

APPEAL OR NOT TO APPEAL?

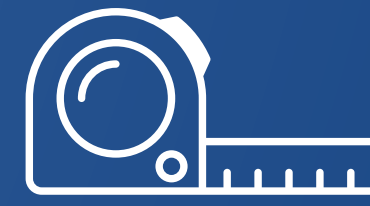
Insights & Appellate Statistics
for Family Lawyers

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OVERVIEW

1. Standards of Review



2. Appellate Statistics



3. Avoiding Appeals



4. Common Pitfalls



STANDARDS OF REVIEW

Abuse of Discretion

Sufficiency of Evidence

De Novo

**More deference
(Less likely to overturn)**

**Less deference
(More likely to overturn)**



Iliff v. Illiff, 339 S.W.3d 126 (Tex.App.-Austin 2009);
Moroch v. Collins, 174 S.W.3d (Tex.App-Dallas 2005);
Kelly v. Kelly, 634 S.W.3d 335 (Tex.App-Houston[1st Dist.] 2021);
Garza v. Garza, 217 S.W.3d 538 (Tex.App.-San Antonio 2006).

More deference
(Less likely to overturn)

Less deference
(More likely to overturn)



Abuse of
Discretion + Sufficiency of Evidence

De Novo

Findings of FACT

**Conclusions
of LAW**

**More deference
(More difficult)**

**Less deference
(Less difficult)**

**Abuse of
Discretion**

+

Sufficiency of Evidence

De Novo

Burdens of Proof

Preponderance

Clear & Convincing

More deference
(More difficult)

Less deference
(Less difficult)



