

Michigan Court of Appeals

2018 Annual Report





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Introduction

The Michigan Court of Appeals began its operations in 1965. Since that time, the Court, through its dedicated staff and judges, has worked tirelessly to ensure that the residents of Michigan are the beneficiaries of an efficient and productive intermediate appellate Court. Over these past five decades the Court has fluctuated with respect to the number of judges, with respect to the number of districts, with respect to the Court's jurisdiction, and with respect to the number of employees. But throughout this time the Court's judges and staff have remained dedicated to serving the public in an exemplary manner.

The Court is currently comprised of 25 judges who are elected from four geographic districts. Specifically, seven judges are located in the first district, with the district's offices and two courtrooms being located in Detroit. The second district (with offices located in Troy), the third district (with offices and a courtroom in Grand Rapids), and the fourth district (with offices and a courtroom in Lansing), each have 6 judges. In addition to these judges, the Court employs approximately 165 employees who work within judicial chambers, the clerk's office, the research division, the information systems division, the finance office, or the security division.

During calendar year 2018, the Court lost four judges through retirement. These four judges were long-serving colleagues and outstanding jurists, each of whom made tremendous contributions to the Court over the last several decades. Two of those judges, former Chief Judge William Murphy and Judge Peter O'Connell, were unable to run in the November 2018 election because the Michigan Constitution precludes a person from seeking election to a judicial position if the person is over 70 years of age at the time of the election. As a result of legislation enacted several years ago, those two judicial positions were eliminated. Additionally, former Chief Judge Michael Talbot and Judge Joel Hoekstra retired during the course of the past year. Each will be tremendously missed, but each has also left an indelible mark on the Court.

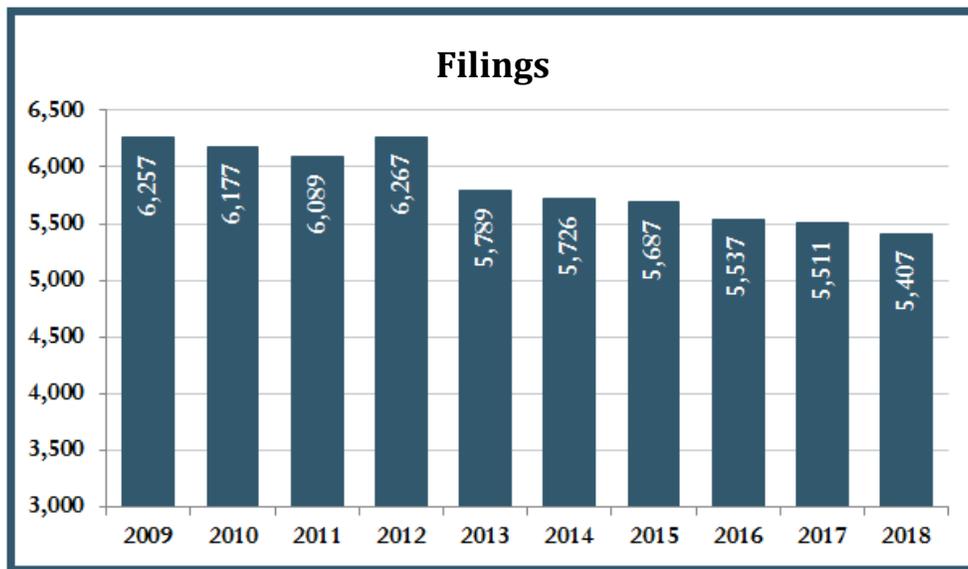
As this report details, 2018 was another good year for the Court, as it produced 2,304 opinions (of which 175 were published, binding decisions) and 3,072 dispositive orders. The Court also held oral argument at Thomas Cooley Law School and Wayne State University Law School, where judges were able to interact with law students and faculty before and after arguments. Finally, our judges continue to be active throughout the State, involving themselves with various bar associations, teaching duties, and other civic and charitable endeavors.

—Chief Judge Christopher M. Murray

Court Performance

New Filings

The Court of Appeals received 5,407 new case filings in 2018. This was a slight decrease from 2017. The graph below depicts the volume of new filings with the Court over the past ten years.



Appeals by right made up 52% of new filings in 2018; appeals by leave accounted for 46% of cases, and original actions 2%. Appeals from civil matters made up 56% of the filings and 44% were from criminal cases. Discretionary appeals from guilty plea convictions accounted for 37% of all criminal appeals, while appeals from termination of parental rights cases constituted 15% of all civil appeals.

