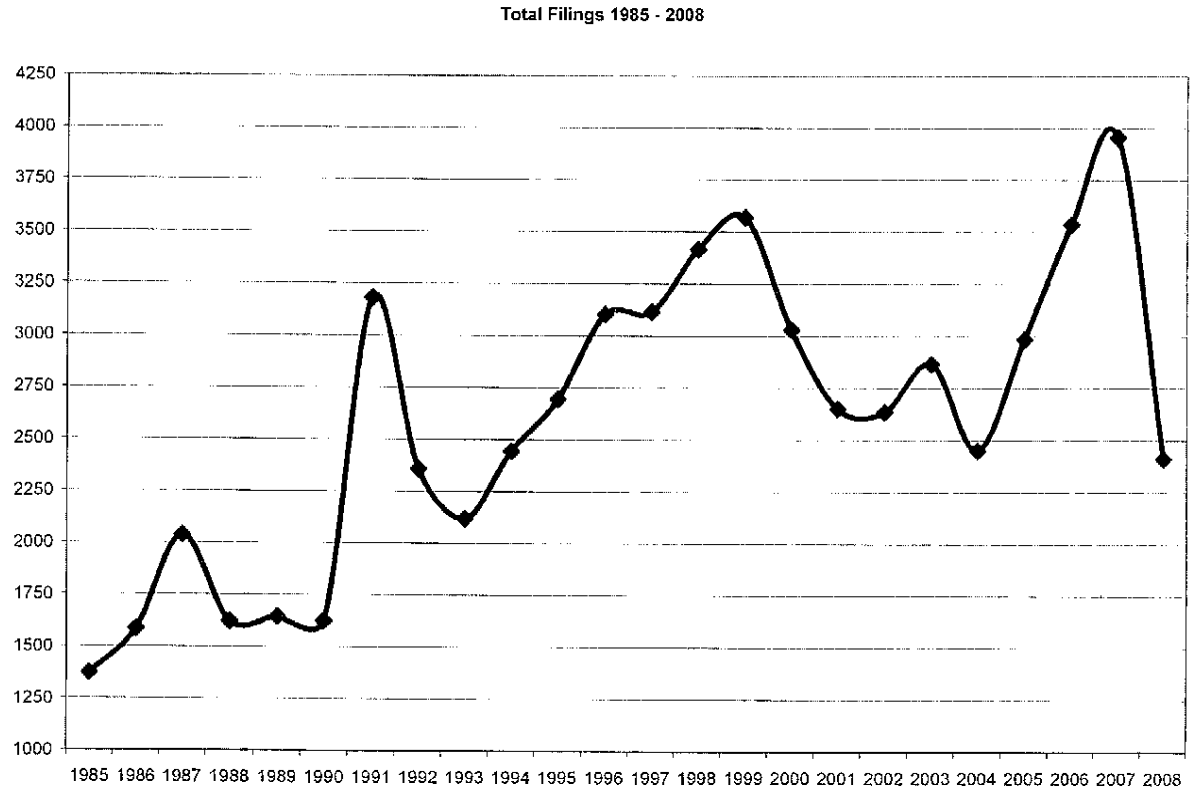
SUPREME COURT OF APPEALS OF WEST VIRGINIA

2008 Statistical Report

Case Filings

After an all-time record number of filings in 2007, the number of new cases filed in 2008 decreased by 39 percent to 2,411. Filing rates returned to levels seen in 1994 and 2004. As illustrated in Figure 1, the number of petitions filed in 2008 remains high when compared to years prior to 1990.

Figure 1



The decrease in the number of new petitions filed in 2008 is attributable in large part to a 50 percent drop in the number of workers' compensation petitions filed. The all-time high of 2,894 filed in 2007 decreased by half in 2008, to 1,447. This decrease may signal the emerging stability in the decision-making body at the agency level, following a period of transition as the Office of Judges and the Board of Review became part of the Office of the Insurance Commissioner.

Apart from workers' compensation cases, filings in 2008 remained steady or declined across most case types, with domestic relations filings showing the only significant increase. (See Table 1.)

