

# CERTIFICATE OF QUALIFICATION FOR EMPLOYMENT (CQE)

*2012/2013 Annual Review*

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## RESULTS OF THE STUDY

Effective September 29, 2012, a “Certificate of Qualification for Employment” (CQE) was created under Revised Code 2953.25. The Department of Rehabilitation and Correction (DRC) adopted rules in accordance with this chapter for the implementation and administration of this process and generated forms for the petition for a CQE as charged under the statute. These rules and forms were submitted for review and were adopted on February 18, 2013, after which the DRC and common pleas courts were able to accept petitions either directly (where permitted by law) or online. The DRC developed and maintains the online petition site.

A working group was created to promulgate model local rules, forms, and a flow chart of the process which were completed and distributed to all Ohio courts of common pleas and were made available online.

Members of the CQE workgroup included:

- Judge Charles Schneider, Franklin Co. Common Pleas Court, Chair
- Judge Scott T. Gusweiler, Brown Co. Common Pleas Court
- Judge Hank H. Harcha, III, Scioto Co. Common Pleas Court
- Judge Peter J. Kontos, Trumbull Co. Common Pleas Court
- Judge Roger B. Wilson, Champaign Co. Common Pleas Court
- Magistrate Matt Reed, Butler County Common Pleas Court
- Judge Mark R. Schweikert, Retired, Executive Director, Ohio Judicial Conference
- Ms. Michele Worobiec, Judicial Services Coordinator, Ohio Judicial Conference
- Ms. Sara Andrews, Deputy Director, ODRC
- Ms. Alicia Handwerk, Chief, Bureau of Community Sanctions, ODRC
- Mr. Christopher Galli, Assistant Chief, Bureau of Community Sanctions, ODRC
- Mr. Ryan Dolan, Staff Counsel, Division of Legal Services, ODRC
- Ms. Gayle Dittmer, Chief Probation Officer, Franklin Co. Common Pleas Court

- Mr. Atiba Jones, Executive Director, Franklin Co. Common Pleas Court
- Mr. Todd A. Bickle, Clerk of Courts, Muskingum Co. Common Pleas Court

The DRC conducted an outreach initiative to raise awareness of the availability of the new process. The DRC solicited input and participation from interested parties, stakeholders and members of the public to actively educate and market the CQE. The DRC public website invited questions and provided a detailed overview of the process with contact information for subject matter experts. Brochures and pamphlets were created and distributed throughout DRC facilities, parole offices, courts of common pleas, community corrections agencies and business partners. Several forums and outreach efforts were conducted that involved members of the General Assembly, the Courts and petitioners. To give just one example, an event organized by Senator Shirley Smith on May 23, 2013 invited petitioners to attend and begin their petitions on-site. The event included presentations from DRC, BCI, Legal Aid, and the Cuyahoga County Public Defender, an Expungement Clinic for petitioners, and a continuing legal education course for attorneys led by Judge Joan Synenburg.

The Ohio Judicial College in conjunction with the Ohio Judicial Conference offered two online webinars to judges, court administrators, clerks of courts and court staff. The February 27 webinar addressed the Common Pleas General Division, with 27 judges and magistrates participating, as well as 96 other court personnel. The February 28 webinar addressed Municipal and County Courts; 5 judges and magistrates and 31 other court personnel participated. The Judicial College also presented an educational program at the Ohio Common Pleas Judges Association Meeting in June 2013 attended by more than 100 judges of the Ohio Courts of Common Pleas.

The Ohio Judicial Conference and DRC also jointly made a presentation to the Ohio Clerk of Courts Association on February 20, 2013 explaining the CQE process. This effort has been ongoing and in fact, DRC has recently

attended the Association's monthly meeting to again present on the topic and other matters of mutual interest.

## RECOMMENDATIONS FOR ELECTRONIC DATABASE

Section 2953.25 required DRC to 'conduct a study to determine the manner for transferring the mechanism for the issuance of a certificate of qualification for employment created by this section to an electronic database established and maintained by the department' and report back to the general assembly and the governor a report that contains the results and recommendations of the study. The DRC opted to forgo conducting said study and immediately developed and made available the electronic petition system accessible at [www.drccqe.com](http://www.drccqe.com). DRC used appropriated GRF dollars from line item 503-321 in the amount of \$45,250 to develop and make available the electronic database. The annual contract amount for this electronic database is projected to be \$4,800 and continued electronic enhancements to the database are projected to be \$10,000-\$15,000 which the DRC will fund from its existing budget.

