

Commission on Trial Court Performance and Accountability
Tampa, FL
May 5, 2014

Minutes

Members in attendance:

Judge Terry D. Terrell, Judge Victor L. Hulslander, Judge Kathleen Kroll, Judge Paul Alessandrone, Judge Ronald W. Flury, Judge Leandra Johnson, Judge Ellen Sly Masters, Judge Diana Moreland, Gay Inskip, Mike Bridenback and Holly Elomina

Members absent:

Judge Brian Davis, Judge Elizabeth A. Metzger, and Justice Jorge Labarga (Liaison)

Additional Attendees:

Judge Robert Morris (JMC)

Staff in attendance:

Patty Harris, Maggie Geraci, Greg Youchock, Andrew Johns, Dorothy Wilson and Blan Teagle

I. Welcome and Introduction, Judge Terry D. Terrell, Chair

Judge Terrell called the meeting to order at 10:02 a.m.. He acknowledged that a quorum was present.

II. Approval of the December 9, 2013 Minutes

Mike Bridenback moved to approve the minutes. The motion was seconded by Judge Johnson and the minutes were approved unanimously without modification.

III. Status Update on Joint Workgroup on Shared Remote Interpreting

Maggie Geraci presented an update on the Joint Workgroup on Shared Remote Interpreting. In December 2011, the supreme court, in AOSC11-45 approved several of the recommendations proposed by the Commission on Trial Court Performance and Accountability (TCP&A) in *Recommendations for the Provision of Court Interpreting Services in Florida's Trial Courts*. Among those, the court charged the Trial Court Budget Commission (TCBC) with “monitoring court interpreting budgets to ensure that, to the extent possible given the fiscal environment, the trial courts are provided the opportunity to seek the necessary and appropriate level of resources for purposes of implementing those polices in the future, as funding becomes available” and to conduct “a feasibility study to assess the viability of remote interpreting technology for improving efficiencies as well as reducing anticipated operational costs associated with expanding the provision of court interpreting to all court proceedings and court-managed activities.”

The TCBC established a Due Process Technology Workgroup (DPTW) to review the current state of remote technology in consideration of expanding remote interpreting regionally and/or statewide. A pilot project has been established in the 7th, 9th, 14th, 15th,

and 16th Circuits to study the processes associated with the “regional model.” Additionally, the Office of the State Courts Administrator (OSCA) is participating in the pilot by housing the call manager. The pilot is currently in the beginning phase, with shared remote interpreting occurring between the 7th and 9th Circuits. Additionally, remote interpreting has been provided by the 9th Circuit to the 16th Circuit.

The joint workgroup, with cross-over membership from the DPTW, the Court Interpreter Certification Board, and the Commission on Trial Court Performance and Accountability, established to make recommendations on the business processes for the “regional model” of sharing remote interpreting resources, began meeting in February of 2014. Three meetings have occurred, including an in-person meeting held at the Orange County Courthouse in the 9th Circuit on April 4, 2014. The in-person meeting included live demonstrations of shared remote interpreting and a business meeting. The workgroup has identified issues to address and are currently drafting recommendations.

Judge Flury added, as a member of the joint workgroup, that the group is learning that not all interpreting is the same across the circuits and they are focusing on achieving uniformity.

IV. Discussion on Court Reporting Certification

A. Supreme Court Referral to Rules of Judicial Administration Committee on Rules 13.010 – 13.190

Patty Harris presented on the issue. At a supreme court conference on October 2013, representatives from the Florida Court Reporters Association (FCRA) gave a presentation concerning the need and benefit of reinstating Rules of Judicial Administration 13.010-13.190 with regard to the certification and regulation of court reporters. In response, the supreme court issued a letter dated January 4, 2014, to the chair of the Rules of Judicial Administration Committee requesting a review of rules 13.010-13.190 regarding mandatory certification and regulation of court reporters. As stated in the letter, the supreme court requested the committee to take into account the input of the circuit court chief judges as they develop the proposed rule revisions. They also asked the committee to solicit expert advice from the Commission on Trial Court Performance and Accountability. The supreme court requested the committee to submit their recommendations by June 30, 2014.

In response to the referral letter, Jon Morgan, Chair of RJA Committee, directed the Subcommittee C to develop preliminary recommendations. The Subcommittee C has held three conference calls. During the most recent call, held on April 11, 2014, the Subcommittee C met to discuss preliminary recommendations, as follows:

1. “Given the lack of actual data of misconduct or incompetence among the State’s court reporters demonstrating systemic problems, the apparent success of the current state of the delivery of court reporting services in Florida, the likely additional costs to be borne by persons working as court reporters, and in light of the changing nature of technology which may significantly change the concept of court reporting in the future, the RJA does not recommend enacting statewide certification rules for court reporters.

