

Michigan Court of Appeals



Annual Report 2019

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INTRODUCTION

The Michigan Court of Appeals was created by the Constitution of 1963, art 6, § 1, and began operation in 1965 with a bench of nine judges. The Legislature increased the size of the bench several times in subsequent years, and by 1995 the Court was comprised of 28 judges. In 2012, legislation was enacted that will eventually reduce the Court's size to 24 judges through attrition.

Beginning January 1, 2019, the bench of the Court of Appeals is comprised of 25 judges, divided into four geographic districts for election purposes with office locations in each of those districts: Detroit (District I), Troy (District II), Grand Rapids (District III), and Lansing (District IV). In addition to the judges, approximately 164 employees work in the Court's Judicial Chambers, Clerk's Office, Research Division, Information Systems Department, Finance Office, and Security Department.

Judges and staff at the Court of Appeals take seriously our mandate "to secure the just, speedy, and economical determination of every action and to avoid the consequences of error that does not affect the substantial rights of the parties." MCR 1.105. To effectuate that goal, the Court continually focuses on improving the speed at which cases move through the Court—providing accessible, transparent operations and delivering high-quality judicial decisions.

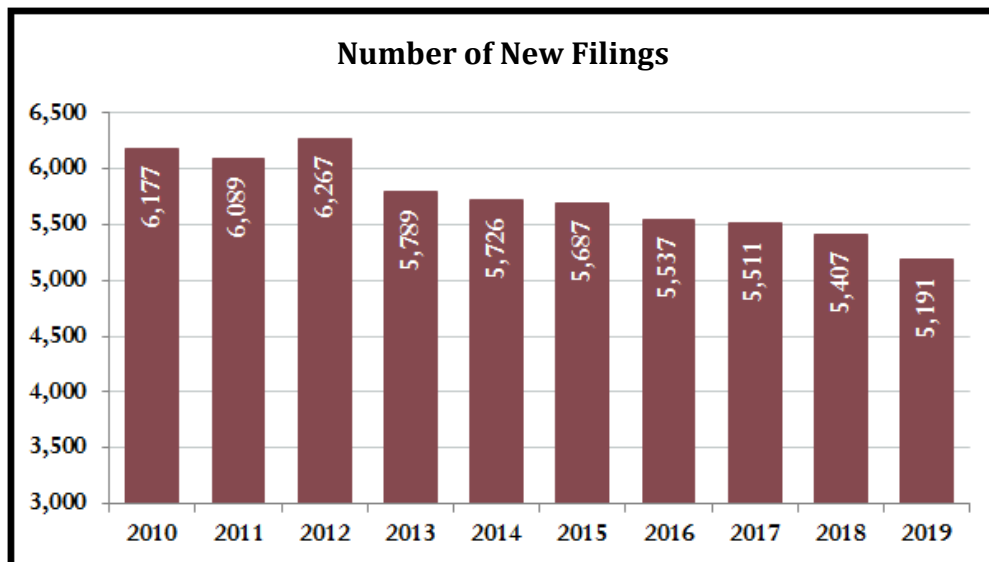
Finally, I wish to acknowledge the hard work and dedication of the judges and staff of the Court over the past year in making significant progress toward our common goals. As noted, 2019 started with a reduction of our Court by two judges, reducing the number of panels during the year. Despite this, the Court issued the same number of opinions and substantially the same number of orders as it did in 2018. And the quality of the work remained high. I look forward to the future, confident that the Court of Appeals will continue to set high standards in both the quality of its work and the efficiency of its operations.

—Chief Judge Christopher M. Murray

COURT PERFORMANCE

NEW FILINGS

The Court of Appeals received 5,191 new case filings in 2019. This was a decrease from 2018. The graph here depicts the volume of new filings with the Court over the past ten years.

