

**Trial Court Budget Commission  
Meeting Minutes  
Amelia Island, Florida  
December 8, 2004**



**Members Present**

Stan Morris, Chair	A. B. Majeed	William Roby
Belvin Perry, Jr., Vice Chair	Donald Moran, Jr.	Walt Smith
Mike Bridenback	Carol Ortman	Patricia Thomas
Paul Bryan	Wayne Peacock	Fred Tygart
Ruben Carrerou	James E. C. Perry	Mark Weinberg
David Demers	Nancy Perez	Theresa Westerfield
Joseph Farina	Judy Pittman	
Charles Francis	Thomas Reese	

**Members Absent**

John Laurent	Susan Schaeffer
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**Others Present**

Judge Fine-14<sup>th</sup>, Judge Hayes-20<sup>th</sup>, Jennifer Wells-14<sup>th</sup>, Caron Jeffreys-20<sup>th</sup>, Judge Warren Burke-18<sup>th</sup>, Mark Van Bever-18<sup>th</sup>, Judge Kim Hammond-7<sup>th</sup>, Elaine New-6<sup>th</sup>, Gay Inskeep-6<sup>th</sup>, Britt Beasley-4<sup>th</sup>, and OSCA staff.

**WELCOME AND INTRODUCTION OF GUESTS**

**New Commission Appointments**

Judge Morris called the meeting to order Wednesday, December 8, 2004, at 8:40 a.m.

Judge Morris welcomed and introduced the following new members as appointed by Chief Justice Barbara Pariente: Judge David Demers-6<sup>th</sup>, Judge E.C. Perry-18<sup>th</sup>, Judge Patricia Thomas-5<sup>th</sup>, and Mark Weinberg-7<sup>th</sup>.

Judge Morris recognized the guests in attendance.

**Approval of Meeting Minutes**

Judge Francis made a motion to approve the minutes as drafted. Judge Pittman seconded and the motion was approved, without objection.

### **Special Presentation**

A conference call was made to Judge Susan Schaeffer, who was unable to attend the meeting. Judge B. Perry spoke about Judge Schaeffer's excellence in her judicial career, which had a profound effect on the entire State Courts System, and to which colleagues from Key West to Panama City can agree. Chief Justice Pariente was unable to attend the meeting, and asked Judge B. Perry to present to Judge Schaeffer a proclamation before the Commission, on her behalf. Judge B. Perry read the proclamation (attached). Chief Justice Pariente recognized Judge Schaeffer's long and faithful service to the Trial Court Budget Commission, honoring her with a lifetime title of Chair Emeritus. The Chair Emeritus is a non-voting perpetual member, and is authorized to attend all meetings at state expense. On behalf of the "A-Team" and colleagues, Judge B. Perry expressed the debt of gratitude owed to Judge Schaeffer for her work with Revision 7, and what it means to the TCBC, to colleagues, and to people who work in the courthouses every day. The "have nots" are now "haves."

Judge Schaeffer expressed that she would love to remain a part of the TCBC, as it is her heart and soul, and accepted the appointment as Chair Emeritus. She regrets not being able to attend the meeting. Judge Schaeffer wanted to be present to support Judge Morris and Judge B. Perry. She wished the members a wonderful holiday season and New Year.

### **REPORT FROM THE BUDGET MANAGEMENT COMMITTEE**

Judge Laurent reviewed the charge of the committee for the new members. The committee is charged with monitoring operating budgets within the trial courts and recommending policies to manage operating budgets within the trial courts.

### **Status of Salary Shortfall**

In FY 2003/04 the trial courts faced a \$4.3 million general revenue salary shortfall between the circuit and county court budget entities. The TCBC successfully managed this shortfall by imposing a hiring freeze on all vacant positions, and mandating across-the-board operating budget reductions for all circuit budgets. Significant progress was made to reduce the salary shortfall.

July 1 estimates for FY 2004-05 indicate the annual circuit courts salary budget will be short approximately \$6.4 million, and county courts will be short \$800,000. The TCBC developed salary management policies at their June meeting to reduce the shortfall for FY 2004-05. These actions included not filling new positions until October 1<sup>st</sup>; hiring all initial appointments at the minimum of the pay range; disallowing overlaps of positions; placing unallocated FTE in Reserve; and transferring funds from unallocated operating categories to the salary/benefits category.

Projections through December indicate that because of significant vacancies since July 1, the salary budget is covered (\$1.3 million excess) through fiscal year-end, assuming no changes in current personnel action policies. Approximately \$1.5 million was made up permanently, to reduce the annual shortfall.

The TCBC has filed a budget issue for the SA/PD cost sharing issue. Judge Morris reported that initial discussions with the SA, PD, and JAC resulted in agreements for court reporting due process costs. The plan was to bill those entities quarterly, but the process broke down. There is a substantial difference on what we have received compared to what is actually owed.

Judge Farina stated that the circuit courts are doing well this year, but the majority of the savings were not helping make up the permanent shortfall. Permanent recovery must equal \$2.6 million. Chief Judges will have more discretion restored when the shortfall is permanently met. Judge Morris added that the courts experienced a paradigm shift, and are now in a new environment without county funding. The TCBC wants to return authority back to the Chief Judges for salary management as soon as possible, but to also ensure that inequities will not result from the authority shift.

