

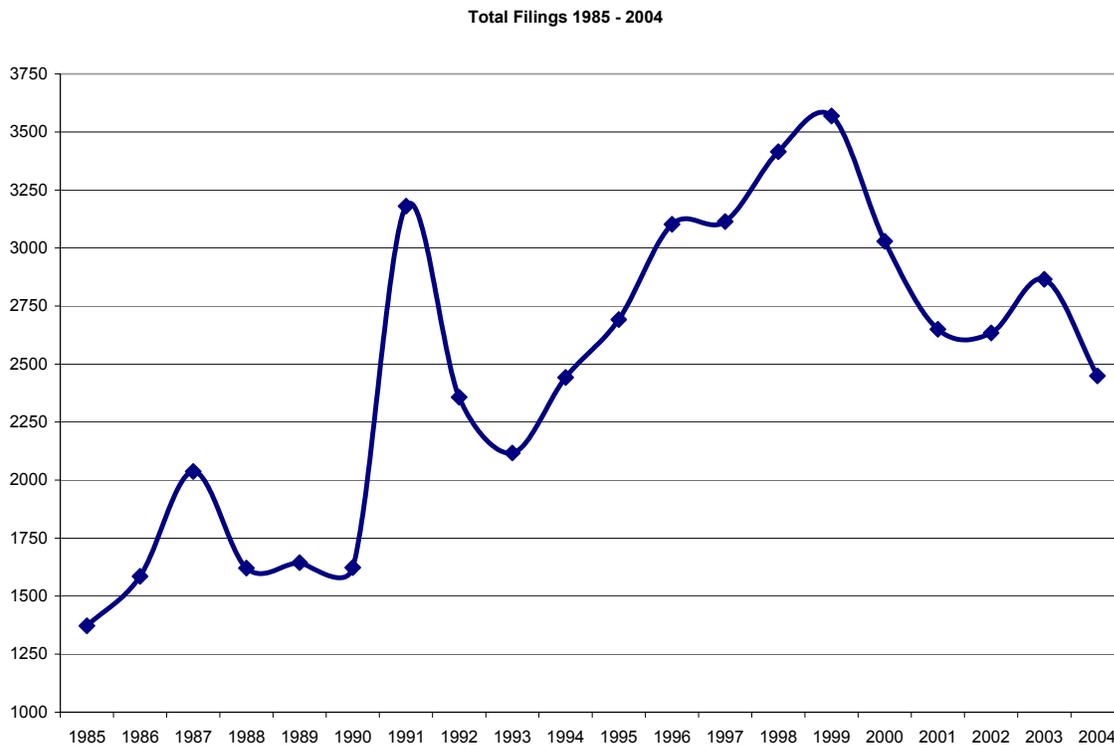


SUPREME COURT OF APPEALS OF WEST VIRGINIA

2004 Statistical Report

Case Filings

The total number of new petitions filed in 2004 decreased over the previous year, falling 416 for a total of **2449**. This decrease across most categories revives a prior three-year decline in new petitions filed. Although filing rates remain high when compared to the historical perspective, last year's filings fell to levels not seen since 1994. As the chart below illustrates, the number of petitions filed last year was still nearly double the number of petitions filed as recently as 1985.



The decrease in the number of new petitions filed in 2004 corresponds with a fall in the number of workers' compensation petitions over the previous year, from **1572** to **1279**. This decrease may be due to administrative transition in the decision-making

body at the Workers' Compensation Commission, as well as the fact that the Court held new decisions in workers' compensation appeals in abeyance for most of the year pending the outcome of *Wampler Foods Inc. v. Workers' Compensation Div.*, 216 W.Va. 129,

