NATIONAL CENTER FOR STATE COURTS

REVIEW OF CASEFLOW IN THE WISCONSIN COURT OF APPEALS

Final Report

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Description of the Consulting Engagement

The National Center for State Courts (NCSC) was retained to examine caseflow through the districts of the Wisconsin Court of Appeals (Court) and provide an assessment and recommendations for improvement. NCSC's consulting team, consisting of Penelope J. Wentland and Dawn M. Rubio, both Senior Court Management Consultants met with or interviewed each judge, law clerk, administrative assistant, and staff attorneys housed in each district as well as the Chief Judge, the Chief Staff Attorney, the Administrative Assistant to the Chief Judge, and staff attorneys housed in Madison. In addition, both the Clerk of Court and Deputy Clerk were interviewed concerning the Clerk's Office involvement in case processing for the Wisconsin Court of Appeals.

NCSC is acknowledges Chief Judge Thomas Cane for his input, support, and patience as well as Presiding Judge Ted E. Wedemeyer, Jr., District I, Presiding Judge Richard S. Brown, District II, Presiding Judge Michael W. Hoover, District III, and Presiding Judge Charles P. Dykman, District IV. We also thank Chief Staff Attorney Peg Carlson and the Chief Judge's Administrative Assistant, Jennifer Krapf. We appreciate the access given to us by the Court and are grateful for the candor and confidence shown us. It has been a privilege to work with the judges and staff of the Wisconsin Court of Appeals and it is our sincere hope that this report will support the Court in its future endeavors.

Organization of This Report

This report is organized into five sections – I – Caseflow in the Wisconsin Court of Appeals, II – District Profiles, III – Issues, IV – Recommendations, and V - Comments. Sections I and II are designed to give the general reader the basic background and describe the context in which work is done. Each district of the Wisconsin Court of Appeals has an individual character that adds to the overall identity of the Court. Sections III and IV identify and address specific issues facing the Court. In addition, differences among the districts that impact the flow of work are also identified and discussed. Section III contains some specific recommendations as it reflects on

issues arising in each district. Recommendations on Section IV are general and directed to the Court. Section V results from the interactive process of review and comment by the Court on the draft report of issues and recommendations. In performing operational reviews, NCSC has found it valuable to solicit and include comments, perceptions, and dissensions concerning its work. The final deliverable includes both the observations and conclusions of the consultant and the responses of the client. This provides the reader with a richer context in which to consider the recommendations and their suitability for a particular environment. For the final report to stand alone without response or rebuttal is simplistic and unfair. And to exclude a client's comments is to diminish the involvement, commitment, contribution, and concerns of the judges and staff of the Wisconsin Court of Appeals. In addition to Section V, throughout the report, the reader will find footnoted comments and observations provided by the client in order to highlight contrasts in perceptions and conclusions. The Statistical Reference in both spreadsheet and chart forms is provided to support the discussions in Section III.

I. CASEFLOW IN THE WISCONSIN COURT OF APPEALS

Wisconsin's Court of Appeals is organized into four districts and has mandatory jurisdiction in civil, criminal, administrative agency, and juvenile case appeals. It has discretionary jurisdiction in interlocutory decision cases.[1] The Court Statistics Project of the National Center for State Courts (*State Court Caseload Statistics, 1999*-2000, p. 176) reports the following filings over the last 11 years (the 2000 number was provided by the Court):

1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
2,853	2,970	3,187	3,290	3,345	3,532	3,628	3,763	3,577	3,279	3,472

Dispositions over the last eleven years are as follows (same source as above):

1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
2,612	2,955	2,942	3,226	3,262	3,465	3,638	3,679	3,777	3,409	3,574

The long-term trend has been an increase in the number of cases filed except for 1998 when the number of cases filed dropped approximately 5%. The number of dispositions has also increased through the years except for 1999 when dispositions dropped a little less than 10%. When fewer cases were filed, the Court was able to produce more dispositions. It can be said that the Court has faced an ever-increasing workload over the last decade.

Figures 1 and 2 (found following page 6) illustrate general civil and criminal caseflow processes. Wisconsin provides for expedited appeals in civil cases where all parties are represented by counsel. Criminal appeals, petitions for leave to appeal, civil cases where at least one party is appearing pro se, and cases in which a no merit report will be filed are not eligible for the expedited appeals program. Cases to be decided by one judge are traffic regulation cases, municipal ordinance violation cases, misdemeanor cases, civil forfeitures, contempt cases, and cases under the Children's Code, the Mental

[1] Court Statistics Project, *State Court Caseload Statistics, 1999-2000* (National Center for State Courts 2000), p. 58.

Health Act, the Protective Service System, Small Claims Actions (including evictions), and the Juvenile Justice Code. All other cases are decided by a three-judge panel.

Typically, cases are to be calendared for submission or oral argument within 45 days of receipt of the last brief. Very few cases are orally argued in front of the Court of Appeals. At the direction of the Presiding Judge of the district, preference is typically given to expedited and criminal appeals and those appeals that must be given preference by statute.[2]

Motions are filed with the Clerk's Office. Each Presiding Judge designates a motions judge for the district and that motions judge may act on all motions for appeals to be heard by a panel except for those that reach the merits or preclude the merits from being reached. The motions judge may decide any motion on an appeal to be decided by one judge.[3] Staff attorneys assist the motions judge (and panel where the motion will be heard by the entire panel). Staff attorneys assigned to districts are located in Madison near the Clerk's Office primarily to facilitate the handling of motions.

Cases to be heard by a three-judge panel are reviewed by judges prior to a screening conference. At the screening conference, the panel determines the appropriate decisional process. A case may be routed for summary disposition, submission on briefs, without oral argument, oral argument, consolidation or consideration on the same calendar, or certification to the Supreme Court. Districts typically hold the decision conference immediately after or simultaneously with the screening conference. Cases to be disposed of summarily are those on which the panel unanimously agrees both on the decision and that the issues raised in the appeal involve only the application of well-settled law; those on which the issues are decided on the basis of unquestioned and controlling precedent; or those where the issues relate either to the sufficiency of evidence that is clearly supported by the record or to trial court discretion where the record clearly illustrates that there was no abuse of discretion. The panel may also issue

[2] *Wisconsin Court of Appeals: Internal Operating Procedures*, Revised September 27, 2000, p. 8.
[3] *Wisconsin Court of Appeals: Internal Operating Procedures*, Revised September 27, 2000, p. 9.

a summary order when requested to do so by the parties or where the panel deems it appropriate.[4]

Where the panel's decision is to be rendered in the form of an opinion or memorandum, preparation time should not exceed an average of 40 days and for the most complex cases, 70 days. This is by necessity dependent on workload composition for the individual judge responsible for the opinion and on the workload of the Court as a whole. When a case involves new or unsettled questions of general importance, the decision is rendered in the form of a full written opinion. Otherwise, the decision may be rendered in the form of a memorandum or per curiam opinion. Opinions are circulated for review and comment by the panel. Comments may be submitted to the opinion writer and the opinion writer may accept some or all of the suggestions. The opinion may be discussed again in conference, rewritten all or in part, and recirculated unless all judges concur. If all judges concur, the opinion becomes final. The author may request in writing that the panel approve the opinion or file any dissent or concurrence within five days. Dissents and concurrences are also circulated to the panel. In some instances, opinions are circulated to other panels that may be considering the same or similar issues. Only full written opinions are considered for publication.[5]

The Court's publication committee consists of the Chief Judge and one judge from each district selected by the other judges within that district. The opinion writer may recommend to the panel that an opinion be published but the recommendation for publication must come from the deciding panel to the publication committee. The Chief Staff Attorney may prepare a publication memorandum for distribution to the committee.[6]

Judges are responsible not only the decision but for the preparation of all opinions, memoranda, and orders. Both law clerks and staff attorneys assist in drafting and researching but that work is done at the direction and under the supervision of the

[4] *Wisconsin Court of Appeals: Internal Operating Procedures*, Revised September 27, 2000, p. 7.
[5] *Wisconsin Court of Appeals: Internal Operating Procedures*, Revised September 27, 2000, pp. 13-14.
[6] *Wisconsin Court of Appeals: Internal Operating Procedures*, Revised September 27, 2000, pp. 15-16.

judge assigned responsibility for the decision. In addition to each judge's participation in one or more panels, (s)he also writes one-judge opinions.

WISCONSIN COURT OF APPEALS
CIVIL CASEFLOW

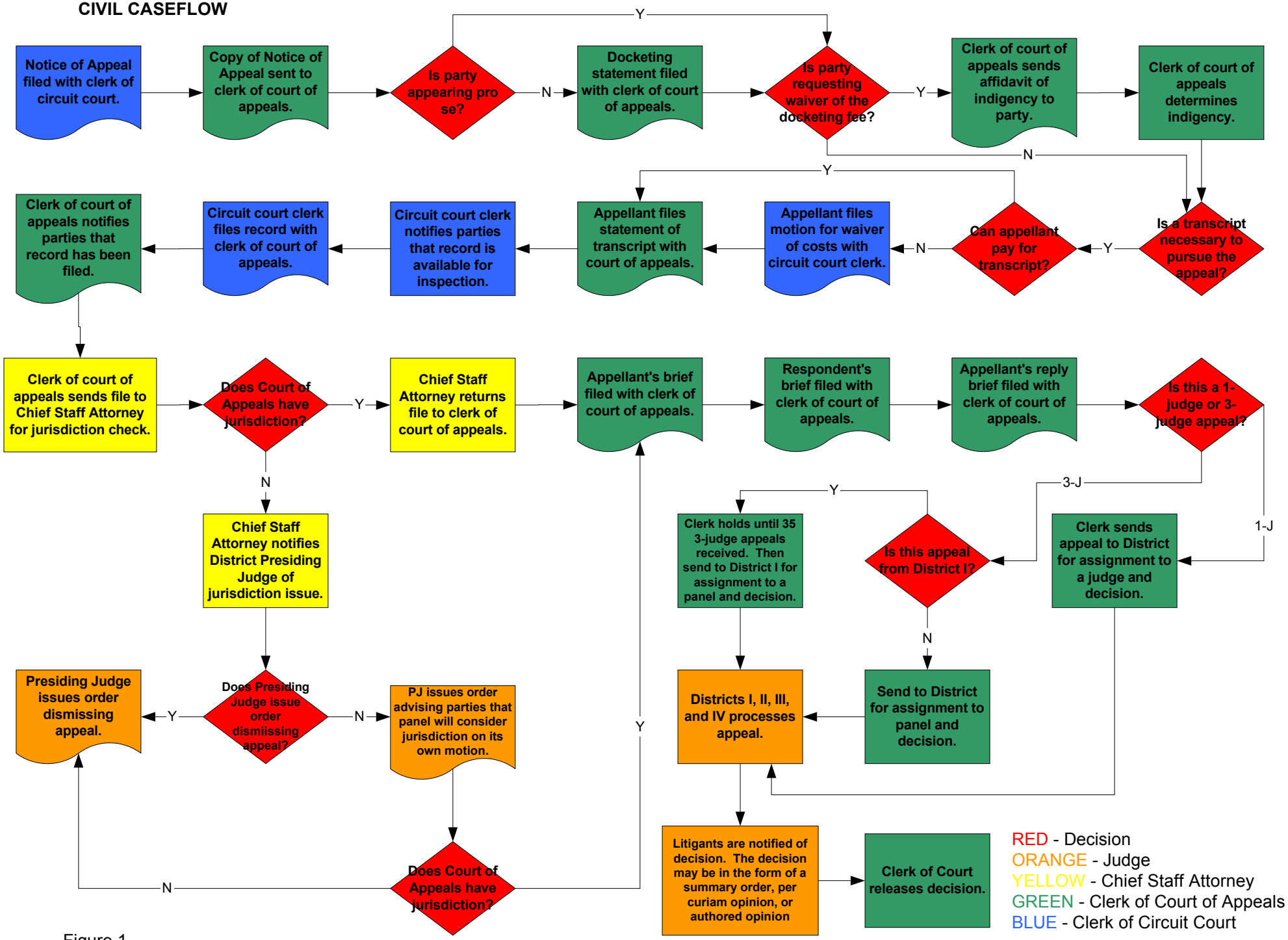

Figure 1

WISCONSIN COURT OF APPEALS
CRIMINAL CASEFLOW

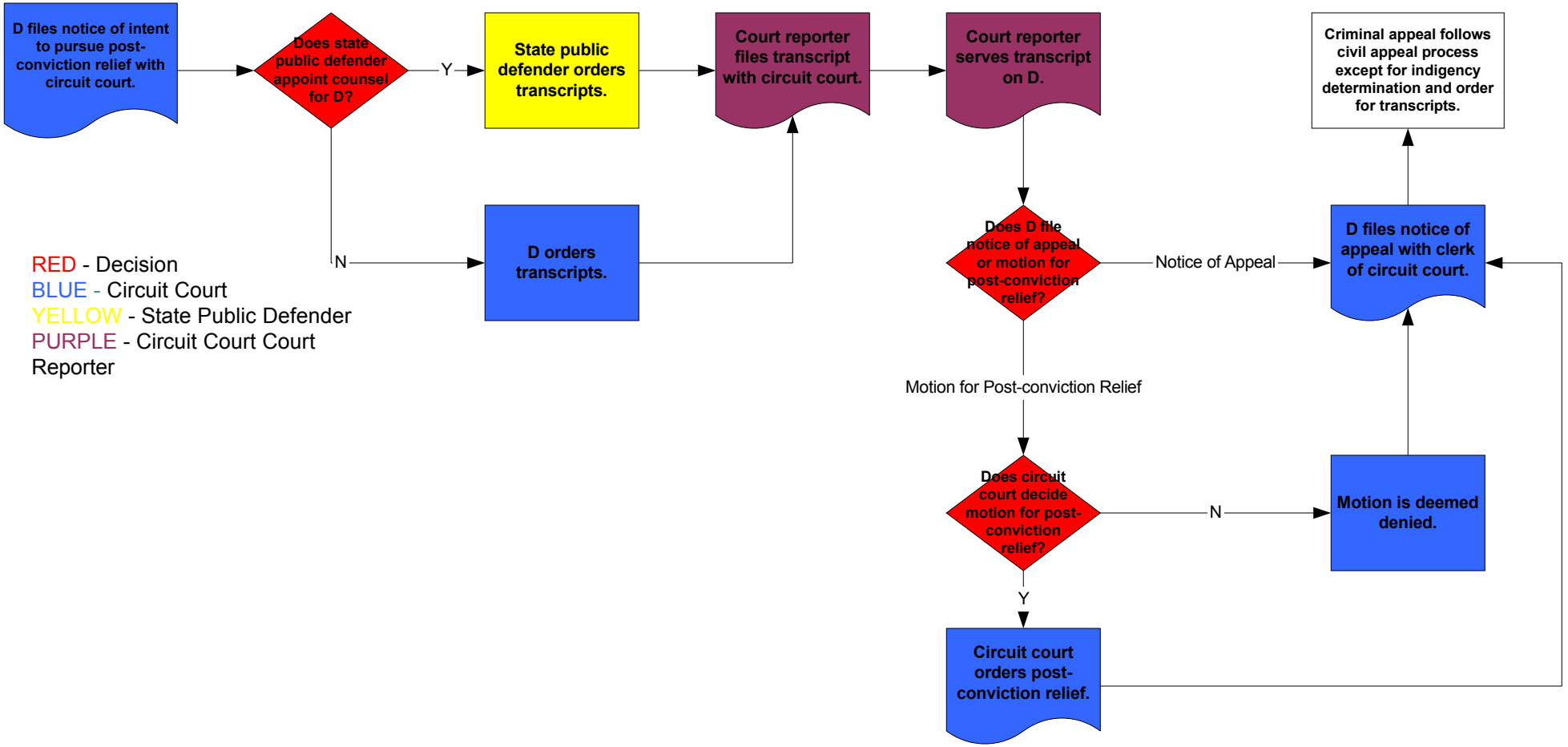

Figure 2

II. DISTRICT PROFILES

The four geographic districts of the Wisconsin Court of Appeals were intended to be equal in population. 2000 population estimates indicate District I has a population of 940,164; District II – 1,430,090; District III – 1,476,574, and District IV – 1,516,847.[7] District I contains only one county but it is by far the single most populated county within the state and most urban. District IV is the most populous and contains both the state capitol and the main campus of the University of Wisconsin. District III comprises the largest geographical area. District III also has the largest number of people per judge. Population per judge in District I is 235,041; in District II – 357,523; in District III – 492,191; and in District IV – 303,369. If a fourth judge were added to District III, the population per judge would still be the highest in the state at 369,143.5 persons per judge. Both Districts III and IV have 67 circuit court judges each; District I has 47 and District II has 61.

	DISTRICT I	DISTRICT II	DISTRICT III	DISTRICT IV
Number of Judges	4	4	3	5
Number of Screening Conferences/Month	1	2	4	2
Number of Panels/District	4	4	1	5
Number of Panels/Judge	3	3	1	3
Number of 3-J Cases/Panel/Month	8	7	24	7
Number of 3-J Cases/Judge/Month	24	21	24	21
Number of 3-J Cases/District/Month	32	28	24	35
Number of Counties/District[8]	1	12	35	24
Number of Circuit Court Judges/District[9]	47	61	67	67
2000 Redistricting Data Summary File[2]	940,164	1,430,090	1,476,574	1,516,847
Population/Court of Appeals Judge	235,041	357,523	492,191	303,369

[7] http://factfinder.census.gov/servlet/BasicFactsTable?_lang=en&_vt_name=DEC_2000_PL_U_GCTPL_ST2&_geo_id=04000US55 10/18/2001.
[8] BNA's Directory of State and Federal Courts, Judges, and Clerks – 2001.
[9] http://www.courts.state.wi.us.circuit/ - accessed 9/17/2001.

III. ISSUES

A. One Court or Four?

Constitutional and statutory provisions referencing the Court of Appeals require it to function as a single court. However, when the question of whether the Court of Appeals is one court or four courts was asked in each district, the essential distillation of the answers is that it is four courts. The only institution unifying the four districts identified is the Publication Committee. This committee, meeting monthly, determines which opinions will be published and may be cited as precedent. Judges, staff, and the Clerk's Office are heavily invested in the separate district identities – as are the attorneys for litigants. Having regional jurisdiction instead of statewide jurisdiction is one of the characteristics that adversely impacts time on appeal.[10]

Another facet of the one court or four courts issue is articulated in the Court's *Internal Operating Procedures*. The Presiding Judge of each district may initiate the development of policy concerning the Court's internal operations.[11] Without a courtwide mechanism to reconcile differing policies developed in the four districts on the same topic, the Court will be subject to divergent means for accomplishment of the same goals, inconsistent application of policies and procedures, and disparate development of the legal culture.

[10] Hanson, Roger A., *Time on Appeal,* National Center for State Courts, Williamsburg, Virginia (1996) p. 40.
[11] *Wisconsin Court of Appeals: Internal Operating Procedures*, Revised September 27, 2000, p. 2.

B. Lack of Case Management

The Court has no formal courtwide system of case management. It is supported by an automated system for records and event management and each district monitors its own workflow. Each chambers also closely monitors both its own workflow as well as the progress of opinions through the circulation process. However, the Court's automated system (shared by the Supreme Court) in use today does not readily provide the type or depth of information necessary to actively manage the Court's caseflow. Monitoring of workflow within the district and each chambers does not manage the case either before it actually arrives in the district or after it leaves the district nor does it manage cases in the aggregate. The Court has relied on unexamined processes that have long been in place to move cases from the trial court through the Clerk's Office, out to each district, and back again.

Responsibility for case management, as outlined in the Court's *Internal Operating Procedures*, rests in

1) The Chief Judge, who is responsible for the administration of the Court.
2) Each Presiding Judge, who is responsible for the management of the caseflow of appeals and proceedings originating in his/her district.
3) The Clerk of Court, who is responsible for the constant monitoring and supervision over cases from the time of appeal or commencement of proceedings until ultimate disposition.
4) The Chief Staff Attorney, who as legal advisor to the Clerk of Court, assists in the establishment of procedures for docketing and monitoring appeals and proceedings.

When some portion of responsibility for case management resides in each of seven positions, no one is truly responsible. To assist in monitoring caseflow, both the Clerk of Court and Administrative Assistant to the Chief Judge are responsible for the compilation and preparation of statistics concerning the Court's work; yet none of this information can readily be used to proactively manage the Court's cases.

