



# NEW MEXICO LAW REVIEW

---

Volume 22  
Issue 3 Summer 1992

---

Summer 1992

## History of the New Mexico Court of Appeals

Thomas A. Donnelly

Pamela B. Minzner

*University of New Mexico - Main Campus*

### Recommended Citation

Thomas A. Donnelly & Pamela B. Minzner, *History of the New Mexico Court of Appeals*, 22 N.M. L. Rev. 595 (1992).

Available at: <https://digitalrepository.unm.edu/nmlr/vol22/iss3/2>

This Article is brought to you for free and open access by The University of New Mexico School of Law. For more information, please visit the *New Mexico Law Review* website: [www.lawschool.unm.edu/nmlr](http://www.lawschool.unm.edu/nmlr)

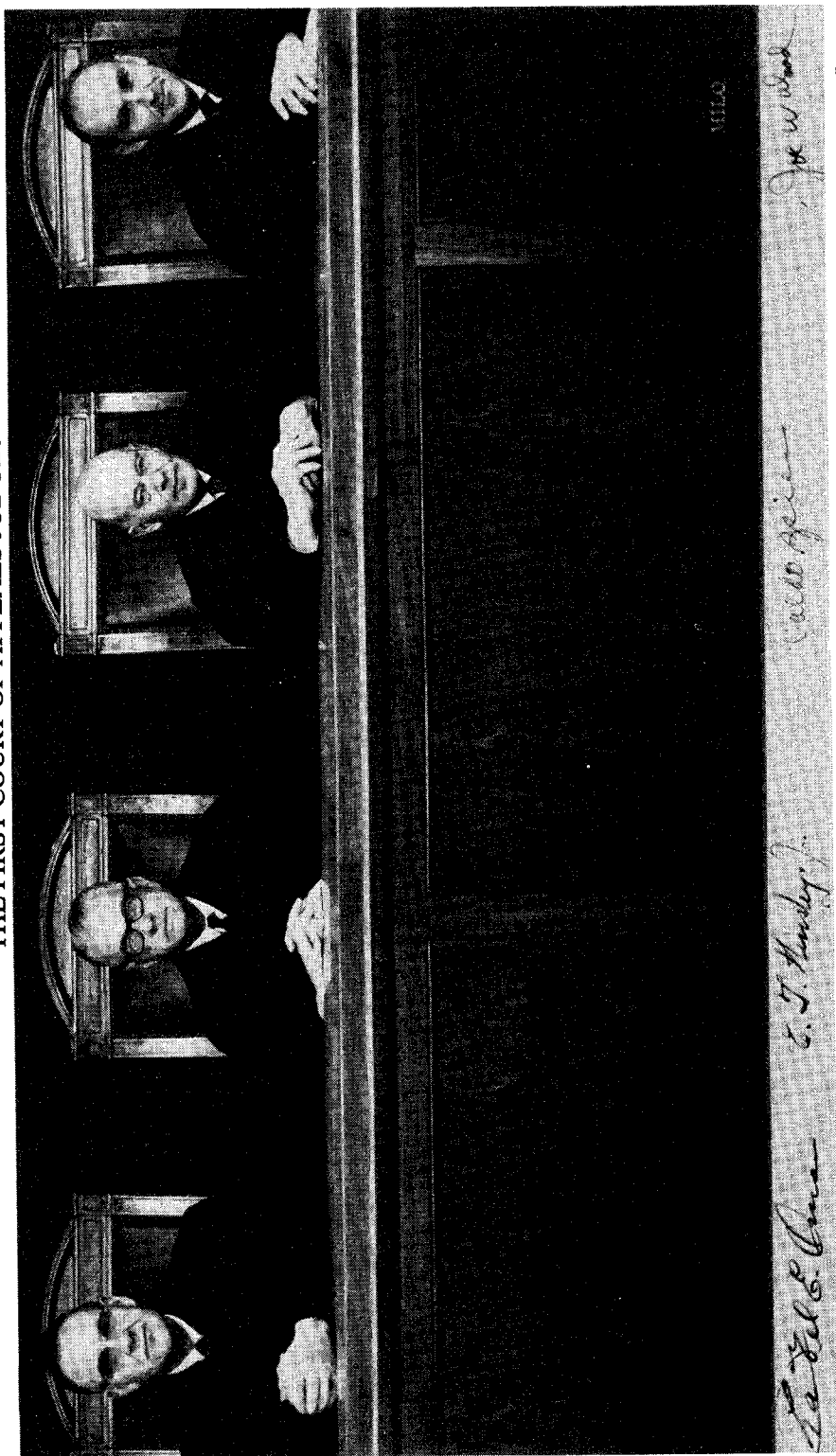
## THE CURRENT COURT OF APPEALS JUDGES



Back row (left to right): Benny E. Flores, Harris L. Hartz, Thomas A. Donnelly, William W. Bivins, Benjamin A. Chavez.

Front row (left to right): Lynn Pickard, Pamela B. Minzner, A. Joseph Alarid, Rudy S. Apocada, and Bruce D. Black.  
(Photograph taken September, 1991)

# THE FIRST COURT OF APPEALS JUDGES



The first judges chosen in 1966 by Governor Campbell were (left to right): LaFel E. Oman (Las Cruces), E.T. Hensley, Jr. (Portales), Waldo Spiess (Albuquerque), and Joe W. Wood (Farmington).

# HISTORY OF THE NEW MEXICO COURT OF APPEALS

THOMAS A. DONNELLY and PAMELA B. MINZNER\*

## I. INTRODUCTION

On April 1, 1991, the New Mexico Court of Appeals marked its twenty-fifth anniversary. Legislation authorizing the creation of the court was enacted in 1966,<sup>1</sup> following approval of a proposed constitutional amendment by the 1965 legislature and submission of the proposal to the electorate at a special election on September 28, 1965. The amendment was approved by the voters of New Mexico by a large margin.<sup>2</sup>

The genesis for the creation of the court of appeals arose out of supreme court efforts to alleviate its steadily growing backlog. Since its creation, however, the court of appeals has experienced a steady increase in its own caseload. This increase is attributable to increased filings as well as expansion of the court's jurisdiction. The court of appeals has responded to the increase in various ways: by requesting additional judges, instituting a method of screening cases for summary disposition, expanding its central staff, and relying on members of the New Mexico Bar in connection with several innovative programs aimed at reducing the court's backlog. None of the responses has been completely effective; all have helped prevent a serious crisis.

Twenty-four years following the creation of the court, the Thirty-Ninth State Legislature enacted legislation expanding the number of judges on the court to ten.<sup>3</sup> This legislation was signed into law by Governor Garrey Carruthers; however, the necessary funding to implement expansion of the court was not enacted until 1991, when the legislature appropriated additional monies to staff the extra judges and Governor Bruce King signed the subsequent General Appropriation Act. The 1991 expansion was the third time in twenty-five years the legislature had added judges to the court. Each expansion was followed by the adoption of new procedures that checked, but ultimately could not contain, a rising tide of new filings.

With the advent of its twenty-fifth anniversary, the New Mexico Court of Appeals celebrates a tradition of responding to growing demands on

---

\* Judges, New Mexico Court of Appeals. The authors wish to express their appreciation to several staff members on whose thoughtful research, editing, and typing this article depended. They include Georgia Romero, Judge Donnelly's secretary; Kate Purcell, Judge Minzner's secretary; Tom Clayton, a judicial extern from the University of California—Los Angeles (UCLA) School of Law (1990); Mary Jo Lujan, a University of New Mexico Law School work-study student (1991-92); and Kris Bogardus, Judge Minzner's law clerk (1991-92).

1. 1966 N.M. Laws ch. 28.

2. See N.M. CONST. art. VI, § 28.

3. 1990 N.M. Laws ch. 35. The 1990 legislation provided for appointment of the three new judges April 1, 1991. The 1991 legislation provided the necessary funding beginning July 1, 1991. See 1991 N.M. Laws chs. 10, 168.

its limited resources in different ways. The creation and expansion of the court is part of a national trend; in the last twenty-five years, many states have added intermediate appellate courts in response to growing appellate court caseloads. Those courts, like New Mexico's, have tended to expand as well as experiment with various methods of case management. Nevertheless, some aspects of the history of the New Mexico Court of Appeals are unique. Members of the court have been especially imaginative in experimenting with innovative measures to reduce the "leisurely pace" at which appellate cases proceed. This article will describe the creation of the court, the first appointees and their successors, major expansions of the court, and changes in jurisdiction and procedures prior to each expansion.

