



**Conference Call**  
**Wednesday, September 18, 2013**  
**3:30 pm – 4:30 pm**

**Call number: 1-888-670-3525**  
**Access Code: 2356634197#**

## **AGENDA**

- I. Welcome and Roll Call**
- II. Reconsideration of FY 2014-15 Legislative Budget Request**
  - A. Employee Salary Increases**
  - B. Comprehensive Statewide Facilities Study**
- III. Certification of New Judgeships**

**Item: II.A.: Reconsideration of FY 2014-15 Legislative Budget Request - Employee Salary Increases**

**Background:**

At its August 3, 2013, meeting the TCBC voted to recommend to the Supreme Court inclusion in the FY 14/15 Legislative Budget Request (LBR) of an employee salary issue as follows:

The Supreme Court requests \$9,866,302 in recurring salary dollars branch wide, effective July 1, 2014, to address a wide range of salary issues affecting the State Courts System (SCS).

In order to become competitive and to experience equity with other government salaries, and to address other significant salary concerns, the SCS needs approximately \$18,828,193 in recurring salary appropriation. However, recognizing the considerable size of such a request, the SCS proposes a two-year implementation period. The requested FY 2014-15 funding would provide for a 3.5% salary equity adjustment for all SCS employees as well as provide \$4,110,959 to address critical salary issues.

On August 19, 2013, the Supreme Court Budget Oversight Committee approved this same proposal.

On August 23, 2013, the District Court of Appeal Budget Commission (DCABC) voted to recommend to the Supreme Court a slightly different proposal for an employee salary issue as follows:

The Supreme Court requests \$18,828,193 in recurring salary dollars branch wide, effective July 1, 2014, to address a wide range of salary issues affecting the State Courts System (SCS).

In order to become competitive and to experience equity with other government salaries, and to address other significant salary concerns, the SCS needs approximately \$18,828,193 in recurring salary appropriation. The requested FY 2014-15 funding would provide for a salary equity adjustment for all SCS employees as well as provide funds to address critical salary issues. However, if the requested funds are not available for FY 2014-15, then a two-year implementation period is requested, beginning with a recurring salary appropriation of \$9,866,302 for FY 2014-15.

The proposed narrative to support the request using either approach is included in Attachment A.

**Current Issue:**

At the Joint Budget Leadership Meeting<sup>1</sup> on September 13, 2013, a concern about the proposed issue was raised. The proposed request (using either the TCBC or DCABC approach) was based on an analysis that found that the average salary of forty-three executive branch classes is 11.45% higher than the average salary of comparable SCS classes, meaning in some instances Executive Branch salaries were higher, but in others, SCS salaries might be the same or even more than Executive Branch salaries. However, of the proposed request of \$18,828,193, \$5,755,343 was proposed to be used for a general pay increase for all employees. Members of the leadership group expressed a concern that if a portion of the requested funding was simply used for a general increase, sufficient funding to address the specific issues of competitiveness and equity with other branches of government for certain classes of positions could never be fully addressed. At the same time, if SCS employees were not included in whatever general pay increase is provided to other state employees, court employee salaries would fall behind those of other state employees as a whole. It was proposed that the employee pay issue should actually be split into two issues: an issue recommending a 3.5% competitive salary increase for all SCS employees, and a second issue requesting \$18,828,193 to address specific equity and retention issues with other branches. It was further recommended that the TCBC recommendation of requesting only one half of the \$18,828,193 for equity and retention issues in FY 14/15 as part of a two year implementation plan be adopted. The alternative recommendation of two separate issues is included in Attachment B.

After much discussion of this proposal, it was suggested that both the DCABC and TCBC revisit their initial recommendations on the employee salary issue before the Supreme Court considered the Legislative Budget Request on September 25, 2013.

**Decision Needed:**

Option 1: No change in current recommendation on employee pay issue.

Option 2: Approve alternative recommendation as proposed in Attachment B.

---

<sup>1</sup> (The Joint Budget Leadership Meeting included Chief Justice Polston; Justice Labarga; Justice Perry; Judge Alan Lawson, DCABC Chair; Judge Meg Steinbeck, TCBC Chair; Judge Melanie May, DCA Conference Chair; Judge Olin Shinholser, Circuit Conference Chair; and Judge Jim McCune, County Conference Chair.)

## ATTACHMENT A

State Courts System employee pay continues to lag behind competing employers in state and local government. As an example, a comparison of average salaries by class reflects that the average salary of forty-three executive branch classes is 11.45% higher than the average salary of comparable SCS classes.

Since January, 2011, in the Office of the State Courts Administrator (OSCA), eighteen employees (10.5% of the OSCA workforce) have been lost to the executive and legislative branches. The average increase for these employees was \$5,621 (12% above salary upon leaving SCS). Four of the employees experienced an increase of over \$10,000, and received enhanced benefit packages. In this analysis, only those losses which resulted in higher pay for similar work (not promotional opportunities) are included. The Fiscal Year 2013-14 competitive pay adjustment had no affect on the SCS's ability to keep pace with executive branch agencies since it was given to all eligible state employees.

The Supreme Court Clerk's Office is also experiencing loss of veteran staff to higher paying positions (three alone in the past year – a 22% turnover rate in core clerk positions). The Office has had to repeatedly readvertise in order find anyone who appeared qualified and who would accept the minimum salary for these positions. These new hires require an extensive training period, up to a year or more, before they are able to perform without constant supervision.