2. If the Supreme Court determines that in spite of the foregoing recommendation a statewide certification scheme be adopted, the RJA then recommends the Court appoint a blue ribbon committee with a membership to include persons working within the court reporting profession, judges, attorneys, and court administration staff, to study the more modern regulatory schemes from other states mentioned in this report, and to make revisions to the 1998 suspended rules to reflect changes in technology.

3. The RJA recommends that any regulatory scheme should not be funded by, nor administered by, the Florida Bar, but instead should be funded from either fees collected and/or legislative appropriates, and should be administered by the Office of State Courts Administration.”

As the result of the discussion held on April 11, 2014, the Subcommittee C agreed that while the preliminary analysis and recommendations appear valid and reasonable, these recommendations should be appended to new, succeeding recommendations that include revised rule language in support of certification of court reporters. To accomplish the development of the new rule language, they have asked FCRA to begin drafting recommendations from an industry perspective, by July 2014, for consideration by Subcommittee C. Then, to allow full review and vetting opportunity by the various stakeholders, the Subcommittee C intends to file a request to the Court, in the next few weeks, for an 8 month extension to the original deadline of July 1, 2014. If approved, the RJA Committee will submit their final report and recommendations to the court, sometime in March 2015, following the January midyear Florida Bar meeting.

B. Eighth Circuit Proposal re: DCR Training and Certification Curriculum

In February 2014, the Eighth Circuit contacted the Office of State Courts Administrator (OSCA) regarding a proposal to implement a training and certification program for digital court reporters. The circuit noted that with the growth of technology in the area of digital court reporting, the standards set by outside professional organizations have not kept pace with advancement in the field. Thus, the Eighth Circuit is proposing an in-house curriculum as a way to meet current digital court reporting skill. The proposed curriculum would include an overview of court procedures that pertain to Florida’s individual circuits. A training component will provide an overview of court hearings, sample transcription order forms and abbreviations of tagging live court events. Further, the curriculum will incorporate a written training manual, experiential activities, and a testing component. At present, the digital court reporting manual is specific to the Eighth Circuit’s use of OpenCourt.¹ However, it may be revised for those circuits that may want to adapt the manual as a means of certifying their local digital court reporters.

While there is currently no formal state certification process for digital court reporters, the Commission on Trial Court Performance and Accountability (TCP&A), in *Recommendations for the Provision of Court Reporting Services in Florida’s Trial Courts*, proffered as a best practice that “[c]ourt employees or contractors providing

¹ A newly developed open-source (non-proprietary) software for digital court reporting.

digital court reporting or transcript services for the State Courts System will achieve and maintain certification with the American Association of Electronic Reporters and Transcribers (AAERT).“ The supreme court approved this best practice in Administrative Order 10-1.

To determine a need for a specialized training and certification program for digital court reporters, the OSCA has developed four strategies below as means to evaluate and determine, if necessary, how to further develop the Eighth Circuit’s training and certification program to be offered to all judicial circuits as a potential alternative to outside professional organizations such as AAERT.

Strategy 1: Review whether other states require training and certification of their digital court reporters.

In September 2013, the National Center for State Courts released a report on digital court reporting titled, *Making the Record Utilizing Digital Electronic Recording*. Within the report, several states and territories are listed in which digital recordings are used in all, or most of, their general jurisdiction court sessions. The report states that Alaska, Indiana, New Hampshire, Oregon, Utah and Vermont use audio digital recordings to make the record in all or most of their general jurisdiction court sessions. Outreach to these states to determine if digital court reporters are required to be trained and/or certified.

Strategy 2: Outreach to all circuits to gauge their interest in adopting a curriculum for certifying digital court reporters.

Circuit outreach should be conducted to assess whether adopting a digital court reporting certification curriculum would benefit the circuits as opposed to that offered through AAERT or the International Alliance of Professional Reporters and Transcribers (IAPRT). Some information that would be gathered from the circuits would include:

- Does your circuit currently require AAERT or IAPRT certification for digital court reporters?
- Explain the process and criteria used to choose AAERT or IAPRT.
- Would using the curriculum proposed by the Eighth Judicial Circuit be a viable alternative to AAERT or IAPRT certification?
- Identify any performance issues you have experienced regarding performance levels of digital court reporters.
- Does your circuit believe a formal training and certification program would be beneficial as an alternative to AAERT or IAPRT certification?
- Does your circuit believe that a more comprehensive state certification for digital court reporters is needed that would include a formal grievance process, a certification designation, a governance body, and digital court reporter certification registry?

