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Chair
Stephen Busey
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Melvia B. Green
Thomas D. Hall
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C o m m i t t e e o n
District Court of Appeal
Workload AND Jurisdiction
Supreme Court of Florida

Christopher M. Kise
Mark K. Leban
Rebecca Mercier-Vargas
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Raquel A. Rodriguez
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William A. Van Nortwick, Jr.
Martha C. Warner

Report and Recommendations

October, 2005

Committee Charge and Membership

The Committee on District Court of Appeal Workload and Jurisdiction (the Committee) was created by Administrative Order AOSC04-122, entered by Chief Justice Barbara J. Pariente on September 22, 2004.

The order notes that Article V, section 9 of the Constitution of the State of Florida provides that the Supreme Court shall establish uniform criteria for the determination of need for additional judges as well as the necessity of increasing, decreasing, or redefining appellate districts and judicial circuits.

The order states that the Court finds it beneficial to reexamine court of appeal workload and jurisdiction consistent with this constitutional requirement.

This Committee was therefore created and directed to make recommendations to the Supreme Court “on uniform criteria as a primary basis for the determination of the need to increase, decrease, or redefine the appellate districts.” The Committee was directed to submit its recommendation to the Supreme Court no later than November 1, 2005, the date on which the term of the Committee expires.

The following individuals were appointed to the Committee:

The Honorable Chris W. Altenbernd, Judge,
Second District Court Of Appeal (Chair)

Mr. Stephen Busey, Attorney, Jacksonville

Mr. John G. Crabtree, Attorney, Key Biscayne

The Honorable Henry E. Davis, Circuit Court Judge,
Fourth Judicial Circuit

The Honorable Hugh D. Hayes, Chief Judge,
Twentieth Judicial Circuit

Ms. Margaret Good-Earnest, Assistant Public Defender,
Fifteenth Judicial Circuit

The Honorable Melvia B. Green, Judge,
Third District Court of Appeal

The Honorable Thomas D. Hall, Clerk,
Supreme Court of Florida

Mr. Christopher M. Kise, Solicitor General of Florida

The Honorable Mark K. Leban, County Court Judge,
Miami-Dade County

Ms. Rebecca Mercier-Vargas, Attorney, West Palm Beach

The Honorable William David Palmer, Judge,
Fifth District Court of Appeal

Ms. Kathryn Senecal Pecko,
Judge of Compensation Claims, Miami

Ms. Raquel A. Rodriguez, General Counsel,
Office of the Governor

Mr. Rodolfo Sorondo, Jr., Attorney, Miami

The Honorable William A. Van Nortwick, Jr., Judge,
First District Court of Appeal

The Honorable Martha C. Warner, Judge,
Fourth District Court of Appeal

The Committee held its first two meetings in Tampa at the Second District Court of Appeal, Stetson Tampa Law Center, on February 22, and May 17, 2005. At the May 17 meeting the Committee created a subcommittee and directed it to draft a proposed rule setting out criteria. The subcommittee met by telephone conference call on June 9 and July 6, 11 and 18, 2005, and circulated its work product via email. The Committee held its last meeting on August 17, 2005, at which time it discussed and

modified the subcommittee draft. The Committee circulated final revisions and approved the attached proposed rules as well as this report via email during October, 2005.

Research

The Committee began its deliberations by familiarizing itself with the major developments in the history of Florida's appellate court system, from the creation of first three district courts in 1957 through the jurisdictional reforms to Article V in 1978, and the more recent work of the Committee on District Court of Appeal Performance and Accountability, under the Judicial Management Council and the subsequent work of its descendant body, the Commission on District Court of Appeal Performance and Accountability.

The Committee reviewed the following materials regarding Florida's appellate court system:

- *Report and Recommendations of the Committee on District Court of Appeal Performance and Accountability*, Judicial Management Council, 1998.
- *Overview of Florida Appellate Courts: Structure, Organization, Jurisdiction, Workload*, prepared by OSCA and Clerk of the Supreme Court of Florida, 2005.
- *Court Size as it Affects Collegiality and Court Performance*, Commission on District Court of Appeal Performance and Accountability, 2004.
- *Florida's Courts of Appeal: Intermediate Courts Become Final*, John M. Scheb, *Stetson Law Review*, 1984.

