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THE EXPEDITED APPEALS PROCESS FOR THE DISTRICT OF COLUMBIA COURT OF APPEALS

Bonny L. Tavares*

This Article describes the expedited appeals process for the District of Columbia Court of Appeals. To put the expedited process in context, Part I provides background information on the jurisdiction and structure of the court, and Part II describes the “regular” appeals process. Part III details the steps involved in the expedited appeals process, and Part IV summarizes certain categories of appeals that must be expedited pursuant to a statute. Finally, Part V presents appellate court caseload statistics for the District of Columbia and compares them to other appellate court systems in the nation.

I. THE DISTRICT OF COLUMBIA COURT OF APPEALS’ JURISDICTION AND ITS JUDGES

The District of Columbia Court of Appeals, which was established by Congress in 1970, is the court of last resort for District of Columbia litigants. The jurisdiction of the court of appeals includes reviewing all final orders and judgments and certain interlocutory orders of the trial court, which is the Superior Court of the District of Columbia; reviewing decisions emanating from District of Columbia government administrative agencies, boards and commissions; and answering questions of law certified by the Supreme Court of the United States, a court

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of appeals of the United States, or the highest appellate court of any state.¹

The members of the District of Columbia Court of Appeals are a chief judge and eight associate judges. In addition, the court is assisted by several senior judges, i.e., retired judges who have been recommended and approved for service to the court. Three “elbow” clerks work for the chief judge; the associate judges have two law clerks each; and the senior judges share four law clerks.

II. “REGULAR” APPEALS PROCESS

All appeals² before the District of Columbia Court of Appeals are appeals “as of right,” with the exception of appeals of small claims cases and certain criminal cases where the penalty imposed is a fine of less than fifty dollars for an offense punishable by imprisonment of one year or less, or by a fine of not more than one thousand dollars, or both.³ An application for allowance of appeal must be filed with the court of appeals for the latter two categories of cases. The application will only be granted when the case presents a novel question or where there was apparent error below.⁴ For all other cases (civil or criminal), a notice of appeal must be filed with the clerk of the trial court within thirty days after entry of judgment or order is taken, unless a different time is specified by the provisions of the District of Columbia Code.⁵

The chief judge randomly designates judges to serve on one of three hearing divisions: Regular Calendar Division, Summary Calendar Division, and Motions Division.⁶ All docketed cases are screened by the clerk of the court or the chief deputy clerk of

1. D.C. Code Ann. § 11-721 (2001).

2. “The term ‘appeal’ shall mean any proceeding in this court initiated by a notice of appeal, a petition for review, a petition of appeal, or a petition for writ of mandamus or prohibition or for any other extraordinary writ, or a recommendation from the Board on Professional Responsibility for disciplinary action against a member of the Bar.” D.C. App. R. 1(e) (West 2001).

3. D.C. Code Ann. § 11-721(c).

4. *Id.*; Interview with Rosanna Mason, Senior Staff Atty., D.C. Ct. App. (Dec. 12, 2001).

5. D.C. App. R. 4(a)(1), (b)(1).

6. *D.C. App. Internal Operating Procedures*, at § I(A), (D).

the court after the appeal or petition is filed, and again after the filing of the brief of appellee or respondent.⁷ When screening has been completed, the case is placed on a regular, summary I or summary II calendar.⁸ Any division to which a calendared case has been assigned may direct that a case that has been placed on the summary I or summary II calendar be reassigned to the regular calendar.⁹

A. Regular Calendar

After it has been screened, the case is placed on the regular calendar if it satisfies any of the following criteria: (1) It raises an issue of first impression; (2) it raises a substantial issue as to the constitutionality of a statute; (3) the appeal may alter, modify or significantly clarify a rule of law previously decided; (4) the appeal criticizes or questions an existing rule of law; (5) the appeal seeks reversal of the underlying decision; (6) it seeks to apply an established rule of law to a novel fact situation; or (7) the issues appear to be multiple or complex.¹⁰ In addition, any case that does not meet the criteria for either summary calendar is placed on the regular calendar.¹¹ Cases on the regular calendar are accorded full briefing and oral argument, unless one or more parties move to submit the case without oral argument.¹²

