



**Judicial**  
**MANAGEMENT**  
**Council**

**Committee on  
District Court of Appeal  
Performance and Accountability**

**Report and Recommendations**

**September 1999**

**Judicial Management Council**  
**Committee on**  
**District Court of Appeal**  
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**Judicial Management Council**  
**Committee on**  
**District Court of Appeal Performance and Accountability**

**Report and Recommendations**

**I Introduction**

The Judicial Management Council's Committee on District Court of Appeal Performance and Accountability was established at the direction of Chief Justice Gerald Kogan, as Chair of the Judicial Management Council, at an October, 1997 meeting of the Council. The committee was formed to develop the judicial branch's response to several mandates relating to the accountability of the courts.

The committee was directed to make recommendations to the Judicial Management Council on the capacity of Florida's DCAs to measure and report on their performance. Specifically, the committee was asked to address the following matters:

1. articulate the mission of the DCAs;
2. define the core processes employed to achieve that mission;
3. facilitate the transition of the DCAs to performance-based program budgeting;
4. establish uniform methods of counting cases and reporting appellate information; and
5. develop the capacity of the DCAs to effectively manage the progress of cases.

## II Committee Findings and Recommendations

The findings and recommendations of the committee track the five tasks provided for in the committee charge.

### Charge #1: Articulate the Mission of the District Courts of Appeal

#### Recommendation 1.1.

**Adopt the following mission statement, with accompanying commentary, for the District Courts of Appeal:**

#### **Mission Statement**

The purpose of Florida's District Courts of Appeal is to provide the opportunity for thoughtful review of decisions of lower tribunals by multi-judge panels. District Courts of Appeal correct harmful errors and ensure that decisions are consistent with our rights and liberties. This process contributes to the development, clarity, and consistency of the law.

#### **Commentary**

Under the Florida Constitution, citizens whose rights and liberties have been determined by trial courts and state agencies have a guaranteed right of appellate review. The District Courts of Appeal were created to conduct this appellate review, by a panel of at least three judges, which in most cases is final.

Following review of a case, the court's decision may be accompanied by an opinion that discusses the legal issues and the court's analysis of the case. The courts' opinions provide the public, other courts and the legal community with a body of law, thereby enhancing understanding of the courts' work and providing a level of stability and predictability that allows Florida's citizens to conduct their business and personal affairs in accordance with the law of our state.

In developing the mission, one key decision of the committee was to keep values such as fairness and accountability separate from the mission statement, which is an expression of purpose. Following the lead of the Judicial Management Council in the development of the mission statement for the judicial branch, the committee observed that all components of the judicial branch are governed by the vision statement for the judicial branch. The values

expressed in the vision statement — accessible, fair, effective, responsive, and accountable — apply to the District Courts of Appeal as well as to the judicial branch as a whole (for a discussion of the mission and vision of the Florida Judicial Branch, see section III. C.). The committee also decided to develop a commentary to accompany the mission statement. The commentary was developed to provide a level of precision and detail that cannot be provided in a concise mission statement.

## **Charge #2: Define the Core Processes Employed to Achieve That Mission**

### **Recommendation 2.1.**

#### **Adopt the following definitions of core court functions and court programs:**

- Core Court Function. Any activity that is reasonably necessary for a district court of appeal to fulfill its mission to review cases, correct harmful errors, and clarify the law. Core functions are activities flowing from constitutional authority.
- Court Program. A set of activities undertaken in accordance with a plan of action organized to realize identifiable goals and objectives. Programs address policy goals consistent with the Vision of the judicial branch or the individual court.

Note: The terms “core court function” and “court program” are intended to be mutually exclusive. Any court function or activity that is core, being constitutional, cannot be included within a program.

The committee was asked to define the core processes employed to achieve the mission of the DCAs. The judicial branch has long struggled with concepts of “core processes” and “core court functions.” These terms are commonly used to refer to activities of courts that are critical to the performance of the judicial function. The committee recommends that the term “core function” be related directly to the constitutional mission of the court, and should embrace the infrastructure needed to effectuate the mission. The committee does not recommend that the

judicial branch attempt to enumerate core functions, but rather define criteria to assess activities as core or not core. "Core functions" and "core processes" have the same meaning.

**Recommendation 2.2.**

**Performance indicators that describe the core court functions of the District Courts of Appeal should be developed and regularly reported.**

**(See performance indicators in Appendix A.)**

**Charge #3: Facilitate the Transition of the District Courts of Appeal to Performance-Based Program Budgeting (PB<sup>2</sup>)**

**Recommendation 3.1.**

**Those court activities that meet the definition of court program should be classified as a program that could operate under performance-based program budgeting, and should be submitted to the Legislature as such.**

The committee carefully considered the language of 94-249, Laws of Florida, in developing its recommendations regarding transition to performance-based program budgeting. That law, the Government Performance and Accountability Act of 1994, recognizes that the judicial branch must independently carry out its constitutional mandates, and places with the Chief Justice the responsibility for identifying programs that *could* operate under performance-based program budgeting (for a discussion of the performance-based budgeting mandate, see section III. B.).

The Act also defines "program" as "a set of activities undertaken in accordance with a plan of action organized to realize identifiable goals and objectives based on legislative authorization." Given this definition, the committee concluded that most activities in the District Courts of Appeal, being constitutionally directed, do not meet the criteria of a program for purposes of performance-based program budgeting.

### **Recommendation 3.2.**

**The Chief Justice should identify Appellate Mediation as a court program for purposes of performance-based program budgeting.**

The committee finds that, given the recommended Mission of the District Courts of Appeal (Recommendation 1.1), and given the recommended Mission for Appellate Mediation (Recommendation 3.3), Appellate Mediation conforms with the definition of a program for purposes of performance-based program budgeting. The committee finds that all other court functions and activities of the District Courts of Appeal are core court functions and should not operate under a performance-based program budget.

### **Recommendation 3.3.**

**The following Mission Statement and Commentary for Appellate Mediation should be adopted:**

#### **Mission Statement**

Mediation in the District Courts of Appeal facilitates the early, voluntary resolution by the parties of appellate cases and issues, thereby reducing litigant costs, increasing satisfaction, and preserving judicial resources.

#### **Commentary**

Mediation programs select cases and engage the parties in negotiations to resolve issues between the parties and ultimately induce voluntary settlement. Settlement early in the appellate process reduces costs to litigants, while participation in the negotiation process increases satisfaction. Settlement also reduces judicial involvement, particularly in complex cases, thereby optimizing the use of judge and staff time and saving public funds. To be responsive to the divergent conditions and caseloads in each appellate district, mediation programs develop and operate differently. Experimentation and flexibility in the methods of selecting cases and coordinating negotiations allows particular programs to address local needs while maximizing settlement rates and minimizing the use of judicial resources.

**Recommendation 3.4.**

**The Appellate Mediation Subcommittee should continue its work in developing performance measures and standards as appropriate for operation under performance-based program budgeting.**

The subcommittee has identified the data that should be maintained to manage appellate mediation programs and to report on performance. However, since appellate mediation is a relatively new process, it is not yet possible to establish specific performance measures or standards without baseline data. Recommendation 6.1 also addresses this and other work that needs to continue.

**Charge #4: Establish Uniform Methods of Counting Cases and Reporting Appellate Information**

To be truly accountable, courts must have the capacity to consistently record information about cases. The classification of different types of cases, the time frames between events, and the recording of case-related events must be captured in the same manner within courts and from court to court.

The computerized case management system found in the District Courts of Appeal, like systems found in most courts, does not provide for consistent recording of case-related information. In the DCAs, users can look up a single case and obtain an accurate account of case activity for that case. However, extracting accurate information about the entire caseload, or about certain categories of cases, is very difficult with the current system.

Since uniform recording and reporting is so critical to performance, part of the committee's charge was to establish uniform methods of counting cases and reporting appellate case information. The timing of the project was fortunate, since it coincided with the development of a new case management system. The new case management system, which will be installed in each of the five DCAs and the Supreme Court by the end of the year, provides advanced management tools and enhanced querying and reporting capabilities. With a uniform method of reporting case information, the new case management system vastly improves the ability of the appellate courts to manage cases and report on their performance.

**Recommendation 4.1.**

**Adopt the DCAs' working definitions of critical case events and draft disposition classification system.**

**(The Council has previously approved the case classification system. See Appendix B.)**

**Recommendation 4.2.**

**The committee, with the assistance of the Clerks of the District Courts of Appeal, should continue to meet to further develop a system for the uniform recording and reporting of information.**

The clerks should recommend to the committee improvements to work products already developed, and should strive for uniformity in the definition, classification, and recording of motions and orders and additional case events, in light of the impact of changes in case law and other legal changes on the uniform case information reporting system. The committee appreciates the efforts of the Clerks in developing recommendations for a uniform recording and reporting system. The committee also recognizes that future changes in the law and in court practices will require an ongoing effort to continuously monitor and improve this system. Recommendation 6.1 addresses this matter.

**Charge #5: Develop the Capacity of the DCAs to Effectively Manage the Progress of Cases**

**Recommendation 5.1.**

**The committee should continue its efforts to develop workload measures for judges and staff.**

**The judicial certification process should be reviewed, taking into account: current judicial workload standards, research findings of the Committee on District Court of Appeal Performance and Accountability, and proposals of the Judicial Management Council's Committee on Appellate Court Workload and Jurisdiction.**

The committee contemplates that the judicial branch will develop an approach to resource acquisition and allocation that provides for adequate staffing levels while ensuring appropriate flexibility and autonomy within each DCA.

**Recommendation 5.2.**

**The District Courts of Appeal should develop a quality management program that will foster continuous improvement in the management of caseloads.**

The development of the capacity to manage the appellate caseload efficiently and effectively is responsive to the long-range strategic plan and consistent with the Florida Constitution. Judicial conferences and other education programs provide DCA judges with opportunities to address issues of quality management. Opportunities for DCA staff education should also be explored.

## Remaining Matters Recommended for Action

### Recommendation 6.1.

The term of the Committee on District Court of Appeal Performance and Accountability should be extended through September 1, 2000. The committee's charge over the next year should be to:

- coordinate the continued development of performance measures for court programs (see Recommendation 3.2), and performance indicators for core court functions (see Recommendation 2.2);
- develop a budgeting framework that incorporates performance indicators and measures (see Recommendation 5.1);
- consider the development of new judicial and staff workload measures for use in the judicial certification process (see Recommendation 5.1);
- coordinate the continued development of the uniform case information reporting system (see Recommendation 4.2), and;
- recommend a quality management program for the DCAs (see Recommendation 5.2).

The committee feels that these matters are integral to the completion of its original charge, and that the existing committee has developed such familiarity with the subject matter that would allow it to complete this work. Given the operational nature of the work that remains, the committee's membership can be limited to those directly involved in the appellate process.

After September 1, 2000, the committee anticipates that it will recommend to the Supreme Court the appointment of a standing committee on DCA performance reporting, statistics, and policy to ensure implementation of this committee's recommendations. The committee's responsibilities might include the ongoing review of performance indicators and performance measures; the coordination of management reports for effective caseload management; the oversight of the preparation of reports on the performance of the DCAs; and coordination and oversight of the work of the DCA Clerks regarding the uniform recording and reporting of information.

### III Background and Mandates

The committee's charge arises from a series of demands for greater accountability within the judicial branch. Mandates for greater judicial branch accountability can be found in the state constitution, in general law, and in the long-range strategic and operational planning documents of the judicial branch.

The committee's charge also stems from the directives in the long-range strategic and operational plans to clarify the role of the judicial branch. The long-range strategic plan cites "confusion about the appropriate roles and responsibilities of the courts," and calls upon organizational units within the judicial branch to define their missions, articulate their core processes and core functions, and identify outcomes to be achieved by each organizational unit.

Finally, the committee's work, as one of several judicial branch initiatives relating to performance and accountability, is a key component of Florida's efforts to improve public trust and confidence in the judicial branch. Florida's two-pronged approach to public trust and confidence may be summarized as follows:

#### **Components of Florida's Approach to Public Trust and Confidence**

**Performance and Accountability Initiatives:** Include efforts to articulate the mission of the organizational units of the judicial branch, to identify and critically assess expectations placed upon the system, and to develop and report indicators and measures of judicial branch performance.

**Communication Initiatives:** Include efforts to identify public expectations of court performance, and to develop strategies for the provision of information to the public about the work of the judicial branch, and how courts are performing with respect to their mission and public expectations.

For a complete discussion of Florida's approach to public trust and confidence, please see Appendix D.

## A. Constitutional Mandate

The Taxation and Budget Reform Commission proposed significant alteration to the state budgeting, planning, and appropriations processes when it offered an amendment to the Florida Constitution in November, 1992. That amendment was approved by the voters. Article III, section 19 of the Florida Constitution now requires that general law be developed to prescribe the annual state budgetary and planning processes for state agencies and the judicial branch. Proposed legislation to apply these provisions to the judicial branch was twice vetoed by then-Governor Lawton Chiles.

Nonetheless, the judicial branch has been responsive to the mandates of the Constitution. The Judicial Management Council guided the branch through a strategic planning process that led to the development of the first-ever long-range strategic plan for the Florida judicial branch, and to the development of a two-year operational plan. After the development of these plans, the judicial branch turned its attention to other Article III mandates.

Section 19(h) of Article III includes a mandate for a "quality management and accountability program:"

To ensure productivity and efficiency in the executive, legislative, and judicial branches, a quality management and accountability program shall be implemented by general law. For the purposes of this subsection, the terms department and agency shall include the judicial branch.

## B. General Law Mandate

In response to this constitutional mandate, the Legislature passed The Government Performance and Accountability Act of 1994, which provides for a new budgeting framework known as performance-based program budgeting, commonly referred to as "PB<sup>2</sup>." PB<sup>2</sup> requires all state agencies to budget by approved programs and outcome-based performance measures. "Outcomes" are defined as indicators "of the actual impact or public benefit of a program." Budgeting by outcomes represents a change from budgeting by "inputs" (resource needs) or "outputs" (actual service or product completed by a state agency). A phased-in schedule for state agencies and the judicial branch to move to PB<sup>2</sup> is established in the act.

