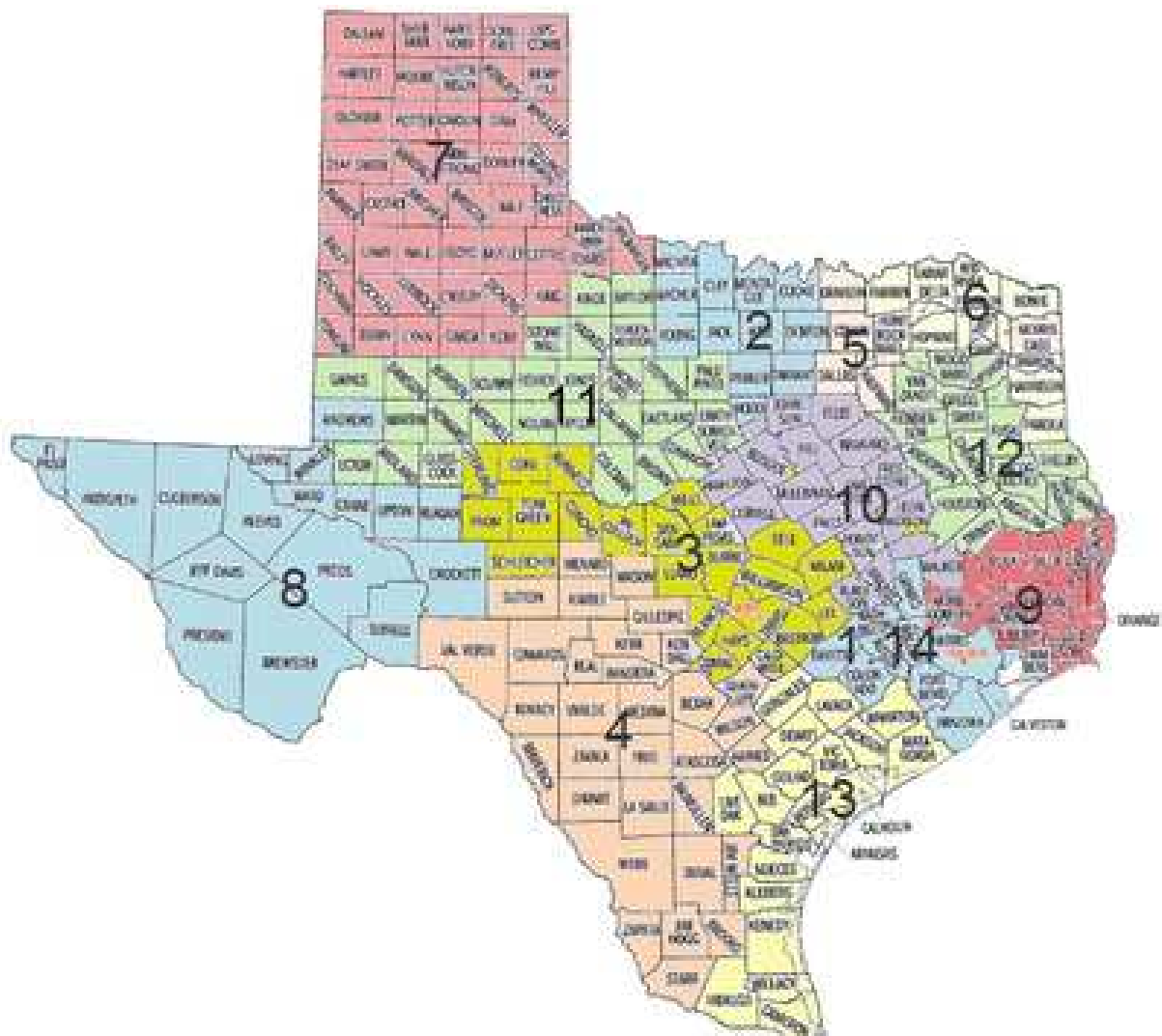


## A Texas Appellate Judge's View of Employment Law Cases

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# Fifth Court of Appeals

JUSTICE AMANDA L. REICHEK

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## Place 10

Justice Amanda Reichek was elected to the Fifth District Court of Appeals in 2018. Justice Reichek worked for several prominent plaintiff-side employment law firms before starting her own practice where she continued to represent employees in employment disputes and unions in labor disputes.

