

Factors that Impact Caseload in the District Courts of Appeal

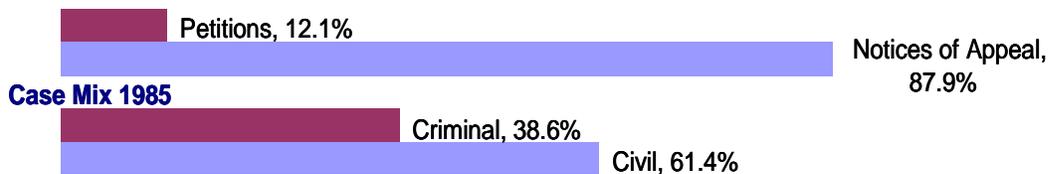
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In 2005 the Florida Supreme Court initiated two studies of the intermediate appellate courts to (a) develop criteria for the need to change jurisdiction and to increase or decrease the number of courts, and (b) to refine the criteria for the need to certify the increase or decrease of judges on the district courts of appeal. The Committee on District Court of Appeals Workload and Jurisdiction (Committee) and the Commission on DCA Performance and Accountability (Commission), respectively, were engaged in the two studies.

Historically, a number of factors have been perceived as influencing the workload of the appellate courts, but no empirical data was used to confirm the perception that these factors did in fact measurably impact court workload. Consequently, both the Committee and the Commission determined that for jurisdiction and workload criteria to be developed it was essential that there be a clear understanding of the actual factors that influence the caseload and workload of the courts.

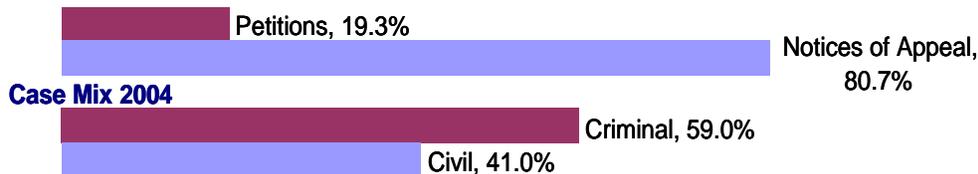
I. DCA Profile

The first step in the analysis was to develop a profile of district court filing trends over the past twenty years.¹ In 1985, 61.4% of the cases were civil and 38.6% were criminal. Notices of appeal accounted for 87.9% of the cases and petitions accounted for 12.1%. The certification standard for determining the need for a new judge was 250 filings per judge. The average number of filings per judge, at that time, was 303.



¹ Much of the analysis in this report is at the aggregate statewide level. The Commissions also reviewed many of these factors at the district level.

In contrast, in 2005 there has been a considerable change in case mix: 41% of the cases are civil and 59% are criminal, essentially a reversal of the 1985 proportions. Notices of appeal now account for 80.7% of the cases and petitions account for 19.3%. The certification standard for filings-per-judge has been increased from 250 to 350 filings. The average filings-per-judge has increased from 303 to 388.5 filings per judge.



There has also been a change in the manner of disposition. In 1985, 61% of the cases were disposed of by opinion and 39% by order. Written opinions accounted for 32% and Per Curium Affirmed (PCA) accounted for 29%. In 2005, the manner of dispositions remains fairly constant with 64% of the cases disposed of by opinion and 36% by order. However, written opinions now account for 23% of the opinions and PCAs account for 41%. Some of these changes are in part related to the change in case mix, such as criminal post-conviction matters, which make up a high percentage of the cases and are often decided by a PCA.



In examining state filings trends from 1985 to 2005 it is apparent that there has been a reduction in civil case filings beginning in 1996 and continuing to the present. There has been a steady increase in criminal case filings from 1992, with a corresponding increase in post-conviction filings. The net result of the decrease in civil cases and increase in criminal cases is that the aggregate statewide case filings of the district courts of appeal have generally increased at a relatively

marginal level.² The notable exception is at the third district where case filings have been on the decline since about 1997.

