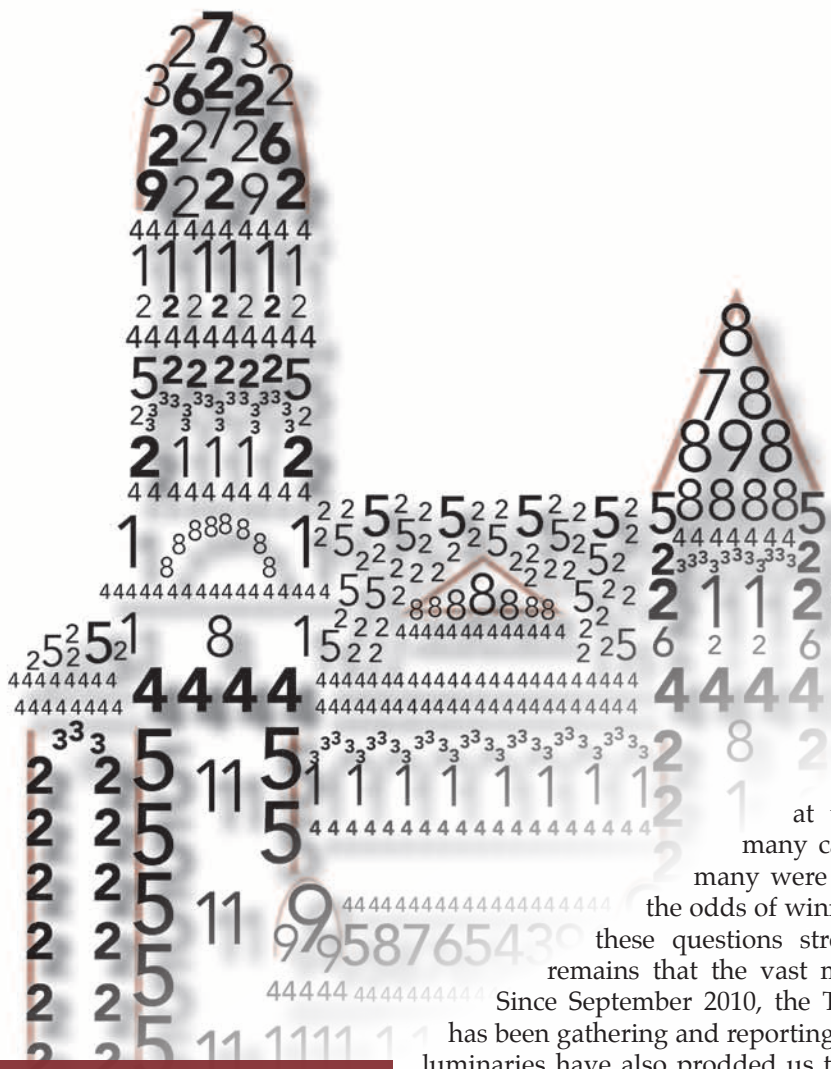
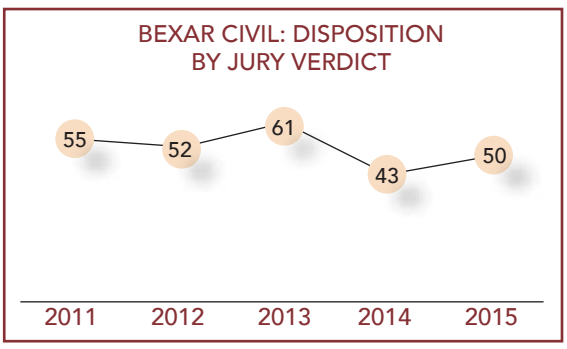


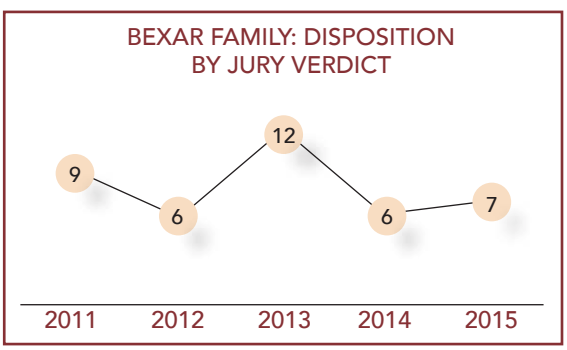
Recent Bexar County District Court Statistics

