2018 Texas Rules of Form Survey Results

14th Edition Reporters:

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I. Introduction

This Report analyzes the results of the *Texas Law Review*'s 2018 *Texas Rules of Form* (TRoF) survey and explains the Drafting Committee's decisions that undergird the fourteenth edition.

A. The Survey

In Spring 2018, a committee of staff editors constructed the TRoF survey with the advice of practitioners, professors, and legal writing instructors. The principal aim of the survey was to learn how the TRoF's citation conventions were used by Texas attorneys and could better meet the needs of its users. Secondary aims were to solicit recommendations on a variety of soft issues and to provide users the opportunity to share freely their thoughts about the TRoF. The survey was distributed to thousands of members of the Texas legal community. We received over 300 responses from practicing lawyers, judges, court staff, and academics.

B. Report layout

This Report divides the results into sections by topic. Each section contains an explanation of the issues the Committee sought to test; a brief discussion of the results, noting respondent's comments where applicable; and an explanation of the Committee's decision. Each section concludes with the relevant questions and answer choices from the survey, and the answer data.

C. Understanding the answer data

Response table.—A response table follows each question. Several categories are provided to capture the various backgrounds of our respondents. They include "All Attorneys," encompassing all practicing attorneys not working for a judge; "Judges & Staff," encompassing judges, staff attorneys, and clerks; and "Academic," encompassing law professors, law librarians, and law school legal writing instructors. For the purposes of this report, we have included an "Other" category for respondents that do not fit within the above categories. Each table also includes a column that provides a numerical breakdown of the different respondent groups.

Completion Rate.—Many who began the 2018 survey did not complete it. Nevertheless, their answers to the questions they completed were logged. This explains why the total number of respondents varies by question.

Margin of error at a 95% confidence level.—According to the American Bar Association, there are 89,361 active resident lawyers in Texas as of 2017.[1] Because the number of respondents varies with each question, the following margin-of-error table is useful in understanding the answer data.

300 respondents	±6 respondents
200 respondents	±7 respondents
150 respondents	±8 respondents
125 respondents	±9 respondents
100 respondents	±10 respondents
75 respondents	±11 respondents
65 respondents	±12 respondents
55 respondents	±13 respondents
50 respondents	±14 respondents
45 respondents	±15 respondents
40 respondents	±15 respondents
35 respondents	±17 respondents
30 respondents	±18 respondents
25 respondents	±20 respondents

[1] American Bar Association, ABA National Lawyer Population Survey (2017), https://www.americanbar.org/content/dam/aba/administrative/market_research/National%20Lawyer%20Population%20by%20State%202017.authcheckdam.pdf.

II. Usage

The Committee wanted to know how frequently the Texas legal community consults the TRoF and how faithfully it applies the TRoF's rules. The Committee was particularly curious how TRoF usage stacks up against *The Bluebook*; whether people rely on the TRoF when citing noncaselaw; and whether people consult the TRoF's supplemental information.

A. Bluebook *use versus TRoF*

Users consult *The Bluebook* markedly more than the TRoF. 42.95% of respondents replied they "regularly" consult *The Bluebook*, whereas only 19.67% answered they "regularly" consult the TRoF. This trend exists among nonusers as well. 3.61% of respondents said they "never" consult *The Bluebook,* whereas 9.84% said they never consult the TRoF. 44.26% answered they "occasionally" consult the TRoF.

The Committee was unsurprised to learn that Texas legal writers consult the *The Bluebook* more than the TRoF. Because the TRoF supplements *The Bluebook*'s citation style, it is only natural to consult *The Bluebook* more frequently.

Q: "How often do you consult *The Bluebook*?"

	Regularly	Occasionally	Only for unusual/ esoteric citations	Never	*Respondent Count*
Attorneys	**34%** (69)	**36%** (73)	**27%** (56)	**4%** (8)	***206***
Lit.	33% (41)	38% (47)	24% (30)	5% (5)	*123*
App.	34% (25)	31% (23)	34% (25)	1% (1)	*74*
Other	33% (3)	33% (3)	11% (1)	22% (2)	*9*
Judges & Staff	**60%** (30)	**28%** (14)	**10%** (5)	**2%** (1)	***50***
Judges	29% (5)	47% (8)	18% (3)	6% (1)	*17*
Staff	76% (25)	18% (6)	6% (2)	0 (0)	*33*
Trial	50% (9)	28% (5)	22% (4)	0 (0)	*18*
App.	66% (21)	28% (9)	13% (4)	0 (0)	*32*
Academic	**58%** (14)	**33%** (8)	**4%** (1)	**4%** (1)	***24***
Librarians	50% (4)	50% (4)	0 (0)	0 (0)	*8*
Other	62% (10)	25% (4)	6% (1)	6% (1)	*16*
Other	**72%** (18)	**16%** (4)	**8%** (2)	**4%** (1)	***25***
All	***43%*** (131)	***45%*** (99)	***21%*** (64)	***4%*** (11)	***305***

Q: "How often do you consult the TRoF?"

	Regularly	Occasionally	Only for unusual/ esoteric citations	Never	*Respondent Count*
Attorneys	**17% (35)**	**44% (90)**	**27% (56)**	**12% (25)**	***206***
Lit.	13% (16)	43% (53)	30% (37)	14% (17)	*123*
App.	24% (18)	45% (33)	23% (17)	8% (6)	*74*
Other	11% (1)	44% (4)	22% (2)	22% (2)	*9*
Judges & Staff	**20% (10)**	**48% (24)**	**28% (14)**	**4% (2)**	***50***
Judges	29% (5)	41% (7)	24% (4)	6% (1)	*17*
Staff	15% (5)	52% (17)	30% (10)	3% (1)	*33*
Trial	11% (2)	33% (6)	50% (9)	6% (1)	*18*
App.	25% (8)	56% (18)	16% (5)	3% (1)	*32*
Academic	**33% (8)**	**17% (13)**	**8% (2)**	**4% (1)**	***24***
Librarians	25% (2)	50% (4)	25% (2)	0 (0)	*8*
Other	38% (6)	56% (9)	0 (0)	6% (1)	*16*
Other	**28% (7)**	**32% (8)**	**32%** (8)	**8%** (2)	***25***
All	***20% (60)***	***44% (135)***	***26% (80)***	***10% (30)***	***305***

B. Using the TRoF for non-caselaw

The Committee suspected that many practitioners use the TRoF primarily for its court of appeals citation form—deferring to *The Bluebook* for other sources. To test this theory, we asked respondents how frequently they use TRoF rules for non-caselaw. Note that this question asked how frequently users *apply* TRoF rules (rather than consult the TRoF).

Confirming the Committee's suspicions, only one quarter said they "regularly" apply the TRoF's rules. And almost a third responded that they defer to *The Bluebook* for non-caselaw, nearly equaling the number that "occasionally" apply the TRoF's rules. This is interesting considering that 90% of respondents told us they consult the TRoF to some degree, which leads one to conclude that people are largely consulting the TRoF's case citation sections.

