

**Final Report to the Joint Legislative Budget Committee on the
Effectiveness of the Temporary Law Clerks Program in
Reducing the Appellate Workload Backlog**

May 31, 2002

Executive Summary

- For the past three years, the appellate courts with the most severe caseload backlogs [Fourth District, Divisions Two and Three, and the Fifth District], have been assisted by 21 additional research attorneys and seven additional judicial secretaries who work exclusively on the pending cases that comprise the backlog. The funding for these additional positions was originally approved by the Legislature for a two-year period in 1998, and again in 2000.
- This infusion of resources has resulted in significant improvements in nearly all areas of caseload management:
 - **Disposition** of cases increased in all three courts, ranging from nine to 32 percent;
 - The number of **written opinions** increased in two of the three courts (nine and 54 percent);
 - **Median case-processing time** for criminal and juvenile cases decreased in all three courts, (ranging from a five to 58 percent decrease) and, for civil cases, in one of the three courts (nine percent); and
 - The number of **pending cases** (backlog) decreased in all three courts, ranging from 21 to 35 percent.
- In addition, all the pilot courts showed more favorable results than the non-pilot courts in at least three areas: **Dispositions, median case-processing time in criminal cases, and pending cases**. Some pilot courts exceeded the non-pilot courts in other areas as well.
- Fourth District, Division Three had by far the most severe backlog of any of the courts at the start of the program, with more than twice the number of pending cases per justice as the other two pilot courts. In the third year of the program, Fourth District, Division Three's backlog decreased by 26 percent. This significant decrease exceeds the 20 percent decrease seen in the non-pilot courts and keeps pace with the other two pilot courts.

- For most of the first two years of the pilot program, two of the six judicial positions in Division Three were vacant, and other significant staff shortages occurred as well. During this period, the backlog increased by only six percent; it is highly likely that, without the third research attorney positions, the backlog in Division Three would have increased by 20 percent or more.

- Since June 2000, four of the six research attorney positions in Division Two of the Fourth District have been reallocated to Divisions One and Three to address the most severe backlog in the district. In addition, at least 300 cases were transferred from Division Three to Divisions One and Two, to further address backlog. This shift in resources to handle the most pressing needs of the courts of appeal is a prime example of how these positions can be utilized most effectively across the state.

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History of the Program. In FY 98-99, the Legislature approved funding for a two-year pilot program to allow the hiring of a third research attorney for each justice in the three court locations that had the most severe caseload backlogs. These courts were the Fourth Appellate District, Divisions Two (Riverside) and Three (Santa Ana), and the Fifth Appellate District (Fresno). The original funding supported the equivalent of 21.0 FTE Research Attorney, Range B, positions for the first year and 21.0 Senior Attorney I positions for the following year, to allow for promotions for successful attorneys.

In FY 99-00, the Legislature approved funding for one year for 7.0 FTE Judicial Secretary I positions, to support the attorney positions at a ratio of one secretary for every three attorneys.

Beginning in FY 00-01, these 28.0 FTE positions were funded for an additional two years. The Legislature asked the Judicial Council to report to the Joint Legislative Budget Committee and the Legislature's fiscal committees in December 2000 and again by December 2001 on "the effectiveness of the Temporary Law Clerks Program in reducing the workload backlog in the courts of appeal." This is the second of those two reports.

Justification for Pilot Program. There are currently 105 court of appeal justice positions in California. Ninety-three justice positions were funded with two research attorneys assigned to chambers, and 12 (those positions created January 1, 2001) were funded with three research attorneys. This creates a disparity of resources among justices.

Research attorneys prepare memoranda on those appeals that have been assigned to a specific chamber. A typical memoranda presents: (1) a statement of the case (summary of proceedings, result in the trial court, and the posture on appeal); (2) a statement of the relevant facts; (3) a list of the issues on appeal; (4) an analysis of each issue, with authorities, the position of each party, and the attorney's conclusions on the merits; and (5) in most instances, a recommendation as to the disposition of the appeal.

In 1995, the Judicial Council adopted the *Appellate Court Resources Analysis* setting forth workload standards for justices and attorneys, which has supported the addition of central staff attorneys to address the growth in appellate filings. However, the number of pending, fully briefed appeals was not factored into the workload standards because it was felt that bringing authorized staffing up to

required levels would provide enough flexibility to allow courts to address their backlog.

