

District Court of Appeal Budget Commission
Video Conference Call
Meeting Minutes
May 22, 2018



Members Present

Judge Jonathan Gerber, Chair

Judge Clayton Roberts, Vice Chair

Judge Bradford Thomas

Judge Edward LaRose

Judge Stevan Northcutt

Judge Leslie Rothenberg

Judge Barbara Lagoa

Judge Spencer Levine

Judge Jay Cohen

Judge Wendy Berger

Judge Vance Salter

Marshal Kevin Taylor

Marshal Jo Haynes

Marshal Veronica Antonoff

Marshal Charles Crawford

Others Present

Justice Ricky Polston, Judge Stephanie Ray, Eric Maclure, Dorothy Willard and other OSCA staff

Special Note: It is recommended that these minutes be used in conjunction with the meeting materials.

Agenda Item I.: Welcome and Opening Remarks

Judge Jonathan Gerber welcomed members and called the District Court of Appeal Budget Commission (DCABC) meeting to order at 1:00 p.m.

Judge Gerber inquired if there were any edits to the September 5, 2017, meeting minutes. With no objections, Judge Gerber noted the minutes unanimously approved.

Agenda Item II.: Fiscal Year 2017-18 Salary Budget

A. Salary Budget

Dorothy Willard presented the Salary Budget as of April 30, 2018, stating the adjusted liability under salary appropriation at full employment was \$681,666. Ms. Willard noted OSCA staff is currently gathering information to prepare FY 18-19 start-up salary budgets to provide to the Salary Committee for review in early June, and for presentation to the commission at the next DCABC meeting scheduled for June 18, 2018.

B. Positions Vacant Over 180 Days

Dorothy Willard presented the Positions Vacant over 180 Days as of April 30, 2018, and noted there are 9.5 FTE that are new to the report. Ms. Willard stated that while there is rate associated with these positions, there is no funding currently associated with them. Judge Gerber noted this will be a discussion item via Agenda Item III.B.4.

C. Operating Budgets

Dorothy Willard presented the FY 2017-18 Operating Budgets as of April 30, 2018, and reported the deadline date for Budget Amendments is May 31, 2018, and the deadline date for Budget Transfers is June 26, 2018.

D. Trust Fund Cash Statement Overview

Dorothy Willard presented the State Courts Revenue Trust Fund (SCRTF) Cash Analysis as of April 30, 2018 and reminded the commission this trust fund impacts all budget entities in the branch due to FTE the Salary dollars support. Ms. Willard then reported there is an approximate carry forward into FY 18-19 of \$14.3 million and a projected ending balance at June 30, 2019 of approximately \$6.3 million. Ms. Willard noted these funds do not compete with any LBR issues.

Ms. Willard then presented the Administrative Trust Fund (ATF) Cash Analysis and reminded the commission this trust fund only impacts the 1st DCA due to worker compensation cases. Ms. Willard reported the cash balance as of April 30, 2018 was \$601,584.

Agenda Item III.: FY 2019-20 Legislative Budget Request (LBR)

A. LBR Timeline

Dorothy Willard reviewed the LBR timeline for FY 19-20, noting the date of submission to the Legislature will be October 15, 2018. Judge Gerber then asked if there were any courts other than the 2nd DCA that may be planning to request Fixed Capital Outlay (FCO) funding.

Judge Thomas stated the 1st DCA would like to build two additional security doors at the courthouse entrance.

Judge Rothenberg stated there are no plans for the 3rd DCA at this time.

Judge Cohen stated the 5th DCA would like to install hurricane windows.

B. Discussion of LBR Issues and Priorities

1. 2nd DCA New Courthouse Site Acquisition and Design

Judge Gerber reported that he and Judge Roberts prepared draft language for the FY 19-20 LBR submission and provided an overview of the changes from the FY 18-19 LBR submission.

