

General Guidelines for New Judgeships

PART A. GENERAL GUIDELINES

1. **Purpose and Scope.** The following guidelines and criteria are hereby promulgated by the Judicial Council to guide the process of evaluating requests for new judgeships and the offices of commissioner, magistrate, hearing officer, and other judicial officers for the Supreme Court, courts of appeal, district courts, city courts, parish courts, juvenile courts, family courts, traffic courts, and municipal courts pursuant to R.S.13:61 (Act 163 of the 2003 Regular Legislation Session).

2. **Guidelines Relating to the Supreme Court.** Because the essential structure and authority of the Supreme Court with respect to the number of justices, the minimum number of districts from which justices may be elected, the Court's subject matter jurisdiction, and its en banc method of decision-making, are provided in Article 5 (Sections 3-5) of the Louisiana Constitution of 1974, any proposed change in the Court's current structural and decision-making framework would require constitutional and not statutory change and would involve more than simply changing the number of justices. For these and other reasons, the Judicial Council recognizes that such change cannot be based solely on statistical criteria or a numerical way of determining the optimum number of judges, but rather upon political and policy-making judgments regarding theories of representation and the way in which the Court discharges its responsibilities and conducts its administrative functions. Nevertheless, the Judicial Council will review and comment on any proposed legislation directed to it for comment by any legislator. Such review and comment, however, shall be limited to an assessment as to the benefits of the proposed change in terms of more effective case management, the reduction in time delays, the favorable or unfavorable impact on the Court's supervisory jurisdiction, the favorable or unfavorable impact on the Court's administrative responsibilities, the efficiencies and effectiveness to be gained by the change, and change's projected effects on the cost of operations.

3. **General Criteria for All Courts Except the Supreme Court.** In developing these general guidelines, the Judicial Council has been guided by two over-arching criteria, inherent in Act 163, regarding the scope and applicability of the Council's new judgeship process to proposed legislation. The first criterion is that the new judgeship process shall apply to any proposed statutory legislation requesting new authority to create new judgeships or new judicial officers regardless of whether new state funding from statutory legislation is also sought or not. The second criterion is that the new judgeship process shall also apply to any proposed statutory legislation requesting new state funding (not previously budgeted) for new judgeships or judicial officers regardless of whether such positions had been previously authorized by statutory legislation or not.

4. **ADR Personnel.** The Judicial Council's procedures relative to new judgeships and judicial officers do not apply to arbitrators, mediators, or other alternative dispute specialists who may be appointed or retained from time to time by a court to provide alternative dispute resolution or restorative justices processes.

5. **Eligible Requests.** The Judicial Council shall consider any request for a new judgeship, commissioner, magistrate, hearing officer, or other judicial officer provided the request is submitted in writing by the chief judge or a majority of the judges of the en banc court of the affected jurisdiction, or by a legislator and provided the request is made pursuant to these general guidelines and the applicable evaluation criteria. The Council shall not consider oral requests or requests made by other parties.

When a request for a new judgeship or a new judicial officer is received by the Council for a jurisdiction for which a previous request in the past two years had been received and evaluated unfavorably with attached conditions from the Council or from one of its new judgeship committees, the appropriate new judgeship committee need not authorize a new site visit to that jurisdiction until all stipulated conditions regarding the previous request have been met as evidenced in a written report from the chief judge of that court.

6. **Assignment of Request to an Appropriate Committee.** Upon receipt of a proper request, the request shall be assigned to an appropriate committee to evaluate new judgeships as provided below. There shall be two standing committees to evaluate the need for new judgeships and judicial officers – The Committee to Evaluate Requests for the Creation of Appellate Judgeships and Other Judicial Offices, hereafter referred to as the Appellate New Judgeship Committee; and the Trial Court Committee to Review the Need for Judgeships and Other Judicial Offices, hereafter referred to as the Trial Court New Judgeship Committee. Each of these standing committees is information-gathering and advisory arms of the Judicial Council. All requests for new appellate judgeships or judicial offices shall be assigned to the Appellate New Judgeship Committee. All requests for new trial court judgeships or judicial officers shall be assigned to the Committee to Evaluate Requests for the Creation of New Trial Court Judgeships.

7. **Committee Reporting.** The appropriate committee to evaluate requests for new judgeships shall present a report at each meeting in which the Judicial Council is expected to receive and consider the committee's recommendations. At such meetings of the Judicial Council, the committee shall provide the findings and recommendations of its Site Team and the committee as a whole on each request. The Judicial Council shall review the request and shall report its findings and recommendations to the Legislature even if the request is withdrawn.

