

Florida Supreme Court
Commission on District Court of Appeal Performance and Accountability Videoconference
August 7, 2012
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, Jo Haynes, and Mary Cay Blanks.

Members absent:

Justice Peggy Quince (Liaison)

Staff in attendance:

Maggie Geraci, Greg Youchock, Arlene Johnson, Blan Teagle

Judge Van Nortwick called the meeting to order at 1:36 pm.

I. Approval of August 16, 2011 Videoconference Minutes

The minutes were approved unanimously.

II. Review of Administrative Order SC12-26

Judge Van Nortwick reviewed the charges of AO SC12-26 and noted that, as chair of the DCAP&A, he was now an ex officio nonvoting member of the District Court of Appeal Budget Commission, as directed in SC11-1374. He has participated in one meeting of the DCABC and would keep the commission apprised of their work.

III. Review of Long-Range Program Plan Measures

Judge Van Nortwick noted that the Long-Range Program Plan Measures found in the meeting materials had been modified to reflect the most recent data and options for the next fiscal year. He reviewed the options, noting that Option 1 was what was used last year. Judge Altenbernd commented that in the Second District, the clearance rate for last year was at 88% in part because of the Adkins case, causing hundreds of cases to pile up. These cases will probably be PCA-ed, but the district will need manpower to move through all the cases. The judge noted that this would probably cause a statistical blip in this fiscal year and possibly in the next.

Judge Salter stated that he did not think there was any reason to believe it will be above or below 102%. Judge Warner stated that it appears that most, if not all, of the courts have taken proactive approaches to clearing up backlog. Judge Salter offered a motion to accept Option 1, Judge Altenbernd seconded the motion. Judge Van Nortwick asked about the square footage number and whether it includes real estate. Arlene Johnson confirmed that it did. Judge Van Nortwick noted that at the First District, most of the square footage is grass. He asked whether the chart could show the building square footage as well as the lawn. Judge Warner noted that when the LRPP measures were first established, the marshals asked to include the property because there are some costs associated with maintenance. However, the combined number was what the

legislature agreed to when the definitions were established. Judge Van Nortwick agreed to leave it that way for now, but suggested looking at breaking it down into building and property at some point in the future. Judge Warner noted that the legislature wanted one measure. Tom Hall confirmed Judge Warner's assessment, although he agreed that it was odd to say square footage and that it was misleading. Judge Van Nortwick suggested that the commission could take time this year to look at what might be a more meaningful definition to use.

Tom Hall noted that no rehearing was filed in the Adkins case, so courts can begin disposing of those cases.

The motion to use Option 1 was approved with no changes.

IV. Review of Dependency/TPR Data

Judge Van Nortwick noted that generally, the courts are continuing to tweak and make improvements in meeting the required time frames for Dependency/TPR appeals. He stated that it was interesting that the courts are not able to meet the time periods that relate to the filing of the record and briefs. However, times frames within the courts' control are met. He suggested that this reflects how much the courts are doing to meet these ambitious time frames. Additionally, it shows where future improvements can be made. Judge Salter stated that it also shows that progress has been made in those areas where the time frames have not been met. Judge Warner questioned the graph for initial brief to answer brief time frame. Judge Altenbernd stated that the graphs are somewhat misleading. Mary Cay Blanks stated that there are five days for service in the rule, so she believes that what is happening is that the five days are being added to the 20 day time frame. Judge Warner asked if it is necessary to have "disposed not on the merits" and "disposed on the merits?" Is it necessary to differentiate? Judge Salter said he thought they were included to isolate them from the merits cases. Judge Altenbernd stated that at least in the Second District, "disposed not on the merits" takes a little longer because they have to send the brief to the parents. Judge Warner asked if in that instance, should it be "on the merits." Jo Haynes stated that those cases are usually dismissed for failure to file a brief. Judge Van Nortwick stated that for the time frame notice of appeal to disposition, it shows about 40% or more disposed of not on the merits. Judge Warner noted it would be an interesting statistic to show statewide.