C. Court Administration

The only courtwide position in addition to that of the Chief Staff Attorney is the Administrative Assistant to the Chief Judge. The *Internal Operating Procedures* state that the Administrative Assistant is to communicate and implement the administrative orders and directives of the Chief Judge.[12] Currently this involves primarily the compilation and computation of statistics concerning the work of the Court and other duties as the Chief Judge may assign. The *ABA Standards Relating to Appellate Courts* in Section 3.61 identify an appellate court administrator as a necessary component for smooth and efficient appellate court administration. The appellate court administrator should participate in the development and implementation of administrative policy for the Court, assist in calendar management and conformance monitoring of caseflow time and clearance standards, provide general administration for all staff services, perform personnel, financial, and records administration, liaise with local governments or other entities as directed by the chief judge, provide facilities and equipment management and the purchase of outside services as necessary, serve as secretary for administrative meetings of the Court's judges, provide reports to and consult with the administrative office of the courts, coordinate training and education for non-judicial personnel and assist with judicial education and training programs as needed, perform planning and research activities as required by the Court, supervise shared administrative services, and manage the Court's information system and other technology used by the Court.[13] Many of these administrative responsibilities such as technology, payroll, purchasing, and education and training are centralized within the office of the director of state courts. Another factor influencing the Court's administrative structure is the decentralization of the Court itself into the district structure. The autonomy provided to each district by the *Internal Operating Procedures* for the development of internal policy concerning caseflow has not supported strong centralized appellate court

[12] *Wisconsin Court of Appeals: Internal Operating Procedures*, Revised September 27, 2000, p. 2.

administration. One may argue whether or not a need for such administration exists. However, given the Court's backlog, the overall timeliness issues impacting case processing in District I[14], and the lack of timeliness in the preparation of per curiam opinions for the Court as a whole, NCSC is suggesting that there is a need for overall administration of the Court's operations based on timely, accurate, concise, and complete information concerning the flow of cases through the Court. The Administrative Assistant to the Chief Judge is not empowered by the Court to be proactive in monitoring and enhancing the flow of its cases. While no administrator may usurp the authority given to the judges for the administration of justice, the administration of the Court may be viewed differently. Because the work of the Court involves, in addition to the judge, his or her assistant, law clerks, staff attorneys, the Chief Staff Attorney, and the Clerk's Office, it is necessary to articulate and implement policies and procedures that permit smooth functioning and interactions among all participants in the Court's work. The *ABA Standards Relating to Appellate Courts* distinguishes between the judicial functions of judges and the administrative functions necessary to support the Court's operations by addressing the different tasks in different sections.

The current administrative structure of the Court consists of the Chief Judge, the Administrative Assistant, and the Chief Staff Attorney. Current workload monitoring and caseflow management information tools are reactive and are based upon data entered into the records management system. That system is not designed to monitor elapsed time for certain milestones in the appellate process. However, even without modification of the existing records management system

[13] American Bar Association, Judicial Administration Division, *Standards Relating to Appellate Courts 1994 Edition*, American Bar Association, Chicago (1995) pp. 117-118.

[14] **The Chief Judge has suggested that the issues specifically impacting timeliness of case processing in District I are outside the duties and responsibilities of an appellate court administrator. While this is true, an appellate court administrator would be able to devote the time and effort to monitor caseflow whereas the Presiding Judge, in addition to being that district's Presiding Judge must still carry a fully caseload as an appellate court judge, cannot. The appellate court administrator can compile and provide information to the Presiding Judge that**

to provide workflow monitoring detail, information is compiled so far after the fact that the Court cannot proactively respond to barriers and issues impacting the flow of its cases. Nor is there a courtwide forum in which the judges can discuss, assess, and evaluate the process and procedural modifications.

D. The Misnomer of Central Staff Attorney

The *Internal Operating Procedures* identify as central staff attorneys those attorneys who work in the Madison office and report to the Chief Staff Attorney. However, a central staff attorney's primary responsibility is for the work of the district to which (s)he is assigned and secondarily, for the out-of-district work assigned by the Chief Staff Attorney. The Chief Staff Attorney is dependent on the judges within each district in order to assess the performance of individual staff attorneys. The Chief Staff Attorney does not have staff available to assist in current and, potentially, future courtwide tasks. In practice, the Chief Staff Attorney has little actual authority to assign staff attorneys to non-district-related work nor is the Chief Staff Attorney viewed by staff attorneys as a resource upon which they can call to remedy workload inequities, procedural inconsistencies, or disparities in treatment. The management infrastructure for the staff attorneys is minimal. Although supervision nominally rests with the Chief Staff Attorney, judges are actually responsible for particular work assignments, review of that work, and performance assessment of staff attorneys to the Chief Staff Attorney. The Court has been quite flexible in permitting job sharing and the use of part-time staff attorneys to cover the workload of the Court of Appeals. Even though a full-time-equivalent position may be filled by two or some other combination of staff attorneys (i.e., three staff attorneys filling two full-time-equivalent positions), this actually means more people – rather than less – to supervise and more people require more communication. The Court's entire management infrastructure is minimal and while staff attorneys may not require supervision in the same sense as a clerk requires supervision, it is still necessary to manage the

would assist in the evaluation of the local case management process and permit the judges in District I to proactively and objectively evaluate their district's case management practices.

resource and ensure a consistent and equitable work environment. This identification of staff attorneys to a particular district reinforces inconsistencies of practice and procedure among the districts and, in some instances, among individual judges within a particular district. However, the identification of staff attorneys with a particular district also provides some positive benefits in setting expectations of performance from only three, four, or five judges rather than sixteen and can support closer communications and relationships between judges and staff attorneys.

Staff attorneys write memoranda and make recommendations concerning extensions of time, procedural and substantive motions, requests to place a 1-judge appeal in front of a 3-judge panel, supervisory writs, petitions for leave to appeal, motions for relief pending appeal, and inmate petitions. Staff attorneys also draft orders and, except in District I, per curiam opinions under the supervision of individual judges as well as review and evaluate no merit reports. Location of the staff attorneys in Madison, although assigned to particular districts, resulted from their involvement in the motions practice and the corresponding need to be co-located with the Clerk's Office.

In addition to staff attorneys assigned to each district but located in Madison, each district also has a staff attorney located in the district itself. These attorneys have different responsibilities and report to the Presiding Judge of each district. District staff attorneys also draft orders and per curiam opinions, but do so for panels within the district. A district staff attorney may also handle motions that are better addressed within the district rather than from Madison. The district staff attorney is also responsible for managing the expedited appeals program where it exists. In some instances, a district staff attorney functions more as an integral component of the district than do staff attorneys assigned to the district but located in Madison. In other instances, districts have overcome the geographical separation and are inclusive of staff attorneys located in Madison. Each appellate judge also has a law clerk.

Courtwide responsibilities of the Chief Staff Attorney include a jurisdiction review of each appeal filed. The Chief Staff Attorney also reviews opinions not recommended for publication to determine if a non-published opinion should be recommended for publication. The Chief Staff Attorney also reports doctrinal inconsistencies found in panel decisions to the Chief Judge.

E. Time on Appeal and Backlog[15] [16]

It has been said that one may know when it has taken either too little time or too much time to resolve an appeal. It is difficult to determine how long one should take. Time standards for time on appeal have undergone several iterations. From a firm 280-day stance by the American Bar Association promulgated in 1988 for both courts of last resort and intermediate appellate courts to 1994's more flexible reference model of 290 days from time of filing to disposition for 75% of cases in front of an intermediate appellate court and 365 days for 95% of its caseload, it is impossible to identify an optimum timeline in isolation. In looking at time on appeal for the Wisconsin Court of Appeals, we will reference one district to another rather than to an intermediate appellate court in another state. While differences in the districts do exist, they are less variable than attempting a comparison with intermediate appellate courts in other states where those courts have a different jurisdiction, operate under a different set of statutes and court rules, and bring judges to the bench using different methods. The project team examined statistical data collected by the Court as a basis for comparison and analysis. In reviewing the Court's own data, significant trends, issues, and points

[15] Statistics in this section are initially presented for the Court and then for each district. Statistical data is presented as both spreadsheets and charts in the Statistical Reference of this report.

[16] **The Chief Judge has noted that NCSC has inappropriately characterized the pending caseload as "backlog" in that included in this number are cases that cannot be placed on a submission calendar because they may be awaiting completion of the transcript, the record, or the briefing cycle. The Court is unable to consider any appeal until all preparatory steps have been completed. Therefore, not all of these cases are truly backlog. However, the presence of this consistent number of approximately 2,000 cases represents a demand on the Court of Appeals by its litigants and places the Court under significant pressure as well as the potential misconception that it is not timely. While it is timely in the aggregate, individual litigants view the Court on an appeal-by-appeal basis. There were 452 cases under submission in December of 1997 and that figure decreased to 308 in December of 2000 illustrating the Court's increased ability to promptly render its decisions.**

for discussion became readily apparent without the need to supplement with data collected specifically for this project. Using data specifically collected for this project could produce a bias into our analysis and conclusions as well as focus comment on data collection methods rather than report content.

As of December 31, 1997, 2,303 cases were pending. As of December 31, 1998, 2,135 cases were pending. As of December 31, 1999, 2,059 cases were pending. And as of December 31, 2000, 2,034 cases were pending. 1998 filings equal 3,577. 1999 filings equal 3,279. 2000 filings equal 3,472. Terminations in 1998 equal 3,777; in 1999, 3,409; and in 2000, 3574. Average days from filing of the notice of appeal to disposition in 1998 were 230; in 1999, 268; and in 2000, 276 – all well within the ABA Reference Model Time Standards for intermediate appellate courts which states that 75% of all cases should be resolved within 290 days from filing of the notice of appeal and 95% of all cases should be resolved within one year of the filing of the notice of appeal.[17] The production of 3-judge opinions in 1998 took 362 days; in 1999, 353 days; and in 2000, 359 days. These numbers indicate that those decisions eligible for publication and citation as precedent required the maximum recommended for 95% of the cases while representing only 14% of the cases terminated in 1998; 14% in 1999; and 12% in 2000. Without consideration of the backlog of approximately 2,000 cases each year, the Court's disposition production falls within the ABA Reference Model. However, when the work of the Court is presented on a district basis, a different pattern emerges.

District I

As of December 31, 1997, 729 cases were pending. As of December 31, 1998, 745 cases were pending. As of December 31, 1999, 754 cases were pending. And as of December 31, 2000, 645 cases were pending. 1998 filings equal 838; 1999 filings equal 839; 2000 filings equal 899. Terminations in 1998 equal 828; in 1999, 831; and in 2000, 981. Average days from filing of the notice of appeal

to disposition in 1998 were 312; in 1999, 327; and in 2000, 349 – all exceeding the ABA Reference Model Time Standards. The production of 3-judge opinions in 1998 took 510 days; in 1999, 474 days; and in 2000, 511 days. The production of 1-judge opinions in 1998 took 188 days; in 1999, 158 days; and in 2000, 210 days. The production of per curiam opinions required 463 days in 1998, 479 days in 1999, and 513 days in 2000. Judges write per curiam opinions in District I. Fast track cases required 244 days in 1998, 278 days in 1999, and 383 days in 2000.

District II

As of December 31, 1997, 543 cases were pending. As of December 31, 1998, 517 cases were pending. As of December 31, 1999, 517 cases were pending. And as of December 31, 2000, 488 cases were pending. 1998 filings equal 882; 1999 filings equal 844; 2000 filings equal 832. Terminations in 1998 equal 911; in 1999, 855; and in 2000, 888. Average days from filing of the notice of appeal to disposition in 1998 were 219; in 1999, 291; and in 2000, 263 – within or exceeding by only one day the ABA Reference Model Time Standards. The production of 3-judge opinions in 1998 took 357 days; in 1999, 396 days; and in 2000, 328 days. The production of 1-judge opinions in 1998 took 162 days; in 1999, 176 days; and in 2000, 176 days. The production of per curiam opinions required 392 days in 1998, 400 days in 1999, and 362 days in 2000. Fast track cases required 144 days in 1998, 141 days in 1999, and 132 days in 2000.

District III

As of December 31, 1997, 302 cases were pending. As of December 31, 1998, 313 cases were pending. As of December 31, 1999, 299 cases were pending. And as of December 31, 2000, 377 cases were pending. 1998 filings equal 708; 1999 filings equal 688; 2000 filings equal 777. Terminations in 1998 equal 697; in 1999, 708; and in 2000, 698. Average days from filing of the notice of appeal

[17] American Bar Association, Judicial Administration Division, *Standards Relating to Appellate Courts 1994 Edition*, American Bar Association, Chicago (1995) p.101.

to disposition in 1998 were 160; in 1999, 202; and in 2000, 214 – all within the ABA Reference Model Time Standards. The production of 3-judge opinions in 1998 took 230 days; in 1999, 237 days; and in 2000, 252 days – all within the ABA Reference Model Time Standards. The production of 1-judge opinions in 1998 took 152 days; in 1999, 154 days; and in 2000, 176 days – all within the ABA Reference Model Time Standards. The production of per curiam opinions required 235 days in 1998; 257 days in 1999; and 270 days in 2000 – all within the ABA Reference Model Time Standards. Fast track cases required 183 days in 1998, 170 days in 1999, and 172 days in 2000.

District IV

As of December 31, 1997, 729 cases were pending. As of December 31, 1998, 560 cases were pending. As of December 31, 1999, 489 cases were pending. And as of December 31, 2000, 524 cases were pending. 1998 filings equal 1149; 1999 filings equal 908; 2000 filings equal 964. Terminations in 1998 equal 1341; in 1999, 1015; and in 2000, 1007. Average days from filing of the notice of appeal to disposition in 1998 were 230; in 1999, 252; and in 2000, 279 – all within the ABA Reference Model Time Standards. The production of 3-judge opinions in 1998 took 350 days; in 1999, 303 days; and in 2000, 344 days. The production of 1-judge opinions in 1998 took 176 days; in 1999, 184 days; and in 2000, 203 days. The production of per curiam opinions required 360 days in 1998, 313 days in 1999, and 322 days in 2000. Fast track cases required 152 days in 1998, 149 days in 1999, and 136 days in 2000.

Each district performs approximately the same workload from year to year – although that workload varies by district. What is unknown by NCSC is whether cases sent out of district for processing are counted in the district of origin or the district of decision. However, given that the transfer of cases to another district for processing is the exception rather than the norm, it is unlikely that transferred cases would impact either the numbers or the processing time in any significant fashion. District I consistently requires more time from filing to disposition for

any type of case or disposition. We have averaged 1998, 1999, and 2000 data for each district for comparison purposes.[18]

- The average days from time of filing to disposition for District I cases over 1998, 1999, and 2000 is 329 days. For District II, this average is 258 days; District III, 192 days; and District IV, 254 days.

All of the other districts require less time, on the average, to reach disposition than District I and all of the other districts are under the 75% 290-day ABA Reference Model Time Standard for 100% of their cases.

Do District I cases have unique characteristics that require more time for consideration and deliberation? Is District I's caseload composition significantly different from that of other districts? Are the practices and procedures of District I contributing to time on appeal? Do the communications methods used by District I with their staff attorneys contribute to time on appeal? Are court reporters serving District I trial courts consistently late with the production of transcripts? Are those trial courts feeding cases to District I consistently late with compilation of the record? Has a history of delay created an expectation of delay that is translated into the reality of delay? What impact does District I's motion practice have on judge availability for opinion production? Why do cases require more time in District I to reach disposition?

Do District I cases have unique characteristics that require more time for consideration and deliberation? Is District I's caseload composition significantly different from that of other districts?

- Over the last three years (1998-2000), District I has had an average of 394 civil filings and 465 criminal filings. Of the 465 criminal filings, 170 were no merit reports or 43 per judge.
- District II averaged 475 civil filings and 378 criminal filings of which 119 were no merit reports or 30 per judge.
- District III – 452 civil filings and 272 criminal filings with 96 no merit reports or 32 per judge.

[18] Statistical data is presented in the Statistical Reference of this report.

- District IV – 622 civil filings and 385 criminal filings with 140 no merit reports or 28 per judge.
- District I's no merit reports constituted 37% of its criminal caseload; District II's no merit reports were 31% of its criminal caseload; District III's no merit reports were 32% of its criminal caseload; and District IV's no merit reports were 36% of its criminal caseload.

In each district, a staff attorney reviews the no merit report, any response, the record, and drafts an opinion or order under a judge's supervision.[19] On a percentage basis, a numerical basis, and a per judge basis, District I was responsible for supervising staff attorneys in the production of more opinions or orders on no merit reports and did so with four judges compared to District IV's responsibility for supervising 140 opinions or orders on no merit reports. This comprised 36% of its criminal caseload supervised by five judges. While differences in the number of no merit opinions and no merit summary dispositions may not be significant, on a per judge basis, District I was responsible for 43 per judge and District IV was responsible for 28 per judge. An average of 107 criminal cases were terminated by opinion in District I which corresponds to 27 criminal opinions written or supervised per judge and in District IV, an average of 189 criminal cases were terminated by opinion corresponding to 38 criminal opinions written or supervised per judge. In Districts II and III, there were 35 criminal opinions per judge and 34 criminal opinions per judge respectively. While District I had the largest no merit caseload, it had the smallest number of criminal opinions per judge.

- District I judges had, on the average, 12 writs per judge, 15 leave to appeal petitions per judge, and 145 matters of right per judge filed in the last three years.
- District II had 14 writs per judge, 20 leave to appeal petitions per judge, and 150 matters of right per judge.
- District III had 13 writs per judge, 21 leave to appeal petitions per judge, and 175 matters of right.

[19] **The Chief Judge notes that the bulk of work on no merit reports falls to staff attorneys. Neither judges nor their staffs typically perform "hands-on" work on no merit reports. The work required in resolving no merit reports reduces the amount of time available for other types of work and has a cascading impact on the amount time required to accomplish all of the work.**

- District IV had 16 writs per judge, 12 leave to appeal petitions per judge, and 145 matters of right per judge.
- Average total filings per judge in District I were 215; in District II, 213; in District III, 241; and in District IV, 201.
- Average per judge statistics for civil opinions are District I – 46 per judge; District II – 51 per judge; District III – 74 per judge; and District IV – 69 per judge.

For all types of matters, on a per judge basis, District I has the fewest. Districts II, III, and IV are responsible for more civil opinions per judge than District I.

- There are, on average, 16 1-judge opinions per judge and 16 3-judge opinions per judge for a total of 32 cases per judge terminated by signed opinion in District I.
- In District II, there are, on average, 26 1-judge opinions per judge and 30 3-judge opinions per judge for a total of 56 cases per judge terminated by signed opinion.
- In District III, there are, on average, 26 1-judge opinions per judge and 34 3-judge opinions per judge for a total of 60 cases per judge terminated by signed opinion.
- In District IV, there are, on average, 27 1-judge opinions per judge and 37 3-judge opinions per judge for a total of 64 cases per judge terminated by signed opinion.

While there are differences in the caseload composition from one district to another, District I produces the lowest number of signed opinions per judge than any other district. District I produces the lowest number of civil opinions per judge than any other district. District III has the highest number of filings per judge. District I has the highest number of no merit reports per judge.

Are the practices and procedures of District I contributing to time on appeal? Do the communications methods used by District I with their staff attorneys contribute to time on appeal? District I practices and procedures differ from the other districts most significantly in two areas – the first is the construction, format, and report of outcomes of its screening conference and the second is its assignment of the writing of per curiam opinions to judges. The Court of Appeals uses the designation "screening conference" for what is, for all intents and purposes (and is so referred to in the *Internal Operating*

Procedures)[20], the decision conference. Although cases scheduled for oral argument would be decided following that argument, the Wisconsin Court of Appeals does not have a tradition of oral argument. In 1998, the Court held a total of 58 oral arguments out of 1535 cases submitted or less than 4% of cases. In 1999, the Court held a total of 58 oral arguments out of 1525 cases submitted or less than 4% of cases. In 2000, the Court held a total of 47 oral arguments out of 1484 cases submitted or a little more than 3% of cases.

During the screening or decision conference, 3-judge appeals assigned to panels are considered for both the Court's decision and the method by which the decision will be promulgated. If the report method decided on is written opinion, the disposition is assigned to a particular judge for writing. If another method is used to announce the decision, the disposition is assigned to a particular judge for supervision. In District I, per curiam opinions are also assigned to a particular judge for writing. In other districts, per curiam opinions are assigned to staff attorneys and are written under the supervision of a judge.

Judges review the record, pertinent papers and pleadings, as well as the briefs prior to the screening or decision conference. This activity typically occurs immediately preceding the conference so that material is fresh and foremost in the minds of the judges. However, the limited time allocated for this activity does not permit the formal preparation of bench memoranda or intensive research (although judges do assign research or conduct it themselves should they have questions). Therefore, the decision reached at a screening or decision conference may be tentative and subject to change once the judge responsible for the opinion has had an opportunity to truly study and contemplate the subject matter. Hence, the Court of Appeals typically refers to these conferences using the appellation "screening conference" rather than decision conference. Input from law clerks or staff attorneys prior to the screening conference is minimal if at all. Should a decision be assigned out of conference to a staff attorney, it is necessary to

[20] *Wisconsin Court of Appeals: Internal Operating Procedures*, Revised September 27, 2000, p.11.

communicate the rationale of the conference to the staff attorney to assist him or her in crafting the verbiage.

