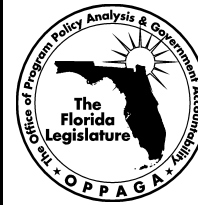




Office of Program Policy Analysis And Government Accountability



John W. Turcotte, Director

January 1998

Review of the Efficiency of the Two-Tiered Trial Court System and the Process for Certifying Judges

Abstract

- **The process used to establish the need for additional judges does not accurately identify where and when they are needed. In 1996-97, the State Courts expended over \$128 million for salaries and benefits of trial court judges and their judicial assistants.**
- **Using a weighted caseload system could improve the determination of judicial workload and the need for additional judicial resources such as judges and hearing officers.**
- **Constitutional provisions limit the efficient assignment of county judges. In 35 counties where there are single judges, it would only require 12 county judges to handle the total number of cases filed in 1996. The cost of this "excess" county judicial capacity amounted to \$3.8 million.**
- **Amending the Constitution to allow assignment of county judges as needed to circuit courts would be a better option to improve court efficiency than implementing a unified trial court system.**

Purpose

Chapter 97-257, Laws of Florida, directs the Office of Program Policy Analysis and Government Accountability to "study the judicial efficiency and

cost effectiveness of Florida's two-tiered trial court system and the jurisdictional distinctions between county and circuit courts. Alternatives, such as full- or part-time magistrates for small claims and civil traffic infractions, changes in jurisdiction, and unified trial court system, should be included in the study. This study should also include an examination of the state case reporting system currently used by the Florida Supreme Court to determine judicial workload."

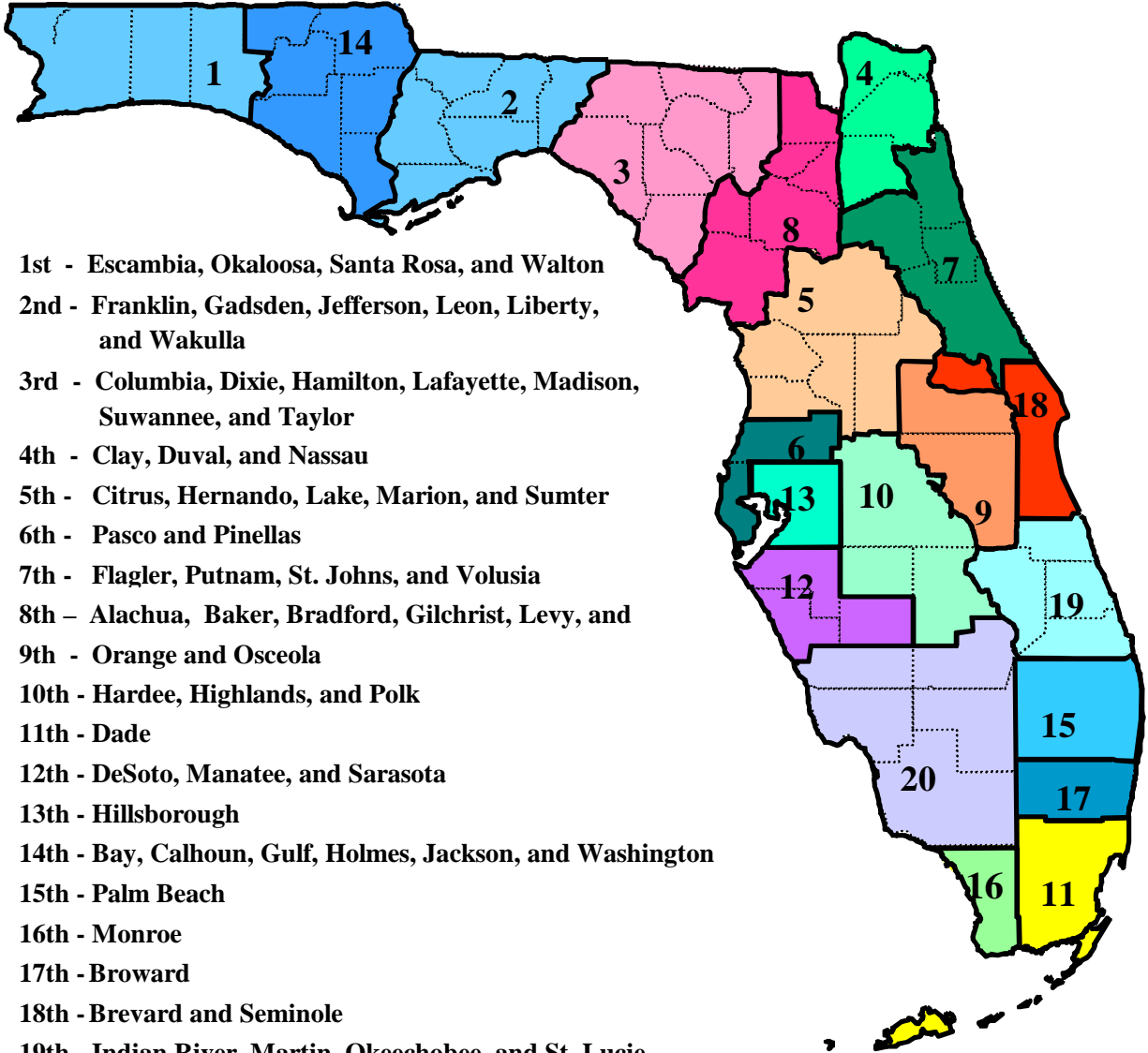
Background

The Florida Constitution establishes a two-tiered trial court system comprising county and circuit courts. Generally, county courts have jurisdiction in most misdemeanor cases, violations of local ordinances, traffic infractions, and civil actions involving less than \$15,000. Circuit courts have jurisdiction in all other trial matters, such as felonies, disputes concerning more than \$15,000, and cases relating to juveniles and tax disputes. Appeals of county court decisions are heard by the circuit courts; appeals of circuit court decisions are heard by district courts of appeal or the Florida Supreme Court.

