

Oregon  
Court of  
Appeals  
Annual  
Report

2007

## A Welcome from the Chief Judge

The Oregon Court of Appeals is pleased to announce the issuance of the court's 2007 Annual Report. The format and approach adopted in this year's report vary to some extent from those of previous years' reports. I've asked several judges and staff members of the Court of Appeals team to write updates concerning a number of projects that the court has undertaken, and those updates are the cornerstones of this year's report. I use the word "team" deliberately, because the court strives to achieve a cohesive model of shared responsibility for its governance that takes full advantage of the skills and energies of the many talented people who plan and perform its work. Each of the projects described in this report relates in some way to the court's commitment to being as transparent as possible about how we perform our work so that we can better serve the public. The court leaders who have contributed to this report epitomize that effort.

In this introductory section, I will briefly share several additional pieces of news that may be of interest. First, 2007 marked a year of increasing continuity in judicial experience for the court. Nine of our ten judges have now served with the court for at least three years; of that number, five judges have been members of the court for ten years or more. The experience that our judges gain in every year of service is critical to the accurate and timely performance our work. Our tenth judge, Tim Sercombe, joined us in 2007. Judge Sercombe brings 30 years of legal experience to the court. His many accomplishments in private law practice include management of a major Oregon law firm and many years of stellar practice in the fields of land use and local government law, two vital areas of expertise for our case load. We welcome Judge Sercombe to the Court of Appeals as a friend and colleague.

Second, the court must constantly examine its internal practices and decisional structure so as to maximize its efficiency within the constraints of existing resources. To that end, over the past 18 months the Court of Appeals has sponsored and supported a survey of the best practices of state intermediate appellate courts across the nation. The culmination of that survey will be the publication this year of a thoughtful study authored by Willamette University College of Law professor Warren Binford and three

law student externs, Preston Greene, Maria Schmidlkofer, and Hillary Taylor, who, together with three of our judges, comprise the "Willamette Court Study Group." We hope and expect that the study group's work will meaningfully contribute, both in Oregon and across the nation, to the improvement of intermediate appellate court performance through the systematic sharing of information pertaining to court processes and design. We will post publication information for the study on our court's web page as soon as it is available.

Third, we continue to progress toward full implementation of a new automated Appellate Case Management System, a key component of the Chief Justice's vision for an "electronic courthouse." The first three releases of the Appellate Case Management System are now up and running, and the final phases of the system are scheduled to be implemented in the first six months of 2008. Although many people have contributed to this effort, I especially want to thank Court of Appeals staff attorney Julie E. Smith for her tireless and self-sacrificing efforts in spearheading the various Court of Appeals releases for the project over the past two and one half years. In addition, I would like to recognize the similarly dedicated efforts of Judicial Services Specialist Debbie Rosenberger, Administrative Analyst Judi Baker, and Appellate Legal Counsel Jim Nass, who have also helped create a first-rate, modern case management system for our court.

Fourth, with the support and leadership of the Chief Justice, the Court of Appeals expects to improve and expand the store of information about its work that is electronically available to the public on its web pages. In 2007, we published our Internal Practice Guidelines and the results of our Bench and Bar survey on the court's web pages, and we expect to add more useful information to our digital storehouse in 2008 and beyond.

Fifth, I am pleased to report that renovation of the Justice Building is complete. As I indicated in the 2005 and 2006 annual reports, a much-needed and comprehensive renovation of the building began in early 2005 while we, and other tenants of the

building, continued to occupy it. During the renovation, the judges and staff of our court were separated onto two floors of the building, and each of us moved offices twice. Our entire staff, with special credit going to Court of Appeals Office Manager Linda Weigel and Judicial Services Specialist Nancy Livermore, worked tirelessly to assure the uninterrupted flow of work in our office during the renovation process. We now occupy a safer facility, and – of primary importance to our day-to-day work – we are reunited on a single floor. Convenient in-person contact is an integral component of collegial decisionmaking and helps the court efficiently process its workload.

Finally, the court continues its efforts to maintain its productivity goals, once again reaching the 400 mark for total authored opinions in 2007. I can assure you that each of our judges and our court staff are committed to a high level of personal and institutional performance as we face the uncompromising goals of both timely and correctly deciding the cases that are entrusted to us.

Respectfully,

David Brewer,

Chief Judge

## ***The Oregon Court of Appeals Internal Practices Guidelines***

**Hon. Jack L. Landau, Judge, Oregon Court of Appeals**

The Oregon Court of Appeals is committed to improving communications with the bench, the bar, and the public about its work. As part of its efforts to fulfill that commitment, the court has prepared a written summary of its internal processes, the *Oregon Court of Appeals Internal Practices Guidelines*. Completed in 2007, the *Guidelines* describe the internal workings of the court, from the filing of documents that trigger the court's jurisdiction, to the issuance of judgments that end it. Included are descriptions of the organization of the court and its professional and administrative staff, how the court processes various filings at the initiation of an appeal or judicial review proceeding, how the court typically arrives at its decisions, and how it prepares them for publication. It also includes descriptions of how the court processes its more than 20,000 motions annually and how cases may be referred to its nationally recognized Appellate Settlement Conference Program. It is the court's hope that, by providing these insights into its internal workings, its work is more accessible and litigants may be aided in complying with its rules and procedures.

