

The Role of State Intermediate Appellate Courts

Principles for Adapting to Change



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I. INTRODUCTION

A. Objectives and Overview

The majority of states have one or more intermediate appellate courts (IACs), with over ninety such courts nation-wide. IAC jurisdiction varies from state to state, as does their role in each state's judicial system. In most states, however, intermediate appellate courts were established to relieve the workload of the state's highest court by serving as the courts where most litigants obtain review of adverse decisions from trial courts and various administrative agencies. IACs primarily provide an appeal of right and most do not have discretion to decline to hear an appeal filed with the court. Because IACs must hear virtually all cases that are properly before them, they typically have extremely heavy workloads and are often referred to as the "workhorses" of the appellate justice system.

The role of IACs has changed over time as a result of steadily rising appellate filings and an expansion of their jurisdiction through statutory enactments and state constitutional amendments. States' highest courts, most of which do have primarily discretionary jurisdiction, do not have the resources to review every decision in which an IAC addresses an issue of first impression or clarifies or develops existing law. Thus, while IACs continue to serve their traditional role as error correction courts, their role has evolved to include significant responsibility for the definition and development of the law, a role that had historically been served only by the states' highest courts.

Although the role of the IACs has changed over time, the fact that they have mandatory jurisdiction and no ability to control the size of their workload has not. In addition, most IACs have experienced significant increases in the number of annual filings since the 1980s. As a result of the increased caseload, many IACs were successful in obtaining legislative approval for additional judges and non-judicial staff members. But courts at all levels have experienced significant budgetary reductions since 2008 due to the widespread fiscal crisis. These budgetary limitations have necessitated reductions in staffing levels for many courts and have placed a significant burden on them as they work to maintain timely and high quality service to the public while managing high volume caseloads with shrinking resources. Courts have responded to these challenges in a variety of ways, including re-evaluating the use of staff, making technological improvements, and adopting organizational and operational changes designed to resolve cases more efficiently. Through these challenges, IACs remain steadfast in their commitment to meet these increased demands without compromising their ability to render quality jurisprudence.

Against this background, the Council of Chief Judges of the State Courts of Appeal (CCJSCA) and the National Center for State Courts (NCSC) jointly undertook this effort to study the evolution of the role played by the intermediate appellate courts and their core functions and principles. The study also examined the effect of the recent fiscal crisis on IACs, and how they have adapted to new budgetary realities. Funding was provided by the State Justice Institute (SJI).

B. Data Collection Process

The NCSC assigned a consultant team who worked closely with a project committee composed of CCJSCA member representatives.¹ Together, they developed an on-line survey designed to collect data regarding the historical and modern roles of respondent courts; changes to their jurisdiction over time; the courts' goals, objectives, and core principles; how courts measure their fulfillment of those goals and objectives; the extent and effects of budgetary reductions; the level of state legislatures' understanding of the work of the courts and the effect of budget cuts on the courts' ability to function effectively; and operational and managerial strategies courts have adopted in response to budget reductions. This survey was administered to the full membership of the CCJSCA. In all, thirty-one intermediate appellate courts responded to the survey.

Following collection of the data, the NCSC compiled and analyzed the survey results which were presented to and discussed with the project committee. The team also conducted additional research regarding the establishment and role of IACs in state judiciaries and compared the values expressed by the IACs with the

¹ CCJSCA member representatives were: Chief Judge David Brewer, Oregon Court of Appeals; Judge Ann Scott Timmer, Arizona Court of Appeals, Division 1; Judge Gary Lynch, Missouri Court of Appeals, Southern District; Chief Judge William Murphy, Michigan Court of Appeals; Chief Justice Jim Worthen, 12th Texas Court of Appeals; and Judge James Davis, Utah Court of Appeals

recently published *Principles for Judicial Administration*.²

II. ROLE OF STATE INTERMEDIATE APPELLATE COURTS

A. History, Purpose, and Jurisdiction

Appellate courts have two primary roles: to review individual decisions of lower tribunals for error and to interpret and develop the law for general application in future cases filed in all levels of the legal system. The legal systems in most states initially contemplated a single appellate court that served both functions. But throughout the twentieth century, appellate courts experienced significant increases in workload as a result of various factors, including population growth, expanded post-conviction and appellate rights in criminal cases, increases in legislation and government regulation, expansion of appellate jurisdiction to include the review of agency decisions, and a societal trend toward resolving social and economic controversies through the legal system. The burgeoning workload resulted in a backlog of appellate cases and a growing lack of confidence in the judicial system.

To relieve the pressure of the workload and ensure the timely resolution of appeals, forty states³ and the

² <http://ncsc.contentdm.oclc.org/cgi-bin/showfile.exe?CISOROOT=/ctadmin&CISOPTR=1891>

³ Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky,

Of the thirty-one intermediate appellate courts that participated in this study, nine were established between 1875 and 1915, and twenty-two were established between 1963 and 1996.

States that have both a court of last resort and one or more intermediate appellate courts vary considerably in how they structure their appellate court systems and divide jurisdiction among the courts. The scope of intermediate appellate court jurisdiction is defined by each state's substantive law, whether by constitutional provisions or legislative enactments. Several respondent courts indicated that, when first established, their jurisdiction was limited by case type or geographic territory, but that it expanded over time to meet the changing needs and demands of the state's judicial system.

In most states, the majority of appeals of trial court and administrative decisions are reviewed in the first instance by the intermediate appellate courts, whose mandatory jurisdiction requires them to accept such appeals for review.⁵ Appeals in capital cases and a limited number of other case types⁶ are usually

⁵ Some states have procedures that permit courts of last resort to select appeals initially filed in the intermediate appellate court for transfer or that allow intermediate appellate courts to request the court of last resort to accept direct appellate jurisdiction over certain appeals, such as those involving issues of significant public interest or significant issues of first impression.

⁶ In most states, death penalty cases are taken directly from the trial courts to courts of last resort, bypassing the intermediate appellate courts. Alabama, Ohio, and Tennessee are exceptions to this general practice; in those states, death penalty cases

filed directly with the higher courts. The higher courts generally have discretionary jurisdiction to review cases already decided by the intermediate appellate court, selecting the cases they review in order to address novel legal issues, reformulate decisional law, and maintain consistency in lower court decisions. In a few states, all appeals are initially filed in the court of last resort, which retains some cases while transferring others to the intermediate appellate court.⁷ For example, the North Dakota Court of Appeals hears only the cases assigned to it by the Supreme Court, and in some years the Supreme Court assigns no cases to the Court of Appeals. Similarly, the Idaho Court of Appeals hears cases assigned by the Idaho Supreme Court (except capital murder convictions and appeals from the Public Utilities Commission or Industrial Commission, which must be heard by the Supreme Court); appellants may petition the Idaho Supreme Court to rehear a Court of Appeals decision, but the Supreme Court is not required to grant such a petition.

Most state intermediate appellate courts have general jurisdiction, but some states have multiple intermediate courts of appeal with distinct subject-matter jurisdiction. Alabama, New York, and Tennessee, for example, have separate intermediate appellate courts for civil and criminal matters. Indiana has one

are appealed directly to the intermediate appellate courts. Other appeals that are typically filed directly with the court of last resort include election disputes and habeas corpus, mandamus, and quo warranto proceedings.

⁷ Idaho, Iowa, Mississippi, North Dakota, Oklahoma, and South Carolina.

intermediate appellate court for tax matters and another for all other appeals, and Pennsylvania has two intermediate appellate courts, one that hears non-criminal matters brought by and against the government and one that is a general court of appeal.

