

Florida Supreme Court
Commission on District Court of Appeal Performance and Accountability Videoconference
August 11, 2009
12:00 pm to 2:00 pm

Minutes

Members in attendance:

Judge William Van Nortwick, Judge Chris Altenbernd, Judge Vance Salter, Ty Berdeaux, Mary Kay Blanks, Justice Ricky Polston (Liaison)

Members absent:

Judge William Palmer, Judge Martha Warner, Tom Hall

Others in attendance:

Jon Wheeler, Jo Suhr, Judge Gerald Cope

Staff in attendance:

Sharon Buckingham, Clyde Conrad, Mandy Couch, Arlene Johnson, Jim Ledbetter, Don Lubbers

Judge Van Nortwick called the meeting to order at 12:00 pm.

I. Case Weights Update

Judge Van Nortwick stated that at the February meeting, the members agreed that another study, similar to the one conducted for the 2005 report, was not feasible, given time constraints and because of the instability of the budget over the last couple years. He also noted that Commission staff did research on case weight updates from the 2005 report. Staff was directed to develop proposed modifications to address specific issues in the 1st and 3rd DCAs.

Arlene Johnson gave a brief overview of the analysis conducted by staff. She explained that Table 1 of the materials provides the percent difference which represents modifiers affecting dispositions on the merits in the 1st DCA for administrative appeals and the 3rd DCA for post conviction appeals. Table 3 shows that by including the modifiers, dispositions on the merits increased by 65 for the 1st DCA and 523 for the 3rd DCA. Table 4 shows that the modifier for the 1st DCA increased the dispositions on the merits per judge by 7 and for the 3rd DCA by 35.

Pursuant to rule 2.240, Florida Rules of Judicial Administration, the court presumes there is a need for an additional district court judgeship, for which there is a request, where the weighted dispositions on the merits per judge exceed 280 after application of the proposed additional judge(s). The weighted dispositions on the merits per judge that are provided in the fiscal year 2010/11 certification statistics are 324 for the First District and 238 for the Third District. Using the modifier, the adjusted weighted dispositions on the merits per judge are 331 and 273 for the First District and Third District, respectively.

Judges Salter and Cope noted that in the 3rd DCA, the cases go to a judge directly, not central staff, for review and then the law clerks get the case.

Judge Van Nortwick inquired as to how that process is different from the central staff model used by the other DCAs. Judges Salter and Cope replied that central staffers are specialists, while law clerks are active in preparation for oral argument. Also, files are harder to decipher, even with law clerk assistance. They also noted that post conviction files are complete, once central staff makes a recommendation, which is not true in the 3rd DCA.

Judge Van Nortwick commented that the 1st DCA uses a blended approach of central staff and law clerks in the initial screening of a case, but many are disposed of administratively, not on the merits.

Judge Altenbernd observed that in the 2nd DCA, 1/3 of cases are resolved via a three judge panel, some are handled by central staff; however, with so many of the central staff being laid off due to budget cuts, each judicial suite gets several more writs than usual.

Ty Berdeaux said that the 5th DCA parallels the operations of the 1st DCA. Also, emergency writs are screened.

Judge Van Nortwick shared the comments of Judge Warner, received via memo and email before the meeting. Judge Warner inquired in her transmission, "Are the courts all that different?" Judges Salter and Cope replied, yes. Effort in cases makes for different workloads. They suggested tweaking, rather than revamping a Delphi study. They further noted that the most problematic area is post conviction cases. Also problematic is the process of completing the file and getting staff analysis. Analysis and responses from the Public Defender and Attorney General offices are scattered and inconsistent, so staff handle those duties.

Judge Altenbernd noted that the 2nd DCA doesn't ask for responses from the state, since the Attorney General's office is not requesting to file a response. As a result, central staff or the judges assigned to the case are working harder, with some work being done by elbow clerks. Judge Altenbernd added that the Commission should consider work input (filings), not just work output (dispositions) in the computation of the case weights. When the case weights were first computed, it was assumed that the clearance rate would be close to 100%, so regardless of whether filings or dispositions were used, it would not matter. Budget cuts have changed that conclusion.