8. **Voting by Ballot.** Members of the Judicial Council may vote for or against a request for a new judgeship, or may vote to abstain or to recuse themselves from voting, on the ballot sheets provided at each meeting. The results of such balloting shall be read by the secretary and reported as favorably or unfavorably considered. The individual vote of each member, for or against or to abstain or to recuse, shall be recorded in the minutes of the Council meeting.

9. **Recusal.** Any member of a committee to evaluate requests for new judgeships as herein defined or the Judicial Council who may have a personal, family, or financial interest in the new judgeship shall recuse him-or-herself from voting on the request, and shall note for the record the recusal and the factual basis therefor. In addition, a sitting judge of a court for which a new

judgeship has been requested shall recuse him-or-herself from voting on the request, and shall note for the record the recusal and the factual basis therefor.

10. **Advocacy and Lobbying.** Advocates for or against a new judgeship are encouraged to make their positions known to each member of the Committee and the Council in writing. However, the advocates shall not contact Council members in person or by phone. Any member of the Council who is contacted in person or by phone shall disclose the contact at all meetings in which the action shall be considered and such disclosure shall be reported in the minutes.

11. **Quorum.** A quorum of a majority of the Judicial Council is necessary to vote on all official actions of the Judicial Council.

12. **Emergency Situations.** In emergency situations or in other circumstances deemed necessary, the Chair of the Council has the discretion to authorize the use of mail-in or electronically transmitted ballots to allow or facilitate voting on matters before the Judicial Council

PART B. APPELLATE COURT NEW JUDGESHIP REQUEST

Process for Evaluating Requests for New Appellate Judgeships

Step 1. A request for a new judgeship must be received by the Judicial Administrator's Office by October 1st of each year.

Step 2. The average number of workload points required to dispose of the filings of the circuit in the preceding two years is calculated.

Step 3. The number of judges needed is calculated by dividing that average by 2,500. For example, if the average amount of workload points needed to dispose of a circuit's filings in the last two years is 30,000, 12 judges would be needed in that circuit ($30,000/2,500=12$).

Evaluation Criteria

In order to receive Judicial Council approval of the request for the creation of a new appellate judgeship, a circuit must meet the following criteria:

Criterion 1. The average length of time from the filing of an appeal to its disposition must be greater than eight months.

Criterion 2. Other than in exceptional circumstances, the workload of the circuit must have been level or increasing over the five calendar years preceding the Judicial Council meeting in which the request for new judgeships is to be considered.

Criterion 3. The circuit making a request must have accounted for dispositions equaling 2,500 workload points per judge in each of the two calendar years preceding the Judicial Council meeting in which the request for a judgeship is considered, and the average workload points per judge must not have decreased in the second of those two years. Work point values for courts of appeal are summarized below.

Criterion 4. The circuit must demonstrate that significant efforts have been made to improve its efficiency. The circuit must demonstrate that it has studied innovations in the other circuits and in progressive courts of appeal in other states and has adopted innovations that show promise of increasing productivity. Further, the circuit must demonstrate that in spite of these efforts, the implementation of the suggestions, if any, of previous Site Teams, and the effects of any suggestions which the current site visit team makes, the circuit will continue to fall behind.¹

Criterion 5. The circuit must prepare a fiscal note indicating the full cost to the state of creating a new judgeship or judgeships including adequate staff, supplies, office space, etc.

Work Point Values for the Courts of Appeal

	<u>Civil</u>	<u>Criminal</u>
Disposition of an appeal by formal opinion, memorandum opinion, or summary disposition	25	17.2
Granting of a writ	12	9
Denial of a writ	9	7
Writ not considered/writ refused	3	3

PART C. DISTRICT COURT NEW JUDGESHIP REQUEST

Process for Evaluating Requests for New Judgeships or New Offices for Commissioners or Magistrates

¹ If these suggestions have not been adopted, the circuit must show good cause for not adopting them or considering their adoption.

Step 1. Request for the new judgeship or other officer must be received by the Judicial Administrator's Office by October 1st of each year.

Step 2. Staff of requesting court gathers statistical data relevant to the request.

Step 3. The Site Team (Judicial Council staff and two members of the Judicial Council's Standing Trial Court Committee to Review the Need for Judgeships) visit the jurisdiction making the request to interview judges and others and review docket books and other relevant materials. The Site Team then makes a recommendation to the full Committee.

Step 4. The full Committee meets to formulate recommendations to the Judicial Council. Representatives of the district making the requests may attend this meeting.