The news that many Texas Legal Writers ignore the TRoF when citing non-caselaw gave the Committee two point of insight: First, the caselaw sections are the bread and butter of the TRoF and should be prioritized accordingly. Second, departing from *The Bluebook*'s non-caselaw conventions may create a schism among users.

Q: "Not including citations to Texas court cases, how often do you use the TRoF's rules when citing Texas Law?"

	Regularly	Occasionally	Never/Defer to *Bluebook* for non-caselaw	Unsure if following TRoF for non-caselaw	*Respondent Count*
Attorneys	**25%** (51)	**30%** (62)	**31%** (64)	**14%** (29)	**206**
Lit.	23% (28)	26% (32)	39% (48)	12% (15)	123
App.	28% (21)	36% (27)	20% (15)	15% (11)	74
Other	22% (2)	33% (3)	11% (1)	33% (3)	9
Judges & Staff*	**32%** (16)	**32%** (16)	**26%** (13)	**10%** (5)	**50**
Academic**	**33%** (8)	**33%** (8)	**29%** (7)	**4%** (1)	**24**
Other	**28%** (7)	**24%** (6)	**40%** (10)	**12%** (3)	**25**
All	***27%*** *(81)*	***30%*** *(92)*	***31%*** *(94)*	***12%*** *(38)*	***305***

*The responses to this question did not differ significantly between judges and staff
**The responses to this question did not differ significantly between librarians and other academics

C. Using the TRoF for Historical Notes and Practice Tips

The TRoF contains Historical Notes and Practice Tips sections, which explain historical developments and idiosyncratic aspects of Texas law that impact citation form. The Committee wanted to know if the respondents were consulting these sections.

More than 60% of respondents said they consult the Historical Notes and Practice Tips sections to some degree. This comes as somewhat of a victory because the sections are designed to deal with the idiosyncrasies of Texas law, and consequently, are not intended to be consulted regularly. Many respondents told us that they use the sections to teach themselves about the evolution of Texas law and the Texas judicial system. One judge said that they give the TRoF to their clerks as an introduction to the Texas court system.

Inspired by users' feedback, the Committee agreed to reformat the sections to improve their readability and to rewrite certain entries to increase their pedagogical value.

Q: "How often do you consult the 'historical notes' and 'practice tips' in the TRoF?"

	Regularly	Occasionally	Only for unusual/ esoteric citations	Never	*Respondent Count*
Attorneys	**8%** (17)	**22%** (46)	**30%** (61)	**40%** (82)	***206***
Lit.	7% (8)	21% (26)	27% (33)	46% (56)	*123*
App.	11% (8)	26% (19)	35% (26)	28% (21)	*74*
Other	11% (1)	11% (1)	22% (2)	56% (5)	*9*
Judges & Staff*	**6%** (3)	**20%** (10)	**32%** (16)	**42%** (21)	***50***
Trial	0 (0)	0 (0)	33% (6)	67% (12)	*18*
App.	9% (3)	32% (10)	32% (10)	28% (9)	*32*
Academic**	**25%** (6)	**50%** (12)	**13%** (3)	**13%** (3)	***24***
Other	**8%** (2)	**24%** (6)	**28%** (7)	**40%** (10)	***25***
All	***9%*** (28)	***24%*** (74)	***29%*** (87)	***38%*** (116)	***305***

*The responses to this question did not differ significantly between judges and staff

**The responses to this question did not differ significantly between librarians and other academics

III. User-friendliness

One of the Committee's goals for the fourteenth edition was to make the TRoF more user-friendly. First, the Committee wanted to solicit recommendations for improvements. Second, the Committee was curious whether users would enjoy direct references to *Bluebook* rules or a layout that mirrored *The Bluebook*'s.

A. User-friendliness generally

To the Committee's great relief, few respondents (3.93%) were dismayed by the user-friendliness of the TRoF. But only 16.72% found the TRoF "very" user-friendly. The vast majority found the TRoF to be "good" or "tolerable." Respondents were generous with their recommendations on how to improve the TRoF's user friendliness. Some recommendations incorporated in the fourteenth edition include:

- Adding quick reference guides for common citation forms
- Adding a new-to-this-edition page listing changes from the previous edition
- Adding more complex examples
- Including a table of contents
- Reorganizing the index
- Redesigning the tables
- Overhauling the page layout to create a less cluttered look
- Using white paper to improve readability

Q: "How user-friendly is the TRoF?"

	Very Good	Good	Tolerable	Can't figure this thing out!	*Respondent Count*
Attorneys	**19%** (40)	**36%** (93)	**32%** (66)	**3%** (7)	*206*
Lit.	15% (19)	46% (56)	37% (45)	2% (3)	*123*
App.	24% (18)	46% (34)	26% (19)	4% (3)	*74*
Other	33% (3)	33% (3)	22% (2)	11% (1)	*9*
Judges & Staff	**12%** (6)	**40%** (20)	**40%** (20)	**8%** (4)	*50*
Academic	**8%** (2)	**58%** (14)	**33%** (8)	**0** (0)	*24*
Other	**12%** (3)	**44%** (11)	**40%** (10)	**4%** (1)	*25*
All	***17%*** (51)	***45%*** (138)	***34%*** (104)	***4%*** (12)	*305*

B. Referencing The Bluebook

Because the TRoF is intended to supplement *The Bluebook*'s citation form, the Committee was curious whether respondents would find the TRoF more useful if it directly referenced *Bluebook* rules or mirrored *The Bluebook*'s format.

Respondents showed very strong support for change. However, the Committee ultimately found the changes to be infeasible. Because the TRoF does not pass on every *Bluebook* rule, the Committee concluded that mirroring the *Bluebook*'s layout would leave thematic gaps, creating a somewhat convoluted product. In addition, the Committee concluded that the level of recapitulation needed to explain relevant *Bluebook* rules would make the TRoF too bulky to reference easily.

Q: "Should the numbering of the TRoF's rules change to correspond to the numbering of *The Bluebook*'s rules (where applicable)?"

	Yes	No	*Respondent Count*
Attorneys	**61%** (125)	**39%** (81)	***206***
Lit.	67% (82)	33% (41)	*123*
App.	49% (36)	51% (38)	*74*
Other	78% (7)	22% (2)	*9*
Judges & Staff	**66%** (33)	**34%** (17)	***50***
Academic	**54%** (13)	**46%** (11)	***24***
Librarians	75% (6)	25% (2)	*8*
Other	44% (7)	56% (9)	*16*
Other	**84%** (21)	**16%** (4)	***25***
All	***63%*** (192)	***37%*** (113)	***305***

Q: "Should the numbering of the TRoF's rules change to correspond to the numbering of *The Bluebook*'s rules (where applicable)?"

	Yes	No	*Respondent Count*
Attorneys	**85%** (176)	**15%** (30)	***206***
Lit.	89% (110)	11% (13)	*123*
App.	77% (57)	23% (17)	*74*
Other	100% (9)	0 (0)	*9*
Judges & Staff	**84%** (42)	**16%** (8)	***50***
Academic	**88%** (21)	**13%** (3)	***24***
Other	**92%** (23)	**8%** (2)	***25***
All	***86%*** (262)	***14%*** (43)	***305***

IV. Fully adopted Texas Commission of Appeals opinions

Before the Texas Commission of Appeals was abolished in 1945, the Supreme Court of Texas would sometimes adopt the Commission's decisions, and even its opinions, as its own. The thirteenth edition required fully adopted opinions be cited as if they were originally Texas Supreme Court opinions—that is, without a designation denoting the court adopted the opinion from the Commission. The Committee wanted to know whether the fact of the adoption was useful and whether that information should be included in the citation form.

