

THE JOURNAL OF APPELLATE PRACTICE AND PROCESS

DEVELOPMENTS AND PRACTICE NOTES

EXPEDITED APPEALS IN SELECTED STATE APPELLATE COURTS

PREFACE

The “caseload crisis” in appellate courts is just as significant in the state appellate courts as it is in the federal system. Particularly at the intermediate courts of appeal, which handle the bulk of all state appeals, courts are struggling to keep their dockets moving. The gridlock isn’t new. Twenty-five years and many cases ago, two writers described the frustrating consequences of appellate courts’ overcrowded dockets and overworked judges:

[A]lthough the judicial system has not yet collapsed, it suffers from an insidious, precollapse erosion of its only product, justice. Appellate judges in crowded courts are not performing their duties in the manner people believe and expect. They have stoically accepted their role as society’s shock absorbers and made necessary compromises in the way they perform their duties, simply to forestall predicted disasters. In so doing, they have subtly, and perhaps

unwittingly, altered the product which has been their historic contribution to American society.*

What will it take to alleviate the problem? What have some courts tried; what has worked? More judges, but on smaller panels? Utilization of the services of retired judges? New limits on civil parties' ability to appeal? New ways to speed up the process of deciding appeals? Foregoing the writing or publishing of opinions? The old cliché says, "Justice delayed is justice denied." And yet, some wonder, is justice accelerated also a form of justice denied?

Among the approaches courts may employ to reduce their workloads and to facilitate the processing of cases through the appellate system is the adoption of an expedited procedure for certain kinds of cases. The following articles describe, and at times criticize, the expedited procedures used in several jurisdictions, including the District of Columbia, Indiana, Kentucky, Massachusetts, New Hampshire, New York, Ohio, Vermont, and West Virginia. We are particularly pleased to share with you in the New Hampshire article the perspective of Justice Joseph P. Nadeau of that state's supreme court, who was instrumental in developing New Hampshire's 3JX Docket, and who read with interest the other articles in this section during our initial preparation of this issue. We owe him our thanks, and we are grateful as well to his colleague Justice James E. Duggan, who first suggested that we consider focusing on the differences among the states in approaching expedited appeals.

The reader will notice here an interesting variety of approaches to acceleration of the appellate docket, from the use of small or single-judge panels, to quicker means of record compilation/assembly, to limits on oral arguments and briefing, and to limits on the publication of written opinions or dispositions.

The criticisms and challenges highlight several issues: (1) whether what is being omitted or shortened in the name of expediency is too valuable to be sacrificed; (2) whether the so-called expedited procedures are in truth any faster or more satisfactory for the parties involved; (3) whether the right

* Arthur J. England, Jr. & Michael P. McMahon, *Quantity Discounts in Appellate Justice*, 60 *Judicature* 442, 443-44 (1977).

kinds—or too few kinds—of cases are eligible for expedited process; (4) whether lawyers are willing to utilize fast-track procedures when it's up to them to choose; (5) whether some kinds of cases—even though assigned to an expedited docket—are yet being handled fast enough; and (6) whether parties forced into expedited procedures are being shortchanged in the due process department.

Those whose state court systems are considering the implementation, retention, modification, or elimination of expedited procedures will all find relevant information in the following pages.

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