



Office of Program Policy Analysis And Government Accountability



John W. Turcotte, Director

March 1998

Information Brief on Weighted Caseload Methods of Assessing Judicial Workload and Certifying the Need for Additional Judges

Abstract

- The Supreme Court should adopt a weighted caseload system for assessing judicial workload and certifying the need for additional judges. (See page 2, column 2.)
- Adopting a weighted caseload system would significantly improve the accuracy of assessments of the workload of the judicial branch. As a result, the Supreme Court, the Legislature, and local governments could make more informed decisions about the use and distribution of judicial resources. (See page 2, column 2.)
- Experts estimate that implementing a weighted caseload system would cost approximately \$52,000. Similar costs would be incurred every four years when the weights were updated. (See page 2, column 1.)
- A weighted caseload system would assist the Court in implementing performance-based budgeting for the judicial branch. (See page 2, column 2.)

Purpose

Chapter 97-257, F.S., directs the Office of Program Policy Analysis and Government Accountability to review several aspects of Florida's court system. This information brief addresses options for assessing

judicial workload and certifying the need for additional judges.

Background

In January 1998 OPPAGA issued Report 97-36, a "Review of the Two-Tiered Trial Court System and the Process for Certifying Judges." The report reviewed the method currently used by the Supreme Court to establish the need for additional judges and raised concerns that the process might not accurately identify where and when additional judges are needed. The report noted that using a weighted caseload system could improve the process for determining judicial workload and the need for additional judges.

The Supreme Court currently certifies the need for additional judges using an "unweighted" system based on 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. However, it is unclear whether the threshold numbers accurately reflect workload.

The weighted caseload method recognizes that cases differ in complexity and require different amounts of time from judges and other resources. Weighted caseload translates caseload to workload by determining the average judicial or quasi-judicial time needed from initiation through disposition for each type of case.

OPPAGA contracted with Gryphon Consulting Services to provide time and cost estimates, expected

accuracy, and a description of the work required to implement a weighted caseload method in Florida. This information brief provides a summary of the Gryphon report and OPPAGA's recommendation for improving the method of assessing judicial workload. The Gryphon Consulting Services' report is a public record of this office and is available upon request.

Findings

Gryphon Consulting Services' February 1998 report, "Designing a Judgeship Needs Process for Florida," describes how a weighted caseload system works and presents considerations for its use in Florida's judicial certification process. Gryphon provides cost estimates for four weighted caseload options and recommends that Florida adopt the Delphi method.

The Gryphon report addresses several concerns the Court has raised about the weighted caseload system, including the availability of case-related data necessary for a weighted caseload system and the time and costs associated with such an effort. Gryphon concludes that using a Delphi method for weighting cases could be implemented using currently available data. The Delphi method would require a limited amount of judicial time, as it could be accomplished with three group meetings of participating judges. Gryphon estimates the Delphi method would cost approximately \$52,000. Similar costs would be incurred every four years when the weights are updated.

The Office of the State Courts Administrator (OSCA), which assists the Supreme Court in the certification process, reported that it would need additional staff to conduct a weighted caseload process. If this were the case, Gryphon estimates an additional annual cost of \$93,300. While OPPAGA has not conducted an analysis of OSCA's workload, it appears that the method recommended by Gryphon could be implemented with little extra work that would be cyclical in nature.

The cost of a weighted caseload system is less than the \$166,630 cost of one judge and a judicial assistant with associated fringe benefits. In light of the \$128 million the state courts spend on salaries and benefits for trial court judges and their judicial assistants, the expense would be minimal for implementing a weighted caseload method that would improve the assessment of judicial workload and distribution of judicial resources.

A summary of Gryphon's four options for weighting caseloads and their estimated costs is provided in Exhibit 1. Further information on these options, the

assumptions regarding their estimated costs, and recommendations for improving the quality of certification data and using an advisory committee to assist in the certification process can be found in Gryphon's report.

Conclusions and Recommendations

We recommend that the Supreme Court adopt a weighted caseload system for assessing judicial workload and certifying the need for additional judges. The specific method to be used to implement a weighted caseload should be determined by OSCA and the Supreme Court based on their assessment of which option would be most appropriate. The Court should begin taking steps to implement the process immediately.

Adopting a weighted caseload system would significantly improve assessments of workload by the judicial branch and could be adopted for a minimal cost. As noted in Report 97-36, 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 significant benefits, including:

- improving the Florida State Court System certification process; and
- facilitating documentation and evaluation of the use of supplemental resources, such as hearing officers and general masters.

Also, the judicial branch is required to begin performance-based program budgeting by January 2000, in accordance with the 1994 Government Performance and Accountability Act. Because the major costs and activities of the judiciary are based on case-related activity, adoption of a system that more accurately translates caseload into workload will be necessary to assess the effectiveness of the performance of the judicial branch. Adoption of a weighted caseload system would assist the Supreme Court in implementing performance-based budgeting for the judicial branch.

Exhibit 1

Comparison of Weighted Caseload Methods With Respect to Calendar Time, Cost, and Accuracy

Method	Calendar Time to Develop ¹	Cost	Accuracy
Option 1: Weighting case <i>types</i> by measuring the time spent from initiation to completion of a case.	10 months, representing (a) 4 months to develop time sheets and to train judges regarding the process; (b) 2 months to conduct judges' time study; and (c) 4 months to analyze data, develop weights, and write final report.	Out-of-pocket costs for staff travel to train judges; to selectively visit some circuits to monitor progress; for 1 new PC and software; and printing, mail, and telephone costs: \$14,000. If observers are used in courtrooms to record time rather than judges: \$160,000. Possible need for additional staff positions for OSCA: \$93,300. <i>(Total from \$14,000 to \$267,300)</i> ³	Reasonably accurate. Two items can affect accuracy: » Judge's time in courtroom, except for trials, often is not organized by case type ² ; accuracy depends on judge's estimating allocation of time on each case type after each calendar is finished. » If enough calendar time not allowed for time-sheet part of study, may not capture infrequent events for some case types, so resulting weights would be low.
Option 2: Weighting case <i>events</i> by measuring the time required for each event within a case, by case type.	13-14 months, representing (a) 4 months to develop time sheets and event-counting forms and to train judges regarding the process; (b) 3 months to hire and train new temporary hires OR 2 months to train court staff; (c) 2 months to conduct judges' time study; (d) 4 months to collect data from case files (overlaps time study); and (e) 4 months to analyze data, develop weights, and write final report.	All costs of Option 1 plus: • Additional travel costs to train trial court staff: \$1,725. • 20 temporary hires for 16 weeks to review samples of file for event frequency if trial court staff not used: \$67,000. Travel costs for temporary hires: \$8,250. <i>(Total from \$15,725 to \$344,275)</i> ³	Most accurate because measuring events is simpler and easier than measuring time on entire case.
Option 3: Delphi process that weights case <i>types</i> by estimating the time spent from initiation to completion of a case.	8 months, representing (a) 3 months to train staff and select Delphi Committee; (b) 4 months for 3 Delphi sessions; and (c) 1 month to write final report.	Travel and per diem costs for 3 face-to-face sessions: \$31,700. Consultant to train OSCA staff and oversee process: \$20,000. Possible need for additional staff positions for OSCA: \$93,300. <i>(Total from \$51,700 to \$145,000)</i> ³	Close to accuracy in measured approach of Option 1. Adds benefit of discussion of best practices when developing weights.
Option 4: Delphi process that weights case <i>events</i> by estimating the time required for each event within a case, by case type.	10 months, representing (a) 3 months to train staff and select Delphi Committee; (b) 4 months for 3 Delphi sessions; (c) 4 months to collect data from case files, longer if temporary staff hired and trained (overlaps with Delphi sessions); and (d) 3 months to analyze event data, develop weights, and write final report.	All costs of Option 3 plus: • Additional travel costs to train trial court staff: \$1,725. • 20 temporary hires for 16 weeks to review samples of file for event frequency if trial court staff not used: \$67,000. Travel costs for temporary hires: \$8,250. <i>(Total from \$128,675 to \$221,975)</i> ³	Close to accuracy of Option 2; judges probably better able to estimate event time than total case time. Shares with Option 3 benefit of discussion of best practices when developing weights.