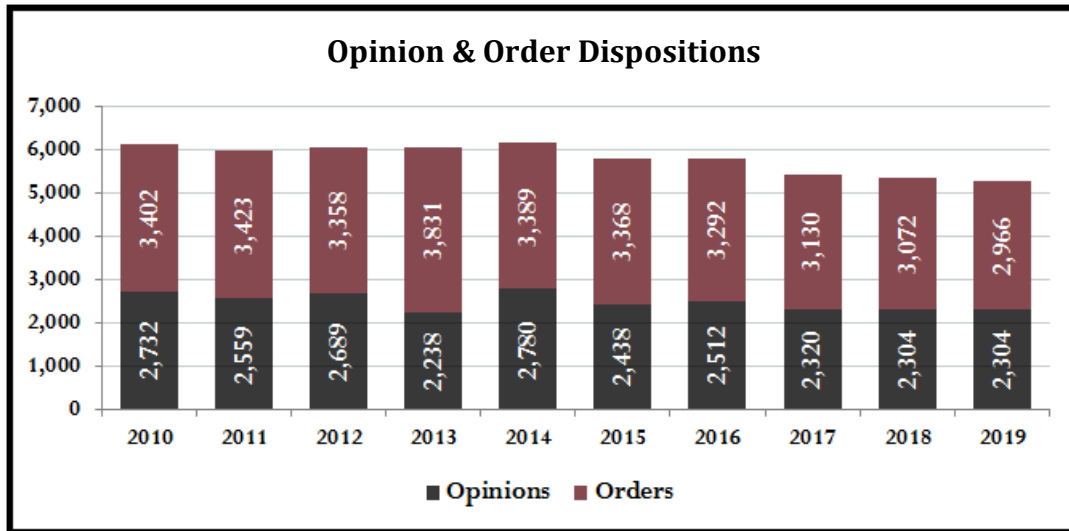


Appeals by right made up 53% of new filings in 2019; appeals by leave accounted for 46% of cases, and original actions 1%. Appeals from civil matters made up 55% of the filings, and 45% were from criminal cases. Discretionary appeals from guilty plea convictions accounted for 37% of all criminal appeals, while appeals from termination of parental rights cases constituted 17% of all civil appeals.

DISPOSITIONS

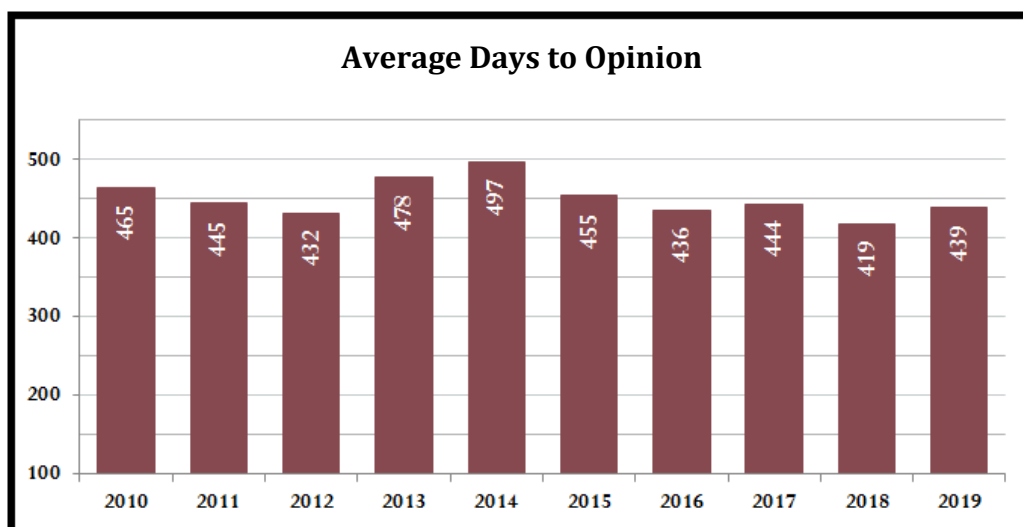
Cases filed with the Court of Appeals are resolved by order or opinion. Dispositions by order generally occur in appeals by leave when the Court denies the application. Opinion dispositions typically occur in appeals by right and in those cases where leave to appeal is granted. Opinion dispositions take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

In 2019, the Court issued 2,304 opinions and 2,966 dispositive orders, for a total of 5,270 dispositions. The accompanying graph shows the number of opinion and order dispositions over the past ten years.



