

MINUTES
FLORIDA CLERKS OF COURT OPERATIONS CORPORATION
WEDNESDAY, SEPTEMBER 22, 2004
HYATT INTERNATIONAL AIRPORT
ORLANDO, FLORIDA

The September 22, 2004 meeting of the Executive Council of the Clerks of Court Operations Corporation (CCOC) was called to order at 1:05 p.m. by Chairman Maryanne Morse who welcomed members and guests. Members and staff of the Executive Council of the Corporation present were Honorable Maryanne Morse, Honorable Jeffrey K Barton, Honorable Jim Fuller, Honorable Harvey Ruvin, Honorable Tim Smith, Honorable Richard Weiss, John Dew, Joseph Boyd, and Judy Zorn. Honorable Howard Forman participated by telephone. Honorable Annie Mae Murphy was excused. Ms. Morse announced that a quorum was present.

APPROVAL OF AGENDA

Ms. Morse accepted a motion by Mr. Ruvin to approve the Agenda. Seconded by Mr. Barton, it passed unanimously.

APPROVAL OF MINUTES FROM AUGUST 19, 2004

Ms. Morse asked for any revisions to the Minutes. There being none, a motion to approve the minutes from the August 19, 2004 meeting was made by Mr. Fuller and seconded by Mr. Smith. The minutes were approved as circulated.

TREASURER'S REPORT

Mr. Barton reported that since the last meeting, the Corporation has expended \$27,674.38. The Conference checking account was closed September 17, 2004 and \$6,530 was transferred from that account to the Corporation account. The Corporation balance as of September 7, 2004 is \$147,035.70. With encumbered bills in the amount of \$23,691.40, the available balance is \$123,344.30. A request for an \$85,000 payment for deliverables has been made by Mr. Dew and approved by the CFO's office but not yet received.

Mr. Weiss moved that we accept the financial report. The motion, seconded by Mr. Fuller, passed unanimously.

LEGISLATIVE SUBCOMMITTEE REPORT

Mr. Forman reported that many Clerks around the state are ready to talk about the Glitch Bill, but there are no raging issues right now.

PERSONNEL COMMITTEE

Mr. Smith distributed the proposed employment agreement for Mr. Dew including a supplemental benefits package to compensate him for benefits he would normally receive as a state employee. A leave policy was provided to allow accrual of vacation and sick leave. Mr. Smith moved that the Executive Council enter into this employment agreement authorizing the Chair to sign the contract on the Council's behalf. Mr. Weiss seconded the motion. Mr. Dew asked about the amount of annual leave stated in the contract. Mr. Boyd stated that it was intended that the annual leave would follow state guidelines for an employee having served a number of years and that the annual leave amount would be corrected to reflect such. The motion passed unanimously.

Regarding Ms. Zorn, Mr. Smith reported that the Council has budgeted \$23,000 for a fulltime person in this position. As Ms. Zorn wishes to be employed on a part-time basis, the recommendation is that she be compensated at a rate of \$14.25 per hour and that we establish her employment with an employment letter rather than a contract. She will accrue annual leave and sick leave on a part-time basis. Mr. Smith moved that we accept this arrangement with Ms. Zorn. Seconded by Mr. Barton, the motion passed unanimously.

Mr. Boyd stated he will help us get started with IRS requirements. Both agreements will take affect October 1, 2004.

PERFORMANCE MEASURES

In Ms. Murphy's absence, her report as Chair of the Performance Measures Subcommittee was given by Mr. Dew. He noted that section 28.35(2)(e), F.S. requires that the CCOC develop a certified uniform system of performance measures and standards relating to operational efficiency, fiscal management, and effective collection of fines, fees, service charges and court costs. These performance standards, according to the CCOC contract with the CFO, must be developed by September 30, 2004. While the CCOC has developed performance standards for operational efficiency and effective collections, to date the CCOC has not approved fiscal management standards.

At the previous CCOC meeting the Council asked that Ms. Murphy work with Mr. Dew to develop fiscal management standards. Ms. Murphy, Mr. Robertson, and Mr. Dew attended a meeting on Performance Standards on September 1, 2004 at FACC with Clerk financial staff where Mr. Dew presented a draft fiscal management performance standards form. Suggestions and edits were obtained during that process. The revised form then went to the FACC Article V Steering Committee for input. The form being presented today was agreed to by the Steering Committee.

Mr. Barton moved to delete the word "automated" in #5 and #6 on the form because some smaller counties might not have the capability to do an 'automated' budgeting and finance system. Mr. Smith seconded the motion, and it passed unanimously.

Ms. Morse had concerns with three of the five bullets under #6, those being: 1) FTE counts and distribution methodology for calculating administrative/Article V costs; 2) a performance measurement collection and analysis system; and 3) a unit costing

capacity (dividing expenditures into output measures). She is concerned that smaller counties can't accomplish these measures at all and larger counties would have to spend a great deal of time to accomplish them. Ms. Morse turned the meeting over to Mr. Forman and she moved to delete the last three bullets under Item #6. Mr. Barton seconded the motion. Mr. Robertson suggested that, in addition to striking "automated", we strike the words "budget/finance" leaving "A system is available..." That system would include the CCOC process which can distribute FTE counts, associate with performance measures, and do unit costing. Mr. Forman, with Ms. Morse's approval, restated the motion to amend #6 to read, "A system is available that produces CCOC required data..." There being no further discussion, a vote was taken and the motion passed unanimously.

