



January 26, 2021

Commission on Judicial Performance  
455 Golden Gate Avenue, Suite 14400  
San Francisco, California 94102

Re: Administrative Presiding Justice Vance W. Raye  
Associate Justice Cole Blease  
Associate Justice William J. Murray, Jr.

To the Commission on Judicial Performance:

I write to complain of extraordinary decisional delay by three justices of the Court of Appeal for the Third Appellate District – Administrative Presiding Justice Vance W. Raye, Associate Justice Cole Blease, and Associate Justice William J. Murray, Jr. – as well as administrative neglect by Administrative Presiding Justice Raye. During the past three years, these justices – enabled by Justice Raye’s failures of oversight – have been substantially dilatory in deciding large numbers of pending appeals, cumulatively allowing at least 150 cases to languish unadjudicated for at least two years and as much as seven years from the completion of briefing to submission for decision.

I am a California appellate lawyer with more than four decades of experience, including 26 years as a private practitioner (1996–2021 and 1980–1982) and 15 years as a staff attorney at the California Court of Appeal for the First Appellate District (1979–1980 and 1982–1996). I am the author of *The Rutter Group’s California Practice Guide: Civil Appeals and Writs*, first published in 1989 and updated annually. I am a California State Bar Certified Specialist in Appellate Law, a Past President of the California Academy of Appellate Lawyers, a former adjunct professor at Hastings College of the Law, and a frequent participant in continuing legal education programs on the California appellate process. In these various capacities, I communicate frequently with appellate lawyers throughout the state on current issues regarding appellate practice and California’s appellate courts.

Over the past few years, many of my colleagues and I have become increasingly concerned about lagging performance in the Third Appellate District, sharing personal anecdotes about lengthy delays from the completion of briefing to submission for decision (whether upon oral argument or after a waiver of oral argument). Last month, as expressions of concern among my colleagues reached a crescendo, I took it upon myself to take a close look at that court’s performance statistics. What I discovered is the basis for this complaint.

Using Westlaw and the California appellate courts website ([appellatecases.courtinfo.ca.gov](http://appellatecases.courtinfo.ca.gov)), I studied performance statistics for each of the current justices of the Third Appellate District in all cases (civil, criminal, and juvenile) adjudicated by written opinion since January 1, 2018, focusing on the time between completion of briefing and submission for decision. I focused on that period because that is when the adjudicatory process falls completely under the court's control, unencumbered by delays in record preparation and briefing.

I searched for cases in which the pertinent period exceeded two years. Two years from case-fully-briefed to submission-for-decision is inarguably far too long, given the *Model Time Standards for State Appellate Courts*, which prescribes a “reasonable” number of 90 days from case-fully-briefed to submission-for-decision plus another 120 days from submission-for-decision to issuance-of-opinion for 95 percent of civil cases. (Court Mgmt. Committee of the Conference of Chief Justices and the Conference of State Court Administrators, *Model Time Standards for State Appellate Courts* (Aug. 2014) p. 23; see also Jenkins, *Delay in our Courts of Appeal*, Daily Journal (Aug. 6, 2018) [“Over the past 10 years, civil cases [in California] have averaged between eight and 12 months from the filing of the last brief to oral argument, and criminal cases have frequently averaged 14 to 19 months.”].)

For Justices Raye, Blease, and Murray, I found an extraordinarily large number of cases adjudicated since January 1, 2018, in which the time from case-fully-briefed to submission-for-decision exceeded two years. These include criminal and juvenile cases (which have calendar preference) as well as civil cases. Specifically:

- Justice Raye issued at least 44 majority opinions with delays ranging from two years to nearly **seven years** from case-fully-briefed to submission-for-decision.
- Justice Blease issued at least 53 majority opinions with delays ranging from two years to more than **five years** from case-fully-briefed to submission-for-decision.
- Justice Murray issued at least 53 majority opinions ranging from two years to more than **seven years** from case-fully-briefed to submission-for-decision.

Here is an accounting of those cases, as best I could put together using the resources available to me:<sup>1</sup>

---

<sup>1</sup> My compilation of this accounting was an enormous undertaking, and I might have missed a few cases that have had delays exceeding two years.