By Don Philbin

BEXAR COUNTY
by the numbers

In any gathering of lawyers, the discussion inevitably turns to what's happening at the courthouse. Are case filings up? How many cases are actually being tried? Of those, how many were tried to a jury? Is there any way to predict the odds of winning a motion for summary judgment? While these questions stroke lively cocktail conversation, the truth remains that the vast majority of cases are not judicially decided. Since September 2010, the Texas Office of Court Administration (OCA) has been gathering and reporting data that may inform these questions.[1] Local luminaries have also prodded us to focus on empirical data. Mediator Tommy Smith started writing about the decline of jury trials in 2007 when the data was much harder to accumulate.[2] His article followed a provocatively titled piece "The Vanishing Trial" in the top empirical legal publication three years before.[3] United States District Judge Xavier Rodriguez has watched and commented on trends and, in 2014, added a well-reasoned article titled "The Decline of Civil Jury Trials."[4]





Like any data set, the OCA district court data are only as good as the thousands of inputs from hundreds of sources. Broad case categorizations rely on cover sheets from millions of filings statewide. Reporting may be subject to occasional miscategorization and local interpretation, but the impact of such discrepancies smooths out over time in a pool of more than 250,000 Bexar County and 3.4 million statewide civil and family filings since 2010.

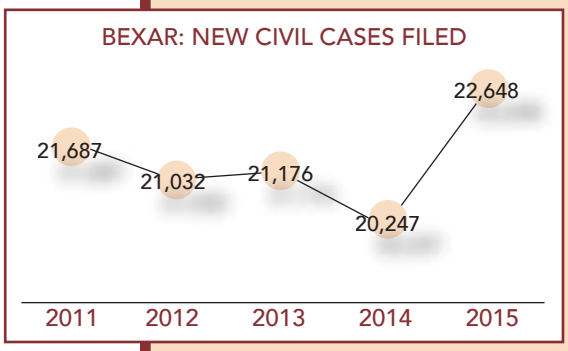
Jury Trials Have Steadied

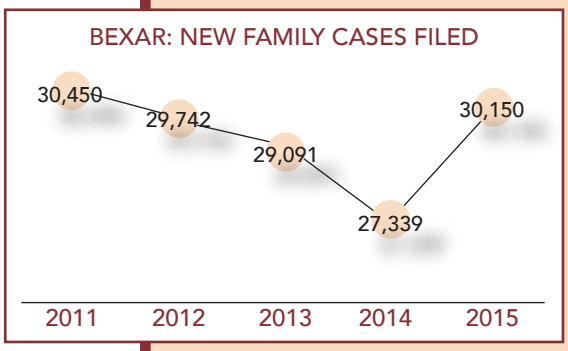
When Smith wrote his first article showing that there were 85 civil jury verdicts in Bexar County in 2006, people questioned the data sample and suggested that he look again the following year. He did. Civil jury trials declined to 78. Today, we have a five-year sample from the OCA database (2011-15). Over that time period, jury trials have slowed their decline. There were 55 in 2011 and 50 in 2015. The same was true in family law matters: 9 in 2011 and 7 in 2015. Jury verdicts declined more statewide, particularly in family law cases. In 2011, there were 1,560 civil jury verdicts statewide. That declined 21.92% to 1,218 in 2015. Family law jury verdicts declined 58.84% from 498 in 2011 to 205 statewide in 2015.

Bexar Civil Case Filings Are Up Slightly

The question naturally arises: how do dispositions compare with

filings? Statewide, both civil (-8.84%) and family (-6.22%) filings declined over the five-year period.[5] Federal case filings also declined 6% nationwide in 2015, but the busy Western District fell less than half the national average (-2.6%).[6] Bexar County held its own in family filings (-0.99%) while civil filings increased 4.43% over the five-year period. Both civil and family filings in Bexar County trailed off slightly going into 2014, but rebounded in 2015. Since new case filings have remained relatively constant over the five-year period, new case filings are used as the reference point for dispositions in this analysis. There is a lot of noise in total docket figures (e.g., inactive cases, docket adjustments, reactivated and other cases) so the steady flow of new cases provides the best reference point. For that reason, disposition percentages in this article are measured against new case filings or total contested dispositions.

