

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

**Michael E. Hegarty  
United States Magistrate Judge**

**2017 STATISTICS FOR THE  
U.S. DISTRICT COURT, DISTRICT OF COLORADO**

This memorandum analyzes trial results and statistics<sup>1</sup> in civil and criminal cases in the District of Colorado (“the District”) from January 1, 2017, through December 31, 2017, as well as information concerning dispositive motions practice, ADR, and Magistrate Judge consent.

**TRIALS**

**I. SUMMARY**

In 2017, the District saw seventy total cases tried to verdict.<sup>2</sup> This includes forty civil jury trials and twenty-one criminal jury trials, for a total of sixty-one jury trials (last year saw forty-five civil and ten criminal for a total of fifty-five jury trials) and nine civil bench trials.<sup>3</sup> This represents the first uptick in total jury trials that reached a verdict after a five-year trend of decline: fifty-five civil and criminal jury trials in 2016; fifty-eight in 2015; sixty-two in 2014; seventy-four in 2013; and ninety-one in 2012.

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<sup>1</sup> Statistics reflect trial verdicts as opposed to dispositions entered by the court through some other mechanism.

<sup>2</sup> Four civil cases settled during jury trial, one jury trial concluded on a judgment as a matter of law at halftime, and one trial resulted in a hung jury that was not retried. In addition, one bench trial concluded on a Rule 52 judgment. These are not included in the statistics, although this obviously leaves the 2017 numbers slightly understated when viewed in the light of a litigant’s access to trials in our court.

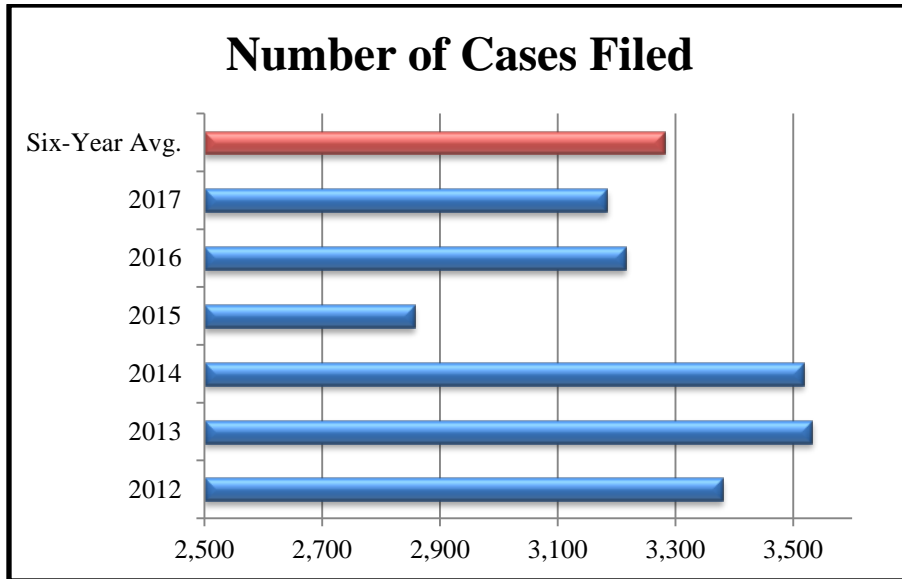
<sup>3</sup> One of these cases is currently awaiting final judgment. The District held seven civil bench trials in 2016.

## II. CIVIL JURY TRIALS

### A. Overview

The District tried forty civil cases to jury verdicts in 2017. Litigants filed a total of 3,184 cases in 2017; 3,216 in 2016; 2,857 in 2015; 3,517 in 2014; 3,532 in 2013; and 3,380 in 2012.

These figures are presented in the chart below:



Taking the average cases filed in 2012 through 2017 of 3,281 (rounded to the nearest whole number) and comparing it with the forty jury verdicts in 2017 represents a 1.22% trial rate, a slight decrease from last year's 1.37% rate using the same 3,281 case total. The filing date for each case tried to verdict in 2017 is reported below:

<u>Year Filed</u>	<u>No. Tried in 2017</u>
2016	6
2015	23
2014	5
2013	3

2012	1
2011	1
2010	1

**B. Time to Trial**

The average time from civil case filing to a jury trial in 2017 was 28.4 months, a slight decrease from the 28.6 months in 2016. This compares to 26.4 months in 2015. The shortest time from filing to trial was fourteen months (personal injury – assault), while the longest time was ninety-six months (trespass to land – mineral development). Further, seventeen of the forty cases were tried within two years of filing (42.5%), compared with fifteen of forty-five cases last year (33.3%). Six of the cases were tried to a Magistrate Judge, compared with only three cases last year. The average time to trial for cases tried to a Magistrate Judge was 27.6 months, virtually the same statistically as the overall average.