Charlotte Jerrett reviewed the payroll projections worksheet and list of personnel actions that are forwarded to the Budget Management Committee each month.

### **Status of Expense Spending**

Charlotte Jerrett reported that through November 30, 2004, the trial courts have been very conservative in spending operating budget categories. Circuit and county court expenditure comparisons were reviewed. Through November 30<sup>th</sup> only 9½ % was spent. Lisa Goodner reminded the members that funds for large expenditures can be encumbered by OSCA staff and will reflect on reports as obligated. We do not want to report information to the legislature that understates our spending needs. The encumbrance process is a very important tool to use to help accurately reflect spending trends.

Judge Demers asked if expense dollars can be transferred to salary dollars to prevent losing staff due to the salary restrictions. Judge Morris replied that this transfer would not solve the shortfall problem. Judge Demers said it is hard to explain to staff that they can have new furniture but cannot have relief from salary inequities.

Lisa Goodner reminded the group that the bottom-line expenditure number could be a false surplus. It is premature until we get a handle on the need. Judge Pittman in the 14<sup>th</sup> Circuit was spending county funds from July through October, so she agrees that it may be a false surplus. Charlotte Jerrett added that due process costs show a false surplus for vendor payments, as vendors are having difficulty knowing what entity to send their bills for payment. A \$5 million placeholder has been filed in the FY 05-06 LBR, if additional due process resources are needed.

Judge Morris reported that there is confusion with the traffic court witness and expert witness due process costs. The SA and PD agree the court should pay for the 2<sup>nd</sup> witness.

Mike Bridenback reported that the 13<sup>th</sup> Circuit is re-visiting using due process funds for home studies. Charlotte Jerrett stated that due process budget amendments are allowable to move dollars among due process categories. Walt Smith stated he needs funds for custody evaluators and asked if there is any budgetary flexibility. Lisa Goodner stated that the general appropriations bill contains proviso language that only refers to expert witnesses.

### **Status of Cost Recovery for Mediation**

Charlotte Jerrett stated that the legislature authorized budget authority in the amount of \$2,229,965 to provide for spending of collections pursuant to Section 44.108(2), F.S. A chart for projected revenues, actual revenues, and expenditures through November 30, 2004 was reviewed. The Budget Management Committee asked that the projections be updated to reflect current collections. Cost recovery amounts are to be allocated back to the circuit in support of mediation programs. Expenditures cannot be made until cash is collected.

Carol Ortman reviewed the fee structure when court-ordered mediation services are provided by a circuit court's mediation program:

- a) Eighty dollars per person per session in family mediation when the parties' combined income is less than \$100,000; or
- b) Forty dollars per person per session in family mediation when the parties' combined income is less than \$50,000; or
- c) Forty dollars per person per session in county court cases.

The ability to collect the fees is also dependent on judges to assess fees on non-indigent parties.

Mike Bridenback reported problems with accounting of dollars. The clerks are depositing funds in the wrong accounts. The 13<sup>th</sup> Circuit is working with the clerk to resolve the accounting problems. The second issue is that projected revenue from collection of fees could be over estimated. The 13<sup>th</sup> Circuit shows 60% of parties are paying \$40 instead of more people paying \$80. Ruben Carrerou reported that the 11<sup>th</sup> Circuit's mediation office is collecting data and found problems also. They are working with the clerks to resolve the issues. Charlotte Jerrett urged each circuit to check their records against the clerks' figures for fee collection.

### **Status of Cost Sharing for Court Reporting**

Charlotte Jerrett reviewed the model that the 2004 Legislature funded for due process costs in General Revenue and the Grants & Donations Trust Fund. According to the model agreed to

during session, the State Attorneys, Public Defenders, and JAC were to remit the amount of funds to pay for their estimated portion of services, as provided by trial court employees.

With the implementation of Revision 7, some of these entities now indicate that they were not funded amounts to pay for these services, and/or they didn't understand the model. The JAC indicates that they have no statutory authority to pay according to our model, and can only pay on a per case basis. This item contributes directly to the salary shortfall and is a glitch issue.

Judge Morris reported that the TCBC gave approval for staff to try and mitigate the loss of these funds, by proposing agreements that would allow State Attorneys, Public Defenders, and the JAC to pay only for those services used, instead of paying in accordance with the original funding model. The JAC indicates they will sign the new proposal and those details are in the process of being worked out.

The State Courts System was budgeted for a total of \$4,670,796, with approximately \$1,167,674 to be billed each quarter. Through November 30, 2004, \$395,942.75 has been received. Since the budget authority was intended to pay for a portion of the trial court employees' salaries that provide these services, it is critical funds be collected so payroll will be covered.

Should this account run short, proviso language in the FY 2004-05 GAA stipulates that once all contingency funds are depleted, a request may be made to the Legislative Budget Commission, to access the Working Capital Fund. Judge Morris encouraged the members to show good faith and keep operating as usual. The Legislature is aware of the problem and recognizes the State Courts System favorably for continued operations.

Walt Smith asked who is responsible for communicating with the State Attorneys and Public Defenders that the State Courts System would like to cease using staff for depositions. Judge Morris answered that communication should come from both the local and organizational level. This issue is ongoing with the Legislature because of the impact to the salary shortfall. Mark Weinberg added that other entities such as Department of Children and Families request services also. Judge Morris added that many entities request services. Another issue is the people who can afford to pay.