State intermediate appellate courts also differ with respect to their geographic jurisdiction and degrees of independence from each other. Most have statewide jurisdiction, though some of those courts have multiple sites. Several state intermediate appellate courts, however, have multiple courts with regional jurisdiction and independence or a single court with multiple locations and geographically assigned cases.⁸

B. Evolution and Contemporary Role

Most intermediate appellate courts are cast primarily in the role of error correction, following precedent established by the courts of last resort, and error-correcting opinions typically affect only the parties to the cases in which the opinions are issued. But not all cases involve pure legal questions based on settled law or cases in which the legal issues are settled and resolution of the appeal requires the application of established law to straightforward facts. There is often an absence of binding precedent, and many cases involve either conflicts between statutes or previous court decisions, or the application of existing law to new fact patterns. In those cases, intermediate

⁸Arizona, California, Florida, Illinois, Louisiana, New York, Ohio, Texas, and Washington.

appellate court do not function solely as error-correcting courts, but also have responsibility -- subordinate to that of the higher court -- for announcing new rules of law, expanding or modifying existing legal principles, and resolving conflicts in authority. Opinions in such cases have precedential value and a broader impact on the legal system, affecting not only the litigants in the cases in which the opinions are announced, but also parties in future cases.

Although litigants in most states may petition the court of last resort for further review of adverse decisions of intermediate appellate courts, such review is generally discretionary and is exercised in a small percentage of cases – typically less than ten percent of cases heard by the intermediate appellate courts. Courts of last resort generally do not grant petitions for review in cases that involve only error correction, and most do not have the capacity to grant review in all cases in which intermediate appellate courts have issued opinions formulating and developing the law. Thus, by virtue of sheer volume, intermediate appellate courts are the court of last resort for most litigants, and their role in the appellate system has evolved from the original purpose of relieving the workload of higher courts by absorbing their error-correcting function to also playing a significant role in advancing the law in cases of first impression.

C. Shared Values

Despite significant differences in size, structure, jurisdiction, and internal governance, the survey responses reveal

that intermediate appellate courts share the common goal of rendering quality decisions clearly and efficiently, thereby preserving public confidence in the judiciary. These courts have also identified both explicitly and implied in the comments, shared institutional values and objectives for accomplishing that basic goal, including:

- Adopting effective internal management and operational structures that maximize public resources;
- Implementing case management processes that promote the timely and efficient disposition of cases;
- Promoting public awareness about the judicial system and avenues for access to the courts;
- Maintaining judicial integrity by promoting transparency regarding court processes; and
- Producing high quality work product in the form of well-reasoned, clearly written decisions that respond to the issues before the court.

Twenty-four of the respondent courts reported that they have adopted performance goals and objectives, including establishing timelines for the case resolution, minimum annual clearance or disposition rates, and individual production expectations for judges.⁹ Half of those courts did so internally, two reported that

⁹ These performance goals and objectives are in addition to timelines established by legislation or court rule requiring the expedited handling of appeals in parental termination and other time-sensitive case types.

their performance goals and objectives were imposed by statute or rule, and six courts indicated that their performance goals and objectives were promulgated in coordination with state court administrators, legislatures, or rule-making bodies, sometimes as part of the budget negotiation process.

Several courts reported that the impetus for adopting performance goals and objectives was the American Bar Association model time standard recommendation that appellate courts resolve ninety-five percent of all cases within one year of the notices of appeal being filed.¹⁰ Three of the respondent courts (the Oregon Court of Appeals and both divisions of the Arizona Court of Appeals) have adopted and implemented modified versions of the Appellate CourtTools performance measurement system developed by the NCSC.

Of the twenty-four courts that have adopted performance goals and objectives, about half indicated that they periodically distribute statistics reflecting their performance results internally, while the other half make that information publicly available, either through state court administrators' offices, state legislatures, or on court websites.

Summaries of three courts' survey responses regarding their performance goals and objectives are featured in the break-out boxes on the following pages.

¹⁰See ABA Judicial Admin. Div., *Standards Relating to Appellate Courts*, 1994 ed., § 3.52, at 101.

Arizona Court of Appeals

Like the other respondent courts, the Arizona Court of Appeals reported that one of its primary goals is continued excellence in processing and deciding appellate matters. In furtherance of that overarching goal, the two divisions of the Court of Appeals, along with the Arizona Supreme Court, adopted many of the formal performance measures known as the Appellate CourTools.

A working committee reviewed performance statistics from a period of years relating to different performance criteria for the various types of appeals the court hears. The committee then developed performance targets for completion of the court's work. For example, Arizona adopted the CourTools measure of the time from notice of appeal to ultimate disposition, and subsets of that time frame, including measuring from the time an appeal is at-issue (the completion of briefing) until disposition, and from the time the appeal is submitted following conference and/or oral argument until disposition. The courts also measure case clearance rates and the age of pending caseloads. CourTools statistics are reviewed quarterly, and the statistics and an explanatory report are published annually. The report is provided to the Arizona Supreme Court and the state court administrator's office, and is posted on the Court of Appeals' website for easy public access.

In addition, the courts conduct surveys every two years of the attorneys who have appeared before the court, and the trial judges whose decisions have been reviewed, regarding case management issues and the quality of judicial review.

Utah Court of Appeals

The Utah Court of Appeals captures detailed data on all of its cases, providing the court with the tools it needs to make sound management decisions. In addition, the court has developed many internal operating procedures concerning time standards once a case has been submitted for decision.

For example, the court adopted internal procedures for the circulation of opinions which require that the first draft of the majority opinion must be circulated to the other judges on the panel within 90 days of the date of the initial case conference. Concurring or dissenting opinions must be circulated within 30 days of circulation of the majority opinion. Judges are encouraged to provide the author judge with "action slips" -- written comments and proposed changes to the draft -- within 7 days, which the author judge may accept or reject. Within 21 days after voting is completed on the majority and any concurring or dissenting opinions, a draft is circulated to all judges, law clerks, and central staff, who must convey any concerns or comments about the draft to the author of the opinion or the presiding judge within 7 days. The author judge then has 14 days to review suggestions and incorporate changes.

Michigan Court of Appeals

The impetus for the Michigan Court of Appeals' adoption of performance goals and objectives was the ABA's 1994 publication of model time standards recommending that appellate courts resolve 95% of all cases within one year of the notices of appeal being filed.

In 1998, a workgroup of judges and staff, along with representatives of the Michigan Supreme Court and state court administrative office, met to address the ABA model as applied to this court. Because Michigan court rules allow a full ten months for transcript preparation, briefing, and record production, they concluded that the ABA model was unrealistic. Instead, they established the goal for the court of deciding 95% of all appeals within 18 months, but little headway was made in meeting this goal in the ensuing years.

At the end of 2001, another committee of Court of Appeals judges and staff met to address the backlog and delay in deciding cases. In 2002, they issued a report that (1) set forth a specific plan to increase the number of dispositions, and (2) established measurement standards and time frames for resolving 95% of all appeals within 18 months. In response, the judges of the court unanimously adopted a delay reduction plan that sought to increase the number of dispositions by assigning additional cases to panels without the benefit of staff reports and proposed opinions, and by producing summary reports or draft opinions only in routine cases.

The plan also sought to decrease the time to disposition by establishing time frames for issuing opinions according to the type of case and/or hearing panel and by proposing several court rule amendments designed to hasten the time in which appeals become ready for decision, especially those involving the termination of parental rights. The Supreme Court adopted many of the proposed rule amendments. Although the court is still a couple percentage points shy of reaching the "95-in18" goal, it has set new goals of eliminating the backlog of appeals and deciding 95% of all cases within 15 months. Increased appropriations and disciplined spending has enabled the court to increase its central research staff in an effort to reach the new goals within a reasonable period of time.

