

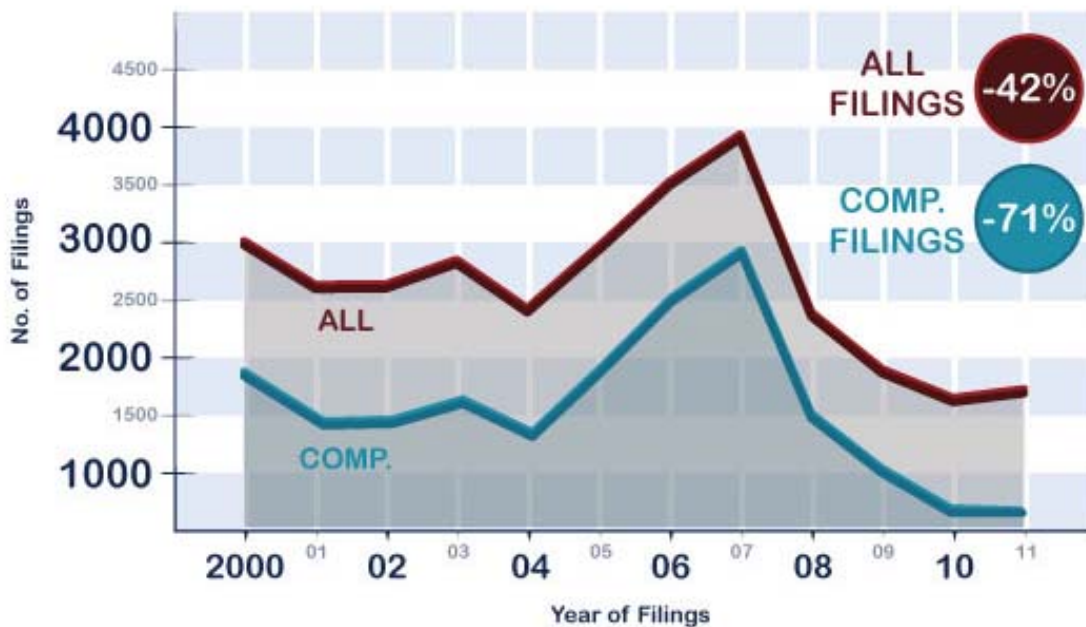
SUPREME COURT OF APPEALS OF WEST VIRGINIA

2011 Statistical Report

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Significant Overall Decline in Caseload Since 2000

The Court's caseload has fallen by forty-two percent since 2000. In that year, a total of 3,029 new cases were filed, compared to 1,744 in 2011.

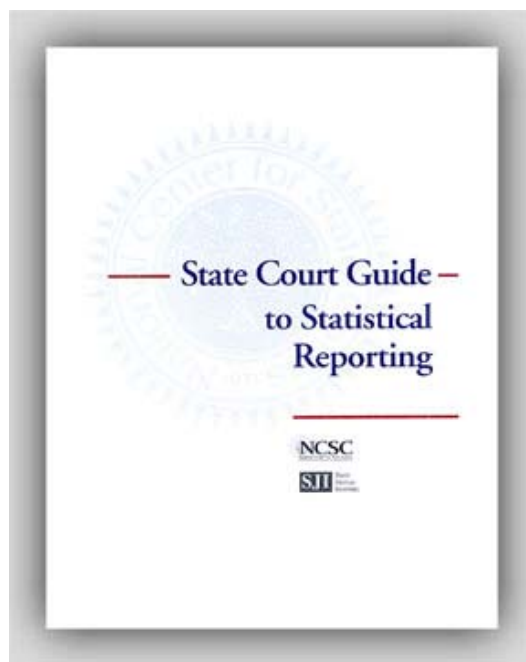


Workers' compensation appeals were the most important factor in the Court's caseload over the previous decade. Incoming cases reached an all-time high in 2007, when 3,954 new cases were filed. At that time, nearly two-thirds of new filings were workers' compensation appeals. This disproportionate number 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 accomplished, the number of incoming workers' compensation appeals was 532 last year, a drop of seventy-one percent since 2000.

When compared to national markers, the overall forty-two percent decline is quite significant. According to the most recent data available from the National Center for State Courts, the total number of incoming cases in courts of last resort fell by fourteen percent between 2000 and 2009. The decline in West Virginia exceeds the national average by over twenty-five percentage points.