Unfortunately, this has not proved possible. As noted in the *Appellate Court Resources Analysis*, the cases comprising the backlog are regular, chambers cases. They are not the *Wende* (no-issue) cases or the routine disposition appeals normally handled by central staff attorneys. Additional chambers' staffing is still required to reduce the backlog and the delay in the disposition of cases in the courts of appeal.

Allocation of Attorneys to Pilot Courts. The justification for assigning the positions to the courts noted above centered on the backlog of cases in those courts. The Fourth District, Division Three had 182 pending cases per justice, Division Two had 88 pending cases per justice, and the Fifth District also had 88 pending cases per justice. These figures far exceeded the 1996-97 statewide average of 67 cases per justice, and represented a critical and growing delay in the disposition of appellate proceedings.

Decrease in Backlog. Experience during the three-plus years of the pilot program has shown that the goal of decreasing backlog in the courts is being achieved.

Each of the selected courts had a distinctly different experience with the pilot program. For this reason, each court should be examined separately in order to consider the extenuating factors that varied from court to court. Generally, though, it appears that the longer the program is in effect, the more productive these courts become. This may be attributed to the fact that the courts that have become more efficient and adept over time at training the extra research attorneys, and the attorneys, in turn, become highly productive much faster than in the beginning of the program.

Implementation of Pilot Program. A survey was sent to the three participating appellate courts in September 1999 to collect anecdotal information about the initial phase of the pilot program.

Recruitment/Training/Facilities

- These research attorney positions were initially filled between early October and December 1998, with courts reporting no difficulty recruiting qualified candidates for these two-year positions. Training programs varied across courts, with all courts using a form of "in chambers" training conducted by the justices and senior attorneys.

- There were some minor facility issues with these new positions (i.e., some courts had to create additional work stations) although all the courts were able to accommodate the additional attorneys.

Responsibilities and workload

- Responsibilities of the third research attorneys were generally the same as other research attorneys, although they were typically assigned less complex cases or a lighter workload, in light of their inexperience. They handled about 50 percent criminal, 35 percent civil, and 15 percent juvenile cases, and in the early days of the program, they produced four or five opinions per month; research attorneys in one court also occasionally handled writs as needed (about 12 per month). Currently, the number of cases handled per month by each of the attorneys in most courts is less than five, because as they become more experienced, they handle more complex, but fewer, cases per month.

It is also worth mentioning that at least during the initial two-year program, it took between six and 12 months (depending on the prior experience of each attorney) for each research attorney to be performing at the journey level. Generally, though, it appears that the longer the program is in effect, the more productive these attorneys become in a shorter period of time. This may be attributed to the fact that the courts have become more efficient and adept over time at training these extra research attorneys by institutionalizing a training program, and the attorneys, in turn, become highly productive much faster than in the beginning of the program. It should be noted that because of the fixed ending date of the positions, many of the attorneys sought and found other employment and left the court before the expiration of their appointments. Because of the omission of permanent funding from the Governor's Budget for FY 02-03, we can expect that many of the attorneys currently holding these positions will seek other more stable employment in the coming months.

- In general, those attorneys who successfully complete a year of service are promoted to the next level (Court of Appeal Attorney C).
- Most of the courts experienced some attrition, because although a budget change proposal had been submitted to the Legislature during the 99-00 budget year to extend the program for another two years and was eventually approved, the uncertainty forced many of the attorneys to seek other employment before the end of the original term (June 30, 2000). Likewise, the courts did not hire replacement attorneys until two or three months into the 00-01 budget year.

Workload and Backlog Statistics

Changes in selected workload and backlog statistics from the 1st quarter of FY 1998-99 to the 1st quarter of FY 2001-02 were computed for courts with the third research attorney, as well as for all other appellate courts combined. Since the third research attorneys were hired and trained during the second and third quarters of FY 1998-99, first quarter data for FY 1998-99 characterizes the workload and backlog of the appellate courts before the third research attorneys joined the selected courts. First quarter data for FY 2001-02, the most current data available, reflects the appellate workload and backlog after the third research attorney positions have been in place for just over three years in the selected courts. Some changes took place after the first two years of the program (some positions were shifted among divisions to address heaviest backlog, as explained below), so it is informative to look at statistics over these two time periods.