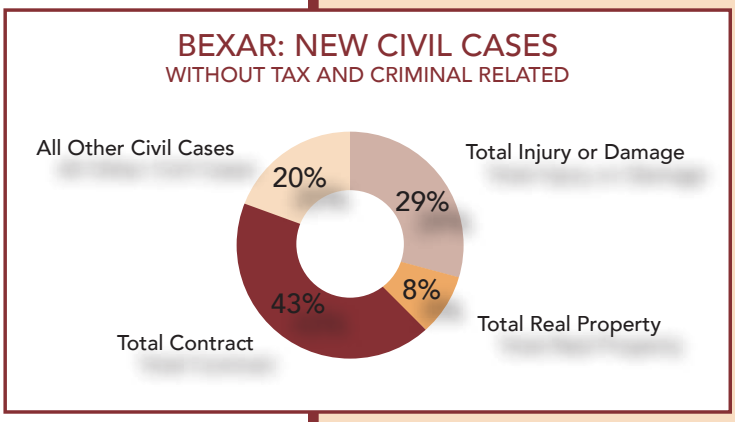




Docket Composition by New Filings

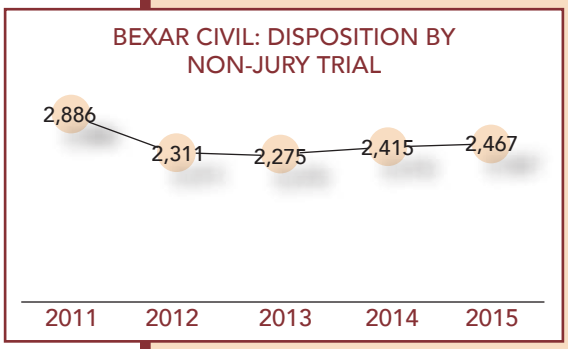
OCA divides civil cases into injury or damage, real property, contract, and other (civil relating to criminal, tax, and other). Tax and criminal related cases have been excluded in this analysis, but graphs including tax and criminal matters are available in the complete statistics package at **https://goo.gl/4O5ha2**. OCA categorizes family cases broadly into divorce with and without children, termination and protective order, Title IV-D, post-judgment, and other.

Contract cases led new civil filings (42.97%), most of which were consumer-commercial-debt (34.65%), followed by injury or damage (28.78%), most of which were motor vehicle (23.03%), other (19.72%), and real estate cases (8.53%).[7] Family filings were majority divorce (30.47%), comprised of children (14.88%) and no children (15.59%), followed by a near tie between Title IV-D (25.99%), including support order (17.24%) and paternity (8.05%) cases, and post-judgment actions (25.40%) relating primarily to Title IV-D (17.97%), which were probably support related.



Contested Case Dispositions

As you would expect, the vast majority of the docket resolved itself somewhere along the way by nonsuit (31.74%), want of prosecution (30.95%), default judgment (18.80%), agreed judgment (7.43%), or venue transfer (0.83%). The remainder of the cases were contested dispositions. Each category of contested dispositions is compared to total contested dispositions in the spreadsheet on page 12.

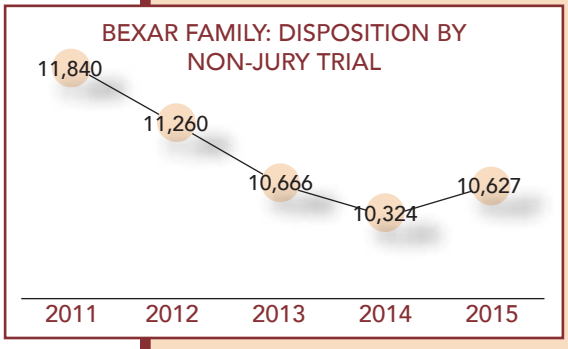


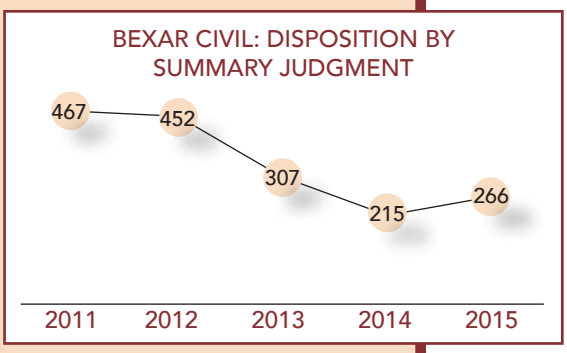
Non-Jury Trials Top Contested Dispositions