## II. CREATION

The impetus for the creation of the court of appeals was an increasing number of appeals to the state supreme court and the resulting delay in disposing of such cases. As observed in 1960 by the Administrative Office of the Courts, "[t]he maximum efficient caseload of the Supreme Court has been reached, or . . . exceeded. Anticipated increases in the number of appeals to the Supreme Court in future years will mean a constantly growing backlog of undecided cases, all to the public detriment."<sup>4</sup> As noted in the Santa Fe New Mexican, "[b]y late 1965, before the appeals court went into operation, it took from 30 to 36 months for decisions appealed from district court to clear through the Supreme Court."<sup>5</sup>

In 1962, Chief Justice David W. Carmody requested the assistance of the State Judicial System Study Committee, an interim committee of the New Mexico Legislature, to review the appellate backlog of the court and to explore possible solutions to its burgeoning caseload. The committee, together with the State Board of Finance, assisted the supreme court in obtaining funding to engage the Institute of Judicial Administration, to conduct the study of the supreme court, and to recommend methods to reduce the court's lengthening appellate delay.<sup>6</sup>

Following a six-month survey, the Institute issued its report on January 15, 1963, noting that due to the increase in the number of appeals:

[I]n September of 1962 the [supreme] court temporarily suspended all oral arguments. It is now working on the accumulated cases, some of which were submitted as long as two years ago. This trend, coupled with the fact that the number of new cases filed is constantly increasing, unmistakably shows that the court is falling behind and building up an uncomfortable backlog. The problem is a serious one.<sup>7</sup>

---

4. 1960 ANN. REP. OF THE ADMIN. OFFICE OF THE COURTS 27.

5. Santa Fe New Mexican, Nov. 27, 1966.

6. Interview with Fabian Chavez, Former Senator (Apr. 16, 1991).

7. *Expediting Appeals: A Study of the Supreme Court of New Mexico*, INST. OF JUDICIAL ADMIN. 3 (1963).

The Institute recommended a variety of solutions, including: (1) for the immediate problem, either (a) enactment of legislation authorizing the supreme court to appoint two supreme court commissioners to assist with the court's caseload; or (b) adoption of a state constitutional amendment, similar to that enacted by the state of Washington, authorizing the supreme court to appoint "judges or retired judges of courts of record of this state to perform, temporarily, judicial duties in the Supreme Court . . . ."; and (2) for the long-range problem, that the state constitution be amended to permit enlargement of the supreme court from five to seven members.<sup>8</sup> Alternatively, the study suggested that if an amendment was not adopted permitting enlargement of the supreme court, "then our alternative recommendation is to establish an additional appellate court consisting of three judges" invested with "jurisdiction over roughly three-eighths of the cases now heard by the Supreme Court, the precise types to be defined either by legislation or Supreme Court rule, with further review of those cases permitted in the discretion of the Supreme Court."<sup>9</sup>

In an effort to implement the recommendations of the Institute of Judicial Administration, the supreme court requested that the 1964 legislature approve a proposed state constitutional amendment for submission to the electorate authorizing enlargement of the supreme court from five to seven members.<sup>10</sup> A proposed joint resolution passed the House of Representatives but died in the state senate.<sup>11</sup> After its unsuccessful effort to obtain approval of a constitutional amendment, the supreme court recommended that the legislature direct the Interim Judicial Study Committee "to investigate and consider the wisdom of the creation of an intermediate appellate court for New Mexico . . . . Need of an intermediate court in New Mexico is a future certainty. Only timeliness is problematical."<sup>12</sup>

Acting on the court's recommendation, the legislature extended the life of the State Judicial System Study Committee for an additional two-year period.<sup>13</sup> After additional study, the committee recommended enactment of a constitutional amendment authorizing the creation of an intermediate court of appeals.<sup>14</sup> A joint resolution passed both legislative houses in 1965.<sup>15</sup>

The proposed constitutional amendment authorizing the creation of the court of appeals was submitted to the electorate in a special election held on September 28, 1965.<sup>16</sup> The amendment authorized the creation

---

8. *Id.* at 18-19.

9. *Id.* at 19.

10. Interview with Fabian Chavez (Apr. 16, 1991).

11. *Id.*

12. 1960 ANN. REP. OF THE ADMIN. OFFICE OF THE COURTS 28

13. Interview with Fabian Chavez (Apr. 16, 1991); David Norvell served as vice-chair of the committee and then chair, succeeding Senator Chavez. Interview with David Norvell (May 29, 1991).

14. Interview with Fabian Chavez (Apr. 16, 1991).

15. *Id.*

16. The vote tally on the proposal was 31,582 for and 18,477 against. See N.M. CONST. art. VI, § 28 annot.

of an intermediate appellate court consisting of "not less than three judges" possessing the same qualifications as justices of the state supreme court.<sup>17</sup> The amendment also provided that judges on the court serve for "terms of eight years . . . , except that an initial term may be prescribed by law for less than eight years to provide maximum continuity."<sup>18</sup>

Legislation to implement the constitutional amendment creating the court was introduced and passed during the 1966 legislative session.<sup>19</sup> Governor Jack M. Campbell, recognizing the necessity for such legislation, had called for the creation of the court in his message to the legislature.<sup>20</sup> Enactment of enabling legislation, like enactment of the constitutional amendment, resulted from the work done by the State Judicial System Study Committee.<sup>21</sup> House Bill No. 2, subsequently enacted by the legislature, provided the legislative framework for creation of the court.<sup>22</sup> Primary sponsors of the legislation were Representatives David Norvell, Robert E. Ferguson, Foster Evans, and Clifford J. Hawley.<sup>23</sup> The legislation received widespread bipartisan support. A primary advocate of such legislation was Senator Fabian Chavez, Jr., Senate Majority Leader and Chairman of the State Judicial System Study Committee. The legislation, which Governor Campbell signed, specified that the new judges would take office on April 1, 1966.<sup>24</sup>

Senator Chavez, together with the League of Women Voters and a nonpartisan citizen's committee, campaigned throughout the state for passage of the constitutional amendment. Principally through their efforts and a favorable reception of the state press, the amendment and implementing legislation became a reality.

The 1966 legislation established a court of appeals consisting of four judges, and directed that a panel of three judges would constitute a quorum for deciding cases.<sup>25</sup> The constitutional provision had specified that a "majority of those participating must concur in any judgment of the court."<sup>26</sup>

### III. THE FIRST JUDGES

Governor Campbell made the four initial appointments to the court in early 1966. Under the terms of the enabling legislation, each appointee was to serve until the general election of 1968;<sup>27</sup> thereafter each appointee was required to run for a specific position. The act also provided that

---

17. N.M. CONST. art. VI, § 28.

18. *Id.*

19. 1966 N.M. Laws ch. 28.

20. Interview with Jack M. Campbell, Former Governor (Jan. 23, 1991).

21. Interview with Fabian Chavez (Apr. 16, 1991).

22. 1966 N.M. Laws ch. 28.

23. H.R. 2, 27th Leg., 2d Sess. (1966).

24. 1966 N.M. Laws ch. 28, § 64.

25. *Id.* § 11.

26. N.M. CONST. art. VI, § 28.

27. 1966 N.M. Laws ch. 28, § 64.

the original appointees would serve staggered terms.<sup>28</sup> The first judges chosen, selected by Governor Campbell from diverse geographical parts of the state, were E.T. Hensley, Jr., from Portales; Waldo Spiess, from Albuquerque; LaFel E. Oman, from Las Cruces; and Joe W. Wood, from Farmington. Selections to the court were made from a list of names submitted to the governor by a nonpartisan judicial screening committee of the State Bar Association.<sup>29</sup>

The first appointees possessed varied and lengthy experience. Each made unique contributions to the judiciary.

Judge Hensley, 58, was a native of Roosevelt County. He served six years as district attorney before succeeding Justice Compton as district court judge. At the time of his appointment to the court of appeals, Judge Hensley had served as a district court judge in the Ninth Judicial District for nearly two decades. Judge Hensley served on the court of appeals until his death in 1967 and was elected the first chief judge.<sup>30</sup>

Judge Oman, 53, was a 1936 graduate of the University of Utah Law School, a sole practitioner, and a former president of the Dona Ana County Bar Association. He was admitted to practice in Utah in 1937 and moved to New Mexico in 1942. He served three years in the Navy before his admission to the New Mexico Bar in 1947. He had been city attorney for Truth or Consequences and an assistant city attorney for Las Cruces. Judge Oman served on the court of appeals until his election to the New Mexico Supreme Court in 1970. Justice Oman served as Chief Justice of the New Mexico Supreme Court in 1976 and 1977. After his retirement from the supreme court in 1977, he continued to serve as a district court judge pro tem, most notably in water rights adjudications.<sup>31</sup>

Judge Spiess, 62, was a native of San Miguel County. He was admitted to the New Mexico Bar in 1932 and had practiced in Las Vegas until he moved to Albuquerque in 1956; a sole practitioner in Albuquerque, he was a former president of the New Mexico State Bar. Judge Spiess had been a state legislator from the Las Vegas area; he had also served as assistant district attorney and as a member of the Las Vegas City Council. Succeeding Judge Hensley as chief judge, Judge Spiess served on the court of appeals until his death in 1971.<sup>32</sup>

---

28. *Id.*; see also *id.* § 1.

