

Civil Litigation Trends in One of the Nation's Largest Counties

Harris County is the largest county in the State of Texas. This article examines the considerable data that exists on the history of civil litigation in Harris County and litigation trends.

Harris County Population Trends

Harris County currently has a population of just over four million, making it the third largest in the nation.¹ Indeed, if the county was a state, it would rank 27th, between Kentucky and Oregon. In the past 10 years, Harris County population has grown 20 percent, making it one of the fastest growing areas of the country. Over the same time period, the number of civil litigation matters in Harris County has increased by 66 percent.

The Texas Judicial System

The Texas judiciary can be described as a haphazard patchwork of courts. As this diagram

illustrates (Fig. 1), there are multiple layers of trial courts with

overlapping jurisdictions.² Indeed, the Texas Supreme Court recently described our judicial system as "one of the most complex in the United States, if not the world."³ Elsewhere the Texas court system has been described as Byzantine,⁴ confusing and inefficient⁵ and a patchwork of overlapping jurisdictions.⁶

The Harris County Judicial System

The Harris County court system suffers from the same inefficiencies as the state-wide system. Harris County has district courts, statutory county courts, probate courts, justice of the peace courts, and municipal courts. (Fig. 2) The district courts of Harris County have been divided into the civil, criminal, family and juvenile trial divisions by both statutory requirements and administrative board policies.⁷

This article will focus on the

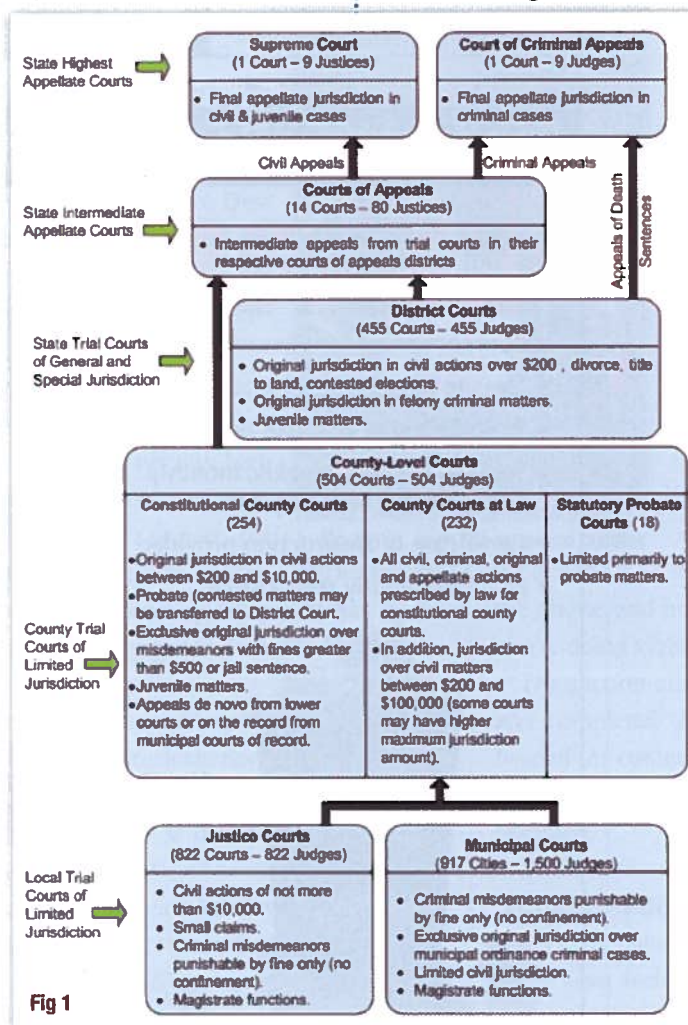
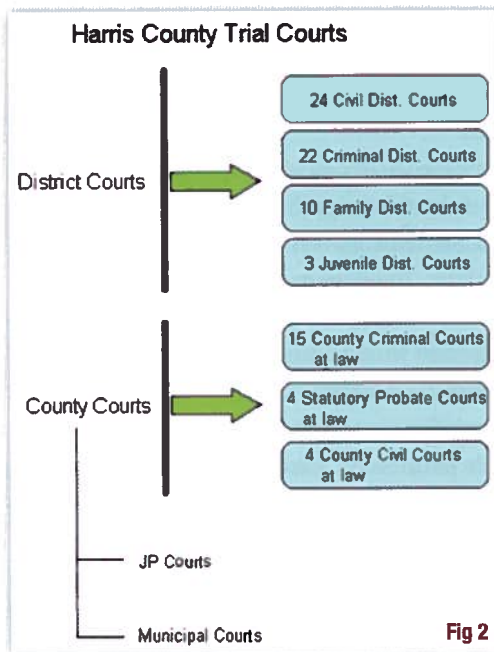


