

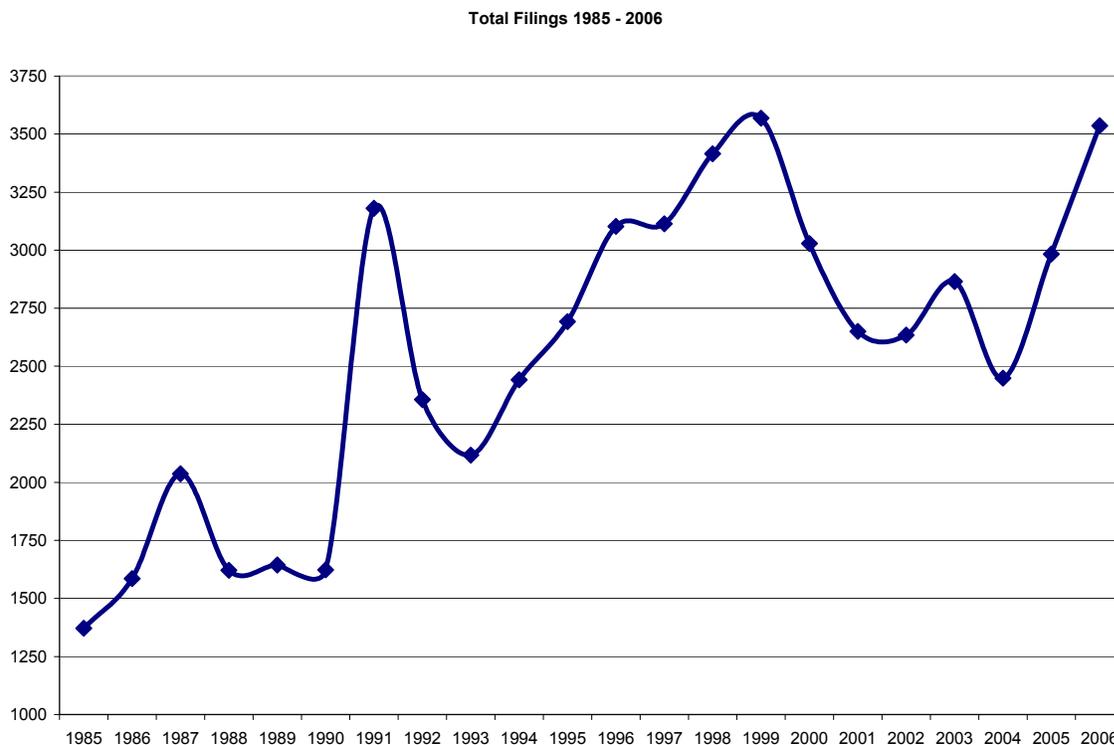


SUPREME COURT OF APPEALS OF WEST VIRGINIA

2006 Statistical Report

Case Filings

The total number of new petitions filed in 2006 increased by **561** from the previous year to **3,544**. The increase in filings continues to reverse a recent declining trend. Filing rates continue to remain high when compared to the historical perspective. As the chart below illustrates, the number of petitions filed in 2006 was more than twice the number of petitions filed as recently as 1985.



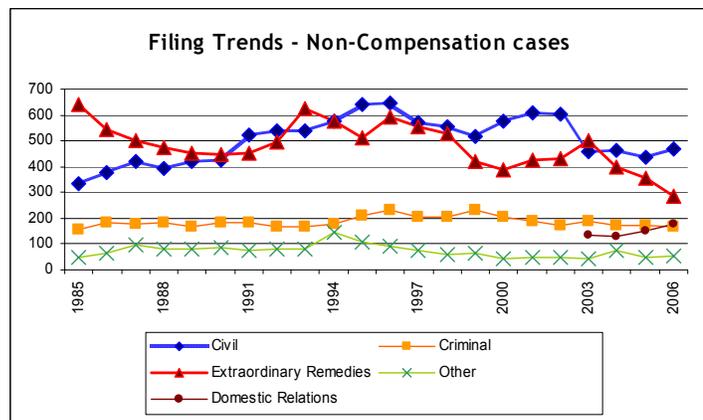
The increase in the number of new petitions filed in 2006 is almost entirely attributable to the **2,473** workers' compensation petitions filed, which is an all-time high, and an increase of **613** filings from 2005. This increase may signal the near-completion of administrative transition in the decision-making body at the agency level, as the Office of Judges and the Board of Review became part of the Office of the Insurance Commissioner.

