

MEMORANDUM

TO: Craig Chick  
Clerk, House Committee on Civil Practices

FROM: Don Warren  
Program Director, Statistical & Demographic Research

DATE: September 8, 2000

SUBJECT: Results of Judicial Survey

Attached are tables that contain statistics that resulted from the "Legislative Census of Texas Judges." Following the response-rate information in Table 1, the results are in questionnaire-number order. The district court responses start on page 2; the court of appeals responses start on page 20. As we discussed, these results are listed in this way to facilitate your ability to mesh them with the other materials that you are preparing for the committee.

If you would like them in a different format, please let me know.

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Attachment

I. Survey Response Rates<sup>1</sup>

Table 1. Response Rates			
Survey	Targeted Population	Responses	Response Rate
District Court	309 <sup>2</sup>	103	33%
Appellate Court	80	36	45%

II. Summary of District Court Survey Responses

Table 2. District Court Survey Question 1: <i>Would you classify the area of the state covered by the jurisdiction of your court as: Urban, Rural, or Mixed?</i>		
Area	Number	Percent of Total
Urban	25	24%
Rural	40	39%
Mixed	35	34%
No Response	3	3%
Total	103	100%

Table 3. District Court Survey Question 2: <i>How many class action suits were filed in your court during each of the last five years?</i>				
Year	Total Responses <sup>3</sup>	Number Where Response = "0" (Percent of Total)	Number Where Response > 0 (Percent of Total)	Average of Responses > 0
1995	64	51 (80%)	13 (20%)	1
1996	65	58 (89%)	7 (11%)	2

1997	66	55 (83%)	11 (17%)	2
1998	68	53 (78%)	15 (22%)	2
1999	74	52 (70%)	22 (30%)	2

Table 4. District Court Survey Question 3:  
*How many contested class certification determinations were made in your court during each of the past five years, and how many of these determinations were appealed to the court of appeals?*

Year	Total Responses <sup>4</sup>	Number Where Response = "0" (Percent of Total)	Number Where Response > 0 (Percent of Total)	Average of Responses > 0
1995				
Determination	57	48 (84%)	9 (16%)	1
Appeal	33	29 (88%)	4 (12%)	1
1996				
Determination	57	51 (89%)	6 (11%)	1
Appeal	34	31 (91%)	3 (9%)	2
1997				
Determination	57	53 (93%)	4 (7%)	2
Appeal	32	29 (91%)	3 (9%)	2
1998				
Determination	59	49 (83%)	10 (17%)	1
Appeal	36	32 (89%)	4 (11%)	2
1999				
Determination	63	51 (81%)	12 (19%)	1
Appeal	37	32 (86%)	5 (14%)	2

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Table 5. District Court Survey Question 4:  
*Please indicate how many class action suits were disposed of in your court during each of the last five years, and state the manner of disposition.*

Year	Total Responses <sup>5</sup>	Number Where Response = "0" (Percent of Total)	Number Where Response > 0 (Percent of Total)	Average of Responses > 0
1995				
Trial	52	47 (90%)	5 (10%)	1
Pretrial dismissal/ Summary judgment	25	25 (100%)	0 (0%)	N/A
Settlement	28	25 (89%)	3 (11%)	1
Other	23	23 (100%)	0 (0%)	N/A
1996				
Trial	52	48 (92%)	4 (8%)	1
Pretrial dismissal/ Summary judgment	26	25 (96%)	1 (4%)	1
Settlement	29	25 (86%)	4 (14%)	1
Other	24	24 (100%)	0 (0%)	N/A
1997				
Trial	54	50 (93%)	4 (7%)	1
Pretrial dismissal/ Summary judgment	26	26 (100%)	0 (0%)	N/A
Settlement	30	26 (87%)	4 (13%)	1
Other	24	23 (96%)	1 (4%)	1
1998				
Trial	55	50 (91%)	5 (9%)	2

Pretrial dismissal/ Summary judgment	28	26 (93%)	2 (7%)	1
Settlement	32	25 (78%)	7 (22%)	2
Other	26	24 (92%)	2 (8%)	1
1999				
Trial	58	50 (86%)	8 (14%)	1
Pretrial dismissal/ Summary judgment	30	26 (87%)	4 (13%)	1
Settlement	30	26 (87%)	4 (13%)	2
Other	27	24 (89%)	3 (11%)	1

Table 6. District Court Survey Question 5:  
*Of the medical malpractice cases filed in your court in each of the last five years, how many plaintiffs filed a cost bond [Vernon's Ann. Civ. St. Art. 4590i, Sec. 13.01(a)(1)], placed cash in escrow [Sec. 13.01(a)(2)], filed an expert report [Sec. 13.01(a)(3)], or did a combination of these things?*

