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## A Review of the Caseload Management Process Among the 14 Courts of Appeals

August 1997

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# Key Points of Report

## A Review of the Caseload Management Process Among the 14 Courts of Appeals

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### Overall Conclusion

Continuous oversight and management of appellate dockets have become critical to ensure the efficient administration of justice in Texas. Transfers of cases have not been strategically used to equalize judges' workloads statewide. In fiscal year 1996, incoming workloads varied across the courts and ranged from about 61 cases allocated per judge to approximately 178 cases allocated per judge. Further, efficiency and effectiveness have not always been considered in deciding which caseload management method to use in individual instances.

The need for continuous strategic oversight and management is even more essential than in the past due to perpetual increases in the number of cases filed, increases in carry-over workloads, and relatively high percentages of cases on the largest courts' dockets for more than 24 months. For example, carry-over workloads increased 94 percent between the beginning of fiscal year 1987 and the beginning of fiscal year 1997. Permanent legislative changes, such as additions of judges or courts, may be needed in the future if the system of Courts of Appeals reaches its maximum capacity of cases. However, strategic oversight of the appellate dockets will continue to be needed to ensure the best use of state resources for the efficient administration of justice.

### Key Facts and Findings

- Equalization of dockets per judge has not occurred on a statewide basis even though statutory and constitutional requirements support equal workloads for judges. The Supreme Court should provide focused statewide monitoring and oversight of dockets and more aggressive transfers of cases to ensure the efficient administration of justice. Additionally, a recommendation task force is needed to conduct a study and develop recommendations for possible changes to the current court structure or to the number of judges or courts.
- Policies and procedures for assignments of visiting judges have not been documented, and, until recently, policies for transfers of cases were not completely implemented. In July 1997, the Supreme Court began fully implementing its policies for transferring cases.
- Efficiency and effectiveness have not always been considered when determining which caseload management method to use in individual instances. Criteria have not been developed for making caseload management decisions, and appellate court requests for transfers of cases and assignments of visiting judges have been routinely approved without consideration of statewide efficiency and effectiveness.

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*This audit was conducted in accordance with Government Code, Section 321.0133.*

## Executive Summary

Continuous oversight and management of appellate dockets have become critical to ensure the efficient administration of justice in Texas. Caseload management methods such as transfers of cases have not been aggressively used to equalize judges' workloads statewide. In fiscal year 1996, incoming workloads varied across the courts and ranged from about 61 cases allocated per judge to approximately 178 cases allocated per judge. Further, efficiency and effectiveness have not always been considered in deciding which caseload management method to use in individual instances. In addition, the number of cases filed increased 10.4 percent between fiscal years 1995 and 1996, and carryover workloads increased 16.5 percent over the last two fiscal years. In fact, carryover workloads increased 94.0 percent between the beginning of fiscal year 1987 and the beginning of fiscal year 1997. Moreover, the three largest courts have a significantly higher percentage of cases on their dockets for more than 24 months than the 11 other courts.

While the workloads at the 14 Courts of Appeals in Texas are increasing each year, the number of judges at the courts has remained relatively constant since 1983. Permanent legislative changes, such as additions of judges or courts, may be needed in the future as courts reach maximum capacity for hearing cases. Even with permanent changes, strategic oversight of the appellate dockets will continue to be needed to ensure the most efficient use of state resources for the efficient administration of justice.

### **Currently, Improvements Are Needed in the Caseload Management Process to Equalize the Dockets and Increase the Efficient Administration of Justice**

A review of case filings, transfers of cases, pending cases, total dockets, and clearance rates revealed that equalization of dockets per judge has not occurred on a statewide basis. (See Appendices 2 through 8.) The Texas Constitution and other legislation support the need for caseload management through the transfer of cases to equalize state dockets and ensure the efficient administration of justice. Additionally, trends of increasing caseloads may indicate a need to increase capacity.

Overall, there are at least two options that should be considered to more effectively manage the caseloads at the 14 Courts of Appeals:

- Improve oversight and monitoring of current statewide caseload management methods, including transfers of cases and assignments of visiting judges. (This option requires no legislative or constitutional change.)
- Consider adding capacity to the Courts of Appeals system by adding full-time judges and supporting legal staff to courts with high caseloads per judge, and/or add a new court to a current Court of Appeals District, and/or re-district the appellate court system. (This option would require a legislative decision.)

Causes of weaknesses and improvements needed in the current statewide caseload management process include:

## Executive Summary

- Strategic oversight and management of dockets has only recently resulted in more aggressive transfers of cases.
- Policies and procedures for assignments of visiting judges have not been documented.
- Until recently, caseload management policies for transfers of cases were not completely implemented.
- Some Courts of Appeals have been proactive in requesting that cases be transferred to them, while others have not.
- A recommendation task force is needed to determine whether changes should be made to the current structure of districts or to the number of judges or courts.

of caseload management has unique characteristics and benefits, each method should continue to be used in certain situations. However, in situations where more than one caseload management method would effectively serve to manage the caseload, the cost of each method should be considered in determining which method to use. For example, transferring cases across courts may be the most cost effective and efficient method of caseload management to equalize the dockets on a per-judge basis. On the other hand, if all courts have reached their maximum capacity with cases and if docket equalization per judge has already occurred, the addition of full-time judges may be the best alternative.

### **Efficiency and Effectiveness Have Not Always Been Considered When Determining Which Caseload Management Method to Use in Individual Instances**

Criteria have not been developed for making caseload management decisions. Additionally, appellate court requests for transfers of cases and assignments of visiting judges have been routinely approved without consideration of statewide efficiency and effectiveness.

An analysis and assessment of methods used to manage caseloads indicated that certain methods are more cost effective, and each method has advantages and disadvantages. Since each method

#### **Caseload Management Methods**

The following caseload management methods are currently used statewide on an ongoing basis:

- Transfers of Cases Across the Courts
- Assignment of Visiting Judges

Other caseload management methods which have been considered or used when a permanent caseload distribution change was needed include:

- Addition of Full-time Judges
- Addition of a Court to a Court of Appeals District
- Redistricting of Courts and/or Redistricting with addition of new courts

Caseload management methods which have been used by individual courts, with legislative approval include:

- Addition of Staff Attorneys
- Addition of Law Clerks
- Addition of Paralegals

Section 1:

## Currently, Improvements Are Needed in the Caseload Management Process to Equalize Dockets and Increase the Efficient Administration of Justice

The overall number of cases filed at the 14 Courts of Appeals in Texas is increasing each year, while the number of judges at the courts has remained relatively constant since 1983. From fiscal years 1995 to 1996, the number of appellate court cases filed increased at a statewide rate of 10.4 percent. Based on the first eight months of fiscal year 1997 filings, the projected increase in filings from fiscal year 1996 to 1997 is about 4.3 percent. Additionally, carryover workloads have increased approximately 16.5 percent between the beginning of fiscal year 1995 and the beginning of fiscal year 1997. In fact, carryover workloads increased approximately 94.0 percent between the beginning of fiscal year 1987 and the beginning of fiscal year 1997. With these

increases in caseloads, managing the Texas appellate dockets has become critical to ensure the efficient administration of justice.

Causes of weaknesses in the caseload management process include:

- There has been a lack of aggressive strategic oversight and management of dockets.
- There is a lack of policies and procedures for assignment of visiting judges.
- Until recently, caseload management policies for transfer of cases were not fully implemented.
- Some Courts of Appeals have been proactive in requesting that cases be transferred to them, while others have not.
- There is a need for a study of options which could change the current districts or number of judges or courts.

There are at least two options that should be considered to more effectively manage the appellate caseload:

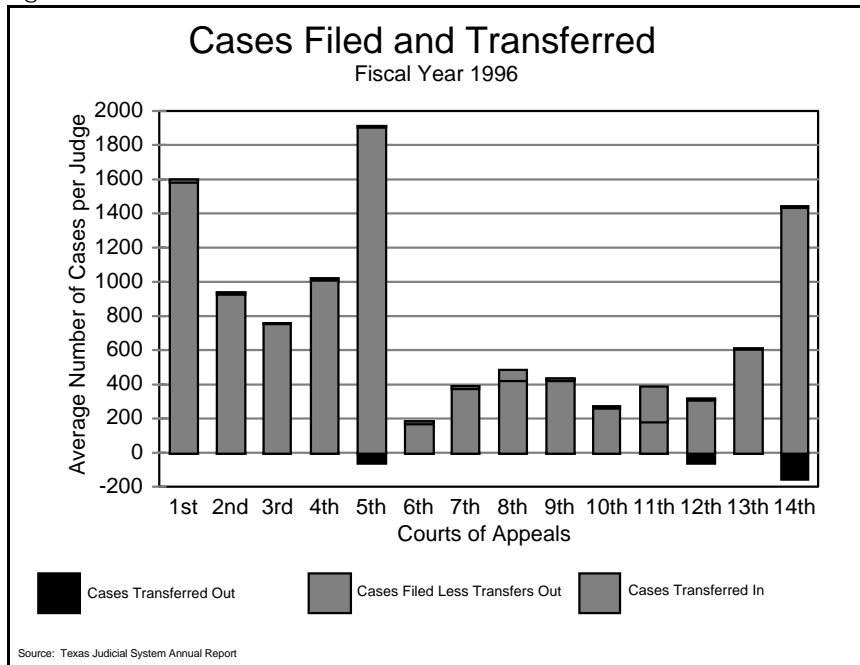
- Improve oversight and monitoring of current statewide caseload management methods, including transfers of cases and assignments of visiting judges. (This option requires no legislative or constitutional changes.)
- Consider adding capacity to the Courts of Appeals system by adding full-time judges and supporting legal staff to courts with high caseloads per judge, and/or add a new court to a current Court of Appeals District, and/or re-district the appellate court system. (This option would require a legislative decision.)

Section 1-A:

### Analyses of the Appellate Dockets Revealed That Dockets Have Not Been Equalized on a Per-Judge Basis

Workloads have not been equally distributed on a per-judge basis, and pending workloads are steadily increasing each year. While complete equalization of dockets may not be possible, the increasing workload strongly indicates the need for strategic

Figure 1



focus on caseload management and docket equalization techniques to ensure the efficient administration of justice in the State's Courts of Appeals. Some courts have been unable to dispose of as many cases as are filed each year. Those courts are at risk of falling further behind, with longer delays to dispose of cases as caseloads continue to grow. Other courts do not have enough cases per judge and need to have additional cases transferred to them.

Figure 1 demonstrates the cases transferred throughout the State in fiscal year 1996.

As indicated by the graph, dockets have not been equalized through transfers, but transfers have occurred from and to certain courts. Bars below the zero on the x-axis on the graph indicate transfers out. Extensions to bars above the x-axis indicate transfers in.

In fiscal year 1996, the transfer of cases noticeably impacted only five courts (see Figure 1). Through transfers, the number of cases per judge was increased at the 11th and 8th Courts, and the number of cases per judge was reduced at the 5th, 14th, and 12th Courts.

In the first eight months of fiscal year 1997, half of the courts were noticeably impacted by transfers. This trend indicates an increase in the use of transferring cases to manage caseloads, although equalization of dockets has not yet been achieved.

