

**Trial Court Budget Commission
Meeting Minutes
January 31, 2012**



Attendance – Members Present

The Honorable John Laurent, Chair
Mr. Mike Bridenback
The Honorable Catherine Brunson
The Honorable Ronald Ficarrota
The Honorable Charles Francis
Ms. Sandra Lonergan
The Honorable Mark Mahon
The Honorable Thomas McGrady
The Honorable Wayne Miller
The Honorable Debra Nelson

The Honorable Margaret Steinbeck, Vice Chair
The Honorable Belvin Perry, Jr.
Ms. Kathy Pugh
The Honorable Robert Roundtree
The Honorable Louis Schiff
Mr. Walt Smith
The Honorable Patricia Thomas
Mr. Mark Weinberg
Ms. Robin Wright

Attendance – Members Absent

Mr. Tom Genung
The Honorable Gregory Parker

The Honorable Elijah Smiley

Welcome and Approval of Meeting Minutes

The Trial Court Budget Commission (TCBC) meeting was called to order at 8:30 a.m. by Judge Laurent. The roll was taken and a quorum was present. Judge Laurent introduced new member Kathy Pugh and announced the resignation of Judge Farina from the commission. He welcomed the members and asked the guests to introduce themselves.

Judge Laurent introduced Chief Justice Canady. Chief Justice Canady thanked the members for their work and Judge Laurent for his leadership. He also expressed his appreciation for the efforts of the TCBC, entire Judicial Branch, and The Florida Bar to secure reliable and stable funding for the State Courts System.

Judge Laurent asked if there were any revisions to the September 22, 2011, October 7, 2011 or October 19, 2011 meeting minutes. A motion was made by Judge Roundtree to adopt the minutes as drafted. Judge Miller seconded and the motion passed without objection.

Status of Current Year Funding

Status of SCRTF Deficit

Dorothy Wilson reviewed the monthly analysis of revenues received and expenditures through December and projections to year end. The official estimates of the Article V Revenue

Estimating Conference were added to the analysis to allow for comparison with actual revenues coming in. December actual revenues were \$2.5 million below the official estimate. The analysis indicates that sufficient cash is available through March and a deficit will occur in April. The analysis reflects that after the \$99 million loan repayment, the year end revenue deficit will be approximately \$112 million. Ms. Wilson reported that a proposed House bill would provide \$121 million to repay the \$99 million loan and \$22 to provide for operating expenditures through year end.

Other Trust Fund Cash Balances

Dorothy Wilson reviewed the cash statement for the Administrative Trust Fund (ATF). The cash balance as of December 31, 2011 was \$933,852. This trust fund is comprised of cost recovery collections and is used for circuit emergency needs. The bulk of the expenditures will come in during the next several months.

Lisa Goodner stated that available cash will run very close to the operating expenditures in March and staff will be monitoring the SCRTF closely, analyzing revenues and spending trends in great detail. The issue of when the legislature will finalize the budget will be critical. If the process is delayed, the State Courts System may run out of cash and another vehicle will be needed to address the cash shortfall.

Salary Budgets

Dorothy Wilson provided a status of the salary budgets for the trial courts. After application of leave payments and savings for vacancies, the trial courts were under the salary appropriation in the State Courts Revenue Trust Fund by \$4.8 million. The Federal Grants Trust Fund was under appropriation by \$19,702, and the Administrative Trust Fund was under by \$27,874 due to position vacancy.

Status Update on Trial Court Salary Distribution Plans - Dorothy Wilson reported that of the \$3,344,996 allocation, \$1,757,323 of the requests were for new FTE to meet workload needs and \$437,964 for equity issues. Plans have yet to be implemented for the 3rd, 10th, and 14th Circuits.

Reclassification and Other Personnel Action Requests – Ms. Wilson further reported that reclassification requests received total \$301,469.

Ms. Wilson noted that after all personnel actions are implemented, the payroll projections will remain in good shape.

Operating Budgets

Dorothy Wilson provided the status of the State Courts Revenue Trust Fund trial court operating budgets as of December 31, 2011. She noted that 28% was expended or encumbered

in the Expense category, 32% in Contracted Services, and 39% in the Due Process category. She added that spending in the Expense category was up from last year due to restrictions in spending last year.

Third Circuit Request for Additional Allocation

Dorothy Wilson reported on this agenda item stating that the 3rd Circuit is requesting \$87,745 in due process contractual services funds to pay for half of their annual CourtSmart invoice, to purchase equipment to transition to OpenCourt, and to cover a due process deficit. Ms. Wilson noted that the 3rd Circuit has requested additional funding for the past several years. After review of the Template for Circuit Forecasting of Unobligated Funds, Circuit and OSCA staff identified unobligated funds. The circuit will also use cost recovery and county funding to partially fund the request, reducing their request for due process contractual services funds to \$55,168.

