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# 2023: THE YEAR IN REVIEW

## U.S. DISTRICT COURT

## DISTRICT OF COLORADO

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MICHAEL E. HEGARTY

CHIEF UNITED STATES MAGISTRATE JUDGE

AUGUST 15, 2024

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## **I. INTRODUCTION**

In this Report I have endeavored to bring the federal practitioner useful information to assist the practice of law before the United States District Court, District of Colorado (“the District”). You should use this information to help the Court fulfill the aspirations of Federal Rule of Civil Procedure 1 (“the just, speedy, and inexpensive determination of every action or proceeding”). The Report presents, among other things, trial results, timing, and an overall picture of trial work in the District from January 1—December 31, 2023, as well as longer-term data, information concerning dispositive motions practice, alternative dispute resolution, pro se and pro bono representation, Magistrate Judge consent, bankruptcy, and even appeals. Please feel free to contact me directly for specific information (so long as your query could not be construed as an *ex parte* communication), and if I can, I will respond.

## **II. YOUR DISTRICT OF COLORADO TRIAL BENCH**

The District of Colorado has seven congressionally funded active District Judge positions.<sup>1</sup> Each federal district has a Chief District Judge, a position that is typically held for up to seven years (the Chief cannot be a senior District Judge). The Chief is allotted an extra chambers staff position and sometimes carries a slightly lower caseload to offset the added administrative responsibilities.

Once a District Judge achieves the “Rule of 80” (age plus years on the Article III bench, with a minimum age of sixty-five and minimum ten years on the bench required), he or she may elect (but is not required) to move to senior status, which opens up an active spot for appointment by the President. A senior District Judge may continue to carry a full caseload or a reduced caseload

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<sup>1</sup> The District has an additional two positions that are recommended by the Judicial Conference but never authorized by Congress. Almost every year there is noise out of Washington concerning allocating funds for these and other recommended judgeships around the country.

(usually a set percentage compared with an active District Judge caseload, perhaps sixty percent, fifty percent, etc.). Senior District Judges may carry a different percentage of a civil versus criminal caseload, or they may carry no criminal caseload at all (the converse rarely happens, *i.e.*, a criminal but no civil caseload). The level of the caseload determines how many chambers staff the senior District Judge is permitted. A senior District Judge may also exercise his or her prerogative to decline any particular case when it is assigned, without stating any other basis for recusing. In our District, a senior District Judge is typically designated to supervise (prior to ultimate assignment to a presiding judge) a particular area of the Court's business, such as the administrative appeal docket, wiretaps, pro se cases, etc.

According to the Administrative Office of the United States Courts ("AO"), senior District Judges nationwide handle about ten to fifteen percent of the total district caseload. In this District, I believe that percentage has historically been higher. Indeed, in our District, senior District Judges tried 25.49% of the trials in 2023: ten of thirty-three civil jury trials; one of eight civil bench trials; two of nine criminal jury trials; and zero of one criminal bench trials. Obviously, a busy senior District Judge bench is an incredible benefit to a district.

Magistrate Judges are creatures of statute, judicial officers of the District Court appointed by the District Judges of the Court to handle a variety of judicial proceedings. They serve renewable eight-year terms. They do not have "senior" status; they are either all in, or not in at all.<sup>2</sup> Their criminal law responsibilities include the authority to issue arrest and search warrants, conduct preliminary proceedings in criminal cases (such as initial appearances and arraignments), and hear cases involving petty offenses committed on federal lands. In most districts, Colorado

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<sup>2</sup> A retired Magistrate Judge can be on "recall" status, meaning they are still authorized to preside over cases. Once a retired Magistrate Judge engages in the practice of law (including mediation), they are no longer eligible to be on recall status. Our District has not historically experienced recall Magistrate Judges, although we have utilized them from other districts on occasion.

included, Magistrate Judges handle pretrial motions and hearings in civil and criminal cases. They also handle civil settlement conferences. While most civil cases are tried to District Judges, Magistrate Judges may also preside over civil trials if all parties consent, discussed in more detail below. Magistrate Judges can be full-time or part-time. Colorado is a unique district in that it has two part-time Magistrate Judges (Durango and Grand Junction). Six full-time Magistrate Judge positions are allotted to Denver and one to Colorado Springs. In our District, Magistrate Judges tried 9.8% of the trials in 2023: four of thirty-three civil jury trials; zero of eight civil bench trials; zero of nine criminal jury trials;<sup>3</sup> and the only criminal bench trial. Obviously, Magistrate Judges provide an essential resource for the District.

The past several years has involved significant shifts in the makeup of the District's bench worth noting:

- **2022:** Judge Arguello took senior status, Judges Sweeney and Wang were appointed, Magistrate Judge Dominguez Braswell took the bench
- **2023:** Judges Martinez and Moore took senior status, Judge Gallagher was appointed, Magistrate Judge Mix retired, Magistrate Judges Prose and Starnella took the bench
- **2024:** Judge Crews was appointed, Magistrate Judges Richard T. Gurley and Timothy O'Hara took the bench (expected around October 15)

The following chart identifies the District's current bench and each Judge's appointment year, as well as notes if they are posted outside of Denver.

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<sup>3</sup> Of course, Magistrate Judges cannot constitutionally preside over felony criminal trials. They do try misdemeanor criminal cases and petty offenses (including up to a potential sentence of one year in prison) and, by consent, preside over civil cases.

District Judges		Magistrate Judges	
Senior	Active	Full-Time	Part-Time
John L. Kane (1977)	Philip A. Brimmer (2008) (Chief Judge)	Michael E. Hegarty (2006) Successor: Cyrus Chung (Expected January 2025)	James M. Candelaria (2019) (Durango)
Lewis T. Babcock (1988)	Daniel D. Domenico (2019)	Scott T. Varholak (2016)	Richard T. Gurley (2024) (Grand Junction)
Marcia S. Krieger (2002)	Regina M. Rodriguez (2021)	N. Reid Neureiter (2018)	
Robert E. Blackburn (2002)	Charlotte N. Sweeney (2022)	Maritza Dominguez Braswell (2022) (Colorado Springs)	
Christine M. Arguello (2008)	Nina Y. Wang (2022)	Susan Prose (2023)	
William J. Martinez (2010)	Gordon P. Gallagher (2023) (Grand Junction)	Kathryn A. Starnella (2023)	
R Brooke Jackson (2011)	S. Kato Crews (2024)	Timothy O’Hara (Expected Late 2024)	
Raymond P. Moore (2013)			

### III. 2023 AT A GLANCE

The more remarkable events for our District transpired at the beginning of 2024. The Magistrate Judges of the District adopted Uniform Practice Standards, a first for the District of Colorado. In addition, the District created the Chief Magistrate Judge position, another first for the District, which occurred in January.

In 2023, our District remained one of the busiest district courts in the nation (based on the number of matters handled per judicial officer). The District had 3,468 civil cases filed and 3,302 civil cases terminated. The District also had 99 miscellaneous cases filed and 98 miscellaneous

cases closed.<sup>4</sup> As for criminal proceedings, the District had 2,792 cases filed and 1,801 cases terminated.

### **A. Civil Caseload**

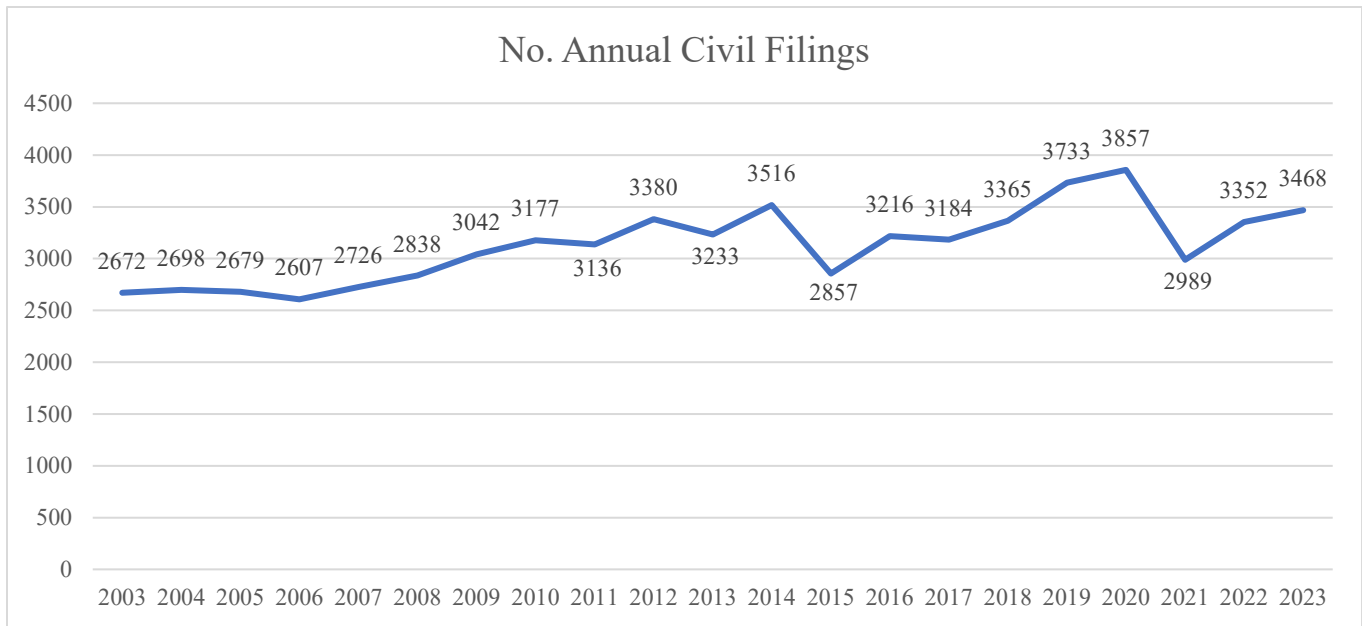
The AO tracks twelve-month periods on a quarterly basis that provide more context for how our District compares to the other ninety-four districts across the country. For the twelve-month reporting period ending December 31, 2023, our District remained in the top third for largest volume of civil case filings and fell at the median for fastest civil case disposition time. Interestingly, the median time to dispose of a case in this District was 8.3 months, which obviously includes early dismissals (either on the merits in pro se cases, or early settlements in civil cases, or perhaps cases that simply never get served and are dismissed without prejudice). The District was also nearly in the top third for highest volume of civil cases pending. These high figures underscore the significance of the speed in which a civil case is resolved in this District.

The **3,468 civil cases filed in the District in 2023** reverses recent declines. This is still lower than the five-year average of 3,479.8 civil case filings per year. However, this five-year period had record-high filings in 2020 (3,857) and 2019 (3,733). Reviewing more historical data shows that 2023 filings were higher than the past decade's average of 3,353.7 case filings per year. Moreover, comparing the data for the past twenty-one years, 2023 continues the general pattern of higher case filings in this decade than the last. Indeed, 2023 filings are higher than the twenty-one year average of 3,129.76 cases filed per year. The following graph shows the number of civil cases filed each year for this period:

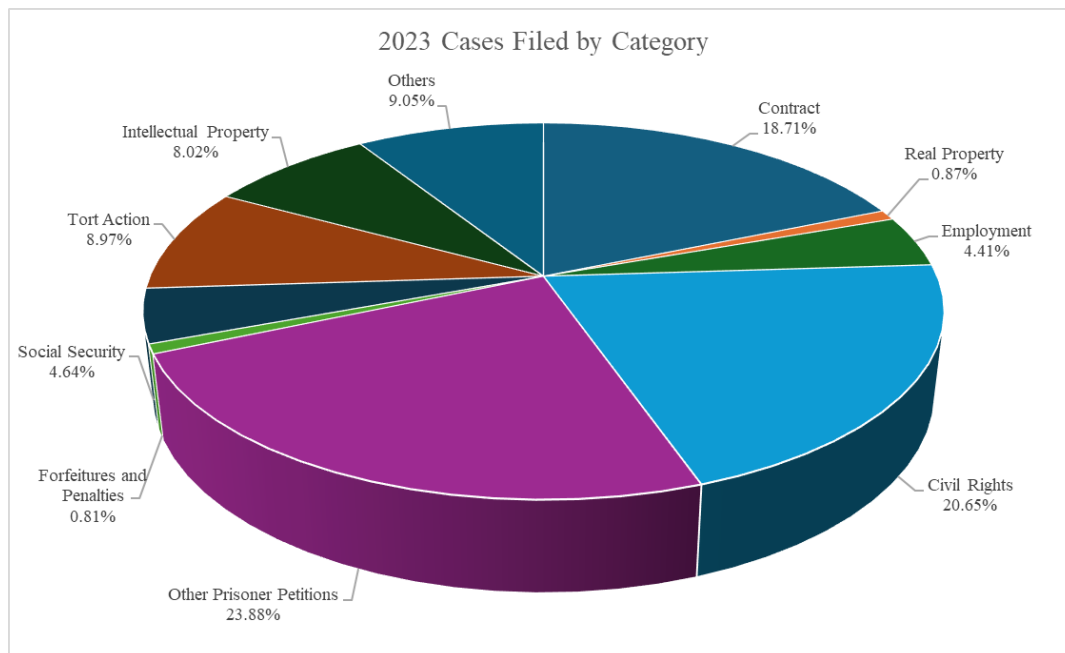
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<sup>4</sup> These cases are not properly considered criminal or civil cases but may be related to criminal or civil cases pending within the District or another district. For instance, miscellaneous cases include motions to compel, enforce, or quash subpoenas from other districts, as well as motions to withdraw immunity for a witness or a warrant for arrest of a juror. The District's website has more information on categories of miscellaneous cases here: [http://www.cod.uscourts.gov/Portals/0/Documents/Forms/CivilForms/Categories\\_of\\_Misc\\_Cases.pdf](http://www.cod.uscourts.gov/Portals/0/Documents/Forms/CivilForms/Categories_of_Misc_Cases.pdf). Interestingly, the number of miscellaneous cases in 2023 declined by more than 50% from 2022.





Civil rights, contracts, and other prisoner petitions<sup>5</sup> were the most popular categories of civil cases filed. The next chart displays the approximate breakdown of cases filed in 2023 by nature of suit.



<sup>5</sup> Includes a variety of claims, including motions to vacate sentences, habeas corpus claims, death penalty appeals, complaints over prison conditions, and requests for mandamus.

## **B. Criminal Caseload**

The AO also reviews cases filed as felonies and Class A misdemeanors as well as petty offenses assigned to District Judges (not Magistrate Judges). For the twelve-month reporting period ending December 31, 2023, the AO reports that our District had a 14.6% increase in criminal case filings when compared with 2022. This is the highest number of criminal cases filed since 2019, after which the District saw a dramatic 42% decrease in filings in 2020, undoubtedly as a result of the COVID-19 pandemic. In 2023, the District was in the top 45% for largest number of criminal case filings, up from the top 61% the previous two years.

Turning to the District's 2023 statistics, it had **309 indictments originating in the District**, which includes superseding indictments (an amended indictment in an already-existing criminal case). The following chart further provides a breakdown of the District's 2023 criminal caseload:

Case Type	No. Cases Filed	No. Cases Closed	No. Cases Pending On 12/31/2023	No. Defendants Added	No. Defendants Terminated	No. Defendants Pending On 12/31/2023	No. Fugitives Reported
<b>Felony</b>	410 <sup>6</sup>	437	251	540 <sup>7</sup>	530	249	37
<b>Magistrate Judge</b>	219	182	45	215	188	29	12
<b>Misc. &amp; Pen Register</b>	409	345	79	388	345	70	0
<b>Petty Offense</b>	11	9	5	11	9	3	2
<b>Search Warrant</b>	1,731	828	930	1,123	831	930	0
<b>Wire Tap</b>	12	0	12	18	0	23	0

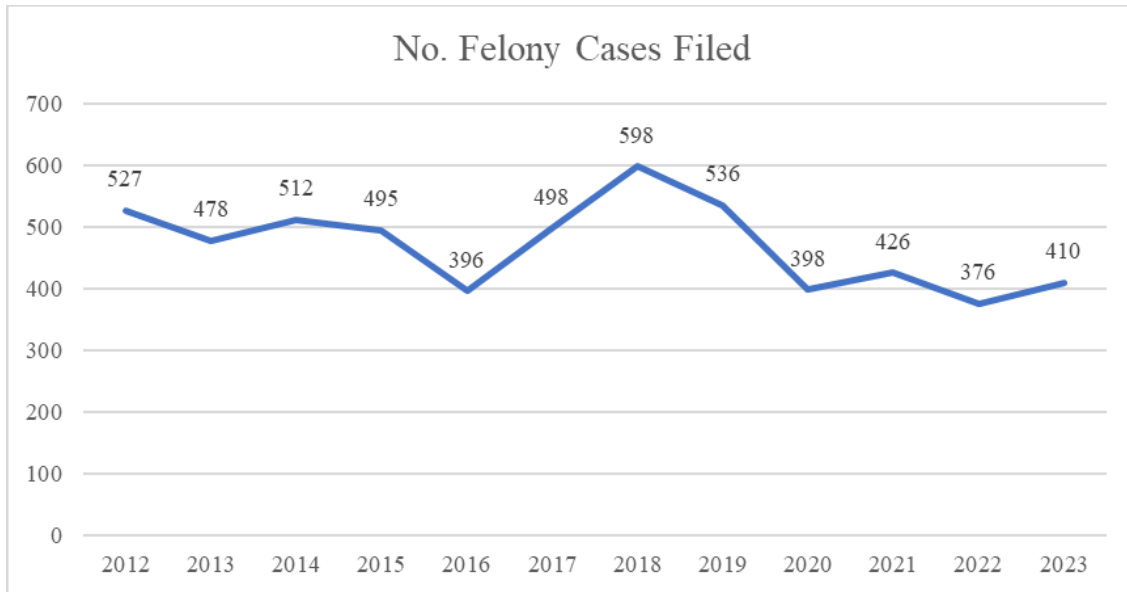
The 410 new felony cases filed in 2023 represent an increase over the 376 filed in 2022, but this number is still well below the twelve-year average of 470.83 new felony filings per year.<sup>8</sup> That said, the District has experienced a general decline in new felony filings since 2018, and the 410 new felony filings in 2023 is therefore much closer to the five-year average of 429.2 new felony filings per year.

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<sup>6</sup> This includes indictments transferred from other districts and any criminal informations (an alternative charging document to an indictment, usually when the defendant is cooperating).

<sup>7</sup> This figure also includes defendants transferred from other districts.

<sup>8</sup> The District began recording this data twelve years ago in 2012.



### **C. Summary of Trials**

In 2023, the District had fifty-one total cases tried to verdict,<sup>9</sup> a downtick from fifty-six in 2022 and virtually even with the fifty-two tried in 2021. The District had forty-two jury trials (thirty-three civil and nine criminal) in 2023, a decrease from fifty-one jury trials in 2022. Interestingly, the District saw an increase in 2023 in civil jury trial volume (up from twenty-nine in 2022) and a notable decrease in criminal jury trials (down from twenty-two in 2022). The District also had nine bench trials (eight civil and one criminal) in 2023, almost double the volume from 2022 (five). While the criminal bench trials are only one different between the two years, the increase is attributable to the civil bench trials as 2022 only had three. This volume of civil bench trials is consistent with 2021's numbers and represents the largest number of civil bench trials that the District has seen since 2018 (fifteen).

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<sup>9</sup> This figure includes five civil bench trials which were held in 2023 but for which Findings of Fact and Conclusions of Law were not entered until 2024.

#### IV. CIVIL JURY TRIALS

##### A. Overview

The District tried **thirty-three civil jury trials to verdict in 2023**.<sup>10</sup> This was the highest number since 2018. Four of those originated in Colorado Springs, one in Grand Junction, and the remaining twenty-eight in Denver. Most of the thirty-three civil jury trials tried to verdict in 2023 were filed between 2020 and 2021. The longest pending case was filed in 2016. The chart below shows the filing year for each case:

Year Filed	No. Tried to Verdict in 2023
2016	1
2018	3
2019	2
2020	9
2021	14
2022	4

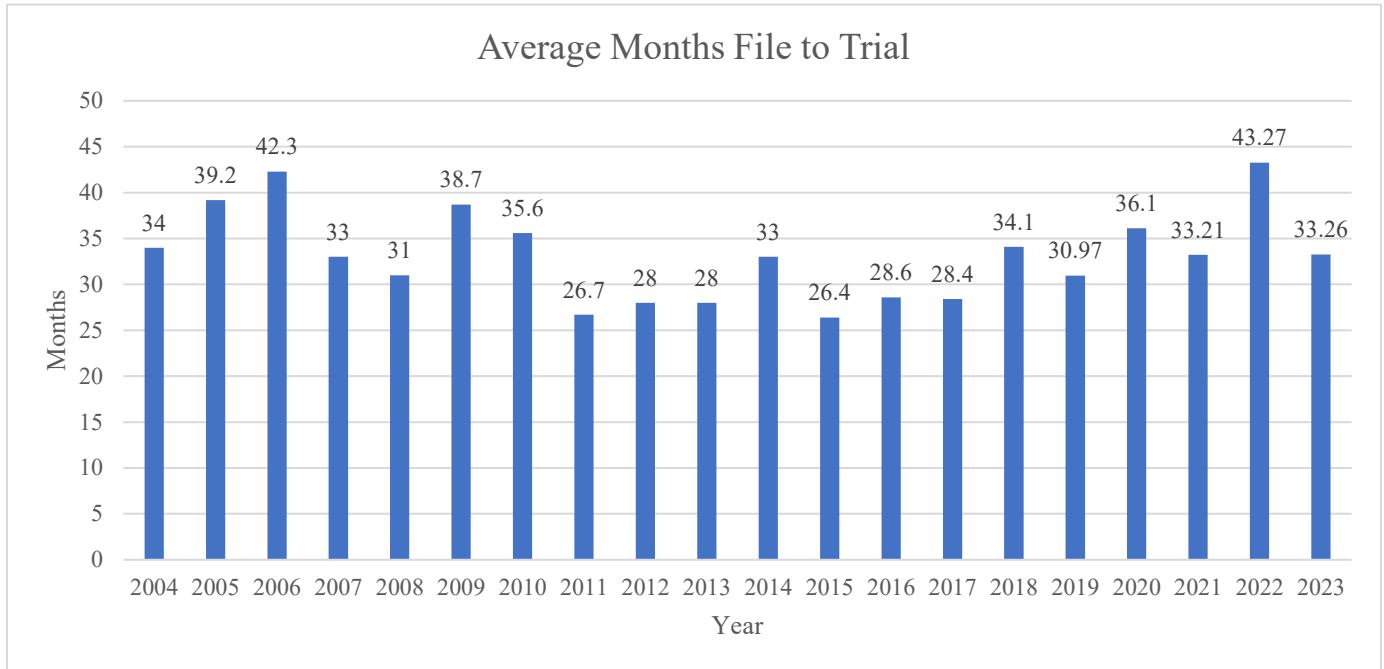
##### B. Time to Trial

In 2023, the **average duration between a complaint's filing in the District and its first day of jury trial was 33.26 months**, which is a 30.1% decrease from 43.27 months in 2022, a 0.15% increase from 33.21 months in 2021, and an 8.54% decrease from 36.1 months in 2020. Historically, this timeframe (33.26 months) is consistent with the twenty-one year average time to trial in the District (33.19 months). The shortest time from filing to trial was 16.27 months (a slight improvement from the 17.57-month record in 2022) in a case involving claims for breach of insurance contract and unreasonable delay of benefits. The longest time from filing to trial was 78.07 months (significantly lower than the 109.63-month high in 2022) in a civil rights case filed in 2016 involving alleged disability discrimination.

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<sup>10</sup> There were three other civil jury trials that began in 2023. Two settled during trial (half of those that settled mid-trial in 2022), and the Court granted judgment as a matter of law in the other.

The graph below illustrates historic trends for average months to trial:



The chart below shows the average months to trial by nature of suit tried by civil jury in 2023:

Nature of Suit	Months to Trial	Number of Cases
Breach of Contract	41.98	2
Civil Rights	62.64	3
Employment	36.83	5
Insurance	25.86	16
Intellectual Property	45.17	2
Torts	27.49	5

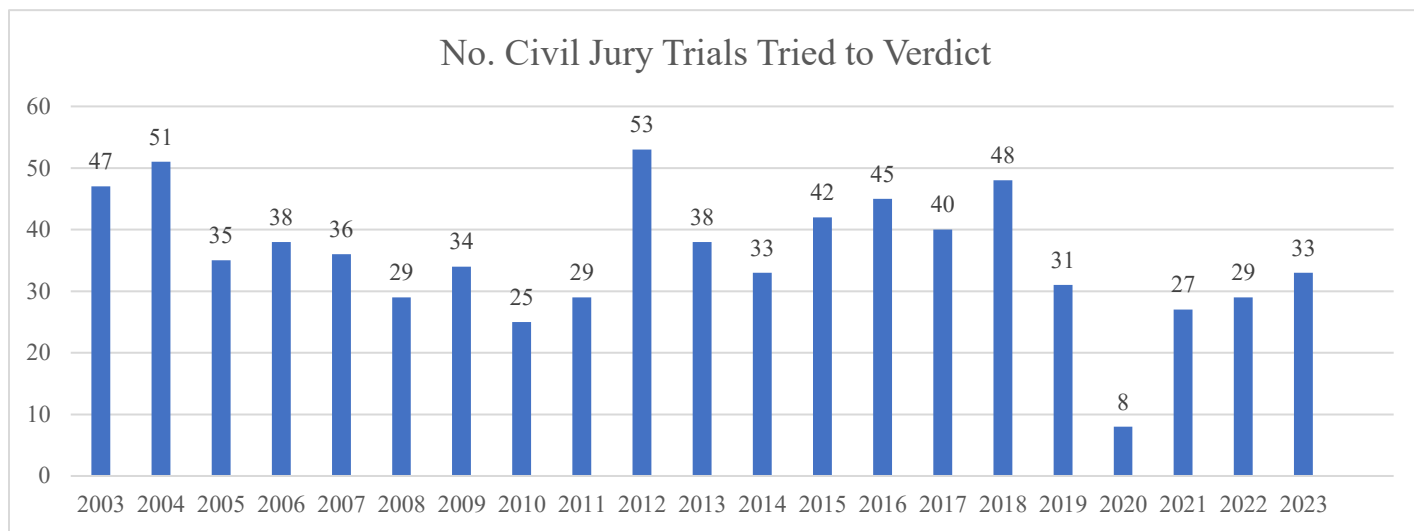
Seven of the thirty-three civil jury trials in 2023 occurred within two years of filing in the District (21.21%), which is a higher rate than the seven of twenty-nine (14.71%) in 2022 and consistent with the rates of other recent years: eight of twenty-seven cases in 2021 (29.63%), two

of eight cases in 2020 (25%), and nine of thirty-one cases in 2019 (29.03%). Two of these “under two years” cases (28.57%) were tried to Magistrate Judges, consistent with the three “under two years” cases tried to Magistrate Judges in 2022.

