

# ABOTA Member Survey on Trust and Confidence in the Civil Justice System

By Logan Cornett and Natalie Knowlton

Public trust and confidence in the legal system is essential for the system’s legitimacy and, ultimately, for a functioning democracy. We often make assumptions about how the public views the legal system. However, those assumptions are often not examined empirically. Even rarer are the efforts to empirically examine attorney attitudes toward the legal system. To begin to fill this gap in research, IAALS, the Institute for the Advancement of the American Legal System at the University of Denver, conducted a survey of ABOTA members as part of a broader research effort exploring public trust and confidence in the legal system. The data presented here reflects the findings of that survey.

Because responses to this survey came solely from ABOTA members, a very specialized subgroup of the broader attorney population, the results should be considered informative and enlightening—but they should not be assumed to reflect all attorney perspectives.

The survey was distributed electronically to 5,620 ABOTA members; we received 312 valid responses (margin of error = 5.4%). While the response rate (5.5%) may, on its face, seem low, there are two germane facts to keep in mind. First, it is not uncommon for online surveys to garner relatively low response rates. Second, research has demonstrated that low

response rates do not necessarily result in nonresponse bias—the more important consideration is representativeness of the sample.<sup>1</sup> Thus, the low response rate on this survey does not point to unreliable results.

Respondents tended to be civil litigators (90%) in private practice (91%) with substantial trial experience (83% had conducted more than 30 trials). These demographics are not surprising given ABOTA’s membership requirements. Respondents were evenly split between primarily representing plaintiffs and defendants (44% each). A majority of respondents’ client base consisted of individuals (57%), compared to small businesses

(12%), medium-sized corporations (12%), and large corporations (19%). Respondents were asked to identify all practice areas in which they had significant experience over the past 10 years; the most commonly-reported practice areas were personal injury/medical malpractice law (85%) and commercial litigation (40%).

## Attorney Perspectives on the Legal System

### Levels of Confidence and Changes Over Time

The ABOTA survey sought to explore attorney levels of trust and confidence in the system and factors that influence ABOTA members’ perspectives. To that end, the survey instrument asked about current levels of confidence in the state and federal systems, as well as changes in confidence over the past five years. Survey respondents broadly reported high levels of confidence. Indeed, over three-quarters (76%) indicated their confidence in the state civil court system was somewhat or extremely high. A similar proportion of respondents (75%) reported their confidence in the federal civil court system was somewhat or extremely high (see Tables 1 and 2).

TABLE 1 Levels of Confidence in Civil Courts

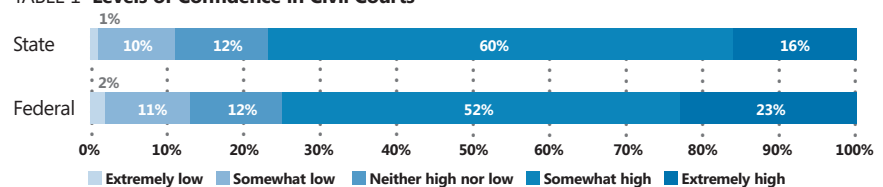


TABLE 2 Changes in Confidence in Civil Courts

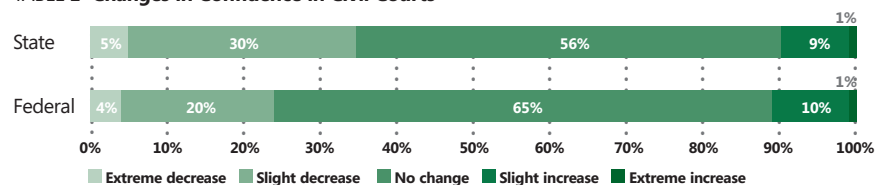
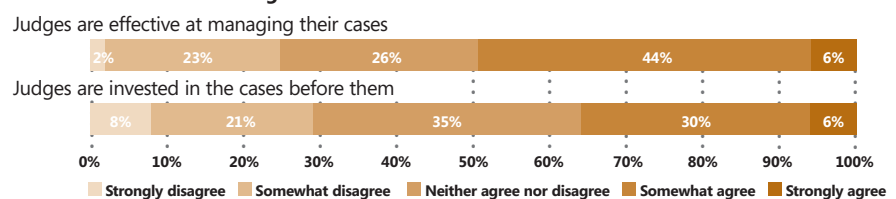


