STATE BAR *of* TEXAS

# Report of the Court Administration Task Force

— OCTOBER 2008 —

This publication was developed by the Court Administration Task Force, a diverse group of stakeholders, appointed by Gib Walton, 2007-2008 State Bar of Texas President. The recommendations presented in this report represent a consensus of the members of the Court Administration Task Force and do not necessarily represent the opinions of the State Bar, its Board of Directors, members or volunteers. Further, the inclusion of a comment about any past or potential legislation in this report does not indicate that the State Bar is taking a legislative position. The State Bar's Legislative Policy Committee has the sole discretion to review legislation and to make recommendations to the State Bar Board of Directors regarding any position that might be taken. This publication is intended for educational and informational purposes only.

# EXECUTIVE SUMMARY

*The ordinary administration of criminal and civil justice . . . contributes, more than any other circumstance, to impressing upon the minds of the people affection, esteem, and reverence towards the government.*

Alexander Hamilton
New York Delegate
The Federalist, No. 17

This Report addresses the complexity, shared local and state responsibility, and decentralization in the Texas court system. The Texas Constitution and statutes establish a four-tiered system of state courts: district courts, constitutional county courts, statutory county courts, and justice of the peace courts. Each court was intended to have its own jurisdiction, consistent between the counties, generally based upon the severity of the civil or criminal issues in question. The system, however, actually presents a patchwork array of courts with significant overlapping jurisdiction that differs from county to county. A court in one county may have completely different jurisdiction from the identically named court in the next county. To understand a particular court's jurisdiction, no less than six sources must be consulted. First, one must look to the Texas Constitution, then to the general statutory provision for all courts on a particular level, then to the specific statutory provision that authorizes the individual court, then to statutes creating other courts in the county which may affect the jurisdiction of the court in question, then to statutes dealing with specific subject matters (e.g., the Texas Family Code), and finally to local rules that may specify a subject matter preference for particular courts (e.g., child protection cases). If this exercise can frustrate a licensed Texas attorney, surely the average Texan is bewildered. Putting it in Hamiltonian terms, it is doubtful that this court system succeeds in "impressing upon the minds of [Texans] affection, esteem, and reverence towards the [State's] government."

Throughout Texas history, there have been multiple attempts by the Texas Supreme Court, the Legislature, and other interested groups to address the structural problems that have plagued Texas courts almost from their inception.[1] None of the proposals has ever gotten far. The most recent attempt occurred in the spring of 2007 during the 80th Legislative Session when Sen. Robert Duncan, R-Lubbock, introduced S.B. 1204. After significant controversy, the bill was revised based on input from, among others, the Texas Trial Lawyers Association, the Texas Association of Defense Counsel, the American Board of Trial Advocates, Texans for Lawsuit Reform, trial and appellate judges from across the state, and a group of experienced trial lawyers and judges put together by the Litigation Section of the State Bar of Texas. S.B.

1 *See e.g.*, C. Raymond Judice, *The Texas Judicial System: Historical Development and Efforts Towards Court Modernization*, 14 S. Tex. L.J. 295, 314 (1973); Thomas M. Reavley, *Court Improvement: The Texas Scene*, 4 Tex. Tech. L. Rev. 269, 269-270 (1973).

1204 became C.S.S.B. 1204 and was widely regarded as the Legislature's first real attempt to tackle some of the more daunting and perplexing problems of our court system. It failed, however, to pass the House.

Not wanting to lose the momentum for potential positive reform, and recognizing the State Bar's unique ability and obligation to contribute to this type of legislation, 2007-08 State Bar President Gib Walton appointed the Court Administration Task Force in the fall of 2007. The Task Force was charged with studying issues relating generally to the administration of the courts of Texas and specifically those raised during the 2007 Texas Legislative Session, including but not limited to S.B. 1204 and C.S.S.B. 1204. Fifty members strong, the Task Force was a diverse group of lawyers, judges, law professors, lay persons, and legislators representing key constituencies and stakeholders in the administration of our Texas courts.[2] Martha Dickie, 2006-07 President of the State Bar of Texas, and the Honorable Ken Wise, Judge of the 152nd District Court of Harris County, served as co-chairs. Alex Albright, of the University of Texas School of Law, served as reporter.

The Task Force was divided into three subcommittees that were assigned the following issues:

- Issues relating to restructuring the trial courts. Chair, Richard C. Hile, Austin; Reporter, Gerald Powell, Waco.

- Issues relating to the appellate courts, the jury and arbitration. Chair, Tom A. Cunningham, Houston; Reporter, Lisa Hobbs, Austin.

- Issues relating to additional resources and the establishment of specialized courts. Chair, Carl Reynolds, Austin; Reporter, Alex Albright, Austin.

The Task Force sought to identify problems in the current court system and to propose long-term and short-term solutions to those problems. From October 2007 to June 2008 it held six meetings, both as subcommittees and as the full committee. The Task Force not only reviewed existing

2 Members of the Task Force are: Professor Alex Albright (Austin), John C. Ale (Houston), Daniel W. Bishop (Austin), Jeff Boyd (Austin), Jerry Bullard (Grapevine), J.A. "Tony" Canales (Corpus Christi), David Chamberlain (Austin), Judge F. Alfonso Charles (Longview), Tom Cunningham (Houston), Alistair Dawson (Houston), Martha Dickie (Austin), Judge John K. Dietz (Austin), Senator Robert Duncan (Lubbock), Harper Estes (Midland), Judge David Evans (Fort Worth), Dr. Lloyd M. Garland (Lubbock), Representative Dan Gattis (Georgetown), Dicky Grigg (Austin), Deborah Hankinson (Dallas), Jay Harvey (Austin), Richard Hile (Austin), Lisa Hobbs (Austin), Judge Martha Jamison (Houston), Lamont Jefferson (San Antonio), Joy Latrelle (Lubbock), Justice of the Peace Tom Lawrence (Humble), Alice McAfee (Austin), David R. McClure (El Paso), Steve McConnico (Austin), Justice Harriet O'Neill (Austin), Jay Old (Beaumont), Justice Patrick Pirtle (Amarillo), Lilly Plummer (Odessa), Professor Gerald Powell (Waco), Mickey Redwine (Ben Wheeler), Judge Rose Reyna (Edinburg), Carl Reynolds (Austin), J. Hamilton Rial (Austin), Thomas Riney (Amarillo), Eduardo Rodriguez (Brownsville), Scott Rozzell (Houston), Judge Craig Smith (Dallas), Steve Suttle (Abilene), Richard Trabulsi (Houston), Gib Walton (Houston), Pat Long Weaver (Midland), Judge Ken Wise (Houston), Dan Worthington (McAllen), Justice Linda Yanez (Edinburg), Larry York (Austin).

legal and empirical research on the structure of the court system, but also conducted four separate surveys of judges and lawyers about the operation of the Texas courts.[3] This Report represents a consensus of the members of the Task Force. Four minority reports were received and are included.[4]

This Report begins to chart a course toward a simpler and more comprehensible civil court system for Texas. The Task Force does not propose a unified and centralized system of state courts. Shared local/state governance of the mechanics of justice is firmly embedded in the Texas Constitution and generally carried forward in the "Philosophy of Texas State Government": "Decisions affecting individual Texans, in most instances, are best made by those individuals, their families, and the local government closest to their communities."[5] The Task Force was challenged to honor that philosophy by providing flexibility and resources for the trial courts of the state while also increasing the simplicity and efficiency of the system for its users.

Task Force deliberations can be synthesized into four "Core Principles"—efficiency, simplicity, flexibility, and excellence—around which this Report is organized. Each Core Principle contains a number of related recommendations (some of which are broken down into more specific recommendations). Each recommendation is discussed at length, and is followed by an Action Plan of specific proposals to assist the Legislature, the Texas Supreme Court, and other interested parties in achieving positive reform. All of the changes proposed in this Report seek to promote the efficient resolution of disputes; organize courts in a straight-forward and comprehensible manner; provide a flexible allocation of resources to address the greatest needs; and enhance the excellence of our Texas courts.

## Task Force Recommendations

I. **Efficiency**: Justice is lost with the passage of time; court administration should be focused on the reduction of delay.

II. **Simplicity**: The subject matter jurisdiction of all Texas courts should be apparent to lawyers and litigants, and overlapping jurisdiction generally should be avoided. Texas should move towards a three-tiered trial court system composed of district courts, county courts at law and justice courts. Cases should be decided within their appropriate court of appeals district whenever possible.

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3 *See infra* App. 1 (Trial Court Survey Results), App. 2 (Justice of the Peace Survey Results), App. 3 (Appellate Survey Results), App. 4 (Complex Case Survey Results).

4 *See infra* Minority Reports. (A - Ale Report on Arbitration; B - Charles Report on Trial Court Jurisdiction; C - Reynolds Report on Presiding Judge Selection and D - Trabulsi Report on Arbitration;).

5 Instructions for Preparing and Submitting Agency Strategic Plans, Fiscal Years 2009-2113, Governor's Office of Budget, Planning & Policy and the Legislative Budget Bd. (March 2008), at App. A, 37.

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1. *Three-tiered system. The Legislature should move towards a three-tiered jurisdictional trial court structure with minimal overlapping jurisdiction.*

2. *District Courts and County Courts at Law. The Legislature should simplify and standardize the subject matter jurisdiction of the district courts and county courts at law.*

   A. The Legislature should amend Chapter 24 of the Texas Government Code to establish $10,000.01 as the minimum jurisdictional amount for district courts.

   B. All district courts should have the same general jurisdiction to hear any civil, criminal, family, or juvenile case. The specialization of courts should be accomplished at the local level by local rules of administration, rather than by statute.

   C. The Legislature should amend Chapter 25 of the Texas Government Code to establish that all county courts at law have the same maximum jurisdictional amount in controversy of $200,000.00 and create uniform definitions of criminal cases and proceedings, family law cases and proceedings, juvenile cases and proceedings, and mental health cases and proceedings that may be assigned to county courts at law.

   D. The Legislature should convert to district courts all county courts at law that elect to keep their maximum jurisdictional amount in controversy in excess of $200,000.00.

   E. The Legislature should fund additional courts and capital improvements and additions where needed.

3. *Justice of the Peace and Small Claims Courts. The Legislature should simplify the distinction between justice of the peace and small claims courts.*

   A. The Legislature should repeal Texas Government Code, Chapter 28, Small Claims Courts, and authorize the Texas Supreme Court to promulgate new rules for justice courts to exercise jurisdiction over small claims.

   B. Pending repeal of Chapter 28, the Legislature should amend Section 28.053, Texas Government Code, to allow an appeal from a county court to the court of appeals if the case originates in the small claims court.

4. *Subordinate Judicial Officers. The Legislature should amend Chapter 54, Texas Government Code, to establish uniform administrative, trial and appellate provisions for all subordinate judicial officers – masters, magistrates, referees and associate judges.*

5. *Courts of Appeals Districts. The Legislature should address jurisdictional overlaps in the court of appeals districts gradually, in cooperation with the courts themselves, while maintaining the number of courts and diverse geographical coverage of each district.*

6. *Maintaining Simplicity. The Legislature should commit to maintaining a simplified structure of the Texas courts by adopting rules that require the Office of Court Administration to conduct a comprehensive analysis regarding the need for any proposed court.*

III. **Flexibility**: Flexibility is key to the efficient administration of the judicial system. Courts should be empowered to resolve cases without unnecessary delay, and resources should be available to respond as the needs of particular courts and counties change with population growth, litigation trends, and specific case filings. These needs should be locally and regionally determined, largely funded by the State, and allocated through the judicial system.

1. *Flexible Resources. The Legislature should provide additional funding to support trial courts, especially those hearing cases requiring special judicial attention.*

   A. The Legislature should provide for additional resources for specific cases requiring special judicial attention, for court system enhancements, and for child protection cases.

   B. The Legislature should provide funding for legal and judicial personnel to support trial judges.

2. *In-County Transfers. All courts should be able to transfer cases to other courts in the county with the consent of the parties and the affected courts.*

   A. The Legislature should amend Chapter 25 of the Texas Government Code to allow district courts, county courts at law, constitutional county courts, statutory probate courts and justice courts to transfer cases to another court in the county with consent of the parties and courts.

   B. The Legislature should amend the Texas Government Code to allow justice courts to adopt local rules and amend the Texas Civil Practices & Remedies Code and the Texas Code of Criminal Procedure to allow justice courts to transfer civil and criminal cases within the county.

3. *Regional Administration. The Texas Supreme Court should select the regional presiding judges with significant local input.*

4. *Appellate Docket Equalization. The appellate court system should continue to have flexible tools at its disposal to ensure that cases are handled fairly and efficiently.*

IV. **Excellence**: It is fundamental that the Texas court system remain an excellent method of dispute resolution. Providing juries and judges with more tools to assist them in performing their jobs will ensure informed decisions. Maximizing jury comprehension should lead to greater accuracy and fairness in jury verdicts. Greater resources and educational opportunities for judges should also enhance judicial decision-making.

1. *Juror Comprehension. Trial procedures should facilitate the jury's comprehension of the evidence so that it can render an informed and fair verdict. Court personnel should do all they reasonably can to improve citizens' experience with jury service.*

   A. The Texas Rules of Civil Procedure should expressly allow, in appropriate cases, juror note-taking, written questions from the jury, and interim statements by counsel.

   B. Counties should be encouraged to adopt electronic jury assembly procedures when possible and to adopt other procedures to make jury service more convenient and efficient.

2. *Judicial Education. Judges should receive the education, as well as other resources (discussed above), they need for the types of cases they will encounter.*

3. *Arbitration. The Legislature should amend the Texas Arbitration Act and other statutes to address concerns raised by the growing use of arbitration.*

   A. The Legislature should amend the Texas Arbitration Act to protect against inadequate disclosure and unfair methods of negotiating arbitration clauses.

   B. The Legislature should amend the Texas Arbitration Act to provide additional procedural protections to litigants participating in arbitration hearings.

   C. The Legislature should amend the Texas Arbitration Act to provide for additional, although limited, judicial review of arbitration awards.

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## COURT ADMINISTRATION TASK FORCE REPORT

I. **Efficiency**: Justice is lost with the passage of time; court administration should be focused on the reduction of delay.

Efficiency in court administration means processing case dockets in a timely fashion with the appropriate infrastructure for case management. The Supreme Court of Texas holds the constitutional responsibility for the efficient administration of the judicial branch,[6] and the mission of the Office of Court Administration of the Judicial Branch derives from that responsibility.[7] The Court Administration Task Force recognizes the centrality of efficiency as a system goal. Virtually all of the Task Force recommendations can be linked to the concept of efficiency. Therefore, there are no specific recommendations following this Core Principle.

II. **Simplicity**: The subject matter jurisdiction of all Texas courts should be apparent to lawyers and litigants, and overlapping jurisdiction generally should be avoided. Texas should move towards a three-tiered trial court system composed of district courts, county courts at law and justice courts. Cases should be decided within their appropriate court of appeals district whenever possible.

1. *Three-tiered system. The Legislature should move towards a three-tiered jurisdictional trial court structure with minimal overlapping jurisdiction.*

Background

The current structure of the Texas court system was established in 1891 under Art. V of the Texas Constitution, and includes four types or levels of trial courts: district courts, constitutional county courts, statutory county courts, and justice of the peace courts.[8] The district court is the trial court with general jurisdiction. The county-level courts are made up of constitutional county courts and statutory county courts, the latter comprised of county courts at law and probate courts. Finally, at the lowest trial court level, there are justice of the peace courts in precincts of each county. Theoretically, each court level is intended to handle different types of cases. Although to some extent there is exclusive subject

6 Tex. Const. Art. V, § 31(a). ("The Supreme Court is responsible for the efficient administration of the judicial branch . . . ").

7 *See* Office of Court Administration, OCA Strategic Plan FY 2009-2013 (2008), http://www.courts.state.tx.us/oca/Strategic_plan/strat-plan08.pdf at 2 (establishing as its mission, "to provide resources and information for the efficient administration of the judicial branch of Texas).

8 Municipal courts represent a fifth, non-county level trial court of limited criminal and civil jurisdiction. There are two kinds of municipals courts—municipal courts and municipal courts of record. Tex. Gov't Code Ann. §§ 29.001-30.9994 (Vernon Supp. 2008). The criminal jurisdiction of both municipal courts is set forth in Code Crim. Proc. Ann. Art. 4.14. (Vernon 2005) and Tex. Gov't Code Ann. §§ 29.003, 30.00005. Additionally, municipal courts of record have limited civil jurisdiction. Tex. Gov't Code Ann. § 30.00005(d)(1) (providing that the governing body of a municipality may provide that the municipal court of record have specified civil jurisdiction).

matter jurisdiction among the courts over various matters, there is also a wide degree of overlapping subject matter jurisdiction caused by localized and piecemeal legislative action.

If we were starting from scratch, none of us would adopt the system that exists today—there is too much overlapping jurisdiction. Many county courts at law have some or all of the jurisdiction as district courts, and many district courts have some or all of the jurisdiction of county courts. Moreover, there is little transparency regarding the grants of jurisdiction as there are general rules applicable to county courts and district courts, exceptions to the general rules, and exceptions to the exceptions.

*The district courts.*

The district court serves as the primary trial court in the state. This court has general jurisdiction, which means it has jurisdiction over all matters other than those matters in which exclusive, appellate, or original jurisdiction is conferred by law on another court. Many district courts handle both civil and criminal matters. It is also not uncommon for district courts in a given county to have some or all the jurisdiction of the constitutional county court. Some counties have multiple district courts serving only that county; other counties share a district court with another county or counties; and still others have some combination of shared and unshared district courts. In urban areas, district courts tend to specialize in civil, criminal, juvenile or family law, and a few district courts are statutorily designated as either family or criminal district courts. The district judge must be a lawyer.

The basic grant of district court jurisdiction gives jurisdiction over all civil, criminal, family, and juvenile matters co-extensive with the broad grant of jurisdiction in the Texas Constitution,[9] and jurisdiction over any cause cognizable in law or equity.[10] District courts also have original jurisdiction over all felony criminal cases, misdemeanors involving official misconduct, and misdemeanors punishable with jail time if the case is transferred to the district court with the written consent of the district judge from a county court with a non-lawyer as a judge.[11]

It is also common for district courts, in addition to the grant of general jurisdiction, to have some or all the judicial jurisdiction of the constitutional county court. But here there is little consistency and multiple variations. Some district courts have the civil jurisdiction of a county court.[12] Others have

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9 Section 24.007 of the Government Code and Article V, Section 8 of the Texas Constitution provide:

> District Court jurisdiction consists of exclusive, appellate, and original jurisdiction of all actions, proceedings, and remedies, except in cases where exclusive, appellate, or original jurisdiction may be conferred by the Constitution or other law on some other court, tribunal, or administrative body….

10 Tex. Gov't. Code Ann. § 24.008.

11 Code Crim. Proc. Ann. Art. 4.05, 4.17.

12 Tex. Gov't. Code Ann. §§ 24.101, 24.114, 24.132, 24.137, 24.178(b), 24.193, 24.220.

the civil *and* criminal jurisdiction of a county court.[13] Other district courts have the criminal jurisdiction of a county court and the civil jurisdiction of a county court in all cases under the Texas Family Code or the Texas Health and Safety Code.[14] Some district courts have concurrent jurisdiction with the county court over all original and appellate criminal matters over which the county court has jurisdiction.[15] Other district courts have concurrent jurisdiction with the county court over misdemeanor cases over which the county court has jurisdiction.[16] And some district courts have the civil and criminal jurisdiction, but not the probate jurisdiction, of a county court.[17]

Additionally, many district courts have concurrent jurisdiction with *statutory* county courts, again, with multiple variations and little consistency. Some district courts have concurrent original jurisdiction with the county criminal courts over misdemeanor cases.[18] Some district courts have concurrent jurisdiction with county courts at law in misdemeanor cases.[19] Some district courts have concurrent jurisdiction with county courts at law to receive a guilty plea in a misdemeanor case pending in a county court at law and to dispose of the case.[20] Some district courts have concurrent jurisdiction with the county court and the county court at law in all civil and criminal matters in which the county court or county court at law has original or appellate jurisdiction.[21]

Added to this chaos are the exceedingly complex geographic boundaries of Texas district courts. There are currently 444 district courts in Texas, most of whose geographic jurisdiction overlaps with another district court. The Office of Court Administration has developed a "taxonomy of jurisdictional boundary-overlap patterns" to describe it.[22] The Task Force, however, did not focus on this aspect of district court jurisdiction at this time.

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13 *Id.* at §§ 24. 105, 24.106, 24.123, 24.151, 24.152, 24.192, 24.217(b), 24.436.

14 *See, e.g., id.* at § 24.551(d).

15 *Id.* at §§ 24.178(c), 24.453(d), 24.471, 24.490, 24.502, 24.547.

16 *See, e.g., id.* at § 24.435.

17 *See, e.g., id.* at § 24.217(h).

18 Tex. Gov't Code Ann. §§ 24.392, 24.474(d).

19 *Id.* at §§ 24.187, 24.449, 24.506.

20 *Id.* at §§ 24.130, 24.196, 24.207(d), 24.219, 24.353(c), 24.393(c), 24.493, 24.627.

21 *Id.* at § 24.168.

22 *See infra* App. 5, Office of Court Administration, Complexities in the Geographic Jurisdiction of District Courts (2008), http://www.courts.state.tx.us/courts/pdf/JurisdictionalOverlapDistrictCourts.pdf (categorizing the taxonomy into six jurisdictional overlap patterns, as follows:

(1) Single County / Multiple Courts / No Courts Serve Another County
(2) Single County / Single Court / Court Does not Serve Another County
(3) Multiple Counties / Multiple Courts / Identical Jurisdictions
(4) Multiple Counties / Single Court
(5) Multiple Counties / Multiple Courts / One Separate Jurisdiction
(6) Multiple Counties / Multiple Courts / Many Separate Jurisdictions).

*See also infra* App. 6, Office of Court Administration, Map of District Courts (2007), http://www.courts.state.tx.us/courts/pdf/sdc2007.pdf.

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*The constitutional county courts.*

The Texas Constitution requires that each county have a county court,[23] which is often called the "constitutional" county court to differentiate it from the various statutory county courts. The county judge has both administrative and adjudicatory duties. The judge acts as the chief operating officer of each county, and the judge presides over the constitutional county court, which has original jurisdiction over certain civil actions, probate and juvenile matters, certain misdemeanors, and appellate jurisdiction over cases tried in lower courts.[24] The Texas Constitution provides that a county judge "shall be well informed in the law of the State."[25] This means that neither a formal study of the law nor a law license is a necessary requirement to be a constitutional county court judge. Only 11% of constitutional county judges are licensed to practice law, and 214 of the 254 county judges exercise their judicial function at least 40% of the time or more.[26]

*The statutory county courts.*

Statutorily-created county courts (county courts at law and probate courts) play an integral role in the trial of civil, family law and criminal cases in Texas. These courts are created pursuant to Article V, Section 1, of the Texas Constitution: "[t]he Legislature may establish such other courts as it may deem necessary and prescribe the jurisdiction … thereof." Unlike a constitutional county court judge, a county court at law judge generally is required to be a licensed attorney who has practiced law or served as a judge for at least four years.[27] Specific legislation is necessary to create a new court, and is often done through local bills garnering little attention from the full Legislature. This has resulted in a haphazard, complex and opaque legislative scheme. Lawyers and members of the public seeking to determine which courts have jurisdiction over a particular lawsuit are often confused.

Statutory county courts are intended to relieve the county judge of some or all of the judicial duties of office. Over time, county courts at law were created to assist with the increasing caseloads of district courts as well. If a county needed another court and was willing to provide the needed resources, the Legislature would create a county court at law (funded by the county) rather than a district court (largely funded by the state).

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23 Tex. Const. Art. V, § 18.

24 Tex. Gov't Code Ann. § 26.041-26.052.

25 Tex. Const. Art. V, § 15.

26 The Office of Court Administration reports that of the 254 county judges, 214 submit affidavits to the Office of Court Administration under Tex. Gov't Code.Ann. § 26.006, claiming the $15,000 supplement for spending at least 40% of their time on judicial duties.

27 Tex. Gov't Code Ann. § 25.0014. However, there are exceptions. Hopkins County requires that its county court at law judge be licensed to practice for three years (Tex.Gov't Code Ann. § 25.1142(c)), and Lamar County requires that its county court at law judge be licensed to practice for five years (Tex.Gov't Code Ann. § 25.1412(b)(3).

There are currently 222 county courts at law serving 84 of the 254 Texas counties, and 18 statutory probate courts serving ten counties. The exact jurisdiction of each statutory county court is determined by the statute that created the court. Individual court jurisdictions vary widely.

Generally, the county court at law has the jurisdiction prescribed by law for constitutional county courts, which includes criminal misdemeanor cases, appeals of civil and criminal cases from justice courts and municipal courts, civil cases involving smaller amounts in controversy, and probate matters in counties that do not have statutory probate courts.[28] The county courts at law also generally have concurrent jurisdiction with district courts over civil cases with the amount in controversy from $500 to $100,000 and in appeals of workers compensation awards.[29] Many of these courts also exercise the criminal misdemeanor jurisdiction and probate jurisdiction assigned to constitutional county courts. A number of county courts at law have more jurisdiction than that provided in the general statute. Some have higher maximum amount in controversy jurisdictions—nine can take a case with up to $250,000 in controversy; one up to $500,000; one up to $750,000; one up to $1 million; and fifteen have the same (unlimited by dollar amount) amount in controversy jurisdiction as a district court. Many have additional subject matter jurisdiction—some exercise subject matter jurisdiction over family law and juvenile matters, some have felony criminal jurisdiction like a district court, and others have jurisdiction over mental health matters, eminent domain, and title to real and personal property. Also a number of county courts at law have probate jurisdiction but are not "probate courts" as defined in Subchapter B, Chapter 25, of the Texas Government Code.[30]

*The justice of the peace court.*

The lowest level of state trial courts are the justice of the peace courts.[31] Justice of the peace courts have exclusive jurisdiction over forcible entry and detainer cases.[32] They also have exclusive jurisdiction on claims for less than $200 and concurrent jurisdiction with county courts and with district courts for claims with an amount in controversy up to $10,000.[33] The justice of the peace courts also exercise the jurisdiction of the small claims court.[34] Justice of the peace courts have original jurisdiction in criminal cases that are punishable by fine or when penalties do not include jail time.[35] Like the constitutional county judges, there is no requirement that a justice of the peace has any formal legal education or be a licensed attorney.[36]

28 Tex. Gov't Code Ann. § 25.0003(a).

29 *Id.* at § 25.0003(c).

30 For this Report, the Task Force focused on the jurisdiction of the county court at law, not the jurisdiction of the probate court.

31 As noted above, municipal courts represent a fifth, non-county level of limited jurisdiction trial court.

32 Tex. Gov't Code Ann. § 27.031(a)(2).

33 *Id.* at § 27.031(a)(1).

34 *Id.* at § 28.003.

35 Tex. Const. Art. V, § 19.

36 The Constitution and statutes contain no qualifications for justices of the peace.

Action Plan

- The Legislature should move towards the three-tiered structure for Texas trial courts such as that set out in the chart below. This proposal would reduce, but not completely eliminate, overlapping jurisdiction. The three-tiered structure provides a destination for deliberate change that is part of a long-term process of restructuring. The recommendations set out later in this Report will move towards that system.

- The Legislature should seek to eliminate the adjudicatory function from the constitutional county court, which would allow the county judge to focus on county administrative duties. This adjudicatory function should be exercised by a county court at law. Therefore, each county eventually should have one or more county courts at law.

- District courts, county courts at law, and justice courts should have distinct roles with the amount in controversy and the severity of the punishment increasing with each level. Moreover, jurisdiction over matters that affect the lives of nearly all Texans should be clear; for example, the district court would always exercise family jurisdiction and the county court at law would always exercise probate jurisdiction.

| **Court Type** | **Minimum Civil Jurisdiction** | **Maximum Civil Jurisdiction** | **Criminal Jurisdiction** | **Family Jurisdiction** | **Probate Jurisdiction** |
|---|---|---|---|---|---|
| Justice of the Peace | No minimum | $10,000.00 | Fine only | None | None |
| County Court at Law | $500.00 | $200,000.00 | Misdemeanor | None | All |
| District Court | $10,000.01 | No maximum | Felony | All | None |

2. *District Courts and County Courts at Law. The Legislature should simplify and standardize the subject matter jurisdiction of the district courts and county courts at law.*

   **A. The Legislature should amend Chapter 24 of the Texas Government Code to establish $10,000.01 as the minimum jurisdictional amount for district courts.**

Background

There is a split of authority among the Texas courts of appeal over whether the current minimum jurisdictional limit of a district court is $500.00 or $200.01. The split was precipitated by amendments to Article V, Section 8, of the Texas Constitution and the codification of the Texas Government Code, both in 1985. Prior to 1985, Article V, Section 8 provided that "(t)he district court shall have original jurisdiction … of all suits, when the matter in controversy shall be valued at, or amount to five hundred dollars.…" This provision was also duplicated by statute.[37] As a result of the 1985 amendment, Article V, Section 8, of the Texas Constitution now provides "District Court jurisdiction consists of … original jurisdiction of all action … except … where exclusive … or original jurisdiction may be conferred by this Constitution or other law on some other court ...." The passage of the constitutional amendment and the codification of the Texas Government Code resulted in the deletion of all references to the minimum amount in controversy being $500.00.[38] The controversy resulted from this omission.

The Houston (1st) Court of Appeals first addressed the implications of the omission, finding that "the district court's minimum amount in controversy was reduced, perhaps unintentionally, from $500.00 to $200.01."[39] The court reasoned that the amendments granted the district courts all jurisdiction not exclusively granted to the justice courts, and since the justice courts have exclusive jurisdiction only up to $200.00, the district court jurisdiction was expanded downward to $200.01.[40] The Texarkana Court of Appeals reached the same conclusion.[41]

However, the Tyler Court of Appeals disagreed, holding that the 1985 amendments had no effect on the district court's minimum amount in controversy.[42] The court reviewed the legislative history of the 1985 amendments and concluded that neither amendment was intended to change the minimum jurisdictional amount for district courts. The court held that the district court's minimum jurisdictional amount in controversy "remains at $500.00."[43]

The Legislature can eliminate the uncertainty that currently exists and avoid the time and expense of litigating the jurisdictional issue by statutorily establishing the minimum jurisdictional

37 Acts 1945, 49th Leg., ch. 329, at 543, § 1, *amended by* Act of May 17, 1985, 69th Leg., R.S., ch. 489, § 2691, 1985 Tex. Gen. Laws 1720, 2048 (current version at Tex. Gov't Code Ann. § 24.007); *see also Arnold v. West Bend Co.*, 983 S.W.2d 365, n.1, 366 (Tex. App.—Houston [1st Dist.] 1998, no pet.).

38 Tex. Gov't Code Ann. § 24.007.

39 *Arnold*, 983 S.W.2d at n.1, 366.

40 *See* Tex. Const. Art. V, § 19 ("Justice of the peace courts shall have … exclusive jurisdiction in civil matters where the amount in controversy is two hundred dollars or less.…").

41 *Artega v. Jackson*, 994 S.W.2d 342, 342 (Tex. App.—Texarkana 1999, pet. denied).

42 *Chapa v. Spivey*, 999 S.W.2d 833, 835-36 (Tex. App. –Tyler 1999, no pet.).

43 *Id*. at 836.

amount for district courts. The Task Force not only concluded that a clarification was called for but also considered what the appropriate minimum jurisdiction of the district court should be.

The 80th Legislature, in S.B. 618, increased the upper jurisdictional limits of justice and small claims courts from $5000.00 to $10,000.00. The intent of this change was to broaden the reach of justice court jurisdiction, effectively shifting some cases from district or county court to justice court. Assuming that the present minimum jurisdiction of the district court is actually $500, then cases falling between $500 and $10,000 could be filed in three different courts – district courts, county courts, or justice courts. The Task Force concluded that, in the interest of simplicity, there is no need for such a high degree of overlapping jurisdiction. Consequently, the Task Force recommends the Legislature increase the minimum jurisdictional amount for District Courts to $10,000.01.

Action Plan

The Legislature should amend Section 24.007 of the Texas Government Code and Article 4.01(4) of the Texas Code of Criminal Procedure to provide that the district court's minimum amount in controversy jurisdiction is $10,000.01.

**B. All district courts should have the same general jurisdiction to hear any civil, criminal, family, or juvenile case. The specialization of courts should be accomplished at the local level by local rules of administration rather than by statute.**

Background

A district court's jurisdiction may be further complicated by limitations in the court's enabling legislation. The district court might be created as a court of limited jurisdiction under Article V, Section 1, of the Constitution. Or, the district court might be given the general jurisdiction of a district court, but the enabling statute also creates a statutory preference for a particular category of cases (referred to as a "preference" in this Report).

For example, some courts are by statute denominated "Criminal District Courts."[44] These statutes do not explicitly state the jurisdiction of the courts and say nothing about whether the courts have the general jurisdiction of a district court. Indeed, the Texas Supreme Court has held that these courts are courts of limited jurisdiction.[45] Thus, the judges of these courts do not have jurisdiction

44 *See, e.g.*, Tex. Gov't Code Ann. §§ 24.901-24.907 (discussing the Dallas County Criminal District Courts).

45 *Ex parte Richards*, 137 Tex. 520, 525, 155 S.W.2d 597, 599 (1941)(holding that Criminal District Courts are created under a different constitutional provision than most district courts – Article V, Section 1, rather than Article V, Section 8; therefore, they are "other courts as may be provided by law," as authorized by Section 1 and do not receive the grant of general jurisdiction from Section 8).

to decide matters other than criminal matters, and other matters specifically enumerated in their enabling statutes.

Of course it gets more complicated. The Dallas County Criminal District Courts have concurrent original misdemeanor jurisdiction with the county courts in Dallas County that have criminal jurisdiction,[46] and have concurrent criminal jurisdiction with the district courts of Dallas County.[47] The El Paso County Criminal District Courts give "*primary preference*" to felony drug cases and associated civil cases emanating from those felony drug cases."[48] These courts give "*secondary preference*" to other criminal cases and their "associated civil cases."[49] The Tarrant County Criminal District Courts have jurisdiction of criminal cases within the jurisdiction of a district court, and also have concurrent original jurisdiction with county criminal courts over misdemeanor cases.[50] And perhaps most interesting, the Criminal District Court of Jefferson County has jurisdiction over criminal cases within the jurisdiction of a district court, concurrent original and appellate jurisdiction with the county courts at law of misdemeanor cases normally within the exclusive jurisdiction of the county courts at law, and, despite its title, civil jurisdiction over divorce cases, other Texas Family Code proceedings, and habeas corpus cases.[51]

In contrast, there are district courts that are by statute denominated "Family District Courts," but nonetheless are given the general jurisdiction of a district court. They are given "*primary responsibility*" for family law matters.[52] Thus, while the family law cases in that county will be filed in the family district court, the judge of that court has jurisdiction to decide other matters as well.

There is a bewildering array of different statutory preferences.

| **Preference** | **Statutory Examples (Texas Government Code)** |
|---|---|
| Criminal cases | §§ 24.139(d); 24.207(a); 24.209(a); 24.240; 24.248; 24.362; 24.363; 24.364; 24.365; 24.366; 24.373; 24.374; 24.376; 24.381; 24.382; 24.383; 24.384; 24.386; 24.387; 24.388; 24.393; 24.404; 24.405; 24.406; 24.407; 24.409; 24.425; 24.429; 24.439; 24.440; 24.442; 24.459; 24.460; 24.467; 24.468; 24.469; 24.474(b); 24.483; 24.484; 24.485; 24.497; 24.508; 24.516; 24.517; 24.522; 24.535; 24.541; 24.544; 24.548; 24.571; 24.589 |

46 Tex. Gov't Code Ann. § 24.901(c).

47 *Id.* at § 24.115(d).

48 *Id.* at § 24.908(c).

49 *Id.*

50 *Id.* at §§ 24.910 – 24.913.

51 *Id.* at § 94.920(c).

52 *See* Tex. Gov't Code Ann. § 24.601; *see also* Tex. Gov't Code Ann. § 24.614 (setting forth that the Galveston County Family District Court is also given primary responsibility for all juvenile cases filed in the county).

| Preference | Statutory Examples (Texas Government Code) |
|---|---|
| Civil matters | §§ 24.394; 24.402; 24.462; 24.465; 24.472; 24.475; 24.479; 24.480; 24.488; 24.491; 24.494; 24.498; 24.554 |
| Family law matters | §§ 24.408; 24.410; 24.422; 24.423; 24.424; 24.431; 24.432; 24.433; 24.434; 24.456; 24.532; 24.533; 24.538 |
| Juvenile matters | §§ 24.531; 24.561; 24.593 |
| Civil *and* family law matters | § 24.175 |
| *First* preference to family law matters and *second* preference to criminal cases | § 24. 353(b) |
| *Primary* preference to cases under Title 2, 3, or 5, Texas Family Code, and *secondary* preference to criminal cases | § 24.466 |
| Civil cases and cases under Title 2 or 5, Texas Family Code | § 24.403 |
| Cases involving family violence, cases under the Texas Family Code, and cases under the Texas Health and Safety Code | § 24.551(b) |
| Family violence and criminal matters | § 24.574 |
| Civil commitment matters, criminal cases involving offenses under Section 841.085, Texas Health and Safety Code, and Article 62.203, Texas Code of Criminal Procedure | § 24.579 |

The Legislature created these courts with preferences as the counties' population grew—the counties needed more courts, particularly to handle increases in family law and criminal cases. However, needs change over time, and, when a preference is mandated by statute, it can change only

by legislative action. For example, Hidalgo County has twice had to ask the Legislature to repeal statutory preferences for its district courts.[53]

District courts of general jurisdiction with no *statutory* preference may still be given a preference by local rules of administration. There is a local administrative district judge in each county,[54] who has authority to implement and execute local rules of administration which include, among other things, the assignment of cases.[55] This local administrative judge may also coordinate and cooperate with any other local administrative judge in the county (such as the administrative judge for county courts at law) in the assignment of cases in the courts' concurrent jurisdiction.[56]

For example, the local rules of administration for McLennan County provide for preferences in assignment of cases, as agreed to by the local judges. The rules provide that all civil cases are filed randomly in the district courts, except that no civil cases are filed in the 54th District Court, and all juvenile cases are filed in the 19th District Court.[57] All cases filed are assigned randomly by computer in the District Clerk's Office as follows:

- 19th District Court: 30% of all Family Law; 30 % of all Criminal Cases
- 54th District Court: 70% of all Criminal Cases
- 74th District Court: 10% of all Family Law; 10% of all Civil Trial; 100% Child Protective Services; 100% Juvenile
- 170th District Court: 30% of all Family Law; 45% of all Civil Trial
- 414th District Court: 30% of all Family Law; 45% of all Civil Trial

Allowing courts to specialize through preferences can contribute significantly to the efficient administration of justice. Specialization allows a county with multiple courts to take advantage of a

53 *See, e.g.*, Tex. Gov't Code Ann. § 24.534(b) (concerning repeal of the preference for criminal cases in the 389th District Court of Hidalgo County); *see also* § 24.543(b) (concerning repeal of the preference for family violence and criminal cases in the 398th District Court of Hidalgo County). At the time of repeal, Hidalgo County no longer followed the preferences, but repeal was necessary to conform the statute to local practice.

