

NOW

BGR's Spotlight on Local Government Issues

Open, Fact-Based Process Needed to Address Judgeships

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In 2011, the State Legislature asked the Louisiana Supreme Court to examine the efficiency of the state's courts. Specifically, lawmakers called for a review of caseload data and the number of judges at each court and requested recommendations on "changes necessary to the existing structure of the judiciary to provide the most efficient use of judicial resources."¹ In response, the Supreme Court established a committee to conduct the study (HCR 143 Committee). That committee's report on the state's 97 district and city courts is due in February 2014.

Previous reports released by the Judicial Council, another Supreme Court committee, suggest that some judicial districts, including Orleans Parish, may have more judges than they need. As BGR documented in its recent report on the

judiciary, each judgeship carries substantial costs. In Orleans Parish, for example, the average cost of a judgeship is \$570,000 a year, or \$3.4 million over a six-year term. Clearly, any unnecessary judgeship is a waste of already strained public resources – resources that could be redeployed for much-needed public services in the judicial system or other areas.

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Committee's proceedings, it is critical that the committee conduct its work in an open and transparent manner. For the reasons discussed below, it is also critical that it complete its analysis of judicial districts with the largest potential surpluses before the 2014 legislative session.

Unfortunately, the HCR 143 Committee's work is cloaked in secrecy. With the exception of one public hearing, the committee has been meeting behind closed doors. The precise scope of its work, the process it is using and the standards that it is applying are unclear. If current practices continue, the public will not have access to the committee's deliberations and records. This will make it extremely difficult, if not impossible, to hold the committee accountable and assess the quality of its work.

BGR requested records relating to the HCR 143 Committee's process and asked to attend the committee's meetings. The Supreme Court denied the requests, claiming that the judiciary is not subject to the state's open meeting and public record laws.

That should not be the end of the issue. Regardless of whether the open meeting and public record laws apply, the court has the option of opening the meetings and providing records to the public. It can and should do so. There is simply no valid reason for the HCR 143 Committee to conduct its work in secrecy.

BGR urges the HCR 143 Committee to use an open and transparent process in conducting its evaluation. The process should be set forth in writing and include the following elements:

- A clear statement of the scope of the committee's work.
- A formal methodology for assessing the appropriate number of judges, including (i) the application of a workload formula to identify jurisdictions with the largest apparent judicial surpluses and (ii) additional analysis of courts with the largest estimated sur-

pluses to correct for factors that are not accurately captured by the formula. The document setting forth the methodology should describe with specificity the formula, data and other factors that the committee will use or consider in its analysis.

- Detailed records of court site visits, interviews and other consultations with members of the judiciary and other stakeholders.
- Detailed documentation of the committee's deliberations and findings, including data to support conclusions that differ from the workload formula's preliminary estimates of judges needed.
- Open committee and subcommittee meetings and publicly available records.

The committee should also publish its work plan.

Clearly, any study of the efficient use of judicial resources should examine whether courts are properly sized and recommend the elimination of any excess judgeships. However, the committee has not publicly stated whether it intends to make such recommendations. It should.

There is no need for the committee to create its decision-making process out of whole cloth. Instead, it can build on the foundation already established by the Judicial Council, taking as its starting point the existing methodology that the council developed to assess whether a court has the appropriate number of judges. For three decades, the Judicial Council employed that methodology to evaluate requests for additional judgeships. It concluded in 2007 that the methodology was valid for assessing whether a court has surplus judgeships.²

Although the HCR 143 Committee has had two and a half years to conduct its work, there are signs that it would have difficulty completing an analysis of all district and city courts before the 2014 legislative session. However,

adequate time remains for the committee to analyze the courts with the largest estimated judicial surpluses.

As noted earlier, it is vital that the HCR 143 Committee provide the Legislature with a report on those courts in advance of the 2014 legislative session. In the fall of that year, 80% of the judgeships in Orleans Parish and all of the district court judgeships in the state will be up for election. If the Legislature does not take action to eliminate any unnecessary judgeships before the election, a constitutional provision against shortening a judge's term would forestall meaningful reform until 2020.

Some judges and others who work in the court system have made a number of arguments for delaying or preventing a determination of whether courts with large estimated judicial surpluses do in fact have more judges than necessary. As is demonstrated in the Appendix, none of those arguments is persuasive.

An open and transparent process is essential to a credible evaluation of the number of judges needed in the various courts. BGR urges the HCR 143 Committee to implement such a process and to complete its analysis of the courts with the largest estimated judicial surpluses in time to meet its February 2014 deadline.