The courts most susceptible to caseload management problems have been the larger courts: The 1st and 14th Courts in Houston and the 5th Court in Dallas. Thus, cases are typically transferred from larger courts to smaller courts in an effort to equalize the dockets on a per-judge basis. The larger courts had the most cases pending per judge, with carryover workloads increasing each year. The number of cases pending at the beginning of the fiscal year is the number of cases carried over from the previous fiscal year. Additionally, of all the Courts of Appeals, these courts had the greatest percentage of cases pending for more than 24 months. (See Appendix 6.)

The increased caseloads appeared to be attributable primarily to criminal cases. Of the cases filed since 1995, 56.9 percent have been criminal cases and 43.1 percent have

been civil cases. There were more than twice as many criminal cases as civil cases pending at the beginning of each year. In addition, criminal cases generally appeared to impact the courts' ability to dispose of as many cases as were filed during each fiscal year. (See Appendix 8.)

Recommendation:

Dockets should be equalized on a per-judge basis in order to ensure the efficient administration of justice. Dockets should be equalized through the transfer of cases.

Section 1-B:

**The Supreme Court Should Continue to Improve Its Strategic Oversight Process for Transfers of Cases Across the Courts of Appeals**

Recently, the Supreme Court has improved its oversight process and has fully implemented its policies for transferring cases. In the past, requests from the Courts of Appeals to receive additional transferred cases have impacted the Supreme Court's decisions to transfer cases and assign visiting judges. Further, the Courts of Appeals' requests for transfers of cases have not equalized the dockets. Some Courts of Appeals with fewer than average cases filed per judge have requested that cases be transferred to them, while others have not. However, in July 1997, the Supreme Court appropriately ordered cases transferred based on the relative number of cases filed in each of the Courts of Appeals compared to the statewide average per justice of cases filed as recommended by the Office of Court Administration.

The Supreme Court's *Policy for Transfer of Cases Between Courts of Appeals*, Section 1.01 states that the decision to transfer cases for equalization purposes will be made by the Supreme Court based on the relative number of cases filed in each of the Courts of Appeals during the preceding 12 months, compared to the statewide average per justice of cases filed (see Appendix 9). In the past, these decisions have been based on requests from the Courts of Appeals for transfers to their courts. If a court did not request that cases be transferred to it, the Supreme Court did not transfer cases even though the analysis described in its policy would have resulted in the cases being transferred to equalize the dockets. In addition, specific criteria for making caseload management decisions for transfers of cases has not been documented.

Article 5, Section 31 of the Texas Constitution and Government Code, Sections 74.021 and 74.024 authorize the Supreme Court to adopt rules of administration and make the Supreme Court responsible for the orderly and efficient administration of justice. Government Code, Section 73.001 empowers the Supreme Court to transfer cases from one Court of Appeals to another at any time.



Recommendation:

The Supreme Court should continue to take a more active role in the equalization of dockets for the Courts of Appeals. The Supreme Court should continue to base decisions to transfer cases on an analysis of the state Courts of Appeals' dockets to determine which courts need cases transferred to them on a per-judge basis. In addition, specific criteria for making caseload management decisions for transfers of cases should be developed and documented.

Section 1-C:

**The Supreme Court Should Improve Its Strategic Oversight Process for Assignments of Visiting Judges to the Courts of Appeals**

For the assignment of visiting judges, the Supreme Court approved these requests without policies, procedures, or criteria for approval. Additionally, there has been a lack of monitoring and oversight for the use of visiting judges. In addition, criteria for making caseload management decisions for assignments of visiting judges has not been documented.

Article 5, Section 31 of the Texas Constitution and Government Code, Sections 74.021 and 74.024 authorize the Supreme Court to adopt rules of administration and make the Supreme Court responsible for the orderly and efficient administration of justice. Government Code, Sections 74.003(a), 74.003(b), 74.056(d), 74.057(a), 75.002(b), and 75.003 empower the Chief Justice of the Supreme Court to assign judges to various Courts, including the Courts of Appeals.

Recommendation:

Criteria should be established and used to determine whether visiting judges should be assigned to Courts of Appeals on a case-by-case basis. Requests for assignments of visiting judges should be monitored to ensure compliance with statutory and other requirements.

Section 1-D:

**The Office of Court Administration Should Continue to Monitor the Appellate Court Dockets and Provide Written Recommendations to the Supreme Court**

To ensure the efficient administration of justice in the Texas Courts of Appeals, the relevant constitutional provisions, statutes, and Supreme Court policies indicate the need for equalization of dockets on a per-judge basis. For example, Government Code, Section 72.024 (c) authorizes the Office of Court Administration to make recommendations to the Supreme Court regarding docket equalization. The Office of

Court Administration has monitored the appellate court dockets and, beginning in April 1997, has provided written recommendations to the Supreme Court regarding specific transfers needed to equalize dockets. The Supreme Court is authorized to enforce these recommendations under Government Code, Section 73.001, which authorizes the Supreme Court to order cases transferred from one Court of Appeals to another at any time that, in the opinion of the Supreme Court, there is good cause for the transfer. The Office of Court Administration has not documented its policies and procedures for making these recommendations.

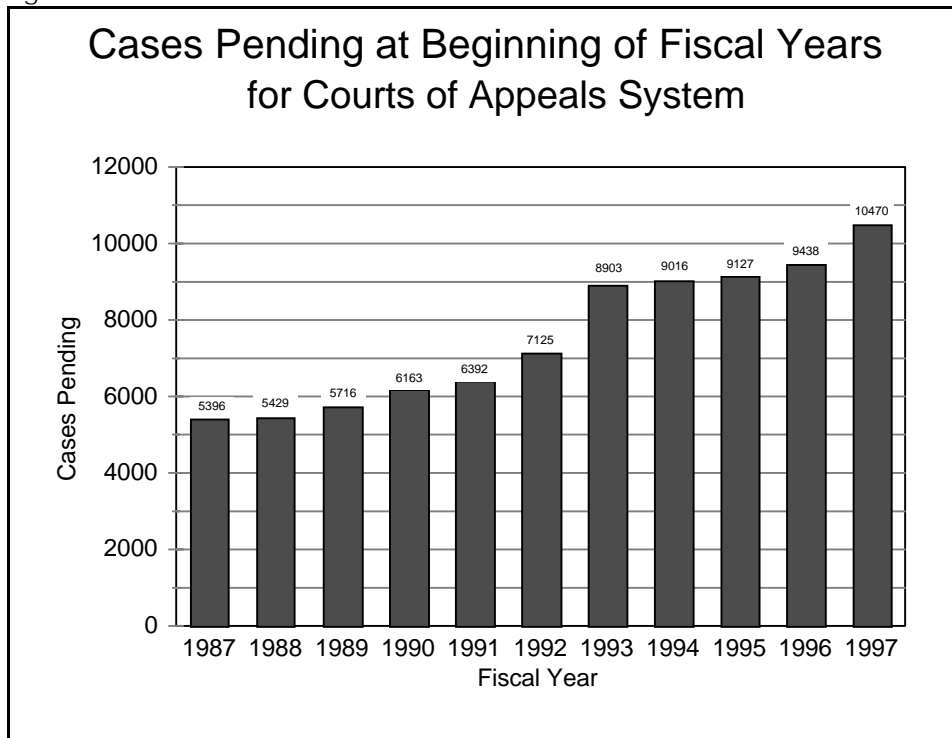
Recommendation:

The Office of Court Administration should continue to make written recommendations to the Supreme Court regarding equalization of dockets through the transfer of cases and should document policies and procedures for making such recommendations.

Section 1-E:

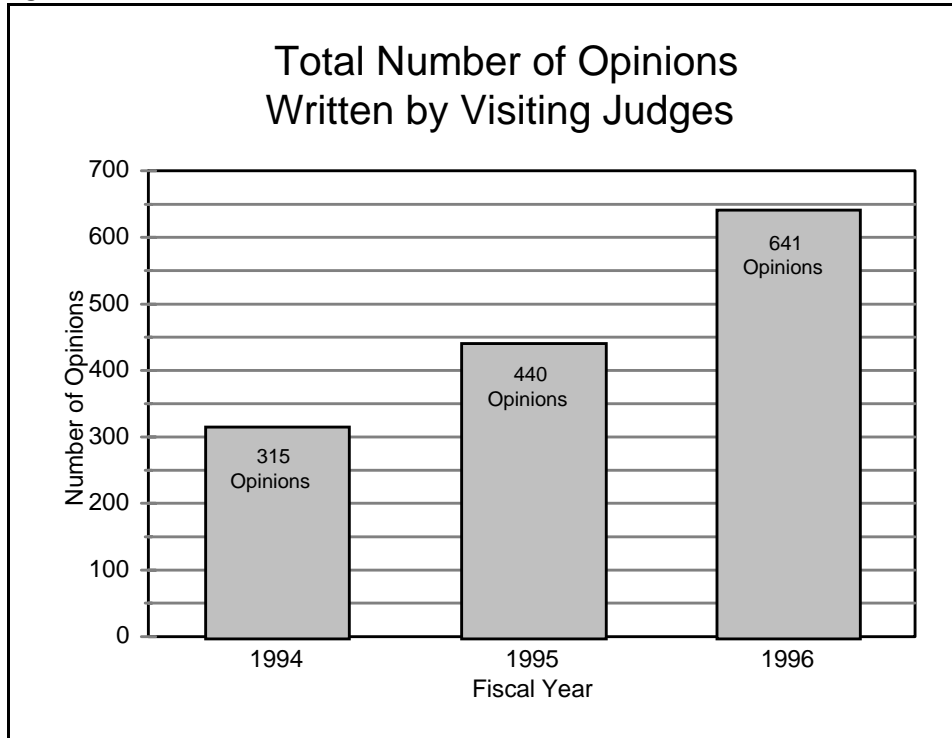
**A Recommendation Task Force Is Needed to Conduct a Study and Develop Recommendations for Possible Changes to the Current Court Structure or to the Number of Judges or Courts**

Figure 2



Once the system of Courts of Appeals reaches its maximum capacity for hearing cases, additional capacity may be needed. Permanent legislative changes, such as additions of full-time judges and supporting legal staff, additions of courts within current Courts of Appeals Districts, redistricting of courts, and/or redistricting with addition of new courts may be needed as maximum capacity approaches. A study is needed to determine which changes could

Figure 3



improve the current court system.

One reason a study is needed is that current trends indicate that the Courts of Appeals system caseload is increasing, while the number of judges has not increased since 1983, and a general redrawing of appellate court lines has not been enacted since 1927. For example, the number of cases filed has increased 10.4 percent between fiscal years 1995 and 1996, and carryover workloads have increased 16.5

percent over the last two fiscal years. Further, the number of cases pending at the beginning of each fiscal year (carryover workloads) has increased every year since the beginning of fiscal year 1987, for a total increase of approximately 94.0 percent since that time (see Figure 2). Another indication that an increase in capacity may be needed is the increase in the number of opinions written by visiting judges over the last three fiscal years. In fiscal years 1994, 1995, and 1996, visiting judges wrote 315, 440, and 641 opinions, respectively (see Figure 3). Overlaps in appellate jurisdictions provide additional reasons to conduct a study of the current structure of districts, since certain counties are currently assigned to more than one appellate court district.

