

**District Courts of Appeal Budget Commission  
Video Conference Meeting Minutes  
May 26, 2009**

**DCABC Members Present:**

Judge Stevan T. Northcutt, Chair  
Judge Paul Hawkes  
Judge David M. Gersten  
Judge Carole Taylor  
Judge William D. Palmer

Judge Edwin B. Browning, Jr. Vice Chair  
Judge Darryl Casanueva  
Judge Juan Ramirez, Jr.  
Judge Robert M. Gross

**Others Present:**

Judge Richard B. Orfinger  
Judge Martha C. Warner  
Marshal Jo Suhr  
Marshal Glen Rubin  
Lisa Goodner

Judge Vance E. Salter  
Marshal Steven Nevels  
Marshal Dottie Munro  
Marshal Ty Berdeaux  
OSCA Staff

Judge Stevan Northcutt called the District Courts of Appeal Budget Commission (DCABC) meeting to order at 2:01 P.M.

**Welcome and Opening Remarks:**

Judge Northcutt began the meeting by welcoming all Commission members and guests to the meeting.

**Approval of February 25, 2009 Minutes:**

A motion to approve the February 25, 2009 minutes was made by Judge Gersten. The motion was seconded by Judge Browning. The motion passed unanimously.

**Status on Payroll Coverage through June 2009:**

Charlotte Jerrett briefed the Commission on operating issues pertaining to payroll obligations through June 30, 2009. She noted that Senate Bill 12A created revenue streams for the trial courts for deposit into the newly created State Courts Revenue Trust Fund (SCRTF) and effective with the April payroll, 750 Circuit Court positions were transferred from General Revenue funding to the SCRTF. Ms. Jerrett provided a detailed analysis of the anticipated revenue collections within the State Courts Revenue Trust Fund, compared to projected circuit court payroll costs for the remaining fiscal year. This analysis predicts a revenue shortfall of between \$1 to \$1.3 million by the end of the fiscal year. Ms. Jerrett reviewed a proposed action plan for payroll coverage detailing the General Revenue amounts that could be utilized from each budget entity to cover the shortfall incurred through June.

Judge Gersten asked for clarification as to whether District Courts' general revenue funds will be used to cover the Circuit Court projected payroll deficit. Ms. Jerrett responded by confirming

that based on the analysis, DCA general revenue funds will be needed to cover a portion of the Circuit Court payroll deficit.

Judge Hawkes asked if the year-end general revenue transfer will affect the rate and salary appropriations for FY 2009 -2010 for the DCA's. Ms. Jerrett informed the Commission that this transfer is a one-time action that will have no recurring effects on the next fiscal year.

Judge Gersten inquired as to whether the trial courts were aware of the DCA's offer to supplement the Circuit Courts projected payroll deficit. Judge Northcutt noted the positive relationships between the trial and appellate courts in recent years and Ms. Jerrett added that OSCA staff is in weekly contact with the Trial Court Budget Commission (TCBC) Executive Committee and that they are aware of the proposal to utilize DCA general revenue to offset the projected salary shortfall.

### **Legislative Session Wrap:**

#### ***A. Budget Conference Report***

Judge Northcutt reviewed the final results of the 2009 Legislative Session as adopted in the FY 2009-10 Conference Report distributed in the meeting materials. He noted that as a whole, the State Court System (SCS) finished session in a "no cut" situation. Although no positions were lost, The Supreme Court, Office of the State Courts Administrator (OSCA), District Courts of Appeal and Trial Courts will largely transition from general revenue dollars to the State Courts Revenue Trust Fund.

#### ***B. Budget Implementing Bill Directives***

Ms. Jerrett reviewed the analysis of the back-of-the-bill language and implementing bill directives in the FY 2009-10 Conference Report. Ms. Jerrett specifically focused on two important provisions of the bill. One provision allows the SCS to transfer up to \$7 million from the unobligated cash balance in the Mediation and Arbitration Trust Fund to satisfy outstanding obligations through June 30, 2010, in the State Courts Revenue Trust Fund.

As OSCA staff prepare to shift \$220 million budget from General Revenue to the SCRTF, it is important to realize that the balance in the SCRTF on the first of the new fiscal year will essentially be zero. "Revenue", "Trust Fund Authority" and "Cash" are terms that the DCA's (with the exception of the 1<sup>st</sup> DCA) may not be very familiar with, but they are each critical in understanding trust fund management. Because funds won't be available in the SCRTF until revenue is deposited in the fund, each DCA should carefully monitor current resources and, if possible, make purchases for FY 09-10 1<sup>st</sup> quarter supplies now to curtail expenditures until collections are received.