Fig 1

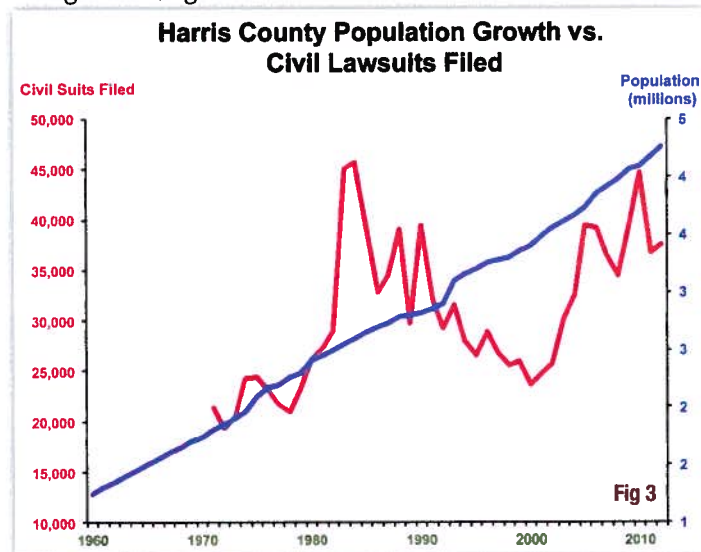


24 civil district courts in Harris County.⁸ The data from these courts are generally quite good and provide the opportunity to examine civil litigation trends in depth.

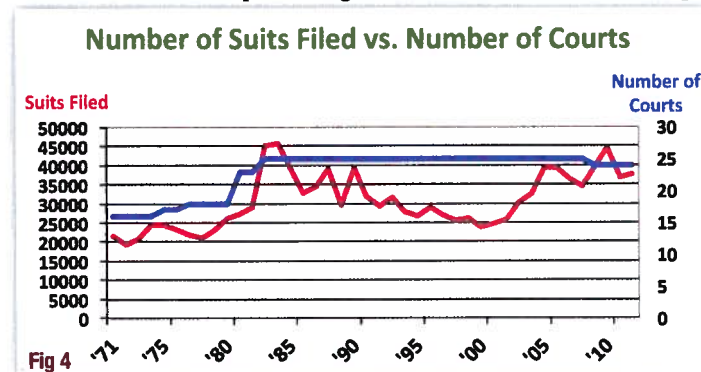
Growth of Civil Litigation

Civil filings have grown considerably over the past 40

years. Although it follows a general trend line of population, civil filings have wavered over the years. For example, in the 1970s, filings dramatically outpaced population, and declined during the 1990s. Over the past decade, once again the rate of civil filings has grown considerably faster than that of population growth (Fig. 3).



Over the past several decades, the Texas legislature has added a number of civil district courts to Harris County. When the number of courts is plotted against the number of civil filings,