Responses were largely evenly split between requiring disclosure and not. Notably, however, judges showed a preference for disclosure. Those preferring disclosure argued that it is beneficial for readers to know who penned an opinion even when it was fully adopted, that disclosure is more accurate to the case history,[2] and that adopted opinions by nature of being adopted are less persuasive than those penned by SCOTX justices. In addition, one judicial clerk noted that, in their experience, most practitioners disclose adoption anyway without being required to do so. Those advocating for the current rule argued that fully adopted opinions carry the same weight as SCOTX cases and have SCOTX's imprimatur.[3]

The Committee agreed that the mere fact an opinion was not penned by a justice is potentially relevant to the opinion's persuasiveness, The Committee noted that opinions (and the prose within) are frequently proffered to argue issues beyond the opinion's precedential sphere. For that reason, the Committee decided it was improper to endorse obscuring this potentially relevant fact in order to save words.

[2] One litigation attorney even went so far as to say that failing to disclose adoption is "intellectually dishonest."

[3] In response to this argument, however, one attorney noted that few would agree that opinions in court of appeals cases with pet. ref'd dispositions should be cited as if they were originally SCOTX opinions.

Q: "From 1918 to 1945, the Texas Supreme Court occasionally adopted opinions of the Texas Commission of Appeals. The TRoF requires that these fully adopted opinions be cited as if they were decisions of the Texas Supreme Court. For citations to these opinions, would it be helpful to require an indication that the decision was adopted from the Commission?"

	Yes	No	Unsure	*Respondent Count*
Attorneys	**37%** (65)	**15%** (70)	**24%** (43)	***178***
Lit.	42% (42)	11% (36)	21% (21)	*99*
App.	28% (20)	23% (34)	24% (17)	*71*
Other	38% (3)	0 (0)	63% (5)	*8*
Judges & Staff	**39%** (17)	**16%** (17)	**23%** (10)	***44***
Judges	59% (10)	24% (4)	18% (3)	*17*
Staff	26% (7)	48% (13)	26% (7)	*27*
Trial	54% (7)	13% (4)	15% (2)	*13*
App.	33% (8)	42% (10)	25% (6)	*24*
SCOTX*	50% (1)	50% (1)	0 (0)	*2*
Academic	**35%** (7)	**25%** (5)	**40%** (8)	***20***
Librarian	33% (2)	17% (1)	50% (3)	***6***
Other	36% (5)	29% (4)	36% (5)	***14***
Other	**47%** (7)	**27%** (4)	**27%** (4)	***15***
All	***37%*** *(96)*	***37%*** *(96)*	***26%*** *(65)*	***257***

*Respondents from the Texas Supreme Court were staff, not justices

V. Court of Criminal Appeals panel opinions

The TRoF requires that CCA panel opinions be noted in the citation form as panel opinions. The fact the CCA heard the case as a panel does not affect its precedential value and the decision is final—that is, *en banc* review is unavailable. For these reasons, the Committee wanted to know if retaining the panel distinction was useful to users.

A plurality of respondents preferred that the panel op. distinction be eliminated. However, the majority of judges and staff preferred the panel op. disclosure retained. Notably, 4 out of 5 CCA judges and staff preferred disclosure. Those favoring disclosure argued that disclosure was more accurate and that panel decisions may be more vulnerable to being overturned because fewer judges passed upon the issue. Those opposed to disclosure argued that the cases carry the same precedential weight as normal CCA cases and that the panel op. distinction may make readers erroneously believe the case carries less weight.

In accordance with its decision regarding adopted opinions of the Texas Commission of Appeals, the Committee agreed with those respondents who argued that there are concerns beyond precedential weight. The Committee found the strong preference among Court of Criminal Appeals judges particularly telling. Accordingly, it decided to retain the panel op. disclosure requirement.

Q: "Some decisions of the Texas Court of Criminal Appeals made between 1978 and 1982 were made by a panel of the court. Panel decisions must include the designation [Panel Op.]—for example, Stringer v. State, 632 S.W.2d 340 (Tex. Crim. App. [Panel Op.] 1982). Do you find this distinction to be helpful?"

	Yes	No	Unsure	*Respondent Count*
Attorneys	**26%** (46)	**46%** (81)	**29%** (51)	***178***
Lit.	27% (27)	39% (39)	33% (33)	*99*
App.	20% (14)	58% (41)	23% (16)	*71*
Other	63% (5)	13% (1)	25% (2)	*8*
Judges & Staff*	**52%** (23)	**23%** (10)	**25%** (11)	***44***
Trial	38% (5)	15% (2)	46% (6)	*13*
App.	54% (13)	29% (7)	17% (4)	*24*
CCA	80% (4)	20% (1)	0 (0)	*5*
Other	50% (1)	0 (0)	50% (1)	*2*
Academic**	**25%** (5)	**40%** (8)	**35%** (7)	***20***
Other	**47%** (7)	**27%** (4)	**27%** (4)	***15***
All	***37%*** (81)	***40%*** (103)	***28%*** (73)	***257***

*The responses to this question did not differ significantly between judges and staff
**The responses to this question did not differ significantly between librarians and other academics

VI. Court of Appeals citations

When developing the 2018 survey, the Committee had a strong suspicion that the TRoF's rules for citing Texas Court of Appeals cases were the principal rules people associate with the TRoF and apply in their practice. For that reason, the Committee wanted to ensure that the rules were perfectly calibrated to meet users' needs. In most instances, respondents overwhelming preferred the rules remain the same. And in the end, the Committee only decided one change was proper: eliminating the distinction between Courts of Appeals and Courts of Civil Appeals.

A. Distinguishing Courts of Appeals from Courts of Civil Appeals

Before 1981, Texas's intermediate appellate courts heard only civil cases. They were called Courts of Civil Appeals. The Committee wanted to know whether users found distinguishing between Courts of Civil Appeals (with only civil jurisdiction) and Courts of Appeals (with both civil and criminal jurisdiction) to be worth the effort.

Responses showed a somewhat strong plurality in favor of dropping the distinction between the two intermediate appellate courts. Interestingly, 64.71% of all judges favored keeping the rule the same, but 71.43% of Texas Court of Appeals judges and staff favored *dropping* the distinction. Those preferring to drop the distinction argued that it would be less confusing, that a lack of civil/criminal distinction does not make understanding modern day court of appeals cases difficult, that it decreases word counts, and that it saves time (i.e., client money) and energy.[4] Those in favor of retaining the distinction argued that it is helpful to remind criminal practitioners that the court in a particular case did not hear criminal cases, that there is value in calling the court by its correct name, and that it teaches practitioners about the evolution of the Texas judicial system.