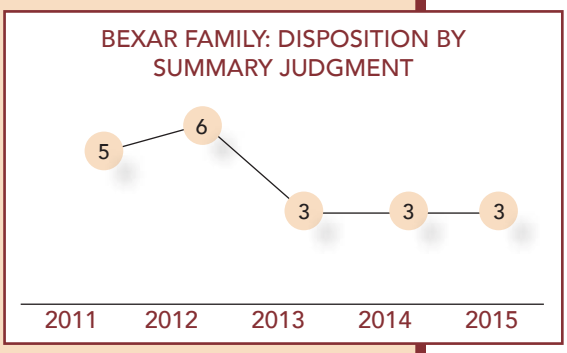
Most civil (39.40%) and family (35.25%) cases were resolved by non-jury trial. Almost all contested dispositions occurred at the bench (81.26% civil; 99.91% family). Over the five-year period, civil bench trials declined 14.52% from 2,886 in 2011 to 2,467 in 2015. Family bench trials declined 10.24% from 11,840 in 2011 to 10,627 in 2015. Statewide, bench trials declined more in both civil (-17.78%) and family (-16.94%) matters.

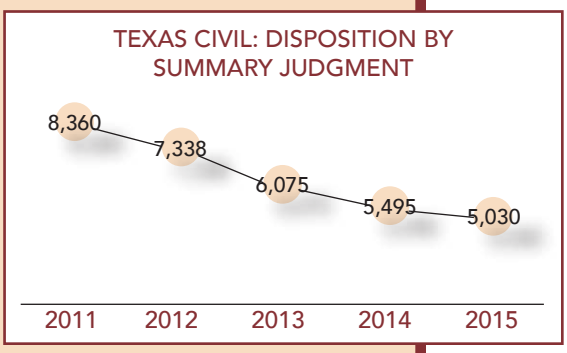
Bexar County bench trials were slightly more common in contract cases (32.05%) than injury or damage (28.54%) cases. Out of 1,223 civil non-jury trials in 2015, motor vehicle (19.38%) and consumer-commercial-debt (20.44%) cases resulted in more non-jury trials than any other single category except the broad category "other" (28.37%).

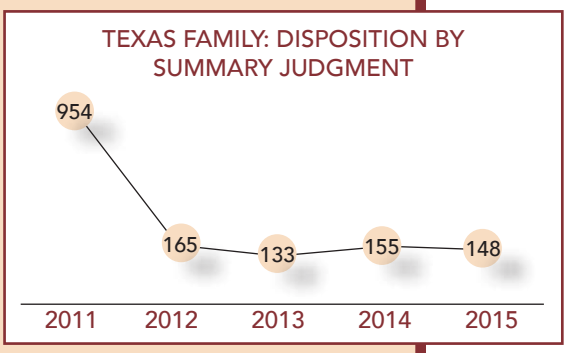
Almost all contested family law matters were resolved by non-jury trial. OCA reports three summary judgment grants (0.01%) and seven jury verdicts (0.02%) in Bexar County for 2015. The remaining contested matters were resolved by non-jury trials, with divorces (37.6%) as the largest sub-category. There was a statistical tie between the number of divorces with and without children ending in jury trial. Interestingly,











18.47% of contested divorce actions with children were disposed of by non-jury trial and a nearly equal number of "no child" divorces (19.16%) were similarly disposed. Nearly all adoption (90.39%), CPS (86.90%), and termination (83.28%) matters were resolved at the bench.

Summary Judgments Decline

Both statewide and in Bexar County, summary judgment dispositions declined over the five-year period. In 2011, there were 467 civil summary judgment dispositions and that declined 43.04% to 266 in 2015 in Bexar County. That is slightly more than the decline statewide (39.83%). Summary judgment dispositions declined sharply in family law matters statewide, falling from 954 in 2011 to 148 in 2015 (-84.49%). While Bexar County saw less of a decrease, summary judgment grant rates have historically been low in family cases. Five cases were disposed of by summary judgment in 2011, and that number declined to three in 2015 (-40.00%).[8] The overall disposition rate by summary judgment as a percentage of new filings in Bexar County was 5.52% in civil cases and practically non-existent (0.01%) in family cases. Most civil summary judgments were in consumer-commercial-debt (54.70%) and other contract (9.40%) cases, giving the contract category 64.10% of the summary judgment dispositions (150 of 234 total). Of the 84 remaining summary judgment dispositions, 16.67% were in injury or damage, 3.42% in real estate, and 15.81% in other matters. Overall, the civil summary judgment disposition rate declined 43.04% in Bexar County over the five-year period while new filings increased 4.43%. Since so few civil cases result in contested dispositions (10.85% of new filings), measuring the summary judgment dispositions may be more instructive. While only 1.69% of new filings resulted in summary judgment, they accounted for 15.55% of civil contested dispositions.