The second states that if at any time during the fiscal year, the Revenue Estimating Conference projects that revenue deposited into the State Courts Revenue Trust Fund will be less than 98% of the amount appropriated from the trust fund, the Chief Justice may request a loan. This implementing language provides the SCS with some protection should revenues fall short.

### ***C. SB 2108 Relating to Clerks of Courts***

Greg Smith reviewed a section by section analysis of CS for CS for SB 2108. Prior to the creation of this legislation, the Clerk of Courts used revenues received from fees and fines to fund their budgets as needed. SB 2108 completely transforms the manner in which the Clerks are funded. The primary purpose of SB 2108 is to establish an appropriation mechanism for the Clerks budgetary process. Mr. Smith provided a detailed analysis of specific sections of the bill.

**Section 3 (28.35)** Places the Clerk of Courts Operations Corporation (CCOC) in the Justice Administration Commission (JAC); makes CCOC employees state workers; places designees of House, Senate and the Chief Justice on the CCOC Executive Council.

**Section 4 (28.36)** Requires each clerk to prepare a budget request in the categories of case processing, financial processing, jury management and information and reporting; budget requests must identify service units within each category; CCOC must propose a unit cost for each service and compare budgets/unit costs among similar counties and require clerks to justify higher unit costs.

**Section 5 (28.37)** Sweeps all non-earmarked fines, fees, service charges, costs to the CCOC Trust Fund in the JAC.

**Section 9 (43.27)** Provides that clerks may not close their offices during customary weekday hours without consent of the Chief Judge. Clerks must consult and get approval of the Chief Judge to set customary weekday hours.

**Section 12 (142.01)** Provides that all funds received for court-related services cannot be put in the county fine and forfeiture fund, but must go directly to the CCOC Trust Fund.

**Section 15 (216.011)** Provides that for all budgeting issues, including fiscal affairs of the state, appropriations acts, legislative budgets, and approved budgets, the CCOC is considered a state agency.

**Section 16 (318.18)** Increases from \$15 to \$30 the surcharge a county may impose on violators to fund court facilities; allows a county to impose a surcharge to pay bonds to fund court facilities.

**Section 18** Requires a study to be completed by the Office of Program Policy and Government Accountability, in consultation with the Chief Financial Officer and Auditor General, of the operations and function of the clerks and the courts regarding operating efficiency; report is due January 15, 2010 provides that Technology Review Workgroup (TRW) shall provide recommendations with the goal of establishing an integrated computer system by February 1, 2010.

Mr. Smith compared SB 2108 (Section 18) and SB 1718 (Section 19). SB 2108 establishes a moratorium until July 1, 2011, on clerks IT spending for new hardware or software. SB 1718 has a similar section that softens the moratorium on hardware and software purchases to those in excess of \$25,000. This section would trump SB 2108 (Section 18), but will not take effect if the

bill does not become law. Therefore, if the study is vetoed in SB 2108, it would also be vetoed in SB 1718.

Judge Gersten asked if SB 2108 is the bill sponsored by Representative Bogdanoff. He also asked as to what extent OSCA staff has been able to review and provide input to legislative staff and how much interpretation will be required if this bill is signed into law.

Judge Northcutt responded by informing the Commission that OSCA staff and trial court judicial leadership had been given a great deal of opportunity to review and to provide input on this bill to legislative staff and that the bill was followed and reviewed throughout the entire legislative process.

State Courts Administrator Lisa Goodner explained in detail OSCA's interaction with the formulation of this bill. Currently SB 2108 has yet to be signed into law. The clerks are working diligently to persuade the governor to veto this bill.

Ms. Goodner highlighted the importance of SB 2108 as a means to bring revenue to the state and to provide legislative oversight and direction of the Clerks' budgets during the appropriation process. Ms. Goodner indicated that the bill has not been presented to the Governor.

#### ***D. SB 1718***

Mr. Smith presented a section by section analysis for the Committee Substitute for SB 1718. This bill was presented to the Governor on May 15<sup>th</sup> and will become law if not acted upon by the 30<sup>th</sup>. Mr. Smith explained that this bill has been expedited because of its correlation to the budget. Mr. Smith provided a detailed review of various sections of this bill.

**Section 4 (28.2401)** Clarifies when filing fees are charged as distinguished from service charges in probate cases. This section will increase filing fee to \$115 that will be deposited into the SCRTF. Mr. Smith pointed out that this fee increase does not become effective until June 1, 2009. For this reason, all revenues that are generated at the beginning of the next fiscal year will not be received until late July.