B. Summary Calendars

A case placed on the summary I calendar must be deemed likely to satisfy all of the following criteria: (1) No new rule of law will be established; (2) no existing rule of law will be altered, modified, criticized, or clarified; (3) no established rule of law will be applied to a novel fact situation; (4) the case will not result in the only, or only recent, binding precedent on a particular point of law; (5) the case involves no legal issue of continuing public interest; and (6) the court will not likely

7. *Id.* at § VI(A).

8. *Id.*

9. *Id.* at § VI(A).

10. *Id.* at § VI(B)(i)(1)-(7).

11. *Id.* at § VI(B)(iv).

12. *Id.* at § VI(C).

conclude that there is any error of law.¹³ Cases are placed on the summary II calendar if they meet all of the requirements for placement on the summary I calendar plus at least one of the following criteria: (1) The only arguments raised appear to be clearly lacking in merit; (2) it appears that the dispositive issue has been recently decided; or (3) the issues appear to be sufficiently presented so that oral argument is plainly unnecessary.¹⁴

Cases placed on either summary calendar are not scheduled for oral argument unless one of the parties submits a written request for oral argument within ten days after notice of calendaring is mailed by the clerk.¹⁵ Timely requests for oral argument are determined by the clerk or submitted to the Merits Division for disposition. Untimely requests for oral argument are referred to the Merits Division.¹⁶

C. Opinions

A division of the court issues a memorandum opinion and judgment when it unanimously determines that a judgment of the trial court or a decision of an administrative agency should be affirmed or enforced, and its decision: (1) does not establish a new rule of law; (2) does not alter, modify, criticize, or clarify an existing rule of law; (3) does not apply an established rule of law to a novel fact situation; (4) does not constitute the only, or only recent, binding precedent on a particular point of law in the court's jurisdiction; (5) does not involve a legal issue of continuing public interest; and (6) does not find any error of law.¹⁷ Signed opinions and per curiam opinions are published.¹⁸ Memorandum opinions and judgments are not published unless one of the parties promptly files a motion stating why publication is merited, and two or more division members vote to grant the motion.¹⁹ In 2000, the court issued 386 opinions, 625

13. *Id.* at § VI(B)(ii)(1)-(6).

14. *Id.* at § VI(B)(iii)(1)-(3).

15. *Id.* at § VI(C).

16. *Id.*

17. *Id.* at § VIII(C)(1)-(6).

18. *Id.* at § IX(A).

19. *Id.* at § IX(A)-(B).

memorandum opinions and judgments, eighty-four judgments without opinion, and 811 orders, for a total of 1,906 dispositions.²⁰

III. EXPEDITED APPEALS PROCESS

A. Notice of Appeal

The expedited appeals process for cases before the District of Columbia Court of Appeals also begins when counsel for appellant files a notice of appeal with the trial court.²¹ Immediately thereafter, counsel for appellant must, either in person or by telephone, notify the clerk of the court of appeals and opposing counsel that he or she has filed the notice of appeal.²² Counsel for appellant also has the responsibility for advising the clerk of the court of appeals of the name, address and telephone number of opposing counsel, and a telephone number where counsel for appellant may be reached.²³

B. Designation of the Record

Counsel for appellant is responsible for advising the trial court of the transcript, pleadings and other documents to be included in the record on appeal.²⁴ The record on appeal must include copies of the notice of appeal and the order appealed from, as well as copies of any written opinion, findings of fact, or conclusions of law.²⁵ If there is no written order, the docket entry may be substituted for a copy of the order from which it was appealed. Opposing counsel is responsible for advising the trial court of any additional transcripts, pleadings and other documents to be included in the record.²⁶ Then the trial court

20. 2000 D. C. Ct. App. statistics, provided by Rosanna Mason, Senior Staff Atty., D. C. Ct. App. (copy on file with author).

