

**Commission on Trial Court Performance and Accountability
Tallahassee, FL
May 24, 2013**

Minutes

Members in attendance:

Judge Terry D. Terrell, Judge Paul Alessandroni, Judge Brian Davis, Judge Ronald W. Flury, Judge Leandra Johnson, Gay Inskeep, and Judge Diana Moreland.

Members absent:

Judge Victor L. Hulslander, Judge Ellen Sly Masters, Judge Kathleen Kroll, Judge Elizabeth Metzger, Mike Bridenback, Holly Elomina, and Justice Jorge Labarga (Liaison)

Additional Attendees:

Judge Robert Morris (JMC)

Staff in attendance:

Patty Harris, Maggie Geraci, P.J. Stockdale, Kris Slayden, Lisa Bell, Andrew Johns, Lindsay Hafford, Victor McKay, Eric Maclure, and Lisa Goodner.

I. Welcome and Introduction of Guests

Judge Terrell called the meeting to order at 9:00. He acknowledged that a quorum was present. He also asked the members and guests to introduce themselves.

II. Approval of the November 27, 2012 Minutes

Judge Terrell asked the members if they had reviewed the minutes and if there was a motion to approve. Judge Davis moved to approve the minutes. The motion was seconded by Judge Alessandroni and the minutes were approved unanimously without modification.

III. Development of Standards of Operation and Best Practices for Expert Witness Services

Victor McKay gave a presentation on the development of standards of operation and best practices for the provision of expert witness services. He noted how the commission defined an expert witness previously, what essential services expert witnesses provide to the trial courts, and the legal criteria used to determine when an expert should be appointed by the court. He discussed the preliminary work done thus far which includes a proposed draft action plan that outlines how long the process will take and the number of in-person meetings and conference calls that would be necessary. He also spoke on the outreach done to this point. This outreach included contacting chief judges and trial court administrators to determine potential members to serve on the workgroup. Additional outreach to the smaller circuits was completed in order to provide representation from all circuit sizes.

Patty Harris provided some additional information as to the project outline. She stated the workgroup would develop recommendations, outreach them to the circuits, and present the recommendations to the TCP&A by February 2014. Ms. Harris reminded the

members that once best practices have been developed, the next step is to work with the Trial Court Budget Commission (TCBC) on determining the fiscal impact of the recommendations. She further stated that there is time available between February and July to prepare this fiscal impact analysis to supplement the recommendations for the Supreme Court.

Judge Terrell referred to a potential impact issue resulting from new legislation passed during the 2013 Session that changes the standard used to admit expert testimony/evidence (from Frye to Daubert). He mentioned this legislative change could have some impact on obtaining experts on capital mitigation, accident reconstruction, and mental health cases due to the potential increase in associated fees. Ms. Harris suggested this issue could be discussed with the newly appointed members of the Expert Witness Workgroup as fee structure standards would be under their purview.

A motion to adopt the project outline was made by Judge Alessandrini and seconded by Judge Moreland. The motion passed unanimously.

A motion was made by Gay Inskeep to approve the membership of the workgroup. The motion was seconded by Judge Johnson. The motion passed without modification.

IV. Implementation of Approved Standards of Operation and Best Practices on the Provision of Court Interpreting Services

Lisa Bell provided an overview of the recent National Summit on Language Access. She detailed the six recommendations that were a result of the Summit. Those recommendations include designating a language access advisory committee, developing a language access plan, conducting outreach on related court interpreter certification and regulation functions with other entities (e.g. universities, national testing organizations), enhancing remote interpreting services, enhancing judicial education, and instituting a grievance complaint process. Judge Johnson asked if the grievance process envisioned would occur at the state or circuit level. Ms. Bell responded that she believed it would be an online reporting mechanism available at the state level, but acknowledged that the details are still being worked out. She further stated that there is a teleconference scheduled for June 3rd with the Court Interpreter Certification Board and this topic will be discussed.

Judge Terrell commented on the advent of remote interpreting technology to improve access and how this will also provide opportunity to provide better economies of scale for his circuit as well as others. He remarked on the impact of past hurricanes, in particular after Hurricane Ivan, whereby his circuit experienced a bubble-like need due to the increased amount of Hispanic workers coming into the community and accessing the judicial system. Ms. Slayden discussed how the Legislature is interested in the use of remote court interpreting, as noted by the recent \$100,000 appropriation the trial courts received to initiate a remote interpreting technology pilot. Judge Terrell remarked on how the U.S. Department of Justice challenged the structure of court interpreting in Delaware. He praised Florida on being proactive with court interpreting.

Judge Davis reflected on his experience dealing with litigants who have speech issues and asked if the state considers those who have developmental speech issues as eligible to receive court interpreting services or if there is national attention on this issue. Ms. Bell

responded that the Board's work to date has focused on foreign language interpreting services and not language access issues related to ADA matters. Ms. Bell mentioned that a comprehensive bench guide was finalized in the fall of 2012 that provides guidance on the provision of interpreting services for limited English proficient persons as well as persons who are deaf or hard of hearing and persons with other disabilities. Accessible through the OSCA intranet, she indicated that the issue concerning litigants with speech impediments is likely addressed in the bench guide.

