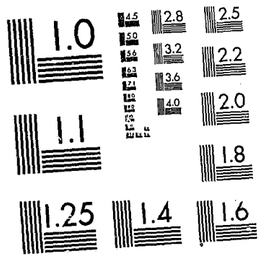
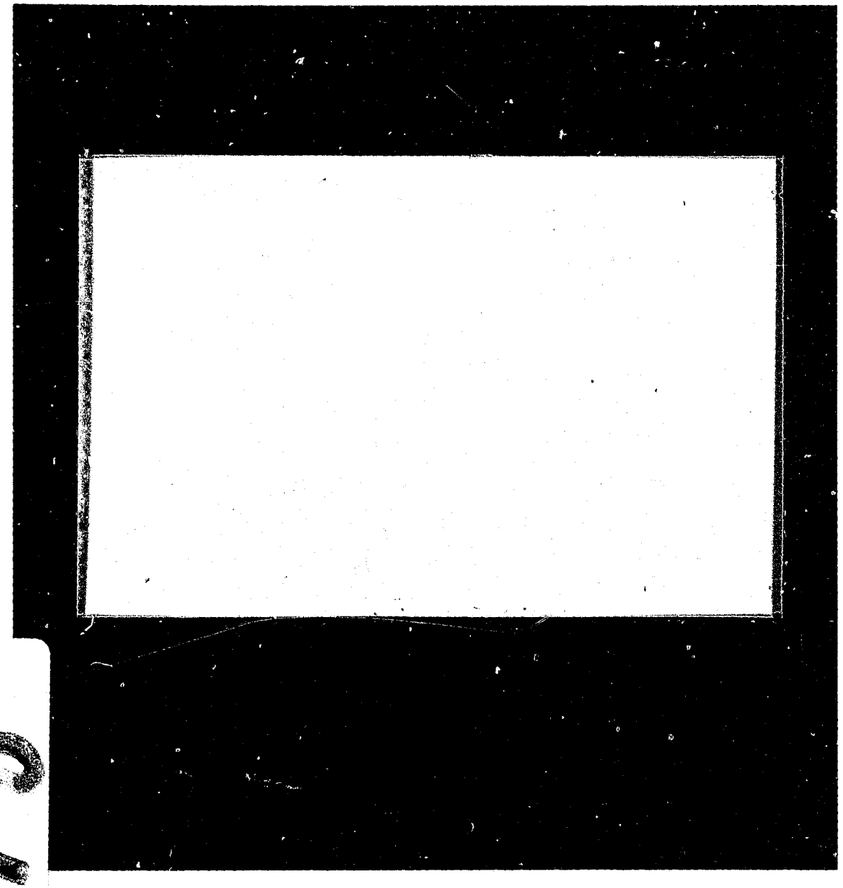


MF-1

Northeastern Regional Office



National Center for State Courts

Northeastern Regional Office

THE APPELLATE SYSTEM IN THE NORTH CAROLINA COURT OF APPEALS

Technical Assistance Report No. 3
in the Appellate Justice Improvement Project

Regional Director: Samuel D. Conti

Project Director: Michael J. Hudson

Technical Assistance Staff and Co-Authors: Michael J. Hudson
Cynthia L. Easterling

National Center for State Courts
Osgood Hill
723 Osgood St.
North Andover, Massachusetts 01845

This research was conducted under Grants No. 78-DF-AX-0021 and No. 79-DF-AX-0082, awarded to the National Center for State Courts by the Law Enforcement Assistance Administration of the U.S. Department of Justice. Additional funding was supplied by the Charles E. Culpeper Foundation. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the U.S. Department of Justice, the Charles E. Culpeper Foundation, The National Center for State Courts, or the project advisory board. The Law Enforcement Assistance Administration reserves the right to reproduce, publish, translate, or otherwise use, and to authorize others to publish and use, any or all parts of the copyrighted material contained in this publication.

National Center for State Courts
NORTHEASTERN REGIONAL OFFICE
Osgood Hill
723 Osgood Street
North Andover, Massachusetts 01845
(617) 687-0111

Edward B. McConnell
Director

Samuel D. Conti
Regional Director

December 30, 1980

Mr. Nicholas L. Demos
LEAA - Adjudication Division
Office of Crime Justice Programs
633 Indiana Avenue, N.W.
Washington, D C. 20531

Dear Mr. Demos:

Enclosed for your information is a copy of a technical assistance report prepared for the North Carolina Court of Appeals by Michael J. Hudson and Cynthia L. Easterling. This and other reports in the technical assistance series are aimed at providing a diagnosis and analysis of the individual appellate systems. It is our intention to distribute this report as a research product of the National Appellate Project. The opportunity to produce such reports is a tribute to the continuing support and confidence shown in the Center by the Law Enforcement Assistance Administration and by the Charles E. Culpeper Foundation.

If we may provide any further information on this report or its preparation, please call upon us.

Very truly yours,

Samuel Domenic Conti

SDC:bjs
Attachment

Preface

This volume is one of a series of technical assistance reports prepared as part of the National Center for State Courts' Appellate Justice Improvement Project. The National Center is grateful for the continuing support and encouragement of the Law Enforcement Assistance Administration and the Charles E. Culpeper Foundation which have made these reports possible.

THE APPELLATE SYSTEM IN THE NORTH CAROLINA COURT OF APPEALS

Table of Contents

THE APPELLATE SYSTEM IN THE NORTH CAROLINA COURT OF APPEALS

[The following material was addressed to North Carolina Court of Appeals Chief Judge Naomi E. Morris as part of the technical assistance rendered by the Appellate Justice Improvement Project in June 1980.]

At your request, we conferred with you, other members of your court, and your staff on April 16, 17 and 18, 1980. This report contains our principal observations and recommendations resulting from that trip. We are each available for a follow-up trip to confer with you and the Supreme Court after you have reviewed them.

I. The Current Situation

A. Court Organization

North Carolina's appellate courts are the Supreme Court and the Court of Appeals. The Supreme Court consists of seven justices, elected at general elections. The Chief Justice must run for and be elected to that position. The Court of Appeals is the state's only intermediate appellate court and has twelve judges, also elected at general elections. The Chief Judge is appointed by the Chief Justice of the Supreme Court from the members of the Court of Appeals. The term of office for both courts is eight years. Both courts sit in Raleigh.

The clerk for each court is appointed by that court and serves at its pleasure. Although not required by law, each clerk is an

attorney. The Court of Appeals has a central staff, divided into a prehearing section and a staff attorney section. Each judge also has one law clerk

The Supreme Court hears appeals from superior court judgments which involve sentences of death or life imprisonment, and the court may grant petitions to review decisions of the Court of Appeals. The Supreme Court also has discretionary jurisdiction to grant extraordinary writs. The Court of Appeals has initial appellate jurisdiction over (1) final judgments of the superior court; (2) final judgments of district courts in civil actions; (3) appeals from interlocutory orders which have the effect of determining the actions; (4) superior court orders from which appeals are specifically authorized by statute; and (5) judgments in juvenile proceedings. In addition, the Court of Appeals hears direct appeals from the Utilities Commission, the Industrial Commission, and orders from the Commissioner of Insurance, as well as appeals as a matter of right from the North Carolina State Bar pursuant to G.S. 84 - 28, and from the Property Tax Commission. The Court of Appeals also has discretionary jurisdiction to grant extraordinary writs.

B. Appellate Procedure

The rules of appellate procedure are promulgated by the Supreme Court. Under the rules, a notice of appeal must be filed in the trial court. No copy of the notice is sent to the appellate court. The original transcript of the testimony is not filed in the appellate court. Instead, the appellant's attorney is responsible for obtaining the transcript and then writing a narrative summary of the testimony which, after review by the appellee's attorney, is filed in the appellate court along with a transcript of selected portions of the trial court file including the pleadings. These materials, the "record",

are required to be filed with the appellate court within 150 days after the filing of the notice of appeal. Extensions are obtained up to that 150-day limit from the trial court and thereafter from the appellate court. The Court of Appeals does not open a file on an appeal until it receives the record. A motion for extension of time to file the record is placed on a separate docket.

The court reporters in each district are supervised by the superior court resident judge of that district. In general, court reporters are reimbursed directly by the attorneys.

The rules provide that the appellant has 20 days after the filing of the record ("docketing") in which to file his brief and the appellee has 20 days after that in which to file his. Appellants' reply briefs are not normally permitted. Motions for extensions of time to file briefs are granted by the appellate court. Motions to dismiss for delinquency in filing briefs are entertained by the court when filed by opposing counsel, but it is the very rare case in which the court moves to dismiss a case on its own motion (ex mero motu).

At present, there is an average waiting period of approximately four to five months after the appellee's brief is filed before the case is calendared for oral argument; after a case is calendared, the average time to oral argument is one additional month. During this period, the court may choose to deny oral argument under Rule 30 (f).

After the briefs are filed in an appeal, it is reviewed by the court's central staff. The director of the central staff screens the appeals. The central staff is organized into two groups, staff

attorneys and prehearing attorneys. Those appeals which the director selects are assigned to the staff attorneys (including the director) who prepare research memoranda and draft opinions on them. All other cases are referred to the supervisor of the prehearing attorneys, who assigns them to the attorneys for prehearing memoranda only.

All petitions filed in the court are distributed among the staff attorneys by the clerk of the court. The staff attorneys prepare research summaries on the petitions and state their recommendations for appropriate disposition of the petitions. Similarly, all motions filed in the court are sent to the director of the central staff. He is authorized by an order of the court (promulgated in July 1979) to grant certain narrowly defined motions. For all other motions, the director prepares a summary of the facts and when necessary performs legal research on the issues, and forwards these motions with his recommendations for their disposal to the Chief Judge for action.

The Court of Appeals hears oral argument eleven months of the year, for a current total of approximately 23 weeks of oral argument. Each week the court hears oral argument on some 48 cases, and takes under submission about eight more cases without oral argument. Since August 1979, cases are assigned to individual judges for opinions after oral argument, rather than before oral argument as was the previous practice. There is a rule requiring each judge to produce an opinion within a maximum of 90 days after oral argument. The rule is not rigidly adhered to, but its effect can be seen in the fact that the average time for the production of opinions is close to

45 days after oral argument. (It should be noted that very few states have rules governing this time interval, and North Carolina is a happy exception.)

Opinions are normally circulated only among the three judges on each panel. Collegiality among the judges and consistency among the opinions is maintained by obedience so far as possible to a statute which requires that each judge is to sit with each other judge on the court at least once a year. The recent expansion of the court from nine to twelve judges has made this mathematically problematic, but the goal is very nearly if not completely achieved. The judges' law clerks review the opinions prior to publication to note any potential inconsistencies among them. Rule 30 (e) provides for the issuance of unpublished opinions, which currently account for between ten and fifteen percent of the opinions issued by the court.

After an opinion is issued, there is a waiting period of 20 days before it becomes automatically final. A petition for hearing (review) by the Supreme Court must be filed within 15 days after an opinion is issued; a petition for rehearing may be filed within 40 days of issuance. Due no doubt to the vigorous rotation of judges among the panels, petitions for rehearing based upon alleged discrepancies among opinions are quite rare; most such petitions, and they are few, are based upon allegations that the court's opinion did not answer a question which was properly presented.

C. Volume, Backlog, and Productivity

The following table sets forth the filings and dispositions for

recent years.

Year	Judges	Filings of Records	Central Staff Atty's	Total Dispositions	Opinions	Opinions per Judge
1969	9*	561				
1970	9	673				
1971	9	767				
1972	9	844				
1973	9	828				
1974	9	1,100	3*			
1975	9	1,078	3			
1976	9	1,067	3	999	944	104.8
1977	9	1,078	3	846	787	87.4
1978	12*	1,174	4*	1,133	1,038	86.5
1979	12	1,206	7**	1,190	1,104	92.0

*As of July 1.
**A total of 8 attorneys were authorized as of July 1; one of them has been on maternity leave.

These figures reveal that the number of filings increased 115% during the last ten years. They also reveal two other interesting facts: the rate of increase over the last five years has been generally steady but small, which indicates that the court has some time in which to design and implement procedures to meet this increase, if it begins promptly; and the proportionate increase in the number of opinions when the three new judges were added was quite prompt. A momentary drop of average judge productivity from 87.4 opinions per year to 86.5 following the addition of three new judges, who had to be trained and acclimated to a previously nine judge court, is small; and the very next year the overall productivity rose to an average of 92 opinions per judge. This relatively rapid acclimatization is probably due to the rotation of judges on the court, which affords new judges a fast exposure to the

other judges and their work methods.

The office of the Clerk of the Court of Appeals stated that as of April 17, 1980, the number of cases docketed but not yet heard was 542. Of these, 181 cases were calendared for oral argument during the month of May. The remainder, 361 appeals, may be viewed as backlog: cases in which the attorneys have completed their tasks but which the court is unable due to the press of volume to attend to immediately. In comparison with other courts which we have observed, this is a small backlog for this point--it amounts to a two months' backlog of fully prepared cases--but it could grow, and no reliable figures are available for backlogged cases at other points in the appellate process.

(It is appropriate at this point to provide a working definition of the term, "backlog". Backlog is best understood as a subset of the category, "case inventory". Case inventory consists of all the cases currently filed before a court. If a court has no case inventory, it has no business, and not all cases in the case inventory are backlogged. For example, a case in which the notice of appeal was timely filed two days ago is not backlogged because it is not in any way delinquent. However, a case in which an extension has been requested and the extension has been granted because the court was not itself in a position to insist on prompt filing, is at least arguably a backlogged case; and one which is delinquent but which the court cannot efficiently discipline, or which is fully prepared for oral argument but which the court cannot immediately calendar, is a backlogged case.

The line of demarcation may often be blurred, but it is necessary to recognize the distinction.)

One reason that no reliable figures are available on backlog at other points in the appellate process is that the present rules do not give the appellate courts jurisdiction, and therefore management control, over appeals until the record, or a motion for an extension of time beyond the 150 day period, is filed in the appellate court. If an appellate court does not have de jure jurisdiction over a particular stage in an appeal, it will neither exercise de facto management control over it, nor be likely to have much information concerning it.

The productivity of the court is very high. The twelve judges are presently writing an average of more than 100 opinions each per year, and that average includes a Chief Judge who is heavily burdened with administrative matters. The central staff attorneys are producing work on each of the more than 1,200 cases presently filed with the Court of Appeals each year. Currently they are producing prehearing summaries in all cases, and in 15% of the cases the central staff also prepare draft opinions. In addition, the central staff research all motions and petitions filed in the court. The interviews reveal that both the judges and the central staff attorneys are working extremely hard, are working long hours, and are concerned about maintaining the quality of their work as they try to cope with the increasing volume of appeals. A brief review of the opinions, and of the summaries and draft opinions produced by the central staff, indicates that they are

of excellent quality, but the quality is threatened by increasing volume.

D. Clerk's Office

The clerk, an experienced attorney, assumed the office four years ago. At that time, he was oriented to the Court of Appeals by a senior clerk on loan from the Supreme Court. He perceives his role as being more ministerial than administrative, and devotes a good deal of effort to insuring the correctness of records and briefs. Attorneys are only infrequently contacted concerning tardiness of submissions; at the same time, office staff answer daily telephone inquiries concerning format and rules. The clerk's office also corresponds frequently with pro se litigants to determine the exact nature of their requests and to instruct them on jurisdiction and formats.

The clerk is responsible for supervising a staff of six deputy clerks and a messenger, who all have high school degrees but who vary greatly in experience. Each of the deputy clerks has been assigned a separate clerical function as well as the rotating duty of responding to telephone and counter inquiries. One senior employee acts as an unofficial assistant to the clerk by answering her colleagues' procedural questions. Another deputy clerk serves part time as the clerk's secretary. The messenger serves as court crier and transports records and correspondence within the court house.

If an appellant wishes to extend the perfection of a record in excess of 150 days from the notice of appeal, he or she must file a

motion in the Court of Appeals. These motions are received in the clerk's office but do not initiate creation of a case file nor are they ever joined with the official case papers. Requests for extensions currently are received in approximately 10% of the cases and are increasing in frequency.

The Court of Appeals takes jurisdiction when the perfected record is received from the superior court. The clerk insures that the correct fees are attached, and dockets the case, or holds the case without docket number until additional necessary fees are submitted. The appellant is then notified that his or her brief is due in 20 days. The clerk checks the docketed record for any errors, then routes it to the Supreme Court clerk's office where it is retyped, by free-lance typists, and copied in the court printshop. The filing party is charged $3.00 per retyped page.

The Court of Appeals receives 23 copies, of which staff mail two to the filing party, one to each additional party, six to regional law schools, while retaining eleven copies for court use, two for permanent files, and one for the U. S. Supreme Court if the case is certified to it. These retyping, copying, and distributing procedures apply to all records and briefs except civil in pauperis cases which are copied directly from the originals and distributed only to the judges of the panel deciding the case.

Unless granted an extension, the appellant submits his or her brief, within 20 days of case docketing, to the clerk's office while forwarding a copy to the appellee whose brief is due 20 days (plus

three "mail days") after the appellant's. Briefs may be delayed or filed without page references to the official record if the attorney has not yet received a printed record or brief. The total number of requests is increasing, and the requests are based most often on attorneys' trial conflicts.

Copies of the official printed record and the briefs are sent to the central staff at the time the case is calendared, 30 days before the hearing date. Notices are sent out for submission of any exhibits. Complete case files are presented to the court for hearing.

The clerk's office notifies attorneys and reporting services, on the first and third Tuesday of each month, as to which opinions are then made available. A mandate is sent to the trial court 20 days after the filing of the opinion if there has been no receipt of a petition for rehearing or a petition for review by the Supreme Court. The clerk's office certifies the records of cases to be reviewed and sends them to the Supreme Court.

Statistics are computed twice a year by deputy clerks who tally record books to determine the semi-annual and annual number of record filings, petitions, motions, dispositions and opinions, organized according to the jurisdiction from which the appeal originated. No statewide count of notices of appeal is made.

The clerk's office facility consists of two large adjoining rooms, a private office for the clerk, a locked storage room, and basement storage. Flat case folders are filed in cabinets which line the walls of all rooms. Bound opinions are stored in tall

bookcases and calendared files are placed in large multi-tiered shelves in the middle of one room.

II. Conclusions

A. The Judges

The judges of the North Carolina Court of Appeals are working very hard indeed. Their productivity is phenomenal. They are at present producing an average of over 100 opinions per judge per year, which is all the more remarkable when one considers that the court has a very broad general subject matter jurisdiction, and is therefore likely to get an accordingly broad range of legal and fact issues; and also when one considers that this average is for a twelve judge court, not merely a two or three judge panel. In fact, the judges are working far too hard. As one judge observed, if any judge were to be ill it would be a severe blow to the court and if two judges were to be even temporarily incapacitated it would be a catastrophe, since the court can't afford to "break stride". This perception on the part of each judge of a duty to avoid breaking stride can often result in a conflict of conscience with the judge's duty to be accurate and clear in deciding appeals. The judges are keenly aware of this conflict, and it is to their credit that while they strive to contend with the increasing volume of appeals, they are concerned that the use of the central staff may present some threat to their own accountability. As our subsequent discussion will show, we do not feel this to be a problem at present.

The judges of the court are concentrating on the production of opinions to the inadvertent exclusion of other possible methods of contending with increasing volume. This is a common situation in appellate courts, and is due primarily to two factors: first, the fact that judges are trained in law, not in management; second, the fact that regularly increasing volume steadily usurps a judge's time in writing more opinions until a point is reached where there is very little time left to the judge in which to try to plan changes in the system.

The current system of rotating the judges, so that as nearly as possible each judge will sit with each other judge of the court at least once a year, is extremely valuable. Our research in other state appellate courts has shown that for those courts which sit in panels, rotation of the membership of the panels is the most effective method developed so far to insure collegiality on the court and to avoid inconsistency among the opinions. The Appellate Justice Improvement Project of the National Center for State Courts has performed a two year statistical analysis of eleven state appellate courts. One finding was that a reduction in collegiality among the panels of an appellate court results in an increase in the number of motions for rehearing filed, and an increase in the average time necessary to dispose of them. Reduced collegiality results in a diversity among the opinions which in turn produces an increase in motions for rehearing to resolve the diversity. This does not appear to be happening in the North Carolina Court of Appeals: the number of motions for

rehearing is small and the customary reason for filing such motions is not discrepancy among opinions but rather the alleged failure of an opinion to address all the questions raised on appeal. We also found no evidence to indicate that the volume of petitions for hearing before the Supreme Court has changed in such a way as to imply a decrease in collegiality in the Court of Appeals. We conclude that the vigorous system of rotation on the court, together with the practice of having the judges' law clerks review the opinions for consistency prior to publication, has served to preserve collegiality among the judges and uniformity of the law as stated by the court, despite the addition of judges, the system of sitting in panels, and the volume of opinions.

The judges of the court appear to be very interested in examining and, where appropriate, adopting procedural reforms. It is crucial that the judges be apprised of all substantial reforms to insure that any changes which may be undertaken are pursued until they have been given a fair opportunity to work. In general, most appellate court reforms take longer to succeed than the majority of the support staff remain with the courts; therefore, it is necessary that the judges on the court understand the reforms and support them. Their understanding and support provides necessary stability to the reforms.

