



IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 02- **9232**

RECOMMENDATIONS FOR REALLOCATION OF COURTS OF APPEALS

Pursuant to § 74.022, Government Code, the Supreme Court must “assess the need for adding, consolidating, eliminating, or reallocating existing appellate courts,” and “recommend any needed changes” to the Seventy-Eighth Legislature. The statute further provides that the Court must promulgate “rules, regulations, and criteria to be used in assessing those needs.”

In compliance with this law, the Supreme Court has adopted the following propositions:

- (1) No county should be in more than one appellate district. Texas is the only state in the nation with overlapping appellate districts, an historical anomaly which causes real and recurring problems to the bench and bar. See, e. g., *Miles v. Ford Motor Co.*, 914 S.W.2d 135 (Tex. 1995); Curt Haygood, “When Reasonable Judicial People Can Disagree (Express Conflicts Between the Respective Decisions of the Fourteenth and First Courts of Appeals),” Houston Bar Assn. Appellate Section, September 25, 1996.
- (2) The Supreme Court should not recommend a change in the total number of appellate justices. The Legislature has established eighty intermediate appellate justices, which is reasonable in comparison to California (93 justices), New York (71), Florida (61), Ohio (66), Illinois (52), Pennsylvania (24) and other large states. The Legislature has full authority to increase or decrease the number of positions on either a temporary or permanent basis.
- (3) The Supreme Court should not recommend creating, eliminating, consolidating or moving courts except in two instances. In southeast Texas, the consolidation of the First and Fourteenth Districts is necessary to eliminate overlapping districts. And in South Texas, the Supreme Court recommends that the six-justice Thirteenth Court of Appeals be separated into two three-justice courts. The

Thirteenth Court now maintains two offices and expends thousands of extra dollars each year for judicial and staff travel. In both these instances, the consolidation or creation would save money and increase efficiency. Otherwise, the Legislature can balance the benefit of convenient access to regional courts against heightened administrative costs and the possibility of jurisprudential conflict. The Legislature can also determine whether any courts should be moved within their districts to reflect current demographic conditions.

- (4) Judicial appellate workload should be measured by a combination of population and case filings. The Supreme Court has calculated a Judicial Index number for each county, comprised of the sum of new cases filed during the past five years and the 2000 population of the county in thousands. In plain language, this means:
 - a. The 2000 census population of Texas is 20,851,820, or 20,852 in thousands.
 - b. The total number of regular cases filed in the 14 courts of appeals in the past five fiscal years 1998-2002 (September 1, 1997 to August 31, 2002) was 57,588.
 - c. Adding 20,852 and 57,588 produces a statewide index number of 78,440. (This weights the value of case filings at approximately 2.3 times the value of population.)
 - d. Dividing the 78,440 by 80 justices yields a per justice index of 980.5.
 - e. Use the statewide index number to determine the index number for a proposed court district. Thus, the ideal index for a court with three justices would 2,942, for four justices 3,922, and so forth.
- (5) Any judicial redistricting should so nearly equalize the burden on each justice that the transfer of cases between courts of appeals should, at least as a matter of routine, be unnecessary. Under the General Appropriations Act (Supreme Court Rider No.2, page IV-2) the Supreme Court is to equalize workload among the courts of appeals to within ten per cent. Pursuant to that mandate, in 2002, the Supreme Court transferred 856 cases, or 7 % of the 11,984 cases filed in that year. The Legislature appropriated \$ 34,665 for 2002 to cover the travel expenses of justices to hear oral argument in transferred cases. On top of the expense and lost time that such travel entails, the transfer process increases confusion and uncertainty in the judicial process. See, e. g., *Perez v. Murff*, 972 S.W.2d 78 (Tex. App. – Texarkana 1998, pet. denied); *American Nat'l Ins. Co. v. International Bus. Machs. Corp.*, 933 S.W.2d 685 (Tex. App. – San Antonio 1996, writ denied); *Blakeney v. State*, 911 S.W.2d 508, 516 n. 5 (Tex. App. – Austin 1995, no pet.); *Blackwell v. Harris County*, 909 S.W.2d 135 (Tex. App. –

Houston [14th Dist.] 1995, writ denied).

- (6) To ensure that the workload is substantially equalized for the next decade, the Court recommends that no district shall deviate by more than ten per cent from the ideal Judicial Index. If imbalances in filings or workload develop, they can be remediated by the Chief Justice's assignment of former and retired justices pursuant to §§ 75.002 and 75.003, Government Code rather than by transfer of cases.
- (7) Since the Legislature authorized the Supreme Court to assess and recommend based on these propositions, the Court recommends the following appellate districts:

First District. Nineteen justices. Five counties: Brazoria, Fort Bend, Galveston, Harris, and Waller.

Second District. Seven justices. Five counties: Denton, Johnson, Parker, Tarrant, and Wise.

Third District. Five justices. Seventeen counties: Austin, Bastrop, Blanco, Burleson, Burnet, Caldwell, Colorado, Fayette, Gillespie, Gonzales, Hays, Kerr, Lee, Milam, Travis, Washington, and Williamson.

Fourth District. Six justices. Seventeen counties: Atascosa, Bandera, Bexar, Comal, Dimmit, Edwards, Frio, Guadalupe, Karnes, Kendall, Kinney, La Salle, Maverick, McMullen, Medina, Real, Uvalde, Wilson, and Zavala

Fifth District. Fifteen justices. Five counties: Collin, Dallas, Ellis, Kaufman, and Rockwall.