Figure 1. Total Filings by DCA

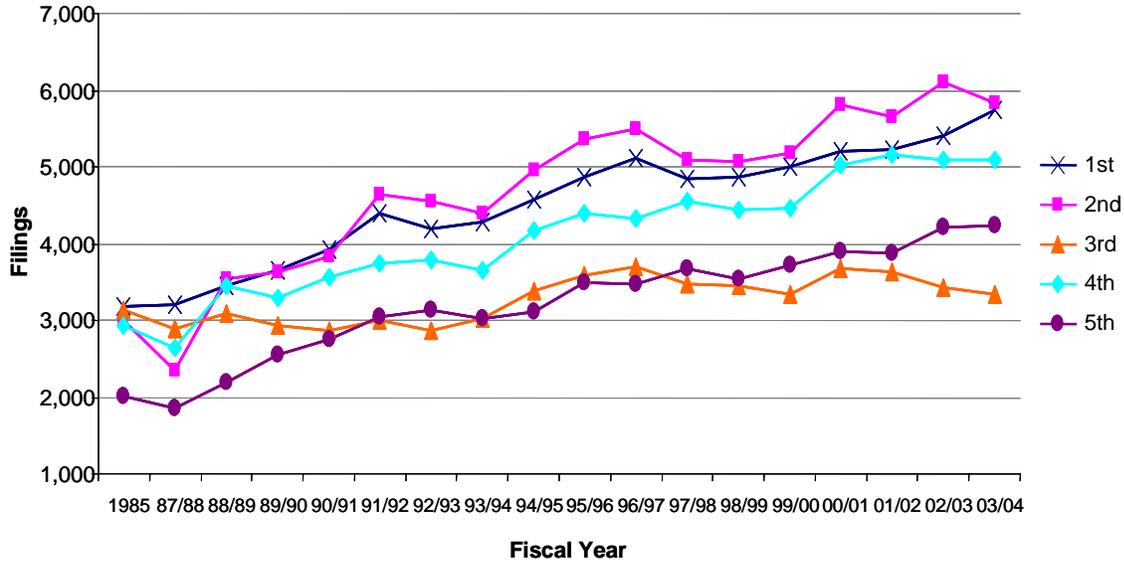
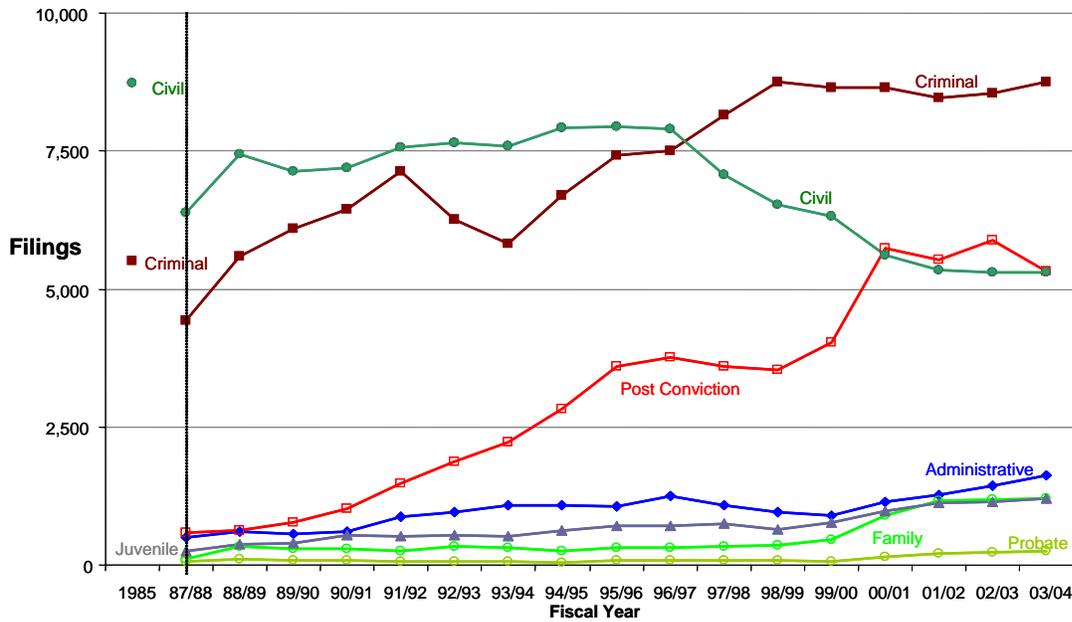


Figure 2. Total Filings by Case Type



² The filing trends and case mix of the individual district courts vary and do not necessarily track the aggregate statewide trend.

II. Factors That Do Not Directly Correlate With Case Filings.

Several factors are generally believed to contribute to appellate caseloads. Upon closer analysis, however, these relationships appear to be spurious. Following is a summary of the factors that do not appear to have a significant influence.

A. Population: There is a belief that growth in appellate caseloads is directly correlated to growth in population. Florida is one of the fastest growing states in the nation. From 1960 to 1990, Florida's population grew from 5 to 13 million, representing an annual growth rate nearly triple the national rate. This growth rate has historically been considered as a factor for increase in appellate case filings. However, the highest growth projections are among the older and the young (under 19 years of age). Floridians aged 65 and older saw an increase of nearly 40% between 1980 and 1990 and 19% between 1990 and 2000. By 2010, Florida's 65 and older population is projected to increase 22% over the 2000 number. Neither of these groups contributes appreciably to high crime rates nor contributes highly to litigation.³

District court filings are slowing in relation to population growth. The charts in Figure 3 represent the percentage change in district court filings and population over the past two decades. From 1985 to 1995, filing percentage increases outpaced the population percentage increases. Between 1995 and 2004, however, the rate in increase in district court filings slowed considerably while the rate of increase in population remained steady. Figure 4 represents the corresponding changes in filings per 100,000 population.

In examining national statistics, the absence of a correlation between population and appellate case filings is further confirmed. Florida, the fourth largest state, ranks third in terms of appeals per 100,000 population. However, California, Texas, and New York, which rank first, second and third in population, rank 21st, 11th and 23rd respectively in appeals per 100,000 population.⁴

³ 93% of the Department of Corrections admissions in 2004 were 18 to 49 years old. Florida Department of Corrections, Annual Report, 2004.

⁴ *Examining the Work of State Courts*, National Center for State Courts (2003).

Figure 3. Population and Filings Growth – Slowing Growth in Filings Compared to Steady Growth in Population