54 *Id*. at § 74.091.

55 *Id*. at § 74.092(1).

56 Tex. Gov't Code Ann. § 74.092(10). Local rules of administration must be adopted by a majority vote of the judges. *Id*. at § 74.093(a). The local administrative district judge may promulgate local rules of administration if the other judges do not act by a majority vote. *Id*. at § 74.092(3). The local rules of administration for each county must, among other things, provide for assignment of cases. *Id*. at § 74.093(b)(1).

57 170th (Tex.) Dist. Ct. Loc. R. 1.01 (McLennan County).

particular judge's experience and expertise, and also allows judges to develop expertise where needed. But counties must be flexible in assigning specializations because judicial expertise and the number and types of cases filed in a county can change over time as population, litigation trends, and personnel change. Therefore, specialization should be accomplished at the local level by local rules of administration.

Action Plan

- The Legislature should repeal all provisions in Chapter 24 of the Texas Government Code [and any relevant provisions of the Texas Code of Criminal Procedure] that give specific jurisdiction to a district court and enact a single statement of district court general jurisdiction.

- The Legislature should amend Section 74.093 of the Texas Government Code to ensure that local assignment of cases is specified by local rules.

- The Legislature should amend Section 74.093(c)(2) of the Texas Government Code to provide that local rules may provide for assigning courts preference to a specified class of cases, such as civil, criminal, juvenile, family law, child protection, or other cases requiring special judicial attention.

### C. The Legislature should amend Chapter 25 of the Texas Government Code to establish that all county courts at law have a maximum jurisdictional amount in controversy of $200,000.00, and to create uniform definitions of criminal cases and proceedings, family law cases and proceedings, juvenile cases and proceedings, and mental health cases and proceedings that may be assigned to county courts at law.

Background

Chapter 25 of the Texas Government Code governs statutory county courts. Subchapter A of Chapter 25 provides a basic grant of jurisdiction, applicable to all statutory county courts, "over all causes and proceedings, civil and criminal, original and appellate, prescribed by law for [constitutional] county courts."[58] Additionally, county courts at law that have civil jurisdiction also have concurrent jurisdiction with a district court over (1) civil cases with amounts in controversy of $500 to $100,000, excluding interest, statutory or punitive damages and penalties, and attorney's fees and costs, and (2) an appeal of a final decision of the Texas Department of Insurance regarding workers' compensation claims, regardless of the amount in controversy.[59] Finally, except in the urban counties that have a statutory

58 Tex. Gov't Code Ann. § 25.0003(a).

59 *Id.* at § 25.0003(c).

probate court, a county court at law has concurrent jurisdiction with the constitutional county court of the probate jurisdiction provided by general law for county courts.[60] In counties with a statutory probate court, the statutory probate court is the only county court with probate jurisdiction.[61]

These general grants of jurisdiction are not without exception, as Section 25.0001 of the Texas Government Code states: "[i]f a provision of this subchapter conflicts with a specific provision for a particular court or county, the specific provision controls." Thus, in analyzing the jurisdiction of a county court at law, one must always carefully analyze the specific provisions in Subchapter C, *Provisions Relating to Particular Counties*, to ensure that there is no exception to the general grant of jurisdiction by Subchapter A. For example, the statutes creating county courts at law often provide for maximum jurisdictional limits exceeding $100,000. Currently fifty-three county courts at law located in twenty counties have civil jurisdiction in excess of $100,000. This jurisdiction varies from $250,000 to unlimited jurisdiction, similar to that of a district court, in a number of counties.[62]

*Uniform amount in controversy jurisdiction.*

One of the goals of S.B. 1204 was to establish a uniform maximum jurisdictional amount in controversy for county courts at law. This goal was to be achieved, not by limiting the amount in controversy jurisdiction for all county courts at law, but by elevating those county courts that desired to keep their maximum jurisdictional amounts in excess of the agreed upon maximum for county courts at law to district courts. This Report also takes this approach.

There was some debate within the Task Force over the appropriate maximum jurisdictional amount for county courts at law. C.S.S.B. 1204 did not contain an express amount. Some believed that the agreed-upon maximum amount was $200,000.00, while others believed that the amount was $250,000. The Task Force conducted a survey of district and county courts at law regarding whether there should be a uniform jurisdictional amount for county courts at law and, if so, what should be the appropriate amount.[63] A majority of the judges supported establishing a uniform jurisdictional amount for county courts at law. Judges whose courts have civil jurisdiction in excess of $100,000 typically opposed reducing their maximum jurisdiction while judges whose civil jurisdiction was $100,000 supported limiting the amount. Courts in urban areas, such as Houston, whose maximum jurisdiction amount is $100,000, opposed any increase because of fear that the additional jurisdiction would exacerbate already overcrowded dockets. Other judges supported an increase in the maximum jurisdictional amount, as this would reduce the caseloads of district courts in their counties.

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60 *Id.* at § 25.0003(d).

61 *Id.* at § 25.0003 (e). The Task Force did not study the statutory probate courts in sufficient detail to make recommendations at this time. Therefore, this Report makes no recommendations concerning Subchapter B of Chapter 25, which deals with statutory probate courts.

62 *See supra* Section II.1.

63 *See infra* App. 1 (Trial Court Survey Results).

The Task Force recommends that the maximum jurisdictional amount be $200,000.00, recognizing that any amount selected may impose burdens on county courts at law or district courts in some jurisdictions. If this should occur, the appropriate response would be to create new courts to lessen this burden.

*Uniform grants of subject matter jurisdiction.*

Similarly, Chapter C also contains statutes creating county courts at law with differing grants of subject matter jurisdiction over family law, criminal law, probate, and juvenile matters. Sometimes the individual grants of jurisdiction over a particular subject matter to one court are identical or similar to that given to another. Other times the grants are completely different. Uniform definitions of particular subject matter areas will significantly eliminate the potential for confusion, increase transparency, and provide more uniformity in the law governing county courts at law.

The Legislature has created some uniformity in the family law area.[64] The defined phrase "family law cases and proceedings" is used in the vast majority of statutory provisions creating county courts at law that have family law jurisdiction, making it much easier for lawyers and litigants to determine whether a particular court has jurisdiction over a particular family law proceeding.[65] However, there are statutory provisions granting family law jurisdiction that do not use the defined term and the failure to do so needlessly raises questions regarding the scope of that court's jurisdiction.[66] Does a court given jurisdiction over "suits arising under the Family Code" have jurisdiction over juvenile matters? Apparently yes, as Title 3 of the Texas Family Code governs judicial proceedings involving juveniles. On the other hand, in granting jurisdiction over juvenile matters to particular county courts at law, the Legislature has distinguished juvenile proceedings from family law cases.[67] If jurisdiction over juvenile cases were a defined term, there would be no potential for confusion.

C.S.S.B. 1204 simplified jurisdictional grants in family law matters by providing simple definitions. First, it redefined the phrase "Family Law Cases and Proceedings" to include simply "cases and proceedings under Titles 1, 2, 4, and 5, Family Code," and deleted the lengthy recitation of family law matters over which a court might have jurisdiction. Second, C.S.S.B. 1204 defined "Juvenile Law

64 *See* Tex. Gov't Code Ann. § 25.0002 ("In this chapter, 'family law cases and proceedings' include cases and proceedings involving adoptions … divorce and marriage annulment ... and independent actions … involving controversies between parent and child, between parents, and between spouses.").

65 *See i.e., id.* at § 25.0042(a)(1)(B), 25.0052(a)(2)(B), 25.0062(a)(1), 25.0132(a), 25.1392(a)(1), 25.1542(a), 25.1652(a)(each providing that these particular county courts at law have "concurrent jurisdiction with the district court in … family law cases and proceedings.").

66 *See e.g., id.* at § 25.1352(b)(1) (setting forth that Kerr County court at law has "… concurrent jurisdiction with the district court in proceedings under the Family Code..."); *id.* at § 25.0042(a)(2) ("… concurrent jurisdiction … over all suits arising under the Family Code …").

67 *See* Tex. Gov't Code Ann. §§ 25.0292(a), 25.1152(a) (providing for jurisdiction over "family law cases and proceedings, including juvenile cases"); *id.* at §§ 25.0222(c)(3), 25.1801(c)(2), 25.1802 (r)(1) (referring to "proceedings under Title 3 … Family Code)".

Cases and Proceedings" to include "all cases and proceedings brought under Title 3, Family Code." Third, C.S.S.B. 1204 went one step further and defined "Mental Health Cases and Proceedings" to include "all cases and proceedings brought under Subtitle C, Title 7, Health and Safety Code," for the number of county courts with specific grants of jurisdiction over these matters.[68]

Subchapter C also contains significant variations in the grant of criminal jurisdiction to various county courts at law. These jurisdictional grants vary not only from county to county, but often from court to court in the same county. One court's criminal jurisdiction may be very broad and include the jurisdiction provided by the constitution and general law for district courts,[69] while another court's jurisdiction may be limited to jurisdiction over pretrial hearings and accepting guilty pleas.[70]

C.S.S.B. 1204 also included an amendment to Section 25.0002 of the Texas Government Code that defined "Criminal Law Cases and Proceedings" to include "cases and proceedings for allegations of conduct punishable in part by confinement in the county jail not to exceed one year." Defining criminal law cases that should be included in county court at law jurisdiction eliminates most of the confusion that currently exists. However, this definition has substantive implications because it would alter the existing jurisdiction of a number of county courts at law that have criminal jurisdiction.[71] Nevertheless, if this definition were adopted, some necessary individual variations in jurisdiction can continue to be addressed in Subchapter C.

There are other specific grants of subject matter jurisdiction for particular county courts at law. A review of Subchapter C indicates that county courts at law are sometimes granted jurisdiction over 1) eminent domain proceedings,[72] 2) the issue of title to real or personal property,[73] 3) suits to recover damages for slander or defamation,[74] 4) appeals from justice courts and from the county court in misdemeanor cases,[75] 5) appellate jurisdiction in all appeals in criminal cases from justice courts and municipal courts,[76] and 6) appeals from the justice court and other inferior courts in the county.[77] These and other miscellaneous grants of jurisdiction apply to only a few counties. Adoption of the Task

68 *See, e.g., id.* at §§ 25.0173(o), 25.0631(c), 25.1132(b), 25.1802 (a)(4)(A-C), 25.2452(a)(3).

69 *See, e.g., id.* at §§ 25.0942(a)(limiting, however, the jurisdiction in capital felony cases), 25.0212(a), 25.0312(a), 25.0362(a).

70 *See, e.g., id.* at § 25.0062(a)(2).

71 Some county courts at law have "concurrent jurisdiction with justice courts in all criminal matters prescribed by law for justice courts." *See, e.g.*, Tex. Gov't Code Ann. § 25.0152(b). Others have "criminal jurisdiction, original and appellate, provided by the constitution and law for county courts and concurrent jurisdiction with county courts … to hear appeals of the suspension of driver's licenses and original proceedings regarding occupational drivers licenses." *See, e.g., id.* at § 25.0593(a).

72 *Id.* at §§ 25.0173(a), 25.0222(c)(2).

73 *Id.* at §§ 25.0173(a), 25.1032(c)(3), 25.1032(c)(6).

74 *Id.* at § 25.1032(c)(2).

75 *Id.* at § 25.0362(a)(5).

76 Tex. Gov't Code Ann. § 25.0862(a)(2).

77 *Id.*

Force's recommendations may eliminate the need for many of them. But, again, necessary individual variations in jurisdiction can continue to be addressed in Subchapter C.

Often these specific grants of subject matter jurisdiction give the county court at law concurrent jurisdiction with the district court. This is clearly the case with criminal felony jurisdiction, family law jurisdiction, and juvenile jurisdiction. The Task Force recognizes that retaining these specific grants of subject matter jurisdiction is contrary to the ultimate goal of achieving the three-tiered system described in section II.1, *supra*. For example, under that system only the district courts would exercise family law and felony jurisdiction. Eventually, any overlapping subject matter jurisdiction should be eliminated. But the Task Force recommends that *for now* specific grants of subject matter jurisdiction for county courts at law be retained. Taking the subject matter jurisdiction away from county courts at law today, while also converting the courts' amount in controversy jurisdiction, would be too disruptive.

*Uniform administrative provisions.*

Finally, the many administrative provisions in Subchapter A of Chapter 25 are often duplicated (although not exactly) in Subchapter C. And some sections in Subchapter C apply only to particular counties even though they should apply to all county courts at law. These duplications, omissions, and inconsistencies should be eliminated. The generally applicable provisions should apply to every county and be included in the general provisions of Subchapter A, and only necessary exceptions to the general provisions should be included in Subchapter C. Local issues, such as terms of courts and preferences to specified classes of cases for particular courts should be addressed in the local rules for each county.[78] The specific provisions that the Task Force has identified are listed in the Action Plan below.

Action Plan

- The Legislature should eventually eliminate all county courts at law jurisdiction that overlaps with the district courts.

- The Legislature should amend Chapter 25 of the Texas Government Code as follows:

    - Amend Section 25.0001 to eliminate application to Section 25.003 and amend the maximum amount in controversy in Section 25.003(c)(1) to not exceed $200,000.00;

    - Amend Subchapter A, *General Provisions*, to include a new section styled "Definitions" with the following definitions:

78 *See* Tex. Gov't Code Ann. § 74.093 (specifically providing for local rules concerning these matters); see *also supra* Section II.2.B (concerning local rules for preferences).

a. "Criminal Law Cases and Proceedings" includes cases and proceedings for allegations of conduct punishable in part by confinement in the county jail not to exceed one year;

b. "Family Law Cases and Proceedings" includes cases and proceedings under Titles 1, 2, 4, and 5, Texas Family Code;

c. "Juvenile Law Cases and Proceedings" includes all cases and proceedings brought under Title 3, Texas Family Code;

d. "Mental Health Causes and Proceedings" includes all cases and proceedings brought under Subtitle C, Title 7, Texas Health and Safety Code.

- Amend Subchapter A, *General Provisions*, to include sections in Subchapter C that apply to all counties, thereby avoiding duplication of provisions and confusion. Additionally, provisions that already exist in Subchapter A, but which are also included in Subchapter C, should be deleted. These should include the following:

  a. Section 25.0004 (in Subchapter A) identifies the powers and duties that are assigned to a county court at law. Subsection (c) states that "[t]he judge of a statutory county court has all other powers, duties, immunities, and privileges provided by law for county court judges." Thus, a county court at law judge has the same judicial immunity as a *constitutional county judge*.[79] But, at least five provisions of Subchapter C indicate that judges of county courts at law are provided the judicial immunity of a *district judge*.[80] The provisions in Subchapter C should be repealed.

  b. Section 25.0004 (d) (in Subchapter A), provides that a county court at law "has no authority over the county's administrative business that is performed by the county judge." However, a number of statutes in Subchapter C also include provisions that state "… the county court at law does not have general supervisory control or appellate review of the commissioners court…."[81] Section 25.0004(d) should be amended to include the provision that states

79 *See Spencer v. City of Seagoville,* 700 S.W.2d 953, 957-958 (Tex. App.—Dallas [5th Dist.] 1985, no writ)( "The Supreme Court has ruled that absolute immunity extends to all judicial acts unless such acts fall clearly outside the judge's subject-matter jurisdiction." (citing *Stump v. Sparkman*, 435 U.S. 349 (1978))).

80 Tex. Gov't Code Ann. §§ 25.0732(v), 25.1312(n), 25.1412(k), 25.1802(q), 25.2012(n).

81 Tex. Gov't Code Ann. §§ 25.0312(b), 25.0362(b); see i.d. at §§ 25.0633(f)(2), 25.0732(d).

that county courts do not have supervisory control or appellate review power, and the occasional inclusion of this provision should be deleted from Subchapter C.

c. Section 25.0007 (in Subchapter A) states that

> … drawing of jury panels … and practice in the statutory county courts must conform to that prescribed by law for county courts, except that practice, procedures, rules of evidence … and all other matters pertaining to the conduct of trials and hearings in the statutory county courts, other than the number of jurors … are governed by the laws and rules pertaining to district courts.

This and iterations thereof appear throughout Subchapter C.[82] These sections in Subchapter C should be deleted to ensure uniform trial procedures.

d. Section 25.0010, *Facilities; Personnel* (in Subchapter A) requires that the county attorney or criminal district attorney, sheriff and county clerk serve each of the statutory county courts. Similar provisions are included in Subchapter C.[83] The Legislature should revise Section 25.0010 to clearly provide authorization, and the provisions in Subchapter C should be deleted.

e. Section 25.0014, *Qualifications of Judge*, provides that county court at law judges must "a) be at least 25 years of age; b) have resided in the county for at least two years before election or appointment; and c) be a licensed attorney in this state … for the four years preceding election or appointment, unless otherwise provided by law." A review of Subchapter C reveals a variety of qualifications; including 1) "… judge of a County court at law must have the same qualifications as those required by law for district judge."[84]; 2) "…judge of county criminal court at law must have been a licensed and practicing member of the state bar for at least five years before appointment or election…"[85]; and 3) "…judge of a statutory probate court must … be well informed in the laws of the state; …and have been…licensed and practicing… for at least five

82 *See, e.g., id.* at §§ 25.0042(i), 25.0102(h), 25.0132(f), 25.0162(h), 25.0172(s), 25.0292(h), 25.0302(f), 25.0392(i), 25.0482(g), 25.0512(h).

83 *See* Tex. Gov't Code Ann. §§ 25.0042(g), 25.0052(g), 25.0102(g), 25.0152(e), 25.0172(m), 25.0172(q), 25.0173(h), 25.0292(g), 25.0302(e), 25.0332(k), 25.0392(g), 25.0512(d), 25.0592(k).

84 *Id.* at §§ 25.0212(c), 25.0632(a). Further, section 7 of article V in the Texas Constitution requires that a district judge have more than eight years of practicing law or serving as a judge.

85 *Id.* at § 25.1033(e).

consecutive years."[86] The qualifications for county courts at law judges should be uniform

f. There are other sections in Subchapter C which relate only to courts in particular counties that should be applicable to all county courts at law and, therefore, included in Subchapter A instead of Subchapter C. These provisions include those:

   i. authorizing the appointment and pay of court coordinators and administrative assistants;

   ii. authorizing terms of court;

   iii. authorizing the appointment and pay of special judges or visiting judges;

   iv. authorizing the appointment and pay of the official court reporter;

   v. prohibitions upon the judge engaging in private practice;[87] and

   vi. identifying when the county or district clerk shall act as clerk of the court.

**D. The Legislature should convert to district courts all county courts at law that elect to keep their maximum jurisdictional amount in controversy in excess of $200,000.00.**

Background

As was discovered during the debates surrounding C.S.S.B. 1204, as a practical matter, it is difficult for all counties with county courts at law having jurisdiction in excess of $200,000.00 to simply decrease their amount in controversy jurisdiction. County courts with higher jurisdictional maximums

86 *Id.* at § 25.1034(c). Furthermore, the phrase, "well informed in the laws of the state," should be deleted. This phrase was originally included in the qualifications for constitutional county courts because a judge of such court is not required to be a lawyer.

87 The statutes creating the county court at law in Coryell expressly allows a county court at law judge to engage in private practice while statutes creating county courts at law for Bell, Burnet, Harrison, Orange and Starr counties either prohibit the judge from appearing or pleading in a county court at law or inferior court in the county in question or from any courts of record in this state. *See* Tex. Gov't Code Ann. §§ 25.0522(d)(allowing judges to engage in private practice in Coryell County), 25.0162(f)(prohibiting in Bell County), 25.0292(f) (providing that "[t]he Commissioners Court of Burnet County shall set the salary of each judge of a county court at law who engages in the private practice of law."), 25.1042(f)(providing that for Harrison County where a judge is disqualified to hear a case, a special judge may be appointed), 25.1832(d)(prohibiting judges from engaging in private practice in Orange County), 25.2162(d)(allowing in Starr County a judge to engage in private practice but prohibiting the judge from being named the attorney of record in any case in the state).

were created out of judicial necessity. Changing the amount in controversy jurisdiction to meet a uniform statewide standard could leave a county without sufficient courts to address the caseload in that county.

To address this problem, C.S.S.B. 1204 created a number of "super district courts." The bill proposed to convert some of the county courts at law with maximum jurisdictional limits exceeding $200,000.00 to district courts with each of the newly created district courts retaining the county court jurisdiction previously assigned to the county court. C.S.S.B 1204 also addressed two of the biggest political obstacles to conversion: first, the bill allowed current county court at law judges to elect to continue to participate in the county pension plan if the benefits of continued participation were more favorable than those offered under the state pension plan; and second, the bill allowed the judge of the converted county court at law to run as an incumbent of the newly created district court.

Nineteen counties with forty-five county courts at law indicated that they would rather convert their county courts at law to district courts than reduce their maximum jurisdictional limits as proposed by the legislation. Of the nineteen counties, six had one county court at law that would be converted; eight had more than one county court at law — all of which would be converted; and the five remaining counties had multiple county courts at law of which one or more, but not all, would be converted.

The Task Force applauds C.S.S.B 1204's efforts to standardize the amount in controversy jurisdiction of county courts at law. However, a majority of the Task Force is concerned that C.S.S.B. 1204 ultimately did not result in a simpler court system because it created one "super" court (the district court with jurisdiction of a county court) that replaced another (the county court at law with jurisdiction of a district court). The "super district courts" could spend a majority of their time addressing county court cases because of their large county court jurisdiction, which could include criminal misdemeanor cases, appeals from justice courts, civil jurisdiction over cases of less than $200,000.00, and, in some instances, probate jurisdiction. Consequently, the Task Force recommends that county courts at law converting to district courts should not retain their county court jurisdiction.

However, if the newly-created district courts do not retain the county court jurisdiction, another concern arises – some counties may be left with no county court at law. If we take the counties electing to convert under C.S.S.B. 1204, the proposed legislation would eliminate all of the county courts at law in fourteen of the nineteen counties included in C.S.S.B. 1204. Thus, the conversion could very well mean that some counties would have a significant county court docket with no court to hear these cases other than the constitutional county court. In these situations, the Task Force recommends that the Legislature create additional county courts at law as needed to relieve constitutional county court judges (who may not even be lawyers) from having to resolve litigation disputes, thereby allowing them to focus their efforts on their administrative duties.

The Task Force's long term recommendation of the three-tiered court system includes a proposal that in every county the constitutional county court's judicial function be given to one or more county courts at law.[88] Therefore, this recommendation jump-starts the process of creating a county court at law to serve counties that either do not have one now or will not have one after all of their county courts at law are converted to district courts. The Task Force recognizes that not all counties can support a full-time county court at law. However, Subchapters D and E of the Texas Government Code allow the Legislature to create county courts at law serving two or more counties—much like a single district court serves multiple counties. Although no counties have such a court at this time, the statutory authority is already in place.

The Task Force believes that keeping uniformity among district courts and creating replacement county courts at law where needed is a better solution than creating "super courts" in some counties. The public is better served by moving towards, rather than away, from a three-tiered trial court system that eliminates overlapping jurisdiction when possible and maintains the traditional jurisdictional grants of authority for these courts.

The counties that elected to convert their county courts to district courts for purposes of C.S.S.B. 1204 might not elect to convert for purposes of a new bill that includes these recommendations. During the 80th Legislative session, a number of district and county courts at law were created in counties that would have been affected by C.S.S.B. 1204 (*e.g.*, two county criminal courts at law and two district courts were created in El Paso County; a district court was created for Hidalgo County; and two district courts were created for Cameron County). So the recommended legislation is likely to impact other counties that are among the fastest growing counties in the state. Thus, the effect that the recommended legislation has on a particular county or court must be evaluated in light of the circumstances that exist at the time new legislation is adopted.

To allow a better informed evaluation, the Task Force also recommends that before creating any new county or district court(s), the Legislature direct the Office of Court Administration to conduct a comprehensive study of the proposed courts and submit an impact statement to the legislative committee considering the proposed legislation. The impact statement should include the Office of Court Administration's recommendation regarding creation of the proposed court, relevant information regarding the existing courts in affected counties, and quantitative and qualitative factors that will affect the proposed court. This analysis will provide the Legislature and the counties with valuable information from which they can make a more informed decision concerning whether to reduce the maximum jurisdictional amount of the county courts at law to $200,000.00, and whether to convert some but not all of the county courts to district courts. This study will also indicate when there is a

88 *See supra* Section II.1 ("Action Plan").

need for new county courts at law or district courts and whether the subject matter jurisdiction of existing courts should be revised to eliminate overlapping jurisdiction.

Action Plan

The Task Force recommends:

- The Office of Court Administration should conduct a study of the county courts at law and district courts in counties that have county courts at law with civil jurisdiction in excess of $200,000.00 and submit an impact statement to the counties and Legislature no later than October 1, 2010;

- On or before January 1, 2011, counties whose county courts at law jurisdiction are in excess of $200,000.00 should elect to either reduce the maximum civil jurisdictional limits of each court to $200,000.00 or have such courts converted to district courts;

- Effective September 1, 2011, all county courts at law, except those electing to be converted to district courts as provided for below, should have uniform maximum amount in controversy jurisdiction of $200,000.00. Any provisions in Subchapter C to the contrary should be repealed;

- Effective January 1, 2013, county courts at law in counties that elected to have one or more of their county courts converted to a district court should be abolished and district courts should be created in their place;

- Any new county courts at law should have a maximum amount in controversy jurisdiction of $200,000.00;

- Any newly created district court should not retain the county court jurisdiction of the county court at law that it replaced;

- The Legislature should create no county courts at law with district court jurisdiction or district courts with county court jurisdiction; and

- The Legislature should provide additional funding to the Office of Court Administration to conduct studies of counties whose county courts at law's maximum jurisdiction exceeds $200,000.00.

### E. The Legislature should fund additional courts and capital improvements and additions where needed.

Background

The Task Force recognizes that its recommendations might call for the creation of additional county courts at law and district courts. Currently, when a new district court is created, the State pays for most of the district judge's salary but not the salaries of court personnel. The counties in the district typically supplement the judge's salary, and each county provides facilities for the court and pays court personnel working in that county. Individual counties pay all costs, including judges' salaries, associated with the constitutional and statutory county courts and the justice courts sitting in that county, although the State supplements county courts at law judges' salaries.

The Task Force recommends that the State provide significant additional funding for new courts. In 2005, the Legislature appropriated $523.5 million to the judiciary, which represents less than one percent of all state appropriations.[89] While seventeen states fund their court system primarily through local revenues, only three states—Ohio, South Carolina, and Tennessee—allocate a smaller percentage of their state budget to the judiciary.[90]

It is appropriate for the State to provide significant additional funding to the judicial system. As a result of state and federal mandates, much of a court's work now is to act as a "gatekeeper," allocating resources in areas such as criminal justice, child protective services, juvenile justice, and protection of the mentally impaired. These mandates have significantly increased the burden on the court system and local governments that support the courts. As a matter of fundamental fairness, the State should bear more of these costs rather than putting so much of the burden on counties.

Action Plan

- The Legislature should fund any additional courts created as a result of the recommendations set out in this Report.

3. *Justice of the Peace and Small Claims Courts. The Legislature should simplify the distinction between justice of the peace and small claims courts.*

89 Legis. Budget Bd., Financing the Judiciary in Texas: Legislative Primer (1st Ed.) 1 (2005), http://www.lbb.state.tx.us/Other_Pubs/Judiciary_Leg_Primer_0107.pdf.

90 *See* Texans for Lawsuit Reform Foundation, Recommendations for Reform: The Texas Judicial System 67-68 (2007).

### A. The Legislature should repeal Chapter 28, Texas Government Code, Small Claims Courts, and authorize the Texas Supreme Court to promulgate new rules for justice courts to exercise jurisdiction over small claims.

Background

In 1953, the Texas Legislature created the small claims court to provide an affordable and expedient procedure for litigating claims involving small amounts of money.[91] The purpose of the Small Claims Court Act was "to place justice within the reach of many Texas citizens who were previously denied such relief because the litigation expense and delay overshadowed their small claim."[92] This is reflected in almost every aspect of small claims court procedures. For example, instituting a claim in is as simple as filling out a one-page form. The hearing is informal, with designed to dispense speedy justice. The small claims court is a forum where citizens can economically resolve disputes without lawyers, using informal rules and the judge's assistance.

While the Small Claims Court Act created a new court, it provided for no new judges. Instead, each justice of the peace is also the judge of the small claims court. Therefore, justices of the peace exercise two types of civil jurisdiction–first, as a judge of the justice court,[93] and second, as judge over the small claims court.[94] The justice court has original jurisdiction of the following:

(1) civil matters in which exclusive jurisdiction is not in the district court or county court and in which the amount in controversy is not more than $10,000.00 exclusive of interest;

(2) cases of forcible entry and detainer; and

(3) the foreclosure of mortgages and enforcement of liens on personal property in which the amount in controversy is otherwise within the justice court's jurisdiction.[95]

The small claims court has "…concurrent jurisdiction with the justice court in actions by any person for the recovery of money in which the amount involved, exclusive of costs, does not exceed $10,000."[96] Therefore, all claims within the amount in controversy jurisdiction of the justice court may be filed in either justice court or small claims court.

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91 *See* Act of May 27, 1953, 53rd Leg., R.S., ch. 309, 17, 1953 Tex. Gen. Laws 778, 780 (amended and recodified 1953) (current version at Tex. Gov't Code Ann. §§ 28.001-28.055 (Vernon 1988 & Supp. 2000)).

92 O.L. Sanders, Jr., *The Small Claims Court*, 1 S. Tex. L.J. 80, 85-86 (1954); *accord* Act of May 27, 1953, 53rd Leg., R.S., ch. 309, 17, 1953 Tex. Gen. Laws 778, 780 (amended and recodified 1953).

93 *See* Tex. Gov't Code Ann. § 27.031.

94 *Id.* at § 28.002.

95 *Id.* at § 27.031(a).

96 *Id.* at § 28.003(a).

This overlapping jurisdiction between justice courts and small claims courts has bifurcated small claims resolution: the role that the judge exercises, the rules governing proceedings, and the rights of the litigants vary significantly.

A justice of the peace in the justice court conducts trials like those in county or district courts, while a judge in the small claims court assists litigants in developing the facts of a case, including examining witnesses and parties and summoning persons to appear and testify.[97] Traditional rules of procedure and evidence apply to cases in justice court, but not in small claims court.[98] Instead the small claims court is instructed to conduct an "informal hearing . . . with the sole objective being to dispense speedy justice between the parties," and to allow "reasonable discovery" that "is limited to that considered appropriate and permitted by the judge."[99]

The current system is confusing and requires justices of the peace to constantly change hats, resolving similar disputes while using different rules. The Task Force recommends that Chapter 28, *Small Claims Courts*, be repealed leaving all small claims be adjudicated by the judges exercising justice court jurisdiction under Chapter 27.

Repealing Chapter 28 will also allow the Texas Supreme Court to exercise rulemaking authority over all civil claims heard by a justice of the peace. The Texas Government Code confers upon the Texas Supreme Court the right to promulgate rules of civil procedure.[100] However, this section does not apply to small claims courts because rules governing that court are set out in the Small Claims Act.[101]

Thus, the Texas Supreme Court should adopt new rules governing all claims filed in the justice courts, including eviction proceedings. The rules governing small claims should continue to allow judges to assist litigants in the trial and should include relaxed standards for pleadings, discovery, and rules of evidence similar to those currently allowed in Chapter 28. Under this proposal, the Texas Rules of Civil Procedure would not apply to civil proceedings in justice court. Litigants with claims of $500.00 or more who want to be governed by the Texas Rules of Civil Procedure would file their claims in the county courts.

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97 Tex. Gov't Code Ann. § 28.034.

98 *See* Tex. R. Civ. P. 523 (applying to justice courts); Tex. R. Evid. 101(b)("…these rules govern civil… proceedings…in all courts of Texas, except small claims courts").

99 Tex. Gov't Code Ann. §§ 28.033(d) - 28.033(e).

100 Tex. Gov't Code Ann. § 22.004(b).

101 *See id.* at §§ 28.012, 28.031-035.

Action Plan

- The Legislature should repeal Chapter 28 of the Texas Government Code, effective January 1, 2011;

- The Supreme Court of Texas should promulgate new rules for small claims and eviction proceedings that would be effective December 31, 2010;

- These new rules for small claims should include provisions similar to those in Chapter 28 regarding the duties of a judge[102] and the nature of the pleadings and hearing.[103]

### B. Pending repeal of Chapter 28, the Legislature should amend Section 28.053, Texas Government Code, to allow an appeal from a county court to the court of appeals if the case originates in the small claims court.

Background

The appellate process is different for justice and small claims courts. An appeal can be taken to the court of appeals from a judgment arising out of a county court's *de novo* review of a case if the case originates in the justice court. But if the case originates in small claims court, there is no appeal to the court of appeals.

The Small Claims Act permits an appeal to the county court or statutory county court from a final judgment in a case involving more than $20.00, exclusive of costs. Under the provisions of the statute, the appeal is actually a trial *de novo* and its verdict "final."[104] Before 1998, several courts had held that county courts' or county courts at law's judgments on *de novo* appeals from a small claims court *could* be appealed to the court of appeals. In 1998, however, the First Court of Appeals held that the word "final" in Section 28.053(d) of the Texas Government Code meant "that there is no further appeal beyond the county court or county court at law."[105] This holding was followed by most Texas courts of appeals.

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102 *Id.* at § 28.034.

103 *Id.* at § 28.033.

104 Tex. Gov't Code Ann. § 28.053(d).

105 *Davis v. Covert*, 983 S.W.2d 301, 302 (Tex. App.—Houston [1st Dist.] 1998, pet. dism'd w.o.j.).

In 2005, the Supreme Court of Texas in *Sultan v. Mathew*[106] agreed with the First Court of Appeals, holding that "final" meant not appealable to the court of appeals. The Texas Supreme Court reasoned that the Legislature's goal was to provide a simplified and inexpensive court procedure and that the legislative intent was to forego the added time and money that inevitably accompanies an appeal to the court of appeals.[107] The court noted that if its ruling seemed illogical, the problem was a legislative one and not one for the courts.[108] During the 80th Legislative session, H.B. 196 was filed to address this problem. This bill would have amended Section 28.053(d) of the Texas Government Code and allowed an appeal of cases originating in small claims courts to the courts of appeals. This bill did not pass and the problem persists.

Individuals pursuing claims for less than $10,000 will often represent themselves and will have little, if any, legal training or understanding of the legal distinctions that exist when a claim is initiated in justice court versus small claims court. As discussed in the previous section, a suit filed in small claims court is filed in the same office, on the same form (except for the name of the court), with the same allegations, and before the same judge, as a suit filed in the justice court. The right of appeal or lack thereof is typically not apparent, so claimants do not know that in filing their claims in small claims court instead of justice court, they are giving up the important right of appeal.

Repealing Chapter 28 of the Texas Government Code, *Small Claims Courts*, will resolve this problem. Until Chapter 28 is repealed, the Legislature should ensure that all persons have the right of appeal to the courts of appeals, no matter in which court a small claims suit is filed.

Action Plan

- Pending repeal of Chapter 28, *Small Claims Court*, the Legislature should amend Section 28.053(d) of the Texas Government Code to provide that judgments from county courts and county courts at law are appealable to the courts of appeals regardless of whether the suit originated in the justice court or small claims court.

4. *Subordinate Judicial Officers. The Legislature should amend Chapter 54, Texas Government Code, to establish uniform administrative, trial, and appellate provisions for all subordinate judicial officers–masters, magistrates, referees, and associate judges.*

106 178 S.W.3d 747, 752 (Tex. 2005).
107 *Id.*
108 *Id.*

Background

Since the mid-1980s, Texas counties have sought legislative authority to appoint masters, magistrates, referees, and associate judges ("judicial officers") to assist district and statutory county courts in fulfilling their judicial duties. Permission is typically obtained under a local bill regarding a particular type of case or matter (civil, criminal, juvenile, family law, or mental health) for a single county.[109]

Under this single-shot approach, there are over twenty-five subchapters in Chapter 54 of the Texas Government Code (A through GG), each of which authorizes the appointment of a judicial officer(s) in a single Texas county. Powers, authority, method of appointment and termination, and process for reviewing or appealing decisions may all vary from county to county. The result is a complex maze of rules that vary depending on the county where the case is filed.

In 1995, the Legislature lessened the confusion about the powers and authority of judicial officers in family law cases by repealing provisions in Chapter 54 of the Texas Government Code that created judicial officers for family law matters. At the same time the Legislature enacted Chapter 201 of the Texas Family Code, Subtitle C, *Judicial Resources and Services, Associate Judges*. Chapter 201 establishes uniform procedures for appointing and terminating judicial officers, establishes uniform qualifications, powers and authority, and procedures for *de novo* review of these officials' decisions. Chapter 201 is divided into three subchapters: a) Subchapter A addresses typical family law issues, b) Subchapter B addresses child support enforcement issues (Title IV), and c) Subchapter C addresses child protection cases (by associate judges, known sometimes as "Cluster Courts").[110]

The Legislature has also tried to bring uniformity as to judicial officers appointed to handle probate matters. In 1999, Sections 54.601-620, Subchapter G, of the Texas Government Code were revised to provide uniform procedures for judicial officers assigned to assist in handling probate matters. Under this subchapter, any commissioners court can appoint judicial officers to assist courts in addressing probate issues.

Appointing judicial officers to assist courts in performing duties is complicated by the ever-changing terminology the Legislature has employed during the past thirty years. The terms "masters," "hearing officers," "referees," and "associate judges" have been used interchangeably. Recent legislation would appear to support referring to them as "associate judges."

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109 *See, e.g.*, Tex. Gov't Code Ann., Chapter 54, Subchapter C, creating Criminal Law Masters in Jefferson County; Subchapter D, creating Criminal Law Magistrates in Dallas County; Subchapter E, creating Juvenile Court Referees in Wichita County; and Subchapter F, creating Associate Judges in Dallas County to hear civil matters.

110 The Family Code provisions relating to Associate Judges are explained on Texas Courts Online at http://www.courts.state.tx.us/courts/assocjs.asp.

The Legislature should adopt uniform procedures to establish the positions, qualifications, compensation, and termination of judicial officers. Trial procedures should include procedures to refer cases or matters, powers, and authorities that a district or county court at law *might* assign to judicial officers, and they should also include actions that may be taken by the referring court upon receipt of a decision or report. Appellate procedures should include uniform provisions regarding notice of decision of judicial officers, procedures for *de novo* review, and rights of appeal of decision.

Action Plan

The Legislature should amend Chapter 54 of the Texas Government Code, as follows:

- All subchapters should be repealed and replaced with 5 new subchapters addressing the appointment of judicial officers for a) civil cases, b) criminal cases, c) juvenile cases d) probate cases, and e) miscellaneous cases (*i.e.*, mental health, education, etc);

- Uniform provisions regarding the process for appointment, termination, compensation, qualifications, method or order of referral, and judicial immunity to be afforded such officers should be adopted;

- Uniform definitions regarding powers or authorities that might be assigned by the referring court should be adopted;

- Uniform provisions regarding the judicial action that a court might take, the procedures for initiating a de novo review of the judicial officer's findings and the right of appeal should be adopted; and

- All judicial officers should be referred to as "Associate Judges."