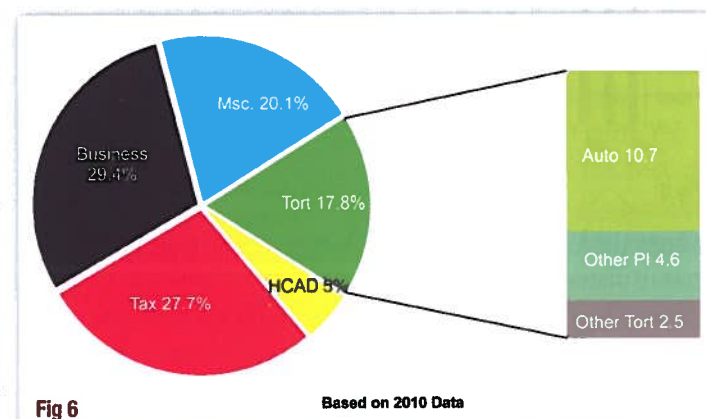
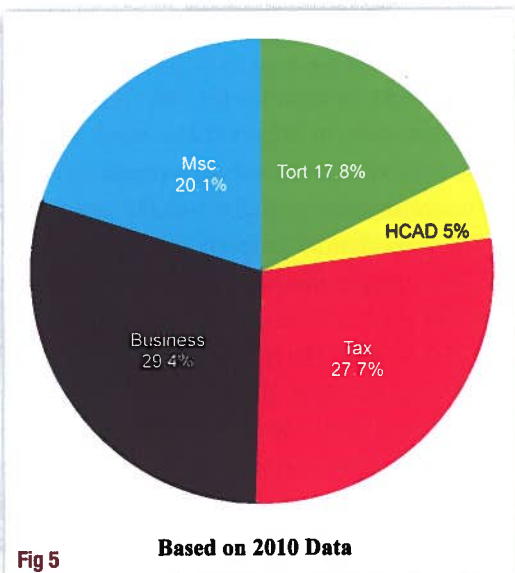
one can see that while civil filings have increased dramatically in the last 10 years, the number of civil district courts has remained flat and even declined (Fig. 4). Currently, there are nearly 1,900 new suits filed per year for each Harris County civil district court, whereas in 2000, the number was only 948 new filings per court.

What Kinds of Suits are Being Filed?

The types of civil suits being filed in Texas are varied and complex. Generally speaking, suits can be divided into five categories: tort suits, business actions, suits for tax deficiencies, appraisal district challenges or HCAD suits and miscellaneous actions (Fig. 5).

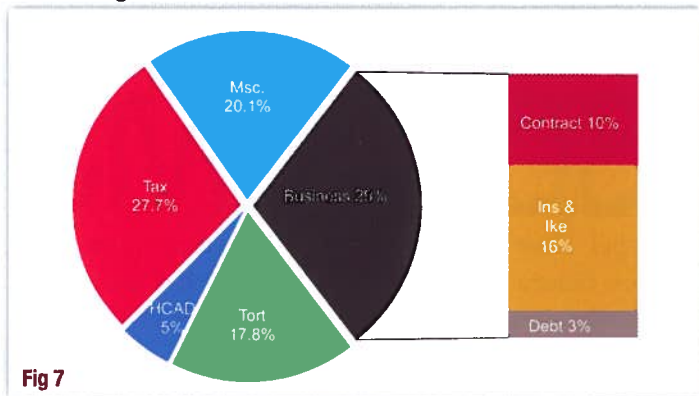
Tort Suits.

Although the numbers vary from year to year, approximately two-thirds of all tort filings are automobile accident personal injury cases. The remainder of the personal injury tort cases consists of medical malpractice, Jones Act, asbestos and silicosis, slip and fall, products liability, construction injuries, adverse reactions to drugs and pharmaceuticals and others. Finally, there are "other torts," which are non-personal injury tort actions. Examples of such non-personal injury tort cases would be theft and conversion, fraud, defamation, tortious interference and legal malpractice (Fig. 6).



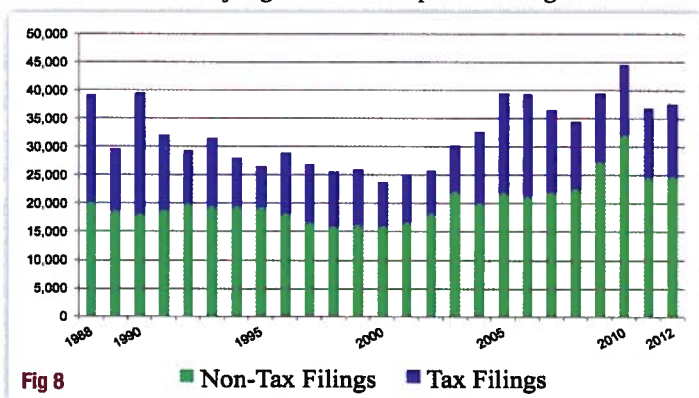
Business Suits. Business litigation suits, which comprise about 30 percent of all filings per year, are equally varied. Examples of such filings include: breach of contract or lease, suits on notes, suits to remove liens, credit card or other debt actions, suits to partition property, trespass to try title, adverse

possession, receiverships, securities fraud and business dissolution (Fig. 7).