Districts II, III, and IV employ the convention of a screening memorandum, a report of outcomes and rationale for those outcomes, to communicate the conference's decisions to staff attorneys. District I does not provide a post-screening memorandum to its staff attorneys although the outcome and the format of the decision is noted.[21] One impact of this is that staff attorneys must discern the panel's rationale through their own research into the case and its issues, presenting it back to the supervising judge to determine if he or she has followed the same rationale as the panel did in reaching its decision. District I judges have indicated that in most instances, these types of outcomes are based on a well-settled application of the law of which staff attorneys should be cognizant. In looking at this practice, NCSC found that staff attorneys must, in essence, recreate the work of the panel and, if arriving at a different decision, place it before the supervising judge (and perhaps before the panel to re-conference the decision) for reconsideration. Other districts provide to staff attorneys a brief outline of the rationale used by the panel in reaching a particular decision. In summary:

- District I takes, on the average from the notice of appeal to disposition, 355 days for summary dispositions and 143 days for orders.
- District II takes, on the average from the notice of appeal to disposition, 254 days for summary dispositions and 73 days for orders.
- District III takes, on the average from the notice of appeal to disposition, 190 days for summary dispositions and 110 days for orders.
- District IV takes, on the average from the notice of appeal to disposition, 250 days for summary dispositions and 61 days for orders.

For both summary dispositions and orders, District I requires more time from notice of appeal to disposition than District II, III, or IV.

[21] **Additional information provided by the Chief Judge indicates that District I judges do provide to staff attorneys individual pre-screening memoranda. Individual judges' pre-screening memoranda may focus on issues or articulate rationale that may not become an integral component of the actual decisional process. The staff attorney is left without the panel's consensus on the resolution of issues raised in the appeal.**

Another unique feature of the District I conference is its length. Conferences typically last from 90 – 120 minutes, during which 35 cases are discussed. While the actual conference proceedings are confidential, this timeframe of 90 – 120 minutes permits between 2.6 to 3.4 minutes per case. It is difficult to imagine that, while this use of time appears extremely efficient, all cases receive a thorough and substantive discussion. It is also important to remember that while all cases are equal, they do not all require the same amount of work. Therefore, many cases can be readily disposed in 2 – 3 minutes. However, some cases cannot. Certainly devoting 90 – 120 minutes to a conference does not permit the recordation in memorandum form of the panel's rationale and basis for a particular decision. If concern exists that a restructuring of the conference would result in overly long conferences or unresolved dialog, it is necessary to balance the need to fully explore both the differences in judicial philosophy concerning the application of the law and to ensure that an environment that promotes secure and respectful dialogue exists against the equally pressing requirement to complete the work. To do this requires a consensus at the conference as to what is reasonable, necessary, and appropriate. This is a responsibility of the judges as individuals and of the district in the aggregate. To do less does not serve the Court.

District I cases are held in the Clerk's Office until enough cases have been submitted to fill out a conference agenda. Only District I follows this practice. When asked, the Clerk's Office indicated that District I did not have enough file storage space and wanted to limit the number of files held in the district. However, District I did not indicate file space as the issue. In other districts, cases are sent out to the district from the Clerk's Office as soon as the briefing schedule is completed. The housing of the completed case file within the district presents a tangible graphic of the district's pending caseload. Whether this results in any legitimate impact on workflow is debatable. However, it is much easier to determine what lies ahead when it is sitting on the shelf.

The *Internal Operating Procedures* states that

> "the panel's decision and opinion is given in a form appropriate to the complexity and importance of the issues presented in the case. In cases involving new or unsettled questions of general importance, a full written opinion reciting the facts, the questions presented, and analysis of pertinent authorities and principles is rendered. Cases not involving such questions are decided by memorandum or per curiam opinion."[22]

Per curiam opinions are, by this definition, reserved to settled and specific questions. The question is whether or not having judges write per curiam opinions is the best and most appropriate use of this scarce, valuable, and much-worked resource.[23] Judges must be viewed as leaders of a team that includes not only their individual law clerks but also the staff attorneys assigned to support the district as well. The team for every decision might be different but articulating every decision is a team-effort. A judge may even use his or her law clerk to assist in writing a 1-judge opinion although this practice is rare. Judges typically focus law clerks on the meatier and weightier cases that may be published and become precedent. A judge supervises every opinion. However, having a judge actually write every opinion does not make the best use of the judicial resource. The work of the Court of Appeals would be impossible to do if only sixteen judges did it all. Therefore, judges are supplemented by both law clerks and staff attorneys. Law clerks and staff attorneys do not make decisions but do assist the judges in articulating their decisions. The task of judging falls to those individuals elected to that position and not to chambers or court staff. The Court of Appeals is very conscious of this requirement and judges do the judging.

Because settled and specific questions are just that, staff attorneys should be used to write per curiam opinions under judicial supervision once a case has been conferenced and the decision has been rendered. However, in order to do so, staff attorneys must have adequate guidance and direction from the conference. This

[22] *Wisconsin Court of Appeals: Internal Operating Procedures*, Revised September 27, 2000, p.13.
[23] **The Chief Judge has pointed out that all panels release judge-written per curiam opinions on occasion.**

would allow District I judges to focus more on 1-judge and 3-judge opinions as well as conference preparation and participation.[24]

- In District I, per curiam opinions average 485 days from notice of appeal to disposition. Three-judge opinions require an average of 498 days from notice of appeal to disposition.
- In District II, per curiam opinions average 385 days from notice of appeal to disposition. Three-judge opinions require an average of 360 days from notice of appeal to disposition.
- In District III, per curiam opinions average 254 days from notice of appeal to disposition. Three-judge opinions required an average of 240 days from notice of appeal to disposition.
- In District IV, per curiam opinions average 332 days from notice of appeal to disposition. Three-judge opinions required an average of 332 days from notice of appeal to disposition.

It is arguable that decisions on settled and specific questions should not require as much or more time than the production of 3-judge opinions which are, by the Court's own definition, decisions concerning new questions or unsettled questions of general importance. Only 3-judge opinions may be published and become precedent. It must also be said that the pace of per curiam opinion production in Districts II, III, and IV is similar to that in District I. What is unknown is the response of litigants who wait a year less one day (the average number of days from notice of appeal to disposition for the Court as a whole is 364 days) for a decision from the Court of Appeals on a settled and specific question.

An anomaly found in District III concerns the time from notice to appeal to disposition for fast track cases.

- District I fast track cases require an average of 302 days, 3-judge opinions 498 days, and per curiam opinions 485 days. In other words, it takes 61% of the time to get a fast track case resolved than it takes to receive a 3-judge opinion and 62% of the time it takes to receive a per curiam opinion.

[24] **NCSC did not review actual content of any published opinion, authored but unpublished opinion, per curiam opinion, or summary disposition order. It has been suggested that there are differing interpretations among the districts as to what is styled as an authored but unpublished opinion and a per curiam opinion. Such an evaluation of content is beyond the scope of this project but NCSC recommends that the Court review content and form for consistent use across the districts.**

- District II fast track cases require an average of 139 days, 3-judge opinions 380 days, and per curiam opinions 385 days. In other words, it takes 37% of the time to get a fast track case resolved than it takes to receive a 3-judge opinion and 36% of the time it takes to receive a per curiam opinion.
- District III fast track cases require an average of 175 days, 3-judge opinions 240 days, and per curiam opinions 254 days. In other words, it takes 73% of the time to get a fast track case resolved than it takes to receive a 3-judge opinion and 69% of the time it takes to receive a per curiam opinion.
- District IV fast track cases require an average of 146 days and both 3-judge opinions and per curiam opinions require 332 days. In other words, it takes 44% of the time to get a fast track case resolved than it takes to receive either a 3-judge opinion or a per curiam opinion.

The fast track is designed to reduce the time between the filing of the notice of appeal and disposition of the case. In District III a fast track appeal is faster than either a case receiving a 3-judge opinion or a case receiving a per curiam opinion, but if it requires 73% or 69% of the time, is it fast enough? In District I, fast track appeals require 61% of the time it takes to receive a 3-judge opinion and 62% of the time it takes to receive a per curiam opinion. However, District III's 175 days appears much better than District I's 302 days. Is the fast track process worth the time and resources devoted to it? What is done in Districts II and IV that permit them to process fast track cases in 36.5% and 44% of time required for 3-judge and per curiam opinions? Or is it that District III, having the fewest judicial resources and correspondingly, the fewest staff attorney resources, simply cannot afford the differentiation that fast track cases require?

Are court reporters serving District I trial courts consistently late with the production of transcripts? Are those trial courts feeding cases to District I consistently late with compilation of the record? Has a history of delay created an expectation of delay that is translated into the reality of delay? NCSC did not review statistics showing the number of days from the date of appeal until the case is submitted to the district.[25] However, in reviewing the

[25] **The Chief Judge has suggested that had NCSC requested this statistic (which is available but unpublished), we could have more fully explored reasons for delay.**

rules of appellate procedure, NCSC constructed both the civil appeal and criminal appeal timelines. For a civil appeal, the transcript of the proceedings is due on day 70 of the civil appeal timeline with the record due on day 90. In District I, 3-judge opinions require, on the average, 498 days from notice of appeal to disposition; 1-judge opinions require 135 days; and per curiam opinions require 485 days. (Per curiam opinions are included because of District I's practice of assigning per curiam opinions to judges for writing.) In District II, the average number of days from notice of appeal to disposition is 360 days for 3-judge opinions, 171 days for 1-judge opinions, and 335 days for per curiam opinions. In District III, the average number of days from notice of appeal to disposition is 240 days for 3-judge opinions, 161 days for 1-judge opinions, and 254 days for per curiam opinions. In District IV, the average number of days from notice of appeal to disposition is 332 days for 3-judge opinions, 188 days for 1-judge opinions, and 332 days for per curiam opinions. This appears to support the supposition that the delay in producing 3-judge and per curiam opinions may be due to late filing of the transcript and/or record on appeal. One-judge opinions are typically rendered in those cases requiring a specific track by law because of the nature of the case.

In constructing the criminal appeal timeline, we note that the transcript must be filed with the trial court during pursuit of post-conviction relief by day 90 of that process. The notice of appeal does not have to be filed until completion of post-conviction relief activities at the trial court level. The Wisconsin Court of Appeals does not publish statistics on the length of time from notice of appeal to disposition for 3-judge, 1-judge, and per curiam opinions further delineated by case type (civil or criminal) which would allow us to determine if the production of the transcript during the lower court's post-conviction relief proceedings improves the Court's production time for opinions in criminal cases. However, District I produces the fewest number of signed opinions in criminal cases and takes the longest time in doing so even though the trial transcripts are produced during the post-conviction relief phase at the trial court level.

We also reviewed the average number of days from assignment of the appeal to a particular judge for writing of the opinion to disposition.

- The average number of days from assignment to disposition for 3-judge opinions in District I is 93 days. The average number of days from assignment to disposition for 3-judge opinions in District II is 71 days. The average number of days from assignment to disposition for 3-judge opinions in District III is 42 days. The average number of days from assignment to disposition for 3-judge opinions in District IV is 88 days.[26]

The *ABA Standards Relating to Appellate Courts* state that opinions should be prepared within 55 days from the date of oral argument or date of assignment. Judges on intermediate appellate courts not filing a written dissent should indicate their vote within 15 days of the receipt of an opinion. Dissents should be filed within 30 days. Prerelease processing should take no more than 20 days including the time necessary to address a dissent.[27] A generous computation of the total time from assignment to release is 55 + 30 + 20 or 105 days. This assumes that every opinion includes a dissent. A more realistic computation is 55 + 15 + 20 or 90 days. Districts II, III, and IV all comply with this standard.

- In District I, the assignment of the opinion for writing occurs on day 405 after filing of the notice of appeal. In District II, assignment occurs on day 289 after filing of the notice of appeal. In District III, assignment occurs on day 198 after filing of the notice of appeal. In District IV, assignment occurs on day 244 after filing of the notice of appeal.

For civil cases, the transcript is to be filed on day 70 after filing of the notice of appeal according to court rules and the record should be filed on day 90. The reply brief is due on day 175. In criminal cases, the transcript is filed during the post-conviction relief proceedings at the trial court level and the record is filed with the Court of Appeals on day 40 after filing the notice of appeal. The reply brief is due on day 130.

This means that there are, theoretically, 230 days between the filing of the reply brief in District I civil cases and the time an opinion is assigned for writing. In

[26] Averages were computed from the number of days from assignment to disposition for individual judges in each district for 1999 and 2000.

District II, there are 114 days; in District III, 23 days; and in District IV, 69 days. For criminal cases, there are, theoretically, 368 days between the filing of the reply brief in District I and assignment of the opinion; in District II, 159 days; in District III, 68 days; and in District IV, 114 days. It has been suggested that the production of the transcript and filing of the record from the trial court do not always occur in an expeditious manner, thereby creating an apparent delay in the Court's consideration of cases. The Court could choose to exercise a tighter control over the production of transcripts and filing of the record through the application of sanctions for non-compliance with court rules. The Court could also choose a strict no extension policy for the filing of briefs.[28] However, if after the application of sanctions and a denial of extensions of time for the filing of briefs, the Court is still unable to consider a particular case in a timely manner, these actions may be perceived as inappropriate remedies for enhancing the Court's expeditious resolution of cases. The Court must also contend with the current perception that because it takes so long for a particular case to flow through the Court, attorneys, aware that the briefing schedule will most likely be extended, automatically pace their work to the almost guaranteed extensions of time. The *ABA Standards Relating to Appellate Courts* suggest that if a case is to be submitted to a panel, it should be submitted to that panel within 35 days of the filing of the appellee's brief.[29] Under ideal circumstances, this means that civil cases would be decided on day 210 of the civil appeals timeline and criminal cases would be decided on day 165 of the criminal appeals timeline.

Also of interest is the guideline for the production of memorandum opinions. In District I judges, it takes an average of 73 days for per curiam opinions from date of assignment to disposition; for District II judges, 80 days; for District III judges, 55 days; and for District IV judges, 95 days. The *ABA Standards Relating to*

[27] American Bar Association, Judicial Administration Division, *Standards Relating to Appellate Courts 1994 Edition*, American Bar Association, Chicago (1995) pp.111-112.
[28] **The Chief Judge has noted that policy changes such as this require the agreement of each district and may have implications that should be carefully considered by all judges.**
[29] American Bar Association, Judicial Administration Division, *Standards Relating to Appellate Courts 1994 Edition*, American Bar Association, Chicago (1995) p. 111.

Appellate Courts states "memorandum opinions should be prepared within 30 days of oral argument or date of assignment."[30] [31] No district is in conformance with this particular standard; however, District I outpaces both Districts II and IV. Does this attention to the production of per curiam opinions come at the cost of judge availability for 3-judge opinions?

What impact does District I's motion practice have on judge availability for opinion production? District I handled 2,849 motions in 1998, 2,826 in 1999, and 3,078 in 2000 for an average of 2,918 motions per year. District II handled 2,406 motions in 1998, 2,310 in 1999, and 2,606 in 2000 for an average of 2,441 motions per year. District III handled 1,335 motions in 1998, 1,380 in 1999, and 1,531 in 2000 for an average of 1,415 per year. District IV handled 2,811 motions in 1998, 2,674 in 1999, and 2,599 in 2000 for an average of 2,695 motions per year. District I had an average of 729 motions per judge; District II – 610 per judge; District III – 472 per judge; and District IV – 539 per judge. District I has the highest average number of motions per judge. However, in District I, all motions on 1-judge cases are heard by the Presiding Judge. We do not have numbers as to how many 3-judge motions there are as opposed to 1-judge motions.[32] However, if 3-judge appeals represent an average of 84% of filings in District I, 78% of filings in District II, 76% of filings in District III, and 75% of filings in District IV, then it is not unreasonable to suggest that 3-judge motions represent an average of 2,451 motions in District I, 1,904 motions in

[30] American Bar Association, Judicial Administration Division, *Standards Relating to Appellate Courts 1994 Edition*, American Bar Association, Chicago (1995) p. 112.

[31] **The Chief Judge has requested a clarification of the ABA standard concerning the production of memorandum opinions. According to p. 113 of the *Standards Relating to Appellate Courts* a memorandum opinion is defined as being adequate "when the decision in a case involves the application of well-settled law or the disposition of the case is controlled by a prior holding of the court or a higher court." This language agrees with that of the *Internal Operating Procedures* for disposing a case summarily by order (see p. 7). Other factors impacting the Court's ability to comply with such a standard are the number of case assignments each staff attorney receives each month, the motions practice, and attendant duties such as circulation, approval, and cite checking.**

[32] **The Chief Judge notes that statistics detailing the numbers of 1-judge and 3-judge motions would have been made available to NCSC had we requested them.**

District II, 1,075 motions in District III, and 2,021 motions in District IV.[33] This means that there are, on average, 613 3-judge motions per judge in District I; 476 3-judge motions per judge in District II; 358 3-judge motions per judge in District III; and 404 3-judge motions per judge in District IV. This also means that each judge in District I hears, on the average, 51% more motions than other judges within the Court.[34] As each District I judge's motion practice is half again as much as any other judge on the Court, it is reasonable to assert that the volume of motions in District I impacts its opinion production timeline.

As the Chief Judge has pointed out to NCSC and we have presented in footnote 33, NCSC's assumption concerning motions heard by 3-judge panels was not only incorrect – but wildly so. Therefore, we present the correct numbers in the annotation and will recast the preceding paragraph.

In District I, 3-judge panels heard an average of 38 motions; in District II, 3-judge panels heard an average of 45 motions; in District III, the 3-judge panel heard an average of 111 motions; and in District IV, 3-judge panels hard an average of 221 motions. Given that District I's Presiding Judge handles motions not requiring the attention of a 3-judge panel, other District I judges are NOT disproportionately impacted by the motions practice as we previously asserted. However, the impact of having more

[33] **The Chief Judge has pointed out that NCSC's supposition that 1-judge and 3-judge motions are proportional to 1-judge and 3-judge appeals is incorrect. On addition, only those motions in 3-judge appeals which reach the merits or preclude the merits from being reached are heard by a 3-judge panel. Therefore, the motions practice has a disproportionate effect on the judges and cannot be extrapolated from the number of 3-judge appeals. The following table has been provided to rectify this error.**

Motions Referred To 3-Judge Panels	1997	1998	1999	2000
District I	23	45	26	57
District II	41	43	42	52
District III	29	26	24	31
District IV	109	112	128	95
Court of Appeals	202	226	220	235

[34] On a per judge basis, District I's motion practice is 29% more than that of District II, 71% more than District III, and 52% more than District IV for an average of 51% more. The calculation is for District II – (613 – 476 = 137)/476 = 29%; District III – (613 – 358 = 255)/358 = 71%; and District IV – (613 – 404 = 209)/404 = 52%. (29 + 71 + 52)/3 = 51%.

motions than any other district is felt by staff attorneys assigned to District I.

Why do cases require more time in District I to reach disposition? NCSC believes there is a combination of factors impacting time on appeal in District I. On a percentage basis, a numerical basis, and a per judge basis, District I has been responsible for supervising more no merit appeals than any other district. While District IV's no merit cases constituted 36% of its caseload as compared to District I's no merit cases as 37% share of its caseload, District IV was able to spread the supervision of these cases among five judges rather than four. While District I may have more criminal cases filed than other districts, it produces fewer criminal opinions per judge. It also produces fewer civil opinions per judge than any other district. It produces the fewest number of signed opinions per judge. The fast track, in its District I incarnation, does not appear to provide any relief of the caseload congestion for the district as a whole. District I judges are also responsible for more motions per judge than any other district. It is likely that both the number of no merit reports and the number of 3-judge motions impact judge availability for other tasks.[35]

It is our contention that District I's structure of its screening conference does not permit the full range of discussion that would result in a thorough and well-documented rationale for use in later opinion production by either judges or staff attorneys. It also appears that the assignment of per curiam opinions to judges for writing rather than for supervision impacts the time judges have available to work on 3-judge opinions. Per curiam opinions are by definition a reflection of the Court's decision rather than that of a single judge. To spend judge time on writing unsigned and routine opinions must by necessity take time away from that available for the more time-sensitive 1-judge opinions and the more complex 3-judge opinions. If District I were to produce a comprehensive screening memo

[35] **We refer the reader to footnote 33. Although the number of motions in District I is greater than that of any other district, their impact on judge time, except for the Presiding Judge, may be negligible.**

out of conference for use by both judges and staff attorneys, that time invested up front will potentially save time during the actual opinion production process. There must also be the willingness on the part of judges to work together in their assigned panels to determine the Court's rationale for a particular decision. The Court's decision must be a consensus of individual judicial thought, philosophy, experience, and interpretation. Appellate courts are by definition responsible for building a consensus arrived at through discussion and contemplation and are unlike trial courts which are much more representative of the judge's individual approach to the law and a reflection of his or her personality, style, and orientation. It is for this very reason that appellate review exists – to provide the opportunity for the application of additional resources to an issue – outside the heat of battle or the pressure of the trial. It is incumbent on the Court and also on each district to promote both the opportunity that fosters the creation of consensus and the culture that sustains it. This consensus must also recognize, honor, and respect the individual differences and the unique character brought to the Court by each of its members. To do less is to fail to meet the Court's responsibility to its litigants, the state's citizens, and the ideals and principles of justice. The current structure of District I's screening conference does not provide the judges with a fully realized opportunity for discussion and exchange as well as an opportunity to memorialize that exchange for use by both staff attorneys and judges. The commentary to Section 3.41 – Responsibilities of Judges and Lawyers – of the *ABA Standards Relating to Appellate Courts* states "Judges should also adjust working habits to the requirements of the appellate court as a whole. While steadfastly independent in carrying out judicial functions, they should perform them in conformity with the procedures governing the administration of the appellate court."[36]

There is anecdotal information that trial courts and court reporters in District I are less timely in providing the record to or producing trial transcripts for the Court

[36] American Bar Association, Judicial Administration Division, *Standards Relating to Appellate Courts 1994 Edition*, American Bar Association, Chicago (1995) p. 78.

than trial courts and court reporters in other districts. While this certainly impacts time on appeal, the Court could choose to require these functions be performed more expeditiously. Given that there are, theoretically, 230 days between filing of the reply brief and the date of assignment, some of this time is consumed by the late filing of transcripts and records – at least for civil appeals. However, District I 3-judge cases are currently held in the Clerk's Office until they have received enough to fill out a conference agenda. In addition, District I is preparing conference agendas 2 – 3 months in advance basically adding 60 – 90 days to time on appeal where fully briefed cases are waiting without action.[37] It is also difficult to reform a culture of delay when it is supported by backlog. Until such time as the current backlog of cases is adequately addressed, it will be difficult for District I to reduce substantially time on appeal for its cases. NCSC recognizes this but also believes that there are other factors adding to time on appeal in this district that could be addressed in conjunction with a backlog reduction effort or in advance of it, such as a restructuring of the conference to encourage and support a more meaningful dialog among District I's judges. In addition, District I should closely examine its communication with staff attorneys in order to address some of the delays currently seen in the preparation of summary dispositions and orders. Enhanced communication of specific rationale should improve the current 355 days to produce a summary disposition and the 143 days to produce an order. District I should also consider following other the districts' practice and have judges supervise staff attorneys in per curiam opinion production rather than write them themselves.

