

**District Court of Appeal Budget Commission
Video Conference Call Meeting Minutes
November 24, 2008**

DCABC Members Present:

Judge Stevan Northcutt, Chair
Judge Edwin Browning Jr., Vice Chair
Judge Robert Gross
Judge William Palmer
Judge David Monaco

Judge Juan Ramirez
Judge George Shahood
Judge Carolyn Fulmer
Judge Darryl Casanueva
Judge David Gersten

Others Present:

Judge William Van Nortwick, Jr.
Marshal Don Brannon
Marshal Jo Suhr
Lisa Goodner

Marshal Glen Rubin
Marshal Ty Berdeaux
Marshal Dottie Munro
OSCA Staff

Absent:

Judge Paul Hawkes

Judge Stevan Northcutt called the District Court of Appeal Budget Commission (DCABC) meeting to order at 10:04 a.m.

Approval of September 3, 2008 Meeting Minutes

A motion to approve the September 3, 2008 minutes was made by Judge Gersten, seconded by Judge Browning. The motion passed unanimously.

Update on Budget Outlook

Charlotte Jerrett briefed the members on the Friday, November 21, 2008, General Revenue Estimating Conference. Ms. Jerrett noted that the Revenue Estimating Conference reduced its estimate of General Revenue collections for Fiscal Year 2008-09 by \$1.4 billion, or 6% below the estimate from August. For Fiscal year 2009-10, expected revenues were reduced by \$2.3 billion, which is 9.5% below the previous estimate. Ms. Jerrett further reported that Alex Sink, Florida's Chief Financial Officer, is urging the Florida Legislature to hold a special legislative session in December or January, to provide for projected current year budget shortages.

The Executive Summary for the November 21, 2008 General Revenue Estimating Conference is posted at <http://edr.state.fl.us/conferences/generalrevenue/grsummary.pdf> and OSCA staff will provide the link to the DCABC members.

Court Funding Stabilization Initiative

Charlotte Jerrett reported that the branch has initiated a plan to seek alternative funding streams so that the courts may not be so negatively affected by future reductions to general revenue funding. Other parts of the initiative include developing the proposed cost of what is needed at every level of the state courts system, and to analyze and propose specific sources to fund the

total need.

Determination of Necessary Funding Levels for Essential Court Elements: Report from the Commission on District Court of Appeal Performance and Accountability

Ms. Jerrett reported that the District Court of Appeal Performance and Accountability Commission (DCAP&A) has done an extremely large amount of work in developing proposed recommendations for the Court Stabilization Funding Initiative in terms of determining the total funding needs for each district court element.

Judge Northcutt noted that there were still some cost issues that would need to be determined for some of the elements. He then asked Judge Van Nortwick, Chair, DCAP&A Commission, to present the report.

Judge Van Nortwick explained that the Chief Justice had tasked the DCAP&A with developing recommended methodologies for determining the total funding needs of each district court element. Neutral and objective methodologies were developed to reflect the need for resources and to ensure that the methodologies could be properly defended to the legislature and the public. The Commission did not have time to complete in-depth analysis such as weighted caseload studies, and relied on historical experience and member expertise. However, in addition to the aforementioned principles, other data sources and methodologies were used including those from other state courts, federal courts, Florida Bar's Law Office Management Assistance Service, Florida Department of Management Services, etc. Judge Van Nortwick presented a brief overview and recommendations for each district court element.

Judicial Assistants

The recommendation is to adopt a Judicial Assistant FTE ratio of 1 Judicial Assistant per judge. It was noted that judicial assistants in the district courts support not only a judge but also the judges' two law clerks and that the funding of one judicial assistant per every two law clerks and one judge is in keeping with the 1:3 staffing ratio used by private law firms (confirmed by The Florida Bar's Law Office Management Assistance Services). This ratio is also consistent with the federal court's ratio of one judicial assistant per judge's suite.

Judge Northcutt asked if there were any questions or comments pertaining to the funding methodology for this element. Charlotte Jerrett asked for clarification in regards to Footnote 1 in the report which reads: "The DCAP&A also recommends that districts be permitted to hire a law clerk into a judicial assistant slot, but only if the district remains within the funding amount allocated to Cost Center 111." She asked if that was meant to apply to funding and/or FTE. Judge Van Nortwick responded that it was meant to apply to both funding and FTE, the result of which could not have a negative budgetary impact.

Law Clerks and Central Staff Attorneys

Judge Van Nortwick pointed out that this was the most controversial element for the DCAP&A Commission in determining a methodology, resulting in both a majority position and a minority position. Judge Salter briefly described the majority position: Represent the need for total attorneys using a ratio of two law clerks per judge and a range of .8 (minimum) to 1.2 (maximum) central staff attorneys per judge, and provide a minimum of 2 staff attorneys in those DCA's where there are no central staff attorneys. Judge Palmer briefly reviewed the minority position: The need for staff attorneys should rely on case filings and consist of a ratio of one attorney per 153 total filings, with a floor of two law clerks per judge plus two additional central

staff attorneys for the courts as a whole. Judge Van Nortwick stated that the DCAP&A Commission recommended the majority position.

