

**District Court of Appeal Budget Commission
Meeting Minutes
September 30, 2010**

Members Present

Judge David Monaco, Chair
Judge Robert Gross, Vice-Chair
Judge Linda Wells
Judge Melanie May

Judge Stevan Northcutt
Judge Juan Ramirez Jr.
Judge Paul Hawkes
Judge Darryl Casanueva

Others Present

Marshal Stephen Nevels
Marshal Al Sadowski
Marshal Ty Berdeaux
OSCA Staff

Marshal Jo Suhr
Marshal Glen Rubin
Lisa Goodner

Absent

Judge Robert Benton, II

Judge Richard Orfinger

Welcome and Opening Remarks

Judge David Monaco called the District Court of Appeal Budget Commission (DCABC) meeting (via video conference) to order at 11:01 a.m.

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

Approval of the August 24, 2010 Meeting Minutes

The August 24, 2010, DCABC meeting minutes were approved without objection.

FY 2011/12 Legislative Budget Request (LBR)

Correspondence from Chief Justice Canady

Judge Monaco reviewed correspondence from Chief Justice Canady, requesting that the DCABC re-examine in whole the FY 2011-12 Legislative Budget Request (LBR) for the issues the DCABC approved on August 24, 2010. He reviewed the purpose and responsibilities of the Commission as established by Supreme Court Administrative Order SC01-87, signed by Chief Justice Wells. Judge Monaco explained that the Commission has always taken the approach that

each DCA has the greatest understanding of its specific needs. Therefore, the Commission has traditionally deferred to the expertise of each district to determine what their needs are. The Supreme Court reminded the Commission of its obligation thoroughly review all funding requests and to counterbalance needs with priorities, in the communication from Chief Justice Canady.

Reconsideration of Approval of DCA Capital Improvement Program Plan Requests

Judge Monaco suggested that the Commission begin by reviewing each DCA's Fixed Capital Outlay requests. He explained that due to the current budget situation, these projects would be the least likely to be approved for funding.

Judge Casanueva stated that the Second District's HVAC renovation and mold remediation request is of critical importance. He explained that the current courthouse facility is in desperate need of mold remediation. Court employees have become sick and further neglecting the issue will result in health safety issues.

Judge Monaco agreed that this issue should remain within the FY 2011-12 LBR. He suggested that the Lakeland building alteration and renovation issue, although necessary, be deferred until the following year. He stated that all of the Capital Improvement Program (CIP) issues should not be abandoned but only delayed until next year's LBR. Dorothy Wilson added that the Capital Improvement Program Plan encompasses five fiscal years and anticipated needs for out-years can still be identified in the FY 11/12 CIP Plan.

Judge Ramirez stated that the Third DCA will defer its request for an emergency generator as well as the reconfiguration of the court building for security systems upgrades. Judge May explained that the Fourth DCA has decided to adjust its only Fixed Capital Outlay request to be funded within the Contracted Services category, with a reduction from the prior request of \$7,000. Judge Monaco stated that the Fifth DCA will defer its request for a courthouse upgrade as well as the request for the installation of hurricane windows.

Reconsideration of Approval of DCA LBR Issue Requests

Judge Monaco asked each of the DCA's to review their operating requests for the FY 2011-12 LBR.

Judge Hawkes began by withdrawing the First DCA's issue for \$128,472. Judge Casanueva stated the Second DCA's request for replacement of obsolete office furniture could be deferred to the next LBR cycle.

Jo Suhr stated that the Second DCA has submitted two issues to address their sick courthouse building. The first issue (as previously explained by Judge Casanueva) was filed as a CIP issue to completely replace the HVAC system. The second is a non-CIP request to clean the existing system if the CIP issue (to replace the HVAC system) is not funded by the legislature. If funding is not provided to replace the system, then at the very least, it must be cleaned. Judge Monaco asked OSCA staff if it is possible to file both of these issues within the same LBR. Ms. Jerrett clarified that both of the issues can be filed, but prioritized differently.

Judge Casanueva deferred the Second DCA's request for increased contracted services but explained the court will need this funding in the near future. Judge Ramirez deferred the Third DCA's request for acquisition of office workstations and installation of remotely operated window blinds. He explained that the request for a replacement telephone system is of critical importance.

