

**Supreme Court of Florida
Commission on Trial Court Performance and Accountability
Meeting
Teleconference
January 31, 2011
11:30 am to 1:00 pm**

Minutes

Members in attendance:

Judge Terry Terrell, Judge Paul Alessandroni, Judge Leandra Johnson, Judge Peter Marshall, Judge Elizabeth Metzger, Judge Diana Moreland, Mike Bridenback, Judge Dawn Caloca-Johnson and Carol Ortman

Members absent:

Judge Brian Davis, Judge Kathleen Kroll, Judge Ellen Sly Masters, Gay Inskeep, Justice Jorge Labarga (Liaison), and Judge Lisa Davidson (Liaison)

Staff in attendance:

Greg Youchock, Maggie Geraci, Patty Harris, Sharon Buckingham, and Laura Rush

Judge Terrell called the meeting to order at 11:34 am.

Judge Terrell recognized Mike Bridenback, who was named the recipient of the 2010 Distinguished Service Award, sponsored by the National Center for State Courts.

I. Approval of November 18, 2010 Minutes

Judge Terrell asked if the members had a chance to review the November 18, 2010 meeting minutes. Mr. Bridenback moved approval of the minutes. Judge Moreland seconded. The minutes were approved without opposition.

II. Trial Court Integrated Management Solution (TIMS) Project – Phase One

Judge Terrell stated that staff has finalized the Project Plan for TIMS. Sharon Buckingham noted that the finalized plan is in the materials and has been approved by all committees sponsoring the project. Ms. Buckingham reminded the members about the purpose of TIMS, noting the two major trial court functions and six sub-functions addressed by the project. She also discussed the four phases of the project, emphasizing Phase One, which is being led by the TCP&A and the Court Statistics and Workload Committee (CSWC). Ms. Buckingham then went through the Phase One Action Plan in the materials. She discussed the goal of Phase One and described each action step. She highlighted the need for flexibility and adaptability with the plan to ensure the success of the project.

Ms. Buckingham reported that staff has been participating in site visits, noting visits to the FACC, the Second Judicial Circuit, and the Eighth Judicial Circuit. She stated that trips are also planned for the Third Judicial Circuit, the Sixth Judicial Circuit, and the Seventh Judicial Circuit. She stated that more visits may be planned throughout the project as resources permit.

Ms. Buckingham explained the potential make-up of the Phase One workgroups. She noted that membership would be comprised of front-line workers, such as judges, magistrates, hearing officers, case managers, and deputy clerks, with cross-over from partner committees.

Judge Terrell expressed concern over the aggressive timeline coinciding with the legislative session. Ms. Buckingham agreed and stated that staff would do the best they could to move forward. Ms. Buckingham stated that the Phase One Action Plan would be shared with the Steering Committee on Families and Children in the Courts (FCC) and the Florida Courts Technology Commission (FCTC), at meetings this week. She noted that staff has been working on potential member lists for the workgroups and that commission members may be asked to participate.

Judge Terrell asked for any discussion. There being none, he moved to the next agenda item.

III. Court Reporting Standards of Operation and Best Practices – Producing Copies of Recordings

Patty Harris reminded the Commission that the current protocol on Standards of Operation and Best Practices allows the Commission to recommend revisions to the standards and best practices that have been approved by the Supreme Court, if necessary.

Ms. Harris reviewed the history of the standards of operation and best practices in regard to producing copies of recordings. She stated that on July 16, 2009, the Supreme Court issued opinion SC08-1658 approving several proposed amendments to the Rules of Judicial Administration and the Rules of Appellate Procedure. The proposed amendments were approved in response to the TCP&A's October 2007 report on court reporting. While the Court adopted the majority of the TCP&A's proposed amendments, they declined to adopt amendments that would restrict the disclosure of electronic recordings. Specifically, the Court declined to approve a revision to rule 2.420, Rules of Judicial Administration that governs public access to judicial branch records. This revision would have removed "electronic records, videotapes, or stenographic tapes of court proceedings" from the definition of "court records". As such, recordings of court proceedings are still considered court records even if not part of the court file and must be released to the public if requested and are not exempt or confidential.

Ms. Harris further stated that the Court also did not approve the proposed revision to rule 2.535, Rules of Judicial Administration, pertaining to restricting access to the "electronic record," noting that "such a provision is overly restrictive and is contrary to Florida's public policy of government in the sunshine...digital recordings of court proceedings are now widely used throughout the state and have proven to be useful, reliable, and cost effective...We agree that access to these recordings should not be denied or left to the unfettered discretion of the trial court or chief judge."

Following the release of the opinion, the TCP&A issued a supplemental report recommending modifications to the standards of operation and best practices originally submitted in October 2007 (which were still pending with the Court). This was completed in an effort to ensure consistency with the new rule amendments. On January 7, 2010, the Court issued AOSC10-1 which adopted the standards of operation and best practices proposed by the TCP&A in both the October 2007 report and as revised in the November 2009 report.