Jury Trials

Perhaps the most visible and watched category of contested dispositions is jury trials. OCA provides two measures in the category—Jury Selected and Jury Verdict. In civil cases, the number of juries selected over the five-year period declined from 99 to 70 (-29.29%) but the number of jury verdicts only declined from 55 to 50 (-9.09%). That trend reversed in family cases, where verdicts (-22.22%) declined more than selections (-11.11%). To put those numbers in context, 2013 was the only year with double-digit (12) jury verdicts in family cases.

Statewide, civil jury verdicts declined 21.92% from 1,560 in 2011 to 1,218 in 2015. Family jury verdicts declined 58.84% from 498 in 2011 to 205 in 2015. Locally, most jury verdicts were in the injury area (54.17%). Of the 48 jury trials in 2015 (excluding one each in tax and criminal related matters), 26 were injury cases. Within that group, motor vehicle cases (27.08%) accounted for the most, with other injury matters (20.83%) coming in second. Because most filings are in consumer-commercial-debt actions (34.65%), jury trials in that area (29.17%) were second to injury cases. There were only three jury verdicts in contract cases excluding consumer-commercial-debt and seven verdicts classified as "other." Civil jury trials disposed of 0.35% of new cases and 3.19% of contested dispositions.

Civil Disposition Analysis by Case Type

This section slices the Bexar County data by case type. The breakdown of new cases and contested dispositions by summary judgment, bench and jury trials appear in the nearby charts. While tax and civil cases related to criminal cases accounted for a large number of civil filings (8,771) in 2015, they have been excluded since many are uncontested or disposed of by bench trial.

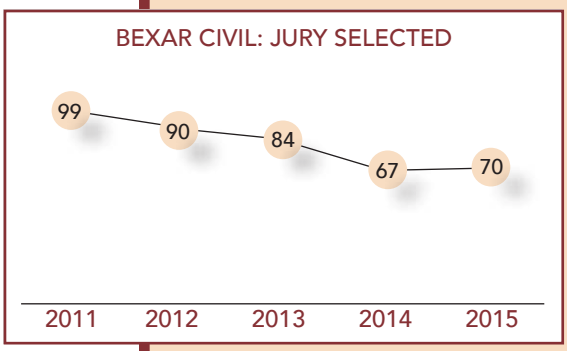
Injury or Damage. There were 3,994 new injury cases filed in 2015. The largest sub-group was motor vehicle (3,196) followed by other (677). Medical (89) and other malpractice (14) and asbestos (8) and other products cases (10) rounded

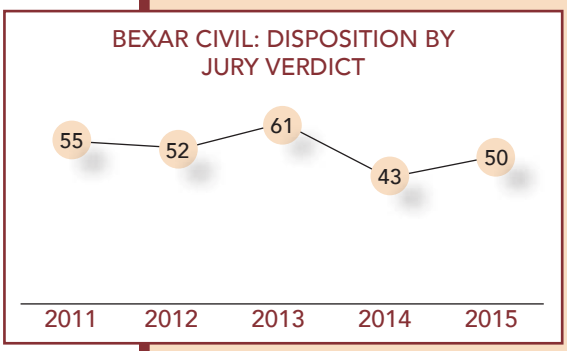
out the category. Summary judgment (39) disposed of more injury cases than jury verdicts (26). Bench trials (349) disposed of 13.42 times as many injury cases as jury verdicts (26). Again, motor vehicle and other injury led the sub-group.