The Legislature recognized that the legislative and judicial branches must operate independently in the performance of their constitutional functions, and that performance measures under PB<sup>2</sup> would not apply to all functions. Among the "whereas" clauses of the Act is the following:

Whereas the legislative and judicial branches must independently carry out their mandates provided by the Florida Constitution, but nonetheless should endeavor to develop performance measures to evaluate *certain* functions of the legislative and judicial branches to encourage efficient performance of their duties for the benefit of the public, . . . . (emphasis added)

The Act continues, in section 6, to require the judicial branch to identify those functions that *could* operate under a performance-based program budget:

By January 15, 2000, the judicial branch shall identify and submit to the Legislature a list of programs that the Chief Justice of the Supreme Court recommends could operate under a performance-based program budget. By September 1, 2000, the judicial branch shall submit to the Legislature performance measures and standards for such programs.

### **C. Mandates from the Long-Range Strategic Plan**

The judicial branch's own planning documents also include a call for greater accountability within the judicial branch. The long-range and operational plans also direct that the judicial branch clearly define the role of the courts.

*Taking Bearings, Setting Course: The Long-Range Strategic Plan for the Florida Judicial Branch* begins with the vision of the judicial branch. The vision is an expression of the fundamental values of the Florida judicial branch.

#### **Vision of the Florida Judicial Branch**

Justice in Florida will be accessible, fair,  
effective, responsive, and accountable.

The vision statement includes "accountable" among the fundamental values of the judicial branch, and states that to be accountable "the Florida justice system will use public resources efficiently, and in a way that the public can understand."

The plan then defines the mission statement for the judicial branch:

### **Mission of the Florida Judicial Branch**

The mission of the judicial branch is to protect rights and liberties, uphold and interpret the law, and provide for the peaceful resolution of disputes.

The long-range strategic plan then includes several goals that directly relate to the charge of the committee.

### **Goals of the Long-Range Strategic Plan Impacting the Committee on District Court of Appeal Performance and Accountability**

<b>Goal 1.1</b>	The roles and responsibilities of the judicial branch will be clearly defined.
<b>Goal 1.2</b>	The roles and responsibilities of the courts will be widely understood.
<b>Goal 5.1</b>	The judicial system will be accountable to the public.
<b>Goal 5.2</b>	The judicial branch will inform the public about the functioning of the courts.

Additional goals and strategies and desirable outcomes identified within the long-range strategic plan also had a strong influence on the work of the committee. For example, the plan identifies the following outcomes under an issue relating to the administration of justice:

By the year 2004, the judicial branch will have:

- an equitable range of dispute resolution options and other core court processes available in every jurisdiction;
- a case management infrastructure in place to support the effective movement of cases through the system;
- adequate and appropriate funding of the courts consistent with Article V of the Florida Constitution; and

- a qualitative and quantitative performance measurement system including a process for monitoring, evaluating, and reporting.

#### D. Operational Plan

*Horizon 2000: The Operational Plan for the Florida Judicial Branch* includes several references to the work of the committee. This plan was finalized after the committee was formed, so the committee charge and the operational plan were developed in conjunction with one another. Three tasks within the operational plan specifically mention the work of the committee.

<b>Operational Plan Tasks Referencing the Committee on District Court of Appeal Performance and Accountability</b>
<b>Objective II-D: Enhance the Timely Processing of Cases</b>
<b>Task:</b> The performance and accountability committees of both the trial and appellate courts are directed to consider timeliness among their recommendations of court performance standards. These committees, with input from other Supreme Court committees and relevant bodies, are asked to recommend changes and enhancements to time standards that adequately address court rules, statutes, changes in the legal process, and increasing complexity of the law.
<b>Objective II-G: Enhance District Courts of Appeal Effectiveness</b>
<b>Task:</b> The District Court of Appeal Performance and Accountability Committee is directed to continue its work and tender its report and recommendations to the Judicial Management Council by the summer of 1999.
<b>Objective II-J: Institutionalize Strategic Planning, Performance and Accountability Programs</b>
<b>Task:</b> Committees of the Council are to establish mission statements and performance standards for the district courts of appeal and the trial courts consistent with the vision and mission of the judicial branch.

## IV Committee Membership

Chief Justice Major B. Harding asked Justice Charles T. Wells to serve as a liaison between the Supreme Court and the Committee on District Court of Appeal Performance and Accountability. In this capacity, Justice Wells attended several committee meetings and was briefed regularly by committee members and staff.

The committee was originally chaired by Justice Peggy A. Quince. Upon her elevation from the Second DCA to the Supreme Court, she resigned from the committee and from the Judicial Management Council. Justice Quince had been the chair of the Committee on Appellate Court Workload and Jurisdiction, which preceded the current committee.

After Justice Quince left the committee, Chief Justice Harding, who now chairs the Judicial Management Council, asked Judge Martha C. Warner, Fourth DCA, to chair the committee. The membership of the committee included:

- Martha C. Warner, Chief Judge, Fourth DCA, chair
- James R. Wolf, Judge, First DCA
- Jerry R. Parker, Judge, Second DCA; Chair, Appellate Technology Committee, Florida Courts Technology Commission
- David M. Gersten, Judge, Third DCA
- Jacqueline R. Griffin, Judge, Fifth DCA
- Susan F. Schaeffer, Chief Judge, Sixth Judicial Circuit
- Alice Blackwell White, Judge, Ninth Judicial Circuit
- John R. Beranek, Attorney at Law, Tallahassee
- Benedict P. Kuehne, Attorney at Law, Miami; Chair-Elect, Appellate Practice and Advocacy Section, The Florida Bar; Chair, Appellate Practice Certification Committee, The Florida Bar

Judges Parker and Griffin served as chief judge of their courts during the tenure of the committee through June 30, 1999. Martha Warner began her tenure as chief judge on July 1, 1999.

Judge John W. Dell, Fourth DCA, attended several meetings of the committee. Judge Dell, a former member of the Judicial Management Council, served on the Council's Committee on Strategic Planning. Jim Boyd, Inspector General of the Supreme Court of Florida, also attended several committee meetings. Boyd is charged with monitoring the judicial branch's transition to performance-based program budgeting.

Peggy Horvath, Brian Lynch, Stephan Henley, and Jacqueline Bierwirth of the Strategic Planning Unit of the Office of the State Courts Administrator (OSCA) provided staff support to the committee. Thomas Hall, Career Staff Attorney with the First DCA, provided substantive input and staff support to the committee. Additional staff support was provided by additional

OSCA staff, including W. Clyde Conrad (Information Systems Services), Charlotte Jerrett (Budget Office), and Gregory Cowan (Court Services).

Dr. Roger Hanson, who staffed the national Appellate Court Performance Standards Commission, attended several committee meetings and provided background on the work of the commission. Hanson also provided information about the work of state and federal appellate court systems, and provided the committee with research findings from other state appellate courts.

## **V Mediation Subcommittee**

A Mediation Subcommittee developed a mission statement and performance measures relating to appellate mediation (see later discussion of appellate mediation as a program requiring performance measures). This committee was chaired by Judge Wolf, and included John Beranek and Thomas Hall. The subcommittee also included the following members:

- W. Matthew Stevenson, Judge, Fourth DCA
- Earle W. Peterson, Jr., Judge, Fifth DCA
- Donna Gebhart, Mediation Officer, First DCA
- Alan Kahn, Appellate Mediation Officer, Fourth DCA
- H. George Kagan, Attorney at Law, West Palm Beach
- Nancy Nowlis, Attorney at Law, Jacksonville

Peggy Horvath provided staff support to this subcommittee.

## **VI Meetings of the Clerks of Court**

In order to address the fourth element of the committee charge (the establishment of uniform methods of counting cases and reporting appellate information), the committee convened several meetings of the DCA Clerks of Court and their key deputies.

Participating in the clerks meetings were: Jon Wheeler, Clerk, Karen Roberts, Chief Deputy Clerk, and Vickie Maloy, Deputy Clerk, First DCA; Jim Birkhold, Clerk, William Haddad, Clerk (retired), Carol Stockrahm, Chief Deputy Clerk, and Pat Quets, Deputy Clerk, Second DCA; Mary Cay Blanks, Clerk, Third DCA; Debbie Picklesimer, Chief Deputy Clerk, and Patricia Brandt, Deputy Clerk, Fourth DCA; and Frank Habershaw, Clerk, and Linda Howard, Chief Deputy Clerk, Fifth DCA.

These meetings were facilitated by Thomas Hall. Additional staff support was provided by the Strategic Planning Unit, Information Systems Services, and Court Services of the OSCA.

## VII Committee Process

The committee held its first meeting on April 29, 1998, meeting a total of 11 times, culminating in a 1 ½-day workshop with DCA judges on June 17-18, 1999. At the committee's direction, the Clerks and their key deputies met five times to develop the uniform case information reporting system required by the charge. Also, the Mediation Subcommittee met on two occasions.

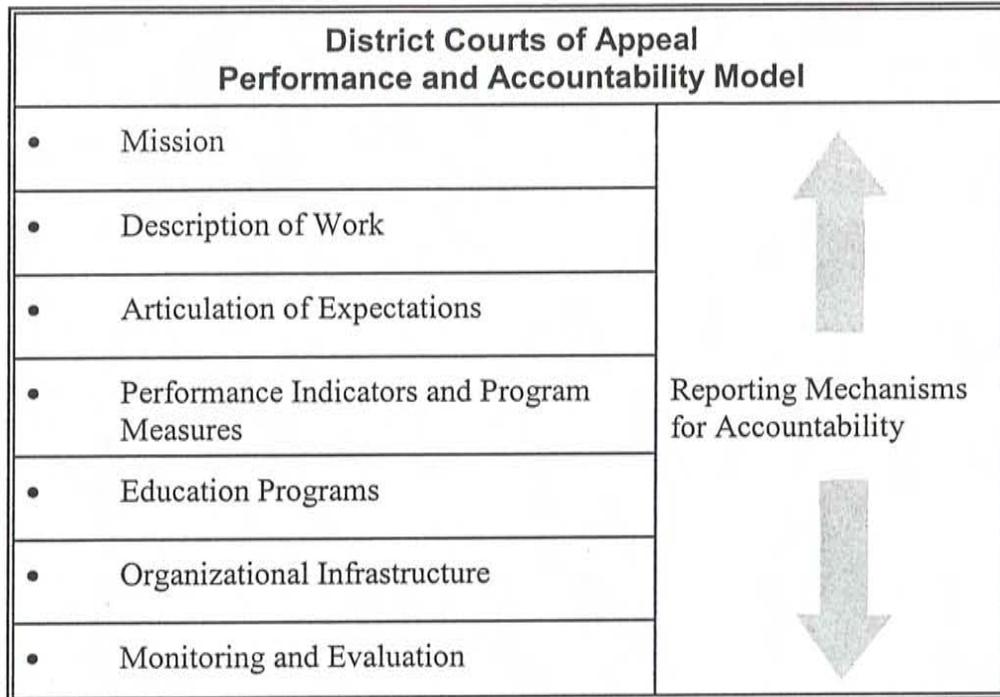
The committee did not have a process for addressing its charge when it began its work. Justice Wells commented at the initial meeting that the committee was "traveling down a dark hallway with its hand against the wall." The committee developed a process as it went, exploring a relatively new area of court administration with little to guide it. In doing so, the committee developed a process that could be adapted by the trial courts and the Supreme Court in their performance and accountability initiatives.

Eventually, a process did emerge. The committee process included the following components:

- background and education
- research and analysis
- definition and development
- outreach and approval
- institutionalization

Each component of the process is detailed in Appendix C.

The model that emerged included the following elements:



## VIII Committee Outreach

As mentioned earlier, the committee presented its preliminary findings at a statewide workshop held on June 17-18, 1999. Each of the five DCAs sent a team consisting of judges, clerks, and staff attorneys to the workshop. Approximately one-third of the 61 DCA judges participated in the workshop. The primary objectives of the workshop were to update participants about the background of the performance and accountability initiative, to present the draft findings of the committee, to solicit feedback about the committee's preliminary decisions, and to ratify the committee's overall approach. The committee received valuable feedback from this session, which is reflected in its final work product.

Several national commissions and associations have expressed an interest in the work of the Committee on District Court of Appeal Performance and Accountability. In January of 1999, Peggy Horvath and Thomas Hall met with the Appellate Court Performance Standards Commission of the National Center for State Courts to provide feedback about Florida's experience with the performance standards, commentary, and guideposts promulgated by the commission. While many states have studied the black-letter *Appellate Court Performance Standards* themselves, few have examined the "guideposts" accompanying the standards to the extent that this committee has. The guideposts are intended to "translate the goals articulated by the Standards into observable aspects of appellate court structure, process, and case decisions . . . ." While the committee ultimately decided on a more descriptive approach to performance

reporting, the Appellate Court Performance Standards Commission has acknowledged the contribution Florida has made in the most recent edition of *Appellate Court Performance Standards*.

As part of the committee's outreach process, Judges Warner and Parker, and Stephan Henley met with The Florida Bar Citizens Forum, chaired by Judicial Management Council member Dr. Wilhelmena Mack, to discuss the work of the committee and its preliminary findings in order to gain public input. The meeting helped the committee to get a better understanding of the audiences for its final work products.

Thus far, three national associations have invited the committee to explain the performance and accountability initiative at their meetings and conferences. Judge Griffin, Thomas Hall, and Brian Lynch made a presentation about the work of the committee at the annual meeting of the American Bar Association Council of Appellate Staff Attorneys, and Jon Wheeler, Thomas Hall, and Peggy Horvath made a similar presentation at the National Conference of Appellate Court Clerks' annual conference. Finally, the Conference of Chief Judges of Courts of Appeal has invited the committee to its annual meeting later this fall.