29. Interview with Jack M. Campbell, Former Governor (Jan. 23, 1991). The committee submitted a list of nine names to the governor, whom they felt possessed outstanding qualifications. Letter from James E. Sperling, Chairman of the Judiciary, to Governor Campbell (Mar. 9, 1966).

30. Judge Rudy S. Apodaca, a graduate of Georgetown University Law Center and formerly in private practice in Las Cruces, presently holds the position to which Chief Judge Hensley had been appointed. Elected in 1986, Judge Apodaca took office January 1, 1987.

31. Judge William W. Bivins, a graduate of Vanderbilt University School of Law and formerly in private practice in Las Cruces, presently holds the court of appeals position to which Justice Oman had been appointed. Elected in 1982, Judge Bivins took office on January 1, 1983.

32. Chief Judge A. Joseph Alarid, a graduate of Georgetown University Law Center and formerly both a district court judge and metropolitan court judge in Bernalillo County, now holds the position to which Judge Spiess had been appointed. Appointed by Governor Toney Anaya in December 1983, Chief Judge Alarid took office as a court of appeals judge on January 1, 1984.



Judge Wood, 42, was a trial attorney from Farmington and was a member of the first class to graduate from the University of New Mexico School of Law in 1950, a class in which he finished first. Judge Wood worked as assistant director and attorney for the New Mexico Legislative Council Service and had been president of the San Juan County Bar Association. He also had served in the Navy during World War II. He was the first graduate of the University of New Mexico Law School to serve on a New Mexico appellate court.<sup>33</sup>

Judge Wood recalls that the first appointees decided to resolve the question of which position each judge would assume by lot. "We drew names out of a hat to determine the length of our terms, and also to see which of us would get what office in the court building."<sup>34</sup>

The ceremony installing the members of the original court took place in the supreme court courtroom on April 1, 1966, and was attended by Governor Campbell and members of each of the judge's families. Judge Hensley was sworn in by Justice J.C. Compton, Judge Spiess was sworn in by Justice M.E. Noble, Judge Oman was sworn in by Justice Irwin S. Moise, and Justice David W. Carmody administered the oath of office to Judge Wood.

The court of appeals convened for the first time on that same day. Immediately after convening, the court elected Judge Hensley Chief. Shortly after the court first met, it also appointed its first chief clerk, Elizabeth Eisenhart, an attorney; the initial court staff included ten others, a law clerk, a secretary for each judge, and two assistants to the chief clerk.<sup>35</sup>

Of the four initial judges appointed to the court, Chief Judge Hensley served the shortest tenure; he became ill and passed away on November 22, 1967. Judge Hensley had submitted his resignation on November 16, 1967; however, because no successor was appointed to replace him, he remained chief judge until his death.<sup>36</sup> Judge Waldo Spiess was selected as the second chief judge on November 27, 1967. Justice Compton, Chief Judge Spiess, Senior Judge Oman, and Associate Judge Wood paid tribute to Judge Hensley in Volume 78 of the New Mexico Reports, which was designated as a memorial volume.

On December 6, 1967, upon the unanimous recommendation of the State Bar Committee, Governor David Cargo appointed Roberto L. Armijo, 46, a Las Vegas attorney and president of the San Miguel County Bar Association, to fill the vacancy. Judge Armijo, the son of former district court judge Luis Armijo, became the first Republican to serve

---

33. Succeeding Judge Spiess as chief judge, Judge Wood served on the court of appeals for almost twenty years, retiring in January 1986. Judge Benjamin Anthony Chavez, a graduate of the University of New Mexico School of Law and formerly a metropolitan court judge in Bernalillo County, presently holds the position to which Judge Wood had been appointed. Elected in 1982, Judge Chavez took office on January 1, 1983.

34. Santa Fe New Mexican, Nov. 27, 1966.

35. Interview with Judge Wood (Jan. 9, 1991); see also 1966 N.M. Laws ch. 28, § 5.

36. See 78 N.M. at 7 (Memorial Proceedings).

on the court. A graduate of Vanderbilt University Law School, Judge Armijo was admitted to the New Mexico Bar in 1949 and practiced law in Las Vegas thereafter. Judge Armijo served the balance of Judge Hensley's term and then ran for election to the New Mexico Supreme Court in 1968.

In the first general election of court of appeals judges, William R. Hendley, an Albuquerque attorney in private practice, was elected to the position in which Judge Hensley and Judge Armijo had served, and Judge Oman, Judge Spiess, and Judge Wood were elected to the positions to which they had been appointed in 1966. Judge Hendley took office January 1, 1969, and he served on the court until December 31, 1986. Judge Hendley, a 1956 graduate of the University of New Mexico, had served on the New Mexico Board of Bar Commissioners and the Albuquerque Bar Association Board of Directors prior to his election.

#### IV. THE EARLY WORK OF THE COURT

The legislation creating the court of appeals specified that the supreme court had appellate jurisdiction as it had existed with respect to any case filed in any court before April 1, 1966, and that the district courts had appellate jurisdiction as it had existed with respect to any appeal from the decisions of an administrative agency filed in district court before April 1, 1966.<sup>37</sup> On March 30, 1966, Chief Justice David W. Carmody entered an order making the Rules of Practice and Procedure in the supreme court applicable "insofar as pertinent" to appeals filed in the court of appeals.<sup>38</sup>

In its first decisions, the court of appeals reviewed orders denying motions for post-conviction relief.<sup>39</sup> The court conducted its first oral argument in December 1966. The first decision published by the court was filed on December 12, 1966.<sup>40</sup> On July 1, 1991, twenty-five years after the first appeal was filed with the court, appeal No. 13,236 was docketed.

Under the terms of the 1965 constitutional amendment authorizing the creation of the court of appeals, article VI of the New Mexico Constitution had been amended to provide that:

The Court of Appeals shall have no original jurisdiction. It may be authorized by law to review directly decisions of administrative agencies of the state, and it may be authorized by rules of the Supreme Court

---

37. See 1966 N.M. Laws, ch. 28, §§ 62, 63; see also 1966 ANN. REP. OF THE ADMIN. OFFICE OF THE COURTS 25.

38. Supreme Court Misc. Order No. 8000 (Mar. 30, 1966).

39. *Jones v. State*, No. 2 (N.M. Ct. App. May 16, 1966) (case dismissed for lack of jurisdiction); *State v. Grayless*, No. 3 (N.M. Ct. App. Oct. 24, 1966) (case dismissed by order of the court); *State v. Sanchez*, 78 N.M. 25, 420 P.2d 786 (Ct. App. 1966) (Docket No. 4); *State v. Larranaga*, No. 5 (N.M. Ct. App. 1966) (oral argument held Dec. 5, 1966; order transferring case from supreme court to court of appeals set aside Feb. 14, 1967), *decided on appeal*, 77 N.M. 528, 424 P.2d 804 (1967).

40. *Sanchez*, 78 N.M. 25, 420 P.2d 786.

to issue all writs necessary or appropriate in aid of its appellate jurisdiction. In all other cases, it shall exercise appellate jurisdiction as may be provided by law.<sup>41</sup>

As observed in the 1967 Annual Report of the Administrative Office of the Courts:

Under New Mexico law prior to [the] creation [of the Court of Appeals], every final judgment of a district court could be appealed as a matter of right to the Supreme Court. Now, however, certain statutorily defined cases [Sec. 16-7-8, NMSA 1953 Comp.] must be appealed to the Court of Appeals and there is no absolute right of appeal from [the] court [of appeals] to the Supreme Court.<sup>42</sup>

The original intent of the legislature appears to have been to divide the appellate caseload approximately equally between the court of appeals and the state supreme court. Under its initial statutory provisions, the court of appeals was invested with appellate jurisdiction to review on appeal: (A) any civil action which included a count seeking damages on an issue based on tort; (B) all actions under the worker's compensation, occupational disease disablement, and subsequent injury acts; (C) criminal actions except those involving judgments of the district court imposing a sentence of death or life imprisonment; (D) actions involving violations of municipal or county ordinances where a fine or imprisonment is imposed; (E) decisions of state administrative agencies where district review by the court of appeals is provided by law; and (F) decisions in other actions as may be provided by law. The 1966 enabling legislation also authorized the supreme court to review by writ of certiorari any matter in which the decision of the court of appeals involves a significant question of law under the state constitution or that of the United States or an issue of substantial public interest that should be determined by the supreme court, as well as any decision that conflicts with a decision of the supreme court or a decision of the court of appeals.<sup>43</sup>

In 1967 the supreme court ruled in *State v. Court of Appeals*<sup>44</sup> that the court of appeals was without jurisdiction to issue a writ of prohibition to a lower court, and that the legislature, by enacting legislation implementing the appellate authority of the court of appeals, granted only limited appellate jurisdiction. A few months earlier, the supreme court had ruled in *State v. Weddle*<sup>45</sup> that the court of appeals lacked jurisdiction over appeals in proceedings to vacate, set aside, or correct sentences. In 1969, however, the supreme court in *State v. Garlick*<sup>46</sup> noted that the legislature had modified the court of appeals' jurisdiction to include such appeals.

