
Volume 7 • Number 2

CASELOAD HIGHLIGHTS

EXAMINING THE WORK OF STATE COURTS

Caseload and Timeliness in State Supreme Courts

The attention focused on the Florida Supreme Court during the 2000 presidential election highlights the importance of state supreme courts to the nation. The decisions rendered by these courts have profound significance for cases involving election law, discrimination, tort doctrine, and family law, to name a few. They are also the final arbiters for appeals of death penalty convictions, matters of attorney discipline, and a wide array of applications for writs. Yet, awareness of their extensive and variegated caseload is underappreciated due to limited data and possible misconceptions of the complete scope of state supreme courts' responsibilities.

A common image of state supreme courts is that they can pick and choose what cases they should decide. Courts are believed to give considerable weight to the public policy significance of a case in making these choices. However, the application of this criterion and others is in the hands of the members of a court. According to this conventional image, the workload of state supreme courts is defined in terms of two

main activities: (1) an initial review and an ultimate denial of most discretionary petitions for review, and (2) the preparation of written opinions in a limited number of discretionary petitions granted full review. Finally, it is widely assumed that the work of state supreme courts is fundamentally assisted by prior intermediate appellate court review of the bulk of their cases, which provides the supreme courts with pertinent information and reasoning for their consideration.¹ Despite the persistent and widespread acceptance of this perspective, very little data have been assembled to verify it.

The purpose of this *Caseload Highlights* is to compare the received tradition with recently compiled data on five state supreme courts. To assess the image's accuracy, each court's caseload is measured in terms of five possible

¹ A distinguished group of scholars has constructed this image in several published essays. See, for example, Cartwright (1975); Kagan, Cartwright, Friedman, and Wheeler (1977, 1978); Friedman, Kagan, Cartwright, and Wheeler (1981); Kagan, Infelise, and Detlefsen (1984); Kagan (1984); and Wheeler, Cartwright, Kagan, and Friedman. This image has influenced the academic community and is found in textbooks (e.g., Baum, 1990) and as a foundation in more contemporary research (e.g., Farole, 1999 and Dolan, 1999).

categories. They include discretionary petitions for review, mandatory appeals, bar and judicial discipline matters, applications for writs, and death penalty cases. The sidebar below and across the following pages, offers a brief definition of each category.

Data on appellate cases resolved in 1996 and 1997 from five state supreme courts (Florida, Georgia, Minnesota, Ohio, and Virginia) are examined. The data are part of a larger project conducted by the National Center for State

Courts (NCSC) to describe and analyze case processing times in state supreme courts.² The following tables and narrative use data collected from this project to evaluate the nature of state supreme court case processing.

² This larger project's report, *Jurisdiction, Caseload, and Timeliness in State Supreme Courts* was supported by a grant from the State Justice Institute to the National Center for State Courts. Because they all are part of the most common forms of state appellate court systems (See Flango and Flango, 1997), they were considered reasonable courts from which to gain clues to what state supreme courts can do to achieve timeliness. There is no reason to consider them unrepresentative bodies.

◆ Definitions

Discretionary Petitions are cases challenging a final judgment of a trial court or administrative agency. The case generally has been reviewed previously by an intermediate appellate court, although in some states these cases are filed directly with a supreme court after a trial court's decision has been rendered. A state supreme court has discretion to grant or deny these cases a full-blown appellate review.

Mandatory Appeal cases are "appeals of right" that the state legislature or constitution has determined a supreme court must decide. These cases are appealed directly from a trial court or an administrative agency to a supreme court. Mandatory appeals might include criminal only, civil only, or both types of cases, depending on the state.

Attorney Discipline cases most often revolve around attorney malpractice issues. However, some of these cases involve judicial discipline. Original jurisdiction is exercised over the majority of these cases.

Composition of State Supreme Court Caseloads

The adjacent bars show data about the composition of the caseload of each of the five courts that participated in the NCSC study.

- ◆ Supreme courts resolved a considerable number of cases in 1996 and 1997, ranging from 1,785 to 5,540.³
- ◆ Many different types of cases come before supreme courts, and the composition of the caseload varies between courts. Along with discretionary petitions for review, there are also many cases from the categories of mandatory appeals, bar disciplinary matters, applications for writs, and death penalty cases. A supreme court may decide which discretionary petitions for review it wants to hear, but it must hear cases in the other four categories of cases.
- ◆ In every court, there is at least one type of case that is greater in number than granted discretionary petitions.

