Civil Justice Initiative

A Renewed Analysis of the Expedited Actions Rules in Texas Courts

March 28, 2023

Table of Contents

Project Staff

National Center for State Courts

Paula Hannaford-Agor, JD

Lindsey Wylie, JD, PhD

Miriam Hamilton, MS

IAALS

Brittany K. T. Kauffman, JD

Logan Cornett, BS

James Swearingen, MS

Michael Houlberg, JD

Office of Court Administration

Jeffrey Tsunekawa, MPA

Michael Smith, MPIA

Sheri Woodfin, Consultant

Acknowledgements

The combined project team of NCSC, IAALS, and OCA are indebted to the colleagues in our respective organizations who supported this effort, especially Keeley Daye (NCSC), Janet Drobinske and Robin Beattie (IAALS). We are also grateful to the State Justice Institute for its financial support (SJI-14-P-080) of this study, for previous educational programming on the Expedited Actions Rules for Texas judges and court staff, and especially for its patience and moral support as the project scope evolved over the course of the COVID-19 pandemic. The views expressed in this report are those of the authors and do not necessarily represent those of the Texas judicial branch; IAALS, the Institute for the Advancement of the American Legal System; the National Center for State Courts; or the State Justice Institute.

Introduction

On November 13, 2012, the Supreme Court of Texas adopted Rules for Dismissals and Expedited Actions, cited here as the Expedited Action Rules (EARs).[1] In brief, these rules were intended to increase access to justice in simple civil cases by addressing the duration, cost, and degree of conflict in discovery; address the costs associated with mediation; lower times to disposition; and decrease the overall length of trials in civil cases.

The new rules were comprised of several key components:

- A requirement that all civil cases involving exclusive monetary damages of $100,000 or below be subject to the EARs;
- A cap on damages in EARs cases of $100,000, inclusive of penalties, costs, expenses, prejudgment interest, and attorney's fees;
- Commencement of discovery in EARs cases immediately upon the filing date with a deadline for conclusion within 180 days of the filing of the first discovery request, with modifications to the timeline authorized by the court of jurisdiction;
- Restrictions on the scope of discovery for EARs limited to no more than 6 hours of oral deposition for all witnesses, 15 written interrogatories, 15 requests for production, and 15 requests for admission;
- Trial dates for EARs cases set by the court within 90 days of the completion of discovery; and
- Court-ordered Alternative Dispute Resolution (ADR) in expedited actions restricted to one half-day, fees restricted to not more than twice the applicable civil filing fee, and all ADR procedures completed at least 60 days before the initial trial date, or within 30 days of the completion of discovery.

Adoption of these rules by the Supreme Court of Texas reflected the efforts of the Texas Judiciary to address concerns by state and federal courts, policy makers, and local stakeholders about the fairness, cost, and efficiency of the civil justice system.

In 2014, the National Center for State Courts (NCSC) and the Texas Office of Court Administration (OCA) collaborated on an evaluation of the impact of the EARs, with funding support from the State Justice Institute (SJI).[2] Judicial policymakers in Texas wanted

1 Adoption of Rules for Dismissals and Expedited Actions, *Per Curiam* Opinion, Misc. Docket No. 12-9191 (Tex S. Ct., Nov. 13th, 2012).

2 SJI-P-14-001.

concrete information regarding whether the EARs were having the desired impact on civil case processing in the state's county courts at law. The NCSC sought information about the impact of civil justice reform efforts to inform deliberations of the Conference of Chief Justices (CCJ) Civil Justice Improvements Committee as it drafted recommendations for a national audience.[3] The evaluation design was intended to capitalize on the shared interests of Texas and national policy makers.

The evaluation employed an empirical analysis of case characteristics and outcomes of civil cases filed before and after implementation of the rules. It coupled that analysis with qualitative methods, including surveys and interviews with judges, trial attorneys, and court coordinators. The evaluation focused on civil cases filed in the county courts of law in Dallas, Fort Bend, Harris, Lubbock, and Travis Counties between July 1 and December 31, 2011 and between July 1 and December 31, 2013.

The study findings were published in September 2016.[4] Overall, the evaluation found that cases filed after implementation of the EARs disposed faster than cases filed before the rule changes. Settlement rates increased significantly with corresponding decreases in summary judgment and trial rates. Although the rate of discovery disputes did not change significantly, when disputes occurred in EARs cases, they involved significantly fewer motions and occurred more than two months earlier than previously. While these findings strongly suggested that the EARs were working exactly as intended, one of the most surprising findings of the evaluation was that many attorneys were unaware that the EARs applied to their cases. Moreover, judges reported that they were not managing their caseloads any differently after the EARs went into effect, and they rarely even knew whether a case scheduled on their calendar was an EAR or non-EAR case. The NCSC and OCA ultimately concluded that communications about deadlines and other restrictions in docket control and case scheduling orders in EAR cases were the mostly likely contributors to more timely and effective case management.

Much has changed in the intervening seven years since the evaluation was published. In 2017, Hurricane Harvey shuttered many of the courthouse buildings in Harris County, where one-fourth of statewide civil cases in district court and one-fifth of civil cases in county court are filed.[5] Some of those courthouses remain closed in 2023. Beginning in 2016, district and county courts across the state struggled to maintain clearance

3 CCJ Civil Justice Improvements Committee, Call to Action: Achieving Civil Justice for All (NCSC, IAALS 2016), available at https://www.ncsc.org/__data/assets/pdf_file/0021/25581/ncsc-cji-report-web.pdf.

4 Paula Hannaford-Agor & Scott Graves, Texas: Impact of the Expedited Actions rules on the Texas County Courts of Law (NCSC September 1, 2016), available at https://www.ncsc.org/__data/assets/pdf_file/0023/26474/texasimpactoftheexeditedactionsrulespdf.pdf).

5 *See* District Court, Summary By County, Activity Detail (2021) and Statutory County Court, Summary by County, Activity Detail (2021), at https://www.txcourts.gov/statistics/annual-statistical-reports/2021/.

rates for civil cases at or near 100%.[6] The 2018 election cycle turned over 25% of the judicial bench, bringing new judges in need of training and guidance on both the EARs and fundamentals of caseflow management. Of course, COVID-19 slowed the work of courts across Texas, and across the country, creating further backlogs.

On a more positive note, advancements in case management technology locally and the full deployment of the e-filing system statewide for all civil cases has changed how the business of Texas courts is done. Prompted by the success of the EARs, the Supreme Court of Texas also increased the monetary threshold for EARs cases from $100,000 to $250,000 effective January 1, 2021.[7] In response to concerns raised in the previous evaluation, the amended rules also excluded fees and costs from the damages cap and clarified that discovery level 1 applies to all EARs cases. As a result, all general civil cases seeking only monetary damages filed in the county courts are now subject to the rules and likely a substantial proportion of cases filed in the district courts (general jurisdiction court for civil cases greater than $201) will be as well.

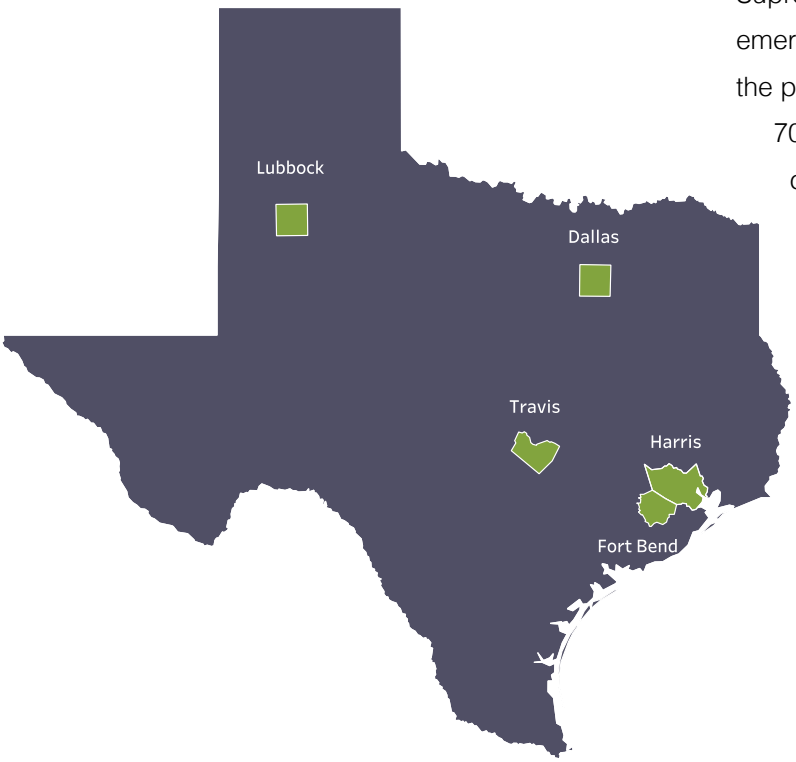
In October 2021, the OCA and the NCSC returned to the question of whether the EARs in Texas were continuing to have a positive impact on civil case processing. With new funding from SJI, the NCSC, OCA, and IAALS, the Institute for the Advancement of the American Legal System at the University of Denver, set out to replicate the 2016 study. Using the same research methods, the project team gathered data from the district and county courts in Dallas, Fort Bend, Harris, Lubbock and Travis Counties and surveyed and interviewed judges and trial attorneys about their experience with the EARs. The primary objective was, again, to determine whether the EARs were being implemented and followed, and whether they have a positive impact on case outcomes. The working hypotheses are that cases subject to the EARs will resolve more quickly compared to cases that are exempt from the rules, that discovery conflicts will be fewer in EARs cases with less time spent in discovery, and that more cases will resolve by settlement. In short, the EARs and strong caseflow management principles provide key tools for judges to prioritize and manage the efficient and fair administration of their civil dockets. This report describes the data and methods, findings, and conclusions from the new study, including recommendations to support the Texas Judiciary in returning to best practices and moving the courts forward across the state.

6 Texas Statutory Courts of Law averaged 93% clearance rates from 2016 to 2021 with a low of 84% in 2019. Texas District Courts averaged 91% clearance rates during the same time period with a low of 87%, also in 2019. *See* Annual Statistical Reports for the Texas Judiciary, Fiscal Years 2016 to 2021, at https://www.txcourts.gov/statistics/annual-statistical-reports/.

7 In the Supreme Court of Texas, Misc. Docket No. 20-9101, Order Amending Texas Rules of Civil Procedure 47, 169, 190, 192, 193, 194, and 195 (Aug. 21, 2020). A major criticism of the EARs was that they applied to cases seeking monetary relief aggregating $100,000 or less *including penalties, costs, expenses, pre-judgment interest and attorney fees.* Amended Rule 169 increased the cap to $250,000, but also excluded interest, statutory or punitive damages and penalties, and attorney fees and costs. The $250,000 damages cap also aligns with the jurisdictional threshold for county courts of law, which increased from $200,000 to $250,000 effective Sept. 1, 2020.

Data and Methods

As in the previous study, this evaluation employed analyses of case characteristics and outcomes, attorney surveys, and interviews with judges, attorneys, and court coordinators to obtain a well-rounded perspective on the impact of the EARs on civil case processing. Although the EARs apply to cases filed in both district and county courts, NCSC's previous evaluation only included cases filed in the county courts under the theory it would be the preferred venue for cases subject to the EARs. This current project extends the previous evaluation to cases filed in both the county and district courts in the same five counties as the previous evaluation, nearly seven years after implementation of the EARs in Texas.



DOCKET STUDY

The previous evaluation of Texas' EARs compared cases filed between July 1 and December 31, 2011 (Sample 1) to cases filed between July 1 and December 31, 2013 (Sample 2). This evaluation examined cases filed between July 1, 2018, and June 30, 2019 (Sample 3) in the same five county courts, as well as the respective district courts. Figure 1 shows the counties participating in both evaluations.

This timeframe was chosen to further two goals. The first goal was to reduce the disruptive impact of the COVID-19 pandemic on case processing times. The sampled cases would have had at least nine months of processing time before the Supreme Court of Texas issued its first COVID-19 emergency order on March 13, 2020.[8] Based on the previous study, the project team estimated that 70% or more of the sampled cases would be disposed within this timeframe. The second goal was to avoid the complication of assessing cases using different monetary thresholds after the amendments enacted in 2021.

Figure 1. Map of Participating Counties

8 Supreme Court of Texas and Court of Criminal Appeals of Texas, First Emergency Order Regarding the COVID-19. State of Disaster (Misc. Docket No. 20-9042, March 13, 2020).

The data request to the Clerks of Court asked for the following information for all cases filed during that timeframe:

- Case number, case name, and case type;
- Filing, answer, and disposition dates;
- Declared amount in controversy and discovery level assigned;
- Scheduled trial date and actual trial date, if held;
- Manner of disposition (if any);
- Judgment amounts (if any); and
- Attorney names, bar numbers, and email addresses for counsel of record for all parties.

