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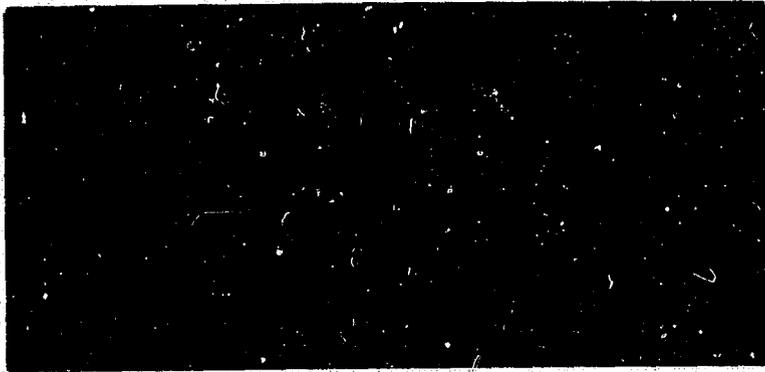
**CRIMINAL COURTS TECHNICAL ASSISTANCE PROJECT**

Institute for Advanced Studies in Justice

The American University Law School

Washington, D.C.

A Program of the  
Office of Regional Operations  
(Adjudication Division)  
Law Enforcement Assistance Administration  
U.S. Department of Justice



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T/A Assignment # 301

RECOMMENDATIONS FOR IMPROVING THE  
ADMINISTRATION OF THE FOURTH DISTRICT  
COURT OF APPEAL OF FLORIDA

VOLUME I

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OCT 3 1978

ACQUISITIONS

April 1977

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LAW ENFORCEMENT ASSISTANCE ADMINISTRATION CONTRACT NUMBER: J-LEAA-013- 76

This report was prepared in conjunction with The American University Law School Criminal Courts Technical Assistance Project, under a contract with the Law Enforcement Assistance Administration of the U.S. Department of Justice.

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## I. INTRODUCTION

In response to a significant increase in cases over the past several years, the Chief Judge of Florida's Fourth District Court of Appeal (located in West Palm Beach), Hon. Gerald Mager, requested LEAA's Criminal Courts Technical Assistance Project at The American University to survey the court's existing operating procedures and organization with a view to recommending improvements in case processing and administration. This survey included procedures for maintaining case files, assignment, calendaring and other matters relating to efficient overall case management. In view of the scope of study involved, the assistance was provided in two phases. The first consisted of a general review of the administration and resources of the Court focussing primarily upon case assignment policies, screening practices and general administrative procedures. A subsequent phase of assistance (scheduled for May 1977), has been designed to provide a detailed analysis of the procedures presently utilized in the Clerk's Office and to recommend and explain, as appropriate, alternative processes practiced in other jurisdictions which the Court might consider to more efficiently handle its caseload.

This report documents the first phase of assistance which was provided by the following consultants assigned by the project:

- Hon. T. John Lesinski, former Chief Judge for the Michigan Court of Appeals;
- Ronald Czerbicki, Chief Clerk of the Michigan Court of Appeals\*;
- Maurice Geiger, former court specialist with the LEAA Regional Office in Boston and who had a broad familiarity with appellate court operations at both the state and federal level.

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\* Mr. Czerbicki will provide the second phase of assistance and address the paper-flow and case processing systems used by the court.

These consultants met with Judge Mager and members of the Court on December 16th and 17th, 1976, accompanied by William Herndon, Court Specialist for the Southeast Regional LEAA Office in Atlanta. During this time, they also met with the Clerk of the Court, the Marshall, legal researchers, and support personnel as well as observed the Court's physical facilities and paperwork activities. Prior to their visit, each consultant was provided information relating to the organization and recent caseload of the Court as well as existing and proposed Appellate Court Rules.

The central focus of the site study was upon analyzing the Court's procedures, organization and administration to suggest changes which would assist the Court in more efficiently handling its caseload. Although the primary concern of the team was upon the efficient movement of cases, it could not avoid noticing the high quality with which these cases were handled and a high degree of professionalism among the Court and support staff.

The team has made recommendations in four areas:

- Handling of paperwork
- Handling of motions
- Needed increases in judicial and research resources
- Internal administrative relationships within the Court

Some of these recommendations, particularly those involving paperwork and motions handling, will be treated at length by Mr. Czerbicki in a separate technical assistance report prepared as a result of his review of the Clerk's Office procedures.

## II. BACKGROUND

### A. Jurisdiction

The Florida District Courts of Appeal have jurisdiction over judgments and decrees of the trial courts as well as other matters prescribed by statute. These courts also have jurisdiction to issue writs common to most appeal courts. In terms of jurisdiction, the Florida District Courts of Appeal are much like any other first level appeal court in the nation.