Mr. Forman returned the chair to Ms. Morse. Mr. Smith moved to approve the form as amended. Mr. Forman seconded, and there being no further discussion, the motion carried.

BUDGET AMENDMENT PROCESS (BAR)

Mr. Robertson presented the objectives and the BAR form itself. The form includes the certified budget information, the cause for the request, and the length of time the cause is projected to affect the budget. Ms. Morse suggested that Page 1 contains some actual and some projected data, and there needs to be a way to distinguish between the two. Mr. Robertson agreed. The next sections of the form define the problem and anticipated impact(s) the problem will have on the office and delineates the proposed solution(s). Mr. Robertson noted that one section of the form is related to the need for more funding due to an unexpected increase in expenditures. He said that while we appear to be limited to not allowing any expenditure above the maximum cap authorized for 04/05, this will at least provide documentation of the need. Mr. Forman moved to accept the form after clarifying the "actual vs. projected" monthly data on page 1. Mr. Barton seconded the motion. There being no further discussion, a vote was taken and the motion carried unanimously.

HARDEE COUNTY BUDGET AMENDMENT REQUEST AND 4TH QUARTER REQUESTS

Mr. Barton reported that on September 2, 2004 the Executive Council held an emergency meeting by teleconference and unanimously approved Hardee County's Budget Amendment Request (BAR). The requested funds have been disbursed.

Mr. Barton suggested that each Clerk needs to check his/her current cash flow and revenues situation for the 4th quarter of FY 03/04 since the end of the fiscal year is only a few days. If any clerk anticipates a problem funding his/her office during the 4th quarter of this year, information should be faxed to CCOC today or tomorrow. Ms. Morse asked that any requests be submitted prior to September 30, 2004.

Ms. Morse reported we have a major problem in Escambia County due to Hurricane Ivan hitting that area. With the court closed for a month, Escambia cannot make their October 7 payroll. Mr. Barton reported that St Lucie also may have a financial problem due to impact from Hurricanes. Mr. Dew stated that CCOC has also

been contacted by Liberty, Pasco, and Orange counties and that they may seek a BAR. Ms. Morse recommended that, in the case of Escambia County, this Council authorize the CCOC Executive Director to work with DOR to provide payments from the Trust Fund to Escambia County Clerk's Office to insure that payrolls are being met at least until our meeting October 20 by which time we hope to have actual financial information that we can use to adopt additional funding beyond the payroll cycle. Mr. Ruvin so moved and Mr. Forman seconded the motion. Mr. Fuller suggested we amend the motion to include financial assistance for any counties requesting funds as a result of hurricane damage and office closure, specifically Escambia, Walton, Bay, and Santa Rosa. Mr. Ruvin and Mr. Forman agreed to amend the motion on the floor.

Mr. Dew requested that Mr. Barton work with him jointly to approve all such budget amendment requests. The Council agreed that Mr. Dew and Mr. Barton would work jointly on approving such requests on behalf of the CCOC. Mr. Dew said we have \$5.5 in the trust fund, enough to cover October payments to deficit counties and the Hardee County BAR. When asked about potential FEMA reimbursement, Mr. Dew stated that Mr. Forman's staff is researching this issue. Currently FEMA dollars are being disbursed for rebuilding, not for reimbursing for funding not coming in as a result of loss revenues. Mr. Smith recommended ongoing discussions w/ CFO's office on the FEMA issue. Mr. Smith also stated that the hurricanes' affects are being felt even in counties not directly impacted because these counties have sent law enforcement officers to help directly affected counties thereby decreasing the number of tickets being written in their home counties. There being no further discussion, a vote was taken and the motion passed unanimously.

BUDGET CERTIFICATIONS

Mr. Dew said that he and Mr. Robertson would jointly do a presentation on 1) CCOC process, 2) required spending cap calculation, 3) final spending cap amendments, 4) information that all 67 counties are now within their maximum cap, 5) budget bottom lines, 6) budget problems, and 7) the plan for dealing with the budget problems.

Mr. Dew requested the Council approve an increase in the maximum budget cap for Flagler, Liberty, Nassau, Orange, Pinellas, and Union counties based on documentation provided to FACC and the CCOC staff. A motion was made by Mr. Barton and seconded by Mr. Fuller that we accept the new maximum caps for these six counties. There being no discussion, a vote was taken and the motion passed unanimously.

Mr. Robertson then presented the budget bottom line for all 67 Clerks. Based on projections from Clerks it is expected that there will be revenues of \$422 million from the 67 Clerks for fiscal year 04/05. However, Mr. Robertson noted that this does not include a potential \$7.5 million from Dade County in traffic fines and fees collected in the unincorporated areas. Dade County Attorney, Bob Ginsburg, has issued to Mr. Ruvin an opinion that the unincorporated areas of Dade County should be treated as a municipality and therefore most of the fines and fees would be retained by the County and not sent to the State Trust Fund. At this point Ms. Morse suggested we address the Dade County revenue issue before proceeding further with Mr. Robertson's overview of the budget.