The Chief Justice of the Florida Supreme Court is the administrator of the State Courts System. As of December 1, 1997, the system included 260 county judges in 67 counties and 461 circuit judges in 20 circuits. (See Exhibit 1.) In each circuit, the circuit and county judges elect a chief judge to administer all county and circuit trial courts. In fiscal year 1996-97, the State Courts expended over \$128 million for salaries and benefits of trial court judges and their judicial assistants.

Exhibit 1

Florida's Judicial Circuits



- 1st - Escambia, Okaloosa, Santa Rosa, and Walton
- 2nd - Franklin, Gadsden, Jefferson, Leon, Liberty, and Wakulla
- 3rd - Columbia, Dixie, Hamilton, Lafayette, Madison, Suwannee, and Taylor
- 4th - Clay, Duval, and Nassau
- 5th - Citrus, Hernando, Lake, Marion, and Sumter
- 6th - Pasco and Pinellas
- 7th - Flagler, Putnam, St. Johns, and Volusia
- 8th - Alachua, Baker, Bradford, Gilchrist, Levy, and
- 9th - Orange and Osceola
- 10th - Hardee, Highlands, and Polk
- 11th - Dade
- 12th - DeSoto, Manatee, and Sarasota
- 13th - Hillsborough
- 14th - Bay, Calhoun, Gulf, Holmes, Jackson, and Washington
- 15th - Palm Beach
- 16th - Monroe
- 17th - Broward
- 18th - Brevard and Seminole
- 19th - Indian River, Martin, Okeechobee, and St. Lucie
- 20th - Charlotte, Collier, Glades, Hendry, and Lee

To conduct this study we reviewed court administration literature, statewide court statistics and talked with judges and court personnel. We also visited and analyzed data for seven circuits. We selected this sample to represent two small circuits (3rd and 8th), two medium circuits (1st and 18th), and three large circuits (11th, 13th, and 15th) based on the number of cases filed per circuit in 1996. We also took into consideration circuit clearance rates and pending caseload.¹ In each circuit we met with a variety of court personnel including chief judges, county judges, court administrators, hearing officers, general masters, and mediators. We also observed numerous types of court proceedings presided over by various judicial personnel.

Findings

The Florida Legislature directed OPPAGA to address concerns regarding two chief functions of the State Courts System: the method for determining the need for additional judges, referred to as certification, and the operational efficiency of a two-tiered trial court. Section 1 of this report addresses certification and Section 2 addresses the two-tiered trial court. In each section we discuss the current environment and then offer recommendations for increasing court efficiency.

Section 1 Certification

The Process Used to Establish the Need for Additional Judges May Not Accurately Identify Where and When They Are Needed.

The certification process by which the Supreme Court requests funding from the Legislature to add more judges to the State Courts System may not accurately identify the need for judges and supplemental resources. Also, the associated data system may not accurately record workload. As a result, it is not clear where and when additional judges are needed.

The Supreme Court certifies the need for additional judges on the basis of actual and projected case filings. The Court makes a presumption of need for an additional judge when the number of case filings meets or exceeds a “threshold” number of case filings per judge. The Court may also consider secondary factors specified in

¹ Clearance rate is the ratio of number of cases disposed to the number of cases filed. Pending caseload is the number of open cases.

Florida Rules of Judicial Administration. (See Exhibit 2.)

Exhibit 2 Factors Considered in Certifying the Need For Additional Judges

Primary Factor:

Number of cases filed (threshold):

Circuit Court	County Court
1,865 per judge	6,114 per judge
(adopted 1984)	(adopted 1992)

Secondary Factors:

- County judge availability/service in circuit court
- Availability/use of senior judges
- Availability/use of supplemental hearing officers
- Use of alternative dispute resolution (e.g., mediation, arbitration)
- Number of jury trials
- Foreign language interpretations
- Geographic size/travel in circuit
- Law enforcement activities in jurisdiction
- Availability/use of case related support staff; case management practices
- Nature and complexity of cases
- Caseload trends

Threshold Filings. However, it is unclear whether the threshold numbers accurately reflect workload. First, the thresholds do not differentiate by type of case. Therefore, complex murder cases count the same as uncontested probate cases. Also, the thresholds do not take into account the different distribution of cases among circuits. For example, in 1996, criminal cases varied as a percentage of the total number of cases filed from 15% in the 20th Circuit to 26% in the 19th Circuit.

Second, the court environment has changed since the thresholds were adopted, so the thresholds do not take into consideration many of the other factors that currently impact judicial workload. For example, the recent increase in pro se litigants (those who choose to represent themselves in court proceedings) has significantly slowed court proceedings. Finally, many requests for court action, such as modifications of child support, are not counted as new case filings, so the number of cases counted understates judicial workload.

A lack of reliable data may also impede the Court’s ability to apply the threshold criterion uniformly. The accuracy of the threshold numbers depends on how accurately and uniformly county Clerks of the Court record the cases filed. The Court audits these figures approximately every three years in the larger circuits and less frequently in smaller ones, or as requested by a chief judge. However, several of the judges and court staff we

spoke to questioned the reliability of the data recorded and reported in the Court's Summary Reporting System. Staff in two of the seven circuits we visited were working with Court staff to resolve data reporting problems.