### B. Caseload

The volume of cases filed in the Fourth District Court of Appeal has increased quite steadily over the last few years. There has been nearly a 300% increase in the number of cases filed in the last six years. The number of cases pending before the Court has also increased. At the end of February 1977, 2,276 cases were pending compared with 1,322 cases pending at the end of February 1975. Of the February 1975 cases, 182 were "perfected and ready for argument" while 111 were "ready" in February 1977. The rapid increase in the number of cases pending is apparently a direct result of an increase in the number of cases filed without a corresponding increase in the number of dispositions. The "backlog" appears to be a direct result of the drastic increase in the number of cases filed.

It should be noted that the caseload increases experienced by the Fourth District Court of Appeal are disproportionate to increases experienced by other appeal courts in the state, and above the national average in terms of numbers of appeals per population. Although the team made an effort to identify the reasons for this disproportionate increase, it could not discern any unique factors which would account for this anomaly. At first, the team assumed that the high number of cases could be explained by a high number of cases involving interlocutory appeals or similar limited issue cases. However, a sampling of 200 cases indicated that the types of cases were an average mix similar to typical appeal court caseloads in other states.

No conclusion was possible as to why there was a high level of appeals in the Fourth District but it is safe to say that the bulk of the cases filed in the Fourth District Court of Appeal require the same level of judicial work as cases in other appeal courts.

C. Organization and Staffing

The Fourth District Court of Appeal is organized like most appeal courts. There are seven judges (five at the time of the on-site visit and two appointed in January 1977), each with a secretary and a law clerk. The Chief Judge is elected by the judges on the Court for a two-year term. Visiting judges are available and assigned by the Chief Judge. The support staff consists of a court clerk with seven employees, a central research/screening unit with two researchers, a Marshall, and a librarian. The organization and operating procedures of the Court are set out by court rule in considerable detail.

D. Facilities

The physical plant is in very good condition. It is clean and well-maintained. However, it is simply too small for the amount of work to be done and the resources necessary to perform this workload. The two newest judges appointed to the court are housed in offices several blocks from the court. While these offices are excellent by most standards, the physical separation of the judges from the court will surely impair their effectiveness. Although the Clerk's space appears adequate, particularly if the paperwork processes are simplified, the space provided for the legal research unit is barely adequate for the existing staff and must be expanded if the legal research unit is increased (see Recommendation #4). Facilities for visiting judges and conference rooms for attorneys and other parties are also insufficient.

It appears that there is room on the site of the present Courthouse for expansion if funds are available.

### III. ANALYSIS AND RECOMMENDATIONS

#### Recommendation No. 1

It is recommended that the number of judges in the Fourth District Court of Appeal be increased to ten (10) with continued use of visiting judges when necessary. At present, the number of cases being assigned to each judge is well above the national average, and is higher than the recommended caseload if cases are to receive proper attention.

#### Recommendation No. 2

The Clerk's Office should be given an immediate increase in capabilities. At present, the Clerk's Office is understaffed for the amount of work it is being asked to perform. This condition can be remedied by two methods: a change in work process and/or an increase in staffing levels. While more specific recommendations in this regard can be made after the second phase of technical assistance is completed, it is clear that the Clerk's Office should be given an immediate increase in capabilities. This could best be accomplished by adding a staff person who could assist both in terms of handling the present workload and in planning for system improvements.

It is therefore recommended that the Clerk's Office be expanded to include the position of Deputy Clerk or administrative assistant who is trained in the legal process. This new position should be used to relieve some of the present workload of the Clerk so that he can take over some of the motions tasks (see Recommendation No. 12) and also relieve the day to day operational pressures. With this additional staff member, the Clerk's Office could give greater attention to improving its present case processing methods.

#### Recommendation No. 3

The Chief Judge should prepare a brief statement of responsibilities regarding assignment of administrative responsibilities and hold short monthly staff meetings to insure adequate communication between the Clerk, the Marshall, and the bench regarding resource needs and allocations.

It is important to have a clear understanding of who is responsible for specific management and administrative tasks. In the past, there seems to have been some ambiguity surrounding such key matters as budget preparation or personnel practices. A statement from the Chief Judge and brief regular staff meetings could improve communication regarding these and other matters.

Recommendation No. 4

The research unit should be expanded so that eventually there is a unit supervisor and one researcher for every Judge. The Unit should be provided with adequate space and support services and the capability to develop and maintain a research data bank. Ideally, this bank would be shared on a statewide basis.

