

Profile of Civil Litigation in Wisconsin

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Abstract

A comparison of litigation in ten of the largest Wisconsin counties reveal interesting local variations. The number of filings per capita of civil and divorce claims is fairly constant throughout the state. Yet, there are great differences among counties in how long it takes to process a case. There is also a difference among counties as to how many cases make it to trial, and different counties use juries more often than others. Finally, it appears that tort actions take longer to process than contract cases. Through these comparisons, a profile of litigation in Wisconsin can be established.

Further,

This study compares 1985 Wisconsin civil and family law litigation between several Wisconsin counties using data available from the Director of State Courts, State of Wisconsin. Ten of the largest counties in Wisconsin were selected for comparison. Each of these 10 counties had an urban population center as well as surrounding rural areas; they are Dane (Madison), Racine (Racine), Waukesha (Waukesha), Fond du Lac (Fond du Lac), Winnebago (Oshkosh), La Crosse (La Crosse), Brown (Green Bay), Outagamie (Appleton), Eau Claire (Eau Claire) and Kenosha (Kenosha) Counties. The study compares these counties with each other, with the group of 10 as a whole, and with the totals for the state. The data show interesting local variations from one county to the next and reveal that certain kinds of cases have distinct characteristics from other types of litigation.

The Data Source and Its Limitations

Information was compiled by the Office of the Director of State Courts based upon batch reporting(1) submitted by the Clerks of each Circuit Court. Milwaukee County is the only county which does not report to this information system. Thus, a statewide comparison using this data is done realizing that Milwaukee is not included. However, to the extent that litigation in Milwaukee County may be distinct, its omission has the benefit of not skewing the data for the rest of the state.

Inconsistencies are apparent in the reporting of this data, which is put together by various Clerks of Court around the

state. For example, a car accident case could conceivably be considered "products liability," "personal injury-auto," or "intentional tort," depending on the facts of the case and local practice. The information source used reflects the classifications used by the Clerk of Court offices. To avoid classification problems, this study has collapsed the specific civil and family cases used by the Clerks into broad headings. For example, no matter whether a particular auto accident is called "products liability" or "intentional tort," it will still fall under the category "tort." Thus, this means comparisons within more narrowly defined classes of cases like "intentional tort" are not possible.

Small claims data were also available. However, the data only reflect "contested" small claims and are therefore not comprehensive. The indeterminacy apparent when "uncontested" claims are left out, and the fact that small claims data reflect only "contested" claims and thus are not comparable with the civil and family data available for the state, led the author to omit this type of data from this analysis at this time.

Finally, there appears to be a problem in the available data in distinguishing between settlement prior to trial and a dismissal before trial. For example, if there was a dismissal because the parties settled, it is conceivable that the Clerk of Court office might categorize this as being either a settlement or a dismissal. The confusion is illustrated in Table 5 which relates data on the disposition of tort cases in 1985. Racine County had 277 settlements before trial but only 71 dismissals. In contrast, Kenosha County had 176 dismissals with only 39

settlements. Dane County had very roughly equal number of settlements to dismissals. Since there is no consistent pattern statewide in this area, it is questionable whether comparison of the numbers in these two categories against each other would be meaningful. Nevertheless, it is clear that if the two categories are combined along with the "Other" category (for change of venue and any other sort of dismissal), the result is the total of cases disposed of before trial.

A "trial" is defined as a hearing which includes at least one sworn in witness. Thus, the "trial" category includes not only trials that went to verdict, but also those that settled anytime before verdict.

The strength of the data lies in its comprehensiveness for civil and family cases. The State of Wisconsin has gone to great efforts to produce reliable data in a single computer data source based upon information received as part of the normal process of disposing of the state's caseload. The state itself uses the data to help in the administration of the courts' cases. Prior to 1985, the data source was less accurate because the process was being perfected. Thus, the 1985 data are the most accurate and comprehensive available.