**Administrative Presiding Justice Raye**  
**Majority Opinions Since January 1, 2018, Exceeding Two Years from**  
**Case-Fully-Briefed to Submission-for-Decision**

<u>Case No.</u>	<u>Period of Delay</u>	<u>Case No.</u>	<u>Period of Delay</u>
C069187	6 years 10 months	C072975	6 years 2 months
C066914	5 years 11 months	C076888	4 years 11 months
C073673	4 years 8 months	C072773	4 years 8 months
C072098	4 years 6 months	C074620	4 years 6 months
C075878	4 years 3 months	C075125	4 years 3 months
C079260	4 years 0 months	C075423	3 years 10 months
C078614	3 years 10 months	C081515	3 years 10 months
C074902	3 years 9 months	C082599	3 years 8 months
C077560	3 years 4 months	C084755	3 years 2 months
C081559	3 years 2 months	C084423	3 years 2 months
C082779	3 years 1 month	C082895	2 years 10 months
C080711	2 years 10 months	C082726	2 years 9 months
C082597	2 years 8 months	C080474	2 years 8 months
C075295	2 years 7 months	C079554	2 years 7 months
C083349	2 years 7 months	C081325	2 years 6 months
C081577	2 years 4 months	C081184	2 years 3 months
C076994	2 years 3 months	C084483	2 years 3 months
C080944	2 years 3 months	C078957	2 years 2 months
C084480	2 years 2 months	C084328	2 years 1 month
C083430	2 years 1 month	C082278	2 years 1 month
C077659	2 years 1 month	C080001	2 years 0 months
C083401	2 years 0 months	C083401	2 years 0 months

**Associate Justice Blease**  
**Majority Opinions Since January 1, 2018, Exceeding Two Years from**  
**Case-Fully-Briefed to Submission-for-Decision**

<u>Case No.</u>	<u>Period of Delay</u>	<u>Case No.</u>	<u>Period of Delay</u>
C071785	5 years 2 months	C078435	4 years 0 months
C082927	3 years 3 months	C080685	3 years 3 months
C078142	3 years 3 months	C080263	3 years 2 months
C082691	3 years 2 months	C080715	3 years 2 months
C077018	3 years 1 month	C080890	3 years 1 month
C077516	3 years 0 months	C083563	3 years 0 months

C081903	3 years 0 months	C082883	3 years 0 months
C080342	3 years 0 months	C082811	2 years 10 months
C078749	2 years 10 months	C080564	2 years 10 months
C079715	2 years 9 months	C080254	2 years 9 months
C078589	2 years 9 months	C083268	2 years 9 months
C077711	2 years 8 months	C083844	2 years 7 months
C084295	2 years 7 months	C080527	2 years 7 months
C077841	2 years 7 months	C080913	2 years 7 months
C077813	2 years 7 months	C083291	2 years 6 months
C081566	2 years 6 months	C081747	2 years 6 months
C077689	2 years 6 months	C084299	2 years 6 months
C077302	2 years 6 months	C082971	2 years 5 months
C077843	2 years 5 months	C079560	2 years 5 months
C078301	2 years 4 months	C079455	2 years 4 months
C083232	2 years 3 months	C080023	2 years 3 months
C079226	2 years 3 months	C077554	2 years 3 months
C078854	2 years 2 months	C081249	2 years 1 month
C083282	2 years 1 month	C081090	2 years 1 month
C079497	2 years 1 month	C081091	2 years 0 months
C076187	2 years 0 months	C081092	2 years 0 months
C081251	2 years 0 months		

**Associate Justice Murray**  
**Majority Opinions Since January 1, 2018, Exceeding Two Years from**  
**Case-Fully-Briefed to Submission-for-Decision**

<u>Case No.</u>	<u>Period of Delay</u>	<u>Case No.</u>	<u>Period of Delay</u>
C066582	7 years 6 months	C071466	7 years 0 months
C068400	6 years 6 months	C062332	6 years 6 months
C072239	6 years 3 months	C066714	6 years 1 month
C074335	5 years 8 months	C076428	5 years 7 months
C072574	5 years 7 months	C069663	5 years 6 months
C070644	5 years 5 months	C072907	5 years 5 months
C071967	5 years 5 months	C076296	5 years 4 months
C075933	5 years 1 month	C071036	5 years 1 month
C068036	5 years 1 month	C074299	4 years 10 months
C079633	4 years 6 months	C073796	4 years 6 months
C076773	4 years 5 months	C079078	4 years 4 months
C074940	4 years 2 months	C079303	4 years 2 months
C074919	4 years 1 month	C080861	4 years 0 months