Recommendation:

A recommendation task force should conduct a study and develop recommendations to be considered by state leadership regarding proposed changes to the current structure of Courts of Appeals Districts or to the number of judges or courts. Involvement of state leadership in the study would be helpful in determining ways to approach this issue, since implementation of any recommendations made will be a difficult and complicated task. Political pressures, state funding considerations, and local issues impact efforts to improve the current court system.

## Efficiency and Effectiveness Have Not Always Been Considered When Determining Which Caseload Management Method to Use in Individual Instances

Criteria have not been developed for making caseload management decisions. Additionally, appellate court requests for transfers of cases and assignments of visiting judges have been routinely approved without consideration of statewide efficiency and effectiveness.

An analysis and assessment of methods used to manage caseloads indicated that certain methods are more cost effective, and each method has advantages and disadvantages. Since each method of caseload management has unique characteristics and benefits, each method should continue to be used in certain situations. However, in situations where more than one caseload management method would effectively serve to manage the caseload, the cost of each method should be considered in determining which method to use.

When determining which caseload management method to use in individual instances, the following factors should be considered:

- The cost of each caseload management method
- Whether the particular situation requires a recurring solution, a more permanent change, or both
- The time required to administer each caseload management method
- Other advantages or disadvantages associated with each particular method

Table 1

Cost Information Gathered	
Caseload Management Methods and Alternatives (Statewide and Individual Courts)	Cost of Method/Alternative
Transferred Cases Submitted on Brief	There would be no significant additional costs for transferred cases submitted on brief than for any case originally filed at the court; however, there are minimal costs of dual processing of cases when they come into each court and postage to mail documents. Since the cost of full-time judges at the court to which the case is transferred is a sunk cost, these costs were not included in our analysis.

Table 1, concluded

Cost Information Gathered		
Caseload Management Methods and Alternatives (Statewide and Individual Courts)	Cost of Method/Alternative	
Transferred Cases Orally Argued by Video Conference	The estimated cost would be \$38 per case if equipment was used to full capacity. Currently, the estimated cost is \$519, since equipment has not been used to full capacity.	
Cases Orally Argued where travel by judges and staff occurred	The cost per orally argued transferred case/opinion assuming travel to another court was analyzed and estimated to be approximately \$106. Depending on the locations of courts the cases are transferred from and to, travel costs will vary.	
Use of Visiting Judges	The estimated cost per case/opinion for visiting judges is \$1,428. (This cost is estimated to be approximately the same whether cases were submitted by oral argument or on brief.)  Visiting judges have approximately the same salary per work day as full-time judges (about \$400); however, benefit costs for visiting judges are only 2.4 percent of their salaries.	
Addition of Full-Time Judges	Full-time judges have approximately the same salary per work day as visiting judges (about \$400); however, benefit costs for full-time judges are 40.3 percent of their salaries. Further, costs for full-time judges would include additional office space, office supplies, and support staff. (Note: Some full-time judges receive county supplements to these salaries. Only the costs to the State were considered in this analysis.)	
Addition of Legal Staff (includes attorneys, law clerks and paralegals)	Salary Ranges	\$23,232 to \$62,517 annually
	Benefit Ranges	\$9,362 to \$25,194 annually
	Total Salary plus Benefit Costs to State Ranges	\$32,594 to \$ 87,711 annually
	Costs for full-time legal staff would also include additional office space, office supplies, and possibly support staff.	

### Comparisons of Estimated Costs of Caseload Management Methods

- Comparison of the estimated cost per oral argument for transferred cases assuming travel to another court versus assuming use of video conference technology - Based on information in Table 1, the lowest cost method for hearing oral arguments in transferred cases depends on whether video-conference equipment can realistically be used to its capacity. If video conference equipment can be used to hear at least 15 cases per month by each court, then video conferencing is more cost effective than travel for that court. To enable courts to use video conferencing more often, decision makers should consider whether video conferencing could be used to capacity for oral arguments in transferred cases if more Courts of Appeals had access to video

conference technology and equipment. If one court transmitted oral arguments to another court and both courts used video conference technology, approximately 30 cases per month would have to be transmitted to justify the cost of video conference equipment at both courts.

- Comparison of the estimated total fiscal year 1996 cost of visiting judges per visiting judge case/opinion to the estimated total fiscal year 1996 costs for transferred cases per transferred case/opinion - Based on information in Table 1, the cost of assigning visiting judges per case/opinion is significantly higher than the cost of transferring cases per case/opinion. However, the two methods are often used for different purposes, and other benefits and characteristics of each method may be more important than costs in specific situations.
- Comparison of the estimated cost of visiting judges to the estimated cost of full-time judges - State salaries per work day are approximately the same amount (\$400) for visiting judges and full-time judges. However, using visiting judges would be a more cost-effective method for short-term docket fluctuations, since benefits are lower and since office space and legal staff do not significantly increase when visiting judges are used. Benefits for visiting judges are approximately 2.4 percent of their salaries, while benefits for full-time judges are approximately 40.3 percent of their salaries. Adding visiting judges or full-time judges would assist courts with dockets which have reached their capacities, but adding full-time judges would be a more permanent solution.

Recommendation:

Efficiency and effectiveness should be considered when determining which caseload management methods to use in individual instances. Policies and criteria should be developed and implemented for making caseload management decisions. (This recommendation also applies to Sections 2-A, 2-B, and 2-C.)

Section 2-A:

**Caseload Management Decision Makers Should Consider the Efficiency and Effectiveness of Transferring Cases Across Courts**

This method of caseload management is used to transfer cases from courts which have more cases per judge than they can complete to courts which have capacity to complete more cases. The large, urban courts typically have larger caseloads per judge than smaller courts, so courts use this method to transfer cases from larger court dockets to smaller court dockets in an attempt to improve statewide equalization of dockets. Effectively, this method is a cost efficient way to quickly adjust docket sizes across the State. However, once the Courts of Appeals system has reached maximum

capacity, transfer of cases does not improve overloaded dockets. The Supreme Court has the authority to approve these transfers for many cases at one time or for an individual case, if necessary. As with other appellate cases, oral arguments are heard in some but not all transferred cases. When oral arguments are heard for transferred cases, judges travel to the transferring court, or the oral argument is transmitted to the judges through video conference.

**General advantages of transferring cases include:**

- Flexibility to transfer more or less cases depending on current needs
- Efficient, cost-effective method to quickly equalize dockets per judge in the State
- Caseloads may be monitored and managed by the Supreme Court
- Allows for complete use of current judge capacity in the State's Courts of Appeals

**General disadvantages of transferring cases include:**

- Cases are not heard by judges from the district in which they are originally filed
- Requires continual monitoring of dockets to determine when transfers are needed

**Advantages of Travel by Judges to Transferring Courts to Hear Oral Arguments:**

- Judges hear the cases in person.

**Disadvantages of Travel by Judges to Transferring Courts to Hear Oral Arguments:**

- Costs increase as the number of cases increases.
- Travel consumes valuable time of judges and legal staff.

- Would not improve caseload problems once all courts reached maximum capacity

**The cost per oral argument for transferred cases assuming travel to another court was analyzed and estimated to be approximately \$106.** In fiscal year 1996, the average travel cost per case transferred and orally argued was approximately \$106. Depending on the court locations cases are transferred to and from, travel costs will vary. Most courts hear oral arguments for several cases during a travel visit to a transferring court.

**The cost per oral argument for transferred cases assuming use of video-conferencing technology was analyzed and estimated.** Video conferencing is primarily used to hear oral arguments for cases located in other cities. The cost per oral argument varies depending on the number of cases heard monthly. The estimated cost per oral argument for November 1996 to date is estimated to be \$519; however, if 40 cases were heard each month, the estimated cost per oral argument would be

**Advantages of Oral Arguments by Video Conference:**

- Costs decrease as the number of cases heard by video conference increases.
- Judges' and legal staff members' time is spent only on cases instead of travel.
- Video conference equipment can be used for other purposes such as seminars and communication between courts.

**Disadvantages of Oral Arguments by Video Conference:**

- Currently, most of the courts do not have this equipment which limits its use by courts that do have the equipment.
- Judges do not hear the cases in person.

approximately \$38. Capacity of the equipment is about 40 cases per month without additional charges, but more than 40 cases per month could be heard with additional charges. The initial equipment and installation costs are estimated to total \$52,000, which, when allocated over five years, is estimated to be \$867 per month. In addition, recurring monthly connection charges are estimated to be \$649, for total estimated monthly costs of \$1,516. (Note: These calculations assume one hour for each oral argument conducted by video conference and are based on information obtained from the 8th Court of Appeals.)

Section 2-B:

**Caseload Management Decision Makers Should Consider the Efficiency and Effectiveness of Assigning Visiting Judges to Courts**

This method of caseload management has been used in two ways: (1) to replace judges who are absent from a court due to illness, recusals, or other cause, and (2) to increase the number of judges at certain courts which need temporary assistance with their caseloads. Adding visiting judges would also assist courts with dockets beyond maximum capacity on a temporary basis. Using visiting judges appears to be a more cost-effective method for short-term docket fluctuations than adding full-time judges, since benefits are lower in cost and since the amount of office space and legal staff do not significantly increase when visiting judges are used. For this method, the court requesting a visiting judge makes a formal request in writing to the Chief Justice of the Supreme Court that a visiting judge be assigned to the court. Visiting judges eligible for assignment are former or retired appellate court justices. Following are advantages and disadvantages to this method of caseload management:

**Advantages of Assigning Visiting Judges**

- Benefit costs for visiting judges are significantly lower than for full-time judges.
- Office space costs for visiting judges are minimal.
- Additional legal staff costs are not required or can be hired on a temporary basis as needed when workloads fluctuate.
- A constitutional change is not needed to assign a visiting judge to a court.



- Flexibility exists to add visiting judges on a temporary basis when regular judges are unavailable due to recusals, illness, or campaigning, or when workloads at a particular court increase on a temporary basis.

#### **Disadvantages of Assigning Visiting Judges**

- This is a temporary rather than permanent solution to statewide caseload management problems in that visiting judges are assigned and re-assigned on an ongoing basis.
- Assignment of visiting judges can be a time-consuming process, since the courts must request each assignment and Chief Justice of the Supreme Court must review and approve or disapprove each assignment.

The estimated cost per opinion for visiting judges is \$1,428. This estimate was based on fiscal year 1996 cost data for 33 former and retired visiting judges who were assigned to Courts of Appeals. Total salaries were \$593,809, and total benefits were \$14,321, for a total of \$608,130. (Per diem expense was only claimed by one judge, and travel expenses were only claimed by two. Due to the insignificant amounts of per diem and travel expenses, these expenses were not included in the estimate.)

Section 2-C:

#### **Caseload Management Decision Makers Should Consider the Efficiency and Effectiveness of Adding Full-Time Judges and/or Legal Staff to Courts**

Adding judges to courts may be a useful caseload management method, especially when dockets have been equalized and the system of Courts of Appeals has reached its maximum capacity to the point that near 100 percent clearance rates cannot be achieved. Adding full-time judges would be a relatively permanent method to address saturated dockets. However, adding full-time judges would not be the most cost-effective method for short-term docket fluctuations.

Adding full-time legal staff without adding judges could be an effective method of caseload management in certain courts. Each court's needs should be considered on an individual basis.