From the full datasets, the project team randomly sampled cases that were presumptively eligible for EARs processing in which an answer was filed. The intent was to create a dataset of 2,500 cases proportionately reflecting the contested caseloads of the study courts, with a minimum of 50 cases per court.[9]

Table 1: Case Samples by Jurisdiction

COURT	INTENDED SAMPLE		ACTUAL SAMPLE	
Dallas County Court	123	5%	123	6%
Dallas District Court	430	17%	353	17%
Fort Bend County Court	50	2%	50	2%
Fort Bend District Court	99	4%	103	5%
Harris County Court	347	14%	342	16%
Harris District Court	1,017	41%	681	32%
Lubbock County Court	50	2%	44	2%
Lubbock District Court	50	2%	51	2%
Travis County Court	187	7%	202	10%
Travis District Court	147	6%	155	7%
TOTAL	2,500		2,104	

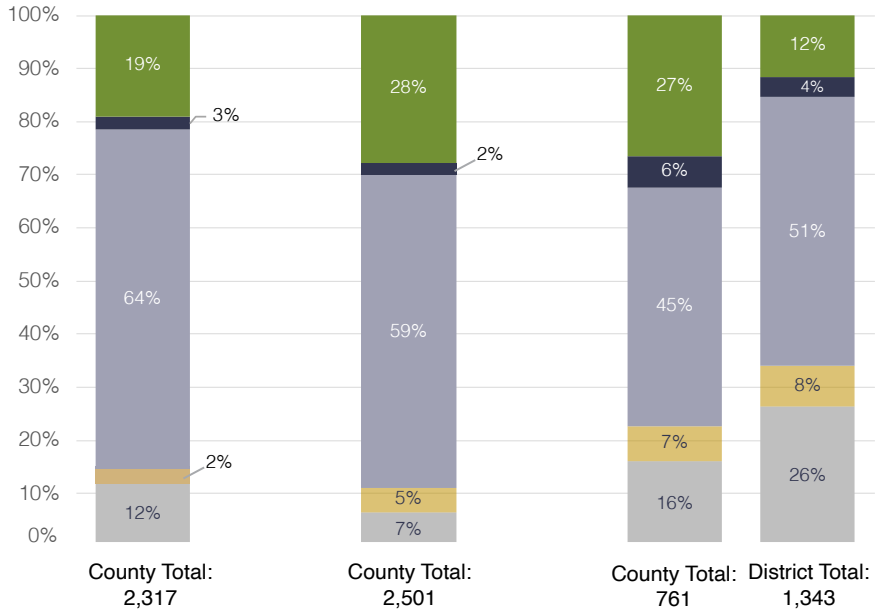
Note: Percentages do not necessarily total to 100% due to rounding.

9 Project staff received fewer cases from the Harris District Court than expected due to the removal of duplicate cases in the original data extract. Duplicate cases included 335 from Harris District, 6 from Harris County, 1 from Lubbock District, 5 from Lubbock County, and 76 from Dallas District. Landlord/tenant and family law cases (n = 3) cases were also removed because they are not eligible for the EARs.

In addition to information routinely collected in court case management systems (CMS), the project team wanted to examine case-level events, including dates and motions related to discovery (e.g., motions to modify discovery, motions to compel discovery, motions for protective orders) and the decisions on those motions, which were only available in the casefiles and registers of actions. OCA manually collected those data, as well as verified data for which the CMS had conflicting or missing information.

Sample 3 differs from the two previous samples in several ways, as shown in Figure 2. First, due primarily to the identification of duplicate records in the Harris County District Court cases, Sample 3 was smaller with only 2,104 cases compared to 2,317 and 2,501 cases in Samples 1 and 2, respectively. The decision to examine the impact of the EARs on district court cases, which ultimately comprised two-thirds of the sample, resulted in substantially fewer county court cases than Sample 1 and Sample 2. Finally, the geographic distribution of the cases shifted substantially. Sample 3 included a much larger proportion of cases filed in Dallas County, which was almost a quarter (22%) of the total sample. Lubbock County provided a larger proportion of cases (5%) than both previous samples, while Harris County had a correspondingly smaller proportion of cases (49%).

Figure 2: Cases Selected for Evaluation, by Sample



	SAMPLE 1	SAMPLE 2	SAMPLE 3	
Travis	441	695	202	155
Lubbock	58	58	44	51
Harris	1,481	1,476	342	681
Fort Bend	56	112	50	103
Dallas	281	163	123	353

Case Types by Jurisdiction

Table 2 displays the case type makeup of the sample by court type, and Table 3 displays the case type makeup by county (including both district and county courts). Looking first at Table 2, the sample of district court cases included a larger proportion of tort (60%) and, correspondingly, a substantially smaller sample of contract cases (33%) compared to cases from the county courts (41% and 54%, respectively). In both the county and district courts, tort caseloads consisted predominately of automobile tort cases, while contract caseloads consisted predominately of debt collection cases. Tort cases often allege serious personal injury claims for which plaintiffs seek higher damage awards. The comparatively higher proportion of tort cases in the district courts may reflect plaintiffs' preference for a forum in which damage awards can exceed the $200,000 jurisdictional cap in effect at that time in the county courts. Consequently, the proportion of cases subject to the EARs may also be smaller in the district courts than in the county courts.

Table 2: Cases Selected for Evaluation, by Court Type

CASE TYPE	COUNTY		DISTRICT	
Automobile Tort	284	37%	626	47%
Medical Malpractice	2	<1%	19	1%
Other Professional Malpractice	1	<1%	7	1%
Product Liability	2	<1%	6	<1%
Other Tort	20	3%	142	11%
Fraud	--	--	19	1%
Debt Collection	392	52%	335	25%
Other Contract	18	2%	88	7%
Other Civil	42	6%	101	8%
	761		1,343	

When examining case types by county, there were some geographical variations. Over half of the Dallas County cases were automobile torts. On the other hand, Dallas County included a substantially smaller percentage of debt collection cases compared to the other counties. Debt collection cases comprised the largest proportions of cases from Lubbock and Fort Bend Counties. In Fort Bend County, "other civil" cases are almost one-third of its sampled cases.

Table 3: Cases Selected for Evaluation, by County

CASE TYPE	DALLAS		FORT BEND		HARRIS		LUBBOCK		TRAVIS	
Automobile Tort	275	58%	22	14%	442	43%	35	37%	136	38%
Medical Malpractice	5	1%	1	1%	13	1%	2	2%	--	--
Other Professional Malpractice	--	--	--	--	4	<1%	--	--	4	1%
Product Liability	1	<1%	--	--	7	1%	--	--	--	--
Other Tort	30	6%	7	5%	94	9%	5	5%	26	7%
Fraud	--		1	1%	15	2%	--		3	1%
Debt Collection	118	25%	69	45%	399	39%	51	54%	90	25%
Other Contract	21	4%	11	7%	13	1%	--		61	17%
Other Civil	26	6%	42	28%	36	4%	2	2%	37	10%
	476		153		1,023		95		357	

Case Types by Sample

Table 4 compares the number and proportion of cases by case type in each of the samples. Particularly noteworthy is the dramatic increase in tort cases generally, and automobile tort cases specifically. Tort cases accounted for 18% of Sample 1, 25% of Sample 2, and a much larger (41%) proportion of Sample 3. Automobile tort cases accounted for approximately three-quarters of the tort cases in Samples 1 and 2, but 92% of tort cases in Sample 3. A corresponding increase in total tort filings occurred in the Dallas County Court from 2013 to 2019, which may explain part of the increase, but the proportion of tort cases was relatively stable in the Fort Bend and Travis County Courts, and actually declined in the Harris County and Lubbock County Courts during the same period.[10] At the same time, there was a marked increase in the proportion of tort cases filed in the Harris and Travis District Courts with stable rates of tort filings in the Dallas, Fort Bend, and Lubbock District Courts. Fort Bend County cases in Sample 3 had a similar proportion of automobile tort cases as Samples 1 and 2 (14%). Investigation of the dramatic increase in tort cases revealed a practice in these counties in which cases filed

10 Tort data extracted from OCA Information Technology on February 16, 2023.

in the district court may be assigned to a county court judge authorized by the district court judges to manage cases that would otherwise exceed the monetary jurisdiction of the county court of law. State and local caseload trends and the practice of assigning district court cases to county court may both explain the differences in the samples.

The proportion of "other contract" cases had declined from Sample 1 to Sample 2 across civil caseloads in county courts, ostensibly as the impact of the economic recession dissipated. Sample 3 cases now include only a fraction of these cases compared to earlier sampled cases. Only the Travis County courts sample has a proportion of "other contract" cases that is similar to what it was in the total samples of previous phases (17%). Overall, there was also a smaller proportion of "other civil" cases compared to Samples 1 and 2.

Table 4: County Court at Law Cases Selected for Evaluation, by Sample

CASE TYPE	SAMPLE 1		SAMPLE 2		SAMPLE 3	
Automobile Tort	295	13%	473	19%	284	37%
Medical Malpractice	--	--	2	<1%	2	<1%
Other Professional Malpractice	--	--	3	<1%	1	<1%
Product Liability	3	<1%	2	<1%	2	<1%
Other Tort	118	5%	155	6%	20	3%
Fraud	5	<1%	9	<1%	--	--
Debt Collection	1,321	57%	1,243	50%	392	52%
Other Contract	412	18%	407	16%	18	2%
Other Civil	163	7%	207	8%	42	6%
	2,317		2,501		761	

ATTORNEY SURVEY

In addition to the docket study, the research team administered a survey to attorneys of record in Sample 3. The purpose of the survey was to provide additional case-level data, to obtain factual information about the cases that could not ordinarily be found in the court files, and to solicit the attorneys' opinions about the EARs and their impact on case processing. The survey questions are shown in Appendix A.

The attorney survey replicated several sections of the survey employed in the previous evaluation.[11] The beginning of the survey presented details about the sampled case and asked attorneys to provide corrections for any errors. The survey then asked respondents a set of multiple-choice questions related to various aspects of the sampled case, including:

- The amount of discovery conducted;
- Whether discovery was expanded and, if so, why; and
- What kept the case moving forward.

The survey presented a series of Likert-response questions about EAR cases broadly. Respondents could provide additional comments in an open-ended format at the end of the survey. Finally, the survey asked respondents to indicate whether they would be willing to participate in a follow-up interview.

Where possible, OCA provided contact information for the attorneys of record from the sampled cases. The project team removed firm-wide email addresses (e.g., info@firmname.com) and incomplete email addresses from the contact list, as well as ensured each attorney would receive only one survey.[12] Ultimately, 1,651 attorneys received the survey electronically between December 9, 2022 and January 10, 2023,[13] with four reminders sent from OCA.

Out of the 1,651 attorneys who received an invitation to complete the survey, 90 submitted valid responses for a response rate of 6%.[14] Notably, the research team received outreach from several attorneys who received the survey invitation, but believed their cases were not subject to the EARs.

11 The Sample 3 attorney survey, which is the subject of this report, mirrored the Phase 2 attorney survey in content to facilitate comparison where it was logical and feasible to do so. Hannaford-Agor & Graves, *supra* note 4, at pp. 34-40.

12 Where an attorney was listed as the attorney of record in multiple cases in the sample, researchers selected the case with the most complete data in our dataset. Where multiple cases were equally complete, researchers used a random number generator to select the case to be included.

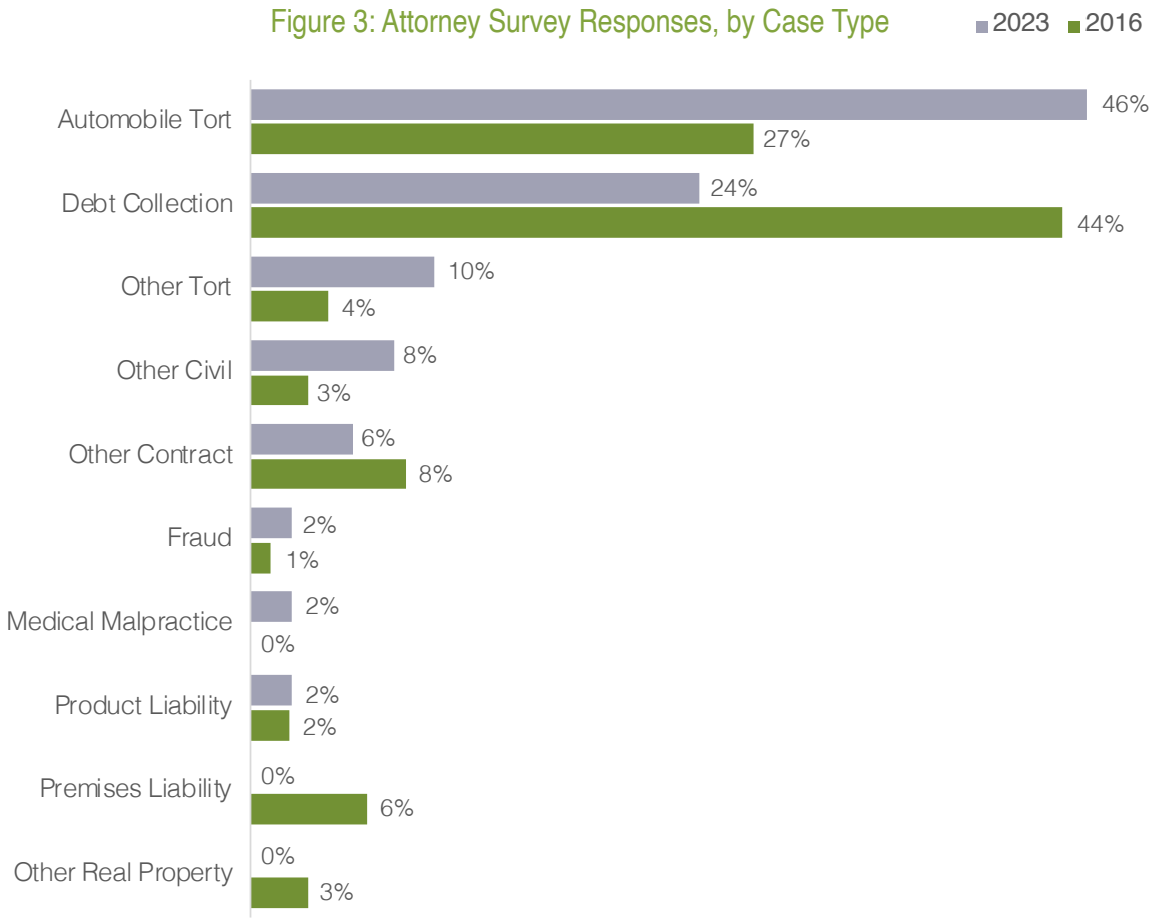
13 Researchers built the survey in Qualtrics, an online survey platform, and each attorney received an individualized link to complete the survey.