This electronic system will need to be enhanced during the next calendar year to accurately reflect and report the statutorily required data including the granted certificates and revoked certificates, the number of certificates granted and revoked, the industries, occupations, and professions with respect to which the certificates have been most applicable, the types of employers that have accepted the certificates, and the recidivism rates of individuals who have been issued the certificates. The DRC also makes available the CQE's granted on its website at [www.drc.ohio.gov](http://www.drc.ohio.gov).

## Feasibility Study

The statute also required DRC, in conjunction with the Ohio Judicial Conference, to 'conduct a study to determine whether the application process

for certificates of qualification for employment created by this section is feasible based upon the caseload capacity of the department and the courts of common pleas. Not later than the date that is one year after the effective date of this section, the department shall submit to the general assembly a report that contains the results of the study and any recommendations for improvement of the application process.

In order to comply with the aforementioned, DRC tracks data provided in the online petition. Courts that have decided on petitions were simultaneously surveyed about costs, fees, and workload. That information is limited due to the relatively short time the process has been operational and because only a few CQEs have been granted. Therefore, the DRC and the Ohio Judicial Conference contend feasibility concerning case load capacity, staffing level and budgetary impact can more accurately be assessed as the process continues to evolve in its implementation. The data provided from DRC as a part of this study and report is from the electronic database as of October 1, 2013.

## Filing Costs

Pursuant to ORC 2953.25 (L), one area in need of clarification for courts of common pleas is the lack of guidance for how fees should be collected to complete the filing process. The Ohio Supreme Court has determined that the CQE petition is a miscellaneous civil filing. As such, it is subject to the court costs set out in RC 2303.20 and the security for deposit set out in RC 2323.31. Each court has discretion to set the security deposit based on its expectations of what such a class of cases should accumulate in costs on average. Additionally, some courts also charge a special projects fee for this type of case pursuant to RC 2303.201(E)1 to help fund the local burden.

As a result, there is a large disparity in the range of filing fee across the state, as well as the rationale for why the fees are charged. The variance of these filings ranges from \$0.00 to \$300.00 in respective County Common Pleas Courts across the state.

It is still difficult to predict the long-term financial impact of these types of filings. A high number of filings and a low filing fee may cause adverse effects to some courts. The investigative and data gathering requirements stated in

the law have created more work and require additional resources. A large number of filings could potentially be very costly for courts.

Some courts view the filing cost as a barrier to the petitioner's access to justice; therefore, setting the fees at a low rate so individuals do not experience an economic hardship. Another rationale that courts utilize to determine a filing fee is based on offsetting the cost of processing the CQE. Courts that require a larger sum of money to file a CQE are attempting to recoup some of the cost for processing the filings. These courts view the increased filing fee as a means to fund the mandate. While this justification is sound from a fiscal perspective, it may serve as a deterrent for petitioners.

Under the RC 2323.31 the court has the ability to develop a local rule for a waiver of the deposit and costs based on an affidavit of indigency so that those who cannot afford the costs are not precluded from access to justice.

The CQE process is often compared to the process for expungement. The state has set a fixed filing fee for expungements at RC 2953.37. It is likely that this fee does not cover the expense to the local court or the state agencies involved in investigation, the judicial process, and the record sealing process for expungements. Thus, the state has determined that it and the local authorities subsidize the cost of the process in favor of a uniform rate statewide.