Finally, in 2004, the Michigan Supreme Court authorized the court to conduct a pilot program with an expedited track for appeals from orders granting or denying summary disposition, which account for about half of the court's civil case docket. Implementation of the expedited track, known as the "90/90 Plan," began in 2005. Under the plan, transcript preparation and briefing were to be completed in 90 days. The court would then have 90 days to review the briefs and record, hear oral argument (if any), and issue an opinion. Unfortunately, the expedited track was terminated in 2007 because budget cuts and resulting decrease in staff made it impossible for the court to decide the appeals within the promised timeframe.

The chief clerk prepares weekly reports that measure (1) the average time to disposition by case category, and (2) the percentage of dispositions in increments from 10 to 24 months. The clerk also prepares monthly reports that measure certain caseload factors and track the status of pending cases to ensure timely processing. These weekly and monthly reports are only published internally. From the late 1990s through the mid 2000s, the court prepared annual reports that contained sections on court performance, including the average age of opinion cases at disposition, the number of dispositions by opinion and order, the clearance rate of cases, the percentage of pending cases that were 18 months or younger, and the percentage of cases that were decided within 18 months. The reports had been suspended for the past several years due to budget cuts but one was prepared for 2011 and is available on the court's website.

III. THE NEW BUDGET PARADIGM

Because the intermediate appellate courts provide an appeal of right in most cases and do not have discretion to decline to hear such appeals, they must consider and issue decisions in virtually all cases that are properly before them, absent a transfer of jurisdiction to the state's higher court. Thus, intermediate appellate courts have no control over the size of their workload as measured both by annual case filings and the number of decisions issued each year. Over the past few decades, most appellate courts across the country have experienced a steady increase in the number of annual case filings and a corresponding increase in workload, generating the need for additional judges and support staff.

At the same time, however, courts of all levels have experienced significant budgetary reductions since 2008 due to the widespread fiscal crisis, effects of which are likely to continue for some time. Twenty-two of the respondent states reported reductions in their budgets in recent fiscal years, and six indicated that their budgets have been generally flat, with no appreciable cuts but also no increases to meet inflation and the corresponding increase in the costs of doing business. Courts typically have relatively low actual operating expenses and the vast majority of a court's budget is for personnel expenses. Thus, budgetary limitations have resulted in reductions to staffing levels – both judicial and support staff -- placing a significant burden on courts as they work to maintain timely and high quality service to the public.

State governments have paid increased attention in recent years to the details of appropriated budgets and how their various state agencies, departments, and judicial branches operate. Virtually all states now require or encourage higher degrees of organizational accountability, transparency and a performance management mindset. These changes describe a “new budget paradigm” that is increasingly affecting the management and operations of the intermediate appellate courts, separate from the recent recession that continues to affect court budgets.

This new budget paradigm has highlighted the need for intermediate appellate courts to ensure that legislatures understand their core functions and principles, and appreciate the demands placed on them, including the inability to control increasing workload, and the impact on the public of continued budgetary reductions, both in terms of the quality of the services provided and the public's confidence in the judiciary. Four of the respondent courts reported that their state legislatures have a clear understanding of those issues, and twelve indicated that their legislatures have a more limited understanding of those issues. But almost half of the respondent courts reported that their legislatures have little or no understanding of the core functions of intermediate appellate courts, the operational challenges they face, and the effect of budget cuts on the timeliness and quality of services provided.

The new budget paradigm has also highlighted the need to ensure that courts are operating as efficiently as possible. Most respondent courts reported that they continually examine their organizational structures, operational and workflow processes, allocation and utilization of staff, and application of technology, in an effort to adapt to their growing caseloads and improve the efficiency of court operations, without compromising their ability to provide quality jurisprudence for their citizenry.

IV. EFFECTS OF BUDGETARY REALITIES

While a few courts reported that budgetary issues have had little or no effect on court staffing levels and operations, over half of the responding courts indicated that budgetary limitations and the new budget paradigm have impacted employee compensation, and have required some reductions in staffing levels and changes to court operational systems.

A. Staffing Levels and Employee Compensation

With respect to staffing levels and employee compensation, the responding courts consistently reported that the most significant impact has been on non-judicial staff -- clerk's office staff, secretaries, and legal staff (both law clerks and central staff attorneys), but several courts also reported reductions in judicial resources. More specifically, courts reported that that budget limitations have required them to:

- freeze non-judicial salaries by eliminating merit, automatic step, and cost of living increases;
- impose mandatory furlough days on non-judicial staff and/or encourage employees to take voluntary furlough days;
- reduce work hours for some employees;
- lay off non-judicial staff;
- eliminate judicial and non-judicial positions vacated through attrition;
- delay filling judicial and non-judicial positions vacated through attrition;
- eliminate or delay filling judicial positions vacated when judges retire or resign; and
- reduce the number of days for which retired judges may be compensated.

B. Organizational and Operational Changes

Not surprisingly, courts also reported that reductions in personnel have required significant organizational and operational changes, including the redistribution of work and realignment of job duties among remaining staff to accommodate reductions in staffing levels, and more judicial involvement in work previously performed by law clerks and central staff attorneys. One court indicated that it achieved significant savings by

consolidating separate Clerk of Court offices for its supreme and intermediate appellate courts into one combined Appellate Court Clerk's Office.

Because the vast majority of intermediate appellate courts' budgets are for personnel expenses, there are few areas of discretionary spending where courts can achieve savings. Nevertheless, courts reported that they have implemented a variety of cost-saving measures to reduce discretionary spending, such as reducing library resources (particularly print holdings), eliminating in-house settlement programs, reducing the number of hours the court is open to the public, deferring technological improvements and equipment updates, delaying the purchase of office supplies, limiting travel and continuing legal education allowances.

C. Effects on Performance

Courts reported that budgetary limitations and the new budget paradigm have had both positive and negative effects on court performance. As discussed below in Section V, the focus by legislatures, as the primary funding authority for most courts¹¹, and the public's interest in organizational accountability, transparency, and performance has caused many courts to streamline their procedures to become more efficient and maximize the use of public resources. Some courts reported that these measures have not only

¹¹ Some courts receive funding from county funding authorities rather than from state legislatures but because most intermediate appellate courts are funded by state legislatures, this report refers to funding authorities as legislatures.

improved overall court operations, but have also had a positive effect on morale.

But many courts reported that the budgetary challenges, particularly reductions in staffing levels, have had negative effects on morale and the quality of the court's written opinions; decreased productivity, backlogs, and clearance rates; and sharply increased the time required to resolve appeals. Courts also reported that budget reductions in trial courts and government agencies have resulted in delays in filing records and briefs, contributing to delays in the resolution of appeals.

V. STRATEGIES FOR RESPONDING TO THE NEW BUDGET PARADIGM

Intermediate appellate courts have developed a wide range of strategies to deal with modern budget realities and resultant staffing reductions in an effort to maximize efficiency and productivity, ensure the timely resolution of appeals, continue to produce quality written opinions, and maintain public confidence in the judiciary. The strategies reported most frequently focused on the use of legal staff, case screening and differentiation, technological advancements, imposition of internal case processing deadlines, and improved coordination with legislatures and state court administrators

A. Use of Legal Staff

Intermediate appellate courts employ several types of legal staff to help manage their heavy workloads, including law clerks, central staff attorneys, and other

court attorneys, and several respondent courts indicated that they are re-evaluating their attorney support structures and exploring more cost-effective ways to utilize legal staff and increase their productivity.¹² This process has led many courts to turn increasingly to permanent legal staff instead of relying solely on short-term law clerks.

