

January 1981

## Judicial Administration in the United States Court of Appeals for the Ninth Circuit

Richard H. Deane

Valerie Tehan

Follow this and additional works at: <http://digitalcommons.law.ggu.edu/ggulrev>

 Part of the [Jurisprudence Commons](#)

---

### Recommended Citation

Richard H. Deane and Valerie Tehan, *Judicial Administration in the United States Court of Appeals for the Ninth Circuit*, 11 Golden Gate U. L. Rev. (1981).  
<http://digitalcommons.law.ggu.edu/ggulrev/vol11/iss1/4>

This Article is brought to you for free and open access by the Academic Journals at GGU Law Digital Commons. It has been accepted for inclusion in Golden Gate University Law Review by an authorized administrator of GGU Law Digital Commons. For more information, please contact [jfischer@ggu.edu](mailto:jfischer@ggu.edu).

# JUDICIAL ADMINISTRATION IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT\*

---

Richard H. Deane\*\*  
and  
Valerie Tehan\*\*\*

## I. INTRODUCTION

The federal court system has experienced substantial growth in case filings during the last decade, and certainly the U.S. Court of Appeals for the Ninth Circuit is no exception. During the period from 1970 to 1978, the court experienced almost a one hundred percent increase in yearly filings while the number of judgeships remained constant at thirteen. It is thus understandable that each year since 1970, case filings have consistently exceeded case terminations.<sup>1</sup>

However, a dramatic change in court membership has taken place in the past eighteen months. As a result of the recent appointments made pursuant to the Omnibus Judgeship Act of 1978,<sup>2</sup> the court has a larger complement of judges to address its ever-increasing caseload. Of the twenty-three active judges now sitting on the court, only ten were serving in September 1979.

---

\* The views expressed in this Article are those of the authors and are not necessarily those of the judges of the court.

\*\* Clerk of Court, U.S. Court of Appeals for the Ninth Circuit, formerly Assistant Director of the Administrative Office of the U.S. Courts and Associate Professor at the Georgia Institute of Technology at Atlanta. B.S., 1966, Mississippi State University; M.S., 1968 Mississippi State University; Ph.D, 1971, Purdue University; J.D., 1975, Atlanta Law School.

\*\*\* Third Year Student, Golden Gate University School of Law; formerly Deputy Clerk, U.S. Court of Appeals for the Ninth Circuit.

1. ADMINISTRATIVE OFFICE OF THE U.S. COURTS, WORKLOAD STATISTICS FOR THE DECADE OF THE 1970'S-UNITED STATES COURTS OF APPEALS TABLE B-1 (1980).

2. 28 U.S.C. § 44 (Supp. III 1979).

2 GOLDEN GATE UNIVERSITY LAW REVIEW [Vol. 11:1

In addition to the change in court membership, numerous procedural and administrative programs have been undertaken to expedite the flow of cases through the court. This Article will focus in part upon these programs.

The next section of this Article provides an outline of the court's organization. The judicial and administrative role of the federal appellate judge is explained and the function of the Ninth Circuit Judicial Council is outlined along with the upcoming changes in the composition of the Council. The relatively recent addition of the Circuit Executive's office is described along with the expansion plans for the circuit court library. The expanding role of the Clerk of Court is described with emphasis on the Clerk's case management responsibilities. An overview is also provided of the role of the central legal staff of the court and the important role it plays in improving court productivity.

The third section of the Article describes the procedural innovations and new programs that have, in part, enabled the court to increase dramatically its disposition rate and that will enable it, hopefully, to become current within the next year.

*Caseload*

Geographically, the Ninth Circuit is the largest of the federal circuits, encompassing approximately forty percent of the entire land area of the United States. The court hears appeals from thirteen U.S. district courts in the states of Arizona, Nevada, California, Hawaii, Oregon, Washington, Alaska, Montana and Idaho. In addition the U.S. territorial courts in Guam and the Northern Mariana Islands are included within the jurisdiction of the Ninth Circuit.<sup>3</sup>

During the court statistical year ending June 30, 1980 there were 3,738 new appeals filed before the court.<sup>4</sup> The increase in filings over the previous year was the largest increase ever experienced by a U.S. court of appeals in the history of the federal judiciary. The vast majority of these new filings can be attrib-

---

3. 28 U.S.C. § 41 (1970).