While in private practice, Justice Reichek held numerous leadership positions within the labor and employment law field, including Immediate Past Chair (2018), Chair (2017), Vice-Chair (2016), Treasurer (2015), and At-Large Councilmember (2010-2014) of the Labor and Employment Law Council of the Dallas Bar Association; Board Member of the Texas Employment Lawyers Association (2012-2014); and President of the Dallas-Fort Worth Employment Lawyers

Association (2014). She was also a frequent speaker on labor and employment law matters. She is Board Certified in Labor and Employment Law by the Texas Board of Legal Specialization.

Justice Reichek was selected as a Texas Monthly Magazine Super Lawyers Rising Star in 2010, 2011, 2012 and 2013; Super Lawyer in 2013, 2014, 2015, 2016, 2017 and 2018; and Top 50: Women Texas Super Lawyer in 2017 and 2018.

Justice Reichek is a Houston native, and earned a bachelor's degree in sociology and political science from Texas Tech University, a Master's degree in sociology from North Carolina State University, and her Juris Doctor from Texas Tech University, where she graduated with honors.

## Overview of TX Courts of Appeal

- 14 courts of appeal
- No discretionary review – consider all appeals
- Jurisdiction over civil, criminal, and family appeals from our state and county district courts
- Elected through partisan elections

### Employment cases as percentage of docket (approximate)

1 <sup>st</sup> & 14 <sup>th</sup> (Houston):	10-15% (Appx)
2 <sup>nd</sup> (Fort Worth):	1-5%
3 <sup>rd</sup> (Austin):	5-10%
4 <sup>th</sup> (San Antonio):	<5%
5 <sup>th</sup> (Dallas):	10-15%
6 <sup>th</sup> (Texarkana):	1%
7 <sup>th</sup> (Amarillo):	<1%
8 <sup>th</sup> (El Paso)	15%
9 <sup>th</sup> (Beaumont)	5-10%
10 <sup>th</sup> (Waco):	1%
11 <sup>th</sup> (Eastland):	1%
12 <sup>th</sup> (Tyler):	<1%
13 <sup>th</sup> (Corpus Christi):	5-10%

### 2018 elections changed the partisan makeup of the 1<sup>st</sup>, 3<sup>rd</sup>, 5<sup>th</sup>, and 14<sup>th</sup>

<https://www.texastribune.org/2018/11/08/texas-courts-appeals-2018-midterms-beto-ourouke/>

<https://www.law360.com/articles/1100293/newly-blue-texas-appeals-courts-could-benefit-plaintiffs>

<https://www.dallasnews.com/news/2018/11/11/conservative-texas-appellate-court-flips-blue-overnight-after-19-years-without-a-democrat-on-the-bench/>

<https://www.statesman.com/news/20181106/democrats-sweep-3rd-court-of-appeals-races>

## TCHRA

**Smith v. Harris County, 2019 WL 1716418 (Tex. App. – Houston [1st] Apr. 18, 2019) (CJ Radack, J. Goodman, J. Countiss)**

In 1996, Ronald Smith began working for Harris County Juvenile Probation Dept. as a juvenile probation officer. While employed he filed two EEOC charges, one in 2008 (sex and race) and one in 2012 (retaliation for 2008 EEOC charge). In 2015, he applied for the position of Intake (Screening) Supervisor, and the county awarded the position to “a lesser qualified employee by the name of Doris Cisneros.” Smith brought a retaliation claim, based on his two previous EEOC charges. The county moved for no-evidence and traditional summary judgment, arguing that there is no evidence of a causal link between his protected activity and the adverse employment action. The county also argued that it had a legitimate, non-retaliatory reason for the failure to promote, and Smith had no evidence that the County’s articulated reason was a pretext. Smith argued that circumstantial evidence of causation existed in that (1) the county failed to follow its hiring policy, in that the wrong person made the decision to hire for the person, (2) one ultimate decisionmaker was friends with Cisneros, (3) three members of the hiring committee, including another ultimate decisionmaker, knew of his prior EEOC charges, (4) Cisneros was significantly less qualified, and (5) temporal proximity. He also argued that the County’s reason for not promoting him was pretextual. The County demonstrated through affidavit testimony of several witnesses that the correct person did make the ultimate decision to hire although it was based on the recommendation of the person who would ultimately directly supervise the applicant, and the screening process used was the same one used for prior supervisor hires. In contrast, Smith relied on

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30<sup>th</sup> Annual Conference on State and Federal Appeals session  
"Appellate Judge's View of Employment Law Cases"