Courts have historically relied primarily on law clerks (often referred to as "elbow clerks"), who work for an individual judge and have no direct responsibilities to the court as a whole, to provide legal research and writing support for the judges to whom they are assigned. Under the traditional hiring model, law clerks work for an individual judge for one or two years to gain additional legal research and analytical skills before practicing law. But many appellate courts reported that because the learning curve for new law school graduates is steep, most law clerks do not produce consistently high quality work until well into their terms. Accordingly, although most courts continue to have some short-term law clerk positions, many have begun to allow judges to employ long-term or permanent law clerks in an effort to maximize the usefulness of law clerks to the judges they serve.

Consistent with the recognition that long-term law clerks produce higher quality

¹² A 2011 white paper commissioned by the CCJSCA summarizes data collected from thirty-four intermediate appellate courts across the country regarding the various ways in which they use legal staff. See *Comparative Attributes of Legal Staff in Intermediate Appellate Courts*, Council of Chief Judges of the State Courts of Appeal, April 2011.

work and are generally more useful to the judges they serve than short-term law clerks, most intermediate appellate courts also employ central staff attorneys who serve indefinite terms and work for the court as a whole rather than for an individual judge. Central staff lawyers serve as research attorneys who may prepare memoranda or draft opinions on cases, sometimes without the initial involvement of judges, and also perform other chambers support, such as opinion editing, and administrative functions, often in conjunction with the Clerk of Court's Office. Central staff attorneys tend to stay employed with the courts for which they work for many years -- often their entire legal careers -- and develop valuable expertise and institutional knowledge. Although central staff attorneys are typically paid more than short-term law clerks, courts have found -- even in tight budgetary circumstances -- that the salary differential is worth the significant productivity, efficiency, and work quality benefits provided by permanent legal staff.

Several courts indicated that they have reduced the number of law clerks assigned to each judge and/or the size of their central staff and that judges have had to assume responsibility for some of the work previously done by legal staff and accept some portion of their caseload without bench memoranda or draft opinions. But courts also reported that they have adapted the way they use legal staff to maximize their effectiveness and productivity and ensure that they provide the legal support services necessary to enable courts to manage their burgeoning caseloads. Specifically, courts reported using central staff attorneys to accomplish

various operational efficiencies, such as streamlining motions, screening cases early in the appeal process for jurisdictional and procedural defects, and assessing case difficulty for purposes of identifying cases appropriate for summary disposition and

equalizing case assignments among judges. A brief description of how the Colorado Court of Appeals uses staff attorneys for these purposes is discussed in more detail below.

Colorado Court of Appeals

The Colorado Court of Appeals rules on over 13,000 motions per year. It combines its motions practice with a screening process designed to identify appeals with jurisdictional defects before briefing begins.

A staff attorney screens every case for jurisdictional defects shortly after the notice of appeal is filed. In cases with a possible jurisdictional defect, the screening attorney issues an order directing the appellant to cure the defect or explain why the appeal should not be dismissed. Screening files and motions are then divided into three general categories.

Certain types of motions, including dispositive motions and most motions for stay, are decided by a three-judge motions panel, which rotates on a monthly basis. Other matters, including uncontested motions involving ministerial or procedural issues, are ruled on under the Chief Judge's signature by a central staff attorney. All other motions are decided by one judge, usually the Chief Judge.

At separate one- and three-judge motions meetings scheduled weekly, a staff attorney orally presents motions to the judges and makes a recommendation regarding the disposition of each motion. The staff attorney then prepares written orders or, in some cases, drafts opinions for publication.

Another method courts reported using to maximize the usefulness of central staff attorneys is encouraging or requiring them to develop one or more areas of specialization, particularly in cases involving administrative law or statute-driven subjects, such as domestic relations, workers compensation, and parental

termination. As a corollary to staff attorney specialization, a significant number of courts indicated that there are subject matter areas for which staff attorneys write all or most of the initial opinions. Courts that reported using one or both of these approaches indicated that doing so is more efficient and results in higher quality

opinions than having short-term law clerks with generally limited experience in those areas getting bogged down in trying to understand complex statutory and administrative law or side-tracked by irrelevant issues that are easily identified by an attorney who specializes in those areas.

B. Screening and Case Differentiation

Most respondent courts indicated that they employ a process of screening cases for jurisdictional and other procedural defects (such as lack of a final order or subject matter jurisdiction, or failure to timely appeal) at some point in the appeal process. The timing of the screening varies among courts, as does the person responsible for conducting the screening, but in most courts the screening is done by a staff attorney or other court attorney (not a law clerk) before briefing begins -- either shortly after the appeal is filed or after the record is filed. In a few courts, the jurisdictional screening is done after briefing is complete, often by a law clerk, as part of the opinion-drafting process, primarily because those courts do not have the staffing resources to screen cases earlier.

Courts that screen cases for jurisdictional and other procedural defects early in the appeal process do so for several reasons. The identification and potential dismissal of cases with incurable jurisdictional defects before briefing helps manage the courts' dockets and saves both time and money for the court and the parties. In addition, identifying and notifying the parties of potential defects

gives them an opportunity to resolve the problem or clarify the record and can sometimes narrow the scope of the issues on appeal.

Courts also use case screening to balance the difficulty of case assignments among judges. For example, a case screening process that assesses overall case complexity and assigns a difficulty rating to each case based on factors such as the size of the record, length of the briefs, number of issues raised, and complexity of the issues presented, can be used to balance not only the difficulty of cases assigned to each panel but also the difficulty of writings assigned to individual judges.

Case screening can also be part of differentiated case management programs and expedited calendars designed to resolve certain classes of cases more expeditiously, reduce or avoid backlogs, and redirect judicial resources to more demanding cases. The key to the success of differentiated case management programs is identifying cases appropriate for placement on an accelerated calendar early in the appellate process. The screening and case differentiation systems adopted by the New Mexico and Michigan courts of appeal are highlighted in the breakout boxes on the following pages.

New Mexico Court of Appeals

The ten-member New Mexico Court of Appeals pioneered an accelerated docket program that, unlike the California and Rhode Island models, emphasizes briefing in the form of “docketing statements” and deemphasizes oral hearings. Established in 1975, New Mexico’s summary calendar is one of the most enduring instances of procedural differentiation in state appellate courts.

The summary calendar was initially aimed at expediting criminal appeals and reducing transcript volume and cost. However, the scope of the calendar has been expanded to include all other case types in the court’s jurisdiction, including workers’ compensation, domestic relations, and routine civil appeals.

Within ten days after a notice of appeal is filed in the New Mexico Court of Appeals, trial counsel is required to file a “docketing statement” that outlines the relevant facts, lists the issues on appeal, indicates how the issues were preserved in the trial court and identifies relevant authorities.

After the trial court or administrative agency record (without transcripts) is filed, a central staff attorney reviews the record, docketing statement, and applicable law, then prepares a memorandum recommending a calendar assignment. A single judge reads the memorandum and either adopts the recommended calendar assignment or makes a different calendar assignment.

Cases placed on the summary calendar include those with issues governed by settled New Mexico law or that otherwise have obvious outcomes. They are decided without transcripts, a 20-day briefing time and no oral argument. Cases that are not assigned to the summary calendar are assigned to either the legal calendar or the general calendar. Legal calendar cases are also decided with no transcripts, but have 30-day full briefing. General calendar cases have transcripts and 45 day full briefing time. Oral argument in non-summary calendar cases is by the granting of an attorney’s request for oral argument.

During the calendaring process, a central staff attorney reviews the file for jurisdictional defects (such as no final judgment or order, or an untimely notice of appeal), and also reviews the docketing statement, record, and applicable law. The staff attorney then prepares, for a single judge’s signature, a calendar notice or notice of proposed disposition briefly setting forth the Court’s understanding of the facts and issues, and the rationale for its proposed decision. The parties may file memoranda in response to the calendar notice within 20 days. The failure to oppose the Court’s proposed disposition constitutes acceptance of the proposed decision. The central staff attorney reviews any memoranda received in response to the calendar notice and recommends to the single calendaring judge a further notice of assignment to a non-summary calendar or to resolve the case by opinion. If an opinion is to be filed, a three-judge panel is assigned and must agree.

