

**District Court of Appeal Budget Commission
Meeting Minutes
September 2, 2009**

Members Present

Judge David Monaco, Chair
Judge Carole Taylor, Vice-Chair
Judge Robert Benton, II
Judge Paul Hawkes
Judge Darryl Casanueva

Judge Stevan Northcutt
Judge Juan Ramirez Jr.
Judge Robert Gross
Judge Richard Orfinger

Absent

Judge Linda Wells

Other Present

Justice Ricky Polston
Marshal Stephen Nevels
Marshal Jo Suhr
Marshal Dottie Monroe

Marshal Glen Rubin
Marshal Ty Berdeaux
Lisa Goodner
OSCA Staff

Judge David Monaco called the District Court of Appeal Budget Commission (DCABC) meeting (via video conference) to order at 2:02 p.m.

Welcome and Opening Remarks

Judge Monaco opened the meeting by welcoming all Commission members and guests.

Approval of July 20, 2009 Meeting Minutes

Judge Casanueva moved to approve the July 20th meeting minutes. Judge Northcutt seconded the motion. With no opposition, the minutes were approved unanimously.

FY 2008/09 Year End Wrap Up

A. Salary and Rate Budgets

Dorothy Wilson provided the Commission with a summary of the 2008-09 Salary and Rate Budgets. She explained that as of June 30, 2009, the District Courts of Appeal ended the fiscal year with an overall \$1.2 million surplus in the salary category, and over \$900,000 was used to provide for the trial court salary budget to maximize revenues in the State Courts Revenue Trust Fund. Actual DCA payroll expenditures totaled \$33.6 million resulting in \$91,072 under the salary appropriation.

B. Projected Budget Reversions

Ms. Wilson reviewed the projected DCA budget reversions for FY 2008-09. The projections provided to the Commission were based on the remaining balances as of June 30th as well as

certified forward payments that had been processed as of August 27th. Preliminary projections anticipate that overall, the DCA's will revert approximately \$189,562.

Marshal Ty Berdeaux noted that the Fifth DCA has projected a reversion balance that is lower than the amount projected by staff. Ms. Wilson said that there have been additional payments made since August 27th and there are still outstanding certified forward payments that have not been processed. This summary is only intended to provide the Commission with a snapshot of the available reversion balances as of August 27th.

C. Trust Fund Cash Balances

An overview of the First DCA's Operating Trust Fund's Cash Statement was provided to the Commission. Ms. Wilson explained that this Trust Fund is used to pay expenditures associated with worker compensation cases. As of June 30th, the available balance within this fund was \$138,174.

FY 2009/10 Budget Update

Ms. Wilson provided the Commission with an overview of the Salary and Rate Payroll projections for FY 2009-10. These projections are part of the operating reports distributed to the DCA's for the month of July. Currently, Rate is 746,655 under the GAA Approved Rate.

Ms. Wilson shared with the Commission a letter from Chief Judge Casanueva to Chief Judge Ramirez, thanking him for providing the Second DCA 50,000 in Rate and \$23,832 in Salary and Benefits. She explained that the ability to transfer funds between Districts is flexibility that results from funding having been appropriated to all of DCA's as a whole. The presentation of this letter was intended for informational purpose and requires no action by the Commission.

Judge Monaco asked if the transfer of appropriated funds between Districts should be an issue for consideration by the DCABC in the future. Judge Hawkes explained that in the past, all transfers of funds have been processed at the discretion of each of the Districts. Judge Northcutt added that the Chief Judge and the Marshal of each DCA are responsible for working together to identify what changes are needed within their operational budgets.

Judge Monaco raised the question whether, as a policy decision, transfers should be approved by the Commission or should they continue to be approved at the discretion of individual DCA's. Judge Hawkes added that he believes that the DCABC should continue allowing transfers based on a handshake to prevent any ramifications or consequences that would dissuade DCA's from participating in future transfers. Judge Ramirez followed by adding that he believes transferring funds between Districts should be done on an ad hoc, as needed basis, rather than be part of a formalized procedure. Judge Gross stated that he was in agreement with Judge Hawkes.

