

**Trial Court Budget Commission
Meeting Minutes
December 6, 2008**



Attendance - Members Present

Hon. Belvin Perry, Jr., Chair	Hon. Wayne Miller
Hon. Charles Francis, Vice Chair	Hon. Robert Morris
Hon. Alice Blackwell	Carol Ortman
Mike Bridenback	Hon. James Perry
Hon. Catherine Brunson	Hon. Judy Pittman
Ruben Carrerou	Hon. Susan Schaeffer
Hon. Joseph Farina	Walt Smith
Tom Genung	Hon. Margaret Steinbeck
Hon. Carroll Kelly	Hon. Patricia Thomas
Hon. John Laurent	Mark Weinberg
Hon. Mark Mahon	Robin Wright

Attendance - Members Absent

Hon. Paul Bryan	Hon. Robert Roundtree
-----------------	-----------------------

The December 6, 2008 meeting of the Trial Court Budget Commission (TCBC) was called to order at 8:35 a.m. by Judge Belvin Perry, Chair.

I. Welcome and Introduction of Guests

Judge B. Perry welcomed the members and the roll was called. He also welcomed Chief Justice Quince and recognized the guests in attendance. Chief Justice Quince also welcomed the members and guests.

Approval of October 31, 2008 Meeting Minutes

Judge B. Perry asked if there any revisions to the draft minutes from the October 31, 2008 meeting minutes. Judge Mahon made a motion to adopt the meeting minutes as drafted. The motion was seconded by Carol Ortman, and passed without objection.

II. Status of Current Year Funding

A. Salary Projections

Dorothy Wilson provided a review of the trial court payroll projections as of November 30, 2008 and reported the following:

After applying salary lapse and leave payouts, the payroll liability was \$359,770 over the circuit court salary appropriation and \$83,234 over the county court salary appropriation. Both amounts can be made up under the current restrictions in place.

As of November 30, 2008, there were 121 vacant FTE's in the Circuit Courts and 8 in the County Courts.

Hiring Freeze Consideration - Dorothy Wilson provided a review of hiring freeze considerations and presented the following:

The courts have experienced very little salary lapse. Agencies have had to hold back 4% of their salary appropriations. In accordance with the Chief Justice's appropriation release plan, and at this time, the state courts did not have to hold back salaries.

In association with newly elected judges, new judicial assistant openings (41 in Circuit and 18 in County) will be effective January 1, 2009. As a precautionary measure, if the positions are held open until June 2009, the projected payroll liability for Circuits would be \$2,036,343 under the salary appropriation. The projected County payroll liability would be \$369,733 under the salary appropriation. The current judicial assistant hiring freeze is one month and would generate approximately \$160,000 for these new positions.

The Executive Committee recommended lifting the hiring freeze temporarily for the new judicial assistants to start employment in January with the new judges. Walt Smith made a motion to temporarily lift the hiring freeze to fill the judicial assistant positions attached to new judges coming on board in December and January. Judge Farina seconded, and the motion was passed without objection.

B. Operating Budgets

Dorothy Wilson provided a status of the trial court operating budgets as of November 30, 2008 and reported the following:

The operating budgets were reviewed by category. Average spending rates should be about 50% of total budget by November. The actual spending rates are considerably lower. Due process expenditures are also lower compared to the same time period last fiscal year.

C. Trust Fund Cash Balances

Charlotte Jerrett provided a review of the cash balances for the Operating Trust Fund and Mediation and Arbitration Trust Fund as of November 30, 2008 and reported the following:

The Budget Management Committee, chaired by Judge Laurent, monitors the trial court operating budget, and now includes the monitoring of trust fund cash balances.

- **Operating Trust Fund** – The revenue, from JAC cost sharing and cost recovery from court reporting and court interpreting fees were reviewed. After expenditures, including the 7% surcharge of revenue to General Revenue Fund, the November 1 cash balance is \$2,353,784 and is considered a healthy balance for this fund.
- **Mediation and Arbitration Trust Fund** - The revenues received continue to increase due to the new fee structure. The expenditures were reviewed, including the 7% surcharge mandated for General Revenue. The November 1 cash balance is \$5,904,142 and is considered a very healthy balance for this fund.

D. Requests for OCO Allocations: 2nd Circuit, 15th Circuit, 3rd Circuit, and 1st Circuit

Judge B. Perry stated that the Executive Committee recommended adding furnishings for new judges as a priority consideration, along with furnishings for new courthouse facilities. The Executive Committee also reviewed the circuits' expenditures and availability of other resources in making their recommendations.