The data fail to support the assumption that discretionary petitions uniformly dominate the caseloads of state supreme courts, as the common image contends.

Moreover, if state supreme courts are considered to handle exclusively discretionary petitions, this outlook actually discounts the importance of other types of cases that may also require considerable time and attention to resolve. To gain a better sense of the caseloads and workloads of state supreme courts, four analyses are conducted in this *Caseload Highlights*. The focal points of the analyses are: (1) the number of discretionary petitions granted compared to the number of mandatory appeals; (2) the composition of state supreme court cases decided on the merits; (3) the method of resolution for different types of cases; and, (4) the time to disposition for different types of cases. The results of these analyses are described in the following.

³ By considerable, we mean that the number of cases resolved is more than the limited number of discretionary petitions granted review, as the common image suggests.

Applications for Writs seek a supreme court to issue an order directed to a specific person, requiring that person to perform or refrain from performing a specific act. Writs of habeas corpus are among the most frequent type of writ. They challenge the validity of a criminal defendant's conviction or sentence and seek either release from custody, a rehearing or retrial, or a reduced sentence.

Death Penalty cases challenge the imposition of capital punishment. A supreme court must hear these cases, although they are considered a unique type of mandatory appeal and should be treated as a separate cat-

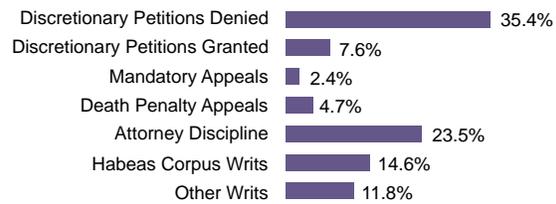
egory because of the special attention that is given to them in terms of particular court policies, procedures, and practices.

◆ Outcomes

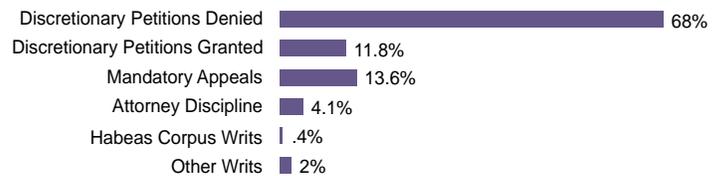
Discretionary Petitions can be granted, denied, or dismissed. A denied discretionary petition means that a court reviewed the case on the merits, but the case was not accepted for full consideration. A granted discretionary petition means that a court accepted the case on the merits,

Supreme Court Caseload Composition, 1996-1997

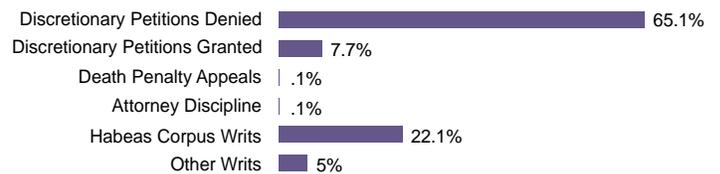
Florida: Total Cases 4,861



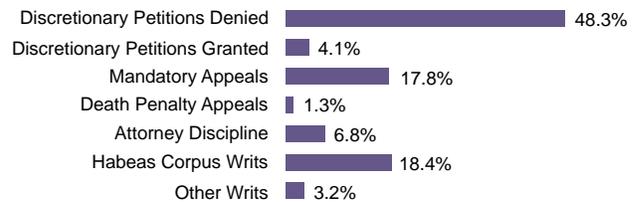
Minnesota: Total 1,785 (Minnesota does not have a death penalty statute.)



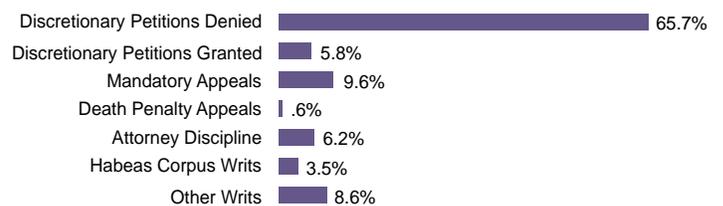
Virginia: Total 5,157 (Virginia has no mandatory appeal jurisdiction except in death penalty cases.)



Georgia: Total 2,899



Ohio: Total 5,540



Comparison of Granted Discretionary Petitions and Mandatory Appeals

The table below provides data to better understand the contribution of discretionary petitions to the workload of state supreme courts.