Year	Total Responses <sup>6</sup>	Number Where Response = "0" (Percent of Total)	Number Where Response > 0 (Percent of Total)	Average of Responses > 0
1995				
Cost Bond	31	27 (87%)	4 (13%)	2
Cash Escrow	22	20 (91%)	2 (9%)	1
Expert Report	26	19 (73%)	7 (27%)	2
Combination	20	19 (95%)	1 (5%)	4
1996				
Cost Bond	33	26 (79%)	7 (21%)	2

Cash Escrow	24	22 (92%)	2 (8%)	1
Expert Report	28	19 (68%)	9 (32%)	2
Combination	21	20 (95%)	1 (5%)	4
1997				
Cost Bond	36	25 (69%)	11 (31%)	2
Cash Escrow	24	23 (95%)	1 (5%)	1
Expert Report	28	15 (54%)	13 (46%)	2
Combination	20	19 (95%)	1 (5%)	2
1998				
Cost Bond	33	25 (76%)	8 (24%)	2
Cash Escrow	24	22 (92%)	2 (8%)	1
Expert Report	28	14 (50%)	14 (50%)	3
Combination	21	20 (95%)	1 (5%)	1
1999				
Cost Bond	36	27 (75%)	9 (25%)	2
Cash Escrow	25	23 (92%)	2 (8%)	1
Expert Report	30	12 (40%)	18 (60%)	3
Combination	22	22 (100%)	0 (0%)	N/A

Table 7. District Court Survey Question 6:

*Of the medical malpractice cases filed in your court during the last five years, how many have been dismissed as the result of a defense motion alleging either that no cost bond, escrow or expert report was filed? [Vernon's Ann. Civ. St. Art. 4590i, Secs. 13.01(b) and (e).]*

Year	Total Responses <sup>7</sup>	Number Where Response = "0" (Percent of Total)	Number Where Response > 0 (Percent of Total)	Average of Responses > 0
1995	50	47 (94%)	3 (6%)	2
1996	52	44 (83%)	8 (17%)	1
1997	56	42 (75%)	14 (25%)	2
1998	54	40 (74%)	14 (26%)	2
1999	57	36 (63%)	21 (37%)	2

Table 8. District Court Survey Question 7(A):

*In your court, in how many cases have sanctions been sought by a defendant or plaintiff for filing a frivolous lawsuit, motion, or pleading?*

Year	Total Responses <sup>8</sup>	Number Where Response = "0" (Percent of Total)	Number Where Response > 0 (Percent of Total)	Average of Responses > 0
1995				
Sought by Plaintiff	47	39 (83%)	8 (17%)	8
Sought by Defendant	42	31 (74%)	11 (26%)	6
1996				
Sought by Plaintiff	46	36 (78%)	10 (22%)	7
Sought by Defendant	41	32 (78%)	9 (22%)	7
1997				
Sought by Plaintiff	49	36 (73%)	13 (27%)	7
Sought by Defendant	43	30 (70%)	13 (30%)	8
1998				
Sought by Plaintiff	50	35 (70%)	15 (30%)	7



Sought by Defendant	43	30 (70%)	13 (30%)	9
1999				
Sought by Plaintiff	52	35 (67%)	17 (33%)	8
Sought by Defendant	47	27 (57%)	20 (43%)	7

Table 9. District Court Survey Question 7(B): <i>In your court, in how many cases were a party's requests for sanctions granted against a defendant or plaintiff for filing a frivolous lawsuit, motion, or pleading?</i>				
Year	Total Responses <sup>9</sup>	Number Where Response = "0" (Percent of Total)	Number Where Response > 0 (Percent of Total)	Average of Responses > 0
1995				
Against Plaintiff	47	43 (91%)	4 (9%)	3
Against Defendant	41	38 (93%)	3 (7%)	2
1996				
Against Plaintiff	47	43 (91%)	4 (9%)	3
Against Defendant	41	39 (95%)	2 (5%)	3
1997				
Against Plaintiff	51	46 (90%)	5 (10%)	3
Against Defendant	44	40 (91%)	4 (9%)	3
1998				
Against Plaintiff	53	45 (85%)	8 (15%)	3
Against Defendant	44	37 (84%)	7 (16%)	2
1999				
Against Plaintiff	55	46 (84%)	9 (16%)	3

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Against Defendant	51	41 (80%)	10 (20%)	3
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Table 10. District Court Survey Question 7(C): <i>In your court, in how many cases were sanctions granted against a plaintiff or defendant imposed on the court's own motion for filing a frivolous lawsuit, motion, or pleading?</i>				
Year	Total Responses <sup>10</sup>	Number Where Response = "0" (Percent of Total)	Number Where Response > 0 (Percent of Total)	Average of Responses > 0
1995				
Against Plaintiff	64	61 (95%)	3 (5%)	1
Against Defendant	56	55 (98%)	1 (2%)	3
1996				
Against Plaintiff	63	61 (97%)	2 (3%)	1
Against Defendant	56	55 (98%)	1 (2%)	1
1997				
Against Plaintiff	65	61 (94%)	4 (6%)	1
Against Defendant	58	56 (97%)	2 (3%)	1
1998				
Against Plaintiff	65	63 (97%)	2 (3%)	1
Against Defendant	57	56 (98%)	1 (2%)	1
1999				
Against Plaintiff	68	64 (94%)	4 (6%)	1
Against Defendant	60	58 (97%)	2 (3%)	1