## **PERSONNEL ISSUES**

### **Salary Policies**

Judge Morris reviewed the 2004-05 Budget and Pay Memorandum from Chief Justice Pariente. The salary policies contained in the memorandum are the TCBC recommendations to the Chief Justice. The Supreme Court is very supportive of the TCBC.

Judge Morris explained the committee structure for reviewing policy change requests with budgetary impact:

1. Requests for exceptions to adopted policy are to be forwarded to the Budget Management Committee for budgetary impact and recommendation;
2. Budget Management Committee recommendation forwarded to the Executive Committee; and
3. Executive Committee recommendation forwarded to the full Trial Court Budget Commission for decision.

Only the full commission can make policy decisions. Two requests for exceptions to pay policy were reviewed involving requests for two judicial assistants to retain their salary upon reemployment after retirement (DROP). The policy is that these judicial assistants must be appointed at the minimum of the pay range. The Budget Management Committee recommended that the requests be denied. Similar requests were denied by the former Chief Justice. The Executive Committee approved the Budget Management's recommendation to deny. The chief judges who made the request were advised they could ask for a full TCBC decision. The TCBC approved the request and requested that the Personnel Committee make a policy recommendation.

### **Classification and Pay Study**

Judge Morris recognized the concern with employee morale, as county employees were impacted with cuts in pay and loss of benefits. He reported that a systematic study of the classification and pay plan will be done, with the last conducted in 1991. The TCBC understands the issues and is trying to do something to fix the problem. The best way to fix the problem is to start with the study. We are losing senior level staff and with the policy of hiring staff at the minimum salary, we are falling further behind. Walt Smith suggested that all circuits use excess expense money to fund the study now, rather than wait for funding by the legislature. The Trial Court Administrators will discuss this option further during their roundtable meeting tomorrow.

## **IMPLEMENTATION ISSUES**

### **Remaining Mediation Allocations**

Charlotte Jerrett reported that the 2004 Legislature appropriated a total of \$7,631,689 GR for mediation resources. An additional \$2,229,292 TF budget authority was appropriated to be funded through collections for mediation services provided in each circuit.

Effective July 1, 2004, the TCBC allocated 95.75 FTE and \$5,719,877 GR and \$2,229,292 trust authority. The remaining unallocated funds were held pending a review of the

mediation model, and identification of those circuits that will require additional FTE to operate a sound program. Circuits were polled to determine additional resource needs.

At their October 14, 2004 meeting, the TCBC Executive Committee approved emergency allocations in the following amounts: 3<sup>rd</sup> Circuit – 3.0 FTE, 5<sup>th</sup> Circuit – 1.0 FTE and \$40,000 contract, 6<sup>th</sup> Circuit – 1.50 FTE and \$125,000 contract, for a total additional allocation of 5.50 FTE and \$421, 398. The Executive Committee declined to allocate the remaining \$649,997 GR, pending analysis of projected collections for mediation service cost recovery.

Charlotte Jerrett reviewed a chart which showed the proposed additional allocations for 13.25 FTE and \$678,541 (includes \$30,000 transfer from Reserve Operations for contract expenses). Walt Smith moved to approve the proposed additional mediation allocations. Wayne Peacock seconded, and the motion was approved without objection.

#### **Payment of Civil Traffic Witnesses**

Judge Morris reviewed the October 14, 2004, TCBC memorandum from Judge Schaeffer, addressed to Chief Judges and Trial Court Administrators, regarding the responsibility of payment for traffic court witnesses. There are no clear guidelines from HB 113A or SB 2962 as to which entity should pay, but it is clear that the state court budget should not pay. In addition to the legislation, it is not ethical for the courts to pay witness fees for one side of the proceeding, losing the appearance of impartiality. However, there are no funds budgeted to pay for civil traffic witnesses. We have been asked by the legislature to pay this cost for this year only. The fees will be assessed out of circuit funds, from the juror/witness appropriation.

### **APPROVAL OF PROPOSED SUPPLEMENTAL FY 2005-06 LBR ISSUES**

#### **Court Reporting**

Carol Ortman reported that the Commission on Trial Court Performance and Accountability was charged with proposing an overall management system for the due process services of court reporting, language interpretation, and expert witnesses. The commission established a Court Reporting Workgroup, which reviewed court reporting operating issues, and focused on three primary objectives:

1. Develop a plan with goals, objectives, and strategies for improving the effectiveness and efficiency of the delivery of court reporting services in the trial courts;
2. Develop operating principles for the implementation of digital court reporting; and
3. Develop strategies for the implementation of digital court reporting.