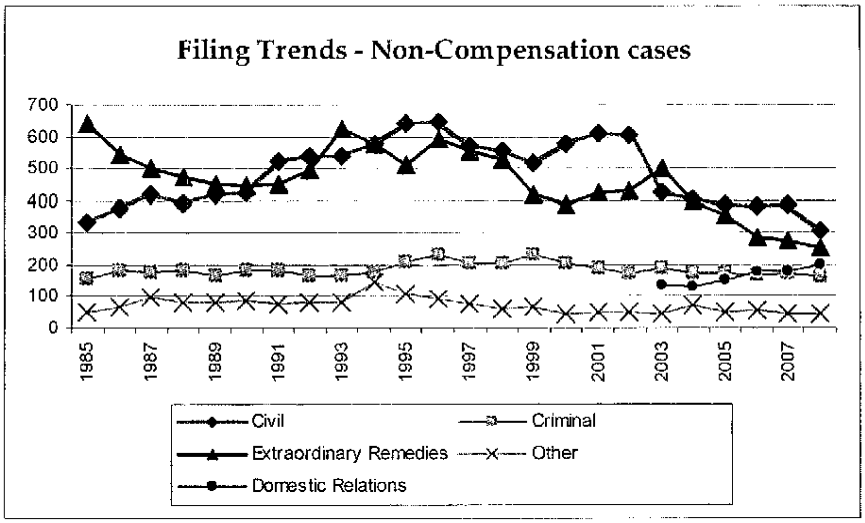
Table 1

	Certified	Certiorari	Civil	Criminal	Domestic	Ethics	Habeas	Mandamus	Pet. Bail	Prohibition	Workers' Comp.	TOTAL
1983	18	9	293	180	—	0	321	132	10	80	116	**1159**
1984	20	27	306	183	—	1	317	166	20	80	162	**1282**
1985	12	10	332	157	—	10	367	181	24	81	198	**1372**
1986	17	6	376	182	—	16	240	196	30	101	421	**1585**
1987	23	4	422	176	—	20	200	214	52	85	841	**2037**
1988	21	2	394	182	—	13	195	183	47	96	488	**1621**
1989	28	7	419	168	—	12	186	141	39	116	528	**1644**
1990	29	5	426	183	—	17	171	149	40	122	481	**1623**
1991	35	4	524	181	—	23	149	179	20	118	1947	**3180**
1992	43	2	538	168	—	25	192	184	12	118	1075	**2357**
1993	34	2	536	165	—	27	319	187	21	118	708	**2117**
1994	46	7	575	178	—	69	239	173	30	159	966	**2442**
1995	27	8	642	209	—	43	218	172	39	114	1220	**2692**
1996	30	4	646	234	—	33	265	180	30	146	1534	**3102**
1997	27	5	571	203	—	27	253	164	24	132	1708	**3114**
1998	15	3	556	207	—	24	230	162	20	131	2067	**3415**
1999	19	5	519	232	—	27	118	177	16	120	2306	**3539**
2000	7	3	578	203	—	18	100	199	19	86	1816	**3029**
2001	15	3	606	189	—	19	96	245	13	84	1380	**2650**
2002	14	2	605	173	—	17	102	210	18	118	1394	**2653**
2003	17	3	423	186	136	16	170	236	12	94	1572	**2865**
2004	30	4	402	174	127	24	108	202	16	83	1279	**2449**
2005	19	0	388	175	151	21	82	190	11	86	1860	**2983**
2006	18	0	381	169	179	24	78	104	13	105	2473	**3544**
2007	8	0	386	175	180	26	74	105	8	98	2894	**3954**
2008	**9**	**0**	**308**	**159**	**201**	**28**	**53**	**99**	**6**	**101**	**1447**	**2411**

In 2003, appeals from family court orders and appeals in abuse and neglect cases began to be counted as part of the domestic case type. These cases were previously counted as part of the general civil case type, thus explaining the apparent dip in civil filings in 2003. After taking this adjustment into account, general civil appeals have shown a steady decline in the past six years, dropping 27 percent since 2003.