State Courts Administrator Lisa Goodner asked the Commission for clarification regarding the DCA Monthly Operating Reports. She explained that all transfers are captured within these

reports and asked if the Commission requests that the letter authorizing the transfer be attached to the operating reports for supporting documentation. Judge Monaco responded by stating that in order to maintain transparency that this would be an acceptable action. Judge Hawkes reiterated his concerns that the Commission must not act in any way that may prevent future transfers of funds between Districts.

Judge Monaco asked staff as what actions were required from the Commission in order for the DCA's to comply with the FY 2009-10 Budget and Pay Administration Memorandum from Chief Justice Quince regarding the development of a Salary Management Plan. Ms. Wilson explained several examples and reviewed the Salary Management Plan for the Trial Courts and OSCA.

Ms. Goodner stated that with the proposal to lift the hiring freeze, a salary management plan should be developed and well documented by each of the DCA's. The models provided to the Commission are not to be viewed as templates but as examples of various salary management tools. Ms. Goodner clarified that each of the DCA's are able to manage their own salary budgets within the established policy, but that the Chief Justice just wanted to have the plans documented.

Judge Hawkes explained that the First DCA has had three vacancies and that over time they will lower the projected deficit within their salary budget. This is currently not established as a salary management plan, but he asked if it could be used as the basis of one. Ms. Goodner responded by stating that managing salary shortfalls by generating lapse from vacant positions can be used as a salary management plan and that it just needs to be documented as such. Judge Monaco asked Ms. Goodner for the anticipated time frame for these plans to be developed and submitted. Ms. Goodner indicated that the deadline was for the Commission to set. Judge Monaco asked the Commission if thirty days would be acceptable and if not, what would be an appropriate period of time. Judge Northcutt responded that the thirty days was enough time to complete this task. Judge Monaco asked if the proper flow of submittal would be for each DCA to submit the plan to the DCABC Chair and then to the Chief Justice. Ms. Goodner informed the Commission that submittal to the Chief Justice would not be necessary but that a copy of the plans should be provided to OSCA for retaining within the official records of the DCABC. Judge Monaco asked if there were any objections to the proposed 30-day deadline. With no objections, Judge Monaco asked the Commission to submit management plans by October 2nd.

Trust Fund Revenues

A. State Courts Revenue Trust Fund – Forecast Update

Kris Slayden provided the Commission with an overview of the projected monthly revenues compared to estimated expenditures and actual cash receipts. She explained that the total FY 2009-10 revenue projections have been reduced to \$279 Million by the Office of Economic and Demographic Research (EDR). Ms. Slayden explained that estimates may vary from actual expenditures as a result of vacancies, varying expenses and contractual obligations, as well as

increases in services charges. For this reason, cash has been accumulated at a higher rate than originally anticipated.

Ms. Slayden presented a comparison of the actual monthly State Court Revenue Trust Fund (SCRTF) collections with the projections as provided by the Article V Revenue Estimating Conference. Actual July revenues were \$33.6 million and August Revenues as of August 27, 2009 were \$40.5 million. Her review also stated that nearly 75% of the revenues collected during the month of July were from real property foreclosures. It is anticipated that the amount collected over the year will be larger in the first part of the year and smaller in the later months due to foreclosure cases slowing down as the economy improves. New revenue streams may need to be identified to replace revenue declines resulting from declines in these filings.

The Commission was presented with documents that compare estimated filing fee collections with actual collections by county for June 2009 as well as July remittances. This data has also been provided to the trial courts. Ms. Slayden reviewed historical data reflecting real property and mortgage foreclosure filings by each county which shows foreclosures dropping off.

Additionally, Ms. Slayden reviewed data from the EDR depicting yearly foreclosures as well as real property filings and revenues. The data shows a drop of \$80 million between FY 2009-10 and FY 2010-11. This gap in revenue collections must be supplemented with other revenue streams.

Judge Casanueva asked Ms. Slayden about the use of positive and negative indicators in the comparison of estimated filing fee collections to actual collections. Ms. Slayden explained that either a positive or negative indicator could have been used in the calculations depending on whether or not the estimated values were subtracted from the actual values, or vice versa, and agreed to reverse them. Judge Ramirez pointed out that during the months of June and July, actual revenue collections for the SCRTF were greater than the monthly projections established by the Revenue Estimating Conference. This surplus will serve as a cushion for the SCRTF when foreclosures begin to go down.