TIME ON APPEAL

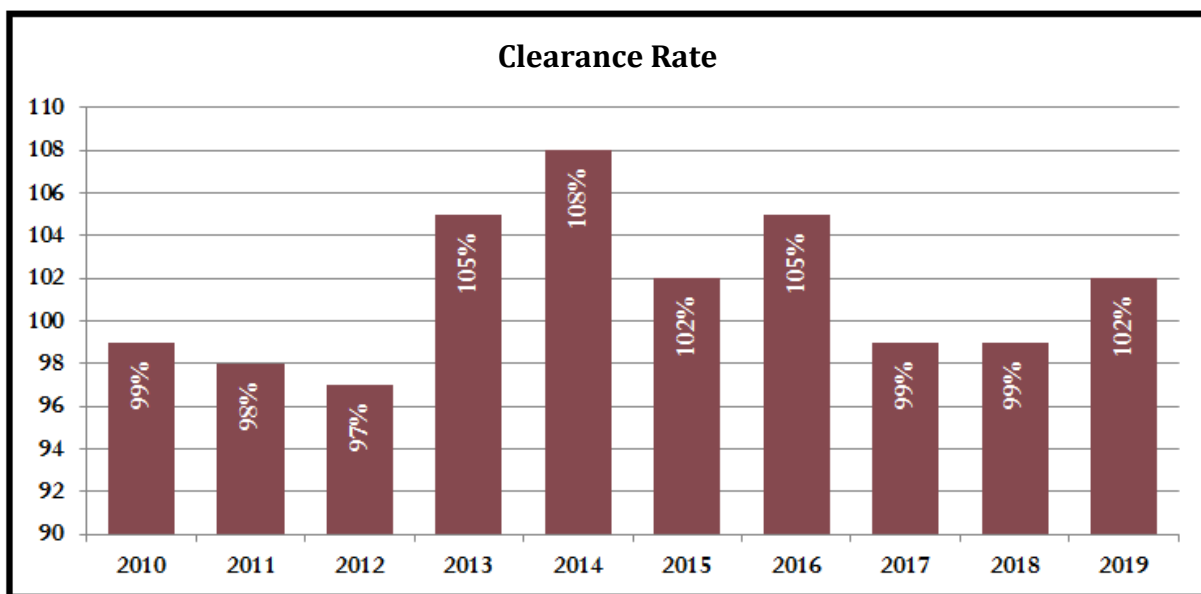
In 2001, the average time for the Court to dispose of a case by opinion was 653 days (21.5 months). Recognizing that such a delay was unacceptable, the Court voluntarily undertook an ambitious plan in 2002 to reduce the time on appeal. Under that plan, the average time to disposition by opinion has dropped dramatically, and in 2019 the average time to opinion disposition was 439 days (14.4 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 2019, the average disposition time on appeal for expedited cases was 246 days (8 months). 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 2019, the Court achieved a clearance rate of 102%, disposing of 5,270 cases while receiving 5,191 new filings. The following graph shows the Court's clearance rate since 2010.

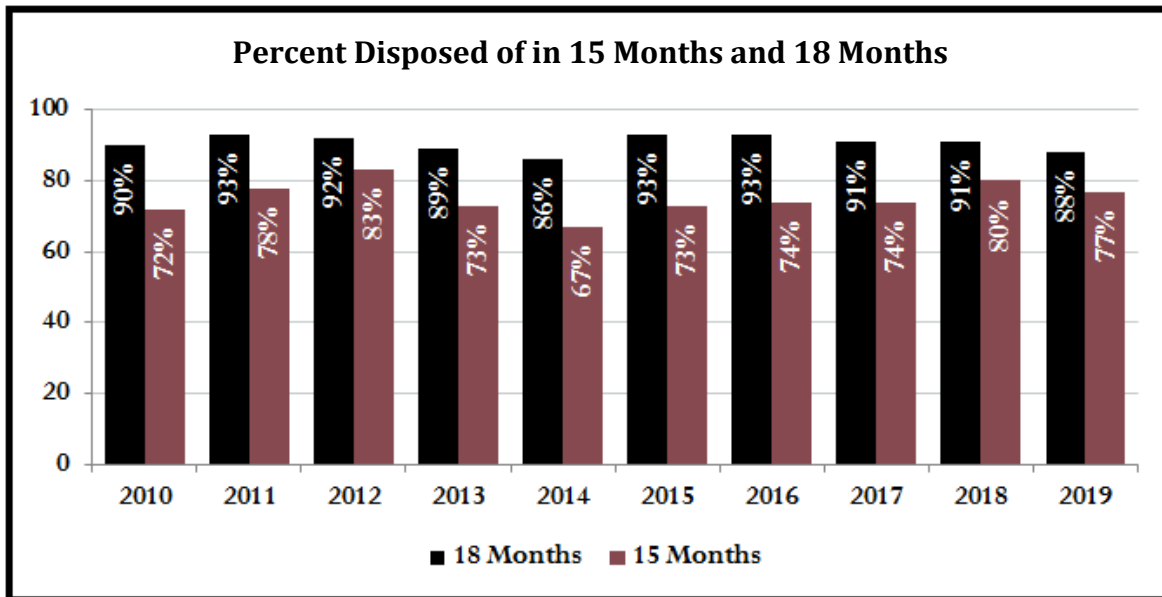


PERCENTAGE OF DISPOSITIONS WITHIN 18 AND 15 MONTHS

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 within 18 months of filing, while only about 33% of opinion cases were resolved within that time period. By comparison, in 2019, the Court disposed of 88% of cases within 18 months.