14 Three responses were removed due to incompleteness or a lack of engagement with the survey (e.g., the attorney wrote that the survey did not apply to them in every open-ended field).

Figure 3 presents the distribution of case types across the survey responses, which largely mirrors the composition of Sample 3. The largest proportion of surveys (46%) were automobile tort cases, followed by debt collection cases (24%). This differs from the 2016 survey in which the largest proportion of responses were debt collection cases. Additionally, this sample is not balanced between represented parties, as the project team received 61% responses from plaintiffs/petitioners but only 39% responses from defendants/respondents.

Of the sample, 64 attorneys indicated that the sampled case was not subject to the EARs, with only 25 (28%) indicating their case was subject to the rules.[15] The sample is similarly skewed within the cases subject to the rules. Harris County comprised a majority of responses (16; 64%), as do plaintiffs/petitioners (18; 72%). With regard to EAR cases by case type, the sample contained 12 automobile tort cases (48%), 11 debt collection cases (44%), one other tort case (4%), and one other civil case (4%).

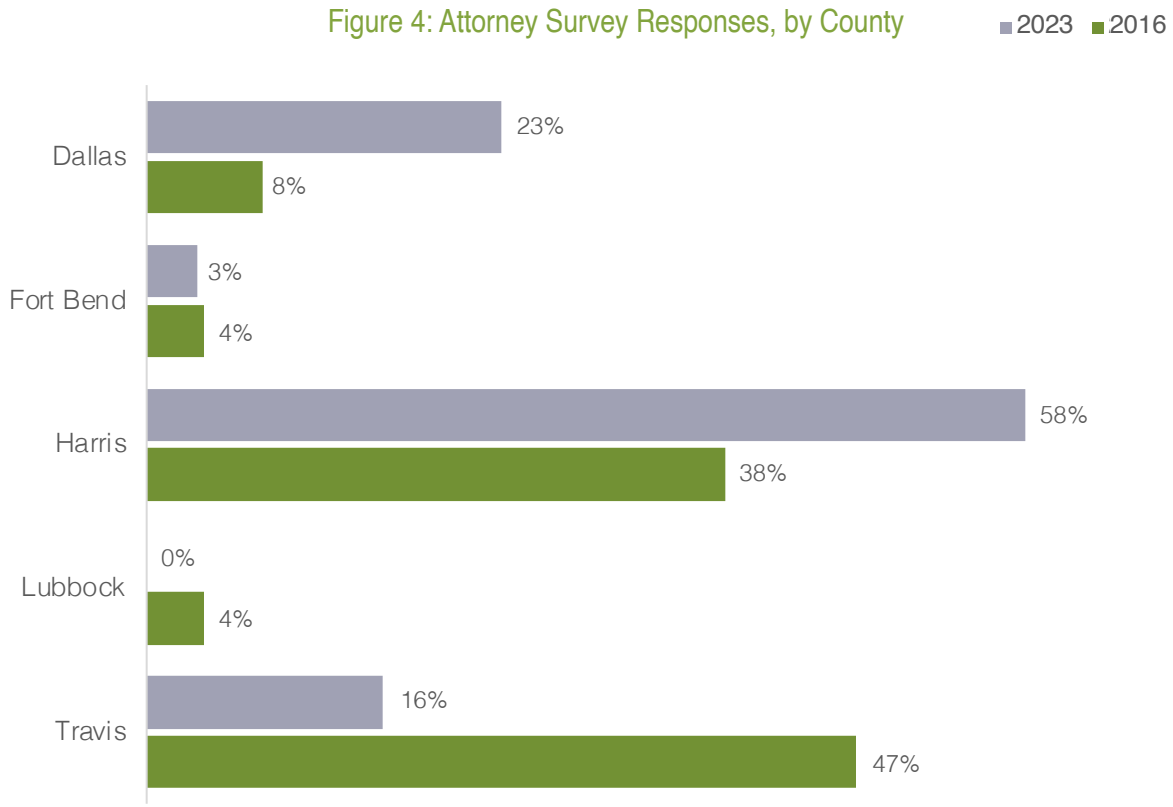
Figure 3: Attorney Survey Responses, by Case Type



15 One of the 90 attorneys did not indicate whether the case in question was subject to the EARs, but their survey was included as they responded to later questions about the rules generally.

With respect to the distribution of responses across counties, over half (58%) of the responses were cases from Harris County, with Harris District Court cases comprising 43% of the responses alone. Attorneys in Lubbock County did not respond to the survey at all. Figure 4 presents the distribution of survey responses across counties.

Figure 4: Attorney Survey Responses, by County



JUDGE, ATTORNEY, AND COURT COORDINATOR INTERVIEWS

The final component of this evaluation consisted of interviews with attorneys, judges, and court coordinators. The aim of this last stage of the evaluation was to better understand the experiences of those working most closely with EAR cases, including how the cases are handled in practice, stakeholders' experiences with EAR case management protocols, and when the rules are effective and ineffective.

The interview protocols focused on experience with EARs cases, experience with discovery, perspectives on EARs cases, protocols used for EARs cases, opinions on improving the effectiveness of the rules, and general comments. The protocols differed between the three interviewed groups, with a greater emphasis placed on case management in the judge and court coordinator interviews and more emphasis placed on the rules in practice for attorneys. Each interview lasted no longer than an hour. See Appendix B for the interview questions.

Judge and court coordinator interviewees were recruited via emails and personal outreach from the project team. Researchers recruited attorney interviewees from the pool of attorney survey respondents who indicated in their survey response that they would be interested in a follow-up interview.

Given concerns about the response rate, the project team reached out on multiple occasions to potential interviewees. Unfortunately, despite the numerous attempts and follow ups, only 10 total interviews were conducted.[16]

Table 5: Interviews Conducted, by Sample

	SAMPLE 2 INTERVIEWS	SAMPLE 3 INTERVIEWS
Judges	8	5
Court Coordinators	5	1
Attorneys	5	4
TOTAL	18	10

16 All interviews were audio recorded and transcribed. The research team undertook an iterative qualitative analysis process in which researchers read through the transcripts, identified broad themes that emerged in the interviews, and then collected quotes relating to those themes.

COMPLIANCE WITH EXPEDITED ACTION RULES

Under the rules in effect at the time, amended Rule 47(c) of the Texas Rules of Civil Procedure required plaintiffs to expressly state whether the party seeks monetary relief of $100,000 or less, or if the party seeks monetary relief of more than $100,000 and/or non-monetary relief. Prior to implementation of the EARs, litigants were only required to state that the monetary relief sought was within the court's jurisdictional limits. A party that fails to comply with this requirement may not conduct discovery until the party's pleading is amended.[17] The declared amount in controversy enables courts to identify cases subject to the EARs at the time of filing and to apply the appropriate case management deadlines. Compliance with this rule indicates that the parties are aware of their applicability.

In the previous evaluation, the proportion of cases in which the litigant complied with Rule 47(c) by declaring the amount in controversy actually decreased after the rule change, from 70% to 65%. In addition to indicating a lack of awareness, the decrease in compliance was believed to be a possible indicator of purposeful attempts by some attorneys to evade the EARs. The recently sampled cases, however, showed a dramatic increase in compliance, as presented in Table 6. In 2019, only 7% of county court cases and 3.5% of district court cases failed to include a declared amount in controversy. More than one-quarter of Sample 3 cases declared an amount in controversy that exceeded $100,000, which would be exempt from the EARs in place at that time.[18]

Table 6: Declared Amount in Controversy in County Courts at Law Cases

	SAMPLE 1		SAMPLE 2		SAMPLE 3	
$100,000 or less	1,594	69%	1,595	64%	503	66%
More than $100,000	24	1%	34	1%	203	27%
Not declared	699	30%	872	35%	55	7%
TOTAL	2,317		2,501		761	

17 TX. R. CIV. PROC. Rule 47(e).

18 This increase of higher amount cases may be due to county courts hearing some district court cases during the time of backlogs.

As in prior analyses, the research team investigated whether attorneys may have been reluctant to declare amounts in controversy to avoid the restriction on collecting judgments in excess of $100,000, excluding post-judgment interest, pursuant to Rule 169(b). A monetary judgment greater than $0 was awarded in only 18% of cases, and in only 17% of cases with undeclared amounts in controversy. Contrary to what would be expected if attorneys were "evading the rules," cases with undeclared amounts in controversy had smaller damage awards ($15,679) on average than those with declared amounts in controversy under $100,000 ($19,265).[19] This pattern was true for county and district cases, although the average damage award was higher in district cases than county cases. Because there is no evidence that cases in which litigants failed to declare the amount in controversy would usually have been exempt from the EARs, the project team assumed any cases missing an amount in controversy were subject to the rules.

However, there is some evidence that even attorneys who declared an amount in controversy below $100,000 are sometimes unaware that these cases are subject to the EARs. Among the surveyed attorneys who claimed that their cases had been exempt from the rules, 16% had a declared amount recorded that was below the threshold of $100,000.

As shown in Table 7, 46% of the total sample was thus assumed to be subject to the rules, with slightly more than half of these being county court cases, which is dramatically lower than the proportion of cases subject to the EARs in the previous evaluation.[20] A lower proportion of EAR cases was expected in the district court cases due to the unlimited monetary cap, but the difference in the county court cases may be due to the inclusion of district court cases that were subsequently assigned to the county court. Although the proportion of Sample 3 cases subject to the EARs is smaller than the previous samples, it does provide the ability to compare case characteristics and outcomes for EAR and non-EAR cases in both the district and county courts.

Table 7: Cases Subject to EARs

	N	% OF TOTAL SAMPLE
County	558	27
District	418	20
Total EAR	976	46

Note: The percentage of total sample does not equal the sum of county and district percentages due to rounding.

19 The only county court case with an undeclared amount in controversy and a damage award higher than $100,000 was excluded for the purposes of comparing these averages.

20 Only 1% of cases in Sample 2 declared an amount-in-controversy greater than $100,000, whereas 27% of cases in Sample 3 declared an amount-in-controversy in that range.

COMPLIANCE WITH DISCOVERY RESTRICTIONS

The EARs discovery restrictions are central to the intent of the rules to lower the costs of discovery and expedite the litigation overall. Under the rules, all discovery must be conducted during the discovery period, "which begins when the suit is filed and continues until 180 days after the date the first request for discovery of any kind is served on a party."[21] The rules provide specific limitations on discovery for EAR cases, including a limit of six hours of oral depositions, 15 interrogatories, 15 requests for production, and 15 requests for admissions. As in the prior analysis, the survey investigated the extent to which attorneys complied with these limitations and their perspectives with regard to discovery in these cases more generally.

Surveyed attorneys reported very high compliance with the discovery restrictions on EAR cases. The parties completed depositions in six hours or fewer in 83% of cases subject to the EARs. Requests for production and requests for admission numbered fewer than 15 for both sides in all but three cases. Responses to the attorney survey suggested that the amount of discovery in EAR cases has increased over time in comparison with the prior study, most likely due to the increase in tort cases in both the county and district courts.

