

MEMORANDUM

TO: Steering Committee on Appellate Court Standards

FROM: Michael Brown

DATE: February 25, 2016

RE: Adjustments to Proposed Standards

As you recall, at our last meeting (February 11, 2016), the committee voted to change the proposed "assigned to panel to disposition" ("Assigned") standard to "at issue to disposition." ("At Issue"). I opposed the change, and Ruth Willingham, Division One Clerk of the Court, joined in my opposition. To state the obvious, I was very surprised by that decision, given that it substantially changed the target we were trying to hit. In preparation for that meeting, our court staff and I spent many hours preparing data showing what Division One's performance measurements would have been for the past three years based on the Assigned standard, which was provided to the committee prior to the meeting. As I explained at the meeting, once the committee decided to change to the At Issue standard, we no longer had relevant corresponding data to work with in putting together specific performance measures.

As we 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 finally 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. At Issue, on the other hand, is the date on which the briefing in an appeal has been completed, and signifies that the appeal is ready to be placed on a calendar and eventually assigned to a panel. (Criminal *Anders* cases are not calendared, they are assigned to panels after they become At Issue.) The time it takes to for an appeal to move from At Issue to Assigned can vary greatly, depending on the statutory priority for the respective case type (such as juvenile and criminal, which are placed on calendars as quickly as possible after they become At Issue) and the complexity of the case, not to mention the necessary administrative tasks that must occur prior to finalizing an evenly-distributed, conflict-free monthly calendar. Civil cases, including family law cases, have much lower priority and cannot be processed in the same manner; therefore, it takes substantially more time to issue decisions for those appeals. For the past several decades, the court has struggled with a continuing backlog of civil cases. Thus, it is essential that the committee recognize that it takes time, even several months, for civil and family cases to move from At Issue to Assigned. For example, in Fiscal Year 2015, the average time from At Issue to Assigned for civil cases was 148 days, and for family law cases, it was 115 days. (See Exhibit A.)

I continue to believe that the principal standard appellate courts should be focusing on is Assigned, 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 very little 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.

Accordingly, at the February 11th meeting we discussed and approved proposed tentative At Issue standards, with the understanding that we would revisit any areas that needed further adjusting as a result of performing additional modeling that would capture how our courts have performed for the past several years for the At Issue 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. (See Exhibit B.) In reviewing these numbers, it is clear to me that 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. Thus, I propose that we adjust the standards as set forth in the attached chart. (See Exhibit C.) According to my calculations, the resulting percentages under the adjusted standards are shown in Exhibit D.¹

Exhibit C contains two sets of changes based on the look-back performance data. First, it makes several adjustments for the At Issue standards for IC, family, civil, and criminal cases. Second, it increases slightly the time period for IC cases for "notice of filing to disposition" for the 75% measurement.

Regarding the At Issue category, time measurements for these cases are quite different from the universe of cases that encompasses "notice of filing to disposition." With regard to the larger classification, the targets of 75% and 95% include many cases that are dismissed prior to briefing. Such cases are resolved by dismissal far more quickly than cases that are resolved by a written decision after full briefing, which decreases the overall average time it takes to hear a particular category of appeals from beginning to end. By contrast, the vast majority of cases that go At Issue will not be dismissed, but instead represent each of the actual appeals that are considered by panels and are concluded with a written decision. Achieving the 75% and 95% thresholds for the At Issue cases carries greater significance for each judge because cases that take longer than the standards in this subset of cases are generally not "offset" by dismissed cases. We need to ensure there is some degree of flexibility built into the At Issue standards, given the many variables that exist such as the timing of placement on calendars as noted above, supplemental briefing orders, handling of *Anders* cases for criminal appeals, continuances of oral arguments, publication of decisions², just to name a few. Otherwise, no realistic possibility exists

¹ As the committee is presumably aware, there is data available from CourTools going back to FY 2009, which can be provided as an additional resource for the committee if sufficient time is given to allow court staff to prepare the relevant reports.