Judge Northcutt then asked for questions or comments. Judge Gross asked how the minority position responds to changes in type of case filings. It was noted that because it is data driven, there is no flexibility. It was further noted that there is really no flexibility in either position in those terms. Judge Salter stated that there was too much volatility in choosing case filing numbers as a basis for the methodology and what was needed was a real case weight study for the central staff attorneys' methodology.

Judge Northcutt reflected that using a funding methodology to prepare the annual legislative budget request (LBR) would capture the need for law clerk support even if no new judges were certified. He further noted that year to year, there will still be specific budget requests based on justification.

Judge Palmer noted that the minority position mirrors the allocation of resources more closely prior to the time the budget began being reduced. Judge Northcutt observed that the gap in both positions is the case *mix* and that neither approach captures that. Judge Gersten stated that the 3rd DCA is "excepted out" in either of the proposals and the majority position seems the best fit.

Central Staff Support

Judge Van Nortwick reported the recommendation for the central staff support is a ratio of one support position per every three central staff attorneys, based on the norm in large law firms as well as the practice in the federal system.

Library

Judge Van Nortwick reported that the Librarians in the 3rd and 4th DCA's prepared a report for the Commission including a review of Florida law and the development of a list of materials an appellate library should contain. The recommendation is for 1 FTE per district and \$150,000 per district annual budget for subscriptions (that \$150,000 being the budget at April 2008 rounded up).

Senior Judges Days

The recommendation for senior judge days' methodology was to use a statewide ratio of 3 senior judge days used per judge, which was based on actual usage. Due to the volatility in the need for senior judge days from year to year, the DCAP&A Commission further recommends that senior judges days be pooled at a statewide level as opposed to being allotted out to each court.

Clerk's Office

Judge Van Nortwick recognized the daunting task that the Clerks completed in making recommendations for each type of staff in the Clerk's Office. The need for clerk's office positions were represented using a series of ten ratios and the DCAP&A Commission approved the following:

Cases Filed

- One position (set-up deputy) per every 2,000 cases filed
- One position (docketing deputy) per every 40,000 entries

Case Processing

- One position (motion deputy) per every 7,500 motions
- One position (orders deputy) per every 15,000 orders
- One position (file maintenance deputy) per every 5,000 records maintained
- One position (inquiries deputy) per every 5,000 records maintained

Cases Disposed

- One position (case assignment/calendars deputy) per every 3,000 dispositions
- One position (opinions deputy) per every 5,000 dispositions
- One position (record destruction deputy) per every 10,000 dispositions
- One position (mandates deputy) per every 2,500 mandates

Judicial Administration

In this series of elements, the recommended methodologies were initially developed by the Marshals. The DCAP&A Commission approved the following:

Judicial Administration: One marshal position, two support personnel, and one administrative support position per facility.

Security: Three positions per district with 1.5 extra positions allocated per each additional facility.

Facilities Maintenance and Management: One Facilities Engineer per district and 1 Custodian per 16,000 building square feet. Judge Northcutt noted that there are certain fixed costs associated with facilities, such as leases and utilities that are fixed, even when downward changes occur within revenue streams.

Operating Categories for All Cost Centers – Expense, Contracted Services, OPS, Recurring OCO and Non-recurring OCO

Judge Van Nortwick asked Sharon Buckingham to review the recommendations associated with the Expense, Contracted Services, Other Personal Services (OPS) and Operating Capital Outlay (OCO) operating categories.

Ms. Buckingham reviewed the recommended methodologies for operating categories. She noted that the expense category needs were based on current FY 08-09 allotments added to expense dollars allocated with new positions, i.e., \$10,112 per position (\$6,700 in recurring dollars and \$3,412 non-recurring). For the contracted services, OPS and recurring OCO categories, the highest historical expenditures (over the last three years) with a cost-of-living increase applied were calculated for the methodology. For non-recurring OCO to replace furniture and non-Information System Services (ISS) equipment, an amount equal to 5% of the cost of furniture and equipment previously purchased would be applied.

Ms. Buckingham indicated that non-recurring OCO for security equipment is to be requested on an as-needed basis.

Judge Salter pointed out that in the Operating Budget chart for the 1st DCA (page 38 in the DCAP&A materials), that the total in the Workers Compensation section reflects \$622,436 and that needs to be changed to \$2,003,579. Staff noted the change to be made.