**Judicial Management Council**  
**Committee on**  
**District Court of Appeal Performance and Accountability**

**Appendix A:**  
**Performance Indicators**

**I Introduction**

The Committee on District Court of Appeal Performance and Accountability has developed a set of performance indicators that describe the core court functions of the District Courts of Appeal (see Recommendations 2.1 and 2.2). Performance measures and standards will be developed for the DCA's court program (see Recommendation 3.4).

The development of performance indicators is responsive to the goals and strategies of the long-range strategic plan of the Florida judicial branch, and is consistent with Article III, section 19(h) of the Florida Constitution (see section III).

The manner in which case-related information is currently recorded in the District Courts of Appeal limits the ability to provide accurate reports for each performance indicator. The implementation of a uniform system of reporting and recording case-related information (see Recommendations 4.1 and 4.2, and Appendix B) will provide the capability of more accurate reporting in the future. The new computerized case management system that is being installed in the appellate courts will also greatly improve the courts' ability to generate accurate reports for external reporting and internal management.

**The data in this section is presented only to illustrate the performance indicators generated by the committee.** For several performance indicators, the accuracy of the data cannot be verified until implementation of the uniform reporting and recording system.

## II Development of Performance Indicators

For the core court functions of the District Courts of Appeal, the committee decided to develop *performance indicators* as opposed to performance standards.<sup>1</sup> Performance indicators are distinguished from performance standards follows:

- *Performance Standards* would have included numerical targets or goals, which the DCAs would have had to meet (or aspire to meet).  
*Related terms: benchmarks, performance measures*
- *Performance Indicators* report quantitative data about the performance of the DCAs without setting targets or goals.

Performance standards and measures will be developed for District Court of Appeal programs.

The committee had several reasons for adopting performance indicators instead of performance standards:

**Avoid changing court practices to meet statistical targets.** The committee wanted to discourage courts from changing effective practices for statistical purposes.

**Maintain accountability for the performance of core court functions within the judicial branch.** The committee felt that, for core court functions, the responsibility for developing performance level targets belongs within the judicial branch.

**Avoid inappropriate normative judgments.** Most of the performance indicators developed by the committee are descriptive, but not evaluative. Objective conclusions about the relationship between performance indicators and the quality of judicial processes cannot be drawn.

**No baseline.** The development of performance standards would require the analysis of several years' worth of baseline data, which is not currently available.

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<sup>1</sup>An exception is a performance indicator relating to the extent to which the District Courts of Appeal are in compliance with their time standard, which for a long time has been required by 2.080 (d)(2), Florida Rules of Judicial Administration ("the 180 day rule").

Before developing performance indicators, the committee identified the various audiences for reports about the District Courts of Appeal:

<b>Audiences for Performance Indicators</b>	
<b>Internal Audiences</b> <ul style="list-style-type: none"><li>• Supreme Court</li><li>• Chief Judges</li><li>• DCA Judges</li></ul>	<b>External Audiences</b> <ul style="list-style-type: none"><li>• General Public</li><li>• Litigants</li><li>• Attorneys</li><li>• Executive Branch</li><li>• Legislative Branch</li></ul>

The committee also reviewed data from other states with similar appellate court systems before selecting performance indicators. The committee focused on states that had separate regional intermediate appellate courts, a relatively high volume of cases, and similar legal systems. States reviewed included California, Illinois, Ohio, New York, and Texas.

### **III Performance Indicators**

The committee organized the performance indicators into three categories:

- Jurisdiction
- Case Processing
- Disposition

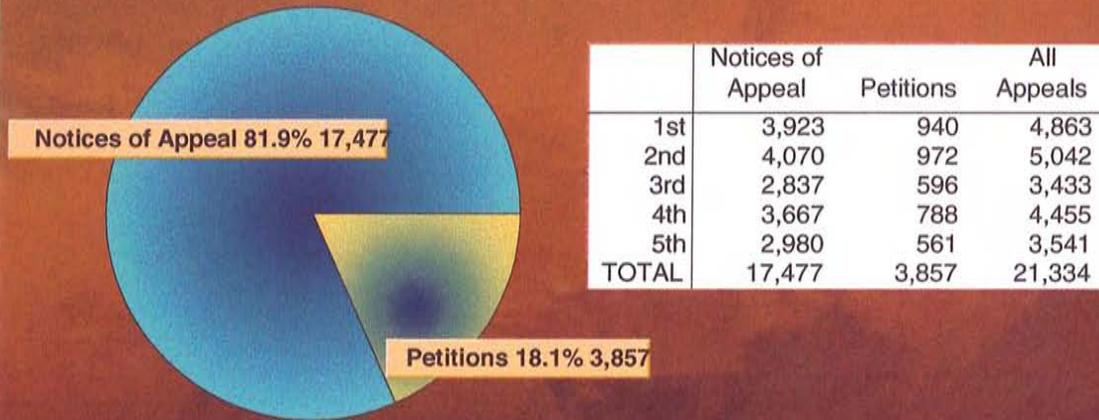
#### **A. Jurisdiction**

The performance indicators relating to jurisdiction seek to address the following questions:

- What type of appellate review is available in Florida?
- What is the composition of cases across the five DCAs?
- What is the volume of cases heard by the DCAs?
- How does the volume of work compare to other similar states?

# Performance Indicators: Jurisdiction

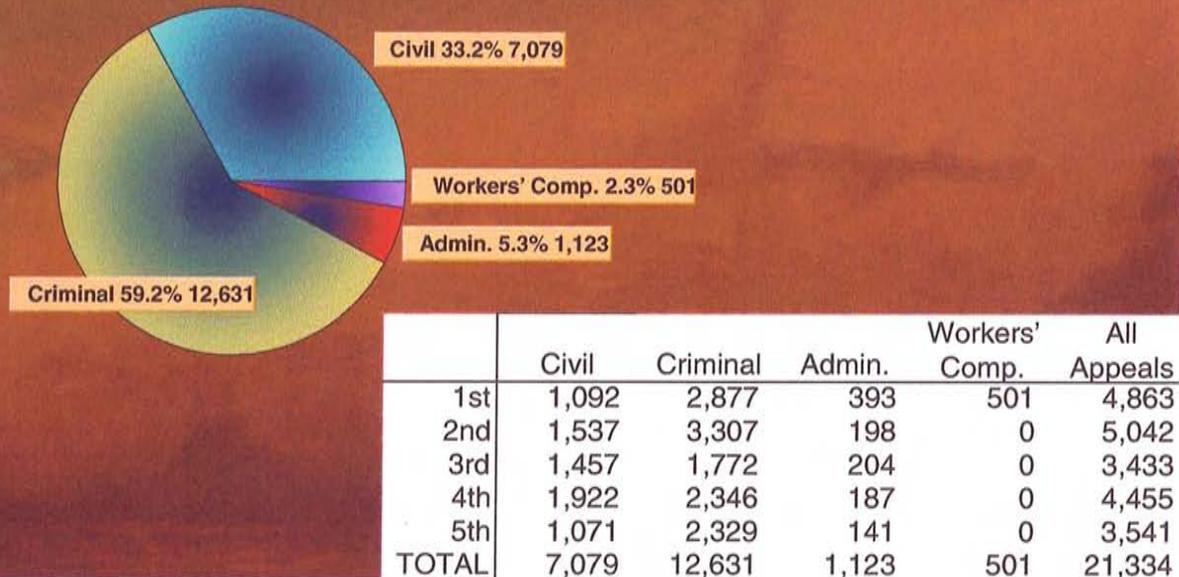
## Cases Filed in the District Courts of Appeal, 1998



What type of appellate review is available in Florida?

## Performance Indicators: Jurisdiction

### Types of Cases Filed in the District Courts of Appeal, 1998 (includes notices of appeal and petitions)



#### What is the composition of appeals across the five DCAs?

*Note: A more discrete (and more accurate) breakdown of cases will be available once the uniform case classification system is implemented.*

## Performance Indicators: Jurisdiction

### Cases Filed Per 100,000 Population, 1997 in Intermediate Appellate Courts

	Total Filings	Population (in thousands)	Population Rank	Cases per 100,000 Population
<b>Florida</b>	<b>22,511</b>	<b>14,654</b>	<b>4</b>	<b>154</b>
California	27,681	32,268	1	86
Illinois	9,153	11,896	6	77
New York	14,026	18,137	3	77
Ohio	12,488	11,186	7	112
Texas	10,754	19,439	2	55

**What is the volume of cases heard by the DCAs?  
How does the volume of work compare to other similar states?**

## B. Case Processing

The performance indicators relating to case processing seek to address the following questions:

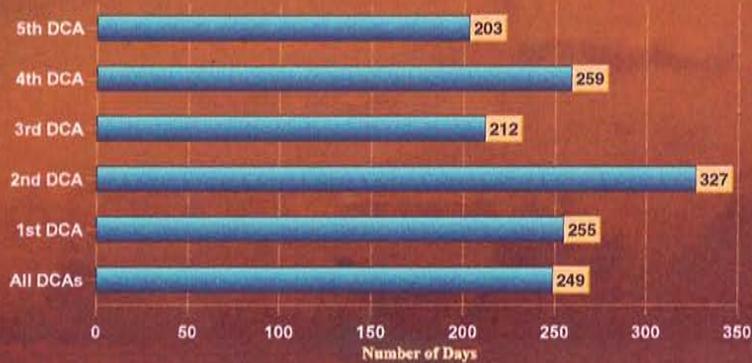
- How long does it take for the typical case to progress from filing to disposition?
- How does the time to disposition vary for:
  - appeals -vs- petitions?
  - criminal -vs- non-criminal cases?
- How many appeals are disposed before perfection?
- How many cases have oral argument?
- After oral argument or conference, how long does it take for a typical case to be decided?

<p><i>Statistical Note:</i></p> <p>Many of the performance indicators in this section use the statistic <b>median</b>. This represents the “middle value” in a set of numbers and more closely represents a typical case than a statistical average.</p>	<p>12</p> <p>14</p> <p>14</p> <p>15</p> <p>15</p> <p>→ 16</p> <p>18</p> <p>19</p> <p>22</p> <p>median = 16 24</p> <p>average = 18 29</p>
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## Performance Indicators: Processing

### Median Number of Days from Filing to Disposition

#### All Appeals Disposed During 1998



**How long does it take for the typical case to progress from filing to disposition?  
How does the time to disposition vary for appeals -vs- petitions?**

## Performance Indicators: Processing

### Median Number of Days from Filing to Disposition

#### All Petitions Disposed During 1998



## Performance Indicators: Processing

Median Number of Days from Filing to Disposition  
**Appeals Disposed During 1998:**  
**Criminal -vs- All Other**



How does the time to disposition vary for criminal -vs- non-criminal cases?

## Performance Indicators: Processing

Median Number of Days from Filing to Disposition  
**Petitions Disposed During 1998:**  
**Criminal -vs- All Other**



## Performance Indicators: Processing

### Number and Percent of Appeals Disposed Before Perfection (Appeals Disposed in 1998)

	Number of NOAs Perfected	Number of NOAs Disposed Prior to Perfection	Total Number of NOAs	Percent Disposed Prior to Perfection
First DCA	2,533	1,279	3,812	33.6%
Second DCA	3,305	982	4,287	22.9%
Third DCA	1,889	958	2,847	33.6%
Fourth DCA	2,608	953	3,561	26.8%
Fifth DCA	2,555	687	3,242	21.2%
<b>All DCAs</b>	<b>12,890</b>	<b>4,859</b>	<b>17,749</b>	<b>27.4%</b>

NOA = notice of appeal

### How many appeals are disposed before perfection?

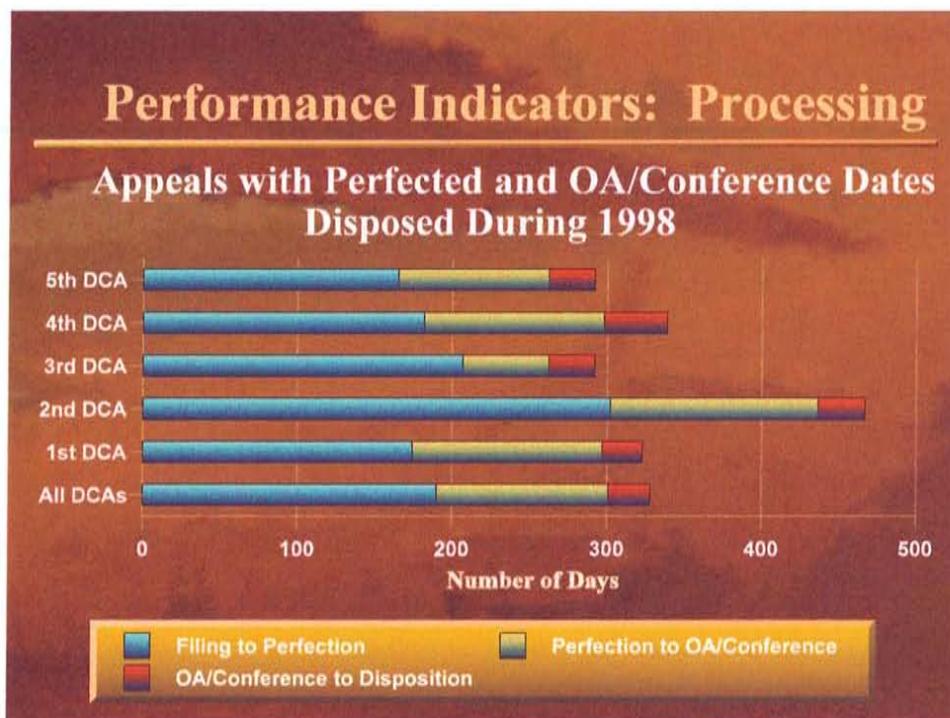
*Notes: The figures for the number of NOAs perfected for the Second, Third, Fourth, and Fifth DCAs also include all postconviction relief appeals disposed during 1998, according to the Summary Reporting System. Since briefing does not occur in these cases, it is not the practice in the clerks' offices to enter a perfected date for these types of cases. In the First DCA, the clerk's office **does** enter a perfected date for postconviction relief appeals, so the number of NOAs with perfected dates (2,533) is used for this court.*

*Along with postconviction relief appeals, the number of NOAs perfected for the Third DCA also includes all appeals for which an answer brief or a perfected date was available on the case management system. Figures for the other DCAs include appeals with a perfected date on the case management system.*

Case Processing Times Appeals with Perfected and OA/Conference Dates Disposed During 1998				
	Median Number of Days Between Selected Events			Number of Cases
	Filing to Perfection	Filing to OA/Conference	Filing to Disposition	
5th DCA	165	262	292	1873
4th DCA	182	298	339	1947
3rd DCA	207	262	292	1018
2nd DCA	302	437	467	2350
1st DCA	175	297	323	2266
All DCAs	190	301	337	9454

**How long does it take for the typical case to progress from filing to disposition?**

The table above shows how long it takes for appeals to move through the stages of the district court process. The analysis is limited to those appeals for which a brief was filed, and for which oral argument or court conference was held. Additional cases may have been excluded from this analysis if the perfection date or oral argument/conference date was not entered onto the case management system. Below, the same information is presented graphically.