The Budget Management Committee and Executive Committee made a recommendation to approve the request for \$55,168 utilizing the Court Reporting statewide reserve in the due process contractual services category to provide \$27,084 to cover half of the CourtSmart invoice, \$27,084 to purchase equipment for the transition to OpenCourt, and \$1,000 to cover the remaining projected due process deficit for FY 2011-12 as reported by the circuit. Judge Perry made a motion to approve the Budget Management Committee and Executive Committee recommendation. Judge Roundtree seconded and the motion passed without objection.

Update on OpenCourt Project

Fred Buhl, 8th Circuit Court Technology Officer, provided a status report on the OpenCourt Project, reporting that the 8th Circuit has transitioned 32 courtrooms and should make a total conversion by June 2012 or sooner. OpenCourt is in use in the 10th Circuit and is being evaluated by the 3rd, 13th, 15th, 17th, 18th, and 19th Circuits. He projected that six circuits will implement by June 2012.

Mr. Buhl addressed the issue of governance as the use of OpenCourt expands to other circuits. He recommended the TCBC establish a governance board to guide future development of the program and further recommended that members be comprised of court technology officers, court reporters, court administrators, and judges. Judge Francis noted that one of the goals of the project was for savings in maintenance costs and suggested that savings be documented for future funding requests. Walt Smith asked who is providing support for the program. Fred Buhl replied that currently the 8th Circuit provides support and that the circuit does not have the resources for continued support as the program expands. This is an issue that a governance board would need to address.

Judge Roundtree made a motion to create a workgroup to address issues of the OpenCourt Project. Mike Bridenback seconded and the motion passed without objection.

Report from the Personnel Committee

Theresa Westerfield reported that beginning in July 2011, the 9th Circuit expressed concern regarding retention and recruiting in Court Reporting and Court Interpreting Services and made a request to increase the starting salaries of the 9th Circuit's Court Reporter I's and Court Reporter II's by 10% in the Legislative Budget Request. The TCBC chair directed the Personnel Committee to determine the statewide cost of the request and whether the retention and recruitment issues were a statewide problem. Turnover research indicated that the problem was not statewide.

The 9th Circuit submitted requests to Chief Justice Canady in October 2011 and December 2011 requesting approval to use funds from the circuit salary distribution plan to increase the starting salaries of 9th Circuit's Court Reporter I's and Court Reporter II's. The requests were referred to the Personnel Committee for consideration.

Ms. Westerfield further reported that at their January 2012 meeting, the Personnel Committee discussed the salary problems regarding stenographic court reporters and court interpreters.

Court Reporting – The Committee reviewed turnover data, vacancy data, and four options. The Committee did not make a recommendation for any of the options as they appeared to be under the jurisdiction of the Funding Methodology Committee.

The Personnel Committee then referred the 9th Circuit's request to utilize their salary distribution allocation to the Executive Committee for resolution pursuant to the Budget and Pay Administration Memorandum and the November 16, 2011 TCBC Executive Committee meeting wherein it was clarified that an action outside of the salary distribution plan criteria requires an exception request to be approved by the TCBC Executive Committee.

Court Interpreting – The committee reviewed turnover and vacancy data and determined the 9th, 10th, and 20th Circuits experienced turnover rates higher than the statewide average. The Personnel Committee made a recommendation to increase the starting salary of a Court Interpreter/Translator only in those circuits where data clearly supports retention and/or recruitment problems (9th, 10th, 11th, and 20th Circuits) by providing a Competitive Area Differential of \$5,000 and a CAD for the Supervising Court Interpreter of \$2,700.

The Executive Committee made a recommendation that these types of requests be submitted to the Executive Committee for an exception to the salary distribution plan. Judge Nelson

made a motion to approve the Executive Committee recommendation. Judge Roundtree seconded and the motion passed without objection.

Ms. Westerfield stated that the Personnel Committee directed staff to review in critical detail Supreme Court Order No. ASOSC11-45, *In re: Court Interpreting Services in Florida's Trial Courts*, issued December 21, 2011, for consideration by the Personnel Committee of the current court interpreting classes and salary structure, including salary incentives for achieving certification.