Filing Data

Having established the parameters of the data, some comparisons can now be made between the counties. Table 1 shows the number of filings in the various counties, while Table 2 compares filings per 1000 population. Table 2 reveals that the

level of filings per 1000 population in the various counties is fairly uniform; divorce is the most uniform category throughout the ten counties. Tort claim filings are is also fairly stable, with the exception of Racine and Kenosha Counties, which have higher filing rates per 1000 population for tort claims.

INSERT TABLES 1 AND 2 HERE

One of the most noticeable figures is the high number of contract cases filed in Dane County. Dane has over twice the number of contracts cases per 1000 population than the state average (leaving out Milwaukee County). Mr. Dean Ziemke(2) of the Office of Court Operations explained that this figure may be high in part because many cases involving the state as a party are filed in Dane County. Also, the Wisconsin Higher Education Corporation's files a large number of contract money damage cases in Dane County for persons failing to pay student loans. The combination of these factors may cause Dane to have a very large number of contract cases. State involvement in litigation may also account for why Dane has a high number of cases in the "Other" (civil) category which includes administrative agency reviews, temporary restraining orders, interlocutory injunctions and other extraordinary writs, among other things.

It is interesting to note that Dane County has no more propensity to file claims than other counties in tort and property cases. Indeed, in these two areas, Dane had a lower number of filings per 1000 population in 1985 than the ten

counties taken as a whole. On balance, it may be said that Dane County has actually a lower propensity to file claims than other areas of the state.

Outside of Dane County, it is interesting that the number of filings per 1000 population in each of the categories for civil cases is fairly constant. Yet statewide (leaving out Milwaukee County), there seems to be many more filings per 1000 population in contract cases than in other civil areas.

In the family area, there seems to be a fairly constant number of divorce cases throughout the state (leaving out Milwaukee County) with Kenosha and Racine Counties having a few more than other areas. In relative terms, the number of paternity cases to divorce cases appears quite high (nearly one paternity case for every three divorces) for the state (leaving out Milwaukee County). This may be high due to the filing of paternity cases by district attorney offices involved with child support agencies and the administration of AFDC claims.

Kenosha and Racine Counties have the highest number of family case filings per 1000 population. At the other end, Waukesha and Fond du Lac Counties appear to have the least amount of filings per 1000 population in the family law area.

Disposition Ages

Table 3 shows the number of days to dispose of a filing in the 10 counties. The table reveals that in all categories, the average(3) is much greater than the median(4) number of days it takes to dispose of a case. This means that there are a few

cases which take a very long time, greatly increasing the average, while the bulk of the cases are processed with greater speed.

INSERT TABLE 3 HERE

In the civil area, there are great differences among counties in how long it takes to process a case. Brown County has the highest median ages of disposition of the group. Indeed, it has the highest ages even though it has a fairly high percentage of contracts cases which, as Table 8 shows (discussed later), are more rapidly disposed. Kenosha County has the group's lowest median ages of disposition, disposing of a case in a median of only 60 days, followed by Racine County, which disposes of its claims in 78 days. Brown County also has the highest median ages of disposition in the family area, whereas Kenosha and Racine Counties have the lowest median ages of disposition with respect to disposing of family filings.

A note of caution should be added at this point regarding the data on ages at disposition. First, a lower age at disposition, while indicating greater speed, may not mean greater efficiency. While the courts are attempting to reduce delays in the administration of the courts, they do not wish to compromise the quality of their decisions. Complex cases will take longer. Thus, it may be misleading to some degree to compare ages at disposition. Second, there appears to be problems with the data source in this area. A number of counties (indicated on the

Table with "***") conducted caseload "clean-ups." This means that during the year, they disposed of older, inactive cases which for one reason or another were still in inventory for that county. Thus, the disposition of these cases tended to skew the median and average ages at disposition upward for 1985. Third, medians may be more meaningful in this area than averages, since a few extraordinarily long cases can bring the average age at disposition way up, while such extraordinary cases would not alter the median to the same extent.