## Performance Indicators: Processing

### Manner of Deliberation Through Oral Argument -vs- Conference

State Totals: Oral Argument 3,720 (34.2%)  
Conference 7,145 (65.8%)



### How many cases have oral argument?

The chart above shows the number of conference and oral argument dates that were *set* for cases disposed of in 1998. The information was collected from docket entries in the case management system. The figures available at this time overrepresent the number of cases with oral argument or conference in the First and Second DCAs, and underrepresent the number of cases with oral argument or conference in the Third, Fourth, and Fifth DCAs.

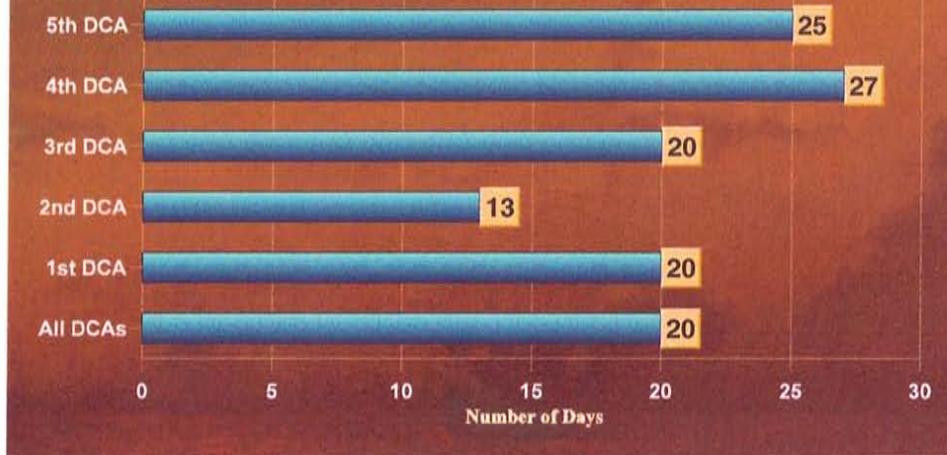
The Fifth DCA is particularly underrepresented in this chart: in 1998, over 2,900 cases were disposed after an oral argument or court conference. However, the manner in which oral argument and conference date information was recorded allowed for only 1,442 cases to be represented here.

Once information about oral arguments and court conferences is entered consistently, the above chart will more accurately reflect the manner in which the DCAs consider the merits of cases.

In addition, the committee hopes to add a performance indicator that reflects the number of requests for oral argument, and the extent to which requests for oral argument are granted in each court. This information is not currently available.

## Performance Indicators: Processing

### Median Number of Days from OA/Conference to Disposition, 1998



After oral argument or conference, how long does it take the typical case to be decided?

### Cases Disposed within 180 Days of Oral Argument or Conference

	Number of Cases with OA or Conference	Number of Cases Disposed within 180 Days of OA or Conference	Percentage of Cases Disposed within 180 Days of OA or Conference
1st	3,142	3,068	97.64%
2nd	2,459	2,434	98.98%
3rd	1,635	1,601	97.92%
4th	1,983	1,891	95.36%
5th	2,929	2,848	97.23%
<b>TOTAL</b>	<b>12,148</b>	<b>11,842</b>	<b>97.48%</b>

### **C. Disposition**

The performance indicators relating to disposition seek to address the following questions:

- How many cases are disposed by order -vs- opinion?
  - Does the rate vary for appeals -vs- petitions?
  - Does the rate vary for criminal -vs- non-criminal cases?
- How many cases are disposed by written opinions and PCAs?
- How many cases are affirmed, reversed, and dismissed?

# Performance Indicators: Disposition

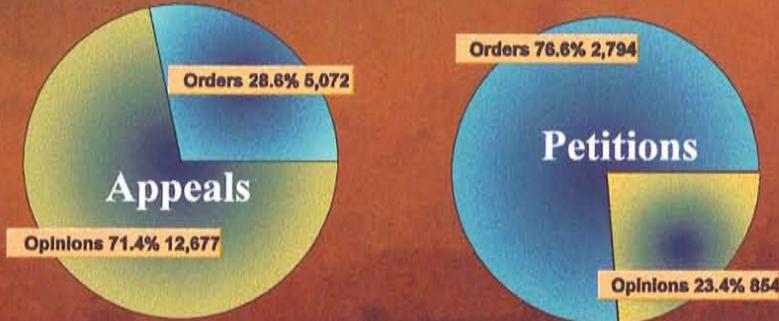
## Manner of Disposition in the DCAs, 1998



**How many cases are disposed by order -vs- opinion?**

## Performance Indicators: Disposition

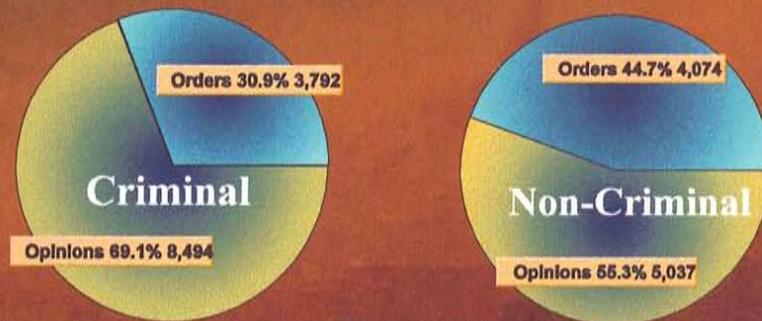
### Manner of Disposition for Appeals and Petitions Statewide, 1998



How many cases are disposed by order -vs- opinion?  
Does the rate vary for appeals -vs- petitions?  
Does the rate vary for criminal -vs- non-criminal cases?

## Performance Indicators: Disposition

### Manner of Disposition for Criminal and Non-Criminal Cases Statewide, 1998



**Manner of Disposition by Criminal and Non-Criminal Case Types  
(includes appeals and petitions)**

		<b>criminal</b>	<b>non-criminal</b>	<b>total</b>
<b>First DCA</b>	Order	741	752	1,493
	Opinion	1,904	1,203	3,107
	total	2,645	1,955	4,600
<b>Second DCA</b>	Order	1,144	867	2,011
	Opinion	2,188	1,045	3,233
	total	3,332	1,912	5,244
<b>Third DCA</b>	Order	534	776	1,310
	Opinion	1,208	936	2,144
	total	1,742	1,712	3,454
<b>Fourth DCA</b>	Order	694	1,034	1,728
	Opinion	1,496	1,098	2,594
	total	2,190	2,132	4,322
<b>Fifth DCA</b>	Order	679	645	1,324
	Opinion	1,698	755	2,453
	total	2,377	1,400	3,777
<b>State Total</b>	Order	3,792	4,074	7,866
	Opinion	8,494	5,037	13,531
	total	12,286	9,111	21,397

**Manner of Disposition by Criminal and Non-Criminal Case Types  
(appeals only)**

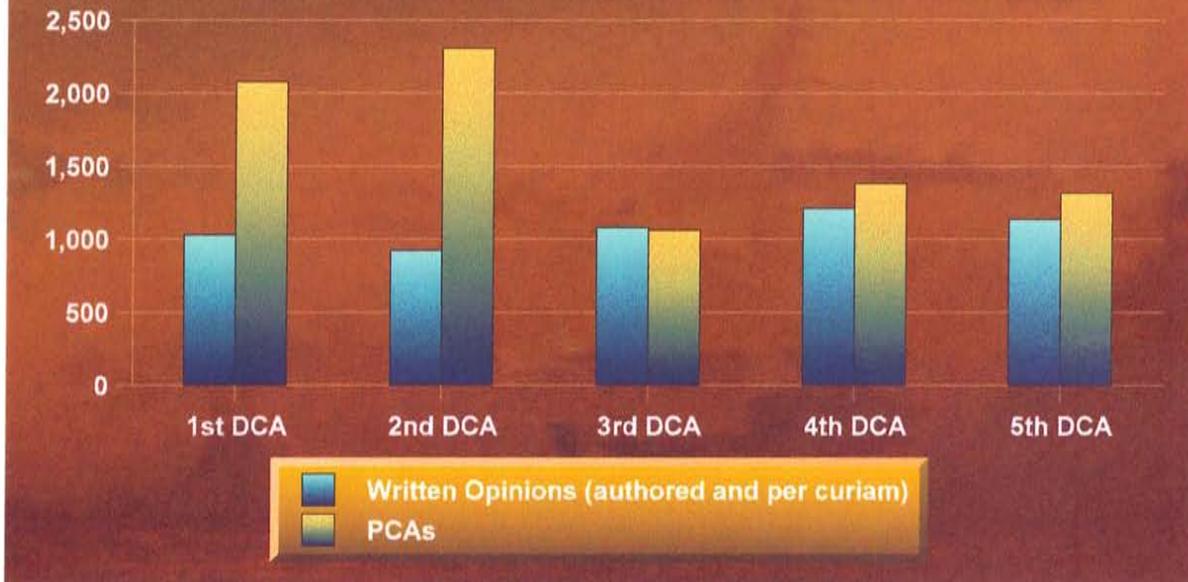
		criminal	non-criminal	total
<b>First DCA</b>	Order	468	697	1,165
	Opinion	1,580	1,067	2,647
	total	2,048	1,764	3,812
<b>Second DCA</b>	Order	487	666	1,153
	Opinion	2,119	1,015	3,134
	total	2,606	1,681	4,287
<b>Third DCA</b>	Order	196	583	779
	Opinion	1,168	900	2,068
	total	1,364	1,483	2,847
<b>Fourth DCA</b>	Order	307	779	1,086
	Opinion	1,451	1,024	2,475
	total	1,758	1,803	3,561
<b>Fifth DCA</b>	Order	374	515	889
	Opinion	1,640	713	2,353
	total	2,014	1,228	3,242
<b>State Total</b>	Order	1,832	3,240	5,072
	Opinion	7,958	4,719	12,677
	total	9,790	7,959	17,749

**Manner of Disposition by Criminal and Non-Criminal Case Types  
(petitions only)**

		criminal	non-criminal	total
<b>First DCA</b>	Order	273	55	328
	Opinion	324	136	460
	total	597	191	788
<b>Second DCA</b>	Order	657	201	858
	Opinion	69	30	99
	total	726	231	957
<b>Third DCA</b>	Order	338	193	531
	Opinion	40	36	76
	total	378	229	607
<b>Fourth DCA</b>	Order	387	255	642
	Opinion	45	74	119
	total	432	329	761
<b>Fifth DCA</b>	Order	305	130	435
	Opinion	58	42	100
	total	363	172	535
<b>State Total</b>	Order	1,960	834	2,794
	Opinion	536	318	854
	total	2,496	1,152	3,648

# Performance Indicators: Disposition

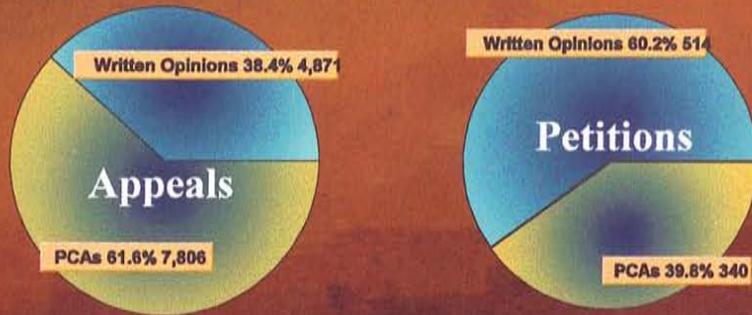
## Types of Opinions Prepared by the DCAs, 1998



**How many cases are disposed by written opinions and PCAs?**

## Performance Indicators: Disposition

### Types of Opinions for Appeals and Petitions Statewide, 1998



How many cases are disposed by written opinions and PCAs?

