

**Florida Supreme Court
Commission on District Court of Appeal Performance and Accountability Videoconference
December 14, 2009
12:00 pm to 2:00 pm**

Minutes

Members in attendance:

Judge William Van Nortwick, Judge Chris Altenbernd, Judge Vance Salter, Judge Martha Warner, Ty Berdeaux, Mary Cay Blanks, Tom Hall, Justice Ricky Polston (Liaison)

Members absent:

Judge William Palmer

Others in attendance:

Jon Wheeler

Staff in attendance:

Sharon Buckingham, Maggie Geraci, Tom Long, Don Lubbers, Greg Youchock

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

I. Approval of August 11, 2009 Videoconference Minutes

Judge Warner noted that she was recorded as voting against the use of case weight modifiers, but she was not present at the meeting. She requested that the minutes reflect her as “not voting.” Judge Van Nortwick responded that the minutes would be changed to that effect.

Judge Salter moved the approval of the minutes as amended. The motion passed unanimously.

II. Dependency/TPR Case Monitoring

Judge Van Nortwick asked Mary Cay Blanks to discuss the reports generated from C-Web. Ms. Blanks reported that she and Don Lubbers have worked along with the clerks to develop the reports, using the time frames outlined in the 2007 DCAP&A supplemental report that have been adopted by rule. Ms. Blanks noted that the reports can be run at any time by district staff, and by clicking on a median number, a list of cases will be generated. The user is then able to click on an individual case to see the docket. Ms. Blanks noted that there were some issues with the reports in need of the Commission’s attention.

The first issue pertains to the report providing the length of time between answer brief to conference date as 40 days as opposed to 30 days which is the recommendation of the 2007 DCAP&A report. Ms. Blanks noted that at the last meeting, there was some discussion on this timeframe and it was determined that the length of time should be 40 days. However, this is inconsistent with the recommendation in the 2007 report. Judge Warner asked if the rule specified the length of time. Ms. Blanks responded that the rule does not specify a timeframe.

She also stated she believed that the DCAs agreed that this was something that would be calendared. Judge Warner stated that the 2007 report recommended 30 days so that everything could get done by 195 days. Ty Berdeaux confirmed that the length of time between answer brief and conference date should be 30 days to get everything completed within 195 days. Judge Van Nortwick stated that if the 2007 report says 30 days then that is what it should be. Judge Salter noted that if you add up the numbers, 40 days does work.

The second issue pertains to the C-Web reports using the first date of the record instead of the last date because to do otherwise, many cases would be removed from the sample. The Commission discussed using the first date versus the last date, as an accurate measurement. Ms. Blanks noted that it is important to include more in the sample to get the bigger picture. She stated that looking at the docket of individual cases would indicate what specifically was causing the delay.

Jon Wheeler said that the more accurate information would be generated by using the last date of the record. Ms. Blanks responded that she agrees but by doing so, it removes many cases from the sample. Judge Van Nortwick asked why that would happen. Tom Hall responded that if the case has a negative number, it is kicked out of the report. Judge Van Nortwick asked if they could use the last date of record, unless there is the anomaly, then use the first. Ms. Blanks asked if Mr. Lubbers could write that into the code and he responded that he could try. Judge Warner asked what would be shown on the report. Judge Van Nortwick responded that they would be using the date of the filing for preparing the initial brief.

Jon Wheeler asked if it was possible to get a list of cases that are kicked out and Mr. Lubbers responded that it can be done. Mr. Wheeler noted that, with such a list, it could be determined what the issue is with those cases. Mr. Hall said he believed this has been an issue discussed in previous years and that a solution was reached. He stated that the same solution should be used for consistency. Judge Van Nortwick stated that staff should work with the clerks to come up with a consistent way to handle these cases. Ms. Blanks responded that she will meet with the clerks and OSCA staff to work on the issue. Judge Van Nortwick asked that amended reports be provided at the next meeting.

The third issue pertains to the 5th DCA expressing concern that their statistics were skewed because they are dismissing cases for failure to file the brief and then reinstating them. Mr. Wheeler stated that this is how it is handled in the 1st DCA. Judge Warner stated that the 4th DCA also handles it similarly. Ms. Blanks stated that this would show a delay in the report. Mr. Hall noted that he thought it was agreed on by all the districts a few years ago to not make these new cases. Judge Warner noted that the reports will show where the problems are. Judge Warner stated that if a problem exists and the parties who are causing the problem can be identified, it would indicate where the court can help, such as meeting with the local bar associations. Judge Van Nortwick agreed. Judge Altenbernd asked if it was possible to get the statistics on “cases not disposed on the merits.” Mr. Lubbers responded that it was.

Judge Van Nortwick asked if there was anything else they could do with these reports today. He noted that, in his court, some changes have been made based on the reports, but not all of the Supreme Court’s requirements have been addressed. Judge Warner asked if these reports have

been disseminated. Ms. Blanks stated that she suggests these statistics be provided to the Supreme Court after a year to capture the impact of the new rules. Judge Altenbernd asked if the statistics could be presented in such a way so that they could be more easily understood. Judge Van Nortwick stated that if they disseminate these reports, it should be done next July along with recommendations, and in a manner that is helpful.

III. Postconviction Case Monitoring

Judge Van Nortwick noted that we do not have any new information from the Criminal Court Steering Committee. Judge Van Nortwick asked Judge Altenbernd if the DCAP&A can be of assistance to the Committee. Judge Altenbernd responded that a report was submitted to the Supreme Court in September 2006 making recommendations that could realistically be addressed by January 2008. A subcommittee was created and they have met three times with no results. An email was sent out five weeks ago noting the subcommittee would get started again but there has been no further information. Judge Warner commented that she offered support back in 2007. Judge Van Nortwick noted that the administrative order gives responsibility to the Commission for monitoring postconviction cases. Judge Altenbernd noted that he has not seen postconviction statistics since 2006. Judge Van Nortwick requested that staff gather updated statistics and then the Commission can go from there. Judge Warner asked if data on circuit and district courts could be obtained and Ms. Buckingham stated that there were some limitations on the availability of circuit data, but staff would try to gather as much information as possible. Judge Warner noted that she did not think it was necessary to review timeframe statistics listed on page 13 of the meeting packet, however, the other statistics referenced on page 12 would be useful for review. Judge Van Nortwick agreed and suggested that these statistics could be shared with the Criminal Court Steering Committee and the Supreme Court.

IV. Emergency Preparedness

Judge Van Nortwick reported that the Court Emergency Management Group has created a comprehensive plan for all levels of the State Courts System and he is not sure that there is anything the DCAP&A should add at this point. Tom Hall responded that he is member of CEMG. Judge Van Nortwick asked Mr. Hall to let him know if the Commission may be of assistance in the future.

V. Schedule Next Meeting

Judge Van Nortwick proposed that the next meeting be in the spring, after staff has given some input on when they can provide the information on dependency/TPR and postconviction data.

Judge Van Nortwick thanked Justice Polston for attending. Justice Polston noted that he will look into the efforts of the Criminal Court Steering Committee.

Judge Van Nortwick adjourned the meeting at 1:12 pm.