

# Nothing Stays the Same

by Hon. Everett O. Inbody



In December, the Nebraska Court of Appeals celebrated its 16th birthday. In the span of 16 years, the court has become an integral part of the Nebraska judicial process. Yet, the court must continue to examine the way it does business to ensure that it is correctly deciding cases in a timely fashion. My goal in this brief article is to inform the bench and bar of a number of substantial changes in the way the court processes and decides cases; these changes have occurred over the last several years and are continuing to occur. It brings to mind the old saying: "Nothing stays the same, it either gets better or it gets worse." We continually strive to make things better.

## RECENT CHANGES

In 2004, the Supreme Court and the Court of Appeals were concerned that it took approximately 10 months to process a termination of parental rights case through the appellate sys-

tem in Nebraska, and it was determined that changes in case processing were needed in order to move these crucial cases through the system more quickly. Because additional resources were not available, we anticipated that such changes could have an adverse effect on other aspects of our caseload, particularly the nonadvanced civil cases. Nonetheless, the need for improvement and the benefits it would bring to Nebraska children and families required that changes be made, despite the risk of slowing down the processing of another portion of our docket. The changes that were implemented have made a difference. The statistical data indicates that generally the court's opinions in termination cases are now being released less than 7 months from the date the notice of appeal was filed.

The first step was to strictly enforce the court rules on requests for brief date extensions in termination of parental rights cases. No extensions are allowed in termination cases except upon a showing of exceptional cause. The strict enforcement of this rule has significantly reduced the number of requests for additional time to prepare briefs in termination cases. For the second step, at the request of the Court of Appeals, the Supreme Court amended the rules for placing termination cases on the proposed call. Usually, advanced cases are placed on the proposed call when the appellee's brief is filed. The amended rules place termination cases on the proposed call as of the date that the appellant's brief is due. Some of the lawyers who practice in this area are now referring to these cases as being on "The Rocket Docket."

We felt that it was very important that counsel understood from the beginning that the appellate courts intended to move these cases along as quickly as the rules allow. Thus, when a juvenile termination of parental rights appeal is filed, both the

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appellant and the appellee receive a notice from the Clerk of the Court of Appeals on brightly colored paper informing counsel that no extension of brief date will be allowed except upon a showing of exceptional cause and that this rule will be strictly enforced. The notice also informs counsel that the case will be put on the proposed call on the date that the appellant's brief is due. The effect of these changes is that, usually, reply briefs from the appellant are due in the same month that the case is argued to one of our panels.

Additionally, in 2006, the Supreme Court amended the appellate rules to require all appealing parties whose parental rights have been terminated to personally sign the notice of appeal after the trial court order has been entered. This requirement is not jurisdictional; if the parent has not complied with the rule, he or she is still given the opportunity to show cause why the appeal should not be summarily affirmed, but the rule serves to dispose of termination cases where the parent whose rights were terminated has no real interest in taking the appeal, allowing the court to devote limited judicial resources to other cases.

Historically, the primary goal for the creation of the Court of Appeals was to reduce the length of time required for processing appeals and to dispose of close to 800 appeals which had been pending for several years. These goals were achieved, but constant effort and scrutiny is required to ensure that all cases, whether advanced or not, continue to be decided in a timely fashion. Like every court, the Court of Appeals experiences changes in the number of cases filed. On average, in 2006, the six judges of the Court of Appeals resolved over 100 cases each month. However, in 2006, there were over 115 cases docketed each month. Thus, more appeals were filed than were decided, which, over time, obviously increases case processing time. Additionally, there is a "cost" involved in processing the juvenile cases in the way described above because it increases the processing time for nonadvanced civil cases. This occurs simply because the juvenile cases "leapfrog" the nonadvanced civil cases that are fully briefed and that are awaiting oral argument and submission to the court for decision. As a result, the number of nonadvanced civil cases that are on the docket--briefed, but unsubmitted for decision--has increased, as has the processing time for such cases.

## OTHER EFFORTS TO REDUCE CASE PROCESSING TIME

As discussed above, the Court of Appeals has sought innovative ways to prevent cases from lingering on our docket for an excessive amount of time. However, at the most basic level, in order to reduce the case processing time, given that the number of judges and staff has not changed, and is unlikely to change, we can only decide more cases, but to do so requires that we write less on the cases we decide--at least on certain cases. The

judges of the Court of Appeals believe that an intermediate appellate court should properly focus its writing on cases which present issues of law or in which full exposition of the case will provide some benefit in the future for the bench and bar. As a result, the judges of the Court of Appeals have implemented three initiatives which we believe will achieve our goal of reducing case processing time. It is important that the bar and the bench understand what we are doing and why.

