

Federal and State Forum Preferences:
A Survey of Attorneys in Recently Closed Diversity Jurisdiction Cases

Prepared for the Judicial Conference Committee on Federal-State Jurisdiction

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Executive Summary

At the request of the Judicial Conference Committee on Federal-State Jurisdiction, Federal Judicial Center (FJC) researchers surveyed attorneys in recently closed cases filed in or removed to federal court based on diversity of citizenship jurisdiction. Survey respondents were asked about their overall preference for a federal or state forum and then a battery of both closed and open-ended questions regarding their reasons for preferring one forum to the other.

In terms of overall forum preference, 50% of respondents reported that they prefer federal court, 35% that they prefer state court, and 15% expressed no overall preference. Attorneys who primarily represent defendants prefer federal court by a large margin, 75%, over state court, 14%. Attorneys who represent both plaintiffs and defendants in equal numbers also prefer federal court, but by a smaller margin, 55%, over state court, 24%. Attorneys who primarily represent plaintiffs prefer state court, 60%, over federal court, 25%. There was, in addition, a relatively small group of attorneys who said they have no overall forum preference; most of these attorneys report choosing a forum on a case-by-case basis.

In terms of explaining their forum preferences, attorneys most often identified judicial personnel as an important consideration. Fully 43% of attorneys who primarily represent defendants and 47% of attorneys who represent plaintiffs and defendants in equal numbers selected judicial personnel as most important for their forum preference—typically a preference for federal court. Attorneys who prefer federal court also identified federal motion practice, procedural rules, and active case management, while attorneys who prefer state court stated that state courts as more favorable to the types of cases they bring and the types of clients they represent. Notably, the conduct of jury trials was an important consideration for attorneys preferring state court. These attorneys, often primarily representing plaintiffs, perceived that jury trials were more likely in the state forum and that state jury pools, voir dire procedures, and likely jury awards were more favorable to their clients' interests than federal alternatives.

Attorneys primarily representing defendants preferred federal case management practices and attorneys primarily representing plaintiffs preferred state case management practices. When asked to consider whether case management practices are more likely to result in a quicker decision, however, all attorneys tended to favor federal courts. The open-ended responses also reflected the view that federal case management leads to quicker resolutions in a uniform and predictable manner. Plaintiff attorneys, especially those with a state preference, on the other hand, preferred state case management practices, finding state judges more flexible than federal judges on such issues as extensions and deadlines.

Background

Article III of the U.S. Constitution vests the federal courts with jurisdiction over cases arising under state laws when the litigants are citizens of different states. Diversity-of-citizenship jurisdiction has served as the source for recurring debates about “the proper balance between federal and state jurisdiction.”¹ These debates, still current among legal commentators and policy makers, often focus on concerns about local bias in state courts against nonresident parties. This is one of the oldest debates over the nature of American federalism. Defending the provision of diversity-of-citizenship jurisdiction to the proposed federal courts, Alexander Hamilton argued in *The Federalist* that “state tribunals cannot be supposed to be impartial and unbiased.”² Almost 140 years later, Henry Friendly (not then a judge) opined that “fears of local hostilities” had “only a speculative existence in 1789, and are still less real today.”³ Whether or not there is state-court bias against out-of-state defendants, the balance of federal and state jurisdiction providing access, as it does, to alternate forums that differ in terms of rules, practices, and personnel likely differentially affects the interests of various stakeholders, particularly the clashing goals of plaintiffs and defendants.⁴ Perceived differences between the state and federal courts continue to shape the forum preferences of attorneys and repeat litigants. Some empirical literature addresses attorney forum preferences,⁵ but the debate over the proper balance between federal and state jurisdiction still often relies on personal anecdotes and experiences.

To inform its discussion on considerations influencing attorneys’ forum preferences, the Judicial Conference Committee on Federal-State Jurisdiction (Committee) requested an empirical Federal Judicial Center (FJC) study regarding which considerations affect attorneys’ preferences for state or federal court.

In March 2021, the FJC surveyed 6,783 attorneys of record in a random sample of diversity-of-citizenship jurisdiction cases that closed in the federal courts in the first six months of 2020. The

1. Fed. Jud. Ctr., *Jurisdiction: Diversity*, <https://www.fjc.gov/history/courts/jurisdiction-diversity> (last visited Oct. 22, 2021).

2. *The Federalist* No. 80, at 445 (Alexander Hamilton) (Isaac Kramnick ed., 1987).

3. Judge Henry J. Friendly, *The Historic Basis of Diversity Jurisdiction*, 41 Harv. L. Rev. 483, 510 (1928); see also Marvin R. Summers, *Analysis of Considerations That Influence Choice of Forum in Diversity Cases*, 47 Iowa L. Rev. 933 (1962) (for an overview).

4. The late nineteenth-century debate over the scope of diversity jurisdiction, for example, pitted corporate defendants with a strong preference for a federal forum against plaintiffs with a preference for state court:

In the decades following Reconstruction, it was large interstate business corporations, especially railroads and insurance companies, that most took advantage of federal diversity jurisdiction. Corporations, which were deemed by the Supreme Court to be citizens of the state in which they were chartered, sought to remove contract and tort suits against them from state courts, where, business leaders argued, they were subject to local anticorporate prejudice. At the same time, plaintiffs seeking to recover from corporations fought to keep their suits in state courts through the increased use of joinder.

Id.

5. This appears to have been a subject of much interest in the 1990s. See Victor E. Flango, *Litigant Choice Between State and Federal Courts*, 46 S.C.L. Rev. 961 (1995); Neal Miller, *An Empirical Study of Forum Choices in Removal Cases Under Diversity and Federal Question Jurisdiction*, 41 Am. U. L. Rev. 369 (1992); Victor E. Flango, *Attorneys’ Perspectives on Choice of Forum in Diversity Cases*, 25 Akron L. Rev. 41 (1991).

researchers deduplicated the randomly generated attorney list so no attorney received the survey for more than one closed case. The attorneys, evenly split between those who represented plaintiffs and those who represented defendants, received an email from Judge D. Michael Fisher, chair of the Committee on Federal-State Jurisdiction, asking them to complete a survey on attorney preferences for litigating in federal or state court; the email contained a survey link to Qualtrics. The survey closed after two weeks, and all attorneys who had not yet responded 48 hours before the deadline received a reminder to complete the survey. About 1,600 attorneys completed the survey for a response rate of 24%, which is in line with FJC response rates for attorney surveys.

The Sample

A relatively seasoned group of practitioners, the survey respondents had practiced law for an average of 25.5 years, with a range from 2 to 60 years. They were fairly evenly split by their usual role in litigation—that is, between attorneys primarily representing plaintiffs, attorneys primarily representing defendants, and attorneys representing both sides in similar numbers—and in terms of their usual type of client—that is, businesses versus individuals. The largest category by attorney role, plaintiff attorneys made up 40% of the sample (626 respondents). Defendant attorneys made up almost a third of the sample, 32% (512), and both-side attorneys more than a quarter, 28% (448). In terms of their usual client type, about half of the attorneys, 51% (814 respondents), reported that they usually represent businesses (e.g., corporations, LLCs), and 43% (687) that they usually represent individuals in their private capacity. The small numbers of remaining attorneys reported that they usually represent government entities (2%, or 24), individuals in public/official capacity (1%, or 12), or nonprofit entities (0.2%, or 3). Forty-six attorneys (3%) selected Other; these attorneys said that they represented both business and individuals equally, parties involved in class actions, and parties involved in insurance litigation (insurance companies; insurers; insurance policyholders).

When asked about the setting of their law practice, respondents most often reported practicing in a small private firm of 2–10 attorneys (38%, or 609), followed by private firm of 11–49 attorneys (23%, or 357), private firm of 50 or more attorneys (22%, or 354), and solo practitioner (15%, or 236). The remaining 2% of attorneys were reportedly counsel for corporations, government, or a nonprofit entity.

Although the sample was drawn from only federal court records,⁶ the sampling design aimed to include attorneys with experience litigating in both state and federal courts. The sample included only attorneys of record in diversity cases, which could be brought in either a state or federal forum. Our expectation was that attorneys in diversity cases would have experience litigating in both forums, and this expectation appears to be borne out by the attorneys' responses. The respondents—at least occasional federal practitioners, based on our sampling design—noted extensive state court experience. As

6. As researchers for the Federal Judicial Center, we do not have ready access to state-court filing records. We encourage further research examining the forum preferences of attorneys who primarily file in state court.

shown in table 1, the most common responses were that attorneys' time was spent 1–24% in federal court (44%, or 698) and 75–99% in state court (36%, or 563).

Table 1. Percentage of Attorney Practice in Federal and State Court

Percentage	What percentage of your legal practice is devoted to cases in . . .	
	Federal Court?	State Court?
0%	1% (16)	1% (13)
1–24%	44% (698)	17% (275)
25–49%	24% (374)	21% (337)
50–74%	18% (286)	24% (378)
75–99%	13% (199)	36% (563)
100%	1% (10)	1% (16)
Total	100% (1583)	100% (1582)

To further gauge experience in state and federal forums that could affect their forum preferences, respondents also identified how often, in the past five years, they had participated in cases originally filed in federal court, removed to federal court, and remanded to state court. As shown in table 2, in the past five years, 46% had participated in more than eight cases originally filed in federal court, and 33% had participated in more than eight cases removed to federal court. Remand experience was less common, which makes sense given that remand to state court occurs only in a subset of removed cases. More than 4 in 10 attorneys (44%) had no experience in the past five years with a case remanded to state court.

Table 2. Attorney Experience with Case Events

Frequency	In the past five years, how often have you been named counsel in a case . . .		
	Originally Filed in Federal Court?	Removed to Federal Court?	Remanded to State Court?
Never	8% (120)	8% (120)	44% (705)
Once	6% (91)	13% (208)	23% (371)
2–4 cases	23% (360)	30% (470)	23% (363)
5–8 cases	18% (281)	17% (266)	5% (80)
More than 8 cases	46% (733)	33% (522)	4% (69)
Total	100% (1585)	100% (1592)	100% (1588)

Overall, it is important to keep the composition of the sample in mind when interpreting the survey results. The results presented in this report should be taken as representing only the views of attorneys who litigate in both state and federal forums, though more often in state court. The views of attorneys who litigate exclusively in either a federal or state forum would likely differ from those summarized in this report. Attorneys who exclusively practice in one forum would likely have especially strong preferences for that forum. As table 2 makes clear, however, only about 1% of our sample practices exclusively in either a state or federal forum, so we are unable to empirically test that proposition.

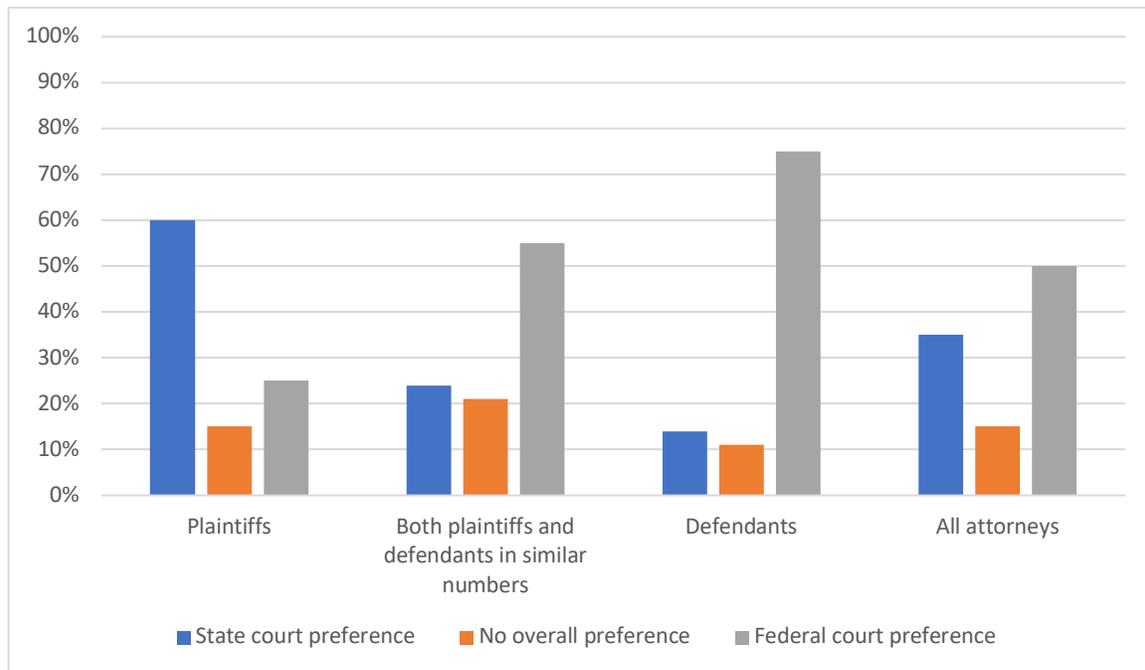
It should also be kept in mind that state courts differ. Across our sample, attorneys' experiences in one state court could vary significantly from other attorneys' experiences in another state court. The same is likely true at the federal level, although the variation among federal district courts should be less than among the states; though they operate under local rules and procedures, the federal courts all apply the Federal Rules of Civil Procedure and Evidence in diversity cases.