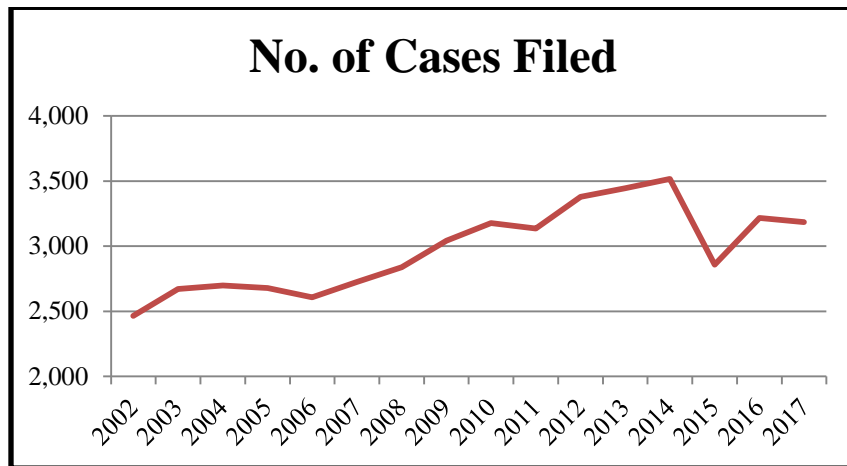
**C. Volume of Trials**

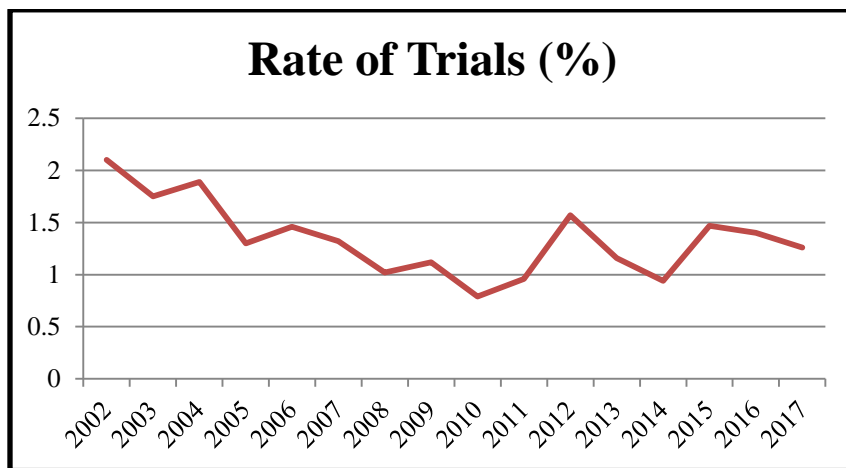
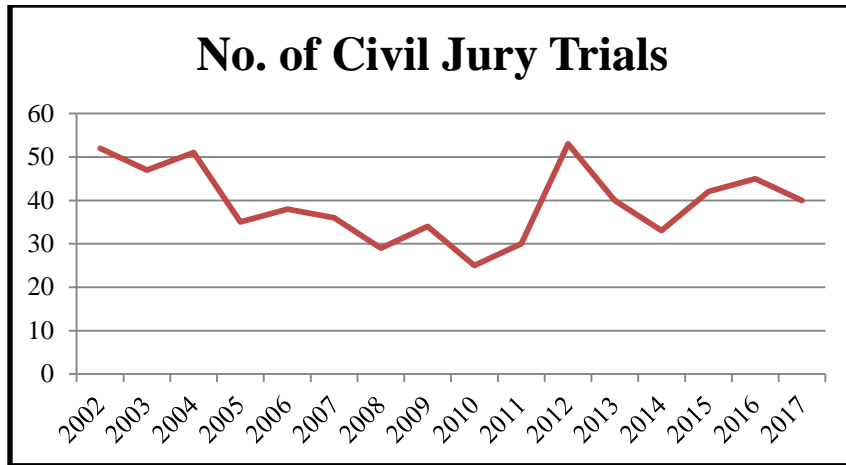
The number of civil jury trials that reached verdict in 2017 (forty) fell slightly from that number in 2016 (forty-five) and 2015 (forty-two). Similarly, the number of civil cases filed in 2017 (3,184) was slightly lower than the 2013-2017 five-year average of 3,243. This is less than a 1% deviation from the total cases filed in 2016 (3,216). However, 2016 saw a statistically significant increase over the number of cases filed in 2015 (2,857), 12.6%. Indeed, prior to 2016 the biggest change year to year in raw case filings since the District (*i.e.*, Magistrate Judge Boland) began tracking numbers was a 244-case increase from 2011-2012 (7.8% increase), while the biggest percentage change was in 2002-2003 (8.4% increase). Thus, 2017 mostly maintained the increase in filings that occurred in 2016.

Relevant statistics regarding civil jury trials in each of the last sixteen years are reported

below:

<u>Year</u>	<u>No. of Cases Filed</u>	<u>No. of Civil Jury Trials</u>	<u>Rate of Trials (%)</u>
2017	3,184	40	1.26
2016	3,216	45	1.40
2015	2,857	42	1.47
2014	3,516	33	0.94
2013	3,444	40	1.16
2012	3,380	53	1.57
2011	3,136	30	0.96
2010	3,177	25	0.79
2009	3,042	34	1.12
2008	2,838	29	1.02
2007	2,726	36	1.32
2006	2,607	38	1.46
2005	2,679	35	1.30
2004	2,698	51	1.89
2003	2,672	47	1.75
2002	2,464	52	2.10
<b>Average</b>	<b>2,977</b>	<b>39.38</b>	<b>1.32</b>





The five-year average from 2013 through 2017 is exactly forty trials per year, nearly identical to the sixteen-year average of 39.38 trials per year. At the very least, the decline in jury trials has stabilized.

**D. Parties' Success Rates**

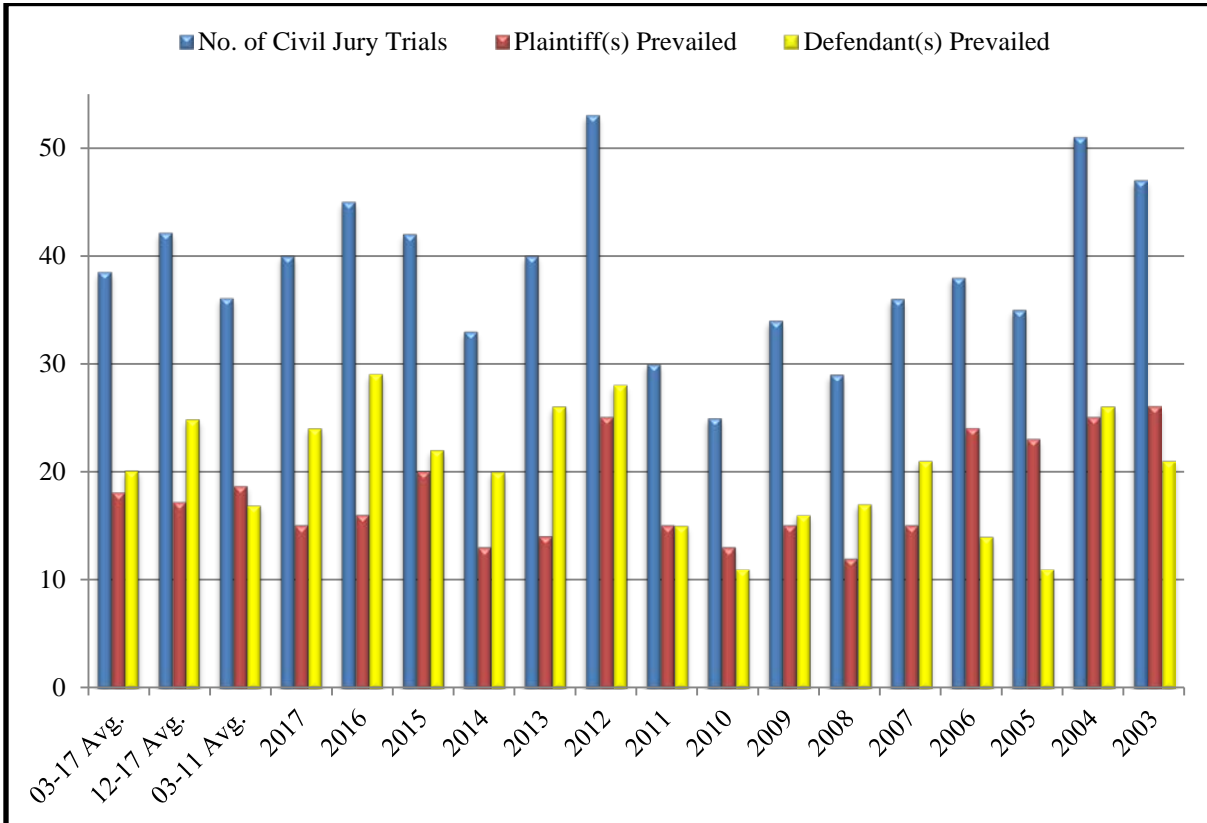
Defendants prevailed in twenty-four of the forty civil jury trials (60%), while plaintiffs prevailed in fifteen of the trials (37.5%).<sup>3</sup> As noted above, four cases settled during trial, and one resolved before verdict on judgment as a matter of law.

Since 2003, there have been 578 civil jury trials. The plaintiffs prevailed in 271 (46.9%),

<sup>3</sup> One case reached a split verdict. That case resulted in a \$676,465.00 award to the defendant.

and the defendants prevailed in 301 (52.1%). There were six (0.1%) split verdicts. Rates of success since 2003 are presented below:

<u>Year</u>	<u>No. of Civil Jury Trials</u>	<u>Plaintiff(s) Prevailed</u>	<u>Defendant(s) Prevailed</u>	<u>Split Verdicts</u>
2017	40	15 (37.5%)	24 (60.0%)	1
2016	45	16 (35.5%)	29 (64.5%)	0
2015	42	20 (47.6%)	22 (52.4%)	0
2014	33	13 (39.4%)	20 (60.6%)	0
2013	40	14 (35.0%)	26 (65.0%)	0
2012	53	25 (47.2%)	28 (52.8%)	0
2011	30	15 (50.0%)	15 (50.0%)	0
2010	25	13 (52.0%)	11 (44.0%)	1
2009	34	15 (44.1%)	16 (47.1%)	3
2008	29	12 (41.4%)	17 (58.6%)	0
2007	36	15 (41.8%)	21 (58.3%)	0
2006	38	24 (63.2%)	14 (36.8%)	0
2005	35	23 (65.7%)	11 (31.4%)	1
2004	51	25 (49.0%)	26 (51.0%)	0
<u>2003</u>	<u>47</u>	<u>26 (55.3%)</u>	<u>21 (44.7%)</u>	<u>0</u>
TOTAL	578	271 (46.9%)	301 (52.1%)	6 (0.1%)



Although cumulative success rates of plaintiffs and defendants are similar dating back to 2003, a different view shows that plaintiffs prevailed in 51.7% of trials in the nine-year period from 2003 to 2011. However, in the six-year period from 2012 through 2017, plaintiffs have only prevailed 40.7% of the time, while defendants have prevailed 58.9% of the time. In 2016-2017, defendants prevailed at a rate of 62.4%, nearly two-thirds of the time.

