

**Florida Supreme Court  
Commission on District Court of Appeal Performance and Accountability Meeting  
September 9, 2012  
1:00 pm to 4:00 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 Stevan T. Northcutt, Judge Dorian K. Damoorgian,

**Staff in attendance:**

Maggie Geraci, Greg Youchock, Arlene Johnson, Patty Harris, Alex Krivosheyev, Kris Slayden, Blan Teagle, Theresa Westerfield

Judge Van Nortwick called the meeting to order at 1:01 pm.

**I. Approval of August 7, 2012 Videoconference Minutes**

Judge Salter motioned to approve the August 7, 2012, Meeting Minutes. Judge Altenbernd seconded the motion. The minutes were approved unanimously.

**II. Review of the Charge to the Joint Workgroup on Model Staffing Levels**

Judge Van Nortwick opened the meeting by discussing the development of a DCABC/DCAP&A joint workgroup, charged with developing model staffing levels and periodic reallocations of FTE. He asked Judge Northcutt, as a member of the DCABC and the joint workgroup, to provide additional background on the charge and purpose of the workgroup. Judge Northcutt noted that the district courts have functioned autonomously for years. Due to a lack of shared information between the district courts, over time this has caused a skewing of resources. There was no discontent among the districts until the economic downturn in 2007-2008. At that point, there were two current year budget reductions. Another reduction to the base budget was instituted in FY2008-09. In the course of a year, the district courts suffered three significant reductions. This occurred at all levels of Florida's court system. However, the district courts had no method to determine budget reductions in a considerate way since there were no established methodologies. Some district courts took cuts in salary dollars, whereas others took cuts in expense dollars. For example, the Third District gave up a judge position in FY 2008-09. However, the salary dollars for the judge's staff stayed with the Third District.

In contrast, the TCBC, through the Revision 7 process of transferring what had been expenses borne by local government to the state level, developed methodologies for managing the salary budgets at the commission level. When the revenue shortfall occurred for the trial courts, it was

no less painful, but the process was clear, so there were no surprises. Judge Northcutt stated that as the chair of the DCABC at the time, he looked on the TCBC process with envy.

Judge Northcutt went on to explain that the development of the State Courts Trust Fund established in 2009 and advocated as a way to stabilize court funding, fell far short of that mission further skewing the district courts' budget. He noted that in late 2008, DCAP&A conducted the Needs Assessment and identified standards for the allocation of FTEs. Those standards still exist, but do not serve the purpose for which the workgroup was established. The Needs Assessment's purpose was to determine how big the trust fund needed to be. These methodologies were considered ideals, but are not a good tool for allocating current district court resources. Additionally, the methodologies are not useful in telling the legislature what is needed. For example, applying the Needs Assessment methodology to staff attorneys, the ideal is 2.8 staff attorneys per judge. However, the average filings for staff attorney for 2009, ranged from a high of 164 in the First District to a low of 122 in the Third District. This is a broad range and the distribution of cases does not match the ratio per judge.

Judge Northcutt noted that another impact of the trust fund was the necessity to partner with the trial courts. It was difficult to articulate the demands the district courts were putting on the trust funds. He noted the TCBC was very aware that district courts had no methodologies. Judge Northcutt also discussed the two percent pay cut that was included in FY2008-09 legislation. Governor Crist vetoed the legislation, but the Legislature had not appropriated those salary dollars, so the reduction had to be absorbed in the court's budget. Each court had to deal with that in its own way, so salary budgets are further skewed.

Judge Northcutt stated another issue that has occurred, in part because of history and in part because of how the districts courts handled the economic downturn, was that three district courts started off the new fiscal year in the negative and had to make that up in the course of a year. He noted it would be easier to deal with these issues on a system-wide basis, not a court-by-court basis. Over the last three years, district courts have reverted funds back to the Legislature. For instance, the Second District has requested two additional central staff attorneys as far back as 2008 and continues to need them, but the Legislature will not appropriate funds. The Legislature approaches the district courts as a single entity and the entity has reverted money each year. Additionally, there are problems with judges in DROP. If the district courts operated as a system, it would better be able to absorb these funding issues, but as individual courts, it is a burden to absorb. All the district courts are applying different criteria based on what they have offered as reductions. The DCABC has decided to follow the TCBC model and manage the salary budget as a system. So this requires answering a two-fold question: What does the system need and how do we allocate what we have? That is the task of this joint workgroup.