¹ OSCA and some in the trial courts believe OSCA will need to add staff to conduct the weighted caseload process, whichever option is used. If so, at least three months would have to be added to this time line to allow for creation of the positions and hiring.

² Calendars might be organized broadly by "civil," or "criminal," or "family law," but the case types to be weighted will be subcategories of these broad categories. Several different case types are likely to be on a single law and motion calendar for civil cases, for example, and many different case types may be on an arraignment calendar for criminal cases.

³ *Total cost estimates are OPPAGA's calculation of Gryphon's estimates.*

Source: Gryphon Consulting Services Report, "Designing a Judgeship Needs Process in Florida," February 1998

Agency Response

The State Courts Administrator (OSCA) provided a multi-page letter with exhibits in response to our information brief. Because of limited space, this report provides summaries and excerpts of OSCA's key points. The report and full response are available upon request or by visiting OPPAGA's web site (<http://www.oppaga.state.fl.us>).

OSCA Summary Statement: The State Courts System agrees that the Delphi process should be used as an enhancement to the certification process. If the certification process proves sound, the case weights could be used to augment the current criteria for certifying the need for additional judgeships. The use of the Delphi process that is recommended will not result in an objective model for weighting cases; it is inherently subjective. Florida has experimented with Delphi weighting methodology and is well acquainted with a number of characteristics and limitations which should be considered to ensure that expectations about the results are realistic.

OPPAGA Response: The Delphi process should replace the current process, not augment it. Weighting cases using the Delphi process recognizes differences among case types. While this process is subjective, it makes explicit the time and resources required for each type of case and thereby establishes a more accurate basis for translating caseload into workload and determining the need for additional judges. Because the courts' past experimentation with the Delphi process was flawed, a knowledgeable consultant should guide the use of this process.

OSCA Summary Statement: The committee charged with development of case weights using the Delphi process should be appointed by the Supreme Court and comprised of judges from the circuit and county courts. It is not believed that significant value would be added by the inclusion of quasi-judicial officers, court administrators, and clerks of court on the committee. The development of separate weights for urban and rural courts should be considered. However, the recommended classification of Florida's twenty circuits as urban or rural assumes a similarity between certain circuits when we know them to be quite different.

OPPAGA Response: Developing case weights that recognize distinctions between circuits is preferable to the current method that uses the same case filing thresholds for every circuit and every county. Recognizing these differences in a weighted caseload model, as we recommend, would produce a more accurate determination of judicial workload.

OSCA Summary Statement: The Supreme Court's Court Statistics and Workload Committee will give consideration to the consultant's recommendation to create a judgeship needs advisory committee to recommend judgeships in priority order and to develop a set of best practices for judgeship requests.

It is expected that two additional positions will be required to support the development and periodic updating of Delphi weights. Such staff would also support the proposed Judgeship Needs Advisory Committee in applying the Delphi weights.

OPPAGA Response: While OPPAGA has not performed a workload study of OSCA staff, it does not seem unreasonable to assume that staff supporting the current system could assist with the new system.

OSCA Summary Statement: The State Courts System concurs that the schedule for developing and implementing case weights is reasonable and that they should be updated periodically, possibly every four years. The cost for initial development of Delphi weights would be approximately \$100,000, not including staff positions.

OPPAGA Response: Our consultant determined that the Delphi Committee could establish a weighted caseload system for approximately \$52,000. According to supplemental information requested from OSCA, the additional items included in its estimate, such as meetings of the conferences of judges, are not needed to develop the weighted caseload system.

OSCA Summary Statement: The State Courts System concurs that the current system may be enhanced by the establishment of an advisory committee, the standardization of the application process, and expansion of information provided by the Supreme Court to the legislature regarding the impact of supplemental factors on each request. The Courts Statistics and Workload Committee will consider these recommendations.

OPPAGA provides objective, independent, professional analyses of state policies and services to assist the Florida Legislature in decision-making, to ensure government accountability, and to recommend the best use of public resources. Copies of this report in print or alternate accessible format may be obtained by telephone (850/488-0021 or 800/531-2477), by FAX (850/487-3804), in person (Claude Pepper Building, Room 312, 111 W. Madison St.), or by mail (OPPAGA Report Production, P.O. Box 1735, Tallahassee, FL 32302).

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March 20, 1998

Mr. Richard Dolan
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Dear Mr. Dolan:

This is in response to the preliminary findings and recommendations included in the information brief on “Weighted Caseload Methods of Assessing Judicial Workload and Certifying the Need for Additional Judges” and the accompanying report of Gryphon Consulting Services, entitled “Designing a Judgeships Needs Process for Florida.”

The attached comments are directed primarily at the information brief and the report of Gryphon Consulting Services, with regard to the proposal for implementing a weighted caseload methodology as the basis for certification of need for additional judgeships. Attachment I is an executive summary of our comments on the reports. Attachment II is a detailed response.

Please advise if you, your staff, or the consultants have any questions regarding our remarks.

Sincerely,

Kenneth R. Palmer

KRP:mb
Attachments

Attachment I

Executive Summary of State Courts System Response

The Delphi process should be used to weight case filings, with the weighted caseload then serving as the foundation for certification of the need for additional judicial resources.

Response: The State Courts System agrees the state of Florida should use the Delphi process to develop weights for different types of case filings as a possible enhancement to the certification process. If the methodology proves sound, the case weights could be used to augment the current criteria for certifying the need for additional judgeships.

However, the use of the Delphi process that is recommended will not result in an objective model for weighting cases. It is inherently subjective, in that it is based on a number of assumptions and estimates related to how judges spend their time and how much time is required to dispose of various types of cases.

Florida has experimented with Delphi weighting methodology and is well acquainted with a number of characteristics and limitations of the recommended process which should be considered, to ensure that expectations about the results are realistic. Such concerns are outlined in the detailed response.

A 32-member committee of judges, quasi-judicial officers, court administrators, and clerks of court should develop two sets of weights, one for rural courts and one for all others.

