

SUPREME COURT OF APPEALS OF WEST VIRGINIA

2013 Statistical Report

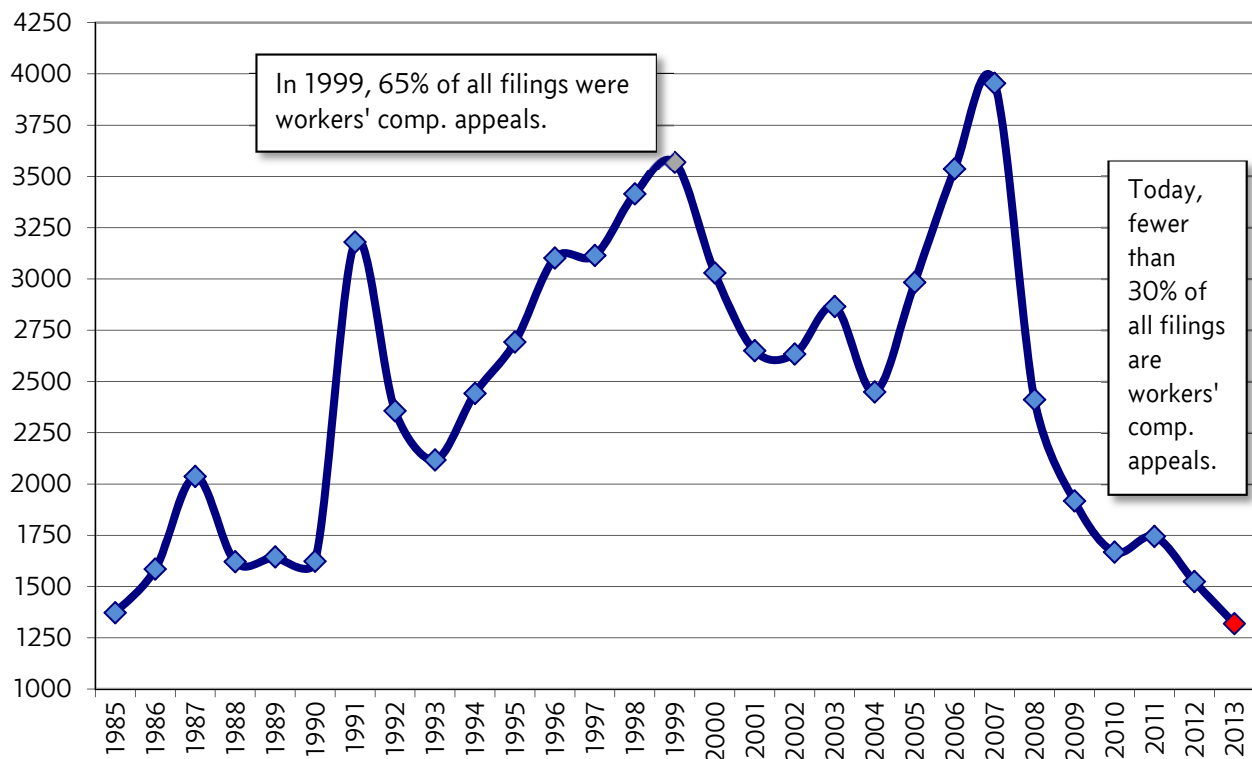
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Case Filings Continue to Decline

Case filings in 2013 continued to decline, reaching the lowest level since 1985. Over the last fifteen years, new case filings have fallen by more than sixty percent. In 1999, a total of 3,569 new cases were filed, compared to 1,319 in 2013. The following chart depicts the trend.

Total Filings 1985 - 2013

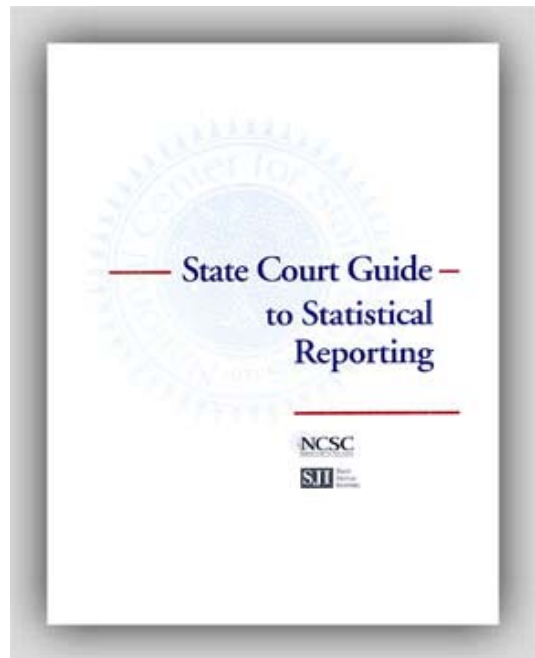


Workers' compensation appeals were the most important factor in decline of the Court's caseload over the previous decade. Incoming cases reached an all-time high in 2007, when 3,954 new cases were filed, due to the fact that two-thirds of new filings were workers' compensation appeals. This disproportionate number of incoming cases was a result of the administrative transition in the workers' compensation system, and it was temporary. Now that the legislative reforms and privatization of the workers' compensation system in West Virginia have been fully

implemented, the number of incoming workers' compensation appeals was 364 last year. Thus, workers' compensation appeals made up only twenty-seven percent of case filings last year, which is the lowest percentage since 1986.

