

**17<sup>th</sup> ANNUAL FAMILY LAW  
RETREAT TO THE BEACH**

October 22-23, 2010  
Perdido Beach Resort  
Orange Beach, Alabama

Chief Justice Sue Bell Cobb  
Supreme Court of Alabama

Access to Justice  
The Judicial Reallocation Legislation

## The Judicial Allocation bills

### **1. There are substantial and inequitable disparities in the caseloads of Alabama judges.**

The number of cases filed and assigned each year to circuit judges in some circuits is almost 3½ times the number of cases assigned to circuit judges in other circuits. An even greater disparity exists with district court case filings—some district judges have 5 times more cases assigned to them each year than district judges in other circuits in the state.

### **2. These disparities must be reduced and caseloads brought into relative parity.**

These disparities are unfair to judges with heavier caseload assignments, but more importantly, are unfair to the citizens in those judges' circuits and counties. They are beginning to seriously compromise the Alabama judicial system's ability to deliver civil and criminal justice in a timely manner in a number of our counties and beginning to cause serious case backlogs in the busiest circuits.

These disparities in the circuits' caseloads result in unequal access to justice, which will continue to exist as long as these disparities continue to exist. Unequal access to justice must be addressed and it is the obligation of the state's judiciary to provide the solution.

### **3. These disparities cannot be addressed by just creating more judgeships.**

To even begin to approximate equalization of the caseloads throughout the state by just creating additional judgeships would require the creation of several dozen additional judgeships. Obviously, this is not possible. Rather, equalizing caseloads between the circuits must be accomplished by a combination of increasing the number of judgeships in some circuits and reducing them in others.

### **4. Presently, only the Legislature can increase or reduce the number of judges.**

Section 151 of the Alabama Constitution provides: "No change shall be made in the number of circuit or district judges . . . unless authorized by an act adopted after the recommendation of the supreme court on such propos[ed change] has been filed with the legislature."

### **5. It is unrealistic to expect the Legislature to pass a bill that eliminates a judgeship.**

Because of the nature of the legislative process and the ability of individual legislators to effectively block legislation, reducing the number of judgeships by the only means presently available—by legislative act—cannot be accomplished.

### **6. An alternative means of adjusting the number of judgeships in the state is needed.**

The Chief Justice hopes to introduce two bills in the next legislative session to provide that alternative means, but will not do so unless the state's judges support the bills.

## **7. The bills are the product of the year-long work of a committee of 13 state judges.**

Beginning in mid-2009, Baldwin County Circuit Judge Jim Reid and 12 other circuit and district court judges drawn from urban, suburban and rural circuits, multi-county circuits and single county circuits, and all geographic areas of the state, began to study and work on this problem. They completed their report in December, 2009, and two bills implementing their recommendations has since been drafted.

That committee took on an extraordinarily difficult task and they have performed a great service to the state. The bills drafted by this committee minimize the impact of some tough choices that had to be made. There were no easy solutions to this problem, but ignoring it and doing nothing will make the problem much worse in a very short time.

This is the Judicial Branch's problem and Alabama's judges owe it to the people of our state to solve it. If passed, the committee is confident these bills will solve it. The Chief Justice asks for your enthusiastic support for the committee's work and the bills they have drafted.

### **A summary of the bills**

The bills provide for a means to reallocate the existing number of state court judgeships, based on the case filings in the circuits. The bills provide that upon a judgeship being vacated as a result of a judge's death, retirement, resignation, removal from office, or declination to qualify or run for re-election, the Supreme Court may eliminate the vacated judgeship in that circuit and create a new judgeship in another circuit, if that is the recommendation of a specially constituted Judicial Allocation Commission created by the bills and the Supreme Court does not override their recommendation by a two-thirds or greater vote.

Two points need to be made at the outset. First, no judgeship can be eliminated as long the judgeship is occupied. For example, the bills prohibit the elimination of any judgeship where the incumbent judge is approaching the end of a term, but qualifies to run for re-election. Such a judgeship is not subject to being eliminated. Second, determinations regarding elimination and creation of judgeships are required to be based strictly on the statistical data regarding the need for the judgeship. These decisions will not be based on politics.