The Commission on Trial Court Performance and Accountability amended and approved the goals, objectives and strategies developed by the Workgroup. The goals and objectives of the Statewide Plan for Effective Use and Management of Court Reporting Services are:

1. Goal – All records of court proceedings will be accurate and of high quality.
  - Objective - In order to ensure quality, the court will be solely responsible for recording all events required to be recorded at public expense.
  - Objective - All recording methods utilized in the trial courts will accurately capture the words spoken in court.
  - Objective - All digital recording systems will comply with statewide standards for digital court recording, as established by the Florida Court Technology Commission.
2. Goal – Court proceedings will be covered by the appropriate court recording method.
  - Objective - Court reporting services will be provided in an efficient and effective manner.
  - Objective - Digital recording capacity will exist in all courtrooms utilized for cases in which recording is required at public expense.
  - Objective - Capital cases will be recorded and transcribed in compliance with court rules.
3. Goal – High-quality records for appellate review will be submitted timely.
  - Objective - Appellate transcripts will comply with court rules for record submission.
  - Objective - The necessity for the preparation of written transcripts will be reduced.
4. Goal – Courts will have adequate funding that will be expended prudently.
  - Objective - Cost per unit in the twenty circuits will demonstrate a tendency to cluster around an acceptable norm.
  - Objective - Court reporting services will be procured in a cost-efficient manner.

The Commission has directed that these goals, objectives, and strategies be incorporated into a final report to be prepared by staff and submitted to the Commission in the near future. Judge Morris stated that court reporting is a priority issue and the outcome will impact local courts. He asked that the TCBC members read and study the TCP&A's report when it is finalized and give feedback to Carol Ortman or Peggy Horvath.

The Commission's Workgroup also identified court reporting priority considerations and recommendations which were submitted to the Funding Methodology Committee as input to the 2005 legislative budget request on court reporting.

In considering the budget request for court reporting, the Funding Methodology Committee developed a funding strategy for fiscal year 2005-06 that incorporates the following factors:

- **Equitable Funding Formula** – The TCBC should adopt a plan to achieve an equitable allocation of recurring funds to circuits to cover the operating costs for court reporting services, and provides for the efficient and effective delivery of court-related court reporting services.

The Funding Methodology Committee recommends that the general revenue recurring budget request be based on \$17 per eligible filing. Carol Ortman reviewed a chart which shows how the unit cost was calculated. Peggy Horvath stated that some circuits show low numbers because they are not a full service court.

The circuits should be required to submit a plan to the TCBC by May 1, 2005, for bringing their operating costs within range of an acceptable norm by FY 2006-07. The circuit plans should include full coverage for all divisions of court where there is a requirement for services at public expense; accommodate the assumption of services currently being provided by the clerk of court; elimination of deposition support to other entities by July 1, 2005; and improved efficiencies by effectively balancing digital and stenographic reporting. Based on a target budget of \$17/projected eligible filings, the recurring LBR for FY 2005-06 would be calculated as follows:

Formula Amount	\$23,231,061
FY 2004-05 Budget*	<u>\$21,080,660</u>
Additional \$ Required**	\$ 2,150,401 (50 FTE)

\* less cost sharing amounts

\*\* does not include non-recurring OCO necessary for new positions

- **Digital Court Recording Equipment** – The FY 2005-06 LBR for court reporting should include non-recurring funding for digital court reporting equipment to allow circuits to achieve the effective and efficient delivery of service and a strategy for accommodating the staffing changes associated with the transition from stenographic to digital court reporting.

The Funding Methodology Committee recommends that the supplemental court reporting request for FY 2005-06 include \$4 million in non-recurring dollars for digital recording equipment for circuits that have developed an effective and realistic transition strategy as part of their court reporting operating plans.

- **Operating Principles** – Operating principles should be developed to help guide the development of an efficient delivery model. The circuits should retain the discretion to determine the type of service delivery (stenographic, real-time, or digital) and the manner of service delivery (contract or employee).

The Funding Methodology Committee should collaborate with the Commission on Trial Court Performance and Accountability in the development of the operating principles.

- **Flexibility** – The Funding Methodology Committee recommends that the TCBC ensure existing budget flexibility, allowing for the transition from stenographic court reporting to digital recording and between contract and staffing models, is maintained in the FY 2005-06 GAA.
- **Contingency** – Request continuation of the contingency funds for FY 2005-06 to accommodate unexpected additional changes in service by the clerks of court, cost sharing uncertainties, etc.
- **Certification/Courtrooms** – Because the proposed funding methodology is based on filings, separate requests for recurring dollars to accommodate the increase in the number of judges certified and funded by the legislature will not be necessary. The Funding Methodology Committee recommends that non-recurring equipment dollars be requested as courtrooms used for cases required to be recorded at public expense are added.
- **Cost Recovery/Sharing** – A plan for accommodating cost recovery for transcripts of court events provided to private attorneys, state agencies, and others by trial court stenographer or transcripts from a digital recording by trial court transcribers need to be developed.

**Supplemental LBR Summary for Court Reporting:**

<b>Additional Recurring GR</b>	<b>\$ 2,150,401 (50 FTE)</b>
<b>Non-Recurring GR for digital equipment</b> (also includes the appropriate non-recurring expense and OCO for the positions)	<b><u>\$ 4,000,000</u></b>
	<b>\$ 6,150,401 (50 FTE)</b>

Judge Morris asked if the members agreed with the methodology and the \$17 per eligible filing rate. Judge Roby asked if the TCBC has plans to establish a policy moving to electronic court reporting. Peggy Horvath stated that courts can choose the most economic way, and operating at no more than \$17 per eligible filing. Judge Farina stated he is happy to have the discretion to choose the best method but thinks that all circuits may have to move to the electronic method.