It is also important to note that the statistics for 1st quarter FY 1998-99, as well as the March 2001 change statistics, are taken from the first Report to the Joint Legislative Budget Committee. This report was submitted to the Committee on March 8, 2001. The statistics from the 1st quarter of FY 1998-99 to 1st quarter of FY 2001-02 include the most recent information that the Administrative Office of the Courts has on the program.

Dispositions

Disposition data provides one measure of a court’s productivity in processing cases. The following table lists disposition totals from the 1st quarter of FY 1998-99 and the 1st quarter of FY 2001-02, as well as the percent change over this period.

Dispositions – Total appeals

| | FY 1998-99 1st Quarter | FY 2001-02 1st Quarter | Current Change | Mar. 01 Change |
|--------------------------------------|--|--|---------------------------|---------------------------|
| 4 th District, Division 2 | 376 | 409 | +9 % | +17% |
| 4 th District, Division 3 | 299 | 357 | +19 % | -5% |
| 5 th District | 321 | 424 | +32 % | +13% |
| Other courts | 3,503 | 3,131 | -11 % | -2% |

All of the courts with the additional research attorney produced more dispositions in 1st quarter of FY 2001-02 than in 1st quarter of FY 1998-99. Fourth District, Division Three and the Fifth District showed significant improvements in this area, a 19 percent and 32 percent increase, respectively. In contrast, statistics for

all other appellate courts throughout the state, in the aggregate, show an 11 percent decrease in dispositions over this period. This number is up from the two percent decrease seen at the end of FY 2000-01.

Division Two of the Fourth District showed only a nine percent increase in dispositions from the first quarter of FY 1998-99 until the first quarter of FY 2001-02, falling eight percent from last year. This change can largely be attributed to the reallocation of four of Division Two’s attorneys to work on Division Three’s severe backlog. In addition, some cases from Division Three were transferred to Divisions One and Two. As a result, Division Two is only operating with two of their initial six third research attorneys.

Keeping in mind this shift of resources over the past year, when we isolate the statistics for only the past 12 months, the Fourth District, Division Three showed a significant increase in dispositions (+19%), attributable to the availability of extra research attorneys to work on its backlog between 3rd quarter FY 1999-00 and 1st quarter FY 2001-02.

Written opinions

Because courts indicated that their third research attorneys were almost exclusively assigned to work on appeals after they have been fully briefed, one would expect their greatest impact on productivity to be reflected in the number of written opinions. Written opinions for appeals only (which exclude original proceedings) were selected for analysis because the third research attorneys generally were not assigned to handle writs.

Written Opinions – Total appeals

| | FY 1998-99 1st Quarter | FY 2001-02 1st Quarter | Change | Mar. 01 Change |
|--------------------------------------|--|--|---------------|---------------------------|
| 4 th District, Division 2 | 252 | 274 | +9 % | +21% |
| 4 th District, Division 3 | 184 | 165 | -10 % | -25% |
| 5 th District | 221 | 341 | +54 % | +20% |
| Other courts | 2,254 | 2,155 | -4 % | +3% |

Written opinions were also dramatically higher for two of the three courts in 1st quarter of FY 2001-02: a nine percent increase for the Fourth District, Division Two, and a surprising 54 percent increase for the Fifth District. Though the Fourth District, Division Three had a ten percent decrease in written opinions, this is a significant improvement from the 25 percent decrease seen a year ago. This

improvement can in large part be attributed to the additional attorneys that were reallocated from Division Two to work on Division Three's backlog. Aggregated statistics for all other appellate courts throughout the state show a four percent decrease in written opinions over the life of the pilot program.

Case processing

Case processing time data provides a measure of a court's efficiency in processing cases through the various events that make up the case. Because the third research attorneys were almost exclusively assigned to work on appeals after they had been fully briefed, median case processing time data was selected that indicates the time elapsed from when a case is fully briefed to the filing of an opinion. This data is broken down into the three appellate case types; civil, criminal, and juvenile.