Returning to the thirty-three civil jury trials in 2023, twenty-nine of them were tried to District Judges with an average time to trial of 34.03 months. Of these, ten were tried to senior District Judges with an average 29.62 months to trial and nineteen were tried to active District Judges with an average of 36.35 months to trial. Additionally, four of the 2023 civil jury trials to reach a verdict were tried to Magistrate Judges with an average time to trial of 27.63 months.

### C. Volume of Trials

As discussed above, the total volume of civil jury trials to reach verdict in 2023 (thirty-three) increased from 2022 (twenty-nine). Considering 2023 in light of the District’s history, 2023 was not inconsistent with the twenty-one-year<sup>11</sup> average of 35.76 trials per year:

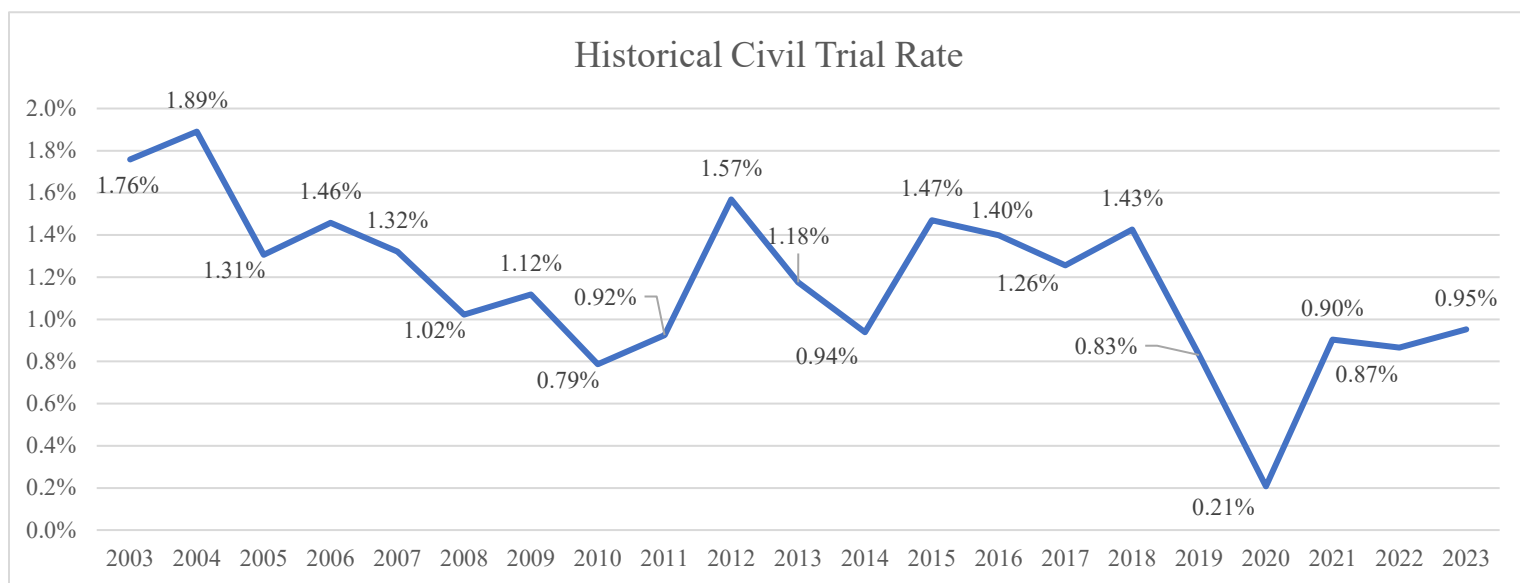


As shown in the chart above, 2023 continues an upward trend back to pre-pandemic numbers, although the recovery is not yet (and may never be) complete. This reflects the COVID-

<sup>11</sup> The District began recording this data twenty-one years ago in 2003.

19 pandemic's continued effects on civil jury trials. While the pandemic may have encouraged settlements which could partially explain the lower numbers since 2020, it likely also delayed litigation<sup>12</sup> that would have otherwise been tried in the years following. All in, this data suggests we will likely continue to see a rise in civil jury trials year over year.

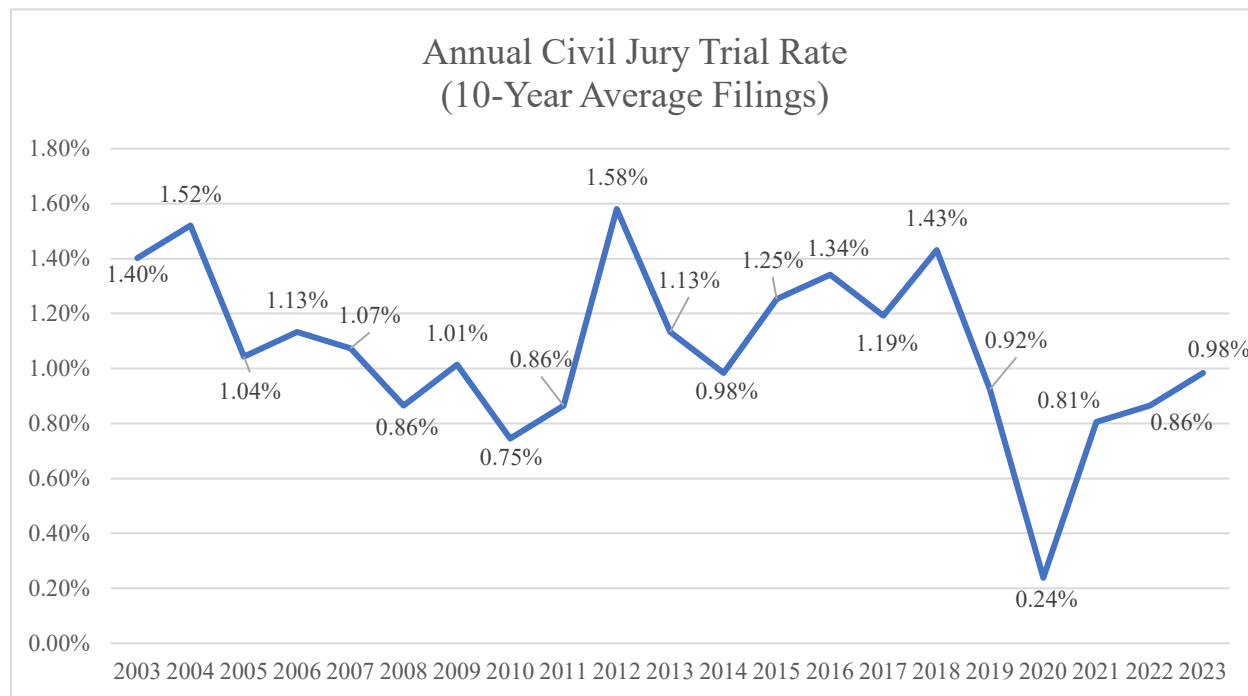
Comparing civil jury trials with verdicts to civil cases filed, 2023 had a 0.95% trial rate. Once again, this suggests a return to pre-pandemic standards as this continues the rise since the two-decade low in 2020. In fact, 2023 had the highest rate since 2018 which had a trial rate of 1.43%. The graph below shows the trial rates for the past twenty-one years:



<sup>12</sup> From March through July of 2020, the District ceased all in-person proceedings. The District cautiously reopened for a few trials between July and October of 2020, but then shut down again following the second wave of COVID in Colorado. This second shutdown continued until March of 2021.



Even if this rate is calculated using the ten-year average number of cases filed (3,353.7) in an attempt to standardize the most recent data, the outcome is not substantially different. As shown below, it yields the same overall trends—a 2023 rate on the lower end of pre-pandemic standards and confirmation that civil jury trials have bounced back from the pandemic.



#### **D. Parties' Success Rates**

In 2023, **plaintiffs prevailed in nineteen of the thirty-three civil jury trials** that reached a verdict (**57.58%**) whereas **defendants prevailed in thirteen (39.39%)**. The only other civil jury trial to reach verdict in 2023 resulted in a split judgment, with two of the four plaintiffs prevailing on their claims. This marks the third year in a row (and the only three years since 2011) that plaintiffs enjoyed a higher success rate than defendants.<sup>13</sup> I think this could be considered a trend!

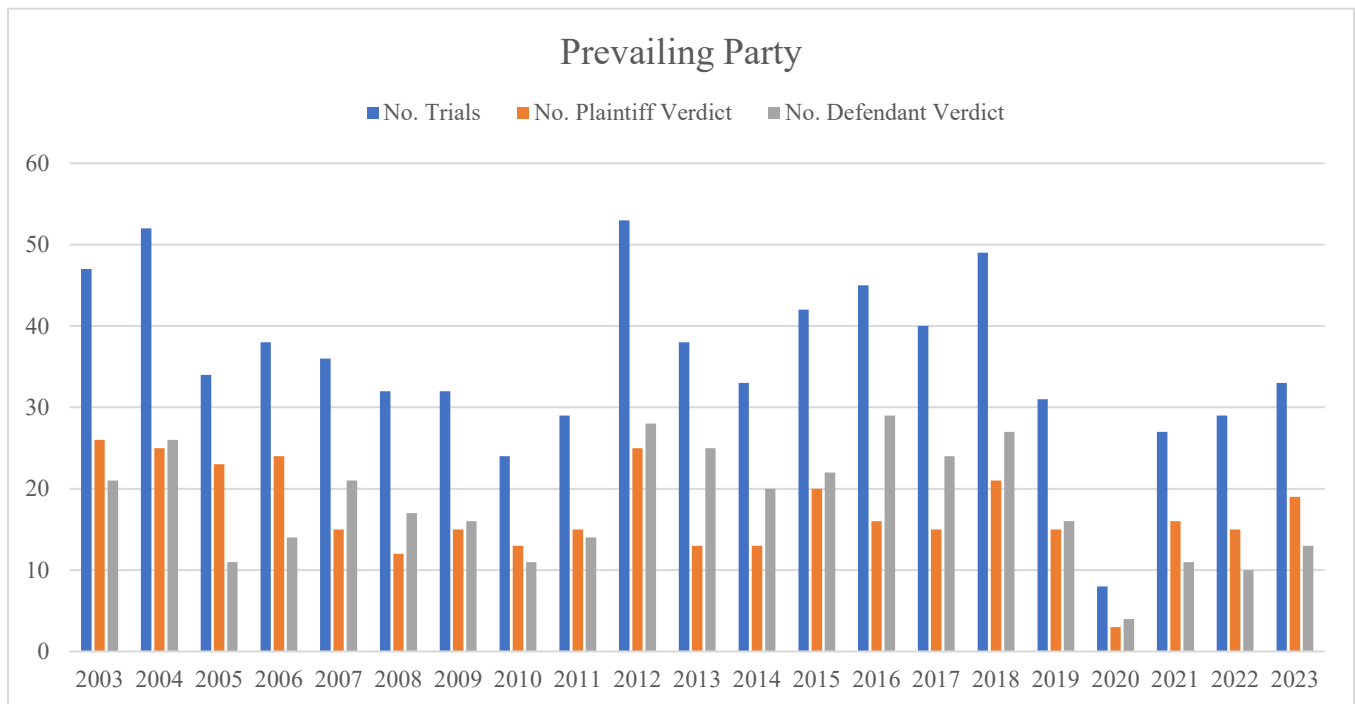
<sup>13</sup> In 2022, plaintiffs prevailed in nineteen of twenty-nine trials, yielding a success rate of 51.72%. In 2021, plaintiffs prevailed in sixteen of twenty-seven trials, yielding a plaintiff success rate of 59.26%. In 2011, plaintiffs prevailed in fifteen of the twenty-nine trials, yielding a plaintiff success rate of 51.72%.

Since 2003, the District has seen 752 civil jury trials. Plaintiffs prevailed in 359 of those (47.74%), and defendants prevailed in 380 (50.53%). There have been eleven split verdicts (1.46%) and two judgments vacated (0.27%). The chart below presents success rates since 2003:

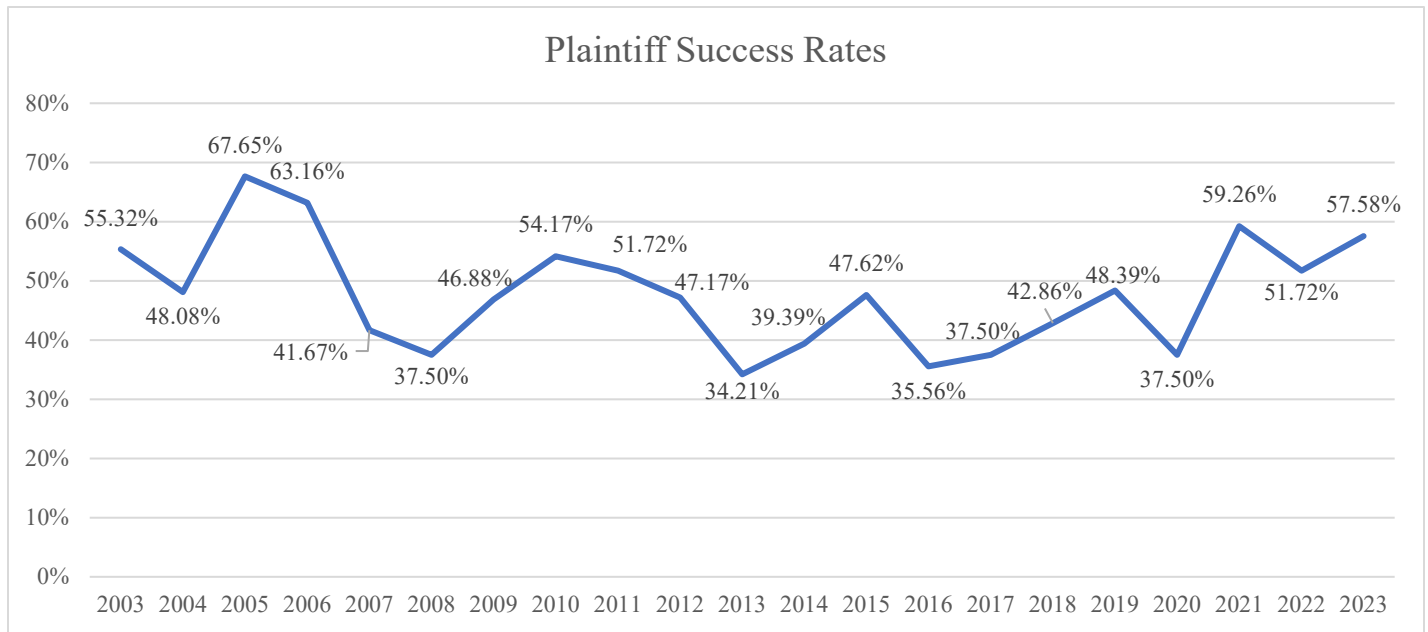
<b>Year</b>	<b>No. Trials</b>	<b>No. Plaintiff Verdict</b>	<b>% Plaintiff</b>	<b>No. Defendant Verdict</b>	<b>% Defendant</b>	<b>Split Verdicts</b>	<b>Vacated</b>
<b>2003</b>	47	26	55.32%	21	44.68%	0	0
<b>2004</b>	52	25	48.08%	26	50%	1	0
<b>2005</b>	34	23	67.65%	11	32.35%	0	0
<b>2006</b>	38	24	63.16%	14	36.84%	0	0
<b>2007</b>	36	15	41.67%	21	58.33%	0	0
<b>2008</b>	32	12	37.5%	17	53.13%	3	0
<b>2009</b>	32	15	46.88%	16	50%	1	0
<b>2010</b>	24	13	54.17%	11	45.83%	0	0
<b>2011</b>	29	15	51.72%	14	48.28%	0	0
<b>2012</b>	53	25	47.17%	28	52.83%	0	0
<b>2013</b>	38	13	34.21%	25	65.79%	0	0
<b>2014</b>	33	13	39.39%	20	60.61%	0	0
<b>2015</b>	42	20	47.62%	22	52.38%	0	0
<b>2016</b>	45	16	35.56%	29	64.44%	0	0
<b>2017</b>	40	15	37.5%	24	60%	1	0
<b>2018</b>	49	21	42.86%	27	55.1%	0	1
<b>2019</b>	31	15	48.39%	16	51.61%	0	0
<b>2020</b>	8	3	37.5%	4	50%	1	0

<b>2021</b>	27	16	59.26%	11	40.74%	0	0
<b>2022</b>	29	15	51.72%	10	34.48%	3	1
<b>2023</b>	33	19	57.58%	13	39.39%	1	0
<b>Total</b>	752	359	47.74%	380	50.53%	11	2

The following graph also shows historic trends for prevailing parties:



Finally, the graph on the following page illustrates the historical trend for plaintiff success rates. Of course, a graph charting defendant success rates over this period would be a symmetrical mirror image of the trend above.



#### **E. Level of Awards**

**Seventeen civil jury trials resulted in plaintiff awards.** There were two other plaintiff verdicts which did not lead to awards. One arose in a bifurcated case (*i.e.*, liability only) in which the jury determined the defendant was liable for disability discrimination. In the other, a trial for employment discrimination, liability was determined at trial, but the parties settled before the hearing for backpay could be held. Of the seventeen verdicts resulting in plaintiff awards, seven of these were tried to active District Judges, seven were tried to senior District Judges, and three were tried to Magistrate Judges.

Of the seventeen plaintiff awards, the Court modified one. In that case, the plaintiff brought a claim against his insurer for breach of an insurance contract seeking underinsured motorist coverage after being injured by an uninsured driver. Per the plaintiff's insurance contract, he was insured for up to \$1.25 million, and had received \$69,946.83 from the defendant pursuant to that contract. At trial, the jury found that the plaintiff's injuries amounted to \$2.4 million. The Court

reduced the award to \$1,180,053.17—the difference between the \$1.25 million for which plaintiff was insured and the \$69,946.83 he had already received.

Analyzing the final 2023 civil jury plaintiff awards, the largest was \$39 million in a case for patent violation. This is significantly higher than the largest award in 2022 of \$13.8 million in a civil rights case, and significantly lower than the largest civil jury verdict in 2021 of \$156 million in a case regarding fiduciary duty, fraudulent concealment, fraudulent misrepresentation, and civil conspiracy claims. Still, it is much larger than both the largest civil jury verdict in 2020 of \$921,059 in a breach of insurance contract case and the largest civil jury verdict in 2019 of \$2,995,004 in an unlawful arrest case.

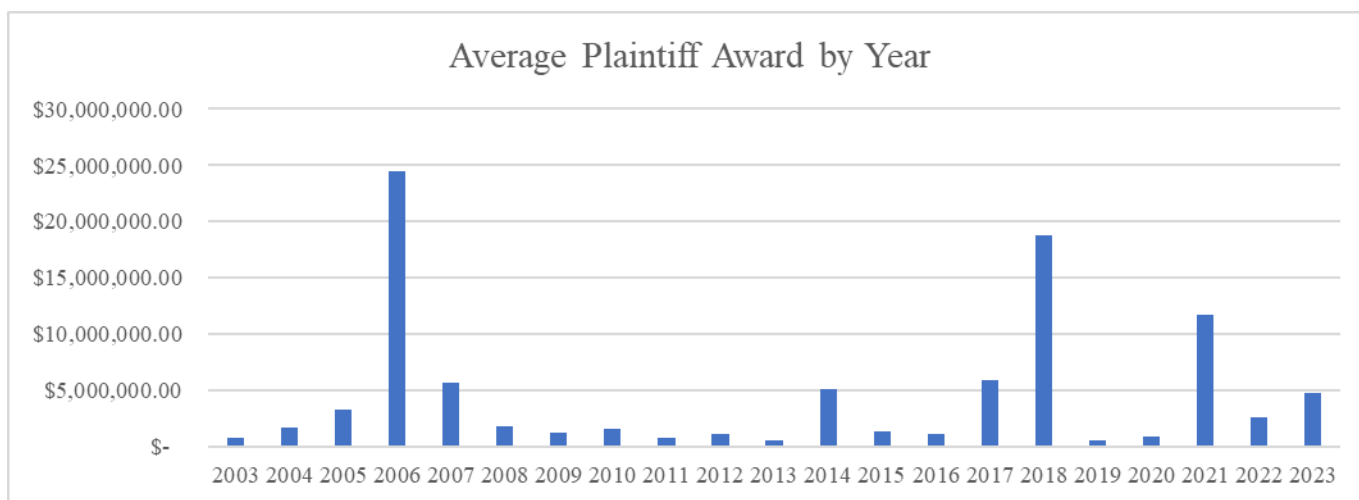
The smallest award in 2023 was \$3,540 in a breach of insurance contract case for underinsured motorist coverage in which the negligent driver had paid the plaintiff \$25,000 and the jury found the plaintiffs total damages from a collision were \$28,540, thus entitling plaintiff to recover the \$3,540 difference. This figure is similar to the smallest verdict in 2022 of \$5,000 in a breach of contract case, in 2020 of \$3,190 in an intellectual property case, and in 2019 of \$6,000 in an auto accident case. These numbers are substantially smaller than that of 2021, where the smallest jury verdict was \$37,900 in a case over discrimination under the Americans with Disabilities Act.<sup>14</sup>

The **average plaintiff award in 2023 was \$4,758,628.99**, substantially higher than the averages of \$2,683,703.59 in 2022, \$365,906 in 2020, and \$545,968 in 2019. However, these numbers are substantially lower than the average of \$11,768,570.25 in 2021. Excluding the highest and lowest verdicts of 2023, the average civil jury plaintiff award was \$2,792,876.86. This is larger

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<sup>14</sup> In 2021, a plaintiff also prevailed in a jury trial regarding the ownership of several paintings, but no monetary award was sought or awarded.

than the \$2,156,354.04 in 2022. The following graph shows historic trends in average plaintiff awards:



Additionally, of the seventeen cases with plaintiff awards, only four had attorney's fees awarded, and in one of those the parties settled attorney's fees outside of court. The average attorney's fees award of the three remaining cases was \$1,021,154.45. The highest fee award was \$2,590,956.35 entered in a breach of contract case, in addition to an award of \$7,623,654. The lowest fee award was \$123,790, entered in a case for breach of insurance contract.

The chart on the following page reports details of the civil trial jury verdicts in 2023:

## Civil Jury Trial Results - 2023

Judge	Substantive Area	Category	Verdict	Award
CMA	Breach of Insurance Contract	Insurance	Plaintiff	\$ 3,540.00
CMA	Negligence: Premises Liability	Torts	Plaintiff	\$ 3,043,610.00
CNS	Bad Faith Breach of Insurance Contract, Unreasonable delay of benefits	Insurance	Defendant	N/A
CNS	Breach of Insurance Contract, Unreasonable delay of benefits	Insurance	Defendant	N/A
CNS	Fraudulent Inducement, Negligent Misrepresentation	Torts	Plaintiff	\$ 19,891,447.00
CNS	Breach of Insurance Contract, Statutory Bad Faith, Common Law Bad Faith	Insurance	Plaintiff	\$ 7,623,654.00
DDD	Breach of Insurance Contract, Unreasonable denial of payment benefits, Bad Faith Breach	Insurance	Plaintiff	\$ 3,600,000.00
GPG	Negligence	Torts	Plaintiff	\$ 125,489.00
GPG	Bad Faith Breach of Insurance Contract, Unreasonable delay of benefits	Insurance	Plaintiff	\$ 490,555.26
KAS	Breach of Insurance Contract	Insurance	Defendant	N/A
MEH	Breach of Insurance Contract, Unreasonable delay of benefits	Insurance	Plaintiff	\$ 10,900.00
NYW	Civil Rights, Job Discrimination, Age Discrimination	Employment	Defendant	N/A
NYW	1983 Civil Rights (First Amendment Retaliation for Strike), Breach of Contract	Employment	Defendant	N/A
PAB	Civil Rights, Race Employment Discrimination	Employment	Defendant	N/A
PAB	Breach of Contract, Tortious interference with business, breach of fiduciary duty	Breach of Contract	Plaintiff	\$ 195,900.00
PAB	8th Amendment, Deliberate Indifference	Non-Prisoner Civil Rights	Defendant	N/A
PAB	Breach of Insurance Contract	Insurance	Plaintiff	\$ 1,320,948.00
RBJ	Breach of Insurance Contract	Insurance	Defendant	N/A
RBJ	Violation of 1st Amendment and Due Process Rights	Non-Prisoner Civil Rights	Plaintiff	\$ 135,500.00
REB	Breach of Insurance Contract	Insurance	Defendant	N/A
REB	Breach of Insurance Contract	Insurance	Plaintiff	\$ 300,025.25
REB	Breach of Insurance Contract	Insurance	Plaintiff	\$ 1,180,053.17
RM	Negligence	Torts	Defendant	N/A
RM	830 Patent	Intellectual Property	Plaintiff	\$ 39,000,000.00
RM	Bad Faith Breach of Insurance Contract, Unreasonable delay of benefits	Insurance	Plaintiff	\$ 1,389,919.17
RMR	Breach of Insurance Contract, Unreasonable delay of benefits	Insurance	Defendant	N/A
RMR	Misappropriation of Trade Secrets, Breach of Contract, Unjust enrichment	Intellectual Property	Defendant	N/A
RMR	Title VII Sex Discrimination	Employment	Defendant	N/A
SKC	False Representation, Concealment, Conversion, and Civil Theft	Torts	Plaintiff	\$ 2,491,152.00
STV	Breach of Contract	Breach of Contract	Plaintiff	\$ 94,000.00
WJM	Breach of Insurance Contract	Insurance	Split	\$ 100,000.00

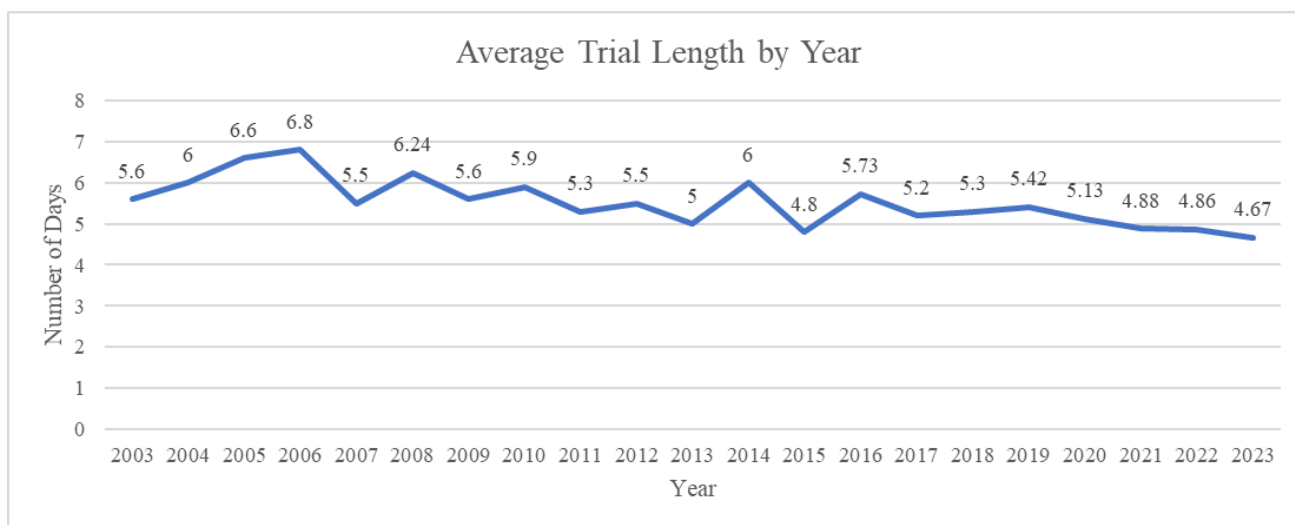
## F. Trial Lengths

Civil jury trials that went to verdict in 2023 required 154 total days compared with 141 total trial days in 2022, 132 in 2021, forty-one in 2020, 168 in 2019, and 252 in 2018. The longest trial lasted fourteen days (disability discrimination case), compared with fifteen days (civil rights action) in 2022. The shortest trials lasted two days (breach of insurance contract) consistent with two days in 2022 (civil rights). The **average civil jury trial in 2023 lasted 4.67 days**, consistent with 4.87 days in 2022. The most common trial length was four days. For the nineteen cases tried to an active District Judge, the average trial length was 5.26 days. For the ten cases tried to a senior District Judge, the average trial length was 3.9 days. For the four cases tried to a Magistrate Judge, the average trial length was 3.75 days. The chart below shows the total number of cases for each trial length:

Number of Days	Number of Trials
2	1
3	6
4	14
5	8
7	2
10	1
14	1

The 4.67-day average trial length in 2023 was fairly similar to historical averages in the District as shown in the graph on the following page:





### G. Time to Judgment

For the thirty-three civil jury trials to reach judgment in 2023,<sup>15</sup> the **average time to judgment from the jury’s verdict was 1.33 months**. At times, judgments were amended, usually to add pre-and/or post-judgment interest, costs, and fees but sometimes also to modify an award. This modestly extends the time to finality. Indeed, the average time to the last judgment from the jury’s verdict was 2.08 months. In turn, the average time to judgment from filing the case in the District was 33.39 months. Again, calculating to the final judgment only slightly increases this figure as that average is 34.14 months. Under either calculus, the fastest time to judgment was zero days (*i.e.*, the same day the jury entered a verdict) whereas the longest time was 8.7 months.

