

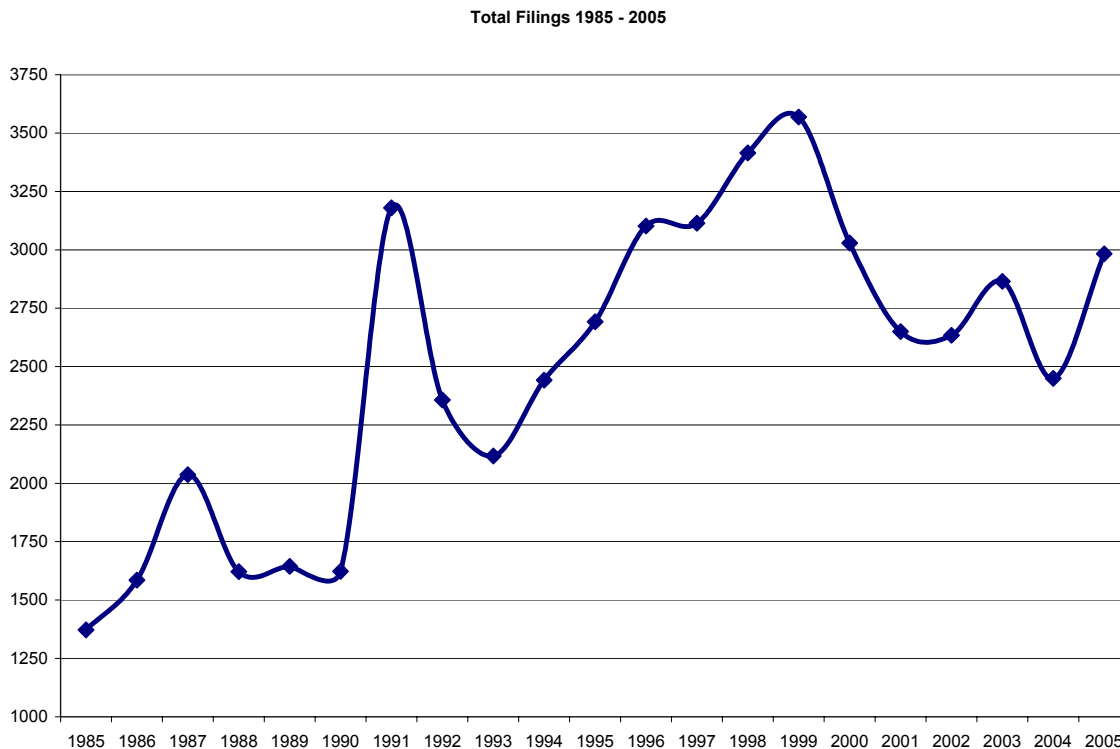


# SUPREME COURT OF APPEALS OF WEST VIRGINIA

## 2005 Statistical Report

### Case Filings

The total number of new petitions filed in 2005 increased by **534** to **2983** from the previous year. The increase in last year's filings reverses 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 last year was more than twice the number of petitions filed as recently as 1985.



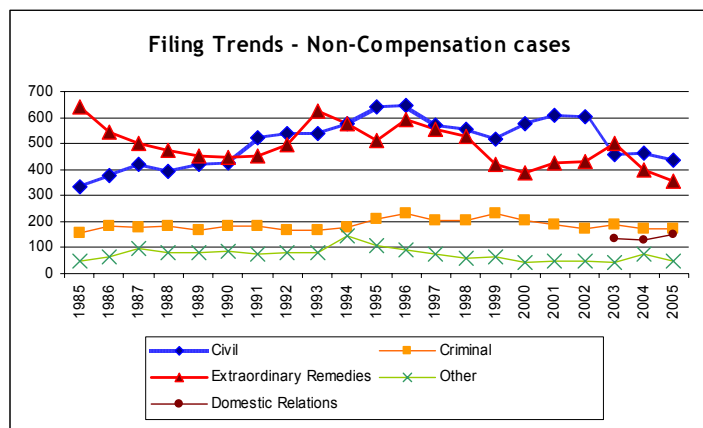
The increase in the number of new petitions filed in 2005 is almost entirely attributable to a rise in the number of workers' compensation petitions over the previous year, from **1279** to **1860**. This increase may signal the near-completion of administrative transition in the decision-making body 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 2005 remained steady or dropped slightly.