5. *Courts of Appeals Districts. The Legislature should address jurisdictional overlaps in the court of appeals districts gradually, in cooperation with the courts themselves, while maintaining the number of courts and diverse the geographical coverage of each district.*

Background

In general, two appellate courts should not have jurisdiction to hear and decide an appeal. Recognizing this principle of justice, the Texas Legislature has moved in recent years towards eliminating

all jurisdictional overlaps within the Texas appellate court structure.[111] However, some overlaps remain.[112] The most extensive is between the two courts of appeals sitting in Houston. They have coextensive jurisdiction in districts that cover the same geographic area.[113] Other overlaps exist in northeast Texas. The Fifth Court of Appeals in Dallas and the Sixth Court of Appeals in Texarkana share Hunt County.[114] The Sixth Court of Appeals also shares Gregg, Rusk, Upshur and Wood counties with the Twelfth Court of Appeals in Tyler.[115]

These overlapping appellate districts create the potential for conflicts among the courts of appeals, provide the opportunity for unfair forum shopping, allow voters of some counties to elect a disproportionate number of justices, and create uncertainty in projecting case-flow management.[116] Ideally jurisdictional overlaps should be avoided.

The resistance to eliminating overlaps is significant for several reasons. Jurisdictional realignment might alter the political make-up of a particular court. It might also impact court caseloads, causing an undesirable reduction in the number of courts or a change in their geographical coverage.

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111 *See* Act of May 15, 2003, 78th Leg., ch. 44, § 1, 2003 Tex. Gen. Laws 81 (codified at Tex. Gov't Code Ann. § 22.201(b), (o)) (removing Brazos County from three appellate districts to only the Tenth Appellate District in Waco); Act of June 17, 2005, 79th Leg., ch. 542, § 1, 2005 Tex. Sess. Laws 1466, 1467 (Vernon) (codified at Tex. Gov't Code Ann.§ 22.201(b), (f), (k), (m), (o)) (removing overlapping jurisdiction in Burleson, Trinity, Walker, Hopkins, Kaufman, Panola, and Van Zandt counties).

112 *See infra* App. 7, Office of Court Administration, Detailed Map of Court of Appeals Districts (2005), http://www.courts.state.tx.us/resource/images/coa_map.pdf.

113 The counties of Austin, Brazoria, Chambers, Colorado, Fort Bend, Galveston, Grimes, Harris, Waller, and Washington are in both of these appellate districts. Tex. Gov't Code Ann. § 22.201(b), (o).

114 Tex. Gov't Code Ann. § 22.201(f), (g).

115 *Id*. at § 22.201 (g), (m).

116 The Supreme Court recently promulgated the new Rule of Judicial Administration 15, effective September 1, 2008, to remedy a specific problem that arises in the five East Texas counties that have overlapping appellate districts—when notices of appeal are filed by two or more parties from a single judgment and the notice designates two different courts of appeals. The new rule essentially requires consolidation of the appeals in one appellate court, either by agreement of the parties, or, if no agreement can be reached, by the Chief Justice's random assignment of an appellate court. Tex. R. Jud. Admin. 15, *reprinted in* Tex. Gov't Code Ann., tit. 2, subtit. F app. (Vernon 2005). The rule, though needed, does not cure all the problems that arise from overlapping jurisdictions. *See, e.g., Recommendations for Reallocation of Courts of Appeals*, Order of the Supreme Court of Texas dated December 17, 2002, Misc. Docket No. 02-9232 ("No county should be in more than one appellate district. Texas is the only state in the nation with overlapping appellate districts, an historical anomaly which causes real and recurring problems to the bench and bar."); Andrew T. Solomon, *A Simple Prescription for Texas's Ailing Court System: Stronger Stare Decisis*, 37 St. Mary's L. J. 417 (2006); 1995 Report of the Supreme Court to the Legislature Regarding Appellate Courts ("The primary recommendation of the Court at this time is to eliminate the current jurisdictional overlaps that occur between two or more Courts of Appeals in ten counties, and in one instance, in three counties."); 1993 Report of the Supreme Court to the Legislature Regarding Appellate Courts ("No county should be in more than one appellate district."); 1986 Report on the Reapportionment of the Courts of Appeals Districts as adopted by the Supreme Court of Texas and the Texas Judicial Council ("All current overlapping districts should be eliminated except for the 1st and 14th districts which are coterminous.").

Moreover, historically the most commonly presented solution to eliminate the overlapping jurisdictions of the Houston appellate courts is to simply merge the two courts in to one larger court. This proposal, however, presents its own unique issues:

- Merging two courts with different cultures would be difficult and is not necessary.
- It would be difficult for a single chief justice to manage a court of up to eighteen judges effectively.
- It would be difficult to maintain proper consistency of rulings on an eighteen-judge court.
- It is unclear whether a merger would offer significant fiscal benefits.
- Conflicts between the two courts, especially case-determinative conflicts, are rare and can be resolved by high-court review.
- Studies show that adding judgeships to an appellate court tends to reduce the quality of a court's output.[117]

Although the Task Force recognizes that jurisdictional overlaps are problematic, they must be addressed on a gradual basis using appropriate methods. Therefore, the Task Force recommends that the Legislature continue to work in consultation and cooperation with the courts of appeals to develop feasible solutions that maintain the diverse geographical and political coverage of the courts. In no event, however, does the Task Force support merging the two Houston courts.

Action Plan

- The Legislature should eliminate overlapping jurisdiction in the courts of appeals over the long term.
- The Legislature should consider prescribing the jurisdiction of the First and Fourteenth Courts of Appeals by assigning each judicial district, rather than each county, to a particular court.

6. *Maintaining Simplicity. The Legislature should commit to maintaining a simplified structure of the Texas courts by adopting rules that require the Office of Court Administration to conduct a comprehensive analysis regarding the need for any proposed court.*

117 *See generally*, Terry Jennings, *Justice Better Served by Merging Our Appeals Courts? No: Mega-Court, Mega-Troubles*, Houston Chronicle, March 30, 2003, at C1; *see also* Richard A. Posner, *Is the Ninth Circuit Too Large? A Statistical Study of Judicial Quality*, 29 J. Legal Stud. 711, 711 (June 2000).

Background

The creation of new county and district courts has often resulted from political forces rather than the actual needs of a particular county. In order to bring some degree of objectivity to the evaluation of proposed courts, House and Senate committees that must consider this legislation have often sought assistance from the Office of Court Administration. The Office of Court Administration has conducted a quantitative and qualitative analysis of relevant criteria and submitted an "Impact Statement" that assesses the need for a new court.

During prior legislative sessions the Office of Court Administration's Impact Statement has included an analysis of one or more of the following quantitative factors:

1) Five-year average of the number of cases added to docket per court and statewide average;
2) Percentage change in the average number of total cases added to the docket per court and variance from the statewide average per court;
3) Five-year average of the number of total cases disposed per court and variance from the statewide average per court;
4) Percentage change in the average number of total cases disposed and variance from the statewide average per court;
5) Five-year average number of total cases pending on the docket at year end per court and variance from the statewide average per court;
6) Percentage change in the average number of total cases pending on the docket at the end of the year per court and variance from the statewide average per court;
7) Five-year average case clearance rate and variance from the statewide average clearance rate;
8) Case clearance rate and variance from average clearance rate for similarly-sized counties;
9) Five-year average population per court and variance from statewide average per court; and
10) Percentage change in average population per court and variance from statewide average per court.

The Impact Statement has also included discussions of several qualitative factors including: 1) number of lawyers in county, 2) complexity of cases, 3) availability of visiting judges, and 4) presence of state facilities and institutions. The factors that the Office of Court Administration has considered vary from county to county depending on the type of court being created, the specialized jurisdiction of the court, and the number of counties that might be involved. The Office of Court Administration has also conducted a weighted caseload study of courts throughout Texas (also known as the "Judicial Needs Assessment") and the information obtained will provide additional assistance in assessing the needs for new courts.[118]

118 *See* Office of Court Administration, Judicial Needs Assessment (2008), http://www.courts.state.tx.us/oca/jnas/jnas-home.asp.

The Office of Court Administration's report has never attempted to provide a quantitative score on the need for a new court. Nor should it. To arbitrarily require that proposed new courts exceed the statewide averages in a certain number of the categories (*e.g.*, five out of the ten) before recommending the creation of a new court is impracticable. The effect that one criterion might have in one county may be significantly different from county to county.

Action Plan

- The Legislature should amend House and Senate rules to require that committees considering new court legislation obtain from the Office of Court Administration, prior to final consideration by the committee, an Impact Statement regarding the proposed court to be included as part of the bill analysis.

- The Impact Statement, in addition to its recommendation regarding the creation of the proposed court, should include relevant information regarding the existing courts in such county or district, qualitative factors that will affect the proposed court, and other quantitative information regarding the county in issue and existing county and district courts.

III. **Flexibility**: Flexibility is key to the efficient administration of the judicial system. Courts should be empowered to resolve cases without unnecessary delay, and resources should be available to respond as the needs of particular courts and counties change with population growth, litigation trends, and specific case filings. These needs should be locally and regionally determined, largely funded by the State, and allocated through the judicial system.

1. *Flexible Resources. The Legislature should provide additional funding to support trial courts, especially those hearing cases requiring special judicial attention;*

**A. The Legislature should provide additional resources for specific cases requiring special judicial attention, for court system enhancements, and for child protection cases.**

Background

Management of "complex" cases became one of the more controversial provisions in S.B. 1204. The bill initially proposed a judicial panel on complex cases similar to the judicial panel on multidistrict litigation.[119] The proposed panel was to be comprised of appointed judges who would determine

119 The panel is designated pursuant to Tex. Gov't Code Ann. § 74.161. *See* Tex. R. Judicial Admin. 13.

whether a case was "complex," and, if so, the panel would appoint a judge to hear the case. C.S.S.B. 1204 did not include these provisions but instead focused on providing resources to courts that were handling complex cases.

To evaluate whether specialized courts were needed in Texas, the Task Force studied the provisions of the original version of S.B. 1204, as well as the specialized courts programs in other states.[120] Specifically, the Task Force considered the complex courts model of California and Arizona, and the business courts model of New York and North Carolina. In the typical complex court model, one or more judges in urban counties are designated as being the judge of a "Complex Court." "Complex" cases that are filed in the county are assigned to the "Complex Court" and handled until resolution. In the typical business court model, certain judges are designated as judges of the "Business Court" and business cases are assigned to that court until resolution. The states using these models have identified several benefits to these specialized courts. These benefits include:

- the efficiencies gained from assigning a single judge to the case, instead of having a central docket system where the judge is randomly assigned each time a hearing is scheduled;

- the development of special expertise through technology, judicial education, and administrative training;

- the provision of additional resources that permits the assigned judges to carry a smaller docket, provides staff (such as a staff attorney), and encourages the creative use of technology; and

- for business courts, the ability to more fully develop the state common law in business areas, and make it readily accessible through technology.

Despite these potential benefits, the Task Force quickly reached a consensus not to recommend a specialized court system for Texas at this time. The Task Force tabled discussion of a statewide business court because it found that adoption of such a system would require detailed study of important constitutional and statutory issues, such as venue and election of judges. And the Task Force recommended that Texas not adopt a complex court system because Texas courts have already taken advantage of most of the advantages that a complex court system would provide. Texas counties already assign a single judge to complex cases, even in Bexar and Travis Counties which employ a central docket system. And the urban counties that tend to have a number of complex cases filed in their courts have already begun to develop best practices in case management, including the use of technology. Many urban counties also provide a staff attorney for district judges.

120 *See infra* App. 8 (list of resources concerning specialized courts in other states).

This consensus was reinforced with the results of a survey of Texas trial judges regarding complex cases.[121] Thirty-two percent of the district judges responded (a fair representation) and seventy-five percent of those judges reported that they have had complex cases in the past two years. From the comments submitted, there appears to be a strong consensus that the judges would not see a need for a specially assigned "specialized complex case judge"; that they feel that the judges should try the cases in their respective courts to which they were elected; that they would not like to see the cases transferred out of their jurisdiction; that they would appreciate having a visiting judge handle their docket while they try the complex cases themselves; and that several are in need of more courts. A member of the Task Force summarized the results thus: "the judges see no need for a complex or specialized court. They need resources. Also, they appear to be adamant about retaining local control over their cases."

The Task Force did continue to study the issues related to complex cases, which became known as "cases that require special judicial supervision." The Task Force was concerned that the term "complex case" had come to be associated with particular types of civil cases and wanted to make sure that any case could be included in the Task Force's recommendations.

There was general consensus that Texas judges were able to handle complex cases if given adequate resources. Moreover, although specialization can provide certain efficiencies, there was consensus that specialization is realized in urban areas, and that local court systems must remain flexible to respond to changes in population, litigation trends and specific case filings. Thus, the Task Force concluded that the current system that allows counties to assign specific courts to a particular specialty should be continued, a county should be able to include a complex litigation specialty at the county's option, and there should be incentives to encourage specialization where it is appropriate.[122]

Sometimes an unusually demanding case is filed in a court not generally equipped with the resources to handle it efficiently. That court might need help, wherever the court is located. Therefore, the Task Force was concerned that any recommendation be able to reach any court in the state that finds itself with a case of whatever kind requiring special judicial attention. In discussions of the need for court resources for complex cases, some members identified child protection cases as the key area, rather than more traditional complex civil cases.

As it happened, the Child Protective Services cases filed in Eldorado, Schleicher County, in April 2008 made abundantly clear that not only complex commercial and personal injury cases require special judicial supervision and benefit from additional resources and expertise.[123] The Office of Court

121 *See infra* App. 4 (Complex Case Survey Results).

122 This conclusion relates to the Task Force's recommendation found *supra* at II.2.B.

123 *See In re Texas Department of Family and Protective Services*, 255 S.W.3d 613, 614 (Tex. 2008) (detailing facts of "the largest child protection case documented in the history of the United States," which involved the removal of 468 children living on a rural religious compound).

Administration and the regional presiding judge coordinated significant assistance to the judge presiding over the case and the judicial personnel of Tom Green and Schleicher counties to manage this extraordinary case. Resources that were provided include: additional visiting judges; assistance with the referral of volunteer attorneys; videoconferencing technology for hearings; supplies, equipment, and funding for additional clerk's office personnel; arrangements for the electronic filing of court papers; tools to allow judges and attorneys to collaborate online; and administrative assistance obtaining emergency funding from the state to the counties. Having dedicated resources and a clear legal mechanism to provide those resources in such cases—as C.S.S.B. 1204 would have provided—would have been highly useful in this endeavor.

The Task Force worked from the provisions of C.S.S.B. 1204 that sought to provide additional resources to courts for particular cases. The bill represented a productive consensus around the need for additional resources and a vehicle for distribution of those resources that had components of local and central control.

Action Plan

The Legislature should amend Chapter 74 of the Texas Government Code to add a new Subchapter I of Section 2.01, as follows:

- Provide for the creation of the Judicial Committee for Additional Resources (JCAR), which is composed of the Chief Justice of the Texas Supreme Court and the nine Presiding Judges of the administrative judicial regions. The Chief Justice should serve as the presiding officer and the Office of Court Administration should provide support to the Committee.

- Provide for additional resources for specific cases requiring special judicial attention:

    - The JCAR should determine whether a case is one requiring special judicial attention and needing additional resources to ensure efficient judicial management. In making that determination, the JCAR should consider the following:

        - Whether the case has a large number of parties;

        - Whether coordination with related actions pending in one or more courts in other counties of the state or in one or more United States district courts is likely;

        - Whether the case is likely to have numerous pretrial motions that present difficult or novel legal issues that will be time-consuming to resolve;

- Whether the case is likely to have a large number of witnesses or substantial documentary evidence;
- Whether the trial is likely to last more than four weeks;
- Whether the case is likely to impose a substantial additional burden on the trial court's docket and the resources available to the trial to hear the case;
- Anything else that the JCAR considers is relevant to its decision.

- The judge of the court in which the case is pending, on motion of a party or on the court's own motion, should review the case and determine whether the case is one requiring special judicial attention and additional resources to ensure efficient judicial management. The judge is not required to conduct an evidentiary hearing to make this determination but may direct the attorneys for the parties to appear before the judge for a conference to provide information to assist the judge in making the determination. Upon determining that the case needs additional resources, the judge should notify the presiding judge of the administrative judicial region in which the court is located, and request any specific additional resources needed. The presiding judge will review the request, and, if the presiding judge agrees that the case qualifies, the presiding judge should submit the trial court's request for additional resources to the JCAR, which will consider the request. The decisions of the trial judge, the presiding judge, and the JCAR are not subject to review by appeal or mandamus.

- The JCAR, upon determining that the case qualifies, should make the requested resources available to the extent that funds are available and to the extent the JCAR determines that the requested resources are appropriate to the circumstances of the case.

- The resources that the JCAR may make available, which should be paid for by the State, should include:
  - The assignment of an active or a retired judge, subject to the consent of the judge of the court in which the case is pending;
  - Additional legal, administrative, or clerical personnel;
  - Specialized continuing legal education;

- A special master;
- Special accommodations or furnishings for the parties;
- Other items determined to be necessary to try the case; and
- Any other resources the JCAR considers appropriate.

- Provide matching grants to counties for court system enhancements, as follows:
  - Provide that the Office of Court Administration will develop procedures for application, administer the program, and monitor the use of the grant money;
  - Provide that the JCAR should determine whether to award a grant to a county-applicant that meets the eligibility requirements; and
  - Provide that the grant be used to implement initiatives that will enhance the county's court system, including grants to develop programs to more efficiently manage cases that require special judicial attention.

- Provide grants for counties for child protection cases, as follows:
  - Provide that the Permanent Judicial Commission for Children, Youth and Families will develop and administer the program, and monitor the use of the grant money;
  - Provide that the Permanent Judicial Commission for Children, Youth and Families will determine whether to award a grant to a county-applicant that meets the eligibility requirements; and
  - Provide that the grant be used to improve safety or permanency outcomes, enhance due process, or increase timeliness or resolution in child protection cases.

**B. The Legislature should provide funding for legal and judicial personnel to support trial judges.**

Background

The Task Force polled Texas judges about the resources that they needed to more efficiently handle the cases on their dockets and, more specifically, cases needing special judicial supervision.[124] Of the resources listed in the survey, 49% of those responding would have been aided by a staff or briefing attorney; 45% would have been aided by additional technology; 29% by additional staff; 22.6% by an associate judge; and 21.4% by a special master. The percentages for those who would be aided by such resources in the next two years appear to be about the same. The most frequently identified resources needed for cases requiring special judicial attention are briefing attorneys and visiting judges. However, judges generally report that they need flexibility, so that resource allocation can change as the caseload changes.

The Task Force also reviewed a 2006 Office of Court Administration survey of Texas trial judges regarding their access to and need for staff attorneys.[125] That survey indicated that 96.2% of trial judges do not have access to dedicated legal staff, 86.8% do not have access to shared legal staff, and about 60% of judges would be interested in the availability of a centralized shared legal staff.

Although some densely populated counties now provide resources for trial judges to hire staff attorneys, a vast majority of Texas counties do not. The Task Force recognized that the State does not have the resources to provide a staff attorney for each district judge in the state, and that many trial judges do not have the need for a full-time staff attorney. Therefore, the Task Force recommends that a pool of staff attorneys be available to the presiding judges to assign to particular courts when needed.

The Task Force also recommends full funding for the visiting judge program. Visiting judges are assigned to trial and appellate courts to hear cases when the judge who would otherwise sit is unable to hear the case or has a conflict of interest that precludes hearing the case. Trial court assignments are made by the presiding judges of the nine administrative judicial regions. A visiting judge may be assigned to trial courts to assist with the docket when the judge is on vacation or sick, recused or disqualified, or when the suit is to remove a locally elected official.[126] The most prevalent reason for assigning a visiting judge in Texas (and in the metropolitan areas of the state) is assistance with a heavy docket. Recusal and disqualification are the main reasons for assigning a visiting judge in more rural regions.[127]

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124 *See infra* App. 4 (Survey on Complex Cases Results).

125 *See infra* App. 9, Office of Court Administration, Survey of Judges Concerning Need for Staff Attorneys (2006).

126 Tex. Gov't Code Ann., Chapter 74, Subchapter C.

127 Legis. Budget Bd., Financing the Judiciary in Texas: Legislative Primer (1st Ed.) app. F (2005), http://www.lbb.state.tx.us/Other_Pubs/Judiciary_Leg_Primer_0107.pdf.

During the budgetary crisis in 2003, the 78th Legislature reduced funding for the visiting judge program by sixty-seven percent.[128] The program was also capped instead of being an "estimated" (in effect, unlimited) appropriation. The current appropriation for the program is approximately $4.3 million per year.[129] The regional presiding judges recently requested an additional approximately $900,000 per year. The Task Force recommendation would support this request so that the presiding judges are able to fully exercise their authority and obligation to fill gaps in the state court system without delay.

A robust visiting judge program is also necessary to efficiently handle cases requiring special judicial attention. The assignment of these cases to a single judge early in the litigation is necessary if there is to be a timely and efficient resolution. However, absent effective management and the possibility of assistance from a visiting judge, the court is confronted with a Hobson's choice: allow the complex case to languish, allow the court's remaining docket to languish, or, even worse, attempt to address all matters with none getting the proper attention.

Action Plan

- The Legislature should amend Section 74.050 of the Texas Government Code to authorize the JCAR to hire up to 27 staff attorneys who will be available to assist trial judges.

- The Legislature should reinstate full funding—an additional $900,000 per year—for the visiting judge program.

2. *In-County Transfers. All courts should be able to transfer cases to other courts in the county with the consent of the parties and the affected courts.*

**A. The Legislature should amend Chapter 25 of the Texas Government Code to allow district courts, county courts at law, constitutional county courts, statutory probate courts and justice courts to transfer cases to another court in the county with consent of the parties and courts.**

Background

To further maximize efficiencies in the Texas trial court system, the Task Force recommends that trial courts be allowed to transfer cases to other courts within the county when the parties and the

128 *Id.*

129 General Appropriations Act, p. IV-23, Judiciary Section, Comptroller's Dept., Strategy A.1.2.

judges consent to the transfer. In other words, as long as all parties and both the transferring judge and the assigned judge consent, a pending case may be transferred to another trial court within the county, even if the assigned court did not originally have jurisdiction over the case. This has been referred to as the "judge is a judge" provision of C.S.S.B 1204. This provision would provide additional flexibility into the court structure and allow cases to move more efficiently through the court system. Typically, the provision would be used to allow the trial courts to transfer cases to deal with routine matters, such as entering pleas in criminal cases or conducting other uncontested hearings.

For example, suppose a district court is tied up for two weeks on a murder trial. Suppose further that there is a civil case with over a million dollars in controversy pending in the same district court, and, in that case, damages are being claimed on behalf of a minor. The plaintiffs and the defendant have settled the civil case, and the guardian *ad litem* recommends that the settlement be approved. But the settlement must be proved up before the court, and the parties will have to wait at least two weeks for a hearing before the district judge. However, the county court at law judge can hear the settlement prove-up the next day because of an opening on its docket. If the plaintiffs, the defendant, the *ad litem*, the district court judge, and the county court at law judge all agree, the "judge is a judge" provision would allow the case to be transferred to the county court at law. The case can be disposed of in a timely manner even though the statutory county court did not have jurisdiction over the case.

Allowing transfers under these circumstances allows the trial courts to work together to move through their dockets. Furthermore, these transfers could allow certain judges to better exercise their expertise without formally designating a particular court as a specialized court by local rule. For instance, if a judge in a particular county court at law is experienced in handling probate matters, cases filed in other trial courts could be transferred to that judge after obtaining the necessary consents.

By requiring the consent of all parties, the transferring judge, and the assigned judge before a transfer can occur, the provision achieves a system of checks and balances that prevent it from being abused. Usually, one party will not agree to transfer if the transfer is not in the party's best interest. However, in certain situations, the transferring and the assigned judges might refuse to agree to the transfer. For example, the assigned judge's education, experience, and familiarity with the subject matter of the case could counsel a judge to refuse a transfer to a justice of the peace court.

Action Plan

- The Legislature should add Section 23.002 to the Texas Government Code, to allow district courts, constitutional county courts, statutory county courts, and justice courts to transfer pending cases among themselves within the county with the consent of all parties to the case,

as well as the transferring and assigned judges, regardless of whether the court to which the case is transferred originally had jurisdiction of the matter.

**B. The Legislature should amend the Texas Government Code to allow justice courts to adopt local rules, and amend the Texas Civil Practices & Remedies Code and the Texas Code of Criminal Procedure to allow justice courts to transfer civil and criminal cases within the county.**

Background

Each county in Texas is divided into justice of the peace precincts. The least populous counties may have one precinct, but counties of 30,000 or more population have four to eight precincts. Each precinct has one justice of the peace, who serves a term of four years. Justice courts have jurisdiction over criminal offenses that are punishable by fine only and over civil cases in which the amount in controversy, exclusive of interest, does not exceed $10,000. Justices of the peace also serve as magistrates who can issue warrants to arrest or search in felony and misdemeanor cases, discharge an accused or remand the accused to jail and set bail, and act as coroners in counties that do not have medical examiners. The caseload in these courts is high and is getting higher, as the JP criminal caseload has increased every year and as civil jurisdiction has significantly expanded. More specifically, prior to 1995, justice court civil jurisdiction was $2,500; in 1995, civil jurisdiction increased to $5,000; then, in 2007, the amount was doubled to $10,000.

Texas Civil Practice & Remedies Code, Subchapter E, governs venue of justice courts.[130] Unlike traditional venue rules, which only determine the county in which permissive or mandatory venue exists, venue of an action brought in justice courts also requires a nexus with the precinct in which suit is brought. As a general rule, venue of claims within the jurisdiction of justice courts is in the county and precinct where one or more of the defendants reside.[131] There are a number of exceptions to the general rule, which include lawsuits: 1) involving forcible entry and detainer actions;[132] 2) to recover personal property;[133] 3) for rent;[134] 4) on a contract;[135] 5) on a tort;[136] 6) against a corporation;[137] and 7) against insurance companies.[138] Each of these exceptions to the general rule requires some nexus between the claim alleged and the precinct in which the action may be brought.

130 Tex. Civ. Prac. & Rem. Code Ann. § 15.081-15.100 (Vernon 2006).
131 *Id.* at § 15.082.
132 *Id.* at § 15.084.
133 *Id.* at § 15.090.
134 *Id.* at § 15.091.
135 *Id.* at § 15.092.
136 Tex. Civ. Prac. & Rem. Code Ann. § 15.093.
137 Tex. Civ. Prac. & Rem. Code Ann. § 15.094.
138 *Id.* at § 15.097.

The Texas Government Code allows statutory county and district courts to adopt, by majority vote, local rules that govern the management of cases within a county.[139] Among other things, the rules may provide for the assignment, docketing, and transfer of cases between the various courts. No such provision exists regarding justice courts. Allowing justice courts to manage their dockets by local rule will give these judges the same opportunity to maximize flexibility and efficient caseload management. This would require amendments to the current venue provisions so that civil cases could be transferred intra-county by local rule. Any proposal would also require amendments to the Texas Code of Criminal Procedure.

Action Plan

- The Legislature should amend the Texas Government Code to allow justice courts the right to adopt local rules governing actions within their county;

- The Legislature should amend the Texas Civil Practice and Remedies Code, Section 15, to allow justice courts the right to transfer civil cases from one precinct to another pursuant to local rules;

- The Legislature should amend the Texas Code of Criminal Procedure to allow justice courts the right to transfer criminal actions by local rules.

3. *Regional Administration. The Texas Supreme Court should select the regional presiding judges with significant local input.*

Background

Texas is divided in to nine administrative regions.[140] The Governor, with the advice and consent of the Texas Senate, appoints a presiding judge to each region.[141] The presiding judge serves a four-year term.[142] A presiding judge must be, at the time of appointment, a regularly elected or retired district judge, a former judge with at least twelve years of service as a district judge, or a retired appellate judge with judicial experience on a district court.[143]

The regional presiding judges have many responsibilities.[144] They advise local judges on case flow management and make recommendations to the Texas Supreme Court on changes in the organization,

139 *See* Tex. Gov't Code Ann. § 74.093.
140 *Id.* at § 74.042(a).
141 *Id.* at § 74.005(a).
142 Tex. Gov't Code Ann. at § 74.044.
143 *Id.* at § 74.045.
144 *Id.* at §§ 74.046-74.049.

jurisdiction, operation or procedures of the region that might improve the administration of justice.[145] They also assign judges of the region to other counties in the region when the caseloads demand or when the regularly sitting judge is recused.[146]

Despite these important judicial functions, the regional presiding judges, because they are appointed from outside of the judiciary, are not particularly accountable to the Texas Supreme Court—the entity constitutionally charged with the fair and efficient administration of justice in Texas, or to any other judicial officer or agency. Moreover, irrelevant political issues may prevent the best administrator from being appointed. And regional presiding judges are, in the words of the current Chief Justice, "more likely to support (and less likely to thwart) Supreme Court initiatives if appointed by Chief Justice."

This issue saw division among the Task Force members. Preliminary straw votes saw a slight majority favoring the appointment of regional presiding judges by the Texas Supreme Court without limitation, while only seven members favored leaving the appointment of regional presiding judges with the Governor. Several members expressed that they would favor Texas Supreme Court appointment if the process included some kind of peer input. This group was interested in more local control than appointment by the Texas Supreme Court would allow. Ultimately, the Task Force adopted a consensus proposal that allows the Texas Supreme Court to select the regional presiding judge with significant peer input at the local level.

Action Plan

- The Legislature should amend Section 74.005 of the Texas Government Code to allow the Texas Supreme Court to select the regional presiding judges from a list of no more than three nominees provided by the council of judges from that region.

4. *Appellate Docket Equalization. The appellate court system should continue to have flexible tools at its disposal to ensure that cases are handled fairly and efficiently.*

Background

Texas has fourteen intermediate appellate courts,[147] the largest number of appellate courts in the nation. Texas has one more intermediate court of appeals than the entire federal system, eight more than California and New York, and nine more than Florida.[148]

145 *Id.*

146 *Id.* at §§ 74.052, 74.056.

147 Tex. Gov't Code Ann. § 22.201(a).

148 28 U.S.C. § 41 (creating 13 judicial circuits); Directory of Judges of State Courts of Appeal, Council of Chief Judges of Courts of Appeals, at xxv (2005) (chart of number of appellate courts per state).

This high number of courts is an historical anomaly. From 1876 to 1978, the Texas Constitution limited the number of justices of each court of appeals to only three.[149] Consequently, as population and case filings increased, it was necessary to create new courts to handle the increased caseload. Today, the constitution no longer limits the courts of appeals to three justices. It does, however, require at least three justices on each court.[150]

Despite its size, however, the Texas appellate court structure is nowhere near as complex as the Texas trial court system. In fact, the diversity of Texas, both geographically and culturally, makes a centralized appellate system particularly undesirable. Rather, the courts of appeals should remain close to the electorate so that appellate judges can more easily be held accountable through local elections.

However, given the population disparity among the various parts of the state, there is a significant difference in the workload among the 80 intermediate appellate court justices sitting on the fourteen courts. In 2007 an average of 125 new cases were filed per justice.[151] The new filings per judge vary from about 100 filings per year in Eastland, Amarillo and Texarkana, to up to 140 or higher in Texas's urban courts.[152]

A number of tools have developed over the years to address this disparity. The tool most utilized today is case transfers. Specifically, the Legislature has granted the Supreme Court of Texas the authority to transfer cases among the courts for "good cause."[153] It has also mandated that the Court "equalize" the dockets of the courts of appeals by transferring cases from the busy courts to the less-busy courts rather than let judges sit idle or make them serve away from home.[154]

These docket-equalization transfers are disliked for a number of reasons.[155] The Texas Supreme Court, through its rulemaking power, recently resolved the most problematic issue that arises when a case is transferred from one appellate court to another, that is, when a case-determinative conflict exists

149 James T. ("Jim") Worthen, *The Organizational & Structural Development of Intermediate Appellate Courts in Texas*, 46 S. Tex.. L. Rev. 33, 36 (2004).

150 Tex. Const. Art. V, § 6(a).

151 *See* Office of Court Administration, Activity for the Fiscal year Ended August 31, 2007 (2007), http://www.courts.state.tx.us/pubs/AR2007/coas/4-activity-detail-2007.xls.

152 *Id.*

153 Tex. Gov't Code Ann. § 73.001.

154 *See, e.g.*, Act of June 18, 2005, 79th Leg., R.S., ch. 1369, Art. IV, 2005 Tex. Gen. Laws 4324, 4804 ("Equalization shall be considered achieved if the new cases filed each year per justice are equalized by 10% or less among all the courts of appeals.").

155 *See, e.g., Recommendations for Reallocation of Courts of Appeals*, Order of the Supreme Court of Texas, dated December 17, 2002, Misc. Docket No. 02-9232 ("On top of the expense and lost time that such travel entails, the transfer process increases confusion and uncertainty in the judicial process."); Wade Glover, Comment, *Docket Equalization: Turning the Texas Court System Into a Crapshoot and How Your Case May Be Affected*, 40 Tex. Tech. L. Rev. 295 (2008); Scott A. Brister, *Is it Time to Reform our Courts of Appeals*, 40 Hou. Law. 22, March-April 2003; Susan Borreson, *Docket Police Issue More Transfer Orders*, Tex. Lawyer, May 11, 1998.

between the law of the transferor court and that of the transferee court.[156] But there are other reasons to avoid case transfers. From a practical perspective, the practice of transferring cases creates significant inefficiencies for parties, courts and clerks. Case transfers also diminish the electorate's ability to hold elected judicial officials accountable, require citizens to bear the cost of deciding excess appeals from outside the region, and undermine a justice's ethical obligation to handle cases filed in that court.

Nevertheless, the Task Force recognizes case transfers can be a valuable tool, when used sparingly, to resolve caseload imbalances and, thus, recommends that it remain one of many flexible tools at the courts' disposal to ensure that cases are handled fairly and efficiently. Moreover, the Chief Justices of the Courts of Appeals are in the best position to respond to imbalances as they arise; they should monitor their caseloads continuously and make recommendations to the Texas Supreme Court and the Legislature regarding the appropriate measures to maintain reasonably equal caseloads.

Action Plan

- The Texas Supreme Court and the Chief Justices of the Courts of Appeals should use the following tools in the following order of priority to address caseload imbalances among the court of appeals:

  1) special assignment of sitting justices;

  2) use of retired justices (from present district first);

  3) transfer of cases;

  4) redistricting of the courts of appeals.

- Caseload equalization techniques should be utilized only when the need for equalization is clearly indicated and with due regard for economy, convenience, local court orientation, and the recommendations of the chief justices.

- Significant redistricting of the appellate courts should be effectuated only as a last resort when all other balancing techniques are proven ineffective.

156 *See* Tex. R. App. P. 41.3 (governing the proper precedent to apply when a case is transferred between courts of appeals).

IV. **Excellence**: It is fundamental that the Texas court system must be an excellent method of dispute resolution. Providing juries and judges with more tools to assist them in performing their jobs will ensure informed decisions. Maximizing jury comprehension should lead to greater accuracy and fairness in jury verdicts. Greater resources and educational opportunities for judges should also enhance judicial decision-making.

1. *Juror Comprehension. Trial procedures should facilitate the jury's comprehension of the evidence so that it can render an informed and fair verdict. Court personnel should do all they reasonably can to improve citizens' experience with jury service.*

**A. The Texas Rules of Civil Procedure should expressly allow, in appropriate cases, juror note-taking, written questions from the jury, and interim statements by counsel.**

Background

Jury note-taking, written jury questions, and interim statements by counsel are all widely accepted trial procedures that facilitate jury comprehension. Note-taking aids juror memory, encourages more active participation, and helps to decrease deliberation time by allowing jurors to more efficiently consider evidence. Similarly, written jury questions enable the jury to be more attentive during trial, help jurors resolve questions they have about the evidence, and allow attorneys to identify and resolve issues troubling the jury. Finally, long, complex trials often demand a periodic statement by counsel, in the nature of an opening statement, concerning the evidence presented.

Action Plan

- The Supreme Court of Texas should amend the Rules of Civil Procedure to expressly allow, in appropriate cases, juror note-taking, written questions for the jury, and interim statements.

**B. Counties should be encouraged to adopt electronic jury assembly procedures when possible and to adopt other procedures to make jury service more convenient and efficient.**

Background

Travis County was the first county in the country to reject the "cattle call" of jury impaneling in lieu of a process over the internet. Started in 2002, the "I-jury" system allowed users to submit their

response to their jury summons via an electronic questionnaire.[157] The questionnaire contains qualification and exemption standards. It also allows the potential jurors to specify what dates would prohibit jury service, and even allows the individual to postpone service for up to 90 days. Surveys indicate the convenience of the system has increased citizens' positive perceptions of the jury process. The I-jury system is not just convenient though. It also has saved Travis County significant funds, in the form of jury compensation, since the personal appearance for impaneling never takes place, and rent for impaneling facilities.

Action Plan

- The Legislature should encourage Texas counties to adopt electronic jury assembly procedures when possible and to adopt other procedures to make jury service more convenient.

2. *Judicial Education. Judges should receive the education, they need for the types of cases they will encounter.*

Background

In Texas, judicial education is administered by the Court of Criminal Appeals, pursuant to Chapter 56, Texas Government Code, and Appropriations Act riders applicable to the Court of Criminal Appeals. The Court has adopted Rules of Judicial Education that require appellate, district and county court judges, including retired and former judges if they are subject to assignment, to complete "30 hours of instruction in the administrative duties of office and substantive, procedural and evidentiary laws unless the judge has previously complied with this requirement and has been absent from the bench less than one year before taking the present office. . .[and] each fiscal year thereafter, complete at least 16 hours of instruction in substantive, procedural and evidentiary laws and court administration."[158] The current continuing education system for judges has two primary providers, the State Bar of Texas and the Texas Center for the Judiciary.

Everyone who has studied management of complex cases emphasizes the need for judicial education and sharing of best practices in administering these kinds of cases. Judges who expect to handle complex cases should be encouraged to learn more about administering them. As one provider of judicial education has noted, "A well-informed and well-educated judiciary is essential to a sound civil justice system. Judges routinely hear cases involving complex issues of economics, finance, accounting, statistics, and science. Yet many judges lack the basic knowledge in these disciplines necessary to distinguish

157 Available at http://www.co.travis.tx.us/district_clerk/jury/default.asp.

158 For a more detailed analysis of the statutory basis for judicial education, see http://www.courts.state.tx.us/oca/judicialeducation.asp.

between valid and invalid arguments. This educational void means that litigants do not meet on a level playing field and this threatens the fundamental principles of a fair and just society. "[159]

The rules also require that justices of the peace must complete, within one year of taking office, an 80 hour course of instruction from the Texas Justice Court Training Center in the performance of the duties of office; and complete in the second year after taking office, a 20-hour course of instruction from the Texas Justice Court Training Center in the performance of duties of office; and each fiscal year thereafter, complete a 20 hour course of instruction approved by a Justice Court Education Committee in the performance of the duties of office. Nevertheless, the Texas justices of the peace have identified a need for additional judicial education after the justice court amount in controversy jurisdiction was increased to $10,000. A survey of justices of the peace in Texas, which had a response rate of over 60%, shows that over 67% of justices of the peace who responded feel that they need an average of 15 additional hours of judicial education on civil matters.[160] Therefore, the Task Force recommends that the justices of the peace receive this needed education. This additional education could be provided through the Texas Justice Court Training Center, the Center for the Judiciary, the State Bar of Texas, a local Bar Association, or an accredited law school in Texas.

