



TEXAS JUDICIAL COUNCIL
COMMITTEE REPORT
and
RECOMMENDATIONS

June 2018

CIVIL JUSTICE



In June 2017, the Texas Judicial Council established the Civil Justice Committee to “study the Conference of Chief Justices’ Civil Justice Initiative recommendations and the landscape of Texas civil justice and recommend necessary reforms to improve access to civil justice in the Texas courts.” The members of the committee are:

Chief Justice Sherry Radack, Chair	Justice Court Judge Valencia Nash
State Senator Judith Zaffirini	Mr. Carlos Amaral
State Representative John Smithee	Mr. Kenneth Saks
County Court at Law Judge Vivian Torres	Mr. Evan Young

The committee appointed an advisory council to assist in its efforts. The members of the advisory council are:

State Representative Andrew Murr	Sandy Hoy, Texas Apartment Association
Court of Appeals Justice Tracy Christopher	Frank Markantonis, Pappas Restaurants
District Judge Camile DuBose	George Christian, Texas Civil Justice League
District Judge Les Hatch	Jami Meador, Amegy Bank National Association
District Judge Roy Ferguson	Brett Merfish, Texas Appleseed
County Court at Law Judge Claudia Laird	Nelson Mock, Texas RioGrande Legal Aid
County Court at Law Judge Amanda Putman	Charles Carver, Attorney
Justice Court Judge Shelly Cleveland	Kennon Wooten, Attorney
District Clerk Lynne Finley	Lisa Hobbs, Attorney
Deputy Attorney General Jim Davis	Murray Fogler, Attorney
Court Administrator Wendi Pearson	Steve Rech, Attorney
Janiece Longoria, Port of Houston Authority	

The Civil Justice Committee held meetings on September 28, 2017, April 18, 2018, and June 4, 2018, and the Civil Justice Advisory Council met on February 15-16, 2018. The advisory council meeting was supported by a grant from the State Justice Institute. Points of view expressed herein are those of the Texas Judicial Council and do not necessarily represent the official position of policies of the State Justice Institute.

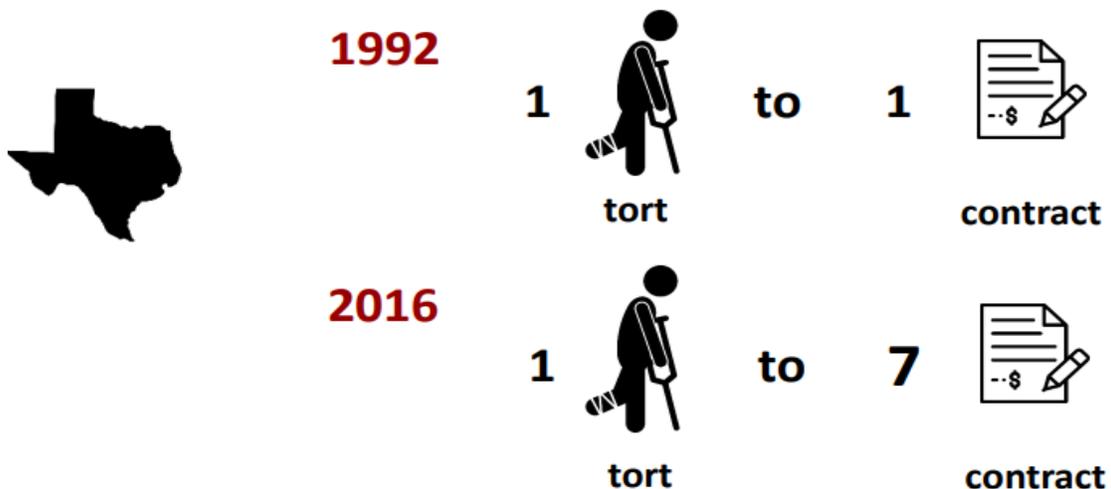
Background

In his State of the Judiciary address in 2017, Supreme Court of Texas Chief Justice Nathan L. Hecht stated that “justice only for those who can afford it is neither justice **for** all nor justice **at** all. The rule of law, so revered in this country, has no integrity if its promises and protections extend only to the well-to-do.” Texas has long been recognized as a leader in civil justice reform and was a case study for the national Conference of Chief Justices’ Civil Justice Initiative (CJI) in recent years. The CJI’s Report and Recommendations provide best practice suggestions for consideration by state courts throughout the country. The Texas courts have significant room for improvement, and the charge of this committee was to review the CJI’s suggestions and make recommendations to improve Texas’ civil justice system.