## Performance Indicators: Disposition

### Types of Opinions for Criminal and Non-Criminal Cases Statewide, 1998



**Types of Opinions by Criminal and Non-Criminal Case Types  
(includes appeals and petitions)**

		<b>criminal</b>	<b>non-criminal</b>	<b>total</b>
<b>First DCA</b>	Written	575	454	1,029
	PCA	1,329	749	2,078
	total	1,904	1,203	3,107
<b>Second DCA</b>	Written	561	365	926
	PCA	1,627	680	2,307
	total	2,188	1,045	3,233
<b>Third DCA</b>	Written	444	638	1,082
	PCA	764	298	1,062
	total	1,208	936	2,144
<b>Fourth DCA</b>	Written	572	639	1,211
	PCA	924	459	1,383
	total	1,496	1,098	2,594
<b>Fifth DCA</b>	Written	632	505	1,137
	PCA	1,066	250	1,316
	total	1,698	755	2,453
<b>State Total</b>	Written	2,784	2,601	5,385
	PCA	5,710	2,436	8,146
	total	8,494	5,037	13,531

**Types of Opinions by Criminal and Non-Criminal Case Types  
(includes appeals only)**

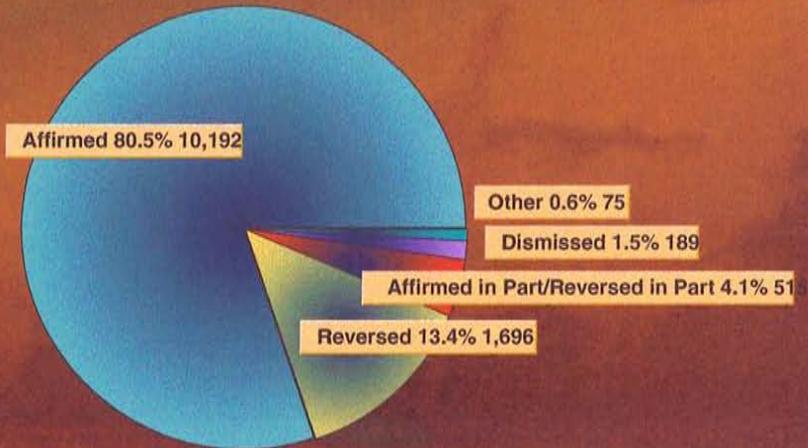
		criminal	non-criminal	total
<b>First DCA</b>	Written	459	404	863
	PCA	1,121	663	1,784
	total	1,580	1,067	2,647
<b>Second DCA</b>	Written	531	336	867
	PCA	1,588	679	2,267
	total	2,119	1,015	3,134
<b>Third DCA</b>	Written	408	602	1,010
	PCA	760	298	1,058
	total	1,168	900	2,068
<b>Fourth DCA</b>	Written	527	566	1,093
	PCA	924	458	1,382
	total	1,451	1,024	2,475
<b>Fifth DCA</b>	Written	575	463	1,038
	PCA	1,065	250	1,315
	total	1,640	713	2,353
<b>State Total</b>	Written	2,500	2,371	4,871
	PCA	5,458	2,348	7,806
	total	7,958	4,719	12,677

**Types of Opinions by Criminal and Non-Criminal Case Types  
(includes appeals only)**

		criminal	non-criminal	total
<b>First DCA</b>	Written	116	50	166
	PCA	208	86	294
	total	324	136	460
<b>Second DCA</b>	Written	30	29	59
	PCA	39	1	40
	total	69	30	99
<b>Third DCA</b>	Written	36	36	72
	PCA	4	0	4
	total	40	36	76
<b>Fourth DCA</b>	Written	45	73	118
	PCA	0	1	1
	total	45	74	119
<b>Fifth DCA</b>	Written	57	42	99
	PCA	1	0	1
	total	58	42	100
<b>State Total</b>	Written	284	230	514
	PCA	252	88	340
	total	536	318	854

## Performance Indicators: Disposition

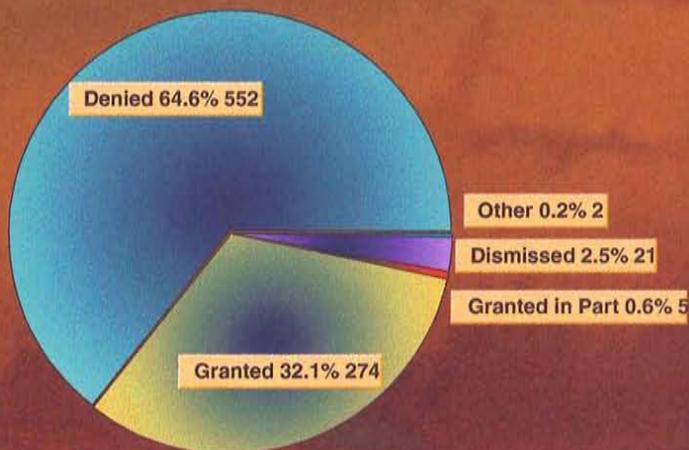
### Appeals: Disposition of Opinions



How many cases are affirmed, reversed, and dismissed?

## Performance Indicators: Disposition

### Petitions: Disposition of Opinions



**Judicial Management Council**  
**Committee on**  
**District Court of Appeal Performance and Accountability**

**Appendix B:**  
**Uniform Case Information Reporting System**

**I Introduction**

The Committee on District Court of Appeal Performance and Accountability was charged with “establish[ing] uniform methods of counting cases and reporting appellate information.” In response to this charge, the committee has worked with the clerk’s offices in each of the District Courts of Appeal to develop a uniform case information reporting system. To date, this system consists of:

- a uniform case classification system;
- agreement on definitions of critical case events; and
- a uniform disposition classification system.

The clerk’s offices, rather than the committee itself, developed the new reporting system. However, the committee established the development criteria that was used by the clerks. The development criteria specified that the uniform case information reporting system should:

- operate within the new case management system;
- feature “pull-down” menus to select case categories;
- include a discrete number of choices at each level;
- allow for each type of case to fit in only one place;
- include the same categories for each court; and
- not allow classification overrides.

Five two-day meetings of the clerks and key deputy clerks were held to generate this system. The clerks made recommendations to the committee, which in turn reviewed the recommendations and at times asked the clerks to consider additional changes.

One component of this reporting system, the uniform case classification system, has already been reviewed and approved by the Judicial Management Council. Further development of this system is needed, including the definition, classification, and recording of motions and orders and additional case events.



### III Critical Case Event Definition

#### A. Date NOA or Petition Filed:

*For notices of appeal*, the filing date shall be the earliest date the notice is filed in the lower tribunal or the district court.

*For petitions*, the filing date shall be the date the petition is filed in the District Court of Appeal.

#### B. Date Appeal is Perfected:

*For appeals of final orders*, a case is perfected when (1) a record has been filed with the district court AND (2) the answer brief has been filed or the time for filing the answer brief has expired. If an answer brief is filed, then the perfected date shall be extended until the date the reply brief has been filed or the time for filing the reply brief has expired.

*For summary postconviction cases*, the perfected date should be set to automatically equal the assignment date, since full briefing does not occur. If the court does not grant oral argument, the conference/OA date should be set to equal the assignment date automatically. This will trigger the 180-day monitoring. Perfection, assignment, and conference/OA dates will change if the court orders a response from the state attorney's office.<sup>1</sup> If a brief is filed, the definition for final orders applies.

*For appeals of non-final orders*, a case is perfected when the answer brief has been filed or the time for filing the answer brief has expired. If an answer brief is filed, then the perfected date shall be extended until the date the reply brief has been filed or the time for filing the reply brief has expired. If the court orders the record filed, the perfection date shall be determined by the definition for appeals of final orders.

*For cross appeals*, a case is perfected when (1) the record has been filed with the district court, AND (2) the answer brief has been filed OR the time for filing the answer brief has expired, AND (3) the reply brief has been filed OR the time for filing the reply brief has expired. If a reply brief is filed, then the perfected date shall be extended until the date the cross-reply brief has been filed or the time for filing the cross-reply brief has expired.

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<sup>1</sup>See policies for missing or out-of-sequence events.

*For petitions*, a perfected date is not applicable and should be left blank.

*For all cases*, motions filed which toll the time under the Florida Rules of Appellate Procedure toll the perfected date.

**C. Date Case Assigned**

*For notices of appeal*, the assignment date is the date that the clerk's office notifies selects the panel that the case has been assigned to them. The assignment date is not affected by the actual date the case is delivered to or picked up by the judges.

*For petitions*, the assignment date is not applicable and should be left blank.

**D. Date of Oral Argument/Conference**

*The oral argument or conference date* is the date the clerk sets as the oral argument or conference date. The conference date to be recorded is not affected by the actual date that the judges meet.

**E. Date of Disposition**

*The disposition date* is the date written in the opinion or the disposition order.

**F. Date of Mandate**

*The mandate date* is the date the mandate issues.

**G. Policies for Missing or Out-of-Sequence Events**

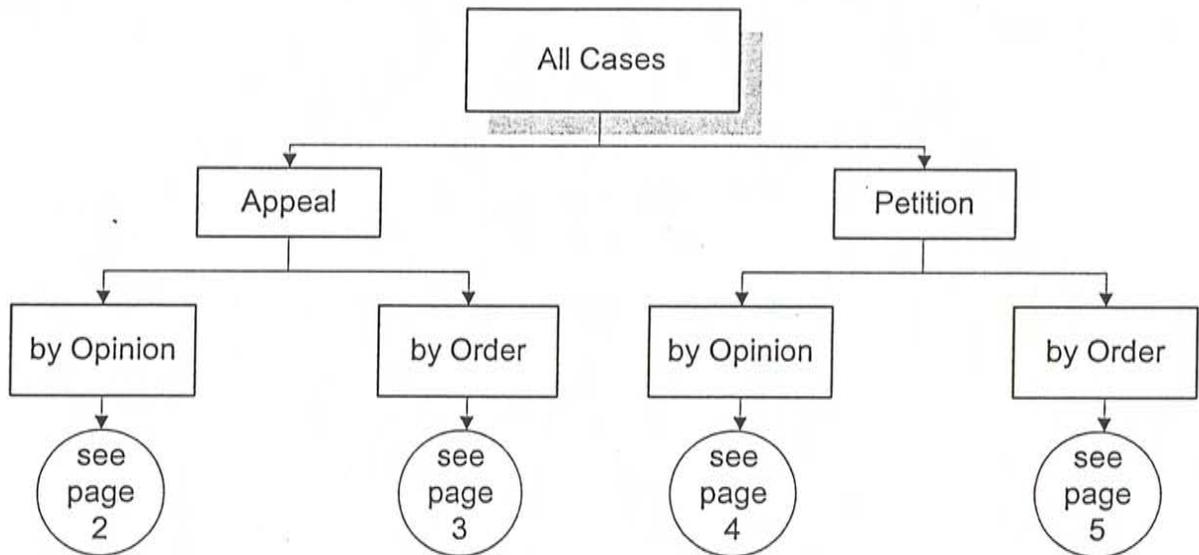
The perfection date cannot be before the filing date.  
The conference/OA date cannot be before the date of perfection.  
The disposition date cannot be before the conference/OA date.

**H. Additional Policies**

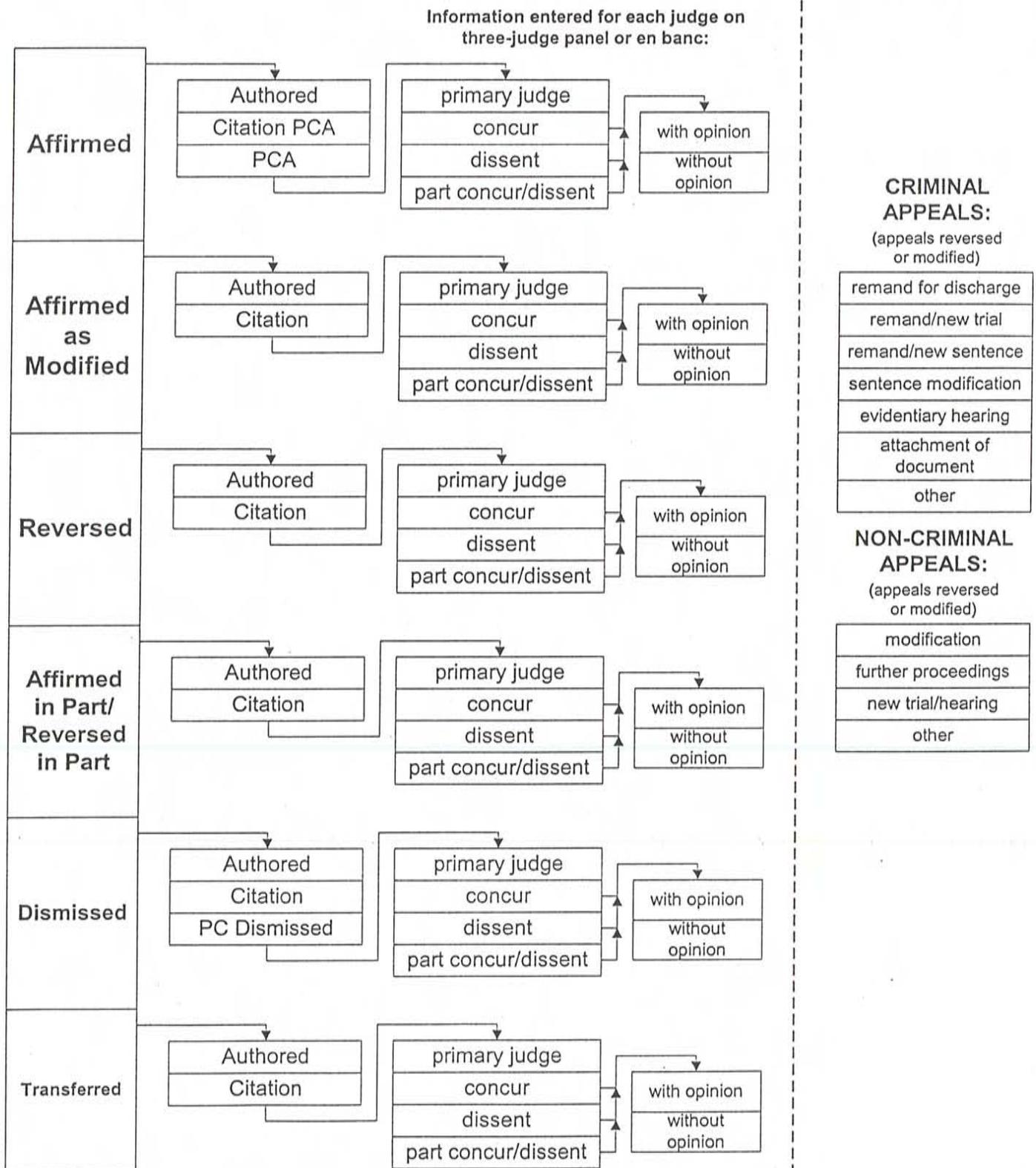
*Reinstatements*: do not count as another filing and disposition.  
*Rehearings*: do not count as a new disposition.  
*Corrected or Substituted Opinions*: do not count.  
*Supreme Court Reversals*: do not count.

