

**District Court of Appeal Budget Commission
Meeting Minutes
August 24, 2010**

Members Present

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

Judge Stevan Northcutt
Judge Juan Ramirez Jr.
Judge Linda Wells
Judge Melanie May
Judge Richard Orfinger

Others Present

Marshal Stephen Nevels
Marshal Glen Rubin
Lisa Goodner

Marshal Jo Suhr
Marshal Ty Berdeaux
OSCA Staff

Absent

Marshal Al Sadowski

Welcome and Opening Remarks

Judge David Monaco called the District Court of Appeal Budget Commission (DCABC) meeting (via video conference) to order at 2:35 p.m.

Judge Monaco opened the meeting by welcoming all Commission members and guests to the meeting. He recognized new Commission member Judge Melanie May.

Approval of the June 21, 2010 Meeting Minutes

Judge Orfinger motioned to approve the June 21, 2010, DCABC meeting minutes. The motion was seconded by Judge May. The motion passed unanimously.

Wrap-Up of FY 2009/10 Budgets

Salary and Rate Budgets

Dorothy Wilson presented the Commission with a review of the final FY 2009-10 salary budgets for each DCA. Ms. Wilson reported that as whole, the District Court of Appeal's budget entity ended FY 2009-10 with unobligated budget authority of \$506,448 within the Salaries and

Benefits category in the State Courts Revenue Trust Fund (SCRTF). She also reported that there were approximately \$72,000 in annual leave payouts throughout the year. No funds remain in General Revenue (GR).

Operating Budgets

Ms. Wilson summarized the final outcome of the FY 2009-10 operating budgets as of June 30, 2010. Her review included both the SCRTF and the 1st DCA's Operating Trust Fund (OTF).

Projected Unobligated Budget / Reversions

Charlotte Jerrett presented a chart that represented the preliminary FY 2009-10 SCRTF unobligated budget by category as of August 16, 2010. Ms. Jerrett noted that the ending unobligated / reversion balances will not be finalized until after September 30, 2010, when all of the certified forward payments have been processed. Preliminary figures indicate that each of the DCA's successfully optimized allocated funds with the majority of unobligated budget within the Salaries and Benefits category.

Trust Fund Cash Statements

Ms. Jerrett presented information pertaining to the cash balances of the OTF and the SCRTF. As of June 30, 2010, the OTF had an ending cash balance of \$25,034. Her presentation included a review of the fine and fee revenues collected within the SCRTF during the last two quarters of FY 2009-10. Ms. Jerrett reported that the SCRTF had an ending cash balance of \$107,025,229.

FY 2010/11 Trust Fund Revenue Projections

Reports from the July 21, 2010, Article V Revenue Estimating Conference

Kris Slayden provided the Commission with a review of the July 21, 2010 Article V Revenue Estimating Conference meeting. Ms. Slayden reported that adjustments were made to the February 8, 2010 estimates to adjust previous revenue projections to reflect more current information. Ms. Slayden stated that the Conference forecasted a significant decrease in projected revenues in the SCRTF for FY 2010-11, by \$43.9 million. Conference principals significantly decreased these revenue projections due to the dramatic falling off of mortgage foreclosure filings in recent months. Research indicates that new foreclosure cases are not being filed as aggressively as they were last year because mortgage companies are focusing on the workload backlog. Conference principals also increased foreclosure revenue projections up for FY 2011-12, by \$58.7 million based on the belief that filings will increase once mortgage companies are able to move through the backlog of workload. Additionally, research indicates

that a significant number of delinquent mortgages have not yet been filed on by the banks/mortgage companies.

The estimated revenues for the SCRTF include the new legislation that passed in 2010 on red light cameras and the non-judicial foreclosure of timeshare properties. Revenues resulting from red light camera legislation are expected to add an additional \$300,000 to the trust fund during FY 2010-11. Furthermore, non-judicial foreclosure of timeshare properties legislation is anticipated to reduce revenues by \$100,000.