The New Mexico Court of Appeals resolves from 55 to 65% of its appeals on the summary calendar.

Michigan Court of Appeals

The Michigan Court of Appeals provided the following description of its use of legal staff both for traditional research and writing functions and for case screening and differentiation.

Before cases are assigned to a panel, central staff attorneys prepare research reports for most cases and draft opinions for those cases expected to be resolved by unpublished opinion. Research reports contain neutral statements of the relevant facts, summaries of the parties' arguments, legal analyses of the issues raised, and recommendations as to dispositions. The draft opinions typically include a short recitation of the relevant facts and a succinct analysis of each issue. The assigned judge will accept, revise or reject the drafts and produce final opinions, with assistance from a law clerk. Judges may request additional staff attorney assistance in limited situations to take advantage of particular areas of expertise. Law clerks draft opinions for cases that are submitted to panels without research reports

The court uses a two-step difficulty assessment process, one for assigning cases to central staff, then for achieving balance in the judges' workload. The first assessment, or day evaluation, is performed by a senior staff attorney after briefing is completed. The attorney estimates in days the amount of time each case will require for preparation of a research report based on factors such as the type of case, the length of the briefs and record, and the number and complexity of issues. Career track attorneys work on those cases expected to take 7 days or more and less experienced limited tenure attorneys work on cases of that are more routine and expected to take 4 to 6 days. Contract attorneys work primarily on termination of parental rights appeals but will also work on other routine appeals on occasion. These assessments are also used to identify appropriate cases to assign to judges on case call without research reports, which is done to advance the court's delay reduction goals.

The second assessment, focusing on difficulty, is made by a supervising staff attorney. Each case with a research report is rated on a 1 to 6-point scale usually assessing factors such as the number of issues presented, whether the issues are routine, whether publication is recommended, the experience of the authoring attorney and the length of the research report. These assessments are distinct from the day evaluation and are used to balance the workload for judges on case call. Judicial caseloads typically consist of from 19 to 23 aggregate difficulty points. Different judges may have varying numbers of cases assigned to them but a similar number of difficulty points.

Most courts that have implemented such systems indicated that they typically use central staff attorneys to screen case filings and identify appropriate cases, and most expedited review programs involve abbreviated briefing. Six examples of procedural and case differentiation programs are described below. Any of these programs can be adjusted to fit the particular needs and circumstances of other

intermediate appellate courts, and can be used for any case type or for particular subjects (civil, criminal, worker's compensation, etc.).

- **Limited Brief, Expanded Oral Argument Calendar.** Under this system, a court attorney identifies routine cases before briefing begins based primarily on the notices of

appeal and underlying trial court order. For courts that have in-house settlement or mediation programs, cases suitable for the limited brief/expanded oral argument calendar can also be selected from among those that remain unsettled after a settlement conference. The parties file briefs with a page limit substantially less than the rules would otherwise allow, and the court holds expanded oral argument (for example, instead of fifteen minutes per side, the court might allow thirty minutes per side). Participation in such programs is generally voluntary, but courts can encourage participation by committing to issue a decision within two weeks after argument.

- **Show Cause Calendar.** The show cause calendar is based on the same principle as the limited briefing, expanded oral argument calendar: full briefing is not necessary in routine appeals, and judicial resources should be allocated among cases in proportion to their complexity. Selection of cases for the show cause calendar is a two-step process. After the lower court record is filed, appellants are required to submit written statements of up to five pages summarizing the issues presented in the appeal; appellees may file similar summary statements. After reviewing the parties' summary statements, a judge holds a conference with the attorneys and parties to evaluate the complexity of the case and its appropriateness for

the show cause calendar. Cases the conference justice concludes do not warrant full briefing are set on the show cause calendar and assigned to a panel for oral argument. The parties are permitted to file supplemental statements of ten pages or less, and the cases are orally argued shortly thereafter. Show cause dispositions, which require unanimity, result in a one-page order and summary affirmance or summary reversal.

- **Summary Calendar.** The summary calendar program adopted by the New Mexico Court of Appeals is described in more detail in the break-out box on page 15, but the gist of the program is that the court identifies cases early in the process that involve straight-forward issues that can be resolved on settled law based not only on limited briefing, but also on a limited record. This program recognizes that the preparation and filing of the trial court record often causes significant delays, and cases identified for participation in the program are those that can be resolved without transcripts. For those cases, the court submits written proposed dispositions to the parties who are given an opportunity to respond. If the panel to which a summary calendar cases assigned disagrees with the response or if the parties agree that the proposed disposition is appropriate, the court issues a memorandum opinion consistent with the proposed disposition without briefing or oral argument.

- **No-Argument Calendar.** The examples of procedural differentiation programs described above rely on systems of tracking cases early in the appellate process. A more common form of procedural differentiation, used to some degree by most state intermediate appellate courts, is to decide a portion of their appeals without oral argument. The intended and observed effect of “no argument calendars” is to reduce the time judges spend on non-argued appeals. A common practice is for central staff attorneys to prepare memoranda or draft opinions in cases that are not orally argued, and for chambers staff to prepare draft opinions in orally argued cases. While directing cases to a non-orals calendar can reduce the time from close of briefing to issuance of an opinion, it does not reduce the time between the date the notice of appeal is filed and the date briefing is completed.
- **Sentencing Calendar.** For many intermediate appellate courts, although criminal cases represent a majority of the court’s filings and can contribute to the accumulation of significant backlogs, the majority of criminal cases are relatively straight-forward and can be resolved on settled law. Accordingly, several of the case differentiation systems respondent courts described involved primarily criminal cases. Among the programs described included one that focuses

on cases in which the only issues raised are challenges to the sentence imposed, because the legal issues are settled, and questions regarding the application of law to case-specific facts can be resolved based on a review of a limited record – typically just the judgment of conviction, pre-sentence investigation report, and sentencing hearing transcript – that can be prepared on an expedited basis.

Under one example of a sentencing calendar program, cases are placed on an orals calendar dedicated solely to sentencing appeals, the court holds abbreviated arguments (for example, instead of fifteen minutes per side, the court might allow only ten minutes per side), and decisions are announced in an order, not an opinion. Like the other expedited calendar programs described above, sentencing calendars enable courts to resolve a portion of their criminal caseloads more expeditiously and allocate judicial resources among cases in proportion to their complexity. Moreover, by concentrating criminal sentencing appeals on a separate calendar, courts can improve the quality of their decision-making in those appeals by achieving greater consistency in the resolution of similar issues.

- **Limited Briefing, No-Argument Criminal Per Curiam Calendar.** This system is designed to identify criminal cases that can be resolved based on the record and the

appellant's opening brief, with no response brief, thereby eliminating or reducing the sometimes significant delay in filing responsive briefs. One court's system is structured as follows. A central staff attorney with experience in criminal law reviews every opening brief and record filed in criminal cases to identify cases that may be appropriate for summary disposition without an answer brief. The types of cases selected for this program are typically sentence appeals and appeals of trial court orders denying post-conviction motions that are governed by settled law or are procedurally barred (time-barred or successive). The staff attorney prepares a summary draft opinion, usually within one or two weeks after the opening brief is filed, and the cases are then assigned to the per curiam division, which meets weekly. Membership on the panel rotates regularly, and the judges who sit on the per curiam division also sit on a "regular" division. If the panel agrees with the proposed disposition, it issues an opinion without holding oral argument, usually within two weeks of the meeting. If the division concludes that an answer brief is necessary or that the case is not appropriate for summary per curiam disposition, the court orders that a response brief be filed and assigns the case a regular division.