C074411	4 years 0 months	C077666	3 years 10 months
C078000	3 years 9 months	C081809	3 years 8 months
C077992	3 years 7 months	C078089	3 years 6 months
C078460	3 years 5 months	C077621	3 years 5 months
C080915	3 years 5 months	C077676	3 years 4 months
C082707	3 years 3 months	C079864	3 years 2 months
C080194	3 years 2 months	C077096	3 years 2 months
C075910	3 years 1 month	C080931	3 years 1 month
C074267	3 years 0 months	C079134	2 years 10 months
C078306	2 years 9 months	C079168	2 years 8 months
C081165	2 years 7 months	C080261	2 years 6 months
C081345	2 years 5 months	C077542	2 years 5 months
C081194	2 years 5 months	C080816	2 years 5 months
C080488	2 years 0 months		

No other Justice of the Third Appellate District has exceeded more than one year from case-fully-briefed to submission-for-decision more than occasionally.

I also calculated, for each serving Justice of the Third Appellate District (a vacancy is currently unfilled), the average number of majority opinions filed annually since January 1, 2018, referencing published and unpublished opinions reported on Westlaw. Again, Justices Raye, Blease, and Murray have underperformed:

**Third Appellate District Average Majority Opinions Per Justice  
Annually Since January 1, 2018**

Robie	115	Duarte	114
Hull	110	Mauro	109
Hoch	104	Renner	99
Krause	95 (2-year average) <sup>2</sup>	Blease	89
Raye	86	Murray	37

In contrast, at the other end of the spectrum, Division Two of the Fourth Appellate District has averaged 139 majority opinions per Justice annually since January 1, 2018, with virtually all cases taking less than a year from case-fully-briefed to submission-for-decision. The statewide annual average of the six Court of Appeal districts in 2017–2018 was 90 majority opinions per Justice. Several Justices of Division Two of the Fourth Appellate District substantially exceeded the

---

<sup>2</sup> Justice Krause took the bench on December 21, 2018.

statewide annual average: Justice Art W. McKinster – 159; Justice Carol D. Codrington – 152; and Justice Manuel A. Ramirez – 129.

Most notable is Justice Murray’s annual average of only 37 majority opinions – just 41 percent of the statewide average and far less than his closest colleague, Justice Raye. The likely explanation seems to be that a substantial number of cases initially assigned to Justice Murray as lead Justice were later reassigned to others after languishing untouched for long periods. (Whether cases were reassigned just from Justice Murray or from other justices as well can only be determined by reference to the Third Appellate District’s internal monthly calendaring documents, to which I do not have access.)

Unusually, an extensive pattern of reassignment of delayed cases can be gleaned from 25 decisions filed in the Third Appellate District since June 12, 2018, in which five members of the court – Justices Kathleen Butz (now retired), Elena J. Duarte, Andrea Lynn Hoch, Jonathan K. Renner, and Ronald B. Robie – commented in either footnotes or text that the case had been reassigned to that panel long after the completion of briefing. All but one of those decisions was unpublished – masking this pattern from the general public. They all include, in slightly varying language, words to the effect that “[t]his matter was assigned to the panel as presently constituted in [month and year].” In some instances, the date of completion of briefing is also noted.

Here is an accounting of those 25 cases:

- *County of Monterey v. Bosler* (Oct. 20, 2020) 57 Cal.App.5th 466 (Duarte, J.) **(21 months to reassignment)**: “Briefing was completed in August 2018. The panel as presently constituted was assigned this matter in May 2020.”
- *LoanDepot.Com, LLC v. Coots* (Oct. 20, 2020) 2020 WL 6144661 (Duarte, J.) **(15 months to reassignment)**: “Briefing was completed in January 2019. The panel as presently constituted was assigned this matter in May 2020.”
- *People v. Graham* (Aug. 7, 2019) 2019 WL 3713753 (Hoch, J.) **(19 months to reassignment)**: “The matter was assigned to the panel as presently constituted in January 2018.”
- *Baumwohl v. JP Morgan Chase Bank* (May 29, 2019) 2019 WL 2281531 (Robie, J.) **(28 months to reassignment)**: “The panel as presently constituted was assigned in February 2019.”

