

What Are The Odds?



Appeals in the Panther City Court and Big D!

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Joint Appellate Seminar
Sponsored by the
Dallas Bar Association
Appellate Law Section and
Tarrant County Bar Association
Appellate Law Section

Fort Worth Court of Appeals

The Fort Worth Court:
Who Are Those Guys?



Fort Worth Court of Appeals

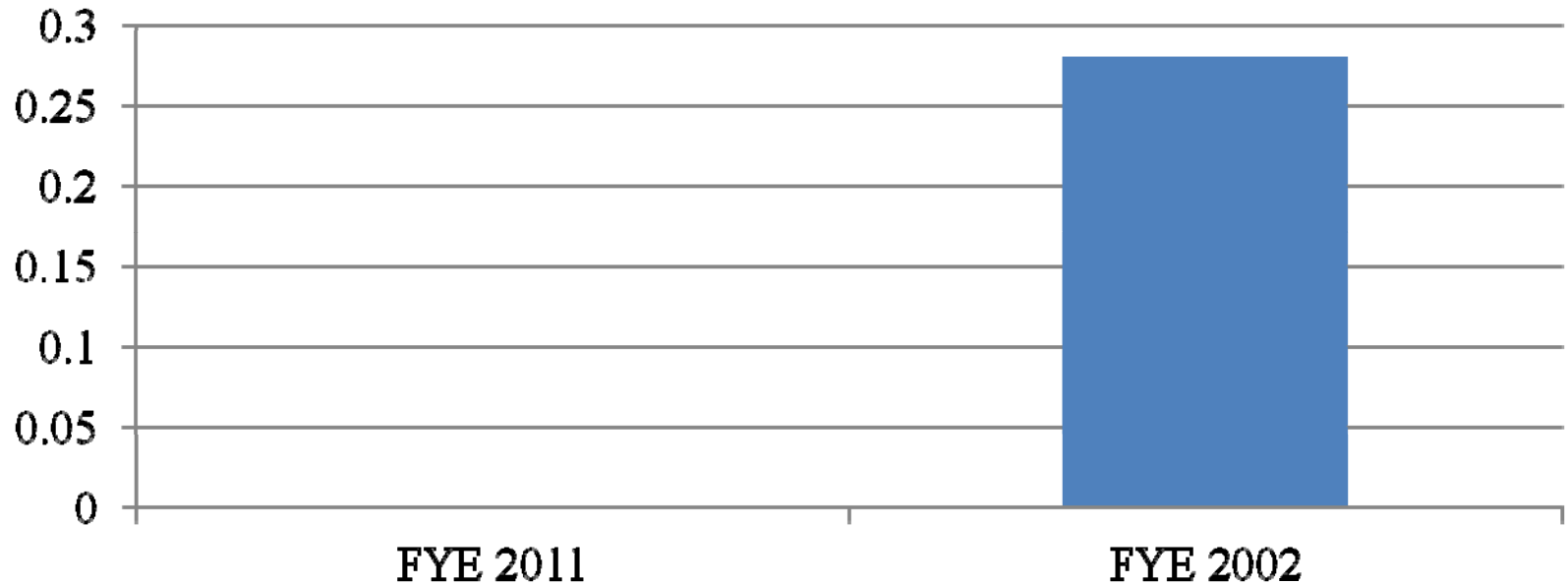
- ▶ Seven (7) Justices
- ▶ Two Panels of 3 Justices Each
- ▶ Panels Change Every 6 Weeks
- ▶ 1 Administrative Justice
- ▶ Only 2 justices with less than 4 years experience
- ▶ Pool Dice

Fort Worth Court of Appeals

So What Are My
Chances of Success?

Fort Worth Court of Appeals

Fort Worth Overall Reversal Rates—Jury Trials (2011 sample too small)



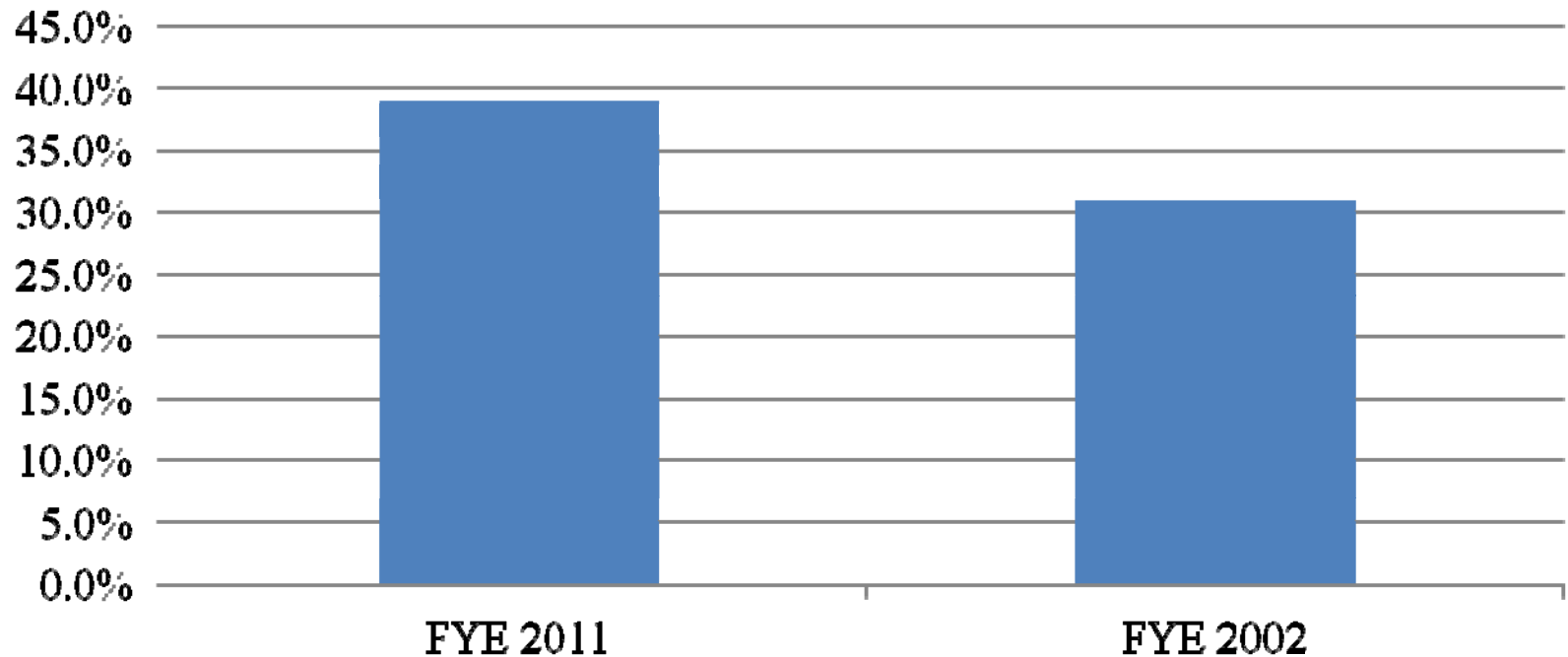
Sources:

Lynne Liberato and Kent Rutter, *Why Courts Reverse*, STATE BAR OF TEXAS
25TH ADVANCED CIVIL APPELLATE SEMINAR (2011)

Hon. Murray B. Cohen and Kent Rutter, *Why Courts Reverse*, STATE BAR OF TEXAS
17TH ADVANCED CIVIL APPELLATE SEMINAR (2003)