F. Error Correction, Law Development, or Both?

It is an on-going debate as to whether an intermediate appellate court must define its role as a vehicle for the correction of errors or a vehicle for the development of law or some combination of both. And if the answer is both, the intermediate

[37] **While it has been suggested that this sentence is a *non sequiter*, it does illustrate that fully briefed cases are available in District I 60-90 days before a panel is able to screen and decide them.**

appellate court must determine how it can identify those cases requiring correction and those that require the more difficult task of law development and then give to each, its deserved attention. The genesis of the intermediate appellate court has always been in the addressing of errors that may have occurred at the trial court level. As the volume of litigation increased, it became evident that an intermediate step was necessary in order to resolve litigants' questions in a timely and responsive fashion. No longer could courts of last resort perform both of these functions. Therefore, error correction was cleaved off from the court of last resort and made the province the intermediate appellate court.

Litigation continued to increase. It was inevitable that the court of last resort would need to confine itself to those cases having the most impact for its state's citizens and for the development and refinement of the law. The need to remain a collegial body inherently limits the size of the court of last resort. Therefore the court of last resort cannot review every decision of the intermediate appellate court and continue to perform its work of adding to the body of law and addressing those issues that are most important to its constituency.

Hence, the dilemma – a court of last resort should not become a super intermediate appellate court – increasing its size and sitting in panels. Nor should an intermediate appellate court become a lower court of last resort, sitting en banc to almost develop law when the court of last resort is too busy. The reality is that the intermediate appellate court is, for most cases in the court system, the final stop and it, therefore, is responsible for the development of law in addition to error correction. But in being the court of first review, an intermediate appellate court is in the position of identifying those cases that need the attention of the court of last resort immediately and a mechanism to move those cases quickly to the attention of the justices exist.

For the Wisconsin Court of Appeals, this dilemma represents itself primarily through the philosophy of individual judges. Given the reality that most cases end after an appeal as a matter of right, the care and concern in reviewing a particular

application of the law to a particular set of circumstances and distilling from that principles for a wider use is a serious task for any panel and their success rate can be illustrated by the Supreme Court's upholding of a Court of Appeals' decision – should the Supreme Court takes the case. The Supreme Court takes, on the average, approximately 10% of the petitions for review filed with it. Over the last three years, the Supreme Court upheld the Court of Appeals, on the average, 50% of the time on opinions written on petitions for review and reversed them only a third of the time.

District II files more certifications with the Supreme Court than any other district, averaging 13 over the last three years. District I filed an average of two certifications over the last three years; District III – an average of three certifications over the last three years; and District IV – an average of four certifications over the last three years. The Supreme Court grants certifications approximately 77% of the time which is an indication of the Supreme Court's regard for the judgment of the Court of Appeals should its judges believe a matter need hearing by the court of last resort.

IV. RECOMMENDATIONS

A. One Court

There can clearly be only one Court of Appeals in Wisconsin. Each district must fully identify with one another and see themselves as integral and integrated components of the larger whole. Currently the Court has no mechanism to encourage and support this identity other than that of the Publication Committee and the role of Chief Judge. However, one cannot lead those who do not want to follow. There will always be the delicate balance of first among equals that must be negotiated and maintained. It is therefore incumbent upon each judge to reinforce a single court identity among themselves, their staffs, the Court staff, and the public. While identification with a particular district can enhance the flow of cases, it can also set one district up against another as a competitor. Individual district statistics should serve to direct the resources of the Court where they need to be placed; they should not be a confirmation that the problem lies elsewhere. And although we have used individual district statistics in this report, our only intent is to direct the Court's attention to where the Court may have an issue. Each issue is one which the entire Court must resolve.

NCSC recommends that judges meet yearly to discuss administrative, judicial, and policy issues as well as to keep one another informed face-to-face if not more often. Committees to assist the Chief Judge in administration of the Court should be formed across districts to look at programs to reduce delay. Other committees may review caseflow management methodologies and make recommendations on a courtwide basis – not simply on a district basis. And yet other committees may address the work of staff attorneys, relationships with the appellate bar, or liaison with trial courts. Not only should judges meet, but the entire staff should also gather for a courtwide meeting to discussion mutual problems and identify mutually beneficial solutions. Ideally, each district should rotate hosting a meeting. The year the courtwide meeting is hosted by District IV, both the

Clerk's Office staff and the Supreme Court could join with the Court of Appeals for extended discussions on matters of mutual interest and impact.

The Court should also explore the use of video-conferencing to support more frequent courtwide meetings. Wisconsin enjoys one of the more comprehensive state-supported telecommunications networks and the Court should determine if it is able to make use of it in support of its work. In addition, the Court should consider supplementing e-mail with networked video meeting software that can permit users in different locations to work on the same document simultaneously and see each other while they are collaborating.

B. Case Management

NCSC recommends that the Court begin collection and publication of expanded statistics for use in case management. The Court should also refine current statistical data by insuring that appropriate categories are broken down by case type (i.e., civil and criminal filings should be further refined into 3-judge and 1-judge civil and criminal filings). Supplementing statistics already collected, the following categories should be added:

- Average days by case type by district from notice of appeal to filing of the transcript
- Average days by case type by district from notice of appeal to filing of the record
- Average days by case type by district from notice of appeal to completion of the briefing schedule
- Average days by case type by district from completion of briefing schedule to assignment
- Average days by case type by district from assignment to circulation
- Average days by case type by district from completion of circulation to disposition

In addition, the filing of transcripts and records should be closely monitored on a case-by-case basis in order to determine whether or not early intervention is required. The Clerk's Office is in the best position to obtain this data and provide it to the Administrative Assistant to the Chief Judge.

The Court should examine closely its fast track implementation in each district to determine if both it and litigants are receiving any tangible benefit. One of the issues surrounding the fast track program is the necessary involvement of the staff attorney assigned to the district. The staff attorneys from each district should determine if they, as a group, are applying the same criteria to the selection of cases suitable for fast track processing, are administering the program using similar methodologies, and whether or not attorneys in their districts have the same or similar expectations as to the benefits of the fast track program and the

actual process itself.[38] Too often, a program that has real benefits in its pilot phase is not sufficiently or rigorously monitored upon courtwide implementation to determine if the pilot results are truly applicable to the Court as a whole. It can happen that a success during a pilot phase reflects more the excitement of a novel approach or the personalities of a program's sponsors and supporters and their particular efforts and this success cannot be sustained once a program is institutionalized. In other instances programs, which are truly beneficial at initiation, lose their value over time. Courts, not unlike other institutions, do not often reassess long-standing processes to determine if initial goals and expectations are still being met. We also recommend that the Alternative Dispute Resolution Pilot Program goals be modified to reflect specific targets for the reduction of time on appeal and cost of the appellate process as well as whose cost (the Court's, the litigants).[39] Goals such as the provision of creative settlement ideas and improved communication between parties and attorneys[40] are soft outcomes and difficult to measure. This is not to say that a perception of an improved and more timely process cannot be an appropriate outcome. Other case management recommendations are closely tied with recommendations for court administration and will be discussed in the following section.

[38] **Additional information provided by the Chief Judge indicates that the staff attorney located in the district screens cases for placement on a fast track in Districts I, II, and III. Utilizing a single individual in each district should provide consistency in the selection of cases for this particular calendar. Although several staff attorneys screen cases for this calendar in District IV, the structure of the program (agreement for placement on the fast track calendar is required by all parties) is designed to minimize inconsistency in case selection. NCSC recommends that the Court ensure that criteria for recommending a case to this calendar be reviewed for consistency across all districts.**

[39] **The Chief Judge has suggested that a more precise formulation of goals may not be feasible until the program's structure is better defined.**

[40] *Alternative Dispute Resolution Pilot Program, Wisconsin Court of Appeals*, Revised September 5, 2000, p. 1.

C. Court Administration

The Court of Appeals does not have a court administrator. Although certain administrative functions are vested with the Administrative Assistant to the Chief Judge and other functions are provided through the office of the director of state courts, this position does not have the authority to provide professional administration to the Court as a whole. In some appellate courts, the role of court administrator is fulfilled by the Clerk of Court. However, the organization of the Court of Appeals into geographic districts utilizing a single Clerk's Office shared by the Supreme Court does not easily permit the Clerk to assume this role in addition to that position's other responsibilities.

The Court of Appeals does not have an administrative structure of sufficient depth that permits it a smooth and coordinated functioning. With 16 judges, 16 law clerks, 16 judicial assistants, 1 administrative assistant to the Chief Judge, 1 Chief Staff Attorney, 4 staff attorneys located in the districts, and, at last count, 15 people filling 12.5 authorized FTE's supplemented by two limited term employees, we have a staff of 69 disbursed in four separate locations. NCSC recommends that the Court of Appeals add a court administrator responsible to the judges as a group and reporting to the Chief Judge in particular to standardize case processing procedures and expectations as well as provide administrative support for personnel matters, the budget cycle, facilities maintenance, purchasing, technology, and to liaise with both the office of the director of state courts and the Clerk's Office on matters impacting the Court.[41] We believe this will remove the administrative distractions from the Presiding Judges in each district as well as individual judges and permit them to define policy rather than implement procedure while continuing their focus on case processing and

[41] **The Chief Judge has suggested that the addition of an appellate court administrator represents a significant proposal and its success requires the cooperation and support of each district and all judges. The addition of an appellate court administrator would create a new layer of bureaucracy within the Court and could perhaps conflict with the services provided by the Director of State Courts' Office to the Court. The standardization of case management procedures that this role can potentially provide would represent a significant cultural change for the Court that would require the support and participation of each and every judge of the Court.**

resolution. Should the Court adopt our recommendation to increase courtwide meetings as well as provide cross-district committee support to define administrative policies, the role of court administrator becomes even more necessary as both a coordinating mechanism and the institutional memory. Furthermore, with appropriate training, support, and exposure, the role of Administrative Assistant to the Chief Judge could be converted into that of a professional court administrator without increasing the Court's full-time employee complement.[42] We want to emphasize that the role of an appellate court administrator should in no way usurp the decision and policy-making responsibilities of the Court itself but should supplement and support them. The purpose of a court administrator is to ensure that judges and staff have the necessary environment, tools, and time to perform the work of the Court. As both the number and complexity of cases increase, it becomes more necessary for judges to withdraw from the daily activities and distractions of administration and concentrate on the process of judging.

With the advent of a court administrator, the Court now has the opportunity to focus proactively on case management as well as programs to address backlog. The court administrator can alert the Chief Judge and Presiding Judges as to emerging trends and issues and work with the Court to define resolutions. The court administrator can work closely with the Clerk's Office and circuit court administrators to ensure the timely filing of transcripts and records. To attempt a backlog reduction effort without diligent supervision and administration of cases flowing to special panels is to invite disaster.

The presence of a court administrator can serve to promote consistency in administrative procedures supporting case processing. In addition, the Chief Judge, the Presiding Judge of each district, the Chief Staff Attorney, and the Court Administrator naturally comprise an executive team that can work strategically to assist the Court in meetings its goals and fulfilling its responsibilities.

[42] However, salary structures may be impacted given the additional responsibility and authority of a court

D. Central Staff Attorney

While NCSC discussed the creation of a true central staff dissolving the district assignment of all attorneys located in Madison, we recognize that such a radical change would neither serve the Court well nor accomplish its goals. And while the necessity of co-locating staff attorneys with the Clerk's Office has lessened in the age of electronic information and communication, the shift of staff attorneys from Madison to assigned districts would create both a disruption of personnel and a stress on facilities that the Court may have difficulty in absorbing. However, the Court does not truly have a central staff. What it has is a staff centrally located. We believe that a central staff would enhance the functioning of the Court by allowing for a professional and standardized motions practice prior to assignment of the case within a district. We believe that a central staff would more efficiently and consistently support delay reduction programs such as fast track case processing and alternative dispute resolution. We believe that a central staff would develop into a unifying component enhancing the Court's identity as one court. NCSC recommends that the Court assign two staff attorneys to work with and report directly to the Chief Staff Attorney.[43]

There is merit in the assignment of staff attorneys to work with individual districts. NCSC recommends that in addition to the assignment of two staff

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administrator over that of an administrative assistant.

[43] **NCSC stated that the use of central staff attorneys (in place of district staff attorneys) would provide a professional and standardized motions practice. The Chief Judge has observed that NCSC did not provide information supporting the inference that the motions practice within the districts was inconsistent. In our discussions with district staff attorneys, we noted that procedures did vary across districts but we do not know if this results in significant differences in outcomes. NCSC may also be overly optimistic in its contention that two central staff attorneys could support the motions practice, the fast track calendar, and alternative dispute resolution programs. Our enhanced recommendation is that the Court undertake a thorough examination of the motions handled by the Clerk's Office, the availability of legal staff within the Clerk's Office to assist central staff in procedural motions that are beyond those addressable through administrative procedure, and identify the number and type of motions occurring prior to the time a case becomes the responsibility of the district. This should result in a better definition of the impact of the motions practice as well as the number of legal staff required to support it. As to whether or not the permanent assignment of staff to the motions practice results in faster burnout, this is most likely dependant on the individuals involved. Some intermediate appellate courts have permanently assigned individuals to the motions practice with varying degrees of success.**

attorneys to the Chief Staff Attorney, the staff attorneys remaining in the Madison location be officially assigned to each district and supervised by a lead staff attorney for each district. By doing this, the readily recognizable charade of the Chief Staff Attorney supervising attorneys assigned to districts is over. Each district, with the coordination of the court administrator and the advice of the Chief Staff Attorney, should set consistent yet appropriately individualized performance expectations that acknowledge both the special character of each district and the unity of the Court. The Court can also create a career path as a retention and development tool as well as a reward for performance. The restructuring and redistribution of duties should include staff attorneys located in the district. In addition, the Chief Staff Attorney can truly act as counsel to the Court and provide needed courtwide services utilizing a staff dedicated to the Court as a whole. It is hoped that this suggested realignment of staff will satisfy both the Court's need to be served by a central staff and the individualized attention needed by each district in meeting its goals and responsibilities.

E. Time on Appeal and Backlog

These two issues remain intimately connected. Backlog lengthens time on appeal and time on appeal increases backlog. One cannot significantly lessen time on appeal without first reducing or eliminating backlog. Nor can one accurately determine if the Court should request the permanent investment in additional judicial and attorney resources. There is, however, every indication that District III may soon require additional judicial resources. The Court should carefully monitor the number of cases sent out of district for processing to determine how having only three judges in District III impacts the functioning of the Court as a whole.

In *Time on Appeal*, Dr. Roger A. Hanson concluded that data revealed seven factors influencing time on appeal for some intermediate appellate courts in resolving 75% and 95% of the mandatory civil and criminal appeals. For those courts requiring more time on appeal:[44]

- They have more appeals filed per law clerk (as distinguished from central staff attorney).
- They use some form of internal procedure rather than gubernatorial appointment or popular election to select a chief judge.
- They have regional district jurisdiction rather than statewide jurisdiction.
- They are part of a deflective state appellate system.
- They do not place limitations on oral argument in criminal cases.
- They require a reasoned opinion in every case (75^{th} percentile only).
- They do not place limitations on oral argument in civil cases (95^{th} percentile only).

The Court has no option to change its selection method for Chief Judge. Its structure is constitutionally defined. It is not part of a deflective appellate system. And by practice, there is little oral argument in either civil or criminal cases in any district. The Court already has the option of determining how a decision will be reported. This leaves only the factor of increasing the number of law clerks.

[44] Hanson, Roger A., *Time on Appeal,* National Center for State Courts, Williamsburg, Virginia (1996) p. 40.

However, the addition of 16 law clerks is, most probably, not feasible in the current budget climate and economic environment. Dr. Hanson's research could not show that adding staff attorneys materially affects time on appeal. This is a factor more of the study's construction rather than whether or not additional attorney resources can reduce time on appeal. In his study, intermediate appellate courts in different states were compared. Staff attorneys perform a wide variety of duties in each state and that fact alone inhibits "their utility as a statistical measure of court resources"[45]. The Court has already exhibited that additional staff attorney resources impact backlog as shown by the increase in District I's terminations during the period they had the services of a limited term employee available to them.

NCSC recommends that the Court explore the viability of adding staff attorney resources to each district. This should be a coordinated approach with the restructuring of two staff attorneys to a central staff under the Chief Staff Attorney and the official assignment and management of staff attorneys by each district. In addition, the Court should explore whether the additional staff attorney resources can be better used in each district or in Madison. This answer is dependent on the restructuring of duties and responsibilities between central staff and district staff as well as the reorganization of district staff into lead staff attorneys and staff attorneys.

At the same time the Court is looking at restructuring existing resources and adding new ones, NCSC recommends that it adopt courtwide time standards for the different components of the appellate process. We recognize that time standards are, initially, goals toward which the Court strives and the Court may need to set interim goals for performance. Time standards must also allow for variations in case complexity and represent overall goals for the Court's case processing rather than individual goals in each case. While the Court is in compliance with ABA recommended overall time standards, it is seriously out of

[45] Hanson, Roger A., *Time on Appeal,* National Center for State Courts, Williamsburg, Virginia (1996) p. 30.

compliance for some components of the appellate timeline for certain types of decisions. The bottom line should be the Court's ability to respond to its litigants and to provide the trial courts with both timely guidance and affirmation. We recommend that the Court begin with the time standards recommended for judicial functions as outlined in Section 3.55 of the *ABA Standards Relating to Appellate Courts*. These are:[46]

- Setting a case on the oral argument calendar within 55 days of filing of the appellee's brief.
- Submitting to the panel or assigned judge those cases to be decided on the briefs within 35 days of the filing of the appellee's brief.
- Preparing opinions within 55 days from the date of oral argument or the date of assignment.
- Filing written dissents within 30 days of the receipt of a circulating opinion. Judges not filing a written dissent should indicate their vote within 15 days of receipt of a circulating opinion.
- Limiting processing of an opinion for final release so that it does not exceed 20 days including the time to address a dissent.
- Preparing decisions on non-final orders within 15 days from the date of oral argument or the date of assignment.
- Preparing memorandum opinions within 30 days of oral argument or date of assignment.

The Court should also continue its overall compliance disposing of 75% of its cases within 290 days from the notice of appeal and 95% of its cases within one year from the filing of the notice of appeal.

In addition, the Court should exercise control over extensions of time granted for the filing of transcripts, records, and briefs. Extension policies should be tightly written and strictly administered.

Unless the Court decides to address its backlog, time on appeal will continue to stretch. NCSC believes that each district and each judge is working to their maximum capabilities and capacities and that while some modifications of basic process and procedures in some districts would enhance time on appeal, without

[46] American Bar Association, Judicial Administration Division, *Standards Relating to Appellate Courts*

the application of additional judicial and attorney resources to the Court's backlog, no adoption of aspirational goals and none of the recommended changes will impact the backlog. There is simply no other way to coerce more work out of the same number of judges, staff attorneys, or staff that would significantly reduce the backlog.

