

**Report to the Joint Legislative Budget Committee on the  
Effectiveness of the Temporary Law Clerks Program in  
Reducing the Appellate Workload Backlog**

**March 8, 2001**

**Executive Summary**

- In FY 98-99, the Legislature approved funding for a two-year pilot program to allow the hiring of a third research attorney for each justice in the three court locations that had the most severe caseload backlogs, Fourth District, Divisions Two and Three, and the Fifth District. A total of 21 attorneys and 7 judicial secretaries were eventually hired for the program.
- Responsibilities of the third research attorneys were generally the same as other research attorneys, although they were initially assigned less complex cases or a lighter workload, in light of their inexperience. They handle about 50% criminal, 35% civil, 15% juvenile cases, and they have each been producing four or five opinions per month.
- Statistics from first quarter F/Y 98-99, just before the start of the program, and first quarter F/Y 00-01, the most recent quarter in which we have final statistics, were compared for this report.
- Two of the three pilot courts (Fourth District, Division Two, and Fifth District) showed significant improvements in reducing the pending backlog of cases (a 21 and 23 percent reduction, respectively), in increasing the number of dispositions (a 17 and 13 percent increase, respectively), and in increasing the number of written opinions issued (a 21 and 20 percent increase, respectively).
- The third pilot court (Fourth District, Division Three), had by far the most severe backlog of any of the courts at the start of the program, with more than twice the number of pending cases per justice as the other two pilot courts. In addition, two of their six judicial positions were vacant for most of the two years that the pilot program has been operating, and other significant staff shortages occurred as well. Division Three's backlog increased by six percent during these two years, and while the effects of the third research attorneys on the court's backlog are inconclusive at this point, it is possible that without them the backlog would have increased substantially more than this.
- Four of the six research attorney positions in Division Two of the Fourth District have been reallocated to Divisions One and Three to address the most

severe backlog in the district. In addition, at least 200 cases have been transferred from Division Three to Divisions One and Two, and will continue to be transferred on a regular basis, until the backlog in Division Three is under control.

- Because of the strong favorable results of this program, the courts of appeal will be moving forward to seek regular funding for at least the 21 research attorneys and 7 judicial secretaries that currently comprise the program. It is our intention to continually evaluate the status of each court's backlog and adjust the placement of the attorney positions accordingly, in a manner that will most effectively address the statewide backlog of cases.

## **Report to the Joint Legislative Budget Committee on the Effectiveness of the Temporary Law Clerks Program in Reducing the Appellate Workload Backlog**

**History of the Program.** In FY 98-99, the Legislature approved funding for a two-year pilot program to allow the hiring of a third research attorney for each justice in the three court locations that had the most severe caseload backlogs. These courts were the Fourth Appellate District, Divisions Two (Riverside, with six justices) and Three (Santa Ana, with six justices), and the Fifth Appellate District (Fresno, with nine justices). The original funding supported the equivalent of 21.0 FTE Research Attorney, Range B, positions for the first year and 21.0 Senior Attorney I positions for the following year, to allow for promotions for successful attorneys.

In FY 99-00, the Legislature approved funding for one year for 7.0 FTE Judicial Secretary I positions, to support the attorney positions at a ratio of one secretary for every three attorneys.

Beginning in FY 00-01, these 28.0 FTE positions were funded for an additional two years. The Legislature asked the Judicial Council to report to the Joint Legislative Budget Committee and the Legislature's fiscal committees by December 2000 and again by December 2001 on "the effectiveness of the Temporary Law Clerks Program in reducing the workload backlog in the courts of appeal."

**Justification for Pilot Program.** Each current court of appeal justice has two research attorneys assigned to chambers. Research attorneys prepare memoranda on those appeals that have been assigned to a specific chamber. A typical memoranda presents: (1) a statement of the case (summary of proceedings, result in the trial court, and the posture on appeal); (2) a statement of the relevant facts; (3) a list of the issues on appeal; (4) an analysis of each issue, with authorities, the position of each party, and the attorney's conclusions on the merits; and (5) in most instances, a recommendation as to the disposition of the appeal.