Notably, **nine of the thirty-three cases were appealed to the Tenth Circuit (29.03%)**. Seven remain pending and two have been terminated—one by settlement agreement and another by order from the Tenth Circuit.

The chart on the next page provides an overview on time to judgment and appeals organized by nature of suit:

<sup>15</sup> Though thirty-three trials reached verdict, one settled before judgment could be entered and another remains pending because the issues of liability and damages were bifurcated and only liability has been established.

Nature of Suit	Verdict to Judgment (months)	Verdict to Final Judgment (months)	Filing Suit to Judgment (Months)	Filing Suit to Last Judgment (Months)	Appealed ?	Appeal Still Pending ?
Breach of Contract	0	0	33.67	33.67	Yes	Yes
Breach of Contract	0.13	0.13	50.63	50.63	No	No
Employment	0.03	0.03	27.2	27.2	No	No
Employment	0.03	0.03	36.4	36.4	No	No
Employment	0	0	36.9	36.9	No	No
Insurance	0.07	0.07	31.37	31.37	No	No
Insurance	0	0	16.33	16.33	Yes	Yes
Insurance	0.03	1	26.03	27	No	No
Insurance	0	0	24.17	24.17	Yes	No
Insurance	0	0	25.93	25.93	No	No
Insurance	0.23	0.23	31.57	31.57	No	No
Insurance	0.7	0.7	25.57	25.57	No	No
Insurance	2.63	2.63	19.1	19.1	No	No
Insurance	0.4	6.67	24.53	30.8	No	No
Insurance	0.2	2.23	17.73	19.77	No	No
Insurance	0.2	0.2	19.13	19.13	Yes	Yes
Insurance	0	0	22.87	22.87	No	No
Insurance	0.43	0.43	36.63	36.63	No	No
Insurance	0.13	1.1	34.93	35.9	No	No
Insurance	6.83	6.83	34.1	34.1	Yes	No, Settled
Insurance	4.9	5.6	42.13	42.83	Yes	Yes
Non-Prisoner Civil Rights	0.23	0.23	61.87	61.87	No	No
Non-Prisoner Civil Rights	0.1	0.1	48.5	48.5	No	No
Employment	8.7	8.7	63.73	63.73	Yes	Yes
Intellectual Property	1.73	1.73	61.63	61.63	Yes	Yes
Intellectual Property	7.87	7.87	38.67	38.67	No	No
Torts	0.03	0.03	25.97	25.97	No	No
Torts	0.67	0.67	19.1	19.1	No	No
Torts	0.13	10.47	42.2	52.53	No	No
Torts	0.03	1.87	24.67	26.5	No	No
Torts	4.77	4.83	31.87	31.93	Yes	Yes

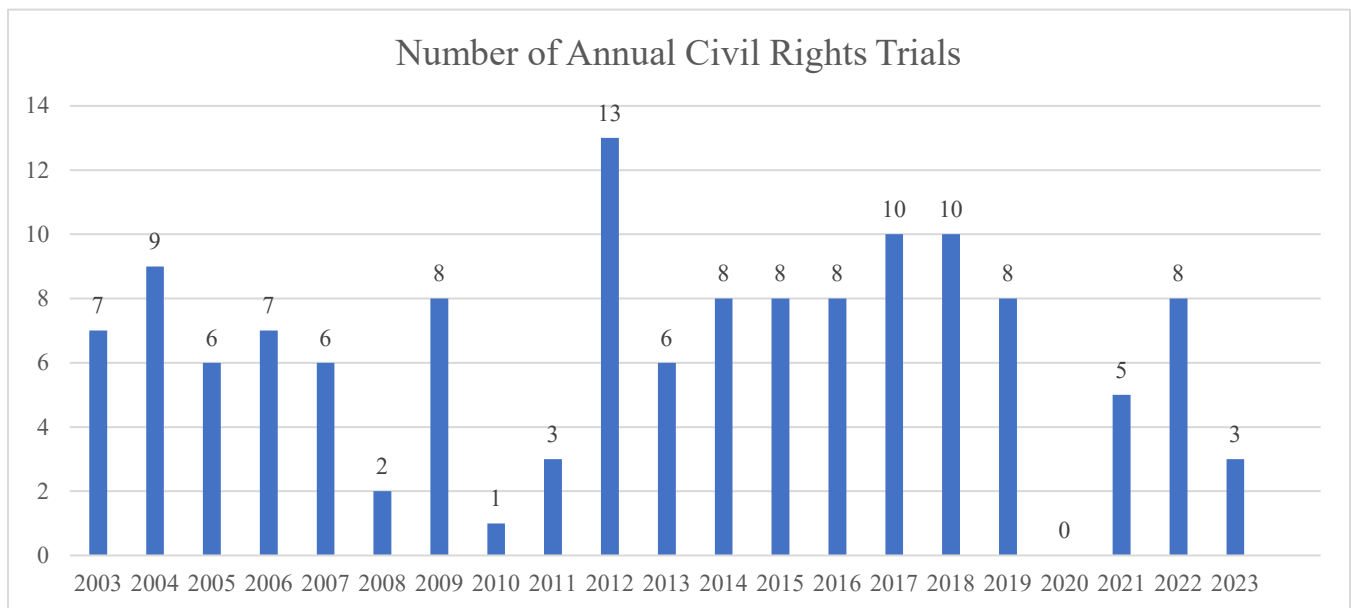
## H. Nature of Claims

The civil jury trials conducted in 2023 fall into the following categories:

Category	No. Cases	Percent of Cases Tried
Employment	5	15.15%
Common Law Tort	5	15.15%
Insurance	16	48.48%
Civil Rights	3	9.09%
Breach of Contract	2	6.06%
Intellectual Property	2	6.06%

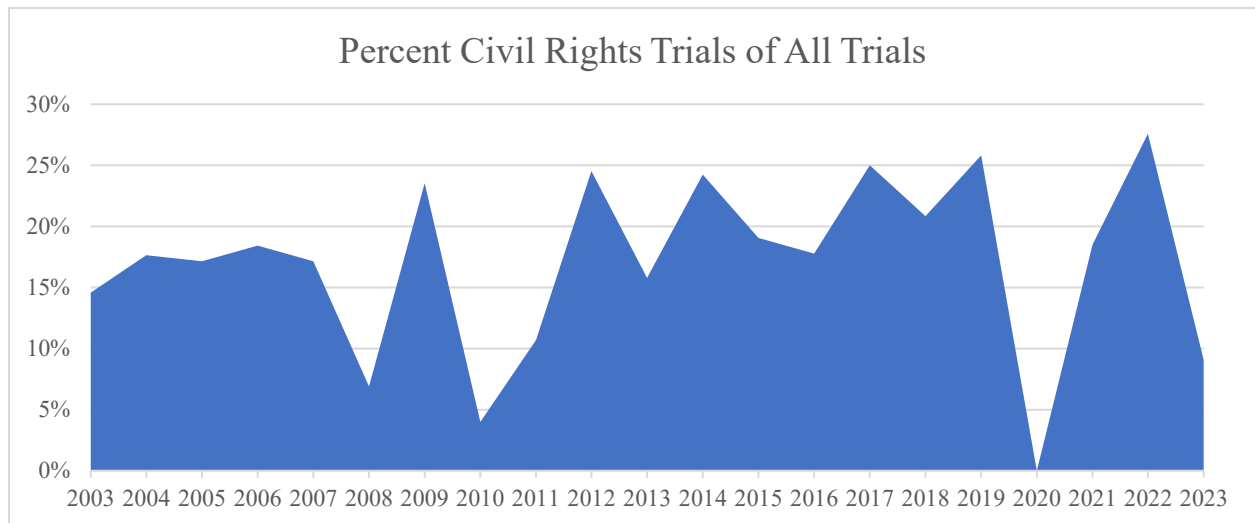
### 1. Civil Rights

**Civil rights disputes accounted for three of the thirty-three civil jury trials in 2023 to reach verdict.** This is the lowest number since 2011 (excluding 2020) and notably lower than the twenty-one year average of 6.48 trials. The graph below illustrates the historical trend for annual civil rights trials in the District:

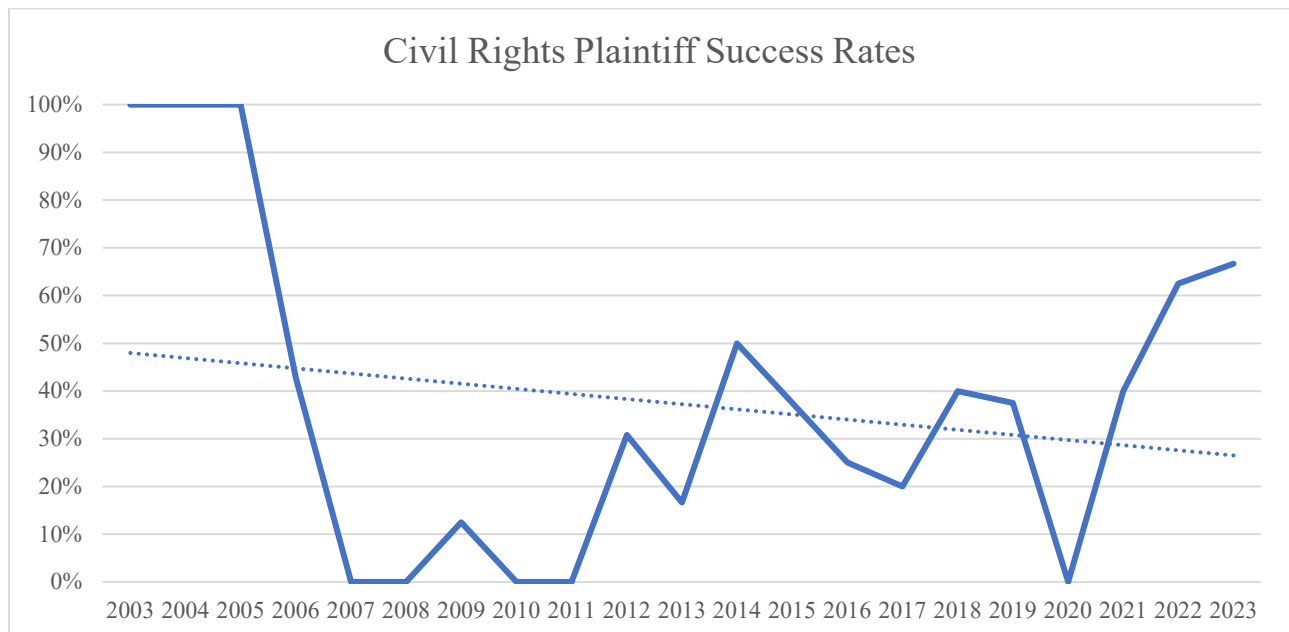


These three trials accounted for 9.09% of civil jury trials in 2023 to reach verdict. This is significantly lower than 27.59% in 2022 and 18.52% in 2021. This is much lower than the 18.13%

average for the past twenty-one years. The graph below depicts the twenty-one-year trend of percentage of all trials for civil rights trials:



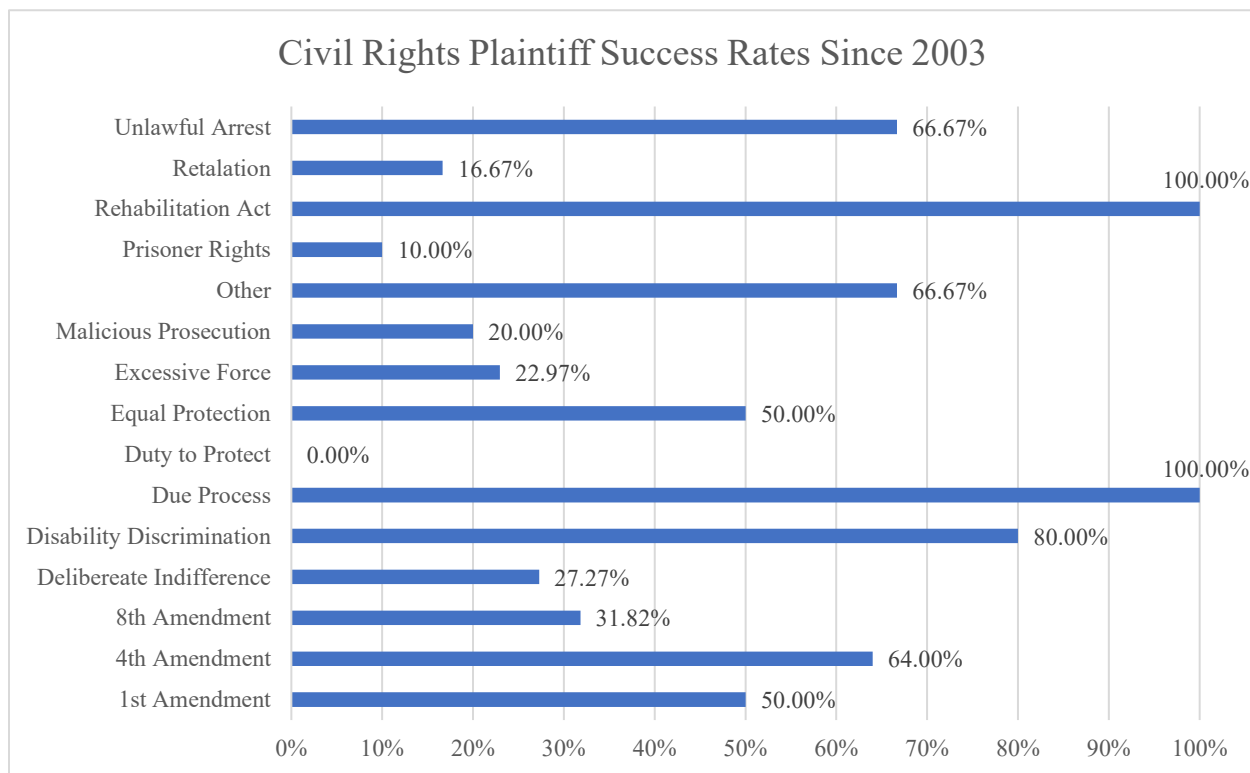
**In 2023, Plaintiffs prevailed in two of the three civil rights jury trials (66.67%),** a slight increase from five of eight (62.5%) in 2022 and two of the five civil rights trials (40%) in 2021. This is almost double the twenty-one year average for civil rights plaintiff verdicts of 35%. The following graph illustrates the trend for plaintiff success rates in civil rights disputes:



Plaintiffs prevailed in two civil rights claims in 2023, but one of those was in a bifurcated trial only on the issue of liability. The one award for damages was for \$135,500. The chart below provides a breakdown of the civil rights disputes in 2023 by nature of claim:

Substantive Area	Verdict	Award
Violation of 1st Amendment and Due Process Rights	Plaintiff	\$135,500
8th Amendment, Deliberate Indifference	Defendant	N/A
Disability Discrimination, Disparate Impact	Plaintiff	Bifurcated, N/A

The graph below shows the breakdown of plaintiff success rates by subject in every civil rights jury trial since 2003<sup>16</sup>:



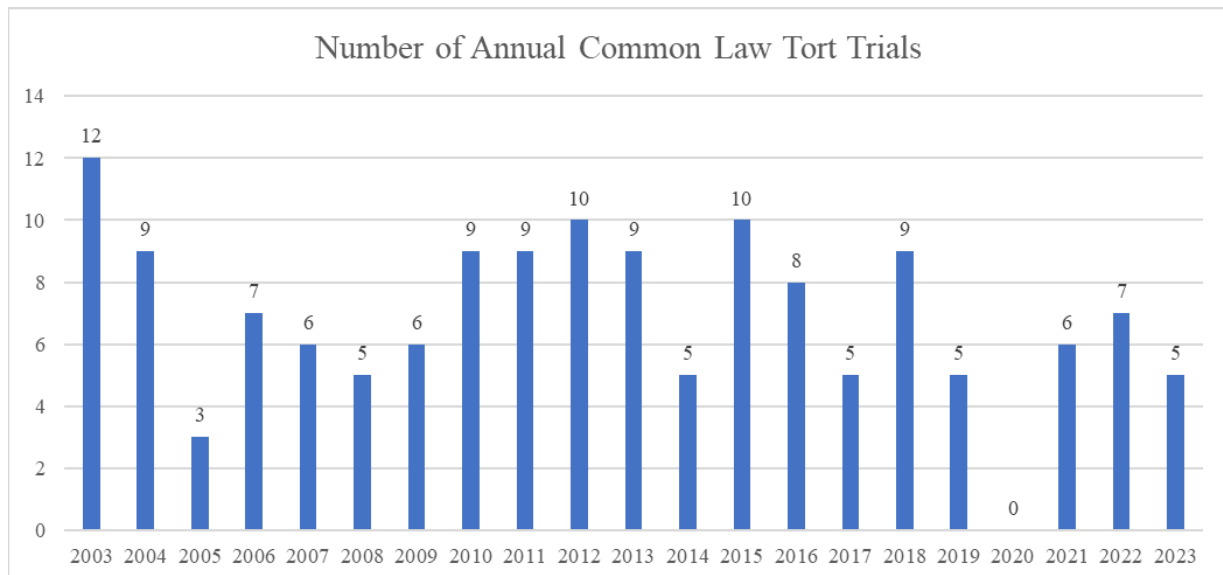
<sup>16</sup> For civil rights trials in which several claims were tried by a plaintiff, each of those claims has been recorded as a fraction of a trial (e.g., for a trial in which excessive force and prisoner rights were considered, a half point has been included in each of those rows).

The chart below further shows this breakdown by individual verdict:

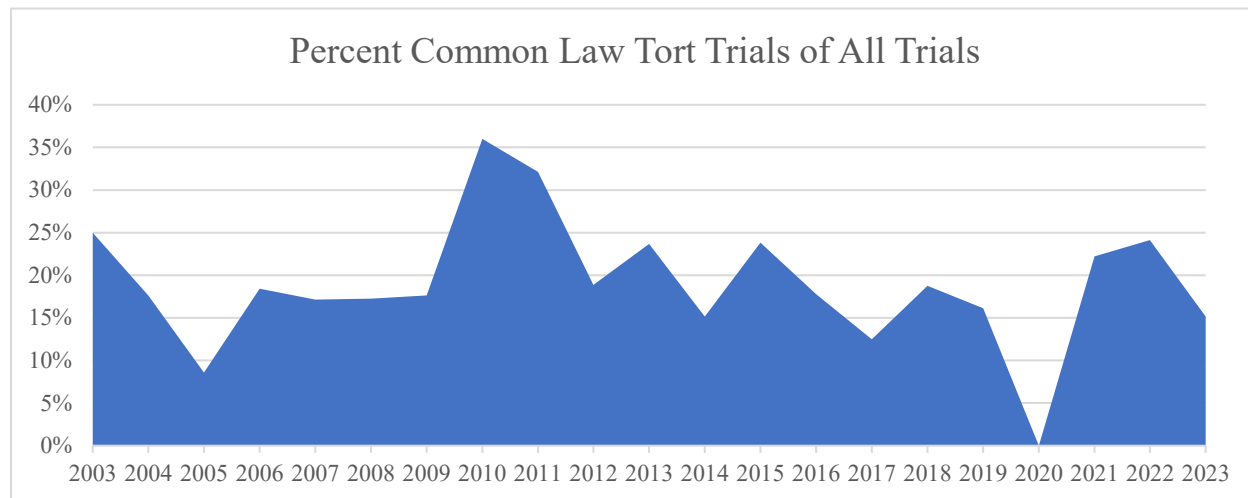
<u>Type of Claim</u>	<u>Total Verdicts</u>	<u>Plaintiff Verdicts</u>	<u>Plaintiff Success Rate</u>
<b>1st Amendment</b>	8	4	50%
<b>4th Amendment</b>	8.33	5.33	64%
<b>8th Amendment</b>	7.33	2.33	31.82%
<b>Deliberate Indifference</b>	5.5	1.5	27.27%
<b>Disability Discrimination</b>	5	4	8%
<b>Due Process</b>	2.5	2.5	100%
<b>Duty to Protect</b>	1	0	0%
<b>Equal Protection</b>	2	1	50%
<b>Excessive Force</b>	49.33	11.33	22.97%
<b>Malicious Prosecution</b>	5	1	20%
<b>Other</b>	3	2	66.67%
<b>Prisoner Rights</b>	10	1	10%
<b>Rehabilitation Act</b>	1	1	100%
<b>Retaliation</b>	6	1	16.67%
<b>Unlawful Arrest</b>	6	4	66.67%

## 2. Common Law Torts

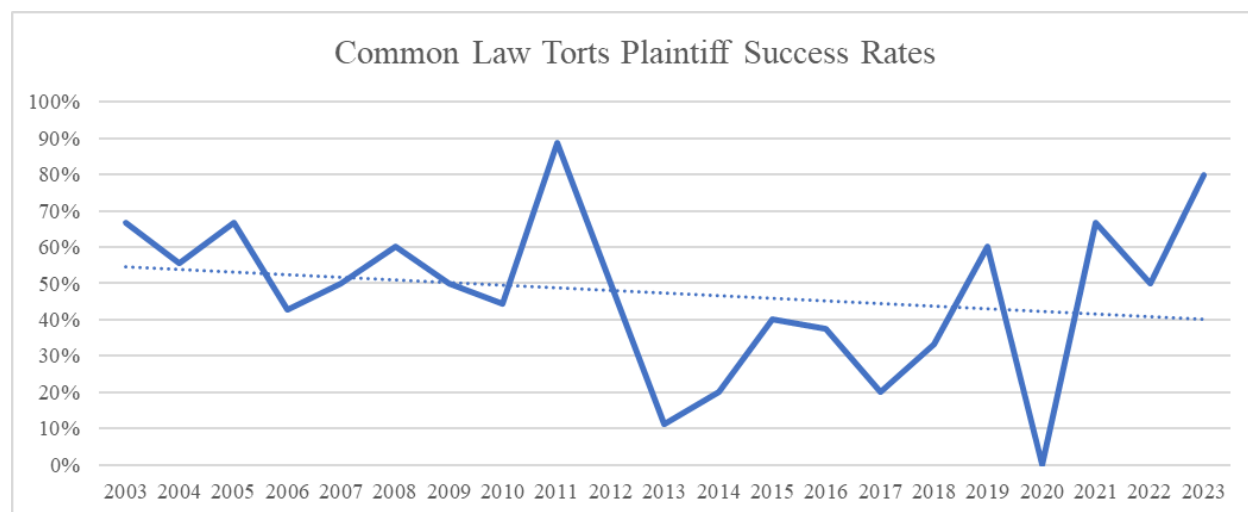
Common law torts accounted for five of the thirty-three civil jury trials in 2023 to reach verdict. This is slightly lower than the twenty-one year average of 6.9 trials per year. The graph below shows the District's trends for annual common law torts trials the past twenty-one years:



These five cases accounted for 15.15% of civil jury trials in 2023 to reach verdict. This is somewhat lower than the twenty-one year average of 19.33% of trials. The next graph shows the District's historical record for common law tort trial load:



