



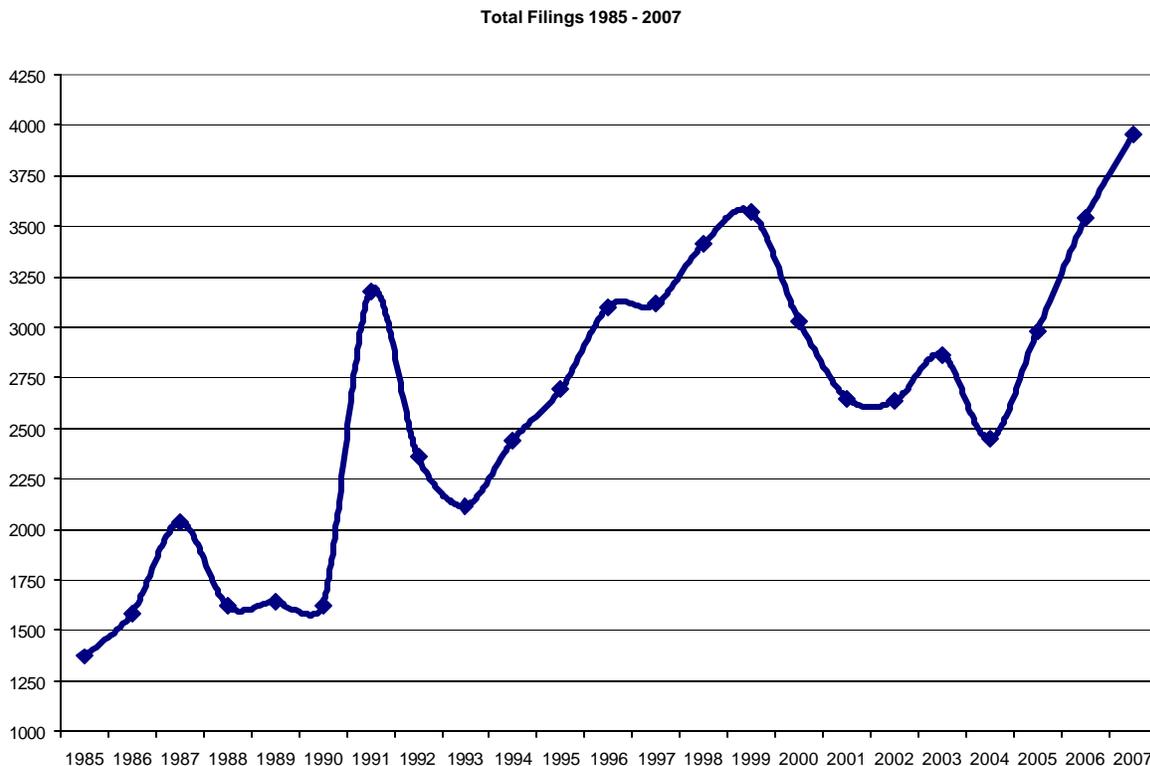
# SUPREME COURT OF APPEALS OF WEST VIRGINIA

## 2007 Statistical Report

### Case Filings

The number of filings in 2007 was the highest in the history of the Court. The total number of new petitions filed in 2007 increased by **410** from the previous year to **3,954**. Filing rates continue to remain especially high when compared to the historical perspective. As illustrated in Figure 1, the number of petitions filed in 2007 was more than twice the number of petitions filed as recently as 1990.

**Figure 1**



The increase in the number of new petitions filed in 2007 is entirely attributable to the **2,894** workers' compensation petitions filed, which is an all-time high, and an increase of **421** filings from 2006. This increase may signal the near-completion of administrative transition in the decision-making body at the agency level, as the Office of Judges and the Board of Review became part of the Office of the Insurance Commissioner.

Apart from workers' compensation cases, filings in 2007 remained steady or dropped slightly. (See Table 1.)

