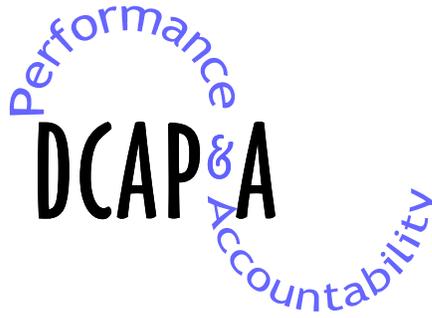


Martha C. Warner
Chair
Chris W. Altenbernd
Ty W. Berdeaux
Mary Cay Blanks
Melvia B. Green
Thomas D. Hall
William D. Palmer
William A. Van Nortwick



September 30, 2005

The Honorable Barbara J. Pariente
Chief Justice, Florida Supreme Court
Florida Supreme Court Building
Tallahassee, Florida 32399

Dear Chief Justice Pariente:

As promised in my letter dated July 7, 2005, attached is a report on the Commission's progress in developing recommended criteria for determining the need for district court of appeal judges. It includes an outline of a proposed rule, which, if you approve of the approach, we would develop as an amendment to rule 2.035, Florida Rules of Judicial Administration. Our proposal differs substantially from our historical approach, which identified a single threshold filing criteria for new judge requests. Because of the significance of this departure, we would appreciate the opportunity to meet with the Court at one of your conferences to answer any questions the court may have about the criteria we have developed.

Yours very truly,

A handwritten signature in black ink that reads "Martha C. Warner". The signature is written in a cursive style and is placed on a light gray rectangular background.

Martha C. Warner

MCW/jhs

Enclosure

cc: DCA Performance and Accountability Members

Martha C. Warner
Chair
Chris W. Altenbernd
Ty W. Berdeaux
Mary Cay Blanks
Melvia B. Green
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DCA Workload Report to the Supreme Court

September 2005

Charge of the Commission

Administrative Order No. AOSC04-21 directs the Commission, “[b]y June 30, 2005 [to] propose a process and criteria for determining the resource needs and deployment patterns sufficient to address the workload of the district courts of appeal, including a re-examination of whether the 350-filings-per-judge threshold accurately reflects a basis for certifying the need for additional district court of appeal judges.”

On July 7, 2005, the Chair, Judge Martha Warner, provided a written update to the Chief Justice regarding the Commission’s progress. Judge Warner reported that the Commission had concluded that a single number threshold most likely was insufficient to capture the intricacies both of the caseload as well as the other factors that make up judicial workload and indicated that the Commission was seeking to complete a relative case weight study. She stated that the Commission would provide additional information to the court by the end of September and that the re-write of the rule could be accomplished by Spring 2006.

Research Methodology:

The Commission began by reviewing its charge, Florida’s current certification rule, the national appellate court performance standards, the mission of the district courts of appeal, and the complimentary charge of the Committee on Appellate Court Workload and Jurisdiction. While acknowledging some overlap, the Commission distinguished between those criteria that are relevant to whether the judges on a court are working above optimal capacity and those criteria that would suggest that the need for a jurisdiction change was indicated.

The Commission's initial analysis included a review of the existing certification criteria to identify those that directly correlate to judicial workload and those which did not directly correlate. The Commission found that many of the criteria in rule 2.035 are not good measures or predictors of judicial workload. (See the staff analysis prepared by the Office of the State Courts Administrator).

The Commission set out to identify the factors and trends that facilitated this apparent increased capacity for judicial work. The Commission examined trends to identify: how change in case mix impacts judicial workload; historical trends that impact the ability to reliably forecast filings; the impact of technological advances in legal research, case processing, and document preparation on judicial productivity; and the impact of central staff support on judicial workload.

