

**District Court of Appeal Budget Commission
Tampa, FL
June 20, 2013**



Members Present

Judge Richard Orfinger, Chair
Judge Robert Benton, II
Judge Morris Silberman
Judge Stevan Northcutt
Judge Frank Shepherd
Marshal Veronica Antonoff
Marshal Charles Crawford

Judge Linda Wells
Judge Dorian Damoorgian
Judge Vincent Torpy
Judge William Van Nortwick, Jr.
Marshal Stephen Nevels
Marshal Jo Haynes
Marshal Daniel DiGiacomo

Members Absent

Judge Simone Marstiller
Judge Melanie May

Others Present

Judge Joseph Lewis, Jr., Judge Charles Davis, Jr., Judge Richard Suarez, Judge Cory Ciklin, Theresa Westerfield, Dorothy Wilson and other OSCA staff

Welcome and Opening Remarks

Judge Richard Orfinger welcomed members and recognized the new incoming members present, Judge Davis, Judge Lewis, Judge Suarez and Judge Ciklin. Judge Orfinger also welcomed the new 4th DCA Marshal Daniel DiGiacomo. Judge Orfinger called the District Court of Appeal Budget Commission (DCABC) meeting to order at 9:00 a.m.

Approval of 5/14/13 Meeting Minutes

A motion was made by Judge Shepherd to adopt the May 14, 2013 meeting minutes as drafted. Judge Torpy seconded and the motion was passed without objection.

2013 Legislative Session Wrap-up

General Appropriations Act (GAA) – Section 7 Overview

Dorothy Wilson reviewed the General Appropriations Act (GAA) – Section 7, stating that legislature came close to passing the \$400,000 statewide DCA maintenance request and the commission may want to consider continuing to pursue a recurring statewide maintenance issue during the 2014-15 Legislative Budget Request (LBR). Ms. Wilson remarked that the Governor vetoed the 2nd DCA Driveway Expansion project.

Judge Orfinger remarked that it was a very successful session and attributes the success to Senator Negron.

GAA – Section 8 Overview

Theresa Westerfield reviewed the GAA – Section 8 Overview stating the Judges salary 2% restore will be effective July 1, 2013, the competitive pay adjustment will be effective October 1, 2013, there were not changes to employee benefit premiums and Bar Dues are allowable. Ms. Westerfield further explained that funds were provided to allow the Chief Justice to provide discretionary one-time lump sum bonuses of \$600 to eligible employees. The Chief Justice will be developing a plan to implement bonuses in June 2014. To be eligible, employees must be permanent employees who are, at a minimum, meeting their required performance standards. Ms. Westerfield further explained that language was added to allow the Chief Justice to exempt certain employees from Performance Evaluations.

FY 2012-13 Year End Wrap Up

Salary Budgets

Dorothy Wilson presented the Salary Budgets as of May 31, 2013 for the DCA's. The final adjusted liability for all district courts was under the salary appropriation by \$727,786. She pointed out that this amount doesn't take into account the annualized actions or rate distributions that may have occurred since the May 14, 2013 meeting. She reported that the remaining projected Law Clerk Pay Plan liability through June 30, 2013 is \$36,721. Ms. Wilson stated the budget office would work with the Marshals for the Projected Law Clerk Pay Plan liability for next fiscal year.

Rate Distribution

Theresa Westerfield presented an update on the rate distribution approved at the May 14, 2013 meeting. She reported that of the \$75,000 rate approved for distribution, \$74,260 rate has been expended, which equates into \$85,000 when benefits are included.

Operating Budgets

Ms. Wilson reported on the status of the FY 2012-13 operating budgets as of May 31, 2013 for General Revenue (GR) and the Administrative Trust Fund (ATF). Ms. Wilson stated that Contracted Services expenditures are beginning to level off and that the budget office will work with the Marshals to determine if funds need to be permanently realigned to other categories.

Trust Fund Cash Statements

Ms. Wilson reported on the status of the State Courts Revenue Trust Fund (SCRTF) stating a balance of \$5.4 million is anticipated to carry forward into next fiscal year. She stated there would be a fund shift of expenditures from SCRTF to GR in order to maximize GR and preserve cash in the trust funds to meet first quarter expenditures in FY 2013-14. Ms. Wilson reported on the status of the ATF cash statement stating the remaining balance as of May 31, 2013 is close to \$466,325. She noted that any remaining cash in this trust fund would revert, similar to GR.