Strategy 3: Conduct research to determine the requirements for instituting the Eighth Circuit’s training and certification program.

Identify the training and certification components that would be needed to establish a digital court reporter training and certification program.

Compare the benefits and costs of the Eighth Circuit’s training and certification program and other certification programs such as AAERT and IAPRT. Also, analyze training and testing procedures and certification processes of each.

The Eighth Circuit indicated that the curriculum as developed is currently specific to OpenCourt. Examine the Eighth Circuit’s curriculum manual to determine if it could be adopted for use in other circuits with different digital court reporting technology.

Strategy 4: Develop staff recommendations for the TCP&A’s consideration.

Identify policy change recommendations pertaining to qualifications of digital court reporters.

The existing standard of operation and best practice for court reporting services as approved by the supreme court in Administrative Order 10-1 is as follows:

Standard of Operation²

- Court reporting employees and contract service providers shall meet all professional standards and training requirements established by Florida statute, court rule, the State Courts System, and chief judge of the circuit.

Best Practice²

- Court employees or contractors providing digital court reporting or transcript services for the State Courts System will achieve and maintain certification with the American Association of Electronic Reporters and Transcribers (AAERT).

The Eighth Circuit proposes changing the existing policy approved by the supreme court under Administrative Order 10-1. Specifically, the Eighth Circuit proposes modifying the existing best practice as follows:

Best Practice

- Court employees or contractors providing digital court reporting or transcript services for the State Courts System will achieve and maintain certification with the training and testing program as approved by the TCP&A and OSCA. ~~American Association of Electronic Reporters and Transcribers (AAERT).~~

Mr. Bridenback moved to approve the action plan. Judge Kroll seconded the motion. The motion was approved unanimously.

² A “standard of operation” is defined as a mandatory practice, and a “best practice” is defined as a suggested practice.

V. The Provision of Expert Witness Services in Florida’s Trial Courts

Maggie Geraci presented the report of the Expert Witness Workgroup. In 2012, the Florida Supreme Court issued AO12-25, directing the TCP&A to “continue with the development and implementation of standards of operation and best practices for the major elements of the trial courts.” The development of standards and best practices has already been completed for court reporting, mediation, and court interpreting. The TCP&A established a workgroup, in the summer of 2013, to develop recommendations for the expert witness element. The workgroup consisted of 16 judges, court staff, and experts familiar with the provision of expert witness services in the trial courts. The workgroup met several times, via conference call and one in-person workshop held in Tampa on October 28, 2013.

Through these meetings, the workgroup developed an issues list to address, assigned the issues to the members, and drafted the recommendations into the report *The Provision of Expert Witness Services in Florida’s Trial Courts*. The major areas of focus for the recommendations include assignment of services, management practices, judicial appointments/monitoring, education, funding/payment, data collection/performance monitoring, and suggested statutory/rule revisions. The report is laid out in a similar manner to previous standards and best practices reports. It includes an executive summary, an introduction, an expert witness process overview, court appointed expert witness legal criteria, and the recommendations for standards and best practices for the major areas.

The workgroup outreached the draft report to the chief judges and court administrators of the trial courts. A small amount of feedback was received. After the workgroup considered the comments, the report was fine-tuned for presentation to TCP&A.

Judge Johnson moved to approve the report. Judge Kroll seconded the motion. The motion carried unanimously.

VI. Mortgage Foreclosure Initiative Update

Mr. Youchock provided an update on the Mortgage Foreclosure Initiative. The courts system is making significant process in tackling Florida’s backlog of mortgage foreclosure cases. As of the end of February 2014, an estimated 229,341 foreclosure cases were pending before the courts statewide, down from 329,171 as of the beginning of July 2013. During that period, the courts system disposed of more than 159,577 cases, but plaintiffs also filed more than 59,747 cases.