Increased Detail in Case Type Categories Shows Breadth of the Court's Workload

When most people consider the type of cases that a state supreme court handles, they might imagine that important business disputes or weighty constitutional questions take up most of the Court's time. In fact, cases of that nature are relatively rare. Instead, the vast majority of the work of the Court involves criminal appeals, abuse and neglect appeals, workers' compensation appeals, administrative appeals, and cases involving property and contract disputes. In order to bring a higher degree of transparency to the work of the Court and to foster better public understanding of the caseload, in 2011 this Court began implementing the national reporting guidelines¹ developed in the *State Court Guide to Statistical Reporting* by the National Center for State Courts.



The first component of the *Guide* to be implemented was the use of detailed case type codes to identify merits decisions on the Court's website.² Beginning in 2011, the Court's caseload was reported using the more detailed case types set forth in the *Guide*. Although this departure from the method used in prior years will make comparisons slightly more difficult — at least initially — use of the case types set forth in the *Guide* will modernize West Virginia's



appellate case reporting and bring West Virginia into parity with the growing number of states who seek to better understand their appellate caseload. Continuing this effort, this year's report adds a section on *Clearance Rates* (see page 6). This tool is part of the CourTools³ package of performance measures designed by the National Center for State Courts to provide a well-targeted set of indicators on how well appellate courts handle cases.

The table below shows the distribution of incoming filings in 2013 as compared to the previous two years. Overall, eighty-five percent of incoming filings are appeals by right, which the Court is required to decide on the merits. The remaining fifteen percent of filings fall into the original jurisdiction/other category, in which the Court continues to have discretionary review. Filings in 2013 dropped thirteen percent overall compared to last year.

Appeals By Right	2011	2012	2013	Change
Abuse & Neglect	229	195	177	-18
Administrative	68	32	38	+6
Administrative - Tax	8	10	2	-8
Civil - Torts, Contracts, Real Property	208	223	168	-55
Civil - Probate	8	5	1	-4
Civil - Other	158	139	120	-19
Criminal - Felony	214	166	145	-21
Criminal - Misdemeanor	11	9	9	0
Criminal - Other	6	6	10	+4
Domestic Violence	3	4	2	-2
Family	45	48	51	+3
Workers' Compensation	532	446	364	-82
Total Appeals by Right	1,744	1,524	1,087	-196
Original Proceeding/Other				
Certiorari	2	1	1	0
Certified Question	7	13	12	-1
Habeas Corpus	45	43	34	-9
Mandamus	88	68	79	+11
Prohibition	71	71	63	-8
Petition for Bail	5	5	4	-1
Lawyer Discipline	35	34	34	0
Judicial Discipline	0	6	3	-3
Lawyer Admission	1	0	2	2
Total Original Proceeding/Other	254	241	232	-9
GRAND TOTAL	1,744	1,524	1,319	-205
13% Decrease Over Last Year				

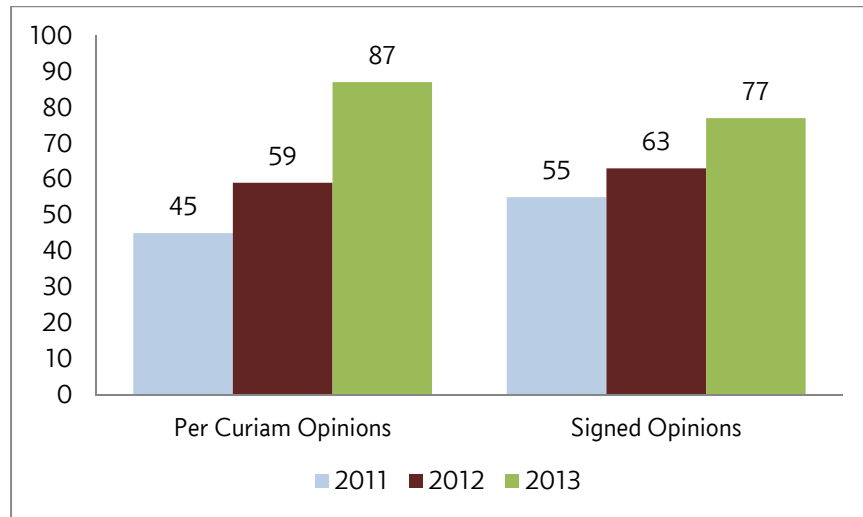
Implementing the Appeal by Right Continues to Increase the Number of Decisions on the Merits

IN LATE 2010 the Supreme Court of Appeals of West Virginia made sweeping changes to its rules of procedure. The new rules eliminate the appeal by permission and replace it with an appeal by right. As confirmed by the National Center for State Courts, the rule changes implemented in late 2010 define the appeal by right as a case that the Court *must* review, instead of a case that the Court can *choose* to review. What this means for litigants is that each properly prepared appeal is *fully decided on its merits*, and appeals are no longer refused.