Dispositions

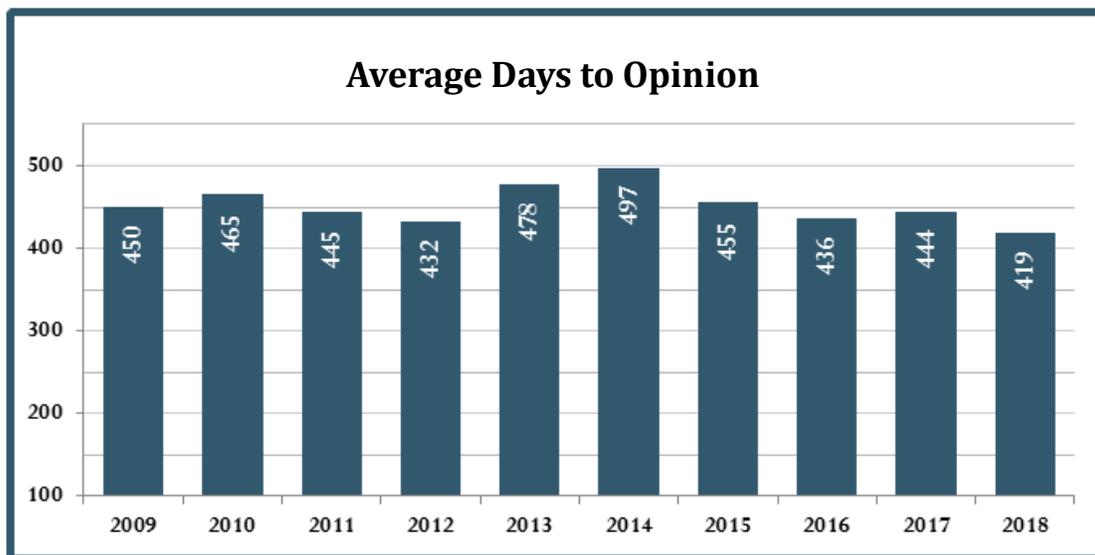
Cases filed with the Court of Appeals are resolved by order or opinion. Dispositions by order generally occur in appeals by leave when the Court denies the application. Appeals by right and those cases where leave to appeal is granted are generally decided by opinion. Opinion dispositions take longer due to the need for transcript preparation, briefing, and record transmission; a process which takes over 7 months on average and is largely outside the control of the Court. Opinion cases are typically routed to the Court's research department for preparation of a report by a staff attorney on the relevant facts and applicable law prior to being scheduled for oral argument before a three-judge panel that will ultimately issue the opinion disposing of the appeal.

In 2018, the Court issued 2,304 opinions and 3,072 dispositive orders for a total of 5,376 dispositions. The accompanying graph shows the number of opinion and order dispositions over the past ten years.



Time on Appeal

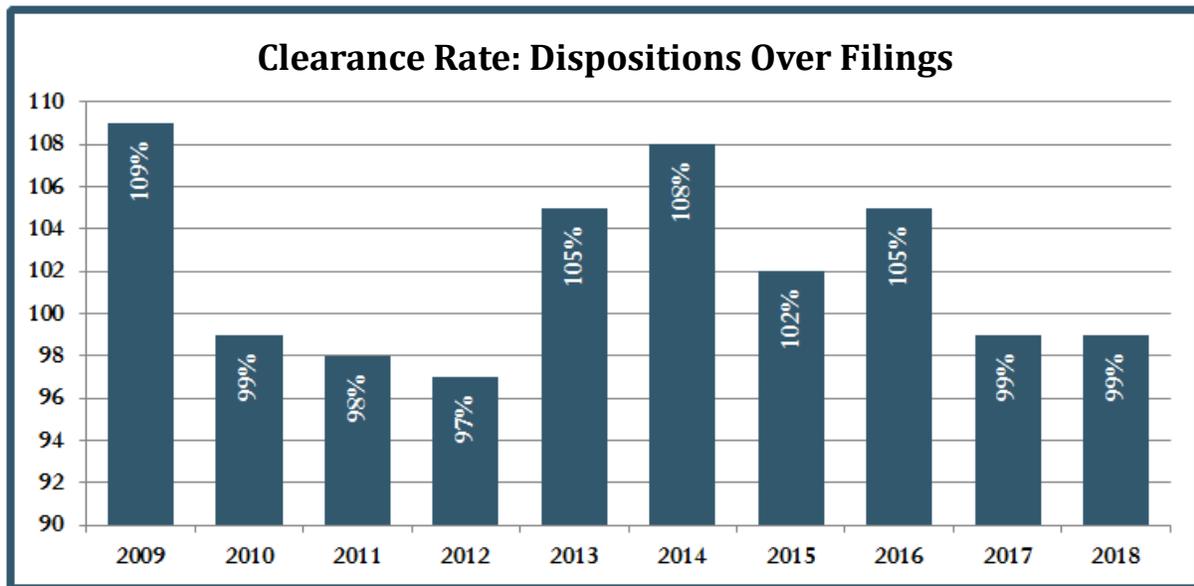
In 2001, it took an average of 653 days (21.5 months) for the Court to dispose of a case by opinion. Recognizing that such a delay was unacceptable, the Court voluntarily undertook an ambitious plan in 2002 to reduce the time on appeal. Under that plan, the average time to disposition by opinion has dropped dramatically and in 2018 the average time to opinion disposition was 419 days (13.8 months). The accompanying chart shows the average days to opinion disposition over the past ten years.