Judge May deferred the Fourth DCA's request for electronic filing and records management funding. She explained that the request for HVAC maintenance must be funded due to the system's warranty expiring at the end of the year. She also added that the Fourth DCA's requests for security glazing, carpet and paint restoration and the acquisition of office workstations for the Clerk's Office are issues of critical importance.

Judge Monaco deferred the Fifth DCA's request for foundation hardening. He explained that the project will be completed in-house using the savings realized from energy costs. He requested that the issue for the HVAC repair remain within the LBR. If funded, the HVAC repair is estimated to reduce costs by 20-25%, ultimately paying for itself. The Fifth DCA also deferred its requests for equipment replacement as well for the 2 FTE requested, an additional Law Clerk, and an additional Deputy Clerk position.

Judge Hawkes deferred the First DCA's request for an increase in contracted services for additional security as well as the request for four additional deputy clerk positions that were part of the needs assessment.

Jo Suhr explained that the Second DCA's request for two additional court security officers is critical and essential to the function of the court. However, the Second DCA will defer requesting these two FTE and only request an additional \$43,750 within the Contracted Services category. Judge Casanueva deferred the Second DCA's request for salary funding for a user support analyst and an additional Deputy Clerk III. The request for salary funding for two additional staff attorneys was reduced to funding for one additional staff attorney.

Judge Ramirez deferred the Third DCA's request for one custodial position and reduced the request for two additional law clerk FTEs to one law clerk FTE, which is necessary for the Third District to begin growing a central staff.

Judge May explained that the request for one additional law clerk position for the 4th DCA cannot be deferred. Without this position, central staffing ratios will increase causing a drop in clearance rates. This position is considered critical and will provide relief to the current backlog of post conviction cases.

Judge Ramirez stated that the 2.0 Law Clerk FTE requested by the 3rd DCA was addressed by the Performance and Accountability report pending with the Supreme Court. Because of the way post-conviction cases are handled in the 3rd DCA (there is no central staff so the judges receive these cases directly from the clerk's office), the process is very inefficient. The 1.0 FTE would be a step in the right direction. Judge Ramirez stated that if the FTE was not requested through the LBR, then a transfer of an FTE from another district court would also work.

Judge Northcutt stated that in reviewing the filings per attorney in the DCA's, the 2nd, 3rd, 4th and 5th fall into two groups (he noted that due to the law clerks in the Workers Comp unit in the 1st DCA, he did not include the 1st DCA into a group). The 3rd and 5th DCAs have about 163-164 filings per attorney in fiscal year 2009-2010 while the 2nd and 4th DCAs' ratio was much higher with 180 filings per attorney in the 2nd DCA and 178 filings per attorney in the 4th DCA. If the 2nd and the 4th DCAs each received a law clerk, then the filings per attorney would be reduced to 174 in the 2nd DCA and 172 in the 4th DCA. Judge Northcutt stated that the current imbalance could be remedied through the 3rd DCA transferring excess salary dollars from the previous budget reductions to the 2nd and 4th DCA's.

Judge Northcutt further explained that while understanding and considering the lack of central staff attorneys in the 3rd DCA, court wide the 2nd and 5th are close and if you add in writs, all four courts are close. If writs and post convictions are taken out and the 2 law clerks per judicial suite ratio examined, the appeals per suite law clerks are all close. The 3rd DCA is at 138 appeals per suite law clerk (the 1st is at 167, the 2nd is at 169, the 4th is at 173 and the 5th is at 180). If central staff were added to the 3rd, the appeals per suite law clerk would decrease and an imbalance would be created; therefore, the numbers do not justify adding central staff attorneys. A law clerk for the 2nd and 4th DCA's could be obtained with current funding and then the issue of the 3rd DCA law clerk could be decided.

Judge Ramirez stated that there are large, complex cases in the 3rd DCA as well as class action cases and you can't just look at the filings numbers. He also noted that the elbow clerks don't

work on post-conviction cases – the judges handle these directly. Judge Ramirez noted that the 2008 staffing model for non-central staff attorneys is three attorneys per judicial suite and the 3rd DCA is only asking for one attorney to establish expertise in post-conviction cases. He stated that a proposal without an additional law clerk for the 3rd would result in 100% of the money for the other courts' requested law clerks while returning nothing to the 3rd.