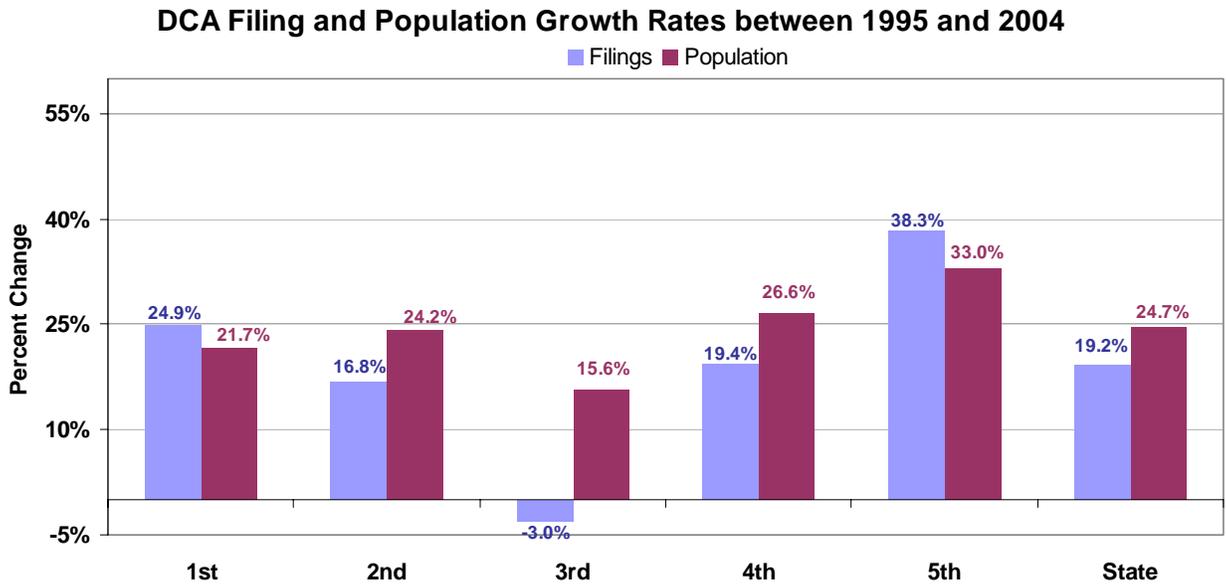
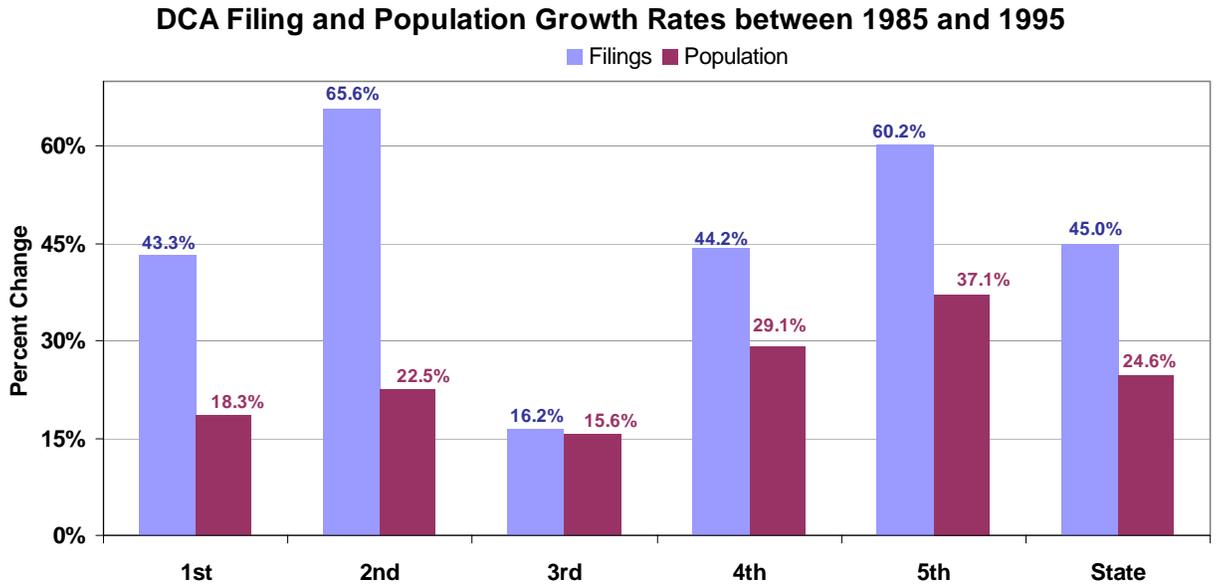


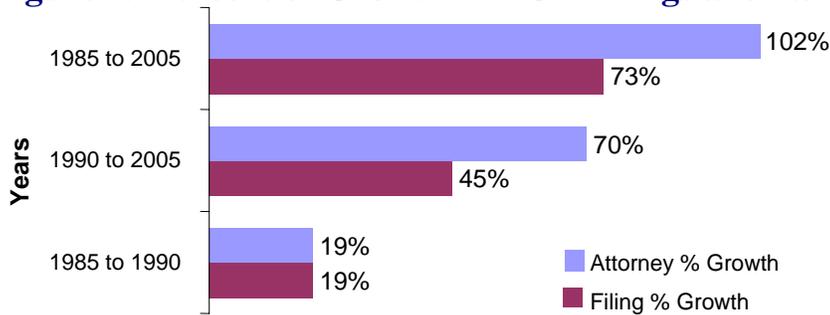
Figure 4. Change in Filings per 100,000 Population.⁵

	1st	2nd	3rd	4th	5th	State
1985	157	95	159	135	93	124
1995	190 (+33)	128 (+32)	159 (0)	151 (+16)	108 (+15)	144 (+20)
2004	195 (+5)	120 (-8)	134 (-25)	143 (-8)	113 (+5)	138 (-6)

⁵ The first district has statewide jurisdiction over certain administrative cases and workers' compensation cases, which is reflected in filings per population.

B. Number of Attorneys. Many believe that growth in appellate caseloads is directly correlated to growth in the number of attorneys in a jurisdiction. There is not a direct correlation between the numbers of attorneys admitted to practice in Florida and the filings in the district courts of appeal. The attorney rate is growing at a much higher rate than district court case filings. One reason may be that many lawyers do not practice trial or appellate court litigation. Another reason may be the growth of mediation. This is an area of increased growth for lawyers particularly in the civil area where mediation certification is limited to attorneys. In 1992 there were 856 circuit civil mediators. Now there are 2,114 certified circuit civil mediators.