B. Report from July 28, 2009 Article V Revenue Estimating Conference

Members were briefed on the July 28, 2009 meeting of the Article V Revenue Estimating Conference. At the meeting OSCA provided information on the collection of fine revenue for FY 2008-09. The Conference agreed to adjust the fine revenue projections downward by almost \$9 million, from \$47,053,679 to \$38,255,874. No adjustments were made to the projected filing fee revenue for the SCRTF adopted during Session 2009.

FY 2010/11 Legislative Budget Request (LBR)

A. Needs Assessment Update

Jim Ledbetter presented the updated Needs Assessment amounts to the Commission and the resulting recommendations for the FY 2010-11 LBR. He began his presentation by reviewing

the background and methodologies approved last fall used to calculate the Needs Assessment. The results of the assessment were presented to the DCABC as follows:

Judicial Assistants-The Needs Assessment is based on a 1 to 1 ratio with Judges, but holds the current FTE allotment for the First and Second DCA's harmless. Based on these ratios, the needs assessment provides for no new Judicial Assistant positions for the FY 2010-1 LBR.

Judge Orfinger asked why the First and Second DCA's have additional Judicial Assistant positions beyond the funding ratio. Mr. Ledbetter explained that during the formulation of the Needs Assessment, the DCABC agreed that these Districts would be held harmless for additional positions beyond the prescribed methodologies and ratios in this element. Judge Hawkes clarified that in the First DCA, a Judge had vacated a position many years ago and the associated Judicial Assistant position remained. Judge Casanueva explained that the additional Judicial Assistant within the Second DCA is the result of a Judge that passed away years ago and the Judicial Assistant position remained.

Judge Hawkes further clarified that although the Judicial Assistant position in the First DCA is associated with a specific Judge, it serves as central staff position that coordinates work with all of the other Judicial Assistants.

Judge Monaco asked if this position should be changed to a central staff position so that the Needs Assessment could compare apples to apples. Judge Hawkes pointed out that the two position classes receive different benefits packages. He didn't believe it would be right to take anything away from the employees within these positions. Judge Northcutt stated that all of the orders within the Judicial Suites are coordinated through the additional Judicial Assistant in the Second DCA.

Judge Ramirez added that salary and benefits do not have to be changed and that the position should still be classified as a Judicial Assistant. He believes that the position should be moved to the Central Staff category in order to keep the Needs Assessment uniform. Judge Northcutt responded by explaining that if a Judicial Assistant position is absorbed or moved into a Judicial Suite, then the ratio will be returned to the standard. Judge Hawkes agreed.

Judge Orfinger asked for an explanation of how this affects the Central Staff and Attorneys. Judge Northcutt explained that using the agreed upon methodology gives the First and Second DCA each an extra position. Once the extra Judicial Assistant positions have been vacated then the DCA's will revert back to the 1:1 staffing ratio. Judge Gross noted that the purpose of the Needs Assessment is to equalize all of the DCA's. Within the Fourth DCA, Judicial Assistants perform Central Staff work. Using the current funding formula, 3 positions were lost due to budget cuts. With the idea of fairness, positions should be removed once they have been lost. Mr. Ledbetter concluded by confirming that there will not be a budget request for the Judicial Assistants cost center.

Law Clerks and Central Staff Attorneys- The Needs Assessment is based on a ratio of 0.8 Central Staff Attorneys per Judge and 2 Law Clerks per Judge. The proposed request for this cost center is 13 additional positions including Salaries and Benefits, Expenses and HR.

Central Staff Support- The Needs Assessment is based on a 1 to 3 ratio with Central Staff Attorneys. The proposed request for this cost center is 9 additional positions including Salaries and Benefits, Expenses and HR.

Library- The Needs Assessment is based on a threshold of 1 position per District and a proposed subscription operating budget of \$150,000 per DCA. Judge Casanueva stated he would like an additional Central Staff position instead of an additional Library position. Judge Hawkes responded by clarifying that the LBR simply addresses what the budget should be the court then decides how to use the funds accordingly. Judge Monaco supported this statement and added that this is correct in terms of a Legislative Budget Request. The proposed request for this issue is 2 additional positions, including Salaries and Benefits, Expenses and HR as well as \$545,203 for Law Library Subscriptions.

