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California Supreme Court Releases Annual Workload Statistics

Court Increases Opinion Production

San Francisco — The California Supreme Court today released its annual workload statistics for the period from September 1, 2006 through August 31, 2007, the official court year for statistical purposes.

Overall, the number of opinions issued by the court increased from 103 last year to 111 in 2006-2007. During the same period the number of petitions for review remained essentially stable, and the number of filings in original proceedings increased substantially.

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 opinions continue to be filed. The court resumed oral argument on September 5, 2007, in its courtroom in San Francisco.

OPINIONS FILED

Including Death Penalty Appeals and Related Habeas Corpus Petitions

In the 2006–2007 court year, the Supreme Court filed opinions in a total of 111 cases, 8 more than were filed in the 2005–2006 court year. Of the court’s 111 opinions, 55 involved civil cases, 33 involved noncapital criminal cases, 21 involved automatic appeals arising from judgments of death, and 2 involved habeas corpus petitions relating to death penalty judgments. The 21 opinions in death penalty appeals equaled the number filed in the previous year.

In addition to the opinions filed in the 2006–2007 court year, the court acted by order upon 31 petitions for writ of habeas corpus relating to death penalty judgments, issuing an order to show cause in 3 matters. The court also issued 2 orders to show cause in proceedings under *Atkins v.*

(over)

Virginia (2002) 536 U.S. 304, a decision in which the United States Supreme Court clarified that the federal Constitution bars the execution of mentally retarded defendants. The court dismissed 1 habeas corpus petition as moot, ordered 1 withdrawn, and issued orders denying 24 petitions. In comparison, last year the court acted on 33 petitions for writ of habeas related to capital cases, including 1 in which an order to show cause issued.

The 3 non-*Atkins* matters in which the court issued an order to show cause likely will result in opinions by the court in the future, usually after an evidentiary hearing has been held before a court-appointed referee and the court has considered the referee's report and additional briefs filed by the parties, and has heard oral argument on specified claims.

When a petition for writ of habeas corpus is denied, the court does not issue an opinion and instead disposes of the matter by order. Nevertheless, even when no opinion results, the preparation and 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 may exceed 75 to 100 pages in length.

PETITIONS FOR REVIEW

Including Dispositions of Requests for Depublication

Total filings in the 2006-2007 court year increased to more than 9,600. Filings in original proceedings increased by approximately 16 percent to more than 3,400, whereas filings of petitions for review remained static at approximately 5,300. (The balance of filings consisted of State Bar-related matters.) Civil petitions for review, consistent with a ten year trend, dropped slightly from approximately 1,500 to approximately 1,400; criminal petitions for review increased slightly from approximately 3,800 to approximately 3,900. Deciding which matters are appropriate for Supreme Court review, leading to a written opinion, constitutes a significant part of the court's workload.

In the 2006-2007 court year, the court disposed of nearly 9,300 petitions for review, petitions in original proceedings, and actions arising out of State Bar court disciplinary proceedings, approximately 900 fewer matters than were disposed of in the 2005-2006 court year. In part, this reduction is a function of two specific factors.

First, the number of dispositions was affected by the court's action in granting and holding hundreds of cases for 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]. These opinions affected a large number of cases, resulting in the court's granting and holding petitions that typically would have been disposed of within 90 days after the filing of the petition for

review. It is anticipated that the resolution of these grant-and-hold matters, expected over the next several weeks, will result in a corresponding inflation of next year's disposition statistics.

Second, last year's disposition number was temporarily amplified by a large number of State Bar resignations submitted following an increase in the fee for inactive members and changes to the "scaling provisions" permitting active members to pay a lower fee. This in turn was reflected in a 25 percent decrease in the number of resignations in the most recent year, contributing to an overall 12 percent decline in the rate of dispositions in State Bar Court matters, to 850.

The court staff prepares 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.

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 the 2006–2007 court year, 17 Court of Appeal opinions were ordered depublished by the Supreme Court, 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 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 several months 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. 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 on appeal, as well as 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 in these matters. 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 five 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 intends to seek additional personnel for the Capital Central Staff in view of the continuing heavy demands upon court resources arising out of these matters.

In December 2006, the Supreme Court selected a group of approximately 40 judges and justices to serve as special masters in Commission on Judicial Performance disciplinary proceedings. Following the commencement of formal proceedings, the Commission may request that the court appoint a panel of special masters to hold a hearing and make a report to the Commission. A well-received two-day special training session for the new special masters was provided through the Center for Judicial Education and Research of the Administrative Office of the Courts.

At the Supreme Court's direction, the Supreme Court's Advisory Committee on Judicial Ethics circulated for comment a variety of proposed amendments to the Code of Judicial Ethics. The Committee has considered the comments and will be making its report to the Supreme Court in the near future. In addition, the committee began initial steps to review the revised Model Code of Judicial Conduct issued by the American Bar Association in order to determine whether it suggests any changes that should be made in California's Code of Judicial Ethics.

The Supreme Court also announced plans to create an official committee of judges, with the possible participation of one or two attorneys, to provide ethics opinions to judges seeking information to ensure that they conduct themselves in accord with the highest ethical standards. The court took this action in response to a request from the Commission on Judicial Performance, explaining that 40 other states provide such ethics opinions for their judiciary through the use of an official committee, typically appointed by the state supreme court. The court will appoint a committee to develop recommendations for procedures and policies for the group that will offer judicial ethics opinions. Once those procedures and policies have been established, the court will appoint the members of the new body, which will be assisted by attorney staff.

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.

The court carefully monitors its internal practices to enhance its ability to process the matters before it fairly, efficiently, and effectively. When necessary, because of pending external deadlines or other good cause, the court may expedite the handling of particular civil and criminal matters in which review has been granted. Death penalty appeals — which under the Constitution automatically are filed directly in the Supreme Court without intervening review in the Court of Appeal — as well as corresponding habeas corpus proceedings, present distinctive workload problems for the court.

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