In 2011, which was the first year of implementing the appeal by right, the number of merits decisions issued by the Court more than tripled when compared to the previous system. In 2012, the increase continued, with a thirty-four percent increase in the total number of decisions over the prior year. In 2013 the Court continued to increase its productivity by issuing a total of 1,360 decisions on the merits, which is double the number of decisions issued in 2011.

Decisions on the Merits	2011	2012	2013
Abuse & Neglect	145	201	169
Administrative	27	35	40
Administrative - Tax	3	2	4
Civil - Torts, Contracts, Real Property	92	104	169
Civil - Probate	3	5	7
Civil - Other	37	94	173
Criminal - Felony	105	105	207
Criminal - Misdemeanor	7	6	8
Criminal - Other	3	1	4
Family	23	25	55
Workers' Compensation	209	297	445
Certiorari	1	0	1
Certified Question	1	4	9
Habeas Corpus	0	0	0
Mandamus	4	9	3
Prohibition	12	14	19
Lawyer Discipline	5	5	7
Judicial Discipline	0	1	1
Lawyer Admission	1	0	1
GRAND TOTAL	678	908	1,360
			100% increase since 2011

The overall increase in decisions on the merits includes a continued increase in the number of opinions. The Court issued a total of 164 opinions in 2013, compared with 122 opinions in 2012, and 100 opinions in 2011. For fifty-three years of the Court's history fewer than one hundred opinions were issued, and the number of opinions issued last year signals the Court's continuing commitment to fulfill its constitutional role of establishing the common law through published opinions. The Court issues two types of published opinions. Signed opinions are used when a new point of law is announced, while *per curiam* opinions are used to apply settled principles of law to facts necessarily differing from those at issue in signed opinions.⁴



Of the 164 opinions released by the Court in 2013, seventy-seven were signed opinions and eighty-seven were *per curiam* opinions. The ongoing increase in published opinions may signal that the screening mechanisms of the revised appellate process — which were adopted in large part from the Final Report of the West Virginia Independent Commission on Judicial Reform⁵ — are in fact accomplishing the goal of allowing counsel and the Court to identify cases with important legal issues.

The Court continues to keep pace with the number of incoming cases. The Court more than complies with the time standards for appellate courts that are recommended by the American Bar Association, with well over ninety percent of appeals being resolved in less than one year from the date they are mature for consideration. In the case categories that take priority, such as those involving the abuse and neglect of children, the average age at disposition is less than nine months. The lack of delay is very important in these cases because there is no permanency for the children involved until the appeal is fully concluded.

Clearance Rates Demonstrate that the Appeal by Right Has Matured, and the Court is Keeping Pace With Incoming Cases

Implementing the appeal by right required an adjustment period for the Court and its staff. Evidence shows that the adjustment period is now over. The measure of *clearance rates* is a CourTools appellate performance measure that gauges whether a court is keeping up with its incoming caseload. As expected, during the first two years of implementation, clearance rates were less than optimal for some case types. Nevertheless, clearance rates have steadily improved during implementation, and surpassed 100 percent in 2013. This objective measure demonstrates that the Court’s efforts over the last three years have proven to be fruitful.

Appeal By Right Clearance Rates, 2011-2013



ENDNOTES

¹ Version 1.3 of the *State Court Guide to Statistical Reporting* is available online at: <http://www.ncsconline.org/D_Research/csp/CSPStatisticsGuidev1.3.pdf>. The Court Statistics Project has wide variety of reports and other resources available at: <<http://www.courtstatistics.org>>.

² All opinions and memorandum decisions issued by the Court are posted on the Court's website in an integrated decision list that identifies the decision type and case type. The decision type and case type codes are explained using the definitions supplied in the *Guide*. See <<http://www.courtsv.gov/supreme-court/integrated-decision-list-explained.html>>.

³ *CourTools: Appellate Court Performance Measures*. Available at <<http://www.courtools.org/Appellate-Court-Performance-Measures.aspx>>.

⁴ In syllabus points two, three, and four of Walker v. Doe, the Court articulated the difference between signed opinions and *per curiam* opinions. "This Court will use signed opinions when new points of law are announced and those points will be articulated through syllabus points as required by our state constitution." Syl. Pt. 2. "*Per curiam* opinions have precedential value as an application of settled principles of law to facts necessarily differing from those at issue in signed opinions. The value of a *per curiam* opinion arises in part from the guidance such decisions can provide to the lower courts regarding the proper application of the syllabus points of law relied upon to reach decisions in those cases." Syl. Pt. 3. "A *per curiam* opinion may be cited as support for a legal argument." Syl. Pt. 4.

⁵ *Final Report of the West Virginia Independent Commission on Judicial Reform* at 37 (November 15, 2009) Available at: <<http://www.scribd.com/doc/22604435/West-Virginia-Independent-Commission-on-Judicial-Reform-Final-Report>>.