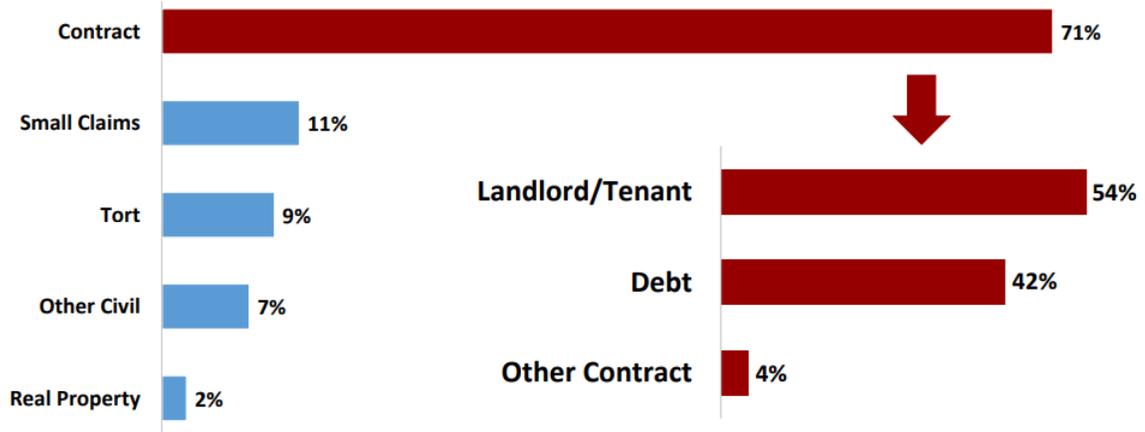
The Landscape of Civil Litigation in Texas

To suggest reforms without first reviewing the landscape of civil litigation in Texas would potentially lead to unwise recommendations. Accordingly, this committee report begins with a review of the facts as they face us today.

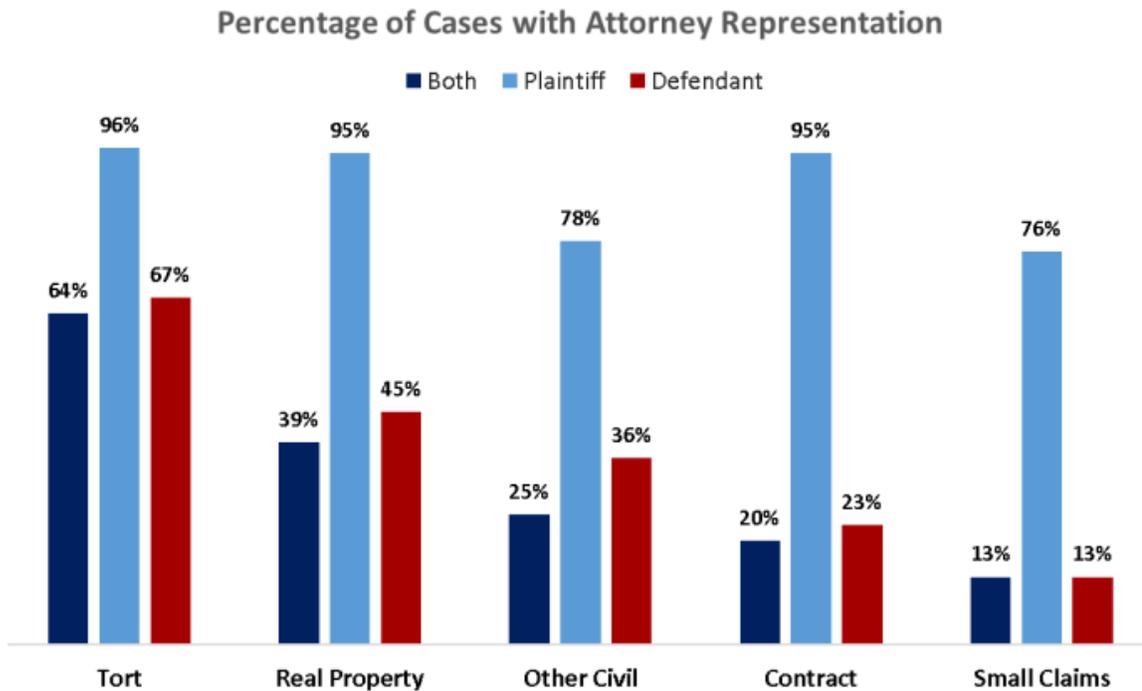
- Nationally, contract case filings have come to dominate the civil justice landscape. Texas has seen the same transition, with contract cases now outnumbering tort cases seven-to-one.



- Contract and small claims disputes now make up more than 80 percent of the caseload in Texas, with landlord/tenant and debt cases making up most of the contract cases.