**Section 5 (28.241)** Effective June 1, 2009; increases all civil circuit filing fees, except family cases, by \$100 and sweeps the \$100 addition to the SCRTF; sweeps \$80 of fees currently kept by the clerk to the SCRTF; provides a sliding scale in all real estate and foreclosure cases; requires the judge to state the value upon an order for final disposition; requires the clerk to compare final value to the stated value (at time of filing) and requires additional payment or issue refund; adds counter-petition to countersuits; adds \$100 to countersuits (non-family); adds graduated scale to countersuits in real estate and foreclosure cases and the additional countersuit fee goes to SCRTF.

Mr. Smith explained that Sections 8 – 14 have been included in the bill in an effort to correct glitches that were identified in Senate Bill 12A.

**Section 8 (57.081)** Exempts indigent parties in civil cases from paying filing fees.

**Section 9 (57.082)** Strikes provisions requiring the clerk to place indigent parties in civil cases on a payment plan to pay the filing fee.

**Section 10 (318.121)** Adds 318.121(19) to the list of authorized surcharges in traffic cases.

**Section 11 (318.15)** Fixes the traffic school 18% glitch.

**Section 12 (318.18)** Fixes the \$12.50 and \$10 fee glitch by adding chapters 320 and 322 to the statute.

**Section 13 (318.18)** Re-enacts subsections (18) and (19) of section 318.18.

**Section 14 (939.185)** Amends SB 412 to add language that limits a real property lien to property within the county where the judgment was entered and to add a lien on personal property if filed with the Department of State.

**Section 15** Sweeps excess dollars in the CCOC Trust Fund at the end of the fiscal year not needed to meet the clerks' budgets.

**Section 16** Requires each clerk to implement an electronic filing process; requests the Supreme Court to set statewide standards for electronic filing by July 1, 2009; the clerks shall begin implementation by October 1, 2009; CCOC shall report on progress by March 1, 2010; provides that the clerks modernization trust fund may be used to implement electronic filing.

Mr. Smith pointed out that SB 2108 (section 5) provides that 10% of all fines, fees, service charges, and costs, shall be remitted to the Public Records Modernization Trust Fund to pay for the e-filing process.

**Section 18** Provides a statewide ceiling for clerks' expenditures in the event that SB 2108 is vetoed. The statewide budget cap for the clerks of court is \$451,380,312 for the 2009-2010 fiscal year.

**Section 19** If SB 2108 becomes law, this section will modify the study as required by the bill to change the moratorium on clerks spending on IT hardware and software.

**Section 20** Gives instruction to statutory revision should both SB 2108 and SB 1718 become law.

**Section 21** Changes the effective date of SB 2108 to July, 2009. Changing the effective date certifies dates for revenue projections.

Mr. Smith asked for any questions regarding the implementation of CS for SB 1718. Judge Gersten asked if Section 5 of the bill will involve any federal issues in regards to domestic filing injunction fees. Mr. Smith responded that this section does not affect those fees.

Judge Gersten requested a review of Section 17 in SB 1718. Ms. Smith reviewed the section for the Commission noting that it provides for a pilot project in the 1<sup>st</sup> DCA for electronic filing in workers compensation appeals and requires a report from the Chief Judge nine months after implementation. Judge Hawkes stated that the Workers Comp Division is interested in adding appeals to their existing electronic system processes and, if successful, such an addition could potentially save \$100,000 annually. Judge Gersten asked Judge Hawkes to send a copy of the required report once it is completed to the other District Courts of Appeal. Judge Hawkes stated that he would and further noted that the final goal of the pilot project would be for it to have applicability for any type of case. Judge Northcutt asked Ms. Goodner and Ms. Jerrett about additional budget authority for the pilot project and Ms. Goodner replied that it has been determined that no additional budget authority was funded.

Ms. Jerrett brought to the attention of the Commission a provision at Section 51 of the General Appropriations Act Implementing Bill (SB 2602). This section specifies that each agency must review the use of cellular telephones, PDA's and other wireless devices by employees and submit a report to the president of the Senate and the Speaker of the House of Representatives by September 1, 2009. This implementing language only applies to OSCA and the appellate courts, as the county funds trial court cellular phone communication devices. Ms. Jerrett informed the Commission that she will be contacting each of the DCA's for information necessary in order to complete this report.

