

Presented:

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Austin, Texas**Results of the 2015 Judicial Survey****Scott Rothenberg**
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RESULTS OF THE 2015 JUDICIAL SURVEY

I. INTRODUCTION

In 2009, members of the State Bar of Texas Appellate Section disseminated a survey to all Texas Supreme Court and Texas intermediate appellate court justices. Eighty-nine (89) percent of Texas appellate justices responded.

The survey asked questions regarding various aspects of appellate practice in Texas courts. The aim was to help Texas appellate attorneys conform their briefing, arguments and communications with appellate courts and opposing counsel to the expectations of appellate justices.

Flash forward to 2015. A majority of the justices presently on the Supreme Court of Texas were not on the court when the 2009 survey was disseminated. The same is true of several of our intermediate appellate courts. The continued usefulness of “the survey” depended upon disseminating it once more.

As a result, we distributed a survey containing many of the same questions as 2009, plus additional questions addressing e-briefing, e-filing, e-readers, and other matters that have become important to appellate practice since the first survey was disseminated. This time, 78% of Texas appellate justices responded. We hope that you find the results to be as interesting and enlightening as we did.

II. BRIEFS

A. Principal Briefs

1. Which of the following should be used to identify the parties in the brief?

- 32% Their status on appeal: appellant, appellee.
- 3% Their status at trial: plaintiff, defendant.
- 59% Proper names or descriptive labels: Bank of America, the Bank.

5% No preference.

Comment: None of the above exactly; per TRAP 3.2 in criminal appeals position terms (appellant/State) but in civil appeals abbreviated party names.

2. When reading briefs or motions, do you have a preference in terms of the font used?

- 28% No, I have no preference.
- 31% Yes, I prefer Times New Roman.
- 4% Yes, I prefer Century.
- 18% Yes, I prefer a sans-serif font such as Arial.
- 18% Yes, I prefer Times New Roman, Century, or similar fonts, instead of a sans-serif font such as Arial.

Comment: I wish we used Century for our opinions.

3. Do you favor a change in the word limits for briefs?

- 2% Yes, word limits should be increased.
- 68% No, word limits are fine the way they are.
- 30% Yes, I favor reducing the word limits, as the federal courts of appeals will do if recently proposed amendments to the Federal Rules of Appellate Procedure are adopted [*see* <http://www.uscourts.gov/uscourts/rules/preliminary-draft-proposed-amendments.pdf>].

4. How should counsel emphasize language? (Please check all that apply.)

- 20% **Bold.**
- 36% *Italics.*
- 32% ***Bold italics.***
- 6% Underlined.

- 5% No emphasis.
24% No preference.
5. In a civil appeal of moderate complexity, how many issues do you expect to see from a wise advocate?
- 53% Two to four.
38% Three to five.
9% Four to six.
0% Seven or more.
6. Most briefs I read are:
- 0% Too short.
35% About the right length.
54% Longer than necessary.
11% Much longer than necessary.
7. How do you prefer that the appellant phrase the issues?
- 71% As a positive statement: e.g., “The trial court erred in excluding the expert testimony on the issue of whether the moon is made of green cheese.”
6% As a question: e.g., “Did the trial court err in excluding the expert testimony on the issue of whether the moon is made of green cheese?”
5% Neutrally: e.g., “Whether the trial court erred in excluding expert testimony on the issue of whether the moon is made of green cheese.”
14% As a positive assertion of law, followed by a question: e.g., “Expert testimony is reliable if it is grounded in the methods and procedures of science, and if it is more than mere subjective belief or unsupported speculation. Did the trial court abuse its discretion in failing to follow this guiding rule and principle in excluding the expert testimony on the issue of whether the moon is made of green cheese?”
5% No preference.
8. Which statement best describes your view of the Table of Contents? (Please check all that apply.)
- 55% It is the best place to turn for a quick overview of the issues.
29% It is helpful only if the Argument section of the brief is organized in outline form.
39% Even if the Argument is organized in outline form, the Table of Contents is unhelpful if the headings are too lengthy or there are too many sub, sub-headings.
9. Which of the following describe your view of the most effective use of headings in the brief? (Please check all that apply.)
- 44% I find headings in the Statement of Facts to be particularly helpful sign-posts.
59% Headings in the Argument section of the brief should rarely exceed two lines.
69% Headings in the Argument section should correspond with the issues presented.
48% Headings in the Argument section should be simple, declarative sentences without any argument (e.g., “David Doe defrauded Polly Plaintiff,” or, “There is legally sufficient evidence supporting the jury’s finding of fraud.”).
6% I find headings that are slightly argumentative to be particularly persuasive.
53% I find headings to be distracting if they are too long or if they do not comport with the argument that follows.
10. Which of the following best describes your view of the Statement of Facts?
- 42% The Statement of Facts must be purely objective.
56% The Statement of Facts should be persuasive, although not argumentative.