

Writs, Prayers and Appellate Facts and Figures

By Herb Fox

What's the best way to get a published opinion in a civil case from the Court of Appeal in Ventura? The secret is to convince the Court to accept for review a discretionary writ petition; last year Division Six published nearly 45% of its written opinions resulting from writ petitions. In comparison, the Court published only 14% of its opinions arising from routine appeals.

What, then, is the best way to get the Court to accept your civil writ petition for review? A wing and a prayer – only five out of 121 writ petitions (four percent) filed at Division Six last year resulted in a written opinion.

Those are just some of the statistical gems found in the Supreme Court's newly released 2006 Court Statistics Report, which contains statewide case trends in the Superior Courts, Courts of Appeal and Supreme Court between fiscal years 1995 and 2005.

The statewide reversal rate for civil appeals for 2004 – 2005 held relatively steady at 21% for full reversal and 11% for affirmance with modification, meaning that 33% of all civil appellants received some degree of relief from the Courts of Appeal. The report does not, unfortunately, break down the affirmance/reversal rate by District and Division.

If you are representing a criminal defendant, the full reversal rate is only five per cent, but 21% were affirmed with modification (usually modifying the sentence). Thus even defendants in criminal appeals have a reasonable chance (26%) of receiving some relief. If, on the other hand, the prosecution appeals (for example, a pre-judgment dismissal), the reversal rate is an extraordinary 30%!

Our appellate division also again wins the race for the quickest median time between submission of the final briefs to filing of the opinion: only 76 days. The statewide

median time is 122 days, and some divisions exceed that by a mile. In other Divisions of the Second District (Los Angeles), the median time from filing of the final brief to issuance of the opinion is 211 days (Division Three) and 187 days (Division Two).

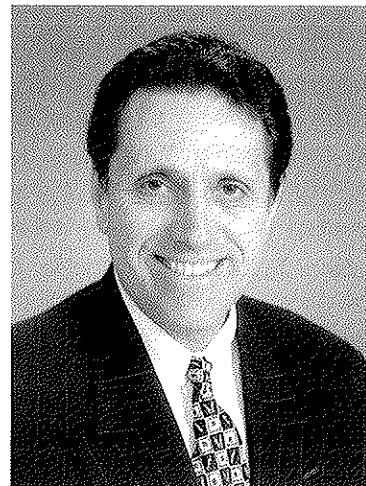
The time from the filing of the Notice of Appeal to the filing of the written opinion is less significant because much will depend on the time taken for record preparation and briefing – factors not under the strict control of the Courts. The statewide median time is 433 days. Our Division Six comes in second quickest at 379 days, only to be outdone by Division Four of the First District (Bay Area), at 347 days.

While the stones of appellate justice grind slowly, there's at least one good reason: the average yearly caseload for an appellate court justice is 124 cases. If all of these appeals go to the merits, they would require each Justice to issue about ten written opinions per month, or more than two per week.

Moving to the state's Supreme Court, the rate of granting Petitions for Review crept up to five per cent (the same for criminal and civil), up two points from the three percent grant rate in the previous year (this includes grants, grants and hold, and grants and remands). And the number of depublication orders from the Supreme Court declined precipitously over the decades. The Supreme Court depublished only 16 appellate court cases last year; in 1986-87 it depublished 132 cases!

The 145-page report can be found and downloaded at: <http://www.courtinfo.ca.gov/reference/documents/csr2006.pdf>.

Watch this space next month for another Appellate Scorecard—the appellate affirmance/loss records for our local civil trial bench!



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