Secondary Factors. It is also unclear how the secondary factors, such as supplemental resources, are applied. The Rules of the Florida Supreme Court direct that these factors be taken into consideration in the certification process, but do not specify how. The Court's written analysis of their recommendation for additional judges is summary in nature and does not include supporting data or calculations, thereby making it difficult to independently assess how secondary factors are considered.

While supplemental resources such as special masters, hearing officers, and mediators are considered to enhance the efficiency of courts, there is no model or set of best practice standards for when and how they should be used. Also, methods and data for assessing their impact have not been developed. As a result, it is not clear how the impact of supplemental resources is measured or evaluated.

In our interviews throughout the state, judges unanimously reported that supplemental resources are an effective way to increase the efficiency of judicial operations. They believe efficiencies result from time freed by supplemental resources performing judicial duties and from the fact that supplemental resources also cost considerably less than judges, as indicated in Appendix A. However, the use of supplemental resources varies widely. For example, Circuit 11 employs every type of supplemental resource, while Circuit 14 employs none. (See Appendix B.)

We reviewed court statistics and data for the seven circuits we visited to determine if the use of supplemental resources reduced the number of pending cases or produced better clearance rates (the ratio of disposed cases to the number of case filings). We were unable to document any correlation between an increased use of supplemental resources and improved clearance rates.

Difficulty in assessing the impact of supplemental resources stems, in part, from a lack of workload data and differences in how these resources are used throughout the state. Courts maintain statistics for the number of cases referred to supplemental staff, the number of agreements reached, and the number of recommendations provided to judges. However, no

records are kept that describe whether action by supplemental resources accounts for 10% or 90% of the time required for the case.

Circuits differ in the types of cases heard by supplemental resources. Also, the amount of time judges spend reviewing the recommendations made by these quasi-judicial resources varies, depending on such factors as confidence in the personnel making the recommendation and workload demands. Because judge time gained from supplemental resources cannot be translated into hours, the impact of additional resources on judicial workload cannot be quantified.

There are similar problems in measuring the impact of two other secondary factors: use of county judges for circuit work and use of senior judges (retired judges who hear cases on a part-time basis). Although the number of hours that senior judges work are recorded, the number of cases they resolve and the resulting impact on judicial workload are not calculated. County judge hours are only recorded for those judges who request reimbursement for the pay differential allowed when they work in circuit court.

Because of these issues regarding the validity of the threshold numbers and the way secondary factors are applied, the Court may not be able to accurately identify when and where additional judicial resources are needed.

Using A Weighted Caseload System Could Improve the Determination of Judicial Workload and the Need for Additional Judicial Resources.

According to court administration literature, the most valid approach for assessing where and when more judges are needed is a weighted caseload system. Weighted caseload is a technique for determining the average time required to process each type of case. The process Florida uses to measure circuit court judicial workload is an "unweighted" method. Unweighted methods like the one Florida uses treat all cases as if they required the same resources. The data requirements of Florida's method are limited, so it is inexpensive to administer. However, the unweighted method may not provide sufficient accuracy for good resource allocation decisions.

In a 1996 report, the National Center for State Courts states "because unweighted cases are not directly tied to workload, they offer only minimal guidance for estimating the need for judges and support staff. Therefore, an estimate of the amount of work to be done is a precondition to estimating the need for resources.

Weighted caseload provides an explicit process for shifting the emphasis from caseload to workload.”

The National Center for State Courts considers the weighted caseload method as the most valid approach for assessing personnel needs. Weighted caseload translates caseload to workload by determining the average judicial or quasi-judicial time needed from initiation through disposition for each case type. The weighted caseload method recognizes that cases differ in complexity and require different amounts of time from judges and other resources.

To weight cases, information is collected for a sample of cases and used in a formula to project the time required to process each specific type of court case. When this case information is aggregated, it describes the court’s workload. Once the workload can be accurately assessed, the number of hours required by various types of resources, such as judges and hearing officers, is calculated and converted to full-time positions. Because the mix of case types filed can vary among the circuits and among county courts, a weighted caseload system more accurately measures the demand for judicial resources in each circuit than unweighted filings.

Weighted caseload also provides a method for collecting and analyzing data on many secondary factors, such as supplementary resources. A weighted caseload system would provide a basis to assess their impact by collecting and comparing information describing the time spent on cases by both supplemental resources and judges.

In our interviews, judges, trial court administrators, and hearing officers expressed concern that Florida’s current unweighted system does not take into account the present court environment and that the threshold approach is inadequate to accurately identify resource needs.

Concern with Florida’s current method was also the subject of a 1993 study by the Office of State Courts Administrator and the Court Statistics and Workload Committee. The study noted concerns with the time and cost of collecting the data needed to conduct a weighted caseload system and periodically update it. The study concluded that the method required further analysis. Using the funds the Legislature appropriated for this review, OPPAGA has contracted with a consultant to provide time and cost estimates, expected accuracy, and a description of the work that would be required to implement a weighted caseload method in Florida.

A weighted caseload system would allow the Supreme Court, the Legislature, and local governments to make a

more informed decision about the use and distribution of judicial resources. This system would have several significant benefits, including:

- improving the Florida State Courts System certification process;
- facilitating documentation and evaluation of the use of supplemental resources; and
- generating information that could be used to develop and apply measures and standards for performance-based program budgeting.²

The time and cost information is vital to making a decision as to whether these benefits of a weighted caseload system are worth the cost. Our consultant report is due in February 1998 to allow the Legislature to consider this information during the 1998 Legislative Session.