IV Uniform Disposition Classification System

# Disposition Classification, District Courts of Appeal

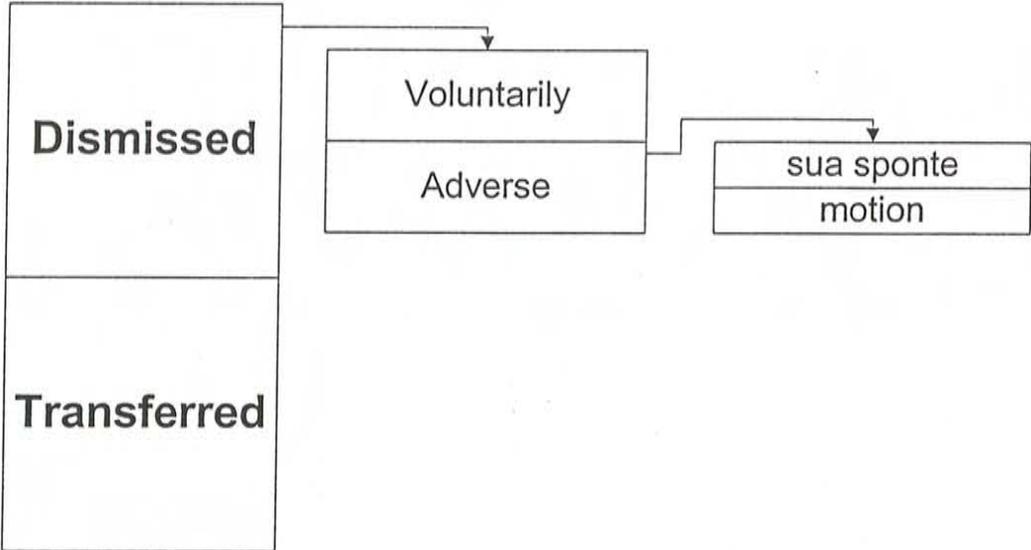


# Classification of Appeals Disposed by Opinion

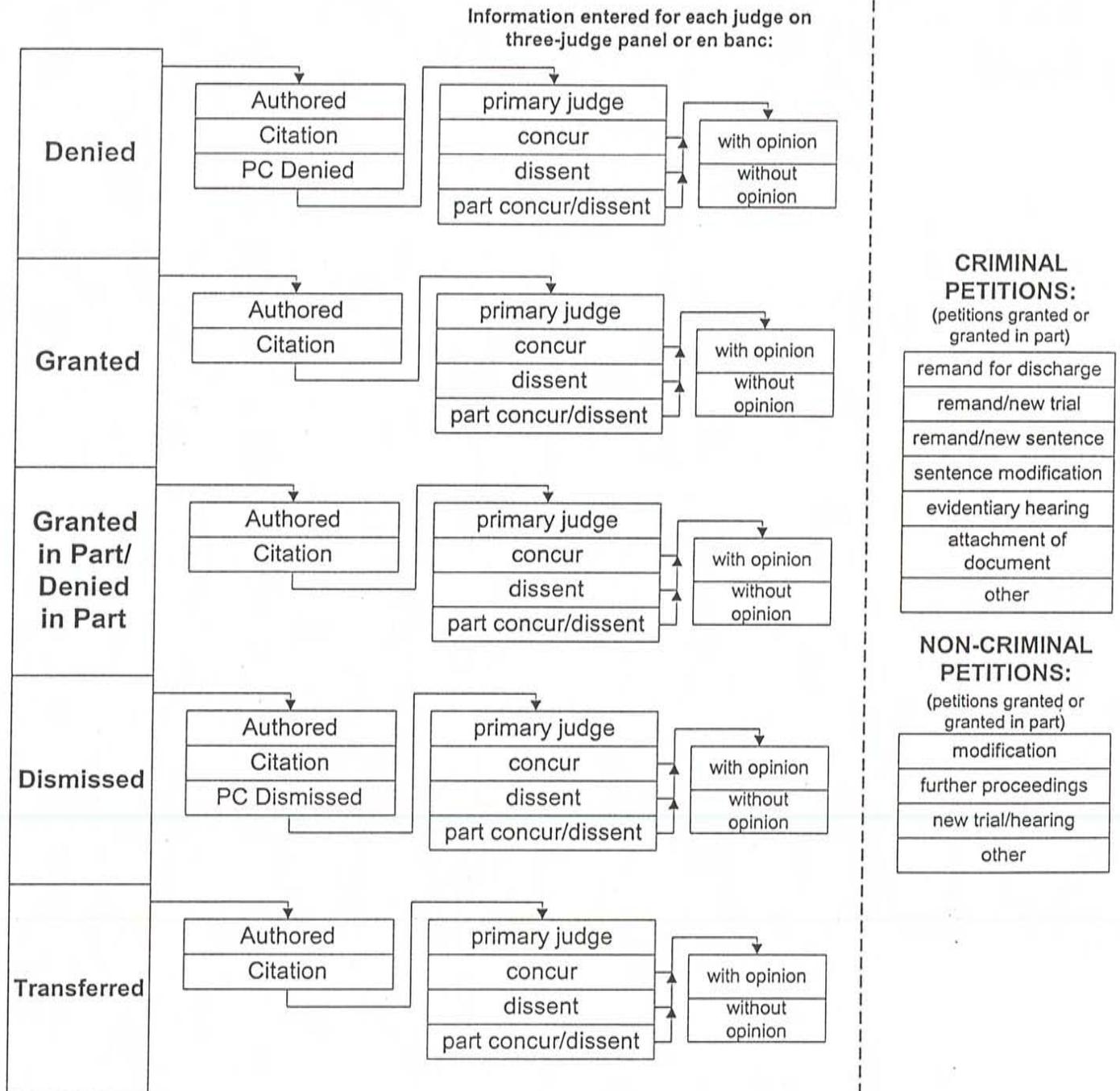


# Classification of Appeals Disposed by Order

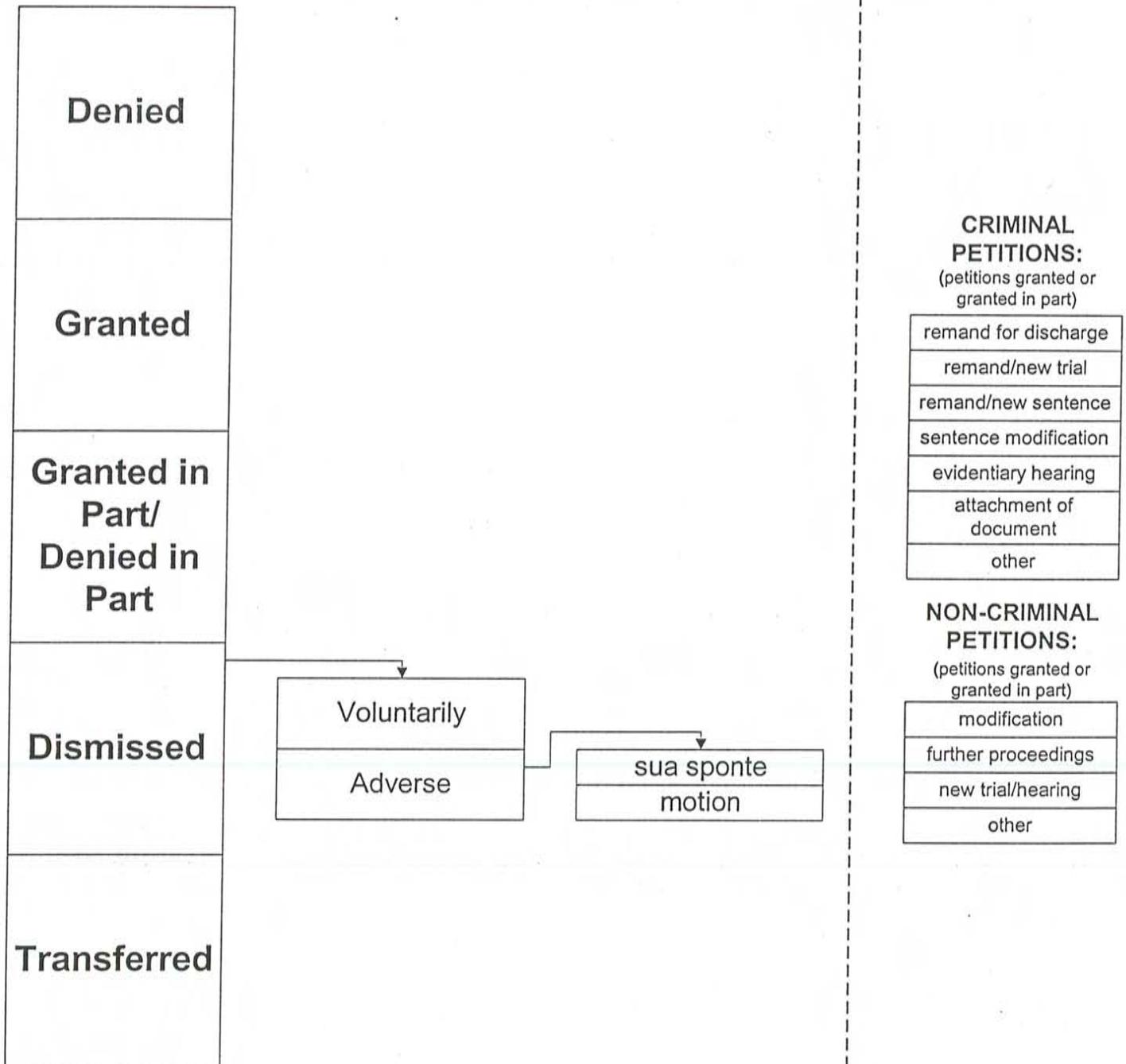
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# Classification of Petitions Disposed by Opinion



# Classification of Petitions Disposed by Order



**Judicial Management Council**  
**Committee on**  
**District Court of Appeal Performance and Accountability**

**Appendix C:**  
**Committee Process**

# District Courts of Appeal Process for Developing Performance and Accountability Model

## Background Education Components

Review of Literature on Performance Measurement in Government Entities Attendance at National Educational Programs on Strategic Planning, Budgeting, and Performance Measurement Consulting Assistance	Review Literature on Performance Measurement in Florida Review of Entities Involved in Performance-Based Program Budgeting (PB <sup>2</sup> ) (Governor's Office, OPPAGA, GAP Commission) Review of State Agency Approaches to PB <sup>2</sup> Attendance at Legislative PB <sup>2</sup> Presentations
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## Research and Analysis Components

Review National Appellate Court Performance Standards and Guideposts	Review ABA Appellate Court Standards, Literature on Appellate Courts	Compilation of National Data on Appellate Court Jurisdiction, Performance, and Workload	Compilation of Florida Data on DCA Jurisdiction, Performance, and Workload	Compilation of Budget Data for Other States' Appellate Courts	Compilation of Budget Data for Florida's DCAs	Documentation of DCA Case Processing Practices
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## Definition and Development Components

Development of DCA Mission Statement	Data-based Development of DCA Performance Indicators	Definition, Differentiation Among Core Functions, Court Programs	Development of a Process for a Qualitative Performance Review	Development of Workload Measures	Development of PB <sup>2</sup> Performance Measures for Court Programs	Development of a Budget Format
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## Outreach and Approval Components

Outreach to Judges Regarding Performance and Accountability Recommendations	Outreach to Clerks Offices and Central Staff Attorneys	Outreach to Lawyers, Other Constituents, and the Public	Recommendations to Judicial Management Council and Supreme Court for Acceptance and Approval
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## Institutionalization Components

Establishment of a Uniform Case Classification and Recording System	Establishment of a System of Reports Common to all Courts	Implementation of an Automated Case Monitoring and Tracking System	Delivery of Education Programs for Judges on Performance and Accountability, Caseflow Management	Delivery of Education Program for Clerks and Staff on Caseflow Management	Coordination with Appellate Bar on Caseflow Management Policies and Practices
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**Judicial Management Council**  
**Committee on**  
**District Court of Appeal Performance and Accountability**

**Appendix D:**  
**The Florida Approach to**  
**Public Trust and Confidence in the Courts**  
**(Winter 1999)**

Nationally and in Florida, the issue of public trust and confidence in the courts has emerged as a matter of the highest priority. The national Conference of Chief Justices has launched a major initiative on the subject in an effort to develop a national strategy to improve public support of the justice system. In May of 1999, the Conference will bring together teams from every state, led by the chief justices, to address the topic and consider a strategic national response. In Florida, Chief Justice Harding has identified building public trust and confidence as the focus of his administration, and has charged the Judicial Management Council with leading branch efforts to address this issue.<sup>1</sup> The following analysis discusses the issue of trust and confidence, and suggests a framework under which a comprehensive strategy can be developed.

