

**Florida Supreme Court**  
**Commission on District Court of Appeal Performance and Accountability Videoconference**  
**April 26, 2010**  
**1:30 pm to 3:30 pm**

**Minutes**

**Members in attendance:**

Judge William Van Nortwick, Judge Chris Altenbernd, Judge Vance Salter, Judge Martha Warner, Mary Cay Blanks, Tom Hall, Justice Ricky Polston (Liaison)

**Members absent:**

Judge William Palmer, Ty Berdeaux

**Staff in attendance:**

Sharon Buckingham, Maggie Geraci, Don Lubbers, Kristine Slayden, Avron Bernstein

Judge Van Nortwick called the meeting to order at 1:35 pm.

**I. Approval of December 14, 2009 Videoconference Minutes**

Judge Salter moved the approval of the minutes. Judge Altenbernd seconded the motion. The motion passed unanimously.

**II. Supreme Court Request for Further Information on Case Weight Recommendations**

Judge Van Nortwick provided a synopsis on the request for further information from the Supreme Court and noted that staff had compiled the districts' responses. He stated that he was inclined to provide the Supreme Court with copies of the actual responses from each district. Judge Salter agreed that this would provide the necessary background information. Judge Altenbernd also agreed. Judge Van Nortwick stated that staff will prepare a summary and he will review it prior to sending it to Supreme Court along with the district responses. He stated that the district responses should be sufficient to address the Supreme Court's request. He noted that the Supreme Court suggested that the Commission consult, as appropriate, with Judge Monaco, chair of the DCA Budget Commission, but Judge Van Nortwick did not see a need to do so as Judge Monaco's thoughts were well represented in the Third District's response. The members agreed.

**III. Postconviction Case Monitoring**

Judge Van Nortwick stated that the updated postconviction data in the materials seems to show that postconvictions are stabilizing and perhaps even starting to decline slightly. Judge Altenbernd stated that he was surprised by some of the data especially that prison admissions were higher in 1989 than 2009. Sharon Buckingham stated that the information on prison admissions was double-checked this morning and has been confirmed as accurate. Judge Altenbernd stated that page 44 of the meeting materials shows circuit court filings by district and those numbers have tripled in the Fourth District very quickly. Judge Van Nortwick noted that the Fourth and Third Districts also showed a very large spike. Judge Salter stated that he believes the data is accurate, but the chart needs a footnote to explain the spike.

Judge Van Nortwick asked staff to research the prison admission and circuit court filings and provide explanations by adding footnotes to the appropriate charts.

#### **IV. Dependency/TPR Case Monitoring**

With the recent rule revisions approved by the Supreme Court, Judge Van Nortwick asked the members if the data reports were reflective of changes the courts have made in managing dependency/TPR cases. Judge Altenbernd stated that the courts seem to have started making changes and he now has data to take to his district showing there are other reasons, besides getting records, why they are behind. He also stated that the data is useful in determining how these cases are processed and that he believes the information is very well presented. Judge Salter agreed and stated that he thought the data was useful.

Mary Cay Blanks stated that the clerks met again regarding the calculation from receipt of record to initial brief in the C-web reports. The clerks determined that the record should be defined as the last record filed before initial brief, and by doing so, this provides a larger sample. Judge Warner asked if it was necessary to display the statistics by those cases “disposed of not on the merits.” Judge Altenbernd stated that it is useful to see both cases “disposed on the merits” and “not disposed on the merits.” Judge Van Nortwick asked if the statistics should be provided to the Supreme Court both ways, as seeing cases “disposed not on the merits” is a useful management tool. Tom Hall stated that from his discussions with the Court, they are interested in cases “disposed on the merits.” Ms. Blanks stated that in criminal cases, the case is reviewed, but in TPR/Dependency, the case does not have to be reviewed, similar to Anders cases. She noted that the majority of the time, parents do not file briefs, so the case is dismissed for failure to prosecute.