Although we examine state and federal forum preferences in this report, we recognize that there is no generic state or federal court. Instead, differences between specific state and federal courts factor into attorneys' considered forum preferences. These differences are clearly relevant in the policy debate. Advocacy groups have long identified so-called "judicial hellholes,"⁷ particular state jurisdictions that defendants seek to avoid at all costs; based on survey respondents' comments, the same is probably true for some federal district courts, from certain plaintiffs' point of view. Although our sample size does not allow for an examination of attorneys' preferences for specific state and federal forums, some limited analyses are offered in the appendix.

Overall Forum Preference

The survey asked respondents about their overall preference for state versus federal court when a choice of forum was available. As shown in figure 1, 50% of respondents reported that they prefer federal court, 35% that they prefer state court, and 15% expressed no overall preference. However, attorneys' forum preferences differ in the manner discussed both anecdotally and in the relevant literature: 60% of plaintiff attorneys prefer state court, compared to 25% preferring federal court, and 75% of defendant attorneys prefer federal court, compared to 14% preferring state court. Interestingly, a majority of both-side attorneys—that is, attorneys who represent plaintiffs and defendants in similar numbers—are not evenly divided in their forum preferences. Instead, both-side attorneys are more than twice as likely to prefer federal court (55%) than state court (24%). The above differences are statistically significant ($p < .001$).

7. The American Tort Reform Foundation maintains a website, judicialhellholes.org, which includes an annual list of jurisdictions "where judges in civil cases systematically apply laws and court procedures in an unfair and unbalanced manner, generally to the disadvantage of defendants." Am. Tort Reform Found., *Judicial Hellholes 2020/2021* at 1, https://www.judicialhellholes.org/wp-content/uploads/2020/12/ATRA_JH20_layout_09d-1.pdf (emphasis in original).

Figure 1: Attorneys' Forum Preferences by Type of Parties They Primarily Represent

Overall Forum Preference by Practice Type

Overall forum preference varied not only by attorney role, but also by respondents' usual client type—i.e., whether an attorney typically represents individuals or businesses. Three broad categories of attorneys account for 82% of survey respondents:

- Plaintiff attorneys who usually represent individuals, 34% of the sample
- Defendant attorneys who usually represent business entities, 27%
- Both-side attorneys who usually represent business entities, 21%

The importance of these categories is not terribly surprising; the archetypal plaintiff is an individual suing a business (or government) defendant. Although the roles can certainly be reversed, few respondents identified themselves as plaintiff attorneys who usually represent businesses (only 4% of the sample) or defendant attorneys who usually represent individuals (3%). Similarly, few respondents identified as both-side attorneys who usually represent individuals (6%), suggesting that these attorneys' account for a substantial share of the business-as-plaintiff cases on the civil docket.

With respondents categorized in this manner, it is clear that both attorney role and usual client type are important considerations in forum preference.

- Plaintiff attorneys who usually represent individuals preferred state court to federal court, 63% to 23%, with 15% expressing no overall preference. But the very small category of plaintiff attorneys who usually represent businesses instead preferred federal court to state court, 48% to 40%, with 12% expressing no overall preference.

- Defendant attorneys who usually represent businesses preferred federal court to state court, 80% to 10%, with 11% expressing no overall preference (the numbers sum to 101% because of rounding). But the very small category of defendant attorneys who usually represent individuals instead preferred state court to federal court, 47% to 40%, with 12% expressing no overall preference.
- Both-side attorneys who usually represent businesses preferred federal court to state court, 63% to 18%, with 20% no overall preference. But the smaller category of both-side attorneys who usually represent individuals instead preferred state court, 47% to 29%, with 24% expressing no overall preference.

Overall Forum Preference and Firm Size

Attorney role and firm size correspond with forum preference for defendant attorneys and both-side attorneys ($p < .001$) but not for plaintiff attorneys ($p = .153$). As firm size increases, defendant and both-side attorneys' preference for federal court increases. For example, defendant attorneys in firms of more than 50 attorneys preferred federal court to state court, 85% to 7%, while solo-practitioner defendant attorneys preferred federal court to state court, 48% to 35%. Most plaintiff attorneys in every size of firm tend to prefer state court, but sizeable numbers of plaintiff attorneys in every size of firm prefer federal court. This is not true of defendant attorneys and both-side attorneys; federal court preference for these attorneys in the largest firms is particularly strong. It bears emphasizing that attorneys who represent defendants at least half the time and who practice in large-firm settings have a marked preference for litigating in federal court.

Overall Forum Preference: Most Important Consideration

The findings summarized so far reflect the conventional wisdom that attorneys who represent defendants at least half the time generally prefer federal court, and attorneys who mostly represent plaintiffs generally prefer state court. Of more interest are the reasons attorneys offer for their stated forum preferences. To shed light on these underlying reasons, the survey first asked attorneys to select the most important reason for their stated forum preference from a list of nine options:

- Substantive law serving as basis for claims
- Rules of procedure in preferred forum
- Judicial personnel in preferred forum
- Expected cost of litigating in preferred forum
- Expected time necessary to litigate in preferred forum
- Expected case outcome in preferred forum
- Familiarity with preferred forum
- Location of preferred forum
- Other (please specify)

Table 3 provides the percentage of attorneys who selected each of the nine considerations, starting with all attorneys and then for attorneys holding the majority forum preference for their respective role (e.g., plaintiff attorneys with a state court preference, defendant attorneys with a federal court preference). The three righthand columns in table 3 summarize the responses of the 998 attorneys overall (63%) who held the majority forum preference for their respective role.

Table 3: Attorneys' Choice of Forum Considerations for All Attorneys and by Type of Parties They Primarily Represent (Including Only Attorneys with Most Common Forum Preference)

Considerations	Overall Sample of All Attorneys (N = 1587)	Attorneys who . . .		
		Primarily Represent Plaintiffs (with State Preference) (N = 373)	Represent Both Plaintiffs and Defendants in Similar Numbers (with Federal Preference) (N = 243)	Primarily Represent Defendants (with Federal Preference) (N = 382)
Judicial personnel in preferred forum	26%	11%	47%	43%
Rules of procedure in preferred forum	17%	20%	17%	20%
Expected case outcome in preferred forum	14%	22%	7%	15%
Substantive law serving as basis for claims	11%	8%	10%	7%
Familiarity with preferred forum	9%	16%	2%	2%
Expected time necessary to litigate in preferred forum	9%	7%	10%	4%
Expected cost of litigating in preferred forum	3%	4%	1%	1%
Location of preferred forum	1%	1%	<1%	1%
Other	10%	12%	7%	8%

“Judicial personnel in preferred forum” was the most frequently selected consideration for attorneys overall, largely because that it is the overwhelmingly most common response for defendant attorneys and both-side attorneys who prefer federal court. In contrast, “judicial personnel in preferred forum” was the fifth most commonly selected consideration for plaintiff attorneys who prefer state court. Instead, those attorneys most often selected “expected case outcome in preferred forum” as the key consideration.

One consistent finding is that few attorneys with a majority forum preference selected “expected cost of litigating in preferred forum” or “location of preferred forum” as their most important consideration, regardless of role. A second consistent finding is that all attorneys selected “rules of procedure in preferred forum” second most often, regardless of role.

We also examined the responses of attorneys with the less common preference, that is: plaintiff attorneys who prefer federal court, defendant attorneys who prefer state court, and both-side attorneys

who prefer state court. These responses are provided in table 4 and differ markedly from those of attorneys with the majority preference. The 158 plaintiff attorneys in the table most often stated that they preferred federal court because of the “expected time necessary to litigate in preferred forum” (23%) and the “judicial personnel in preferred forum” (22%). The 72 defendant attorneys in the table, as well as the 108 both-side attorneys, most often stated that they preferred state court because of “familiarity with preferred forum” (39% and 24%, respectively, selected about twice as often the next most common consideration).

Table 4: Attorneys’ Choice of Forum Considerations for All Attorneys and by Type of Parties They Primarily Represent (Including Only Attorneys with Less Common Forum Preference)

Considerations	Overall Sample of All Attorneys (N = 1587)	Attorneys who . . .		
		Primarily Represent Plaintiffs (with Federal Preference) (N = 158)	Represent Both Plaintiffs and Defendants in Similar Numbers (with State Preference) (N = 108)	Primarily Represent Defendants (with State Preference) (N = 72)
Judicial personnel in preferred forum	26%	22%	10%	7%
Rules of procedure in preferred forum	17%	15%	14%	18%
Expected case outcome in preferred forum	14%	8%	10%	4%
Substantive law serving as basis for claims	11%	11%	10%	13%
Familiarity with preferred forum	9%	9%	24%	39%
Expected time necessary to litigate in preferred forum	9%	23%	7%	10%
Expected cost of litigating in preferred forum	3%	1%	11%	0%
Location of preferred forum	1%	1%	5%	0%
Other	10%	13%	8%	10%

Combined, for attorneys who held a majority forum preference, defendant attorneys and both-side attorneys most often considered judicial personnel and rules of procedure, while plaintiff attorneys most often considered expected case outcomes and rules of procedure. However, for attorneys who held the less common preference, defendant attorneys and both-side attorneys most often considered familiarity, while plaintiff attorneys most often considered expected time necessary to litigate in the preferred forum.

Considerations Influencing Forum Preference

Considerations by Category

Survey respondents were then asked about 56 specific considerations, presented in seven categories, that potentially influence their forum preferences. They were asked to indicate, for each consideration, whether it weighed in favor their preferring “federal court, to a great degree,” “federal court,” “no overall preference for federal or state court,” “state court,” or “state court, to a great degree.” To avoid ordering effects, half of survey respondents received a survey listing the federal response options first, and half the state response options first.

Tables 5a–5g below present the attorneys’ responses to each consideration. The most common response is presented in bold for each attorney type. Across the tables, large percentages of respondents indicated “no overall preference for federal or state court” for that consideration. But in general, the pattern matches the overall preference findings in that defendant attorneys tend to prefer or strongly prefer federal court, both-side attorneys tend to prefer or strongly prefer federal court (but to a lesser extent), and plaintiff attorneys tend to prefer state court at higher rates than the others. The differences among plaintiff attorneys, defendant attorneys, and both-side attorneys are statistically significant at at least the $p < .05$ level for 55 of the 56 considerations. (The one consideration on which the respondents did not differ, regardless of role, was “Cases are more likely to result in trial.” As discussed below, this is likely because attorneys generally did not respond that either federal or state courts were likely to hold trials.) Given the large number of survey respondents, however, even relatively small differences among the groups are likely to reach traditional levels of statistical significance. The observed differences among the groups should thus be interpreted in light of their substantive significance. That is, for several considerations, the perceived advantages of one forum over the other appear to be slight but real.

Courts and Judges. Table 5a provides the 11 specific considerations regarding courts and judges, with the responses organized by attorney role. For all 11 considerations, defendant and both-side attorneys preferred federal court or had no overall preference. For all but 2 considerations, described below, plaintiff attorneys preferred state court or had no overall preference.

Two considerations (items 1 and 2 in table 5a) relate to the receptiveness of the forums to different types of parties, and to debates about potential forum biases against particular kinds of litigants. When asked which forum is “generally, more receptive to the type of parties I represent (e.g., corporations, individuals)” and in which forum “judges are more likely to rule in favor of the type of parties I represent,” 61% and 54%, respectively, of plaintiff attorneys preferred, or preferred to a great degree, state courts; 67% and 65%, respectively, of defendant attorneys preferred, or preferred to a great degree, federal courts; and 51% and 61%, respectively, of both-side attorneys preferred, or preferred to a great degree, federal courts. These findings are consistent with expectations: plaintiff attorneys perceive a federal court bias against their individual clients’ cases, and defendant attorneys (including those who

represent defendants about half the time) perceive a federal court bias in favor of their business clients. Given that defendant attorneys in the sample tended to represent businesses, and plaintiff attorneys tended to represent individuals, client types likely influenced the rating of these considerations.