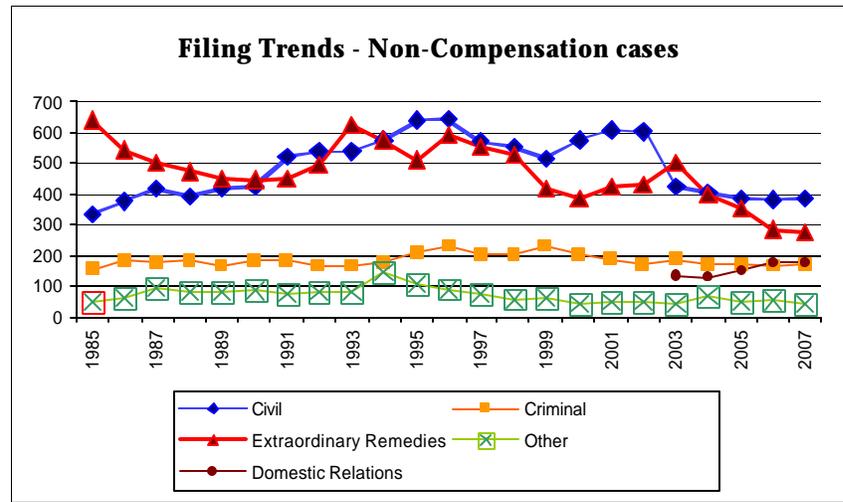
**Table 1'**

	<b>Certified</b>	<b>Certiorari</b>	<b>Civil</b>	<b>Criminal</b>	<b>Domestic</b>	<b>Ethics</b>	<b>Habeas</b>	<b>Mandamus</b>	<b>Pet. Bail</b>	<b>Prohibition</b>	<b>Workers' Comp.</b>	<b>TOTAL</b>
1983	18	9	293	180	—	0	321	132	10	80	116	<b>1159</b>
1984	20	27	306	183	—	1	317	166	20	80	162	<b>1282</b>
1985	12	10	332	157	—	10	367	181	24	81	198	<b>1372</b>
1986	17	6	376	182	—	16	240	196	30	101	421	<b>1585</b>
1987	23	4	422	176	—	20	200	214	52	85	841	<b>2037</b>
1988	21	2	394	182	—	13	195	183	47	96	488	<b>1621</b>
1989	28	7	419	168	—	12	186	141	39	116	528	<b>1644</b>
1990	29	5	426	183	—	17	171	149	40	122	481	<b>1623</b>
1991	35	4	524	181	—	23	149	179	20	118	1947	<b>3180</b>
1992	43	2	538	168	—	25	192	184	12	118	1075	<b>2357</b>
1993	34	2	536	165	—	27	319	187	21	118	708	<b>2117</b>
1994	46	7	575	178	—	69	239	173	30	159	966	<b>2442</b>
1995	27	8	642	209	—	43	218	172	39	114	1220	<b>2692</b>
1996	30	4	646	234	—	33	265	180	30	146	1534	<b>3102</b>
1997	27	5	571	203	—	27	253	164	24	132	1708	<b>3114</b>
1998	15	3	556	207	—	24	230	162	20	131	2067	<b>3415</b>
1999	19	5	519	232	—	27	118	177	16	120	2306	<b>3539</b>
2000	7	3	578	203	—	18	100	199	19	86	1816	<b>3029</b>
2001	15	3	606	189	—	19	96	245	13	84	1380	<b>2650</b>
2002	14	2	605	173	—	17	102	210	18	118	1394	<b>2653</b>
2003	17	3	423	186	136	16	170	236	12	94	1572	<b>2865</b>
2004	30	4	402	174	127	24	108	202	16	83	1279	<b>2449</b>
2005	19	0	388	175	151	21	82	190	11	86	1860	<b>2983</b>
2006	18	0	381	169	179	24	78	104	13	105	2473	<b>3544</b>
<b>2007</b>	<b>8</b>	<b>0</b>	<b>386</b>	<b>175</b>	<b>180</b>	<b>26</b>	<b>74</b>	<b>105</b>	<b>8</b>	<b>98</b>	<b>2894</b>	<b>3954</b>

In 2003, appeals from family court orders and appeals in abuse & neglect cases began to be counted as part of the “Domestic” category. These cases were previously counted as part of the general “Civil” category, thus explaining the apparent dip in civil filings in 2003. After taking this adjustment into account, general civil appeals have remained relatively steady in recent years, showing only a slight decline since 2003.