Judge Gerber then reminded the commission that the LBR submission for FY 18-19 of \$8,196,359 was based on pre-construction services and land procurement, and stated FY 19-20 LBR can be written using the same approach as last year or could project construction costs for a very non-conservative request. Judge Gerber and Judge Roberts requested permission from the commission to present this issue to the incoming chief justice to obtain input regarding a reasonable cost and to request the Supreme Court's approval to approach legislators to discuss this issue. Judge Roberts noted helpful direction was received from the legislature for last year's LBR submission.

Judge Gerber then asked Judge LaRose if he would like to add anything to the presentation. Judge LaRose stated the issue was accurately reported and he had nothing to add at this time. Judge Rothenberg asked if the estimated costs would be based on a Tampa location or an open-ended location. Judge Gerber stated that although Tampa is the desired location, it is not specifically mentioned in draft LBR language to utilize discretion. There being no other questions or comments regarding the FY 19-20 LBR draft language, Judge Gerber and Judge Roberts opened the floor to discuss how best to determine the LBR amount.

Judge LaRose stated he feels the cost is preliminary until justices and the legislature provide direction. Judge Gerber agrees, but wanted to give all members the opportunity to offer their thoughts. There being no other comments offered, Judge Gerber stated he will notify the members of any progress and/or new information regarding this issue.

2. Judicial Suite Staffing Complement

Judge Gerber asked Judge Thomas to present this issue to the commission. Judge Thomas began by recommending the DCABC ask the chief justice for approval to provide salary dollars for a three (3) law clerk per suite model, and added that that when Justice Canady was chief justice, Judicial Assistant's pay was reduced from approximately \$41,000 to approximately \$35,000. Judge Thomas added if approval and funding were available for the three law clerk model, individual suites could determine if a three law clerk model or a JA/law clerk hybrid model would be utilized, therefore providing flexibility within the appellate courts.

Judge Thomas added one of his primary goals is to increase the number of written opinions, which would be a direct result of the three law clerk model. Currently, suite staffing is on an

ad-hoc basis. Judge Thomas then proposed requesting the legislature provide funding to support the three law clerk model.

Judge Cohen referenced the federal model and administrative law clerks, and stated three permanent law clerks would be expensive and therefore, consideration should be given to prohibition of more than one or two permanent/career law clerks. Judge Thomas responded positively to Judge Cohen's comments.

Judge Salter added that he researched the federal model, and federal law clerks have locality payments added to their salary. Miami Dade's locality rate is 22.64% while the remainder of the state's locality rate is 15%, which would exclude 48 of 176 law clerks in the 3rd DCA. Judge Salter feels this data should be considered.

Judge Salter, Chair of the Commission on District Court of Appeal Performance and Accountability (DCAP&A), added the DCAP&A would be happy to gather data from various sources and from that data, prepare proposed policies and procedures for DCABC consideration.

Justice Polston then requested to speak, and noted his opposition to the three law clerk model due to funds decreasing across all budget entities statewide. In addition, the legislature could interpret this request as the courts lack of need for Judicial Assistants and possibly eliminate this class within the State Courts System, with no guaranteed increase to FTE within the law clerk class. Justice Polston also noted that when he was an appellate judge at the 1st DCA, any budget cuts that might be realized were to be offset by reducing FTE and not by reducing any specific class title's base rate of pay.

Judge Thomas noted his appreciation for the court's hierarchy and Justice Polston's input, then stated he has been measuring written opinions per judge, per month, and they have been increasing. Judge Thomas also noted the Florida Department of Law Enforcement's most recent crime data shows that in the State of Florida, crime is down 53% and added he feels strongly about writing more opinions.

Judge Gerber then asked OSCA staff about DCABC procedures in conjunction with Judge Salter's offer on behalf of the DCAP&A. Dorothy Willard stated the DCABC Chair would write to the DCAP&A Chair to ask the DCAP&A to consider raising the issue in their end-of-term report to the Supreme Court and requesting that the issue be included in their FY 18-19 charges. The incoming chief justice would then include or not include this charge in the FY 18-19 Administrative Order.

