

Civil Justice Initiative

Texas Judicial Council

June 30, 2017



Civil Justice Initiative

The Landscape of Civil Litigation in State Courts

“Civil justice **touches every aspect of our lives and society**, from public safety to fair housing to the smooth transaction of business.”

“Americans deserve a civil legal process that can **fairly and promptly resolve disputes for everyone**—rich or poor, individuals or businesses, in matters large or small.”



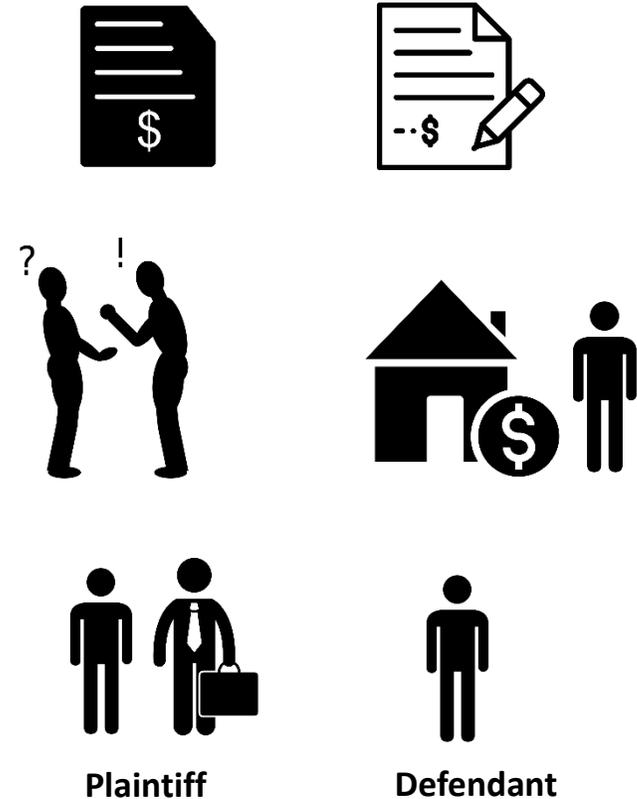
The civil justice system is a lot different than many perceive it to be.

Perception



Judgment: \$1,000,000

Reality



Plaintiff

Defendant



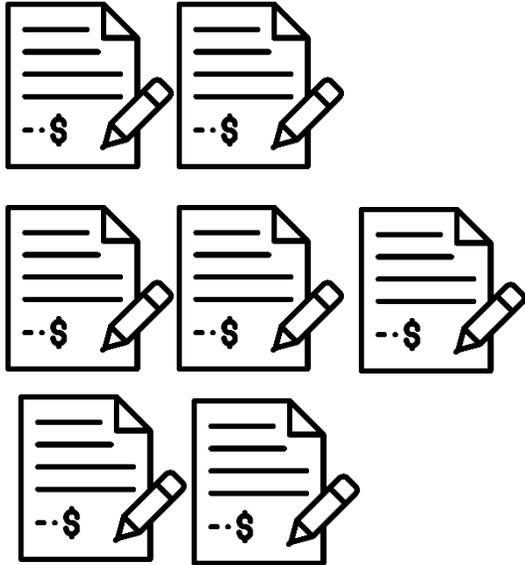
Nationally, contract case filings have come to dominate the civil justice landscape.

1992



**1 Tort case filed for every
1 Contract case filed**

2013

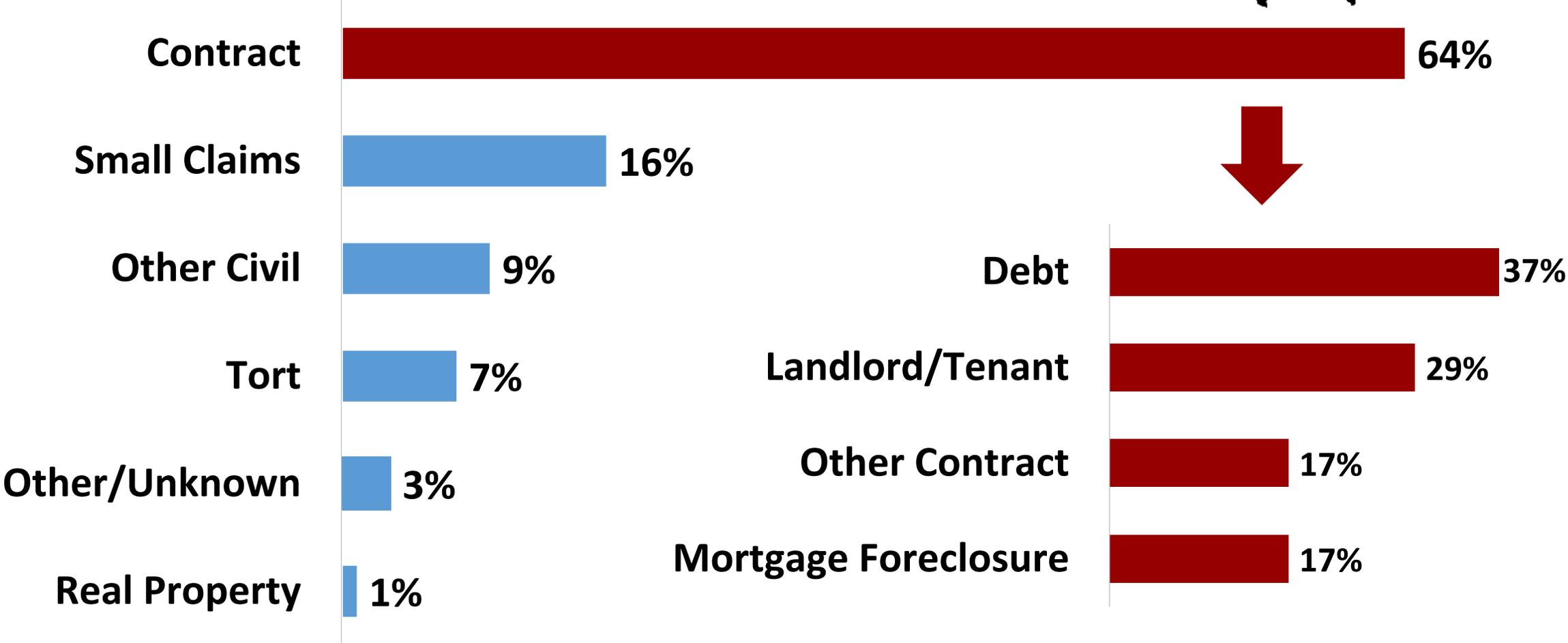


**1 Tort case filed for every
7 Contract cases filed**

NCSC *Landscape of Civil Litigation in State Courts* (2015)



80% of caseload involves **contracts** and **small claims**.



