

IN THE SUPREME COURT OF FLORIDA

**IN RE: AMENDMENTS TO RULE 2.240,
RULES OF JUDICIAL ADMINISTRATION CASE NO.
- DETERMINATION OF NEED FOR
ADDITIONAL JUDGES**

**PETITION OF THE COMMISSION ON TRIAL COURT
PERFORMANCE AND ACCOUNTABILITY**

(A) Jurisdiction. The Commission on Trial Court Performance and Accountability, pursuant to rule 2.140(g)(1), Fla.R.Jud.Admin., files this request for amendments to rule 2.240, Fla.R.Jud.Admin., in response to the instructions in the March 14, 2006 letter from Mr. Tom Hall, Clerk of the Florida Supreme Court. The Chair originally requested an extension until July 15, 2006. However, the term of the Commission expired on June 30, 2006 before the Commission was able to approve the amendments for submission to the Court. The Commission,¹ re-appointed by Chief Justice R. Fred Lewis in AOSC06-54 (September 19, 2006), met on December 3, 2006 and approved the proposed amendments.

¹ The Honorable Alice Blackwell White, Chair, Judge, Ninth Judicial Circuit; The Honorable Robert B. Bennett, Jr., Chief Judge, Twelfth Judicial Circuit; Mr. Mike Bridenback, Court Administrator, Thirteenth Judicial Circuit; The Honorable Brian J. Davis, Judge, Fourth Judicial Circuit; The Honorable James V. Dominguez, Judge, Hillsborough County; Ms. L. Caron Jeffreys, Court Administrator, Twentieth Judicial Circuit; The Honorable Kathleen Kroll, Chief Judge, Fifteenth Judicial Circuit; The Honorable Peter R. Lopez, Judge, Eleventh Judicial Circuit; The Honorable Peter F. Marshall, Judge, Volusia County; The Honorable Ellen Sly Masters, Judge, Polk County; Ms. Carol Lee Ortman, Court Administrator, Seventeenth Judicial Circuit; The Honorable Jonathan Sjostrom, Judge, Second Judicial Circuit; and The Honorable Terry D. Terrell, Judge, First Judicial Circuit.

(B) Proposed Rule Amendments. The Florida Supreme Court is responsible for determining the need for additional judges.² Historically, the Court has analyzed case filings and disposition data to evaluate the growth in judicial workload in the trial courts. The criterion of case filings per judge was generally the basis for certifying the need for additional judges. Specifically, subdivision 2.240(b)(1)(A) provides that circuit courts operating at or above a filing threshold of 1,865 case filings per circuit judge, and county courts operating at or above a filing threshold of 6,114 cases filings per county judge, are presumed to have a need for one or more additional judges. This

² Article V, section 9, of the Florida constitution, provides:

Determination of number of judges.—The supreme court shall establish by rule uniform criteria for the determination of the need for additional judges except supreme court justices, the necessity for decreasing the number of judges and for increasing, decreasing or redefining appellate districts and judicial circuits. If the supreme court finds that a need exists for increasing or decreasing the number of judges or increasing, decreasing or redefining appellate districts and judicial circuits, it shall, prior to the next regular session of the legislature, certify to the legislature its findings and recommendations concerning such need. Upon receipt of such certificate, the legislature, at the next regular session, shall consider the findings and recommendations and may reject the recommendations or by law implement the recommendations in whole or in part; provided the legislature may create more judicial offices than are recommended by the supreme court or may decrease the number of judicial offices by a greater number than recommended by the court only upon a finding of two-thirds of the membership of both houses of the legislature that such a need exists. A decrease in the number of judges shall be effective only after the expiration of a term. If the supreme court fails to make findings as provided above when need exists, the legislature may by concurrent resolution request the court to certify its findings and recommendations and upon the failure of the court to certify its findings for nine consecutive months, the legislature may, upon a finding of two-thirds of the membership of both houses of the legislature that a need exists, increase or decrease the number of judges or increase, decrease or redefine appellate districts and judicial circuits.

methodology does not distinguish variation in case complexity, e.g., a capital murder and a simplified dissolution are treated equally.