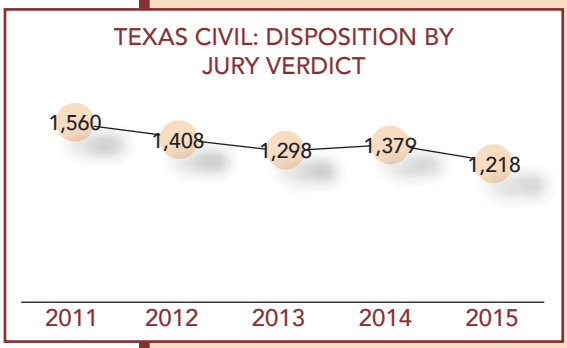
Real Property. New eminent domain (42) and other (1,142) filings make up the OCA real property category.[9] Eminent domain cases in district court apparently resolved themselves or were transferred because there were no contested dispositions by summary judgment or trial in 2015. Other real property cases were disposed of mostly by non-jury trial (135), with summary judgment (8) and jury verdict (1) accounting for far fewer dispositions.

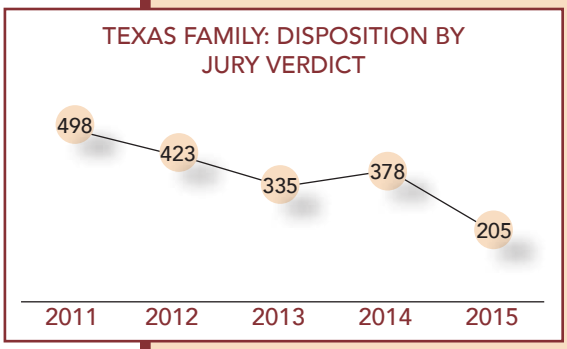
Contract. Consumer-commercial-debt filings (4,809) were the largest contract sub-category in 2015. OCA categorizes everything else as other (1,154). More than half the summary judgment dispositions in Bexar County (128 of 234) were in the consumer-commercial-debt (54.70%) category. The disposition rate in other contract cases (1.91%) exceeded the Bexar civil average (1.69%). Together, the contract category represents 392 (32.05%) of the 1,223 civil bench trials in 2015. Jury verdicts resolved 14 contract cases, most (11) being classified as consumer-commercial-debt cases.

Other Civil. Other civil cases (2,736) accounted for 19.72% of filings. These miscellaneous cases were most often resolved by bench trials (347), followed by summary judgments (37) and jury verdicts (7).









Family Dispositions by Case Type

Family case filings bumped up to 30,150 in 2015. By far the largest number (10,627 or 35.25% of new filings and 99.91% of contested dispositions) were resolved by bench trial. There were only seven family jury verdicts reported and three summary judgment dispositions.

Divorce. Divorces with (4,485) and without (4,701) children accounted for about a third (30.47%) of new family filings. One of each went to jury verdict; none was disposed of by summary judgment; and the rest of the contested resolutions were by bench trial (4,001).

Title IV – D. Support (5,198), paternity (2,427), and UIFSA (211) filings comprised the Title IV-D category, which accounted for 25.99% of new family filings. All of the contested resolutions were by bench trial (1,009).

Post-Judgment Actions. Post-judgment filings (7,658) comprised 25.40% of family filings. Title IV-D (presumably support orders) accounted for the bulk (5,418) of the sub-group. Other than one summary judgment in a custody modification case, all of the contested dispositions were by bench trial (1,799).

Other Family. OCA leaves several reporting categories ungrouped. While bench trials disposed of most of these cases, five of the seven family jury verdicts were in parent-child—no divorce (4) and CPS (1) cases. Adoptions were resolved at the bench either by non-jury trial (1,157) or summary judgment (1). Parental rights were terminated at the bench by non-jury trial (269).

Conclusion

Both civil and family case filings in Bexar County ticked up in 2015 over 2014. Civil filings increased 5% over the five-year study period, while family filings remained constant. Most civil cases resolved consensually during the litigation process, leaving 1,223 (8.81%) to be disposed of by bench trial, 234 (1.69%) by summary judgment, and 48 (0.35%) by jury verdict. Contested family law cases were almost entirely resolved by bench trial. While the number of civil juries selected continued downward (-29.29%) the number of jury verdicts stabilized (-9.09%) over the five-year period. Summary judgment dispositions declined in civil (-43.04%) cases over the five-year period and most of those (54.70%)