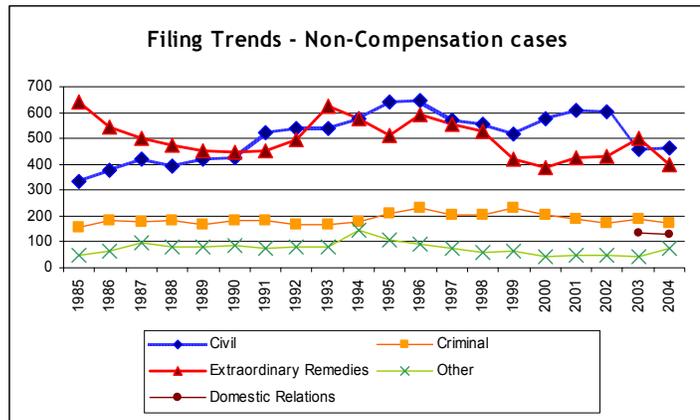
Case Type	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
Certified	12	17	23	21	28	29	35	43	34	46	27	30	27	15	19	7	15	14	17	30
Certiorari	10	6	4	2	7	5	4	2	2	7	8	4	5	3	5	3	3	2	3	4
Civil	332	376	422	394	419	426	524	538	536	575	642	646	571	556	519	578	606	605	457	402
Compensation	198	421	841	488	528	481	1947	1075	708	966	1220	1534	1708	2067	2306	1816	1380	1394	1572	1279
Criminal	157	182	176	182	168	183	181	168	165	178	209	234	203	207	232	203	189	173	186	174
Domestic*	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	136	127
Ethics	10	16	20	13	12	17	23	25	27	69	43	33	27	24	27	18	19	17	16	24
Habeas	367	240	200	195	186	171	149	192	319	239	218	265	253	230	118	100	96	102	170	108
Mandamus	181	196	214	183	141	149	179	184	187	173	172	180	164	162	177	199	245	210	236	202
Pet. Bail	24	30	52	47	39	40	20	12	21	30	39	30	24	20	16	19	13	18	12	16
Prohibition	81	101	85	96	116	122	118	118	118	159	114	146	132	131	120	86	84	118	94	83
TOTAL	1372	1585	2037	1621	1644	1623	3180	2357	2117	2442	2692	3102	3114	3415	3539	3029	2650	2653	2865	2449

602 S.E.2d 805, (Jul 01, 2004). The overall decrease in compensation filings is a return to levels not seen since 1995.

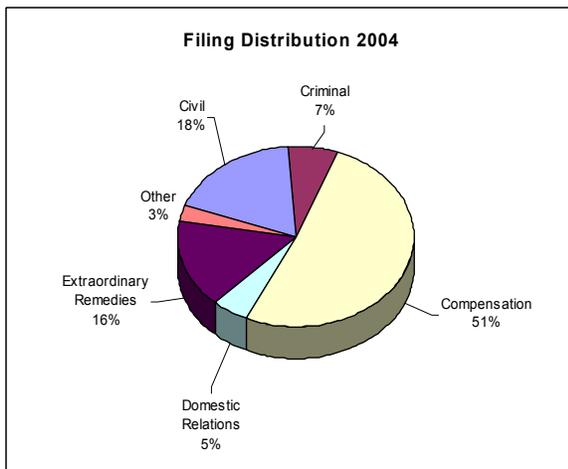
The number of civil filings, at **402**, fell **55** from the previous year's total of **457**. (See the footnote below for explanation of an important change in Civil case category.) Nearly every case category showed a decrease in the number of filings over the prior year. The most notable rise in filings is in the category of **certified questions**, which showed a substantially sharp increase over the prior year, moving from **17** to **30** petitions filed. The relatively small number of cases filed in that category is deceptive, because resolution of certified questions can be a particularly complex endeavor both for the attorneys involved and for the Court. See, e.g. *In Re: Flood Litigation*, ___ W. Va. ___, 607 S.E.2d 863 (December 9, 2004)(Addressing nine certified questions from the Mass Litigation Panel); *McMahon v. Advanced Title Services Co. of West Virginia*, ___ W.Va. ___, 607 S.E.2d 519 (December 3, 2004)(Addressing six certified questions from the Circuit Court of Brooke County); *Barefield v. DPIC Companies, Inc.*, 215 W.Va. 544, 600 S.E.2d 256 (June 25, 2004)(Addressing a certified question from the United States District Court for the Northern District of West Virginia); *Martino v. Barnett*, 215 W.Va. 123, 595 S.E.2d 65 (March 15, 2004)(Answering three certified questions from the Circuit Court of Harrison County); *Burrows v. Nationwide Mut. Ins. Co.*, 215 W.Va. 668, 600 S.E.2d 565 (February 19, 2004)(Answering two certified questions from the United States District Court for the Southern District of West Virginia).

* **NOTATION OF STATISTICAL ADJUSTMENT:** For the first time this year, the filing chart reflects a separate category for Domestic cases. These cases were previously counted as part of the Civil category. The new Domestic filing category includes appeals from cases originating in family court, as well as appeals in Abuse & Neglect cases, which were previously counted as part of the general Civil category. This change is to comply with new statistical reporting standards established by the National Center for State Courts. The figures for 2003 and 2004 in the case

Filing Trends: For non-compensation cases, filing levels have been steady in certain areas, while fluctuating in other areas, as seen in the chart at right. Criminal filings have remained largely steady since 1985, while civil filings and requests for extraordinary remedies have fluctuated.



The general trend in civil filings is upward for the entire period, though civil filings have fallen off considerably since 1996. The number of extraordinary remedies sought, (including mandamus, prohibition, habeas corpus, and certiorari), 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.



The overall composition of cases filed in 2004, as shown in the chart at left, was consistent with the prior year. Workers’ compensation appeals made up only 51% of all new petitions filed, down from levels in excess of 65% seen in prior years, and continuing a downward trend in that area.