The Court also separately tracks the average disposition times of various matters expedited by statute, court rule, or court order. Expedited cases are primarily child custody and termination of parental rights cases. In 2018, the average disposition time on appeal for expedited cases was 234 days (7.8 months). This is slightly lower than the 2017 average of 236 days and is the lowest average disposition time in the last five years. To put this in context, the pre-delay reduction average for expedited cases was 351 days (11.5 months).

Clearance Rate

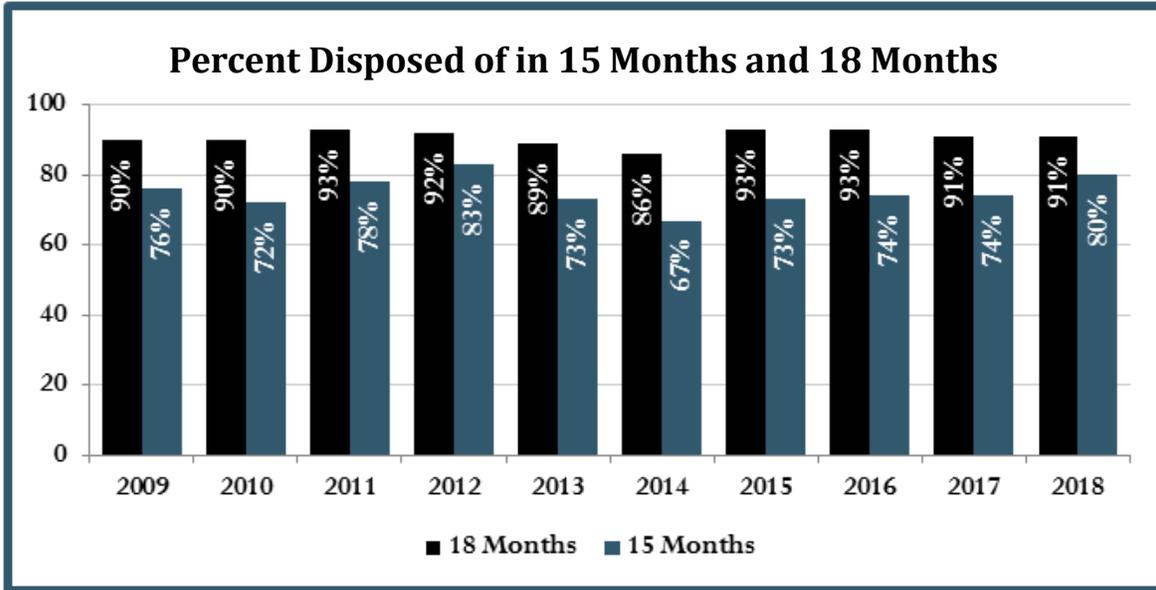
The clearance rate reflects the number of cases disposed by the Court during the year compared to the number of new cases filed. In 2018, the Court achieved a clearance rate of 99%, disposing of 5,376 cases while receiving 5,407 new filings. The following graph shows the Court's clearance rate since 2009.



Percentage of Dispositions Within 18 and 15 Months

For the delay reduction effort that began in 2002, the Court set a goal of disposing of 95% of all cases within 18 months of filing. In the first year of delay reduction, 66% of all cases were disposed within 18 months of filing, while only about 33% of opinion cases were disposed within that time period. By comparison, in 2018, 91% of all cases and 83% of opinion cases were disposed within 18 months. More recently, the Court began to track the percentage of cases disposed within 15 months.

The chart below shows the percentage of all cases disposed within 15 months and 18 months for the past ten years.



Judicial Chambers

Court of Appeals Judges

In 2018, the Court of Appeals bench consisted of 27 judges, although there were some departures and additions to the Court throughout the year. Chief Judge Michael J. Talbot retired from the bench in April 2018, and in June 2018 Governor Rick Snyder appointed Anica Letica to fill the vacancy. In August 2018, Judge Joel P. Hoekstra retired from the Court and in December, Governor Snyder appointed James Robert Redford to that seat.

As of January 1, 2019, the judicial terms of Judge William B. Murphy and Judge Peter D. O'Connell expired and they could not seek another term due to the constitutional restriction preventing a judge from running for office after reaching the age of 70. In accordance with 2012 legislation that ultimately reduces the Court to 24 judges, those judicial seats were eliminated and the Court now operates with 25 judges going forward.



