

The Role of the Staff in the Operation of the Ninth Circuit Court of Appeals

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What I want to talk about today is the role of the staff in the operation of the Ninth Circuit Court of Appeals. The staff has been very blessed with excellent chief judges over the years including: Judge Chambers, Judge Browning, Judge Goodwin, Judge Wallace, and Judge Hug. We have learned a great deal from their many years of experience in overseeing the operation of the circuit.

In his remarks, Judge Browning alluded to the court's Long-Range Plan. The plan starts with the mission statement of the court. It reads:

The mission of the Ninth Circuit Court of Appeals is to provide an impartial forum for the just and prompt resolution of cases through the uniform and coherent application of the Constitution and the laws of the United States.¹

The principal role of the staff is to help the court achieve its mission. It is a well-known fact that judicial time is our scarcest resource. Accordingly, the staff attempts to conserve judicial time so it is wisely spent deciding cases.

As noted by Chief Judge Hug and Judge Browning, the vacancies on this court have made some think that the Ninth Circuit judges should actually be on the "Endangered Species List." These long-term vacancies have had a serious impact on court operations. The staff tries to assist

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¹ UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, LONG RANGE PLAN 5 (May 1992).

the court in those areas where it is appropriate, so that the judges can do what the President appointed them to do – decide cases. To that end, the court has made efforts over the years to delegate to staff things that are appropriately delegable, with clear guidelines and the necessary checks and balances in place.

I would like to spend a few minutes giving you some examples of how this works in the real life day-to-day world of the Ninth Circuit. However, because I am a clerk, I should provide you with some of the court's statistics before I proceed. These numbers should give you some flavor of how the workload of the court has changed over the years, particularly the last twenty years or so.

As Judge Browning mentioned, the Ninth Circuit is approaching 10,000 appeals annually.² This past year, the court received about 9,400 appeals.³ But the one change that I think has really made an impact on the court over the last ten years or so is that 40% of these cases are pro se, or involve parties not represented by attorneys.⁴ These approximately 4,000 cases per-year present certain challenges to the court, including the dilemma over how to process these cases. Efforts thus far at processing the multiple pro se and un-represented cases demonstrate a great use of the staff, who again operate under appropriate checks and balances that the judges set in place.

Another statistic is of the approximate 9,500 cases the court received this year, about half of them fell out of the system at some point along the way. In other words, the cases that are actually going to be at issue, briefed, and ready for the judges to decide on the merits is more in the neighborhood of 4,500.⁵ Cases fall out of the system for a number of reasons including: the effectiveness of the court's mediation program, protective notices of appeal, and lack of jurisdiction. Thus, a primary task for the staff is just trying to ferret out the cases that the judges need to decide and preparing them for the judges' resolution.

Another related statistic that I think is somewhat interesting is that of those cases that three-judge panels decide on the merits, the court affirms approximately 90% of them.⁶ Clearly, this demonstrates that appellants have an uphill battle when pursuing their case at the appellate level.

² 5 *Symposium Transcript* 7.

³ JUDICIAL BUSINESS OF THE UNITED STATES COURTS, 1999 ANNUAL REPORT OF THE DIRECTOR 88 tbl. B-1 (1999)[hereinafter ANNUAL REPORT OF THE DIRECTOR].

⁴ *Id.* at 128 tbl. B-9.

⁵ *Id.* at 88 tbl. B-1.

⁶ *Id.* at 110 tbl. B-5.

Now I will spend a few minutes describing various staff offices within the court whose common goal is conserving judicial time to decide cases. The first staff unit I would like to discuss is our Pro Se Unit, which the circuit established about seven years ago at the time when the Ninth Circuit saw pro se cases increase dramatically. The Pro Se Unit consists of an attorney and four paralegals. Essentially, their job is to look at each and every pro se case, as soon as the litigants file the case with the Court of Appeals, to assure that the court has jurisdiction and that the appealed judgment is a final "appealable judgment."

The Pro Se Unit also keeps track of what we call our "frequent filers." This allows the court, through the staff, to aggressively manage some of the pro se cases so that the judge can decide them more efficiently. They consolidate cases, set firm schedules, and keep the cases on track. In addition, the Pro Se Unit decides which cases would benefit from appointment of pro bono counsel. There is a designated lawyer in each of the districts within the Ninth Circuit who helps locate local counsel to handle the appeal. As part of the incentive for attorneys or law schools to take these pro bono appointments, the court pays for expenses and guarantees oral argument. This particular function of the Pro Se Unit has been well received around the circuit.