21. D.C. App. R. 4(c)(1).

22. *Id.*

23. *Id.* at 4(c)(6).

24. *Id.* at 4(c)(2).

25. *Id.*

26. *Id.* at 4(c)(3).

will transmit the record to the clerk of the District of Columbia Court of Appeals.²⁷

C. Transmission of the Record

The trial court is required to transmit the record within sixty days after the filing of the notice of appeal.²⁸ However, due to a shortage of court reporters at the Superior Court of the District of Columbia, the completed transcript frequently is transmitted long after the sixty-day deadline has passed.²⁹ As discussed more fully below, certain categories of cases that must be expedited within a certain timeframe as prescribed by statute receive priority treatment. The trial record for those cases, including the transcript, always is completed first.³⁰ As a result, other appeals, including some expedited appeals, experience long delays in the record transmittal phase. Accordingly, preparation of the trial record can be a major cause of delay in the resolution of an expedited appeal.

D. Fees

Advance arrangements to pay necessary fees to the trial court and the court of appeals, if required, must be made by counsel for appellant.³¹ The same fees are charged for filing an expedited or regular appeal.³² However, preparation of an expedited transcript is more expensive than a regular transcript—four dollars per page for an expedited transcript as opposed to one dollar per page for “regular” transcripts.³³ Nevertheless, all fees are waived for appellants who are represented by court-appointed counsel.³⁴

27. *Id.* at 4(c)(4).

28. D.C. App. R. 11(a).

29. Telephone Interview with Rosanna Mason, Senior Staff Atty., D. C. Ct. App. (Jan. 16, 2002).

30. *Id.*

31. D.C. App. R. 4(c)(5).

32. D.C. App. R. Fees and Costs Schedule (West 2001).

33. Mason Interview, *supra* n. 4.

34. D.C. App. R. 23(a).

E. Motion for Expedited Appeal

To request that an appeal be expedited on the calendar, counsel for appellant must next file an appropriate written motion with the court of appeals, and personally serve a copy on opposing counsel.³⁵ Other documents believed to be essential to the court's consideration may be appended to the motion, and copies of trial court documents may also be attached as exhibits.³⁶ Opposing counsel may file any response, additional memoranda or documents, and must personally serve a copy on counsel for appellant.³⁷

F. Consideration by the Motions Division

The chief judge is responsible for designating three judges by random selection to serve monthly on the Motions Division of the court of appeals.³⁸ The clerk of the court is responsible for forwarding motions to the Motions Division on vote sheets, with or without staff attorney or law clerk memoranda.³⁹ The judges assigned to the Motions Division must "dispose expeditiously of all substantive motions and petitions submitted for determination."⁴⁰ The clerk of the court is responsible for preparing orders reflecting the decisions of the Motions Division of the court.⁴¹ As discussed in more detail below, the Motions Division is responsible for disposing of certain appeals that must be expedited as required by statute. In addition, other matters such as applications for allowance of appeal and petitions for writ of mandamus, are expedited by internal court practice.⁴² For these categories of expedited appeals, the Motions Division may issue either an opinion or a memorandum opinion and judgment.⁴³ Actions by the Motions Division are exempt from

35. D.C. App. R. 4(c)(7).

36. *Id.*

37. *Id.* at 4(c)(9).

38. *D.C. App. Internal Operating Procedures*, at §§ I(D), IV(F).

39. *Id.* at § II(G).

40. *Id.* at § IV(A).

41. *Id.* at § II(H).