Judge Van Nortwick thanked Judge Northcutt for the information, noting that many of the commission members are not on the DCABC, so it was good to hear the budget commission's perspective.

### **III. Discussion of Previous DCAP&A Studies**

#### **A. 2005 DCA Workshop Summary**

Judge Van Nortwick discussed the 2005 DCA Workshop, where representatives of each district came together to talk about district practices in the hopes that other districts could glean

information useful to their courts. He suggested using the summary document of the 2005 Workshop as a starting point for joint workgroup. Judge Damoorgian stated that he would like to suggest an alternative approach. He suggested bringing in people, outside of the court system, who could provide a fresh perspective and have them determine what the best practices are first and foremost, and determine the most efficient way to do a job. For instance, he noted that the Fourth District had to lay off staff during the economic decline which caused tremendous strain on their system and created a huge caseload backlog. Instead of asking for salary dollars to hire more staff, the district reviewed their processes. They developed screening processes that enabled them to plow through the backlog. They determined that they did not need additional staff; rather they changed the practice of how to process cases. Cases are screened for timeliness through the use of forms. He suggested an approach would be to review how the district courts conduct themselves and choose from the best and brightest examples. If case counts are high, look at the disposition rate. If an implemented practice does not change the disposition rates, then there is justification for new staff resources.

Judge Van Nortwick noted that the purpose of 2005 DCA Workshop was to share practices. He noted that every district court representative left the workshop learning something new which changed how they handled cases. Judge Altenbernd stated that the whole concept of the DCAP&A was to identify efficiencies. The district courts continue to conduct themselves in the way they believe is most efficient. Judge Northcutt offered that he did not disagree with Judge Damoorgian that there are efficiencies worthy of review.

Judge Altenbernd noted that in previous years there was a suite of staff for visiting judges including two attorneys and a judicial assistant. The visiting judges acted as a fifteenth judge for all practical purposes, but that funding was lost in FY2007-08. He encouraged returning to that idea and factoring other such ideas into account as the recommendations are made.

Judge Van Nortwick noted that another question to consider is not just how many law clerks and central staff exist, but how experienced they are. Judge Cohen offered that since this may impact determinations of how to allocate salary dollars, the criteria needs to be fairly solid.

Tom Hall stated that adding to the mix, not only in clerk's office, but in the suites when the judges are voting on opinions, it is the JA's responsibility to load the vote into the system, so there is a workload issue. Judge Van Nortwick added that the chambers that do not have JAs require another chamber to do more work.

Judge Damoorgian suggested getting someone from the business schools to review court processes. Judge Salter responded that it may be difficult to obtain a professor to do such work. In private law firms, best practices are considered by a time study. Judge Altenbernd noted that many in the business world do not understand the differences and complexities of the courts. Jo Haynes noted that the district courts were functioning well prior to the budget reductions and the courts fell into the 2.8 attorneys per judge methodology naturally. Judge Damoorgian responded that the economy is going through cycles of downturn and now may be the time to look at the processes. He noted that most in the courts do not like having to lay off employees.

Judge Van Nortwick stated that statistics show that the Florida intermediate appellate courts handle more cases than any other courts in the country, so it should be noted that the district courts are doing a great job.

## **B. 2008 Updated Needs Assessment**

Judge Van Nortwick reminded the group that the goal was to institutionalize some methodologies. He noted the types of organizations that have reviewed this issue. He agreed with Judge Northcutt that the 2008 work product was really an attempt to come up with what the system needs. Judge Northcutt offered that the 2008 Needs Assessment did not address the allocation of current resources. Judge Altenbernd offered that when the workload study was conducted, all cases were divided into 25 different categories. If there is a consensus of the district judges to accept such a breakdown, it will be a fairly lengthy laundry list. It may be uniform for several of them. He suggested that if there is enough time, to break out what the functions are and the time involved in doing these functions. Judge Damoorgian stated that this example suggests that this is not something that a conclusion can be reached in the length of time given. He questioned whether the courts need more resources because of the types of cases that are handled.