Judge Van Nortwick stated he is inclined to wait to send the data to the Supreme Court because it has not been a full year since the rules were revised. Judge Salter agreed. Judge Van Nortwick asked Judge Warner and Judge Altenbernd how they felt about waiting to send these statistics to the Supreme Court. Judge Warner stated that the Fourth District did much of this before the timelines were adopted, but the economy and lack of staff are affecting the statistics. She agreed to wait before sharing the statistics, but noted that these numbers may be showing something other than procedural problems. Judge Van Nortwick noted that Judge Warner made a good point and with more time, a more complex and nuanced report may be provided to the Supreme Court. Judge Altenbernd stated he did not have strong feelings one way or the other, but the statistics show the Second District has issues to work on. Ms. Buckingham stated that the opinion revising the rules was issued in November 2009 and suggested that next November may be the time to look at the data again. Judge Van Nortwick agreed that the Commission should wait at least a year.

Ms. Blanks stated that when the statistics are reported to the Supreme Court, some kind of report should go with it. She noted that with certain cases, no matter what is done, they cannot be processed quickly. She indicated that some cases need more time, involve complex issues, etc., and she hopes that when the report is made to the Supreme Court, that it is noted that some of these cases naturally take longer. Judge Van Nortwick agreed and stated that specific examples of cases and why they resist all attempts to expedite should be included in the report. Tom Hall agreed and noted that they put these cases on an expedited case list and review the list periodically, but they are still slowed down on occasion and there is nothing that can be done about it. He stated that the report needs to note that the new procedures have been put in place, but someone has to manage them. He stated the Court very much understands limited resources. Judge Van Nortwick remarked that this is the approach they will take.

## **V. Potential Commission Activities for FY 2010-2012**

Judge Van Nortwick stated that dependency/TPR and postconviction monitoring should carry over as charges to the Commission for the next two years. He stated that he was not certain if any of the other items listed in the materials need to be addressed during the next term. Ms. Buckingham pointed to certain goals in the Long Range Strategic Plan for the Florida Judicial Branch, a suggestion by the Fifth District on studying the need for uniformity in handling opinions versus orders, and assistance that may be needed in the development of a new case management system.

In regards to the suggestion by the Fifth District, after a lengthy discussion, the members determined that uniformity had been discussed many times by the Commission over the years and that most issues have already been resolved.

Mr. Hall stated that ISS has said they can produce a new case management system by June 2011 as the existing technology is close to end of life. Ms. Buckingham asked Mr. Hall if the completion of a case management system by June 2011 was contingent on funding. Mr. Hall responded that the proposal is to fund it through the Technology Trust Fund and that there should be sufficient funds. This issue is to go before the Appellate Courts Technology Commission (ACTC) and then the DCA Budget Commission, before being presented to the Supreme Court. He noted that this was included in the Administrative Order for the ACTC. Judge Van Nortwick asked if there were plans to change the data elements and Mr. Hall responded that he did not believe they would change any data capturing. Mr. Lubbers stated that he did not think there would be changes to existing data variables, but that new data variables may be developed. Judge Warner asked Mr. Lubbers to keep the Commission in the loop as data elements were determined. Mr. Lubbers agreed. Ms. Buckingham noted that she had talked briefly with Chris Noel about the new case management system. Judge Van Nortwick asked Ms. Buckingham if she would continue discussions with Mr. Lubbers and Chris Noel on this issue. Ms. Buckingham affirmed that she would, especially in relation to the issue being included in the new administrative order for the DCAP&A.

Judge Van Nortwick asked if there were any other items for consideration by the Commission. Judge Warner stated that there is a need to look at uniformity in the use of senior judges, associate judges and legal staff for certification calculations. She asked where the funding methodology for legal staff originated. Judge Van Nortwick and Ms. Buckingham confirmed that it was recommended by the DCAP&A. Judge Warner asked if the number was based upon the optimum number of judges the districts are supposed to have. Judge Van Nortwick stated that he thought that number was based on the actual number of judges. Judge Salter agreed. Mr. Hall noted that the Supreme Court recently addressed the issue regarding senior judges in the trial courts. Kristine Slayden was asked to explain further. Ms. Slayden stated that the Supreme Court was interested in more detail on why senior judges were being used, so they could distinguish certain factors such as increased case load due to mortgage foreclosures, sick days, etc. Mr. Hall noted that some courts allow trial judges to sit on DCA panels and asked if that number was taken into account. Ms. Slayden responded that this is considered as additional information, but is not factored into the certification calculation directly.

There being no other business, Judge Van Nortwick adjourned the meeting at 2:58 pm.