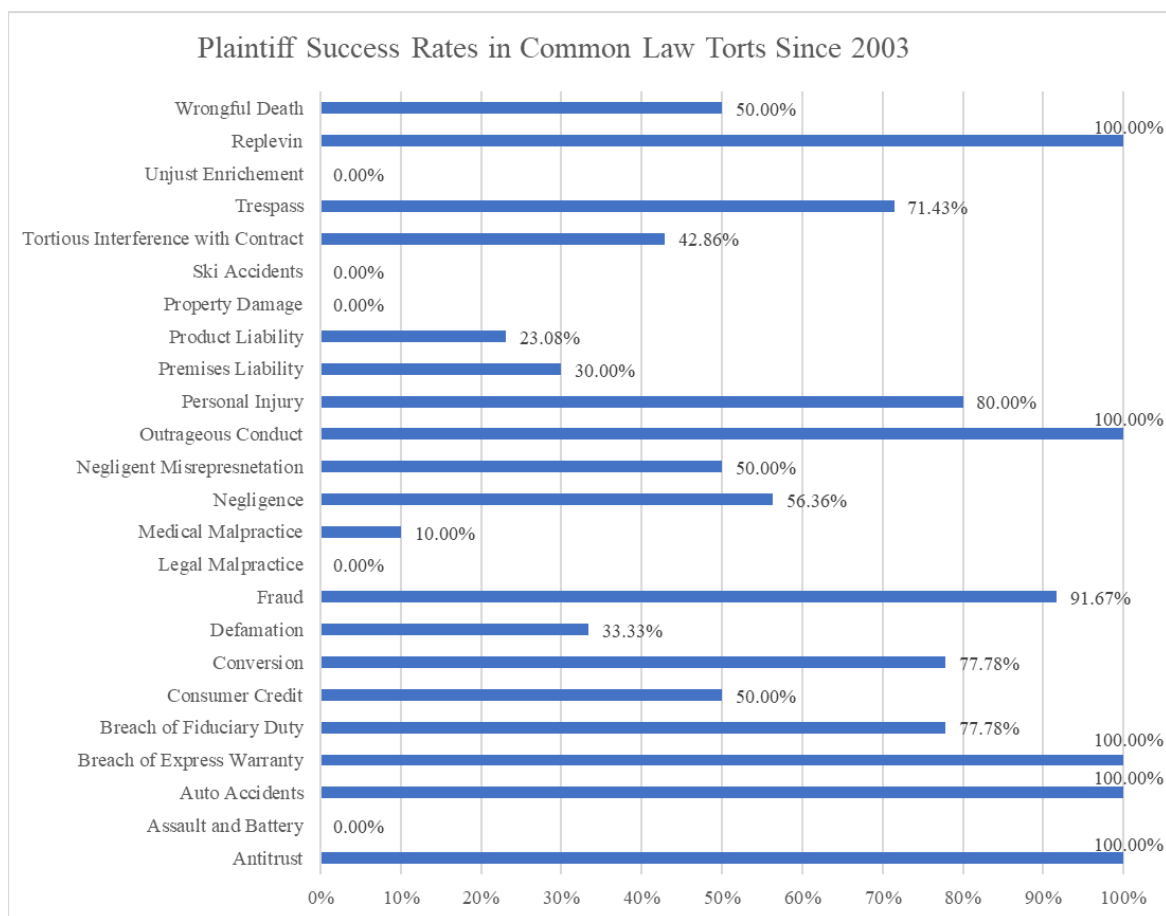
In 2023, plaintiffs prevailed in four of the five trials, yielding a success rate of 80%. This is the highest plaintiff success rate for common law tort trials since 88.88% in 2011, and it is much higher than the District's twenty-one year average of 49.31%. The graph below shows plaintiff success rate trends in common law torts disputes for this time period:



The average of the four plaintiff awards in 2023 was \$6,387,924.5. The highest was \$19,891,447, and the lowest was \$125,489. The chart below provides a breakdown of the common law tort disputes in 2023 by substantive area:

Substantive Area	Verdict	Award
False Representation, Concealment, Conversion, & Civil Theft	Plaintiff	\$2,491,152
Fraudulent Inducement, Negligent Misrepresentation	Plaintiff	\$19,891,447
Negligence	Defendant	N/A
Negligence	Plaintiff	\$125,489
Negligence: Premises Liability	Plaintiff	\$3,043,610

The graph below illustrates the breakdown of plaintiff success rates by subject for every type of common law tort tried since 2003<sup>17</sup>:



<sup>17</sup> Several trials over the past twenty-one years involved multiple claims. These cases have been broken into fractions based on the number and type of claims tried in each instance. Thus, some totals including fractions of cases.

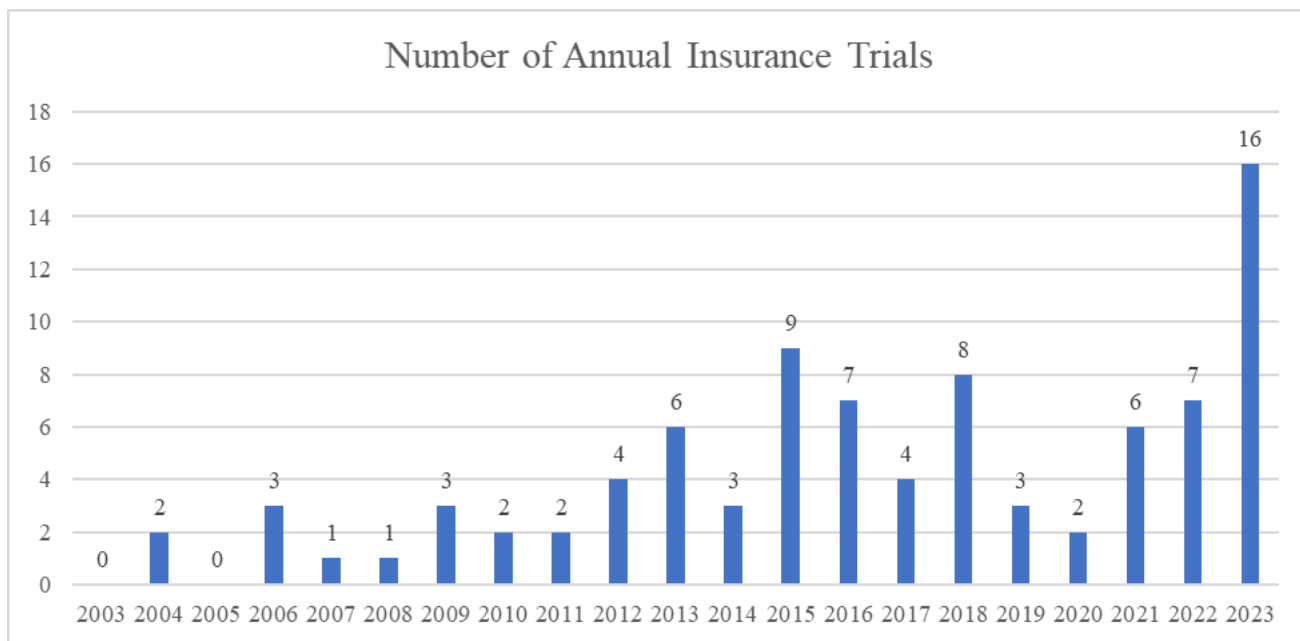


The next chart further details plaintiff success rates by individual verdict:

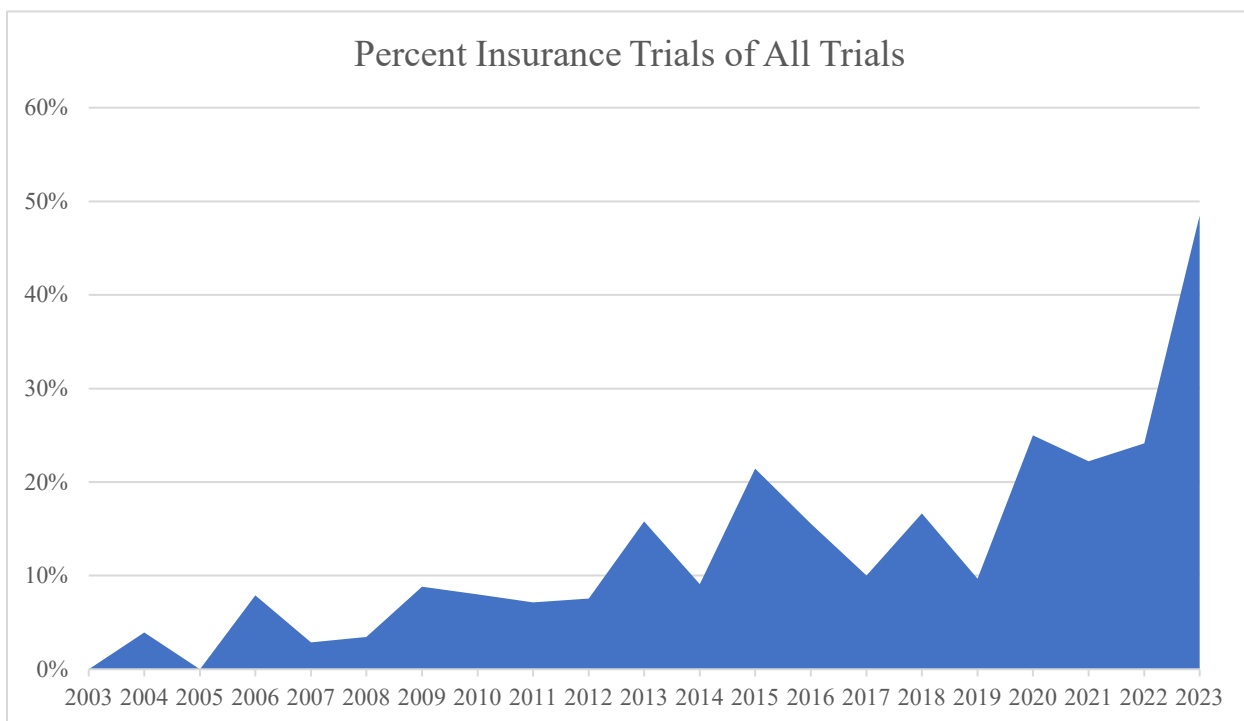
Substantive Area	Total Verdicts	Plaintiff Verdicts	Plaintiff Success Rate
Antitrust	1	1	100%
Assault and Battery	2	0	0%
Auto Accidents	3	3	100%
Breach of Express Warranty	1	1	100%
Breach of Fiduciary Duty	2.25	1.75	77.78%
Consumer Credit	4	2	50%
Conversion	2.25	1.75	77.78%
Defamation	3	1	33.33%
Fraud	6	5.5	91.67%
Legal Malpractice	0	0	0%
Medical Malpractice	20	2	10%
Negligence	55	31	56.36%
Negligent Misrepresentation	3	1.5	50%
Outrageous Conduct	2	2	100%
Personal Injury	10	8	80%
Premises Liability	10	3	30%
Product Liability	13	3	23.08%
Property Damage	0	0	0%
Ski Accidents	0	0	0%
Tortious Interference with Contract	1.75	0.75	42.86%
Trespass	1.75	1.25	71.43%
Unjust Enrichment	1	0	0%
Replevin	1	1	100%
Wrongful Death	2	1	50%

### 3. Insurance

In 2023, the District had **sixteen insurance contract civil jury trials reach verdict**. This is the highest number of insurance trials since the District began recording these statistics in 2003. Significantly, this is almost four times the twenty-one year average of 4.24 trials per year. The graph on the following page shows the District's history of annual insurance disputes:



In 2023, insurance trials accounted for 48.48% of the thirty-three civil jury trials to reach verdict, double the 24.14% in 2022. This is almost four times the average percentage for the past twenty-one years: 11.87%. The graph below shows the twenty-one year trend of the percentage of all trials in the District for which insurance trials account:



The chart below provides a breakdown of the 2023 insurance disputes tried by civil jury to a verdict:

Claims	Verdict	Award
Bad Faith Breach of Insurance Contract, Unreasonable Delay of Benefits	Plaintiff	\$490,555.26
Bad Faith Breach of Insurance Contract, Unreasonable delay of benefits	Defendant	N/A
Bad Faith Breach of Insurance Contract, Unreasonable Delay of Benefits	Plaintiff	\$1,389,919.17
Breach of Insurance Contract	Defendant	N/A
Breach of Insurance Contract	Plaintiff	\$3,540
Breach of Insurance Contract	Defendant	N/A
Breach of Insurance Contract	Plaintiff	\$1,320,948
Breach of Insurance Contract	Plaintiff	\$1,180,053.17
Breach of Insurance Contract	Plaintiff	\$300,025.25
Breach of Insurance Contract	Defendant	N/A
Breach of Insurance Contract	Split	\$100,000
Breach of Insurance Contract, Statutory Bad Faith, Common Law Bad Faith	Plaintiff	\$7,623,654
Breach of Insurance Contract, Unreasonable Delay of Benefits	Plaintiff	\$10,900
Breach of Insurance Contract, Unreasonable Delay of Benefits	Defendant	N/A
Breach of Insurance Contract, Unreasonable Delay of Benefits	Defendant	N/A
Breach of Insurance Contract, Unreasonable Denial of Payment, Bad Faith Breach	Plaintiff	\$3,600,000

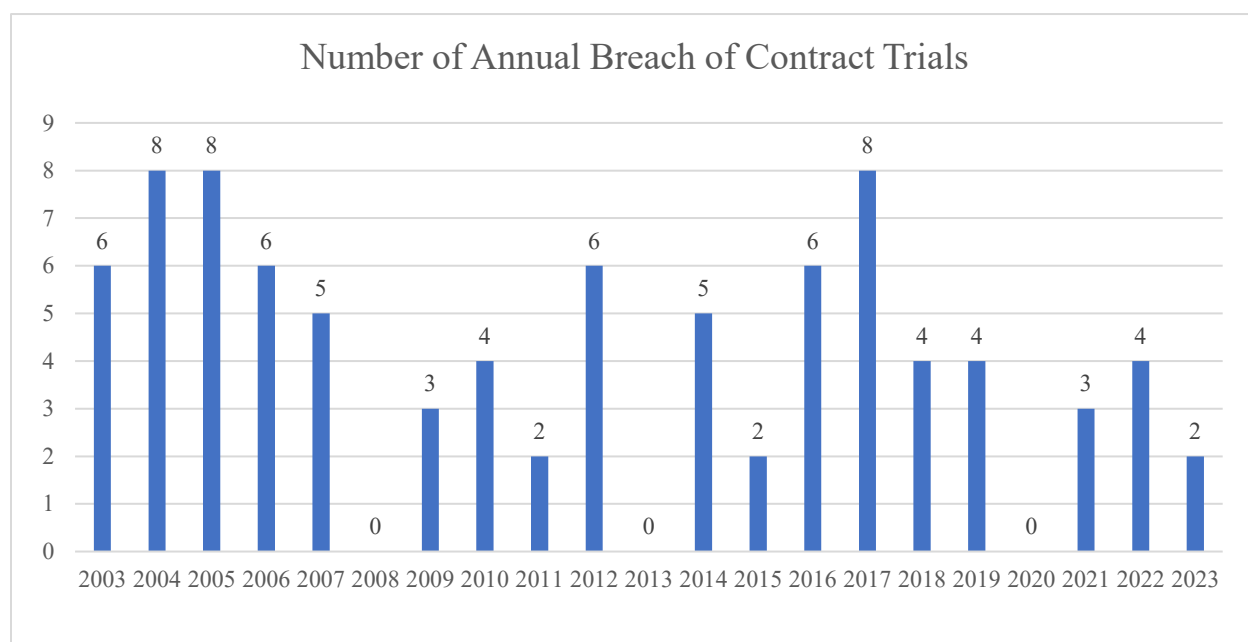
**Nine of the sixteen civil rights jury trials resulted in plaintiff verdicts (56.25%).** One resulted in a split verdict, with two of the four plaintiffs prevailing on their claims. Regardless of whether the split verdict is included, the 2023 plaintiff success rate in insurance civil jury trials is larger than the 37.14% success rate in 2022 and is consistent with the 50% rates in 2021 and 2020. Furthermore, 2023 is about even with the twenty-one year average of 49.31%.

Because insurance disputes have historically made up only about 10% of total trials in the District, statistics regarding plaintiff win rate by year are somewhat misleading, as success rates

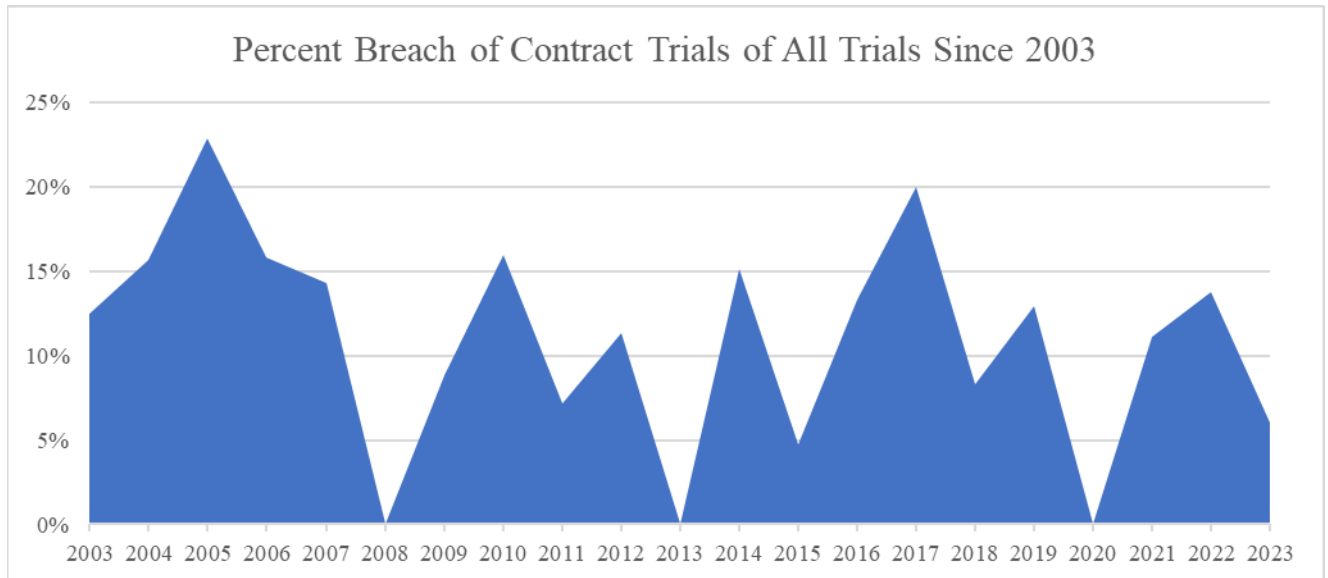
can easily jump from 100% based on two cases in 2018 to 0% based on three cases in 2019. Accordingly, this Report excludes illustrations of plaintiff success rates in insurance trials by year.

#### 4. Breach of Contract

Breach of contract disputes, excepting insurance contracts, accounted for **two of the thirty-three civil jury trials to reach verdict**. This is lower than four in 2022 and about half of the twenty-one year average of 4.1 trials per year. The graph below illustrates the District's data for this period:



These two cases accounted for 6.06% of total civil jury trials in 2023 to reach verdict. This is about half of the 11.47% historical average of breach of contract trials in the District over the past twenty-one years. The following graph depicts the District's historic trends for percentage of all trials to involve breach of contract claims:



The chart below provides an overview of the two breach of contract civil jury trials in 2023 to reach verdict:

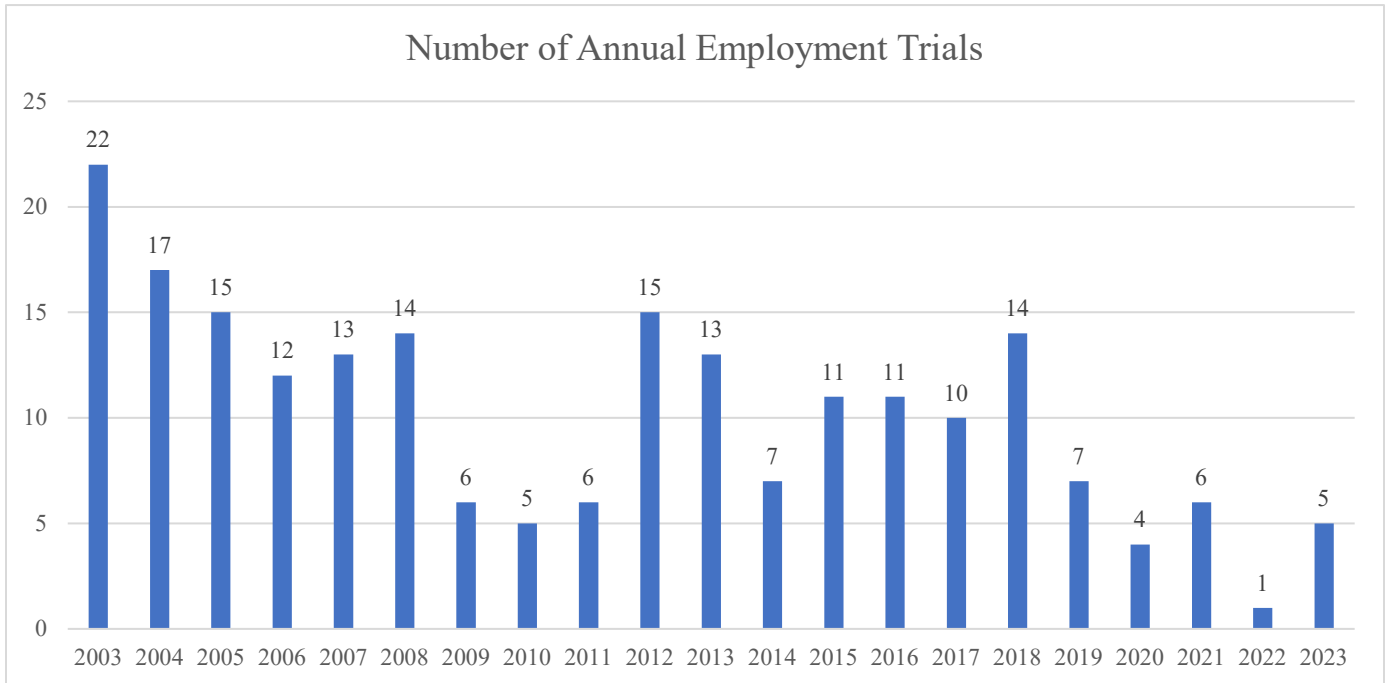
Claims	Verdict	Award
Breach of Contract	Plaintiff	\$94,000
Breach of Contract, Tortious Interference with Business, Breach of Fiduciary Duty	Plaintiff	\$195,900

As shown above, both 2023 insurance civil jury trials resulted in plaintiff awards. This 100% success rate is higher than the per-claim success rate of 72.73% in 2022 and consistent with the 100% success rate in 2021. Interestingly, the District had no breach of contract cases in 2020, and in 2019 plaintiffs prevailed in zero of the four breach of contract trials.

Considering that breach of contract disputes have historically made up only about 10% of the District's trials, the data regarding plaintiff success rates is somewhat misleading, as it can jump from a 0% plaintiff win rate, based on no cases in 2020, to a 100% win rate, based on three cases in 2021. Therefore, this Report excludes illustrations of plaintiff success rates for breach of contract disputes by year.

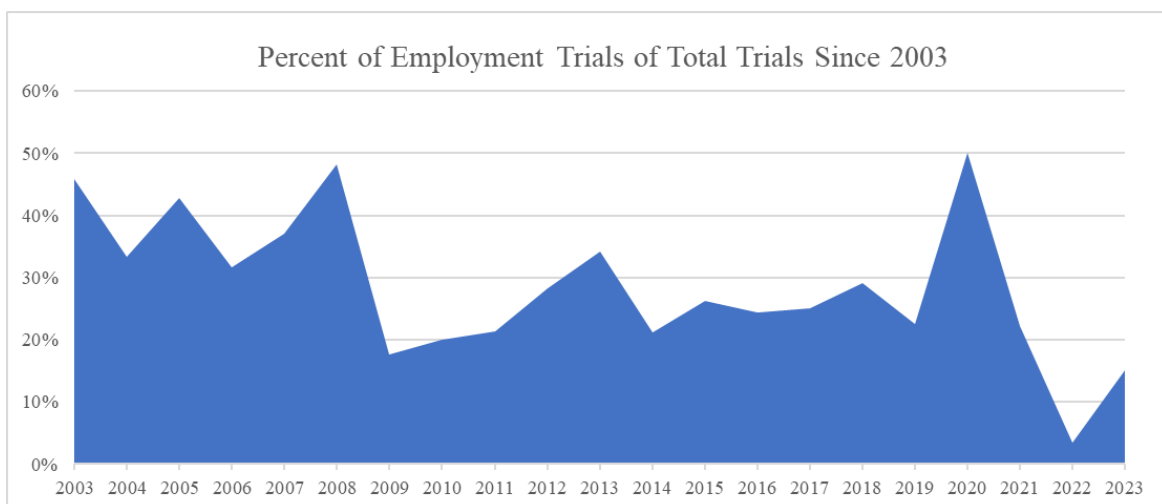
## 5. Employment

The District's **employment cases tried by civil jury to a verdict increased from one in 2022 to five in 2023**. While this does represent an increase over 2022, it continues the ten-year trend of decreasing employment trial volume, and is less than the twenty-one year average of 10.19 trials. The graph below shows the District's historical trend of annual employment trials:

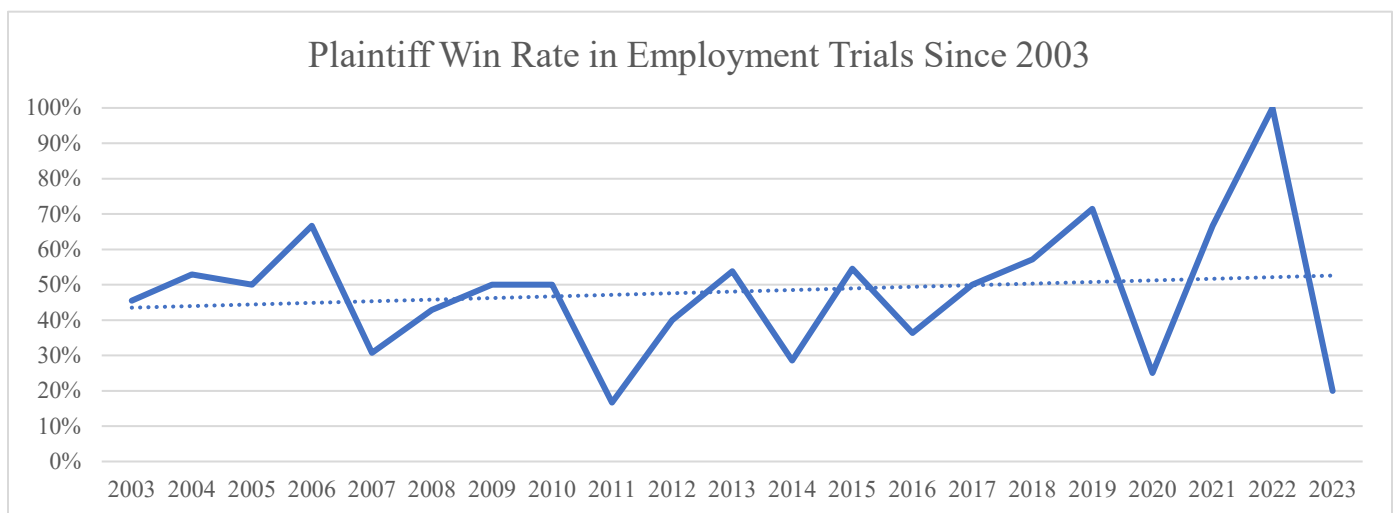


In 2023, employment trials were 15.15% of the thirty-three civil jury trials to reach verdict.