In making its recommendations, the Judicial Allocation Commission will be required to adhere strictly to a pre-determined set of criteria and apply those criteria to the most current statistical caseload data supplied by the Administrative Office of Courts. These criteria will be based purely on the statistical data on all circuits' case filings—whether the caseloads in the circuit in which the vacancy occurred justified or did not justify continuing the judgeship in that circuit and, if not, which other circuit, again based purely on the statistical criteria and data, has the greatest need for an additional judgeship. A suggested means for the Judicial Allocation Commission to statistically rank the circuits is described in a separate document accompanying this handout. These rankings will be revised periodically (perhaps twice a year) with new case filing data and available for inspection at an online electronic website.

If the vacated judgeship did not meet the criteria for elimination, that judgeship would continue. The bills provide that 30 days after a judgeship is vacated, in the absence of any order from the Court eliminating the judgeship, the Governor is authorized to appoint a replacement judge in accordance with prior existing law.

If the judgeship met the criteria for elimination, the Commission is required to recommend both the elimination of that judgeship and the creation of a judgeship in another judicial circuit that, again, based strictly on the statistical data on caseloads in the circuits, has the greatest need for an additional judgeship.

Upon receipt of the commission's recommendation, the Chief Justice is authorized and required to enter an order in conformity with the recommendation of the commission eliminating the vacated judgeship and creating another judgeship in the circuit with the highest ranked average caseload per judge, unless an order signed by six or more Justices of the Supreme Court disapproves the commission's recommendation. If the recommendation is rejected, the vacated judgeship continues and the Governor is authorized to make the appointment of a successor in accordance with prior existing law.

In reviewing the inequities that exist in the volume of cases per judge filed in the circuits, the Committee found that within many circuits while a judicial circuit's circuit

judges might be either over-worked (have a higher than average number of case filings per circuit judge) or under-worked (have a lower than average number of case filings per circuit judge), the opposite was true for that circuit's district judges.

The committee found that many of these disparities in a judicial circuit's caseloads could be eliminated or greatly reduced by combining the district and circuit court caseloads, i.e., by making all district judges, circuit judges. This step brings the overall combined caseload per judge for some of these circuits very close to the overall combined statewide per judge average and eliminates the need to either eliminate or create a judgeship in many circuits.

Although there will no longer be district judges, the district court and its jurisdiction will remain, and will be presided over by those circuit judges that the presiding judge designates. Former district judges, who as new circuit judges will vote in the selecting their presiding judge, will likely be assigned by their presiding judge to perform most of the district court duties that they had been performing. Some district judges will perform some circuit court work, as needed, and vice versa—some circuit judges, where needed and when assigned by the presiding judge, will perform some district court work.

As result of all judges being circuit judges, other significant changes will occur. First, all circuit judges from multi-county circuits will run for re-election only in their county of residence, rather than in all of the counties in their circuit. Second, every county will have at least one circuit judge that is a resident of the county.

In the coming weeks and months, the Chief Justice and the members of the committee who oversaw the drafting of these bills plan to meet with the state's judges, their associations' leadership, the state bar association and its committee formed to review these bills, and with other interested parties to further refine and revise the bills. The aim is to have bills that accomplish the ends that are both vital to the state, its court system, and its citizens, and are acceptable to and supported by all.

## How are circuit rankings determined?

A circuit's statistical ranking is determined by the ratio or percentage of the average number of caseload minutes per judge for all cases filed in that circuit in the preceding 12 months to the average number of caseload minutes per judge for all circuit and district courts for the preceding 12 months. Here is formula for that calculation:

$$\frac{\text{Average caseload minutes per judge for all cases filed in a circuit in last 12 months}}{\text{Average caseload minutes per judge for all cases filed in all circuits in last 12 months}}$$

### **1. How is the Average caseload minutes per judge for all cases filed in a circuit in last 12 months calculated?**

There are 20 categories of cases used in the Weighted Caseload Study<sup>1</sup> adopted in 2008 by the Alabama Supreme Court. Each category had an average number of minutes that circuit judges and district judges expended on cases in each of these 20 categories.