Update on 2012 Legislative Session

Overview of House and Senate Budget Proposals

Dorothy Wilson informed the members that the Senate budget proposal was not out and provided a review of the House Justice Appropriations Subcommittee Chair's proposal compared to the State Courts System's request. The House funded the Foreclosure and Economic Recovery Proposal as requested. A House member project was included for Global Positioning Monitoring Devices in Domestic Violence Cases in the 9th Circuit. The Operating Capital Outlay base that was cut last year as part of a larger issue the Governor vetoed was restored. An additional House member project added funding for county courthouse repairs. The House proposed a State Courts Revenue Trust Fund/General Revenue fund shift of \$288 million for the stabilization of court funding. Judge Laurent noted that in previous years, funding for small county courthouses was included the State Courts System budget in the Administered Funds budget entity (pass-thru).

Overview of Budget Conforming Bills and Implementing Legislation

Ms. Wilson reviewed proviso and back of the bill language of the House proposed budget and implementing bill, and their fiscal impact on State Courts System. Proviso language included detail of the funding to assist with the backlog of foreclosure cases, Global Positioning Monitoring Devices in the 9th Circuit, and small county courthouse funding. In the Justice Administrative Commission section, proviso included \$3 million for court ordered payments for attorney fees in criminal conflict cases in excess of the flat fee established in law and provides that any payments in excess of \$3 million must come from the State Courts System budget. Back of the bill language included a redirect of \$1.5 million in American Recovery and Reinvestment Act funding to the Department of Corrections and approximately \$122 million for repayment of loans and to assist with funding the State Courts System through June 30, 2012. The implementing bill included a provision and guidelines for discretionary, one-time lump sum bonuses.

HB 5403 relating to State Court Revenues – Kris Slayden reviewed the bill in which the mortgage foreclosure filing fees would be redirected to the General Revenue (GR) Fund from

the State Courts Revenue Trust Fund (SCRTF). This bill would conform to the Governor's budget recommendation to use GR as a principal funding source for the State Courts System (SCS). The SCS favors full implementation of Revenue Stabilization Workgroup recommendations which recognize that revenue generated through the courts should fund the court system before being diverted to other purposes but that some court functions should be considered a general cost of government and should be funded with GR.

HB 5405 relating to Clerks of Court – Ms. Slayden reviewed the highlights of the bill and stated that the proposed bill would remove the clerks from the legislative appropriations process. The bill also removes a reference to court-related revenue collected by the clerks as state funds and removes Supreme Court participation in the Clerks of Court Operations Corporation. The process is the same as before the legislature required the clerks to be a part of the state budget. The bill authorizes the clerks to retain two-thirds of the fines, fees, and costs they collect and are not designated for other purposes. When a clerk faces a projected deficit in revenues, the clerk may retain additional revenues and potentially seek a special release of funds from the Governor. This plan counters the plan developed by the courts and the clerks to ensure stable revenue for the entire system. Judge Laurent noted that this bill was not an issue of the clerks and that the courts and the clerks have been working together. Lisa Goodner added that Karen Rushing-Sarasota Clerk of Court, Ken Burke-FACC President, and Fred Baggett-FACC General Counsel have indicated their full support of the Revenue Stabilization Workgroup recommendations.

Judge Brunson asked how this bill would affect the judiciary. Lisa Goodner replied that language in this bill will compromise the courts' ability to use fees paid to access the courts. Judge Laurent added that when either the courts or clerks are not fully funded, the total court system will not work and will face problems if the majority of revenues raised to fund the courts remain at the local level.

Update on Status of Revenue Stabilization Proposal

Ms. Wilson reviewed a comparison of the State Courts System's (SCS) revenue stabilization proposal and that of the House proposal. Currently the SCS budget is comprised of 10.23% General Revenue (GR) and 89.77% State Courts Revenue Trust Fund (SCRTF). The SCS proposal would include 50.52% funding from GR and 49.48% from SCRTF, more evenly distributing the funding source. The House proposal provides 77.24% from GR and 22.76% from SCRTF. Judge Laurent expressed concern with GR as the major funding source, resulting from past GR reduction issues in tough times. Approximately \$1.1 billion court related revenue is generated annually; however, the State Courts System receives only a small portion.

Lisa Goodner briefed the members and stated that the Senate budget proposal should be out within the next few weeks. Judicial Branch leadership has made it clear that the branch

appreciates the Governor and House of Representatives fully funding the courts; however, the need for more trust fund dollars versus GR dollars is being expressed.