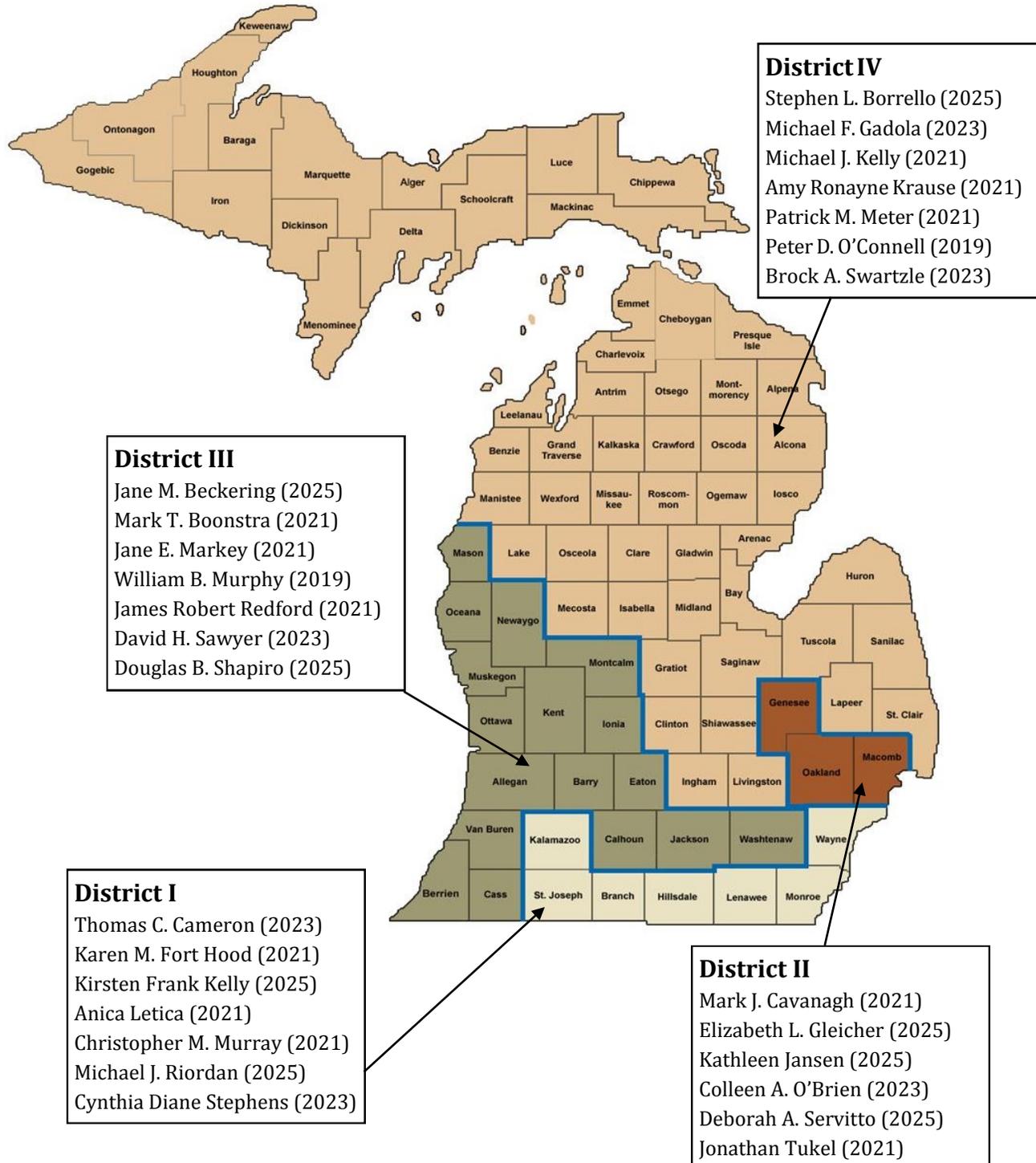
Photograph by Trumpie Photography

Pictured from Left to Right

- First row: Karen M. Fort Hood, Kirsten Frank Kelly, Peter D. O'Connell, David H. Sawyer, Chief Judge Christopher M. Murray, Chief Judge Pro Tem Jane M. Beckering, William B. Murphy, Jane E. Markey
- Second row: Stephen L. Borrello, Elizabeth L. Gleicher, Patrick M. Meter, Cynthia Diane Stephens, Michael J. Kelly, Amy Ronayne Krause, Mark T. Boonstra, Douglas B. Shapiro
- Third row: Colleen A. O'Brien, Brock A. Swartzle, Michael F. Gadola, Michael J. Riordan, Thomas C. Cameron, Jonathan Tukel, James Robert Redford, Anica Letica
- Not pictured: Mark J. Cavanagh, Kathleen Jansen, Deborah A. Servitto