Section 2 Two-Tiered Trial Court System

Constitutional Provisions Restrict the Operational Efficiency of the Trial Courts System.

Although the case-filing threshold method for assessing judicial workload is of limited validity, it provides sufficient information to indicate that constitutional provisions impede trial court efficiency.

The Constitution requires that there be at least one judge in each county, that county and circuit judges hear different types of cases, and that county judges may only be assigned to circuit duties on a temporary basis. As a result of these provisions, county judges in 35 counties do not have a full-time caseload. Because county judges cannot be fully used, circuit judges continue to be added to these circuits to meet their needs, despite the excess county judge time available.

Thirty-five county judges preside in single-judge counties. (See Exhibit 3.) Using the threshold criteria, in calendar year 1996 the combined caseload of these 35 judges translated into the equivalent caseload of 12 judges. At \$166,630 each, the state cost of this “excess” capacity of 23 judges, including their judicial assistants and fringe benefits, was \$3.8 million. If the Constitution did not require that each county be served by at least one judge, fewer judges would be required.

² The State Courts System is scheduled to come under performance-based program budgeting in fiscal year 2000-2001.

Exhibit 3
In 1996, County Judges in 35 Counties
Did Not Have a Full-Time Workload

Circuit	County	Full-Time Equivalents Needed Based on Threshold Filings
1 st	Walton	0.52
2 nd	Franklin	0.20
	Gadsden	0.69
	Jefferson	0.22
	Liberty	0.06
	Wakulla	0.22
3 rd	Columbia	0.87
	Dixie	0.13
	Hamilton	0.13
	Lafayette	0.04
	Madison	0.27
	Suwannee	0.36
	Taylor	0.18
4 th	Nassau	0.56
5 th	Citrus	0.66
	Hernando	0.82
	Sumter	0.31
7 th	Flagler	0.41
	Putnam	0.93
8 th	Baker	0.24
	Bradford	0.36
	Gilchrist	0.10
	Levy	0.44
	Union	0.08
10 th	Hardee	0.41
	Highlands	0.72
12 th	DeSoto	0.23
14 th	Calhoun	0.10
	Gulf	0.14
	Holmes	0.15
	Jackson	0.46
	Washington	0.19
19 th	Okeechobee	0.34
20 th	Glades	0.11
	Hendry	0.48
Total	35	12.09

*Analysis based on established Supreme Court filing threshold of 6,114 cases equaling one FTE judge.

One way to use surplus county judge time is to assign county judges to assist with circuit court work. Almost all county judges are assigned to some circuit duties, with the exception of five who are not eligible for circuit work because they are non-lawyers.³ The 30 judges who were eligible for assignment claimed circuit work

³ The 1972 Constitutional revision allowed existing non-lawyer judges to retain their judgeships.

equivalent to 2.36 judgeships using the threshold criterion.⁴ Consequently, the equivalent of 15.64 judgeships was available for assignment and was not used.

Constitutional restrictions prohibit the circuits from fully utilizing surplus county resources. While the Constitution allows county judges to be assigned to circuit duties, it stipulates that the assignment be temporary. What constitutes a temporary assignment continues to be defined by case law. Generally, temporary assignment of a county judge to full-time circuit work should not exceed 60 days. Part-time circuit work should not exceed six months.

There are continuing challenges to routine assignment of county judges to circuit duties. These challenges assert that the consecutive assignment of county court judges for terms just under the six month limitation or sixty day limitation results in county court judges serving as circuit judges without constitutional authority. As a result, circuits cannot freely assign county judges with available time to assist with circuit cases. Despite the availability of county judge time, circuit court judges continue to be added to these circuits to meet their needs.

Recent appropriations provide an example of how the restriction on assigning county judges to circuit work limits the efficient and cost-effective use of judicial resources. In 1996, five new judgeships were added in five circuits. In these five circuits, judges representing single judge counties had excess time ranging from .25 to 3.26 judgeships. In these five circuits where county judge time was available, the cost of adding five circuit judges and their judicial assistants was approximately \$900,000.

Two concerns have been raised about assigning county judges to circuit duties. First, some question whether county judges are competent to hear circuit cases. However, the qualifications for both judgeships are the same. In addition, chief judges currently assign county judges to hear every type of circuit case; the most frequent assignment is to hear criminal cases. Second, when county judges sit in circuit court, they are hearing cases they have not been elected to hear. While this is true, circuit work would remain each county judge's secondary responsibility and would decrease over time as county caseload increased.

Because of the courts' inability to more efficiently distribute their workload, some counties have too little

⁴ County court judges assigned to circuit duties may claim differential pay. Data on county judge hours spent in circuit duties is based on these requests. Some county judges do not request the pay differential, so their circuit hours are not recorded.

work while some circuits have too much work. Constitutional restrictions on the operation of the trial courts produce an imbalance in the State Courts System.

Amending the Constitution to Allow Assignment of County Judges as Needed to Circuit Court Duties Is a Better Option to Improve Court Efficiency than Implementing a Unified Trial Courts System.

Research indicates that an effective way to promote more efficiency in trial courts is implementation of a unified trial courts system. Florida's two-tiered trial court system already incorporates many of the advantages of a unified court. Improving this process to allow for routine assignment of county judges to circuit work would further increase efficiency and decrease cost without the disruption of restructuring the trial court system.

Generally, a unified courts system consists of only one tier of trial courts that has general jurisdiction over all trial cases, centralized administration, and authority to assign judges vested in a chief administrative judge. Judicial administration literature cites the primary advantages of a unified system as: administrative efficiency through elimination of redundant support services; flexibility in assigning judges to meet caseload pressure; and cost efficiency by reducing the need for judges.