In contrast, most attorneys did not perceive much difference between federal and state forums regarding their openness to parties and attorneys from marginalized or minority groups. Majorities of attorneys in each role group expressed no overall preference with respect to whether the court was “more welcoming to diverse parties (e.g., on the basis of race, ethnicity, gender, religion)” (ranging from 65% to 77%) or “more welcoming to diverse attorneys (e.g., on the basis of race, ethnicity, gender, religion)” (ranging from 76% to 81%). See table 5a, items 3 and 4. Still, for attorneys who did have a preference, the pattern held: plaintiff attorneys were more likely to prefer, or prefer to a great extent, state courts, while defendant attorneys and both-side attorneys were more likely to prefer, or prefer to a great extent, federal courts.

Table 5a. Attorney Considerations Regarding Courts and Judges

Consideration	Attorney Role	Attorney Forum Preference				
		Federal court, to a great degree	Federal court	No overall preference for federal or state court	State court	State court, to a great degree
1. Generally, more receptive to the types of parties I represent (e.g., corporations, individuals).	Primarily plaintiffs	3% (17)	6% (34)	31% (187)	32% (195)	29% (178)
	Both in similar numbers	9% (38)	24% (108)	51% (226)	10% (43)	6% (28)
	Primarily defendants	19% (95)	48% (244)	28% (140)	4% (18)	2% (10)
2. Judges are more likely to rule in favor of the types of parties I represent.	Primarily plaintiffs	1% (7)	5% (29)	40% (246)	33% (198)	21% (129)
	Both in similar numbers	4% (16)	24% (105)	61% (272)	8% (35)	4% (16)
	Primarily defendants	13% (65)	52% (263)	33% (164)	2% (8)	1% (5)
3. Generally, more welcoming to diverse parties (e.g., on the basis of race, ethnicity, gender, religion).	Primarily plaintiffs	3% (16)	7% (40)	65% (394)	16% (97)	10% (63)
	Both in similar numbers	3% (15)	12% (51)	77% (340)	6% (26)	2% (10)
	Primarily defendants	5% (23)	16% (79)	74% (371)	5% (24)	1% (7)
4. Generally, more welcoming to diverse attorneys (e.g., on the basis of race, ethnicity, gender, religion).	Primarily plaintiffs	3% (15)	6% (38)	76% (462)	9% (57)	6% (38)
	Both in similar numbers	3% (12)	11% (48)	81% (357)	4% (18)	2% (8)
	Primarily defendants	3% (17)	13% (65)	80% (405)	3% (13)	1% (5)

5. Judges are more knowledgeable of the issues in the cases I litigate.	Primarily plaintiffs	16% (96)	27% (162)	35% (211)	16% (98)	6% (38)
	Both in similar numbers	35% (154)	42% (185)	17% (74)	5% (23)	2% (7)
	Primarily defendants	41% (207)	42% (210)	13% (65)	3% (17)	1% (5)
6. Judges are more knowledgeable of scientific evidence issues that might come up in the cases I litigate.	Primarily plaintiffs	11% (66)	26% (161)	54% (330)	6% (36)	3% (17)
	Both in similar numbers	24% (104)	34% (150)	40% (177)	2% (9)	1% (3)
	Primarily defendants	27% (136)	45% (226)	27% (138)	1% (4)	0.4% (2)
7. Less congested and better able to address civil issues.	Primarily plaintiffs	16% (97)	30% (182)	29% (173)	17% (100)	9% (55)
	Both in similar numbers	24% (104)	38% (167)	27% (119)	8% (37)	4% (16)
	Primarily defendants	24% (123)	44% (222)	25% (126)	5% (25)	2% (8)
8. More focused on high-value cases.	Primarily plaintiffs	11% (67)	25% (151)	52% (316)	7% (44)	5% (30)
	Both in similar numbers	19% (84)	35% (153)	43% (191)	2% (7)	2% (8)
	Primarily defendants	18% (92)	35% (177)	44% (219)	2% (10)	0.4% (2)
9. Generally, more responsive to attorney requests for information.	Primarily plaintiffs	8% (50)	18% (107)	41% (249)	22% (131)	12% (73)
	Both in similar numbers	10% (45)	23% (103)	47% (208)	14% (61)	6% (25)
	Primarily defendants	12% (58)	30% (152)	46% (232)	9% (43)	3% (15)
10. Case management practices are more likely to favor my client.	Primarily plaintiffs	7% (41)	15% (94)	34% (206)	27% (166)	17% (105)
	Both in similar numbers	17% (75)	25% (110)	41% (179)	11% (47)	7% (30)
	Primarily defendants	19% (96)	43% (217)	30% (149)	6% (29)	3% (14)
11. Case management practices are more likely to result in a quicker decision.	Primarily plaintiffs	14% (87)	32% (192)	29% (177)	14% (87)	11% (66)
	Both in similar numbers	23% (102)	35% (156)	26% (115)	10% (45)	6% (25)
	Primarily defendants	24% (121)	47% (238)	22% (112)	5% (23)	2% (10)

How knowledgeable judges are on litigated issues in general, and on scientific evidence issues in particular, seems to be an important driver in forum selection, especially by defendant attorneys and both-side attorneys. For example, on scientific evidence issues (table 5a, item 6), 72% of defendant attorneys and 58% of both-side attorneys preferred, or preferred to a great degree, federal court. However, differing from the earlier findings that plaintiffs preferred state court, although a majority of plaintiff attorneys expressed no forum preference regarding judges' knowledge of the issues in the cases they litigate (item 5), or of scientific evidence issues (item 6), when plaintiff attorneys did have a

preference, it was for the federal courts. Furthermore, on two considerations, plaintiff attorneys joined defendant and both-side attorneys as tending to favor federal courts over state courts for being “less congested and better able to address civil issues” (item 7) and as having case management practices “more likely to result in a quicker decision” (item 11). Still, there were some differences for item 11; 46% of plaintiff attorneys prefer, or prefer to a great extent, federal court, while 58% of both-side attorneys and 71% of defendant attorneys did. Differences regarding case management practice preferences were also clear with item 10 (“Case management practices are more likely to favor my client”) despite the large number of neutral responses; 44% of plaintiff attorneys prefer, or prefer to a great extent, state court, and 62% of defendant attorneys prefer, or prefer to a great extent, federal court.

Large percentages of respondents in each role group tended to have no overall preference with respect to which forum was “More focused on high-value cases” (item 8) and “Generally, more responsive to requests to information” (item 9). Attorneys in all three groups with a preference were more likely to think, however, that federal courts were more focused on high-value cases; defendant attorneys and both-side attorneys were more likely than plaintiff attorneys to state that federal courts were more responsive to information requests.

Court Preferences and Familiarity. As shown in table 5b, the location and accessibility of the courts themselves seem to play a limited role in attorneys’ forum preferences. Attorneys most often had no overall preference regarding the convenience of the court’s location for themselves and their clients (item 4), or witnesses (item 5), or regarding which forum is “More accessible for individuals with special needs (e.g., physical disability, visual or hearing impairment)” (item 6).

With respect to whether local rules are generally more favorable (item 1), however, the familiar pattern reappeared. While each attorney role most often said they had no preference, 51% of plaintiff attorneys preferred, or preferred to a great extent, state court, and 44% of defendant attorneys preferred, or preferred to a great extent, federal court. Both-side attorneys had no forum preference regarding local rules. The consideration regarding local procedures (item 2) showed the same pattern as with local rules but to a lesser degree.

Table 5b. Attorney Considerations Regarding Court Preferences and Familiarity

Consideration	Attorney Role	Attorney Forum Preference				
		Federal court, to a great degree	Federal court	No overall preference for federal or state court	State court	State court, to a great degree
1. Local rules are generally more favorable to our case.	Primarily plaintiffs	2% (13)	6% (38)	40% (244)	33% (200)	18% (110)
	Both in similar numbers	6% (25)	17% (72)	62% (271)	10% (44)	6% (24)
	Primarily defendants	9% (43)	35% (174)	48% (242)	7% (33)	2% (11)
2. I am more familiar with the procedures.	Primarily plaintiffs	6% (38)	10% (59)	40% (244)	25% (152)	18% (111)
	Both in similar numbers	9% (37)	15% (64)	52% (227)	17% (76)	8% (33)
	Primarily defendants	11% (55)	18% (91)	51% (255)	14% (68)	7% (33)
3. I am more familiar with the individuals (judges, court staff).	Primarily plaintiffs	4% (24)	11% (66)	35% (210)	30% (179)	21% (125)
	Both in similar numbers	8% (34)	16% (71)	45% (199)	23% (99)	8% (35)
	Primarily defendants	7% (34)	24% (122)	47% (235)	16% (81)	6% (29)
4. The location is more convenient for me and my clients.	Primarily plaintiffs	2% (10)	6% (33)	64% (388)	16% (98)	12% (74)
	Both in similar numbers	3% (12)	7% (29)	76% (331)	11% (48)	4% (18)
	Primarily defendants	4% (20)	13% (66)	75% (375)	6% (32)	2% (8)
5. The location is more convenient for witnesses.	Primarily plaintiffs	1% (7)	3% (17)	70% (420)	15% (91)	11% (66)
	Both in similar numbers	1% (5)	5% (20)	81% (352)	10% (42)	4% (16)
	Primarily defendants	3% (14)	8% (42)	80% (399)	8% (38)	1% (6)
6. More accessible for individuals with special needs (e.g., physical disability, visual or hearing impairment).	Primarily plaintiffs	4% (22)	9% (56)	82% (494)	3% (20)	2% (10)
	Both in similar numbers	3% (14)	13% (56)	82% (357)	2% (8)	0.2% (1)
	Primarily defendants	3% (17)	12% (59)	84% (420)	1% (5)	0.2% (1)

Case outcomes. The results for this category, as shown in table 5c, show a somewhat surprising level of agreement among the groups. All three attorney groups expressed a federal court preference after considering whether “cases are more likely to be decided by a motion to dismiss” (item 2) or “by summary judgment” (item 3). However, when the attorneys provided open-ended responses, discussed further below, those who identified motion practice as a major consideration in their forum

preferences diverged: Those preferring the federal forum favored federal motion practice, and those preferring the state forum expressed great reservations about this aspect of litigating in federal court.

Additionally, majorities of attorneys in all three groups shared no overall preference for state versus federal court when considering whether “Cases are more likely to result in settlement” (item 4). This could be because settlement is perceived to be the most likely outcome of litigation in both federal and state courts. It is also consistent with the only consideration for which the differences among these groups are not statistically significant: “Cases are more likely to result in trial” (item 5). About half of attorneys in each role expressed no forum preference, and no more than 2% of attorneys in each group found this most likely, to a great extent, in federal court.

There is more variation with respect to whether “Cases are more likely to be decided on the merits” (item 1). After reviewing this consideration, both plaintiff and both-side attorneys most often reported no overall preference, with defendant attorneys reporting a federal preference; 52% of defendant attorneys, 46% of both-side attorneys, and 27% of plaintiff attorneys indicated that this was an advantage of federal court.

Table 5c. Attorney Considerations Regarding Case Outcomes

Consideration	Attorney Role	Attorney Forum Preference				
		Federal court, to a great degree	Federal court	No overall preference for federal or state court	State court	State court, to a great degree
1. Cases are more likely to be decided on the merits.	Primarily plaintiffs	9% (52)	18% (110)	38% (228)	20% (121)	15% (93)
	Both in similar numbers	18% (76)	28% (122)	35% (151)	12% (52)	8% (34)
	Primarily defendants	21% (104)	31% (156)	28% (141)	14% (71)	6% (32)
2. Cases are more likely to be decided by a motion to dismiss.	Primarily plaintiffs	27% (163)	46% (274)	24% (145)	3% (18)	0.3% (2)
	Both in similar numbers	26% (112)	46% (201)	27% (116)	2% (7)	0.2% (1)
	Primarily defendants	32% (163)	50% (254)	15% (75)	2% (10)	0.4% (2)
3. Cases are more likely to be decided by summary judgment.	Primarily plaintiffs	29% (177)	45% (273)	23% (137)	3% (16)	0.2% (1)
	Both in similar numbers	29% (127)	44% (192)	23% (98)	3% (14)	1% (4)
	Primarily defendants	39% (196)	44% (223)	14% (70)	2% (11)	1% (4)
4. Cases are more likely to result in settlement.	Primarily plaintiffs	6% (34)	15% (92)	55% (333)	17% (102)	7% (41)
	Both in similar numbers	6% (27)	19% (82)	61% (266)	10% (43)	4% (17)
	Primarily defendants	6% (29)	20% (101)	60% (305)	11% (55)	3% (15)
5. Cases are more likely to result in trial.	Primarily plaintiffs	2% (11)	8% (49)	51% (308)	29% (174)	10% (60)
	Both in similar numbers	2% (8)	6% (27)	54% (234)	28% (122)	10% (42)
	Primarily defendants	1% (5)	7% (35)	55% (275)	27% (134)	11% (55)

Rules and Statutes. As shown in table 5d, when attorneys had preferences regarding rules and statutes, defendant attorneys most often preferred federal procedural rules, and plaintiff attorneys most often preferred state procedural rules. Majorities of defendant attorneys prefer, or prefer to a great degree, federal court with respect to “Civil procedure rules (generally),” “Pleading requirements,” “Discovery rules (generally),” “Discovery rules (regarding the production of documents),” “Discovery rules (limitations on document requests),” “Evidentiary rules,” and “Expert evidence (*Daubert/Frye*) and testimony rules.” Majorities of plaintiff attorneys prefer, or prefer to a great degree, state court with respect to “Pleading requirements,” and more than 40% prefer, or prefer to a great degree, state court with respect to “Civil procedure rules (generally),” “Discovery rules (generally),” “Discovery rules

(regarding the production of documents),” and “Expert evidence (*Daubert/Frye*) and testimony rules.” Both-side attorneys’ preferences were in the middle, but tended more toward the federal courts, which is consistent with the finding that these attorneys, like defendant attorneys, tend to represent businesses and more likely have an overall preference for federal court.

