

MINUTES

FLORIDA CLERK OF COURT OPERATIONS CONFERENCE MONDAY, APRIL 13, 2004 COUNTY CENTER TAMPA, FLORIDA

The meeting of the Clerk of Court Operations Conference (CCOC) was called to order at 10:00 a.m. by Chairman James C. Watkins who welcomed members and guests. Members and staff of the Conference present were Honorable James Watkins, Honorable DeWitt Cason, Honorable Judge Belvin Perry, Honorable Regina Parish, Honorable Marsha Ewing, Honorable Lydia Gardner, Honorable Richard Ake, Honorable Harvey Ruvin, John Dew, Joe Boyd, and Judy Zorn. Honorable Howard Forman was absent.

APPROVAL OF MINUTES FROM MARCH 15, 2004

Mr. Watkins asked if there were any revisions to the Minutes. There being no discussion, a motion to approve the minutes was made by Ms. Gardner and seconded by Judge Perry. The minutes were approved.

DISCUSSION OF LEGISLATIVE ISSUES

Mr. Ruvin, Chairman of the CCOC Legislative Committee, updated members on Legislative issues affecting the Conference. He reported that he, CCOC Executive Director John Dew, and CCOC General Counsel Joe Boyd, spoke via a telephone conference with Fred Baggett, General Counsel and Lobbyist for FACC, regarding current issues. Mr. Ruvin reported that the House Bill remains unchanged.

This language recommends that the CCOC would report directly to DOR, but Mr. Baggett noted during the phone conference that this language may not survive in the final version of the bill. Funding technology is another significant issue. He feels that, even with the revision of fees to fund technology, there will not be enough money to cover all technology expenses and this may lead to a problem. As late as yesterday (April 12), the House has not filed a bill but just proposed language coming from the Article V Committee. Mr. Ruvin said that Mr. Baggett is working diligently with House staff to express the concern that CCOC should not become subservient to DOR. However, even if the issue with DOR is removed, the Chief Financial Officer's Office may end up being given the authority to review and approve our budget process. Likewise, there will be authority in the law for post-audits of the Clerks' budgets to assure each Clerk followed the approved CCOC budget process.

A concern has been mentioned, especially in small counties, that come July 1 when they need money, it may not be available for them. Mr. Dew noted that there is potentially an agreement in the House that as of June 1 there will be an early increase in certain fines, fees, or service charges to have monies available July 1 to handle cash-flow issues. If brought up on the House side, the Senate has expressed that they will approve that too.

Mr. Dew reported that the Senate meanwhile has filed Senate Bill 2962 as their Revision 7 glitch bill. The bill passed the Senate Judiciary March 22nd with amendments. It then passed the Appropriations Subcommittee on Article V Implementation and Judiciary on March 29th. He reported that the bill does not change the role of the CCOC in any substantive manner. He emphasized that we need to understand what the Legislature expects from the Trust Fund for revenues back to them after Clerks' needs are satisfied. Mr. Baggett, during our earlier phone conference, said that the figure he has heard will be approximately \$70 million. Mr. Dew said he had a concern that we need to look at these figures very close to assure that the Legislature is not misled on how much money may indeed be available from the Trust Fund to them.

Mr. Watkins reported that he spent two days in Tallahassee in March meeting with Legislators and staff on behalf of the CCOC. The first day he met with the House staff. There is concern among the staff regarding how they make sure that the figures they are given in the budgets are accurate and how the FTE's, the dollars paid for staff statewide, compares to that being paid to state employees. The second day he spent with Representative Holly Benson, Chairman of the House Select Committee, who invited one representative from each of the stakeholders in this bill to discuss the bill page by page, issue by issue. He stated that Representative Benson understands the Committee she leads and is well-informed on the issues and the pro's and con's of those issues.

The suggestion was made that we may need to be lobbying for CCOC. Mr. Watkins feels that lobbying is best left FACC staff and Fred Baggett who has the expertise and experience to lobby for the Clerks. He does feel, however, that legislative monitoring done by Mr. Dew and our Legislative Committee is essential. Lydia Gardner interjected that she is on the FACC Legislative Committee which gives us an ear to what FACC considers the major issues and that their efforts are not at odds with our objectives. Mr. Ruvin requested that Ms Gardner notify him of their next meeting so he can attend. Ms. Gardner stated that MaryAnne Morse, Chairman of the FACC Legislative Committee is amenable to anyone attending that Committee's meetings.