Judge Monaco asked how much money is needed for funding the 2 requested law clerks for the 2nd DCA and Judge Northcutt responded that it was approximately \$174,000. Judge Ramirez stated that for the attorney FTE requested by the 3rd DCA, approximately \$60,000 to \$70,000 in available salary dollars would be used. Judge Monaco asked if the 3rd DCA had any unfilled positions they could use and Judge Ramirez responded no. Charlotte Jerrett noted that there are unfunded positions in reserve which resulted from prior year budget cuts.

Judge Monaco stated that, unlike the Trial Court Budget Commission (TCBC), there is not a similar systematic way to allocate funds to the DCA's. He stated that the district courts are not the trial courts; that the DCA's have courthouses, fewer FTE and that the DCABC cannot be wedged in the TCBC shoe as the prescribed method doesn't fit. He suggested a face-to-face meeting in January to discuss a format that the DCABC could use in allocations that would meet the need of the DCA's, the legislature, and the Supreme Court.

Judge Monaco proposed that the three law clerks requested be funded with existing dollars and asked the other DCA's for input.

Judge Hawkes stated that the DCABC has always agreed that each court has special needs. Allocations should tie back to case numbers. Each court needs to decide what is best for that court and it should be correlated to case numbers. Judge Gross agreed with Judge Northcutt's view of allocating resources based on subjective numbers and that these objective criteria must be established. It was noted that this is what the District Court of Appeal Performance (DCAP&A) and Accountability Commission did, that they looked at criteria, and the DCABC should not be reinventing parameters for allocation of resources.

Judge Northcutt noted that the DCAP&A used figures to establish needed funding and that the DCABC used these figures. He suggested that staff attorneys are needed now in the 2nd and 4th DCA's and, as a compromise, would agree to consider the position needed by the 3rd at the meeting where criteria is established. Judge Ramirez noted that as a practical matter, the 3rd also has a critical need and they have the available funds for a staff attorney.

Judge Monaco asked if there was a motion for moving FTE from the 2nd DCA to the 4th DCA and authorizing the 4th and 2nd DCA to fill the FTE with the lowest level of law clerk with funding from the 3rd and any remaining salary funds to stay in the 3rd.

Lisa Goodner asked for clarification regarding the position needed and the money from the 3rd and noted that the payroll projections hadn't been looked at. It appears that the 4th DCA could fill an attorney position from its own salary dollars without the 3rd's funding, and that the 4th just needs an FTE which could come from reserve. She noted that the salary adjustment numbers have just been made available to us. Judge Hawkes asked how the other DCA's projections looked. Dorothy Wilson reported the following:

The 1st DCA payroll liability is over salary appropriation in the State Courts Revenue Trust Fund (SCRTF) by (\$180,683); when netted against the \$63,344 in appropriation over liability in the Administrative Trust Fund, the liability over appropriation is reduced to closer to (\$120,000). The 2nd DCA payroll liability is over appropriation by (\$192,839). The 3rd DCA has \$271,389 in appropriation over liability and the 4th DCA has \$115,939 in appropriation over liability. The 5th DCA has (\$101,907) in liability over appropriation. The bottom line for the SCRTF is (\$88,061) in liability over appropriation and, with adjustments to date this fiscal year, the bottom line is reduced to (\$26,409). Ms. Goodner noted that the salary budget is in good shape and it would not be hard for the individual courts to make up the deficit.

Judge Monaco clarified what the payroll analysis means for the FTE requests. The 4th DCA can afford the FTE, the 3rd DCA can afford the FTE and the 2nd DCA could get the salary dollars from the 3rd DCA for their requested FTE. Judge Northcutt stated that this action is still not based on need or equitable distribution and that the positions need to be for a Career Attorney.

Judge May asked if the FTEs in reserve are available now for hire. Ms. Wilson responded that the positions were available now, but would require a budget amendment to be moved out of reserve.

Judge Monaco summarized the motion and requested a vote on the following: The 3rd DCA is to receive an FTE from reserve. The 2nd DCA is to receive salary funding from the 3rd DCA for an FTE. The 4th DCA is to receive an FTE from the 2nd DCA. The FTE's are to be funded at the Career Attorney level. A roll call vote was taken and the motion was approved unanimously.

Judge Monaco asked OSCA staff to send out a summary of the revised legislative budget request based on the actions taken during the meeting.

With no further business, the meeting was adjourned at 12:13 p.m.