NCSC Landscape of Civil Litigation in State Courts (2015)



The civil caseload in **Texas** has undergone a similar transition.



1992

1



tort

to

1



contract

2016

1



tort

to

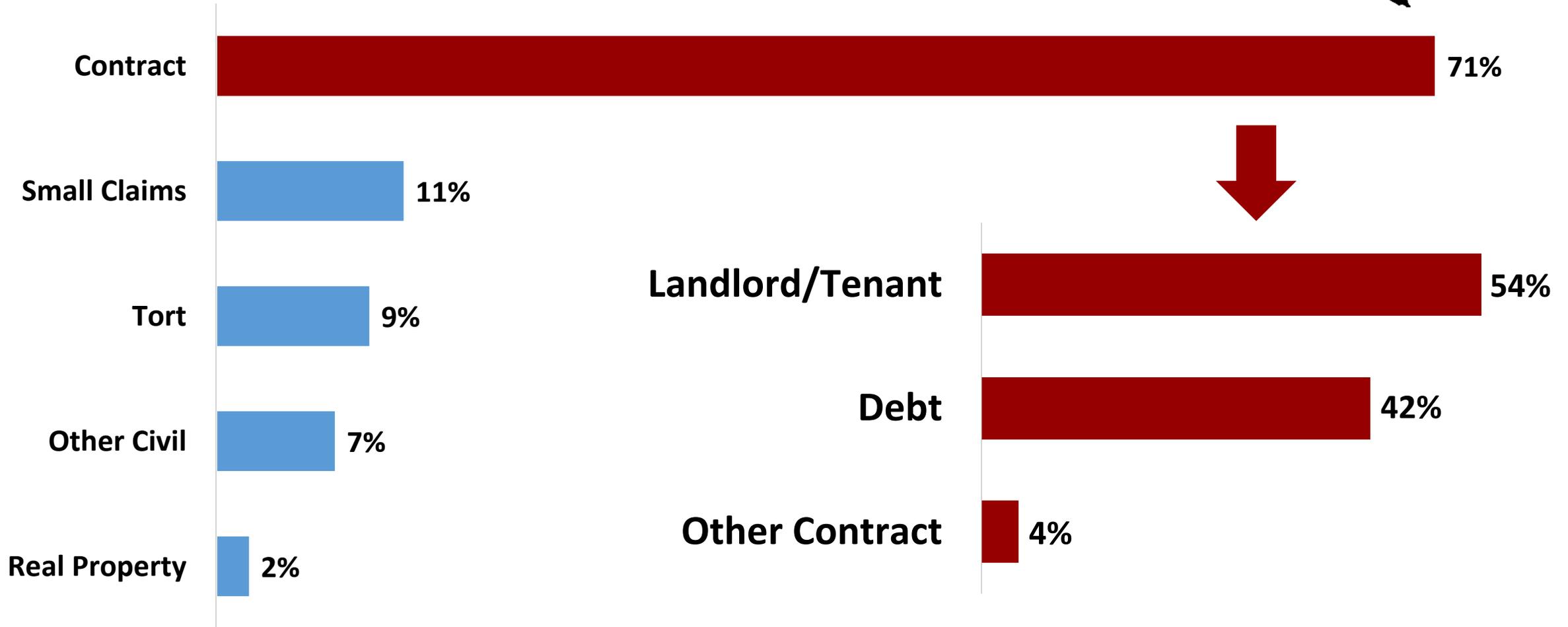
7



contract



More than 80% of caseload involves **contracts** and **small claims**.