---

41. See N.M. CONST. art. VI, § 29; see also N.M. STAT. ANN. § 34-5-8 (Repl. Pamph. 1990).

42. 1967 ANN. REP. OF THE ADMIN. OFFICE OF THE COURTS 22.

43. 1966 N.M. LAWS ch. 28, § 8 (appellate jurisdiction of court of appeals); *id.* § 14 (certiorari jurisdiction of supreme court).

44. 78 N.M. 71, 428 P.2d 473 (1967).

45. 77 N.M. 420, 423 P.2d 611 (1967).

46. 80 N.M. 352, 456 P.2d 185 (1969).

During its first full year of operation, the court received a limited number of appeals. As the Administrative Office of the Courts observed in 1967, "On January 1, 1967, the Court had a total of 20 pending cases, of which 2 had been previously submitted and 18 were not at issue. During 1967, 108 cases were filed. The court disposed of 35 cases by written opinion, and 46 cases other than written opinion."<sup>47</sup>

With a relatively low caseload<sup>48</sup> during the first year of the court's existence, many of the judges were designated by the supreme court to sit as district judges pro tem and to serve on panels in a number of cases pending before the state supreme court.<sup>49</sup> During the first two years of the court's existence, court of appeals judges disposed of approximately 310 district court cases, and during 1967, court of appeals judges wrote 110 opinions in supreme court cases and participated in 81 other supreme court decisions.<sup>50</sup> "In 1967, Court of Appeals judges continued to participate in Supreme Court and District Court cases, but on a more limited basis."<sup>51</sup> Since 1966, court of appeals judges have continued to sit in individual cases on the supreme court by specific designation.

As observed in a report on the state of the judiciary by former District Judge Dee Blyth:

The Supreme Court has been able to speed up its processes considerably since the creation of the Court of Appeals in 1966. The average elapsed time from filing of transcript to decision was reduced 26%, from 15.6 months in 1965 to 11.5 in 1968. No statistics on this were published in 1969, but [according to Chief Justice M.E. Noble] the average elapsed time on the last 40 cases disposed of was 9 1/3 months. The combined caseloads of the Supreme Court and the Court of Appeals were approximately the same in 1969 as the Supreme Court alone had in 1965, and the cases pending at the end of the year declined 36% for this same period.<sup>52</sup>

47. 1967 ANN. REP. OF THE ADMIN. OFFICE OF THE COURTS 23.

48. As observed in the 1966 ANNUAL REPORT OF THE ADMINISTRATIVE OFFICE OF THE COURTS, [d]uring 1966, it was impossible for an appreciable number of cases to reach the Court of Appeals by appeal from the district court. During the year, three cases on appeal from the district court were filed with the Court of Appeals. An additional 21 cases were filed with the Court of Appeals, being matters brought before the district courts by inmates of the penitentiary challenging the legality of the action of the district court in imposing sentence[s]. . . . During the year, the Court of Appeals terminated five cases on the docket of that court.

1966 ANN. REP. OF THE ADMIN. OFFICE OF THE COURTS 25-26.

49. "When necessary, the chief justice of the supreme court may designate . . . any judge of the court of appeals to hold court in any district, or to act as a justice of the supreme court. (As added September 28, 1965)." N.M. CONST. art. VI, § 28.

50. 1967 ANN. REP. OF THE ADMIN. OFFICE OF THE COURTS 25. "[A]ll four judges of the Court of Appeals have participated in the disposition of Supreme Court cases . . . . The efforts of the Court of Appeals Judges has [sic] been of invaluable assistance to the Supreme Court." 1966 ANN. REP. OF THE ADMIN. OFFICE OF THE COURTS 18-19.

51. 1967 ANN. REP. OF THE ADMIN. OFFICE OF THE COURTS 23.

52. See Blythe, *The State of the Judiciary in New Mexico*, 9 N.M. BAR BULL. 346, 346-47 (1970).

The first judges of the court of appeals received an annual salary of \$18,500, and the court's initial annual operating budget was \$193,800.<sup>53</sup> By way of comparison, for the fiscal year beginning July 1, 1991, the court's annual budget exceeds \$2,000,000; the current salaries for the court are: court of appeals judge - \$71,250, and the court of appeals chief judge - \$72,300.<sup>54</sup>

The increased budget reflects expansion in the number of judges and personnel. The first expansion occurred in 1972.<sup>55</sup>

## V. THE FIRST EXPANSION (1972) AND THE FIVE-JUDGE COURT

From the court's first-year caseload of twenty-four cases, the number of appeals steadily increased. For several years the court was able to promptly dispose of pending appeals and continue to sit as trial judges. Eventually, the appellate caseload required a fifth judge, and members of the court ceased to sit as trial judges on a regular basis, because the number of trial judge designations given to court of appeals judges impeded the court's ability to dispose of appeals.<sup>56</sup> Judge Wood remarked in 1971: "We started getting behind last year [1970] when the trial work to which Court of Appeals judges were assigned took so much of our time."<sup>57</sup>

By 1969 the court's caseload had reached the point that the Administrative Office of the Courts commented:

The court of appeals is rapidly approaching a point where some action must be taken to relieve the already heavy work load imposed upon its members. The designation of its members to sit in place of district judges has been drastically curtailed but even without any outside demands the number of judges is inadequate to allow the consideration each case deserves. Reorganization of the court, in respect to jurisdiction and size, is directly related to the matter of adjusting the work load of the Supreme Court . . . .<sup>58</sup>

Judge Oman was elected to the state supreme court on January 1, 1971, becoming the first court of appeals judge to become a member of the state supreme court. On January 11, 1971, Governor King appointed Lewis R. Sutin to succeed Justice Oman on the court of appeals. Judge Sutin was a University of Illinois Law School graduate and had been an assistant city attorney and Chief Deputy Prosecutor in Terre-Haute, Indiana. He served on the court of appeals until December 31, 1982, a period of almost twelve years.

---

53. 1966 N.M. Laws, chapter 28, § 3 (annual salary); 1966 ANN. REP. OF THE ADMIN. OFFICE OF THE COURTS 26 (annual budget).

54. See 1991 N.M. Laws ch. 10 (budget); see also N.M. STAT. ANN. § 34-5-3 (salaries).

55. 1972 N.M. Laws ch. 32, § 1.

56. 9 N.M. BAR. BULL. 490 (Address by Judge Wood to Albuquerque Bar Association on March 2, 1971).

57. *Id.* at 492.

58. 1969 ANN. REP. OF THE ADMIN. OFFICE OF THE COURTS 14-15.

Chief Judge Spiess died on July 2, 1971. Judge Wood succeeded him as chief judge on July 19, 1971, a position in which he served until January, 1981. Justice Oman, retired Justice Moise, Acting Chief Judge Wood, Judge Hendley, and Judge Sutin paid tribute to Judge Spiess in Volume 82 of the New Mexico Reports, which was designated as a memorial volume.

In 1972, the court's caseload of new appeals filed climbed to a total of 235.<sup>59</sup> As a result of the increased caseload, Chief Justice John B. McManus, Jr. of the supreme court and Chief Judge Wood of the court of appeals requested legislation to expand the court. In 1972, the legislature authorized the addition of an additional judge, bringing the composition of the court to five judges.<sup>60</sup> The bill was approved by the legislature and signed into law on February 28, 1972, by Governor King. The 1972 act provided that the governor shall "fill the vacancy on the court of appeals . . . by appointment of a fifth judge to serve from the date of qualification until December 31, 1974" and that the fifth judge "shall be nominated and elected in the 1974 primary and general elections in the same manner as justices of the Supreme Court . . . ."<sup>61</sup> Governor King appointed B.C. Hernandez, an Albuquerque attorney, to serve as the fifth judge on March 8, 1972.

Judge Hernandez, a graduate of DePaul University Law School, had been a special assistant to the Attorney General of the United States and served as United States Ambassador to Paraguay from 1967 to 1969. He served on the court of appeals until October 1, 1981.<sup>62</sup>

In the 1972 Democratic primary, Ramon Lopez, an Albuquerque attorney, defeated Judge Ray C. Cowan, a Hobbs attorney, whom Governor King had appointed to succeed Judge Spiess. Judge Lopez, a 1951 graduate of the University of New Mexico School of Law, had been an assistant district attorney in Bernalillo County and then in private practice until December 1, 1972, when he was sworn in as a judge of the New Mexico Court of Appeals. Judge Lopez served eleven years on the court of appeals, retiring December 31, 1983.

For the next nine years, from late 1972 until late 1981, Judge Hendley, Judge Hernandez, Judge Lopez, Judge Sutin, and Judge Wood served together on New Mexico's intermediate appellate court. For the six-year period from late 1972 until January 1, 1979, they were the five-judge court.

During this period, with the support and assistance of the supreme court, the court of appeals made important changes in its procedures. Some changes clarified the relevant rules and others reduced the length of time between the time a notice of appeal is filed and a case is submitted

---

59. 1972 ANN. REP. OF THE ADMIN. OFFICE OF THE COURTS 12.

