WORKLOAD OF THE SUPREME COURT OF FLORIDA

Prepared by

The Office of the State Courts Administrator

for

THE SUPREME COURT WORKLOAD STUDY COMMISSION

November 7, 2000

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Kenneth Palmer, State Courts Administrator
Thomas D. Hall, Clerk of the Court
Peggy Horvath, Chief of Strategic Planning
Brian Lynch, Court Operations Consultant
Steve Henley, Senior Court Analyst
Clyde Conrad, Applications Development Manager

CONTENTS

INTRODUCTION

This report on the workload and operations of the Supreme Court of Florida has been compiled pursuant to Chapter 2000-237, Laws of Florida, which found that "it is necessary and beneficial to the furtherance of an efficient and effective judiciary to study the workload of the Florida Supreme Court" and created the Supreme Court Workload Study Commission to conduct such a review. The law directs the State Courts Administrator, in consultation with the Office of Program Policy Analysis, to conduct this workload study of the Florida Supreme Court, and to provide the study and associated data to the Commission to assist it in formulating its recommendations.

The study presents an overview of the history of the structure and jurisdiction of the Supreme Court, a summary of the resources of the Court and a description of how they are utilized in addressing workload, a statistical profile of the Court's caseload from 1990-1999, caseload forecasts through 2002, discussion of increases in the workload of the Court and steps the Court has taken to address these increases, and a review of the structure, caseload, and operations of the courts of last resort of the ten largest states.

PROFILE OF THE SUPREME COURT OF FLORIDA

1. History.

The Supreme Court of Florida was created concurrent with statehood in 1845. Under the 1845 Constitution, the Court had no justices of its own, but was comprised instead of the four circuit court judges sitting collectively to review their individual decisions. A constitutional amendment in 1851 provided that the Supreme Court would have three full-time justices. The number of justices was raised to six in 1902, reduced to five in 1911, and returned to six in 1923 where it remained until 1940. At that time the constitution was amended to call for seven members of the Court, where it remains today.

The method of selection and length of terms of office has also varied over the years. For much of its history, justices of the Supreme Court were elected by the Legislature, and then directly by the voters. In 1976 merit retention was instituted by a constitutional amendment. Under merit retention, vacancies are filled by a selection made by the Governor from a list of three qualified candidates submitted by the Judicial Nominating Commission. This process is known as merit selection. The appointed justice then serves a term of six years. If the justice wishes to remain on the Court, his or her name will be placed on the general election ballot, with the question put to the voters: "Shall Justice _____ be retained in office?" A retention vote occurs every six years for each justice. If a majority of votes cast are not in favor of retaining the incumbent justice, a vacancy is created and the process begins again. The hybrid of these two processes – selection for merit and retention by the voters – constitutes the merit retention system.

The method of selection of the chief justice of the Court, as well as the term of office, has also varied over the years. The 1885 Constitution provided that a chief justice be designated by lot among the justices, who would then serve as chief justice for the remainder of his term. In

1926 the constitution was amended to allow the Court to select a chief justice from among its members. By tradition, the Court selects as chief justice for a two year term the most senior member of the Court who has not yet served as chief justice. If every member has served, then the most senior member who has served only one term is selected. In the event that the Chief Justice is unable to perform the duties of the office, the justice with the longest continuous service, the Dean of the Court, serves as acting chief justice.

There are several ways in which a member of the Supreme Court can be removed from office, beyond retirement, resignation or death. First, the voters can elect not to retain a justice through a negative retention vote at the end of a justice's six-year term. Second, the Supreme Court itself can remove a justice from the bench for cause in the same manner as the removal of any judge, following a recommendation by the Judicial Qualifications Commission. Finally, the Legislature can impeach and remove a justice from office.

2. Jurisdiction.

The jurisdiction of a court largely determines its caseload and workload. A court can only consider and decide cases when it has a basis of jurisdiction. For this reason, virtually every opinion published by the Supreme Court of Florida begins with a statement identifying the constitutional basis of its jurisdiction in the matter.

Jurisdiction requires that the operative law, whether constitutional, statutory or by rule, vest the court with authority to consider and decide matters of the type presented. This subject matter jurisdiction is not to be confused with preservation on an issue for appeal, which is a procedural issue controlled by rule of court. Subject matter jurisdiction is determined externally and expressed in constitution and in statute. It represents deliberate policy decisions as the relative priority of different kinds of controversies.

The structure and jurisdictional distribution of Florida's court system has developed through a series of reorganizations and reforms occurring every few decades. The current jurisdiction of the Supreme Court has been shaped by reforms to the structure and jurisdiction of Florida's appellate courts in 1957 and 1980.

From the creation of the state in 1845 until 1957, the Florida Supreme Court was the court of appeal for all decisions of the trial courts. Rapid growth in the 20th Century, particularly in the post-war years, increased the volume of cases in the trial courts, and created a proportional increase in cases on appeal. In 1953, the Judicial Council of Florida was created and directed to study the organization of the court system and to make recommendations for improvement. The report of the first Judicial Council found that there were 1,172 cases disposed by the Supreme Court in 1953, an amount that the Council described as "immense."[1] The Council advanced the idea of creating another layer of appellate courts that would hear most direct appeals. This concept found support and in 1957 the constitution was amended to create three district courts of appeal. These new courts would be based in Tallahassee, Lakeland, and Miami, originally staffed by three judges each.

The creation of courts of appeal significantly alters the structure of a court system and changes the roles of the respective courts. The Florida constitution provides a right of appeal. This means an appeal to only one higher court; appeals beyond that are not considered appeals of right, but further review that is allowed to achieve some public policy purpose, such as consistency throughout the jurisdiction or fuller consideration of important issues. The vast majority of cases disposed of by the district courts of appeal cannot be reviewed by the Supreme Court.

The creation of another layer of appeals courts below the court of last resort separates to some extent the two principle roles of appellate courts. The fundamental reasons for appeals from trial courts and administrative agencies are, in the first case, to correct harmful errors by having review by a multi-judge panel of experienced judges, and in the second case to promote clarity and consistency in the law by publishing opinions that set forth the relevant facts of the case and the proper application of the law to those facts. While this division is not absolute – supreme courts continue to have an important error-correcting role and lower appeals courts contribute very substantially to the development of the law – the creation of a subordinate layer

[1] First Annual Report of the Judicial Council of Florida, Volume I, 1954.

does allow the higher court to focus more heavily on the work of clarifying and unifying the law.[2]

The 1957 constitutional amendment creating the district courts of appeal necessarily had to redefine the jurisdiction of the Supreme Court. Under the amendment, the district courts of appeal would become the final court of appeal for about two-thirds of appellate cases, and limited categories of cases would now be appealable to the Supreme Court. The division of jurisdiction between the district courts of appeal and the Supreme Court was not addressed again until 1980, when the constitution was again amended to shift significant jurisdiction from the Supreme Court to the district courts.[3]

By 1978, the caseload of the Supreme Court had increased to 2,740 cases. At that time, the Court responded to what was perceived to be a crisis by forming a special commission to study the jurisdiction and workload of the appellate courts and to make recommendations to address the problem.[4] The commission produced a series of recommendations to shift several areas of jurisdiction to the district courts of appeal, and to limit appeals to the Supreme Court. Following consultation with the bar and the Legislature, versions of these recommendations were placed on the ballot by resolution of the Legislature and adopted in April, 1980.

The goal of the 1979 reform effort was not only to reduce the workload of the Supreme Court, but also to allow the Court to focus its attention on cases that need resolution at the highest level, "to free the court from non-policy types of decisions, and direct its efforts to issues of statewide importance or jurisdictional significance."[5] The crisis that was felt in 1980 was not

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2 The mission of Florida's district courts of appeal is: "The purpose of Florida's District Courts of Appeal is to provide the opportunity for thoughtful review of decisions of lower tribunals by multi-judge panels. District Courts of Appeal correct harmful errors and ensure that decisions are consistent with our rights and liberties. This process contributes to the development, clarity, and consistency of the law." Report and Recommendations of the Committee on District Court of Appeal Performance and Accountability, Judicial Management Council, 1999.

3 The new1968 Constitution generally carried forward the existing judicial article, now Article V. Advocates of the revisions to Article V that were approved in 1975 decided strategically to concentrate on trial court matters – generally unification of the trial courts and the qualifications and selection of judges – and put off changes to the appellate courts.

4 See the Report of the Commission on the Florida Appellate Court Structure, March 13, 1979.

5 Constitutional Jurisdiction of the Supreme Court of Florida: 1980 Reform, University of Florida Law Review, Winter 1980, 200.

only one of workload, but of priority. By placing jurisdiction for the direct – and usually final – appeal of the vast majority of cases arising from the trial courts and from state agencies in the district courts of appeal, and by providing for discretionary review at the Supreme Court that would almost always be based on an express opinion of a district court of appeal, the roles of the Supreme Court and the district courts were reinforced. The error-correcting function of the appellate court system was now more fully concentrated in the district courts, and the Supreme Court's role became more narrowly focused on clarifying and harmonizing the law.

The jurisdictional shifts of the 1980 amendment were summarized by Justice Arthur England, chief justice at the time they were adopted, as follows:

> [T]he voters were asked to approve an appellate court structure having these features: 1. a supreme court having constitutionally limited, as opposed to unlimited, discretionary review of intermediate appellate court decisions; 2. finality of decisions in the district courts of appeal, with further review by the supreme court to be accepted, within the confines of its structural review, based on the statewide importance of legal issues and the relative availability of the court's time to resolve cases promptly; and 3. use of the district courts for the initial review of all trial court orders and judgments, other than in death penalty cases and bond validation matters, in order to cull routine points of appeal (such as evidentiary rulings) from the important legal issues eventually brought to the court. (footnotes omitted.)[6]

In substantive terms, these changes would limit the Supreme Court's mandatory[7] review jurisdiction to a narrow set of cases: cases in which the death penalty has been imposed, cases in which a district court of appeal has declared a state statute or provision of the constitution

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[6] Constitutional Jurisdiction of the Supreme Court of Florida: 1980 Reform, University of Florida Law Review, Winter 1980, 161.

[7] "Mandatory" jurisdiction defines those cases that, under the constitutional and statutory framework of a state, *must* be considered and decided by the court as a matter of right if properly filed. "Discretionary" jurisdiction defines the class of cases where a petition seeking review, if granted, would result in the case being considered and decided on the merits.

invalid,[8] cases involving bond validations, and cases from the Public Service Commission relating to rates or service of utilities providing electric, gas, or telephone service.

The Court's discretionary review would also be significantly reduced by inserting in the constitution a requirement that the Supreme Court may only take conflict jurisdiction when a decision of a district court of appeal either "expressly" conflicts with a decision of another district court or the Supreme Court, or a district court certifies that conflict exists. The requirement for express conflict effectively settled an ongoing controversy surrounding the conflict jurisdiction of the Supreme Court with respect to non-opinion cases of the district courts of appeal.[9]

The 1980 amendment further reduced the jurisdiction of the Supreme Court by making the review of cases in which a district court of appeal upheld the validity of a statute discretionary. Previously, such cases were mandatory, requiring the Supreme Court to review all such decisions. The amendment also removed review by certiorari of such cases, allowing the Supreme Court to review only the central issue presented if it so elected, and not provide the complete plenary review of all issues. Decisions of district courts of appeal that construe a provision of the state or federal constitution would be similarly treated.

While several other changes were included in the 1980 amendment, the above elements constitute the most significant. The current jurisdiction of the Supreme Court of Florida can be outlined as follows:

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[8] The revised language with respect to statutory invalidity is significantly more restrictive than the previous language. Now, only decisions of district courts are reviewable, not trial courts, and the invalidity must be declared expressly, rather than implied, which had been allowed under the existing "inherency" doctrine.

[9] Decisions released by a district court of appeal without an opinion read simply "Per Curiam Affirmed." Because a per curiam affirmed decision has no opinion and so cannot indicate express conflict, it cannot be reviewed on conflict jurisdiction.

- *Mandatory Jurisdiction:*
  - Death Penalty
  - Statutory Invalidity
  - Bond Validations
  - Public Service Commission

- *Discretionary Jurisdiction:*
  - Statutory Validity
  - Constitutional Construction
  - Class of Constitutional Officers
  - Direct Conflict of Decisions
  - Certified Great Public Importance
  - Certified Direct Conflict
  - Certified Judgment of Trial Courts
  - Certified Question from Federal Courts

- *Original Jurisdiction:*
  - Petitions
  - The Florida Bar
  - Florida Board of Bar Examiners
  - Rules of Court
  - Code of Judicial Conduct
  - Judicial Qualifications Commission

The jurisdiction grant of the Supreme Court within the Florida constitution, section 3(b) of Article V, is reproduced on the next page in full.

JURISDICTION.--The supreme court:

(1) Shall hear appeals from final judgments of trial courts imposing the death penalty and from decisions of district courts of appeal declaring invalid a state statute or a provision of the state constitution.

(2) When provided by general law, shall hear appeals from final judgments entered in proceedings for the validation of bonds or certificates of indebtedness and shall review action of statewide agencies relating to rates or service of utilities providing electric, gas, or telephone service.

(3) May review any decision of a district court of appeal that expressly declares valid a state statute, or that expressly construes a provision of the state or federal constitution, or that expressly affects a class of constitutional or state officers, or that expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law.

(4) May review any decision of a district court of appeal that passes upon a question certified by it to be of great public importance, or that is certified by it to be in direct conflict with a decision of another district court of appeal.

(5) May review any order or judgment of a trial court certified by the district court of appeal in which an appeal is pending to be of great public importance, or to have a great effect on the proper administration of justice throughout the state, and certified to require immediate resolution by the supreme court.

(6) May review a question of law certified by the Supreme Court of the United States or a United States Court of Appeals which is determinative of the cause and for which there is no controlling precedent of the supreme court of Florida.

(7) May issue writs of prohibition to courts and all writs necessary to the complete exercise of its jurisdiction.

(8) May issue writs of mandamus and quo warranto to state officers and state agencies.

(9) May, or any justice may, issue writs of habeas corpus returnable before the supreme court or any justice, a district court of appeal or any judge thereof, or any circuit judge.

(10) Shall, when requested by the attorney general pursuant to the provisions of Section 10 of Article IV, render an advisory opinion of the justices, addressing issues as provided by general law.

3. Organization, Staff, and Operations.

The Supreme Court operates as an appellate court, and has further supervisory and administrative responsibilities within the judicial branch of Florida. The Supreme Court is directed by section 2 of Article V of the Florida constitution to adopt rules for practice and procedure in all state courts and for the administrative supervision of all courts, and the chief justice is designated as the chief administrative officer of the judicial system. The Court is also directed by section 9 of Article V to establish criteria and to annually certify the necessity for increasing or decreasing the number of county, circuit, and district court judges.

