

## MEMORANDUM

**TO:** Advisory Task Force on Composition of Judicial Districts

**FROM:** Judge Robert L. Childers (Ret.)

**DATE:** July 15, 2019

My name is Robert L. Childers. I served as Circuit Court Judge for the 30<sup>th</sup> Judicial District in Shelby County for 33 years from September 1, 1984 until my retirement from the bench June 30, 2017. During my time on the bench I served as President of the Tennessee Judicial Conference and the Tennessee Trial Judges Association. In 1998 I was appointed to the TJC Advisory Committee for the Weighted Caseload Study and continued to serve on that committee until I retired in 2017.

I am very concerned that if any judicial redistricting is undertaken by the Tennessee General Assembly it will have an adverse impact on the number of judges in Shelby County, and thus on the ability of the judges to hear cases and deliver justice in a timely manner for the citizens of Shelby County. Since 2014 several bills have been filed to take a Circuit Court Judge from Shelby County. In 2014 a Shelby County Senator filed a bill to take away a Shelby County Circuit Court Judge. His stated reason for doing so was the annual Weighted Caseload reports from the Comptroller's Office. He did so without discussing his concerns with the judges in Shelby County, or apparently with anyone else. The bill passed the Senate Judiciary Committee, but the Senator later withdrew the bill after strong opposition from the rest of the Shelby County Delegation.

### History of adding judges in Tennessee

Before 1998 state trial judges were added using primarily population figures. In 1984 a Judicial Redistricting bill was passed. Under that legislation all Judicial Districts were renumbered from 1 to 30, with the 1<sup>st</sup> Judicial District in Upper East Tennessee and the 30<sup>th</sup> in Lower West Tennessee, and ten Circuit Court judges were added across the state. After the Redistricting bill was passed, the General Assembly created a new 31<sup>st</sup> District in Middle Tennessee. After that the members of the General Assembly began looking for another more objective way to determine when trial judges should be added. In 1997 the National Center for State Courts (NCSC) provided information that a new method had been devised to assist legislatures with those decisions – the Weighted Caseload Formula. As a result the General Assembly hired the NCSC to conduct a Weighted Caseload Study (WCS) for the Tennessee Trial Judges, the District Attorneys General and the Public Defenders, however the WCS has never been done for the District Attorneys General or the Public Defenders.

## Weighted Caseload Study

The initial WCS was conducted in 1998 over a 4-week period. Working in conjunction with the Tennessee Judicial Conference WCS Advisory Committee, the NCSC selected a cross-section of 16 Judicial Districts to participate in the study. During the 4-week period all judges in the 16 Judicial Districts filled out slips of paper with the number of minutes it took the judge to do the judge's work during the day. The results of the first study showed that it takes 90 minutes to dispose of any civil case, 43 minutes to dispose of any divorce case and 71 minutes to dispose of any probate case. These results were totally inaccurate. A comparison with case weights developed in another state (Michigan), also conducted in 1998, showed how absurd the Tennessee case weights were.

The WCS is essentially a time and motion study, often done by manufacturers to determine how many employees it should take to make Widgets and how long it should take. Needless to say, dealing with peoples' legal problems (property, lives, children, money) is not Widget-making. It is not a one-size-fits-all concept. At best, a WCS shows a slice in time and an average time it should take to hear and decide a particular legal matter. Although subsequent WCS (in 2007 & 2013) have made improvements, it still shows an average time, and does not take other things into consideration. For example, whether a Judicial District is in a major medical center (more health care liability act cases) or a major tourist attraction (more auto accidents, crimes, etc.), and the like.

After each of the three studies that the NCSC has conducted in Tennessee, the NCSC submitted a Final Report to the General Assembly, that included several caveats cautioning against using only the numbers (the case weights) contained in the Comptroller's Annual Weighted Caseload Report, and not considering any other factors. The October 2013 NCSC Final Report Recommendation #3 on page 14 states: "there are some considerations that an objective Weighted Caseload model cannot account for that should be taken into account when determining judicial staffing level needs . . . issues of local culture should be considered."

By adding the Recommendations the NCSC advised the General Assembly to consider other qualitative factors as well, factors such as local legal culture, population, major medical centers or tourist areas where many people gather, etc. Several years ago one legislator told one of the TJC Weighted Caseload Advisory Committee members that many legislators use the Comptroller's Weighted Caseload Report as "the bible" for adding/taking away judges.

## Population

As previously stated, before the WCS the General Assembly used only population to determine the need for new trial judges, however, population is not used at all to make those decisions. I respectfully suggest and urge that population should at least be one of the factors



the General Assembly uses in addition to the Weighted Caseload Report. As an example, based on 2010 Census figures, the ratio of civil judges per capita in the four largest counties in Tennessee were as follows:

- Davidson County: 1 civil judge per 52,000 people
- Hamilton County: 1 civil judge per 54,000 people
- Knox County: 1 civil judge per 62,000 people
- Shelby County: 1 civil judge per 77,000 people

### Local Legal Culture

I would like to give a few personal examples of some of the “legal culture” issues involved in cases that I have heard and decided as a judge before my retirement in 2017. I heard and decided a divorce case with no children that lasted for 7 weeks (average of 6-7 hours per day of in-court time). I received 46 minutes credit on the Weighted Caseload Report for that case. I also tried a highly publicized and controversial Termination of Parental Rights/Custody case that I spent more than 20,000 minutes on, including writing a 72-page written decision. I also received credit for 46 minutes on the Weighted Caseload Report for that case. Finally, during an 18-month period, I re-tried four different medical malpractice/healthcare liability act cases. Two of the cases were 3-week trials that had to be retried twice. Another one was a 2-week trial that had to be retried once. The fourth case was a one-week case that had to be retried three times before a verdict was finally reached. Total time for the retrial of these 4 cases was 54 days. On the Weighted Caseload Report I received credit for 4.25 days of the 54 days I actually spent with those cases.

### Other Factors

There are several other factors that cause the figures in the Comptroller’s Annual Weight Caseload Report to be inaccurate.

1. Court Clerks sometimes put cases in the wrong case type in the reports to the AOC. As an example sometimes a medical malpractice/healthcare liability act case, which has a case weight of 1,122 minutes, is incorrectly listed by the Clerk as a damage/tort case, which has a case weight of only 135 minutes.
2. The General Assembly sometimes enacts legislation giving additional responsibilities to the Courts/Judges and no category is created to give a case weight for those matters, so the judges time is not counted.

3. Again, time spent on re-trials is not counted at all; a case is only counted once at initial filing, and there is no method to count the additional time the judge spends on those cases.
4. The Administrative Office of the Courts (AOC) sometimes changes the way the Court Clerks are to categorize certain cases, causing confusion to Court Clerks; although this has improved somewhat since the Tennessee Judicial Conference now has a standing Weighted Caseload Advisory Committee to work with the AOC staff.

## Conclusion

During the last few years several Judicial Districts have needed and have asked for new trial judges. The response to those requests has been that some members of the General Assembly filed proposed legislation to take judges away from Shelby and Davidson Counties, apparently based solely on the quantitative numbers of the Comptroller's Annual Weighted Caseload Report, without considering any other factors. It is important to consider other factors when making these important decisions. We need efficiency, of course, but not at the expense of doing justice in every case – regardless of the time it takes. It seems to be relatively easy to take trial judges away, but it is very, very, very, difficult to add a trial judge.

I appreciate the time the Task Force members have given to this matter and the consideration you have given to these comments and suggestions.