Abuse of
Discretion

+

Sufficiency of Evidence

De
Novo

Questions of Law

Burdens of Proof

Preponderance

Clear & Convincing

Statute Specific

Best Interest

Just & Right

Significant Impairment

Substantial change

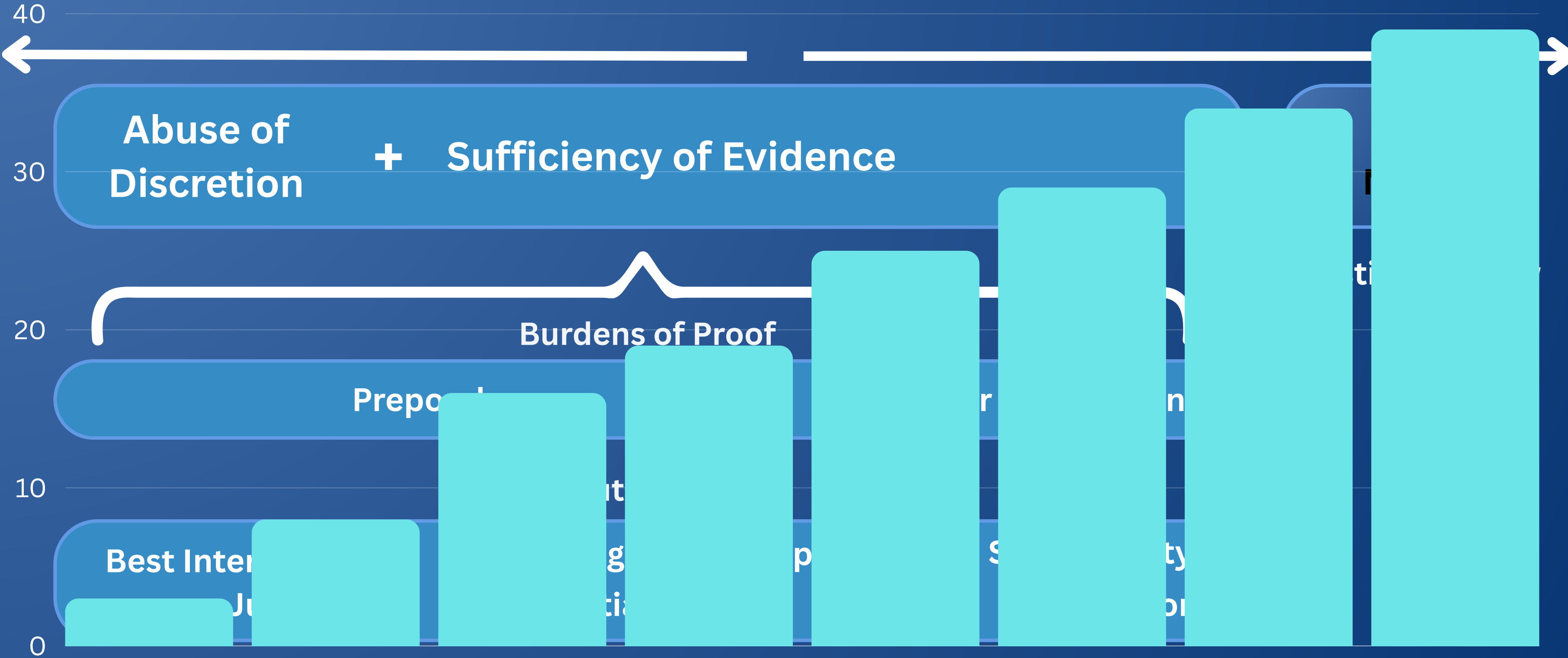
Sep Property

Termination

More deference
(More difficult)

Less deference
(Less difficult)

● Series 1



**7th Court -
Amarillo**



**2nd Court -
Fort Worth**

**6th Court -
Texarkana**

**11th Court -
Eastland**

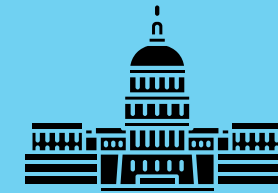
**5th Court -
Dallas**

**12th Court -
Tyler**

**8th Court -
El Paso**



**10th Court -
Waco**