## **IV. Discussion of DCA Elements**

### **A. Judicial Assistants**

Judge Altenbernd mentioned that some judges do not use judicial assistants, but other judges do. He noted the disparities in pay and that there is a two tier pay system for judicial assistants. A decision was made to get JA salaries under control. He noted this was one example, but there are many more. He asked if the goal was to dispose of cases faster than current disposition rates or increase quality. He noted the public wants fast and thoughtful decisions. Judge Van Nortwick noted that the study on expediting dependency/termination of parental rights cases was done; it was to create best practices. As a result, all of the district courts have changed the way those cases are processed. He suggested giving more thought on what Judge Altenbernd previously suggested which would be to go through 30 different types of cases and determine the best ways to process them. Judge Altenbernd stated that theoretically, if best practices were developed based on workload analysis, it involves a great deal of work, but it provides a more accurate determination for allocations.

### **B. Law Clerks/Central Staff/Central Staff Support**

Judge Northcutt noted that the next evaluation would be to determine the experience level of elbow clerks and how that affects the salary dollars. Judge Cohen stated that the federal government does not allow two senior staff attorneys at one time. At least one has to be replaced every two years. Judge Damoorgian added that was the policy in the Fourth District. Judge Cohen stated that the Fifth District was considering that approach as well. Judge Damoorgian suggested developing best practices and then determining what experience is needed. Judge Van Nortwick offered that the Worker's Compensation unit in the First District is incredibly effective because of experienced worker's compensation attorneys. Their experience allows them to determine the most efficient ways to handle certain types of cases. He stated that perhaps this could serve as a model for determining central staff best practices.

Judge Van Nortwick asked if staff would like to provide input. Greg Youchock responded that the data from 2008 Needs Assessment was updated and he asked if Judge Van Nortwick would like staff to provide the members with an update. Judge Van Nortwick responded yes. Arlene Johnson provided information on the updated data beginning with the elbow clerks/central staff

attorneys. Judge Northcutt asked what majority versus minority position was from. Judge Van Nortwick explained the history from the 2008 Needs Assessment.

Judge Van Nortwick noted that a determination needs to be made as to whether there should be weighted dispositions, explaining that judges do not do the same things as law clerks. Mr. Hall asked if there was also the variable of how cases are treated. For example, at the First District, a form might be checked off, whereas a different procedure would occur at another district. There is the need to look at the efficiencies of processing cases, not just the weighting of cases. Judge Damoorgian stated that in the Fourth District no one was managing the central staff. Issues occurred such as central staff doing long bench memos on points one through six of a case, but the case would be disposed on point one. He noted this was an opportunity to review how things are being performed, so when the court goes before the Legislature there are legitimate issues to raise.

Mr. Youchock discussed staff obtaining some preliminary information on the varying practices of central staff among the district courts. He noted that the Fourth District has some unique practices. Judge Northcutt stated that in the Second District's central staff, they cannot compare among the various tasks as they are specialized to certain procedures and do not participate in all the tasks. He noted that perspective will shift from court to court. Judge Van Nortwick agreed that there will be many more differences. Mr. Youchock explained that a Delphi study was done with regard to the trial court judges. The study included a group of forty judges who went through every single case, every single weight, and noting the norm before the weights were adopted. Kris Slayden added that the study was based on a time study and suggested the workgroup could measure those differences using these concepts. Judge Van Nortwick noted that the commission decided not to do a time study because there were no resources available to do so. He stated that the relative analysis was performed quickly and that we are in the same boat now with little resources or time, as a decision is needed by January, 2013. He stated he was unaware of a separate budget to do a time study. Ms. Slayden offered that the workgroup can determine a new timeline, as the decision is not anticipated for a legislative budget request, but the group may want to have some policies in place by July 1, 2013.

