

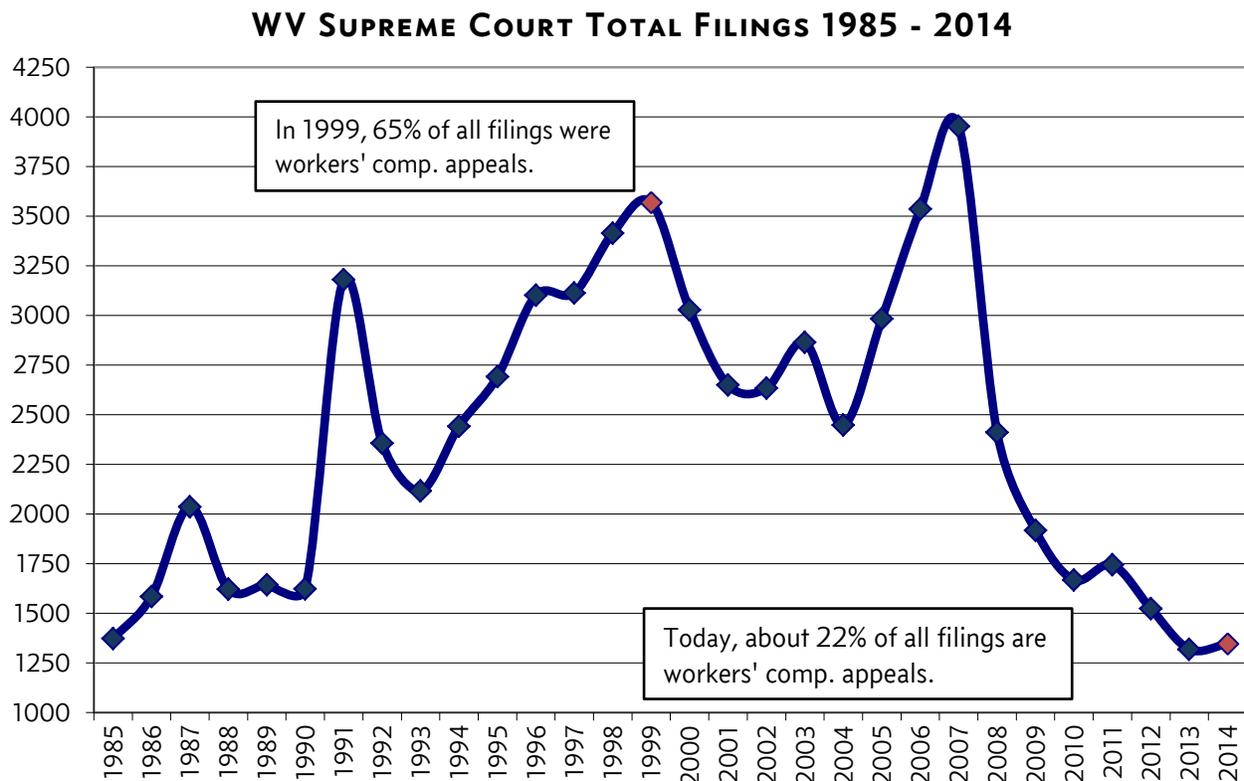
SUPREME COURT OF APPEALS OF WEST VIRGINIA

2014 Statistical Report

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Rory L. Perry II, Clerk of Court

Case Filings Remain Low

NEW CASE filings in 2014 remained steady, with a very slight increase of 25 cases over last year. Over the last fifteen years, new case filings have fallen by more than sixty percent. In 1999, a total of 3,569 new cases were filed, compared to 1,346 in 2014. The following chart depicts the trend.