In 2012, the Court began to track the percentage of cases resolved within 15 months of filing. In 2019, 77% of cases were decided within that 15-month time frame.

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



JUDICIAL CHAMBERS

COURT OF APPEALS JUDGES

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, those judicial seats on the Court were thereby eliminated, and the Court operated during 2019 with 25 judges.

For election purposes, the judgeships are divided into four districts. However, for hearing and deciding cases, the judges sit in statewide panels of three. Each judge rotates with other judges with equal frequency and among the three courtroom locations (Detroit, Lansing, and Grand Rapids). Published opinions of the Court are controlling across all four districts unless and until overruled by a special conflict panel of the Court or reversed by the Michigan Supreme Court.



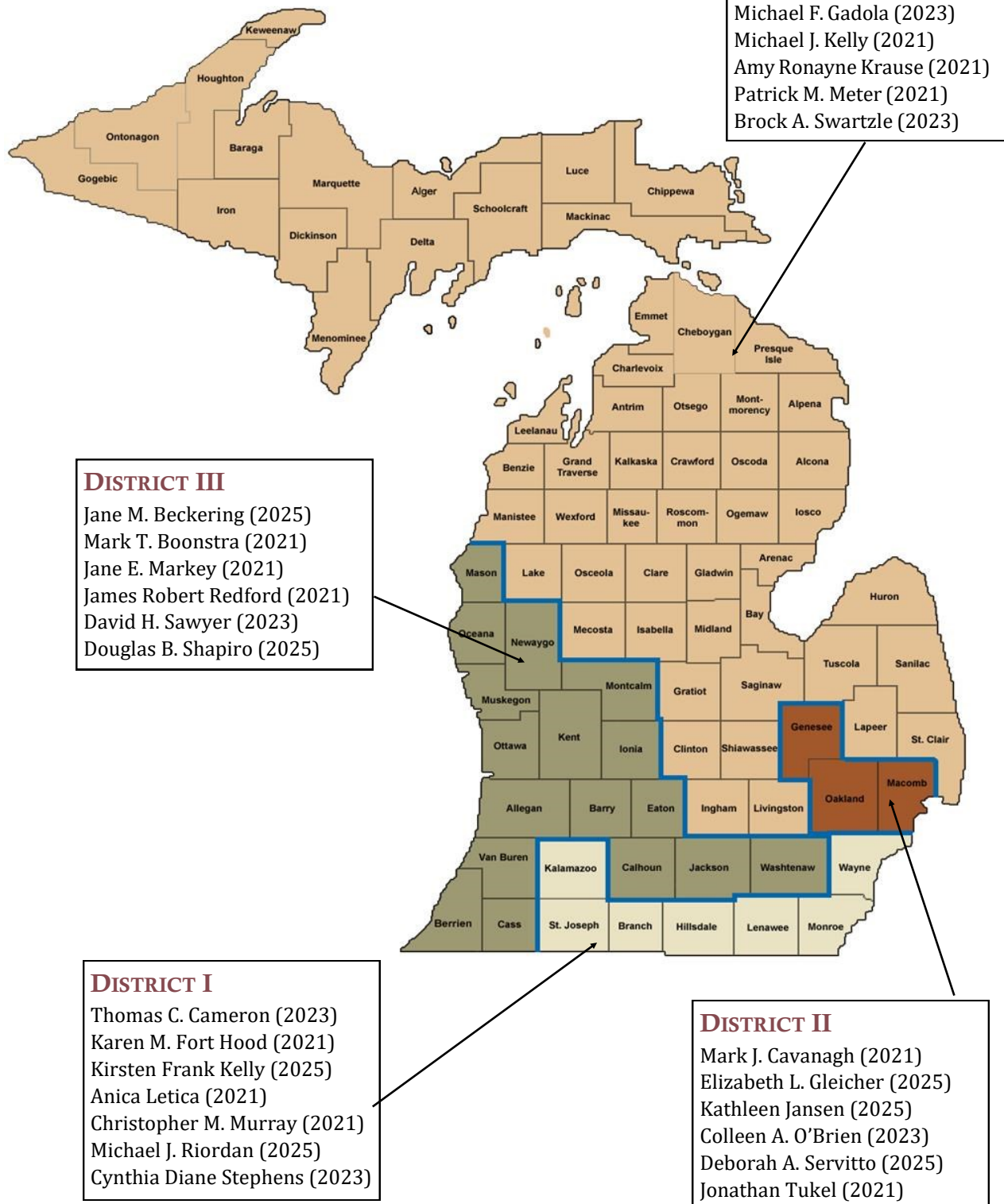
Photograph by Trumpie Photography

Pictured from Left to Right

- First row: Karen M. Fort Hood, Kirsten Frank Kelly, Peter D. O’Connell (retired), David H. Sawyer, Chief Judge Christopher M. Murray, Chief Judge Pro Tem Jane M. Beckering, William B. Murphy (retired), 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 2019