The following graph depicts the trend for this period:



The jury rendered a **verdict for the plaintiff in only one of the five 2023 employment trials**, awarding the plaintiff \$2,400 for emotional distress and another \$2,400 in punitive damages on a claim for disability discrimination. The plaintiff in that case was also entitled to backpay as a result of this verdict, but the parties settled that element of damages outside of court. This yields a 20% plaintiff success rate in 2023, the lowest rate since 16.67% in 2011. Indeed, it is less than half of the twenty-one year average of 47.2%. The next graph illustrates the trend for plaintiff success rates in employment disputes:



Since 2003, the District has tried 214 employment cases to verdict, and plaintiffs have prevailed in 101 of those, which represents a 47.2% plaintiff success rate. The employment claims most frequently tried during those twenty-one years were retaliation (46) and gender discrimination (41.5). The chart on the next page displays historical verdicts rendered by nature of the claim asserted during the past twenty-one years<sup>18</sup>:

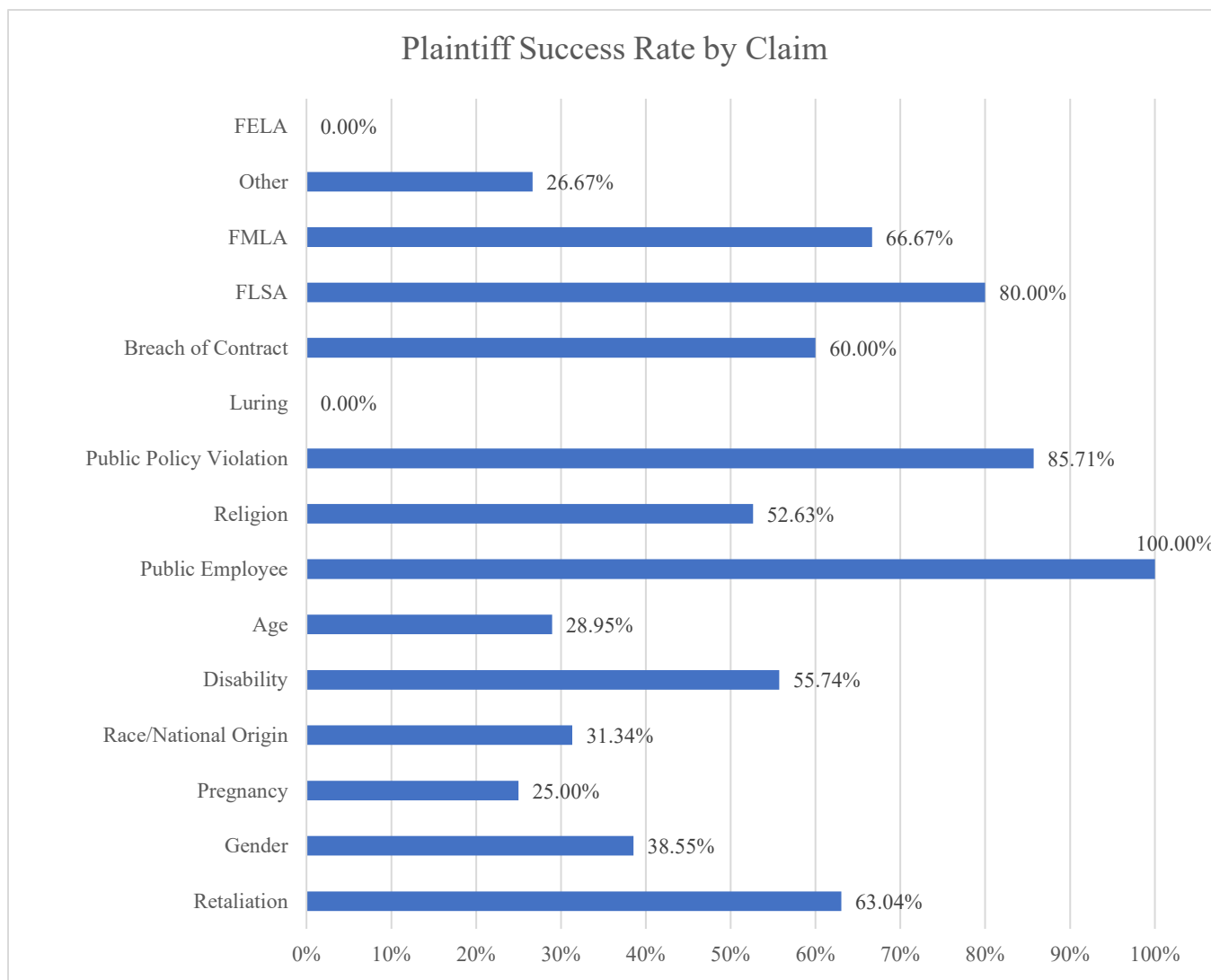
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<sup>18</sup> One case involved two claims which fell into distinct categories in this table. Rather than recording the same case twice, which would make calculating total cases misleading, cases with two claims have been broken into two “half-cases” and listed as 0.5 a case tried. Thus, some totals include half-cases.

Substantive Area	Cases Tried	Cases Won by Plaintiff	Plaintiff Success Rate
Retaliation	46	29	63.04%
Gender	41.5	16	38.55%
Pregnancy	4	1	25%
Race/National Origin	33.5	10.5	31.34%
Disability	30.5	17	55.74%
Age	19	5.5	28.95%
Public Employee	1	1	100%
Religion	9.5	5	52.63%
Public Policy Violation	7	6	85.71%
Luring	1	0	0%
Breach of Contract	5	3	60%
Negligent Misrep.	0	0	N/A
FLSA	5	4	80%
FMLA	1.5	1	66.67%
Other	7.5	2	26.67%
FELA	2	0	0%

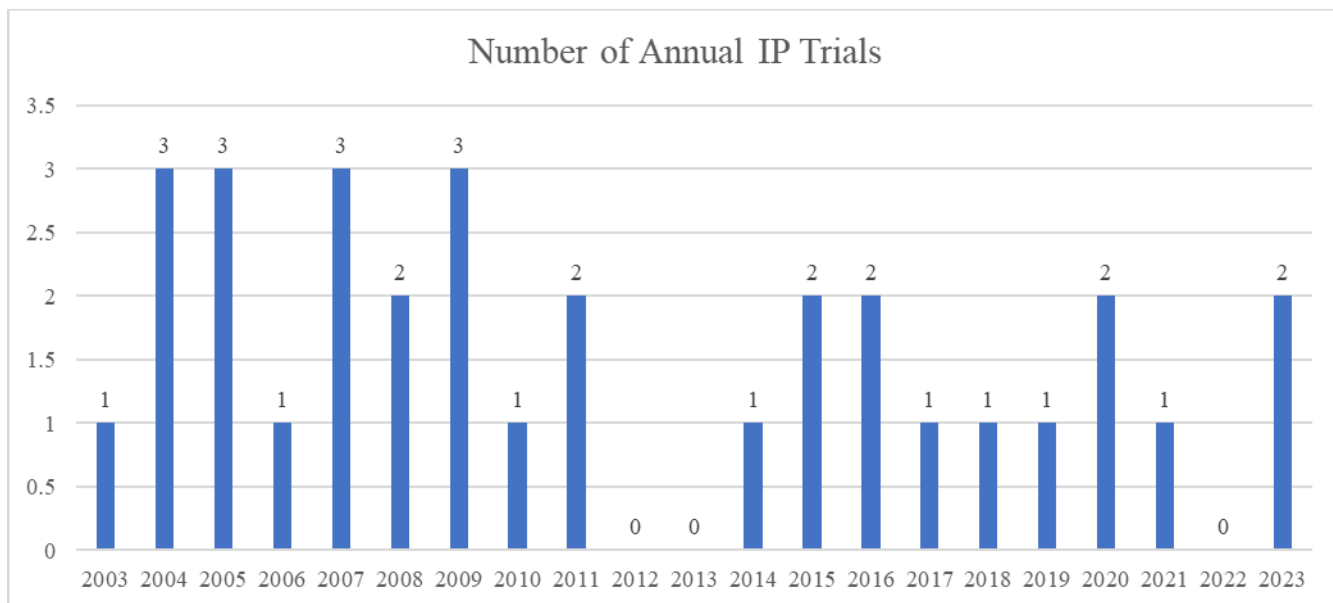
The graph on the next page represents plaintiff success rates for various employment claims since 2003:



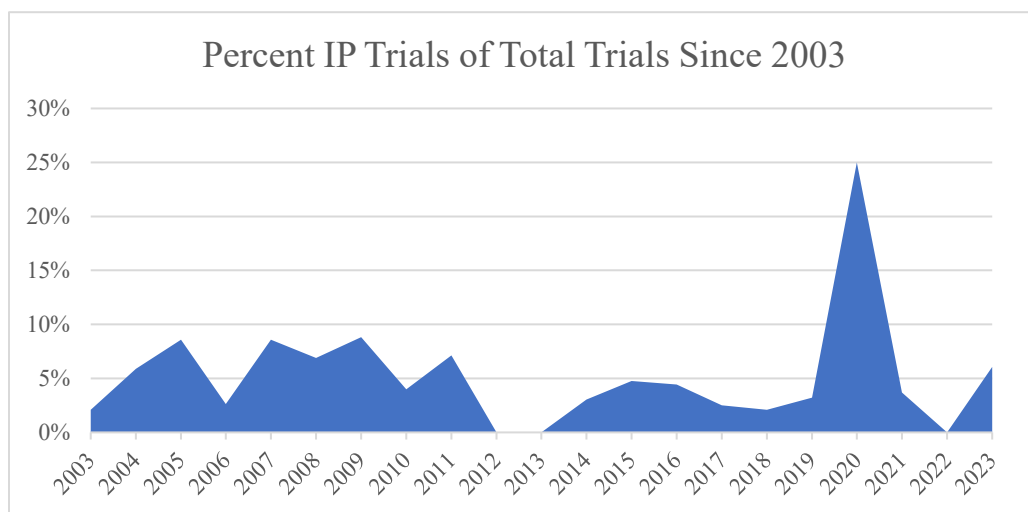


## 6. Intellectual Property

Two of the thirty-three civil jury cases to reach verdicts in 2023 involved disputes over intellectual property (“IP”). This is fairly consistent with the twenty-one year average of 1.52 IP trials per year. The following graph depicts the historical trend for IP trials since 2003:



The two IP trials in 2023 accounted for 6.06% of total trials, consistent with the 4.27% historical average. The following graph depicts the historical trend of IP trials as a portion of total trials:



The plaintiff prevailed in one of the 2023 IP cases on a claim for patent infringement and was awarded \$39,000,000. The defendant prevailed in the other case against a claim for misappropriation of trade secrets. Because there have historically been so few IP trials in the District (only thirty-one since these statistics began being recorded in 2003), data regarding party

success rates, average verdicts, and per claim numbers are misleading, and have therefore been excluded from this Report.

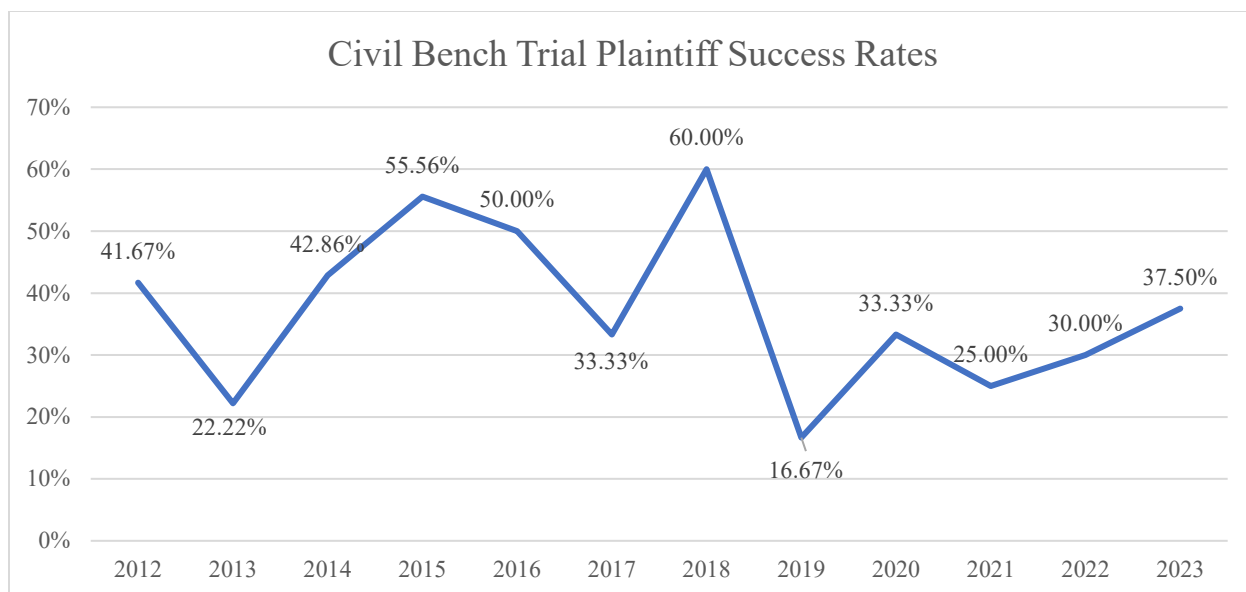
## V. CIVIL BENCH TRIALS

The District held **eight civil bench trials in 2023**, a sharp incline from 2022 and a return to recent trends. Indeed, the District held two in 2022, eight in 2021, six in 2020, and six in 2019. Three of the 2023 civil bench trials were initiated by pro se litigants. Two of the eight bench trials originated in Colorado Springs, one in Grand Junction, one in Durango, and the other four in Denver. Of these eight bench trials, three involved breach of contract claims, one involved an intellectual property dispute, two involved common law torts, one was a dispute over real property, and one sought a declaratory judgment to reverse pierce the corporate veil in order to collect on a previous judgment.

Plaintiffs prevailed in three cases (37.5%), defendants in four (50%), and one dispute—the declaratory judgment case—resulted in a split verdict.<sup>19</sup> This 37.5% plaintiff success rate represents an increase from the 30% rate in 2022 and the 25% rate in 2021. Historically, the District has issued judgments in favor of plaintiffs in forty-one of 105 bench trials (39.9%). Thus, the plaintiff success rate in 2023 was slightly lower than historical averages. The next graph illustrates this historical data:

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<sup>19</sup> The Court allowed plaintiff to pierce the corporate veil for one of multiple corporations sought.



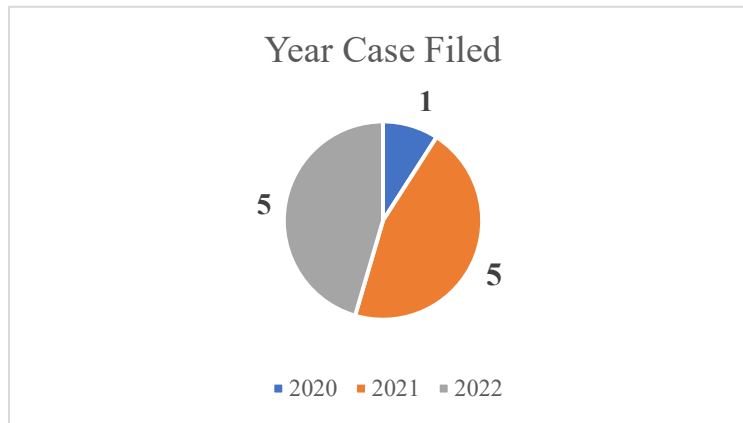
The average time between the filing of a complaint in the District and the start of the bench trial in 2023 was 29.47 months, a decrease from the 32.67-month average in 2022. This 29.47-month average wait from file to trial for civil bench trials in 2023 was also somewhat faster than the 33.26-month average time from file to trial for civil jury trials the same year discussed in Section V.B. Moreover, the average civil bench trial length in 2023 was three days, a decline from the prior year's 3.33-day average. And the average time between the start of the civil bench trial and the issue of the judgment was 5.9 months. The following page provides an overview of the nature of each bench trial and its outcome:

Judge	Claim	Award	Attorney's Fees	Filing Suit to Trial (Months)	Trial Length (Days)	Trial to Judgment (Months)	Filing Suit to Judgment (Months)
GPG	Breach of Contract	N/A	\$310,002	28.9	3	9.67	38.57
NYW	Breach of Contract	\$2,668,155	Yes, Pending Order	27.27	4	6.27	33.53
WJM	Breach of Contract (against Prisoner)	N/A	N/A	20.23	2	5.37	25.6
RMR	Equitable Lien, Civil Conspiracy, Declaratory Judgment to reverse pierce the corporate veil	N/A	N/A	34.53	3	7.9	42.43
RBJ	Real Property	Quiet Title -partitioned by sale	N/A	23.67	3	1.27	24.93
KLM	Trademark Infringement	Declaratory Judgment: trademark is valid	N/A	22.53	2	1.2	23.73
RMR	Negligent Misrep., Fraudulent Concealment, Unjust Enrichment, Promissory Estoppel	N/A	N/A	42.13	3	10.53	52.67
WJM	Medical Malpractice, Breach of Duty of Care	N/A	N/A	36.47	4	4.97	41.43

## VI. CRIMINAL JURY TRIALS

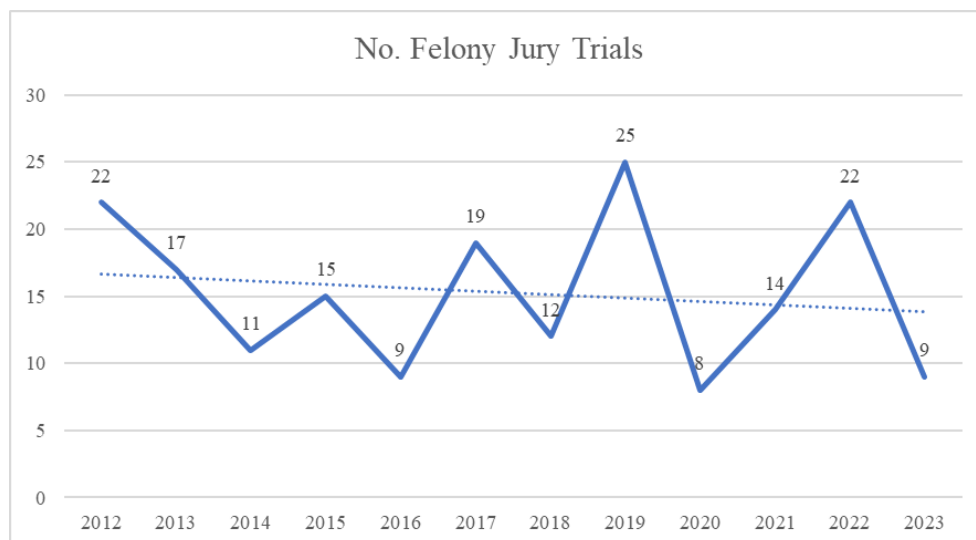
### A. Overview

In 2023, nine felony jury trials reached verdict. There were two other criminal jury trials which began in 2023, but one was vacated on the first day and ultimately retried in 2024, and another was declared a mistrial on the fourth day of trial. All but one of the felony cases which led to jury trials in 2023 were filed in 2021 or 2022 as shown below:



### B. Volume of Trials

Notably, 2023 saw a relatively low number of felony jury trials reach verdict. The average number of felony jury trials to reach verdict per year since 2012 is 15.25. The following graph shows the number of annual felony jury trials for the past twelve years:



Based on the number of felony cases filed in 2023 (410), the number of felony jury trials to reach verdict constitutes a **2.2% trial rate**. As such, 2023 had the lowest trial rate since 2020, and was more than a full percentage point below than the eleven-year average of 3.24%:

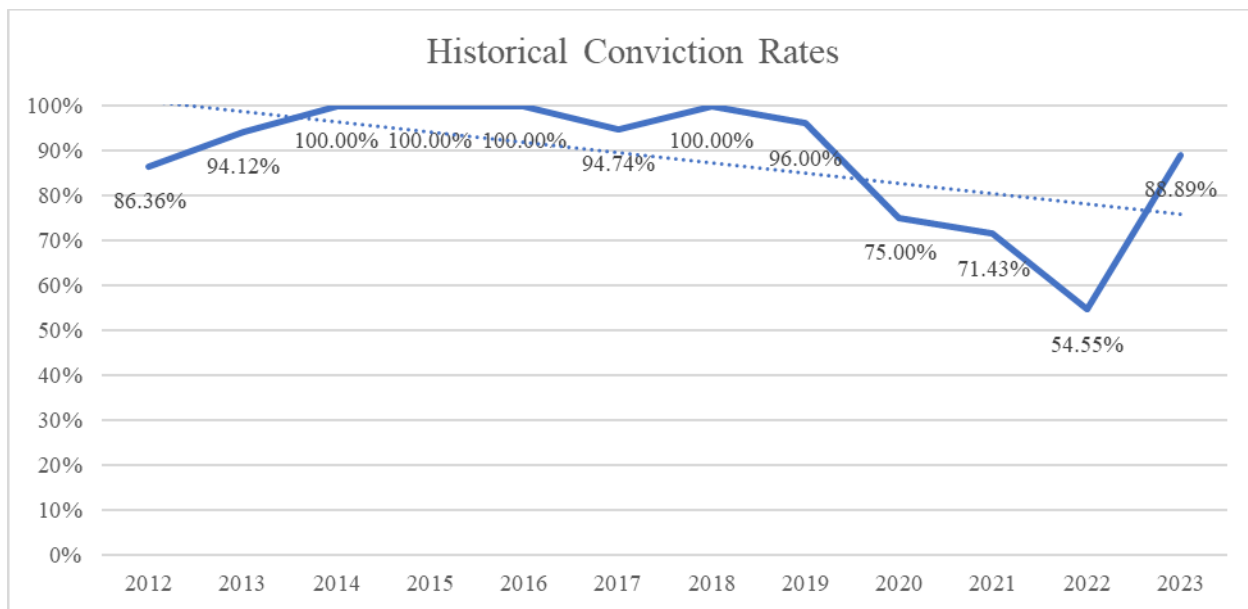
Year	No. of Cases Filed	No. of Felony Jury Trials	Rate of Trials
2012	527	22	4.17%
2013	478	17	3.56%
2014	512	11	2.15%
2015	495	15	3.03%
2016	396	9	2.27%
2017	498	19	3.82%
2018	598	12	2.01%
2019	536	25	4.66%
2020	398	8	2.01%
2021	426	14	3.29%
2022	376	22	5.85%
2023	410	9	2.2%
<b>Average</b>	<b>470.83</b>	<b>15.25</b>	<b>3.24%</b>

### C. Parties' Success Rates

The defendants were acquitted in one of the nine felony jury trials, yielding a **11.01% success rate**—much lower than the prior year's 41.67% acquittal rate. Accordingly, the Government achieved **convictions in eight of the nine felony jury trials to reach verdict, which is an 88.89% conviction rate**.<sup>20</sup> This represents a dramatic increase over the 54.55% conviction rate in 2022 and a return toward historical conviction rates.<sup>21</sup> The historical conviction rates are depicted on the following page:

<sup>20</sup> In one of these trials, the people achieved convictions for two of the four counts charged.

<sup>21</sup> The District began compiling trial reports in 2003, but the reports only contained data for civil trials until 2012.



#### **D. Sentencing**

In 2023, the most severe sentence imposed was 360 months in a case where a jury found the defendant guilty on all counts—(1) conspiracy to violate federal laws pertaining to a controlled substance; (2) distribution of a controlled substance; (3) distribution of a controlled substance to someone under 21; (4) possession of methamphetamine with intent to distribute; (5) possession of heroin with intent to distribute; and (6) possession of cocaine with intent to distribute. This is significantly less severe than the longest sentence in 2022 of five concurrent life sentences, and it is more severe than the longest 2021 sentence of 180 months. The least severe sentence in 2023 was forty-eight months in a case for wire fraud. This is slightly larger than the lowest sentence in 2022 of forty-one months and in 2021 of forty months. There were no life sentences given in 2023.

Notably, three sentences from 2023 convictions remain pending. All five of the cases in which sentencing is completed have been appealed to the Tenth Circuit and all appeals remain pending.

The chart on the next page reports the 2023 felony prosecutions:



Judge	Crime(s) Charged	Verdict	Sentence	Appealed?
WJM	(1) conspiring to distribute (or conspiring to possess with intent to distribute) heroin; (2) use of a communication facility to facilitate the commission of a felony drug offense; (3) traveling in interstate commerce with the intent to further violations of federal law; and (4) distribution of (or possession with intent to distribute) a controlled substance	Gov't	Pending	Yes
RM	20 counts each of mail/wire fraud	Gov't	Pending	No
WJM	(1) conspiracy to violate federal laws pertaining to controlled substances; (2) possession of a controlled substance with intent to distribute; (3) distribution (or possession with intent to distribute) of heroin; (4) distribution (or possession with intent to distribute) of fentanyl	Mixed <sup>22</sup>	Pending	No
RMR	(1) conspiracy to violate federal laws pertaining to a controlled substance; (2) distribution of a controlled substance; (3) distribution of a controlled substance to someone under 21; (4) possession of methamphetamine with intent to distribute; (5) possession of heroin with intent to distribute; (6) possession of cocaine with intent to distribute	Gov't	360 mos	Yes
RBJ	(1) felon in possession of a firearm; (2) possession with intent to distribute 50 grams or more of methamphetamine; (3) possession with intent to distribute heroin	Gov't	288 mos	Yes
RM	(1) conspiracy to violate federal laws pertaining to controlled substances; (2 & 4) distribution (or possession with intent to distribute) cocaine; (3) transfer of funds across United States borders with intent to promote illegal activity	Gov't	210 mos	Yes
PAB	(1) taking from a person by force or violence or by intimidation a motor vehicle that has moved in interstate commerce; (2) use of a firearm during and in relation to a crime of violence; (3) knowing possession of a firearm by a felon	Gov't	184 mos	Yes
RMR	(1) Bank Robbery; (2) Possession of a firearm during and in relation to a crime of violence; (3) Possession of a firearm by a felon	Gov't	135 mos	Yes
DDD	Wire Fraud	Gov't	48 mos	Yes

<sup>22</sup> The People achieved convictions on two of the four accounts charged (counts 3 and 4).

