

Supreme Court of Florida
Commission on Trial Court Performance and Accountability
Teleconference
September 25, 2009
12:00 pm to 2:00 pm

Minutes

Members in attendance:

Judge Robert Bennett, Judge Brian Davis, Judge Peter Lopez, Judge Ellen Sly Masters, Judge Terry Terrell, Gay Inskip, Carol Ortman

Members absent:

Judge Thomas Jaworski, Judge Kathleen Kroll, Judge Peter Marshall, Judge Jonathan Sjoström, Judge William Wright, Mike Bridenback, Justice Jorge Labarga (Liaison), Judge Lisa Davidson (Liaison)

Staff in attendance:

Sharon Buckingham, P.J. Stockdale, Greg Youchock, Greg Smith, Laura Rush

Judge Bennett called the meeting to order at 12:04 pm.

Sharon Buckingham noted that only six members are present and a quorum had not been achieved. Judge Bennett asked that staff first cover the informational items on the agenda in the event that additional members may dial-in later in the call.

I. Self-Help

Greg Youchock reviewed the self-help project summary under Agenda Item III in the meeting materials:

- Self-help assistance was diminished with the implementation of Revision 7 as the responsibility for this function fell to the clerks, many of whom provide very limited and inconsistent services throughout the state.
- A TCP&A report was submitted to the Supreme Court in April 2008, which outlined a service framework, basic principles and assumptions, roles and responsibilities, and proposed rules.
- A supplemental TCP&A report was submitted to the Supreme Court in December 2008, which recommended a hybrid model of local self-help centers in each circuit and a statewide call-in center based in the OSCA. The model was approved by the TCBC and the Supreme Court and included in the Stable Funding Initiative cost calculations. The report also recommended changes regarding court and clerk staff responsibilities, as well as a suggestion to amend Florida Statutes so that self-help is considered an element of the State Courts System.
- On September 1, 2008, the Chief Justice issued a letter to Judge Bennett notifying that the Supreme Court had approved all of the TCP&A recommendations contained in both reports. Additionally, the Chief Justice has charged Judge Bennett, as Chair

of the TCP&A and Judge Nikki Clark, as Chair of the Steering Committee on Children and Families in the Court to jointly appoint a workgroup to:

- 1) Determine services that are currently available to self-represented litigants and associated fees assessed in each judicial circuit (through the clerks or counties) and how these services may be integrated with the court-based programs;
- 2) Develop an overall funding strategy including the possibility of at least partially funding court-based self-help programs through nominal fees charged to litigants using self-help services;
- 3) Develop a process for building consensus and forming partnerships among stakeholders (e.g., clerks of court, legal aid organizations, law libraries, and The Florida Bar) to ensure effective and efficient service delivery; and
- 4) Develop an infrastructure to support the self-help programs with form development, staff training, and other operating policies and procedures.

Judge Bennett and Judge Clark will be discussing the action steps for this project in the near future.

Mr. Youchock noted that a report addressing these charges is due to the Supreme Court by October 1, 2010. He also stated that OSCA Court Services and the Office of Court Improvement will staff this effort.

Carol Ortman mentioned that a state senator from the Seventeenth Circuit has expressed interest in returning self-help functions to the court system. Greg Smith mentioned a link between self-help and e-filing. Mr. Smith stated that the OSCA will be asking for bids for a statewide e-filing portal.

II. Court Interpreting

Ms. Buckingham reviewed the court interpreting project summary under Agenda Item V in the meeting materials:

- In Administrative Order SC08-32, the TCP&A was directed to continue with the development and implementation of standards of operation and best practices for the major elements of the trial court system. With mediation and court reporting as a precedent, the formation of a court interpreting workgroup was approved at the May 20, 2009 TCP&A teleconference.
- In order to aid in the understanding of court interpreting operations at the trial court level and the creation of standards of operation and best practices statewide, a court interpreting profile for each circuit has been created. Each profile is a summary of a circuit's fiscal allocation, service delivery model, staffing model, and operations. Staff is in the process of finalizing the profiles for publication.
- Staff also compiled a proposed list of court interpreting workgroup members which has been approved by Judge Bennett. The workgroup will include: judges; TCAs; court interpreting managers and interpreters; as well as cross-over membership with the TCP&A, the Court Interpreter Certification Board, and the original 2002 workgroup.
- The deadline for completion of this project is April 2010.

