

William A. Van Nortwick  
*Chair*  
Chris W. Altenbernd  
Ty W. Berdeaux  
Mary Cay Blanks



Thomas D. Hall  
William D. Palmer  
Vance Salter  
Martha C. Warner

October 13, 2009

The Honorable Peggy A. Quince  
Chief Justice, Supreme Court of Florida  
Supreme Court Building  
500 South Duval Street  
Tallahassee, Florida 32399

**RE: Judicial Certification**

Dear Chief Justice Quince:

In 2006, the Supreme Court adopted rule 2.240, Florida Rules of Judicial Administration, which outlines the process whereby a district court may request certification of the need for increasing or decreasing the number of judges in a district. Among other things, this rule provides:

- 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)<sup>1</sup>.
- 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<sup>2</sup>.
- 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<sup>3</sup>.

In 2009, as directed by Administrative Order SC08-84 and in accordance with rule 2.240 Florida Rules of Judicial Administration, the Commission conducted a review of workload trends of the district courts and considered adjustments in the relative case weights used for the determination

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<sup>1</sup> rule 2.240(b)(2)(B)

<sup>2</sup> rule 2.240(b)(2)(B)(i)

<sup>3</sup> rule 2.240(b)(2)(B)(ii)

of need for additional judges. Due to budget instability over the past two fiscal years, the Commission determined that this would not be an appropriate time to conduct a new Delphi-type study. Instead, the review focused on two unresolved issues outlined in the 2005 Commission Report: administrative appeals in the First District and the effect of a lack of central staff in the Third District. Currently, the relative weights for all case categories reflect the statewide average, resulting in lower relative case weights than is reflective of the actual workload in the First District for administrative appeals and the Third District for all petitions and summary post-conviction relief matters.

As detailed in the enclosed report *Review of Relative Case Weights for the Determination of Need for Additional Judges*, the Commission recommends that the Court modify the case weights to reflect the amount of additional workload expended by the First and Third Districts. The modifiers, suggested by the Commission, parallel the current methodology used by the trial courts for calculating the jury trial modifier during the trial court judicial certification process, which provides an adjustment to trial court judicial need by taking into account how the number of jury trials in a circuit deviates from the state average. For the district courts, this modifier would be the percent difference between the statewide average relative weight and the district average relative weight for administrative appeals in the First District and all petitions and summary post-conviction relief matters in the Third District.

Should you have any questions or if the Commission may be of further assistance, please do not hesitate to contact me.

Sincerely,



Judge William A. Van Nortwick, Jr.  
Chair, DCAP&A

WAVN / JL  
Enclosure

# **Commission on District Court of Appeal Performance & Accountability**

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## **Review of Relative Case Weights for the Determination of Need for Additional Judges**

**October 2009**



## Background and Objective

In 2005, the Commission on District Courts of Appeal Performance and Accountability (Commission) established uniform criteria to be applied by the Supreme Court of Florida in determining whether to certify the need for increasing or decreasing the number of judges on a district court of appeal. The Commission developed two processes to examine the uniform criteria:

- The first process involves an annual review of the need for new judges by each district court of appeal, approval by the District Court of Appeal Budget Commission, and if approved, a request to the Supreme Court for the certification of additional judges.
- The second process is a review, every four years, of the workload trends of the district courts of appeal and consideration of adjustments to the relative case weights by the Commission.

Relative case weights are based on Delphi principles of consensus determination. The relative case weights provide information regarding the relative judicial workload involved in each type of case, show how a court's judicial workload has increased or decreased over time, and allow for a comparative assessment of the distribution of judicial workload between the districts.

The process for establishing the relative case weights adopted in 2005 began with the acknowledgement that case mix was a relevant factor in determining judicial workload. 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 consistency of the judges' responses, the Commission was able to statistically determine that this methodology adequately represented judicial perceptions of the proportional relationship between case type categories.

In 2009, as directed by Administrative Order SC08-84 in 2009, the Commission conducted a review of workload trends of the district courts and considered adjustments in the relative case weights used for the determination of need for additional judges. Confident the current relative case weights accurately reflect judicial workload for each type of case, the Commission did not conduct a full study of the weights. Instead, the review focused on two unresolved issues outlined in the 2005 Commission Report.

- The first concerns the area of administrative appeals in the First District. In the 2005 study, the relative weights identified by judges in the First District for administrative appeals were substantially greater than other courts due to the number of complex rule challenges filed in Tallahassee.
- The second issue relates to the increased judicial workload in the Third District caused by the lack of central staff. In other courts, central staff conducts the initial legal review and case preparation of various categories of cases, including petitions and summary post-conviction relief matters. Without central staff in the Third

District, these cases demand more judicial effort which is reflected in the relative weights assigned by judges in the Third District.

In the 2005 report, the relative weights for all case categories reflected the statewide average, resulting in lower relative case weights than is reflective of the actual workload of the First District for administrative appeals and the Third District for all petitions and summary post-conviction relief matters. The 2005 report expressly discussed these two issues.

The objective of this report is to address the two unresolved issues. Specifically, the report will assess the amount of additional judicial workload for the First and Third Districts for the categories of cases listed above and represent the additional workload in the form of modifiers. The modifiers may then be applied to current dispositions on the merits and used to more accurately ascertain the future need for additional district court judges in Florida.

## **Methodology and Analysis**

To determine the amount of the additional workload expended by the First and Third Districts, the Commission adopted an analysis using modifiers for each applicable category of case. The modifiers parallel the current methodology used by the trial courts for calculating the jury trial modifier during the trial court judicial certification process. The trial court jury trial modifier provides an adjustment to trial court judicial need that takes into account how the number of jury trials in a circuit deviates from the state average.