<sup>1</sup> The Weighted Caseload Study (WCS) was authored by a committee of 53 Alabama circuit and district court judges working with the National Center for State Courts. Based upon data supplied by the 75% of Alabama judges who responded to its survey, the WCS Committee published the Final Weighted Caseload Study in June, 2008. The Study determined the number of minutes of a judge's time, on average, required to dispose of each of 20 categories of cases listed in the WCS. The initial WCS formula has since been refined and continues to be refined, based on feedback from Alabama judges, to achieve greater accuracy in its statistical modeling. Here is the WCS table with the average number of judge minutes for each these 20 categories of cases:

**Final Workload Standards (in minutes)**

Case Types	Circuit	District
Capital Crimes	1,983	105
Felony-Persons	180	30
Felony-Property	73	16
Felony-Drug	90	21
Felony-Other	49	36
Misdemeanor/Lower Court Appeals	23	18
DUI	-	23
Traffic	-	2
Other Civil/Small Claims	-	13
General Civil-Tort	203	-
General Civil-Other	74	-
Contracts	30	-
Domestic Violence/Protection Orders	73	-
Workman's Compensation	48	-
Domestic Relations	51	-
Juvenile-Delinquency	28	28
Juvenile-Dependency	107	107
Juvenile-TPR	724	724
Juvenile-Paternity	32	32
Child Support	29	29

(Alabama Judicial Weighted Caseload Study, Final Report, June, 2008, p. 13, Fig. 15)

To calculate the total caseload minutes for a circuit during the last 12 months, the number of cases in each category that was filed in the circuit is multiplied by the number of minutes allotted for either the circuit and district court, depending on which court the case was filed in. Those two totals—one for the circuit court minutes and one for the district court minutes—are added together and divided by the number of circuit and district judges in the circuit.

For example, in the 29<sup>th</sup> Circuit, which is comprised of 2 circuit judges and 2 district judges, in the past year there were 391 Felony-Drug cases filed in circuit court and 176 Felony-Drug cases filed in district court (See Schedule A, Felony-Drug). To determine the number of caseload minutes expended in this category in the 29<sup>th</sup> Circuit in the past year, 391 (the number of circuit felony drug cases) is multiplied by 90 minutes and 176 (the number of district felony drug cases) is multiplied by 21 minutes.

These two totals of caseload minutes for circuit and district felony drug cases are added to the similarly calculated totals for each of the other 19 categories of cases filed in the 29<sup>th</sup> Circuit in the past year (See Schedule A) and then divided by 4 (the number of circuit and district judges in the 29<sup>th</sup> Circuit) to yield the *Average caseload minutes per judge for all cases filed in the 29<sup>th</sup> Circuit in last 12 months*.

As shown on Schedule A, when the calculations for all 20 categories of cases are completed for the 29<sup>th</sup> Circuit, the judges of that circuit would require 370,165 caseload minutes to resolve all of the cases filed in their circuit in the past twelve months; after 370,165 is divided by 4, the number of judges in the circuit, the average caseload minutes per judge for all cases filed in the circuit in past 12 months is 92,541.25 minutes.

## **2. How is the *Average caseload minutes per judge for all cases filed in all circuits in last 12 months* calculated?**

First, the same calculations of the total caseload minutes for the circuit for each of the 20 categories that were performed for the 29<sup>th</sup> Circuit are performed for the other 40 circuits in the state. This sum will be the total *caseload minutes for all cases filed in all circuits in the past 12 months*. For the most recent 12 month period, that number was 22,435,913 minutes. (See Schedule B)

This total of 22,335,913 minutes is then divided by 252 (the number of circuit and district court judges in the state) to yield 88,635 minutes, which is the *Average caseload minutes per judge for all cases filed in all circuits in the past 12 months*.

## **3. How is the statistical ranking of a circuit determined?**

The *Average caseload minutes per judge for all cases filed in the circuit in past 12 months* is divided by the *Average caseload minutes per judge for all cases filed in all circuits in the past 12 months*.

To again use the 29<sup>th</sup> Circuit as an example, the *Average caseload minutes per judge for all cases filed in the 29<sup>th</sup> Circuit in past 12 months* (or 92,541.25 caseload minutes per judge) is divided by the *Average case-load minutes per judge for all cases filed in all circuits in the past 12 months* (or 88,635 caseload minutes per judge)

$$92,541.25 \div 88,635 = 1.04407 \text{ or } \mathbf{104.4\%}$$

Thus, the caseload minutes per judge in the 29<sup>th</sup> Circuit for the cases filed in the past 12 months in that circuit is 104.4%, or 4.4% more than that of the average caseload minutes for all judges in the state.