Judge Van Nortwick asked Judge Warner if the Fourth District had done something different because they have made a quantum leap in the Notice of Appeal to Disposition time frame. Judge Warner responded that some of those cases were not being put on the docket because of clerk misinterpretation and that they changed procedure a little bit. Judge Van Nortwick noted that it was good work, in any case.

Judge Van Nortwick stated that he had no changes, just observations. Maggie Geraci stated that the 2011 report was presented to the Steering Committee on Families and Children in the Courts, as an opportunity to provide the information to stakeholders. Judge Van Nortwick asked if there was any feedback from the stakeholders. Ms. Geraci responded that no feedback had been received.

V. Joint Workgroup with DCABC on Model Staffing Levels

Judge Van Nortwick referred to the email that he sent regarding the joint workgroup established by the DCABC to determine model staffing levels for the district courts. He noted that he wanted to involve the commission in providing input to the workgroup in order to maximize the information. The deadline for the recommendations is January, 2013. He noted that the commission is scheduled to have a meeting from 1:00 pm to 4:00 pm on September 9, 2012, at the Appellate Judges Conference in Amelia Island. Judge Van Nortwick stated that the task would be broader than what was done when the 2008 Recommendations for the Needs Assessment were made, although that exercise established a model of sorts. He has invited the workgroup members to the commission meeting and hopes to have a productive discussion. Updated data, through the most recent fiscal year, will be provided at the meeting. He noted there were some very good discussions of the models, reflected in the 2008 Recommendations majority and minority reports. He does not know what the new data will show, but he believes will show the impact of the budget constraints in the past few years.

Judge Van Nortwick said he welcomes comment and input as the workgroup develops the recommendations for the DCABC. He noted that Judge Warner and Judge Altenbernd have so much historical knowledge that will help in this work. Judge Warner asked what kind of data would be provided. Judge Salter asked if NCSC had any new information on staffing levels for appellate courts. Judge Van Nortwick noted that Judge Shepherd had requested OSCA search for that information. Greg Youchock stated that he has begun to search the NCSC website for reports on appellate staffing models. Although he found 18 reports, only three were related to Judge Shepherd's request. He noted that Oregon recently completed a Delphi study, but stated that there is not much national research at the intermediate level of appellate. He offered to follow up with Brian Ostrom at NCSC on what other work may have been done. Judge Salter noted that technology may have affected staffing levels and that it would be good to look at what other states are doing. Tom Hall stated that at the National Appellate Court Conference it was noted that so many courts going to mostly or entirely electronic. He said that it is hard to gather statistics right at this moment because of the transition. Judge Warner stated it will be extremely difficult to determine a staffing model on a future way of doing business.

Judge Warner suggested that for law clerk staff, the commission could gather information on how cases are actually assigned within each district, since there is a wide variety among the courts. Judge Salter suggested obtaining information on what the workflows are for petitions. Judge Warner asked what is the actual number of cases to determine how much can be done in a given period of time. Tom Hall stated that would be hard to determine because it is not known what the individual judges expect from each law clerk. Judge Warner responded that that is exactly why the information is necessary so that it can be shown how it is done in each district. It is difficult to determine a "one size fits all" without that kind of information. Judge Van Nortwick noted that in the First District, some central staff is dedicated to post conviction appeals and some to writs. Judge Warner emphasized the need to know the numbers. Judge Van Nortwick said he could get that from his court. Judge Warner suggested determining how many cases are reasonable to expect a staff attorney to do in one month or one year. Tom Hall stated that when he was at the First District, each attorney was able to do 20 a month.