The composition of the backlog must first be identified. How many fully briefed cases are awaiting conference and assignment? What are the oldest cases? How old are the oldest cases? At what stage in the appellate process are other cases? How many cases are actually delayed because a transcript or record has not been timely filed? How many cases that have been decided are waiting to be written? Whose attention is required – a judge or a staff attorney?

NCSC recommends that the Court organize special cross-district panels to hear those 3-judge cases that have lingered too long. Recruiting both retired and circuit court judges for an intermediate appellate court experience would assist both the Court and, hopefully, provide an enriching experience for individual judges. However, the hearing and processing of cases by inexperienced panels must be carefully monitored and supervised and appropriate resources of the Court itself must be used to guide the panels.

SWATAT (Special Writing Attorney Attack) units could be formed with temporary lawyer personnel to assist district staff attorneys in the processing of summary dispositions, orders, and per curiam opinions. Temporary personnel would not need to be fully integrated into the Court itself and could work under the direction of the lead staff attorney for each district.

1994 Edition, American Bar Association, Chicago (1995) pp. 111-112.

NCSC also recommends to the Court that it participate in strategic planning to define and refine its goals and commitments. Reviewing the Court's history and its record of change will assist the Court in preparing for its future as well as to strategically plan for the request of additional resources in a reasonable and controlled manner that is coherent with the needs of Wisconsin's entire justice system. To actually examine and understand the work that an intermediate appellate court does under the twin pressures of matter of right and court of first and, more often than not, only resort is truly a humbling experience. It is only through the dedication and hard work of the judges and the staff that the Court's never-ending caseload is addressed.

V. Comment

NCSC includes here comments made after review of the draft report. In addition, we have noted within the report various comments, considerations, and other information brought to us by the Chief Judge. The project team is grateful for the Court's careful consideration of its report and wishes to thank the judges and staff of the Court. The lively discussion engendered by this project highlights the individual commitment to the work of the Court and the Court itself by its members.

From Chief Judge Thomas Cane:

Please accept our court's appreciation for your report's observations and recommendations. All of our judges will be discussing your report in greater detail at our next meeting and, hopefully, many of the recommendations will be implemented eventually.

As we had discussed earlier, this is the first study of the Wisconsin Court of Appeals since its inception in 1978. Obviously, many things have changed since the court's inception and your review will help us to pause, reflect and reexamine how we should manage the appellate caseload.

I truly appreciate the effort expended in collecting and analyzing the data on our court. As your report correctly reminds us, the Court of Appeals is one court as it must be under our State Constitution and should operate as such even though it is divided geographically into four districts. Operating as one court will continue to be our primary theme, and any future discussion of our court's operation will always start with that premise.

I am especially thankful for your report's recognition of our court's need for additional staff and the need for an additional judge in District III. Any pleas for need for additional help usually go unheeded unless it comes from an independent study showing the need. Your report properly assessed this problem and, unfortunately, until this need is adequately provided, delays in deciding cases will only continue to get worse. Whether the additional staff help comes in the form of a second law clerk for the judges as you recommend or additional staff attorneys is something that will have to be debated among the judges and legislature. But it is an urgent need that must be addressed if the Court of Appeals is to continue to provide fair and expeditious intermediate appellate review in Wisconsin.

Finally, thank you again for your independent observations and recommendations. They will not go unheeded and will be seriously discussed as ways to improve our court.

From Judges Wedemeyer, Fine, and Curley – District I:

DISTRICT I's RESPONSE TO NATIONAL CENTER FOR STATE COURT'S REPORT
SUMMARY OF FACTS IGNORED BY THE REPORT.

1. Although, as we show below in greater detail, the numbers reveal that for the year 2000, the case terminations in District I were 981, which was greater than any other district other than District IV (which has five judges), and the average disposition per judge in District I is greater than that of *any* other district, the report singles out District I for criticism. That criticism is wholly without merit.

2. Any delay in District I from the receipt of final briefs to disposition is not caused by District I but rather in the past significantly caused by the office of the circuit court clerk in Milwaukee County. No court of appeals district can process an appeal until the record is assembled by the clerk, and the parties submit their briefs. As we discuss below, although the report mentions, it does not account for the delay that we experienced until recently because of the circuit court clerk's inability to speedily get the record assembled and to us once a notice of appeal is filed.

3. The report does not accurately portray how District I determines what cases will be decided as an "authored" opinion, rather than as a per curiam or summary disposition. District I reserves the "authored" opinion for those cases that: A) represent issues worthy of publication in the official reports; or B) those cases where one member of the panel will either dissent or write a concurring opinion.

4. District I writes per curiam decisions in those civil and criminal cases where the issues presented are governed by controlling law—either precedent established by the supreme court on in published court of appeals decisions. All of the per curiam decisions issued by District I are written in-house—none are farmed out to the staff attorneys, which is the practice in other districts.

5. District I issues summary dispositions in criminal cases presenting one or two routine issues that are fully controlled by governing law. Every criminal defendant is entitled to an appeal as of right, and many of the appeals lack sufficient merit to be the subject of a full-blown opinion. District I decides these appeals efficiently and effectively via summary disposition.

6. The report makes, essentially three suggestions: A) more meetings; B) longer screening conferences; C) hiring of a court administrator.

- **A) Academics may love meetings, but they are essentially an inefficient way to conduct the business of an organization—given email and the telephone.**
- **B) Screening conferences take as long as they should; no judge in District I has ever indicated that a screening conference was truncated without the full discussion of the issues presented by each appeal. It is important to remember that in District I *each* judge reads, personally, before the screening conference, every brief**

in every case. Thus, each judge has thought about each case well in advance of the screening conference; this permits the efficient use of screening-conference time. All of the judges on District I were trial judges, and all of the judges on District I have been on the court of appeals for some time; it is silly to suggest, as does the report, that the wheel has to be reinvented with each case. Simply put, we take the time needed—no more, no less.

C) The silliest suggestion that the report makes is to hire another bureaucrat to supervise the judges. As explained below, the court cannot even get needed staff attorney help; hiring of an "administrator" will divert needed resources from where it is needed and from where it will be most productive.

RESPONSE

District I does not challenge the numbers set forth in the report. It is what is not included in the report that is troubling. In succinct terms District I objects to the methodology employed and the bases used for the conclusions it reached.

In focusing upon District I the report poses a series of questions which in the interests of brevity shall not be repeated. The District shall respond in turn however, where it feels appropriate.

Since we know that over the years there has been a problem with case management peculiar to Milwaukee County, we address this subject first because it directly reflects upon one of our more important opening comments.

We note at the outset that the "Team" did not interview John Barrett, Clerk of Courts for Milwaukee County, who supervises the Milwaukee County employees who initially process all appeals in Milwaukee County. For that matter, the "Team" did not interview those employees either.

The initial processing of an appeal for District I takes place in two separate offices of the Clerk of Court located in two different buildings. All appeals generated from the forty-seven trial courts of Milwaukee County are handled by just three individuals: two in the criminal division and one in the civil appeals division. The individual in the civil division is employed full time to process civil appeals generated by 17 civil jurisdiction courts. Such is not the case, however, in the criminal division. There, the two individuals are only allowed to spend 50% of their time processing criminal appeals. The balance of their time is devoted to county payroll matters. District I in fact has no control over how these individuals allocate their time. It is solely in the hands of Milwaukee County.

Despite this handicap, which in the past had seriously affected our turn around time, particularly in the increased filing years of 1995, 1997 and recently, from 1998 on, we have worked diligently with the Clerk's office to improve the initial processing of appeals. We appreciate the Clerk's continuing efforts. Since January 1, 2001 we know of no delinquencies in the processing of case records for appeal.

We now turn our attention to decision categories and the report's seeming obsession with the subject. It is clear to us that the "Team" does not understand the bases upon which District I categorizes decisions, i.e. Authored Opinions, Per Curiams and Summary Dispositions.

Since the establishment of the Court of Appeals in 1978, District I has always issued the fewest authored opinions. The sensible and significant reason is that authored opinions are reserved for precedent setting decisions worthy of publication. All other cases with the exception of one- judge opinions are assigned to either Per Curiam or Summary Disposition status.

We do not select the appeals that come to us. Nor does the entire court have the staff to pre-categorize cases. The fundamental reason why District I has fewer authored opinions is that in the judgment of the panels which consider the cases, only a certain limited number fit our standard to warrant the authored opinion status. Thus the recurring theme throughout the report about the paucity of authored opinions in District I is fundamentally flawed based on a failure to understand how the District determines the status of a decision during screening conferences.

Per curiam decisions include all civil cases and criminal cases involving more than two issues that are clearly determined by existing precedent; the exception being a dissent which automatically elevates a decision to one of authored status. In an average month's decision conference, 75% of 32 cases under consideration are in the per curiam or summary disposition category, and all the per curiams are divided among the judges and frequently even the summary dispositions are written by individual judges as well. This makes sense, is efficient, and gives to each appeal the resources the issues require.

District I has never proposed slotting decisions for cosmetic or local legal cultural reasons. We have no obligation to do so. To the contrary, we have a responsibility to not do so.

The report critically makes mention of the method in which District I conducts its decision conferences and communicates the content of decisions to be drafted by staff attorneys. Whence the source of this information we do not know. Suffice it to say, it did not come from three of the four judges who are submitting this response. There has never been an occasion since the beginning of the court in 1978 where a judge has raised an objection to the length of time for discussing and deciding an individual case. Decision conferences, as can only be learned by experience, are not classic *concertatios* or academic seminars. The "Teams" comment about this matter has no basis in fact and ought to be stricken from the report.

It is quite basic that a decision by a panel does not reach final form until 2 of the 3 judges agree on the majority disposition. In District I with rare exceptions, staff attorneys will only draft summary dispositions, which reflect unanimous views of all three judges on the panel. Thus, the screening notes that are forwarded to them will reflect the agreement of all three judges and their

stated reasons. To conclude that staff attorneys must "re-create the work of the panel," again demonstrates an ignorance of the reality of the process. In common sense terms, if a staff attorney has a problem with the basis of the decision, he or she is only seconds away by phone or E-mail from the supervising or presiding judge for a quick resolution. Again, summary dispositions concern only one or two issue decisions that are determined by settled case law. Including this topic as a significant cause of delay is to nonsense.

In the year 2000, the total court decided to hire temporary staff attorneys to relieve the additional work generated by appeals in District I and II. This decision was most beneficial. In response, District I agreed to increase its screening load each month from 28 cases to 32 (not counting one judge cases). This additional help paid handsome dividends. The result is that District I screened more cases than any other District except District IV (a five judge District). The same pace has continued through July 31, 2001. Unfortunately due to legislative restraints, "temps" have been eliminated. Thus we are back to square one. The adverse impact of this staff reduction will not be known for several months.

If there is one area of comment made by the report that rings true it is District I's problem of turn around time from the date of screening to the date a decision is released. As we noted earlier, any discussion about the length of decision conferences and communication with staff attorneys has no factual basis in reality. We do however, acknowledge that District I has a problem yet to be resolved and that is the length of time drafted decisions remain in individual chambers without a final response. For three-quarters of the court, it is well documented, that is no delay. We have a court-wide internal operating rule generated to alleviate the problem (the five day rule), but invoking it aggravates rather eases the problem. There is also judicial code of ethics' concerns which make resolution of the problem difficult. Note is made of this matter because it was mentioned to the "Team." District I was hoping for a suggested solution for the delay that one of the judges has in turning around decisions drafted by the other three judges. Unfortunately, none was forthcoming.

Short pause is taken to comment upon cases placed in "fast track" status. When the increased filing wave in 1997 began to have severe effects on our backlog, District I deemed it ill advised to encourage fast track processing because in fact it was "slow track" processing. If our termination process continues, we shall once again promote "fast track" resolution.

There are two activities of District I mentioned in the report that we hoped would be given more emphasis and discussion: "no merit appeals and motion practice." We are disappointed.

As the report appropriately notes, District I has a much larger "no merit" burden than the other Districts. This greater burden placed upon the staff attorneys is significant because of the detailed review work that is constitutionally required in the no merit appeal process. The report gives little attention to this significant burden, and offers no solution.

When one considers motion practice as affecting District I versus the other Districts, the numbers are telling; yet, again, the analysis given, misses the mark. The increase in the motions burden on the staff attorneys over the last three or four years is, by and large, generated by pro-se prison litigants. This affects District I to a much greater extent than the other Districts because of the larger number of criminal appeals in absolute numbers. Without the availability of additional staff attorneys to review the motions before determination, a matter not mentioned in the report, the amount of time the staff attorneys take to process these motions is overwhelming for them. Further, this motion practice burden limits the staff attorneys' time to discharge their normal duty of drafting summary dispositions. This condition quite naturally affects the turn around time for the disposition of summaries.

The "Team" was told how the motion practice problem was being partially addressed; i.e. reducing or eliminating the granting of extensions. In fact this approach has been in effect for over two years. The effect of the practice has been such that the Attorney General's office has complained about the additional burden such a practice has on its staff. To draw conclusions based admittedly upon anecdotal evidence is not worthy of the "Team's" reputation that preceded its arrival.

CONCLUSION

In submitting this response for inclusion in the final report, District I took pause to appreciate the efforts and otherwise thorough work of the Team insofar as it related to the whole court. We respectfully observe, however, that too much effort was consumed on what was observed to be a problem that was non-existent or insignificant at best.

The averaging of statistics for all the judges in District I notwithstanding, what is not mentioned at bottom is that District I's terminations in 2000 were 981 compared to District II-888, Dist III 698 (three judges) and District IV 1007 (five judges). Noteworthy also is that in 2000 the average disposition per judge in District I is 245, District II 222, Dist III 233 and District IV 201. This trend continues for the first six months of 2001.

What was left unaddressed and certainly within the "Team's" systems expertise, were the bigger problems of unpredictable cyclical increases in filings in 1995, 1997, and beginning to occur again, increased prison litigation and the failure of authorities who control the purse strings to give to the Court of Appeals the necessary support or attention it deserves in the total delivery of justice system for the State of Wisconsin. In the total court system, the Court of Appeals is the "poor church mouse." This must change, while we continue to address the problem areas earlier recognized by the District and mentioned in the report.

From Judge Dykeman – District IV:

This is a response to the NCSC study. I have always felt that District I's method of writing cases was an aberration, and discounted it as such. But after discussing this with my colleagues, I wonder if this is true. District I is now terminating the highest number of cases, and with four judges. True, from what we have seen, District I gets many criminal appeals with little merit. But it may be more efficient for judges to write per curiams with a few authored opinions thrown in, and have the staff attorneys write the no brainers. This is an especially good procedure if the judges suffer from a lack of collegiality. One is always more willing to compromise if the opinion can't be published.

STATISTICAL REFERENCE

1998 WISCONSIN COURT OF APPEALS STATISTICS

	DISTRICT I	DISTRICT II	DISTRICT III	DISTRICT IV	COURT
Civil Filings	428	517	442	739	2126
Criminal Filings	410	365	266	410	1451
TOTAL FILINGS	838	882	708	1149	3577
3-Judge Appeals	717	691	534	885	2827
1-Judge Appeals	121	191	174	264	750
TOTAL 3-JUDGE AND 1-JUDGE APPEALS FILED	838	882	708	1149	3577
No Merit	125	129	111	157	522
Writ	41	76	35	114	266
Leave to Appeal	64	72	68	68	272
Matter of Right	608	605	494	810	2517
TOTAL APPEAL TYPES FILED	838	882	708	1149	3577
Civil Cases Submitted on Briefs	195	216	195	339	945
Criminal Cases Submitted on Briefs	159	139	91	143	532
Civil Cases Orally Argued	16	9	6	14	45
Criminal Cases Orally Argued	5	8	0	0	13
TOTAL CASES SUBMITTED	375	372	292	496	1535

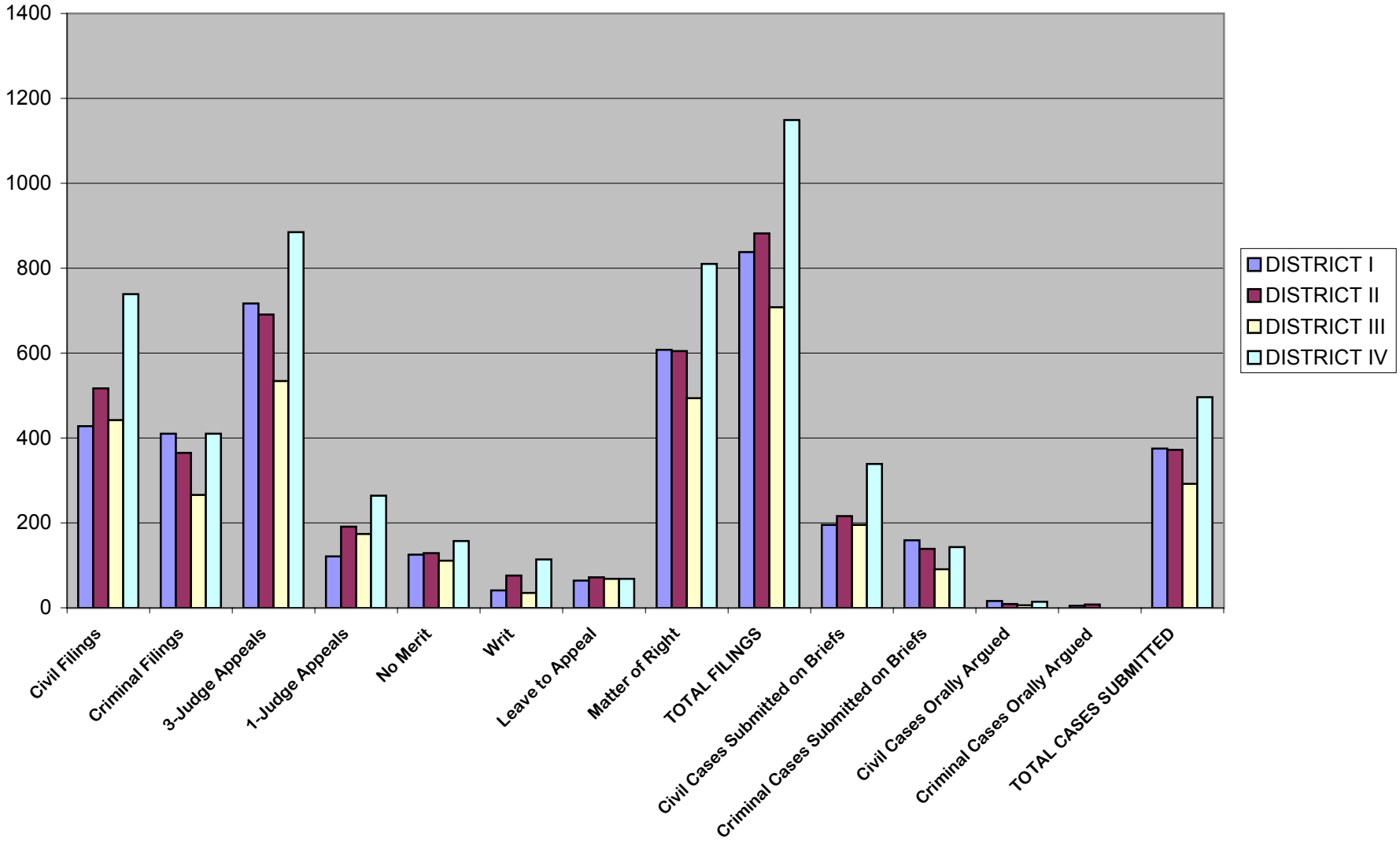
1998 WISCONSIN COURT OF APPEALS STATISTICS

	DISTRICT I	DISTRICT II	DISTRICT III	DISTRICT IV	COURT
Civil Cases Terminated by Opinion	174	206	205	393	978
Criminal Cases Terminated by Opinion	121	128	102	229	580
TOTAL CASES TERMINATED BY OPINION	295	334	307	622	1558
Cases Terminated by Per Curiam Opinion	148	105	146	256	655
Cases Terminated by Signed Opinion	147	229	161	366	903
(Cases Terminated by 3-Judge Signed Opinions)	78	120	104	220	522
(Cases Terminated by 1-Judge Signed Opinions)	69	109	57	146	381
TOTAL CASES TERMINATED BY OPINION TYPE	295	334	307	622	1558
# OF OPINIONS PUBLISHED	49	89	48	93	279
Cases Terminated by Order - Summary Disposition - Affirmance	116	119	52	102	389
Cases Terminated by Order - Summary Disposition - Reversal	6	4	4	11	25
Cases Terminated by Order - Summary Disposition - No Merit	120	101	82	87	390
Cases Terminated by Order - Summary Disposition - Other	6	3	3	4	16
Cases Terminated by Order - Memo Opinion - Jurisdiction	24	24	30	35	113
Cases Terminated by Order - Memo Opinion - Other	93	145	87	211	536
Cases Terminated by Order - Memo Opinion - Writ Denied, etc.	40	68	36	112	256
Cases Terminated by Order - Memo Opinion - Writ Granted	1	0	1	9	11
Cases Terminated by Order - Memo Opinion - Leave Denied, etc.	44	58	53	46	201
Cases Terminated by Other Order Types - Voluntary Dismissal	74	48	35	86	243
Cases Terminated by Other Order Types - Stipulation	6	1	6	4	17
Cases Terminated by Other Order Types - Other	3	6	1	12	22
TOTAL CASES TERMINATED BY ORDER	533	577	390	719	2219
TOTAL CASES TERMINATED	828	911	697	1341	3777