## E. Time

Collectively, forty days were spent trying the nine felony jury trials to verdict.<sup>23</sup> The **average felony jury trial was 3.64 days**, shorter than the 2022 average of 5.27 days. The longest trial was six days, down from fifteen in 2022 and ten in 2021. The shortest trial was one day, shorter than two days in 2022 and 2021. The chart below shows the total number of cases for each trial length:

Number of Days	Number of Trials
1	2
3	3
4	2
5	3
6	1

Additionally, the average time from filing the action to a trial that reached verdict in 2023 was 19.75 months.<sup>24</sup> The average time from a verdict to a judgment was 4.26 months.<sup>25</sup> And the average time from filing suit to judgment was 22.09 months.<sup>26</sup>

## VII. CRIMINAL BENCH TRIALS

The District had **one criminal bench trial in 2023**, one fewer than in 2022. The Government prevailed in that trial.

That trial, tried to a Magistrate Judge, involved petty offense charges for (1) failing to comply with official signs and (2) unlawful photography on federal property. The trial was held

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<sup>23</sup> An additional combined five days were spent on the vacated trial and the trial in which the Court entered a directed verdict.

<sup>24</sup> This figure represents the average time from filing to trial for the nine trials which reached a verdict in 2023. However, because two verdicts are still pending judgment, the averages for the following data are calculated using the seven trials in which judgment has been entered. For those seven trials, the average time between filing and trial was 17.91 months.

<sup>25</sup> See *supra* note 24, this is calculated using only the seven trials in which judgment has been entered. Two other judgments remain pending.

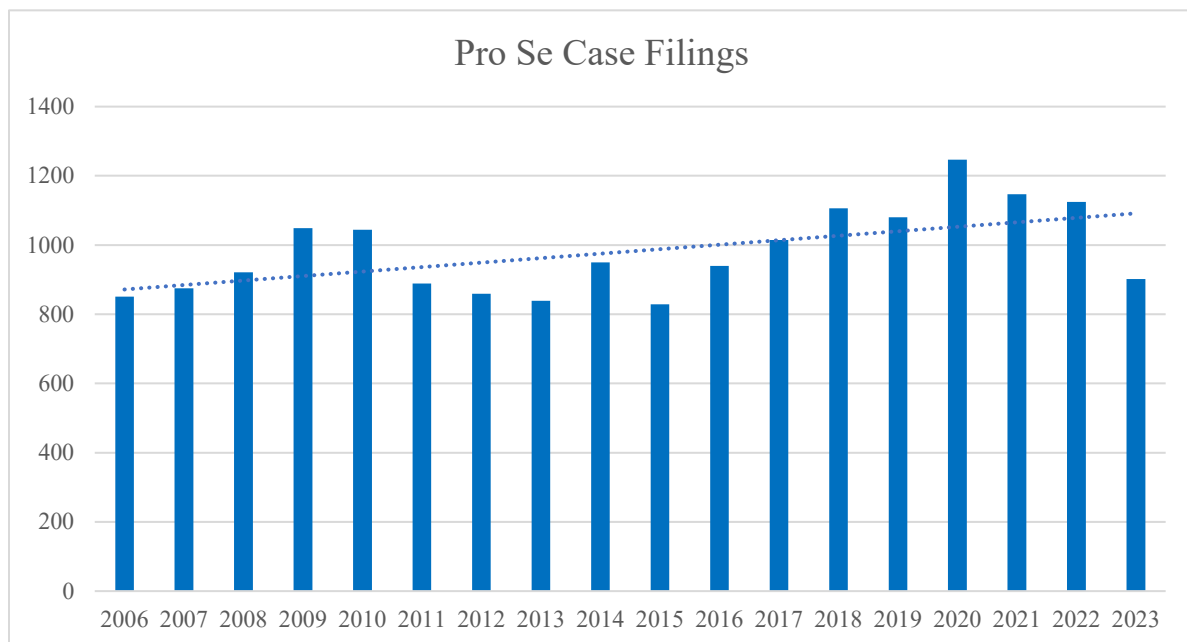
<sup>26</sup> See *supra* notes 24 and 25.

4.2 months after the complaint was filed, and it only lasted one day. The Court entered its findings of fact and conclusions of law just four days after the trial was held and entered final judgment about seven months after that. The defendant was sentenced to fifteen days in prison and fined \$3,000. The defendant appealed that conviction to a District Judge, and that decision is still pending.

Historically, there have been only ten felony bench trials in the District since 2012. The Government achieved convictions in eight, or 80%, of those cases. Because there were no felony bench trials in 2023, those numbers remain unchanged from 2022.

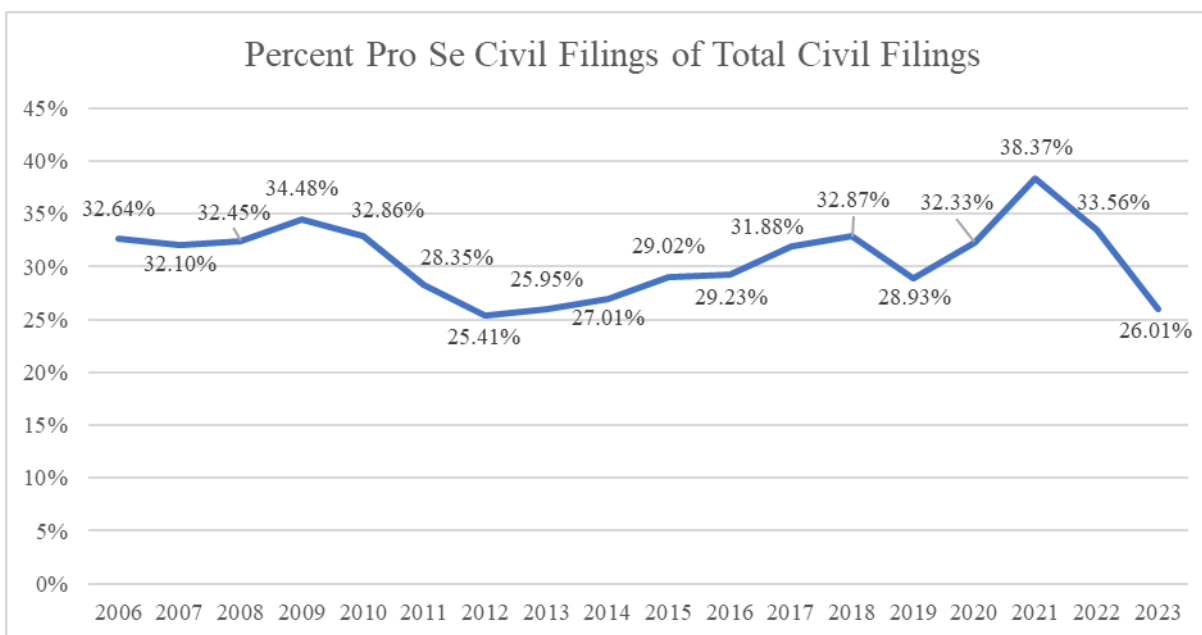
## VIII. PRO SE

**Pro se litigants filed 902 civil cases in 2023.** This continues the downward trend that began in 2021. Over the past sixteen years, a total of 17,668 cases have been filed by pro se litigants for an average of 981.56 cases per year. The graph below outlines the number of pro se cases filed:



Since 2006, pro se filings have accounted for, on average, 30.63% of total civil filings. This year, pro se filings accounted for 26.01%. This is a significant decline from previous years.

Notably, 2023 saw the lowest percentage of civil cases initiated by pro se litigants since 2013, as illustrated below:



In 2023, none of the thirty-three civil jury trials which reached verdict were filed by pro se litigants. This represents a departure from the four of forty-five in 2022.

## IX. PRO BONO

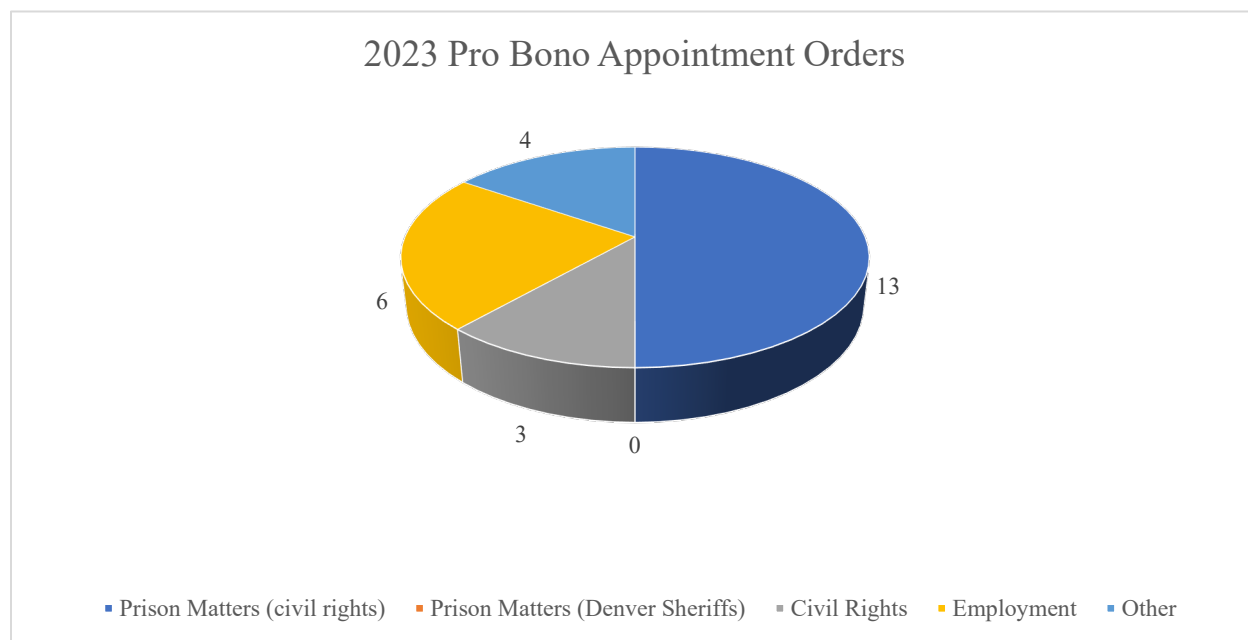
To ensure litigants have access to the Court, regardless of financial means, in 2013 the District began the Civil Pro Bono Panel program. The program helps appoint pro bono representation to litigants of limited means, as well as to assist pro se litigants in more technical aspects of litigation. For more information and statistics regarding the program, review the Civil Pro Bono Panel Annual Report at:

<http://www.cod.uscourts.gov/AttorneyInformation/CivilProBonoPanel-Details,andAvailableCases.aspx>

Notably, none of the thirty-three civil jury trials in 2023 involved pro bono counsel. This represents a decrease from three of forty-five in 2022. As demonstrated below, the majority of pro bono appointment orders and placements involved prisoner civil rights.

The District **entered forty-two pro bono appointment orders in 2023**, up significantly from thirty-two in 2022. However, as of August 1, 2024, sixteen of those orders remain pending. Of the twenty-six orders which have been resolved, **counsel was successfully placed in nineteen cases** (compared with twenty in 2022), yielding an adjusted pro bono placement rate of 73.08%, up from 62.5% in 2022 and 62.82% in 2021.<sup>27</sup> Since 2013, 501 pro bono appointment orders have been entered with 341 successful placements, yielding a 68.06% placement rate.<sup>28</sup>

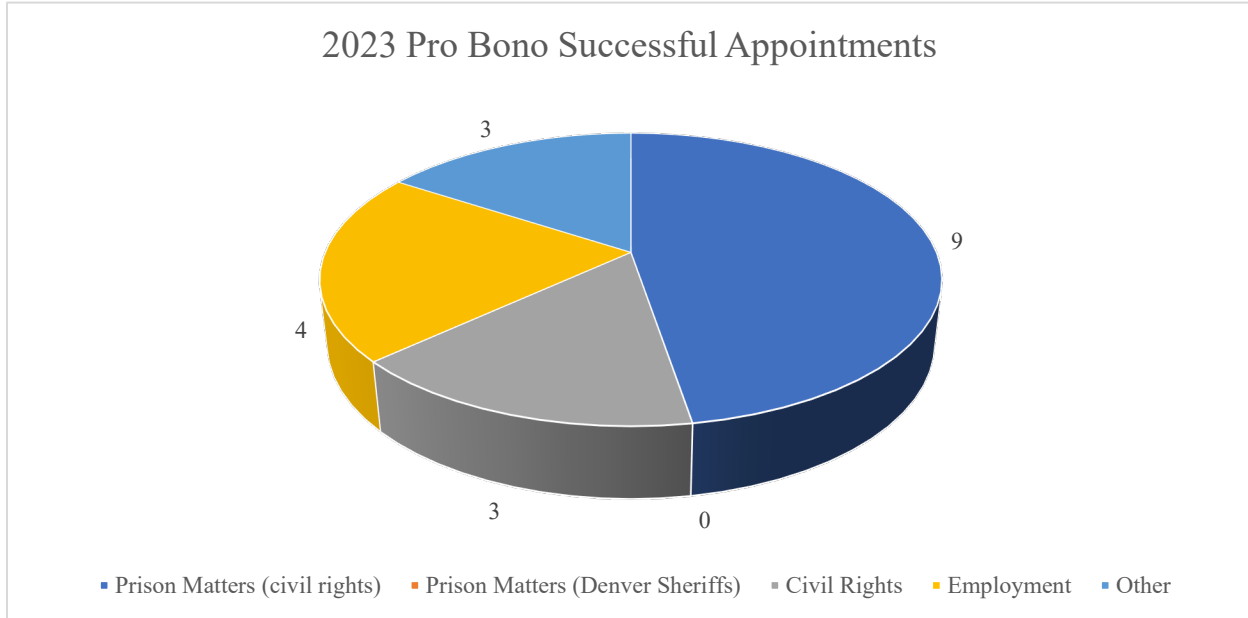
The twenty-six resolved pro bono appointment orders by subject for 2023 are illustrated below:



<sup>27</sup> The pro bono placement rate for 2023 calculated using the forty-two total orders rather than the twenty-six resolved orders is only 45%.

<sup>28</sup> Again, this placement rate is calculated using only the twenty-six resolved orders from 2023. Using the full forty-two orders, the all-time placement rate drops to 66%, but this number is misleading given several of the pending orders will likely result in appointment of pro bono counsel.

The chart below illustrates the nineteen successful appointments made in 2023 by subject:



## X. SOCIAL SECURITY CASES

There are usually some Social Security practitioners into whose hands this Report lands, so it might be useful to summarize the District’s handling of these cases.

In 2023, **plaintiffs filed 159 Social Security appeals**, a significant decrease from 214 in 2022. Of those, forty-three are still pending judgment, twenty-two were dismissed for various procedural reasons,<sup>29</sup> and ninety-four were ordered on the merits. Plaintiffs prevailed in sixty-eight of the ninety-four decided cases.<sup>30</sup> Of the ninety-four, sixty-eight were assigned to District Judges and twenty-six to Magistrate Judges. The average time from filing to decision was 7.33 months. Of course, this number is somewhat misleading as it excludes those forty-three cases still pending judgment.

<sup>29</sup> Usually, failure to prosecute or to pay filing fees.

<sup>30</sup> This Report records as plaintiff victories those cases which were voluntarily remanded pursuant to a motion by the Social Security Commissioner. These orders were usually granted by a judgment, in the words of the Court, “for the Plaintiff,” and were remanded along with a reversal of the Commissioner’s prior determination.

In 2023, there were **178 dispositive orders entered in Social Security appeals**.<sup>31</sup> Of those, plaintiffs prevailed in 101 cases,<sup>32</sup> the Commissioner in fifty-three cases, twenty-three were dismissed, and in one case the appeal was granted in part and denied in part. For these 178 orders, the average time from filing to judgment was eleven months. Of course, this number somewhat understates the most relevant wait period—the period for those orders granted on the merits—as it includes dismissals. The more relevant time period—the **average time from filing to order on the merits—was 11.81 months**.

When this Report was published in 2022, ninety-one Social Security appeals filed in 2022 were still pending judgment. As of August 1, 2024, that number had dropped to only thirteen. In light of these new orders, the average time from filing a Social Security appeal to judgment on the merits for 2022 filings has increased from 9.75 months to 10.56 months. Notably, even this adjusted figure is less than the 11.81 months appellants have already waited on average for 2023 filings.

Incidentally, parties may choose to consent to Magistrate Judge jurisdiction during the preliminary steps of their Social Security case. Usually, a consent decision is filed several months after filing the case but before the case is drawn to a presiding judge. Thus, consenting parties will not know to whom Magistrate Judge they have consented, which was the case for the twenty-six cases drawn to Magistrate Judges.

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<sup>31</sup> This number is difficult to calculate (as no one CM/ECF query will pull all relevant cases). To calculate this number, the District has combed through all Social Security appeals filed in the last five years. As such, this is the first year this section has been included in this Report.

<sup>32</sup> Successful plaintiff outcomes include motions for voluntary remand, which are usually filed after plaintiff has submitted the opening brief.

## XI. SUMMARY JUDGMENT ORDERS

During 2023, litigants filed **493 summary judgment motions**, including motions for partial summary judgment. This is a notable decrease from 531 motions in 2022 and 502 motions in 2021. The District, in turn, entered 389 orders on 466 summary judgment motions, including motions for partial summary judgment.

Of the **466 total summary judgment motions decided in 2023, 350 motions (75.11%) were decided on their merits**. The Court entered orders on 75 motions (16.01%) for other reasons (*e.g.*, finding or dismissing motions as moot because the parties reached a settlement or plaintiffs amended their complaint, ordering that the Court was taking the motion under advisement at the end of an oral argument, etc.). There were also 41 motions (8.8%) which were stricken for a variety of reasons (*e.g.*, noncompliance with judges' Practice Standards, failure to comply with the Scheduling Order deadline for dispositive motions, etc.). The sections below discuss the motions **decided on the merits** in further detail.

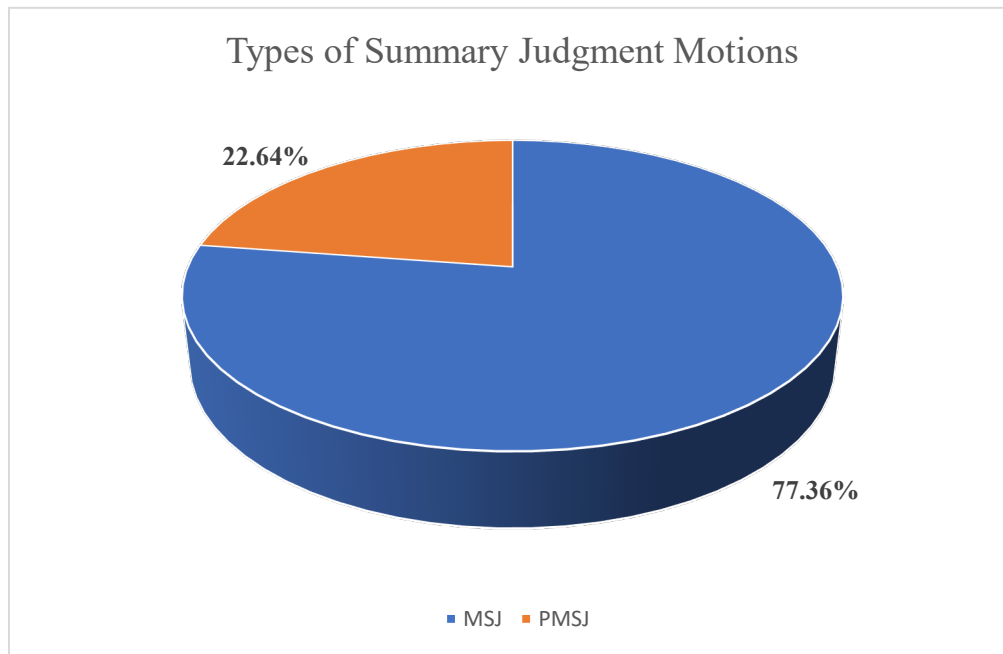
### A. Overview

Most summary judgment motions which were ruled on the merits—more than 51%—arose in cases filed in 2022. Indeed, some 89.6% of those motions arose in cases pending for less than two years. There were two outlier motions which arose in cases filed in 2019. The chart below provides an overview:

Year Case Filed	No. Summary Judgment Motions Decided on the Merits	Percent Decided on the Merits
2019	2	0.57%
2020	7	2%
2021	27	7.71%
2022	180	51.43%
2023	134	38.29%



Of the **350 summary judgment motions decided on the merits in 2023**, 271 were motions for summary judgment (“MSJs”) and seventy-nine were motions for partial summary judgment (“MPSJs”). The next figure shows the breakdown by motion type:



District Judges directly<sup>33</sup> ruled on 280 of the 350 summary judgment motions decided on the merits in 2023 (80%). Of the 280, 211 were MSJs (75.36%) and sixty-nine were MPSJs (24.64%). Also of the 280 motions, 254 were filed in cases where District Judges referred the case generally to Magistrate Judges yet did not refer the summary judgment motions to them (90.71%).

Conversely, Magistrate Judges issued orders or recommendations on seventy of the 350 summary judgment motions decided on the merits in 2023 (20%). Of the seventy, District Judges referred thirty-four of these motions (48.57%) to Magistrate Judges for recommendation. The remaining thirty-six summary judgment motions (51.43%) were decided on orders by Magistrate Judges in consent cases (*i.e.*, the parties consented to Magistrate Judge trial jurisdiction).

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<sup>33</sup> This figure only represents District Judge’s orders in cases where they did not refer the summary judgment motion to a Magistrate Judge for a recommendation first.

## B. Time

In 2023, the average number of months from filing any summary judgment motion to a presiding judge's order<sup>34</sup> ruling on the merits was **8.8 months**. The longest duration was 57.63 months and the shortest was 0.07 months (two days), both of which were District Judge<sup>35</sup> orders on MSJs. Looking only at MPSJs, the highest was 50.47 months and the lowest was 0.17 months (five days). While it has been the norm in years past that MSJ orders generally took longer than MPSJ orders, that was not the case in 2023. The average number of months from filing MSJs to the order on the merits was 8.45 months in 2023, whereas that average for MPSJs was 10<sup>36</sup> months.

Analyzing this data from yet another angle, the average number of months from **filing any summary judgment motion to an order on the merits entered by a District Judge was 9.17 months**. The longest duration was 57.63 months and the lowest was 0.07 months. As for **orders entered by Magistrate Judges in consent cases, the average time was 5.64 months**, the highest being 15.37 months and the lowest being 0.07 months.

Calculating from when the **last summary judgment brief was filed (e.g., reply, sur-reply, and amended briefs), on average it took 7.17 months for the presiding judge to enter an order on the merits**. The longest time was 56.43 months, and the shortest time was 0.03 months (one day). Once again, unusually, these averages are higher for MPSJs than MSJs. The average wait time for MSJs was 6.89 months whereas the average wait time for MPSJs was 8.14 months. The longest duration for MSJs was 56.43 months and the shortest was 0.03 months. For MPSJs, the

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<sup>34</sup> This includes not only orders where District Judges ruled on the summary judgment motion themselves, but also District Judge's orders after a Magistrate Judge's recommendation, as well as orders by Magistrate Judges in consent cases.

<sup>35</sup> This number includes both orders where District Judges ruled on summary judgment motions themselves as well as orders ruling on a Magistrate Judge's recommendation.

<sup>36</sup> Notably, this figure excludes one outlier MPSJ order which took 50.47 months from motion to order. If that number were to be excluded, the 2023 average time from motion to order on the merits for MPSJs was 9.48 months.

longest time was 47 months and the shortest was 0.17 months. For orders<sup>37</sup> on the merits entered by District Judges in 2023, the average number of months from filing the last brief to entering the order was 7.54 months with a high of 56.43 months and low of 0.03 months. As for orders entered by Magistrate Judges in consent cases, the average time was 4.1 months, the highest was 13.76 months, and the lowest was 0.07 months.

Unsurprisingly, summary judgment motions referred to Magistrate Judges for recommendation before a District Judge entered an order can take longer to resolve as they involve more briefing (*i.e.*, parties have fourteen days to file objections to recommendations which District Judges resolve in their final orders).<sup>38</sup> Calculating first **from motion filing date to the District Judge's order on the Magistrate Judge's recommendation, referred motions took an average of 9.9 months**, the longest duration being 27.77 months and the shortest being 2.2 months. Calculating next from the **last brief filed, referred motions took an average of 8.35 months**, the longest duration being 26.8 months and the shortest being 0.53 months (16 days).

Analyzing referred motions further, it took an **average of 5.62 months from filing a motion to entering a recommendation** (with a high of 10.13 months and low of 1.13 months). It also took an **average of 4.07 months from filing the last brief to entering a recommendation** (with a high of 9.73 months and low of zero months). And it took an average of **4.28 months from entering the recommendation to entering the final order**.