The loss of key managers and other high performers, who had developed broad knowledge bases of critical judicial branch operations, has brought significant organizational challenges in already difficult times. These challenges are compounded by the loss of long-term employees who have recently retired or will be retiring, resulting in an essential need to develop and retain existing employees to ensure expertise. Filling knowledge gaps ensures the continued development of efficiencies in the work of the State Courts System.

In addition, the salary appropriation for the State Courts System does not provide necessary flexibility for the branch to address a number of salary problems nor to respond to dynamic, shifting employment market factors. One-half of the branch's salary appropriation is a fixed cost needed for judicial salary obligations and the courts have no flexibility to hold those positions open or to alter the salary level to generate lapse dollars. Given these constraints, salary problems as they arise cannot be addressed. While it is understood that all state agencies must manage their salary budgets, the SCS is more particularly constrained in this regard. At the beginning of each fiscal year, all levels of the court have been required to develop strict policies to generate the necessary salary dollars to meet projected payroll liability. These polices have taken on various forms including such requirements as holding positions open for a specified number of days, hiring all new employees at the minimum, limiting promotional salary increases to 5% above current salary

(instead of the 10% flexibility in the State Courts System's Classification and Pay Plan), prohibiting any overlap of positions, etc.

Challenges surrounding salary limitations are extremely varied across the levels of court and across the state. Although the SCS has made some limited headway in addressing some of the salary concerns, there are numerous other examples of the branch's inability to adequately address salary issues. These include adjustments to specific classes as well as to geographical areas as needs arise in either or both cases due to recruitment and/or retention problems; provision of merit increases (being recognized for excellent service and performance is a motivating factor for continued improvement in support of creating efficiencies for the branch); incentivizing valuable, experienced employees whose specialized knowledge base has accumulated over a number of years, and, related to that issue, counter offers for key managers and high performers.

The branch continues to experience difficulty in reaching its Long Range Strategic Plan goal of supporting competency and quality. Success in this regard depends on the branch's ability to attract, hire and retain highly qualified and competent employees. As well, like merit increases, competitive pay is a motivating factor for continued improvement in support of creating efficiencies for the branch. As the economy improves, the employment environment is sure to become increasingly competitive. The State Courts System needs to be able to retain and recruit top talent to ensure that justice is served in the most efficient and effective manner to the people of Florida.

## **Attachment B**

### **FY 14-15 Competitive Pay Adjustment Issue for State Courts System Employees**

The Supreme Court requests a minimum 3.5% competitive salary increase for all State Courts System employees, effective July 1, 2014. At a minimum, it is requested that State Courts System employees be included in any general competitive salary increase as may be provided to other state employees.

Notwithstanding the competitive pay adjustment for state employees authorized during the 2013 legislative session, this request is in recognition of the lag between salaries and the rate of inflation, which has increased 15.9%, cumulatively, over the past seven years. The \$1400.00 adjustment authorized by the 2013 Legislature for employees making \$40,000 or less equated to an adjustment of at least 3.5%. An additional 3.5% for this group of employees would total roughly 7%, which while not matching the 15.9% rate of inflation, would result in significant progress in catching up with inflation. Those employees making more than \$40,000 who received the \$1,000 adjustment from the Legislature did not benefit as significantly in 2013 with an adjustment at less than 3.5%. A 3.5% adjustment in the next fiscal year is a critical step in addressing the impact the inflation rate has had on their buying power as well.

The lack of regular salary increases to combat inflation during recent tough economic times was a reality for workers in both private and public sector. As the economy improves, employers are becoming more able to address the need for cost of living adjustments. Our request would provide an adjustment to State Court System employees' base salaries as well to allow the Branch to compete with other governmental sector employees to attract and retain a competent, skilled workforce.

It should also be noted that it is the policy of the Supreme Court to advocate that all judicial officers be included in legislative pay adjustments as may be provided to employees in the branch or in state government generally.

### **FY 14-15 Equity and Retention Pay Issue for State Courts System Employees**

The Supreme Court requests \$9,866,302 in recurring salary dollars branch wide, effective July 1, 2014, to address a wide range of salary issues affecting the State Courts System (SCS).

In order to retain highly skilled employees and to experience more equity with other government salaries, the SCS needs approximately \$18,828,193 in recurring salary appropriation. However, recognizing the considerable size of such a request, the SCS proposes a two-year implementation period.

State Courts System employee pay, in general, continues to lag behind competing employers in state and local government. As an example, a comparison of average salaries by class reflects

that the average salary of forty-three executive branch classes is 11.45% higher than the average salary of comparable SCS classes.

Since January, 2011, in the Office of the State Courts Administrator (OSCA), eighteen employees (10.5% of the OSCA workforce) have been lost to the executive and legislative branches. The average increase for these employees was \$5,621 (12% above salary upon leaving SCS). Four of the employees experienced an increase of over \$10,000, and received enhanced benefit packages. In this analysis, only those losses which resulted in higher pay for similar work (not promotional opportunities) are included. The Fiscal Year 2013-14 competitive pay adjustment had no effect on the SCS's ability to keep pace with executive branch agencies since it was given to all eligible state employees.