Ms. Slayden informed the Commission that for the Clerk of Court Trust Fund, revenue projections for FY 2010-11, were further reduced by \$28.8 million. In FY 2009-10, a portion of the excess cash in SCRTF was used to cover the amount owed by the Clerks of Court to the State for the service charge to the GR fund. Judge Monaco asked if there is an expectation that funds from the SCRTF will be used again to cover this charge. Ms. Slayden responded by stating that it is possible that funds from the SCRTF may be used again in this capacity, assuming excess funds are available and not obligated.

The forecasts for direct receipts to GR (from SB 1790 revenues from session, the \$80 redirect, counterclaims, 20.6% of fines and some other revenue sources) were also adjusted slightly downward from \$195.6 million in FY 2010-11 to \$189.0 million. Also, the amount projected to get in excess from the clerks went down to \$0 from the original estimate of \$11.2 million. This is due to a revenue projection that is lower than the clerks' budgets of \$451 million plus the \$3.6 million foreclosure initiative and the 8% service charge. Ms. Slayden also presented a chart that provided a breakdown of the SCRTF revenue projects by source for FY 2010-11 and FY 2011-12.

State Courts Revenue Trust Fund Update

Ms. Slayden presented the Commission with a comparison of the projected vs. actual revenue collections in the SCRTF during FY 2009-10. Actual revenue collections were \$35.7 million less than the projections provided by the February 8, 2010, Article V Revenue estimating conference. This decrease was due to a drop off in mortgage foreclosure filings during the last five months of FY 2009-10. As of June 30, 2010, the ending cash balance in the SCRTF is \$107,025,229. Ms. Slayden reviewed the estimated cash balance for FY 2009-10 through FY 2011-12. She explained that if revenues do not hold at the current projection levels for FY 2010-11, or if they come below the projection for FY 2011-12, then the SCRTF may not have adequate revenue to fund the State Court System in FY 2011-12. Projections identify an estimated ending cash balance of \$13 million in FY 2011-12. This does not provide a comfortable or adequate cushion or contingency. As the foreclosure filings are projected to fall

off in FY 2012-13 and FY 2013-14, there will be a projected deficit in the SCRTE. Ms. Jerrett noted that this deficit will require additional funding from the GR fund or other sources of revenue.

Judge Monaco stated that the declining estimated cash balance through FY 2011-12 is very disturbing. The Commission must identify sources to supplement declining revenues. Judge Gross asked Ms. Slayden if the \$12.9 projected ending cash balance in FY 2011-12, will result in salary reductions. State Courts Administrator Lisa Goodner responded to the question by explaining that the estimated operating budget for FY 2010-11 is \$360 million. A substantial portion of this estimate is comprised of judicial salaries. She reiterated the importance of identifying supplemental revenue sources. Judge Orfinger asked about the \$6 million decrease in estimated operating budgets between FY 2010-11 and FY 2011-12. Charlotte Jerrett explained that this decrease is a result of the non-recurring \$6 million appropriation from FY 2010-11, used to address mortgage foreclosures. Judge Monaco noted that he will be appointing a committee of three to four persons, to identify supplemental funding sources for the SCRTE. He encouraged members to contact him by email, if they are interested in participating in this committee.

FY 2010/11 Budget Update

Salary Budget Projections (Tentative)

Charlotte Jerrett informed the Commission that OSCA staff had hoped to have these projections completed for review. Currently, the Governor's Office of Policy and Budget (OPB) is working on technical adjustments to the FY 2010-11 base budget. Once these figures are provided, OSCA staff will complete and distribute salary budget projections to all of the Commission members. Judge Monaco asked if not having these projections will result in the Commission postponing decisions on issues from the current meeting's agenda. Ms. Jerrett responded by clarifying that these projections have the greatest impact on individual court operations.

