1993

Ten Years Later: Justice Delayed is no More

Peter S. Popovich

Follow this and additional works at: http://open.mitchellhamline.edu/wmlr

Recommended Citation

This Article is brought to you for free and open access by the Law Reviews and Journals at Mitchell Hamline Open Access. It has been accepted for inclusion in William Mitchell Law Review by an authorized administrator of Mitchell Hamline Open Access. For more information, please contact sean.felhofer@mitchellhamline.edu.
© Mitchell Hamline School of Law
TEN YEARS LATER: JUSTICE DELAYED IS NO MORE

THE HONORABLE PETER S. POPOVICH†

The hallmark of a successful court system is like that of any business—service, efficiency, and quality. Where a business serves the public rather than seeking to make a profit, public confidence is critical. Ten years of efficient case management and quality legal decisions demonstrate that the public’s confidence and the bar’s support of the Minnesota Court of Appeals is well-warranted.

The court’s success is due to two factors. First, from the beginning, the court has emphasized strong case management and adherence to reasonable procedural processing rules. Second, the strength, quality, and loyalty of the judges and staff make the court a model of cooperation and dedication for deciding cases efficiently and with due consideration.

INCREASED CASE FILINGS

In 1982, the state of the court system was one of delay, delay, delay. For 125 years, the Minnesota Supreme Court had been responsible for appellate review of trial court decisions. The supreme court was the court of last resort and had jurisdiction over all cases. In addition to reviewing trial decisions, the court also developed new law and policy.

Prior to the 1970s, the case load of the court had increased at a steady pace. In the 1970s, however, other reforms of the court system substantially affected the supreme court. The County Court Act of 1971 merged the probate and municipal courts to give trial courts jurisdiction over all probate, juvenile, civil, and criminal cases. While eliminating some of the backlog at the trial level, the appeals from county courts to district courts overloaded the district courts. The two busiest county

courts—Hennepin County and Ramsey County—continued to send appeals to the supreme court as did most administrative agencies, including worker’s compensation and unemployment compensation claims. As a result, the caseload at the supreme court rose from 419 cases in 1964 to 677 cases in 1973. By 1982, the number of filings increased to 1682, a 400 percent increase in filings since 1964.1

Several of the reform initiatives sought to alleviate the increased number of cases at the supreme court. The Court Reform Act of 1977 attempted to streamline the court’s administrative authority and to provide more support for the court.2 Most significantly, the court was reorganized as a high-volume court. In 1973, the number of justices serving the court was increased by the legislature from seven to nine. In order to improve efficiency, the court heard matters in panels, initially in panels of five justices and later in panels of three justices. The central legal research staff grew in number and assumed greater case-related responsibilities. Oral argument was limited. Summary dispositions—decisions with no reasoning—were used extensively.

The result of the 1970s reform was a compromise of quality in order to process quantity. At this point, the supreme court even indicated in one case that the right to appeal was not guaranteed by the Minnesota Constitution but was merely a statutory right. The court also raised the possibility of creating a tribunal that would allow review only at the court’s discretion.

**INTERMEDIATE COURT ESTABLISHED**

The time had come for a major improvement of the state’s judicial system. In 1982, the Minnesota Legislature, the Min-

---

2. 1977 Minn. Laws ch. 432. The Court Reform Act: (1) clarified the administrative authority of the Supreme Court over the state court system, (2) authorized the development of computerized information systems, (3) created a centralized, professional administrative staff for the state and local courts, and (4) transferred appeals originating from municipal courts of Hennepin and Ramsey Counties to three-judge panels of district court judges. Three-judge panels also replaced the single judge appeals system from county to district courts. The court continued to have discretionary review authority over appellate panels. The Chief Justice and the Court also shouldered the burden of administering the state court system.
TEN YEARS LATER

nesota Supreme Court, and the Minnesota bar responded by supporting a constitutional amendment to permit the creation of an intermediate court of appeals. In May 1983, Governor Rudy Perpich asked me to create and oversee the new court. I gladly accepted the challenge. The new court came into existence on November 2, 1983.

In the formative years of the court of appeals, my role was not only that of an administrator but also as the court’s cheerleader. I am still not sure why Governor Perpich chose me. Perhaps I was selected because I had extensive legal appellate experience, experience as a legislator, an understanding of the legislative process, a progressive, public service orientation, and had started my own law firm from the ground up. Whatever the reason, Governor Perpich called me at 5:30 a.m. at home and said, “Why aren’t you at work?”