The Supreme Court Clerk's Office is also experiencing loss of veteran staff to higher paying positions (three alone in the past year – a 22% turnover rate in core clerk positions). The Office has had to repeatedly readvertise in order find anyone who appeared qualified and who would accept the minimum salary for these positions. These new hires require an extensive training period, up to a year or more, before they are able to perform without constant supervision.

The loss of key managers and other high performers, who had developed broad knowledge bases of critical judicial branch operations, has brought significant organizational challenges in already difficult times. These challenges are compounded by the loss of long-term employees who have recently retired or will be retiring, resulting in an essential need to develop and retain existing employees to ensure expertise. Filling knowledge gaps ensures the continued development of efficiencies in the work of the State Courts System.

In addition, the salary appropriation for the State Courts System does not provide necessary flexibility for the branch to address a number of salary problems nor to respond to dynamic, shifting employment market factors. One-half of the branch's salary appropriation is a fixed cost needed for judicial salary obligations and the courts have no flexibility to hold those positions open or to alter the salary level to generate lapse dollars. Given these constraints, salary problems as they arise cannot be addressed. While it is understood that all state agencies must manage their salary budgets, the SCS is more particularly constrained in this regard. At the beginning of each fiscal year, all levels of the court have been required to develop strict policies to generate the necessary salary dollars to meet projected payroll liability. These policies have taken on various forms including such requirements as holding positions open for a specified number of days, hiring all new employees at the minimum, limiting promotional salary increases to 5% above current salary (instead of the 10% flexibility in the State Courts System's Classification and Pay Plan), prohibiting any overlap of positions, etc.

Challenges surrounding salary limitations are extremely varied across the levels of court and across the state. Although the SCS has made some limited headway in addressing some of the salary concerns, there are numerous other examples of the branch's inability to adequately address salary issues. These include adjustments to specific classes as well as to geographical areas as needs arise in either or both cases due to recruitment and/or retention problems; provision of merit increases (being recognized for excellent service and performance is a motivating factor for continued improvement in support of creating efficiencies for the branch);

incentivizing valuable, experienced employees whose specialized knowledge base has accumulated over a number of years, and, related to that issue, counter offers for key managers and high performers.

The branch continues to experience difficulty in reaching its Long Range Strategic Plan goal of supporting competency and quality. Success in this regard depends on the branch's ability to attract, hire and retain highly qualified and competent employees. As well, like merit increases, equitable pay is a motivating factor for continued improvement in support of creating efficiencies for the branch.

As the economy improves, the employment environment is sure to become increasingly competitive. The State Courts System needs to be able to retain and recruit top talent to ensure that justice is served in the most efficient and effective manner to the people of Florida.



**Item III.: Certification of New Judgeships**

In July 2006, the Court released its opinion *In Re: Report of the Commission on District Court of Appeal Performance and Accountability – Rule of Judicial Administration 2.035 (No. SC06-397)*. The opinion created a new step in the judicial certification process, requiring each district to submit their requests for new judgeships to the District Court of Appeal Budget Commission for review and approval. The requests for new judgeships and the Budget Commission’s approval are then submitted to the Court for consideration.

Requests for new judgeships for the FY 2014-15 Certification of Need for Additional Judgeships process were due to the District Court of Appeal Budget Commission on September 6, 2013. Based on the submissions from each District Court of Appeal (attached), for FY 2014-15 the Second District Court of Appeal is requesting two new judgeships and the Fifth District Court of Appeal is requesting one new judgeship. There are no new judgeships requested from the First, Third or Fourth District Courts of Appeal.

**Decision Needed:**

Option 1: Approve the requests for the new judgeships in the Second and Fifth District Courts of Appeal.

Option 2: Deny the requests.

---

**From:** Judge Joseph Lewis [<mailto:lewisj@1dca.org>]  
**Sent:** Thursday, August 22, 2013 12:16 PM  
**To:** Judge C. Alan Lawson  
**Cc:** Arlene Johnson; Jon Wheeler  
**Subject:** RE: FY 2014/15 Certification of Need for Additional Judges

Judge Lawson,

Per Ms. Johnson's email set forth below, the 1st DCA **is not** requesting any new district court judges for the FY 2014/15.

Thanks.

---

**From:** Arlene Johnson [<mailto:johnsona@flcourts.org>]  
**Sent:** Wednesday, August 21, 2013 11:35 AM  
**To:** Judge Joseph Lewis  
**Cc:** Judge C. Alan Lawson; Jon Wheeler; Stephen Nevels; Dorothy Wilson; Corla Washington  
**Subject:** FY 2014/15 Certification of Need for Additional Judges

Chief Judge Lewis - Attached is the Judicial Certification FY 2014/15 packet, including a memorandum from Chief Justice Polston, the FY 2014/15 Certification Statistical Report and the Historical Judicial Certification Chart.

Please direct your request for new district court judges electronically to Judge C. Alan Lawson ([lawsona@flcourts.org](mailto:lawsona@flcourts.org)), Chair of the District Court of Appeal Budget Commission, with a copy to Ms. Dorothy Wilson ([wilsond@flcourts.org](mailto:wilsond@flcourts.org)), in the office of the States Courts Administrator no later than COB Friday, September 13, 2013. If you have questions or need additional information, feel free to contact me at any time.