Table 11. District Court Survey Question 7(D):

*In cases in which sanctions were imposed for filing a frivolous lawsuit, motion, or pleading, how many of each authorized type of sanction were imposed?*

Year	Total Responses <sup>11</sup>	Number Where Response = "0" (Percent of Total)	Number Where Response > 0 (Percent of Total)	Average of Responses > 0
1995				
Strike Motion/ Pleading	25	19 (76%)	6 (24%)	1
Pay Party's Costs	26	20 (77%)	6 (23%)	3
Dismiss a Party	25	23 (92%)	2 (8%)	7
Pay Penalty to Court	24	23 (96%)	1 (4%)	1
File Grievance with State Bar	27	26 (96%)	1 (4%)	1
Other Orders of the Court	24	23 (96%)	1 (4%)	1
Combination of Sanctions	25	23 (92%)	2 (8%)	2
1996				
Strike Motion/ Pleading	26	20 (77%)	6 (23%)	1
Pay Party's Costs	26	21 (81%)	5 (19%)	4
Dismiss a Party	25	24 (96%)	1 (4%)	2
Pay Penalty to Court	25	24 (96%)	1 (4%)	1
File Grievance with State Bar	27	27 (100%)	0 (0%)	N/A

Other Orders of the Court	26	24 (92%)	2 (8%)	1
Combination of Sanctions	26	23 (88%)	3 (12%)	2
1997				
Strike Motion/ Pleading	29	21 (72%)	8 (28%)	2
Pay Party's Costs	29	21 (72%)	8 (28%)	3
Dismiss a Party	27	23 (85%)	4 (15%)	2
Pay Penalty to Court	26	22 (85%)	4 (15%)	2
File Grievance with State Bar	28	28 (100%)	0 (0%)	N/A
Other Orders of the Court	27	25 (93%)	2 (7%)	2
Combination of Sanctions	27	24 (89%)	3 (11%)	2
1998				
Strike Motion/ Pleading	29	21 (72%)	8 (28%)	2
Pay Party's Costs	30	21 (70%)	9 (30%)	3
Dismiss a Party	28	24 (86%)	4 (14%)	2
Pay Penalty to Court	27	24 (89%)	3 (11%)	2
File Grievance with State Bar	30	27 (90%)	3 (10%)	1
Other Orders of the Court	26	25 (96%)	1 (4%)	3

Combination of Sanctions	27	25 (93%)	2 (7%)	5
1999				
Strike Motion/ Pleading	28	21 (75%)	7 (25%)	2
Pay Party's Costs	32	21 (66%)	11 (34%)	3
Dismiss a Party	30	27 (90%)	3 (10%)	3
Pay Penalty to Court	29	25 (86%)	4 (14%)	2
File Grievance with State Bar	33	31 (94%)	2 (6%)	1
Other Orders of the Court	29	27 (93%)	2 (7%)	3
Combination of Sanctions	31	28 (90%)	3 (10%)	2

Table 12. District Court Survey Question 7(E):  
*What additional authority, if any, does your court need to be able to impose effective sanctions to deter the filing of a frivolous lawsuit, motion, or pleading?*

Authority Needed?	Number	Percent of Total
Yes	5 <sup>12</sup>	11%
No	40	89%
Total	45 <sup>13</sup>	100%

Table 13. District Court Survey Question 8:  
*In how many cases tried in your court in each of the last five years were exemplary damages sought by a plaintiff, awarded by a jury, and reduced by the court under the limiting provisions of Civil Practice and Remedies Code Sec. 41.008?*

Year	Total Responses <sup>14</sup>	Number Where Response = "0" (Percent of Total)	Number Where Response > 0 (Percent of Total)	Average of Responses > 0
1995				
Sought by Plaintiff	42	22 (52%)	20 (48%)	5
Awarded by a Jury	45	36 (80%)	9 (20%)	1
Reduced by Court	47	46 (98%)	1 (2%)	1
1996				
Sought by Plaintiff	41	23 (56%)	18 (44%)	6
Awarded by a Jury	46	36 (78%)	10 (22%)	1
Reduced by Court	49	47 (95%)	2 (5%)	1
1997				
Sought by Plaintiff	45	23 (51%)	22 (49%)	10
Awarded by a Jury	48	38 (79%)	10 (21%)	2
Reduced by Court	52	52 (100%)	0 (0%)	N/A
1998				
Sought by Plaintiff	44	24 (54%)	20 (46%)	11
Awarded by a Jury	47	38 (81%)	9 (19%)	2
Reduced by Court	51	50 (98%)	1 (2%)	1
1999				
Sought by Plaintiff	48	27 (56%)	21 (44%)	12
Awarded by a Jury	51	42 (82%)	9 (18%)	2
Reduced by Court	54	53 (98%)	1 (2%)	1