B. The Central Staff

Like the judges, the central staff attorneys are working extremely hard, are very conscientious, and are being spread too thin. Filings of records now exceed 1,200 per year. The central staff attorneys

produce prehearing summaries on all the cases, and in addition produce draft opinions on approximately 15% of them. The central staff also produce research memoranda on all petitions and on all motions which the director is not specifically authorized to grant.

The central staff attorneys are in danger of having their usefulness diluted by the growing case load. The prehearing summaries and draft opinions which we sampled were quite literate and professional, and compare well with those we have seen in other jurisdictions; yet the summaries contained the occasional honest admission that a specific fact situation or case history was too complex to be adequately summarized in such a report. Our interviews with the judges support our conclusion that the central staff attorneys are producing work of a high quality, and are very ably supervised; yet their usefullness to the judges is being threatened by the volume of the cases which they review and research, combined with the reluctance of the judges to rely unduly on preliminary research in the face of the increasing volume lest they abdicate their responsibility to decide the cases independently.

We also conclude that the central staff directors, like the judges, are preoccupied with the challenge of producing adequate research on every case coming before the court, to the partial exclusion of developing alternative methods of coping with the volume. The supervisor of the prehearing attorneys expressed concern about maintaining the accuracy of the recommendations in the prehearing summaries. She suggested that the inclusion of the recommendations for disposition

be eliminated in those cases where it could not be made with sufficient confidence. We disagree. When an attorney includes his or her recommendation for the ultimate disposition of a case, the deciding judge can then assess that attorney's bias, if any, and account for it while independently arriving at a decision. Further, requiring a recommendation from an attorney encourages the attorney to think the issues through. We conclude that the central staff should have their efforts focused on a smaller number of appeals, on which they can expend greater effort, and should serve as support staff to any alternative methods of case disposition the court selects. The risks involved in so deploying the central staff will be addressed later.

C. The Clerk's Office

Though the Court of Appeals' case load has doubled in the last decade, the clerk's office staff has only increased by one employee. Yet the office processes cases at a volume that satisfactorily supplies the judges' current disposition rate. This ability to meet such a drastic change in case load with minimal increase in personnel is due to the staff performing near the limits of their capacity. If the case load continues to increase, additional staff and a revision of work assignments will be necessary.

The clerk is currently the only attorney in his office. His work day is therefore dominated by those office tasks that require legal training, leaving little time for identifying and solving systemic problems. In the clerk's absence, the office cannot perform

the majority of tasks requiring a professional. If the clerk were to become seriously ill or accept another position, the office would be severely handicapped until a new clerk could be recruited, hired, and trained. Orientation of a new clerk of court by office subordinates and Supreme Court personnel is awkward.

The current work allocation will be inefficient if the number of staff is increased. Since each deputy clerk is assigned one entire office function, any new employee would have to accept a fragmented function that would reduce the senior employees' individual areas of responsibility and perhaps decrease staff accountability and motivation. The work structure's inflexibility would also make the assumption of new jurisdiction or the implementation of alternative case disposition methods very difficult.

Staff estimate that one hour of each work day, or approximately 13% of the office's work load, involves answering attorney questions on format and deadlines which are answered in the appellate rules. Additional staff time is spent in correcting the format of filings while records and briefs are still being retyped, although changes in court printing techniques now allow copies to be made from letter-sized originals. The court is therefore spending a substantial amount of its support personnel resources in giving out information which attorneys could obtain for themselves, and in producing final copies of a quality that should be expected from the attorneys' original submissions.

Court retyping also contributes to litigation delay since many

extension of time to file briefs are due to attorneys' tardy receipt of the official record or of the opposing party's brief. At a cost of $3.00 per original page, this practice is expensive for the litigants, or in the case of criminal in pauperis cases, for the state. (Civil in pauperis cases are denied the clerk's office services of format correction or quality copying.)

The clerk does not view the current assignment of his office as including the identification of tardy cases, prompting attorneys to submit overdue documents, or suggesting the dismissal of inactive appeals. Since the court's current jurisdiction does not include activities taking place prior to 150 days after the filing of the notice of appeal, case management is necessarily limited in any event to only part of the appellate process, and current data gathering procedures do not provide the information needed to identify delinquent cases.

If the court should decide to adopt any alternative methods of case disposition, such as an appellate settlement conference, it will be necessary for the clerk's office to maintain more current and somewhat more detailed information on all appeals. This additional information could also help the court to forecast its work load and would be useful for reference in future discussions with the legislature.

Filing storage is nearing capacity, limited both by current facilities and by current records management practices. The clerk's office staff assess both the storage room and the basement as being

overcrowded. While office space is sufficient at present, any increase in filings unaccompanied by changes in records retention procedures would soon result in cramped quarters.

III. Recommendations

The court must develop alternative methods of disposing of appeals without disturbing the extraordinarily high productivity of the judges. To do this, the court must create flexibility in its central research staff and in its clerk's office to enable it to explore these alternatives. The judges must understand these alternatives and yet not let them make substantial demands upon the judges' time. Any methods adopted must be clearly understood by the practicing bar, and be acceptable to it at least in principle and eventually in practice.

A. The Supreme Court Danger

At present the Supreme Court is disposing of a respectable volume of cases, but far less than the volume in the Court of Appeals. This discrepancy has produced a rather awkward relationship between the two courts. (We have not as yet interviewed any members of the Supreme Court.) The judges of the Court of Appeals were both unwilling to appear unable to cope with their own case volume, and yet keenly aware that their expected output was numerically far below that demanded of the justices of the Supreme Court. On this point we volunteer our observations regarding the allocation of cases between a court of last resort and an intermediate court

of appeal.

The worst thing that could happen would be for the Supreme Court to reach into the case load of the Court of Appeals and take up cases, regardless of subject matter category, which it considered to be of sufficient public interest to merit decision by the Supreme Court. This could result in a vicious cycle of case allocation which would threaten the effective operation of both courts. We have observed this unfortunate pattern in various stages of development in several states. First, the supreme court of a state becomes overburdened with cases, and an intermediate appellate court is created. Then the intermediate court itself becomes overburdened and the supreme court tries to help by taking selected cases on a case by case basis, regardless of subject matter, prior to decision by the intermediate court. In short order the intermediate court begins to perceive itself as being allowed to decide only cases of lesser importance, and resentment builds; at the same time, the judges begin to take more time writing longer opinions on those cases of greater importance which have escaped the screening of the supreme court. The supreme court, having assumed the burden of deciding the selected additional cases, begins to resent these longer opinions with their longer preparation time. The intermediate court has trouble recruiting new judges of sufficiently high caliber, due to the perception of the court as one which only decides lesser cases. This difficulty in acquiring new intermediate court judges of appropriately high ability leads to the supreme court coming to regard the other court as being less competent; accordingly, the supreme court takes up cases of decreasing difficulty which serves to

aggravate the process. The end result can be two appellate courts which do not in normal terms speak to each other: the supreme court resenting the intermediate court because of the ever growing burden on the supreme court which the intermediate court was created to eliminate, and the intermediate court resenting the supreme court for appropriating all the cases of substantial interest. This vicious cycle can lead to a total breakdown of the operation of both courts.

Therefore, it is recommended that if the Supreme Court should at any time decide to assume part of the burden of the Court of Appeals' case load, it should only be done by assuming a predetermined category of cases--e.g., felonies, or civil cases of some particular category--and not by taking cases of "sufficient interest". Otherwise, the Court of Appeals would be better left to develop its own methods of reducing volume.

B. The Attorney's Handbook

We recommend that the Court of Appeals (and the Supreme Court, if it desires) prepare and distribute an attorney's handbook along the general lines of the one which we have supplied to the court. (A copy of this handbook, produced by the state court of appeals in St. Louis, Missouri, is appended to this report.) This document can be produced inexpensively and will serve, among other things, to assist those attorneys who are pursuing an appeal for the first time. (Figures are incomplete, but we estimate that such first-timers constitute about 25% of the average appellate court's cases.) It would be a plain English, not-for-citation manual covering the mechanics of pursuing

an appeal and emphasizing those aspects of the process which for one reason or another are regularly overlooked or misunderstood. The handbook can be quickly and inexpensively updated, and since it can be made available at the trial court level it can inform the practicing bar quickly of any significant changes in appellate substance or procedure. We recommend that the central staff immediately be assigned the task of drafting such a handbook, to be reviewed by the clerk's office and the judges of the Court of Appeals, and then published. Again, it is not intended to be encyclopedic in its treatment of the appellate process, but to be a point of first reference.

C. The Reorganization of the Central Staff

The present philosophy regarding the central staff attorneys parallels that regarding the judges of the Court of Appeals: get the best you can and keep them as long as you can. This approach has been successful so far but it is necessary to examine it at this point before it creates problems. There are three major difficulties with hiring central staff attorneys on a permanent basis.

The first difficulty is one that is often summarized in the phrase, "shadow judiciary". If a court has research attorneys who are employed on a de facto permanent basis, the danger is not that they will not be competent--the court would detect that--but that they will be competent and will remain too long. If a judge has been receiving memoranda from an attorney for several years and has received no bad work, no sloppy or misguided research, the temptation

to the judge increases to simply approve the memorandum and issue the opinion without independent review. This temptation increases further as the volume grows. Although cases may be correctly decided, an ethical question arises since it was the judges who were popularly elected and not the staff attorneys.

The second danger is that as the central research attorneys acquire seniority, the court loses some very valuable flexibility. Central staff attorneys can be deployed to meet a wide assortment of demands upon a court's time without reducing substantially the court's ability to produce opinions. They can, as the court's staff now do, perform preliminary reserach on petitions for writs and on motions; they can also research potential changes in appellate rules and in legislation, explore the ramifications of alternative methods of disposition of appeals, help to establish such methods, and in general serve as a flexible resource for the court. To a very substantial degree this flexibility is lost as the central staff attorneys gain seniority. One cannot assign just any duty to an attorney who has been with the court for years. To the degree that this flexibility is desirable, retention of central staff (other than the staff directors) beyond a few years is undesirable.

The third difficulty is purely economic. If an attorney remains in the court's employ, the court must provide at the very least an annual cost-of-living salary increase. When one adds merit raises for good work, in rather short order the salary of a capable central staff attorney grows substantially beyond that of temporary staff.

The difficulty here is allied with the consideration outlined above: if an attorney is to be restricted to non-judge functions, that attorney can become very expensive in view of the work done. IF the attorney begins to perform judge functions, then the salary is more defensible--but the functions performed come into question.

Our observation has been that central staff are most valuable to an appellate court when they perform two functions: routine screening--work involving only a modest level of complexity--and flexible support, which can be very complex: serving as temporary "extra clerk" to a judge, reviewing appellate rules for the court or for presentation to the legislature, serving as support staff to innovations such as appellate settlement conferences or accelerated dockets, and so forth. These functions, routine and flexible, are both inhibited to some degree when central staff are retained for a long period of time.

We suggest, therefore, the following two-tiered structure.

We recommend that, excluding specifically the director of the central staff and the supervisor of the prehearing staff, all attorneys be hired for a fixed term, possibly two or three years. Each attorney would be notified upon hiring that he or she would be expected during the first half of the employment period to perform essentially routine work for the court--research on motions and petitions, providing prehearing summaries. At the end of the first half of the projected term of employment, the attorney would, if capable, be promoted to a senior level (with an appropriate salary increase) and be assigned

duties at the discretion of the director of the central staff department. Those duties would include the preparation of prehearing summaries and draft opinions, but would also involve assisting the court in establishing alternative disposition programs such as settlement conferences and accelerated dockets; updating the attorney's handbook; assisting judges on extraordinary matters such as election cases or rate cases; researching rules changes and legislative proposals; and any other work the director felt was appropriate. The director would make every reasonable effort to see that the senior attorneys came into direct contact with the judges of the court. At the end of the predetermined term of employment, the attorneys would be expected to seek other jobs.

This arrangement would provide the court with a central staff which could both perform the function of providing prehearing summaries and draft opinions, and also supply flexible support to the court for a variety of other tasks. The attorneys would learn a good deal about appellate procedures during the first half of their term of employment, and would receive the opportunity to work directly with the judges during the second half. Since they would not become permanent employees, the long term problem of rising salaries would be avoided, which would enable the court to pay the director and the supervisor higher salaries, thereby enabling the court to keep them to provide stability to the central staff operation. Finally, the problem of the "shadow judiciary" would be avoided.

This arrangement would also help solve a problem endemic to

central staff attorneys, that of lack of feedback. If central staff attorneys do their job properly, the judges are able to take their research and proceed without direct communication with the attorneys; we analogize the procedure to handing on the baton in a relay race. Unfortunately, this means that the attorneys rarely receive any indication as to how well they are doing, and how they might improve their work. They rely principally on two sources of feedback: comments by their supervisors, who may themselves be receiving little regular response from the judges, and reviewing the final opinions to see whether their recommendations were followed. This latter approach is notoriously untrustworthy since a research memorandum may be extremely useful to the judge although he decides the appeal differently, and a poor memorandum may recommend the same decision which the judge reaches after doing all the research independently. This lack of direct feedback has been observed in other courts to lead eventually to some difficulty in keeping and hiring qualified attorneys. Under the proposed arrangement, the staff attorneys would perform their research in the absence of regular feedback from the judges, but they would know that during the second half of their term of employment they would receive the occasional opportunity to work directly with the judges.

We recommend further that the central staff be relieved of the responsibility of performing preliminary research on 100% of the appeals and other matters filed, so that they may perform other tasks as directed (preparing an attorney's handbook, etc.) and also that

they may perform more substantial research on the matters which they do consider. With a steadily increasing volume of appeals, the central staff are confronted with a dilemma: either increase the size of the staff accordingly, which presents management problems, or gradually and painfully reduce the scope and depth of the research performed on each case, which presents the danger that the summaries will become little more than cover sheets to the files. This has been observed in other states. If the staff are allowed to let some cases by without researching them, they can perform more useful work on those they do research. The directors should be assigned the responsibility of selecting cases to be researched by central staff.

We also recommend that the central staff attorneys be officially authorized, pursuant to Rule 9(b)(6), to order up the transcripts in cases in which they consider it to be appropriate. One valuable function of a central staff is to insure that the case described in the record and the briefs is the one which actually occurred. At present, the clerk's office reports that opposing counsel contest the accuracy or completeness of the prepared record in only about 10% of the cases. In our opinion, this is a very low percentage and it raises suspicions about the accuracy of the records in describing the cases. Too often attorneys alter the facts, often unconsciously, perhaps out of a sense of drama or just plain intellectual boredom, and both sides find themselves arguing issues which are not to be found in the transcripts. The central staff attorneys can perform a valuable service by policing the accuracy of the records.

In conclusion, the central staff is one of the few potential sources of flexibility in a court which is straining to stay current. The judges cannot be taken away from their duties without severely impairing the productivity of the court, but the central staff attorneys, to some degree, can.

D. The Establishment of an Appellate Settlement Conference

We recommend that the Court of Appeals establish an appellate settlement conference using a retired judge. The conference should, if possible, be established in such a way as to permit eventual statistical evaluation of the effectiveness of the procedure. The conference should also be so constructed as to allow the settlement judge to hold conferences on cases as soon after the appeal is filed as possible, to allow the litigants the maximum incentive to settle and thereby to reduce the costs of the appeal. A central staff attorney should be assigned to assist in the initial installation of the conference procedure, including the drafting of any rules which may be necessary to establish a settlement conference and the designing of an information form for use by the settlement judge in each case. Eventually, this procedure may be established in other parts of the state.

The Northeastern Regional Office of the National Center for State Courts has established appellate settlement conferences in three courts, the Supreme Court of Connecticut, the Supreme Court of Rhode Island, and the Superior Court (the intermediate court of appeals) of Pennsylvania. These programs have been designed and are being conducted

so as to permit eventual empirical evaluations of their effectiveness. Pending such evaluations, any estimates of the effectiveness of them are incomplete and subject to revision, but at present the available evidence indicates that a properly designed appellate settlement conference, using the services of a retired judge three days a week, using also a central staff attorney during the start-up period, and using approximately one half of a secretary's time for those three days each week, can produce an average minimum of over 50 settlements and withdrawals per year initially; the evidence also indicates that this productivity may well increase with time as the practicing bar become accustomed to the idea.

These estimates, of course, are drawn from the experiences of three northern states, and the results could well be quite different in North Carolina--the rate of settlements could be smaller or greater. Therefore, we recommend that the conference procedure be so designed as to permit an eventual statistical evaluation of the procedure so that its effectiveness can be independently assessed. The procedure should also be designed to allow the evaluator to examine not only the overall effectiveness of the settlement conference procedure, but also to examine the question of whether there may be some particular category of case which in North Carolina is especially suitable to settlement at the appellate level.

The basic premise of an appellate settlement conference is the same as that of a settlement conference at the trial level: in many instances, parties and counsel are more likely to arrive at fair and

satisfactory settlements if the topic of settlement is introduced by an experienced but impartial person not involved in the litigation and if the discussions take place in a neutral forum. Counsel and parties are usually reluctant to introduce the topic of settlement for fear it might be taken as a sign of weakness in their cases or in themselves. This reluctance may lead to cases proceeding through the entire legal process despite the fact that a settlement was possible. We have observed also that in many instances a case on appeal may be in some way connected with a case or cases in the trial court; in such instances the attorneys are usually unable to resolve the various issues to bring about a settlement of all the cases, but a settlement judge often can, to the benefit of both the appellate and trial courts.

To initiate such a procedure, three preliminary steps are necessary. First, the court must begin to consider whom it would select to hold the appellate settlement conferences. We urge that the person be a judge, probably retired, either from the trial or the appellate bench. Employing a judge for this function has two crucial advantages. For one thing, the judge will not feel under any compulsion to produce a "box score" of settlements as a justification for employment, as a non-judge might. For another, the very fact that a judge is holding the conferences operates to put the stamp of legitimacy on the idea of settling cases after the trial has concluded and one side has lost. There is no intrinsic reason why a case may not be settled after the trial--indeed, a reasonable settlement is arguably

more feasible after both sides have seen the other's evidence. Yet an attorney who has just lost a trial is understandably shy about suggesting settlement, at least until he has rebuilt his aggressive image by initiating an appeal, and the danger is that the possibility of settlement may be lost in the details of appeal. If the court employs a judge to preside over settlement conferences, the prestige of the court is tacitly conferred on the concept of post-trial settlement.

The judge may be a retired appellate judge or a retired trial judge. Both have been used in conference procedures instituted by the National Center with apparently equal success. It is necessary only that the judge chosen be a person who enjoys the respect of the bar and who has the necessary qualities of mind and personality to pursue settlements vigorously without in any way offending or distressing the parties. It is not necessary that the settlement judge be especially conversant with fine points of appellate law; in fact, the unanimous opinion of the appellate settlement conference judges we have spoken to is that cases very rarely if ever settle "on the law"; rather, they settle as a result of other factors--including expense, fatigue, emotion, and practical modifications of the judgment.

The second preliminary step is to design an information form to be filed with the Court of Appeals no later than the filing of the notice of appeal in the trial court. Samples of information forms designed for the Rhode Island Supreme Court are appended to this report. That court, like the North Carolina Court of Appeals,

takes jurisdiction of an appeal only after the record is filed; yet it found that to conduct an appellate settlement conference effectively, it needed to have notice of the appeal from the earliest possible point. While it was about the task of designing an information form for civil cases, the court decided it would be useful to obtain information on all cases which were likely eventually to reach it, so forms were designed for writs and criminal appeals, and a special order of court was promulgated requiring that they be filed with the appellate court in all cases. The civil form performs two additional functions. It allows the settlement judge to have before him some basic information about the case so that he may begin intelligently to conduct the conference. It also allows him to conduct the conferences as early in the appellate process as possible. The settlement judge in Rhode Island has stated that in his opinion, large cases involving large amounts of money can be settled, if at all, at any point in the appellate process; but the smaller cases almost always must be addressed early on before the cost of appellate litigation--transcript, record, briefs--exceeds the amount in controversy and "the stakes get too high". We recommend that the central research staff be assigned the task of producing a first draft of such an information form for civil cases, and, if the court so chooses, for all cases. As the settlement conference procedure develops, a central staff attorney assigned to assist the settlement judge can modify the civil information form to include information which the settlement judge finds useful.

The third preliminary step is obviously to design some procedure by which the Court of Appeals will receive these completed information forms from the attorneys at the beginning of the appeals. We recommend that the court confer with the Supreme Court and that the two courts produce an appellate rule requiring the completion and filing of such information forms no later than the required filing of the notices of appeal.

Regarding this step, we offer the following observation. Eventually the appellate courts in North Carolina will be compelled to assume jurisdiction over appeals from the moment of their inception. This process has been observed in appellate courts throughout the country. Often it is described as a desirable step, and we agree; but more than that, it is inevitable. If there is an interval, however short or long, between the last entry by the trial court of its judgment or order and the assumption by the appellate court(s) of jurisdiction, cases will get lost in that interval. Neither the trial courts nor the attorneys have sufficient motivation to police the progress of the appeals to insure that some cases will not die of neglect or proceed at an unacceptably slow pace, and in fact the attorneys may die, retire, or move away leaving appeals in this preliminary stage with the litigants waiting, assuming that action is being taken when it is not. The occasional scandal, the increased expense of such delays, and the sheer press of numbers eventually force appellate courts to assume jurisdiction of appeals from the earliest point. Therefore, we suggest that the appellate courts in

North Carolina draft any new procedures such as the information forms or an accelerated docket with an eye to the fact that eventually they will assume jurisdiction of the entire appellate process.