4. ADMINISTRATIVE OFFICE OF THE U.S. COURTS, ANNUAL REPORT OF THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE U.S. COURTS (Preliminary Draft) 44 (1980) [hereinafter cited as ANNUAL REPORT, preceded by year or years].

uted to the corresponding increase in dispositions from the federal district courts of the Ninth Circuit during 1980. Projections reveal that case filings in the court of appeals should reach 4,100 for the statistical year ending June 30, 1981. Unfortunately, the court did not reach its present complement of active judges until October 1980, so that the court's disposition rate did not match the new filing rate during 1980. Thus, the pending caseload soared to 4,618 cases, a record high for the court and a record for any U.S. court of appeals in the history of the federal judiciary.<sup>5</sup> This huge backlog means that civil non-priority cases required an average of 26.9 months to be processed through the court during 1980. Criminal cases required 9.5 months.<sup>6</sup>

The future looks quite optimistic, however. Through the assistance of the court's senior judges and visiting judges from other federal courts, the accelerated growth in the backlog has diminished.

## II. ORGANIZATION OF THE COURT

In addition to the active and senior judges serving on the court, there are approximately 250 staff members supporting court operations. This includes the personal staff of each judge, plus the employees of the Circuit Executive's office, the Clerk's Office, the Office of Staff Attorneys, and the Library. About half are dispersed among the nine states within the geographical boundaries of the circuit. The distribution of personnel within the circuit may change significantly over the next two years based upon the court's plan to decentralize portions of its operations.

### A. THE JUDGES

At the present time, the court has twenty-three active judges and eight judges holding "senior" status.<sup>7</sup> Each active judge is authorized a staff of three law clerks and two secretaries. The chief judge is allowed an additional law clerk or secretary for administrative purposes. Generally, senior judges who continue to hear cases employ one law clerk and one secretary.

---

5. *Id.*

6. 1980 ANNUAL REPORT, *supra* note 4, at A-10, A-11.

7. See Omnibus Judgeship Act, 28 U.S.C. § 44 (Supp. III 1979).

Although San Francisco is the “headquarters” for the court, most judges maintain their residence chambers in other cities throughout the circuit.<sup>8</sup> At the present time, only the Chief Judge, two other active judges, and two senior judges have “residence” chambers in San Francisco.

The judges of the court undertake a continuously increasing appellate caseload. In Court Year 1960, the average number of dispositions per active judgeship was 45, while in 1978 the average number of dispositions per active judgeship was 209.<sup>9</sup> Most of the judges have undertaken this increased caseload while at the same time serving on numerous administrative or professional committees. The administrative burden upon each judge has grown at the same rate in recent years as has the caseload.

The Chief Judge of the court has primary responsibility for court staff operations. The Chief Judge also represents the court and the circuit at the Judicial Conference of the United States, the “board of directors” for the federal judiciary.<sup>10</sup> In addition, the Chief Judge has other administrative and judicial functions assigned by statute or rule.

#### B. THE JUDICIAL COUNCIL

At the present time, the Judicial Council for each circuit is comprised of all court of appeals judges in active service. On October 1, 1981, each Judicial Council must be reconstituted under the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980.<sup>11</sup> Under the Act, two or more federal district court judges along with a number of court of appeals judges will compose the Council.

Many of the duties of the Council are imposed by statute or by delegation from the Judicial Conference of the United States. For example, the Council must (1) approve speedy trial compli-

---

8. 28 U.S.C. § 456 (Supp. III 1979) authorizes a circuit judge to maintain residence chambers in any location within the circuit where a district court sits.

9. 1978 ANNUAL REPORT, *supra* note 4, at 158. In 1960, the court terminated 404 cases with nine judgeships. In 1978, the court terminated 2,715 cases with thirteen judgeships.

10. 28 U.S.C. § 331 (Supp. III 1979).