Table 14. District Court Survey Question 9: <i>How many minor settlements were heard in your court in the past five years, and of these, how many involved structured settlements?</i>				
Year	Total Responses <sup>15</sup>	Number Where Response = "0" (Percent of Total)	Number Where Response > 0 (Percent of Total)	Average of Responses > 0
1995				
Number of Settlements	46	9 (20%)	37 (80%)	17
Number Structured	43	17 (40%)	26 (60%)	7
1996				
Number of Settlements	46	9 (20%)	37 (80%)	17
Number Structured	44	19 (43%)	25 (57%)	7
1997				
Number of Settlements	49	7 (14%)	42 (86%)	17
Number Structured	47	15 (32%)	32 (68%)	7
1998				
Number of Settlements	48	7 (15%)	41 (85%)	13
Number Structured	47	17 (36%)	30 (64%)	4
1999				
Number of Settlements	52	7 (13%)	45 (87%)	12
Number Structured	50	17 (34%)	33 (66%)	4



Table 15. District Court Survey Question 10:

*In asbestos cases in your court, for how many claims, by number of claimants, have defendants sought dismissal based on forum non conveniens (Civil Practice and Remedies Code Sec. 71.051), and for how many claims have dismissals on the basis of forum non conveniens been granted or denied?*

Year	Total Responses <sup>16</sup>	Number Where Response = "0" (Percent of Total)	Number Where Response > 0 (Percent of Total)	Average of Responses > 0
1995				
Sought	47	46 (89%)	1 (2%)	1
Granted	27	26 (96%)	1 (4%)	1
Denied	26	26 (100%)	0 (0%)	N/A
1996				
Sought	47	47 (100%)	0 (0%)	N/A
Granted	27	27 (100%)	0 (0%)	N/A
Denied	27	27 (100%)	0 (0%)	N/A
1997				
Sought	50	49 (98%)	1 (2%)	20
Granted	28	28 (100%)	0 (0%)	N/A
Denied	28	27 (96%)	1 (4%)	20
1998				
Sought	51	49 (96%)	2 (4%)	25
Granted	29	29 (100%)	0 (0%)	N/A
Denied	28	27 (96%)	1 (4%)	50
1999				
Sought	53	49 (92%)	4 (8%)	21
Granted	31	31 (100%)	0 (0%)	N/A

Denied	30	28 (93%)	2 (7%)	41
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Table 16. District Court Survey Question 11:  
*How many asbestos claims, by number of claimants, have been dismissed in your court for forum non conveniens (Civil Practice and Remedies Code Sec. 71.051) during each of the past five years?*

Year	Total Responses <sup>17</sup>	Number Where Response = "0" (Percent of Total)	Number Where Response > 0 (Percent of Total)	Average of Responses > 0
1995	50	49 (89%)	1 (2%)	1
1996	50	50 (100%)	0 (0%)	N/A
1997	53	53 (100%)	0 (0%)	N/A
1998	53	53 (100%)	0 (0%)	N/A
1999	55	55 (100%)	0 (0%)	N/A

Table 17. District Court Survey Question 12:  
*How many civil cases of each of the following categories were filed in your court during each of the past five years?*

Year	Total Responses <sup>18</sup>	Number Where Response = "0" (Percent of Total)	Number Where Response > 0 (Percent of Total)	Average of Responses > 0 <sup>19</sup>
1995				
Injury	47	5 (11%)	42 (89%)	139
Family	47	12 (26%)	35 (74%)	539
Tax	47	7 (15%)	40 (85%)	172
Other	46	4 (9%)	42 (91%)	142
1996				
Injury	48	5 (10%)	43 (90%)	119

Family	48	12 (25%)	36 (75%)	555
Tax	48	7 (15%)	41 (85%)	156
Other	47	4 (9%)	43 (91%)	146
1997				
Injury	50	5 (10%)	45 (90%)	118
Family	50	12 (24%)	38 (76%)	762
Tax	50	6 (12%)	44 (88%)	164
Other	49	3 (6%)	46 (94%)	187
1998				
Injury	51	5 (10%)	46 (90%)	118
Family	51	13 (25%)	38 (75%)	652
Tax	51	7 (14%)	44 (86%)	141
Other	50	4 (8%)	46 (92%)	192
1999				
Injury	55	5 (9%)	50 (91%)	108
Family	56	13 (23%)	43 (87%)	647
Tax	55	7 (13%)	48 (87%)	160
Other	54	4 (7%)	50 (93%)	194

District Court Survey Question 13:

*In 1995 the legislature passed major bills dealing with venue, joint/several liability, exemplary damage limitations, medical malpractice procedure, and DTPA. We would appreciate any input that you may have about the impact of these changes on the civil justice system and your caseload in particular, as well as any suggestions about future legislation.*