E. The Establishment of an Accelerated Docket

We recommend that an accelerated docket be designed and installed in the Court of Appeals. An accelerated docket, often referred to as a "fast track", is a procedure whereby certain appeals can receive appropriately abbreviated treatment. The appellate court should be the one to decide which cases are to be placed on the special docket, but the suggestions of counsel should be invited. The docket should be designed so that cases on it are prepared more quickly and at substantially less expense than those on the regular docket, and are decided more quickly and usually with shorter opinions. The appellate court should have the option at all times of returning a case to the regular docket if it decides that full treatment is appropriate.

At this point we also offer a general observation. The Anglo-American system of jurisprudence, in some contrast to the European system of codification, emphasizes the uniqueness of each case. The appellate opinions traditionally set forth in some detail the particular fact situations which led to the decisions. To arrive at these individual decisions, the appellate courts developed methods which would inform them of the specifics of each case: transcripts, briefs, oral arguments. Then to insure that the decisions were accurately directed towards the specific cases, individually written

opinions were developed. The ironic result of this effort to fashion an appellate procedure which would respond to the unique features of each appeal was that the procedure itself has become uniform rather than unique: all appeals are expected to follow the same format (and suffer the expense of so doing), regardless of the economic or personal factors involved. Appellate court reform is currently moving in the direction of designing alternative methods of resolution which can afford appropriate treatment to the individual cases, reserving the full traditional procedure for those cases which either intrinsically require them or which simply cannot be resolved any other way.

We recommend that an accelerated docket be designed for the Court of Appeals of North Carolina along the following lines. First, in the information form, there should be a place for the attorney to indicate whether he would prefer his appeal to be assigned to the accelerated docket, and to give a brief statement of why; for example, an appeal may involve only a small amount of money, or an immediate decision may be desirable because one of the litigants is aged or ill. The attorney would not be allowed to determine whether his case went on the accelerated docket--that decision would be reserved for the Court of Appeals--but he would be allowed to state his preference. If the case were deemed appropriate for the accelerated docket, it would be heard on the transcript without a prepared record, thereby saving time and expense. The briefs would have a maximum length, and no extensions for preparation of briefs would be granted.

Oral argument would be shortened. Finally, the court would agree to make every effort (not, of course, to guarantee) to produce a short opinion as quickly as possible: such cases would go to the "front of the line" for decision.

The National Center for State Courts has been monitoring and preparing a preliminary evaluation of an accelerated docket along these general lines in the Court of Appeals for the state of Colorado. The procedure there is somewhat different from the one suggested here, but the principle is the same. All indications are that the procedure is a success: it apparently has increased the productivity of the court, reduced the expense to litigants, and received the approbation of the appellate bar.

There is an argument for having an accelerated docket quite apart from the promise of increased productivity. In many instances, a straightforward appeal--an "easy" case--may be taken for preparation (transcript, etc.) and decision in the order of filing and assignment and get stuck behind a complicated case. The attorneys and litigants in the more complicated case may well understand why it takes a certain amount of time to receive a decision, but those involved in the "easy" case may be less likely to understand why their case takes equally as long. An accelerated docket allows the court to provide appropriately prompt decisions on straightforward cases. At present, all the available evidence indicates that an accelerated docket does in fact result in a total savings of time to the appellate court, that the court gains more on the accelerated docket than it loses by having

the straightforward cases culled from the regular docket; but there is still an argument for adopting an accelerated docket even if it were not to result in such an overall saving of time.

It should be noted that the accelerated docket, like the settlement conference and the use of the information forms, can be described informally and at length in the attorney's handbook recommended above; and as each procedure is adopted or changed, the handbook can be updated accordingly.

F. The Establishment of a "Fast Track" for Criminal Appeals

Criminal appeals pose a particular problem, in that the appellate court must observe the constitutional strictures which apply to such cases and therefore alternative methods of treatment have been slow to develop.

However, the Northeastern Regional Office of the National Center for State Courts has been working closely with the Rhode Island Supreme Court for the past year in developing a proposal for alternative disposition of criminal appeals which was designed originally by the appellate division of the Rhode Island Public Defender's Office. We anticipate that this proposal will be adopted in 1980. Of course, it will be necessary for the procedure to be reviewed by the federal courts so that its constitutionality may be determined. However, it is entirely possible that the North Carolina Court of Appeals may want to adopt this procedure for itself in some modified form (the procedure at present is designed only for a supreme court of five justices), and we encourage the court to begin considering how it might modify it

for its own structure and needs. It is also possible that, if the Rhode Island court is for some reason delayed in adopting this procedure, North Carolina may want to go ahead with its own version. Rather than attempt to summarize the proposed procedure, we are appending a summary to this report.

G. Management of Court Reporters

At present, the court reporters are supervised by the resident judges in each superior court district, and arrange for payment directly with the attorneys. We are sure that this works to the disadvantage of the appellate system, and to the court reporters as well. We recommend that the court reporters be centrally managed.

Under the current arrangement, there is no efficient method of determining whether a particular court reporter is keeping up with commitments to produce transcripts or is far behind. A reporter in one court may be overloaded with transcript orders while another may be idle. Central management of the court reporters would allow for deploying the reporters where they are most needed, and would provide more prompt production of transcripts and more efficient use of the reporters, and therefore of the taxpayers' money.

The current arrangement also very likely operates to the disadvantage of the court reporters. It is almost certain that two scenarios are occurring regularly in North Carolina which have been observed in other states. First, there is the situation where the attorney orders a large and expensive transcript but only pays the reporter a fraction of the estimated cost as a deposit. The

reporter is understandably left with less motivation to complete that transcript than others where the full amount has been paid in advance, and may in fact subsequently encounter difficulties in collecting the balance. Second, there is the situation where the attorney orders a transcript but asks the reporter to defer starting on the transcript until further notice. The reporter is left not knowing whether that transcript is really owing--has, in fact, really been "ordered"--or not.

We recommend that the appellate courts begin to take steps to put court reporters under central management; and that ordering a transcript be defined as depositing the full estimated cost of the transcript in advance with the central manager who will then pay the sum to the court reporter immediately upon, but not before, delivery of the completed transcript to him. This system could work generally along the following lines:

1. Upon completion of a trial, the court reporter would estimate the length of the transcript (this can be done with great accuracy) and file with the manager of court reporting a statement that the court reporter recorded that trial and an estimate of the length of the transcript.
2. An attorney wishing to order a transcript would go to the manager of court reporting and place the order, stating the trial and the name of the court reporter.
3. The manager would look in that court reporter's file, figure the cost of the transcript from the estimate of its length,

and collect the full amount of the estimated fee in advance.

4. The manager would notify the reporter that the transcript had been ordered and would direct the reporter to begin preparation immediately. The preparation deadline would be set.
5. When the reporter completed the transcript, he would deliver it to the manager and collect the full deposited fee. The manager would be responsible for dealing with any refunds or further amounts due.
6. The manager would notify the attorneys and the appellate court that the transcript had been filed and that the time for preparing the record or the brief had begun. The attorney would be permitted to check out the transcript to work on the record or the brief, if necessary.

This procedure would have several advantages over the current system. Court reporters would not be in any doubt at any time as to how many transcripts they owed. Court reporters would not have to chase attorneys to collect the remainder of their fees upon completion of the transcripts. The manager would know at all times how many pages of transcript were owed by each reporter and would if necessary be able to reassign reporters to make their work load equal. The state could collect the interest on the money deposited for pending transcripts. The court reporters would have an incentive for completing the transcripts: when they were done, they would be paid in full. And the manager would be able to keep the appellate courts informed as necessary

of the progress of transcripts ordered. (Among other things, this could enable the appellate courts to identify those cases in which an appeal had been filed but no transcript ordered.)

Finally, litigants would be compelled to consider at the very outset of the appeals whether or not they wished to pursue the appeals. Under the present system, it is quite possible for an attorney to file an appeal, order the transcript, and then receive the transcript and the bill for it some months later, at which time the attorney may inform the client for the first time of his liability for the full amount of the cost of the transcript. This can lead to many appeals being pursued in ignorance of the financial consequences. The proposed system would allow the client to be informed, at the start, of the full amount of the transcript cost, enabling him to make a more informed choice as to whether or not to pursue an appeal. This could be reinforced if ordering a transcript were to be made a specific prerequisite to filing a non-voidable notice of appeal.

A procedure of this nature would also enable the court eventually to adopt a case tracking procedure along the lines of that recently designed for the Rhode Island Supreme Court. A copy of that proposal is appended to this report.

H. The Clerk's Office

The clerk's office staff should be increased by one attorney. This "chief deputy clerk" should assume the majority of the clerk's routine legal functions, freeing the clerk for case load and personnel management. This person should be trained to assume the clerk's duties

when necessary. This chief deputy clerk could also be delegated the tasks of maintaining the statistical and ministerial procedures necessary to support any new alternative case disposition techniques, and of maintaining the court library.

Deputy clerks should be assigned responsibility according to case type; this involves assigning all clerical functions of an entire case category to one employee. For example, one deputy clerk would be responsible for processing all divorce appeals from start to finish. This would make possible a more flexible use of staff. If the case load grows, the clerk could assign two deputy clerks as a team to a given category of appeal. An article on this "team process" is appended to this report.

This method of work assignment has advantages for all concerned. The employee gains increased responsibility, variety in the work content, and a sense of accomplishment in managing an entire process. The court gains increased accountability and productivity from its employees.

Eventually it will be necessary to inform attorneys that, while the clerk's office will continue to check documents for legal correctness, all records and briefs will be printed exactly as submitted in spite of format or other non-legal mistakes or, alternatively, they will be rejected if the errors are too extreme. Reducing attorney dependence in this manner will significantly increase the available personnel resources, decrease the typing and printing costs charged to the litigants, and reduce delay in the filing of briefs

caused by tardy receipt of official copies.

The clerk's office should assume an affirmative administrative role by initiating caseflow management, and by using the data provided in the information forms discussed above. The clerk may begin limited caseflow management by establishing methods of regularly identifying tardy post-docketing cases, and by discussing with the Chief Judge how the court can best stimulate delinquent attorneys to file documents promptly.

Any efforts to increase court effectiveness must be informed by detailed and current case statistics. A satisfactory data collection procedure can be designed to be inexpensive, minimize staff demand and meet the Court of Appeals' specific needs. Statistics are critical to forecasting work loads, in determining if the court is coping with caseload demands, and in evaluating the success of procedural or managerial changes.

The addition of a new professional, an increase in total case volume, or a change in jurisdiction should be met with more efficient methods of storing records. We recommend that the clerk's office adopt the procedure of microfilming closed case files, to increase the amount of available space. The microfilm could be kept in the court house and the closed paper files could be stored elsewhere. Some information on microfilming is appended to this report.

A reduction in the number of copies made for court use would also diminish storage demands. If the court expands its jurisdiction over the entire appellate process, it may have to increase the number

of employees in the clerk's office at some point, and eventually this may lead to the clerk's office needing larger quarters.

The clerk, and perhaps a chief deputy clerk, should be offered opportunities to attend judicial administrative seminars, as well as relevant local administrative educational courses, to increase their knowledge of how other organizations are coping with similar problems. Joint meetings attended by the clerk, the central staff supervisors, and the Chief Judge should be held regularly to discuss planning and the impact that changes may be having.

I. The Certiorari Alternative

In our interviews, we encountered speculation that the court would eventually be compelled to eliminate appeals of right in certain types of cases and substitute certiorari. Like adding another law clerk for each judge (which we recommend the court avoid), this alternative is possible but not advisable. It would be better to attempt first to contend with the rising volume of appeals by developing alternative methods of disposition rather than by developing alternative methods of assuming jurisdiction.

One primary difficulty with resorting to certiorari is that the decision of whether or not to accept jurisdiction is usually assigned to some judges of the court who are then given responsibility for deciding for all the court, a time consuming (if properly performed) responsibility; otherwise, all the court must decide, which in a twelve judge court is not feasible. Judges have different objective and subjective criteria for accepting jurisdiction of appeals, based in part

on their own differing backgrounds and areas of experience and expertise. This can lead to inequality in granting certiorari.

Some courts, notably the Supreme Court of Virginia, have adopted total certiorari jurisdiction. We have encountered in interviews some skepticism on the part of attorneys regarding the amount of time and attention which the court devotes to these petitions. We do not attempt to judge whether this skepticism is justified, but we are convinced that the criticism is unavoidable in cases of certiorari and we prefer other methods of coping with volume whenever possible.

IV. Summary

The North Carolina Court of Appeals is currently stretched near its limits. It is ably staffed with judges, central staff attorneys, and other support staff, but it cannot contend with further increases in its case load without either making structural changes and adopting alternative methods of case disposition, or else adopting undesirable alternatives such as denying appeals to certain categories of cases or having the Supreme Court assume part of the volume, which has particular dangers if it is done on a case by case basis and which if done otherwise may only operate to defer structural changes.

The court needs to adopt a variety of changes, some of which can be done promptly without further authorization and some of which require the cooperation of the Supreme Court and the legislature. These changes are aimed at increasing the disposition of appeals without

seriously disturbing the judges who are producing opinions at a very remarkable rate. They are also aimed at expanding the jurisdiction and the control of the court over the entire appellate process. Eventually, the court will need to address such questions as eliminating the printed record in favor of using the transcript, and policing the timely filing of all steps in the appeal, not only those occurring after the filing of the record/transcript. All policy and structural changes and all changes which involve the adoption of alternative methods of case disposition require the understanding and agreement of the judges and the support of the central staff and the clerk's office, who must adopt procedures to enable them to assist the court in making these changes.

# # #

APPENDIX I

The A B C's of Appellate Practice

An Attorney's Guide for Processing Direct Appeals and Extraordinary Writs in the St. Louis District of the Missouri Court of Appeals

MISSOURI COURT OF APPEALS
ST. LOUIS DISTRICT

Joseph J. Simeone, Chief Judge

March, 1978

Printed as a Public Service
By
St. Louis Daily Record
The St. Louis Countian

TABLE OF CONTENTS

A. INTRODUCTION

This manual consists of a summary of the basic procedural requirements for processing direct appeals and extraordinary remedial writs in the St. Louis District of the Missouri Court of Appeals. It is designed to be used as a reference tool and general information guide for attorneys practicing before this Court; it is not to be used as a substitute for the Missouri Rules of Court (Supreme Court Rules).

Appellate practice before the St. Louis District of the Missouri Court of Appeals is governed by the Supreme Court Rules, which are applicable to all districts of the Missouri Court of Appeals, and certain Special Rules promulgated by the St. Louis District. In addition, over the past few years this Court has established several internal procedures and policies relating to the perfection of appeals. Members of the Bar practicing before this Court should be aware of these Special Rules and internal practices in addition to the Supreme Court Rules. Although the material included herein should prove informative and helpful to members of the Bar practicing before this Court, this material shall not provide the sole basis for any action, taken by any party, relative to any appeal or other proceeding pending before this Court. Reference should be made to the actual text of the Rules governing appellate practice and the decisions of the Missouri Courts for authority.

B. THE APPELLATE PROCESS: STEP BY STEP

The following is a step by step summary of the procedure for filing and perfecting direct appeals in the St. Louis District of the Missouri Court of Appeals. It is intended to be both a logical beginning-to-end overview of the appellate process (as contemplated by the Supreme Court Rules) and a practical guide to attorneys practicing before this Court.

I. STEP 1: PRESERVING THE RECORD

Although the appellate machinery is set in motion upon the filing of the notice of appeal, the appellate process actually begins at the trial level, in the trial court. Counsel and the parties are bound by the record made at the trial level. Trial errors cannot be raised for the first time on appeal. Two things are important to keep in mind in this regard.

First, objections during trial must be timely and specific. Untimely or general objections preserve nothing for appellate review.

Second, in jury tried cases, allegations of error must be included in a motion for new trial to be preserved for appellate review. A motion for new trial must be timely filed in the trial court and must be specific as to the allegations or error. In a civil case a motion for new trial must be filed within 15 days after the entry of judgment on a jury verdict (judgment is entered as of the date of the verdict). The time for filing may not be extended either by the trial court or the appellate court. In a criminal case a motion for new trial must be filed within 10 days after the return of the jury verdict but prior to judgment (judgment is generally entered at time of sentencing). However, the time for filing may be extended by the trial court for an additional period not to exceed 30 days, provided proper application is made within the original 10 day period. The extension must be a part of the record. A motion for new trial, timely filed, is automatically overruled at the expiration of 90 days after the motion is filed if not ruled on prior to that time.

In court tried cases a motion for new trial is not necessary to preserve error for appellate review. However, if a motion for new trial is to be filed, it must be filed within 15 days after the entry of judgment.

II. STEP 2: NOTICE OF APPEAL

Before the appellate court processes can begin, notice must be given to the trial court of a party's intention to appeal from an adverse judgment or ruling of that court.

This notice of appeal must be filed with the clerk of the trial court not later than 10 days after the judgment or order appealed from becomes final.

In civil cases the judgment becomes final 30 days after the entry of the judgment if no timely motion for new trial is filed. In civil cases tried before a jury, judgment is entered as of the date of the verdict. If a timely motion for new trial is filed, the judgment, previously entered, becomes final on the date of disposition of the motion for new trial or at the expiration of 90 days from the filing of the motion for new trial, whichever occurs first.

In criminal cases the judgment is final when the motion for new trial is overruled, judgment is entered in accordance with the jury verdict and sentence is imposed.

It is important to note the dual effect that the failure to file a timely motion for new trial has on an appeal--(1) alleged trial errors are not preserved for appellate review and (2) the date for filing the notice of appeal continues to run from the date of judgment

At the time of the filing of the notice of appeal with the clerk of the trial court, a $20 docket fee or a forma pauperis finding must also be filed. A jurisdictional statement must also be

filed either in the trial court at the time of the filing of the notice of appeal or within 10 days thereafter in the appellate court. These are jurisdictional requirements. Beginning July 1, 1978, it will also be required by Special Rule (St. Louis District, Special Rule A) that the appellant or his attorney complete an Appeal Information Form and submit such form to the clerk of the trial court together with the notice of appeal. The forms will be available in the clerk's office of the trial court.

If timely notice of appeal has not been filed, a party may seek leave from the appellate court to file a "late" notice of appeal. Leave to file a "late" notice of appeal is sought by filing with the clerk of the appellate court a written motion for a special order permitting the filing of a notice of appeal out of time. Leave to file a "late" notice of appeal must be granted within 6 months from the date of final judgment in civil cases and within 12 months from the date of final judgment in criminal cases. (It is important to note that a proceeding pursuant to Rule 27.26, Post Conviction Relief, is a civil proceeding.) Leave to file a "late" notice of appeal will be granted only upon a showing of good cause, i.e., that there is merit to the proposed appeal and that the delay was not due to appellant's culpable negligence.

The filing of a notice of appeal does not automatically stay execution on a judgment during the pendency of the appeal. In many cases an appellant may, at or prior to the filing of the notice of appeal, present to the trial court a supersedeas bond which shall, if accepted by the trial court, have the effect of staying any execution on the judgment while the appeal is pending. A supersedeas bond is subject to the approval of the trial court as to form and sufficiency and is conditioned by any terms set by that court. In cases when an appeal is taken out of time after special order of the appellate court, the power to issue a stay rests exclusively in the appellate court. In such cases an application for a stay of execution should be directed to the appellate court which may in its discretion issue a stay upon such terms and conditions with

respect to a supersedeas bond as it deems appropriate.

III. STEP 3: TRANSCRIPT

As soon as is practicable, but not later than 30 days after the filing of the notice of appeal, the transcript (original and at least two copies) should be ordered in writing from the court reporter(s) who participated in the trial proceedings. The written order should specify with certainty those portions of the trial proceedings that are to be transcribed. The court reporter should be requested to transcribe only those portions of the proceedings that are necessary to a determination of the issues to be presented to the appellate court for review. Keep in mind that the appellate court may tax the cost of unnecessary portions of the transcript against the party responsible for its inclusion.

Once the transcript has been ordered in writing from the court reporter, a copy of the written order should be filed with the clerk of the trial court not later than 15 days after the date of such written order.

The transcript must be filed in the clerk's office of the appellate court within 90 days after the filing of the notice of appeal unless the time for filing has been extended by the trial court or the appellate court upon proper application by the appellant. The trial court may extend the time for filing the transcript for an additional 90 days only if the transcript has been ordered in writing from the court reporter within 30 days after the filing of the notice of appeal and a duplicate copy of the written order is filed with the clerk of the trial court within 15 days thereafter. Under no circumstances may the trial court extend the time for filing the transcript beyond 180 days from the filing of the notice of appeal. Jurisdiction to extend the time for the filing of the transcript rests exclusively in the appellate court (1) where either the appellant has failed to order the trasncript in writing from the court reporter within 30 days of the filing of the notice of appeal or the appellant has failed to file a copy of the written order with the clerk of the trial court within 15 days thereafter, or

(2) if the additional time granted by the trial court and the original 90 days equal 180 days.

Applications for extensions of time to file the transcript addressed to this court must be in motion form and should be directed to the clerk's office. Prior to the completion of the transcript by the court reporter all motions for extension of time to file the transcript must be accompanied by a court reporter statement in compliance with St. Louis District, Special Rule C.