Figure 5. Percent of Growth in DCA Filings and Number of Attorneys



C. Circuit Court Filings: While there has been an increase in both the district court and trial court filings over the past decade, trial court filing trends have demonstrated a fairly stable growth pattern. The district court growth trend has demonstrated periodic fluctuations that have not directly correlated with circuit court patterns. In examining the case mix of the trial courts, the areas of most significant growth is in family law cases and, to a lesser extent, probate cases. These are not case types where there is a corresponding high growth rate in the appellate courts.

Figure 6. DCA and Circuit Filing Trends

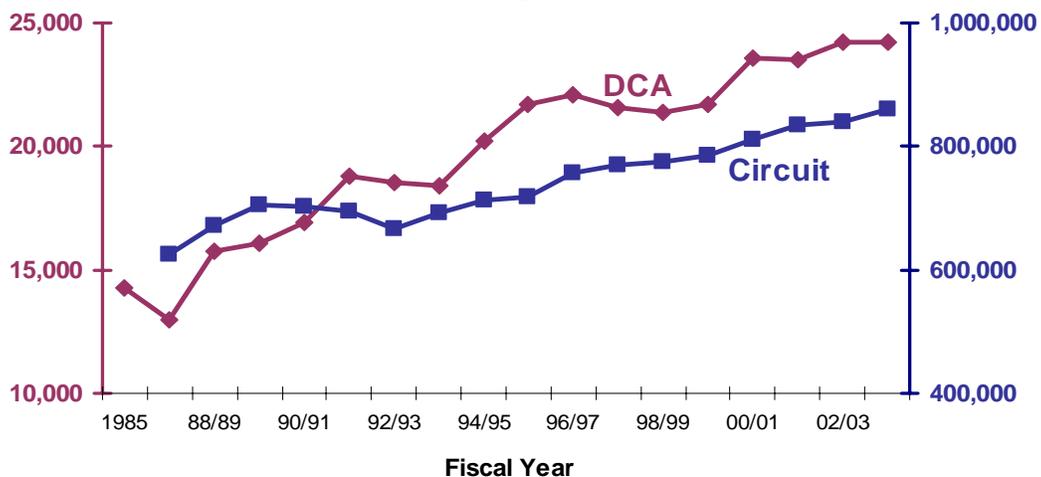
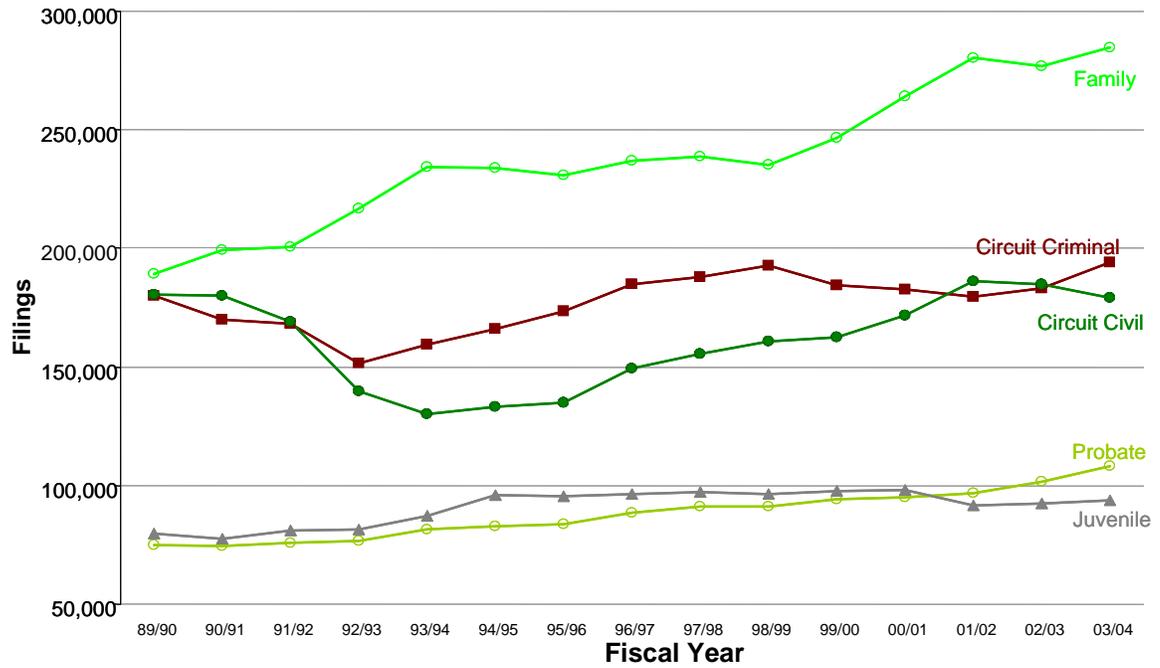
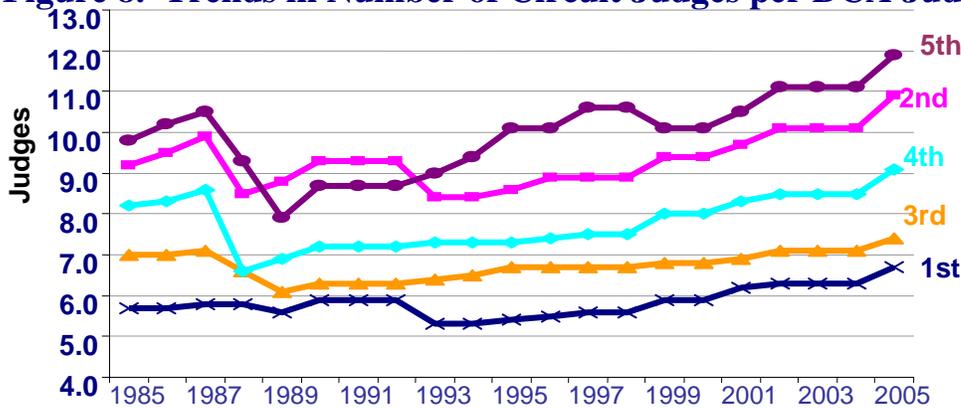