Dorothy Wilson provided a review of the requests from the 2nd and 15th Circuits to access the OCO Reserve and reported the following:

- **2nd Circuit**
 - The circuit requests \$3,446 to purchase furniture for a judge's chamber. The current furnishings are privately owned by a retiring judge occupying the chamber.
 - The circuit requests \$2,442 to purchase furniture for a newly constructed judicial chamber that will be used to house visiting senior judges.
 - The circuit requests \$44,000 for the purchase and installation of digital court reporting (DCR) equipment in two newly constructed courtrooms.

The Budget Management Committee and the Executive Committee recommended approving the 2nd Circuit's requests with the caveat that if the LBR for maintenance costs is not funded, the 2nd Circuit will absorb the maintenance costs. Ruben Carrerou made a motion, seconded by Carol Ortman, to add new judges as priority to requests considerations and to approve the 2nd Circuit's OCO requests. The motion passed without objection.

- **15th Circuit**

1. The circuit requests \$113,155 to purchase and install six digital court recording (DCR) units to be used for four new courtrooms and two new hearing rooms.
2. The circuit requests \$20,525 to replace substandard court reporting equipment with five new stenographic units.

The BMC recommended approving request #1 and referred request #2 to the Executive Committee as additional information was pending. The Executive Committee recommended approving \$30,000 of request #1 and to deny request #2 as the request was not consistent with priorities set by the TCBC.

Members discussed options for purchasing needed OCO equipment. Ms. Wilson advised the members that once the OCO reserve is exhausted, circuits may request a budget amendment to move expense funds to OCO. Also, during each of the last four years the circuits have participated in a year end spending plan and pooled unobligated expense funds for court reporting equipment needs.

For request #1, Judge Farina made a motion, seconded by Carol Ortman, to approve \$30,000 from the statewide OCO reserve for the purchase and installation of three DCR units with the caveat that if the LBR for maintenance costs is not funded, the 15th Circuit will absorb the maintenance costs. The motion passed by the majority, with Walt Smith dissenting. Judge Farina offered assistance to the 15th Circuit, and arranged for the 11th Circuit to provide the difference between the cost of three DCR units and the OCO funds approved from the statewide reserve. The cost of three DCR units is approximately \$18,860 each and totals \$56,580. The difference between the cost and the \$30,000 approved from the statewide OCO reserve is \$26,580.

For request #2, Judge Laurent made a motion to reject the request as the purpose is not for new courthouse or new judge furnishings. Judge Pittman seconded, and the motion passed without objection.

- **4th Circuit**

The circuit requests \$41,631 for the purchase and installation of two DCR units for two new hearing rooms. Judge Mahon made the motion to approve \$33,410 of the request with the caveat that if the LBR for maintenance costs

is not funded, the 4th Circuit will absorb the maintenance costs. Carol Ortman seconded, and the motion passed without objection.

- **1st Circuit**

The 1st Circuit withdrew their request.

- **3rd Circuit**

The circuit requests \$4,000 to furnish a new judicial chamber for a newly elected judge and judicial assistant. Judge Francis made a motion, seconded by Ruben Carrerou, to approve the request. The motion passed without objection.

III. Report from Funding Methodology Committee – FY 2009-2010 Supplemental Legislative Budget Request (LBR) Issues

A. Mediation Trust Authority

Charlotte Jerrett provided a review of the trust fund and reporting the following:

The Mediation Arbitration Trust Fund was analyzed to determine whether there are sufficient revenues for spending authority. If revenue collections exceed spending authority in a trust fund, it is necessary to determine the amount of additional spending authority (if any), by expenditure category, which would most effectively and efficiently maintain and/or enhance the trust-supported program(s) and to request that additional authority, with justification, in the LBR or by way of a budget amendment.

Revenues were reviewed and revealed that filings are up at this time; however, it may be premature to request an increase in spending authority based on the filing fee revenue alone due to the economic climate. For example, it is not possible to confidently predict whether foreclosure filings will continue to rise in FY 2009-10.

Expenditures for the first quarter of FY 2008-09 are down from the first quarter of FY 2007-08. If the first quarter expenditure trend is sustained through FY 2008-09, then increased authority could be used to begin applying the newly proposed funding formula in order to expand service coverage and address duties that are required beyond direct service delivery.

The recommendation of the Funding Methodology Committee is to not file a supplemental LBR to increase budget authority. Analyze revenue throughout FY 2008-09 and, if revenues continue to increase, submit a budget amendment at the beginning of FY 2009-10 for additional spending authority to begin applying the newly proposed funding formula in order to expand service coverage and to address duties that are required beyond direct service delivery. Such a budget amendment could be made permanent in the FY 2010-11 LBR.

Judge Laurent made a motion to approve the recommendation of the Funding Methodology Committee. Carol Ortman seconded, and the motion passed without objection.