**3rd Court -
Austin**

**9th Court -
Beaumont**

**4th Court -
San Antonio**



**1st Court -
Houston**

**14th Court -
Houston**

**13th Court -
Corpus Christi**



Stats for Family Law Cases filed with the Appellate Courts (2019-2024)

2,906 family law appeals filed in the appellate courts
(Non-CPS; also does not include original proceedings)

1,434 cases dismissed prior to reaching the merits
49.34% of filed cases

397 cases waiting for a decision

1,075 cases heard on the merits

REASONS FOR DISMISSALS

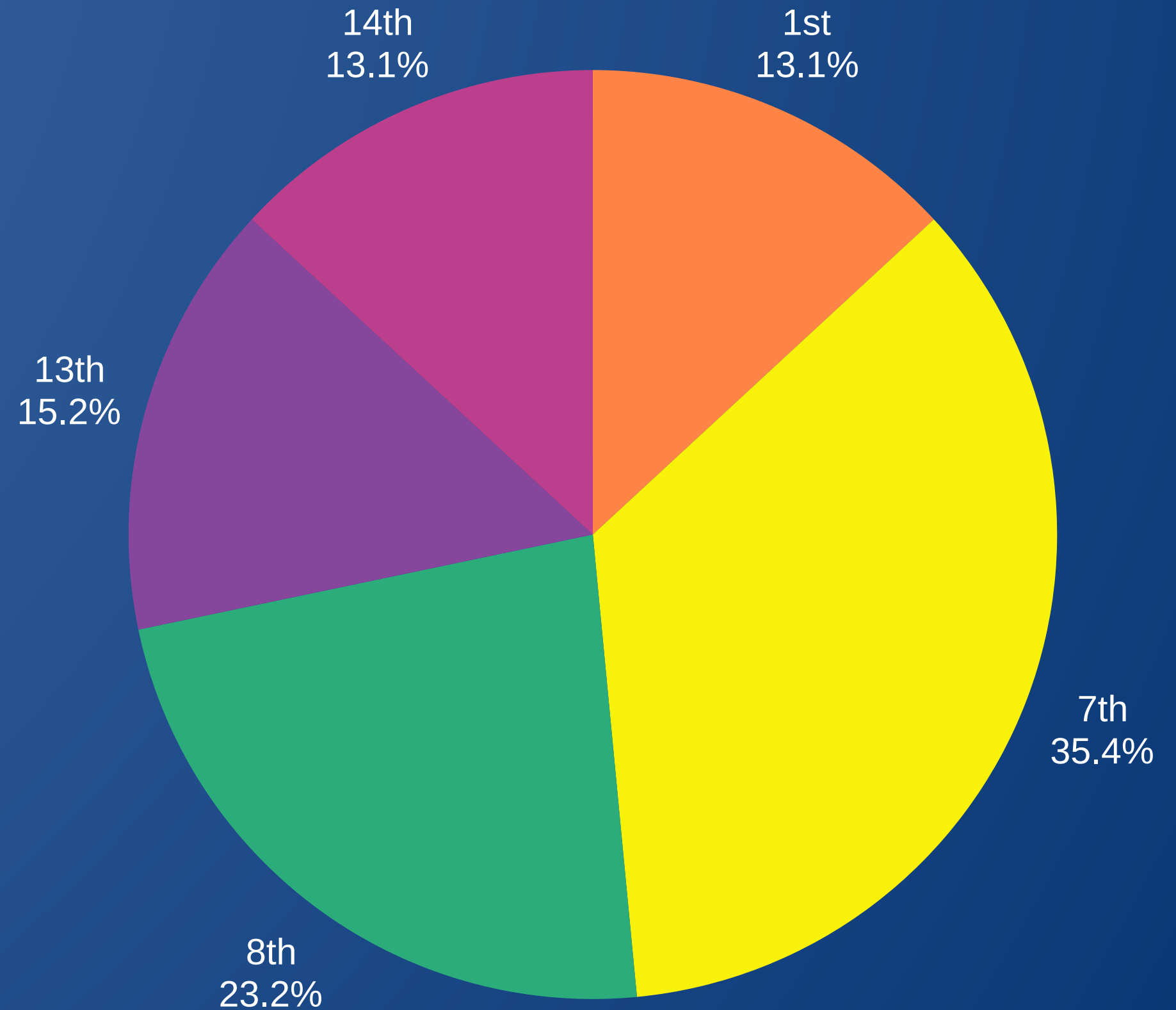
- Jurisdiction
- Want of Prosecution
- Voluntary
- Settlement

