

**Florida Supreme Court
Commission on District Court of Appeal Performance and Accountability Meeting
Tampa, Florida
May 6, 2014**

Minutes

Members in attendance:

Judge William Van Nortwick, Judge Chris Altenbernd, Judge Jay P. Cohen, Judge Vance Salter, Judge Martha Warner, Jo Haynes, Mary Cay Blanks, and Justice Peggy Quince (Liaison).

Staff in attendance:

Maggie Geraci, Arlene Johnson, Greg Youchock and Patty Harris.

I. Welcome and Introductions.

Judge Van Nortwick called the meeting to order at 10:03 am. He welcomed the members and thanked Justice Quince for attending the meeting.

II. Approval of October 3, 2013 Minutes.

Judge Salter moved to approve the October 3, 2013 minutes. Judge Altenbernd seconded the motion. The minutes were approved unanimously

III. Review of Postconviction Letter to Supreme Court.

Judge Van Nortwick presented on the draft monitoring report on postconviction data. The letter noted that the DCAP&A identified a discrepancy in the data for circuit court postconviction relief motions filed by district and asked the Office of the State Court Administrator to audit the felony and misdemeanor postconviction relief motions filed in the Eleventh Judicial Circuit. The audit is scheduled to be conducted the week of May 19, 2014, and once that information is received, the letter will be sent via email to the commission members for approval.

IV. Review of Dependency/TPR Appeals Report.

Maggie Geraci presented the draft Dependency/TPR Appeals report. The Supreme Court charged the DCAP&A with the task of monitoring the processing of dependency and termination of parental rights appeals. After a review of the data for dependency/TPR appeals, the *Performance Monitoring Report: Dependency and Termination of Parental Rights Appeals* was drafted for submission to the court in June 2014. The report provides a review of findings for each district court in meeting eight median time frames. Additionally, the report recommends establishing a joint study by the DCAP&A and the Commission on Trial Court Performance and Accountability on the delay issues with the receipt of documents performance measures.

Judge Warner suggested contacting regional counsel and the guardian ad litem program to investigate reasons for delay in some of the receipt of documents timeframe. Mary Cay Blanks noted that the district clerks should be able to collect data on whether the guardian ad litem submits briefs timely.

Judge Altenbernd moved to approve the report, subject to the revisions discussed. Judge Salter seconded the motion. The motion was approved unanimously.

V. Status Update on Joint Workgroup with DCABC on Model Staffing Levels.

Greg Youchock presented an update on the Joint Workgroup 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.

As part of the joint workgroup's focus on central staff, an ad hoc central staff workgroup was formed to identify best practices and an allocation methodology. The workgroup met on October 31 to develop a methodology to determine Central Staff Attorney workload by assigning relative weights to case filings. The Central Staff Workgroup recommended two methodologies for allocating and requesting resources based on using relative case weights.

On March 18, 2014, the joint workgroup reviewed the recommendations and tentatively approved the proposed methodology, but asked for additional data before making a final recommendation (see attached meeting materials). The additional data will be provided to the joint workgroup for their final recommendation in mid-May. Once the final recommendation is approved, a report will be drafted and presented to DCAP&A and DCABC.

Judge Warner expressed concern with the sample size of the survey. She asked if staff would determine a cost estimate of a time study for central staff for the next meeting.

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

Ms. Geraci presented on the required review of the relative case weights. 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 [DCAP&A] 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 review focused on two unresolved issues outlined in the 2005 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 include 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.

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.

At the last DCAP&A meeting, on October 3, 2013, it was discussed that four years has elapsed since the previous review. Therefore, the commission is tasked with reviewing the workload trends of the district courts of appeal. At that time, the commission requested that staff obtain the instructions and other information from the previous case weight study in order to determine if any changes need to be made. The question was also asked whether judge participation in the time study could be increased while keeping the pro rata percentage intact. A proposed timeline for the time study was presented to the commission for review and approval.

The commission reviewed the instructions from the previous survey and determined that the representative cases should continue to be "disposed on the merits." Additionally, the commission asked staff to determine the appropriate sample size from the districts, and the members would contact the appropriate judges from their district that had a minimum of two years' experience on the DCA bench. The common base line case would continue to be Appeal from Criminal Judgment and Sentence. The instructions would include directions to count only judicial workload, and exclude staff time.

Judge Salter moved to approve the timeline. Judge Warner seconded the motion. The motion was approved unanimously.

VII. Review of DCAP&A End-of-Term Report.

Judge Van Nortwick presented the draft end-of-term report, which highlights the accomplishments of the DCAP&A in a letter to the Chief Justice. He noted that information gleaned from the audit scheduled for the 11th Circuit will be added before the report is submitted to the court.

Judge Salter moved to approve the report. Judge Warner seconded the motion. The motion carried unanimously.

VIII. Other Business.

There being no other business, Judge Van Nortwick adjourned the meeting 2:11 at pm.