Florida's current trial court system already incorporates two of these major advantages. First, statewide rulemaking, budgeting, and automated systems are administered by one office, the Office of the State Court Administrator. Consolidation of these responsibilities reduces the cost of support services. Second, in each circuit, the circuit and county judges elect a chief judge to administer all county and circuit trial courts. This circuit-wide administration of cases allows the courts flexibility to respond to changes in workload at both the county and circuit courts.

However, the constitutional restriction that county judges may only be assigned to circuit work on a temporary basis creates a significant constraint to court flexibility and the efficient use of judicial resources. If the temporary assignment stipulation were removed from the Constitution, chief judges would have flexibility to assign county judges with available time to hear cases where and when they were needed. Using available county judges for circuit assignment will increase their compensation when they request the pay differential. However, these costs are outweighed by more efficient use of county judges and mitigated by the fact that additional circuit court judges may not be needed until county judges are fully used.

Removing the temporary assignment stipulation would also allow circuit judges to be assigned to hear county cases if necessary. The current system, with this revision, would achieve the major benefits of the unified system: administrative efficiency, judicial flexibility, and cost efficiency.

Our proposed approach also offers other benefits not provided by a unified system. It would allow citizens in every county to continue to elect a county judge to hear local cases. Circuit judges could still hear appeals of county court cases, whereas in a unified system such cases would have to be heard by a panel of circuit court judges or by the District Court of Appeal. Retaining a two-tier system would also be less costly than a unified system that elevates the salaries of county judges to the level of circuit judges. And, revising the current system would also avoid the physical and political disruption of restructuring the trial courts to create a unified system.

We also considered changes in the jurisdiction of the types of cases each court is permitted to hear to allow redistribution of trial court work. These jurisdictional changes can be grouped into three categories: geographic, legal, and judicial staffing. These changes and a summary of their advantages and disadvantages are discussed in Appendix C. These changes do not appear to offer as significant a benefit as would be achieved by removing the stipulation for temporary assignment.

Therefore, we recommend that the current two-tiered trial court system be retained and the Constitution be revised to remove the word "temporary" from Article V, section 2(b). The Constitutional Revision Commission is also considering recommending that this change be made.

If the Constitution is revised and county judges may be routinely assigned to meet circuit needs, the Supreme Court should routinely and uniformly collect data to document county judge work in circuit court. We recommend that the county judges in a circuit be fully utilized before the Court requests additional circuit judges.

Conclusions and Recommendations

The Florida Legislature directed OPPAGA to address concerns regarding two chief functions of the State Courts System: the method for determining the need for additional judges, referred to as certification, and the operational efficiency of a two-tiered trial court.

Certification

The certification process by which the Supreme Court requests funding from the Legislature to add more judges to the State Court System does not accurately identify the need for judges and supplemental resources. Also, the associated data system may not accurately record workload. As a result, it is not clear where and when additional judges are needed.

The process Florida uses to measure judicial workload is an “unweighted” method that treats all cases as if they required the same resources. The National Center for State Courts considers the weighted caseload method a more valid approach for assessing judicial personnel needs. Weighted caseload is a technique for determining the average time required to process each type of case. It also provides a method for collecting and analyzing data on supplementary resources such as hearing officers. Using a weighted caseload system could improve the determination of judicial workload and the need for additional judicial resources. This information would also assist the Court in implementing performance-based program budgeting.

OPPAGA has contracted with a consultant to provide time and cost estimates, expected accuracy, and a description of the work that would be required to implement a weighted caseload in Florida. This report will be available for the 1998 Legislative Session to allow the Legislature to compare the costs and benefits of implementing a weighted caseload system.

Two-Tiered Trial Court System

The Constitution requires that there be at least one judge in each county, that county and circuit judges hear different types of cases, and that county judges may only be assigned to circuit duties on a temporary basis. As a result of these provisions, judges in 35 counties do not have a full-time caseload. Because county judges cannot be fully used, circuit judges continue to be added to these circuits to meet their needs.

Amending the Constitution to allow assignment of county judges as needed to circuit court duties is a better option to improve court efficiency than combining the two tiers of trial courts to create a unified trial courts system. If the temporary assignment stipulation were removed from the Constitution, chief judges would have flexibility to assign county judges with available time to hear cases where and when they were needed. The current system, with this revision, would achieve the

major benefits of a unified system: administrative efficiency, judicial flexibility, and cost efficiency.

This approach also offers other benefits not provided by a unified system. It would allow citizens in every county to continue to elect a county judge to hear local cases and would leave the current appeals process intact. Retaining a two-tier system would also be less costly than a unified system that elevates the salaries of county judges to the level of circuit judges. And, revising the current system would also avoid the physical and political disruption of restructuring the trial courts to create a unified system.

We recommend that the current two-tiered trial court system be retained and the Constitution be revised to remove the word “temporary” from Article V, section 2(b). If the Constitution is revised and county judges may be routinely assigned to meet circuit needs, the Supreme Court should routinely and uniformly collect data to document county judge work in circuit court. We recommend that the county judges in a circuit be fully utilized before the Court requests additional circuit judges.

Agency Response

The State Courts Administrator (OSCA) provided a multi-page letter with exhibits in response to our review. Because of limited space in this report format, we provide summaries and excerpts of OSCA’s key points. The report and full response are available upon request or by visiting OPPAGA’s web site (www.oppaga.state.fl.us).