In 1995, the Judicial Council adopted the *Appellate Court Resources Analysis* setting forth workload standards for justices and attorneys which has supported the addition of central staff attorneys to address the growth in appellate filings. However, the number of pending, fully briefed appeals were not factored into the workload standards because it was felt that bringing authorized staffing up to required levels would provide enough flexibility to allow courts to address their backlog.

Unfortunately, this has not proved possible. Despite the fact that dispositions had grown from 139 per justice in 1994-95 to 150 per justice in 1996-97, the numbers of pending, fully briefed appeals continued to grow, reaching 6,220 in 1996-97, or a statewide average of 67 per justice. As noted in the *Appellate Court Resources Analysis*, the cases comprising the backlog are regular, chambers cases. They are not the *Wende* (no-issue) cases or the routine disposition appeals normally handled by central staff attorneys.

The justification for assigning the positions to the courts noted above centered on the backlog of cases in those courts. The Fourth District, Division Three had 182 pending cases per justice, Division Two had 88 pending cases per justice, and the Fifth District also had 88 pending cases per justice. These figures far exceeded the statewide average of 67 cases per justice, and represented a critical and growing delay in the disposition of appellate proceedings.

**Implementation of Pilot Program.** A survey was sent to the three participating appellate courts in September 1999 to collect information about the pilot program during its first year.

#### *Recruitment/Training/Facilities*

- These research attorney positions were filled between early October and December 1998, with courts reporting no difficulty recruiting qualified candidates for these two-year positions. Training programs varied across courts, with all courts using a form of “in chambers” training conducted by the justices and senior attorneys.
- There were some minor facilities issues with these new positions, although all the courts were able to accommodate the additional attorneys.

#### *Responsibilities and workload*

- Responsibilities of the third research attorneys were generally the same as other research attorneys, although they were typically assigned less complex cases or a lighter workload, in light of their inexperience. They handled about 50% criminal, 35% civil, 15% juvenile cases, and in the early days of the program, they produced four or five opinions per month; research attorneys in one court also occasionally handled writs, as needed (about 12 per month). Currently, the number of cases handled per month in most courts is less than 5, because as they become more experienced, they handle more complex, but fewer, cases per month.

It is also worth mentioning that at least during the initial two-year program, it took between 6 and 12 months (depending on the prior experience of each attorney) for the research attorney to be performing at

the journey level. Then, because of the fixed ending date of the positions, many of the attorneys sought and found other employment and left the court before the expiration of their appointments.

- At the time the survey was completed, none of the research attorneys were eligible for promotion because they had not been employed for a year; but all attorneys were eventually elevated to Senior Attorney (or to Research Attorney B if they had been hired at the A level) when they became eligible.
- Most of the courts experienced some attrition, because although a budget change proposal had been submitted to the Legislature during the 99-00 budget year to extend the program for another two years and was eventually approved, the uncertainty forced many of the attorneys to seek other employment before the end of the original term (June 30, 2000). Likewise, the courts did not hire replacement attorneys until two or three months into the current budget year.

### Workload and Backlog Statistics

Changes in selected workload and backlog statistics from the 1<sup>st</sup> quarter of FY 1998-99 to the 1<sup>st</sup> quarter of FY 2000-01 were computed for courts with the third research attorney as well as for all other appellate courts combined. Since the third research attorneys were hired and trained during the second and third quarters of FY 1998-99, first quarter data for FY 1998-99 characterizes the workload and backlog of the appellate courts before the third research attorneys joined the selected courts. First quarter data for FY 2000-01, the most current data available, reflects the appellate workload and backlog after the third research attorneys have been in place for just under two years in the selected courts. This “before-and-after” analysis provides an approximate measure of the impact of the third research attorneys on a court’s workload and backlog.