By resolving identified cases without answer briefs, courts can reduce backlogs, redirect judicial

resources to more complex cases, and, by reducing the number of briefs states Attorneys General are required to file, allow them to likewise reduce their backlogs and redirect their resources to more complex cases. Courts can also accomplish those dual goals by having a staff attorney review all criminal opening briefs to determine which issues, if any, merit a response brief and which can be resolved based only on the opening brief and record and ordering that the answer brief address only those issues identified by the court as meriting a response.

These are just a few examples of case differentiation systems used in intermediate appellate court which acknowledge that judicial resources should be allocated among cases in proportion to their complexity: the most difficult cases consume a disproportionately large amount of attorney and judicial time, while the least difficult cases consume a disproportionately small percentage.

C. Technological Advancements

Technological advancements have been a significant factor in allowing many courts to maintain high clearance rates, avoid backlogs, and issue opinions on a timely basis in most appeals. Although obtaining the equipment or programs necessary to accomplish technological improvements in court systems always presents a budget challenge, many courts

have found that the short-term investment is cost effective in the long-term because it enables them to streamline operations and save money in other areas, including personnel, copying and mailing expenses.

The technological advancement mentioned most frequently by respondent courts is the adoption of electronic filing systems allowing lower courts to e-file or provide digital versions of the record, and that require parties to e-file briefs, motions, and other case related documents.¹³ Several courts indicated that they are in the planning stage and have not yet actually implemented e-filing systems, but have begun to require parties to file digitized copies (either on disk or through an email delivery system) of their briefs and pleadings along with the paper originals. Requiring digital filings – whether through an e-filing system or by requiring simultaneous filing of paper and digital documents – reduces the number of paper documents that must be handled and docketed by clerk’s office staff, allows legal staff and judges to access records, briefs, and other pleadings remotely, and gives them the option of printing those materials or reviewing them electronically.

Although the implementation of e-filing systems is costly and requires extensive up-front training of court personnel, courts that have made the investment report that the initial expense is well spent in the long-term because of the significant efficiencies and ongoing cost

¹³ Courts with e-filing systems typically allow pro se parties to continue to file their pleadings and briefs on paper. Court personnel then scan the documents and store the electronic version with e-filed materials.

savings achieved through e-filing systems. Moreover, some courts charge a filing fee for each document in addition to the initial case filing fee to offset the cost of the e-filing system.

Courts have adopted other technological advancements, both with respect to interactions with litigants and the public, and with respect to internal operation systems. Examples of technological advancements that respondent courts (or state judicial branches) reported adopting to improve filing systems and other interactions with litigants and the public include:

- Eliminating court reporters statewide and simultaneously implementing an automated transcript management system, which significantly reduces the traditionally significant delay between the filing of the notice of appeal and the filing of the record;
- Linking e-filed or digital versions of documents in the court’s case management system so they are directly accessible by court staff and judges;
- Conducting all written correspondence with litigants, attorneys, and lower court personnel electronically;
- Issuing orders and opinions electronically;
- Posting opinions and dispositive orders online;

- Developing and posting self-help forms that help litigants (particularly pro se parties) prepare pleadings that are clear and comply with applicable rules; and
- Improving and updating court websites to enhance litigants' access to public court records and provide up-to-date information to the public (thus reducing telephone calls requesting information from court staff) about court rules, internal court procedures, and other court operations.

Courts also reported adopting technological advancement designed to streamline internal operations, minimize administrative burdens on judges and staff, maximize the speed and portability of digital text, and reduce the costs associated with document-driven systems (such as copying and mailing expenses) including:

- Storing draft opinions and other court documents in shared databases;
- Circulating draft opinions electronically;
- Commenting on and editing opinions electronically; and
- Conferencing and voting electronically in cases in which in-person or extensive discussions are unnecessary.

D. Imposition of Internal Case Processing Deadlines

For many courts, budget limitations and staffing reductions have caused sometimes significant backlogs and that can prevent courts from achieving the goal of ensuring the timely resolution of all appeals. Some jurisdictions have taken various measures to improve the management of pending cases in their courts by establishing aspirational timelines and benchmarks for the preparation and issuance of opinions, including:

- Requiring judges to circulate draft opinions within a certain number of days (often 90 days) after case assignment and requiring concurring or dissenting opinions to be circulated within a certain number of days (often 30 days) thereafter;
- Preventing judges who still have excessive outstanding writings from sitting on any new cases;
- Internally circulating reports showing the number of cases each judge has outstanding and the number of days each case has been pending since the assignment date;
- Internally circulating the number of decisions issued as well as the average number of days cases were pending between the assignment date and the date the opinion was announced, for each judge;
- Establishing timelines for panel members to comment on draft

opinions or requiring panel members to comment on other judges' draft opinions before circulating draft opinions of their own for comment by the other panel members; and

- Requiring panel members to meet with the Chief Judge to re-conference and discuss the status of cases that have been pending for more than ninety days.

5. Improved Coordination with Legislatures and State Court Administrators

A number of respondent courts expressed concern that their state legislatures view the judicial branch as a department or agency, rather than a separate co-equal branch of government, and as a result, courts have historically not been fully and adequately funded. Others commented that their legislatures continue to pass laws that increase the court's workload without providing funding. These concerns, combined with the ongoing effects of the recession and increasing attention to the details of appropriated budgets and court operations, emphasize the importance of ensuring that legislatures understand the budgetary needs of intermediate appellate courts and the effect on courts and the public of further budget reductions.

To that end, courts reported making increased efforts to be as transparent as possible and educate legislatures about court operations at all levels to ensure that

legislators and their staffs understand the difficult structural and fiscal decisions required to enable courts to enhance the quality of justice while facing increased caseloads with fewer resources. Courts indicated that they often coordinate with their state court administrators' offices during the budget negotiation process with legislatures. The specific measures judicial systems and intermediate appellate courts have taken in this regard include:

- Hiring and working closely with knowledgeable and experienced state court administrators and budget staff;
- Providing legislatures with statistical reports of the court's operations;
- Preparing and distributing annual reports explaining the nature and extent of the work of the court and reiterating the standards against which court performance is measured;
- Providing timely and accurate information regarding court operations throughout the budgetary process;
- Encouraging chief judges and court administrators to engage regularly in straightforward communications with key budget decision makers; and
- Assessing operations to evaluate alternatives and to develop improvements to the court's efficiency. These can be shared with legislators and others responsible for court appropriations.

For courts in states with multiple courts of appeal, the appropriation process used by the fourteen Texas Courts of Appeal might be of particular interest. Specifically, the Texas Courts of Appeal reported that they have developed a unified approach for working with the legislature to secure appropriate funding for the judicial branch as a whole, including the appellate courts. They submit appropriation requests based on the concept of "similar funding for same size courts." This unified approach has fostered solidarity among the courts of appeal, simplified the requests for appropriations, and reduced competition and acrimony between courts during the legislative budget process.

All budget requests should be based solely upon demonstrated need supported by appropriate business justification, including the use of workload assessment models and application of appropriate performance measures. The requests should focus on obtaining funding sufficient to allow the court to resolve cases in accordance with recognized time standards; have facilities that are safe, secure and accessible and which are designed, built and maintained according to adopted courthouse facilities guidelines; and have access to technologies comparable to those used in other governmental agencies and private businesses.

VI. PRINCIPLES FOR JUDICIAL ADMINISTRATION APPLIED TO THE INTERMEDIATE APPELLATE COURTS

The new budget paradigm and changing socioeconomic factors have created shifting demands on our judicial institutions, requiring courts at all levels to continually find solutions that provide quality judicial services more efficiently. To maintain public confidence in the judiciary, efforts by court leadership to address the long-term budget shortfalls and the inevitable restructuring of court services must be guided by overarching practical operational principles. In response to this need, the Conference of Chief Justices (CCJ) and the Conference of State Court Administrators (COSCA) jointly adopted 25 *Principles for Judicial Administration* in July 2012.