Resource Allocation Implementation Plan – Work Group Status Reports

Judge Orfinger recognized Judge Silberman to discuss the reports and recommendations of Resource Allocation Implementation. Judge Silberman thanked Judge Marsteller, the members of the workgroups and OSCA staff for all their assistance.

Work Group 1

The charge for Workgroup 1 was presented recommending ways to provide incentive(s) to the courts to implement their own cost-saving and efficiency measures over and above the uniform policies and guidelines. Upon further review and in consultation with Judge Orfinger and Judge Wells, a determination was made to postpone the charge of Work Group 1 until further discussion could be had between the full DCABC to determine if this charge should move forward or be removed.

Judge Orfinger discussed since the DCABC moved to a statewide Salary Management Plan each DCA has been able to hire positions when vacant, continue implementation of the Law Clerk Pay Plan and provide a rate distribution in the current year. Judge Orfinger further stated it could take a year or two to determine the new norm and what type of lapse will be generated from the implementation of the statewide management.

Judge Torpy moved Option Two to remove the charge. Judge Benton seconded and the motion passed without objection.

Work Group 2

Judge Silberman reported on the progress of Workgroup 2, detailing the four charges of the workgroup and its recommendations for each charge.

The first charge was to examine variances among the district courts in the implementation of Personnel Regulations and propose uniform implementation policies, as needed.

The workgroup recommended the management of leave remain with supervising judge, adopt a policy to encourage employees to use earned annual leave on a yearly basis and to add language to the State Courts Personnel Regulation 4.09(3)(B) regarding donation of sick leave.

Theresa Westerfield commented that Personnel is currently in the process of revising leave rules and this language is included with those revisions.

A motion was made by Judge Morris to adopt the workgroups recommendations for. Judge Northcutt seconded and the motion passed without objection.

Charge 2 is deferred to later in the minutes.

Judge Silberman reported on the third charge to ensure full implementation of the current Law Clerk Pay Plan in all district courts. This issue was discussed at the July 20, 2012 DCABC meeting in Orlando, Florida. The costs of all pending actions pursuant to the Law Clerk Pay Plan were included in the salary budget report and the DCABC agreed to recommend to the Chief Justice language for the Fiscal Year 2012-13 Budget and Pay Administration Memorandum: "Appointment rates are to be made in accordance with the policies outlined in the Appellate Law Clerk Pay Plan. Any incentive adjustments and promotional increases made in the discretion of the employing judge and chief judge, shall be made consistent with the Law Clerk Pay Plan." The Chief Justice subsequently provided the recommended language in the memorandum (August 3, 2013) thus ensuring that the Law Clerk Pay Plan could be fully implemented in all courts.

No action was needed at this time.

Judge Silberman reported the fourth charge which was to specify new hire salary ranges for non-exempt employee classifications to address recruitment needs and include as recommendations to the Chief Justice's Annual Budget and Pay Administration Memorandum.

The workgroup reviewed a number of background documents and scenarios for minimum salary ranges, paying particular attention to the Second, Third and Fourth District Courts of Appeal. Discussions were had regarding competitive are differentials and issues regarding recruitment and retention. The following positions appear to present the most difficult issues due to low minimum salaries; Deputy Clerks, Deputy Marshals and Clerical positions.

The workgroup recommends, as an intermediate solution for recruitment problems, that the DCABC recommend to the Chief Justice additional language for the Fiscal Year 2013-14 Budget and Pay Administration Memorandum in Section 5, Other Personnel Actions. The workgroup further recommends that, if the language approved, the DCABC periodically review the documentation submitted to determine whether sufficient data exists to justify recommending permanent competitive are differentials.

Judge Torpy motioned to approve the workgroup recommendation for the additional language to be included in the Fiscal Year 2013-14 Budget and Pay Memo. Judge Silberman seconded and the motion passed without objection.

Judge Shepherd spoke to the cost of living differential across the state remarking that Miami-Dade is the most expensive. Judge Shepherd further remarked that in the past there have been cost of living adjustments. Judge Shepherd requested that the incoming chair appoint a workgroup to explore available options.

Judge Orfinger agreed that the cost of living differential is an issue but stressed there needs to be reliable data and a comparative study to determine the differential and how to advance.

A motion was made by Judge Shepherd to agree in principle that there is a cost of living differential around the state and to appoint a workgroup to determine options on how to proceed. Judge Wells seconded the motion.