Fort Worth Court of Appeals

Fort Worth Court—Overall Civil Reversal Rates



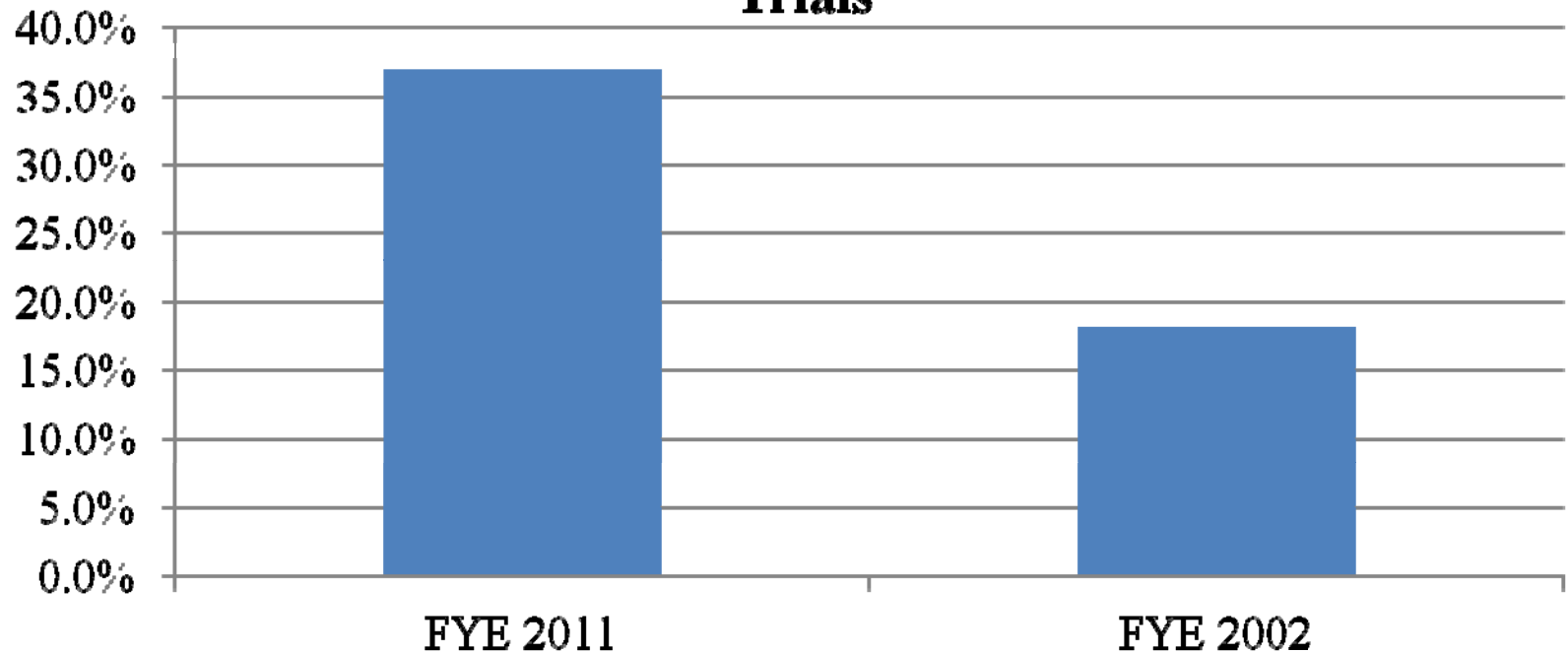
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Fort Worth Court of Appeals

Fort Worth Court: Overall Reversal Rates—Bench Trials



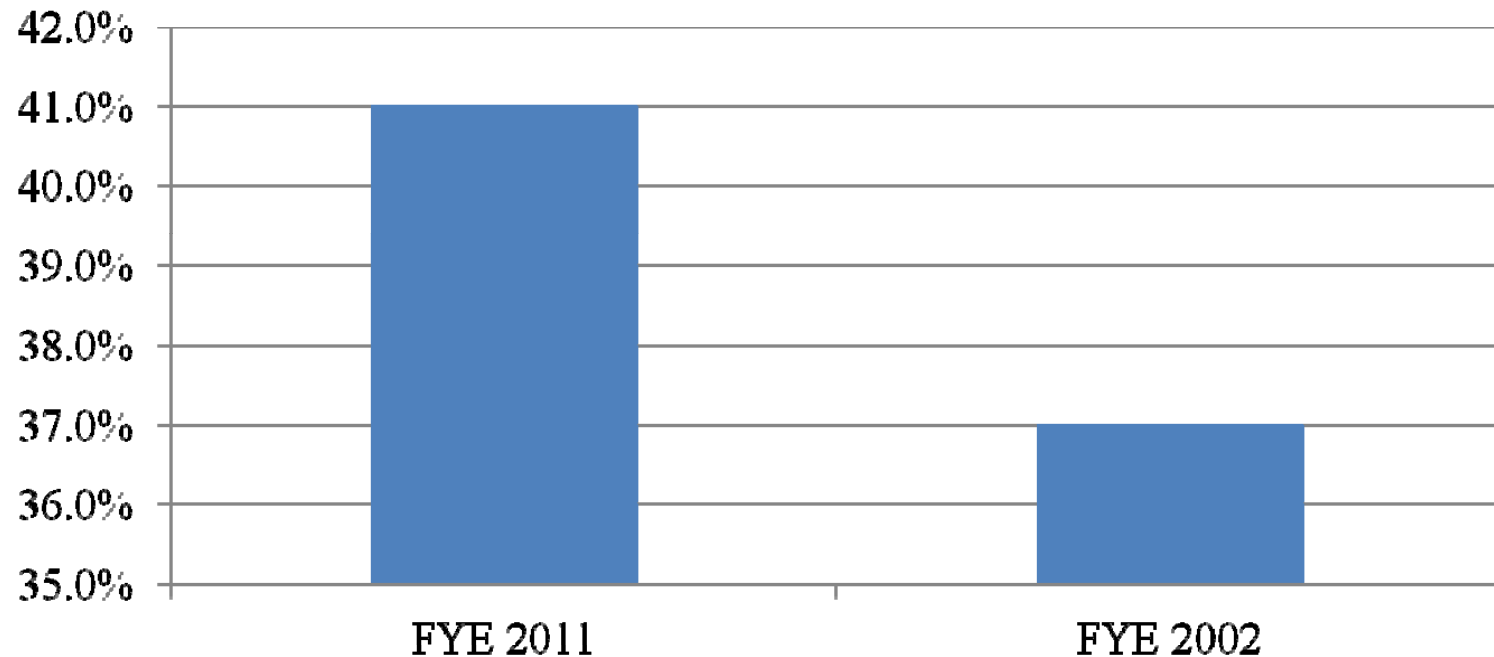
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Fort Worth Court of Appeals

Fort Worth Court Overall Reversal Rates— Summary Judgment



Sources:

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25TH ADVANCED CIVIL APPELLATE SEMINAR (2011)

Hon. Murray B. Cohen and Kent Rutter, *Why Courts Reverse*, STATE BAR OF TEXAS
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Fort Worth Court of Appeals

Rehearings: FYE 8/31/2010-2009

Rehearing Motions in Civil Cases:

Filed	54
Granted	6 (11.1%)
Den./Withdrawn	7 (13%)