Findings:

- ✓ No single factor can adequately establish the need to increase or decrease the number of judges on a court.
- ✓ Establishing an optimal number of filings-per-judge unrealistically presumes static circumstances.
- ✓ There is an important distinction between the number of cases filed and the judicial effort required to dispose of those cases. This distinction should be quantified and considered as a more precise measurement of workload than that shown by filing predictions.
- ✓ Legal conditions, generally the result of legislation, translate into "blips" in filings that hamper the ability to develop reliable filing forecasts
- ✓ Judicial workload should be examined in light of judicial and support staff resources.
- ✓ Multiple factors contribute to the workload capacity of judges and an optimal analysis must accommodate trends in case filing, case mix, and staffing ratios.
- ✓ Judicial workload in any given district court should be examined in relationship to the judicial workload of the other district courts.

Process for Establishing Relative Case Weights

Upon determining that case mix was a relevant factor for judicial workload, the Commission developed a process to measure the judicial effort associated with any given caseload. The Commission first established categories of similar cases and ranked them to identify a mid-ranked case. Then, representative samples of judges from each court were asked to approximate the relative weight of each case category in relation to the mid-ranked case.

Judges were instructed to assign the relative weights based on a “typical,” “average,” or “normal” version of each case type. Based on the similarity and consistency of the judges’ responses, we were able to statistically determine that this methodology adequately represented judicial perceptions of the proportional relationship between case type categories. These weights were then applied to each court’s dispositions on the merits to determine the weighted caseload value. See Appendix A for the average relative weights and explanation of their application; see Appendix B for the instrument and instructions.

Figure 1. Application of Average Relative Weights to Cases Disposed After Submission on the Merits

FY	First	Second	Third	Fourth	Fifth
2000-01	23,135	28,566	24,178	28,003	25,343
2001-02	25,267	28,571	24,621	29,986	26,484
2002-03	23,702	31,923	24,149	30,848	26,654
2003-04	28,365	29,317	22,050	32,005	28,409
2004-05	28,317	32,456	22,553	31,424	28,387

The relative case weights may be used in several ways. First, they can show how a court’s judicial workload has increased or decreased over time. Second, they can allow a comparative assessment of the distribution of judicial workload between the districts. And finally, they can also contribute to an analysis of how the use of other non-judicial resources can affect judicial workload. Notwithstanding the usefulness of the case weight analysis, the Commission does not believe that the case weighted number of dispositions on the merits for any particular district court can provide a single numerical factor for determining the need for additional district court judges.

The Commission notes two issues with the survey results that require further comment. The first is in the area of administrative appeals. The First District weighted their administrative appeals with a substantially greater judicial effort than the other courts. This is because so many complex rule challenges are filed in Tallahassee, which is the headquarters of most state agencies. The relative weights calculated for this report reflect the statewide weight for administrative appeals, resulting in a lower relative case weight than is reflective of the actual workload of the First District. The Commission will continue to study this issue and attempt to isolate that portion of cases in the First District unique to that court, just as workers’ compensation cases are unique to that court. It will then assign a weighted workload measure to those cases commensurate to their greater complexity.

The second issue deals with the Third District and its lack of central staff. Central staff handles the work-up of various categories of cases in the other courts, including writs and post-conviction relief matters. In the Third District, without central staff, these cases appear to demand more judicial effort, which is reflected in the relative weights assigned in the Third District's survey results. Were the Commission to use the Third District's weights for these cases the Third District's relative case weight would be substantially higher. However, the use of the relative weight to compare courts may also tend to show the impact of various case management practices on the judicial workload.

Criteria:

The Commission recommends that workload, efficiency, effectiveness and professionalism criteria be evaluated in determining the need for increasing or decreasing the number of judges. Each of the criteria has objective and subjective components to be evaluated. The Commission has identified specific factors to be considered as part of each issue.

The Commission also recommends a process for reviewing the criteria, which includes a periodic review of the relative case weights established for the various case types and approval of certification requests by the District Court of Appeal Budget Commission.

Following is an outline of the process and the specific criteria for determining the need for increasing or decreasing the number of district court judges. To assist the Court in its consideration, the OSCA has prepared a certification report relative to the proposed criteria.