Arlene Johnson  
OSCA, Court Services  
Telephone 850.922.5103  
Facsimile 850.414.1342



CHARLES A. DAVIS, JR  
CHIEF JUDGE  
CHRIS W. ALTENBERND  
STEVAN T. NORTHCUTT  
DARRYL C. CASANUEVA  
MORRIS SILBERMAN  
PATRICIA J. KELLY  
CRAIG C. VILLANTI  
DOUGLAS A. WALLACE  
EDWARD C. LAROSE  
NELLY N. KHOUZAM  
MARVA L. CRENSHAW  
ROBERT J. MORRIS, JR.  
ANTHONY K. BLACK  
DANIEL H. SLEET  
JUDGES

JAMES BIRKHOLO  
CLERK  
JACINDA (JO) HAYNES  
MARSHAL

**DISTRICT COURT OF APPEAL**  
**SECOND DISTRICT**  
1005 E. MEMORIAL BOULEVARD  
LAKELAND, FLORIDA 33801-0327

PLEASE REPLY TO:  
 P.O. BOX 327  
LAKELAND, FL 33802-0327  
(863) 499-2290  
 1700 N. TAMPA ST. #300  
TAMPA, FL 33602-2653  
(813) 272-3430

September 12, 2013

The Honorable Ricky Polston  
Chief Justice, Supreme Court of Florida  
Supreme Court Building  
500 South Duval Street  
Tallahassee, Florida 32399-1925

**VIA: The Honorable Alan Lawson  
Chair, DCABC**

Re: Report on the Need for Additional Judges in the Second District Court of Appeal,  
Fiscal Year 2014-15

Dear Chief Justice Polston:

In accordance with your memorandum and Florida Rule of Judicial Administration 2.240, I have examined the need for increasing the number of appellate judges in the Second District Court of Appeal. After careful consideration of the applicable criteria in rule 2.240(b)(2)(A) and pertinent statistics, I respectfully request that the supreme court certify the need for two additional appellate judgeships in the second district.

My report demonstrates the need for two additional judges, based upon the application of the criteria in the rule. This need is confirmed by the following trends about our workload and efficiency:

- **Filings are increasing.** Using a five-year average, annual filings have increased by 36% since the last judge was added to this court in 1994 and civil filings have increased 17% in the last five years.
- **Backlog is increasing.** The number of pending cases is increasing, and our district has the highest number of average pending cases per judge.
- **Output is increasing.** Notwithstanding the reduction in resources, our clearance rate is up. Accordingly, our relative weighted judicial workload per judge has increased by 21% in the last five years. Under the method established in rule 2.240(b)(2)(B),

our weighted judicial workload per judge establishes a presumption of need for two additional judges.

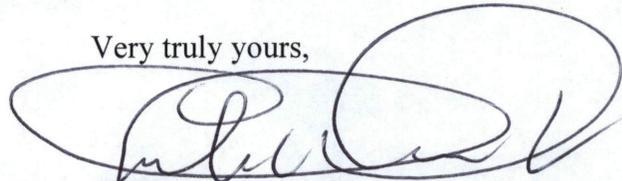
Despite the high caseload and the reduction in personnel, the judges and staff of this court have made every effort to carry out their responsibilities properly. The district's workload and efficiency trends demonstrate that the judges and staff in the second district are working over their expected capacity. The cost of maintaining this pace has resulted in a reduction in the amount of time that can be dedicated to resolving individual cases, which negatively impacts the court's effectiveness.

The effectiveness factors described in rule 2.240 address the time to review and consider briefs, petitions, motions, and memoranda; fully research legal issues; write opinions; and review all decisions rendered by the court. The judges on this court uniformly agree that their workload appreciably constrains their ability to write opinions in many instances where it would be useful, but not essential, to write an opinion developing and clarifying the law.

The time when the judges on this court regularly read The Florida Law Weekly from cover-to-cover has long passed. Because our district operates from two locations, opportunities for in-person conferences are critical to maintaining our effectiveness and the high level of collegiality enjoyed by the judges on our court. To date, we have resisted the temptation to forgo these in-person meetings because we realize that our collegiality contributes to the court's effectiveness, but it is becoming very difficult to do so given our workload.

I recognize that the financial costs in creating additional appellate judgeships are not insignificant. However, based upon the specified criteria and additional factors as described above and in the attached report, I respectfully urge that the supreme court certify the need for two additional appellate judges in the Second District Court of Appeal.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Charles A. Davis, Jr.", written over a large, loopy flourish that extends across the signature line.

Charles A. Davis, Jr.

MS/jh  
cc: Dorothy Wilson

# Report on the Need for Additional Judges in the Second District Court of Appeal, FY 2014-15

In July 2006, the supreme court amended the criteria for assessing the need for additional district court judges to include several factors, which are identified in rule 2.240(b)(2)(A). The factors include: (i) workload, (ii) efficiency, (iii) effectiveness, and (iv) professionalism. Each is addressed in turn below.

