

Florida Supreme Court
Commission on District Court of Appeal Performance and Accountability Videoconference
August 16, 2011
1:30 pm 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, Ty Berdeaux, and Mary Cay Blanks

Members absent:

Justice Ricky Polston (Liaison)

Staff in attendance:

Maggie Geraci, Greg Youchock, Arlene Johnson and Patty Harris

Judge Van Nortwick called the meeting to order at 1:32 pm.

I. Approval of March 2, 2011 Videoconference Minutes

Judge Salter noted at the end of Agenda item II that “threaten the clerks” should be changed to “threaten the court reporters.” Judge Salter moved that the minutes be approved with that revision. Ty Berdeaux seconded the motion. The minutes were approved unanimously with revision.

II. Approval of Dependency/TPR Report

Judge Van Nortwick asked for any comments or suggestions by the Commission on the draft Dependency/TPR report. He noted that edits suggested by Mary Cay Blanks were incorporated into the version in the meeting materials. Judge Warner stated that, based on reading the report, she was immediately able to address a situation in her own court. She had noticed that the 4th District, according to the statistics, seemed to be behind in getting the record and getting the initial brief. She asked since they all had it common would there be any best practice suggestions by the Commission on improving this. Judge Van Nortwick noted that his clerk has spent a great deal of time trying to expedite the record and initial brief and at some point, short of contempt, there is a limited ability to push it further. All courts have done extremely well with the time frames that the districts have the most control over. Judge Van Nortwick stated that he is happy to receive suggestions regarding best practices with respect to two items judge Warner mentioned. Judge Warner questioned whether this is an area that can be helped, noting part of the issue is resources. It may be uneven across the districts because of the differing resources and she noted that she believes that all the districts have taken a proactive approach to the issues they can control. Judge Altenbernd agreed, stating that it boils down to court reporters and low reporter resources. Judge Van Nortwick asked that a statement be added to the beginning of the report noting that all districts have done what they can do to alleviate delays in the record and initial briefs, but most issues are due to lack of resources at the trial court level for court reporters, and lack of resources at the appellate level for counsel. Judge Warner suggested stating in the report that is it resource driven, instead of that the districts have done all they can. Judge

Van Nortwick stated he would work with staff to develop some language noting the improvement, but articulating that further improvement may be a matter of resources.

Judge Van Nortwick asked for any other suggestions or comments and whether the commission should spend some time at another meeting discussing possible best practices. Judge Warner stated that if the commission decides to pursue this beyond the time standards, discussion with the appellate counsels and court reporters would be helpful in identifying what was needed in order to speed up the process. Judge Van Nortwick suggested that the commission develop a list of lawyers/court reporters to survey and obtain feedback on where resources are needed and where improvements can be made to encourage timeliness. The group agreed. Judge Altenbernd noted that he believes there are not an adequate number of lawyers handling these cases for the parents. Judge Warner asked if all these are handled through the justice administration commission. Judge Altenbernd confirmed they were being paid by the JAC. Judge Warner asked whether a survey could be sent to the JAC on payments and other information related to this issue. Judge Van Nortwick agreed to make that part of the survey. Tom Hall asked if these matters were handled by Regional Counsel and just paid by the JAC. Judge Altenbernd stated that if there are two parents, Regional Counsel will handle one parent's case and the other is handled by outside counsel. The JAC would pay the outside counsel, but the Regional Counsel would be paid through the state.

Judge Van Nortwick asked if the survey should be offered to circuit judges who are making the appointments in order to show how quickly they're moving. The group agreed. Judge Warner noted that it might be interesting to know from the Regional Counsel's standpoint how cases are prioritized and how resources are allocated. Judge Van Nortwick agreed and noted that if there are any more thoughts, please share with the commission. He would have staff come up with ideas on the survey and circulate that for comments by the members.

Subject to the revisions noted previously in the meeting, Judge Van Nortwick asked for a motion to approve the report. Motion made and approved.