Because of the relative inexperience of the attorneys particularly in the early stages of this project, one did not expect the additional third research attorneys to impact case processing time as significantly as they should dispositions and written opinions. In fact, one court warned that there initially might be an overall slowdown in case processing because of the inexperience of the additional research attorneys and because the permanent attorneys would now be assigned only the most complex, time-consuming cases. However, except in civil cases, the change in median case processing time over the past three years was significantly more favorable for courts with the additional research attorney as compared to all other courts.

Median case processing time (in days) – Fully briefed to filing of opinion

Civil

| | FY 1998-99 <i>1st Quarter</i> | FY 2001-02 <i>1st Quarter</i> | Change | Mar. 01 Change |
|--------------------------------------|---|---|---------------|---------------------------|
| 4 th District, Division 2 | 168 | 171 | +2 % | -24% |
| 4 th District, Division 3 | 610 | 613 | +1 % | -37% |
| 5 th District | 426 | 388 | -9 % | +7% |
| Other courts | 157 | 151 | -4 % | -5% |

Only one of the three courts in the program showed a decrease in median time to process a civil case from being fully briefed to the filing of an opinion. The Fifth District showed a decrease of nine percent in the median time to process a civil case from being fully briefed to the filing of an opinion. The Fourth District, Division Three experienced a one percent increase in median case processing time,

while the Fourth District, Division Two showed a two percent increase in case processing time. Courts outside the program experienced a four percent decrease in case processing time.

It appears that the Fourth District is now experiencing what the Fifth District experienced a year ago: the pilot program is now enabling the court to dispose of some very old cases and the addition of these cases in the pool of disposed cases is causing a temporary increase in case processing time.

It is important to note that the Fifth District showed a large decrease in case processing time since the previous report to the Legislature in March 2001. At that time, the court had seen a seven percent increase in case processing time, which was attributed to the fact that the addition of the third research attorneys has enabled the court to dispose of some very old cases. The addition of these old cases in the 1st quarter FY 00-01 disposition pool, coupled with the court's responsibility to process criminal cases before any civil matters (the Fifth District has a higher percentage of criminal cases in its caseload mix than either of the courts in the Fourth District), may have caused the seven percent increase seen last year in the median case processing time. As stated in the prior report, the Fifth District expected this to be a temporary phenomenon until the aged cases reached disposition. (Note that the length of time a case is pending does not affect the above statistics until the quarter in which the case reaches disposition.) It appears that this prediction held true, as 1st quarter 01-02 statistics attest with a nine percent decrease in median case processing time.

Median case processing time (in days) – Fully briefed to filing of opinion

Criminal

| | FY 1998-99 1st Quarter | FY 2001-02 1st Quarter | Change | Mar. 01 Change |
|--------------------------------------|--|--|---------------|---------------------------|
| 4 th District, Division 2 | 118 | 50 | -58 % | -32% |
| 4 th District, Division 3 | 349 | 239 | -32 % | -7% |
| 5 th District | 244 | 198 | -19 % | -2% |
| Other courts | 103 | 95 | -8 % | +18% |

From the 1st quarter of FY 1998-99 until the 1st quarter of FY 2001-02, all three courts with the additional research attorney decreased their criminal case processing times enormously. The Fourth District, Division Two decreased their criminal case processing time by over half (58%), while the Fourth District, Division Three and the Fifth District had significant decreases over prior years

(32% and 19%, respectively). Though all other courts also experienced a decrease in case processing time, it was significantly lower (8%) than the courts in the program.

In the Fourth District, the additional research attorneys have proven very helpful in accomplishing the disposition of these cases, and the recent reallocation of resources to Division Three cases may be the cause of the shift in median processing time in these courts.

Median case processing time (in days) – Fully briefed to filing of opinion

Juvenile

| | FY 1998-99 1st Quarter | FY 2001-02 1st Quarter | Change | Mar. 01 Change |
|--------------------------------------|--|--|---------------|---------------------------|
| 4 th District, Division 2 | 68 | 43 | -37 % | -35% |
| 4 th District, Division 3 | 140 | 133 | -5 % | -11% |
| 5 th District | 102 | 84 | -18 % | -5% |
| Other courts | 76 | 66 | -13 % | +12% |

Overall, median case processing time for juvenile cases continued to show a significant decrease in all three of the courts participating in the program. The Fourth District, Division Two decreased its median case processing time 37 percent, while the Fourth District, Division Three and the Fifth District showed a five percent and 18 percent decrease, respectively. In large part, due to the third research attorneys, these courts have not only been able to catch up with the other courts, but in most cases (Fourth District, Division Two and the Fifth District) have surpassed the non-pilot courts' case processing times.