Integral to this progress is the \$21.3 million that the Legislature appropriated from National Mortgage Settlement funds to the trial courts – \$16 million for human resources, such as additional senior judge days, general magistrates, and case managers, and \$5.3 million for judicial-viewer technology. The funding may be expended over the course of two fiscal years, although it is less than the amount the courts originally requested as a three-year plan for the foreclosure initiative through fiscal year 2015-16. Neither the

House nor Senate proposed budgets for the coming fiscal include the \$3.8 million the judicial branch requested to fully fund human resources for the second year of the initiative. Thus, at this stage additional funding does not appear to be forthcoming in the new fiscal year. However, based on spending trends, the courts system will evaluate whether some of the money allocated for the current fiscal year may be available to bolster the \$6.5 million reserved for the second year of the initiative.

In a meeting with the State Courts Administrator, representatives of the banking industry requested input from the courts system on steps the industry and its attorneys can take to improve their management of cases and their performance in litigating cases. In short, the industry is soliciting practical feedback on what it can be doing better as the state continues deal with the backlog of cases.

The banking representatives also called attention to federal mortgage servicing rules that took effect January 10, 2014. The Consumer Financial Protection Bureau, which issued the rules, explains that servicers “must not move for foreclosure judgment, order of sale, or conduct a foreclosure sale, if a borrower submits a complete application for a loss mitigation option more than 37 days before a foreclosure sale.”

Although the rules, which stem from the Dodd-Frank Wall Street Reform and Consumer Protection Act, were issued in January 2013, they took effect this year. The rules also address notification of foreclosure alternatives and restrictions on dual-tracking, among other topics. Additional information on the new regulations is available from the Consumer Financial Protection Bureau.

In conjunction with working with banking attorneys, the circuits also are encouraged to continue to work actively with their clerks of court on implementation of processes for designating the status of cases as active or inactive, which is critical to accurate reporting on the age of cases. The supreme court’s October 2013 administrative order (AOSC13-51), which called upon every circuit to issue a local administrative order governing case status, specified that “[i]t is incumbent on each clerk of court to enter the status change of any case so that judges, magistrates, case managers, and judicial assistants are apprised of the proper status of each case within their purview.” With respect to reporting on the age of cases, the supreme court administrative order noted that “a case on inactive status should not be considered pending until it becomes active by order of the presiding judge or action by the clerk of court.”

VII. Judicial Workload Study Update

Gregory Youchock provided an update on the Judicial Workload Study. The Supreme Court of Florida has tasked the Office of the State Courts Administrator (OSCA) with updating the trial court judicial case weights used to evaluate judicial workload. The OSCA has 15 years of direct experience evaluating judicial workload beginning with the 1999 Delphi Workload Assessment followed by the 2006-07 Judicial Resource Study (JRS). At present, Court Services staff is reviewing the methodology and dialoguing with staff from the National Center for State Courts the original consultants to the 1999 Delphi and 2006-07 JRS study.

Several major methodological steps have been identified thus far including the need to: conduct a one month judicial time study; appoint and convene a Judicial Needs Assessment Committee; conduct in-person or web-based training; conduct site visits to multiple circuits; administer a web-based sufficiency of time survey; convene a group of approximately 120 judges by court division to assess the proposed revised weights; and reconvene the Judicial Needs Assessment Committee to review and approve of the final proposed case weights.

Mr. Youchock reported that an effort of this magnitude generally takes 12-18 months and requires significant funding for hiring consultants as well as costs associated with judicial and staff site visits and meetings. OSCA staff is working closely with senior management to identify the most practical and prudent course of action. A final determination as to when the study will commence is pending.

VIII. Review of Time to Disposition Data for JMC's Performance Workgroup

Judge Morris and Andrew Johns provided a presentation on the work of the JMC Performance Workgroup in reviewing Time to Disposition data. It was noted that in researching the filings in various divisions, there is a slight, gradual downward trend since 2000 and that Time to Disposition data is also trending down. It shows that the branch is operating efficiently for the most part. Judge Morris acknowledged that the JMC's Performance Workgroup is looking at the complete, macro level picture. He anticipates discussions regarding the data will hopefully provide a complete picture of the workload, as a means to help the Court prepare for discussions regarding future project needs.

IX. Review of End-of-Term Report

Ms. Harris presented the draft end-of-term report, which highlights the accomplishments of the TCP&A in a letter to the Chief Justice. Judge Alessandroni spoke to the work of the Court Statistics and Workload Committee. Judge Terrell asked to include some language in the report on the advent of the judicial viewers and the role of all stakeholders that have helped the commission complete the charges of the FY 2012-2014 term. He noted that upon completion of the edits, the report would be sent to the commission members for final approval via email.

There being no other business, Judge Terrell adjourned the meeting at 2:50 p.m.