

The Appellate Strategist

INSIGHTS ON APPELLATE ISSUES, TRIAL CONSULTATIONS, AND EVALUATING APPEALS

[Too Many Courts, not Enough Judges? A Proposal to Rationalize the Texas Appellate Courts](#)

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Texas has 14 intermediate appellate courts, more than any other state. In a recent Texas Tech Law Review article and in CLE presentations, Jones Day attorney, David Schenck, has questioned whether the state needs so many appellate courts. This large number of courts was created over many years on an ad hoc basis, seemingly due to the sprawling nature of Texas itself and a growing population. Mr. Schenck has reasoned that the large number of courts necessarily increases the odds of the development of circuit conflicts. This is particularly problematic in the Houston area, which is governed by two separate courts of appeal within the same geographical area. A trial court judge could find himself faced with conflicting opinions, both of which would be “controlling.”

Other anomalies exist as well. There is a substantial difference in case loads between the courts of appeals. While transfers for the purpose of docket equalization occur, these transfers can create thorny questions regarding the application of legal rules of the transferor’s court. Finally, a handful of counties have been placed in more than one appellate district. Aside from the possible conflicts problem, this situation has occasionally resulted in a “race to the court of appeal,” as litigants attempt to jockey for a more favorable court.

Mr. Schenck proposes to consolidate the courts of appeals into five new super-regional courts. The case load of the five courts would be more equal and the chances of a conflict would be reduced. His plan would eliminate any overlap in the territorial reach of the new court. The proposal would *increase* the number of appellate judges.

It will be interesting to see whether the court rationalization plan gathers momentum. Since it will likely prove difficult to divest a city of its own court of appeals, perhaps the best starting place is to combine the two Houston courts of appeals.