TABLE 3 Judicial Case Management



A majority of respondents (56%) indicated that their confidence in the state system had not changed over the last five years, but more than one-third (35%) expressed that it had decreased. When respondents were asked to explain their answers, the most frequently cited reasons included politics on the bench, un- or underqualified judges, and underfunded courts. One respondent shared: “Quality of new judges is disappointing. Ability to convince well-qualified lawyers to leave private practice for a seat on the bench is nearly impossible,” wrote one respondent. Another noted that “state court judges being elected in partisan elections becomes more about party affiliation than competence.”

Similar findings emerged from the questions asking ABOTA members whether their level of confidence in the federal civil court system had changed over the past five years: almost two-thirds (65%) indicated no change while about one-quarter (24%) reported their confidence had decreased. When again asked to elaborate on their answers, respondents most commonly cited politics on the bench and quality of the judiciary as reasons for declining levels of confidence. One respondent stated: “Too many political appointees without any significant legal/judicial experience who are appointed as a part of a political agenda.” Additionally, some respondents referenced, with respect to the federal system, a perception that judges want to move cases through the system quickly. As embodied in one respondent’s reply: “Federal judges seem overworked and tend to use power to dismiss cases. It feels like it is because they are too busy with criminal cases and are looking for a reason to dismiss a civil case.”

### Factors Potentially Impacting Levels of Confidence

The survey explored several specific aspects of the court system that may potentially impact ABOTA members’ perceptions of the system. These items were selected from prior research (from IAALS and others) on areas of the process ripe for civil justice reform.

### Judicial Case Management and Investment

Half (50%) of respondents agreed or strongly agreed that judges are effective at managing their cases, while one-quarter (25%) disagreed or strongly disagreed. More than half (59%) of respondents acknowledged that untimeliness of judicial rulings impacted their level of confidence in the courts. When asked whether judges are invested in the cases before them, just over one-third (36%) agreed or strongly agreed, while a smaller proportion (29%) disagreed or strongly disagreed (see Table 3).

### Judicial Decision-Making

With respect to judicial decision-making nearly half (47%) of respondents disagreed or strongly disagreed with the statement “Judges in civil cases are biased,” with approximately 30% agreeing or strongly agreeing. The analysis of the open-ended follow-up question on bias in civil cases points to concerns over political bias, preference for plaintiff or defendant parties, and bias based on the judge’s personal experiences. “Elected judges want to be re-elected. Partisanship can influence the way they handle politically-sensitive issues,” reported one respondent. Another noted, “Many [judges] are pro plaintiff, especially in medical malpractice cases where the plaintiff is often seen as a victim.” Yet another said, “All humans have biases, including judges. A judge’s political leanings and personal beliefs in whether a particular type of case should be

before the court strongly influences judicial decisions.”

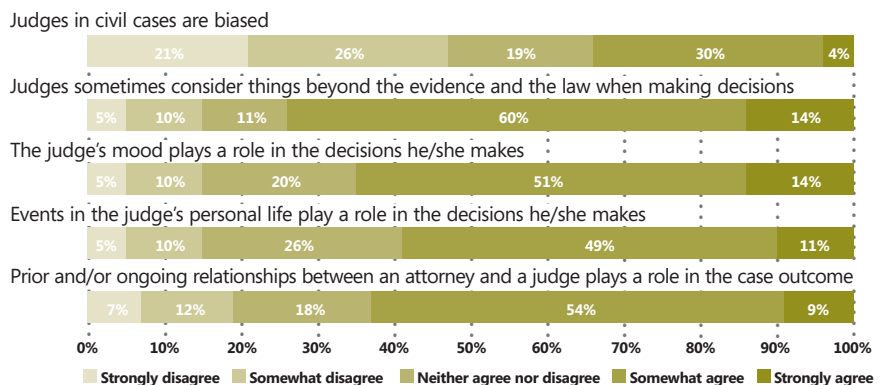
About three-quarters (74%) of survey respondents agreed or strongly agreed that judges sometimes consider things beyond the evidence and the law when making decisions. Substantial majorities of respondents agreed or strongly agreed that the judge’s mood plays a role in the decisions s/he makes and that events in the judge’s personal life play a role in the decision s/he makes (65% and 59%, respectively). Nearly two-thirds (62%) of respondents agreed or strongly agreed that prior ongoing relationships between an attorney and a judge play a role in the case outcome (see Table 4).