Response: The committee charged with development of case weights using the Delphi process should be appointed by the Supreme Court and comprised of judges from the circuit and county courts. It is not believed that significant value would be added to the Delphi process by the inclusion of quasi-judicial officers, court administrators, and clerks of court on the committee, for the reasons cited in our detailed response.

The development of separate weights for urban and rural courts should be considered. However, the recommended classification of Florida's twenty circuits as urban or rural assumes similarity between certain circuits when we know them to be quite different. For instance, the Eleventh Judicial Circuit would be subject to the same weights as the First, Fifth, and Tenth Judicial Circuits.

The Supreme Court should appoint a 17-member judgeship needs advisory committee of judges, court administrators, and clerks to develop a new assessment process and recommend judgeships in priority order to the Court.

Response: The State Courts System concurs that this recommendation merits further

consideration. As creation of such a committee would require a change in rule 2.035, Rules of Judicial Administration, this recommendation will be considered by the Supreme Court's Court Statistics and Workload Committee, which is responsible for monitoring and recommending improvements in the reporting of court-related data, as well as the certification process.

- **Part of the assessment process should include development of a set of “best practices” or “working principles” against which judgeship requests will be measured. These are both quantitative and qualitative factors that would refine Rule 2.035's current “supplemental factors.”**

Response: The “best practices” or “working principles” recommended by the consultants track closely the quantitative and qualitative factors already articulated in rule 2.035, Rules of Judicial Administration, which governs the certification process. The degree of quantification of such “best practices” or “working principles” and the manner in which they are applied in making decisions about the need for additional judgeships elsewhere, is not dissimilar from how such factors are considered in Florida's process. Nevertheless, the Court Statistics and Workload Committee will consider the recommendation and propose appropriate changes to the Florida Supreme Court.

- **OSCA and some in the trial courts believe OSCA will need new staff positions to undertake a weighted caseload process and the associated additional auditing responsibility.**

Response: It is expected that two additional positions will be required to support the development and periodic updating of Delphi weights. Such staff would also support the proposed Judgeship Needs Advisory Committee in applying the Delphi weights. Funding for a substantial number of additional positions will be required to address the need for increased training on data reporting requirements and to meet the standard recommended by the consultants that each circuit should be audited annually.

- **Development of the new system and the first set of weights will require nine months. Judgeship recommendations based on the new weights and process will require an additional six months.**

Response: The State Courts System concurs that the recommended schedule is reasonable.

- **Weights should be updated every four years unless significant changes for one or more case types requires earlier updating.**

Response: The State Courts System concurs that case weights developed via a Delphi process should be updated periodically. Four years seems a reasonable interval for such updates.

- **The new system will require an estimated \$51,700 in new cash outlays; the possible need for new OSCA staff would add to this cost.**

Response: For reasons cited in our detailed response, it is estimated that the cost for the development of Delphi weights would be approximately \$100,000, not including staff positions. There would also be recurring costs every three or four years to update the Delphi weights.

· **During development of a new weighted caseload system, the current system would be enhanced by establishment of an advisory committee, standardization of the application process, and expansion of information provided by the Supreme Court to the legislature regarding the impact of the supplemental factors on each request.**

Response: The State Courts System concurs that the current system may be enhanced by the establishment of an advisory committee, the standardization of the application process, and expansion of information provided by the Supreme Court to the legislature regarding the impact of supplemental factors on each request. These recommendations will be considered by the Court Statistics and Workload Committee.

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Attachment II

State Courts System Response

The comments of the State Courts System are organized relative to the specific recommendations in the consultants' report, which appear in bold face.

Recommendation #1 - Florida should use a Delphi process to determine case weights.

and

Recommendation #2 - Develop case-based weights rather than event-based weights.

We concur with the consultants' recommendation that the development and application of case weighting should be explored. The consultants identified four approaches to develop a caseload weighting system, but recommended a process involving the use of Delphi methodology to establish weights by case type. We concur that, of the four alternatives presented, this option (Option #3) is the most viable from an implementation and cost benefit standpoint. The State Courts System is willing to undertake the development of such a case weighting model.

We believe that a Delphi-based weighting procedure could enhance the current certification criteria and process. However, we would reserve judgment on whether or not it would "significantly" improve assessments of workload by the judicial branch, as suggested by both the consultants and OPPAGA. It should not be considered as an alternative to the current methodology for certifying judgeship needs, but rather as an enhancement. As noted in our response to OPPAGA's draft report entitled "Review of the Efficiency of the Two-Tiered Trial Court System and the Process for Certifying Judges," it is our position that the current process provides a relatively accurate and extremely cost-beneficial means of determining where and when additional judgeships are needed. It relies on filings data in combination with data and information on a number of other workload-related factors. The consultants' recommendation that Florida use Delphi weights plus "supplemental factors" reflecting "best practices" is not substantially different in application from our existing procedures. As the consultants themselves acknowledge:

In addition to the weighted caseload numbers, non-statistical or 'supplemental factors' also must be considered, so that the numbers alone, whether just filings or a weighted caseload, are not determinative. Since various factors influence a decision to add or not to add a judgeship, scientific precision in the weights is not required.

We assert that scientific precision is not even possible.

The courts have experimented with Delphi methodology in the past. In the mid 1980's a large cross-section of circuit and county court judges were involved in a Delphi weighting exercise for different case types and case events. Our experience yielded a number of lessons about Delphi methodology that should be considered so that expectations about the approach are realistic.

1. Delphi methodology does not result in an “objective” assessment of need for additional judgeships. It is inherently “subjective.” Judges, who are presumed to be qualified experts, make estimates of the relative time or demand for judicial attention required for different types of cases, based on their familiarity with and application of “best practices.”

Delphi weights look objective because they are applied through a formula, as follows:

$$\text{Weight in minutes} \times \text{filings by case type} = \text{total minutes.}$$

2. The consultants point out that the “sum result of the formula equals ‘annual’ demand for judicial resources in a particular court or circuit.” The annual demand is compared with the “supply,” or the minutes per year a judge has to spend on case-related work to dispose of the demand - a value referred to as judge year. The formula allows a comparison of workload with the judicial time available.

Florida’s experience, however, is that there are generally significant fluctuations in the number of cases brought to the courts for resolution, statewide and by circuit, by case type, from year to year. Sometimes those variations can range between 100 to 300 percent over a year or two for case types that are usually big consumers of judicial time. Appendix A includes several charts showing such frequent and often significant variations for certain categories of filings that are generally more demanding of judicial time, for several of the circuits. Case weights, even properly applied to filings data, could yield significantly different results from year to year for circuits where such variations occur.

Obviously, not all types of filings require the same amount of judicial time. However, a basic assumption of the current certification methodology, whereby historical and projected filings data (based on historical data) are used as the baseline measure for assessing judicial workload, is that the distribution of types of cases that are more labor-intensive over time is relatively consistent from one circuit to the next, over time. Also, where the most labor-intensive types of cases are added to court dockets in disproportionate numbers, such dockets are usually increased for a limited period. Examples include complex litigation involving asbestosis or benlate, eminent domain filings associated with a transportation project, or an unusual rash of capital cases. Frequently, these irregular patterns of filings can be addressed most effectively through the temporary assignment of

senior judges, without the necessity of adding full-time judgeships. In sum, it is only when there is a consistent pattern of disproportionate filings for case types that are more or less labor-intensive, over time, that it is beneficial to differentiate the workload of one circuit versus another using case weights.