Figure 7. Statewide Circuit Court Filing Trends



D. Number of Circuit Court Judges: Similar to the idea that appellate filings correlate closely to trial court caseloads is the idea that appellate caseload is a function of the number of circuit judges within a district, so that appellate cases increase as more circuit judgeships are created. This does not appear to be true. When judges are added to the circuit courts they are assigned to the areas where there is the most significant growth. If the growth rate is in family cases and new judges are assigned to that division then there is no appreciative corresponding increase in the filings of the district courts. However if additional circuit judges are added to the criminal division then there is a corresponding increase in filings in the district courts.

Figure 8. Trends in Number of Circuit Judges per DCA Judge ⁶



⁶ The first district has a higher number of original jurisdiction cases as well as a statewide jurisdiction of certain administrative cases and workers' compensation cases, which do not originate in the circuit courts.

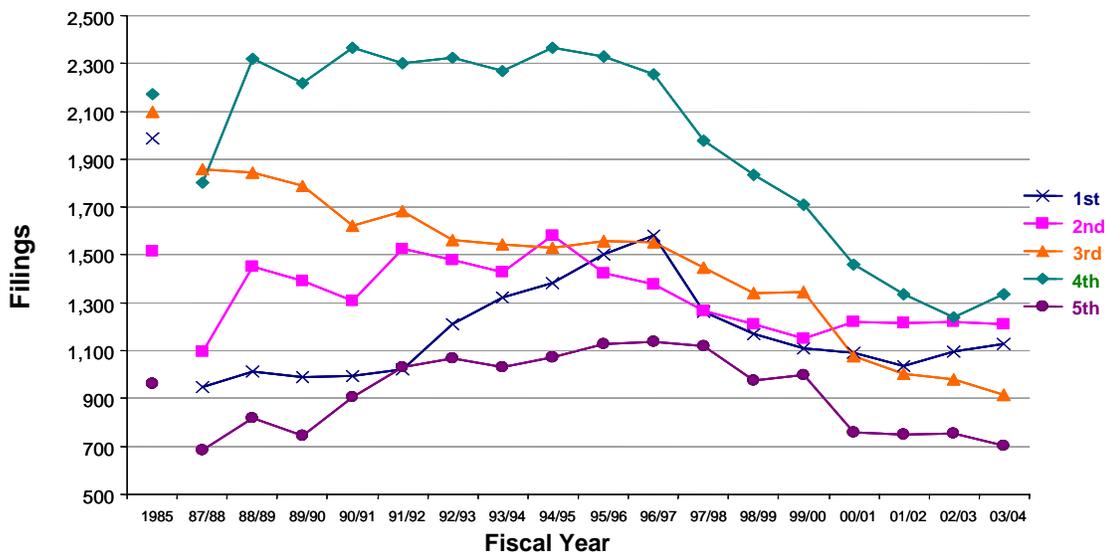
III. Factors That Correlate With Appellate Case Filings

The factors discussed in Part II do not appear to correlate with appellate caseloads. Following is a review of the filing trends of different case types and the identification of the factors that do appear to influence appellate filing trends.

A. Civil Cases: One key factor limiting the growth in filings has been the implementation of mediation. Florida has embraced mediation in the private sector, within the court system, and as part of the administrative proceeding process. Because mediated cases are not appealed, this has resulted in a reduction of appeals in civil cases, family law cases, workers compensation cases, and other administrative cases. The most significant impact has been in civil case filings. A current trend that may continue to reduce the civil filings in the courts is the use of private arbitration for the resolution of disputes for contracts involving such things as credit cards, medical services, and insurance coverage.

Another factor in the reduction of civil case filing was the adjustments in county court jurisdiction for civil cases that occurred in 1990 (county civil jurisdiction increased to \$10,000) and 1992 (county civil jurisdiction increased to \$15,000).

Figure 9. DCA Civil Filing Trends⁷



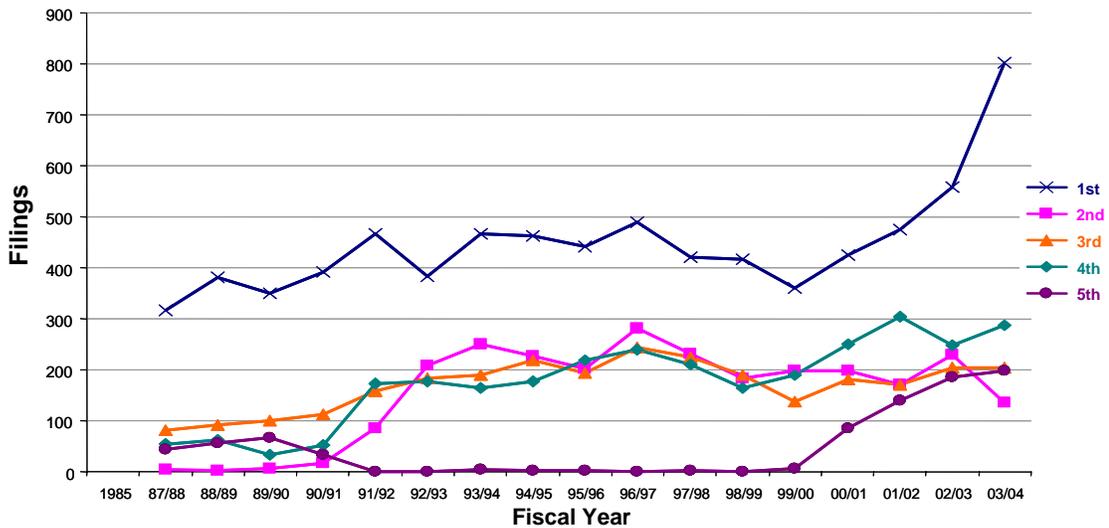
⁷ 1985 data point includes all non-criminal cases; the first district's data includes family cases through 96/97; the first and fifth district's data includes probate through 99/00; and the fourth district captured writs as civil cases through 98/99.

