

**Supreme Court of Florida  
Commission on Trial Court Performance and Accountability  
Meeting  
Teleconference  
June 30, 2011  
12:00 pm (EST) to 1:30 pm (EST)**

**Minutes**

**Members in attendance:**

Judge Terry Terrell, Judge Paul Alessandrone, Judge Brian Davis, Judge Leandra Johnson, Judge Elizabeth Metzger, Judge Diana Moreland, Mike Bridenback, and Gay Inskeep.

**Members absent:**

Judge Dawn Caloca-Johnson, Judge Kathleen Kroll, Judge Peter Marshall, Judge Ellen Sly Masters, Carol Ortman, Justice Jorge Labarga (Liaison), and Judge Lisa Davidson (Liaison).

**Staff in attendance:**

Greg Youchock, Maggie Geraci, Patty Harris, Sharon Buckingham, Kristine Slayden, and Lakisha Hall.

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Judge Terrell called the meeting to order at 12:04 p.m.

Judge Terrell noted that member Carol Ortman and staff Sharon Buckingham will be leaving. Judge Terrell stated that Ms. Buckingham has been a rock to the commission. Ms. Ortman has been a significant member of the group with her years of experience. They both will be greatly missed. Mike Bridenback noted that Ms. Ortman is having some health problems and asked the Commission to keep her in their thoughts.

**I. Approval of the January 31, 2011 and February 16, 2011 Minutes**

Judge Johnson noted that she was listed as absent at the January 31<sup>st</sup> meeting, but she was present. Judge Metzger noted the same issue.

Motion: Mike Bridenback  
Second: Judge Alessandrone  
Approved with revisions.

**II. Trial Court Integrated Management Solution (TIMS) Project Update**

Patty Harris discussed the current status of the TIMS project. The six workgroups have been formed. The Probate Workgroup will be the first to meet. Staff have been working on the materials and an orientation was held for the chair of the Probate Workgroup and the Family Workgroup. The Probate Workgroup's orientation will be held on July 8, 2011.

Judge Terrell noted that there are continued concerns with resources of the court system. TIMS has an aggressive timeline with limited resources. He stated that he met with Judge Kreeger, chair of the Florida Courts Technology Commission (FCTC) about the timeline and explained

the background work that has been done by staff. He noted the continued interaction between staff of TCP&A, FCTC, the Steering Committee on Families and Children in the Courts (FCC), and the Court Statistics and Workload Committee (CSWC).

### **III. Court Reporting Standard Template for Service Provider Contracts**

Ms. Harris discussed the court reporting standard template for service provider contracts. She noted that template was developed by the Court Reporting Technical Assistance Workgroup. The template has been reviewed by the OSCA's General Counsel's office.

Gay Inskip asked if the circuits are required to use the template. Ms. Harris responded that it is an optional template that the circuits can use at their discretion and that it includes customizable provisions so that it can be tailored to accommodate a circuit's unique needs. Ms. Buckingham noted that it was drafted at the request of some circuits. Mr. Bridenback asked if it would be circulated to the TCAs for feedback. Ms. Harris stated that additional outreach had not been planned, but could certainly be done. Mr. Bridenback suggested that it be vetted through the TCAs. Thus, this issue was tabled to allow for feedback by the TCAs.

### **IV. Recommendations for Resolving Civil Disputes**

Maggie Geraci noted that during the 2011 Legislative session, SB 2116, an act relating to the state judicial system, creating the Judicial Caseload Incentive Plan, was presented by the Senate Budget Committee. The plan's stated purpose was "to resolve civil disputes in a timely manner and reduce legal costs in the state courts system by allowing certain judges within each judicial circuit meeting the established performance goals to earn a nonrecurring award." According to the bill, the Legislature would prescribe annual performance goals in the General Appropriations Act (GAA) for specified case types in each judicial circuit. The Office of the State Courts Administrator (OSCA) would calculate the performance of a circuit toward meeting its performance goal using data collected from the clerks of court. Annual performance goals would be divided into equal quarterly goals. Under the bill, if a circuit met all of the performance goals for a quarter, each judge assigned the types of cases specified in the GAA would receive an award for that quarter of \$3,000. OSCA would be required to provide quarterly reports to the chairs of the Senate and House appropriations committees, noting the progress of each circuit in meeting the performance goals and the number and amount of awards provided.

In response to the proposed legislation, an alternative proposal was offered, the Judicial Performance Incentive Plan, that would establish a civil case flow management initiative that would be tied to results-oriented performance measures designed to improve productivity, timeliness of civil courts, and reduced costs of civil litigation to the public. The plan was designed as a three-year phased-in approach, beginning with the implementation in nine circuits the first year, and expanding to all circuits by years two and three. Judge Terrell noted that this plan originated from Judge Steinbeck and the 20<sup>th</sup> Circuit. He stated that Kris Slayden and Rick Callanan put in a great deal of work into the proposal. Ms. Geraci added that neither the legislative proposal nor the alternative proposal passed during the legislative session. However, proviso language within the GAA directed the Office of the State Courts Administrator to make recommendations by January 2, 2012, to the chair of the Senate Budget Committee and the chair of the House Appropriations Committee on resolving civil disputes in a timely manner and reducing legal costs to the state court system through the use of financial and other incentives. The Commission has been asked to draft the recommendations, along with input from the

CSWC, the FMC, and the TCBC. Ms. Geraci stated that the Commission needs to determine the framework for developing the recommendations, whether to build upon the concept of differentiated case management (DCM) or to use some other option.