3. Based on our experience with the Delphi technique, the development of weights for case filing types alone would be extremely difficult. Inevitably, judges participating in our Delphi exercise had a difficult time differentiating between case types without also considering the extent of hearing or trial time involved for particular types of cases. We were compelled to break down case types/filings by those which went to trial before a jury, were disposed of by a judge, or were disposed of by other means, at a minimum. Judges also articulated distinctions in the relative demands of cases based on whether or not they involved habitual criminal offenders, were multi-defendant or multi-party, etc. Differentiating for certain types of cases which are handled very differently in different circuits was also difficult. For instance, some circuits divert the vast majority of their worthless checks, while others prosecute them vigorously. Some courts have specialized drug divisions with treatment resources, while others do not. Finally, judges often based their responses in the Delphi exercise on the exceptional case.
4. One of the benefits ascribed to the Delphi strategy by the consultants is that the weights would be developed by judges who are known to use:

. . . ‘best practices’ in the management of their court calendars and in the conduct of their trials and hearings. ‘Best practices’ are those case management techniques and trial management techniques that have been identified in widely available literature. . . .The judge time needed to dispose of each case type will be less when ‘best practices’ are used than when less efficient procedures are used.

There are a number of considerations relative to the notion of “best practices” and its application in the development of Delphi weights.

- (a) The rationale for selecting judges who are using “best practices” to set the case weights makes sense from a theoretical standpoint, since presumably they would be the most efficient. However, most of the “best practices” referred to by the consultants are dependent on the availability of resources. For instance, hearing officers, mediation, information technology, video technology, case management staff, and other support personnel such as law clerks and guardianship monitors, all cost money. So, there is a risk of setting a standard that influences case weights based on the assumption that all courts can apply “best practices” equally. The

adequacy and extent of these types of resources varies dramatically from one circuit to the next, and even across counties within a circuit. Even the consultants' recommendation that separate weights be devised for urban vs. rural courts would not effectively allow or adjust for such substantial variations in resource availability.

- (b) The discussion of “best practices” under recommendations 3 and 11 suggests that data and “standards” on such practices should be factored into the process of determining the need for additional judges. The consultants infer that the standards for determining compliance with “best practices” can be evaluated objectively or quantitatively in conjunction with Delphi data. Yet, the “working principles” used by the California courts’ Judgeship Needs Advisory Committee, which are provided to illustrate “best practices” are, for the most part, essentially qualitative factors. No procedure for quantifying these factors or explanation of the way in which they should influence the decision on judgeship needs is articulated. (It is also noted that California currently uses neither Delphi nor any other caseload weighting scheme.)

OPPAGA criticized the current criteria and process that is used by the Supreme Court on the grounds that there is no way of determining how the “other factors” articulated in rule 2.035, Florida Rules of Judicial Administration, are evaluated. Yet, the “other factors” in our rule track closely the “working principles” in the California procedure which the consultants use to define “best practices.” See Appendix B.

Again, nothing in the consultants’ report or recommendations, or in the material from California, suggests that the “best practices” or “working principles” are evaluated in a manner substantially different from how the Florida Supreme Court considers the same types of factors. Indeed, the consultants concede that:

The presence or absence of ‘best practices’ in courts or circuits seeking judgeships should be combined with other qualitative (emphasis added) information to establish expectations or principles against which the requests of judgeships will be evaluated.

In the final analysis, both the approach recommended by the consultants and that currently used in Florida involve an assessment of a range of data and information on such qualitative “best practices” (their terminology) or “other factors” (our terminology) that, beyond filings data and/or Delphi weights, will have a significant, but not objectively quantifiable, effect on decisions about judgeship needs. The Gryphon project team, in

consideration of how these supplemental factors are now used by the Florida Supreme Court, noted:

**It seemed that proper
'supplemental factors' are being
considered and are being used
properly.**

We feel the distinction between how “best practices” and the “other factors” considered in the current certification process are applied is largely a matter of form over substance. Separately, the consultants suggest a structured judgeship needs questionnaire. We agree that such a questionnaire would standardize the manner in which information on these supplemental factors is captured, for more uniform consideration.

Recommendation #3 - A Delphi committee of thirty-two members should be established by the Supreme Court. The committee should contain mostly judges but include quasi-judicial officers, court administrators, and clerks of court. Committee members should be selected based on their use of “best practices” in the management of their court calendars and in the conduct of their trials and hearings. The committee should be supported by staff of OSCA.

We concur in the consultants’ recommendation that a committee or group be established to develop Delphi weights. It should be appointed by the Supreme Court. We agree that there should be some balance in terms of representation on the committee to reflect differences in the size and character of the courts (urban, rural/demographics/etc.), the level of court, and other considerations such as diversity. However, we have concerns about the representation recommended by the consultants.

1. We see no need to include either court administrators or clerks of court on the committee. While they may have some perspective on the relative demands of cases, they have no frontline experience in actually handling cases, since their work is primarily administrative. Expecting them to contribute meaningfully to the development of estimates of the relative number of minutes required to dispose of different types of cases is inappropriate.
2. Likewise, we do not feel it appropriate to include quasi-judicial officers on the committee. Generally, the functions of masters and hearing officers in Florida are limited in scope. They hear only certain types of cases and, therefore, have no overall perspective as to the relative demands of the full range of cases a court must consider. Further, they often hear only certain events for the types of cases they are assigned. For instance, they conduct fact-finding hearings and make recommendations to the court. They do not preside over trials. Finally, the extent of reliance of different courts on hearing officers varies significantly. Some judges conduct frequent de novo reviews of matters already heard by masters, while

others simply ratify recommended reports and orders.

3. The consultants' recommendation that the thirty-two person committee be divided into two sixteen-member subcommittees to deal with weights for the circuit and county courts, respectively, means that a total of only ten judges representing small, medium and large size courts would participate in establishing the Delphi weights for each of the two levels of court. One of the problems we encountered in our earlier Delphi experiment was that it was extremely difficult to build consensus among judges on the relative demands of the different types of cases because not all judges came to the Delphi exercise with the same experience. With so few judges participating in a Delphi exercise, one would have to ensure that each judge had, as the consultants recommend, a **“thorough and sophisticated understanding of all case types.”** This means that, presumably, they would have recent and extensive experience in hearing all case types within their jurisdiction to enable them to make accurate relative judgments, as are required in a Delphi exercise.

In practice, most of our judges are assigned to divisions for terms of two to four years which would preclude them from hearing the full range of case types within their jurisdiction in any less than ten to twelve years. The vast majority of judges in our earlier exercises seemed to place the greatest weight on the types of cases they were currently hearing. Moreover, changes in statutes, rules, case law, and court operations and resources, as well as “best practices,” can change the workload demands for a class of cases dramatically not long after a judge rotates out of a particular division.