Senior Judge Days- The Needs Assessment is based on 3 Senior Judge days per Judge. Judge Hawkes asked if the Senior Judge Days would be pooled and Jim Ledbetter confirmed that was correct. The proposed request for this issue is 35 Senior Judge Days for \$12,260.

Clerk's Office- The Needs Assessment is based on staffing ratios established for cases filed, cases processed and cases disposed. The proposed request for this issue is 12 positions including Salaries and Benefits, Expense and HR.

Court Administration and Marshal's Office- The Needs Assessment is based on a ratio of 4 Administrative Staff per DCA and 1 Administrative Assistant II position allocated per additional facility. The proposed request for this issue is 2 additional positions as well as Salaries and Benefits, Expenses and HR.

Security- The Needs Assessment is based on a threshold of 3 positions per DCA with 1.5 positions allocated per each additional facility. The proposed request for this issue is 10.5 additional positions including Salaries and Benefits, Expenses and HR.

Facility Maintenance and Management and Facility Lease- The Needs Assessment is based on a threshold of one Maintenance Engineer per DCA and a ratio of one Custodian for every 16,000 square feet of building space. The proposed request for this issue is 8.5 additional positions, including Salaries and Benefits, Expenses, HR and \$525,000 Facility Lease operating budget.

Information Systems Support and Desktop Support- The Needs Assessment is based on a ratio of 3 Systems Administrator positions (including 1 position associated with each District Clerk's Office). The Other Data Processing budget reflects a threshold of \$171,000 that has been consistent for several years. The proposed request is for 7 positions including Salaries and Benefits, Expenses and HR.

Expense- The Needs Assessment included a 5.8% growth rate compounded for 2 years applied to the highest historical allotment over the last 3 years. Mr. Ledbetter provided updated calculations for this category resulting in a proposed request of \$638,364.

Other Personal Services- The Needs Assessment included a 5.8% growth rate compounded for 2 years applied to the highest historical expenditures over the last 4 years. The proposed request for this category is \$388,158.

Operating Capital Outlay- The Needs Assessment included a 5.8% growth rate compounded for 2 years applied to the highest historical expenditures over the last 4 years. A one year growth rate was applied to the current FY 2009-10 Workers Compensation allotment. The Fifth DCA requested \$25,331 to replace office furniture and equipment (5% of inventory) and that request would be covered by the Needs Assessment calculations. The proposed request for this category is \$534,336.

Contracted Services- The Needs Assessment included a 5.8% growth rate compounded for 2 years applied to the highest historical expenditures over the last 4 years. The proposed request for this category is \$900,720.

Mr. Ledbetter concluded his review of the FY 2010-11 Needs Assessment and asked if there were any questions. Dottie Munro asked staff about the inclusion of the Third DCA's LBR requests. Dorothy Wilson responded by explaining the LBR and Capital Improvement Plan issues will be covered in subsequent sections of the presentation.

Judge Monaco asked for a motion to approve the Needs Assessment for the FY 2010-2011 LBR. Judge Hawkes motioned for the approval and Judge Gross seconded the motion. The motion was approved unanimously.

B. LBR Issues

Ms. Wilson began her presentation of the Non-Capital Improvement FY 2010-11 Legislative Budget Requests.

Fourth District Court of Appeal, Furnishings and Communications Expenses for Satellite Office Space- This request is for \$10,000 (\$7,500 non-recurring), for expenses associated with establishing office space within the Broward County Courthouse.

Judge Gross explained to the Commission that four Judges travel to West Palm Beach from Broward County daily. The office space located at the Broward County Courthouse will greatly limit travel time. The recurring costs requested are for phone and internet connections; the non-recurring request is for furniture and equipment.

Judge Monaco noted a similar issue that occurred at the Fifth DCA. Their request was not approved because there were no statutory provisions for a satellite or branch office. Concerns were also raised that a travel allowance would have to be provided for Judges.