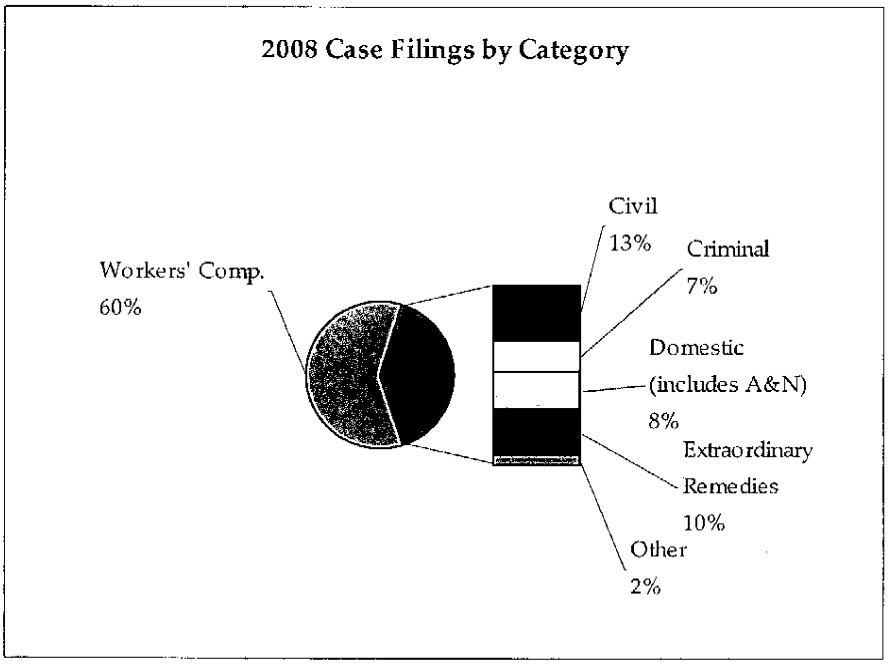
The number of habeas corpus petitions filed in 2008 was the lowest number in the past 25 years. The number of certified questions filed also continued a declining trend since 2004.

Figure 2



In non-compensation cases, filing trends have been steady in certain areas, while fluctuating in other areas, as seen in Figure 2. Criminal filings have remained largely steady since 1985, while requests for extraordinary remedies have declined in recent years. The trend in domestic cases has been on the rise each year since 2003. 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.

Figure 3



The overall composition of cases filed in 2008, as shown in Figure 3, continues to reflect the breadth and scope of the Court's workload. Although in 2007 workers' compensation cases made up nearly three-quarters of all new filings, in 2008 that figure fell to 60 percent. This downward trend is expected to continue in 2009. Filing levels through the first five months of 2009 confirm this expectation, with workers' compensation filings on the decline by almost half when compared to the same period in the prior year.

Case Disposition

The Court can dispose of cases by a variety of methods, resulting in opinions and orders. Because the Court's review of all petitions is discretionary, some cases are disposed by entry of a refusal order.[1] 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 that are granted are ultimately disposed by memorandum order.[2]

The case clearance percentage is a practical measure of the Court's workload in 2008, and its ability to keep pace with recent filing levels. Because of the extraordinary workers' compensation filings in recent years, combined with delays associated with new statutory changes, the case clearance percentage fell to below 100 percent in recent years.[3] In 2008, however, the Court disposed of 4,102 cases, for a clearance rate of 170 percent, nearly triple the percentage reached in the prior year. The overall breakdown of the number of cases by disposition method is shown in Table 2.[4]

Table 2

Disposition Method	Number of Cases Disposed in 2008
Signed Opinion	50
Per Curiam Opinion	78
Petition Refused	2,880
Memorandum Order	539
Dismissed	63
Withdrawn	440
Moot	2
Disposed by Order	50
TOTAL DISPOSITIONS	**4,102**

Through the first five months of 2009, the Court sustained this level of activity, with a case clearance rate of 158 percent.

Other components of the Court's workload are not reflected in Table 2. In addition to disposing of cases filed, the Court considered 106 pre-petition matters, which is down from last year's total of 201. 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 fell slightly in 2008. 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. That figure held steady in 2007, with 24 petitions for rehearing filed, and fell only slightly in 2008, with 21 filed.

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 by the Court in 2008. 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). Table 3 sets forth the total number of discretionary petitions considered over the past ten years in each category, along with a percentage of the petitions that were granted for full briefing and argument.