I. The Importance of Public Trust and Confidence.

There is general agreement that an essential condition for the effective functioning of the courts is a measure of trust and confidence on the part of the people. One might ask why this is so, given that the courts do, after all, operate under broad express and inherent authority vested in them by constitutional structures. At least three reasons have been articulated: First, confidence in the institution of the judiciary contributes to the voluntary compliance of citizens

with the rule of law in general, and court orders in particular.<sup>2</sup> Second, the American constitutional scheme of separation of powers functions best when public support for the three branches is relatively equally distributed, or balanced. This allows courts to decide controversial cases and manage their affairs without political interference, and enables the judicial branch to fulfill its role as a check on the other branches.<sup>3</sup> Finally, in jurisdictions with election or popular retention of judges and justices, such as Florida, the ability of judges to make locally unpopular decisions when necessary is buttressed where judges are comfortable in the knowledge that they are protected from personal retaliation by a buffer of support for the institution.<sup>4</sup>

Public trust and confidence, then, give force to the formal power vested in the courts by the constitution. Public support can thus be understood as an extra-constitutional, or pre-constitutional, political foundation upon which the formal structures of public institutions rest. Without this foundation, the formal authority of the courts is rendered impotent. The long-range strategic plan for the Florida judicial branch recognizes this, stating that “the legal authority of the courts is a grant by the people, extended as a matter of faith and confidence.”<sup>5</sup> The strategic plan is organized around five long term issues confronting the Florida courts, culminating with public trust and confidence.

## II. The Status of Public Trust and Confidence in Florida.

By a number of indicators, public trust and confidence in the courts is at or near a historical low point. The only national opinion survey specifically directed at assessing regard for the courts was carried out in 1978 by the National Center for State Courts.<sup>6</sup> (The National Center is developing another national survey to be conducted in early 1999.) This research showed that only 23% of respondents reported being extremely or very confident in their state or local courts. The researchers concluded, “[t]he general public and community leaders are dissatisfied with the performance of courts and rank courts lower than many other major American institutions.”<sup>7</sup> More recent surveys have been conducted in various states which indicate similar results, with between 22% and 48% of the public reporting high confidence in the judicial system. A national survey of judges by the American Judicature Society showed that

almost 80% of respondents report an observed lack of public trust and confidence in their jurisdictions, with the highest levels of dissatisfaction found in urban areas.<sup>8</sup>

Public opinion research was commissioned in 1996 by Florida's Judicial Management Council. This research included a telephone survey of more than one thousand households, as well as seven regional focus groups. The results were comparable to those of surveys in other states. In the telephone survey, 13% of respondents reported being "extremely" or "very confident" in the Florida courts, while 48% rated them as "only fair" or "poor."<sup>9</sup> Questions directed at specific aspects of court performance indicate public concern with a number of issues. For instance, 69% of the public disagree with the statement that "the courts treat poor and wealthy people alike," 34% disagree that the courts spend their funds wisely, and 46% disagree with the statement "court cases are concluded in a timely manner."

Further evidence of public dissatisfaction with the courts can be found in efforts such as legislative action to reorganize the death penalty process, and support for broad changes in civil liability law. Increasing disregard for court orders, as frequently occurs in matters such as child support, restraining orders, and probation conditions, also indicates diminishing respect for the courts. Direct expressions of public dissatisfaction with the courts, overflowing into violent frustration, have been seen in riots that occurred in Florida cities in response to perceived injustices not addressed by the courts following confrontations between law enforcement and black citizens. Regarding race, the 1996 public opinion survey found that 47% of Floridians disagree that courts treat whites and minorities alike.

It should be noted that the courts are not alone as the recipients of low public esteem. Other social and governmental institutions are similarly held in low regard by the public, and public views toward the courts must be understood in this context. Government agencies in general, as well as media, educators, and industries like health care all suffer from public dissatisfaction. While 13% of Floridians said they were "extremely confident" or "very confident" in the courts, this was comparable to confidence in public schools (15.5%), and the news media (14.5%), and somewhat better than the Florida Legislature (9.5%). Lawyers in particular are poorly thought of, and public views toward the courts are closely related to their

views toward attorneys and the larger civil and criminal systems of which the courts are a central element.

### III. An Expectations Approach.

Judge Roger Warren, president of the National Center for State Courts, believes that public trust and confidence is an outcome of two necessary conditions. First, it involves the essential quality of the system and the consistent delivery of justice. Secondly, it involves meaningful communication between the courts and the public. In short, courts earn public trust by doing a good job, and consolidate it by communicating effectively with the people. This view conflicts in part with that of those observers who explain diminishing faith in the courts as primarily a result of public ignorance and misunderstanding about the courts. Because citizens do not fully understand the limited role of the courts within the larger justice system, they cannot intelligently assess the effectiveness of the courts. From this perspective, diminishing public support is largely a public relations and education problem.

The proposed Florida approach largely accepts Roger Warren's paradigm, but also incorporates some elements of the second perspective. This approach starts with the simple notion that trust comes about when there is, between concerned parties, some measure of clarity as to what is expected, followed by a degree of substantial fulfillment of those expectations over time. Confidence is nothing more than comfort in the knowledge that a person or institution is capable and reliable regarding the fulfillment of duties. Under this perspective, those who argue that the cause of low public trust and confidence is public misunderstanding of the role of the courts are essentially saying that there is confusion or ambiguity regarding the expectations that the public has of the courts. Those who view diminished trust and confidence as arising out of poor performance, in this analysis, are saying that the courts are not meeting the expectations that are reasonable, clear, and appropriate.<sup>10</sup> These views are not inconsistent, and both are incorporated in the Florida model.

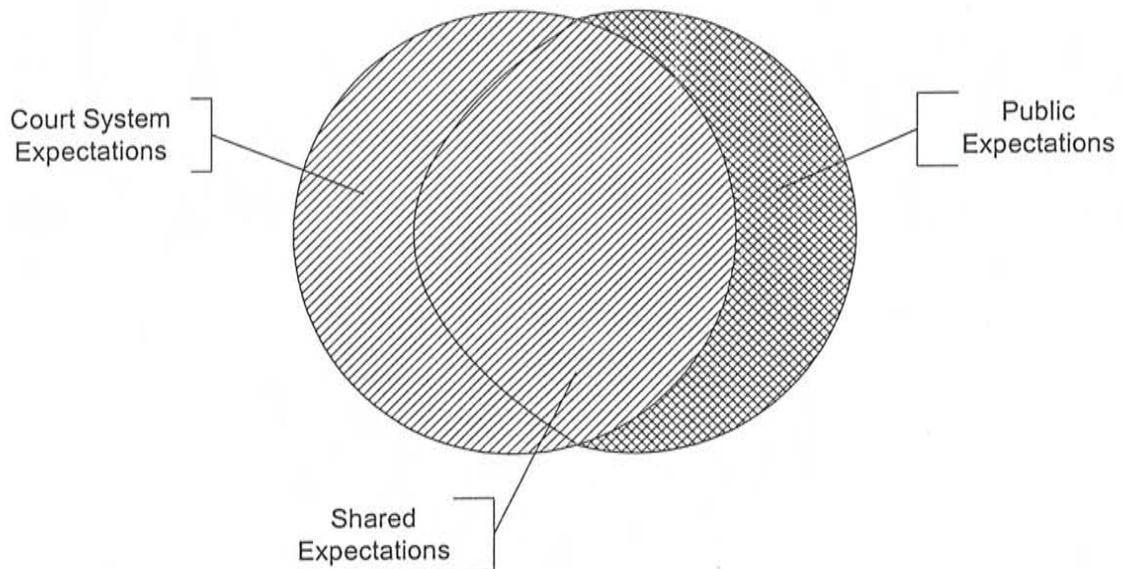
So the beginning point is a discussion of public expectations of the courts. The "public," of course, is not a monolithic entity. Our population, particularly in a jurisdiction with the size and diversity of Florida, includes many different types of people with widely divergent

circumstances, backgrounds, perspectives and interests. It cannot be anticipated that a clear and unified articulation on what is expected of the courts would be easily forthcoming. Some people desire an assertive judiciary, one quick to respond to public and private problems, while others want a limited judiciary that exercises restraint, deciding only strictly legal matters brought before it. This tension is found in areas such as specialty courts, such as drug and elder courts, which are designed to involve judges in more aggressive intervention in cases. Furthermore, some expectations that the public holds out for the courts may be unreasonable or inconsistent with constitutional structures and principles of due process, such as expectations that courts will “fix” troubled youths or resolve difficult emerging issues of medical ethics. On the other hand, many of the expectations that the public has are altogether reasonable and fully consistent with our constitutional and legal systems. People have many expectations regarding how cases should be handled by the courts: They expect judges to be unbiased and competent; they expect court matters to be dealt with in a timely fashion; they expect information about their cases to be accessible and understandable; they expect court decisions to be consistent. Many of these expectations, while undefined, are real, and they are utterly reasonable and achievable. To begin the process of addressing public trust and confidence, there is no need to pass judgement on the merits of the many and various expectations that people have for the courts; as a first step, it is only necessary to acknowledge that these expectations exist, and to make a conscious effort to identify and understand them.

The second element of addressing the trust and confidence issue is the assessment, or filtering, of the universe of public expectations, identifying those which are reasonable and constitutional and not otherwise flawed. But by what criteria are the expectations of the people to be judged? Clearly, the courts should not manage themselves like a retail enterprise, catering to whatever the demands of its “customers” may be. It is the duty of the courts themselves, given constitutional parameters, to state their responsibilities consistent with the mission of the courts. Public expectations must therefore be examined and sorted in light of the expectations that the courts themselves have developed regarding their mission and role. Those public expectations that are consistent with court system expectations become the mutual or shared expectations by which court performance can be measured; those which are not accepted as legitimate or

reasonable by the reckoning of the judicial system represent matters that may call for education and clarification. This conceptual framework can be illustrated with a simple diagram such as that in Figure 1.

Figure 1:



The diagram shows two overlapping sets of expectations, those of the public and those of the courts. The juxtaposition of the two sets creates three conceptual types of expectations: those that are held in common, or shared; those that the public has that the courts for one reason or another do not accept; and those that the courts have of themselves that the public either does not accept or is not aware of. Once organized into this basic topology, each group of expectations can then be addressed separately.

Before going on, it is important to note that, as with the public regarding its expectations, there is not unanimity of views within the court community regarding what the courts ought to expect of themselves. This lack of consensus may itself contribute to public confusion as to the role of the courts. The strategic plan of the Florida judicial branch identifies this as a threshold problem, articulating it as the first of its five long-range issues:

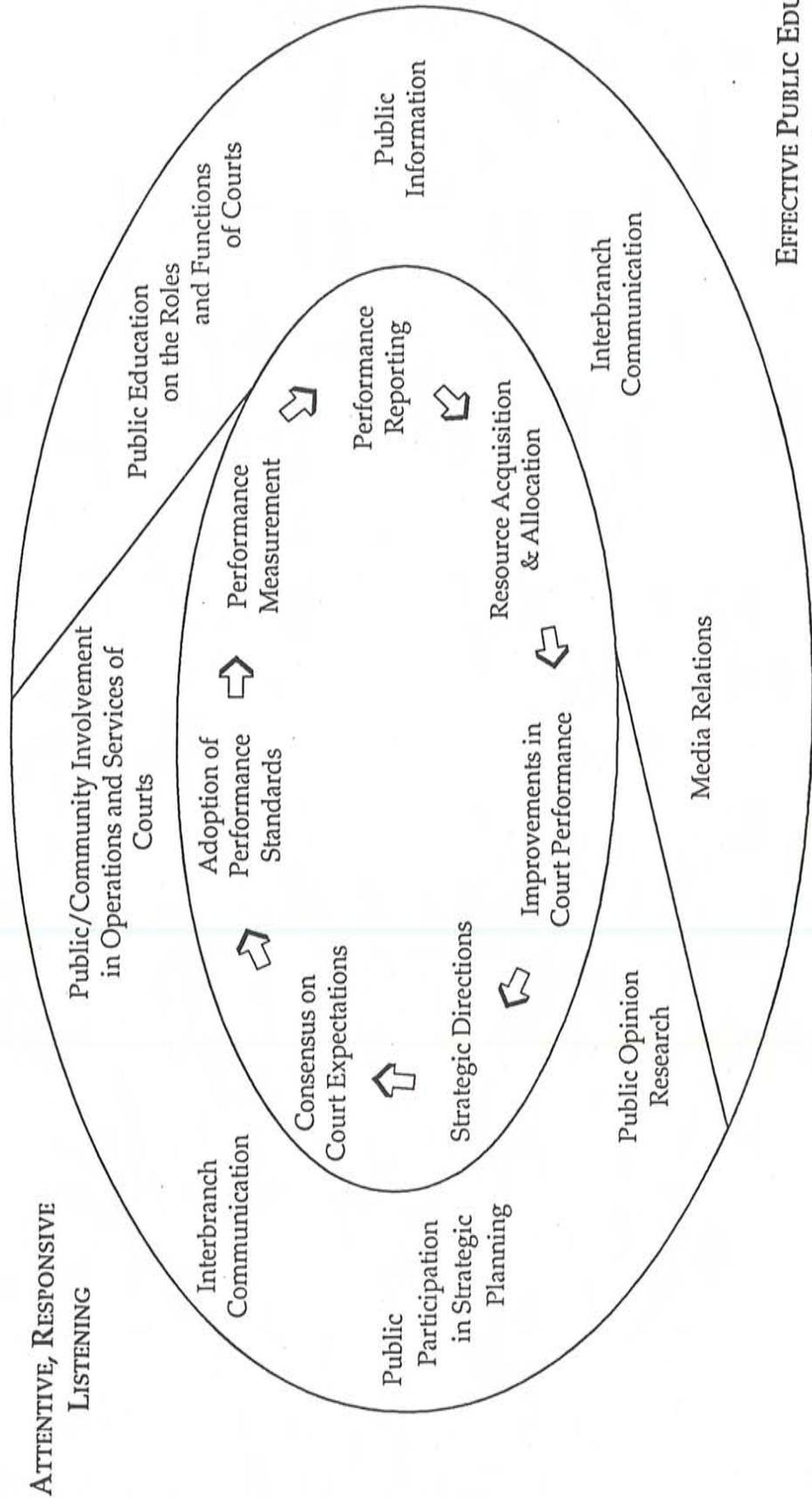
Before other issues can be addressed, there is a need for deliberate, ongoing discussion that clarifies the roles and responsibilities of the courts within Florida's overall systems of justice and human services. Resolution of this fundamental question will allow the judicial branch to focus its energies and resources on improvement of those core court processes and functions which are agreed upon to be within the responsibility of the courts. As a clearer consensus on the role of the courts emerges, this consensus can be communicated to the public, bringing a degree of reconciliation between that which is expected and that which is provided.<sup>11</sup>

The clarification of expectations regarding the roles and responsibilities of Florida's courts is thus a definitional threshold to improving public trust and confidence. But it is only a starting point. This process will serve as a basis for further activities that the Judicial Management Council will be asked to undertake to address trust and confidence. These will include the articulation of court performance standards based on expectations that are shared by the public and the courts, and communication initiatives directed at addressing and reconciling the divergent expectations of the public and the courts.