Judges by District in 2018

Year that Current Term Expires Indicated in Parentheses



In Memoriam



Former Judge E. Thomas Fitzgerald

Judge E. Thomas Fitzgerald, age 79, passed away on December 27, 2018. Judge Fitzgerald, who was born in Detroit, earned his undergraduate degree from the University of Detroit in 1963. He also received an honorable discharge from the United States Marine Corps in 1962. In 1966, Judge Fitzgerald earned his law degree from the University of Detroit Law School. He was in private practice in Detroit from 1967 to 1968 and then joined Ellis Bowler & Associates in Durand, Michigan. In 1969, he established the law firm of Fitzgerald & Dumon, P.C. in Owosso, Michigan, where he concentrated primarily on the practice of criminal and domestic law. In

1990, Judge Fitzgerald was elected to the Michigan Court of Appeals and he was re-elected three times. He also served as an adjunct professor at Thomas M. Cooley Law School from 1991 to 1996. Judge Fitzgerald served on the Court for 24 years and departed at the end of his final term on January 1, 2015, due to the restriction in the Michigan Constitution that prevents a judge from running for a judicial term after reaching the age of 70. He was the consummate professional who will be greatly missed by all those who worked with him at the Court.

Clerk's Office

Overview

The Court of Appeals Clerk's Office is comprised of four office locations: District I in Detroit, District II in Troy, District III in Grand Rapids, and District IV in Lansing. Generally, each office is tasked with handling the Court files that arise from the trial courts located in the counties that comprise that district and with supporting the work of the judges elected to that district. As of the end of 2018, the Clerk's Office had 30 full-time employees.

Electronic Filing

Since 2006, the Court of Appeals has offered e-filing on a voluntary basis for all case types. The current TrueFiling system from ImageSoft Inc. is operated in conjunction with the Michigan Supreme Court. This voluntary e-filing program has been remarkably successful, with more than two-thirds of all filings by attorneys in 2018 being received electronically, including roughly three-quarters of all briefs and motions.

When e-filed documents are received and docketed, a link to the document is created in the Court's case management system. The judges and staff can immediately access the document from any location connected to the Court's network. In addition to the benefits of ease-of-use and accessibility, the high volume of e-filed documents has allowed the Court to reduce resources devoted to scanning, transporting, and copying paper filings.

Electronic Records

Just as an increasing number of documents are filed and stored electronically, more lower court and tribunal records exist in electronic form only. In 2011, the Court set up a File Transfer Protocol (FTP) server to receive the electronic records on appeal from lower courts and tribunals.

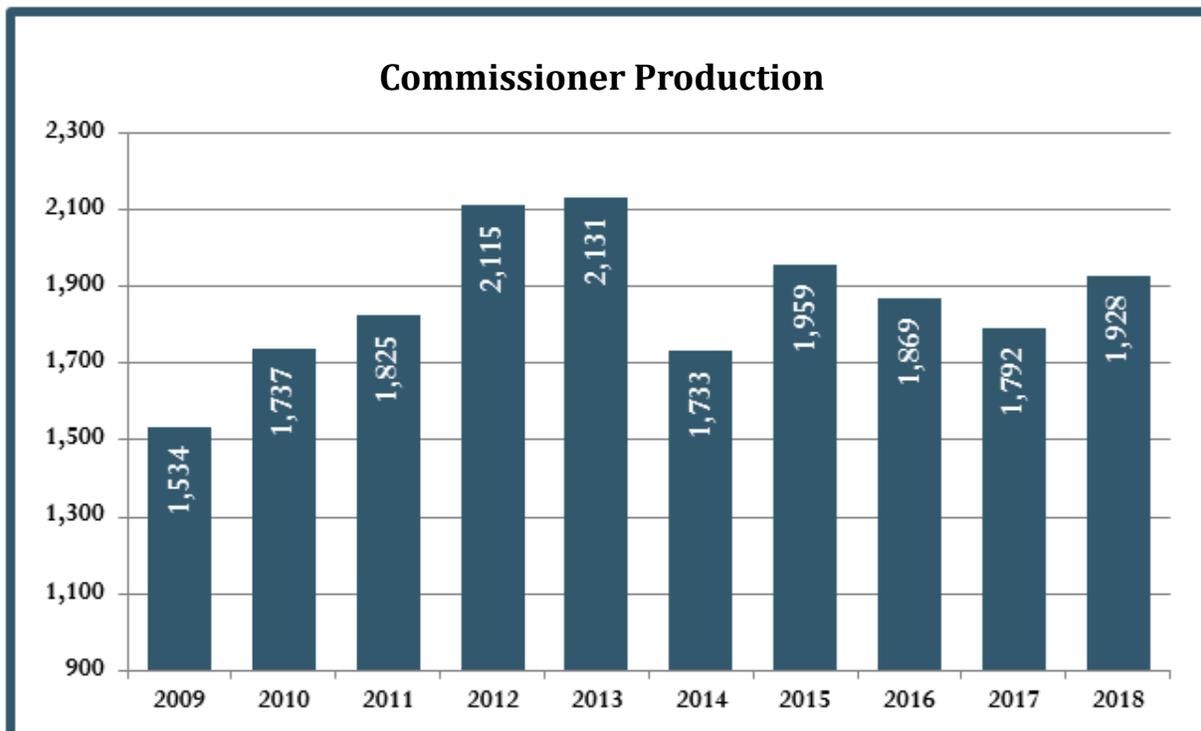
The Court regularly receives records in electronic format directly from the Public Service Commission, Tax Tribunal, Grand Traverse Circuit Court, Macomb Circuit Court, Ottawa Circuit Court, Oakland Circuit Court, Oakland Juvenile Court, Wayne Circuit Court, and the Court of Claims. The Court is now receiving electronic records in roughly half of its cases. Having records accessible electronically through the Court's case management system affords the judges, law clerks, and staff attorneys immediate, simultaneous access to the records, and greatly reduces costs associated with the physical transfer of printed records.