Table 3

	Certified Questions		Certiorari		Civil		Abuse & Neglect		Criminal		Domestic		Habeas Corpus		Mandamus		Petiton for Bail		Prohibition		Workers' Comp.		Totals	
	Reviewed	Granted %	Reviewed	Granted %	Reviewed	Granted %	Reviewed	Granted %	Reviewed	Granted %	Reviewed	Granted %	Reviewed	Granted %	Reviewed	Granted %	Reviewed	Granted %	Reviewed	Granted %	Reviewed	Granted %	Reviewed	Granted %
1999	17	35%	6	67%	456	30%	96	11%	234	18%	x	x	108	>1%	132	30%	16	0	113	27%	1874	51%	3052	41%
2000	10	60%	4	50%	431	29%	120	>1%	194	21%	x	x	91	>1%	142	39%	17	6%	85	26%	2298	65%	3392	52%
2001	16	69%	0	0	378	39%	135	4%	187	18%	x	x	62	3%	165	15%	14	0	69	26%	2211	51%	3237	42%
2002	14	43%	2	50%	370	35%	118	11%	144	22%	x	x	102	10%	131	21%	16	0	109	28%	1162	42%	2168	34%
2003	14	86%	2	50%	479	32%	84	8%	195	17%	37	27%	132	7%	146	27%	13	0	83	37%	1011	34%	2196	29%
2004	26	69%	5	40%	405	30%	113	5%	182	10%	34	35%	126	6%	109	20%	14	7%	79	20%	1496	40%	2589	32%
2005	20	60%	1	100%	393	30%	90	1%	167	14%	51	22%	82	9%	107	23%	9	22%	77	32%	844	27%	1841	24%
2006	19	42%	0	0	384	21%	130	5%	190	14%	50	14%	87	9%	240	14%	12	0	110	15%	1367	8%	2589	11%
2007	8	38%	0	0	319	27%	136	3%	147	17%	41	37%	69	1%	92	27%	10	0	84	18%	1751	17%	2657	17%
2008	**8**	**75%**	**0**	**0**	**390**	**32%**	**150**	**3%**	**171**	**12%**	**43**	**21%**	**48**	**4%**	**89**	**21%**	**5**	**0**	**101**	**15%**	**2706**	**23%**	**3711**	**22%**

Notable is the significant increase in the number of workers' compensation petitions reviewed. In addition, the percentage of petitions granted rose in the civil and workers' compensation categories, yielding an **overall 22 percent of petitions granted in 2008**. (For a graphical representation of these data, see Table 5 on page seven: "Percentage of Discretionary Petitions Granted - Major Case Types - 1999-2008.") As recognized by the National Center for State Courts, "most discretionary petitions filed in both intermediate appellate courts and courts of last resort are denied."[5]

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 (IACs) 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 (2006) data from the National Center for State Courts[6] continues to confirm West Virginia's position as the busiest appellate court of its type in the country. In 2006, West Virginia's caseload exceeded by nearly 1,500 cases that of the next-busiest state, Nevada, and was more than the states of Delaware, Maine, North Dakota, Rhode Island and Wyoming combined.

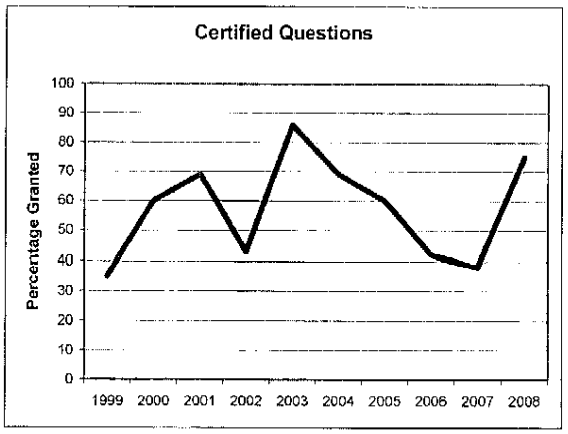
Table 4 illustrates the comparable caseload figures for 2006 across jurisdictions without a permanent intermediate appellate court.[7] Other measures appearing in the chart, such as the number of cases filed per 100,000 population, are used to compare judicial workloads across diverse jurisdictions.