If the court generally approves of the recommended process and identified criteria, the Commission will submit appropriate amendments to rule 2.035, Florida Rules of Judicial Administration, by March 30, 2006.

Outline for Amendments to Rule 2.035, Rules of Judicial Administration: District Court of Appeal Judges

Purpose: The purpose of this rule is to establish uniform criteria used by the Supreme Court in determining whether to certify the need for increasing or decreasing the number of judges on a district court of appeal.

Process: The process for examining the uniform criteria in this rule includes:

- ✓ an annual review of the need for new judges by each district court of appeal, approved by the District Court of Appeal Budget Commission, and a request to the Supreme Court for the certification of additional judges, and
- ✓ a four year review of the workload trends of the district courts of appeal and consideration of adjustments in the relative case weights by the Commission on District Court of Appeal Performance and Accountability.

Criteria: The criteria for determining the need to certify the need for increasing or decreasing the number of judges on a district court of appeal are:

- **Workload:** The workload factors to be considered for this criteria are:
 - ✓ 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.
- **Efficiency:** The efficiency factors to be considered for this criteria are:
 - ✓ 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.

- **Effectiveness:** The effectiveness factors to be considered for this criteria are 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, including consistency between written opinions and per curiam affirmances without written opinions;
 - ✓ 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.

- **Professionalism:** The professionalism factors to be considered for this criteria are 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.

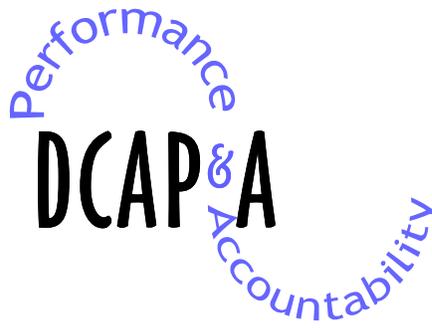
Relative Case Weights and Method of Calculation of Relative Weighted Judicial Workload

Delphi Case Group	Relative Weight*	
NOA – Civil Final	204	
NOA – Workers Compensation	190	
NOA – Administrative (Other)	152	
NOA – Civil Non Final	140	
NOA – Juvenile (TPR)	128	
Petitions – Certiorari	115	
NOA – Criminal State Appeals	105	
NOA – Criminal Judgment and Sentence	100	← mid ranked case type
NOA – Juvenile	99	
NOA – Criminal Post Conviction Non Summary	70	
NOA – Civil Prisoner Litigation	67	
Petitions – All Other	66	
NOA – Criminal Habeas Corpus and Other	66	
NOA – Criminal Post Conviction Summary	55	
NOA – Administrative (Unemployment Compensation)	51	
NOA – Criminal Anders	45	

* Number is the statewide average weight for each case group from the survey responses.

The Relative Weighted Caseload per judge is calculated by multiplying the relative case weight for each Delphi case group times the number of dispositions on the during the fiscal year, totaling all weighted case dispositions for the court, and dividing by the number of judges on the court.

OSCA will use this method for calculating the relative case weight per judge for each court and will include the individual court’s calculations in the annual certification report.



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Dear Judge [REDACTED] :

Thank you for agreeing to participate in the Relative Case Weight Survey. The Performance & Accountability Commission will use the results of this survey to provide additional information to the Supreme Court with respect to the criteria for determining the need for new judges. In The Court's opinion, *In Re Amendment to the Florida Rules of Judicial Administration (Certification of Judges)*, Case No. SC03-1905 (2004), the court conditionally adopted our recommended 350 filings per judge as a threshold requirement to requesting a new judge. However, the Chief Justice directed a continuing study of this standard to specifically re-examine its relevance to judicial workload.

The Commission has reviewed the data and concluded that using unelaborated filing numbers as criteria was insufficient to capture the intricacies of the individual courts' caseloads as well as other factors that make up the judicial workload. We therefore looked to other factors that might assist in determining a more nuanced set of measures for determining the need for judges. A relative case weight study provides us information regarding the relative judicial workload is involved in each type of case. This can be used to see how our workload has changed over time and thus provide information on the need for new judges as our caseload changes. The Commission will use your collective input to determine a consensus relative weight for each case type group.