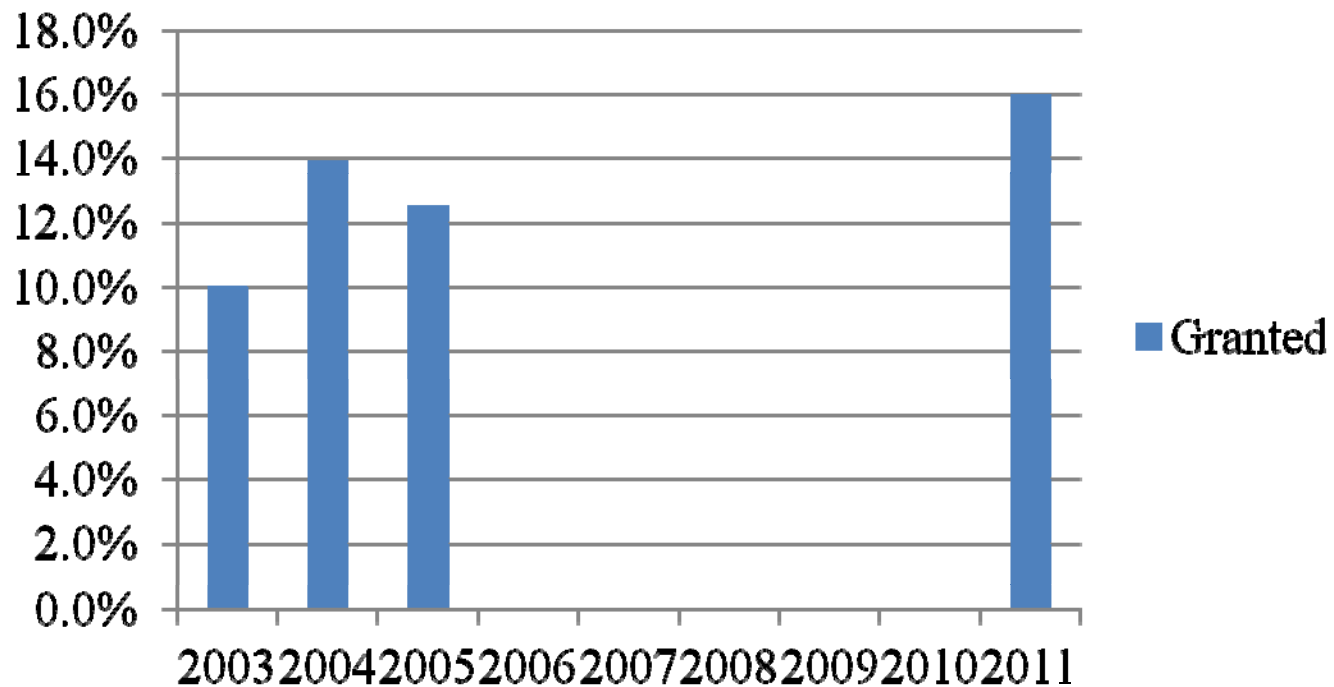
Source:

Steven K. Hayes, et al, *Rehearing Practice in The Courts of Appeal: They Heard You The First Time, and Other Rules of Thumb* STATE BAR OF TEXAS 24TH ANNUAL ADVANCED CIVIL APPELLATE SEMINAR (2010)

Fort Worth Court of Appeals

Fort Worth Court - Mandamus: FYE 8/31/2003-2005 and 2011* (*approx. 10% sample).

Granted



Source: [Mandamus Before the Second District Court of Appeals: An Analysis of Mandamus Rulings in 2003 Through 2005](#), by Steven K. Hayes. Copyright 2006.

Fort Worth Court of Appeals

Fort Worth Court - Mandamus: FYE 8/31/2003-2005

- ▶ Within thirty days of filing, the Court dismissed 76% of petitions (80% dismissed w/i two weeks in 2011 sample)
- ▶ If the Second Court of Appeals Requested a Response, the Grant Rate Increases to Nearly One in Three (One of Two (maybe 100%), in 2011 sample).
- ▶ When the Second Court of Appeals Entered a Stay Order on a Discovery-Oriented Mandamus Proceeding, It Denies the Mandamus Less Than Half the Time.
- ▶ If petition is pending:
 - (1) 30 days post-filing, grant rate = 34%;
 - (2) 40 days post-filing, grant rate 40%;
 - (3) 50+ days post-filing=grant rate>50%.

Dallas Court of Appeals

Fifth District
Court of Appeals
Dallas

Dallas Court of Appeals

Court Overview:

- ▶ 13 Justices
- ▶ Four panels of 3 justices each
- ▶ Panels are reconstituted every 9 weeks
- ▶ Two panels sit for oral argument on Monday and Wednesday; the other two on Tuesday and Thursday
- ▶ One motions panel – sits for one year
- ▶ One mandamus panel – rotates every month