Step 5. The Judicial Council makes its decision after hearing the recommendations of the Committee and the presentation of the jurisdiction requesting the new judgeship.

Evaluation Criteria

In order to receive Judicial Council approval of a request for the creation of a new district judgeship, a new commissioner or a new magistrate, a district court must meet the following criteria:

Criterion 1. The requesting court must be able to document that its judges are, on the average, engaged in working on "judicial activities" 209 workdays per year.²

Criterion 2. The requesting court must have a caseload which by application of efficient docket management cannot be handled without undue delay.

Criterion 3. Work point values for the district courts are as follows:

- Civil domestic filings count as 2.44 work points
- Civil non-domestic filings count as 1.51 work points
- Criminal felony filings count as 3.9 work points
- Criminal misdemeanor filings count as .4 work points
- Traffic filings count as .02 work points
- Juvenile delinquency/FINS filings count as 2.6 work points
- Juvenile Child in Need of Care filings count as 2.6 work points
- Other juvenile filings count as .76 work points

² The Committee has not enumerated all of the activities which might be considered "judicial activities." The Committee's assumption, however, is that judges will consider workdays to be those days on which the judge is at the courthouse working on cases or administrative tasks, or those days on which the judge is involved in out of office activities which are necessary to the courts.

Bonus points *may* be added to these base values for extraordinary drug court work, jury trials, and in juvenile courts where it can be documented that certain best practices are being implemented.

See the table below for an illustration of how this system works for a hypothetical court with 600 civil filings, 150 felony filings, 400 misdemeanor filings, 1,400 traffic filings, and 70 juvenile delinquency filings. In this example, the court's workload would be quantified as follows:

Filings		Work Value	Point	Total Work Points
600	X	2.44	=	1,464
150	X	3.9	=	585
400	X	.4	=	160
1,400	X	.02	=	28
70	X	2.6	=	182
Total				2,419

Since the average judge accumulates 3,167 work load points during an average year, this court would have a lighter than average work load and would likely not receive Judicial Council approval of a request for a new judgeship.

The Committee has not specified a cutoff point below which a request for new judgeship would not be appropriate for consideration, but a court whose work points totaled only 10% above average would have difficulty receiving Committee approval. The Committee recommends, as a threshold basis for analysis, that each judge in a court requesting a new judgeship have work load points that are at least 15% higher than the benchmark of 3,167 work points in order to qualify for consideration.

The Committee is aware that there are mitigating factors that need to be considered in evaluating work load that cannot be formularized or easily quantified. Examples of these mitigating factors include such things as:

- The number of filings in a given year that are heard by the judicial officer;
- Extraordinary time spent on the requirements of juvenile justice reform such as the requirements of the Annie E. Casey Foundation's Juvenile Detention Alternatives program, the MacArthur Foundation's Model Courts program, the Model Courts Program of the National Council of Juvenile and Family Court Judges, and other such juvenile justice reform initiatives approved by the Supreme Court;
- Extraordinary administrative work relating to service on official committees of the executive, legislative, or judicial branches, special on-going requirements relating to budgetary and financial matters and other such extraordinary ongoing requirements;

- Extraordinary amounts of time spent on complex litigation, post conviction hearings, and appellate work;
- Unusual amounts of time spent traveling from one parish to another in multi-parish districts;
- The use of resource personnel such as hearing officers, commissioners, traffic referees, law clerks or judicial administrators who perform what may be considered judicial functions, such as issuing judicial orders and rendering judgments. The minutes spent by such personnel on judicial functions should be subtracted from the work points of the court submitting the request.

The Site Team will take these factors into consideration and will be on the alert for other mitigating factors.

Criterion 4. The requesting court must have assurances that the parish government, the sheriff, and the clerk of court will provide courtroom space and support personnel to the new judge.

Criterion 5. The requesting court must meet such other requirements as the Judicial Council may deem appropriate.

Process for Evaluating Requests for the Creation of New Offices for Hearing Officers and Other Non-Judicial Officers

See above.

Evaluation Criteria

In order to receive approval of a request for the creation of a new hearing officer or other non-judicial officers, the following criteria must be met:

Criterion 1. The district court, juvenile, city or parish court must be able to document the fact that its hearing officers or other non-judicial officers are, on the average, engaged in working on "judicial activities" 209 workdays per year.³

Criterion 2. The requesting court must have a workload which by application of efficient docket management cannot be handled without undue delay.

Criterion 3. The hearing officer or other non-judicial officer's workload is quantified as appropriate.