Table 8: Compliance with Discovery Restrictions on Expedited Actions Cases in Attorney Survey Sample*

		PERCENT COMPLIANCE	
	EXPEDITED ACTIONS REQUIREMENTS	PLAINTIFF/ PETITIONER	DEFENDANT/ RESPONDENT
Average Number of Fact Witnesses		2.29	1.63
Average Number of Expert Witnesses		1.70	0.71
Time for Oral Depositions	6 hours	91%	95%
Requests for Production	15	95%	88%
Requests for Admissions	15	100%	94%
Requests for Disclosures	Unlimited	N/A	

* Only cases known to be subject to EARs (n = 25)

21 TX R. CIV. PROC. Rule 190.2(a)(1).

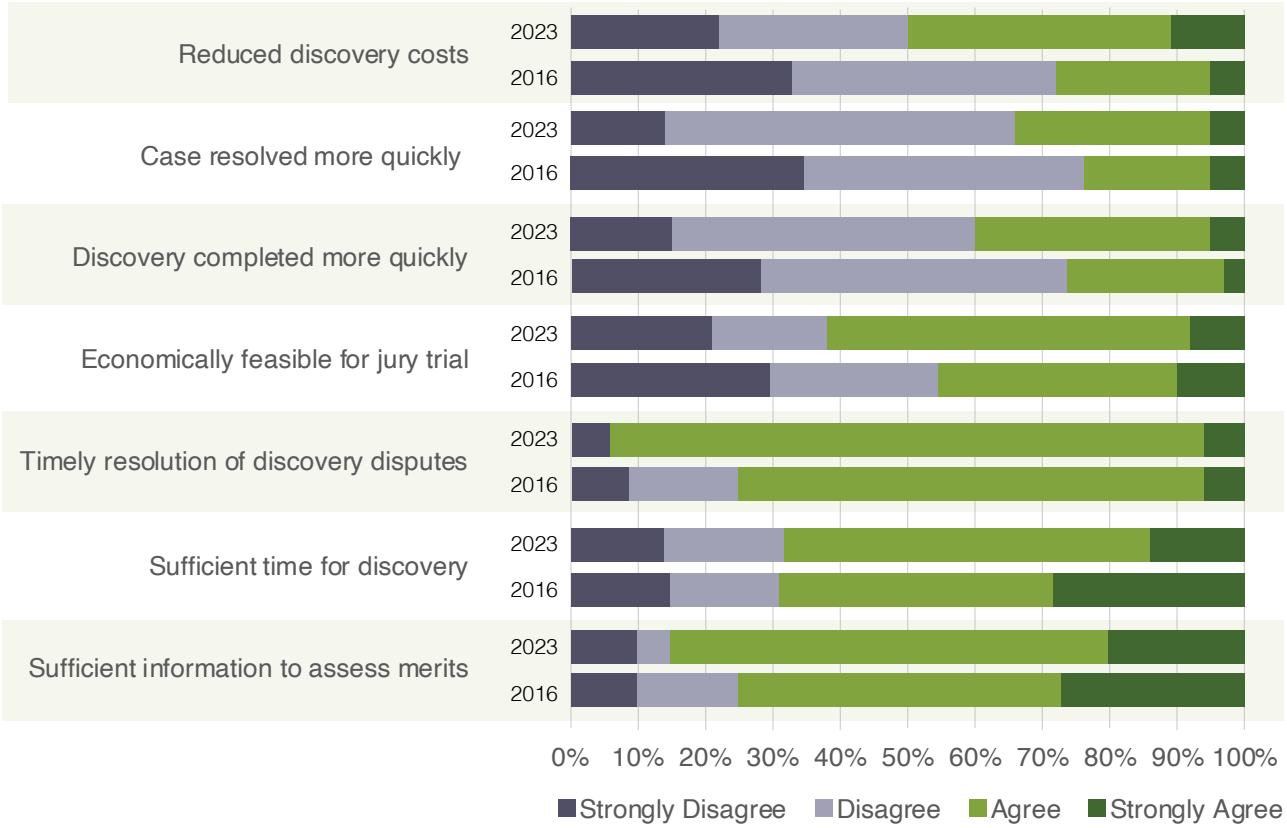
Table 9: Proportion of Discovery Exceeding Zero

	REPORT YEAR	PLAINTIFF/PETITIONER	DEFENDANT/RESPONDENT
Depositions	2023	38%	42%
	2016	12%	12%
Requests for Production	2023	76%	61%
	2016	41%	36%
Requests for Admissions	2023	33%	28%
	2016	26%	9%
Requests for Disclosures	2023	85%	74%
	2016	54%	45%

The survey provided useful insight into attorney perspectives on the impact of the rules on discovery. Almost all (94%) agreed or strongly agreed that discovery disputes were resolved in a timely manner; 85% agreed or strongly agreed that the standard discovery provided sufficient information to inform their assessment of the merits of the case; and 63% agreed or strongly agreed that it was economically feasible to try the case to a jury.

Attorney opinions about the EARs were more positive than in the previous evaluation. More than two-thirds (68%) agreed or strongly agreed that the amount of time permitted was sufficient to complete discovery in the case, which is similar to 69% of attorneys who reported sufficient time to complete discovery in the prior study. When asked if discovery costs were lower due to the restrictions imposed by the EARs, exactly half of the attorney respondents agreed or strongly agreed, up from 28% in the prior study. However, only 40% agreed or strongly agreed that discovery was completed more quickly due to the restrictions imposed by the EARs. The interviewed attorneys recognized that the restrictions on discovery promoted efficiency and helped focus discovery. Attorneys noted decreased gamesmanship, increased cooperation, and increased negotiation between the parties. Together, the result has been reduced time and costs associated with these cases.

Figure 5: Attorney Opinions, by Study Year



MOTIONS TO MODIFY DISCOVERY

As in prior analyses, the project team hypothesized that litigants who were aware of the rules would be similarly aware of the applicable discovery deadlines and would seek modifications to the discovery schedule if needed. Motions to modify discovery were filed in less than 1% of the cases in Sample 1, but in 5% of the cases in Sample 2, which strongly suggested that attorneys were aware of the rules and sought permission for additional discovery or a longer timeframe to complete discovery. These motions were filed on average 13 months after filing in Sample 1 compared to 7 months after filing in Sample 2. In Sample 3, however, motions to modify discovery were virtually absent. They were filed in only two cases, 5 months and 7 months after filing, respectively.

Survey responses shed some light on the disappearance of motions to modify discovery. Only one attorney in the survey reported filing a motion to expand the number of deposition hours, and the motion was granted. The interviews with attorneys and judges reflected differing views about seeking permission for expanded discovery. While attorneys reported that lawyers generally comply with the rules, there was also a recognition that some attorneys work around the rules of discovery. Examples of workarounds included pleading a higher level of damages, pleading a higher discovery level, and agreeing amongst themselves to increased discovery. Judges generally did not have concerns with this flexible approach to the rules, deferring to the attorneys to manage discovery rather than strictly enforcing the discovery rules.

DISCOVERY DISPUTES

Another working hypothesis about the EARs is that the reduced scope and amount of time for discovery would also reduce the incidence of discovery disputes. The proportion of cases in which discovery disputes arose declined from 5% in Sample 1 to 4% in Sample 2, and then again to 3% in Sample 3 of cases subject to the EARs. However, as indicated in Table 10, cases where motions arose involved more motions on average than was the case in previous samples.

Table 10: Discovery Disputes in County Court Cases, Subject to the EARs

	CASES WITH DISCOVERY DISPUTES		AVERAGE NUMBER OF MOTIONS
SAMPLE 1	104	5%	1.47
SAMPLE 2	98	4%	1.16
SAMPLE 3	18	3%	1.94

Table 11 depicts the proportions of cases with discovery disputes by court type in Sample 3. Cases subject to the EARs included fewer cases with disputes and fewer motions per case with disputes compared to those that were exempt from the rules. The difference is greater for district court cases than for county courts. Generally, the proportion of cases involving discovery disputes is higher among district court cases. However, district court cases subject to the rules were 58% less likely to involve disputes compared to cases exempt from the rules. For county cases, those subject to the rules were just 42% less likely to involve disputes compared to county cases that were exempt.

Table 11: Discovery Disputes by Court Jurisdiction (Sample 3)

		CASES WITH DISCOVERY DISPUTES		AVERAGE NUMBER OF MOTIONS	AVG DAYS TO 1ST ORDER ON MTN TO COMPEL/ PROTECTIVE ORDER
COUNTY COURTS	EAR Cases[22]	18	3%	1.94	338
	Exempt Cases	11	5%	2.55	376
DISTRICT COURTS	EAR Cases	17	4%	1.65	310
	Exempt Cases	84	9%	2.08 [23]	374

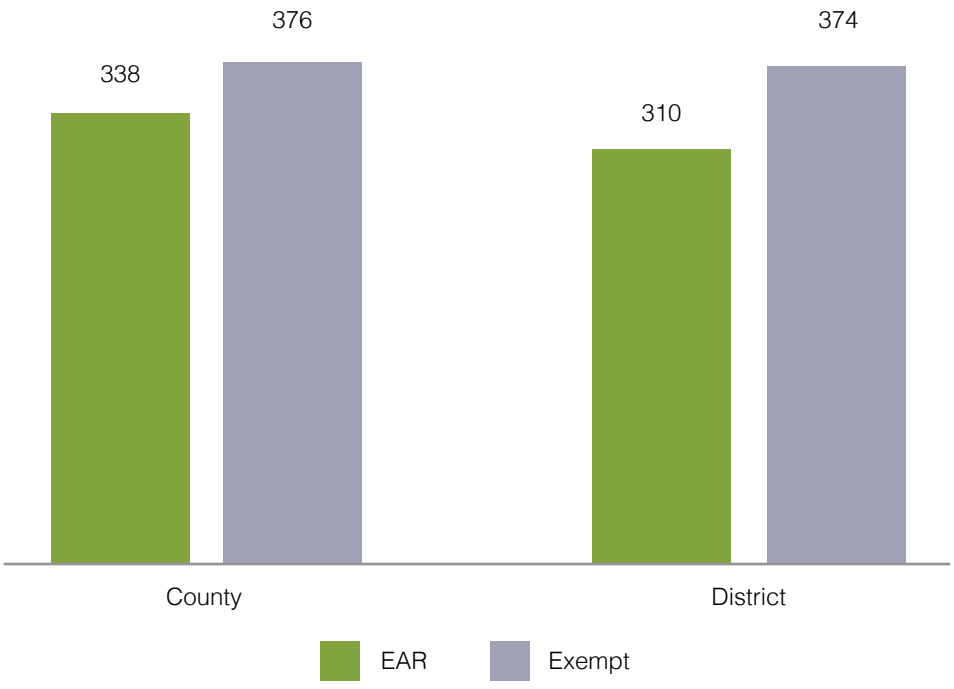
22 Cases include those with unknown status due to a missing amount in controversy or discovery level.

23 This average excludes one outlier district court case with 23 motions.

Additionally, when disputes arose in cases that were subject to the rules, they occurred earlier under the EARs. In Samples 1 and 2, the average days to the first motion to compel discovery or protective order served as an indicator for the timing of the dispute. For cases that were not exempt from the rules in Sample 2, the first such motion was filed on average 225 days after the case was filed. This was 66 days earlier than the average first motion filed in Sample 1—before the rules were implemented.

While the date of the first motion to compel or motion for a protective order would be a better indicator for the timing of the dispute, these dates were not collected from the casefiles in Sample 3. Instead, the first order on discovery motions served as a proxy for indicating the timing of the dispute, as displayed in Figure 6. For county courts, the average days between filing and the first order on a motion to compel discovery or a protective order were 38 days shorter for cases subject to the rules than for those that were exempt. For district court cases, the difference was 64 days. Although an exact comparison with the previous evaluation was not possible, these data suggest the EARs accelerate the timeframe for filing discovery motions.

Figure 6: Average Days to First Order on Motion to Compel/Protective Order



CASE OUTCOMES

Sample 3 included cases filed on or before July 1, 2018, with the intention that they would have had the opportunity to dispose prior to the COVID-19 pandemic. While Texas did not officially close their courts during the early months of the pandemic, the pandemic affected the manner of and time to disposition for civil cases more than for criminal cases, which have legal priority. To account for this, the project team treated cases not disposed by March 13, 2020, as pending (n = 696)—as if the study end date corresponded to the Texas start date of the pandemic.[24]

The project team recoded case outcomes as cases with a meritorious disposition (i.e., by settlement, by summary judgment, or by bench or jury trial) and cases closed by non-meritorious dispositions (i.e., default judgment, non-suits, and dismissals). Across all three samples, the time to disposition for non-meritorious cases was longer than for meritorious cases.[25] In subsequent time-to-event analyses (survival analyses), the project team removed cases with a non-meritorious disposition because the EARs should have little impact on measures of civil processing for these dispositions.

The project team compared case outcomes across each sample for cases that were and were not subject to the EARs, based on the amount in controversy. If a case was missing information for the amount in controversy, it was treated as subject to the EARs. Table 12 presents the frequency and the proportion of meritorious cases, as well as the frequency and overall proportion of non-meritorious cases across each sample, of cases subject to the Texas EARs.

The proportion of settlements has increased steadily since Sample 1. Three in four cases subject to the EARs settled in Sample 3. The proportion of judgments entered has also increased in each sample, with Sample 3 having the highest proportion of judgments entered across all samples. Conversely, the frequency of bench and jury trials decreased significantly to only a single trial subject to EARs in Sample 3. It is likely that the pandemic has had an outsized impact on trial rates in Sample 3. In the previous study, trial rates decreased and the time from filing to trial increased. The proffered explanation was twofold. Cases more amenable to settlement did so, leaving more complex and contested cases that required more time to prepare for trial. In addition, some judges balked at prioritizing EARs cases for trial while older cases were pending.

24 Case outcomes in district and county courts were compared before and after March 13, 2020. Preliminary analyses revealed differences in the manner of disposition. Specifically, settlements and non-meritorious dispositions increased in post-pandemic cases in county court.