60. 1972 N.M. Laws ch. 32, § 1.

61. *Id.* § 2.

62. Judge Harris L. Hartz, a graduate of Harvard Law School and formerly in private practice in Albuquerque, presently holds the position to which Judge Hernandez had been appointed. Judge Hartz took office on October 11, 1988, by appointment of Governor Carruthers.

to a panel for decision. In addition, the court added a central staff of research attorneys. These changes occurred in response to a rising number of appeals and particularly reflected an increase in appeals in criminal cases.<sup>63</sup> After the addition of the fifth judge, the number of appeals filed with the court continued its upward climb from 235 in 1972, to a total of 533 in 1978.<sup>64</sup> The changes that occurred in the seventies followed a period of experimentation and study as the court sought to manage its rising caseload.

In 1973, for example, the court of appeals judges began to resolve appeals by memorandum, or unpublished opinions.<sup>65</sup> Without a screening system, however, the court could not identify at an early stage in an appeal whether the issues raised in that case justified a formal opinion.<sup>66</sup> In addition, without a screening system, the court could not identify at an early stage procedural bars such as late notices of appeal or the lack of a final order; the judges' law clerks provided assistance with screening for procedural bars in 1974.<sup>67</sup>

In 1974, partly at the urging of members of the court of appeals, the supreme court adopted comprehensive rules of appellate procedure applicable to all civil cases, except those governed by special statutory proceedings.<sup>68</sup> In 1974, Chief Judge Wood requested that the supreme court authorize a pilot project in Bernalillo and San Juan Counties utilizing tape-recorded transcripts of proceedings in lieu of typewritten transcripts in criminal cases.<sup>69</sup> The tapes, unlike stenographic records, were available immediately after a trial concluded. The success of this experiment led to the adoption of a rule requiring the use of taped transcripts in all criminal and children's court cases.<sup>70</sup> Chief Judge Wood served as Chairman of the Committee to Study Criminal Appellate Procedures at this time.

The new rule was part of comprehensive new rules of appellate procedure in criminal cases adopted by the supreme court in 1975.<sup>71</sup> The new rules allowed appeals in criminal and juvenile court cases to be placed on the summary, limited, legal, or general calendars.<sup>72</sup> Cases disposed of on the summary calendar were decided without full briefing. The new rules also contained a provision authorizing memorandum, or unpublished opinions.<sup>73</sup>

---

63. See Simpson & Mahlum, *Court of Appeals Prehearing Division: An Introduction*, STATE BAR APPELLATE PRACTICE SECTION NEWSL., Vol. 1, Summer 1991, at 4.

64. 1978 ANN. REP. OF THE ADMIN. OFFICE OF THE COURTS 18.

65. Telephone interview with Judge Wood (Mar. 21, 1992); Telephone interview with Justice Walters (Aug. 1991); Simpson & Mahlum, *supra* note 63.

66. Simpson & Mahlum, *supra* note 63.

67. *Id.*

68. Supreme Court Misc. Order No. 8000 (Jan. 2, 1974); see also 87 N.M. 530.

69. Interview with Judge Joe W. Wood (Aug. 2, 1991).

70. See N.M. R. Crim. App. P. 209(d) (adopted June 24, 1975).

71. Supreme Court Misc. Order No. 8000 (June 24, 1975); see also 88 N.M. 666.

72. See 88 N.M. at 673-74 (N.M. R. Crim. App. P. 207, "Calendar Assignment").

73. *Id.* at 685 (N.M. R. Crim. App. P. 601, "Opinions"); see also *Hudson v. State*, 89 N.M. 759, 557 P.2d 1108 (1976) (discussing N.M. R. Crim. App. P. 601 and summary affirmance).

Concerned over the steadily increasing number of criminal appeals filed with the court, Chief Judge Wood and Judge Hendley had requested the 1974 legislature to authorize two full-time staff attorneys. Legislative approval of this request resulted in the creation of the court's Prehearing Division in 1975.<sup>74</sup> The Prehearing Division was patterned after the central staff utilized by the Michigan Court of Appeals.<sup>75</sup> Members of the Division assisted the court in screening cases and proposing the appropriate calendar for each one. The first Prehearing Division Chief Staff Attorney, appointed by the court, was Winston Roberts-Hohl, a Santa Fe attorney.<sup>76</sup>

The measures adopted and implemented by the five-judge court worked. The new rules, patterned in part after the Federal Tenth Circuit Appellate Rules, permitted swift resolution of cases placed on the summary calendar, in which neither briefing nor a transcript was necessary. They also permitted swifter resolution of briefed cases for which a taped record, rather than a transcribed record, was submitted.<sup>77</sup> In 1977, statistics gathered by the National Center for State Courts indicated that the New Mexico Court of Appeals was one of the five most efficient state courts, in terms of the promptness of its appellate dispositions; as shown in the study, the court was able to dispose of most of its appellate caseload within five months from the date of the filing of the notice of appeal.<sup>78</sup> Nevertheless, eventually increased filings led to a second request for additional judges.

## VI. THE SECOND EXPANSION (1978) AND THE SEVEN-JUDGE COURT

In 1978 the legislature again approved legislation providing for further expansion of the court, authorizing the addition of the sixth and seventh judges.<sup>79</sup> Signed into law on February 24, 1978, by Governor Jerry Apodaca, the act provided that the sixth and seventh judges should be nominated and elected in the 1978 general election. Following the 1978 elections, Mary C. Walters, a former Bernalillo County district judge, and Leila Andrews, a Santa Fe attorney, were elected to fill the newly created judgeships. On January 1, 1979, Judges Walters and Andrews were sworn in as the first female judges on the court and the first women appellate court judges ever to serve in New Mexico. Both were graduates

---

74. "The Prehearing Division of the Court of Appeals began operations July 1, 1975, . . . consisting of one attorney and one secretary. On September 1, 1975, a second attorney was added. The purpose of this division is to screen appeals at various stages of the appellate process, separating cases which might be disposed of with less than a formal opinion." 1975 ANN. REP. OF THE ADMIN. OFFICE OF THE COURTS 21; see also Simpson & Mahlum, *supra* note 63.

75. Interview with Judge Hendley (Jan. 30, 1991).

76. Currently, the division is headed by Gina Maestas, an Albuquerque attorney.

77. For a description and evaluation of the operation of these rules, see Marvell, *Abbreviated Appellate Procedure: An Evaluation of the New Mexico Summary Calendar*, 75 JUDICATURE 86 (1991).

78. S. WASBY, T. MARVELL & A. AIKMAN, VOLUME AND DELAY IN STATE APPEALS COURTS: PROBLEMS AND RESPONSES 29-32 table 3.1 (1979) (New Mexico listed on page 32).

79. 1978 N.M. Laws ch. 25.



of the University of New Mexico School of Law. Judge Andrews served on the court until her death in June, 1981.<sup>80</sup>

During her judicial tenure, Judge Walters was the first woman to hold three distinct positions. In 1971, Governor King had appointed her the first woman district judge in New Mexico. In 1981 she was chosen by the other judges on the court of appeals to serve as chief judge, the first woman to serve in that capacity. In December 1983, she was appointed by Governor Anaya to fill a vacancy on the supreme court and in January 1984 became the first woman to ever serve on that court.<sup>81</sup>

The seven-judge court continued to respond, as had the five-judge court, in innovative ways to the problems caused by increased filings. The success of these programs and the court's reputation for timeliness is attributable to the efforts of staff as well as judges.

Increased filings in the court of appeals most immediately affect the clerk's office. In 1978 the court established a policy of requiring that its chief clerk be an attorney. The present clerk, Patricia C. Manzanares, has held that position since 1985. Prior to becoming the chief clerk, Ms. Manzanares held the position of staff attorney with the Prehearing Division. The clerk's office now includes a deputy clerk, Evelyn Valdez, and four assistant clerks.

Increased filings also create greater demands on the Prehearing Division. In 1981, the court appointed Lynn Pickard, a Santa Fe attorney, as chief of the Prehearing Division. Under her supervision the division expanded to thirteen attorneys, including the chief staff attorney. Eventually, however, despite the efforts of judges and staff, additional judges were required. Although divisionalization was discussed and seriously considered, it did not occur.

In 1982, the State Judicial Council, a joint legislative judicial study committee, reported that its District and Appellate Court's Committee considered reorganizing the court of appeals. The report noted:

The committee undertook a limited study of two possibilities: (a) splitting the Court into regional districts, and (b) implementing a circuit-riding system. The study was largely prompted by legislation introduced in 1979 proposing a southern district of the Court with facilities in Alamogordo. The legislature passed an amended version of the bill appropriating money for a feasibility study, but that bill was vetoed by the governor.<sup>82</sup>

Following the gubernatorial veto of the proposal to conduct a feasibility study, no other efforts to divisionalize the court were instituted. The

---

80. Judge Thomas A. Donnelly, a graduate of the University of Arizona School of Law and formerly a district court judge in Santa Fe, now holds the position to which Judge Andrews was elected. Judge Donnelly was appointed by Governor King to this position in August 1981, following Judge Andrews' death.