With respect to dispositive motions specifically, 20% reported that rulings were based solely on evidence *about half the time*, while almost 60% thought this happened *often* and only 6% reporting that this always occurred. In terms of case outcomes more broadly, a considerable majority—about two-thirds (67%) of respondents—indicated that the outcome of a civil case at trial was somewhat or extremely predictable, while less than one-third (29%) of respondents thought outcomes were somewhat or extremely unpredictable.

### Representation and Case Outcomes

Respondents were split on the assertion “The more expensive a party’s lawyer, the better the case outcomes for that party tend to be”: just over one-third (36%) agreed or strongly agreed, while 40% disagreed or strongly disagreed

TABLE 4 Judicial Decision-Making



(24% neither agreed nor disagreed).

### Attorney Perspectives on Public Trust and Confidence in the Legal System

In addition to understanding respondents' own perspectives, the survey sought to provide insights into how ABOTA members view their clients' perspectives on the civil legal system. This section of the survey explored three aspects of attorney perceptions of the client perspective: first-time client knowledge of the civil system, first-time client levels of confidence, and client concerns about fairness in the civil process.

#### Client Knowledge of the Civil System

The survey asked respondents to reflect on their first-time clients'—both individuals and small businesses—knowledge of the civil court system at the outset of the case (see Table 5).

ABOTA member respondents reported that both types of first-time clients are largely uninformed, with individuals being considered less informed than their small business counterparts (74% and 60%, respectively). Respondents reported that only about 16% of individual and 33% of small business first-time clients were somewhat informed; very small proportions of first-time clients were considered extremely informed (2% individuals, 1% small businesses).

#### Client Levels of Confidence

The survey then asked respondents to indicate their perceptions of first-time client levels of confidence both at the outset and conclusion of the case. The comparison allows us to assess whether ABOTA members perceive that client levels of confidence change through the course of a legal matter (see Table 6 and 7).

Respondents reported that only one-quarter (25%) of first-time individual clients had somewhat or extremely high levels of confidence in the civil system at the outset of the case; this proportion increased

substantially—to 61%—by the conclusion of the case. Though somewhat attenuated, respondents also reported that the proportion of first-time small business clients with somewhat or extremely high levels of confidence in the civil system increased between the outset to the conclusion of the case—from 22% to 44%.

These findings suggest that respondents perceive that client experience with the civil justice system tends to increase their levels of confidence.

#### Client Concerns with the System

To explore ABOTA members' perceptions of root causes of public concern with the civil legal process, the survey asked respondents to select, based on their experience, their clients' top three concerns from a list of 19 options (the list included another option to capture responses not included in the list of options—only about 8% of respondents selected this option).

Table 8 presents the options that were selected by more than 10% of respondents.

By a wide margin, the high financial costs of participating in a lawsuit was the most frequently-cited concern, with nearly two-thirds (64%) of respondents selecting this response. Just over one-quarter of respondents selected each of the following: the influence of the judge's personal and/or political beliefs on the judge's decisions (27%); perception that attorneys engage in gamesmanship (27%); and arbitrariness of judicial decision-making (20%). Smaller, but considerable, proportions of respondents selected socioeconomic bias (20%), perception that attorneys are greedy (18%), attorneys' lack of communication (15%), politicization of the judicial selection process (13%), the impact of judge-attorney relationships on judicial decision-making (13%), and racial bias (12%).