- *People v. Mercado* (Apr. 30, 2019) 2019 WL 1912732 (Robie, J.) (**29 months to reassignment**): “This matter was assigned to the panel as presently constituted in January 2019.”
- *People v. Saetern* (Apr. 8, 2019) 2019 WL 1529323 (Hoch, J.) (**24 months to reassignment**): “The panel as presently constituted was assigned to this matter on August 31, 2018.”
- *Almaguer v. Newland Entities, Inc.* (Mar. 27, 2019) 2019 WL 1373228 (Renner, J.) (**24 months to reassignment**): “The panel as presently constituted was assigned this matter in September 2018.”
- *People v. Shepardson* (Mar. 25, 2019) 2019 WL 1323817 (Robie, J.) (**28 months to reassignment**): “This matter was assigned to the panel as presently constituted in January 2019.”
- *People v. Stone* (Mar. 12, 2019) 2019 WL 1140741 (Duarte, J.) (**32 months to reassignment**): “[B]riefing was initially completed in March 2016 (with supplemental briefing ordered later), and the panel as presently constituted was assigned to the case in November 2018.”
- *Root v. Deutsche Bank National Trust Co.* (Mar. 11, 2019) 2019 WL 1109740 (Butz, J.) (**27 months to reassignment**): “The panel as presently constituted was assigned the matter in October 2018.”
- *Kalani v. Castle Village, LLC* (Feb. 28, 2019) 2019 WL 968112 (Renner, J.) (**27 months to reassignment**): “The panel as presently constituted was assigned this matter in October 2018.”
- *Ramirez v. State Personnel Board* (Feb. 27, 2019) 2019 WL 948970 (Robie, J.) (**25 months to reassignment**): “The matter was assigned to the panel as presently constituted in September 2018.”
- *People v. Wolfington* (Feb. 4, 2019) 2019 WL 422215 (Renner, J.) (**44 months to reassignment**): “The panel as presently constituted was assigned this matter in June 2018.”
- *Charter School Capital, Inc. v. San Joaquin County Office of Education* (Jan. 30, 2019) 2019 WL 364584 (Butz, J.) (**46 months to reassignment**): “Briefing was completed in September 2014. The panel as presently constituted was assigned this matter in July 2018.”

- *Allgoewer v. Waldear* (Jan. 29, 2019) 2019 WL 350379 (Hoch, J.) (**26 months to reassignment**): “The matter was assigned to the panel as presently constituted in October 2018.”
- *People v. Cuevas Ayala* (Jan. 7, 2019) 2019 WL 116824 (Robie, J.) (**33 months to reassignment**): “This matter was assigned to the panel as presently constituted in November 2018.”
- *Lingren v. Placer County Civil Service Comm’n* (Dec. 31, 2018) 2018 WL 6839351 (Butz, J.) (**23 months to reassignment**): “[B]riefing was completed in October 2016, and the panel as presently constituted was assigned the matter in September 2018.”
- *Waszczuk v. California Unemployment Insurance Appeals Board* (Dec. 27, 2018) 2018 WL 6804226 (Duarte, J.) (**23 months to reassignment**): “The matter was assigned to the panel as presently constituted in September 2018.”
- *People v. Haley* (Dec. 24, 2018) 2018 WL 6734635 (Hoch, J.) (**43 months to reassignment**): “The matter was assigned to the panel as presently constituted in June 2018.”
- *People v. Cuirar* (Dec. 17, 2018) 2018 WL 6598767 (Robie, J.) (**19 months to reassignment**): “The matter was assigned to the panel as presently constituted in October 2018.”
- *People v. Barnes* (Nov. 30, 2018) 2018 WL 6322496 (Renner, J.) (**47 months to reassignment**): “The panel as presently constituted was assigned this matter in June 2018.”
- *People v. Walton* (Sep. 10, 2018) 2018 WL 4292397 (Butz, J.) (**53 months to reassignment**): “The briefing originally was completed in February 2014; supplemental briefing was completed in June 2017 and February 2018. The panel as presently constituted was assigned this matter in July 2018.”
- *People v. Bowens* (Aug. 28, 2018) 2018 WL 4090958 (Hoch, J.) (**57 months to reassignment**): “The matter was assigned to the panel as presently constituted in June 2018.”



