

APPELLATE PRACTICE NEWS

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INTRODUCTION

By Larry Hammerling, Editor

This issue of Appellate Practice News will report on the Appellate Section's recent CLE program, presented by Chief Judge Edward Toussaint and Judge Wilhelmina Wright of the Minnesota Court of Appeals. This issue also presents a report on the welcome reception the section sponsored for Justice G. Barry Anderson and Judge Christopher J. Dietzen, as well as other news about the section.

APPELLATE PRACTICE CLE

February 7, 2005

The Minnesota Court of Appeals

Chief Judge Toussaint and Judge Wright, continued what has become an Appellate Section tradition of presenting both an institutional update on the Court of Appeals, and a discussion of significant opinions issued by the court during the last year.

Retirements Looming

Judge Toussaint noted that Judge James Harten will be retiring this Spring. Judge Harten was appointed to the Court of Appeals in February, 1992. Judge Toussaint said he hoped that Judge Harten's replacement will be available by April. Judge Robert

Schumacher is going to retire in January, 2006. He has been a member of the court since 1987.

Budget Cuts Continue to Impact the Court

Judge Toussaint emphasized that the court has not permitted budget problems to impair the quality of decision making or the process by which decisions are made. He noted that other appellate courts have addressed budget issues by reducing access to oral argument, or reduced the number of judges assigned to reviewing panels.

In Minnesota, the impact on practitioners of the very tight Court of Appeals budget is oral argument

timing. The court is able to field one fewer panel of judges – five rather than the six it managed up until last year. This has resulted in the time from the filing of the first respondent brief to the date of oral argument increasing from 45-60 days to 100-120 days.

Case Filing Developments

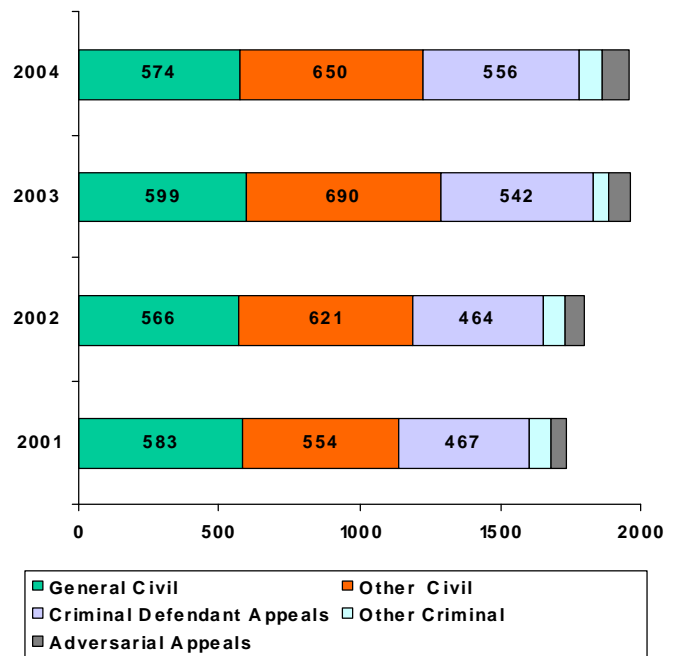
New case filings in the court have been consistent for the last several years, averaging 2200-2500 cases a year and resulting in 1500-1600 opinions. The one exception to this occurred in 1994-5 when changes to DWI laws resulted in a spike in appeal filings.

At the time of Judge Toussaint’s presentation, only the first ten months of fiscal year 2004 data was available. A few of the PowerPoint slides he presented are displayed below.

For purposes of his presentation, Judge Toussaint divided cases up into five categories: **General Civil**, encompassing most civil appeals arising in district court, other than family law and juvenile matters; **Other Civil**, which includes family matters, juvenile protection and delinquency cases, economic security, commitment, and implied consent cases; **Defendant Criminal**

appeals; **Other Criminal**, which includes sentencing and probation appeals, prosecution appeals, and certified questions in criminal cases; and **Adversarial Filings**, which include petitions for writs and petitions for discretionary appeal.

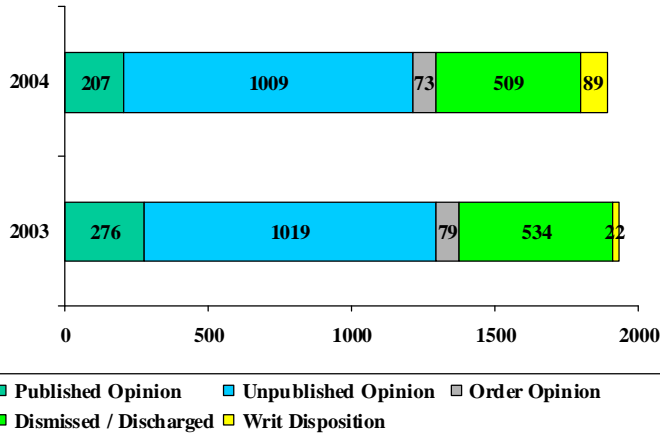
Filing data for the first 10 months of fiscal 2001-4



Court of Appeals Dispositions

Through the first 10 months of FY 04, the court has disposed of 1898 cases. Of these, 207 were addressed in published opinions, 1009 in unpublished opinions and 73 in order opinions. The remaining cases were either dismissed or discharged, or reflect writ dispositions.

Court of Appeals dispositions for the first 10 months of fiscal 2003-4



Pro Se Filings

The number of pro se filings 10 months into FY 2004 was 492. Of these, 281 were in the “other civil” category, the majority of which were filings in economic security (153) and family (68) cases. This number represents about 25 percent of the total filings in the court (1961) for that period.