Judge Gerber requested a vote to determine if the DCABC would like to move forward with directing the DCAP&A to review staffing models and offer the DCABC recommendations for consideration to file a possible LBR for FY 19-20. Judge Rothenberg requested specific language to the motion to ensure flexibility and guard against permanent restrictions for law clerk positions, and also requested clarification regarding a set amount per suite, as she feels that approach would limit flexibility.

Judge Thomas responded that in light of Justice Polston's comments, he has some trepidation with moving forward. However, asking the DCAP&A to review staffing models and report back to the DCABC would not commit the court to move forward and therefore, he would like to proceed with this approach.

Judge Rothenberg then inquired about DCABC consideration per request as opposed to a specific procedure. Judge Thomas agreed that a case by case request to use rate might be a more feasible model if funding exists, and deferred to OSCA staff. Judge Rothenberg asked if the remaining salary dollars being rolled into the State Court Revenue Trust Fund at the end of FY 17-18 could be utilized. Dorothy Willard responded that the funds projected to be remaining at the end of this fiscal year are a result of lapse being realized, which is a one-time action, and then added when the salary reports are presented at the June 18, 2018, DCABC meeting, we will know more.

Judge Northcutt then added that the current process regarding salary requests takes too long. Judge Cohen added it is difficult to vote on this issue without structure on where we are going and funding among different suites and agrees with Justice Polston.

Judge Gerber then asked Judge Thomas to frame a motion that requests the DCAP&A review this issue for further consideration.

Judge Thomas moved that the DCABC recommend that the Commission on District Court of Appeal Performance and Accountability (DCAP&A) consider research and provide recommendations regarding judicial suite staffing models under which a judge could hire a third law clerk (rather than two law clerks and one judicial assistant) and classify the third position as a law clerk.

A roll call vote was taken; the motion carried by a vote of seven to three.

Judge Gerber asked Judge Thomas to draft a letter for him to distribute to DCABC members for comments. Once finalized, Judge Gerber will send to Judge Salter.

3. Judicial Suite Funding Model

Judge Thomas moved this issue be tabled until the next meeting on June 18, 2018. There being no comments, Judge Gerber noted that Judge Thomas' motion to table was unanimously approved.

4. Funding of Unfunded Deputy Marshal Positions

Judge Gerber reported that there are 9.5 unfunded FTE currently in reserve that must be addressed, as legislative staff has notified OSCA staff that these positions may be swept if they are not utilized. Judge Gerber noted that this issue was not submitted as a LBR for FY 18-19 as the 2nd DCA new courthouse was the priority. Dorothy Willard stated that the Governor's recommendations for FY 18-19 marked these positions for elimination, and Judge Gerber added these positions have been retained in reserve because it is easier to obtain funding to support the positions than obtain new FTE and recommended maintaining every legislative authorized position.

Judge Gerber then asked 2nd DCA commission members for comment due to the branch's number one priority being the 2nd DCA courthouse. Judge LaRose indicated that security continues to be a priority for all courts. Jo Haynes added that the trial courts have projected unfunded FTE and use them for model shifts as needed and asked if the legislature would be amenable to that suggestion. Dorothy Willard responded the trial courts have two types of unfunded FTE, one type that is specifically provided for Administrative Trust Fund (ATF) needs and are not under scrutiny and another type that are at risk; however, Jo's suggestion could be presented to legislative staff, if needed. Jo added a number of deputies of are leaving the courts to assist with school security, and therefore, the contractual security model used in the 2nd DCA may not be sustainable and FTE may be needed.

Judge Gerber moved that an LBR be prepared for a final vote at the June 18, 2018, DCABC meeting in the amount of \$851,951 to fund 9.5 Deputy Marshal positions. Hearing no objections, the motion was unanimously approved.

Agenda Item IV.: Other Business and Adjournment

Other Business

Judge Gerber noted the next DCABC meeting is scheduled for June 18, 2018, via video conference, to begin at 3:30 p.m. (EDT).

Adjournment

With no other business before the commission, the meeting was adjourned.