

**Florida Supreme Court  
Commission on District Court of Appeal Performance and Accountability Meeting  
October 3, 2013  
10:00 am to 3:00 pm**

**Minutes**

**Members in attendance:**

Judge William Van Nortwick, Judge Chris Altenbernd, Judge Jay P. Cohen, Judge Vance Salter, Judge Martha Warner, Tom Hall, Jo Haynes, and Mary Cay Blanks.

**Members absent:**

Justice Peggy Quince (Liaison).

**Guests in attendance:**

Judge Robert Morris.

**Staff in attendance:**

Maggie Geraci, Arlene Johnson, and Patty Harris. Via conference call: Blan Teagle, Greg Youchock, and Andrew Johns.

Judge Van Nortwick called the meeting to order at 10:01 am.

**I. Welcome and Introductions.**

Judge Van Nortwick welcomed members and guest, Judge Morris. In order to accommodate Judge Morris's schedule, Agenda item III was introduced.

**II. Discussion Regarding the Role of the Judicial Management Council, Performance Workgroup. (Judge Robert Morris)**

Judge Morris provided information on what the Judicial Management Council's Performance Workgroup is doing as it relates to the Commission. He spoke to the lack of reliable data and the subsequent inability to determine trends for the court system. The Performance Workgroup is focused on determining what data is available, what information that data can provide, and what data is needed. He asked that the Commission provide information on what data is collected and how to interpret that data.

**III. Approval of September 9, 2012 Minutes.**

Judge Salter motioned to approve the minutes as drafted. Tom Hall seconded the motion. The minutes were approved unanimously.

**IV. Review of Post-Conviction Data.**

The Commission reviewed the post-conviction data. Historically, in September 2006, a report was submitted to the supreme court, by a joint DCAP&A and TCP&A workgroup, pertaining to recommended changes in procedural rules, administrative practices, and statutes that affect post-conviction remedies. Following the submission of the report, then Chief Justice Lewis directed

the Criminal Court Steering Committee to form a subcommittee to conduct a comprehensive review of rules 3.850 and 3.851, Florida Rules of Criminal Procedure. The subcommittee was also directed to study the recommendations contained in the 2006 joint workgroup report. However, due to the impact of budget cuts on staffing and travel restrictions, this project was unable to progress.

In Administrative Order 12-26, the supreme court tasked the Commission with monitoring the processing of post-conviction cases. Data was reviewed at the December 14, 2009 DCAP&A meeting and again at the April 26, 2010 video conference.

The Commission reviewed data on:

- Number of district court post-conviction case filings (FY 1993-94 thru FY 2012-13),
- Post-conviction cases as a percent of total district court cases (FY 1993-94 thru FY 2012-13),
- Number of prison admissions (FY 1992-93 thru FY 2011-12),
- Prison population (FY 1992-93 thru FY 2011-12), and
- Number of circuit court post-conviction relief motions (FY 1993-94 thru FY 2012-13).

The Commission expressed concern that some of the data for the Eleventh Circuit is inaccurate. Arlene Johnson noted that the data may be reviewed as part of the OSCA's auditing responsibilities over the Summary Reporting System..

The Commission decided to draft a report to the supreme court consisting of post-conviction information, including the data on post-conviction filings by district, a 20-year review of post-conviction filings by district, post-conviction filings as a percent of total filings by district, and a 20-year review of post-conviction filings as a percent of total filings by district.

## **V. Review of Dependency/TPR Appeals Data.**

Judge Van Nortwick discussed the review of Dependency/TPR Appeals data. In February 2011, the Commission initiated the first review, since rule implementation, on the eight noted time frames pertinent to dependency/TPR of parental rights. As a result of this review and as directed by Administrative Order SC10-47, in October 2011, the Commission submitted [Performance Monitoring Report: Dependency and Termination of Parental Rights Appeals](#). The report included district strategies that are being used to improve meeting the performance goals. The Commission did note that improvements across the districts have been made in most of the time frames. However, the Commission observed that reduced resources in the trial courts, such as limited court reporters to prepare records, and at the appellate level, such as limited regional counsel or conflict counsel available to prepare briefs, may be contributing to delays in receiving the record and the filing of initial briefs.

In response, then Chief Justice Canady sent a memorandum to all district court chief judges in which he praised the efforts of the district courts in working towards expeditiously resolving issues that involve the welfare of children and he further encouraged the district courts to share useful information that would help meet the timeliness goals.