Case Disposition

The Court can dispose of cases by a variety of methods, resulting in opinions and orders. Because all petitions are discretionary (except for ethics cases), some cases are disposed by entry of a refusal order. Other cases are granted and set for argument, but

filing chart have been adjusted to reflect this transition. In some other charts in this report, the distinction between Domestic Relations cases and Abuse & Neglect cases is maintained.

later withdrawn, dismissed, or otherwise disposed by order. Most non-compensation cases that persist after being granted are disposed by written opinion. Most compensation appeals are disposed by memorandum order.

Since 1999, the number of case dispositions has far exceeded the number of filings because the Court worked to clear a substantial increase in the compensation filings in previous years. However, because dispositions in workers' compensation cases were held in abeyance for about a year beginning in late October 2003, the clearance rate was only 78% in 2003. In 2004, as the Court began to clear pending cases after the *Wampler* decision was issued, the clearance rate rose to 95%, with the Court disposing of a total of 2338 cases.

For a breakdown of the number of cases by disposition method, please refer to the following chart:

Disposition Method	Number Disposed in 2004
Signed Opinion	57
Per Curiam Opinion	102
Petition Refused	1745
Memorandum Order	181
Dismissed	58
Withdrawn	52
Moot	103
Disposed by Order	40
TOTAL DISPOSITIONS	2338
2004 Clearance Rate = 95%	

In addition to disposing of cases filed, the Court considered and disposed of 136 pre-petition matters in 2004, which is generally up from prior years. 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 filed continued to decrease in 2004. 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.

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 full review by the Court last year. 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). The chart below sets forth the total number of discretionary petitions considered over the past six years in each category, along with a percentage of the petitions that were granted for full briefing and argument.

Case Type	1999		2000		2001		2002		2003		2004	
	Petitions Reviewed	% Granted										
Certified	17	35%	10	60%	16	69%	14	43%	14	86%	26	69%
Certiorari	6	67%	4	50%	0	0%	2	50%	2	50%	5	40%
Civil	456	30%	431	29%	378	39%	370	35%	479	32%	405	30%
Abuse & Neglect	96	11%	120	.025%	135	4%	118	11%	84	8%	113	5%
Compensation	1874	51%	2298	65%	2211	51%	1162	42%	1011	34%	1496	40%
Criminal	234	18%	194	21%	187	18%	144	22%	195	17%	182	10%
Domestic	—	—	—	—	—	—	—	—	37	27%	34	35%
Habeas Corpus	108	.05%	91	.02%	62	3%	102	10%	132	7%	126	6%
Mandamus	132	30%	142	39%	165	15%	131	21%	146	27%	109	20%
Petition for Bail	16	0%	17	6%	14	0%	16	0%	13	0%	14	7%
Prohibition	113	27%	85	26%	69	26%	109	28%	83	37%	79	20%
TOTAL	3063	41%	3403	52%	3237	42%	2171	34%	2159	29%	2589	32%

Notable is a decrease in the percentage of workers' compensation petitions granted, down to **40%**, reflecting a leveling downward trend in that area. If compensation petitions are excluded, the Court's overall percentage of petitions granted is **20.49%**, down from **25%** in 2003. This is in contrast to the percentage granted in most other states. State supreme courts nationwide granted about **13%** of the discretionary petitions filed in 2001. (For a graphical representation of this data, see page 7: Percentage of Discretionary Petitions Granted - Major Case Types - 1999-2004.)

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") has tripled in the same time period; 13 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 this Court. The most recent (2002) data from the National Center for State Courts confirms this Court's position as the busiest appellate court of its type in the country. In 2002,

West Virginia’s caseload was nearly 1.5 times that of the next busiest state, Nevada, and more than the states of Delaware, Maine, North Dakota and Rhode Island combined.

The chart below illustrates the comparable caseload figures for 2002 across the states without an intermediate appellate court. 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.

States Without Intermediate Appellate Courts	Appeals per 100,000 population	Total Filings	Percent Mandatory	Percent Discretionary
Delaware	89	715	100	-
Maine	57	738	76	24
Montana	88	798	73	27
Nevada	79	1723	100	-
New Hampshire	64	813	-	100
North Dakota	57	363	94	6
Rhode Island	70	754	45	55
South Dakota	60	457	84	16
Vermont	86	530	97	3
West Virginia	147*	2653	-	100
Wyoming	-	-	100	-

National court data obtained from B. Ostrom, N. Kauder, & R. LaFountain, *Examining the Work of State Courts, 2003: A National Perspective for the Court Statistics Project* (National Center for State Courts 2004).

* West Virginia ranks third in the nation in the number of appeals filed per 100,000 population, behind Louisiana with **294** and the District of Columbia with **266**. Wyoming did not provide data for 2002.

Percentage of Discretionary Petitions Granted - Major Case Types - 1999-2004