The original transcript is to be filed in the appellate court, and within 5 days thereafter a copy must be served on the respondent in a civil case and a copy must be filed in the trial court. Before the original transcript may be filed in the appellate court, it must be approved by both counsel or by the trial judge if an abbreviated transcript is to be filed or if the parties cannot agree on the content of the transcript. An abbreviated transcript is generally filed where the issues on appeal can be resolved without resort to a review of any testimony taken at trial or where no testimony was taken at trial.

IV. STEP 4: BRIEFS

The appellant's brief must be filed in the appellate court within 60 days after the transcript is filed; respondent's brief must be filed within 30 days after the appellant's brief is filed; and appellant's reply brief, if any, must be filed within 15 days thereafter. Each party must deposit 10 copies of his brief in the clerk's office of the court. Each party must also serve 2 copies of his brief on each opposing counsel. The file copy of each brief must include notice of service upon opposing counsel before being filed by the court.

The contents of the brief must conform with the requirements of Rule 84.04. Briefs not in compliance with Rule 84.04 may be stricken and the party ordered to file a new or amended brief. In severe cases an appeal may be dismissed because the appellant's brief fails to conform with the requirements of Rule 84.04. A respondent who fails to file a brief or whose brief has been stricken

will be precluded from filing a brief and participating in oral argument.

Every effort should be made to adhere to the time prescriptions mandated by the Supreme Court Rules for the filing of transcripts and briefs. Of course, the appellate court may, in its discretion and for good cause shown, extend the time prescribed for filing the transcript and the briefs. Requests for extensions of time must be in writing, in motion form, and must state with clarity the reasons for the request for additional time. In addition, all such motions must be filed prior to the expiration of the time allowed by the Rules or allowed by previous extension granted by the court for the filing of a transcript or brief. Untimely or improperly filed motions may be summarily dismissed.

After the respondent's brief is filed, each case is screened for possible placement on the court's docket. Cases are set either on an accelerated docket or on a regular docket. Appeals placed on the accelerated docket are scheduled for early submission without oral argument. Attorneys of record are notified by letter of the placement of a case on the accelerated docket. If oral argument is desired on such cases, written notification to that effect must be made to the clerk of this court within 10 days after the court's letter is mailed to the attorneys. Placement of an appeal on the accelerated docket is not a determination as to the merits of the appeal. Cases selected for the accelerated docket will receive the same consideration as cases taken under submission in the normal course. Cases selected for the accelerated docket are generally those in which the issues raised on appeal are few, the fact situation is uncomplicated and the doctrines of law to be applied are settled. Cases in which the issues to be resolved are many or are of precedential importance, or in which the facts are extremely long or complicated, will normally not be placed on the accelerated docket.

V. STEP 5: ORAL ARGUMENT

Court convenes at 9:30 a.m. to hear oral arguments. Oral argument is optional. Cases may be submitted on the briefs without argument.

If counsel are not present when court convenes, the case will be submitted on the briefs.

Cases are set for oral argument by session (January, April, September). Counsel are notified of the specific time and place of oral argument approximately 6 weeks prior to the date scheduled for the argument.

In cases which are set on the regular docket, the appellant is allowed a maximum of 20 minutes for argument and may reserve 5 additional minutes for rebuttal. Respondent is allowed a maximum of 20 minutes.

Oral argument for cases which are set on the accelerated docket is limited to 10 minutes for appellant, 10 minutes for respondent and 2 minutes for rebuttal.

VI. STEP 6: POST OPINION PROCESS

A party may file in the Court of Appeals a motion for rehearing or in the alternative to transfer to the Supreme Court of Missouri after an opinion of the Court of Appeals has been filed. Such motions must be filed in the Court of Appeals before seeking transfer in the Supreme Court. Opinions of the court are handed down and filed each Tuesday at 10:00 a.m. A motion for rehearing or in the alternative to transfer to the Supreme Court must be filed, if at all, in the clerk's office of the Court of Appeals within 15 days after the opinion is filed.

If the Court of Appeals overrules the motion for rehearing and denies the motion to transfer, a party may make application to transfer directly to the Supreme Court of Missouri. Application to the Supreme Court for transfer must be filed in the office of the clerk of the Supreme Court within 15 days after the date on which transfer was denied by the Court of Appeals. Application to the Supreme Court must be accompanied by a copy of the opinion of the Court of Appeals and a copy of the motion for rehearing or transfer filed in the Court of Appeals.

C. THE APPELLATE PROCESS: AN OUTLINE OF THE RULES

I. PRESERVING THE RECORD

A. During trial, objections should be timely and specific (Rule 78.09, 28.01).

1. Allegations of error in a jury trial case must be presented to, or expressly decided by, the trial court to be considered by the appellate court (Rule 84.13(a)).

B. Motion for New Trial - A motion for new trial is automatically denied if not ruled on within 90 days after the motion is filed. (Rule 78.06, 27.20(b)).

1. Court tried cases - In court tried cases a motion for new trial or a motion to amend the judgment is not necessary to preserve any matter for appellate review. If a motion for new trial is to be filed, it must be filed within 15 days after the entry of judgment (Rule 73.01).

2. Jury tried cases - In jury tried cases, allegations of error must be included in a motion for new trial to be preserved for appellate review (Rule 78.07).

a. Civil cases - In civil cases a motion for new trial must be filed within 15 days after the entry of judgment on a jury verdict (Rule 78.04).

b. Criminal cases - In criminal cases a motion for new trial must be filed within 10 days after the return of the verdict, however, the time for filing may be extended by the trial court for not more than an additional 30 days, provided application is made by defendant within the original 10 day period. (Rule 27.20(a)).

C. Allegations of error included in a motion for new trial must be briefed on appeal or such allegations will be considered waived or abandoned (Rule 28.02).

D. Plain Error - In the discretion of the appellate court trial errors affecting substantial rights may be considered on appeal, though not raised or preserved, or defectively raised or preserved, when the court finds that "manifest injustice or a miscarriage of justice" has resulted therefrom. (Rule 84.13(c), 27.20(c)).

II. CONTROL OF JUDGMENT BY TRIAL COURT

A. The trial court retains control over judgments during the 30 day period after entry of judgment and may vacate, reopen, correct, amend, modify, arrest or set aside the judgment within that time (Rule 75.01, 27.22) - Note: The trial court has a limited continuing jurisdiction over the cause prior to the filing of the transcript on appeal. (See C.IV.A.1.a.; C.VII.A.1.)

III. NOTICE OF APPEAL

A. Filing

1. When to file - Notice of appeal must be filed not later than 10 days after the judgment or order appealed from becomes final (Rule 81.04, 28.03).

   a. Finality - The judgment becomes final 30 days after the entry of the judgment if no timely motion for new trial is filed. If timely motion for new trial is filed, the judgment becomes final on the date of disposition of the motion for new trial or at the expiration of 90 days from the filing of the motion for new trial, whichever occurs first (Rule 81.05, 78.06). Note: Date of entry of judgment is different for civil and criminal cases.

   b. Special Order ("Late Notice of Appeal") - If timely notice of appeal has not been filed, a party may seek leave from the appellate court to file "late" notice of appeal. Leave must be granted within 6 months from the date of final judgment in civil cases (Rule 81.07,27.26(a)), and within 12 months from the date of final judgment in criminal cases (Rule 28.07).

2. Where to file - Notice of appeal must be filed with the clerk of the trial court (Rule 81.04,81.08). This is true even after leave is granted by the appellate court to file "late" notice of appeal.

B. Contents - Notice of appeal should specify the parties taking the appeal, the judgment or order appealed from and the jurisdictional basis of the appellate court (Rule 81.08(a)).

1. Jurisdictional Statement - A jurisdictional statement must be filed either with the notice of appeal in the trial court or in the appellate court within 10 days of the filing of the notice of appeal. (Rule 81.08(b)). In criminal appeals and post-conviction cases (Rule 27.26) the nature of the offense and the section of the statute under which defendant was convicted should be specified (Rule 81.08(b)).

C. Form - Forms are available in the trial court -- Civil Procedure Form No. 8-A (Supreme Court) and Form 8-B (Court of Appeals) or Criminal Procedure Form No. 36.

D. Fee - A $20 docket fee or an in forma pauperis finding must accompany the notice of appeal (Rule 81.04). This is a jurisdictional requirement.

E. Appeal Information Forms - Effective June 1, 1978, Special Rule A shall require that at the initiation of any appeal taken to this court, the appellant or his attorney shall complete an Appeal Information Form and submit such form to the clerk of the circuit court together with the notice of appeal. Civil (Appendix A) and Criminal (Appendix B) Appeal Information Forms will be available in the office of the clerk of the appropriate circuit court, along with the notice of appeal forms.

F. Appellant's Duty to Notify Clerk of Any Change - Effective June 1, 1978, Special Rule B shall require that appellant or his attorney notify the clerk of this court, in writing, of any action or ruling made by the trial court subsequent to the filing of the notice of appeal which affects:

1. the time for filing the transcript on appeal,

2. the bail bond status of a defendant in a criminal case, including any change of address of the defendant, or a change of surety, or a change of address of surety,

3. the entry of appearance or withdrawal of appellant's attorney in any case pending before this court.

Notice shall be mailed or delivered to the clerk of this court within three (3) days of any such action or ruling.

IV. TRANSCRIPT

A. Filing

1. When to file - The transcript must be filed within 90 days after the filing of the notice of appeal unless the time for filing has been extended by the trial court or the appellate court (Rule 81.18).

   a. The trial court may extend the time for filing the transcript for an additional 90 days only if (i.e. jurisdictional) the transcript is ordered in writing from the court reporter within 30 days after the filing of the notice of appeal and a duplicate copy of the written order is filed with the clerk of the circuit court within 15 days thereafter. Under no circumstances shall the trial court extend the time for filing the transcript beyond 6 months from the filing in the trial court of the notice of appeal (Rule 81.19).

   b. Prior to the completion of the transcript by the court reporter all motions for extension of time to file the transcript which are addressed to the appellate court must be accompanied by a court reporter statement in compliance with St. Louis District, Special Rule C. (Appendix C)

2. Where to file - The original transcript is to be filed in the appellate court and within 5 days thereafter a copy shall be served on the respondent and a copy shall be filed in the trial court (Rule 81.12(a)). Note: Cf. Rule 28.08.

B. Contents - The transcript should contain all of the record necessary to the determination of all questions to be presented to the appellate court for decision (Rule 81.12(b), 81.14(a), 28.08). The transcript must contain, but need not be limited to, the following:

-Civil Cases

1. pleadings;
2. verdict (if any);
3. findings of court or jury (if any);
4. judgment or order appealed from;
5. motions and orders after judgment;
6. notice of appeal;
7. orders extending time to file transcript;
8. exhibits, unless stipulated otherwise.

-Criminal Cases

1. indictment or information;
2. arraignment or waiver thereof and plea;
3. fact of defendant's presence at trial;
4. verdict(s);
5. granting of allocution;
6. judgment(s) and sentence(s);
7. motions and orders after verdict (motion for new trial);
8. notice of appeal;
9. orders extending time to file transcript;
10. exhibits, unless stipulated otherwise.

C. Approval - The transcript must be approved by both counsel or by the trial judge if an abbreviated transcript is used or if the parties cannot agree on the content of the transcript (Rule 81.12(c)). A transcript cannot, and will not, be filed unless properly approved.

D. Costs - Rule 84.18, 81.12(b)

V. BRIEFS

A. Filing

1. Appellant's brief must be filed within 60 days after the transcript is filed. Respondent's brief must be filed within 30 days after appellant's brief is filed and appellant's reply brief, if any, must be filed 15 days thereafter (Rule 84.05).

2. Ten (10) copies of each brief are required to be deposited with the appellate court (Rule 84.26). Two (2) copies of the brief are required to be served on each opposing counsel (Rule 84.05(a)).

3. The file copy of each brief must include notice of service upon opposing counsel before being filed by the court (Rule 84.07).

B. Form - All briefs must be printed or duplicated by an approved process. Xerox briefs are approved and may be filed without a motion, but they must be 8 1/2" by 11" (Rule 84.06) (Appendix D).

1. Appellant's brief shall not exceed 100 pages; Respondent's brief shall not exceed 90 pages; Appellant's reply brief shall not exceed 25 pages (Rule 84.04(i)).

C. Contents - Appellant's brief shall contain:

1. Jurisdictional Statement - A concise statement of the grounds upon which the jurisdiction of the reviewing court is based. "No bare recitals." (Rule 84.04(b));

2. Statement of Facts - A fair and concise statement of the facts relevant to the issues presented for review (Rule 84.04(c)). Page references to the transcript must be included (Rule 84.04(h));

3. Points Relied On - A brief statement of what actions or rulings of the trial court are sought to be reviewed and wherein and why they are claimed to be erroneous. Citations of authority must be included under each point relied on (Rule 84.04(d));

4. Argument - The argument must substantially follow the order of the "Points Relied On." If a point relates to the giving, refusal or modification of an instruction, the instruction must be set out in full in the argument portion of the brief (Rule 84.04(e)). Page references to the transcript must be included (Rule 84.04(h)).

D. Screening and Docketing

1. Upon the filing of appellant's brief, the brief is preliminarily screened for compliance with Rule 84.04. Briefs found not to be in substantial compliance with the requirements of Rule 84.04 may be stricken and appellants ordered to file new or amended briefs, or may, in severe cases, result in the dismissal of the appeal.

2. After the respondent's brief has been filed, the case is screened by a panel of Judges for possible placement on the Court's accelerated docket. Cases selected for the accelerated docket will be submitted on an accelerated basis without oral argument, unless oral argument is expressly requested in writing.

VI. Oral Argument

A. Oral argument is optional. Cases may be submitted on the briefs without argument. If counsel are not present, case is submitted on briefs.

B. Appellant is allowed a maximum of twenty-five (25) minutes of which (5) minutes can be reserved for reply or rebuttal. Respondent is allowed a maximum of twenty (20) minutes (Special Rule D, St. Louis District, effective June 1, 1978).

1. Oral argument for cases on the Accelerated Docket will be limited to ten (10) minutes for appellant, ten (10) minutes for respondent and two (2) minutes for rebuttal (Special Rule D, St. Louis District, effective June 1, 1978).

VII. WITHDRAWAL OR DISMISSAL OF APPEAL

A. Voluntary

1. Prior to filing the transcript with the appellate court an appeal may be withdrawn by filing a written withdrawal in the trial court (Rule 81.20).

2. After the transcript has been filed an appeal may be voluntarily dismissed by appellant by filing a written dismissal in the appellate court. (Rule 84.09).

B. Involuntary

1. Twenty-four (24) hour notice must be given to the appellant before a respondent may file a motion to dismiss appeal or affirm judgment (Rule 84.10, 28.09).

2. Criminal and Civil dismissal dockets are held monthly to remove those appeals which have not been maintained in a perfected status (Rule 84.08, 84.27, 28.09).

   a. Cases placed on the dismissal docket will not be removed therefrom for reasons other than those of "compelling necessity.":

      (1) The mere filing of a motion requesting an extension of time for the filing of a particular overdue document (e.g brief, transcript) or the filing of the delinquent document itself, after the case has been placed on the dismissal docket, will not be sufficient to remove the case from the dismissal docket.

   b. The time prescriptions mandated by the Supreme Court Rules must be adhered to, and, where compliance with the rules is impossible, the timely filing of a written motion requesting an extension of time for the filing of the particular document is required. Timely means: prior to the running of the time prescribed for the filing of a particular document.

VIII. Motions

A. Filing

1. All motions must be in writing and must be delivered or mailed to the clerk's office of the appellate court for filing. Motions should not be in letter form and should not be addressed to a judge, but to the clerk (Rule 84.20).

2. All motions must be signed and must include notice of service upon opposing counsel (Rule 84.01,84.07, 84.11).

3. Motions are generally not argued, unless by direction of the court.

4. Motions are generally held 5 days before disposition (Rule 84.01). Notification of disposition to St. Louis City and St. Louis County attorneys is through the Daily Record and Countian only.

5. All routine administrative motions require only an original. Motions for rehearing require an original and 12 copies.

IX. POST OPINION PROCESS

A. Court of Appeals

1. Motions for rehearing or transfer to the Supreme Court must be filed within 15 days of the date upon which the opinion of the court of appeals is filed (Rule 83.02, 84.17).

   a. Opinions are filed each Tuesday at 10:00 a.m. Attorneys of record are mailed a copy of the opinion, or may pick up a copy in the clerk's office of the appellate court.

B. Supreme Court

1. Application to transfer to the Supreme Court shall be filed in the Supreme Court within 15 days of the date on which transfer was denied by the Court of Appeals. (Rule 83.03).

   a. Application to the Supreme Court is limited to 6 pages and must be accompanied by a copy of the Court of Appeals opinion and the motion for rehearing or transfer filed with the Court of Appeals (Rule 83.04).

X. EXTRAORDINARY WRITS

A. Filings and Procedure

1. All petitions seeking extraordinary writs must be accompanied by the following:

   a. a filing fee of $20 or an affidavit to proceed in forma pauperis;

   b. a document showing that notice has been given to the adverse party (Rule 84.24);

   c. suggestions in support of the petition (Rule 84.24); and

   d. a certificate of service upon the respondent or a waiver of such service.

2. An original and eight (8) copies of all writ filings (petitions and suggestions) shall be filed in the clerk's office.

3. Unless otherwise ordered by the court, respondent shall file suggestions in opposition to the petition within 5 days of notice.

4. If a preliminary or alternative writ issues, the court will determine the return date of the writ and the time within which relator shall file an answer to the return. (Rule 84.24).

   a. A preliminary or alternative writ will not issue until the adverse party has had at least 5 days notice of the filing of the application for the writ, unless (1) the application is for a writ of habeas corpus or (2) a request for a waiver of the 5 day notice is made at the time of the filing of the application for the writ and the waiver is granted by the court upon a showing that the 5 day notice would defeat the purpose of the writ.

   b. Alternative or preliminary writs and writs of habeas corpus will be prepared by the clerk's office and need not be prepared by the attorneys.

5. If a preliminary or alternative writ issues, the case is docketed for oral argument when the return is filed, and the briefing schedule will be in accordance with Rule 84.24--relator's brief must be filed within 30 days from the return date; respondent's brief is due 20 days thereafter and relator may file a reply brief 10 days thereafter, unless otherwise ordered by the court.

   a. Generally no hearings or conferences will be held with the attorneys before the denial or issuance of a preliminary or alternative writ. In exceptional cases a conference may be held, at the direction of the court.

D. APPENDIX A

MISSOURI COURT OF APPEALS - ST. LOUIS DISTRICT

Civil Case Information Form

Appellate Case No. _____

Please type or neatly print the information requested. This form must accompany the notice of appeal before the case will be processed. Identify each party by inserting either App. for appellant or Resp. for respondent in the appropriate parentheses.

_____ ( ) County _____

_____ ( ) Judge _____

vs.

_____ ( ) Circuit No. _____

_____ ( ) Division No. _____

Appellant's Attorney	Respondent's Attorney
Address	Address
City Zip Code	City Zip Code
Telephone	Telephone
Name of Appellant	Court Reporter
Address	Telephone
City Zip Code	
Date of Judgment	Date Post Trial Motion Filed
☐ Court ☐ Jury	Date Post Trial Motion Decided
Number of Days of Trial	
Brief Description of Case:	Judgment or Order Appealed From: (Attach copy of judgment if desired)

E. APPENDIX B

MISSOURI COURT OF APPEALS - ST. LOUIS DISTRICT

Criminal Case Information Form

Appellate Case No. _____

Please type or neatly print the information requested. This form must accompany the notice of appeal before the case will be processed. Identify each party by inserting either App. for appellant or Resp. for respondent in the appropriate parentheses.

_____ County _____

_____ ( ) Judge _____

vs.

_____ Circuit No. _____

_____ ( ) Division No. _____

Date Notice of Appeal Filed in Circuit Court _____

Name of Defendant/Appellant	Name of Defendant's Attorney
Address	Address
City Zip Code	City Zip Code
	Telephone
Name of Trial Attorney	Name of Court Reporter
Telephone	Telephone
Date of Judgment	Date of Post Trial Motion
Date of Verdict	Date Motion for Ext. Filed (if any)
Number of Days of Trial	Extension granted until
	Date Post Trial Motion Ruled Upon
Defendant found guilty by:	Bail/Jail Disposition:
☐ plea ☐ jury ☐ court	☐ committed ☐ not committed
Convicted of Charges of:	☐ on bail/Amt. of Bond $_____
	Name of Surety
	Address
	City Zip Code
	Sentence or Punishment Imposed:

F. APPENDIX C

COURT REPORTER AFFIDAVIT FORM

_____ Appellant

v.

_____ Respondent

Circuit Court No. _____

Appeal No. _____

TO THE MISSOURI COURT OF APPEALS, ST. LOUIS DISTRICT:

In support of the appellant's motion for an extension of time to file the transcript on appeal in the above case I hereby certify and represent to the Court:

1) that I served as the official court reporter in the trial of the above case which ended on _____ (date of judgment);

2) that within 30 days after the filing of the appellant's notice of appeal the appellant gave me a written order for such transcript; (If not ordered within 30 days, state when transcript was ordered _____)

3) that appellant has not countermanded said order nor has he requested me to defer or delay my preparation of said transcript;

4) that the trial court in accordance with Rule 81.19 extended the time for filing the transcript to _____;

5) that I have not prepared said transcript within the time required because _____;

6) that I will complete the preparation of the transcript on appeal in this case on or before _____.