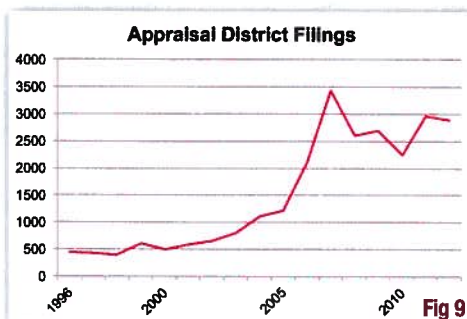


Ike Claims. In recent years, Harris County has experienced a significant spike in litigation as a result of Hurricane Ike which made landfall in Galveston on September 13, 2008. Harris County estimates that Hurricane Ike caused approximately \$8.2 billion in residential property damage in Harris County alone.⁹ Not surprisingly, Hurricane Ike has spawned many lawsuits by insureds against their carriers. A total of 2,179 and 6,774 Ike suits were filed in Harris County in 2009 and 2010, respectively. Ike filings, obviously, declined dramatically in 2011 and 2012, totaling only about 550 new suits filed each year.

Tax Suits. The various taxing authorities of Harris County frequently file suit to collect delinquent property taxes. The taxing authorities include the county, municipalities, school districts, and municipal utility districts. Roughly 10,000-12,000 tax suits are filed annually. Many of these tax suits are handled in the first instance by two tax masters who make recommendations to the district judge for their disposition (Fig. 8).



Appraisal District Suits. Each county in Texas has an appraisal district that makes property tax valuations. Property



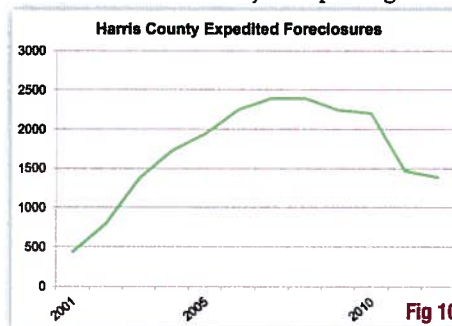
owners are then permitted to challenge these valuations in district court. These suits challenging Harris County Appraisal District valuations have grown to be a

significant part of each district judge's docket, now totaling approximately five percent of the total (Fig. 9).

Miscellaneous Actions

District courts hear a wide variety of actions, all of which impact their dockets. Some of the most significant include:

- **Sale of Structured Settlements**—We have all heard the commercials that proclaim, "It's your money; you deserve it now!" From time to time, lawsuits are settled by the purchase of an annuity pursuant to which an insurance company makes payments to a plaintiff over time. If the annuitant wishes to sell his or her periodic payments for a lump sum, the annuitant must seek permission from a district court, which must find that the sale is in the best interest of the payee, taking into account the welfare and support of the payee's dependents.¹⁰ These cases are increasing in frequency; there are about 350 such actions filed annually.
- **Expunctions of Criminal Records**—A person who was charged with a crime and acquitted, or arrested and never charged may petition to have his or her arrest record expunged.¹¹ Upwards of 1,000 such suits are filed per year in Harris County.
- **Home Equity Foreclosures**—If a homeowner is delinquent on a home equity loan or reverse mortgage, the lender must make an *in rem* application under Rule 736 to a district judge to obtain permission to post the property for foreclosure.¹² These filings have become a significant part of a district court docket, currently comprising about four percent of all



filings. Surprisingly, notwithstanding the economic downturn since the fall of 2008, the filings of home equity foreclosures fell slightly

in 2009 and 2010, and fell sharply in 2011 (Fig. 10).