The Committee then directed its attention to gaining a more complete understanding of the circumstances that contribute to judicial workload on the district courts and the circumstances that affect the operational dynamics of the courts.

As a starting point the Committee studied the changing caseload of the district courts over time by considering three different points in time over a forty year period: 1985, 2005 and conceivable expectations for the caseload of the district courts in 2025. The Committee examined detailed filing trends, broken down by case type for both district and circuit, from 1989 to the present, and projected through 2015.

Staff to the Committee prepared an environmental scan and trend analysis of the factors that have influenced the courts in the past. The Committee analyzed internal and external trends that are likely to impact Florida's appellate courts in the future.

Analysis of caseloads and trend data led the Committee to conclude that many commonly held beliefs about factors that contribute to appellate court caseloads, such as correlations to populations, numbers of attorneys, and trial court caseloads are overstated, and that caseloads are also affected by changes in the law, such as those contributing to post-conviction appeals,

and changes in trial court practice, such as increased reliance on mediation and other private forums.¹ In short, future caseloads cannot be reliably projected based on linear calculations of populations and other data, but are dependent on uncertain contingencies regarding the legal and social structure.

Similarly, the Committee concluded that judicial workload – the efforts required of judges as distinct from overall court workload that can be carried in part by staff -- is less closely related to caseloads than is widely believed. Judicial workload can be great for some case types and less for others. Furthermore, workload continues to be highly influenced by changes in court processes, such as the use of staff attorneys and deployment of information technologies that increase judicial efficiency. Thus, assessments and projections of a court's workload cannot be reliably based on caseloads alone, but must be based on a number of interrelated factors. In reaching its conclusions the Committee consulted with, and is greatly indebted to, the Commission on District Court of Appeal Performance and Accountability.²

¹ For a complete discussion see *Factors that Impact Caseload in the District Courts of Appeal*, Strategic Planning Unit, Office of the State Courts Administrator, September, 2005.

² *Workload Report to the Supreme Court*, Commission on Trial Court Performance and Accountability, September, 2005.

Finally, the Committee studied the relationship of court size, in terms of the number of judges on a court, and overall performance. There has long been a widely held assumption in Florida that appellate courts cannot operate effectively as the size of the court grows larger than that to which judges have become accustomed. This assumption is rebutted in a study on collegiality and appellate court size conducted by the Commission on District Court of Appeal Performance and Accountability in 2004.³

The Commission reported that the operating dynamics of courts has been altered by developments in court management practices, the deployment of resources such as central staffs, and the increased sophistication of information-sharing technologies, including video conferencing, email, and document management. Thus, the assumption that a court would become less effective when the number of judges on the court approached twenty no longer holds true. As the Commission reported, “the experience in Florida and elsewhere suggests that larger appellate courts with strong leadership, adequate staff support, well considered case management strategies and appropriate technology can operate with a

³ *Report: Court Size as it Affects Collegiality and Court Performance*, Commission on District Court of Appeal Performance and Accountability, June, 2004.

collegial environment and efficiency similar to or even greater than that of a smaller court.”⁴

In light of these conclusions the Committee shifted its focus away from a search for a purely quantitative solution. The Committee does not support the use of arbitrary numerical thresholds that would purport to indicate when caseload or court size are too great. Instead the Committee advises that Florida adopt the approach embraced by national court management institutions, an approach that concentrates more directly on court performance through measurement of valid indicia, whether they are termed standards, measures, or criteria.

The essential question to be asked, in the view of this Committee, is not whether a court has too many judges, its caseload is too high, or it publishes too few opinions. The relevant question is simply whether, given the totality of the circumstances, Florida’s district courts are able to effectively and efficiently perform their primary functions in service to the people. If there are indications that the courts are struggling to fulfill their mission, then responsible steps should be considered, including geographic redefinition of the districts and alteration of subject matter jurisdiction.