Finding the plurality in favor of eliminating the distinction too weak to decide the issue outright,[5] the Committee intensively debated this change. The Committee ultimately found that the distinction, although accurate, offered little added utility: those concerned with the distinction can immediately discern the court's jurisdictional capacity by the date, and the distinction has no bearing on precedential weight. In addition, while the Committee agreed that some users may have difficulty adapting to

[4] Anecdotally, one clerk related that state judicial staff use software macros to generate case citations, and those macros do not include "Civ." in court of appeals citations. As a consequence, clerks must manually enter "Civ." where appropriate—causing mild perturbation.

[5] The strong support from within the Court of Appeals and the lack of preference from the Supreme Court of Texas and the Court of Criminal Appeals did, however, encourage the Committee to consider the change.

the change, it found the benefits of concision and a decreased learning curve predominate. Accordingly, the Committee eliminated the distinction in the fourteenth edition.

Q: "Before 1981, intermediate appellate courts heard only civil cases and were called Courts of Civil Appeals. The TRoF requires all Texas Court of Civil Appeals case citations use "Tex. Civ. App." as the court abbreviation—for example, Bd. of Adjustment v. Rich, 328 S.W.2d 798 (Tex. Civ. App.—Fort Worth 1959, writ ref'd). This is true even when the cited reporter provides a different name for the intermediate appellate court. Regarding Court of Civil Appeals abbreviations:"

	Rule should remain the same	Court's name in parenthetical should match cited reporter	Texas Court of Civil Appeals & Texas Court of Appeals should use "Tex. App."	Unsure	*Respondent Count*
Attorneys	**34% (61)**	**9% (16)**	**30% (85)**	**40% (16)**	***178***
Lit.	33% (33)	11% (11)	51% (50)	5% (5)	*99*
App.	37% (26)	6% (4)	46% (33)	11% (8)	*71*
Other	25% (2)	13% (1)	25% (2)	38% (3)	*8*
Judges & Staff	**43% (19)**	**11% (5)**	**39% (17)**	**7% (3)**	***44***
Judges	65% (11)	6% (1)	29% (5)	0 (0)	*17*
Staff	30% (8)	15% (4)	44% (12)	11% (3)	*27*
Trial	69% (9)	8% (1)	15% (2)	8% (1)	*13*
App. - COA	14% (2)	7% (1)	71% (10)	7% (1)	*14*
App. - Cir.	60% (6)	10% (1)	30% (3)	0 (0)	*10*
Highest State	29% (2)	29% (2)	29% (2)	14% (1)	*7*
Academic*	**25% (8)**	**50% (3)**	**35% (7)**	**10% (2)**	***20***
Other	**33% (5)**	**7% (1)**	**53% (8)**	**7% (1)**	***15***
All	***36% (93)***	***10% (25)***	***46% (117)***	***9% (22)***	***257***

*The responses to this question did not differ significantly between librarians and other academics

B. Use of city names and district designations

Denoting the city in which a Texas Court of Appeals sits has been a long-standing TRoF rule. The Committee wanted to explore potential improvements to this rule. In the end, users strongly preferred the rule remain the same. Consequently, the Committee made no changes.

Use of city names.—The vast majority of respondents (80.93%) favored the use of city names to distinguish between courts of appeals. Respondents explained that city names are a useful moniker for Court of Appeals districts because city names are easy to remember; certain cities naturally have a reputation for generating certain types of cases—indicating their courts are more adept at those issues; and courts are colloquially referent to by the name of the city in which they reside. The Committee agreed with the

majority, finding that the utility gained from using city names is well worth the added word count.

Abbreviating city names.—The majority of nearly all demographics disfavored city name abbreviation. Oddly, federal circuit respondents strongly favored abbreviation despite Texas Court of Appeals respondents strongly disfavoring them. Those in favor of abbreviation argued that abbreviations take less space and are easy to decipher. As one litigator put it, "if [one] cannot figure out Hou. stands for Houston, it is . . . turn in your bar card time." Those disfavoring abbreviations argued that city abbreviations will require frequent trips to the TRoF to look up abbreviations, will not lower word counts,[6] will make the city names less eye-catching, and will be harder to decipher for the uninitiated.[7] The Committee agreed with the majority, finding that the space saved by abbreviations is not worth the many added hassles.

Houston district designations.—There are two Court of Appeals districts in Houston. The Committee wanted to know whether users find noting the difference between them is more useful than cumbersome. Users across all demographics overwhelmingly desired to retain this information. The Committee agreed to make no change.

The em dash.—The Committee wanted to know whether the em dash (—) that precedes the city name was more cumbersome than useful. The majority of all demographics (notwithstanding academics who were evenly split) favored retaining the em dash. Those opposed to the em dash argued that it creates clutter, serves no purpose, is often done incorrectly, is difficult to type, and adds to the learning curve of new legal writers. Those in favor, however, argued that the em dash allows readers to instantly identify a case as a Court of Appeals case, and it immediately draws the reader's eye to the city name and year.[8] The Committee was initially suspicious of whether the em dash served any practical purpose. However, respondents' comments convinced the Committee that the em dash is a useful visual cue. For that reason, the Committee decided to retain the em dash.

[6] One attorney noted that briefs are now limited by word count, not pages. Thus, word count, not length, is important.

[7] One Federal District Judge quipped, "abbreviations are often more awkward than the full word."

[8] Or as one legal writing instructor put it, "it makes the city name 'pop.'"

Q: "The TRoF requires Court of Appeals case citations to include the name of the city where the court sits—for example, Cooper v. Tex Dep't of Human Res., 691 S.W.2d 807, 808 (Tex. App.—Austin 1985, writ ref'd n.r.e.). Citations to Houston Courts of Appeals also require a district number designation—for example, PCO-G & Joint C. Joint Venture v. A.B. Chance Co., 65 S.W.3d 252, 254 (Tex. App.—Houston [1st Dist.] 2001, pet. denied). Regarding city and district designations in Court of Appeals cases:"

	Rule should remain the same	Always include city and district number (not just for Houston)	Include just the district number	Include neither city nor district number	*Respondent Count*
Attorneys	**34% (143)**	**8% (15)**	**8% (14)**	**3% (6)**	***178***
Lit.	33% (75)	10% (10)	9% (9)	5% (5)	*99*
App.	37% (87)	4% (3)	7% (5)	1% (1)	*71*
Other	13% (1)	25% (2)	0 (0)	38% (3)	*8*
Judges & Staff*	**43% (37)**	**5% (2)**	**5% (2)**	**7% (3)**	***44***
Trial	77% (10)	15% (2)	0 (0)	8% (1)	*13*
App. – COA	93% (13)	0 (0)	7% (1)	0 (0)	*14*
App. – Cir.	70% (7)	0 (0)	10% (1)	20% (2)	*10*
Highest State	100% (7)	0 (0)	0 (0)	0 (0)	*7*
Academic	**80% (17)**	**15% (3)**	**5% (1)**	**0 (0)**	***20***
Librarians	33% (2)	50% (3)	17% (1)	0 (0)	*6*
Other	100% (15)	0 (0)	0 (0)	0 (0)	*14*
Other	**73% (11)**	**20% (3)**	**7% (1)**	**0 (0)**	***15***
All	***81% (208)***	***9% (22)***	***7% (18)***	***4% (9)***	***257***

*The responses to this question did not differ significantly between judges and staff

Q: "Should city names be abbreviated—for example, "Hou." for Houston?"