Judge Gross clarified that this request is contingent upon free office space within the Broward County Courthouse. There will be no cost allowances for travel. Judge Gross also clarified that the office is not a satellite office and that it is for the convenience of the judges who reside within Broward County.

Judge Hawkes voiced his support for the issue stating that if it keeps the judges safe by limiting their travel and there are no additional costs then it is good idea.

Judge Ramirez asked if this request is approved, will other Districts seek similar requests.

Judge Gross stated that his request is an inexpensive way to meet a need of the Court. Legislative requests are based on need and all that the DCABC can do is to ask for funding for needed issues.

Judge Casanueva motioned to approve the request. Judge Hawkes seconded the motion. The motion was approve unanimously.

Judge Monaco suggested that the entire set of non-Capital Improvement program requests be reviewed and then voted on as a whole.

Ms. Wilson explained that two of the issues within the request were covered by the Needs Assessment. The duplicative issues are the Third DCA's request for an additional Custodial position and the Fifth DCA's request for replacement of office furniture.

Ty Berdeaux expressed his support of the Fifth DCA's request for replacement of office furniture. The Court's policy for replacement of equipment is 5% of the current inventory amount.

Ms. Wilson explained that the Needs Assessment request amount for the Fifth DCA is large enough to cover the furniture replacement issue. Filing that issue would be duplicative. The Fifth DCA withdrew their request for replacement of furniture and equipment issue from the proposed FY 2010-11 LBR.

The Third DCA withdrew their request for an additional Custodial Position from the proposed 2010-11 LBR request.

Dottie Munro asked staff why the request submitted by the Third DCA for office furniture was not included. Ms. Wilson explained that the issue was not received in time for this meeting; the issue will be added to the proposed FY 2010-11 LBR.

Ms. Munro also stated that the Third DCA would like to add an additional issue request for a life safety issue. \$100,000 is requested in non-recurring Contracted Services funding in order to correct life safety issues. In a visit to the Third District Court of Appeal during construction, the State Fire Marshal noted several deficiencies which must be corrected in order to bring the building up to code. Ms. Wilson indicated the issue will be added to the FY 2010-2011 LBR and that she has contacted the Executive Office of the Governor to discuss an emergency appropriation to cover this issue.

Judge Casanueva motioned to approve the proposed requests as well as the additional issues presented by the Third DCA. Judge Taylor Seconded. The motion was approved unanimously.

C. Capital Improvement Program (CIP) Issues

Judge Hawkes provided the Commission with an overview of the First DCA's request for furniture, fixtures and equipment for the new courthouse facility.

Judge Casanueva added that the Second DCA would like to request an additional 10% contingency fee for the following issues:

- HVAC Renovation and Mold Remediation
- Lakeland Building Alteration and Renovation
- Clean and Seal Building Envelope

Judge Monaco requested that the Commission review all of the CIP issues so that they may be voted on as a group.

Judge Casanueva motioned to add an additional 10% contingency fee for the issues requested by the Second DCA and to approve all CIP issues. Judge Ramirez seconded the motion. The motion was approved unanimously.

D. Overall Needs Assessment

Jim Ledbetter provided the Commission with a summary of the overall FY 2010-11 Needs Assessment.

Dorothy Wilson presented additional compensation issues for consideration, and explained that pay issues have been requested by other budget commissions. She also stated that an updated overall Needs Assessment summary will be provided to the commission that reflects additional updates resulting from the meeting.

Judge Taylor motioned to approve the FY 2010-11 Overall Needs Assessment. Judge Casanueva seconded the motion. The motion was approved unanimously.

Other Legislative Issues for the FY 2010-2011 Legislative Session

A. Certification of Need for Additional Judgeships

Kris Slayden provided a review of the analysis of need for additional Appellate Court Judgeships. She presented historical data on the weighted dispositions, from the past two fiscal years, for each of the DCA's. The methodology is based on the presumption that there is a need for an additional appellate court judgeship in any district for which a request is made and where the relative weight of cases disposed on the merits per judge would exceed 280, after application of the proposed additional judges.

For FY 2010-11, the Second DCA was the only DCA to request an additional judgeship.

Judge Ramirez motioned for the approval of the Second DCA's request for an additional judgeship. Judge Northcutt seconded the motion. The motion was approved unanimously.