First, we have determined that we must implement a better screening process to determine whether a case can be summarily disposed by reference to controlling authority, bearing in mind that the court rules provide for summary dispositions without opinions. The advantage to the parties of such a summary disposition is that the time the case is pending on our docket will be reduced. The disadvantage for the parties is that they do not receive a full and detailed explanation of our decision in the form of a written opinion--which can be seen as evidence that the case has been fully and thoroughly considered. Nonetheless, our internal processes are such that the case is thoroughly examined and considered by the court, even though there is a summary disposition without an opinion.

Second, we are more aggressively examining cases to determine whether the case can be decided without oral argument. Nonadvanced civil cases on the September 2007 call were argued about 15 months after they came at issue. We all agree that 15 months is too long. As a result, we have started an aggressive program to find cases that could be resolved without oral argument, and the judges and their staff are processing additional cases each month which have been screened out of the oral argument "queue," in addition to their usual allotment of argued cases. Thus, while these efforts will increase the number of cases decided and decrease the case processing time, it means that the court will be writing less on a good number of cases.

Third, we have limited resources available for the substantial editing and review that is provided to our permanently published precedential decisions by the court's Reporter of Decisions Office. Because of the detail-oriented nature of the work performed by the staff of the Reporter of Decisions, an opinion to be published could possibly spend up to 2 months in the reporter's office awaiting editing and review. We want to shorten this time period, and we recognize that reducing this delay requires a reallocation of resources. Therefore, we intend to issue more memorandum opinions, which require very little, if any, of the resources available to the Reporter of Decisions Office. In the past, there has been a category of opinions which were "not designated for permanent publication." These opinions were not precedential, but nonetheless were reported on the Judicial Branch Web site, which required resources from the Reporter of Decisions Office. In order to redirect resources,



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we have essentially eliminated this category of opinions. Therefore, in the coming months, the practicing bar will observe very few, if any, of the "not designated for permanent publication" opinions; a substantial increase in the number of memorandum opinions; and some increase in the opinions designated for permanent publication. In short, we will be deciding cases by summary dispositions, memorandum opinions, or permanently published precedential opinions. That said, our preference as a court is to issue as many full opinions as our resources permit. Given the choice between summary affirmance and a memorandum opinion, we think that even a memorandum opinion provides the parties and counsel in the particular case with a better explanation of the reasons for a decision. In a perfect world, the court would have enough judges and staff to write a fully developed opinion in all appeals, but our court, like every other area of state government, is under pressure to reduce consumption of resources.

## EARLY RESULTS

The early results show that the new procedures are working. In January 2008, we will be hearing arguments in cases that have been at issue for 10 to 11 months, a reduction of at least 4 months from the cases argued in September 2007. By February,

the comparable time will be down to 9 to 10 months. Thus, we have already accomplished a substantial reduction in the time between completion of briefing and submission of the case, even though these internal changes have been implemented only very recently. We believe that more impressive results will follow in the months ahead. We are committed to reducing the time between filing of an appeal and issuance of the decision to the shortest period consistent with maintaining a high quality in the ultimate product of our work--that is, in our decisions. This is an ongoing process, and we will continue to monitor the system and look for ways to keep cases moving. There are no quick fixes.

## CONCLUSION

The Court of Appeals will continue to evolve to make the changes necessary to effectively fulfill our mission, but we believe the court is alive and well. We welcome your thoughts and comments as you observe the impact of these changes. All of us at the Court of Appeals recognize that we are to serve the people of Nebraska, and particularly the litigants and their counsel. As these new opportunities come along, we welcome the challenge. 

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## Nebraska Child Support Guidelines

On October 24, 2007, the Nebraska Supreme Court adopted amendments to worksheets 1 through 4 of the Nebraska Child Support Guidelines. The Child Support worksheet amendments are posted at the link below. The actual worksheets will be updated early next week.

<http://www.supremecourt.ne.gov/rules/amendments/childsuppwkshtamds.pdf>