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Supreme Court Issues Annual Workload Statistics Report

Filings, Dispositions Increase in 2007-2008 Court Year

San Francisco—The California Supreme Court today released its annual workload statistics for the period from September 1, 2007 through August 31, 2008, the official court year for statistical purposes.

Overall, the number of opinions issued by the court decreased from 111 last year to 107 in 2007–2008. During the same period the number of petitions for review increased by 7.5 percent, and the number of filings in original proceedings increased by 11 percent.

The Supreme Court released the statistics following the usual interval in July and August during which the court does not regularly schedule oral argument, but continues to meet weekly to vote on petitions, and opinions continue to be filed. The court resumed oral argument on September 2, 2008, in its courtroom in San Francisco.

OPINIONS FILED

Including Death Penalty Appeals and Related Habeas Corpus Petitions

In the 2007–2008 court year, the Supreme Court filed opinions in a total of 107 cases, 4 fewer than were filed in the 2006–2007 court year. Of the court's 107 opinions, 45 involved civil cases, 29 involved noncapital criminal cases, 29 involved automatic appeals arising from judgments of death, 3 involved habeas corpus petitions relating to death penalty judgments, and 1 involved a non-habeas corpus, capital case-related writ. The 29 opinions in death penalty appeals were 8 more than the number filed in the previous year.

In addition to the opinions filed in the 2007–2008 court year, the court acted by order upon 26 petitions for writ of habeas corpus relating to

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death penalty judgments, issuing an order to show cause in 3 matters. The court dismissed 3 habeas corpus petitions as moot, and issued orders denying 20 petitions. In comparison, last year the court acted on 31 petitions for writ of habeas corpus related to capital cases, including 5 in which an order to show cause issued. When a petition for writ of habeas corpus is denied without the issuance of an order to show cause, the court does not issue an opinion and instead disposes of the matter by order. Nevertheless, even when no opinion results, the preparation of internal memoranda and the related disposition of death-penalty-related habeas corpus petitions draws heavily upon the court's resources, because the petitions in such cases frequently are very lengthy and complex and are analyzed in internal memoranda that often exceed 75 to 100 pages in length.

PETITIONS FOR REVIEW

Including Dispositions of Requests for Depublication

Court staff prepare internal memoranda concerning each petition for review and original matter, except various uncontested State Bar Court proceedings, and the justices consider these requests and the related internal memoranda at weekly conferences held throughout the year. It is common for the court to review and act upon more than 250 petitions at a weekly conference.

Total filings in the 2007–2008 court year increased to more than 10,400. Filings in original proceedings increased by approximately 15 percent to nearly 3,900, whereas filings of petitions for review increased to approximately 5,700, an increase of 8 percent. (The balance of filings consisted of State Bar-related matters.) Civil petitions for review remained static at approximately 1,400 filings; criminal petitions for review increased by more than 10 percent from approximately 3,900 to approximately 4,300. Deciding which matters are appropriate for Supreme Court review, leading to a written opinion, constitutes a significant part of the court's workload.

The Supreme Court continues to experience significant increases in the number of non-capital case habeas corpus matters. In the past 15 years the number of non-capital case original criminal habeas corpus petitions has increased by nearly 170 percent, from approximately 1,300 in 1993–1994 to nearly 3,500 in 2007–2008. Likewise, petitions for review in non-capital habeas corpus matters have grown from 125 petitions in 1993–1994 to nearly 750 petitions for review in 2007–2008, an increase of approximately 500 percent.

In the 2007–2008 court year, the court disposed of nearly 11,000 petitions for review, petitions in original proceedings, and actions arising out of State Bar court disciplinary proceedings—approximately 1,700 (or 18 percent) more matters than were disposed of in the 2006–2007 court year.

Part of the increase was attributable to the circumstance that the court had granted and held approximately 250 cases pending the resolution of two cases in which decisions were filed on July 19, 2007—*People v. Black*, 41 Cal.4th 799, and *People v. Sandoval*, 41 Cal.4th 825. Both opinions resolved sentencing issues arising under the United States Supreme Court’s decision in *Cunningham v. California* (2007) 549 U.S. ____ [127 S.Ct. 856]. Because a substantial number of cases that normally would have been disposed of in the prior court year were held awaiting these decisions, the number of dispositions for the current court year was increased when the cases were disposed of following the finality of the two sentencing cases.

Publication and Depublication Orders

The *Court Statistics Report*, issued by the Judicial Council of California, since 2001–2002 has included information concerning depublication and publication orders issued by the Supreme Court. In 2007–2008, 10 Court of Appeal opinions were ordered depublished by the Supreme Court. In the 2006–2007 court year, 17 Court of Appeal opinions were ordered depublished, compared to 18 in 2005–2006, 17 in 2004–2005, 25 in 2003–2004, and 13 in 2002–2003. In contrast, depublication orders regularly exceeded 100 per year in the late 1980’s and early 1990’s.