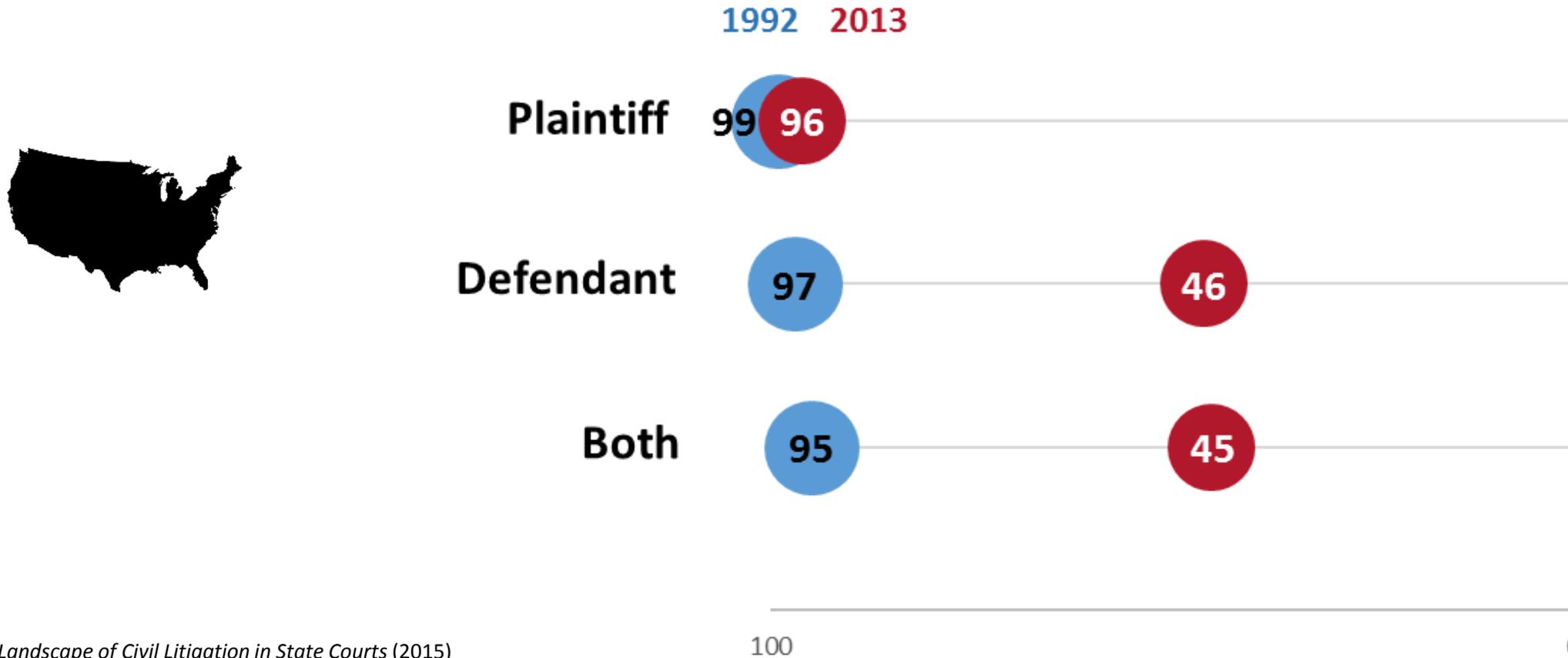
Texas Office of Court Administration

Number of mortgage foreclosures unknown



The **percentage** of cases in which an **attorney represented one or both parties** in general jurisdiction courts (equivalent to Texas district courts) **has declined**.

Percentage of Cases in Which Attorney Represented



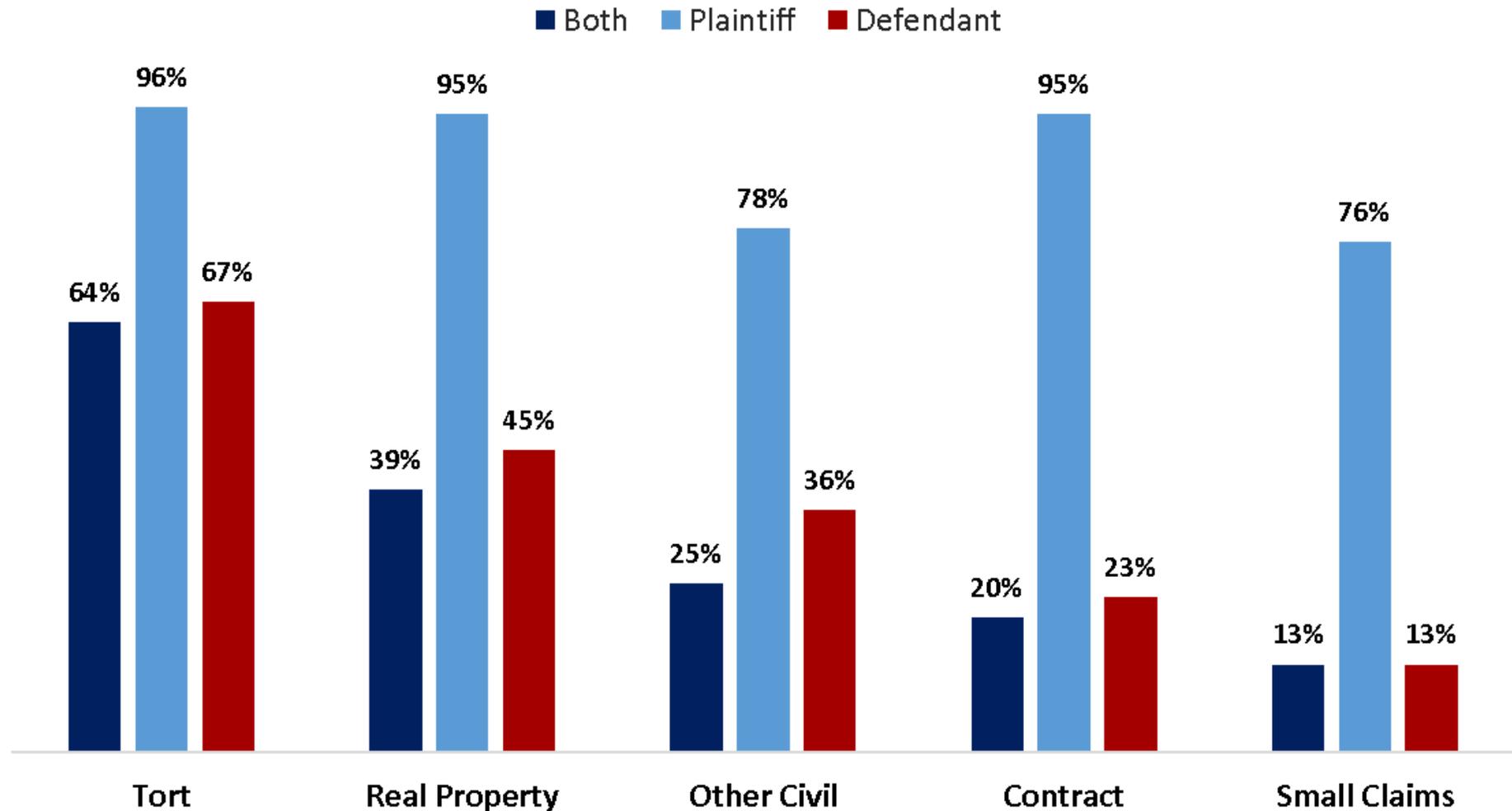
NCSC *Landscape of Civil Litigation in State Courts* (2015)