Year that Current Term Expires Indicated in Parentheses



IN MEMORIAM

FORMER COA JUDGE MAUREEN PULTE REILLY



Judge Maureen Pulte Reilly, age 84, passed away on January 7, 2019. Judge Reilly, who was born in Ann Arbor, earned her law degree from the University of Detroit Law School in 1958. She worked in private practice with firms in Detroit, New York, and Washington, D. C., for several years. Following her return to Michigan in 1971, she was Corporation Counsel for the City of Detroit from 1971 to 1977. During her tenure, she drafted Detroit's zoning ordinance restricting the location of adult movie theaters and successfully defended the ordinance before the United States Supreme Court. Then Governor William Milliken appointed her to the Detroit

Common Pleas bench in 1977 and then to the Wayne County Circuit Court in 1978. She was re-elected twice and served as president of the Michigan Judges' Association. In November of 1988, Judge Reilly was elected to one of two newly established seats on the Michigan Court of Appeals. She was re-elected in 1996 and retired in 1998.

REBECCA DUBUQUE



Rebecca ("Becky") Dubuque, age 46, passed away on May 21, 2019, following a courageous battle against cancer. Becky was born on December 12, 1972, in Grosse Pointe Farms, and graduated from Marian High School in 1991. She earned her undergraduate degree from Michigan State University in 1994 and her law degree from Detroit College of Law at MSU in 1997. Becky worked for the Court as a research attorney and contract attorney, and then as a law clerk for several years for Judge Kirsten Frank Kelly. Becky was known for her infectious laugh, great sense of humor and endless love for her husband and four daughters. She is greatly missed by her many friends and colleagues 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 election district and with supporting the work of the judges elected to that district.

As of the end of 2019, the Clerk's Office had 30 full-time employees. Managers and staff in the four locations handle a variety of tasks, including opening new case files, docketing incoming filings, reviewing new cases for jurisdiction and compliance with the court rules, and issuing orders. The Lansing district office also schedules case call matters and releases the opinions resolving those appeals. Importantly, the Clerk's Office is the public face of the Court, communicating with counsel and the parties, as well as prospective litigants, trial courts, and media representatives.

ELECTRONIC FILING

In January 2015, the Court of Appeals and Michigan Supreme Court went live with ImageSoft's e-filing solution, known as TrueFiling. This replaced the prior e-filing system that the Court of Appeals used since 2006.

This voluntary e-filing program has been remarkably successful, with more than two-thirds of all filings by attorneys in 2019 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 established 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 providing the benefits of ease-of-use and accessibility, the e-filing of documents has reduced the need for the Court to devote resources to scanning, transporting, and copying documents.