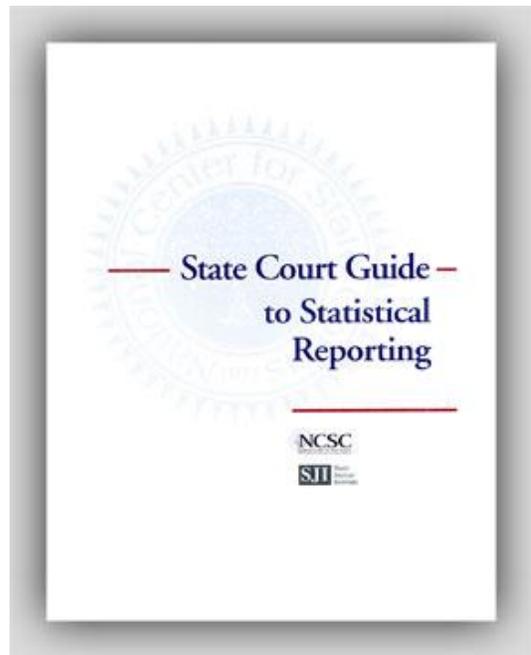


Workers' compensation appeals were the most important variable affecting the Court's caseload over the previous three decades. Incoming cases began to climb in the 1990s, and reached an all-time high in 2007, when 3,954 new cases were filed. This rise was due to the fact that two-thirds of new filings 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 implemented, the number of incoming workers' compensation appeals was 295 in 2014. Thus, workers' compensation appeals made up only twenty-two percent of case filings last year, which is the lowest percentage since the early 1980s.

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 this 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 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. Continuing this effort, this year's report includes a section on *Clearance Rates* (see page 7). This tool is part of the CourTools³ package of performance measures designed by the National Center for State Courts to provide a well-targeted set of indicators on how well appellate courts handle cases.

The table below shows the distribution of incoming filings in 2014 as compared to the previous three years. Overall, eighty-one percent of incoming filings are appeals by right, which the Court is required to decide on the merits. The remaining nineteen percent of filings fall into the original jurisdiction/other category, in which the Court continues to have discretionary review. Filings in 2014 increased two percent over last year.

Appeals By Right	2011	2012	2013	2014
Abuse & Neglect	229	195	177	185
Administrative	68	32	38	47
Administrative – Tax	8	10	2	4
Civil – Torts, Contracts, Real Property	208	223	168	184
Civil – Probate	8	5	1	5
Civil – Other	158	139	120	144
Criminal – Felony	214	166	145	155
Criminal – Misdemeanor	11	9	9	12
Criminal – Other	6	6	10	14
Domestic Violence	3	4	2	2
Family	45	48	51	49
Workers’ Compensation	532	446	364	295
Total Appeals by Right	1,490	1,283	1,087	1,096
Original Proceeding/Other				
Certiorari	2	1	1	0
Certified Question	7	13	12	10
Habeas Corpus	45	43	34	35
Mandamus	88	68	79	104
Prohibition	71	71	63	56
Petition for Bail	5	5	4	8
Lawyer Discipline	35	34	34	30
Judicial Discipline	0	6	3	6
Lawyer Admission	1	0	2	1
Total Original Proceeding/Other	254	241	232	250
GRAND TOTAL	1,744	1,524	1,319	1,346

Implementing the Appeal by Right Has Vastly Increased 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.

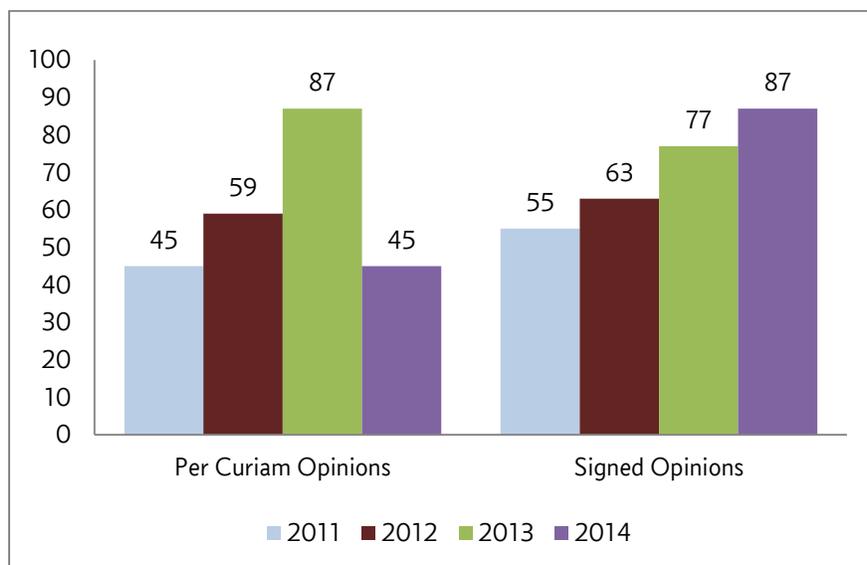
In 2011, which was the first year of implementing the appeal by right, the number of merits decisions issued by the Court more than tripled when compared to the previous system. In 2012, the increase continued, with a thirty-four percent increase in the total number of decisions over the prior year. In 2013 the Court continued to increase its productivity by issuing a total of 1,360 decisions on the merits, which was double the number of decisions issued in 2011. In 2014, this number leveled off to a total of 1,140 decisions on the merits.