- **Homeowners' Association Suits**—Actions by homeowners' associations against homeowners had recently been as many as 950 suits per year. The vast majority of such suits are to recover delinquent dues, but some are to enforce deed restrictions. In the last two years, however, the number of such suits has fallen to about 500-600 annually.
- **Others**—In addition to the above, Harris County civil district courts hear a variety of other miscellaneous matters. Some of them include:
 - Name changes—About 400 per year;
 - Depositions before suit under Rule 202—About 100 per year;
 - Seizure and forfeiture of items recovered by police—About 700-800 per year;

- Declaratory judgment actions—About 500 per year;
- DTPA suits—About 300 per year;
- Employment and discrimination actions—About 200 per year;
- Attorney discipline actions—About 20 per year;
- Bills of review, enforcement of foreign judgments, and miscellaneous collection writs, such as sequestration, garnishment, attachment, and replevy.

Outside Influences on the Number of Suits Being Filed

Some outside influences affect the number of suits being filed. For example, as previously mentioned, Hurricane Ike has resulted in thousands of new suits. Two additional outside influences bear discussion.

Tort Reform

Over the past two decades, a number of changes have been made to Texas' tort system. Some of the more significant changes include:

- Punitive Damages—Punitive damages now have caps,¹³ and require a burden of proof of clear and convincing evidence,¹⁴ with a unanimous jury verdict¹⁵
- Venue Changes¹⁶
- Offers of Settlement¹⁷
- Establishment of MDL Courts¹⁸
- Forum Non Conveniens¹⁹
- Responsible Third Party Practice²⁰
- Judgment Interest—Lower judgment rates²¹
- Medical Malpractice—Caps²² and 120-day expert report screening process²³
- Paid or Incurred Medical Bills²⁴
- Asbestos/Silica—Impairment before suit can be commenced²⁵
- New Rules—Including motions to dismiss, expedited suits under \$100,000, interlocutory appeals, breach of contract fees for both sides and barratry cause of action.

Not surprisingly, these various changes, generally characterized as tort reforms, have resulted in a significant reduction of various tort claims. One of the most significant tort reforms enacted in recent years is the so-called Proposition 12 changes in

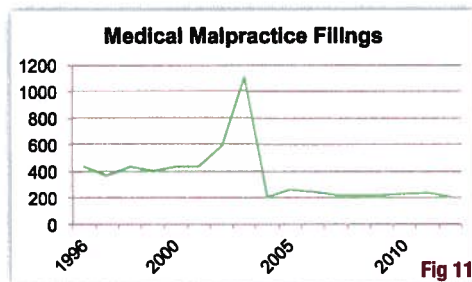


Fig 11

2003, which dramatically altered medical malpractice claims (Fig. 11). These changes include limitations on noneconomic damages²⁶ and a

requirement to submit an expert report at the beginning of the litigation.²⁷ All of these changes took effect for suits filed subsequent to September 1, 2003. The numerous wholesale changes to Texas medical liability claims resulted in a dramatic increase of medical malpractice claims prior to September 2003 in order for plaintiffs to avoid their effect. After 2003, these changes have cut

medical malpractice claims roughly in half.

The various tort reforms have had an impact across the board. Virtually all tort filings have reduced (Fig. 12). Indeed, notwithstanding the fact that population in Harris County has increased by approximately 25 percent from the mid-90s to the present, tort filings in general have decreased by about 20 percent.

Deceptive Trade Practice Act (DTPA) suits have experienced the same fate. DTPA filings have decreased from 616 per year in 1996, to only 294 in 2012.

Statewide data are consistent with the Harris County experience. Data from the Texas Office of Court Administration also shows a long-term decline in tort filings (Fig. 13). Automobile tort filings have only increased by 10 percent over the last 20 years, while non-motor vehicle tort filings decreased by 52 percent during the same period.²⁸

Economic Downturn

According to the National Bureau of Economic Research, America's recession began in December 2007, continued until at least June 2009, and recovery has remained sluggish thereafter. The traditional wisdom is that business litigation

increases when the economy weakens.²⁹

Not surprisingly, this downturn is reflected in filing data in Harris County. [Figure 14]

Two of the best indicators of business litigation are contract and debt suits. In Harris County, such business litigation takes the form of suits for breach of contract, suits on notes and sworn accounts. An analysis of these filings indicates that such suits have risen dramatically in recent years. This follows precisely the trend that one would expect. As the economy worsened in late 2008, and continued through 2009, suits by banks, credit card companies and other lenders have spiked. However, the number of debt suits began declining in 2010.