Summary Statement

The review’s conclusion that the process used to establish the need for additional judges does not accurately identify where and when they are needed is unsubstantiated. On the contrary, historical trends of filings per judge compared to the workload threshold used for circuit court, where most judgeships have been added over the past decade, show consistent adjustments to, and balance in, overall workload over time.

The thresholds are not the sole basis for determining workload. The Court also carefully considers a range of secondary factors, although formula “calculations” are not prepared. OPPAGA seems to believe effective consideration of data requires a formula-driven measure of workload. Complete data on these

secondary factors is available to the Legislature upon request.

OPPAGA Response

We do not consider case filing thresholds a valid starting point for measuring the need for additional judgeships because they do not translate caseload into workload. Secondary factors should be included in assessing judicial workload; however, it is not clear how the Court applies these factors to determine the need for additional judges.

Summary Statement

OPPAGA states that the filing thresholds do not reflect the current court environment. However, both circuit and county filing thresholds were the subject of an extensive 1993 study by the Court Statistics and Workload Committee of the certification process and criteria. This study was based on in-depth profiles of workload-related data and factors in eight circuits. The study concluded that filings per judge was still a valid starting point for measuring the need for additional judgeships. The Committee did recommend changes regarding the application of the threshold and secondary criteria that the Court adopted in 1995.

In reviewing the need to develop workload measures, OPPAGA does not address the full range of issues. These issues include the cost of using other factors, the time and expense of auditing data on these variables, and the time and expense of building new data reporting systems.

OPPAGA Response

Descriptions of the time and costs required to develop meaningful measures will be addressed in the report from our consultant, due in February.

Summary Statement

OPPAGA's remarks regarding the accuracy of the threshold numbers seem to be an impeachment of the accuracy of the filings data. OSCA acknowledges that data collection is subject to reporting errors, as are all reporting systems. However, OPPAGA fails to point out three factors related to data procedures. First, the 67 Clerks maintain an array of diverse systems to

generate these reports. On the whole they do an extraordinary job, although turnover and software changes inevitably result in errors from time to time. Second, the data reporting procedures OSCA supports are not staffed at a level that allows frequent audits of filings data. Third, the system was devised to provide a range of workload data at a relatively low cost. More sophisticated systems would require significantly increased costs.

OPPAGA Response

We agree that data collection for the Summary Reporting System is subject to reporting errors. We did not assess the availability and allocation of OSCA staff to audit system data.

Summary Statement

The option of developing a weighted caseload system was evaluated by the Court in 1993. There are a variety of approaches to developing such a system, which are the subject of a separate study by OPPAGA consultants. We will reserve comments until the report is received.

OPPAGA Response

Our consultant report is due in February.

Summary Statement

OPPAGA concludes that there are 35 counties with single judges and only 12 judges are justified on the basis of case filings. This conclusion fails to take into account geographical considerations, economies of scale, travel time, and essential timely court appearances. Assigning a value of \$3.8 million to prospective savings overstates the potential benefit.

OPPAGA Response

We presented this information, and the \$3.8 million associated with this excess judge capacity, to provide contextual information on the current judicial system. We agree that some of the assumptions OSCA mentions would have to be considered in a detailed cost-effectiveness study. However, the main conclusion we draw is that the current Constitutional provision does not allow sufficient flexibility in judicial assignment to allow efficient use of county judges.

Appendix A Supplemental Resources Hear a Variety of Cases

Resource	Type Cases Handled	Cost
Senior Judge	Any county or circuit case	\$253.63 per day, no benefits included
County Judge*	Any type circuit case	\$5.76 per hour (difference between County Judge and Circuit Judge salary), no benefits included
General or Special Master	Domestic relations (agreement modification, child custody/ visitation, child support), probate, juvenile dependency (custody, child placement, medical or therapeutic treatment)	From \$73,234 to \$94,158 annually, including fringe benefits
Child Support Hearing Officer	Establishment of Child Support Orders, Establishment of Uncontested Paternity, Enforcement of Child Support Order (IV-D cases)	From \$22 per hour for part-time, no benefits included to \$66,123 for full-time, including fringe benefits
Traffic Hearing Officer	Civil Traffic infractions, unless they involve an accident with injuries	From \$20 to \$30 per hour, no benefits included
Mediators	<u>County</u> : Landlord/tenant, breach of contract, auto negligence, worthless checks <u>Circuit</u> : Contract, construction, personal injury, malpractice, real estate, product liability	From \$26,842 to \$61,655 annually, including fringe benefits

* Except non-lawyer judges, who cannot be assigned to circuit duties.

Source: Florida Statutes, Office of State Courts Administrator (OSCA) publications and Trial Court Administrators

Appendix B Circuit Use of Supplemental Resources Varies

Judicial Circuit	Full-Time Equivalent (FTE) Masters	FTE Child Support Enforcement Hearing Officers	FTE Hearing Officers	Use of County Judges for Circuit Duties, CY 1996 (FTEs)	Senior Judges Used, CY 1996 (FTEs)
1 st	0	2	0	0.92	0.57
2 nd	0	0.6	0	0.22	0.20
3 rd	0	0	0	0.50	0.06
4 th	1.2	1.8	0	0.20	1.30
5 th	0	0	0	0.17	0.05
6 th	2.2	2	0.5	0.26	2.18
7 th	0.6	0.4	0	0.19	0.44
8 th	0	1.6	0	0.58	0.71
9 th	0	2	1.6	0.00	0.67
10 th	0	0.5	0	0.37	0.40
11 th	8	2	4.3	2.46	7.25
12 th	2	2	0	0.32	1.00
13 th	4	1	0.5	2.29	1.84
14 th	0	0	0	0.05	0.00
15 th	4	2	0.6	0.49	1.28
16 th	0	0	0	0.24	0.23
17 th	6	1	3	1.01	2.27
18 th	0.5	1.5	0.75	0.02	1.12
19 th	0	1	0	0.75	0.90
20 th	1	3	0	0.82	0.35
Total	29.5	24.4	11.25	11.86	22.84