Thus, while respondents recognize that monetary issues

TABLE 5 Client Levels of Confidence

Based on your experience, how informed are \_\_\_\_\_ about the civil court system at the outset of the case?

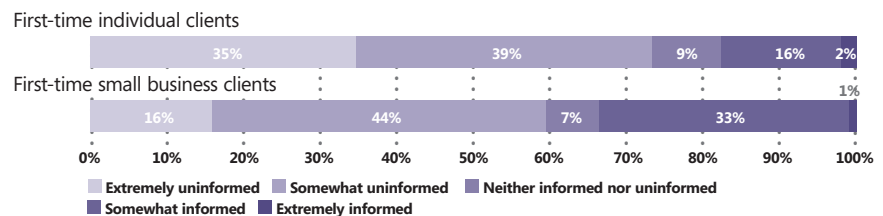


TABLE 6 Client Levels of Confidence

Based on your experience, how would you categorize your typical individual first-time client's level of confidence in the civil court system?

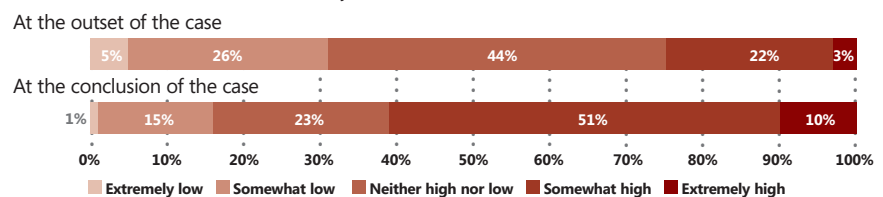
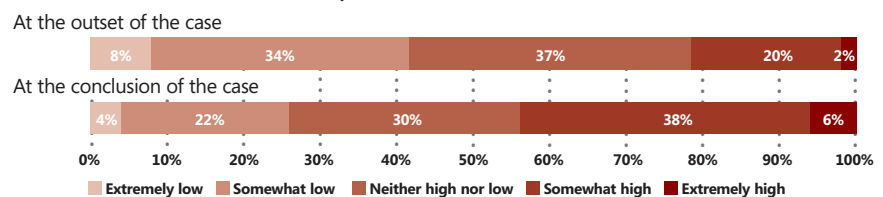


TABLE 7 Client Levels of Confidence

Based on your experience, how would you categorize your typical small business first-time client's level of confidence in the civil court system?



associated with pursuing a legal case are the most concerning for clients, respondents also perceive that clients have concerns about issues around bias in judicial decision-making and in the process more broadly, as well as issues with how attorneys approach their cases and communicate with their clients.

### Perspectives on Self-Representation

The incidence of self-representation in civil cases is high—in some courts (e.g., family courts), a majority of cases involve at least one self-represented litigant. When asked whether there were some types of civil cases that are simple enough that the average citizen could successfully navigate the legal process without an attorney, respondents were approximately split; 48% thought there were some types of cases simple enough to navigate without a lawyer, 52% did not. In an open-ended follow-up

question, respondents were asked to identify the types of cases that are simple enough to navigate without a lawyer. Among the most common case types identified were debt collection, landlord-tenant disputes, small claims, and simple family cases (see Table 9).

Similarly polarizing was a survey question asking respondents to indicate their level of support for systemic changes intended to make the civil legal system more accessible to self-represented litigants. While about one-quarter (26%) were undecided on the issue, responses were nearly evenly split on either side of the spectrum: 38% were somewhat or extremely supportive; 37% were somewhat or extremely unsupportive.

The near-even split on issues related to self-representation in civil cases underscores their complexity, and highlights that the justice system must identify new and innovative ways to respond to litigant representation needs.