The other new task that the Unit handles is managing the implementation of the Prisoner Litigation Reform Act. Congress passed this statute to eliminate, or at least reduce, the ever-increasing numbers of prison lawsuits in the federal courts. In such lawsuits, the prisoner will ask for *in forma pauperis* status, meaning that they cannot afford the filing fee. If the Court denies the request, the prisoner must pay the fee. If the court grants the request, the prisoner has to pay the filing fee on an installment plan based on the amount of money in the prisoner's account. This requires a great deal of paperwork and monitoring to ensure that filing fees are tracked and paid so that prisoners may proceed with their litigation. This is, again, something that perhaps does not merit judicial time, but is something that the court staff handles by following court provided administrative guidelines.

Another unit I would like to describe is our Procedural Motions Unit. The court receives numerous motions each month. Approximately 800 motions per month are procedural in nature.⁷ Most of these procedural

⁷ See *Monthly Productivity Report*, PROCEDURAL MOTIONS PRODUCTIVITY REPORT (Ninth Circuit Procedural Motions Coordinator), Feb. 2, 2000, at tbl. 13 (on file with UC Davis Law Review) [hereinafter *Monthly Productivity Report*] (internal court report charting procedural

motions are requests for more time, extra words in the brief, correction of the record, and things of that nature. Previously, the court assigned a single judge to handle these matters. However, because most of these motions are fairly routine, a team of paralegals in the Clerk's Office now handles these routine motions, following guidelines set by the court. Usually the paralegals turn these motions around within forty-eight hours of receipt. This quick turnover accommodates lawyers. Indeed, we have found over the years that what lawyers want is an answer to their motion. They may not be quite as concerned with whether a judge issues the order as long as the court's ruling is prompt, consistent, and fair.

Another fairly recent innovation in the court is the Appellate Commissioner position. As Judge Browning alluded, the court created this position to help take non-dispositive matters away from judicial officers, allowing them to spend more time on the substance of the cases. The driving force behind the Commissioner position began with Criminal Justice Act vouchers.

Criminal Justice Act vouchers are submitted by counsel who the court appoints to represent indigent defendants in criminal appeals.⁸ Many of these vouchers were sitting on the judges' desks. Clearly these were not always their highest priority. Moreover, there was some inconsistency among judges on how to assess the fees. So the court authorized the Commissioner to set up standards, to work closely with the bar developing these standards, and to give lawyers notice prior to any reduction in their fee request. I believe the court has found this to be a great success.

The responsibilities and duties assigned to the Commissioner's position have increased over the years. He serves as a special master, conducts *Faretta* hearings, deals with attorney discipline matters, and more recently panels of the court have requested that the Commissioner resolve attorney fee disputes in civil cases. Again, let me emphasize that there are checks in the system. A party may seek reconsideration by a judge on any order a deputy clerk, staff attorney, or Commissioner issues. However, as I mentioned earlier, it appears that litigants really just want an answer so that they can proceed with their case.

Judge Browning also mentioned the Mediation Unit in the court. This Unit consists of eight very experienced mediators. These are lawyers with a litigation background, as well as extensive mediation training and

motions from February 1999 to January 2000).

⁸ See 18 U.S.C. § 3006(A) (1996).

experience. These mediators resolve between 700 to 800 complex civil appeals annually.⁹

The panel has already discussed Case Management Attorneys. This is the group in the office that does the case weighting and issue tracking. I would like to mention a couple of examples of how this has worked over the years. In addition to assigning the weights and tracking the issues, the Case Management Attorneys monitor new areas of law within the circuit. For example, the new immigration laws that Congress passed during the last few years have generated lots of new cases. Consequently, last year there were over 900 immigration appeals nationwide in the federal circuits.¹⁰ Four hundred and forty-two of these immigration cases were in the Ninth Circuit.¹¹ This, again, presents special challenges in dealing with new immigration law and its aftermath. Accordingly, the court has authorized the Case Management Attorneys to stay, when it is appropriate to do so, some of those cases pending the resolution of the issue by either a Ninth Circuit panel, who may have the issue before it, or by the United States Supreme Court. This makes for better utilization of judicial resources because once the Supreme Court or a Ninth Circuit panel or en banc court issues its decision, the rest of the cases can be dealt with en masse.

There is much more I could say about the role of the staff in the Ninth Circuit. I hope this limited recitation gives you some sense of just what a wonderful job it is.

⁹ See *Monthly Productivity Report*, *supra* note 7, at tbl. 13.

¹⁰ ANNUAL REPORT OF THE DIRECTOR, *supra* note 3, at 92 tbl. B1-A, 124 tbl. B-7.

¹¹ *Id.*