To a limited extent, these administrative and oversight functions are divided between the Court proper and the Office of the State Courts Administrator. This division is not absolute, however. While the general administration of the State Courts System is conducted through the Office of the State Courts Administrator under the direction of the chief justice and the Court, many matters which are inherently a part of the Court's oversight role are taken up by the Court in the context of cases. Court legal staff, rather than staff within the Office of the State Courts Administrator, provide general support for consideration of these matters. These include cases involving court rules, admissions and oversight of The Florida Bar, oversight of the Board of Bar Examiners, and rules and disciplinary actions concerning judges, lawyers, and individuals charged with the unlicensed practice of law.

A general overview of the structure and operations of the Court and its support system, derived from the Internal Operating Procedures of the Court, follows:

a. *Court Composition.*

The Supreme Court of Florida is composed of seven justices who serve terms of six years. Each justice, other than the chief justice, is authorized to employ three staff attorneys and one judicial assistant.[10] The staff of the chief justice includes an executive assistant (an attorney); two staff attorneys; three judicial assistants; an inspector general; a reporter of decisions (an attorney); a director of public information (an attorney); and a central staff of six attorneys, one of whom serves as the director of central staff, and one judicial assistant.

[10] The third staff attorney for each justice became available in October of 1999.

b. *Chief Justice.*

The chief justice is the administrative officer of the Court, responsible for the dispatch of the Court's business, and is also the chief administrative officer of the Florida judicial system. The chief justice has the power to make temporary assignments of senior and active justices and judges to duty on any court for which they are qualified. The Constitution of the State of Florida requires that the chief justice be chosen by a majority vote of the Court. Court rule sets the term of the chief justice at two years, commencing on July 1 of every even-numbered year.[11] By tradition, the Court elects the most senior justice who has not served as chief justice. Whenever the chief justice is absent, the most senior justice present becomes acting chief justice and may exercise any and all powers of that office.

c. *Administrative Justice.*

The administrative justice is appointed by the chief justice and has the authority to act on routine procedural motions and other case-related matters which do not require action by a panel of justices. The administrative justice also has the authority to direct that certain clearly defined types of writ petitions be transferred to a more appropriate court.[12] The administrative justice advises the clerk's office and other Court staff on procedural issues which may arise in cases filed before the Court.

d. *Central Staff.*

The Court's central staff attorneys serve at the pleasure of the Court and report to the chief justice through the central staff director. The central staff attorneys analyze issues raised in original proceedings at the discretion of the assigned justice, assist with attorney discipline cases, bar admission cases, standard jury instruction cases and all rule amendment cases. They also perform other special assignments, both substantive and administrative, as determined by the chief justice or the Court as a whole. The central staff director also is responsible for coordinating the judicial system rule-making process and has other administrative duties as

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[11] Florida Rule of Judicial Administration 2.030(a)(2).

[12] Harvard vs. Singletary, 733 So. 2d 1020 (Fla. 1999).

assigned by the chief justice.

e. *Clerk of the Court.*

The clerk of the Supreme Court serves at the Court's pleasure and has administrative and clerical responsibilities. The clerk is authorized to appoint a chief deputy clerk, who may discharge the duties of the clerk during the clerk's absence, and to appoint such other clerical assistants as the Court may deem necessary. The clerk's office receives all documents and other papers filed with the Court. Office hours are 8:00 a.m. to 5:00 p.m., Monday through Friday. Questions by non-court personnel regarding the Court and its work are handled by the clerk's office rather than the office of any justice or the central staff attorneys.

All Court records are open to public inspection except the work product of the justices and their staffs, vote and remark sheets placed in individual case files, justice assignment records maintained by the clerk's office, portions of case records sealed by a lower court or the Court, case files which are confidential under the rules of the Court, and internal case management data. All petitions and briefs on the merits that are received in electronic format are posted shortly after filing on the Supreme Court Clerk's Office page of the Court's website located at www.flcourts.org.

f. *Reporter of Decisions.*

The reporter of decisions serves at the pleasure of the Court and reports directly to the chief justice. The reporter of decisions reviews opinions and disposition orders prior to their release for technical and formal correctness, makes recommendations as to needed corrections, and coordinates the process of preparing opinions and disposition orders for release. The reporter of decisions works closely with the justices, their staffs, and the clerk's office in the process of releasing opinions and disposition orders to legal publishers, the press and the public. The reporter of decisions assists the Court and clerk's office in the case management process and may also be assigned by the chief justice to assist the Court on various special projects.

g. *Director of Public Information.*

The director of public information serves at the pleasure of the Court and reports directly to the chief justice. The director of public information serves as public information officer and public spokesperson for the Court, coordinates Court communications with news media and the public at large, serves as the chief justice's communications officer, assists all the justices in their public communications and public activities as required, serves as a deputy webmaster, coordinates the broadcast of Court arguments and coordinates public events as required by the chief justice. Press inquiries about the Court and its work are directed to the director of public information.

h. *Marshal.*

The marshal of the Supreme Court serves at the Court's pleasure, is empowered to execute process of the Court throughout the state, and is the custodian of the Supreme Court Building, its furnishings and grounds. The marshal also is responsible for Court security as well as the Court's operational budget and the Court's purchasing and contracting.

i. *Librarian.*

The Supreme Court Library, created in 1845, is the oldest state supported library in continuous operation in the state of Florida. The librarian of the Supreme Court serves at the Court's pleasure. The Court's library is in the custody of the librarian, who has an assistant librarian, a computer services librarian who serves as webmaster of the Court's internet site, an internet specialist who serves as a deputy webmaster, a technical services/documents librarian, and an administrative assistant. The library uses a computerized cataloging system which is accessible to the public via the internet. The library is for the use of Court personnel at any time. Library hours for the public are from 8:00 a.m. to 5:00 p.m., Monday through Friday.

j. *State Courts Administrator.*

The Office of the State Courts Administrator has been created by the Court to serve the chief justice in carrying out his or her responsibilities as chief administrative officer and to assist the Court in its role of providing administrative oversight for the judicial branch. The state

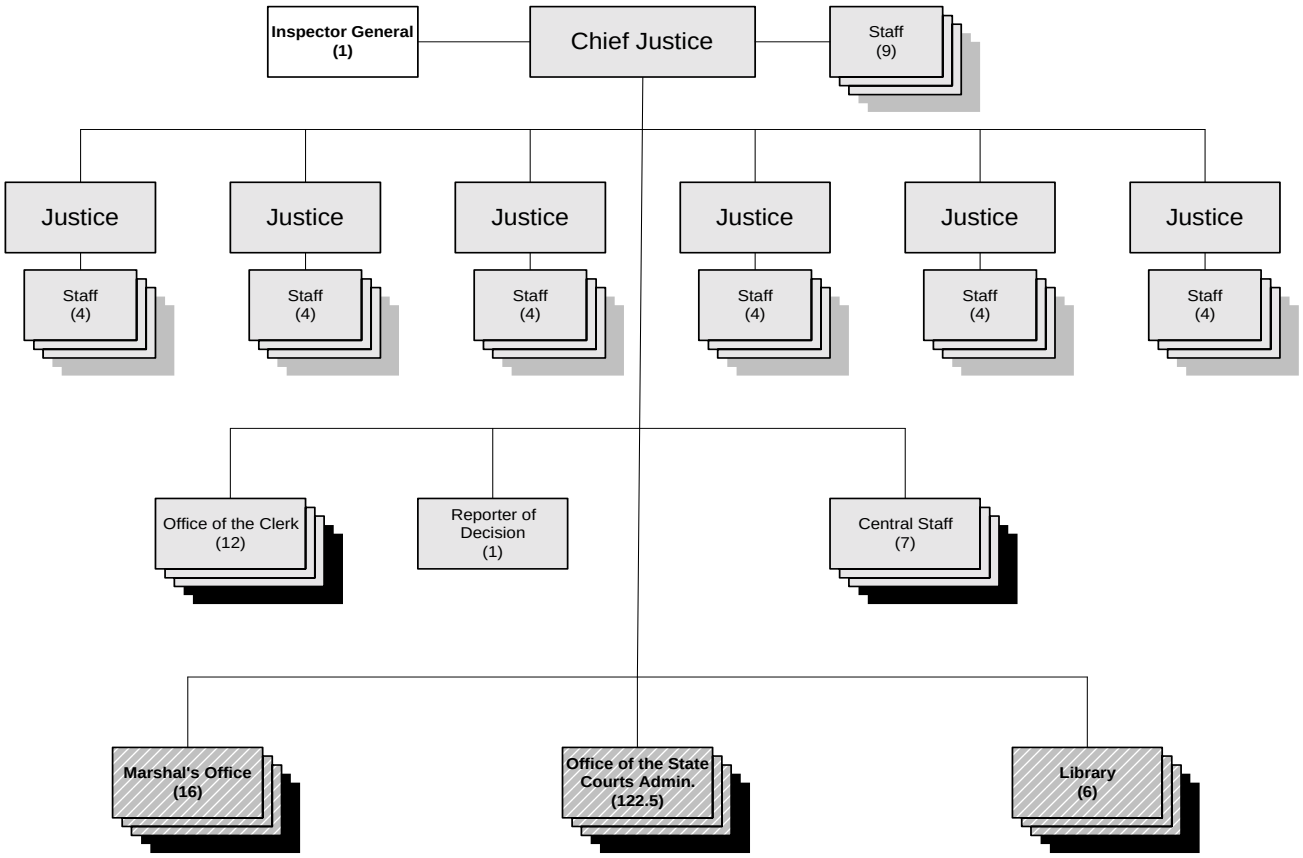
courts administrator serves at the pleasure of the Court and employs professional and clerical support personnel to carry out such functions as: finance, accounting, human resource management and purchasing; information technology support, court-related research, statistics and technical assistance; strategic planning and performance assessment; judicial and court staff education; regulation of mediators; and court improvement initiatives in family, juvenile delinquency and dependency, court operations, and legislative and governmental relations.

k. *Inspector General.*

The inspector general serves at the pleasure of the Court and reports directly to the chief justice. The inspector general is assigned specific duties and responsibilities for audit and investigation functions by section 20.055, Florida Statutes. The scope of these responsibilities encompasses the entire State Courts System and includes advising in the development of performance measures, standards, and procedures for the evaluation of programs; reviewing actions taken to improve program performance and meet program standards; performing audits, investigations, and management reviews relating to programs and operations; recommending corrective actions; reviewing the progress made in implementing corrective action; and related duties.

A complete description of the organization and processes of the Court is found in the Internal Operating Procedures of the Supreme Court of Florida, which is reproduced in full in Appendix B. The organizational chart on the next page illustrates the relationship of these components of the Supreme Court and its support offices.

Organization: Supreme Court and Support Offices



Elements that appear lightly shaded primarily contribute to the Court's work as a court. Elements that are more heavily shaded primarily contribute to the Court's functions related to the State Courts System and services in general to the public.

4. Budget of the Supreme Court

The table below presents an overview of the 2000/01 fiscal year budget for the Supreme Court and its support offices. Amounts provided are General Revenue funds; the Office of the State Courts Administrator also administers funds from several trust funds.

Supreme Court	justices, legal staff and judicial assistants, chief justice staff, central staff, reporter of decisions, technology support	48 FTE	$4,856,282
Clerk of Court	records and caseflow management	12 FTE	$660,778
Marshall	facility maintenance, security	16 FTE	$1,148,537
Library	research, public access	6 FTE	$662,148
Inspector General	accountability	1 FTE	$96,672
State Courts Administrator	executive, legal, judicial education, professional certification, planning and budgeting, research, finance and accounting, human resources, procurement, communications, technology	121 FTE	$10,414,508
Totals		204 FTE	$17,838,925

STATISTICAL PROFILE OF SUPREME COURT CASELOAD

An assessment of the workload of a court begins with an assessment of the court's caseload, and proceeds to consideration of the nature of the cases and the operational procedures used by the court to dispose of the cases it receives. There are very large differences in the amount of work required by different types of cases, and even different cases of the same type may require significantly different amounts of work, depending on their posture and how they are handled by the court. Workload can be differentially distributed among the personnel of a court: judges, legal staff, and clerical staff. This section presents summary data on the caseload of the Supreme Court of Florida from 1990 to 1999. The next section discusses the workload implications of this caseload. Finally a discussion is presented of strategies the Court is pursuing to address the demands of its workload.

1. Major Events in Case Processing.

The Internal Operating Procedures of the Court provides a comprehensive overview of the processing of cases at the Supreme Court.[13] For present purposes of analyzing and discussing the work of the Court, the major events in the processing of most cases provide the necessary reference points. There are four major events in the processing of an appellate case that moves all the way through to a decision:

- *Filing.* Filing occurs when a petition or notice of appeal is delivered to the Court or to the lower tribunal, as appropriate.

[13] Another comprehensive overview of the Court and its processing of cases can be found in The Operation and Jurisdiction of the Florida Supreme Court, Gerald Kogan and Robert Craig Waters, 18 Nova L. Rev. 1151 (1994).

- *Perfection.* A case is perfected when a record has been filed with the Court and all briefs have been filed or the time for filing briefs has expired.

- *Oral argument/conference.* The oral argument or conference date is the date oral argument is held or first discussed at court conference.[14]

- *Disposition/decision.* The disposition occurs when the case is decided or disposed, whether by opinion or order.

2. Volume of Caseload, 1990-1999

Convention has developed for a general classification of appellate cases within court systems which categorizes cases as either coming to the court in its mandatory jurisdiction, discretionary jurisdiction, or original jurisdiction. Tables are presented on the next several pages that document the numbers of cases filed and cases disposed during the period 1990-1999, classified as being under mandatory, discretionary, and original jurisdiction. Cases are further presented in sub-categories that reflect the specific jurisdiction of the Supreme Court. Finally, specific sub-categories of death penalty cases are presented.

[14] Some cases are conferenced several times while under consideration by the Court.