Judge Perry asked that, next year when the Legislature is in session, we consider holding our meetings in Tallahassee allowing us to monitor the work of the session. He feels that while monitoring is essential, we might want to do some independent lobbying which could aid us protecting our independence from FACC. He also stated that he is strongly against CCOC's subservience to DOR. Mr. Watkins stated that, from its inception, the House wanted to see CCOC as a separate entity able to make independent recommendations. Mr. Watkins suggested that we revisit the issues of meetings in Tallahassee during session and lobbying when this session ends.

Regarding the issue of independent lobbying, Mr. Ruvin asked that any member doing lobbying update him on input the Legislative member gave and feedback received from the contact so he can share it with the rest of the committee. Judge Perry suggested not that we hire our own lobbyist, but that we have two able people to lobby for us in Joe Boyd and John Dew. Mr. Watkins said it becomes a matter of whether we have them register as lobbyists. Mr. Boyd suggested that state agencies hiring lobbyists is a hot issue every year. He also cautioned members that their lobbying efforts should be made as individual constitutional officers, not as members of CCOC.

BUDGET PROCESS

Richard Ake reported on the Budget Process that he is recommending should be followed for the 2003/04 4th quarter. He stated that The CCOC Article V Budgeting Process Working Paper, Draft 6 for Discussion with CCOC should be the final draft, with exceptions to accommodate legislatively mandated changes. A meeting was held in Tampa on March 31 with a taskforce of select members of FACC chaired by Charlie Green, Lee County Clerk of the Court, to discuss FACC concerns about the budget process and the budget documents. John Dew, Glenn Robertson, and Mr. Ake represented CCOC.

Mr. Ake reported that the two conceptual issues of concern from the FACC taskforce were: 1) where the 10% reserve would be kept and 2) the need for reporting of information technology (IT) and county obligation costs.

Mr. Ake stated to the taskforce that it is his belief and the belief of CCOC that the 10% would be held locally. Mr. Watkins asked that a motion be made that the 10% be held locally. The motion, made by Richard Ake and seconded by Regina Parrish, passed unanimously.

Some taskforce members argued that county obligations and IT costs are paid by the county and are costs which the law does not specifically require Clerks to report to the CCOC. The FACC felt that CCOC doesn't need this information, and FACC assured CCOC that they would gather and keep this information should the Legislature require it.

Mr. Watkins asked Mr. Ake if he reached the conclusion after meeting with the taskforce that we don't need this information for certification of budgets. Mr. Ake replied that for now he reached that conclusion. However he wanted to make sure each Clerk now understood that the budget submitted only included court-related costs. To resolve the issue of what is allowable in the budgets submitted, the taskforce agreed with Mr. Ake that each Clerk would sign a certification letter and submit this to the CCOC when they submit their budget.

Mr. Dew pointed out that the list of allowable court-related expenditures has been established, based on the "Betty Book" and was listed in the certification letter. In addition, the letter enumerates those items that are not to be included in the budget. The

certification form was sent to each Clerk with the budget form. It was noted however, that if a Clerk still completed the IT and county obligation forms, that the CCOC would not disallow approval of the budget since these expenses are backed out on a subsequent Exhibit. In addition, there was a concern that the formulas wouldn't work if the IT costs are not included, but the formulas are based on FTE's which are still required to be included, alleviating this concern.

Mr. Ake also stated that there were two nonsubstantive changes. On Page 1 where it says, "Expenditure and Revenue projections are reasonable", the word "reasonable" was changed to "justifiable". FACC also took issue with the option of potentially submitting the budgets to a CPA firm first instead of CCOC directly. It was agreed that budgets will be submitted to CCOC.

CCOC members agreed to the changes made based on the meeting with the FACC Taskforce and agreed that the budget process as presented in the document by Mr. Ake will be the process used for the 03/04 4th quarter budget cycle.

Mr. Watkins asked Glenn Robertson to make a brief report on the possible scenarios of what could happen based on projected revenues and expenditures and reserves that are required to fully balance a Clerk's budget. Mr. Robertson provided information on the following two possible scenarios the Conference may face after receiving all of the Clerk's budgets.

SCENARIO 1: If after the budgets are submitted and analyzed, the Trust Fund is sufficient to fund all clerk needs and sufficient to fund the revenues that are in the Appropriations Act, then all is fine. The Conference may not have to make any cuts in proposed budgets.