Judge Damoorgian noted that it appears that everyone agrees that central staff should be the area of focus; however, the question remains how to study central staff and determine which practices are the best, implement those practices, and identify the results. He suggested that the members of the workgroup pick the one person from central staff in their district to get together with the members via video conference. The OSCA can help develop the questions; for example, how is jurisdictional screening done in each district court. This would allow the workgroup to get a picture of practices statewide, who does what best, or combine various practices into one streamlined set. Judge Altenbernd stated this is exactly what the commission did with Dependency/Termination of Parental Rights, but he noted that it had to be tested and it took several years. It is valuable information, but takes time before it is effective.

Judge Van Nortwick suggested first developing the list of case types to study. Then with the help of central staff, determine how each court handles each of those case types, starting with screening and moving through the case. The group could discuss the best practices and at the same time identify unique cases that would require different resources. Judge Altenbernd offered that the group needs to determine the most efficient way to get cases to disposition. Judge Cohen suggested that this technique could be used for each part of the court. Judge Van Nortwick stated that central staff is more expensive and the core of the issue. By addressing central staff

practices, the biggest need is addressed. Judge Northcutt agreed, noting that there are probably more about central staff practices that can be changed.

The members began developing the list of case types for review by central staff: Anders cases; Rule 3; writ petitions for mandamus, prohibition and certiorari; motion practice; jurisdictional screening; summary affirmances; notice of concession from US attorney general; unemployment appeals case screening; and pro se family cases.

Ms. Slayden asked if senior judge usage needs to be reviewed in relation to central staff, since senior judge use is part of the Third District's model. Judge Van Nortwick agreed that it should be reviewed as part of the model staffing levels. Ms. Haynes stated that it might be informative to review how senior judges are being used, either as a part of a court's resources to get through the case load or as a pool for sick/vacation days of judges. Judge Damoorgian observed that the district courts are allowed to pool their senior judge money.

Mary Cay Blanks asked if central staff handle emergency matters. Judge Damoorgian responded that emergency matters tend to go to a motions panel. Ms. Slayden asked if the Colorado Study offered other case types that might be added to the group's list. Judge Van Nortwick suggested reviewing cases that are more susceptible to screening, to eliminate the low hanging fruit. Mr. Hall offered that cases at the other end of extreme that lend themselves to case management practices, especially complicated cases with many motions. He noted that case management conferences have had a big effect on getting those cases through court in efficient manner, as practiced by the First District and Supreme Court of Florida.

Judge Van Nortwick stated that now there is a list and they would need to get a description from each court on how they handle these matters and if there are particular forms they use. Judge Damoorgian suggested gathering not only forms, but also standard orders, how the cases are screened, as well as forms for disposition. He offered that the group could use the central staff survey approach for each case type, allowing the workgroup members to take it back to their districts to whomever would be best to answer the questions.

Judge Cohen asked if there are case filings data for what central staff is doing. The staff responded that there is not. Judge Cohen stated that information would be good to have. Mr. Youchock brought up the central staff survey on p. 205 of the materials noting that it is a review of what central staff spends their time on. Judge Cohen explained that he still believes there is some value in knowing the number of cases central staff is handling. Ms. Blanks also stated there is value in knowing the time from filing to disposition in cases handled by central staff. Judge Damoorgian offered that Jon Gerber, head of their central staff committee, created a minimum standard of how many cases each central staff had to handle. Ms. Johnson asked Ms. Blanks if the automated Appellate Case Management System would provide the data on the cases that central staff handles. Ms. Blanks responded that it would not unless it is assumed that they handle the same types of cases statewide. Mr. Hall asked whether the clerks could say which cases are generally assigned to central staff, noting that the Second District would have a difficult time because the database has been moved.

Judge Altenbernd stated that when he started as a district court judge, he worked on 320 cases, currently his caseload is up to 480. The amount of time that he has to work on the quality cases is significantly reduced and his work has changed dramatically in 20 years.