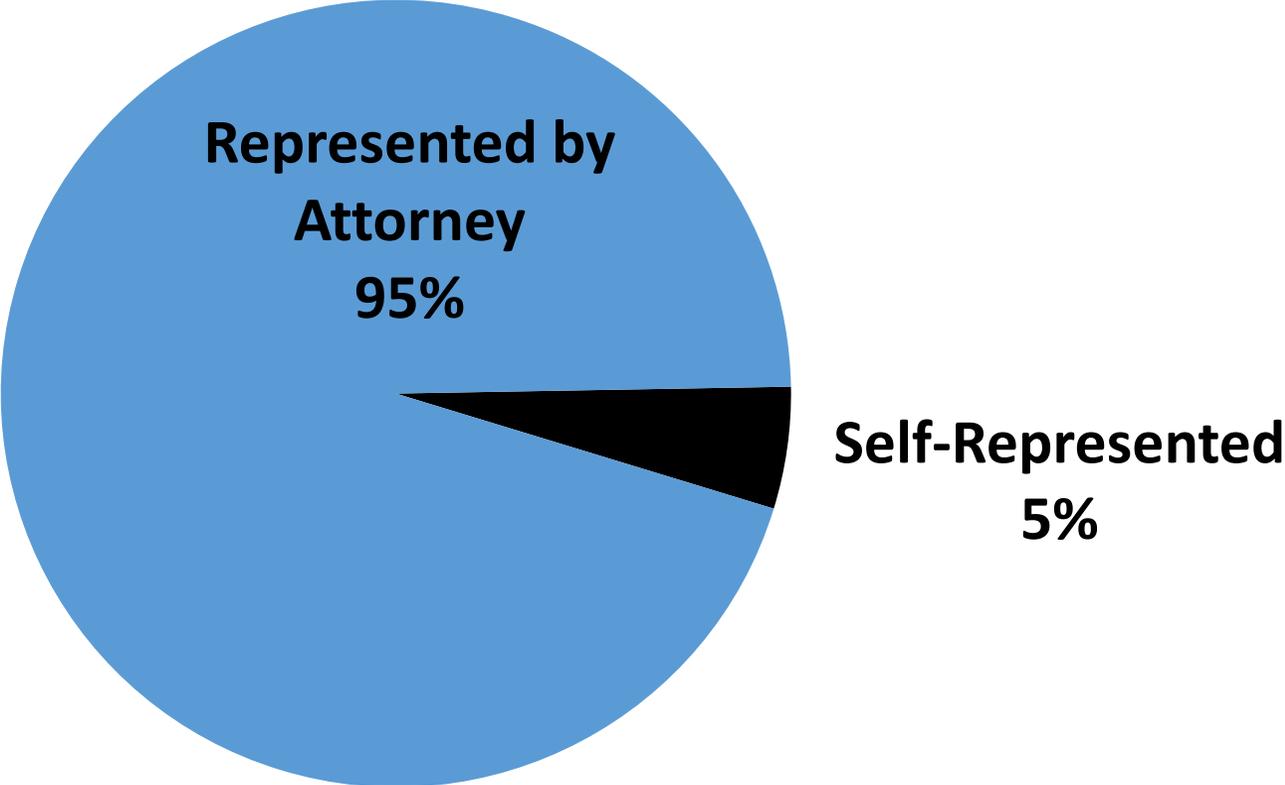
There is a **large percentage** of cases in which **at least one party is unrepresented**, usually the **defendant**.



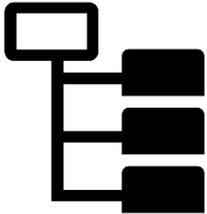
Percentage of Cases with Attorney Representation



Similar to the national landscape, **plaintiffs** are represented by attorneys in most **civil** cases filed in the **district and county** courts.



No statewide data are collected for...



More specific case types



Plaintiffs in **justice courts**



Defendants at any court level

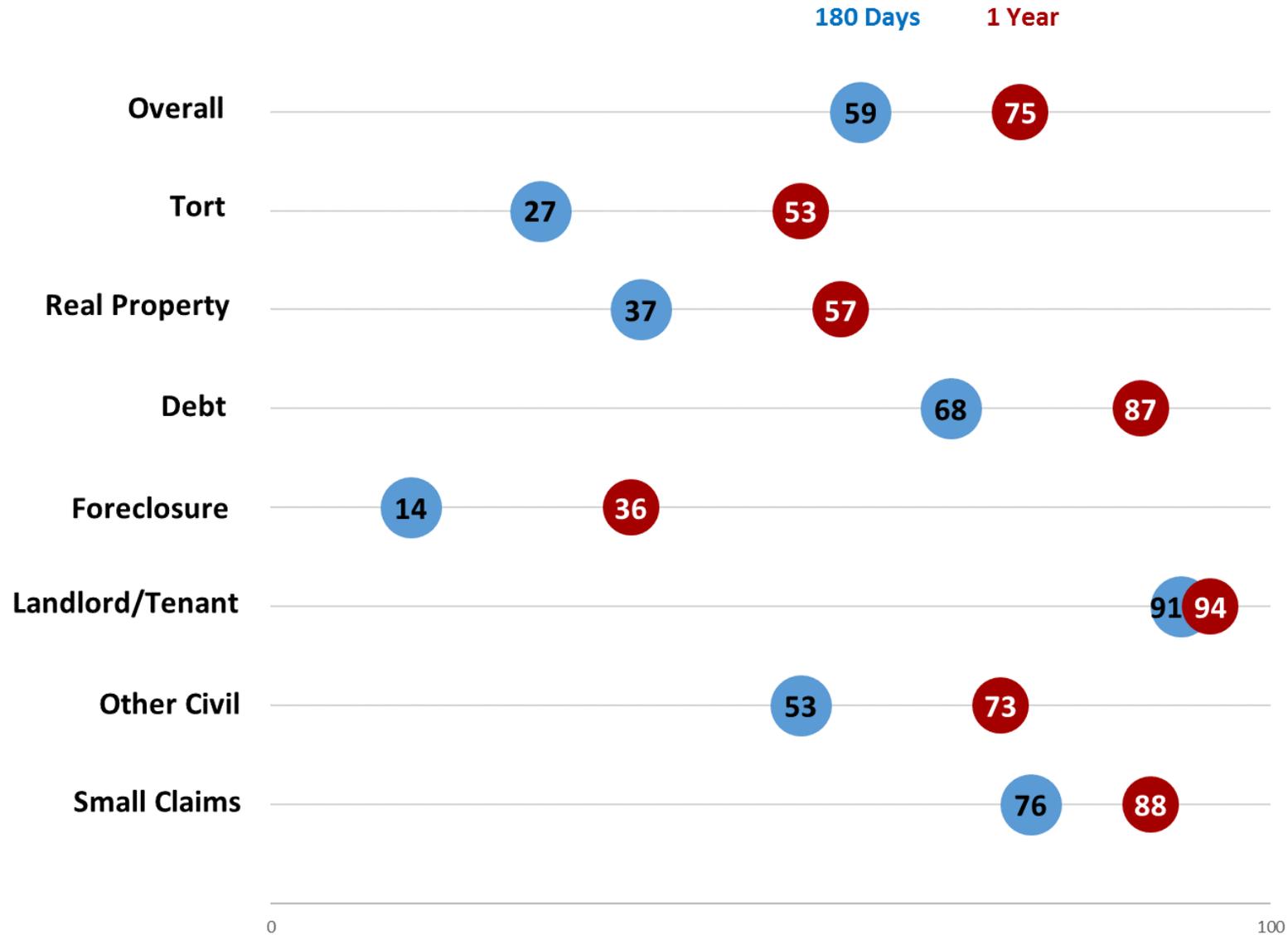




The average time from **filing to disposition** was 306 days (**10 months**) for all cases.

