

District Court of Appeal Budget Commission
Video Conference Call
August 3, 2017



Members Present

Judge Jonathan Gerber, Chair
Judge Wendy Berger
Judge Stevan Northcutt
Judge Clayton Roberts
Judge Bradford Thomas
Judge Edward LaRose
Judge Barbara Lagoa
Judge Jay Cohen

Marshal Veronica Antonoff
Marshal Charles Crawford
Marshal Jo Haynes
Judge Spencer Levine
Judge Leslie Rothenberg
Judge Darryl Casanueva
Marshal Daniel DiGiacomo

Members Absent

Judge Vance Salter

Others Present

P.K. Jameson, Eric Maclure, Blan Teagle, Dorothy Willard, Beatriz Caballero 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 1:32 p.m.

Agenda Item II. Approval of June 20, 2017 Meeting Minutes

Judge Gerber requested the draft minutes be revised to reflect Judge Thomas expressed the 1st DCA would like to pursue an agenda item to address current fiscal year, to make the JA salary uniform, and added that a system wide approach would be the prudent path. Judge Cohen concurred. There being no other edits, Judge Gerber moved to approve the minutes as amended. Judge Cohen seconded, and the motion was unanimously approved.

Agenda Item II. Fiscal Year 2017-18 Salary Budget

A. Amended Start-Up Salary Budget

Dorothy Willard presented the Amended Start-Up Salary Budget, and presented four scenarios for the estimated spending flexibility for FY 2017-18. Ms. Willard reported that supplemental appropriations should be received soon, and projections will be finalized at that time. Judge Gerber confirmed this issue is for information purposes only, and no actions are required until final adjustments can be made.

B. Recommendations from the Salary Budget Committee

I. Purpose and Role

Judge Northcutt provided an overview of the purpose and role of the Salary Budget Committee (SBC), and provided information regarding a SharePoint website for commission members to view salary and rate trends for the appellate courts.

II. FY 2017-18 Salary Budget Management

Judge Northcutt provided an overview of the SBC's approach to FY 2017-18 spending flexibility utilizing FY 2016-17 actual lapse. He noted the SBC initially recommended Scenario 2, noting the 2-year average lapse methodology is the historical method and the conservative approach. However, since the final appropriations are unknown at this time, Judge Northcutt recommended Option 2, to defer any actions until the appropriation is final.

Judge Gerber asked if there were any objections to Option 2. There being none, the motion was unanimously approved.

Judge Gerber added that if final appropriations are known in the next few weeks, this issue should be concluded via email vote prior to the Florida Conference of District Court of Appeal Judges Annual Education Program, which is scheduled to begin September 5, 2017. If this issue is still pending at that time, the commission will address it at the conference.

III. Security

Judge Northcutt reported the DCABC, the Commission on District Court of Appeal Performance & Accountability (DCAP&A), and the Task Force on Appellate Court Safety and Security recommend a minimum of 3.0 security officers per court and 1.50 security officers for additional facilities.

On behalf of the SBC, Judge Northcutt recommended Option 3, to not file an LBR for this issue. Judge Gerber added that he did not receive any responses from the individual courts to his request regarding this issue.

Judge Gerber moved to approve Option 3, and asked if there were any objections. There being none, the motion was unanimously approved.

IV. JA CAD (Circuit Equity Issue)

Judge Northcutt reported the Supreme Court created a pay structure for Judicial Assistant (JA) Competitive Area Differential (CAD), and referred members to a revised report that includes projections for Option 3. Judge Northcutt noted the revised chart was received by the SBC this morning, and stated this option requests the CAD be established as suggested in Option 2 (add the appropriate CAD across the board), but offset the total cost by permitting the chief judge to reduce the base salary of JA's whose base salary currently reflects an amount originally part of a CAD or in lieu of a CAD. This alternate implementation will net out to cost less than \$20,000 in rate for the 2nd DCA, rather than \$56,000.

On behalf of the SBC, Judge Northcutt recommended Option 3 and also proposed immediate implementation prior to other pending salary management decisions being finalized. Dorothy Willard indicated she has not had an opportunity to review the impact of Option 3. Judge Berger noted she had no concerns with the impact of Option 3 on the 5th and recommended an implementation date of October 1, 2017.

