



MICHIGAN COURT OF APPEALS BACKLOG REDUCTION

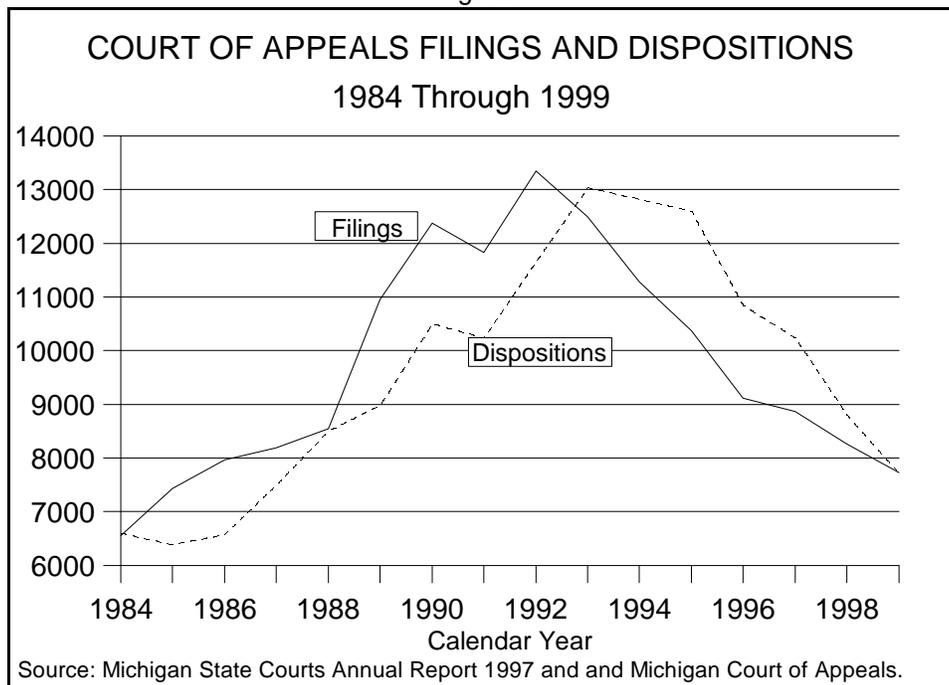
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This document updates information first published in a December 1998 Senate Fiscal Agency Issue Paper entitled, Michigan Court of Appeals Backlog Reduction. The conclusion of that paper stated that a case backlog no longer existed in the Court of Appeals. The separate line item that was originally created to address the backlog was transformed into funding to reduce the amount of time necessary to process a case in the Court of Appeals (from filing to final disposition). The Governor's Recommendation for FY 2000-01 proposes elimination of the separate line item currently designated as "delay reduction" and rolls the 12.0 FTEs and \$950,000 appropriation into the Court of Appeals "operations" line. Based on the updated information in this document, it appears that the existence of a separate line item is more form than substance.

BACKGROUND

The separate line item appropriation for backlog reduction to the Court of Appeals began at a time when statistics showed that annual filings were increasing at a rapid pace. From 1984 to 1992 dispositions by the Court of Appeals increased by 76.6%, from 6,605 to 11,662. During the same time period, however, case filings in the Court of Appeals increased by 103.7%, from 6,554 to 13,352. While the level of dispositions was increasing, it was not at a rate sufficient to make up for the growing number of case filings in the Court of Appeals (Figure 1).

Figure 1



Cases pending at year end from 1984 to 1992 increased by 143.3%, from 7,174 to 17,451. The clearance rate (ratio of total dispositions to new cases filed) for the Court of Appeals reflected that the Court was not keeping pace with increased filings. Table 1 provides a history of filings, dispositions, pending cases, and the clearance rate from 1984 through 1999.