Date _____

_____ Official Court Reporter

Phone Number of Court Reporter

Office: _____

_____ (Court)

Home: _____

G. APPENDIX D

FIRMS APPROVED FOR DUPLICATING PROCESS

Name	Process	Date
Acme Reporting Service P. O. Box 2754 Kansas City, Missouri	Model #320, A.B. Dick Offset Press	May 9, 1966
The Francis Press 4515 Olive Street St. Louis, Mo. 63108	Model #1250 Multilith	May 9, 1966
Heimbuecher Business Service 7811 Carondelet Avenue Clayton, Missouri 63105	Model #1250 Multilith	March 14, 1966
Kathryn's Letter Shop 1005 East 31st Street Kansas City, Missouri	Mimeograph Model 438 Multilith, Model 1250	March 14, 1966
Postal Instant Press 108 North 4th St. Louis, Missouri	Offset Printing	Nov. 10, 1969
Quick Service Press 823 Walnut Kansas City, Missouri	Multilith, Model #1250	March 14, 1966
St. Louis Law Printing Co. 812 Olive Street St. Louis, Missouri 63101	Photo-Reproductions (offset process)	May 6, 1974

The following processes have been approved by the Court for various individuals:

#420 Xerox Copier Machine prepared by use of IBM electric type with pica size type

#1250 Multilith

Duplicating Mimeograph Machine

Offset Printing

Xerox

Offset printing process with the type set by a mag card typewriter.

2/12/76 -

H. TIMETABLE: PROCEDURE FOR PROCESSING DIRECT APPEALS

Verdict or Judgment

In a civil case a MNT* must be filed within 15 days of entry of judgment. (Rule 78.04)

In a criminal case a MNT must be filed within 10 days after return of verdict unless such time is extended by the trial court for an additional period not to exceed 30 days, upon timely application of the defendant. (Rule 27.20(a))

Motion for New Trial

In civil cases judgment becomes final at the expiration of 30 days after the entry of judgment if no timely MNT is filed. If a timely MNT is filed, judgment becomes final on the date of disposition of the MNT or at the expiration of 90 days whichever comes first. (Rule 81.05, 78.06)

In criminal cases, judgment becomes final when the MNT is overruled, judgment is entered in accordance with the jury verdict and sentence is imposed.

Final Judgment

NOA** must be filed not later than 10 days after the judgment or order appealed from becomes final. (Rule 28.03, 81.04)

In civil cases, the appellate court may grant leave to file "late NOA," within 6 months from the date of final judgment. (Rule 81.07)

In criminal cases, the appellate court may grant leave to file "late NOA" within 12 months from the date of final judgment. (Rule 28.07)

Notice of Appeal

The transcript (original) must be filed in the appellate court within 90 days after the NOA is filed, and a copy of the transcript must be filed in the circuit court within 5 days thereafter. (Rule 81.18, 81.12(a))

The time for filing the transcript in the appellate court may be extended by the trial court for an additional period of time, not to exceed 90 days, if and only if (1) the transcript is ordered in writing from the court reporter within 30 days after the filing of the NOA and (2) a duplicate copy of the written order is filed with the clerk of the trial court within 15 days thereafter. (Rule 81.19)

The time for filing the transcript may be extended by the appellate court upon proper application (motion). Prior to completion of transcript by court reporter all motions for extension of time to file transcript must be accompanied by a court reporter statement. (Special Rule C)

Briefs

Appellant's brief is due within 60 days after the filing of the transcript; respondent's brief must be filed within 30 days after appellant's brief is filed and appellant's reply brief, if any, must be filed 15 days thereafter, unless extended by the appellate court upon proper application. (Rule 84.05)

Post Opinion Process

In the Court of Appeals, motions for rehearing or transfer to the Supreme Court must be filed within 15 days of the date upon which opinion of the Court of Appeals is filed.

In the Supreme Court, application to transfer to the Supreme Court shall be filed within 15 days after the date on which transfer was denied by the Court of Appeals. (Rule 83.03, 83.04)

*MNT--Motion for New Trial
**NOA--Notice of Appeal

APPENDIX II

CIVIL APPEAL INFORMATION STATEMENT

NOTE: For appeals of right only. For certiorari or other writs use the writ information form.

ENTERED BY SUPREME COURT CLERK
DOCKET #

CASE TITLE IN FULL:

2 TRIAL COURT OR AGENCY
☐ SUPERIOR ☐ FAMILY ☐ OTHER (SPECIFY):
☐ DISTRICT ☐ WORKERS COMP.

3 TRIAL COURT CASE NUMBER:

DATE CASE FIRST FILED IN LOWER COURT OR AGENCY:

5 TRIAL COURT JUDGE:

ATTORNEY(S) FOR FILING PARTY
☐ ASSIGNED
☐ PRIVATE
☐ PUBLIC DEFENDER
☐ ATTORNEY GENERAL
☐ PRO SE
☐ OTHER (SPECIFY):
NAME:
ADDRESS:
TELEPHONE NO:

ATTORNEY(S) FOR OTHER PARTY
☐ ASSIGNED
☐ PRIVATE
☐ PUBLIC DEFENDER
☐ ATTORNEY GENERAL
☐ PRO SE
☐ OTHER (SPECIFY):
NAME:
ADDRESS:
TELEPHONE NO:

☐ CHECK THIS BOX IF THERE ARE ADDITIONAL PARTIES AND LIST THEIR ATTORNIES ON THE BACK.

PARTY FILING APPEAL
☐ PLAINTIFF ☐ PETITIONER ☐ OTHER(SPECIFY):
☐ DEFENDANT ☐ RESPONDANT

9 DATE OF ORDER/JUDGMENT APPEALED

10 DATE NOTICE OF APPEAL FIL

TRIAL COURT ACTION APPEALED

INJUNCTION
☐ PRELIMINARY ☐ DENIED
☐ PERMANENT ☐ GRANTED

DOMESTIC RELATIONS
☐ ORIGINAL PETITION ☐ ALIMONY
☐ MOTION TO MODIFY ☐ SUPPORT
AMOUNT SOUGHT $_____
☐ DENIED ☐ GRANTED $_____

OTHER(SPECIFY):

GENERAL CIVIL
☐ DEFAULT JUDGMENT
☐ DISMISSAL/JURISDICTION
☐ DISMISSAL MERITS
☐ NEW TRIAL MOTION DENIED
☐ NEW TRIAL MOTION GRANTED
☐ JUDGMENT/JUDGE
☐ JUDGMENT/JURY
☐ DIRECTED VERDICT
☐ SUMMARY JUDGMENT

WORKERS COMPENSATION
☐ PETITION FOR BENEFITS
☐ PETITION TO MODIFY

12 STAGE OF PROCEEDINGS
☐ PRE-TRIAL ☐ POST TRIAL
☐ DURING TRIAL

13 CIVIL DAMAGES
AMOUNT SOUGHT $_____
☐ DENIED ☐ GRANTED $

14 JUDGMENT/VERDICT FOR
☐ PLAINTIFF ☐ PETITIONER
☐ DEFENDANT ☐ RESPONDENT
☐ OTHER(SPECIFY):

TYPE OF CASE

CONTRACTS
☐ ARBITRATION
☐ COMMERCIAL
☐ INSURANCE
☐ NEGOTIABLE INSTRUMENT
☐ PERSONAL SERVICES
☐ OTHER:

PROBATE
☐ TRUSTS
☐ WILLS
☐ OTHER:

MISCELLANEOUS
☐ CIVIL RIGHTS
☐ CONSUMER PROTECTION
☐ ENVIRONMENTAL
☐ PUBLIC UTILITIES
☐ OTHER:

DOMESTIC RELATIONS
☐ ADOPTIONS
☐ CHILD CUSTODY
☐ DIVORCE
☐ RECIPROCAL ORDERS
☐ SUPPORT
☐ OTHER:

PROPERTY
☐ ADVERSE POSSESSION
☐ CONDEMNATION
☐ LEASEHOLDS
☐ PERSONAL PROPERTY ACTION
☐ REAL ESTATE PURCHASE/SALE
☐ ZONING/SUBDIVISION
☐ OTHER:

OTHER STATUTORY ACTIONS
☐ TRESPASS & EJECTMENT
☐ WORKERS COMPENSATION
☐ EMPLOYEE APPEAL
☐ EMPLOYER APPEAL
☐ OTHER:

TORTS
☐ INTENTIONAL
☐ NEGLIGENCE
☐ VEHICULAR
☐ NON-VEHICULAR
☐ PERSONAL INJURY
☐ PROPERTY DAMAGE
☐ MALPRACTICE
☐ LEGAL ☐ MEDICAL
☐ UNINSURED MOTORISTS
☐ PRODUCT LIABILITY
☐ PROPERTY-RELATED
☐ OTHER:

LEGAL ISSUES YOU INTEND TO RAISE (NOTE: You will not be bound by this answer):

TRANSCRIPT ORDERED
☐ NO ☐ YES ESTIMATED COST $ COURT REPORTER:

10/79

WRIT INFORMATION STATEMENT

NOTE: Use this form for certiorari, habeas corpus and other writs.

ENTERED BY SUPREME COURT CLERK
DOCKET #

CASE TITLE IN FULL:
PETITIONER: RESPONDENT:

V.

2 TRIAL COURT OR AGENCY
☐ SUPERIOR ☐ FAMILY ☐ OTHER (SPECIFY):
☐ DISTRICT ☐ WORKERS COMP.

3 TRIAL COURT OR AGENCY CASE NUMBER:

4 DATE CASE FIRST FILED IN LOWER COURT OR AGENCY

5 TRIAL COURT JUDGE:

6 ATTORNEY (S) FOR THE PETITIONER
☐ ASSIGNED
☐ PRIVATE
☐ PUBLIC DEFENDER
☐ ATTORNEY GENERAL
☐ PRO SE
☐ OTHER (SPECIFY):
NAME:
ADDRESS:
TELEPHONE NO:

7 ATTORNEY (S) FOR THE RESPONDENT
☐ ASSIGNED
☐ PRIVATE
☐ PUBLIC DEFENDER
☐ ATTORNEY GENERAL
☐ PRO SE
☐ OTHER (SPECIFY):
NAME:
ADDRESS:
TELEPHONE NO:

8 PARTY FILING PETITION
☐ PLAINTIFF ☐ PETITIONER ☐ OTHER
☐ DEFENDANT ☐ RESPONDENT

9 DATE OF ORDER/JUDGMENT/ACTION SOUGHT REVIEWED

10 DATE PETITION FILED

11 TRIAL COURT ORDER/JUDGEMENT OR AGENCY ACTION SOUGHT TO BE REVIEWED

12 STAGE OF PROCEEDINGS
☐ PRE-TRIAL ☐ POST TRIAL
☐ DURING TRIAL

13 TYPE OF PETITION
☐ CERTIORARI ☐ STATUTORY RIGHT ☐ HABEAS CORPUS
☐ DISCRETIONARY ☐ OTHER:
☐ COMMON LAW

14 TYPE OF CASE
☐ CIVIL ☐ AGENCY
☐ CRIMINAL ☐ OTHER:

15 LEGAL ISSUES YOU INTEND TO RAISE (NOTE: You will not be bound by this answer.)

16 TRANSCRIPT ORDERED
☐ NO ☐ YES ESTIMATED COST $ COURT REPORTER:

DATE | FILING ATTORNEY (PLEASE PRINT) | REGISTRATION NO. | SIGNATURE

CRIMINAL APPEAL INFORMATION STATEMENT

NOTE: For appeals of right only. For certiorari, habeas corpus or other writs use the writ information form.

ENTERED BY SUPREME COURT CLERK
DOCKET#

1 CASE TITLE IN FULL:

STATE V.

2 TRIAL COURT
☐ SUPERIOR ☐ FAMILY ☐ OTHER

3 TRIAL COURT CASE NUMBER

4 DATE OF INDICTMENT/INFORMATION/PETITION

5 TRIAL COURT JUDGE

6 ATTORNEY (S) FOR THE DEFENDANT
☐ ASSIGNED
☐ PRIVATE
☐ PUBLIC DEFENDER
☐ PRO SE
☐ OTHER (SPECIFY)
NAME:
ADDRESS:
TELEPHONE NO:

7 PARTY FILING APPEAL
☐ DEFENDANT ☐ STATE

8 DATE OF JUDGMENT/ORDER APPEALED

9 DATE NOTICE OF APPEAL FILED

10 TRIAL COURT ACTION APPEALED
☐ CONVICTION
☐ DENIAL OF BAIL
☐ PROBATION VIOLATION
☐ GRANT OF PRE-TRIAL MOTION
☐ OTHER (SPECIFY)
☐ GRANT OF JUDGMENT OF AQUITTAL
☐ GRANT OF POST-CONVICTION RELIEF
☐ DENIAL OF POST-CONVICTION RELIEF
☐ DENIAL OF SENTENCE MODIFICATION

11 STAGE OF PROCEEDINGS
☐ PRE-TRIAL
☐ DURING TRIAL
☐ POST TRIAL

12 ☐ APPEAL FROM CONVICTION
CHARGE (S): STATUTE:

SENTENCES:
☐ CONFINEMENT ☐ SUSPENDED
☐ SPECIAL PROGRAM ☐ PROBATION
☐ FINE OR RESTITUTION ☐ DEFERED
PERIOD OF TIME: AMOUNT $
☐ OTHER:

BAIL OR RELEASE STATUS:
☐ PERSONAL RECOGNIZANCE ☐ SURETY BOND ☐ CASH BOND ☐ HELD IN LIEU OF BAIL ☐ HELD WITHOUT BAIL ☐ OTHER:

CO-DEFENDANTS:

MOTIONS (CHECK IF MADE & DENIED):
☐ SUPRESS EVIDENCE ☐ SUPRESS CONFESSION ☐ SUPRESS IDENTIFICATION ☐ SEVER ☐ OTHER:

TRIAL TYPE
☐ JUDGE ☐ JURY

13 ☐ APPEAL FROM DECISION ON POST-CONVICTION RELIEF
WAS THE CONVICTION THE RESULT OF: ☐ TRIAL ☐ PLEA

14 LEGAL ISSUES YOU INTEND TO RAISE (NOTE: You will not be bound by this answer):

15 IF TRANSCRIPT REQUIRED
COURT REPORTER: DATE OF PROCEEDING: ESTIMATED COST $ DATE ORDERED:

DATE | FILING ATTORNEY (PLEASE PRINT) | REGISTRATION NO. | SIGNATURE

APPENDIX III

CRIMINAL CASE PROCESSING PROPOSAL

The Supreme Court of Rhode Island is receiving a consistently high volume of criminal appeals which are straining the resources both of the court and of the advocates.[1] The following proposal has been designed to provide the court with a flexible and efficient method of dealing with criminal appeals. The aim is to interdict the appeals at an early stage in the proceedings and to determine at that point whether a full appellate proceeding is necessary and appropriate.

Suggested Procedure

The court would require that the following procedure be followed in all criminal appeals.[2]

Within twenty (20) days after the filing of the record with the Clerk of the Supreme Court, the appellant or other moving party shall file a statement of the case and a brief summary of all the issues proposed to be argued on appeal; this document shall be concise, not exceeding five pages. The party may take out the transcripts from the Clerk's office to refer to in preparing the statement but shall return them when the statement is filed.

Within fifteen (15) days after the filing of the above statement, the responding party may file a counter-statement. The transcripts may

[1]See Appendix.

[2]The procedure would be required in criminal appeals whether the defendants were represented by the Public Defender or brought by private counsel, so as to avoid equal protection challenges.

be taken out for reference in preparing this counter-statement but shall be returned upon its filing.

Upon the filing of the counter-statement or the expiration of the time for filing it, whichever is earlier, the Clerk shall schedule a pre-briefing conference. This conference shall be conducted by a single justice of the Supreme Court (chosen on a rotating basis) in the presence of counsel for all parties. The justice will discuss the case and the statements filed and at the conclusion of the conference shall take appropriate action, notifying counsel at that time what the action will be. The justice will be authorized to take any of the following actions he deems appropriate:

- He may order that the case be fully briefed and argued.
- He may order a special briefing schedule for individual cases, and may also order that a case be specially assigned to a calendar for oral argument and submission.
- He may order that specific appeals be consolidated.
- He may remand a case for specific actions such as evidentiary hearings or entry by the trial court of necessary orders.
- He may issue a show cause order requiring the appellant's attorney to appear before the full court prior to briefing to show cause why the judgment or order appealed from should not be summarily affirmed without further briefing or argument.
- He may issue a show cause order requiring the responding party's attorney to appear before the full court to show cause why the judgment or order appealed from should not be summarily reversed

without further briefing or argument.

In addition, the justice conducting the conference can advise counsel as to what further issues the court might be interested in having briefed and argued, or he may advise counsel as to which of the issues proposed in the statement to be raised he considers to be a waste of time. In the latter case he may provide counsel with a very brief written statement of his preliminary opinion that certain points would be fruitless to pursue, for the attorney to refer to when subsequently conferring with the client.

In those cases in which show cause orders are issued, counsel for either side would be permitted if they so desired to amplify their statements to a maximum of ten pages. The attorney would also, within this ten page limit, be permitted to add issues not set out in the original statement. (This would permit argument of points first brought to light in the conference.)

The full court would hear arguments on the show cause orders. After the argument the court could do the following:

- It could order that the case be scheduled for full briefing and argument on all points.
- It could order that additional issues be argued on appeal.
- It could remand the case for specific actions such as evidentiary hearings, etc.
- It could order that a case be assigned a specific schedule for briefing and oral argument.
- It could order that cases be consolidated.

In addition, the court could by a four-justice majority vote to do the following:

- It could order that the judgment or order appealed from be summarily affirmed with no further briefing or argument.
- It could order that the judgment or order appealed from be summarily reversed with no further briefing or argument.
- It could order that the appeal be briefed and argued but only on specific issues and that any other issues previously proposed to be briefed and argued not be pursued.

In the event that an order is promulgated by the court disposing of an appeal (summary affirmance or summary reversal), it is suggested that the victorious party be permitted the option of requesting and receiving from the court a brief official statement of law on a specified point or points.

Benefits of the Procedure

The suggested procedure would have the following benefits:

1. It would retain with the court the final decision on the appropriate disposition of each case.
2. It would dispose of no criminal appeals without a hearing.
3. It would provide the court with the option of disposing of appropriate appeals without the burden of full briefing and full oral argument.
4. It would provide the court with an opportunity to "clean up" the procedural aspects of cases before final submission, thus avoiding the possibility of those cases producing multiple appeals.
5. It would provide the court with the option of scheduling selected urgent cases more quickly than they would be otherwise.
6. It would provide the court with the option of limiting full briefing and argument to those points which the court believes merit such attention.
7. It would provide counsel and their clients with an opportunity to make an informed decision whether or not voluntarily to limit the issues on appeal.
8. It would provide the court with a mechanism for ordering summary reversal in criminal cases, an option it does not now have.

APPENDIX

The Office of the Public Defender presently has before it a total of approximately 71 appellate actions pending, of which approximately 41 will require appellate briefs. It is estimated that new appellate matters requiring briefs are being filed at a current rate of 40 per year. At the same time, the Public Defender's Office is currently preparing briefs at a rate of approximately 20 per year. While this briefing rate is expected to increase somewhat as new personnel gain experience, the rate of filings may increase also. In short, the Public Defender's Office is confronted with what amounts to a two year briefing backlog which is increasing at the rate of one year's worth of backlog every calendar year. The Public Defender's Office has reviewed its pending cases and estimates that approximately 37% of its cases would be appropriately handled without full briefing if this proposal were adopted.

The offices of the Public Defender and of the Attorney General have endorsed the pre-briefing conference proposal, on two minor conditions: that the procedure be applied to all criminal appeals, not just to those involving the Public Defender so as to avoid potential equal protection challenges; and that the procedure be mandatory and not discretionary so that neither side is put in the untenable position of selecting those appeals it considers weak.

Proposed Rule Relating to Pre-Briefing Conferences in Criminal Cases:

(a) Within twenty (20) days after the date on which the record is filed with the Clerk of the Supreme Court, the appellant or other moving party shall file in the Office of the Clerk a printed or typewritten statement of the case, consisting of no more than five pages, which shall include a brief summary of the facts and prior proceedings in the case, an outline of errors claimed, and an explanation of the reasons and grounds upon which relief shall be granted. The statement should not include extensive citation of authority. If the appellant or other moving party has taken out any transcripts in the case, they shall be returned upon the filing of the statement.

(b) Within fifteen (15) days after the statement of the appellant or other moving party has been filed, the appellee or other adverse party may file with the Clerk of the Supreme Court a similar statement setting forth the reasons why relief should not be granted. If the appellee or other adverse party has taken out any transcripts in the case, they shall be returned upon the filing of the statement.

(c) Upon the filing of the statement of the appellee or other adverse party, or the expiration of fifteen (15) days from the date of the filing of the statement of the appellant or other moving party, whichever is earlier, the Clerk of the Supreme Court shall place the case on a pre-briefing conference calendar.

(d) Pre-briefing conferences shall be conducted by a single justice of the Supreme Court chosen on a rotating basis, in the presence of counsel for all parties, unless counsel for a party notifies the Court in writing that s/he does not wish to be present. Following conclusion of the conference, the justice presiding shall issue a written order specifying that the judgment below is conditionally reversed or conditionally affirmed or that the case shall proceed to full briefing and argument. The presiding justice may alternatively issue an order remanding the case to the trial court for specific further proceedings, including but not limited to evidentiary hearings. Following any such proceedings in the trial court, the record shall be returned forthwith to the Clerk of the Supreme Court, including any additional record made of such proceeding, and the case placed on the pre-briefing conference calendar.