**E. Amount of Plaintiffs’ Verdicts**

The largest civil jury verdict in 2017 was \$60,215,413.00 in a breach of contract case, while the smallest was \$5,000.00 in a Title VII gender discrimination and retaliation case. By comparison, the largest verdict in 2016 was \$6,986,538.00 in an intellectual property/patent infringement case. The average civil jury verdict in 2017 was \$5,919,490.01, but eliminating the largest and smallest verdicts, the average was \$2,197,841.32. In 2016, the average verdict amount after eliminating the largest and smallest verdicts was \$724,958.88. The following chart reports the jury verdicts in 2017 from highest to lowest:

<b>Rank</b>	<b>Amount</b>	<b>Type of Case</b>
1	\$60,215,413.00	Breach of Contract
2	\$10,840,000.00	Breach of Contract
3	\$8,421,267.00	RICO: Fraud
4	\$2,258,277.50	Breach of Contract
5	\$2,150,000.00	ADA & Retaliation
6	\$1,386,150.90	Breach of Contract

7	\$950,000.00	Insurance Coverage/Unreasonable Delay/Bad Faith
8	\$779,590.00	1983: Retaliation
9	\$580,000.00	Wrongful Termination: Colorado Public Policy
10	\$511,929.00	Wrongful Death
11	\$300,000.00	Title VII Retaliation/Rehabilitation Act/1983 Religion
12	\$288,960.00	ADEA
13	\$55,762.79	Breach of Contract
14	\$50,000.00	1983: Excessive Force
15	\$5,000.00	Title VII: Gender & Retaliation

Note: Two of the trials involved defendants who either prevailed on a counterclaim or recovered on a split verdict when the plaintiff received nominal damages. These awards were for \$460,000.00 and \$676,465.00. I am including these cases as defense verdicts and not as plaintiff verdicts. First, it is true that the defendants prevailed. Second, in my experience, a defendant often has a claim that it never would have raised had the defendant not been sued in the first place; therefore, including these cases as defense verdicts is consistent with these statistics serving as information on which a plaintiff could assess whether to file a lawsuit in the first place.

Active District Judges presided over twenty-one jury trials (compared with twenty-five last year); Senior District Judges presided over thirteen jury trials (compared with seventeen last year); and Magistrate Judges presided over six jury trials (compared with three last year). The



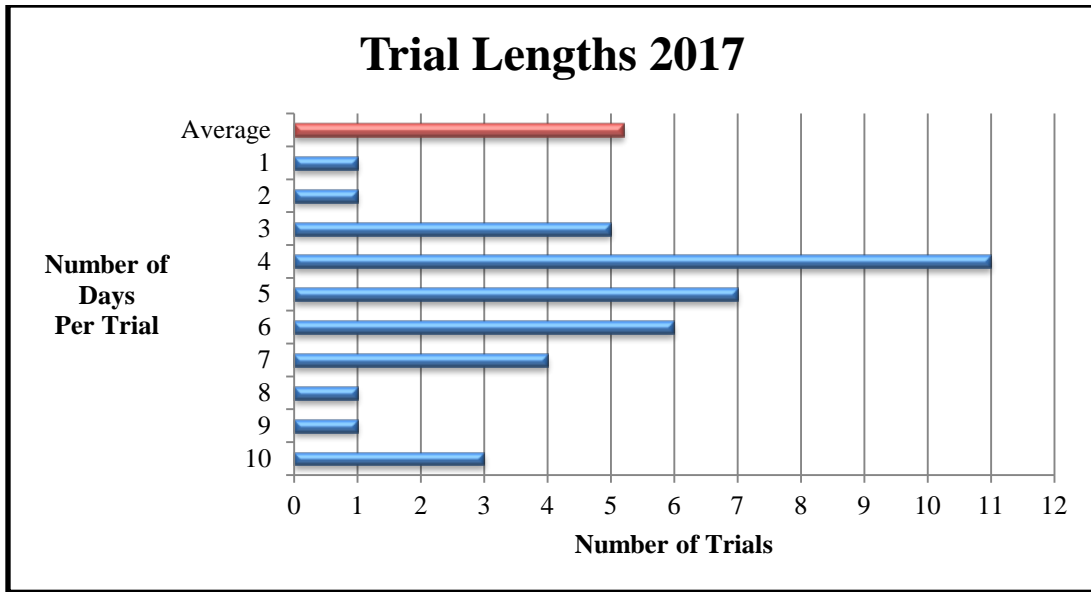
following is a breakdown of the civil jury trials in 2017 by presiding judge:

<b>Judge</b>	<b>Type of Case</b>	<b>Prevailing Party</b>	<b>Amount of Verdict</b>
MSK	Breach of Contract	P	\$2,258,277.50
PAB	1983: Excessive Force	D	
CMA	Title VII: Gender Discrimination	P	\$5,000.00
	ADEA	P	\$288,960.00
	Insurance Coverage: House	D	
	Breach of Contract	D	
WJM	Contract/Counterclaim: Abuse of Process	D	(\$460,000.00)
	Title VII: National Origin Hostile Environment	D	
	Insurance Coverage: Automobile	D	
	Defamation/Counterclaim: Assault	D	(\$1.00)
	1983: Malicious Prosecution	D	
	FELA	D	
RBJ	RICO	P	\$8,421,367.00
	Patent Infringement	D	
	Breach of Contract	P	\$10,840,000.00
	FDCPA	D	
	Common Law: Assault and Battery	D	
	Breach of Contract	P	\$55,762.79
	FELA	D	
RM	Breach of Contract	Split: D	(\$676,465.00)
	Title VII: Retaliation/Rehabilitation Act/1983: Religion	P	\$300,000.00
DME	Breach of Contract	P	\$1,386,150.90
RPM	1983: Retaliation	P	\$779,590.00
	Common Law: Personal Injury	D	
	Title IX: Pregnancy and Maternity Discrimination	D	
LTB	Premises Liability	D	
WYD	1983: Prisoner Rights	D	
	1983: Retaliation/FMLA/Equal Pay Act	D	
	1983: Excessive Force	P	\$50,000.00
	1983: Excessive Force	D	

REB	Insurance Coverage: Condominiums	D	
	Breach of Contract	P	\$60,215,413.00
	ADA & Retaliation	P	\$2,150,000.00
	Wrongful Death	P	\$511,929.00
CBS	1983: Excessive Force	D	
MEH	1983: Prisoner Rights	D	
	Insurance Coverage/Unreasonable Delay/Bad Faith	P	\$950,000.00
MJW	1983: Excessive Force	D	
NYW	Wrongful Termination: Colorado Public Policy	P	\$580,000.00
KMT	1983: Prisoner Unreasonable Search	D	