The study is based on Delphi principles of consensus determinations. Current appellate judges who have at least two years' experience are eligible to participate. A sample size for each court was calculated and you were asked to represent your court.

Please carefully review the instructions on the next page. It is important that your participation be your own and not tainted by input from other judges or court staff. We will be able to identify the responses by district, but we will not be able to identify an individual judge's response. If you have questions about the survey design, you should contact a member of the Commission; if you have difficulty executing the survey instrument, please contact Arlene Johnson, OSCA, at (850) 922-5103.

What is Delphi? The Delphi technique was developed in the 1950s 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 useful theory on which to form predictions about the future or in extremely complex situations where human judgment was at a premium. The logic behind the Delphi is the old adage that 'two heads are better than one', combined with the recognition that many group decision-making processes are unsatisfactory. The process is designed to maximize group performance, whilst minimizing the problems that can arise due, for example, to the impact of dominant group members. In practical terms, a Delphi study typically proceeds by multiple rounds in which subject matter experts contribute their input anonymously. Input may be in the form of numerical rating and/or written comments.

Relative Weighted Caseload Study Instructions.

Case Types

To reduce the number of case types to be weighed, the Commission has grouped cases together in instances where we agreed the cases represented similar judge “workload.” There are 15 case groups.

Survey Scenario

Imagine that you have been assigned 15 cases representing each of these 15 grouped case types. **Each will be disposed on the merits and the judicial work required will be representative of the average work required for that case type.** Based on what your personal experience with cases in each group, you assign each a relative weight that reflects your estimation of the judicial work required to dispose of it.

It is critical that you assume each of these cases will require the **average** judicial workload involved in disposing of a case in that group. This means that for the cases in each group, the briefs (or petitions and responses) and record are of average length, that your preparation for OA or conference is of average duration, and an average opinion for that case group is written.

- The volume of a particular case type in your court is not directly relevant to its weight.
- Do not consider the efforts of your staff in disposing of the case.

Assigning Weights from Base Line

Appeal from Criminal Judgment and Sentence = 100 point case

To insure that everyone ranks the cases relative to a common base line, the Commission has assigned the *Appeal from Criminal Judgment and Sentence* case type a weight of 100 points. We believe that each of us had sufficient understanding of the judicial work required by our largest category of cases. Each participant in the study will assign a relative weight to the other 14 case groups based on how much more or less work is required to dispose of a typical case in that group.

- the lowest weight you can assign to a case type grouping is “1”
- there is no limit to the highest weight that you can assign relative to the 100 point case.
- you may assign the same weight to more than one case type grouping

Examples

If you think the work required by a case group represents one-fifth of the work required by the 100 point case, assign a relative weight of “20”; if you think a case group requires 50% more work, assign a relative weight of 150; if you think a case group requires the same work as the Appeal from Criminal Judgment and Sentence, assign a weight of 100 points.

When do I need to do this?

The Relative Case Weight Survey will be available for completion from July 13, 2005 through July 21, 2005.

What do I need to do?

Please complete the following steps to access and complete the Relative Case Weight Survey.

Step 1: Log on to <http://199.242.69.81/Sites/Extranet/home/cs/dca/default.aspx>

Step 2: Enter User Name **FLAEXT\dca5_2**. The User Name is case sensitive.

Step 3: Enter Password **Pa\$\$word**. The Password is case sensitive.

Step 4: Select **Relative Weighting** from the left hand blue shade column under Surveys

Step 5: Select **Respond to this Survey** from the top blue shaded row and enter a numeric whole number weight for each case group.

Step 6: Select **Save and Close** to submit your survey response.

Step 7: Close the website.

If you experience difficulty in executing any of the steps above, please contact Arlene Johnson, OSCA, at (850) 922-5103 or johnsona@flcourts.org.