B. Administrative Cases: Pursuant to subsection 120.68(2), Florida Statutes, all appeals from agency action are taken to the DCA in the appellate district where the agency maintains its headquarters or where a party resides, except where judicial review by the Florida Supreme Court is provided by law. Because most state agencies have their headquarters in Tallahassee, the first district receives the majority of administrative appeals from across the state. The Florida Supreme Court hears administrative appeals only from Public Service Commission (PSC) orders that relate to electric, gas, or telephone rates and service. Appeals from other orders of the PSC must be taken to the first district. There are also a number of other statutes which create jurisdiction specifically in the first district or in the second judicial circuit. Some examples are:

- ✓ Chapter 120, F.S. (the Florida Administrative Procedure Act) (This chapter creates de facto preference for first district, not actual exclusive jurisdiction.)
- ✓ Chapter 440, F.S. (the Florida Workers' Compensation Act)
- ✓ Section 72.011, F.S. (actions by taxpayers, resident and non-resident, challenging tax assessments)
- ✓ Subsection 99.097(5), F.S. (action to contest verification of ballot petition by Department of State if more than one county is involved)
- ✓ Section 102.1685, F.S. (action to contest nomination or election or results thereof when more than one county is involved)
- ✓ Subsection 420.509(4), F.S. (actions to validate revenue bonds of the Florida Housing Finance Corporation)
- ✓ Subsection 944.095(9), F.S. (decisions of Governor and Cabinet relating to siting of correctional facilities of the Department of Corrections)

Other factors impacting the most recent upturn in case filing include the closing of the state unemployment office in Tampa and the resulting shift in filings to the first district, and a recent trend that may have impact in the next few years is the change in section 409.2563, F.S., which provides for appeals of the Department of Revenue's administrative action to establish child support. In FY 2003/04 the Department of Administrative Hearings had a 40% increase (242 cases compared to 48 cases) in referrals of child support cases. The appeals from these administrative cases will go to the first district.

Figure 10. Administrative Filing Trends by DCA

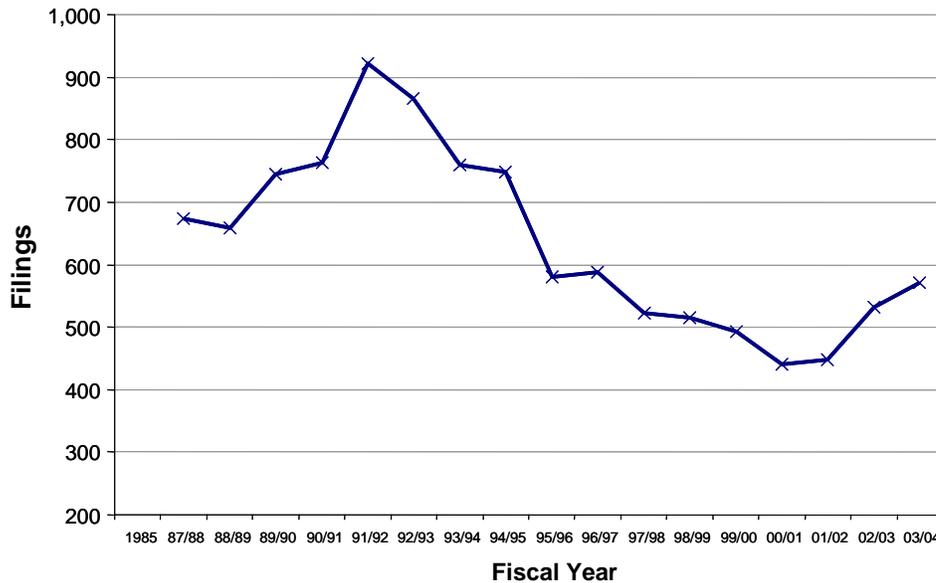


C. Workers Compensation: The first district has exclusive statewide jurisdiction for workers’ compensation cases. The filings in these cases have had a steady downward trend since 1991. Much of this can be attributed to the implementation of mediation, which became mandatory in 1996.

As previously noted, the case filings in the district courts often have spikes when there is a relatively dramatic short term increase in filings. This can be noted in 1990 for workers compensation cases. This is an example of how a decision on a particular issue can result in a swell of litigation in cases presenting the same or similar issues. In 1989 the Florida Supreme Court rendered a decision in the case of *Barragan v. City of Miami*, 545 So 2d 252 (Fla. 1989). It is estimated that 80 to 100 appeals were filed based on this decision.

Decisions such as *Barragan* have a strong influence on filings in the short term. These fluctuations make forecasting appellate court workload difficult. For example, a recent upward trend in workers’ compensation cases resulted from 2003 legislative changes to chapter 440, F.S., regarding attorney fees. This change increased the number of appeals in the first district.