ELECTRONIC RECORDS

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

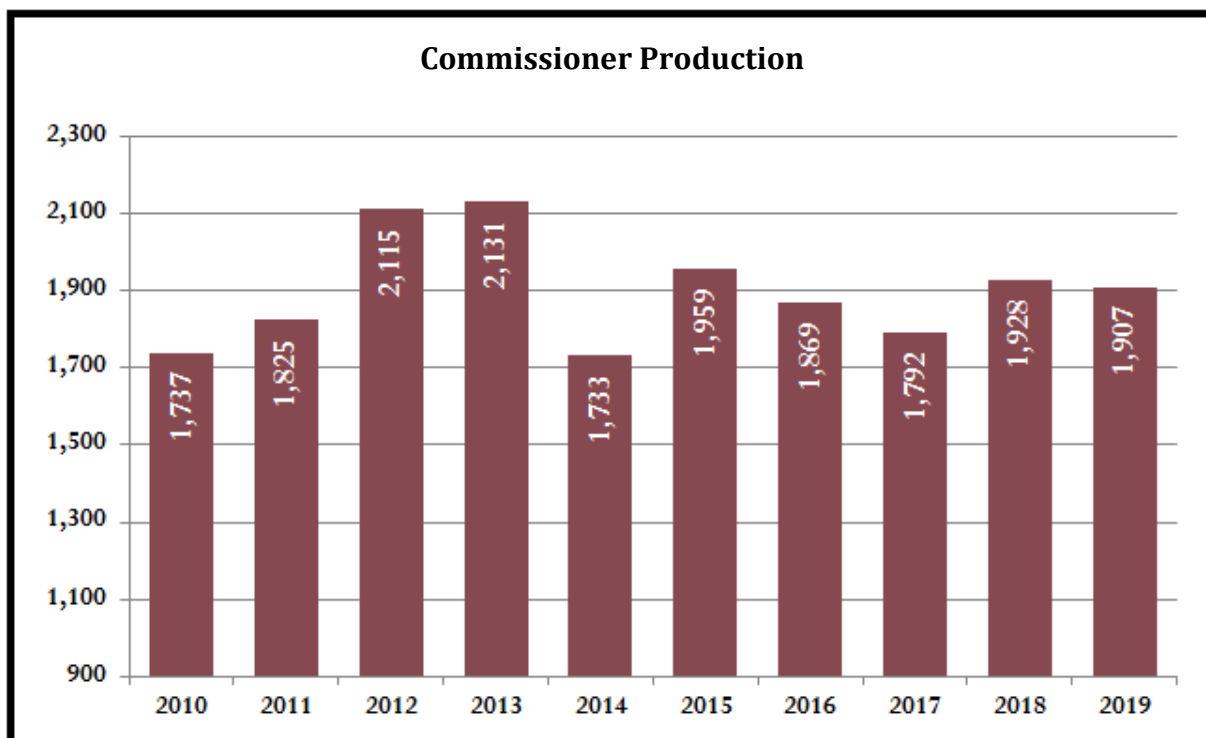
The Court regularly receives records in electronic format directly from the Public Service Commission, Alpena Circuit Court, Grand Traverse Circuit Court, Macomb Circuit Court, Ottawa Circuit Court, Oakland Circuit Court, Oakland Juvenile Court, Wayne Circuit Court, and the Court of Claims. The Court of Appeals is now receiving electronic records in roughly half of its cases. In addition, the Court is scanning many of the paper records it receives, creating an informal electronic record to be used internally. Having records accessible electronically through the Court's case management system provides 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 2019, the commissioners prepared reports in 1,907 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 out-of-state law schools were interviewed at the research offices in Detroit, Lansing, and Grand Rapids. In 2019, the research staff represented the in-state law schools of Michigan State University, Western Michigan University Cooley Law School, University of Michigan, University of Detroit Mercy, and Wayne State University, and the out-of-state law schools of Case Western University (Cleveland, OH), 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), and Temple University James Beasley School of Law (Philadelphia, PA). Most research attorneys ranked in the top five percent of their graduating classes.

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 drafts of opinions to accompany the reports. The judges and their law clerks are responsible for preparing opinions when publication is recommended, as well as editing, refining, or rewriting the rough draft opinions provided by the research attorneys.

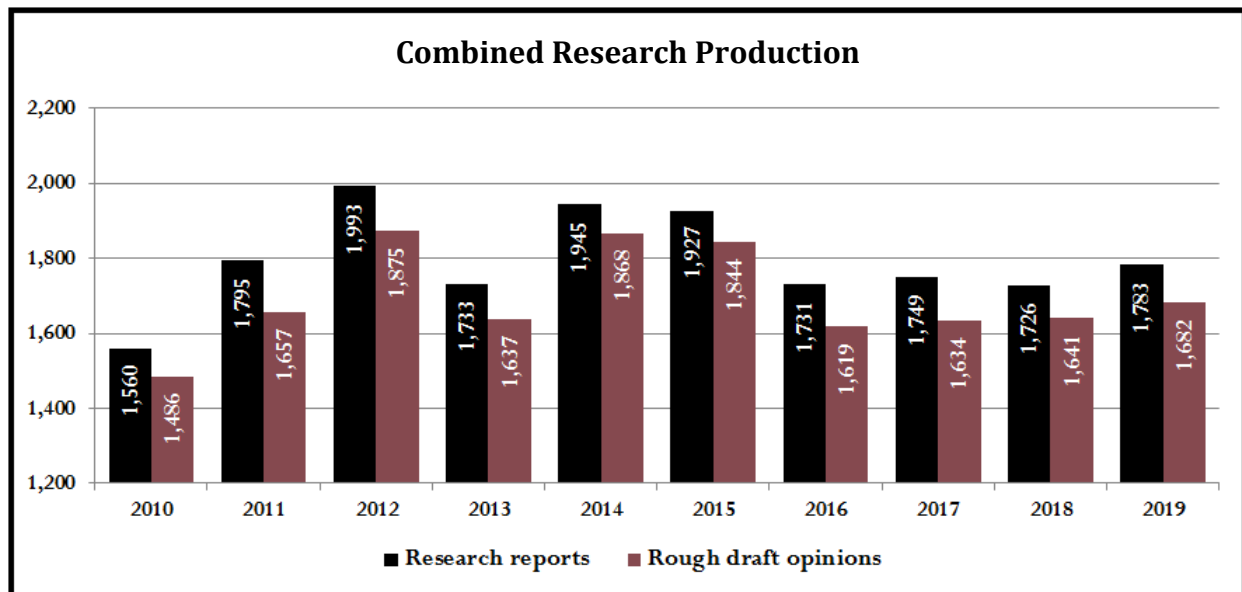
Senior Research is comprised of experienced attorneys; each attorney has worked as a research attorney and as a law clerk to one of the Court's judges, in private practice, or at other courts. Unlike with the research attorneys, the tenure of the senior research attorneys is not for a limited duration. The primary function of senior research attorneys is to prepare research reports. These research reports have the same content as those prepared by the research attorneys, but the cases are typically more difficult in nature.² The main office of Senior Research is located in Detroit, but several attorneys also work in Lansing, Grand Rapids, and Troy.

