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Idaho Lawyers Evaluate The Court of Appeals

By Judge Don Burnett

The performance of lawyers is evaluated every day. Their clients evaluate them, their colleagues evaluate them, and judges evaluate them. But the courts — especially appellate courts — usually do not get the feedback they need to improve their performance.

The Idaho Court of Appeals has decided to change that. In January, 1983, we sent an experimental questionnaire to 61 neys who participated in cases, assigned at random, before the Court of Appeals during 1982. 36 lawyers, or 60%, had responded to the questionnaire by the deadline for submission of this article to *The Advocate*. All questionnaires were strictly anonymous. Special envelopes with postage paid, but no return addresses, were furnished to ensure anonymity. Candid criticisms were invited.

Here are the results of survey:

PRE-ARGUMENT PHASE OF APPEAL

87% of the lawyers responding felt their cases appropriately had been assigned to the Court of Appeals. The few who felt otherwise said their cases involved "first impression" issues in Idaho. All attorneys felt they had received adequate notice of the time and place of oral argument. 88% of the attorneys actually participated in oral argument, the remaining 12% waiving oral argument because they felt the issues were adequately framed by their briefs.

ORAL ARGUMENT

The Court of Appeals generally allows thirty minutes of argument on each side of a case, *plus* the time required to answer questions from the Court. 94% of the attorneys responding said this format gave them adequate time to present their cases. 92% reported that the Court had engaged them and/or opposing counsel in a question-and-answer dialogue. All of the attorneys felt the questions from the Court were fair, but one lawyer said the tone of the questions was "antagonistic." 95% said that the questions were pertinent to issues which they considered important. 42% said the extent of the dialogue with the Court was about what they had expected, while 28% said it was more extensive and 30% said it was less extensive than they had expected. Some attorneys added that they appreciated the dialogue with the Court, and one said that the importance of the questions was not apparent until a decision later was issued.

DECISION

42% of the attorneys said they received decisions in their cases sooner than expected, while another 36% said the decisions came about when expected. 28% reported that they waited longer for decisions than they had expected. The Court of Appeals took on many more cases, by oral argument and submission on briefs, than it could decide in 1982. However, we hope that we can shorten the "turn around" time for decisions in 1983.

76% of the attorneys said that, regardless of whether their clients prevailed or lost, the results reached by the Court of Appeals reasonably could have been anticipated. The other 24% said they were surprised by the results. Several attorneys in the latter group felt that the Court had focused upon the wrong issues or had created new ones. Others simply said they disagreed with the Court's analysis. 92% of the attorneys reported that the Court of Appeals' decisions had addressed the key issues in their cases.

OPINION WRITING

Attorneys were asked to rate the Court's opinions as to organization and format, legal analysis, clarity of expression and conciseness. They used a rating scale of very poor, unsatisfactory, fair, good and excellent. These ratings were assigned a numerical value from 0 to 4, respectively. The attorneys were asked to rate opinions in their

own cases, and opinions by the Court in general. As might be expected, the average ratings in both categories were about the same, although the range of responses was somewhat wider in the attorneys' own cases — indicating, perhaps, that they had stronger personal feelings about those cases.

On all criteria, the Court received average ratings between good and excellent, concerning its opinions in general. As to organization and format, the average rating was 3.33, with 96% of the responses being good or excellent. With respect to legal analysis, the average rating was 3.16, and 88% of the responses were either good or excellent. On clarity of expression, the average rating was 3.24, and 92% of the responses were good or excellent. Finally, in regard to conciseness, the Court's average rating was 3.28, and 94% of the ratings were good or excellent.

CASE ADMINISTRATION

Attorneys were asked whether they had been treated fairly and courteously by the Court's staff. They were also asked whether motions, petitions and other ancillary matters, filed after the case was assigned to the Court of Appeals, had been processed efficiently. All but two of the responses were in the affirmative, and the two exceptions were non-specific in content.

GENERAL REMARKS

Finally, attorneys were asked to give us the benefit of any suggestions they had for improving the Court of Appeals and the appellate process. The remarks generally tended to break down into two categories — general performance and the writing of appellate opinions.

As to general performance, one attorney suggested that the Court should not travel as much as it does. Another attorney, noting that the Court had conducted hearings in Hailey, suggested that the Court should sit at Twin Falls as well. This attorney will be happy to learn that the Court intends to divide its time during south-central Idaho terms between Hailey and Twin Falls in 1983. The remaining remarks were all positive. Typical comments were "excellent work . . . you look good to me . . . continue setting a good example . . . diligent and productive . . . keep firing . . . don't stop working hard . . . new system is serving its intended purpose . . . would like all my cases heard before your Court . . . Court is filling well the expectations of the practicing bar and serving the public interest."

With respect to the Court's opinions, one attorney said they were "clear and concise" but "result oriented." He continued "(The Court's) considerable technical and literary skills are employed to sanction and justify the Court's notions rather than to achieve the broader goals of even-handed justice and impartial adherence to legal principles." Another attorney said that the Court of Appeals "should not act as a rubber stamp of the lower court." Yet another attorney suggested that, on procedural questions, the Court of Appeals should defer to the Supreme Court's "formal rule-making process" and should not establish procedural requirements "in the process of deciding cases." Other attorneys added such comments as "the Court's opinions are models . . . the Court has an excellent general reputation for quality and promptness (of opinions) . . . the opinions are a great benefit to the practicing bar . . . the Court should be congratulated on avoiding unnecessary pontificating."

All in all, the members of the Court of Appeals are grateful for the generous reviews given to us after our first year of operation. However, we will also focus on the deficiencies noted and will try, within the limits of our resources, to improve the Court's performance in 1983.