Table 1

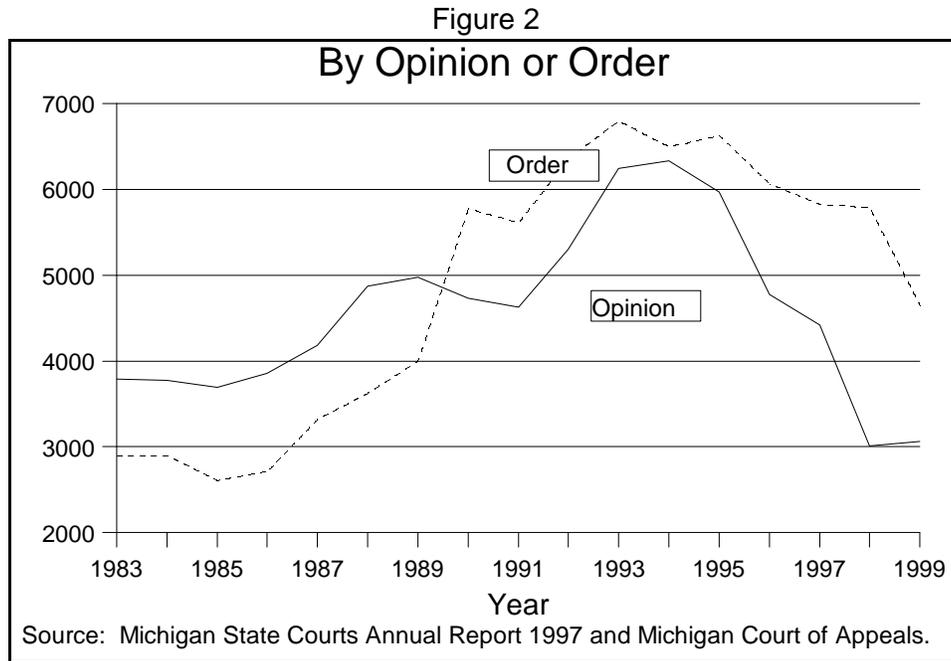
COURT OF APPEALS CASELOAD HISTORY 1984 Through 1999 ¹				
Calendar Year	Filings	Dispositions	Pending	Clearance Rate
1984	6,554	6,605	7,174	100.8
1985	7,436	6,386	8,224	85.9
1986	7,966	6,573	9,617	82.5
1987	8,186	7,502	10,301	91.6
1988	8,546	8,508	10,339	99.6
1989	10,951	8,983	12,307	82.0
1990	12,369	10,503	14,173	84.9
1991	11,825	10,237	15,761	86.6
1992	13,352	11,662	17,451	87.3
1993	12,494	13,037	16,908	104.3
1994	11,287	12,824	15,371	113.6
1995	10,370	12,596	13,145	121.5
1996	9,108	10,842	11,411	119.0
1997	8,866	10,242	10,035	115.5
1998	8,264	8,806	7,023	106.6
1999	7,731	7,715	6,942	99.8

Source: Michigan State Courts Annual Report and Michigan Court of Appeals.

The growing caseload was addressed in several ways. From fiscal year (FY) 1990-91 through FY 1993-94 the Court of Appeals received Federal Anti-Drug Abuse Grant funds (75/25 Federal/State match). This funding was used mainly for reports and proposed opinions on drug-related guilty plea cases. In FY 1990-91, 8.0 full-time equated positions (FTEs) and \$550,000 were added to the Court of Appeals for enhanced docket management. The funds were used to hire a staff of research attorneys assigned to visiting judges to reduce the backlog. Permanent measures have included increasing the number of judges on the Court of Appeals from 18 to 24 on January 1, 1989, and from 24 to 28 on January 1, 1995. Staff in the Court of Appeals also increases with the addition of judges. Each judge is assigned one secretary and one law clerk. Also, historically there has been a ratio of two research attorneys for each judge. In FY 1983-84 the authorized FTE level for the Court of Appeals was 158.7 FTEs. In FY 1991-92 the authorized FTEs for the Court of Appeals totaled 191.0. By FY 1997-98, the FTE authorization for the Court of Appeals totaled 245.5, representing a 54.7% increase over FY 1983-84. Other methods used by the Court of Appeals to improve case production included decentralizing certain staff functions, limiting cases that include oral arguments, using prehearing settlement conferences, making technology improvements, and disposing

¹ It is important to note that the Court of Appeals changed the method used for counting cases in 1998. Prior to that year, case statistics reflected one case for each lower court number that was referred to in a file. Beginning in 1998, statistics reflect one case for each Court of Appeals docket number regardless of how many lower court docket numbers were referred to in that file.

of a greater number of cases through orders instead of opinions. Figure 2 compares cases disposed of by opinion or by order. The number of cases disposed of by opinion has decreased from 57.2% of total dispositions in 1984 to 39.7% of total dispositions in 1999.