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	TOTAL
Original Jurisdiction											
Petitions											
Habeas Corpus	278	165	124	219	201	244	388	360	486	543	3,008
Mandamus	52	67	88	116	112	138	229	167	175	262	1,406
Prohibition	47	58	35	29	30	37	78	48	57	52	471
All Writs	9	5	6	11	17	16	60	42	44	44	254
Error Corum Nobis	0	2	1	1	1	0	0	1	1	5	12
Quo Warranto	2	4	0	1	5	4	5	3	9	5	38
Petitions Subtotal	388	301	254	377	366	439	760	621	772	911	5,189
The Florida Bar	344	371	361	364	411	442	539	478	459	443	4,212
Florida Board of Bar Examiners	38	56	53	46	70	53	64	46	39	40	505
Rules	24	25	31	15	15	30	25	19	25	12	221
Code of Judicial Conduct	0	0	1	0	1	0	1	1	1	0	5
Judicial Qualifications Commission	4	9	8	12	11	7	2	6	3	4	66
Advisory Opinions to the Governor	1	0	1	1	1	1	0	1	0	1	7
Advisory Opinions to the Attorney General	1	2	0	1	10	3	4	5	3	0	29
Certificate of Judicial Manpower	1	1	1	1	1	1	1	1	1	1	10
Statewide Grand Jury	0	1	1	0	1	1	0	1	0	1	6
Administrative Orders	3	1	2	3	2	2	2	1	2	2	20
Review of Non-Final Administrative Action	0	0	0	1	5	2	1	0	0	0	9
Joint Resolution -- Validity	0	0	1	0	0	0	0	0	0	0	1
Mediators -- Review of Final Determination	0	0	0	0	1	0	0	0	0	0	1
Original Jurisdiction Subtotal	**804**	**767**	**714**	**821**	**895**	**981**	**1,399**	**1,180**	**1,305**	**1,415**	**10,281**
SUPREME COURT TOTAL	**1,847**	**2,005**	**1,890**	**1,936**	**2,064**	**2,092**	**2,530**	**2,368**	**2,451**	**2,507**	**21,690**

Supreme Court of Florida: Death Penalty-Related Dispositions from 1990-1999

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	TOTAL
Death Penalty											
Initial	39	41	29	38	52	29	31	57	26	17	359
Resentencing	7	11	12	7	10	5	8	11	4	3	78
Retrial	1	4	5	2	9	2	4	1	1	1	30
3.850 with Evidentiary Hearing	33	12	22	14	13	12	9	13	29	18	175
3.850 without Evidentiary Hearing	3	2	6	5	5	5	7	10	5	9	57
3.850 Interlocutory	1	0	3	1	3	8	5	10	5	9	45
3.850 State	0	1	1	0	0	1	1	0	1	0	5
3.850 State Interlocutory	0	0	0	0	1	0	0	1	0	2	4
3.850 State Resentencing	1	0	0	0	0	0	0	0	0	0	1
Interlocutory	0	0	1	2	1	0	0	0	0	1	5
3.811	0	0	0	0	0	0	0	2	0	2	4
Death Penalty Subtotal	85	71	79	69	94	62	65	105	71	62	763
Petitions											
Habeas Corpus	26	17	16	21	13	10	4	8	10	8	133
Mandamus	2	3	1	2	4	6	4	8	5	3	38
Prohibition	3	7	9	5	7	9	8	11	14	6	79
All Writs	3	1	0	0	1	3	7	6	3	6	30
Error Corum Nobis	0	1	0	0	0	0	0	0	0	0	1
Quo Warranto	0	0	0	0	1	0	1	0	1	1	4
Petitions Subtotal	34	29	26	28	26	28	24	33	33	24	285
Death Penalty-Related Total	**119**	**100**	**105**	**97**	**120**	**90**	**89**	**138**	**104**	**86**	**1,048**

3. Dispositions.

Appellate cases are disposed in a number of different ways, and there is a broad range of outcomes, or types, of dispositions.

a. *Manner of Disposition.*

The major events already discussed – filing, perfection, oral argument/conference, decision – occur in cases that proceed all the way through the court process. Many cases do not progress all the way through to a decision on the merits, but are dismissed or transferred to another court at various stages in the process.

In brief, cases can be disposed by *order* or by *opinion*. *Orders* disposing of cases can be issued in certain cases by a panel of justices or by the clerk of the court. The administrative justice can also transfer certain cases by order. *Opinions* disposing of cases are by the full court or signed by an authoring justice. This produces four distinct manners of disposition: order by justice, order by clerk, opinion by judge, and per curiam opinion.

The table on the following page presents the numbers of cases disposed by each manner for each year from 1990 to 1999, and by broad classification and selected case type.

Supreme Court of Florida: Manner of Disposition, 1990-1999

Manner of Disposition	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	TOTAL
Order by Judge*	1,464	1,576	1,383	1,497	1,169	900	1,244	1,043	1,173	1,333	12,782
Order by Clerk	—	—	—	—	416	846	908	982	938	958	5,048
Written Opinion by Judge	198	184	234	205	186	169	173	130	159	92	1,730
Per Curiam	185	245	273	234	293	177	205	213	181	124	2,130
TOTAL	**1,847**	**2,005**	**1,890**	**1,936**	**2,064**	**2,092**	**2,530**	**2,368**	**2,451**	**2,507**	**21,690**

*Includes Orders by the Clerk from 1990 through mid-1994.

Supreme Court of Florida: Manner of Disposition by Type of Case, 1990-1999

Manner of Disposition	Death Penalty	Other	Mandatory	Discretionary	Petitions	The Florida Bar	Other Original	TOTAL
Order by Judge	82		576	5,002	4,802	1,795	525	12,782
Order by Clerk	10		73	2,747	198	1,997	23	5,048
Written Opinion by Judge	68		83	1,444	57	11	67	1,730
Per Curiam	603		40	681	132	409	265	2,130
TOTAL	**763**		**772**	**9,874**	**5,189**	**4,212**	**880**	**21,690**

b. *Type of Disposition.*

There are many potential dispositional outcomes to an appellate case. The full range of potential dispositions of cases, by case type, can be found in diagrams in Appendix C. The following tables array grouped dispositional outcomes, by case type, aggregated for 1990-1999.

Types of Dispositions of Death Penalty Cases, 1990-1999:

Affirmed or Denied	Affirmed in Part / Reversed in Part	Reversed, Remanded, or Granted	Dismissed / Transferred	TOTAL
379	2	307	75	763

Types of Dispositions of Other Mandatory Jurisdiction Cases, 1990-1999:

Affirmed or Denied	Affirmed in Part / Reversed in Part	Reversed, Remanded, or Granted	Dismissed / Transferred	TOTAL
86	3	38	645	772

Types of Dispositions of Discretionary Cases, 1990-1999:

Affirmed, Approved, or Denied	Affirmed or Approved in Part	Reversed, Remanded, or Granted	Dismissed / Transferred	TOTAL
4,785	57	1,103	3,929	9,874

Types of Dispositions of Original Writ Cases, 1990-1999:

Affirmed or Denied	Affirmed or Approved in Part	Reversed, Remanded, or Granted	Dismissed / Transferred	TOTAL
3,739	11	420	1,019	5,189

Types of Dispositions of The Florida Bar Cases, 1990-1999:

Affirmed, Approved, or Denied	Approved or Denied in Part	Disciplinary Actions	Resigned	Reinstated	Acquitted, Reversed, Remanded, or Granted	Dismissed	TOTAL*
336	13	2,573	364	180	183	559	4,208

Types of Dispositions of Other Original Jurisdiction Cases, 1990-1999:

Affirmed, Approved, Adopted, or Denied	Approved or Denied in Part	Disciplinary Actions	Modified, Quashed, Remanded, or Granted	Dismissed / Transferred	TOTAL*
637	14	41	146	46	884

*Four cases originally classified as The Florida Bar cases are now classified as Rules cases, moving them to the "Other Original Jurisdiction" category.

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Affirmed or Denied	Affirmed in Part / Reversed in Part	Reversed, Remanded, or Granted	Dismissed / Transferred	TOTAL
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4. Time to Disposition

There exists no single, accurate measure of timeliness in appellate courts. The national Appellate Court Performance Standards Commission recommends that courts establish guidelines of the appropriate number of days that a given percentage of cases should take to complete each stage of the appellate process.[15] The American Bar Association recommends that 90% of all appeals should be resolved within one year from filing.[16]

Under the branch's performance and accountability initiative, the approach taken in assessing the performance of the district courts of appeal moves in this direction. The district courts of appeal are currently implementing a reporting system which measures the amount of time it takes for cases to proceed through the several stages of the appellate process.[17] The following tables apply that approach to the Supreme Court, presenting: the number of days that transpired from filing to disposition for cases that were disposed in each year from 1990-99, in terms of the median case and the average; the percentage of cases disposed of within 180 days of filing; and the percentage of cases disposed of within 365 days of filing. Categories of cases – death penalty, other mandatory, discretionary, petitions, bar cases, and other cases – are also presented using the same measures.

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15 Appellate Court Performance Standards and Measures, Appellate Court Performance Standards Commission and the National Center for State Courts, 1999.

16 Standard 3.52, Standards Relating to Appellate Courts, American Bar Association.

17 Report and Recommendations of the Committee on District Court of Appeal Performance and Accountability, Judicial Management Council, 1999.

5. Clearance Rates.

A standard reference point for whether a court is keeping up with its caseload is the clearance rate of the court. The clearance rate is a calculation of the number of cases disposed divided by the number of cases that were filed in a given time, expressed as a percentage. The usual period is for one year. The clearance rate essentially encapsulates the flow of cases through court. When the court is disposing of fewer cases than are filed, its clearance rate will be less than 100%. When a court is disposing of more cases than are being filed, its clearance rate will be greater than 100%.

A clearance rate above 100% indicates that a court has been able to reduce its backlog of cases. A well-performing court will rarely operate with a clearance rate significantly higher than 100% because the court has had the resources and policies in place that have allowed it to consistently process its cases in a timely manner to avoid the creation of a backlog. A very high clearance rate indicates that the court had a large backlog that is being reduced, sometimes in a concerted purge of aging cases. Ideally, a court should maintain a clearance rate around 100%, accompanied by timeliness indicators that show the court's work is being done in a timely manner.

The following table presents the clearance rates for the Supreme Court from 1990-1999.

6. Pending Cases.

The workload of a court can also be assessed in terms of the number of cases that are pending at the court at any given time. Pending caseloads are typically examined in relation to the age of pending cases. A large pending caseload with increasing ages of cases indicates an emerging backlog; a large pending caseload with steady aging indicates the court is busy, but keeping abreast with the increased volume. The following table presents the numbers of pending cases, with the median and average ages, at the Supreme Court calculated for December 31 of each year.

	Number of Pending Cases: Dec. 31	Median Age of Pending Cases	Average Age of Pending Cases
1999	1338	151	252
1998	1100	157	258
1997	1049	156	254
1996	923	151	289
1995	926	157	272
1994	843	149	258
1993	937	157	276
1992	920	174	290
1991	967	174	279
1990	985	166	271

7. Forecasts of Future Caseloads.

Court caseloads can be forecasted based on historical trend data using specialized statistical models. Forecasts of Supreme Court caseloads are provided below for the balance of 2000, 2001 and 2002. The forecasts were produced through ARIMA Box-Jenkins modeling.[18] In layman's terms, this method plots trends, progressively weighs the most recent data, and excludes outlying data peaks and valleys. Monthly data points were used from January of 1990 through September of 2000 to generate the forecasts.

Forecasts were individually computed for each type of Supreme Court jurisdiction – mandatory cases, discretionary review cases, and original proceedings – and then combined for an aggregate forecast. In addition, supplemental forecasts are presented for four specific types of cases. Within mandatory cases, death penalty cases were forecasted; within discretionary review cases, those alleging a direct conflict of decisions; and within original proceedings, original writ petitions and The Florida Bar cases.

	Mandatory	Discretionary	Original	**Total**	Death Penalty	Original Writ Petitions	Florida Bar	Direct Conflict of Decisions
2000	115	1,265	1,330	**2,710**	71	773	469	926
2001	113	1,225	1,354	**2,692**	72	798	473	850
2002	114	1,193	1,354	**2,661**	74	798	471	835

[18] ARIMA Box-Jenkins modeling method has proven to be very accurate in forecasting the caseload of Florida's circuit and county courts, and its district courts of appeal as part of the process of certifying the need for additional district, circuit, and county court judges.

ANALYSIS OF SUPREME COURT WORKLOAD, 1990-1999

The total caseload of the Supreme Court of Florida increased substantially during the 1990s. As presented in the table below, the growth in total cases from 1990 to 1999 was 827 cases, an increase of 43%, or an average annual increase of 4.8% The table also provides three-year averages, calculated for the years 1990-92 and for 1997-99. The three-year averages are presented to provide a more stable indication of trends. These calculations yield a three-year average of 1,918 annual filings in 1990-92, and an average of 2,580 in 1997-99.

Examination by the broad categories of mandatory, discretionary, and original jurisdiction cases shows that filings of mandatory cases *decreased* 44% from 1990 to 1999, or 48% based on the three-year averages. Discretionary cases *increased* 34%, or 21% on average, and original jurisdiction cases *increased* by 77% from 1990 to 1999, or 75% on average. To understand the impacts of these caseload trends in terms of workload, it is necessary to further identify increases within the sub-categories of the broad classifications, and then to investigate the workload implications of caseload increases in these particular types of cases.

	1990 Cases	1999 Cases	Change 90-99	Percent Change 90-99	Average Annual Change	1990-92 Average	1997-99 Average	Change in Average	Percent Change
Mandatory	209	117	-92	-44%	-5%	219	105	-114	(-48%)
Discretionary	909	1215	306	34%	3.7%	938	1,135	197	21%
Original	800	1413	613	77%	8.5%	759	1,340	581	75%
All Cases	**1918**	**2745**	**827**	**43%**	**4.8%**	**1,916**	**2,580**	**664**	**35%**

1. Trends in Caseload, 1990-1999.

Inspection of these caseload data shows that the bulk of increases during the decade can be attributed to substantial increases in only a few sub-categories.

a. *Categories of Decrease.*

Looking briefly to categories in which a decrease in the number of cases occurred, only two areas appear significant. First, cases in which the district courts of appeal have certified a question to be of great public importance have declined by about 50%, from 151 in 1990 to 71 in 1999. The three-year average decrease is from 165 to 80.

The second area of apparent decrease is in mandatory appeals of cases in which a statute has been declared invalid. A closer look shows that there was a sudden and dramatic drop from 176 cases in 1993 to 24 cases in 1994, and a three-year average decline from 128 to 22 per year. This result can be largely attributed to a change in policy by the clerk of the court with regard to classification of cases, rather than a decline in actual workload. Prior to that point, cases arguing that a statute should have been declared invalid by the district court of appeal, often filed *pro se* by prisoners, were classified as mandatory jurisdiction cases because they were filed by the litigants as notice of appeals rather than petitions seeking review. Under the constitution and court rules, however, mandatory review is appropriate only when the district court of appeal has in fact expressly declared the statute in question to be invalid. In other cases, the appropriate filing is as a petition for discretionary review. Since 1994, cases that are filed as mandatory appeals, but which upon examination are found not to actually declare the statute to be invalid, are treated by the Clerk's office as discretionary petitions.

b. *Categories of Increase.*

Significant increases in caseload[19] during the decade are found in five jurisdictional sub-categories: direct conflict, certified conflict, writs of habeas corpus, writs of mandamus, and bar

[19] Increases in relatively small categories are not discussed where they do not create a significant workload. For instance, petitions for the exercise of all writs jurisdiction increased from 7 to 41, and petitions for writs of quo warranto quadrupled from 2 to 10. These petitions do not create a meaningful amount of workload, and most are in fact denied. Petitions for review of cases involving construction of a constitutional provision increased from 24 to 62. Few of these discretionary petitions are granted, and the workload impact is not significant.

discipline cases. Commonalities in the nature of some of these make it possible to collapse several categories for discussion purposes. The categories of conflict jurisdiction – direct and certified – are therefore collapsed, as are petitions for writs of habeas corpus and mandamus.[20] The following table presents the same information for the grouped sub-categories as was presented for the broad classifications:

	1990 Cases	1999 Cases	Change 90-99	**Percent Change 90-99**	Average Annual Change	1990-92 Average	1997-99 Average	Change in Average	**Percent Change Average**
Conflict (Direct and Certified)	675	1015	340	**50%**	5.6%	655	860	205	**31%**
Habeas and Mandamus	311	750	439	**141%**	15.7%	253	681	428	**169%**
Bar Discipline	352	468	116	**33%**	3.7%	361	471	110	**30%**
Total	1338	2233	895	**69%**	7.4%	1269	2012	743	**59%**

2. Discussion of Workload Increases.

Setting aside bar discipline cases for the moment, the combined sub-categories of conflict and habeas and mandamus writs cases comprise more than 100% of the total increase in the caseload of the Court during the decade. Taken together, the volume of these cases grew from 986 in 1990 to 1765 in 1999, an increase of 779 or 79%. Viewed another way, the combined categories of conflict and writs cases grew as a proportion of the total caseload of the Court from 51% to 64%. Of the sub-categories, the greater impact is found in petitions for writs of habeas corpus and mandamus.