Dallas Court of Appeals

- ▶ New Cases filed in FYE 2011

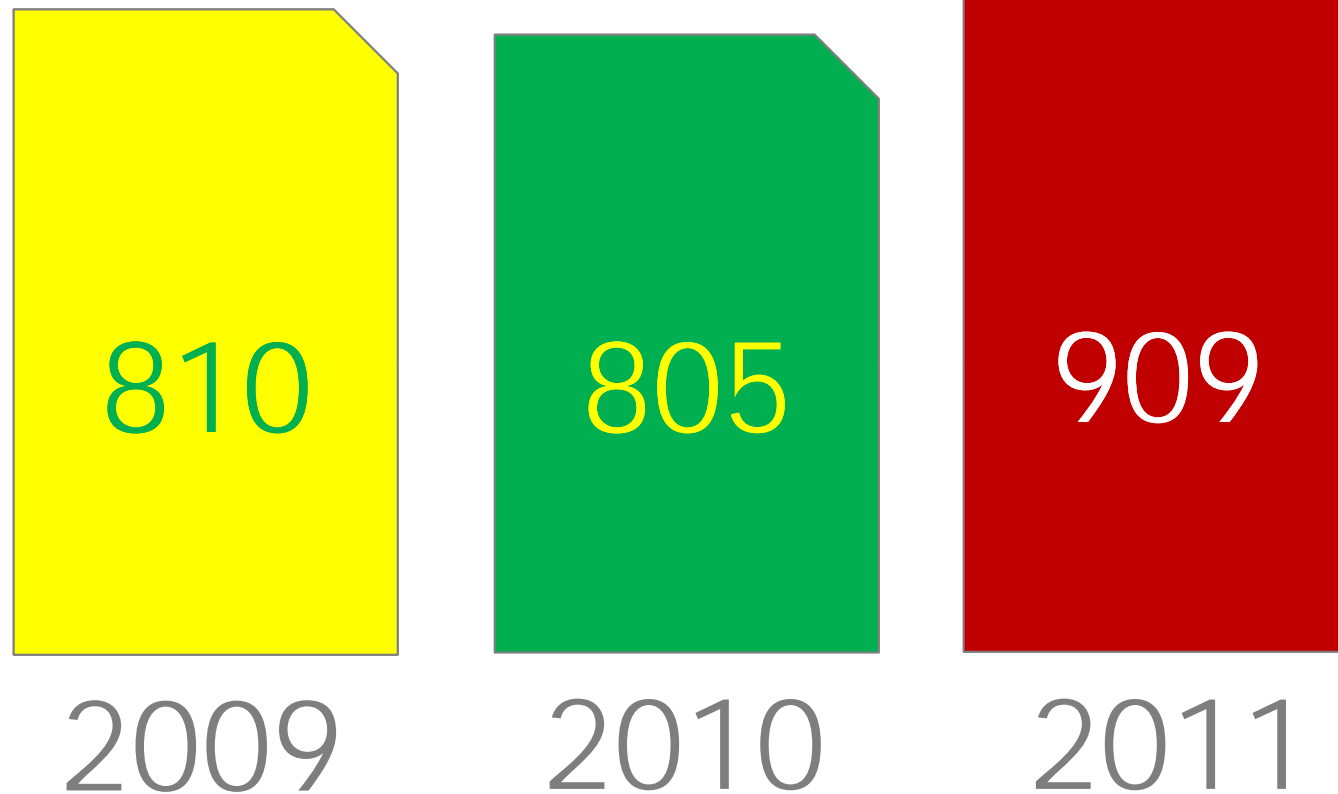
861

- ▶ Total Cases Disposed

909

Dallas Court of Appeals

Civil Cases Disposed



Dallas Court of Appeals

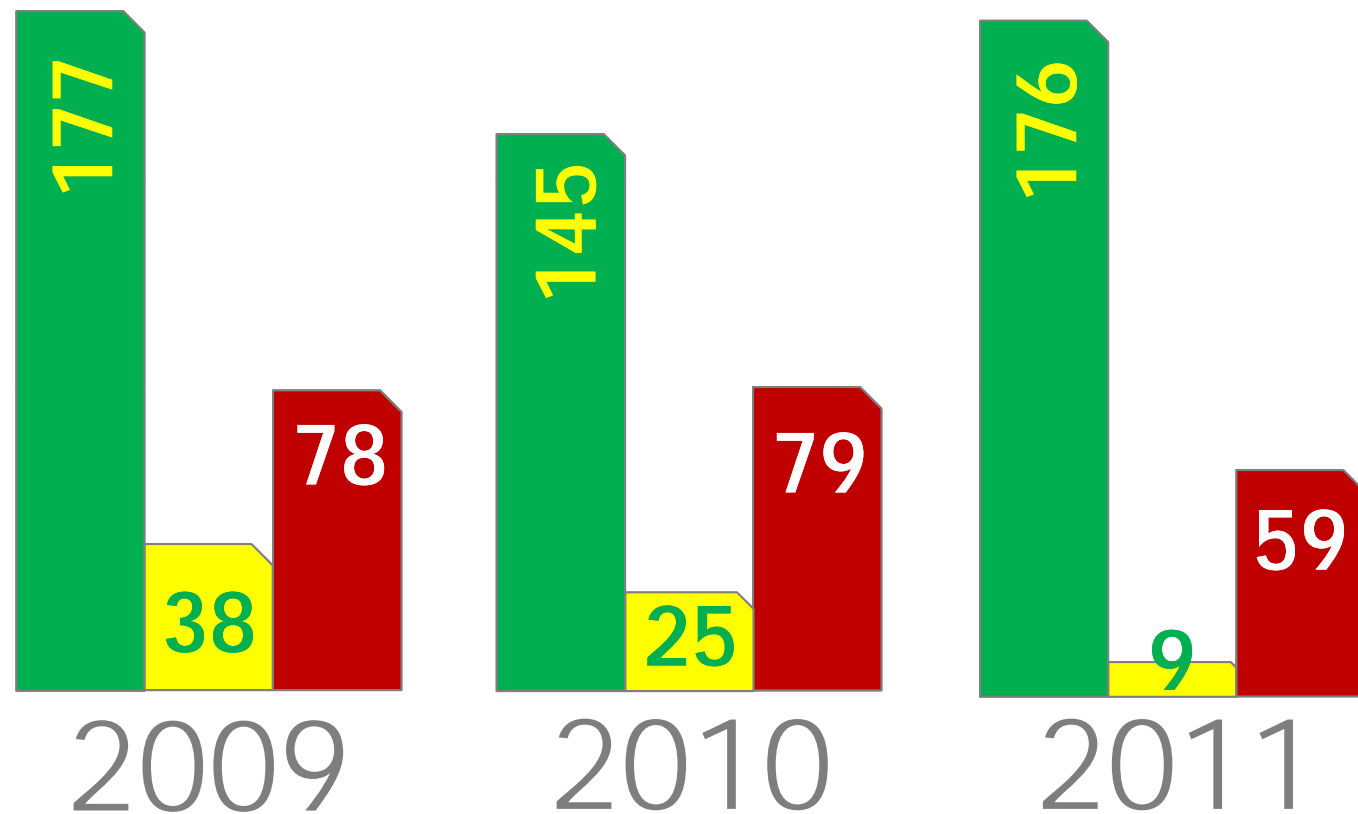
Reverse/Affirmance Rates

FYE 2009 – FYE 2011

Affirmed

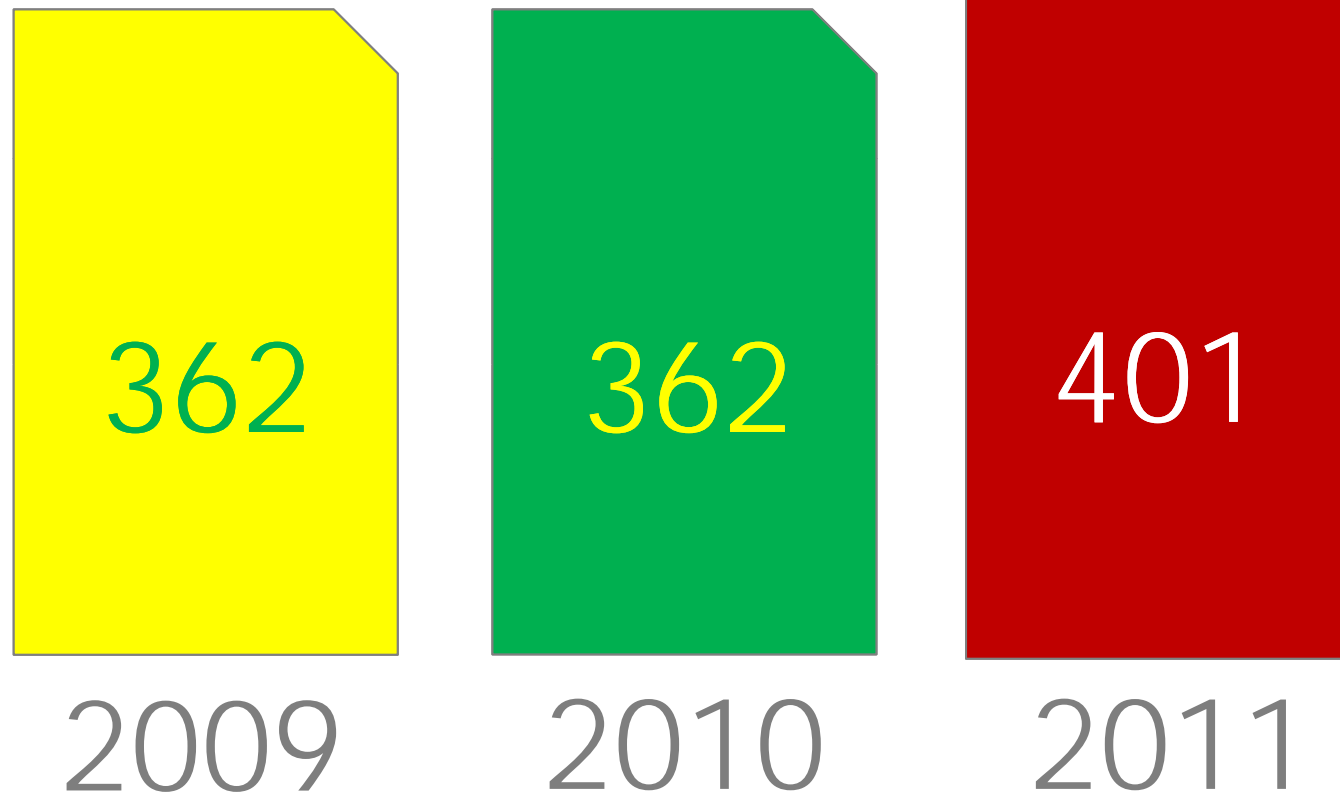
Affirmed in part
Reversed in part

Reversed



Dallas Court of Appeals

Civil Cases Dismissed



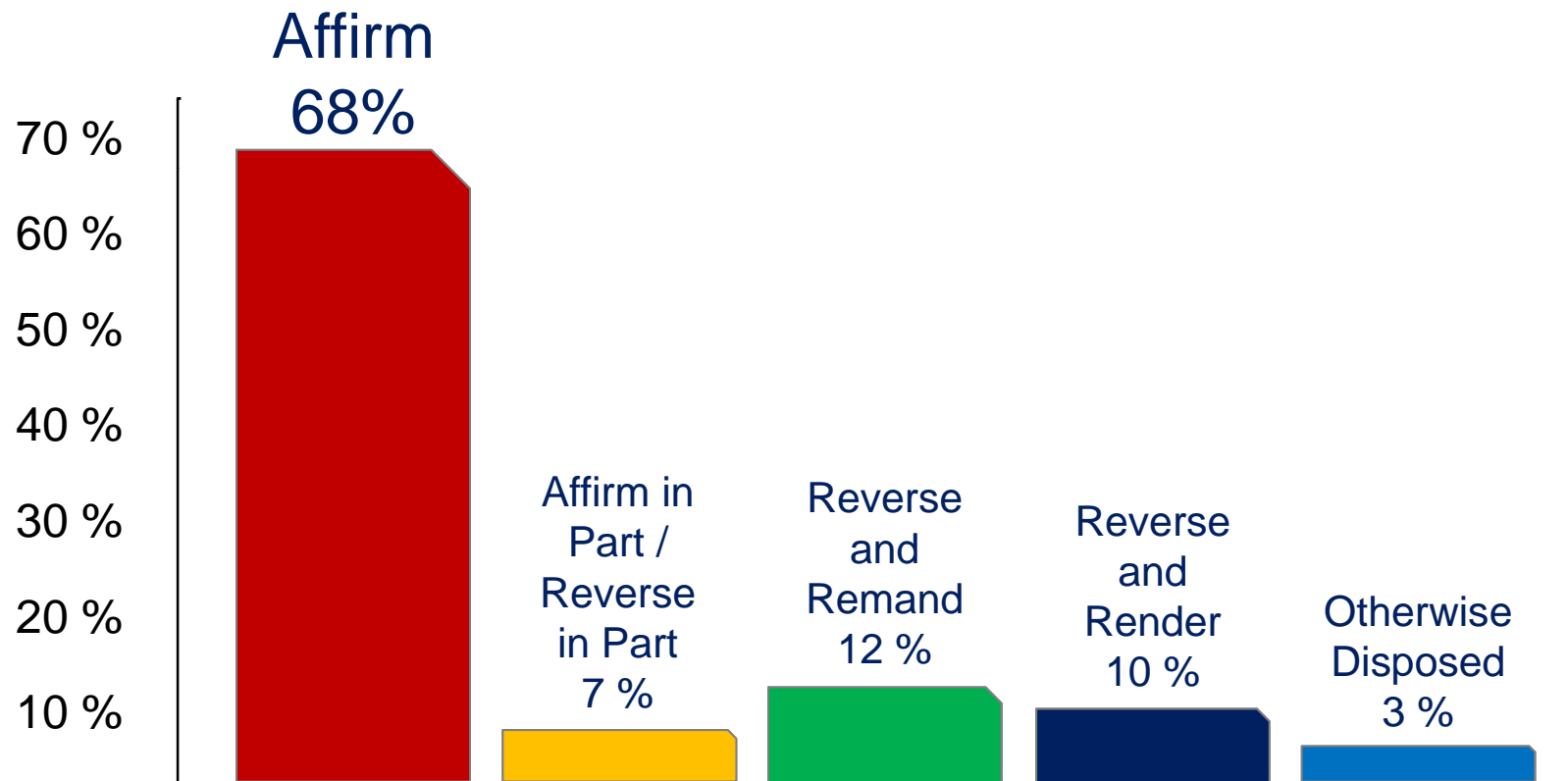
Dallas Court of Appeals

Official OCA Statistics

▶ Affirm	19%
▶ Affirm In Part/ Reverse in Part	1%
▶ Reverse	7%
▶ Dismiss	44%
▶ Otherwise Disposed	27%