The court is also committed to reviewing its internal practices on an ongoing basis, in an effort to improve its practices to better serve the bench, the bar, and the public. As it changes those practices, it will modify the *Guidelines* to reflect those changes.

Copies of the *Guidelines* may be obtained online at the court's webpage on the Oregon Judicial Department website at the address listed below. A limited number of printed versions of the *Guidelines* also may be obtained at the Appellate Court Records Section.

<http://www.ojd.state.or.us/courts/coa/documents/OregonCourtofAppeals-IPG.pdf>

## **Juvenile Appeals Work Group**

### **Hon. Darleen Ortega, Judge, Oregon Court of Appeals**

This group, originally formed in 2006, consists not only of members of both the Court of Appeals and the Supreme Court, but also members of the Legislature and of the executive branch, meeting periodically to consider ways of improving the efficiency and effectiveness of the disposition of appeals in juvenile dependency cases. This year the group's efforts have focused on a pilot project to attempt mediation of appeals in cases involving termination of parental rights. Even with expedited processing, such appeals typically take many months and, occasionally, years to resolve, a time period that can feel like an eternity to the families and, particularly, the children affected. Additionally, appellate review is necessarily limited to the record at the time of trial, although circumstances may well change during the pendency of the appeal. The work group's hope has been that focused mediation of such cases may result in a disposition that better accounts for a family's changing circumstances and better protects the best interests of children.

This past October, as part of that effort, various trial court and appellate judges and representatives of the Department of Human Services, as well as a representative group of advocates, mediators, and others involved in working with families in juvenile dependency cases, met for a training session. The focus of the training was to educate each other regarding how mediation can best be approached in the appellate context and to work together to address some of the apparent barriers to resolution of cases at a point in the proceedings where the stakes may be very high and, frequently, the pattern of communication between the parties may be very poor. The session opened lines of communication between the various participant groups and enabled the work group to focus its strategy toward mediated resolution of a targeted group of such cases.

## The Oregon Court of Appeals Performance Measures Project

Alice Phalan, Strategic Planning and Evaluation Manager, Office of the State Court Administrator

The Court of Appeals Performance Measures design team, which began meeting in the fall of 2005, finalized the court's success factors and accompanying core performance measures.

### Success factors:

- *Quality*: Fairness, equality, clarity, transparency, and integrity of the judicial process.
- *Timeliness and Efficiency*: Resolution of cases in a timely and expeditious manner.
- *Public Trust and Confidence*: Cultivating trust and confidence in the judiciary.

### Core performance measures:

1. *Appellate Bar and Trial Bench Survey*: The percentage of members of the Oregon appellate bar and trial bench who believe that the Oregon Court of Appeals is delivering quality justice, both in its adjudicative and other functions.
2. *On-Time Case Processing*: The percentage of cases disposed or otherwise resolved within established time frames.
3. *Clearance Rate*: The ratio of outgoing cases to incoming cases expressed as an average across all case types and disaggregated by case type—that is, civil, criminal, collateral criminal, juvenile, and agency/board.
4. *Productivity*: The number of cases resolved by the Court of Appeals disaggregated by decision form—that is, signed opinions, per curiam opinions, AWOPs (affirmances without opinion), and dispositive orders.

In spring 2007, the court invited attorneys and judges involved in a circuit court case on appeal in which a case dispositional decision was entered between July and December 2006 to complete an anonymous online survey as our first formal effort to measure the quality of the court's work. Survey respondents gave the highest marks to the court's treatment of the trial court judges and appellate attorneys involved in the cases on appeal. Nine out ten believe that the Court of Appeals treats them with courtesy and respect. A lesser percentage of respondents, approximately two out of three, believe that the court handles its caseload efficiently, that the court is accessible to the public and attorneys in terms of its cost, and that the court does a good job in informing the

bar and the public of its procedures. Overall four out of five appellate attorneys and trial judges indicated that the court is doing a good job. The statistical summary is posted on the court's webpage on the Oregon Judicial Department website at the address listed below.

During the Appellate Management Case System phase-in, the design team's extensive work on the case processing, clearance rate, and productivity measures helped identify the proposed standard reports that will provide enhanced quality appellate case data.

In 2008 and beyond, the design team will guide the monitoring, analysis and integration of performance measurement into the court's management and leadership, including how are we doing over time, what are we doing to improve or maintain good performance, and what performance targets and goals should we set for future performance.

<http://www.ojd.state.or.us/courts/coa/documents/SurveyResultsSummarywithCoAteamuggestionsv4.pdf>

## **Reorganization of the Office of Appellate Legal Counsel**

### **Jim Nass, Appellate Legal Counsel**

The Office of Appellate Legal Counsel is adding a new assistant appellate legal counsel position. In addition, the Office of Appellate Legal Counsel is being reorganized into an appellate commissioner's office. The appellate commissioner, aided by two assistant appellate commissioners, will have authority to decide motions, own motion matters, and cost and attorney fees matters arising from cases not decided by a department. Parties will be able to move for reconsideration of a decision of the appellate commissioner, resulting in review of the decision by either the Chief Judge or the Motions Department of the Court of Appeals. The appellate commissioner position is modeled on commissioner positions found in the State of Washington appellate courts, except that the Oregon appellate commissioner would not have authority to decide any cases on their merits.