Research Division

Commissioners

The commissioners are experienced staff attorneys whose primary functions are to prepare written reports and proposed orders for (1) applications for leave to appeal (which are discretionary appeals) and any accompanying motions, (2) original actions, such as complaints for writs of habeas corpus, superintending control, and mandamus, and (3) motions to withdraw as counsel in termination of parental rights appeals and criminal appeals. The commissioners also review incoming emergency applications and work closely with the judges to resolve priority matters on an expedited basis. They are also responsible for the jurisdictional review of applications and original actions and for ensuring the pleadings comply with the Michigan Court Rules. The commissioners are located in each of the four district offices — Detroit, Troy, Lansing, and Grand Rapids.

In 2018, the eight commissioners and some senior research attorneys prepared reports for 1,928 leave applications and miscellaneous matters. The graph below shows the production of commissioner reports for the past ten years.



Research, Senior Research, and Contract Attorneys

Research attorneys are typically recent law school graduates who are hired for a period of one to three years. Although these graduates are primarily recruited from in-state law schools, many students from other out-of-state law schools were interviewed at the research offices in Detroit, Lansing, and Grand Rapids. In 2018, the research staff represented the in-state law schools of Michigan State University College of Law, Western Michigan University Cooley Law School, University of Michigan, University of Detroit Mercy, and Wayne State University, and the out-state law schools of Indiana University Mauer School of Law (Bloomington, IN), New York Law School (New York, NY), Northeastern University School of Law (Boston, MA), Notre Dame (South Bend, IN), Ohio State University Moritz College of Law (Columbus, OH), Regent University School of Law (Virginia Beach, VA), Southern Methodist University Dedman School of Law (Dallas, TX), and Temple University James Beasley School of Law (Philadelphia, PA). Most research attorneys ranked in the top five percent of their graduating classes.

The research attorneys generally prepare research reports in cases that are determined to be easy to moderately difficult.¹ A research report is a confidential internal Court document that contains a comprehensive and neutral presentation of the material facts with citation to the lower court record, a recitation of the issues raised by the parties, a summary of the parties' arguments, a thorough analysis of the law and facts on each issue, and a recommendation as to the appropriate disposition. In cases involving non-jurisprudentially significant issues, which do not require a published opinion, the research attorneys also prepare rough draft opinions to accompany the reports.

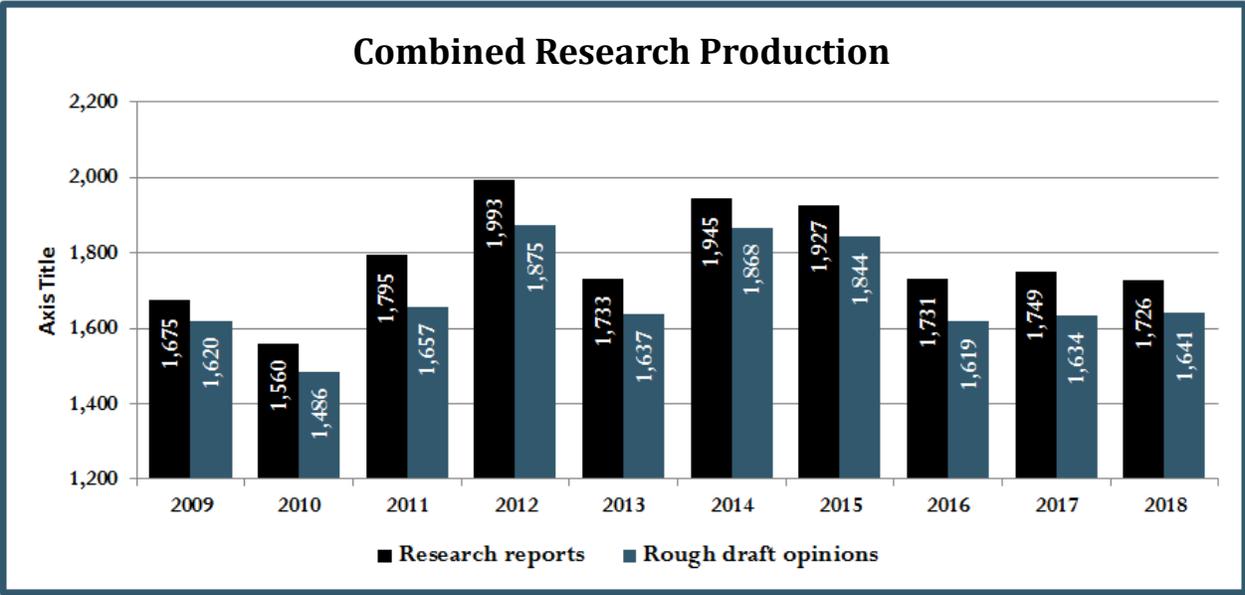
Senior research is comprised of experienced attorneys who have worked as a research attorney and as a law clerk to one of the Court's judges, and/or who have worked in private practice or at other courts. Unlike the research attorneys, the tenure of the senior research attorneys is not for a limited duration. The primary function of senior research attorneys is to prepare research reports in the longer or more complex cases for case call. The content of these research reports is the same as those prepared by the research attorneys, but the cases are typically more difficult in nature.²