A similarly calculated percentage is determined for all of the 41 circuits in the state and each circuit is then ranked from the highest to lowest percentage. (Schedule C)

### Summary of Calculations

Here is a recap of the steps used to calculate the 29<sup>th</sup> Circuit's statistical ranking:

1. Calculate the total *caseload minutes for all cases filed in the 29<sup>th</sup> Circuit in past 12 months*

$$\text{See Schedule A calculations} = 370,165 \text{ minutes}$$

2. Calculate the *Average caseload minutes per judge for all cases filed in the 29<sup>th</sup> Circuit in the last 12 months*

$$370,165 \text{ minutes} \div 4 \text{ judges in the circuit} = 92,541.25 \text{ minutes/judge}$$

3. Calculate the total *caseload minutes for all cases filed in all circuits in the last 12 months.*

$$\text{See Schedule B calculations} = 22,435,913 \text{ minutes}$$

4. Calculate the *Average caseload minutes per judge for all cases filed in all circuits in the last 12 months*

$$22,335,913 \text{ minutes} \div 252 \text{ judges in the state} = 88,635 \text{ minutes/judge}$$

5. Calculate the ratio or percentage of the 29<sup>th</sup> Circuit's per judge caseload to the average caseload per judge in the state

$$92,541.25 \div 88,635 = 1.04407 \text{ or } 104.4\%$$

6. Calculate ratios or percentages for the *Average caseload minutes per judge for all cases filed in the each of the state's 41 circuits in past 12 months* and rank the circuits from the highest to the lowest percentages.

See Schedule C



**Schedule A – Calculation of caseload minutes for the 29<sup>th</sup> Circuit in the last 12 months:**

Number of cases filed in the 29<sup>th</sup> Circuit  
in last reported 12 months

Capital Crimes	0	x 1,983 min. (circuit court)	= 0
	0	x 105 min. (district court)	= 0
Felony-Persons	67	x 180 min. (circuit court)	= 12,060
	72	x 30 min. (district court)	= 2,160
Felony-Property	232	x 73 min. (circuit court)	= 16,936
	311	x 16 min. (district court)	= 4,976
Felony-Drug	391	x 90 min. (circuit court)	= 35,190
	176	x 21 min. (district court)	= 3,696
Felony-Other	154	x 49 min. (circuit court)	= 7,546
	56	x 36 min. (district court)	= 2,016
Misdem. Appeals	56	x 23 min. (circuit court)	= 1,288
	986	x 18 min. (district court)	= 17,748
DUI	0	x 0 min. (circuit court)	= 0
	217	x 23 min. (district court)	= 4,991
Traffic	0	x 0 min. (circuit court)	= 0
	14,011	x 2 min. (district court)	= 28,022
Other Civ./Small Claim	0	x 0 min. (circuit court)	= 0
	2,665	x 13 min. (district court)	= 34,645
General Civil-Tort	90	x 203 min. (circuit court)	= 18,270
	0	x 0 min. (district court)	= 0
General Civil-Other	407	x 74 min. (circuit court)	= 30,118
	0	x 0 min. (district court)	= 0
Contracts	213	x 30 min. (circuit court)	= 6,390
	0	x 0 min. (district court)	= 0
Dom. Violence/PFAs	0	x 73 min. (circuit court)	= 0
	0	x 0 min. (district court)	= 0
Workers' Comp.	62	x 48 min. (circuit court)	= 2,976
	0	x 0 min. (district court)	= 0
Domestic Relations	835	x 51 min. (circuit court)	= 42,585
	0	x 0 min. (district court)	= 0
Juvenile-Delinq.	0	x 28 min. (circuit court)	= 0
	1,246	x 28 min. (district court)	= 34,888
Juvenile-Depend.	0	x 107 min. (circuit court)	= 0
	324	x 107 min. (district court)	= 34,668
Juvenile-TPR	0	x 724 min. (circuit court)	= 0
	9	x 724 min. (district court)	= 6,516
Juvenile-Paternity	0	x 32 min. (circuit court)	= 0
	195	x 32 min. (district court)	= 6,240
Child Support	0	x 29 min. (circuit court)	= 0
	560	x 29 min. (district court)	= 16,240
			<b>370,165</b>