Decisions on the Merits	2011	2012	2013	2014
Abuse & Neglect	145	201	169	176
Administrative	27	35	40	36
Administrative - Tax	3	2	4	2
Civil - Torts, Contracts, Real Property	92	104	169	93
Civil - Probate	3	5	7	1
Civil - Other	37	94	173	86
Criminal - Felony	105	105	207	116
Criminal - Misdemeanor	7	6	8	9
Criminal - Other	3	1	4	5
Family	23	25	55	43
Workers' Compensation	209	297	445	537
Certiorari	1	0	1	0
Certified Question	1	4	9	3
Habeas Corpus	0	0	0	0
Mandamus	4	9	3	2
Prohibition	12	14	19	19
Lawyer Discipline	5	5	7	10
Judicial Discipline	0	1	1	1
Lawyer Admission	1	0	1	1
GRAND TOTAL	678	908	1,360	1,140

Decisions on the merits can take two forms: memorandum decisions and published opinions. Unlike those of some other appellate courts that dispose of cases in two or three boilerplate paragraphs, the memorandum decisions issued by the Court are detailed and address each issue. Although they are not published in the bound volumes of the official reporter, memorandum decisions are available online in a free searchable format. Memorandum decisions are precedential and may be cited by lawyers in support of a legal argument. Cases that are decided by memorandum decision don't usually involve novel issues, and are often requested by the parties to the appeal because they can typically result in a more expedited resolution.

Published Opinions

Published opinions provide specific guidance to lawyers, judges, and the legal community because each opinion — as required by the state Constitution — includes a syllabus of the points adjudicated that is authored by the Court itself. For fifty-three years of the Court's history fewer than one hundred published opinions were issued, and the median number of opinions issued per year is 129. The Court issued a total of 132 published opinions in 2014, compared with 164 opinions in 2013, 122 opinions in 2012, and 100 opinions in 2011. 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. This commitment was bolstered by the Court's decision in September 2014 to eliminate unsigned published opinions.



Eliminating Unsigned Published Opinions

ONE OF the most significant opinions issued in 2014 is a criminal case that is notable not for its holdings in the area of criminal law, but instead for its elimination of the *per curiam* opinion and its explanation of the differences in West Virginia common-law precedent. In recent history, signed opinions were used when a new point of law was announced, while unsigned *per curiam* opinions were used to apply settled principles of law to facts necessarily differing from those at issue in signed opinions.⁴ In *State v. McKinley*, 234 W.Va. 143, 764 S.E.2d 303 (2014), the Court explained that “[a]s a result of the widespread changes to the appellate process in this State that took place in 2010, the number of written decisions on the merits issued by the Court has expanded significantly. The appeal by right process adopted by the Court has been fully implemented, and the time has come to more closely examine the usefulness of the *per curiam* opinion. For the reasons that follow, we conclude that the *per curiam* opinion is no longer necessary.” *Id.* at ___, 309. The opinion conducts a review of the historical use of the *per curiam* opinion, discusses the confusion that was created by the oft-cited footnote 4 in *Lieving v. Hadley*, 188 W.Va. 197, 423 S.E.2d 600 (1992), the adjustments that were made to correct that confusion in *Walker v. Doe*, 210 W.Va. 490, 558 S.E.2d 290 (2001), the use of the memorandum decision, and some of the criticisms of *per curiam* opinions. In one paragraph, the Court summarizes its three-tier system of precedent.