[20] In certified conflict cases, conflict is recognized by a district court of appeal; in direct conflict cases the conflict is alleged by the petitioner. If after review the Court agrees that conflict exists, the two are then treated very similarly. The primary difference between habeas petitions and mandamus petitions is that habeas petitioners are seeking immediate release, while mandamus petitioners seek a reduction in sentence but not immediate release.

To understand the workload implications of growth in these cases it is necessary to examine more closely the nature of cases filed under these categories. Habeas and mandamus cases are filed almost exclusively in criminal cases, and generally seek review of matters related to sentence duration. A review of these cases, as well as of conflict cases, reveals that many of the cases present the same legal issues. In recent years the Court has taken steps to refine its ability to identify cases where the same issue is presented. When several cases are so identified, they may be consolidated, or one or more lead cases may be selected for resolution by a full opinion that addresses the central issue. The related cases can then be decided or remanded as necessary, consistent with the decision in the lead case or cases. Several recent cases can serve as examples of this phenomenon:

> In November, 1996, the Court issued an opinion in Gwong v. Singletary, 683 So.2d 109 (Fla. 1996). At the time *Gwong* was decided, there were approximately 130 other cases pending at the Court that hinged on the same issue.
>
> In December, 1999, the Court issued an opinion in State v. Thompson, 750 So.2d. 643 (Fla.1999). At the time *Thompson* was decided, the Court had identified approximately 40 pending cases that raised the same issue.
>
> In February, 2000, the Court issued Heggs v. State, 759 So.2d 620 (Fla. 2000). There were approximately 30 cases pending at the Supreme Court that raised the same issue.
>
> In May, 2000, the Court issued an opinion in the consolidated cases of Maddox v. State, Edwards v. State, Speights v. State, and Hyden v. State, 760 So. 2d 89 (Fla. 2000). There were approximately 45 pending cases.
>
> In June, 2000, the Court decided the consolidated cases of State v. Cotton and Woods v. State, 25 Fla. L. Weekly S689 (Fla. June 15, 2000). About 90 pending cases had been identified.

Several points should be made with reference to these similar-issue cases. First, cases that raise the same issue do not necessarily come to the court in the same jurisdictional posture. In each of these examples, the pending cases and even the lead cases in the consolidated cases came to the Court on different jurisdictional bases. For instance, in *Maddox,* the Court took jurisdiction of the four lead cases on three different grounds: *Maddox* and *Edwards* due to direct and express conflict, *Speights* as a question certified by a district courts of appeal to be of great public importance, and *Hyden* based on a conflict certified by a district court. Among the pending similar-issue cases can be found cases based on habeas, mandamus, all writs, and other jurisdictional grounds. The impact of these cases, therefore, can be found across several sub-categories of jurisdiction.

Second, the volume of similar-issue cases that eventually reach the Supreme Court is but a small fraction of the total number of such cases systemwide. A new law can be applied in hundreds, or even thousands, of cases which may subsequently be affected by appellate litigation of an issue. Many of these cases may be pending in the trial courts and district courts of appeal at the time a similar-case issue is being considered at the Supreme Court. At present, it is not possible to assess the extent of this pattern. The capacity of the Supreme Court to identify similar-issue cases is still developing, and is a burden that at present falls largely to one staff attorney. The Court is currently analyzing procedural methods by which the Supreme Court and the district courts of appeal might coordinate in the identification and management of related cases.

Third, in terms of workload, the number of similar-issue cases does not have a linear relationship with the magnitude of judicial work involved. In fact, similar-issue cases might be said to involve less work overall. Although each case must be individually considered and decided, the identification of a case as a similar-issue case, and a deliberate process of evaluating it in terms of the decision rendered in the lead case, provides a degree of efficiency by directing the legal analysis of the case to the similar issue, which is often dispositive.

Finally, the flow of similar-issue cases through the Court, the release of a lead case, and the subsequent handling of the related cases can contribute to dramatic variations in key indicators of court activity, including disposition rates, pending case rates, timeliness measures, and opinion production. For instance, the Court had a pending case inventory on December 31, 1999, of 1338 cases and had released only 216 opinions during that year. However, three of the

similar-issue cases discussed above have been released since that time, and the number of opinions released in 2000 has already passed 300 and is expected to be about 500 for the year.

Another class of cases that has increased is found in petitions for extraordinary writs. A large portion of these petitions, numbering in the hundreds, are subject to transfer or dismissal because concurrent jurisdiction rests in a lower court. Most of these are petitions for writs of habeas corpus, mandamus, prohibition or "all writs" jurisdiction filed by individuals who are advancing a claim related to their confinement or sentence. The Supreme Court has discretionary jurisdiction to grant petitions for writs.

Many writs petitions advance a claim that is either procedurally barred because the petitioner has not exhausted available remedies,[21] or presents factual issues that would require an evidentiary hearing. The long-standing practice of the Court has been to consider these cases on the merits, and most were then denied. In the decision of Harvard v. Singletary, 733 So.2d 1020 (Fla. 1999), released in May, 1999, the Court announced that henceforth it would refrain from exercising jurisdiction over any cases that do not require resolution by the state's highest court. Subsequent to the *Harvard* decision, the Court developed a screening system by which the clerk's office identifies such cases and submits them to the administrative judge for review. The administrative judge can now direct the clerk of the court to deny a petition, refer it to the full Court, or transfer it. The vast majority are transferred. This policy has reduced workload on the balance of the Court, as few petitions now circulate to the entire Court for a determination of jurisdiction.

Turning now to bar discipline cases, the volume of bar discipline cases has risen steadily over the last decade, from 352 in 1990 to 468 in 1999, or by a three-year average of 361 per year in 1990-92 to an average of 471 in 1997-99, a 30% increase. This growth reflects in part the 44% increase in the membership of The Florida Bar from 46,000 to 66,000 during this period.

Bar discipline cases are matters of original jurisdiction with the Court. Once a complaint is filed with the Court, the matter is assigned to a circuit judge. In this capacity the circuit judge is known as a referee. After conducting a hearing, the referee makes recommendations back to the Court as to guilt and sanction. The Court than makes a final determination and disposition.

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[21] Frequently a petitioner/prisoner has not fully pursued the matter through the grievance process of the Department of Corrections.

If guilt is found, sanctions can range from reprimand to suspension to disbarment.

In terms of workload, the increase in the number of bar discipline cases has not generated the amount of work required of the Court that the raw numbers may reflect. In the majority of cases – approximately 90% over the decade – neither the attorney nor The Florida Bar contest the recommendation of guilt or sanction.[22] In these cases, the level of review by the Court is less, and the agreed upon sanction is usually imposed by order. With respect to contested cases, the Court does spend an appropriate amount of time attempting to reach a consensus and write an opinion.

3. Discussion of Death Penalty Workload.

The legal processing of cases involving individuals who have been sentenced to death represents the most complex and difficult area of the criminal law, and is a significant part of the workload of the Supreme Court of Florida. The volume of cases filed at the Supreme Court involving individuals who have been sentenced to death, however, has not risen during the 1990s, and in fact has declined slightly. To understand the workload implications of death penalty cases, it is first necessary to review the role of that court in the overall legal process surrounding death-sentenced individuals.

a. *The Death Penalty Process*.

In most criminal cases in Florida, the judgment and order of the trial court completes the legal process, and the defendant simply accepts the sentence imposed. In some cases, an appeal is advanced to a district court of appeal, and once that appeal is resolved there is no further legal activity in the case. In a very small minority of cases there is further activity in the Florida Supreme Court or another forum. Death cases are different. The Florida Supreme Court is required to provide review in all cases in which the death penalty has been imposed.[23] This

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[22] Data on the precise number of contested and uncontested cases is not available. To approximate this value, the numbers of discipline cases disposed by order versus opinion are used as a proxy. This is possible because almost all contested cases are disposed by opinion, whereas most all uncontested cases are disposed by order. From 1990-99, 420 of 4212 cases were disposed by opinion.

[23] Article V, section (3)(b)(1), Florida Constitution.

review is only the beginning of the capital appellate process.

The legal processing of death penalty cases has three basic stages: the trial, the direct appeal, and postconviction or collateral attacks. The trial stage itself has two parts. Issues of sentencing are dealt with only after guilt has been determined, through a trial process known as *bifurcation*. For a sentence of death to be imposed in Florida, a jury must find guilt unanimously at the conclusion of the guilt stage of the trial, and the trial judge must impose the sentence following a recommendation from the jury at the close of the sentencing stage of the trial. The jury recommendation need not be unanimous.

Once an individual is adjudicated guilty and sentenced to death, a direct appeal must be taken to the Florida Supreme Court to review both the judgment and sentence. What the Court decides determines the next stage of the case: If both the judgment and sentence are affirmed, the defendant will frequently file a petition to the United States Supreme Court seeking its review of the case. If either the judgment or sentence is not affirmed, the matter is often returned to the trial court for a new trial or new sentencing. If a new trial and/or sentencing is ordered and held, and these proceedings lead to another death sentence, the case again comes to the Supreme Court on direct appeal.

Once the direct appeals process is completed in both the Florida Supreme Court and the United States Supreme Court, the postconviction process begins. Postconviction cases, often referred to as collateral attacks, are challenges to the integrity of the trial and direct appeals process. Collateral attacks are directed to the quality of the trial and direct appeal process, seeking to show that in some way the defendant did not receive a fair trial or appeal. These challenges raise factual and legal issues that have a bearing on the judgment and sentence of death. Frequently, collateral attacks focus on the effective assistance of counsel, the availability of evidence that may have affected the judgment or sentence, or the competence of the defendant to either have been tried or to be subject to execution. These cases begin in the original trial court, and the orders that result are appealed to the Florida Supreme Court. Once postconviction issues are exhausted in the state courts, defendants can then begin a collateral attack process in the federal courts.

Litigation patterns of death penalty cases – with sequential and multiple cases moving between trial courts and the Supreme Court, as well as among the federal courts – explains why final resolution of cases, whether by execution or a lesser sentence, can take what seems to some

to be an inordinately long period of time. The time that a case spends at the Florida Supreme Court is only a fraction of the overall life of a case. A review of the current pending case inventory of capital cases shows that 181 cases are now pending at the Florida Supreme Court.[24] Of these, all but seven, involving four individuals, have been at the Court for less than four years. Of these, two have been relinquished to a trial court for resolution of an issue, one is awaiting a matter pending in another court, and the fourth was delayed by production of the record.

b. *Time of Processing.*

The first involvement of the Supreme Court of Florida in the legal process of a death-sentenced individuals is the initial direct appeal. The average amount of time that transpires for an initial direct appeal, from filing to decision, is a little less than three years. The average time from filing to disposition for the 100 initial direct appeals cases disposed by the Court from 1997-1999 is 996 days. For 85 of the 100 cases it is possible to identify the key event dates of perfection and oral argument.[25] The charts below and on the following page illustrate the timeframe for the 100 cases, and further shows the average number of days that transpire between the key events for the 85 cases. The first stage shows that on average 671 days pass from the date of filing until the date the record and all briefs are filed, that 64 days pass from the date the last document is filed to the date of oral argument, and that 271 days pass on average from oral argument until the day the Court issues a decision, invariable with an opinion.

Time of Processing, Initial Direct Appeals, (100 cases) 1997-1999:

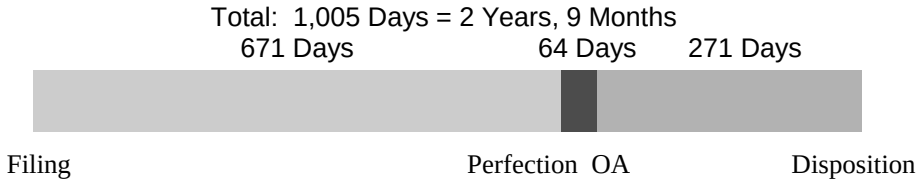
Total: 996 Days = 2 Years, 9 Months

Filing Disposition

[24] As of November 2, 2000.

[25] In 14 of the 15 remaining cases supplemental records of briefs were submitted after oral argument. One case was disposed prior to oral argument.

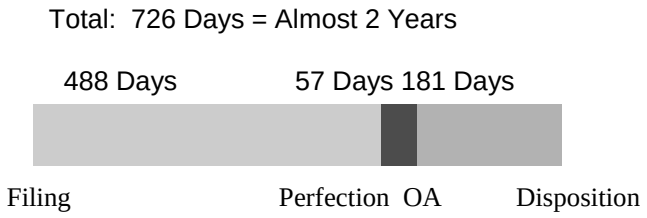
Time of Processing, Initial Direct Appeals, (85 cases) 1997-1999:



If the judgment and sentence survives the direct appeal, defendants can then initiate postconviction and collateral proceedings in the trial court. The Supreme Court has mandatory jurisdiction for all final orders in death penalty cases, which extends to final orders from postconviction proceedings. There were 138 such postconviction appeals to the Supreme Court disposed from 1997 to 1999. The average time from filing to disposition for these cases was 552 days. In 77 of these cases data are available to identify key event dates. For these cases, the average time between each stage in the process is shown, along with the overall average time.

Time of Processing, Postconviction and Collateral Direct Appeals, (138 cases) 1997-1999:

Time of Processing, Postconviction and Collateral Direct Appeals, (77 cases) 1997-1999:



As is evident, the overall time that transpires for consideration of postconviction matters is generally somewhat less than for initial appeals. One reason for this is that the record that must be prepared from a postconviction hearing is usually less extensive than that of a full trial, and so these records on appeal are generally prepared and submitted more quickly. Furthermore, the issues presented tend to be more narrowly defined than they are in the initial direct review.

The time required to dispose of death penalty cases is in part a reflection of the typical complexity of the record in a capital case. The volume of the record on appeal, and the thoroughness and number of briefings, is unique in criminal law to capital case litigation. These factors have a very direct bearing on the workload of the Court. Furthermore, because of the gravity of the ultimate punishment of death, every case is afforded oral argument, and every decision is released with a written opinion. Every capital case, both on initial appeal and in postconviction, requires and receives the full, in-depth scrutiny of the Court.

c. *Court Efforts to Improve the Death Penalty Process*.