### Conclusion

This survey provides important insights into the perspectives of ABOTA members, a specific and specialized segment of attorneys. In general, ABOTA member respondents have high levels of confidence in the civil justice system at both the state and federal levels—and this has largely remained stable over the past five years. The aspects of the system that are most concerning to ABOTA member respondents are judicial bias—particularly with respect to political affiliation and preferential treatment for certain types of parties—and related issues in judicial decision-making. Respondents generally view first-time clients as uninformed about and lacking confidence in the civil legal system, but perceive that client confidence increases by the conclusion of the case. In terms of perceived client concerns about fairness in the civil process, ABOTA member respondents most frequently cited issues around the cost of pursuing a case, with issues related to systemic and judicial bias also garnering a substantial proportion of responses. Finally, respondents were divided on issues related to self-represented litigants.

Together, these findings suggest that, although respondent confidence in the civil justice system is generally high, there are many salient issues—such as bias and the high incidence of self-representation in civil cases—that deserve much more attention. Finding ways to address and resolve these issues is pivotal for ensuring a civil justice system that is both trusted and trustworthy. ■

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TABLE 8 Client Concerns About Civil Legal Process Fairness

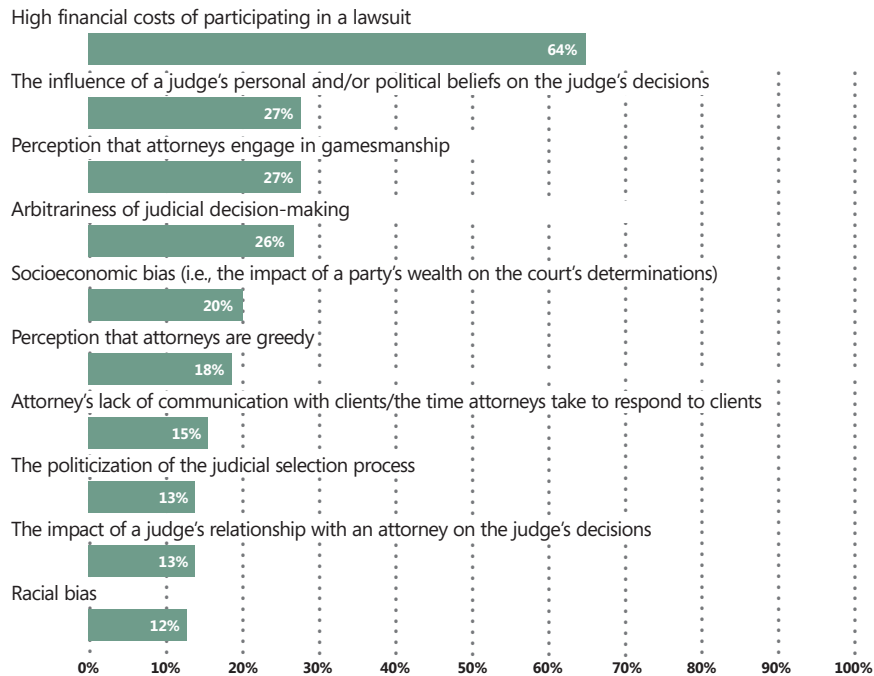
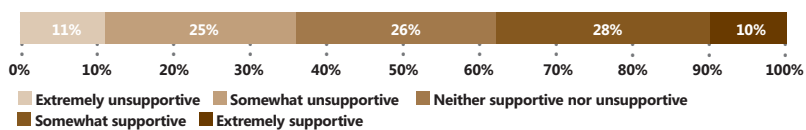


TABLE 9 Perspectives on Self-Representation

How supportive are you of systemic changes intended to make the civil legal system more accessible to self-represented litigants?



<sup>1</sup> See Robert M. Groves & Emilia Peytcheva, *The Impact of Nonresponse Rates on Nonresponse Bias: A Meta-Analysis*, 72 THE PUB. OPINION Q. 167, 183 (2008); Andy Peytchev, *Consequences of Survey Nonresponse*, 645 ANNALS AM. ACAD. OF POL. & SOC. SCI. 88, 90 (2013); Scott Keeter, *Evidence About the Accuracy of Surveys in the Face of Declining Response Rates*, in THE PALGRAVE HANDBOOK FOR SURVEY RESEARCH (David L. Vannette & Jon A. Krosnick eds., 2018).