Ms. Bell also reported that the Court Interpreter Certification Board filed comprehensive proposed rule changes with the Court on 2/26/2013. The proposed changes were initially outreached to a broad range of professionals numbering over 1,200 people. As a result of responses received to the proposed changes, a number of modifications were made to the rules before filing the recommended changes with the Court. Among others, the Sixth Judicial Circuit provided some great recommendations in this regard. She further advised that another publication notice concerning the proposed amendments was recently published in the April 15 edition of the Florida Bar News, and the Court has invited all interested persons to comment on or before May 15. She further explained that to date, no additional comments have been filed.

Ms. Harris provided an explanation of the remote interpreting technology initiative efforts. She stated that the 2010 TCP&A report, *Recommendations for the Provision of Court Interpreting Services in Florida's Trial Courts*, submitted to the Supreme Court the same year, included several recommendations for remote interpreting technology. The Court decided to approve those recommendations that did not have a fiscal impact, and charged the TCBC with reviewing the viability of implementing remote technology state wide. In response, the TCBC directed the Due Process Technology Workgroup (DPTW) to review the issue. The DPTW requested funding of \$100,000 to test and pilot shared remote interpreting services in two, possibly three, circuits. Ms. Harris further explained the funding request was approved by the Legislature and the DPTW is now looking into establishing objectives for the 2013 pilot with the possibility of the Circuits 7, 9, or 15 participating. The pilot will be looking at the business processes, the technical and functional capabilities, and service and delivery models. Ms. Harris stated that it appears the Legislature is interested in remote interpreting expansion and it is hoped that a legislative budget request can be made in the next cycle to maintain the pilot and possibly expand upon this technology. Ms. Harris stated the system will include a statewide call manager, housed in the Office of the State Courts Administrator, which would provide capabilities similar to calling into a doctor's office and going through a menu of choices, but with a more sophisticated system setup.

Ms. Harris further indicated that this regional model will reduce travel, improve efficiency in case processing, improve delivery of interpreting services and increase opportunity to share interpreter resources between circuits and other states. Maggie Geraci explained the goal of the program is to use Florida's certified court interpreters. Judge Davis then asked if there will be a mechanism built in to the technology to ensure the interpreters are interpreting accurately. Ms. Harris stated that the court interpreter will be tied to the digital court reporting system of the courtroom, so the possibility is there that the interpretation can be recorded. Judge Terrell further emphasized the integrity of interpreting service is paramount and improvements to accountability will ensure both litigants and defendants are receiving the correct information to make the

right decisions in cases. Ms. Harris noted that some of these integrity issues may be able to be easily addressed in the development of technical and functional standards. Many of these questions hinge on the functionality permitted with the technology. Ms. Harris informed the commission members that Cisco, a company that offers remote interpreting technology recently loaned equipment for testing purposes to the Office of the State Courts Administrator with some end points in the 15th Circuit, however, this equipment has not gone live yet. Hopefully, the additional funding will allow for live, more in depth testing to determine functionality and design changes.

V. Report from Court Statistics and Workload Committee

Judge Alessandrini provided a status update on the Court Statistics and Workload Committee (CSWC). He noted that a CSWC meeting was held in February of this year. He stated the issues discussed at that meeting included: 1) statutory and rule changes made to the stalking violence reporting, which staff is continuing to monitor changes to these issues as these may have an impact on SRS reporting; 2) a dependency workgroup, chaired by Judge Masters, was created to investigate more effective practices for tracking and reporting the disposition of juvenile dependency cases; however, this work has been deferred because of other priority issues; and 3) the CSWC discussed various options for reviewing the case weights under the Judicial Workload Model. It was decided staff would need to recalculate event proportions for all case types and that an adjustment modifier would be needed for misdemeanor and criminal traffic cases.

P.J. Stockdale noted how critical it is to have good event definitions to support case weights and adjustment of the Judicial Workload (Case Weight) Model accordingly. He gave a historical perspective on how CSWC undertook a separate project to establish clear definitions for post-judgment events, commonly called reopens. He introduced the Case Event Definition Framework, on page 57 of the meeting packet, which resulted from this project. These definitions will have an impact on the foreclosure initiative. The TCBC's Foreclosure Reduction Plan adopted these definitions. The CSWC is recommending adoption of these definitions for application across all divisions. Judge Terrell asked whether there is a requirement that cases be noted as inactive based on automatic stays/inactive stays or if it is broader than that. Mr. Stockdale responded that it is broader as the CSWC had identified five or six automatic stays. He also stated that a case could be rendered inactive by meeting the criteria in which a judge can no longer act on the case. Ms. Slayden stated a reporting plan is being developed for foreclosures specifically that will include more definitions.

Ms. Inskeep offered a motion to accept the recommended Case Event Definitions as proposed by the Court Statistics and Workload Committee. The motion was seconded by Judge Davis. The motion carried unanimous.

Ms. Inskeep offered a motion to recommend to the Supreme Court that the Case Event Definitional Framework be adopted for use in the trial courts. Judge Davis seconded the motion. The motion carried unanimous.

