

## FROM THE CHIEF

Elizabeth D. Walker

Chief Justice  
The West Virginia Supreme Court



## 2022 JUDICIAL WORKLOAD STUDY

Lawyers probably spend more time preparing for court than thinking about how our state courts are organized and how many judges we have in West Virginia. On the other hand, my colleagues and I at the Supreme Court of Appeals think about it frequently; but our ability to act is limited. That's because our state constitution addresses how the number of judges can be changed (and when), how circuits are organized and who decides these issues. This article explains that process and highlights the recently completed West Virginia Judicial Workload Study.

### Current Judicial Allocation

Our state constitution vests the Legislature with the power to rearrange judicial circuits and determine the number of circuit judges, family court judges and magistrates.<sup>1</sup> By constitution, statute and past

practice, these issues are taken up in the odd-number year prior to the statewide judicial elections. Since all circuit judges, family court judges and magistrates are on the ballot in May 2024, any bill to modify the existing circuits or the number of judicial officers must be passed this year.

Currently, West Virginia has 75 circuit judges organized in 31 judicial circuits.<sup>2</sup> The circuit boundaries have changed very little in recent history; the last change was in 1999 when Mason County split from Putnam County.<sup>3</sup>

Our state's 47 family court judges are organized in 27 circuits.<sup>4</sup> The current geographic boundaries were significantly adjusted during the 2015 Regular Legislative Session.<sup>5</sup>

In contrast to family and circuit courts, our state constitution establishes magistrate courts on a county, and not a circuit, basis.<sup>6</sup>

West Virginia currently has 159 magistrates, with a minimum of two per county.<sup>7</sup> Determining the number of magistrates has always been a difficult task for the Legislature. Prior to 2000, magistrates were allocated by a simple, population-based, mathematical formula.<sup>8</sup> In 2000, the Legislature struck that method in favor of the workload evaluation method.<sup>9</sup> Despite multiple workload studies in 2006 and 2014, the current allocation of magistrates is still based on the last population-based allocation prior to the revised 2000 law.

Recognizing past challenges and the significant need for magistrate reallocation, the Legislature charged the Supreme Court in 2022 to study magistrates' workloads and then issue a proposal to address any imbalances the study reveals.<sup>10</sup> By statute, the Court may not propose to reduce the number of magistrates

in any county below the 2022 count or to increase the number of magistrates beyond 170, statewide.<sup>11</sup> The Legislature then may accept or reject the allocation, and the process is set to repeat every four years.<sup>12</sup>

### 2022 Workload Study Process

As you might imagine, a judicial workload study is complex and time-consuming. The National Center for State Courts (NCSC) is the recognized national expert in this work, having conducted workload studies in 40 states, including all of West Virginia's recent evaluations. At the request of Legislative leadership, the Supreme Court contracted with the NCSC last summer for three different workload studies.

First, the Supreme Court's Administrative Office and the NCSC compiled the state's case filing statistics from 2017 to 2019. The NCSC recommended excluding 2020 and 2021 statistics from the study, as national trends indicate a significant disruption in court filings because of the COVID-19 pandemic. And because this work began last summer, 2022 data was not yet available.

Once filing counts were established, circuit judges and family court judges each undertook the second step: a five-week time study. During this time, each judicial officer tracked their daily time by the type of case and activity. This study also recorded time unrelated to cases, like travel between counties in a single circuit, administrative time and judicial education. We were pleased that 99% of circuit judges and 100% of family court judges participated in the time-study exercise.

Next, the NCSC aggregated the statewide data to develop case weights in minutes by the type of case. The goal was to estimate how long, on average, it took a judicial officer to resolve each type.

The judges also participated in an adequacy-of-time study to determine whether case weights should be adjusted based on how long judges believed certain tasks should take if that officer had enough time to dedicate

to a task. Finally, some judges participated in focus groups to evaluate the preliminary data and to address areas that needed qualitative refinement.

Due to time constraints, the analysis of workloads in magistrate court focused on a Delphi study methodology, where small groups of magistrates participated in focus groups specific to types of cases to compare time-study data from past years in West Virginia and adjust case weights based on changed realities since those past studies. For example, Legislative changes created some new case types and caused certain prior case types to increase in complexity.

The third step was to determine the total amount of judicial availability, in minutes. This figure deducts time for duties unrelated to cases, travel, sick days, judicial education, civic duties and holidays from a judge's annual case-time availability. Because the NCSC made travel findings specific to each circuit, each circuit's total case-time availability varies.

In the final step, case weights were multiplied by case filings to determine the judicial need, in minutes, for each circuit and county. That time figure was applied to the circuits' judicial availability and to the current number of judicial officers. The resulting calculation is the current workload of each judicial officer, expressed in terms of a full-time equivalency, or FTE. For example, a workload per FTE of 1.33 means the current workload is that of one judge and one-third of another. The NCSC then ranked the need by circuit and by county to determine the extent of judicial need from greatest to least.