The consultants rightly observe that **“the trial courts need to believe that the system will improve the current certification process.”** Our experience indicates they will be distrustful of the work product of so small a number of judges, challenging the basis for the selection of such judges and the unavoidable fact that their circuit and others may have no input on the establishment of the weights. For all of these reasons, we feel that the number of judges that should be involved in the Delphi exercise must be significantly larger than ten for the circuit and county courts, respectively. It is possible that the exercise might also benefit from the participation of some of our recently retired senior judges.

4. The consultants recommend that the judges selected be those who use “best practices.” Selecting those judges may be a subjective determination as well. It might be best accomplished through peer recommendations or nominations by chief judges. Also, the problem of establishing Delphi weights, based on “best practices” that are dependent on available resources is problematic, as noted earlier.

Recommendation #4 - Weights should be developed for two categories of courts - urban and rural.

We concur that the development of Delphi weights should take into consideration the possibility that there may be differences between urban and rural courts in how case types should be weighted, but reserve judgment on this recommendation until after the exercise is completed. There may, indeed, be other criteria that would be appropriate for establishing differential case weights for courts of different size and character.

Recommendation #5 - Weights should be updated every four years unless major statutory or other changes directly impacting a case type's weight occurs sooner, in which case the weights for that case type should be redetermined.

We concur that periodic update of the weights would be necessary if they are incorporated into the certification process.

Recommendation #6 - The judgeship needs committee must determine the numeric value of a judge year in minutes. Part of this process requires determining the amount of case-related time per day an average judge is expected to have.

The consultants recommend that the weights by case type be based on the number of minutes required and that such weights be compared with the numeric value of a judge year in minutes. This approach is worthy of exploration but it will require a complicated set of assumptions about how judges do or should spend their time. There would also have to be a set of assumptions about the "supply" side of the equation, to wit, how much judge time does a requesting court have available. As the consultants point out, this will be affected by the availability of and the nature of work performed by senior judges, county judges who are available to be assigned temporarily to circuit court, the possible cross assignment of judges from adjacent circuits, etc.

The consultants appear to endorse a weighting scheme that factors in the possible or actual use of supplemental hearing officers (in Florida this would involve general masters, child support enforcement hearing officers and traffic magistrates). The consultants note "**there is no need or value in distinguishing between different types of bench officers.**" We dispute this conclusion. Based on our 1993 survey of the use of hearing officers at the circuit level, for instance, it was clear they provide a significant increase in the time that can be devoted to individual cases as compared to judges, but they did not equate to judges on anywhere near a one-to-one basis.

The manner in which these quasi judicial officers are employed varies widely from court to court. A more in-depth analysis of their use and the extent of workload relief they provide judges should precede the development of methodology for quantifying weights reflecting their availability in the "supply" side of the Delphi equation. The study should result in development of some standards or "best practice" guidelines for these types of positions. Such a study was recommended in the 1993 White Paper prepared by the Court Statistics and Workload Committee, but there have been no resources to do so. The earlier report by OPPAGA did not address these issues in sufficient depth. We recommend the legislature provide nonrecurring

funds for such a study to be undertaken by the judicial branch. This is deemed critical if the view of the consultants that judges and supplemental hearing officers are essentially interchangeable is to be validated, and the actual or potential deployment of such resources is to be a standard part of the formula for evaluating the need for judgeships.

Finally, there are alternative ways to derive case weights using the Delphi methodology. Our earlier experience involved developing relative numeric values to be assigned different case types as a multiplier rather than estimates of time required for each case type. Both alternatives should be examined.

Recommendation #7 - The OSCA needs to audit trial court data on a regular basis to determine and ensure the accuracy of data and to identify systematic errors correctable by training.

and

Recommendation #8 - The OSCA needs staff focused on a regular training program and schedule for trial level staff, mostly in the clerks' offices, who will develop training modules when the auditing staff identifies new systematic errors.

and

Recommendation #9 - A single point of accountability and responsibility for data quality must be assured.

We have strong concerns about the following statements, made under these recommendations.

. . . no one in Florida has assumed either ownership or responsibility for collecting high-quality data.

OSCA has four people whose jobs are to audit trial court data. They now audit all case data and financial records.

OSCA needs to specifically identify the problems with reliability and validity, train local staff to correct the reporting problems, and monitor data quality.

When an audit reveals a data problem, OSCA asks the Clerk of Court to correct the data. Most do, but it appears not all do. OSCA tries to obtain corrected data, but if a Clerk chooses to

ignore the request, it seems the data remained unchanged.

. . . a dedicated training team at OSCA is also needed to follow up on the audits and train local court staff on standardized methods for collecting and reporting data.

Failure to recognize the value of training will result in poor quality data and diminish the value of the audits.

Some of these statements infer a lack of concern about and/or procedures to ensure accurate, complete, and valid data, and to meet associated training requirements. Others are simply untrue, e.g., we do not audit “**all case data and financial records**” of the clerks.. These statements are made notwithstanding that Gryphon acknowledges it “**has not conducted an audit of the data provided to the OSCA by the Clerks.**” Nor, to our knowledge, did Gryphon review the OSCA audit reports, logs of communications with circuits regarding reporting problems, and related documentation.

First, the OSCA, by direction of the Supreme Court, is the single point in accountability and responsibility for data quality. This is required in section 25.075, Florida Statutes, rule 2.030(e)(2), Florida Rules of Judicial Administration, and various administrative orders.

Second, it is inevitable that those in one circuit will suspect those in another of not reporting cases by the rules. It is also inevitable that, even with an optimal training and audit capability, errors will occur. More errors will occur when the resources available for training and auditing do not allow conduct of those functions on an optimal schedule, which is the case in Florida. The OSCA audits trial court data on a regular basis. However, there exist the following limitations in staff available to audit filings, dispositions and other data reported by the clerks of court, and to provide training:

1. We have an established audit cycle for filings data that allows audits of the large counties no more frequently than every two to three years. The cycle for smaller counties is between three and five years.
2. Until November of 1997, no staff were available to audit dispositions. Three additional positions funded in the current fiscal year will allow audit of the dispositions data on approximately the same cycle as that for filings data.
3. No staff resources are available to audit pending case data related to compliance with time standards.
4. Training of personnel in the offices of the clerks of court who report filings, dispositions and pending case data can only be accomplished sporadically, on an

as-needed or requested basis.

The consultants recommend annual audits of trial court data. However, OPPAGA and the consultants offer only a tepid acknowledgment that there may be a need for additional staff resources in the OSCA. A significant number of additional staff will be necessary to extend the audit function to all data reported to the OSCA and establish an optimal schedule for both training and audits.

Finally, a range of quality control procedures, not acknowledged by Gryphon, are in place. They include review, editing and troubleshooting of all monthly reports by trained staff analysts; computer edit checks, regular follow up with Clerks' office staff to address reporting errors and obtain corrected reports, and distribution of data to trial court administrators who are asked to alert the OSCA to suspected problems with the data.

Through these procedures we can generally pick up and resolve most of the significant problems, and will audit a county out of sequence to resolve same. Less obvious problems may result from the frequent turnover in local reporting staff, systematic but not numerically significant coding errors, or glitches attributable to problems with local case management software used to generate the reports.

The system is by no means perfect, but substantial additional resources will be required to make it more perfect.

