

# Florida Courts Technology Commission Meeting

## FCTC Action Items/ Summary of Motions

May 20, 2010

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### Commission Members Present

Judge Judith L. Kreeger, Chair, 11<sup>th</sup> Circuit

Judge Manuel Menendez, Jr., 13<sup>th</sup> Circuit

Judge Marci Goodman, 1<sup>st</sup> Circuit

Judge Gary M. Farmer, 4<sup>th</sup> DCA

Judge C. Alan Lawson, 5<sup>th</sup> DCA

Mary Cay Blanks, Clerk of Court, 3<sup>rd</sup> DCA

Kent Spuhler, Esq., Executive Director, Florida Legal Services

Paul Regensdorf, Esq., Fort Lauderdale

Murray Silverstein, Esq., St. Petersburg

Ken Nelson, CTO, 6<sup>th</sup> Circuit

### Members Not Present

Judge Charles Williams, 12<sup>th</sup> Circuit

Carol Ortman, Trial Court Administrator, 17<sup>th</sup> Circuit

Ted McFetridge, Trial Court Administrator, 8<sup>th</sup> Circuit

Sally Heyman, Miami-Dade Board of County Commissioners

Jim Fuller, Clerk of Court, Duval County

Judge Belle Schumann, Volusia County

Judge Angela Cox, Duval County

### OSCA Staff Present

Lisa Goodner

Chris Noel

Chris Blakeslee

Maria Arnold

Donna Brewer

Lakisha Hall

Jenna Simms

Blan Teagle

Laura Rush

Steve Henley

### Supreme Court Staff Present

Chief Justice Peggy A. Quince

Justice Barbara J. Pariente

Tom Hall, Clerk of the Supreme Court

### Other Attendees

Judge George S. Reynolds, 2<sup>nd</sup> Circuit

Walt Smith, TCA, 12<sup>th</sup> Circuit

Tom Genung, TCA, 19<sup>th</sup> Circuit

Craig McLean, CTO, 20<sup>th</sup> Circuit

Bob Inzer, Clerk of Court, Leon County

Ken Kent, Executive Director, Florida Association  
of Court Clerks and Comptrollers

Melvin Cox, Director of Information Technology,  
Florida Association of Court Clerks and Comptrollers

Jannet Lewis, CTO, 10<sup>th</sup> Circuit

Dennis Menendez, CTO, 12<sup>th</sup> Circuit

Steve Shaw, CTO, 19<sup>th</sup> Circuit

Noel Chessman, CTO, 15<sup>th</sup> Circuit

John Stott, Chief Deputy Clerk, Leon County

Fred Baggett, General Counsel, Florida

Association of Court Clerks and Comptrollers

Judge Kreeger called the meeting to order. Chief Justice Quince welcomed everyone and thanked the Commission members for their hard work and dedication to the FCTC. Justice Quince stated that the court is moving towards more technology. E-filing is prevailing and the e-portal is coming soon. She attributed these advancements to Judge Kreeger.

### **Agenda Item I. Status of Electronic Filing**

Chris Blakeslee gave a status on electronic filing. As of May 19<sup>th</sup>,

- the Court has received 42 e-filing applications for the Probate Division
- 4 of the applications have been approved and an Administrative Order (AO) has been issued
- 11 of the applications have been approved and are awaiting an AO
- 21 of the applications are pending approval from the FCTC
- 2 of the applications are pending approval from the Electronic Filing Committee
- 3 of the applications are pending because we are awaiting additional information from the counties

Justice Pariente suggested working with the FACC when local clerks' applications are problematic or are sent back for additional information. Fred Baggett said the FACC would be glad to work with the court to coordinate bundling applications in order to minimize confusion.

Chris Blakeslee briefed the Commission on how ISS staff met with Justice Pariente in an effort to streamline the process of having e-filing applications approved expeditiously, due to time constraints. ISS will bundle the e-filing applications and provide a summary to Lisa Goodner, who will review and provide the packet to Tom Hall, who in turn will transmit the packet to Justice Pariente. She will review the packet on behalf of the Supreme Court and will pass the packet along to the other Justices. She will notify the other Justices that she intends to authorize approval of the e-filing applications unless she receives any objections from them. However, the bundling of applications may not be necessary. Paul Regensdorf mentioned proposed Rule of Judicial Administration 2.236 which is currently pending before the Supreme Court. The purpose of this rule is to establish the FCTC by rule, with responsibility for overseeing, managing, and directing the development and use of technology within the judicial branch under the direction of the Supreme Court. If passed, this rule will place the FCTC in a status equivalent to other standing commissions, such as the Judicial Management Council, Trial Court Budget Commission and District Court of Appeal Budget Commission.