11. Pub. L. No. 96-458, 94 Stat. 2035 (1980).

ance plans from the district courts;<sup>12</sup> (2) approve Equal Employment Opportunity Plans enacted for circuit court personnel or personnel of the district courts;<sup>13</sup> (3) approve jury selection plans enacted by the district courts;<sup>14</sup> (4) approve district court plans for the appointment of counsel under the Criminal Justice Act;<sup>15</sup> (5) approve supporting personnel for senior judges of the district courts and courts of appeals;<sup>16</sup> and (6) provide recommendations concerning the number of magistrates to be employed in the circuit.<sup>17</sup> In addition, the Council will play an important role in the recently enacted judicial discipline procedures for federal judges.<sup>18</sup>

### C. THE CIRCUIT EXECUTIVE'S OFFICE

The Judicial Council of the circuit is authorized to employ a Circuit Executive to perform administrative duties. The Circuit Executive also exercises administrative control over nonjudicial activities of the court of appeals.<sup>19</sup> The role of the Circuit Executive in the various circuits has been described in a report by the Federal Judicial Center.<sup>20</sup>

The Circuit Executive's office is staffed by the Circuit Executive and several assistants. The Circuit Executive position is relatively new, having been created by statute in 1971. The position was created in recognition of the increasing role of professional court managers in the administration of justice in the federal courts.

In addition to planning the annual judicial conference of the circuit, the Circuit Executive is involved with processing the many administrative matters coming before the Judicial Council of the circuit. In addition, the Circuit Executive is responsible

---

12. 28 U.S.C. § 1863 (1970); 18 U.S.C. § 3006A (1970).

13. Proceedings of the March 1980 Meeting of the Judicial Conference of the United States at 5.

14. 28 U.S.C. § 1863(a) (1970).

15. 18 U.S.C. § 3006A(1) (1970).

16. Proceedings of the September 1950 Meeting of the Judicial Conference of the United States at 51.

17. 28 U.S.C. § 633(b) (1970).

18. Judicial Councils Reform and Judicial Conduct and Disability Act of 1980, Pub. L. No. 96-458, 84 Stat. 2035 (1980).

19. 28 U.S.C. § 332(e) (1970).

20. FEDERAL JUDICIAL CENTER, THE IMPACT OF THE CIRCUIT EXECUTIVE ACT (1979).

for coordinating the personnel system and the budget for the court of appeals. The Circuit Executive also prepares management information and statistical reports for the Judicial Council and the court of appeals.

#### D. THE CLERK'S OFFICE

The Clerk's Office is headed by the Clerk of Court who is assisted by several senior management personnel. The Clerk of Court is charged with the management of all cases before the court. This includes the maintenance of the official docket of the court along with all supporting record keeping systems.

Court management has developed rapidly in the past few years. Instead of deputy clerks periodically "browsing" through a tray of docket sheets to locate cases in which there is a filing delinquency, a computer system now performs this task in the court of appeals. Routine correspondence to litigants is now generated by deputy clerks using the latest word processing equipment.

The Clerk's Office is now divided into case management teams principally organized by geographic origin of the caseload. Each team has complete case management responsibility for a segment of the docket. This has made the Clerk's Office more responsive to the bar because a single deputy clerk is familiar with all aspects of a particular case.

In order to keep the court apprised of the status of the docket, the Clerk's Office generates an internal statistical report each month that provides the judges with important management information necessary to make daily judicial administrative decisions and monitor their individual caseloads.

In order to streamline the processing of cases, the Clerk's Office has been delegated the responsibility for acting upon certain procedural motions; for example, motions for extensions of time to file the transcript or to file a brief. In addition, the Clerk is authorized to dismiss cases for lack of prosecution<sup>21</sup> and to dismiss cases upon stipulation of the parties.<sup>22</sup> The Clerk's Office

---

21. 9TH CIR. R. 19(b).

22. FED. R. APP. P. 42(b).

also assists the court by staffing Court and Judicial Council Committees, and assisting in special judicial administration projects.

#### E. OFFICE OF STAFF ATTORNEYS

In addition to the law clerks directly employed by each judge, the court employs a central legal staff consisting of thirty attorneys and several supporting personnel. About twenty of these attorneys are "court law clerks" hired for a one or two year period. The other attorneys are hired on a more permanent basis to handle administrative and supervisory matters as well as provide support to the judges in handling substantive motions. The central staff attorneys perform a variety of tasks including a process of reviewing and categorizing all cases (known as "inventory"), preparation of pre-argument research memoranda, and special court administration projects.

The staff attorneys also provide a valuable service in terms of preparing memoranda on substantive motions, especially "emergency" motions, filed before a case is calendared. A detailed article describing the role of the central legal staff in the Ninth Circuit is available.<sup>23</sup>

The central legal staff is located in San Francisco. However, individual staff attorneys are occasionally detailed to judges throughout the circuit as the workload varies.