Breach of Contract and Debt Filings

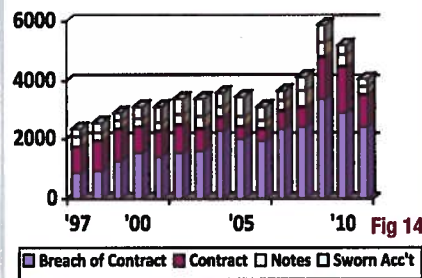
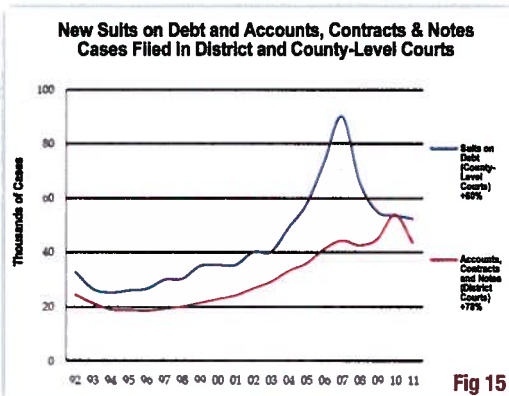


Fig 14

Again, the statewide data are the same as Harris County.

While tort suits have generally declined over the past 20 years, debt, contract and note cases have increased. Indeed, suits involving accounts, contracts and notes have increased by nearly 80 percent in district court over the past 20 years.³⁰ Again, however, such filings decreased statewide in 2011 and 2012 (Fig. 15).

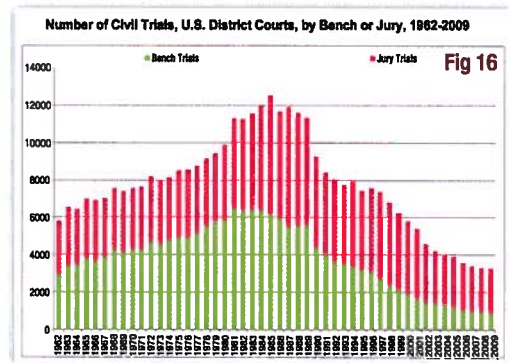


The Vanishing Trial

Federal Courts

A tremendous amount has been written in recent years about the so-called “vanishing trial.”³¹ Nationwide, there is no question that the number of trials is decreasing. This article will not attempt to repeat this wealth of writing except to provide a brief summary of the data.

Professor Marc Galanter of University of Wisconsin Law School was the first to quantify what trial lawyers had sensed for years—that jury trials were on the decline. Galanter’s landmark article looked at the number of federal trials over a 40 year period, from 1962 to 2002.³² Recently, the data have been updated through 2010 in an unpublished paper³³ (Fig. 16). The conclusion in the updated paper is simple: no news and big news. The no news story is that the trend lines regarding the decline of trials are unchanged. The big news story is that the civil trial seems to be approaching extinction.³⁴

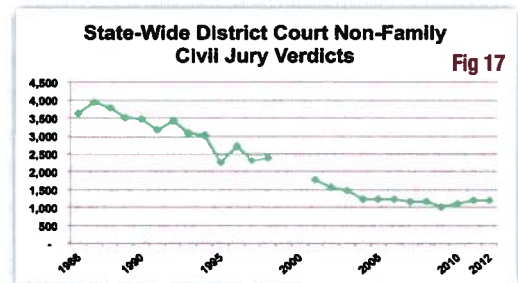


The absolute number of civil trials, either to a jury or bench, continues to decline. In 2010, only 2,154 jury trials were commenced in all federal district courts. Astonishingly, this averages to fewer than four civil jury trials per Article III federal judge.³⁵ This decline in litigation extends to all case types. On average, only about 600 tort cases are tried nationwide in federal court and about 700 contract cases.³⁶ The percentage of cases that is terminated by trial continues to fall precipitously. Only 0.73 percent of civil cases are terminated by trial in federal court.³⁷