Judge Bennett asked if any additional members had dialed into the call. Hearing no response, Judge Bennett asked staff to proceed with the items on the agenda that require a vote. Ms. Buckingham suggested that staff send the minutes out to the members following the call and ask for a vote via e-mail from those members that could not participate. Judge Bennett agreed to this approach.

III. Approval of the May 20, 2009 Minutes

Judge Bennett asked if the members have had an opportunity to review the draft minutes. Ms. Buckingham noted that the minutes were sent out a month after the May meeting and that Judge Terrell had suggested a correction to the misspelling of “Jimmy Ryce” on the last page of the minutes. Judge Bennett moved approval of the minutes with that change. Judge Terrell seconded the motion. The minutes were approved without opposition pending a vote of the members via e-mail. *[Note: Following the meeting, the minutes were approved by a majority of the members via e-mail.]*

IV. Report from the Court Statistics and Workload Committee

Judge Masters provided a report on the activities of the Court Statistics and Workload Committee under Agenda Item II. Judge Masters explained the proposed changes to senior judge usage data reporting and the eight recommendations that were being advanced by the committee in the senior judge report. Judge Masters also commented on the difficulty in tracking the number of cases handled by senior judges. Judge Bennett suggested that the recommendations of the committee will lead to improved data reporting.

P.J. Stockdale reiterated the purpose and intent of the report and stated that three data elements represent the minimum amount of data necessary: 1) where senior judges serve, 2) how long senior judges serve, and 3) reasons for the use of senior judges. Mr. Stockdale explained that this data will now be used for budget decisions, not just for the judicial certification process.

Judge Terrell asked whether there would be a problem with getting this data reported by the senior judges. He suggested that a list with the appropriate categories could be provided to the senior judges for their completion. He stated further that this would not be too cumbersome of a reporting requirement for the senior judges. Judge Bennett agreed that this would not be a hardship for the senior judges. Judge Masters stated that the committee focused on recommendations to improve the data reporting as directed by the Supreme Court and decided not to address how the data would actually be collected. Judge Bennett stated that the only person who can provide the required senior judge information is the actual senior judge performing the work. Ms. Ortman voiced her agreement and stated that the Seventeenth Circuit has worked very hard on refining their senior judge data reporting.

Judge Bennett stated that the senior judge report is an excellent report. The senior judge report and recommendations were approved without opposition pending a vote of the members via e-mail. If approved, the report will be submitted to the Supreme Court. *[Note:*

Following the meeting, the report and recommendations were approved by a majority of the members via e-mail.]

Judge Masters continued to the next issue from the committee- the value of claim forms. She discussed the graduated filing fees for real property/mortgage foreclosure cases and how they are problematic. Judge Masters then reviewed the estimated value of claim form on page 29 of the materials and discussed the filing fee requirements. Mr. Stockdale discussed the final disposition form on page 30 of the materials and pointed out that the committee discussed updating the forms outside of the standard rules procedure. Mr. Youchok described the precedent that has been set with jury management for such an administrative process. Judge Davis inquired as to whether the clerks of court were consulted when developing the forms. Mr. Stockdale replied that they were consulted. Judge Davis moved approval of the forms. Ms. Ortman seconded the motion. The forms were approved without opposition pending a vote of the members via e-mail. If approved, the forms will be submitted to the Supreme Court. *[Note: Following the meeting, the forms were approved by a majority of the members via e-mail.]*

V. Court Reporting

Ms. Buckingham reviewed the court reporting project summary under Agenda Item IV in the meeting materials:

- A report was submitted to the Supreme Court in October 2007, which included recommended court reporting best practices, standards of operation, and rule and statutory changes.
- In developing the recommendations, the TCP&A gave priority consideration to the effectiveness and quality of the court reporting process and the maximization of resources to ensure accountability. Also considered were current practices both in Florida and around the United States and local market conditions which may be beyond the circuits' control.
- The Supreme Court referred the proposed rule revisions to the Florida Bar RJA and Appellate rules committees. These committees submitted their recommendations to the Supreme Court in August 2008. Subsequently, the Supreme Court held Oral Argument on April 6, 2009 and issued SC08-1658 on July 16, 2009.
- In SC08-1658, the Supreme Court adopted the majority of TCP&A's proposed rule revisions but declined to adopt the amendments that would restrict disclosure of electronic recordings (i.e., at the discretion of the chief judge). The Supreme Court noted that digital recordings of court proceedings are now widely used throughout the state and have proven to be useful, reliable, and cost effective. They noted that access to these recordings should not be denied.
- The Supreme Court also approved a new section in rule 2.535 on safeguarding confidential communications when electronic recording equipment is used in the courtroom as recommended by the TCP&A. Court personnel are required to provide notice to participants that electronic recording is being used; attorneys are required to take all reasonable precautions to protect disclosure of confidential communications in the courtroom; and participants also have a duty to protect confidential information.
- The TCP&A recommended standards of operation and best practices are still pending formal approval by the Supreme Court.