The number of habeas corpus petitions filed in 2007 was the lowest number since 1983, perhaps in part due to improved conditions in correctional facilities and regional jails. The number of certified questions filed also continued a declining trend since 2004.

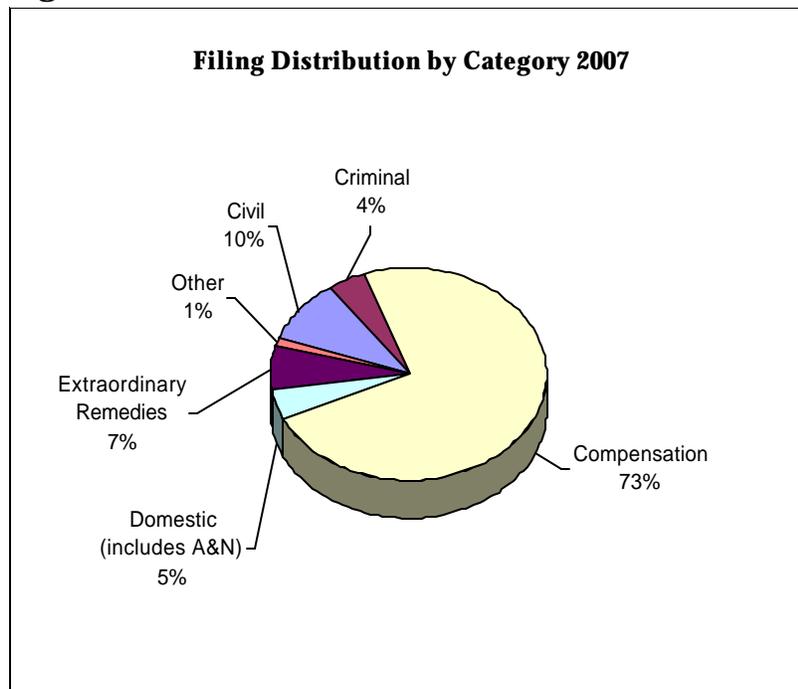
**Figure 2**



In non-compensation cases, filing levels have been steady in certain areas, while fluctuating in other areas, as seen in Figure 2. Criminal filings have remained largely steady since 1985, while requests

for extraordinary remedies have declined in recent years. The general trend in civil filings is upward for the entire period, although recently civil filings have fallen slightly. The number of extraordinary remedies sought changes from year to year, sometimes according to issues such as prison conditions. The category “Other” includes ethics cases, certified questions, and petitions for bail. This category has been largely steady since 1985, apart from a spike in ethics filings in 1994, and a spike in certified questions in 2004.

**Figure 3**



The overall composition of cases filed in 2007, as shown Figure 3, continues to reflect the increasing number of workers’ compensation cases, which made up **nearly three-quarters** of all new filings in 2007. This upward trend is expected to taper off in 2008. Filing levels through the first six months of 2008 confirm this expectation, with workers’ compensation filings on the decline by more than 700 through mid-June.

## Case Disposition

The Court can dispose of cases by a variety of methods, resulting in opinions and orders. Because the Court's review of all petitions is discretionary, some cases are disposed by entry of a refusal order.<sup>2</sup> Other cases are granted and set for argument, but later withdrawn, dismissed, or otherwise disposed of by order. After being granted, most non-compensation cases are disposed of by written opinion. Most compensation appeals that are granted are ultimately disposed of by memorandum order.

In a typical year, the number of case dispositions exceeds or closely matches the number of filings. In recent years, however, two main factors have combined to cause the clearance rate to fall below typical levels. First, dispositions in workers' compensation cases were held in abeyance for about a year beginning in late October 2003, while the Court considered consolidated cases involving the impact of the adoption of Senate Bill 2013, and to what extent the statutory changes could constitutionally be applied retroactively to cases filed before July 1, 2003. See Wampler Foods, Inc. v. Workers' Compensation Div., 216 W.Va. 129, 602 S.E.2d 805 (July 1, 2004). The clearance rate was only **78** percent in 2003. In 2004, as the Court began to clear pending cases after the Wampler decision was issued, the clearance rate rose to **95** percent. The second factor occurred over the next three years, when the extraordinary increase in workers' compensation petitions made it increasingly difficult to keep apace with new filings. Despite the fact that the Court in 2007 reviewed more than double the number of compensation petitions than it reviewed as recently as 2005, the overall clearance rate fell to **64** percent last year. If workers' compensation cases are excluded, however, the clearance rate was **91** percent for 2007. As of January 2008, the average number of days to disposition for non-compensation cases was **165**. Both of these figures are evidence that the Court has not allowed the overload in compensation cases to adversely affect the progress of other cases. The overall breakdown of the number of cases by disposition method is shown in Table 2.