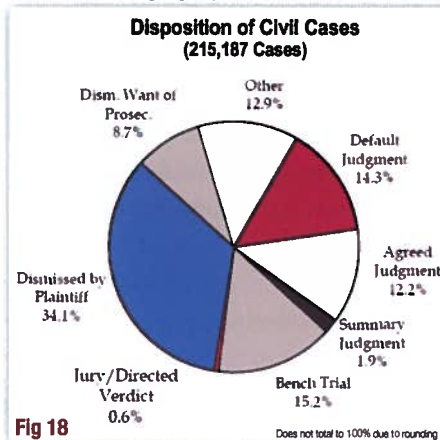
Texas Courts

Data compiled by the Texas Office of Court Administration show a similar decline statewide (Fig. 17). While the data may not be

perfect,³⁸ the general trends show a decline comparable to the federal experience. The absolute number of civil trials in non-family cases has steadily declined.



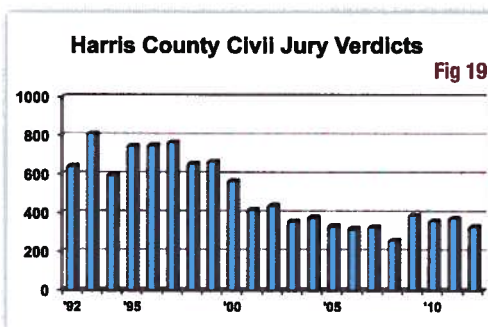
The percentage of non-family civil cases that is disposed during or after trial is strikingly similar to federal court. As of 2009, only 0.6 percent of all such cases are disposed of after trial. While the percentage was never great,³⁹ the trend line is clear: the percentage rate of disposition following a jury trial has declined steadily since 1986.



While the point of this article is not to attempt to identify and dissect the possible causes of the decline of the jury trial, one point needs to be made. Many have argued that summary judgments have increased, particularly since the advent of the no evidence summary judgment in 1997.⁴⁰ The data, however, do not support this assertion (Fig. 18). Only about 2 percent of all non-family civil cases is disposed of via summary judgment.⁴¹ While the percentage has varied slightly over time, the percent of cases disposed of by summary judgment has remained relatively flat for the past 25 years.

Harris County

The experience in Harris County may follow the same general trend line, but not to the same extent. There are several problems with the Harris County data. First, virtually no trial data exist prior to 1994. Second, the trial data in the 1990s are invalid because a single trial with, for example, three plaintiffs were often counted as three verdicts. As a result, data prior to 2000




are virtually worthless. Fortunately, multiple counting of trials stopped in approximately 2000. Nevertheless, the number of trials shows a decline in the 2000s versus the 1990s (Fig. 19). Harris County civil district judges average about 15-20 jury trials per year,⁴² which are broadly divided two-thirds personal injury, and one-third everything else.

Some have speculated that while the number of trials has declined, the length of trials may have increased. Harris County has some data that will shed light on this question. Harris County measures "units of evidence" which is defined as a day in which testimony is received. A unit of evidence is imprecise, because both testimony from five witnesses that lasts all day and testimony from a single witness for one hour are both counted as one unit of evidence. Nevertheless, it provides some measure of trial length. Each civil jury trial in Harris County has an average of three to four units of evidence. Adding voir dire, closing arguments and deliberations, an average civil trial length is approximately four to six days. The trial length shows a slight increase over the past 10 years.

Conclusions

Civil district judges are confronted with a tremendous variety of types and sizes of cases. The diversity of the types of cases filed and disposed is vast and complex. Looking at the filing and trial data from Harris County and elsewhere, a few conclusions can be drawn:

- The number of civil lawsuits is affected dramatically by external factors, such as legislation and economic swings;
- Tort reform has significantly affected the number of tort lawsuits filed;
- While the decline in jury trials marches forward in federal court, Texas and Harris County trial rates appear to have stabilized. 

The Hon. Randy Wilson is judge of the 157th District Court in Harris County.

