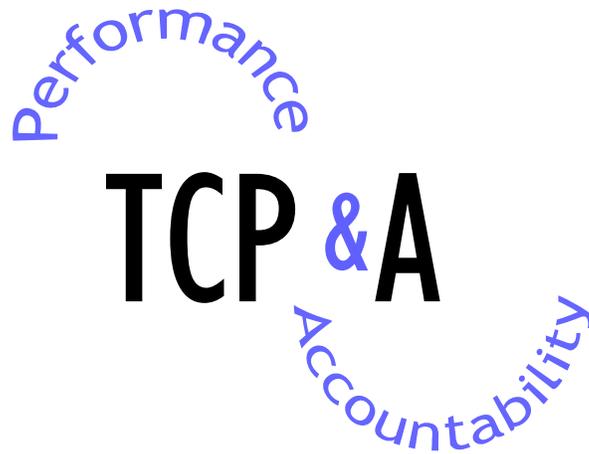


Supreme Court of Florida

Commission on Trial Court Performance and Accountability



Ensuring Access to Justice:

Serving Florida's Self-Represented Litigants

Supplemental Report

December 2008

Respectfully submitted:

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The Honorable Thomas M. Jaworski, County Judge, Alachua County

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The Honorable Peter R. Lopez, Circuit Judge, Eleventh Judicial Circuit

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Introduction

On September 19, 2006, Chief Justice Lewis issued Administrative Order (AO) 06-54, which charged the Commission on Trial Court Performance and Accountability (TCP&A) with various management and monitoring tasks. Specifically, the court mandated that the commission “make recommendations for a court-based service framework that will connect litigants with legal assistance” and “reliably provide the ministerial assistance and procedural information needed to ensure that litigants representing themselves have meaningful access to the civil justice system.”

In April 2008, the TCP&A submitted its self-help report to the court, with the following goal:

It is the intent of the TCP&A to address the Supreme Court’s directive and enhance the discussion of the problems facing pro se litigants. Thus, this report accomplishes three objectives: 1) to describe a comprehensive service framework, which identifies and meets the access needs of self-represented litigants in civil cases; 2) to affirm basic principles and assumptions relating to court-based programs for self-represented litigants; and 3) to establish and clarify the roles, responsibilities, and expectations for the private bar, legal service providers, trial courts, and clerks of court.

Subsequent to the submission of the April 2008 report, the TCP&A found it necessary to draft a supplemental report for the court in light of budgetary developments that have seriously impacted the funding of the judicial branch and, more specifically, due to the advent of the Stable Funding Initiative.

Justice for All Floridians: Stabilizing State Court System Funding

Florida’s State Courts System, in concert with The Florida Bar, friends in the business community, and other interested parties, is embarking on a funding stabilization initiative. The purpose of the initiative is to enable courts at all jurisdiction levels to be sufficiently funded to function effectively without experiencing the loss of critical positions and operating expense monies.

The short term objective is to minimize additional reductions in court budgets and restore the ability to utilize vacant positions. The long term objectives are to determine necessary funding levels for essential court elements at all levels of court and equitably across all jurisdictions, restructure the funding framework for the State Courts System's budget to protect the courts' ability to perform their constitutional functions in times of economic decline, and assess the impact of loss of resources to better convey to policymakers the negative outcomes for Florida's citizens generated by an insufficiently funded court system.

To accomplish the objectives of the initiative, the branch must determine what it needs to operate effectively and the approximate cost of those needs.

Self-Help Model Recommendations

The TCP&A was asked to recommend a court-based self-help service delivery model as a component of the branch's needs assessment. A national review of self-help programs indicated that there are three primary court-based self-help service delivery models: 1) local self-help centers; 2) centralized call-in centers; and 3) a hybrid of local self-help centers and centralized call-in centers. Each model provides a base level of service including those services recommended by the TCP&A in the April 2008 report.

The local self-help center model is characterized by the presence of one or more of the following sub-items: a concierge desk, videos, community outreach programs, initial assessment, one-on-one assistance, and topic specific workshops. The call-in center model is characterized by document co-browsing capability, initial assessment, and one-on-one assistance. A key advantage of this model is that it provides electronic access and assistance, which increases overall access to Florida's court system. All service delivery models have a primary website which is well-designed; regularly updated; provides links to all court websites and referral agencies by county; contains all approved and relevant forms by county; and provides lawyer-related links by county and circuit.

The TCP&A recommends a hybrid model, with funding provided for court-based self-help centers in each circuit in addition to a statewide call-in center located in the Office of State Court Administrator (OSCA). The local self-help centers would be funded through the trial court budget and the call-in center would be funded through the OSCA budget. The recommended hybrid model is specifically patterned after the Hennepin County District Court Center in Minneapolis, Minnesota, which provides self-help services using a hybrid model in both family and civil matters. The Minnesota model operates with a staffing level for their local self-help centers based on a ratio of 1.0 FTE per every 56,355 filings. This same ratio was applied to each circuit's filings in Florida (i.e., county civil and circuit civil, probate, and domestic relations filings). Based on those staffing levels, a floor has been established by circuit size designation. The floor is defined as 1.0 FTE for small circuits, 2.0 FTE for medium circuits, 3.0 FTE for large circuits, and 11.0 FTE for very large circuits. However, there are two exceptions to the floor for the 15th and 17th Circuits as their caseloads justify an additional 2.0 FTE and 4.0 FTE respectively. A floor of 1.0 administrative staff support position per circuit is also utilized.

