

CASELOAD HIGHLIGHTS

EXAMINING THE WORK OF
THE STATE COURTS

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How often are trials reversed
or affirmed?

See Figure 4



Civil Trials on Appeal - Part 1

Decisions rendered by judges or juries in state trial courts do not necessarily signify the end of court involvement in a dispute. In fact, litigants appealed their 2001 trial court decision in approximately 15 percent of general civil trials in 46 of the nation's most populous counties. The purpose of Part I of this two-part *Caseload Highlights* series is to explore intermediate appellate court activity following general civil jury and bench trials.

The data reported in this issue are from the *Civil Justice Survey of State Courts, 2001 – Supplemental Study of Civil Appeals*, conducted by the National Center for State Courts (NCSC) with funding from the Bureau of Justice Statistics (BJS). The NCSC compiled appellate data on all general civil trials in which a litigant sought appellate review. In total, 1,204 appeals took place in 33 intermediate appellate courts (IAC) and 13 courts of last resort (COLR). Since most appellate activity occurred at the IAC level, this *Caseload Highlights* will focus on those appeals.

Appellate courts differ structurally across states. The differences have been created, in part, as a state's response to managing sizeable appellate caseloads. For instance, some states have created an intermediate appellate court (IAC) with mandatory jurisdiction and a court of

last resort (COLR) with discretionary jurisdiction over civil appeals.

Twenty of the 22 states that participated in this project are organized in such a way that appeals arising out of the trial court are filed at the IAC, with any subsequent appeals decided by the COLR. In Virginia, appeals of general civil trials are filed directly to the COLR; the IAC in Virginia does not have jurisdiction over general civil appeals. Currently, Hawaii's appellate court structure is consistent with the majority of states. However, at the time of the study, Hawaii directed all appeals to the COLR, which then retained some appeals and, by discretion, transferred others down to the IAC.

Typically, the intermediate appellate court reviews alleged trial court errors such as: how procedures were followed, whether relevant substantive law was applied, and/or how costs and fees were calculated. For example, a litigant may allege that the trial court affected the outcome of the trial by allowing the testimony of an unqualified expert witness. Courts of last resort oversee subsequent appeals and through review of the lower court decisions may establish important legal precedent and public policies by way of written opinions.

CSP Resource



National Center for State Courts
State Court Organization Charts

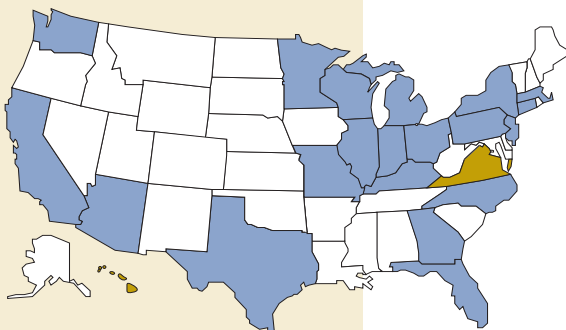
NCSC Resource



National Center for State Courts
Caseload Highlights
A Taxonomy of Appellate
Court Organization

Twenty-Two Participating States

Civil Justice Survey of State Courts, 2001
Supplemental Study of Civil Appeals



■ Appeals Cases Filed Directly with IAC ■ Appeals Cases Filed with COLR

Trial Court Verdicts and Judgments

Not Necessarily the Final Outcome

After trial, litigants may pursue judicial review to reconsider the trial court decision. For example, a litigant with a judgment against her may file a post-trial motion to decrease the award amount. Of the 8,311 trials¹ in the *Civil Justice Survey of State Courts, 2001*, litigants filed post-trial motions in 16 percent of bench trials and 33 percent of jury trials. However, when it comes to appeals, the difference between bench and jury trials dissipates; a notice of appeal was filed at the appellate court in 16 percent of bench and 13 percent of jury trials.

¹Data from the 46 counties were weighted in all analyses to represent the nation's largest 75 counties.