B. Due Process Trust Authority

Charlotte Jerrett provided a review of the Due Process Cost Recovery trust authority and reported the following:

The revenue represents recovery by the circuits of expenditures for state-funded services, e.g., the costs of court reporter services and transcription, court interpreting services and translation, and other services for which state funds were used to provide a product or service within a circuit.

Authorized expenditures for cost recovery are contractual due process services for any due process element, including court reporting and court interpreting equipment maintenance; salaries, salaries, and expense for 1.0 FTE in the 9th Circuit.

In analyzing revenue collected during FY 2007-08 and the FY 2008-09 first quarter revenue collections, there appears to be no basis for a request for additional budget authority for due process cost recovery at this time. This trust authority and its related cash balances should be monitored closely as it appears that over time, carried forward cash may need to be utilized along with future revenue collections to meet approved budget authority. If a significant increase in revenues should begin occurring, a budget amendment for additional authority could be submitted during FY 2009-10 and, subsequently, be made permanent in the FY 2010-11 LBR.

The recommendation of the Funding Methodology Committee is to not file a supplemental LBR to increase budget authority. Robin Wright made a motion, seconded by Judge Thomas, to not file a supplemental LBR. The motion passed without objection.

C. Court Reporting Technology

Patty Harris provided a review of the Court Reporting Technology Workgroup policy recommendations and the Funding Methodology Committee (FMC) recommendations for the FY 2009-10 Supplemental LBR issues; and reported the following:

The workgroup was to complete three major tasks: 1) issue a new ITN (Invitation to Negotiate), 2) update the technology inventory, and 3) develop policy recommendations on a long-term budgetary framework for court reporting technology. It is anticipated the ITN will not be completed until spring 2009;

however, the following policies were recommended for approval by the FMC and were provided for the TCBC's consideration:

Standardized Costs for Future Purchases

- 1A Future expansion should be based on standard cost models for courtrooms, hearing rooms, standalone recording, and stenography
- 1B An outline of due process technology funding obligations as defined per Florida Statutes 29.008 should be established so as to clearly delineate between discrete level state and county obligations for planning, budgeting, and auditing purposes. This document should be updated each year to reflect statutory/rule changes.

Future Digital Court Recording Expansion

- 2A Future digital expansion should be based on outfitting courtrooms and hearing rooms that hold proceedings that are required to be recorded at state expense (consistent with the goals and objectives outlined in the Trial Court Performance and Accountability Commission's February 2005 report).
- 2B Funds to complete the original statewide initiative to implement digital technology in existing rooms should be requested based on a three year phase-in plan for the remaining 133 courtrooms and 39 hearing rooms (total rooms existing as of FY 2009-10).

Change Management

- 3A Vendors that provide digital court reporting technology and services must meet the technical and functional standards established by the Florida Court's Technology Commission. Approved vendors must have been awarded a state contract through the ITN or other OSCA official process.
- 3B If a circuit wishes to change vendors, circuits should file a special issue request for the TCBC's consideration/approval.
- 3C There should be a procedure in place to track state purchased court reporting hardware and software licenses in order to properly manage their use and possible reassignment within the State Courts System.

Refresh

- 4A Timeframes for future refresh should be based on a hardware replacement schedule (as outlined in the recommendations report).
- 4B Costs for refresh should be based on current industry pricing and a percentage applied to initial costs should be determined. Cost information reported in the technology inventory and ITN should be reported at discrete levels comparable to the refresh schedule (unbundled). Circuit requests for

refresh should be evaluated based on initial hardware costs and the hardware replacement schedule.

- 4C Upon reaching end-of-life, analog tape recorders utilized for the primary recording of proceedings required to be recorded at state expense, should be replaced by digital recorders (consistent with recommendations outlined in the Trial Court Performance and Accountability Commission October 2007 report).

Maintenance

- 5 Maintenance should be based on a simple 13% funding formula of initial state purchased hardware and software costs (excluding installation and training costs).
- 6 A funding source for break-fix contingencies of \$100,000 should be pooled at the state level for circuits in the event of an unforeseen failure of court reporting equipment or software. Any remaining fund balances at year end may be allocated for expansion, open source development, or other needs identified by the circuits, as determined by the TCBC.

Data Collection and Analysis

- 7A A more robust database platform should be developed to collect data related to court reporting technology. This platform should allow each circuit to maintain data throughout the year (as dynamic) with an annual certification (data freeze) completed in the spring, so the most current information may be used for the development of the LBR.
- 7B The annual data certification (technology inventory) and ITN processes should be conducted in the spring so as to correspond with the legislative budget process and the court's development of the LBR/allocations.