Following are the advantages and disadvantages of adding full-time judges and/or legal staff.

#### **Advantages of Adding Full-Time Judges and Legal Staff**

- Judges and legal staff can be added to the particular courts where they are needed due to size of caseload and other relevant factors.

- Adding full-time judges to courts that need them may be a more permanent method to address caseload management issues than some of the other methods.
- This method of caseload management may be more effective than other methods if the dockets are equalized and all courts have reached maximum capacity with workload.

**Disadvantages of Adding Full-Time Judges and Legal Staff**

- There are several costs associated with increasing the number of judges and/or legal staff. The costs of additional office space, office equipment, and office supplies will increase as the number of judges and/or staff increase.
- When the number of judges increases, additional legal staff and support staff will need to be hired to support the judges. In most cases at least two legal staff members and one support staff member will need to be added per judge.
- Adding judges to a court requires a change in legislation.
- At some point, an unmanageable number of judges may exist on a particular court.

There are several costs that should be considered when determining whether to increase the number of judges and/or legal staff. These costs include: salaries and benefits, additional office space, additional office equipment, and office supplies. The estimated costs for hiring additional legal staff may vary depending on the location of the court, the prospective employee’s level of experience, and the salary ranges for each position. Table 2 summarizes the estimated salary and benefit costs of adding full-time judges and legal staff.

Table 2

Estimated Costs for Full-Time Judges and Legal Staff				
Position Title	Estimated Salary Cost		Estimated Benefit Cost Range*	Estimated Total Cost to State +
	Average Salary	Salary Range		
Full-Time Judge		\$103,550** to \$107,350	\$41,731 to \$43,262	\$145,281 to \$150,612
Full-Time Attorney	\$40,179	\$26,340* to \$62,517	\$10,615 to \$25,194	\$36,955 to \$87,711
Full-Time Law Clerk		\$31,788* to \$41,016	\$12,810 to \$16,529	\$44,598 to \$57,545
Full-Time Legal Assistant	\$27,864	\$23,232* to \$43,728	\$9,362 to \$17,622	\$32,595 to \$61,350

\* Figures are based on the Classification Salary Schedule B, which is in effect September 1, 1997, through August 31, 1999. The benefit costs to the State are estimated at 40.3 percent of the annual salaries.  
 \*\* Figures are based on appropriated amounts for fiscal years 1998 and 1999.  
 + Excludes office space, equipment, and office supplies

## Response From the Supreme Court of Texas

State Auditor's  
Note:

Exhibits were  
provided as  
indicated in the  
response of the  
Supreme Court.  
Due to their  
volume, we did  
not include  
these exhibits in  
the report.

*The Supreme Court is responsible for the dockets of the courts of appeals in several ways. Although we believe we are exercising this authority prudently, we of course welcome the observations of the Auditor.*

*The Legislature has authorized the Supreme Court to transfer cases between the courts of appeals for more than a century. Act approved April 19, 1895, 24<sup>th</sup> Leg., R. S., ch. 53, 1895 Tex. Gen. Laws 79 (current version at TEX. GOV'T CODE ANN. § 73.001 (Vernon 1988)). In modern times, the Chief Justice has appointed one justice to serve as the Court's liaison for transfers. The liaison justice works closely with the Office of Court Administration to monitor the dockets of the courts of appeals, to consult with the chief justices of the courts of appeals, and to recommend appropriate transfers to the full Supreme Court for approval.*

*The most recent justices to serve in this capacity have been Craig Enoch (1995 to present), Bob Gammage (1991-95), C. L. Ray (1982-90), and James G. Denton. Since each of these justices was elected to our Court while serving on a court of appeals, they were all familiar with the operation and needs of those courts.*

*Prior to 1994, the Legislature seldom appropriated more than \$17,000 per annum for the Court to provide travel expenses for the transferee courts of appeals. The Supreme Court frequently exhausted this appropriation before the end of the fiscal year and thus transferred only an average of 383 cases per annum between FY 1979 and FY 1993. Beginning in FY 1994, the appropriation has increased to \$35,000 per annum, and the transfers have now increased to an average of 686 cases per year. See Exhibit A.*

*Beginning in 1987, the Court adopted a general policy of transferring only future cases — i.e., ordering the transfer of cases subsequently filed in a backlogged court, rather than cases already pending in that court — in order to avoid any appearance of judicial ex post facto forum shopping. In 1996, the Court adopted a formal policy to accomplish equalization based on the number of cases filed per justice rather than the number of cases pending per justice. See Tex. Sup. Ct., Miscellaneous Order No. 96-9224 (Oct. 24, 1996), attached as Exhibit B.*

*Under the leadership of Justice Enoch, a former chief justice of the state's largest appellate court, the Court has worked closely with the chief justices of the courts of appeals to accomplish transfers by voluntary agreement. Only when these efforts do not produce sufficient equalization does the Court unilaterally order transfers. Most of the chief justices, whether from transferor or transferee courts, have expressed satisfaction with the Supreme Court's performance in this area.*

*We are satisfied as well. We are, of course, committed to the notion that all citizens are entitled to have their cases decided and resolved at all levels of the court system in a timely and efficient fashion. We are particularly anxious that unreasonable delay*

*and expense not be visited upon litigants because of where they live or where their lawsuits are pending. See, e.g., Statement of Thomas R. Phillips and William E. Moody Dissenting to the Order of the Judicial Districts Board, August 25, 1993. But we find little relationship between the number of filings in a district and the time needed to dispose of cases. That is, some of the courts with average or light filings have historically experienced at least as much delay as those with above-average filings. Clearly, there are other factors at work.*

*Of course, the Court could seek to equalize outcomes across the state by transferring new cases based on backlog. But there is a strong sense on our Court and the courts of appeals that this would systematically reward sloth and penalize diligence, and thus we have abandoned such an approach.*

*Our courts of appeals, on the whole, operate quite efficiently. See, e.g., ROGER HANSEN, TIME ON APPEAL 16 (1996). There may well be less delay in these courts than in any other level of our judicial system, and much of what delay there is can be attributed to difficulties in obtaining the trial record rather than to problems with the justices or their staffs.*

*When for legitimate reasons a court is experiencing a backlog, we instead rely on other formal and informal methods to reduce delays. Since 1949, the Chief Justice has been authorized to assign retired justices to the courts of appeals. See Act of April 25, 1949, 51<sup>st</sup> Leg., R. S., ch. 99, § 7, 1949 Tex. Gen. Laws 181, 183 (current version at TEX. GOV'T CODE ANN. § 75.002 (Vernon Supp. 1997)); see also TEX. GOV'T CODE ANN. § 74.003 (Vernon 1988 & Supp. 1997), id. § 75.003 (Vernon Supp. 1997). The increase in use of this authority resulted in the assignment of 41 judges who wrote 641 opinions last year. See Exhibit C. At the Court's request, the Legislature has just enacted a law that will allow an automatic objection to a judge assigned under these provisions, Act of May 28, 1997, S. B. 607, 75<sup>th</sup> Leg., R. S., paralleling the practice in assignments to trial courts. The Rules of Judicial Education provide that retired judges who have elected to continue to serve as judicial officers must enroll in continuing legal education courses each year. In addition, the Chief Justice considers, before assigning a retired judge, whether the judge meets the requirements for assignment to a trial court, that is, has substantial expertise in the law, has kept up with continuing education, and agrees not to appear and plead in court as an attorney. See Report of the Chief Justice and Council of Presiding Judges on the Assignment of Visiting Judges (Feb. 14, 1997).*

*To the best of our knowledge, the consistent policy of all Chief Justices has been to make such individual assignments only upon the request of a chief justice of a court of appeals. Frequently, but not always, that chief justice's recommendation as to which retired judge should be assigned is also solicited and followed. Although the Draft Audit Report criticizes the Court for "routinely approv[ing]" these requests, we believe that justice functions more efficiently when the local chief justices bear more responsibility for the management of their dockets. We are unaware of a situation*

where honoring a local request has undermined "statewide efficiency and effectiveness."

Finally, the Chief Justice has power to assign sitting justices from one court to another. TEX. GOV'T CODE ANN. § 74.003(a) (Vernon 1988). We have no record of such an assignment being made, as the use of retired justices creates fewer logistical problems than moving a sitting elected justice to another part of the state.

Undoubtedly, the Supreme Court could use these statutory methods in combination to equalize either the filings or the disposition of cases among the courts; and, as the Draft Audit Report correctly notes, this has not been done. Yet to do so has obvious costs, which we believe would outweigh the efficiencies achieved. First, the state's strong public policy in favor of an elected judiciary, whether misguided or not, is fundamentally undermined whenever a case is handled by an assigned rather than a regular judge. The ten percent of appellate decisions now written by assigned justices seems acceptable, but doubling or trebling that number might not.

The transfer of cases to different courts also creates genuine practical difficulties for those lawyers and judges who must try a case without knowing which appellate court will review their work. With fourteen separate courts, it is simply inevitable that different courts will reach different results on important legal issues, not all of which will be timely resolved by the state's highest courts. See, e.g., Cynthia Keely Timms, *Conflicts Among the Texas Courts of Appeals*, UNIVERSITY OF TEXAS SCHOOL OF LAW SEVENTH ANNUAL CONFERENCE ON STATE AND FEDERAL APPEALS, JUNE 5-6, 1977; Curt Haygood, *When Reasonable Judicial People Can Disagree: Express Conflicts between the Respective Decisions of the Fourteenth and First Courts of Appeals*, HOUSTON BAR ASSOCIATION APPELLATE SECTION, SEPTEMBER 25, 1996. Finally, the appellate justices themselves disagree on whether the law of the transferor or transferee court should apply in such situations. See, e.g., *American Nat'l Ins. Co. v. International Bus. Machs. Corp.*, 933 S.W.2d 685, 689 (Tex. App. -- San Antonio 1996, writ denied) (Duncan, J., concurring and dissenting).

The Chief Justice's assignment of retired justices, either individually or in panels, presents even greater problems, particularly when not made in response to a court's request. For example, the court of appeals may not have adequate space or staff for temporary judges. And if the assigned justice reaches a different result in a particular case than the regular justices would have reached, extra work may be generated in the form of dissenting or concurring opinions, en banc reconsideration, or subsequent conflicting decisions. Nor would judicial efficiency be served if, on the other hand, sitting justices became too fond of having substitutes help with their work!

Thus, recent Chief Justices have relied as much on formal and informal persuasion as on statutory mechanisms to assure the timely disposition of appellate cases. In 1983, Chief Justice Pope directed the Office of Court Administration to investigate and report on the delay in one court of appeals, and in 1985, under Chief Justice Hill, the Court ordered a formal study of that court. Order of the Supreme Court, January 29,

1985, attached as Exhibit D. I have had numerous conferences both in person and on the telephone with various chief justices about the state of their courts' dockets and occasionally I have inquired in writing about the status of particularly old cases on which no action has been taken.

The Audit Report is undoubtedly correct that both additional justices and comprehensive redistricting should be explored. The Legislature has not enacted a general redrawing of appellate court lines since 1927. Act approved March 31, 1927, 40<sup>th</sup> Leg., R.S., ch. 255, 1927 Tex. Gen. Laws 378. Moreover, the number of filings per judge has increased over 50% — from 7,314 filings in 1983 to 11,139 in 1996 — since any new appellate judicial positions were created. As long as there is a three-to-one disparity in filings per justice among the courts, equalized workloads will be difficult to achieve. Yet change in this area must come from the Legislature.

