Houston Law Review Publishes Haynes and Boone Study of Reversal Rates in Texas Appeals

By Kent Rutter, Natasha Breaux | April 6, 2020

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The Houston Law Review has published a comprehensive study of litigation trends in Texas by Haynes Boone Partner Kent Rutter and Associate Natasha Breaux.

In a study of all non-criminal decisions issued by all 14 Texas courts of appeals from September 2018 to August 2019, the lawyers gleaned fascinating trends about how trial court verdicts and rulings fared on appeal. For example, Rutter and Breaux found that Texas appellate courts were more likely to uphold jury verdicts and decisions by trial judges in comparison to an earlier study the firm released in 2011.

Plaintiffs in personal injury, other tort, and consumer cases were prime beneficiaries of this trend; their claims were reversed about half as often as they were in the appeals studied in the 2011 report. Rutter attributes the shift in plaintiffs' fortunes in part to the most recent statewide elections in November 2018.

"The shift is particularly pronounced in the four courts of appeals (Austin, Dallas, and the two appellate courts in Houston) where Democrats won a majority of the seats in November 2018," Rutter said. "During the final four months of 2018, when all of the justices on those courts were Republicans, the courts reversed judgments favoring plaintiffs at an unusually high rate—approximately eight times as often as they reversed judgments favoring defendants (39% to 5%). Between January and August 2019, after the new justices joined the courts, the courts reversed judgments favoring plaintiffs and defendants at approximately equal rates (17% to 18%)."

Irrespective of their ideology, "newer appellate judges are sometimes more hesitant to reverse unless a trial judge's decision is plainly wrong," Rutter said. "Often, appellate judges grow more confident in their own assessments over time."

The study also provides revealing data about how appellate courts view arbitrations, a popular means to resolve disputes. Appellate courts reversed a remarkable 70% of trial court orders declining a party's request to arbitrate disputes. "The finding indicates that while many trial judges are skeptical of arbitrations, appellate judges generally favor the process," Rutter said.

Other findings from the current study include:

- Jury verdicts were more likely to be set aside in Houston (36%) than in Dallas (20%);
- Statewide, Texas courts of appeals set aside 26% of the jury verdicts that were appealed (compared to 34% in the 2011 study);
- The statewide reversal rate for decisions by a trial judge conducting a trial without a jury was 20% (compared to 28% in 2011).

This is the third edition of "Reasons for Reversal." The prior two versions, authored by Rutter and Haynes Boone Partner Lynne Liberato, were completed in 2011 and 2002 and later published,

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respectively, by *The Houston Law Review* and *South Texas Law Review*.

Rutter is an accomplished appellate advocate with more than 20 years of experience. He serves as the elected chair of the Appellate Section of the State Bar of Texas, an organization of more than 2,000 attorneys that promotes the role of appellate lawyers in Texas, enhances their skills, and improves appellate practice in Texas.

Breaux represents clients in a broad variety of litigation matters, focusing on appellate issues. As a former law clerk to federal judges at both the appellate and trial level, she understands firsthand how appellate and trial courts make decisions.

With one of the largest full-time appellate teams of any national law firm, Haynes Boone can match clients with appellate lawyers who offer personal experience with specific industries, procedural issues, and courts. Team members have argued appeals before the U.S. Supreme Court, the federal circuit courts of appeals, the Texas Supreme Court, and the Texas courts of appeals, setting precedent for our clients in jurisdictions from coast to coast.

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The Southeast Texas Record published an article about the study.

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