As depicted in the chart below, in most other categories, filings in 2006 remained steady or dropped slightly.

Case Type	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
Certified	17	23	21	28	29	35	43	34	46	27	30	27	15	19	7	15	14	17	30	19	18
Certiorari	6	4	2	7	5	4	2	2	7	8	4	5	3	5	3	3	2	3	4	0	0
Civil	376	422	394	419	426	524	538	536	575	642	646	571	556	519	578	606	605	457	402	388	468
Compensation	421	841	488	528	481	1947	1075	708	966	1220	1534	1708	2067	2306	1816	1380	1394	1572	1279	1860	2473
Criminal	182	176	182	168	183	181	168	165	178	209	234	203	207	232	203	189	173	186	174	175	169
Domestic*	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	136	127	151	179
Ethics	16	20	13	12	17	23	25	27	69	43	33	27	24	27	18	19	17	16	24	21	24
Habeas	240	200	195	186	171	149	192	319	239	218	265	253	230	118	100	96	102	170	108	82	78
Mandamus	196	214	183	141	149	179	184	187	173	172	180	164	162	177	199	245	210	236	202	190	104
Pet. Bail	30	52	47	39	40	20	12	21	30	39	30	24	20	16	19	13	18	12	16	11	13
Prohibition	101	85	96	116	122	118	118	118	159	114	146	132	131	120	86	84	118	94	83	86	105
TOTAL	1585	2037	1621	1644	1623	3180	2357	2117	2442	2692	3102	3114	3415	3539	3029	2650	2653	2865	2449	2983	3544

The number of civil filings, at **468**, increased from total of 388 in 2005. (See the footnote below for explanation of an important change in Civil case category.) Domestic filings increased slightly, but nearly every case category showed a decrease in the number of filings over the prior year.

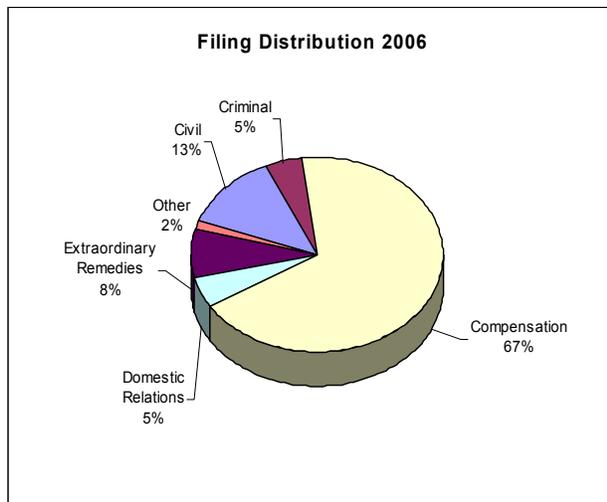
Filing Trends: For non-compensation cases, filing levels have been steady in certain areas, while fluctuating in other areas, as seen in the chart at right. Criminal filings have remained largely steady since 1985, while civil filings and requests for extraordinary remedies have declined in recent years.



The general trend in civil filings is upward for the entire period, although civil filings have fallen off considerably since 1996. The number of extraordinary remedies sought (including mandamus,

* **NOTATION OF STATISTICAL ADJUSTMENT:** Beginning in 2003, 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 - 2006 in the case 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.

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 2006, as shown in the chart at left, continued a change from 2004, when compensation appeals made up only 51% of new filings. At 67% of all new filings, compensation appeals exceeded levels in excess of 65% seen in prior years, with the upward trend expected to continue at least through 2007 and early 2008, as the administrative agency transition is completed.

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 later withdrawn, dismissed, or otherwise disposed by order. After being granted, most non-compensation cases 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 has 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 2,338 cases. With the sharp increase in workers' compensation filings in both 2005 and 2006, however, the overall clearance rate fell to 80%. If workers' compensation cases are excluded, the clearance rate was 120% for 2006, and the average number of days to disposition for non-compensation cases was 170.