- ◆ The percent of discretionary petitions granted is fairly similar between courts, never exceeding 18 percent of all discretionary petitions filed.
- ◆ When compared to the number of mandatory appeals, the number of discretionary petitions granted is fewer, except in Florida. A ratio above one indicates that there are more granted discretionary petitions than mandatory appeals and a ratio below one indicates the opposite.
- ◆ When death penalty appeals are combined with other mandatory appeals, the number of discretionary petitions granted is only slightly greater than mandatory appeals in Florida.

The popular assumption that most discretionary petitions are denied is confirmed by the data. However, the data also help us better understand the relative contribution of discretionary petitions to the

caseload of state supreme courts by comparing the number of discretionary petitions granted to the number of mandatory cases. Because both of these types of cases typically require considerable court resources to resolve (more so than the other categories of cases), they collectively account for a very significant proportion of state supreme

court workloads. The data show that the contribution that granted discretionary petitions make usually does not exceed the contribution made by mandatory appeals. Thus, other types of cases such as mandatory appeals, as well as granted discretionary petitions, have substantial consequences on state supreme courts.

Discretionary Petitions, 1996-1997

	Florida	Georgia	Minnesota	Ohio	Virginia
Discretionary Petitions	2,091	1,520	1,425	3,958	3,750
Discretionary Petitions Granted	368	120	211	319	395
Percentage Granted	17.6%	7.9%	14.8%	8.1%	10.5%

Discretionary Petitions Granted Compared to Mandatory and Death Penalty Appeals, 1996-1997

	Florida	Georgia	Minnesota	Ohio	Virginia
Discretionary Petitions Granted	368	120	211	319	395
Mandatory Appeals	117	515	243	533	0
•Ratio: Discretionary Petitions Granted Mandatory Appeals	3.15	0.23	0.87	0.6	N/A
Discretionary Petitions Granted	368	120	211	319	395
Mandatory & Death Penalty Appeals	344	554	243	567	0
•Ratio: Discretionary Petitions Granted Mandatory & Death Penalty Appeals	1.07	0.22	0.87	0.56	N/A

N/A = not applicable

received briefs from both sides, possibly heard oral arguments, and issued a published, signed opinion or a less elaborate opinion summary order (e.g., per curiam opinion, order). A dismissed petition means that the parties withdrew from the case (e.g., the case settled or was abandoned by the parties) or the court determined that it lacked the jurisdiction to review the case.

Mandatory Appeals are either decided on the merits or dismissed. Mandatory appeals decided on the merits result in either a published, signed opinion or a less elaborate opinion (e.g., per curiam opinion, un-

published memoranda decision order). A dismissal means that the parties withdrew from the case (e.g., the case settled or was abandoned by the parties) or the court determined that it lacked the jurisdiction to review the case.

Attorney Discipline cases are either decided on the merits or dismissed. Attorney discipline case appeals decided on the merits usually result in orders. Dismissed attorney discipline cases are either voluntarily withdrawn (e.g., the case settled or was abandoned) or are withdrawn because the court lacked jurisdiction.

Cases Decided on

The bars to the right provide a different perspective on the workload of state supreme courts on the basis of cases “decided on the merits.” Cases that were decided on the merits include any cases generating any form of an opinion (orders, per curiam opinions, memoranda, and published and unpublished opinions) but excluding dismissed cases along with denied petitions and denied writs. By excluding denied and dismissed cases, the number of cases decided on the merits provides a more realistic measure of the workload of state supreme courts than caseload numbers alone.

- ◆ Though smaller in number than the total caseload, a considerable number of cases are decided on the merits by supreme courts in each state, except Virginia.⁴

⁴ By considerable, we mean that the number of cases decided on the merits is more than a limited number of petitions for review, as the common image suggests.

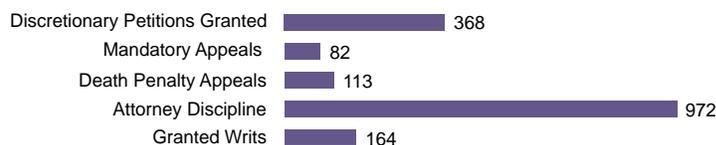
the Merits

- ◆ The composition of cases decided on the merits is primarily a combination of mandatory appeals, bar disciplinary cases, applications for writs, and death penalty cases in Florida, Georgia, Minnesota, and Ohio.
- ◆ The presence of a large combination of mandatory appeals, applications for writs and attorney discipline cases in every state except Virginia also shows that many of the cases decided on the merits by state supreme courts have not been previously decided by an intermediate appellate court.
- ◆ Large numbers of writs are decided on the merits in Florida, Ohio, and Virginia, all states with large prisoner populations. Many of the cases originate from state prisoners as applications for writs of habeas corpus.