⁴ *Court Size as it Affects Collegiality and Court Performance*, Commission on District Court of Appeal Performance and Accountability, 2004.

Review Process and Criteria

Review Committee

The Committee proposes that a new Rule of Judicial Administration, enumerated as Rule 2.036, be created to fulfill the constitutional mandate of Article V, section 9 to provide uniform criteria for determining the necessity to increase, decrease or redefine the appellate districts. The rule should provide that an assessment be conducted every eight years by a review committee appointed by the chief justice. The review should evaluate the degree to which the district courts, collectively and individually, are able to fulfill their mission, using the criteria identified in the proposed rule.

The Committee recommends that the review committee be composed of one district judge, one circuit judge and one attorney from each district, for a total membership of fifteen. The chief justice should designate the chair. Members should be appointed no later than August 31 of the year before the review year. The review committee should submit its report by July 1 of the review year.⁵ Staff support to the review committee should be provided by the Office of the State Courts Administrator, in consultation with the clerks and marshals of the district courts.

⁵ Under this proposal the 2007 review committee should be appointed by August 31, 2006, and the report of the committee due no later than July 1, 2007.

Upon receiving the report of the review committee, the chief justice should submit the report to the supreme court. On or before November 15 of the review year the supreme court should certify its findings and recommendations to the legislature.

The Committee recommends that the review process be conducted on an eight-year cycle. There are several reasons for this recommendation: First, it contemplates that the review process will be comprehensive and will represent a formidable task for both the review committee and the district courts. Second, given that change in the underlying conditions that may create a necessity to reorganize the district courts has historically been gradual, the Committee anticipates that in the future such change will not emerge quickly. The Committee also notes that the Commission on District Court Performance and Accountability has separately recommended that appellate case weights be recalibrated every four years.

Certification of Need

In making recommendations regarding certification of a need to reorganize the district courts, the Committee recommends that the review committee seek to balance the potential disruption that may be caused by changes in appellate districts against the need to address circumstances that

tend to limit the quality and efficiency of the appellate review process, or public confidence in that process.

In making a determination whether there is a necessity to redefine the appellate districts, the review committee should address two questions.

First, do any adverse conditions exist that prevent the district courts from fulfilling their constitutional mission in some degree? And second, if such adverse conditions are present, can they be addressed or mitigated by less disruptive means or can they be addressed only by an increase, decrease or redefinition of the appellate districts?

As this suggests, the realignment of appellate districts is an inherently disruptive event. The transfer of a judicial circuit from one district to another subjects the residents of the circuit to a period of transition in the venue of appeals, as well as a transitional period regarding the controlling law in areas of the law where there is conflict between or among districts. Thus, realignment is disruptive not only for the district courts, but for the circuit courts and the judges, parties and attorneys within them as well. On the appellate courts themselves judge and staff must be redeployed and in some cases relocated, and the operational logistics of court processes must be reorganized, both within the affected districts and inter-court.

Construction, expansion or renovation of facilities may also be required. To

minimize these disruptions the review committee should carefully consider other adjustments, including, but not limited to, the creation of branch court locations, geographic or subject-matter divisions within districts, deployment of new technologies, and increased ratios of support staff.

The Committee recommends that proposed Rule 2.036 articulate the supreme court's role in determining whether a change is necessary or merely desirable. This recommendation is based in part on the use of the terms "need" and "necessity" within Article V, section 9 of the constitution, which suggests that the Court is required to use a more restrictive test when redefining districts than when certifying the need for additional judgeships. To accomplish this, the rule should provide that the supreme court *shall* certify a necessity to increase, decrease or redefine the appellate districts when it determines that the appellate review process is adversely affected by circumstances that present a compelling need for the certified change. The supreme court *may* certify a necessity to increase, decrease or redefine the appellate districts when it determines that the appellate review process would be improved significantly by the certified change. The Committee felt it appropriate to suggest a court commentary to the rule on this constitutional language.