- *Solomon v. EC Closing Corp.* (Aug. 20, 2018) 2018 WL 3966955 (Robie, J.) (**51 months to reassignment**): “This matter was assigned to the panel as presently constituted in July 2018.”
- *de Lipkau v Hanna* (June 12, 2018) 2018 WL 2931194 (Butz, J.) (**13 months to reassignment**): “The matter was assigned to the panel as presently constituted in February 2018.”

Plainly there has been a failure of effective oversight by Administrative Presiding Justice Raye. “Institutional accountability of the Judicial Branch can be undermined when the leadership does not demonstrate its willingness to establish time-based goals for the resolution of appellate cases.” (*Model Time Standards for State Appellate Courts*, *supra*, p. 5.)

A comparison of the Judicial Council’s Court Statistics Reports for fiscal year 2009-2010 and for fiscal year 2017-2018 (the most recent full report currently available) shows a precipitous drop in the Third Appellate District’s average overall productivity over the course of that eight-year period:

- The average number of majority opinions per authorized Justice dropped by 34 percent.
- The median time from notice of appeal to filing of opinion in civil appeals increased by 28 percent.
- The median time from notice of appeal to filing of opinion in criminal appeals increased by 23 percent.

This extraordinary decisional delay in the Third Appellate District has caused considerable harm to participants in California’s judicial process. Prisoners have wrongly served time without receiving the benefit of a reduction in sentence that comes too late. Crime victims have been denied the closure that comes with the final affirmance of a judgment of conviction. Commercial transactions have suffered from uncertainty while business disputes remain unresolved. Enforcement of money judgments has been delayed, hurting plaintiffs who must wait years to collect as well as defendants who must pay excessive interest on judgments at the legal rate of 10 percent.

These are real people who have been done real harm. Here are just a few examples:<sup>3</sup>

---

<sup>3</sup> This is just a sampling. Undoubtedly there are others.

- Criminal defendant Cindy Dee Kent lost all the benefit of an eight-month reduction in her prison term for theft offenses, because of a six-year-and-six-month delay between case-fully-briefed and submission-for-decision. (*People v. Kent* (Mar. 28, 2018, No. C062332) 2018 WL 1514968 (Murray, J.).)
- A putative class of grocery store maintenance technicians in a wage-and-hours class action sustained years of delay while awaiting reversal of an order denying class certification, because of a four-year-and-three-month gap between case-fully-briefed and submission-for-decision. (*Myers v. Raley's* (Feb. 13, 2019, C075125) 32 Cal.App.5th 1239 (Raye, J.).)
- Criminal defendant Walter Mullins lost some of the benefit of a judgment remanding the case for consideration whether to strike a five-year sentence enhancement on a domestic violence conviction, because of a four-year-and-two-month delay between case-fully-briefed and submission-for-decision. (*People v. Mullins* (Mar. 4, 2020, C079303) 2020 WL 1041428 (Murray, J.).)
- In a marital dissolution proceeding, husband Roy Rubin had to wait years for reversal of a judgment requiring him to pay monthly spousal and child support totaling \$12,337 plus attorney's fees and costs totaling \$595,500, because of a three-year-and-four-month delay between case-fully-briefed and submission-for-decision. (*In re Marriage of Rubin* (Apr. 24, 2019, C077676) 2019 WL 1785493 (Murray, J.).)
- Foreclosed homeowner Herbert Whitaker, who challenged his lender's refusal of a loan modification, had to wait years to go to trial after reversal of a summary judgment, because of a three-year-and-two-month delay between case-fully-briefed and submission-for-decision. (*Whitaker v. Wells Fargo, N.A.* (Mar. 26, 2020, No. C081559) 2020 WL 1457774 (Raye, J.).)
- Property owner Karen Daniels was delayed in her efforts to retain full use of an easement while awaiting reversal of a summary judgment restricting such use, because of a two-year-and-eight-month gap between case-fully-briefed and submission-for-decision. (*Daniels v. Weir* (July 14, 2020, No. C083844) 2020 WL 3969814 (Blease, J.).)
- Personal injury plaintiff Robert Kalani was unable to go to trial while awaiting reversal of a summary judgment, because of a two-year-and-seven-month delay between case-fully-briefed and submission-for-decision

– during which he died. (*Kalani v. Castle Village, LLC* (Feb. 28, 2019, No. C079905) 2019 WL 968112 (Renner, J.) [noting “[t]he panel as presently constituted was assigned this matter in October 2018”].)