Justice Pariente suggested working with the clerks on several initiatives, such as, getting the FACC involved when local clerks' applications are problematic or are sent back for additional information, as well as work concerning what the courts want an e-filing system to look like and what will work best for the judges. In regards to the first initiative, Fred Baggett said the FACC would be glad to work with the court to coordinate bundling applications in order or to minimize confusion. Mr. Baggett is going to provide to the court a chart that was initially compiled by TRW, which shows what each clerk uses for that clerks' case maintenance system. As to the second initiative, one way to approach it is by looking at one circuit or county that meets all of the criteria for an e-filing system and use that as a "model" all

circuits should follow. It appears that Polk County may be our “model” system. Polk County was the first e-filing application to be approved by the FCTC and issued an AO.

Paul Regensdorf proposed creating a pilot e-court that encompasses e-filing, e-process, e-service, etc. Justice Pariente recommended Sarasota and Manatee counties. Walt Smith said that although Sarasota and Manatee are paperless, only about 20-25% of the attorneys are e-filing. Although all judges are using the system, they complain that looking at electronic documents is not as user friendly as paper. The clerks are working on improving the process to make viewing electronic documents easier. It was also noted that the state attorneys and public defenders are not users of the e-filing system in Sarasota or Manatee counties.

### **Motion to Allow for counties to submit one e-filing application for all divisions**

MOTION OFFERED: Judge C. Alan Lawson

MOTION SECONDED: Judge Manuel Menendez, Jr.

### **MOTION PASSED BY UNANIMOUS VOTE**

### **Agenda Item II. Status of the E-Portal**

Judge Kreeger discussed the collaborative efforts made by the FACC, the chair, and the State Courts Administrator following Senator Crist’s urging that a statewide e-portal be developed. The agreements that originated from those meetings are almost ready to be signed. They include provisions that:

- The portal will be transferred to and owned by the newly created Interlocal Authority, which will be governed by a board of directors of 9 members
- The Clerk of the Supreme Court has veto power concerning any issue that substantially affects the court’s records
- The proposed plan of operation and technical standards were created by the technical staff at OSCA
- The newly created Interlocal Authority will sign contract with the FACC services group
- All records of the Interlocal Authority must be transparent
- All data elements identified by the data element workgroups must be implemented in the portal within 90 days

Judge Menendez wanted to know if the portal will actually store data, or if the portal will just be a pass through. Fred Baggett clarified that the data will only be stored until the local clerk has accepted the filing. Chris Noel added that documents will be stored on a separate server for the smaller counties that do not have storage capability. He reiterated that the portal will only store audit information.

Justice Pariente had questions about the appellate courts’ use of the portal. If the Appellate Court Technology Commission (ACTC) determines the portal will not work for the appellate courts, they would not be required to use the portal. Tom Hall discussed the portal in relation to appellate courts. He has seen the portal and the FACC agrees that the portal needs to be modified in order to be used by the appellate courts. The portal needs to have optimal functionality to include both trial and appellate courts. Tom is in the process of creating an appellate courts workgroup to start identifying data

elements needed for appeals. This workgroup will work with the FACC to have these data elements implemented immediately in the portal.

**Motion to Approve the FACC portal as the statewide portal which will be required for trial courts use and optional for the appellate courts upon approval of the ACTC**

MOTION OFFERED: Judge C. Alan Lawson

MOTION SECONDED: Judge Marci Goodman

OPPOSED: Paul Regensdorf

Paul Regensdorf opposed the motion because it gave the appellate courts the option to “opt out” of using the portal. He wanted the FCTC and the Supreme Court to say the appellate courts “must” use the FACC portal. Tom Hall also had issues with excepting the appellate courts.