The Supreme Court's role in redistricting has been short and generally unhappy. In 1985, the Legislature first directed this Court and the Texas Judicial Council to present jointly a reapportionment plan to the Legislature in 1987. Court Administration Act, 69<sup>th</sup> Leg., R.S., ch. 732, 1985 Tex. Gen. Laws 2533. Committees were appointed, meetings were held, testimony was received, and maps were drawn. A joint report was submitted to the Legislature on June 30, 1986, including a bill draft to accomplish the recommended redistricting, attached as Exhibit E. When the Legislature met in 1987, no bills were filed and no hearings were held. Instead, the Legislature merely amended the law to provide that the Supreme Court alone would make recommendations for appellate redistricting and that such were to be made to every regular session. Act of April 30, 1987, 70<sup>th</sup> Leg., R.S., ch. 148, § 2.93, 1987 Tex. Gen. Laws 534, 580. Due to the pendency of several federal Voting Rights Act cases against the Texas judicial system, the Court decided not to proceed with a useless act by submitting reports in either 1989 or 1991.

In 1993, the Court obtained authorization from the Legislative Budget Board for the Legislative Council to assist the Court in presenting a redistricting plan. After careful study, the Court presented a final report to the Legislature on March 3, 1993, attached as Exhibit F. Again, no bills were introduced and no hearings were held as a result.

In 1995, the Court resubmitted the plan formulated in 1993. Again, no bills were introduced and no hearings were held by the Legislature. It is not much of an exaggeration to say that only the justices whose job security was impacted by our suggestions took any real interest in our ideas. Fortunately, in 1995, the Legislature amended the law to provide that the recommendations of the Supreme Court on redistricting were to be made only in the third year following each federal decennial census instead of to each regular session. Act of May 24, 1995, 74<sup>th</sup> Leg., R. S. , ch. 639, 1995 Tex. Gen. Laws 3511 (codified at TEX. GOVT CODE ANN. § 74.022(c) (Vernon Supp. 1997)). Under current law, the Court has no redistricting responsibilities until 2003.

*In any comprehensive redistricting, we hope that the Legislature would follow those criteria we set forth in our 1993 Report. The elimination of overlapping districts alone would, in our opinion, be an important improvement over the current lines. See, e.g., Miles v. Ford Motor Co., 914 S.W.2d 135 (Tex. 1995).*

*The Supreme Court appreciates the Auditor's interest in and suggestions for improving our performance with regard to appellate transfer and assignment. We hope you will consider these comments, and we will of course carefully consider your recommendations.*

## Objective, Scope, and Methodology

### Objective

The objective of the audit was to evaluate caseload management within the State Courts of Appeals, focusing on efficiency and compliance with established equalization procedures.

### Scope

The scope of the audit included an analysis of the dockets at the appellate court level, an analysis of advantages and disadvantages and a cost analysis of various caseload management efforts, a review of policies and procedures at the Supreme Court, and a review of caseload management information and recommendations provided by the Office of Court Administration to the Supreme Court.

### Methodology

The following information was analyzed across the 14 Courts of Appeals to determine whether dockets had been equalized and whether certain factors impacted docket equalization:

- For fiscal year 1996:  
A comparison of Cases Filed vs. Filed + Transferred vs. Pending Cases
- For fiscal years 1995 and 1996:  
A comparison of cases filed, cases transferred in and cases transferred out.
- For fiscal years 1995, 1996, and 1997:  
Number of Cases Allocated per Judge (Filings + Transfers)  
Cases Pending per Judge (at Beginning of Fiscal Year)  
Cases on Docket per Judge (Pending + Filed + Transfers)  
Clearance Rate (Cases Disposed/Cases Added)  
Cases Pending (Filed) more than 24 Months  
Cases Submitted more than 12 Months

For fiscal years 1994, 1995, and 1996, the number of opinions written per visiting judge was analyzed.

The following cost comparisons were made of various caseload management methods:



**Estimated Cost Per Oral Argument for Transferred Cases through Video**

**Conference vs. Travel of Judges** - This comparison was made by comparing the estimated cost of an oral argument using video conference technology vs. the cost of an oral argument where judges and legal staff traveled to the transferring court to hear cases.

**Estimated Cost of Visiting Judges vs. Full-time Judges** - This cost comparison estimated and compared the salaries and benefits of visiting and full-time judges. The costs of additional office space, support staff, and office supplies were estimated to be higher for full-time judges, but specific estimates for these items were not identified.

**Estimated Cost to Transfer Cases vs. Cost of Assigning Visiting Judges** - This comparison was made by comparing the total cost of visiting judges per visiting judge case opinion to (1) the total travel cost/video conferencing cost for transferred cases per orally argued transferred case opinion and (2) cost for transferred cases submitted on brief.

**Estimated Costs of Adding Legal Staff** - The following costs were estimated based on the Classification Salary Schedule B, which is in effect September 1, 1997, through August 31, 1999 and on appropriated amount for fiscal years 1998 and 1999.

- Cost of Adding Staff Attorneys
- Cost of Full-Time Judges
- Cost of Visiting (Retired) Judges

Advantages and disadvantages of caseload management methods were analyzed and documented.

The National Center for State Courts was consulted to obtain information about use of caseload management methods and video conferencing technology by other states.

Fieldwork was conducted from May 1997 through July 1997. The audit was conducted in accordance with applicable professional standards, including:

- Generally Accepted Government Auditing Standards
- Generally Accepted Auditing Standards

The audit work was performed by the following members of the State Auditor's staff:

- Andrea Claire, JD, MBA (Project Manager)
- Verma Elliott, MBA (Quality Control Reviewer)
- Kerre Eppinger
- Ann Huebner, CGFM
- Jennifer Jupe
- Barnie Gilmore, CPA (Audit Manager)
- Deborah L. Kerr, Ph.D. (Audit Director)

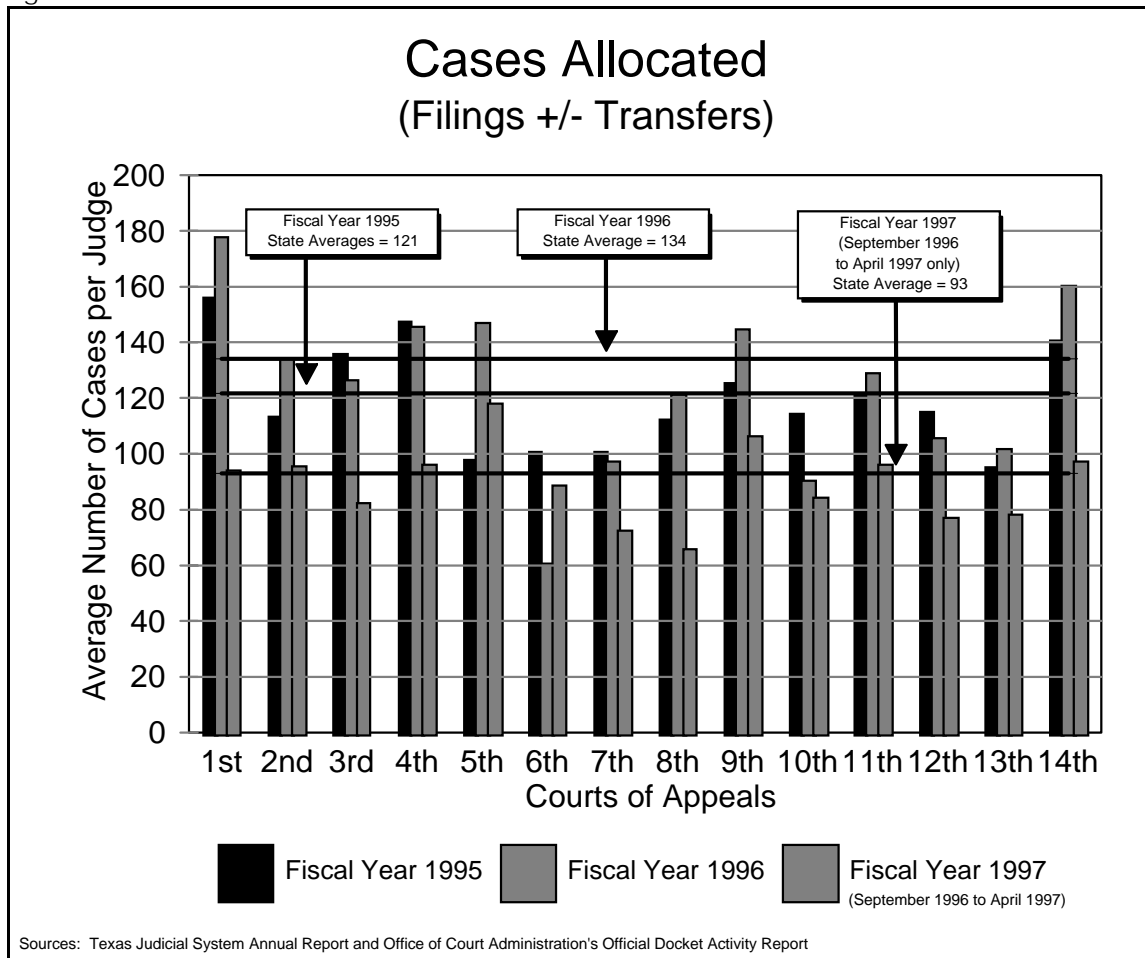
## Number of Cases Allocated Per Judge (Filings +/- Transfers)

Figure 4 indicates that cases transferred between Courts has not equally distributed the State's incoming workload on a per-judge basis. The number of new cases filed plus transfers of cases for fiscal years 1995, 1996, and 1997 through April 1997 are depicted by Figure 4. The number of cases filed increased 9.4 percent between fiscal years 1995 and 1996. Only partial information (through April) was available at the time of analysis for fiscal year 1997.

The 1st and 14th Courts, which are both in Houston, had the largest incoming workloads for two of the three years analyzed even after cases were transferred out to other courts. The 6th and 7th Courts had the smallest incoming workloads on a per-judge basis for two of the three years analyzed.

Of the cases filed since the beginning of fiscal year 1995, 56.9 percent have been criminal cases and 43.1 percent have been civil cases. The number of criminal cases filed per judge on a statewide basis exceeded the number of civil cases filed per judge on a statewide bases for the three fiscal years analyzed.

