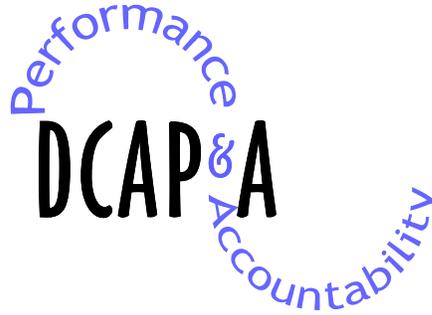


Martha C. Warner  
*Chair*  
Chris W. Altenbernd  
Ty W. Berdeaux  
Mary Cay Blanks  
Melvia B. Green  
Thomas D. Hall  
William D. Palmer  
William A. Van Nortwick



January 31, 2006

Chief Justice Barbara J. Pariente  
Supreme Court of Florida  
500 South Duval Street  
Tallahassee, Florida 32399-1900

Dear Chief Justice Pariente:

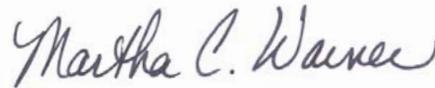
In accordance with the directive of the Supreme Court to the Commission on District Court of Appeal Performance & Accountability, the Commission submits the attached proposed amendment to rule 2.035, Florida Rules of Judicial Administration. The proposed amendment modifies the criteria for certification of need for district court of appeal judges.

In response to your letter of December 13, 2005, the Commission has also identified a relative weight of cases per judge disposed on the merits, against which requests for a new judge will be evaluated. The Commission proposes that a need for a new appellate judge should be presumed when the number of weighted cases disposed of on the merits exceeds 280 relative weighted cases per judge after addition of the new judge. You will note that the proposed rule adjusts the definition of relative case disposition, reducing it in scale by a factor of 100. Thus a weighted caseload of 28,000 is adjusted to 280 weighted cases. The Commission feels this to be more understandable to the casual reader.

Chief Justice Barbara J. Pariente  
January 31, 2006  
Page Two

Drafts of the proposed amendments were also circulated to the district court chief judges for their review. If the Court wishes further comment or revision, we would be happy to comply.

Sincerely,

A handwritten signature in cursive script that reads "Martha C. Warner". The signature is written in dark ink on a light-colored background.

Martha C. Warner

Enclosure

cc: Lisa Goodner  
District Court of Appeal Chief Judges  
Commission on District Court of  
Appeal Performance and Accountability

**Proposed Rule**

**Reasons for Change**

**Rule 2.035. Determination of Need for Additional Judges**

<p><b>(a) Statement of Purpose.</b> The purpose of this rule is to set forth uniform criteria used by the supreme court in determining the need for additional judges, except supreme court justices, and the necessity for decreasing the number of judges, <del>and for increasing, decreasing, or redefining appellate districts and judicial circuits,</del> pursuant to article V, section 9, Florida Constitution. <del>The criteria set forth in this rule have been identified and used by the supreme court in making this determination in recent years.</del> These criteria form the primary basis for our determination of need for additional judges. Unforeseen developments, however, may have an impact upon the judiciary resulting in needs which cannot be foreseen or predicted by statistical projections. This court, therefore, may also consider any additional information found by it to be relevant to the process. In establishing criteria for the need for additional appellate court judges, substantial reliance has been placed on the findings and recommendations of the <u>Commission on District Court of Appeal Performance and Accountability</u>. See <u>In re Certification</u>, _____ (Fla. 2006) <del>Supreme Court Commission on Florida Appellate Court Structure. See In re Certification, 370 So. 2d 365 (Fla. 1979).</del></p> <p><b>(b) Criteria.</b></p> <p>(1) <i>Trial Courts.</i> [no change]</p> <p>(2) <i>District Courts of Appeal.</i></p> <p><del>(A) The following threshold has been established based upon caseload statistics supplied to the state courts administrator by the clerks of the district courts of appeal. 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 current caseload filings reflect the need for an additional judgeship based on a primary caseload of 350 filings per</del></p>	<p>This amendment conforms the rule to accommodate the proposed new rule on district court jurisdiction criteria and the fact that this rule does not actually set forth criteria for increasing, decreasing, or redefining judicial circuits.</p> <p>Updates reference to the Commission’s report and opinion.</p> <p>Deletes existing criteria for district courts of appeal; incorporates the criteria proposed in the Commission on District Court of Appeal Performance and Accountability’s <u>Workload Report to the Supreme Court</u> (2005); and provides a standard for presumption of judicial need.</p>
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judge-

~~(B) Any other factor deemed relevant by the court may be utilized in the determination of the need for one or more additional judges, including, but not limited to, the following factors:~~

~~(i) number and percent of pro se and other cases impacting extraordinarily on workload;~~

~~(ii) caseload trends;~~

~~(iii) use of assigned or senior judges;~~

~~(iv) number of law clerks, staff attorneys and judicial assistants available to support judges;~~

~~(v) use of administrative measures to reduce delay and pending caseload (i.e., accelerated calendar, frequency of court days, dispute resolution programs, case management policies, etc.);~~