(e) Within ten (10) days of the issuance of an order conditionally reversing or affirming the judgment below, any party for whom such order is adverse in whole or in part may petition the full court for review of such order. Such petition may consist of the original statement filed in the pre-briefing conference and in any event shall not exceed a total of ten (10) pages. Any opposing party may respond in similar manner within five (5) days. If no petition for review is filed within the 10-day period, the order of the single justice shall become final.

(f) Review of a single justice order shall occur at a closed conference of the full court. The full court shall affirm or reverse or modify the order of the single justice by a four-justice majority. If there is no such majority, the case shall proceed to full briefing and argument. The Court shall after conference enter any and all appropriate written orders.

Explanation to Proposed Rule Relating to Pre-Briefing Conferences in Criminal Cases:

The purpose of this proposed procedure is to dispose of cases as quickly as possible which do not demand plenary treatment. The proposed time limitations can be expected to give the parties adequate time to prepare their statements.

Insofar as criminal cases are concerned, particularly where the defendant is indigent and not bearing the costs of litigation, it is imperative that the pre-briefing procedure be potentially dispositive in the proper case on formal action by the Court and not dependent on agreement of the defendant or counsel. Under the existing system, a defendant who pursues a plenary appeal has only to gain and virtually nothing to lose. Counsel for such a defendant may not, consistent with ethical obligations, advise any other course. Conceivably, a significant number of defendants might be likely to forego voluntarily a full appeal if meaningful sentence review were available, but absent such a possibility even weak cases could not be "settled". Nor are most cases which could potentially be resolved through pre-briefing conferences so totally frivolous as to be disposable under Anders v. California. Thus, while in a civil case the cost of litigating a full appeal might induce an appellant either to withdraw the appeal or to settle the claim if the pre-briefing conference discloses that s/he is unlikely to succeed on the merits, a criminal defendant, particularly an indigent and/or one who is incarcerated or facing incarceration, is not vulnerable to the same considerations; where sentence negotiation is not even available at the appellate level, compromise is not possible.

Because counsel for a defendant-appellant is not able to induce voluntary withdrawal of an appeal, and counsel for the State may be restrained by various considerations from confessing error, final disposition of a summary nature must come from the Court. Since summary treatment is a drastic measure in a criminal case, and new to this jurisdiction, it ought to bear the imprimatur of the full court unless the parties are otherwise agreeable. Thus we propose a simple mechanism for review of a single judge determination requiring the assent of not less than four justices to any type of summary disposition.

Specific provision has been made for remands to the trial court following the single justice conference. This mechanism could serve to further expedite cases and to increase overall efficiency of the system. A significant number of criminal appeals involve issues which may not have been properly preserved below. Where these are of constitutional or otherwise significant dimensions, remand would give the Supreme Court the option of ultimately having all raisable issues clearly before it in one final proceeding. Alternatively, a remand might result in the appeal being moot. In any event, where this Court now often hears two appeals on the same case (one directly from the conviction and the other from denial of collateral relief), there would be in most cases only one appeal. The provision for remand is by no means mandatory and it would occur only where the single justice feels it serves the interests of the court and the judicial system.

Proposed Amendment to Rule 16(g):

Within twenty (20) days of the docketing of an appeal, the appellant or other moving party may file and serve a motion to reverse the order or judgment below. The sole ground for such a motion shall be that it is manifest on the face of the record and the memorandum filed on behalf of the motion that the issue on appeal is clearly controlled by existing Rhode Island or federal law. The provisions of Rule 28 shall be applicable to all procedures hereunder. If the motion to reverse shall be granted, an order will be entered and a mandate will issue thereon, without further briefing and without oral argument. If the motion shall be denied, the appellant's or other moving party's brief will be due within forty (40) days of receipt of notice of such denial; and the appeal will proceed through briefing, oral argument, and disposition as provided by these Rules.

Explanation to Proposed Amendment to Rule 16(g):

Rule 16(g) currently allows only for summary affirmance. There is no reason why it should not be expanded to include summary reversal where the case warrants it. While the number of cases falling into this category is likely to be small, a review of the Public Defender caseload indicates that there are cases pending at any given time which are likely candidates for summary reversal. These are cases which would probably be disposed of on a confession of error in a jurisdiction where such action is not uncommon. In this jurisdiction, it is apparently unrealistic to expect a confession of error in a criminal case.

This proposed amendment is an alternative to the proposed pre-briefing conference procedure.

APPENDIX IV

National Center for State Courts

MEMORANDUM

TO Walter Kane

FROM Michael Hudson

RE Proposed Case Tracking Procedure for the Rhode Island Supreme Court

In response to your request, this memorandum sets forth a proposal for a revised appellate procedure for the Rhode Island Supreme Court which would enable the Court effectively to monitor the preparation of the appeals from the point of the filing of the notices of appeal.

By order, the Supreme Court has assumed concurrent jurisdiction with the trial courts to supervise the course of appeals from the point of the filing of the notices of appeal. The necessary step now is for the Court to adopt a procedure which will keep it apprised of the progress of an appeal at all times, so that this newly assumed authority to supervise the appeals can be exercised effectively to prevent cases getting lost in the interstices of appellate procedure and to reduce the frequency and length of dilatory appeals.

Supervision of Appeals

The Supreme Court presently has no consistently reliable knowledge of the status of an appeal until the record is filed with it by the trial court clerk. From the filing of the notice of appeal (NOA) to that point, the trial court supervised the progress of the appeal.

CONTINUED

1 OF 2

The current practice is for the appellant to file the notice of appeal in the trial court, which forwards a copy of it to the Supreme Court Clerk. Then, within ten days of filing the NOA, the appellant orders the transcript from the trial court reporter. The reporter delivers it to the appellant upon completion. The appellant, in turn, must file the transcript within sixty days after the date the NOA was filed. The appellant can obtain one thirty-day extension from the trial court and must apply to the Supreme Court for subsequent extensions. The trial court clerk assembles the record on receipt of the transcript and sends the record to the Supreme Court Clerk. When the record arrives, the Supreme Court Clerk opens a file on the appeal and assigns it a docket number. Only at this point does the Supreme Court take jurisdiction over the appeal and monitor its progress.

Our observation of, and experience in, a wide variety of appellate court systems leads us to the firm conclusion that trial courts cannot and should not be relied on to supervise appeals effectively. Once judgment has been entered, trial judges tend to feel that their involvement in a case is over: responsibility for appealing is seen as resting exclusively on the attorneys. Furthermore, even if trial judges were of a mind rigorously to police the steps required to perfect an appeal, the decentralized nature of trial courts would make uniformity or efficiency in doing so impossible. Finally, if no specific court has assumed clear and active responsibility for the early stages of appeals, attorneys in turn are likely to be less energetic during these stages as a result of having no specific court to which to be responsible or answerable.

Effective management of the appellate process requires centralized administration of appeals to insure consistent treatment of all cases. This does not mean that Supreme Court justices should personally supervise all aspects of the process. It does mean that clear guidelines for granting extensions of time or administering other rules of appellate procedure should be established and enforced. This can most effectively be done if the NOA is filed in the Supreme Court in the first instance. The Supreme Court can then actively control all phases of the case until the appeal is terminated. In addition, by the physical act of filing the NOA, attorneys will be made aware that they are in the Supreme Court and answerable to it. At present, between the filing of the NOA and the transmittal of the record, control of the case rests in part with trial court personnel and in part with the attorneys. The concern of both for appellate efficiency is secondary.

Dilatory Appeals

For tactical reasons, attorneys occasionally want to prolong rather than expedite an appeal. An attorney may adopt such stratagems as retaining the transcript in his possession instead of filing it promptly with the trial court clerk. Because of the press of other business, trial court judges and clerks often lack time to police the steps for taking an appeal as closely as the steps in pre-trial proceedings. Rather than scrutinize the reasons given to justify questionable requests for an extension of time, trial courts are prone to grant them on the premise that the facts as stated are true, thereby inadvertently allowing the dilatory tactics

of attorneys to succeed. In fact, in many cases, no clear reasons may be offered or required.

The Supreme Court can minimize the incidence of dilatory appeals by taking responsibility for granting time extensions in an appeal from its inception. The Supreme Court Clerk's staff would be able to monitor each step in the appellate process, thereby insuring that extensions are not allowed automatically but only for genuinely good cause shown. Attention to such details will reduce the frequency with which dilatory tactics succeed even if such tactics are not altogether eliminated, and will also reduce the likelihood of appeals becoming inadvertently "lost" through confusion or disinterest.

Filing the Notice of Appeal in the Supreme Court

Authorities on appellate courts agree that effective case management requires that the NOA be filed in the appellate court, and that the appellate court take jurisdiction over the appeal from the filing of the NOA. E.g., see R. A. Leflar, Internal Operating Procedures of Appellate Courts 13-18 (Chicago: ABA Foundation, 1976).

At present, ten jurisdictions require that attorneys file the NOA in the appellate court. Thirty-seven require it to be filed in the trial court, and three require it to be filed in both. One jurisdiction, Oregon, requires that the NOA be filed in the appellate court in criminal cases and administrative agency appeals, while the NOA is filed in the trial court in civil cases. Appendix A contains a table showing which jurisdictions fall into each category.

Specific Examples

New Hampshire adopted new rules of appellate procedure, effective July 3, 1979. Key steps in the New Hampshire approach are as follows:

1. The original NOA is filed with the Supreme Court Clerk, who in turn mails copies of it to the trial court clerk, the administrative assistant of the trial court, and all parties. The NOA contains a statement of issues to be raised in the appeal, described in the context of how they arose at trial.
2. Transcripts are not ordered until the Supreme Court reviews the statement of issues in the NOA and determines what portions are required to hear the case: only those portions are prepared, and they are ordered by the Supreme Court Clerk. The attorneys may request the Supreme Court Clerk to order additional portions of the transcript.
3. Court reporters have sixty days to prepare the transcript and file it with the Supreme Court Clerk. One automatic extension of fifteen days can be obtained from the Supreme Court, but the Clerk reviews the request to ascertain the number of pages involved and to be sure that the request is warranted. Additional requests for extension of time are viewed skeptically by the Court and are not granted readily.
4. All motions for extensions of time following the NOA are heard in the Supreme Court.

Like Rhode Island, New Hampshire has only one appellate court. Thus, the New Hampshire model could serve in some respects as a useful guide for Rhode Island.

Designation of the transcript by the Supreme Court clerk is unique to New Hampshire among the New England states. Connecticut's procedure is more typical. In Connecticut, the appellant orders the transcript on or before filing the NOA: the reporter fills out an acknowledgment form for the appellant, which states the number of pages and estimated delivery date, and the appellant sends a copy of that acknowledgment to the appellate court to be filed with the NOA. The NOA is vulnerable to a motion to dismiss if it does not have the completed acknowledgment form attached to it. The reporter also sends a copy of it to the appellate court clerk and to the chief state court administrator. When the transcript is delivered to the appellant, the reporter files a certificate of delivery with the appellate court clerk and the chief state court administrator. Connecticut specifies no time limit within which the transcript must be filed. If no certificate of delivery has been filed by the estimated due date, the appellate court clerk contacts the reporter to determine the reason for the delay and when delivery can be expected. Exceptionally delinquent reporters are prodded by the state court administrator's office until they file the transcripts.

New Jersey's transcript preparation procedures are much like Connecticut's. In New Jersey, the appellant must attach a copy of the

transcript order to the NOA. The transcript itself is due thirty days after the appellant filed the NOA. However, reporters need not ask for an extension if they cannot prepare it within that time. The administrative office of the courts puts out a weekly report showing, for each court reporter in the state, the number of transcript pages owed and the number of days each transcript is delinquent. If a transcript becomes too delinquent, the reporter is pulled out of court until it is finished. Vermont takes the same approach as New Jersey. The only difference is that the initial due date of the transcript is sixty days, rather than thirty days, after the NOA is filed.

The New Hampshire model imposes substantial burdens on the Supreme Court by making it responsible for designating what portions of the transcript are needed for an appeal. Connecticut, New Jersey, and Vermont leave that burden with the appellant. All three appellate courts police the timely preparation of transcripts to prevent undue delay in the appellate process.

Suggested Procedure for Rhode Island

Elimination of unnecessary delay in the appellate process requires two things to be done simultaneously. First, time periods for each of its steps should be reviewed. Reasonably brief time limits should be set for each step. Second, once the steps have been streamlined, the appellate court should make sure that the time limits specified are met. Leflar, supra, pp. 14-15. This means that the appellate court should itself rule on any motion affecting timely preparation of the record.

The following is a summary of the proposed procedure

The appellant would have 30 days from the entry of the judgment below to order the transcript and file the NOA. The information form currently in use would be made the NOA. The appellant would obtain from the trial court administrator a date stamped certificate stating that the transcript had been ordered, and giving its estimated length and the amount of the deposit paid for it. By rule, a transcript would only be deemed to be "ordered" if the full estimated price had been deposited in advance with the trial court administrator unless the appellant had been allowed to proceed in forma pauperis. The appellant would be required to attach the certificate of transcript order to the NOA at the time of filing. Without the certificate, the appeal would be vulnerable to a motion to dismiss - voidable, not void.

Upon receipt of the NOA, the Supreme Court clerk's office would open a file, assign the case an appellate number, and mail a date stamped copy of the NOA (with a copy of the certificate of transcript order) to the appropriate trial court, the trial court administrator, and to all other parties. The trial court clerk would be responsible for assembling the record and transmitting it directly to the Supreme Court within 30 days of the date of the filing of the notice of appeal. The transcript would be due in the Supreme Court 60 days after the date the transcript was ordered. The court reporter would deliver the transcript to the trial court administrator, who would in turn deliver it directly to the Supreme Court clerk's office. The trial court

administrator would be authorized, upon motion or sua sponte, to extend the delivery date a maximum of 30 additional days, with notice to the Supreme court and all counsel; subsequent extensions could only be granted by the Supreme Court. Upon receipt of the transcript, the Supreme Court clerk's office would file it and mail a notice of its filing to all counsel, notifying them that the briefing schedule had begun. While the appellant would not have possession of either the record or the transcript before their being filed with the Supreme Court, the appellant would be held primarily responsible for seeing that all deadlines were met, and that extensions were obtained where necessary. With the exception of the one 30-day extension by the trial court administrator for transcript preparation, all time extensions would be granted by the Supreme Court. Trial courts would continue to rule on substantive motions.

<u>The Procedure in Detail</u>

- Filing the NOA

The appellant should file the NOA with the Supreme Court Clerk. This notifies the Court as soon as an appeal is taken and allows it to monitor the subsequent progress of the appeal. The Clerk should open an appeal file and assign a docket number when the NOA is filed. Among other benefits assigning a docket number would greatly facilitate case monitoring by SJIS. It would also simplify record keeping regarding the preargument settlement conference. The Clerk's office should mail copies of the NOA to the trial court clerk and other parties.

- Ordering the Transcript:

  The appellant should be required to order the transcript before filing the NOA, obtaining from the trial court administrator a signed certificate that shows the estimated length of the transcript and the dollar amount of the deposit paid. A copy of that certificate should be attached to the NOA. The absence of the certificate at filing would make the appeal voidable, not void. This ensures that transcripts are ordered promptly and indicates the size and nature of the transcripts actually ordered.

  The Supreme Court should require that to "order" a transcript, a party must (a) pay the full amount of the estimated cost in advance or (b) be adjudged in forma pauperis. This would be in accord with the current procedure in the Superior Court; a summary of that procedure is appended as Appendix B. It is suggested that a uniform policy be adopted for both the Superior Court and the Family Court.

- Form of the Notice of Appeal:

  The information form presently required by Provisional Order should be made the NOA. This eliminates the filing of multiple documents and ensures that the information will be obtained.

- Time For Filing:

  The time for filing the NOA should be changed from twenty days to thirty days. This would allow the appellant as much time as at present to raise the transcript fee and order the transcript.

- Delivery of the Record:

  The trial court clerk should assemble and deliver the record directly to the Supreme Court within 30 days after the filing of the NOA, as shown on the date-stamped copy mailed to the trial court by the Supreme Court clerk. Since the transcript has been ordered and paid for, there is no reason to wait for its completion before forwarding the record. Forwarding the record directly reduces the possibility of its going astray. Judges in both the Superior and Family Courts have said that the 30 day deadline would not significantly interfere with their use of the trial record in deciding substantive post trial motions.

- Time for Transcript Delivery:

  The reporter should deliver the transcript to the trial court administrator within sixty days after the date of order. The Superior Court Administrator has stated that this is an adequate amount of time in the great majority of cases. (Family court transcript preparation may present a problem initially.)

- Extensions for Preparation:

  If the reporter finds that the transcript cannot be prepared by the due date specified in the preceding paragraph, the trial court administrator should be empowered to extend the time up to a maximum of thirty additional days. The administrator should fix the length of that extension in consultation with the reporter so that it approximates the time actually needed to finish the transcript.

The trial court administrator should file a certificate of the new due date with the Supreme Court Clerk and serve copies on the parties. Extensions beyond this total 90 day period should be granted only by the Supreme Court, and only on a clear and convincing showing of cause.

This procedure would remove from the trial court judges the responsibility for initial transcript preparation extensions, which accords with the fact that the trial court judges are in fact usually ignorant of reporters' production problems, and assigns this responsibility to the person most able to assess and control those problems.

- Delivery of the Transcript:

The trial court administrator should deliver the transcript directly to the Supreme Court clerk's office, at which point the clerk should notify counsel of the transcript's delivery and filing and the beginning of the briefing cycle. This way, the transcript is less likely to go astray. Also, the clerk can make a rough estimate of the completeness of the transcript by comparing it with the estimate on the certificate of transcript order attached to the NOA.

Four points should be noted. One: the ruling by the trial court administrator on motions for extensions of time would be a ministerial function, not a judicial one. In fact, he should have the authority to extend the time (up to the maximum of 30 additional days) sua sponte, as management of the court reporters may require. (Note that this could eliminate a signifcant number of motions and orders.) Second the

filing in the Supreme Court by the administrator of a certificate of extension will keep the Court apprised at all times of when a transcript is due. Third, the final responsibility for the production of the transcript officially rests at all times with the appellant's attorney, who is expected to stay in touch with the reporter regarding its production and to be aware of and ensure adherence to any deadlines. Fourth, this procedure will allow the Supreme Court to know at all times when any document is due to be filed in it.

Appendix C contains a flow chart diagramming the suggested procedure.

Motions

Earlier in this memorandum, it was noted that the Supreme Court alone should pass on motions affecting timely preparation of the record or the transcript. The suggested procedure identifies two such motions.

1. Motions for extensions of time to file the transcript.
2. Motions for extensions of time to file the record.

These two motions would be based on Rule 11(c) of the Supreme Court. In addition, Rule 12(c) provides that the appellee may move to dismiss the appeal if the appellant fails to have the record timely transmitted to the Supreme Court Clerk. Rule 12(c) motions clearly affect the future course of the appellate process and, therefore, should also be heard by the Supreme Court.

This procedure would eliminate the motion for extension of time to file a notice of appeal for excusable neglect; appropriate cases could be

dealt with by writs of certiorari. If the Court prefers to keep the "excusable neglect" motion, we recommend that the authority for ruling on all such motions be exclusively assumed by the Supreme Court, in line with the overall suggested policy that the Supreme Court have authority over, and knowledge of, everything affecting the time intervals in appeals.

All motions other than those asking for more time, filed between trial court judgment and transmittal of the record, should continue to be heard by the trial court. Such motions, even if filed as part of the appellate process, do not affect the time sequence in the Supreme Court. Research has identified fourteen such ancillary motions in the Superior Court. Appendix D contains a list of those motions. Appendix E contains a list of all post trial motions which can be filed in the Family Court under both present and proposed rules. Of these 22 motions, only three would be filed in the Supreme Court (Nos. 14, 15, and 21, and only if the Supreme Court continues to allow extensions for time to file the NOA; otherwise, only two motion types would be affected).

Finally, we suggest that the clerk's office perform the function of ruling on routine motions for extensions of time rather than the Justices of the Supreme Court. Unusualy, non-routine, or repeated motions for extensions could be brought to the attention of the Justices as appropriate.

Appendix A

Filing of Notice of Appeal (NOA)

A. NOA Filed in Appellate Court 10

Delaware	Oklahoma
Indiana	Pennsylvania
Michigan	South Carolina
New Jersey	Texas
Ohio	New Hampshire

B. NOA Filed in Trial Court 37

Alabama	Illinois	Missouri	Utah
Alaska	Iowa	Nebraska	Vermont
Arizona	Kansas	Nevada	Virginia
Arkansas	Kentucky	New Mexico	Washington
California	Louisiana	New York	Wisconsin
Colorado	Maine	N. Carolina	Wyoming
Florida	Maryland	N. Dakota	D.C.
Georgia	Massachusetts	Rhode Island	
Hawaii	Minnesota	S. Dakota	
Idaho	Mississippi	Tennessee	

C. NOA Filed in Both 3

Connecticut
Montana
W. Virginia

D. Other 1

Oregon (see p. 4)

Appendix B

Summary of the Current Procedure for Obtaining a Transcript in the Superior Court

Appendix B

1. Upon completion of a trial, the court reporter measures her stenographic tapes and makes an estimate as to the cost of preparation of the transcript of the proceedings.