**Schedule B** – Calculation of caseload minutes for all circuits in the last 12 months:

Number of cases filed in all circuits  
in last reported 12 months

Capital Crimes	156	x 1,983 min. (circuit court)	= 309,348
	137	x 105 min. (district court)	= 14,385
Felony-Persons	6,326	x 180 min. (circuit court)	= 1,138,680
	6,771	x 30 min. (district court)	= 203,130
Felony-Property	14,762	x 73 min. (circuit court)	= 1,077,626
	18,791	x 16 min. (district court)	= 300,656
Felony-Drug	16,173	x 90 min. (circuit court)	= 1,455,570
	17,339	x 21 min. (district court)	= 364,119
Felony-Other	14,325	x 49 min. (circuit court)	= 701,925
	4,919	x 36 min. (district court)	= 177,084
Misdem. Appeals	14,281	x 23 min. (circuit court)	= 328,463
	78,427	x 18 min. (district court)	= 1,411,686
DUI	0	x 0 min. (circuit court)	= 0
	10,043	x 23 min. (district court)	= 230,989
Traffic	0	x 0 min. (circuit court)	= 0
	511,471	x 2 min. (district court)	= 1,022,942
Other Civ./Small Claim	0	x 0 min. (circuit court)	= 0
	169,594	x 13 min. (district court)	= 2,204,722
General Civil-Tort	8,538	x 203 min. (circuit court)	= 1,733,214
	0	x 0 min. (district court)	= 0
General Civil-Other	23,927	x 74 min. (circuit court)	= 1,770,598
	0	x 0 min. (district court)	= 0
Contracts	14,784	x 30min. (circuit court)	= 443,520
	0	x 0 min. (district court)	= 0
Dom. Violence/PFAs	6,819	x 73 min. (circuit court)	= 497,787
	0	x 0 min. (district court)	= 0
Workers' Comp.	4,560	x 48 min. (circuit court)	= 218,880
	0	x 0 min. (district court)	= 0
Domestic Relations	43,022	x 51 min. (circuit court)	= 2,194,122
	0	x 0 min. (district court)	= 0
Juvenile-Delinq.	23,046	x 28 min. (circuit court)	= 645,288
	32,205	x 28 min. (district court)	= 901,740
Juvenile-Depend.	5,632	x 107 min. (circuit court)	= 602,624
	5,456	x 107 min. (district court)	= 583,792
Juvenile-TPR	188	x 724 min. (circuit court)	= 136,112
	486	x 724 min. (district court)	= 351,864
Juvenile-Paternity	3,551	x 32 min. (circuit court)	= 113,632
	4,989	x 32 min. (district court)	= 159,648
Child Support	15,415	x 29 min. (circuit court)	= 447,035
	20,508	x 29 min. (district court)	= 594,732
			<b>22,335,913</b>

**Schedule C Alabama FY2009 Judicial Weighted Caseload Percentage of  
Statewide Average Per Judge By Circuit**

<b>Circuit</b>	<b>Counties</b>	<b>Combined Percentage of Statewide Average Per Judge</b>	<b>Rank</b>
23	Madison*	151.1%	1
13	Mobile	143.2%	2
28	Baldwin	141.1%	3
6	Tuscaloosa	133.5%	4
18	Shelby	129.6%	5
19	Autauga, Chilton, Elmore	117.8%	6
41	Blount	113.1%	7
37	Lee	109.9%	8
15	Montgomery	108.8%	9
32	Cullman	107.8%	10
27	Marshall**	106.4%	11
29	Talladega	104.4%	12
11	Lauderdale	103.8%	13
16	Etowah	99.9%	14
20	Henry, Houston	99.7%	15
5	Chambers, Macon, Randolph, Tallapoosa	99.3%	16
38	Jackson	99.3%	16
12	Coffee, Pike	96.7%	18
8	Morgan	96.0%	19
30	St. Clair	93.3%	20
39	Limestone	93.1%	21
26	Russell	92.5%	22
36	Lawrence	90.5%	23
7	Calhoun, Cleburne	87.9%	24
31	Colbert	87.6%	25
10	Jefferson	86.6%	26
33	Dale, Geneva	83.5%	27
2	Butler, Crenshaw, Lowndes	83.0%	28
22	Covington	82.2%	29
34	Franklin	81.0%	30
4	Bibb, Dallas, Hale, Perry, Wilcox	79.8%	31
9	Cherokee, DeKalb	78.7%	32
35	Conecuh, Monroe	77.7%	33
24	Fayette, Lamar, Pickens	76.5%	34
25	Marion, Winston	76.4%	35
3	Barbour, Bullock	76.2%	36
21	Escambia	72.2%	37
14	Walker	67.3%	38
1	Choctaw, Clarke, Washington	66.8%	39
17	Greene, Marengo, Sumter	65.8%	40
40	Clay, Coosa	40.4%	41

\* Calculated with the judgeship to be filled by election at the general election in 2010.

\*\* Calculated with the judgeship to be filled by election at the general election in 2012.