Clerk and Court Staff Recommendations

In order to further the goal of establishing a model for the funding initiative and to provide a more consistent and comprehensive self-help program that clearly delineates the duties of the clerk for budgetary purposes, the TCP&A recommends moving three duties and responsibilities from the Clerk (intake column) to the Court (case management column), contained in the table on page 15 of the April 2008 report, which is reprinted below with highlighted changes. The dichotomy of self-help responsibility between the clerks of court and the courts proper, as identified by the implementing language of Revision 7, was a factor in the recommendation to shift some responsibilities to court staff. Under the implementing language, clerks of court are required to provide ministerial assistance to self-represented litigants, which is essentially case maintenance, and the courts are to provide case management functions. An amendment to the Roles & Responsibilities list, beginning on page 13 of the April 2008 report, is also recommended by the TCP&A.

Clerk and Court Staff Duties

The following table provides a delineation of duties for *Self-Help* program staff. Clerk of court staff will be responsible for intake and will provide ministerial assistance, while court staff will be responsible for case management and information access.

Clerk – intake	Court – case management
<ul style="list-style-type: none"> • ministerial • accept documents for filing • provide docketed case information • notarize documents 	<ul style="list-style-type: none"> • management • provide general information about court process, practice and procedure • provide information about available pro bono legal services, low cost legal services, legal aid programs, and lawyer referral services • encourage self-represented litigants to obtain legal advice • provide information about available approved forms, without providing advice or recommendation as to any specific course of action • provide approved forms and approved instructions on how to complete the forms • engage in limited oral communications to assist a person in the completion of blanks on approved forms • record information provided by a self-represented litigant on approved forms • provide information about mediation, court programs, required parenting courses, and courses for children of divorcing parents • provide, orally or in writing, definitions of legal terminology from widely accepted legal dictionaries without advising whether or not a particular definition is applicable • provide, orally or in writing, information from local rules or administrative orders • provide general information about local court operations • provide information about community services • facilitate the setting of hearings • attend hearings • draft orders/judgments for judge

	<ul style="list-style-type: none">• post-filing case review• review cases for differential case management
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Roles & Responsibilities

- d) ~~Court clerks have the statutory duty to provide ministerial assistance to pro se litigants by helping litigants complete court forms, including services for litigants with disabilities.~~ The clerks have been funded to provide ministerial assistance for pro se litigants. Therefore, the court-based program should incorporate this aid provided by the clerks. From the litigants' perspective, the pro se services provided by the clerk and that provided by case managers should be seamlessly incorporated into the court-based program. Clerks may choose to fund the ministerial portion of the program, or they can contribute staff directly. Clerk staff assigned to provide ministerial assistance should do so within the court-based framework. This may prove beneficial to those dedicated staff, which would alleviate the pressure to serve self-represented litigants at the intake counter.
- e) Court case managers are responsible for providing approved forms and information about the forms; assisting with recording information from the litigant; as well as facilitating the progress of the case, including the functions of reviewing, evaluating, assigning, monitoring, tracking, coordinating, and scheduling.

Legal Recommendations

To be effective, a program to assist self-represented litigants should provide guidance to personnel implementing the program. As noted in the April 2008 report, such personnel should not be without a list of expectations, as well as a list of prohibitions, to guide them away from the unlicensed practice of law (UPL) prohibited by rule 10-2.1 of the Rules Regulating the Florida Bar and section 454.23, Florida Statutes, which makes UPL a third degree felony. Therefore the rule proposed in the report is still a valid method to provide the chief judge with needed flexibility to allow the unique circumstances within a circuit to be addressed with a local response.

Florida Statutes currently address the issue of pro se assistance as follows:

28.215 Pro se assistance.--The clerk of the circuit court shall provide ministerial assistance to pro se litigants. Assistance shall not include the provision of legal advice.

It may be appropriate to amend section 28.215, Florida Statutes, to provide the clerk with more guidance respecting the role the clerk is expected to play in coordination with the pro se assistance responsibilities being assumed by court administration. Additionally, it would seem appropriate to make pro se assistance either a separate element of the state court system by adding a subsection to section 29.004, Florida Statutes, or describe pro se assistance as a sub-element of the case management element already in that statute.

Conclusion

The TCP&A offers these supplemental recommendations for the court's consideration, given the expedited nature of the funding stabilization initiative. It should also be noted that the proposed service delivery model was presented to the Trial Court Budget Commission at their December 6, 2008 meeting and has been recommended for inclusion into the funding initiative needs assessment.