Much discussion ensued after the motion. Murray Silverstein had questions regarding the January 1, 2011 deadline for use of the portal to gain access to court records. Judge Kreeger said the answer depends on the moratorium that is in effect right now regarding remote electronic access. Murray Silverstein is concerned that full use of the portal for filing and accessing records may be years away, until the clerks have digitized all of their documents. He inquired about the feasibility of the courts defining access standards for 20 circuits, 5 DCA’s and the Supreme Court. Should those standards come from clerks rather than the court, based on the clerks having control over when they will be able to digitize these records since this impacts internal operations within their office.

Justice Pariente said we must have one place to visit for e-filing. She stressed the need for attorneys to file electronically. Mary Cay suggested the lack of e-filing at the appellate level may be because lawyers are still required to file paper and electronically. Justice Pariente wondered if the Florida Bar should have a rule requiring lawyers to file electronically. Paul Regensdorf said that until lawyers are mandated to file electronically, they will not do it. Ken Nelson said the chief judge in Pasco County issued an administrative order that requires all attorneys to use e-filing and over 80% of the attorneys are doing it. Walt Smith said that Sarasota and Manatee counties do not require paper follow-up, yet only 20% of the lawyers file electronically.

Discussions continued regarding the portal. Judge Kreeger stated not having standardized docket codes or data elements is not holding up e-filing. In their applications, the various counties state that they need about nine months after their applications are approved to implement e-filing. Fred Baggett said the portal is designed to have internal access to the data in CCIS. Justice Pariente said all of the clerks are not putting information into CCIS, therefore data is missing. Ken Kent said the FACC and the OSCA are working together to resolve these issues.

**Amended Motion to approve the portal for the trial courts. A separate motion will be made for the appellate courts.**

MOTION OFFERED: Paul Regensdorf

No action was taken on the amended motion

Paul Regensdorf had reservations about approving the proposed portal agreements, because many members of the FCTC have not seen the drafts of the agreements. Murray Silverstein agreed with him. Justice Pariente said the court was very concerned about control issues and the court will not approve any agreement without the circuits and DCA's being considered. Ultimately this was the best route. The Supreme Court wanted ultimate control and with Tom Hall being on the board with the power of veto vote, this gives the Supreme Court as much control as possible. Lisa explained that the OSCA hired outside counsel to work with Laura Rush on the negotiation process which took approximately six months. She wanted to clarify that the court will not approve these agreements with the Interlocal Authority lightly.

**Amended Motion to approve the concept of the use of the FACC portal as the Florida Court's Statewide E-Portal for trial court e-filing, contingent on final review and approval of all associated e-Portal documentation**

MOTION OFFERED: Paul Regensdorf  
MOTION SECONDED: Judge C. Alan Lawson

**MOTION PASSED BY UNANIMOUS VOTE**

**AGENDA ITEM III. Report of Appellate Court Technology Committee**

Judge Farmer gave a brief update on the work of the ACTC. Currently the 1<sup>st</sup> DCA is piloting their own e-filing system and ISS is in the process of having a SharePoint case management system installed. The 5<sup>th</sup> DCA is going to receive more money to purchase hardware and software to pilot the 1<sup>st</sup> DCA's e-filing system. At the same time, the Supreme Court and the 2<sup>nd</sup> DCA will pilot the SharePoint system. ISS is to report the status of the pilot projects to the ACTC by September 30, 2010.

**Motion to Approve ACTC pilot project with caveat that evaluation/report be presented to FCTC after Phase I.**

MOTION OFFERED: Judge Gary M. Farmer  
MOTION SECONDED: Kent Spuhler

**MOTION PASSED BY UNANIMOUS VOTE**

**Motion for Approval of an Administrative Order authorizing chief judges to require electronic filing of documents in appellate courts by everyone and to waive Rules of Judicial Administration and Rules of Civil Procedure that require the submission of paper**

