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REDUCING COURT DELAY

IDAHO'S COURT OF APPEALS THE FIRST FOUR YEARS: A PORTRAIT IN NUMBERS

By Judge Donald L. Burnett, Jr.

Tempus fugit. Many of us remember — as though it were yesterday — the Legislature's enactment of a bill, proposed by the Idaho State Bar, creating a new Court of Appeals. More than four years have passed since members of the new Court were sworn into office on January 2, 1982. During this period, a backlog of cases awaiting argument has been dissolved. The processes of assigning cases to the Court of Appeals, deciding those cases and reviewing the decisions have evolved from embryonic states to maturity.

The Court has compiled a booklet containing a statistical profile of its work from 1982 through 1985. The booklet provides data of interest to trial judges and practicing lawyers. This article captures some of the highlights.

The Assignment Process. The Court of Appeals has received about half of the cases on which the Supreme Court made assignment/retention decisions. Every year since 1982, more than 400 new appeals have been filed. Due to settlements, and for other reasons, more than 100 cases annually have been dismissed without reaching the point of assignment or retention. Among the backlogged cases that had reached this point by 1982, 56.4% were assigned to the Court of Appeals. The assignment percentage gradually subsided to 47.0% in 1985. The average for the four-year period has been 51.2%.

Types of Cases Assigned. The assignments have evolved toward a roughly equal mix of civil and criminal cases. In 1982 civil appeals accounted for 61.6% of the cases assigned. Criminal appeals represented 37.5% and administrative appeals comprised 0.9%. By 1985, the civil and criminal shares had converged more closely — 47.0% civil and 50.3% criminal. Administrative appeals remained a small slice of the pie, at 2.7%. The four-year averages were 56.0% for civil appeals, 42.7% for criminal appeals, and 1.3% for administrative appeals.

Dispositions of Cases Assigned. The number of cases awaiting decision in the Court of Appeals has dropped sharply since 1982, when the Court inherited part of the appellate backlog. 206 cases were pending at the end of that year, and the number was 249 in 1983. However, in 1984 and 1985, the Court received additional law clerks, a Lexis terminal was installed, "special panels" were created, and production goals were set. The number of cases awaiting opinions dropped to 195 in 1984 and fell to only 21 at the end of 1985.

Opinion Production. As readers of our slip opinions know, the productivity of the Court of Appeals reached a peak in 1985. During that year, the regular Court produced 229 majority opinions and the "special panels" added 49 more, bringing the total to 278. (Members of the regular Court also served on several "special panels.") For the entire period from 1982 through 1985, 639 majority opinions were filed. Of these, 580 (90.8%) were written by the regular Court and 59 (9.2%) were contributed by the "special panels." In addition, the Court produced 45 "substituted" (revised majority) opinions, 28 concurrences and 29 dissents, resulting in a total output of 741 opinions.

These figures also show a high degree of collegiality in the Court of Appeals. Unanimous decisions were issued in approximately 95% of the cases. Dissenting opinions were filed in about 5%.

Use of Per Curiam Opinions. The per curiam format may be used in routine, simple-issue cases or in rare situations where security is a concern. This format was not employed in 1982. However, 12.4% of the Court's opinions in 1983 were issued per curiam, 20.1% in 1984 and 21.9% in 1985.

Results of Opinions. Affirmances have outnumbered reversals in cases decided by the Court of Appeals. In civil appeals from 1982 through 1985, 49.1% of judgments and orders were affirmed, an additional 19.2% were affirmed in part, and 31.7% were reversed or vacated. In criminal appeals, 81.3% of judgments and orders were affirmed, 7.3% were affirmed in part, and 11.4% were reversed or vacated. In administrative appeals, 62.5% of the decisions were affirmed, 12.5% were affirmed in part, and 25.0% were reversed or vacated.

Petitions for Rehearing. The Court of Appeals has been asked to reconsider a relatively small fraction of its decisions. From 1982 through 1985, petitions for rehearing were filed in 14.6% of the cases decided. In these cases, 6.2% of the petitions were granted. 54.3% of the petitions were denied with modifications to the opinions (the result usually remaining the same). 35.8% of the petitions were denied without any changes in opinions. A residual 3.7% of the petitions were withdrawn or were awaiting action at the end of 1985. These figures (petitions filed in 14.6% of the cases, and 6.2% of those petitions granted) show that the Court of Appeals actually has heard new arguments in less than 1% of its total cases.

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"Special panel" opinions attracted a somewhat larger percentage of petitions for rehearing than did regular Court decisions. In 1984-85, petitions were filed in 13 (22.0%) of the 59 cases decided by the "special panels." During the same period, petitions were filed in 51 (13.3%) of the 383 cases decided by the regular Court.

Petitions for Review. The Supreme Court has been asked to review a shrinking percentage of decisions by the Court of Appeals. From 1982 through 1985, petitions for review were filed in 21.8% of the cases. The percentage during 1982 was 27.0%, but it fell to 19.4% by 1985. The percentages for regular Court and "special panel" decisions were similar — 20.1% and 18.6%, respectively, during 1984-85.

From 1982 through 1985, in those cases where petitions for review were filed, 17.7% of the petitions were granted, 78.5% were denied and

3.7% were withdrawn or were still pending at the end of 1985. These figures (petitions filed in 21.8% of the cases, and 17.7% of those petitions granted) show that the Supreme Court actually has reviewed about 3.8% of the Court of Appeals' decisions.

Results of Supreme Court Review. Within the narrow band (3.8%) of decisions actually reviewed by the Supreme Court during 1982-85, the Court of Appeals were overruled 55.0% of the time. The Court of Appeals' decisions were upheld entirely in 25.0% of the cases and were upheld in part (including instances when the Supreme Court reached the same result upon different reasoning) in 20.0% of the cases. Thus, the fraction of total decisions eventually overruled by the Supreme Court was about 2%. □

CLE NEWS

On February 21-22, the Annual Bankruptcy Section Meeting was held in McCall. As always, the comments concerning the panel of speakers were very favorable. Judge Lundin, a special guest from Tennessee, received acclaim for his presentation and expertise in the field of Chapter 13 practices and procedures. The program received praise on every level from the 80 plus attendees. They commented on the quality of the program, as well as the opportunity to visit with their fellow practitioners.

The Corporate Counsel Workshop experience proved to be a memorable one again this year. The distinguished panel comprised of speakers from California, New York, Texas, Illinois, Tennessee and Oregon discussed the current issues and developments in corporate law. The participants commended the insight provided by the panel. The

recreational aspect of the program added to its success — skiing was at its best!

Mini CLE's tentatively planned for the Annual Meeting are on the following topics: Economic and Expert Witnesses, Technologies for Detecting Injuries, Constitutional Law, Law Office Management, and Fundamentals of Estate Planning. The Annual Meeting will be held in Coeur d'Alene this year, at the newly remodeled North Shore Hotel and Convention Center. We hope you plan to attend.

The Idaho Law Foundation appreciates the support of its members and would like to take this opportunity to thank those of you who have become Fellows:

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