At the time of the technical assistance team's on-site visit, there were two research aides. The team's impression was that the aides saw themselves as having a status somewhat below the judges' law clerks. They did not have adequate space, filing or secretarial support, nor any formal way to retain, exchange, or retrieve memos on points they had researched.

The status of aides is a function of cultural attitudes. The Court should foster the attitude that aides are as important as law clerks. This could be done by ensuring that the aides have more interaction with the clerks and judges and are more "involved" in the decision-making process, such as case conferences where there is disagreement on a decision.

Recommendation No. 5

The Court should consider, even on an experimental basis, having panels site once a month to hear arguments.

Presently, the assignment process works as follows. In August, the Chief Judge prepares a list of panels for the year. There are panels for oral argument and panels for cases where oral argument has been waived or not required ("OAW" panels). The Clerk's Office assigns cases to panels and to individual judges on the panels. The Clerk's Office reviews a case to

determine if a case should not be assigned to a particular panel because of a potential conflict of interest (i.e., a case appealed from a visiting judge's county or a case in which one of the counsel is related to one of the judges, etc.). Assignments are then made to the panels and a random draw procedure is used to determine which judge gets which cases.

One three-judge oral argument panel is set each week. There are six cases set each day for three days and each judge gets six cases per panel. Thus, there are usually eighteen cases set for oral argument each week. Cases not requiring oral argument are assigned to OAW panels. All OAW cases except criminal appeals are sent directly to the judge assigned. Criminal cases are sent to the research unit to make a recommendation to the Chief Judge as to whether the case can be heard without oral argument.

There is a certain amount of "fixed" effort necessary to get a panel of judges working on a calendar. The present method of assigning panels to sit for one week to hear approximately 18 cases that week might not be the most efficient use of judge time. It is therefore recommended that the court consider, even experimentally, having panels sit on monthly basis to hear arguments. The problems of not being able to recall points in oral argument and questioning could be met by a simple electronic recording of the arguments which would be kept until the case is decided.

#### Recommendation No. 6

The Clerk's Office should review cases for timeliness at the time of filing and begin to reject late filings at the time of filing.

At present, there is little "screening" of cases being filed. If a case is not filed within the time allowed under the rules, the Clerk's Office will most likely still accept the case.

Recommendation No. 7

It is recommended that the court review the recent literature relating to screening practices in other appeal courts and explore the value and possibilities of implementing some of these screening principles.

There is little screening being done in the true sense. As noted above, the Clerk does not screen the case at time of filing to determine if the appeal is timely.

Once a case is "perfected" (i.e., issues are joined and attorneys are ready for argument), it is placed in one of two classes: those that may require oral argument and those that do not. The cases deemed to not require oral argument are:

- Interlocutory appeals
- Petitions for certiorari
- Cases where oral argument has been waived
- Cases where argument has not been requested

Criminal cases are screened to determine if they can be heard without oral argument. If oral argument is not required, the research unit prepares a staff memo treating the procedural and substantive aspects of the case. Cases needing oral argument are placed on the oral argument calendar and sent to the judge assigned. The procedures allow oral argument in most matters and therefore little screening is conducted in terms of excluding cases or for determining which civil cases warrant oral argument. Under the rules, even if the parties request oral argument, the request need not be granted. It would be appropriate to notify the parties where the court does not believe that oral argument is necessary and ask them to reconsider their request. However, under present procedures there is little basis to deny a request for oral argument. Furthermore, there is a matter of screening cases for the purposes of determining which cases need full opinions and which ones could be handled by the use of memos or per curiam

pinions. It is therefore recommended that the court explore the potential value of instituting various screening techniques which have been applied in other appeals courts.

Recommendation No. 8

The Court's filing system should be changed to separate the present file into two files: one for the material from the court below and the other for the pleadings directly filed in the appeal.

At present there is one case file per case and that file contains all pleadings filed with the Court of Appeal and the record from the court below. All documents relating to the case (including the records from below) are kept in the case file. When a case is sent to a judge, the entire file is sent. The change-over to two files recommended above could be done over a long weekend with the use of temporary help.

Recommendation No. 9

Assuming the creation of the two separate files recommended above, it is recommended that from then on only the lower court record be sent to the judge to whom the appeal has been assigned for opinion.

Recommendation No. 10

The devices used by the Clerk's Office to determine the location and status of cases should be limited to three: an index by name with cross reference; a docket card; and a status card.

It was not possible for the team to gain a complete knowledge of the court's operation during their short visit and one area which remains somewhat unclear is the index and docketing system used in the Clerk's Office. While this system will receive considerable attention during the subsequent phase of technical assistance, the number and kinds of indices and dockets being kept to locate cases or to determine their status appeared excessive.