In 2000, the Court, pursuant to a request by the Florida Legislature, began applying a caseload weighting system in assessing judicial workload. See In re Certification of Need for Additional Judges, 755 So.2d 79 (Fla. 2000). A weighted caseload system is a method by which to measure the judicial time needed to handle various kinds of cases. The application of case weights to trial court filings³ is a more meaningful measure of workload and has produced reasonable caseload standards that the Court has accepted as the primary basis for the certification of the need for additional judges since 2000. Id. at 81. Under this new system, a capital murder case now receives a 3,150 relative weight and a simplified dissolution receives a 25 relative weight. Relative weights represent the average number of minutes required by a judge to dispose of a case.

For each certification of need since 2000, the Court has utilized this weighted caseload methodology in lieu of the case filings prescribed by rule 2.240. See In re Certification of Need for Additional Judges, 918 So.2d 283 (Fla. 2005); In re Certification of Need for Additional Judges, 889 So.2d 734 (Fla. 2004); In re Certification of Need for Additional Judges, 842 So.2d 100 (Fla. 2003); In re Certification of Need for Additional Judges, 806 So.2d 446 (Fla. 2002); In re Certification of Need for Additional Judges, 780 So.2d 906 and (Fla. 2001). The proposed amendments are necessary so that the rule, which is required by Article V, section 9 of the Florida constitution, will accurately reflect the factors currently considered by the Court in assessing the need for additional trial court judges. Specifically, the proposed amendments codify the trial court certification process utilized by the Court

³ The Supreme Court established a Delphi Policy Committee of 41 circuit and county judges to direct the study. Delphi is a technique developed as a way of achieving a consensus of opinion from a group of experts in situations where there was a lack of historical data or in extremely complex situations where human judgment is at a premium. Over 100 judges participated in a series of Delphi exercises to determine specific Delphi weights, which identified the time they believed should be spent by a judge to handle various types of cases. Finally, a two-month time study involving nearly 120 judges produced a set of case weights that showed the amount of time judges actually were spending on various types of cases. See National Center for State Courts, Florida Delphi-based Weighted Caseload Project, Final Report, January 2000.

since 2000, when the Court adopted a caseload weighting system. The Commission members unanimously support each of the amendments described below:

In subdivision (a), the reference to the Court's opinion amending the criteria for the district courts of appeal is amended to reflect the updated Southern Second citation.

Subdivisions (b)(1)(A) and (b)(1)(B) have been extensively amended. The case weight methodology has replaced the per judge case filings threshold described in the rule 2.240(b)(1); this methodology relies primarily on case weights, forecasted case filings, and calculations of available judge time to determine the need for additional trial court judges.

Subdivision (b)(1)(A) identifies the statistical methodology used to assess and certify the need for additional judgeships for the trial courts. This process changed pursuant to the 1999 Delphi-based Weighted Caseload project. As such, general filings thresholds are no longer used as the basis for certifying judicial need.

Subdivisions (b)(1)(A)(i) and (b)(1)(A)(ii) have been modified to reflect the criteria used to determine judicial workload in circuit and county court respectively.

References to the use of filings thresholds have been omitted from subdivision (b)(1)(B). Filing thresholds have been replaced with the Delphi methodology.

Subdivision (b)(1)(B)(i) is amended to conform to language in subsequent subdivisions regarding availability and use.

Subdivision (b)(1)(B)(ii) is amended to conform to language in subsequent subdivisions regarding availability and use.

Subdivision (b)(1)(B)(iii) is amended to reflect statute changes that change the designations of masters to magistrates. In 2004, the legislature adopted the term "magistrates" in place of the term "masters." Chapter 2004-11, Laws of Florida.

Subdivision (b)(1)(B)(x) has been removed, as the nature and

complexity of cases is factored into the calculation of the case weights.

Subsection (b)(1)(C) is added to reflect that the case weights should be reviewed at least every 5 years. The case weights are designed to be updated every five years to preserve the integrity of the system. A workgroup is presently updating the case weights under the auspices of the Commission. As the proposed amendments do not incorporate actual case weight values, updated case weights will not require a change to the rule.

The Commission has consulted with the trial court chief judges who concur in the proposed amendments.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Alice Blackwell White', written in a cursive style.