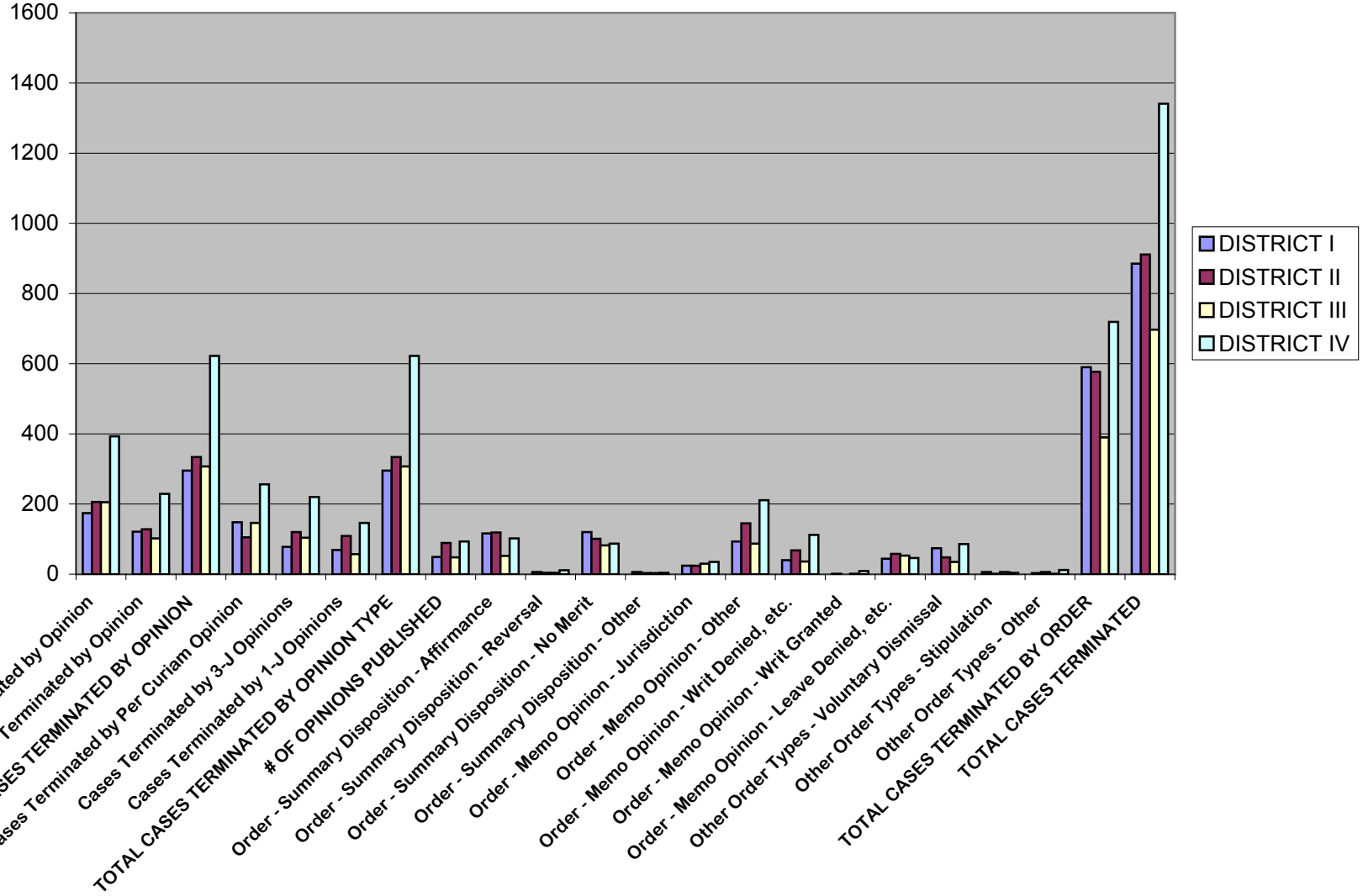
1998 WISCONSIN COURT OF APPEALS STATISTICS

	DISTRICT I	DISTRICT II	DISTRICT III	DISTRICT IV	COURT
Motions	2849	2406	1335	2811	9401
Certifications Filed	2	12	4	3	21
Bypasses Granted	2	0	0	2	4
Pending Cases - 12/31/98	745	517	313	560	2135
Number of Judges	4	4	3	5	16
Number of Filings per Judge	210	221	236	230	224
Number of Cases Submitted per Judge	94	93	97	99	96
Number of Terminations per Judge	207	228	232	268	236
Number of Cases Terminated by Signed Opinion per Judge	37	57	54	73	56
Number of 3-Judge Cases Terminated by Signed Opinion per Judge	20	30	35	44	33
Number of Motions per Judge	712	602	445	562	588
Percentage of Cases Terminated to Cases Filed	99%	103%	98%	117%	106%
AVERAGE DAYS TO DISPOSITION					
Notice of Appeal to Disposition	312	219	160	230	230
3-Judge Opinions	510	357	230	350	362
1-Judge Opinions	188	162	152	176	170
Per Curiam Opinions	463	392	235	360	363
Summary Dispositions	357	248	180	269	264
Memo Opinions	116	102	65	87	93
Orders	182	47	65	66	90
Fast Track Cases	244	144	183	152	181

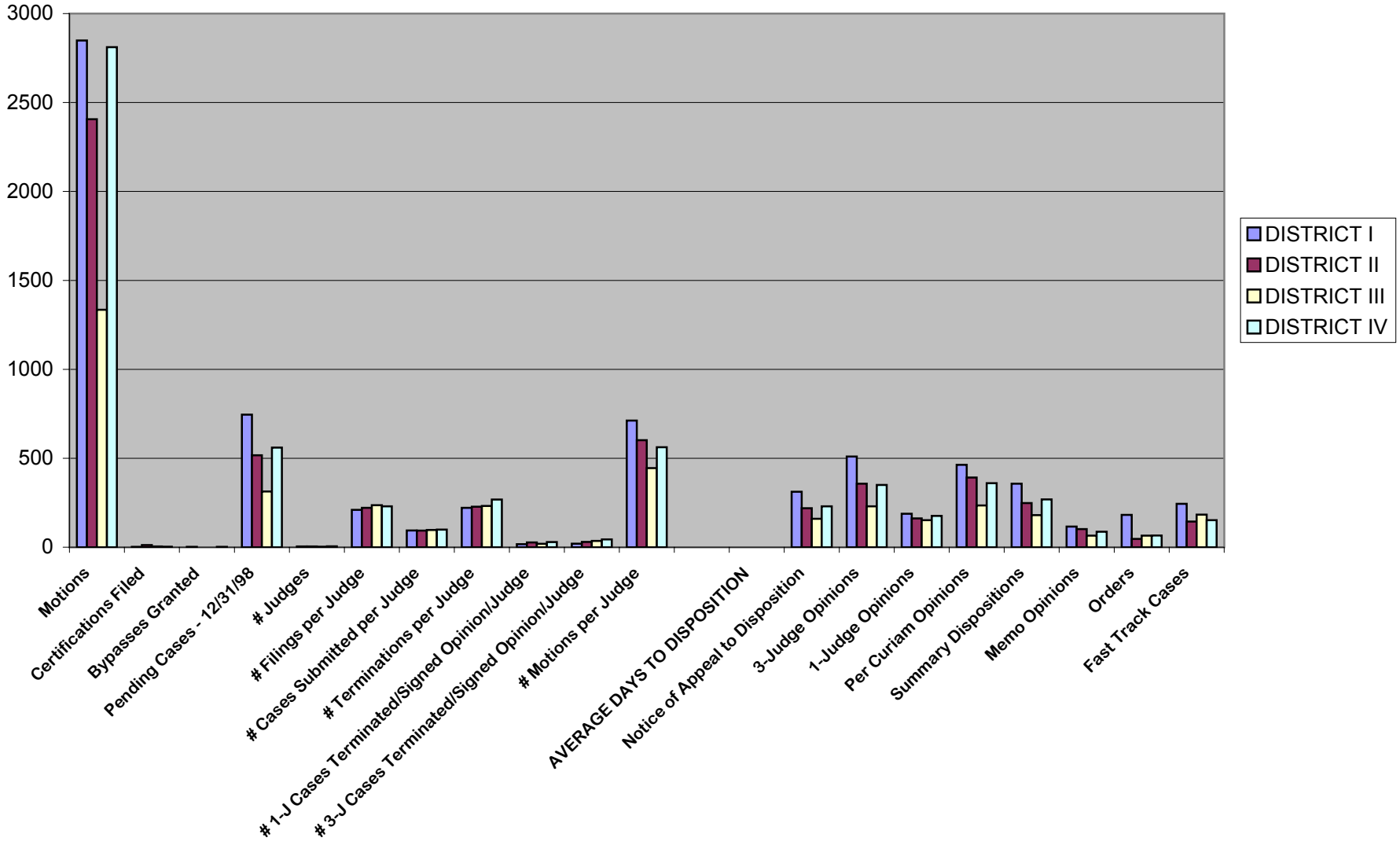
1998 CASES FILED AND SUBMITTED



1998 TERMINATIONS



1998 PER JUDGE AND AVERAGE DAYS



1999 WISCONSIN COURT OF APPEALS STATISTICS

	DISTRICT I	DISTRICT II	DISTRICT III	DISTRICT IV	COURT
Civil Filings	355	453	451	560	1819
Criminal Filings	484	391	237	348	1460
TOTAL FILINGS	839	844	688	908	3279
3-Judge Appeals	688	623	516	650	2477
1-Judge Appeals	151	221	172	258	802
TOTAL 3-JUDGE AND 1-JUDGE APPEALS FILED	839	844	688	908	3279
No Merit	187	113	69	119	488
Writ	52	44	38	50	184
Leave to Appeal	57	86	64	65	272
Matter of Right	543	601	517	674	2335
TOTAL APPEAL TYPES FILED	839	844	688	908	3279
Civil Cases Submitted on Briefs	202	231	218	282	933
Criminal Cases Submitted on Briefs	184	147	86	117	534
Civil Cases Orally Argued	14	15	10	12	51
Criminal Cases Orally Argued	3	3	0	1	7
TOTAL CASES SUBMITTED	403	396	314	412	1525

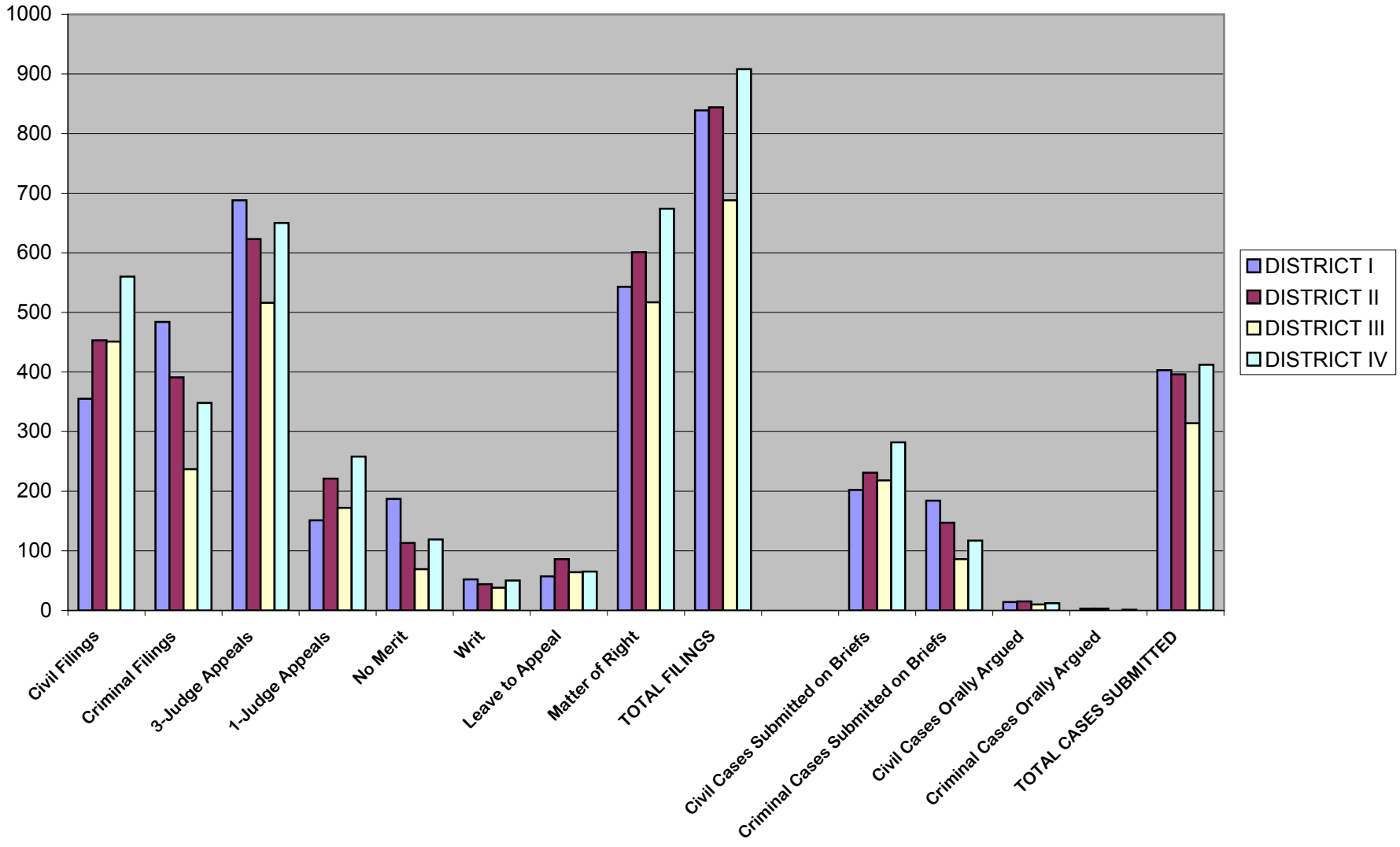
1999 WISCONSIN COURT OF APPEALS STATISTICS

	DISTRICT I	DISTRICT II	DISTRICT III	DISTRICT IV	COURT
Civil Cases Terminated by Opinion	157	209	249	326	941
Criminal Cases Terminated by Opinion	99	153	103	178	533
TOTAL CASES TERMINATED BY OPINION	256	362	352	504	1474
Cases Terminated by Per Curiam Opinion	136	118	151	211	616
Cases Terminated by Signed Opinion	120	244	201	293	858
(Cases Terminated by 3-Judge Signed Opinions)	64	128	117	167	476
(Cases Terminated by 1-Judge Signed Opinions)	56	116	84	126	382
TOTAL CASES TERMINATED BY OPINION TYPE	376	606	553	504	2039
# OF OPINIONS PUBLISHED	39	109	63	89	300
Cases Terminated by Order - Summary Disposition - Affirmance	145	108	41	51	345
Cases Terminated by Order - Summary Disposition - Reversal	27	7	4	3	41
Cases Terminated by Order - Summary Disposition - No Merit	139	112	95	109	455
Cases Terminated by Order - Summary Disposition - Other	3	5	4	4	16
Cases Terminated by Order - Memo Opinion - Jurisdiction	24	21	36	27	108
Cases Terminated by Order - Memo Opinion - Other	73	73	67	152	365
Cases Terminated by Order - Memo Opinion - Writ Denied, etc.	48	42	31	47	168
Cases Terminated by Order - Memo Opinion - Writ Granted	0	3	1	3	7
Cases Terminated by Order - Memo Opinion - Leave Denied, etc.	57	62	42	52	213
Cases Terminated by Other Order Types - Voluntary Dismissal	52	48	32	40	172
Cases Terminated by Other Order Types - Stipulation	2	5	2	3	12
Cases Terminated by Other Order Types - Other	5	7	1	20	33
TOTAL CASES TERMINATED BY ORDER	575	493	356	511	1935
TOTAL CASES TERMINATED	831	855	708	1015	3409

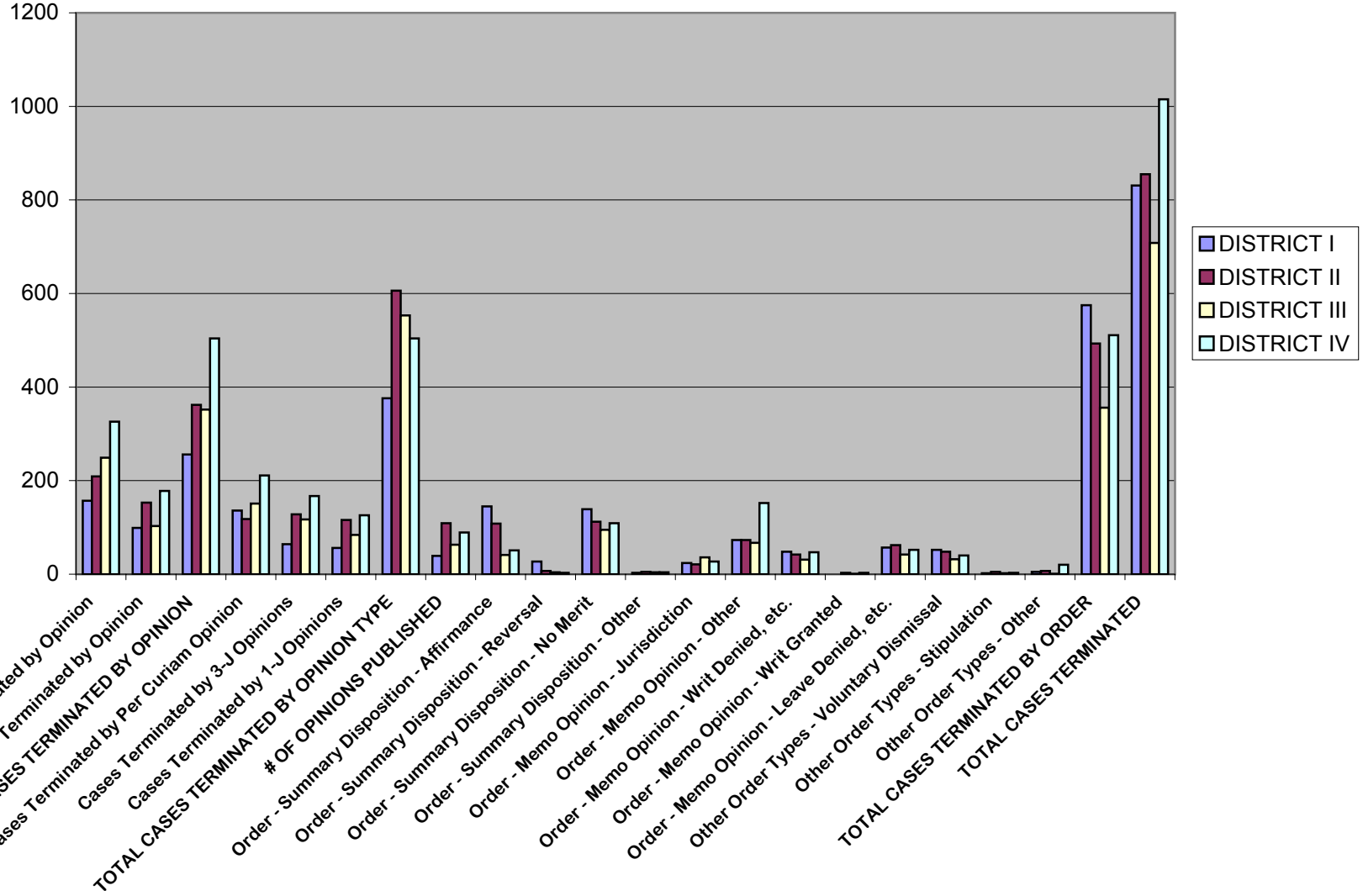
1999 WISCONSIN COURT OF APPEALS STATISTICS