MOTION OFFERED: Judge C. Alan Lawson  
MOTION SECONDED: Judge Gary M. Farmer

Kent Spuhler had concerns with e-filing being required in all courts. This would place more responsibility on the clerks and he was not confident the clerks were going to fill that role. Judge Kreeger had major concerns about pro se litigants and the public's access to the courts (e.g., the cost

for a farmer down in Homestead having to travel to downtown Miami to file a case). Judge Lawson said it is no different than mailing huge packets. Judge Farmer recognizes the pro se problem and had three comments. Firstly, every clerks' office is set up for scanning. They will offer to scan for walk-ins. Secondly, the rules for e-filing could be waived where it cannot legitimately be done. Thirdly, and perhaps more importantly, proceed this way but allow for case-by-case exceptions. Judge Lawson suggested limiting mandatory e-filing to the appellate court for now if the trial courts are not ready. Kent Spuhler said if you are going to mandate e-filing you have to be ready. Judge Farmer said 80% of appellate filings are pro se. At some point trial courts and litigants should be ordered to file electronically. Paul Regensdorf agreed with the goal, but questioned the procedure. He said it sounded like creating an exception to the Rules of Procedure. He wanted to see something in writing, perhaps a proposal from the ACTC before he votes.

He also questioned why the ACTC only has judges as members. Judge Farmer said back in the 1980's the Court created the Project Management Committee comprised of one judge from each appellate court to oversee the implementation of word processors. Judge Farmer said he sees the logic of having lawyers or clerks as members, but the ACTC is a committee not a commission. The ACTC is primarily a technology budget committee. The major function of the ACTC is to administer the funds of the appellate courts.

MOTION was recessed to be taken up another time. There was no one from the FACC to offer input because this was not on the agenda as an action item.

#### **AGENDA ITEM IV. Update on Manatee County Pilot Project**

Judge Kreeger said Manatee County moved into Phase II of their pilot project in April. They are running the pilot project for six months. Walt Smith had questions regarding Objective 6: *"The clerk will report the results of the cost analysis in terms of personnel, software, hardware, including cost offsets for the reduction of personnel and other costs savings associated with paper file access"* of the Manatee Pilot Report 04/10/10 – 04/30/10. He said Manatee should provide "real" numbers as to the cost savings. Chris Noel said at the end of the six month pilot, OSCA is going to ask for "hard" numbers and Tom Clark of the National Center for State Courts is going to do an evaluation of the system.

#### **AGENDA ITEM V. Status Reports from the Workgroups**

##### **User Access Policies Workgroup:**

Jannet Lewis, Chair of the workgroup, gave an update on the work of the workgroup since the FCTC last met in February 2010. It should be noted that she assumed responsibility as chair of the workgroup in March of this year when Carol Ortman had to step down. The workgroup was directed to undertake the following tasks:

- A. Review and evaluate matters relating to user access fees and funding models, and develop information regarding implications and advisability of funding models.
- B. Develop information regarding the advisability of requirements that system users provide identification information

- C. Develop information regarding the advisability of regulations relating to search technology and of commercial use of court records.

Jannet Lewis gave a description of different user groups, what level of access each user group should have, and any fees associated with access. The user groups included judicial, litigant, public, subscriber, attorney, government and commercial. Murray Silverstein suggested having the legislature take a look at 28.2221, Florida Statutes, Electronic Access to Official Records. Paul Regensdorf said attorney access should be limited to records of cases in which the attorney represents a party.

He criticized the way a disproportionate amount of court fees continue to be imposed on the lawyers and the pro se litigants. Stating that the clerks are already saving money with e-filing, he questioned why lawyers and users have to continue paying up front. He remarked that it looks like these two users are paying for the system. Ken Nelson said lots of the costs are associated with hardware and software. Paul Regensdorf said that fees have increased exponentially over the past ten years. This is limiting user access to the court. He wants a distinction between access fees for subscribers and attorneys. Subscribers should not be equated to attorneys.

Lisa Goodner wanted to know if there is a definition for bulk records. She questioned what is the difference between bulk records and a public records request? How does someone get around people making public records requests for bulk data? Public records requests can be made in bulk. Discussion occurred regarding the limitations to allow for a bulk records request versus a public records request under the Freedom of Information Act. In an effort to avoid those lines becoming blurred, Steve Henley believes a lot more fee information is needed and more research on bulk records needs to be conducted. All comments will be forwarded to Steve Henley to incorporate within the final report of the User Access Policies Workgroup.