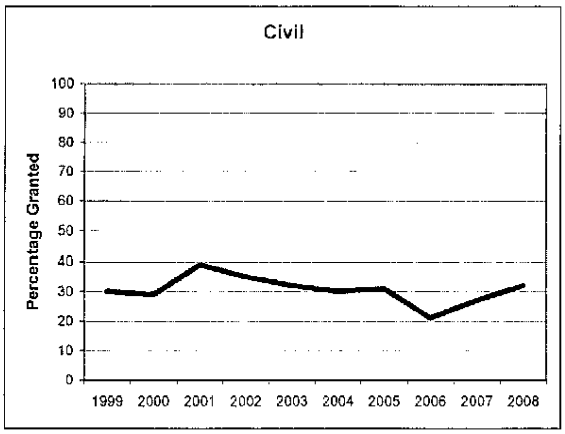
Table 4

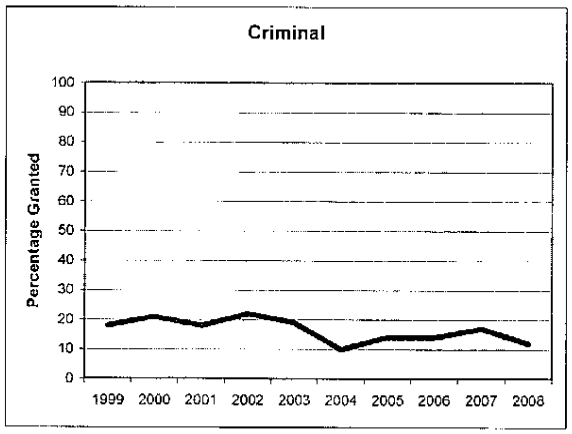
Jurisdictions Without Intermediate Appellate Courts	Appeals per 100,000 population	Total Filings	Percent Mandatory	Percent Discretionary
Delaware	81	688	100	-
District of Columbia	288	1,687	99	1
Maine	54	709	81	19
Montana	87	821	85	15
Nevada	88	2,185	100	-
New Hampshire	73	964	-	100
North Dakota	60	383	100	-
Rhode Island	32	341	67	33
South Dakota	57	451	85	15
Vermont	88	548	95	5
West Virginia	**201**	**3,631**	**-**	**100**
Wyoming	62	319	100	-

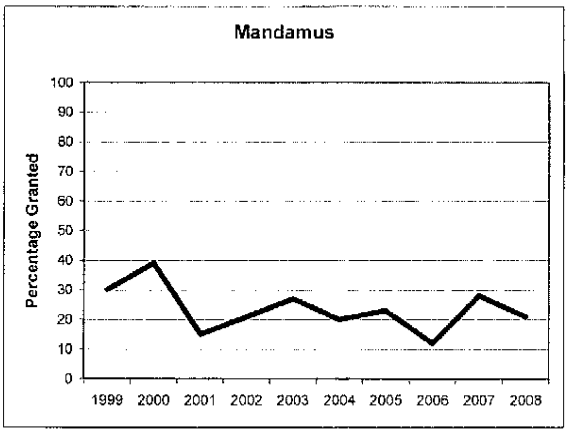
Percentage of Discretionary Petitions Granted - Major Case Types - 1999-2008