Action Plan

- Judges who handle cases that require special judicial attention should be encouraged to take additional continuing education to assist them in handling those cases.

- The Legislature should amend Section 27.005 of the Texas Government Code to require justices of the peace to take an additional 10 to 15 hours of continuing education in substantive, procedural and evidentiary law that governs civil cases.

3. *Arbitration. The Legislature should amend the Texas Arbitration Act and other statutes to address concerns raised by the growing use of arbitration.*

Background

During the 80th Legislative Session, Representative Dan Gattis and Senator Robert Duncan proposed several revisions to Chapter 171 of the Texas Civil Practice and Remedies Code, known as the Texas Arbitration Act ("TAA"), to address certain concerns raised by the growing use of arbitration. H.B. 3885 addressed concerns regarding perceived inadequate disclosure and negotiation of arbitration

159 *See* http://www.law.northwestern.edu/jep/.

160 *See infra* App. 2 (Justice of the Peace Survey Results).

clauses, especially in the consumer context, as well as issues of arbitration procedure and judicial review. The bill did not pass, and the Task Force was asked to review the proposed legislation and make recommendations. Because so much of arbitration law is subject to federal preemption under the Federal Arbitration Act ("FAA"), the Task Force recognizes that many legislative goals must be achieved at the federal rather than the state level.

### A. The Legislature should amend the Texas Arbitration Act to protect against inadequate disclosure and unfair methods of negotiating arbitration clauses.

Background

Critics of arbitration point to its growing use in consumer, employment, and other contexts in which bargaining power between the parties may be disparate. Other critics note that arbitration clauses, especially in the retail consumer context, are often disclosed in a manner rendering them unlikely to be read by the consumer. These concerns present issues of contract formation.

Action Plan

- The Legislature should amend the TAA to raise from $50,000 to $150,000 the threshold below which the signature of an attorney is required to enforce an arbitration agreement.

- The Legislature should amend the TAA to exempt consumer transactions (borrowing definitions from the Deceptive Trade Practices Act) and employment disputes.

### B. The Legislature should amend the Texas Arbitration Act to provide additional procedural protections to litigants participating in arbitration hearings.

Background

Under the TAA, a party may waive notice of an arbitration hearing, effectively depriving itself of any notice should an arbitrable dispute occur. Moreover, there is no provision regarding a right to a stenographic recording of the hearing, which is important when a party seeks review of the ultimate award. Also of concern is the lack of objective qualifications for a court appointed arbitrator—the statute only requires that the arbitrator be "qualified."[161] Finally, under current law, a party seeking

161 Tex. Civ. Prac. & Rem. Code § 171.041(b).

review of a trial court's order refusing to enforce an arbitration agreement must file parallel proceedings in the court of appeals when it is unclear whether the FAA or the TAA applies. The TAA provides for an interlocutory appeal, but the FAA requires mandamus.[162] As noted by Texas Supreme Court Justice Brister, "requiring litigants to pursue parallel mandamus and interlocutory appeal proceedings in arbitration cases [is an] unnecessary duplication [that] makes arbitration more cumbersome and costly than other cases, rather than the "simplicity, informality, and expedition" intended for them."[163]

Action Plan

- The Legislature should amend the TAA to establish:
    - a non-waivable five-day minimum notice period for all arbitration hearings;
    - a non-waivable right to a stenographic recording at the cost of the party requesting such record;
    - objective qualifications (education, training and experience) for judicially appointed arbitrators;
- The Legislature should amend Section 51 of the Texas Civil Practice & Remedies Code to allow an interlocutory appeal of an arbitration agreement covered by the FAA to the same extent as allowed under the TAA.

### C. The Legislature should amend the Texas Arbitration Act to provide for additional, although limited, judicial review of arbitration awards.

Background

The statutory and common law grounds for vacating arbitration awards are quite narrow. Section 171.088 of the TAA sets out the circumstances under which the arbitration award can be vacated. Section 171.022 provides that unconscionable arbitration agreements should not be enforced. Critics of arbitration argue that such narrow grounds do not provide for meaningful substantive judicial review of arbitration awards. They further argue that development of the common law is impeded by private dispute resolution. Legislation proposed in the 80th Legislative Session would provide for district

162 *In re D. Wilson Construction Co.*, 196 S.W.3d 774, 783 (Tex. 2006)(Brister, J. concurring).
163 *Id.*

court review of all arbitration awards "as if from a bench trial." Proponents of arbitration contend that the proposed right of unlimited judicial review for errors of fact and law in all cases would be procedurally unworkable, and would effectively destroy a key element of arbitration – finality. The Task Force does not recommend unlimited judicial review of arbitral awards. Several essential features of arbitration would be undermined by unlimited access to appellate review up to the Texas Supreme Court. The Task Force does, however, recommend adding two statutory grounds for judicial review.

Action Plan

- The Legislature should amend the TAA to allow courts to vacate an arbitration award that "clearly violates fundamental public policy of the State of Texas".

- The Legislature should amend Section 171.222 of the TAA, which prohibits enforcement of an unconscionable arbitration agreement, to make clear that violations of state and federal constitutional rights may render an arbitration contract unconscionable.

## CONCLUSION

The State Bar of Texas is in a unique position to assist the Legislature, the judiciary, the public, and other interested parties as they consider the pros and cons of changes to our judicial system. Our unified, integrated Bar represents a wide spectrum of practice areas, is racially and geographically diverse, and is nonpartisan. As such, the State Bar should be well equipped to serve as a trusted forum for vetting any proposed changes to our system of justice.

The Task Force recommends that the State Bar continue this effort in future years to better inform the process of our evolving Texas court system. The work of this Task Force, and the experience of reacting to S.B. 1204 in a time frame that many perceived to be inadequate for thoughtful study, have reinforced the need for the State Bar to maintain a vigilant and well-informed presence whenever administration of justice is the topic of legislation. Members of the Bar, on behalf of their clients, are the principal "customers" of our state courts, and have a unique perspective and depth of experience that must be brought to bear in any such discussions. It is also critical that future iterations of the Task Force continue to represent all key constituencies within the Bar, the courts (at all levels), the Legislature, and the public.

When significant changes to our system of justice are proposed, there should be an opportunity for all interested parties to study the changes and provide comment. Future lawmakers ought to be able to say, with respect to any bill significantly impacting the administration of justice, "This bill has been fully vetted and discussed by a well-qualified, nonpartisan task force of the State Bar of Texas, and a broad consensus emerged for these changes." Alternatively, lawmakers ought to be able to say, "Significant disagreement exists concerning certain aspects of this bill, as reflected in the State Bar's report."

With that type of input from some of the best legal minds of our state and from all walks of legal practice and locales, the administration of justice and the citizens of Texas will be the ultimate winners.

# Minority Reports

# M E M O R A N D U M

September 25, 2008

TO: State Bar of Texas Court Administration Task Force

FROM: John C. Ale

RE: Task Force Report

Let me begin by saying what an honor and a pleasure it has been to serve with each of you on this Task Force. Merely to be included in such a group is an honor; the pleasure came in learning from the members, both substantively and from their concern as citizens of our State, as they analyzed issues soberly and cordially despite varying experiences and perspectives. A special treat for me as a transactional lawyer—the sole one on the Task Force—was interacting professionally with so many judges, court administrators and other dedicated public servants, something I only rarely have had the opportunity to do since my days as a judicial clerk.

I agree with almost every aspect of the Report that Professor Albright so ably has consolidated. (I must admit that, in the case of many administrative and procedural matters, that is out of deference to judges, administrators and trial lawyers, who are far more knowledgeable than I on those matters.) This memorandum addresses three areas, one to emphasize the Report's conclusion that the subject requires further consideration, another to support strongly a recommendation making life easier on our citizens, and the final to register respectful disagreement with my colleagues' conclusions. I ask that this memorandum be included with the Report.

To be clear, these comments are solely my own. They do not necessarily reflect the views of my law firm, its other lawyers, or our clients, or of the Business Law Section of the State Bar or its Council, of which I recently served as Chair. They are not made on behalf of any other person or organization or with input from anyone else, other than my confirming my understanding of a few niceties of arbitration law with members of the Task Force and a litigation partner at my own firm.

1. Specialized Courts

As Part III(1)(A) of the Task Force's Report states, we "quickly reached a consensus not to recommend a specialized court system at this time" and "tabled discussion of a statewide business court, because it found that adoption of such a system would require detailed study of important constitutional and statutory issues such as venue and election of judges." I want to emphasize that we did not conclude these were bad ideas. On the contrary, as the Report implies, these deserve further, and thoughtful, consideration. Further, Part II(2)(B) of the Report endorses specialization on the local level where possible.

In my practice—which uniquely among the Task Force's members is a transactional one—I often must counsel clients on whether to agree to resolve disputes in a particular forum. The decision sometimes is based on geographic convenience or fear (rightly or wrongly) of being "home towned" by a party perceived as well connected locally. In addition, as I told the subcommittee of the Task Force looking at this issue, parties often choose courts specializing in business cases, such as Delaware's Chancery Court and the Commercial Division of the Supreme Court of New York in Manhattan. In this way, they have greater assurance of obtaining a judge familiar with the issues that may arise, both substantively and procedurally, which in turn increases the likelihood that a decision will be reached quickly (and thus at less expense) and consistent with precedent. Parties not wanting

to leave Texas often agree to exclusive venue in one of the larger counties so that they can be assured of a judge who at least concentrates on civil cases. That is not disparaging in any way the capability of any other judge; it reflects only the reality that no one can be a master of all issues or disciplines.[1]

As the Task Force's Report correctly states, promoting excellence in our court system is fundamental. Although we cherish the mystique of the GP in medicine, we all realize that there are situations when specialists enhance the quality or efficiency of the care provided. Our larger counties already divide the work of their courts among civil, criminal and family law. To assure Texans quality judicial care, we should promote specialization where that would contribute to the quality of the process or the outcome.

This is not an issue just for commercial matters: it may include courts for cases with especially large numbers of parties—the sad situation in El Dorado earlier this year being but one example—or for violent versus nonviolent crimes, probate versus custody cases, and tort versus contract versus intellectual property civil disputes. At some point, this may mean weighing always going to a locally elected judge against the need to concentrate experience in judges familiar with particular subject matter or procedures who can render well informed decisions efficiently. I like most of my medical care to come from my GP near my home, but

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[1] As I said in our subcommittee meeting, we cannot expect a trial judge with general jurisdiction to know the law in every substantive or procedural area. Briefs from counsel can bring case and statutory law to their attention, but too often the budgets clients impose on lawyers or their own busy schedules prevent every issue from being researched and advanced as thoroughly as it could be. That can lead a judge, through no fault of his or her own, to base a decision on cases that have been overruled by statute or subsequent appellate decisions. Resources can help, as the Task Force Report suggests. Narrowing the areas an individual judge must master can help as well.

The Task Force's Report cites a somewhat unscientific poll of sitting trial judges as broadly opposing specialization. As the Report notes, a member of the subcommittee studying these issues observed that judges "appear to be adamant about retaining local control over their cases." Judges themselves have terrific insights into many areas of court administration; however, with respect, one must question whether judges who sought their positions with minimal specialization as the rule are in the best position to evaluate objectively whether that approach provides litigants the highest quality process and results.

once in a while I may need a specialist, even if that specialist is out of town. To assure legal health, a similar step might be appropriate.

Our larger counties already have the power to assign cases to particular district courts. As Part II(2)(B) of the report advocates, local judges should experiment by sorting cases by subject matter or procedural issues (e.g., complex discovery, class actions) so that litigants receive decisions most efficiently. Perhaps that process will produce a paradigm for future action on a broader scale. I encourage the State Bar and the Legislature to continue to look at these possibilities.

2. Jury Service

The Task Force Report, in Part IV(1)(B), encourages courts to adopt electronic jury assembly and other procedures to make jury service more convenient and efficient. As a non-litigator, my most frequent encounter with the court system probably is jury duty. Despite greater flexibility to reschedule "without cause" in my county (Harris), taking more than half a day to assemble and wait only to be dismissed because the courts did not need this many panels, or an evident strike (such as relationships to the parties or their counsel), seems unnecessary—and the burden is far less on a professional like myself, who comes downtown every business day anyway and can work flexible hours, than on the vast majority of the jury pool. The current "cattle call" approach strikes many non-lawyer friends and fellow potential jurors as an example of government and lawyers designing systems around their own convenience, not that of citizens.

As the Report suggests, the internet and other methods permit much of voir dire to occur in advance, without the need of bringing people to court. I have friends and relatives in other states who respond to a summons in this fashion and can learn quickly whether they will be stricken or need to appear for further questioning. Clearly, any process must take into account that many people do not have regular internet access or are not technically sophisticated, but I'm sure that

smart people looking at this issue can develop systems, such as services at schools and libraries, to ensure this method does not skew the pool. As the Report notes, this not only improves a citizen's experience in often the most frequent interaction with the court system, it also can save money.

3. Arbitration

Part IV(3) of the Task Force's Report recommends multiple changes to the Texas Arbitration Act. The Report in conclusory fashion assumes, rather than demonstrates, widespread abuses in arbitration. Further, the proposals that the Task Force advances do little, if anything, to address the abuses touted, which principally relate to disclosure and disparate bargaining power. Instead, the Task Force would (1) effectively forbid arbitration in broad categories of disputes where that method of resolving disputes very well may be advantageous to our citizens and (2) undermine the finality of arbitral awards, thus taking away a major benefit of this process when permitted. I respectfully disagree with the Task Force's recommendations in Part IV(3)(A) and (C) of its Report.

Part IV(3)(A) of the Report begins, "The Legislature should amend the Texas Arbitration Act to protect against inadequate disclosure and unfair methods of negotiating arbitration clauses." Beyond brief references to what "critics note," the Report does not discuss the specifics, the frequency, the consequences, or the causes of the alleged problems. In a complete non sequitur, the Task Force proposes curing these supposed abuses, which relate solely to the formation of arbitration agreements, by effectively banning arbitration for all consumer transactions and all employment disputes.[2] Thus, rather than tackling purported

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[2] The Task Force also proposes increasing the threshold for when an arbitration agreement must be signed by an attorney from $50,000 to $150,000. The existing threshold of $50,000 already is well above the value of the typical retail consumer transaction, which is the only situation that the Task Force cites as problematic. Because, in the real world, no one is going to multiply the cost of buying a refrigerator or hiring an exterminator by retaining a lawyer to review an arbitration clause in a bill of sale or service contract, the statute already excludes most retail consumer agreements as a

problems in formation, the Task Force would render an often efficient, inexpensive and private means of resolving disputes wholly unavailable in vast categories of situations where it can have a real benefit, all because some people allegedly enter into arbitration agreements unwisely.

Task Force members no doubt sincerely desire to "protect" consumers and employees by assuring them access to the courts. Yet even if courts in general reach "better" decisions than arbitrators—a premise the Report implicitly assumes but for which it offers not even anecdotal support—arbitration can offer a quick, cheap, and more confidential resolution of many simple disputes. An individual rationally may conclude that these benefits outweigh the costs of seeking a "perfect" but protracted and costly result through the courts. An individual competent to represent himself or herself in pursuing or defending a claim in the informal setting of arbitration also may be intimidated (rightly) by the prospect of going to court without a lawyer, but because hiring a lawyer can be expensive (especially compared to the size of the dispute), that consumer or employee may be less, not more, likely to continue the claim or defense judicially. In addition, basic economics tells us that sellers of goods and services who now prefer arbitration for its lower cost and simplicity will raise their prices to take into account the added cost of litigation. Does imposing the material financial, time, and other burdens of mandatory full-court litigation really help consumers and employees? The Report does not even discuss these issues.[3]

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practical matter—and that is before increasing this threshold or adopting the proposed categorical exclusion for consumer transactions discussed below.

[3] No doubt there are many examples when arbitration is protracted and expensive. Most of the episodes I have heard described involve large commercial disputes, not retail consumer or employee disputes. I have no doubt there may be examples, however, but surely there are many when arbitration saves the consumer or employee money in terms of litigation costs. One also hears of biased arbitrators and other deficiencies in the process, but as noted below the Texas Arbitration Act already provides several grounds for attacking an award that was procured unfairly.

Moreover, the Task Force does not propose eliminating arbitration just for individuals with disparately lower bargaining power or in contracts of adhesion. First, in defining consumer transaction, the Task Force would borrow from the Texas Deceptive Trade Practices Act. Depending on how much is borrowed—on which the Report is silent—the scope could be breathtaking. That statute defines consumer to include not only individuals but also corporations, partnerships, and other business entities, except when their (or their parent companies') assets exceed $25 million and they are buying goods or services for business or commercial purposes. TEX. BUS. & COMM. CODE § 17.45(4), (10). Thus an arbitration clause would not be enforceable in a multimillion-dollar transaction with a $25-million company, or in a billionaire's contract to buy a jet for personal use or to employ a small contractor to work on a multimillion-dollar vacation home. Second, the proposal applies to all employment disputes, meaning not just the shift worker or secretary but also the CEO with a $1+ million salary, bonuses, long-term incentive plans, and stock options may not agree to arbitration. Multimillion-dollar businesses, billionaires spending their personal money, and highly paid executives do not need to be "protected" from arbitration due to their disparately low bargaining power. Even if one accepts eliminating arbitration in what most people think of as retail consumer or employee contexts, what falls in those categories should be defined narrowly to encompass only those who are presumed to be at a disadvantage.[4]

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[4] The chair of the subcommittee that prepared this recommendation has told me that the intent was not necessarily to utilize the full definition from the Deceptive Trade Practice Act but to allow that to be discussed in the Legislature, with the result more likely to track only individuals "seeking goods, services, money or credit for personal, family or household purposes." If that language were used, the purely commercial transaction with the $25-million business would not be picked up; however, unless some monetary limit is included, the billionaire buying a jet or having work done on a vacation home would, as would the CEO's employment contract. Regardless, I fear that the Report as written, if endorsed by the State Bar Board of Directors, will be used to say we support the very broad definitions from the Deceptive Trade Practices Act.

The Task Force's recommendations simply do not address the problems the Task Force assumes exist: inadequate disclosure and unfair methods of negotiating arbitration clauses. In this vein, arbitration agreements already are revocable under grounds generally applicable to contracts and unenforceable if unconscionable at the time agreed. TEX. CIV. PRAC. & REM. CODE §§ 171.001(b), .022. Under appropriate facts, these principles can address fraud, duress, unequal bargaining power, and contracts of adhesion. In addition, the Texas Arbitration Act already includes numerous grounds for rejecting an award, including procurement by corruption, fraud, or other undue means and misconduct by arbitrators. Id. § 171.088(a). Existing law thus amply addresses the areas that concern the Task Force.[5]

In Part IV(3)(C) of its Report, the Task Force would expand the grounds on which a court may overturn an arbitral award to include matters that "clearly violate of fundamental public policy of the State of Texas" and provide that arbitration agreements violating federal or state constitutional rights are per se unconscionable. The rationale for needing a change is skimpy and unsupported, and the specific recommendation ravages finality, a key benefit of arbitration.

The Task Force again cites unspecified "critics" who "argue that [existing] narrow grounds for arbitration do not provide meaningful substantive judicial review of arbitration awards." Well, isn't that the point? Arbitration is all about not having to go through formal, expensive, time-consuming, and multi-tiered court proceedings. As noted above, the Report never demonstrates that courts come to better resolutions for the litigants, either on the merits alone or after taking cost

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[5] If concepts already in the law do not include sufficient grounds to prevent abuse in the formation of an arbitration agreement, the Legislature could consider requiring that an arbitration clause with individuals having disparately low bargaining power (e.g., natural persons acquiring goods or services under a specified amount for personal or household use, or employees whose annual compensation is under a particular threshold) be "conspicuous" (e.g., boldface type and/or capital letters of a specific size), be signed or initialed separately, and/or highlight specified features (e.g., no judge, no appeal to a court, loser pays).

into account. In addition, the Task Force recounts that some have argued arbitration will prevent development of common law through the courts. Although this may be troubling academically, we must remember that courts exist to serve the litigants, not vice versa. If citizens opt for an alternative method of resolving disputes because they prefer it (for whatever reason) to the courts, we should not interfere with their freedom to do so, as long as they do so knowingly and voluntarily.

As for the solutions to this (non)problem, the Task Force recommends allowing challenges based on violations of "fundamental rights" and "constitutional rights." Over the years, we have seen a multitude of challenges to conduct or contracts based on alleged violations of "fundamental public policy." It does not take much for a lawyer to argue that any statute or judicial decision involves a policy that is "fundamental"—after all, it was adopted by the Legislature or pronounced by our courts—thus permitting a rehashing of an argument rejected in the arbitration. In the case of "constitutional" rights, given that access to courts and trial by jury are protected by both our federal and our state constitutions, do arbitration agreements, which by their very nature preclude court and jury, violate constitutional rights and thus are per se unconscionable? That is a wide open door for further layers of review, at least for the several years it would take for cases to reach our appellate courts to sort out what rights are "fundamental" or "constitutional" in this context. Even if a particular challenge ultimately fails, the process can tax the resources of the prevailing party—who very well may be the "little guy"—and force that party to compromise, when a great benefit of arbitration is a single procedure producing a final and binding decision.

The Task Force, which otherwise rightly advocates efficiency and decries lack of judicial resources, ironically would limit citizens' ability to choose efficient methods to resolve their disputes that do not tax those same scarce judicial resources. If there is a chronic problem with disclosure and negotiation methods—again, something the Report fails to demonstrate—then let's address that problem,

not ban arbitration on a wholesale basis. Under the Task Force's proposals, however, more people must go to court with their disputes and more arbitration awards will be challenged in court. Thus, the only people we can be certain will benefit from these recommendations are lawyers.[6] Fortunately, however, for the reasons the Report itself cites, federal law may preempt these recommendations, even if enacted.

[6] To be clear, I do not assert, or have reason to suspect, that was the goal of any member of the Task Force. That would shock me. I may think the Task Force is wrong, but I do not doubt its good faith. Nonetheless, as representatives of the Bar, we must recognize when our actions create the appearance of advocating self-serving legislation. We should not shrink from recommending what we think is right, but we should not be naïve about what others might assert, however wrong that interpretation may be.

# Dissent to Court Administration Task Force Report

The Court Administration Task Force did an outstanding job on the vast majority of the report. I was honored to have served on the Task Force. I think that most of the report would help out the justice system in the State of Texas. However, I dissent as to three portions of the report:

1) Raising the minimum jurisdiction of District Courts to $10,000.01;
2) Converting the County Courts at Law that wish to keep their jurisdiction over $200,000.00 to District Court, while eliminating their County Court jurisdiction;
3) The long term goal of maintaining a 3 tier trial court system.

The Task Force recommendations were based on four goals: Efficiency, Simplicity, Flexibility, and Excellence. However, the task force's positions on those three issues do not meet those goals.

## Minimum District Court Jurisdiction

On paper, the idea of District Courts having minimum jurisdiction of $10,000.01 looks good. But in practice, especially in rural and small counties, it would have a detrimental effect on litigants. It would create a system where cases under 10,000.00 may never be heard by a lawyer judge until it reaches the Courts of Appeals.

Most of the rural counties do not have County Courts at Law. Therefore these cases would have to be filed in the Justice of the Peace Courts. Most of the Justices of the Peace in those counties are not attorneys. In addition, most of the Constitutional County Court Judges, who would hear any appeal from Justice Court, are not attorneys either. So in those counties, the cases would never be heard by a lawyer judge. I don't believe that creates an ideal system.

## Conversion of Certain County Courts at Law to District Courts Without Maintaining their County Court Jurisdiction

While no one would have initially choose the current system we have currently have concerning County Court at Law jurisdiction, in its own strange way, the system works. Different counties have taken advantage of the versatility of the County Court at Law system, and designed jurisdictions to meet the needs of their individual counties.

These counties have looked at their individual needs and designed their County Court at Law jurisdiction to meet those needs accordingly. They decided what would best serve the citizens and judiciary in those counties. Part of the goal of the Task Force was to increase local control. However, this part of the Task Force report goes against that.

The Task Force's recommends a standardized jurisdiction for County Courts at Law of $200,000.00. Additionally, the Task Force recommends standardized definitions for misdemeanor, family and probate jurisdictions for County Courts at Law. For the regular County Courts at Law, that would work.

But the proposal concerning the "Super" County Courts at Law is flawed. The majority of the state's County Courts at Law have the standardized jurisdiction set out in Chapter 25.0003 of the Government Code ($100,000.00, probate, misdemeanors, justice court appeals, and mental health). But in some counties, there was a need for increased jurisdiction. Some have civil jurisdiction up to $250,000.00, some greater, and some unlimited or equal to a district court. These courts have been referred to as Super County Courts at Law. Many of these courts exercise increased criminal jurisdiction, including felony. Additionally, many County Courts at Law exercise Family and Juvenile jurisdiction. These expanded civil and criminal jurisdictions were chosen due to the needs of those counties. So many of these courts are basically operating as a District Court with some or all County Court jurisdiction. These courts fill the need for those counties.

The expanded jurisdiction was chosen by the individual counties to fill the needs of those individual counties. Some of these courts are in counties that don't have a full time District Court. Others were created in counties to increase productivity and availability of justice and court access. These courts help reduce the civil, family, juvenile, and felony dockets.

Senate Bill 1204 created a standardized jurisdiction for the majority of the County Courts at Law in the state. But it also allowed the counties with the increased jurisdiction to choose. They could voluntarily reduce their County Courts at Law jurisdiction to the standardized one or they could convert to a District Court, while keeping the current County court jurisdiction that they exercised. It essentially would have allowed those courts to continue operating as they currently do. The subcommittee of the Task Force that spent nine (9) months studying this issue recommended the proposal similar to SB 1204. Further, the majority of the judges affected by this support the SB 1204 approach. The judges affected do not want their jurisdictions reduces and do not want jurisdiction taken away. (Based on interviews with judges and local administrative judges of the affected counties)

The Task Force recommendation would not provide that choice. It would force counties to choose between converting their super County Courts at Law to a District court without the County Court jurisdiction or remain a County Court at Law and give up the expanded jurisdiction. Realistically it would force the smaller counties to give up their expanded jurisdiction. The smaller counties with only one or two County Courts at Law would have to choose to give up the expanded jurisdiction and remain as a County Court at Law. Those counties could not choose to not have a without the County Court jurisdiction. So, basically, the Task Force gives the smaller counties no choice.

In order for these counties to provide the same level of services they provide now, they would have to add additional courts. This would create addition expenses for the state and on already financially strapped counties. Why force counties to create new courts when they already have courts that serve their citizens well?

The Task Force's justification for this is uniformity. The Task Force has chosen uniformity over efficiency. They set up a goal of trying to create a system that is flexible and efficient. While the State Bar promotes "Access to Justice", passage of this proposal would have the effect of reducing access to justice in many counties. Some of these counties only have a District Court available half the year. They gave their County

Courts at Law expanded jurisdiction to provide their citizens and litigants access to the courts 365 days a year, not just half.

Further, the Task has a long term goal of removing all expanded jurisdiction for County Courts at Law including and Family, Felony, or Juvenile jurisdiction. This would have a detrimental effect on several counties. In many counties, the County Court at Law is the Family Court or the Juvenile Court. To take away this jurisdiction would mean the creation of new District Courts and increased expenses. Again, this proposal is not supported by most of the County Court at Law Judges that would be affected.

While uniform jurisdiction would be ideal in the beginning, Texas is too big for one size fits all justice. The needs of the courts in rural Texas are often different from those in major cities. Those counties that have chosen the expanded jurisdiction for their County Courts at Law did so with thought to the needs of their counties. The justice system in these counties is currently flexible and efficient. Further, to force these changes and take away jurisdiction would not make the systems in those counties simpler, but more complicated. This part of the recommendation is not a fix, but creates bigger problems.

These courts currently operate with the dual jurisdictions. They were created specifically for that purpose. The lawyers in those counties know how those courts operate. The justice system in those individual counties is designed around those courts having their expanded jurisdiction. Allowing those courts to convert to a District Court while keeping their current County Court jurisdiction would allow those courts to operate as they have. It creates little or no disruption in the justice system of those counties, and does not increase costs to the county. It is the most efficient, simple and flexible answer.

## Three Tier Trial System

The Task Force proposes that Texas keep its current three tier trial system of Justice Courts, County Courts at Law and District Courts. A two tier system, with Justice Courts and District Courts would be a better goal for the state.

The Justice Courts could hear the "small claims" cases and the class C misdemeanors, just as they do now. No real change would be necessary.

However, the legislature should look at converting all County Courts at Law to District Courts and giving all District Courts the same jurisdiction. This would allow a District Court to handle any civil case, any type of criminal case, be it misdemeanor or felony, or probate cases. This would allow for a much more efficient system. Parties would not need to worry about which court to file in. The same court could deal with a defendant that had a felony case and a misdemeanor, without having to go to two courts. The same court could hear the forcible detainer appeal and the suit affecting title without there having to be filed in different courts.

It would let the local counties determine how to divide up cases. All courts having the same jurisdiction would increase simplicity, flexibility and efficiency, the stated goals of the Task Force.

## Conclusion

The Task Force report does an outstanding job on most of its proposals. It was an honor to serve on the committee with so many thoughtful and concerned individuals. I support the majority of the report, except the issues I have responded to above.

Thank you.

Respectfully Submitted:

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Judge Alfonso Charles
County Court at Law 2
Gregg County, Texas

# OFFICE OF COURT ADMINISTRATION

CARL REYNOLDS
Administrative Director

October 1, 2008

To: Martha Dickie and the Honorable Ken Wise
Chairs, State Bar Court Administration Task Force
From: Carl Reynolds
Re: Dissent regarding the appointment of regional presiding judges

Thank you for including me in the Task Force and entrusting me with a leadership role. It was the highlight of my work in the last year and I applaud the Bar for taking on this work. I think the report is excellent and will be very helpful to the legislature in considering the issues it addresses.

However, I need to register a dissent on the recommendation regarding the appointment of regional presiding judges. The presiding judges are the backbone of trial court administration in the state with duties including promulgating and implementing regional rules of administration, advising local judges on judicial management, recommending changes to the Supreme Court for the improvement of judicial administration, acting for local administrative judges in their absence, and assigning visiting judges to hold court when necessary to dispose of accumulated business in the region.

Currently, section 74.005 of the Texas Government Code provides that the Governor appoints the presiding judges for the nine administrative judicial regions. The Texas Constitution places in the Supreme Court the responsibility of ensuring that justice in Texas is efficient. Similarly, the Legislature has statutorily charged the Court, under Texas Government Code section 74.021, with "administrative control over the judicial branch and . . . the orderly and efficient administration of justice." Further, under section 74.049 of the Texas Government Code, the Chief Justice of the Supreme Court of Texas has the obligation to perform the duties of a regional presiding judge in the absence of that judge.

Judicial independence and the coherent administration of the Judicial Branch strongly suggest that section 74.005 should be amended to provide that the Chief Justice appoints the presiding judges to the administrative judicial regions.

Respectfully submitted,

Carl Reynolds

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# MEMORANDUM

**TO:** **Martha Dickie, Esq.**
**Honorable Ken Wise**
**Members of the State Bar of Texas Court Administration Task Force**

**FROM:** **Richard J. Trabulsi, Jr.**

**DATE:** **September 22, 2008**

**RE:** **Comments on the Report of the State Bar of Texas Court Administration Task Force**

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I appreciate the opportunity to serve with each of you on the Court Administration Task Force. I have been impressed with the good faith efforts of the Task Force members to work through complex and difficult issues.

The Task Force's Report ("Report") is an impressive document and makes several excellent proposals. I am concerned, however, about the arbitration recommendations and the recommendation regarding the appointment of regional presiding judges. I write to state my dissent on the arbitration proposals and to express my concerns about the proposal on the appointment of regional presiding judges.

I also think it appropriate to restate my opinion that the Task Force would benefit by including more members of the non-litigation bar. Since the Task Force has an on-going mandate and will continue its work, and since transaction lawyers are likely to view court administration with a different perspective than litigators and judges, I believe the Texas Bar and the people of Texas would benefit from having the perspective of transaction lawyers represented on the Task Force in the same proportion as are litigators and judges. Court administration, after all, impacts the entire Bar and the entire citizenry of our State.

I respectfully request the Task Force append this letter to the Report.

## Arbitration

### *A. Consumer and Employment Transactions*

The Texas Arbitration Act ("TAA") does not apply to an agreement for the acquisition by one or more individuals of property, services, money, or credit in which the total consideration to be furnished by the individual is not more than $50,000 unless: (1) the parties to the agreement agree in writing to arbitrate, and (2) the agreement is signed by each party and each party's attorney.[1]

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[1] TEX. CIV. PRAC. & REM. CODE § 171.002.

The Task Force is recommending that the Legislature: (1) "amend the TAA to raise from $50,000 to $150,000 the threshold below which the signature of an attorney is required to enforce an arbitration agreement," and (2) "amend the TAA to exempt consumer transactions (borrowing definitions from the Deceptive Trade Practices Act) and employment disputes."[2] These recommendations are problematic for several reasons.

***First.*** As the Report recognizes, "much of arbitration law is subject to federal preemption under the Federal Arbitration Act ("FAA") [so] … many legislative goals must be achieved at the federal rather than state level."[3] There is little question that § 171.002's limits are preempted by the FAA.[4] Increasing the threshold for requiring an attorney's signature from $50,000 to $150,000 will not change the fact of federal preemption. There is no obvious reason – and none provided in the Report – for recommending that the Legislature perform a meaningless act. Furthermore, there is no explanation for increasing the threshold to $150,000, which is a substantial sum of money for most Texans. It appears that the only reason to increase the threshold to $150,000 is to attempt to exempt from arbitration the great majority of transactions occurring in this State every day, thus forcing disputes arising from all of those transactions into litigation. While this proposal would benefit lawyers who represent clients in litigation, there is no expressed or apparent benefit to Texas's businesses and consumers.

***Second.*** In regard to prohibiting arbitration in consumer transactions, the Task Force recommends borrowing definitions from the Deceptive Trade Practices Act ("DTPA"). The DTPA defines "consumer" to mean "an individual, partnership, corporation, this state, or a subdivision or agency of this state who seeks or acquires by purchase or lease, any goods[5] or services,[6] except that the term does not include a business consumer[7] that has assets of $25 million or more, or that is owned or controlled by a corporation or entity with assets of $25 million or more."[8]

If this definition of "consumer" is borrowed from the DTPA, arbitration will not be available in a transaction for goods or services – which are broadly defined in

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[2] Report at 75.
[3] *Id.* at 74.
[4] *See In re AdvancePCS Health L.P.* 172 S.W.3d 603, 606, n.5 (Tex. 2005) (FAA preempts state contractual requirements that apply only to arbitration clauses, like those found in § 171.002, citing *Doctor's Associates, Inc. v. Casarotto*, 517 U.S. 681, 686-87 (1996)).
[5] "Goods" means tangible chattels or real property purchased or leased for use. TEX. BUS. & COMM. CODE § 17.45(1).
[6] "Services" means work, labor, or service purchased or leased for use, including services furnished in connection with the sale or repair of goods. *Id.* § 17.45(2).
[7] "Business consumer" means an individual, partnership, or corporation who seeks or acquires by purchase or lease, any goods or services for commercial or business use. The term does not include this state or a subdivision or agency of this state. *Id.* § 17.45(4).
[8] TEX. BUS. & COMM. CODE § 17.45(4).

the DTPA – involving two corporations, if the corporation acquiring the goods or services has assets of less than $25 million, no matter the size of the corporation selling the goods or services. Thus, two corporations having assets of, say, $10 million each that are involved in the commercial exchange of goods or services will not be able to agree to arbitrate their disputes.

Arbitration will be available, however, if the corporation acquiring the goods or services has assets of more than $25 million, no matter the size of the corporation selling the goods or services. Why should it make a difference whether the larger corporation is the purchaser or seller of the goods or services? Why shouldn't corporations having $1 million, $10 million, or $24 million in assets be allowed voluntarily to enter into arbitration agreements to resolve their disputes with other corporations?

Additionally, assuming the definition of "consumer" is borrowed from the DTPA, arbitration will not be available in a transaction for goods or services in which the State, or a subdivision or agency of the State, is the purchaser. Why should the State be prohibited from entering into an arbitration agreement when it acquires goods or services?

Even if the DTPA definitions are ignored, surely it is true that many "consumer transactions" are between knowledgeable and capable individuals. There is no reason these individuals should not be allowed to decide for themselves whether to include an arbitration provision in their contracts.

***Third.*** The Report states that "[c]ritics of arbitration point to its growing use in consumer, employment, and other contexts," but the Report fails to provide any empirical data to support the assertion.[9] Even if the use of arbitration is growing in some contexts, why does the Task Force assume that the growing use of arbitration is a problem? Perhaps, instead, it indicates a lack of faith in litigation and a widespread acceptance of arbitration as an alternative to lawsuits. The basis for the Task Force's recommendations is missing from the Report. What is the legal and public policy basis for a recommendation that essentially seeks to ban arbitration provisions in *all* consumer and employment contracts? I also point out that the Report contains no discussion about how its recommended changes would affect commerce, economic competitiveness, and job growth in Texas.

***Fourth.*** The Report also provides little justification supporting a ban on arbitration clauses in employment contracts and fails to identify any problem arising from the use of arbitration clauses in the employment context.

[9] Report at 75.

> In the employment context, absent a collective bargaining agreement, a prospective employee has no right to be hired and no right to dictate the terms of employment. Some prospective employees may even prefer arbitration to litigation. Indeed, many employment relationships are between individuals who are fully capable of deciding for themselves whether to include an arbitration provision in their contracts. In the absence of a demonstrated problem and compelling public policy interests, why would the Texas Bar make proposals that seek to interfere in employment and contractual relationships?

In sum, the Report offers no evidence of a problem requiring prohibition of arbitration agreements in consumer and employment contracts. And even if one were to assume that there are specific problems related to arbitration provisions in consumer and employment transactions, I respectfully submit that the Task Force has not pinpointed and explained those problems, and that its recommended blanket ban on arbitration provisions is overreaching and detrimental to sound legal and public policy.

### *B. Violation of Fundamental Public Policy*

The Task Force recommends that the Legislature "amend the TAA to allow courts to vacate an arbitration award that 'clearly violates fundamental public policy of the State of Texas.'"[10] In support of this proposal, the Task Force explains that the "statutory and common law grounds for vacating arbitration awards are quite narrow," and that arbitration critics argue that these grounds "do not provide for meaningful substantive judicial review of arbitration awards."[11] Of course, these statements beg this question: Doesn't the policy underpinning arbitration as an alternative to litigation *require* that the grounds for vacating an arbitration award be limited?

The TAA currently provides that a court shall vacate an award if:

> (1) the award was obtained by corruption, fraud, or other undue means;
>
> (2) the rights of a party were prejudiced by: (A) evident partiality by an arbitrator appointed as a neutral arbitrator; (B) corruption in an arbitrator; or (C) misconduct or wilful misbehavior of an arbitrator;
>
> (3) the arbitrators: (A) exceeded their powers; (B) refused to postpone the hearing after a showing of sufficient cause for the postponement; (C) refused to hear evidence material to the controversy; or (D) conducted the hearing … in a manner that substantially prejudiced the rights of a party; or

[10] *Id.* at 77.
[11] *Id.* at 76-77.