The Commission reviewed updated dependency/TPR statistics at their August 7, 2012 video conference. It was noted that improvements continued to be made by the district courts in

reaching the timeframes, although the courts are still not able to meet the time periods relating to the filing of records and briefs, which remain outside their control. The consensus of the group was that no report needed to be submitted to the supreme court at that time.

Judge Van Nortwick noted that current data indicates continuing improvement at a similar rate to previous years. The Commission determined that an updated report should be drafted that includes the data on final judgment to disposition, for both cases disposed on the merits and cases disposed not on the merits. For all other measures, the data should only include all cases disposed. The report should note that several of the measures still remain outside the control of the court and are affected by the budgetary constraints of several stakeholder groups.

## **VI. Status Update on Joint Workgroup with DCABC on Model Staffing Levels.**

Greg Youchock provided a status update on the Joint Workgroup with DCABC on Model Staffing Levels. The joint workgroup established between the District Court of Appeal Performance and Accountability Commission (DCAP&A) and the District Court of Appeal Budget Commission (DCABC) is charged with reviewing model staffing levels and periodic reallocation of full-time equivalent positions as workload demands change between the districts. Within its purview are the clerks of court, marshals, and central staff of the district courts.

The Workgroup met once in person with the DCAP&A at the Appellate Judges' Conference on Amelia Island (September 2012) and several times via video-conference to discuss the primary elements of its charge. The Workgroup requested that the marshals and clerks meet to review the 2008 Needs Assessment methodology. As to the central staff piece, the Workgroup asked that an ad hoc central staff workgroup be formed to identify best practices. Subsequent to the identification of the best practices, an allocation methodology is to be developed and approved by the Workgroup. This last piece remains pending.

An ad hoc workgroup comprised of central staff representatives from each district was appointed and met in the fall of 2012. The workgroup identified a series of best practices that could be adopted for those districts that have a central staff model. The best practices were circulated and approved by the Workgroup with recognition that each district court is uniquely organized, with variations in the division of labor between central staff and elbow clerks. Further, the best practices are "suggested" methods and are not considered a standard of operation which connotes a mandatory method of operation. The workgroup is schedule to reconvene on October 31 to develop a methodology to determine Central Staff Attorney workload by assigning relative weights to case filings.

## **VII. Discussion on Rules 2.240 and 2.241, Fla. R. Jud. Admin.**

### **A. Changes to Rule 2.241.**

Greg Youchock presented on the changes to Rule 2.241. In July 2013, seeking to address certain deficiencies within Florida Rule of Judicial Administration 2.241, the supreme court directed the Office of the State Courts Administrator (OSCA) to recommend changes. The issues of concern included the arbitrariness of an eight year review cycle of existing appellate districts and addressing the omission of requiring a similar review for the judicial circuits.

In August, the OSCA suggested revisions to both Rule 2.241 and 2.240. The revisions allowed for supreme court discretion in the review cycle and provided consistency in reviews for both the trial courts and the district courts. Rule 2.240 is implicated in this process as the supreme court will solicit regular and formal feedback from the district court chief judges via the Judicial Needs Application as part of the certification of need process. If, after receiving feedback from the district court chief judges that a review of appellate workload and jurisdiction is necessary, the court may appoint an assessment committee to study the issue. At this time, the matter has been assigned case number SC13-1703 and is pending before the court.

#### **B. Review of Relative Case Weights under Rule 2.240(b)(2)(B)(ii).**

In 2006, the Commission proposed to the supreme court an amendment to then-rule 2.035, Florida Rules of Judicial Administration (renumbered as 2.240 in 2006). The proposed amendment modified the criteria for certification of need for district court judges. The amendment also added section (b)(2)(B)(ii) which states “[t]he Commission on District Court of Appeal Performance and Accountability shall review the workload trends of the district courts of appeal and consider adjustments in the relative case weights every four years.” The Court Commentary noted “[e]very four years the Commission will measure the relative judicial effort associated with the cases disposed on the merits for the year immediately preceding. This will be accomplished by asking a representative sample of judges to approximate the relative weight of cases in relation to a mid-ranked case. The resulting weights will then be applied to each court’s dispositions on the merits to determine the weighted caseload value per judge.”