▶ Consolidation or Voids	2%

Dallas Court of Appeals

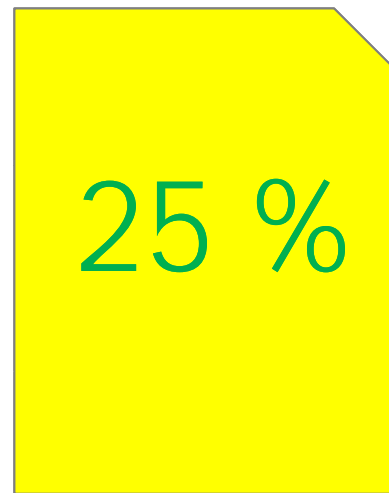
2011 Affirm/Reverse Rates for Select Civil Cases
(Civil Cases Decided on the Merits Excluding Juvenile, Family Law, and Civil Forfeiture)



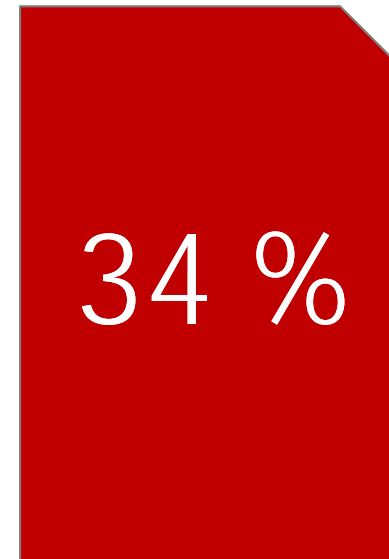
Dallas Court of Appeals

2011 Reversal Rates

Jury Trials



FYE 2002



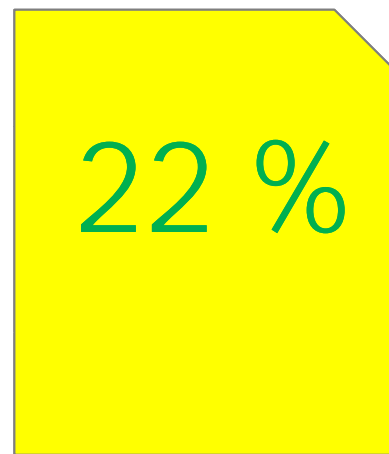
FYE 2011

Sources: Lynne Liberato and Kent Rutter, *Why Courts Reverse*, STATE BAR OF TEXAS
ADVANCED CIVIL APPELLATE PRACTICE COURSE (2011)
Hon. Murray B. Cohen and Kent Rutter, *Why Courts Reverse*, STATE BAR OF TEXAS
ADVANCED CIVIL APPELLATE PRACTICE (2003)