81. Judge Pamela B. Minzner, a graduate of Harvard Law School and formerly a professor of law at the University of New Mexico School of Law, presently holds the position to which Justice Walters had been elected. Appointed by Governor Anaya, Judge Minzner took office in January 1984.

82. 1982 ANN. REP. OF STATE JUDICIAL COUNCIL 19.

Judicial Council concluded that there was neither sufficient need nor justification to recommend any change and tabled the study indefinitely.

During the 1983 legislative session, the statute governing the jurisdiction of the court was modified to provide that all appeals not expressly reserved to be heard by the supreme court under constitutional or statutory provision may be transferred to the court of appeals.<sup>83</sup> In response to the legislature's action, the supreme court issued an order directing that:

[E]ffective June 17, 1983, the following appeals shall be filed in the New Mexico supreme court: appeals from the district courts . . . in which one or more counts of the complaint alleges a breach of contract or otherwise sounds in contract; appeals . . . in which a sentence of death or life imprisonment has been imposed; appeals from the public service commission; appeals from the corporation commission; appeals from the granting of writs of habeas corpus; and appeals in which jurisdiction has been specifically reserved to the . . . supreme court by the New Mexico constitution or by any other specific provision of state law.

It is further ordered that effective June 17, 1983, all [other] appeals . . . shall be filed in the New Mexico court of appeals.<sup>84</sup>

Following the expansion in the court's jurisdiction, its caseload increased dramatically. During the fiscal year preceding the increase in the court's jurisdiction (July 1, 1982 to June 30, 1983), the court received 561 new appeals.<sup>85</sup> During the following fiscal year (July 1, 1983 to June 30, 1984), the court received 629 new cases on appeal.<sup>86</sup>

In 1983, the supreme court ordered that taped transcripts also be utilized in workers' compensation and domestic relations appeals and extended to such appeals the appellate rules then governing appeals in criminal cases.<sup>87</sup> The supreme court in *State v. Johnson*<sup>88</sup> held that "[t]he law in New Mexico has long been settled that the taped recording of a trial court's proceedings properly preserves the record for appellate review with no inherent prejudicial effect." As a result of the rule change, appeals from decisions in workers' compensation and domestic relations cases were now potential candidates for summary disposition, as appeals in criminal cases had been since 1975. In addition, the court of appeals adopted a policy of assigning certain types of cases to a priority list for early appellate disposition. Cases placed on the priority list are criminal appeals; children's court cases; appeals in workers' compensation and occupational disease proceedings; mental health cases; interlocutory ap-

---

83. 1983 N.M. Laws ch. 333 (effective June 17, 1983).

84. Supreme Court Misc. Order No. 8000 (Apr. 20, 1983).

85. 1983 ANN. REP. OF THE ADMIN. OFFICE OF THE COURTS 10.

86. 1984 ANN. REP. OF THE ADMIN. OFFICE OF THE COURTS 7.

87. Supreme Court Misc. Orders No. 8000 (Nov. 17, 1982; effective January 1, 1983 for workers' compensation cases); (April 15, 1983, effective June 17, 1983 for domestic relations cases), amending Rules of Appellate Procedure for Criminal, Children's Court and Domestic Relations Cases, Rule 101.

88. 99 N.M. 682, 689, 662 P.2d 1349, 1356 (1983).

peals; and appeals in domestic relations involving issues of child custody or child support. While the expanded use of tapes and prioritization of appeals facilitated prompt resolution of certain categories of appeals, undecided civil cases, assigned to the lowest priority, began to accumulate.

In 1985, the court, with the approval of the supreme court and the state bar, in an effort to reduce its rapidly growing civil backlog, adopted its attorney advisory project. Under this plan, attorneys from throughout the state volunteered to author proposed appellate opinions. A number of separate attorney advisory panels were then created, consisting of three attorneys on each panel. Each panel member drafted a proposed opinion and submitted it to the other panel members for suggestions and modification. When a majority of the panel of attorneys agreed upon a proposed opinion, it was sent to the attorneys representing the parties in the case. Counsel then were given an opportunity to respond in writing indicating, what, if any, errors were present in the proposed opinion. Thereafter, a panel of three court of appeals judges reviewed the responses and the proposed opinion and either held oral argument in the case or issued a final opinion without oral argument. Under this process, eighty-nine additional cases were disposed of during 1985 and 1986, enabling the court to make a substantial decrease in its backlog. In *Thompson v. Ruidoso-Sunland, Inc.*,<sup>89</sup> the court upheld the validity of an opinion issued pursuant to the attorney advisory project against a challenge that the experimental plan was unconstitutional.

Judge Wood retired from the court of appeals in January 1986, having been a member of the court for almost twenty years. No one has equaled his length of service on the court, although Judge Hendley, who retired in December 1986, came close. Judge Wood and Judge Hendley, who served on the court eighteen years, both served as chief judge and played major roles in the administration of the court. They are primarily responsible for the court's success in managing a large caseload for many years with minimal resources and without great delay. One of the changes they had foreseen and for which they laid the groundwork occurred shortly after they retired. Other changes that occurred after they retired foreshadowed the next expansion in the number of judges.

Effective January 1, 1987, the supreme court ordered that the Rules of Appellate Procedure for Criminal, Children's Court, Domestic Relations and Workers' Compensation cases be withdrawn and adopted a single set of appellate rules governing all appeals.<sup>90</sup> These rule changes, due in part to the suggestions of members of the court of appeals, extended the availability of the summary calendar to all civil cases.

In 1989, the court secured supreme court approval for a pilot project carried out by Judge Apodaca. He moved his office to Las Cruces and, by means of telephone and computer, performs the main part of his work from a satellite office. This project, partly funded by the legislature

---

89. 105 N.M. 487, 734 P.2d 267 (Ct. App. 1987).

90. Supreme Court Misc. Order No. 8000 (Sept. 17, 1986).

and by a grant from the New Mexico State Bar Foundation, proved that a judge located away from the main offices of the court can receive and process appeals in an efficient manner.

Also in 1989, upon recommendation of a supreme court committee,<sup>91</sup> the supreme court adopted an appellate time standards rule. Under the rule, a case should be on appeal no longer than ten months and an opinion should be filed within three months of submission to a panel for decision.<sup>92</sup> The rule became effective for cases filed after July 1, 1990.<sup>93</sup>

In 1990, anticipating legislative funding of three new judgeships and acknowledging the success of the Las Cruces experiment, the court opened an Albuquerque satellite office in the old bar center offices next to the University of New Mexico Law School. Three judges moved their offices permanently to Albuquerque; two others worked part of each week in Albuquerque and the remainder of the week in Santa Fe, so that both offices were staffed during the experimental year by at least three judges on a regular basis. Effective July 1, 1991, four judges are now based permanently in Albuquerque, including Chief Judge Alarid.

The seven-judge court experimented in the use of appellate settlement conferences. The first settlement conferences were supervised by members of the court, serving on a rotating basis. If a case settled, the judge who supervised the process was credited with a case disposition; if the case did not settle, the appeal was restored to the submission list, and the judge who supervised the process was excluded from further participation in the appeal. In November 1990, the court initiated a comprehensive appellate settlement program with the assistance of over 200 attorneys acting as settlement facilitators. One hundred fifty three cases were distributed for settlement conferences, and approximately two dozen cases settled, including several that were unusually complicated. The court reported to the bar that the cases settled saved at least 2200 hours of court time.<sup>94</sup> The court noted that "the total percentage of cases that have been completely settled (over 15%) compares favorably under the circumstances to the percentage of cases completely settled in the First Judicial District's Settlement Week (23%)."<sup>95</sup>

In the last several years, the court has followed a practice of conducting oral argument in different parts of the state. To date, the court has regularly held oral argument in Albuquerque, Roswell, and Las Cruces, in addition to its hearings in Santa Fe. The number of oral arguments, however, sharply declined as the caseload grew.

---

91. The supreme court committee, chaired by Judge Donnelly, included (now Chief Justice) Richard E. Ransom, retired Judge Wood, Judge Minzner, Martha A. Daly and Winston Roberts-Hohl, both Santa Fe attorneys.

92. See N.M. R. APP. P. 12-406.

93. *Id.*

94. Pickard, *Court of Appeals Reports on Settlement Week*, 30 N.M. BAR BULL. 8 (May 30, 1991).

95. *Id.*

## VII. THE THIRD EXPANSION (1990-1991) AND THE TEN-JUDGE COURT

Continuing its steady pattern of growth, the court's caseload again indicated a need for court expansion in the late 1980's. In the seventy-seventh fiscal year (July 1, 1988 through June 30, 1989), for example, 821 new cases were filed, and the court's open cases increased from 414 to 495.<sup>96</sup> In the seventy-eighth fiscal year (July 1, 1989 through June 30, 1990), 843 new cases were filed, and the court's open cases increased twenty-four percent, from 495 to 614.<sup>97</sup>

The court's caseload has grown at a great rate. One scholar calculates that the court's caseload increased by 500% between 1970 and 1990.<sup>98</sup> Figures available from the court's annual reports show a steady growth in appellate filings since the time the court was created.