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APPENDIX: Setting the Record Straight

In recent months, there has been significant public debate both at public hearings and in the news media on possible judicial surpluses in New Orleans and elsewhere in Louisiana. Unfortunately, some of the arguments presented in those debates are based on misconceptions. In the following discussion, BGR attempts to set the record straight, so that public dialogue on this matter can proceed without distortion.

Argument: *Eliminating unnecessary judgeships before the 2014 judicial election would require a rush to judgment.*

Fact: It has been nearly six years since the Judicial Council called for eliminating unnecessary judgeships before the 2014 judicial election.³ The HCR 143 Committee has had two and a half years to conduct its analysis of potential surplus judgeships across Louisiana. Information gleaned from a public hearing in October suggests that the committee might not have made as much progress as it should have by this point, and that it might not have time to analyze every court in the state. However, the committee still has time to focus on jurisdictions with the largest estimated judicial surpluses.

In doing this, the committee can draw on the methodology the Judicial Council developed to re-evaluate the number of judgeships in Louisiana following Hurricane Katrina. The council established a two-step process that first uses a court workload formula to flag courts that appear to have more judges than necessary, and then calls for site visits to assess other factors, such as an unusually complex caseload, to determine the appropriate number of judgeships.

With a solid foundation already established by the Judicial Council, the HCR 143 Committee is well-positioned to assess courts with the largest potential judicial surpluses. There is time for the committee to schedule site visits at these courts to determine on a case-by-case basis whether they do in fact have more judges than necessary.

Argument: *The Judicial Council's workload formula is totally unrealistic and needs to be overhauled.*

Fact: As BGR emphasized in its report on surplus judgeships, there are weaknesses in the Judicial Council's formula that can lead to inaccurate workload estimates. For example, the formula does not account well for the workload at a court with a disproportionate share of complex cases.⁴

However, the formula is not intended to provide a final estimate of how many judges a court needs. Instead, it serves as an indicator to let officials know where a closer examination of apparent judicial surpluses is needed. It is only the first step in an analytical process that includes site visits to assess qualitative factors not captured by case filing data.

The Judicial Council has used the workload formula since 1980, making adjustments to it along the way. The council spent a considerable amount of time updating and revising the formula's case weights from 2006 to 2008. Responding to concerns raised by judges, the council increased the points awarded for domestic cases. It also took steps to ensure that courts were reporting filing data uniformly across the state. In a 2008 report, the council concluded that the formula and methodology are valid and reliable.⁵

This conclusion is supported by the fact that the formula's estimate of the number of judges needed at the state's district courts outside of Orleans Parish is fairly closely aligned with the actual number of judges. The formula's estimate for those courts falls within 13% of the actual number of judges. This relatively low variance suggests that the formula's case weights are generally realistic. It also means that Orleans Parish, with more than twice as many judges as the formula estimates it needs, is an extreme outlier that demands a closer look.

Argument: *There is no methodology for determining if a court has too many judges. The Judicial Council's methodology is valid only for adding judges, not subtracting them.*

Fact: It is simply not true that there is no methodology for evaluating surplus judgeships. One of the first things the Judicial Council did in 2006 after the Legislature asked the Supreme Court to analyze potential judicial surpluses was to review three different methodologies for determining whether a court has more judges than necessary. The council decided to use the same methodology, including the workload formula, that it had been using in its evaluation of requests for new judgeships.⁶

This makes sense. The workload formula estimates how many judges a court needs. The need is the same regardless of whether a court has too many or too few judges.

A number of other states have used methodologies that employ weighted caseload formulas to evaluate surplus judgeships. Among them is Michigan, which decided last year to eliminate 36 of the state's nearly 600 trial court judgeships.

Argument: *Calls to rightsize the courts are misguided because they are based solely on the Judicial Council's flawed formula.*

Fact: The Judicial Council's workload formula is not the only indicator pointing to a need for further analysis of the number of judges needed in various jurisdictions. Trends in case filings suggest the workloads at several Orleans courts have dropped dramatically while the number of judges has stayed the same or increased. As the chart below indicates, filings at Civil District Court, Juvenile Court, First City Court and Second City Court have plunged by 55% to 88% since peaking in the 1980s.

Decline in Filings at Four Orleans Parish Courts

Court	1980s peak filings	2012 filings	% Change
Juvenile Court	11,810	1,430	-88%
Civil District Court	27,665	11,883	-57%
First City Court	34,723	8,794	-75%
Second City Court	3,368	1,511	-55%

Note: The courts' peak filing years are as follows: Juvenile Court, 1984; Civil District Court, 1989; First City Court, 1982; and Second City Court, 1982.