1 When cases are ready for reports from the Research Division, an experienced staff attorney reviews the lower court records and appellate briefs and, based on established criteria, assigns a day evaluation to them. The day evaluations represent how long it should take an average research attorney to complete reports in the cases. The day evaluations are calculated in whole numbers only (i.e., no fractions of a day). Research attorneys generally work on cases that are evaluated at six days or lower, and are expected to complete the reports within the day evaluations of the cases, as measured on a monthly basis.

2 Senior research attorneys generally work on cases that are evaluated at seven days or more (see footnote 1). They have higher production requirements than the research attorneys and are expected to complete the reports in approximately 25% less time than the day evaluations.

Contract attorneys work for the Court on a contractual basis, primarily preparing reports and rough draft opinions for a significant number of routine criminal and civil appeals, as well as for routine termination of parental rights (TPR) appeals. Most of the current contract attorneys previously worked for the Court in research. The contract attorneys work from their homes and are not otherwise engaged in the practice of law.

Combined, the research attorneys, senior research attorneys, and contract attorneys prepared 1,726 research reports and 1,641 rough draft opinions in cases that were submitted on case call. The graph below compares the combined production numbers from 2009 to 2018.



Court of Claims

Operations

After the Court of Claims became a function of the Court of Appeals on November 12, 2013, a separate Clerk's office for the Court of Claims was established within the Court of Appeals' Lansing district office. With two full-time employees dedicated to Court of Claims work and a separate case management system, the Clerk's office docketed the filings for the Court, supports the Court of Claims' work of the four judges, responds to inquiries from parties and practitioners, coordinates court sessions, and issues opinions and orders. The Court of Claims also employs a full-time research attorney to provide support for the judges.

All Court of Claims filings are scanned by staff on receipt allowing the Court to maintain a fully electronic record of each of its case files. This use of technology allows the judges and their staff to access the case filings from any location, as well as allowing the Clerk's office to file its records electronically with the Court of Appeals.

Judges

Effective May 1, 2017, the Michigan Supreme Court appointed Chief Judge Michael J. Talbot, and Judges Christopher M. Murray, Stephen L. Borrello, and Cynthia Diane Stephens to two-year terms on the Court of Claims expiring April 30, 2019. On the retirement of Chief Judge Talbot in April 2018, Judge Murray was appointed Chief Judge and Judge Colleen A. O'Brien was appointed to the Court to complete Chief Judge Talbot's unexpired term. While handling the demands of the Court of Claims' caseload, these four judges are responsible for nearly a full caseload with the Court of Appeals. As demonstrated by the Court's caseload statistics, the judges are providing a high-level of service to the public in their dual roles.