59% were disposed of within **180 days** and **75%** within **1 year**.

Percentage of Cases Disposed Within 180 Days or 1 Year

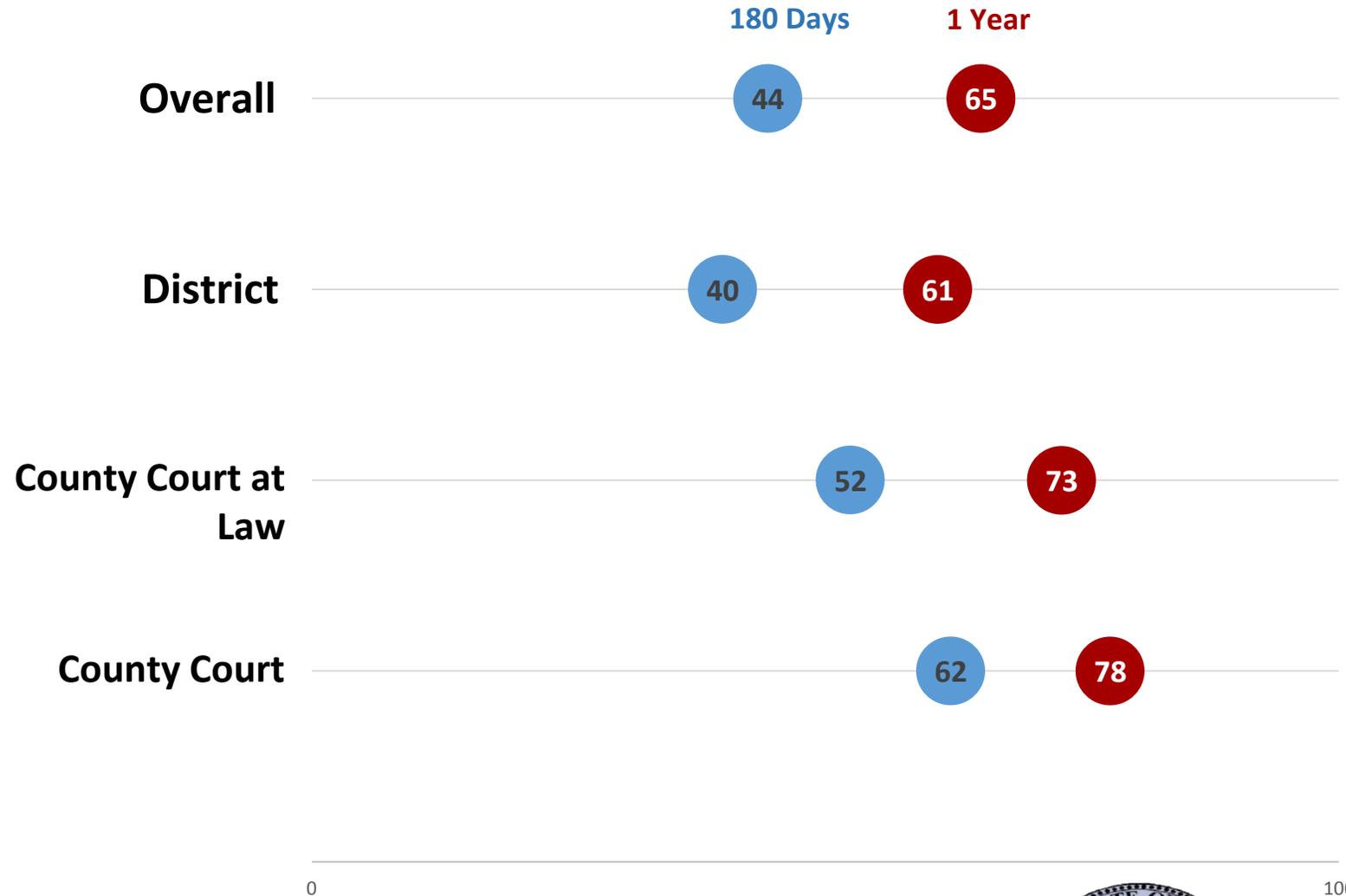




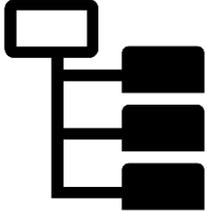
The average time from **filing to disposition** cannot be calculated with available data for **district and county court** civil cases.

44% were disposed of within **180 days** and **65%** within **1 year**.

Percentage of Cases Disposed Within 180 Days or 1 Year



No statewide data are collected for...