Future Considerations

- 8A If funding becomes available, the TCBC should consider approving circuit requests for additional funding in support of regional technical support staff. The OSCA should provide necessary systematic oversight.
- 8B The development of open source software should be permitted contingent upon open source software being developed for statewide use per the principles as outlined in the workgroup's report. The OSCA should provide necessary systematic oversight.

Judge Farina made a motion, seconded by Carol Ortman, to approve the Court Reporting Technology Workgroup's November 2008 report and policy recommendations.

For the FY 2009-10 LBR, the TCBC approved to consider only those circuit requests that are related to critical due process needs. For equipment, the TCBC approved to file a LBR for OCO (\$1,933,339), expense (\$549,495 non-recurring; \$510,489 recurring), contracted services (\$74,872 non-recurring; \$150,000 recurring two years), and maintenance contractual funding (\$310,985) based on circuit requests.

The FMC made the following recommendations for the FY 2009-10 Supplemental LBR using the Court Reporting Technology Workgroup's policy recommendations:

Expansion of Digital Court Reporting Equipment

Modify the LBR based on approving those circuit requests within the Court Reporting Technology Workgroup's recommended standard cost models (Policy 1A). Plus, request additional funding per the workgroup's continued digital expansion three year phase-in plan (Policy 2B). Include 13% maintenance for FY 2010-11 per the workgroup's recommended maintenance formula (Policy 5). Include the 8th Circuit's request for \$150,000 for development of open source software per the workgroup's recommendation (Policy 8B). Include the 10th Circuit's special request for \$7,200 for ECR data integrity storage.

Expansion of Stenography Equipment

Modify the LBR based on approving those circuit requests within the Court Reporting Technology Workgroup's standard stenography expansion model (Policy 1A). Include 13% maintenance for FY 2010-11 per the workgroup's recommended maintenance formula (Policy 5).

Carol Ortman made a motion, seconded by Judge Mahon to approve the expansion of digital court reporting equipment and expansion of stenography equipment as recommended by the FMC. The motion passed without objection.

Maintenance of Existing Stenography and DCR Equipment

Modify the LBR based on approving only those circuit requests with the Court Reporting Technology Workgroup's 13% maintenance formula (Policy 5).

Mike Bridenback made a motion, seconded by Walt Smith to approve this issue as recommended by the FMC. The motion passed without objection.

Refresh of Existing Stenography and DCR Equipment

Maintain the LBR as is. However, reduce the 15th Circuit's request by \$20,525 OCO if the 15th Circuit's emergency request to use existing FY 2008-09 funds is approved by the TCBC.

Judge Brunson made a motion, seconded by Carol Ortman to approve this issue as recommended by the FMC. The motion passed without objection.

Statewide Maintenance Contingency Fund

Modify the LBR based on requesting additional funding in the amount of \$100,000 for the purpose of establishing a statewide maintenance contingency fund per the Court Reporting Technology Workgroup's recommendation (Policy 6).

Judge Mahon made a motion, seconded by Carol Ortman to approve this issue as recommended by the FMC. The motion passed without objection.

Future Considerations

Upon review of the Court Reporting Technology Workgroup recommendations, the TCBC may wish to consider the future development of a standard LBR issue form(s) for the purpose of better evaluating circuit funding request in-line with approved new policies. In doing so, the TCBC may wish to request the assistance of the Florida Courts Technology Commission in the development of relevant data collection instruments so as to ensure compliance with the approved new policies.

With the budgetary losses sustained in both the trial courts and the OSCA, the actual implementation of certain approved policies as recommended by the Court Reporting Technology Workgroup (such as 7A and 7B) may be delayed.

As the ITN process is still underway, it may be necessary for the Court Reporting Technology Workgroup to update approved policy recommendations based on the outcome of the ITN upon its completion during spring 2009.

Walt Smith asked for funding strategy guidance for those circuits building new courthouses. Judge B. Perry recommended submitting an LBR issue first and if unsuccessful, using funds from the year end spending plan, if available. The circuits may also utilize due process cost recovery funds.

Judge Farina suggested that circuits provide an inventory of new courthouses coming online to assist in the funding projections and planning of funding strategies. Patty Harris added that this information may be captured on the standard LBR issue form as recommended by the Funding Methodology Committee. Judge Farina stated that communication to chief judges and trial court administrators is needed. Judge B. Perry asked the workgroup to send out a survey.

Carol Ortman thanked the workgroup chair, Mark Weinberg, the workgroup members, and OSCA staff for their work in developing a long-term budgetary framework for the future course of digital court recording technology.

IV. Court Funding Stabilization Initiative

Judge B. Perry reported that in October, the trial courts were poised to lay off 220 FTE as a result of the budget reduction hold back exercise. As a result of efforts by Chief Justice Quince, Lisa Goodner, and staff, the layoffs did not occur. The trial courts were asked to look at their funding and determine the necessary funding levels and sources.