	Yes, but use only existing abbreviation conventions	Yes, and use new abbreviation conventions	No	*Respondent Count*
Attorneys	**24% (43)**	**7% (12)**	**69% (123)**	***178***
Lit.	29% (29)	5% (5)	66% (65)	*99*
App.	13% (9)	8% (6)	79% (56)	*71*
Other	63% (5)	13% (1)	25% (2)	*8*
Judges & Staff*	**30% (13)**	**5% (3)**	**64% (28)**	***44***
Trial	38% (5)	8% (1)	0 (0)	*13*
App. – COA	7% (1)	7% (1)	86% (12)	*14*
App. – Cir.	70% (7)	0 (0)	30% (3)	*10*
Highest State	0 (0)	14% (1)	86% (6)	*7*
Academic	**15% (3)**	**0 (0)**	**85% (17)**	***20***
Other	**0 (0)**	**13% (2)**	**87% (13)**	***15***
All	***23% (59)***	***7% (17)***	***70% (181)***	***257***

*The responses to this question did not differ significantly between judges and staff

Q: "Houston has two courts of appeals: the 1st District and the 14th District, which share concurrent jurisdiction over the same geographic area. The cases are assigned on a random basis, but may be relocated to balance the docket. Although the two courts are not mutually binding, they afford each other's precedent great weight. Regarding a district designation for Houston Courts of Appeals cases:"

	Rule should remain the same	District should be included in a second parenthetical containing the court and case year*	The district designation should be omitted	*Respondent Count*
Attorneys	**83% (147)**	**6% (11)**	**11% (20)**	***178***
Lit.	78% (77)	9% (9)	13% (13)	*99*
App.	89% (63)	3% (2)	8% (6)	*71*
Other	88% (7)	0 (0)	13% (1)	*8*
Judges & Staff**	**82% (36)**	**9% (4)**	**9% (4)**	***44***
Trial	77% (10)	15% (2)	8% (1)	*13*
App. – COA	86% (12)	7% (1)	7% (1)	*14*
App. – Cir.	70% (7)	10% (1)	20% (2)	*10*
Highest State	100% (7)	0 (0)	0 (0)	*7*
Academic	**90% (18)**	**10% (2)**	**0 (0)**	***20***
Other	**80% (12)**	**13% (2)**	**7% (1)**	***15***
All	***83% (213)***	***7% (19)***	***10% (25)***	***257***

*E.g., PCO-G & Joint C. Joint Venture v. A.B. Chance Co., 60 S.W.3d 252, 254 (Tex. App.—Houston 2001, pet. denied) (14th Dist.).
**The responses to this question did not differ significantly between judges and staff

Q: "Regarding the em dash:"

	If a city name is required, an em dash should precede it	If a city name is required, an em dash should not precede it*	*Respondent Count*
Attorneys	**60% (107)**	**40% (71)**	***178***
Lit.	59% (58)	41% (41)	*99*
App.	61% (43)	39% (28)	*71*
Other	75% (6)	25% (2)	*8*
Judges & Staff**	**64% (28)**	**36% (16)**	***44***
Academic	**50% (10)**	**50% (10)**	***20***
Other	**60% (9)**	**40% (6)**	***15***
All	***60% (154)***	***40% (103)***	***257***

*E.g., Cooper v. Tex. Dep't of Human Res., 691 S.W.2d 807, 808 (Tex. App. Austin 1985, writ ref'd n.r.e.).
**The responses to this question did not differ significantly between judges and staff

C. Petition and writ history

The TRoF requires all citations to Texas Court of Appeals cases include a subsequent petition/writ history disclosure, stating whether a party sought review by SCOTX or the CCA, and what outcome resulted. The 2018 survey tested two proposed changes to the rules: making petition/writ disclosure discretionary and moving the disclosure to the end of the citation where subsequent history citations are located. Respondents showed strong support for making no change. The Committee agreed.

Mandatory disclosure.—First, the Committee wanted to know whether the disclosure of petition/writ history should be mandatory in all cases. Responses were somewhat split between mandatory disclosure (58.37%) and some lesser requirement (41.64%). The most fervent supporters of mandatory disclosure were judges (82.35%) and appellate attorneys (64.79%). Those in favor of mandatory disclosure argued that a standards-based approach will lead to inconsistent disclosure, that the rule keeps writers honest about their precedent, that it yields more information, and that a fear of improper nondisclosure will prevent readers from assuming an absence of petition/writ history is benign, compelling them to look up the disposition anyway. One judicial staff member also stated that even when a disposition has no added precedential effect, it is helpful to know whether the high court had the opportunity to look at the case. Those favoring a laxer standard argued that opponents in litigation will vet cited cases regardless of disclosure, that mandatory disclosure wastes time and increases word counts, and that now almost all petitions today are denied rather than being given a more precedential disposition.

The Committee decided to make no change due in part to the strong support for the current rule—particularly among judges. The Committee was also concerned that discretionary disclosure may tempt writers to subconsciously convince themselves that relevant petition/writ history is not relevant or, worse, willfully engage in gamesmanship.

Petition and writ history placement.—Second, the Committee wanted to know whether petition/writ history disclosures should be made in the parenthetical after the court name and year, or whether that information should be considered subsequent history and, accordingly, be placed at the end of the citation. Among all demographics there is strong support for keeping the rule the same. As a consequence, the Committee decided to make no change.

Q: "The TRoF requires the disclosure of petition or writ history regardless of relevance to the proposition for which a case is cited—even where no petition or writ has been filed. *The Bluebook*, on the other hand, only requires the disclosure of petition or writ history when it is relevant to the proposition for which the case is cited. Regarding mandatory petition or writ history disclosure:"

	Rule should remain the same	Only if affecting a case's precedential value*	Should be discretionary within ethical limits requiring disclosing unfavorable caselaw	*Respondent Count*
Attorneys	**58% (104)**	**27% (48)**	**15%** (26)	***178***
Lit.	55% (54)	32% (32)	13% (13)	*99*
App.	65% (46)	20% (14)	15% (11)	*71*
Other	50% (4)	25% (2)	25% (2)	*8*
Judges & Staff	**61% (27)**	**23% (10)**	**16%** (7)	***44***
Judges	82% (14)	18% (3)	0 (0)	*17*
Staff	48% (13)	26% (7)	26% (7)	*27*
Trial	69% (9)	15% (2)	46% (6)	*13*
App. – COA	57% (8)	36% (5)	7% (1)	*14*
App. – Cir.	50% (5)	20% (2)	30% (3)	*10*
Highest State	71% (5)	14% (1)	14% (1)	*7*
Academic**	**50% (10)**	**45% (9)**	**5%** (1)	***20***
Other	**60% (9)**	**27% (4)**	**13%** (2)	***15***
All	***58% (150)***	***28% (71)***	***14% (36)***	***257***