Final Recommendations on Pay Policies for FY 2010/11

Gary Phillips reported on this agenda item and stated that the 2010/11 General Appropriations Act (GAA) allows for merit-based pay increases. These increases are allowed as long as they are funded from within each DCA's own budget and that performance evaluations document an above average performance. Chapter 216.251(3), F.S. prohibits giving a cohort of employees (same class or occupation) across the board pay increases. Providing across the board pay increases is a process that may only be accomplished as part of the General Appropriations Act, as authorized by the Florida Legislature. This language prohibits the granting across the board

increases for Judicial Assistants, or Deputy Clerks excluding specified one, two and five year law clerk incentives as those have been approved by previous legislative action. OSCA staff has identified the potential impact that this legislation will have on the administration of the policies set forth in the Budget and Pay Memorandum.

An amendment to the Budget and Pay Memorandum has been proposed as follows: The Chief Judge may approve merit-based pay adjustments of up to five percent (5%) for employees who have distinguished themselves as high performers to address inequities caused by actions associated with the 2008 Reduction in Force, stringent budget and pay policies, or to make adjustments from hiring or promoting employees with lower salaries due to restrictions that began in 2007. Employees may not be granted increases from multiple categories within this paragraph that total more than a five percent (5%) increase to their pay. Mr. Phillips added that all such actions would have to be funded from available rate and salary dollars within each court.

Mr. Phillips further clarified that this amendment would allow for each court to address issues that have created inequities over previous years by using available resources. Judge Northcutt stated that he is concerned that without current salary projections, each court would be unable to identify the status of their current salary budget. Additionally, if courts differ in their position to grant a merit pay increase, further funding inequities may be created. He expressed his concern that the DCAs do not know yet how much of a deficit has to be managed. Judge Northcutt motioned to not approve this amendment and to table the discussion until salary budget projections have been distributed to the Commission members. The motion died with no second.

Judge Orfinger then motioned to approve the amendment. Judge Ramirez seconded the motion and discussion ensued. Judge Hawkes pointed out that in FY 2009-10, the DCA's as a whole began with a projected salary deficit but ended the year with a surplus. He noted that it makes sense to wait and see the figures from the salary budget projections for FY 2010-11 before a decision is made. Ms. Goodner added that it is important to wait and see what the projected liabilities are FY 2010-11. As the fiscal year moves forward, liabilities will be reduced, and funds will become available to each court. Judge Monaco supported holding off on a decision until the next DCABC meeting when salary projection will be available. Ms. Goodner reiterated that an immediate decision is not necessary at this time and that this issue was brought to the DCABC's attention because the trial courts had approved a similar amendment. With no objection, Judge Monaco tabled this issue until the next meeting of the DCABC.

Policy Considerations-Governance of State Courts Revenue Trust Fund

Charlotte Jerrett explained that currently there are no policies and procedures in place to govern requests for increases to trust fund authority outside of the Legislative Session. Current policy

criterion requires that amendments to approved operating budgets for operations and fixed capital outlay expenditures may only be requested through the Chief Justice and must be approved by the Legislative Budget Commission (LBC). Amendments must be consistent with legislative intent, and may not initiate or commence a new program or fixed capital outlay project. Additionally, the amendment may not provide funding for items which were funded by the legislature in an amount less than requested by the agency in the legislative budget request.

Trust funds may not be increased in excess of the original approved budget except during unforeseen circumstances that are essential to continue the operation of government, and then they may be increased up to \$1 million. Amounts in excess of \$1 million require approval by the LBC. In such cases, amendments may not conflict with any provision of law and may not provide funding for an issue requested in the legislative budget request that was not funded. Additionally, any amendment for an information technology project in excess of \$500,000 must be reviewed by the Technology Review Workgroup and must be approved by the Chief Justice for the judicial branch. Finally, all amendments are subject to the notice, review, and objection procedures set forth in s. 216.177, F.S.