Wayne Peacock moved to approve the Funding Methodology Committee's recommendation of a funding strategy which includes: an equitable recurring allocation of \$17 per eligible filing; submit to TCBC circuit plans for becoming a full service court in FY 2006-07 and for operating at no more than \$17 per eligible case filing; collaborate with the TPC&A in the development of the operating principles; TCBC to ensure existing budget flexibility; request continuation of contingency; request non-recurring equipment dollars used for cases required to be recorded at public expense are added; and development of a plan for cost recovery and cost sharing. Mike Bridenback seconded, and the motion was approved without objection.

Wayne Peacock made the motion to approve filing a supplemental LBR for court reporting which includes: \$2,150,401 (50 FTE) additional recurring GR, and \$4,000,000 non-recurring GR for digital equipment. Mike Bridenback seconded, and the motion was approved by the members without objection.

### **Child Support Hearing Officer Resources**

Charlotte Jerrett reported that during October 2004, the Department of Revenue (DOR) approached the OSCA about filing a budget issue for additional hearing officer resources. DOR is undertaking an initiative to establish Florida among the top performing states with large caseloads, with an overall ranking of 17<sup>th</sup>, by FY 2006/07. Currently, Florida is ranked 38<sup>th</sup>. The DOR's proposal for 8 additional hearing officers and 8 additional support staff was reviewed. The DOR would be appropriated general revenue funds and the State Courts System will do a draw down from these funds with trust authority. The DOR would like to meet with TCBC representatives. Judge Francis stated federal money, over \$61 million, was received to enhance DOR's child support computer system.

After discussion, Judge Francis made a motion to approve the proposal and give the OSCA authority to enter into an agreement with DOR. Judge Pittman seconded, and the motion was approved without objection.

### **Capital Outlay for New Courthouse Construction or Renovations**

Charlotte Jerrett reported that SB 2962 stipulates that furniture and equipment for non-public areas in courthouses are a State funding responsibility [29.008(1), F.S.]. The trial court operating budget does not contain funds to provide for equipment and furnishings for new courthouses, or renovations of existing courthouses. Examples of these areas include judges' chambers, staff offices, break rooms, conference rooms, etc.

The Funding Methodology Committee requested that staff gather information to determine the status of furnishing needs related to new construction or renovations. A survey was sent to trial court administrators and the results were presented to the Funding Methodology Committee.

The Funding Methodology Committee recommended:

1. For FY 2005-06, confirm completion date and TCA must certify that existing furniture is below minimum standards for use in renovated space;
2. Determine and adopt state standards for each furnishing and equipment component; and
3. Request staff to provide a comparison of each court's itemized budget request to the state standards.

Judge B. Perry made a motion to approve the Funding Methodology Committee's recommendations and file a supplemental budget issue. Walt Smith seconded, and the motion was approved without objection.

### **Due Process Costs**

Charlotte Jerrett reported that for FY 2004-05, the legislature appropriated \$16,852,621 of the requested \$17,778,487 for the contractual due process needs of the trial courts. In August 2004, there had not been time to gain solid data on actual expenditures for due process costs or assess possible growing expenditures due to outstanding policy issues. Furthermore, given the uncertainty of sufficient resources, the TCBC agreed to file a placeholder budget issue for \$5,000,000 in the 2005-06 LBR.

In determining a need to request supplemental due process funds in the 2005-06 LBR, consideration should be given to the following factors:

- Five months of actual data has been captured for FY 2004-05 which indicate the following (five months equals 42% of the fiscal year): Custody Evaluation – 0.6%, Expert Witness – 11.7%, Court Interpreting – 22.4%, and Court Reporting – 31.3%;
- There are no amounts factored into the base budget for annual increases for contract services;
- For FY 2004-05, the legislature appropriated \$3.4 million in contingency funds and \$637,866 or 18.8% is non-recurring; and
- There are pending recommendations from the legislature's Article V Indigent Services Advisory Board regarding standardized rates for due process services.

The TCBC was asked to consider if the budget issue for the \$5 million be adjusted upward, downward, or left as filed currently? The members discussed other factors and that if the courts have to pick up the second witness in certain proceedings, there may be some hidden factors that have budgetary impact.

Judge Roby made a motion to leave the placeholder of \$5 million as filed. Judge Morris seconded, and the motion was approved without objection.

### **Transfer of Equipment Effective July 1, 2005**

Charlotte Jerrett reported that Section 28 of SB 2962 states equipment and furnishings in existence and owned by counties on July 1, 2005, except for that in the possession of the clerks, for areas other than courtrooms, jury facilities, and other public areas in the courthouses and any other facility occupied by the courts, state attorneys, public defenders, shall be transferred to the state at no charge. This provision does not apply to any communication services as defined in Section 29.008 (1)(f).

At its August meeting, the TCBC approved filing an LBR issue to cover the costs the State will be picking up effective July 1, 2005. These costs are for maintenance agreements or lease agreements associated with stand-alone copiers, typewriters, etc. Technology items remain a county responsibility and court reporting equipment maintenance is covered under a separate issue. Actual cost data has been collected from trial court administrators and are estimated at \$1,003,333.