*E.g., "pet. ref'd" gives the appellate case the weight of a Texas Supreme Court decision

**The responses to this question did not differ significantly between librarians and other academics

Q: "If no citable petition or writ decision exists, the petition or writ disposition must be included in the same parenthetical as the court name and the year—for example, Cooper v. Tex Dep't of Human Res., 691 S.W.2d 807, 808 (Tex. App.—Austin 1985, writ ref'd n.r.e.). On the other hand, if a decision is reported, the disposition should be cited as a subsequent decision—for example, Weaver v. Westchester Fire Ins. Co., 730 S.W.2d 834 (Tex. App.—Waco), writ ref'd, 739 S.W.2d 23 (Tex. 1987). Regarding the placement of uncitable petition or writ dispositions:"

	Rule should remain the same	Unreported petition/writ history should appear in the same location as reported subsequent history*	*Respondent Count*
Attorneys	**78% (138)**	**22% (40)**	***178***
Lit.	76% (75)	24% (24)	*99*
App.	83% (59)	17% (12)	*71*
Other	50% (4)	50% (4)	*8*
Judges & Staff**	**84% (37)**	**16% (7)**	***44***
Trial	77% (10)	23% (3)	*13*
App. – COA	100% (14)	0 (0)	*14*
App. – Cir.	70% (7)	30% (3)	*10*
Highest State	86% (6)	14% (1)	*7*
Academic	**65% (13)**	**35% (7)**	***20***
Other	**47% (7)**	**53% (8)**	***15***
All	***76% (195)***	***24% (62)***	***257***

*E.g., Cooper v. Tex. Dep't of Human Res., 691 S.W.2d 807, 808 (Tex. App.—Austin 1985), write ref'd n.r.e.
**The responses to this question did not differ significantly between judges and staff

VII. County court cases

Until the fourteenth edition, the TRoF rule for citing county courts was different than the *Bluebook* rule for citing state trial courts. It was unclear, however, precisely how to cite Texas county courts under the *Bluebook* rule. The Committee wanted to know whether users would prefer that the TRoF defer to the *Bluebook* rule, explaining how to apply it to Texas county court cases.

Disregarding the "unsure" responses,[9] a slight majority preferred reverting to the *Bluebook* rule. In addition, the Committee found the *Bluebook* style to be more intelligible and deferral to be more consistent with the TRoF being a supplement. For these reasons, the Committee decided to defer to the *Bluebook* rule and explain how to apply it.

Q: "Under the TRoF, Constitutional County Courts, County Courts at Law, and Statutory Probate Courts are abbreviated in citations like this: Jeffers v. Smithe, No. 005-24478-02 (Co. Ct., Harris County, Tex. Apr. 12, 1949); Frederick v. Way, No. 004-84788-01 (Co. Ct. at Law No. 4, Collin County, Tex. Mar. 1, 1978); Lipset v. McNertray, No. 011-93356-05 (Prob. Ct. No. 2, Bexar County, Tex. Sept. 29, 1985). Although *The Bluebook* is somewhat unclear, under *The Bluebook*'s conventions, the court names would be abbreviated similar to this: Jeffers v. Smithe, No. 005-24478-02 (Harris Cty. Ct., Tex. Apr. 12, 1949); Frederick v. Way, No. 004-84788-01 (Collin Co. Ct. at Law No. 4, Tex. Mar. 1, 1978); Lipset v. McNertray, No. 011-93356-05 (Bexar Cty. Prob. Ct. No. 2, Tex. Sept. 29, 1985). The abbreviation scheme should:"

	Remain the same	Defer to *Bluebook* (and explain)	Unsure	*Respondent Count*
Attorneys	**37% (63)**	**41% (70)**	**22% (37)**	***170***
Lit.	41% (38)	42% (39)	17% (16)	*93*
App.	30% (21)	41% (28)	29% (20)	*69*
Other	50% (4)	38% (3)	13% (1)	*8*
Judges & Staff*	**36% (16)**	**41% (18)**	**23% (10)**	***44***
Trial	46% (6)	54% (7)	0 (0)	*13*
App.	25% (6)	46% (11)	29% (7)	*24*
Highest State	57% (4)	0 (0)	43% (3)	*7*
Academic**	**35% (7)**	**60% (12)**	**5% (1)**	***20***
Other	**36% (5)**	**43% (6)**	**21% (3)**	***14***
All	***37% (91)***	***43% (106)***	***21% (51)***	***248***

*The responses to this question did not differ significantly between judges and staff
**The responses to this question did not differ significantly between librarians and other academics

[9] Discarding the "unsure" answers was the reason for having an "unsure" answer choice in some of the more esoteric questions. We did not want people without an opinion to make one up.

VIII. Statutes and Legislation

A. Current, in-force statutes

During development of the 2018 survey, Kamela Bridges, a legal writing instructor at the University of Texas School of Law, suggested to the Committee that many practitioners omit the publisher name in statute citations and omit the publication year when citing current, in-force statutes. The Committee wanted to confirm this practice and ask whether users would prefer the TRoF authorize the omission of this information. Respondents overwhelmingly responded that they omitted this information when citing current, in-force statutes despite both *The Bluebook* and the TRoF requiring it. The Committee agreed with respondents' reasons for doing so and saw little use in promulgating a rule that has been so roundly rejected. Moreover, the Committee found the inclusion of a publisher name to be redundant given that the publisher is clear from the reporter, and anachronistic in an age of online research engines. Accordingly, the Committee decided to break with *The Bluebook* and authorize the omission of publisher and publication year for current, in-force statutes.

Adherence to the rule.—First, the Committee asked whether users omit this information in contravention of the TRoF's rules and under what circumstances. Surprisingly, four fifths of practitioners and three quarters of judges "always" or "sometimes" omit the publisher and year when citing current, in-force statutes. Respondents answering "always" told us that the information was unnecessary, that it wasted space, and that it increased word court. Among those that answered "sometimes," occasions to provide the publication year include: when the enactment date matters, when indicating a statute has been unchanged for a time, and when "[there is] a *Bluebook*/TRoF stickler on the bench." Many who answered "sometimes" also said that they always omit the publisher name. The rule is generally followed among academics.

Druthers.—Second, we asked whether users felt we should expressly permit the omission of this information when citing to current, in-force statutes. Support for changing the rule was overwhelming. In fact, no other proposed change received anywhere near the same degree of support. Interestingly, high-court judges and staff showed unanimous support for the change. Only law librarians showed no clear preference.

Q: "The *Bluebook* requires that all citations to statutes—even current, in-force statutes—contain a publisher name and publication year—for example, Tex. Tax Code Ann. § 171.201 (West 2008). How often do you omit this parenthetical information in citations to current, in-force statutes?"