> (4) there was no agreement to arbitrate ... and the party did not participate in the arbitration hearing without raising the objection.[12]

I do not see these grounds for vacating an award as unduly narrow. The Task Force seeks to expand these grounds on the basis that they "do not provide for meaningful substantive judicial review of arbitration awards."[13] It would be more accurate, however, to say that the statutory grounds for vacating an arbitration award are purposefully *limited* to ensure an impartial decision-maker and a fair process.[14]

Arbitration is an alternative to trial. It is intended to be an efficient form of dispute resolution, not an equivalent to a judicial trial.[15] "Subjecting arbitration awards to judicial review adds expense and delay, thereby diminishing the benefits of arbitration as an efficient, economical system for resolving disputes."[16]

For a number of years, many courts, including the United States Supreme Court, the Fifth Circuit Court of Appeals, and several Texas appellate courts, recognized a common-law public policy basis for vacating an arbitration award.[17] The United States Supreme Court called these decisions into question earlier this year in *Hall Street Associates v. Mattel, Inc.*[18] The arbitration agreement in *Hall Street* provided that a particular United States

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[12] TEX. CIV. PRAC. & REM. CODE § 171.088(a).
[13] Report at 76.
[14] *See Houston Village Builders, Inc. v. Falbaum*, 105 S.W.3d 28, 42 (Tex. App.—Houston [14th Dist.] 2003, orig. proceeding) ("Parties often select arbitration based on its promise of an expedient, inexpensive, and final result. ... Parties who bargain for arbitration are deserving of these benefits. Of course, they are also entitled to an impartial decision-maker and a fair process.").
[15] *See Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 219 (1985) (goal of FAA is the expeditious resolution of claims and avoidance of cost and delay of litigation); *Hartford Lloyd's Ins. Co. v. Teachworth*, 898 F.2d 1058, 1061 (5th Cir. 1990) (arbitration aims to submit a dispute to a third-party for speedy and efficient resolution without resort to the courts); *Prudential Securities, Inc. v. Marshall*, 909 S.W.3d 896, 900 (Tex. 1995) ("the fundamental purpose of arbitration [is] to provide a rapid, less expensive alternative to traditional litigation").
[16] *CVN Group, Inc. v. Delgado*, 95 S.W.3d 234, 238 (Tex. 2002).
[17] See *United Paperworkers Int'l Union v. Misco, Inc.*, 484 U.S. 29, 42 (1987); *W.R. Grace & Co. v. Local Union 759*, 461 U.S. 757, 766 (1983); *Apache Bohai Corp. v. Texaco China BV*, 480 F.3d 397, 401 (5th Cir. 2007); *Prestige Ford v. Ford Dealer Computer Servs., Inc.*, 324 F.3d 391, 394 (5th Cir. 2003); *Bennett v. Leas*, 2008 WL 2525403, *2 (Tex. App.—Corpus Christi, June 26, 2008, pet. filed) (not reported); *Myer v. Americo Life, Inc.*, 232 S.W.3d 401, 408 (Tex. App.—Dallas 2007, no pet.). The United States Supreme Court recognizes public policy as a basis for vacating an arbitration award *if* the public policy is well defined and dominant, and the public policy can be ascertained by reference to the laws and legal precedents and not from general considerations of supposed public interests. *United Paperworkers*, 484 U.S. at 43; *see also Muschany v. United States,* 324 U.S. 49, 66 (1945).
[18] ___ U.S. ___, 128 S.Ct. 1396, 170 L.Ed.2d 254 (2008).

District Court was required to vacate, modify, or correct an arbitrator's award if the arbitrator's findings of facts were not supported by substantial evidence, or the arbitrator's conclusions of law were erroneous.[19] These grounds are not among the grounds listed in the FAA for vacating, modifying, or correcting an arbitration award.[20]

The United States Supreme Court held that the FAA provides the "exclusive grounds for expedited vacatur and modification" of an arbitration award.[21] While the Court did not explicitly overrule or affirm its prior decisions finding common-law grounds for vacating an arbitration award, the opinion certainly suggests that the previously recognized common-law grounds are no longer available under the FAA.[22] The Fifth Circuit has indicated that it believes the non-statutory grounds may no longer be available.[23]

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[19] *Id.*, 128 S.Ct. at 1400-01.

[20] *See* 9 U.S.C. §§ 10, 11. Under the FAA, an arbitration award can be vacated: (1) where the award was procured by corruption, fraud, or undue means; (2) where there was evident partiality or corruption in the arbitrators, or either of them; (3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or (4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made. 9 U.S.C. § 10.

Under the FAA, an award may be modified or corrected: (1) where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award; (2) where the arbitrators have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matter submitted; or (3) where the award is imperfect in matter of form not affecting the merits of the controversy. 9 U.S.C. § 11.

[21] *Hall Street*, 128 S.Ct. at 1403. The use of the word "expedited" does not appear intended as limiting the Court's holding. As the Court notes earlier in its opinion, review of arbitration awards under the FAA is expedited pursuant to § 6 of the Act. *Id.* at 1402 ("The Act also supplies mechanisms for enforcing arbitration awards: a judicial decree confirming an award, an order vacating it, or an order modifying or correcting it. §§ 9-11. An application for any of these orders will get streamlined treatment as a motion, obviating the separate contract action that would usually be necessary to enforce or tinker with an arbitral award in court. § 6.").

[22] *See id.* at 1406 ("In holding that §§ 10 and 11 provide exclusive regimes for the review provided by the statute, we do not purport to say that they exclude more searching review based on authority outside the statute as well. The FAA is not the only way into court for parties wanting review of arbitration awards: they may contemplate enforcement under ***state*** statutory or common law, for example, where judicial review of different scope is arguable. But here we speak only to the scope of the expeditious judicial review under §§ 9, 10, and 11, deciding nothing about other possible avenues for judicial enforcement of arbitration awards.") (emphasis added).

[23] *See Rogers v. KBR Technical Services*, 2008 WL 2337184 (5th Cir., June 9, 2008) (not reported) ("The Supreme Court has recently held that the provisions of the FAA are the exclusive grounds for expedited vacatur and modification of an arbitration award, which calls into doubt the non-statutory grounds which have been recognized by this Circuit.").

The Supreme Court noted that grounds for vacating an award found within the FAA "address egregious departures from the parties' agreed-upon arbitration: 'corruption,' 'fraud,' 'evident partiality,' 'misconduct,' 'misbehavior,' 'exceed[ing] ... powers,' 'evident material miscalculation,' 'evident material mistake,' 'award[s] upon a matter not submitted;' the only ground with any softer focus is 'imperfect[ions],' and a court may correct those only if they go to '[a] matter of form not affecting the merits.'".[24] In other words, according to the United States Supreme Court, the grounds provided in the FAA for vacating, modifying, or correcting an award (which are similar to those provided in the TAA) are purposefully limited to those intended to address "egregious departures from the parties' agreed-upon arbitration," not those intended to ensure substantive correctness.

The ground for vacating an arbitration award that the Task Force seeks to add is a ground related to the substantive correctness of the arbitration decision. Foregoing the assurance of a substantively correct decision historically has been viewed as being part of the exchange parties make to obtain an expedited and inexpensive process for achieving a final resolution of a claim. The Task Force's recommendation is contrary to the idea of having a quick, fair, and final alternative dispute resolution process. It is a step toward making arbitration more like a trial.

By suggesting another ground for vacating an arbitration award, the Task Force is suggesting that the existing grounds for vacating an award are insufficient. The Report, however, does not identify any specific problem the recommendation is intended to address. The basis for vacating an award suggested by the Task Force has no definite meaning and creates a basis for the *substantive* review of arbitration decisions. Absent a significant justification, and a careful analysis of whether substantive review of arbitration decisions comports with the goals of having arbitration as an alternative dispute resolution procedure, the Report's recommendation of an amorphous and limitless standard for vacating arbitration awards should not be adopted.

### *C. Violation of Constitutional Rights*

The Task Force recommends that the Legislature amend § 171.022 of the TAA, which prohibits enforcement of an unconscionable arbitration agreement, "to make clear that violations of state and federal constitutional rights may render an arbitration contract unconscionable."[25] The Report, however, fails to identify any problem requiring such legislative action, and the proposed language is subject to an unknown, and potentially expansive, application.

Section 171.022 already provides that "[a] court may not enforce an agreement to arbitrate if the court finds the agreement was unconscionable at the time the agreement was made."[26] Unconscionability already is a flexible concept. Texas courts recognize both

[24] *Hall Street*, 128 S.Ct. at 1404.
[25] Report at 77.
[26] Tex. Civ. Prac. & Rem. Code § 171.022.

"procedural unconscionability" and "substantive unconscionability."[27] Procedural unconscionability refers to the circumstances surrounding the adoption of the arbitration agreement, such as fraud in the inducement.[28] Substantive unconscionability refers to the circumstance where the arbitration clause is so one-sided that it is unconscionable under the circumstances existing when the parties made the contract, given the parties' general commercial background and the commercial needs of the particular trade or case.[29] Today, substantive unconscionability appears to arise only in cases in which one party complains that the costs of arbitration make dispute resolution prohibitive.[30]

With the already-flexible unconscionablility concept available to them, Texas courts presumably could find that violations of state and federal constitutional rights can be a basis for holding an arbitration contract unconscionable. So far, there is no evidence that the courts have seen a need to do so. Additionally, if there is an explicit need to provide by statute that a contract cannot violate state or federal constitutional rights, shouldn't that statute apply to all contracts? What need is there for such a provision only in the TAA?

The Texas Constitution has many and various provisions, including the right to a jury trial and an expansive due course of law provision. Under the Task Force's recommendation, an arbitration provision might be found unconscionable and unenforceable because a jury trial was not available, thereby essentially eliminating arbitration as a viable alternative to litigation in our State.

The Report does not identify any problem that needs correction or explain how its proposal might be used in practice. Absent a compelling justification, the concept of unconscionability should not be expanded. It certainly should not be expanded in so broad a way that no reasonable person can foresee its cascading ramifications.

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[27] *In re Foster Mold, Inc.*, 979 S.W.2d 665, 667-68 (Tex. App.—El Paso 1998, orig. proceeding).

[28] *Id.* Procedural unconscionability must relate to the arbitration agreement itself, not merely the underlying contract. *In re FirstMerit Bank, N.A.*, 52 S.W.3d 749, 756 (Tex. 2001).

[29] *In re Fleetwood Homes of Texas, L.P.*, 257 S.W.3d 692, 695 (Tex. 2008)

[30] The threshold for finding substantive unconscionability is fairly high: "The party opposing arbitration on the ground that fees and costs make the arbitration clause unconscionable must prove the likelihood of incurring such costs. … Some specific information of future costs is required in order to show that an arbitration agreement is made unconscionable by subjecting parties to substantial costs and fees." *Aspen Technology, Inc. v. Shasha*, 253 S.W.3d 857 (Tex. App.—Houston [14 Dist.], 2008, no pet.). But it is not impossible to meet the test. In *Olshan Foundation Repair Co. v. Ayala*, the court found that arbitration costs amounting to nearly forty-five percent of the Ayala family's annual income made the arbitration agreement unconscionable. 180 S.W.3d 212, 215-16 (Tex. App.—San Antonio, 2005, pet. denied). The Ayalas were able to prove the likelihood of substantial costs because the arbitration provider gave them a bill prior to the arbitration proceeding. *Id.*

### *D. Arbitration Recommendations Taken as a Whole*

The Task Force's arbitration recommendations would make it easier for courts to review arbitration awards, while at the same time allowing arbitration only in the biggest cases.

The desire to make arbitration awards reviewable on appeal is reflected in the recommendation that a public policy ground for vacating an award be created, that a constitution-based form of unconscionability be adopted, and that parties be entitled to have a record of the proceeding. Each is a step toward making an arbitration award reviewable as if it were a trial court judgment. Each is a step toward making arbitration more like trial, only with a private judge. Arbitration is not intended to be like trial. It is intended as an expeditious and cost-effective alternative to trial. The more arbitration is made to be like trial, the less useful it is.

The Report's recommendations on arbitration, taken as a whole, would destroy or seriously diminish arbitration as an alternative to trial and would seriously erode Texans' right to contract.

## Regional Presiding Judges

The Task Force is recommending that the Legislature "amend § 74.005 of the Government Code to allow the Supreme Court to select the regional presiding judges from a list of no more than three nominees provided by the council of judges from that region."[31]

The Texas Constitution and Government Code give the Supreme Court broad administrative and supervisory authority over the Texas judicial system.[32] In exercising the Court's administrative and supervisory authority, the Chief Justice can: (1) temporarily assign a trial judge from one administrative region to another administrative region when he considers the assignment necessary to the prompt and efficient administration of justice,[33] (2) call and preside over meetings of the regional and local presiding judges if he considers a meeting necessary for the promotion of the orderly and efficient administration of justice,[34] (3) make assignments within an administrative region and perform the other duties of a regional presiding judge if the regional presiding judge dies, resigns, is

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[31] Report at 68.
[32] Tex. Const. art. V, § 31(a) (Texas Supreme Court "is responsible for the efficient administration of the judicial branch."); Tex. Gov't Code § 74.021 (Texas Supreme Court has "supervisory and administrative control over the judicial branch and is responsible for the orderly and efficient administration of justice.").
[33] Tex. Gov't Code § 74.057(a).
[34] *Id.* § 74.001(a), (b).

incapacitated, or is disqualified in a particular matter,[35] and (4) promulgate rules of administration.[36]

By comparison, a regional presiding judge has a good deal of administrative authority. A regional presiding judge is to:

(1) Ensure the promulgation of regional rules of administration;
(2) Advise local judges on case-flow management and auxiliary court services;
(3) Recommend to the Chief Justice of the Supreme Court any needs for judicial assignments from outside the region;
(4) Recommend to the Supreme Court any changes in the organization, jurisdiction, operation, or procedures of the region necessary or desirable for the improvement of the administration of justice;
(5) Act for a local administrative judge when the local administrative judge does not perform the duties required of him or her;
(6) Implement rules adopted by the Supreme Court pursuant to its authority under the Court Administration Act;
(7) Provide requested statistical information to the Supreme Court or the Office of Court Administration;
(8) Perform duties assigned by the Chief Justice of the Supreme Court;[37]
(9) Assign judges of the administrative region to other counties in the region to try cases and dispose of accumulated business[38] and hear recusal motions;[39]
(10) Request the presiding judge of another administrative region to furnish judges to aid in the disposition of litigation pending in a county in the administrative region of the judge who makes the request;[40] and
(11) Call a yearly meeting of the district and statutory county court judges in the administrative region for the purpose of consulting with those judges "concerning the state of the civil and criminal business in the courts of the administrative region and arranging for the disposition of the business pending on the court dockets."[41]

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[35] *Id.*
[36] TEX. CONST. art. V, § 31(a) (the Court may promulgate rules of administration "as may be necessary for the efficient and uniform administration of justice in the various courts."); *see also* TEX. GOV'T CODE § 74.024(a).
[37] TEX. GOV'T CODE § 74.046.
[38] *Id.* § 74.056(a).
[39] TEX. R. CIV. P. 18a(c); *see also* TEX. CONST. art. V, § 11 (grounds for disqualification of a judge); TEX. GOV'T CODE § 21.005 (same); TEX. R. CIV. P. 18a (grounds for disqualification or recusal of a judge).
[40] TEX. GOV'T CODE § 74.056(b).
[41] *Id.* § 74.048(a), (b).

Currently, the regional presiding judges are appointed by the Governor for a four-year term from the date he or she qualifies as the presiding judge.[42] A presiding judge must be, at the time of appointment, a regularly elected or retired district judge, a former judge with at least twelve years of service as a district judge, or a retired appellate judge with judicial experience on a district court.[43] If the judge is retired, he or she must have voluntarily retired from office and must reside within the administrative region.[44] A regional presiding judge receives a higher salary from the State than do other judges.[45]

The State is divided into nine administrative judicial regions.[46] As the chart below reflects, the presiding judge is not always from the most-populous county in the region.

| **Region** | **Major Counties**[47] (Most-populous county highlighted) | **County in which Presiding Judge is located** |
|---|---|---|
| First | **Dallas**, Collin | Dallas |
| Second | Brazoria, **Harris**, Fort Bend, Galveston, Jefferson, Montgomery | Montgomery |
| Third | Bell, McLennan, **Travis**, Williamson | Guadalupe |
| Fourth | **Bexar**, Webb | Bexar |
| Fifth | Cameron, **Hidalgo**, Nueces | Nueces |
| Sixth | **El Paso** | Kerr |
| Seventh | **Ector**, Midland, Taylor, Tom Green | Midland |
| Eighth | Denton, **Tarrant** | Tarrant |
| Ninth | **Lubbock**, Potter, Randall | Terry |

The Texas Supreme Court is constitutionally charged with the efficient administration of the judicial branch, and has most of the administrative powers possessed by other states' high courts. The major impediment to the Supreme Court carrying out its constitutional mandate, however, is that the nine regional administrative judges are appointed by the governor and, therefore, need not be responsive to the Supreme Court.

By making the recommendation that the regional presiding judges be appointed by the Supreme Court, the Task Force recognizes that the appointment power should be held within the judicial system. The Task Force, however, is making a recommendation that could: (1) create conflict among judges, and (2) diminish the efficient administration of the judicial system.

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[42] *Id.* §§ 74.005, .044.
[43] *Id.* § 74.045(a).
[44] *Id.* § 74.045(b).
[45] *Id.* § 74.051 (a presiding judge receives compensation of up to $33,000 per year above his or her normal salary).
[46] *Id.* § 74.042.
[47] The counties in each administrative region are listed in Texas Government Code § 74.042.

The process recommended by the Task Force of nominating three judges from the region seems likely to create an incentive for judges to campaign with their colleagues for the position (which brings a salary increase). Will the criminal judges in the region unite behind a candidate while the civil judges unite behind another? Will rural judges always be in competition with urban judges? Furthermore, the qualifications needed in a regional presiding judge may not be the same as the attributes that help a judge secure the nomination of his or her colleagues. Campaigning by judges with their colleagues seems unlikely to engender good will within the judiciary.

Additionally, most of the administrative regions have one large county (by population) and a number of small counties. It is not hard to imagine that the three judges nominated to be the regional presiding judge always will be from the largest county or counties in the region. But, because the large counties have a structure for local administration, their counties may not need as much help from the regional presiding judge as do the smaller counties.

The Task Force's recommendation that the Supreme Court should appoint regional presiding judges is a positive one, but I disagree with the specific proposal made. I think the Task Force's proposal on the appointment of regional presiding judges is inferior to either keeping the appointive power with the Governor or moving the appointment power outright to the Supreme Court without requiring the Court to choose from nominees.

**Conclusion**

Again, I recognize and appreciate the hard and serious work of the members of the Task Force and I am pleased to participate with each of you in the important mission of the Task Force.

# Appendices

## APPENDICES

Appendix 1: Trial Court Survey Results

Appendix 2: Justice of the Peace Survey Results

Appendix 3: Appellate Court Survey Results

Appendix 4: Complex Case Survey Results

Appendix 5: Complexities in the Geographical Jurisdictions of District Courts

Appendix 6: Map of District Courts

Appendix 7: Map of Court of Appeals Districts

Appendix 8: List of Resources Concerning Complex Cases in Other States

Appendix 9: OCA Results of Resources Survey – Access to Law Clerks & Staff Attorneys

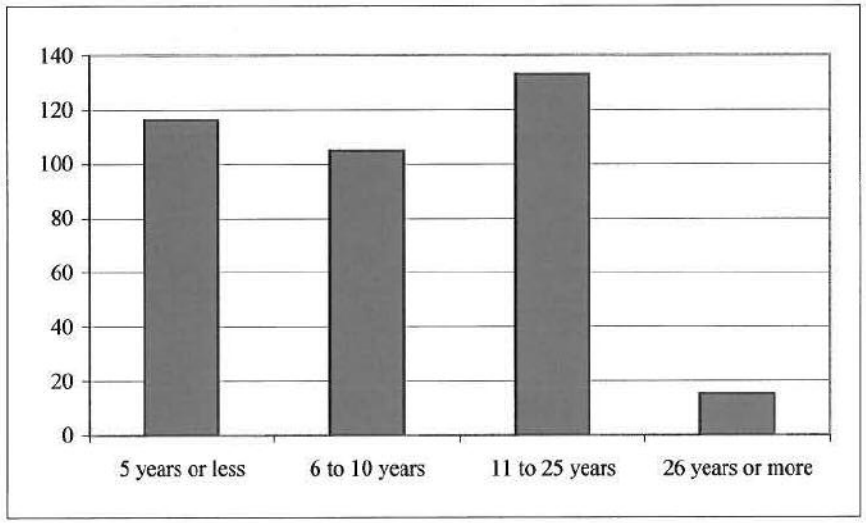
# Appendix 1

# Survey of Texas Trial Courts Results

| Section | Questions |
|---|---|
| Basic Demographic Information | 1-5 |
| County Courts at Law & County Probate Courts | 6-31 |
| Distric Courts | 32-58 |
| Constitutional County Courts | 59-70 |
| All Courts | 71-80 |

1. How long have you served as a judge?

| | Number | Percent |
|---|---|---|
| 5 years or less | 116 | 31.4% |
| 6 to 10 years | 105 | 28.5% |
| 11 to 25 years | 133 | 36.0% |
| 26 years or more | 15 | 4.1% |

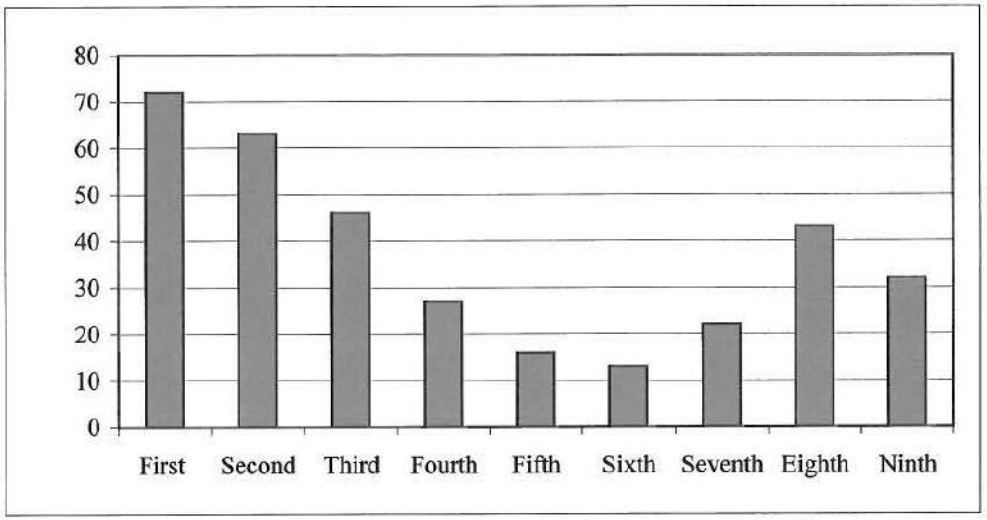



2. List areas in which you are board certified, if any:

| Top 4 Responses | Count |
|---|---|
| Criminal | 30 |
| Personal Injury | 17 |
| Family | 17 |
| Civil Trial | 15 |

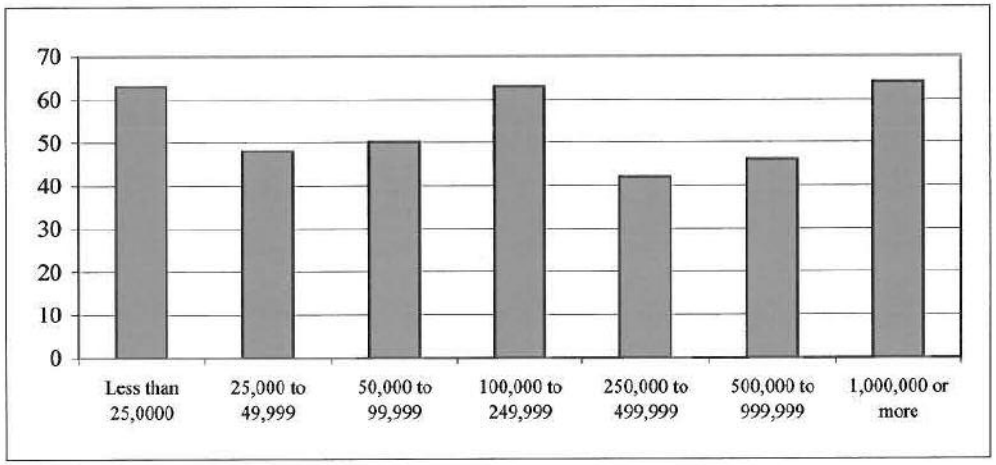
3. In which administrative judicial region do you reside?

| | Number | Percent |
|---|---|---|
| First | 72 | 21.6% |
| Second | 63 | 18.9% |
| Third | 46 | 13.8% |
| Fourth | 27 | 8.1% |
| Fifth | 16 | 4.8% |
| Sixth | 13 | 3.9% |
| Seventh | 22 | 6.6% |
| Eighth | 43 | 12.9% |
| Ninth | 32 | 9.6% |



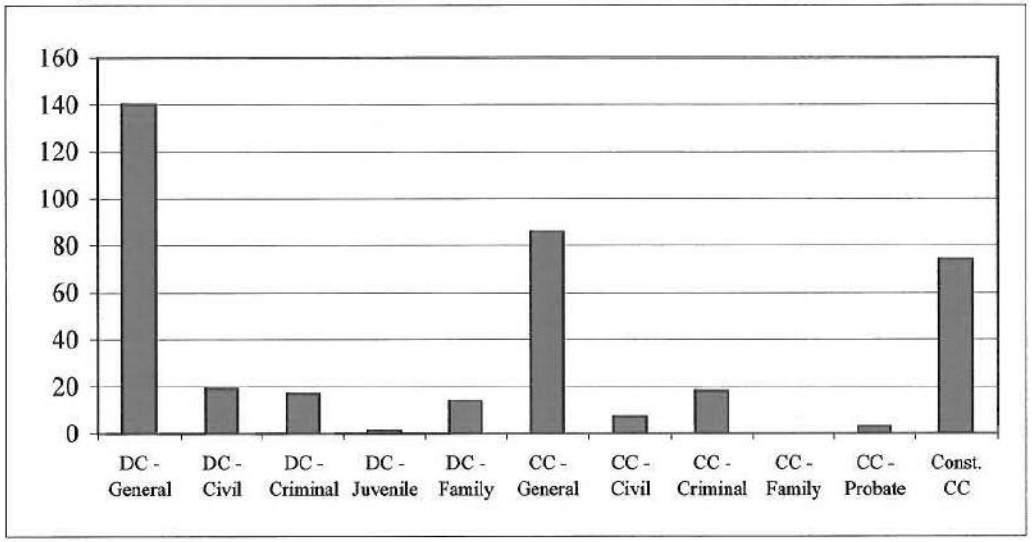

4. Please indicate the range of population that reflects the county or counties in which your courts are located:

| | Number | Percent |
|---|---|---|
| Less than 25,0000 | 63 | 16.8% |
| 25,000 to 49,999 | 48 | 12.8% |
| 50,000 to 99,999 | 50 | 13.3% |
| 100,000 to 249,999 | 63 | 16.8% |
| 250,000 to 499,999 | 42 | 11.2% |
| 500,000 to 999,999 | 46 | 12.2% |
| 1,000,000 or more | 64 | 17.0% |



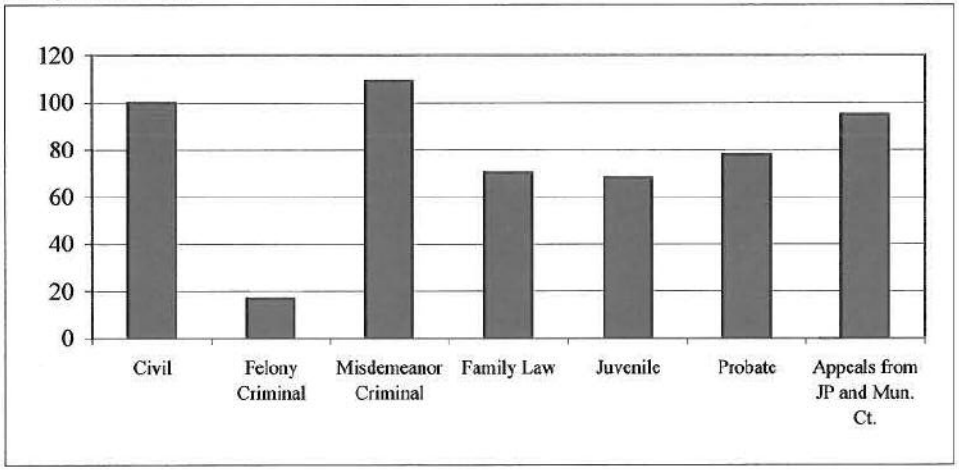
5. Please indicate the court that you are currently serving on:

| | Number | Percent |
|---|---|---|
| DC - General | 140 | 36.9% |
| DC - Civil | 19 | 5.0% |
| DC - Criminal | 17 | 4.5% |
| DC - Juvenile | 1 | 0.3% |
| DC - Family | 14 | 3.7% |
| CC - General | 86 | 22.7% |
| CC - Civil | 7 | 1.8% |
| CC - Criminal | 18 | 4.7% |
| CC - Family | 0 | 0.0% |
| CC - Probate | 3 | 0.8% |
| Const. CC | 74 | 19.5% |



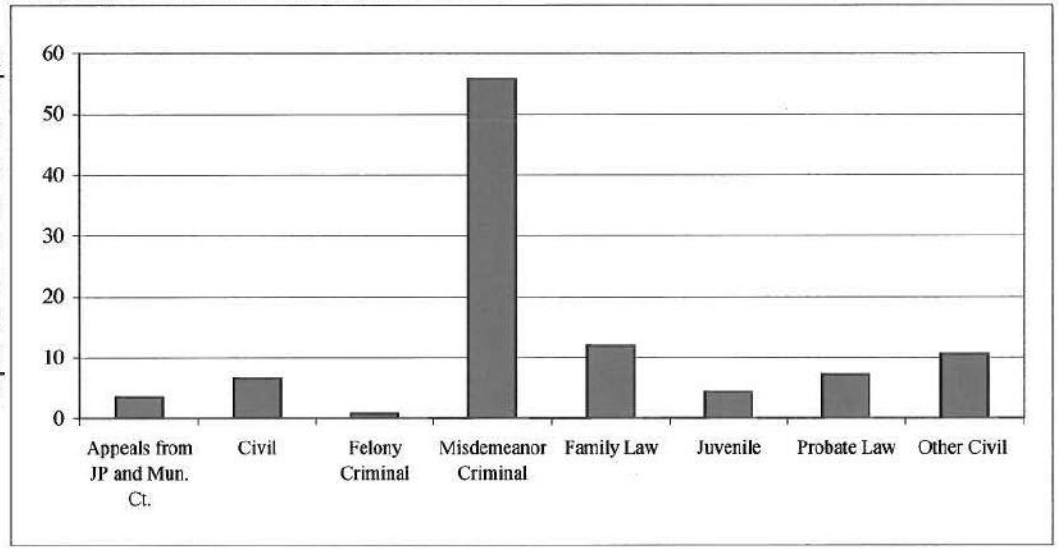

6. Indicate the category of cases over which your court has jurisdiction:

| | Number |
|---|---|
| Civil | 100 |
| Felony Criminal | 17 |
| Misdemeanor Criminal | 109 |
| Family Law | 70 |
| Juvenile | 68 |
| Probate | 78 |
| Appeals from JP and Mun. Ct. | 95 |



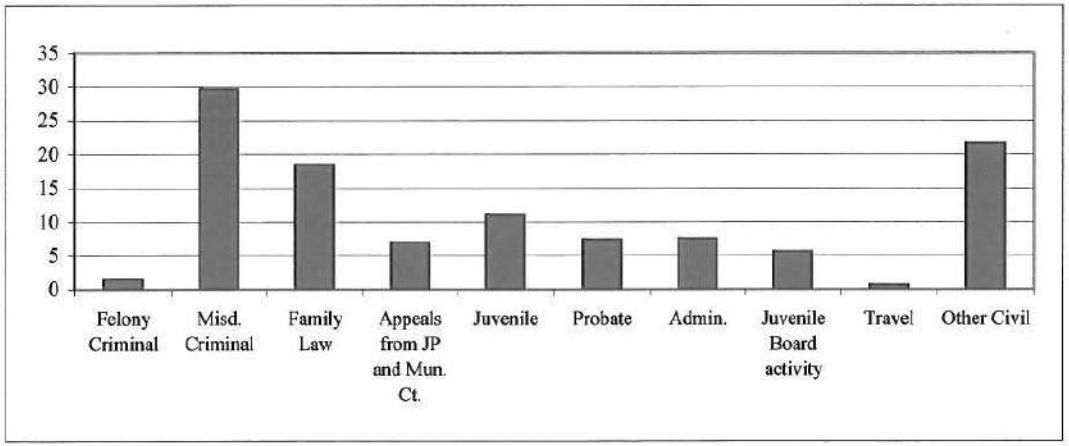
7. Approximately what percentage of the cases filed per year is in each category listed below?

| | Average Percent |
|---|---|
| Appeals from JP and Mun. Ct. | 3.5 |
| Civil | 6.5 |
| Felony Criminal | 0.8 |
| Misdemeanor Criminal | 55.8 |
| Family Law | 11.9 |
| Juvenile | 4.3 |
| Probate Law | 7.2 |
| Other Civil | 10.5 |
| Total | 100.5 |



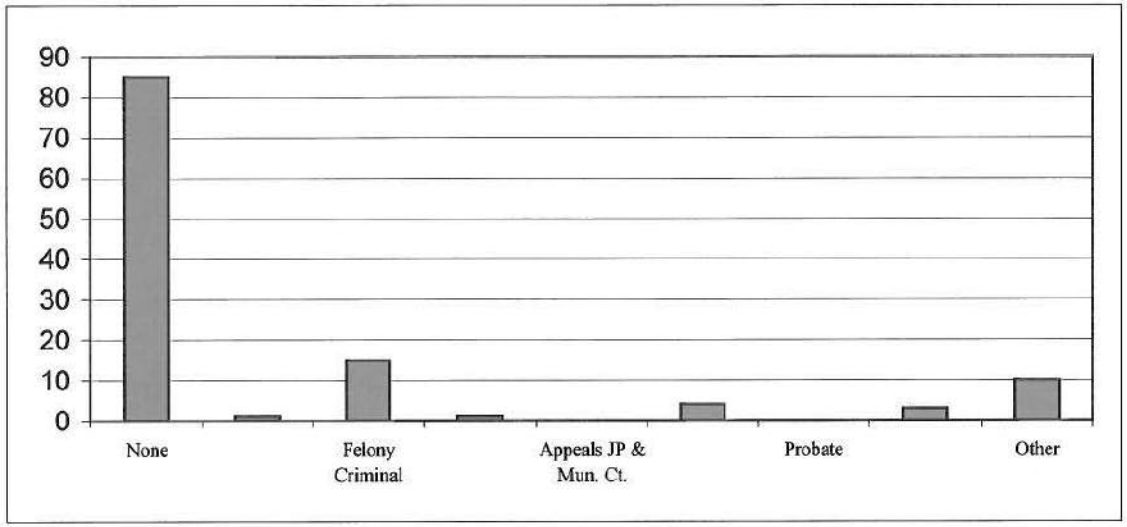

8. Approximately what percentage of your time is expended per year on each of the categories listed below?

| | Average Percent |
|---|---|
| Felony Criminal | 1.5 |
| Misd. Criminal | 29.6 |
| Family Law | 18.4 |
| Appeals from JP and Mun. ( | 6.9 |
| Juvenile | 11.1 |
| Probate | 7.4 |
| Admin. | 7.5 |
| Juvenile Board activity | 5.6 |
| Travel | 0.6 |
| Other Civil | 21.6 |
| Total | 110.2 |



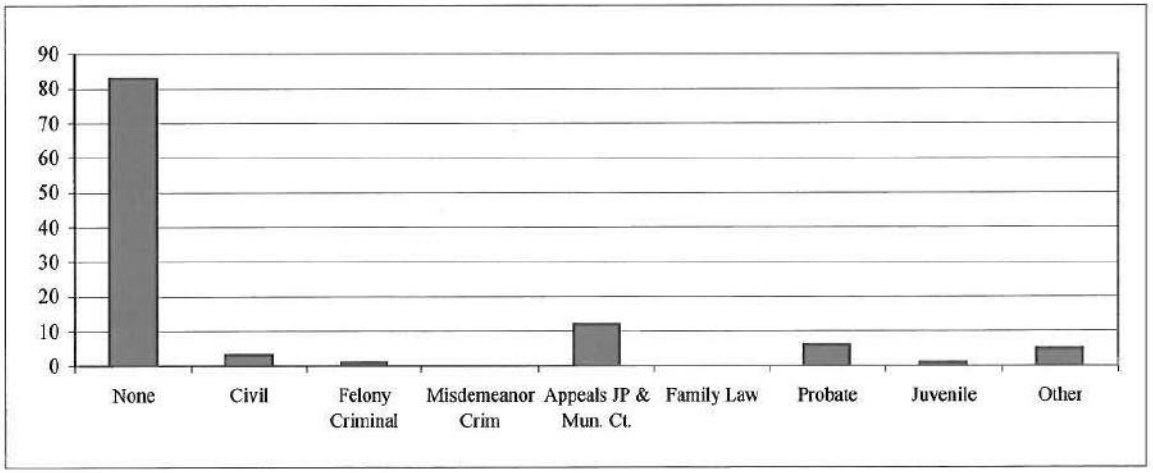
9. Are there any categories of cases that you do NOT currently have jurisdiction over, but you believe should be assigned to your court?

| | Count |
|---|---|
| None | 85 |
| Civil | 1 |
| Felony Criminal | 15 |
| Misdemeanor Crim | 1 |
| Appeals JP & Mun. Ct. | 0 |
| Family Law | 4 |
| Probate | 0 |
| Juvenile | 3 |
| Other | 10 |




10. Are there any categories of cases that you currently have jurisdiction over, but which you believe should not be assigned to your court?

| | Count |
|---|---|
| None | 83 |
| Civil | 3 |
| Felony Criminal | 1 |
| Misdemeanor Crim | 0 |
| Appeals JP & Mun. Ct. | 12 |
| Family Law | 0 |
| Probate | 6 |
| Juvenile | 1 |
| Other | 5 |



# Appendix 2

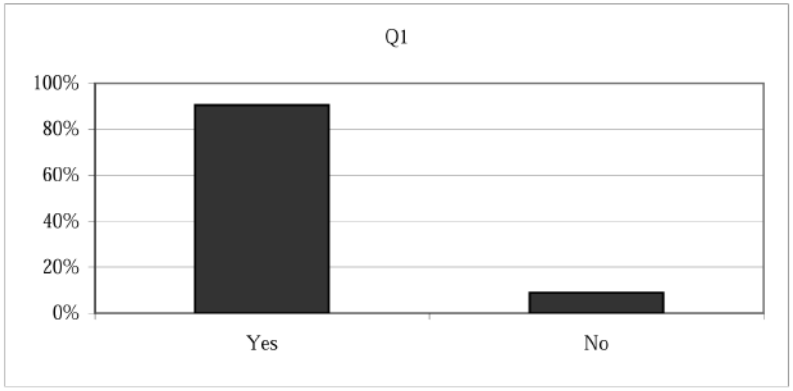
June 12, 2008

# Justice of the Peace Survey Results

Over 800 surveys were distributed and nearly 500 were returned. This is a response rate of over 60%. The following represents how respondents answered each question.