The sources of information used for the analysis included the existing statewide average relative case weights, the average relative case weights provided by the First and Third Districts, and the fiscal year 2008/09 dispositions on the merits extracted from the District Courts of Appeal case management system. Dispositions on the merits for appeals included authored opinions, citations, per curiam affirmed, and per curiam opinions. Dispositions on the merits for petitions include authored opinions, citations, orders by judge, per curiam denied, and per curiam opinions. The analysis was performed in three steps.

**Step 1. Calculate the modifier. The modifier is the percent difference between the statewide average relative weight and the district average relative weight for each category of case requiring workload review.**

As indicated earlier, the Commission reviewed administrative appeals in the First District and petitions and summary post-conviction relief matters in the Third District. The percent difference between the statewide average relative case weight and the district average relative case weight for each category of cases are shown in Table 1.

**Table 1  
Percent Difference in Relative Case Weights**

District	Category of Cases	Statewide Average Weight	District Average Weight	Modifier (Percent Difference)
First	NOA – Administrative (Other)	152	250	64.5%
Third	Petitions – Certiorari	115	163	41.7%
Third	Petitions – All Other	66	70	6.1%
Third	NOA – Criminal Post Conviction (Summary)	55	81	47.3%

The average relative case weight for administrative appeals in the First District of 250 is 64.5 percent higher than the statewide average relative case weight of 152. For the Third District, the relative case weight for certiorari petitions, all other petitions, and summary criminal post convictions is 41.7 percent, 6.1 percent, and 47.3 percent higher, respectively, than the statewide average relative case weights. Each of the modifiers (percent differences) identifies the additional workload expended by each district for the category of cases under review.

**Step 2. Calculate the adjusted fiscal year 2008/09 dispositions on the merits for each category of case under review.**

Having calculated the modifier for each category of cases, the Commission computed the adjusted dispositions on the merits by applying the modifier to actual dispositions on the merits. For comparative purposes with FY 2010/11 judicial certification results, actual FY 2008/09 dispositions on the merits are utilized. Table 2 illustrates the modifier, actual fiscal year 2008/09 dispositions, and the adjusted dispositions on the merits for each category of case. Table 3 shows the total FY 2008/09 dispositions on the merits that include the adjustments which would be used during the judicial certification process.

**Table 2  
Adjusted FY 2008/09 Dispositions on the Merits  
By Category of Cases**

District	Category of Cases	Modifier	Actual FY 2008/09 Dispositions on the Merits	Adjusted FY 2008/09 Dispositions on the Merits
First	NOA – Administrative (Other)	64.5%	101	166
Third	Petitions – Certiorari	41.7%	232	329
Third	Petitions – All Other	6.1%	512	543
Third	NOA – Criminal Post Conviction (Summary)	47.3%	835	1,230

The modifier for the First District increased the actual fiscal year 2008/09 dispositions on the merits for administrative appeals by 65. Certiorari petitions, all other petitions, and summary post conviction modifiers for the Third District increased actual fiscal year 2008/09 dispositions on the merits by 97, 31, and 395, respectively.

**Table 3**  
**Total FY 2008/09 Disposition on the Merits**  
**(Including Adjustments)**

District	Actual FY 2008/09 Dispositions on the Merits	Total FY 2008/09 Dispositions on the Merits (including adjustments)	Difference
First	5,209	5,274	+65
Third	2,663	3,186	+523

Table 3 displays the total increase in dispositions on the merits for the First and Third Districts using the modifier and fiscal year 2008/09 statistics. Actual dispositions increased by 65 for the First District and 523 (sum of 97, 31, and 395) for the Third District.

**Step 3. Calculate the updated weighted dispositions on the merits for each category of case under review and updated weighted dispositions on the merits per judge.**

The updated weighted dispositions on the merits were determined by multiplying the statewide average relative weight for each category of case under review by the adjusted fiscal year 2008/09 dispositions on the merits provide in Table 2. Table 4 outlines the calculation for each category of case under review. The updated weighted dispositions on the merits per judge in Table 5 were calculated by dividing the total weighted dispositions on the merits by the number of judges multiplied by 100.

**Table 4**  
**Updated FY 2008/09 Weighted Dispositions on the Merits**  
**Category of Case under Review**

District	Category of Cases	Statewide Average Relative Weight	Adjusted FY 2008/09 Dispositions on the Merits	Updated Weighted Dispositions on the Merits
First	NOA – Administrative (Other)	152	166	25,232
Third	Petitions – Certiorari	115	329	37,835
Third	Petitions – All Other	66	543	35,838
Third	NOA – Criminal Post Conviction (Summary)	55	1,230	67,650

**Table 5**  
**Updated FY 2008/09 Weighted Dispositions on the Merits per Judge**

District	Number of Judges	Current Dispositions on the Merits per Judge	Total Weighted Dispositions on the Merits	Updated Weighted Dispositions on the Merits per Judge	Difference
First	15	324	495,825	331	+7
Third	10	238	273,185	273	+35

The modifier for administrative appeals in the First District increased the dispositions on the merits per judge by 7. The Third District’s modifiers for certiorari petitions, all other petitions, and summary post conviction increased the dispositions on the merits per judge by 35.

Pursuant to rule 2.240, Florida Rules of Judicial Administration, the court presumes there is a need for an additional district court judgeship, for which there is a request, where the weighted dispositions on the merits per judge exceed 280 after application of the proposed additional judge(s). The weighted dispositions on the merits per judge that are provided in the fiscal year 2010/11 certification statistics are 324 for the First District and 238 for the Third District. Using the modifier, the adjusted weighted dispositions on the merits per judge are 331 and 273 for the First District and Third District, respectively.