Alice Blackwell White
Chair, Commission on Trial Court
Performance and Accountability

Cc: The Honorable R. Fred Lewis, Chief Justice
The Honorable Kenneth B. Bell, Liaison to Commission
The Honorable Winifred J. Sharp, Chair Rules of Jud.Admin.Com.
Lisa Goodner State Courts Administrator
Deborah Meyer, Director of Central Staff

Rule 2.240, DETERMINATION OF NEED FOR ADDITIONAL JUDGES

(a) Statement of Purpose. The purpose of this rule is to set forth uniform criteria used by the supreme court in determining the need for additional judges, except supreme court justices, and the necessity for decreasing the number of judges, pursuant to article V, section 9, Florida Constitution. These criteria form the primary basis for the supreme court's determination of need for additional judges. Unforeseen developments, however, may have an impact upon the judiciary resulting in needs which cannot be foreseen or predicted by statistical projections. The supreme court, therefore, may also consider any additional information found by it to be relevant to the process. In establishing criteria for the need for additional appellate court judges, substantial reliance has been placed on the findings and recommendations of the Commission on District Court of Appeal Performance and Accountability. *See In re Report of the Comm'n on Dist. Court of Appeal Performance and Accountability--Rule of Judicial Admin. 2.035, No. SC06-397 (Fla. July 6, 2006)* 933 So. 2d 1136 (Fla. 2006).

(b) Criteria.

(1) Trial Courts.

~~(A) The following thresholds have been established based upon caseload statistics supplied to the state courts administrator by the clerks of the circuit courts. Courts either at or projected to be at the thresholds are presumed to have a need for one or more additional judges. The thresholds are not an optimal level but reflect that the courts are operating above capacity.~~ Assessment of judicial need at the trial court level is based primarily upon the application of case weights to circuit and county court caseload statistics supplied to the Office of the State Courts Administrator by the clerks of the circuit courts, pursuant to rule 2.245, Florida Rules of Judicial Administration. Such case weights provide a quantified measure of judicial time spent on case-related activity, translating judicial caseloads into judicial workload by factoring in the relative complexity by case type in the following manner:

~~(i) The circuit court threshold is 1,865 case filings per circuit judge. These case filings include circuit criminal (includes worthless checks), civil (includes habeas corpus), juvenile dependency and delinquency, domestic relations (including child support), probate, guardianship, and mental health cases.~~ The circuit court case weights are applied to forecasted case filings,

which include circuit criminal (includes felony, drug court, and worthless check cases), circuit civil (includes matters involving claims of \$15,001 and above), family (includes domestic relations, juvenile dependency, and juvenile delinquency cases), and probate (includes guardianship, mental health, and trust cases).

~~(ii) The county court threshold is 6,114 case filings per county judge. These case filings include criminal misdemeanor, county civil (including small claims and landlord-tenant), violations of county or municipal ordinances, DUI, and other criminal traffic cases; they do not include worthless check cases. The county court case weights are applied to forecasted filings, which include county criminal (includes misdemeanor, violations of county and municipal ordinance, worthless check, driving under the influence, and other criminal traffic cases), and county civil (includes small claims, matters involving claims ranging from \$5,001 to \$15,000, landlord-tenant, and civil traffic infraction cases).~~

(B) Other factors may be utilized in the determination of the need for one or more additional judges. ~~These other factors may indicate that need for an additional judge(s) even though a court may not have achieved the presumptive threshold. Conversely, the absence of these other factors may mitigate the need for one or more additional judges.~~ These other factors include, but are not limited to, the following:

~~(i) County judge availability to serve and county judge service in circuit court. The availability and use of county court judges in circuit court.~~

~~(ii) The use and availability and use of senior judges to serve on a particular court.~~

~~(iii) The availability and use of supplemental hearing officers magistrates and hearing officers.~~

~~(iv) The extent of use of alternative dispute resolution.~~

~~(v) The number of jury trials.~~

~~(vi) Foreign language interpretations.~~

~~(vii) The geographic size of a circuit, including travel times between courthouses in a particular jurisdiction.~~

~~(viii) Law enforcement activities in the court's jurisdiction, including any substantial commitment of additional resources for state attorneys, public defenders, and local law enforcement.~~

~~(ix) The availability and use of case-related support staff and case management policies and practices.~~

~~(x) The nature and complexity of cases coming before the courts in the jurisdiction.~~

~~(xi)~~ Caseload trends.