## **(i) Workload: Filings, Case Mix, Backlog; Relative Weights and Other Changes**

### **Workload: Trends in Case Filings**

In January 1994, the legislature created positions for a thirteenth and fourteenth judge on this court. The district's total filings that year were 4625. FY 2011-12 filings were a record 6834, a 48% increase; FY 2012-13 filings returned to a more typical range, 6081, a 31% increase.<sup>1</sup>

Initially, the court accommodated the increased workload by adding central staff attorneys, adjusting case management techniques, and taking advantage of changing technology. In addition, from 2001 until just prior to FY 2008-09, our increased workload was partially addressed by our utilization of associate judges as part of what was effectively treated as a fifteenth judge's suite. The court had two staff attorneys and a judicial assistant to work with associate judges, and the suite was assigned a full calendar. Due to budget reductions we were unable to maintain that additional suite. Regardless, the court's workload has now increased to such an extent that reliance on additional staff attorneys and associate judges cannot alleviate the real concern that the quality of the work of this court will be compromised if additional judges are not added.

### **Workload: Trends in Changes in Case Mix**

The chart on the next page reflects the case mix in the second district for the past five years, with the most significant changes being the percentage increases within the civil, criminal postconviction, juvenile, and family case categories. The increase in civil cases is noteworthy, as they are assigned a relatively high weight for purposes of measuring judicial workload. The percentage changes in the administrative and probate cases are less meaningful due to the relatively low number in those case categories.

---

<sup>1</sup> Under the previous workload standard of 350 filings per judge, the second district would be eligible for three additional judges.

## Case Filings and Percent Change Fiscal Year 2008-09 to 2012-13

Case Category	2008-09	2009-10	2010-11	2011-12	2012-13	% Change Fiscal Year 2010-11 to 2012-13	% Change Fiscal Year 2008-09 to 2012-13
Administrative	135	142	102	96	83	-18.6%	-38.5%
Civil	1,068	1,099	1,209	1,194	1,256	3.9%	17.6%
Criminal Post Conviction	1,380	1,398	1,698	1,826	1,577	-7.1%	14.3%
Other Criminal Appeals	3,010	2,840	2,583	2,944	2,519	-2.5%	-16.3%
Family	262	281	292	318	291	-0.3%	11.1%
Juvenile	347	296	351	418	311	-11.4%	-10.4%
Probate/Guardianship	41	44	45	38	44	-2.2%	7.3%
<b>Total</b>	<b>6,243</b>	<b>6,100</b>	<b>6,280</b>	<b>6,834</b>	<b>6,081</b>	<b>-3.2%</b>	<b>-2.6%</b>

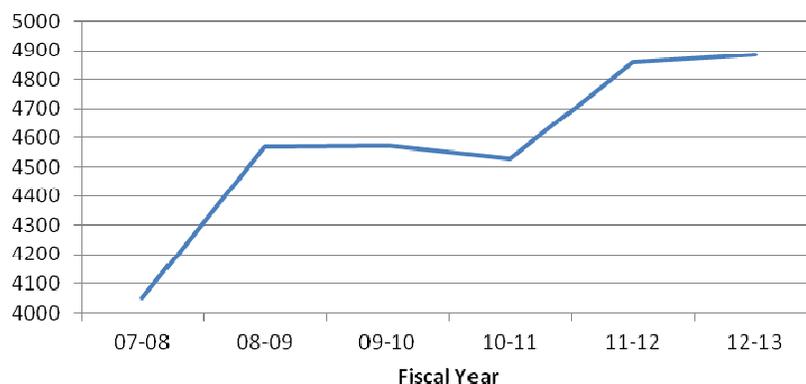
### Workload: Trends in Backlog of Cases

The statistics for average pending cases per month demonstrate that in spite of increased clearance rate and a reduction in the number of filings, the second district continues to maintain the highest number of pending cases per judge. Average pending cases per judge increased 13% between FY 2007-08 and FY 2008-09 (4049 to 4571), coinciding with the elimination of the associate judge's suite. In FY 11-12, this indicator jumped by more than 300 cases. The number of pending cases in FY 2012-13 represents more than a 20% increase from FY 2007-08, when the average pending cases per month was 4049 cases.<sup>2</sup>

Pending Cases Per Judge	
District	FY 2012-13
First	211
Second	349
Third	195
Fourth	317
Fifth	243

This backlog is more than a statistic. It means that people wait longer for finality. Divorces take longer. Foreclosures take longer. Business litigation takes longer. Sadly, if you can afford to pay for an oral argument, your case is currently resolved quicker than if you waive oral argument. This is not good for families and it is not good for business.

### Pending Cases Trend



<sup>2</sup> A subsequent discussion, "Workload: Changes in Statutes, Rules, and Case Law that Directly or Indirectly Impact Judicial Workload," explains how this court's decision to "hold" Shelton cases impacted our disposition patterns the last few years. Removing 365 Shelton cases from the pending cases analysis results in a FY 2012-13 per judge average of 323.

**DISTRICT COURTS OF APPEAL**  
**Average Pending Cases Per Month<sup>1</sup>**  
**Fiscal Year 2008-09 to 2012-13**

District	2008-09	2009-10	2010-11	2011-12	2012-13
First	3,898	3,453	3,336	3,406	3,159
Second	4,571	4,574	4,527	4,859	4,886
Third	2,065	2,111	2,125	2,060	1,945
Fourth	3,239	4,215	4,797	4,642	3,806
Fifth	2,257	2,447	2,493	2,562	2,434
<b>Total</b>	<b>16,029</b>	<b>16,800</b>	<b>17,278</b>	<b>17,528</b>	<b>16,229</b>

<sup>1</sup>For each fiscal year, average pending cases per month is determined by the number of pending cases (cases with a filing date but no disposition date) at the beginning of each month averaged for the 12 month period.