It comes as no surprise that attorney role corresponds with forum preferences with respect to certain procedural rules, which are some of the most contentious topics of the past several decades. Plaintiff and defendant attorneys likely see relative advantages and disadvantages of state and federal rules regarding discovery and pleading requirements, for example. Still, there is some agreement. Respondents generally have no forum preference for considerations regarding “Rules and practice on availability of temporary restraining orders,” “Rules regarding timing of appeals,” “Rules regarding standards for appeal,” and “Rules regarding sanctions.”

Table 5d. Attorney Considerations Regarding Rules and Statutes

Consideration	Attorney Role	Attorney Forum Preference				
		Federal court, to a great degree	Federal court	No overall preference for federal or state court	State court	State court, to a great degree
1. Civil procedural rules (generally)	Primarily plaintiffs	9% (56)	14% (81)	30% (182)	25% (152)	22% (129)
	Both in similar numbers	19% (82)	28% (121)	34% (148)	13% (58)	6% (24)
	Primarily defendants	26% (130)	34% (171)	25% (125)	12% (61)	3% (14)
2. Pleading requirements	Primarily plaintiffs	5% (32)	11% (65)	27% (159)	29% (170)	28% (169)
	Both in similar numbers	14% (60)	28% (123)	33% (142)	17% (74)	8% (34)
	Primarily defendants	22% (112)	33% (164)	28% (141)	13% (63)	4% (20)
3. Rules and practice on availability of temporary restraining orders	Primarily plaintiffs	1% (5)	3% (17)	78% (461)	10% (60)	9% (51)
	Both in similar numbers	7% (31)	10% (45)	58% (249)	17% (73)	8% (35)
	Primarily defendants	6% (28)	11% (55)	76% (379)	6% (31)	1% (7)
4. Discovery rules (generally)	Primarily plaintiffs	7% (44)	20% (120)	24% (144)	27% (161)	22% (129)
	Both in similar numbers	14% (61)	35% (152)	29% (124)	16% (69)	6% (27)
	Primarily defendants	19% (92)	45% (226)	22% (107)	12% (60)	3% (13)

5. Discovery rules (regarding the production of documents)	Primarily plaintiffs	8% (46)	21% (127)	27% (160)	25% (150)	20% (117)
	Both in similar numbers	15% (63)	35% (152)	31% (134)	13% (57)	6% (26)
	Primarily defendants	17% (86)	43% (216)	25% (126)	12% (58)	3% (13)
6. Discovery rules (limitations on document requests)	Primarily plaintiffs	5% (29)	16% (94)	40% (239)	22% (131)	18% (106)
	Both in similar numbers	13% (56)	31% (133)	38% (166)	13% (56)	5% (22)
	Primarily defendants	16% (79)	43% (211)	30% (148)	10% (47)	2% (11)
7. Evidentiary rules	Primarily plaintiffs	5% (27)	13% (76)	49% (293)	19% (114)	15% (89)
	Both in similar numbers	12% (50)	26% (112)	55% (236)	5% (20)	4% (15)
	Primarily defendants	15% (76)	39% (194)	40% (198)	5% (26)	1% (5)
8. Expert evidence (<i>Daubert/Frye</i>) and testimony rules	Primarily plaintiffs	4% (22)	11% (64)	40% (240)	25% (151)	20% (118)
	Both in similar numbers	15% (65)	30% (129)	47% (203)	4% (18)	4% (16)
	Primarily defendants	27% (134)	43% (215)	27% (136)	2% (9)	1% (3)
9. Rules regarding timing of appeals	Primarily plaintiffs	2% (14)	6% (37)	73% (435)	10% (62)	8% (49)
	Both in similar numbers	6% (25)	9% (40)	73% (317)	9% (38)	3% (12)
	Primarily defendants	6% (28)	15% (74)	74% (369)	4% (21)	1% (7)
10. Rules regarding standards for appeal	Primarily plaintiffs	2% (13)	5% (32)	74% (440)	9% (55)	9% (55)
	Both in similar numbers	7% (28)	11% (47)	71% (308)	9% (38)	3% (12)
	Primarily defendants	6% (28)	17% (82)	72% (359)	5% (24)	1% (5)
11. Rules regarding sanctions	Primarily plaintiffs	4% (23)	12% (73)	61% (364)	13% (77)	10% (62)
	Both in similar numbers	6% (27)	23% (98)	62% (268)	6% (27)	3% (12)
	Primarily defendants	7% (37)	26% (129)	61% (301)	5% (27)	1% (3)

Cost and Timing. With respect to cost to the client (table 5e, item 1) and cost to the opposing side (item 2), all attorney groups most often have no overall preference. However, there were differences when examining attorneys who did have a preference. When considering their client's costs, 39% of defendant attorneys prefer, or prefer to a great degree, federal court, compared to 25% of both-side attorneys and only 12% of plaintiff attorneys. Instead, 34% of both-side attorneys and 45% of plaintiff attorneys prefer, or prefer to a great degree, state court.

When considering “how quickly the court can resolve the case” (item 3), 65% of defendant attorneys and 59% of both-side attorneys prefer, or prefer to a great degree, federal court compared to 40% of plaintiff attorneys, who most often had no overall preference.

In other words, when considering cost and how quickly courts resolve cases, defendant attorneys show a federal court preference, while both-side attorneys and plaintiff attorneys express mixed preferences.

Table 5e. Attorney Considerations Regarding Cost and Timing

Consideration	Attorney Role	Attorney Forum Preference				
		Federal court, to a great degree	Federal court	No overall preference for federal or state court	State court	State court, to a great degree
1. The overall cost of litigation for my client	Primarily plaintiffs	3% (18)	9% (53)	43% (247)	25% (145)	20% (115)
	Both in similar numbers	6% (26)	19% (82)	41% (175)	25% (105)	9% (37)
	Primarily defendants	10% (47)	29% (145)	42% (209)	15% (72)	4% (20)
2. The overall cost of litigation for the opposing party	Primarily plaintiffs	5% (31)	8% (47)	72% (414)	9% (54)	5% (30)
	Both in similar numbers	4% (18)	15% (62)	69% (291)	8% (35)	4% (17)
	Primarily defendants	4% (20)	18% (88)	69% (339)	7% (33)	2% (12)
3. How quickly the court can resolve the case	Primarily plaintiffs	11% (62)	29% (165)	31% (177)	17% (101)	13% (74)
	Both in similar numbers	18% (74)	41% (174)	27% (115)	11% (48)	3% (12)
	Primarily defendants	16% (80)	49% (238)	29% (140)	5% (25)	1% (6)

Motion practice. Perhaps the largest differences among the groups appear among the motion practice considerations provided in table 5f. Defendant and both-side attorneys prefer, or prefer to a great degree, federal court with respect to “Favorable rulings on motions to dismiss,” “Predictable rulings on motions to dismiss,” “Timely rulings on motions to dismiss,” “Predictable rulings on discovery motions,” “Timely rulings on discovery motions,” “Favorable rulings on summary judgment motions,” “Predictable rulings on summary judgment motions,” and “Timely rulings on summary judgment motions.” Plaintiff attorneys are much more likely to have no overall preference; those who have a preference prefer, or prefer to a great degree, state court.

Moreover, the fact that predictability of rulings on motions to dismiss, discovery motions, and summary judgment motions corresponds with a federal preference for defendant and both-side attorneys matches qualitative results from attorneys’ open-ended responses described below. The

attorneys tend to view the federal courts as more likely to resolve cases by motion than the state courts. To the extent that motion practice in the federal courts typically weighs in the defendants' favor, it appears to be a decisive consideration in defendant attorneys' preference for a federal forum and in both-side attorneys' similar forum preference, to a more limited extent.

Table 5f. Attorney Considerations Regarding Motion Practice

Consideration	Attorney Role	Attorney Forum Preference				
		Federal court, to a great degree	Federal court	No overall preference for federal or state court	State court	State court, to a great degree
1. Favorable rulings on motions to dismiss	Primarily plaintiffs	3% (17)	10% (61)	36% (211)	27% (155)	24% (142)
	Both in similar numbers	22% (93)	39% (165)	29% (125)	8% (33)	3% (11)
	Primarily defendants	29% (146)	50% (248)	19% (95)	1% (4)	1% (6)
2. Predictable rulings on motions to dismiss	Primarily plaintiffs	5% (31)	19% (108)	36% (212)	21% (123)	19% (111)
	Both in similar numbers	19% (80)	44% (188)	27% (117)	7% (31)	3% (11)
	Primarily defendants	25% (123)	53% (264)	19% (92)	2% (11)	1% (7)
3. Timely rulings on motions to dismiss	Primarily plaintiffs	7% (39)	20% (117)	41% (237)	18% (102)	15% (88)
	Both in similar numbers	14% (58)	36% (155)	29% (124)	16% (68)	5% (21)
	Primarily defendants	20% (101)	47% (231)	22% (110)	7% (37)	4% (18)
4. Favorable rulings on discovery motions	Primarily plaintiffs	4% (21)	17% (97)	42% (247)	22% (130)	15% (90)
	Both in similar numbers	9% (40)	33% (140)	46% (196)	9% (37)	3% (13)
	Primarily defendants	12% (59)	45% (225)	37% (185)	4% (21)	1% (6)
5. Predictable rulings on discovery motions	Primarily plaintiffs	4% (25)	21% (125)	44% (258)	17% (101)	13% (76)
	Both in similar numbers	12% (51)	40% (172)	38% (161)	8% (32)	3% (11)
	Primarily defendants	16% (77)	46% (229)	34% (169)	3% (17)	1% (5)
6. Timely rulings on discovery motions	Primarily plaintiffs	6% (34)	26% (153)	39% (228)	16% (94)	13% (76)
	Both in similar numbers	14% (60)	38% (163)	34% (146)	10% (44)	3% (13)
	Primarily defendants	16% (79)	45% (224)	30% (151)	6% (31)	2% (11)

7. Favorable rulings on summary judgment motions	Primarily plaintiffs	3% (15)	9% (51)	36% (210)	26% (151)	27% (157)
	Both in similar numbers	19% (79)	40% (169)	32% (136)	6% (27)	4% (16)
	Primarily defendants	32% (161)	47% (235)	19% (92)	1% (5)	1% (5)
8. Predictable rulings on summary judgment motions	Primarily plaintiffs	3% (19)	17% (99)	37% (218)	23% (134)	20% (116)
	Both in similar numbers	20% (86)	42% (178)	30% (126)	6% (25)	3% (11)
	Primarily defendants	28% (140)	51% (253)	18% (91)	1% (7)	1% (6)
9. Timely rulings on summary judgment motions	Primarily plaintiffs	6% (34)	18% (106)	42% (244)	17% (100)	17% (100)
	Both in similar numbers	16% (68)	36% (153)	28% (121)	13% (57)	6% (27)
	Primarily defendants	22% (111)	43% (215)	24% (120)	7% (33)	4% (18)

Court Practices. As shown in table 5g, the court practices considerations focus on court processes related to filing and service of process, alternative dispute resolution (ADR), and jury trials. Attorneys most often had no overall preference regarding these considerations, especially regarding filing and service of process.

One major exception is that all groups of attorneys preferred the federal courts with respect to “Helpfulness of the case tracking/case management system” (item 4), including 46% of plaintiff attorneys preferring, or preferring to a great degree, the federal forum.

About two-thirds of attorneys in all three groups had no overall preference regarding the receptivity to or availability of ADR methods. However, attorneys who have a preference prefer, or prefer to a great degree, the federal forum. The same pattern holds for attorney preferences regarding settlement assistance: no overall preference but, when attorneys do have a preference, it is for the federal court.