SCENARIO 2: There is not enough money in the Trust Fund to meet the needs of one or both of the two key Trust Fund users; the Clerks and the State of Florida. The Clerks' budgets may be adequately funded, for instance, but there may not be enough to support the State, assuming the Legislature appropriated revenues to be transferred from the Operations Trust Fund to the General Revenue Fund during its fiscal year. Will the CCOC be pressured to fill in that gap?

In terms of examining the deficit, we have developed two models, 1) projecting expenditures based on estimating the number of court cases that will require processing in the next fiscal year and applying a cost of living (wage index) factor and 2) projecting revenues based on estimated revenues by type and number of cases and collection rates.

There are at least four options for relieving the deficit that can be considered if necessary:

1. Option 1: Increase Clerk revenues by increasing fees (being proposed in the 2004 Legislative Session)
2. Option 2: Decrease expenditures in select Clerks' budgets as needed. This should be done prior to first approval. It could be required during the fiscal year

- if actual expenditures differ from projected expenditures in CCOC approved budgets.
3. Option 3: The reserves could be capped in certain counties as needed.
 4. Option 4: Decrease expenditures in every county by a certain percentage, if absolutely necessary.

Mr. Watkins felt that it would not be CCOC's responsibility to come up with funds to fill in any gap, rather the Legislature would need to mandate higher fees or turn to the Appropriations process to cover it.

Mr. Ake reported that, as of last week, the FACC was projecting (based on submissions of projections from Clerks last November) that there will be \$67 - \$70 million for the state after funding the Clerks' budgets from the Trust Fund. He felt that this is a worst case scenario.

Mr. Watkins stated that he has great comfort in Doug Isabelle's figures of \$67-70 million being available in the trust fund because of the professional work done in the past. He further stated that if Doug Isabelle has given us a figure, then it is probably within percentage points of being accurate and you could probably take that to the bank.

Mr. Dew added that his concerns about the figures arise from the unknowns, i.e. how much the indigency examiner issue will add to each of the budgets, how much of the 10% reserve will be included by each Clerk, and how much in overestimates of expenditures and under-projection of revenue might be included in the proposed budgets.

Mr. Ake stated that of the \$67 - \$70 million, \$32 million is the \$50 that comes off the top from filing fees to state general revenue. This leave \$35 - \$38 million from what's left of the 1/3 after we have met all the projected needs of all the counties. Glenn Robertson noted that he understands that the 'money off the top' goes directly to the General Fund, not to the Trust Fund. However, he questioned if the Legislature understood that the Trust Fund would only then produce approximately \$35 million the first year. Mr. Ake stated that he asked that question specifically of Doug Isabelle and Fred Baggett and was assured that the \$32 million is a part of the \$67 - \$70 million.

Mr. Watkins stated that an example of how the budget process would work under the current CCOC polices as adopted today is as follows. He used his office as an example of a Clerk's office. His office collects fees. The \$50 from filing fees is sent directly to the State of Florida off the top. Then 1/3 of the fees would be sent to the Clerk's Trust Fund if all of his office needs are met.

If monies from the 1/3 are necessary to meet expenditures then what is required is kept once the CCOC approves the budget. If his office cannot fund the budget after keeping all of the 1/3 then he would have to come to the CCOC for approval to receive monies from the Trust Fund. No member of the CCOC disagreed with Mr. Watkin's description of this process.

Mr. Ake reminded the Conference that in this first budget process there are no expenditure or revenue caps. Caps become an issue in the 04/05 budget process and beyond. During the first review, we must be concerned about whether revenues are adequate to support estimated expenditures, that the court functions being supported by state funds come from the Betty Book or from the Statutes, and that the budgets are justifiable.

Mr. Dew added that this approved document will be presented to the Clerks at their Conference next Friday. He suggested that their main question will probably be 'How will CCOC analyze the budgets?' Although the document doesn't say we're going to compare budgets/actuals of previous years, in some way we will have to do that kind of comparison.

Mr. Dew asked if there was some other process concerning budgeting that the CCOC members would like staff to explore. Mr. Watkins suggested that Clerks and the CCOC monitor actual expenditures and revenues after the beginning of the FY 2003-04 Quarter IV fiscal period. Differences between approved expenditure and revenue projections and actual numbers may require amendments to CCOC approved Clerk budgets.