Who Appeals and Who Succeeds

Do plaintiffs or defendants appeal more often? Are appellants (parties raising the appeal) more likely to seek an appeal of a decision made by a judge or a jury? A review of appeal rates provides answers to these questions (for computation details see *Clermont & Eisenberg, Appeal from Jury or Judge Trial: Defendants' Advantage*).²

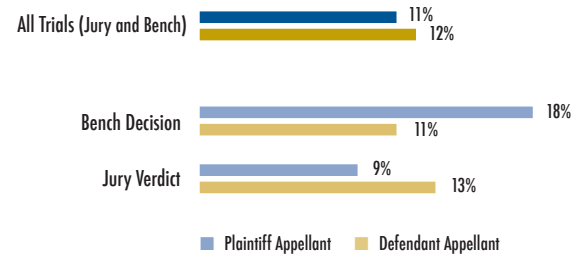
Plaintiffs and defendants filed appeals at similar rates; plaintiffs appeal 11 percent of trials compared to defendants, who appeal 12 percent of trials (see Figure 1). Losing defendants appealed decisions by judges and juries alike. However, losing plaintiffs appealed decisions of judges more frequently than decisions by juries. This difference is partially accounted for by the types of claims litigants self-select to be heard in front of a judge or jury at trial. For example, in 2001, of all contract trials held in 46 large counties, most (72%) were heard by judges.

The caseload composition at trial generally parallels the composition on appeal. However, straightforward disputes, such as motor vehicle torts or rental/lease agreements, were less likely to be appealed (see Figure 2). Conversely, litigants in approximately one-third of product liability, professional malpractice, and employment disputes appealed the outcome at trial.

Is it worthwhile to pursue an appeal? At trial, plaintiffs prevailed 51 percent of the time before a jury and 65 percent of the time before

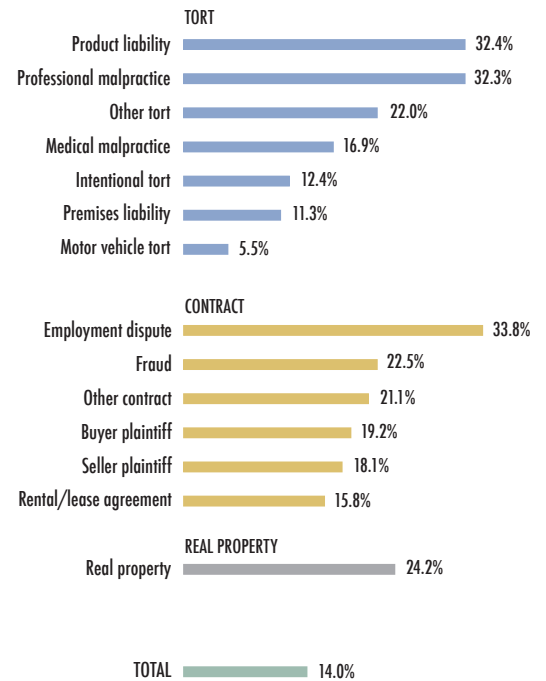
²Some appellants prevailed at the trial court, but still pursued appellate review. These appeals were excluded from the following analyses, as typically appellants did not seek to alter liability, but sought to modify the award or recalculate interest, costs, or fees.

Figure 1: Notice of Appeal Rates, Bench Decision v. Jury Verdict



a judge. Outcomes after review by the IAC and, if applicable, the COLR, only slightly decreased plaintiff win rates to 50 percent and 63 percent, respectively.³ Regardless of the trial adjudicator, plaintiffs were successful approximately half of the time (with a combined win rate of 55 percent at trial and 53 percent following an appeal).

Figure 2: Rate of Appeal by Case Type



³These figures exclude cases (N=111) in which the final appeal was still pending at the completion of data collection (April 2005), or in which the appellate court granted a remand or new trial and the final outcome was not known.