### **State Courts Revenue Trust Fund Implementation Issues:**

Charlotte Jerrett provided the Commission with an overview of the implementation issues facing the State Courts System as a result of the significant fund shift from General Revenue to the State Courts Revenue Trust Fund (SCRTF) in FY 2009-2010. Ms. Jerrett explained that the current funding composition of State Courts System is approximately 90% General Revenue and 10% Trust Funds. The passage of SB 1718 will greatly change the way the State Court System does business. This legislation shifts the funding composition for FY 2009-2010 to 30% General Revenue Funds and 70% Trust Funds. The bill provides dedicated funding streams for all activities within the State Courts System except for judicial salaries, which will still be covered by General Revenue. (Although \$54 million of circuit court judges' salaries are funded in the SCRTF, this is a glitch that will need to be fixed.) Ms. Jerrett pointed out that all of the DCA's, with the exclusion of the 1<sup>st</sup> DCA, are accustomed to being funded strictly with General Revenue dollars.

Ms. Jerrett provided a review of s. 215.32, Florida Statutes, that directs the administration of state trust funds. She noted the provision that the Chief Financial Officer may authorize payment for a trust fund account only if there is sufficient cash and releases at the level of the account. Statute requires the transfer of revenue from the clerks to be completed by the 20<sup>th</sup> of the month following the month of collections, and payroll runs between the 19<sup>th</sup> and 25<sup>th</sup> of each month. For this reason, concerns have been raised regarding the ability to cover expenses in the first months of the new fiscal year. Another implementation issue is the assessment of a General Revenue Surcharge as stipulated in Florida Statutes 215.20 – 215.25. The SCRTF is subject to an 8% surcharge.

Ms. Jerrett noted that additional information will be sent to the Marshals in order to address the various technical issues associated with the SCRTF implementation. Ms. Jerrett then reviewed a list of implementation issues: an accounting structure will be determined for revenue collections and budget allocations; specific FTE must be transferred from the General Revenue Fund to the State Courts Revenue Trust Fund; reporting requirements for cash flow and expenditure monitoring for operational and management reporting will need to be determined; oversight and operational policy will need to be determined by the DCABC; and training requirements need to be determined.

Judge Gerstein asked how and when will the decision be made as to which FTE will be transferred to the State Courts Revenue Trust Fund. Ms. Jerrett responded that all of the position transfers will be completed by OSCA personnel staff. The transfers will be done systematically and will not require additional work on the part of each court. All positions will transfer with the exception of the judges and the transfers must be completed after July 1<sup>st</sup>, but before the July payroll is processed.

Ms. Goodner added that for the first few months of the new fiscal year, there is concern over having adequate cash balances within the SCRTF to pay bills and to cover the monthly payroll expense. Each month \$15 million is needed to meet this requirement alone. It is for this reason that, if possible, supplies should be purchased in the current fiscal year to limit discretionary spending during the 1<sup>st</sup> quarter of FY 2009-2010.

#### **Collecting Filing (and additional ) Fees:**

Tom Hall provided the Commission with an overview of the current appellate court service charges and fees. Chapter 28, Florida Statutes, identifies the provision for fee collections for DCA clerks. Under Florida law, appellate courts are authorized to collect any fees that the Circuit Courts are authorized to collect. The appellate courts have not previously attempted to collect all of the fees allowed by law. OSCA General Counsel, Laura Rush, has completed a legal opinion on the subject. After careful review of s. 28.24 and 28.2401, Florida Statutes, there have been additional fees that could be collected. As of this time, a revenue estimate has not been completed. Mr. Hall explained that Chief Justice Quince has expressed concern that all of the appellate courts collect fees in a uniform fashion. For this reason, Ms. Rush is drafting a memorandum that provides for a uniform implementation of new fee collections.

Judge Northcutt asked if the DCA Clerks were aware of a time forecast for implementation. Mr. Hall responded by informing the Commission that this process will happen very quickly, hopefully by July 1<sup>st</sup>.

Judge Gersten commented on a similar review that he and Judge Gross had spent a great deal of time working on. Mr. Smith noted that a number of revenue streams had been presented to the legislature, but they were not all picked up in the fee legislation. Judge Gersten also asked if there is a fee schedule that the clerks may follow. Mr. Hall responded that there will be one provided before July 1<sup>st</sup>.

Mr. Hall reported that he had asked Ms. Rush if she could look at a sliding scale for appeals in probate cases and to determine whether fees could be collected on single or family fees. Judge Gersten asked if there had been review of revenue generated from photocopy fees and wondered if those could be increased to fund additional positions. Mr. Hall stated that this review as well as a review of filing fees has been requested.

A discussion was then held regarding the annual dues for the Council of Chief Judges. As there was no resolution, Judge Northcutt stated that Ms. Jerrett would send out an inquiry to the DCA's as to which would participate in the payment and the specific cost center from which payment could be made.

**Closing Remarks:**

There being no further business, the meeting adjourned at 3:10 p.m.