**Table 2**

<b>Disposition Method</b>	<b>Number Disposed in 2007</b>
Signed Opinion	47
Per Curiam Opinion	73
Petition Refused	2193
Memorandum Order	70
Dismissed	58
Withdrawn	48
Moot	0
Disposed by Order	43
<b>TOTAL DISPOSITIONS</b>	<b>2532</b>

In addition to disposing of cases filed, the Court considered **201** pre-petition matters, which is up from last year's total of **170**, and is more comparable to the total of **222** pre-petition matters considered in 2005. Pre-petition matters often involve

emergent questions for litigants, such as whether a stay should be granted pending appeal.

The number of petitions for rehearing remained steady in 2007. In 2000, **31** petitions for rehearing were filed. In 2001, that number more than doubled, to **63**. In 2002, that number increased again, to **87**, nearly three times the number filed in 2000. In 2003, **43** petitions for rehearing were filed. In 2004, that number fell again, to **36** petitions for rehearing filed. In 2005 the number rose slightly to **45**. In 2006, the number fell by almost half, to **23**. That figure held steady in 2007, with **24** petitions for rehearing filed.

## Discretionary Petition Disposition

By narrowing the focus to the disposition of discretionary petitions, rather than the broader area of case disposition, it is possible to determine the percentage of petitions for appeal in several categories that were granted by the Court in 2007. The petition grant rate is based upon the total number of petitions of a given type *actually considered* by the Court in a given year (which will differ from the number of petitions *filed* in a given year). Table 3 sets forth the total number of discretionary petitions considered over the past nine years in each category, along with a percentage of the petitions that were granted for full briefing and argument.

**Table 3<sup>3</sup>**

	Certified Questions		Certiorari		Civil		Abuse & Neglect		Criminal		Domestic		Habeas Corpus		Mandamus		Petition for Bail		Prohibition		Workers' Comp.		Totals	
	Reviewed	Granted %	Reviewed	Granted %	Reviewed	Granted %	Reviewed	Granted %	Reviewed	Granted %	Reviewed	Granted %	Reviewed	Granted %	Reviewed	Granted %	Reviewed	Granted %	Reviewed	Granted %	Reviewed	Granted %	Reviewed	Granted %
1999	17	35%	6	67%	456	30%	96	11%	234	18%	x	x	108	>1%	132	30%	16	0	113	27%	1874	51%	3052	41%
2000	10	60%	4	50%	431	29%	120	>1%	194	21%	x	x	91	>1%	142	39%	17	6%	85	26%	2298	65%	3392	52%
2001	16	69%	0	0	378	39%	135	4%	187	18%	x	x	62	3%	165	15%	14	0	69	26%	2211	51%	3237	42%
2002	14	43%	2	50%	370	35%	118	11%	144	22%	x	x	102	10%	131	21%	16	0	109	28%	1162	42%	2168	34%
2003	14	86%	2	50%	479	32%	84	8%	195	17%	37	27%	132	7%	146	27%	13	0	83	37%	1011	34%	2196	29%
2004	26	69%	5	40%	405	30%	113	5%	182	10%	34	35%	126	6%	109	20%	14	7%	79	20%	1496	40%	2589	32%
2005	20	60%	1	100%	393	30%	90	1%	167	14%	51	22%	82	9%	107	23%	9	22%	77	32%	844	27%	1841	24%
2006	19	42%	0	0	384	21%	130	5%	190	14%	50	14%	87	9%	240	14%	12	0	110	15%	1367	8%	2589	11%
2007	8	38%	0	0	319	27%	136	3%	147	17%	41	37%	69	1%	92	27%	10	0	84	18%	1751	17%	2657	17%