As previously discussed, the Supreme Court has responsibilities not only as an appellate court, but for the practice and procedure of all courts in the state. In this capacity, the Court has taken a number of steps to improve the quality and timeliness of the capital case process. These ongoing efforts are summarized here.

The Court has developed and installed a specialized extension of its automated case management system for death penalty cases, allowing it to closely track all events in the progress of a case. This case management system allows the Court to monitor cases even when they are pending in a trial court or federal court, or when a case has no pending activity in any court. The Court has also instituted a system of quarterly reports from the circuit courts to track all postconviction death penalty proceedings pending in the circuit courts. This system will also facilitate the provision of data to the Commission on Capital Cases.

The Court has set standards for judges who sit on capital cases in terms of experience and specialized education.[26] Furthermore, the Court has announced rules pertaining to the experience and qualifications of attorneys who represent defendants at trial in capital cases. In addition to the substantive benefits of such improvements, the expectation is that they will make the work of reviewing and deciding death penalty cases more manageable by reducing the number of trial errors.

To address issues related to the postconviction process, the Court has directed the Committee on Postconviction Relief in Capital Cases, a body of experienced capital case judges chaired by Judge Stan Morris of the Eighth Judicial Circuit, to continue to study the postconviction process and to make recommendations to the Court on improvements in the management of these cases and changes in the Rules of Criminal Procedure.

Finally, with respect to court reporters and the time required for the preparation and submission of trial court records, the Court has required the chief judge of every circuit to develop and submit by January 1, 2001, a plan to improve procedures for the timely production of court records.

[26] Standard 4.3 of the national Appellate Court Performance Standards and Measures is concerned with the role of appellate courts in improving trial court performance by identifying patterns of error and facilitating educational programs for trial court judges. This would help reduce trial error, and ultimately to decrease the demands on the appellate courts. Appellate Court Performance Standards and Measures, Appellate Courts Performance Standards Commission and the National Center for State Courts, 1999.

4. Non Case-related Workload.

In addition to its function as an appellate court, the Supreme Court has administrative, regulatory and oversight responsibilities over the State Courts System and aspects of the judicial branch. The workload impacts of these responsibilities are difficult to quantify, but their scope should be considered in an overall examination of workload.

The Supreme Court is directed by section 2 of Article V of the Florida constitution to adopt rules for practice and procedure in all state courts and to provide administrative supervision of all courts. The chief justice is designated further as the chief administrative officer of the judicial system, with responsibilities to assign judges and justices to temporary duty on other courts, and to assign senior retired judges. The Court is directed by section 9 of Article V to establish criteria and to annually certify the necessity for increasing or decreasing the number of county, circuit, and district court judges.

The constitution also places with the Court exclusive jurisdiction for the regulation of lawyers. In its capacity as regulator of the practice of law, the Court governs the admissions standards of attorneys, including oversight of the Board of Bar Examiners,[27] and has original jurisdiction for cases involving attorney misconduct and individuals alleged to have engaged in the unlicensed practice of law. The Court shares responsibility for the discipline of judges with the Judicial Qualifications Commission, and has ultimate responsibility to decide and impose sanctions for judicial misconduct, including reprimand, suspension, and removal from office.

The Court and the chief justice have constitutional and statutory responsibilities for the administration of the State Courts System and the judicial branch, including providing direction to the administrative office of the courts, the preparation and submission of a budget of the State Courts System, long-range and program planning, accountability mechanisms, and the regulation of professional services including court reporters, interpreters, hearing officers and masters. The Court provides liaison and guidance for judicial branch policy committees and liaison for

[27] While much of the administrative work of the Bar Examiners is handled by the Bar Examiners itself, the court has extensive duties relating to the Bar Examiners, such as approving the yearly budget and all the rules regulating the Bar Examiners.

committees of The Florida Bar.

Finally, the Court takes an active role in providing input, guidance, coordination, or oversight to a multitude of organizations and institutions. These include the conferences of the Florida appellate and trial court judiciary; specialized committees established by the Court to address specific issues or services;[28] national court conferences and meetings to represent the Florida judicial branch; The Florida Bar and the various bar committees including those addressing court rules and jury instructions; court stakeholder associations such as the prosecutors, public defenders, and clerks of court; the legislature for policy development and court funding; state and local governmental relations including the Governor's office and the state executive agencies and local government organizations who provide court related services; educational institutions for lawyers and the general student public; and communications and public relations with various community groups and the general public.

[28] For instance, the Court currently has committees working in the areas of: family courts, delinquency improvement, drug courts, jury innovations, Article V funding implementation, fairness, court performance and accountability, public records, pro bono representation, and others.

STRATEGIES EMPLOYED TO ADDRESS WORKLOAD

The Court has taken a number of steps in recent years to address its growing caseload. Essentially, there are three elements to the Court's strategies: deployment of personnel resources, the use of case management techniques that allow an efficient division of labor, and technological enhancements that support effective case management.

1. Legal Staff.

The Court created a central staff of two attorneys in 1996. Centrals staffs are common in appellate courts in both state and federal systems to assist courts in handling their workload more efficiently. Although central staffs are used in many different manners throughout the country, the Court has chosen to use its central staff to concentrate on certain types of cases where the development of staff expertise can best be applied. Currently central staff assists the Court on writs cases, bar discipline cases and rules cases. Additional attorneys have been added to central staff in increments: two were added in 1997 and two more in 1998, bringing the total to six. The Court has asked the Legislature for funds to expand the central staff by two additional attorneys in 2001.

Furthermore, in 1999 the Court added one additional attorney to each of the justices' personal staff. Although it is too early to measure the specific results of these additions, there is no question that this will assist the Court with its workload. Additional law clerks can assist a court in reducing the time on appeal because judges and justices can make decisions faster when clerks can fully prepare a file for a decision by the judge or justice. The additional clerk means more cases can be put in a posture to be decided by a court in a more timely manner.

2. Technology.

The Court has installed a state-of-the-art computerized case management system. This system provides advanced record-keeping, case management, and reporting capabilities that the Court did not have previously. This system has already improved the ability of the Court to manage its caseload and has only begun to provide the benefits it will in time produce. The advanced reporting capability of this system has generated interest from appellate courts across the country.

Now that the case management system is installed and operating, the Court is in the process of adding significant improvements to it. A separate module exclusively for death penalty cases has already been added, which provides a capability to monitor the status of all death cases. With this module the Court can ascertain activity in any death case, whether it is pending at the Supreme Court, in a circuit court, or in the federal courts. This technology performs a number of functions electronically that previously were done by Court staff by hand, thus improving the timeliness of communications and case processing.

The Court has instituted a system of quarterly reports from the circuits to track all post conviction death penalty proceedings pending in the circuit courts. This information currently has to be entered manually into the Court's case management system. The Court is currently developing an addition to CMS that will allow these reports to be submitted electronically from the circuit court to the Supreme Court and then incorporated directly into the case management system. The Court has asked for additional funding for the clerk's office in 2001 to continue to improve this process.

3. Case Management.

The Court is also developing a module of the case management system that will greatly improve its ability to identify cases which present similar issues. The new module will allow the court to identify these cases in a more efficient manner and ultimately to dispose of the cases more quickly. The Court has asked the Legislature to fund an additional position in the clerk's office to assist with this procedure.

To better facilitate the use of this module, the Court has asked the clerk to also meet with representatives of the attorney general's office and the appellate public defender offices from around the state. Since most similar-issue cases arise in criminal matters, these entities can greatly assist the Court in identifying these cases. The purpose of the meetings is to explore the development of a system through which the Attorney General and Public Defenders can assist the Court in identifying similar-issue cases. The first of these meetings will take place in November. The clerk has met with the clerks of the district courts of appeal for the same reason.

In recent years there have been a number of initiatives directed at improving the court system's handling of death cases. Court rules now require all judges hearing capital cases to attend a course taught by judges experienced in trying death cases. Lawyers who prepare capital cases must also meet minimum standards of competency. In January of next year the Court will be offering a special seminar to trial court law clerks who handle death penalty cases.

FINDINGS AND CONCLUSIONS

Clearly, the Florida Supreme Court has realized a consistent increase in case filings over the past ten years, from 1,918 in 1990 to 2,745 in 1999. As discussed in section C, the case categories which account for the vast majority of the growth are conflicts (direct and certified), original writs for habeas corpus and mandamus, and bar discipline proceedings. The pattern of filings for all other types of cases, with the exception of declines in cases involving matters of statutory invalidity and certified questions of great public importance, show no substantial variation since 1990.

Total filings remained relatively constant from 1990 to 1994, and showed a nominal increase in 1995. The real growth in filings began in 1996 and continued through 1999. The forecast presented in section B is for a total of 2,710 cases in 2000, slightly below the 2,745 filed in 1999. Indeed, the projections suggest additional, modest reductions in filings through 2002. In section C, several factors were identified as accounting for the growth in writs of habeas corpus and mandamus, direct and certified conflicts, and bar discipline matters. Like the total filings, the levels of filings in habeas and mandamus writs showed a dramatic increase in 1996 which continued through 1999. This correlates with passage of a number of significant crime control measures by the legislature. Conflict cases (both direct and certified) also showed higher filings levels in the last half of the decade.

As pointed out, the raw numbers of filings are somewhat misleading with regard to the actual workload demands on the court because of the large number of similar issue cases. The effects of the similar issue cases on productivity are reflected in some of the performance indicators for which statistical data has been presented herein. The timing of the court's decisions on similar issue cases can affect the annual disposition rates, pending inventory, and

clearance rates. This was clearly the case at the end of 1999 during which the Court issued a relatively low number of written and per curium opinions (216), and had a higher than usual pending case inventory and a consequent low clearance rate. However, what appeared to be a backlog has already been substantially impacted in 2000 as the result of resolution of several lead, single issue cases. Through October of 2000 the Court had released over 400 written and per curiam opinions, and projects to issue over 500 for the year.

By other statistical measures, the Court has been able to keep up with the pace of litigation. Both median and average number of days from filing to disposition for the aggregate caseload have declined over the past ten years. The median and average age of pending cases has remained relatively constant over the years. When the caveat relating to single issue cases is taken into account in evaluating clearance rates, since 1990 they have fallen into a relatively tight range of approximately 94% to 105%.

Even with death penalty appeals which, for the reasons cited in the analysis, take much longer than other cases in the Court's jurisdiction, the Court has only seven cases involving four individuals that have been pending longer than four years. Further, as the analysis states, it often requires up to two years from filing before the record is complete and all briefs are filed, thereby putting the case in a posture where the Court can set it for argument.

The ability of the Court to keep up with the increased workload has been enhanced since 1996, when the filings rates in several of the growth categories accelerated. This was accomplished through the addition of new resources, especially the creation of the central research staff and the addition of a third law clerk to each justice's personal staff. These changes occurred between 1996 and 1999. The case management system supporting the Court was substantially upgraded in 1999. These resource enhancements, along with changes in internal operating procedures such as the handling of writs pursuant to the Court's ruling in *Harvard*, have effectively enabled the Court to avoid a workload crisis. The Court's request for additional personnel for the central staff and clerk's office, included in the 2001 budget request, should, if funded, permit the Court to maintain effective control of its workload, given the caseload forecasts presented earlier.

APPENDIX A

REVIEW OF OTHER STATES

REVIEW OF OTHER STATES

The structure, caseload, and operations of the Supreme Court of Florida can be considered in contrast to those aspects of the courts of last resort of other states. While contrasts can be readily drawn, conclusions based on direct comparisons are unreliable without full consideration of contextual factors. Variations among states in jurisdiction, operating policies and procedures, overall state system structure, and definitions of date regarding caseload, make direct comparison extremely problematic.

The following review examines aspects of state appellate systems and courts of last resort in the ten largest in terms of population:[29]

State	1988 Population
California (CA)	32,666,000
Texas (TX)	19,750,000
New York (NY)	18,176,000
Florida (FL)	**14,916,000**
Illinois (IL)	12,045,000
Pennsylvania (PA)	12,002,000
Ohio (OH)	11,209,000
Michigan (MI)	9,818,000
New Jersey (NJ)	8,115,000
Georgia (GA)	7,642,000

[29] Sources: *Examining the Work of State Courts, 1998, State Court Caseload Statistics, 1998, Appellate Court Procedures, 1998,* and *Appellate Court Performance Standards and Measures, 1999,* National Center for State Courts; *State Court Organization, 1998,* and *Capital Punishment 1998,* Bureau of Justice Statistics; and a telephone survey of states conducted by Clerk of the Supreme Court of Florida.

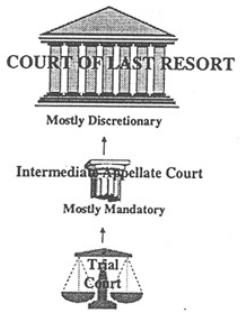
1. Structure and Organization of Appellate Systems and Courts of Last Resort.

a. *Appellate System Structures.*

There are three distinct appellate court structures for the ten largest states. They are:

Type I: One court of last resort and one type of intermediate appellate court. This model is considered the prototypical structure for the appellate system of a large jurisdiction. Seven of the ten largest states, including Florida, have this structure, as do twenty-five states total.

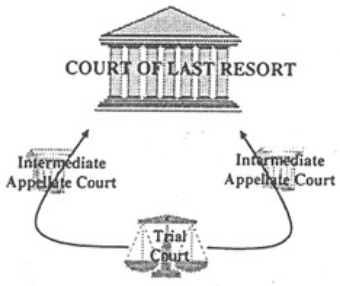
CA, **FL,** GA, IL, MI, NJ, OH



AK, AR, AZ, CA, CO, CT, **FL,** GA, IL, KS, KY, MA, MD, MI, MN, MO, NC, NE, NJ, NM, OH, OR, UT, WA, WI

Type II: One court of last resort and two types of intermediate appellate courts. Two of the ten largest states have this structure, five states total.

NY, PA



AL, IN, NY, PA, TN

Type III: Two courts of last resort with divided subject matter jurisdiction, and one type of intermediate appellate.

TX

TX, OK

b. *State size and Appellate Structure.*

In terms of the distribution of jurisdiction, there are four general appellate court structures:

Smallest population: one appellate court with mandatory jurisdiction. (10 states: DC, DE, ME, MT, ND, NV, RI, SD, VT, WY)

Small population: mandatory and discretionary jurisdiction in court of last resort and with some cases transferred to intermediate court. (7 states: HI, IA, ID, MS, NH, SC, WV)

Medium-large population: court of last resort and one or more intermediate appellate courts with mandatory and discretionary jurisdiction. (32 states: AK, AL, AR, AZ, CA, CO, CT, **FL,** GA, IL, IN, KS, KY, LA, MA, MD, MI, MN, MO, NC, NE, NJ, NM, NY, OH, OR, PA, TN, UT, VA, WA, WI)

One large and one medium state: two courts of last resort and intermediate appellate courts. (2 states) OK, TX

c. *Number of Justices.*

Nine of the ten largest states, including Florida, have seven justices. (CA, **FL,** GA, IL, MI, NJ, NY, OH, PA) One state has nine justices. This state has two courts of last resort; both courts have nine justices.