Potential additional State Courts Revenue Trust Fund governance criterion was presented and recommended for adoption as follows: The request for increased budget authority must be submitted in writing to the Chief Justice via the appropriate Budget Commission Chair, with a copy to the State Courts Administrator. The Budget Commission must review the request and make a recommendation to the Chief Justice. The request must be due to an emergency necessitated by a life safety/welfare issue that cannot wait for resolution during the next legislative session. The request could also be due to an emergency necessitated by unavoidable changes in due process services or extraordinary events that cause unforeseen expenditures that cannot wait for resolution during the next legislative session. The requested amount must not be able to be funded from within the requestor's existing budget entity (not individual court or organization), as indicated by written analysis and documentation. Notification of request by the reviewing Budget Commission must be provided to the Chair of the non-reviewing Budget Commission. The basis of this criterion is that all entities and not just the specific budget entity should be made aware of an amendment. The Supreme Court and OSCA must also provide written notice of requests for increased budget authority to the Budget Commission chairs.

Judge Hawkes asked why the Commission would wish to impose additional restrictions to the request process. Ms. Jerrett explained that as resources become limited within the SCRTF, it will be important to have established standards and conditions for increased spending authority. Lisa Goodner added that by establishing evaluation criteria, all requests will receive the same

level of scrutiny. As funds become limited, scrutiny will increase on spending outside of the legislative appropriations process. Judge Northcutt asked if the Trial Court Budget Commission had a Due Process Contingency fund. Ms. Jerrett explained that there is a contingency fund but currently there is no funding for it. Judge Northcutt suggested that an Emergency Building fund be established for the DCAs. Judge Monaco agreed stating that it may be helpful to tweak the governance criterion to address emergency building needs.

Judge Orfinger motioned to adopt the additional SCRTF Governance Criterion. The motion was seconded by Judge Ramirez. The motion passed unanimously.

Request from the Second District Court of Appeal

Judge Monaco explained that Justice Canady has asked that the Second DCA's request for emergency funds be reviewed by the Commission. Ms. Jerrett added that this request has been included within the governance section of the agenda because it is a request for additional authority within the SCRTF. Justice Canady also asked that DCABC review the budgets of the district courts to determine whether collectively the district courts might be able to identify funds that can be made available in the current fiscal year to assist the Second District, without asking the legislature to increase the budget authority in the trust fund. Judge Monaco voiced his concern that it will be difficult to identify unobligated funds so early in the fiscal year. Judge Casanueva further clarified that when submitting this request, he did not realize that the issue would be brought before the Commission immediately. During FY 2009-10, the Second District attempted to utilize unobligated funds to correct the problem, but a budget amendment could not be processed before the end of the fiscal year. The conditions at the courthouse building are severe and the risk of future workers compensation claims is increasing.

Judge Orfinger asked if the Second District could request an amendment at the end of the fiscal year. Since this is a life safety issue, could the issues be immediately resolved with current funds and a budget amendment be requested if funds are needed at the end of the fiscal year? Ms. Jerrett explained that this is not the typical procedure for requesting additional funding. Typically, a request must be approved before funds are expended. Ms. Goodner pointed out that over \$600,000 was projected to be unobligated in the SCRTF from FY 2009-10. Judge Hawkes asked if there was any prohibition to moving salary dollars to other categories. Ms. Goodner explained that salary dollars can be moved to other categories, but the reason that the Second District was unable to use last year's unobligated salary funds was because the transfer could not be processed before June 30, 2010.

Marshal Jo Suhr explained that based on a two-year-old quote, the Second District requires \$42,000 to clean and HEPA vacuum the contaminated air distribution system equipment to

remove existing mold. The Department of Management Services recommends replacing the system, but requests a \$50,000 contractual commitment plus an \$8,000 quality assurance fee. Due to the projected salary deficit, the Second District does not have available funds within its operating budget to address this issue. Furthermore, the project could be completed during the winter months when the weather is more favorable. Judge Hawkes suggested postponing the issue to allow time for the Second District to obtain a new quote and for each of the DCA's to assess their available funds. Judge Monaco, hearing no objections, postponed this issue until the next DCACB meeting.