(C) The Commission on Trial Court Performance and Accountability shall review the trial court workload trends and case weights and consider adjustments no less than every five years.

(2) *District Courts of Appeal.*

(A) The criteria for determining the need to certify the need for increasing or decreasing the number of judges on a district court of appeal shall include the following factors:

(i) workload factors to be considered include: trends in case filings; trends in changes in case mix; trends in the backlog of cases ready for assignment and disposition; trends in the relative weight of cases disposed on the merits per judge; and changes in statutes, rules of court, and case law that directly or indirectly impact judicial workload.

(ii) efficiency factors to be considered include: a court's ability to stay current with its caseload, as indicated by measurements such as trend in clearance rate; trends in a court's percentage of cases disposed within the time standards set forth in the Rules of Judicial Administration and explanation/justification for cases not resolved within the time standards; and a court's utilization of resources, case management techniques and technologies to maximize the efficient adjudication of cases, research of legal issues, and preparation and distribution of decisions.

(iii) effectiveness factors to be considered include the extent to which each judge has adequate time to: thoroughly research legal issues, review briefs and memoranda of law, participate in court conferences on pending cases, hear and dispose of motions, and prepare correspondence, orders, judgments and opinions; expedite appropriate cases; prepare written opinions when warranted; develop, clarify, and maintain consistency in the law within that district; review all decisions rendered by the court; perform administrative duties relating to the court; and participate in the administration of the justice system through work in statewide committees.

(iv) professionalism factors to be considered include: the extent to which judges report that they have time to participate, including teaching, in education programs designed to increase the competency and efficiency of the judiciary and justice system as well as the competency of lawyers; provide guidance and instruction for the professional development of court support staff; and participate in appropriate activities of the legal profession at both the state and local levels to improve the relationship between the bench and bar, to enhance lawyer professionalism, and to improve the administration of justice.

(B) The court will presume that there is a need for an additional appellate court judgeship in any district for which a request is made and where the relative weight of cases disposed on the merits per judge would have exceeded 280 after application of the proposed additional judge(s).

(i) The relative weight of cases disposed on the merits shall be determined based upon case disposition statistics supplied to the state courts administrator by the clerks of the district courts of appeal, multiplied by the relative case weights established pursuant to subdivision (b)(2)(B)(ii), and divided by 100.

(ii) The Commission on District Court of Appeal Performance and Accountability shall review the workload trends of the district courts of appeal and consider adjustments in the relative case weights every four years.

(c) Additional Trial Court Workload Factors. Because summary statistics reflective of the above criteria do not fully measure judicial workload, the supreme court will receive and consider, among other things, information about the time to perform and volume of the following activities, which also comprise the judicial workload of a particular jurisdiction:

- (1) review appellate court decisions;
- (2) research legal issues;
- (3) review briefs and memoranda of law;
- (4) participate in court conferences on pending cases;
- (5) hear and dispose of motions;
- (6) prepare correspondence, orders, judgments, and decisional opinions;
- (7) review presentence investigative reports and predispositional reports in delinquency and dependency cases;
- (8) review petitions and motions for post-conviction relief;
- (9) perform administrative duties relating to the court;
- (10) participate in meetings with those involved in the justice system; and
- (11) participate in educational programs designed to increase the competency and efficiency of the judiciary.

(d) Certification Process. The process by which certification of the need to increase or decrease the number of judges shall include:

- (1) The state courts administrator will distribute a compilation of summary statistics and projections to each chief judge at a time designated by the chief justice.
- (2) Each chief judge shall submit to the chief justice a request for any increase or decrease in the number of judges:

(A) Trial Courts. Each chief judge will then consider these criteria, additional workload factors, and summary statistics, and submit to the chief justice a request for any increases or decreases under article V, section 9, of the Florida Constitution that the chief judge feels are required.

(B) District Courts. Each chief judge will then consider the criteria of this rule and the summary statistics; if a new judge is requested, the chief judge shall prepare a report showing the need for a new judge based upon the application of the criteria in this rule.

(i) Any request for a new district court judge shall be submitted to the District Court of Appeal Budget Commission for review and approval.