	DISTRICT I	DISTRICT II	DISTRICT III	DISTRICT IV	COURT
Motions	2826	2310	1380	2674	9190
Certifications Filed	2	11	1	2	16
Bypasses Granted	1	0	0	0	1
Pending Cases - 12/31/99	754	517	299	489	2059
Number of Judges	4	4	3	5	16
Number of Filings per Judge	210	211	229	182	205
Number of Cases Submitted per Judge	101	99	105	82	95
Number of Terminations per Judge	208	214	236	203	213
Number of Cases Terminated by Signed Opinion per Judge	30	61	67	59	54
Number of 3-Judge Cases Terminated by Signed Opinion per Judge	16	32	39	33	30
Number of Motions per Judge	707	578	460	535	574
Percentage of Cases Terminated to Cases Filed	99%	101%	103%	112%	104%
AVERAGE DAYS TO DISPOSITION					
Notice of Appeal to Disposition	327	291	202	252	268
3-Judge Opinions	474	396	237	303	353
1-Judge Opinions	158	176	154	184	168
Per Curiam Opinions	479	400	257	313	362
Summary Dispositions	372	272	200	236	270
Memo Opinions	124	94	54	83	89
Orders	87	115	114	34	88
Fast Track Cases	278	141	170	149	185

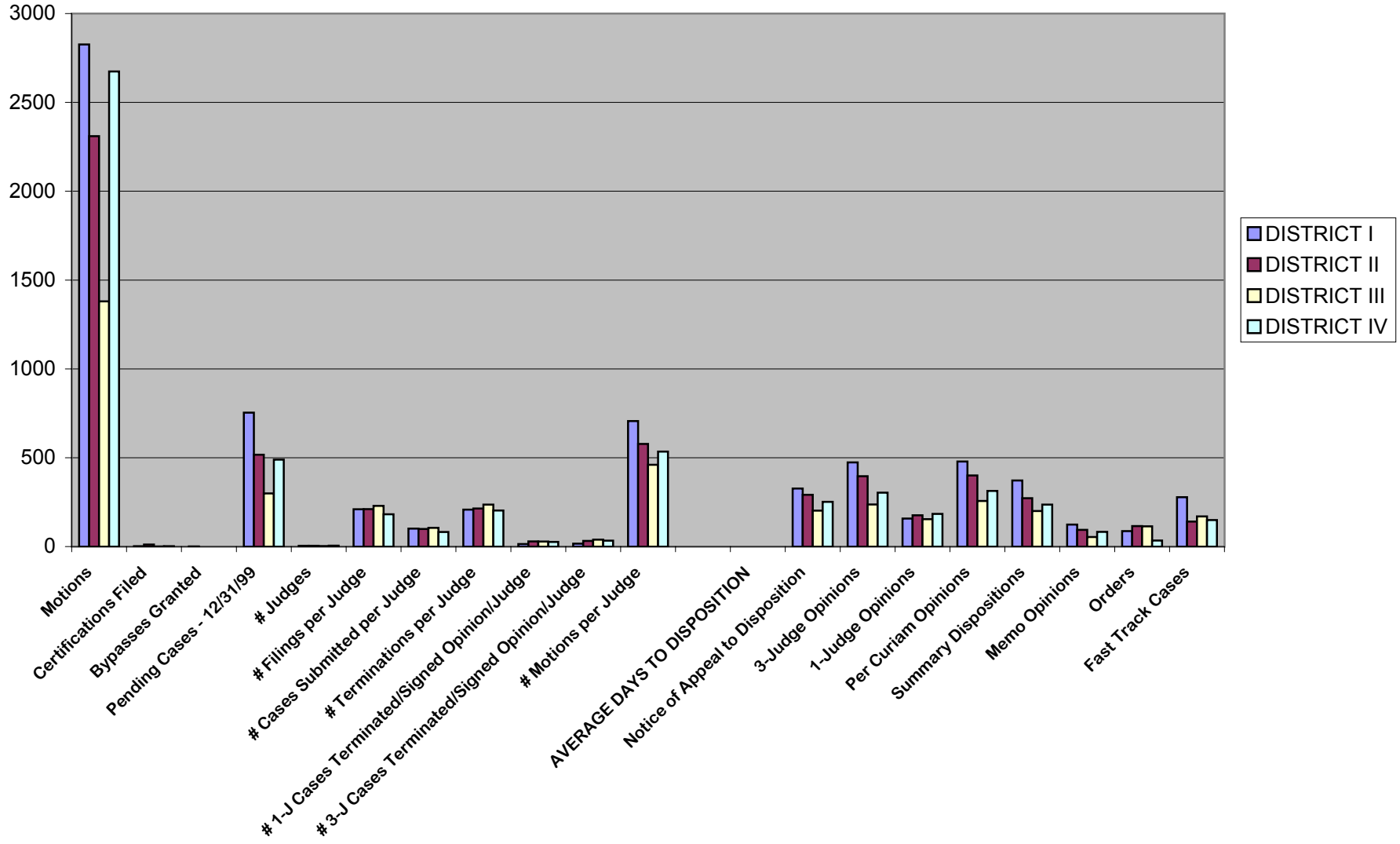
1999 CASES FILED AND SUBMITTED



1999 TERMINATIONS



1999 PER JUDGE AND AVERAGE DAYS



2000 WISCONSIN COURT OF APPEALS STATISTICS

	DISTRICT I	DISTRICT II	DISTRICT III	DISTRICT IV	COURT
Civil Filings	399	455	464	568	1886
Criminal Filings	500	377	313	396	1586
TOTAL FILINGS	899	832	777	964	3472
3-Judge Appeals	760	672	603	724	2759
1-Judge Appeals	139	160	174	240	713
TOTAL 3-JUDGE AND 1-JUDGE APPEALS FILED	899	832	777	964	3472
No Merit	199	116	109	143	567
Writ	56	51	42	74	223
Leave to Appeal	59	76	60	54	249
Matter of Right	585	589	566	693	2433
TOTAL APPEAL TYPES FILED	899	832	777	964	3472
Civil Cases Submitted on Briefs	197	225	203	259	884
Criminal Cases Submitted on Briefs	164	146	86	157	553
Civil Cases Orally Argued	12	9	4	9	34
Criminal Cases Orally Argued	5	6	0	2	13
TOTAL CASES SUBMITTED	378	386	293	427	1484

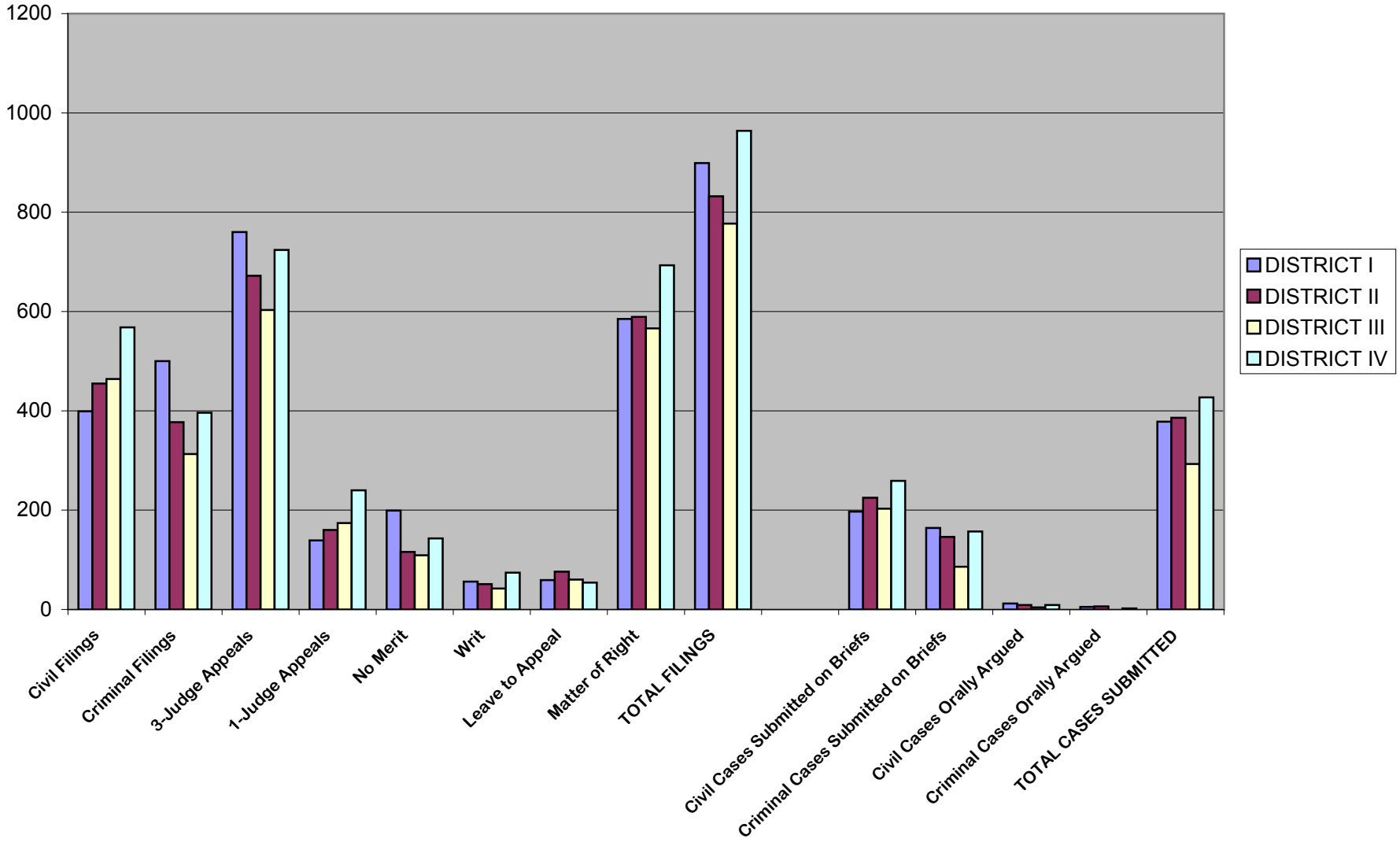
2000 WISCONSIN COURT OF APPEALS STATISTICS

	DISTRICT I	DISTRICT II	DISTRICT III	DISTRICT IV	COURT
Civil Cases Terminated by Opinion	162	193	214	311	880
Criminal Cases Terminated by Opinion	102	139	98	161	500
TOTAL CASES TERMINATED BY OPINION	264	332	312	472	1380
Cases Terminated by Per Curiam Opinion	151	130	135	176	592
Cases Terminated by Signed Opinion	113	204	177	296	790
(Cases Terminated by 3-Judge Signed Opinions)	52	116	88	161	417
(Cases Terminated by 1-Judge Signed Opinions)	61	88	89	135	373
TOTAL CASES TERMINATED BY OPINION TYPE	377	538	489	768	2172
# OF OPINIONS PUBLISHED	37	81	55	85	258
Cases Terminated by Order - Summary Disposition - Affirmance	156	102	48	41	347
Cases Terminated by Order - Summary Disposition - Reversal	15	16	7	8	46
Cases Terminated by Order - Summary Disposition - No Merit	194	112	88	134	528
Cases Terminated by Order - Summary Disposition - Other	5	4	3	2	14
Cases Terminated by Order - Memo Opinion - Jurisdiction	42	31	39	22	134
Cases Terminated by Order - Memo Opinion - Other	107	126	73	147	453
Cases Terminated by Order - Memo Opinion - Writ Denied, etc.	60	48	42	71	221
Cases Terminated by Order - Memo Opinion - Writ Granted	2	1	0	6	9
Cases Terminated by Order - Memo Opinion - Leave Denied, etc.	49	55	49	34	187
Cases Terminated by Other Order Types - Voluntary Dismissal	66	39	32	64	201
Cases Terminated by Other Order Types - Stipulation	7	7	3	0	17
Cases Terminated by Other Order Types - Other	14	15	2	6	37
TOTAL CASES TERMINATED BY ORDER	717	556	386	535	2194
TOTAL CASES TERMINATED	981	888	698	1007	3574

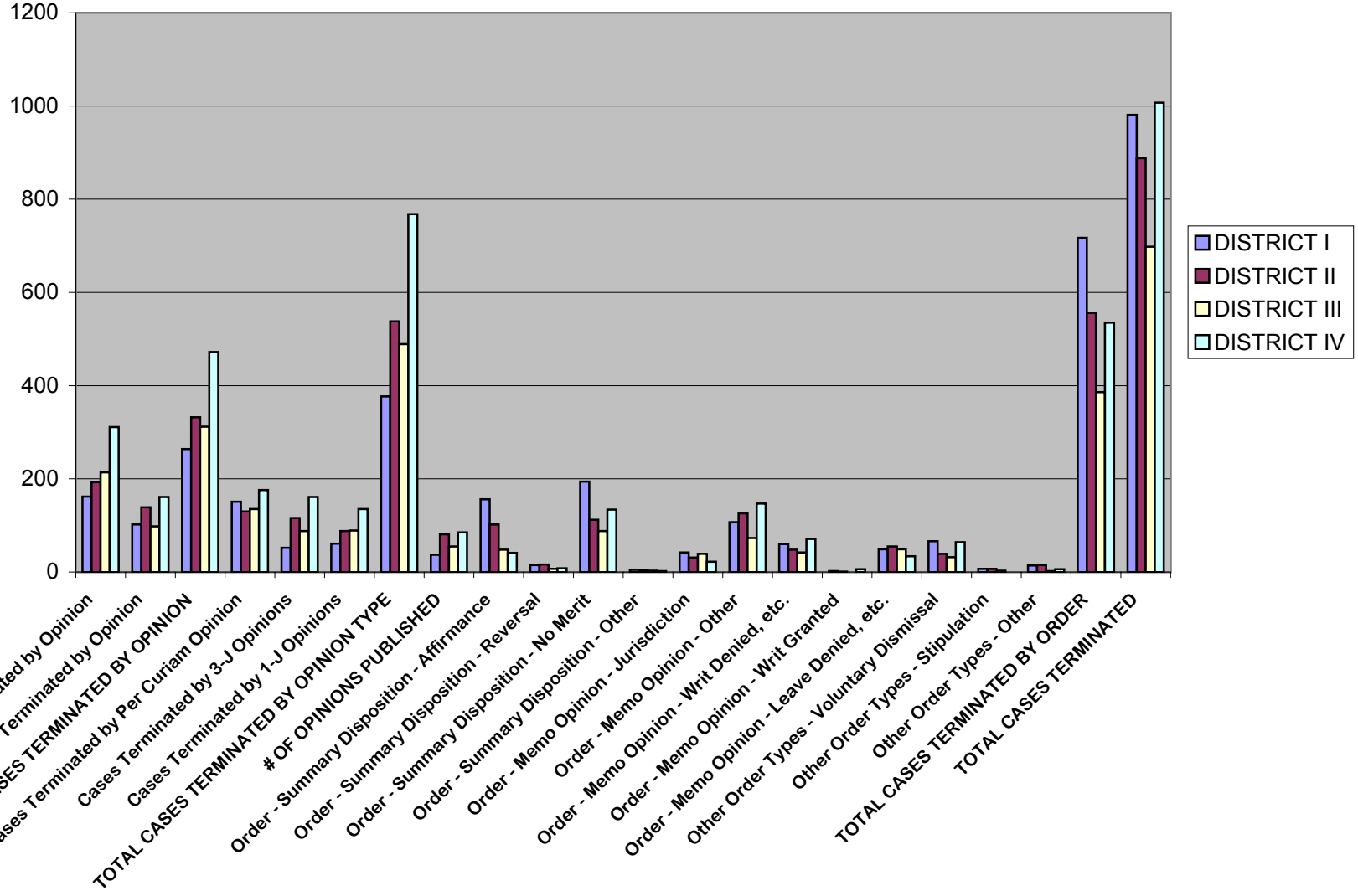
2000 WISCONSIN COURT OF APPEALS STATISTICS

	DISTRICT I	DISTRICT II	DISTRICT III	DISTRICT IV	COURT
Motions	3078	2606	1531	2599	9814
Certifications Filed	2	15	5	4	26
Bypasses Granted	2	1	0	2	5
Pending Cases - 12/31/00	645	488	377	524	2034
Number of Judges	4	4	3	5	16
Number of Filings per Judge	225	208	259	193	217
Number of Cases Submitted per Judge	95	97	98	85	93
Number of Terminations per Judge	245	222	233	201	223
Number of Cases Terminated by Signed Opinion per Judge	28	51	59	59	49
Number of 3-Judge Cases Terminated by Signed Opinion per Judge	13	29	29	32	26
Number of Motions per Judge	770	652	510	520	613
Percentage of Cases Terminated to Cases Filed	109%	107%	90%	104%	103%
AVERAGE DAYS TO DISPOSITION					
Notice of Appeal to Disposition	349	263	214	279	276
3-Judge Opinions	511	328	252	344	359
1-Judge Opinions	210	176	176	203	191
Per Curiam Opinions	513	362	270	322	367
Summary Dispositions	338	241	191	244	254
Memo Opinions	117	112	53	82	91
Orders	161	58	151	84	114
Fast Track Cases	383	132	172	136	206

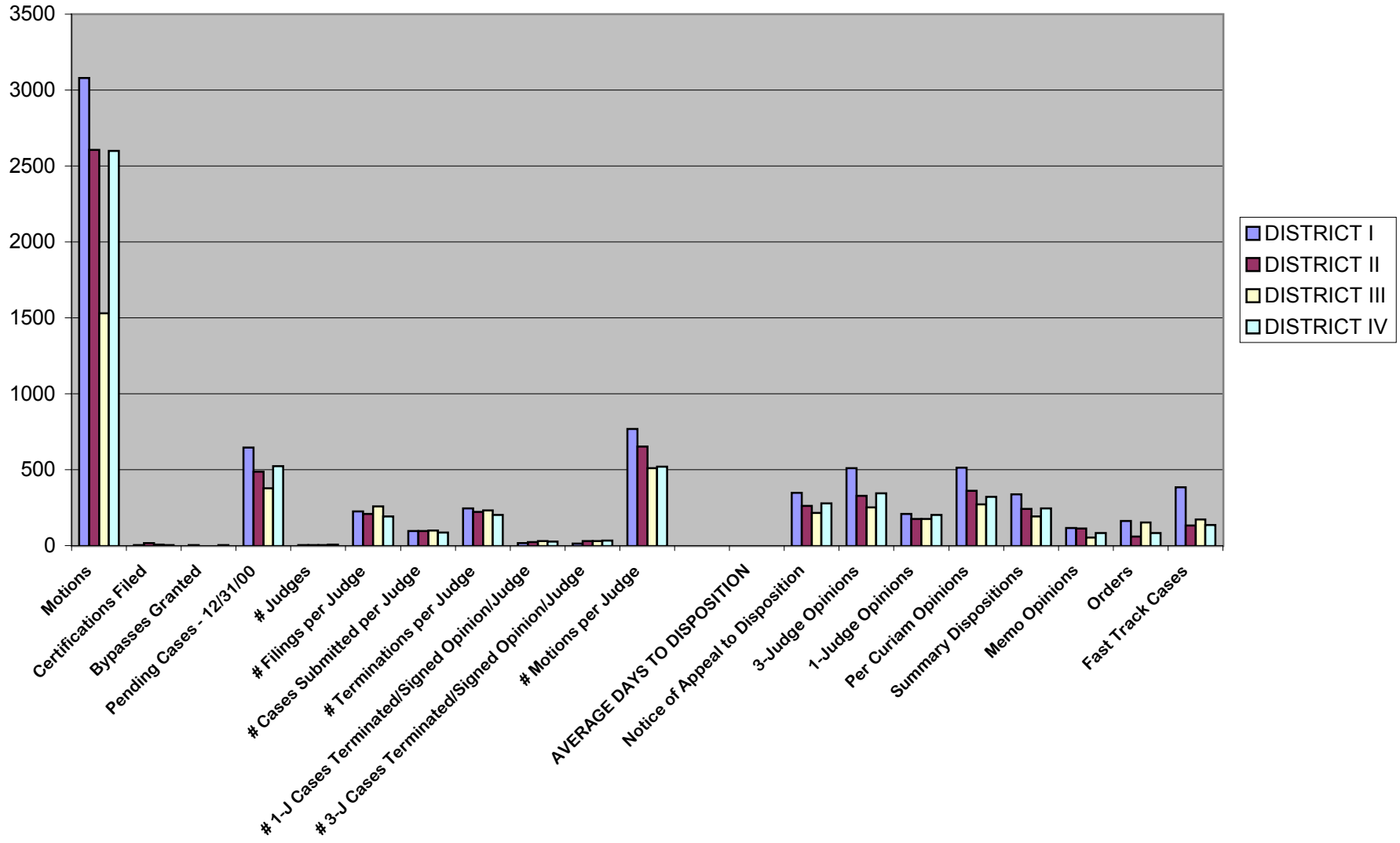
2000 CASES FILED AND SUBMITTED



2000 TERMINATIONS



2000 PER JUDGE AND AVERAGE DAYS



WISCONSIN COURT OF APPEALS COMPOSITE STATISTICS

	DISTRICT I					DISTRICT II					DISTRICT III					DISTRICT IV				
	1998	1999	2000	AVG.	AVG. PER JUDGE	1998	1999	2000	AVG.	AVG. PER JUDGE	1998	1999	2000	AVG.	AVG. PER JUDGE	1998	1999	2000	AVG.	AVG. PER JUDGE
Civil Filings	428	355	399	394	99	517	453	455	475	119	442	451	464	452	151	739	560	568	622	124
Criminal Filings	410	484	500	465	116	365	391	377	378	94	266	237	313	272	91	410	348	396	385	77
TOTAL FILINGS	838	839	899	859	215	882	844	832	853	213	708	688	777	724	241	1149	908	964	1007	201
3-Judge Appeals	717	688	760	722	180	691	623	672	662	166	534	516	603	551	184	885	650	724	753	151
1-Judge Appeals	121	151	139	137	34	191	221	160	191	48	174	172	174	173	58	264	258	240	254	51
TOTAL 3-JUDGE AND 1-JUDGE APPEALS FILED	838	839	899	859	215	882	844	832	853	213	708	688	777	724	241	1149	908	964	1007	201
No Merit	125	187	199	170	43	129	113	116	119	30	111	69	109	96	32	157	119	143	140	28
Writ	41	52	56	50	12	76	44	51	57	14	35	38	42	38	13	114	50	74	79	16
Leave to Appeal	64	57	59	60	15	72	86	76	78	20	68	64	60	64	21	68	65	54	62	12
Matter of Right	608	543	585	579	145	605	601	589	598	150	494	517	566	526	175	810	674	693	726	145
TOTAL APPEAL TYPES FILED	838	839	899	859	215	882	844	832	853	213	708	688	777	724	241	1149	908	964	1007	201
Civil Cases Submitted on Briefs	195	202	197	198	50	216	231	225	224	56	195	218	203	205	68	339	282	259	293	59
Criminal Cases Submitted on Briefs	159	184	164	169	42	139	147	146	144	36	91	86	86	88	29	143	117	157	139	28
Civil Cases Orally Argued	16	14	12	14	4	9	15	9	11	3	6	10	4	7	2	14	12	9	12	2
Criminal Cases Orally Argued	5	3	5	4	1	8	3	6	6	1	0	0	0	0	0	0	1	2	1	0
TOTAL CASES SUBMITTED	375	403	378	385	96	372	396	386	385	96	292	314	293	300	100	496	412	427	445	89