In terms of jury selection and jury awards, there are clear divides between plaintiff and defendant attorneys. A majority of plaintiff attorneys prefer, or prefer to a great degree, state court with respect to “The jury selection process,” “Voir dire practices,” “The jury pool,” and “Likely jury award.” A majority of defendant attorneys prefer, or prefer to a great degree, federal court with respect to “The jury pool” and “Likely jury award.” For example, 52% of plaintiff attorneys prefer, or prefer to a great degree, state-court jury pools, while 63% of defendant attorneys prefer, or prefer to a great degree, federal-court jury pools.

A majority of both-side attorneys had no overall preference with respect to these considerations, likely because they have experienced advantages and disadvantages in both forums when representing plaintiffs and defendants. For example, a majority of both-side attorneys (53%) had no overall preference regarding the jury pool (item 10).

Table 5g. Attorney Considerations Regarding Court Practices

Consideration	Attorney Role	Attorney Forum Preference				
		Federal court, to a great degree	Federal court	No overall preference for federal or state court	State court	State court, to a great degree
1. Ease of filing	Primarily plaintiffs	14% (81)	15% (87)	38% (218)	16% (92)	17% (100)
	Both in similar numbers	21% (90)	20% (84)	44% (187)	12% (52)	3% (14)
	Primarily defendants	17% (82)	20% (98)	51% (255)	9% (44)	4% (18)
2. Size of filing fee	Primarily plaintiffs	4% (24)	10% (57)	50% (290)	21% (121)	15% (86)
	Both in similar numbers	5% (23)	7% (31)	65% (277)	19% (80)	4% (15)
	Primarily defendants	6% (30)	5% (26)	79% (390)	8% (38)	3% (13)
3. Ease of service	Primarily plaintiffs	10% (58)	17% (96)	49% (282)	14% (78)	11% (63)
	Both in similar numbers	12% (52)	20% (83)	56% (240)	10% (41)	2% (10)
	Primarily defendants	12% (60)	17% (86)	63% (311)	5% (26)	2% (10)
4. Helpfulness of the case tracking/case management system	Primarily plaintiffs	19% (107)	27% (158)	36% (210)	9% (52)	9% (51)
	Both in similar numbers	30% (129)	31% (133)	30% (130)	6% (27)	2% (8)
	Primarily defendants	25% (126)	34% (169)	32% (160)	6% (29)	2% (12)
5. Receptivity to alternative dispute resolution methods	Primarily plaintiffs	7% (39)	16% (90)	62% (361)	10% (56)	6% (33)
	Both in similar numbers	9% (37)	17% (72)	66% (283)	7% (28)	1% (6)
	Primarily defendants	7% (33)	22% (108)	67% (331)	4% (19)	1% (4)
6. Availability of preferred alternative dispute resolution methods	Primarily plaintiffs	8% (47)	16% (93)	61% (354)	9% (53)	6% (32)
	Both in similar numbers	9% (37)	20% (84)	63% (268)	7% (30)	1% (6)
	Primarily defendants	7% (33)	22% (107)	67% (333)	4% (19)	1% (3)
7. Assistance in settlement	Primarily plaintiffs	11% (61)	29% (169)	43% (247)	12% (68)	6% (33)
	Both in similar numbers	13% (54)	32% (136)	48% (205)	7% (28)	1% (3)
	Primarily defendants	11% (52)	36% (179)	49% (242)	3% (17)	1% (6)

8. The jury selection process	Primarily plaintiffs	2% (13)	6% (37)	41% (235)	21% (123)	29% (170)
	Both in similar numbers	5% (22)	14% (59)	57% (242)	15% (62)	10% (41)
	Primarily defendants	7% (32)	25% (125)	49% (240)	13% (65)	7% (33)
9. Voir dire practices	Primarily plaintiffs	2% (14)	6% (32)	36% (207)	23% (134)	33% (192)
	Both in similar numbers	5% (19)	15% (62)	52% (221)	18% (75)	12% (49)
	Primarily defendants	6% (31)	24% (118)	46% (225)	17% (82)	8% (39)
10. The jury pool	Primarily plaintiffs	3% (19)	8% (46)	36% (210)	25% (147)	27% (157)
	Both in similar numbers	8% (35)	24% (100)	53% (223)	10% (42)	6% (24)
	Primarily defendants	21% (105)	42% (207)	32% (157)	4% (19)	1% (7)
11. Likely jury award	Primarily plaintiffs	2% (12)	6% (33)	37% (216)	26% (148)	29% (169)
	Both in similar numbers	5% (23)	19% (82)	58% (246)	12% (49)	6% (25)
	Primarily defendants	12% (61)	39% (194)	43% (211)	4% (20)	2% (9)

Plaintiff and Defendant Attorneys' Forum Preferences Compared

Across the 56 considerations examined in the previous section, plaintiff attorneys generally preferred the state forum, defendant attorneys generally preferred the federal forum, and both-side attorneys provided more mixed responses. This section identifies the considerations where plaintiff and defendant attorneys' preferences differed the most.⁸

To generate the figures used in this section and examine differences between plaintiff and defendant attorneys, for each consideration we subtracted the percentage of plaintiff attorneys who preferred, or preferred to a great degree, the state forum from the percentage of plaintiff attorneys who preferred, or preferred to a great degree, the federal forum. For each consideration, the difference results in a negative number when a larger percentage of respondents prefer state court (to federal court), i.e., a net perceived advantage for state forums. The difference results in a positive number when a larger percentage of respondents prefer federal court, i.e., a net perceived advantage for federal court.

8. Excluding the both-side attorneys makes for a more straightforward presentation of the data using differences, which are complicated when discussing three groupings, in part, because these attorneys' views fall in the middle of the ranges presented in this section. Neutral responses were also excluded in calculating these differences; the goal was to calculate the net advantage for either state or federal forum for respondents. Neutral responses still reduce the potential size of the net difference. If, for example, most respondents respond that a particular consideration does not weigh in favor of either state or federal forums, then the net preference for state or federal forum will be relatively small. Even where many respondents rate a consideration as neutral, however, large numbers of respondents on one side of the forum issue can yield a large net forum preference on a particular consideration.

The same difference was estimated for defendant attorneys. For example, for favorable rulings on summary judgment, 53% of plaintiff attorneys preferred, or preferred to a great degree, state courts, and 12% preferred, or preferred to a great degree, federal courts. As shown in table 11 (*infra*), that resulted in a -41 ($12 - 53 = -41$) score for plaintiff attorneys, a strong state court preference.

In general, plaintiff attorneys' net perceptions of the considerations represent an overall state court preference (i.e., take a negative sign), and defendant attorneys' net perceptions show an overall federal court preference (i.e., take a positive sign).⁹ In some cases, both plaintiff and defendant attorneys' net perceptions showed a federal court preference (were positive); however, with only one exception, the defendant attorneys' net perception of federal court was always more positive than plaintiff attorneys' net perception, evincing a stronger federal preference for defendant attorneys. The one exception—when both plaintiff and defendant attorneys' net assessments were negative—was for “Cases are more likely to go to trial,” which is also the one consideration on which forum perceptions did not differ for attorney role in a statistically significant way. As discussed in the previous section, this finding suggests a shared perception that cases are more likely to go to trial in state forums.

The final column of table 11 then presents, in the right-most column, the net difference between the net perceptions of the plaintiff and defendant attorneys (in order of the absolute size of the net difference). For example, regarding favorable rulings on summary judgment, the plaintiff net perception was -41 (state net preference) and the defendant net perception was 77 (federal net preference), resulting in an absolute difference of 118, the largest absolute difference between plaintiff and defendant attorneys among the 56 considerations in the survey.¹⁰ The smallest difference was on “Cases are more likely to go to trial,” differing by only one net percentage point.

Figure 2 displays the nine considerations from the survey with the greatest differences between plaintiff and defendant attorneys—that is, the nine considerations on which plaintiff and defendant attorneys were farthest apart in terms of their stated forum preference.¹¹ The scale of the figure runs from net state preference on the left side and net federal preference on the right side; data labels include the wording of the consideration and, for both plaintiff and defendant attorneys, the net preference. For each of these nine considerations, the plaintiff attorneys have a net state preference, and the defendant attorneys have a net federal preference; for this reason, plaintiff attorney preferences are always on the left-hand side of the figure, and defendant attorneys on the right-hand side.

Procedural considerations loom large in figure 2. Four involve motion practice, and three involve the conduct of jury trials (including the *Daubert* consideration). In general, defendant attorneys tend

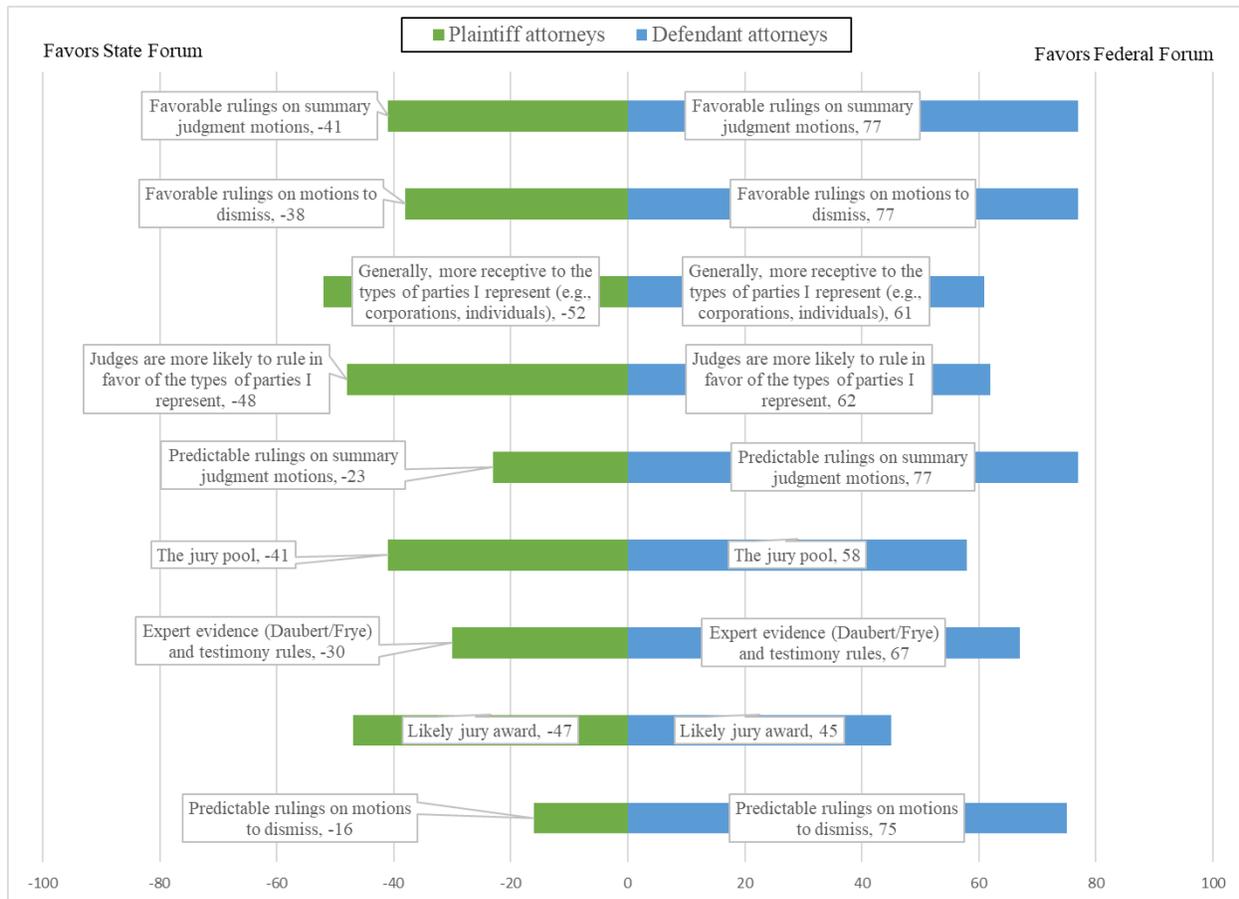
9. The positivity/negativity of these difference scores do not reflect normative assessments of the respective forums. That is, negative sign does not reflect negative views toward a particular forum. Obviously, the positive and negative signs could be shifted to the opposite forum preferences without affecting the interpretation of the results.

10. The average absolute difference between plaintiff and defendant attorneys' net perceptions was 50 percentage points.

11. There was a notable gap between the ninth and tenth largest differences between plaintiff and defendant attorneys, so we report the top nine.

to perceive that procedural considerations weigh in favor of the federal forum, and plaintiff attorneys that procedural considerations weigh in favor of state forums (or, at least, against federal forums).