**Workload: Trends in the Relative Weight of Cases Disposed on the Merits per Judge**

The relative weight of cases disposed is a sophisticated measure that measures *judicial* effort associated with actual cases disposed. Relative weights are assigned to each type of case and then applied to each court's dispositions by judges (i.e., not cases dismissed by the clerk or otherwise administratively disposed). Applying the weighted caseload measure to the actual work of a court (dispositions) is an accurate representation of how a court's "output" has increased or decreased over time, and it allows a comparative assessment of the distribution of work between districts. Weighted caseload measures also contribute to an analysis of how the use of other nonjudicial resources can affect judicial workload. See In re Certification of Need for Additional Judges, 918 So.2d 283, 289 (Fla. 2005).

**Weighted Judicial Workload Per Judge and Percent Change**  
**Fiscal Year 2008-09 to 2012-13**

District	2008-09	2009-10	2010-11	2011-12	2012-13	Three Year Average Weighted Judicial Workload Per Judge (2010-11 to 2012-13)	% Change Fiscal Year 2010-11 to 2012-13	% Change Fiscal Year 2008-09 to 2012-13
First	324	320	291	303	294	296	1.0%	-9.3%
Second	289	321	318	307	350	325	10.1%	21.1%
Third	238	255	261	259	264	261	1.1%	10.9%
Fourth	266	242	287	341	333	320	16.0%	25.2%
Fifth	291	279	313	337	341	330	8.9%	17.2%

Note: Weighted Judicial Workload is based on the number of cases disposed on the merits and the relative disposition case weight.

Rule 2.240 (b)(2)(B) establishes that "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)." In other words, to earn the *presumption* of need a court's judges must first perform the work attributed to the proposed new judge(s).

The second district's weighted judicial workload per judge has remained above 280 since the supreme court introduced this presumption of need in July 2006, e.g., 14 judges have been doing the work of at least 15 judges because relative weights would have exceeded 280 in four of the last five years after the application of one additional judge. The single exception, FY 2008-09, occurred in a year when the court experienced three extended judicial vacancies (Judges Salcines, Canady, and Stringer) along with a 2.0 FTE reduction in staff attorneys.

Weighted Workload	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	3-year average
current 14 judges	312	289	321	318	307	350	<b>325</b>
after add'l judge	291	270	300	297	287	327	<b>303</b>
after 2 add'l judges	273	253	281	278	269	306	<b>284</b>

The weighted workload measures reported for each district suggests that a district court cannot sustain an average weighted disposition rate greater than 315 per judge. (And it is unlikely that this output measure can be significantly improved by simply adding staff attorney positions. It should be noted that the first district has a higher staff attorney-to-judge ratio than the second district and that their weighted judicial workload per judge is lower than that of the second district.)

Once the judges on a court have reached their per judge workload "ceiling," the weighted disposition measure becomes increasingly less meaningful as an indication of *how many* additional judges the court requires. This phenomenon, in turn, increases the relative importance of other measures—such as filings, clearance rate, average pending cases, and time to disposition.

In Chief Judge Silberman's report last year, he suggested another application of the relative case weight measure. He proposed that the judicial workload *potential* represented by a district's filings could be determined by applying the percentage of a court's total dispositions on the merits by case type and applying that percentage to the filings for that same year to determine a projected weighted workload per judge. For example:

FY 2011/12					
Case Type	All Dispositions	All Merit Dispositions	% of dispositions disposed on the merits	Filings	# filings projected to be disposed on the merits
Petitions - Certiorari	272	249	92%	283	259

Continuing this analysis for all case types and applying the relative case weight to the second district's FY 2011-12 filings indicated that the projected weighted judicial workload represented by those filings was 368 per judge, 344 per judge after application of one additional judge, and 322 per judge after application of two additional judges. Using this analysis, he

projected that the potential judicial workload weight of the cases filed the previous fiscal year indicated that the second district required two additional judges.

**Workload: Changes in Statutes, Rules, and Case Law that Directly or Indirectly Impact Judicial Workload**

In addition to the analysis of the foregoing workload factors, the court’s workload was impacted during FY 2011-12 by a surge in appeals challenging the constitutionality of sections 893.13 and 893.135, Florida Statutes, following the U.S. District Court’s decision in Shelton v. Secretary, Department of Corrections, 802 F. Supp. 2d 1289 (M.D. Fla. 2011). After the Florida Supreme Court issued its decision addressing this issue in State v. Adkins, 96 So.3d 412 (Fla. 2012), the judges promptly attended to approximately 365 cases.

As Chief Judge Silberman explained in his report last year, in the interest of judicial efficiency the second district held the Shelton cases pending the Florida Supreme Court’s Adkins decision, leaving these cases pending in the district and avoiding invoking the supreme court’s jurisdiction. The disposition of these cases partially explains the 10% increase in weighted judicial workload in FY 2012-13. If this district had assigned and disposed of those cases over the previous two years (as the other districts had), the judicial workload increase would have been distributed over the past three years, establishing the weighted judicial workload necessary to establish the presumption of need for two additional judges last year.<sup>3</sup>

**(i) Efficiency: Clearance Rates and Time Standards**

Although there are annual fluctuations, filings consistently have trended upward. It is reasonable to expect that the district’s caseload will continue to increase. Importantly, the district has experienced a spike in filings while operating with fewer central staff attorneys due to budget cuts. As a result of the reduction in central staff attorneys, some postconviction cases, which have lower judicial workload weights, are now being assigned to the judges’ suites.