A. Determination of Necessary Funding Levels for Essential Court Elements

Sharon Buckingham provided a review of the determination of necessary funding levels and reported the following:

1. Summary for Elements Approved by TCBC on 10/31/08

A summary of elements already approved by the TCBC were reviewed. An adjustment based on the supplemental LBR decisions for court reporting is included. In addition, the Executive Committee recommended including \$275,855 for Compensation to County Judges for the TCBC's consideration. Walt Smith made a motion to include funding for Compensation to County Judges as recommended. Judge Farina seconded, and the motion was passed without objection.

2. Court Administration

This element was tabled from the October 31, 2008 TCBC meeting for additional information regarding circuit size classification.

During the Revision 7 transition, the court administration methodology was developed to ensure that all circuits have an adequate level of support necessary to accommodate the threshold level of support for executive court management, general administration, and judicial operations management relative to size designation. For FY 2004-05, a LBR was filed using a threshold of 9 positions in small circuits, 14 positions in medium circuits, 27 positions in large circuits, and 42 positions in Miami-Dade. This included one trial court administrator and one court technology officer per circuit and one general counsel and general counsel support position for large and very large circuits.

In August 2007, the TCBC approved a modification to the thresholds for small and medium circuits. Their thresholds were increased by two positions to allow for a general counsel and general counsel support and by one position for operations/administration to allow for a chief deputy court administrator. The current thresholds are as follows:

Circuit Size	TCA	CTO	General Counsel	Operations/ Administration	Total
Small	1.0	1.0	2.0	8.0	12.0
Medium	1.0	1.0	2.0	13.0	17.0
Large	1.0	1.0	2.0	23.0	27.0
Very Large	1.0	1.0	2.0	38.0	42.0

In FY 2008-09, this element experienced a significant position cut due to the July 1, 2008 reduction-in-force plans. A recent review of existing county funded positions exhibited that a significant number of court administration positions are still being funded by the counties.

Options were developed based on an increase to the thresholds using the average number of county funded positions, by circuit size, as a representation of need (equally applied to each circuit within the size designation). Staff attempted to incorporate a growth factor into the methodology that may be replicated in future years during the legislative budget request process.

Option One

Total cost is calculated based on the current thresholds and incorporate a modification for county funded positions (increase in operations/administration positions of 3 for small, 4 for medium, and 9 for large and very large circuits), using the higher pay plan caps.

Circuit Size	TCA	CTO	General Counsel	Operations/ Administration	Total
Small	1.0	1.0	2.0	11.0	15.0
Medium	1.0	1.0	2.0	17.0	21.0
Large	1.0	1.0	2.0	32.0	36.0
Very Large	1.0	1.0	2.0	47.0	51.0

Option Two

Total cost is calculated using the same methodology as option one and also moving the 19th Circuit to the medium classification, the 20th Circuit to the large classification, and the 17th Circuit to the very large classification.

Option Three

Total cost is calculated by applying a 23.1% growth rate to the current thresholds as a representation of the increased workload required to support the total trial court judges, staff, and other resources requested for FY 2009-10, using the higher pay plan caps.

Circuit Size	TCA	CTO	General Counsel	Operations/ Administration	Total
Small	1.0	1.0	2.0	11.0	15.0
Medium	1.0	1.0	2.0	17.0	21.0
Large	1.0	1.0	2.0	29.0	33.0
Very Large	1.0	1.0	2.0	48.0	52.0

Option Four

Total cost is calculated using the same methodology as option three and also moving the 19th Circuit to the medium classification, the 20th Circuit to the large classification, and the 17th Circuit to the very large classification.

The Executive Committee recommended Option Four with the caveat that the circuit size classification changes are contingent on receipt of funding and the circuits' demonstrated need. Option Four would increase the current FTE from 288.25 to 524 (235.75 increase) and the current salaries, benefits, and expense from \$22,288,182 to \$41,528,088 (\$19,239,906 increase). Mike Bridenback made the motion to approve Option Four, calculating total cost by applying a 23.1% growth rate to the current thresholds, and using the higher pay plan caps. In addition, move the 19th Circuit to the medium classification, the 20th Circuit to the large classification, and the 17th Circuit to the very large classification, contingent upon receipt of funding and each circuit's demonstrated need. Judge Francis seconded, and the motion passed without objection.