Source: Data for Masters and Hearing Officers based on a telephone survey of circuits conducted by Office of State Courts Administrator (OSCA) on March 11, 1997. FTEs are approximations based upon a 40-hour week. Source for data on County and Senior Judge time is OSCA

Appendix C

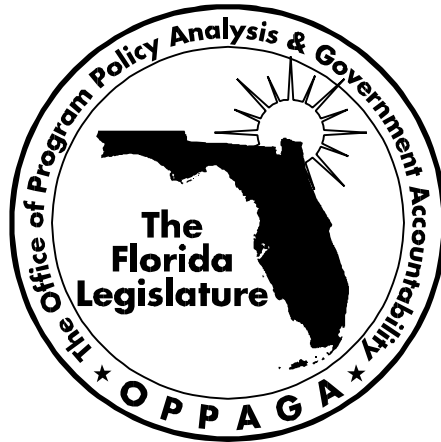
Other Alternatives to Increase Judicial Efficiency

	Option	Advantages	Disadvantages
Geographic Jurisdiction	One county judge for multiple counties.	Better distributes workload for counties in which the number of case filings does not justify the need for a full-time judge.	<p>Must revise the Constitution, which requires time, expense and initiative to convince voters of the need; drafting appropriate language for implementation would be difficult, since some of the counties to be served by one judge may not be contiguous to each other, and the need to allow for a full time judge in a county when justified.</p> <p>Increases judges' travel time.</p> <p>Could be viewed as politically disfranchising for counties that go to a shared judge.</p>
Legal Jurisdiction	Transfer to County Court: Juvenile cases, criminal domestic violence cases, child support enforcement; and increase caps on small claims and civil cases.	<p>Distributes work to county judges with surplus time in counties where judges are working below the filing standards.</p> <p>Allows circuit judges more time to consider other cases.</p>	<p>For continuity, juvenile cases should be heard in the same courts as Family Division cases.</p> <p>In circuits where county judges are working up to standard, this change would create backlogs or the need for additional county judges.</p>
	Transfer to Hearing Officers: County ordinance violations and some criminal license cases (only when not in conjunction with other serious offenses) such as no valid license, no valid tag, lack of proof of insurance and improper equipment.	Distributes more work to less expensive resources.	Must revise the Constitution, which requires time, expense and initiative to convince voters of the need.
	Increase the jurisdiction of general masters to allow them to issue orders for cases they hear.	Distributes more work to less expensive resources.	<p>Increasing the jurisdiction of General Masters and Hearing Officers would give them the same authority as judges; however, they are not elected officials.</p> <p>Must revise the Constitution, which requires time, expense and initiative to convince voters of the need.</p>
	Increase the jurisdiction of hearing officers to allow them to remand those found in contempt of court to jail (usually for nonpayment of child support), without having to have a judge sign the order.	Distributes more work to less expensive resources.	Must revise the Constitution, which requires time, expense and initiative to convince voters of the need.
Variable Judicial Staffing	Part-time judges	Allows additional judges to be phased in to meet workload demands on an as-needed incremental (1/4 time) basis.	<p>Must revise the Constitution, which requires time, expense and initiative to convince voters of the need.;</p> <p>Lack of individuals willing to forego practicing law to work as a judge on a part-time basis;</p> <p>Could be viewed as politically disfranchising for counties that go to a part time judge.</p>

Source: OPPAGA interviews with judges and other judicial personnel

The Florida Legislature

Office of Program Policy Analysis and Government Accountability



ANNOUNCEMENT

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Office of State Courts Administrator
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January 28, 1998

Mr. Richard Dolan
Senior Policy Analyst
Office of Program Policy Analysis
and Government Accountability
111 West Madison Street, Room 312
Claude Pepper Building
Tallahassee, Florida 32301

Dear Richard:

The following are the comments of the Office of the State Courts Administrator on the draft report of OPPAGA entitled Review of the Efficiency of the Two-Tiered Trial Court System and the Process for Certifying Judges. The specific findings and conclusions of OPPAGA to which we are responding appear in italics. Note that most of this response is directed at the certification process as it pertains to circuit court. However, many of the comments apply, similarly, to the determination of need for additional county judges.

1. *The process used to establish the need for additional judges does not accurately identify where and when they are needed.*

This conclusion is unsubstantiated for a number of reasons. First, it implies courts in need of additional judicial resources do not receive them, while other courts may receive them unjustifiably. On the contrary, historical trends of filings per judge compared to the workload threshold used for circuit court, where most judgeships have been added over the past decade, show consistent adjustments to, and balance in, overall workload over time. See charts included as Attachment I.