The reader should exercise caution when comparing data from the Fourth Appellate District, Division Three. This court had by far the most severe backlog of cases at the beginning of the program, with 182 pending cases per justice as compared with 88 per justice in the other two pilot courts. Extreme staffing shortages occurred during the pilot program that do not allow an accurate assessment of the impact of the third research attorney in this court. Two justices retired in early 1999 and were not replaced for 9 and 22 months, respectively<sup>1</sup>; two justices were absent with health problems for a significant period; and three senior

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<sup>1</sup> Justice Edward Wallin retired February 16, 1999 and was replaced by Justice Eileen Moore, effective December 22, 2000. Justice Sheila Sonenshine retired April 14, 1999 and was replaced by Justice Kathleen O’Leary January 21, 2000. In addition, in the Fifth District, Justice William Stone retired September 30, 1999 and was replaced by Justice Dennis Cornell effective December 21, 2000.

research attorneys left the court during the first year of the pilot program. It is possible that the increase in backlog of cases and the decrease in numbers of dispositions and written opinions would have been even higher without the addition of the third research attorneys.

## Dispositions

Disposition data provides one measure of a court’s productivity in processing cases. The following table lists disposition totals for the 1<sup>st</sup> quarter of FY 1998-99 and the 1<sup>st</sup> quarter of FY 2000-01 as well as the percent change over this period.

### *Dispositions – Total appeals*

	<b>FY 1998-99 1<sup>st</sup> Quarter</b>	<b>FY 2000-01 1<sup>st</sup> Quarter</b>	<b>Change</b>
Fourth District, Division Two	376	440	+17 %
Fourth District, Division Three	299	285	-5 %
Fifth District	321	362	+13 %
Other courts	3,503	3,425	-2 %

Except for the Fourth District, Division Three, the courts with the additional research attorney produced significantly more dispositions in 1<sup>st</sup> quarter of FY 2000-01 than in 1<sup>st</sup> quarter of FY 1998-99. The Fourth District, Division Two and the Fifth District increased their dispositions by 17% and 13%, respectively after having the additional third research attorney. In contrast, statistics for all other appellate courts throughout the state, in the aggregate, show a small decrease in dispositions over this period.

Division Three of the Fourth District, with the most severe backlog to begin with and functioning with two-thirds of their judicial positions for most of the initial pilot program period, experienced a five percent decrease in total dispositions. For comparison purposes we looked at the statistics for Division Three in the 12 month period just prior to the start of the pilot program (from 1<sup>st</sup> quarter 97-98 to 1<sup>st</sup> quarter 98-99) when the court had a full complement of justices, and dispositions increased by one percent. Since the ultimate disposition of a case is dependent on an opinion being issued by a judge, it might be expected that even if the third research attorney produced more “ready” cases, disposition statistics would decrease more than five percent, with the court operating with only two of six judicial positions filled.

## Written opinions

Because courts indicated that their third research attorneys were almost exclusively assigned to work on appeals after they have been fully briefed, one would expect their greatest impact on productivity to be reflected in the number of written opinions. Written opinions for appeals only (which exclude original proceedings) were selected for analysis because the third research attorneys generally was not assigned to handle writs.

### *Written Opinions – Total appeals*

	<b>FY 1998-99 <i>1<sup>st</sup> Quarter</i></b>	<b>FY 2000-01 <i>1<sup>st</sup> Quarter</i></b>	<b>Change</b>
Fourth District, Division Two	252	306	+21 %
Fourth District, Division Three	184	138	-25 %
Fifth District	221	264	+20 %
Other courts	2,254	2,325	+3 %

Written opinions were also dramatically higher in 1<sup>st</sup> quarter of FY 2000-01 for courts with the additional research attorney; a 21% increase for the Fourth District, Division Two, and a 20% increase for the Fifth District. The staffing problems that occurred in the Fourth District, Division Three during this period may have had a significant adverse impact on the number of written opinions generated by that court. Aggregated statistics for all other appellate courts throughout the state also show an increase in written opinions, though this increase in productivity was approximately seven times smaller than that in two of the courts with the additional research attorney.