42. Mason Telephone Interview, *supra* n. 29.

43. *D.C. App. Internal Operating Procedures*, at § IV(E).

the requirement applicable to opinions from the other divisions that reversal of a judgment on appeal may be accomplished only by a formal opinion after circulation thereof to the full court in advance of its release.⁴⁴ However, if a panel issues an opinion, that opinion circulates to the full court as required.⁴⁵ In 2000, the Motions Division processed 4,490 procedural motions, 2,030 substantive motions, and 223 petitions for rehearing or rehearing en banc.⁴⁶

G. Calendaring

Next, the clerk advises the appropriate division of the court of appeals that an expedited appeal is pending so that the case may be scheduled promptly for argument or submission.⁴⁷ Moreover, the court may, on its own motion or for good cause shown on motion of any party, advance any case calendared for hearing.⁴⁸ Ordinarily, cases are calendared for oral argument in the order in which appellees' briefs were filed with the court of appeals.⁴⁹ However, cases that are entitled to expedited consideration are calendared for oral argument ahead of all other cases.⁵⁰

G. Opinions

The court prioritizes its opinion writing, as far as practicable, in the following order: (1) pretrial bail appeals, (2) extradition appeals, (3) pretrial government appeals, (4) division opinions in child custody and child abuse and neglect cases, (5) en banc opinions, (6) division opinions in criminal cases with precedence given to those cases in which the adult or juvenile appellant is incarcerated, (7) en banc concurrences or dissents, (8) dissents or concurrences in a division opinion, (9) Public Service Commission appeals, and (10) division opinions in civil

44. *Id.*

45. Mason Telephone Interview, *supra* n. 29.

46. 2000 District of Columbia Court of Appeals statistics, *supra* n. 20.

47. D.C. App. R. 4(c)(10).

48. *D.C. App. Internal Operating Procedures*, at § V(B).

49. *Id.* at § V(A).

50. *Id.*

cases.⁵¹ In 2000, the court issued 386 opinions, 625 memorandum opinions and judgments, thirty-four judgments without opinion, and 811 orders, for a total of 1,906 dispositions.⁵²

IV. APPEALS EXPEDITED BY STATUTE

The Motions Division is responsible for disposing of certain appeals that must be expedited as required by statute, including bail appeals and pre-trial detention appeals under District of Columbia Code § 23-1324; government appeals from intra-trial orders under District of Columbia Code § 23-104; juvenile interlocutory appeals under District of Columbia Code § 16-2328; and extradition appeals under District of Columbia Code § 23-704.

A. Bail and Pre-Trial Detention Appeals

Bail appeals and pre-trial detention order appeals must be expedited pursuant to District of Columbia Code § 23-1324, which requires that such appeals “shall be determined promptly.”⁵³ The appeal shall be heard without the necessity of briefs after reasonable notice to the appellee upon such material as the parties shall present.⁵⁴ These appeals are generally decided on cross-motions for summary disposition.⁵⁵ These appeals must be affirmed if the order is supported by the proceedings below.⁵⁶ If the order is not supported by the record below, the Court may remand the record for the trial court to further articulate its reasons, remand the case for a further hearing, change the terms or conditions of release, or in cases where the United States

51. *Id.* at § VIII(H).

52. 2000 District of Columbia Court of Appeals statistics, *supra* n. 20.

53. D.C. Code Ann. § 23-1324(b), (d); *see also* D.C. App. R. 9(a)(1).

54. D.C. App. R. 9(a)(1).

55. Mason Telephone Interview, *supra* n. 29.

56. D.C. Code Ann. § 23-1324(b)(3). The court of appeals' review of a preventive detention order is limited. The court will not substitute its assessment of a defendant's dangerousness for the trial judge's determination of what is essentially an issue of fact. Accordingly, such orders will be sustained so long as they are supported by the proceedings below. *Pope v. U.S.*, 739 A.2d 819, 824 (D.C. App. 1999).

