

SUPREME COURT OF APPEALS OF WEST VIRGINIA

2012 Statistical Report

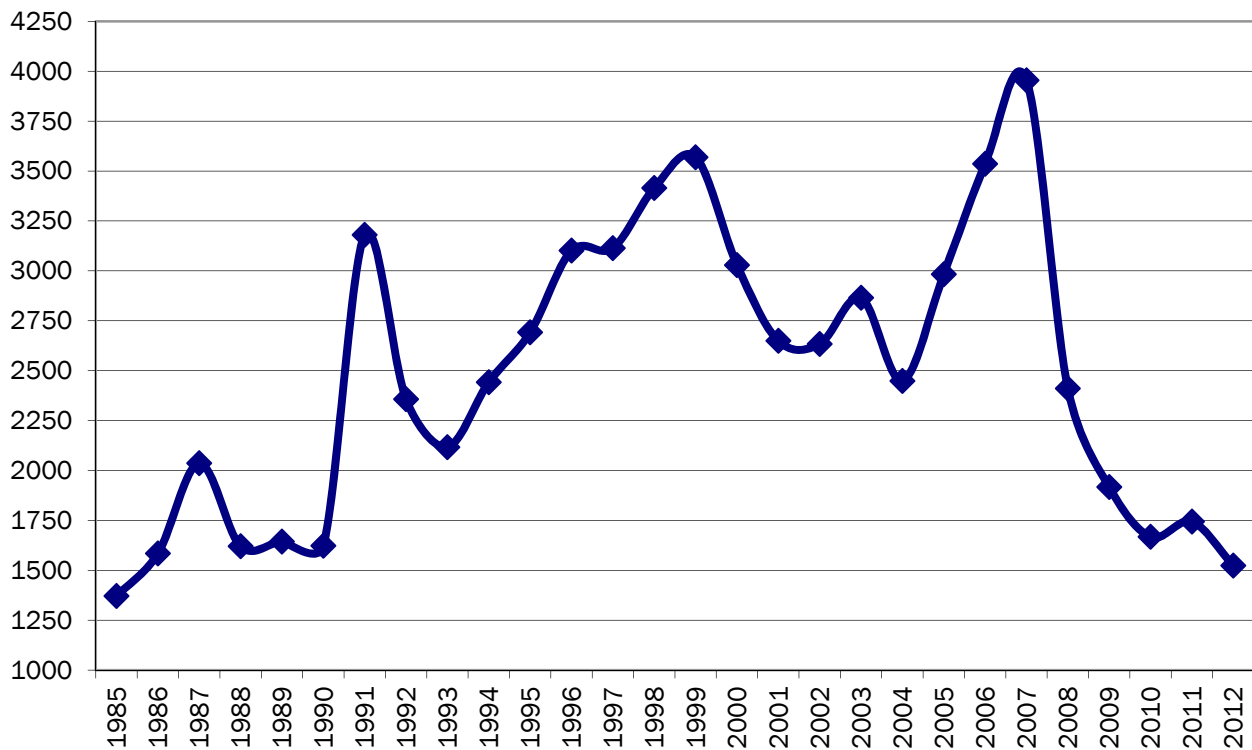
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Rory L. Perry II, Clerk of Court

Case Filings at Lowest Level in over Twenty-Five Years

Case filings in 2012 continued to decline, reaching the lowest level in over twenty-five years. Indeed, the number of incoming cases has declined by half since 1999. In that year, a total of 3,569 new cases were filed, compared to 1,524 in 2012. The following chart depicts the continuing decline in case filings.

Total Filings 1985 - 2012

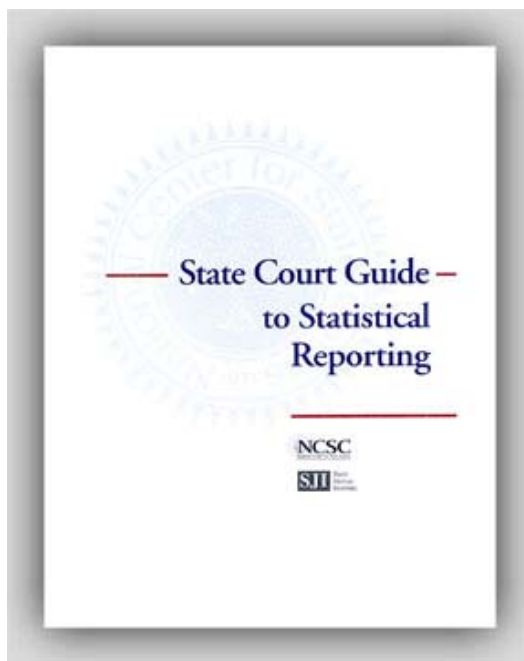


Workers' compensation appeals were the most important factor in the Court's caseload over the previous decade. Incoming cases reached an all-time high in 2007, when 3,954 new cases were filed, due to the fact that two-thirds of new filings were workers' compensation appeals. This disproportionate number 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 accomplished, the number of incoming workers' compensation appeals was 446 last year. Workers' compensation appeals made up only twenty-nine 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 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 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.