In addition to their increased productivity, courts with the additional research attorney, in most cases, experienced some significant increases in efficiency as evidenced by the case processing time statistics presented above.

Pending caseload (Backlog)

Pending caseload provides an indirect measure of the level of backlog experienced within a court. As with written opinions and case processing data, original proceedings were excluded from analysis and only pending appeals for cases that have been fully briefed were considered. This is the area that we would expect to be most favorably affected by the third research attorneys, since this is the point at

which the cases are assigned to a chambers and the research attorney begins work on them.

Pending cases – Fully briefed, All cases

| | FY 1998-99 1st Quarter | FY 2001-02 1st Quarter | Change | Mar.01 Change |
|--------------------------------------|--|--|---------------|--------------------------|
| 4 th District, Division 2 | 297 | 236 | -21 % | -21% |
| 4 th District, Division 3 | 977 | 726 | -26 % | +6% |
| 5 th District | 1,119 | 732 | -35 % | -23% |
| Other courts | 3,831 | 3,074 | -20 % | -11% |

All courts with the additional research attorney experienced a significant decrease in pending cases over the life of the pilot program. All other appellate courts throughout the state also experienced a decrease in pending cases, although significantly less over the three years than two of the pilot courts. In addition, Fourth District, Division Three, the court with the heaviest backlog, both at the start of the program and now, has kept pace with the non-pilot courts in reducing its overall backlog.

Summary

Dispositions

- The disposition rates from 1st quarter 1998-99 to 1st quarter FY 2001-02 showed an overall increase in each pilot court.
- All of the courts in the program showed a significant increase over the average for all other courts, which had seen their dispositions decrease by 11 percent during the past three years.

Written Opinions

- Because courts indicated that their third research attorneys were almost exclusively assigned to work on appeals after they have been fully briefed, one would expect their greatest impact on productivity to be reflected in the number of written opinions.
- Written opinions were dramatically higher in 1st quarter of FY 2001-02 for two of the three courts with the additional research attorney.

- The staffing problems that occurred in the Fourth District, Division Three during the early period of the pilot program may have had a significant adverse impact on the number of written opinions generated by that court, and the court still has significantly improved over the past year.
- Between the 1st quarter of FY 1998-99 and 1st quarter of FY 2001-02, the Fourth District, Division Three showed a decrease in written opinions, although overall they have shown a marked improvement from 1st quarter FY 2000-01, when the decrease was 25 percent, to 3rd quarter FY 2000-01, when it was only 10 percent, (Aggregated statistics for all other appellate courts throughout the state show a four percent decrease in written opinions.)

Case Processing

- Case processing time data provides a measure of a court's efficiency in processing cases through the various events that make up the case.
- This data is broken down into three appellate case types; civil, criminal, and juvenile.
- Because of the relative inexperience of the attorneys, particularly in the early stages of this project, one would not expect the additional third research attorneys to impact case processing time as significantly as they would dispositions and written opinions.
- However, except in civil cases, the change in median case processing time was significantly more favorable for courts with the additional research attorney as compared to all other courts.
- The Fifth District showed a significant decrease in case processing time (9%) of civil cases since the previous report to the Legislature in March 2001.
- From the 1st quarter of FY 1998-99 until the 1st quarter of FY 2001-02, all three courts with the additional research attorney decreased their criminal case processing times substantially.
- Median case processing time for juvenile cases continued to show a decrease in all of the courts in the program.

Pending Caseload (Backlog)

- This is the area that we would expect to be most favorably affected by the third research attorneys, since this is the point at which the cases are assigned to a chambers and the research attorney begins work on them.
- All courts with the additional research attorney experienced a decrease in pending cases over the life of the pilot program.
- In addition, Fourth District, Division Three, the court with the heaviest backlog both at the start of the program and now, has not only kept pace with the non-pilot courts in reducing its overall backlog, but surpassed the numbers seen in non-pilot courts (26 percent versus 20 percent).