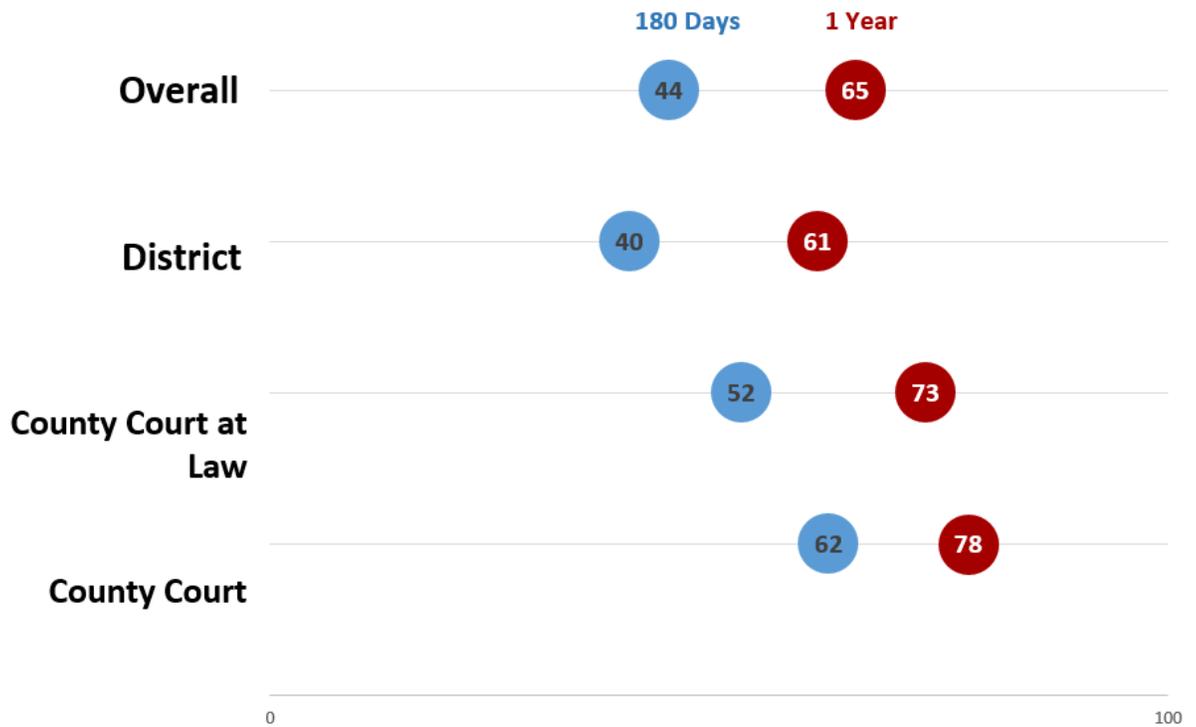
- Nationally, the number of litigants who are unrepresented by counsel has increased to a point where the majority of cases now include at least one party who is unrepresented.¹



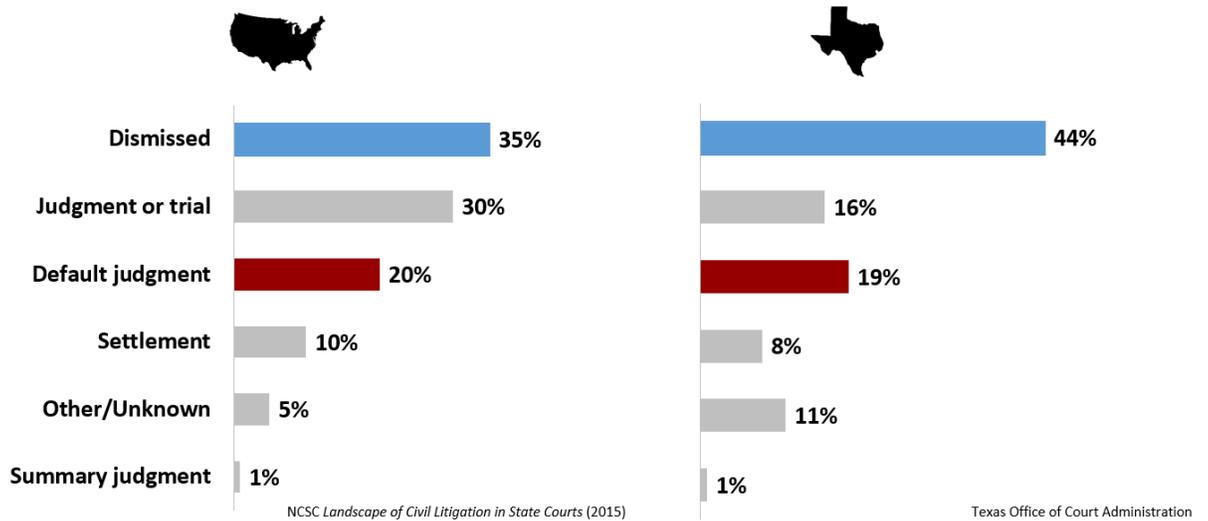
- Only 65 percent of all civil cases are disposed within one year as recommended by Rule 6 of the Texas Rules of Judicial Administration for civil nonjury cases.

¹ Data are not available to calculate the number of litigants who are unrepresented in Texas courts.

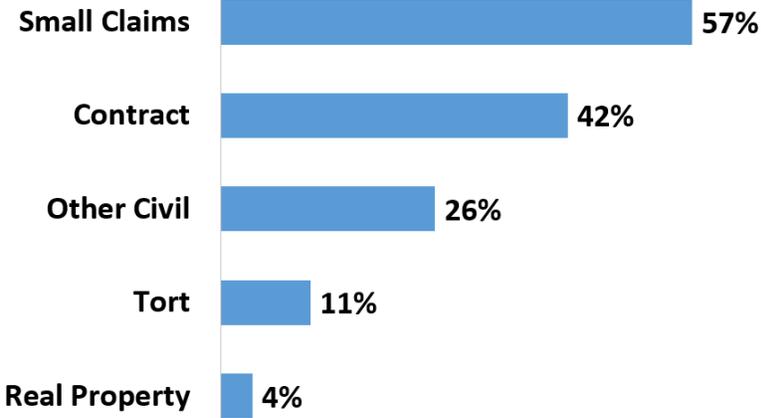
Percentage of Cases Disposed Within 180 Days or 1 Year



- Most civil cases are dismissed or disposed through a default judgment, with very few cases disposed by trial.