25 A default judgment will be entered even for cases in which an answer was filed if the defendant subsequently fails to respond to discovery requests. It is more difficult to discern whether the parties engaged with one another when the case resolves by dismissal. A nonsuit may reflect a settlement with the agreement that the plaintiff withdrew the case to prevent a negative credit record for the defendant. Dismissals may reflect either settlements or simply abandonment by the plaintiff, resulting in the case eventually being dismissed for failure to prosecute. These cases were excluded from analyses because the legal disposition does not indicate the extent to which the parties engaged in litigation activities that should have been governed by the EARs.

The result was that attorneys followed the rules, completed discovery, and then were not given a timely trial setting.

That experience continues and has been exacerbated by the pandemic, which has increased the time to trial and created backlogs. In interviews, judges and attorneys alike noted the high number of cases on the dockets and the fact that the trial date is often not set within the period required by the rules. Attorneys shared that the discovery process has been expedited, but the court has not corresponded with earlier trial settings, leaving the parties to pursue settlement in order to move these cases to resolution. Looking to the survey data with regard to case resolution, only one-third of surveyed attorneys felt that the case was resolved more quickly due to the restrictions imposed. This is consistent with the prior study, where the majority of attorneys reported no change in the time to dispose of their cases.

Table 12: Case Outcomes for Cases Subject to the EARs across Samples

	SAMPLE 1		SAMPLE 2		SAMPLE 3	
	N	%	*N*	%	*N*	%
Settlement	827	47	808	60	324	75
Judgment Entered	82	5	80	6	55	13
Summary Judgment	314	18	149	11	51	12
Bench or Jury Trial	523	30	313	23	1	<1
Meritorious Total	1,746		1,350		431	
Non-Meritorious	89	4	113	5	197	21
Pending	166	8	915	39	325	34
TOTAL	2,001		2,378		953	

Note. A considerable proportion of cases from Sample 3 had meritorious dispositions but were recoded to "pending" to control for pandemic effects in disposition (especially in district cases); as such, Sample 3 is much smaller than the previous samples.

TIME TO DISPOSITION

One of the hypothesized impacts of the EARs is that cases would resolve in a more timely manner, especially meritorious cases. The project team compared time to disposition, measured in days from case filing to disposition, with pending cases included as "censored" observations at the time of the data extracts for each sample. Because cases filed in earlier years would have more opportunity to dispose, it would be problematic to compare the average time to disposition for each sample.

To account for this, the project team employed the Kaplan-Meier survival statistical analysis, which can also be termed a time-to-event analysis.[26] This technique estimates the probability that a case would be fully disposed at any given point in time. Applied to our research questions, the function models how long a case "survives" as a pending case before being disposed, also known as time from filing to disposition. For pending (censored) cases, for which the time to disposition is unknown, this is estimated. [27] When comparing groups, the amount and pattern of censoring should be similar across groups. Our data have similar proportions of censored data for Samples 2 and 3, but far fewer censored cases in Sample 1. Another limitation is that the time at risk (amount of time the case is under the study observation period) differed by phase. Once the cases not disposed by the time the pandemic began were set as "pending", the maximum time at risk was lower in Sample 3 (620 days), as compared to Sample 2 (730 days), both of which were much lower than Sample 1 (1,460 days).

Each of the following survival function figures represents the time to disposition (in days) on the x-axis and the proportion of cases that were pending ("surviving") on the y-axis; each line represents the strata of interest (i.e., sample, jurisdiction, case type). A vertical drop in the survival curve indicates an event, and the curve tick marks represent the censored cases.[28] Under each figure is a table that represents the number of cases "at risk" (open and pending) at each increment of the x-axis.

---

26 The Kaplan-Meier method (Kaplan & Meier, 1958), also known as the "product-limit method", is a nonparametric method used to estimate the probability of survival past the given time points (i.e., it calculates a survival distribution). Furthermore, the survival distributions of two or more groups of a between-subjects factor can be compared for equality. Survival curves were calculated using the R package 'survival' (survfit) in R.4.2.2; Therneau, T.M. (2023), at https://cran.r-project.org/web/packages/survival/survival.pdf

27 While the total time to disposition of a censored case is not known, the fact that the case "survived" at least until the time it was censored is factored into the overall survival rate probabilities.

28 Each tick indicates the known minimum time of survival for a censored case, or, in other words, the age of a pending case at the time of the data extract or the pandemic start. After the first case is censored the survival curve becomes an estimate since it is unknown when censored cases would have disposed. Thus, the more cases are censored, the less reliable the survival curve becomes.

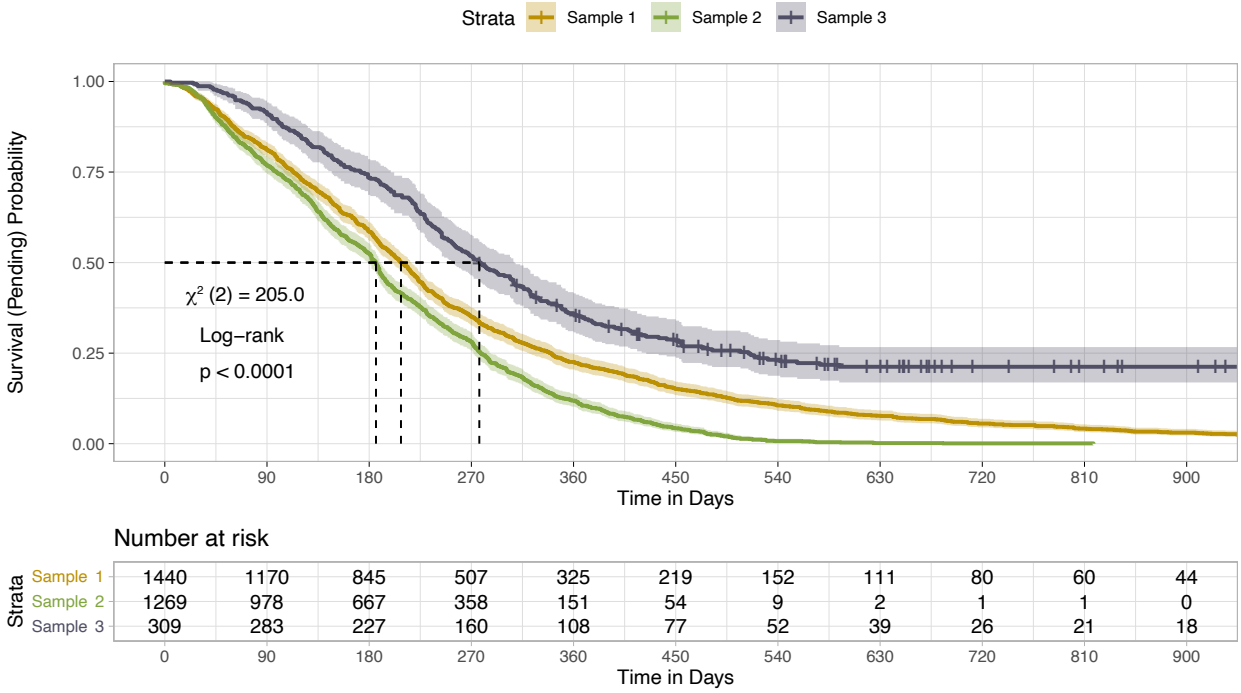
The figures below answer the following research questions:

- Has the median time to disposition remained consistent for pre-implementation (Sample 1), implementation (Sample 2), and post-implementation (Sample 3) for county court cases that are subject to the EARs?
- How does the median time to disposition differ for cases subject to the EARs and not subject to the EARs, within each court type?
- How does the median time to disposition differ for county and district court cases subject to the EARs in Sample 3?
- When examining specific case types (automobile torts and debt collection/contract cases), has the median time to disposition remained consistent for pre-implementation (Sample 1), implementation (Sample 2), and post-implementation (Sample 3) for county court cases that are subject to the EARs?

Cases Subject to EARs in County Courts by Study Sample

To estimate whether the EARs are still having their desired effect on time to disposition in Sample 3, as compared to the previous samples, the first survival function estimated the probability of surviving for county court cases subject to the EARs that were disposed meritoriously. As illustrated in Figure 7, when the EARs were first implemented (Sample 2), the disposition rate was faster than before the EARs were implemented (Sample 1). However, the most recent data indicated a much higher median time to disposition in Sample 3, as compared to the previous samples. On the filing date (Day 0) 100% of cases in all three samples were pending and the survival curves overlap for the first month. However, at that point they begin to diverge and the probability that a case in Sample 3 is still pending decreases at a slower rate than for Samples 1 and 2. After 180 days, the probability that a case in Sample 3 was still pending was about 75%; the probability that a case in Samples 1 and 2 was less than 60%. Half of Sample 1 cases disposed within 208 days compared to 186 days in Sample 2 and 277 days in Sample 3. These were statistically different according to the log rank test.

Figure 7: County Cases Subject to EARs with Meritorious Dispositions, by Sample



Meritorious Cases by Court Type and by Whether Subject to EARs

Cases that are not subject to the EARs have a higher amount in controversy and are presumed to have greater discovery needs; as such, cases not subject to the EARs would be expected to take longer to dispose than cases subject to the EARs. The time to disposition for meritorious cases in Sample 3 was compared to the time to disposition for meritorious cases by whether they were subject to the EARs, within county courts (Figure 8) and district courts (Figure 9), respectively. In county court, cases that were not subject to the EARs had a greater median number of days to disposition (467 days) as compared to the cases that were subject to the EARs (277 days). In district court, cases subject to the EARs had a median disposition time of 333 days. The median could not be calculated for cases not subject to the EARs in District Court because there were an insufficient number of disposed cases by March 13, 2020.

Figure 8: County Cases Subject to EARs with Meritorious Dispositions (Sample 3)

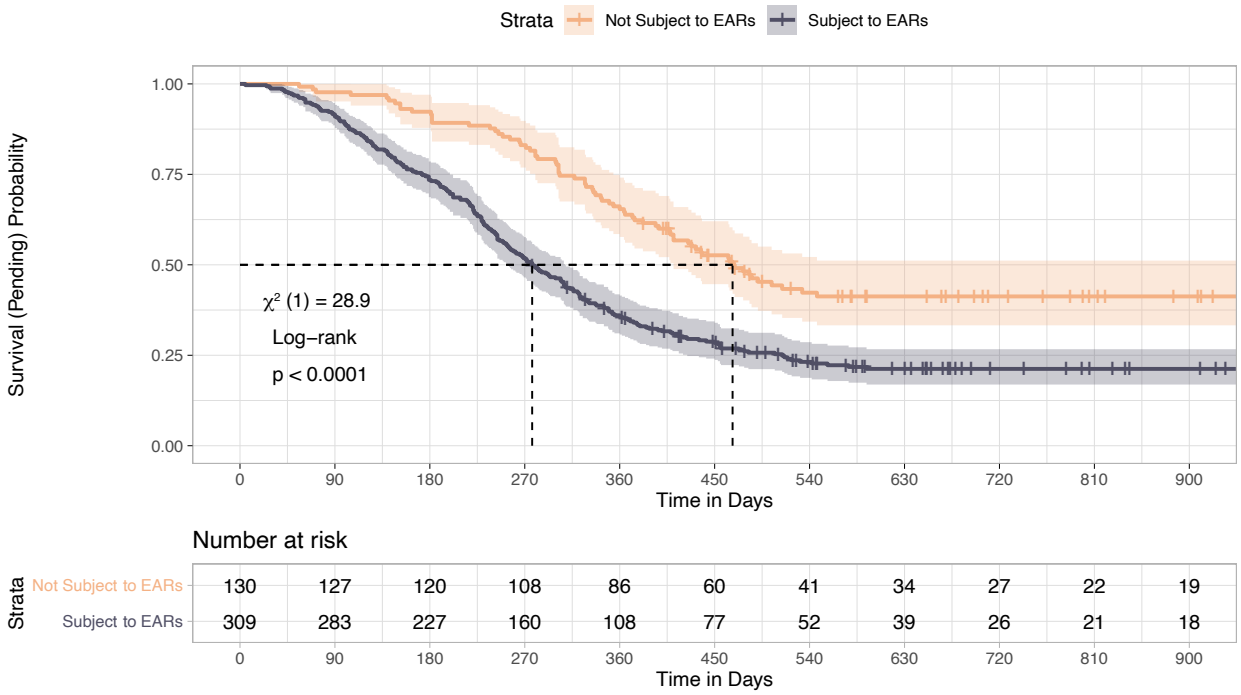
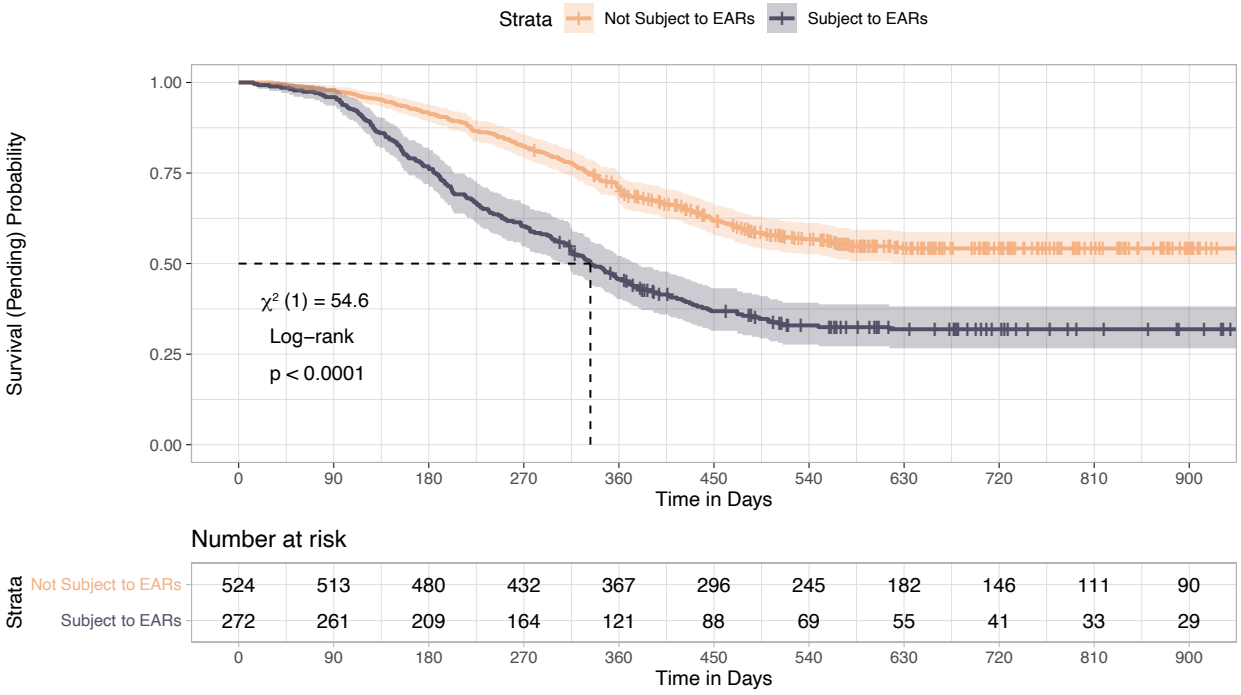