Of all states, seventeen have five justices. The majority of these are small states with populations under two million. Twenty-seven states have seven justices. The majority of these have a medium to large population. One state (LA) has eight justices. The remaining seven states have nine justices. They include:

- Three states with small populations and limited intermediate appellate court workload (IA, MS, OK).
- Two states with medium populations and a single court of last resort and intermediate appellate court (AL, WA).
- One state with a large population with two courts of last resort and one intermediate appellate court (TX).

d. *Term of the Chief Justice.*

The term of the chief justice in the ten states varies. The shortest term is two years, the longest is the duration of term of the justice. Florida has the shortest term of chief justice.

Term							
	2	3	4	6	12	14	Duration of Term
State	**FL**	MI	GA IL	OH TX	CA	NY	NJ, PA
Renewal	-	-	No No	Yes Yes	Yes	Yes	

2. Jurisdiction and Functions of Courts of Last Resort.

The jurisdiction of courts of last resort, and the roles of courts in the functional administration of the judicial system, vary widely among the ten largest states. These components of courts' responsibilities are summarized in the tables below.[30] In general, the Supreme Court of Florida has broader jurisdiction and administrative responsibilities than its counterparts.

General Jurisdiction

Category	Supreme Courts with Jurisdiction	Supreme Courts w/out Jurisdiction
Capital Cases	CA, **FL,** GA, IL, NJ, NY, OH, PA, TX	MI
Extraordinary Writs	CA, **FL,** GA, IL, MI, OH, PA, TX	NJ, NY
Advisory Opinions	CA, **FL,** GA, MI, NY, OH, TX	IL, NJ, PA
Interlocutory Decisions	**FL,** GA, PA, TX	CA, IL, MI, NJ, NY, OH
Certified Questions	**FL,** GA, MI, NJ, TX	CA, IL, NY, OH, PA

Direct Review of Administrative Agency Cases

Public Service	CA, **FL,** OH, PA	GA, IL, MI, NJ, NY, TX
Workers Comp.	OH, PA	CA, **FL,** GA, IL, MI, NJ, NY, TX
Tax Agency	OH, PA	CA, **FL**, GA, IL, MI, NJ, NY, TX
Other[†]	GA, PA	CA, **FL,** IL, MI, NJ, NY, OH, TX

[†] Includes administrative review in cases of medical malpractice, unemployment insurance, public welfare, insurance, from elections agency.

[30] The jurisdictional and functional responsibilities of courts are complex and nuanced. The extent and workload implications of these responsibilities, even where similarly categorized, can differ significantly.

Functional Responsibilities

Category	Supreme Courts w/ Function	Supreme Courts w/out Function
Rule-making	-**FL,** GA, IL, MI, NJ, OH, TX	-CA (Supreme Court only), NY (appellate courts only)
Bar Oversight: - Discipline[†]	-CA, **FL,** GA, IL, MI, NJ, NY, OH, PA, TX	
- Admissions	-CA, **FL,** GA, IL, NJ, OH ,PA, TX	-MI, NY
Judicial Oversight: - Discipline[††]	-CA, **FL,** GA, IL, MI, NJ, NY, OH, PA, TX	
- Senior Judges	-**FL,** IL, MI, NJ, NY, TX	-CA, GA, OH
- Quasi-judicial Officers	-CA, GA	-**FL**, IL, MI, NJ, NY, OH, PA, TX
Professional Oversight: - Mediators	-**FL**	-CA, GA, IL, NJ, NY, OH, PA, TX
- Court Reporters	-NJ	-CA, **FL,** GA, IL, MI, NY, OH, PA, TX
- Court Interpreters	-NJ	-CA, **FL,** GA, IL, MI, NY, OH, PA, TX

[†] In California, Illinois, Michigan, New Jersey, New York and Texas, bar discipline cases are decided by a lower court, a bar committee, or an independent body, with discretionary review in the court of last resort.

[††] In California, Illinois, Michigan, New Jersey and New York, judicial discipline is heard in an independent body with discretionary review in the court of last resort.

3. Caseloads in Appellate Court Systems and Courts of Last Resort.

a. *Total Filings.*

Variation in the numbers of appellate cases in states is likely a function, primarily, the particular laws of a state and the relative permissiveness of its constitution and laws in terms of providing citizens with an opportunity for review by an appellate court. In Florida, for instance, litigants can have review of worker's compensation cases in a district court of appeal; in other states this review is conducted administratively. At any rate, in terms of workload, the absolute and proportional numbers of cases that come into the appellate courts is relevant. The following shows the total numbers of appellate cases in the ten largest states and the proportional amount, expressed as cases per 100,000 population. As is evident, Florida yields the greatest number of appellate filings in proportion to its population.

Total Filings in Courts of Last Resort and Intermediate Courts of Appeal, and Per 100,000 Population (1998 Filings), with Percent Mandatory and Discretionary

	Population Rank	Population	Filings	Mandatory	Discretionary	Filings per 100,000
CA	1	32,666,000	33,707	47%	53%	103
TX	2	19,750,000	23,302	84%	16%	118
NY	3	18,176,000	18,698	76%	24%	103
FL	**4**	**14,916,000**	**24,158**	**73%**	**27%**	**162**
IL	5	12,045,000	13,048	82%	18%	108
PA	6	12,002,000	17,263	82%	18%	144
OH	7	11,209,000	14,441	87%	13%	129
MI	8	9,818,000	10,408	43%	57%	106
NJ	9	8,115,000	11,486	72%	28%	142
GA	10	7,642,000	5,272	68%	32%	69

b. *Distribution of Cases.*

Large court systems develop intermediate appellate courts in order to provide timely and effective review of a high volume of cases. The appellate review of most trial court matters, a requirement of due process, occurs in an intermediate appellate court rather than the court of last resort. The creation of an intermediate level, however, does not completely eliminate the need for resolution of some matters at the highest level of the state judicial system, and furthermore creates a new set of issues that need to be resolved: issues where there is a conflict of decisions between or among the intermediate courts. The intention is to create a horizontal differentiation whereby intermediate appellate courts perform the primary error-correction function, and the role of a court of last resort becomes focused on unifying and clarifying the law and on providing direct review of those cases which are designated by constitution or law as requiring high court scrutiny.

Given this general role differentiation, appellate systems can be viewed in terms of the distribution of cases to the intermediate and last resort courts. The following table presents the distribution of cases in the ten largest states.

Distribution of Cases to Courts of Last Resort and Intermediate Appellate Courts (1998)

State	Cases	Court(s) of Last Resort		Intermediate Courts	
CA	33,707	8,660	25.7%	25,047	74.3%
FL	**24,158**	**2,502**	**10.3%**	**21,656**	**89.7%**
GA	5,272	1,907	36.1%	3,365	63.9%
IL	13,048	3,567	27.3%	9,481	72.7%
MI	10,408	2,436	23.4%	7,972	76.6%
NJ	11,486	3,698	32.1%	7,788	67.9%
NY	18,698	4,816	25.8%	13,882	74.2%
OH	14,441	2,728	18.9%	11,713	81.1%
PA	11,660	3,660	31.4%	8,000	68.4%
TX	23,302	11,736	50.4%	11,566	49.6%

c. *Trends in Caseloads.*

The following table presents the average caseload for each of the ten states for the periods 1989-1992 and 1993-1995, and the actual caseloads for 1996, 1997, and 1998.

Courts of Last Resort Case Filings per Year (1989-1998)

State	Average 1989-1992	Average 1993-1995	1996	1997	1998
CA	5,041	6,321	6,838	7,601	8,660
FL	**1,876**	**2,029**	**2,527**	**2,494**	**2,502**
GA	1,777	1,933	1,932	2,119	1,907
IL	2,024	2,966	3,685	3,605	4,825
MI	2,493	3,037	2,770	2,847	2,436
NJ	2,549	3,394	3,265	3,886	4,148
NY	4,698	5,475	5,033	5,079	4,816
OH	2,500	2,695	2,888	2,730	2,728
PA	3,357	3,133	3,317	3,319	3,660
TX	1,273	1,419	1,340	1,378	1,843
TX (c)	4,232	5,072	6,810	7,964	9,893

d. Caseflow and filings per judge.

Caseload and Cases per Judge, Courts of Last Resort (1998 Filings)

State	Cases Filed	Cases Disposed	Filings Per Judge
CA†	8,660	8,235	1,237
FL	**2,502**	**2,452**	**357**
GA††	1,907	2,353	262
IL †	3,567	3,360	510
MI†	2,436	2,987	348
NJ	3,698	3,890	528
NY †††	4,816	4,730	688
OH	2,728	2,708	390
PA	3,660	3,600	523
TX††††	1,843	1,476	205
TX(c)†††††	9,893	8,354	1,099

† California, Illinois and Michigan have extensive discretionary review jurisdiction, and grant review in only 3-5% of discretionary petitions.

†† Georgia has mandatory jurisdiction for appeals of all murder cases, not only cases in which the death sentence has been imposed.

††† New York disposes of approximately 3,000 cases per year after review by a single judge.

†††† Texas includes motions for extensions of time as new filings.

††††† The Texas Court of Criminal Appeals has extensive discretionary review and disposes of about 4,000 cases after review by a single judge.

e. *Opinion Production.* A principle role of a court of last resort is to clarify and unify the law within the court's jurisdiction. The primary vehicle used by courts to provide guidance on the law is the written opinion. The following table presents the total number of opinions produced by each of the eleven courts in the ten states. Majority, concurring and dissenting opinions are included, as are per curiam opinions as indicated.

Opinions Written by Court of Last Resorts, Opinions per Judge - 1998

State	Opinions	Judges	Opinions/Judge
CA†	97	7	14
FL†	**342**	**7**	**49**
GA†	394	7	56
IL†	158	7	23
MI†	121	7	17
NJ††	114	7	16
NY††	110	7	16
OH†††	378	7	54
PA††	252	7	36
TX††	222	9	25
TX†† (c)	652	9	72

† Includes per curiam opinions.
†† Does not include per curiam opinions.
††† Includes per curiam opinions and decisions.

4. Capital Cases.

Death penalty appellate litigation is among the most complex and difficult areas of law and represents a substantial proportion of the workload of the Florida Supreme Court. While a comparative study of capital punishment in the states is beyond the scope of this report, some basic information is provided for review.

a. *Volume and Status of Death Cases.*

Since the reinstatement of the death penalty following the United States Supreme Court's 1972 decision in Furman v. Georgia, 408 U.S. 238 (1972), Florida has sentenced more individuals to death than any other state, as indicated by the table below.

Status of Capital Cases (1998)

	Date Death Penalty Re-enacted	Number Sentenced to Death	Executed	Died	Sentence Commuted, Conviction Overturned, Other	Under Sentence 12/31/98
CA	1978	679	5	30	132	512
FL	**12/08/72**	**802**	**43**	**22**	**365**	**372**
GA	3/28/73	281	23	8	141	109
IL	7/01/74	264	11	9	87	157
MI†	-	-	-	-	-	-
NJ	8/6/82	47	0	2	31	14
NY	9/1/95	4	0	0	3	1
OH†	1/01/74	341	0	8	142	191
PA	3/26/74	303	2	8	69	224
TX	1/01/74	780	164	18	147	451

† Michigan does not have a death penalty statute.

Prisoners Under Death Sentence (12/31/98)

	Year of Sentence							
State	1974-83	1984-91	1992-93	1994-95	1996	1997	1998	Total
CA	72	200	73	59	40	37	31	512
FL	**54**	**154**	**46**	**54**	**21**	**18**	**25**	**372**
GA	19	39	11	14	6	12	11	109
IL	27	61	21	20	14	7	7	157
MI †	-	-	-	-	-	-	-	-
NJ	-	3	1	4	3	2	1	14
NY	-	-	-	-	-	-	1	1
OH	10	89	22	27	17	10	16	191
PA	1	99	30	43	14	11	12	224
TX	39	154	46	54	21	18	25	451

† Michigan does not have a death penalty statute.

b. *Provisions for Review of Death Penalty Cases.*

- 38 states and the federal system have death penalty statutes.
- All 38 states provide for review of death sentence regardless of the defendant's wishes.
- 34 states authorize automatic review of both the conviction and sentence. ID, IN, OK and TN require review of sentence only. In KY and IN a defendant can waive the review of conviction.
- Until 1995 death penalty cases in Ohio were first reviewed by an intermediate court of appeal.

c. *Minimum Age for Death Penalty.*

- 17 - FL, GA, TX
- 18 - CA, IL, NJ, NY, OH
- PA unknown, MI does not have death penalty

d. *Sentencing Provisions.*

- A unanimous jury recommendation is required in CA, IL, NJ, NY, PA, and TX.
- In Florida a unanimous jury recommendation is not required; a judge can override a jury recommendation of life and impose a sentence of death.
- In Georgia the judge may not impose the death sentence unless the verdict contains at least one statutory aggravating circumstance and a jury recommendation that such a sentence be imposed.
- In Ohio a defendant may elect to be tried and sentenced by a judge or a three-judge panel.

5. Administrative Functions of Courts of Last Resort.

Courts of last resort generally have a range of responsibilities related to the administration of justice within a state. These responsibilities vary from state to state. A comprehensive review of the extent of these responsibilities has not been conducted. An enumeration of the potential functions performed by a court of last resort is provided:

Adopts rules changes for court system practice and procedure
Adopts rules of conduct for judiciary
Governs admission standards for attorneys
Oversees judicial discipline
Appoints retired judges
Oversees educational requirements for judges
Monitors compliance with time standards
Oversees management of court of last resort
Oversees management of administrative office of court
Oversees preparation and submission of state court budget
Oversees development of court system plans
Oversees development of court system personnel policies
Coordinates policy committees of the court of last resort
Provides liaison to the bar and other court related organizations
Acts as liaison to executive and legislative branch
Provides public information services
Regulates court reporters, court interpreters, and mediators
Regulate hearing officers and masters

6. Staff of Courts of Last Resort.

Appellate courts use staff attorneys, or law clerks, to screen cases, perform analysis, conduct legal research, draft memoranda and opinions, and otherwise assist justices and judges in the performance of their duties. The ability of a court to meet its workload is a function of the availability of such legal staff support. The following table presents the legal staff resources of the eleven courts in the ten largest states:

Legal Support Staff (1998)

State	Clerks for Chief Justice	Elbow Clerks/ Justice	Central Staff	Total Staff
CA[1]	8	5	29	67
FL[2]	**3**	**2**	**6**	**21**
GA[3]	3	2	5	20
IL	3	3	19	40
MI	3	3	17	38
NJ[4]	3	2-4	4	-
NY	3	2	15	30
OH[5]	3	3	11	32
PA	Varies	Varies	NA	-
TX	3	3	0	27
TX[6] (c)	2	2	15	33

[1] Central staff now includes 34 attorneys.
[2] Elbow clerks/justice expanded to 3 in 1999; central staff expanded to 7; current total staff is 29 attorneys.
[3] Central staff now includes 8 attorneys.
[4] Two attorneys have been added to the Clerk's office since 1988. One justice may have a fourth law clerk to work as one of two law clerks assigned to death penalty cases.
[5] Added 1 Central Staff attorney since 1998.
[6] Added 5 Central Staff attorneys since 1998.