3. Self-Help Services

Greg Youchock provided a review of the determination of necessary funding levels for self-help and reported the following:

Since the adoption of Revision 7, court-based self-help services have been limited, with few counties/circuits actually providing assistance to self represented litigants. In April 2008, the Commission on Trial Court Performance and Accountability (TCP&A) submitted a final report to the Supreme Court entitled *Ensuring Access to Justice: Serving Florida's Self-Represented Litigants*. Following the submission, the TCP&A was asked to review the possibility of funding court-based self-help services as part of the court system's Stable Funding Initiative.

The TCP&A is recommending that funding be provided for court-based self-help centers in each circuit in addition to a statewide call-in center located in the OSCA. For funding purposes, the local self-help centers are costed-out for the trial court budget and the call-in center is costed-out for the OSCA budget.

The recommendation provides self-help services using a hybrid model in both family and civil matters and operating with a staffing level for the local self-

help centers based on a ratio of 1 FTE per every 56,355 filings (county civil and circuit civil, probate, and domestic relations). Based on these staffing levels, a floor has been established by circuit size designation. The floor is defined as 1.0 FTE for small circuits, 2.0 FTE for medium circuits, 3.0 FTE for large circuits, and 11.0 FTE for very large circuits. There are two exceptions to the floor for the 15th and 17th Circuits as their caseloads justify an additional 2.0 FTE and 4.0 FTE respectively. A floor of 1.0 administrative staff support position per circuit is also provided.

Positions have been calculated for each circuit as follows: one senior attorney I to manage the center; one administrative assistant II to perform administrative support duties; and the remaining balance of positions as court program specialist II's in order to perform case management functions. The TCP&A is also recommending that a provision be made to attract bi-lingual speaking individuals, as Florida has a large and growing non-English speaking population. One option would be to allow circuits to hire 5-10% above the position base to attract bi-lingual candidates. The estimation of self help center FTE costs is \$5,369,210 for 75.0 FTE.

This recommendation presumes that the OSCA centralized call-in center will have a toll-free telephone number advertised at each courthouse and on all court websites and that courthouse desktops/work stations with phones and office space will be available and provided at county expense. Further, it is presumed that OSCA will provide website and forms administration (web administrator and forms attorney) to assist with implementation. It is also assumed that website links to law and public libraries will be established.

Walt Smith made a motion, seconded by Carol Ortman to add self-help services as an essential court element and approve the TCP&A's recommendation of 75.0 FTE and \$5,362,210 for FTE costs. Judge B. Perry thanked Greg Youchock and the TCP&A for their work on this issue.

B. Consideration of a New Funding Structure

1. Identification of Stable Funding Source

Kris Slayden made a presentation on the identification of stable funding sources and reported the following:

Guiding principles:

- Consider revenue that is related to workload that involves the courts
- Do not consider revenue that is already earmarked for a specific program but can consider an increase to be earmarked for the judicial branch

Maximize Stability of Revenue Streams:

- Take into account the volatility of Circuit and County Civil, Probate, Family and Traffic filings
- Diversify the revenue streams by spreading over filing fees, service charge, court costs, and fines
- Incorporate growth in the revenue structure, with possible 10% contingency fund

a. Article V Funding Streams

Total court-related revenue is generated from filing fees, fines, service charges and court costs. For FY 2008-09, the total revenue is estimated at \$966.1 million and is deposited up as follows: \$539.3 - Clerks of Courts, \$203.6 direct to the State's General Revenue (GR) Fund, \$58.0 – Clerk of Court Excess to GR and of the \$165.2 revenues earmarked, \$13.4 is directed to the State Courts System.

The Clerks of Court portion (2/3) of court-related estimated revenue sources after earmarks to GR and other programs in FY 2008-09 is \$550.7 million. FY 2008-09 projected revenue to the State GR from fees, fines, court costs and service charges (GR Earmarks and 1/3 contribution) is \$261.5 million. The clerks are expected to send in to GR \$58.0 million for their 1/3 contribution. The actual 1/3 amount should be \$187.6 million, a difference of \$125.6 million.

b. Other Potential Revenue Sources

The following are possible sources of additional revenue:

1. Civil Traffic Infraction Fine Increase – All moving and non-moving citations would be increased by \$5.
2. Reopen Fee Increase to Modifications/Redirect Current Reopening Revenues – A reopen fee increase of \$150 (total \$200 reopen fee) would be instituted for dissolution and child support (non Title IV-D) modifications.
3. Repeat Violence Filing Fee – For all repeat violence cases charge a \$200 filing fee.
4. Dissolution Responses Filing Fee – Institute a new filing fee of \$300 for responses to dissolution petitions resulting in a contested case.
5. Motions Filing Fee – Institute a new filing fee of \$50 for specific motions that involve judicial workload in the circuit and county civil divisions of court.