Recommendation #10 - The Supreme Court should appoint a judgeship needs advisory committee composed of trial judges, an appellate judge, two trial court administrators, and two members of the Bar. This committee should screen all requests for new judgeships and make appropriate recommendations to the Supreme Court.

We concur that the feasibility of a judgeship needs advisory committee should be explored. We recommend that consideration of this proposal be taken up by the Supreme Court's Court Statistics and Workload Committee.

The Court Statistics and Workload Committee includes representatives of both levels of the trial court, the district courts of appeal, trial court administration, and clerks of court. The Committee has been extremely active in developing and refining the reporting requirements of the SRS and those for pending case data since the mid 1980's. Also, the Court Statistics and Workload Committee was responsible for an extensive 1993 study of factors related to judicial workload and the certification process, which was referred to in our response to the draft report of OPPAGA entitled "Review of the Efficiency of the Two-Tiered Trial Court System and the Process for Certifying Judges." Also, the Committee recommended the most recent changes in rule 2.035, Florida Rules of Judicial Administration, governing the certification process.

The Committee is well equipped to consider this recommendation, as well as the threshold recommendation that a system of case weights be developed using Delphi methodology. The Court will rely on the Committee to address all the recommendations made by OPPAGA and the

consultants, and to develop proposed changes in the rule of court governing the certification process.

Recommendation #11 - The advisory committee with approval from the Supreme Court should identify “best practices” that courts seeking new judgeships should be employing, to be considered for a new judgeship.

Again, the Court Statistics and Workload Committee should be the entity to address this recommendation. Specific concerns regarding the concept of the incorporation of “best practices” into the certification process and their influence on Delphi weights were discussed previously. However, two other points made by the consultants under this recommendation deserve attention:

1. The consultants recognized that Florida has case processing time standards that could be incorporated into the “best practices” or used as an aid in determining whether “best practices” are being employed. They fail to acknowledge the caution they received from the OSCA that the pending caseload report summaries are not audited due to staffing limitations. Moreover, staff limitations have precluded a current examination of the appropriateness of the time standards, which were adopted in 1986. Substantial changes in the requirements for resolution of many types of cases have occurred over the past twelve years as a result of changes in statutory and case law, applicable rules of court, and the organization and resources employed by courts to handle their caseloads. If these time standards are to be evaluated and updated, additional staff and/or study will be required.
2. The consultants indicate “**numeric standards can and should be developed for some of the supplemental factor.**” This may be possible, but the uniform capture of additional workload or statistical data statewide to support the application of such standards may require additional time and/or resources.
3. The consultants recommend that the proposed judgeship needs advisory committee rank the needs of the respective courts so as to determine priority for funding of new judgeships. This recommendation should be considered by the Court Statistics and Workload Committee, along with the general recommendation to create such a committee.
4. We concur in the estimates of the cost for the Judgeship Needs Advisory Committee, at between \$20,000 and \$30,000 per year.

Recommendation #12 - Standardize statistical reporting and data elements captured by trial courts and reported to the OSCA. Because of the computer hardware and software cost potentially associated with such standardization the state should subsidize the trial courts’ compliance as needed.

The Court Statistics and Workload Committee has recommended and the Supreme Court

has adopted “standardized statistical reporting and data requirements.” It is, however, unlikely that the current reporting requirements come close to the consultants’ vision of a system that yields comprehensive, reliable, valid and comparable data for not only the assessment of judgeships needs, but an array of other operational and management information needs - statewide.

In short, the consultants recommend that **“to meet all statistical and management needs of the judicial branch there should be a single, statewide data collection system.”** They further note that **“a statewide data base should include the following types of information for all case types in both circuit and county courts: case filing information, financial information, disposition information, bond information, judgment information, sentencing information, charging information, and party litigant information.”**

It is likely that this recommendation would require tens if not hundreds of millions of dollars to implement. Our estimates of cost are based on actual expenditures being made by various counties of different size to implement local integrated justice information systems, which are intended to be state of the art. States that have accomplished this objective are generally smaller, far more centralized or unified, and/or substantially state-funded. Further, the assertion that such a system could be implemented in Florida in thirty-six months, even with no resource limitations, challenges the imagination.

Recommendation #13 - Move toward a time measured process for developing weights for caseload.

The consultants observe that this would be contingent upon and a benefit of the new statewide case information system proposed in recommendation #12.

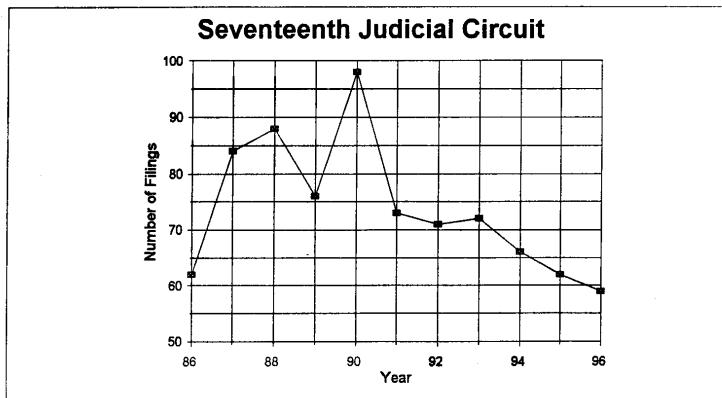
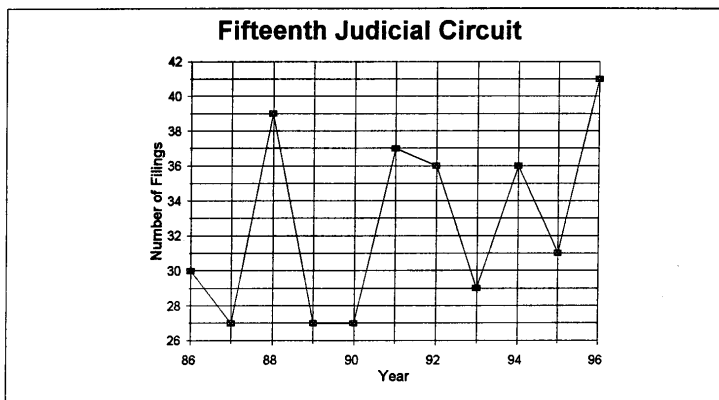
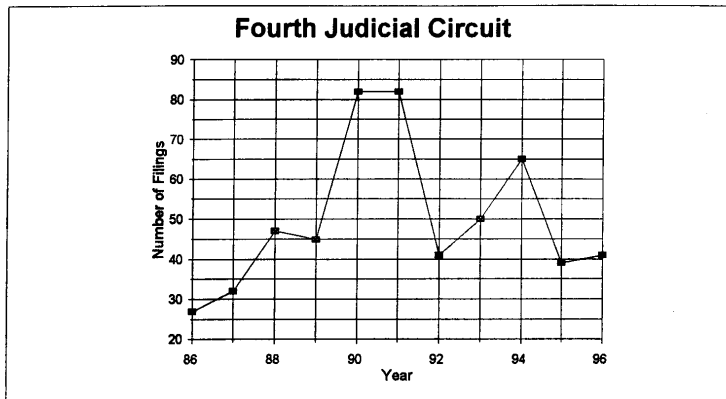
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The consultants make several other recommendations related to the certification process. They recommend the standardization of information and format for requests of the trial courts for new judicial positions. This recommendation has considerable potential merit and should be explored by the Court Statistics and Workload Committee.