Figure 11. First District Workers' Compensation Trends

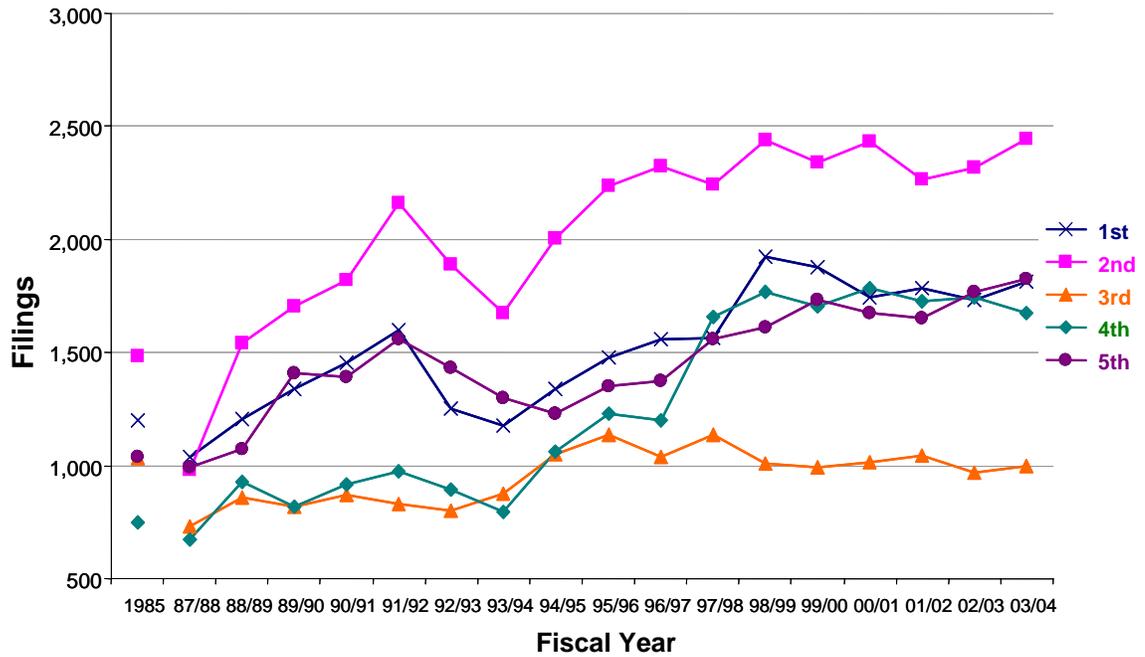


D. Criminal Cases: In the criminal area there was an upward trend in the late 1980s. In the 1990s, drug courts were established in the trial courts. The criminal filing trend decreased somewhat as a result, and has demonstrated a slight increase during the past few years.

Filings in criminal cases are influenced by legislative changes. Following the implementation of criminal reforms there is generally a period when challenges are made to the appellate courts. Some examples of the legislative changes are:

- ✓ 1983 Sentencing Guidelines
- ✓ 1988 Felony Habitual Offender & Violent Offender
- ✓ 1994 Safe Streets (Truth in Sentencing)
- ✓ 1995 Crime Control Act / Violent Career Criminal Act
- ✓ 1997 Prisoner Litigation Reform
- ✓ 1998 Criminal Punishment Code
- ✓ 1999 10-20-Life and 3 Strikes Felony Offender

Figure 12. Criminal Filing Trends by DCA



E. Post Conviction Cases: A related factor is post conviction. The implementation of sentencing guidelines in 1983 and the “get tough on crime” statutes that were passed in the 1990s increased the number of individuals incarcerated in Florida. From the period of 1985 to 2005 the state prison population in the first district increased from approximately 13,000 to 47,000. This resulted in the building of a number of prisons, primarily in north Florida. Twenty three facilities were built in the first district between 1985 and 2005. The average percentage of sentence served also increased based on these statutory changes. In 1994 the percentage of time served was 43%, and in 2004 it was 84%. These two factors have resulted in the significant increase in post-conviction filings with the district courts.

Figure 13. Prison Admissions by DCA of Conviction

	FY 2001-02	FY 2002-03	FY 2003-04
1 st	5,701	6,482	7,479
2 nd	7,238	8,524	9,338
3 rd	2,659	2,749	2,357
4 th	5,008	5,027	5,292
5 th	5,420	6,079	7,391
Other States	23	21	39
Total	26,049	28,882	31,896

Of all factors post conviction has had the most dramatic impact for increased caseload in the district courts. The extent of the impact on the individual districts is based on the prosecution practices in the circuits, the number of individuals incarcerated and the post-conviction filings. A second factor is the number of correctional facilities within a jurisdiction and the corresponding civil prisoner actions. Because the greatest number of prisons is in the first district, more civil prisoner litigation appeals are filed there. The first district also gets additional filings because Tallahassee is the headquarters of the Department of Corrections.