6. Jury Demand – Institute a new fee of \$135 in circuit and \$50 in county for civil cases in which the defendant requests a jury trial.
7. Civil Traffic Infraction Fine Increase (speeding) – charge a \$25 fine increase for non-criminal moving infractions of 15-19 mph (currently \$125) and 20-29 mph (currently \$150) over the posted speed limit.
8. Sliding Scale Filing Fee Increase – A sliding scale filing fee increase to circuit civil, family and probate case filing fees for \$1,000, \$2,000 or \$5,000 based on case value.
9. Memorial Traffic Safety Act – Deputy Michael Callin, Michael Haligowski, and Deputy Ryan C. Sequin Memorial Traffic Safety Act, amendment to s. 322.251 F.S. and 322.34 F.S. requiring \$10 of the total fee assessed for release of a vehicle impounded under this subsection to be remitted to the State Courts System for deposit into the Operating Trust Fund created under s. 25.3844. In addition, a portion of any outstanding fine or fee collected as a result of this bill shall be directed to the State Courts System Trust Fund.
10. Elimination of 18% Driving School Reduction – This proposal would repeal current law regarding the 18% fine reduction for electing to attend driver improvement schools.
11. Reschedule Fee – For all civil cases, charge a reschedule fee of \$50 if a hearing is cancelled by a party and needs to be rescheduled.
12. Fee/Service Charge Increase for District Courts of Appeal – A redirect of the current \$300 filing fee for appeals and petitions and a fee increase of \$100 for filing of appeals and petitions; a new \$50 fee for pre opinion motions; a new \$100 fee for post opinion motions; a new \$100 fee for court reporter requested extensions; a redirect of the current \$1 service charge for photocopies per page and a service charge increase of \$2.25 per page for photocopies; a redirect of the current \$2 certification service charge and a service charge increase of \$3 for certification; a redirect of the current \$25 service charge for O/A recording and a service charge increase of \$75 for recording; a redirect of the current \$100 fee for Pro Hac Vice and a fee increase of \$400 for Pro Hac Vice; a new \$400 fee for Amicus Curiae; a redirect of the current \$295 fee for notice of cross appeal/joiner/intervenor and a fee increase of \$105 for filing of notice; and a new \$25 service charge for file review.

2. Implementation Issues for a Dedicated Funding Source

Charlotte Jerrett reviewed trust fund administration processes including: establishment criteria; general revenue surcharge; implementation issues; and operational issues, and reported the following:

The State Courts System appropriations currently are approximately 92% GR and 8% trust funds. Trust funds consist of moneys received by the state which under law or under trust agreement are segregated for a purpose authorized by law [215.32(2)(b)1, F.S.]. Consequently, revenue streams collected for the Court Funding Stabilization Initiative must be deposited into a state trust fund. An appropriate internal and external financial structure must be in place in order to administer and operate with trust funded budgets.

Guiding Principles for Policy Consideration

- Follow statutory direction for trust fund structure and development.
- Develop trust fund structure that allows for maximum flexibility of internal cash management and allocation of budgetary authority.
- Examine current revenue streams and trust fund structure for application with new revenue streams.

Staff Recommendations

- A. Direct new revenue streams to the existing State Courts System Operating Trust Fund pursuant to s. 25.3844(2) F.S., in the appropriate budget entity for the designated cost shifts and/or new budget authority. This trust fund terminates effective July 1, 2010 and will need to be legislatively recreated during the 2010 Legislative Session.
- B. Re-direct revenue streams pursuant to s. 28.241(1)(a), s. 34.041(1)(b) and s. 44.108(2)(a),(b),(c), F.S., for circuit and county mediation programs and services to the State Courts System Operating Trust Fund. (\$15 circuit and county filing fees; \$60 and \$120 fees for circuit and county court-ordered mediation.) Revenue streams for mediator qualifications and certification, pursuant to s. 44.106 F.S., will remain funded and budgeted for that purpose.
- C. Budget for a minimum 5% cash reserve. This amount is consistent with executive branch standards for cash reserve amounts.
- D. Budget for a minimum additional 5% reserve for cost-of-living amounts for increases in health insurance premiums, retirement contributions and potential raises or bonuses. This amount should be examined annually to provide for adjustments as trend data becomes available.
- E. Cash flows and cash releases should be managed and administered centrally and at the fund level. Oversight and operational policy

development should be provided by the appropriate internal budget commission.