The NCSC did not recommend which circuits or counties need additional judicial officers; that final determination is up to our state's policymakers in the Legislature. But according to the NCSC's analysis, the judicial workload in West Virginia calls for 79 circuit judges,<sup>13</sup> 48 family court judges<sup>14</sup> and 160 magistrates.<sup>15</sup> At the date of this publication, the Legislature is likely working through this subject. For more information

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about the NCSC reports that the Court submitted to the Legislature in January, I encourage you to review them on our website.

### Conclusion

The West Virginia Judicial Workload Study could not have been accomplished without hard work and cooperation between our state's judicial officers and the Supreme Court's Administrative Office. I am very grateful to be part of a team of elected officials and administrative leaders who are committed to public service and upholding the rule of law throughout our entire court system.

I specifically want to thank the committee members from all three of the state's judicial associations who served as an advisory group during this process of the workload study. Their work was extensive and invaluable.

I also want to emphasize one reoccurring theme from the study. It is impossible to evaluate judicial workload without also considering lawyer availability. In many areas of our state, we need more lawyers. Multiple judges and judicial circuits often share the same small

group of lawyers who handle criminal and child abuse and neglect cases. Since lawyers cannot be in two places at once, judges must coordinate their dockets to avoid scheduling conflicts, which in turn greatly restricts judicial workload.

I challenge and encourage all lawyers to consider how they can contribute to the quality of legal representation and judicial efficiency in our state, with an emphasis on underserved counties. There is an abundance of need and potential experience to be gained by newer lawyers who are willing to work as panel counsel in our rural areas. In sum, adding judges or reorganizing our judicial circuits will not help without more lawyers willing to do the work.

Finally, I want to thank the legislative branch for partnering with us in this regular review of the workload of the judiciary. They take on the difficult task delegated to them by the constitution of evaluating the numbers of judges needed throughout the state, which can involve decisions that are neither popular nor easy. We all appreciate their work on this very important task, and we look forward to our continued cooperative effort on this and so many other issues. **WVL**

### Endnotes

1. W. VA. CONST. art. 8, §§ 5, 10, 16.
2. W.Va. Code § 51-2-1(a)(1)–(31) (2018).
3. *Id.* § 51-2-1 (1991), amended by 1999 W.Va. Acts 72 (1999).
4. *Id.* § 51-2A-3(b) (2015).
5. See S.B. 479, 82d Leg. Reg. Sess. (W.Va. 2015).
6. W. VA. CONST. art. 8, § 10.
7. W.Va. Code § 50-1-2 (2001), amended by 2022 W.Va. Acts 75 (2022).
8. *Id.* § 50-1-2 (1997), amended by 2000 W.Va. Acts 73 (2000).
9. H.B. 4009, 74th Leg. 2d Reg. Sess. (W.Va. 2000).
10. H.B. 2910, 85th Leg. 2d Reg. Sess. (W.Va. 2022) (amending W.Va. Code § 50-1-2 (2001)). House Bill 2910 also added West Virginia Code § 50-1-2a (2022) (increasing the number of magistrates serving Berkeley County by one) and amended § 50-1-13 (2020) (relating to salaries of magistrates).
11. W.Va. Code § 50-1-2(b) (2022).
12. *Id.* § 50-1-2(c) and (e).
13. See Nat'l Ctr. for State Ct. & Ct. Consult. Serv., *West Virginia Circuit Court Judicial Workload Assessment 2022 Final Report* (Jan. 6, 2023), [www.courtswv.gov/lower-courts/pdfs/WVCircuitCourtJudgeWorkloadStudy2022FinalReport.pdf](http://www.courtswv.gov/lower-courts/pdfs/WVCircuitCourtJudgeWorkloadStudy2022FinalReport.pdf).
14. See Nat'l Ctr. for State Ct. & Ct. Consult. Serv., *West Virginia Family Court Judicial Workload Assessment 2022 Final Report* (Jan. 6, 2023), [www.courtswv.gov/lower-courts/pdfs/WVFamilyCourtJudgeWorkloadStudy2022FinalReport.pdf](http://www.courtswv.gov/lower-courts/pdfs/WVFamilyCourtJudgeWorkloadStudy2022FinalReport.pdf).
15. See Nat'l Ctr. for State Ct. & Ct. Consult. Serv., *West Virginia Magistrate Workload Delphi Update 2022 Final Report* (Jan. 6, 2023), <http://www.courtswv.gov/lower-courts/pdfs/WvMagistrateDelphiNeedsAssessment2022FinalReport.pdf>.