#### F. LIBRARY

The court's principal library is located in San Francisco, and branch libraries are maintained throughout the circuit in other court facilities. The San Francisco library is staffed by a Librarian, Assistant Librarian, and several clerical assistants. In addition, computer-assisted legal research facilities are located in San Francisco and several other locations within the circuit.

The library is an important research source for the judges, their staff and the central legal staff. It is a government depository and is also available to other court personnel, government agencies and members of the Ninth Circuit bar. During the com-

---

23. Hellman, *Central Staff in Appellate Courts: The Experience of the Ninth Circuit*, 68 CALIF. L. REV. 937 (1980).

ing year, the court expects to expand library support operations by employing several additional professional librarians throughout the circuit.

### III. PROGRAMS TO IMPROVE COURT EFFICIENCY

During the past two years the court has undertaken a variety of programs in an attempt to improve court administration and increase the efficiency with which cases are decided. This section provides a brief synopsis of these programs.

#### A. ADMINISTRATIVE UNITS PLAN

Recognizing the administrative problems in a large circuit court, Congress enacted section 6 of the Omnibus Judgeship Act of 1978.<sup>24</sup> This section allows circuit courts with more than fifteen judges to establish administrative units in order to manage more efficiently the judicial and administrative business of the court. The Fifth Circuit and the Ninth Circuit are the only courts of appeals falling under the provisions of section 6 of the Act; however, the Fifth Circuit will split into two circuits effective October 1, 1981, leaving only the Ninth Circuit with more than fifteen judges.

After the passage of the Act, planning was initiated to implement administrative units within the court. In June 1980, rule 23 of the United States Court of Appeals for the Ninth Circuit was adopted. This rule defined an Administrative Units Plan for the court.

Rule 23 established the Southern, Middle and Northern Administrative Units of the court. Los Angeles, San Francisco and Seattle are designated to serve as the respective headquarters for these divisions. In late 1978, satellite clerk's offices were established in both Los Angeles and Seattle. These clerk's offices were established, in part, to improve the communication between the court and the bar. The deputy clerks in these offices

---

24. Omnibus Judgeship Act § 6, 28 U.S.C. § 41 (Supp. II 1978) provides:

Any court of appeals having more than 15 active judges may constitute itself into administrative units complete with such facilities and staff as may be prescribed by the Administrative Office of the United States Courts, and may perform its en banc function by such number of members of its en banc courts as may be prescribed by rule of the court of appeals.

are authorized to accept only true emergency filings but are available to respond to questions from the bar. Routine filings must still be made through the San Francisco clerk's office.

Under the Administrative Units Plan, the court is scheduling Southern Division cases for hearing in Los Angeles, Middle Division cases in San Francisco, and Northern Division cases in Seattle or Portland. Judges sit in all divisions regardless of where they reside in the circuit. The court has not made a final decision regarding further decentralization. Within the next few months, the court will decide whether to maintain case records and docket sheets in Los Angeles and Seattle.

#### B. COMPUTERIZATION AND WORD PROCESSING

In an effort to improve case management and efficiency, the court is making increased use of computer and word processing technology. A computerized system has been developed by the clerk's office to enhance case management efforts. The on-line, time-sharing system was designed by the Clerk's Office staff and developed by the Federal Judicial Center, the official research and development arm of the federal judiciary. The computerized "record" maintained for each case contains data depicting key events in the life of an appeal. The computer can instantly list those cases in which a filing is overdue or incomplete. Deputy clerks use these computer listings to "manage" the caseload by contacting attorneys and scheduling actions. An auxiliary computer system operated by the central legal staff is used to generate "case clusters" for proposed calendars. A priority algorithm is used to determine the order in which the cases are actually placed upon the calendar. The system is capable of grouping together before a single panel, cases that present the same issues. The computerization efforts have allowed the court staff to generate timely management information that assists the court in making many important administrative decisions.

Automatic word processing equipment has been introduced throughout the circuit during the past year. Most judges and court staff units now have word processing equipment and many have communication capabilities which allow documents to be automatically transferred between word processing units. This equipment has uniformly increased the productivity of both the judges and staff units.

### C. INVENTORYING OF CASES

An initial "inventory" of all cases is performed by the central legal staff after the appellee's brief is filed. This process is performed for the purpose of categorizing the issues on appeal and estimating the relative judicial effort likely to be required to decide the case. A "weighting" scale has been developed that allows the staff to quantify the relative judicial time and effort likely to be required by the judges in order to decide the case. In assigning this weight, the staff attorneys consider such factors as the complexity, number, and novelty of issues listed by the parties, as well as the size of the record.