Judge Van Nortwick commented that the use of filings data seem appropriate for measuring the need for other resources; however, the use of disposition data was decided by the Commission in 2005 to more appropriately measure judicial workload.

Motion: Judge Altenbernd moved and seconded by Judge Salter that the DCAP&A recommend the use of the case weight modifiers for the 1st and 3rd DCAs to the Supreme Court.

Yeas: Van Nortwick, Altenbernd, Salter, Berdeaux, Blanks.

Not Voting: Judge Warner

Motion passed.

II. Dependency/TPR Case Monitoring

In Administrative Order 08-84, the Supreme Court tasked the DCAP&A with monitoring the processing of dependency and termination of parental rights cases.

In June 2006, the DCAP&A issued a report with recommendations on improving the timeliness of dispositions in dependency/termination of parental rights cases, including: amending the rules of appellate procedure to incorporate shortened time periods and specific case management provisions, adopting a time on appeal goal of not less than 180 days, and developing a rule to permit active case superintendence of the record preparation and attorney appointment at the trial level.

In June 2007, the DCAP&A issued a follow-up report on these cases with a recommended time standard for the appellate process of 195 days from rendition of the final judgment to rendition of the opinion on appeal, with a goal of 90% compliance. Improvements to case processing practices were also recommended.

At the February 20, 2009 DCAP&A videoconference, staff presented an analysis of time frame data for dependency and termination of parental rights cases based on the DCAP&A's 2006 and 2007 reports. The analysis included 1,950 case dispositions (as provided by ISS) for fiscal years 2004/05 through 2007/08. The overall trends in the data seemed to support one of the conclusions of the 2007 report – activities prior to perfection account for the greatest percentage of time on appeal. The data also seemed to suggest an overall, downward trend statewide in the time on appeal.

Subsequent to the February 20, 2009 meeting and pursuant to DCAP&A members' request, staff revised the tables for each time frame and district and consulted with ISS regarding the potential for developing district-specific reports that may be generated at any time during the year by district personnel on C-Web.

The DCAP&A approved a number of time frames to be used for the Dependency/TPR case monitoring process and asked staff to also provide the percent of cases that are within or not within each time frame:

- Notice of Appeal to Disposition (165 days)
- Answer Brief to Conference/Oral Argument (40 days)
- Conference/Oral Argument to Disposition (60 days)
- Trial Court Final Judgment to Disposition (195 days)

The DCAP&A also asked staff to gather data for two time frames not in the 2006 or 2007 report:

- Motion for Rehearing to Mandate
- Motion for Rehearing to Disposition of Motion for Rehearing

Additionally, the DCAP&A approved a clarification that the 195 day time frame was to be defined as Trial Court Final Judgment to Disposition, rather than Publication of Opinion.

Finally, the DCAP&A asked the district clerks to work on proposed definitions for the approved time frames in conjunction with OSCA Information Systems Services (ISS). OSCA ISS agreed to provide details on how the data are being generated.

III. Long Range Program Plan Performance Measures (LRPP)

For the requested FY 2010-11 data that must be reported in the LRPP, staff presented two options: 1) requested standards based on statistical projections or 2) requested standards based on actual data from FY 2008-09. Similar to last year, the Commission approved the use of “Indeterminate” standards due to unknowns about funding for FY 2010-11.

IV. Future Projects:

a. Post-Conviction Case Monitoring

Judge Van Nortwick asked Judge Altenbernd for the status on the work of the Criminal Court Steering Committee, Postconviction Workgroup. Judge Altenbernd replied that the September 2006 report was forwarded to the Workgroup, but due to lack of staff resources, it has been unable to take action.

Justice Polston volunteered to see what he could do to advance the work on this project.

b. Panflu Epidemic

Judge Van Nortwick commented that this issue is very timely and could be even more important at the next meeting. He further noted that procedures have been established at the 1st DCA and asked staff to gather background information for discussion at the next meeting.

V. Schedule Next Meeting

The next meeting will be scheduled for October. An e-mail will be distributed with several suggested dates.

Judge Van Nortwick adjourned the meeting at 1:30 pm.