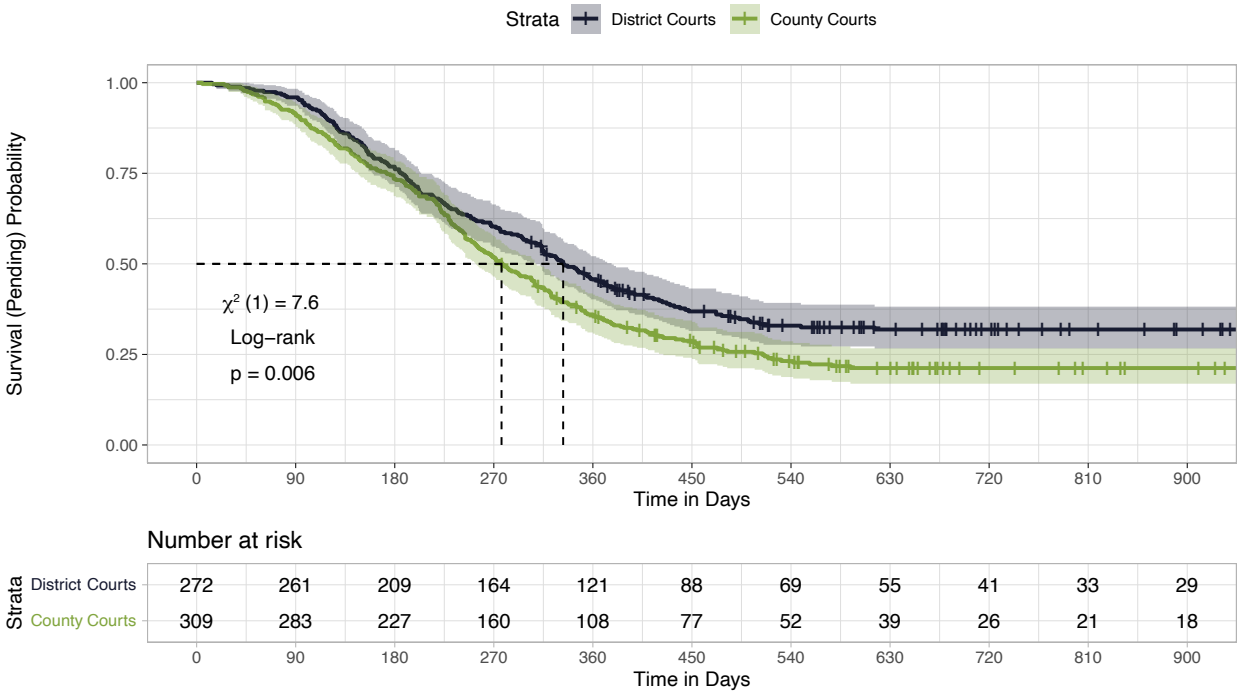
Figure 9: District Cases Subject to EARs with Meritorious Dispositions (Sample 3)



Cases Subject to EARs in District and County Courts (Sample 3)

To examine how cases in district and county court may differ in terms of median time to disposition, the survival function in Figure 10 estimated the probability of surviving for county court and district court cases from Sample 3; again, these included cases that were subject to the EARs and that were disposed meritoriously. At the median, EARs cases in county courts disposed approximately two months (57 days) earlier than EARs cases in district courts, which was statistically different according to the log rank test. Differences between the two jurisdictions are not large, as evidenced by the overlapping confidence intervals. County court cases would be expected to have a much shorter time to disposition than district cases because cases filed in county court should have an average amount in controversy lower (and less complex cases) than cases in district court.

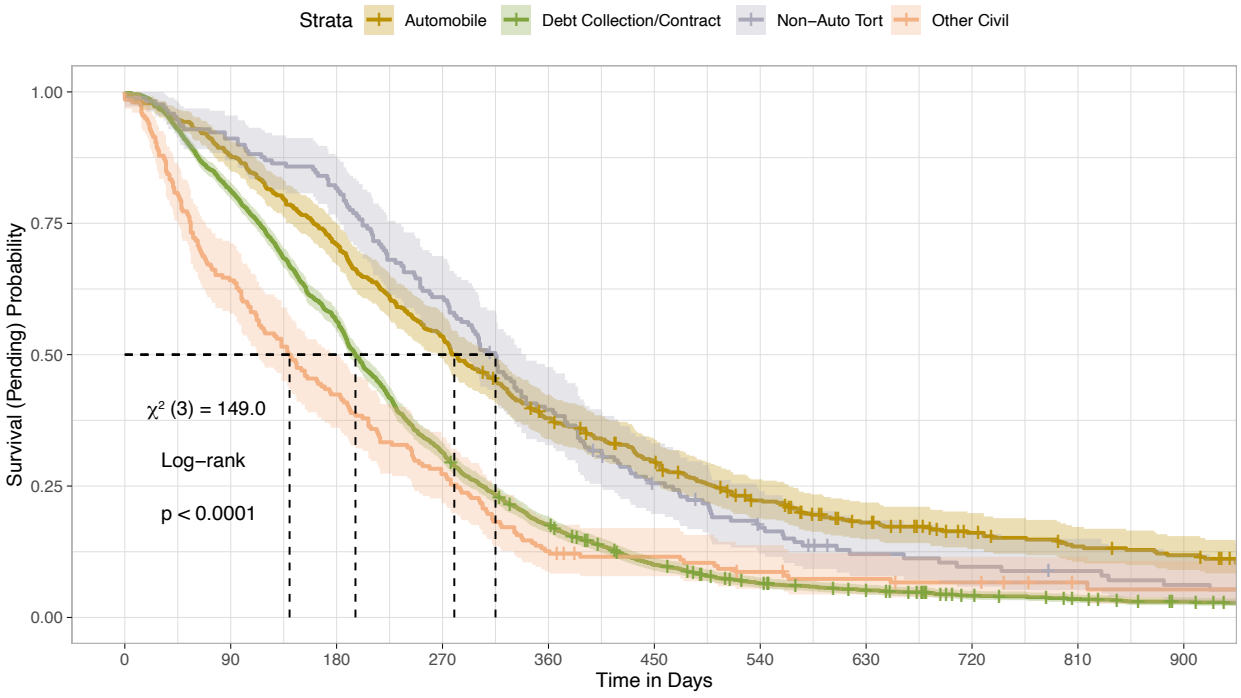
Figure 10: District and County Cases Subject to EARs with Meritorious Dispositions (Sample 3)



Case Types

Because time to disposition was not considerably different for county and district courts in Sample 3, and district courts transfer cases to county courts in times of backlog, the following comparisons collapse Sample 3 cases into case type categories. To compare median time to disposition by case type, the survival function in Figure 11 estimated the probability of surviving for cases that were subject to the EARs and that were disposed meritoriously (both county and district courts). Data revealed that "other" civil cases typically have the fastest time to disposition (median: 140 days), followed by debt collection/contracts (median: 196 days). Cases taking longest to dispose are non-automobile torts (median: 315 days) and automobile torts (median: 280 days), which were statistically different according to the log rank test. The confidence intervals surrounding each give us a sense of how variable time to disposition is within each of these case types. For instance, non-automobile tort cases and "other civil" cases display much more variability, evidenced by the wider color around the lines, whereas debt collection/contract cases are less variable, suggesting they may be less complex/are more predictable in terms of discovery and evidentiary needs.

Figure 11: District and County Cases Subject to EARs with Meritorious Dispositions by Case Type



Automobile Torts by Sample

Figures 12 and 13 display estimates of differences for automobile tort and debt collection cases across samples. These case types were the most frequent types of cases and thought to differ by how much discovery would be needed for each of these types of cases. Automobile torts likely require more discovery due to the nature of damages and complexity of the case, whereas debt collection/contract cases tend to be less complex.

For automobile tort cases in both district and county courts, the median days to disposition were 322 days in Sample 1, 198 days in Sample 2, and 396 days in Sample 3, which were statistically different according to the log rank test (Figure 10). For debt collection/contract cases in both district and county courts, the median days to disposition are shorter than automobile torts across all samples. The confidence intervals for debt collection/contract cases, especially in Sample 1 and Sample 2 suggest less variability in disposition times. Contrast this with the confidence intervals in Sample 3 that are wider, suggesting that disposition times were more variable during this sample (Figure 13). The median days to disposition were 197 days in Sample 1, 182 days in Sample 2, and 276 days in Sample 3, and which were statistically different according to the log rank test.

Figure 12: Automobile Tort Case Types by Sample

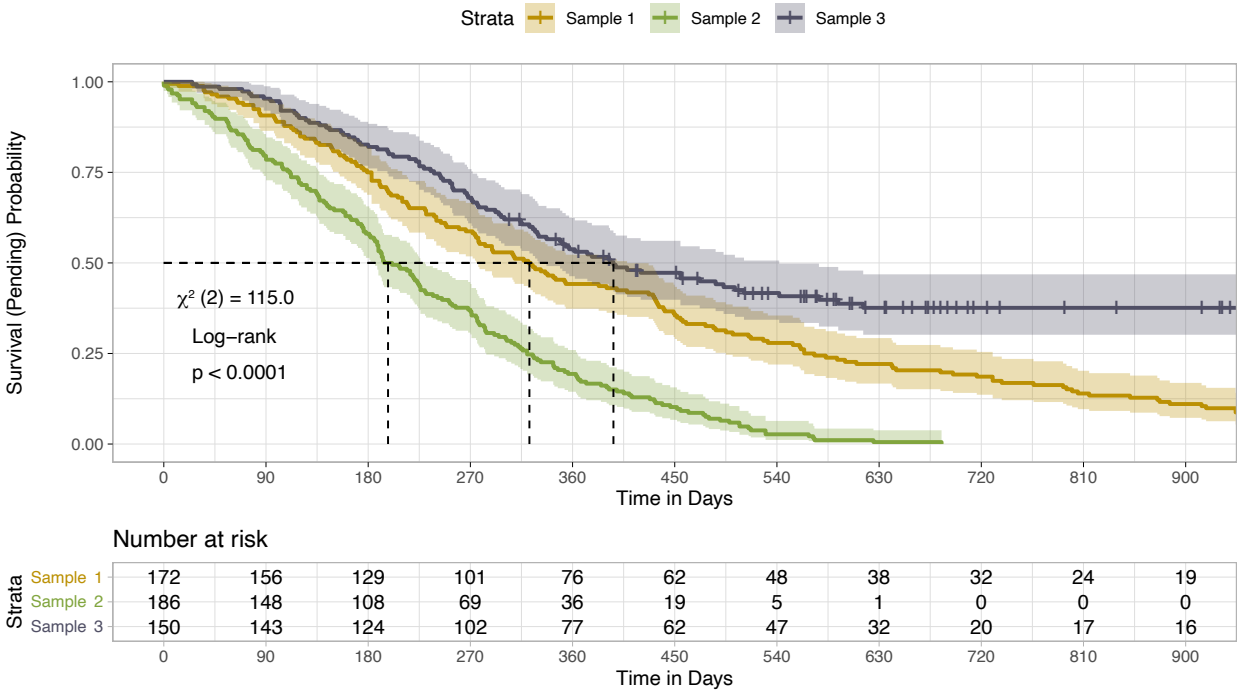
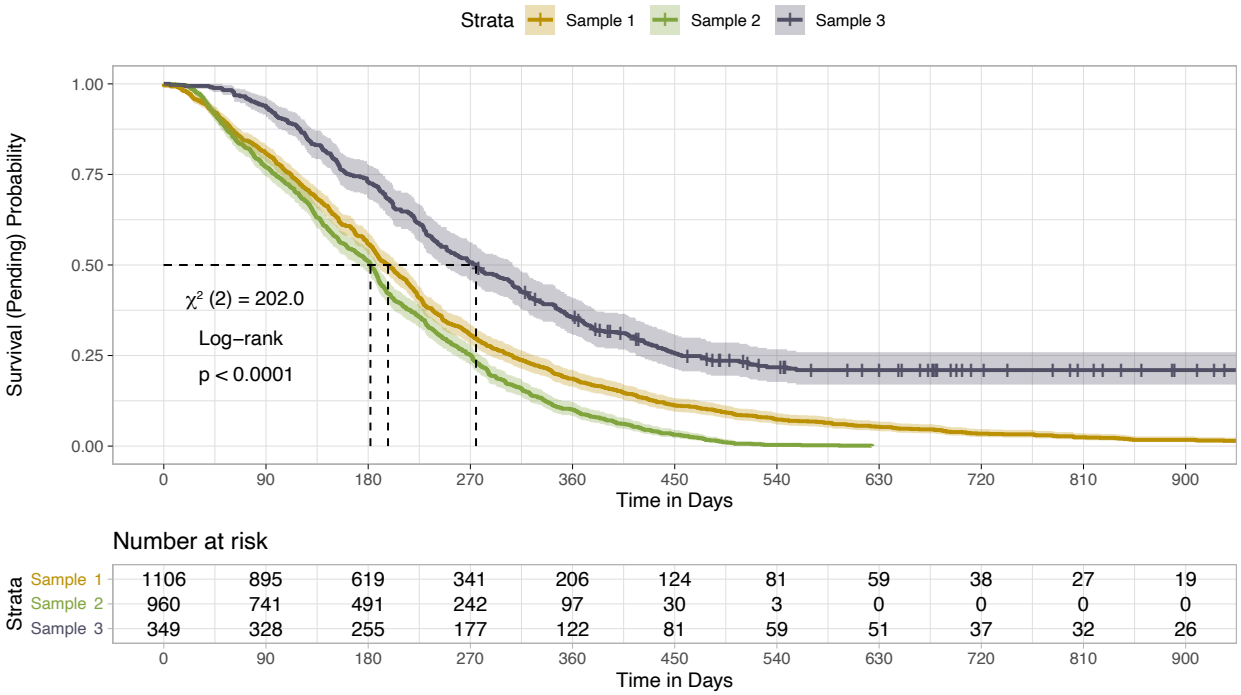