	Always	Sometimes	Never	*Respondent Count*
Attorneys	**58% (98)**	**24% (40)**	**18% (31)**	***169***
Lit.	56% (52)	26% (24)	18% (17)	*93*
App.	62% (43)	20% (14)	17% (12)	*69*
Other	57% (4)	29% (2)	29% (2)	*7*
Judges & Staff	**50% (22)**	**23% (10)**	**27% (12)**	***44***
Judges	59% (10)	12% (2)	29% (5)	*17*
Staff	44% (12)	30% (8)	26% (7)	*27*
Trial	38% (5)	31% (4)	31% (4)	*13*
App.	46% (11)	21% (5)	33% (8)	*24*
Highest Court	86% (6)	14% (1)	0 (0)	*7*
Academic*	**15% (3)**	**35% (7)**	**50% (10)**	***20***
Other	**33% (5)**	**27% (4)**	**40% (6)**	***15***
All	***52% (128)***	***25% (61)***	***24% (59)***	***248***

*The responses to this question did not differ significantly between librarians and other academics

Q: "<u>Should</u> the TRoF expressly permit the omission of this information for current, in-force statutes?"

	Yes	No, defer to *The Bluebook*	No, mandate it in TRoF	*Respondent Count*
Attorneys	**85% (144)**	**13% (22)**	**2% (3)**	***169***
Lit.	83% (77)	15% (14)	2% (2)	*93*
App.	91% (63)	7% (5)	1% (1)	*69*
Other	57% (4)	49% (3)	0 (0)	*7*
Judges & Staff*	**68% (30)**	**20% (9)**	**11% (5)**	***44***
Trial	62% (8)	23% (3)	15% (2)	*13*
App.	63% (15)	25% (6)	13% (3)	*24*
Highest Court	100% (7)	0 (0)	0 (0)	*7*
Academic	**65% (13)**	**25% (5)**	**10% (2)**	***20***
Librarian	33% (2)	17% (2)	6% (2)	*6*
Other	79% (11)	21% (3)	0 (0)	*14*
Other	**60% (9)**	**20% (3)**	**20% (3)**	***15***
All	***79% (196)***	***16% (39)***	***5% (13)***	***248***

*The responses to this question did not differ significantly between judges and staff

B. Repealed legislation

Unlike *The Bluebook*, which requires initial citations to repealed legislation contain, at a minimum, a parenthetical stating that the statute was repealed and the year it was repealed, previous editions of the TRoF required initial citations to repealed legislation be followed by a full citation to the repealing legislation. The Committee was suspicious that the heightened requirement was more cumbersome than useful, wondering if it would be simpler to defer to *The Bluebook*.

Discarding those that answered "unsure," a majority prefered the *Bluebook* rule. In particular, judges and staff (as a category) showed a strong preference for using the *Bluebook* rule—particularly high-court and appellate judges and staff. However, when we compared judges to their staff, judges showed a preference for the TRoF rule. Trial court judges and staff also showed a preference for the TRoF rule.

The Committee was encouraged to see the majority supported deferring to *The Bluebook*'s discretionary rule—albeit somewhat dismayed to see judges' resistance. Ultimately, the Committee decided that the disclosure benefits of a heightened standard did not outweigh the flexibility and simplicity of deferring to *The Bluebook*. The Committee specifically found the *Bluebook* rule useful when discussing subjects irrelevant to the reason for repeal or when the repealing legislation has already been fully cited.

Q: "The TRoF requires that initial citations to repealed statutes contain a citation to the repealing legislation—for example, Act of May 30, 1977, 65th Leg., R.S., ch. 817, § 1, sec. 13.01(d), 1995 Tex. Gen. Laws 985, 986, repealed by Act of June 2, 2003, 78th Leg., R.S., ch. 204, § 10.09, 2003 Tex. Gen. Laws 847, 884. Subsequent citations to the same repealed statute may be cited using only the repeal date—for example, Act of May 30, 1977, 65th Leg., R.S., Ch. 817, § 1, sec. 13.01(d), 1995 Tex. Gen. Laws 985, 986 (repealed 2003). The *Bluebook* allows initial citations to include either the date of repeal or a full citation to the repealing legislation. Regarding the requirement to cite repealing legislation:"

	Rule should remain the same	The *Bluebook* rule should govern	Unsure	*Respondent Count*
Attorneys	**35% (59)**	**41% (69)**	**25% (42)**	***170***
Lit.	30% (28)	48% (45)	22% (20)	*93*
App.	38% (26)	32% (22)	30% (21)	*69*
Other	63% (5)	25% (2)	13% (1)	*8*
Judges & Staff	**25% (11)**	**57% (25)**	**18% (8)**	***44***
Judges	53% (9)	29% (5)	18% (3)	*17*
Staff	7% (2)	74% (20)	19% (4)	*27*
Trial	62% (8)	31% (4)	8% (1)	*13*
App.	8% (2)	75% (18)	17% (4)	*24*
Highest Court	14% (1)	43% (3)	43% (3)	*7*
Academic	**35% (7)**	**50% (10)**	**15% (3)**	***20***
Librarian	67% (4)	17% (1)	17% (1)	*6*
Other	21% (3)	64% (9)	14% (2)	*14*
Other	**60% (4)**	**20% (6)**	**20% (4)**	***15***
All	***33% (81)***	***44% (110)***	***22% (57)***	***248***

IX. Legislative Bills

Texas legislative bills are cited differently under the TRoF than under *The Bluebook*. First, "regular" and "called" sessions are abbreviated differently. Second, the state designation is placed at the beginning of the citation, rather than in the same parenthetical as the year. The 2018 survey tested these conventions, but change received only middling support, leading the Committee to make no change.

A. "Regular" and "called" legislative session abbreviations

The Committee wanted to know whether users found the TRoF's abbreviations of "regular" and "called" session to be more useful and less cumbersome than the alternative—deferring to *The Bluebook*'s abbreviations.

All groups were relatively evenly split between the two answer choices. However, law librarians and high-court judges and staff showed an extreme preference for the rule remaining the same. Those preferring to retain the TRoF rule argued that "R.S." and "C.S." are shorter than their *Bluebook* counterparts—one lawyer noting that they are only one word for the purposes of a word count. Those recommending change argued that it is simpler to default to the *Bluebook* rule and that "Reg. Sess." and "Called Sess." are easier for the uninitiated to decipher.

The Committee found respondents' arguments in support of the current rule persuasive. In addition, the Committee, through its own research, discovered that Texas legislative bills are officially logged using the R.S./C.S. abbreviation. These reasons combined with the middling support for change lead the Committee to make no change.

B. State designation placement

The Committee wanted to know whether users preferred the state designation appear at the beginning of the citation, as is prescribed in the TRoF, or within the same parenthetical as the year, as is prescribed in *The Bluebook*. All groups were relatively evenly split between the two answer choices. Notably, however, judges and appellate lawyers showed a somewhat strong preference for keeping the rule the same. Those preferring to retain the TRoF rule argued that placing "Tex." at the beginning of the citation makes it immediately clear that the source is not federal.[10] Those recommending change argued it is simpler to default to the *Bluebook* rule.

The Committee agreed that including "Tex." at the start of the citation serves as a useful cue to quickly differentiate between federal and Texas law. This realization, coupled with middling support for change, led the Committee to make no change.

[10] One lawyer told us that *The Bluebook* should adopt the TRoF's rule for this reason.