The consultants also note that a substantial amount of information is currently available and in use by the OSCA and the Supreme Court that is not transmitted to the legislature for its consideration. To the contrary, the courts have routinely made all of the data used in the certification process, as well as the requests of the individual circuits, available to the legislature.

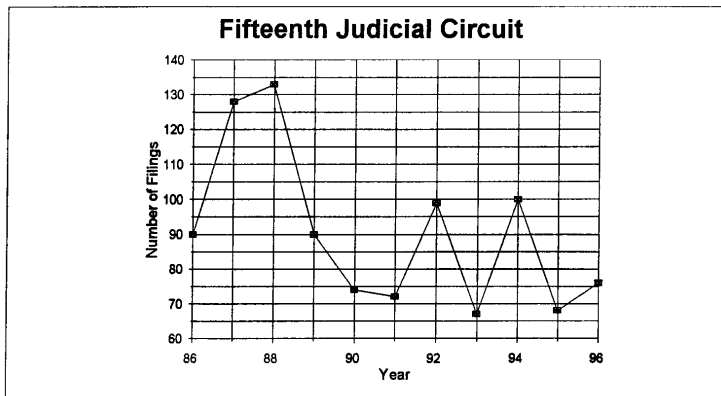
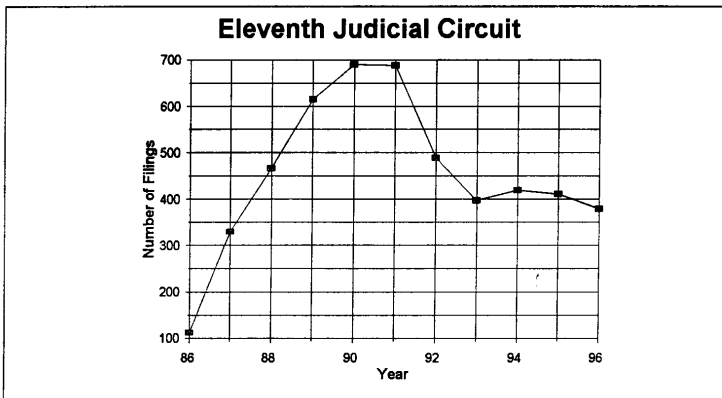
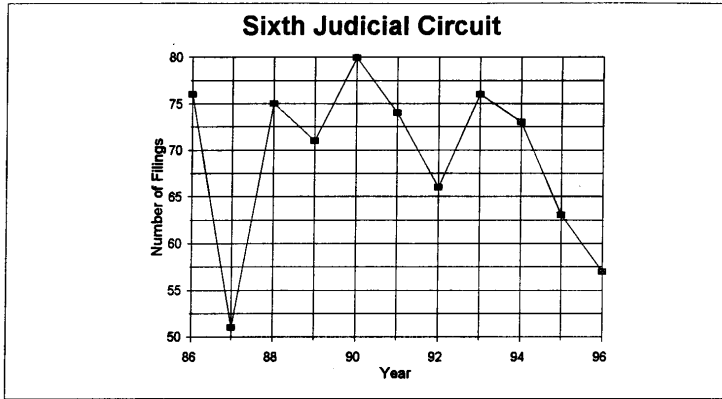
The consultants recommend that the Delphi study can be conducted for an investment of about \$52,000. Because of our concerns about the representativeness of the group of judges who would participate in developing the Delphi weights, we believe that figure is low. We expect that the development of the Delphi weights over a period of twelve to fourteen months would require in excess of \$100,000.

CAPITAL MURDER FILINGS



Source: Summary Reporting System (SRS) Run Date: March 1998

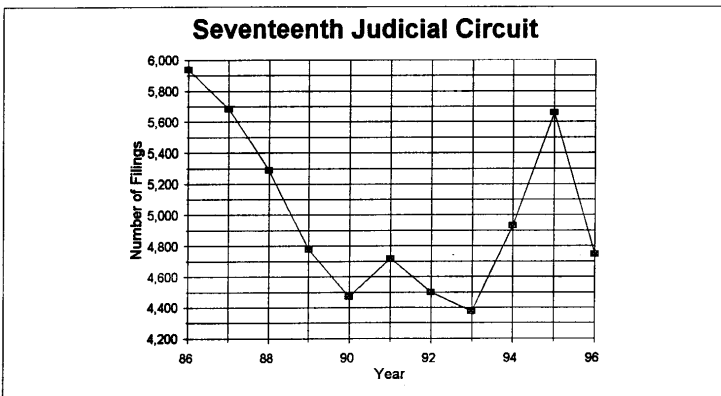
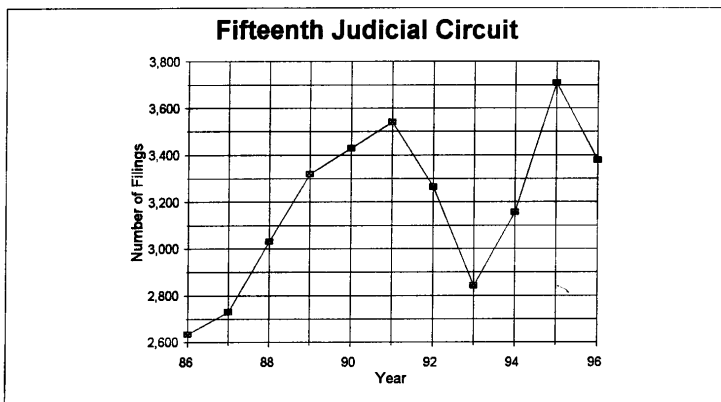
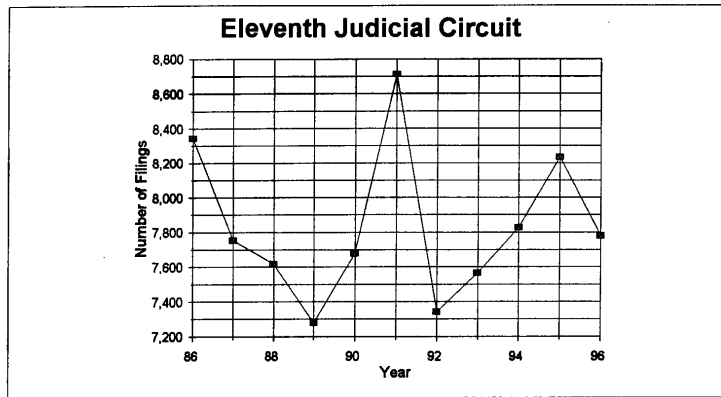
NON-CAPITAL MURDER FILINGS