7. Caseflow Management Practices.

Modern courts employ a range of techniques to manage the flow of cases through the judicial process in an efficient but effective manner. The following table summarizes the use of these practices in the ten states.

Expedition:

Practice	Use	Do Not Use
Expedited Briefing Process	FL, GA, IL, NY, OH, PA, TX	GA, MI, NJ
Advance Qurie (Fast Track)	FL, IL, NJ, NY, PA, TX	CA, GA, MI, OH
Panel Denial of Discretionary Review (number of judges on panel in parenthesis)	FL (5) NY (1) TX(c) (1)	CA, GA, IL, MI, NJ, OH, PA, TX

Technology for Case Management:

Service	In Use	Not In Use
Automated Docket Capabilities	FL, NY, TX	CA, GA, IL, MI, NJ, OH, PA, TX (c)
Automated Calendar Capabilities	CA, FL ,GA, NJ, NY, TX	IL, MI, OH, PA, TX(c)
Electronic Opinions	CA, FL, GA, IL, MI, NJ, NY, PA, TX	OH, TX(c)
Electronic Filing of Documents	TX	
Fax Filing of Documents	FL, GA, IL, MI, NJ, OH, PA	CA, NY, TX
Video Tapes in Lieu of Trial Court Record		CA, FL, GA, IL, MI, NJ, NY, OH, PA, TX

Technology Support for Appellate Research:

Service	In Use	Not In Use
Computer Assisted Legal Research		CA, FL, GA, IL, MI, NJ, NY, OH, PA, TX
CD-ROM Libraries	CA, FL, GA, IL, MI, NY, OH, PA, TX	NJ
Automated Issue Tracking	IL, MI, NY, OH, PA	CA, FL, IL, NJ, TX

Technology for Oral Argument:

Service	In Use	Not In Use
Video Conferencing	GA	CA, FL, IL, MI, NJ, NY, OH, PA, TX
Telephone Conferencing	GA	CA, FL, IL, MI, NJ, NY, OH, PA, TX
Taped Oral Argument Session	FL, IL, MI, NJ, NY, OH, TX	CA, GA, PA

APPENDIX B

INTERNAL OPERATING PROCEDURES

MANUAL OF INTERNAL OPERATING PROCEDURES

INTRODUCTION

This manual of internal operating procedures is designed to: (1) assist practitioners; (2) orient new employees as to internal procedures; (3) codify established practices and traditions; (4) protect and maintain the collegial decision-making process; and (5) make the judicial process more comprehensible to the general public. This manual neither supplants the Florida Rules of Appellate Procedure nor creates any substantive or procedural rights. The Court continually reviews and improves internal procedures, and the manual is revised from time to time as new procedures are officially adopted. Persons interested in receiving revisions should notify the clerk's office.

Section I. Court Structure.

A. Court Composition. The Supreme Court of Florida is composed of seven justices who serve terms of six years. Each justice, other than the chief justice, is authorized to employ at state expense three staff attorneys and one judicial assistant. The staff of the chief justice includes an executive assistant; two staff attorneys; four judicial assistants; an inspector general; a reporter of decisions; a director of public information; and a central staff of attorneys, one of whom serves as the director of central staff. One of the chief justice's judicial assistants provides support for the Court's central staff of attorneys and handles prisoner correspondence. Chambers for each justice, including the chief justice, are located on the second floor of the Supreme Court Building. Members of the public, including attorneys admitted to practice in Florida, are not permitted on the second floor unless they have obtained permission from one of the justices.

B. The Chief Justice. The chief justice is the administrative officer of the Court, responsible for the dispatch of the Court's business, and is also the chief administrative officer of the Florida judicial system. The chief justice has the power to make temporary assignments of senior and active justices and judges to duty on any court for which they are qualified. Traditionally, the chief justice is chosen by a majority vote of the Court for a two-year term beginning in July of every even-numbered year. Whenever the chief justice is absent, the most senior justice present becomes acting chief justice and may exercise any and all powers of that office.

C. The Administrative Justice. The administrative justice is appointed by the chief justice and has the authority to act on routine procedural motions and other case-related matters which do not require action by a panel of justices. The administrative justice also has the authority to direct that certain clearly defined types of writ petitions be transferred to a more appropriate court. The administrative justice advises the clerk's office and other Court staff on procedural issues which may arise in cases filed before the Court.

D. The Clerk. The clerk of the Supreme Court serves at the Court's pleasure and has administrative and clerical responsibilities. The clerk is authorized to appoint a chief deputy clerk, who may discharge the duties of the clerk during the clerk's absence, and to appoint such other clerical assistants as the Court may deem necessary. The clerk's office receives all documents and other papers filed with the Court. Office hours are 8:00 a.m. to 5:00 p.m., Monday through Friday. Questions by non-Court personnel regarding the Court and its work should be directed to the clerk's office rather than to the office of any justice or the central staff attorneys.

All Court records are open to public inspection except the work product of the justices and their staffs, vote and remark sheets placed in individual case files, justice assignment records maintained by the clerk's office, portions of case records sealed by a lower court, and case files which are confidential under the rules of the Court. The Court presently uses a computerized record-keeping system.

E. The Marshal. The marshal of the Supreme Court serves at the Court's pleasure, is empowered to execute process of the Court throughout the state, and is the custodian of the Supreme Court Building, its furnishings, and grounds. The marshal also is responsible for Court security as well as the Court's operational budget, and the Court's purchasing and contracting.

F. The Librarian. The librarian of the Supreme Court serves at the Court's pleasure. The Court's library is in the custody of the librarian, who has an assistant librarian, a computer services librarian who serves as webmaster of the Court's internet site, an internet specialist who serves as a deputy webmaster, a technical services/documents librarian, and an administrative assistant. The library uses a computerized cataloging system which is accessible to the public via the internet. The library is for the use of Court personnel at any time. Library hours for the public are from 8:00 a.m. to 5:00 p.m., Monday through Friday.

G. State Courts Administrator. The Office of the State Courts Administrator has been created by the Court to serve the chief justice in carrying out his or her responsibilities as chief administrative officer of the Florida judiciary. The state courts administrator serves at the pleasure of the Court and is authorized to employ such assistants and clerical support personnel as are necessary, with the approval of the Court.

H. Inspector General. The inspector general serves at the pleasure of the Court and reports directly to the chief justice. The inspector general is assigned specific duties and responsibilities for audit and investigation functions by section 20.055, Florida Statutes. The scope of these responsibilities encompasses the entire state courts system and includes advising in the development of performance measures, standards, and procedures for the evaluation of programs; reviewing actions taken to improve program performance and meet program standards; performing audits, investigations, and management reviews relating to programs and operations; recommending corrective actions; reviewing the progress made in implementing corrective action; and related duties.

I. Reporter of Decisions. The reporter of decisions serves at the pleasure of the Court and reports directly to the chief justice. The reporter of decisions reviews opinions and disposition orders prior to their release for technical and formal correctness, makes recommendations as to needed corrections, and coordinates the process of preparing opinions and disposition orders for release. The reporter of decisions works closely with the justices, their staffs, and the clerk's office in the process of releasing opinions and disposition orders to legal publishers, the press, and the public. The reporter of decisions assists the Court and clerk's office in the case management process and may also be assigned by the chief justice to assist the Court on various special projects.

J. Director of Public Information. The director of public information serves at the pleasure of the Court and reports directly to the chief justice. The director of public information serves as public information officer and public spokesperson for the Court, coordinates Court communications with news media and the public at large, serves as the chief justice's communications officer, assists all the justices in their public communications and public activities as required, serves as a deputy webmaster, coordinates the broadcast of Court arguments, and coordinates public events as required by the chief justice. Press inquiries about the Court and its work should be directed to the director of public information.

K. Director of Central Staff. The director of central staff serves at the pleasure of the Court and reports directly to the chief justice in coordinating the responsibilities and assignments of the Court's central staff attorneys. The director of central staff is authorized to hire and supervise attorneys whose positions on central staff have been authorized by the chief justice. The central staff director also is responsible for coordinating the rule-making process and has other administrative duties as assigned by the chief justice.

L. Central Staff. The Court's central staff attorneys serve at the pleasure of the Court and report to the chief justice through the central staff director. The central staff attorneys analyze issues raised in original proceedings, see section II(C); at the discretion of the assigned justice, assist with attorney discipline, bar admission, standard jury instruction, and rule

amendment cases; and perform other duties as determined by the chief justice or the Court as a whole.

Section II. Internal Procedures For Handling Cases.

A. Discretionary Review.

1. Discretionary Review of District Court of Appeal Decisions (Except Those Certified by District Courts of Appeal).

(a) When notice of a party's seeking discretionary review is filed, the clerk's office determines whether a district court of appeal has written an opinion in the case. If there is no opinion, the case is automatically dismissed. If there is a written opinion, the clerk's office dockets the case. When all jurisdictional briefs have been filed, the case is assigned to a panel of five justices according to a rotation formula, and the file goes to the office of the lead justice on the panel. The assigned justice's office prepares a memorandum summarizing the basis for jurisdiction asserted in the jurisdictional briefs and analyzing whether a basis for exercising discretionary jurisdiction exists. Copies of the briefs and memorandum then go to the offices of each justice on the panel to vote on whether review should be granted and, if so, whether oral argument should be heard. (Each chief justice determines the number of discretionary review petitions that he or she will be assigned.) Five justices constitute a quorum, and the concurrence of four justices is required to grant or deny review. If fewer than four justices on the panel agree on a disposition, the case circulates to the two members of the Court not originally assigned to the panel. Several possible actions result from the circulation of petitions for discretionary review.

(1) If at least four justices vote to deny discretionary review, the parties are notified, the case is closed, and the file is placed in storage.

(2) If at least four justices vote to grant review but four do not agree on the need for oral argument, the chief justice may decide whether to set the case for argument or may place the question of oral argument on the Court's next conference agenda.

(3) If at least four justices vote to grant review, the clerk's office so notifies the parties.

(4) If at least four justices do not agree to either grant or deny discretionary review, the petition is sent to the other two justices.

(b) When oral argument is granted, argument is scheduled by the clerk's office for the earliest convenient date. If oral argument is granted, the procedure outlined in section III(B) of this manual is followed. For a discussion of the procedure followed by the Court after oral argument, see section IV of this manual.

(c) If the Court dispenses with oral argument, or if no argument is requested, the case file stays in the clerk's office until all briefs on the merits have been received. The case file is then sent to the assigned justice's office. The assignment is made on a rotation basis. The lead justice's office summarizes and analyzes the issues raised in the briefs in a memorandum which is circulated, together with copies of the briefs, to the justices. The case is placed on the next conference for consideration by the Court. After conference, the assigned justice drafts a proposed opinion which is then circulated to the other members of the Court, who vote on the merits and write any dissenting or concurring opinions or remarks deemed appropriate.

2. Discretionary Review of District Court of Appeal Decisions Certified as Being in Conflict or of Great Public Importance. Petitions for discretionary review of cases coming to the Court on certificate of conflict or of great public importance do not require jurisdictional briefs. When the briefs on the merits and the record have been received, the case is promptly reviewed

by a panel of five justices to determine whether the Court should exercise its discretion to hear the case and whether oral argument should be heard. If review is denied, the case is closed and the file is placed in storage. If review is granted but oral argument is deemed unnecessary, the clerk's office assigns a lead justice. The case then proceeds in the same manner as other petitions for discretionary review which the Court has granted without argument. (See section II(A)(1)(c) of this manual.) If oral argument is granted, the case is set for oral argument on the earliest convenient date. If oral argument is granted, the case proceeds as described in section III(B) of this manual.

3. Discretionary Review of Trial Court Orders and Judgments Certified by the District Courts of Appeal. Trial court orders and judgments certified by the district courts of appeal in which an appeal is pending as requiring immediate resolution by the Supreme Court do not require jurisdictional briefs. When the certificate of the district court has been received, the Court decides, as expeditiously as possible, whether to accept jurisdiction, usually during the next Court conference. If review is denied, any briefs, exhibits, or other documents filed in the Court are transferred back to the district court for disposition in that forum. If review is granted, the record is brought up from the district court within ten days, and the case is processed in the same manner as a petition for review of a district court decision which the Court has granted.

4. Appeals Filed in Combination With Petition for Discretionary Review. Whenever both a notice of appeal and a motion for discretionary review are filed as to the same decision of a district court of appeal, the two cases are automatically consolidated by the clerk. The case is then treated in the same fashion as an ordinary discretionary review petition and the Court decides whether it has any basis for jurisdiction.

B. Mandatory Review.

1. Statutory or Constitutional Invalidity. Appeals involving decisions of the district courts of appeal holding invalid a state statute or a provision of the Florida Constitution are initially directed to the chief justice to determine if oral argument should be granted. If oral

argument is granted, the case proceeds as described in section III(B) of this manual. If oral argument is denied, the case is sent to an assigned justice and the case proceeds in the same manner as a petition for discretionary review which is granted without argument. (See section II(A)(1)(c) of this manual.) If a justice deems it important to hear argument on a case previously assigned without argument, the chief justice will customarily honor the request. If a motion to dismiss for lack of jurisdiction is filed before the case is assigned to a justice, the file is sent to central staff for a memorandum analyzing the Court's jurisdiction. Copies of the memorandum, together with copies of the briefs and motion to dismiss, are then circulated to a panel which is assigned in the same manner as panels in discretionary review cases. If the motion to dismiss is denied, the case goes to the chief justice for a determination of oral argument. If the motion to dismiss is granted, the case is dismissed.

2. Bond Validation Cases. Appeals of final judgments entered in proceedings for the validation of bonds or certificates of indebtedness are directed to the chief justice, once the briefs are filed, to determine whether oral argument is appropriate. If oral argument is denied the case proceeds in the same manner as a petition for discretionary review which is granted without oral argument. (See section II(A)(1)(c) of this manual.) If oral argument is granted, the case proceeds as described in section III(B) of this manual.

3. Death Penalty Cases. Initial appeals involving the imposition of the death penalty, and appeals from the denial of postconviction relief, whether or not accompanied by a request for oral argument, are automatically placed on the oral argument calendar at the earliest convenient date, after the briefs and record are filed. Initial appeals are assigned on a rotating basis. Other proceedings filed by a death-row inmate also are assigned on a rotating basis, unless the inmate's initial appeal was handled by a justice who is still on the Court, in which case that justice is assigned the case. Original proceedings filed by death-row inmates are sent to the assigned justice and are scheduled for argument only if a justice so requests. Cases scheduled for argument generally proceed as described in section III(B).