² A high percentage of the decisions Division One publishes are civil cases, as indicated in the attached Exhibit E, which typically require a substantial time commitment, particularly for the authoring judge.

for Division One to achieve the committee's proposed At Issue standards in IC, family, civil, or criminal.³

It is also important to recognize that in setting the monthly calendars and/or distributing the workload amongst the 16 judges, our court must handle several other categories of cases that are not included in CourTools or these proposed standards, such as tax appeals, matters deriving from the corporation commission, and unemployment benefits. Additionally, as is the case with Division Two, the court handles mental health cases and petitions for post-conviction relief, neither of which are included in the proposed standards but nonetheless must be accounted for in the overall processing of cases.

In a nutshell, I am recommending various adjustments to the current proposed standards to give Division One judges a realistic possibility of achieving the standards recommended by the committee. If the committee has detailed questions or concerns about these recommendations, I suggest that we set a time for another committee meeting, with a reasonable time period in advance to provide additional modeling. Because our "time" for issuing the final recommendations is running out, we would presumably need to request some additional time from Chief Justice Bales. I would also like the opportunity to obtain meaningful input from the rest of the judges in Division One, which to date has not occurred.

If, at tomorrow's meeting the committee decides to recommend the proposed standards as they currently exist, then I will have no choice but to dissent from the committee's recommendation.

Thank you for considering these matters, and I look forward to our continued discussions regarding appellate standards.

³ For example, the current proposed standard for "at issue to disposition" in FC cases (75%), is 120 days. In Division One, an FC case reaching the "at issue" point would typically not reach "under advisement" status for somewhere between 72 to 121 days, leaving little or no time for post-conference review, editing or filing of the decision.

Exhibit A

At Issue to Assigned			
Civil	75%	95%	Average overall
FY2014	150 Days	174 Days	128 Days
FY2015	175 Days	206 Days	148 Days
Family	75%	95%	Average overall
FY2014	142 Days	157 Days	112 Days
FY2015	154 Days	186 Days	115 Days

Exhibit B

Court of Appeals, Division One – Data Comparison of Proposed Standards Feb. 18, 2016

COA1 At Issue to Disposition						
Number of days it takes for 75% and 95% of cases to reach disposition (decision) from the time placed at issue. Number of days in which a case is stayed not included.						
Case Type		FY13	FY14	FY15	Average – FY13, 14, 15	Proposed Standard
Juvenile	75%	95	92	93	93	100
	95%	134	129	127	130	125
Industrial Commission	75%	169	170	155	165	125
	95%	257	331 (61% increase from 94% mark)	236	275	150
Family	75%	224	225	239	229	120
	95%	305	287	362	319	180
Civil	75%	228	256	277	254	175
	95%	494	376	420	430	240
Criminal	75%	132	132	134	133	100
	95%	239	237	201	226	160

Exhibit C

Court of Appeals

Juvenile	Filing to Disposition		“At Issue” to Disposition	
	75%	95%	75%	95%
	200	250	100	125
Ind. Commission	Filing to Disposition		“At Issue” to Disposition	
	75%	95%	75%	95%
	275 290	365	125 170	150 220
Family	Filing to Disposition		“At Issue” to Disposition	
	75%	95%	75%	95%
	365	450	120 230	180 290
Civil	Filing to Disposition		“At Issue” to Disposition	
	75%	95%	75%	95%
	390	500	175 260	240 350
Criminal	Filing to Disposition		“At Issue” to Disposition	
	75%	95%	75%	95%
	450	600	100 140	160 200
Special Action	Filing to Disposition		“At Issue” to Disposition	
	75%	95%	75%	95%
	40	80	NA	NA

Exhibit D

Court of Appeals Division One (with MJB revised standards)