Table 18. District Court Survey Question 13, Part 1:  
*Did these legislative changes have an impact?*

Response	Number	Percent
Yes	21	60%
No	11	31%
Don't know/No opinion	3	9%
Total	35	100%

Table 19. District Court Survey Question 13, Part 2: <i>Reasons for believing that these legislative changes had an impact.</i>		
Answer	Reason	Number of Responses <sup>20</sup>
Yes	Venue changes	9
Yes	Medical malpractice changes	8
Yes	Changes are unfair to plaintiffs	6
Yes	DTPA	4
Yes	Other reasons <sup>21</sup>	7
No	Various reasons given <sup>22</sup>	10

Table 20. District Court Survey Question 13, Part 3: <i>Do you have any suggestions for future legislation?</i>	
Suggestion	Number
No suggestion/no legislation needed	17
Suggest no new legislation	4
Streamline family law in rural counties adjacent to urban counties	1
Require intentional conduct for an award of exemplary damages	1
Authorize court to set voir dire time by statute	1

Assist a trial judge when subject to motion for recusal	1
Establish "loser pays costs" rule	1
Reintroduce fault system in divorce cases	1
Develop an alternative system of resolution for lesser claims	1

Table 21. District Court Survey Question 14: <i>We would appreciate any comments or suggestions that you may have about the matters subject to our interim charges or within our committee jurisdiction.</i>			
Charge Number <sup>23</sup>	Comment/Suggestion	Reason for Comment/Suggestion	Number
1	In favor	(1) Structured settlements are usually beneficial; (2) This is not a problem, and sale is by adults and not minors.	2
1	Opposed	(1) Structured settlements are not beneficial for certain litigants; (2) A 142 trust is a better mechanism than structured settlement.	2
3	Opposed	(1) It will increase reversals and lead to more trials, if trial judge is in error; (2) It would reduce the number granted because requirement is burdensome, and even if reversed, trial court would know that it is a bona fide cause; (3) Requirement is burdensome and should be accompanied by funding for support staff; (4) Unnecessary increase in workload; (5) It is inefficient, since reasons are given in moving papers.	29
4	Opposed to legislative role	(1) Legislature should not countermand court's rulemaking process; (2) Changes to rules result from reaction to aberrant cases.	2
4	Comment	Need to observe separation of powers.	1

5	Evaluation of enacted legislation	(1) Tort reform has not been successful because it has not reduced insurance or tax costs; (2) Parental Notification Act violates separation of powers doctrine and doesn't work; (3) It is unconstitutional for legislature to evaluate the judiciary; (4) Past legislation in 1993 and 1995 was for industry, not the courts; the system works as is and no new legislation is needed.	4
5	Recommended legislation	(1) Make judicial support staff state employees with appropriate salaries; (2) Require ad litems to have education on structured settlements and minor settlement protection; (3) Provide funding for masters to hear family protection orders; (4) Authorize a district court to appoint its own bailiff by statute; (5) Reverse the legislative trend to require findings; (6) Establish separate budget for judiciary; (7) There is no reason for a jury trial in family law cases; (8) Require parties in a long case to pay jurors extra compensation; (9) Give trial courts more authority to sanction for misconduct; (10) Revise statute allowing a challenge to a visiting judge; (11) Increase funding for the judiciary.	11
5	Evaluation of survey	Survey was burdensome and impossible to complete because data are not available. Need advance notice, software, support staff.	11

### III. Summary of Court of Appeals Survey Responses

#### Court of Appeals Survey Question 1:

*In 1995 the legislature passed major bills dealing with venue, joint/several liability, exemplary damage limitations, medical malpractice procedure, and DTPA. We would appreciate any input that you may have about the impact of these changes on the civil justice system and your caseload in particular, as well as any suggestions about future legislation.*

Table 22. Court of Appeals Survey Question 1, Part 1:  
*Did these legislative changes have an impact?*

Response	Number	Percent
Yes	16	64%
No	2	8%
Don't know/No opinion	7	28%
Total	25	100%

Table 23. Court of Appeals Survey Question 1, Part 2: <i>Reasons for believing that these legislative changes had an impact.</i>		
Answer	Reason	Number of Responses
Yes	Temporary increase in caseload	3
Yes	Changes are unfair to plaintiffs	3
Yes	Other reasons <sup>24</sup>	9
No	Not as many appeals from venue as feared (1); no reason given (1)	2

Table 24. Court of Appeals Survey Question 1, Part 3: <i>Do you have any suggestions for future legislation?</i>	
Suggestion	Number
Enumerate statutes waiving sovereign immunity	1
Suggest no new legislation	1
Need more work on venue, class action litigation	1
Provide more clarification of issues when framing legislation	1
Require that exemplary damages be paid into general revenue fund	1