Third Court of Appeals

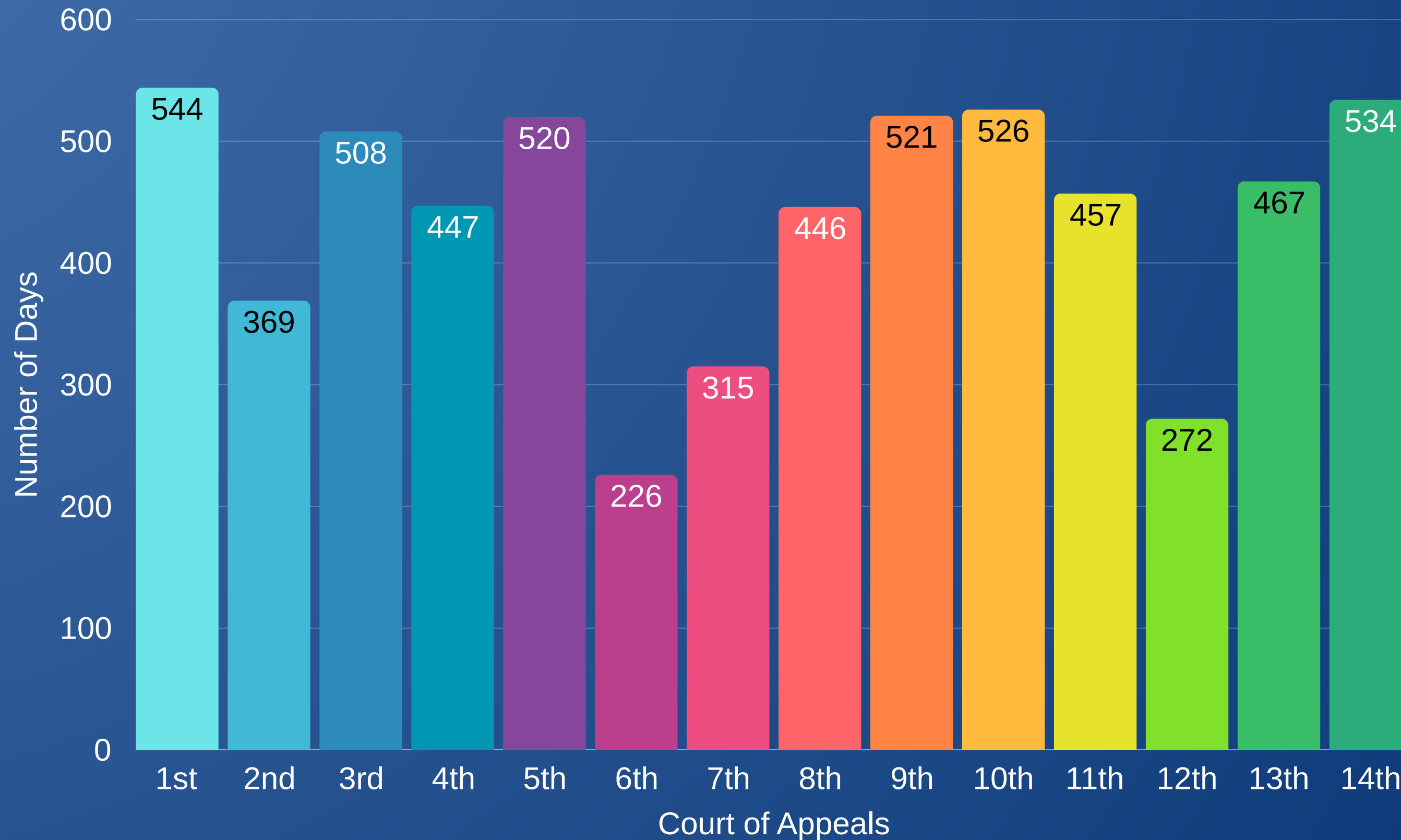
371 cases filed

99 transferred

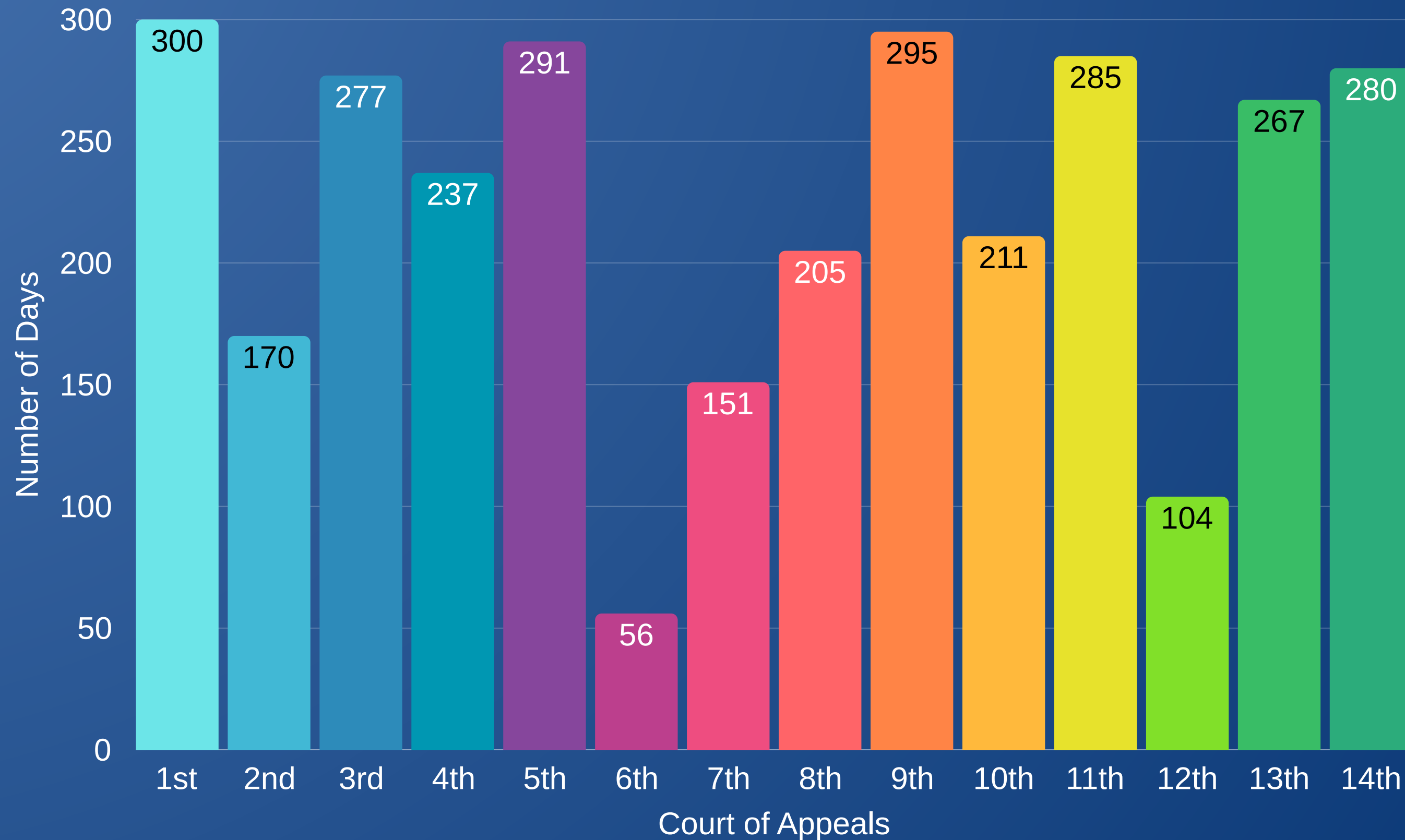