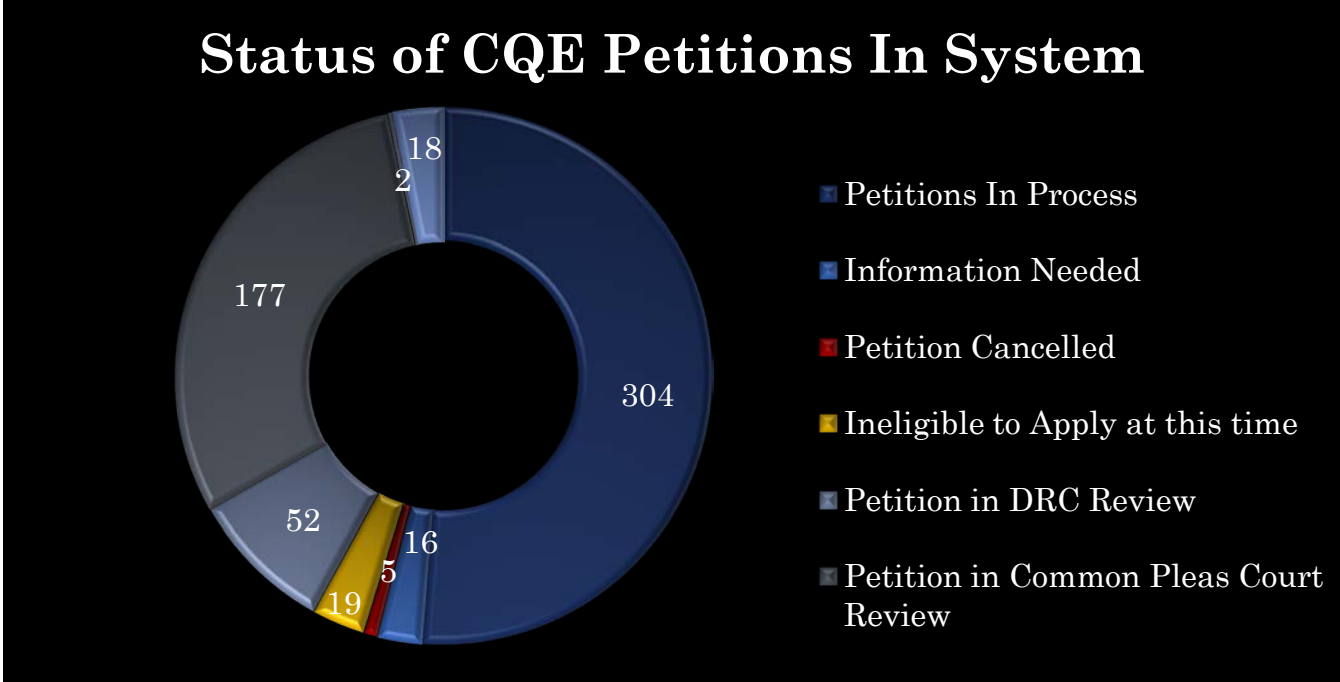
It is unclear if the legislature intended to leave the filing fee to the discretion of each court or if it was just not considered.

## Designation of Responsibilities

Pursuant to ORC 2953.25(L), another area in need of clarification for the courts of common pleas is the outline of the CQE process in 2953.25(B)(5)(b). In practice, there has been some confusion as to what responsibility falls solely on the court and what responsibility can be delegated to the clerk of courts. For this reason, it is necessary to include a statement in 2953.25(B)(5)(b) that makes clear that courts can order the clerk of courts to process and record any of the notices required in the section:

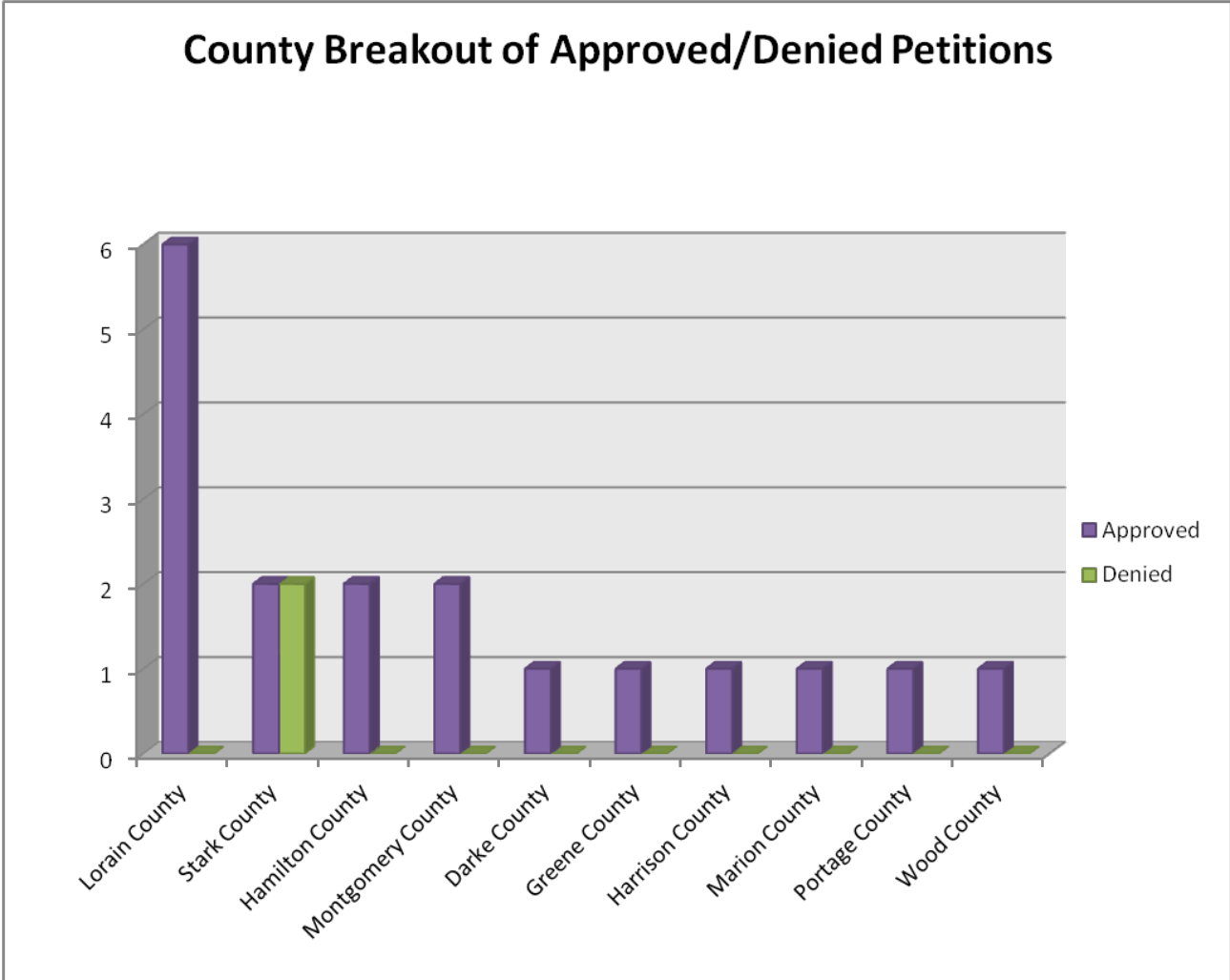
*A court of common pleas that receives a petition for a certificate of qualification for employment from an individual under division (B)(2) of this section, or that is forwarded a petition for such a certificate under division (B)(5)(a) of this section, shall attempt to determine all other courts in this state in which the individual was convicted of or pleaded guilty to an offense other than the offense from which the individual is seeking relief. The court that receives or is forwarded the petition shall notify all other courts in this state that it determines under this division were courts in which the individual was convicted of or pleaded guilty to an offense other than the offense from which the individual is seeking relief that the individual has filed the petition and that the court may send comments regarding the possible issuance of the certificate. A court of common pleas that receives a petition for a certificate of qualification for employment under division (B)(2) of this section shall notify the prosecuting attorney of the county in which the individual resides that the individual has filed the petition. The court may direct the clerk of court to process and record all notices required in this section.*