The court utilizes a coding system to identify the general subject matter and issues in each case. The codes assigned to each case are then entered into the computer. A copy of the issue codes used by the central legal staff is available at the clerk's office public counters in San Francisco, Los Angeles and Seattle. The results of the inventory process are used during calendaring to balance judges' workloads and assign to a single panel cases with identical issues.

In addition to categorizing key issues raised by the parties, the central legal staff will identify for the court any jurisdictional problems that may affect the disposition of the case.

### D. MOTIONS PRACTICE

The court receives, through the Clerk's Office, approximately fifteen thousand motions each year. In an effort to streamline and expedite the processing of motions, the court has delegated the responsibility for handling certain procedural motions to the court staff. In other instances, motions are handled by rotating "motions panels" of three active judges. Substantive motions filed in cases that have already been assigned to a panel of judges for disposition are immediately forwarded to that regular three-judge panel. In this way, each panel retains complete control over its caseload.

#### *Procedural Motions*

Rule 22 of the U.S. Court of Appeals for the Ninth Circuit provides that the Clerk or a designated motions attorney may act on specified motions that would ordinarily be submitted to a

single judge.<sup>25</sup> Under a program undertaken in 1979, the Clerk of Court or a designated motions attorney may act upon certain procedural motions, such as motions for extensions of time to file briefs or trial transcripts, or motions to consolidate cases. The granting of such motions is subject to conditions established by the court, the most important of which is that the motion is unopposed. This program has been expanded moderately over the past year and has proved quite successful. Procedural motions that can be processed by the Clerk's Office are generally acted upon within twenty-four hours. Almost ten thousand motions were processed by the court staff last year.

It is estimated that the program has decreased by one hundred percent the number of procedural matters referred to judges. The overall effect of this program has been to expediate the processing of certain procedural motions and to distribute efficiently the workload of the court so that the judges are relieved of duties that can be performed routinely by qualified staff personnel.

#### *Motions Requiring Judicial Action*

Motions filed in cases not yet assigned to a panel and which cannot be processed by the court staff pursuant to rule 22 are forwarded to the motions attorneys on the central legal staff. In most cases the motions attorney will prepare a memorandum reviewing the motion, citing applicable decisions, and perhaps recommending a particular disposition or alternative dispositions of the motion. All relevant documents are attached for the judge's review.

Each week a single rotating panel of judges is selected to act upon all matters appearing on the criminal motions calendar and the civil motions calendar. Two judges are selected, on a

---

25. 9TH CIR. R. 22 provides:

With the approval of the court, the chief judges may delegate in writing to the Clerk, or to a designated staff attorney acting as a deputy clerk for this purpose, authority to act on specified motions subject to disposition by a single judge, upon the following conditions: (1) the motion is unopposed, and (2) the order entered on the motion does not dispose of the appeal. The order disposing of the motion is expressly subject to reconsideration by a judge of the court if exception is received within 10 days of the entry of the order.

rotating basis, for each panel with an additional judge assigned as tie-breaker for the panel. The central legal staff has been extremely effective in streamlining the processing of motions requiring judicial attention. With a court of twenty-three active judges, the staff attorneys are able to add a degree of uniformity in handling substantive motions, particularly emergency motions.

#### E. DISPOSITION WITHOUT ORAL ARGUMENT

In addition to scheduling the usual number of cases for oral argument each month, the court has operated for several months an experimental program for the disposition of certain appeals without oral argument.

Federal Rule of Appellate Procedure 34, as implemented by rule 3 of the U.S. Court of Appeals for the Ninth Circuit, permits disposition without oral argument if a panel of three judges is of the unanimous opinion that: the appeal is frivolous, the dispositive issue(s) has or have been recently and authoritatively decided, or the facts and the legal arguments are adequately presented by the briefs and record and the decisional process would not be significantly aided by oral argument.

Under this program, the court, on a regular basis, selects appropriate cases for presentation as a group to a three-judge panel. If the court determines that a case falls within one of the prescribed categories, the Clerk of Court will send a letter to counsel informing them of the court's intention to submit the case without oral argument and of their right to file objections within seven days. If any of the three judges believe that objections to submission without argument are valid, argument will be scheduled. Counsel will be notified of the identity of the members of the panel when the case is ordered submitted.