Figure 13: Debt Collection and Contract Case Types by Sample



When comparing the figures for automobile torts (Figure 12) and debt collection/contracts (Figure 13), there are some notable patterns across the samples that could provide insight into whether case types have influenced time to disposition. With respect to automobile cases, there is a large gap between Sample 1 and Sample 2, suggesting that the EARs significantly decreased time to disposition for automobile tort cases when first implemented. In Sample 3, however, civil case processing time for automobile tort cases had reverted to pre-EARs implementation. The confidence intervals for the survival curves overlap completely, indicating that there is no significant difference between Sample 1 and Sample 3 for automobile torts.

With respect to debt collection/contract cases, just after implementation of the EARs in Sample 2, the survival probability for debt collection/contract cases was relatively similar to what was occurring in Sample 1 before the EARs were implemented (the confidence intervals cross, suggesting little difference), especially on the earlier end of the median (days 0 to 180). After approximately nine months, however, debt collection/contract cases in Sample 2 began resolving at a faster rate compared to Sample 1. In Sample 3, however, debt collection/contracts cases are resolving at much slower pace compared even to Sample 1. The median time-to-disposition for Sample 3 debt collection/contract cases is approximately three months longer than the earlier samples. At the point that three-quarters of debt collection/contract cases had fully resolved in Samples 1 (315 days) and 2 (270 days), the lag in disposition time for Sample 3 cases had extended to almost six months (450 days).

CASE MANAGEMENT: ADDITIONAL INSIGHTS FROM THE SURVEY AND INTERVIEWS

Both attorneys and judges provided insights into which cases were best suited for the EARs. They agreed that cases with limited damages fit well within the EAR framework—including debt collection cases, contract disputes, and straightforward personal injury cases—because less discovery is needed, and the parties benefit from expedited resolution. On the opposite side of the spectrum, judges and lawyers agreed that more complex cases, such as cases with multiple expert witnesses and/or complex medical issues, are not well suited for the rules. With the recent increase to $250,000, there are more cases that may fall into this category.

When it comes to application of the rules, as discussed in the prior study, the EARs are not as strictly enforced as suggested by the rules. Respondents felt attorneys generally complied with the rules, but there were exceptions. Attorneys reported that it is difficult to follow the required timeframes given their case volume and time pressures.[29] In addition, parties frequently stipulate around the rules when the parties believe the discovery restrictions are not appropriate for the case. While attorneys responded that removal from the rules is easy, they also left the impression that many do not seek removal because of their ability to stipulate around the rules.

Judicial Enforcement of EARs

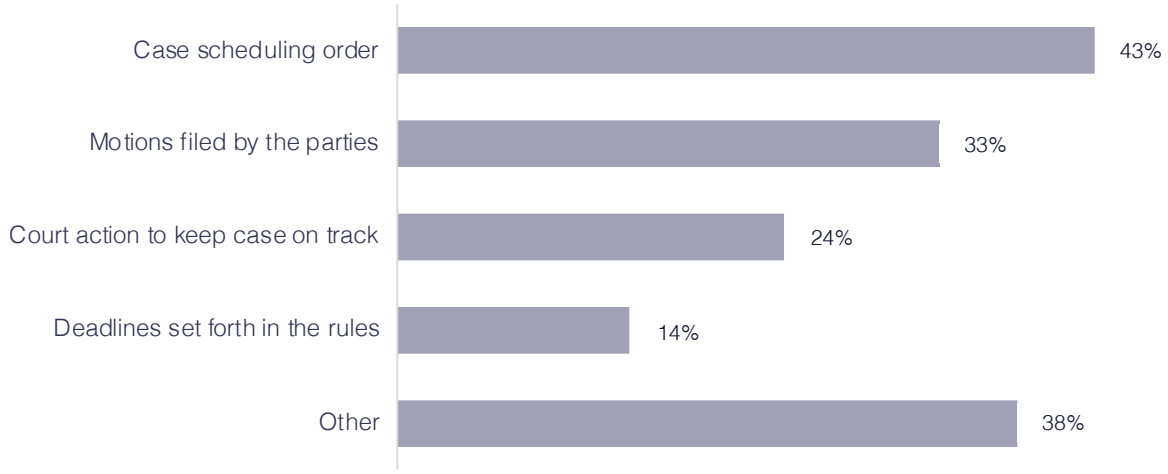
Judges and attorneys alike recognized that they fall short on enforcement. Only 35% of attorneys in the survey felt the EARs were consistently enforced by the court. The majority (65%) disagreed or strongly disagreed that the rules were consistency enforced. This is less than the 80% of attorneys in the previous study who felt that judges "never enforce" the EARs.[30] A key takeaway from the prior evaluation was this lack of consistent enforcement, which limited the impact of the rules. Today, the key takeaway is that the scheduling order and corresponding expedited deadlines articulate the scope and timing of discovery, but these are not consistently followed by attorneys or enforced by judges.

29 One recommendation of the prior evaluation was to "[r]eview reported instances of conflicts between the Expedited Actions Rules and other evidentiary or procedural rules, and make appropriate amendments as necessary. Hannaford-Agor & Graves, *supra* note 4, at 33. The interviews highlighted a potential conflict between the current rules and Section 51.014 of the Texas Civil Practice and Remedies Code, which provides for appeals from interlocutory orders. The condensed discovery deadlines under the expedited actions rules reportedly create a timing challenge with automatic stays under 51.014.

30 Hannaford-Agor & Graves, *supra* note 4, at 43.

The prior evaluation also highlighted that courts did not have procedures in 2013 to identify EAR cases, to alter docketing, or to enforce the rules. The judges previously shared that they rarely enforced the EARs unless specifically requested to do so by the parties. Today, the courts continue to rely on attorneys to manage and resolve these cases. These cases are not consistently identified for the parties or in the CMS, nor are they flagged and purposefully managed differently. This is particularly true for those cases with a central docket. While attorneys are generally positive about the rules and have found them to focus discovery and expedite the process, there is opportunity for even greater impact with improved case management practices.

Figure 14: Attorney Opinions on Events that Keep the Case Moving Toward Final Resolution



Conclusions and Recommendations

The previous evaluation found that cases filed after the EARs were implemented in 2012 settled at higher rates and resolved significantly faster than cases filed before the rules went into effect. Ironically, many attorneys in that study claimed ignorance that their cases were subject to the EARs and judges reported that they had made no changes in case management practices in response to the rule changes. It appeared that case scheduling orders that specified deadlines and other restrictions on discovery were the most likely contributors to more timely and effective case management.

Since 2016, however, Texas trial courts have experienced an unprecedented number of disruptions, including natural disasters, high levels of turnover in both the bench and court staff positions, and, of course, a global pandemic, that exacerbated severe declines in civil clearance rates across the state.

The present evaluation was designed to determine the extent to which improvements in EAR cases had been sustained in the county courts and to extend the examination to EAR cases filed in the district courts. OCA, NCSC, and IAALS employed the same methods as the previous evaluation, including a docket-level study of case characteristics and outcomes, surveys with attorneys who were named as counsel of record in EARs cases, and interviews with judges, attorneys, and court coordinators.

A threshold question for the evaluation was the extent to which attorneys complied with the EARs, including whether plaintiffs declared the amount-in-controversy required by Rule 49(c) so that courts could determine at filing whether the case should be governed by the EARs. In this respect, Sample 3 cases were considerably more likely to comply with this requirement than either of the previous samples. Only 7% of cases filed in county courts and less than 4% of cases filed in district courts failed to declare the amount in controversy compared to 30% and 35% in Samples 1 and 2, respectively. Despite this positive indication, there was still a continued lack of awareness by attorneys when the EARs apply. Approximately one-third of cases in which the amount in controversy was declared at $100,000 or less, and thus should have been managed as EAR cases, requested discovery level 2 rather than discovery level 1 as required by Rule 190 (Discovery Limitations). Another indication of the lack of awareness of EARs requirements was the almost complete absence of motions to modify discovery, which would have been expected if attorneys felt that the time and scope of discovery allowed under the EARs was insufficient given the complexity of the case.

This theme carried through the survey and interviews as well. Of the attorneys surveyed, 72% indicated that their cases were not subject to the EARs despite being presumptively EARs cases based on amount in controversy or discovery level. In the interviews, several of trial judges explained

that they were unable to distinguish EARs from non-EARs cases in their dockets, and they did not implement different case management approaches for EARs cases.

The amendment to the rules in 2021 expanding the application of the EARs to cases up to $250,000 has exacerbated confusion with regard to the rules, their application, and the percentage of cases within the docket that are subject to the rules. The rule changes were implemented in the midst of the pandemic. Although bench and bar trainings have occurred to support effective implementation, it is likely the many disruptions mentioned above have undermined awareness regarding the expanded rules and their implementation.

The lack of awareness about the EARs on the part of attorneys is not new, of course. In the previous evaluation, this was the most surprising finding. Despite this, the EARs are continuing to have a positive impact on civil case processing. In both county and district court, for example, EARs cases had fewer discovery disputes compared to cases that were exempt from the EARs. When they did occur, discovery disputes in EAR cases involved fewer motions and were filed significantly earlier than exempt cases.

The attorney surveys and interviews underscored the positive impact of the rules. Sample 3 attorneys were more positive about the impacts of the rules compared to attorneys in the previous study, and discussions with attorneys highlighted that the rules are achieving many of their intended goals, including more efficient and focused discovery. Attorneys noted decreased gamesmanship, increased cooperation, and increased negotiation between the parties, all of which has led to reduced time and costs associated with these cases.

The rules work particularly well with certain case types, especially contract cases, debt collection, and personal injury cases involving limited discovery. The rules provide predictability, which contributes to efficiency and decreased costs. Judges and attorneys agreed that the rules are less effective for more complex cases, such as cases that require more expert witnesses or additional discovery beyond the limits in the rules. As the rules have expanded to cases up to $250,000, there are increasing instances where more complex cases fall within the rules. While the amended rules are not the focus of this study, the surveys and interviews suggested that attorneys are working around the rules of discovery when they believe it is warranted.

There has been a shift in case outcomes over time. Compared to Samples 1 and 2, EAR cases in Sample 3 saw a dramatic increase in settlements with a corresponding decrease in trials, some of which may be due to delays caused by the pandemic. Non-meritorious dispositions (dismissals, nonsuits) also increased across all cases. Discussions with attorneys shed some light on this increase in settlements. Attorneys shared that the discovery process has been expedited, but the court has not corresponded by setting earlier trial dates, leaving the parties to pursue settlement to move these cases to resolution. Judges shared that it is very difficult given caseloads and calendars to set these cases for trial within the timing of the rules. Although EAR cases in both

county and district courts disposed more rapidly than cases exempt from EARs, they did so at significantly slower rates than in Sample 2 and even in Sample 1. This is consistent with the trends in clearance rates across the state. While this is an issue that goes beyond EARs cases, a critical opportunity exists for improving case outcomes for EARs cases through consistent application and enforcement of the timelines in the rules.