- Continued on page 15 -

Bexar County: By the Numbers

2015 Bexar Civil Cases Without Tax & Criminal Related

	New Cases		Summary Judgment			Non-Jury Trial			Jury Verdict		
Injury or Damage	Number	% of Total	Number	% of MSJ Total	% of Total Contested	Number	% of Non-Jury Total	% of Total Contested	Number	% of Jury Total	% of Total Contested
Motor Vehicle	3,196	23.03%	18	7.69%	1.20%	237	19.38%	15.75%	13	27.08%	0.86%
Medical Malpractice	89	0.64%	3	1.28%	0.20%	13	1.06%	0.86%	3	6.25%	0.20%
Other Professional	14	0.10%	0	0.00%	0.00%	2	0.16%	0.13%	0	0.00%	0.00%
Product Liability - Asbestos/Silica	8	0.06%	0	0.00%	0.00%	0	0.00%	0.00%	0	0.00%	0.00%
Other Product Liability	10	0.07%	0	0.00%	0.00%	0	0.00%	0.00%	0	0.00%	0.00%
Other Injury or Damage	677	4.88%	18	7.69%	1.20%	97	7.93%	6.45%	10	20.83%	0.66%
Total Injury or Damage	3,994	28.78%	39	16.67%	2.59%	349	28.54%	23.19%	26	54.17%	1.73%
Real Property											
Eminent Domain	42	0.30%	0	0.00%	0.00%	0	0.00%	0.00%	0	0.00%	0.00%
Other Real Property	1,142	8.23%	8	3.42%	0.53%	135	11.04%	8.97%	1	2.08%	0.07%
Total Real Property	1,184	8.53%	8	3.42%	0.53%	135	11.04%	8.97%	1	2.08%	0.07%
Contract											
Consumer/ Commercial/Debt	4,809	34.65%	128	54.70%	8.50%	250	20.44%	16.61%	11	22.92%	0.73%
Other Contract	1,154	8.32%	22	9.40%	1.46%	142	11.61%	9.44%	3	6.25%	0.20%
Total Contract	5,963	42.97%	150	64.10%	9.97%	392	32.05%	26.05%	14	29.17%	0.93%
All Other Civil Cases											
Other	2,736	19.72%	37	15.81%	2.46%	347	28.37%	23.06%	7	14.58%	0.47%
Grand Total	**13,877**	**100.00%**	**234**	**100.00%**	**15.55%**	**1,223**	**100.00%**	**81.26%**	**48**	**100.00%**	**3.19%**

2015 Family Cases

	New Cases		Summary Judgment			Non-Jury Trial			Jury Verdict		
Divorce	Number	% of Total	Number	% of MSJ Total	% of Total Contested	Number	% of Non-Jury Total	% of Total Contested	Number	% of Jury Total	% of Total Contested
Children	4,485	14.88%	0	0.00%	0.00%	1,963	18.47%	18.45%	1	14.29%	0.01%

No Children	4,701	15.59%	0	0.00%	0.00%	2,038	19.18%	19.16%	1	14.29%	0.01%
Total Divorce	9,186	30.47%	0	0.00%	0.00%	4,001	37.65%	37.61%	2	28.57%	0.02%
Misc. Family											
Parent-Child (No Divorce)	1,024	3.40%	1	33.33%	0.01%	411	3.87%	3.86%	4	57.14%	0.04%
Child Protective Services	1,046	3.47%	0	0.00%	0.00%	909	8.55%	8.55%	1	14.29%	0.01%
Termination of Parental	323	1.07%	0	0.00%	0.00%	269	2.53%	2.53%	0	0.00%	0.00%
Adoption	1,280	4.25%	1	33.33%	0.01%	1,157	10.89%	10.88%	0	0.00%	0.00%
Protective Orders (No Divorce)	678	2.25%	0	0.00%	0.00%	149	1.40%	1.40%	0	0.00%	0.00%
Total Misc. Family	4,351	14.44%	2	66.66%	0.02%	2,895	27.24%	27.22%	5	71.43%	0.05%
Title IV - D											
Paternity	2,427	8.05%	0	0.00%	0.00%	340	3.20%	3.20%	0	0.00%	0.00%
Support Order	5,198	17.24%	0	0.00%	0.00%	602	5.66%	5.66%	0	0.00%	0.00%
UIFSA	211	0.70%	0	0.00%	0.00%	67	0.63%	0.63%	0	0.00%	0.00%
Total Title IV - D	7,836	25.99%	0	0.00%	0.00%	1,009	9.49%	9.49%	0	0.00%	0.00%
Post-Judgment Actions											
Modification - Custody	1,121	3.72%	1	33.33%	0.01%	399	3.75%	3.75%	0	0.00%	0.00%
Modification - Other	616	2.04%	0	0.00%	0.00%	270	2.54%	2.54%	0	0.00%	0.00%
Enforcement	503	1.67%	0	0.00%	0.00%	175	1.65%	1.65%	0	0.00%	0.00%
Title IV - D	5,418	17.97%	0	0.00%	0.00%	955	8.99%	8.98%	0	0.00%	0.00%
Total Post-Judgment Actions	7,658	25.40%	1	33.33%	0.01%	1,799	16.93%	16.91%	0	0.00%	0.00%
All Other Family Cases											
Other	1,119	3.71%	0	0.00%	0.00%	923	8.69%	8.68%	0	0.00%	0.00%
Grand Total	**30,150**	**100.00%**	**3**	**100.00%**	**0.03%**	**10,627**	**100.00%**	**99.91%**	**7**	**100.00%**	**0.07%**

