

# COMMISSION ON TRIAL COURT PERFORMANCE AND ACCOUNTABILITY

## Legal Support

### Report and Recommendations

Legal Support has been identified by the as one of the essential elements of the trial courts. A report with recommendations is being prepared by staff for consideration by the Commission on Trial Court Performance and Accountability. No workshop or workgroup has been organized to assist in this process. Instead, interviews have been conducted with staff of ten circuits, and relevant statewide data has been compiled.

#### PRINCIPLE FINDINGS:

- < Legal support provided by staff attorneys enhances the effectiveness of the trial courts by providing judges with legal research, analysis, drafting of orders and memoranda, case management and administration. Proper and timely research enhances the quality of judicial decisions and work product and reduces the likelihood of reversal on appeal.
- < Legal support increases the efficiency and speed of the trial courts by referring selected workload from judges to staff attorneys, allowing judges to direct their attention to case adjudication.
- < Legal support is especially helpful in legally complex matters, such as capital cases, complex and multiparty litigation, and post-conviction matters.
- < Assignment practices vary across circuits. Assignment patterns appear to be

affected primarily by the physical co-location (or disbursement) of court facilities within a circuit, and secondarily by local history and practice. While some specialization occurs, and some circuits assign staff attorneys to judges who are assigned to different division, the more prevalent practice is to assign staff attorneys by division.

- < Currently approximately 40% of staff attorneys are assigned to support judges in circuit criminal divisions. The last decade has brought a very substantial increase in the number and complexity of post-conviction matters, and backlog and delays in these dockets are common. Circuits report that 80%-90% of the time of staff attorneys assigned to criminal cases is consumed by post-conviction cases. Thus, more than one-third of all trial court legal support resources are devoted to post-conviction matters, yet backlog continues to accumulate.
- < Several circuits assign a staff attorney to oversee the processing of appeals from county to circuit court. This assignment includes case management responsibility as well as legal research. In the event all circuits are required to assign appeals to three-judge panels, rather than single judges, workload in this area can be expected to increase.
- < Turnover is high in most circuits. With some exceptions, most circuits are unable to retain most staff attorneys for tenures greater than two to four years. It is commonly believed that most new staff attorneys do not reach a full level of skill and efficiency until they have been in service for about two years. Inability to retain experienced staff attorneys diminishes the efficiency and quality of legal support services.
- < The most common reason for leaving is inadequate compensation and lack of salary increases. Compensation levels are thought to be lower than those

offered to attorneys in other state agencies and are lower than those of appellate court staff attorneys.

- < Except for recent training in capital punishment law, staff attorneys do not receive specialized training to assist them in addressing their responsibilities. Most circuits do not pay for staff attorney continuing legal education or Florida Bar membership dues, although membership is a condition of employment.
  
- < Some larger circuits have a general counsel or functional equivalent for legal support in matters such as employment disputes, ADA claims, contract writing and review, and sensitive personnel matters. Most medium and small circuits rely on county attorneys, or delegate work to experienced staff attorneys, court administration staff who are attorneys, or request assistance from the OSCA general counsel. It is expected that under Revision 7 counties will have no obligation to provide legal services, and provision must be made to provide general legal services.

## PRELIMINARY RECOMMENDATIONS:

- A. **Purpose Statement.** The following purpose statement should be used in reference to legal support the Florida trial courts:

**Legal support is the provision of professional legal assistance to judges and the judicial circuit. Legal support enhances and supplements judicial resources, allowing courts to process more cases without creating additional judgeships. By referring selected research, legal analysis, drafting, case management and administrative functions from judges to staff attorneys, judges are able to direct their attention to case adjudication, improving the speed and quality of the judicial process. Legal support also provides legal advice and services to the circuit court as an entity.**

- B. **Staffing.** The following levels of staffing should be provided to each circuit:

- < one attorney for each full time equivalent judicial assignment to a circuit criminal division;
- < one attorney for every three full time equivalent judicial assignments to circuit divisions other than criminal;
- < one attorney for every seven (ten?) county judges within a circuit;
- < one attorney to oversee capital cases;
- < one attorney to oversee the processing of appeals from county to circuit court;
- < one clerical support position for every five staff attorneys;
- < one general counsel position;
- < one administrative assistant support position for the general counsel in each medium and large circuit (1<sup>st</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup>, 13<sup>th</sup>, 15<sup>th</sup>, 17<sup>th</sup>, 18<sup>th</sup>, 20<sup>th</sup>).

- C. **Positions and Compensation:**

- < The legal support function should include the following positions: General Counsel; Deputy General Counsel; Senior Staff Attorney; Career Staff Attorney; Staff Attorney; Secretary; and Administrative Assistant.

- < A review of compensation levels should be conducted and compensation levels adjusted to support the trial courts in recruiting and retaining a qualified and diverse workforce.
- < Consideration should be given to providing benefits that include support for continuing legal education, Florida Bar dues, and any benefits generally provided to assistant state attorneys and assistant public defenders, such as educational loan repayment assistance.

**D. Specialization and Education.**

- < All legal support personnel should be provided with a general training program;
- < Every circuit should have at least one staff attorney who has undergone training in capital punishment law;
- < Every circuit should have at least one **staff attorney** who has undergone training in the processing of appeals from county to circuit court;
- < Specialization may also be feasible in areas such as post-conviction, family law, and complex litigation; where further specialization is feasible, staff attorneys should be provided with appropriate training in the area of specialization; and,
- < Consideration should be given to providing training and education programs through video-conferencing, in conjunction with judicial conferences, or in partnership with the Trial Court Law Clerks Association.

**E. Best Business Practices.** The Office of the State Courts Administrator should conduct a best business practices workshop with managers of legal support offices, trial court administrators, administrative judges and other court personal to develop information and advisory guidelines on best practices regarding the management and oversight of legal support services, including general legal services.