Judge Warner asked how a staffing model can be determined without having the number of cases. Judge Van Nortwick responded that the raw number of cases does not really provide the necessary information. Judge Warner suggested using a weighted average. Judge Van Nortwick asked if it should be done for just postconviction or should the class of cases be broadened. Judge Warner stated that since the numbers will vary greatly, someone will eventually have to

come to some conclusions about workload. Judge Van Nortwick responded that he believes initially this joint workgroup will address that, which means that the commission will need to look at it before sending it back to the DCABC.

Judge Warner asked if staff could gather the information on what the clerks do and number of cases assigned, so they would have something to look at in September. Judge Van Nortwick suggested that these requests should probably go through the chief judges. Judge Salter asked if a spreadsheet with categories would be used and noted that at the Third District, it would be easy because they do not have central staff. Judge Van Nortwick stated that his guess would be that each suite has a way to break down the work between the two law clerks. Judge Salter asked why the DCABC wanted this information and what will they do with it. Judge Van Nortwick stated that the DCABC is taking the next step and part of it will be staffing models and the cost implications of such. Judge Altenbernd noted that might be helpful to look at over time as well, since the cuts that were sustained several years ago, the number of staff attorneys processing 4000 cases then are probably processing 6000 cases now. Judge Van Nortwick stated he was trying to determine what is feasible for staff to gather for the September meeting. He suggested current information for the September meeting and historic information thereafter.

Judge Van Nortwick asked Judge Cohen if he would have a conversation with Judge Orfinger to obtain some information to help guide the commission. Judge Van Nortwick stated he would work with staff after meeting on sending something to the chief judges, under his name, so if there are complaints, he will receive them.

Judge Salter stated that since has been done before, only basic questions needed to be asked. Judge Van Nortwick suggested using essay answers as opposed to a spreadsheet. Ms. Haynes stated that this reminds her of the workshop they had in 2005, where the courts were asked about their processes and then they met at the FSU Reservation to discuss. She suggested sending out those questions again and asking what has changed. Judge Warner noted that they did not gather the numbers then and that would be important. Judge Van Nortwick stated that if there are existing standards at the courts that information should be easy to get. He asked Ms. Haynes if she could get those questions. She responded that she was staff to workgroup at the time and summarized each court's answers. She should be able to get the information by Monday.

Ms. Blanks asked if Judge Van Nortwick said that staff was going to update the funding models in the 2008 report. Judge Van Nortwick confirmed. Judge Van Nortwick asked Ms. Blanks if the clerks had met in 2008 to review the recommendations in regards to the clerks' offices. Ms. Blanks confirmed and asked if the budget commission plans to scrap the 2008 Recommendations and start over. Judge Van Nortwick responded that if we want to still use that information at least in part, we are free to do so. Ms. Blanks noted that the information, particularly in the clerk's office may have either completely changed or is in the process of changing because of technology. Judge Van Nortwick stated that his court may be a model since they are already completely paperless. He asked Ms. Blanks if she could contact the other clerks on what we are doing to update them. Ms. Blanks agreed noting that they can at least begin discussing the issues.

Judge Van Nortwick stated that there were issues dealing with security and facilities maintenance. At the time, they received input from the marshals on the staffing models. Judge Van Nortwick asked Ms. Haynes if she could contact the other marshals on the recommendations. Ms. Haynes agreed noting that at least three marshals have changed since the 2008 Recommendations were made, so it would be good to have them review and see if anything

is different now. Judge Van Nortwick asked if each member of the commission could talk to their respective clerks and marshals on the project, as it would help Ms. Haynes and Ms. Blanks. He asked if there were other suggestions on information or direction and noted that if there were any other thoughts between now and September, please feel free to send an email around. He stated that they will need to work fairly hard on this project between now and end of year and that he hopes to make a great deal of progress at Amelia Island.

VI. Schedule Next Meeting

Judge Van Nortwick reminded the commission that the next meeting would be held September 9, 2012, 1:00 pm to 4:00 pm, at the Appellate Judges Conference at Amelia Island.

There being no other business, Judge Van Nortwick adjourned the meeting at 2:40 pm.