Discussion of Senate Unit Cost Proposal and Assessment of Court-Related Fees, Charges, Costs, and Other Monetary Penalties

Kris Slayden reported that the Senate has been reviewing how unit costs are related to collection rates and are looking at unit cost budgeting for each circuit and assessments. Review of the Florida Association of Court Clerks (FACC) Annual Report on Payment of Court-Related Fees, Charges, Costs and other Monetary Penalties data with the clerks revealed inaccurate data, mainly due to interpretation of business rules. OSCA staff is working with the clerks to standardize mandatory assessments, to develop fine and court cost scenarios for reporting, and other issues. Staff calculated the unit cost for each circuit based on weighted filings and compared to peer groups. An extra small category was added to the peer groupings and the extra large designation was combined into the large. The unit cost data revealed that the circuits are fairly equally funded. Judge Laurent added that smaller circuits have higher unit cost.

Overview of Pay and Benefits Legislation

Theresa Westerfield briefed the members on pay and benefits legislation. At this time, early in the budget process, there are no changes to benefits. The House budget proposal included proviso for discretionary one-time lump sum bonuses, not to exceed 10%. The bonuses do not exclude personal staff and are not tied to performance evaluations. Lisa Goodner noted that after experiencing issues with the salary distribution plan that required performance evaluations for merit increases, she met with legislative staff to explain the nature of the court's workforce and that performance evaluations are not required for judicial assistants. The performance evaluation requirement would have excluded a whole class of employees. The proviso also outlines that no more than 15 percent of the workforce may receive the bonuses, which equates to only 500 trial court employees. The courts will need to develop a plan, if this language stays in the budget.

Update from Chief Justice Designee to the Clerk of Court Operations Corporation Executive Council

Judge Farina expressed that he enjoyed working with the Commission, present and past chairs, A-Team, Legislative Team, Lisa Goodner, and OSCA staff. He reported on the meeting of the Clerk of Court Operations Corporation Executive Council. The clerks' revenue shortfall is projected at \$54 million and the 8% service charge to General Revenue is estimated at \$33 million and they will need additional assistance from the legislature. For FY 2012-13, the Article V Revenue Estimating Conference has projected a \$30 million revenue shortfall. The clerks have requested in the FY 2012-13 legislative budget request \$3 million for the mortgage foreclosure backlog reduction issue and a \$6.3 placeholder for the resolving civil disputes initiative.

Conflict Counsel Cases Over the Flat Fee Report

Susan Dawson provided a summary of the circuit survey of excess conflict counsel fees in criminal cases. During the 2011 legislative session, concerns arose about the increase in expenditures for court-appointed counsel fees, specifically the excess fees permitted in extraordinary criminal cases. OSCA staff reviewed the past three years of data which showed there is significant variation from circuit to circuit in the number of these cases. The OSCA General Counsel's Office conducted a circuit survey that requested that all circuits examine actual excess fee cases for FY 2009-10 and FY 2010-11.

The survey also sought feedback on the proposed allocation plan of the Funding Methodology Committee. The methodology estimated that 1.3% of all conflict counsel cases would result in court-ordered attorney's fees in excess of the flat fee rate, and the number of cases weighted based upon the severity of the types of cases historically by circuit. The survey results revealed variation in the handling of motions for attorney's fees concerning criminal conflict cases. The majority of the circuits responded that the motions are handled by the judges assigned to the cases. Five circuits reported the motions are handled by the chief judge.

Although varied, many factors were recommended for consideration in the allocation process. Several responses opposed any allocation, stating that there is no way to predict, plan, or budget for the events that will require appointment of conflict counsel and that the allocation should be managed at the state level.

The responses revealed that the cases awarded excess fees were primarily those involving: capital, 1st degree murder; 2nd degree murder; death penalty case; felony punishable by life; 1st degree felony; complex RICO; white collar crime; multiple defendants, victims, and charges/counts; and complex legal and factual issues.

Ms. Dawson noted that the report included responses to survey questions that asked the circuits to identify whether or not the JAC objected to a request for payment of excess fees, the nature of the objection, whether a hearing was held, and whether the JAC appeared by telephone or in person. The report also listed the extent and type of errors that were occurring in JAC's detail report.

Jessie Emrich reviewed historical expenditure data and annualized current year data for the amount paid over the flat fee for conflict counsel in criminal cases. The expenditures have increased \$2.1 million from FY 2010-11 to FY 2011-12 (annualized).

Judge Laurent recommended continuing discussion of this issue.

Judicial Conference and TCBC Legislative Activities

Judge Ficarrota reported that Florida Conference of Circuit Court Judges have been working with the Florida Conference of County Court Judges, TCBC, and OSCA staff to speak with one

voice on the State Court System's legislative priorities. Other items on their legislative agenda included senior judges and maintaining funding of benefits. Judge Schiff added that the other issues included veterans' court and drug court.

Adjournment

With no other business before the commission, the meeting was adjourned at 10:48 a.m.