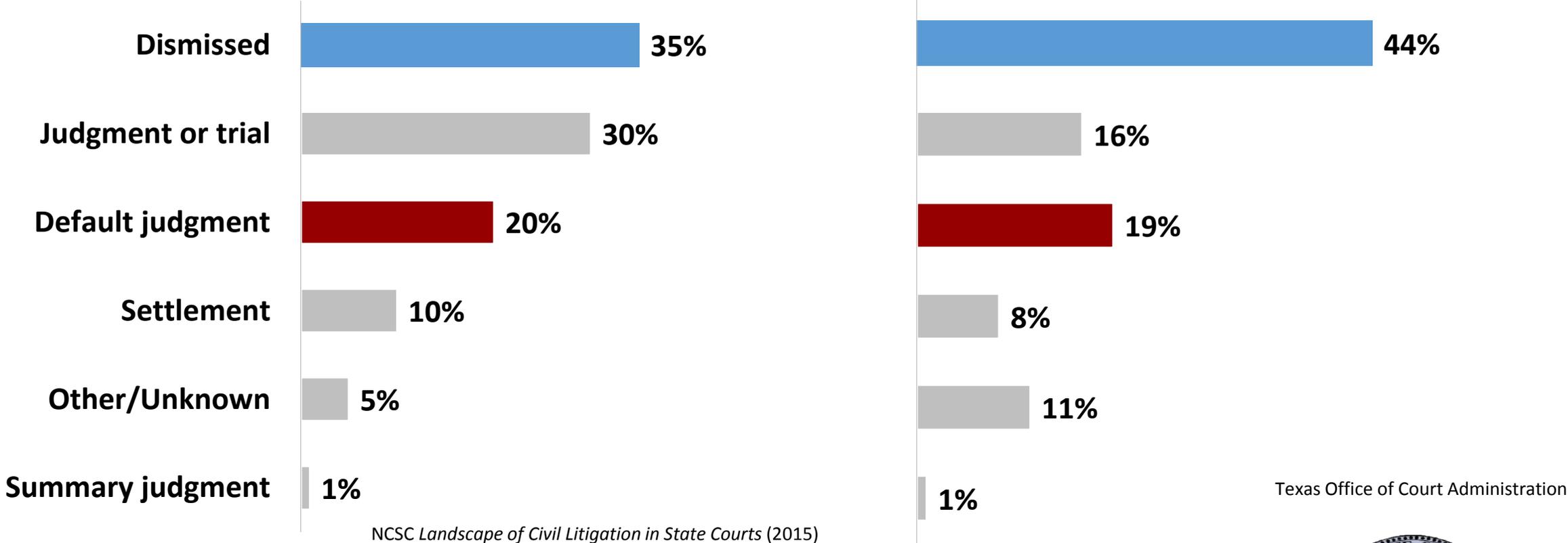
More specific case types



Justice courts



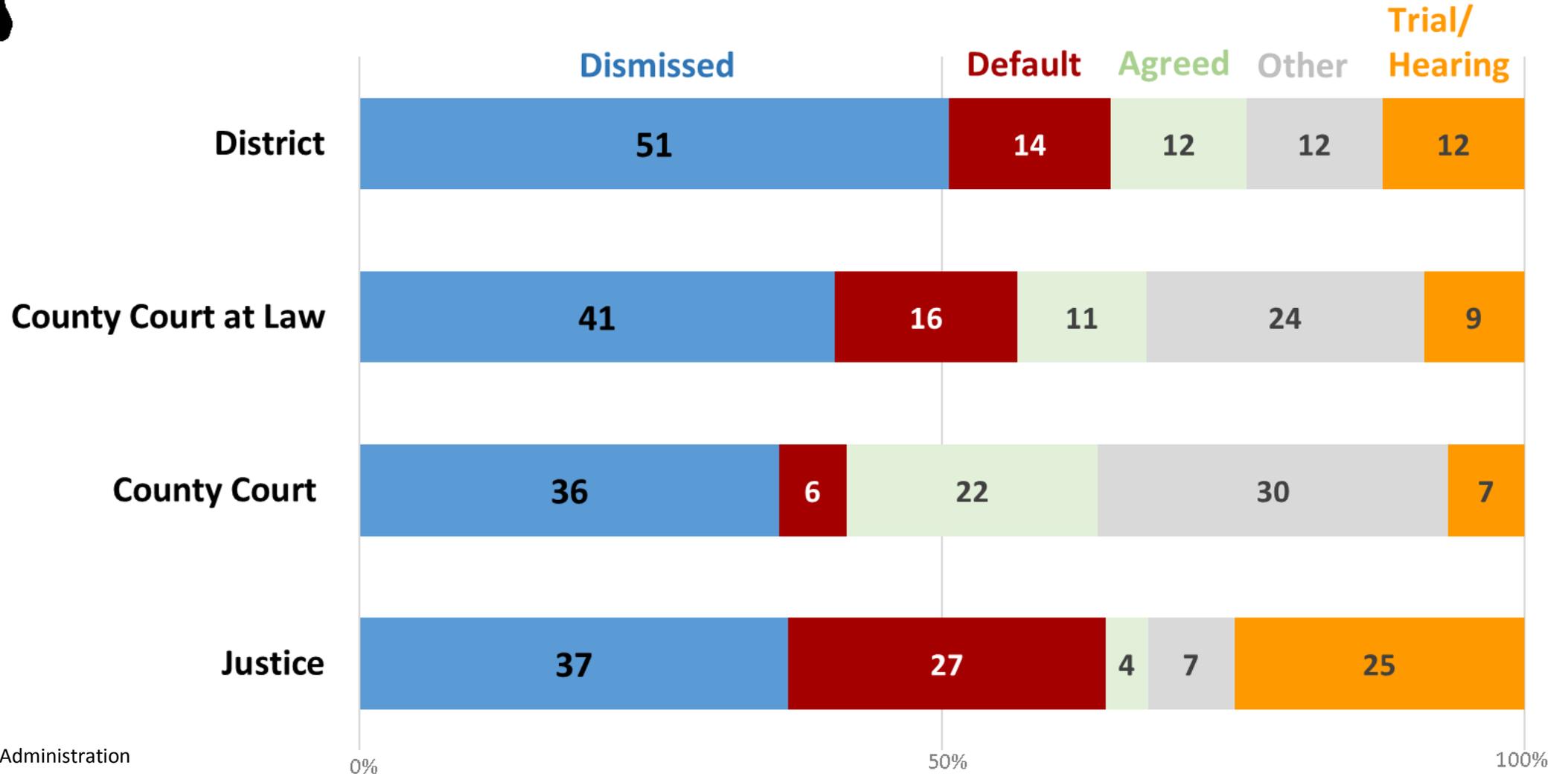
A large share of cases are **dismissed** or have a **default** judgment. Little contested adjudication is taking place in the courts.