27% transferred out



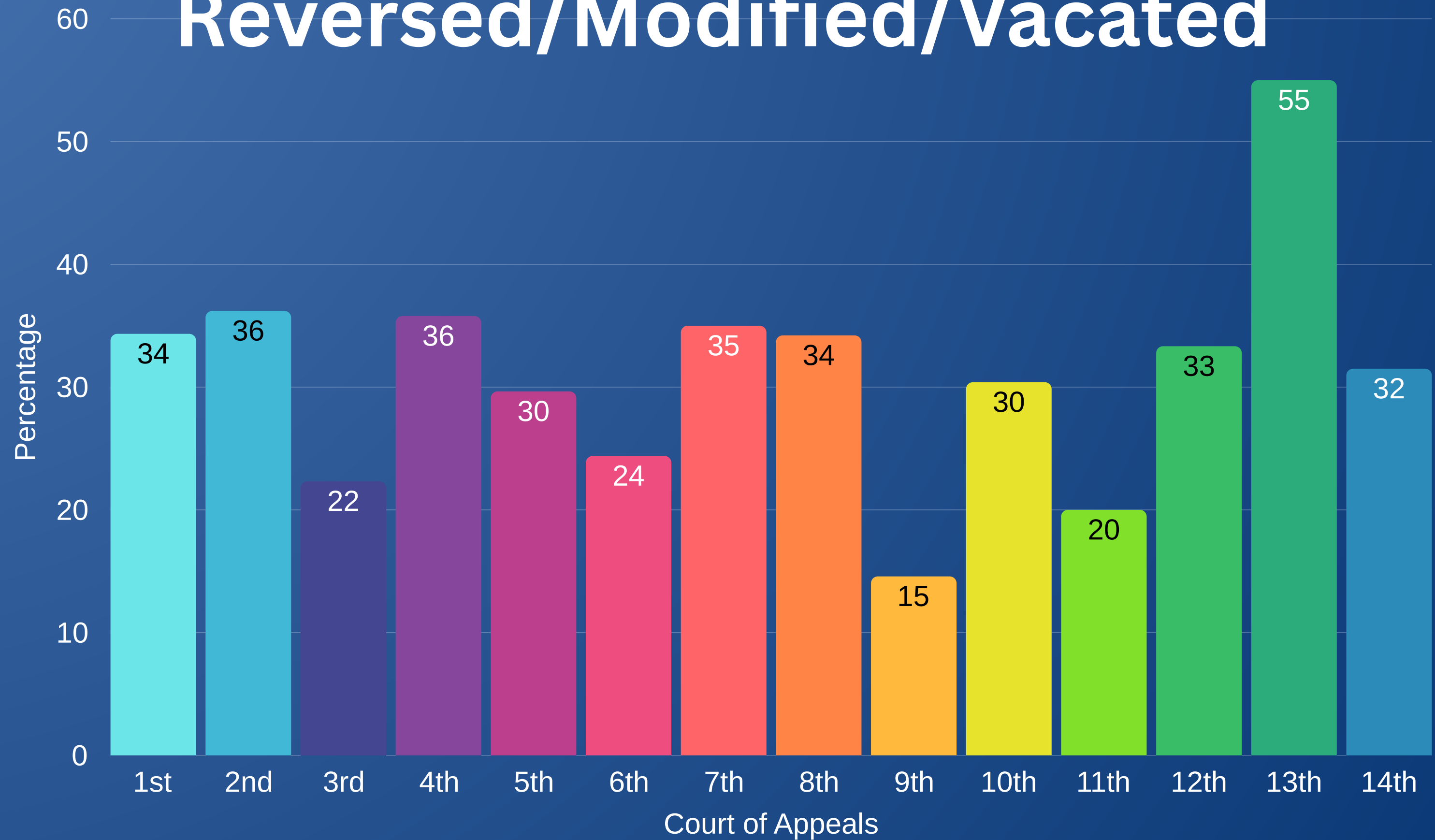
NUMBER OF DAYS FROM NOTICE OF APPEAL TO ISSUED OPINION