The *Principles for Judicial Administration* provide the context in which operational as well as budgetary and funding principles, originating from a variety of organizations such as NCSC, CCJ, and COSCA and the reengineering experiences of the judicial branches in several states, are unified. While the principles are interdependent, they are grouped into four categories:

- Governance;
- Decision-Making and Case Administration;
- Developing and Managing the Judicial Budget; and
- Providing Adequate Funding.

The first two categories are foundational principles that can enable courts to manage their resources efficiently and effectively. They are necessary pre-conditions for the second two categories that address court budgets and funding.

While the principles are focused on state judicial systems generally, they are also applicable to the functional aspects of intermediate appellate courts. They are explicitly intended to help chief judges and court administrators as they seek to address long-term budget shortfalls and the inevitable restructuring of court services. Many of the principles are directly related to the common objectives, strategies and actions taken by intermediate appellate courts to address tightening budgets and the new budget paradigm, and performance management issues previously discussed. A summary of the principles for Judicial Administration is included as an appendix to this white paper.

In Section II (C), we identified 5 shared values among the intermediate appellate courts. These shared values are:

- Adopting effective internal management and operational structures that maximize public resources;
- Implementing case management processes that promote the timely and efficient disposition of cases;
- Promoting public awareness about the judicial system and avenues for access to the courts;

- Maintaining judicial integrity by promoting transparency regarding court processes; and
- Producing high quality work product in the form of well-reasoned, clearly written decisions that respond to the issues before the court.

Many of the Principles for Judicial Administration directly connect with these shared values. The remainder of this section discusses selected judicial administration and their application to the shared values of intermediate appellate courts.

A. Governance Principles

Principle 1: Effective court governance requires a well-defined governance structure for policy formulation and administration for the entire court system.

Principle 2: Judicial leaders should be selected based on competency.

Principle 3: Judicial leaders should focus attention on policy level issues while clearly delegating administrative duties to court administrators.

Principle 4: Court leadership, whether state or local, should exercise management control over all resources that support judicial services within their jurisdiction.

Related Shared Value:

- Adopting effective internal management and operational structures that maximize public resources

The shared value of adopting effective internal management and operational structures that maximize public resources speaks directly to the governance of the IAC in concert with Principles 1 through 4. Effective governance of an IAC requires a well-defined structure for formulating policy as well as administering the day-to-day operations of the court. Court leadership should possess a high level of administrative competence and demonstrate a commitment to the mission and values of the judiciary and the court's responsibilities to its justice system partners and the general public.

In an effective governance model, the chief judge provides leadership for the court, directs its administration, and serves as the principal intermediary between the court and the judicial system of which it is a part, the other branches of government, the bar, and the public. Effective leaders in all organizations, whether private or public, should focus their attention on policy level issues concerning the court's internal operations and external matters affecting the court, while clearly delegating the administrative duties to staff.

B. Decision-Making and Case Administration Principles

Principle 9: Court leadership should make available, within the court system or by referral, alternative dispositional approaches, including:

- a. The adversarial process.
- b. A problem-solving, treatment approach.
- c. Mediation, arbitration or similar resolution alternative that allows the

disputants to maintain greater control over the process.

- d. Referral to an appropriate administrative body for determination.

Principle 10: Court leadership should exercise control over the legal process.

Principle 11: Court procedures should be simple, clear, streamlined and uniform to facilitate expeditious processing of cases with the lowest possible cost.

Principle 12: Judicial officers should give individual attention to each case that comes before them.

Principle 13: The attention judicial officers give to each case should be appropriate to the needs of that case.

Principle 14: Decisions of the court should demonstrate procedural fairness.

Principle 15: The court system should be transparent and accountable through the use of performance measures and evaluation at all levels of the organization.

Related Shared Values:

- Implementing case management processes that promote the timely and efficient disposition of cases
- Maintaining judicial integrity by promoting transparency regarding court processes
- Producing high quality work product in the form of well-reasoned, clearly written decisions that respond to the issues before the court

The primary function of intermediate appellate courts is to review appealed decisions of lower tribunals, but they also have responsibility -- subordinate to the higher court -- for announcing new rules of law, expanding or modifying existing legal principles, and resolving conflicts in authority. All decision-making and case administration procedures should support those functions while also advancing these principles and shared values.

Intermediate appellate courts usually sit in panels of three judges when hearing and deciding cases. In accordance with Principle 14, membership on the panels should change periodically, and panel assignments should be made randomly, such that each judge sits with every other judge as often as practicable. To ensure objectivity and fairness, cases should be assigned to panels in a random process after judges with a disqualifying conflict of interest, as defined by the state's rules of judicial conduct, have been eliminated from the list of potential panel members. The random assignment of cases to panels does not preclude the differentiation of cases according to their urgency, complexity, common subject matter, common parties, and other relevant criteria. Indeed, cases involving the same parties and/or related lower court proceedings should be assigned to the same panel whenever possible. Differentiated case management programs, summary calendars, alternative dispute resolution services such as mediation, and other case administration procedures that allocate judicial resources among cases according to their relative urgency and complexity can be greatly beneficial to their expeditious

resolution. These programs and procedures are addressed and discussed in Principles 9 through 13. However, as stated in Principle 12, the panel assigned to determine the merits of an appeal must ultimately make a collective and deliberative decision in each case, including cases identified as appropriate for summary disposition. This helps to avoid the appearance of cursory consideration, which can undermine public confidence in the integrity of the judiciary.

When reviewing the merits of a lower court decision, IACs determine whether that court correctly applied and interpreted the law, conducted the proceeding fairly and deliberately to avoid substantial prejudice to the parties, and made its decision based on factual findings that are reasonably supported by the evidence. Appellate courts should not consider an issue that was not raised below unless it relates to the court's jurisdiction or must be addressed to prevent manifest injustice.

The parties to an appeal have the opportunity to request oral argument on the merits of the case, and the court usually has the authority to order oral argument when it deems necessary, even if the parties do not request it. Some IACs also have authority to deny a request for oral argument if the panel concludes that it would not assist the court in its deliberation of the case. Rules are usually in place allowing each side a specific length of time for oral argument. The panel can adjust the allotted time commensurate with the relative difficulty of the questions presented for review. Principles 10, 11 and 13 are reflected in these practices.

The judges assigned to decide a case should confer reasonably soon after argument or submission on the briefs. Although opinions may be issued by one designated author judge, all panel members should participate equally in the consideration of the case and the determination of the appropriate outcome. Responsibility for authoring opinions should be assigned among the judges by the presiding judge on the panel pursuant to a rotational system that can be adjusted to balance the difficulty of overall writing assignments and equitable workloads.

IACs should ordinarily provide a reasoned explanation of the court's dispositional decision, though a decision can be issued in a variety of forms and lengths, including orders, memorandum opinions, and published opinions. All parties to an appeal should be provided with a copy of the court's decision. Courts that sit in more than one panel should strive for decisional consistency, though the ultimate responsibility for consistency among panels rests with the state's higher court.

Even when explicit time standards for the resolution of cases do not exist, IACs should adopt aspirational internal time frames for the disposition of cases.¹⁴ To ensure transparency and accountability, these established time frames should be openly available and related statistics

¹⁴ In order to efficiently measure actual court performance relative to such time frames, the court must necessarily utilize a case management system that includes all appropriate data relative to the filing and disposition of cases, as well as the achievement of various milestones, for the various case types.

published on a regular and timely basis. Annual reports should include the extent of compliance with the court's established time frames for case resolution. Principle 15 supports these types of efforts to ensure transparency regarding overall court performance and accountability.