- Continued from page 11 -

were in consumer-commercial-debt cases. Excluding contract cases, which together accounted for 64.10% of summary judgment dispositions, there were 84 dispositions equally spread between injury and other cases. Disposition by summary judgment was also down in family cases (-40.0%), but the number is almost meaningless since there were three summary judgment dispositions in most years of the study.

From this dizzying data, we can see that jury verdict dispositions seem to have stabilized in Bexar County since the "vanishing trial" articles appeared a decade ago, and those bellwether cases no doubt inform how thousands of other cases are voluntarily resolved. These data prove how prophetic Tommy Smith and Judge Xavier Rodriguez were years ago. Thanks to their efforts and OCA's recent data base, empirical data can inform our water cooler discussions and the market for the vast majority of cases that resolve without contested disposition.

Don Philbin was named "Lawyer of the Year" in San Antonio by Best Lawyers® *(2014, 2016), was recognized as the 2011 Outstanding Lawyer in Mediation by the* San Antonio Business Journal, *is one of eight Texas lawyers listed in* The International Who's Who of Commercial Mediation, *and is listed in* Texas Super Lawyers. *He is an elected fellow of the International Academy of Mediators, the American Academy of Civil Trial Mediators, and the Texas Academy of Distinguished Neutrals.*

ENDNOTES

[1]Users can query civil and family case stats by county or statewide at **http://card.txcourts.gov/ReportCriteria.aspx?ddlReportName=115&ddlReportType=4979&ddlReportPeriod=**.

[2]Thomas J. Smith, *Whatever Happened to Jury Trials?*, S.A. Scene Magazine (June 2007). Smith recently updated his work in S.A. Scene Magazine, which was reprinted in *San Antonio Lawyer* in November 2015.

[3]Marc Galanter, *The Vanishing Trial: An Examination of Trials and Related Matters in Federal and State Courts*, 1 J. Empirical Legal Studies 459 (2004).

[4]Xavier Rodriguez, *The Decline of Civil Jury Trials: A Positive Development, Myth, or the End of Justice as We Now Know It?*, 45 St. Mary's L. J. 333 (2014).

[5]Unless otherwise noted, Bexar County numbers are used in this article.

[6]The Administrative Office of the U.S. Courts recently reported that civil case filings fell 6% in 2015 to 279,036. Diversity cases fell 14% while federal question filings increased 1%. **http://www.uscourts.gov/statistics-reports/judicial-business-2015**. As expected, the Western District continues to have a heavy docket with 3,313 new filings in 2015, which was down less than half (2.6%) the national average over 2014 (3,403). **http://www.uscourts.gov/statistics/table/c/judicial-business/2015/09/30**.

[7]These numbers fall when tax (22.71%) and civil related to criminal (16.01%) are included.

[8]While OCA does not expressly report whether partial summary judgments are included in these numbers, it is fair to assume that they are not. Since they are reporting dispositions, presumably partial grants are not reported since they do not dispose of the case. So the low grant rates could well mask the fact that cases are being streamlined for trial using summary judgments that are not captured in these aggregate disposition numbers. Partial summary judgment grants could also impact case assessments by the parties that lead to voluntary resolutions.

[9]Probate is not covered in this OCA dataset.