Source: BGR calculations using data obtained from the Judicial Council and Supreme Court annual reports.

Raw filings are a rough measure of workload for a number of reasons. For example, a single filing can represent a very simple or a very complex case. However, precipitous drops in filings in a court clearly warrant further investigation.

Argument: *Eliminating judgeships would inhibit citizens' access to justice by creating court delays and case backlogs.*

Fact: Rightsizing the court system does not entail eliminating judgeships in an across-the-board or willy-nilly fashion. Rather, it involves eliminating judgeships that are determined to be unnecessary based on a careful analysis. That analysis should include an assessment of whether a reduction in judgeships at a particular court would cause case backlogs or other side effects that would limit citizens' access to justice.

It should be noted that the Judicial Council's formula assumes that judges are working a minimum number of days and hours, and that the courts have efficient workflow processes in place. Failure to meet these minimum standards can result in court delays and case backlogs. Those delays and backlogs should be addressed by remedying the root causes rather than retaining unnecessary judgeships.

Argument: *Because less than 1% of the state's budget is allocated to the judicial system, the cost of a potentially overstaffed judiciary is inconsequential.*

Fact: The state has pressing financial needs and limited resources. Any potential waste in the use of those resources must be addressed.

Furthermore, state funding covers only a portion of the cost of operating trial courts. In 2011,⁷ it cost \$53.1 million to operate Orleans Parish's seven courts and two clerk's offices. The state provided \$10.7 million, or 20%, of the funding. Virtually all of the rest came from local sources. The City of New Orleans provided \$14.1 million, or 27% of total funding.⁸ Revenue generated by the courts and clerks' offices, including court fees and fines, accounted for \$28.3 million, or 53% of the total.

Argument: *Orleans Parish's civil courts are self-sufficient, so eliminating any surplus judgeships at these courts would not benefit the city or other entities in the judicial system.*

Fact: First of all, the three civil courts are far from being self-sufficient. In 2011, the state provided \$3 million for the civil judges' salaries and benefits, accounting for more than a quarter of the courts' funding. In addition, the three courts received \$1.4 million from mortgage and conveyance recording fees.⁹ The mortgage and conveyance records have nothing to do with the civil courts, and the fees associated with them are not revenue generated by those courts.

Second, savings from eliminating any excess civil court judgeships could, with a change to state law, be redeployed to help fund other parts of the court system. For instance, the savings could be redirected to the Clerk of Criminal District Court, reducing the amount of funding the city must provide that office. This sort of subsidization of criminal court functions by civil filing fees occurs elsewhere in Louisiana, where jurisdictions have unified civil and criminal courts.

Conclusion

At the end of the day, certain points are indisputable: First, various metrics indicate that certain courts in Louisiana may have far more judges than they need. Second, these estimated surpluses warrant further investigation to determine the actual number of judgeships needed. Third, there has been ample time to make such a determination. Fourth, the public funds at stake are significant. And fifth, New Orleans and Louisiana both have serious unmet needs due to shortfalls in public funding. Citizens deserve a serious look at courts where the indicators suggest excess judgeships, and they deserve timely action to prevent waste.

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ENDNOTES

- 1 La. House Concurrent Resolution No. 143, Reg. Sess. 2011.
- 2 Judicial Council of the Louisiana Supreme Court, *Final Report of the Judicial Council to Review the Need for Judgeships*, February 2007, p. 2.
- 3 Judicial Council of the Louisiana Supreme Court, *Report of the Judicial Council in Response to Senate Concurrent Resolution #91 of the 2007 Regular Session of the Legislature Regarding the Determination of Judgeships*, March 2008, p.9.
- 4 Bureau of Governmental Research, *Benchmarking the Bench: Are Public Dollars Being Wasted on Excess Judgeships in Orleans Parish?*, September 2013, pp. 6-7.
- 5 Judicial Council, *Report of the Judicial Council in Response to Senate Concurrent Resolution #91 of the 2007 Regular Session of the Legislature Regarding the Determination of Judgeships*, March 2008, p. 7.
- 6 Judicial Council, *Final Report of the Judicial Council to Review the Need for Judgeships*, February 2007, pp. 4-8.
- 7 2011 was the last year for which audited financial statements were available when BGR prepared its report on surplus judgeships.
- 8 The city's 2013 allocation for the court system was \$10.1 million
- 9 Data provided by the Clerk of Civil District Court's office.