Recommendation No. 11

It is recommended that motions be grouped into three classes: (1) administrative, (2) on the merits, and (3) all other.

At present, all motions are sent to the Chief Judge and the complete file. Of twenty-three (23) random motions examined by the team, twelve (12) were administrative (i.e., motions for a change in forms, extensions of time, etc.), five (5) went to the merits and six (6) involved other matters.

Recommendation No. 12

The Court should review its present practice regarding the handling of motions and explore the possibility of expanding the clerk's authority to handle more types of administrative motions with rigid guidelines established in advance by the Court. The Court should be very clear as to what authority is delegated.

Recommendation No. 13

It is recommended that all motions on the merits be assigned to panels on a rotating basis similar to the manner by which cases are assigned.

The team found a group of twenty-six motions being forwarded to the Chief Judge. This package was slightly over four feet high! Under the procedures outlined in Recommendations 11-13 above, this package could have been reduced to a few inches at most, as well as improved the overall efficiency of the Court.

Recommendation No. 14

It is recommended that the rules be changed to permit a motion to dismiss (i.e., for lack of jurisdiction or failure to comply with the rules) or a motion to affirm and that all motions be supported by an accompanying brief. These motions would replace the present motions to strike or quash and avoid having the court do the attorneys' work.

Recommendation No. 15

It is recommended that Florida consider increasing the length of the Chief Judge's term to four years to provide more stability and experience in that role.

The task of Chief Judge requires special skills, knowledge and interests. While the elements of interest and to some extent skill are a matter of personal traits, the element of knowledge is mostly a function of experience. For this reason, it is recommended that the Chief Judge's term be increased to provide for greater continuity and experience in that position.

Recommendation No. 16

It is recommended that the Court review its "lack of progress" rule and consider sanction in cases where no progress has been made within a set period (six months is suggested).

Adequate information was not available to indicate how long cases took to become "perfected". However, a comparison of cases filed with cases "perfected" indicated that some cases are allowed to languish in the process, even though little or no progress is being made by the parties. The statistics indicated that very few cases ever remain unresolved for over a year after being "perfected". It appeared that the Court was making only a limited push to have the cases perfected. In general, the responsibility to move the case along is left with the Bar. The number of cases perfected seems to indicate that the increasing backlog is causing the court to be more lenient in granting extensions, thus extending the overall time for appeals to come to issue.

One possible sanction which might be imposed would be to dismiss the case. However, because of the rule precluding the reopening of cases once they are dismissed, such a sanction is probably too severe. A more feasible sanction might be to notify counsel of the lack of progress with a request that action be taken. If there is failure to move the case, the counsel could then be subject to a money penalty by the court, or the court could order a substitution of assigned counsel without renumeration in indigent criminal cases.

Recommendation No. 17

The Court should request the Florida State Administrative Office of the Courts to provide a description of available information, paperwork and methods and operating services that the court might find useful.

Over the last several years, the State of Florida has received a considerable amount of federal funds to establish a court information system, improve judicial paperwork procedures and develop operating guidelines or manuals for the Clerk's Offices. However, none of the benefits of these efforts seem to impact on the Fourth District Court of Appeal. The team could not explain why this is so. For this reason, the Court should request the state court administrative office for a description of available information and services which the court might find useful.

Recommendation No. 18

It is recommended that the several District Courts of Appeal in Florida join in a program of training and information interchange for research aides and Clerk's Office personnel.