FY 2011/12 Legislative Budget Request (LBR)

LBR Schedule VIII B-1 Current Year (FY2010-11) 5% Reductions and LBR Schedule VIII B-2 (FY2011/12) 10% Reduction

Dorothy Wilson presented information about the submission of Schedule VIII B-1 and VIII B-2 for the FY 2011-12 Legislative Budget Request. The purpose of the Schedule VIII B-1 is to identify reductions from FY 2010-11 recurring and/or nonrecurring appropriations that could be used to address a potential revenue shortfall for the current fiscal year. Agencies are required to submit a Schedule VIII B-1 that contains reduction issues totaling at least 5 percent of their GR and state trust funds, for consideration in addressing the expected shortfall. Schedule VIII B-2 requires agencies and the branch to identify recurring budget reductions that can be made in FY 2011-12, totaling at least 15 percent of FY 2010-11 recurring funds.

Ms. Wilson pointed out that the Salaries and Benefits cut to reach the FY 2010-11 reduction targets would require the FTE cost to be annualized because half of the Salaries and Benefits appropriation would have already been spent by January 1, 2011. However, any amount reduced in the current fiscal year can be applied to the FY 2011-12 reductions. Ms. Wilson presented a chart that represented both Schedule VIII B-1 and Schedule VIII B-2 target reduction amounts. Within the SCRTF and the Administrative Trust Fund (ATF) for FY 2010-11, an estimated annualized reduction of \$4,058,650 would be required to reach the 5% target reduction as required by Schedule VIII B-1. This amount is equivalent to 59.50 FTE positions. In FY 2011-12 an additional estimated annualized reduction of \$2,016,698 would be required to reach the 15% target reduction as requested by Schedule VIII B-2. This amount is equivalent to an additional 29.75 FTE positions.

Judge Monaco voiced his concerns that the State Courts System could not survive such significant staffing reductions. Ms. Goodner agreed and stated that the numbers are problematic for the entire branch. The only way that these targets can be reached is through reductions in the

salaries and benefits category. These figures, although horrible, are not an exaggeration of the impact such reductions would have on the State Courts System. Judge Gross estimated that the reductions would result in significant delays in appeals processing, but also post conviction decisions. Judge Orfinger noted that if the courts use furloughs as the salary reduction tool, then the users of the court will feel the impact of these reductions.

Judge Monaco asked if these figures should be presented as part of this exercise. As horrible as these estimates are, they rationally show that the Court cannot survive such reductions. Judge Hawkes asked if it is irresponsible to present these reductions. Ms. Goodner said that a narrative explanation could be included that will identify the impact that these reductions will have on the State Courts System. The narrative could also explain that figures presented have only been provided to comply with the instructions of the exercise and that they are not a reduction offer on the part of the courts. Ms. Wilson reiterated that these projections portray a realistic picture of the true impact of the target reduction amounts.

Judge Orfinger motioned to approve Schedule VIII B-1 and VIII B-2 to include lengthy narrative that explains the significant impact that the projected reductions will have on the State Courts System. The motion was seconded by Judge Hawkes. The motion passed unanimously.

Fund Shift: State Courts Revenue Trust Fund to General Revenue

Dorothy Wilson presented a chart representing the fiscal health of the SCRTF in FY 2011-12. She explained that Schedule I of the FY 2011-12 LBR requires that a 5% reserve be maintained within the trust fund. Current estimates for the SCRTF reflect a cash balance of \$12,963,637 at the end of FY 2011-12. In order to maintain a 5% reserve in the trust fund, an additional \$2,672,530 is needed for FY 2011-12 year end. Therefore, the operating budget for the SCRTF would need to be fund-shifted by that amount to the General Revenue (GR) fund. Further, any new issues requested in the FY 2011-12 LBR must be requested from GR. Ms. Wilson asked the commission if any of the appellate court activities in the SCRTF should be precluded from this fund shift.