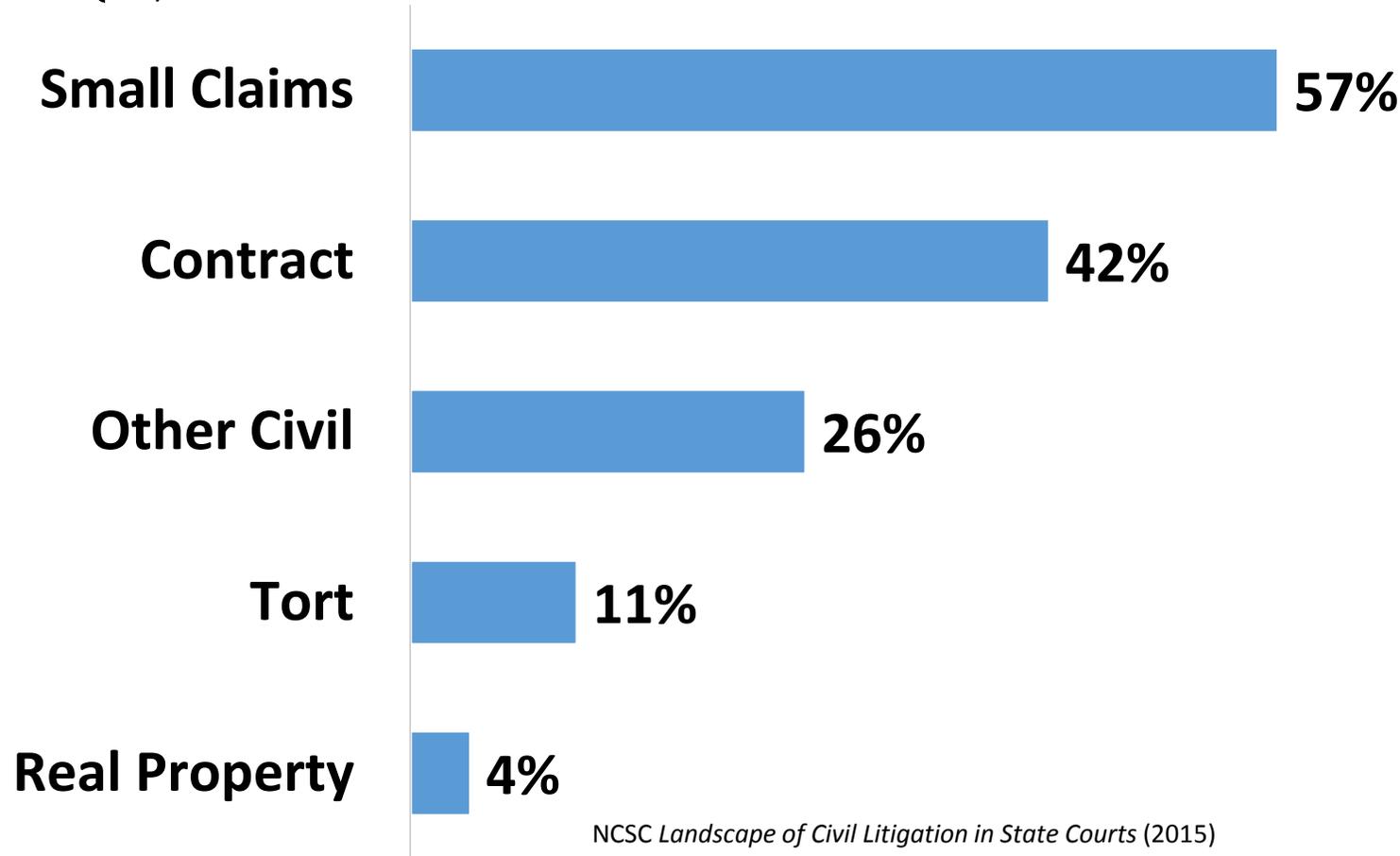
A formal adjudication (**trial or hearing**) is most likely to occur in **justice** courts.



Percentage of Cases by Type of Disposition



There was **significant variation** in the percentage of cases disposed by judgment in which the **judgment exceeded \$0**.



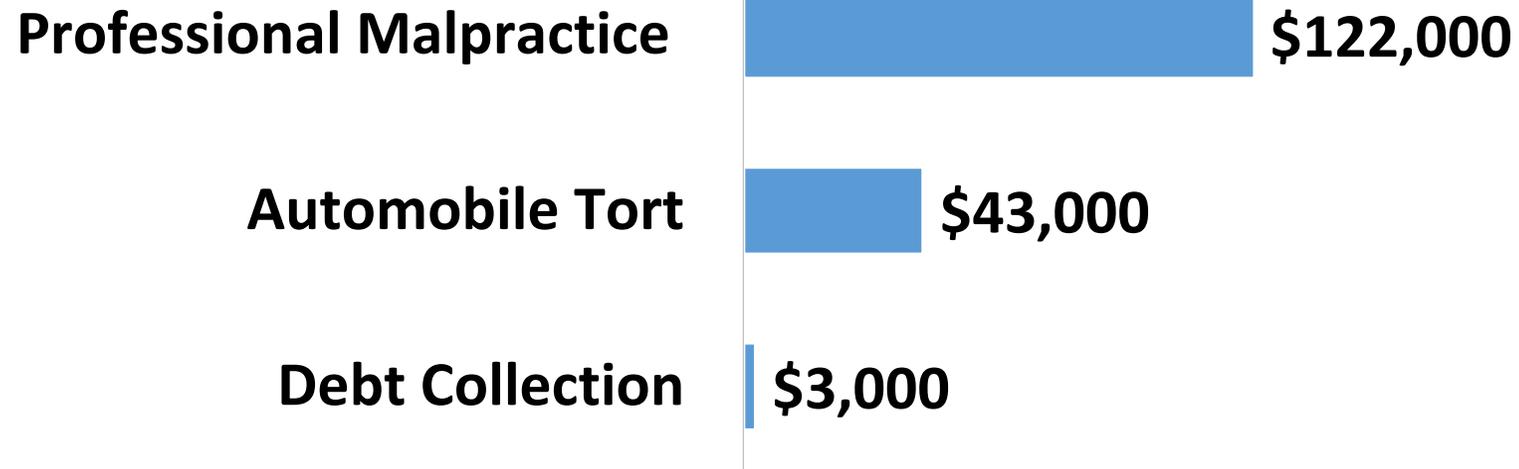
Judgment Amounts	
Median	Average
\$3,000	\$4,503
\$2,272	\$9,428
\$2,002	\$12,349
\$6,000	\$64,761
\$12,789	\$157,651



The **cost** of litigating a case likely **exceeds the potential monetary value** of the case shortly after filing the lawsuit, except in debt collection cases.



Median Cost **per Side** to Litigate a Case from Filing to Trial



NCSC *Landscape of Civil Litigation in State Courts* (2015)



Conclusion

“Runaway costs, delays, and complexity are undermining public confidence and denying people the justice they seek.”

The civil justice system is

- expensive, time consuming and complex
- not adequately meeting the needs and expectations of its participants

Alternatives to the system are helping fill the void (private judges, arbitration, online legal services) but do not guarantee a transparent and impartial process

Call to Action

“It is imperative that court leaders move promptly to

improve caseflow management to control costs, reduce delays, and ensure fairness for litigants and

embrace tools and methods that align with the realities of modern civil dockets.”