Case Type	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Certified	12	17	23	21	28	29	35	43	34	46	27	30	27	15	19	7	15	14	17	30	19
Certiorari	10	6	4	2	7	5	4	2	2	7	8	4	5	3	5	3	3	2	3	4	0
Civil	332	376	422	394	419	426	524	538	536	575	642	646	571	556	519	578	606	605	457	402	388
Compensation	198	421	841	488	528	481	1947	1075	708	966	1220	1534	1708	2067	2306	1816	1380	1394	1572	1279	1860
Criminal	157	182	176	182	168	183	181	168	165	178	209	234	203	207	232	203	189	173	186	174	175
Domestic'	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	136	127	151
E t h i c s	10	16	20	13	12	17	23	25	27	69	43	33	27	24	27	18	19	17	16	24	21
H a b e a s	367	240	200	195	186	171	149	192	319	239	218	265	253	230	118	100	96	102	170	108	82
Mandamus	181	196	214	183	141	149	179	184	187	173	172	180	164	162	177	199	245	210	236	202	190
Pet. Bail	24	30	52	47	39	40	20	12	21	30	39	30	24	20	16	19	13	18	12	16	11
Prohibition	81	101	85	96	116	122	118	118	118	159	114	146	132	131	120	86	84	118	94	83	86
<b>T O T A L</b>	<b>1372</b>	<b>1585</b>	<b>2037</b>	<b>1621</b>	<b>1644</b>	<b>1623</b>	<b>3180</b>	<b>2357</b>	<b>2117</b>	<b>2442</b>	<b>2692</b>	<b>3102</b>	<b>3114</b>	<b>3415</b>	<b>3539</b>	<b>3029</b>	<b>2650</b>	<b>2653</b>	<b>2865</b>	<b>2449</b>	<b>2983</b>

The number of civil filings, at **388**, fell slightly from the previous year's total of **402**. (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, including certified questions, which fell by nearly half.

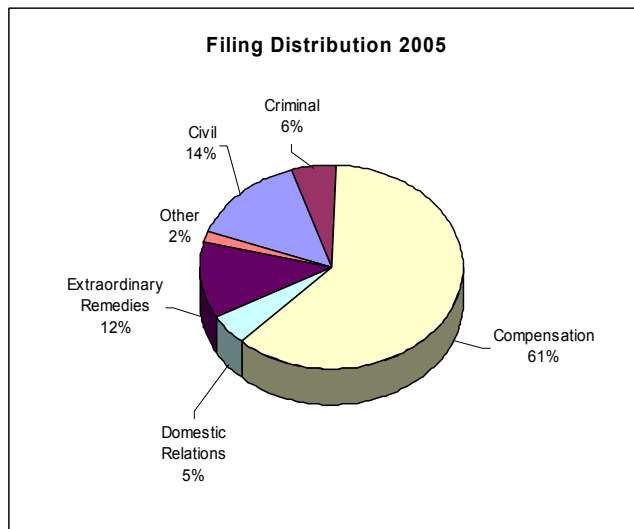
**Filing Trends:** For non-compensation cases, filing levels have been steady in certain areas, while fluctuating in other areas, as seen in the chart at right. Criminal filings have remained largely steady since 1985, while civil filings and requests for extraordinary remedies have declined in recent 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, prohibition, habeas corpus, and certiorari), changes from year to year, sometimes

\* **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 - 2005 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.

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 2005, as shown in the chart at left, was a change from the prior year, in which workers’ compensation appeals made up only 51% of all new petitions filed. At 61% of all new filings, compensation appeals inched back toward levels in excess of 65% seen in prior years, with the upward trend expected to continue in 2006.