Figure 2. Forum-Choice Considerations with Largest Differences Between Plaintiff and Defendant Attorneys



Additionally, the two considerations related to receptiveness to types of parties yielded large differences between plaintiff and defendant attorneys. With respect to “Generally, more receptive to the types of clients I represent (e.g., corporations, individuals),” the net difference is 113 percentage points, and for “Judges are more likely to rule in favor of the types of parties I represent,” the net difference is 110 points. It is clear that, in the aggregate, plaintiff attorneys, who tend to represent individuals, view state forums as more receptive to their clients’ claims, and that defendant attorneys, who tend to represent businesses, view the federal forum as more receptive. This consistent pattern in plaintiff and defendant attorneys’ perceptions of the biases of the state and federal forums may not be surprising to those familiar with the policy debate, but it is remarkable nonetheless.

Open-Ended Responses to Most Important Consideration

At the end of the survey, attorneys were asked to offer up to five considerations, including considerations not included in the survey, influencing their stated forum preference. Overall, 1,102 attorneys (69% of the sample) provided at least one consideration; two attorneys provided nine considerations (the most provided). Combined, the attorneys provided 3,436 responses identifying considerations that influenced their forum decisions. These responses were distilled into 21 mutually exclusive categories:¹²

- Judge-related considerations (e.g., knowledge, overall quality, temperament, hostility toward counsel, elected status of state judges)
- Timing/case duration (e.g., length of case, timeliness of rulings and decisions)
- Civil rules (e.g., Federal Rules of Civil Procedure, discovery rules specifically, *Twombly/Iqbal*, proportionality)
- Types of cases (e.g., substantive legal area, claims, legal issues, class actions, cases with scientific or technical issues)
- Jury trial issues (e.g., voir dire procedures, unanimous juries, diversity of jury panel, likelihood of higher jury awards)
- Parties (e.g., corporate parties vs. individual plaintiffs, bias toward specific parties)
- Impartiality/fairness/bias
- Predictability/consistency (e.g., of outcomes or decisions, but not of procedural rules)
- Familiarity (e.g., with the court, rules, procedures, but not including with court staff)
- Cost (e.g., overall cost of litigation, filing fee)
- Filing/CM/ECF
- Motion/Summary Judgment practice (e.g., likelihood of granting summary judgment, preferences regarding motion practice)
- Uniform/fair procedural rules
- Rulings based on merits/law
- Law clerks/court staff (e.g., access, availability, better judicial resources due to having law clerks)
- Likelihood of a trial (e.g., establishing trial dates, preference for trial)

12. The researchers randomly selected a sample of 200 responses to create an initial list of categories. Then, all 3,436 responses were coded in those categories, as well as additional categories as needed. This resulted in 134 separate categories. The researchers then merged the categories into the 21 mutually exclusive categories used for this analysis. For example, separate categories regarding a judge's knowledge, abilities, temperament, and overall quality were among the response types merged into "judge-related considerations."

- Settlement/ADR (e.g., settlement assistance, use of settlement conferences, early ADR/settlement)
- Evidence/experts (e.g., Federal Rules of Evidence, *Daubert*, rules and practice regarding expert witnesses)
- Case management (e.g., active case management, structured litigation process, involvement of judges, enforcement of deadlines, rules, and orders)
- Other (e.g., likelihood of removal, attorneys' fees, appeals, taxing of costs, better attorneys/opposing counsel)
- Location (e.g., convenience of location; accessibility to parties and witnesses, including ADA accessibility; security; maintenance; majesty of federal court settings)

We analyzed the open-ended responses with reference to respondents' forum preference (federal; state; no overall preference), their attorney role (plaintiff attorneys; defendant attorneys; attorneys representing both equally), and then these two factors in combination (e.g., plaintiff attorneys who prefer state court). In doing so, we draw connections to the 56 specific considerations discussed above.

Overall Preference

Table 6 provides the categories most commonly identified by the attorneys. Each column represents an overall forum preference and then lists the categories into which at least 5% of the comments made by those attorneys fall. Regardless of their overall forum preference, attorneys most often offered judge-related considerations as affecting their forum preferences, although this was less pronounced among those with a state preference (11%) than those with a federal preference (23%), or no overall preference (16%). Attorneys also commonly identified case management whether they had a federal (9%), state (9%), or no overall (8%) preference.

Beyond judge-related considerations and case management, at least 5% of comments in all three groups focused on timing/case duration and civil rules, a category that most often included comments about the Federal Rules of Civil Procedure and state procedural rules generally and discovery rules and procedures specifically.

Some differences emerged between groups as well. Attorneys with a state or no overall preference commonly identified jury trial issues, while attorneys with a federal preference did not. Attorneys with a federal or state preference commonly identified motion/summary judgment practice and law clerks/court staff, while attorneys with no overall preference did not note either in more than 5% of their responses. Instead, attorneys with no overall preference often noted the types of cases as being a major consideration; attorneys with a federal or state preference did not.

Additional considerations that only appeared in at least 5% of responses for one group: rulings based on merits/law (federal preference); familiarity with court/rules/procedures and parties (state preference); and the catch-all other category (no overall preference).

Table 6: Attorneys’ Overall Forum Preference from Open-Ended Responses

Most Commonly Provided Response for Attorneys with the Following Overall Forum Preference . . . (percentage of responses in that category, by overall forum preference)		
Federal	State	No Overall Preference
Judge-related considerations (23%)	Judge-related considerations (11%)	Judge-related considerations (16%)
Case management (9%)	Jury trial issues (10%)	Types of cases (12%)
Motion/Summary Judgment practice (8%)	Case management (9%)	Timing/case duration (9%)
Timing/case duration (7%)	Civil rules (9%)	Case management (8%)
Civil rules (7%)	Motion/Summary Judgment practice (8%)	Jury trial issues (7%)
Rulings based on merits/law (7%)	Timing/case duration (7%)	Civil rules (7%)
Law clerks/court staff (5%)	Types of cases/claims (7%)	Other (5%)
	Familiarity with court/rules/procedures (6%)	
	Law clerks/court staff (6%)	
	Parties (6%)	

We then reviewed the open-ended responses within each overall forum preference. For each overall forum preference, we created word clouds to provide readers with a sense of the relative frequencies of commonly used terms in the open-ended responses. The larger the words in the figures, the more often they were used in the open-ended responses provided by attorneys with that overall forum preference. Because they occur most frequently, given the substance of the question, “court,” “federal,” and “state” were omitted from all three word clouds, as were nonsubstantive common words (e.g., “generally,” “prefer”).

Federal Preference

Figure 3 is a word cloud of the terms attorneys with a federal preference used most often used in their open-ended responses: judges, rules, motions, case, time, predictable, discovery, quality, and decisions. The figure is consistent with the earlier findings that attorneys overall focused more often on judicial personnel and that attorneys with a federal preference, in particular, often considered procedural rules and predictability and uniformity of decisions when explaining their federal preference.

used the term “case.” The underlying open-ended responses and the earlier quantitative findings are in agreement: attorneys with no overall preference appear to make forum choices on a case-by-case basis.

Figure 5. Word Cloud of Most Common Words Used by Attorneys with No Overall Preference



Additionally, as would be expected, these attorneys often provided both advantages and disadvantages to litigating in federal and state courts. For example, one attorney stated:

Jury selection and voir dire are far better in state court. Everything else is better in federal court.

A small number of attorneys with no overall preference identified no factors, emphasizing that they indeed had no overall preference. For example, one attorney noted:

I choose to believe and my experience has proven that regardless of the forum, the right result is usually achieved, more or less, and that it has nothing to do with the forum.

Attorney Role

When considering open-ended responses by attorney role, judge-related considerations were most common, followed by case management. Table 7 includes the categories of considerations mentioned by at least 5% of attorneys within each attorney role. In addition to judge-related considerations and case management, all three attorney groups regularly addressed civil rules, motion/summary judgment practice, and timing/case duration.

Table 7: Attorneys' Overall Forum Preference from Open-Ended Responses (by Attorney Role)

Most Commonly Provided Response for Attorneys by Attorney Role (percentage of responses in that category)		
Plaintiff	Both Plaintiff and Defendant	Defendant
Judge-related considerations (14%)	Judge-related considerations (20%)	Judge-related considerations (21%)
Jury trial issues (9%)	Case management (9%)	Case management (9%)
Civil rules (9%)	Timing/case duration (8%)	Motion/Summary Judgment practice (9%)
Case management (8%)	Types of cases/claims (8%)	Civil rules (7%)
Timing/case duration (8%)	Motion/Summary Judgment practice (7%)	Rulings based on merits/law (7%)
Types of cases/claims (8%)	Rulings based on merits/law (6%)	Timing/case duration (6%)
Motion/Summary Judgment practice (6%)	Civil rules (6%)	
	Law clerks/staff (5%)	

We observed some differences among open-ended responses based on attorney role. Although all three groups most often noted judge-related considerations, plaintiff attorneys did so less often. Instead, plaintiff attorneys, as compared to defendant and both-side attorneys, focused more often on jury trial issues. In reviewing the underlying open-ended comments, plaintiff attorneys focused on judges' management of the voir dire process, parties (which includes types of parties and perceived bias against party types, e.g., for corporations), impartiality/fairness/bias, likelihood of trial, and issues related to experts and evidence. Plaintiff attorneys were most likely to note a federal courts bias in favor of corporate parties. For example, one attorney noted:

I generally represent Plaintiffs. Based upon my experience, I find that the State Courts are much more friendly to a Plaintiff . . . State Court judges also appear to be more open-minded to Plaintiffs than the federal courts.

In reviewing the underlying open-ended comments from defendant attorneys, they were most likely to highly value federal judges and their case management techniques (including active case management), and less likely than plaintiff or both-side attorneys to note that their preference depends on the types of cases/claims.

Based on these initial analyses, it appears that judge-related considerations are the most important, regardless of overall forum preference or attorney role, though attorneys perceive the same considerations in different ways. For example, while attorneys with a federal preference prefer federal judges and active case management (including uniform enforcement of rules and orders), attorneys with a state preference prefer state judges and often consider federal case management to be heavy-handed and inflexible. Attorneys with no overall preference offered both advantages and disadvantages of state and federal judges and their case management practices.

Combined Overall Preference and Attorney Role

In this analysis, we combine both attorney role and overall forum preference. Doing so allows a more detailed analysis, allowing for comparisons (e.g., between plaintiff attorneys with federal, state, no overall preference).

Plaintiff Attorneys

While plaintiff attorneys most often offered judge-related considerations to explain their forum preferences, this was only true for plaintiff attorneys with a federal preference or no overall preference. As shown in table 8, plaintiff attorneys with a state preference most often offered reasons related to jury trials followed by judge-related considerations.

Furthermore, when plaintiff attorneys discussed judge-related considerations, they did so in different ways. In reviewing the underlying open-ended comments, plaintiff attorneys with a federal preference most often noted the knowledge and expertise of federal judges, while plaintiff attorneys with a state preference more often noted the flexibility allowed by state judges, particularly regarding deadlines and rescheduling pretrial conferences when needed. Plaintiff attorneys with no overall preference provided both positive and negative comments about federal and state judges.

Plaintiff attorneys who preferred federal court most often offered judge-related considerations (21%), timing/case duration (11%), case management (9%), civil rules (7%), types of claims/cases (7%), and law clerks/court staff (6%) as reasons for their stated preference. They more often listed uniform/procedural rules and predictability/consistency, compared to plaintiff attorneys who preferred state court or had no overall preference. Overall, plaintiff attorneys with a federal preference said they preferred the predictable, uniform approach of the federal courts, based on active case management by a capable and knowledgeable federal bench.

Plaintiff attorneys who preferred state court, on the other hand, most often emphasized considerations related to jury trials (13%), followed by judge-related considerations (10%), civil rules (9%), motion/summary judgment practice (8%), case management (8%), timing/case duration (7%), types of cases/claims (6%), parties (6%), impartiality/fairness/bias (6%), and familiarity (5%).

While plaintiff attorneys with a federal preference focused on the federal court in their open-ended responses, plaintiff attorneys with a state preference regularly critiqued the federal courts as much as they highlighted benefits of the state courts. For example, plaintiff attorneys who preferred state court regularly noted that federal procedural rules are too rigid and expressed dislike for federal motions and active case management. They also stated that federal cases take too long and that the federal courts can be biased in favor of corporate defendants. Plaintiff attorneys with a state preference also preferred state juries and judges, the greater flexibility in state courts' case management and rules, and the lower likelihood that state courts will resolve cases on summary judgment.

Plaintiff attorneys with no overall preference most often offered that judge-related considerations and case types (including the specific claims and legal issues raised) (both 14%) affected their forum preference. Additionally, these attorneys identified case management (9%), civil rules (8%), timing/case duration (8%), jury trial issues (7%), other issues (6%), and location (5%). As expected, these attorneys had mixed views. For example, some plaintiff attorneys with no overall preference preferred federal case management and rules, while others preferred state court procedures. Overall, it appears that case type and preferences for specific judges are most important for these attorneys.