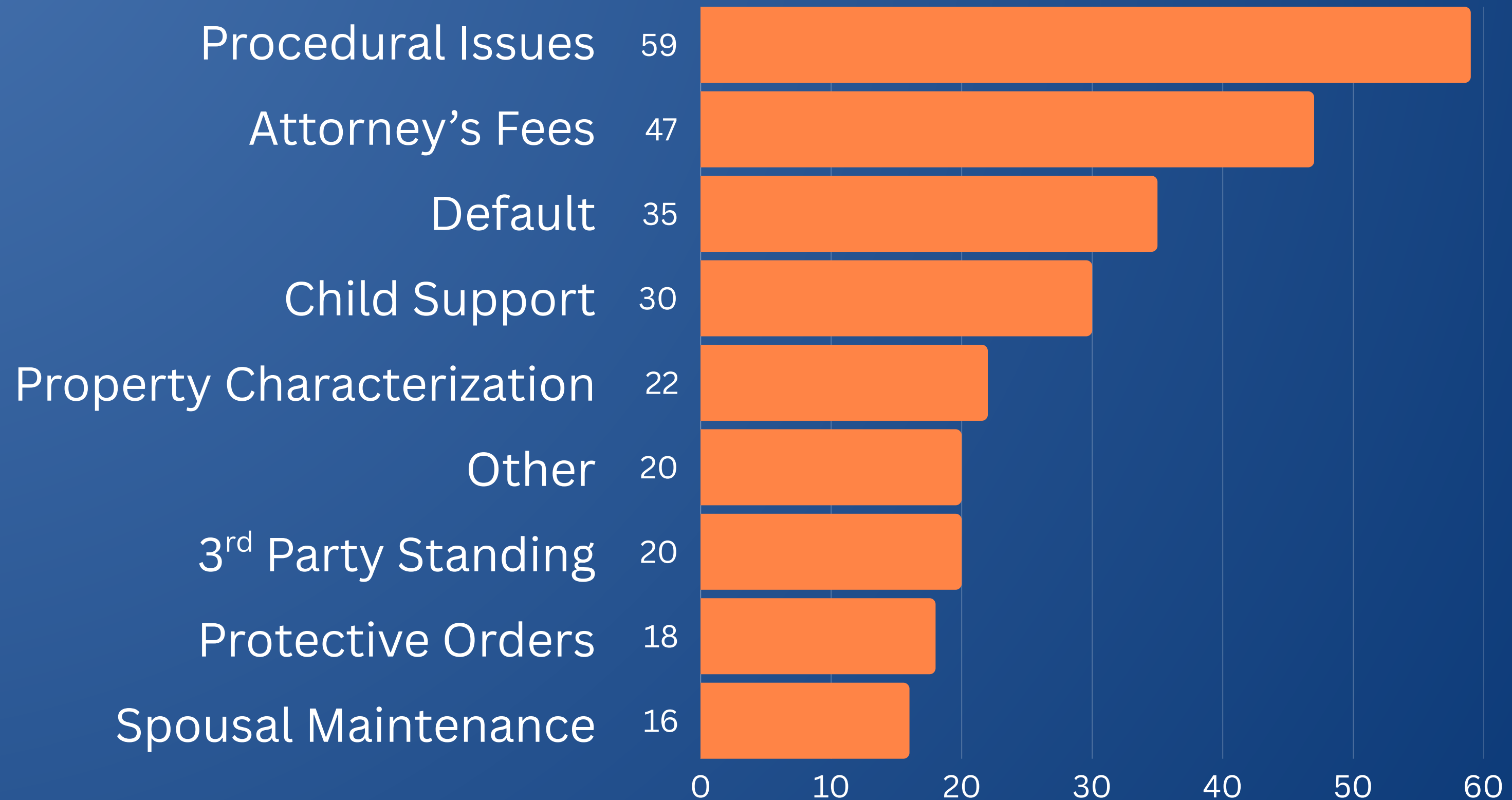
NUMBER OF DAYS FROM LAST BRIEF TO ISSUED OPINION



Percentage of cases Reversed/Modified/Vacated



Types of Cases Reversed/Modified



Types of Cases Reversed/Modified



THIRD COURT OF APPEALS

Reversed/Modified/Vacated

Attorney's Fees	9
Child-related (possession & access, conservatorship, or other child-related)	4
Child Support	4
Procedural	2
Default	2
Property Characterization	2

Other: 5

AVOIDING APPEAL

“The greatest victory is that which requires no battle.”