Ms. Blanks clarified that this is a best practice study, not a weighted cases study. Judge Van Nortwick stated that it may seem like the workgroup is ending up in a different place than was expected. In order to develop a staffing model, the workgroup needs to work with staff to develop a survey instrument to determine how central staff is used in handling these types of cases, forms, standard orders, number of cases, and the time required to dispose of cases that go through central staff.

Judge Warner stated it would be helpful to develop best practices, but she believes it is necessary to go beyond that for the DCABC's goals. She explained it would be prudent to come up with analysis on how many central staff are needed. Perhaps start with an arbitrary number that everyone is comfortable with and then case weight that number. She stated that we need to know how many cases we expect a staff attorney to handle in a year. She also asked if the workgroup could determine a resource allocation model that takes into account experience. She asked if senior attorneys provide more bang for the buck or do they just cost more. Judge Damoorgian stated that the workgroup would determine the best practices and implement those, so then subsequent numbers have meaning. After that, review the differences and determine how to allocate resources, but this process will not get done by January.

Judge Northcutt noted there are two aspects to consider: what other resources the system needs and allocating resources among the district courts. The group should assume best practices by all districts. Judge Van Nortwick asked, assuming everyone is using best practices, how will this information be translated into a staffing model. Judge Northcutt responded that after identifying the best practices, look at the system needs and ask how many of those kinds of cases does this court have and allocate from that point. There is complexity in shifting, so criterion needs to be determined for allocating among the district courts. Judge Warner asked if this process would be used for developing budgets for the Legislature. Judge Northcutt responded that it would be used for budget development but he does not anticipate the Legislature funding the requests. He noted that if you look at the system without applying best practices, you can justify a need greater than the courts have been given. The question to ask is: are those resources in the right place to equalize workload and efficiencies? It will ultimately come down to the numbers. Blan Teagle agreed, stating it was like the mediation element in the trial courts. It was never fully funded, but a methodology had to be developed to allocate the funding that was received.

Ms. Slayden noted that the TCBC did move child support hearing officers not through attrition, but offered them the job in the other circuits that needed more. Judge Northcutt responded that DCABC principles are not to hurt a district court. The point is that the DCABC needs to know what it is trying to accomplish before it can accomplish it. Judge Van Nortwick stated that if a methodology is developed for the efficient use of staff attorneys, the court can go to Legislature with a strong case. Judge Northcutt agreed and noted that right now, the district courts are sending money back. The legislature is not going to knowingly give more money than we are able to prove we need.

### **C. Clerk's Office**

Ms. Blanks noted the memo from the District Court Clerks in the meeting materials. Judge Van Nortwick mentioned that he always considers part of his job as triage, determining where he and his staff will spend most of their time. Mr. Hall stated that if there is effective triage of cases, it means the clerks will spend less time doing so. Judge Damoorgian proposed not reviewing the clerks right now, as there will be a future dynamic impact because of e-filing. Judge Van

Nortwick stated that there was an initial rise in clerk workload as e-filing was implemented in the First District. Judge Damoorgian agreed that this would be the case initially, but eventually it will go down. Mr. Hall observed that the implementation of e-filing might make it necessary to hire more computer savvy clerks with a good understanding of case management. Mr. Hall noted that the clerks' legislative budget request would be voted on at next meeting and he asked the commission to support it.

#### **D. Marshal's Office**

Judge Salter asked about the calculations for the marshals. Judge Northcutt stated that those calculations are based on square footage and numbers of personnel, so that does not change. Ms. Haynes reported that she talked with all the district court marshals, and they agree that the current calculations are adequate. She asked if the workgroup members needed anything further from the marshals. Judge Warner asked what data the calculations were based on. Ms. Haynes responded that it was a consensus based function analysis and that they looked at generally acceptable accounting principles.

#### **V. Schedule Next Meeting**

Judge Van Nortwick noted that he would work with staff on the questionnaire to the chief judges. He anticipated that the workgroup would meet in October via video conference and the commission would meet sometime in the fall. Once the workgroup has defined the next step, it would go to the commission for review.

There being no other business, Judge Van Nortwick adjourned the meeting at 4:03 pm.