What becomes of civil appeals? Interestingly, many appeals filed with appellate courts are not ultimately reviewed. Some litigants will file an appeal as a negotiation tool, which preserves their right to appeal while promoting post-trial settlement discussions with the opposing party. Other litigants withdraw due to the costs of an appeal or the potential delay expected in waiting for a resolution. The IACs did not render a decision in 43 percent of appeals (see Figure 3 and 3a); in the majority of these

rates ought to be low. If rates are low, it demonstrates that the appellate court is, indeed, deferential to the trial court.

Of the appeals for which IACs rendered a decision, there was an overall reversal rate of 30 percent, which speaks to the extent to which the appellate courts defer to the trial court’s findings. Yet, reversal rates varied by the adjudicator at trial and by which party appealed (see Figure 4). When the defendant,

rather than the plaintiff, was the appellant, reversal rates were higher. Reversal rates were highest (31 percent) when the defendant appealed a jury decision and lowest (5 percent) when the plaintiff appealed a decision by a judge. A decision based on the merits of the substantive law is distinct from a dispositive action as a result of a procedural issue. Only appeals resulting in a decision on the merits were considered in calculating reversal rates.

Figure 3: Outcome of IAC Appeals

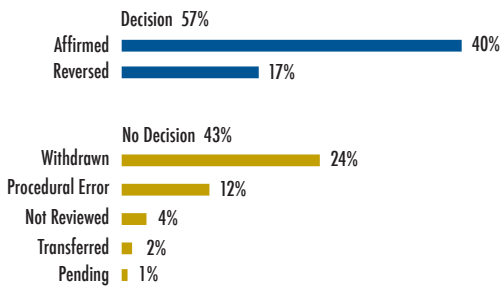
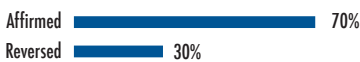


Figure 3a: Outcome of IAC Appeals With a Decision



appeals, appellants either withdrew the appeal or the appellate court dismissed the appeals due to procedural error.

Reversal rates are important statistics that help appellants predict the chance of a successful outcome. In the interest of simplicity, outcomes are reported here as affirmed or reversed. However, only appellate decisions that affirm the trial court decision *in whole* are considered “affirmed.” All other outcomes—reversed in part/affirmed in part, reversed in whole, modified, and remanded—are labeled “reversed.”

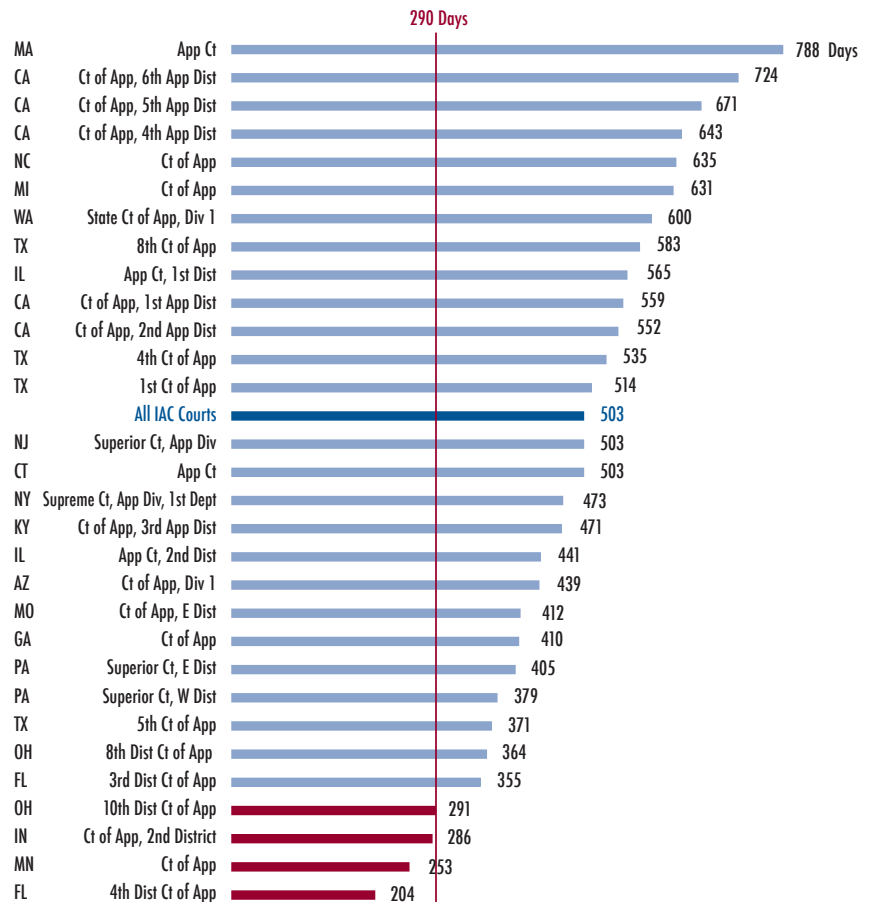
Typical standards of review employed by the appellate court (e.g., when a “clearly erroneous” standard is applied, the evidence is viewed in the light most favorable to *sustaining* the verdict) suggest that reversal