The prior study noted that the EARs create some tension around trial settings for expedited versus non-expedited cases. Given the current caseloads and backlog following the pandemic, some judges expressed concerns about setting EAR cases for trial in advance of more complex cases that have been on the docket for a much longer period awaiting trial. While this may pose a theoretical conflict, the data reflects that EAR cases are not going to trial.

The need for more consistent enforcement extends beyond trial settings. Only 35% of attorneys in the survey felt the EARs were consistently enforced by the court. About two-thirds (65%) disagreed or strongly disagreed that the rules were consistently enforced. The numerous disruptions mentioned above have likely exacerbated challenges with effective enforcement, particularly the high turnover in judicial staff since 2016. The rules have had a positive impact, particularly in the area of discovery, but the full benefit of the rules has not been realized. While it has been over a decade since the rules were first implemented, the opportunity for more consistent case management remains.

Recommendation 1: Offer training both on basic case management principles and on the EARs, especially to new judges and court staff.

A fundamental principle of effective case management is that the court is responsible for the pace of litigation. Unfortunately, many district and county judges and court staff are unfamiliar with this basic tenet of court operations, leaving lawyers to manage the litigation process. Although court rules, including the EARs, provide direction to lawyers, the rules themselves are ultimately not self-enforcing. Courts must provide sufficient administrative infrastructure to ensure their compliance and to intervene as needed to keep cases on the path toward resolution, including for cases that appear to be languishing without discernible case activity. Such cases should regularly be identified and set for hearing to dismiss for lack of prosecution. Eliminating these cases clears the docket to allow judges and court staff to focus on cases that need judicial attention.

Recommendation 2: Empower and train court coordinators to assist in civil case processing.

In the previous evaluation, the case scheduling order issued by court coordinators at filing appeared to be the most significant factor in expeditious EAR case management. Attorneys were seemingly unaware that deadlines for significant case events had been moved earlier.

Judges likewise were unaware that cases set for trial had been filed more recently. Although the project team was unable to connect with court coordinators to conduct interviews, or gain insight into their awareness of the rules and efforts in support of their implementation, the deadlines that are being set appear to drive efficient discovery in these cases. It is important to continue to empower court coordinators, as their role is critical in providing expedited justice in these cases. The CCJ Civil Justice Initiative recommendations highlighted the importance of providing specialized training for court staff and empowering them to assume routine case management tasks, freeing the judge to focus on cases that require their unique judicial expertise and authority.[31] Ideally, training on civil case management should be delivered to court teams consisting of judges, clerks of court, and court coordinators with the intent to develop a coordinated plan for managing civil cases, including EAR cases.

Recommendation 3: Leverage technology to assist in civil case management.

Judges and court staff will be more capable of managing civil cases if supported by appropriate technology tools. Cases subject to the EARs should be identified as such in CMS at filing and tracked throughout litigation to ensure compliance with deadlines. Embedded deadlines in CMS can be displayed on judicial dashboards showing the status of cases, thus ensuring prompt attention to cases that are languishing.

Recommendation 4: Operationalize application of the rules from filing through case disposition.

The rules state that an original pleading shall contain a statement of the monetary relief sought, and the cases that involve $250,000 or less are expedited actions presumptively subject to the discovery restrictions under discovery level 1. While attorney compliance with the rule requiring specification of the amount in controversy has increased, this positive trend should be supported by requiring such a declaration at the time of e-filing. In addition, the parties should be required to designate a corresponding discovery level 1 within the system. This information should be transmitted from e-filing to the case management system, thereby enabling court coordinators and judges to effectively identify and manage these cases from filing through disposition. Designation of these cases by the attorneys in the pleadings, by court coordinators in the scheduling orders, and by the judges in setting timely trial dates is the key to driving success in these expedited actions cases. The more this designation is operationalized—and automated through technology—the more likely all parties will consistently apply and follow the rules, manage these cases effectively, and ultimately achieve the positive outcomes of these reform efforts.

31 A Call to Action, *supra* note 3, at 27-28.

Appendix A: Attorney Survey

According to the case management system for the [county] [court type], you are an attorney of record in the following case. Please review the information for accuracy.

For each item that is correct as is, please select "Correct."

For each item that is incorrect, please select "Incorrect" and provide correct information in the "Corrected Information" field.

	Please enter corrected information where appropriate.	Please indicate whether the information provided is correct or incorrect.	
	Corrected Information	Correct	Incorrect
Case Number:		o	o
Case Name:		o	o
Case Type:		o	o
Representing:		o	o
Filing Date (MM/DD/YYYY):		o	o
Disposition Date (MM/DD/YYYY):		o	o

Was this case subject to the Texas Expedited Actions Rules?

- o Yes
- o No

Did the court identify the case as an Expedited Action case?

- o Yes
- o No

How did the court identify the case as an Expedited Action case?

- o Docket
- o Scheduling Order
- o Verbally during court conference/hearing/trial
- o Other (please describe) _____

Did any party file a motion pursuant to Rule 169(c) to remove the case from the Expedited Actions process? Please select all that apply.

- o Yes, I filed
- o Yes, the other party filed
- o No party filed
- o N/A, this case was never identified as subject to the Expedited Action Rules

What was the justification for removing the case from the Actions Rules? Please select all that apply.

- o The amount of monetary relief claimed exceeded the $100,000 threshold for expedited actions
- o Parties sought non-monetary relief in addition to money damages
- o Case presented legal or evidentiary issues requiring more discovery than permitted under the Expedited Actions Rules
- o Other justification (please describe) _____

Was the motion to remove the case from the Expedited Actions process granted?

- o Yes
- o No

Please indicate the amount of discovery undertaken by the parties in this case.

Indicate the number of ...	Plaintiff/Petitioner	Defendant/Respondent
Fact witnesses		
Expert witnesses		
Requests for production		
Requests for admission		
Requests for disclosure		
Hours (rounded to nearest 30 minutes) of depositions of witnesses		

Did you file a motion to expand the number of deposition hours?

- o Yes
- o No

Was the motion to expand the number of deposition hours granted?

- o Yes
- o No

Did you file a motion for continuance? If so, how many did you file?

- o Yes (please specify the number of motions filed) _____
- o No

Please enter the number of motions for continuance that were granted and the number that were denied.

Granted : _____

Denied : _____

Total : _____

For what reason(s) did you file motion(s) for continuance? Please select all that apply.

- o Additional time needed to complete discovery
- o Discovery of new evidence
- o Additional time for a response to newly disclosed information
- o Newly retained counsel
- o Other (please describe) _____

What, if any, events kept the case moving towards final resolution? Please select all that apply.

- o Deadlines set forth in the rules
- o Motions filed by the parties
- o Case scheduling order
- o Court action to keep case on track
- o Other (please describe) _____
- o None of the above

Indicate the extent to which you agree or disagree with the following statements based on your experience in this case.

	Strongly Disagree	Disagree	Agree	Strongly Agree	Not Applicable
The standard discovery permitted by Rule 190.2(b) provided sufficient information to inform my assessment of the merits of the opposing party's claims or defenses.	o	o	o	o	o
The amount of time permitted by Rule 190.2(b) was sufficient to complete discovery in this case.	o	o	o	o	o
Discovery disputes that arose in this case were resolved in a timely manner.	o	o	o	o	o
It was/would have been economically feasible to try this case to a jury.	o	o	o	o	o

Please indicate the extent to which you agree or disagree with the following statements.

	Strongly Disagree	Disagree	Agree	Strongly Agree	Not Applicable
Discovery was completed more quickly due to the restrictions imposed by the Expedited Actions Rules.	o	o	o	o	o
The case was resolved more quickly due to the restrictions imposed by the Expedited Actions Rules.	o	o	o	o	o
The discovery costs were lower due to the restrictions imposed by the Expedited Actions Rules.	o	o	o	o	o
The Expedited Actions Rules were consistently enforced by the Court.	o	o	o	o	o

You have reached the end of the survey and your answers will be saved when you click SUBMIT.

In addition to this survey, we will be conducting interviews of attorneys about their experiences with the Expedited Actions Rules. Would you be willing to participate in an interview about your experiences with the Expedited Actions Rules?

- o Yes
- o No

Appendix B: Interview Protocols

JUDGE INTERVIEW PROTOCOL

1. Describe your experience with cases subject to the Expedited Actions Rules.
2. Have you participated in any trainings on the Expedited Action Rules? What was the content of the training(s)? Who facilitated the training(s)?
3. What is the proportion of cases on your docket that are subject to the Expedited Actions Rules? (An estimate is ok.)
4. What is your court doing to identify Expedited Actions cases as they are filed?
5. What, if any, special case management protocols are used in your court to manage cases subject to the rule?
6. When the rules were enacted, many people anticipated that lawyers would inflate the amount of damages in order to avoid the application of the rules. Have you experienced that in your court? Explain.
7. Has the court created any procedures to ensure that EARs cases routinely comply with deadlines set forth in the case scheduling order?
8. To what extent are attorneys complying with the Rules? Are attorneys routinely stipulating around the Rules?
9. Have you noted any difference in the number of discovery disputes brought to you for resolution in cases under the Expedited Actions Rules compared to other actions?
10. Are there particular types of cases for which the Expedited Actions Rules are especially useful? If so, what are they and why?
11. Are there particular types of cases that are inappropriate for the Expedited Actions Rules? If so, what are they and why?
12. What has been the impact of the latest rule change to expand application of the Expedited Action Rules from $100,000 to cases up to $250,000?
13. What recommendations would you make to improve the effectiveness of the Rules?
14. Based on your experience, what are the most important things you've learned or believe we need to know about the Expedited Action Rules?

COURT COORDINATOR INTERVIEW PROTOCOL

1. Describe your experience with cases subject to the Expedited Actions Rules.
2. Have you participated in any trainings on the Expedited Action Rules? What was the content of the training(s)? Who facilitated the training(s)?
3. What is the proportion of cases on your docket that are subject to the Expedited Actions Rules? (An estimate is ok.)
4. What is your court doing to identify Expedited Actions cases as they are filed?
5. What, if any, special case management protocols are used in your court to manage cases subject to the rule?
6. When the rules were enacted, many people anticipated that lawyers would inflate the amount of damages in order to avoid the application of the rules. Have you experienced that in your court? Please explain.
7. To what extent are attorneys complying with the Rules? Are attorneys routinely stipulating around the Rules?
8. Have you noted any difference in the number of discovery disputes in cases under the Expedited Actions Rules compared to other actions?
9. Are there particular types of cases for which the Expedited Actions Rules are especially useful? If so, what are they and why?
10. Are there particular types of cases that are inappropriate for the Expedited Actions Rules? If so, what are they and why?
11. What has been the impact of the latest rule change to expand application of the Expedited Action Rules from $100,000 to cases up to $250,000?
12. What recommendations would you make to improve the effectiveness of the Rules?
13. Based on your experience, what are the most important things you've learned or believe we need to know about the Expedited Action Rules?

ATTORNEY INTERVIEW PROTOCOL

1. Please describe yourself and your practice: (e.g., plaintiff/defense orientation or mix practice, types of cases usually managing, number of years in practice).
    a. Plaintiff, Defense, or mixture of practice
    b. Areas of practice
    c. Type of practice
    d. Number of years in practice
2. Describe your experience with cases subject to the Expedited Actions Rules.
3. Are there particular types of cases for which the Expedited Actions Rules are especially useful? If so, what are they and why?
4. Are there particular types of cases that are inappropriate for the Expedited Actions Rules? If so, what are they and why?

5. How easy or difficult is it to get cases removed from the application of the rules when necessary? How often does this happen? If so, under what circumstances?

6. How have the Expedited Actions Rules changed your approach to civil litigation with respect to:

    a. case screening procedures,
    b. the types of cases you accept,
    c. the focus of discovery efforts, and
    d. negotiation strategies with opposing counsel.
    e. other?

7. To what extent are judges consistently enforcing the Expedited Actions Rules?

8. To what extent are attorneys complying with the Rules? Are attorneys routinely stipulating around the Rules?

9. Is the court clearly identifying cases as Expedited Actions Rules cases? How are they identified/ how is this communicated?

10. How have the Rules affected:

    a. Case outcomes?
    b. Damage awards?
    c. Litigation costs?
    d. Time to disposition?
    e. Trial rates?

11. What comments do you have about the impact of the Rules on the following:

    a. The sufficiency of the time to assess the merits of the case
    b. The sufficiency of time for discovery
    c. The timeliness of the resolution/completion of discovery
    d. The costs of discovery
    e. The resolution of the case

12. What has been the impact of the latest rule change to expand application of the Expedited Action Rules from $100,000 to cases up to $250,000?

13. What recommendations would you make to improve the effectiveness of the Rules?

14. Based on your experience, what are the most important things you've learned or believe we need to know about the Expedited Action Rules?

Civil Justice Initiative

ISBN: 978-0-89656-327-8