Source: Summary Reporting System (SRS) Run Date: March 1998

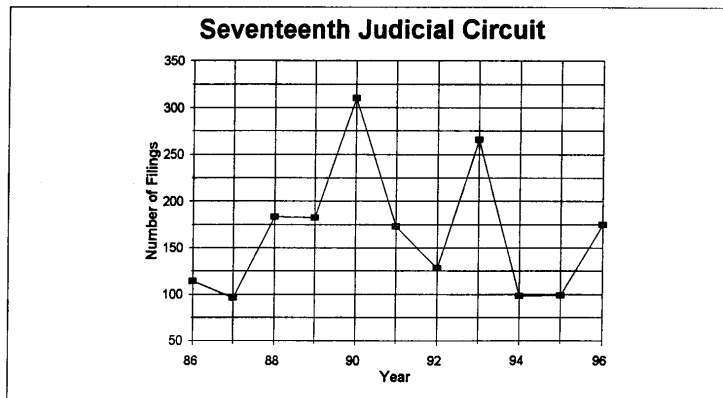
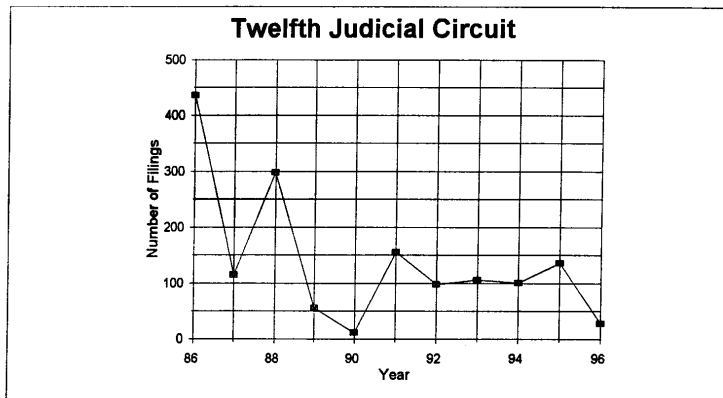
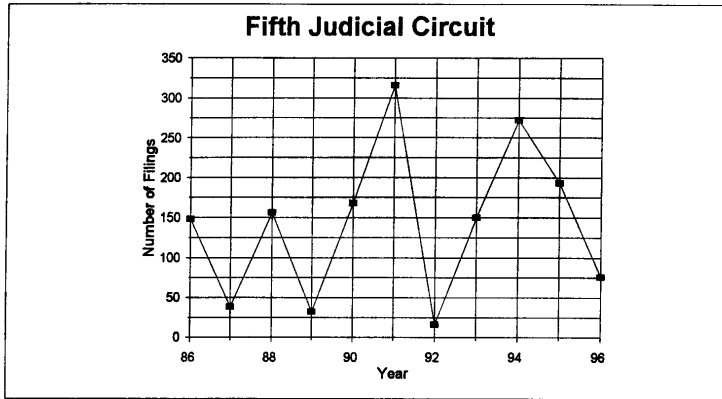
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PERSONAL INJURY FILINGS*



* Personal Injury includes professional malpractice, products liability, auto negligence & other negligence.
 Source: Summary Reporting System (SRS) Run Date: March 1998

EMINENT DOMAIN FILINGS



Source: Summary Reporting System (SRS) Run Date: March 1998

Comparison of California’s ‘Working Principles’ v. Florida’s Certification Criteria

Key: ✖ = Florida does not use a working principle; ✔ = Florida uses a working principle.

California’s Working Principles		Florida’s Certification Criteria
1. New judges will be approved only if more than 1 FTE is needed.	✖	New judges added at or marginally below the presumptive threshold based on the collective weight of supplemental factors. “The thresholds are not an optimal level but reflect that the courts are operating above capacity.” rule 2.035(b)(1)(A)
2. Trial courts will have an approved coordination plan (to coordinate the use of available judicial resources).	✔	“County judge availability to serve and county judge service in circuit court.” “The use and availability of senior judges to serve on a particular court.” “...availability and use of supplemental hearing officers.” rules 2.035(a)(1)(B)(I), 2.035(b)(1)(B)(ii), 2.035(b)(1)(B)(iii)
3. Deny requests based on vacancies, illness, child care, etc.	✔	We do not certify judges based upon temporary workload issues. These needs are met through reassignment of other active judges or temporary assignment of senior judges.
4. Deny requests based on anticipated increases.	✔	We do not consider requests based on anticipated extraordinary events (e.g., road or prison construction), but generally respond to temporary increases in judicial workload with temporary resources (senior judges, etc.). We do consider when a jurisdiction is “... <u>projected</u> to be at the thresholds...” using sophisticated ARIMA modeling. The timing of the certification process necessitates a reliance on forecasts since new judgeships are not generally authorized until a year after the request is made. The forecasting methodology we use has consistently yielded results that highly correlate with actual filings. rule 2.035(b)(1)(A)
5. Deny requests for judges if similar		Supplemental hearing officers in Florida are

California's Working Principles		Florida's Certification Criteria
jurisdictions use subordinate judicial officers instead (equivalent to Florida's supplemental hearing officers).	✗	primarily funded through local government and federal funds. Their functions are limited and unique to each circuit. Many circuits do not have such personnel. For these reasons no standard adjustment to requests for judges is applied.
6. Use of best practices in case management. "Doing the right things, and doing them right."	✓	"The availability and use of case-related support staff and case management policies and practices." rule 2.035(b)(1)(B)(ix)
7. Judicial position equivalents will be considered.	✗	Florida only has full-time judges.
8. Use of pro tems (non-judicial officers temporarily assigned) will be considered.	✗	Pro tems are not utilized in Florida's courts.
9. Caseload comparison of courts similar in size & caseload, primarily for small courts.	✓	We compare quantitative caseload data from all courts. 1998 Certification Package
10. More articulate and complete reports (requests) allows the committee to better assess need.	✗	We base our method on quantitative and qualitative assessments, using (1) the standardized compilation of a full range of caseload and supporting statistical data (the "Certification Package"), and (2) requests developed by the individual circuits.
11. Multi-year comparisons to indicate steady growth.	✓	"Caseload trends", through 60 data points representing 5 years of historical data, by division & court. rule 2.035(b)(1)(B)(xi)
12. Effect of multiple court locations, but not adequacy of facilities.	✓	"The geographic size of a circuit, including travel times between courthouses..." Adequacy of facilities is not an issue. rule 2.035(b)(1)(B)(vii)
13. Applicable financial and nonfinancial information submitted by the trial courts to the Trial Court Budget Commission.	✗	Uncertain about the meaning of this criteria.
14. Statistical information (including three-year time standard data).	✓	"...thresholds have been established based upon caseload statistics..." of adjusted case filings per judge, as well as the "...extent of use of alternative dispute resolution", "the number of jury trials", and "...any additional

California's Working Principles		Florida's Certification Criteria
		information..." rules 2.035(b)(1), 2.035(b)(1)(B)(iv), 2.035(b)(1)(B)(v), and 2.035(a)
15. Availability of physical facilities for new judges.	✘	Not a consideration. Counties pay for judicial office and hearing space, not the state. The requesting courts generally have planned for needed physical facilities with, and have the support of, their counties.
16. Requests for subordinate judicial officers (equivalent to Florida's supplemental hearing officers).	✔	"...availability and use of supplemental hearing officers" is considered, but all funding is obtained from local government. rule 2.035(b)(1)(B)(iii)