Review Criteria

The purpose of the review committee is to evaluate the extent to which the district courts are fulfilling their constitutional mission. The mission of Florida's district courts of appeal has been articulated by the Commission on District Court of Appeal Performance and Accountability:

The purpose of Florida's District Courts of Appeal is to provide the opportunity for thoughtful review of lower 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.⁶

The mission statement for Florida's district courts thus embodies the traditional goals of the appellate process: independent review, correction of errors, and the development of consistency and clarity in the law. In addition, the Florida judicial branch is guided by a vision statement that expresses the essential values to which Florida's court aspire as they perform their respective functions:

Justice in Florida will be accessible, fair, effective, responsive and accountable.⁷

⁶ *Report and Recommendations of the Committee on District Court of Appeal Performance and Accountability*, Judicial Management Council, December, 1998.

⁷ *Ibid.*

In addition to studying the mission and vision statements for the district courts, as well as Article V of the Constitution of the State of Florida, the Committee studied performance measurement models developed for appellate court systems. The models studied by the Committee are:

- Report of the Commission on Structural Alternatives for the Federal Courts of Appeal, 1999;
- Appellate Court Performance Standards and Measures, National Center for State Courts, 1999; and
- Standards Relating to Court Organization and Standards Relating to Appellate Courts, ABA Judicial Administration Division, 1990.

These models advance methodologies of assessing the extent to which appellate courts fulfill their purpose. As such they focus not only on caseloads but also direct attention to court functionality and outcomes. The Committee supports this approach, summarized below by the chair of the Appellate Court Performance Standards Commission, and recommends that the review process concentrate on outcomes rather than process:

There is a common focus to the substance of the standards. We have attempted to emphasize standards for what appellate courts do. What does a well-functioning court accomplish in terms of activities and results? We are not interested in defining what a good court looks like in terms of structure or organization, in part, because of the significant differences between state appellate courts. Instead, we seek to formulate a consensus on what appellate courts should be doing to

render just, timely, and consistent opinions . . . function not form.⁸

As a result of its deliberations, the Committee recommends that the rule require the review committee to evaluate the courts and base its recommendations whether to increase, decrease, or redefine the appellate districts on the following criteria: *efficiency, effectiveness, accessibility, professionalism*, and conduciveness to *public trust and confidence*.

The Committee believes that these criteria capture the essential dimensions of a well functioning appellate court in a balanced and comprehensive manner. Each criterion is accompanied by several specific factors within the proposed rule that elaborate and define the criterion. The review committee should evaluate fulfillment of the criteria based on these factors.

Finally, the Committee recognizes that evaluation of the district courts based on these criteria will require thoughtful balancing and the considered judgment of the review committee. Justice is an inherently qualitative concept and these criteria therefore do not lend themselves to easy quantification. Some of the factors can be evaluated by use of statistics and

⁸ *Appellate Court Performance Standards and Measures and Appellate Court Performance Standards*, the National Center for State Courts, June 1999.

other quantitative methodologies; others will require the application of qualitative research methods designed to elicit the experiences and perspectives of stakeholders in the system. It is the belief of the Committee, however, that the defined criteria and the accompanying factors are reliable indicia that, viewed in their totality, will allow an objective observer to determine whether the district courts are fulfilling their mission.

District Realignment

Finally, the Committee reports for the record that during the course of the it's deliberations, committee member Hugh Hayes, Chief Judge of the Twentieth Judicial Circuit, submitted a letter to Judge Chris Altenbernd, chair of the Committee, asking that the Committee consider making a recommendation regarding district realignment in order to alleviate workload pressure on the Second District Court of Appeal. Judge Hayes outlined several possible realignment options, and argued that the most viable and least disruptive would be to create a sixth district comprising of the Twelfth and Twentieth Judicial Circuits.⁹

The chair responded by letter to Judge Hayes, indicating that in his view a specific recommendation for redistricting was beyond the scope of

⁹ Letter, Judge Hugh D. Hayes, July 14, 2005.

the Committee's charge. The task of the Committee, Judge Altenbernd wrote, "is to propose appropriate uniform criteria as well as a process for using those criteria on a regular basis to determine the need to increase, decrease, or redefine the districts."¹⁰ Both Judge Hayes' proposal and the efforts of the Legislature to realign the districts during the 2004 legislative session, demonstrate a need for the adoption of a rule setting out a process as required by the constitution.