Except for oral argument, these cases are accorded the full benefit of the deliberative appellate process, including a conference of the judges and a written decision. Under this program, cases are neither delayed nor advanced in calendaring. The program has been in operation for several months and is presently being evaluated by the court.

#### F. EXPEDITION OF CRIMINAL CASES

Criminal cases in the Ninth Circuit are, in general, expedited and are always given priority over civil appeals to insure prompt disposition. Soon after the notice of appeal is filed, the U.S. magistrate or U.S. district court judge will call a conference to negotiate a time schedule for filing the record and briefs. All counsel as well as the court reporter should be present. Due dates are established so as to expedite the case as much as possible. Motions by the court reporter for extensions of time to file the transcript or motions by the parties for extensions of time to file briefs are granted in criminal cases only under compelling circumstances.

A separate category of "expedited" criminal appeals has also been created to give even higher priority to cases in which the trial lasted three days or less.<sup>26</sup> In these cases, less time is allocated to the parties for brief preparation.

After briefing is completed, criminal appeals are placed upon the next available calendar. Generally, this means that a criminal appeal will be scheduled for oral argument approximately three months after briefing has been completed.

The expedition program for criminal cases has generally proved successful. Criminal cases in the Ninth Circuit currently move from notice of appeal to disposition in about 9.5 months, which is slightly below the national average.<sup>27</sup>

#### G. EXCERPTS OF RECORD

The March 1979 changes in the Rules of the U.S. court of appeals for the Ninth Circuit are now resulting in significant economies in the appellate process.

Under rule 4, the old requirement that three copies of the record be provided to the U.S. court of appeals was abrogated. The new rule 4(f) requires that only one copy of the record on appeal be prepared by the trial court and filed with this court. However, since appeals are referred to a three-judge panel, copies of selected portions of the record must be made available to

---

26. 9TH CIR. R. 20.

27. 1980 Annual Report, *supra* note 4, at A-10 & A-11.

each of the judges assigned to review the appeal. Under new rule 13(a), the appellant is required to provide the court of appeals with five copies of these selected "excerpts of the record" at the time the opening brief is filed. The excerpts are intended to provide judges with a foundation for understanding the issues raised on appeal. The judges will review the finer points by referring to the more comprehensive record designated by the parties as provided in local rule 4.

Local rule 13 describes, in broad terms, the documents that are required in the excerpt of record. With the exception of a copy of the current trial court docket sheet, it is expected that the documents required for the excerpt of record will be available in counsel's own case file. The excerpt of record is much like an informal appendix. The pages comprising the excerpt may be photocopies from the attorney's files rather than certified copies from the district court clerk's office. This has resulted in an estimated \$750,000 per year cost reduction to the litigants of the Ninth Circuit.

As an additional change, local rule 4(f) now provides that the trial court clerk shall retain possession of the record until briefing has been completed. Under prior practice, the record was transmitted immediately after the trial transcripts were completed. This change in procedure has made the record more accessible to the parties for reference purposes since it remains in the trial court for a longer period of time. The new rule has also significantly reduced administrative problems that had been associated in the past with preparation of the record. Since designation of the clerk's record by the parties now occurs subsequent to briefing, the parties know precisely which documents should be part of the record on appeal. This new procedure has eliminated almost all of the requests to supplement the record that had been submitted under the prior practice of designating the clerk's record earlier in the appellate process.

#### H. LIMITED EN BANC PROCEDURES

In section 6 of the Omnibus Judgeship Act of 1978,<sup>28</sup> Congress passed enabling legislation allowing an "en banc" panel consisting of fewer than all of the active judges of the court.

---

28. See note 24 *supra*.

Pursuant to this statute, rule 25 of the Rules of the U.S. Court of Appeals for the Ninth Circuit was adopted by the court. This rule establishes a "limited en banc panel" of eleven active judges. The procedures were adopted in an attempt to minimize the administrative problems associated with an en banc hearing by the full court, while at the same time providing for a comprehensive review of a decision by a three-judge panel.

Each limited en banc panel consists of the Chief Judge plus ten additional judges drawn at random from the active judges of the court. If a judge is not drawn on any of three successive en banc panels, that judge's name will be placed automatically on the next en banc panel. The decision as to whether a case will be taken en banc is still made by a majority vote of all active judges of the court. Several cases have already been submitted to limited en banc panels of the court.