Attorney has requested pretrial detention, the court may order such detention.⁵⁷

B. Extradition Appeals

The District of Columbia Code requires that extradition appeals “shall be expedited by the District of Columbia Court of Appeals.”⁵⁸ When the governor of any State demands the surrender of a fugitive from justice who has been found within the borders of the District of Columbia, or when United States law provides that a fugitive shall be delivered up, the chief judge of the superior court shall cause the fugitive to be apprehended.⁵⁹ If the person wants to challenge the legality of his or her arrest, the chief judge shall hold a hearing.⁶⁰ If the chief judge orders that the person be delivered over, he or she may appeal within twenty-four hours to the District of Columbia Court of Appeals.⁶¹

C. Juvenile Interlocutory Appeals

A child who has been ordered transferred for criminal prosecution following the filing of a delinquency petition, or a child who has been detained or placed in shelter care, may file a notice of interlocutory appeal within two days of the date on which the order was entered.⁶² Filing of a timely notice of appeal immediately transfers jurisdiction of all matters relating to appeal from the trial court to the court of appeals.⁶³ There is no requirement for written briefs; however, counsel for appellant must file a written motion on the first working day after the notice of appeal is filed.⁶⁴ The court of appeals must hear argument on the appeal on or before the third day (excluding

57. D.C. Code Ann. § 23-1324(b)(3), (d)(2)(C); Mason Telephone Interview, *supra* n. 29.

58. D.C. Code Ann. § 23-704(e).

59. *Id.* at § 23-704(a), (b).

60. *Id.* at § 23-704(d).

61. *Id.*

62. D.C. Code Ann. § 16-2328(a); D.C. Code Ann. § 16-2307(a).

63. *In re S.C.M.*, 653 A.2d 398, 402 (D.C. App. 1995).

64. D.C. App. R. 4(c)(8); D.C. Code Ann. § 16-2328(b)(2).

Sundays) after the notice is filed.⁶⁵ The court must render its decision on or before the day following oral argument.⁶⁶ The decision of the court of appeals is final.⁶⁷

D. Government Appeals from Intra-Trial Orders

Government appeals from certain pre-trial and intra-trial orders must be expedited by the court of appeals.⁶⁸ Where a person has been charged with a criminal offense, the United States or the District of Columbia may appeal a pre-trial order directing the return of seized property, suppressing evidence, or otherwise denying the prosecutor the use of evidence at trial.⁶⁹ The United States or the District of Columbia may also appeal a ruling made during trial that suppresses or otherwise denies the prosecutor the use of evidence on the ground that it was invalidly obtained.⁷⁰ The prosecutor must certify to the judge who granted the motion or made the ruling that the appeal is not being taken for purpose of delay, and that the evidence is a substantial proof of the charge pending or being tried against the defendant.⁷¹

Except where there is an acquittal on the merits, the United States or the District of Columbia may also appeal an order dismissing one or more counts of an indictment or information or otherwise terminating a prosecution.⁷² In addition, the United States or the District of Columbia may appeal any other ruling made during trial that the prosecutor certifies as involving a substantial and recurring question of law that requires appellate resolution.⁷³

65. D.C. Code Ann. § 16-2328(b)(1).

66. *Id.* at § 16-2328(b)(3).

67. *Id.* at § 16-2328(d).

68. D.C. Code Ann. § 23-104.

69. *Id.* at § 23-104(a)(1).

70. *Id.* at § 23-104(b).

71. *Id.* at § 23-104(a)(1), (b). The prosecutor's certificate of no purposeful delay resulting from appeal and substantial proof of a charge pending against a defendant is not subject to attack so as to defeat appeal. *U.S. v. Jackson*, 441 A.2d 937 (D.C. App. 1982). Any impact the appeal may have on other rights of the accused must await the trial court's resolution and, if necessary, be renewed in the event of conviction. *Id.*

72. D.C. Code Ann. § 23-104(c).

73. *Id.* at § 23-104(d).