Ms. Buckingham reviewed cost issues which remain to be determined for some of the elements. These include the non-recurring OCO dollars needed for security and cost of furnishings and equipment previously purchased, so that staff can apply 5% for recurring OCO replacement costs. Ms. Buckingham also noted that it may be that the grounds maintenance under the

Facilities element are covered under the contracted services funding category, but asked as to whether the expense category will provide sufficient funds for utilities.

Judge Northcutt asked Ms. Buckingham if there were any instances where an employee's current salary exceeded the maximum in the MAG study results. Ms. Buckingham responded that if that were to occur, the employee's salary would remain at the current level. Judge Northcutt asked for confirmation that existing salaries would go up to the MAG study result or be maintained at the current level, whichever is higher, and Ms. Buckingham responded that was correct.

Judge Northcutt expressed how impressed he was with the job Judge Van Nortwick and the members of the DCAP&A Commission in putting together the report and recommendations.

Judge Palmer suggested that the DCABC take up the Law Clerk/Central Staff Attorney issue first due to the presentation of a majority and minority opinion. Judge Gross made a motion, seconded by Judge Gersten, that the majority decisions for the Law Clerk/Central Staff Attorney methodology be approved. The motion passed with the following votes:

1st DCA – Yes
2nd DCA – Yes
3rd DCA – Yes
4th DCA – Yes
5th DCA – No

Judge Northcutt expressed concern regarding the ratio for security for additional facilities and noted that instead of 1.5 extra positions being allocated per each additional facility, it might be better to just leave the ratio at 3 security FTE per facility since additional facilities may operate differently than the one in the 2nd DCA. Judge Palmer suggested that making that change should be left for another time. Judge Northcutt agreed.

Judge Palmer made a motion that in costing out the methodologies, the reasonable versus optimal level (in those elements where that option exists) be the basis for the cost. Judge Gross seconded the motion, which passed unanimously. It was noted that only the 1st DCA's Workers Comp funding would be adversely affected in this regard, but it was agreed that they would be held harmless at the reasonable level.

Judge Northcutt asked for clarification regarding the expense category methodology. He asked that if the FY 2008-09 allotments were used as a base and that reflects a cut in the previous base, is that the best place in time to begin? It was agreed that, instead, the beginning FY 2007-08 expense allotment should be used as the base. With that change, Judge Gersten made a motion to approve and adopt the report of the Commission on District Court of Appeal Performance & Accountability *Recommendations for Court Funding Stabilization Initiative*. Judge Shahood seconded the motion which passed unanimously.

Judge Northcutt asked if staff could distribute a new chart reflecting the change to the expense category base to beginning FY 07-08 and staff responded in the affirmative.

Sharon Buckingham noted that in order to have all materials ready for the Chief Judges, the additional information needed for costing some of the elements would need to be received from the Marshal's by Monday, December 1. She also noted that the request for the remaining

information would be made via email.

Judge Northcutt emphasized the principles the DCABC adopted for use in formulating budget decisions for the district courts and noted the importance of maintaining the transition with hold harmless principles, so as to have less disruption to workflow.

Impact of Budget Reductions

Rose Patterson, Chief of Court Improvement (OCI) at OSCA, introduced this agenda item by reporting that Lisa Goodner, had charged OCI with studying the impact of the budget cuts and “putting faces behind the cases.” Ms. Patterson stated that all the trial courts had been surveyed to determine the impact of the cuts they had taken. OCI reviewed this data and pulled out information that could affect the district courts of appeal. Ms. Patterson noted that, for example, loss of court reporters affects timeliness of transcript production which in turn affects the DCA’s workflow. However, how cuts have affected the internal operations of the DCA’s is a gap in this information and Ms. Patterson requested the Commission’s assistance in this regard.

Returning to the information gathered from the trial courts, Ms. Patterson noted that an impact for the 1st DCA could come from the 1st and 4th Circuits who are reporting speedy trial problems. For the 2nd DCA, the 6th Circuit is reporting that the loss of staff attorneys is slowing the post-conviction motion process, resulting in more writs being filed. Both the 10th and 12th Circuits are reporting trial delays. The 11th and 16th Circuits are not reporting any issues that might affect the 3rd DCA at this time. The 17th Circuit is experiencing difficulties associated with budget reductions in quality of transcription resulting in poor records that are in turn resulting in extensions affecting the 4th DCA. For the 5th DCA, the 5th Circuit is reporting delays in transcription production and the 9th Circuit has a 6-month backlog in transcriptions. All these reduction impacts tie back to loss of trial court staff.

Ms. Patterson said her office will be sending a survey to discover the impact of cuts on the district courts of appeal and will also send the trial court survey results by DCA. The impact of the trial court reductions and the internal impact of reductions on the DCA’s will be the focus of the survey questions. Judge Northcutt noted that the Attorney General and Public Defender layoffs will have an effect on timeliness issues as well.