Sixth District. Three justices. Twenty-six counties: Bowie, Camp, Cass, Clay, Cooke, Delta, Fannin, Franklin, Grayson, Gregg, Harrison, Hopkins, Hunt, Lamar, Marion, Montague, Morris, Panola, Rains, Red River, Rusk, Sabine, San Augustine, Shelby, Titus, and Wood.

Seventh District. Three justices. Thirty-six counties: Armstrong, Briscoe, Carson, Castro, Childress, Collingsworth, Cottle, Crosby, Dallam, Deaf Smith, Donley, Floyd, Foard, Gray, Hale, Hall, Hansford, Hardeman, Hartley, Hemphill, Hutchinson, Lipscomb, Lubbock, Moore, Motley, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Swisher, Wheeler, Wichita, and Wilbarger

Eighth District. Three justices. Twenty-four counties: Andrews, Bailey, Brewster, Cochran, Crane, Crockett, Culberson, Ector, El Paso, Gaines, Hockley, Hudspeth, Jeff Davis, Lamb, Loving, Pecos, Presidio, Reeves,

Terrell, Terry, Val Verde, Ward, Winkler, and Yoakum.

Ninth District. Four justices. Nine counties: Chambers, Jasper, Jefferson, Liberty, Hardin, Montgomery, Newton, Orange, and Tyler.

Tenth District. Three justices. Fifteen counties: Bell, Bosque, Brazos, Coryell, Falls, Freestone, Grimes, Hill, Leon, Limestone, Madison, McLennan, Navarro, Robertson, and Walker.

Eleventh District. Three justices. Fifty-five counties: Archer, Baylor, Borden, Brown, Callahan, Coke, Coleman, Comanche, Concho, Dawson, Dickens, Eastland, Erath, Fisher, Garza, Glasscock, Hamilton, Haskell, Hood, Howard, Irion, Jack, Jones, Kent, Kimble, King, Knox, Lampasas, Llano, Lynn, Martin, Mason, McCulloch, Menard, Midland, Mills, Mitchell, Nolan, Palo, Pinto, Reagan, Runnels, San, Saba, Schleicher, Scurry, Shackelford, Somervell, Stephens, Sterling, Stonewall, Sutton, Taylor, Throckmorton, Tom Green, Upton, and Young.

Twelfth District. Three justices. Twelve counties: Anderson, Angelina, Cherokee, Henderson, Houston, Nacogdoches, Polk, San Jacinto, Smith, Trinity, Upshur, and Van Zandt.

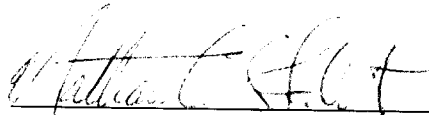
Thirteenth District. Three justices. Nineteen counties: Aransas, Bee, Brooks, Calhoun, De Witt, Duval, Goliad, Jackson, Jim Wells, Kenedy, Kleberg, Lavaca, Live Oak, Matagorda, Nueces, Refugio, San Patricio, Victoria, and Wharton.

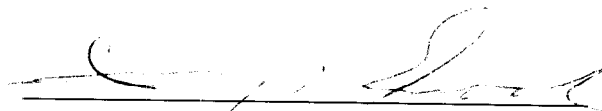
Fourteenth District. Three justices. Seven counties: Cameron, Hidalgo, Jim Hogg, Starr, Webb, Willacy, and Zapata.

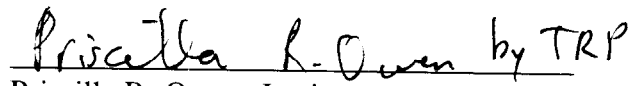
- (8) This proposal has not been submitted to the Civil Rights Division of the United States Department of Justice for pre-clearance under § 5 of the Voting Rights Act because the districts suggested herein are merely recommendations to the Legislature and therefore do not constitute actual "changes affecting voting."

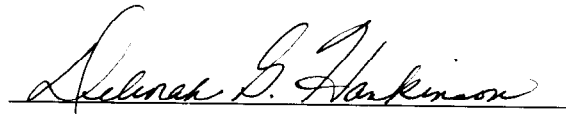
SIGNED this 17th day of December, 2002.

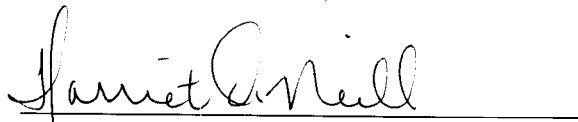
Thomas R. Phillips, Chief Justice

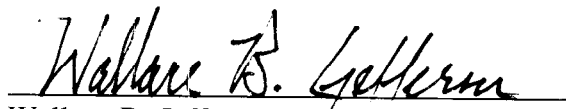

Nathan L. Hecht, Justice

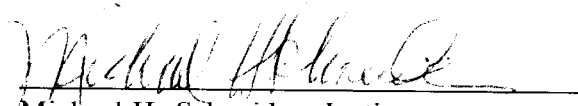

Craig T. Enoch, Justice

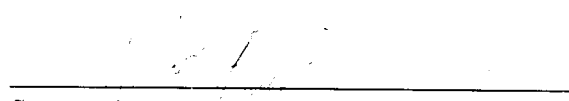

Priscilla R. Owen, Justice


Deborah G. Hankinson, Justice


Harriet O'Neill, Justice


Wallace B. Jefferson, Justice


Michael H. Schneider, Justice


Steven Wayne Smith, Justice