¹⁰ Letter, Judge Chris W. Altenbernd, July 18, 2005.

PROPOSED COURT RULE

Rule 2.036. Determination of the Necessity to Increase, Decrease, or Redefine Appellate Districts

(a) Statement of Purpose. The purpose of this rule is to establish uniform criteria for the supreme court's determination of necessity for increasing, decreasing, or redefining appellate districts as required by Article V, section 9, of the Florida constitution. This rule also provides for an assessment committee and a certification process to assist the court both in certifying to the legislature its findings and recommendations concerning such need and in making its own rules affecting appellate court structure and jurisdiction.

(b) Assessment Committee. At least once during every eight-year period, beginning with review year 2007, the chief justice shall appoint a committee that shall assess the capacity of the district courts to effectively fulfill their constitutional and statutory duties. The committee shall make a recommendation to the supreme court concerning the decisions that it should make during the process described in subdivision (C).

- (1) The assessment committee shall consist of three members from each district: one attorney, one district judge, and one circuit judge.
- (2) The committee should be appointed no later than August 31 of the year prior to the review year. It must report its recommendations to the chief justice in writing no later than July 1 of the review year.
- (3) The chief justice shall select the chair of the committee.
- (4) Prior to the preparation of its report, the committee shall solicit written input from the public and shall hold at least one public hearing.
- (5) The Office of the State Courts Administrator, in consultation with the clerks and marshals of the district courts of appeal, shall provide staff support to the committee.
- (6) The chief justice shall submit the committee's recommendations to the supreme court. On or before November 15 of the review year, the supreme court shall certify to the legislature its findings and recommendations.

(c) Certification Process. The certification process balances the potential disruption caused by changes in appellate districts against the need to address circumstances that limit the quality and efficiency of, and public confidence in, the appellate review process.

(1) The supreme court shall certify a necessity to increase, decrease, or redefine appellate districts when it determines that the appellate review process is adversely affected by circumstances that present a compelling need for the certified change.

(2) The supreme court may certify a necessity to increase, decrease, or redefine appellate districts when it determines that the appellate review process would be improved significantly by the certified change.

(d) Criteria. The following criteria shall be considered by the supreme court and the assessment committee:

(1) **Effectiveness.** The factors to be considered for this criterion are the extent to which:

(A) each court expedites appropriate cases;

(B) each court's workload permits its judges to prepare written opinions when warranted;

(C) each court functions in a collegial manner;

(D) each court's workload permits its judges to develop, clarify, and maintain consistency in the law within that district, including consistency between written opinions and per curiam affirmances without written opinions;

(E) each court's workload permits its judges to harmonize decisions of their court with those of other district courts or to certify conflict when appropriate;

(F) each court's workload permits its judges to have adequate time to review all decisions rendered by the court;

(G) each court is capable of accommodating changes in statutes or case law impacting workload or court operations; and

(H) each court's workload permits its judges to serve on management committees for that court and the judicial system.

(2) **Efficiency.** The factors to be considered for this criterion are the extent to which:

- (A) each court stays current with its caseload, as indicated by measurements such as the clearance rate;
- (B) each court adjudicates a high percentage of its cases within the time standards set forth in the Rules of Judicial Administration and has adequate procedures to assure efficient, timely disposition of its cases; and
- (C) each court utilizes its resources, case management techniques, and other technologies to improve the efficient adjudication of cases, research of legal issues, and preparation and distribution of decisions.

(3) **Access to Appellate Review.** The factors to be considered for this criterion are the extent to which:

- (A) litigants, including self-represented litigants, have meaningful access to a district court for mandatory and discretionary review of cases, consistent with due process;
- (B) litigants are afforded efficient access to the court for the filing of pleadings and for oral argument when appropriate; and
- (C) orders and opinions of a court are available in a timely and efficient manner.