Dallas Court of Appeals

2011 Reversal Rates

Bench Trials



FYE 2002

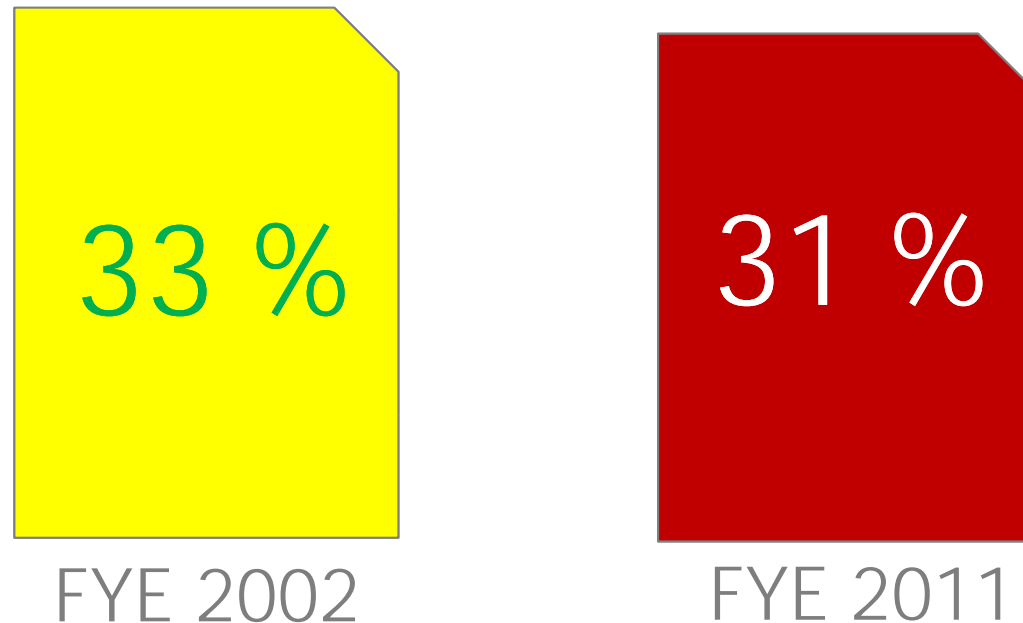


FYE 2011

Sources: Lynne Liberato and Kent Rutter, *Why Courts Reverse*, STATE BAR OF TEXAS ADVANCED CIVIL APPELLATE PRACTICE COURSE (2011)
Hon. Murray B. Cohen and Kent Rutter, *Why Courts Reverse*, STATE BAR OF TEXAS ADVANCED CIVIL APPELLATE PRACTICE (2003)

Dallas Court of Appeals

2011 Reversal Rates Summary Judgments



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Hon. Murray B. Cohen and Kent Rutter, *Why Courts Reverse*, STATE BAR OF TEXAS ADVANCED CIVIL APPELLATE PRACTICE (2003)

Dallas Court of Appeals

Motions for Rehearing FYE 2009

Of 132 Motions for Rehearing Filed:

- ▶ 10 Were Granted (7.5%)
- ▶ 10 Were Denied But Resulted in a New Opinion (7.5%)

Source: Cliffie Wesson, *Rehearing Practice in the Court of Appeals: They Heard You the First Time and Other Rules of Thumb*; State Bar of Texas 24th Annual Advanced Civil Appellate Practice Course (2010).

Dallas Court of Appeals

Petitions for Writ of Mandamus FYE 2011

Granted: **14**

Denied: **152**

Dismissed: 65

Granted in Part/Denied in Part: 1

Dismissed in Part/Denied in Part: 1

Dallas Court of Appeals

Odds of Getting Mandamus?

Based on 2011 numbers:

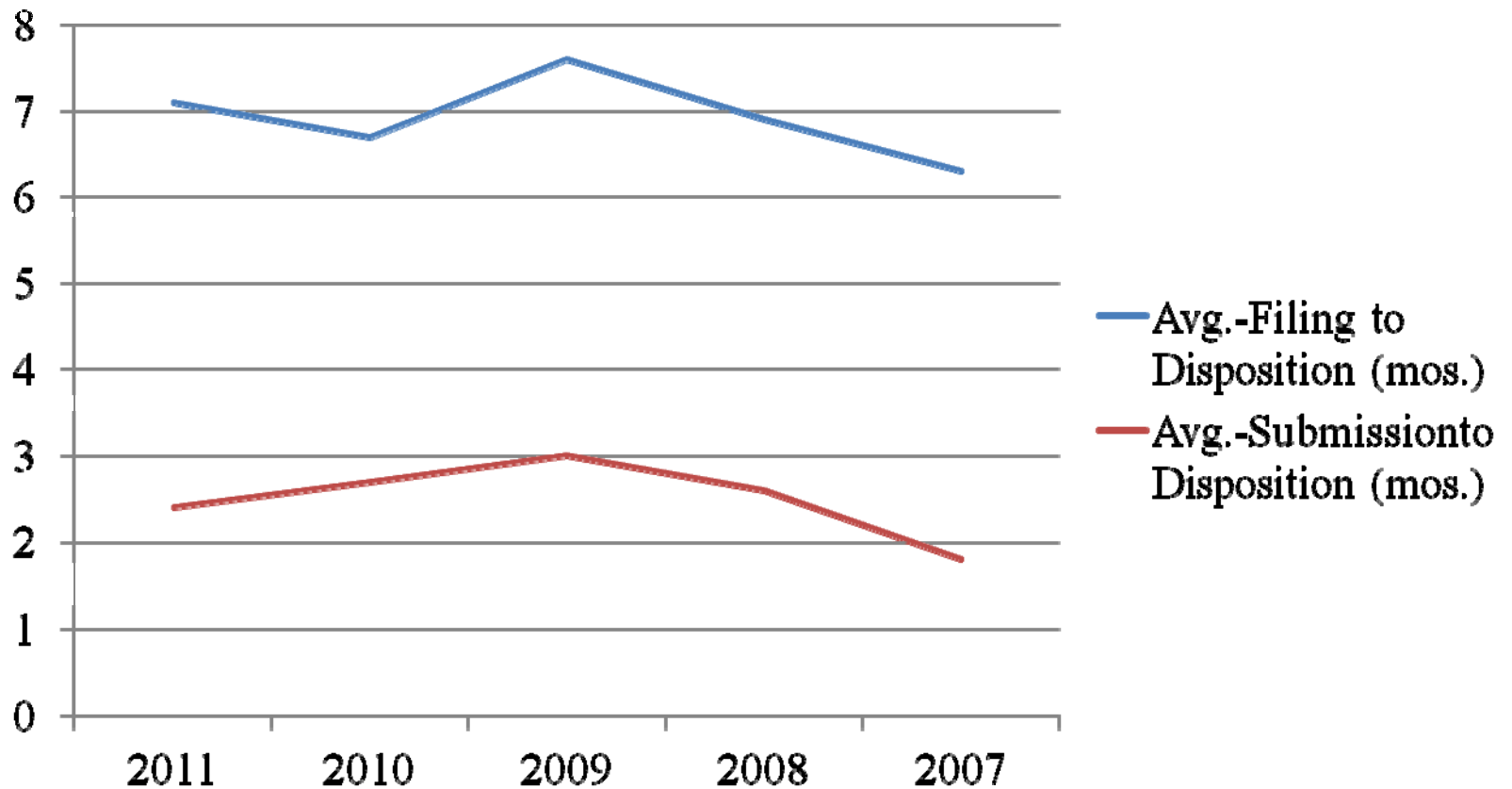
9% of mandamus petitions decided on the merits were granted in whole or in part.

Fort Worth and Dallas Courts of Appeals

So How Quickly
Do Cases Move?