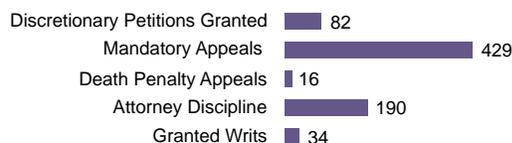
Looking at cases decided on the merits, the workload of state supreme courts appears much different than initial impressions based on the full caseload. While discretionary petitions generally are the largest single caseload category, granted discretionary petitions are the largest category among cases decided on the merits only in Virginia. Specifically, state supreme courts are the court of exclusive or original jurisdiction for applications for writs, mandatory appeals, attorney discipline, and death penalty cases. Both the diversity and number of nondiscretionary cases among the cases decided on the merits and the fact that these other cases are resolved without the benefit of intermediate appellate court review challenge the popular view of state supreme courts.

Number of Cases Decided on Merits, 1996-1997

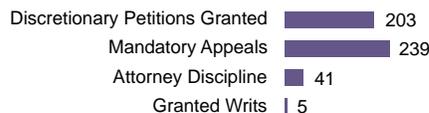
Florida: Total 1,699



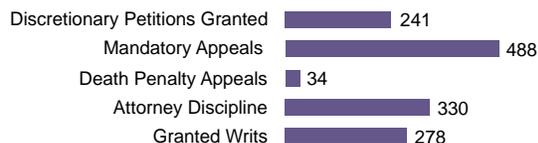
Georgia: Total 751



Minnesota: Total 488



Ohio: Total 1,371



Virginia: Total 523



Applications for Writs can be granted, denied, or dismissed. A denied writ means that the court reviewed the case on the merits, but the case was not accepted for full consideration. A granted writ means that the court accepted the case on the merits, possibly heard oral arguments, and issued a published, signed opinion or a less elaborate opinion (e.g., per curiam opinion, order). A dismissed writ means that the parties withdrew from the case (e.g., the case was abandoned or settled) or the court determined that it lacked the jurisdiction to review the case.

Death Penalty case outcomes depend upon whether the case is a direct review or an application for a writ. Direct review death penalty cases are decided on the merits. A court receives briefs, hears oral arguments, and issues a published opinion. Direct reviews include both an initial appeal of a trial court's decision or an appeal filed after a case has been retried or re-sentenced. Death penalty cases are also subject to a variety of postconviction challenges or applications for writs. These cases can be granted, denied, or dismissed.

Method of Resolution

The table to the right shows the number of cases that actually generated opinions (as opposed to those that had the potential to do so, i.e., cases decided on the merits) in the states that were able to supply such data. The table shows the numbers of summary dispositions (e.g., orders, per curiam opinions) and signed, written opinions (published and unpublished opinions) for granted discretionary petitions and mandatory appeals. Signed, written opinions contribute disproportionately to the workload of courts, compared to summary dispositions.

- ◆ Granted discretionary petitions result in more signed, written opinions than do mandatory appeals, but they also result in summary dispositions, at least in Florida and Virginia.
- ◆ The presence of a death penalty statute adds to the number of court opinions each year.

Discretionary petitions constitute a minority of cases decided on the merits, but they contribute disproportionately to the workload of state supreme courts because they are more likely to result in signed, writ-

ten opinions (as opposed to summary dispositions) than mandatory appeals and other types of cases. A more complete picture of actual state supreme court workload emerges when

mandatory appeals, death penalty reviews, and granted writs are included with granted discretionary petitions and when the manner of resolution of these cases is taken into consideration.

Resolution by Case Type, 1996-1997

Manner of Resolution	Florida	Minnesota	Virginia
Signed Written Opinion			
Granted Discretionary Petitions	244	201	235
Mandatory Appeals	28	108	N/A
Summary Disposition			
Granted Discretionary Petitions	124	2	93
Mandatory Appeals	54	131	0
Writs			
Granted Writs	164	5	186
Denied Writs	1,056	34	1,172
Death Penalty (direct reviews)	113	N/A	7

Case Processing Times

The time taken to resolve cases (timeliness) is one indicator of the amount of work required to resolve a case. The table shows case processing times (in days) for granted discretionary petitions, mandatory appeals, granted writs, and death penalty cases, respectively.⁵

◆ Case processing times vary by category of case within state supreme courts. In Virginia, for example, the median case processing time (i.e., the number of days when half of the cases have been resolved) for granted discretionary petitions is about three times longer than denied discretionary petitions, denied writs, and granted writs.