Judge Moran asked if appropriations could be rolled over to the next year. Charlotte Jerrett indicated that a purchase order must be completed or funds must be encumbered. OSCA Finance and Accounting will then certify funds, and the funds must be spent by December 31. The Governor's office would like to do away with this extra six months to spend the money, and this statutory change will likely come up again this session. Lisa Goodner also reminded the group that the base budget becomes whole again July 1, unless it is cut during legislative session. Judge Roby asked if services can be treated in the same manner. Charlotte Jerrett responded that all services must be provided by June 30, and are not subject to the certified forward process.

Judge Perez made a motion to approve the proposed supplemental FY 2005-06 LBR issue to provide funds for the equipment transfer effective July 1, 2005 in the amount of \$1,003,333. Ruben Carrerou seconded, and the motion was approved without objection.

### **Benefits for Senior Management Classes**

Theresa Westerfield reported that the Personnel Committee established a work group consisting of personnel managers in the circuit courts and OSCA Personnel Services staff, to study and make recommendations on several personnel related issues including benefits for senior management classes. They discussed what positions should be eligible to receive 100% paid state benefits and what positions should be eligible to participate in the Senior Management Retirement Class of the Florida Retirement System.

**100% Paid State Benefits** – Many county-paid court employees in mid-management positions and above received health insurance benefits that were fully paid by the county. The State Courts System had neither the funding nor the authority to provide this benefit to those employees who were retained in state funded positions. There are also equity issues to consider. Paid benefits include health insurance, term life insurance at twice one's annual salary, and a short-term disability policy. In the trial courts, the Court Administrator, Chief Deputy Court Administrator, and each judicial assistant receive this benefit.

The estimated cost to provide this benefit is \$2,101.68 per year, per position, based on family coverage. The Personnel Committee prepared three proposals:

1. All employees not currently receiving this benefit (1,665) with a budgetary impact of \$3,499,297; or

2. Up to five managerial or supervisory positions per court and all attorney positions (415) with a budgetary impact of \$872,197; or
3. Up to five managerial or supervisory positions per court at the discretion of the chief judge (100) with a budgetary impact of \$210,168.

The Personnel Committee recommended option 2. Option 1 was too costly. Judge Morris stated that option 2 presents an equity issue. Theresa Westerfield stated that numbers were needed first to come up with the funding methodology. Judge Morris asked that the language be changed to reflect the total number of managerial/supervisory and attorney positions needed for all courts, instead of per court. Judge Perez added that the attorney number could increase if the 2:1 ratio law clerk issue is funded. Although all the legislative staff and Selected Exempt Service staff of the Executive Branch receive paid benefits, Judge Morris stated that we must look at the shortfall and be able to explain why we need this issue funded.

Judge Demers made a motion to approve option 1, providing for all employees not currently receiving this benefit. Judge Francis seconded the motion. Members discussed concerns with option 1. Ruben Carrerou was concerned that this item was too costly and felt option 2 is a safer choice. Judge Farina thought the salary shortfall was a priority, along with new judgeships, and asked how another big-ticket item would affect those priorities. Judge Roby stated that getting new judges over benefits would not help morale, but option 1 at about \$3.5 million is too big of a request. Judge Pittman agreed that the timing is not right and we have to permanently resolve the shortfall first.

Judge Farina made a motion to approve option 2, amending to read, "up to 100 managerial or supervisory and all attorney positions statewide, with allocation to be approved by the TCBC at a later time." Judge Bryan seconded, and the motion was approved without objection.

**Senior Management Retirement** - Theresa Westerfield reported that Chapter 121.055, F.S. specifically names several classes of State Courts System positions for participation in the Senior Management Retirement Service (SMRS). These are the State Courts Administrator, Deputy State Courts Administrator, Clerk of the Supreme Court, Marshal of the Supreme Court, Clerks of the district courts, Marshals of the district courts, Trial Court Administrators, and Chief Deputy Court Administrators.

The Personnel Committee recommends that legislation be filed to amend Chapter 121.055 during the 2005 Legislative session to include additional State Courts System positions in SMRS. The proposed language would add the General Counsel, the Trial Court Technology Officer, and up to three additional managerial positions in each court at the discretion of the chief judge. Carol Ortman recommended adding "Trial Court" before General Counsel. Judge Demers recommended that instead of naming positions state the number of staff statewide. Judge B. Perry recommended the language be change to read "...up to five additional managerial positions in each court."

Judge Demers asked if these actions could be taken retroactively for staff that lost their senior management benefits in the Revision 7 transition. David Pepper stated that in the past these actions were retroactive. Statutes allow the employee to pay half and the court pay half, or the court could pay the total cost, for eligible service.

Judge Morris made a motion to file legislation to amend Chapter 121.055 during the 2005 Legislative session. The proposed language would add up to 100 managerial or supervisory positions statewide, with allocations to be approved by the TCBC at a later time.” Judge Demers seconded, and the motion was approved without objection.

**Lead Worker Designation** – Section 6.06, SCS Personnel Regulations, states the following:

1. If there are several positions in the same class or a different class with the same pay grade located within the same work unit, one of the positions may be assigned lead worker duties provided:
  - a. The assignment of duties and responsibilities of a limited supervisory nature is in addition to the normal duties and responsibilities of the position;
  - b. The additional responsibilities do not justify reclassification of the position to a supervisory class; and
  - c. Assignment of lead worker duties cannot be utilized to create an intermediate level of full-line supervision, or as a substitute for the establishment of a new supervisory class.