Second, OPPAGA's conclusion implies that the only quantitative data considered in the certification process is filings per judge. The report states:

- *... it is unclear whether the threshold numbers accurately reflect workload.*
- *... the thresholds do not differentiate by type of case.*
- *... the thresholds do not take into account the different distribution of cases among circuits.*

The threshold was never intended to be the sole or complete reflection of the workload in the circuit courts. As the term implies, it is only the starting point in determining the need for additional judges. It measures the number of cases brought to the court for resolution. The 1,865 filings per judge threshold for circuit court is the level at which there is a presumptive need for additional judges and at which a court is likely operating beyond its capacity. However, in addition to the filings data, the Supreme Court gives careful consideration to a range of quantitative data related to the character and handling of the caseload, including:

- County judge availability/service in circuit court;
- Availability/use of senior judges;
- Availability/use of supplemental hearing officers;
- Use of alternative dispute resolution (e.g., mediation, arbitration);
- Number of jury trials;
- Foreign language interpretations;
- Geographic size/travel in circuit;
- Law enforcement activities in jurisdiction;
- Availability/use of case related support staff and case management practices;
- Nature and complexity of cases; and
- Caseload trends.

Third, OPPAGA seems to believe that the various types of data cannot be effectively considered unless used in some type of formula driven measure of workload. OPPAGA notes:

- *The Court's written analysis of their recommendation for additional judges is summary in nature and does not include supporting data or calculations, thereby making it difficult to independently assess how secondary factors are considered.*

The complete set of data as well as the requests of the individual circuits have routinely been made available to the substantive and appropriations committees of the Legislature. These data are all considered by the courts even though formula "*calculations*" are not prepared using same.

It is true that the court may not present separate analysis and findings related to the request of each circuit, in its opinions. However, the OSCA has provided such background to individual members, staff, and committees of the Legislature upon request, and during annual presentations on judicial certification before various committees.

2. *... the court environment has changed since the thresholds were adopted, so the thresholds do not take into consideration many of the other factors that currently impact judicial workload.*

Exhibit 2 of the OPPAGA report suggests that the 1,865 filing per judge threshold for

circuit court was adopted in 1984. In point of fact both thresholds were the subject of an extensive 1993 study of the certification process and criteria. That study was based on in-depth profiles of workload related data and factors in eight circuits. The intent of the study was to specifically look at the need for changes in criteria for certification. The subjects covered are listed in Attachment II.

The study, conducted by the Court Statistics and Workload Committee, concluded that the 1,865 filings per judge figure was still a valid starting point for measuring the need for additional judgeships. The committee did recommend changes to the Florida Rules of Judicial Administration regarding the application of the threshold and secondary criteria, which were adopted in 1995.

It is noted that the 1993 White Paper addressed some of the same issues raised by OPPAGA, including:

- Differentiation by type of case to reflect variable workload demands and the distribution of cases across circuits;
- The increase in pro se litigants;
- The need to examine modifications and other post judgement workload;
- The place of supplemental hearing officers in evaluating judicial workload; and
- The use of senior judges.

In many respects, The OPPAGA's findings with regard to these various factors mirror those of our own Court Statistics and Workload Committee. However, OPPAGA does not address the full range of issues that must be considered in determining if and how a particular variable can be used effectively in assessing workload. Moreover, OPPAGA neglects to address any issues related to the cost of 1) a closer examination and documentation of the relationship of these factors to judicial workload, 2) the time and expense required to effectively audit data already reported to the OSCA on certain of these variables, and 3) the time and expense of building new data reporting procedures that would be required to address their findings. Examples of the later include data on: the workload and manner of disposition of cases heard by masters and hearing officers, mediators, and senior judges; the impact of pro se litigants; etc.

3. *The accuracy of the threshold numbers depends on how accurately and uniformly county Clerks of Court record the cases filed.*

This statement and related remarks seem to be an impeachment of the accuracy of the filings data. The OSCA readily acknowledges that the data collection procedures for filings, as well as those for dispositions and pending data, are subject to reporting errors, as are all data reporting systems. However, OPPAGA fails to point out three critical factors related to administration of such data reporting procedures. First, these procedures are manned by 67 clerks and their staff who maintain an array of diverse systems to generate reports. On the whole they do an extraordinary job. However, turnover in reporting staff and changes in local software

inevitably result in errors from time to time.

Second, the data reporting procedures the OSCA supports are not staffed at a level that allows frequent audits of filings. As OPPAGA points out, it is only possible for the OSCA to audit filings reports by the counties every three or four years. It was not until October of 1997 that three positions were authorized by the Legislature to begin auditing dispositions and reopened case data. No resources are available to audit pending cases whatsoever. Increasing the scope and frequency of filings and dispositions audits, and ensuring the accuracy of pending case data, will require additional staff.

Third, in the early eighties, the current SRS system was devised because it could provide a range of data on workload at relatively low cost to the state and the clerks of court. More sophisticated systems for gathering caseload data can be implemented, but at significantly increased cost.

4. *Using a weighted caseload system could improve the determination of judicial workload and the need for additional judicial resources.*

As OPPAGA notes, the option of developing a weighted caseload system was evaluated by the Court Statistics and Workload Committee in 1993. There are a variety of approaches to developing such a system which, presumably, are the subject of a separate study being undertaken by consultants to OPPAGA. Accordingly, we will reserve comments until that report is received.

5. *In 35 counties where there are single judges, it would only require 12 county judges to handle the total number of cases filed in 1996.*

This conclusion fails to take into account geographical considerations created by our system of counties, a lack of economy of scale (cases not concentrated as in large urban areas), requisite travel time, and the fact that somebody has to conduct essential court appearances in those jurisdictions on a 24-hour per day basis (domestic violence injunctions, emergency requests for search warrants, and first appearances are but three examples). Assigning a dollar figure of \$3.8 million to prospective savings overstates the potential benefit that may be realized.

Please advise if you or your staff have any questions regarding our comments.

Sincerely,
/s/
Kenneth R. Palmer

KRP:aef:mb
Attachments