- When a case is resolved by judgment, national statistics (which include Texas data) indicate that the amount of the judgment is low and far outpaced by the cost to litigate the dispute.



NCSC Landscape of Civil Litigation in State Courts (2015)

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

These facts point to a need for Texas to review its civil justice system, and the recommendations that follow are meant to make improvements to address issues identified by the committee.

Recommendations in Brief

Recommendation 1: The Legislature should seek to ensure that the judiciary is able to attract the best and brightest minds to promote a fair and experienced judiciary.

Recommendation 1a: The Legislature should consider alternatives to the current method of selection of judges by partisan elections.

Recommendation 1b: The Legislature should pass a joint resolution proposing a Constitutional amendment to modify the qualifications to serve as justices/judges as follows:

- Eliminating or increasing the maximum age restrictions as a qualification to serve as a justice/judge and placing greater emphasis on years of experience.
- Alternatively:
 - Raising the age to preside over statutory county courts and statutory probate courts from 25 to 30 years;
 - Requiring justices of the peace and municipal judges (not a court of record) to be at least 25 years old if the justice/judge is a licensed attorney or 30 years old if the justice/judge is not a licensed attorney; and
 - Requiring municipal judges (court of record) to have the same qualifications as a district judge.
- Requiring justices of the peace in counties with a population exceeding 500,000 to be licensed attorneys.
- Increasing the required number of years of service as a practicing attorney or judge to twelve years to serve as an appellate justice/judge and to eight years for a district judge.

Recommendation 1c: The Legislature should increase judicial compensation to an amount sufficient to “attract the most highly qualified individuals in the state, from a diversity of life and professional experiences, to serve in the judiciary without unreasonable economic hardship and with judicial independence unaffected by financial concerns.”²

Recommendation 2: The Legislature should examine the structure and jurisdiction of the courts to increase efficiency.

Recommendation 2a: The Legislature should simplify the trial court structure by establishing consistent jurisdiction among the various trial courts across the state.

- The Legislature should increase the civil jurisdictional floor for district courts from \$200 to \$10,000.

² Govt. Code, Sec. 35.102(b)

- The Legislature should increase the civil jurisdictional floor of the statutory county courts in Sec. 25.0003, Tex. Govt. Code from \$200 to \$5,000.
- For counties with increased qualifications for justices of the peace to require being a practicing attorney, the Legislature should increase the maximum civil jurisdiction of the justice courts from \$10,000 to \$20,000.

Recommendation 2b: The Supreme Court should work with the courts of appeals to recommend to the Legislature simplification of the courts of appeals' structure in an effort to improve jurisprudence and reduce the need for transfer among the courts of appeals.

Recommendation 3: The Supreme Court should create by rule a business court for complex litigation.

Recommendation 3a: The Supreme Court should establish a pilot business court program to permit consideration of implementation details prior to statewide implementation.

Recommendation 3b: The business court should be a part of the existing court structure, and the Supreme Court should establish qualifications to determine who can be designated as a business court judge.

Recommendation 3c: The business court should hold proceedings regionally to ensure that parties throughout the state who have complex litigation have access to the court.

Recommendation 3d: Parties to complex litigation should be given the opportunity to opt-in to the business court.

Recommendation 3e: The business court should be provided sufficient resources to handle the complex litigation, including technology and staff attorneys.

Recommendation 4: The Supreme Court should amend the Rules of Civil Procedure (RCP) to improve case management practices.

Recommendation 4a: The Supreme Court should amend the RCP to require prompt service of process, with a mechanism for a prompt dismissal without prosecution for those who do not comply with the requirement.

Recommendation 4b: The Supreme Court should amend the RCP to restrict the use of citation by publication and require digital diligence to notify the defendant of the lawsuit. The Supreme Court should modify the RCP to permit service of process by social media when personal service is not possible.

Recommendation 4c: The Supreme Court should amend the RCP to require scheduling orders with deadlines, including trial dates.

Recommendation 4d: The Supreme Court should amend the RCP to expand alternative dispute resolution through opt-in short jury trials and mandatory mediation for cases with low amounts in controversy and should initiate this change using a pilot project.

Recommendation 4e: The Office of Court Administration (OCA) should implement low-cost or free online dispute resolution throughout the state so that parties in civil matters may access the judicial system.

Recommendation 4f: The Supreme Court should amend the RCP to require automatic mandatory initial disclosures.

Recommendation 4g: The Supreme Court should amend the RCP to eliminate the pitfalls associated with unrepresented litigants responding to requests for admission that result in facts being admitted inadvertently.

Recommendation 5: The Supreme Court should amend the pleading requirements of the Rules of Civil Procedure (RCP) to improve access to justice.