During the first decade of the court's existence, the number of annual appeals filed had risen from 24<sup>99</sup> to 504.<sup>100</sup> During the first ten-year period, there were a total of 2,377 appeals filed with the court of appeals, or an average of 238 appeals a year. Of the 2,377 appeals filed, 2,145 cases were disposed of and opinions were filed in 1,607 of those cases.<sup>101</sup> During this period, only one judge was added to the court. The court experienced another large increase in the number of appeals filed during its second decade. The second decade started with four appeals reinstated and 442 appeals filed in 1976;<sup>102</sup> the decade ended with 730 appeals filed in 1985.<sup>103</sup> The number of appeals filed from calendar year 1976 through fiscal year 1985 totalled 5,370, resulting in an increase of 225% over the previous ten-year period, an average of 537 appeals filed each year. During the ten-year period, 5,064 cases were disposed of and opinions were filed in 3,965 of those cases.<sup>104</sup> In 1979 the court was increased by the addition of the sixth and seventh judges.

During the next five years (fiscal years seventy-four through seventy-eight), as the court progressed through its third decade, a total of 3,760 appeals were filed, or an average of 752 appeals per year; during the five-year period, 3,579 cases were disposed of, and 2,894 of those were opinions.<sup>105</sup> This is an increase of 215% over the average number of appeals filed in the previous decade. The year 1989 marked the first time in the court's history that the court received over 800 appellate filings.<sup>106</sup>

In response to this steady increase, under the guidance of Chief Judge Bivins, legislation was introduced to increase the number of judges from

---

96. 1989 ANN. REP. OF THE ADMIN. OFFICE OF THE COURTS 18.

97. 1990 ANN. REP. OF THE ADMIN. OFFICE OF THE COURTS 13.

98. Marvell, *supra* note 77, at 87.

99. 1966 ANN. REP. OF THE ADMIN. OFFICE OF THE COURTS 26.

100. 1975 ANN. REP. OF THE ADMIN. OFFICE OF THE COURTS 21.

101. 1977 ANN. REP. OF THE ADMIN. OFFICE OF THE COURTS 23.

102. 1976 ANN. REP. OF THE ADMIN. OFFICE OF THE COURTS 23.

103. 1985 ANN. REP. OF THE ADMIN. OFFICE OF THE COURTS 7.

104. See Appendix II.

105. *Id.*

106. 1990 ANN. REP. OF THE ADMIN. OFFICE OF THE COURTS 13.

seven to ten. This act passed the legislature and was signed by Governor Carruthers on March 1, 1990.<sup>107</sup> The act providing for additional judges specified that the three new judges would be initially appointed for terms commencing April 1, 1991, and that such appointees would be subject to nomination and election at the next general election. The act further provided that "the provisions of this act . . . shall not take effect unless seventy-ninth fiscal year funding for three additional Court of Appeals judges is provided in the General Appropriation Act of 1990."<sup>108</sup> The necessary funding for the additional judges was not approved until the following year in 1991, but corrective legislation was introduced under the guidance of Chief Judge Alarid in 1991.<sup>109</sup>

Following the enactment of legislation in 1990 and 1991, which expanded the number of judges on the court to ten, fifty-one applications were received by the Appellate Judges Nominating Commission. After reviewing the list of applicants, the Commission submitted a list of seven names to the governor. Gubernatorial appointments to the court have generally followed a tradition of geographical diversity, and Governor King observed that tradition in making the new appointments. On July 2, 1991, Governor King appointed Bruce D. Black, a University of Michigan Law School graduate and Santa Fe attorney in private practice, Judge Benny E. Flores, a Georgetown Law Center graduate and a district court judge in Las Vegas, where he had also served as district attorney, and Lynn Pickard, a graduate of Northeastern Law School who had succeeded Winston Roberts-Hohl as the second chief of the court of appeals Pre-hearing Division and served in that position for ten years, to the court of appeals. These three judges became the first judges appointed to the court under the provisions of the 1988 constitutional amendment providing for the nonpartisan screening and nomination of qualified individuals to the governor for appointment to the court.<sup>110</sup>

## VIII. CONCLUSION

What changes are likely in the future? This is difficult to predict; however, as noted by the National Center for State Courts in a 1990 report:

A major development in the organization of American State Court systems over the past three decades has been the establishment and growth of intermediate appellate courts (IACs). Only 13 states had intermediate appellate courts in 1957, but by the end of the 1980's, 37 states had permanent IACs, North Dakota had a temporary IAC, and additional jurisdictions were considering their establishment.

Once established, IACs expand in size, as seen by the fact that 11 states now have over 20 judges serving in courts at this level. The

---

107. 1990 N.M. Laws ch. 35, § 1.

108. *Id.* § 3.

109. 1991 N.M. Laws ch. 10; see also 1991 N.M. Laws ch. 168 (corrective legislation).

110. N.M. CONST. art. VI, § 35.

larger courts also show a tendency to be divided into regional units.<sup>111</sup>

It is too soon to tell whether the latest expansion effort and the development of satellite offices in Las Cruces and Albuquerque is the harbinger of divisionalization in New Mexico. During the first twenty-five and a half years of the court's existence, one judge was appointed or elected from Portales,<sup>112</sup> two from Las Vegas,<sup>113</sup> two from Hobbs,<sup>114</sup> three from Las Cruces,<sup>115</sup> one from Farmington,<sup>116</sup> six from Santa Fe,<sup>117</sup> and ten from Albuquerque.<sup>118</sup> Of the ten appointed from Albuquerque, one practiced for many years in Las Vegas,<sup>119</sup> and another was raised in Farmington.<sup>120</sup> The existence of satellite offices makes it possible for more members of the bar located outside the Las Cruces/Albuquerque/Santa Fe corridor to consider applying for appointments under the new system. Interest in divisionalization, however, has been, on the whole, minimal.

The expansion in judges and staff has increased the administrative work of the chief judge and staff. The time has probably come for the court to consider asking the legislature to fund a position of administrative assistant for the chief judge, as several larger judicial districts and the metropolitan court have done.

The age of the computer certainly has affected the way the court operates. Both the Las Cruces and Albuquerque offices are connected to Santa Fe by telephone, modem, and FAX, making it possible to conference personally or review drafts simultaneously. FAX filings of appeals and motions seems likely to be authorized in the future. At present, the court is experimenting with telephonic oral arguments in cases where counsel are located in remote areas of the state, as Senior Judge Hendley had done in the late 1970's and the early 1980's.<sup>121</sup> The most recently-hired law clerks tend to be more comfortable with word processors than typewriters or dictating equipment and, as a consequence, each law clerk has access to a word processor, as do the Prehearing Division attorneys and some of the judges. In 1990, the legislature funded the installation of a computer in the clerk's office and development of a software program to permit the court to automatically monitor the progress of pending appeals.

In 1991, Chief Justice Ransom of the supreme court requested that judges of the court of appeals assist the supreme court with suggestions

---

111. National Center for State Courts, *Intermediate Appellate Courts: Improving Case Processing*, Final Report xi (1990).

112. Judge Hensley.

113. Judges Armijo and Flores.

114. Judges Cowan and Neal.

115. Judges Oman, Bivins, and Apodaca.

116. Judge Wood.

117. Judges Andrews, Donnelly, Garcia, Fruman, Black, and Pickard.

118. Judges Alarid, Hernandez, Hartz, Minzner, Walters, Spiess, Lopez, Chavez, Hendley, and Sutin.

119. Judge Spiess.

120. Judge Hartz.

121. Based on materials contained in an office file maintained by Judge Hendley.

concerning the future transfer of appeals in contract cases to the court of appeals. Appeals from district court decisions involving contracts constitute the last remaining major area of appellate jurisdiction retained by the supreme court. It is probable that within the next several years these cases will be transferred to the court of appeals and the supreme court will become more nearly a court of last resort, reviewing decisions of the court of appeals by writ of certiorari and those other cases reserved to the supreme court by the state constitution.

The adoption of appellate time standards undoubtedly places additional pressure on both courts. As the intermediate appellate court, the court of appeals may feel more pressure immediately than does the supreme court. Because the court of appeals prioritizes appeals, however, the longest delays for court of appeals cases can be expected within the category assigned the lowest priority. Further, the court of appeals disposes of many cases on the summary calendar, and consequently failure to meet the new time standards will more likely occur in connection with court of appeals cases assigned to non-summary calendars. For both reasons, delay during the time a case is pending on the court of appeals is more likely in a civil case than in a criminal case.