~~(vi) number of trial judges per appellate judge;~~

~~(vii) geographic size of appellate district (i.e., number of counties, number of days court is held in other counties, travel time);~~

~~(viii) population growth and density within district;~~

~~(ix) number of attorneys in district;~~

~~(x) presence of state and local government institutions in district;~~

~~(xi) characteristics of district (i.e., urban v. rural);~~

~~(xii) new laws, events, or litigation impacting caseload or administrative workload;~~

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

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

(ii) efficiency factors to be considered include: a court's ability to stay current with its caseload, as indicated by measurements such as trend in clearance rate; trends in a court's percentage of cases disposed within the time standards set forth in the Rules of Judicial Administration and explanation/justification for cases not resolved within the time

standards; and a court's utilization of resources, case management techniques and technologies to maximize the efficient adjudication of cases, research of legal issues, and preparation and distribution of decisions.

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

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

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

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

(ii) The Commission on District Court of Appeal Performance and

Accountability shall review the workload trends of the district courts of appeal and consider adjustments in the relative case weights every four years.

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

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

The criteria for the district courts of appeal are included wholly in subdivision (b)(2). This amendment clarifies that this subdivision only applies to the trial courts.

Amendment separates the trial court and district court of appeal

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

(1) The state courts administrator will distribute a compilation of summary statistics and projections to each chief judge at a time designated by the chief justice.

(2) Each chief judge shall submit to the chief justice a request for any increase or decrease in the number of judges:

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

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

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

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

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

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

#### **CREDIT(S)**

**Added Nov. 23, 1983, effective Dec. 1, 1983 (442 So.2d 198).**

**Amended Feb. 23, 1984 (446 So.2d 87); Oct. 8, 1992, effective Jan. 1, 199 (609 So.2d 465), Dec. 21, 1995, effective Jan. 1, 1996 (665 So.2d**

processes in order to incorporate the process proposed in the Commission in District Court of Appeal Performance and Accountability's Workload Report to the Supreme Court (2005).

218), Oct. 5, 2000, effective Jan. 1, 2001 (780 So.2d 819); Oct. 14, 2004 (888 So.2d 614).

## COURT COMMENTARY

### 2005 Electronic Pocket Part Update

**1983 Adoption.** Article V, section 9, of the Florida Constitution authorizes the establishment, by rule, of uniform criteria for the determination of the need for additional judges, except supreme court justices, the necessity for decreasing the number of judges and for increasing, decreasing, or redefining appellate districts and judicial circuits. Each year since the adoption of article V in 1972, this court, pursuant to section 9, has certified its determination of need to the legislature based upon factors and criteria set forth in our certification decisions. This rule is intended to set forth criteria and workload factors previously developed, adopted, and used in this certification process, as summarized and specifically set forth in *In re Certificate of Judicial Manpower*, 428 So. 2d 229 (Fla. 1983); *In re Certificate of Judicial Manpower*, 396 So. 2d 172 (Fla. 1981); and *In re Certification*, 370 So. 2d 365 (Fla. 1979).

**2004 Amendment.** Subdivision (b)(2) was amended to provide more specific criteria and workload factors to be used in determining the need for increasing or decreasing the number of judges on the District Courts of Appeal. In addition, the caseload level at which the court will presume that there is a need for an additional appellate judge has been increased from 250 to 350 filings per judge.

### **2006 Amendment**

Subdivision (a) is amended to be consistent with the 2006 adoption of rule 2.036 relating to the criteria for determining the necessity and for increasing, decreasing, or redefining appellate districts and judicial circuits, pursuant to article V, section 9, Florida Constitution.

The Court adopts the Commission on District Court of Appeal Performance and Accountability's conclusion that a single case filing threshold is insufficient to capture the intricacies that make up judicial workload in the district courts. The Commission's alternative to the

350-filings-per-judge threshold is a weighted case dispositions-per-judge, which the Commission determined to be a meaningful measure of judicial workload.

The relative weighted caseload is determined by surveying a representative sample of judges on the relative degree of judicial effort put into each category of cases based upon an agreed typical case having a value of 100. Each category was assigned a relative weight number based upon the statewide average of the weight calculated through the survey. These weights were then applied to each court's dispositions on the merits to determine the weighted caseload value and divided by 100.

This approach accommodates the important distinction between the number of cases filed and the judicial effort required to dispose of those cases. While the number of cases continues to increase, trends in the types of cases filed have dramatically changed the nature of the work that the district court judges handle. The weighted caseload approach not only accommodates the differences in types of cases by measuring their relative workload demands for judges, but it also accommodates the work performed by legal support staff.

Subdivision (b)(2)(B) establishes a presumption that the relative weight of cases disposed on the merits should fall below 280 per judge. Chief judges must consider the impact that the addition of a judge would have on this measure when applied to their courts' dispositions on the merits for the previous year.

Every four years the Commission will measure the relative judicial effort associated with the cases disposed on the merits for the year immediately preceding. This will be accomplished by asking a representative sample of judges to approximate the relative weight of cases in relation to a mid-ranked case. The resulting weights will then be applied to each court's dispositions on the merits to determine the weighted caseload value per judge.