## Certificate of Qualifications of Employment (CQE) Summary Data





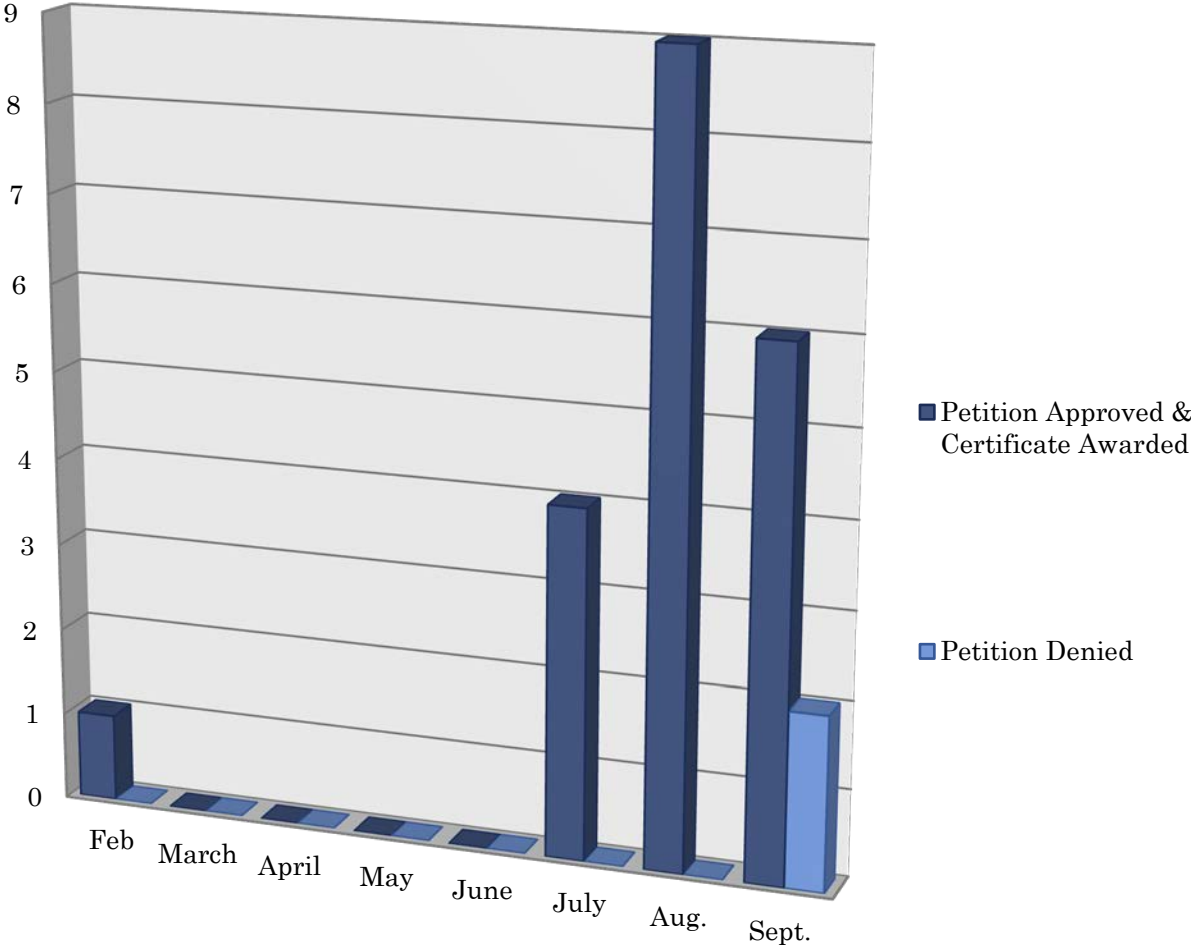
<i>Petition Status</i>	<b>Total</b>	<b>Petition Status Key</b>
Petitions In Process	304	Petitioner registered in system; Petition has not been submitted
Information Needed	16	Petition sent back to Petitioner for addition information
Petition Cancelled	5	Petition cancelled by Petitioner; duplicate petitions likely cause
Ineligible to Apply at this time	19	Petition submitted; DRC determined Petitioner Ineligible due to time constraints from last conviction/supervision period
Petition in DRC Review	52	Petition submitted; In Dept. Rehabilitation & Correction Review
Petition in Common Pleas Court Review	177	Petition submitted; Reviewed by DRC; now in Court Review
Petitions Denied	2	The Court has ruled on the petition; Petition process complete
Petitions Approved	18	The Court has ruled on the petition; Petition process complete
<b>Total</b>	<b>593</b>	



<b>County Breakout*</b>	Petitions	Approved	Denied	In DRC Review	In Court Review	In Progress (not submitted)	Other Status
Cuyahoga	230	0	0	5	67	139	19
Hamilton	86	2	0	3	25	46	10
Summit	78	0	0	31	21	26	0
Franklin	32	0	0	0	14	17	1
Lorain	24	6	0	0	9	7	2
Stark	17	2	2	1	1	11	0
Montgomery	15	2	0	1	3	8	1
Lake	11	0	0	1	2	8	0
Mahoning	9	0	0	1	1	6	1
Butler	7	0	0	0	3	3	1
Erie	7	0	0	0	2	5	0
Clark	5	0	0	0	3	2	0
Portage	5	1	0	0	2	2	0
Delaware	5	0	0	0	1	4	0
Lucas	4	0	0	0	1	1	2
<b>Total</b>	<b>535</b>	<b>13</b>	<b>2</b>	<b>43</b>	<b>155</b>	<b>285</b>	<b>37</b>

\* List consists of large metropolitan counties and those with the most petitions in the system. Remaining counties not listed have four or fewer petitions in the system.