The goal of adding a new attorney position and creating an appellate commissioner position is to reduce substantially the amount of time it historically has taken for substantive motions in the Court of Appeals to be decided.

Until the reorganization process is completed and a recruitment is undertaken for the appellate commissioner position, current Appellate Legal Counsel Jim Nass will be serving as the appellate commissioner. The target date for implementing the appellate commissioner project is February 2008.

One of the consequences of the appellate commissioner having decisionmaking authority is that the commissioner will be subject to the same ethical limitations that constrain judges with respect to *ex parte* communications. The appellate commissioner will not as available as appellate legal counsel was for explanations of appellate practice or to respond to inquiries about appellate procedures. However, the assistant appellate commissioners will remain available to respond to such inquiries.

## **The Oregon Rules of Appellate Procedure Committee**

### **Lora E. Keenan, Staff Attorney, Oregon Court of Appeals**

The Oregon Supreme Court and Oregon Court of Appeals have authority to make rules "necessary for the prompt and orderly dispatch of the business of the court." ORS 2.120; ORS 2.560(2). The courts historically have exercised that authority by jointly promulgating the Oregon Rules of Appellate Procedure.

In alternate years, the Supreme Court and Court of Appeals undertake to review and, as necessary, amend the Oregon Rules of Appellate Procedure (ORAP). By tradition, the courts republish the Oregon Rules of Appellate Procedure as amended on January 1 of every odd-numbered year. Also by tradition, even-numbered years are "ORAP Committee years," that is, years in which the ORAP Committee convenes to review proposed amendments and advise the courts on the merits of those proposals.

Since about 1985, the courts have relied on the ORAP Committee to review and develop proposals to amend, add to, and generally improve the rules. The voting members of the committee include two judges from each court, the Solicitor General from the Oregon Department of Justice, the Chief Defender from the Office of Public Defense Services, a designee of the Appellate Practice Section, six other practitioners with substantial appellate experience, and a trial court administrator. Nonvoting members include the Counsel to the Committee, the Appellate Legal Counsel, a Supreme Court staff attorney, and the Director of the Appellate Courts Services Division. (The 2008 ORAP Committee roster appears below.)

The committee will meet in Salem five times between January and May 2008. The proposed rule changes approved by the committee will then be published with notice of proposed rulemaking in the Oregon Advance Sheets. At the same time, all members of both the Supreme Court and Court of Appeals will review the proposed rule changes.

The committee then will meet again in Salem in September 2008 to make adjustments to the proposed rule changes in response to comments received. The final proposed rule changes will then be submitted to all the members of both courts for adoption. The adopted changes to the rules will be effective January 1, 2009. Those changes will be published in early December 2008 in the Oregon Advance Sheets and may be viewed online at [www.publications.ojd.state.or.us](http://www.publications.ojd.state.or.us).

The courts and the ORAP Committee welcome suggestions for amendments to the rules. Anyone who would like to suggest an amendment to the rules may contact Lora Keenan, Staff Attorney, Oregon Court of Appeals, 1163 State St., Salem, OR, 97301-2563, (503) 986-5660, [lora.e.keenan@ojd.state.or.us](mailto:lora.e.keenan@ojd.state.or.us).

The courts appreciate the time and effort of the members of the committee, each of whom demonstrates a sincere interest in improving appellate practice in the Oregon state courts and a cooperative approach to working with the variety of interests represented on the committee. In addition to the members of the 2008 ORAP Committee listed below, several members who recently completed service on the committee deserve recognition and thanks: the Honorable Virginia Linder, James Murchison, Cecil Reniche-Smith, Thomas Sondag, and Timothy Volpert.

## **2008 ORAP Committee Roster**

### **Voting Members**

Hon. Thomas Balmer, Associate Justice, Oregon Supreme Court (Chair)  
Hon. Rives Kistler, Associate Justice, Oregon Supreme Court  
Hon. David Brewer, Chief Judge, Oregon Court of Appeals  
Hon. Walter Edmonds, Judge, Oregon Court of Appeals  
Mary Williams, Solicitor General, Department of Justice, Appellate Division  
Peter Gartlan, Chief Defender, Office of Public Defense Services  
Wendy Margolis (OSB Appellate Practice Section designee)  
J. Michael Alexander  
Keith Garza  
Lindsey Hughes  
George Kelly  
Sarah Troutt  
James Westwood  
Mari Miller, Trial Court Administrator, Clackamas County Circuit Court

### **Nonvoting Members**

Lora Keenan, Committee Counsel, Staff Attorney, Oregon Court of Appeals  
Jim Nass, Appellate Legal Counsel  
Judith Baker, Appellate Court Services  
Melanie Hagan, Staff Attorney, Oregon Supreme Court