-Sun Tzu, The Art of War



AVOIDING APPEAL

& Improving your result!!!

- **Clients deserve a legal result.**
- **Judges want to get it right.**
- **Good lawyers know when they've won too much.**

AVOIDING APPEAL

Step 1

- Get an appellate lawyer involved immediately.
 - BEFORE orders are signed.
 - BEFORE findings of fact & conclusions of law.
 - BEFORE motions for new trial.

AVOIDING APPEAL

Step 2

- **Motions to Reconsider.**
- **Motions for New Trial.**
- **Post-Trial Negotiation.**
- **Temp Orders / Attorney Fees.**

Attorney's Fees

Prove up fees per Rohrmoos

STEP 1 - Calculate the Total Fees (The Lodestar)

1. Testify to (1) the qualifications and (2) the hourly rates of each professional involved in the case.
2. Testify to the total number of hours each professional billed throughout the case.
3. For each professional involved, multiply their hourly rate by the number of hours charged.

Professional:	Hourly Rate:	Hours Worked:	Total Charged:
Debra Smith (attorney)	\$475	122.7	\$58,282.50
John Jones (paralegal)	\$175	189.2	<u>\$33,110.00</u>
TOTAL			\$91,392.50

The total numbers charged by each professional is what the Texas Supreme Court calls the "lodestar".

STEP 2 - JUSTIFY the rates and amount of time spent (Arthur Anderson)

Justify your “lodestar” by testifying how (1) the rates charged, and (2) the time spent is reasonable taking into account the Arthur Anderson factors:

- The time and labor required;
- The novelty of the question involved;
- The skill required to perform the legal service properly;
- The fee customarily charged in the locality for similar legal services;
- Whether the fee is fixed or contingent on results obtained;
- The uncertainty of collection before the legal services have been rendered; and
- The results obtained.

STEP 3 - PROVE the amount of time spent and why it was reasonable (Rohrmoos)

Include with your testimony: (1) your redacted billing statements, and (2) an exhibit breaking down the hours worked in detail:

FEES THROUGH MEDIATION

Activity:	Hours:
Phone calls & meetings with client:	
• Debra Smith:	22.9
• John Jones:	34.6
Propounding Discovery:	
• Debra Smith:	13.9
• John Jones:	9.8
Responding to Discovery:	
• Debra Smith:	22.9
• John Jones:	34.6
Preparation for Mediation:	
• Debra Smith:	12.7
• John Jones:	7.6

FEES FOLLOWING MEDIATION

Activity:	Hours:
Phone calls & meetings with client:	
• Debra Smith:	32.4
• John Jones:	41.6
Hearing to Compel Discovery:	
• Debra Smith:	11.9
• John Jones:	3.2
Supplementing Discovery:	
• Debra Smith:	14.3
• John Jones:	23.2
Preparation for Trial:	
• Debra Smith:	34.7
• John Jones:	45.6

*The above is just an **example** of the type of specificity necessary per Rohrmoos. Include activities relevant to your case.

*Although breaking hours down pre- and post- mediation is not necessary for holding fees up on appeal, but breaking it down in this manner might make it more likely that fees will be awarded!

DEFAULTS

- Proper pleadings
- Proper service
- Prove up your case

PROCEDURAL

- **Allowing a party to appear virtually**
 - Inmates, out-of-state parties in UIFSA cases
- **Failure to provide sufficient notice of settings and final trials**
- **Enforcement or nunc pro tunc improperly modified substantive terms of order**

PROTECTIVE ORDERS

- Time period/duration of protective order
- Child cannot be interviewed in chambers, due process issue
- Include required findings

CHILD SUPPORT

- Insufficient evidence of net resources
- Failure to make required findings
- Retroactive child support is not a judgment
- SMC cannot be ordered to pay PC

The background is a solid dark blue. On the left and right sides, there are abstract geometric patterns. These patterns consist of several overlapping triangles of different shades of blue (light blue, medium blue, and dark blue) and thin white lines that intersect to form a sense of depth and movement. The central text is white and stands out prominently against the dark blue background.

**THANK
YOU**