Mr. Ruvin asked for an estimate of time required of Conference members for the budget certification process. Mr. Watkins stated that he thought CCOC members will be able to review and approve the budgets in two meetings.

Mr. Watkins then asked Mr. Ake to help develop an appeals process to be used in the event any of the Clerks disagree with our certification determination. He would like for that process to be brought back to the full board for approval. Ms. Ewing suggested he might want to look at the process used by the sheriffs in Florida. Mr. Boyd suggested we need to be careful in formatting an appeals process as to whether or not we have to go through the rule making process under Chapter 120. Mr. Boyd also said we need to have de novo reviews, review done by the whole committee. If there is still a dispute, the question then would be whether it would be addressed at the local Circuit Court are directed to District Court of Appeals for final agency action since we are a state entity.

Mr. Dew suggested that, rather than an appeals process, we develop a clarification process whereby the Clerk would meet with our full board to discuss any budget items in dispute. He feels that the initial budget review could be done without the clerk present. If there are no problems with the budget, then there is no need for the clerk to defend the budget. If specific items of the budget aren't approved, there would be another meeting where the Clerk could defend those items in dispute. It was left that Mr. Dew, Mr. Boyd, and Mr. Ake would discuss this issue and develop a process for settling disputes.

STAFF CONTRACT FOR BUDGET ANALYSIS

Mr. Ake reported that, at CCOC's request, he meet with Mr. Dew and Mr. Robertson to firm up the additional work that is not under Mr. Robertson's current contract regarding

the need to develop a process for the upcoming budget analysis needs. Mr. Dew distributed a paper to CCOC members explaining our needs and what Mr. Robertson can do to fulfill those needs. The 'contract', which would need to begin immediately, would include an hourly wage of \$125.00 for Mr. Robertson. The minimum fee under this 'contract' would be \$33,000 and the maximum \$150,000 depending on how much we require of him. Mr. Boyd can work this into a contract. Lydia Gardner requested a monthly report regarding the draws appearing on this account to allow strict accountability. Ms. Gardner moved that we authorize the Chairman to execute that contract. Mr. Cason seconded the motion and it passed unanimously.

Mr. Dew requested he also be able to hire a part-time staff member as necessary to work with Glenn Robertson on the budgets when they come in May 3. Mr. Ruvin made and Ms. Ewing seconded the motion to authorize Mr. Dew to do that. The motion passed unanimously.

REPORT ON CPA RFP'S

DeWitt Cason reported that the RFP's went out to seventeen firms in Tallahassee. CCOC received four responses. Next week, Mr. Boyd, Mr. Dew, and Mr. Cason will review and discuss the responses. If necessary, they will conduct interviews the following week (April 26-30). It was reiterated that these RFP's are for a CPA firm to do an end-of-year (fiscal year ending June 30, 2004) audit of CCOC dollars only. The range of the proposals is \$4,750 to \$8,500. Mr. Ruvin made and Ms. Parrish seconded the motion to authorize Mr. Cason, as Chairman of the Committee, with counsel from Mr. Dew and Mr. Boyd, to select a CPA firm and have a contract drawn up. Mr. Watkins is authorized to execute the contract once it is finalized. The motion passed unanimously.

TREASURER'S REPORT

Ms. Parrish, CCOC Treasurer, reported that to date CCOC has written 69 checks totaling \$351,001.98. Our current bank balance including interest earned is \$149,041.47. There is \$300,000 available for a drawdown from the Department of Revenue. Judge Perry made and Mr. Ake seconded a motion to accept the Treasurer's Report. The motion passed unanimously.

OTHER BUSINESS

Mr. Dew reported that FACC conducted eight regional workshops. He attended one and felt that the response from the clerks is that they seemed ready and willing to do what is necessary to get the information to CCOC in a timely manner. He reported that he has received the January and February invoices from FACC related to the education contract and is in the process of reviewing them. The March invoices are ready to be picked up. He will review them as well and make sure things are handled properly.

Mr. Ake announced that Judge Robert J. Simms of Hillsborough County died unexpectedly this past weekend. A moment of silence was observed.

Along the same lines, Mr. Cason announced that Judge David E. Bemby of Hamilton County died recently. A moment of silence was observed.

Mr. Ruvin offered that he would be happy to host a meeting of CCOC in Miami at the meeting rooms at the airport. Mr. Dew will take that into consideration when setting up future meetings.

There being no further business, the meeting was adjourned at 11:56 a.m.