That was a good indicator of the kind of work that lay ahead. After consulting with my partners that morning and agreeing to head up the project to develop the court, I met with Chief Justice Amdahl that afternoon to talk about the objectives of the Minnesota Court of Appeals. Less than six months later, the court of appeals was hearing oral arguments and getting out opinions. My goal throughout that planning process was to do it right—there would be no time to reformulate procedures after the court was up and running. The proper groundwork had to be laid, or the new intermediate court would simply add to the delay rather than eliminate it. Ninety day deadlines for opinions had to be met.

Soon after I began this project, I attended a two-week conference on intermediate appellate court systems with experts from throughout the country and thirty intermediate appellate judges. Even though I had not yet been sworn in, I was allowed to attend to learn about the court systems in other states, their objectives, and the possible pitfalls in developing a new court. At this conference I developed a master list of policy choices important to the effective formation of an intermediate court in Minnesota: Who would be appointed as judges, and how? Would the judges travel to hear oral arguments? Would all opinions be published? How would the court develop and adopt internal rules of appellate procedure?

Regardless of the type of court system, all the judges at the conference agreed on one critical piece of advice: keep a good
relationship with the top court. That relationship requires constant communication between the two courts so that both understand the other's challenges, goals, and priorities. Otherwise, these thirty judges warned, the method of communication would be reversals and loss of good personal interrelations.

Judge Edward Devitt of the Minnesota Federal District Court taught me about reversals. He always told me not to count reversals but just to do the best job possible and avoid looking over my shoulder. If the higher court reversed, so be it. I shared Judge Devitt's advice with the judges when we started in 1983. The court had well-defined objectives as a high-volume, error correction court, so we did not focus on reversals. We never took our relationship with the top court for granted. We had regular meetings between the judges to talk about the judicial process.

THE NEW COURT'S GOALS

As a result of learning from appellate judges in other state courts, we developed the objectives and philosophy for the Minnesota Court of Appeals. The court's first objective was timely error correction. The court operated from the premise that every litigant in the state had the right of appeal. Our goal was to expedite this process so that litigants would not be left wondering for years about the accuracy of the trial court's decision.

Second, the court would be a "hot bench." Assignment for writing opinions occurred at the oral or non-oral conference which followed either oral argument or the filing of the last brief. This policy avoided opinions by one judge only and encouraged spirited discussion of legal issues.

Third, the court permitted oral argument for every case if requested. The court adopted its oral argument policy in response to strong support by the Minnesota Bar Association. Since judges were not pre-assigned to write, all three judges on the panel asked questions of the lawyers to distill the legal issues.

Fourth, the court of appeals provided reasons for all of its opinions, replacing the practice of summary affirmance used by the supreme court in response to the volume of cases it faced prior to the inception of the court of appeals.
Fifth, the three-judge panels were randomly assigned and rotated so that all judges had an opportunity to work with each other. In addition, proposed opinions circulated to all members of the court and the court “rode circuit” and heard cases in all ten judicial districts as often as was practical.

Last, in 1987, after nearly five years of publishing all court of appeals decisions to clarify common law in new areas of litigation, the judges agreed the rules of internal procedure should be amended to permit nonpublication of non-precedential decisions. Nonpublication was implemented as a result of legislative inquiry and suggestions. Nonpublication was also a response to the difficulty anticipated in obtaining additional judges. In addition, we wanted to avoid publication of repetitive legal analyses. Publication would be limited to far-reaching and important cases affecting more than just fact-orientated decisions.

Efficient case management is the hallmark of the Minnesota court of appeals and the court has received national recognition for its achievement. All proposed panel opinions are circulated to all judges, and each judge writes more than 100 opinions a year. In the ten years since its inception, the court has never experienced a backlog. The court was one of the first in the country to use computerized scheduling systems to create notices to judges and lawyers to keep the cases moving through the system efficiently. All cases must be decided and an opinion issued within ninety days after oral arguments, or, if there is no oral argument, after the last brief is filed. The ninety day limit is rarely extended by the Chief Judge and then only for good cause.

Minnesotans who operate within the legal system and those who pay for it with their tax dollars have been universally supportive of and pleased with the court of appeals since its inception. The court’s biggest accomplishment has been reduced delay in appellate review, leading the way in case management

---


In most state and federal appeals courts, cases take two years or longer to wend their way to a conclusion and it isn’t uncommon to find six-year old cases languishing on appellate dockets, said Robert Hanson, a researcher with the National Center for State Courts. . . . Last year [in 1991] the Minnesota court’s 16 judges issued 1,500 written decisions, “amounting to 125 per month, or two per week per judge,” said Judge Wozniak.