Section 51.014(b), Civil Practice and Remedies Code, should be repealed, or at least modified to allow trial courts to go forward by agreement. . . . Chief justices of intermediate courts have discussed and agree	1
Evaluation of enacted legislation	
Exemplary damage requirement is burdensome to plaintiff and court	1
Medical malpractice time constraints are too onerous	1
DTPA plaintiff should elect between causes only when there is one injury; DTPA should not be cumulative of other causes for the same injury	1

Table 25. Court of Appeals Survey Question 2:  
*How many appeals on summary judgment has your court received annually for the last five years?*

Year	Total Responses <sup>25</sup>	Number Where Response = "0" (Percent of Total)	Number Where Response > 0 (Percent of Total)	Average of Responses > 0
1995	12	0 (0%)	12 (100%)	61
1996	12	0 (0%)	12 (100%)	54
1997	12	0 (0%)	12 (100%)	56
1998	12	0 (0%)	12 (100%)	54
1999	12	0 (0%)	12 (100%)	49

Table 26. Court of Appeals Survey Question 3:  
*One issue of interest is the impact of requiring trial court judges to specify the grounds on which summary judgments are granted. This is also the subject of a proposed rule being considered by the Supreme Court Rules Advisory Committee. What effect do you feel that such a requirement would have on your workload?*



Response	Number	Percent of total
Lessen	25	24%
Increase	40	39%
No effect	35	34%
No response	3	3%
Total	103	100%

Table 27. Court of Appeals Survey Question 4:  
*What changes would you support with regard to the exercise of conflicts jurisdiction by the supreme court (as covered by Section 22.001, Government Code)?*

Response	Number	Percent of total
Changes to require the supreme court to review more cases	25	24%
Changes to allow the supreme court more discretion in whether to accept cases for review	40	38%
No change	36	35%
Other	1 <sup>26</sup>	1%
No response	3	3%
Total	103	100% <sup>27</sup>

Table 28. Court of Appeals Survey Question 5:  
*We would appreciate any comments or suggestions that you may have about the matters subject to our interim charges or within our committee jurisdiction.*

Charge Number <sup>21</sup>	Comment/Suggestion	Reason for comment/suggestion	Number
1	In favor	It is hard enough to obtain a recovery; if someone can do it this way, so what?	1

1	Opposed	(1) Settlement can be harmful to beneficiary; trial court should have to approve, or some oversight provided; (2) No reason given.	2
1	Comment	The judiciary is not in a position to comment; this is a policy decision for the legislature.	1
2	Oppose change	There is no conflict between statute and constitution.	1
3	Opposed	(1) It would enable appellate judges to handle cases more quickly, but would probably result in more reversals and trial judges would soon learn to avoid specifying grounds; (2) It is unnecessary, since grounds are contained in motion; (3) A good lawyer can explain the judgment to a client; (4) Errors by trial judges would lead to more reversals.	3
3	Comment	Need to provide funding for independent research assistance.	1
4	In favor of legislative role	(1) Legislature should have a role but role should be based on equity issues and not [political persuasion]; (2) Inconsistent with separation of powers for a single branch of government to make, enforce, and interpret rules.	2
4	Opposed to legislative role	(1) System is consistent with separation of powers doctrine; no conflict between laws; (2) Recommend no change; (3) No reason given.	4
4	Comment	(1) Legislature should respect judiciary as a separate and independent branch of government; (2) Supreme court should retain rulemaking authority; (3) Recommended change in statutory language: include prohibition against "substantive changes" rather than "changes affecting the substantive rights of litigants."	3
5	Evaluation of enacted legislation	(1) It was a terrible change to allow an interlocutory appeal of a temporary injunction; (2) Legislation requiring trial court to postpone hearing on the merits pending an interlocutory appeal from temporary injunction has aggravated problems with appeals.	2

5	Recommended legislation	(1) Create more appeals courts in Harris and Dallas counties and improve judicial redistricting in Harris and Dallas counties; (2) Revise onerous judicial performance standards; (3) Review minimum jurisdictional requirement for appellate courts regarding amounts in controversy; (4) Establish single-member districts for supreme court members; (5) Establish rule that motions for rehearing pending more than 60 days are overruled by law; (6) Provide for accountability of justices by publishing certain information.	5
5	Evaluation of survey	Survey was burdensome and impossible to complete because data are not available.	1
5	Evaluation of survey	Survey should be done on continuing basis.	1

Appendix  
Interim Charges for the  
House Committee on Civil Practices

1. Examine the effect and potential of sales and other alienation of structured settlements on the use and advisability of such settlements.
2. Study the exercise of conflicts jurisdiction by the supreme court under Sections 22.001(a) and 22.007(a), Government Code.
3. Examine the impact of requiring trial court judges to specify the grounds on which summary judgments are granted.
4. Examine the supreme court's rulemaking authority, any conflicts between Section 22.004(c), Government Code, and Section 31, Article 5, Texas Constitution, and the role, if any, that the legislature should play in the court's rulemaking process.
5. Collect information from Texas trial and appellate courts that will assist the committee in evaluating the success of recent legislation and in making decisions regarding future legislation.