### **F. Trial Lengths**

Civil jury trials that went to verdict in 2017 required 208 total trial days compared with 258 in 2016. The longest lasted ten days (three times: RICO; Contract/Abuse of Process Counterclaim; 1983: Excessive Force); the shortest was one day (1983: Prisoner Rights). The average trial length was 5.2 days, while the most common trial length was four days (eleven times). For the six cases tried to a Magistrate Judge, the average trial length was 3.5 days. The total cases at each trial length were as follows: ten days (3), nine days (1), eight days (1), seven days (4), six days (6), five days (7), four days (11), three days (5), two days (1), and one day (1). These figures are represented in the chart below:



#### G. Nature of Claims

The jury trials conducted in 2017 fall into the following categories:

Category	Number of Cases	Percent of Cases Tried
Breach of Contract	8	20.0%
Employment	7	17.5%
Civil Rights	10	25.0%
Common Law Torts	5	12.5%
Insurance Claims	4	10.0%
Fair Debt Collection	1	2.5%
FELA	2	5.0%
Intellectual Property	1	2.5%

Title IX	1	2.5%
RICO	1	2.5%

**1. Breach of Contract (non-insurance)**

We had eight breach of contract trials in 2017, which is relatively consistent with 2016 (six), 2015 (eleven), and 2014 (eight). During the last sixteen years, there have been 108 jury trials alleging breach of contract, an average of 6.75 per year. Of those, the plaintiffs prevailed in sixty-six cases, the defendants prevailed in thirty-eight cases, and there were four split verdicts.

In 2017, plaintiffs prevailed in five cases, and defendants prevailed in two, with one split verdict that awarded \$676,465.00 to a defendant on a breach of contract counterclaim. The average verdict for a breach of contract case was a very lucrative \$14,951,120.80, and the median was \$2,258,277.50. These trials lasted from three to ten days, with the average being 5.75 days.

**2. Breach of Insurance Contract**

Of the four insurance cases, only one resulted in a verdict for the plaintiff, with an award of \$950,000.00.

**3. Employment**

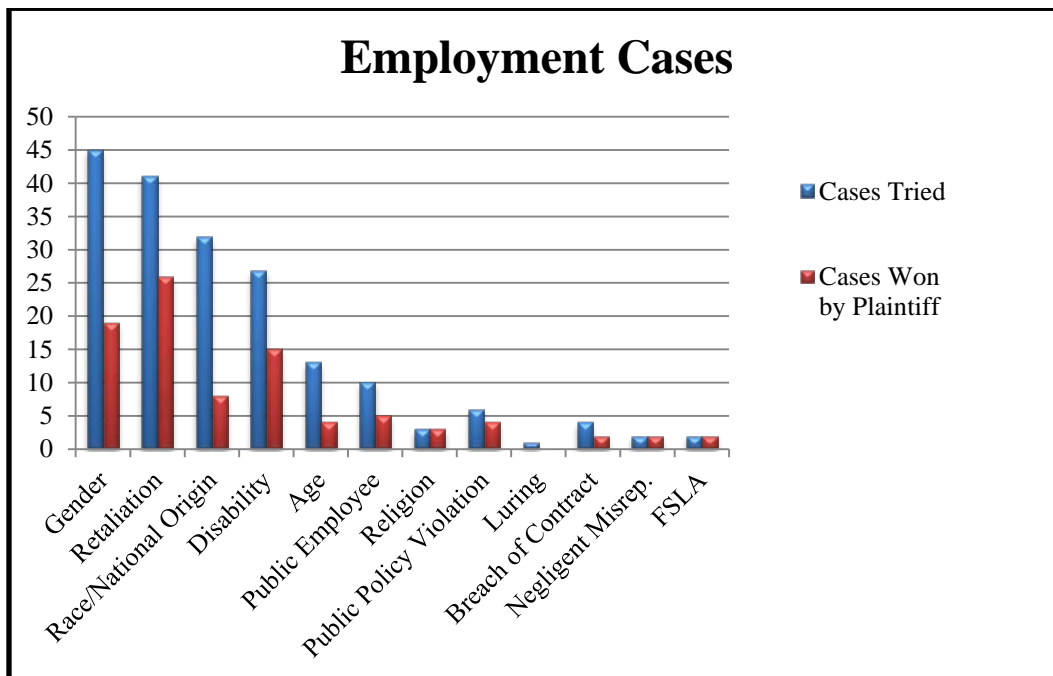
The District's employment cases decreased to seven cases in 2017 from eleven in both 2016 and 2015. The plaintiffs prevailed in 71% (five) of the cases, while the defendants prevailed in the remaining two (29%). The results by nature of the alleged discrimination are reported below:

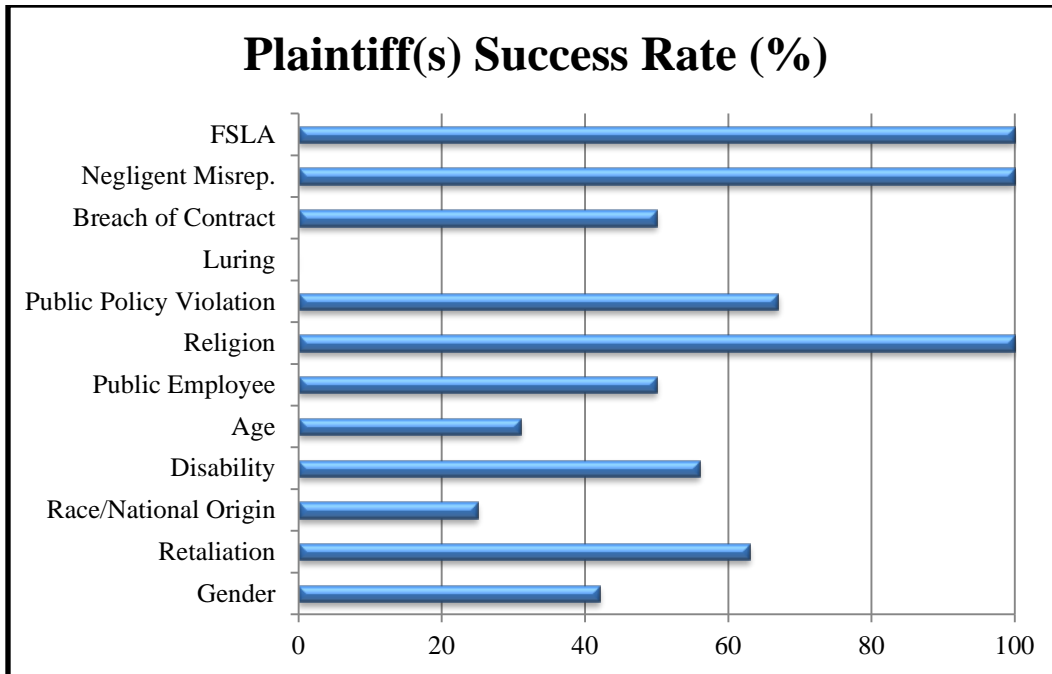
<b>Nature of Claim</b>	<b>Prevailing Party</b>	<b>Verdict</b>
Age	P	\$288,960.00
Gender/Race	D	
National Origin	D	
Gender/Retaliation	P	\$5,000.00
Religion/Retaliation	P	\$300,000.00
Disability/Retaliation	P	\$2,150,000.00
Public Policy – Worker’s Comp.	P	\$580,000.00

In the last sixteen years, 186 employment cases have been tried to verdict. The employment claims most frequently tried are gender (forty-five) and retaliation (forty-one). The plaintiffs have prevailed in ninety employment cases (48%), and the defendants have prevailed in ninety-six cases (52%). Historical verdicts rendered by nature of the claim asserted during the past sixteen years are as follows:

<b>Nature of Claim</b>	<b>Cases Tried</b>	<b>Cases Won by Plaintiff</b>	<b>Plaintiff’s Success Rate</b>
Retaliation	41	26	63%
Gender	45	19	42%
Race/National Origin	32	8	25%
Disability	27	15	56%
Age	13	4	31%

