

## **Criminal Appeals Section<sup>1</sup> backlog**

The Criminal Appeals Section is once again pleased to report that it has made significant progress in decreasing its backlog of appellate cases. The additional staff provided in FY 2014 proved to be a critical factor in this success, and we very much appreciate the Committee's support in this endeavor. In addition, we recognize and thank the judges and staff of the Court of Appeals for their help in adopting several expedited processes to resolve many of the less complicated cases.

### *Backlog*

As of the end of FY 2013, the appellate backlog stood at 564 cases. At the end of FY 2014, that number was 272, a reduction of 292 cases. By June 30, 2015, the backlog was down to 168 cases.

### *Incoming and outgoing cases*

In FY 2015, the Criminal Appeals Section opened 952 new cases and filed answer briefs in 1017 cases. Forty (40) cases were closed out in other ways (35 by expedited docket which required no briefing by the AG, and 5 through dismissals or transfers to other parts of the Office).

### *Expedited and experimental dockets discontinued*

In prior years, in an attempt to bring down the backlog of AG cases, some cases were resolved without briefing by the AG's Office. Two mechanisms made that possible.

The first was the **expedited docket**, in which the Court of Appeals selected cases that could be resolved without full briefing. The Court ended that docket in the fall of 2014. The final cases on that docket were resolved by the end of the FY.

The second mechanism was the experimental docket, which began in March 2012 by agreement with the Court of Appeals as a temporary measure to deal with cases

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<sup>1</sup>The Attorney General's Appellate Division has been renamed the Criminal Appeals Section.

that were not selected for the expedited docket, but which appeared to be good candidates for resolution with less than comprehensive briefing. This was a short term fix to which the Court agreed pending Criminal Appeals staff increases. The judges preferred full briefing on all appellate cases, so once staff increases were realized, the Court discontinued the experimental docket. All of the experimental docket cases were completed by the end of FY 2014, and all cases now receive full briefing.

### *Future outlook*

The backlog reduction was the result of the expedited processes discussed above and a lot of hard work on the part of the both the newly-hired and the experienced Criminal Appeals staff. That said, it is important to remember that this rate of reduction is not likely to continue.

As noted above, the former expedited and experimental docket cases are now back in the general caseload, and it will thus take more attorney time for full briefing on all cases. In addition, the Appellate Division of the Public Defender's Office was given eleven new appellate positions in the FY 2015 budget; ten of those positions will directly impact the Department of Law's Criminal Appeals Section. It is expected that, once up to speed, these new public defenders will generate 100-200 additional incoming cases per year for the Department of Law. If that proves to be the case, it is likely to severely impact the Department's ability to meet incoming numbers, let alone address the backlog.

We have been monitoring the caseload this fiscal year to assess the full effect of these changes. However, given the time it takes to hire and train that many new appellate attorneys, it is too soon to get an accurate indication of how much work those attorneys will generate. Fiscal year 2016 statistics should give us a better indication of how these new PD positions will impact the Criminal Appeals Section. (Criminal Appeals received 125 incoming PD cases for the first three months of FY 2016, an increase of 33 cases over the same time period last fiscal year. This is just a few briefs short of what one Criminal Appeals attorney is expected to handle in a year. Further tracking should give us a better idea of whether this trend will continue.)

**Interagency working group on postconviction appeals**

This group started out as a “think tank” of judges and representatives from Judicial, the Attorney General’s Office, the Public Defender’s Office, and the Office of Alternate Defense Counsel; the goal was to brainstorm the area of postconviction review, with an eye toward improving the process. After many rounds of discussion, it was agreed among a core group of participants that Judicial would propose a decision item for a statewide pilot project for expediting postconviction appeals in several judicial districts, built in large part on a limited 35(c) review process that is currently being done through Judicial. That proposal has been delayed due to the departure of several key players in the Judicial Department, including their chief legal counsel and the attorney who managed the current 35(c) project. Because of these changes, it will not be possible to get the proposal pulled together in time for the FY 2017 budget.