Judge Gerber moved to approve Option 3 with the condition that OSCA staff analyze the option to identify any issues, and make the effective date October 1, 2017, if the Court approves. Judge Gerber asked if there were any objections to Option 3 as proposed. There being none, the motion was unanimously approved.

V. Budget and Pay Memo

Judge Northcutt reported that the SBC has reviewed the OSCA Proposed FY 2017-18 DCA Budget and Pay Memorandum. He identified sections of the proposed memo that do not include DCABC recommendations, and identified other sections that alter DCABC recommendations. Judge Northcutt noted that these exclusions and/or alterations were made without notification to the DCABC, and this action contradicts his understanding of Rule 2.235, the charge of the DCABC, and the role of OSCA staff.

Judge Northcutt then recommended working from Appendix C, OSCA Proposed FY 2017-18 DCA Budget and Pay Memo, to make DCABC revisions.

Judge Berger stated she understood proposed changes can be denied by the chief justice, but cannot be rewritten. Judge Northcutt then referenced Rule 2.235 (b)(1) and (2). Judge Gerber asked if there were any comments; there being none, he requested Judge Northcutt provide an overview of the SBC's recommended changes.

A. DCABC FY 2016-17 B&P Memo Recommendation

Judge Northcutt reminded members about the DCABC recommended change to the FY 2106-17 B&P Memo that did not reflect as strike-through in the final FY2016-17 B&P Memo. He noted that change is being reflected in Appendix A of the meeting packet.

B. Final FY 2016-17 DCA Memo Issued by the Chief Justice

Judge Northcutt reported the final FY 2016-17 B&P Memo issued by the chief justice differed markedly from the DCABC's final recommendation, and noted this memorandum was used as the reference document for the Proposed FY 2017-18 B&P Memo. This document is included as Appendix B of the meeting packet.

C. OSCA's Proposed FY 2017-18 B&P Memo

Judge Northcutt reported the Proposed FY 2018-19 B&P Memo presented by OSCA staff at the June 20, 2017, DCABC meeting is included as Appendix C of the meeting packet. Judge Northcutt then began the review of sections the SBC recommends the DCABC address.

1. Section A.1.

Judge Northcutt reported the SBC recommended this language be revised to FY 2015-2016 language, as follows:

The salaries of the clerks of the district courts shall be equalized among themselves, and the salaries of the marshals of the district courts shall be equalized among themselves. No clerk or marshal of a district court will be eligible to receive a special pay increase, or salary rate allocation, unless the District Court of Appeal Budget Commission approves an equal increase for all clerks and/or marshals of the district courts.

Judge Northcutt recognized that it is not clear who sets the pay under the law, but in practice and historically, it has been the appellate courts that determine appellate salaries within the allocation received. He then proposed an alternate recommendation that the SBC did not review, to revise the language to reflect the appellate clerks and marshals salaries be equalized, as follows:

The salaries of the clerks and marshals of the district courts shall be equalized among themselves. No clerk or marshal of a district court will be eligible to receive a special pay increase, or salary rate allocation, unless the District Court of Appeal Budget Commission recommends an equal increase for all clerks and/or marshals of the district courts to the Supreme Court for final approval.

Judge Roberts agreed that the Rules of Judicial Administration dictate this process, but was concerned about this particular issue. He feels a challenge to the Supreme Court's language will set the stage for future requests to be denied, and he does not recommend any changes to this section. Judge Thomas recommended clarification be requested of the Supreme Court in regards to the proposed salaries. Judge Northcutt stated he will not approve any narrative that includes the current proposed amounts and recommends if specific salary amounts are included, they be the same as the Supreme Court.

Judge Lagoa requested clarification of Judge Northcutt's two options for Section A.1., which Judge Gerber provided, as follows:

Option 1: To remove specific salary amounts, reverting back to FY 2015-16 Budget and Pay Memo language.

Option 2: To equalize the salary amounts of the DCA clerks and marshals.

Additional discussion suggested an in-person meeting with Chief Justice Labarga to discuss the specifics of this issue. PK Jameson communicated that Justice Polston is the DCABC liaison for the court and therefore, any requests to meet with the chief justice should be directed through him.