#### I. APPEALS WITHOUT BRIEFS

The Appeals Without Briefs Project is an experiment in appellate review under which selected cases are decided on the basis of extended oral argument but with limited written submissions in place of traditional appellate briefs. All cases selected for the project will receive an accelerated hearing date that should result in a more prompt decision than would otherwise be possible. On appeals that already have a statutory priority, a case in the project may be argued three months earlier than it ordinarily would. Non-priority project cases may be argued ten to twelve months before they would be calendared as non-project cases. In addition to providing for expeditious disposition of appeals, it is anticipated that the project may significantly reduce the cost to litigants of obtaining appellate review.

Under the pilot project, each attorney filing a notice of appeal in a civil case must return a "docketing statement" form to the Clerk's office within ten days of filing. The docketing statement will enable the court to determine if the appeal appears suitable for the project. This decision will be based on the nature of the issue(s) involved and the nature of the disposition of the case in the district court, i.e., jury verdict, summary judgment, and so on. All parties will be given an opportunity to respond to the court's preliminary determination as to whether the case should be included in the project, and may opt out of

the program.

In cases selected for the project, counsel must file, in lieu of a traditional brief, a "preargument statement." This statement should not be longer than five pages and should include references to the cases and portions of the record to which counsel will refer during oral argument. Because there will be no traditional brief, counsel will be granted extended time for oral argument, with a guaranteed minimum of thirty minutes per side.

Except for the limitation on the length of written submissions, a case selected for the Appeals Without Briefs Project will be governed by the Federal Rules of Appellate Procedure and the Rules of the U.S. Court of Appeals for the Ninth Circuit. At the present time, the Appeals Without Briefs pilot project includes U.S. administrative agency cases and civil cases arising from the districts of Arizona, Central California, Northern California and Southern California. The Federal Judicial Center is currently assisting the court in evaluating the benefits of the project.

#### J. BANKRUPTCY APPELLATE PANELS

In order to adjudicate more effectively appeals from the U.S. Bankruptcy Courts of the Ninth Circuit, the Judicial Council has established Bankruptcy Appellate Panels pursuant to 28 U.S.C. § 160(a) (1976). Each panel hearing a bankruptcy appeal is composed of three U.S. Bankruptcy Judges designated by the Chief Judge of the court of appeals.

The panels were established by the Judicial Council to: (1) provide bankruptcy litigants with speedier access to the appellate procedure than might be possible through the district and circuit courts; and (2) relieve the district and circuit courts from a sizable number of bankruptcy appeals.

In districts where the panels have been established, appeals go directly from the Bankruptcy Court to the Bankruptcy Appellate Panels. From there, appeals may be taken to the court of appeals. By stipulation of the parties, appeals may come directly from the Bankruptcy Court to the court of appeals.

The panels appear to be working well. The initial districts

in the pilot program were the District of Arizona and the Southern District of California. In October of 1980 the jurisdiction of the panels was expanded to include the District of Nevada as well as the Southern, Eastern and Northern Districts of California.

The Bankruptcy Appellate Panels Clerk is located at 300 North Los Angeles Street, Room 2037, Federal Building, Los Angeles, California 90012.

#### K. MISCELLANEOUS PROCEDURAL IMPROVEMENTS

During the past eighteen months, the court has instituted several programs in an attempt to improve judicial efficiency.

##### *Criminal Interlocutory Appeals*

In recognition of the continuing increase in the number of interlocutory appeals in criminal cases,<sup>29</sup> the court adopted an administrative procedure to streamline the processing of such appeals. The procedures allow for the expedited transmission of the record and supporting materials from the district court to the court of appeals. Internal procedures have been adopted by the court to insure expedited handling of the appeal, where appropriate.

##### *Monitoring the Preparation of the Transcript*

As a result of the August 1979 amendments to the Federal Rules of Appellate Procedure, the responsibility for requesting extensions of time to prepare the transcript on appeal has been placed with the court reporter rather than the appellant. The Clerk of Court of the U.S. Court of Appeals is responsible for acting upon these requests.<sup>30</sup> As a result of these changes, the Ninth Circuit Judicial Council established a committee to recommend detailed procedures for monitoring the preparation of transcripts. These procedures have been drafted and recommended for adoption. The procedures should help to expedite the preparation of transcripts and minimize administrative paperwork necessary to monitor the process.