## Notes

1. To administer the questionnaire, we used a procedure adapted from Don Dillman, *Mail and Telephone Surveys: the Total Design Method* (New York: Wiley, 1978), as modified in Priscilla Salant and Don Dillman, *How to Conduct Your Own Survey* (New York: John Wiley & Sons, Inc., 1994). Dillman's procedure was designed to optimize research effort.

During the conduct of the survey, we faced some extenuating factors that we think affected the response rate. One of these factors was that the questionnaire contained some questions that asked the respondents to collect detailed information (e.g., to count types of cases) from several previous years. Another factor was survey fatigue, namely that at the beginning of the survey we discovered that the civil practices survey had been immediately preceded by another legislative survey of Texas courts.

2. Targeted population excludes courts that identified themselves as criminal or family law courts and courts designated "family district courts" under Subchapter D, Chapter 24, Government Code (Secs. 24.601-24.639).

3. The reported number of responses excludes blank fields and the following "other" responses: "Less than three in any given year"; "N/A"; "Unknown. I took the bench 1/1/99"; "?."

4. The reported number of responses excludes blank fields and the following "other" responses: "N/A" (6); check marks.

5. The reported number of responses excludes blank fields and the following "other" responses: "N/A" (9).

6. The reported number of responses excludes blank fields and the following "other" responses: "Unknown" (2); "These are estimates"; "N/A"; "Unable to answer." *Cost Bond*: "2-5"; "Statistics not kept but district clerk didn't recall any." *Cash Escrow*: "Statistics not kept but district clerk didn't recall any"; check marks. *Expert Report*: "Unknown, but few, if any"; "5-10"; "100%"; "Several"; "Filed but no statistics kept by clerk # unknown"; "Not many"; "1-2"; check marks. *Combination*: "N/A."

7. The reported number of responses excludes blank fields and the following "other" responses: "N/A" (2); "No statistics kept. Recall before me 1 maybe for failure to file expert report"; "2-5 Estimate only--no statistics are available to answer these questions"; "2-3 over last 5 years"; "Unknown"; "1-2" (1995) with check marks (1996-1999).

8. The reported number of responses excludes blank fields and the following "other" responses: "Unknown" (2); "Unknown--but very few (2-3) were even presented to the court"; "Extremely difficult to obtain this information. My best estimate would be about five a year"; "Not available"; "Some. I'd say

average each year about 40-50 total"; "< 5"; "No statistics kept, unknown, but not many"; "?"; "Estimate only. 5-10"; "N/A." *Sought by Plaintiff*: "1-3" (1995); check marks (1996-1999); "Less than two a year." *Sought by Defendant*: "3-5" (1995); check marks (1996-1999); "Less than five a year."

9. The reported number of responses excludes blank fields and the following "other" responses: "N/A" (2); "Unknown"; "2-5" (all fields); "No statistics kept, unknown but very few, if any"; "?." *Against Plaintiff*: "1 or less" (1995) and check marks (1996-1999); "My best estimate is that about 50% are granted"; "2-3." *Against Defendant*: "1 or less" (1995); check marks (1996-1999).

10. The reported number of responses excludes blank fields and the following "other" responses: "Unknown"; "2-3"; "?"; check marks; "N/A."

11. The reported number of responses excludes blank fields and the following "other" responses: "N/A" (12); "Unknown"; "Recall being used for discovery sanctions, don't recall any at this time for frivolous lawsuit, motion or pleading; if any, very few"; "?"; "No (File Grievance 1995-1999)."

12. Comments on the need for additional authority were as follows: [The court needs the authority to:] (1) "Sanction for violation of a court order. We now have to rely on inherent power of the court. The court's ability to sanction violating attorneys is limited by statute." (2) "Sanction defendants/insurance companies for refusing to settle meritorious claims." (3) "Report possible alcohol/drug abuse to State Bar when attorneys behave suspiciously. Parties are often ordered drug tested and one criminal defendant who is an attorney has been ordered tested, but we are seeing more aberrant behavior." (4) "Enter an order upon dismissal of the frivolous lawsuit expunging or clearing that lawsuit from the defendant's record (e.g., medical malpractice cases--so that doctors can still indicate that they have not been sued. Frivolous lawsuits still affect doctors' insurance rates. This is also seen in legal malpractice lawsuits against lawyers.)." (5) "[Exercise] more discretion. Although sanctions may be used infrequently regarding frivolous matters. The availability of broad sanctions is extremely important."

13. The total number of responses excludes blank fields and the following "other" responses: (1) "The 90-day waiting period imposed by CPRC Sec. 9.012(d) is too long to make sanctioning effective." (2) "The definition of 'frivolous lawsuit' has to be re-defined." (3) "The public impression is that if you don't win, your claim is 'frivolous.' The legal & dictionary definition of 'frivolous' is: totally without merit or basis. It has been my experience that no lawsuit ever filed in this court ever met that strict definition, either before or after legislative action. It was just a sop to the public perception of 'frivolous.' The public would like a law that only allows cases that will be successful to be filed."