Table 8: Plaintiff Attorneys’ Most Common Considerations from Open-Ended Responses (by Overall Preference)

Consideration	Percentage of Plaintiff Attorneys Noting Consideration in Qualitative Response (by Overall Preference)		
	Federal	State	No Overall Preference
Judge-related considerations	21%	10%	14%
Timing/case duration	11%	7%	8%
Case management	9%	8%	9%
Civil rules	7%	9%	8%
Types of claims/cases	7%	6%	14%
Jury trial issues	4%	13%	7%
Parties	1%	6%	3%
Impartiality/fairness/bias	3%	6%	4%
Predictability/consistency	2%	0.3%	0%
Familiarity with court/rules/procedures	2%	5%	2%
Cost	1%	3%	2%
Filing/CM/ECF	5%	0.5%	3%
Motion/Summary Judgment Practice	2%	8%	2%
Uniform/fair procedural rules	3%	0.4%	0.6%
Rulings based on merits/law	4%	0.8%	3%
Law clerks/court staff	6%	2%	3%
Likelihood of trial	0.8%	4%	2%
Settlement/ADR	2%	1%	3%
Evidence/experts	1%	3%	2%
Locations	2%	2%	5%
Other	5%	5%	6%

We also identified differences between plaintiff attorneys, by overall forum preference. Compared to plaintiff attorneys with a state or no overall preference, plaintiff attorneys with a federal preference more often offered predictability/consistency, uniform/fair procedural rules, timing/case duration, rulings based on merits/law, and law clerks/court staff. In particular, these attorneys noted that federal judges issue timely rulings and responses to dispositive motions, and that this timeliness is often due to resources available to them (e.g., law clerks).

Plaintiff attorneys with a state preference were most likely to identify jury trial issues (including state jury pools and state voir dire procedures), familiarity, and likelihood of trial. They also, more

often than plaintiff attorneys with a federal or no overall preference, identified parties and impartiality/bias, with some noting that federal courts can be biased toward corporate litigants. These attorneys also expressed dislike for federal motion/summary judgment practice. For example, one attorney noted:

The federal courts make it unnecessarily difficult to practice in federal court. It's also obvious the courts favor governmental entities and businesses over individuals. It's shocking to me how little the system cares about justice. Judges would rather get rid of a case than have it heard on its merits. Going into federal court for a plaintiff is like walking through a minefield.

As expected, plaintiff attorneys with no overall preference offered pros and cons about both federal and state courts. As compared to other plaintiff attorneys, they were most likely to identify types of cases, and location. The case itself might be what guides the preferences and filing decisions of plaintiff attorneys with no overall preference.

Overall, the forum preferences of plaintiff attorneys seem to be guided by the perceived strengths of the federal judiciary (for those with a federal preference) and jury and party issues (for those with a state preference), with attorneys with no overall preference allowing the facts of specific cases to guide their choice of forum. Procedural issues were also important to plaintiff attorneys, with perceptions of case management, civil rules, and motion/summary judgment practice affecting overall forum preference.

Defendant Attorneys

As shown in table 9, defendant attorneys, regardless of overall forum preference, offered judge-related considerations most often.

After judge-related considerations, defendant attorneys with a federal preference most often offered motion/summary judgment practice (10%) and case management (9%), followed by civil rules (8%), rulings based on merits/law (8%), and timing/case duration (6%). The open-ended responses from these attorneys indicate that they generally preferred active case management in federal courts, as well as federal motion/summary judgment practice and procedural rules (including civil rules regarding discovery).

Defendant attorneys with a state preference most often offered case management (13%) and parties (8%), followed by four considerations indicated by 7% of these attorneys: timing/case duration, civil rules, familiarity, and types of cases. Unlike defendant attorneys with a federal preference, these attorneys' comments indicate they prefer case management in the state courts. They noted that active case management in the federal courts, as well as the use of federal rules and procedure, promoted efficiency at the cost of fairness. In addition, these attorneys mentioned the types of cases, with some noting that federal courts were biased toward corporations.

Defendant attorneys with no overall preference most often offered types of cases (10%) and timing/case duration (8%), followed by jury trial issues (6%), motion/summary judgment practice

(6%), and location (6%). These attorneys appear to rely more heavily on the facts of specific cases to guide their forum choice.

Table 9: Defendant Attorneys' Most Common Considerations from Open-Ended Responses (by Overall Preference)

Consideration	Percentage of Defendant Attorneys Noting Consideration in Qualitative Response (by Overall Preference)		
	Federal	State	No Overall Preference
Judge-related considerations	22%	15%	19%
Timing/case duration	6%	7%	8%
Case management	9%	13%	6%
Civil rules	8%	7%	5%
Types of claims/cases	4%	7%	10%
Jury trial issues	5%	3%	6%
Parties	2%	8%	5%
Impartiality/fairness/bias	4%	2%	2%
Predictability/consistency	4%	2%	3%
Familiarity with court/rules/procedures	0.8%	7%	0.9%
Cost	1%	4%	5%
Filing/CM/ECF	2%	2%	2%
Motion/Summary Judgment Practice	10%	4%	6%
Uniform/fair procedural rules	4%	0.7%	2%
Rulings based on merits/law	8%	2%	5%
Law clerks/court staff	4%	2%	4%
Likelihood of trial	0.5%	2%	0.9%
Settlement/ADR	1%	2%	3%
Evidence/experts	2%	0%	0%
Location	1%	5%	6%
Other	3%	5%	5%

We then examined differences between the three groups of defendant attorneys. Compared to defendant attorneys with a state or no overall preference, those with a federal preference were most likely to mention impartiality/fairness/bias, motion/summary judgment practice, uniform/fair procedural rules, rulings based on merits/law, and evidence/experts, and least likely to indicate types of cases, parties, cost, and location.

Defendant attorneys with a state preference were more likely to offer parties, familiarity, and case management, and less likely to offer judge-related considerations (less than those with a federal preference), jury trial issues, rulings based on merits/law, and law clerks/court staff, as compared to other defendant attorneys.

Defendant attorneys with no overall preference were most likely to offer case types, and were least likely to mention civil rules as affecting their forum preference, as compared to defendant attorneys with a federal or state preference.

Overall, while all three groups of defendant attorneys offered judge-related considerations as most affecting their preference, defendant attorneys with a federal preference often indicated a strong preference for federal rules and procedures (especially motion/summary judgment practice), which they view as impartial, predictable/consistent, and uniform/fair. Defendant attorneys with a state preference instead focused on the types of parties involved, expressing concerns with federal judges' case management. Defendant attorneys with no overall preference were more focused on the types of cases, timing/case duration, and location.

Both-Side Attorneys

As shown in table 10, both-side attorneys generally offered judge-related considerations most often in their open-ended responses, regardless of overall forum preference. The next most common consideration was case management, which was second most indicated for both-side attorneys with a federal or state preference, though only the fifth most indicated for both-side attorneys with no overall preference. The second most indicated consideration for these attorneys was type of case, in agreement with the quantitative data.

After judge-related considerations, both-side attorneys with a federal preference next most often offered case management (10%), timing/case duration (8%), rulings based on merits/law (8%), motion/summary judgment practice (7%), civil rules (6%), predictability/consistency (5%), and law clerks/court staff (5%). The responses from these attorneys indicated that they preferred federal judges who provide timely decisions, based on merits/law, and manage cases well. They also favored federal motion/summary judgment practice and civil rules, noting the predictability/consistency stemming from the civil rules and judges' reliance on the merits/law.

Both-side attorneys with a state preference next most often offered case management (11%), motion/summary judgment practice (9%), timing/case duration (9%), types of cases (9%), familiarity (8%), civil rules (6%), cost (6%), and jury trial issues (5%). Responses from these attorneys indicated that they preferred state judges and disliked federal court due to, in their view, excessive reliance on motions and summary judgment, longer case duration, active case management, and overly complex civil rules. They also expressed familiarity with the state court and noted that state courts were best for the types of cases they litigate.

Both-side attorneys with no overall preference next most often indicated types of cases (11%), timing/case duration (10%), jury trial issues (8%), case management (7%), civil rules (6%), and law clerks/court staff (6%). These attorneys had conflicting views of federal and state judges, but their responses generally addressed that when they do have a preference, it is often based on the type of case and expected case duration.

Table 10: Both-Side Attorneys' Most Common Considerations from Open-Ended Responses (by Overall Preference)

Consideration	Percentage of Attorneys for Both Noting Consideration in Qualitative Response (by Overall Preference)		
	Federal	State	No Overall Preference
Judge-related considerations	25%	13%	15%
Timing/case duration	8%	9%	10%
Case management	10%	11%	7%
Civil rules	6%	6%	6%
Types of claims/cases	5%	9%	11%
Jury trial issues	2%	5%	8%
Parties	1%	4%	5%
Impartiality/fairness/bias	2%	2%	2%
Predictability/consistency	5%	1%	2%
Familiarity with court/rules/procedures	1%	8%	1%
Cost	1%	6%	5%
Filing/CM/ECF	4%	1%	2%
Motion/Summary Judgment Practice	7%	9%	5%
Uniform/fair procedural rules	3%	1%	1%
Rulings based on merits/law	8%	3%	2%
Law clerks/court staff	5%	4%	6%
Likelihood of trial	0.8%	2%	2%
Settlement/ADR	2%	1%	1%
Evidence/experts	0.3%	2%	2%
Location	1%	4%	2%
Other	3%	3%	6%

We then examined differences between the three groups of both-side attorneys. Compared to both-side attorneys with a state or no overall preference, those with a federal preference were most likely to emphasize judge-related considerations, rulings based on merits/law, predictability/consistency of rulings, filing/CM/ECF, and uniform/fair procedural rules, and they were least likely to indicate type of cases, parties, cost, likelihood of trial, and evidence/experts.

Both-side attorneys with a state preference were more likely to indicate motion/summary judgment practice (compared to those with no overall preference), familiarity, and location.

Both-side attorneys with no overall preference were most likely to indicate types of cases, jury trial issues, and parties (compared to those with a federal preference).

Overall, both-side attorneys generally offered judge-related considerations most often, with case management and timing/case duration also affecting their overall forum preference. Both-side attorneys with a federal preference also identified the importance of rulings based on merits/law, and were focused on federal motion practice, civil rules, and the predictability/consistency of the process. Both-side attorneys with a state preference, in contrast, often expressed concerns with federal motion practice (e.g., disfavoring motion/summary judgment practice) and the length of federal cases. In addition, they identified familiarity with state courts and procedures and the locations of state courts

as guiding their preference. Both-side attorneys with no overall preference offered mixed reviews of federal and state judges, while most often identifying the types of cases and jury trial issues as guiding their preferences. Again, both-side attorneys with no overall preference probably rely on the type of case and parties to guide their forum choices.

Discussion

The findings discussed in this report are consistent with the conventional wisdom that, when a choice of forum presents itself, plaintiff attorneys prefer to file in state court and defendant attorneys prefer to litigate in federal court. But they also reveal some more subtle points. Attorneys who primarily represented plaintiffs tended to prefer state to federal court, but not monolithically so. Sixty percent of plaintiff attorneys stated a preference for state court, but four in ten either preferred federal court or had no overall forum preference. Plaintiff attorneys who represented businesses were divided relatively equally in their forum preference.

Attorneys who represented both sides, plaintiffs and defendants, in equal numbers took a somewhat nuanced approach to forum choice. These attorneys—sometimes overlooked in the policy debate—tended to prefer federal court, but still to a much lesser extent than did survey respondents primarily representing defendants. Both-side attorneys who tended to represent businesses were more likely to prefer a federal forum than those who tended to represent individuals, reaffirming that client type is an important consideration.

Defendant attorneys' preferences most closely mirrored the conventional wisdom, with three in four stating an overall federal court preference. Large-firm defendant attorneys, who typically represent corporations, overwhelmingly favored federal court. But the relatively small number of defendant attorneys who tend to represent individuals had more mixed views of the relative advantages of federal and state courts.

Moreover, policy discussions regarding forum preference often miss the substantial minority of survey respondents who report no overall forum preference. The findings in this report support the view that these attorneys often assess the relative merits of state and federal forums on a case-by-case basis.

The following sections highlight some of the most common considerations identified by attorneys with federal and state preferences.

Judge-Related Considerations

The quantitative and qualitative analyses consistently found that attorneys most often regarded judge-related considerations as influencing their forum preference.

Attorneys expressing a federal preference considered federal judges more knowledgeable than state judges on the issues in cases they litigate. More specifically, defendant and both-side attorneys

often stated that federal judges are more receptive to the type of parties they represent (especially corporate clients) and more likely to rule in favor of them, furthering the perception of some attorneys in our sample that federal courts are biased in favor of corporations. A small group of attorneys with a federal preference also expressed concern with state judicial elections, stating that they can create opportunities for political influence and bias within the state judiciary.