(ii) The chief judge of a district court of appeal shall submit the report showing the need together with the approval of the District Court of Appeal Budget Commission to the chief justice.

(3) The chief justice and the state courts administrator may then visit the chief judge and other representatives of the court submitting the request as well as representatives of The Florida Bar and the public to gather additional information and clarification about the need in the particular jurisdiction.

(4) The chief justice will submit recommendations to the supreme court, which will thereafter certify to the legislature its findings and recommendations concerning such need.

RULE 2.240. DETERMINATION OF NEED FOR ADDITIONAL JUDGES

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(b) **Criteria.**

(1) *Trial Courts.*

(A) ~~The following thresholds have been established based upon caseload statistics supplied to the state courts administrator by the clerks of the circuit courts. Courts either at or projected to be at the thresholds are presumed to have a need for one or more additional judges. The thresholds~~

Reasons for change

[technical change to update cite to So.2d]

Subdivisions (b)(1)(A) and (b)(1)(B) have been extensively amended. Subdivision (b)(1)(A) identifies the statistical methodology used to assess and certify the need for additional judgeships for the trial courts. This process changed pursuant to the 1999 Delphi-based Weighted Caseload project. As such,

~~are not an optimal level but reflect that the courts are operating above capacity.~~ Assessment of judicial need at the trial court level is based primarily upon the application of case weights to circuit and county court caseload statistics supplied to the Office of the State Courts Administrator by the clerks of the circuit courts, pursuant to rule 2.245, Florida Rules of Judicial Administration. Such case weights provide a quantified measure of judicial time spent on case-related activity, translating judicial caseloads into judicial workload by factoring in the relative complexity by case type in the following manner:

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(ii) ~~The county court threshold is 6,114 case filings per county judge. These case filings include criminal misdemeanor, county civil (including small claims and landlord-tenant), violations of county or municipal ordinances, DUI, and other criminal traffic cases; they do not include worthless check cases.~~ The county court case weights are

general filings thresholds are no longer used as the basis for certifying judicial need.

Subdivisions (b)(1)(A)(i) and (b)(1)(A)(ii) have been modified to reflect the criteria used to determine judicial workload in circuit and county court respectively.

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(B) Other factors may be utilized in the determination of the need for one or more additional judges. ~~These other factors may indicate the need for an additional judge(s) even though a court may not have achieved the presumptive threshold. Conversely, the absence of these other factors may mitigate the need for one or more additional judges.~~ These other factors include, but are not limited to, the following:

(i) ~~County judge availability to serve and county judge service in circuit court.~~ The availability and use of county court judges in circuit court.

(ii) ~~The use and availability and use of senior judges to serve on a particular court.~~

(iii) ~~The availability and use of supplemental hearing officers-magistrates and hearing officers.~~

(iv) The extent of use of alternative dispute resolution.

(v) The number of jury trials.

(vi) Foreign language interpretations.

(vii) The geographic size of a circuit, including travel times between courthouses in a particular jurisdiction.

(viii) Law enforcement activities in the court's

References to the use of filings thresholds have been omitted from subdivision (b)(1)(B).

Subdivision (b)(1)(B)(i) is amended to conform to language in subsequent subdivisions regarding availability and use. Subdivision (b)(1)(B)(ii) is amended to conform to language in subsequent subdivisions regarding availability and use. Subdivision (b)(1)(B)(iii) is amended to reflect statute changes that change the designations of masters to magistrates. See 2004-11, Laws of Florida.

jurisdiction, including any substantial commitment of additional resources for state attorneys, public defenders, and local law enforcement.

(ix) The availability and use of case-related support staff and case management policies and practices.

~~(x) The nature and complexity of cases coming before the courts in the jurisdiction.~~

(xi) Caseload trends.

(C) The Commission on Trial Court Performance and Accountability shall review the trial court workload trends and case weights and consider adjustments no less than every five years.

(2) *District Courts of Appeal* [no change]

(c) **Additional Trial Court Workload Factors** [no change]

(d) **Certification Process** [no change]

Subdivision (b)(1)(B)(x) has been removed, as the nature and complexity of cases is factored into the calculation of the case weights.

Subsection (b)(1)(C) is added to reflect that the case weights should be reviewed at least every 5 years.