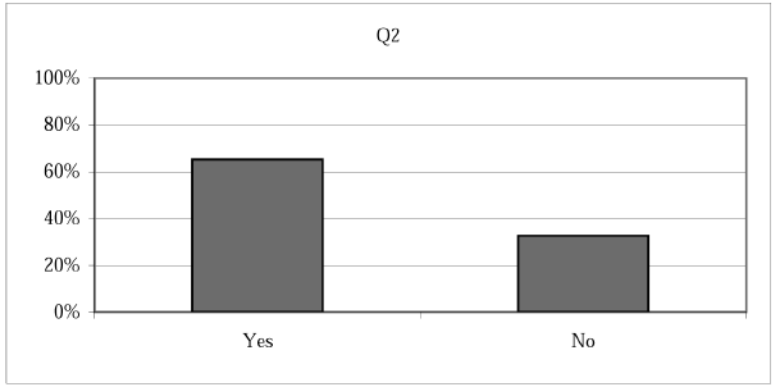
1. Do you believe it is important to have a more informal and simplified type of proceeding, such as Small Claims suit, for smaller cases where an attorney does not generally represent the parties?

| | Number | Percent |
|---|---|---|
| Yes | 445 | 90.6% |
| No | 43 | 8.8% |



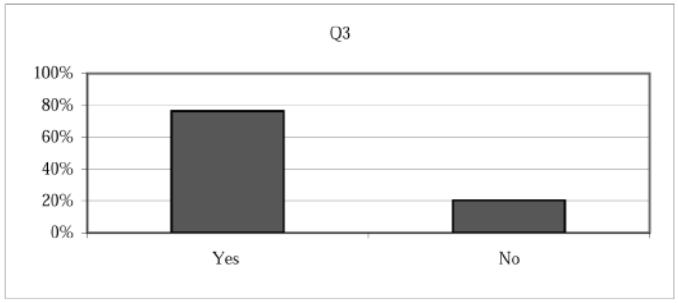

2. Do you believe it is important to have a more formal type of proceeding, such as a Justice Court suit, for larger claims where an attorney generally represents some parties?

| | Number | Percent |
|---|---|---|
| Yes | 321 | 65.4% |
| No | 160 | 32.6% |



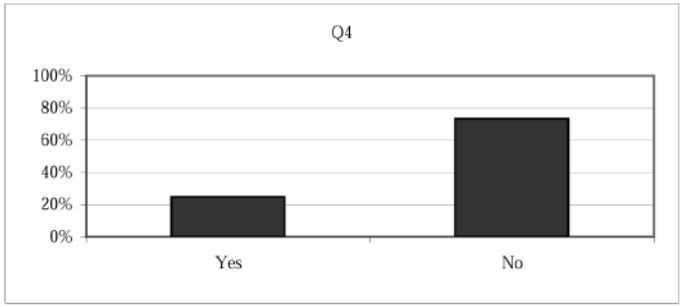
3. Do you believe that the rules of evidence and the discovery rules in the Rules of Civil Procedure are suitable for Justice Court cases?

| | Number | Percent |
|---|---|---|
| Yes | 375 | 76.4% |
| No | 100 | 20.4% |



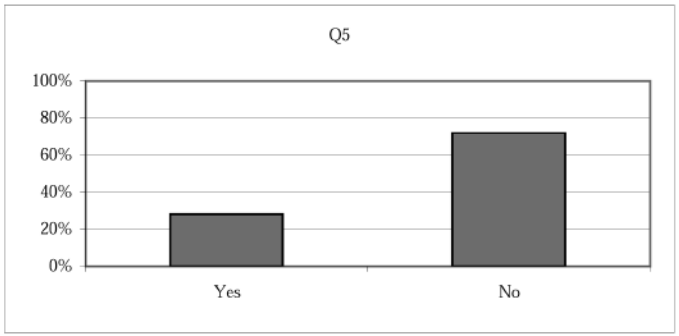

4. There are two types of lawsuits in JP court, Small Claims and Justice Court. Should one be eliminated?

| | Number | Percent |
|---|---|---|
| Yes | 122 | 24.8% |
| No | 361 | 73.5% |



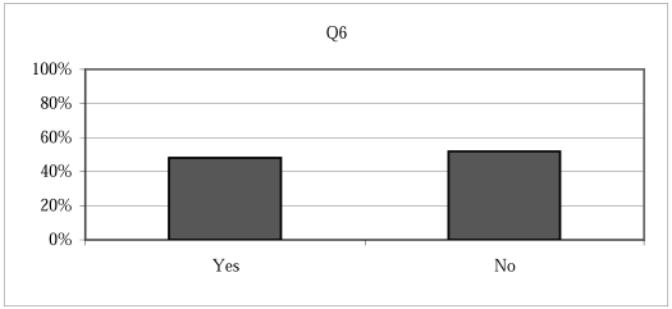

5. If you answered "Yes" to Question #4, should Small Claims cases be eliminated?

| | Number | Percent |
|---|---|---|
| Yes | 47 | 28.1% |
| No | 120 | 71.9% |



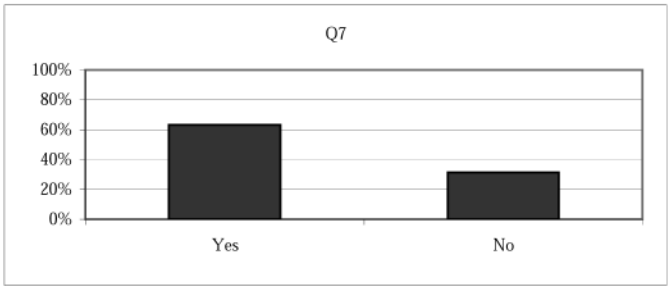
6. If you answered "Yes" to Question #4, should Justice Court cases be eliminated?

| | Number | Percent |
|---|---|---|
| Yes | 78 | 48.1% |
| No | 84 | 51.9% |



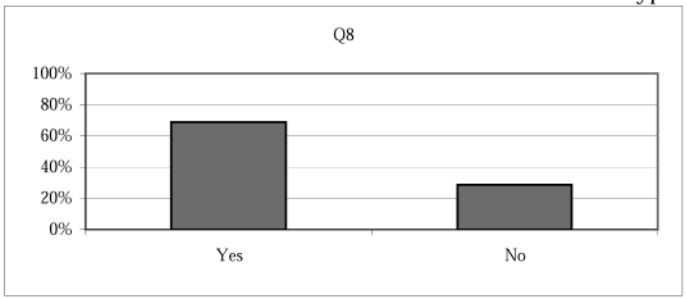

7. If Small Claims cases were eliminated so that only Justice Court cases remained in JP court, would you be in favor of modifying some of the procedural, discovery, and evidence rules as they are applied to those cases?

| | Number | Percent |
|---|---|---|
| Yes | 311 | 63.3% |
| No | 154 | 31.4% |




8. Currently, the Texas Supreme Court promulgates the rules for Justice Court cases, and the legislature promulgates the rules for Small Claims cases. If both Small Claims cases and Justice Court cases were continued, would you be in favor of allowing the Texas Supreme Court to make the rules for both types of cases in order to eliminate conflicts and confusion between the two types of cases?

| | Number | Percent |
|---|---|---|
| Yes | 338 | 68.8% |
| No | 141 | 28.7% |

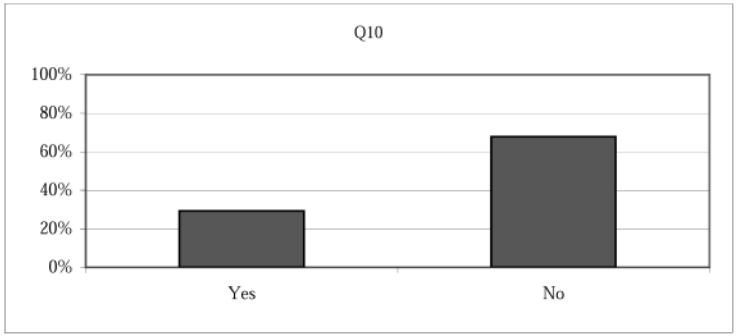


9. Please rank your preference to the following options by putting a 1,2,3,4 or 5 next to the option. 1 would be your first preference and 5 would be your last preference.

| | Average Rating | Rank |
|---|---|---|
| Leave the current Small Claims and Justice Court system as it currently exists with no changes. | 2.0 | 1 |
| Eliminate Small Claims cases retaining only Justice Court cases. | 4.2 | 5 |
| Eliminate Justice Court cases retaining only Small Claims cases. | 3.8 | 4 |
| Eliminate Small Claims cases, retaining only Justice Court cases, but modify the discovery and evidence rules to simplify the handling of Justice Court cases. | 3.6 | 3 |
| Retain Justice Court and Small Claims cases but allow the Texas Supreme Court to promulgate the rules for both types of cases in order to eliminate conflicts and confusion. | 2.7 | 2 |

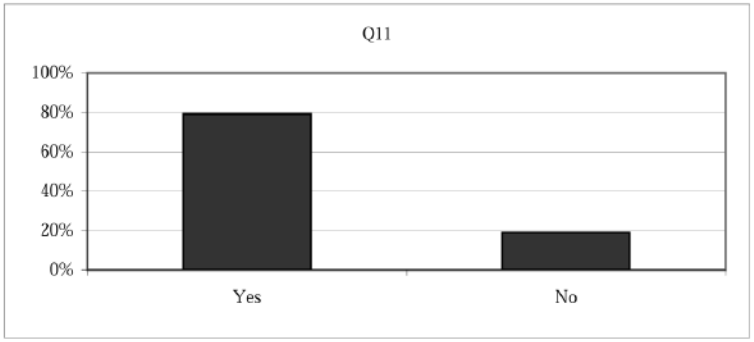
10. Do you believe the increase in civil jurisdiction to $10,000 has caused problems in both Justice Court and Small Claims cases that should be addressed to make the trial of civil cases in JP courts more efficient and fair?

| | Number | Percent |
|---|---|---|
| Yes | 144 | 29.3% |
| No | 333 | 67.8% |



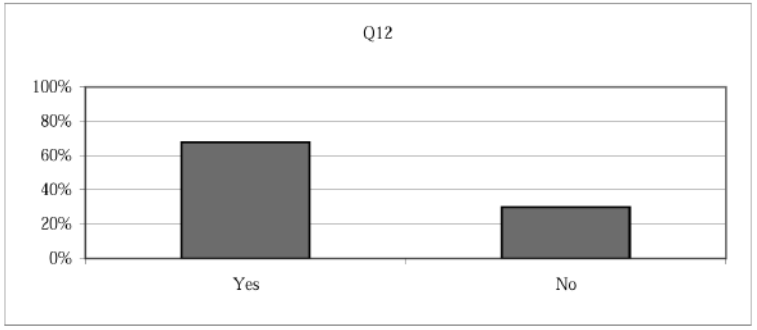
11. Do you believe you are able to effectively handle the more complicated legal issues presented with the increased civil jurisdiction?

| | Number | Percent |
|---|---|---|
| Yes | 389 | 79.2% |
| No | 93 | 18.9% |




12. Do you believe that the increased civil jurisdiction necessitates additional training in civil cases for non-attorney JP's?

| | Number | Percent |
|---|---|---|
| Yes | 333 | 67.8% |
| No | 148 | 30.1% |

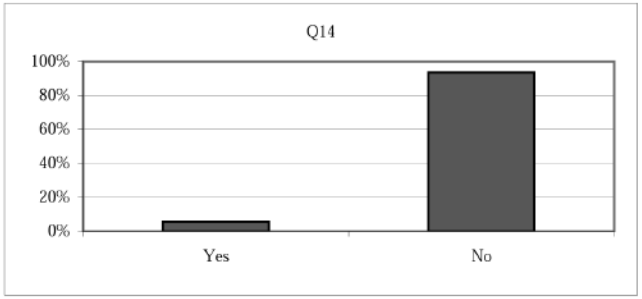



13. If you answered "Yes" to Question # 12, how many additional hours of education and training per year should the legislature require?

Average 15.8 hours

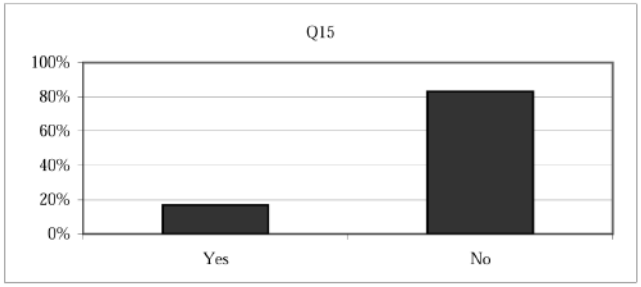
14. Do you believe the legislature should require that all JP's be attorneys?

| | Number | Percent |
|---|---|---|
| Yes | 27 | 5.5% |
| No | 459 | 93.5% |



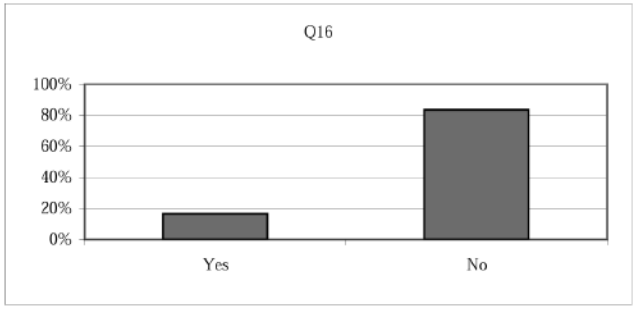

15. If your answer to question # 14 was "No," would you support requiring that all JP's be attorneys if the non-lawyer JP's in office at the time the new law became effective would be allowed to serve for the duration of their judicial career?

| | Number | Percent |
|---|---|---|
| Yes | 76 | 16.9% |
| No | 375 | 83.1% |



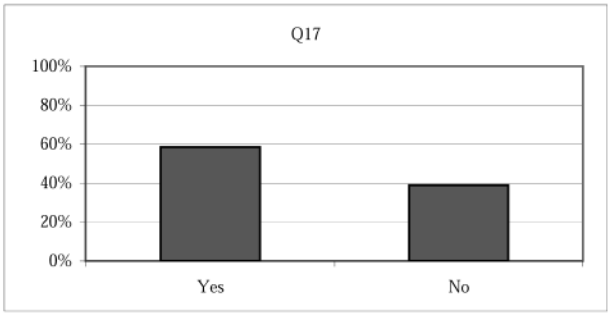

16. If your answer to question #14 was "No," would you support having only attorneys serve as JP's if this requirement only applied to larger counties, and those JP's who are not lawyers would be allowed to serve for the duration of their judicial career?

| | Number | Percent |
|---|---|---|
| Yes | 74 | 16.6% |
| No | 373 | 83.4% |



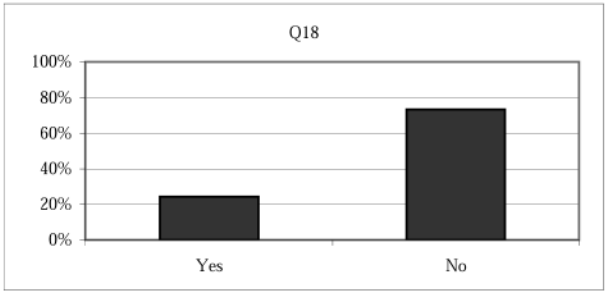
17. If the legislature required all JP's to be attorneys should it also require that all constitutional county judges in counties without a county court at law also be attorneys, since they will hear appeals from JP court and will also have original jurisdiction of civil cases where the amount in controversy is over $500.00?

| | Number | Percent |
|---|---|---|
| Yes | 287 | 58.5% |
| No | 191 | 38.9% |



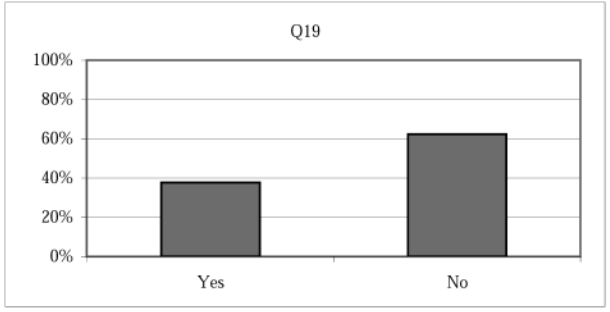

18. If a JP in a particular court is an attorney, would you be in favor of converting this court to a Justice Court at Law, if the county were required to approve the change? (This court would be presided over by an attorney JP and would have to be approved by that county.)

| | Number | Percent |
|---|---|---|
| Yes | 120 | 24.4% |
| No | 361 | 73.5% |



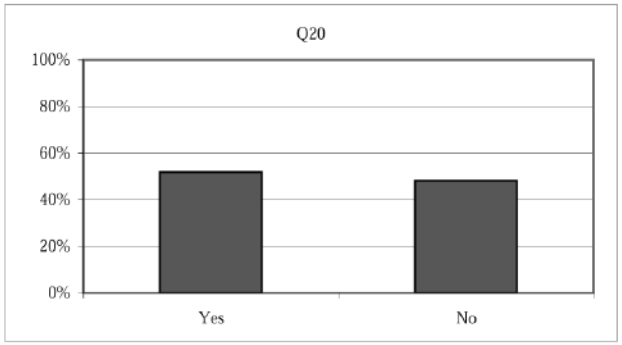

19. If you answered "Yes" to Question # 18, would you be in favor of increasing the civil jurisdiction of a Justice Court at Law in order to take some of the caseload off the county courts?

| | Number | Percent |
|---|---|---|
| Yes | 92 | 37.7% |
| No | 152 | 62.3% |



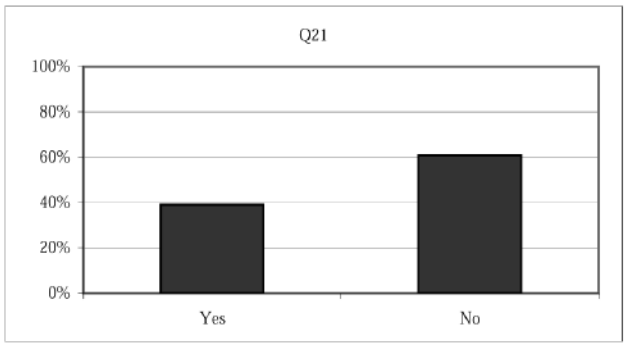
20. If you answered "Yes" to Question # 18, would you be in favor of allowing the justice court at Law to assist the other JP courts in that county by taking certain types of cases, such as commercial eviction cases, deed restrictions cases, license and weight cases, truancy cases, or any other types of case agreed to by the other participating JP courts in that county?

| | Number | Percent |
|---|---|---|
| Yes | 121 | 51.9% |
| No | 112 | 48.1% |




21. If you answered "Yes" to Question # 18, would you be in favor of making a Justice Court at Law a court of record for some cases, and allow appeals directly to the Court of Appeals and not the county court for a trial do novo?

| | Number | Percent |
|---|---|---|
| Yes | 91 | 39.1% |
| No | 142 | 60.9% |

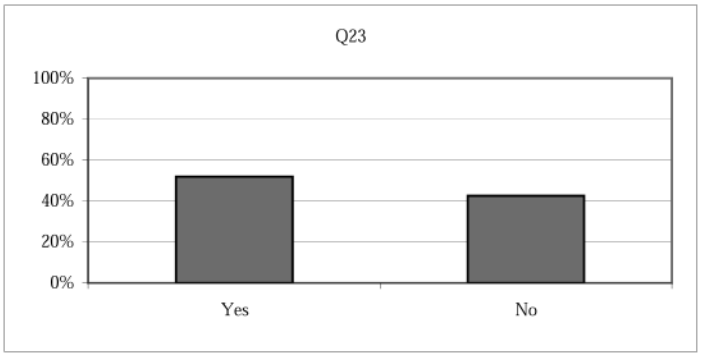


22. Please rank your preferences to the following option by indicating 1,2,3,4, or 5 next to the option. 1 would be your first preference and 5 would be your last preference.

| | Average Rating | Rank |
|---|---|---|
| Do not make any changes regarding the qualifications for a JP. | 1.6 | 1 |
| Require that all JP's be attorneys as of the date of the change in the law by the legislature. | 4.7 | 5 |
| Require that all JP's in the larger counties be attorneys but make no change in the requirements in the other counties. (Non-attorney JP's currently serving in larger counties would be allowed to serve for the duration of their judicial career.) | 3.8 | 3 |
| Require that all JP's in Texas be attorneys but allow non-attorney JP's to serve for the duration of their judicial career. | 3.9 | 4 |
| Make no changes in the qualifications of JP's but allow a county to convert a JP court to a Justice Court at Law whenever the judge of such court is an attorney. (The court would remain a Justice Court at Law as long as the judge is an attorney. A Justice court at Law could have increased civil jurisdiction or receive cases transferred from other JP courts in the county.) | 3.4 | 2 |

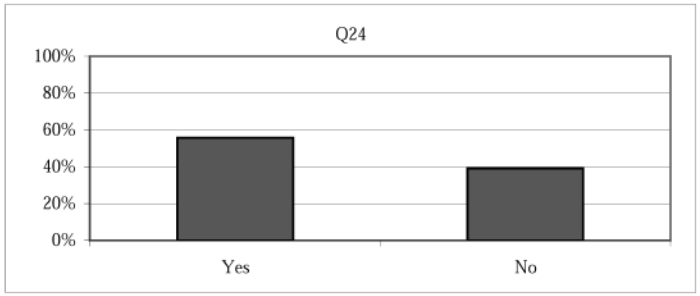
23. If the venue rules could be modified and the JP courts be granted local rule making authority, would you favor allowing the JP's in a county to adopt local rules to equalize caseloads by allowing certain types of cases to be filed in specific precincts or by transferring cases within a county, so long as all participating JP's agree on the system?

| | Number | Percent |
|---|---|---|
| Yes | 255 | 51.9% |
| No | 209 | 42.6% |



24. If the venue rules could be modified, would you, favor allowing JP's to adopt local rules that would allow certain types of cases to be transferred to another JP within that county who specializes in that type of case or prefers to handle that type of case?

| | Number | Percent |
|---|---|---|
| Yes | 274 | 55.8% |
| No | 192 | 39.1% |




Demographic Questions

A. What is the approximate population of the county in which you preside?

Average 203,008

B. What is the approximate civil caseload in your court per year?

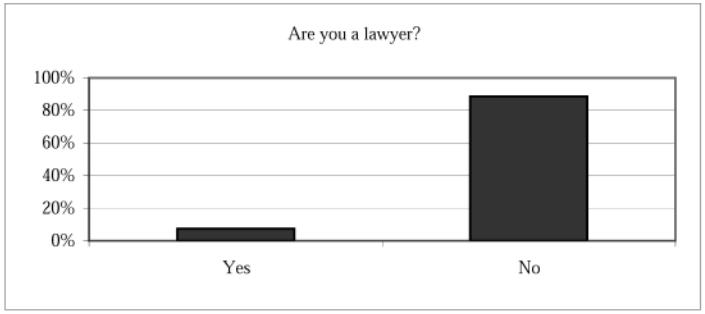
Average 1,281

C. What is the approximate criminal caseload in your court per year?

Average 6,837

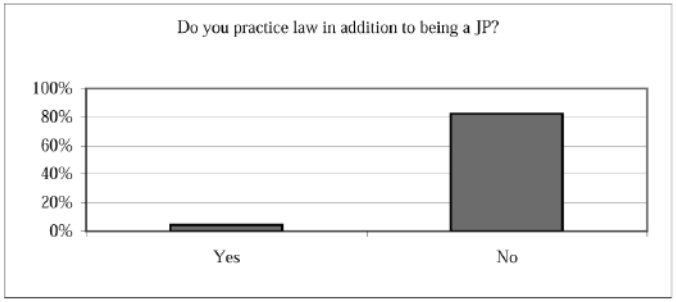
D. Are you a lawyer?

| | Number | Percent |
|---|---|---|
| Yes | 37 | 7.5% |
| No | 435 | 88.6% |



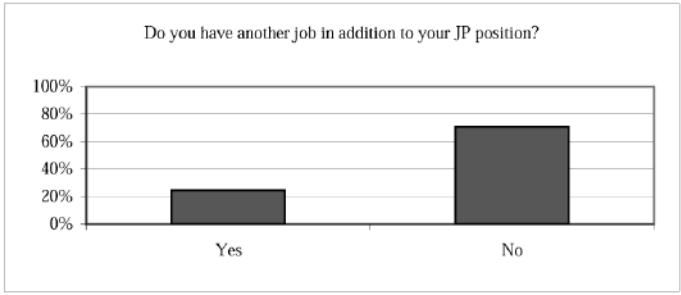
E. Do you practice law in addition to being a JP?

| | Number | Percent |
|---|---|---|
| Yes | 21 | 4.3% |
| No | 404 | 82.3% |




F. Do you have another job in addition to your JP position?

| | Number | Percent |
|---|---|---|
| Yes | 121 | 24.6% |
| No | 348 | 70.9% |



# Appendix 3

# Appellate Courts Questionnaire
## Descriptive Statistics

Respondents were given eleven questions and asked to select from two responses. They were also given the option of explaining their answers. One hundred and forty-four surveys have been returned. The following is a summary of their short answer selections. The bold number is the number of responders, followed by the percentage of the whole that number represents.

1. Should the Supreme Court of Texas and the Court of Criminal Appeals be merged into one court with both civil and criminal jurisdiction?

| | | |
|---|---|---|
| Yes | **33** | 22.9% |
| No | **108** | 75% |
| no ans. | **3** | 2.1% |

2. If the Supreme Court of Texas and the Court of Criminal Appeals are not merged into one court, should the number of justices on each court be reduced to seven from the present nine?

| | | |
|---|---|---|
| Yes | **37** | 25.7% |
| No | **102** | 70.8% |
| no ans. | **5** | 3.5% |

3. Presently, the Texas Supreme Court has jurisdiction to review appeals from some interlocutory trial court orders… Should the Texas Supreme Court be given discretion to review interlocutory trial court orders in all civil appellate matters?

| | | |
|---|---|---|
| Yes | **20** | 13.9% |
| No | **120** | 83.3% |
| both | **1** | 0.7% |
| no ans. | **3** | 2.1% |

4. It is proposed that reducing the number of Courts of Appeals, and having more judges in each court… Do you believe the number of Courts of Appeals should be reduced, and the number of judges per court increased?

| | | |
|---|---|---|
| Yes | **18** | 12.5% |
| No | **115** | 79.9% |
| both | **2** | 1.4% |
| no ans. | **9** | 6.3% |

5. The First and Fourteenth Courts of Appeals in Houston have coextensive jurisdiction… Should these jurisdictional overlaps be eliminated?

| | | |
|---|---|---|
| Yes | **84** | 58.3% |
| No | **40** | 27.8% |
| both | **7** | 4.9% |
| no ans. | **13** | 9% |

6. If the overlap in jurisdiction among the First and Fourteenth Courts of Appeals should be eliminated, should the Courts be merged, or should the jurisdiction of the Courts be divided?

| | | |
|---|---|---|
| Merged | **59** | 41% |
| Divided | **44** | 30.6% |
| both | **2** | 1.4% |
| no answer | **39** | 27.1% |

7. Should the Courts of Appeals be redistricted to equalize their workload?

| | | |
|---|---|---|
| Yes | **45** | 31.3% |
| No | **90** | 62.5% |
| both | **1** | 0.7% |
| no ans. | **8** | 5.6% |

8. If the Courts of Appeals are redistricted, should the present legislative requirement that the Supreme Court transfer cases from one Court of Appeals to another for docket equalization be repealed?

| | | |
|---|---|---|
| Yes | **53** | 36.8% |
| No | **75** | 52.1% |
| no ans. | **16** | 11.1% |

9. Should the Texas Supreme Court use its existing administrative power to assign an active justice of one Court of Appeals to another to address disparity in the caseloads of the Courts of Appeals?

| | | |
|---|---|---|
| Yes | **24** | 16.7% |
| No | **108** | 75% |
| no ans. | **12** | 8.3% |

10. Presently, the Governor has the power to appoint and remove the Regional Administrative Judges. Should the Texas Supreme Court have that power instead?

| | | |
|---|---|---|
| Yes | **41** | 28.5% |
| No | **83** | 57.6% |
| no ans. | **20** | 13.9% |

11. Presently, Local Administrative Judges are appointed by their peers for a specified term. Should the power to appoint Local Administrative Judges be held by the Regional Administrative Judges instead?

| | | |
|---|---|---|
| Yes | **6** | 4.2% |
| No | **127** | 88.2% |
| no ans. | **11** | 7.6% |

Respondents were also asked to indicate what position they hold.

3 identified themselves as Supreme Court Justices.
2 as Court of Criminal Appeals Judges
23 identified as Appellate Court Justices
10 as Trial Court Judges
15 as Appellate Lawyers
4 identified as Prosecutors
1 as Criminal Defense Lawyers
5 identified as Family Lawyers
81 as Other
7 did not indicate any position

Note that this does not add up to 144 as several respondents indicated more than one position.

# Appendix 4

**Office of Court Administration**

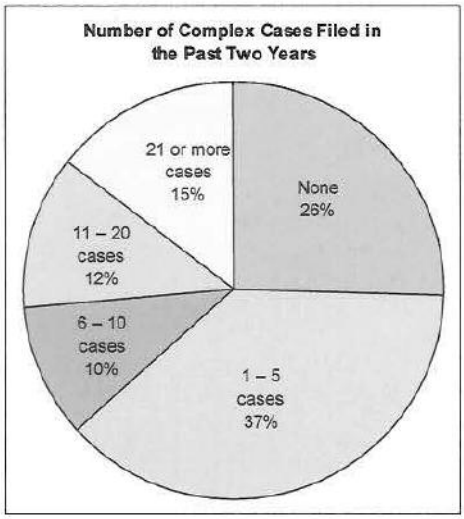
# Complex Case Survey
## March 2008

In February 2008, district judges were requested to complete a short online survey regarding complex cases. Of the 374 district judges who were emailed the survey, 124 responded, resulting in a 33.2 percent return rate.

For the purposes of this survey, a complex case was defined as: a case which, because of either (i) a multiplicity of parties or witnesses, (ii) difficulty of discovery scheduling, document and exhibit management or number of discovery motions, (iii) a complexity of causes of action, counterclaims, cross-claims, defenses or issues of fact or law, (iv) length of trial, or (v) any combination of the above, places such a strain on the court and its resources that the timely administration, trial and disposition of the case is likely to be delayed and result in excessive expense to the litigants.

**1. How many complex cases have been filed in your court in the past two years?**

| | Number | Percent |
|---|---|---|
| None | 30 | 25.6% |
| 1 – 5 cases | 44 | 37.6% |
| 6 – 10 cases | 12 | 10.3% |
| 11 – 20 cases | 14 | 12.0% |
| 21 or more cases | 17 | 14.5% |
| Total | 117 | |

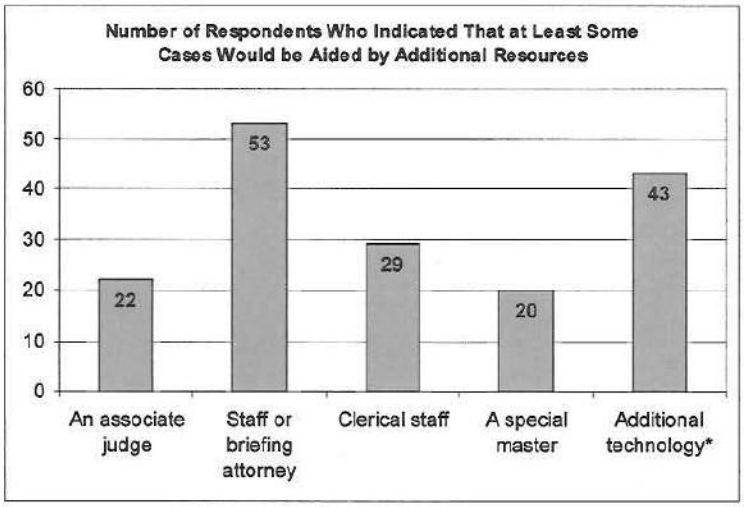


**2. How many complex cases in your court in the past two years would have been aided or accelerated had any of the following additional resources been available to you?**

| | None | 1-10 cases | 11-20 cases | 21 or more cases | Total |
|---|---|---|---|---|---|
| An associate judge | 71<br>76.3% | 16<br>17.2% | 4<br>4.3% | 2<br>2.2% | 93 |
| Staff or briefing attorney | 53<br>50.0% | 43<br>40.6% | 5<br>4.7% | 5<br>4.7% | 106 |
| Clerical staff | 67<br>69.8% | 23<br>24.0% | 4<br>4.2% | 2<br>2.1% | 96 |
| A special master | 73<br>78.5% | 16<br>17.2% | 3<br>3.2% | 1<br>1.1% | 93 |
| Additional technology* | 56<br>56.6% | 38<br>38.4% | 2<br>2.0% | 3<br>3.0% | 99 |

**Number of respondents who indicated that <u>at least some cases</u> would have been aided by the following additional resources:**

| | Number | Percent |
|---|---|---|
| An associate judge | 22 | 20.0% |
| Staff or briefing attorney | 53 | 48.2% |
| Clerical staff | 29 | 26.4% |
| A special master | 20 | 18.2% |
| Additional technology* | 43 | 39.1% |
| Number of respondents who indicated at least one of the above resources would have been helpful in at least some cases: | 73 | 66.4% |
| Total | 110 | |




* Additional technology examples include web site communications, pleading and briefs; central data bank for discovery documents and exhibits; or courtroom technology for presentations.

**3. What is your estimate of the number of times during the next two years that the availability of any of the following resources would be helpful to you in the timely disposition of complex cases?**

| | None | 1-10 cases | 11-20 cases | 21 or more cases | Total |
|---|---|---|---|---|---|
| An associate judge | 70<br>75.3% | 17<br>18.3% | 3<br>3.2% | 3<br>3.2% | 93 |
| Staff or briefing attorney | 54<br>49.5% | 44<br>40.4% | 8<br>7.3% | 3<br>2.8% | 109 |
| Clerical staff | 64<br>66.7% | 25<br>26.0% | 5<br>5.2% | 2<br>2.1% | 96 |
| A special master | 68<br>73.9% | 21<br>22.8% | 3<br>3.3% | 0<br>0% | 92 |
| Additional technology* | 50<br>50.5% | 41<br>41.4% | 4<br>4.0% | 4<br>4.0% | 99 |
| Other | N/A[a] | 5[b]<br>83.3% | 1[c]<br>16.7% | 0<br>0% | 6 |

a. 1. I have the advantage of having several law clerks do extensive research on these cases. I would be short-handed without access to my clerks.

b. 1. We have a superb associate judge and clerical staff. We are sorely in need of more courtroom space and modern technology. We have had to borrow other courtrooms.
2. Money for a visiting judge if the elected judge presides over a lengthy trial.
3. Knowledge and ability to communicate with other judges handling similar types of issues/matters.
4. In Travis County we have most of these resources available to us now and with our Central Docket and working together as a team of judges, our disposition rate on complex and other cases is quite high already.
5. Additional Civil District Courts in Bexar County

c. 1. Availability of a visiting judge to hear routine matters during trial of complex cases.

**4. Do you believe that one judge should be assigned to handle and oversee all complex cases within your judicial region?**

| | Number | Percent |
|---|---|---|
| Yes | 4 | 3.4% |
| No | 113 | 96.6% |
| Total | 117 | |

* Additional technology examples include web site communications, pleading and briefs; central data bank for discovery documents and exhibits; or courtroom technology for presentations.

1. The definition of "complex cases" above is loaded, perhaps unintentionally. Of course, I handle complex cases, but never so that the "timely admin, trial, and disposition of the case is likely to be delayed and result in excessive expense to the litigants.

2. We need briefing/staff attorneys.

3. I can certainly see the need for the ability to request more funding from the presiding judge of a local admin region (e.g. more staff, VJ, clerical, briefing attorneys) because of a truly complex case. I believe that it may be a good idea to allow the local admin presiding judge to have the ability to allocate funding to assist these courts when a particular need is presented. However, any other changes are unnecessary. All trial judges in Texas have the ability to handle "complex cases" (e.g. assignment of masters, etc.) - the question remains how to get the funding to these courts when the need is present and not waiting for the next legislative session to address the shortfall on an ad hoc basis.

4. Additional resources as noted above would be extremely beneficial and make the system proceed in a more timely manner. It would be great to also have resources for visiting judges and appropriate staff (bailiff and court reporter) to hear cases on the regular docket when a judge is tied up in a trial that goes for many weeks. The problem with my county is that we have no extra courtroom space to accommodate such visiting judge or staff. Perhaps resources that would allow the complex case to be tried at another adequate location within the particular county.

5. A case manager in my office would be great in handling the complex cases. He or she could focus on these cases so that when we have hearings, scheduling orders, etc. they would be familiar with the issues, who is involved, what has been resolved, how much time we need on hearings, etc. When my court coordinator has to do this, it takes time away from everything that has to be done in the office to include answering phones or setting other cases for hearings.

6. Briefing Attorney

7. I have not yet been on this bench for two years.

8. I strongly disagree with the concept of taking complex cases out of the normal judicial process or away from any judge's docket. If this is done, then rather than just designating a judge for this purpose, it should be a separately elected position.

9. I have found that the attorneys on my complex cases are well prepared, organized and very competent. Generally, they provide excellent briefs and exhibit lists and other aids that assist the Court

10. Most of my cases would probably not meet your criteria of complex; however the

11. The main resource we need is money for a visiting judge if we get caught in a lengthy trial. There are over 3000 cases filed in my court each year. I have to keep the docket moving, even if I'm in a lengthy trial. Although an associate judge can help with our motion docket, he or she cannot try cases. Money for VJ's should be a priority. And the funds should be controlled in such a manner that the elected judge does not abuse that resource.

12. I have attempted to answer this survey. However, the definition of "complex case" as provided is so vague & subjective that it is impossible to answer the survey. Furthermore, given the complete subjective nature of the definition, any survey will have no value because there is no way to ensure that any respondent is using the "same" definition of the term. Is there any way that the definition of "complex case" can be made more precise? - Judge Carl Ginsberg, 193rd Judicial District Court

13. We don't need more specialty courts. We need more courts, period. The court in each jurisdiction can specialize their caseload between themselves without legislative interference or limitations. In so doing, the courts can adapt themselves as the caseload changes.

14. I believe a judge elected by the people should handle all cases in the district. I believe that additional resources as indicated above would help the elected judge timely dispose of all cases

15. Our central docket system lessens any "strain" that might exist in other counties. We are also fortunate to have most of the "resources" you identified and they are indeed helpful in dealing with complex cases.

16. Civil filings have dramatically decreased due to tort reform that there are no complex cases to try. I see no need to assign judges to oversee complex cases.