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

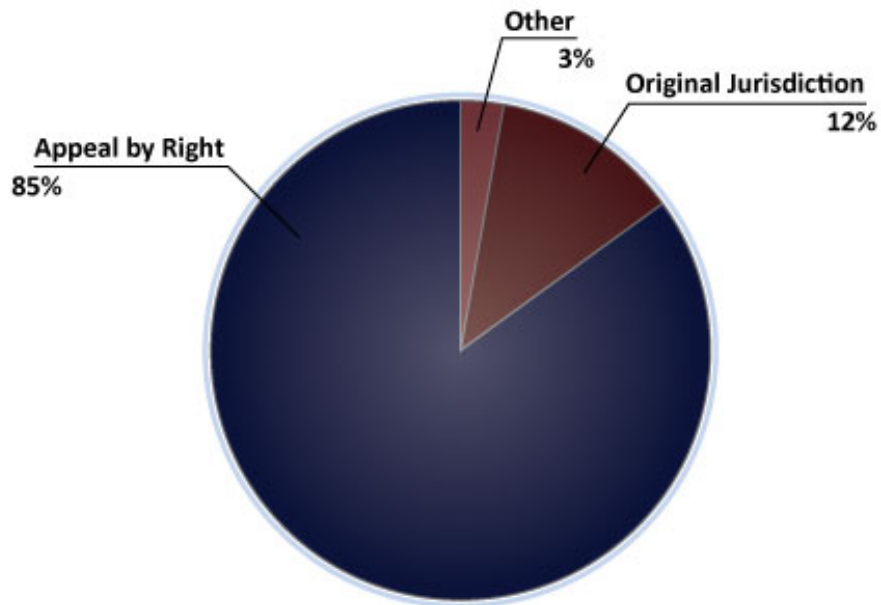
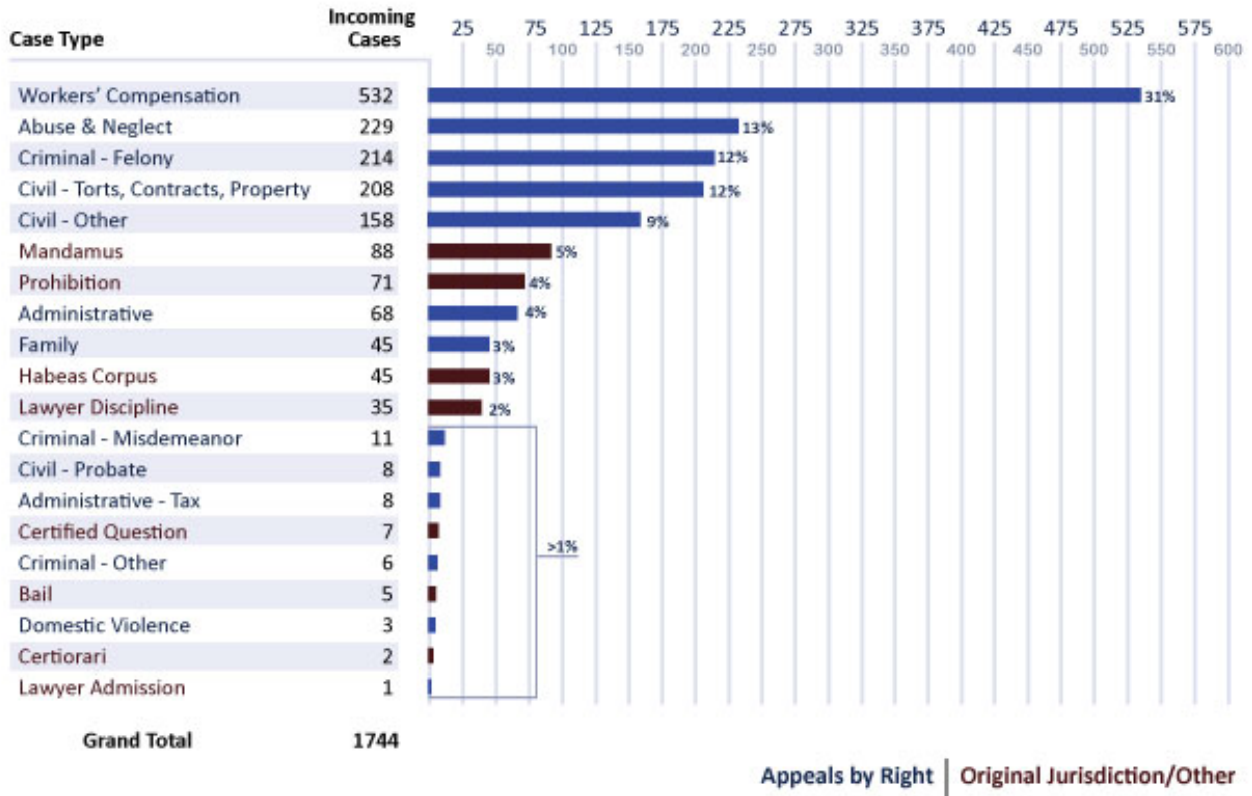
When most people consider the type of cases that a state supreme court handles, they might imagine that important business disputes or weighty constitutional questions take up most of the Court's time. In fact, cases of that nature are relatively rare. Instead, the vast majority of the work of the Court 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 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 In coming years additional components of the *Guide* will be implemented as well, such as more detailed reporting on the manner of disposition.

Beginning in 2011, the Court's caseload will be 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.