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, *supra*). 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 termination of parental rights (TPR) appeals that are not jurisprudentially significant. 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 1,783 research reports and 1,682 rough draft opinions in cases that were submitted on case call. The graph below compares the combined production numbers from 2010 to 2019.



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 Lansing district office of the Court of Appeals. 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, 2019, the Michigan Supreme Court appointed Chief Judge Christopher M. Murray, Cynthia Diane Stephens, Michael J. Kelly, and Colleen A. O'Brien to two-year terms on the Court of Claims expiring April 30, 2021. While handling the demands of the Court of Claims caseload, these four judges continue to manage their 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

As 2019 began, 126 cases were pending in the Court of Claims. Through the year, the Court received 208 new case filings, and 49 cases were reopened. As a result, the total caseload for the Court in 2019 was 383 cases. The caseload consists of civil actions against state entities, such as medical malpractice, prisoner litigation, tax-related matters, highway defects, and other damage claims.

During the year, the Court disposed of 268 cases. Dividing the 268 dispositions by the 257 new filings and reopened cases, the Court of Claims achieved a clearance rate of 104% for the year. At the close of 2019, the Court's pending caseload was 115 cases. The table below details the Court's reported caseload statistics for 2019.

Court of Claims—Caseload Statistics										
2019 Caseload Statistics	Habeas Corpus	Mandamus	Highway Defect	Medical Malpractice	Contracts	Constitutional Claims	Prisoner Litigation	Tax Related Matters	Other Damage Claims	Totals
Beginning Pending	0	1	4	3	8	11	8	18	73	126
New Filings	0	14	9	10	6	18	9	27	115	208
Reopened	0	0	0	0	2	13	0	4	30	49
Total Caseload	0	15	13	13	16	42	17	49	218	383
Disposed by Court	0	9	5	1	4	14	9	10	86	138
Transferred by Joinder	0	0	0	6	0	0	0	0	0	6
Dismissed by Party	0	0	0	1	7	11	1	17	44	81
Dismissed by Court	0	1	0	0	1	3	4	0	12	21
Placed on Inactive Status	0	0	1	0	0	5	0	1	15	22
Totals	0	10	6	8	12	33	14	28	157	268

COURT SECURITY

The Security Division consists of full-time employees complemented by contractual security officers assigned to each of the Court's district offices. All officers are retired law enforcement and judicial security professionals from local, state, and federal agencies.

SECURITY ENHANCEMENTS

For improved crisis response, all security officers will be issued identical firearms and officers will have ready access to bullet-resistant vests in each office.

Security film was applied to the glass windows at the entrances to the Detroit, Troy, and Grand Rapids offices to deter potential intruders.

Court security hosted local law enforcement officers at the Grand Rapids, Detroit, and Troy offices to acquaint them with the layout of the offices and security protocols.