Ms. Geraci noted that a proposed timeline had been drafted and included in the meeting materials. Judge Terrell stated it was an aggressive timeline. Judge Moreland asked when the case managers would be hired. Judge Terrell responded that the implementation plan, which calls for multiple case managers depending on the number of civil judges, would need to be determined and subject to the legislature actually approving the plan. He noted that the TCBC is looking at, not only adding case managers, but also adding magistrates and hearing officers. Mr. Bridenback noted that the TCBC adopted a policy to focus on those resources that can be tied to efficiency and effectiveness, such as using magistrates and hearing officers. From his perspective, he likes the DCM proposal, but he noted the only area that needs more discussion is the benchmarks. He stated that he does not know that there is necessarily consensus on what the benchmarks should be. He stated that a number of courts around the county have implemented Courtools. He suggested that there be more discussion on appropriate benchmarks and whether current data is reliable.

Kris Slayden noted the benchmarks were determined quickly as they did not have much time to flush them out during the session. She stated that she and Lisa Goodner met with the Florida Association of Court Clerks and noted that FACC would need to be involved as they collect the data, and they might require resources as well. Judge Terrell asked if the proposal needed to include expanding funding to the clerks. Ms. Slayden affirmed this. Judge Terrell noted the ethical concerns of the legislature's proposal and suggested redirecting the resources in ways that support the judiciary in being efficient.

Ms. Harris noted the connection with the TIMS project and the idea of moving the TIMS Civil Workgroup up sooner to have it coincide with this project. Mr. Bridenback agreed that it was a good idea and noted that judges on the workgroup could help with benchmarks.

Judge Alessandrone offered that he was involved in DCM as a magistrate in the 20<sup>th</sup> Circuit. His experience with it was positive and he would recommend it. He noted that the administrative order of the 20<sup>th</sup> Circuit that expands DCM to civil cases gives some time standards.

Ms. Inskeep agreed that DCM would be appropriate. She noted that rule 2.250, Rules of Judicial Administration, although old, would provide a good starting place. She stated she would add time standards for foreclosure and complex litigation track. Judge Metzger agreed that the time standards need to be segmented out. Judge Davis concurred that a more refined tracking system as it comports with the reality of their benches, based on complexity and subject matter, would be useful. Judge Terrell agreed and asked staff whether that approach was feasible. Ms. Slayden responded that they did consider that when drafting the proposal for the legislature, but they erred on the side of being more general. She noted there is SRS data that breaks filings down to residential and non-residential and complex so she does not think it should be a problem.

Ms. Harris suggested that there could be phased in approach to the time standards. Ms. Buckingham suggested drafting the report based on DCM, research possible benchmarks, and outreach the plan to the circuits to see if it is feasible.

Mr. Bridenback noted that incentives, such as the Iowa plan, which allows the courts to draw from a fund for technology if annual performance goals are met, avoid the ethical concerns.

Judge Terrell stated that would be helpful for some of the rural circuits that have lower filings in gaining some technology. Ms. Buckingham asked if the members had other suggestions for incentives. Mr. Bridenback stated that if there is an agreement on benchmarks, then funds could be set aside that were accessible by circuits performing the benchmarks, for some specific purpose, like enhanced case management software for the judges. Ms. Buckingham asked if that would be a nonrecurring expense. Mr. Bridenback stated that it would be, noting most of the e-filing systems do not have a bench component. Judge Johnson stated she has a problem with any kind of financial incentive for doing something that should be done anyway. Judge Davis noted that he agrees with incentivizing greater efficiency, but fears that there may be some unequal results in the administration of justice. He noted that there has to be a better way in correcting the inefficiencies. Judge Alessandrone agreed with philosophical concerns of incentives and stated that it goes towards the independence of the judiciary. He has a concern that if there are monetary incentives, the circuits that have the most resources will gain more resources. He asked how incentives would be implemented. Judge Terrell noted concerns about taking a business approach to a court management problem. Ms. Slayden stated that the position Judge Steinbeck took when developing the DCM plan for the legislature was that the good report of the judge is the incentive. Doing well on those reports was incentive enough. Ms. Slayden did note however that the language of the proviso was specific on including incentives. Judge Alessandrone stated that keeping the resources of DCM could be the incentive. Judge Metzger and Judge Johnson agreed. Judge Davis disagreed stating that losing resources could be considered a disincentive.

Motion by Ms. Inskeep: The Commission should take the position that there should be no individual financial incentives of any kind for judges or staff.

Second by Judge Davis.

Approved unanimously.

Judge Terrell asked if there were any supplemental motions on financial incentives.

