

# **Appendix O**

## **Modifications to the Initial Case-Weighting Structure**

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## Modifications to the Initial Case-Weighting Structure

We modified the case-weighting structure that the Judge Advisory Group helped create at the start of the project to respond to feedback from judges attending the circuit-based meetings and the National Consensus Meeting. Participants in many of the circuit meetings discussed changes to the civil and criminal worksheets, changes that they believed would improve the precision of the case weights; a number of these discussions led to formal recommendations from the circuits to modify the case-weights structure. We forwarded these recommendations, with additional information, to the circuit representatives attending the national meeting for further evaluation (see Appendix N). Circuit representatives determined by vote which recommendations should be incorporated into the case-weight structure and we made modifications consistent with the majority vote. Representatives then made a limited number of additional modifications at the national meeting itself. A summary of the modifications appears below.

### Modifications applicable to both the civil and criminal case-weighting structure:

- expand the definition of the tasks included in the Trial Preparation event;<sup>1</sup>
- combine the Motion Hearing and Other Non-Evidentiary Hearing events into a single event category; and
- apply only the single highest adjustment to cases that qualify for more than one case adjustment.<sup>2</sup>

### Modifications specific to the civil case-weighting structure:

- partition the Conference event into separate Settlement Conference and Other Conference events;
- partition the Order on Any Other Enumerated Motion event into separate Order on a Dispositive Motion and Order on Any Other Enumerated Motion events;<sup>3</sup>

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1. Circuit representatives set the parameters for the expanded Trial Preparation event at the National Consensus Meeting. Final national time estimates for this event encompass the following activity: preparation for voir dire, review of trial briefs, final review and orientation, off-the-record conferences with attorneys, research on the law and on evidentiary issues before and during trial, review of the transcript from any suppression motion hearing, preparation of any special verdict forms, review of trial notes, preparation of jury instructions, and responses to juror questions.

2. We recommended that judges approve this recommendation, but we ultimately applied all relevant case adjustments when calculating the case weights because of data analysis issues.

3. Circuit representatives determined the content of the civil event Order on a Dispositive Motion at the National Consensus Meeting. Final national time estimates include time spent writing orders on the following motions: to dismiss case, to dismiss for lack of jurisdiction, for judgment on the pleadings, for temporary restraining order, for preliminary injunction, for permanent injunction, to certify class, and for declaratory judgment. The category additionally included findings of fact and conclusions of law and memorandum opin-

- establish Bankruptcy Appeals and Bankruptcy Withdrawals as separate case types;
- partition the non-prisoner Civil Rights case type into separate case types corresponding to Civil Rights–Employment, Civil Rights–Voting, and Civil Rights–Other;
- account for differing district court practices for docketing “record review” activity in §2254 Habeas Corpus, §2255 Vacate Sentence, Death Penalty Habeas Corpus, Bankruptcy Appeals, Deportation & Immigration, and Social Security cases;<sup>4</sup>
- account for differing district court practices for docketing the final dispositive order in the Death Penalty Habeas Corpus case type;<sup>5</sup>
- incorporate a case adjustment for Multiple Parties (5 or more);
- incorporate a case adjustment for Class Action;<sup>6</sup> and
- do not incorporate a case adjustment for Motions (more than 50).

Modifications specific to the criminal case-weighting structure:

- establish Arraignment Hearing and Plea Hearing as two separate events;
- partition the Order on Any Other Enumerated Motion event into separate Order on a Dispositive Motion and Order on Any Other Enumerated Motion events;<sup>7</sup>

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ion. Orders not removed from the original Order on Any Other Enumerated Motion civil event defined the final Order on Any Other Enumerated Motion event.

4. Judges in circuit-based meetings reported wide variations in their expectations for how final decisions were docketed in these case types. Staff learned from reviewing electronic docket sheets for cases terminated in 44 district courts in calendar year 2002 that significant numbers of summary judgment motions were recorded for these case types, as were orders affirming, reversing, or remanding the appeal; granting or denying the petition, etc. The mechanism developed for accounting for Record Review time was to broaden the *Order on Motion for Summary Judgment* event in §2254 Habeas Corpus, §2255 Vacate Sentence, Death Penalty Habeas Corpus, Bankruptcy Appeals, Deportation & Immigration, and Social Security cases to include the list of motions noted above. The summary judgment estimate was then applied to these orders.

5. Discussion among the participants of the National Consensus Meeting revealed the existence of substantial variation in how courts docket events leading to a final dispositive order in a death penalty habeas corpus petition. Some courts reportedly docket only the final order, whereas other courts docket sometimes numerous orders antecedent to the final order. To account for different practices, participants decided to provide a single “total time” estimate for the average time required to handle all events leading to a final judgment order in this case type, which staff would then allocate *once* to any case with at least one event recorded in any of the following event categories: order on motion for summary judgment, order on substantive or time-intensive motion, or order on any other enumerated motion.

6. Judges determined at the National Consensus Meeting that the adjustment should apply to cases with a class action certification, rather than to the broader category of cases having a class action allegation. Because of data limitations, however, we ultimately applied the adjustment to class action allegations.

7. Circuit representatives determined the content of the criminal event *Order on a Dispositive Motion* at the National Consensus Meeting. Final national time estimates include time spent writing orders on the following motions: to dismiss the case, to dismiss (related to speedy trial), to exclude, in limine, for a judgment of acquittal (Rule 29), to bifurcate, to sever defendant, to disqualify counsel, to withdraw plea, and for new trial. The category additionally included contempt orders, order adopting report and recommendations, findings of fact, and memorandum opinion. Orders not removed from the original *Order on Any Other Enumerated Motion* civil event defined the final *Order on Any Other Enumerated Motion* event.

- partition the Hearing Preparation event into separate Sentencing Hearing Preparation and Other Hearing Preparation events;
- incorporate a case adjustment for interpreters (restricting its application to proceedings events);
- incorporate a case adjustment for multiple defendants (restricting its application to trials and evidentiary hearing events);
- incorporate a case adjustment for prosecution under federal death penalty statutes.