Public Employee	10	5	50%
Religion	3	3	100%
Public Policy Violation	6	4	67%
Luring	1	0	0%
Breach of Contract	4	2	50%
Negligent Misrep.	2	2	100%
FSLA	2	2	100%
<b>Total</b>	<b>186</b>	<b>90</b>	<b>48%</b>





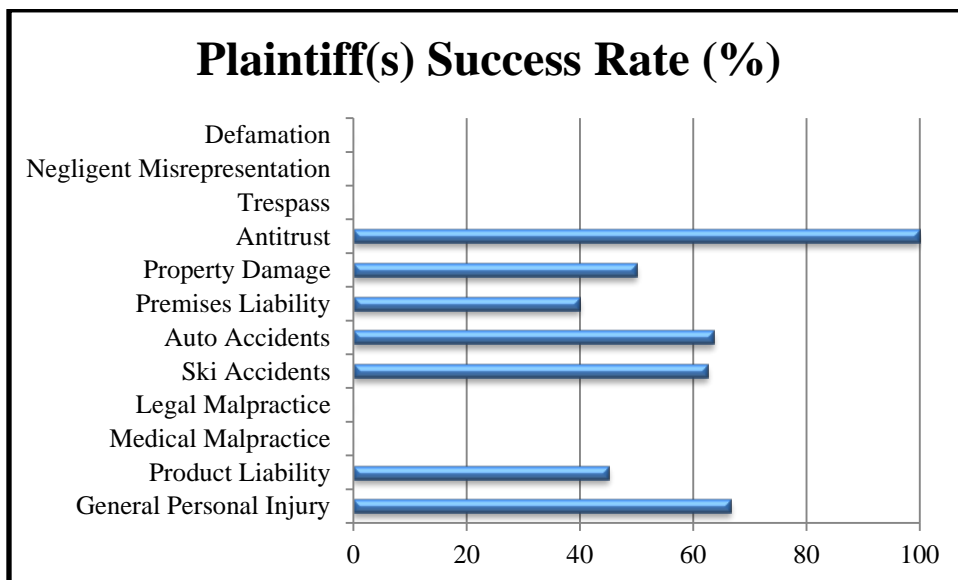
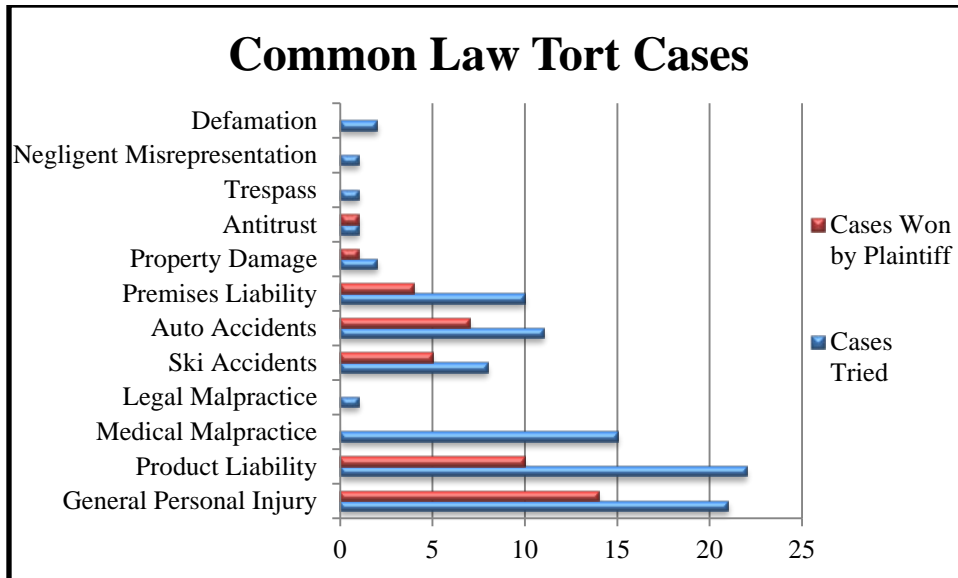
#### 4. Common Law Torts

Common law torts decreased to five jury trials in 2017 from eight in 2016. These cases made up 12.5% of all cases tried to a jury in 2017. Three cases alleged wrongful death or personal injury, one case alleged premises liability, and one alleged defamation. The plaintiff prevailed in only one of these cases, resulting in a \$511,929.00 judgment in the wrongful death suit. Tort claims for the past sixteen years are summarized below:

Nature of Claim	Cases Tried	Cases Won by Plaintiff	Plaintiff's Success Rate
General Personal Injury	21	14	66.7%
Product Liability	22	10	45%
Medical Malpractice	15	0	0%

Legal Malpractice	1	0	0%
Ski Accidents	8	5	62.5%
Auto Accidents	11	7	63.6%
Premises Liability	10	4	40%
Property Damage	2	1	50%
Antitrust	1	1	100%
Trespass	1	0	0%
Negligent Misrepresentation	1	0	0%
Defamation	2	0	0%
<b>Total</b>	<b>95</b>	<b>42</b>	<b>44.2%</b>





In the last sixteen years, litigants have tried ninety-five tort claims to verdict. Plaintiffs have prevailed forty-two times (44.2%), and defendants have won fifty-three times (55.8%). The total amount of damages awarded to plaintiffs in tort cases in the last sixteen years is \$66,417,532.00, for an average of \$1,581,369.81 per plaintiff's verdict. Notably, while fifteen medical malpractice cases have been tried to verdict, no plaintiff has prevailed in any of those

cases.

### 5. Civil Rights

The number of civil rights cases increased to a total of ten from eight the previous two years. In 2017, there were five excessive force trials, three prisoner rights, one retaliation, and one malicious prosecution trial. Plaintiffs prevailed in only two cases.

Nature of Claim	Prevailing Party	Verdict
Excessive Force	P	\$50,000.00
Retaliation	P	\$779,590.00
Excessive Force	D	
Excessive Force	D	
Excessive Force	D	
Excessive Force	D	
Prisoner Rights	D	
Prisoner Rights	D	
Prisoner Rights	D	
Malicious Prosecution	D	

In the last sixteen years, 107 civil rights cases have been tried to verdict. The plaintiffs won twenty-seven cases (25%), and the defendants prevailed in eighty cases (75%). Historically, the largest verdict in the last sixteen years was a deliberate indifference claim resulting in an \$11,399,936.00 verdict. In contrast, juries have returned a \$1.00 verdict three separate times.

Plaintiffs' verdicts over the last sixteen years are reported below:

Nature of Claim	Amount of Verdict
Deliberate Indifference	\$11,399,936.00
Excessive Force	\$4,650,000.00

Disability Discrimination	\$2,200,000.00
Unlawful Arrest	\$1,790,000.00
Taking/Due Process/Defamation	\$1,669,177.56
Unlawful Arrest	\$1,000,000.00
Retaliation: First Amendment	\$779,590.00
Employment Discrimination	\$650,000.00
Excessive Force	\$400,000.00
Unreasonable Search and Seizure	\$190,000.00
False Arrest and Excessive Force	\$130,000.00
4 <sup>th</sup> and 14 <sup>th</sup> Amendment Violations	\$72,583.00
Excessive Force	\$50,000.00
Excessive Force	\$45,000.00
Excessive Force	\$40,000.00
Cruel and Unusual	\$32,002.00
Excessive Force	\$10,000.00
Unlawful Arrest	\$10,000.00

Unreasonable Search	\$6,500.00
Unlawful Arrest	\$5,000.00
Cruel and Unusual	\$2,000.00
Retaliation: 1 <sup>st</sup> Amendment	\$1,791.00
Retaliation	\$1,500.00
Equal Protection	\$630.00
Unlawful Arrest	\$1.00
Excessive Force	\$1.00
Unreasonable Search	\$1.00
<b>Average</b>	<b>\$930,952.32</b>
<b>Total</b>	<b>\$25,135,712.56</b>

The average verdict in civil rights cases is \$930,952.32. After excluding the anomalous \$11 million verdict from 2014, the average is \$528,299.10.