## Endnotes

1. In Re: Judicial Management Council, Administrative Order, (cite). 1998.
2. Gibson, J. L. (1989). "Understandings of Justice: Institutional Legitimacy, Procedural Justice, and Political Tolerance." *23 Law and Society Review* 469.
3. Kaufman, Irving R. (1980). "The Essence of Judicial Independence." *80 Columbia Law Review* 671. "To the extent that the action of another branch exposes a judge to the threat of reprisal if he decides against a particular litigant, usurpation of the judicial power is particularly acute." P.694.
4. Olson, Susan M. And David A. Huth. (1998). "Explaining Public Attitudes Toward Local Courts." *20 The Justice System Journal* 41. "Although they may adhere to the norm of judicial independence and try to make decisions without considering public opinion, these judges face the possibility that loss of public support can mean loss of their judgeships." p.42.
5. *Taking Bearings, Setting Course: The Long-Range Strategic Plan for the Florida Judicial Branch.* (1998). Judicial Management Council, Florida Supreme Court.
6. Yankelovich, Skelly and White, Inc. (1978). *The Public Image of the Courts: Highlights of a National Survey of the General Public, Judges, Lawyers and Community Leaders.* National Center for State Courts.
7. *Ibid.*, p.25.
8. *Results of a National Survey of Strategies to Improve Public Trust and Confidence in the Courts.* (1994). American Judicature Society.
9. *Florida Statewide Public Opinion Survey*, (1996). Judicial Management Council.
10. In Warren's words, "we must not be deaf to just criticism." Warren, Roger K. (1997). "Courts and the Public: The Need for Effective Communication." *The Court Manager*, Winter.
11. *Taking Bearings, Setting Course*, p.19.

# Building Public Trust and Confidence



**Judicial Management Council**  
**Committee on**  
**District Court of Appeal Performance and Accountability**

**Appendix E:**

**USE OF THE APPELLATE COURT PERFORMANCE STANDARDS**  
by the Judicial Management Council of Florida's  
**Committee on District Court of Appeal**  
**Performance and Accountability**

**COMMITTEE CHAIR'S REPORT**  
January 1999

The Committee on District Court of Appeal Performance and Accountability is charged with making recommendations to the Judicial Management Council and the Supreme Court of Florida that, if approved, would develop the capacity of Florida's District Courts of Appeal (DCAs) to measure and report on their performance. The committee's final reports will include:

- o an articulation of the mission of the DCAs;
- o a set of performance indicators relating to each core function of the DCAs;
- o recommendations to the Council and the Supreme Court about the extent to which the DCAs can operate under a performance-based program budgeting system;<sup>1</sup>
- o recommended curricula for judges and court staff on principles of appellate caseflow management and strategies to monitor and improve court performance; and

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<sup>1</sup>For the judicial branch, Florida law provides some flexibility not afforded executive branch agencies. The law provides that "By January 15, 2000, the judicial branch shall identify and submit to the Legislature a list of programs *that the Chief Justice of the Supreme Court recommends could operate under a performance-based program budget.*" Chapter 94-249, Laws of Florida, Section 6. [emphasis added]

- o recommendations and a guidelines to implement uniform case classifications and definitions, data recording procedures, and case management reports.

### **Mandates Under Which the Committee is Operating**

The committee was developed in response to several internal and external mandates. The judicial branch's long-range strategic plan calls for improving public trust and confidence in the judicial branch in part through the establishment of standards and indicators that measure court performance. The Florida Constitution calls for the development of a "quality management and accountability" program to ensure productivity and efficiency. And, Florida law has required all agencies of government to move from a line-item to a performance-based program budget. The judicial branch is included in the chapter laws and is scheduled to begin operating under the new format in fiscal year 2001-2002 (see footnote 1).

### **Committee Work Process**

The committee began meeting in April of 1998 and spent the initial meetings developing a mission statement for the District Courts of Appeal. The committee has heard presentations from two members of the Appellate Court Performance Standards Commission. Roger Hanson has attended committee meetings and has met with project staff on several occasions to help the committee make the best use of the standards and guideposts.

The committee has made use of the Appellate Court Performance Standards and the American Bar Association's Standards Relating to Appellate Courts, as well as other materials in the appellate court and performance measurement fields. The committee has found that an understanding of the context that appellate courts operate within is critical to the interpretation of performance data. The committee has made extensive use of reports from the National Center for State Courts, particularly those that allow for interstate comparisons of caseload statistics, and jurisdiction information. The new *Appellate Court Procedures* report has proved particularly helpful.

In its first nine months, the committee has focused on the data reporting infrastructure required for performance measurement. While there is a wealth of data about the performance of Florida's DCAs, it has not historically been recorded or reported consistently from court to court. The performance and accountability project has provided the impetus for consistent data recording and reporting. Only now is the committee beginning to examine some of the qualitative measures of appellate court performance.

The committee has reviewed data relevant to several potential performance indicators, agreeing on performance indicators on the timeliness of appeals. The comfort level of the committee in establishing performance indicators has increased over the course of the last several

meetings. The committee is not prepared, however, to set benchmarks that target certain levels of performance relating to the discharge of their constitutional functions.

### **Utility of the Appellate Court Performance Standards**

The committee has found the standards and guideposts to be of great use in fulfilling their charge of developing a performance and accountability program for the intermediate appellate courts in Florida. Particularly useful to the committee have been the commentary sections accompanying the standards. The introductory section addressing the role of appellate court systems was particularly helpful to the committee in the development of a mission statement for Florida's District Courts of Appeal (DCAs). The committee has also made great use of the language of the standards themselves in order to articulate the expectations that the DCAs should fulfill.

The committee has found it necessary to organize its work differently than the Appellate Court Performance Standards, which are organized by appellate court function (protecting the rule of law, promoting the rule of law, etc.). The committee has begun to organize its work by the stages of the appellate process (what kinds of cases come in, how does the court handle them, how are they disposed), rather than by function. Interestingly, this approach also differs from the organization of the Trial Court Performance Standards, which are organized by attribute (access, expedition and timeliness, etc.).

The committee has had difficulty moving from the performance standard level to that of the guidepost (or "performance indicator", in the parlance of the committee). Part of the difficulty may be linguistic. As written, the Appellate Court Performance Standards themselves are aspirational, rather than functional. As such, they are very difficult to translate into indicators, measurements, or guideposts. In other words, it is very difficult to determine whether a particular court is meeting the performance standards.

Another difficult but perhaps unavoidable issue in dealing with the performance standards is quality. It is anticipated that the committee will struggle, as the Commission undoubtedly did, with the problem of measuring quality in appellate courts. For many critical areas, the only means to directly measure the quality of appellate court performance seems to be through the measurement of perceptions and attitudes about court performance.

It is anticipated that, as in the guideposts, the committee will attempt to undertake qualitative measurements through surveys. The focus for the committee, however, will be on overall assessments of the court system performance, rather than assessments relating to individual cases or judges.

**Judicial Management Council**  
**Committee on**  
**District Court of Appeal Performance and Accountability**

**Appendix F:**

**DEFINING CORE COURT FUNCTIONS  
AND COURT PROGRAMS  
(February 1999)**

*Note: This appendix is a working document used by the committee in its deliberations on the core functions of courts. For final definitions of core court functions and court programs, please see the committee's recommendations in the main text of this report.*

The District Courts of Appeal Performance and Accountability Committee is charged with defining the "core functions" of the District Courts of Appeal, and with developing a framework for the identification of "programs" for performance-based budgeting purposes.

The former charge, the definition of "core functions," arises out of the judicial branch's desire to meet the constitutional mandate found in Article III, Section 19, that the branch adopt a quality management and accountability program.<sup>1</sup> The judicial branch approach to this mandate, articulated in its long-range strategic plan, requires the branch begin by defining the mission of each major area of the court, and identifying those "core court processes" employed to achieve that mission. The latter charge, to identify "programs" that the Chief Justice may identify as suitable for submission to the Legislature under a performance-based program budget, addresses the statutory requirements of Chapter 216, Florida Statutes, instituted as part of the Government Performance and Accountability Act of 1994.<sup>1</sup>

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<sup>1</sup> "Whereas the legislative and judicial branches must independently carry out their mandates provided by the Florida Constitution, but nonetheless should endeavor to develop performance measures to evaluate certain functions of the legislative and judicial branches to encourage efficient performance of their duties for the benefit of the public,

. . . By January 15, 2000, the judicial branch shall identify and submit to the Legislature a list of programs that the Chief Justice of the Supreme Court recommends could operate under a performance-based program budget.

The Committee discussed these charges, and addressed three specific questions:

- ▶ Beyond the DCA Mission Statement and Commentary, how should the committee define the core functions of the courts of appeal?
- ▶ What criteria can be articulated to identify functions that can be categorized as "programs" for purposes of performance-based budgeting?
- ▶ What functions if any do the DCAs currently perform that could be categorized as "programs?"

Through its discussion, the committee reached several provisional propositions:

*First*, it would not be helpful to enumerate a static roster categorizing those functions the committee feels should fall within each category, but rather to create a set of criteria, a framework for analysis to guide examination of all court functions on a contingency basis. Such a framework should be dynamic, based on established constitutional principles, and able to accommodate court practices that may vary over time, place, access to technology, and other variables.

*Second*, an appropriate starting point for consideration of what court functions are "core," is the jurisprudence that has developed around the doctrine of inherent judicial powers. In short, this doctrine establishes the principle that, to preserve the principles of separation of powers and judicial independence, a court has the inherent power to compel whatever is reasonably required to enable the court to perform efficiently its judicial functions, to protect its dignity, independence and integrity, and to make its lawful actions effective. Core functions arise ultimately out of constitutional authority.

*Third*, an appropriate starting point for identification of "programs" is the statutory definition of a "program" for performance-based program budgeting purposes found in section 216.011, Florida Statutes: "Program means a set of activities undertaken in accordance with a plan of action organized to realize identifiable goals and objectives based on legislative authorization."

*Fourth*, consistent with the principles of separation of powers and judicial independence, no court function which is "core" can be appropriately included within a "program."

*Fifth*, the operative criterion for determining whether a given function is "core" is whether the function is reasonably necessary for the courts to fulfill their mandates provided by the Florida Constitution.

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By September 1, 2000, the judicial branch shall submit to the Legislature performance measures and standards for such programs. . . ." *Chapter 94-249, Laws of Florida.*

*Sixth*, the operative criteria for determining whether a function is suitable for submission under a performance-based program budget is whether the function comes within a set of activities undertaken in accordance with a plan of action organized to realize identifiable goals and objectives based on legislative authorization, and the function is *not* reasonably necessary for the courts to fulfill their mandates provided by the Florida Constitution.

Finally, the committee addressed the question of what functions within the District Courts of Appeal, if any, might be suitable for submission as a performance-based "program." The committee discussed several functions, including law libraries and mediation programs. The committee provisionally concluded, pending further discussion, that mediation programs, more broadly included within the functional category of "alternative dispute resolution," is the only function that might be appropriate for presentation in a performance-based program budget. This conclusion hinged on the distinction that the appellate court mission emphasizes the correction of errors and clarification of the law, rather than the resolution of disputes, as in the trial courts.

#### **Notes: Inherent Powers Doctrine in Florida Caselaw:**

"Inherent power arises from the fact of the Court's creation or from the fact that it is a court. It is essential to its being and dignity **and does not require an express grant to confer it.**" (emphasis added) *Florida State Bar Ass'n et al*, 40 So.2d 902, 905, (Fla. 1949), J. Terrell.

**"Every court has inherent power to do all things that are reasonably necessary for the administration of justice within its jurisdiction,** subject to valid laws and constitutional provisions. The doctrine of inherent judicial power as it relates to the practice of compelling the expenditure of funds by the executive and legislative branches of government has developed as a way of responding to inaction or inadequate action that amounts to a threat to the courts' ability to make effective their jurisdiction. The doctrine exists because it is crucial to the survival of the judiciary as an independent, functioning and co-equal branch of government." *Rose v. Palm Beach Cty.*, 361 So.2d 135, 137, (Fla. 1978), J. Boyd.

"The courts are not simply another agency of the state or county government but are a co-equal branch of government. As such, **they have the inherent power to protect themselves in the performance of assigned duties and functions.**" *Chief Judge of the Eighth Judicial Circuit v. Board of Commissioners of Bradford County*, 401 So.2d 1330, 1332, (Fla. 1981), J. Boyd and J. Overton.

"The power to do a thing necessarily **carries with it the discretion as to how that power will be exercised.** Were it otherwise, power would be only an illusory and meaningless concept." *State of Florida v. Lewis*, 550 So.2d 522, 526, (Fla. 1st DCA 1989), J. Minor.

". . . the legislature cannot, short of constitutional amendment, reallocate the balance of power expressly delineated in the constitution among the three coequal branches. . . . **This**

**Court has an independent duty and authority as a constitutionally coequal and coordinated branch of the government of the State of Florida to guarantee the rights of the people to have access to a functioning and efficient judicial system." *Chiles v. Children A, B, C, D, E, and F*, 589 So.2d 260, 268, (Fla. 1991), J. Barkett.**