Judge Orfinger remarked there is still the question as to what is the most valid data to quantify the inequities. Judge Orfinger offered to determine the inequities, quantify them, and how to proceed as a friendly amendment to Judge Shepherd's first motion. Judge Shepherd accepted and the motion passed without objection.

Judge Silberman reported on charge five to establish overall policies to ensure that district courts have equal opportunity to give raises to employees in all classifications. The workgroup recommends that, beginning in Fiscal Year 2013-14, the DCABC set a rate amount for the district courts to use for salary increases, subject to other planned or unforeseen significant budget events (e.g., several judges exiting DROP in Fiscal year 2014-15) and available salary appropriation. The DCABC would make the appropriate recommendation to the Chief Justice for inclusion in the annual Budget and Pay Memorandum.

Judge Silberman motioned to approve individual salary increases may not exceed 10%. Judge Torpy seconded and the motion passed without objection.

Judge Silberman reported that the workgroup was charged with reviewing and recommending competitive changes to the Law Clerk Pay Plan as identified in charge two. The workgroup examined the current Appellate Court Law Clerk Pay Plan, background research and materials, and a number of options to devise a competitive pay plan for appellate law clerks that addresses the appellate courts' recruitment and retention needs.

The workgroup recommends that the DCABC approve and submit to the Supreme Court a step plan that would keep the current \$2,500 at the end of year one, beginning in year three a 3% increase would be provided in those years where no promotion is received, after eleven years maintain the 3% up to a maximum salary of \$131,130 which is 90% of the Federal maximum.

Judge Orfinger responded to the workgroup recommendation stating that whatever recommendation the DCABC makes would need to be defended to the Supreme Court and believes that there will be some push back concerning the pay increase plan when no other class of employees has one. Judge Orfinger further stated that in short order, there would be Law Clerks earning more than Marshals and Clerk of Court. The proposed recommendation would be a significant impact to the \$40 million DCA budget. Judge Orfinger stressed that the DCABC needs to propose a plan that has some chance of being approved. Judge Orfinger recommended an alternative proposal which uses the current plan as a base and look at the minimums, address an increase of each minimum by five percent, then add a fourth bump to a Career Attorney II at ten years, working with Theresa Westerfield to determine the amount.

Judge Silberman agreed the workgroup proposal was a wish list for where the DCABC wants to be and encouraged a fair consideration of the proposal.

Judge Benton commented that the importance of the Law Clerks has been well articulated and was glad the DCABC is looking at this but felt the DCABC should move to put the DCA minimum and maximums on parity with the Supreme Court.

Judge Orfinger inquired if the three percent in the DCA Step Plan would be in addition or in lieu of any pay increase for State employees. Judge Silberman responded it would be in lieu of a pay increase.

Theresa Westerfield commented that would require some type of proviso language.

Dorothy Wilson explained the issue would end up having to be brought to the legislature each year for funding. Ms. Wilson commented that both alternative proposals would require LBR.

Judge Morris motioned to adopt Judge Orfinger's alternative plan but to keep the workgroup plan as an aspirational goal. Judge Torpy seconded. Judge Shepherd recommended melding the two alternative plans to create a modified alternative plan. This plan would equalize salary minimum and maximum for DCA and Supreme Court Law Clerks and adjust the minimum by five percent. Finally it would add a 4th level Career Attorney II at ten years.

A motion was made by Judge Orfinger to adopt the modified alternative plan. Judge Silberman seconded and the motion passed without objection.

Workgroup 3

Judge Orfinger reported that for workgroup three to revise DCABC operating procedures as needed to accommodate changes from work group recommendations and that no action is required at this time.

Workgroup 4

Greg Youchock reported on the status of workgroup four. The joint workgroup established between the District Court of Appeal Performance and Accountability Commission (DCAP&A) and the DCABC was charged with reviewing model staffing levels and periodic reallocation of full-time equivalent positions as workload demands change between the districts. Within its purview are the clerks of court, marshals, and central staff of the district courts. The results of the workgroup were to maintain the 2008 Needs Assessment methodology for the clerks and marshals. As related to central staff, to the extent practicable, adopt the best practices where the allocation methodology and analysis remaining pending.

Greg Youchock reported that Best Practices are still in process. Workgroup is looking at using existing case weights, time and resource constraints prevent a full study at this time. Mr. Youchock further reported the workgroup would try to schedule a conference call between June 26-28, 2013. At this time there is no action required of the DCABC.