- Criminal defendant William Shepardson lost the full benefit of a judgment striking nine years from his 12-year sentence for a drug offense and requiring reconsideration on the remaining three years, because of a two-year-and-six-month delay between case-fully-briefed and submission-for-decision. (*People v. Shepardson* (Mar. 25, 2019, No. C081157) 2019 WL 1323817 (Robie, J) [noting “[t]his matter was assigned to the panel as presently constituted in January 2019”].)
- Plaintiff Sarah Sumner, who challenged her termination as dean of a theological seminary, was delayed in going to trial while awaiting reversal of a summary judgment, because of a two-year-and-six-month gap between case-fully-briefed and submission-for-decision. (*Sumner v. Simpson University* (Sep. 25, 2018) 27 Cal.App.5th 577 (Blease, J.).)
- Motorist Amanda Meleski, who was injured when another motorist ran a red light, sustained delay in collecting a \$66,017 costs award while awaiting reversal of an order denying the award, because of a two-year-and-three-month gap between case-fully-briefed and submission-for-decision. (*Meleski v. Estate of Hotlen* (Nov. 29, 2018) 29 Cal.App.5th 616 (Blease, J.).)
- Farmer Heather Tanaka sustained delay in her resumption of river water usage while awaiting a published reversal of an order enjoining such usage, because of a two-year-and-one-month gap between case-fully-briefed and submission-for-decision. (*Modesto Irrigation District v. Tanaka* (May 7, 2020) 48 Cal.App.5th 898 (Raye, J.).)
- Criminal defendant Andrew Darnell Johnson lost some of the benefit of a judgment remanding the case for consideration whether to strike a five-year sentence enhancement on a burglary conviction, because of a two-year delay between case-fully-briefed and submission-for-decision. (*People v. Johnson* (Dec. 1, 2020, No. C080001) 2020 WL 7039151 (Raye, J.).)

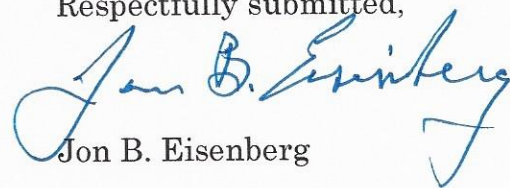
Some of my colleagues say they are reluctant to take child custody appeals in the Third Appellate District for fear of wasting their clients’ money and injecting years of uncertainty into the child’s life. In criminal cases, delays approaching the

length of the disputed sentence are commonplace. This sort of dysfunction undermines the public's faith in the judiciary's availability to resolve disputes.

If anything could be said in mitigation, it might be that, according to the Judicial Council's annual Court Statistics Reports, over the past decade the Third Appellate District's average annual notice of appeal filings per authorized Justice has exceeded the statewide average by some 16 percent. But the Third Appellate District's comparatively heavier caseload does not excuse the above-described underperformances by Justices Raye, Blease, and Murray in comparison with their colleagues at the Third Appellate District and elsewhere.<sup>4</sup>

More than three decades ago, in a different context, Justice Richard D. Huffman commented on "the philosophy underlying the [Trial Court Delay Reduction Act of 1986] that justice delayed is justice denied and the unmistakable requirement that the judiciary now take active management and control of cases, from start to finish, for speedy dispute resolution." (*Laborers' Internat. Union of North America v. El Dorado Landscape Co.* (1989) 208 Cal.App.3d 993, 1007; accord, *In re Elkins* (Rev. Dept. State Bar Ct., Nov. 17, 2009, No. 05-0-03819) 2009 WL 3878295, \*1 [same purpose underlies 90-day rule for adjudication of submitted cases].) Likewise here, justice delayed has been justice denied.

Respectfully submitted,



Jon B. Eisenberg

---

<sup>4</sup> It does, however, suggest that the California Supreme Court should consider ordering a transfer of cases from the Third Appellate District to other Courts of Appeal with significantly lighter caseloads (most notably the First Appellate District) pursuant to rule 10.1000(a)(1)(C) of the California Rules of Court, to ease the burden on the Third Appellate District and provide some relief to its litigants.