Ms. Buckingham further explained that when the Supreme Court's opinion was issued, staff reviewed the proposed standards and practices in order to determine if any changes might be needed. Two standards of operation were identified as possibly needing adjustment:

- All judicial circuits shall codify protocols for producing copies of audio/video recordings in accordance with court rule and standards established by the State Court System. These protocols shall include, but are not limited to: procedures preventing the release of off-the-record discussions, sidebar conferences, ~~and~~ attorney-client conversations, and other confidential information to the public; the court's process for ensuring the accuracy of the recording; and certification of the recording for correctness.
- All judicial circuits shall codify protocols for transcript production in accordance with court rule and standards established by the State Court System. These protocols shall include, but are not limited to: procedures preventing transcription of off-the-record discussions, sidebar conferences, ~~and~~ attorney-client conversations, and other confidential information; the court's process for approving transcription services; and certification of the transcript for correctness.

Additionally, a new standard of operation on the release of audio/video recordings was discussed:

- Copies of audio/video recordings may be made available to attorneys, parties of a case, the media, and the public at large, after review to ensure that matters protected from disclosure are kept confidential in accordance with court rule.

Ms. Buckingham explained that should the TCP&A decide to propose these changes to the Supreme Court, a supplemental report could be submitted. The supplemental report could include a justification for the changes and may reference amendments to rule 2.420(d)(1), Florida Rules of Judicial Administration that have been proposed by the Committee on Access to Court Records, currently under consideration by the Supreme Court. Ms. Buckingham pointed out that the nineteen proposed exemptions may provide guidance to the trial courts on the specific items that are considered confidential.

Judge Terrell stated that changes are needed to the proposed standards of operation and recommended that the justification language on protecting confidential information also reference termination of parental rights and drug court cases. Judge Davis added that mental health and domestic violence cases should be referenced. In addition to digital court reporters, Judge Bennett stated that transcriptionists will also benefit from this guidance. Ms. Buckingham agreed to reference these case types in the supplemental report. Ms. Ortman moved approval of the amended standards of operation and the addition of the standard of operation on the release of audio/video recordings. Judge Davis seconded the motion. The motion passed without opposition pending a vote of the members via e-mail. *[Note: Following the meeting, the changes were approved by a majority of the members via e-mail.]*

Ms. Buckingham explained that following the submission of the TCP&A's October 2007 report, the Trial Court Budget Commission (TCBC) reviewed the proposed best practices on service delivery models and monitoring ratios. After this review, the TCBC suggested changes to the best practices for use in budgetary decisions. Ms. Buckingham summarized

the TCBC's changes (on pages 46 and 47 of the materials) and explained that it would be beneficial to send a consistent message to the trial courts instead of having two different versions of the same policies. Gay Inskeep stated that the changes suggested by the TCBC were more realistic and more consistent with court reporting operations in the Sixth Circuit. Ms. Ortman concurred and stated that Jimmy Ryce trials are enormously important and court reporters need to have their full attention on these proceedings. Ms. Ortman moved approval of the TCBC's changes. Ms. Inskeep seconded the motion. The motion passed without opposition pending a vote of the members via e-mail. *[Note: Following the meeting, the changes were approved by a majority of the members via e-mail.]*

Judge Bennett directed staff to draft a brief supplemental report to be distributed and reviewed by the members before submission to the Supreme Court.

VI. Schedule Next Meeting

Judge Bennett asked staff to explain the funding allocated to the TCP&A for FY 2009-10. Ms. Buckingham explained that the TCP&A has been allocated enough funding to hold two in-person meetings. She further explained that some of this funding will likely need to be used for the court interpreting workgroup but suggested that the full commission could hold an in-person meeting later in the fiscal year.

Ms. Buckingham suggested that the next TCP&A meeting be held via conference call in early December. She explained that staff should be prepared at that time to provide a draft proposal for a Trial Court Operating Procedures Manual, as discussed at the May 20, 2009 meeting. Ms. Buckingham stated that Judge Kroll and staff had discussed this idea with the Publications Committee and that they did not have any objection to moving forward. Judge Bennett directed staff to poll the members on suggested dates for the next meeting.

Judge Bennett adjourned the meeting at 1:17 pm.