Figure 4



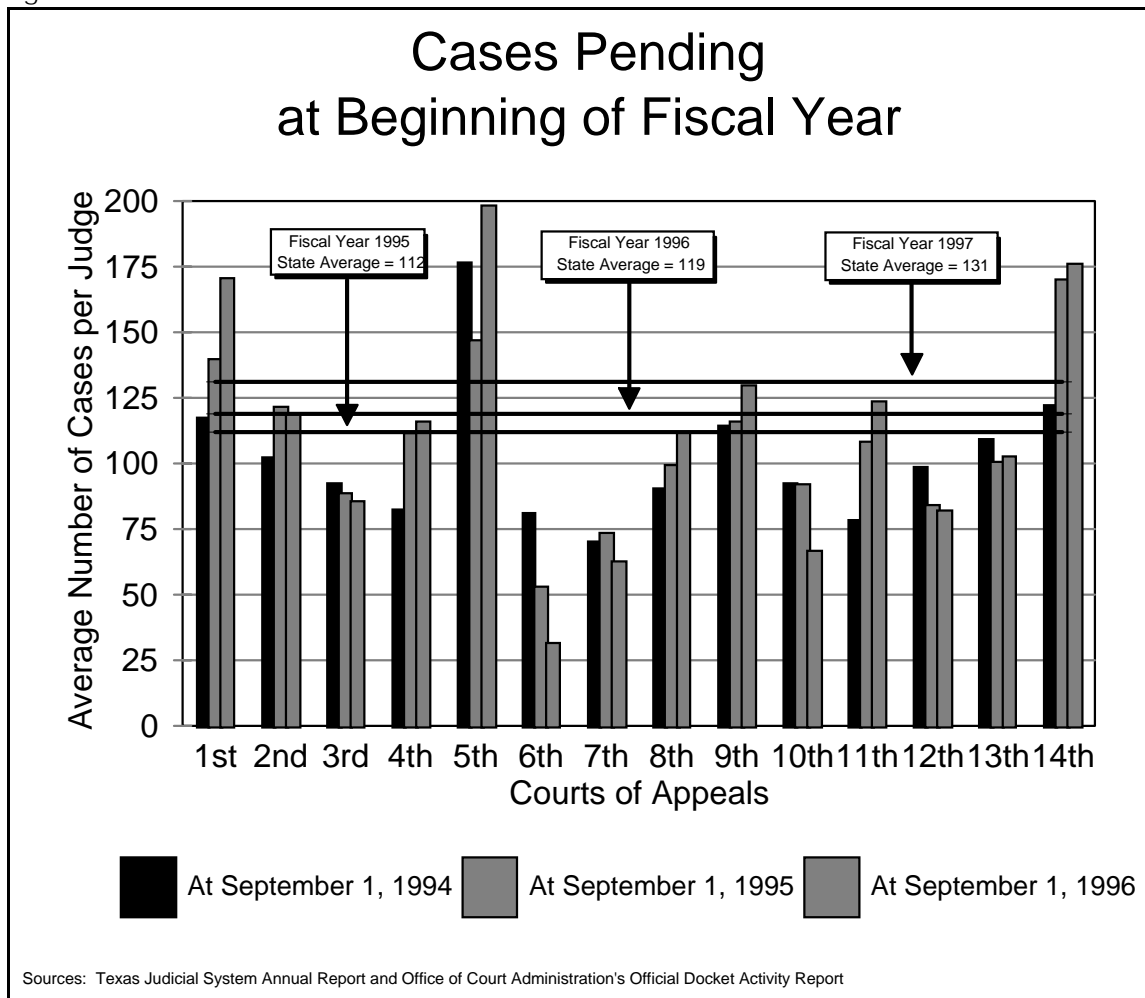
## Number of Pending Cases Per Judge

Figure 5 indicates the number of cases pending on the appellate dockets at the beginning of fiscal years 1995, 1996, and 1997. Pending cases are those that were carried forward from previous fiscal years. The total cases pending for the State has steadily increased for the last three fiscal years. From the beginning of fiscal year 1995 to the beginning of fiscal year 1997, the number of pending cases increased approximately 16.5 percent. Without increased monitoring and management of caseloads, the increase in pending cases could result in significant backlogs over time.

This increase in total pending cases has been primarily attributable to increases in pending criminal cases. There are more than twice as many criminal cases pending as civil cases.

The 1st, 5th, and 14th Courts had the most cases pending for the three fiscal years analyzed. Moreover, the number of pending cases has increased since 1995 for the 1st, 2nd, 4th, 5th, 8th, 9th, 11th, and 14th Courts.

Figure 5

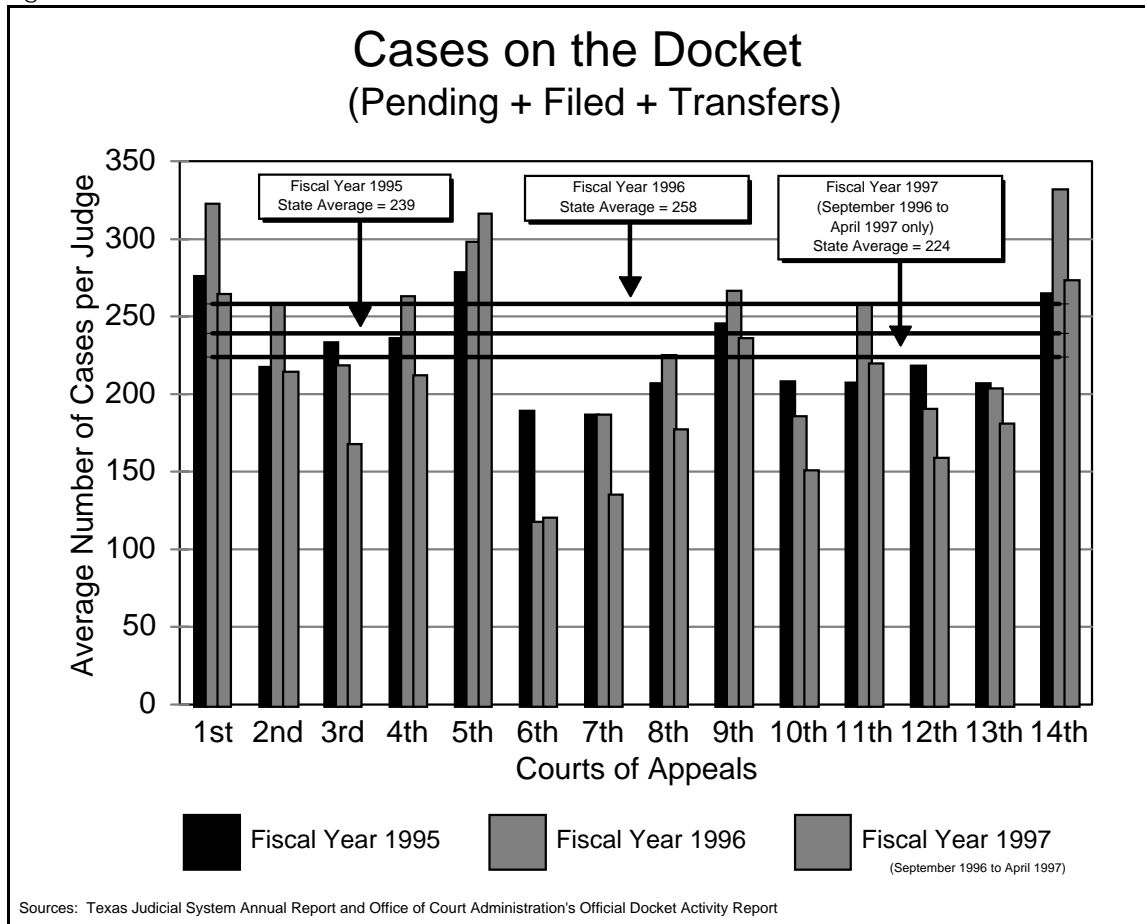


## Number of Cases on the Docket Per Judge (Pending + Filed + Transfers)

Figure 6 indicates the number of cases on state appellate dockets per judge for fiscal years 1995 and 1996 and part of fiscal year 1997. The total cases on the docket for the State has steadily increased over the last three fiscal years. This is attributable to the increase filed and pending cases, most of which have been criminal cases.

There is a risk that the courts may become saturated and caseloads may become unmanageable in the future with the same number of judges, since the total workload per judge is increasing. The 1st, 5th, and 14th Courts had the most cases on docket for the three fiscal years analyzed. In addition, it appears that the number of cases on docket per judge is increasing for all the Appellate Courts. For example, at the 5th Court, the number of cases on docket for the first eight months of fiscal year 1997 had already surpassed the number of cases on docket for the complete fiscal years of 1995 and 1996.

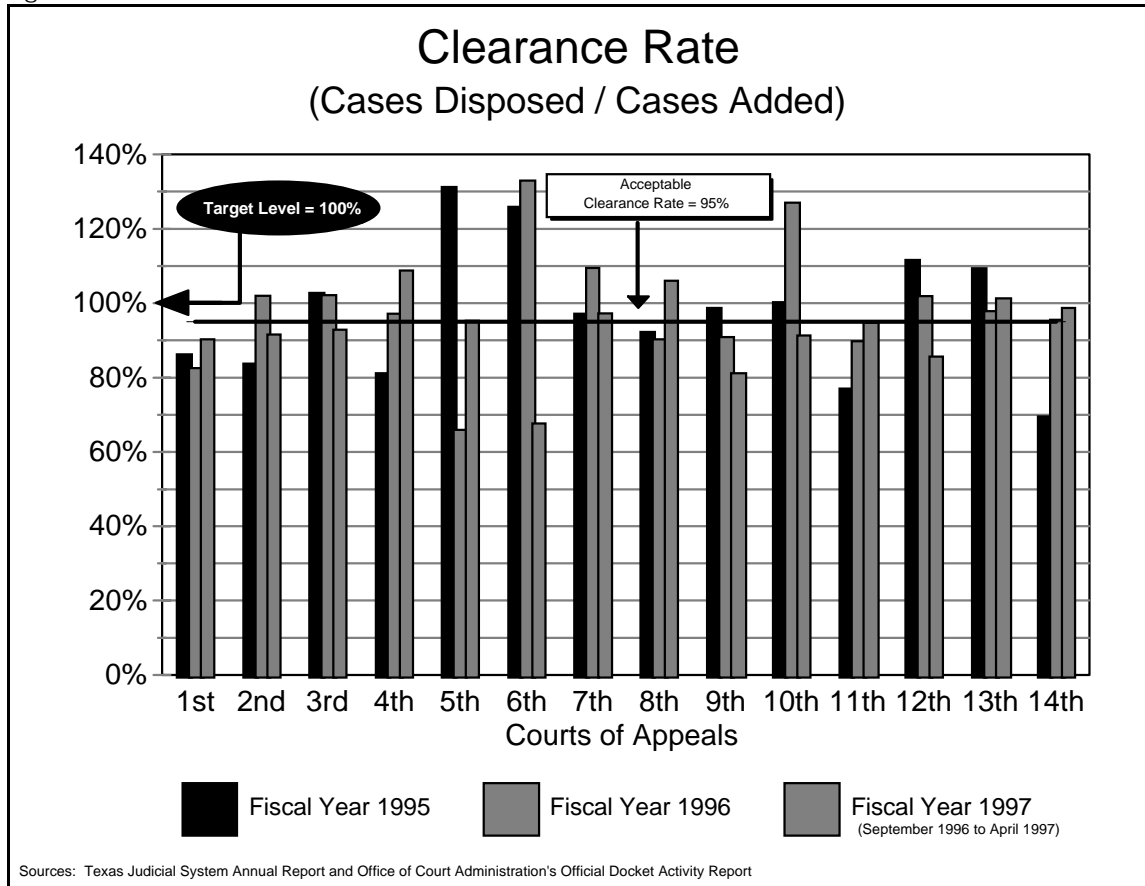
Figure 6



## Clearance Rate

Figure 7 indicates the clearance rate for fiscal years 1995, 1996, and 1997. The clearance rate is the number of cases disposed divided by the number of cases filed and transferred during each fiscal year. The Courts' target or goal is to dispose of (or clear from its dockets) as many cases as are filed and transferred to the Court during each fiscal year. The 1st, 2nd, 8th, 9th and 11th Courts of Appeals exceeded a variance of 5 percent from a target of 100 percent clearance in at least two of three fiscal years analyzed. Entire fiscal years' data were analyzed for fiscal years 1995 and 1996, but only the first eight months of data was analyzed for fiscal year 1997. In general, for these courts, it appears that the lower clearance rates are attributable to the low clearance rates for criminal cases. There is a risk that courts which regularly do not meet clearance rate targets may fall further behind as caseloads continue to increase.