## 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 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. With the sharp increase in workers' compensation filings in 2005, however, the clearance rate fell to 80%. If workers' compensation cases are excluded, the clearance rate was 103% for 2005, 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:

<b>Disposition Method</b>	<b>Number Disposed in 2005</b>
Signed Opinion	84
Per Curiam Opinion	94
Petition Refused	1399
Memorandum Order	578
Dismissed	83
Withdrawn	63
Moot	58
Disposed by Order	37
<b>TOTAL DISPOSITIONS</b>	<b>2396</b>
<b>2005 Clearance Rate = 80%</b>	

In addition to disposing of cases filed, the Court considered **222** pre-petition matters in 2005, up sharply from **136** pre-petition matters in 2004, which continues a general upward trend. 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 remained relatively stable in 2005. 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**.

## **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 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	
	Petitions Reviewed	% Granted	Petitions Reviewed	% Granted	Petitions Reviewed	% Granted	Petitions Reviewed	% Granted	Petitions Reviewed	% Granted	Petitions Reviewed	% Granted	Petitions Reviewed	% Granted
Certified	17	35%	10	60%	16	69%	14	43%	14	86%	26	69%	20	60%
Certiorari	6	67%	4	50%	0	0%	2	50%	2	50%	5	40%	1	100%
Civil	456	30%	431	29%	378	39%	370	35%	479	32%	405	30%	393	31%
Abuse & Neglect	96	11%	120	.025%	135	4%	118	11%	84	8%	113	5%	90	1%
Compensation	1874	51%	2298	65%	2211	51%	1162	42%	1011	34%	1496	40%	844	27%
Criminal	234	18%	194	21%	187	18%	144	22%	195	17%	182	10%	167	14%
Domestic	—	—	—	—	—	—	—	—	37	27%	34	35%	51	22%
Habeas Corpus	108	.05%	91	.02%	62	3%	102	10%	132	7%	126	6%	82	9%
Mandamus	132	30%	142	39%	165	15%	131	21%	146	27%	109	20%	107	23%
Petition for Bail	16	0%	17	6%	14	0%	16	0%	13	0%	14	7%	9	22%
Prohibition	113	27%	85	26%	69	26%	109	28%	83	37%	79	20%	77	32%
<b>TOTAL</b>	<b>3063</b>	<b>41%</b>	<b>3403</b>	<b>52%</b>	<b>3237</b>	<b>42%</b>	<b>2171</b>	<b>34%</b>	<b>2159</b>	<b>29%</b>	<b>2589</b>	<b>32%</b>	<b>1841</b>	<b>24%</b>

Notable is a decrease in the percentage of workers' compensation petitions granted, down to **27%**, reflecting a continued downward trend in that area. If compensation petitions are excluded, the Court's overall percentage of petitions granted is **20.49%**. This is a relatively high percentage when compared to most other state courts of last resort, and may in part be attributable to the fact the West Virginia has no intermediate appellate court. (For a graphical representation of this data, see page 7: "Percentage of Discretionary Petitions Granted - Major Case Types - 1999-2005.")

## 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 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 (2003) 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 2003, West Virginia's caseload exceeded by over 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 2003 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	83	681	100	-
District of Columbia	301	1696	97	3
Maine	51	672	77	23
Montana	94	860	65	35
Nevada	82	1841	100	-
New Hampshire	63	813	-	100
North Dakota	57	363	94	6
Rhode Island	63	674	42	58
South Dakota	58	447	89	11
Vermont	94	582	95	5
<b>West Virginia</b>	<b>158</b>	<b>2854</b>	<b>-</b>	<b>100</b>
Wyoming	56	283	100	-

In 2003, West Virginia ranked third in the nation in the number of appeals filed per 100,000 population, behind the District of Columbia at **301** and Louisiana at **288**. Florida at **156** and Puerto Rico at **137** round out the top five.

National court data obtained from R. Schaufler, R. LaFountain, N. Kauder, & S. Strickland, *Examining the Work of State Courts, 2004: A National Perspective from the Court Statistics Project* at 66-68 (National Center for State Courts 2005).\*

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\* 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](http://www.ncsconline.org/d_research/csp/CSP_Main_Page.html)>

# Percentage of Discretionary Petitions Granted - Major Case Types - 1999-2005