Timeliness

The *American Bar Association (ABA) Reference Models* offer guidelines for IACs to dispose 75 percent of their caseloads within 290 days. As Figure 5 illustrates, appellate courts in this study resolved 75 percent of

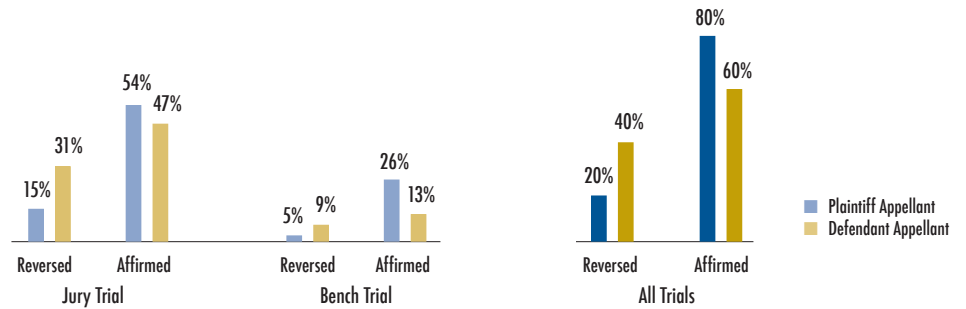
appeals in 503 days. Only four IACs fall within the vicinity of the ABA standard—Florida’s Fourth District, Minnesota Court of Appeals, Indiana’s Second District, and Ohio’s Tenth District Court of Appeal.

Figure 5: Timeliness of IACs Filing to Resolution Duration (ABA Standard 75% within 290 days)



Recall, defendants appealed equally as often (12 percent) as plaintiffs (11 percent), but defendants were successful twice as often (reversal rate for defendant appellants was 40 percent compared to 20 percent for plaintiff appellants). This effect is most apparent following a jury verdict; in 31 percent of appeals with a decision on the merits defendants received a reversal of a jury verdict; whereas, in 15 percent of such appeals, plaintiff appellants won a reversal.