In 2007–2008 the Supreme Court ordered publication of 2 Court of Appeal opinions. In the 2006–2007 court year, the Supreme Court ordered 3 Court of Appeal opinions published. The number of opinions ordered published depends in large part upon the number of requests to publish received by the Supreme Court. The court rarely orders publication of a Court of Appeal opinion without such a request, but it more often may depublish without a specific request to do so.

In December 2006, the Supreme Court adopted amendments to the Rules of Court governing publication of Court of Appeal opinions (Cal. Rules of Court, Rule 8.1100). The amendments were based upon the recommendations of the Supreme Court Committee on the Publication of Court of Appeal Opinions, led by Justice Kathryn Mickle Werdegar.

The court adopted changes that (1) create a presumption that a Court of Appeal opinion should be published if it meets one or more of the criteria set forth in the rule; (2) clarify and expand the criteria for publication; (3) describe factors that should not be considered in determining whether to publish; and (4) specifically state that the rule applies to all opinions, whether reversing or affirming a lower court.

Initial statistics based upon the first year following the effective date of the amendments, April 1, 2007, suggest that the amendments have resulted in a significant increase in the publication of Court of Appeal opinions. From April 2006, to March 2007, the number of published Court of Appeal decisions was 999. In the same period during the year before,

the number was 949. For the first year after the implementation of the new rules, the number of published decisions rose to 1,151, or 15.2 percent more than the previous year. The court will continue to review the data over the coming year.

OTHER ACTIONS

To fulfill the constitutional obligation to provide adequate legal assistance on appeal to defendants in criminal cases, including those involving judgments of death, the court carefully selects and monitors counsel in causes before it. Death penalty matters are lengthy and complex, and high standards have been set and applied for the appointment of counsel both on appeal and for purposes of investigating whether a habeas corpus petition should be filed.

As in past years, the court continues to work closely with the Habeas Corpus Resource Center, the Office of State Public Defender, and the California Appellate Project to improve training and resources so as to encourage and prepare additional qualified counsel to accept appointments. Court staff meets regularly with these groups, as well as the Attorney General's office and other interested entities, in order to improve the processing of these matters.

In addition, the Supreme Court's Capital Central Staff, created six years ago to assist the court in preparing memoranda in matters arising out of capital appeals and related habeas corpus petitions, has expanded. Motions in capital matters are being handled more expeditiously and consistently, and the staff has assisted the court in processing death penalty automatic appeals and capital-related habeas corpus petitions. The court has sought additional personnel for the Capital Central Staff in view of the continuing heavy demands upon court resources arising out of these matters.

Despite its efforts, there are growing delays in processing appeals and related habeas corpus petitions arising out of a judgment of death. At the end of last year, Chief Justice Ronald M. George described the death penalty system in California as "dysfunctional." In January 2008, on behalf of the Supreme Court, he presented to the California Commission for the Fair Administration of Justice a proposal for a constitutional amendment that would permit the Supreme Court to transfer death penalty appeals, once fully briefed, to the Courts of Appeal.

Under the proposal, the Supreme Court would then grant review not only in those capital matters that meet the general criteria for a grant of review—namely presenting a novel issue of statewide importance or presenting a conflict among the courts of appeal—but also in those matters in which there appears to be a question whether the applicable legal standards were applied appropriately.

The Commission on the Fair Administration of Justice endorsed the Supreme Court's proposal in its final report, with the proviso that adequate funding for the system must be provided. This comported with the assertions made for several years by the Chief Justice and by others in the court system to the other branches of government that sufficient funding for all parts of the system—prosecution, defense, and the courts—is required for the death penalty system to function.

Last year, the Supreme Court announced the creation of an official committee of judges to provide advisory ethics opinions to judges seeking information to ensure that they conduct themselves in accord with the highest ethical standards. The court appointed an implementation committee to develop recommendations for procedures and policies for the group that will offer judicial ethics opinions. The committee presented its report and recommendations to the court, and at the court's direction, recently released them to circulate for public comment.

BACKGROUND INFORMATION

Beginning in 1996, the California Supreme Court has issued statistics utilizing a reporting period of September 1 through August 31. The court designated this period as the official court year for statistical purposes after determining that this period best corresponds with the flow of the court's opinion production and facilitates consistency in monitoring the pace of the court's work.

Although the court does not schedule oral argument in July and August, it continues to hold weekly conferences during those months on all other matters, including petitions seeking review. During those months, the court concentrates on completing and filing opinions in cases that have been argued through the June oral argument calendar and continues the process of preparing calendar memoranda for future oral argument sessions.

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