Section 7.02 includes the following regarding pay for lead worker status:

1. The employee filling the position shall be eligible to receive a pay adjustment of up to 10% above the employee’s salary prior to assuming the lead worker duties. Such increases may be granted even though it places the employee’s salary above the minimum of the pay range for the class.
2. If the lead worker duties are removed from the position or the employee is reassigned to a different position, the employee’s salary shall be reduced by the amount it was increased when the duties were assigned.

Based on the interpretation of paragraph 2 above, in most situations, an employee who received a 10% salary additive for lead worker duties, and who is subsequently promoted, would not receive a pay increase upon promotion, as the salary additive is removed before the promotional pay increase is computed. The Personnel Committee recommends the following amendment to Section 7.02:

3. An employee assigned to a position that has been designated as a lead worker position, who is promoted, may receive a promotional pay increase to the minimum salary of the new class or up to a five percent increase to his/her current salary, including the salary additive for lead worker duties, whichever is higher.

Walt Smith made a motion to approve the lead worker designation and the amendment to Section 7.02. Wayne Peacock seconded, and the motion was approved without objection.

**Former Senior Deputy Court Administrator Positions** – The Personnel Committee recommends that all state funded positions that were formerly classified as Senior Deputy Court Administrator be filled at the minimum salary established for the Senior Deputy class prior to their re-titles in May 2004, and their temporary assignment to pay grade 200. The re-title proposal was always considered an interim step in Revision 7 implementation pending a complete study of the SCS classification and pay system. Pay grade 200, which has a range from the minimum of the Deputy Court Administrator (\$43,544) to the maximum of the Senior Deputy Court Administrator (\$92,625), was created to accommodate the existing salaries of all incumbent deputy and senior deputy positions at the time of the re-title. The minimum salary of the former Senior Deputy was \$52,928.

In June 2004, the TCBC voted that all vacant positions must be filled at the minimum of the salary range established for the class. This action has had a deleterious effect on each court administrator's ability to fill vacant former senior deputy positions with employees who have the knowledge, skills, and abilities required to perform management level responsibilities. As court administrators have had to reduce the level of responsibility assigned to these positions to accommodate the lower pay, they have essentially lost key management level positions for their court.

Since the majority of the Senior Deputy Court Administrators were paid above the minimum salary of the Senior Deputy class, each of these positions has been funded above the minimum salary of the senior deputy. Though the savings would not be as significant if these positions were filled at the deputy minimum, there is no additional cost to revert to the former senior deputy minimum.

A motion was made to approve the recommendation that all state funded positions that were formerly classified as Senior Deputy Court Administrator be filled at the minimum salary established for the Senior Deputy class prior to their re-titles in May 2004, and their temporary assignment to a pay grade 200. The motion was approved without objection.

**Trial Court Technology Officer Title** – The Personnel Committee, after consideration of several proposed titles, recommends that the Trial Court Technology Officer title be changed to Director of Trial Court Information Systems Services. The work group determined that this title best reflects the nature of work, level of responsibility, and the purpose of these positions. The members discussed several options. "Court Information" is not a popular term. Walt Smith made a motion to amend the proposal and change the title to Information Systems Services Officer. Carol Ortman seconded the motion. Further discussion ensued and the motion was withdrawn for further consideration by the Executive Committee.

## **2005 LEGISLATIVE ISSUES**

Lisa Goodner reported that a House bill was filed during special session that would create 14 new judgeships. There is no companion bill in the Senate. Concerns arose about how this bill may affect the State Courts System's new judgeship request. The new bill will be lobbied as a phase-in of the 2005/06 certification order and will include law clerks, at a 1 to 2 ratio. Judge Morris recommended accepting the bill as an interim to any action that will take place during regular session.

### **Trial Court Performance & Accountability Report on Court-Appointed Counsel and Indigent Due Process Costs**

Peggy Horvath reported that the Commission on Trial Court Performance and Accountability prepared a report to help identify the scope of the circuit indigent services committees' tasks and the related executive branch support resources necessary to keep the system operational.

The Commission on Trial Court Performance and Accountability has identified three critical problems following the state's assumption of court-appointed counsel costs under Revision 7.

1. The statutes establishing and governing the local indigent services committees are inherently problematic in that the committees are not clearly created as executive branch policy-making bodies.
2. An executive branch infrastructure to support court-appointed counsel operations, just as the state attorney and public defenders' offices enjoy, is necessary.
3. Critical operational and administrative support for both the local committees and for the local day-to-day management of court-appointed counsel activities is urgently needed.

Judge Morris urged the members to read the report in its entirety. The Legislature and JAC assuming that the courts can take over the administration, staffing, and resolving issues are one of the problems that circuit judges are faced with. The TCBC thought this issue would be satisfied when JAC was appropriated 50 new positions. Since this was not the case, funding is needed to fill a big hole in the budget. Judge Morris stated that this study is an enormous task for the TCP&A and this issue was brought to the TCBC due to the huge budgetary impact.