### CQE Certificates Issued by Month Through September 2013



<b>Feasibility Questions</b>								
The questions below are completed when the Court decides to approve or deny a CQE petition. The below information was collected from the 20 petitions Ohio Courts approved or denied as of October 1, 2013.								
<b>1. How many convictions did you identify for this petitioner?</b>	<b>0 to 2 convictions</b>	Percent of CQE Certificates	<b>3 to 5 convictions</b>	Percent of CQE Certificates	<b>more than 5 convictions</b>	Percent of CQE Certificates		
<i>Misdemeanors:</i>	18	90%	2	10%	0	0%		
<i>Felonies:</i>	15	75%	3	15%	2	10%		
<b>2. How many hours did your court spend on the initial investigation?</b>	<b>Under 3.0 hours</b>	Percent of CQE Certificates	<b>3.0 to 5.0 hours</b>	Percent of CQE Certificates	<b>More than 5.0 hours</b>	Percent of CQE Certificates		
	15	75%	5	25%	0	0%		
<b>3. How much money did the Court spend (excluding staff time/expense) for this petition?</b>	<b>None</b>	Percent of CQE Certificates	<b>Less than \$25</b>	Percent of CQE Certificates	<b>\$25 to \$100</b>	Percent of CQE Certificates	<b>\$101 or more</b>	Percent of CQE Certificates
	7	35%	11	55%	2	10%	0	0%
<b>4. Did the Court Order an additional Investigation(s) for this Petition?</b>	<b>Yes*</b>	Percent of CQE Certificates	<b>No</b>	Percent of CQE Certificates				
	6	30%	14	70%				
<b>* ~ If Yes, who collected the information?</b>	<b>Clerk's Office</b>	Percent of CQE Certificates	<b>Probation Dept.</b>	Percent of CQE Certificates	<b>Court Admin</b>	Percent of CQE Certificates	<b>Other</b>	Percent of CQE Certificates
	0	0%	5	83%	0	0%	1	17%
<b>* ~ How much time did they expend?</b>	<b>Under 3.0 hours</b>	Percent of CQE Certificates	<b>3.0 to 5.0 hours</b>	Percent of CQE Certificates	<b>More than 5.0 hours</b>	Percent of CQE Certificates		
	3	50%	2	33%	1	17%		
<b>5. What was the total amount of fees and court costs assessed to the Petitioner?</b>	<b>Less than \$50</b>	Percent of CQE Certificates	<b>\$50 - \$100</b>	Percent of CQE Certificates	<b>\$101 - \$150</b>	Percent of CQE Certificates	<b>\$151 - \$200</b>	Percent of CQE Certificates
	5	25%	5	25%	3	15%	0	0%

<b>Question 5 continued.</b>	<b>\$201 - \$250</b>	Percent of CQE Certificate s	<b>\$251-\$350</b>	Percent of CQE Certificate s				
	2	10%	5	25%				

<b>CQE Petition Timeframe Data Chart</b>								
Petition	under 30 days	30 - 59 days	60 -89 days	90 - 119 days	more than 120 days	Clerk Date	Decision Date	Days
1		X				7/22/2013	9/12/2013	50
2	X					7/8/2013	8/5/2013	27
3					X	2/8/2013	8/13/2013	185
4		X				7/15/2013	8/28/2013	43
5		X				5/29/2013	7/22/2013	53
6		X				7/23/2013	9/6/2013	43
7		X				7/15/2013	9/6/2013	51
8		X				7/1/2013	8/5/2013	34
9		X				6/21/2013	8/9/2013	48
10		X				7/10/2013	8/15/2013	35
11	X					2/8/2013	2/19/2013	11
12				X		5/17/2013	8/29/2013	102
13				X		5/2/2013	8/2/2013	90
14	X					8/22/2013	9/19/2013	27
15			X			5/10/2013	7/15/2013	65
16		X				5/22/2013	7/18/2013	56
17		X				7/8/2013	8/29/2013	51
18	X					7/8/2013	7/25/2013	17
19*			X			6/17/2013	9/10/2013	83
20*	X					8/14/2013	9/10/2013	26
							Avg.	54.85

\*Petition was denied.

The above chart lists the twenty petitions where a Court decision has been reached and the time interval between filing the petition with the Clerk to the date of the Court decision. The average number of days is also indicated.