Judge Kreeger said the Commission should not just focus on the fees, but the other layers of the report and make recommendations. Judge Goodman believes the Draft User Access Policies Workgroup report is a good starting point for the next Commission.

#### Recommendations of the user access policies workgroup

- A. Electronic access to court records should be structured by user groups
- B. Content availability for the user groups
- C. User identification
- D. Fees and funding
- E. Bulk records
- F. Automated searches

A detailed description of all of the recommendations can be found in the Draft User Access Policies Workgroup report.

#### **Motion to Make user access fees a top priority of the next FCTC**

MOTION OFFERED: Judge Marci Goodman

**Subcommittee on Access to Court Records Workgroup:**

Murray Silverstein summarized the administrative order AOSC06-27. He said the court opinions have addressed exemptions and confidentiality that were raised during the request for comment and these opinions are much better than what was there before. Rule 2.420 governs public access to court records. There will be a new rule proposed, Rule 2.425, in response to the seven issues raised by the Supreme Court.

Steve Henley summarized the petition in the case, stating that it was initially 1600+ pages and was filed as In re: Amendments to Rule of Judicial Administration 2.420 – Public Access to Judicial Branch Records, Case No. SC07-2050. The petition identified presumably 19 categories of information and documents which constitute a finite set of exemptions that are appropriate in the court context and are readily identifiable. Confidential means exempt and exempt means confidential. Virtually all petitions that were filed were adopted in Case No. SC07-2050.

Judge Kreeger wants to set up a conference call with the chairs of the Rules Committees to discuss the structure of this proposal. The present rules were written for a “paper” world and need to be revised as court records are acquired, maintained and distributed as digital records. Murray Silverstein and Paul Regensdorf agreed to call all of the chairs of the committees and inform them of the Subcommittee on Access to Court Records recommendations. Murray Silverstein believes the Supreme Court should come up with some language that says, “The rules committees shall do ...”, otherwise, the committees are just going to ignore staff because the demand is not coming from the Court. If there are not any issues with the proposal, the next step would be to file a request with the Supreme Court.

**Data Elements Workgroup:**

Tom Genung discussed the probate data elements workgroup. The probate data elements workgroup identified over 1300 data elements that they wanted the clerks to store in their local case maintenance systems. Clerks wanted to know why so many data elements were needed. Paul Regensdorf said he spoke with Chips Shore, Manatee County Clerk, and Mr. Shore said we do not need all of the identified data elements. He wants to be sure we are not making this more difficult than it has to be. OSCA reached out to circuits to get a list of data elements they currently use for reporting purposes. Polk County provided reports that they run and their report only list 13 data elements.

Chief judges and administrative judges need to determine what they need to manage their cases and manage their divisions, respectively. Judge Kreeger said with the wish list of data elements that we have compiled with the cooperative efforts among the court and clerks, we may be able to bring the list of data elements to a manageable number.

Tom Genung said he did not have the appropriate people as members of the data elements workgroup to make the proper assessment of the needed elements for case management. The workgroup needs to be restructured to make sure the right people are involved to assist with the directed tasks. Judge Kreeger said the next FCTC should look at the constitution of the workgroups and address any necessary changes in direction and make up.



## **AGENDA ITEM VI. Next Steps for FCTC**

Judge Kreeger discussed why the initial meeting of the Commission was set back by a year due to the moratorium on travel. Staff reductions at the OSCA played a role in the slow moving progress of the Commission. Work had to be phased to allow for adequate Commission and staff support.

### **Rule 2.236:**

Proposed Rule 2.236 is currently pending before the Supreme Court. Justice Pariente said the Court likes the rule in concept. However, there were a couple of questions. One of the justices wanted to know what a “subordinate technology organization” was. After some discussion, it was decided to change that provision of the proposed rule to refer to “subordinate technology committee”. Another justice also questioned the size (24 members) of the proposed FCTC.

### **Motion to Direct and establish priorities for the work of all subordinate technology organizations in the judicial branch, including the E-Filing Committee, the Appellate Court Technology Committee, and the Trial Court Technology Committee**

MOTION OFFERED: Murray Silverstein

MOTION SECONDED: Ken Nelson

### **MOTION PASSED BY UNANIMOUS VOTE**

Judge Menendez suggested adding a former state Senator or House Speaker who is no longer serving. These folks can address the financial needs for technology. Paul Regensdorf said that whether the number of members of the commission is odd or even does not really matter. The people who attend the meetings are the people you need.