---

29. *Abney v. United States*, 431 U.S. 651 (1977).

30. *FED. R. APP. P.* 11(b).

*Briefing Positions in NLRB Applications for Enforcement*

In an attempt to clarify and isolate the issues to be adjudicated in applications for enforcement of decisions by the National Labor Relations Board, the court has adopted rule 24 of the Rules of the United States Court of Appeals for the Ninth Circuit. This rule reversed the normal briefing roles of the respondent and the NLRB so that the private party can present the first brief in order to identify the reasons for non-compliance or disagreement with the NLRB decision.<sup>31</sup>

*Cost Bill Form*

In an effort to streamline the processing of appellate cost bills, a standard form has been developed for use by the prevailing party. The form is distributed by the Clerk's Office when the case disposition is filed. The form has been helpful both to attorneys in categorizing and summarizing costs and to the court in evaluating allowable costs on appeal.

## L. COMMUNICATIONS WITH THE BAR

During the past year the court has made a dedicated effort to enhance communications with the bar. The Clerk's Office has initiated a *General Docketing Letter* which is transmitted to all parties upon the filing of each new appeal. The ten-page letter, periodically revised, was developed in an attempt to provide an informal interpretation of the Federal Rules of Appellate Procedure and Rules of the U.S. Court of Appeals for the Ninth Circuit as they apply to practice before the court. The docketing letter also contains an "Appellate Processing Schedule" which is a timetable depicting the key events in the life of the appeal, as well as a "Management Checklist" which can be used by attorneys to monitor the different tasks that must be completed in prosecuting the appeal.

In August of 1980 the Clerk's Office initiated the publication of the *Lawyer's Information Bulletin*. This newsletter is

---

31. 9TH CIR. R. 24 provides:

In an application for enforcement by the National Labor Relations Board under Rule 15(b), Federal Rules of Appellate Procedure, the respondent(s) shall be considered the petitioner(s), and the NLRB considered the respondent, for the purposes of briefing and oral argument, unless the court orders otherwise.

published periodically in an attempt to keep Ninth Circuit lawyers abreast of developments in the court. Copies of the *Bulletin* are sent to all lawyer representatives to the Ninth Circuit Judicial Conference as well as all U.S. Attorneys and Federal Public Defenders in the Ninth Circuit. In addition, copies are available at the Clerk's Office public counter in San Francisco, Los Angeles, and Seattle.

Several judges as well as members of the court staff have participated in a number of seminars in the circuit sponsored by bar associations and similar groups. The seminars have proved helpful as a two-way communication channel between the members of the bar and the court.

At the 1980 meeting of the Ninth Circuit Judicial Conference, specific informal discussion sessions were held with members of the bar and circuit judges participating. Each discussion session consisted of two or three court of appeals judges and fifteen to twenty attorneys. At these sessions, attorneys had a chance to express their views concerning court operations and procedures. Several sessions were also conducted at which lawyer representatives had a chance to interact with court staff officers. As a result of these sessions, the Office of Staff Attorneys distributed, in November 1980, an eight page memorandum detailing the inventory and calendar procedures summarized in section III(B) and (C) above. A copy of the memorandum may be obtained by writing the Office of Staff Attorneys, Box 547, San Francisco, CA 94101.

#### IV. CONCLUSIONS

The past eighteen months have seen an unparalleled number of changes in the U.S. Court of Appeals for the Ninth Circuit. The composition of the court has changed dramatically and many administrative changes have been made to enhance the processing of appeals. Absent the unprecedented increase in appellate filings that occurred during 1980, the court would be well on its way to being current. One of the primary goals of the court is to reduce the present backlog so that both civil and criminal cases can be decided on a timely basis.

Unfortunately, the new district court judges recently appointed in the circuit will probably have the effect of increasing

20 GOLDEN GATE UNIVERSITY LAW REVIEW [Vol. 11:1

cases filed with the court of appeals.<sup>32</sup> As the growth in new filings continues, the court will continue to investigate new procedures and programs to improve court administration while at the same time maintaining the high quality of its judicial decisions.

---

32. The Omnibus Judgeship Act, 28 U.S.C. § 44 (Supp. III 1979), provided a total of 15 new district court judgeships within the Ninth Circuit.