Recommendation 5a: The Supreme Court should amend the RCP to require that petitions refer to a website where defendants can find information about how to obtain a lawyer or how to respond to the lawsuit.

Recommendation 5b: The Supreme Court should amend the RCP to require fact-based pleadings with statements of the evidence and with evidence to counter potential affirmative defenses.

Recommendation 6: The Supreme Court should amend the Rules of Judicial Administration to require trial courts to submit annual countywide plans reflecting how the courts will manage civil cases. These plans should be tailored for the individual jurisdiction but be based upon a template developed by the Office of Court Administration in consultation with trial judges.

Recommendation 7: The Office of Court Administration should provide resources to assist trial judges in managing civil cases.

Recommendation 7a: Working with trial judges and various stakeholders, the Office of Court Administration (OCA) should develop a set of template forms, checklists, and scheduling orders for use by trial judges.

Recommendation 7b: OCA should seek funding for staff or briefing attorneys that could serve as a resource for trial judges throughout the state.

Recommendation 8: Education for new and existing judges on court administration and case management processes should be improved for new and existing judges.

Recommendation 8a: The Office of Court Administration should develop a bench book(s) that covers the administrative responsibilities of a trial judge.

Recommendation 8b: In-depth education on the administrative responsibilities of a trial judge and case management best practices should be delivered to all newly-elected judges initially and to other trial judges regularly.

Recommendation 8c: Education on best practices for handling cases with self-represented litigants should be provided to all trial judges regularly.

Recommendation 8d: The Court of Criminal Appeals should convene annually a group of stakeholders representing all the judicial training entities to assess high-priority educational needs and plan how they can be met for all trial judges.

Recommendation 9: The Office of Court Administration should establish a statewide case management system (CMS) that can be used by trial courts to improve case processing.

Recommendation 9a: The CMS should include the capability for courts to assign cases to tracks that require differing levels of judicial attention.

Recommendation 9b: The CMS should include a dashboard with tools that judges can use to manage cases better.

Recommendation 9c: The CMS should include reporting tools to improve transparency regarding the movement of civil cases within the trial courts.

Recommendation 10: The state's trial courts should establish case management teams to assist in managing civil cases, and the Office of Court Administration should consider ways to assist trial courts in this effort.

Recommendation 11: The state's trial courts should increase the use of technology in the management of civil cases, including in the courtroom, and the Office of Court Administration should consider ways to assist trial courts in this effort.

Recommendation 12: The Legislature should clarify the unauthorized practice of law and barratry statutes to differentiate between providing legal information and legal advice.

Recommendation 12a: The Legislature should amend the unauthorized practice of law and barratry statutes to authorize legal assistance software applications that provide legal information.

Recommendation 13: The Supreme Court should amend the Canons of Judicial Conduct to allow judges to provide basic legal information and the sources for that information to self-represented litigants in civil cases.

Recommendation 14: The Office of Court Administration (OCA) should expand the resources available to self-represented litigants through the texascourthelp.gov website.

Recommendation 14a: Working with appropriate stakeholder groups, the OCA should increase the number of legal forms available for use by self-represented litigants.

Recommendation 14b: The OCA should provide an electronic method for courts to allow litigants to appear remotely when appropriate.

Recommendation 14c: The OCA should establish an electronic platform to connect self-represented litigants with attorneys (who are available for full- or limited-scope representation), mediators, and other legal services.

Recommendation 15: The Legislature should increase funding for civil legal aid services throughout the state.

Recommendation 16: The Office of Court Administration should implement these recommendations through pilot programs in various trial court jurisdictions throughout the state.

Recommendations in Detail

Recommendation 1: The Legislature should seek to ensure that the judiciary is able to attract the best and brightest minds to promote a fair and experienced judiciary.

One of the most critical ways to improve the civil justice system is to ensure that the judges managing and hearing the cases are the most qualified to do this function. The committee, however, recognized several barriers to recruiting and retaining the most qualified individuals, especially selection methods, qualifications, and compensation.

Recommendation 1a: The Legislature should consider alternatives to the current method of selection of judges by partisan elections.

Texas is one of only 11 states that select all judges who hear civil cases by partisan elections. While there are criticisms of this method of selection, there is no consensus around a method that would produce the most qualified judges. The committee discussed nonpartisan elections, gubernatorial appointments, merit selection and retention elections, nominating commissions, and judicial qualifications commissions, to name a few. Because no consensus was reached, the committee recommends that the Legislature study all of these methods or others to determine whether there is a better method than partisan elections.

Recommendation 1b: The Legislature should pass a joint resolution proposing a Constitutional amendment to amend the qualifications to serve as justices/judges as follows:

- *Eliminating or increasing the maximum age restrictions as a qualification to serve as a justice/judge and placing greater emphasis on years of experience.*
- *Alternatively:*
 - *Raising the age to preside over statutory county courts and statutory probate courts from 25 to 30 years;*
 - *Requiring justices of the peace and municipal judges (not a court of record) to be at least 25 years old if the justice/judge is a licensed attorney or 30 years old if the justice/judge is not a licensed attorney; and*
 - *Requiring municipal judges (court of record) to have the same qualifications as a district judge.*
- *Requiring justices of the peace in counties with a population exceeding 500,000 to be licensed attorneys.*
- *Increasing the number of required years of service as a practicing attorney or judge to twelve years to serve as an appellate justice/judge and to eight years for a district judge.*

The qualifications to serve as a trial judge are contained in provisions within Article V of the Texas Constitution, as shown in the graphic below.