### **Motion to Increase the new FCTC membership to 25 by adding someone from the technology field**

MOTION OFFERED: Judge Manuel Menendez, Jr.

MOTION SECONDED: Judge Gary M. Farmer

Judge Menendez withdrew his motion

Ken Nelson said the Trial Court Technology Commission (TCTC) used to take on a lot of the work for these issues, but it was not re-established. Members discussed possibly adding a library member, public defender, state attorney, and government lawyers. After some discussion, ultimately it was decided that the composition of the workgroup should remain the same because the proposed rule includes all necessary parties.

### **Motion for the Membership of the new FCTC to remain at 24 members**

MOTION OFFERED: Judge C. Alan Lawson

MOTION SECONDED: Mary Cay Blanks

## **MOTION PASSED BY UNANIMOUS VOTE**

### **Recommendation regarding moratorium on remote electronic access:**

Massive outreach needs to be done with the Florida Bar, Clerks, and the public regarding remote electronic access and how to protect information. People need to be trained to not include in their filings confidential information that is not needed in case files.

### **What has the Commission accomplished?**

Judge Kreeger is working on a draft report to disseminate to the Commission at the beginning of June for their comments, which should be given to her within two weeks thereafter. Below is a list of some of the things the Commission has accomplished during its term:

1. Judge Farina and the long range plan
2. Response to TRW
3. Manatee oversight (completed Phase I, but waiting on Manatee to complete Phase II)
4. Made progress on developing a comprehensive framework
5. Proposed and the Supreme Court adopted AOSC09-30
6. Addressed issue of confidential information
7. Security measures were identified in AOSC09-30
8. More work needs to be done regarding user access fees
9. Data elements workgroup made significant progress in defining data elements for probate and juvenile dependency cases. However additional work needs to be done.
10. Established technical requirements for statewide portal for e-filing, and worked with clerks to develop a proposed structure for use of the portal developed by FACC
11. Processed 42 applications for e-filing projects

### **What charges should be proposed to be in the new administrative order?**

1. Outreach efforts need to be done with the clerks, the organized Bar and the public, etc. The Bar should be advised about how technology affects the information they include in their documentation. Therefore, the Bar is planning on having seminars, publications and webinars about Rule 2.420. Judge Kreeger plans to do outreach via the OSCA's Court Education unit and at the summer conference. The clerks will need to do outreach to people that come in their offices as well.
2. Encourage the next Commission and Clerks to look at existing judicial dashboards and collaborate with judges to develop a dashboard that satisfies all of the judiciary's needs
3. Rules revisions regarding e-filing. In the FCTC report do we want to recommend that e-filing be mandated in every circuit, county and court?
  - Paul said we should do this as quickly as possible. He also suggested adding some language that says, "The Commission realizes that e-filing cannot be mandated immediately because not all clerks of court are ready for e-filing. Recognizing that e-filing will be implemented in the coming months, the Commission recommends within a year after approval of a clerk's plan, that clerk must accept e-filings and if the clerk does not adhere to this, they must explain why..."

- Judge Goodman wanted to add language that allows the chief judge along with the clerk, to be able to implement mandatory e-filing (via e-filing plan and approval of the Supreme Court) on their timetable.
- Tom Hall said the Florida Bar is going to create a resolution regarding e-filing very soon and maybe we should endorse their resolution.

#### **Continuation of work by the User Access Policies Workgroup**

Jannet Lewis is going to provide the Commission with an updated report

#### **E-Service:**

We do not have to be concerned with issues concerning e-service because the Florida Bar is doing this by rule of procedure.

#### **Closing Business**

#### **Motion for Judge Kreeger to remain as chair of the FCTC**

Judge Kreeger temporarily handed the chairmanship to Judge Goodman for this motion.

MOTION OFFERED: Judge C. Alan Lawson

MOTION SECONDED: Murray Silverstein

#### **MOTION PASSED BY UNANIMOUS VOTE**

There being no further business, the meeting was adjourned.