VI. Final Report and Recommendations of the Foreclosure Initiative Workgroup

Kris Slayden stated the Foreclosure Initiative Workgroup developed a Foreclosure Backlog Reduction Plan, comprised of both budgetary and process solutions. Of the budgetary solutions, it was recommended to provide: 1) more active judicial or quasi-

judicial case management and adjudication, including the expanded use of general magistrates; 2) additional case management resources; and the 3) deployment of technology resources in the form of judicial viewers to allow judges to manage cases, view documents and issue court documents electronically. Lisa Goodner provided a brief historical perspective on her experience before the Legislature on the foreclosure initiative and the creation of the workgroup. Ms. Slayden reviewed the six recommendations outlined in the handout. Ms. Slayden stated that the goal of the plan is to use judicial viewers to track three main indicators that the Supreme Court approved. These indicators include time to disposition of cases, age of pending cases, and clearance rates. Gay Inskeep pointed out that the clerks are in a different state of readiness in her circuit.

Judge Terrell mentioned that he was on the workgroup that looked at this issue. He stated one thing to be mindful of is how the Legislature will feel about their return on investment and that data collection should be expanded so the court will be prepared to discuss additional questions they may have of what happens post judgment. Ms. Slayden agreed. She further stated that the reporting structure that is currently being used will allow for that expansion of data collection for reopened cases. These data collection improvement efforts are underway now and it is hoped that these efforts will provide improved analysis in the near future.

VII. Establishment of a Performance Management Framework in Florida's Trial Courts

Patty Harris and Maggie Geraci presented a power point presentation on the overview of the National Center for State Court's (NCSC) Framework for High Performance Courts. The presentation included an introductory review of the main concepts offered within the NCSC's report. Ms. Harris discussed how the presentation was developed in response to the approval of the Trial Court Integrated Management Solution (TIMS) report which recommended several performance measures and a directive for TCP&A to establish a performance measurement framework for using the measures approved within the report. Three main objectives were outlined for the presentation. These included: 1) reviewing the key themes of the Framework's main concepts, 2) understanding the practical application of the Framework for judges and administrators, and 3) laying a foundation for a performance management process within Florida's trial courts.

Following the presentation, Judge Davis noted that the commission seemed to be already doing many of the suggestions offered by the NCSC. Ms. Harris explained that realistically to institute a performance management framework it may take a 5-7 years and the report gives us some further ideas the commission may want to consider. Ms. Inskeep commented that decisions should not be based on the speed by which things are done. She stated she believes that leaves out due process. Judge Terrell stated that due process is the overarching responsibility when trying to establishing efficiency. Lisa Goodner stated this speaks to the issue of public trust and how the framework addresses that issue. Judge Moreland spoke of the influence television and reality TV has on the public's perception of the court process. Judge Terrell asked the commission members to review the materials and consider where the commission should go from this point and if there is interest in adopting the suggestions in the High Performance Framework. Ms. Goodner stated that it should take into consideration that every court system is different and other court systems may be modifying the framework to suit their needs. Judge Davis stated that the report could be used as a template to do a critical comparison to

what is being done in the state court system now. Ms. Harris stated that the 68 performance measures offered in 1987 were released from NCSC and many courts had a real challenge in implementing all those measures. So in 2005, NCSC released a set of 10 CourTools that made the measures simplified and concise. Judge Moreland asked if the High Performance Framework presentation was ever made at a judicial conference. Ms. Harris responded no and stated that by providing this presentation, she was hoping to get some ideas of how to better communicate through the organization. One issue with the Trial Court Integrated Management Solution project was a lack of feedback through the outreach process because it was a difficult topic to understand and that may be a consideration for this project as well.

Judge Terrell stated there is a fine line when dealing with this type of analysis. He further stated that it is not only important to do the outreach, but it is also important to craft it in a way to get responses. Judge Morris mentioned the idea of bringing in outside consultants to provide some ideas on how to assess and adapt the current culture. He remarked on the perceptions of the judiciary and the differences between legislators and judges whereby it appears the legislative staff are moving quicker to embrace the modern culture. Judge Terrell mentioned the opportunity we have now working with the legislature on managing the foreclosure backlog has brought to light several challenges the courts are facing in respect to achieving efficiencies. For instance, the plaintiff lawyer's reluctance to judges taking charge of their responsibility and interfering with their time management, while defendants don't want to lose their homes. Further, he commented on the issue of rocket dockets and the negative impact caused by a greater efficiency. These issues have heightened awareness to our ultimate challenge which is to balance effectiveness and efficiency. Ms. Harris stated that staff can plan to bring back to the commission more information on the application of the High Performance Court Framework including any additional models that are available. She also mentioned staff can begin to work on developing an action plan that takes into account outreach to all chief judges and trial court administrators to identify performance goals and projects.

VIII. Other Business

Judge Terrell asked if there was anything additional that needed to be brought before the commission. Ms. Harris responded by mentioning that the Long Range Program Plan Measures will be taken up in July.

There being no other business, the meeting adjourned at 2:21 p.m.