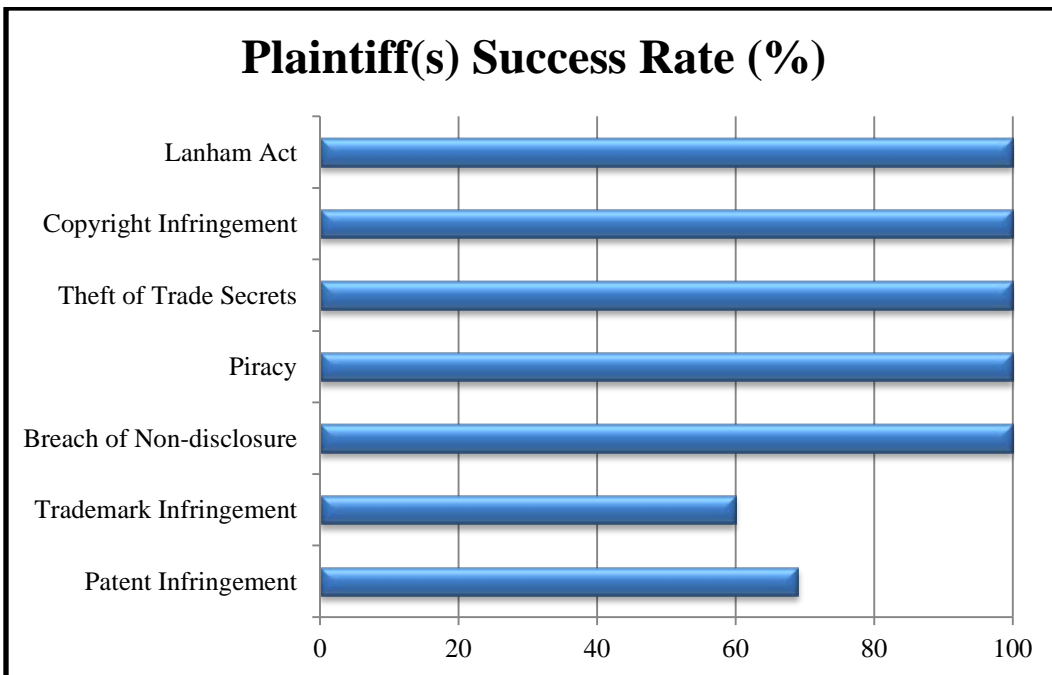
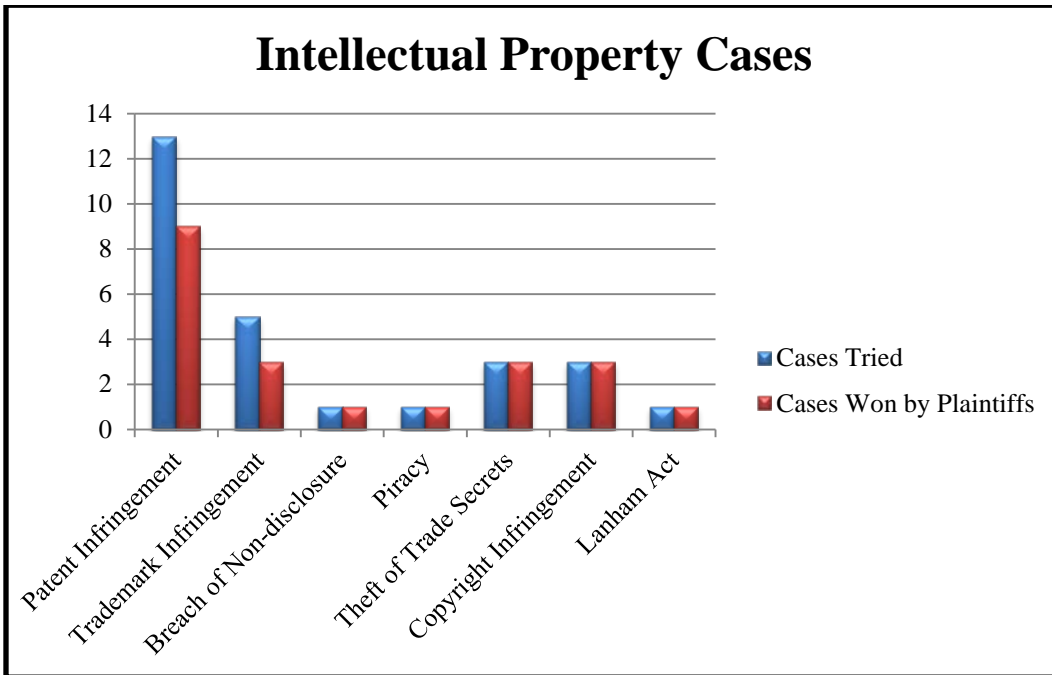
## **6. Intellectual Property**

The District had just one intellectual property trial in 2017, a patent infringement case. The defendant prevailed.

Historically, plaintiffs have fared well in intellectual property cases in this District. In the last sixteen years, twenty-seven intellectual property cases have been tried to verdict, and the

plaintiff prevailed in twenty-one of them (77.8%).

The results over the last sixteen years are reported below:



### III. CIVIL BENCH TRIALS

Judges in this District held nine civil bench trials in 2017; one of those cases is still pending verdict. This compares with six in 2016. The plaintiff prevailed in three of the 2017 cases: two breach of contract claims and one fraud case. The defendant prevailed in two breach of contract cases, a Title VII race and ADEA case, a First Amendment civil rights case, and a foreclosure.

The average time from filing to a judgment (of those decided) for bench trials in 2017 was 23.9 months,<sup>4</sup> which is significantly quicker than the 28.4 months for jury trials. The average length of a bench trial was 4.9 days. The longest was a breach of contract case, which took eleven days.

The nature of the bench trials and their outcomes are reported below.

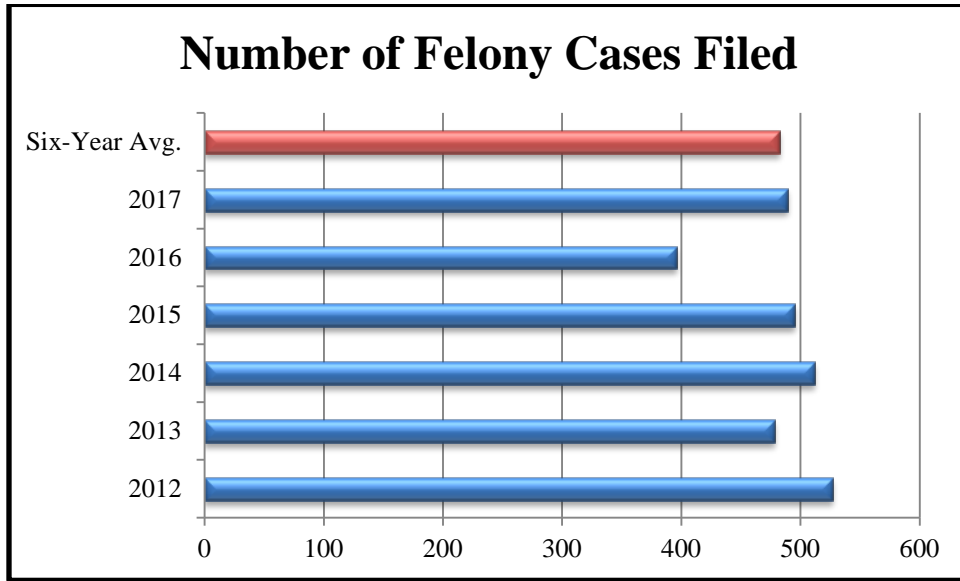
Judge	Type of Case	Time to Judgment (mos.)	Prevailing Party	Award
RPM	Fraud	33	P	\$1,742,475.30
MEH	Breach of Contract	16	P	\$207,400.72
DME	Breach of Contract	19	P	\$80,931.30
WYD	Breach of Contract	29	D	
WYD	Title VII Race & ADEA	26	D	
WYD	Breach of Contract	32	D	
RBJ	Foreclosure	16	D	
WJM	1983: First Amendment	20	D	
PAB	Title VII Religious Accommodation	80+	Pending	Pending

<sup>4</sup> However, this average will rise significantly with the conclusion of the pending case, as the case will exceed eighty months before it reached verdict.