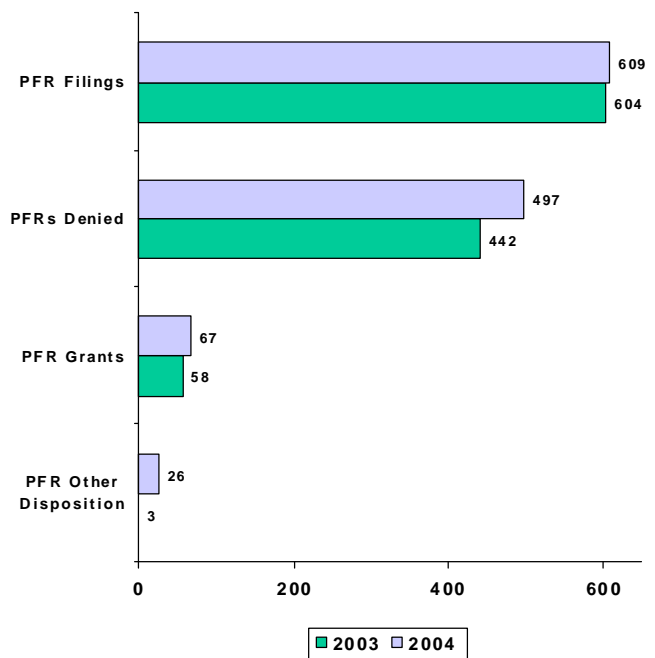
In the context of discussing the pro se filings, Judge Toussaint took the opportunity to praise the section’s Pro Bono Project. He emphasized that the work of pro bono lawyers in economic security appeals resulted in reversals that simply would not have happened had the cases gone forward pro se.

Petitions for Review

Judge Toussaint also told those attending the program that for the first

10 months of fiscal 04, there had been 609 petitions for review of Court of Appeals decisions filed. In the same period, the Supreme Court granted review in 67 cases and denied it in 497 cases. Of cases accepted for review, the court reversed and/or remanded 50 percent of them, affirmed 31 percent, issued a mixed opinion in 10 percent, and dismissed or discharged the remainder.

Petitions for Review filed in the first 10 months of fiscal 2003-4



Significant Cases

Judge Wright presented the most significant cases decided by the court in 2004.

Free Press v. County of Blue Earth, 677 N.W.2d 471 (Minn.)

App. 2004). This case involved the scope of attorney-client privilege in the context of a public body going into closed session to discuss an EEOC case. The court concluded that the organization must specifically describe the matter to be discussed at the closed meeting, subject only to relevant privacy and confidentiality protections, before going into closed session.

TNT Properties, Ltd. V. Tri-Star Developers, LLC, 677 N.W.2d 94 (Minn. App. 2004). Parties to a real estate transaction stated a settlement agreement orally on the record. The court upheld the terms of this agreement when one of the parties sought to rely upon the statute of frauds to renege upon its terms.

Rowe v. Munye, 674 N.W.2d 761 (Minn. App. 2004), *review granted* (Minn. April 28, 2004). How to instruct the jury in personal injury cases where pre-existing injury was the issue in this case. The court ruled that CIVJIG 91.40 misstated Minnesota law and that it was prejudicial error to give that instruction in a case involving both a new injury and a pre-existing disability or medical condition.

Entizion v. Ill. Farmers Ins. Co., 678 N.W.2d 719 (Minn. App. 2004). The court examined the purpose of a limitation period in ruling that the

six-year statute of limitations in contract actions applied to an insured's action against an insurer for no-fault benefits. The limitation period begins to run when the cause of action accrues.

State v. Anyanwu, 681 N.W.2d 411 (Minn. App. 2004). The defendant in this case challenged a plea deal that he had negotiated. The court permitted him to withdraw the plea, though it appeared to be a favorable deal, ruling that the district court had improperly interjected itself into the plea negotiation by promising a particular sentence.

Judge Wright also generally noted the several cases decided by the court addressing the United States Supreme Court decision in *Blakely v. Washington*. That case requires that any facts used to enhance a guidelines sentence beyond the presumptive sentence must be found beyond a reasonable doubt by a jury.

A second line of Court of Appeals cases has stemmed from another United States Supreme Court decision, *Crawford v. Washington*. *Crawford* bars any hearsay statement, regardless of whether it fits a traditional exception to the hearsay rule, when the statement at issue is testimonial. One of these cases, *State v. Wright*, 686 N.W.2d 295 (Minn.

App. 2004), *review granted* (Minn. Nov. 23, 2004), focused on whether

statements made during the course of a 911 call were testimonial.

Welcome Reception a Success

On January 13, the section held a reception for newly appointed Justice, G. Barry Anderson and Judge Christopher J. Dietzen. Over 50 people attended the reception, which was held in the Judicial Center. Among those attending were Justices Paul Anderson, Russell Anderson and Sam Hanson, and Judges Harriet Lansing, Jim Randall, Terri Stoneburner, David Minge, Thomas Kalitowski, and Natalie Hudson.

Past events of this nature have not generated the membership turnout

hoped for, despite the opportunity to meet and chat with so many Justices and Judges in an informal setting, but this one worked. The turnout was great and those who attended had plenty of opportunity to visit with members of the court and with their colleagues. Special thanks to those who worked so hard to make the event the best ever for the section, including **Diane B. Bratvold** of Rider Bennett, **Jenneane Jansen** of Meagher & Geer, and **Kim Basting** of the MSBA.

Annual Meeting of the Appellate Section in Planning Stage

The section council has begun planning an annual meeting to occur in late Spring. While plans are still in the formative stage, it is envisioned that the meeting will be a dinner, preceded by a business meeting. News about this event will be emailed to members as the details are evolved.