Motion by Judge Johnson: That there be no financial incentive for judicial performance other than appropriations by the legislature for additional staffing resources.

Second by Ms. Inskeep.

Approved unanimously.

Mr. Bridenback suggested that an additional item be added to the proposal – a grant process, where a fund is set aside for circuits to apply for based on some kind creative or innovative idea.

Motion by Mr. Bridenback: The recommendations should suggest the creation of a grant fund for circuits.

Second by Judge Alessandrone.

Judge Davis asked for clarification on the process by TCBC on funding circuits differently. Mr. Bridenback provided the example where circuits can decide whether to hire contract court reporters or employees as long as they fit in the funding methodology. The methodologies are in place to create equality and provide flexibility to allow the circuits to make their own decisions as to the delivery of services.

Ms. Inskeep restated her concern regarding any kind of direct financial incentive for staff. For instance, in foreclosure cases, she believes staff should focus on due process and not feel pressure to do anything counterintuitive to the fundamental goal of due process. Mr. Bridenback

stated that his suggestion of grant funds would not be tied to performance. Judge Johnson asked for friendly amendment that embodies the idea that it would be a noncompetitive grant. Mr. Bridenback agreed to modify the motion to include some kind of process designed so that every circuit would have the same opportunity to obtain grant funds.

Modified motion by Mr. Bridenback: Recommend a fund for grants, potentially differentiated among the circuits based on a structure that ensures equality and no erosion of due process secondary to speed.

Approved unanimously.

Judge Terrell asked if the Commission wanted to seek additional suggestions by the circuits on incentives. The group agreed. Judge Terrell asked staff to outreach to TCAs and their staff for appropriate incentives, taking into account no individual monetary incentives.

Judge Terrell then asked the Commission to consider the timeline as drafted by staff.

Motion by Judge Metzger: Approve the timeline.

Second by Judge Johnson.

Approved unanimously.

## **V. Other Business**

Judge Moreland raised an issue on electronic filing of transcripts. In 2006, Florida Rule of Appellate Procedure 9.200(b)(2) was amended to require court reporters to file electronic copies of transcripts with the Clerk of Court to be included in the record on appeal in addition to original paper transcripts. The rule amendment stated “in addition to the paper copies, the approved court reporter, civil court reporter or approved transcriptionist shall file with the clerk of the lower tribunal and serve on the designated parties an electronic copy of the designated proceedings in a format approved by the Supreme Court.”

Following the 2006 rule change, the Supreme Court issued administrative order SC07-41 designating the electronic copy format as Microsoft Word on a CD-Rom. Judge Moreland noted that her circuit has concerns regarding transcript quality, security, and overall costs associated with providing electronic copies in Microsoft Word on CD-Rom. For instance, Word documents are editable and tracked changes may be viewed allowing the non-final version to be accessed. Also, to convert a transcript into Word format, court reporters must convert from Case Catalyst to ASCII (American Standard Code for Information Interchange) to Word. During this conversion process, the transcript formats and margins become askew making it difficult if not impossible to replicate the paper transcript that is provided.

Judge Moreland asked if there was a way to allow court reporters to submit the electronic copy as a PDF via email, rather than as a Word document via CD-Rom. Judge Alessandroni noted that he thinks there is a way to save Word documents without the meta data, but he agrees with the proposal. Mr. Bridenback stated his circuit is experiencing issues with the 2<sup>nd</sup> District Court of Appeals. There is a cost associated with putting the record on CD-Rom. The attorney general is not part of the cost sharing agreement so the court is bearing the cost. Mr. Bridenback stated that he agrees with the proposal, that it is an efficiency issue and provides a more secure way of providing the service. Judge Terrell asked if more outreach needs to be done, such as to the Appellate Rules Committee, the FCTC, or other stakeholders. Ms. Harris noted that she discussed this issue with Chris Blakeslee, staff to the FCTC, and that she recommended outreach

to both the circuits and the clerks. Judge Terrell asked Judge Moreland and Mr. Bridenback if the CD-Rom was important to the clerk. Mr. Bridenback stated that he does not believe the clerk will have issues with receiving transcripts via email.

Motion: Staff to draft letter on behalf of Judge Terrell to the chairs of the FCTC and the E-Filing Committee, requesting that the E-Filing Committee consider submitting a proposal to the Supreme Court to amend AOSC07-41 to require court reporters to submit, in addition to paper copies of transcripts, an electronic copy of a transcript in a PDF attachment to email rather than a Word document on a CD-Rom.

Moved: Mike Bridenback.

Second: Judge Davis

Approved. Judge Terrell asked staff to provide the draft letter to the members for review before sending to the chairs.

#### VI. Schedule Next Meeting

Judge Terrell asked if another telephone meeting could be scheduled on July 22, 2011 at 12:00 pm Eastern. Ms. Inskeep stated she had a conflict with that date. Judge Moreland, Judge Johnson, Judge Davis, and Judge Metzger stated that they had no conflict with the date. Judge Terrell noted an email confirming the meeting would come from staff.

Judge Terrell adjourned the meeting at 1:31 p.m.