A system of precedent. In recognition of the foregoing authorities, we adopt a three-tier system of precedent intended to clarify the weight of opinions issued by this Court. Henceforth all published opinions of this Court will bear the name of an individual justice who authored the opinion of the Court. To provide guidance as to the weight to be afforded the various types of opinions, we hold that signed opinions containing original syllabus points have the highest precedential value because the Court uses original syllabus points to announce new points of law or to change established patterns of practice by the Court. Additionally, we hold that signed opinions that do not contain original syllabus points also carry significant, instructive, precedential weight because such opinions apply settled principles of law in different factual and procedural scenarios than those addressed in original syllabus point cases. We further hold that signed opinions, both those including new syllabus points and those not containing new syllabus points, are published opinions of the Court. As such, they should be the primary sources relied upon in the development of the common law. Moreover, we hold that memorandum decisions are decisions by the Court that are not signed, do not contain a Syllabus by the Court, and are not published. Finally, we hold that, while memorandum decisions may be cited as legal authority, and are legal precedent, their value as precedent is necessarily more limited; where a conflict exists between a published opinion and a memorandum

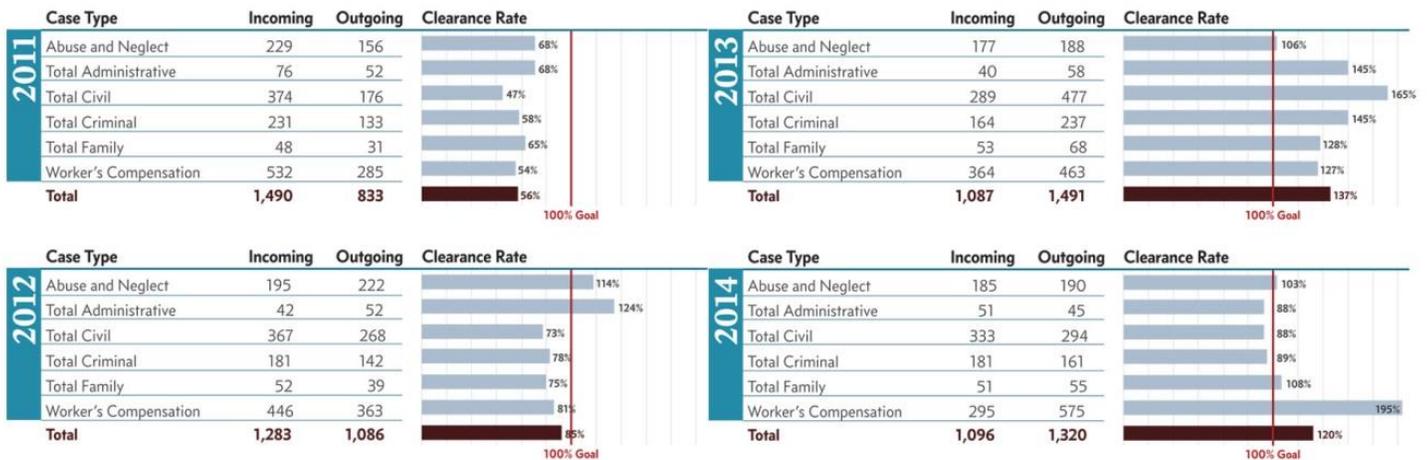
decision, the published opinion controls. Conflicts between memorandum decisions and published opinions should be used by the legal community as a basis to urge this Court to consider, address, and resolve such conflict. Lastly, we hold that, to the extent our prior holdings in *Walker v. Doe*, 210 W.Va. 490, 558 S.E.2d 290 (2001), are inconsistent with this Court's recognition that signed opinions will be used both in cases that articulate new points of law and in cases in which a new point of law is not required, such prior holdings are expressly overruled.

McKinley, 234 W.Va. at ___, 764 S.E.2d at 313. Eliminating unsigned published opinions increases judicial accountability and further signals the Court's dedication to issuing carefully-considered opinions.

Clearance Rates Demonstrate that the Appeal by Right Has Matured, and the Court is Keeping Pace With Incoming Cases

IMPLEMENTING THE appeal by right required an adjustment period for the Court and its staff. Evidence shows that the adjustment period is now over. The measure of *clearance rates* is a CourTools appellate performance measure that gauges whether a court is keeping up with its incoming caseload. As expected, during the first two years of implementation, clearance rates were less than optimal for some case types. Nevertheless, clearance rates have steadily improved during implementation, and surpassed 100 percent in 2013. In 2014, the Court made continued strides, particularly in the area of workers' compensation cases, while maintaining an overall clearance rate that exceeded 100%.

Appeal By Right Clearance Rates, 2011-2014



ENDNOTES

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

³ *CourTools: Appellate Court Performance Measures*. Available at <<http://www.courtools.org/Appellate-Court-Performance-Measures.aspx>>.

⁴ 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.