**IV. CRIMINAL TRIALS**

**A. Felony Trials**

There were 489 felony cases filed in 2017. Comparatively, there were 396 filed in 2016; 495 in 2015; 512 in 2014; 478 in 2013; and 527 in 2012. These figures are charted below:

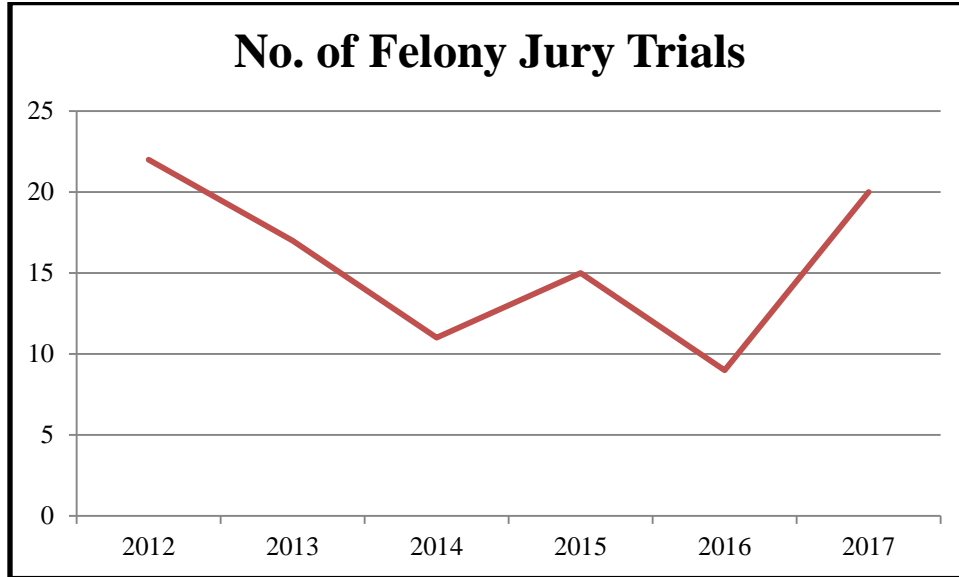


Among those filed in 2017, twenty proceeded to jury trial. This represents a 4.14% trial rate, based on an annual average of 483 between 2012 and 2017. This is a significant increase from last year’s 1.86% rate using the same 483 case total.

The number of felony jury trials that reached verdict in each of the last six years is reported below:

<u>Year</u>	<u>No. of Cases Filed</u>	<u>No. of Felony Jury Trials</u>	<u>Rate of Trials (%)</u>
2017	489	20	4.09
2016	396	9	2.27
2015	495	15	3.03
2014	512	11	2.15
2013	478	17	3.56
2012	527	22	4.17
<b>Average</b>	<b>482.8</b>	<b>15.7</b>	<b>3.21</b>

A visual of the number of felony jury trials per year for the last six years is presented below:



The government achieved convictions in eighteen of the twenty trials, with one case resulting in a verdict for the defendant and one hung jury (resulting in a plea agreement before the second trial). The defendants have been sentenced in sixteen of the twenty felony cases. The most severe sentence imposed was 288 months for second degree murder and assault resulting in serious bodily injury. Three cases resulted in sentences of supervised release, the least severe sentences imposed in 2017.

The felony prosecutions in 2017 are reported below:

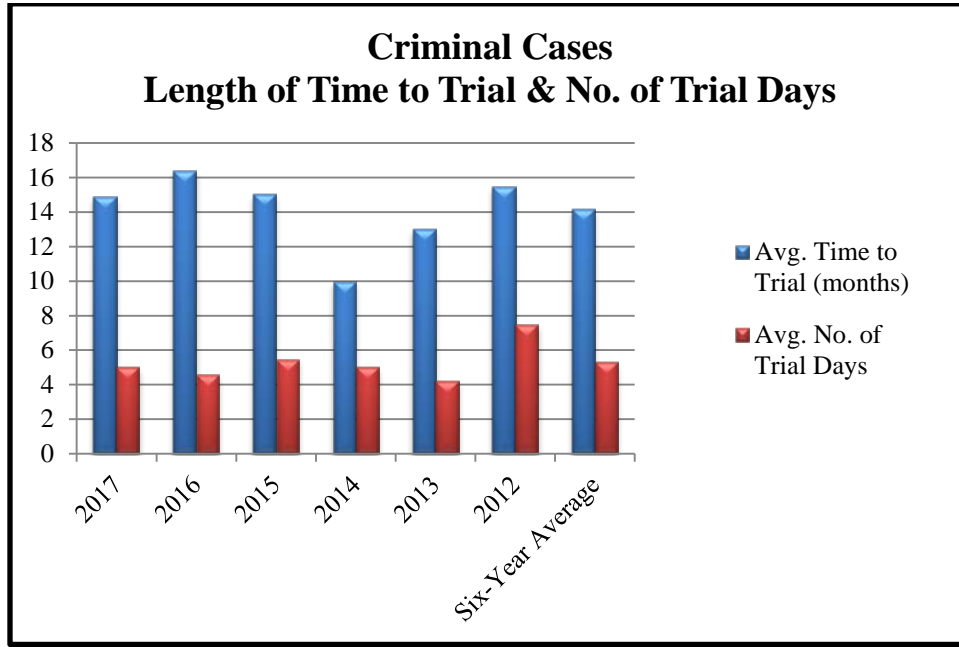
<b>Judge</b>	<b>Crime Charged</b>	<b>Verdict</b>	<b>Sentence</b>
MSK	Tax Evasion	Convicted	78 mos.
	Controlled Substances: Distribution/Felon in Possession of a Firearm	Convicted	97 mos.
PAB	Bank Fraud	Convicted	60 mos.
	Conversion	Hung jury	N/A



WJM	Controlled Substances: Distribution	Convicted	156 mos.
	Tax Evasion/Bankruptcy Fraud	Convicted	50 & 27 mos. (multiple defendants)
	Student Loan Fraud	Convicted	Pending
	Robbery/Felon in Possession of a Firearm	Convicted	210 mos.
RBJ	Kidnapping/Aiding and Abetting	Convicted	Supervised release
	Drug Possession	Convicted	46 mos.
RM	Felon in Possession of a Firearm	Convicted	45 mos.
	Controlled Substances: Distribution	Convicted	Pending
	Assault in a Federal Prison	Convicted	150 mos.
	False Claims	Convicted	Supervised Release
	Assault on a Federal Officer	Convicted	72 mos.
	Felon in Possession of a Firearm	Convicted	96 mos.
REB	Assault on a TSA Officer	Acquitted	N/A
	Controlled Substances: Conspiracy	Convicted	Life
REB	Murder: Second Degree	Convicted	288
	JLK	False Statement	Convicted

Collectively, 100 days were spent trying these twenty cases, for an average of 5.0 days per trial, which is consistent with the six-year average of 5.3 days per trial. The average time from a defendant's initial appearance to trial in 2017 was 14.9 months, which is shorter than the 16.4 months in 2016 but longer than the 2012–2017 average of 14.1 months. One felony case was brought to trial within seventy days. That case, which alleged assault on a TSA officer, resulted in a verdict for the defendant. The next shortest times to trial were four months (drug

possession and conspiracy) and five months (felon in possession of a firearm). The longest case from initial appearance to trial was thirty-three months. This was a drug distribution case. The average time to trial and days per trial for the last six years are presented in the chart below:



**B. Misdemeanor Jury Trials**

There was only one misdemeanor jury trial in 2017, a careless driving case tried by Magistrate Judge West. It resulted in a verdict for the defendant.