2. The court reporter then fills out an estimate form and brings it to the Superior Court Administrator's office where it is kept on file under that court reporter's name.

3. An attorney wishing to claim an appeal to the Supreme Court must file a notice of appeal in the Superior Court Clerk's office within twenty (20) days from the date the judgment appealed from is entered. Under Supreme Court Rule 10(b), the attorney is required to order a transcript of the proceedings within ten (10) days from the date the notice of appeal is filed.

4. The attorney wishing to order a transcript must go to the Superior Court Administrator's Office with the name of the court reporter. There the secretary looks up the estimated cost of the transcript on the estimate form.

5. To order the transcript, the attorney must fill out and submit a transcript order form. This form contains the name of the case, the name of the court reporter and the estimated cost of the transcript.

6. Along with the completed order form the attorney must also submit a check in the full amount of the estimated cost of the transcript. It is upon receipt of these two items that the transcript is considered "ordered."

7. The transcript order form is stamped with the date and time it was received and photocopied. One copy is filed with the record in the Clerk's office. The other is forwarded to the court reporter. The original is retained on file in the Superior Court Administrator's office.

8. The check in the amount of the estimated cost of the transcript is deposited in an account set aside for this purpose by the Superior Court Administrator's office.

9. Upon receipt of the copy of the order form, the court reporter commences the preparation of the transcript.

10. When the court reporter has completed the transcript, he or she delivers it to the Superior Court Administrator's office. The attorney is then notified of its completion.

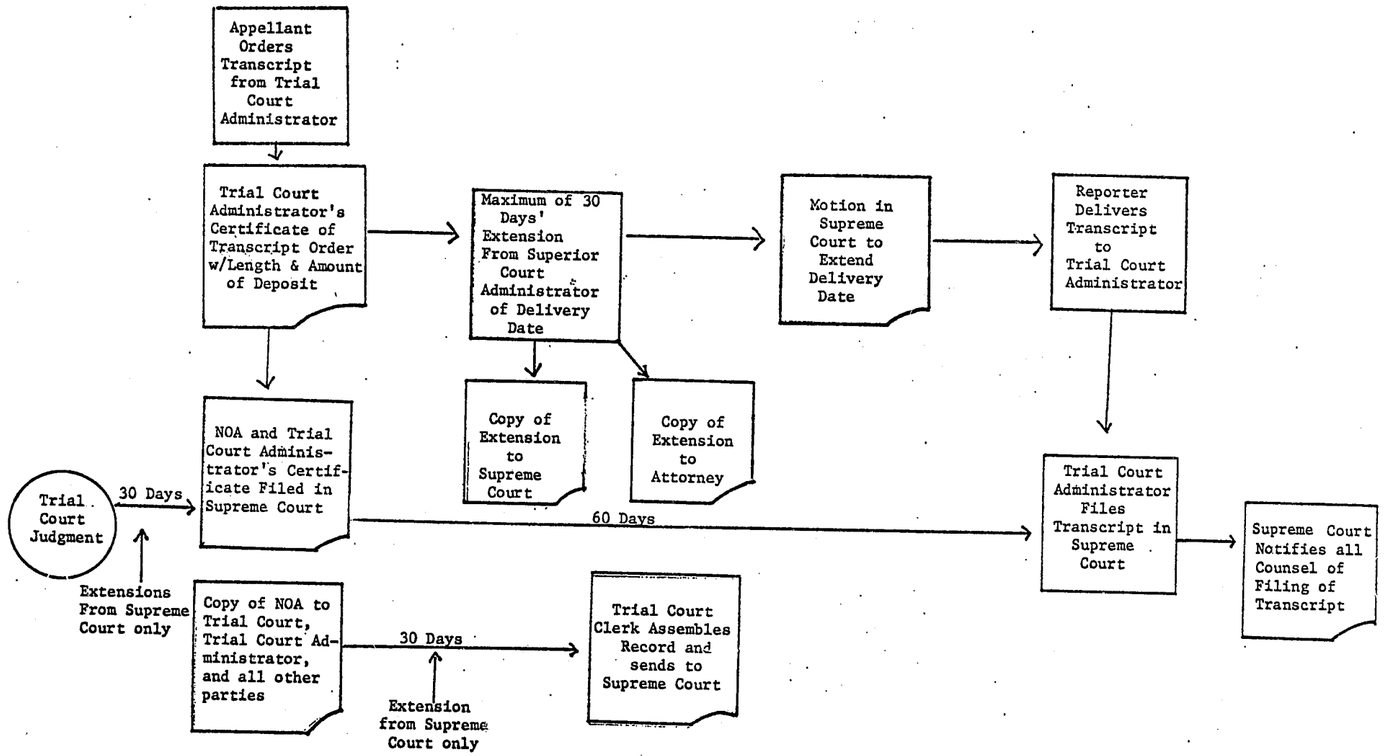
11. When the attorney arrives to pick up the completed transcript, he signs a form acknowledging receipt of the same.

12. After the attorney has received the transcript, the Superior Court Administrator's office makes out a check in the amount of the cost of the transcript and gives it to the court reporter.

13. The attorney on receiving the transcript must file it with the Superior Court Clerk's office where it together with the record and exhibits are transmitted to the Supreme Court and docketed there.

Appendix C

Flow Chart of Suggested Procedure - Appendix C



Appendix D

Appendix D

1. Motion for an injunction pending appeal*
   Super. R. Civ. P. 62 (c)

2. Motion for a stay pending appeal*
   Super. R. Civ. P. 61(a)

3. Motion for orders for protection of parties pending appeal
   Sup. Crt. Rule 7
   G.L. 1956 (1969 Reenactment) sec. 9-24-8

4. Motion to take a deposition pending appeal
   Super. R. Civ. P. 27(b)

5. Motion for correction or reduction of sentence
   Super. R. Crim. P. 35

6. Motion for stay of execution and relief pending appeal
   Super. R. Crim. P. 38

7. Application for release after conviction pending appeal
   Sup. Crt. Rule 9

8. Motion for release on bail pending appeal
   Super. R. Crim. P. 46

9. Motion by state for additional bail pending appeal
   G.L. 1956 (1969 Reenactment) sec. 12-22-12, as amended by P.L. 1972, ch. 169, sec. 27.

10. Motion to withdraw as counsel
    Super. R. Crim. P. 50(b)

11. Motion by defendant to have state pay the cost of transcript for purposes of appeal
    Griffin v. Illinois, 351 U.S. 12, 76 S. Ct. 585, 100 L.Ed. 891 (1956)

12. Motion for correction of clerical mistakes
    Super. R. Crim. P. 36

13. Motion for relief from judgment or order (clerical mistakes)
    Super. R. Civ. P. 60

14. Motion for correction or modification of record
    Sup. Crt. Rule 10(e)

---

* Both these motions must ordinarily be made in the first instance in the trial court. See: Sup. Crt. Rule 8.

Appendix E

1. Motion to take deposition pending appeal.
   R. Dom. Rel. P. 27(b)

2. Motion for relief from judgments or orders.
   R. Dom. Rel. P. 60(a),(b)

3. Motion for stay of proceedings to enforce judgment pending disposition of motion to vacate judgment under R. Dom. Rel. P. 60.
   R. Dom. Rel. P. 62(b)

4. Motion for injunction pending appeal.
   R. Dom. Rel. P. 62(c)

5. Motion for modification of judgment.
   R. Dom. Rel. P. 64(A)

6. Motion for allowance of fees to commissioners after partition and sale of real estate.
   R. Dom. Rel. P. 66(A)

7. Motion for execution to enforce judgment for the payment of money.
   R. Dom. Rel. P. 69

8. Motion to adjudge in contempt for failure to comply with court orders.
   G.L. 1956(1969 Reenactment) sec. 8-6-1
   G.L. 1956(1969 Reenactment) sec. 8-10-38

9. Motion for modification of orders in bastardy proceedings.
   G.L. 1956(1969 Reenactment) sec. 15-8-11

10. Application for release of person committed to A.C.I. for failure to provide support for children.
    G.L. 1956(1969 Reenactment) sec. 15-9-6

11. Motion for reversal of decree of adoption on application of parent not notified.
    G.L. 1956(1969 Reenactment) sec. 15-7-21, as amended by P.L. 1970, ch. 132, sec. 1.

12. Motion for modification of orders of committment- Release, detention or recommittment of juvenile.
    G.L. 1956(1969 Reenactment) sec. 14-1-42

13. Application for discharge of delinquent previously committed.
G.L. 1956(1969 Reenactment) sec. 14-2-4, as amended by Reorg. Plan No. 1, 1970

14. Motion for extension of time for delivery of transcript to attorney.
Family Court Order No. 5.

15. Motion for extension of time for filing notice of appeal.
Sup. Crt. Rule 4(a)

16. Motion for orders for protection of parties pending appeal.
Sup. Crt. Rule 7

17. Motion for stay or injunction pending appeal.
Sup. Crt. Rule 8

18. Motion for trial court to approve statement of evidence of proceedings when no report was made or when transcript is unavailable.
Sup. Crt. Rule 10(c)

19. Motion for trial court to approve agreed statement as record on appeal.
Sup. Crt. Rule 10(d)

20. Motion for correction or modification of the record.
Sup. Crt. Rule 10(e)

21. Motion for extension of time for transmission of the record.
Sup. Crt. Rule 11(c)

22. Motion to dismiss appeal for failure of appellant to cause timely transmission of record or to docket appeal.
Sup. Crt. 12(c)

APPENDIX V

Case Management by Teams

by Lorraine Moore Adams, Cynthia Easterling-Smith, and William Popp

Lorraine Moore Adams, a staff associate for the Center's Northeastern Regional Office, has worked in the area of clerk's office procedures as director of projects in Vermont, Rhode Island, and New York developing court office manuals. She is a graduate of Gettysburg College.

Cynthia Easterling-Smith is also a staff associate for the Northeastern Regional Office. She has worked on projects dealing with personnel systems, collective bargaining, and the improvement of clerk's office management. Ms. Easterling-Smith graduated from East Carolina University and holds an MBA from the University of New Hampshire.

William Popp, senior staff associate of the Northeastern Office, has directed or participated in projects that include the areas of trial court case management, jury improvement, court reporting, facilities, budget, planning, and systems analysis. Mr. Popp has a BA in economics from Fairleigh Dickinson University and an MS in management from Rensselaer Polytechnic Institute.

"I like my job," said the veteran team member to the interviewer. Speaking softly, with confidence and with a discernible sparkle in her eye, she continued, "I was here before the team approach was tried, and frankly I didn't think it would work. We seemed to be doing pretty well, each of us with separate areas of responsibility. My job was checking briefs for compliance with the rules. When I was asked to assume complete responsibility for monitoring a fourth of the criminal caseloads, I was frightened. But it has turned out all right. I have to keep in contact with a wide variety of people including court reporters, attorneys, and administrative people in our office. I find being responsible for the case before it leaves the trial court, through the appellate process and until it is disposed of, makes my job much harder. Now I worry about my cases. But I go home at night feeling that I have accomplished something."

These comments about the team approach to case management were made by a middle-level clerk in the Federal Second Circuit appellate clerk's office during an interview with one of the authors. The interview was conducted in the fall of 1978 as part of a review of the New Jersey intermediate appellate division's clerk's office.[1] Project staff were attempting to identify alternate case-management methods. We were impressed by the Second Circuit's use of teams, and recommended a variation of it for the New Jersey court. Our intent here is not to prepare a balanced article pointing out the strong and weak points of the team approach. Quite simply, we are presenting an advocate's position, written with the object of stimulating thought and action as to its use elsewhere in the courts. We shall show that the team approach works in the courts for the same reasons it works in private corporations. In addition to the job satisfaction, job enrichment, and other reasons cited for its effectiveness in the private sector, this approach lends itself to a number of special characteristics of the courts.

Use of Teams in the Private Sector and at the Federal Second Circuit

While experiments involving the use of work teams in English coal mines began as early as 1945, the most widely known application has been developed by the Volvo Automobile Company in Göteborg, Sweden. Like its American counterparts, Volvo had previously used mass production work techniques, in which the majority of the employees were assigned repetitive assembly-line work. In an attempt to make the jobs more interesting and ultimately to improve the quality of its product, the company adopted the use of teams in the early 1970s.

Under the Volvo configuration, employees were assigned to teams, which, in turn, were assigned to work stations equipped with the machinery and tools necessary to put a portion of the automobile together. These teams were given total responsibility for their part of production, which involved a wide variety of tasks and the planning of a rotation of duties among team members. In order to make the concept work, Volvo found it necessary to make large investments in training programs. But work it did, so much so that a number of American corporations, including American Telephone and Telegraph, have followed Volvo's lead and have established the practice in their organizations.

In the early 1970s the Second Circuit Court, like most courts, processed cases in a highly segmented manner based upon mass production systems employed in the private sector. In assembly-line fashion, case papers were transferred from one individual to another, each responsible for a discrete processing task for all cases filed. Typically, one person screened initiating papers, another made all docket entries, others handled briefs or transcripts, another placed papers in the file room, one scheduled hearing dates, and still another distributed case files to judges.

The following excerpt shows that the court was experiencing many problems concerning work quality, efficiency, and responsibility.

> Since a docket clerk could not accommodate situations that varied even slightly from the norm, many cases "fell out" of the system and had to be retrieved by upper-level management .... Further, since no one person was responsible for processing an entire appeal, no one took the initiative to ensure that all necessary papers were filed, that deadlines were met or that the judges received all briefs and papers in advance of the argument date. There was no efficient way to provide information about particular cases. And because each worker knew how to do only one or two tasks, replacing or helping an overburdened co-worker was difficult if not impossible.[2]

The Second Circuit clerk's office analyzed its procedures in 1972 and concluded that its methods of processing were ineffective in handling the increased caseload. A new organizational structure was designed, based on cases being processed by one of four teams.

The new system designed by the circuit executive called for integrated case processing by four teams, each composed of two case-management clerks. Two clerks are designated "captains." Although the captains are in charge of two teams, they continue to perform all the duties of team members. In addition, each set of two teams is aided by a case-management trainee. A case-control supervisor who reports to the chief deputy clerk is responsible for the work of all four teams. Cases are assigned to teams according to the type of litigation involved. Each case-management team handles every aspect of its cases.

Within each team, tasks are allocated according to personal preference. Each clerk, however, must be familiar with all operations, making it possible for team members to fill in for each other in case of absence or to help out an overworked team.

With the thorough understanding of case processing that the case managers now have, fewer cases become problems. Even the most unusual tasks can generally be accommodated. When problems do arise, the team members know that even though they may seek advice from their supervisor or fellow members, it is their own responsibility to solve the problem.[3]

The employees approve of the new arrangement, with its increased responsibility, and find that it enables them to see the importance of each task and its relation to the work of the court. Attorneys also like the new procedure, since it allows them to deal with fewer people regarding a case. The same is true of the judges, who are able to delegate more responsibility for procedural mat-

ters to the clerical staff once cases have been assigned to individuals.

Why the Team Approach Can Work In the Courts

These observations suggest a key reason why the team approach works. It makes work more interesting, more fulfilling. In the language of management specialists, this is job enrichment. The additional complexity builds interest in the job. Typically, the result is lower absenteeism, greater willingness to help others, and, ultimately, greater productivity.

These benefits need not result in higher costs. Present court experience, while limited, suggests that personnel costs will be about the same or slightly higher under the team approach. The use of teams, however, will require a substantial change in the type of personnel. A court adopting the team approach could anticipate a reduction in employees in its clerk's office from, for example, 30 to 23 or 25, or about 20 percent. But in order to perform the added responsibilities, the team members, in contrast to their predecessors, would have to be better trained, possibly better educated, and above all willing to accept substantial individual responsibilities. Thus, in cost terms the reduction in staff might be offset by increased individual salaries.

What has been said thus far about job satisfaction, costs, and personnel applies, more or less, not only to the courts but also to other organizations. Two further points, however, have to do with the unique characteristics of the courts. First, teams do not require heavy use of computer technology. Thus far, computer and other technological methods have been applied to court problems with limited success.[4] It is true that the use of small-scale technology, like audio recording and filing techniques, has worked; this is because the technology can be easily understood and put to work. On the other hand, expensive, complex computer methods have fallen short of expectations. Consider case scheduling by computer, for example. It has not been successful, despite a significant national effort to deal with the challenge. With the use of teams, the technological problem may be lessened, because a team member schedules the cases assigned to that team. The lower volume for each team may make manual scheduling techniques feasible. Therefore, the need for less complex technology prevails throughout the system, for the work that might require complex technology can be handled by a team member. Teams, however, can make good use of the computer's capability to perform routine jobs efficiently, such as the preparation of notices. These jobs are relatively simple to design, develop, and implement, thus increasing the likelihood of successful applications.

The team approach results in lower absenteeism, greater willingness to help others, and, ultimately, greater productivity.

The second point about the team approach in courts concerns the work habits of judges. As often as not, judges, before coming to the bench, worked for themselves, or in small offices, or in small group practices. In order to prosper in a small practice, a lawyer must use his time wisely. He must meet with clients, get to court, dictate correspondence, and draft memoranda, all within tightly prescribed time limits. His efforts are towards making himself or one or two other individuals very efficient. Coming from this background, judges often give short shrift to large administrative bureaucracies, or cannot quite understand them, or perhaps some of both. Since teams are generally small, judges can identify with them, often feeling more comfortable because the teams closely resemble law offices and other small groups of their experience. Increasingly, judges are being assigned greater administrative responsibilities and, to date, judges' performances in this sphere have been quite uneven. If this level of performance stems in part from their alienation from large organizations, then it is reasonable to postulate that judges, feeling a kinship with small groups, will be motivated to take a greater interest in administration, a basic condition for strong executive leadership.

Two Proposed Uses of the Team Approach

Let us consider how the team approach might be applied in clerks' offices in two hypothetical court situations, one an intermediate appellate court, the other a trial court of general jurisdiction.

An Intermediate Appellate Court

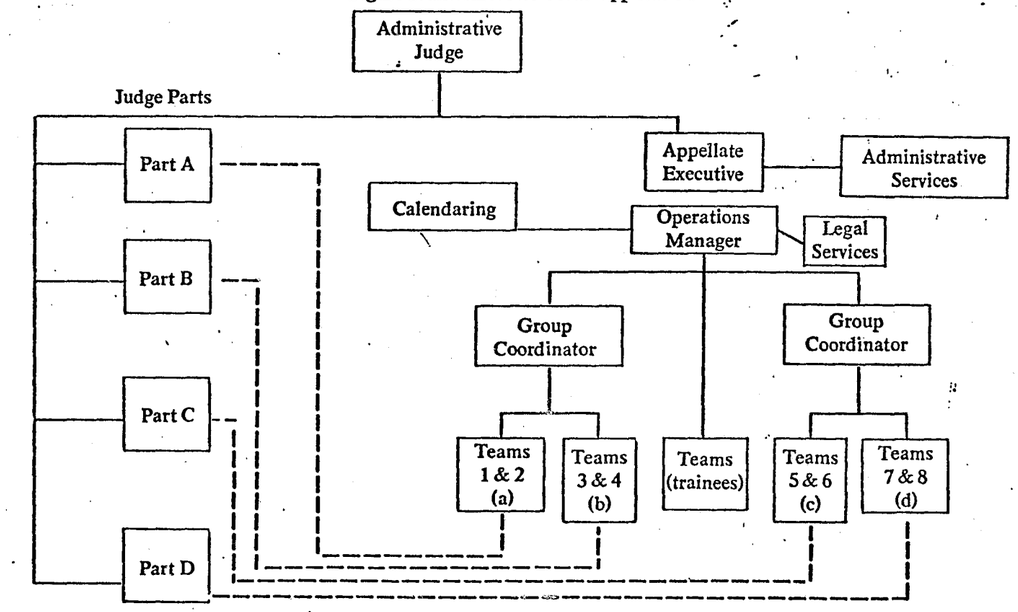
Use of the team approach is particularly appropriate in an intermediate appellate court, which sometimes deals with complex matters requiring continuous monitoring of the documents necessary to perfect the appeal. The basis for establishing a team approach is usually already there, for multijudge panels hear appeals as teams.

In this example, the appellate court, which has statewide jurisdiction, hears appeals as of right from the several divisions of the general trial court, and from the trial courts of limited jurisdiction and state administrative agencies. The administrative judge exercises general administrative superintendence over the entire appellate division. The 16 judges who serve the appellate court are organized into four "parts," each part headed by a presiding judge, who assigns individual cases to three of the four judges in the part. The judges generally use unassigned time to draft opinions. The caseload, which continues to rise, stood at about 3,500 filings for the most recent court year. The administrative processing of appeals is centralized within the office of an appellate executive, who performs strictly as a manager rather than as a case processor, in contrast to the role traditionally performed by the clerk of the court.

The team configuration depicted in organizational chart form in Figure 1 proposes four groups of two teams each, with one group assigned to each of the four judge-parts, and a fifth group of four trainees to be assigned as needed by the group coordinators. Each team, composed of two individuals called case managers, is expected to handle between 500 and 600 cases annually. The group coordinators, in addition to supervising the teams, make specific assignments, and maintain quality control. Reporting directly to the appellate executive, the operations manager coordinates all team efforts, as well as the calendaring and secretarial services. Within legal services are four advising attorneys, available to assist individual teams as needed. The legal services manager, the primary liaison with the judges, assumes case-assignment responsibility, supervises the attorneys, and addresses questions of a legal nature. These two top-level managers, legal services and operations, are key personnel in the decision-making process.