Ms. Harris noted that one such revision to the original 2007 recommendations pertained to producing copies of recordings. This revision was intended to bring the release of recordings into compliance with another court opinion (SC07-2050) issued in March 2010 which amended rule 2.420, Rule of Judicial Administration. The rule amendments were submitted in response to recommendations issued by the Committee on Privacy and Court Records and the Committee on Access to Court Records on the protection of confidential information in court records from public view. These amendments, which became effective on October 31, 2010, address clerk procedures for restricting access to confidential information contained in court records and provide a list of confidential exemptions automatically applicable to court records. Thus, confidential information contained in audio/video recordings must be protected as with all other court records.

During the fall of 2010, the TCBC directed the OSCA to move forward with working with the circuits to determine the overall fiscal impact of AOSC10-1. A survey was conducted whereby OSCA met with most circuits via conference call to discuss potential issues experienced with implementation. During these calls, revisions to rule 2.420 were discussed along with the workload implications on the implementation of the standards of operation for producing copies of recordings.

Concerns were expressed regarding implementation as some circuits lack the staff and technological resources to review copies of recordings for confidential information prior to release. As of now, copies of recordings are being released differently across the state. Some circuits rely on front end standardized tags so that less time is spent reviewing confidential information prior to release. Other circuits, because of limited resources to perform up-front tagging, wait to review recordings upon request. Finally, there are a few circuits that release copies of recordings without any review.

Ms. Harris noted that the Commission might consider amending the standard of operation on producing copies of recordings. Ms. Harris presented potential options. Option #1 would require review of recordings before release to the public only. Option #2 would require review of recordings before release to public only upon objection by a party of a case. Option #3 would require review for all requestors, which would leave the standard of operation in its current form.

Ms. Harris suggested that it might be appropriate to outreach any changes to the circuits based on what the Commission decides today. Mr. Bridenback stated that given the original opinion of the Court, lawyers in these cases have ethical responsibilities to protect confidential information, and the news media would probably challenge Option #1. He noted the significant burden on staff to redact recordings and that the current policy is overly restrictive. He suggested going further than Option #1 by not requiring any redaction. Carol Ortman stated that she agreed with Mr. Bridenback. Ms. Buckingham stated that staff had considered adding an option that would not require any redaction; however, because the recording is defined as a court record in rule 2.420, confidential information must be protected. Laura Rush stated that from a legal standpoint, she believed that unfettered access to the record is allowed as long as confidential information is not released to the public.

Judge Terrell stated he was also concerned with the burden on staff to redact recordings especially in the digital realm. He noted the difficulty of this and the cost involved. Ms. Buckingham asked if the workload would be significantly reduced if redaction was only required

for the public. Mr. Bridenback noted that the media asks for transcripts almost every day in his circuit, but he agreed it would definitely reduce the workload from the current standard of operation; however, he believes the media would argue with Option #1. He also noted that the problem he has experienced is with side conversations, such as attorney/client conversations.

Ms. Buckingham stated that Gay Inskeep sent an email prior to the meeting, stating she was in favor of Option #1. Judge Terrell asked if Option #1 should include a reminder to the parties about the obligation of confidentiality. Judge Moreland noted that there are other protections that are important, such as in dependency proceedings where minors are involved. Judge Metzger agreed. Ms. Rush discussed the difference between confidential and privileged information. She stated that confidential information is information that is statutorily protected. Judge Metzger agreed that the court has an obligation to protect that information.

Judge Terrell asked for any motions on the options. Judge Marshall asked staff, regarding Option #2, if this would satisfy the legal requirements. Ms. Harris said that the concerns with Option #2 are that the media might object to the 10 day waiting period and there was a potential for more workload for circuit staff because of the notice requirement. Ms. Ortman stated that this is current practice in the Seventeenth Circuit. Judge Terrell asked if there have been any objections from the media. Ms. Ortman responded no, there have not been any objections.

Ms. Buckingham offered that Option #1 could be expanded. Ms. Rush suggested that there could be a notice of confidential information that would be submitted by the attorneys or self-represented litigants before or at a proceeding. She also suggested that there could be some kind of form agreement that confidential information could not be further disseminated. Ms. Buckingham offered that OSCA staff could revise Option #1 and get feedback from the circuits. Mr. Bridenback noted that he liked Ms. Rush's suggestion and he would support Option #1 with that amendment. Ms. Rush noted that this would be consistent with the current process under Rule 2.240 for court records contained in the file. Judge Terrell noted that with the rules change last year, everyone is on notice to protect any confidential or privileged information.

Mr. Bridenback moved that the decision be tabled until a later conference call could be scheduled, allowing staff time to draft additional amendments and outreach it to the circuits. Ms. Ortman seconded the motion. The motion carried.

IV. Schedule Next Meeting

Judge Terrell scheduled a conference call for the second week in February to revisit the court reporting issue. Judge Terrell also asked for suggestions on possible future meeting dates. Ms. Buckingham suggested the week of April 25th in the Tampa or Orlando area, from 10:00 to 3:00. Judge Terrell suggested a tentative date of Friday the 29th.

Judge Terrell adjourned the meeting at 12:32 p.m.