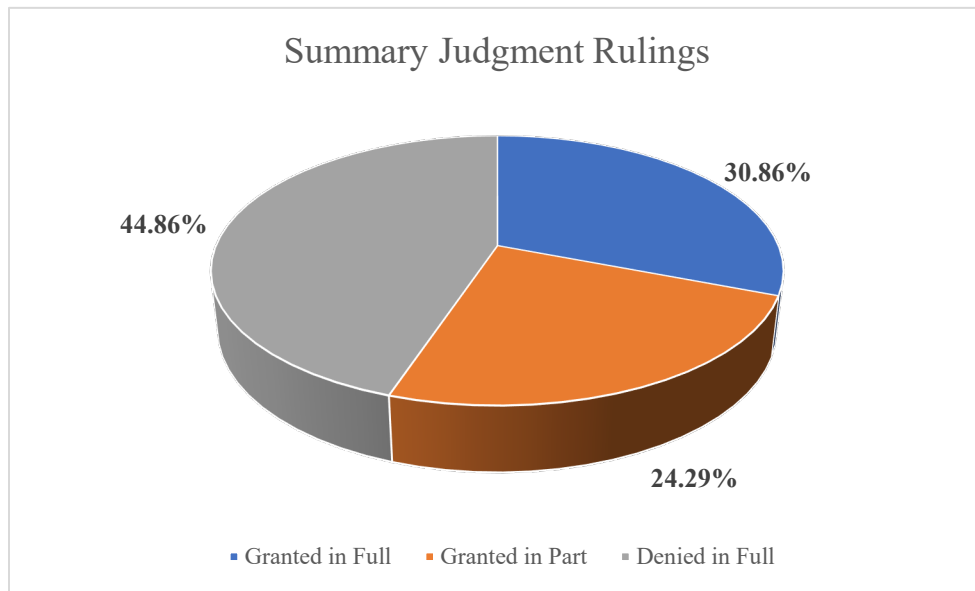
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<sup>37</sup> This number includes both orders where District Judges ruled on summary judgment motions themselves as well as orders ruling on a Magistrate Judge's recommendation.

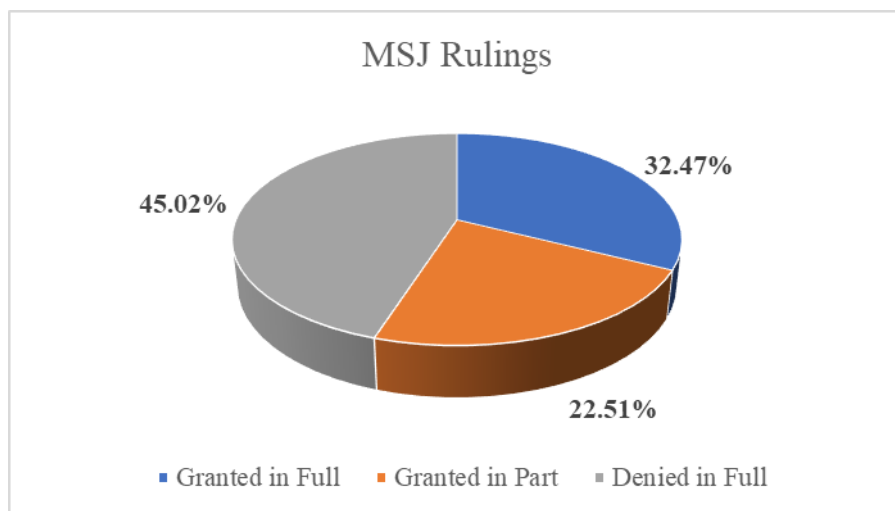
<sup>38</sup> Because only four MPSJs were referred to Magistrate Judges for recommendation, the Report does not distinguish between MSJs and MPSJs here.

### C. Rulings

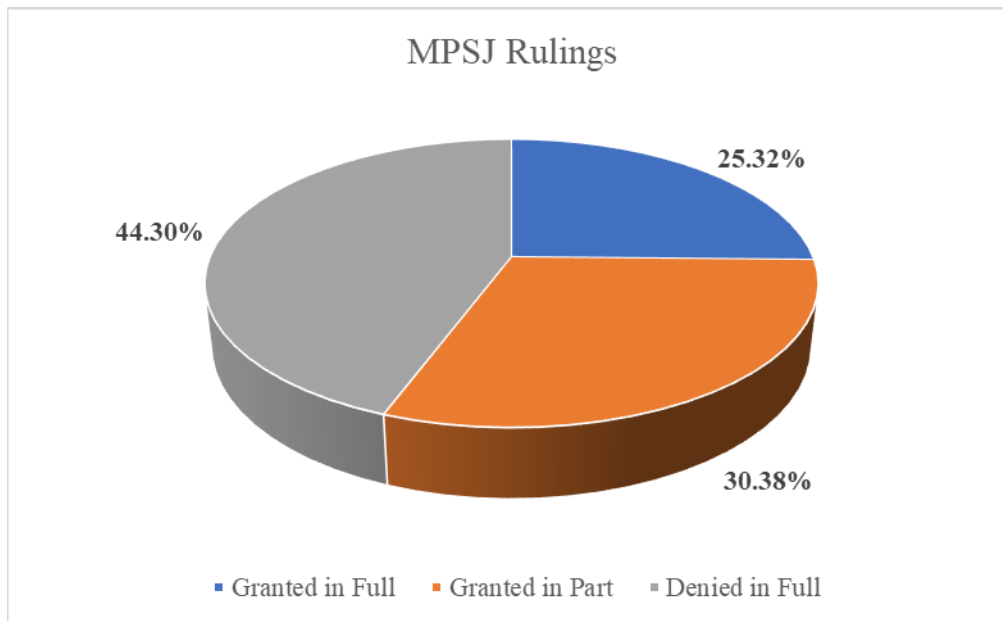
Of the 350 summary judgment motions that were decided on the merits in 2023, Judges granted in full 108 motions (30.86%), denied in full 157 motions (44.86%), and granted in part 85 motions (24.29%). The figure below shows an overview of this data:



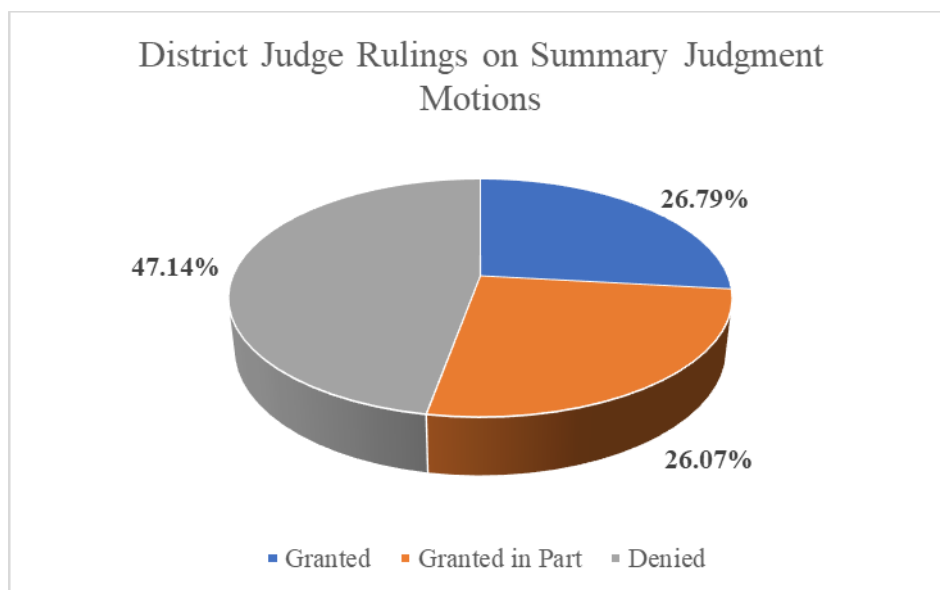
Focusing on the 271 MSJs decided on the merits in 2023, their rulings follow the same breakdown with 88 motions (32.47%) being granted, 122 denials (45.02%) and then 61 grants in part (21.51%). The next figure provides an overview:



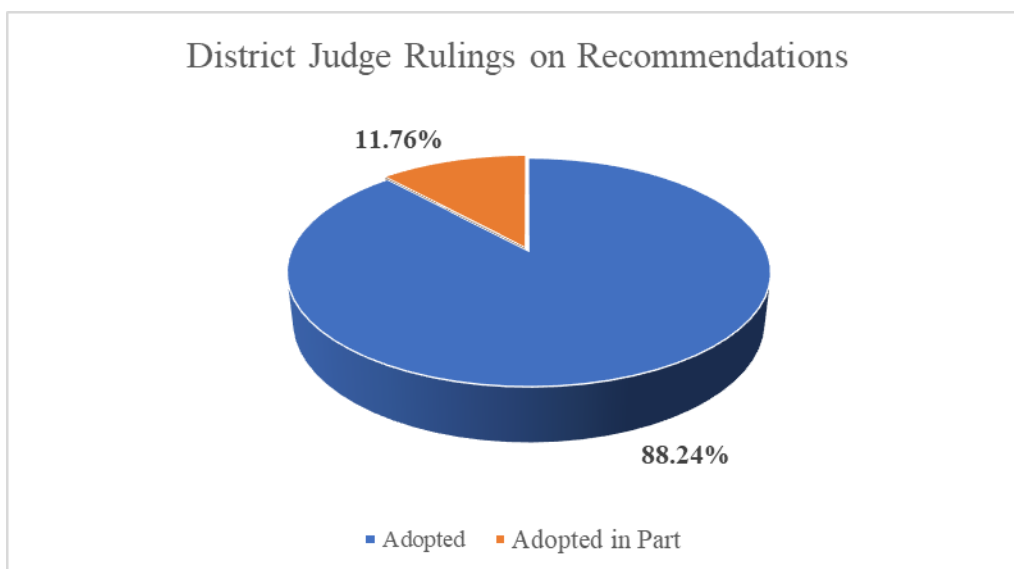
Turning to the remaining seventy-nine MPSJs, twenty were granted (25.32%), thirty-five were denied (44.3%), and twenty-four were granted in part (30.38%). The next figure shows this data:



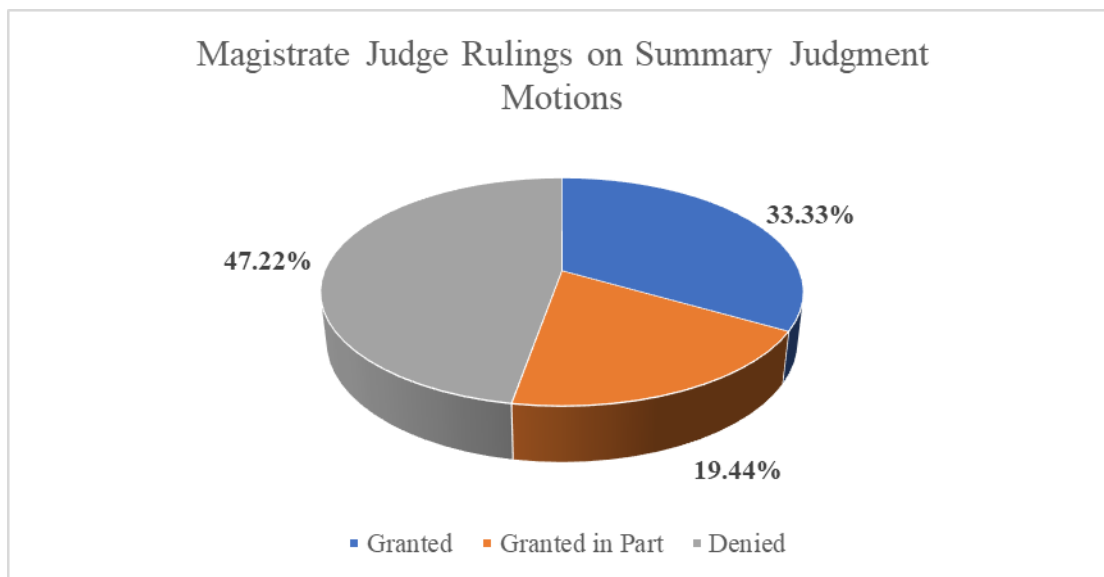
Of the 280 summary judgment motions District Judges directly decided on the merits, seventy-five were granted (26.79%), 132 were denied (47.14%), and seventy-three were granted in part (26.07%). The figure on the following page shows this breakdown:



Of the thirty-four summary judgment motions District Judges referred to Magistrate Judges for recommendation, District Judges ruled on all of them on the merits. Of these, District Judges adopted in their entirety thirty (88.24%) of the recommendations and adopted in part the remaining four (11.76%). Not a single recommendation was rejected in its entirety by the District Judge. The figure below shows the rulings on the merits of recommendations:



Of the thirty-six summary judgment motions Magistrate Judges decided in consent cases, twelve were granted (33.33%), seven were granted in part (19.44%), and seventeen were denied (47.22%). The next figure shows this data:



## XII. MOTIONS TO DISMISS

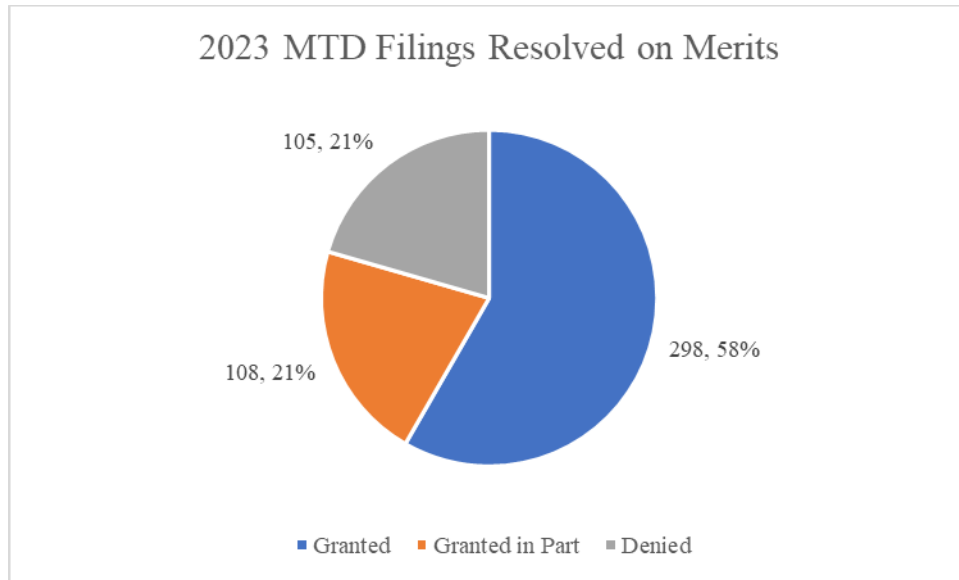
For the first time since these statistics began being recorded in 2003, in response to popular request, the District has collected data for motions to dismiss (“MTDs”). In 2023, **litigants filed 1,479 MTDs and the Court issued 1,406 orders on MTDs.**<sup>39</sup>

### A. 2023 Filings<sup>40</sup>

Of the 1,479 MTDs filed in 2023, 947 were resolved in 2023, 387 were resolved in 2024, and as of July 20, 2024, 145 remain pending. Of the combined 1,334 filings already resolved, 511 were resolved on the merits, as displayed in the chart on the following page:

<sup>39</sup> To be clear, the 1,406 MTD orders issued in 2023 are not exclusive to those MTDs filed in 2023. Rather, 2023 MTD orders span filings from five years (2019-2023) as discussed below.

<sup>40</sup> It is, of course, unique in this Report to record data based on filings in 2023 rather than outcomes. However, because this is the first year for which MTD data is being recorded, we have included this section to expand the very limited sample size that one year of data provides.



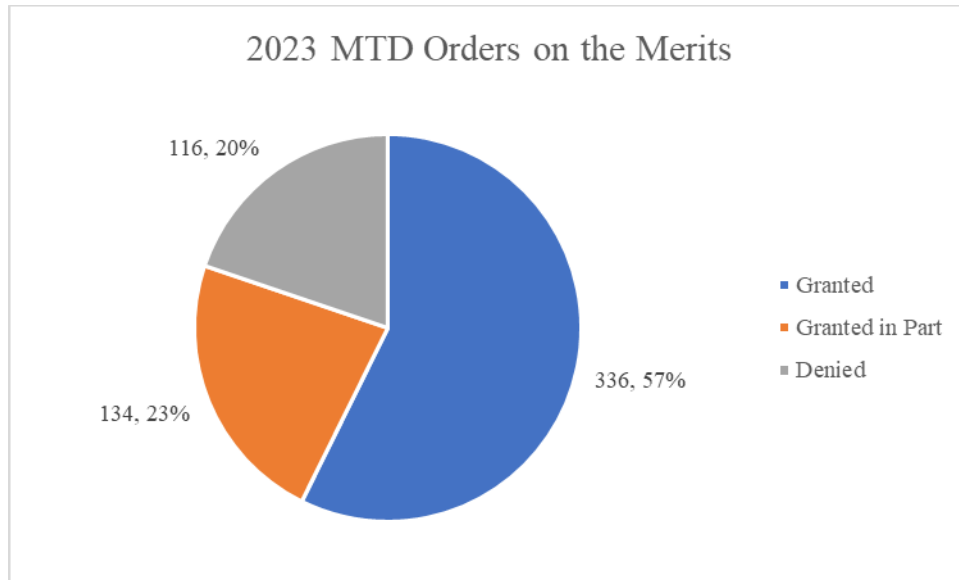
## B. 2023 Orders

For the 1,406 MTD orders entered in 2023, the vast majority—1,306—were ordered within one year of filing. Furthermore, some 67.35% of orders were entered for MTDs filed during 2023. The breakdown of the filing dates for those MTDs ordered in 2023 is displayed below:

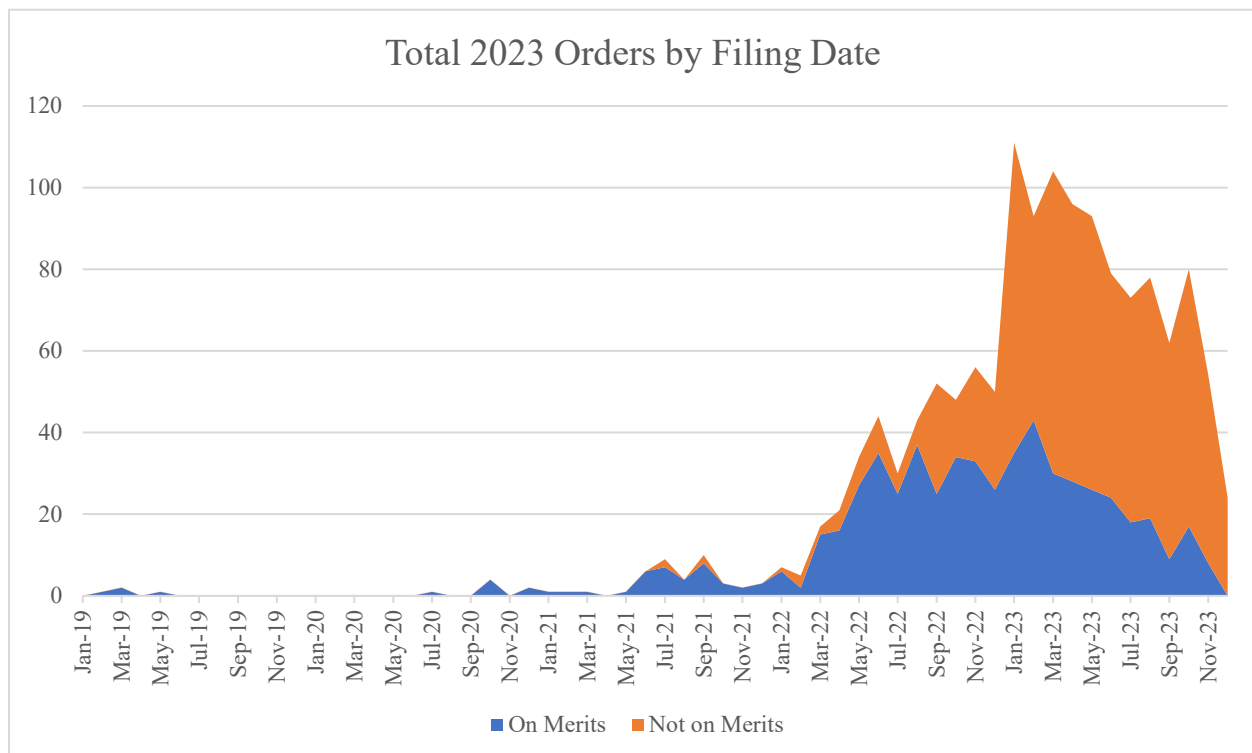
<u>Filed</u>	<u>Number</u>	<u>%</u>
<b>2019</b>	4	0.28%
<b>2020</b>	7	0.5%
<b>2021</b>	41	2.92%
<b>2022</b>	407	28.95%
<b>2023</b>	947	67.35%

Of these 1,406 MTD orders, 586 were ordered on the merits, and the remaining 820 orders were entered for a variety of other reasons, including motions that had been rendered moot by other filings (and particularly by amended pleadings), filings that were denied without prejudice based on other pending motions, stipulated and voluntary dismissals—often pursuant to settlement agreements—and MTDs stricken for failure to comply with Court standards. For the 586 MTD orders on the merits entered in 2023, the breakdown is displayed in the next chart:

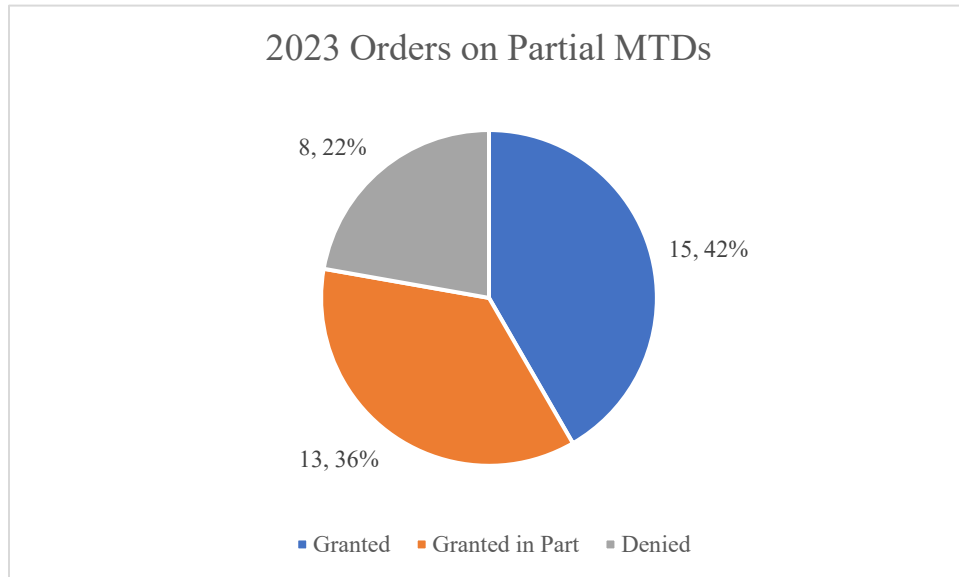




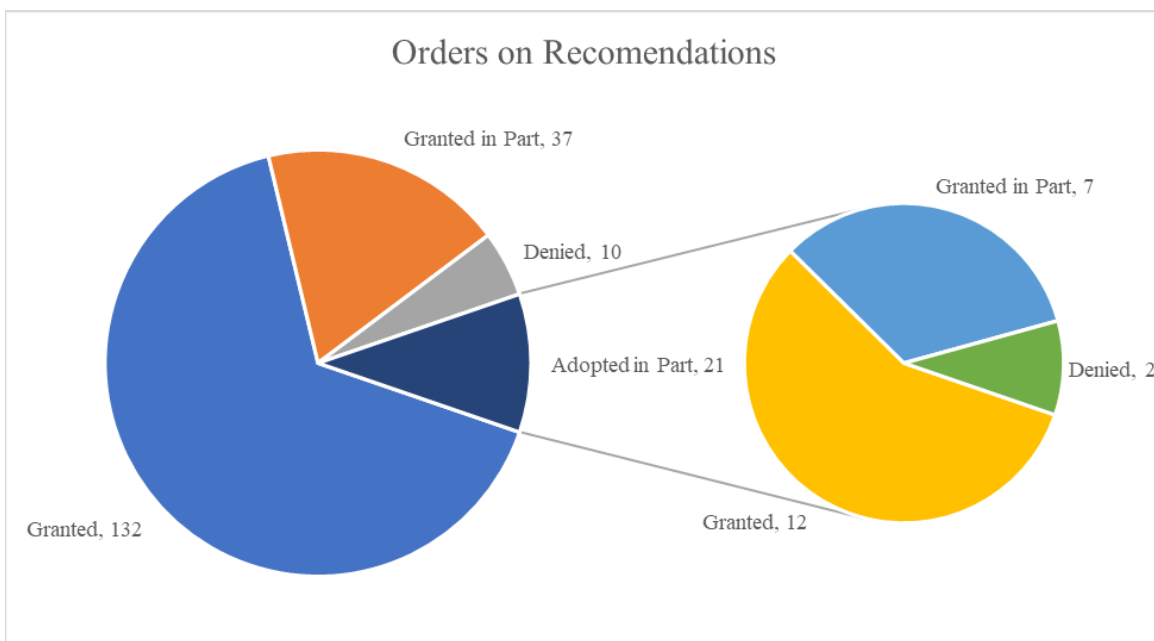
Unsurprisingly, the average filings dates are significantly different for orders issued on the merits and those issued not on the merits. For MTD orders on the merits, litigants waited an average of 7.87 months between filing their motion and the Court’s order. On the other hand, for orders not on the merits, litigants waited an average of only 1.96 months after filing for the Court to issue its order. This skew is represented in the graph below:



For the 586 MTD orders on the merits in 2023, the average time between the last brief and the Court's order was 6.45 months. Additionally, thirty-six were partial MTDs. The orders on partial MTDs are displayed below:



Of the 586 MTD orders on the merits in 2023, 200 of them were entered following a recommendation by a Magistrate Judge. District Judges adopted Magistrate Judge recommendations in full for 179 (89.5%) of the 200 orders and adopted recommendations in part for the other twenty-one (10.5%). The breakdown for is displayed below:



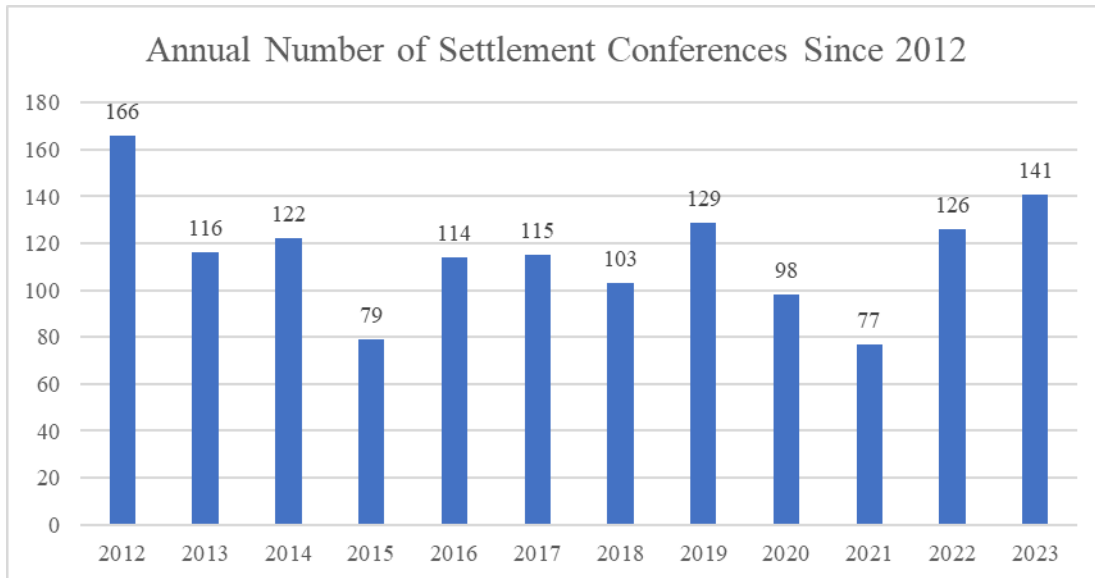
The average time from filing to a Magistrate Judge recommendation was 6.07 months, and the average time from the recommendation to the District Judge's order was 3.69 months. Thus, the average time from motion to order for cases in which MTDs were referred to Magistrate Judges was 9.72 months, which is more than three months longer than the 6.45 month overall average for orders on the merits.