Notable is an increase in the number or workers' compensation petitions considered. In addition, the percentage of petitions granted rose in nearly every case category, yielding an **overall 17 percent of petitions granted in 2007**. The percentage

of workers' compensation cases granted remains lower than prior years, which may be attributed to a number of factors, including a statutory change in the standard of review. (For a graphical representation of this data, see Table 6 on page eight: "Percentage of Discretionary Petitions Granted - Major Case Types - 1999-2007.") As recognized by the National Center for State Courts, "most discretionary petitions filed in both intermediate appellate courts and courts of last resort are denied."<sup>4</sup>

One procedural aspect of review of discretionary petitions bears mention. In some cases, where counsel have requested the opportunity, the Court may invite the petitioner to make an oral presentation of a petition for appeal in open court at a regularly scheduled motion docket. Rule 5(a) of the Rules of Appellate Procedure makes clear that oral presentation is a matter of discretion with the Court: "The Court, at its discretion, may allow . . . oral presentation . . ." This is a departure from practice prior to 1998, when Rule 5 provided that the oral presentation was non-discretionary if requested by the petitioner. Since 2000, the number of cases accepted to the motion docket has generally increased. (See Table 4.)

**Table 4**

<b>YEAR</b>	<b>Number of petitions "Accepted to Motion Docket"</b>
2000	93
2001	69
2002	47
2003	31
2004	119
2005	116
2006	124
2007	137
2008	98 (through June 2, 2008)

### **Caseload Comparison with Comparable Courts**

The steady increase of filings in West Virginia is consistent with the increase of filings nationally over the second half of the twentieth century. In response to the steady increase in filings, the number of states with intermediate appellate courts ("IAC") tripled in the same time period; thirteen states had IACs in 1950, compared with

39 states in 2001. In the past decade, Mississippi, Nebraska, and Utah have created IACs, despite having caseloads smaller than that of West Virginia.

No other comparable appellate court in the country handles as many cases as West Virginia's court of last resort. The most recent (2005) data from the National Center for State Courts continues to confirm West Virginia's position as the busiest appellate court of its type in the country. In 2005, West Virginia's caseload exceeded by nearly a thousand that of the next-busiest state, Nevada, and was more than the states of Delaware, Maine, North Dakota and Rhode Island combined.

Table 5 illustrates the comparable caseload figures for 2005 across jurisdictions without a permanent intermediate appellate court.<sup>5</sup> Other measures appearing in the chart, such as the number of cases filed per 100,000 population, are used to compare judicial workloads across diverse jurisdictions.