Trials and Juries

Table 4 shows the great disparity between counties as to how many civil cases make it to trial. At one extreme, 22% of all civil dispositions in Fond du Lac County make it to trial. In contrast, only 4% of civil dispositions in Brown County made it to trial in 1985. There is also a noticeable difference between these counties in which only 7% of dispositions made it to trial and the state as a whole (leaving out Milwaukee County) where 11% of civil dispositions made it before a judge or a jury. This seems to cut against the notion that the larger communities are more likely to go to trial. To be sure, it is difficult to draw a correlation between size of the county and litigiousness since some members of the group of ten counties fall on either side of the statewide figure.

INSERT TABLE 4 HERE

Yet there may be another explanation for Fond du Lac's high percentage of cases going to trial. Dean Ziemke of the Office of Court Operations indicated that the Clerk of Court office for Fond du Lac County may have been using a different definition of "trial" than the rest of the Wisconsin counties. It seems that in Fond du Lac County, there are a large number of foreclosures and money judgment hearings. Because the judge was involved with these hearings, the Clerk of Court office classified these as "trials."

Table 5 lists the disposition of tort cases while Table 6 contains data on the disposition of contracts cases. Comparing the two, it appears tort cases are more likely to go to trial than contracts cases. This may confirm notions that contract damages are often more calculable and certain than tort damages and therefore contract cases may be easier to settle than tort cases.

INSERT TABLES 5 AND 6

The percentage of tort cases making it to trial appears to be fairly constant throughout the ten counties. Yet the percentage differs in the contract area. In Brown County, only 3% of contract cases made it to a trial in 1985. It might be supposed that the large median number of days it takes to dispose of this type of case in Brown County serves as an incentive to settle before trial or that only complex cases go to trial in Brown

County. In La Crosse County, 12% of disposed civil cases go to trial. It may simply be that the settlement process does not work as well in La Crosse County as in the other 9 counties in the group and therefore more cases make it to trial. Conversely, it may be that the customary and local practice of lawyers in that area is to settle relatively more cases after a trial has begun rather than earlier in the process, thus producing the high trial percentage. The data do not allow a distinction between these two explanations.

Table 7 lists the relative presence of jury trials per 1000 population throughout the ten counties. Racine and Kenosha counties have the greatest number of juries per 1000 population. Winnebago County had the fewest jury trials per 1000 population in 1985. Notably, the ten counties have roughly the same frequency of jury trials as the rest of the state (leaving aside Milwaukee County). This in turn suggests that juries are not more frequent in urban areas than in rural areas.

INSERT TABLE 7

Statewide data on ages at time of disposal

Finally, Table 8 shows the statewide totals for disposal of civil cases and number of jury trials. Again, these totals do not include Milwaukee County. As stated earlier, the Clerk of Court offices are responsible for classifying cases and not all label

cases the same way. The reader should thus approach Table 8 with some caution. Table 8 does indicate that tort actions generally seem to take longer than contract cases. Further, there seems to be more tort jury trials than contract jury trials. Conversely, there are many more bench contract trials than bench tort trials. This may confirm the notion that contract damages are more certain and therefore the need for juries is diminished.

INSERT TABLE 8

Conclusion

In conclusion, the data show interesting variations among tort and family cases within these ten counties. These variations are not necessarily linked to the size of the county. In addition, contract and tort cases seem to have their own distinctive characteristics. The data help in defining these characteristics and mapping out a profile of litigation for these counties.

Footnotes

1. "Batch" reporting refers to a system in which the reporting is not entered online into a computer system. Instead, the data is loaded periodically based on bundles of documents sent to the Office of Court Operations. Thus, the system is updated periodically, not continuously. In other terms, the Clerk of Court offices are not linked with computer terminals to the Office of Court Operations. Instead, they send in their data to the Office of Court Operations to be entered there all at once.

2. Dean A. Kiemke is the Policy and Planning Analyst of the Office of Court Operations, State of Wisconsin.

3. An "average" is an arithmetic term indicating the figure arrived at by finding the sum of a given number of unequal figures and dividing by the number of figures to compute a fair general estimate of something comprising a series of unequal but like things.

4. A "median" is a value in an ordered set of quantities below and above which fall an equal number of quantities. In other words, it is the value situated "in the middle" of a series of ordered values.