Judge Hawkes explained that when the First DCA requested the Workers Compensation Division, 20% of the First DCA's activities were tied to Workers Compensation cases. As a result of that, \$1 million was shifted from GR to the OTF. If the same theory is followed, then 20% of the full cost of the First DCA's rent should be moved to the ATF. Ms. Goodner added that this fund shift will need to be filed as an issue in the FY 2011-12 LBR. Judge Monaco, hearing no objection, approved filing an issue in the FY 2011-12 LBR requesting a fund shift of 20% of the First DCA's building rent from the SCRTF to the ATF (prior OTF).

DCA LBR Issue Requests: Review and Approval

Dorothy Wilson presented a comparison of the FY 2011-12 Needs Assessment to the individual priority issues requested by each of the DCA's. Judge Hawkes pointed out that each of the members has had time to review the requests and moved to approve all of the priority issues as filed. Judge Northcutt objected, stating that without current salary projections, decisions regarding personnel requests cannot be made. Judge Monaco clarified that the Third DCA is requesting two additional FTE positions without requesting additional salary appropriations. Judge Northcutt explained that in May 2008, the salaries and benefits category was reduced in the DCA budget entity. The Third DCA requested to postpone part of their reduction until the following fiscal year but the corresponding budget cut was never made. Without salary projections, it is unclear if there are available funds to cover existing salary deficits within the other courts.

Judge Ramirez responded that the Third DCA has only one central staff position for the entire court. The Third DCA has requested that credit be given as recommended by the Performance and Accountability Commission by weighting this central staff position. Approval of this issue or an alternative recommendation has not yet been provided. The request for two additional FTE positions has been filed as a contingency plan in the event that the Supreme Court does not approve this weighting scenario. Judge Monaco pointed out that it is unlikely that new positions will be funded, and that perhaps the salary and benefits intended to fund these positions could be used to meet the needs of the Second DCA's HVAC issues. Judge Ramirez responded by explaining that the Third DCA has complied with all of the requests made by the Commission to shift funds to other courts and meet required budget reductions.

Judge Hawkes suggested that the approval for this request be postponed until after salary projections have been distributed. Judge Northcutt added that the DCA budget entity has unfunded FTE positions that are held in reserve. It does not make sense to request additional FTE positions without current salary projections. Judge Hawkes motioned to approve all of the priority issues as filed with the exception of the Third DCA's request for an additional two FTE positions. This issue will be revisited at the next meeting of the DCABC when salary budgets are available. The motion was seconded by Judge Northcutt.

Judge Monaco asked OSCA staff if there were any implications to postponing the approval of this budget request. Ms. Wilson explained that the issue may be submitted as a supplemental LBR issue. Judge Ramirez asked the Commission to not exclude the Third DCA's request for two additional FTE positions. Judge Orfinger suggested that this issue be approved with the understanding that the Third DCA will not hire these positions without approval from the

DCABC. Judge Hawkes asked if the DCABC could allocate the Third DCA two FTE positions that are currently held in reserve. Ms. Jerrett answered that the Commission could recommend that these positions be moved out of reserve and allocated to the Third DCA.

Judge Northcutt noted that the funds that will be used to fill these two positions were identified for reduction in May 2008. The Third DCA requested to defer these reductions until the following fiscal year. The DCABC was able to meet the target reductions without the Third DCA's additional funds and the cut was never made. This request for these positions would allow the Third to use funds without any increase in workload factors.

Judge Ramirez responded by explaining that the Third DCA is trying to conform with the other district courts by establishing central staff. It is not fair to punish the Third DCA for performing effectively with only one central staff position. Judge Gross asked if the motion made by judge Hawkes included the Capital Improvement Plan (CIP) Request submitted by each of the DCA's. Judge Northcutt stated that these requests are similar to the CIP requests submitted in the 2010-11 LBR. All courts, with the exception of the Third District, voted to approve all of the priority needs and all CIP issues as filed, not including the Third DCA's request for two FTE positions.

Judicial Certification

Judge Monaco informed the Commission there have not been any additional appellate court judgeships requested for FY 2011-12.

With no further business, the meeting was adjourned at 4:43 p.m.