In 2009, the DCAP&A conducted a review of workload trends of the district courts and considered adjustments in the relative case weights used for the determination of need for additional judges. Due to budget instability over the previous two fiscal years, the DCAP&A determined that this would not be an appropriate time to conduct a new Delphi study. Instead, the review focused on two unresolved issues outlined in the 2006 DCAP&A Report: 1) administrative appeals in the First District and 2) the effect of a lack of central staff in the Third District. At the time, the relative weights for all case categories reflected the statewide average, resulting in lower relative case weights than was reflective of the actual workload in the First District for administrative appeals and the Third District for all petitions and summary post-conviction relief matters. Therefore, in October 2009, the DCAP&A recommended that the supreme court adopt modifiers to reflect the amount of additional workload expended by the First and Third Districts. The modifiers were the percent difference between the statewide average relative weight and the district average relative weight for administrative appeals in the First District and all petitions and summary post-conviction relief matters in the Third District. The October 2009 DCAP&A case weights report is attached.

In February 2010, then Chief Justice Quince issued a letter to Judge Van Nortwick stating that the supreme court approved the use of the modifier for the First District, but deferred the approval of the modifiers for the Third District pending the receipt of additional information from the DCAP&A. Specifically, the supreme court requested information pertaining to: the use of legal staff (i.e., central staff and law clerks), how the use of legal staff is considered when requesting certification/decertification of a judgeship, senior judge usage, and the legal staff allocation methodology. In response to this request for

additional information, Judge Van Nortwick asked the districts to submit information related to legal staff and senior judge usage and that information was forwarded to the supreme court. Upon review, the supreme court denied the Commission's request for the modifiers for the Third District.

Four years has elapsed since the previous review and in accordance with rule 2.240(b)(2)(B)(ii), Florida Rules of Judicial Administration, the Commission is tasked with reviewing the workload trends of the district courts of appeal and whether adjustments should be made to the relative case weights.

The Commission requested that staff obtain the instructions and other information from the previous Delphi study and provide suggestions on how to increase the judge participation while keeping the pro rata percentage intact.

### **C. Discussion on Presumption of Need under Rule 2.240(b)(2)(B).**

Jo Haynes presented an issue for the Commission's consideration. Rule 2.240(b)(2)(B), Florida Rules of Judicial Administration states "[t]he court will presume that there is a need for an additional appellate court judgeship in any district for which a request is made and where the relative weight of cases disposed on the merits per judge would have exceeded 280 after application of the proposed additional judges(s)." Last year, the Second District requested the certification of two additional judges. In the certification opinion (SC12-2398), the supreme court stated "[w]hile the Second District Court of Appeal has requested that two additional district court judges be certified, our analysis of the three-year weighted dispositions per judge average indicates that they do not meet the threshold of 280 weighted dispositions per judge after a second judge is added. Therefore, we certify the need for one additional district court judge in the Second District for Fiscal Year 2013/2014."

An issue has been raised that revolves around the court's use of the word "threshold" and whether the court is changing the "presumption of need" standard to a "threshold" standard. According to the supreme court, the Second District met both factors for the presumption of need for one additional judge (it was requested and the weighted dispositions per judge would be at 294 with one judge), but not for two (although requested, the weighted dispositions per judge would be at 276, therefore not exceeding 280).

Another issue raised is that in the opinion, the court stated "as with last year's opinion, we have used a three-year average of weighted dispositions per judge which is consistent with our discretion under Florida Rule of Judicial Administration 2.240" and it has been queried as to whether the three-year average method should be codified in the rule.

The Commission determined that no action was necessary, stating the belief that the supreme court chose the word "threshold" purposefully, as part of a two-part "presumption of need" test.

## **VIII. Discussion on National Center for State Courts' High Performance Court Framework.**

Patty Harris presented an overview on the High Performance Court Framework, as developed by the National Center for State Courts. She noted that the Commission on Trial Court Performance and Accountability started studying this issue in response to the supreme court's direction to determine a performance measure framework as part of the Trial Court Integrated Management Solution project.

**IX. Other Business.**

Judge Van Nortwick presented Tom Hall with a certificate of appreciation and a gift as a thank you for his years of dedicated service to the Commission. He noted that this was Mr. Hall's last meeting with the Commission before his retirement.

Judge Van Nortwick noted that the Commission would reconvene at some point in early 2014.

There being no other business, Judge Van Nortwick adjourned the meeting 2:47 at pm.