14. The total number of responses excludes blank fields and the following "other" responses: *Sought by Plaintiff*: "Unknown" (4); "Several"; "5-10"; "?" (2); check marks; "Numerous"; "N/A" (2); "Many"; "3-4 per year"; "I am not sure of the number, but I am sure jury has never awarded them." *Awarded by a Jury*:

"None" (2); "1-2" (2); "1-0"; check marks. *Reduced by Court*: "Didn't address it"; "None."

15. The total number of responses excludes blank fields and the following "other" responses: "Unknown"; "Statistics not kept by clerk on these areas; a number of minor settlements involving money being invested by clerk until child 18 though"; "N/A." *Number of Settlements*: "3 to 5"; "5-10"; "About 6/year"; "5-8"; "Unknown" (2); "average 55-60 per year"; "?"; "X." *Number Structured*: "1 to 3"; "1-2"; "?"; "2-3"; "Unknown"; "average 2-3 per year."

16. The total number of responses excludes blank fields and the following "other" responses: "No data available"; "No asbestos cases" (2); "Hundreds"; "Records not available or kept by this office"; "Am not aware of any asbestos cases in my court"; "N/A"; "?"; "Roughly fifty percent of all defense counsel routinely file such motions. However none have been pursued to a final hearing. Plaintiffs voluntarily nonsuited approximately 350 claimants in 2000 pursuant to forum non conveniens concerns. None were dismissed in prior years"; "All asbestos cases were assigned to another court."

17. The total number of responses excludes blank fields and the following "other" responses: "No data available"; "No asbestos cases" (2); "Some"; "Records not available or kept by this office"; "Am not aware of any asbestos cases in my court"; "Unknown" (2); "N/A" (6); "None"; "Roughly fifty percent of all defense counsel routinely file such motions. However none have been pursued to a final hearing. Plaintiffs voluntarily nonsuited approximately 350 claimants in 2000 pursuant to forum non conveniens concerns. None were dismissed in prior years"; "It would necessitate a monumental manual search to provide this information at this time"; "All asbestos cases were assigned to another court"; "No cases."

18. The total number of responses excludes blank fields and the following "other" responses: "Many"; "N/A"; "Unknown" (2); "I don't have statistics for these years"; "These are actual figures (1999). Docket grows 3% per year."

19. Some numbers included in the average represent the workload of several judges, while other numbers represent the workload of a single judge.

20. The number of responses reported is greater than the total reported since some respondents listed more than one reason.

21. Other reasons included changes to: discovery; joint/several liability; exemplary damages; fewer filings; and no explanation given (2).

22. Summary of reasons included: few frivolous suits to eliminate; summary judgment did more to help; workers' comp did more to help (2); damage limits increase trials; joint/several liability changes had no effect (2); damage limits had no effect (2); mediation had greater effect.

23. See appendix for a numbered list of interim charges.

24. Other reasons included: (1) Policy/legal effect is positive, but no effect on caseload. Favorable impact in terms of fairness, but too soon to tell. (2) Made system more workable. (3) Venue, joint/several liability statutes involved significant changes. (4) Changes have weeded out baseless claims. (5) Personal injury trials declined. (6) Changes working well, but joint/several liability area is still unsettled. (7) No reduction in caseload, but changes have simplified disposition. (8) Changes encourage settlement.

25. The total number of responses excludes 24 responses with blank fields.

26. The explanation for the proposed change is as follows: "I think the Supreme Court should give more attention to subsection (a)(1) and (2) of section 22.001 of the Texas Government Code. As subsection (a)(2) provides, definite consideration must be given to conflicts among the rulings of the fourteen courts of appeals of the State of Texas. At present, the statute gives the Texas Supreme Court appellate jurisdiction when a 'case in which one of the courts of appeals holds differently from a prior decision of another court of appeals or of the supreme court on a question of law material to a decision of the case.' I think the language in the conflicts jurisdiction section should be broadened somewhat to simply state that the supreme court has appellate jurisdiction 'where it appears necessary to secure uniformity of decision.' Although such language is substantively similar to the statute's present language, the suggested wording does, I believe, provide a broader jurisdictional base in the conflicts jurisdiction area.

"I am of the opinion that a clear conflict exists between Tex. Gov. Code Ann. Sec. 22. (c) and Tex. Const. Art. V, Sec. 31. The Government Code provides that a rule adopted by the Texas Supreme Court repeals all conflicting laws and parts of laws governing practice and procedure in civil actions. Under the statute, the adopted rule does not repeal substantive laws. The statute conflicts with the constitution, which provides that the Supreme Court 'shall promulgate rules of administration not inconsistent with the laws of the state . . .' The conflict needs to be resolved, presumably by the legislature, to make the statute conform to the provisions of the Texas Constitution."

27. Percentages do not total 100% due to rounding.