*Id.*
and timely disposal. Later, Minnesota's trial courts adopted
time lines and schedules to better manage their case loads.
Unusual delay is no longer a problem. The Minnesota
Supreme Court is free to spend time on the thorny constitu-
tional issues and other cases of public import that the state's
highest court is designed to address. Best of all, the public is
better served. Cases are disposed of quickly with thorough re-
view, supported by extensive research and sound reasoning.

**TRIAL BAR’S CRITERIA**

In 1983, Stephen S. Eckman, then president of the Trial
Lawyer's Association, stated ten criteria by which the court
would be judged by the bar. These criteria measure the
court's ability to meet the needs of practitioners. Based on his
criteria, I would say the court of appeals has measured up well:

1. **Avoiding "labyrinthine regulations and court rules that have made appellate work a specialty."** The bar has been supportive of the
   rules of appellate procedure as being reasonable and not
   overly technical.

2. **Making judges available to "hear matters on an emergency basis or during trial."** The court permitted acceleration of cases in-
   volving termination of parental rights, criminal matters, and
   unemployment compensation. On every other matter, the
   Chief Judge and special term panel is available immediately.

3. **Encouraging oral arguments with "complete presentation of the is-
   sues."** Oral argument is provided in all cases where the parties
   were represented by counsel, although the parties can lose
   the opportunity by violating the rules of appellate practice.

4. **Adoption of "innovative developments in Minnesota’s common law."** While many of the court’s cases are important or of first
   impression, the court serves primarily an error-correcting role.
   The supreme court bears the responsibility of making doctrinal
   or philosophical changes. Nevertheless, the court of appeals has never shirked taking on tough issues. Rather, the
   court has relished such a task. The supreme court knows

---

7. Id.
where the court of appeals stands on important developments that need to be made.

5. Recognition of special nature of trial practice and trial lawyers. The extensive background of the court’s judges and their legal experiences have always made them mindful of the problems of the practicing bar.

6. Avoiding infighting and “regionalism” among the circuits. The judges have worked together with collegiality from the beginning of the court. Both appellate courts are now housed together in a new judicial center.

7. Writing concise decisions with accurate facts and addressing real issues. We adopted an opinion format which includes a concise description of the facts, the issues addressed, and analysis and reasons. We strived to limit the length of opinions, resulting in an average opinion length for many of the judges of seven pages.

8. Avoiding summary dispositions as a way to “duck sensitive issues.” Each opinion had to be supported by reasons. I monitored the court’s opinions to ensure that they informed the public and parties why the court decided as it did.

9. Completing the opinions in a prompt and timely manner, avoiding delay for litigants. From the two-year delay time prior to its creation, the new court reduced the average case disposition time, including filing the appeal, briefing, and rendering a decision, to 183 days for orals and 165 days for non-orals.

10. Keeping “attuned to the needs of the lawyers out in the trenches.” The court visited and heard cases in each judicial district. By “riding circuit,” judges stayed in touch with the lawyers and litigants in all the districts. All judges endeavored to meet with bar groups and gave numerous public speeches about the court’s goals and its operations.

Mr. Eckman concluded his article by saying, “Only time will tell if we’ve contributed to the solution or created just another institution.” In my opinion, the Minnesota Court of Appeals has been a significant contributor to expeditious justice in this state. The court continues to pursue its objective of fair and speedy execution of the appellate process.

DEDICATED JUDGES AND STAFF

The court clearly would not have worked without the exceptional efforts of the judges and staff. The original twelve
judges came from various geographical areas and had different legal experiences. When the number of judges was increased to sixteen or when replacements were made, governors chose carefully to enhance the diversity and experience of the court. The court accomplished its goals with collegiality—hard work with good words. Rarely were there personal animosities. An excellent career support staff and personal law clerks, without exception, became personally involved as part of the team effort.

The court became and remains preeminent among intermediate courts of the nation. We are all collectively proud of the court's reputation. This is an example of judicial administration at its best—based on collective effort. It was a privilege to work with every one involved in the court. I enjoyed seeing something I had a hand in work so well. I deliberated seriously before accepting an appointment to the supreme court, and I missed the court of appeals afterwards. The court is a tribute to the people of Minnesota who, through their confidence in the judges and lawyers of this state, allowed us to create what has become "the best" intermediate appellate court in the nation.