## Case processing

Case processing time data provides a measure of a court's efficiency in processing cases through the various events that make up the case. Because the third research attorneys were almost exclusively assigned to work on appeals after they had been fully briefed, median case processing time data was selected that indicates the time elapsed from when a case is fully briefed to the filing of an opinion. This data is broken down into the three appellate case types; civil, criminal, and juvenile.

Because of the relative inexperience of the attorneys particularly in the early stages of this project, one would not expect the additional third research attorneys to impact case processing time as significantly as they would dispositions and

written opinions. In fact, one court warned that there initially might be an overall slowdown in operations because of the inexperience of the additional research attorneys and because the permanent attorneys would now be only assigned the most complex, time-consuming cases. However, except in one area, the change in median case processing time was significantly more favorable for courts with the additional research attorney as compared to all other courts.

***Median case processing time (in days) – Fully briefed to filing of opinion***

*Civil*

	<b>FY 1998-99 <i>1<sup>st</sup> Quarter</i></b>	<b>FY 2000-01 <i>1<sup>st</sup> Quarter</i></b>	<b>Change</b>
Fourth District, Division Two	168	127	-24 %
Fourth District, Division Three	610	385	-37 %
Fifth District	426	455	+7 %
Other courts	157	149	-5 %

Two of the three courts with the additional research attorney experienced a significant decrease in the median time to process a civil case from being fully briefed to the filing of an opinion. The Fourth District, Division Two experienced a 24 percent decrease in median case processing time, while the Fourth District, Division Three decreased their time by over one-third (37%).

It should be noted that in the Fifth District, the addition of the nine attorneys has enabled the court to dispose of some very old cases. The addition of the statistics on these old cases in the 1<sup>st</sup> quarter 00-01 disposition pool may have caused the 7 percent increase in the median case processing time. The Fifth District expects this to be a temporary phenomenon until the aged cases reach disposition. (Note that the length of time a case is pending does not affect the above statistics until the quarter in which the case reaches disposition.)

All other courts experienced only a slight decrease (5%) in the time to process a civil case from being fully briefed to the filing of an opinion.

*Criminal*

	<b>FY 1998-99 <i>1<sup>st</sup> Quarter</i></b>	<b>FY 2000-01 <i>1<sup>st</sup> Quarter</i></b>	<b>Change</b>
Fourth District, Division Two	118	80	-32 %
Fourth District, Division Three	349	326	-7 %
Fifth District	244	240	-2 %
Other courts	103	122	+18 %

All three courts with the additional research attorney decreased their criminal case processing times; all other courts experienced a significant increase in time. The Fourth District, Division Two decreased their criminal case processing time by almost one-third (32%), while the Fourth District, Division Three and the Fifth District had modest decreases (7% and 2%, respectively). All other courts, in contrast, experienced an 18% increase in their median criminal case processing times.

*Juvenile*

	<b>FY 1998-99 <i>1<sup>st</sup> Quarter</i></b>	<b>FY 2000-01 <i>1<sup>st</sup> Quarter</i></b>	<b>Change</b>
Fourth District, Division Two	68	44	-35 %
Fourth District, Division Three	140	125	-11 %
Fifth District	102	97	-5 %
Other courts	76	85	+12 %

Similar to criminal cases, all three courts with the additional research attorney decreased their juvenile case processing times, while all other courts experienced a significant increase in time. So in addition to their increased productivity, courts with the additional research attorney experienced some significant increases in efficiency as evidenced by the case processing time statistics presented above.

**Pending caseload (Backlog)**

Pending caseload provides an indirect measure of the level of backlog experienced within a court. As with written opinions and case processing data, original

proceedings were excluded from analysis and only pending appeals for cases that have been fully briefed were considered. This is the area that we would expect to be most favorably affected by the third research attorneys, since this is the point at which the cases are assigned to a chambers and the research attorney begins work on them.