17. YOU PEOPLE SHOULD LEAVE THIS ALONE.

18. Leave it alone. There is nothing that needs to be fixed. The "complex" litigation issue is driven by groups that want a tool to remove cases from the dockets of duly ELECTED judges.

19. It would be helpful if this county had the financial resources to afford to pay a visiting judge to oversee this court's regular docket which would allow this Judge to try a complex case.

20. I have no difficulty in handling my docket!!!!!

21. My CCL docket is so largely criminal, family and probate, and my civil jurisdiction is so limited, that concerns about complex cases seldom arise.

22. My county has an excellent record of handling complex cases. We have 1) adequate funding 2) adequate staff 3) adequate technological tools 4) experienced judges whose legal background was in complex civil litigation.

23. I don't need any help, and based on my discussions with other judges, neither do they. I am certainly capable of comprehending and disposing of any case that is filed in the court I have been assigned to. If a case is to "complex" for a judge to oversee and dispose of because that judge cannot or will not take the time to comprehend the issues to be addressed in that case then that judge should consider submitting his/her resignation. Personally, as a proud member of the judiciary I find the "complex case" concept, particularly as it was originally proposed, to be offensive and insulting. Contrary to the beliefs of certain special interest groups, the state of the judiciary is strong and it does not need to be modified.

24. Bexar County has an internal rules and process for handling complex cases that arise within its court system. It works very well and I believe that the attorneys believe the same. We do not need any changes to the rules.

25. The current system is working fine in Denton County. Consolidation would not be an appropriate solution because it would cause an uneven distribution of court time and assets.

26. As our county grows so grows complex litigation; increasing the number of District Courts to keep up with that growth would do more than any one (or more) of the above listed items – you see it's not just the complex lawsuits that need to be heard; there has been an increase in the number of less complex cases as well-and more and more of them want more and more courtroom time. How about giving trails judges similar/same abilities as Federal Judges to impose 12(b) sanctions?

27. Resources for the judge that ends up with the cases.

28. I do think each judicial district should retain responsibility for its own docket.

29. A briefing attorney for discovery and pre-trial motions to help with research on the law.

30. Complex cases are civil and criminal. For general jurisdiction courts it is essential that the courtrooms have technology to effectively present the evidence. Because we are dependent upon the vagaries of the commissioners for our budget-most of us do not have this technology, despite repeated requests. It is essential that the state take responsibility (budget) for moving the state's courts into the 21st century.

31. We do not need to have super judges to handle complex cases. Perhaps, the study should be to determine if we increase the number of courts will that resolve the delays that litigants are experiencing in having the opportunity to have their cases

tried.

32. One size does not fit all. Complex cases should have a separate set of rules.

33. I have adequate time, staff, and available technology. This is what I do. Also, lawyers bring I.T. people and their own technology to court.

34. I am concerned that this issue is a way to circumvent normal venue issues rights of parties.

35. I think we should utilize the resources of the Texas Center for the Judiciary & have more education, perhaps even certification through the College of Judicial Studies, in complex litigation. I strongly oppose the creation of specialty courts for complex litigation because I believe with enough education and support all district judges are competent to handle these cases, and our system of justice benefits from judges who have different perspectives and backgrounds.

36. Better court technology (computer and internet accessibility for attorneys, presentation screen, real time access) and more Civil District Courts in Bexar County.

37. The judges in this state are able to handle complex civil and criminal cases as well as any judge appointed by someone outside our county. This should not be a political issue and motivated by influential corporations, insurance companies, attorneys or lobbyists. Let our judicial system and appellate system work without forum shopping allowed by political or financial interests in this state.

38. We handle large and challenging cases routinely without delay or excessive expense to the litigants.

39. My complex cases are capital murder cases and another judge is required to either try the capital or handle the existing caseload.

40. I would like to see this addressed in CLE programs so we can all learn from those with more experience in these cases.

41. A staffing attorney who could be assigned to all the Civil District Judges in my county would be of great assistance.

42. This is an invalid survey because your definition of "complex cases" skews it toward a certain result.

43. Bexar County civil district judges already have a fine system for handling complex cases. The only that are welcome would involve funding for additional resources.

44. Our county can handle any complex case internally.

45. I am unalterably opposed to any variant of "complex case" legislation or rule-making that would deny litigants the right to have their cases heard by the elected judge of the court in which the case is filed.

46. The resources of each of my counties are sufficient to handle any complex case.

47. Yes. The most qualified in the State of Texas are the regional administrative judges who know more about demands of trial than the Legislature or the Supreme Court.

48. I am the judge of a constitutional county court. I assumed you wanted a response even though the e-mail was not addressed to constitutional county courts.

49. We have a local rule to refer complex cases to one assigned judge if that is appropriate. The definition of complex case is always a subjective one. I would hate to see complex cases taken away from the trial judges locally elected by the citizens of a community.

50. Clerical help is the #1 problem. As an MDL judge as well as a Rule 11 Regional judge, my staff is unable to process the paperwork in a manner that is helpful. The second larges issues is having briefing staff who could help expedite cases through research.

51. I believe that your question to #4 is flawed. In the urban areas, it would be impossible for ONE judge to handle all complex cases; therefore, I voted "no." If the task was given to a limited number of judges (exact number to be determined), I would probably vote, "maybe."

52. Having the Legislature stick to its job and leaving the judiciary to do its job.

# Appendix 5

# Complexities in the Geographical Jurisdictions of District Courts
## As of September 2008

To understand the complexities stemming from the piecemeal creation of District Courts in Texas, a taxonomy of jurisdictional boundary-overlap patterns was developed. Because most courts' boundaries overlap wholly or partially with some other court, the state's 448 District Courts cover its 254 counties in 96 distinct areas. Each area is defined by a lack of overlapping boundaries with other areas.

The taxonomy is useful because it allows us to understand a very complex geographical system by understanding a small number of patterns occurring within that system. Six patterns emerged from an analysis of geographical boundaries. The frequency of the six patterns is shown in the table below. Examples of each pattern and further details follow the table.

| Jurisdictional Overlap Patterns | Number of Areas | Number of Counties | Number of Courts |
|---|---|---|---|
| Single County / Multiple Courts / No Courts Serve Another County | 26 | 26 | 261 |
| Single County / Single Court / Court Does not Serve Another County | 15 | 15 | 15 |
| Multiple Counties / Multiple Courts / Identical Jurisdictions | 6 | 23 | 13 |
| Multiple Counties / Single Court | 25 | 71 | 25 |
| Multiple Counties / Multiple Courts / One Separate Jurisdiction | 14 | 47 | 56 |
| Multiple Counties / Multiple Courts / Many Separate Jurisdictions | 10 | 72 | 78 |
| **TOTAL** | **96** | **254** | **448** |

## Single County / Multiple Courts / No Courts Serve Another County

| *County* | *Number of Courts* | *County* | *Number of Courts* |
|---|---|---|---|
| Harris | 59 | Williamson | 5 |
| Dallas | 39 | Midland | 4 |
| Tarrant | 26 | Smith | 4 |
| Bexar | 24 | Ector | 4 |
| Travis | 17 | Brazos | 3 |
| Hidalgo | 11 | Gregg | 3 |
| Jefferson | 8 | Orange | 3 |
| Collin | 8 | Wichita | 3 |
| Montgomery | 7 | Angelina | 2 |
| Denton | 6 | Ellis | 2 |
| Galveston | 6 | Kaufman | 2 |
| Fort Bend | 6 | Nacogdoches | 2 |
| McLennan | 5 | Parker | 2 |
| **TOTAL Counties = 26** | | | **TOTAL Courts = 261** |

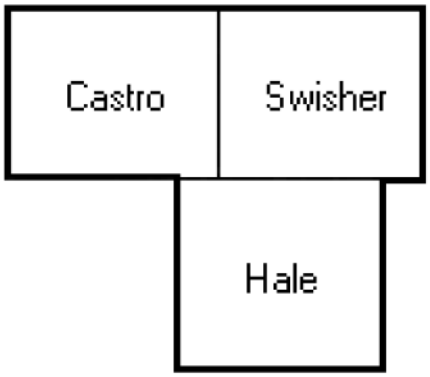
## Single County / Single Court / Court Does not Serve Another County

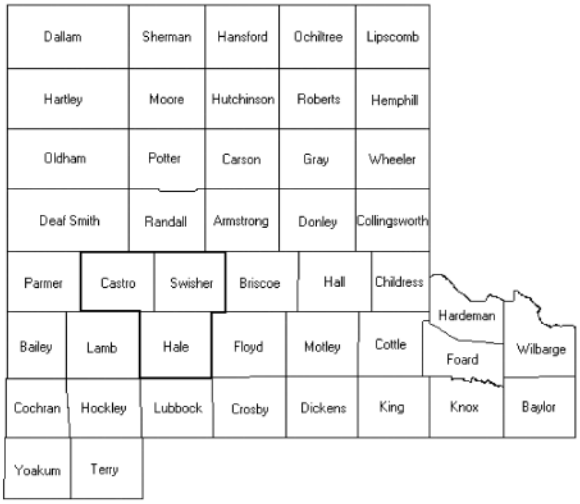
| *Counties with a Single District Court* | |
|---|---|
| Cooke | Milam |
| Coryell | Navarro |
| Eastland | Palo Pinto |
| Erath | Rockwall |
| Harrison | Rusk |
| Hill | Van Zandt |
| Hood | Wood |
| Lamb | |
| **TOTAL Counties = 15** | **TOTAL Courts = 15** |

# Multiple Counties / Multiple Courts / Identical Jurisdictions

**An Example from the Ninth Administrative Judicial Region**

| *Court* | *Counties in Jurisdiction* |
|---|---|
| 64th District Court | Castro, Hale, & Swisher |
| 242nd District Court | Castro, Hale, & Swisher |



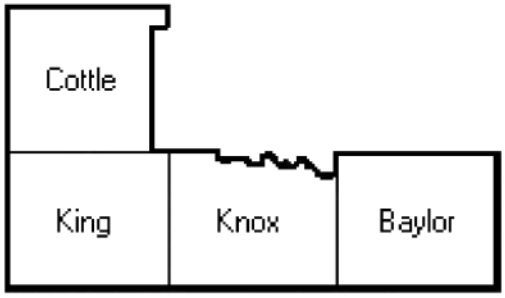



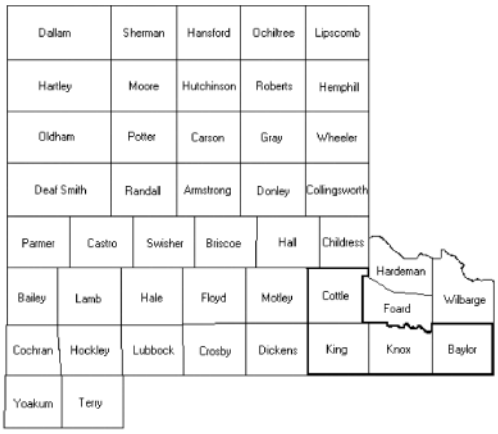

| **Counties Sharing Multiple Courts** | **Courts** |
|---|---|
| **3 Counties:** | |
| Castro, Hale & Swisher | **2 Courts:** 64 & 242 |
| Dimmit, Maverick & Zavala | **2 Courts:** 293 & 365 |
| Polk, San Jacinto & Trinity | **2 Courts:** 258 & 411 |
| **4 Counties:** | |
| Blanco, Burnet, Llano, & San Saba | **2 Courts:** 33 & 424 |
| **5 Counties:** | |
| Atascosa, Frio, Karnes, La Salle & Wilson | **2 Courts:** 81 & 218 |
| Aransas, Bee, Live Oak, McMullen & San Patricio | **3 Courts:** 36, 156 & 343 |
| **TOTAL Counties = 23** | **TOTAL Courts = 13** |

# Multiple Counties / Single Court

**An Example from the Ninth Administrative Judicial Region**

| *Court* | *Counties in Jurisdiction* |
|---|---|
| 50th District Court | Baylor, Cottle, King & Knox |



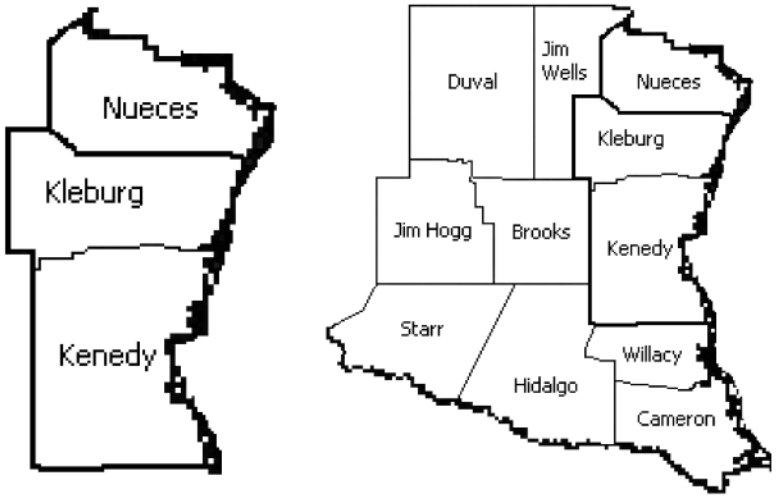




| Counties Per Court | Counties Sharing a Single Court | Administrative Judicial Region |
|---|---|---|
| *Two (11 Courts in 22 Counties)* | Falls & Robertson (82nd) | 3rd |
| | Brooks & Jim Wells (79th) | 5th |
| | Borden & Scurry (132nd) | 7th |
| | Jones & Shackleford (259th) | 7th |
| | Stephens & Young (90th) | 8th |
| | Jack & Wise (271st) | 8th |
| | Terry & Yoakum (121st) | 9th |
| | Deaf Smith & Oldham (222nd) | 9th |
| | Cochran & Hockley (286th) | 9th |
| | Bailey & Parmer (287th) | 9th |
| | Brown & Mills (35th) | 9th |
| *Three (8 Courts in 24 Counties)* | Bosque, Comanche & Hamilton (220th) | 3rd |
| | Medina, Real & Uvalde (38th) | 6th |
| | Fisher, Mitchell & Nolan (32nd) | 7th |
| | Andrews, Crane & Winkler (109th) | 7th |
| | Glasscock, Howard & Martin (118th) | 7th |
| | Loving, Reeves & Ward (143rd) | 7th |
| | Archer, Clay & Montague (97th) | 8th |
| | Foard, Hardeman & Wilbarger (46th) | 9th |
| *Four to Five (6 Courts in 25 Counties)* | Haskell, Kent, Stonewall & Throckmorton (39th) | 7th |
| | Dawson, Gaines, Garza & Lynn (106th) | 7th |
| | Dallam, Hartley, Moore & Sherman (69th) | 9th |
| | Briscoe, Dickens, Floyd,& Motley (110th) | 9th |
| | Baylor, Cottle, King & Knox (50th) | 9th |
| | Carson, Childress, Collingsworth, Donley & Hall (100th) | 9th |
| **Total Counties = 71** | **Total Courts = 25** | |

# Multiple Counties / Multiple Courts / One Separate Jurisdiction

**An Example from the Fifth Administrative Judicial Region**

| *Court(s)* | *Counties in Jurisdiction* |
|---|---|
| 28, 94, 117, 148, 214, 319 & 347 | Nueces |
| 105 | Kenedy, Kleburg, & Nueces |

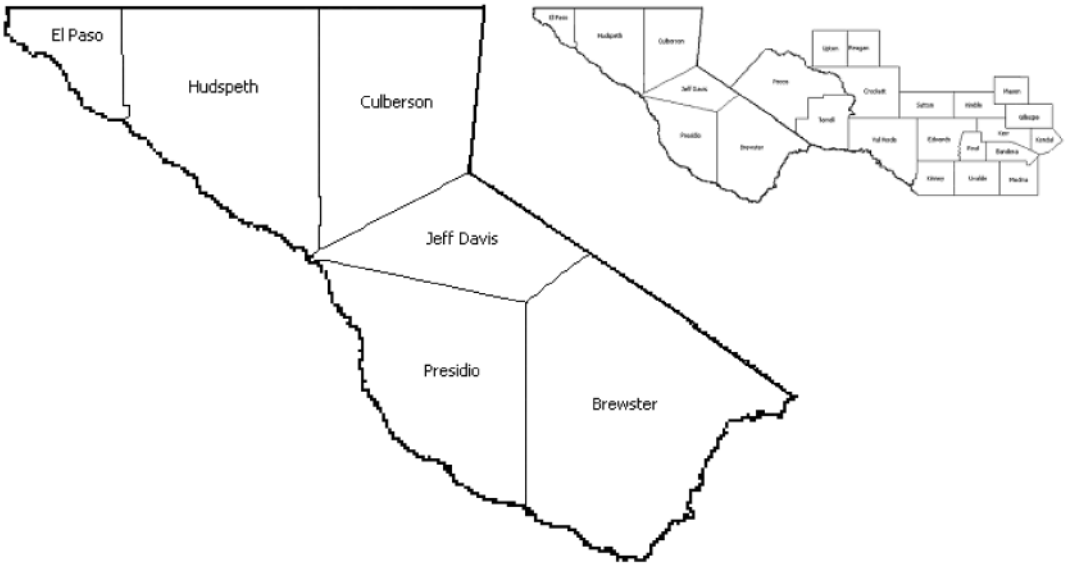



| Counties Sharing Several Courts | Primary County | Courts |
|---|---|---|
| Bell & Lampasas (3rd AJR) | Bell | **27**, 146, 169, 264 & 426 |
| Crosby & Lubbock (9th AJR) | Lubbock | **72**, 99, 137, 140, 237 & 364 |
| Johnson & Somervell (8th AJR) | Johnson | **18**, **249** & 413 |
| Webb & Zapata (4th AJR) | Webb | **49**, 111, 341 & 406 |
| Chambers & Liberty (2nd AJR) | Liberty | 75, **253** & 344 |
| Cameron & Willacy (5th AJR) | Cameron | 103, 107, 138, **197**, 357, 404, 444 & 445 |
| Hansford, Hutchinson & Ochiltree (9th AJR) | Hutchinson | **84** & 316 |
| Kenedy, Kleburg & Nueces (5th AJR) | Nueces | 28, 94, **105**, 117, 148, 214, 319 & 347 |
| Callahan, Coleman & Taylor (7th AJR) | Taylor | **42**, 104, 326 & 350 |
| Duval, Jim Hogg & Starr (5th AJR) | Starr | **229** & 381 |
| Bastrop, Burleson, Lee & Washington | Bastrop | 21, 335 & **423** |
| Calhoun, De Witt, Goliad, Jackson, Refugio & Victoria (4th AJR) | Victoria | **24**, **135**, **267** & 377 |
| Gray, Hemphill, Lipscomb, Roberts & Wheeler (9th AJR) | Gray | **31** & 223 |
| Bandera, Gillespie, Kendall, Kerr, Kimble, McCulloch, Mason & Menard (6th AJR) | Kerr | **198** & **216** |
| **TOTAL Counties = 47** | | **TOTAL Courts = 56** |

# Multiple Counties / Multiple Courts / Many Separate Jurisdictions

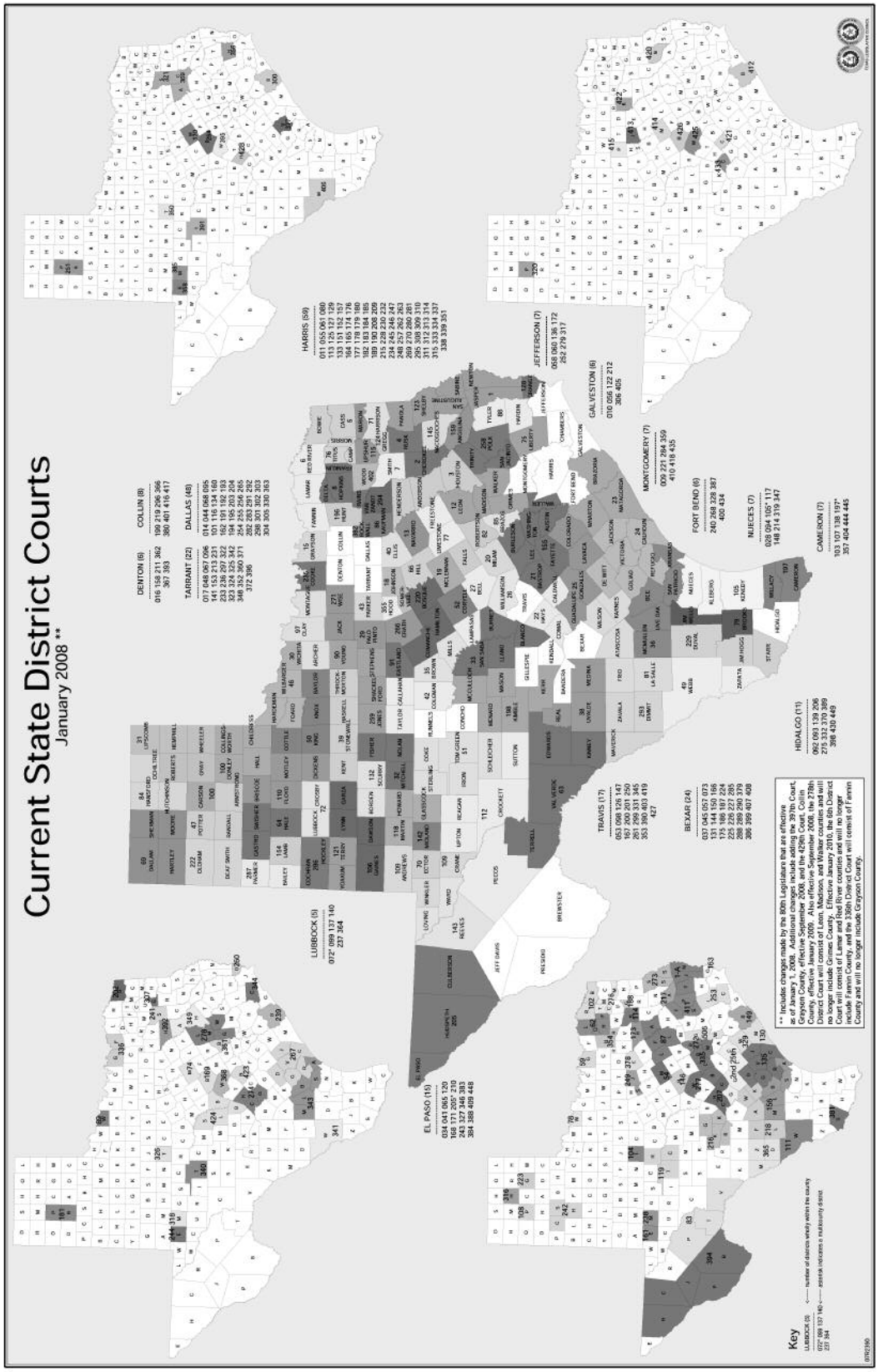
**An Example from the Sixth Administrative Judicial Region**

| *Court* | *Counties in Jurisdiction* |
|---|---|
| 34, 40, 41, 65, 120, 168, 171, 210, 243, 327, 346, 383 & 384 | El Paso |
| 205 | Culberson, El Paso, & Hudspeth |
| 394 | Brewster, Culberson, Hudspeth, Jeff Davis, & Presidio |




| Counties Sharing Several Courts | Courts |
|---|---|
| **3 Counties:** Armstrong, Potter & Randall | **5 Courts:** 47, 108, 181, 251 & 320 |
| **3 Counties:** Brazoria, Matagorta & Wharton | **7 Courts:** 23, 130, 149, 239, 300, 329 & 412 |
| **5 Counties:** Camp, Marion, Morris, Titus & Upshur | **3 Courts:** 76, 115 & 276 |
| **6 Counties:** Brewster, Culberson, El Paso, Hudspeth, Jeff Davis & Presidio | **18 Courts:** 34, 41, 65, 120, 168, 171, 205, 210, 243, 327, 346, 383, 384, 388, 394, 409, 448 & Crim. District Court No. 1 |
| **7 Counties:** Coke, Concho, Irion, Runnels, Schelicher, Sterling & Tom Green | **4 Courts:** 51, 119, 340 & 391 |
| **7 Counties:** Caldwell, Colorado, Comal, Gonzales, Guadalupe, Hays & Lavaca | **8 Courts:** 22, 25, 2nd 25, 207, 274, 421, 428 & 433 |
| **8 Counties:** Hardin, Jasper, Newton, Panola, Sabine, San Augustine, Shelby & Tyler | **6 Courts:** 1, 1A, 88, 123, 273 & 356 |
| **9 Counties:** Crockett, Edwards, Kinney, Pecos, Reagan, Sutton, Terrell, Upton & Val Verde | **3 Courts:** 63, 83 & 112 |
| **11 Counties:** Bowie, Cass, Delta, Fannin, Franklin, Grayson, Hopkins, Hunt, Lamar, Rains, & Red River | **11 Courts:** 5, 6, 8, 15, 59, 62, 102, 196, 202, 336, 354, & 397 |
| **13 Counties:** Anderson, Austin, Cherokee, Fayette, Freestone, Grimes, Henderson, Houston, Leon, Limestone, Madison, Walker & Waller | **12 Courts:** 2, 3, 12, 77, 87, 155, 173, 278, 349, 369, 392 & 506 |
| **TOTAL Counties = 72** | **TOTAL Courts = 78** |

# Appendix 6


Current State District Courts
January 2008 **
DENTON (6)
016 158 211 362
367 393
COLLIN (8)
199 219 296 366
380 401 416 417
TARRANT (22)
017 048 067 096
141 153 219 221
323 324 325 342
348 352 360 371
372 386
DALLAS (48)
014 044 068 095
101 116 134 160
162 192 203 204
194 195 203 204
254 255 256 265
282 292 301 302
304 305 330 363
HARRIS (59)
011 055 061 080
133 151 152 159
163 164 165 174
177 178 179 180
183 184 185 186
189 190 208 209
215 229 230 232
234 245 246 247
269 272 282 283
289 290 291 295
295 308 309 310
311 312 313 314
333 334 338 337
338 339 351
JEFFERSON (7)
058 060 136 172
252 279 317
GALVESTON (6)
010 056 122 212
306 405
MONTGOMERY (7)
009 221 284 359
410 418 435
FORT BEND (6)
240 268 328 387
400 434
NUECES (7)
028 094 105* 117
148 214 319 347
CAMERON (7)
103 107 138 197*
357 404 444 445
LUBBOCK (6)
072* 099 137 140
237 364
EL PASO (15)
034 041 065 120
168 171 205* 210
243 327 346 383
384 388 409 448
TRAVIS (17)
053 098 126 147
167 200 201 250
261 299 331 345
353 368 369 419
427
BEXAR (24)
037 045 057 073
131 144 145 166
175 186 187 224
225 226 227 285
288 289 290 379
386 399 407 408
HIDALGO (11)
062 093 139 206
275 332 370 389
398 430 449
** Includes changes made by the 80th Legislature that are effective as of January 1, 2008. Additional changes include adding the 397th Court, Grayson County, effective September 2008, and the 429th Court, Collin County, effective January 2009. Also effective September 2008, the 278th District Court will consist of Leon, Madison, and Walker Counties and will no longer include Grimes County. Effective January 2010, the 6th District Court will consist of Lamar and Red River counties and will no longer include Fannin County, and the 336th District Court will consist of Fannin County and will no longer include Grayson County.
Key
LUBBOCK (6) <— number of districts wholly within the county
(072* 099 137 140) <— asterisk indicates a multicounty district
237 364

ANDERSON (55,109)
*003, *087, *349, *369
ANDREWS (13,004)
*109
ANGELINA (80,130)
159, 217
ARANSAS (22,497)
*036, *156, *343
ARCHER (8,854)
*097
ARMSTRONG (2,148)
*047
ATASCOSA (38,628)
*081, *218
AUSTIN (23,590)
*155

BAILEY (6,594)
*287
BANDERA (17,645)
*216
BASTROP (57,733)
*021, *335, 423
BAYLOR (4,093)
*050
BEE (32,359)
*036, *156, *343
BELL (237,974)
*027, 146, 169, 264, 426
BEXAR (1,392,931)
037, 045, 057, 073, 131, 144, 150, 166, 175, 186, 187, 224, 225, 226, 227, 285, 288, 289, 290, 379, 386, 399, 407, 408
BLANCO (8,418)
*033, *424
BORDEN (729)
*132
BOSQUE (17,204)
*220
BOWIE (89,306)
*005, *102, 202
BRAZORIA (241,767)
*023, 149, 239, 300, 412
BRAZOS (152,415)
085, 272, 361
BREWSTER (8,866)
*394
BRISCOE (1,790)
*110
BROOKS (7,976)
*079
BROWN (37,674)
*035
BURLESON (16,470)
*021, *335
BURNET (34,147)
*033, *424

CALDWELL (32,194)
*022, *207, 421
CALHOUN (20,647)
*024, *135, *267
CALLAHAN (12,905)
*042
CAMERON (335,227)
103, 107, 138, *197, 357, 404, 444, 445
CAMP (11,549)
*076, *276
CARSON (6,516)
*100
CASS (30,438)
*005
CASTRO (8,285)
*064, *242
CHAMBERS (26,031)
*253, 344
CHEROKEE (46,659)
002, *369
CHILDRESS (7,688)
*100
CLAY (11,006)
*097
COCHRAN (3,730)
*286
COKE (3,864)
*051
COLEMAN (9,235)
*042
COLLIN (491,675)
199, 219, 296, 366, 380, 401, 416, 417
COLLINGSWORTH (3,206)
*100
COLORADO (20,390)
*025, *025-A
COMAL (78,021)
*022, *207, *274, 433
COMANCHE (14,026)
*220
CONCHO (3,966)
*119
COOKE (36,363)
235
CORYELL (74,978)
052
COTTLE (1,904)
*050
CRANE (3,996)
*109
CROCKETT (4,099)
*112
CROSBY (7,072)
*072
CULBERSON (2,975)
*205, *394

DALLAM (6,222)
*069
DALLAS (2,218,899)
014, 044, 068, 095, 101, 116, 134, 160, 162, 191, 192, 193, 194, 195, 203, 204, 254, 255, 256, 265, 282, 283, 291, 292, 298, 301, 302, 303, 304, 305, 330, 363
DAWSON (14,985)
*106
DEAF SMITH (18,561)
*222
DELTA (5,327)
*008, *062
DENTON (432,976)
016, 158, 211, 362, 367, 393
DE WITT (20,013)
*024, *135, *267
DICKENS (2,762)
*110
DIMMIT (10,248)
*293, *365
DONLEY (3,828)
*100
DUVAL (13,120)
*229

EASTLAND (18,297)
091
ECTOR (121,123)
070, 161, 244, 358
EDWARDS (2,162)
*063
ELLIS (111,360)
040, 378
EL PASO (679,622)
034, 041, 065, 120, 168, 171, *205, 210, 243, 327, 346, 383, 384, 388, 409, 448
ERATH (33,001)
266

FALLS (18,576)
*082
FANNIN (31,242)
*006, *336
FAYETTE (21,804)
*155
FISHER (4,344)
*032
FLOYD (7,771)
*110
FOARD (1,622)
*046
FORT BEND (354,452)
240, 268, 328, 387, 400, 434
FRANKLIN (9,458)
*008, *062
FREESTONE (17,867)
*077, *087
FRIO (16,252)
*081, *218

GAINES (14,467)
*106
GALVESTON (250,158)
010, 056, 122, 212, 306, 405
GARZA (4,872)
*106
GILLESPIE (20,814)
*216
GLASSCOCK (1,406)
*118
GOLIAD (6,928)
*024, *135, *267
GONZALES (18,628)
*025, *025-A
GRAY (22,744)
*031, 223
GRAYSON (110,595)
015, 059, *336
GREGG (111,379)
124, 188, 307
GRIMES (23,552)
*012, *278, *506
GUADALUPE (89,023)
*025, *025-A, *274

HALE (36,602)
*064, *242
HALL (3,782)
*100
HAMILTON (8,229)
*220
HANSFORD (5,369)
*084
HARDEMAN (4,724)
*046
HARDIN (48,073)
*088, 356
HARRIS (3,400,578)
011, 055, 061, 080, 113, 125, 127, 129, 133, 151, 152, 157, 164, 165, 174, 176, 177, 178, 179, 180, 182, 183, 184, 185, 189, 190, 208, 209, 215, 228, 230, 232, 234, 245, 246, 247, 248, 257, 262, 263, 269, 270, 280, 281, 295, 308, 309, 310, 311, 312, 313, 314, 315, 333, 334, 337, 338, 339, 351
HARRISON (62,110)
071
HARTLEY (5,537)
*069
HASKELL (6,093)
*039
HAYS (97,589)
*022, *207, *274, 428
HEMPHILL (3,351)
*031
HENDERSON (73,277)
*003, 173, 392
HIDALGO (569,463)
092, 093, 139, 206, 275, 332, 370, 389, 398, 430, 449
HILL (32,321)
066
HOCKLEY (22,716)
*286
HOOD (41,100)
355
HOPKINS (31,960)
*008, *062
HOUSTON (23,185)
*003, *349
HOWARD (33,627)
*118
HUDSPETH (3,344)
*205, *394
HUNT (76,596)
196, *354
HUTCHINSON (23,857)
*084, 316

IRION (1,771)
*051

JACK (8,763)
*271
JACKSON (14,391)
*024, *135, *267
JASPER (35,604)
*001, *001-A
JEFF DAVIS (2,207)
*394
JEFFERSON (252,051)
058, 060, 136, 172, 252, 279, 317
JIM HOGG (5,281)
*229
JIM WELLS (39,326)
*079
JOHNSON (126,811)
*018, *249, 413
JONES (20,785)
*259

KARNES (15,446)
*081, *218
KAUFMAN (71,313)
086, 422
KENDALL (23,743)
*216
KENEDY (414)
*105
KENT (859)
*039
KERR (43,653)
*198, *216
KIMBLE (4,468)
*198
KING (356)
*050
KINNEY (3,379)
*063
KLEBERG (31,549)
*105
KNOX (4,253)
*050

LAMAR (48,499)
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LAMB (14,709)
154
LAMPASAS (17,762)
*027
LA SALLE (5,866)
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LAVACA (19,210)
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LEE (15,657)
*021, *335
LEON (15,335)
*012, *087, *278
LIBERTY (70,154)
075, *253
LIMESTONE (22,051)
*077, *087
LIPSCOMB (3,057)
*031
LIVE OAK (12,309)
*036, *156, *343
LLANO (17,044)
*033, *424
LOVING (67)
*143
LUBBOCK (242,628)
*072, 099, 137, 140, 237, 364
LYNN (6,550)
*106

MCCULLOCH (8,205)
*198
MCLENNAN (213,517)
019, 054, 074, 170, 414
MCMULLEN (851)
*036, *156, *343
MADISON (12,940)
*012, *278
MARION (10,941)
*115, *276
MARTIN (4,746)
*118
MASON (3,738)
*198
MATAGORDA (37,957)
*023, 130
MAVERICK (47,297)
*293, *365
MEDINA (39,304)
*038
MENARD (2,360)
*198
MIDLAND (116,009)
142, 238, 318, 385
MILAM (24,238)
020
MILLS (5,151)
*035
MITCHELL (9,698)
*032
MONTAGUE (19,117)
*097
MONTGOMERY (293,768)
009, 221, 284, 359, 410, 418, 435
MOORE (20,121)
*069
MORRIS (13,048)
*076, *276
MOTLEY (1,4260)
*110

NACOGDOCHES (59,203)
145, 420
NAVARRO (45,124)
013
NEWTON (15,072)
*001, *001-A
NOLAN (15,802)
*032
NUECES (313,645)
028, 094, *105, 117, 148, 214 319, 347

OCHILTREE (9,006)
*084
OLDHAM (2,185)
*222
ORANGE (84,966)
128, 163, 260

PALO PINTO (27,026)
029
PANOLA (22,756)
*123
PARKER (88,495)
043, 415
PARMER (10,016)
*287
PECOS (16,809)
*083, *112
POLK (41,133)
*258, *411
POTTER (113,546)
*047, 108, *181, *251, 320
PRESIDIO (7,304)
*394

RAINS (9,139)
*008, *354
RANDALL (104,312)
*047, *181, *251
REAGAN (3,326)
*112
REAL (3,047)
*038
RED RIVER (14,314)
*006, *102
REEVES (13,137)
*143
REFUGIO (7,828)
*024, *135, *267
ROBERTS (887)
*031
ROBERTSON (16,000)
*082
ROCKWALL (43,080)
382
RUNNELS (11,495)
*119
RUSK (47,372)
004

SABINE (10,469)
*001, *273
SAN AUGUSTINE (8,946)
*001, *273
SAN JACINTO (22,246)
*258, *411
SAN PATRICIO (67,138)
*036, *156, *343
SAN SABA (6,186)
*033, *424
SCHLEICHER (2,935)
*051
SCURRY (16,361)
*132
SHACKELFORD (3,302)
*259
SHELBY (25,224)
*123, *273
SHERMAN (3,186)
*069
SMITH (174,706)
007, 114, 241, 321
SOMERVELL (6,809)
*018, *249
STARR (53,597)
*229, 381
STEPHENS (9,674)
*090
STERLING (1,393)
*051
STONEWALL (1,693)
*039
SUTTON (4,077)
*112
SWISHER (8,378)
*064, *242

TARRANT (1,446,219)
017, 048, 067, 096, 141, 153, 213, 231, 233, 236, 297, 322, 323, 324, 325, 342, 348, 352, 360, 371, 372, 396
TAYLOR (126,555)
*042, 104, 326, 350
TERRELL (1,081)
*063, *083
TERRY (12,761)
*121
THROCKMORTON (1,850)
*039
TITUS (28,118)
*076, *276
TOM GREEN (104,010)
*051, *119, 340, 391
TRAVIS (812,280)
053, 098, 126, 147, 167, 200, 201, 250, 261, 299, 331, 345, 353, 390, 403, 419, 427
TRINITY (13,779)
*258, *411
TYLER (20,871)
*001-A, *088

UPSHUR (35,291)
*115
UPTON (3,404)
*112
UVALDE (25,926)
*038

VAL VERDE (44,856)
*063, *083
VAN ZANDT (48,140)
294
VICTORIA (84,088)
*024, *135, *267, 377

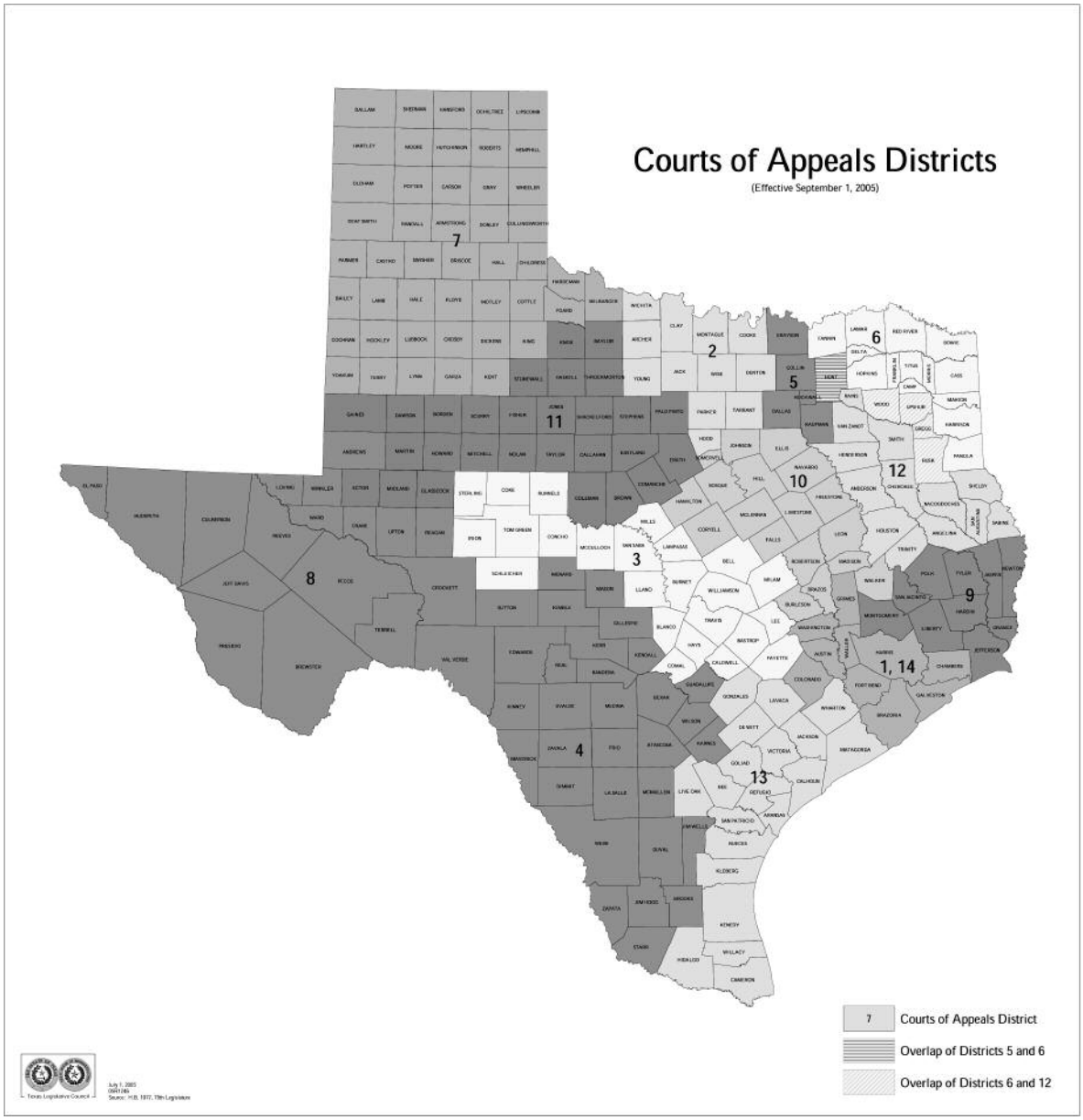
WALKER (61,758)
*012, *278
WALLER (32,663)
*155, *506
WARD (10,909)
*143
WASHINGTON (30,373)
*021, *335
WEBB (193,117)
*049, 111, 341, 406
WHARTON (41,188)
*023, 329
WHEELER (5,284)
*031
WICHITA (131,664)
030, 078, 089
WILBARGER (14,676)
*046
WILLACY (20,082)
*197
WILLIAMSON (249,967)
026, 277, 368, 395, 425
WILSON (32,408)
*081, *218
WINKLER (7,173)
*109
WISE (48,793)
*271
WOOD (36,752)
402

YOAKUM (7,322)
*121
YOUNG (17,943)
*090

ZAPATA (12,182)
*049
ZAVALA (11,600)
*293, *365

**(###) = 2000 census population** *** = district includes more than one county** **Additional new courts: 397th - Grayson County 09/08; 429th - Collin County 01/09.**
**Additional court changes: 278th - Grimes County removed 09/08; 6th - Fannin County removed 01/10; 336th - Grayson County removed 01/10**

# Appendix 7


Courts of Appeals Districts
(Effective September 1, 2005)
7
2
6
5
11
12
10
3
8
9
1, 14
4
13
7 Courts of Appeals District
Overlap of Districts 5 and 6
Overlap of Districts 6 and 12

# Appendix 8

**Texas Supreme Court Advisory Committee**
**Subcommittee on Legislative Mandates**
**Assignment on "Complex Cases"**

## READING MATERIALS

### A. General Materials (State Surveys, History, Discussion)

1. A Survey of Existing State Business and Technology Courts, Univ. of Maryland School of Law, March 2005 (available at www.law.umaryland.edu/journal/jbtl/documents/bus_tech_courts.doc)
2. Complex Litigation, Commercial Litigation, and Commercial Courts (table summary provided by L Parsley and TLR) (available at http://www.tkbpl.com/WebPublisher2.nsf/Docs/FE28B165BF9DC6F9862573590071119C/$File/Complex_Business_Litigation_and_Commerical_Courts.pdf)
3. A History of the Creation and Jurisdiction of Business Courts in the Last Decade, 60 Busin. Lawyer 1 (Nov. 2004) (available at http://www.eckertseamans.com/file/pdf/publications/historybusinesscourts2.pdf).
4. NCSC, Focus on Business and Complex Litigation Courts (available at http://www.ncsconline.org/wc/publications/Res_SpePro_CivilActionV1N1Pub.pdf)
5. NCSC, "Mass Torts" definition survey (available at http://www.ncsconline.org/WC/Publications/MassTorts/Survey/MassTort_CategoryDetail.asp?cat=2)
6. NCSC, "Mass Torts" infrastructure survey (available at http://www.ncsconline.org/WC/Publications/MassTorts/Survey/MassTort_CategoryDetail.asp?cat=8)
7. Junge, Sen. E. Reichgott, *Business Courts: Efficient Justice or Two-Tiered Elitism?*, 24 WM MITCHELL L. REV. 315 (1998).
8. Judicial Selection Methods in the United States (available at http://www.ajs.org/selection/sel_state-select-map.asp).