III. Review of Long-Range Program Plan Measures

Judge Van Nortwick stated that, as many of the long-term members can recall, as budgets were cut, the Commission used "indeterminate" in the Long-Range Program Plan Measures (LRPP) because of the difficulty in determining measures under substantial fiscal and staffing issues. He noted that staff recommended option 1 shown in the meeting materials, but that he had mixed feelings about choosing a definitive number because he was not sure the budget problems are over and possible future problems may impact clearance rates. He also noted that several of the district courts have not been able to meet the clearance rate. Judge Warner asked if there was still a hiring freeze. Mr. Hall noted that there was a hold period, but it was not a freeze. Greg Youchock explained that the positions are held for a temporary amount of time, upon vacancy, but once that time period is up, the position can be filled. Judge Warner stated that until the district courts can return to 2004 staffing levels, she does not believe that the commission can determine a definitive number for the LRPP. Judge Cohen stated that he thinks it would be appropriate to use last year's data. Judge Van Nortwick confirmed that the options presented only use recent years. Judge Altenbernd noted that the average clearance rate has only been 98%, not 100%. Judge Van Nortwick noted that the 100.2% is highest rate in recent years and using that rate is asking for failure. Judge Van Nortwick asked if using an average clearance rate for the last 5 year is a better indicator. Judge Salter asked if there could be a caveat that it is a

historical average and that the districts are still understaffed. Judge Cohen stated that if caveats are used, it would be the same as using “indeterminate.” Judge Altenbernd noted that he feels indeterminate provides no useful information to the legislature so he suggests offering something more informational. Mr. Hall suggested determining a projection based on 2009 data and provide a footnote explanation that the numbers will continue to rise if there is no increase in resources. Arlene Johnson asked for clarification, if Mr. Hall meant to include FY2009-10 and FY2010-11 data and exclude FY 2008-09. Mr. Hall affirmed that was his intention. Judge Van Nortwick confirmed using FY2009-10 and FY2010-11, and then using the average percentages for those two years, like using option 2, but using average of last two years, with footnote stating that it was a historical average, but since 2009 clearance rates have decreased while cases have increased.

Judge Altenbernd said that a significant increase in his district is because of reduction in resources in SAO/PD. Judge Warner confirmed the same for her district. Judge Van Nortwick pointed out that median days were less in FY2007-08. Judge Van Nortwick asked if the members agreed to have staff develop the numbers and send to the group via email for a vote. After clarification, the group agreed. Judge Altenbernd noted the line that said criminal appeals and asked if that combined direct appeals and post-conviction. Ms. Johnson confirmed. Judge Altenbernd said post conviction time processing is because of lack of resources in the districts. Judge Warner confirmed that backlog of post conviction is dragging down the numbers. Judge Warner stated when the measures were first developed; everything was thrown together in 1999. Since it was approved by the legislature, it cannot be differentiated at this point, but might be something to explain in a footnote. Judge Altenbernd said this was clearly an area where improvement could be made if there were more resources, especially FTEs. Judge Van Nortwick agreed to put the information in a footnote. Judge Van Nortwick noted that staff would develop the numbers and footnotes and will email the new version of the first page and have everyone review and approve. Judge Warner asked if the legislature questioned or used the measures in any way. Mr. Youchock said to his knowledge the legislature does not question the measures, but he is not sure if they are used, but he assumes not because it is never discussed. Judge Warner noted governor supports funding the judiciary, but we have to be accountable. Mr. Hall stated that the Chief Justices Conference and COSCA recently passed a resolution supporting new appellate standards and he believes the commission will get a referral from the Chief Justice on addressing these 8 to 10 standards, some of which are purely objective, some of which are purely subjective.

Judge Van Nortwick stated that with a footnote on lack of resources and time of post conviction appeals, the court can use that to argue for more funding. Mr. Hall agreed. Judge Warner stated on the other hand, it might prompt the Supreme Court to look at how the districts handle post conviction and determine ways to make it less onerous on the courts.

IV. Schedule Next Meeting

Judge Van Nortwick suggested having another meeting later in the fall. He stated that he would work with staff on sending out an email poll with possible dates.

There being no other business, Judge Van Nortwick adjourned the meeting at 2:20 pm.