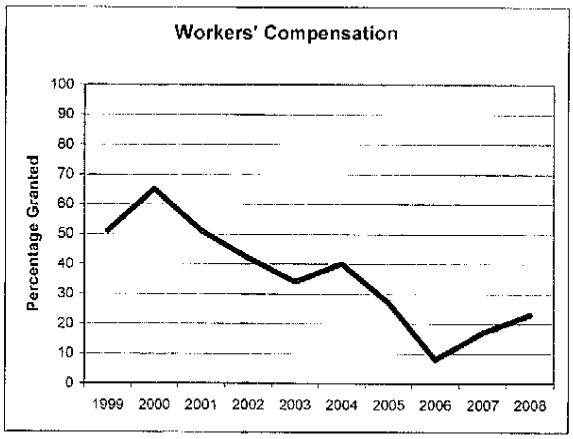
Table 5

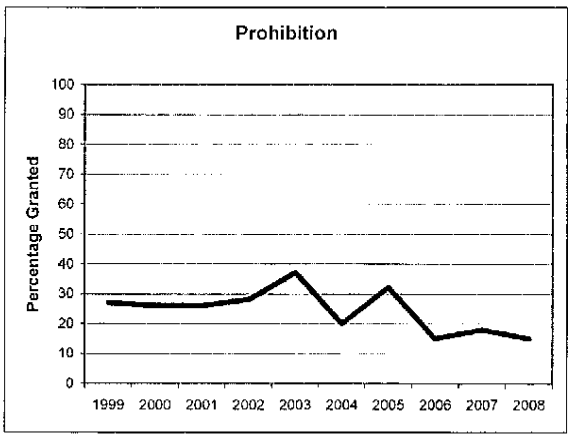


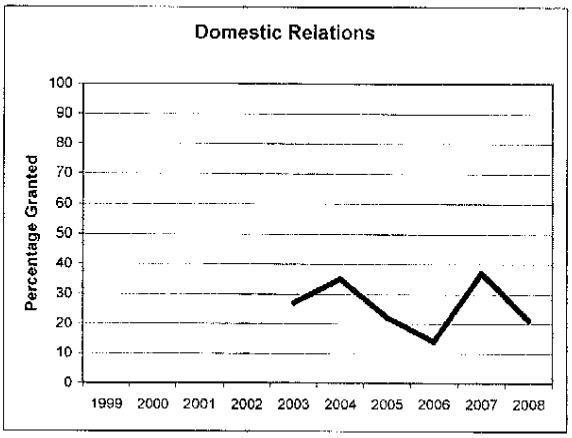


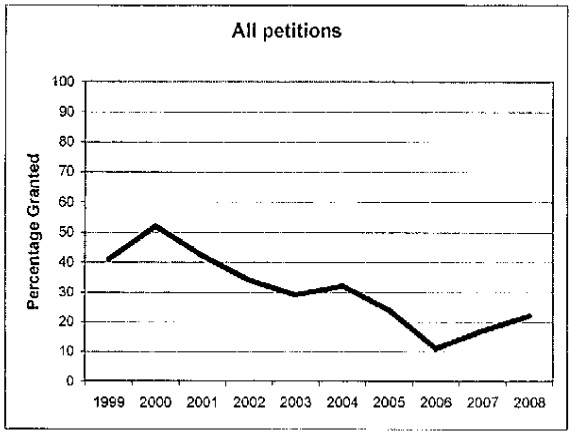












[1] *See* W.Va. Const. Art. VIII, sec. 4 (An "appeal shall be allowed . . . only upon a petition assigning error. . . and then only after the court . . . shall have examined and considered the record and is satisfied that there is probably error in the record, or that it presents a point proper for the consideration of the court.")

[2] It is important to note that granted cases are not concluded until the mandate issues under Rule of Appellate Procedure 25. Issuance of the mandate typically occurs thirty days after the opinion or memorandum order. However, for purposes of clarity and consistency with previous statistical reports, and to conform with national reporting standards, the issuance of an opinion or a memorandum order is reported as a case closing event.

[3] Two main factors combined to cause the clearance rate to fall below typical levels. First, dispositions in workers' compensation cases were held in abeyance for about a year beginning in late October 2003, while the Court considered cases involving the impact of the adoption of Senate Bill 2013, and to what extent the statutory changes could constitutionally be applied retroactively to cases filed before July 1, 2003. *See* Wampler Foods, Inc. v. Workers' Compensation Div., 216 W.Va. 129, 602 S.E.2d 805 (July 1, 2004). The clearance rate was only 78 percent in 2003. In 2004, as the Court began to clear pending cases after the Wampler decision was issued, the clearance rate rose to 95 percent. The second factor occurred over the next three years, when the extraordinary increase in workers' compensation petitions made it increasingly difficult to keep pace with new filings. Despite the fact that the Court in 2007 reviewed more than double the number of compensation petitions than it reviewed as recently as 2005, the overall clearance rate fell to 64 percent in 2007.

[4] In 2008, the Court disposed of 50 cases in 48 signed opinions, and disposed of 78 cases in 73 *per curiam* opinions. The number of opinions issued and the number of cases disposed in a given year may differ, because a single opinion can dispose of multiple cases. Table 2 reports the number of cases disposed, not the number of opinions issued.

[5] R. LaFountain, R. Schauffler, S. Strickland, W. Raftery, & C. Bromage, *Examining the Work of State Courts, 2006: A National Perspective from the Court Statistics Project* at 74 (National Center for State Courts 2007). See . . . Among twenty state courts of last resort, West Virginia had the fifth-highest percentage of petitions granted in 2005. This ranking would be higher if the National Center's percentage was calculated based upon the number of cases *actually considered*, versus the number *filed* in a given year. 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>

[6] R. LaFountain, R. Schauffler, S. Strickland, W. Raftery, & C. Bromage, C. Lee & S. Gibson, *Examining the Work of State Courts, 2007: A National Perspective from the Court Statistics Project* at 63 (National Center for State Courts 2008). The National Center reports 2006 filings in West Virginia as 3,631 rather than 3,544.

[7] North Dakota has a temporary intermediate appellate court that can be called up from time to time by the North Dakota Supreme Court to handle overload matters. Because its IAC is temporary and not usually activated, North Dakota is counted as a jurisdiction without an intermediate appellate court. See *Examining the Work of State Courts, 2006*, Id. at 68.