Juvenile	Filing to Disposition		“At Issue” to Disposition	
	75% within 200 days	95% within 250 days	75% within 100 days	95% within 125 days
FY 2013	87%	95%	80%	92%
FY 2014	92%	98%	84%	93%
FY 2015	87%	95%	81%	94%
Ind. Commission	Filing to Disposition		“At Issue” to Disposition	
	75% within 290 days	95% within 365 days	75% within 170 days	95% within 220 days
FY 2013	76%	83%	75%	87%
FY 2014	72%	95%	74%	92%
FY 2015	77%	92%	78%	89%
Family	Filing to Disposition		“At Issue” to Disposition	
	75% within 365 days	95% within 450 days	75% within 230 days	95% within 290 days
FY 2013	93%	98%	80%	91%
FY 2014	79%	93%	78%	92%
FY 2015	77%	91%	71%	89%
Civil	Filing to Disposition		“At Issue” to Disposition	
	75% within 390 days	95% within 500 days	75% within 260 days	95% within 350 days
FY 2013	81%	93%	82%	90%
FY 2014	74%	92%	75%	91%
FY 2015	70%	88%	69%	89%
Criminal	Filing to Disposition		“At Issue” to Disposition	
	75% within 450 days	95% within 600 days	75% within 140 days	95% within 200 days
FY 2013	71%	93%	79%	90%
FY 2014	79%	94%	78%	93%
FY 2015	81%	97%	76%	95%
Special Action	Filing to Disposition		“At Issue” to Disposition	
	75% within 40 days	95% within 80 days	NA	NA
FY 2013	93%	98%	NA	NA
FY 2014	86%	94%	NA	NA
FY 2015	91%	95%	NA	NA

Meeting standard
 Within 10% of standard
 Failing to meet standard

Court of Appeals Division One (with redline showing MJB revised standards)

Juvenile	Filing to Disposition		"At Issue" to Disposition	
	75% within 200 days	95% within 250 days	75% within 100 days	95% within 125 days
FY 2013	87%	95%	80%	92%
FY 2014	92%	98%	84%	93%
FY 2015	87%	95%	81%	94%
Ind. Commission	Filing to Disposition		"At Issue" to Disposition	
	75% within 290 75 days	95% within 365 days	75% within 125 170 days	95% within 150 220 days
FY 2013	64 76%	83%	45 75%	58 87%
FY 2014	66 72%	95%	38 74%	64 92%
FY 2015	67 77%	92%	47 78%	74 89%
Family	Filing to Disposition		"At Issue" to Disposition	
	75% within 365 days	95% within 450 days	75% within 120 230 days	95% within 180 290 days
FY 2013	93%	98%	9 80%	51 91%
FY 2014	79%	93%	13 78%	40 92%
FY 2015	77%	91%	19 71%	41 89%
Civil	Filing to Disposition		"At Issue" to Disposition	
	75% within 390 days	95% within 500 days	75% within 175 260 days	95% within 240 350 days
FY 2013	81%	93%	35 82%	79 90%
FY 2014	74%	92%	23 75%	66 91%
FY 2015	70%	88%	16 69%	53 89%
Criminal	Filing to Disposition		"At Issue" to Disposition	
	75% within 450 days	95% within 600 days	75% within 100 140 days	95% within 160 200 days
FY 2013	71%	93%	45 79%	86 90%
FY 2014	79%	94%	42 78%	89 93%
FY 2015	81%	97%	39 76%	86 95%
Special Action	Filing to Disposition		"At Issue" to Disposition	
	75% within 40 days	95% within 80 days	NA	NA
FY 2013	93%	98%	NA	NA
FY 2014	86%	94%	NA	NA
FY 2015	91%	95%	NA	NA

Meeting standard
 Within 10% of standard
 Failing to meet standard

Exhibit E

Opinions and Memorandum Decisions Issued in CV and CR Cases By Calendar Year 2005-2015

CIVIL	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
OP	39	39	67	79	70	90	90	71	65	75	54
MD	362	376	423	339	351	359	361	345	344	303	322

CRIM	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
OP	15	10	14	35	31	30	29	13	30	22	21
MD	384	401	412	519	558	572	540	514	430	456	535