**Clearance Rates  
Fiscal Year 2008-09 to 2012-13**

District	2008-09	2009-10	2010-11	2011-12	2012-13
First	111.2%	103.3%	100.3%	103.0%	102.4%
Second	91.0%	104.9%	98.5%	88.1%	110.2%
Third	99.4%	101.7%	100.8%	100.8%	101.9%
Fourth	91.3%	79.9%	98.6%	108.1%	118.6%
Fifth	97.6%	96.4%	103.8%	96.5%	104.0%
<b>Total</b>	<b>98.4%</b>	<b>97.4%</b>	<b>100.2%</b>	<b>98.6%</b>	<b>107.6%</b>

<sup>3</sup> Last year, the second district’s average weighted workload after the application of the second judge was 276, five below the presumption of need established by exceeding 280. The disposition of a single additional petition in FY 11-12 would have established the presumption of need for the second additional judge.

Clearance rate trends, or the ratio of filings to dispositions, also demonstrate the backlog building in the second district. In FY 2011-12 there were 6834 cases filed and 6018 cases disposed, reflecting a clearance rate of only 88.1%. The FY 2012-13 increase in the clearance rate, 110.2%, is partially explained by the disposition of the Shelton cases, as noted in the pending caseload discussion above. Although not available in the statistics provided by the state courts administrator, trends in the backlog of cases ready for assignment and disposition similarly demonstrate that the court's clerk has not been able to assign all cases as they become ready for assignment.

In spite of our best efforts, trends in the percentage of cases disposed within the time standards indicate that the second district's percentage of criminal and noncriminal cases disposed within 180 days of oral argument remains at or below the statewide average for each of the past five years.

## **(ii) Effectiveness**

The effectiveness factors provide that each appellate court judge must have adequate time to review and consider briefs, petitions, motions, and memoranda; fully research legal issues; write opinions; and review all decisions rendered by the court. Opinions reversing lower tribunal judgments must be issued to explain the court's decisions and the correct application of the law to the facts. Opinions affirming lower tribunal judgments often are not required, but they can be of significant value in appropriate cases to develop, clarify, and maintain consistency in the law and maintain public confidence in the decision-making process. A heavy caseload limits the time each judge has available for the consideration of each case and opinion writing; it also limits the availability of judges to participate in administrative duties and the administration of the justice system through committee work.

As is well-recognized, Florida's district courts of appeal are expected to provide for thoughtful review of decisions of lower tribunals by three-judge panels. Many cases that are reviewed result in a determination that there is no harmful legal error to be corrected. In other cases, the appellate courts conclude that errors require the granting of relief to a party. The district courts must correct such errors and explain the proper application of the law. In all cases, the courts are rightly expected to dedicate sufficient resources to assure that the cases are correctly and promptly determined. Meeting that obligation promotes confidence in the decision-making ability of the courts and in the fair application of the law to all persons and businesses in the state court system. Further, it enhances the expectation and belief that the rule of law is properly and consistently applied.

## **(iii) Professionalism**

Regarding the professionalism factors in rule 2.240, the judges of this court have regularly participated in programs designed to increase the competency and efficiency of the judiciary, members of the bar, the court's staff, and the justice system. The judges also have been engaged in activities designed to enhance lawyer and judicial professionalism, advance the administration of justice, and improve relations between the bench and bar. But it is clear that

because of high workloads and reduced resources, the ability of our judges to continue those efforts has been adversely impacted and will likely further diminish.

### **Conclusion**

After careful consideration of the applicable workload standards and the factors set out in rule 2.240, it is evident that the Second District Court of Appeal has a need for two additional appellate judgeships. Furthermore, the weighted judicial workload measure establishes a presumption that two additional judgeships are needed.



FRANK A. SHEPHERD  
CHIEF JUDGE  
LINDA ANN WELLS  
RICHARD J. SUAREZ  
ANGEL A. CORTIÑAS  
LESLIE B. ROTHENBERG  
BARBARA LAGOA  
VANCE E. SALTER  
KEVIN EMAS  
IVAN F. FERNANDEZ  
THOMAS LOGUE  
JUDGES

MARY CAY BLANKS  
CLERK  
VERONICA ANTONOFF  
MARSHAL  
DEBBIE MCCURDY  
CHIEF DEPUTY CLERK

DISTRICT COURT OF APPEAL  
THIRD DISTRICT  
2001 S.W. 117 AVENUE  
MIAMI, FLORIDA 33175-1716

TELEPHONE (305) 229-3200

August 23, 2013

Chief Justice Ricky Polston  
Supreme Court of Florida  
500 South Duval Street  
Tallahassee, Florida 32399-1900

Dear Chief Justice Polston:

In accordance with your letter of August 21, 2013, concerning the certification of need for additional judges, the judges of the Third District Court of Appeal wish to advise you that we will not seek certification of an additional judge this year.

Thank you for your attention to this matter.