CALL TO ACTION:

Achieving Civil Justice for All

*Recommendations to the Conference of Chief Justices
by the Civil Justice Improvements Committee*



Exercise Ultimate Responsibility

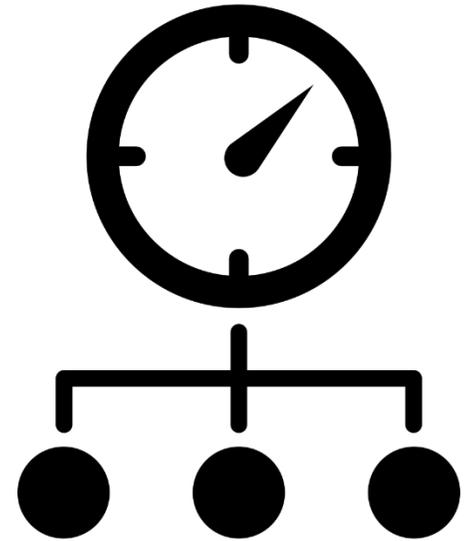
1. Courts must **take responsibility for managing civil cases** from time of filing to disposition.
2. Beginning at the time each civil case is filed, courts must **match resources with the needs of the case.**
3. Courts should use a **mandatory pathway-assignment system** to achieve right-sized case management.....



Triage Case Filings with Mandatory Pathways

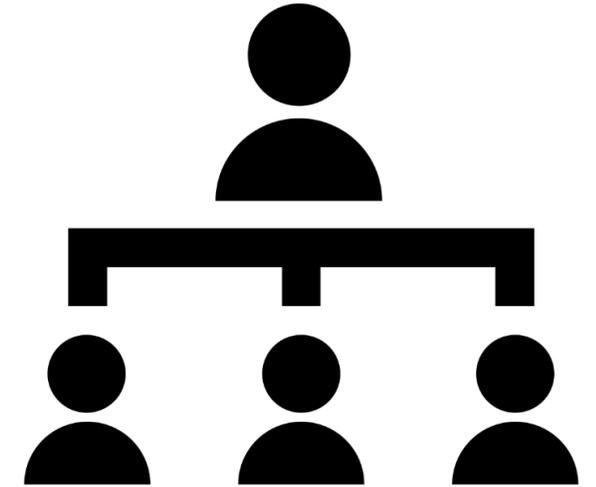
Courts should implement a

4. **streamlined pathway**: uncomplicated facts and legal issues, require minimal judicial intervention but close court supervision
5. **complex pathway**: multiple legal and factual issues, involve many parties, or otherwise are likely to require close court supervision
6. **general pathway**: case characteristics do not justify assignment to either the streamlined or complex pathway



Strategically Deploy Court Personnel & Resources

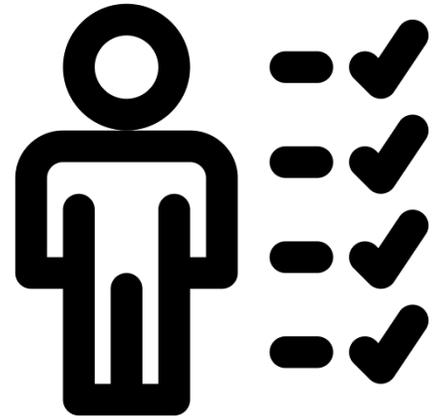
7. Courts should **develop civil case management teams** consisting of a responsible judge supported by appropriately trained staff.
8. For right-size case management to become the norm, not the exception, courts must **provide judges and court staff with training that specifically supports and empowers right-sized case management.**



Strategically Deploy Court Personnel & Resources

Courts should partner with bar leaders to **create programs that educate lawyers** about the requirements of newly instituted case management practices.

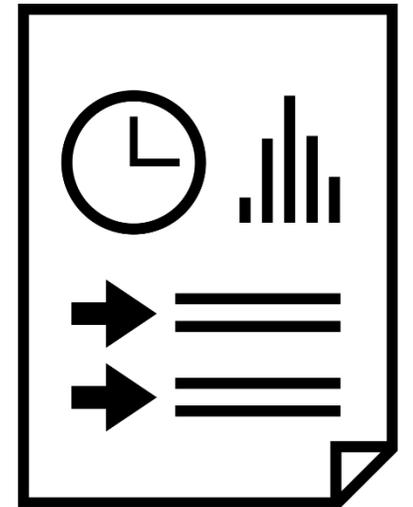
9. Courts should **establish judicial assignment criteria** that are objective, transparent, and mindful of a judge's experience in effective case management.



Use Technology Wisely

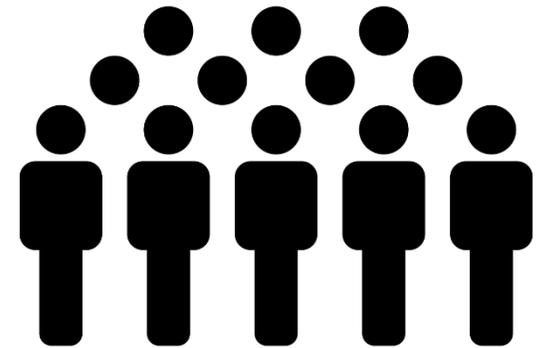
10. Courts must **take full advantage of technology** to implement right-sized case management and achieve useful litigant-court interaction.

- Automate business processes
- Collect, manage and analyze data
- Measure performance



Focus Attention on High-Volume & Uncontested Cases

11. Courts must **devote special attention to high-volume civil dockets** that are typically composed of cases involving consumer debt, landlord-tenant, and other contract claims.
12. Courts must **manage uncontested cases** to assure steady, timely progress toward resolution.
13. Courts must take all necessary steps to **increase convenience to litigants** by simplifying the court-litigant interface and creating on-demand court assistance services.



Civil Justice Reform Roadmap for Implementation

- Lead
- Assess
- Define Issues
- Create Working Group & Engage Stakeholders
- Develop Vision and Goals
- Develop Tailored Recommendations
- Take Action



OUR COURT SYSTEM HAS TO EVOLVE—
THE PUBLIC DEMANDS IT, AND OUR DEMOCRACY DEPENDS ON IT.