Judicial Qualifications



Supreme Court		Citizen of U.S. and of Texas	35 to 74	a practicing lawyer, or lawyer and judge of court of record together, for at least 10 years
Courts of Appeals		Citizen of U.S. and of Texas	35 to 74	a practicing lawyer, or lawyer and judge of court of record together, for at least 10 years
District Courts		Citizen of U.S. and of Texas; resident of the district for 2 years	25 to 74	a practicing lawyer or judge, or both combined, for 4 years
County-Level Courts				
Constitutional County Courts				“Shall be well informed in the law of the State” Law license not required
Statutory County Courts		Citizen of U.S.; resident of county for at least 2 years	25 or older	licensed attorney who has practiced law or served as a judge for 4 years
Statutory Probate Courts		Citizen of U.S.; resident of county for at least 2 years	25 or older	licensed attorney who has practiced law or served as a judge for 5 years
Justice Courts				No specific statutory or constitutional provisions apply

The committee discussed each of these qualifications and believes that increasing the qualifications to serve will ensure that the most qualified jurists are serving in these courts.

Recommendation 1c: The Legislature should increase judicial compensation to an amount sufficient to “attract the most highly qualified individuals in the state, from a diversity of life and professional experiences, to serve in the judiciary without unreasonable economic hardship and with judicial independence unaffected by financial concerns.”³

³ Govt. Code, Sec. 35.102(b)

One of the key elements to having a highly qualified judiciary is ensuring that compensation is neither a barrier to persons deciding to seek the office nor an impediment to continued service on the bench. The Judicial Compensation Commission, however, has found repeatedly that compensation serves as a barrier and an impediment. Accordingly, the committee recommends that the Legislature provide adequate compensation to Texas judges.

Recommendation 2: The Legislature should examine the structure and jurisdiction of the courts to increase efficiency.

Recommendation 2a: The Legislature should simplify the trial court structure by establishing consistent jurisdiction among the various trial courts across the state.

- *The Legislature should increase the civil jurisdictional floor for district courts from \$200 to \$10,000.*
- *The Legislature should increase the civil jurisdictional floor of statutory county courts in Sec. 25.0003, Tex. Govt. Code from \$200 to \$5,000.*
- *For counties with increased qualifications for justices of the peace to require being a practicing attorney, the Legislature should increase the maximum civil jurisdiction of the justice courts from \$10,000 to \$20,000.*

Texas jurisdictional trial court structure has been described as “unimaginably abstruse” and “Byzantine.”⁴ The overlapping civil jurisdiction of the trial courts impedes persons seeking justice and can contribute to gamesmanship amongst litigants. For this reason, the committee recommends simplifying jurisdictions to increase efficiency and access to justice.

Recommendation 2b: The Supreme Court should work with the courts of appeals to recommend to the Legislature simplification of the courts of appeals’ structure in an effort to improve jurisprudence and reduce the need for transfer among the courts of appeals.

Recommendation 3: The Supreme Court should create by rule a business court for complex litigation.

Recommendation 3a: The Supreme Court should establish a pilot business court program to permit consideration of implementation details prior to statewide implementation.

Recommendation 3b: The business court should be a part of the existing court structure, and the Supreme Court should establish qualifications to determine who can be designated as a business court judge.

Recommendation 3c: The business court should hold proceedings regionally to ensure that parties throughout the state who have complex litigation have access to the court.

⁴ *Sultan v. Mathew*, 178 S.W. 3d 747, 753 (Tex. 2005) (Hecht, J, dissenting).

Recommendation 3d: Parties to complex litigation should be given the opportunity to opt in to the business court.

Recommendation 3e: The business court should be provided sufficient resources to handle the complex litigation, including technology and staff attorneys.

Many businesses have indicated that tying their resources up in litigation for years, at a significant cost of resources and increased uncertainty, is untenable. This problem has led businesses to seek other forums to resolve their disputes, including arbitration and other dispute resolution mechanisms. Some states have attempted to rectify this problem by providing specialized business courts. These courts have been praised by businesses and may serve as a model for Texas. Accordingly, the committee recommends that the Supreme Court create a pilot business court and, if results are positive, fully establish the business court program after evaluating the pilot.

Recommendation 4: The Supreme Court should amend the Rules of Civil Procedure (RCP) to improve case management practices.

Recommendation 4a: The Supreme Court should amend the RCP to require prompt service of process, with a mechanism for a prompt dismissal without prosecution for those who do not comply with the requirement.

Recommendation 4b: The Supreme Court should amend the RCP to restrict the use of citation by publication and require digital diligence to notify the defendant of the lawsuit. The Supreme Court should modify the RCP to permit by service of process by social media when personal service is not possible.