#### IV. SUMMARY

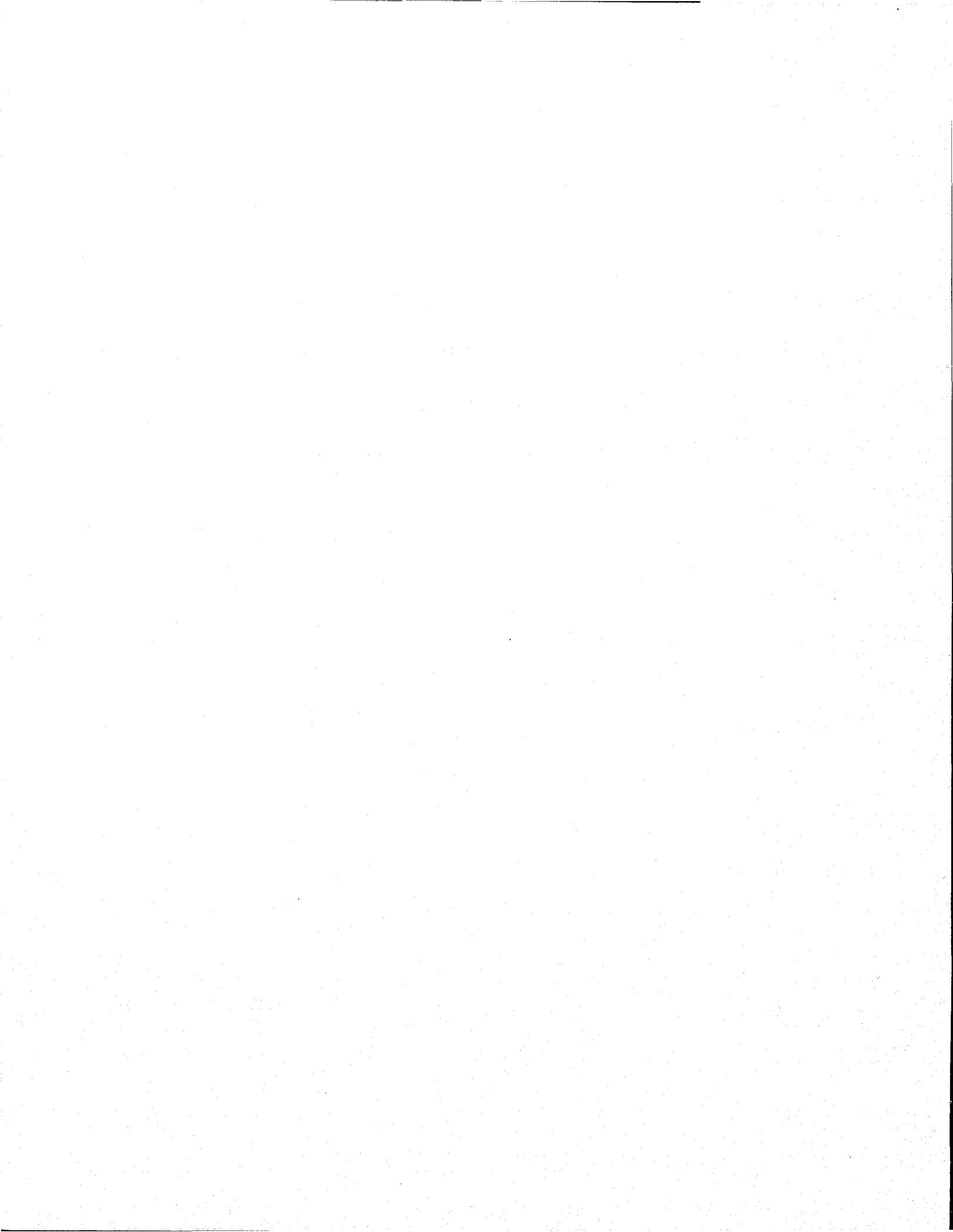
Case filings in the Fourth District Court of Appeals have increased rapidly during the last several years. The degree of difficulty which this increased caseload has placed upon judicial staff has not lessened and the amount of judicial resources provided to the Court has not kept pace with the increased filings. Although there are ways to improve the efficiency of the court's operations, if the quality of review and decisions is to be maintained, the need for more judges and support personnel is unavoidable.

It was refreshing to find a court where there was a climate of professionalism, enthusiasm, pride, cooperation, and willingness to seek improvement. All team members agreed in their conclusion that the Court is doing an outstanding job with the resources available, but that the Court's workload has simply outgrown the resources.

The team's discussions with the judges of the Court indicated that, from their perspective, the greatest problem facing the Court was the high level of frivolous complaints. This is also a common concern of other appellate courts in the country. However, since the court is unable to control which cases are appealed, the Court should develop the administrative capability to identify and screen out at an early stage those cases that are truly frivolous, thus freeing judicial resources to concentrate on those cases meriting appellate review.

The team has made recommendations in four areas: (1) changes in the handling of paperwork; (2) changes in the handling of motions; (3) increases in the judicial and research resources; and (4) improvements in the administrative linkages within the court. Some of these areas will be treated in greater depth by Mr. Czerbicki in his analysis of caseflow which will be documented in a separate technical assistance report. In submitting these recommendations, the team recognizes that there is no right or wrong way to operate an appeal court. Such factors as the "culture" of the Bar,

tradition, social changes, and the economy affect the success of a given strategy. What the technical assistance team has attempted to do is to provide some practical recommendations based on its perceptions and experiences. Some of those recommendations may not work and the Court should not feel compelled to follow them. It is hoped, however, that the recommendations will provide a basis for improving the efficiency of the Court while maintaining the present high quality of its product.



**END**