◆ Case processing times for the same case category vary among state supreme courts.

For example, the median case processing time for granted discretionary petitions resolved in Georgia is nearly half that of Ohio.

◆ The median case processing times for mandatory appeals and granted writs are sub-

stantial, though usually less than the processing time for granted discretionary petitions (except in Georgia).

◆ Though the number of death penalty cases is small in number in every state except Florida, the median process-

ing times for these cases are often the longest of any category of cases.

◆ Courts generally meet the ABA's time frame for 50 percent of the cases more closely than they do for 90 percent of their cases.

Case Processing Time in Days, 1996-1997

Case Type	Florida	Georgia	Minn.	Ohio	Virginia
— Number of days in which 50% of the cases have been resolved —					
Denied Discretionary Petitions	16 ▼	84	19	100 ▲	91
Granted Discretionary Petitions	309	213 ▼	247	404 ▲	276
Mandatory Appeals	170	238	86 ▼	287 ▲	N/A
Denied Writs	45	126	17 ▼	217 ▲	92
Granted Writs	50	209 ▲	14 ▼	64	105
Attorney Discipline Cases	169 ▲	90	161	146	42 ▼
Death Penalty Cases	955 ▲	255	N/A	422	183 ▼
— Number of days in which 90% of the cases have been resolved —					
Denied Discretionary Petitions	120	144	46 ▼	154 ▲	145
Granted Discretionary Petitions	535	318 ▼	380	581 ▲	357
Mandatory Appeals	489	389	363 ▼	818 ▲	N/A
Denied Writs	119	289	40 ▼	438 ▲	161
Granted Writs	187	425 ▲	234	178	160 ▼
Attorney Discipline Cases	497 ▲	269	482	407	137 ▼
Death Penalty Cases	1,492 ▲	551	N/A	567	281 ▼

▲ State with highest number of days within case type ▼ State with lowest number of days within case type

Note: Table excludes dismissed and withdrawn cases. Virginia's figures pertain to the elapsed time from submission of the transcript and record to resolution. All other states are measured from date of the notice of appeal to resolution.

⁵ The 50th (or median) and 90th percentiles are used because the ABA has suggested time frames for those two percentages of cases. The ABA has recommended that 50 percent be resolved in 290 days or fewer and that 90 percent be resolved in 365 days or fewer.

Conclusion

Our results present a more complicated picture of the work of state supreme courts than portrayed in the literature and in many public discussions. We find substantial diversity in the work of each state supreme court as well as significant differences among the courts. By not explicitly including four other types of cases (mandatory appeals, applications for writs, bar disciplinary cases, and death penalty cases) in conversations and analyses of state supreme court caseloads, the workload facing these courts might be seriously understated and misunderstood.

Three implications for understanding and comparing the work of state supreme courts emerge from this study. First, the variety observed in the composition of state supreme court caseloads is a basis for requiring and expecting comparisons between and among courts to be based on the mixture and size of case categories rather than a single measure of all court cases combined. State supreme courts that want to compare their efficiency, productivity, quality, or even use of legal staff to other state supreme courts will

have to look carefully at the jurisdiction and caseload of other courts to find similarly situated courts of last resort.

Second, the five states examined all demonstrate a degree of timeliness, although timeliness is not uniform across all courts. The lack of consistency likely results because the courts have quite different combinations or mixtures of cases. This likelihood calls for a more refined measure of timeliness in the future, one that factors in caseload composition.

Finally, it follows from the first two implications that, whereas all state supreme courts can and should strive for timely and quality appellate review, future research is essential to sort out the best practices. Cases need to be weighted in terms of complexity and difficulty, and judicial and staff resources must be evaluated before one can accurately assess whether a particular procedure or use of resources is most effective in producing timely and quality opinions.

The Court Statistics Project (CSP)

In existence since 1975, the CSP is administered by the National Center for State Courts, with generous support by the State Justice Institute (Grant SJI-91-N-007-O01-1) and the Bureau of Justice Statistics. The CSP receives general policy direction from the

Conference of State Court Administrators through its Court Statistics Project Advisory Committee. Those wishing a more comprehensive review and analysis of the business of state trial and appellate courts are invited to read the CSP's latest publication, *Examining the Work of State Courts, 1999-2000*.



CASELOAD HIGHLIGHTS

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Points of view expressed herein are those of the authors and do not necessarily represent the official position or policies of the State Justice Institute or the Bureau of Justice Statistics.



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