(4) **Professionalism.** The factors to be considered for this criterion are the extent to which:

- (A) each court's workload permits its judges to have adequate time and resources to participate in continuing judicial education opportunities and to stay abreast of the law in order to maintain a qualified judiciary;
- (B) each court is capable of recruiting and retaining qualified staff attorneys, clerk's office staff, and other support staff; and,
- (C) each court's staff has adequate time to participate in continuing education and specialized training opportunities.

(5) **Public Trust and Confidence.** The factors to be considered for this criterion are the extent to which:

- (A) each court’s workload permits its judges to have adequate time to conduct outreach to attorneys and the general public within the district;
- (B) each court provides adequate access to oral arguments and other public proceedings for the general public within its district;
- (C) each court’s geographic territory fosters public trust and confidence;
- (D) each court’s demographic composition fosters public trust and confidence; and,
- (E) each court attracts an adequate, diverse group of well-qualified applicants for judicial vacancies within its district, including applicants from all circuits within the district.

(Proposed) Court Commentary

2005 Adoption. Article V, section 9 of the Florida constitution states that:

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. If the supreme court finds that a *need* exists for . . . increasing, decreasing or redefining appellate districts . . ., it shall, prior to the next regular session of the legislature, certify to the legislature its findings and recommendations concerning such need.

(Emphasis added.)

Thus, the constitution uses only “need” when describing the uniform criteria for certifying additional judges, but uses both “necessity” and “need” when describing the uniform criteria for increasing, decreasing, or redefining appellate districts. This court has never determined whether this language compels differing tests for the two certifications. Subsection (c) of this rule uses the phrase “certify a necessity.” The two standards set forth in that subsection recognize the court’s obligation to recommend a change to the

structure of the district courts when circumstances reach the level of necessity that compels a change, but also recognize the court's discretion to recommend a change to the structure of the district courts when improvements are needed.

Workload and Jurisdiction Committee Notes

The criteria set forth in this rule are based on studies of the workload, jurisdiction, and performance of the appellate courts, and the work of the Committee on District Court of Appeal Workload and Jurisdiction in 2005. In establishing these criteria, substantial reliance was placed on empirical research conducted by judicial branch committees and on other statistical data concerning cases, caseloads, timeliness of case processing, and manner for disposition of cases, collected by the Office of the State Courts Administrator Office as required by section 25.075, Florida Statutes (2004), and Florida Rule of Judicial Administration 2.030(e)(2).

Given the disruption that can arise from any alteration in judicial structure, the workload and jurisdiction committee assumed that, prior to recommending a change in districts, both the assessment committee and the supreme court will consider less drastic adjustments including, but not limited to, the creation of branch locations, geographic or subject-matter divisions within districts, deployment of new technologies, and increased ratios of support staff per judge. The workload and jurisdiction committee assumed that the assessment committee's report would address such options when appropriate, but did not believe the rule should contain detailed requirements concerning such options.

The workload and jurisdiction committee considered the impact of computer technology on appellate districts. It is clear that, at this time or in the future, technology can be deployed to allow litigants efficient access to a court for filing of pleadings and for participation in oral argument, and that it can expand the general public's access to the courts. It is possible that technology will substantially alter the appellate review process in the future and that appellate courts may find that technology permits or even requires different districting techniques. This rule was designed to allow these issues to be addressed by the assessment committee and the supreme court without mandating any specific approach.

The five basic criteria in subdivision (d) are not listed in any order of priority. Thus, for example, the workload and jurisdiction committee did not intend efficiency to be a more important criterion than engendering public trust and confidence.

Subdivision (d)(1)(A) recognizes that the court currently provides the legislature with an annual measurement of the appellate courts' "clearance rate," which is the ratio between the number of cases that are resolved during a fiscal year and the new cases that are filed during the same period. Thus, a clearance rate of one hundred percent reflects a court that is disposing of pending cases at approximately the same rate that new cases arrive. Given that other measurements may be selected in the future, the rule does not mandate sole reliance on this measurement.

Subdivision (d)(5)(E) recognizes that a district court's geographic territory may be so large that it limits or discourages applicants for judicial vacancies from throughout the district and creates the perception that a court's judges do not reflect the makeup of the territory.