**C. Petty Offense Bench Trials**

There were no petty offense bench trials held in the District this year. There were four in 2016. Over the past six years, the District has averaged 2.5 petty offense bench trials per year.

**OTHER RELEVANT DISTRICT INFORMATION**

**V. CONSENT**

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 Magistrate Judges are given an equal draw of civil cases with the active District Judges.

Through December 2017, under the direct assignment of cases, the Magistrate Judges received collectively 3,617 cases in forty-seven months, so about 11.0 cases per Magistrate Judge per month. In those 3,617 cases, a consent decision was made in 2,603, with 1,008 consenting and 1,595 not consenting, for a consent success rate of 38.7%.<sup>5</sup> For the other 1,014 cases in which no consent decision had been made, there were 215 awaiting a consent decision (5.9%), 749 were terminated prior to a consent decision (20.7%), and the remaining fifty cases were re-drawn due to the assigned judicial officer recusing or transferring the case (1.4%).

As of December 31, 2017, the Magistrate Judges had 687 consent cases among them, for an average (per full-time Magistrate Judge) of ninety-eight. In December 2013 (the year prior to the Pilot Project), the Magistrate Judges had thirty-seven cases, or six each. Obviously, this has been a substantial change in the District.

By way of comparison, as of December 31, 2013, the active District Judges in Colorado averaged 224 civil cases, while as of December 31, 2017, they averaged 217. The Senior District Judges averaged 161 cases in December 2013 and 110 in December 2017.

A table showing the year-by-year comparison of the consent rate in the District is provided below:

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<sup>5</sup> This appears to compare very favorably with other districts which utilize our system of direct assignment with early decision making on consent. There are districts in which parties have both a direct draw and may engage in traditional consent until the time of trial and, indeed, are encouraged to do so by both District Judges and Magistrate Judges. Such districts experience a higher rate of consent.

<b>YEAR</b>	<b>CONSENT DECISIONS</b>	<b>ACHIEVED</b>	<b>DECLINED</b>	<b>SUCCESS RATE</b>
2014	556	222	334	40.0%
2015	552	272	278	49.3%
2016	619	261	360	42.2%
2017	876	253	623	28.9%
<b>TOTALS</b>	2603	1,008	1,595	38.7%

## **VI. ALTERNATIVE DISPUTE RESOLUTION**

In November 2011, the District instituted a new paradigm concerning 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.

After the ENE was instituted, the District has experienced the following ADR activity:

2012:	166 settlement conferences	18 ENEs
2013:	116 settlement conferences	15 ENEs
2014:	122 settlement conferences	8 ENEs
2015:	79 settlement conferences	15 ENEs
2016:	114 settlement conferences	8 ENEs
2017:	115 settlement conferences	2 ENEs
<b>Totals:</b>	<b>712 settlement conferences</b>	<b>66 ENEs</b>

Therefore, we have moved from approximately 700 settlement conferences per year to approximately 119 settlement conferences and eleven ENEs. The ENE is a virtually ignored procedure.

## **VII. DISPOSITIVE DECISIONS**

Magistrate Judge Boland had not previously provided statistics concerning dispositive motions in the District. At one of my presentations to members of the bar in 2016, attorneys expressed a sincere interest in learning the average time from the filing of a dispositive motion to a decision, in order to more effectively advise their clients on what to expect in federal cases. I chose 2015 as a baseline and sought to determine judicial time to decide: (1) a motion to dismiss; (2) a motion for summary judgment; (3) and merits briefing in administrative review cases (Social Security, natural resource, and other record review cases), including those cases in which such motions were referred to Magistrate Judges.<sup>6</sup>

This is a difficult subject to study for several reasons. First, it is not infrequent that a motion to dismiss is pending for quite some time, and then an amended complaint is filed. This usually moots the pending motion, yet the time from filing of the motion to the court's order denying it as moot is relevant to this analysis. However, I did not include motions that resulted in this outcome. Second, it is very frequent that a motion to dismiss or for summary judgment is pending for quite some time, and the parties settle. Did the length of time the motion was pending affect the parties' willingness to settle? In many cases, probably, but again, this statistic is not included in my analysis. I only included cases in which the court issued a substantive decision on the motion/briefs. Third, because the wait times begin at the filing of the motion,

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<sup>6</sup> The statistics reported in this section are updated from last year's numbers to incorporate dispositive motions that had not been decided at the time of my 2016 presentation.

instead of when the moving party filed the reply brief, the parties' requests for extensions of time on the briefing often skew the decision time upward. For example, I had a case referred to me in which the recommendation was issued nine months after the motion to dismiss was filed. However, the parties requested discovery upon the filing of the motion to dismiss (during which time briefing was informally stayed), and then they requested extensions on the briefing. The motion was fully briefed eight months after filing, so it only took a month to actually decide the motion. I am sure other judges have similar stories. In collecting and analyzing the data, there is simply not enough time to weed out the out-of-the-ordinary cases; this is not, after all, Major League Baseball. Finally, although I have the raw data to demonstrate the average time per judge, and to demonstrate the rates of granting or denying such motions/appeals, I am not including that in any analysis for obvious reasons.

All that said, given the fairly large statistical database (991 motions or appeals), we still can obtain a fairly accurate picture of wait times in this District.<sup>7</sup> The raw data shows the following:

<b>Motions to Remand (22):</b>	2.7 months all cases
	2.3 months without recommendation
	4.0 months with recommendation
<b>Motions to Dismiss (439):</b>	6.2 months all cases
	5.2 months without recommendation
	8.1 months with recommendation

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<sup>7</sup> I also collected data for APA cases (10.6 months), bankruptcy appeals (5.6 months), and motions for judgment on the pleadings (4.9 months). However, I did not include wait times for these cases above, because the sample size was too small to receive a statistically significant result.

<b>Motions for Partial Dismissal (40):</b>	5.3 months all cases
	4.3 months without recommendation
	7.3 months with recommendation
<b>Motions for Summary Judgment (242):</b>	6.0 months all cases
	5.9 months without recommendation
	7.2 months with recommendation
<b>Motions for Partial Summary Judgment (63):</b>	5.8 months all cases
	5.9 months without recommendation
	4.7 months with recommendation
<b>Social Security Cases (157):</b>	7.8 months

Overall, for the 2015 measuring period, District Judges referred 33% of dispositive motions to Magistrate Judges. One key to viewing this statistic, however, is the fact that two of the District Judges do not refer dispositive motions while two others do so rarely (together they count as one additional judge who does not refer), so for the remaining eight District Judges (both active and senior), the referral rate is approximately 45%.

The following table shows the percentages of referrals by motion type:

Motions to Remand	35%
Motions to Dismiss	44%
Motions for Partial Dismissal	36%
Motions for Summary Judgment	18%
Motions for Partial Summary Judgment	12%