The table below shows the distribution of incoming filings in 2012 as compared to 2011. 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 2012 dropped thirteen percent overall compared to last year.

Appeals By Right	2011	2012	Change
Abuse & Neglect	229	195	-34
Administrative	68	32	-36
Administrative - Tax	8	10	+2
Civil - Torts, Contracts, Real Property	208	223	+15
Civil - Probate	8	5	-3
Civil - Other	158	139	-19
Criminal - Felony	214	166	-48
Criminal - Misdemeanor	11	9	-2
Criminal - Other	6	6	0
Domestic Violence	3	4	+1
Family	45	48	+3
Workers' Compensation	532	446	-86
Total Appeals by Right	1,744	1,524	-207
Original Proceeding/Other			
Certiorari	2	1	-1
Certified Question	7	13	+6
Habeas Corpus	45	43	-2
Mandamus	88	68	-20
Prohibition	71	71	0
Petition for Bail	5	5	0
Lawyer Discipline	35	34	-1
Judicial Discipline	0	6	+6
Lawyer Admission	1	0	-1
Total Original Proceeding/Other	254	241	-13
GRAND TOTAL	1,744	1,524	-220
			Overall 13% Decrease

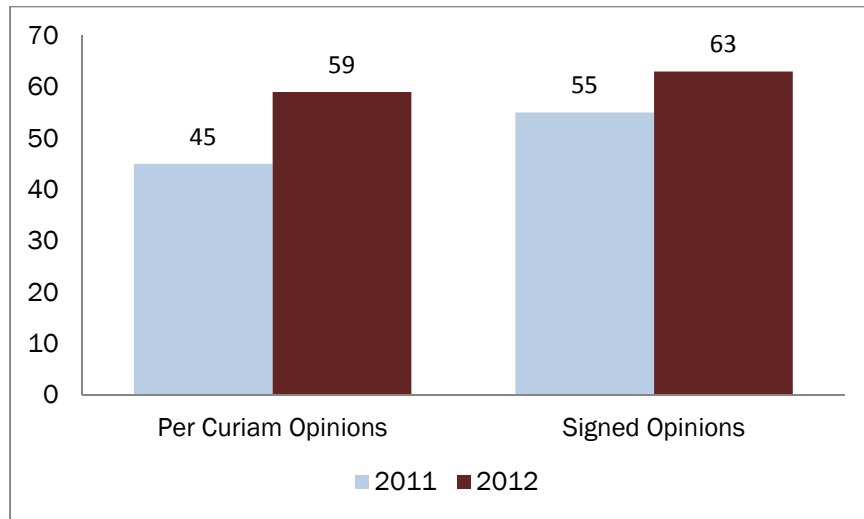
Implementing the Appeal by Right Continues to Increase the Number of Decisions on the Merits

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.

Decisions on the Merits	2011	2012
Abuse & Neglect	145	201
Administrative	27	35
Administrative - Tax	3	2
Civil - Torts, Contracts, Real Property	92	104
Civil - Probate	3	5
Civil - Other	37	94
Criminal - Felony	105	105
Criminal - Misdemeanor	7	6
Criminal - Other	3	1
Family	23	25
Workers' Compensation	209	297
Certiorari	1	0
Certified Question	1	4
Habeas Corpus	0	0
Mandamus	4	9
Prohibition	12	14
Lawyer Discipline	5	5
Judicial Discipline	0	1
Lawyer Admission	1	0
GRAND TOTAL	678	908
	Overall 34% increase	

The overall increase in decisions on the merits includes an increase in the number of opinions. The Court issued a total of 122 opinions in 2012, compared to one hundred 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.³



Of the 122 opinions released by the Court in 2012, sixty-three were signed opinions and fifty-nine were *per curiam* opinions. By issuing more signed opinions than *per curiam* opinions, the Court continues to reverse a trend that began in 1997 and lasted for fourteen years. 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, and continued in 2012. The ongoing 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 2012 was to continue the stable transition to an appeal by right. By continuing to increase 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.courtsv.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>>.