Sincerely,

Frank A. Shepherd  
Chief Judge

**From:** [Dorothy Wilson](#)  
**To:** [Elizabeth Garber](#); [Arlene Johnson](#);  
**Subject:** FW: FY 2014/15 Certification of Need for Additional Judges  
**Date:** Tuesday, September 17, 2013 7:22:40 PM  
**Attachments:** [Chief Justice Transmittal.pdf](#)  
[FY 2014-15 Certification Statistical Report.pdf](#)  
[Historical Judicial Certification Chart.pdf](#)

---

*Dorothy P. Wilson*  
*Chief of Budget Services*  
*Office of the State Courts Administrator*  
*Supreme Court Building*  
*500 S. Duval Street*  
*Tallahassee, Florida 32399-1900*  
*(850) 488-3735*

---

**From:** Judge Dorian K. Damoorgian, Chief  
**Sent:** Tuesday, September 10, 2013 6:59 AM  
**To:** Judge C. Alan Lawson  
**Cc:** Dorothy Wilson; Caroline Tabash  
**Subject:** FW: FY 2014/15 Certification of Need for Additional Judges

Dear Judge Lawson,

In response to Ms. Johnson's request, the judges of the Fourth DCA have voted not to seek certification of a new judge for the court.

Thanks you,  
D. Damoorgian

---

**From:** Arlene Johnson  
**Sent:** Wednesday, August 21, 2013 11:42 AM  
**To:** Judge Dorian K. Damoorgian, Chief  
**Cc:** Judge C. Alan Lawson; Marilyn Beuttenmuller, Clerk; Daniel DiGiacomo, Marshal; Dorothy Wilson; Caroline Tabash  
**Subject:** FY 2014/15 Certification of Need for Additional Judges

Chief Judge Damoorgian - Attached is the Judicial Certification FY 2014/15 packet, including a memorandum from Chief Justice Polston, the FY 2014/15 Certification Statistical Report and the Historical Judicial Certification Chart.

Please direct your request for new district court judges electronically to Judge C. Alan Lawson ([lawsona@flcourts.org](mailto:lawsona@flcourts.org)), Chair of the District Court of Appeal Budget Commission, with a copy to Ms. Dorothy Wilson ([wilsond@flcourts.org](mailto:wilsond@flcourts.org)), in the office of the States Courts Administrator no later than COB Friday, September 13, 2013. If you have questions or need additional information, feel free to contact me at any time.

Arlene Johnson  
OSCA, Court Services  
Telephone 850.922.5103  
Facsimile 850.414.1342



VINCENT G. TORPY, JR.  
CHIEF JUDGE

JACQUELINE R. GRIFFIN  
THOMAS D. SAWAYA  
WILLIAM D. PALMER  
RICHARD B. ORFINGER  
C. ALAN LAWSON  
KERRY I. EVANDER  
JAY P. COHEN  
WENDY W. BERGER  
F. RAND WALLIS  
JUDGES

PAMELA R. MASTERS  
CLERK

CHARLES R. CRAWFORD  
MARSHAL

DISTRICT COURT OF APPEAL  
FIFTH DISTRICT  
300 SOUTH BEACH STREET  
DAYTONA BEACH, FLORIDA 32114  
(386) 947-1500 COURT  
(386) 255-8600 CLERK

September 3, 2013

The Honorable Ricky Polston  
Chief Justice, Supreme Court of Florida  
Supreme Court Building  
500 South Duval Street  
Tallahassee, FL 32399-1925

VIA: Judge C. Alan Lawson  
Chair, DCABC

Re: Request for Additional Judge for Fifth District Court of Appeal  
for Fiscal Year 2014/2015

Dear Chief Justice Polston:

In accordance with Florida Rule of Judicial Administration 2.240, the judges of the Fifth District Court of Appeal have unanimously directed me to request the Supreme Court to certify the need for one additional judge for the upcoming fiscal year.

Using the methodology adopted in *In re Certification of Need for Additional Judges*, 76 So. 3d 932 (Fla. 2011), our court meets the criteria for presumed need for an additional judge. Our three-year average number of cases per judge (330) is highest in the State for a District Court. The addition of one new judge would result in a projected, weighted caseload of 300 cases per judge. Our court is the only District Court in the State that has experienced a net increase in total case filings for the 2008 through 2013 period. We have the highest number of trial court felony filings and the highest number of prison admissions on a per judge basis of any of the District Courts.

As the Court pointed out in *In re Certification for Need For Additional Judges*, 889 So. 2d 734, 742 (Fla. 2004), our court has traditionally resisted requests for additional judges, instead seeking alternative solutions for managing increasing caseloads. We

Hon. Ricky Polston  
Page Two  
August 29, 2013

are constantly reviewing internal methods to increase the efficiency of our human resources, and we have maximized the use of available technology. Even with the implementation of creative methods of case management, with available resources, we have been unable to avoid a declining clearance rate and a decline in timeliness of our case dispositions. These statistics demonstrate the effect of a lack of growth in our workforce and a continual upswing in filings. Although our resistance to growth is as steadfast as ever, the reality is that we have no ability to keep pace with our increasing caseload, let alone absorb vacancies due to turnover or illness, at our present staffing levels. With our aging work force, major illnesses are becoming more commonplace, further taxing our resources.

Should you need any additional information regarding this request, please do not hesitate to contact me.

Sincerely yours,

Vincent G. Torpy, Jr.

VGT,Jr./mgv