When a notice of appeal is filed, it first is transmitted to the legal services manager, who consults with the calendar supervisor to assign the case to one of the four appellate parts. A tailor-made scheduling order that specifies due dates for submission of documents necessary to perfect the appeal is prepared by legal services. The scheduling order and case papers are then assigned to the team designated to the judge-part assigned to hear the appeal. Responsibility for a case is assigned to an individual team member on the basis of a constant formula (by odd or even case number, for example). Teams monitor cases according to the dates set in the

Figure 1: Intermediate Court Application



scheduling order and transfer a case to the calendar supervisor when the appeal has been perfected. Each team member becomes the contact between the judge-part and the public for cases assigned to that member, initiating and handling correspondence, telephone calls, and personal contacts. The advising attorney screens motions, responds to public inquiries of a legal nature, and is a chief information source as to cases assigned to the judges and attorneys. Close interaction with the judge-part throughout the process is necessary. Once the case has been assigned, the team sees it through to completion.

Trial Court of General Jurisdiction

In the second example, a trial court of general jurisdiction, five judges serve a county population of 275,000. The court has original jurisdiction of all criminal and civil cases, and conducts jury trials when necessary. The court also has exclusive jurisdiction of juvenile delinquency, dependency, and neglect proceedings. One division is devoted to probate matters.

Using teams for case management holds out the promise of a more effective and more productive clerical work force.

Annual overall filings (cases ready to go to trial) total about 6,500. This reported caseload does not reflect the amount of clerical work carried out, however, particularly in the civil area. Most torts, resolved by negotiated settlement or arbitration, require little formal court involvement but do create quite a few processing tasks, since papers are often filed long before the dispute is resolved. A speedy-trial rule requires trials in criminal cases to commence within 200 days after arrest. Judges are assigned to cases according to a primarily individual calendaring system. Masters are appointed to hear divorce cases.

In contrast to the appellate court, the team configuration for this court is by general case division. The existing delineation of duties by civil or criminal jurisdiction and the fact that liaison with judges occurs primarily through the court administrator's office influenced the decision to use this case-assignment method. In both the civil and criminal offices, much case-processing work does not involve formal court involvement. For this reason, retention of present employees who would become proficient in one particular type of matter would be more of an advantage in this setting than building up a close working relationship with judges.

The team organization for this court, shown in Figure 2, is much simpler than that in the appellate example, because it involves a smaller, much more specialized staff. The concept of the team as the basic work unit, however, remains the same. Because a team processes a very specific type of matter, quality control, supervised by the group coordinator (formerly the deputy clerk in the respective civil or criminal office), is easy to maintain. Here the composition of the team is somewhat different, each team having three members. The most experienced staff person becomes the captain, who closely supervises the work of the team members, reports work-load adjustment needs to the group coordinator, and performs processing tasks in case of illness, vacation, or burgeoning caseload. Promotions are based upon merit rather than upon the availability of a vacancy in a specified position title: an individual performing satisfactorily as case manager I during a three-to-six-month probationary period may be promoted to case manager II, and might eventually become captain. Were a considerable increase in caseload to occur, one team and an additional group coordinator could be added easily, with new staff assuming case manager I roles in the experienced teams.

Civil matters are divided among three teams, each with three members. One team is devoted entirely to torts, another to divorce matters (the two largest civil case categories) and the third to confession of judgment cases, secured transaction filings, and other miscellaneous matters. Two teams handle criminal matters: the first is responsible for all criminal cases, post-conviction relief petitions, bail forfeitures, and bench warrants, the second processes juvenile, support, and summary conviction cases. Responsibility for responding to inquiries received across the counter is rotated among the more experienced team members; questions regarding specific cases are directed to assigned team members. While in-court duties regarding civil matters are rotated among the three teams, a pool of courtroom clerks is available for the more frequent criminal sessions.

When a case is initially filed in the civil clerk's office, it is assigned a docket number by the group coordinator. A divorce petition, for example, would be routed to the Team B captain, who would direct the case to the proper team member on a rotation basis. The team member would assume responsibility for filing and docketing all pleadings, motions, and the master's report, and would enter the decree granting or denying the divorce. The notice to attorneys of the docket number specifies the court liaison person to whom inquiries are to be directed.

In much the same way, misdemeanor and felony cases are assigned to an individual team by the group coordinator, who immediately informs the calendar-control section in the administrator's office of the case, to ensure strict compliance with the 200-day standard to trial date. Time standards for arraignments and pretrial motions are specified by court rule. Individual team members work closely with the calendaring section, the district attorney, and the judge in scheduling cases to meet the time standards. The careful monitoring of each case ensures the prompt submission of all required documents and readiness for court appearances.

SUMMARY

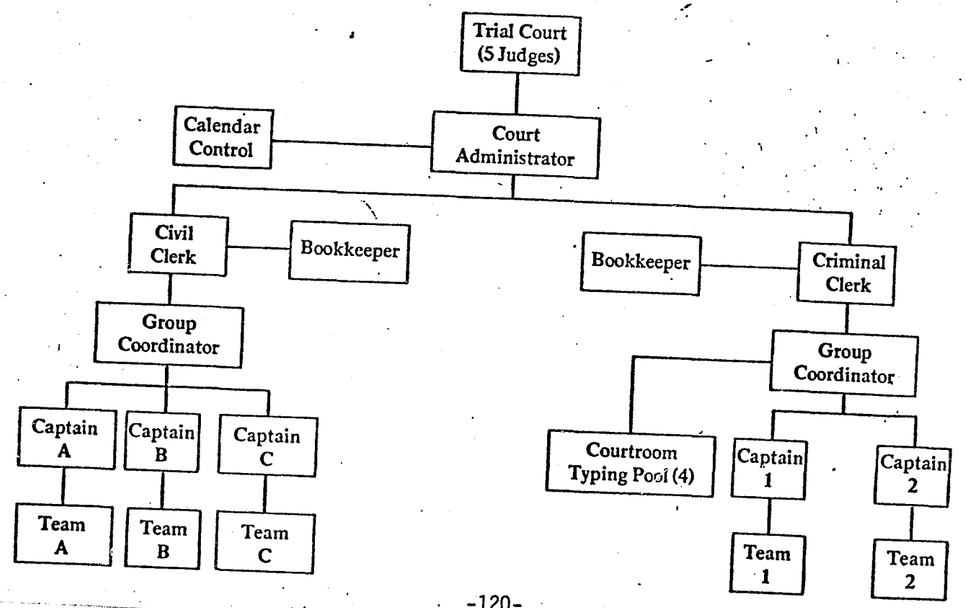
Using teams for case management holds out the promise of a more effective and more productive clerical work force. The practice may also prove helpful in dealing with perennial court problems, the proper role of the computer, and uneven judge performance. If the potential of the approach is realized, routine cases will be handled with as great or greater dispatch. Moreover, with a complete knowledge of a case in mind, a team member can tailor his or her approach to a unique or complex case by, for example, devoting extra time to schedule a diverse group of litigants for a hearing or by arranging for extra typing support for the production of a transcript of a sensitive trial.

It is worth repeating that this article is written by advocates, not by neutral parties. In considering the use of teams, a court must be aware of the hard facts relating to costs and the necessity of attracting and keeping qualified personnel. These items certainly require detailed planning and may require involved negotiations with civil service or union officials. But, given an imaginative and determined effort by court policymakers they can be dealt with.

One more, and perhaps the most important thought: the comments of the Federal Second Circuit appellate clerk quoted at the beginning of this article

continued on page 38

Figure 2: Trial Court of General Jurisdiction Application



Team Approach *cont'd*

gave the reader a glimpse of the enthusiasm and personal growth that can take place with the use of teams. It is quite simply a more human method of work. □

NOTES

[1]National Center for State Courts, *A Study of the New Jersey Appellate Division's Clerk's Office,* May 1979.

[2]"Job Enrichment for Court Clerks" *Judicature,* Vol. 59, Number 8, March 7, 1977, p. 394-399.

[3]*Ibid.*

[4]For detailed report on the courts and computers, see Burton Kreindel, et al., *National Evaluation Program, Phase I Report: Court Information Systems* (Mitre Corporation, August, 1976). Two magazine articles dealing with the same subject are Mae Kuykendendall and William Popp, "Computers in the Courts," *State Court Journal* (Summer 1977); and Samuel Conti, William Popp and David Steelman, "The Lessons of PJIS," *State Court Journal* (Summer 1978). For a more general report on the use of computers in the public sector, see Gilbert W. Fairholm, "A Reality Basis for Management information System Decisions," *Public Administrative Review* (March/April, 1979) and Regina Herzlinger, "Why Data Systems Fail in Nonprofit Organizations," *Harvard Business Review* (January-February, 1979).

Minnesota *cont'd*

tures against the budget and to collect all data needed to prepare the next year's budget. The budget procedures required or recommended in the budget manual were designed to enhance the effectiveness of trial court budgeting efforts and to ensure a degree of uniformity in the process statewide so that meaningful analysis and comparisons of financial information on the operation of trial courts can be conducted.

The final product of the project team's efforts was the development of a conceptual design for a model financial information system that would link together courts of the state through a single financial database and provide essential information for planning, budgeting, accounting and reporting, management and administration, evaluation, and feedback. This system would be designed to produce budgetary and financial reports on a responsibility basis and contain files on the entire range of funds flows through the court. In addition to recommending input forms and output reports, the project staff identified basic elements in the development process of the model financial system. The final report submitted for this component of the Minnesota Financial Information Planning Study includes the proposed budget standards, chart of accounts, budget manual, and financial information system conceptual design.

CONCLUSION

The 18-month study was a significant effort directed toward assisting the state court administrator in complying with the statutory mandate for statewide trial court standards in the areas of personnel administration and financial and budgetary operations, as well as for an information-systems development relative to each of these areas. Moreover, the project staff's recommended standards, supporting forms, procedures, and reporting mechanisms can provide a foundation for the achievement of great administrative unification and improvement of the Minnesota state court system, as well as at least four management objectives. First, the implementation of personnel, budgeting, and associated information-systems standards should result in overall improvement in the short range by ensuring minimum procedural adequacy in the administration of personnel and financial operations of all trial courts. Second, standards implementation should provide the administrative responsibilities necessary for state-level planning and monitoring as well as the basis for adequate responsiveness to legislative requests for information on trial court operations. Third, the standards should result in procedural uniformity required for the collection of comparable data on trial court operations. This information should also enable the Supreme Court and the legislature to assess more accurately the impact of future policy decisions relating to the courts, particularly as to additional or full-time funding of trial court operations. Finally, in the event state funding should be authorized in the future, the implementation of these standards can be expected to significantly ease the transition process. Personnel and financial procedures in the trial courts throughout the state already will become substantially similar. Trial court personnel will be accustomed to working within uniform guidelines promulgated by the state court administrator. Moreover, the components of the personnel and financial information reporting system designed for this project can emerge as a foundation for developing a comprehensive and uniform personnel system and a unified state court budget necessary under a fully state-funded court system. □

NOTES

[1]Chapter 951, 1971 Minn. Laws.
[2]Chapter 432, 1977 Minn. Laws.
[3]Minn. Stat. §480.15, Subd. 10a.
[4]Minn. Stat. §480.15, Subd. 10b.
[5]*Hennepin County Court Employees Group v Public Employment Relations Board, 274 N.W 2d 492, 1979.*

APPENDIX VI

From:

Microfilm and the Courts
Guide for Court Managers

National Center for
State Courts
1976

Appellate Court Applications of Microfilm

Microfilm technology can be applied to some of the larger appellate courts. These courts may wish to utilize microfilm for (1) reviewing the trial court record, (2) disseminating judicial opinions, and (3) recording appellate records and briefs. However, since only the third application has actually been implemented in some appellate courts, the reader should view the first two applications as suggestions for future consideration.

Trial Court Record

Trial courts utilizing an active case microfilm system can rapidly and inexpensively produce a duplicate microfiche copy of the entire case file film-jacket for the court of appeals. This record is more convenient to handle and store than the bulky paper case file. Appellate judges must be provided inexpensive table-top readers and reader-printers to review the record. The size and format of the microfiche (and film-jackets) should be standardized within a state to facilitate this exchange of information.

Disseminating Judicial Opinions

With the current proliferation of judicial opinions and the wide dissemination required, the appellate court may also consider using the National Microfilm Association's standard 105mm x 148mm microfiche at 24X reduction for recording opinions. Generally a service bureau can produce the microfiche more conveniently and inexpensively than the court itself.

Appellate Records and Briefs

In some large appellate courts, the sheer volume of records and briefs has exceeded the court's storage capacity or has hampered the retrieval of information. Microfilm may provide an effective solution to both these problems. Some commercial companies have already undertaken this task and publish microfiche copies of appellate court records and briefs at an appropriate subscription rate.[7]

While the appellate court may have an interest in microfilming these records only for its internal needs, a commercial company is generally best equipped to market the materials to a wider audience. The commercial company might provide the appellate court with a free or low-cost reference copy in exchange for publication rights to the microfilm.

Publications on Microfilm

A number of law-related publications are currently available on microfilm.[8] Courts may wish to utilize the microfilm version instead of the bound volumes due to potentially lower cost and handling convenience.

The main problem with these publications is that they are available in a multitude of reduction ratios and microforms. Publications on ultrafiche, especially, are sometimes recorded in nonstandard reduction ratios to accommodate a specific quantity of information and to protect the publisher's proprietary interest by precluding unauthorized duplication of the ultrafiche without specialized equipment. Microfilm readers acquired for other court applications described earlier in this report may not be compatible with the microfilmed publication.

This dilemma can be resolved by acquiring additional or universal readers to view the various types of microfilm media used by publishers. Most of these publications are provided on microfiche or ultrafiche, and compatible readers are priced under $500. Under no circumstances, however, should the court microfilming program be compromised to accommodate the microfilmed publications by stipulating unjustifiably high filming reduction ratios. Instead, the microfilmed publications should be compatible with the existing court microfilm system.

[7] E.g., the U.S. Supreme Court records and briefs are published by two companies on microfiche.

[8] E.g., West Publishing Company's "National Reporter Service" (First Series), Commerce Clearing House's "U.S. Tax Reports," National Criminal Justice Reporting Service (NCJRS) publications.

Many courts fail to properly inspect microfilm records

Several hundred courts around the country now participate in programs for microfilming their closed court records. After evaluating many court microfilm systems over the last few years, project staff have consistently encountered one alarming problem: courts fail to properly inspect their microfilm. In most cases, courts are not even aware that microfilm requires inspection. They are merely sold equipment and services and then mistakenly led to believe that "if you can see the image, the microfilm is good."

Most courts will view the microfilm in a reader after it has been processed and then proceed to destroy the original paper if this visual inspection does not uncover defects. This type of inspection, however, is simply not adequate to uncover significant problems that could affect the microfilm's utility and ability to last for a long

Continued on next page

National Center for State Courts

REPORT

Court Improvement Through Applied Technology (CITAT)

A TECHNICAL ASSISTANCE PROJECT OCTOBER 1978

Courts benefit from microfilm

What does a court do when storage space is exhausted, records cannot be transferred from the court to an alternate storage location, and records must be kept permanently? An increasing number of courts are looking to microfilm technology to help solve this dilemma.

Microfilm has been used by both industry and government for many years to store large volumes of records in a small amount of space. In the last 10 years, many courts have also begun reaping the benefits resulting from miniaturization. For most courts, microfilm can reduce space requirements for records storage by over 90 percent, improve access to records, and reduce costs.

When microfilm is properly produced and stored (see accompanying articles), most states will allow the courts to destroy the original paper

Continued on next page

Quality control standards for microfilm

The following inspection and testing procedures should be followed to ensure that the court microfilm is suitable for use and long-term retention:

- ☐ **Visual Inspection.** Each roll of film should be examined at intervals using a *light box, eye loupe,* and *cotton gloves* to reveal obvious defects in microfilming such as folded or overlapping documents. Original silver film should normally not be inspected on a reader, since the reader could scratch the film. The order and content of the microfilm images should be established prior to filming through proper document preparation, rather than through post-filming frame-by-frame inspection on a reader.
- ☐ **Density.** The beginning and end of each roll of film should be checked using a *densitometer* to determine the degree of darkness or lightness of the image background. A blank piece of paper of the same condition and color as the documents being filmed should be microfilmed on the roll and used for this test rather than other documents on the microfilm which might contain lines. For a negative microfilm image, the densitometer should read between 0.9 to 1.3; the closer to 1.10, the better the density.
- ☐ **Base Plus Fog Density.** The density between frames of film should be measured, using a densitometer to determine the level of grey cast caused by film characteristics and processing chemicals, which prevent the films from being totally clear. For a negative microfilm image, the densitometer should read below 0.10.
- ☐ **Resolution.** Each roll of film should be checked, using a *microscope* for the degree of detail and sharpness of the microfilm image. A special *microfilm test pattern* is microfilmed for this purpose. The microscope should resolve a test pattern yielding a resolution of 90 lines/mm or higher.
- ☐ **Archival Quality.** At least one roll of microfilm should be tested each week for residual chemicals remaining on the film after processing. A 10cm piece of film leader is cut off and tested in-house or by a service bureau, generally using the *methylene blue* test. The concentration of residual chemicals (hypo) must be less than 0.7 micrograms per square centimeter for permanent microfilm; higher concentrations might lead to film deterioration and blotching. The test must be performed within two weeks of processing.

Standards for microfilm storage

The original silver microfilm required for permanent retention should never be used for daily operations. Instead, a drazo or vesicular copy should be made for daily use and the original stored under the conditions indicated below. Since few courts can provide these conditions, courts generally must store the original microfilm in facilities provided by archives or a commercial service bureau.

COURT IMPROVEMENT THROUGH APPLIED TECHNOLOGY PROJECT
of the
NATIONAL CENTER FOR STATE COURTS

Denver Project Office
250 West 14th Avenue, Suite 802
Denver, Colorado 80204
303/534-6424

Donald S. Skupsky
Project Director

Richard T. Martin, CRM
Staff Associate

Randy P. Wolfe
Staff Associate

This project was supported by Grant Numbers 77SS-99-6016 and 77TA-99-6001, awarded by the Law Enforcement Assistance Administration, United States Department of Justice. Points of view or opinions stated in this publication do not necessarily represent the official position or policies of the U.S. Department of Justice.

- ☐ **Storage Containers.** Film should be wound on noncorroding reels, and placed in noncorroding and acid-free containers. Corrosive metals, rubber bands, and ordinary cardboard boxes could damage the film over time.
- ☐ **Temperature and Humidity.** Room temperature and humidity should be held constant, not to exceed 70°F. and 40% relative humidity; changes should not exceed 5 degrees in temperature or 5% relative humidity in a 24-hour period. High humidity and temperature can foster the growth of mold and fungus which can damage the microfilm. (See photograph).
- ☐ **Physical Security.** Original permanent microfilm should be protected from both natural (fire and water) and man-made threats (theft or sabotage).
- ☐ **Air Impurities.** Air conditioning is most appropriate for filtering out from the air harmful contaminants that could damage the microfilm.

Fungus growth on microfilm caused by improper storage

(Courtesy of Harold Dorfman, Microfilm Systems Coordinator, City of New York, from his article "The Effect of Fungus on Silver Gelatin, Diazo, and Vesicular Films," Journal of Micrographics, Vol. II, No. 4, March/April 1978.)

COURTS BENEFIT

Continued from previous page

records after they have been offered to the archives or historical society for permanent preservation. Document information can then be read from the microfilm using special readers that enlarge the image to original size. Microfilm can be inexpensively duplicated for use in multiple locations, and paper copies of the microfilm images can be made using reader-printers.

Although most courts use microfilm for inactive, closed records, several courts are now recognizing the benefits of microfilming active records through the use of film-jacket and updatable microfiche systems. By microfilming new records as they are received, courts can benefit from improved information retrieval, distribution of copies, security, and integrity of records. The new updatable microfiche now enables courts to rapidly and efficiently microfilm case records as they are received without the time delay and problems associated with traditional microfilm produced by photographic means.

MICROFILM INSPECTION

Continued from previous page

period of time.

Permanent court records that will be retained in microfilm form must be tested for archival quality. This is a legal requirement of most state statutes and court rules regarding microfilm and is also a practical requirement to ensure that the microfilm will not deteriorate with time. During the processing stage of microfilming, chemicals are used to produce the microfilm image. At the last stage in processing, excess chemicals are washed off the film with water. If the wash is not adequate and the residual concentration of these chemicals on the film is above the recommended standard, the chemicals could begin to react with the film and form blotches over the images. This deterioration process could occur within three years or 300 years, depending on a variety of factors. The only way that courts can safeguard the microfilm image is to perform an archival quality test, generally the "methylene blue" test, at least once a week on their film. This type of testing takes time (30 minutes) and does add to the cost of the microfilm program (about $10 per test). The cost for archival testing is minimal, however, compared to the potential loss in personnel time and personal rights, which could result from inadequately prepared microfilm that deteriorates over time. Such testing is critical for permanent court records when the original paper is destroyed after microfilming.

A variety of other problems relating to the microfilm cannot be detected by visual inspection alone. Improper illumination, improper operation of camera and processor equipment, or defective film can only be detected through testing for density and resolution.

END