



# Justice Delayed is Justice Denied

## *Court of appeals backlog*

Occasionally circumstances arise that serve to remind us that courts in this state exist to meet the needs of the public rather than the needs of lawyers, judges, and other court personnel. Such a moment has arrived in Michigan.

Faced with an embarrassingly large and seemingly intractable backlog in the state court of appeals, newly designated Chief Judge William C. Whitbeck has decided to undertake some fundamental and difficult actions, and his bench is on his side. It's hard to imagine any single administrative change in our justice system of more direct and immediate benefit to litigants than resolving our busiest appellate court's chronic problems with long delays. Today, the average case languishes in the court of appeals system for almost two years, and the wait is growing. This, despite a steadily declining average caseload per judge.

Releasing the information about the extent of the problem required courage from the court. Solving it properly will require courage from the court and the rest of us. When Chief Judge Whitbeck met with Bar officers before the public release of the statistics, he acknowledged his initial dismay at the magnitude and complexity of the problem he faced. The statistics speak for themselves, and a careful reader can clearly understand why Judge Whitbeck and his colleagues would be

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concerned. After all, the time from claim of appeal to decision in 2001 was longer in every respect than it had been at any time during the last 15 years. At the same time, filings per year were down significantly from their high in 1993, when the pre-tort reform filings peaked and the constitutional amendment eliminating the automatic right to guilty pleas had not yet taken effect. This decline in filings coupled with the ten new judges added since 1989 has meant that filings per judge are now less than half what they were in the early 90s.

While it is true that the statistics also reflect a change in the way the cases are counted and that there is support for the court's belief that the caseload now has a higher concentration of more difficult cases, there is simply no explanation that makes the long delays the public experiences in the court acceptable. The average opinion case now takes 654 days, or 1.8 years, to reach disposition, and in 2001 nearly 10 percent of the cases took more than 2.5 years for completion. Indeed almost two percent of the cases were three years old when decisions were rendered, and a few took four years. To give some meaningful comparison, the ABA's standard for processing times in the intermediate appellate court system is one year. When one factors out the court's expedited cases, such as termination of parental rights, the problem balloons to an average of 744 days, or two years, to disposition.

Some of the most conscientious lawyers I know are judges of the court of appeals. I am absolutely certain that they share Judge Whitbeck's dedication to this problem because they cannot help but recognize that justice delayed is not simply justice denied, it is justice with an escalating price tag.

The problem is not slow judging. The judges themselves turn cases around within an average of 64 days after they arrive in

their chambers. The biggest point of delay comes from the amount of time that cases sit around gathering dust in "the warehouse," the term used to describe where cases are sent until research staff and judges are available to start working on them. The average regular or complex case sits on the shelf at the court of appeals for almost a year between the time it is filed and the time that it reaches the judge's chambers for oral argument and opinion. That delay is clearly unacceptable.

The 263-day average delay from the time the claim of appeal is filed until the case is submitted to the court is also unacceptable. In my opinion, blame for that delay is shared by many actors, including tardy court reporters, inefficient trial courts, penurious legislators, dilatory appellate lawyers, and outdated court rule procedures. Speaking of the court reporters, the new computerized reporting systems allow nearly instantaneous turnaround of transcripts, and the transcript time provided in the rules needs to be carefully examined.

It cannot be forgotten that at the heart of every case are human beings coming to the court for justice—a real life victim of a crime or a civil injustice, a business struggling in the marketplace, or in the case of our smallest parties, a child seeking a permanent home. Some are defendants who believe that they received an unfair trial, or litigants required to wait for extensive periods of time for money awarded to them by a jury or for the court to tell them that their business will not be ruined by an adverse jury verdict.

Every survey done in recent years shows that there is a crisis in confidence in the judicial system which is brought about by a concern for the cost and delay experienced by those involved in litigation. However painful the effort may be, a solution to the court of appeals' backlog must be found, and the Bar must join the court's effort to make the

changes necessary to reduce the delay. Justice *should* be blind, but it also must be timely.

What should we do? Because I do not have the answers, I have appointed a committee to review the court of appeals' recommendations and to present a report to the Board of Commissioners no later than June 30 for adoption at the board's July meeting. Because I believe this problem is so significant, I intend to chair the committee and to assist the court with all deliberate speed to get the Michigan appellate system to stop delaying justice.

I am personally encouraged that it was the court which released the statistics and the court which intends to be "first one in the water" on these issues. But the court cannot solve the problems alone. They will need the assistance of appellate lawyers, court reporters, and the legislature to solve this nagging problem.

When added to the natural, unavoidable time required to process a case through the trial court system, appellate delay adds to a lack of confidence in the entire judiciary. When it takes the judicial system longer to finally decide a case than it takes the average law student to acquire a law degree, longer than it took the U.S. to fight every war in its history except Vietnam, and longer than it takes to build most of our public buildings, a search for solutions is mandatory. Justice delayed is justice denied. ♦

### on the web

Statistics on the court of appeals backlog can be found on the *Bar Journal* website:  
[www.michbar.org/journal/home.cfm](http://www.michbar.org/journal/home.cfm).