BACKLOG/DELAY REDUCTION FUNDING

Public Act 189 of 1993 provided for a \$2,000,000 annual allocation from the State Court Fund to the Court of Appeals for four fiscal years (FY 1993-94 through FY 1996-97). The Act stated that the purpose of the four-year allocation was to “alleviate the backlog” in the Court of Appeals. The \$2,000,000 annual appropriation from the State Court Fund for FY 1993-94 through FY 1996-97 authorized an additional 23.0 FTEs for the Court of Appeals. The funding initially provided for 16 research attorneys, one assistant clerk, and three support staff. In FY 1997-98, when the restricted funding for backlog reduction ended, the Legislature continued the program with State General Fund support at a reduced level of \$1,500,000. The line item was changed to refer to “delay” reduction instead of "backlog" reduction. The Court of Appeals handled the \$500,000 reduction by obtaining an increase of \$425,000 contingent upon legislation increasing filing and motion fees in the Court of Appeals. The actual annual amount received by the Court from the fee increases is approximately \$350,000. This allowed the Court to partially offset the FY 1997-98 reduction in the backlog/delay appropriation. In FY 1999-2000 the separate line item for "delay reduction" was again reduced, this time by 10.0 FTEs/\$550,000. This left 12.0 FTEs/\$950,000 remaining in the line item.

IMPACT OF BACKLOG/DELAY APPROPRIATION

Filings in the Court of Appeals peaked in 1992. From 1992 through 1999 filings in the Court of Appeals decreased by 5,621 (42.1%). The separate line item appropriation to the Court of Appeals for backlog reduction did not result in increased dispositions. Dispositions by the Court of Appeals peaked in 1993 at 13,037 (Table 1). By 1999 dispositions were down to 7,715, which represents a decrease of 33.8% compared with the 1992 total of 11,662. Due to fewer filings, cases pending decreased by 60.2% during

the same time period. Decreased case filings were responsible for the improved clearance rate and the elimination of the backlog.

Why would dispositions decrease when increased appropriations were provided to reduce the backlog in the Court of Appeals? The answer relates to variations in caseload composition. Decreased dispositions are mainly the result of a decline in the number of routine cases that are disposed of in a short time period. The Court is then left with more complex cases, which results in a reduced level of dispositions. Direct evidence of this is provided in Table 2, which shows a significant reduction in guilty plea case filings since 1993. In 1990 there were 3,944 guilty plea appeals filed, accounting for 31.9% of the 12,369 case filings in that year. By 1992 guilty plea filings peaked at 4,456, accounting for 33.4% of new case filings in the Court of Appeals. In 1999 there were 1,011 guilty plea appeals representing 13.1% of 7,731 filings in that year. Research attorneys in the Court of Appeals can complete guilty plea cases at a rate of two per day compared with the rate of one case in five days for more complex cases. Guilty plea filings have decreased as a result of Proposal B, the 1994 amendment to the State Constitution of 1963 which provides that appeals by an accused who pleaded guilty or nolo contendere must be by leave of the Court of Appeals, except when an appeal of right is provided by law. Case law, People v Cobbs, 443 Mich 276 (1993), also had an impact on guilty plea appeals. That case allowed trial courts to give preliminary estimates of the sentence to be imposed. Under Cobbs, defendants who pleaded guilty with this advance information cannot obtain appellate relief on the ground that the sentence is disproportionate.