### B. State-Specific Materials (Statutes, Rules, Orders, etc.)

#### 1. Arizona

a. Final Report of the Commission to Study Complex Litigation, Sept. 2002 (available at www.supreme.state.az.us/courtserv/ComplexLit/ComplexLitFinal.pdf).
b. In re: Authorizing a Complex Civil Litigation Pilot Program Applicable in Maricopa County, Admin. Order 2002-107 (Ariz. S. Ct., Nov. 22, 2002) (available at http://supreme.state.az.us/orders/admorder/Orders02/2002-107.pdf).
c. Ariz. Rules of Civil Procedure 8(h), 8(i), 16.3, 39.1 (available at http://supreme.state.az.us/orders/admorder/Orders02/2002-107.pdf).
d. Complex Civil Litigation Pilot Program in Maricopa County: Joint Report to the Arizona Supreme Court, submitted by the Superior Court in

Maricopa County and the Complex Civil Litigation Court Evaluation Committee (Dec. 2006) (available at http://www.supreme.state.az.us/courtserv/ComplexLit/JointRptFinal.pdf).

e. In re: Extension of Authorization for the Complex Civil Litigation Pilot Program Applicable in Maricopa County, Admin. Order 2006-20060123 (Ariz. S. Ct., Dec. 20, 2006) (available at http://supreme.state.az.us/orders/admorder/Orders06/2006-123.pdf).

**2. California**

a. Complex Civil Litigation Program, Fact Sheet (available at http://www.courtinfo.ca.gov/reference/documents/factsheets/comlit.pdf)

b. California Rules of Court 3.400 – 3.403 (available at http://www.courtinfo.ca.gov/rules/documents/pdfFiles/title_3.pdf).

c. Superior Court of California, County of Santa Clara, Complex Civil Litigation Pilot Program, Department Rules & Procedures (available at http://www.sccomplex.org/model/handout.html).

d. Guidelines, Complex Civil Litigation Department, Santa Clara County Superior Ct (available at http://www.scefiling.org/GuideDepart17C.pdf).

**3. Colorado**

a. Final Report of Governor's Task Force on Civil Justice Reform, July 24, 2000, with Report of the Committee on Business Courts and Business Courts Operating Statement (available at http://www.state.co.us/cjrtf/report/report.htm) ((homepage with links to orders, agendas, and minutes, available at http://www.state.co.us/cjrtf/).

**4. Connecticut**

a. Notice to Attorneys re Complex Litigation Docket, Superior Court, Civil Division, June 3, 2002 (available at http://www.jud.ct.gov/external/super/ComplexLitigationNotice.pdf

**5. Delaware**

a. Administrative Directive No. 117, Delaware Supreme Court, April 1, 199 (available at http://courts.state.de.us/Courts/Supreme%20Court/Administrative%20Directives/?ad117.pdf).

b. Del. Code Title 10 Section 346, 347 (SB 58), May 23, 2003 (available at http://delcode.delaware.gov/sessionlaws/ga142/chp036.shtml)

**6. Florida**

a. Business Court Procedures for the Ninth Judicial Circuit Court, in and for Orange County, Florida (available at http://www.ninja9.org/Courts/Business/Index-BC.htm).

b. Administrative Order No. 2003-17-1, Ninth Judicial Circuit Court in and for Orange County, Florida (available at http://www.flcourts.org/gen_public/cmplx_lit/bin/reference/Business%20

nd%20other%20Specialized%20Courts/Florida%209th%20Circ%20Business%20Court/Fla9thCircBusCtAO1.pdf).

c. In re Creation of Section 40 ("Complex Business Litigation Section") in the General Jurisdiction Division, Admin. Order 06-40, Eleventh Judicial Circuit, Miami-Dade County, Florida, November 2006 (available at http://reports.jud11.flcourts.org/Administrative_Orders/1-06-40-Creation%20Section%2040-Complex%20Business%20Litigation.pdf).

d. Complex Business Litigation Section Procedures for the Eleventh Judicia Circuit Court, in and for Miami-Dade County, Florida (available at http://jud11.flcourts.org/programs_and_services/CBLCourtProcedure01-17-2007%20_2_.pdf)

e. Complex Business Litigation Division, Admin. Order S-2007-004, Jan. 4 2007, Thirteenth Judicial Cir., Hillsborough County, FL (available at http://www.fljud13.org/AO/DOCS/2007-004.pdf).

f. Complex Business Litigation Division Procedures, for the Thirteenth Judicial Circuit, Hillsborough County, FL, Jan. 22, 2007 (available at http://www.fljud13.org/pdfs/genciv/Complex%20Bus%20Litigation.pdf)

**7. Maine**

a. Maine Business and Consumer Court, General Scope and Purpose (available at http://www.courts.state.me.us/mainecourts/bcd/index.html).

b. Establishment of the Business and Consumer Docket, Admin. Order JB-07-1, Maine Supreme Judicial Court, June 1, 2007 (with Pilot Rules for Business and Consumer Docket) (available at www.courts.state.me.us/opinions/adminorders/JB_07_1%20BCD.htm).

**8. Maryland**

a. Maryland Business and Technology Court Task Force Report (available a http://www.courts.state.md.us/finalb&treport.pdf).

b. Maryland Business and Technology Case Management Program: Final Report of the Implementation Committee of the Conference of Circuit Judges (available at http://www.courts.state.md.us/b&t-ccfinal.pdf).

c. Maryland Rule 16-205 (available at http://www.michie.com/maryland/lpext.dll?f=templates&fn=main-h.htm&cp=mdrules).

d. Baltimore City Circuit Court, Business and Technology Case Manageme Program (available at http://www.baltocts.sailorsite.net/civil/BTCMP/BTCMP.html)

**9. Massachusetts**

a. Notice to the Bar, Business Litigation Session, Suffolk Superior Court (available at http://www.gesmer.com/blog/businesslitigationrules1.pdf).

b. Administrative Directive No. 03-1, Superior Court Business Litigation Session, Extension and Expanded Venue, Feb. 12, 2003 (available at http://www.mass.gov/courts/courtsandjudges/courts/superiorcourt/03_01.df).

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b. Rules 1.33 & 1.61 of the Local Rules of Practice for the Eighth Judicial District Court of Nevada (available at: http://www.co.clark.nv.us/ClarkCountyCourts/clerk/rules/EDCR.pdf)

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b. Section 202.70 Rules of the Commercial Division of the Supreme Court (available at http://www.nycourts.gov/rules/trialcourts/202.shtml#70).

c. Report of the Office of Court Administration to the Chief Judge on Commercial Division Focus Groups, July 2006 (available at http://www.nycourts.gov/reports/ComDivFocusGroupReport.pdf).

d. Haig, Bob, *Can New York's New Commercial Division Resolve Business Disputes as Well as Anyone?*, 1996 ANDREWS DEL. CORP. LIT. RPTR 19373 (1996).

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c. Report on Activities of the North Carolina Business Court 1996-2000 (available at http://www.ncbusinesscourt.net/ref/Report%20on%20Businesscourt%20Activities.htm)

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b. *Oklahoma House Speaker Lance Cagill: Business Courts would boost,* The Journal Record (Okl City), Feb. 22, 1987 (available at http://findarticles.com/p/articles/mi_qn4182/is_20070222/ai_n18627498/print).

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b. Rule 7.031 ("Commercial Court"), Supplementary Local Rules of the Circuit Court of Lane County, Oregon, Feb. 1 2007, (available at http://www.ojd.state.or.us/lan/documents/commercial%20court%20slr%207%20031.pdf)

**17. Pennsylvania**

a. In re Commerce Case Management Program, Admin. Docket 02 of 2003, April 29, 2003 (available at http://fjd.phila.gov/pdf/regs/2003/cptad02-03.pdf).

b. Philadelphia Courts, First Judicial District of Pennsylvania, Guidelines for Cases Assigned to Commerce Program (specific links available at http://courts.phila.gov/common-pleas/trial/civil/commerce-program.html).

c. Allegheny County (Pittsburgh), Court of Common Pleas, Local Rule 249 (available at http://www.alleghenycourts.us/pdf/civil/local_rules/Business%20of%20the%20Courts.pdf)

**18. Rhode Island**

a. R.I. Superior Court, Administrative Order 2001-09 (available at http://www.courts.state.ri.us/superior/pdfadministrativeorders/2001-9.pdf)

## C. Texas Materials

1. Legislation/Statutes/Rules
   a. SB 1204, Article 8 (80th Leg., 2007) (introduced version)
   b. Texas: SB 1204, Article 8 (80th Leg., 2007) (engrossed version)
   c. Tex. Govt. Code Chap 74 (administrative regions)
   d. Tex. R. Jud. Admin. 11 (MDL)

2. Commentaries/Discussions
   a. 36 Tex. Prac.Guide, County And Special District Law § 22.13 (2d ed., 2002).
   b. Recommendations for Reform, The Texas Judicial System, TLR Foundation 2007 at 83-84, 93-103.
   c. Analysis of SB 1204, Prepared by The Texas Association of Defense Counsel.

3. News Reports and Editorials
   a. *Controversial Issue is Back*, Tex Parte Blog , Aug. 22, 2007 (available at http://texaslawyer.typepad.com/texas_lawyer_blog/2007/08/controversial-i.html).
   b. *End Run*, Editorial, Houston Chronicle, August 29, 2007 (available at http://www.chron.com/disp/story.mpl/editorial/5093994.html).
   c. *Court Advisory Committee's Look at Complex Case Rule Causes Concern*, Mary Alice Robbins, Tex. Lawyer, Sept. 3, 2007.

4. Correspondence
   a. Letter, Rep. Bryan Hughes to Chip Babcock (8/22/07)
   b. Letter, Sen. Jeff Wentworth to Chip Babcock (8/22/07)
   c. Letter, Dallas County Civil District Judges to Chip Babcock (8/23/07)
   d. Letter, Steve Bresnen to Chip Babcock (8/24/07)
   e. Letter, Rep. Dan Gattis to Chip Babcock (8/24/07)
   f. Email, Randy Gathany to Jeff Boyd (8/28/07) (with reply)
   g. Letter, Chip Babcock to Rep. Dan Gattis (8/29/07)
   h. Letter, Chip Babcock to Dallas County Civil District Judges (8/29/07)

## CONTACTS

1. Hon. Julie Kocurek (Tex. Assn. of District Judges)
2. Hon. John Dietz (Tex. Assn. of District Judges)
3. Lee Parsley (Texans for Lawsuit Reform(?))
4. Senator Robert Duncan (Porter Wilson, Lisa Kaufman)
5. Hon. Ken Wise (Co-Chair, SBOT Task Force on Court Administration)
6. Martha Dickie (Co-Chair, SBOT Task Force on Court Administration)
7. Gary W. Hutton (Bexar County Civil Dist. Ct. Administrator)

**SCAC Legislative Mandates Subcommittee – Materials re "Complex Cases"**
**Prepared by Jeffrey S. Boyd**

# Appendix 9

## Office of Court Administration
## Results of Resource Survey – Access to Law Clerks and Staff Attorneys
Published May 9, 2006 – Closed May 22, 2006

### Overall

Provide name of respondent and county(ies) served by the respondent's court.

- 163 respondents
- 119 counties

### Access

Do you have access to dedicated* legal staff?

- No = 96.2 percent (212 negative responses)
- Yes = 3.8 percent (8 positive responses)

Do you have access to shared** legal staff?

- No = 86.8 percent (205 negative responses)
- Yes = 13.2 percent (27 positive responses)

* Dedicated staff means a law clerk or staff attorney who works exclusively for an individual judge.
** Shared staff means a law clerk or staff attorney who works exclusively for more than one judge, including staff from an attorney or law clerk pool.

If yes to either, please describe your level of access.

- More than adequate = 20.0 percent (of the 35 positive responses)
- Adequate = 31.4 percent
- Less than adequate = 40.0 percent
- No response = 8.6 percent

If you do NOT have legal staff or access is less than adequate, indicate total number of staff hours per month needed.

- Less than 40 hours = 78.4 percent (of 176 responses)
- 41 – 80 = 12.5 percent
- 81 – 120 = 4.5.percent
- 121 – 160 = 1.7 percent
- 161 – 240 = 1.7 percent
- 241 – 320 = 0.0 percent
- More than 320 = 1.1 percent

**Employment Category**

Type of legal staff employed by county.

- Staff attorney = 34.8 percent (16 of 46 responses)
- Law clerk = 8.7 percent (4 of 46 responses)
- Both = 10.9 percent (5 of 46 responses)
- Other = 45.7 percent (21 of 46 responses)

County legal staff funding source.

- County general revenue funds = 97.1 percent (33 of 34 responses)
- Administrative region = 2.9 percent (1 of 34 responses)

Type of legal staff employed by contract.

- Staff attorney = 8.3 percent (1 of 12 responses)
- Law clerk = 8.3 percent (1 of 12 responses)
- Both = 16.7 percent (2 of 12 responses)
- Other = 66.7 percent (8 of 12 responses)

Who is the contractor?

- County = 33.3 percent (2 of 6 responses)
- County judges = 16.7 percent (1 of 6 responses)
- Law school = 16.7 percent (1 of 6 responses)
- Private firm = 33.3 percent (2 of 6 responses)

Source of contract funding.

- County general revenue funds = 50.0 percent (3 of 6 responses)
- Commissioners' court = 16.7 percent (1 of 6 responses)
- Taxpayers = 16.7 percent (1 of 6 responses)
- Unknown = 16.7 percent (1 of 6 responses)

Type of legal staff volunteers.

- Staff attorney = 14.3 percent (1 of 7 responses)
- Law clerk = 42.9 percent (3 of 7 responses)
- Both = 14.3 percent (1 of 7 responses)
- Other = 28.6 percent (2 of 7 responses)
-

If type of legal staff is Other, please describe.

- College intern = 28.6 percent (2 of 7 responses)
- County attorney = 14.3 percent (1 of 7 responses)
- Shared staff = 28.6 percent (2 of 7 responses)
- Paralegal = 28.6 percent (2 of 7 responses)

## Comments

Comment on the viability of having centralized legal staff. *(Comment categories below based on staff review of comments after their submittal)*

- Positive comment = 38.4 percent (of 125 responses)
- Better than no assistance = 17.6 percent
- Might work = 3.2 percent
- Concerns expressed regarding access, timeliness, quality = 8.8 percent
- Ethics question = 0.8 percent
- Negative comment = 26.4 percent
- Neutral or no comment = 4.8 percent

Provide any additional comments you would like us to consider.

- 58 additional comments were provided.
- Some of these comments addressed the question of centralized legal staff. Of these, 14 indicated positive support and 2 appeared negative on this issue.

Positive Comments

- That would be excellent. Most of the need for staff would be related to research which could be handled by email/mail/phone.
- Would definitely be helpful.
- Love to have an independent resource to call other than other judges.
- This would be a useful and valuable resource.
- Any help would be welcomed and certainly valuable depending on the set up (i.e., instantly accessible).
- I think that would be beneficial.
- This would be a good idea with availability through secure online services. Economically it would work well - I do not need that much assistance, however, to have the backup of legal staff when needed would be a great resource.
- That would be helpful.
- Probably would be helpful. I have a high volume court, therefore, little time for legal research.
- That would be very helpful because I need assistance just every now and then and couldn't justify the need for full time or even part time legal staff.
- Centralized legal staff available by phone, email, or fax would be helpful when unusual problems are encountered.
- I think it would be helpful in smaller counties with no legal staff. Jury charges are a big part of what the court administrator and staff attorney help with in Bexar County.
- It would be tremendous for us to have a legal staff that can help us either research a certain area or complex litigation.

- My court coordinator was my paralegal in private practice and I have to rely upon her because our commissioners' court would not provide a briefing clerk. Centralized legal staff would be a benefit for rural courts.
- It would be helpful.
- It would be helpful, since one of court administration employee helps us on briefing the law and her time is limited.
- Sounds good.
- That would be very helpful to my court.
- Having centralized staff could be helpful.
- Would appreciate any legal staff available on call as a resource.
- A central legal staff for the district and county courts at law within our county would be beneficial.
- It would be excellent if available to all and not just to largest counties.
- This is a good idea. We should be able to communicate via Email. A specific staff person should be responsible for specific courts so that we deal with the same person each time.
- That would be an excellent way to achieve maximum benefit of a limited resource. Much of the research or work required by one court would be that needed by other courts.
- Highly desirable, particularly IF we can communicate by email or instant messaging from my laptop on the bench. I can send the query and keep trying the case while someone researches. If they need help on the question, they can email me, I can tweak the question, and no one in the trial even knew it was happening.
- My needs are slight enough that remote access to legal staff by phone and email would probably be sufficient.
- I think this is viable for many things for which a file is not needed. Otherwise, need to see the clerk's file.
- Wonderful idea!
- Anything would help.
- On call would be a good resource.
- It would be welcomed.
- Could sometimes be very helpful, and see no reason why it would not work.
- I would be great to have a legal staff that could be accessed from Austin.
- Centralized legal staff could be helpful on major research projects.
- We have six district courts in Cameron County; a centralized legal support staff would be very beneficial.
- This would be helpful for complicated questions of law that the Court does not have time to research.
- Would be helpful if there is immediate response.
- Fine.
- Excellent idea.
- Very helpful.
- That would be nice.

- I believe that this would be a very workable resource. There are many times that I could use legal staff, but there would not be enough work to have anyone employed by the county either full time or part time. So, having a central staff available would be helpful to use on an as-needed basis.
- I like the idea of having any resource to assist the court with legal research. This is an area I feel I could improve (technical/knowledge of law and access to enough time to research law, both for rulings in cases, as well as administrative responsibilities of a judge. My court is general jurisdiction. I enjoy the diversity in cases over which I preside, however the diversity requires more time researching the law. Presently, due to the large volume of cases I handle (est. 4500 between 2 counties) combined with the administrative responsibilities and travel time between 2 counties, I have very little time to adequately research the law. Because funding limits affect the viability of providing legal staff other than in a centralized capacity, accessibility is important. Additionally, confidentiality and competence of the "legal staff" would be paramount. Because the need for legal support often arises during trials or hearings, it would be nice to have reliable access to a legal staff person. Dallas District Judges had/have a staff of "legal advisors". One with whom I'm familiar was extremely dependable and knowledgeable. To have a person of her caliber assessable to a judge would be tremendous. A concern is the confidentiality of inquiries; who hires the staff; whether the staff is like-minded with the judge who is calling upon the staff, because often times, the judge's ruling will be impacted by the legal support/research.
- Having access to a centralized legal staff would work, especially with e-mail/fax communication. I am a civil county court judge, and as a civil county court judge, I have wished on many, many occasions that I had someone to call on to research an issue. This resource would be INVALUABLE! Oftentimes our (civil COUNTY courts) books aren't as current as the ones lawyers come into the courtroom with and on top of that we don't have a legal staff to call upon. The district judges do have a staff attorney, and they are much more current on books. A staff attorney is such an asset.
- I think this could be very helpful for smaller counties.
- If you are referring to staff attorneys in criminal cases, we use the ones provided by our Administrative Judge, BUT my need is for civil litigation needs. Whether furnace for districts or administrative regions, either would be fine.
- Any additional resources that are generally available would be of great help to everyone, but especially the rural counties that have almost no resources.
- It would be most helpful to me to have someone available as the need arises. I would appreciate any help that would be made available to the judiciary.

<u>Better than No Assistance</u>

- As a substitute for local assistance? Bad idea. As a supplement? Marginally better.
- I would be nice to have access to legal staff even if it is in Austin, Texas. Courts should have dedicated legal staffs to help the court.

- That is certainly an option. However, because of the large number of motions and briefs filed in the court on certain cases, I would prefer to have someone in or near my office with whom I can confer.
- Something is better than nothing; however, I do have concerns about how timely responses could be obtained.
- That would not be as good as dedicated or shared legal staff, but would be better than what I have now - which is nothing.
- It would be better than what I have now!!!
- It would be nice, but "onsite" help would be preferable.
- It's a start but it would not meet my needs.
- Anything would be better than nothing, but an on-site dedicated legal staff would be of the greatest value to me.
- That would be better than no legal staff at all.
- Probably better than nothing. I need someone with access to files who could help e locate the issues, summarize pick out a few key cases and then let me make the decision. I rarely need anyone to research a clear point of law.
- It would be better than having none. I have to do my own research if I want input other than from an advocate.
- Centralized staff would be preferable to nothing but would probably be cumbersome and inefficient. Judges could probably anticipate a lot of recorded messages and returned calls when the need for staff no longer exists.
- OK however, having a dedicated staff member for every so many courts in a district or region would be more helpful.
- It would be better than nothing, but better yet would be local or at least regional staff.
- Better than nothing.
- Better than nothing but no substitute for on site assistance.
- Preferable to having none, but prefer having in-office legal staff.
- Legal staff at any location would be better than not having any.
- Since we have nothing it would be great to have any type of support.
- Of course, that is better than nothing, but I do not think it would be very feasible to accomplish what a judge would really need from them.
- Problematical, but marginally viable.

<u>Might Work</u>

- Depends on expertise and availability of legal staff.
- I do not know. It would depend on how large the staff is. Is this to do research on our cases or just our liability issues?
- Would prefer staff attorney in Collin County and not Austin. Dallas County has staff attorneys in Dallas.
- Shared legal staff with the other District Judge would be a great improvement.

<u>Concerns Expressed Regarding Access, Timeliness, Quality</u>

- It would probably be more feasible to have centralized legal staff, but my and other's experience with OCA has been that they would rarely be available when called, and wouldn't return calls timely.
- It would be helpful, if there is sufficient staff
- This could be a good alternative depending on the manner in which the service is designed and implemented.
- Theoretically, this sounds like a viable option to some of the counties like Brazoria that do not have access. The law schools in the Houston area generally have students who are available as clerks or interns for summer programs, but this is limited in scope. I would use an on-line or call-in resource if appropriate screening was conducted on the individuals involved.
- The staff would have to be able to cover a very wide range of areas of legal expertise.
- We have Dallas Staff Attorneys on call; (these are the "Legal Staff" referred to above) they've been adequate. A similar central staff in Austin would work if they were as efficient. However, it's a long distance call to Austin, but not to Dallas.
- In theory, it would be good. I worry about how requests for assistance would be prioritized.
- The strength of such a program would depend on several factors. However with a lot of thought it could be very helpful. Success would be dependant on the organization (quality and continuity of staff) and the infrastructure (communications links such as instant messaging email, phone & video conferencing). In private practice I worked with teams and the success depended as much on the organization and infrastructure as the talent of the individual team members.
- Possibly helpful, assuming we could receive quick direct responses.
- This might be useful, particularly in the civil arena, if staff were qualified and diligent.
- Quality would be a concern. Maybe less centralized, i.e., divided per appeals district.

Ethics Question

- Subject to a solution to judicial ethics rules, I believe a central staff is better than none. The current rules arguably allow a judge to consult with another judge about a case without disclosing to parties, and allow confidential consultation with judge's staff; I believe a central staff might strain this exception but clear language creating the central pool could probably fix this issue, if it is one.

Negative Comments

- Not viable.
- I do not think I would utilize this resource.
- Probably not helpful.

- Probably would not work in this court. This court does domestic law cases 99.9 percent of the time, these cases are fact intensive and some require a lot of communication between law clerk and judge.
- I do not believe I would utilize a centralized legal staff.
- I can't imagine it would work.
- Not very practical or user friendly.
- Law Clerk. Clerk in Austin would not useful. My use of a law clerk is having the clerk, here, lands on paper, face to face discussion. The benefit is for case specific assistance; finding motions and responses, preparing the docket, other on-site type assistance. Staff atty. Knowledge of local issues has been a key to successful projects. Perhaps a centralized administrative issue that is frequently encountered by judges across the state might be useful, but often, local issues might create a conflict for one lawyer faced with "clients" who have different interests to be represented. [Research and in-put on issues raised by Legislative changes might be supported by some counties and not by other counties.
- This does not appear to be a practical alternative.
- I have no opinion as to whether a centralized legal staff would benefit the rural/smaller counties. We have Lexis in our offices and do all our own research and writing.
- Probably not helpful; would need to see the file; usually questions are time sensitive.
- Impractical.
- Don't think that would be useful.
- Impractical or useless for Panhandle Judges. What about organizing this around law schools?
- I prefer to have on site legal help. The law clerk watches what is going on in the court room. Many times on an issue they can get the answer immediately while a hearing is in progress. This way the court does not have to bring back the litigants and attorneys. A centralized legal staff would not assist in this manner. Further, the non-centralized method is a greater learning tool for the law clerks.
- It would be nice, but not necessary. I do my own legal research, etc.
- Too remote.
- Wouldn't help me.
- Questionable value.
- Not practical I think.
- Probably not viable.
- I don't believe that a centralized legal staff would be adequate for any court. If so, then the various appellate courts around the State and around the Country would not hire their own personal law clerks. If it were a viable system, we would all be operating from a centralized location as suggested. Having a legal staff available in our home town would allow the dialogue and exchange necessary to conduct acceptable and adequate legal research.
- Too slow.

- I do not think that staff at a centralized office would be something that I would make use of. I have always preferred to do my own research and thus far have been able to find the time to do so.
- As a practical matter I do not think I would ever use someone located in Austin.
- Having to call a centralized legal staff in Austin or anywhere outside my home counties would not give me an adequate opportunity to discuss and present the issue with the faraway staff. More often than not, when a judge needs research help, it's going to be on a complicated, complex or difficult issue that's going to take some time to explain over the phone. If it's a matter than can take a couple of minutes of phone time, the judge can probably figure it out without assistance. We need legal staff on board with the court so that, as in the appellate courts, the staff can be present in the courtroom to listen to the evidence and/or argument in order to get the feel of the case. Second, as when calling the Texas Ethics Commission or other agencies, and depending on the size of a centralized legal staff, a judge may not be able to get through right away or may be placed on hold for longer than patience can tolerate. This makes the effort not worth it at times. But, if all else fails, a centralized staff would be a good starting point for later expansion and improvement. If we get a centralized staff, I would think that it would be appropriate to place it under the authority of the Texas Center for the Judiciary, Inc. Doing so will help the TCJI be continuously aware of what issues or questions of law the judges are asking help on, which information the TCJI can then work with to develop our continuing judicial education programs.
- Unnecessary in my view.
- Centralized legal staff would be unworkable. Efficient staff utilization requires face-to-face contact on a regular basis.
- The legal staff needs to be local not in Austin. Not realistic to expect immediate response to issues unless within the court house.
- County Court at Law does not presently need any legal staff or law clerks.
- Probably not practical because it's necessary to consult 1 on 1 in many instances.
- My experience with calling long distance to a "shared resource" is that they "will get back to me" and usually do long after the trial is over-too late for help.
- Not Practical.

<u>Additional comments for consideration</u>

- I think I would utilize a legal staff employee that would be used for all 6 District courts in Denton County if we had the money.
- Need would be very minimal.
- I had many offices I could call as DA (TDCAA, SPA, etc.). It is ironic judges have none.
- Some dedicated law clerk (i.e., law school graduate) resource is critically necessary.

- Law clerks for district courts are a good idea as far as I am concerned. A year ago I decided that a law clerk was a necessity so I change my staffing around and converted one court coordinator position to law clerk/court coordinator, and that person is a law school graduate waiting bar results and she has helped me tremendously. It also depends on the volume of work involved.
- I would hope that legislation would be drafted and passed to have District Courts the right to have dedicated legal staffs.
- A law clerk or staff attorney could assist the Judge in reviewing the large number of motions and briefs filed by both sides in many cases. Although the Judge has to make the final decision on those cases, that type of assistance would help reduce the amount of time it takes for the Judge to make decisions.
- Smith County has no such staff--each Judge is their own law clerk!
- In a court of general jurisdiction, I can know a lot about a lot, and still run up against novel issues that can consume a tremendous amount of time for something that may well never present itself a second time. Legal staff would help with this problem.
- I use the staff attorneys in Dallas that advise the Judges in Dallas County. I knew these attorneys when I used to work at the Dallas D.A.'s Office. I am also in the same Administrative Region as Dallas County. They are always very helpful.
- This is a great idea if it doesn't just lead to the development of more rules encouraging summary judgment, findings of fact and trial court opinions. It would help a great deal with research of time sensitive issues during trial, and in managing complex litigation. It could be very helpful in the area of post-conviction writs.
- Access to visiting judges would be a great help.
- I had a court coordinator/secretary for six years who I paid 100% for 2 years & 50% for four years. Commissioners Courts took away their funding when federal grants expired and used the funds to hire their own secretary, which they needed, without regard to the effect on the 6th District Court
- In our county, we do all the research; call on other counties with legal staff to sometimes help out. Having that resource would be fabulous.
- We have 6 District Courts in Galveston County with no legal staff whatsoever. Any shared legal clerk would be greatly appreciated.
- Great attention (eternally grateful) was given to Judicial pay raises in the last legislative session. The same attention needs to be given to reduce caseloads and increase judicial resources such as dedicated legal staff.
- One of my counties does provide me with Westlaw.
- Some counties do not have budgets for interns or staff attys. This could be an option if properly supervised.
- An internship (unpaid) set up through one of the surrounding law schools would be useful as our commissioners are unwilling to create new positions at this time.
- It would be awesome if the Texas Center for the Judiciary could have a legal staff available for all judges on a daily basis. Counties could help the State

fund this staff especially if they don't have legal staffs in their respective counties. You could also have this staff put together a library of all petitions, charges of court, briefs and any documents which Judges could access online.

- Rural judges have been on our own for research for so long, we tend to just rely on each other when we get stumped by an issue.
- I could really use help.
- A full time dedicated legal staff would be a great resource.
- It would be very helpful in rural areas to have someone to call vs. trying to find the law
- As North Texas grows, additional staff will be needed to meet increased # of courts using them.
- My need is periodic research in criminal and civil cases. I don't have a full time need, but access to a central resource would be helpful if there was sufficient staffing to get a brief or a response to a legal question or issue in a fairly short period of time(sometimes immediately).
- A higher priority for us than law clerks would be adequate funding for district and county clerks and court reporters.
- There is no money available from Bell County for legal staff for courts
- I would expect that the quality of our rulings would improve.
- I am a new judge and I do not have enough time on the bench to adequately respond to the survey. There are times when a clerk would come in handy to brief issues before the court, but on a daily basis, I do not need a full time staff member.
- I find this survey to be a very positive sign. I chair the local Judicial Technology and Law Library Committee. The resources available to District Judges are pitiful. We are left to conferring with each other on difficult problems without the benefit of research assistants. This leads to delay in decision making in one extreme and "coin flipping" at the other extreme. This is needed.
- I am a family law judge. Westlaw and I can handle it.
- The most immediate need I see is a staff attorney to assist with management of pro se litigants.
- I believe that if centralized legal staff is considered, it may need to be regional as opposed to statewide.
- I can't get adequate funding for administrative staff or courtroom support and legal staff is out of the question.
- I do my own research on internet.
- 33rd and 424th courts could productively use 1 fulltime staff attorney across our mutually shared four counties.
- The Dallas Bar does offer some law student interns in the summer for approximately 6 weeks.
- We have had law school interns in the past, but true staff would be great.
- I would rather have the other haft of our pay increase from the legislature than legal staff.

- What about a system similar to TCDLA where questions are posted and members may comment. The access would be available to judges only. For example if I had a family law issue without a good answer, I could post it and anyone who has dealt with it could respond. It would serve to connect us electronically as a judiciary. I understand the Harris County Courts have an instant message system set-up and we have one here between the two county courts.
- None.
- I have three cases sitting on my credenza that are several weeks old and I don't have time to read and open because my docket is steady.
- We have to share our legal staff among 17 Criminal District Courts. We need additional staff to handle writs, DNA suits, etc.
- Requesting county to furnish legal staff in this county would be political suicide.
- Legislation requiring District Courts to have legal staff.
- With increasing dockets and a more litigious society, I firmly believe that trial courts must have legal staff available on hand to help the judges decided important cases. Our dockets exceed those of the federal courts many times over; yet, a federal court can have two or three law clerks at their beck and call for a smaller docket. Without question, the quality of the judiciary will improve markedly with the addition of legal staff for the trial courts.
- A full time law clerk would be a tremendous benefit to this District.
- "Volunteers" or seasonal interns require too much effort to train (and re-train) to be cost effective.
- A regional staff attorney would be nice; however, there may be room for outside influence and or lack of confidentiality. What ever method is employed, integrity in the system is paramount. I do need the legal support assistance, but don't want to risk integrity and independence.
- An aggressive effort should be made to establish law school internships between the judiciary and all the law schools in Texas. The State Bar should be asked to establish a fund for supplementing the law student income during these internships. A law student in Austin should be able to earn credit and extra income through an internship in El Paso for a semester during their last year in law school.
- Law students with very good briefing and writing skills could also be hired. I think it would be great experience and would look great on a resume.
- We always need funds for court-appointed counsel. An additional grant would be wonderful!
- Not really applicable as I am a family court trial judge.
- I serve three counties (Austin, Fayette, and Waller) -- I have no legal support. I would love to have someone.
- It is always encouraging to see people interested in helping the courts provide better service to the public, but you need to realize that, once again in the rural areas, you have courts at law with no secretarial staff, no court coordinators, etc. There is a long way to go.

- Having legal staff would help tremendously with the pro se family law cases. It is very difficult to address those cases while juggling all the other dockets I handle. Another area where a legal staff would be very valuable is dealing with inmates. That is an area full of problems with little time for me to deal with. I hope OCA can help with this situation!
- There are three judges with overlapping jurisdiction and could share one staff attorney for all three judges and five counties.

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