Figure 4: Reversal Rates, Jury Trial v. Bench Verdict



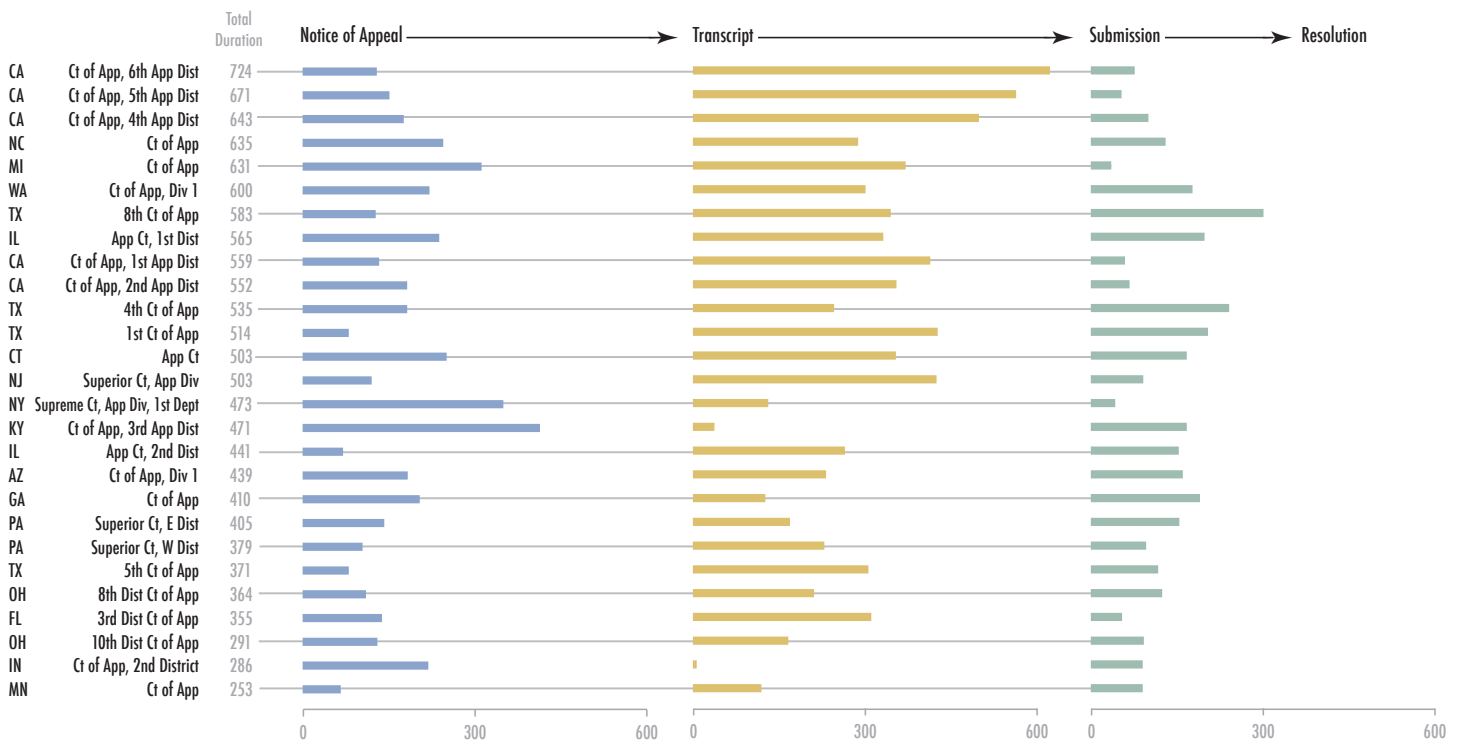
State appellate courts, much like trial courts, operate under a unique local culture. A breakdown of various milestones in the life of an appeal illuminates how each appellate court processed appeals from an initial notice of appeal to a final resolution. IACs in New York, Kentucky, and Michigan experienced delays in receiving transcripts, whereas two courts in Texas, the Fourth and Eighth Courts of Appeals, report delays between submission

and resolution. Appellate courts consider an appeal “submitted” when both sides file a formal brief with the court presenting all issues on appeal.

Timeliness of an appellate court is dependent not only on the actions of the appellants and appellees, but also on the trial court, which must submit documents for review. Figure 6 illustrates the duration of time between

four milestones: notice of appeal, transcript filed, submission of appeal, and resolution (the graphic includes IACs with 10 or more completed appeals). For example, the Kentucky Court of Appeals, Third Appellate District experienced a long delay in receiving transcripts for each appeal, yet the time interval for when the appeal was fully briefed and submitted was typically short, approximately one month.