One of the concerns raised by this committee's advisory council was service of process. The first concern is that litigants often fail to serve notice of the suit promptly, which results in default judgments and delays. The second concern is that litigants often choose methods of service that do not result in actual notice to the litigant, including citation by publication. In a digital world with fewer newspaper subscribers, it is increasingly unlikely that defendants will see notice of a lawsuit in a newspaper. Some litigants in this state and others, however, have found success using social media platforms to serve notice of suits. While this method technically is authorized by Rule 106(b)(2), the committee believes a more explicit listing of the method as an alternative would be beneficial.

Recommendation 4c: The Supreme Court should amend the RCP to require scheduling orders with deadlines, including trial dates.

One of the key principles of effective civil caseload management is active court management of the case from filing through disposition. Many courts have found the use of scheduling or docket control orders to be an effective tool in ensuring the timely disposition of civil cases. Therefore, the committee recommends this practice be instituted as a requirement in all civil cases.

Recommendation 4d: The Supreme Court should amend the RCP to expand alternative dispute resolution through opt-in short jury trials and mandatory mediation for cases with low amounts in controversy and should initiate this change using a pilot project.

Recommendation 4e: The Office of Court Administration (OCA) should implement low-cost or free online dispute resolution throughout the state so that parties in civil matters may access the judicial system.

Data from Texas courts show that virtually all civil cases are resolved through methods other than trial. Some forms of dispute resolution, however, are expensive and unavailable in certain areas of the state. Other states have instituted two forms of dispute resolution that have proven effective in cases involving low amounts of controversy that should be implemented in Texas. The first of these methods is short jury trials, which are a form of dispute resolution that ensure a right to a jury trial while controlling cost through simplified court processes.

The second, online dispute resolution, is a new technique that provides an asynchronous environment for resolution and can be used to reduce the cost, time, and inconvenience of resolving a civil dispute. It is being used to resolve numerous private online disputes successfully on platforms such as Amazon and eBay and is emerging as a tool for civil courts. The committee believes that providing an online dispute resolution platform for Texas courts will enhance access to justice and improve the civil justice system greatly.

Recommendation 4f: The Supreme Court should amend the RCP to require automatic mandatory initial disclosures.

Recommendation 4g: The Supreme Court should amend the RCP to eliminate the pitfalls associated with unrepresented litigants responding to requests for admission that result in facts being admitted inadvertently.

The use of the discovery process in civil cases can be difficult for represented parties but is especially difficult for unrepresented parties. Accordingly, the committee and advisory council believe it would be beneficial to amend the Rules of Civil Procedure to simplify this process and remove potential pitfalls.

Recommendation 5: The Supreme Court should amend the pleading requirements of the Rules of Civil Procedure (RCP) to improve access to justice.

Recommendation 5a: The Supreme Court should amend the RCP to require that petitions refer to a website where defendants can find information about how to obtain a lawyer or how to respond to the lawsuit.

Recommendation 5b: The Supreme Court should amend the RCP to require fact-based pleadings with statements of the evidence and with evidence to counter potential affirmative defenses.

With significant numbers of self-represented litigants in civil cases, ensuring that defendants know how to seek resources, including referrals to legal services, is vital. With the creation of

www.texascourthelp.gov as a portal for these resources, litigants should be informed about this resource when they are served with a copy of a petition.

With almost one-fifth of civil cases being resolved by default judgment, many judges raised concerns about the lack of evidence supporting those default judgments. Absent some change to the Rules of Civil Procedure, however, judges find themselves signing default judgments against non-responding parties even when the judge questions whether there is sufficient evidence on the merits of the case to obtain a judgment. Requiring fact-based pleadings with statements of the evidence and the evidence to counter potential affirmative defenses would provide some remedy to this concern.

Recommendation 6: The Supreme Court should amend the Rules of Judicial Administration to require the trial courts to submit annual countywide plans reflecting how the courts will manage civil cases. These plans should be tailored for the individual jurisdiction but based upon a template developed by the Office of Court Administration in consultation with trial judges.

As mentioned previously, active court management of civil cases from filing to disposition is imperative for effective civil caseflow. Most courts, however, do not have specific plans regarding how to manage these cases. Requiring each county to submit such a plan would allow local jurisdictions to determine the best method for managing the cases while meeting the needs of the local jurisdiction.

Recommendation 7: The Office of Court Administration should provide resources to assist trial judges manage civil cases.

Recommendation 7a: Working with trial judges and various stakeholders, the Office of Court Administration (OCA) should develop a set of template forms, checklists, and scheduling orders for use by trial judges.

Recommendation 7b: OCA should seek funding for staff or briefing attorneys that could serve as a resource for trial judges throughout the state.

Trial court judges cited a lack of resources among their greatest needs and expressed a desire for template forms, checklists, and scheduling orders. They also noted the lack of staff or briefing attorneys to assist the judges regarding difficult civil justice issues. Most trial courts in the state do not have access to a staff or briefing attorney to provide this assistance, and it would not make sense to provide staff to each trial court judge in the state for this purpose. By pooling resources and assigning attorney resources as needed, however, trial court judges' needs could be met efficiently.