Figure 14. Department of Corrections Prisoner Population by DCA

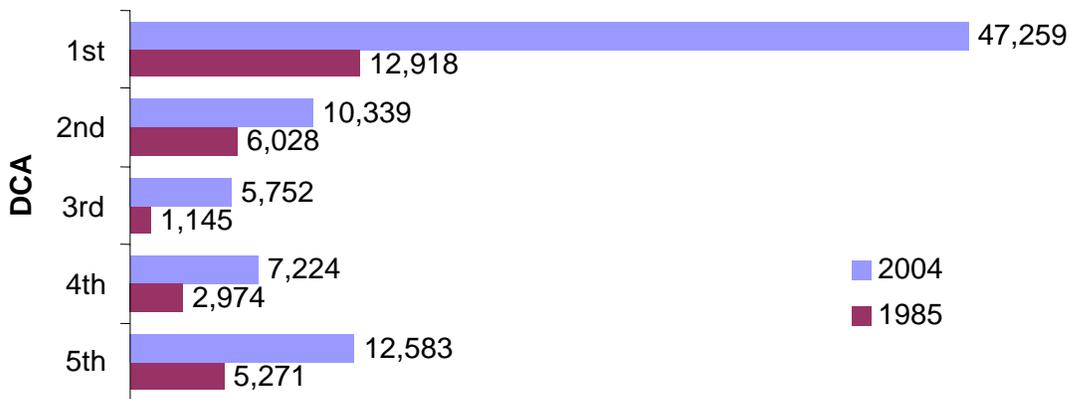
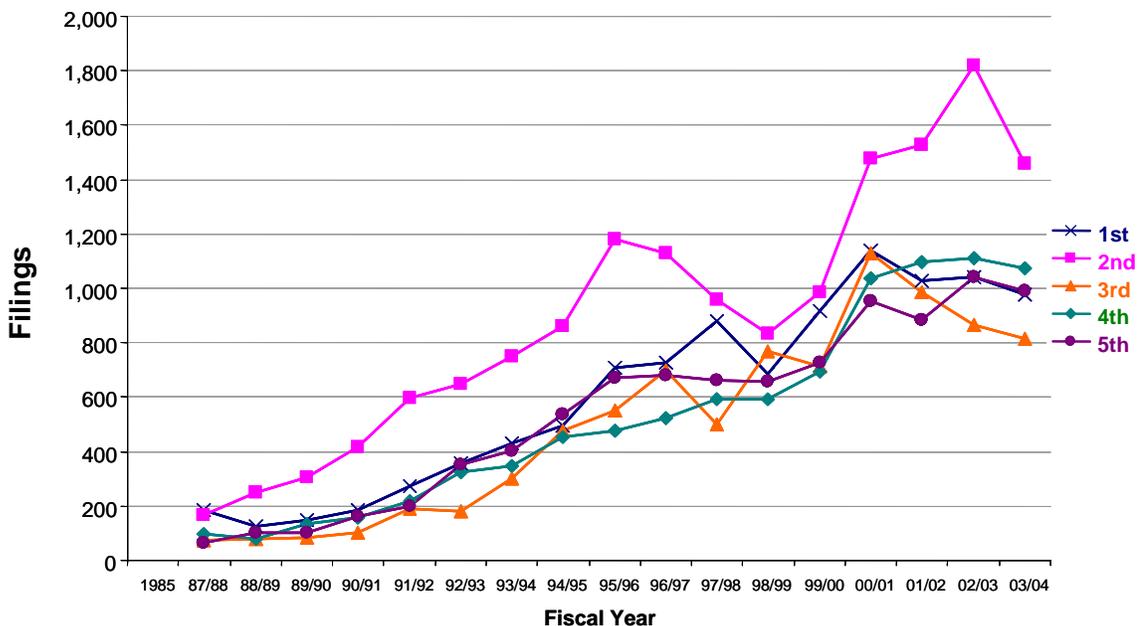


Figure 15. Post-Conviction Filings by DCA



F. Summary of Correlated Factors: From the review of the filing trends the following factors have influenced the changes in the district courts of appeal. They are:

- mediation in civil, administrative and workers compensation cases;
- changes in appellate court civil jurisdiction between the district courts and the circuit courts;
- shift in jurisdiction from judicial to administrative review;
- changes in statutes requiring appellate review and clarification;
- changes in criminal sentencing statutes and time served; and
- growth in prison population and post conviction motions.

IV. Case Processing and Management Practices.

While the caseload and case mix has changed from 1985 to 2005, likewise there have been a number of changes in the staffing and case processing procedures of the district courts. These changes have allowed the district courts to function with a higher level of efficiency and to absorb the increased caseload with limited expansion of judges. Efficiency measures that have been incorporated include the addition of central staff attorneys, the advancement of automated legal research, automated case management, the use of personal computers and all the associated communication features, and video teleconferencing. Following is a comparison of the case processing support available in 1985 versus the support available.

DCA Profiles	1985	2005
Law Clerks	2 per judge	2 per judge
Central Staff Attorneys	None	36
Other Clerical	typing pool	1 JA per judge; No pool
Information System Staff	none	2 per DCA; all staff have PCs
Telecommunication	none	fully networked; electronic opinion distribution
Library	1 per court	only 1 court has a librarian
Record	paper files	E-filing pilot in fourth district
Legal Research	books in chambers, library; 1 Westlaw station in library	Lexis/West available on all PCs
Case Management	ledger books & paper docket	Automated
Video	none	OA in first district; televised OA
Conference	face-to-face	face-to-face; e-mail
Opinion Preparation	hand written or dictated by judges and law clerks typed by JA/clerical pool	electronic; judges and law clerks prepare; JA edits for format

V. Conclusion

In summary, this analysis supports the importance of environmental scans and trends analyses to determine the relevant factors that influence the workload of the district courts of appeal. Steps need to be taken to insure that overgeneralizations are not made, or that overly simplistic measures are identified when there are a number of key factors that need to be considered in examining and measuring appellate caseload and workload. It is important to recognize that there are changes in the types of litigation coming before the courts, the corresponding workload impact of these types on judges, and the influence that technology, court staff and other case processing measures can have. This is clearly noted by the comparison from 1985 to 2005 and it is likely to be as significant in the next 10 to 20 years.