4. Public Service Commission. Cases involving Public Service Commission action relating to rates or service of utilities providing electric, gas, or telephone service are initially examined by the chief justice, after the briefs and record are filed, to determine whether any such case should be placed on the oral argument calendar. If oral argument is denied, the case is assigned to a lead justice. The case then proceeds in the same manner as petitions for discretionary review which the Court has granted without argument. (See section II(A)(1)(c) of this manual.) If oral argument is granted, the case file is returned to the clerk's office and the procedure outlined in section III(B) of this manual is followed.

C. Original Proceedings.

1. General. Petitions for writs of mandamus, prohibition, quo warranto, habeas corpus, and initial pleadings in other original proceedings are automatically docketed by the clerk's office, and in most cases are sent to central staff for a memorandum analyzing the issues raised therein. Petitions that are appropriate for expedited handling are sent directly to a lead justice. Oral argument is set only if a justice so requests, regardless of whether a party has requested it.

2. Writ Petitions. Pursuant to a rotation formula, each petition is assigned to a lead justice. A single justice may direct entry of an order to show cause that will not stay the proceedings, request a response, or transfer the case to another court. If the assigned justice votes to dismiss or deny the petition, directs entry of an order to show cause that will stay the proceedings, or requests that the petition be assigned to a panel, the clerk's office assigns a panel of five justices. If four of the justices do not agree to a disposition, the petition is circulated to the other two justices.

3. Filed by Death-Row Inmates. Original proceedings filed by death-row inmates are handled as outlined in section II(B)(3) of the manual.

4. Automatic Transfer. Certain clearly defined types of writ petitions that raise substantial issues of fact or present individualized issues that do not require immediate resolution by the Supreme Court or are not the type of case in which an opinion from the Supreme Court would provide important guiding principles for other courts of this State are automatically transferred to a more appropriate court. See Harvard v. Singletary, 733 So. 2d 1020 (Fla. 1999). Petitions appropriate for automatic transfer are identified by the clerk of court with the assistance of central staff and reviewed by the administrative justice who directs their transfer.

5. Automatic Dismissal. Extraordinary writ petitions seeking review of a district court decision issued without opinion or citation are automatically dismissed by the clerk's office for lack of jurisdiction. See Grate v. State, 24 Fla. L. Weekly S520 (Fla. Oct. 28, 1999); **ST. PAUL TITLE INS. CORP. V. DAVIS**, 392 So. 2d 1304 (Fla. 1980).

D. Regulation of the Legal Profession.

1. Admission to The Florida Bar. Petitions seeking review of action by the Florida Board of Bar Examiners are docketed by the clerk's office. Upon filing of a response from the Board and a reply thereto, the case is referred to the liaison justice to the Florida Board of Bar Examiners. After the liaison justice votes, the case file circulates to the entire Court.

2. Disciplinary Proceedings. Petitions for review of action recommended by a referee or the board of governors of The Florida Bar are treated in the same manner as petitions for discretionary review granted without oral argument. (See section II(A)(1)(c) of this manual.) If the lead justice determines that oral argument would assist the Court in deciding the issues in the case, the file is returned to the clerk's office and the procedure outlined in section III(B) of this manual is followed. If the action recommended by the referee is disbarment, the case is sent to the chief justice to determine oral argument prior to assignment to a lead justice. Uncontested proceedings are approved administratively by clerk's order.

E. Regulation of the Judiciary. Upon filing, recommendations by the Judicial Qualifications Commission are examined promptly for procedural regularity. If found to be in compliance with the constitution and the commission's rules, the Court may issue an order to the affected justice or judge to show cause why the recommended action should not be taken. Once a response and reply thereto are filed, or if none is requested, the case is treated in the same manner as Public Service Commission cases.

F. Rulemaking.

1. General. At the instance of any justice, the Court may adopt or amend rules on its own motion. When the Court so acts, it generally will allow interested persons to file comments by a date certain. A specific effective date is usually designated by the Court, although whenever possible the Court will allow rules to become effective January 1 or July 1 next succeeding the rule's adoption by at least three months.

2. Rules Regulating The Florida Bar. Petitions to amend the Rules Regulating The Florida Bar are docketed and, in the discretion of the chief justice, either set for oral argument and the case proceeds as described in section III(B) of this manual, or assigned to a lead justice and processed in the same manner as other cases assigned without oral argument. (See section II(A)(1)(c) of this manual.) At the lead justice's discretion, central staff may assist with the case.

3. Rules of Practice and Procedure. Petitions to amend any of the procedural rules promulgated by the Court are docketed only if filed by The Florida Bar or a committee specially designated by the Court. Such cases are published for comments on the Opinions & Rules Page of the Supreme Court's website located at http://www.flcourts.org/ and, in the discretion of the lead justice, either set for oral argument or processed in the same manner as a case assigned without oral argument, except that central staff may assist with the case. Other petitions to amend any procedural rule are referred by the clerk's office to the chair of the appropriate rules committee.

G. Advisory Opinions to the Governor and Attorney General.

1. Governor. When the governor requests the advice of the Court, the clerk immediately sends a copy of the request to each justice. As soon as practicable, the chief justice calls a conference for the purpose of determining whether the governor's question is answerable and, if so, whether oral argument is desired. If the Court decides the question is not answerable, a reply is drafted by a justice chosen by the chief justice and the case is thereafter treated the same as a case where an opinion is written after oral argument. (See section IV, below.) If the Court decides the question is answerable, the chief justice chooses the assigned justice. Traditionally, the Court permits briefs from all interested parties and allows oral argument at the earliest convenient date after briefs are required to be filed.

2. Attorney General. When the attorney general requests an advisory opinion, it is handled in the same manner as above except that the Court does not have to determine if the question is answerable.

H. Cases Where Incorrect Legal Remedy Has Been Sought; Transfer; Unstyled Letters and Petitions. Where a party seeking Supreme Court review has filed an appeal, a petition for discretionary review, a petition for habeas corpus, or other pleading, but the pleading incorrectly sets forth the legal ground for relief, the Court will treat the case as if the proper legal remedy had been sought. Where the case should have been filed in a district court of appeal or in a circuit court sitting in its appellate capacity, the Supreme Court will transfer the case to the appropriate court, provided that the jurisdiction of the lower court was properly invoked and the filing was timely.

When an initial pleading is inadequate to notify the clerk of the nature of the case, the pleading is docketed as a petition for discretionary review, if it can be ascertained that relief is sought from a ruling of a district court of appeal issued within the thirty-day jurisdictional filing period. The litigant then is notified by mail of both the need for a proper filing and the applicable rules of procedure. If the defect in pleading is not remedied within twenty days, the

litigant is advised by mail that dismissal for lack of prosecution is imminent. Unless the litigant makes a supplementary filing within twenty days thereafter, the cause is dismissed. Defective pleadings from prison inmates are researched by central staff.

I. Untimely Filings. Untimely filings are docketed and immediately dismissed by the clerk's office with a form order stating that the case is subject to reinstatement if timeliness is established on proper motion filed within fifteen days.

J. Cases Affecting Children. It is the policy of the Court to expedite proceedings presenting time-sensitive issues affecting children.

Section III. Hearings.

A. Oral Argument on Motions. The Court does not have regularly scheduled motion days. Oral argument on motions, if allowed, is scheduled in the main courtroom of the Supreme Court Building.

B. Oral Argument on Merits.

1. Pre-argument Procedures. Oral arguments are generally scheduled for the first full week of each month, except that no arguments are heard on state holidays or during the months of July and August. When the case is scheduled for oral argument, the clerk's office sends copies of the briefs to each justice. At least two months before the first day of the month in which oral argument has been scheduled, the case file goes to the office of the assigned justice. The lead justice's office summarizes and analyzes the issues raised in the briefs in a memorandum for use on the bench and circulates it to each justice no later than the Wednesday of the week preceding oral argument. The director of public information prepares a brief summary on each oral argument case which is available to the public a few days prior to oral argument and is posted on the Supreme Court Press Page of the Court's website located at http://www.flcourts.org/. The briefs also are posted here. These summaries are not official

Court documents.

2. Oral Argument Procedures. On oral argument days, counsel appearing that day are required to sign in with the clerk's office starting thirty minutes before arguments are scheduled to begin. At this time coffee is available for counsel in the lawyers' lounge, and the justices may join counsel for conversation not relating to cases scheduled for argument.

Oral argument generally begins at 9:00 a.m., but may be scheduled to begin at other times by the Chief Justice. Approximately ten minutes before arguments begin, the justices assemble in the robing room to don their robes for the bench. At the time arguments are to begin, the marshal announces that the Court is in session and the justices enter the courtroom from behind the bench, led by the chief justice or acting chief justice, in order of seniority. Retired justices or judges assigned to temporary duty on the Court enter last. Seating alternates from right to left based on seniority. All justices remain standing until the chief justice indicates that all justices are in place.

The chief justice controls the order of argument and the time allowed to any party. The division of time for argument between co-counsel or among multiple counsel on one side of a case, and between counsel's main presentation and rebuttal, is solely counsel's responsibility. In order to assist counsel, however, amber and red lights are mounted on the lectern. When the chief justice recognizes counsel, the allotted time begins running. The amber light indicates that counsel has either (1) entered the time requested to be set aside for rebuttal, (2) gone into the time set aside for co-counsel's argument, or (3) entered the period of time near the end of argument when notice of the remaining time has been requested. The red light indicates that counsel's allotted time has expired, at which point counsel will be expected to relinquish the lectern. Any justice may ask questions or make comments at any time. The chief justice has discretion to authorize a recess during oral argument and by tradition has done so midway into the calendar. During this mid-morning recess, the justices will not meet with counsel.

At the conclusion of the calendar, the Court is adjourned. The justices leave the bench in the order they entered and reassemble in the conference room for a preliminary conference on the cases argued. No person may enter the conference room without the invitation of the full Court. By tradition, the marshal prepares the conference room for conference and takes his leave when the conference convenes.

3. Electronic Recording and Broadcasts. The Court records audiotapes of all oral arguments held in the courtroom. The audiotapes are kept with the case file and are retained until the case has become final, that is, until any motion for rehearing has been disposed of by the Court. Audiotapes of argument in capital cases, however, are retained indefinitely. Florida State University through WFSU-TV records all oral arguments on videotape, copies of which are available from WFSU-TV by calling (850) 487-3170 or (800) 322-WFSU. Except when preempted by legislative sessions, oral arguments are broadcast live via the Telstar 4 satellite, KU band, 89 degrees west, transponder 13 lower, 12078 vertical polarity, which can be downlinked by satellite dish anywhere in North America. Oral arguments are broadcast live on Tallahassee cable channel 47 and on other cable providers throughout the state if they in their discretion choose to downlink and rebroadcast the satellite feed. Arguments also are broadcast worldwide on the Internet in RealPlayer video and audio formats from a website jointly maintained with WFSU-TV (http://wfsu.org/gavel2gavel/). An archive of RealPlayer video and audio from previous arguments is maintained on the same website. The Court calendar, briefs, press summaries, and other information about cases and about using the Internet are posted on the Supreme Court Press Page of the Court's website located at http://www.flcourts.org/.

4. Recusals. On occasion, a justice will elect to recuse himself or herself from a particular case for good cause. A justice thus recused from any case set for oral argument notifies the chief justice in advance of argument. If four of the remaining justices cannot ultimately agree to a disposition, the chief justice assigns a judge, senior judge, or senior justice to the case. As a general rule, in such instance, re-argument on the case will not be scheduled, because video and audio of the argument will be made available to the assigned judge, senior judge, or senior justice.

Section IV. Consideration of Cases After Oral Argument.

After oral argument, the justices confer and take a tentative vote on the cases argued. The author of the Court's opinion or disposition is ordinarily the assigned justice, and the case file is sent to that justice after conference. Once an opinion has been written, a facing vote sheet is attached in the author's office, and the opinion, the vote sheet, and case file are delivered to the clerk's office.

The assigned justice's judicial assistant reproduces the opinion and vote sheet and distributes copies to each justice. Each justice votes and writes any comments deemed appropriate on the separate vote sheet received. If a concurring or dissenting opinion is written, that opinion and its vote sheet are also delivered to the clerk, and the authoring justice's judicial assistant distributes copies of these papers to the other justices. When all justices have voted on all the separate opinions, the following action is taken:

1. The reporter of decisions directs the clerk in writing to file as an opinion of the Court any opinion to which four justices subscribe, provided no justice on the panel has requested discussion at a conference, or

2. If a panel lacks four concurring votes, the case is scheduled for discussion at the next regularly scheduled conference in order to reconcile the disparate views. If any justice has requested on the vote sheet that the case be discussed at conference, the case is placed on the conference schedule.

Copies of opinions ready for release to the public are delivered to each justice not later than Friday at noon. At any time before 10:00 a.m. the following Thursday, any justice may direct the clerk not to release an opinion. Unless otherwise directed, on Thursday morning at 10:00 the clerk releases the opinions furnished to the justices the preceding Friday. Copies of released opinions are provided free of charge to the parties, the press, and such others as may be directed by the Court or an individual justice. Publishers other than the Court's official reporter

may receive copies at the rate of fifty cents per page, and all other interested persons may receive copies at the cost of one dollar per page. Opinions are posted on the Opinions & Rules Page of the Court's website located at http://www.flcourts.org/ by noon on the day they are released. Opinions may be released out-of-calendar at the direction of the Chief Justice. When opinions are released out-of-calendar, the director of public information notifies news media as soon as is practicable.

Section V. Motions.

The chief justice and administrative justice have authority to dispose of routine procedural motions, such as those seeking an extension of time, permission to file enlarged briefs, an expedited schedule, or a consolidation of cases. The chief justice and administrative justice also have authority to grant requests for a stay during the pendency of a proceeding and a thirty-day stay of mandate pending review by the United States Supreme Court in order to allow counsel the opportunity to obtain a stay from that court. Motions filed after a case has been assigned to a lead justice are ruled on by that justice.

Section VI. Rehearing.

Authorized motions for rehearing are considered by the justices who originally considered the case. Unauthorized motions for rehearing are returned by the clerk.

Section VII. Court Conferences.

The justices meet privately each Tuesday at 9:00 a.m. unless the chief justice otherwise directs. The agenda for the conference is prepared by the chief justice's office. The chief justice may schedule additional conferences at his or her discretion. Official action taken by the Court in conference on matters other than case dispositions is recorded in the minutes of the meeting prepared by the clerk and approved by the Court. Case dispositions at conference result in a formal directive from the chief justice to the clerk that the opinions or appropriate orders be filed.

Section VIII. Committee Assignments.

In order to better perform its administrative duties, the Court has established certain internal committees. The Court also participates in the activities of certain external organizations through a representative justice. Assignment of justices to these committees is made by the chief justice, and the clerk's office maintains a list of current assignments, which is posted on the Supreme Court Clerk's Office Page of the Court's website located at http://www.flcourts.org/.

APPENDIX C

DISPOSITIONS