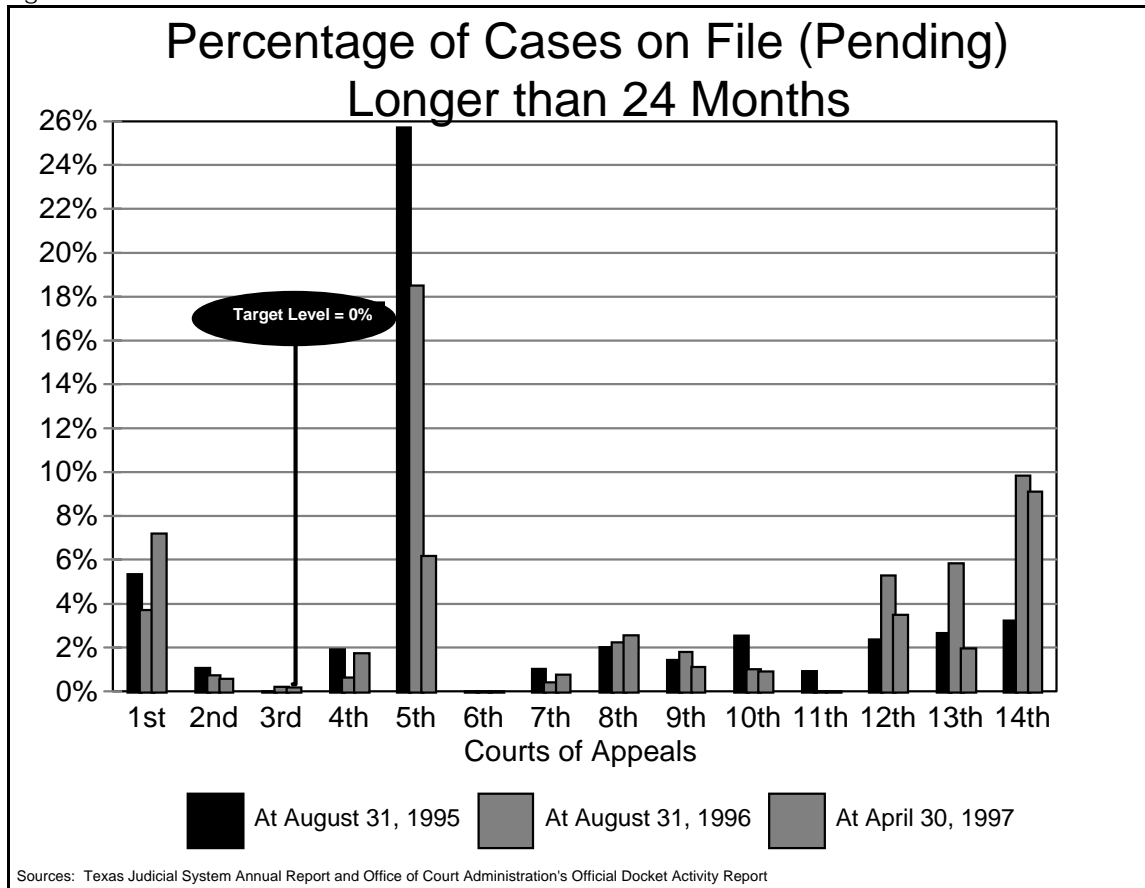
Figure 7



## Percentage of Cases on File (Pending) Longer Than 24 Months

Figure 8 indicates the percent of cases which have been pending at each appellate court more than 24 months. The Courts' goal or target is to have zero cases pending more than 24 months. As indicated by the graph, the 1st, 5th, and 14th Courts of Appeals had relatively large percentages of their cases pending more than 24 months. These three appellate courts (1st, 5th and 14th) are the largest courts with the highest numbers of incoming cases per judge. Due to the large numbers of cases filed per judge and the relatively large number of cases pending more than 24 months at these courts, more oversight and monitoring of the caseload management process is needed to further equalize the dockets and reduce backlogs at these courts.

Figure 8

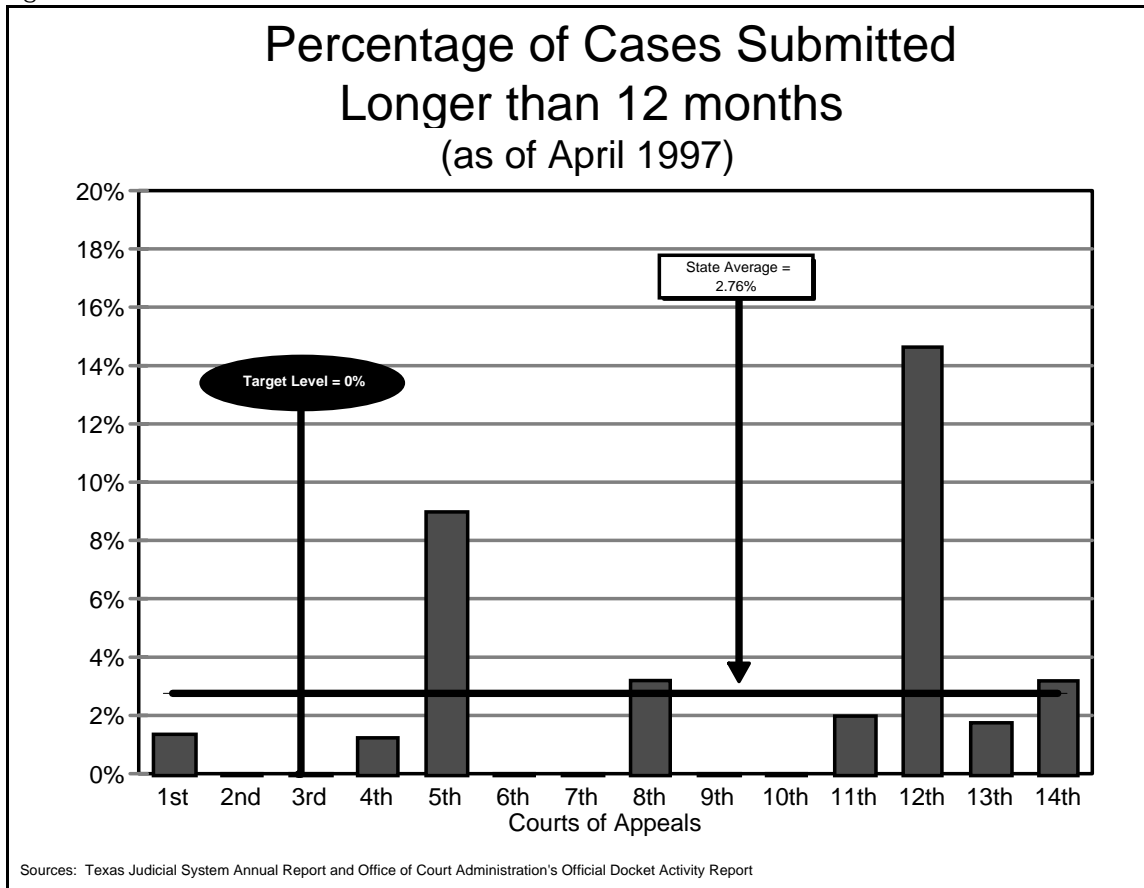


## Percentage of Cases Submitted Longer Than 12 Months (as of April 1997)

Figure 9 indicates the percentage of cases that, as of April 1997, have been under submission for more than 12 months. Cases are considered submitted on the date the oral argument is heard or on the date the appellate brief is submitted. The Courts' goal is to have 0 percent of cases submitted for longer than 12 months.

As of April 1997, the statewide average was 2.8 percent, which is within a 5 percent variance of the Courts' goal. However, four Courts' percentages were above the statewide average, and two of these four varied more than 5 percent from the goal.

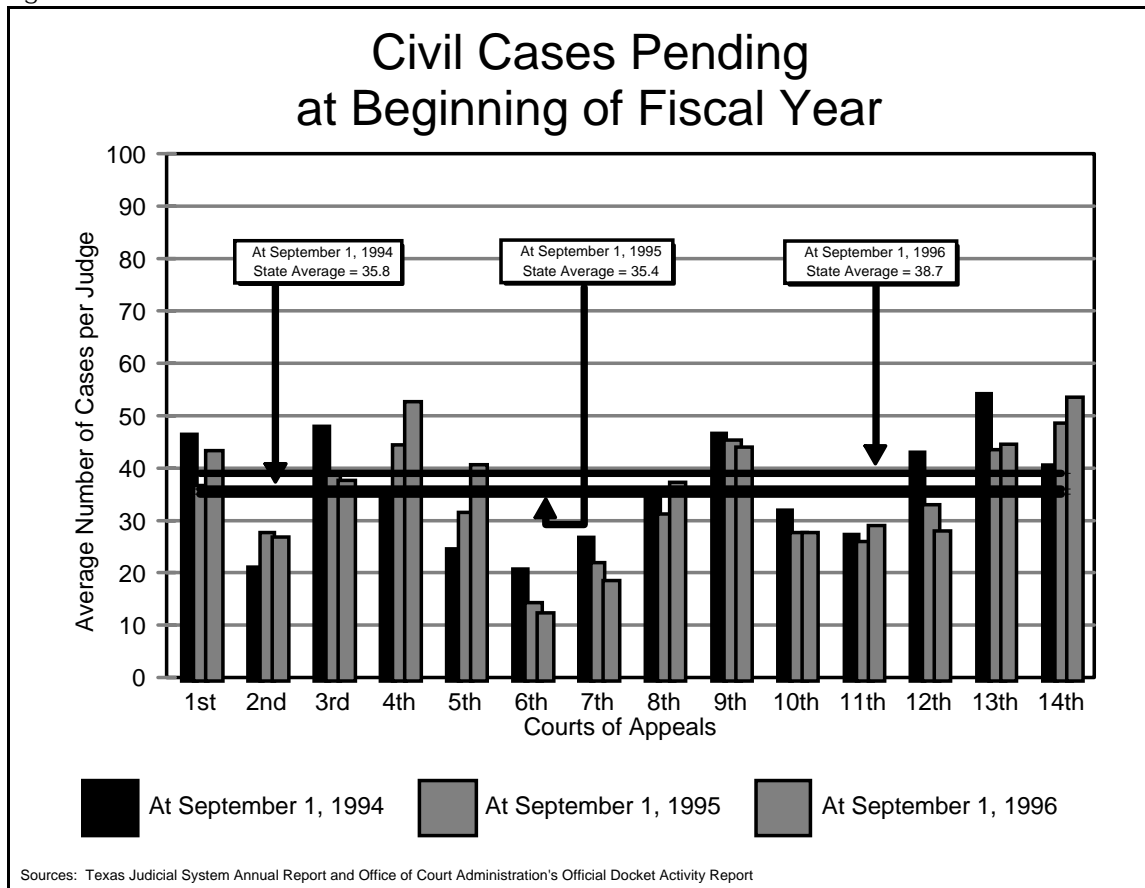
Figure 9



## Number of Pending Cases—Civil and Criminal

The total number cases pending at the 14 Courts of Appeals increased approximately 14 percent between the beginning of fiscal year 1995 and the beginning of fiscal year 1997. This increase was primarily due to an increase in the number of criminal cases pending. Civil cases pending increased 8.1 percent between the beginning of fiscal year 1995 and the beginning of fiscal year 1997. Criminal cases pending increased approximately 20.4 percent between the beginning of fiscal year 1995 and the beginning of fiscal year 1997.