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

Disposition Method	Number Disposed in 2006
Signed Opinion	60
Per Curiam Opinion	61
Petition Refused	2,304
Memorandum Order	122
Dismissed	79
Withdrawn	52
Moot	5
Disposed by Order	38
TOTAL DISPOSITIONS	2,721

In addition to disposing of cases filed, the Court considered **170** pre-petition matters, down from a total of **222** pre-petition matters in 2005, but more than the **136** pre-petition matters in 2004. 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 declined in 2006. 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**.

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 in 2006. 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 on page five sets forth the total number of discretionary petitions considered over the past seven 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		2005		2006	
	Petitions Reviewed	% Granted														
Certified	17	35%	10	60%	16	69%	14	43%	14	86%	26	69%	20	60%	19	42%
Certiorari	6	67%	4	50%	0	0%	2	50%	2	50%	5	40%	1	100%	0	0%
Civil	456	30%	431	29%	378	39%	370	35%	479	32%	405	30%	393	31%	349	21%
Abuse & Neglect	96	11%	120	.025%	135	4%	118	11%	84	8%	113	5%	90	1%	130	5%
Compensation	1874	51%	2298	65%	2211	51%	1162	42%	1011	34%	1496	40%	844	27%	1367	8%
Criminal	234	18%	194	21%	187	18%	144	22%	195	17%	182	10%	167	14%	190	14%
Domestic	—	—	—	—	—	—	—	—	37	27%	34	35%	51	22%	50	14%
Habeas Corpus	108	.05%	91	.02%	62	3%	102	10%	132	7%	126	6%	82	9%	87	9%
Mandamus	132	30%	142	39%	165	15%	131	21%	146	27%	109	20%	107	23%	240	14%
Bail	16	0%	17	6%	14	0%	16	0%	13	0%	14	7%	9	22%	12	0%
Prohibition	113	27%	85	26%	69	26%	109	28%	83	37%	79	20%	77	32%	110	15%
TOTAL	3063	41%	3403	52%	3237	42%	2171	34%	2159	29%	2589	32%	1841	24%	2589	11%

Notable is a continuing decrease in the percentage of workers' compensation petitions granted, down to 8%, reflecting a continued downward trend in that area. The overall percentage of cases granted is down significantly from prior years, due largely to the drop in compensation cases granted, which can be attributed to a number of factors, including a statutory change in the standard of review. (For a graphical representation of this data, see page 7: "Percentage of Discretionary Petitions Granted - Major Case Types - 1999-2006.")

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; 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 (2004) data from the National Center for State Courts confirms the West Virginia court's position as the busiest appellate court of its type in the country. In 2004, West Virginia's caseload exceeded by more than a thousand that of the next-busiest state, Nevada, and was more than the states of Delaware, Maine, North Dakota and Rhode Island combined. As reported by the National Center for State Courts, the nation was evenly split between appellate courts where caseloads have increased over the past ten years, and those where caseloads have decreased. West Virginia has experienced a growth in its caseload over the past ten years, with a 17% increase between 1994 and 2003.

The chart below illustrates the comparable caseload figures for 2004 across jurisdictions 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.

Jurisdictions Without Intermediate Appellate Courts	Appeals per 100,000 population	Total Filings	Percent Mandatory	Percent Discretionary
Delaware	68	564	100	-
District of Columbia	318	1762	99	1
Maine	52	679	77	23
Montana	95	882	79	21
Nevada	81	1896	100	-
New Hampshire	70	906	-	100
North Dakota	60	379	96	4
Rhode Island	36	394	68	32
South Dakota	53	405	88	12
Vermont	95	554	95	5
West Virginia	134	2433	-	100
Wyoming	54	272	100	-

Compared to all appellate courts nationwide, in 2004 West Virginia ranked fifth in the nation in the number of appeals filed per 100,000 population, behind the District of Columbia at **318**, Louisiana at **280**, Florida at **153** and Puerto Rico at **141**.

National court data obtained from R. Schaffler, R. LaFountain, N. Kauder, & S. Strickland, *Examining the Work of State Courts, 2005: A National Perspective from the Court Statistics Project* at 72-78 (National Center for State Courts 2006).*

* 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>

Percentage of Discretionary Petitions Granted - Major Case Types - 1999-2006