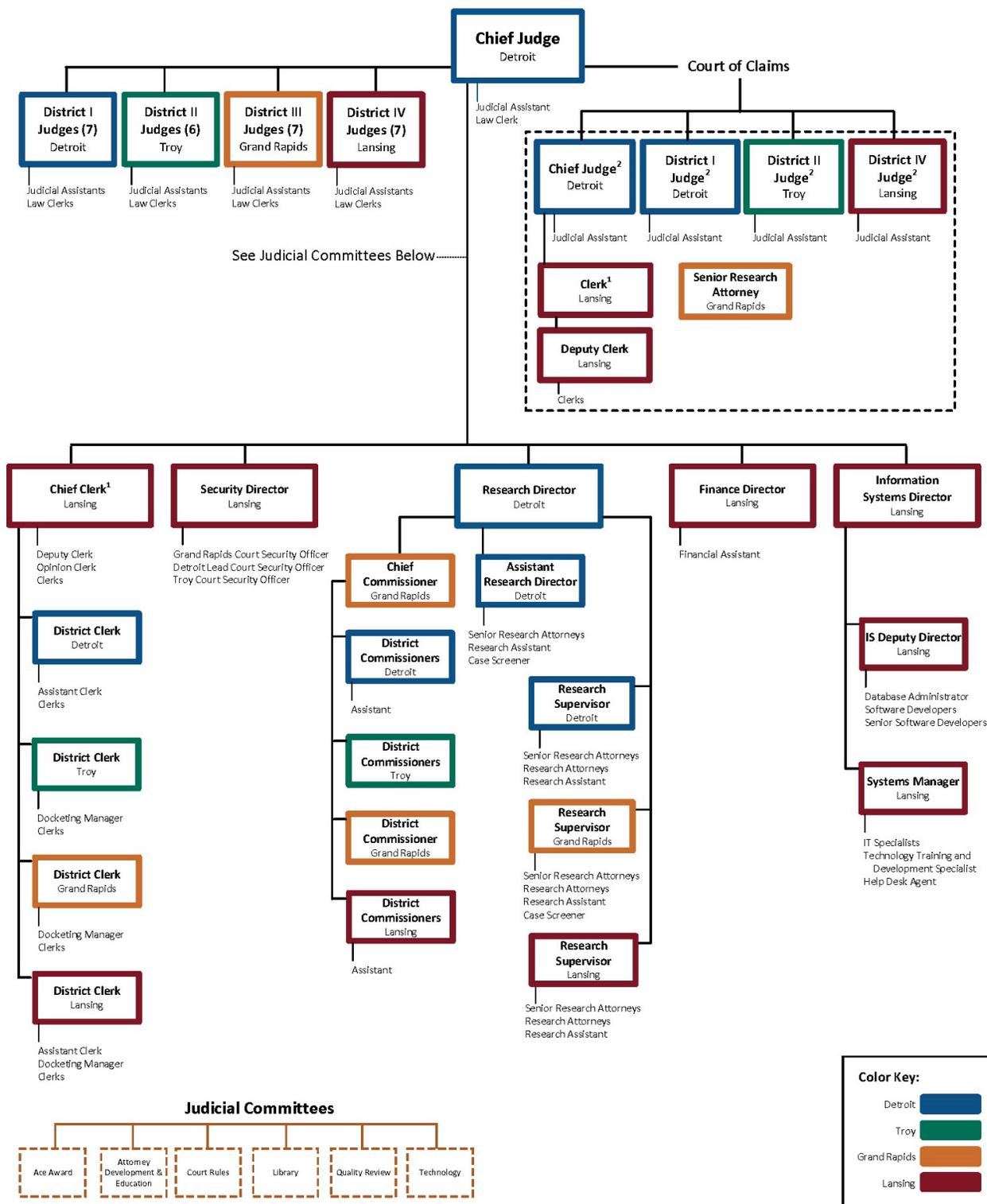
Court Performance

At the beginning of 2018 there were 129 cases pending in the Court of Claims. The caseload included a variety of civil claims brought against the state, including highway defects, medical malpractice, prisoner litigation, tax-related matters, and other damage claims. Through the year, the Court received 275 new case filings and 16 cases were reopened. As a result, the total caseload for the Court in 2018 was 420 cases.

During the year, the Court disposed of 293 cases. Dividing the 293 dispositions by the 291 new filings and reopened cases, the Court of Claims achieved a clearance rate of 100% for the year. At the close of 2018, the Court's pending caseload was 127 cases. The following table details the Court's reported caseload statistics for 2018.

2018 Caseload Statistics	Habeas Corpus	Mandamus	Highway Defect	Medical Malpractice	Contracts	Constitutional Claims	Prisoner Litigation	Tax Related Matters	Other Damage Claims	Totals
Beginning Pending	0	3	2	4	7	3	9	31	70	129
New Filings	0	12	6	8	12	39	18	42	138	275
Reopened	0	2	1	0	2	1	0	0	10	16
Total Caseload	0	17	9	12	21	43	27	73	218	420
Disposed by Court	0	11	3	2	5	9	10	16	65	121
Transferred by Joinder	0	0	0	4	0	0	0	0	0	4
Dismissed by Party	0	0	2	3	5	1	0	36	34	81
Dismissed by Court	0	5	0	0	2	4	9	2	9	31
Placed on Inactive Status	0	0	0	0	1	18	0	0	37	56
Totals	0	16	5	9	13	32	19	54	145	293

Organizational Chart



¹ The Court of Appeals Chief Clerk is also the Clerk for the Court of Claims.

² These Judges are also Judges for the Court of Appeals.

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