Recommendation 8: Education for new and existing judges on court administration and case management processes should be improved for new and existing judges.

Recommendation 8a: The Office of Court Administration should develop a bench book(s) that covers the administrative responsibilities of a trial judge.

Recommendation 8b: In-depth education on the administrative responsibilities of a trial judge and case management best practices should be delivered to all newly-elected judges initially and to other trial judges regularly.

Recommendation 8c: Education on best practices for handling cases with self-represented litigants should be provided to all trial judges regularly.

Recommendation 8d: The Court of Criminal Appeals should convene annually a group of stakeholders representing all the judicial training entities to assess high-priority educational needs and plan how they can be met for all trial judges.

Texas trial court judges receive little judicial education about court administration and case management issues. Without adequate training about these subjects, trial courts are unable to implement best practices in civil case management.

Recommendation 9: The Office of Court Administration should establish a statewide case management system (CMS) that can be used by trial courts to improve case processing.

Recommendation 9a: The CMS should include the capability for courts to assign cases to tracks that require differing levels of judicial attention.

Recommendation 9b: The CMS should include a dashboard with tools that judges can use to manage cases better.

Recommendation 9c: The CMS should include reporting tools to improve transparency regarding the movement of civil cases within the trial courts.

The state judiciary does not provide a statewide case management system for the trial courts. Rather, each individual jurisdiction is responsible for procuring and supporting its own system. This means that some jurisdictions have no case management system, while those that do include a wide variety of capabilities. Providing a statewide case management system that could be used by the trial courts would improve the ability to oversee civil cases.

Recommendation 10: The state's trial courts should establish case management teams to assist in managing civil cases, and the Office of Court Administration should consider ways to assist trial courts in this effort.

In the CJI report, the Conference of Chief Justices recommended that each trial court employ case management teams to assist in the active management of the cases. Most trial courts in Texas have either a court coordinator or court clerk, or both, that could be utilized for this function.

Recommendation 11: The state's trial courts should increase the use of technology in the management of civil cases, including in the courtroom, and the Office of Court Administration should consider ways to assist trial courts in this effort.

Technology can be used to improve the civil justice system significantly. Unfortunately, many courts have not fully implemented technology to assist with the management of civil cases,

which increases the cost of litigation and slows case processing. OCA can and should assist trial courts in understanding how to best employ technologies, as well as how to do so in a way that is cost-effective.

Recommendation 12: The Legislature should clarify the unauthorized practice of law and barratry statutes to differentiate between providing legal information and legal advice.

Recommendation 12a: The Legislature should amend the unauthorized practice of law and barratry statutes to authorize legal assistance software applications that provide legal information.

There are many legal assistance software applications that might be able to assist litigants with legal information. The lack of clarity in the unauthorized practice of law and barratry statutes, however, inhibits persons and businesses from implementing these service for the public benefit. Reviewing and clarifying the boundaries of what services legal assistance software applications can provide would be beneficial.

Recommendation 13: The Supreme Court should amend the Canons of Judicial Conduct to allow judges to provide basic legal information and the sources for that information to self-represented litigants in civil cases.

Many judges have expressed significant concerns regarding how little information they can provide to self-represented litigants in civil cases due to the restrictions in the Canons of Judicial Conduct. The public, however, expects judges to be able to provide a basic level of legal information to litigants. Accordingly, amending the Canons of Judicial Conduct explicitly to allow judges to provide basic legal information and the sources of that information would benefit both the judiciary and the public.

Recommendation 14: The Office of Court Administration (OCA) should expand the resources available to self-represented litigants through the texascourthelp.gov website.

Recommendation 14a: Working with appropriate stakeholder groups, the OCA should increase the number of legal forms available for use by self-represented litigants.

Recommendation 14b: The OCA should provide an electronic method for courts to allow litigants to appear remotely when appropriate.

Recommendation 14c: The OCA should establish an electronic platform to connect self-represented litigants with attorneys (who are available for full or limited scope representation), mediators, and other legal services.

With an increasing number of self-represented litigants, it is imperative for the judiciary to provide an online portal with services and resources for litigants. OCA recently established texascourthelp.gov as a place to direct litigants to self-help services. What's more, recent legislation required clerks and courts to include a link to the resource page on their websites and to post a sign in their offices directing litigants to it. The site contains few forms or services, however, and OCA should expand the resources it makes available.

Recommendation 15: The Legislature should increase funding for civil legal aid services throughout the state.

The best resource for unrepresented litigants with a civil justice issue is access to a lawyer, but most of them will not be able to retain one, nor will the current resources of civil legal aid providers be able to serve their needs. While a civil legal aid attorney is not needed in every case, increased funding would assist unrepresented litigants in cases that do require an attorney's expertise.

Recommendation 16: The Office of Court Administration should seek to implement these recommendations through pilot programs in various trial court jurisdictions throughout the state.

Many of these recommendations would bring about significant changes to trial courts. To ensure that the transition is as smooth as possible, OCA should seek to implement the appropriate recommendations through pilot programs in various trial court jurisdictions throughout the state and then produce resources that will assist other jurisdictions when they implement the changes.