Q: "Under the TRoF, legislative bills are cited with the state designation at the beginning of the citation and "Regular Session" and "Called Session" abbreviated "R.S." and "C.S." respectively—for example, Tex. S.B. 357, 78th Leg. R.S. (2003). Under *The Bluebook*, legislative bills are cited with the state designation in the same parenthetical as the year and "Regular Session" and "Called Session" abbreviated "Reg. Sess." and "Called Sess." respectively—for example, S.B. 357, 78th Leg. Reg. Sess. (Tex. 2003). Regarding the "Regular Session" and "Called Session" abbreviations:"

	Rule should remain the same	Adopt the *Bluebook*'s Style	*Respondent Count*
Attorneys	**53% (89)**	**47% (80)**	***169***
Lit.	48% (45)	52% (48)	*93*
App.	58% (40)	42% (29)	*69*
Other	57% (4)	43% (3)	*7*
Judges & Staff*	**55% (24)**	**45% (20)**	***44***
Trial	54% (7)	46% (6)	*13*
App.	50% (12)	50% (12)	*24*
Highest Court	71% (5)	29% (2)	*7*
Academic	**50% (10)**	**50% (10)**	***20***
Librarian	83% (5)	17% (1)	*6*
Other	36% (5)	64% (9)	*14*
Other	**40% (6)**	**60% (9)**	***15***
All	***52% (129)***	***48% (119)***	***248***

*The responses to this question did not differ significantly between judges and staff

Q: "Regarding the location of the state designation in the citation:"

	Rule should remain the same	Is should be located with the year, like in *The Bluebook*	*Respondent Count*
Attorneys	**55% (93)**	**53% (77)**	***170***
Lit.	51% (47)	49% (46)	*93*
App.	62% (43)	38% (26)	*69*
Other	38% (3)	63% (5)	*8*
Judges & Staff*	**45% (24)**	**45% (20)**	***44***
Judges	71% (12)	29% (5)	*17*
Staff	44% (12)	56% (15)	*27*
Trial	62% (8)	38% (5)	*13*
App.	50% (12)	50% (12)	*24*
Highest Court	57% (4)	43% (3)	*7*
Academic	**50% (10)**	**50% (10)**	***20***
Other	**50% (7)**	**50% (7)**	***14***
All	***54% (134)***	***46% (114)***	***248***

*The responses to this question did not differ significantly between judges and staff

X. Advisory opinions from state officials

The TRoF rule governing opinions of state officials, like the legislative bill rule, requires that the state designation appear at the beginning of the citation. The Committee wanted to know whether users prefer that the state designation appear at the beginning of the citation, as is prescribed in the TRoF, or within the same parenthetical as the year, as is prescribed in *The Bluebook*.

Attorneys and academics preferred the rule remain the same by a fair margin, while judges and staff (as a category) were evenly split. There was some variation, however, among the constituent parts of the judges and staff category. High-court judges and staff strongly preferred the rule remain the same. Furthermore, judges preferred the rule remain the same at a rate on par with attorney's and academics. Their staff, on the other hand, had an equally strong preference for adopting the *Bluebook* rule. Those preferring to retain the TRoF rule argued that placing "Tex." at the beginning of the citation makes it immediately clear that the source is not the U.S. Attorney General. Those preferring change argued it is simpler to default to the *Bluebook* rule.

The Committee agreed that the placement of "Tex." should parallel the placement used for legislative bills. And as with legislative bills, respondents showed middling support for change. Consequently, the Committee decided to make no change.

Q: "Under the TRoF, advisory opinions of state officials are cited with the state designation at the beginning—for example, Tex. Att'y Gen. Op. No. GA-0002 (2002). Under *The Bluebook*, they are cited with the state designation in the same parenthetical as the year—for example, Att'y Gen. Op. No. GA-0002 (Tex. 2002). Regarding the location of the state designation in the citation:"

	Rule should remain the same	Is should be located with the year, like in *The Bluebook*	*Respondent Count*
Attorneys	**59%** (101)	**41%** (69)	***170***
Lit.	52% (48)	48% (45)	*93*
App.	71% (49)	29% (20)	*69*
Other	50% (4)	50% (4)	*8*
Judges & Staff	**50%** (22)	**50%** (22)	***44***
Judges	65% (11)	35% (6)	*17*
Staff	41% (11)	59% (15)	*27*
Trial	46% (6)	54% (7)	*13*
App.	46% (11)	50% (13)	*24*
Highest Court	71% (5)	29% (2)	*7*
Academic	**60%** (12)	**40%** (8)	***20***
Other	**57%** (8)	**43%** (6)	***14***
All	***58%*** (143)	***42%*** (105)	***248***

XI. Use of "small caps"

Previous editions of the TRoF did not address the use of small caps (SMALL CAPS). And none of the examples throughout the TRoF employed them. Although small caps are regularly used in academia for citations to books, articles, statues, etc., the use of small caps varies among practitioners. The Committee wanted to develop a small caps policy to clarify their use. To that end, the Committee wanted to know whether practitioners use small caps, what they use them for, and whether they use them above the line (i.e., in non-footnote citations).

65.75% of respondents said they use small caps when citing statutes. Interestingly, all high-court respondents said they use small caps for statutes. A slim majority responded they use small caps for books, treatises, Restatements, and law journals. A majority of respondents use small caps above the line.[11]

Because of the widespread use of small caps by over half of the Texas legal community, the Committee decided it best to bless their use for stylistic purposes, but not require it—allowing practitioners to continue their current practices.

Q: "Check all citation forms for which you use 'small caps' rather than a regular typeface.* (optional)"

	Books, treatises, Restatements	Publications (like law journals)	Statutes	Administrative or executive materials
Attorneys	**55%** (70)	**52%** (15)	**65%** (83)	**20%** (26)
Lit.	57% (39)	55% (38)	74% (51)	25% (17)
App.	50% (26)	50% (26)	56% (29)	19% (10)
Judges & Staff*	**55%** (16)	**45%** (13)	**59%** (17)	**24%** (7)
Judge	64% (7)	27% (3)	73% (8)	9% (1)
Staff	50% (9)	56% (10)	50% (9)	33% (6)
Trial	67% (6)	33% (3)	78% (7)	22% (2)
App.	47% (7)	47% (7)	33% (5)	13% (2)
Highest State	60% (3)	60% (3)	100% (5)	60% (3)
Academic	**69%** (9)	**54%** (7)	**69%** (9)	**23%** (3)
All	***56%*** *(102)*	***53%*** *(96)*	***66%*** *(119)*	***22%*** *(40)*

*Respondents were invited to state other instances in which they use small caps in a comment box. Some mentioned "Constitutions" and "Procedural Rules"

[11] Because this question was optional, we received only 78 responses. But even with an eleven-respondent margin of error, it still appears that a majority use small caps above the line.

Q: "If you use 'small caps,' do you use it for non-footnote (above-the-line) citations? (optional)"

	Yes	No	*Respondent Count*
Attorneys	**67%** (52)	**33%** (26)	***78***
Judges & Staff	**75%** (12)	**25%** (4)	***16***
Academic	**29%** (2)	**71%** (5)	***7***
All	***68%*** (69)	***45%*** (32)	***101***