Judge Van Nortwick remarked the workgroup would try to have more information by August but more than likely would be later in the Fall.

Judge Orfinger commented that each district uses their central staff differently, the districts have the ability internally, as the study develops data, each district can determine if they have more or less staff than needed and can shift staff, as vacancies occur, to where most needed.

Judge Damoorgian remarked that maybe through attrition as each district determines unneeded staff, each district could reallocate funds. Judge Damoorgian inquired if the committee is looking into systems available. Judge Van Nortwick replied the intent is to look at electronic filing. During the first year, personnel would be needed to deal with any issues the system would generate, but once the system is up and running, issues level off. Judge Wells commented that the redistribution in workload in regards to electronic filing would help with workload inequities.

FY 2013-14 Allocations

Appropriation Summary

Dorothy Wilson presented budget allocation charts based on the Fiscal year 2013-14 appropriations. Ms. Wilson explained that the Fiscal Year 2013-14 appropriations were derived from taking the Fiscal year 2012-13 appropriations, adding any 2012-13 technical adjustments made by the legislature including permanent budget amendments, nonrecurring funding adjustments and adding any new funding approved for FY 2013-14.

Operating Allocations

Ms. Wilson reviewed the operating budget allotment charts provided for each DCA. Ms. Wilson informed the Marshals that the operating budget allotment charts would be emailed to each individual DCA for completion.

eFacts Implementation Allocations

Alex Krivosheyev reported that the legislature approved a lump sum appropriation for eFacts implementation that needs to be equitably distributed among the district courts. Mr. Krivosheyev presented the following two options to distribute the non-recurring resources:

Option A – Non-recurring resources based on OPS hours with the remainder set in Reserve

Option B – Non-recurring resources based on proportional distribution of each Appellate Court's estimated scanning hours.

Judge Orfinger proposed the DCABC adopt Option B stating there is no need for reserve funds. A motion was made by Judge Torpy to adopt Option B. Judge Benton seconded and the motion passed without objection.

FY 2014-15 Legislative Budget Request (LBR)

LBR Timelines

Dorothy Wilson reviewed the District Courts of Appeal 2014-15 LBR Timeline and Fixed Capital Outlay Timeline. Ms. Wilson emphasized the budget requests deadline to OSCA Office of Budget Services is July 31, 2013 and the Marshals deadline to notify OSCA Budget Services Manager of intent to file issue(s) for FCO is June 26, 2013 by noon.

Discussion of Strategy for LBR Issues

Ms. Wilson noted last year, the DCABC's approved strategy for filing recurring and non-recurring issues for the FY 2013-14 LBR was for each DCA to submit their specific requests for critical needs within the official funding methodologies and to submit requests for any nonrecurring issues. Ms. Wilson offered the following three options for the Commission's consideration to address the DCA's needs for the FY 2014-15 recurring costs:

- Option 1: Use the funding methodologies to address additional needs in all elements or select elements.
- Option 2: Each DCA submits specific requests for their critical needs within the official funding methodologies.
- Option 3: Do not file and LBR.

Judge Torpy offered a motion to approve Option 2. Judge Silberman seconded the motion and it was adopted without objection.

Ms. Wilson presented the following two options to address the non-recurring costs for the FY 2014-15 LBR:

- Option 1: Each DCA submit their requests for non-recurring issues.
- Option 2: Do not file an LBR.

Judge Torpy motioned to approve Option 1. Judge Silberman seconded and the motion passed without objection.

Dorothy Wilson presented for consideration the option to file a recurring maintenance issue to be used to address ongoing maintenance and repairs for all DCA's. Additionally she presented to

the DCABC the option to consider filing an issue for a statewide facility study as filed in the FY 13-14 LBR. Judge Torpy motioned to pursue a recurring statewide facility study and recurring statewide maintenance issue. Judge Silberman seconded and the motion passed without objection.

FY 2013-14 Budget and Pay Policies: Payroll Projection Timeline

Dorothy Wilson reviewed the FY 2013-14 Payroll Projections timeline, stating the FY 2013-14 Payroll Projections will be presented to the DCABC for approval at the August 23, 2013 meeting.

Other Business

Dorothy Wilson reminded the members that the next DCABC meeting was scheduled for August 23, 2013 in Orlando. Judge Silberman recognized Judge Orfinger for his outstanding service to the Commission and presented a plaque in honor of his service.

Adjournment

With no other business before the Commission, the meeting adjourned at 12:00 p.m.