In May 1991 the court of appeals unanimously voted to request the supreme court to authorize the court of appeals to institute a pilot fast-track rule to dispose of appeals pending before the court of appeals within five months of the time of filing the appeal. As yet, no rule has been adopted.

The court of appeals, having expanded from seven judges to ten, is now in a position to reduce its backlog and again become current. It remains to be seen whether, after the contract cases are transferred, further expansion will be necessary and, if so, whether further expansion will lead to divisionalization. The success of the court to date has been attributable in large part to the efforts of judges and staff with long tenure on the court; their achievement merit celebration.



## APPENDIX I

## NEW MEXICO COURT OF APPEALS JUDGES

E.T. HENSLEY	April 1, 1966 to November 16, 1967.
LAFEL E. OMAN	April 1, 1966 to January 1, 1971.
WALDO SPIESS	April 1, 1966 to July 2, 1971.
JOE E. WOOD	April 1, 1966 to January 10, 1986.
ROBERTO LUIS ARMIJO	December 6, 1967 to December 31, 1968.
WILLIAM R. HENDLEY	January 1, 1969 to December 31, 1986.
LEWIS R. SUTIN	January 14, 1971 to December 31, 1982.
RAY C. COWAN	August 26, 1971 to November 30, 1972.
B.C. HERNANDEZ <sup>122</sup>	March 8, 1972 to October 31, 1981.
RAMON LOPEZ	December 1, 1972 to December 31, 1983.
LEILA ANDREWS <sup>123</sup>	January 1, 1979 to June 16, 1981.
MARY C. WALTERS	January 1, 1979 to January 13, 1984.
THOMAS A. DONNELLY	August 14, 1981 to present.
C. FINCHER NEAL	December 1, 1981 to July 25, 1985.
WILLIAM W. BIVINS	January 1, 1983 to present.
A. JOSEPH ALARID	January 1, 1984 to present.
PAMELA B. MINZNER	January 13, 1984 to present.
LORENZO F. GARCIA	August 12, 1985 to August 19, 1988.
HARVEY BERNARD FRUMAN	March 10, 1986 to December 31, 1988.
RUDY SAMUEL APODACA	January 1, 1987 to present.
HARRIS L. HARTZ	October 11, 1988 to present.
BENJAMIN ANTHONY CHAVEZ	January 1, 1989 to present.
LYNN PICKARD	July 8, 1991 to present.
BRUCE DOUGLAS BLACK	August 9, 1991 to present.
BENNY E. FLORES	August 16, 1991 to present.

Seven of the court's twenty-five members previously served as district judges,<sup>124</sup> and two served as former metropolitan court judges.<sup>125</sup> Fourteen judges have joined the court directly from private law practice, seven left other judicial positions to become members of the court, and four moved to the court from other positions in state government. Two previously served as presidents of the New Mexico State Bar.<sup>126</sup> Of the twenty-five judges who have served on the court, thirteen have had military experience,<sup>127</sup> eight are of Hispanic heritage,<sup>128</sup> and four are women.<sup>129</sup> Two were former state legislators,<sup>130</sup> three previously served as assistant attorneys general,<sup>131</sup> one served as an assistant United States attorney,<sup>132</sup> and two served as district attorney.<sup>133</sup> Seven of the judges are deceased.<sup>134</sup>

122. Judge Hernandez was appointed to the newly-created fifth judgeship, created by legislature in 1972.

123. Judges Andrews and Walters were elected to their positions after the creation, by the legislature, of the sixth and seventh judgeships of the court of appeals in 1978.

124. Judges Hensley, Neal, Garcia, Alarid, Walters, Donnelly, and Flores.

125. Judges Alarid and Chavez.

126. Judges Spiess and Bivins.

127. World War II era veterans: Judges Armijo, Hendley, Hensley, Hernandez, Lopez, Neal, Walters, and Wood. Korean War era: Judges Bivins and Donnelly. Viet Nam War era: Judges Apodaca, Fruman, and Garcia.

128. Judges Alarid, Apodaca, Armijo, Chavez, Flores, Garcia, Hernandez, and Lopez.

129. Judges Andrews, Walters, Minzner, and Pickard.

130. Judges Spiess and Neal.

131. Judges Andrews, Donnelly, and Alarid.

132. Judge Hartz.

133. Judges Hensley and Flores.

134. Judge Hensley (1967); Judge Spiess (1971); Judge Andrews (1981); Judge Lopez (1991); Judge Oman (1991); Judge Neal (1992); Judge Sutin (1992).

**APPENDIX II**  
**NM COURT OF APPEALS CASELOAD STATISTICS**

YEAR	# OF APPEALS FILED	OPINIONS	TOTAL DISPOSITIONS
1966	24	2	4
1967	108	35	81
1968	152	102	140
1969	168	127	145
1970	168	128	149
1971	232	185	221
1972	235	186	239
1973	316(+ 2)*	193	265
1974	470(+ 5)*	266	372
1975	504(+ 10)*	383	529
SUBTOTAL	2377(2394)	1607	2145
1976	442(+ 4)*	428	550
1977	568(+ 8)*	367	503
1978	533(+ 6)*	350	463
1979	157	382	509
FY 68**	293**	260**	339**
FY 69	498(+ 7)*	444	557
FY 70	599	440	558
FY 71	561	423	522
FY 72	629	450	541
FY 73	730	421	522
SUBTOTAL	5370(5395)	3965	5064
FY 74	723	440	532
FY 76	712	571	690
FY 77	821	601	741
FY 78	843	622	763
SUBTOTAL	3760	2894	3579

\* Numbers in parenthesis are reinstated cases

\*\* Numbers for FY 68 (July 1, 1979-June 30, 1980) are for January 1980 to June 1980 only.

All figures from NM Courts Annual Report for corresponding year.

### APPENDIX III

Of the twenty-five judges, fourteen different law schools are represented on the New Mexico Court of Appeals. The University of New Mexico has the most graduates on the court.

#### Law Schools:

CHICAGO LAW SCHOOL (1)

Judge Spiess.

CUMBERLAND LAW SCHOOL (1)

Judge Hensley.

DePAUL UNIVERSITY (1)

Judge Hernandez.

GEORGETOWN UNIVERSITY LAW CENTER (2)

Judges Alarid and Apodaca.

GEORGE WASHINGTON UNIVERSITY LAW SCHOOL (1)

Judge Flores.

HARVARD LAW SCHOOL (2)

Judges Hartz and Minzner.

NORTHEASTERN UNIVERSITY LAW SCHOOL (1)

Judge Pickard.

UNIVERSITY OF ARIZONA (1)

Judge Donnelly.

UNIVERSITY OF ILLINOIS (1)

Judge Sutin.

UNIVERSITY OF MICHIGAN (1)

Judge Black.

UNIVERSITY OF NEW MEXICO (8)

Judges Wood, Andrews, Chavez, Fruman,  
Garcia, Hendley, Lopez, and Walters.

UNIVERSITY OF OKLAHOMA (2)

Judges Cowan and Neal.

UNIVERSITY OF UTAH (1)

Judge Oman.

VANDERBILT UNIVERSITY (2)

Judges Armijo and Bivins.

# **APPENDIX IV** **JUDICIAL TENURE ON THE NEW MEXICO COURT OF APPEALS**

	1966	1970	1975	1980	1985	1990
<b>HENSLEY</b> (4-1-66 to 11-16-67)	==					
<b>SPIESS</b> (4-1-66 to 7-2-71)	=====					
<b>OMAN</b> (4-1-66 to 1-1-71)	=====					
<b>WOOD</b> (4-1-66 to 1-10-86)	=====					
<b>ARMIJO</b> (12-6-67 to 12-31-68)	==					
<b>HENDLEY</b> (1-1-69 to 12-31-86)		=====				
<b>SUTIN</b> (1-14-71 to 12-31-82)		=====				
<b>COWAN</b> (8-26-71 to 11-30-72)		==				
<b>HERNANDEZ</b> (3-8-72 to 10-31-81)		=====				
<b>LOPEZ</b> (1-1-73 to 12-31-83)		=====				
<b>ANDREWS</b> (1-1-79 to 6-16-81)				==		
<b>WALTERS</b> (1-1-79 to 12-13-84)				=====		
<b>DONNELLY</b> (8-14-81 to present)				=====		
<b>NEAL</b> (12-1-81 to 7-25-85)				=====		
<b>BIVINS</b> (1-1-83 to present)				=====		
<b>ALARID</b> (1-1-84 to present)					=====	
<b>MINZNER</b> (1-13-84 to present)					=====	
<b>GARCIA</b> (8-12-85 to 8-19-88)					=====	
<b>FRUMAN</b> (3-10-86 to 12-31-88)					=====	
<b>APODACA</b> 1-1-87 to present)					=====	
<b>HARTZ</b> (10-11-88 to present)						=====
<b>CHAVEZ</b> (1-1-89 to present)						=====
<b>PICKARD</b> (7-8-91 to present)						==
<b>BLACK</b> (8-9-91 to present)						==
<b>FLORES</b> (8-16-91 to present)						==