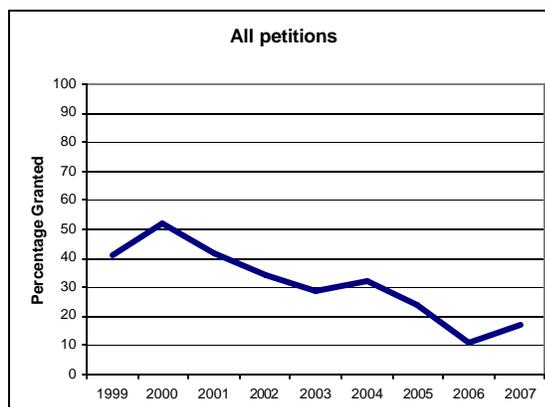
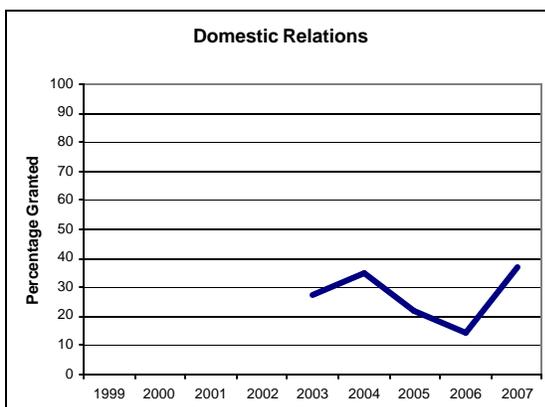
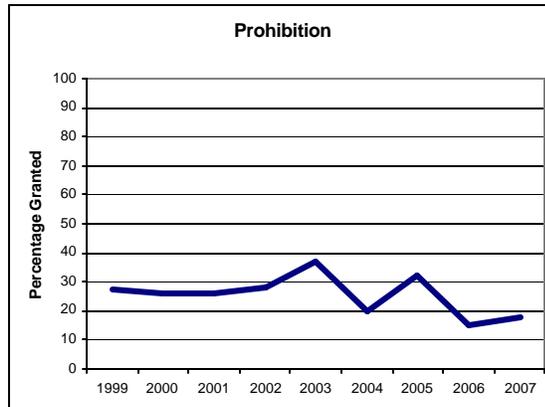
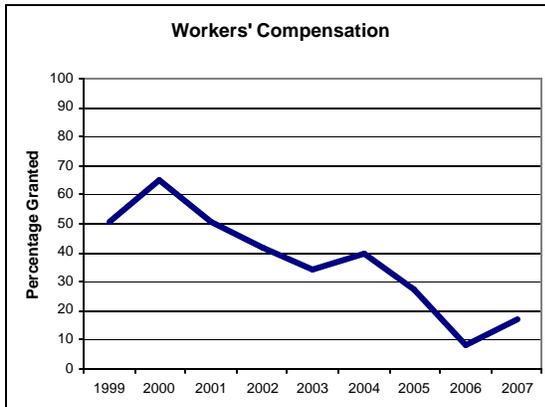
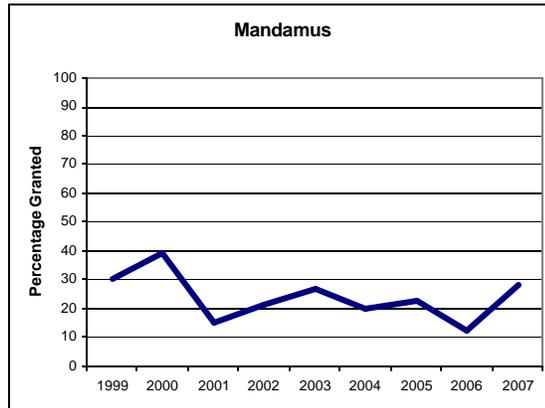
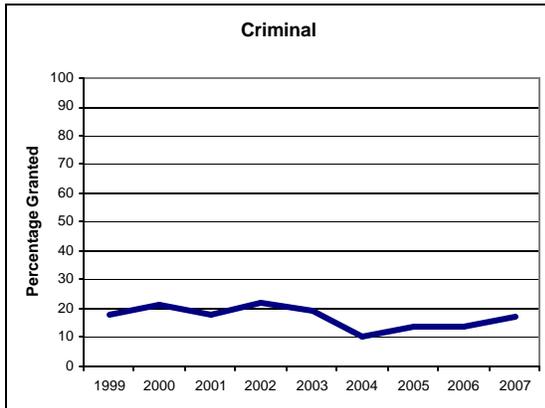
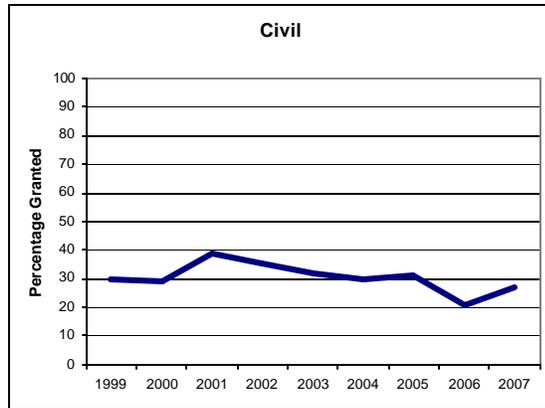
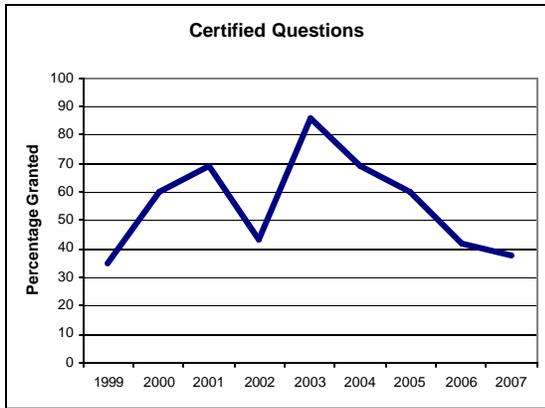
**Table 5**