Consideration of a New Funding Structure: Identification of a Stable Funding Source

Kris Slayden referred the members to the document, *Article V Funding Identification of a Stable Funding Source*, in the meeting materials, emphasizing that the entire document is a work in progress. Ms. Slayden stated that there were three basic questions that need answering for this issue: 1. what is the optimal cost of the branch? 2. what is the impact of the budget cuts on the branch? and 3. how are we going to fund the branch?

She then reviewed the first page in the document beginning with “How much general revenue (GR) do we need?” She noted the GR Recurring base is \$403.5 million, of which \$245 million is for Judges and JAs. She then reviewed FY 09-10 proposed budget amounts over recurring GR and Trust such as \$15.6 million for the certification placeholder, reasonable adjustment for DCA’s which will need to be readjusted based on decisions made at this meeting by the DCABC, and a reasonable adjustment for the Trial Court. She noted too that Supreme Court and OSCA will need adjustments and that additional technology amount will need to be added.

The next issue is how to structure the budget, e.g., GR versus Trust as a percentage of total budget? A separate budget for judges’ salaries? A contingency fund?

Ms. Slayden then reviewed some of the guiding principles for identifying potential revenue that had been discussed by the Trial Court Budget Commission Executive Committee, e.g., only go after revenue that is related to workload that involves the courts; don’t go after revenue that is already earmarked for a specific program (although the revenue could be increased and that part could be earmarked for the branch); and maximize stability of revenue streams (take into account the volatility of circuit and county civil, probate, family and traffic filings; diversify the revenue streams by spreading over filing fees, service charge, court costs and fines; incorporate growth in the revenue structure with a possible 10% contingency fund).

The next issue presented was potential revenue sources, e.g., take an existing earmarked fee, fine, services charge or cost (going to GR or clerks); increase a current fee, fine, service charge or cost; create a new fee, fine, service charge or cost.

Existing sources/amounts of potential revenue were then presented:

FY 2008-09 Projected Revenue going to the State general revenue fund from fees, fines, court costs and services charges (GR earmarks and “1/3” cut) = \$223.72 million

FY 2008-10 Estimated Clerk Retained Revenue (“2/3” cut) = \$539 million

Ms. Slayden also reviewed the detailed breakdown of the sources and amounts for the \$223.72 million in revenue.

Potential revenue proposals, including estimated amounts, were then reviewed by Ms. Slayden. These include an increase earmark on civil filings; an increase in civil traffic infractions; an increase in reopen fee for family court modifications; new (not counter claims) civil responses fee; new motions fee; new jury demand fee; increase in base fines by \$25 in civil traffic cases; sliding scale on civil, family and probate filing fees; impounding fee increase and redirect to general revenue; and elimination of driving school reduction. Ms. Slayden pointed out that there would probably be a lot of changes to these proposals as work continues on the initiative. She then referred the members to additional information in the materials which detail the methodology for calculating estimated revenue for each of the proposals.

Members were asked for any questions or comments. Judge Gross replied that he was concerned about costs being loaded up at the county and traffic court levels. Judge Gross then made a motion to create a subcommittee to review and set filing fees on motions in the appellate court. Judge Gersten seconded the motion. Judge Northcutt noted that a motion was not needed – that, as chair, he would appoint Judges Gross and Gersten to work on these issues. Judge Gross then suggested the Commission adopt a resolution urging the Supreme Court to appoint a committee of three district court of appeal judges and three trial court judges to make recommendations that would assist in reducing post conviction relief matters. Lisa Goodner noted that there currently exists a post-conviction subcommittee of the Criminal Court Steering Committee. Judge Northcutt stated it is the sense of the DCABC that the recommendations coming out of that subcommittee should be acted upon expeditiously and that he would write a letter to the Supreme Court urging the same.

Update on Other Activities

Legislative Update

Lisa Goodner reported that she did not have any additional information regarding the report of the Revenue Estimating Conference held on Friday, November 21. The House and Senate have not agreed on when, or whether, to hold a special legislative session.

January 16 Symposium on State Court Funding

Ms. Goodner reported that this symposium will be held from 9:00 a.m. until noon on Friday in conjunction with the Florida Bar meeting. The symposium is being sponsored by the Florida Bar and will showcase the State Courts System funding initiative. Chief Justice Quince will present along with an economist from the Washington Economics Group and other statewide legal and business leaders.

Business and Bar Coalitions

Ms. Goodner also reported that meetings are being held weekly with business and Bar teams to strategize on how to minimize additional cuts to the state courts as well as pushing through a stable funding source. She further reported that there is plenty of support from these coalitions to meet these goals.

Closing Remarks

Judge Northcutt thanked Judge Van Nortwick and the entire Commission on District Court of Appeal Performance and Accountability for their invaluable work. He also recognized the work of Sharon Buckingham and other OSCA staff for their work in support of the DCABC.

There being no further business, the meeting adjourned at 11:38 a.m.