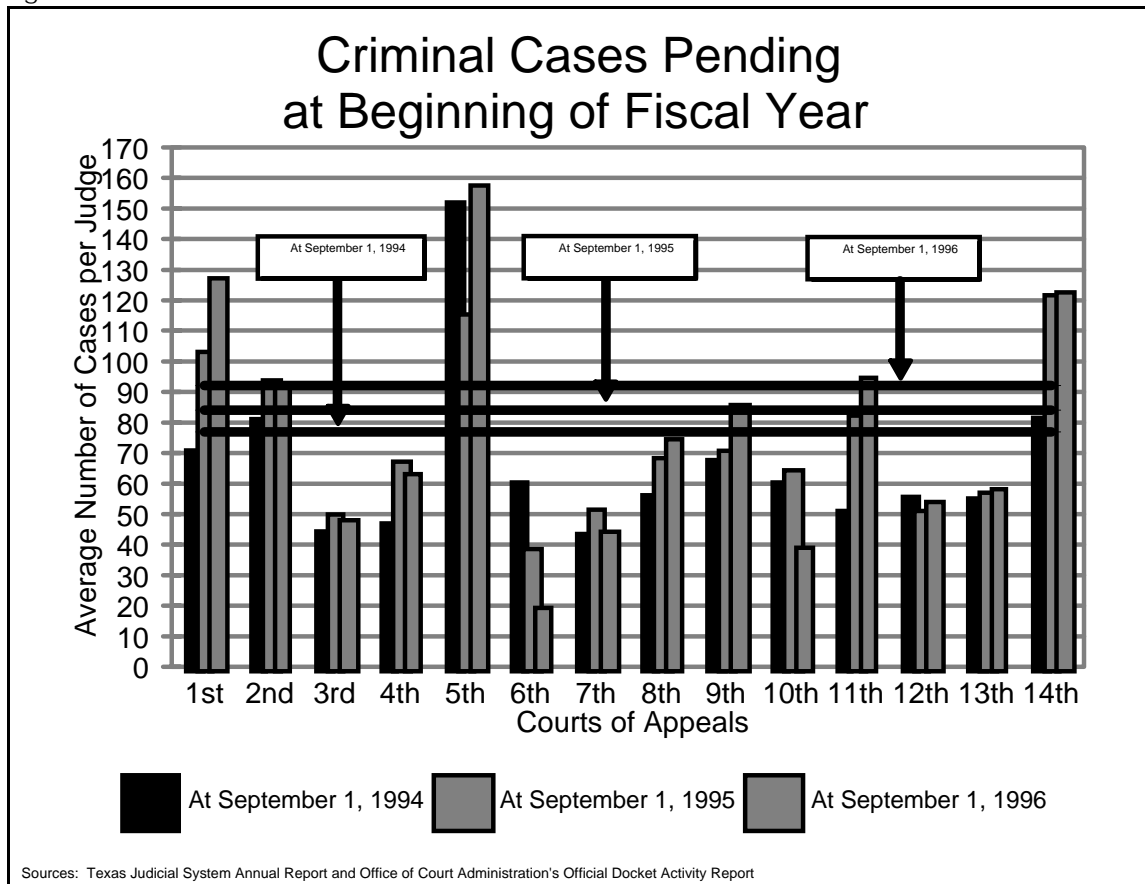
Figure 10





There were more than twice as many criminal cases pending as civil cases pending in the 14 Courts of Appeals at the beginning of fiscal year 1997. While the percentage of pending civil cases to total pending cases declined from 31.9 percent in fiscal year 1995 to 29.6 percent in fiscal year 1997, the percentage of pending criminal cases increased from 68.1 percent in fiscal year 1995 to 70.4 percent in fiscal year 1997.

Figure 11



## Relevant Laws and Policies

### Constitutional Provisions

Article 5, Section 31 makes the Supreme Court responsible for the efficient administration of the judicial branch and authorizes the Supreme Court to promulgate rules of administration not inconsistent with the laws of the State as may be necessary for the efficient and uniform administration of justice in the various courts.

### Statutes

Government Code, Section 72.023(d) authorizes the Office of Court Administration to make recommendations to administrators and coordinators of the courts to provide for uniform administration of the courts and efficient administration of justice.

Government Code, Section 72.024(c) authorizes the Office of Court Administration to make recommendations to the Supreme Court regarding docket equalization.

Government Code, Section 73.001 empowers the Supreme Court to order cases transferred from one Court of Appeals to another at any time.

Government Code, Section 73.002 directs the justices of the court to which the cases are transferred to hear oral argument at the site of the Court where the cases were originally filed. Opinions and decisions are delivered in the city where the receiving Court regularly sits.

Government Code, Sections 74.003(a), 74.003(b), 74.056(d), 74.057(a), 75.002(b), and 75.003 empower the Chief Justice of the Supreme Court to assign judges to various Courts, including the Courts of Appeals, and to the Administrative Judicial Regions for the district courts.

Government Code, Section 74.021 assigns the Supreme Court supervisory and administrative control over the judicial branch and responsibility for the orderly and efficient administration of justice.

Government Code, Section 74.024 authorizes the Supreme Court to adopt rules of administration setting policies and procedures necessary or desirable for the operation and management of the court system and for the efficient administration of justice.

General Appropriations Act (75th Legislature, Article IV, Special Provisions - Judiciary, Section 5), Transfer of Cases states:

The Chief Justices of the 14 Courts of Appeals are encouraged to cooperate with the Chief Justice of the Supreme Court to transfer cases

between Courts of Appeals which are in neighboring jurisdictions in order to equalize the disparity between the workloads of the various Courts of Appeals.

## Policies

The Supreme Court's *Policy for Transfer of Cases Between Courts of Appeals*, Section 1.01 states:

The Decision to transfer cases for equalization purposes will be made by the Supreme Court based on the relative number of cases filed in each of the Courts of Appeals during the preceding twelve months, compared to the statewide average per justice of cases filed. Other factors which may be considered include the availability of appropriated funds for reimbursing the travel and living expenses of the court to which cases are transferred to hear oral arguments at the location of the transferring court and the past or expected absence of justices from a court due to illness, disqualification, absence, or other good cause.

The Supreme Court's *Policy for Transfer of Cases Between Courts of Appeals*, Section 3.01 states:

Upon the agreement of the Chief Justices of two Courts of Appeals, the Supreme Court may order the transfer of a specified number of cases pending in the transferring court. The Chief Justices shall communicate their agreement to the Supreme Court along with an agreed criteria for the selection of the cases to be transferred, such as the oldest pending cases ready for oral argument but unset. The Chief Justice of the court to which cases are proposed to be transferred shall provide the Supreme Court with an estimated month during which oral argument will be heard on the cases at the location of the transferring court pursuant to Sec. 73.003(a), Gov. Code, and the estimated number of days for which traveling and living expenses will be incurred by the court to which the transfer is to be made.

## Glossary of Terms

<b>Annual Report for the Texas Judicial System</b>	A report issued annually by the Texas Judicial Council and the Office of Court Administration which provides statistical summaries for the courts in each distinct level of the Texas Judicial System, in addition to information about the organization, rules, procedures, and practices of the system.
<b>Cases Added</b>	The number of cases added equals the sum of the number of new cases filed, the number of rehearings granted, the number of cases reinstated, the number of cases remanded from a higher court, and the number of cases transferred in, less the number of cases transferred out.
<b>Cases Disposed</b>	Cases in which the rights of the parties have been determined or the proceedings have been otherwise terminated. Criminal/civil cases disposed include: cases disposed on the merits (affirmed, modified, reformed, reversed, remanded, rendered, or combinations of the preceding); cases dismissed; cases otherwise disposed (agreed orders to reverse and remand, abatements); and case consolidations and voids.
<b>Cases Filed</b>	New cases added to the docket.
<b>Clearance Rate</b>	A performance measure intended to demonstrate how efficiently the court is managing its workload in terms of disposing of cases on its docket. This outcome measure is computed by dividing the number of cases disposed by the number of cases added.
<b>District Courts</b>	The trial courts of general jurisdiction of Texas. The geographical area served by each court is established by the Legislature, but each county must be served by at least one district court.
<b>Docket</b>	A list of cases on the court's calendar.
<b>Docket Activity Report</b>	A monthly report prepared by the Office of Court Administration which provides and analyzes current docket activity for the 14 Courts of Appeals. The purpose of the report is to provide the Supreme Court with information necessary for making caseload management decisions.
<b>Equalization of Dockets</b>	The even distribution of workload among judges in the same level of the judiciary.
<b>14 Courts of Appeals</b>	Courts with intermediate appellate jurisdiction in civil and criminal cases from trial courts in each respective geographical Court of Appeals district of the State.

<b>Office of Court Administration</b>	A state agency established to provide administrative support and technical assistance to all courts in the State. The agency also provides the necessary staff functions for the efficient operations of the Texas Judicial Council.
<b>Opinion</b>	The reason given for a court's judgment, finding, or conclusion, as opposed to the decision, which is the judgment itself.
<b>Oral Argument</b>	Legal arguments given in court proceedings by attorneys in order to persuade the court to decide a legal issue in favor of their client.
<b>Pending Cases</b>	Filed cases which have not yet been disposed.
<b>Recusal</b>	Occurs when a judge does not hear a case due to conflict of interest or appearance of conflict of interest.
<b>Submission of Cases</b>	The point at which a case is submitted to an appellate court through a written appellate brief or through an oral argument.
<b>Supreme Court of Texas</b>	The appellate court with statewide, final appellate jurisdiction in most civil and juvenile cases. The Court has general responsibility for the efficient operation of the Texas Judicial System. The Court is empowered to make and enforce all necessary rules of civil trial practice and procedure, evidence, and appellate procedure and promulgates rules of administration of justice in the State.
<b>Transfer of Cases</b>	An act whereby a case is removed from the docket of one court and added to the docket of another court.
<b>Visiting Judge</b>	An active, retired, or former judge who has been assigned to sit on a court by the Chief Justice of the Supreme Court or the presiding judge of an administrative judicial region.

Appendix 11:

## **Issue for Further Study: The Feasibility of Conducting an Analysis of Dockets at the District-Court Level**

Currently, information is not readily available to analyze dockets at the district court level for caseload management purposes. In order to conduct a meaningful analysis of the dockets at the district court level, docket information by district is needed in addition to docket information by county.

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