Judge Northcutt indicated he prefers Option 1, then Option 2, and offered the following alternative option: Should Option 1 be approved, Option 2 be revised, as follows:

Option 2(a): To revise salary amounts after the meeting with the chief justice has occurred.

Judge Rothenberg then proposed Option 3, table a decision until Judge Gerber can meet with the chief justice to discuss this issue.

Judge Gerber called for a roll call vote. Option 1 received 5 yay's, and Option 3 received 5 yay's; therefore, both options failed and were withdrawn.

Judge Lagoa then moved Option 2, with amended language that the DCABC's position be discussed with the chief justice in person, not via an OSCA memorandum. Judge

Cohen requested a supplemental amendment to Judge Lagoa's motion to appoint Judge Gerber, as DCABC chair, be the representative to meet with the chief justice.

Judge Gerber asked if there were any objections to Option 2, with the proposed amendments. There being none, the motion was unanimously approved.

Judge Northcutt noted other issues may be requested for consideration of inclusion in the chief justice meeting, and motioned to amend Section A.1.b. to include the clerks and marshals by name. Judge Gerber asked if there were any objections to this motion. There being none, the motion was unanimously approved.

2. Section A.3.a.

Judge Northcutt reported the SBC recommended removal of language that prohibits overtime without advance approval from supervisor being received. This edit will revise this section to FY 2015-16 language, as follows:
A.3.a. It does not appear to be necessary to hold positions vacant in the district courts at this time. However, the District Court of Appeal Budget Commission will monitor the salary budget and impose such restrictions as necessary in order to cover payroll costs through the end of the fiscal year.

PK Jameson noted this language was added to be consistent with the Personnel Regulations, the Fair Labor Standards Act, and Family Medical Leave Act. Ms. Jameson also noted this language is included in the Trial Courts Budget and Pay Memorandum.

Judge Gerber asked if there were any objections to the motion made by the SBC, as presented by Judge Northcutt. There being none, the motion was unanimously approved.

3. Sections A.3.b.i. and A.3.b.iii.

Judge Northcutt reported the SBC recommended removal of the entire section (A.3.b.) as written, and revise to FY 2015-16 language, as follows:
Subject to available salary appropriation, as confirmed by the Chief Justice, a rate distribution may be made during FY 2017/18.

- i. Distribution to the district courts will be based on the total number of eligible FTE in each district (less judges) unless otherwise directed by the DCABC.
- ii. Individual salary increases may not exceed 10 percent.

- iii. No retroactive salary increases are permitted unless approved by the DCABC due to special circumstances. However, retroactivity may not extend back further than two months.
- iv. When it is anticipated that allocations for a district court will not be used by June 30, 2018, the DCABC will determine whether to re-purpose the funds or let the funds revert for statewide budget management.
- v. Outside of any rate distribution, no special pay increases are permitted. The chief judge may request an exception from the DCABC. These requests should be sent to the Chair of the DCABC with copies to the State Courts Administrator.

Judge Northcutt indicated this recommendation is being made, in part, due to a rate distribution that was approved in August 2016, but not realized until December 2016, then moved to strike A.3.b.as written, and revert to FY 2015-16 language.

Judge Gerber asked if there were any objections to the motion. There being none, the motion was unanimously approved.

Judge Berger inquired how so many changes to DCABC recommendations occur without DCABC notification. PK Jameson stated the Budget and Pay Memorandums are at the Chief Justice's discretion. Judge Northcutt noted he believes that contradicts the Rules of Judicial Administration that dictate the DCABC's purpose. Judge Thomas noted the Supreme Court interprets the Rules of Judicial Administration.

4. Section A.9.

Judge Northcutt reported the SBC recommended removal of this section, or at least specify parameters. Judge Levine stated justification should be required if requesting to pay staff over the minimum hourly rate, and Judge Roberts agreed.

Blair Teagle referenced F.S. 110.131(2)(b), which requires the judicial branch determine the OPS employment appropriate rate of pay and ensure all payments are in compliance with the federal Fair Labor Standards Act and state law. Mr. Teagle added adhering to the salary schedule protects the branch against lawsuits.