Plaintiff attorneys also considered judge-related considerations often, but more often preferred state judges and courts. Plaintiff attorneys believed state judges are more likely to rule in favor of the types of parties they represent, and expressed concerns that federal courts are biased in favor of corporations.

While attorneys highlighted perceived corporate bias, they did not identify a federal or state bias toward parties or attorneys from marginalized groups (e.g., on the basis of race, ethnicity, gender, religion).

Case Management, Procedural Rules, and Practice

Respondents also tended to rate the federal rules of procedure, the federal courts' active case management, and federal motion practice as important factors in explaining their preference for federal court.

Overall, defendant attorneys preferred federal case management practices, and plaintiff attorneys preferred state case management practices. However, when asked to consider whether case management practices are more likely to result in a quicker decision, all attorneys favored federal courts. Defendant and both-side attorneys, and plaintiff attorneys with a federal preference, preferred active case management in federal courts. Their open-ended responses reinforced that they believe federal case management leads to quicker resolutions in a uniform and predictable manner. Plaintiff attorneys, especially those with a state preference, preferred state case management practices, finding state judges more flexible than federal judges on such issues as extensions and deadlines.

Similarly, defendant attorneys most often preferred the federal rules of procedure and plaintiff attorneys most often preferred state procedural rules. Both-side attorneys' preferences were in the middle, but tended more toward the federal courts. This included discussion of rules for civil procedure, pleading, discovery, and evidentiary issues. Again, defendant attorneys often stated that they preferred the federal rules for their uniformity and predictability.

The perception that federal courts are more likely to resolve cases by motion also played a major role in shaping all attorneys' forum preferences. Across the 56 specific factors presented to attorneys, the starkest differences between plaintiff and defendant attorneys related to motion practice. Defendant and both-side attorneys far preferred federal courts regarding the likelihood of favorable, predictable, and timely motions to dismiss; predictable and timely discovery motions; and favorable, predictable, and timely rulings on summary judgment motions.

In general, defendant attorneys tended to perceive that procedural considerations weigh in favor of the federal forum, and plaintiff attorneys that procedural considerations weigh in favor of state forums (or, at least, against federal forums).

Trials

Considerations concerning the conduct of jury trials loomed large in the responses of plaintiff attorneys expressing a state preference. These attorneys perceived that jury trials were more likely to occur in the state forum—the corollary, we suspect, of the perceived weight given to federal motion practice by their usual adversaries—and that state jury pools, voir dire procedures, and likely jury awards were more favorable to their clients’ interests than the federal alternatives.

These strong preferences come despite the finding that the only consideration on which plaintiff and defendant attorney views were virtually indistinguishable was with respect to whether trials were more common in state or federal court. Majorities of respondents in every category saw no difference, likely because, in terms of probability, trials are unlikely in either forum. But among those who saw a difference, there was substantial agreement that trials were more likely in the state courts.

Table 11. Net Differences

Consideration	Plaintiff Attorneys Net Difference	Defendant Attorneys Net Difference	Net Difference
Favorable rulings on summary judgment motions	-41	77	-118
Favorable rulings on motions to dismiss	-38	77	-115
Generally, more receptive to the types of parties I represent (e.g., corporations, individuals).	-52	61	-113
Judges are more likely to rule in favor of the types of parties I represent.	-48	62	-110
Predictable rulings on summary judgment motions	-23	77	-100
The jury pool	-41	58	-99
Expert evidence (<i>Daubert/Frye</i>) and testimony rules	-30	67	-97
Likely jury award	-47	45	-92
Predictable rulings on motions to dismiss	-16	75	-91
Pleading requirements	-41	38	-79
Local rules are generally more favorable to our case.	-43	35	-78
Case management practices are more likely to favor my client.	-22	53	-75
Discovery rules (generally)	-22	49	-71
Civil procedural rules (generally)	-24	45	-69

Favorable rulings on discovery motions	-16	52	-68
Discovery rules (limitations on document requests)	-19	47	-66
Evidentiary rules	-16	48	-64
Timely rulings on summary judgment motions	-10	54	-64
Predictable rulings on discovery motions	-5	58	-63
Timely rulings on motions to dismiss	-6	56	-62
Discovery rules (regarding the production of documents)	-16	45	-61
Judges are more knowledgeable of the issues in the cases I litigate.	21	79	-58
The jury selection process	-42	12	-54
The overall cost of litigation for my client	-33	20	-53
Voir dire practices	-48	5	-53
Timely rulings on discovery motions	3	53	-50
How quickly the court can resolve the case	10	59	-49
I am more familiar with the individuals (judges, court staff).	-36	9	-45
Case management practices are more likely to result in a quicker decision.	21	64	-43
Judges are more knowledgeable of scientific evidence issues that might come up in the cases I litigate.	28	70.6	-42.6
Less congested and better able to address civil issues.	20	61	-41
Cases are more likely to be decided on the merits.	-8	32	-40
Generally, more responsive to attorney requests for information.	-8	30	-38
I am more familiar with the procedures.	-27	8	-35
Rules regarding sanctions	-7	27	-34
Generally, more welcoming to diverse parties (e.g., on the basis of race, ethnicity, gender, religion).	-16	15	-31
The location is more convenient for me and my clients.	-20	9	-29
Rules regarding standards for appeal	-11	17	-28
Ease of filing	-4	24	-28
More focused on high-value cases.	24	50.6	-26.6
Rules regarding timing of appeals	-10	16	-26
Rules and practice on availability of temporary restraining orders	-15	10	-25
The location is more convenient for witnesses.	-22	2	-24

Helpfulness of the case tracking/case management system	28	51	-23
Size of filing fee	-22	0	-22
Assistance in settlement	22	43	-21
Ease of service	2	22	-20
Generally, more welcoming to diverse attorneys (e.g., on the basis of race, ethnicity, gender, religion).	-6	12	-18
Receptivity to alternative dispute resolution methods	7	24	-17
Cases are more likely to result in settlement.	-3	12	-15
Availability of preferred alternative dispute resolution methods	9	24	-15
The overall cost of litigation for the opposing party	-1	13	-14
Cases are more likely to be decided by a motion to dismiss.	69.7	79.6	-9.9
Cases are more likely to be decided by summary judgment.	70.8	80	-9.2
More accessible for individuals with special needs (e.g., physical disability, visual or hearing impairment).	8	13.8	-5.8
Cases are more likely to result in trial.	-29	-30	1

Appendix: Geographic Differences

Although almost 1,600 attorneys responded to the survey, the sample is too small for an exhaustive analysis of district- or state-level variations in attorney forum preferences. This appendix presents two limited analyses based on jurisdiction. Both analyses assign attorney jurisdiction as the district in which the case included in the sampling frame was filed. Assigned in this manner, there are only three states with more than 100 respondents (California, New York, and Texas), permitting a limited analysis of state-level variation in respondents' forum preferences in those jurisdictions. The largest district represented in the sample is the Central District of California, with 95 respondents.

Table A1 shows forum preference for plaintiff attorneys in the three largest jurisdictions. The forum preferences of plaintiff attorneys in Texas and California appear to be similar, with 75% of Texas plaintiff attorneys and 72% of California plaintiff attorneys expressing a state-court preference. New York plaintiff attorneys, however, were much less likely to express a state-court preference, with 47% preferring state court and 45% preferring federal court; this difference is statistically significant.¹⁴ While plaintiff attorneys prefer state court, this was significantly more likely in California and Texas than in New York, where there was an almost equal preference for state and federal court.

Table A1: Plaintiff Attorneys' Forum Preferences by Jurisdiction

Jurisdiction	Federal Court Preference	State Court Preference	No Overall Preference	N
Texas	16%	75%	10%	51
New York	45%	47%	8%	38
California	20%	72%	8%	76
All three states	24%	67%	9%	165

As shown in table A2, defendant attorneys generally prefer federal court to state court in all three jurisdictions. Although this federal preference ranges from 65% in California to 83% in New York, this difference is not statistically significant. Surprisingly, only one defendant attorney respondent in New York (3%) expressed a state preference.

14. $p = .019$.

Table A2: Defendant Attorneys' Forum Preferences by Jurisdiction

Jurisdiction	Federal Court Preference	State Court Preference	No Overall Preference	N
Texas	74%	16%	10%	68
New York	83%	3%	14%	29
California	65%	15%	19%	52
All three states	73%	67%	14%	149

Both-side attorneys in the three jurisdictions (table A3) tend to prefer federal court to state court, with both-side attorneys in New York expressing the strongest preference for federal court. Again, New York attorneys were least likely to have a state court preference. As with table A2, however, the differences in table A3 are not statistically significant.

Table A3: Both-side Attorneys' Forum Preferences by Jurisdiction

Jurisdiction	Federal court preference	State court preference	No Overall Preference	N
Texas	57%	33%	11%	46
New York	68%	13%	18%	38
California	47%	34%	19%	47
All three states	57%	28%	16%	131

We were also able to conduct a limited circuit-level analysis. Again, due to the small sample size (e.g., only one attorney associated with a case filed in the D.C. Circuit), these results should be interpreted with caution. This analysis suggests that there is regional variation in forum preferences, at least for plaintiff and both-side attorneys. Defendant attorneys, however, strongly prefer federal court regardless of circuit.

Table A4 shows the forum preferences of plaintiff attorneys, broken out by circuit. Plaintiff attorneys in the Second Circuit are split relatively evenly between federal and state court; this is consistent with the pattern for the New York plaintiff attorneys, discussed above. By contrast, only 7% of respondents from the Tenth Circuit expressed a federal court preference. With the exceptions of the D.C. Circuit (with only one respondent), the Second Circuit, and the First Circuit, at least half of the plaintiff attorneys in each remaining circuit expressed a state court preference, with the largest state court preference among attorneys in the Ninth, Tenth, and Eleventh Circuits. This variation among the circuits is statistically significant.¹⁵

15. $p = .002$.

Table A4: Plaintiff Attorneys' Forum Preferences by Circuit

Jurisdiction	Federal Court Preference	State Court Preference	No Overall Preference	N
D.C.	--	--	100%	1
1st	39%	33%	28%	18
2nd	48%	46%	7%	46
3rd	33%	51%	16%	67
4th	30%	53%	17%	53
5th	22%	62%	17%	115
6th	30%	57%	13%	46
7th	23%	57%	20%	30
8th	21%	60%	19%	47
9th	18%	71%	10%	115
10th	7%	71%	23%	31
11th	22%	71%	7%	55
All Circuits	25%	60%	15%	624

Table A5 shows the forum preferences of defendant attorneys, broken out by circuit. Defendant attorneys strongly prefer federal court, regardless of circuit. There is some variation (from 57% in the First Circuit to 86% in the Seventh Circuit), but the observed differences in the table are not statistically significant.¹⁶

16. $p = .787$.

Table A5: Defendant Attorneys' Forum Preferences by Circuit

Jurisdiction	Federal Court Preference	State Court Preference	No Overall Preference	N
D.C.	67%	33%	--	3
1st	57%	21%	21%	14
2nd	84%	5%	11%	37
3rd	71%	15%	15%	48
4th	74%	16%	11%	38
5th	80%	11%	9%	99
6th	68%	21%	11%	44
7th	86%	6%	9%	35
8th	69%	22%	9%	32
9th	74%	12%	15%	83
10th	78%	16%	6%	32
11th	70%	19%	11%	47
All Circuits	75%	14%	11%	512

Table A6 shows the forum preferences of both-side attorneys, broken out by circuit. Although both-side attorneys in almost every circuit showed a federal court preference, there was variation by circuit. For example, both-side attorneys in the Eighth Circuit were less likely to express a federal court preference—and more likely to express no overall forum preference—than their counterparts in any other circuit. The state courts in the Second Circuit appear to be unpopular with respondents, yet again, but as shown in table A6, both-side attorneys in the Fourth and Sixth Circuits also rarely expressed a state court preference. The observed differences among circuits in table A6 are statistically significant¹⁷ but difficult to interpret substantively.

17. $p = .042$.

Table A6: Both-Side Attorneys' Forum Preferences by Circuit

Jurisdiction	Federal Court Preference	State Court Preference	No Overall Preference	N
D.C.	75%	--	25%	4
1st	48%	30%	22%	23
2nd	68%	11%	21%	44
3rd	58%	33%	8%	36
4th	63%	15%	22%	41
5th	53%	32%	15%	60
6th	55%	12%	33%	33
7th	68%	18%	15%	34
8th	33%	19%	48%	21
9th	48%	29%	23%	83
10th	46%	36%	18%	28
11th	48%	28%	23%	39
All Circuits	55%	24%	21%	446