WISCONSIN COURT OF APPEALS COMPOSITE STATISTICS

	DISTRICT I					DISTRICT II					DISTRICT III					DISTRICT IV				
	1998	1999	2000	AVG.	AVG. PER JUDGE	1998	1999	2000	AVG.	AVG. PER JUDGE	1998	1999	2000	AVG.	AVG. PER JUDGE	1998	1999	2000	AVG.	AVG. PER JUDGE
Civil Cases Terminated by Opinion	174	157	162	164	41	206	209	193	203	51	205	249	214	223	74	393	326	311	343	69
Criminal Cases Terminated by Opinion	121	99	102	107	27	128	153	139	140	35	102	103	98	101	34	229	178	161	189	38
TOTAL CASES TERMINATED BY OPINION	295	256	264	272	68	334	362	332	343	86	307	352	312	324	108	622	504	472	533	107
Cases Terminated by Per Curiam Opinion	148	136	151	145	36	105	118	130	118	29	146	151	135	144	48	256	211	176	214	43
Cases Terminated by Signed Opinion	147	120	113	127	32	229	244	204	226	56	161	201	177	180	60	366	293	296	318	64
(Cases Terminated by 3-Judge Signed Opinions)	78	64	52	65	16	120	128	116	121	30	104	117	88	103	34	220	167	161	183	37
(Cases Terminated by 1-Judge Signed Opinions)	69	56	61	62	16	109	116	88	104	26	57	84	89	77	26	146	126	135	136	27
TOTAL CASES TERMINATED BY OPINION TYPE	295	376	377	349	87	334	606	538	493	123	307	553	489	450	150	622	504	768	631	126
# OF OPINIONS PUBLISHED	49	39	37	42	10	89	109	81	93	23	48	63	55	55	18	93	89	85	89	18
Cases Terminated by Order - Summary Disposition - Affirmance	116	145	156	139	35	119	108	102	110	27	52	41	48	47	16	102	51	41	65	13
Cases Terminated by Order - Summary Disposition - Reversal	6	27	15	16	4	4	7	16	9	2	4	4	7	5	2	11	3	8	7	1
Cases Terminated by Order - Summary Disposition - No Merit	120	139	194	151	38	101	112	112	108	27	82	95	88	88	29	87	109	134	110	22
Cases Terminated by Order - Summary Disposition - Other	6	3	5	5	1	3	5	4	4	1	3	4	3	3	1	4	4	2	3	1
TOTAL CASES TERMINATED BY SUMMARY DISPOSITION	248	314	370	311	78	227	232	234	231	58	141	144	146	144	48	204	167	185	185	37
Cases Terminated by Order - Memo Opinion - Jurisdiction	24	24	42	30	8	24	21	31	25	6	30	36	39	35	12	35	27	22	28	6
Cases Terminated by Order - Memo Opinion - Other	93	73	107	91	23	145	73	126	115	29	87	67	73	76	25	211	152	147	170	34
Cases Terminated by Order - Memo Opinion - Writ Denied, etc.	40	48	60	49	12	68	42	48	53	13	36	31	42	36	12	112	47	71	77	15
Cases Terminated by Order - Memo Opinion - Writ Granted	1	0	2	1	0	0	3	1	1	0	1	1	0	1	0	9	3	6	6	1
Cases Terminated by Order - Memo Opinion - Leave Denied, etc.	44	57	49	50	13	58	62	55	58	15	53	42	49	48	16	46	52	34	44	9
TOTAL CASES TERMINATED BY MEMO OPINION	202	202	260	221	55	295	201	261	252	63	207	177	203	196	65	413	281	280	325	65
Cases Terminated by Other Order Types - Voluntary Dismissal	74	52	66	64	16	48	48	39	45	11	35	32	32	33	11	86	40	64	63	13
Cases Terminated by Other Order Types - Stipulation	6	2	7	5	1	1	5	7	4	1	6	2	3	4	1	4	3	0	2	0
Cases Terminated by Other Order Types - Other	3	5	14	7	2	6	7	15	9	2	1	1	2	1	0	12	20	6	13	3
TOTAL CASES TERMINATED BY OTHER ORDER TYPES	83	59	87	76	19	55	60	61	59	15	42	35	37	38	13	102	63	70	78	16
TOTAL CASES TERMINATED BY ORDER	533	575	717	608	152	577	493	556	542	136	390	356	386	377	126	719	511	535	588	118
TOTAL CASES TERMINATED	828	831	981	880	220	911	855	888	885	221	697	708	698	701	234	1341	1015	1007	1121	224

WISCONSIN COURT OF APPEALS COMPOSITE STATISTICS

	DISTRICT I					DISTRICT II					DISTRICT III					DISTRICT IV				
	1998	1999	2000	AVG.	AVG. PER JUDGE	1998	1999	2000	AVG.	AVG. PER JUDGE	1998	1999	2000	AVG.	AVG. PER JUDGE	1998	1999	2000	AVG.	AVG. PER JUDGE
Motions	2849	2826	3078	2918	729	2406	2310	2606	2441	610	1335	1380	1531	1415	472	2811	2674	2599	2695	539
Certifications Filed	2	2	2	2	1	12	11	15	13	3	4	1	5	3	1	3	2	4	3	1
Bypasses Granted	2	1	2	2	0	0	0	1	0	0	0	0	0	0	0	2	0	2	1	0
Pending Cases - 12/31/98, 12/31/99, 12/31/00	745	754	645	715	179	517	517	488	507	127	313	299	377	330	110	560	489	524	524	105
Number of Judges	4	4	4	4		4	4	4	4		3	3	3	3		5	5	5	5	
Number of Filings per Judge	210	210	225	215		221	211	208	213		236	229	259	241		230	182	193	201	
Number of Cases Submitted per Judge	94	101	95	96		93	99	97	96		97	105	98	100		99	82	85	89	
Number of Terminations per Judge	207	208	245	220		228	214	222	221		232	236	233	234		268	203	201	224	
Number of Cases Terminated by Signed Opinion per Judge	37	30	28	32		57	61	51	56		54	67	59	60		73	59	59	64	
Number of 3-Judge Cases Terminated by Signed Opinion per Judge	20	16	13	16		30	32	29	30		35	39	29	34		44	33	32	37	
Number of Motions per Judge	712	707	770	729		602	578	652	610		445	460	510	472		562	535	520	539	
Percentage of Cases Terminated to Cases Filed	99%	99%	109%	102%		103%	101%	107%	104%		98%	103%	90%	97%		117%	112%	104%	111%	

WISCONSIN COURT OF APPEALS COMPOSITE STATISTICS

	DISTRICT I					DISTRICT II					DISTRICT III					DISTRICT IV				
	1998	1999	2000	AVG.	AVG. PER JUDGE	1998	1999	2000	AVG.	AVG. PER JUDGE	1998	1999	2000	AVG.	AVG. PER JUDGE	1998	1999	2000	AVG.	AVG. PER JUDGE
AVERAGE DAYS TO DISPOSITION																				
Notice of Appeal to Disposition	312	327	349	329		219	291	263	258		160	202	214	192		230	252	279	254	
3-Judge Opinions	510	474	511	498		357	396	328	360		230	237	252	240		350	303	344	332	
1-Judge Opinions	188	158	210	185		162	176	176	171		152	154	176	161		176	184	203	188	
Per Curiam Opinions	463	479	513	485		392	400	362	385		235	257	270	254		360	313	322	332	
Summary Dispositions	357	372	338	356		248	272	241	254		180	200	191	190		269	236	244	250	
Memo Opinions	116	124	117	119		102	94	112	103		65	54	53	57		87	83	82	84	
Orders	182	87	161	143		47	115	58	73		65	114	151	110		66	34	84	61	
Fast Track Cases	244	278	383	302		144	141	132	139		183	170	172	175		152	149	136	146	
3-J Appeals as a % of Filings	86%	82%	85%	84%		78%	74%	81%	78%		75%	75%	78%	76%		77%	72%	75%	75%	
3-J Opinions as a % of Opinions	26%	17%	14%	19%		36%	21%	22%	26%		34%	21%	18%	24%		35%	33%	21%	30%	
3-J Opinions as a % of Filings	9%	8%	6%	8%		14%	15%	14%	14%		15%	17%	11%	14%		19%	18%	17%	18%	
3-J Opinions as a % of Terminations	9%	8%	5%	7%		13%	15%	13%	14%		15%	17%	13%	15%		16%	16%	16%	16%	
Per Curiam Opinions as a % of Opinions	50%	36%	40%	42%		31%	19%	24%	25%		48%	27%	28%	34%		41%	42%	23%	35%	
Per Curiam Opinions as a % of Filings	18%	16%	17%	17%		12%	14%	16%	14%		21%	22%	17%	20%		22%	23%	18%	21%	
Per Curiam Opinions as a % of Terminations	18%	16%	15%	17%		12%	14%	15%	13%		21%	21%	19%	21%		19%	21%	17%	19%	
1-J Appeals as a % of Filings	14%	18%	15%	16%		22%	26%	19%	22%		25%	25%	22%	24%		23%	28%	25%	25%	
1-J Opinions as a % of Opinions	23%	15%	16%	18%		33%	19%	16%	23%		19%	15%	18%	17%		23%	25%	18%	22%	
1-J Opinions as a % of Filings	8%	7%	7%	7%		12%	14%	11%	12%		8%	12%	11%	11%		13%	14%	14%	14%	
1-J Opinions as a % of Terminations	8%	7%	6%	7%		12%	14%	10%	12%		8%	12%	13%	11%		11%	12%	13%	12%	

ASSIGNMENT TO DISPOSITION

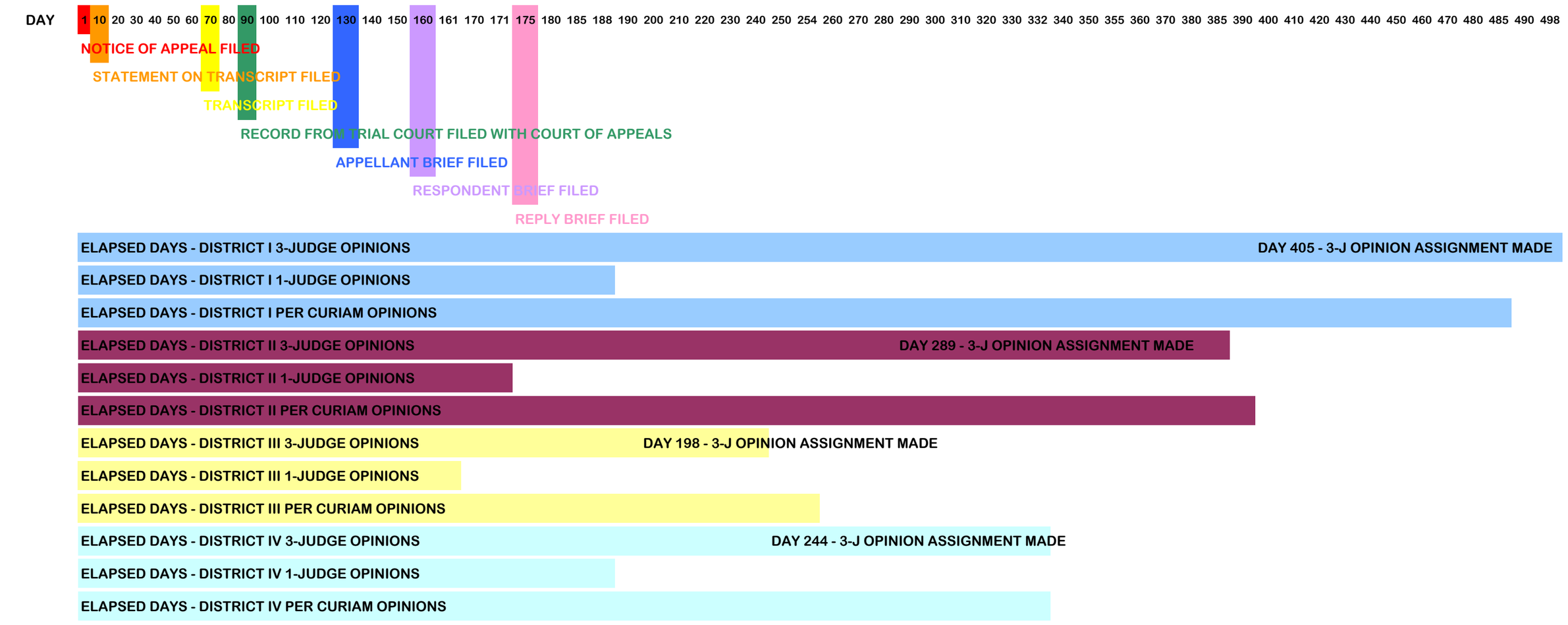
	DISTRICT I					DISTRICT II					DISTRICT III				DISTRICT IV					
	A	B	C	D		A	B	C	D		A	B	C		A	B	C	D	E	
3-Judge Opinions																				
1999	93	95	92	115	99	92	53	59	58	66	46	32	35	38	117	83	76	67	62	81
2000	101	88	68	90	87	92	59	100	54	76	68	42	27	46	136	79	85	102	71	95
					93					71				42						88
Per Curiam Opinions																				
1999	55	99	52	97	76	85	81	88	80	84	53	49	52	51	86	112	96	133	103	106
2000	52	101	47	77	69	78	88	71	67	76	61	61	54	59	69	73	80	90	106	84
					73					80				55						95

SUPREME COURT ACTIVITY

	DISTRICT I				DISTRICT II				DISTRICT III				DISTRICT IV				COURT			
	1998	1999	2000	AVE.	1998	1999	2000	AVE.	1998	1999	2000	AVE.	1998	1999	2000	AVE.	1998	1999	2000	AVE.
Certifications Filed	2	2	2	2	12	11	15	13	4	1	5	3	3	6	4	4	21	20	26	22
Certifications Granted	2	1	3	2	10	8	14	11	4	1	3	3	3	2	1	2	19	12	21	17
Bypasses Granted	2	1	2	2	0	0	1	0	0	0	0	0	2	0	2	1	4	1	5	3
Court of Appeals Opinions Released	275	256	264	265	327	362	332	340	293	352	312	319	551	504	472	509	1446	1474	1380	1433
Petitions for Review Filed on Opinions	153	129	111	131	139	155	133	142	126	129	118	124	217	189	174	193	635	602	536	591
Civil Petitions Filed	93	120	120	111	121	115	121	119	100	111	124	112	203	176	160	180	517	522	525	521
Criminal Petitions Filed	146	125	152	141	112	105	141	119	78	82	70	77	139	108	122	123	475	420	485	460
TOTAL PETITIONS FILED	239	245	272	252	233	220	262	238	178	193	194	188	342	284	282	303	992	942	1010	981
Petitions Acted Upon	236	251	269	252	252	219	249	240	168	188	203	186	321	297	281	300	977	955	1002	978
Civil Petitions Granted	7	23	16	15	8	16	7	10	12	12	21	15	25	11	13	16	52	62	57	57
Criminal Petitions Granted	8	6	14	9	9	10	7	9	5	6	3	5	4	8	9	7	26	30	33	30
TOTAL PETITIONS GRANTED	15	29	30	25	17	26	14	19	17	18	24	20	29	19	22	23	78	92	90	87
Supreme Court Opinions on Petitions	7	25	26	19	19	23	16	19	9	14	9	11	13	25	21	20	48	87	72	69
Civil - Affirmed	4	12	8	8	2	10	0	4	3	4	4	4	5	11	7	8	14	37	19	23
Criminal - Affirmed	0	3	5	3	3	5	4	4	2	3	1	2	1	2	6	3	6	13	16	12
TOTAL AFFIRMED	4	15	13	11	5	15	4	8	5	7	5	6	6	13	13	11	20	50	35	35
Civil - Reversed	1	5	7	4	4	2	8	5	2	1	2	2	0	8	3	4	7	16	20	14
Criminal - Reversed	0	4	2	2	4	4	3	4	0	4	2	2	0	1	3	1	4	13	10	9
TOTAL REVERSED	1	9	9	6	8	6	11	8	2	5	4	4	0	9	6	5	11	29	30	23
Civil - Other	1	1	4	2	3	2	1	2	1	2	0	1	6	3	1	3	11	8	6	8
Criminal - Other	1	0	0	0	3	0	0	1	1	0	0	0	1	0	1	1	6	0	1	2
TOTAL OTHER	2	1	4	2	6	2	1	3	2	2	0	1	7	3	2	4	17	8	7	11

WISCONSIN COURT OF APPEALS

CIVIL APPEAL TIMELINE



WISCONSIN COURT OF APPEALS

CRIMINAL APPEAL TIMELINE

TRIAL COURT COMPONENT

DAY 1 30 90 150 210 230

Day 1 - NOTICE OF INTENT TO PURSUE POST-CONVICTION RELIEF FILED WITH TRIAL COURT

Day 30 - ORDER TRANSCRIPT OF TRIAL COURT REPORTER'S NOTES

Day 90 - TRANSCRIPT FILED WITH TRIAL COURT

Day 150 - MOTION FOR POST-CONVICTION RELIEF FILED WITH TRIAL COURT

Day 210 - TRIAL COURT DECIDES MOTION FOR POST-CONVICTION RELIEF

Day 230 - TRANSCRIPT OF POST-CONVICTION RELIEF PROCEEDINGS FILED WITH TRIAL COURT

COURT OF APPEALS COMPONENT

DAY 1 10 20 30 40 50 60 70 80 90 100 110 120 130 140 150 160 161 170 171 175 180 185 188 190 200 220 240 250 254 260 280 290 300 320 330 332 340 350 355 360 370 380 385 390 400 425 450 475 485 498

NOTICE OF APPEAL FILED

RECORD FROM TRIAL COURT FILED WITH COURT OF APPEALS

APPELLANT BRIEF FILED

RESPONDENT BRIEF FILED

REPLY BRIEF FILED

ELAPSED DAYS - DISTRICT I 3-JUDGE OPINIONS — DAY 405 - 3-J OPINION ASSIGNMENT MADE

ELAPSED DAYS - DISTRICT I 1-JUDGE OPINIONS

ELAPSED DAYS - DISTRICT I PER CURIAM OPINIONS

ELAPSED DAYS - DISTRICT II 3-JUDGE OPINIONS — DAY 289 - 3-J OPINION ASSIGNMENT MADE

ELAPSED DAYS - DISTRICT II 1-JUDGE OPINIONS

ELAPSED DAYS - DISTRICT II PER CURIAM OPINIONS

ELAPSED DAYS - DISTRICT III 3-JUDGE OPINIONS — DAY 198 - 3-J OPINION ASSIGNMENT MADE

ELAPSED DAYS - DISTRICT III 1-JUDGE OPINIONS

ELAPSED DAYS - DISTRICT III PER CURIAM OPINIONS

ELAPSED DAYS - DISTRICT IV 3-JUDGE OPINIONS — DAY 244 - 3-J OPINION ASSIGNMENT MADE

ELAPSED DAYS - DISTRICT IV 1-JUDGE OPINIONS

ELAPSED DAYS - DISTRICT IV PER CURIAM OPINIONS