Table 2

MICHIGAN COURT OF APPEALS GUILTY PLEA FILINGS			
	Total Filings	Guilty Plea Filings	Percent of Total
1990	12,369	3,944	31.9
1991	11,825	3,788	32.0
1992	13,352	4,456	33.4
1993	12,494	4,091	32.7
1994	11,287	3,413	30.2
1995	10,370	2,662	25.7
1996	9,108	1,324	14.5
1997	8,866	1,152	13.0
1998	8,264	1,060	12.8
1999	7,731	1,011	13.1

Source: Court Clerk, Michigan Court of Appeals

An example of a more complex case would be a case involving termination of parental rights. Each case in that category required 2.74 days for a prehearing attorney to complete a research report in 1999. Termination of parental rights filings increased from 354 in 1996 to 590 in 1999. The average time for completion of all prehearing reports increased from 3.72 days in 1996 to 4.09 days in 1999.

While the backlog problem in the Court of Appeals has been eliminated, the issue of disposition of cases within a certain time period remains. Section 310 of Public Act 126 of 1999 (FY 1999-2000 Judiciary Appropriation Act) states legislative intent that the Court of Appeals meet the American Bar Association (ABA) model standard on case processing. That standard provides for 95% of appellate cases be disposed of within 12 months of filing. Current Michigan Court Rules and time lines in the Court of Appeals make meeting this standard improbable. In routine civil cases, it can take 280 days from filing until briefs and the lower court records are received. Subsequent to that, it takes the Court of Appeals approximately 133 days to prepare, submit, and resolve the appeal. This estimate, which would result in 413 days from filing to final disposition, assumes that there will be no delays or complications in processing the case. The ABA numerical guidelines for case processing time in intermediate appellate courts are reference models. A 1993 survey of intermediate appellate courts showed that the majority of courts do not meet the ABA reference models. Seventeen courts took over two years to resolve 95% of their appeals. Based on the realities of the appellate process, the Michigan Court of Appeals has set a goal of resolving 90% of all cases within 18 months.

Table 3 shows case age statistics (time since initial filing date) for the month of February 2000, as of March 13, 2000.

Table 3

Michigan Court of Appeals Case Age Statistics Month of February 2000				
	Total	Percent	Prior Year	Percent
0-12 Months	4,880	69.8	4,957	70.9
13-18 Months	1,093	15.6	1,246	17.8
19-24 Months	755	10.8	602	8.6
25-30 Months	201	2.9	118	1.7
31-36 Months	49	0.7	37	0.5
37+ Months	<u>13</u>	<u>0.2</u>	<u>27</u>	<u>0.4</u>
	6,991	100.0	6,987	100.0

Source: Court Clerk, Michigan Court of Appeals

The current data indicate that the age of 85.4% of the Court's pending caseload is 18 months or less. There were 263 cases 25 months or older, which represented 3.8% of the pending caseload. For the previous year, 182 pending cases were 25 or more months old, accounting for 2.6% of pending cases.

CONCLUSION

The data provided by the Court of Appeals clearly show that currently there is no backlog in the Court. The "delay reduction" line item appropriation is currently 12.0 FTEs/\$950,000, compared with the original FY 1993-94 "backlog reduction" appropriation of 23.0 FTEs/\$2,000,000. The Court also funds fewer prehearing attorneys from its operations line item than it did during the height of its backlog reduction effort. Combined funding from the operations line item and backlog/delay line item previously supported 60.0 FTE prehearing attorneys, compared with the current 30.0 FTE prehearing attorneys now on staff. While reductions to the "backlog/delay" line item have reduced the number of prehearing attorneys, the Court of Appeals also has redirected funding that previously supported prehearing attorneys in the operations line item for technology improvements, security enhancements, and decentralization of certain support services. The reduced number of case filings allows the Court to direct more resources to reducing the age of its pending caseload with a reduced number of prehearing attorneys. Data supplied by the Court indicate that

the Court is maintaining its clearance rate and is capable of reaching the goal of disposing of 90% of its caseload within 18 months with existing resources. Based on the current allocation of the Court of Appeals budget, there is no significance in the "delay reduction" separate line item.

Sources

Michigan's One Court of Justice, 1998-99 Annual Report.

Time on Appeal, Roger A. Hanson, National Center for State Courts, 1996.

1999 Michigan Court of Appeals Annual Report.