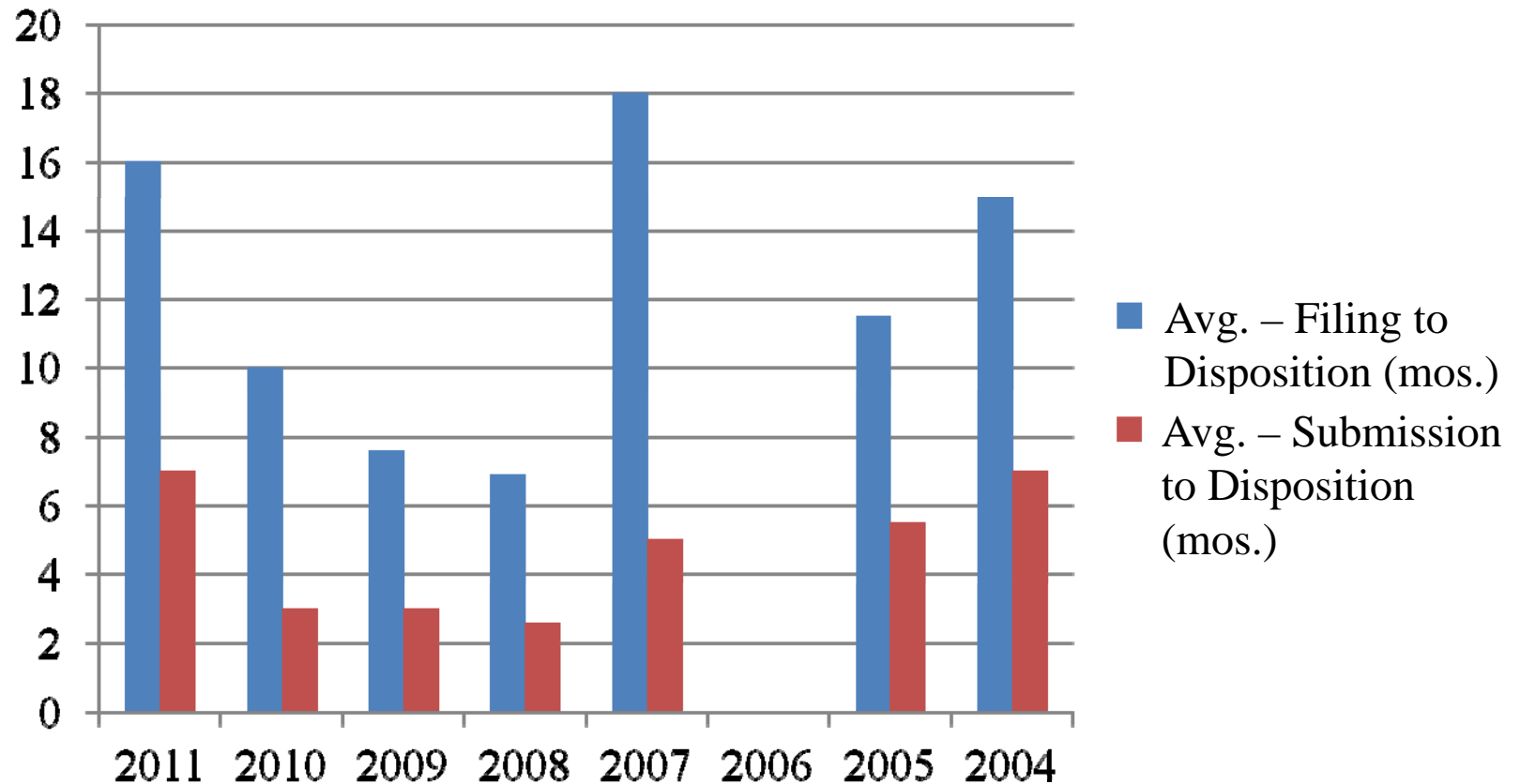
Fort Worth Court of Appeals

Fort Worth Court - Civil Cases Pending by Age:
FYE 8/31/2010-2007



Fort Worth Court of Appeals

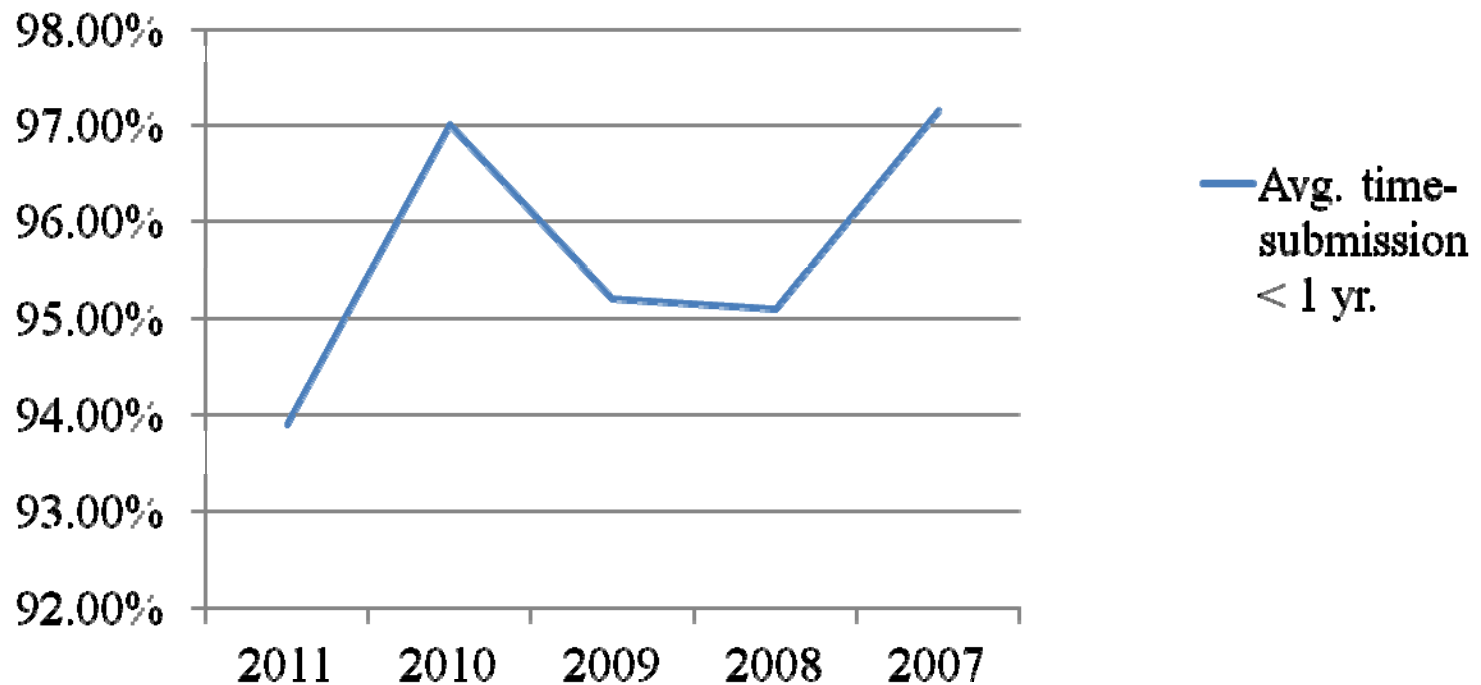
Fort Worth Court - How Long Have My Cases Taken?



Fort Worth Court of Appeals

Fort Worth Court - % of Civil Cases
Pending less than 1 yr. post-submission
FYE 8/31/2010-2007

Avg. time-submission < 1 yr.



Fort Worth Court of Appeals

Oral Argument Before the 2nd Court

It's a Court of Hot Panels

Fort Worth Court of Appeals

Oral Argument Before the 2nd Court

80-90% of the time, you will be questioned.

