

Response to Dissent

At the outset, I note that David Euchner's dissent focuses on an issue that is beyond the scope of the work the committee was asked to perform. The dissent points to Division One's current policy on granting extensions for briefs (for criminal appeals filed after January 1, 2015), suggesting it is too strict. However, the issue of whether the extension policy appropriately balances the rights or interests of defendants, the State, victims, the public, and the judiciary is not part of the committee's role in recommending standards for several categories of cases in each of the appellate courts.

Turning to the committee's work, in my view the dissent fails to accurately describe some of key aspects of how the committee developed its recommendations. At the January 20, 2016 committee meeting, the committee voted to proceed with two standards, one based on Notice of Filing to Disposition, and the other based on Assigned to Disposition.¹ Although some commission members, after the fact, were apparently confused by the Assigned to Disposition standard, there was no confusion from my standpoint, or that of Ruth Willingham, our Clerk of the Court. We therefore followed the committee's express directive to assemble three years of data showing Division One's case processing performance based on two standards: (1) notice of filing to disposition, and (2) assigned to disposition. At the next meeting (February 11, 2016), the committee voted to change its prior determination and instead recommend a standard based on At Issue to Disposition instead of Assigned to Disposition. As I explained at the meeting, once the committee decided to make this change, the committee no longer had relevant data to work with in assembling specific standards for each case type. Nonetheless, the committee discussed and approved proposed tentative standards, with the understanding we would revisit any areas in need of further adjustment as a result of

¹ As discussed at our January meeting, in Division One, the point when a case is assigned to a panel is much different than when it becomes At Issue. "Assigned" means the case has reached the point where it can be assigned to one of the court's five panels, meaning the case is now, for the first time in the appellate proceedings, under the control of the judges who will hear and decide it. I continue to believe that the principal standard appellate courts should be focusing on is Assigned to Disposition, because it provides each judge a reasonable opportunity to track his or her performance based on the time period he or she has control over the case. Unlike trial judges, appellate judges have no ability to manage a particular case until it reaches a point where it is assigned to a panel for consideration. I recognize, however, that my position on this issue was not accepted and the committee has moved forward in the direction it deems appropriate.

preparing additional modeling that would capture how our courts have performed for the past several years for the At Issue to Disposition classification.

Following that meeting, our court staff prepared additional reports, showing Division One's performance over the last three fiscal years compared against the proposed standards. In reviewing these numbers, it was clear to us it would be impossible for Division One to reach some of the standards within the near or even foreseeable future, particularly with regard to the At Issue standard. I therefore proposed specific adjustments.

At the next meeting (February 26th), the committee struggled to find a consensus as to how to proceed with regard to the At Issue to Disposition proposed standards. After considerable debate, the committee determined, with one dissenting vote, to recommend one standard, Notice of Filing to Disposition, which is consistent with the national standards model. Importantly, however, the committee also recommended that each appellate court track and report the various components of appellate case processing, including the time it takes for a case to be fully briefed, for case assignment to a panel (for the court of appeals), and for issuing the decision. These measurements will be similar to the CourTools data the appellate courts have been publishing annually since 2009, maintaining transparency of information regarding appellate processing times.

The dissent suggests that Division One is dilatory in processing appeals after they become At Issue. Unlike the situation in civil and family appeals, the court does not have a backlog of criminal or juvenile cases; instead, they are placed on the calendar and assigned to panel within, at most, a few weeks. Except for extraordinarily complex cases, the court continuously stays current with assignment of criminal and juvenile cases. The dissent also points to certain administrative practices in Division One, asserting they may be contributing to delays in case processing. Such matters, which are for the most part inaccurately summarized by the dissent, are beyond the scope of the tasks the committee has been asked to address. That said, I believe Division One does a fine job of handling a heavy caseload and continually strives to find ways to more efficiently hear and decide cases, without sacrificing the time needed to conduct careful review of such important matters.

Although I have not agreed with several decisions made by the committee throughout this process, I have nonetheless acted in good faith in all the discussions and assignments. With the able assistance of court staff, we have provided a substantial amount of statistical information comparing Division One's performance measurements over the past several years to various possible standards, all of which required many hours of staff and judicial time to effectively gather and present the data.

Considering all of the committee's work to date, and the numerous factors involved in setting standards for unique case types with different priorities, I believe the

committee's recommendations are reasonable. I therefore agree with the committee's Final Report.

Sincerely,

_____/s/_____
Michael Brown