³ The Committee has not enumerated all of the activities which might be considered "judicial activities." The Committee's assumption, however, is that judges will consider workdays to be those days on which the judge is at the courthouse working on cases or administrative tasks, or those days on which the judge is involved in out of office activities which are necessary to the courts.

Criterion 4. To determine the work point value of hearing officers, traffic referees, and other non-elected judicial officers who are engaged in what may be considered judicial functions such as issuing orders and rendering judgments, the site team shall proceed as follows:

- determine the number of filings in a given year that are heard by the judicial officer;
- multiply that number by the benchmark work points assigned to each case type;
- estimate the amount or percentage of time spent on ministerial and non-judicial functions relating to the case type, convert that amount of time to work points, and then subtract the work points associated with ministerial functions from the total work points calculated in step 2;
- calculate and specify the number of work points to be subtracted from the total work points of the particular case type for the court as a whole.

PART D. REQUEST FOR THE CREATION OF NEW CITY AND PARISH COURT JUDGESHIPS

Process for Evaluating Requests for New Judgeships in City and Parish Courts

See Part C., above.

Evaluation Criteria

In order to receive approval of a request for the creation of a new city or parish court judgeship, the following criteria must be met:

Criterion 1. A city court or parish court having one or more elected judges, who are not “full-time”, is not eligible for a new judgeship. For the purposes of these criteria, “full-time” means being statutorily prohibited from engaging in the practice of law or from sharing in the profits, directly or indirectly, of any law firm or legal corporation. Before a new judgeship can be created in a jurisdiction not having full-time judges, each judge of the city or parish court for which the new judgeship is being requested shall have been elected or appointed on a “full-time” basis at least three years before the request for the new judgeship was made.⁴

Criterion 2. The city or parish court must be able to document the fact that its judges are, on

⁴ The creation of new judgeships should be carefully planned. This three-year requirement encourages such planning.

average, engaged in working on "judicial activities" 209 workdays per year.⁵ Average administrative time per judge has been assumed to be 12% of overall judicial time.

Criterion 3. The city or parish court must have a workload that by application of efficient docket management cannot be handled without undue delay.

Criterion 4. The work points for city and parish courts are:

- Civil filings count as .25 work points
- Criminal felony filings count as 3.9 work points
- Criminal misdemeanor filings count as .4 work points
- Traffic filings count as .02 work points
- Juvenile delinquency/FINS filings count as 2.6 work points
- Juvenile Child in Need of Care filings count as 2.6 work points
- Other juvenile filings count as .76 work points

An illustration of how the application of the work point values relates to filings and the determination of the need for additional judicial resources is provided in Part C., above.

The Committee is aware that there are many mitigating factors that need to be considered in evaluating work load that cannot be formularized or easily quantified. Typical examples of these mitigating factors are:

- Extraordinary time spent on the requirements of juvenile justice reform such as the requirements of the Annie E. Casey Foundation's Juvenile Detention Alternatives program, the MacArthur Foundation's Model Courts program, the Model Courts Program of the National Council of Juvenile and Family Court Judges, and such other aspects of juvenile justice reform approved by the Supreme Court;
- Extraordinary administrative work relating to service on official committees of the executive, legislative, or judicial branches, special on-going requirements relating to budgetary and financial matters and other such extraordinary ongoing requirements;
- Extraordinary amounts of time spent on complex litigation, post conviction hearings, and appellate work;
- Unusual amounts of time spent traveling from one parish to another in multi-parish districts;

⁵ The Committee has not enumerated all of the activities which might be considered "judicial activities." The Committee's assumption, however, is that judges will consider workdays to be those days on which the judge is at the courthouse working on cases or administrative tasks, or those days on which the judge is involved in out of office activities which are necessary to the courts.

- The use of resource personnel such as hearing officers, commissioners, traffic referees, law clerks or judicial administrators who perform what may be considered judicial functions, such as issuing judicial orders and rendering judgments. The minutes spent by such personnel on judicial functions should be subtracted from the work points of the court submitting the request.

The site team will take these and other factors into consideration, as appropriate.

Criterion 5. The city court or parish court must have assurances that the local governing authority, the sheriff, and the clerk of court will provide courtroom space and support personnel to the new judge.

Criterion 6. The city court or parish court must meet such other requirements as the Judicial Council may deem appropriate.

Criterion 7. When a request for a new judgeship or a new judicial officer is received by the Council for a jurisdiction for which a previous request in the past two years had been received and evaluated unfavorably with attached conditions from the Council or from one of its new judgeship committees, the appropriate new judgeship committee need not authorize a new site visit to that jurisdiction until all stipulated conditions regarding the previous request have been met as evidenced in a written report from the chief judge of that court.