What happened at least half the time:

- ▶ Before questions started: Appellants had 2.5 minutes to open, Appellees 3 minutes.
- ▶ Court asked Appellants 8+ questions, Appellees 6+ questions
- ▶ Appellants had no questions in the last minute, Appellees had no questions in the last two minutes.

Try to predict/prepare for the questions you will get.

Source: [Oral Argument Before the Second District Court of Appeals: The Rules, and an Analysis of 57 Cases](#), by Steven K. Hayes. Copyright 2005.

Dallas Court of Appeals

Hmmm . . .

When will we get a ruling from the Court of Appeals???



Dallas Court of Appeals

Timing Issues

FYE 2011

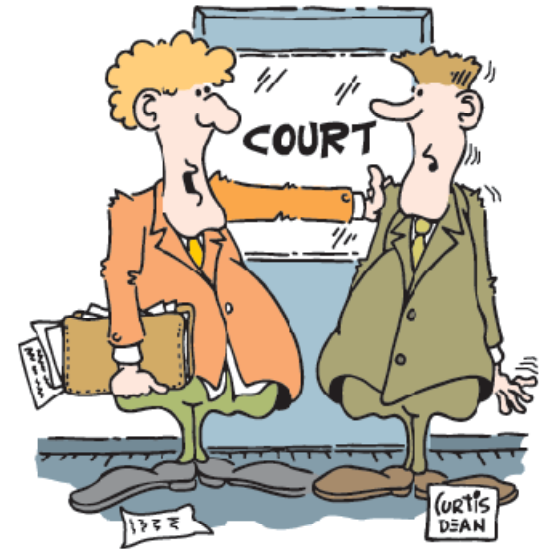
OCA Statistics

Average Time Between
Filing and Disposition:

8.2 Months

Average Time Between
Submission and Disposition:

1.2 Months



Dallas Court of Appeals

Review of Civil Cases Decided on the Merits
(Excluding Juvenile, Family Law, and Civil Forfeiture)

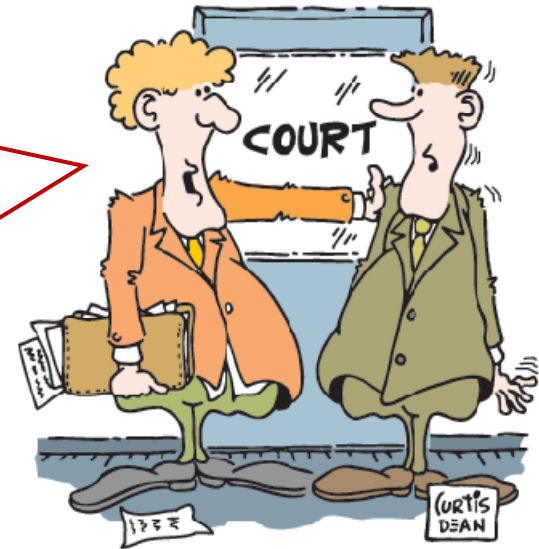
Average Time Between
Submission and Disposition

94 Days

Dallas Court of Appeals

Safe Answer

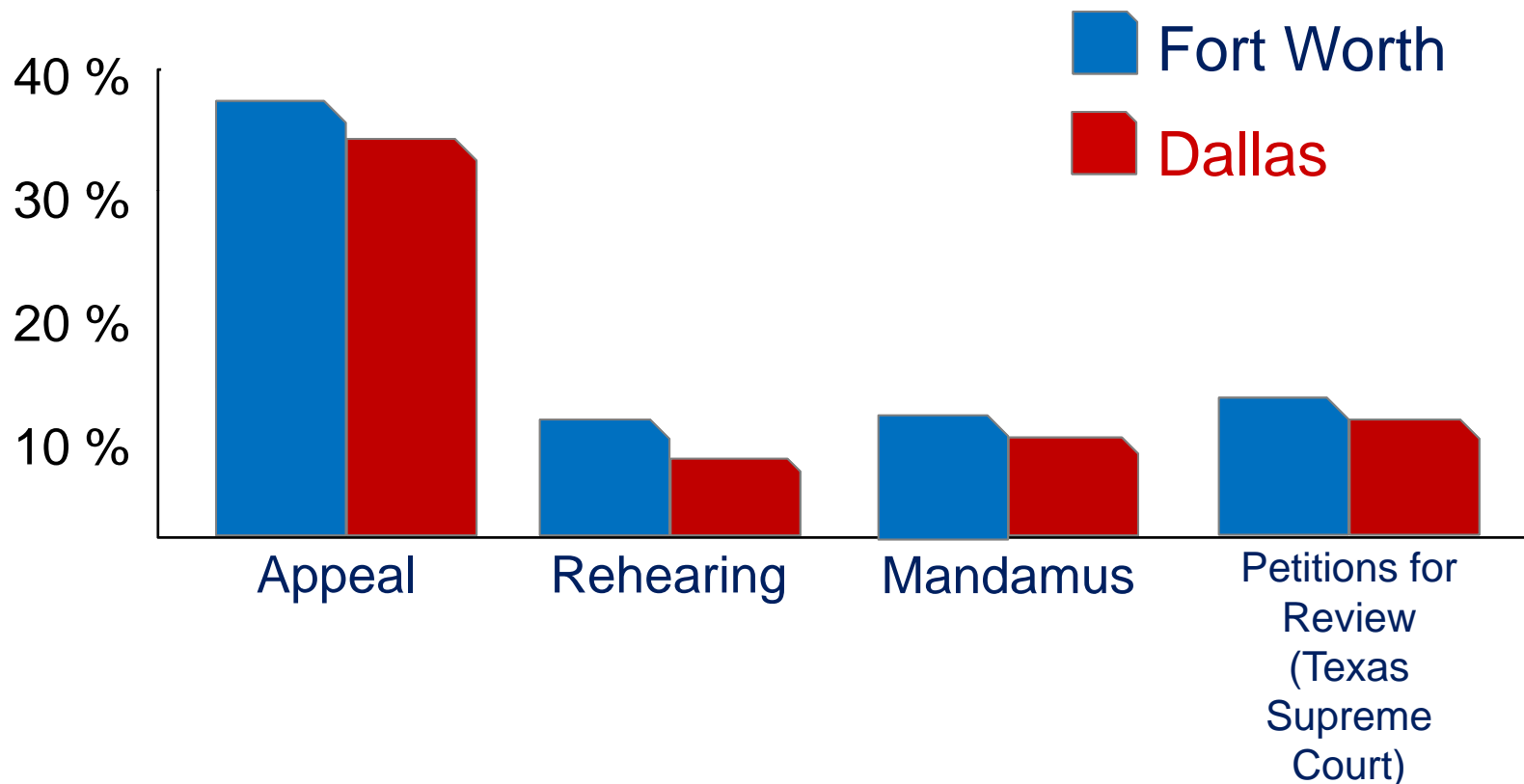
*Probably
less than
one year!*



In FYE 2011, 97.7% of cases were under submission for less than one year.

Dallas and Fort Worth Courts of Appeals

Chances the Courts Will Turn Around The Prior Ruling



Dallas and Fort Worth Courts of Appeals

Those Percentages Reflect the Systemic Challenges of Appeal

Appellate justices and trial judges:

- ▶ deal with the same record;
- ▶ deal with the same law;
- ▶ were trained in the same school of thought.

Trial judges' rulings get certain benefits of the doubt:

- ▶ discretionary rulings;
- ▶ preservation of error rules;
- ▶ evidence sufficiency standards, etc.

Dallas and Fort Worth Courts of Appeals



**Whatcha'
Doin',
Where Ya'
Goin',
Can I Come
Along?**



Thank You!

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