***Pending cases – Fully briefed***

	<b>FY 1998-99 <i>1<sup>st</sup> Quarter</i></b>	<b>FY 2000-01 <i>1<sup>st</sup> Quarter</i></b>	<b>Change</b>
Fourth District, Division Two	297	234	-21 %
Fourth District, Division Three	977	1,036	+6 %
Fifth District	1,119	857	-23 %
Other courts	3,831	3,415	-11 %

As was the case for dispositions and written opinions, two of the three courts with the additional research attorney experienced positive results in the number of pending cases. The Fourth District, Division Two experienced a 21% decrease in pending cases, while the Fifth District decreased its pending caseload by 23%. The staffing problems in the Fourth District, Division Three that affected dispositions and written opinions also not surprisingly adversely impacted the number of cases pending in that court. All other appellate courts throughout the state also experienced a decrease in pending cases, though only half as much as the decrease in two of the courts with the additional research attorney.

**Summary**

***Fourth District, Division Two***

- Dispositions increased by 17% from the 1<sup>st</sup> quarter of FY 1998-99 through the 1<sup>st</sup> quarter of FY 2000-01.
- There was also a 21% increase in written opinions over this period.
- Median case processing time of cases from being fully briefed to the filing of an opinion decreased significantly in all three case types.
  - Civil case processing time decreased by 24%.
  - Criminal case processing time decreased by 32%.
  - Juvenile case processing time decreased by 35%.

- There was a 21% decrease in the number of pending cases from the 1<sup>st</sup> quarter of FY 1998-99 through the 1<sup>st</sup> quarter of FY 2000-01.
- As a result of these favorable results, on October 1, 2000, four of the six research attorney positions were reallocated to other courts with larger backlogs. Two of the positions are now physically located in Division Three, bringing that court's total to eight research attorneys, and two are physically located in Division One, but are working on 165 cases that have been transferred from Division Three. In addition, since October 1, 2000, Division Two has accepted at least 30 transfer cases from Division Three.

#### ***Fourth District, Division Three***

- Despite extreme staffing shortages during the pilot program (the court operated with two of its six judicial positions vacant for most of the first two years of the pilot program period), with the assistance of the third research attorneys, the court was able to minimize the impact on its backlog of cases.
- However, there were some significant decreases in the median time to process cases from the time they were fully briefed to the filing of an opinion over this period.
  - Civil case processing time decreased by 37%.
  - Criminal case processing time decreased by 7%.
  - Juvenile case processing time decreased by 11%.
- There was a small increase (6%) in the number of pending cases from the 1<sup>st</sup> quarter of FY 1998-99 through the 1<sup>st</sup> quarter of FY 2000-01.
- As stated above, effective October 1, 2000, Division Three had eight temporary research attorneys, had transferred 165 cases to Division One and planned on transferring an additional 15 cases per month to Division One, until its backlog is under control, and had transferred another 30 cases to Division Two.

#### ***Fifth District***

- Despite having one of its nine judicial positions vacant for almost a year of the program, dispositions increased by 13% from the 1<sup>st</sup> quarter of FY 1998-99 through the 1<sup>st</sup> quarter of FY 2000-01.
- There was also a 20% increase in written opinions over this period.

- The Fifth District also experienced some positive results in the median case processing time of cases from being fully briefed to the filing of an opinion.
  - Although civil case processing time increased slightly (7%) in first quarter 00-01 this may be a temporary skewing of the statistics by the inclusion of some very old cases in the disposition pool..
  - Criminal case processing time decreased by 2%.
  - Juvenile case processing time decreased by 5%.
- There was a 23% decrease in the number of pending cases from the 1<sup>st</sup> quarter of FY 1998-99 through the 1<sup>st</sup> quarter of FY 2000-01.

**Future action.** Because of the strong favorable results of this program, the courts of appeal will be moving forward to seek regular funding for at least the 21 research attorneys and 7 judicial secretaries that currently comprise the program. It is our intention to continually evaluate the status of each court's backlog and adjust the placement of the attorney positions accordingly, in a manner that will most effectively address the statewide backlog of cases.