B. Revenue Proposals

1. Traffic Light Cameras

Kris Slayden provided an overview of the red light camera revenue proposal. OSCA staff prepared information regarding the proposal made by Chief Judge Gross on fine revenues that may result from the passing of the Mark Wandall Traffic Safety Act. The questions relating to this proposal are: 1) Is this a revenue source that can be used to replace lost revenues from foreclosures? and 2) Is there an impact to the State Courts Revenue Trust Fund revenue from reductions in tickets that are hand-written?

The Legislature has identified these fines as a potential source for State revenue. The outstanding legal issue is should the revenue generated by these fines remain locally or should they be distributed statewide. There is a significant amount of revenue that can be generated through the use of red-light cameras. On August 10, 2009, the Palm Beach Post reported that Juno beach, with one speeding camera, collected \$261,000 from the end of March to August 1st on citations issued by the camera.

The Trial Court Budget Commission has directed OSCA Staff to continue to analyze this issue.

Judge Monaco asked staff what they require from the DCABC regarding this issue. Ms. Slayden responded by stating that staff is asking for a recommendation from the Commission to pursue or monitor this issue.

Judge Gross moved to direct OSCA staff to perform a full scale review and analysis of any potential new revenue and revenue loss for any acts of speeding that may result from the Mark Wandall Act or any associated legislation that pertains to this issue. Judge Hawkes seconded the motion. The motion was approved unanimously.

2. Other Legislative Issues for 2010-11 Legislative Session

Kris Slayden provided the Commission with an overview of a list of potential revenue proposals. The Article V Revenue Estimating Conference has projected that the revenue that flows to the

SCRTF will decrease significantly during the next two fiscal years. In order to cover existing obligations and new Legislative Budget Requests for FY 2010-11, alternative revenue sources may need to be identified.

Request General Revenue

The first proposal is to move Judge's salaries that are paid from the SCRTF to General Revenue. This would free Trust Fund obligations to maintain fund balances as revenues decrease.

Issues have risen regarding the constitutionality of the use of fine revenues to fund the State Courts System. The proposal is to replace fine revenues with General Revenue generating assessments. To accomplish this, it has been proposed to swap out a \$5 Civil Traffic Infraction fee for a \$20 assessment fee.

Another proposal is to redirect the \$80 filing fee from General Revenue to the SCRTF. Currently, it is indeterminate as to the amount of revenue that can be raised through this proposal.

Other proposals that were worked on last year included:

- 1) Reopen fee for modifications
- 2) Motion filing fees
- 3) Repeat violence filing fee/court cost
- 4) Probate Sliding Scale
- 5) Filing fee/service charge increase for DCA's
- 6) Filing fee/service charge increase for Supreme Court

Ms. Goodner added that the Trial Court Budget Commission has decided not to seek additional fee increases. She asked the DCABC to delay any decision and wait to see what happens or to reject any proposal that the Commission does not want to pursue.

Judge Monaco asked for the specific direction as to how the Commission wants to proceed regarding this item.

Ms. Goodner responded that at this time, she requests that any items that are seen as inappropriate be identified and removed from the list of potential proposals.

Judge Ramirez noted philosophical problems with motion filing fees and repeat violence filing fees. Judge Hawkes offered suggestions on the inclusion of user fees such as a slight increase in insurance premium tax, document stamps and intangible fee document stamps to fund the Court System. He suggested that the DCABC keep all options open. He believes that the Court System must be funded through a fair distribution of costs to users of the Court.

Judge Monaco stated that he felt that, the DCABC was not in a position to make a decision on the potential revenue proposals. It was the consensus not to take anything off of the table and see what might develop.

C. Recommendations on Statutory Changes

Greg Smith provided the Commission with an overview of statutory changes needed to redirect fees for trial and appellate proceedings, and filing fees from General Revenue to the SCRTF. He also reviewed statutory changes needed to redirect fine revenue from the SCRTF to the General Revenue Fund.

Mr. Smith explained that both issues were approved by the Trial Court Budget Commission.

Judge Ramirez made a motion to move forward with these statutory changes. Judge Northcutt seconded the motion. The motion passed unanimously.

There being no further business, the meeting adjourned at 3:59.