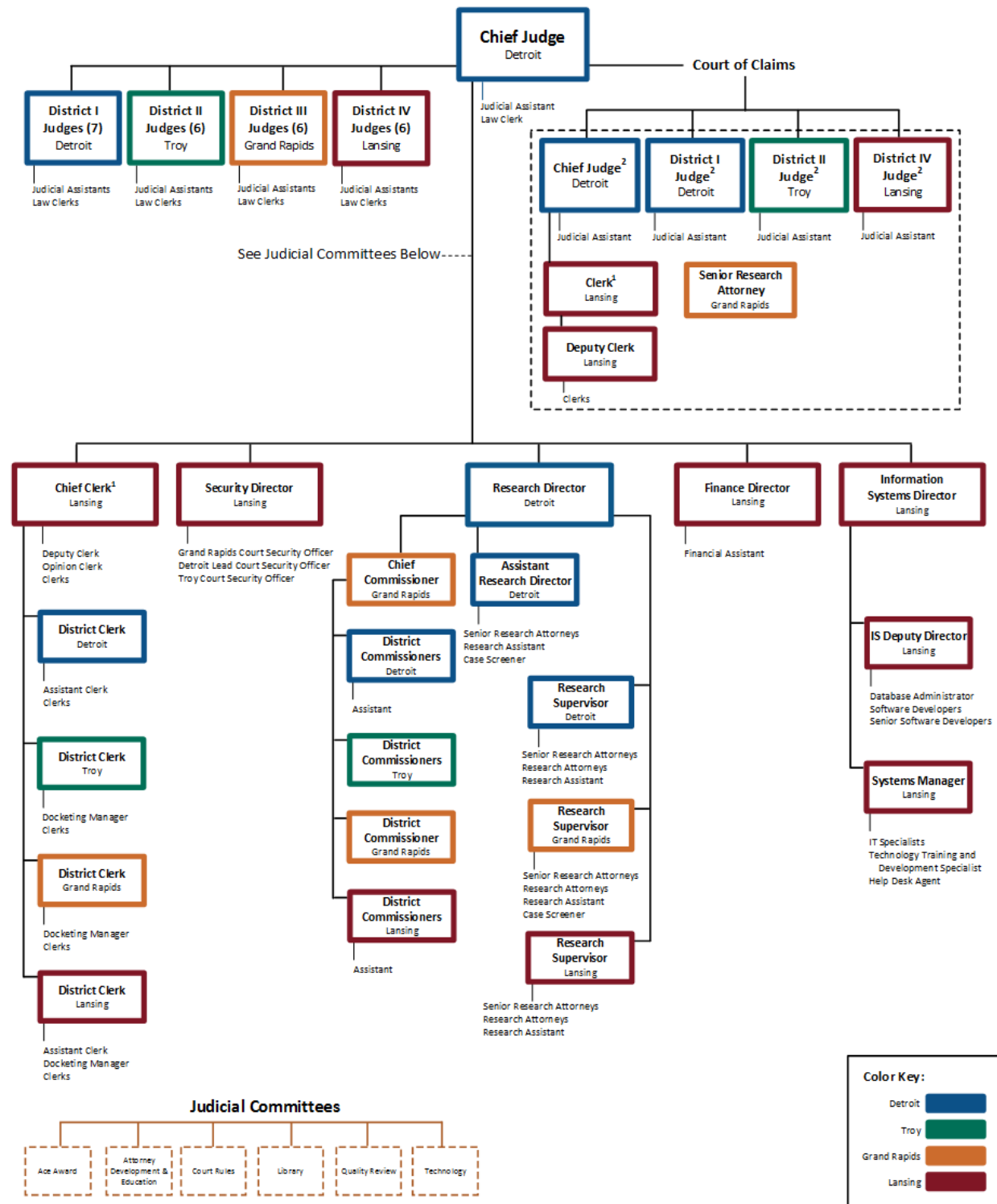
Upgrades were made to the security cameras and video equipment in the Grand Rapids office. Similar upgrades are underway in the Detroit office. When complete, all Court locations will operate on a unified video-monitoring system.

OFF-SITE EVENTS

In 2019, security staff provided protection to judges and staff at the following Michigan locations:

- January 1 Governor Whitmer's Inauguration, Lansing
- January 7 Judge E. Thomas Fitzgerald's Funeral, Owosso
- February 12 Wayne State University Case Call, Detroit
- February 12 Governor Whitmer's State of the State, Lansing
- March 27–29 Michigan Bench Bar Conference, St. John's Inn, Plymouth
- April 6 Judge Maureen Reilly Memorial Service, Grosse Pointe Farms
- May 8–10 Michigan Supreme Court Judicial Conference, Traverse City
- October 1–2 Northern Michigan Case Call, 90th District Court, Petoskey
- November 13 University of Michigan Case Call, Ann Arbor

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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Court of Appeals website address: <http://courts.mi.gov/courts/coa>



2019

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