Finally, of the 586 MTD orders entered in 2023, 113 (19.28%) involved issues of 1983 claims for prisoner civil rights. Of those, 72 (63.72%) were granted, 31 (27.43%) were granted in part, and 10 (8.85%) were denied. The average time from filing to an order on the merits for a 1983 prisoner civil rights claim was 7.72 months, more than a month longer than the average for other claims.

### **XIII. ALTERNATIVE DISPUTE RESOLUTION**

In November 2011, the District instituted a new paradigm concerning alternative dispute resolution (“ADR”), offering an Early Neutral Evaluation (“ENE”) as the presumptive process, with settlement conferences occurring only on motion to the presiding judicial officer. In 2009, the first full year with six full-time Magistrate Judges, the District had 717 settlement conferences. In 2011, the last (essentially) full year of Magistrate Judges conducting settlement conferences on a regular basis, the District held 486 settlement conferences.

The number of settlement conferences held had generally trended downward since the District began recording this data in 2012, through 2021. But in 2023, judges held 141 settlement conferences, the **highest** total since 2012 and a 12% increase over 2022. At the time of publication, the District is on a path to have a similar number of conferences in 2024. The annual number of settlement conferences held since 2012 is displayed in the following graph:



Meanwhile, the ENE is a virtually extinct (and unknown) procedure. In fact, as of January 2018, the Clerk’s Office of the District of Colorado ceased monthly reporting on ENEs. By 2020, the process appeared to have generally gone out of use, except for the occasional ENE in the District (perhaps among practitioners from other districts who know the procedure or find it efficacious).

The chart below shows the District’s ADR activity since 2012:

Year	Number of Settlement Conferences	Number of ENEs
2012	166	22
2013	116	15
2014	122	6
2015	79	15
2016	114	11
2017	115	4
2018	103	6
2019	129	7
2020	98	4
2021	77	2

2022	126	1
<b>2023</b>	<b>141</b>	<b>1</b>
<b>TOTAL</b>	<b>1,386</b> <b>(115.5/year)</b>	<b>93</b> <b>(7.75/year)</b>

The author has a general sense that the success rate for settlement conferences in this District approaches 80%. Perhaps wearing the robe does make some difference!

For the practitioner's information, Local Civil Rule (D.C.COLO.LCivR) 16.6 governs alternative dispute resolution in the District. It mentions early neutral evaluations "or other alternative dispute resolution proceeding" but does not contain the words "settlement conference." It does not explicitly inform the practitioner exactly how to request a court-mediated settlement conference. Many District Judges use the following language in their beginning-of-the-case referrals to Magistrate Judges: "On the recommendation or informal request of the magistrate judge or on the request of the parties by motion, this court may direct the parties to engage in an early neutral evaluation, a settlement conference, or another alternative dispute resolution proceeding." The current trend in referral language for District Judges, especially those appointed in recent years, is along the following: "[P]ursuant to Local Civ. R. 16.6 and at the discretion of the Magistrate Judge, [the Magistrate Judge may] convene such early neutral evaluation and/or settlement conferences and direct related procedures as may facilitate resolution of this case without the necessity of a motion or prior authorization of the undersigned."

So generally, parties may file a motion for a settlement conference or may informally raise the matter with the District Judge or, more typically, the Magistrate Judge (perhaps at the scheduling conference), seeking guidance on how to get a settlement conference. The judges of this District might, and often do, raise the prospect of a settlement conference *sua sponte*. Finally, the practitioner is advised to consult the District of Colorado Magistrate Judges' Uniform Civil

Practice Standards about this or any other issue that might involve practice before the Magistrate Judges.

#### **XIV. CONSENT**

Generally, Magistrate Judges may preside over civil matters with the consent of all parties (by filing the appropriate consent form). If not all parties consent, then a District Judge must preside over the litigation and a Magistrate Judge may continue on the case to hear matters the District Judge refers (*e.g.*, convening scheduling and status conferences, determining pretrial matters such as discovery and non-dispositive motions, providing recommendations on dispositive motions).

Historically, cases were drawn to only District Judges, and parties then had the ability to consent to a Magistrate Judge under 28 U.S.C. § 636(c), known as “traditional consent.” This is still available to the parties by filing the consent form consenting to the jurisdiction of a Magistrate Judge. **Please note** that when a District Judge is drawn to a case upon filing, the consent form, although mailed to the parties, need not be filed; the case stays with the District Judge *unless* a form consenting to the Magistrate Judge is filed.

In February 2014, the District initiated a Pilot Project on Consent, utilizing the full-time Magistrate Judges in the drawing of civil lawsuits. Under this project and the subsequent Local Rule arising therefrom, the full-time Magistrate Judges are given an equal draw of civil cases with the active District Judges. Of course, to keep the drawn Magistrate Judge as the presiding judicial officer, the parties must still unanimously consent. If they do not, the case is re-drawn to a District Judge, and the previously assigned Magistrate Judge stays on the case in a referral role. For either “traditional consent” or those cases drawn directly to a Magistrate Judge, if consent is accomplished, the Magistrate Judge will be the only judicial officer on the case (except when the

parties seek, and are granted, a judicially conducted settlement conference or early neutral evaluation).

Regarding the efficacy of the direct draw program, from February 2014 through December 2023, Magistrate Judges received collectively 9,261 cases in 119 months under the direct assignment of cases. Of the total 3468 civil cases filed in the District in 2023, 1323 (38.15%) were directly drawn to Magistrate Judges. On average since 2014, 972 cases annually have been drawn directly to Magistrate Judges. Many cases never have a consent decision made because they are (1) dismissed voluntarily before the time for consent arrives, (2) reassigned randomly because the assigned Magistrate Judge has a conflict, (3) reassigned to a District Judge because of an early dispositive issue (*e.g.*, temporary restraining order, motion to remand to state court, default, etc.) before consent has been accomplished, or for a myriad of other reasons get reassigned, and, thus, must be handled by an Article III judge. For this reason, accurate reporting on the precise rate of consent would have to be accomplished through a manual review of all cases filed. However, in reviewing the data, I believe an annual average of nearly 300 of the 972 cases (approximately 43 per year per Magistrate Judge) have consent accomplished—an average annual consent rate of about 31%. In 2023 specifically, consent was achieved in 364 cases of the 1323 cases directly drawn to Magistrate Judges (27.51%).

Additionally, traditional consent was accomplished in 228 cases in 2023. Added to the direct draw program, this yields a total of between 70-80 new consent cases handled by Magistrate Judges per year. The traditional consent cases include thirty-nine administrative law cases, which is usually a Social Security case, in which parties have consented to the jurisdiction of a Magistrate Judge before their case is drawn to a particular Magistrate Judge. Thus, in these cases, the parties have consented without knowing to which Magistrate Judge they will be assigned.

Although mathematically the introduction of direct draw to Magistrate Judges has, in absolute terms, reduced the number of civil cases that a District Judge carries, the latter's workload has increased despite consent. Comparing the workload of the judges of the District, and the change in civil caseload over time, in 2013, the active District Judges in Colorado had an average of 224 civil cases pending. However, at the end of 2023, there were an average of 240 civil cases pending per active District Judge.

As the District Judges' caseload increases, so do the cases referred to Magistrate Judges. At the end of 2023, Magistrate Judges were the referral judges for 1,986 civil cases, up from 1,816 in 2022, 1,770 in 2021, 1,670 in 2020, and 1,539 in 2019—a steady and significant increase. These 2023 referred cases yielded an average of 284 cases per full-time Magistrate Judge. Adding the approximately 640 consent cases pending at that time for the Magistrate Judges (about ninety-one per Magistrate Judge), the average civil caseload per full-time Magistrate Judge at the end of 2023 was about 375 cases.

For many, if not most, referred civil cases, the Magistrate Judges handle most or all pretrial matters (scheduling, discovery disputes, settlement conferences, dispositive motions for report and recommendation, final pretrial conferences, and even pretrial evidentiary and Rule 702 motions). The bottom line for practitioners is that all judges in the District of Colorado are busy (a truth borne out in national statistics, showing our District to be one of the busiest in the nation), and the steady diet of criminal cases on a District Judge's docket (with the concomitant Speedy Trial and motions practice burdens) makes it only worse.



## **XV. BANKRUPTCY**

As the reader knows, the United States Bankruptcy Court for the District of Colorado functions as a unit of the District and has subject-matter jurisdiction over bankruptcy cases. The judges are appointed by the Tenth Circuit Court of Appeals and serve fourteen-year terms.

In 2023, Colorado had five Bankruptcy Judges (with dates of appointment):

Chief Judge Kimberley H. Tyson (2017)  
Elizabeth E. Brown (2001) (retired June 30, 2023)  
Michael E. Romero (2003)  
Thomas B. McNamara (2015)  
Joseph G. Rosania, Jr. (2016)

With the retirement of Judge Brown, the Bankruptcy Court's weighted caseload hours are not currently sufficient to have warranted the filling of this vacancy. However, the Bankruptcy Court did not lose this statutory judgeship. If the weighted hours increase to an appropriate level, the Bankruptcy Court will request from the Tenth Circuit the appointment of a new Bankruptcy Judge. Also, Wyoming Bankruptcy Judge Cathleen D. Parker (2015) hears Chapter 7 filings from Larimer County, Colorado pursuant to a temporary assignment authorized by the Tenth Circuit Court of Appeals.

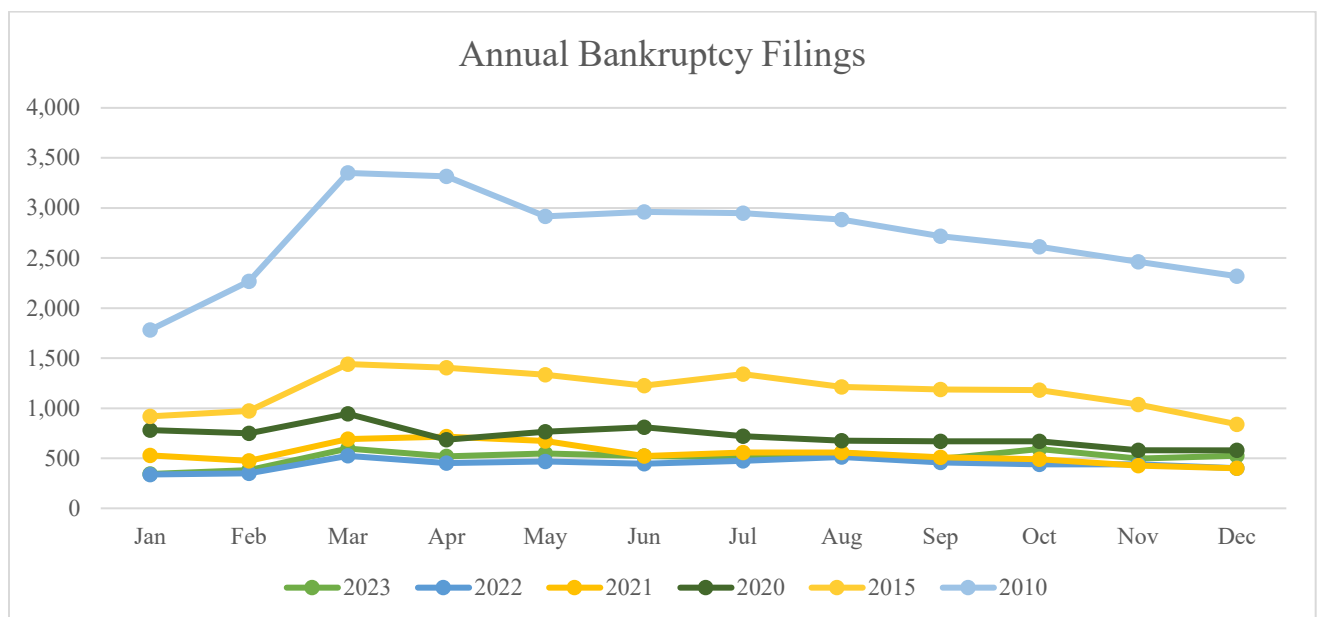
In 2023, the District saw 4,669 Chapter 7 filings, 75 Chapter 11 filings, 1,335 Chapter 13 filings, and one Chapter 12 filing for a total of 6,080 bankruptcy cases. While Colorado's bankruptcy case filings have decreased dramatically since their peak in 2010, this last year brought a 19.3% increase in bankruptcy case filings over the prior year, which is consistent with increases in bankruptcy filings nationally. Specifically, per the Judiciary News, "total bankruptcy filings rose 16.8% nationally, [which demonstrates] a continuing rebound in filings after more than a decade of sharply dropping totals."

Year	Total Filings
2010	32,544
2011	30,044
2012	26,125
2013	21,155
2014	17,143
2015	14,103
2016	12,552
2017	11,768
2018	11,182
2019	11,375
2020	8,281
2021	6,579
2022	5,093
2023	6,080

The following data is correct as of July 2024 and subject to minor fluctuation due to reopenings, chapter conversions, reassignments, and the natural flow of cases.

#### A. Filings & Workload

Bankruptcy filings in 2023 represent a decrease of 81.31% as compared the Court's filing peak in 2010, and 19.3% over filings in 2022.



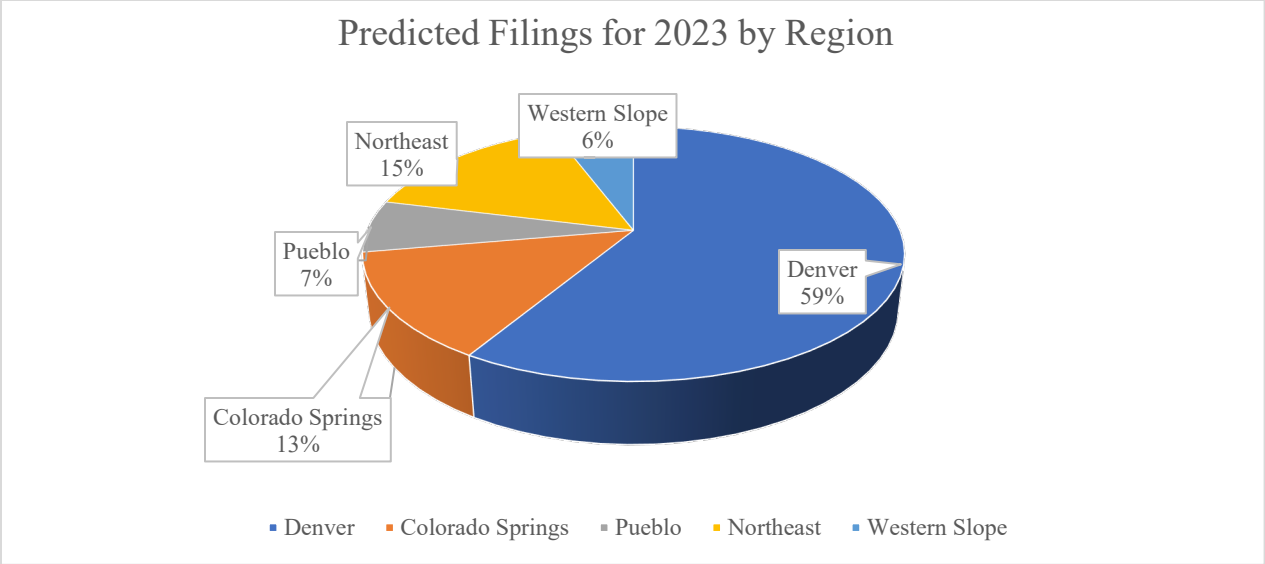
Workload, defined as cases, documents, and docket entries per case administrator, has decreased accordingly. Even with ongoing staffing reductions, employees performed less work per case than they ever have before. Interestingly, the number of documents filed, and docket entries entered per case has remained steady or increased since 2010.

Year	2010	2015	2020	2021	2022	2023
<b>Cases (Bk., Adv., Misc.)</b>	32,539	14,097	8,625	6,550	5,414	6,359
<b>Case Administrators (“CAs”)</b>	25	25	18	17	15	13
<b>Cases Per CA</b>	1301.6	563.9	479.2	385.3	360.9	489.2
<b>Documents per CA</b>	37,314	20,697	16,815	15,399	14,855	18,646
<b>Entries per CA</b>	63,572	30,477	21,409	19,451	19,180	23,958
<b>Documents per Case</b>	<b>28</b>	<b>36</b>	<b>39</b>	<b>40</b>	<b>41</b>	<b>38</b>
<b>Entries per Case</b>	48	54	49	50	53	49

## **B. Case Filings by Region**

The District is divided into five bankruptcy regions to correspond with panel trustee assignments determined by the U.S. Trustee’s office: Denver, Northeast, Colorado Springs, Pueblo, and the Western Slope. This aids in scheduling and management of debtors’ first meetings of creditors as required by 11 U.S.C. § 341.

Denver region debtors were responsible for 59% of the District’s new bankruptcy case filings in 2023. The other regions accounted for the remaining 41%.



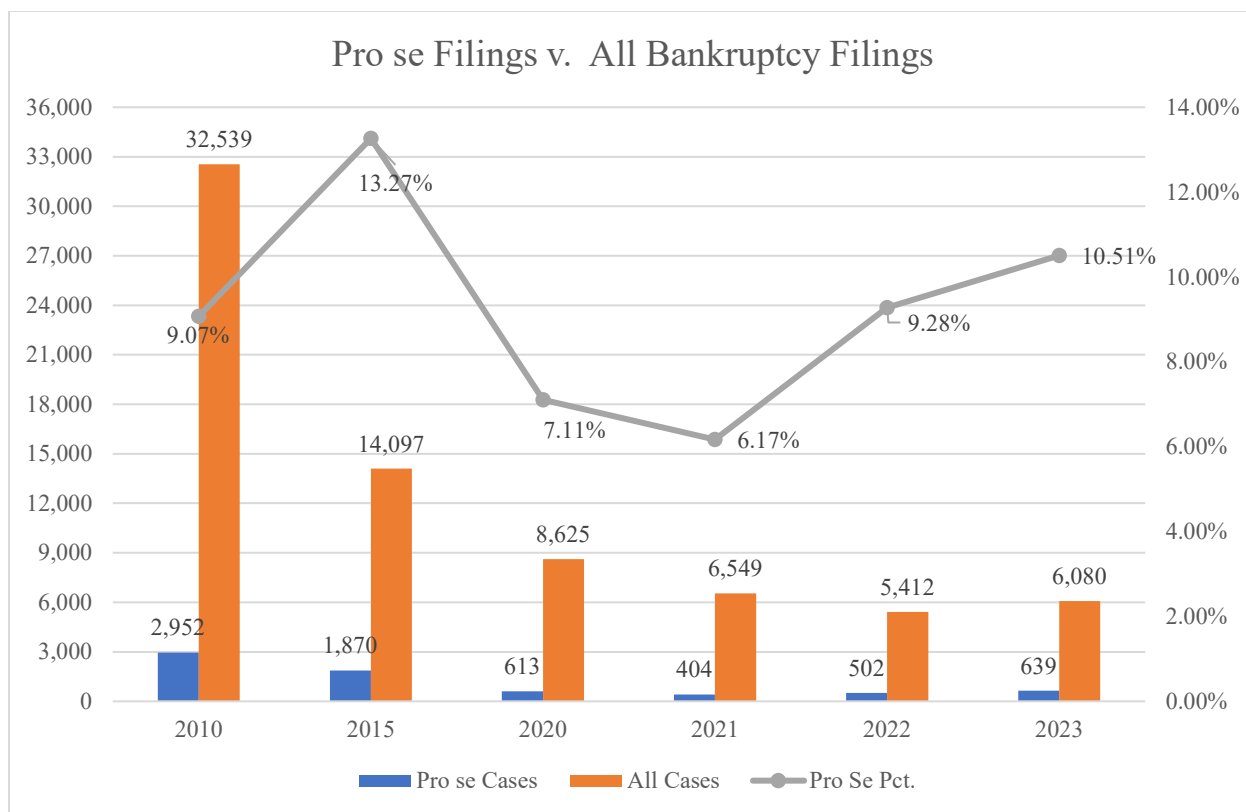
**C. Case Dispositions by Chapter**

In 2023, the Court disposed of about 6,287 cases. About 60% of these dispositions followed discharge orders, while approximately 18% were dismissed. Chapter 7 cases, Chapter 13 cases, and adversary proceedings had the highest rates of dismissal in 2023.

2023 Case Dispositions									
	Ch. 7	Ch. 9	Ch. 11	Ch. 12	Ch. 13	Ch. 15	Adv.	Misc.	Total
Discharges	4,152	0	4	1	977	0	n/a	n/a	5,134
Dismissals	168	0	32	1	819	0	133	0	1,153

**D. Pro Se Participation**

The Court’s pro se filing average since 2010 is 10.49%. In 2023, the pro se filing rate increased slightly to 10.5%.



## XVI. THE FINAL WORD - APPEALS

Since 1998, nearly 13,000 cases have been appealed from the District to the Tenth Circuit, an **average of 485 cases per year**. This encompasses all matters, including criminal, civil, prisoner petitions. In the last twenty years, that average decreased slightly to 482 cases per year. But in the most recent decade, that average decreased further to 453.

Interestingly, the Tenth Circuit is still the third least-busy Circuit, once again ahead of only the District of Columbia and the First Circuit. Indeed, this year our Circuit saw, at bottom, 74% of the Third Circuit's appellate caseload, and at top, 22% of the Ninth Circuit's appellate caseload. In 2023, the Tenth Circuit had 396 appellate matters docketed from the District of Colorado, a decrease from 447 in 2022 and 430 in 2021.

Looking specifically at civil cases and focusing on the most recent decade, an average of 372 civil cases were appealed and an average 380 civil appeals were terminated in the District of

Colorado per year. In 2023, 326 civil cases were appealed and 349 were terminated. Based on the District's average number of civil cases filed (3,410 cases) and the aforementioned average number of civil cases appealed (372), there has been an approximate 9.17% probability of an appeal of a civil case filed in this District in the past ten years.

Turning to criminal cases, an annual average of seventy-six criminal cases were appealed and seventy-seven were terminated over the past ten years. In 2023, seventy criminal cases were appealed, and sixty-one criminal appeals were terminated. Using the District's average number of criminal cases filed in the last decade (370) and the above average number of criminal cases appealed (76), there has been about a 20.54% statistical probability that a criminal case filed in this District would be appealed in the last decade.

Even if a case is appealed to the Tenth Circuit, there is a low probability that it will be reversed. According to the AO, in 2023, the Circuit-wide reversal rate in the Tenth Circuit was 4.5%. That reversal rate was 3.4% for criminal cases, 1.8% for prisoner petitions, and 5.1% for other civil matters. For the past ten years, the overall **reversal rate for in the Tenth Circuit was 5.76%**. However, the information must be taken with a grain of salt. Having reviewed all Tenth Circuit outcomes as they pop up on a daily email, and having discussed the same with Tenth Circuit librarians, I believe the complete affirmance rate is more likely around 75-80%, with reversals or reversals in part around 20-25%. A reminder that data is only as good as the system producing it!

For 2023, the time on all appeals in the Tenth Circuit (Circuit-wide, not limited to the District of Colorado), from **filing of the notice of appeal to the last appellate opinion or final order, was 9.8 months** whereas the average time from **filing in the District Court to the last appellate opinion or final order in 2023 was 32.9 months**. As set forth below, the data also tracks these statistics for prisoner petitions, other civil appeals, and criminal appeals. While this data

shows the Tenth Circuit generally resolved appeals slightly slower than the prior year, its overall time is still generally consistent. For civil appeals in particular, I would think this is very useful information for a client.

Matters	Number of Months from Filing of the Notice of Appeal to the Last Appellate Opinion or Final Order		Number of Months from Filing in the District Court to the Last Appellate Opinion or Final Order	
	2022	2023	2022	2023
<b>TOTAL</b>	9.7	9.8	32.5	32.9
<b>Prisoner Petitions</b>	7.1	6.0	22.6	25
<b>Other Civil Appeals</b>	11.1	12.4	31.9	34.7
<b>Criminal Appeals</b>	9.8	9.9	40.3	34.6

## **XVII. MY FINAL WORD**

As many of you know, I will be retiring from my position as a Magistrate Judge in January 2025. I am grateful to have had the opportunity to serve the District of Colorado from the bench for the past eighteen years. It has been the honor of a lifetime to spend every single day working alongside the dedicated judges and talented lawyers who make up our legal community. In the relentless pursuit of justice that is the judiciary, I am proud of everything we have accomplished together.

As my retirement date looms, I have been reflecting on how much growth and change I have seen in the District in the last (nearly) two decades. I have tried to expand this Statistics Report (since assuming the responsibility from Magistrate Judge Boyd Boland in 2015) every year to track the evolution of our District and provide important knowledge to the federal practitioner.

I believe that these annual Reports give compelling insights into, and foster transparency within, our District of Colorado.

I thank you all for your professionalism, collaboration, passion, and friendship. I have countless cherished memories with so many of you. Although you will no longer see me sitting behind a bench next year, this is not goodbye. I will continue to serve our community in whatever capacity I can for as long as I can, and I hope that whichever path life takes us down will continue to bring me together with many of you.

A handwritten signature in black ink that reads "Michael E. Hegarty". The script is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Michael E. Hegarty

Chief United States Magistrate Judge