Appeals from all of the aforementioned pre-trial and intra-trial orders must be expedited. However, for intra-trial appeals of rulings that suppress evidence or deny the prosecutor the use of evidence, or for intra-trial appeals that have been certified as involving substantial and recurring questions of law, the trial court shall adjourn the trial until the appeal is resolved.⁷⁴ The court of appeals must hear argument within forty-eight hours of the adjournment of trial, shall dispense with any requirement of written briefs, shall render its decision within forty-eight hours of oral argument, and may dispense with the issuance of a written opinion.⁷⁵

V. EFFICIENCY EVALUATION BASED ON RECENT CASELOAD STATISTICS

In 1999, the last year for which comparative statistics are available, the District of Columbia Court of Appeals had the highest per capita filing rate of any state appellate court system in the country.⁷⁶ Of the 1,783 cases filed, 1,757 were appeals as of right, and twenty-six were applications for allowance of appeal.⁷⁷ This represents a filing rate of 344 appeals per 100,000 population, which exceeds every other court system in the nation, including every two-tiered appellate court system in the United States.⁷⁸

Two commentators have observed, “One measure of whether an appellate court is keeping up with its caseload is its clearance rate. A clearance rate is the number of appeals disposed of in a given year divided by the number of filings in

74. *Id.* at § 23-104(b), (d). If the decision on appeal has not been resolved within ninety-six hours, the trial shall resume on the next day of regular court business following the expiration of the ninety-six-hour period, and the appeal shall be deemed void and without effect. *Id.*

75. *Id.* § 23-104(e).

76. Brian J. Ostrom & Neal B. Kauder, *Examining the Work of State Courts, 1999-2000: A National Perspective from the Court Statistics Project 77* (Natl. Ctr. for St. Cts. 2000).

77. See Tbl. 1, *infra*; see also 2000 D. C. Ct. App. statistics, *supra* n. 20.

78. Ostrom & Kauder, *supra* n. 76, at 77. Louisiana, with 338 appeals per 100,000 population filed in 1999, has the highest appellate filing rate of any court system with an intermediate appellate court. *Id.*

the same year.”⁷⁹ A rate above 100 percent indicates that more cases were disposed of than were filed in that year.⁸⁰

The District of Columbia Court of Appeals disposed of 1,830 cases in 1999, including 1,793 appeals as of right and thirty-seven discretionary appeals.⁸¹ This translates into a clearance rate of 102.6%, which represents 1,830 cases disposed of in 1999 divided by 1,783 cases filed. Comparative clearance rate statistics for courts of last resort are not available; however, twenty-one intermediate appellate courts reported clearance rate statistics to the National Center for State Courts. Of the court systems that reported, the top ten clearance rates in 1999 were: California (122%), Washington (117%), Texas (117%), Missouri (116%), Puerto Rico (110%), Indiana (108%), Kentucky (104%), Ohio (104%), Wisconsin (103%), and Arkansas (103%).⁸²

VI. CONCLUSION

The clearance rate for the District of Columbia Court of appeals is comparable to those of the most efficient appellate courts in the nation. This is a remarkable feat, especially in light of the extremely high per capita filing rate in the District of Columbia. However, further improvement in the efficacy of the expedited process is dependent upon the availability of court reporters at the trial level. Currently, the dearth of court reporters at the Superior Court of the District of Columbia significantly slows down the record transmission phase for most appeals with the exception of those few matters that must be expedited by statute. One obvious solution is to increase funding for and hiring of qualified court reporters at the trial level. Another possible solution is to establish a court reporting function within the court of appeals with exclusive responsibility for preparing transcripts for expedited appeals. Without such changes to improve processing and transmission of the trial record, many appeals will continue to be “expedited” in name only.

79. *Id.* at 79.

80. *See id.*

81. *Id.* at 113.

82. *Id.* at 79.

TABLE 1. DISTRICT OF COLUMBIA COURT OF APPEALS,
1990-1999 CASELOAD⁸³

<i>Year</i>	<i>Appeals as of Right</i>	<i>Discretionary Appeals</i>
1990	1650	45
1991	1567	36
1992	1643	44
1993	1724	21
1994	1689	18
1995	1832	16
1996	2008	28
1997	2076	23
1998	1943	25
1999	1757	26
2000	1698	45

83. Court Statistics Project, *State Court Caseload Statistics, 1999-2000* at 112, 176, 186 (Natl. Ctr. for St. Cts. 2000).