Judge Roberts offered a substitute motion to amend Section 9.b. to read, as follows:

Districts requesting to pay hourly rates above the minimum must provide written justification to the OSCA Chief of Human Resources.

Judge Gerber asked if there were any objections to the substitute motion. Judge Rothenberg and Judge Lagoa dissented. Judge Gerber noted the substitute motion as approved by a vote of 8-2.

5. Section A.3.a.

Eric Maclure provided an overview of proposed narrative that addresses the timely submission of Personnel Action Requests (PAR), and reported the Trial Court Budget Commission (TCBC) approved guidelines for this issue be included in the FY 2017-18 Trial Court Budget and Pay Memorandum.

Judge Northcutt reported the SBC recommended this language not be incorporated into the DCA Budget and Pay Memo for the following reasons: 1) the trial courts have many more PARS than the appellate courts; 2) two DCA's electronically submit their PARS and this directive would create a negative impact for these courts; and 3) Personnel Regulations indicate PARS be post-audited, not pre-audited.

Judge Gerber asked if there was a motion to approve consideration of the proposed language. Hearing no motion, Judge Gerber noted there will no consideration of the proposed language for inclusion.

Judge Northcutt concluded the SBC recommendations, and requested any action taken today be included in the presentation to the chief justice. Judge Gerber agreed. Judge Roberts offered to create a strategy proposal for the DCABC's consideration.

Agenda Item III. Fiscal Year 2018-19 Legislative Budget Request

A. Fixed Capital Outlay Issues

Judge Gerber provided an update to the 2nd DCA issue for a new courthouse building, noting the narrative should request the Legislature, not the Department of Management Services (DMS), determine the building site. In addition, the request should also include a request for consideration of a satellite location to remain in the Lakeland area.

Judge Larose moved Option 1, to file the issue as requested. Judge Gerber asked if there were any objections to the motion. Hearing none, the motion was unanimously approved.

B. Employee Pay Issue

Beatriz Caballero provided an overview of the Equity, Recruitment, and Retention Pay Issue, noting that the 2014 Legislature only funded a portion of the FY 2014-15 request. Each year thereafter, an LBR has been filed to obtain funding for classes that were not addressed with the FY 2014-15 issue.

Judge Gerber moved to approve Option 1, to file a FY 2018-19 LBR for second-year funding for court staff salary equity, recruitment, and retention issues. There were no objections and the motion was unanimously approved.

C. Certification of New Judgeships

Dorothy Willard reported that pursuant to Rules of Judicial Administration 2.035, each DCA is required to submit requests for new judgeships to the DCABC for review and approval. The requests for new judgeships and the DCABC's approval are then submitted to the Supreme Court for consideration. Ms. Willard stated the OSCA Office of Court Services will send notification for requests of new judgeships the week of August 21st, and responses are due the week of September 4th. If there are any issues received, an email vote will be necessary.

Judge Gerber reported that to date, there are no district courts expected to file a request for this issue.

D. Discussion and Priority Determination of LBR Issues

Dorothy Willard reported Chapter 216, Florida Statutes, requires all state entities to list their LBR issues by order of priority; therefore, for the issues approved at this meeting, determination of priority was needed from the DCABC.

Judge Gerber asked if the Supreme Court will be the final authority on the priority determined by the DCABC. PK Jameson stated the only issue the Supreme Court prioritizes is the Employee Equity, Recruitment, and Retention Pay Issue.

Judge LaRose asked if nonrecurring funds would help when ranking, and Dorothy Willard responded it would not. Judge Gerber asked if both issues could be filed as number one, and Ms. Willard stated that approach is not recommended, as the Legislature will decide a priority ranking on the courts behalf.

After discussion, the members ranked the issues in the following order of priority:

1. 2nd DCA New Courthouse Building
2. Employee Pay Issue

Judge Gerber asked if there were any objections to this ranking. There being none, the priority order presented was unanimously approved.

Agenda Item VI. Other Business and Adjournment

Judge Gerber asked if there were any other business issues to discuss. There were none.

Judge Gerber stated the next meeting will be Tuesday, September 5, 2017, from 1:00 p.m. to 5:00 p.m., at the education program.

With no other business before the commission, the meeting was adjourned at 4:15 p.m.