### **Report on Article V Technology Board Activities**

Judge Francis reported the Article V Technology Board, at their next meeting in January, will review an implementation issue for use of the \$2 recording fee to support court technology, and the inability to use the funds circuit wide. The Florida Technology Commission and the Article V Technology Board will recommend revision of language to "circuit wide" instead of county by county. \$1 of the \$2 recording fees should be allocated to the courts.

### **Review of Glitch Issues**

Greg Smith reviewed a list of 2005 Revision 7 Glitch Legislation items for TCBC approval.

1. **Indigent Services Committee** – More than one model for the appointment of court-appointed counsel should be available to allow circuits to choose different contractual arrangements. Also removes per case limitation.
2. **Indigent Services Committee staff** – Include provision for staffing the Indigent Services Committee.
3. **Expert Witness in civil, court-appointed counsel cases** – Clear legislation that indicates who should pay for mental health experts asked for by court-appointed counsel in civil cases, guardianship cases, Baker Act, etc.
4. **\$2 technology fee collected by the clerks** – The \$2 of the recording fee earmarked for the court, SA, and PD should be clarified to indicate that these funds are not to be used to support clerk's systems.
5. **Court-appointed lawyers' exemption from clerks' costs** – Court-appointed lawyers should have the same exemption from clerks' fees as the court, SA, and PD.
6. **Cost Recovery** – A mechanism for cost recovery to include the ability to bill for transcription costs. Money recovered should go through an existing Trust Fund.
7. **Information services workers supplying services to the courts must be supervised by the courts** – Clarification of the nature of Information Services workers supplying services to the court – the county has to pay, but the court must maintain control over those employees.
8. **Court reporting equipment** – Court reporting equipment in the courtroom should be state property. The equipment is currently county property even though it supplies the court with a due process element. There should be some clarity respecting digital equipment. Should the county be responsible for providing wiring in the courthouse for court reporting?
9. **Hearing rooms** – Counties should pay for hearing room furniture and equipment like they pay for courtrooms. This item should be a county expense.
10. **Costs for indigents not represented by the PD's or court-appointed counsel** - When a person is found indigent for costs or is a pro se indigent litigant in a criminal case or in a civil case, who should pay those costs, both at the trial level and the appellate level?
11. **Funding for mediation services** – The funding method for mediation services should be amended to allow for certain additional charges like cancellation fees.
12. **Traffic court witnesses** – Witnesses testifying in traffic court should receive their witness fees from the county, municipality, or state entity that will receive the fines imposed. The court should not be involved.
13. **Reporting requirements for court related fees** – Implement reporting requirements for the \$15 court facilities fee and the \$2 technology fee, similar to the one for the \$65 fee, so a clear record is available of how much was taken in and how the funds were used.

14. **Traffic hearing officers** – Some clean-up language respecting traffic hearing officers is required. Conforming language is needed respecting county funding. Eliminates the counties' role now that the traffic hearing officers are state employees.
15. **Expert witnesses when competence to proceed is in issue** – Clear legislation designating who should pay for mental health experts who are court witnesses but appointed at SA or PD motion or request.
16. **County responsibility to pay for courthouse** – A glitch in Section 29.008 seems to imply that the counties should only have to pay for courthouses built or under construction after July 1, 2003.

Judge Farina made a motion to approve the above items for the 2005 Revision 7 Glitch Legislation and for staff to draft the language. Judge Francis seconded, and the motion was approved without objection. Lisa Goodner asked the members to notify Greg Smith at OSCA if other issues need attention.

## **OTHER BUSINESS**

### **Special Legislative Session**

Judge Farina made a motion to give the Executive Committee authority to make decisions and act on the Commission's behalf, during the special legislative session. Wayne Peacock seconded, and the motion was approved without objection.

Judge Demers asked if any action was needed at the local level regarding judicial certification, in preparation for special session. Judge Morris asked the members to wait on taking any action. Lisa Goodner stated that the courts did not ask for the 14 additional judges to be funded during the special session. The members discussed their concerns regarding the impact of this new request on the court's judicial certification issue that would be addressed during the regularly scheduled legislative session.

### **Mediation Model and Formula**

Lisa Goodner distributed a handout describing the mediation model and budget formula. Jo Suhr stated that last year, we had difficulty in explaining the mediation model and formula sufficiently to the legislature.

The Revision 7 funding approach for most elements was based on either: 1) current expenditures; 2) threshold based on circuit size; or 3) workload formula based on filings. In determining each circuit's need for mediation funding, the TCBC combined the threshold and workload methods and added a cost recovery component. State general revenue supports the threshold and workload budgets; user fees support the cost recovery budget, which fills in the remaining dollars needed. Factors that affect cost recovery are: ability to recover the dollars projected; the amount that each circuit will actually collect in user fees is a function

of how they deploy their general revenue resources; and the collection logistics utilized by each circuit (services provided pre- or post-payment of fees). Further complicating the situation, the legislature did not fund the full model, so initial allocations for FY 2004-05 were based on circuits' current expenditures at the time.

The present situation for mediation funding is that the TCBC needs to allocate remaining dollars from the FY 2004-05 appropriation and support the FY 2005-06 LBR to complete the model.

### **ADJOURNMENT**

The next TCBC meeting will be tentatively held April 5, 2005, in Tallahassee. With no other business before the commission, Judge Morris adjourned the meeting at 2:00 p.m.