<b>Jurisdictions Without Intermediate Appellate Courts</b>	<b>Appeals per 100,000 population</b>	<b>Total Filings</b>	<b>Percent Mandatory</b>	<b>Percent Discretionary</b>
Delaware	69	583	100	-
District of Columbia	299	1,648	99	1
Maine	48	629	79	21
Montana	79	738	77	23
Nevada	85	2,058	100	-
New Hampshire	72	939	-	100
North Dakota	74	470	100	-
Rhode Island	32	345	70	30
South Dakota	48	369	84	16
Vermont	85	532	96	4
<b>West Virginia</b>	<b>166</b>	<b>2983</b>	-	<b>100</b>
Wyoming	n/a	n/a	n/a	n/a

Compared to all appellate courts nationwide, in 2005 West Virginia ranked third in the nation in the number of appeals filed per 100,000 population, behind the District of Columbia at **299** and Louisiana at **231**. Florida was fourth at **153** and Puerto Rico fifth at **146**.

Percentage of Discretionary Petitions Granted - Major Case Types - 1999-2007

**Table 6**



---

END NOTES FOR 2007 STATISTICAL REPORT

<sup>1</sup> The figures in Table 1 for the “civil” category have been adjusted for the years 2003 and 2006 in order to correct a computation error. The total civil filings for 2003 were previously reported as 457, when the correct total is 423. The total civil filings for 2006 were previously reported as 468, when the correct total is 381. The computation error was caused when abuse & neglect cases were incorrectly included in the civil totals.

<sup>2</sup> See W.Va. Const. Art. VIII, sec. 4 (An “appeal shall be allowed . . . only upon a petition assigning error . . . and then only after the court . . . shall have examined and considered the record and is satisfied that there is probably error in the record, or that it presents a point proper for the consideration of the court.”)

<sup>3</sup> In Table 3, separate columns are provided for Abuse & Neglect cases, as well as Domestic Relations appeals. Domestic Relations cases arise originally from a family court order, which is then typically appealed to a circuit court. The column for Civil cases includes general civil appeals, cases other than workers’ compensation that arise from administrative agencies, such as tax appeals and appeals from the Public Service Commission. Data for the Domestic Relations category was not collected prior to 2003. Computation errors in the totals for the years 1999, 2000, 2002, 2003 and 2006 have also been corrected. These errors did not affect the percentages.

<sup>4</sup> R. LaFountain, R. Schaffler, S. Strickland, W. Raftery, & C. Bromage, *Examining the Work of State Courts, 2006: A National Perspective from the Court Statistics Project* at 74 (National Center for State Courts 2007). See . . . Among twenty state courts of last resort, West Virginia had the fifth-highest percentage of petitions granted in 2005. This ranking would be higher if the National Center’s percentage was calculated based upon the number of cases *actually considered*, versus the number *filed* in a given year. The Web site of the Court Statistics Project, a joint effort by the Conference of State Court Administrators, the Bureau of Justice Statistics, and the National Center for State Courts, contains a wealth of resources and publications related to court statistics.  
<[http://www.ncsconline.org/d\\_research/csp/CSP\\_Main\\_Page.html](http://www.ncsconline.org/d_research/csp/CSP_Main_Page.html)>

<sup>5</sup> North Dakota has a temporary intermediate appellate court that can be called up from time to time by the North Dakota Supreme Court to handle overload matters. Because its IAC is temporary and not usually activated, North Dakota is counted as a jurisdiction without an intermediate appellate court. The data reported by the National Center for West Virginia in 2005 reflect 3,031 filings rather than 2,983. The correct values have been used in Table 5. Wyoming did not report data for 2005. See *Examining the Work of State Courts, 2006*, Id. at 68.