This chart shows the distribution of incoming filings in 2011. Over half of the filings are in worker's compensation, abuse & neglect and criminal felony appeals.



Direct year-to-year comparisons are limited because cases in prior years have not been classified with the modern case type codes. Nevertheless, some comparisons can be made.

Overall case filings in 2011 increased by less than five percent from the prior year. The number of compensation filings dropped by thirteen percent, continuing a declining trend. Overall original jurisdiction filings also fell by twenty-two percent. Offsetting those declines were increases in appeals from cases involving criminal sentences and termination of parental rights, which is to be expected when implementing an appeal by right. Notably, the twenty-three percent increase in the "Civil" category is due almost entirely to an increase in appeals from post-conviction habeas corpus orders. (Post-conviction habeas corpus challenges by incarcerated persons are civil proceedings.) It is perhaps worth noting that in almost all of these cases the costs for counsel and other costs related to the appeal are borne by the state and county, because each these three case types involves a very high percentage of court-appointed counsel, along with counsel for the State on the other side. Finally, administrative appeals such as those involving license revocations increased, although the increase is partially due to more accurate case type assignment in light of the use of the *Guide*.

Case Filings Comparison (2010 - 2011)

Appeals by Right	2010	2011	Change
Abuse & Neglect	182	229	25.82%
Civil	304	374	23.03%
Civil - Admin	39	76	94.87%
Compensation	610	532	-12.79%
Criminal	185	231	24.86%
Family	36	48	33.33%
Appeals by Right Subtotal	1356	1490	9.88%
Original Jurisdiction			
Certiorari	2	2	0.00%
Habeas Corpus	71	45	-36.62%
Mandamus	114	88	-22.81%
Prohibition	80	71	-11.25%
Original Jurisdiction Subtotal	267	206	-22.85%
Other			
Certified Questions	12	7	-41.67%
Bail	7	5	-28.57%
Lawyer Discipline	26	35	34.62%
Judicial Discipline	0	0	0.00%
Lawyer Admission	0	1	100.00%
Other Subtotal	45	48	6.67%
GRAND TOTALS	1668	1744	4.56%

Implementing the Appeal by Right Results in Triple the Number of Decisions on the Merits

IN LATE 2010 the Supreme Court of Appeals of West Virginia made historic 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.

2011 Combined Decisions Sorted High to Low

Case Type	Number of Decisions
Workers' Compensation	209
Abuse & Neglect	145
Criminal - Felony	105
Civil - Torts, Contracts, Real Property	92
Civil - Other	37
Administrative	27
Family	23
Prohibition	12
Criminal - Misdemeanor	7
Bar Discipline	5
Mandamus	4
Administrative - Tax	3
Civil - Probate	3
Criminal - Other	3
Certified Question	1
Certiorari	1
Bar Admission	1
TOTAL	678

As a result of implementing the appeal by right, the number of merits decisions issued by the Court has more than tripled. In 2011, the Court issued a total of 678 decisions on the merits, compared to 149 in 2010. This is an increase of over three hundred percent. Two thirds of the decisions were rendered in workers' compensation, abuse & neglect, and felony criminal appeals alone.

Although the Court has always fully reviewed each appeal, prior to the 2010 rule changes about three-quarters of all appeals were disposed by a no-reason refusal order that had no precedential effect. Since the rules

were changed, the Court issues a written decision in every properly prepared appeal. As is true for all appellate courts across the country that handle appeals by right, not every appeal requires an oral argument, and not every case has significant points of law that require a published opinion. Even in instances where the Court decides an appeal in a more limited fashion, the memorandum decisions are made available in a searchable form on the Court's website and may be cited as legal authority in any court

of the state. The memorandum decisions are subject to the full range of appellate due process, including the ability to file a petition for rehearing. In 2011 the Court issued 578 memorandum decisions.

In addition to memorandum decisions, the Court issued a total of one hundred opinions in 2011. The median number of opinions issued each year since 1864 is 132, so the total in 2011 is not a significant departure. In fact, for fifty-three years of the Court's history fewer than one hundred opinions were issued. The Court issues two types of 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.³

Of the one hundred opinions released by the Court in 2011, fifty-five were signed opinions and forty-five were *per curiam* opinions. It has been fourteen years since the number of signed opinions significantly exceeded the number of *per curiam* opinions. In 1997, for the first time in the history of the Court, the number of *per curiam* opinions exceeded the number of signed opinions, establishing a general trend that continued until 2011. Last year's shift to more signed opinions may signal that the screening mechanisms set forth in Rule 20 – which were adopted in large part from the Final Report of the West Virginia Independent Commission on Judicial Reform⁴ – 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.

The foremost management task facing the Court in 2011 was the stable transition to an appeal by right. By tripling the number of decisions on the merits and keeping pace with incoming filings, the Court successfully made that transition.

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.courtswv.gov/supreme-court/integrated-decision-list-explained.html>>.

³ 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.

⁴ *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>>.