Figure 6: IAC – Days Between Milestones (Defined as 75th percentile of cases meeting stated duration of days)



Pending Appeals

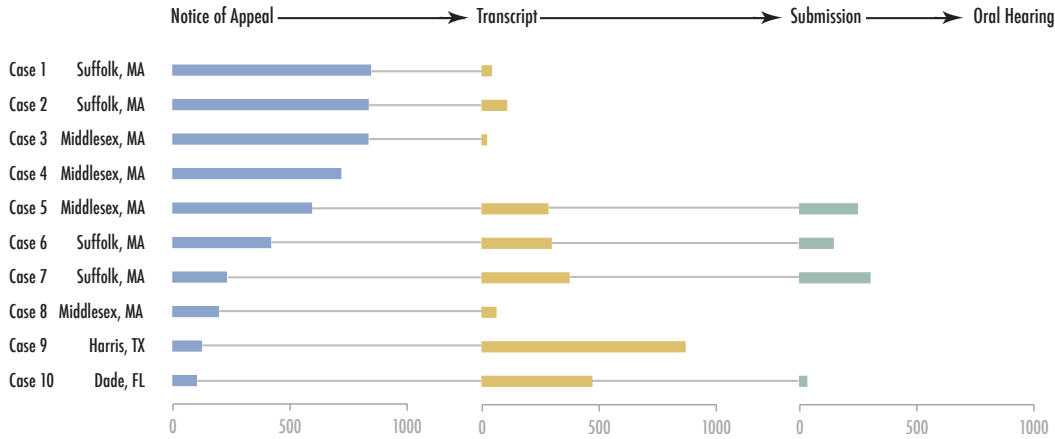
Appeals still pending at the time this study was completed (approximately 1,200 days after trial in 2001) are listed in Figure 7. This figure displays all

ten pending appeals by county and the corresponding breakdown of appellate milestones. Note that eight of the ten appeals were from the Massachusetts

Appeals Court. However, since the majority of the time on appeal occurred before the appellate court received the transcript, the original trial court jurisdictions (counties) are listed for each appeal.

Among the pending appeals reporting activity beyond the notice of appeal, the appeals from Massachusetts reveal how transcript delay made a major impact on a court's ability to process appeals expeditiously.

Figure 7: IAC Pending Appeals (Days Between Milestones)



Implications and Conclusions

This study represents the first supplemental effort to a nationwide examination of civil litigation by tracking general civil trials through the appellate process in state courts. In this *Caseload Highlights*, we have examined factors associated with appeal rates, appellate caseload composition, outcomes on appeal, and appellate court processing times.

Litigants use the appeals process strategically, as leverage for ongoing settlement negotiations or to wait out the opposing party, in addition to the more typical pursuit of correcting alleged trial court error. This is evident considering approximately one-third of appeals were not decided on the merits of the appeal, but withdrawn or dismissed for procedural reasons.

Appeal rates were low, affirmance rates were high, and more reversals were obtained after a jury verdict as compared to a decision by a judge. These findings are consistent with two theories proposed by *Clermont and Eisenberg*, who examined civil appeals in federal appellate courts. They found that appellate courts were deferential to trial courts (i.e., a high affirmance rate), and expert adjudicators were less likely to be reversed (i.e., a lower reversal rate of bench trials than jury trials). These findings also illustrate evidence of a substantial advantage to defendants on appeal, especially in jury trials.

NCSA Resource



National Center for State Courts

Time on Appeal

The National Center for State Courts reviewed appellate court processing times a decade ago, concluding that the ABA Reference Model guidelines are met by very few appellate courts and suggesting a further inquiry into court resources, leadership roles, juris-

ditional policy decisions, and a need for procedural innovations. These data underscore the need for renewed research in this area to better understand the appellate court process. Are the ABA guidelines unrealistic and in need of a significant revision? Why

are only a few appellate courts able to meet the guidelines? And what actions can appellate and trial courts take to implement improvements that will result in more expeditious appellate case processing?

The Court Statistics Project (CSP)

Since 1975 the Court Statistics Project (CSP) has provided a comprehensive analysis of the work of state courts by gathering caseload data and creating meaningful comparisons for identifying trends, comparing caseloads, and highlighting policy issues. The CSP is supported by the Bureau of Justice Statistics and obtains policy direction from the Conference of State Court Administrators. A complete annual analysis of the work of the state trial and appellate courts will be found in *Examining the Work of State Courts, 2005*.



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