VII. CONCLUSION

Appellate courts serve a dual role in state judicial systems: 1) reviewing individual decisions of lower tribunals for error and, 2) interpreting and developing the law for general application in future cases filed in all levels of the legal system. The former is traditionally the primary role of intermediate appellate courts, while the latter is the primary role of courts of last resort. But due to the rising number of intermediate appellate court decisions without a corresponding increase in the capacity of the courts of last resort to review all cases in which an IAC has announced a new rule or expanded on existing law, IACs have become the court of last resort for the vast majority of litigants. While a large percentage of IAC decisions involve error correction, a large number also address issues of first impression. Although data specifically addressing this evolution in the role of IACs are not currently available, it is generally understood that most IAC decisions – estimated at over 90% in many states – do not undergo further review. As a result, many of those decisions no longer affect only the parties to the case in which the opinion was rendered but instead may establish precedent that develops and

clarifies the law on important issues of broader impact.

IACs serve these dual roles in the context of a societal trend toward relying on the judiciary to resolve social and economic controversies, as reflected by increased legislation and governmental regulations at both the federal and state levels that create and expand upon legal rights. While federal courts also serve an important function, state courts are more frequently the courts in which issues that affect individuals and their local communities are resolved, including criminal, domestic relations, child welfare, education, property rights, ballot initiatives, unemployment, and disability matters. IACs play a vital role in most states' judicial systems. The failure of IACs to remain current in resolving their caseloads and rendering effective, well-reasoned decisions, would likely have a negative effect on the ability of both trial courts and courts of last resort to perform their respective functions adequately. The pressure on IACs to resolve appeals expeditiously despite budgetary limitations and resultant staffing reductions is exacerbated by the growing trend in both state and federal legislation to require expedited handling of certain categories of cases, thus further delaying resolution of non-expedited appeals. Beyond effects on the judiciary, individuals, commercial enterprises and governmental agencies would likely also be negatively impacted. Thus, IACs need to ensure that the public and state legislatures understand the work of the court, efforts of the court to improve its organizational performance, and the effects of adding unfunded mandates and statutorily expedited case types. In

addition, because the vast majority of an IAC's budget is for personnel expenses, opportunities are limited for budget reduction without corresponding impacts to court performance.

But even if legislatures fully understand the effect of budget cuts on courts and the administration of justice, courts will not be immune from the realities of the recent fiscal crisis and the new budget paradigm. They must strive to work more efficiently and effectively with shrinking resources. IACs should be mindful that they are part of a bigger enterprise of state government and of their role within the judicial system. Courts should thus re-examine their organizational structures and operational practices with an eye toward improving efficiencies while continuing to produce justice that resolves individual cases promptly, provides clear guidance to lower court judges, and fosters the public's ongoing confidence in the judiciary as a whole. The *Principles for Judicial Administration* provide a framework for IACs adapting to change.

Public confidence in the judiciary depends not only on the timely resolution of individual cases and the quality of opinions, but also on public perceptions regarding the internal workings of courts, the establishment and fulfillment of performance objectives, their adherence to broadly accepted court principles, and the selection and retention of qualified and capable judges. Transparency and accountability are thus critical to a well respected judiciary and can foster an environment in which the public and other branches of government understand the judiciary's role, are more likely to support

adequate funding, and are less likely to interfere with court governance. Courts should promote a culture of transparency and accountability by making information readily available to the public regarding access to the courts, internal court operations, achievement of performance objectives, and how courts are using public resources.

This white paper is intended to stimulate discussion and the sharing of ideas among intermediate appellate courts regarding the various ways in which they have adapted to budgetary limitations and to encourage discussion among chief judges and court administrators regarding the unique approaches they have adopted to solve common problems. It is presented as one in a series of analytical projects that will examine various aspects of intermediate appellate court operations and management issues. Future studies may include topics such as technological applications and solutions; case differentiation systems; the establishment of performance objectives, including how they are measured and reported; and the impacts of intermediate appellate court performance on other levels of the judicial system, other branches of government, the business community, and the public.

APPENDIX

SUMMARY OF THE PRINCIPLES FOR JUDICIAL ADMINISTRATION¹⁵

Governance Principles

Principle 1: Effective court governance requires a well-defined governance structure for policy formulation and administration for the entire court system.

Principle 2: Judicial leaders should be selected based on competency.

Principle 3: Judicial leaders should focus attention on policy level issues while clearly delegating administrative duties to court administrators.

Principle 4: Court leadership, whether state or local, should exercise management control over all resources that support judicial services within their jurisdiction.

Principle 5: The court system should be organized to minimize the complexities and redundancies in court structures and personnel.

Principle 6: Court leadership should allocate resources throughout the state or local court system to provide an efficient balance of workload among judicial officers and court staff.

Principle 7: Court leadership should ensure that the court system has a highly qualified, competent and well-trained workforce.

Decision-Making and Case Administration Principles

Principle 8: Courts should accept and resolve disputes in all cases that are constitutionally or statutorily mandated.

Principle 9: Court leadership should make available, within the court system or by referral, alternative dispositional approaches. These approaches include:

- a. The adversarial process.
- b. A problem-solving, treatment approach.
- c. Mediation, arbitration or similar resolution alternative that allows the disputants to maintain greater control over the process.
- d. Referral to an appropriate administrative body for determination.

Principle 10: Court leadership should exercise control over the legal process.

Principle 11: Court procedures should be simple, clear, streamlined and uniform to facilitate expeditious processing of cases with the lowest possible costs.

Principle 12: Judicial officers should give individual attention to each case that comes before them.

¹⁵ The complete document titled *Principles for Judicial Administration* is available on the National Center for State Courts website at: <http://ncsc.contentdm.oclc.org/cgi-bin/showfile.exe?CISOROOT=/ctadmin&CISOPTR=1891>

Principle 13: The attention judicial officers give to each case should be appropriate to the needs of that case.

Principle 14: Decisions of the court should demonstrate procedural fairness.

Principle 15: The court system should be transparent and accountable through the use of performance measures and evaluation at all levels of the organization.

Court Funding Principles—Developing and Managing the Judicial Budget

Principle 16: Judicial Branch leadership should make budget requests based solely upon demonstrated need supported by appropriate business justification, including the use of workload assessment models and the application of appropriate performance measures.

Principle 17: Judicial Branch leadership should adopt performance standards with corresponding, relevant performance measures and manage their operations to achieve the desired outcomes.

Principle 18: Judicial Branch budget requests should be considered by legislative bodies as submitted by the Judicial Branch.

Principle 19: Judicial Branch leadership should have the authority to allocate resources with a minimum of legislative and executive branch controls including budgets that have a minimal number of line items.

Principle 20: Judicial Branch leadership should administer funds in accordance with sound, accepted financial management practices.

Court Funding Principles—Providing Adequate Funding

Principle 21: Courts should be funded so that cases can be resolved in accordance with recognized time standards by judicial officers and court staff functioning in accordance with adopted workload standards.

Principle 22: Responsible funding entities should ensure that courts have facilities that are safe, secure and accessible and which are designed, built and maintained according to adopted courthouse facilities guidelines.

Principle 23: The court system should be funded to provide technologies needed for the courts to operate efficiently and effectively and to provide the public services comparable to those provided by the other branches of government and private businesses.

Principle 24: Courts should be funded at a level that allows their core dispute resolution functions to be resolved by applying the appropriate dispositional alternative.

Principle 25: Court fees should not be set so high as to deny reasonable access to dispute resolution services provided by the courts. Courts should establish a method to waive or reduce fees when needed to allow access.



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