Endnotes

1. Harris County is behind only to Los Angeles and Cook Counties. Population Estimates, United States Census Bureau. See U.S. Census Population Estimates, County Totals: Vintage 2012, available at <http://www.census.gov/popest/counties/CO-EST2009-07.html>.
2. Texas Courts Online. available at <http://www.courts.state.tx.us>.
3. *In re United Services Auto Ass'n*, 307 S.W.3d 299, 304 (Tex. 2010), citing Braden, et al., The Constitution of the State of Texas: An Annotated and Comparative Analysis 367 (1977).
4. *Sultan v. Mathew*, 178 S.W.3d 747, 753 (Tex. 2005) (Hecht, J., dissenting).
5. *Camacho v. Samaniego*, 831 S.W.2d 804, 807 n.4 (Tex. 1992).
6. *Continental Coffee Prod. Co. v. Cazarez*, 937 S.W.2d 444, 449 (Tex. 1996).
7. Harris County District Judges Rules of Administration, available at <http://www.justex.net/LocalRules/RulesOfAdministration.aspx>.
8. Harris County had 25 civil district courts from 1983 to 2008, at which time the 280th Dist. Court was converted to a family domestic violence court.
9. Hurricane Ike, Residential Damage Assessment, Dec. 2008, available at <http://www.hchatexas.org/documents/disasterrelief/Harris-County-Damage-Assessment-Report.pdf>.
10. TEX. CIV. PRAC. & REM. CODE §141.004.
11. TEX. CODE CRIM. PROC. § 55.01.
12. TEX. R. CIV. P. RULE 736.
13. TEX. CIV. PRAC. & REM. CODE § 41.008.
14. TEX. CIV. PRAC. & REM. CODE § 41.003(b).
15. TEX. CIV. PRAC. & REM. CODE § 41.008(d).
16. TEX. CIV. PRAC. & REM. CODE § 15.002(3).
17. TEX. CIV. PRAC. & REM. CODE § 42 et seq.
18. TEX. R. JUDICIAL ADMIN. Rule 13.
19. TEX. CIV. PRAC. & REM. CODE § 71.051.
20. TEX. CIV. PRAC. & REM. CODE § 33.004.
21. TEX. FIN. CODE § 304.003.
22. TEX. CIV. PRAC. & REM. CODE § 74.301.
23. TEX. CIV. PRAC. & REM. CODE § 74.351.
24. TEX. CIV. PRAC. & REM. CODE § 41.0105.
25. TEX. CIV. PRAC. & REM. CODE § 90 et seq.
26. TEX. CIV. PRAC. & REM. CODE § 74.301.

TEX. CIV. PRAC. & REM. CODE § 74.351.

27. Annual Report for the Texas Judiciary for 2011, Office of Court Administration, Dec. 2010, available at <http://www.courts.state.tx.us/pubs/AR2012/AR12.pdf>.
28. More In-House Counsel Predict Jump in Litigation, Spurring Lawyer Hiring, ABA Journal, available at http://www.abajournal.com/news/article/more_in_house_counsel_predict_jump_in_litigation_spurring_lawyer_hiring.
29. See n.28.
30. Nathan Hecht, The Vanishing Civil Jury Trial: Trends in Texas Courts and an Uncertain Future, 47 S. TEX. L. REV. 163 (Winter 2005).
31. Galanter, The Vanishing Trial: An Examination of Trials and Related Matters in Federal and State Courts, 1 J. EMPIRICAL LEGAL STUD. 459 (Nov. 2004).
32. Galanter and Frozena, The Continuing Decline of Civil Trials in American Courts, available at <http://poundinstitute.org/docs/2011%20judges%20forum/2011%20Forum%20Galanter-Frozena%20Paper.pdf>.
33. *Id.*
34. *Id.* at 24.
35. *Id.* at 17.
36. *Id.* at 3.
37. See Hecht, *supra* n.31 at 166-67 for a discussion of possible limitations on the data. Additionally, for some reason the data do not exist for two years.
38. The apex during the study period was in 1996, when 1.33 percent of all non-jury civil dispositions occurred after a jury trial.
39. TEX. R. CIV. P. 166a(i).
40. *Supra*, n.28.
41. According to the most recent Galanter data, federal judges conduct an average 10 jury trials per year, which are roughly one-half criminal and one-half civil. See n.33 at p. 25.



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