- F. Implementation efforts should include seeking either an exemption from paying the General Revenue Surcharge or authorization to pay the reduced amount of 3 percent, for the General Revenue Surcharge for the State Courts System Operating Trust Fund. Judge Laurent suggested seeking an exemption from paying the surcharge.
- G. The creation and use of an Administrative Trust Fund should continue to be explored by staff for costs associated with statewide departmental and management activities.
- H. Revenue collections should begin July 1, 2009.
- I. Budget expenditures should be paid from the State Courts System Operating Trust Fund, effective October 1, 2009.
- J. Staff should research and propose the necessary legislative changes to implement this plan.
- K. Staff should continue to work on any operational issues associated with this implementation plan and bring forth any policy implications that arise to the TCBC Budget Management Committee.

Judge Mahon made a motion to approve: 1) \$559.3 million as the total FY 2009-10 proposed budget for the State Courts System; 2) proposed new revenue streams as presented; and 3) staff recommendations as presented for implementation and operational issues. Judge R. Morris seconded, and the motion passed without objection.

3. Potential Statutory or Constitutional Revisions

Greg Smith provided the potential statutory or constitutional revisions and reported the following:

Statutory revisions could divert any portion of the filing fees going directly to General Revenue to a trust fund in the state courts system. This action would require amendment of the following sections of the Florida Statutes:

- 25.241 Filing fees in the Florida Supreme Court
- 28.241 Filing fees in trial and appellate proceedings
- 34.041 Filing fees in county court
- 35.22 Filing fees in the District Courts of Appeal
- 28.101 Petitions and records of dissolution of marriage

In addition to the revenue from filing fees which go to General Revenue by law, there are several other specific revenue streams generated by court activity currently going to General Revenue. Those funds could go directly to a trust fund for use by the State Courts System. This action would require amendment of the following additional statutes:

- 27.52 Determination of indigent status
- 27.562 Disposition of funds
- 318.21 Disposition of civil penalties by county courts
- 938.29 Legal assistance; lien for payment of attorney's fees or costs

In addition to the diversion of all funds generated by court-related activity, an additional amount of the filing fees currently going into the 2/3 portion of the revenues collected and retained by the clerks of court could be redirected to a state courts trust fund. That money as well as additional funds generated from new filing fees related to efficient management of the State Court System, would establish a stable funding mechanism for the state courts.

Currently the salaries and benefits of judicial officers are paid from an appropriation that also includes non-judge salaries. If required to reduce the fund by a given percentage, the entire reduction must be absorbed by the non-judge employees because the salaries of judges are set by law. As a result, it is appropriate to fund judges and justices from a separate General Revenue line item that, pursuant to law, must be considered separately in a budget reduction exercise.

C. Assessment of the Impact of Insufficient Funding Levels

Rose Patterson provided a presentation of the impact of insufficient funding levels and reported the following:

Anecdotal information regarding cuts to the court budget must be supported in some way by data. Circuits were surveyed and responses identified specific trends related to the loss of resources. Disposition data was compiled and compared to the survey data. Slowdowns in disposition and increases in pending cases aligned significantly with the survey data. Specific results are as follows:

1. Disposition and Other Quantitative Data
 - a. Disposition data shows that all circuits appear to be experiencing delays in case processing. This trend is consistent with the available pending case data.
 - b. Initial financial data indicates that there is a lack of efficiencies related to the loss of magistrate, law clerk and case manager positions in those circuits where staff is now required to travel.

2. Qualitative Data

- a. Qualitative survey data indicates that the loss of case management resources, law clerks, general magistrates, and court reporting resources most greatly contribute to delays.
- b. There are faces behind the cases. The elimination of specific differentiated case management resources has resulted in delays, shorter hearing times, and children and families not receiving specific services.
- c. Agencies and providers that work with the courts are reporting delays and diminished access to services.

3. Ongoing Efforts

- a. A mechanism has been established to track disposition and pending case data on an ongoing basis. This data will be examined monthly to further evaluate delays.
- b. Identify any additional delays that may occur as the courts approach the midyear point from when the courts sustained the most recent round of cuts. This will give newer case filings time to “age”.
- c. Additional faces behind the cases profile information will also be collected on an ongoing basis.

Lisa Goodner added that talking points will be developed from this assessment. Anecdotes are being collected from judges and attorneys from around the state.

V. Update on Other Activities

Lisa Goodner provided an update on other activities and reported the following:

Appropriations committee meetings are scheduled for the week of December 15th. The Senate has scheduled a major briefing on budget and revenue. If a special legislative session is called, it will most likely take place in January.

The Florida Bar is sponsoring a court funding symposium on January 16th. The Bar has invited legislators, chief judges, members of the TCBC and TCP&A. Chief Justice Quince has authorized travel to participate.

The business and bar coalitions are waiting for the courts to provide them with the funding initiative plan.

Adjournment

Judge B. Perry thanked the members for their hard work and offered special thanks to OSCA staff for their contributions under tight time constraints.

With no other business before the commission, Judge Perry adjourned the meeting at 12:47 p.m.