She asked the CCOC General Counsel, Joe Boyd, to provide an overview of this issue to the Council and provide recommendations.

Mr. Boyd said that the issue concerns the \$7.5 million in tickets issued in unincorporated Miami-Dade by Miami-Dade law enforcement. Ms. Morse stated that if the tickets are issued by the Sheriff's Department, then, for Legislative and CCOC purposes, the money is county money and should be included in the Clerk's budget. If the tickets are issued by the city of Miami within the Miami's boundaries, then the funds belong to the city. However, the Dade County attorney's opinion is that Dade County is a municipality and, as such, all fines and forfeitures in the unincorporated area would qualify and all funds from these tickets should belong not to the Clerk but to Miami-Dade County as a municipality. Mr. Boyd cited cases where Dade County has been defined as a municipality for certain purposes. The question is, for our purposes, should unincorporated areas of Dade County be considered as part of the county or as part of a municipality?

Mr. Boyd stated, "We believe there is a legitimate issue regarding Mr. Ginsburg's opinion that may be factually distinguished." The Dade County Attorney opines that because of home rule charter, the cited Supreme Court cases, and the fact that Dade County's government delivers municipal services in unincorporated areas, it should be treated as a municipality. Mr. Boyd says he has contacted staff from the State Attorney General's Office to better understand the process of seeking an opinion on this issue from the State Attorney General. He was advised that it would be best to have the Dade County Attorney enjoin with the CCOC in seeking an opinion. The opinion would probably take sixty to ninety days and no one has to agree to be bound by it.

Mr. Boyd noted that he has requested the Dade County attorney to join us in soliciting an Attorney General's opinion, but it appears at this point that Mr. Ginsburg prefers not to request an opinion at this time. Mr. Boyd suggests that the Council consider the following options on this issue. Option 1 is to encourage CCOC to seek the Attorney General's opinion and ask again that the Dade County Attorney enjoin us in that process. Option 2 is to accept Dade County's opinion, determining that Dade County is a municipality and that they are entitled to the \$7.5 million. Option 3 is to do more research and address this issue at our next meeting. The question is that, at some point, there will be a dispute; and if there is a dispute, how do we settle it. Neither wants to file suit against the other.

Mr. Ruvin said at this time he supports Dade County's opinion that these funds should stay in the county because the municipalities are making the expenditures for police and equipment that generate the fines. When the county first broached the issue with Mr. Ruvin during budget negotiations with him on the non-court side of his budget, he felt that he was governed by the County attorney, the logic of the argument, and his history as a County Commissioner on similar issues; and he made the decision to omit those funds from his 04-05 budget. While Mr. Ruvin currently supports the county's opinion, he expressed concern that there may be pressure to have the CCOC get these funds for the State.

Mr. Smith asked about the Chief Financial Officer's involvement with this issue and if we are being pressured to disagree with the County Attorney's opinion. Mr. Boyd stated that in his conversation with the CFO's office on this issue he has been told that if we want an Attorney General's opinion, that's fine; but they are not taking an active role

and they would not want to see CCOC initiate any litigation. However, what we are hearing from some legislative staff is that the statutory language is clear and that municipality means municipality without court interpretation. They feel this money should come to the State Trust Fund as excess funds. One provision of the statute states that if we feel that money is rightfully the state's money and is certified as such to the State and DOR, then at some point in time if it's not remitted to the state, DOR will go collect it. Ms. Morse stated that CCOC is in a difficult position. Some legislative staff believe the \$7.5 million belongs to the state. They also believe the Corporation is responsible for making sure this money goes where it should go. Our options today are to either certify or not certify the Dade County budget as presented with or without the \$7.5 million.

Ms. Morse recognized Mr. McCarty, Assistant Dade County Attorney. Mr. McCarty noted that in his opinion the State Constitution says that Dade County's unincorporated area is a city. Mr. McCarty also said the results of previous court cases based on this same type of issue affirms that Dade County is a city. Mr. Barton countered that the Legislature probably knew of the Dade County distinction and it was probably clear to them that the unincorporated areas of Dade County should not be considered a municipality or else they would have written clarification into the legislation.

Mr. Weiss asked Mr. McCarty why Dade County is reluctant to join CCOC in asking for an Attorney General's opinion since he appears to be so confident in his position. Mr. McCarty stated that in 12 previous cases, the Attorney General's opinion came out against them forcing them to litigate. They prevailed through litigation in all of these cases. Mr. McCarty stated that he already has an Attorney General's opinion from a previous case which states that Dade County is a city. Mr. Smith asked Mr. Boyd, if we seek an Attorney General opinion and the Attorney General rules in our favor, then will Miami-Dade sue us? Mr. Boyd stated that if the Attorney General's opinion sustains their opinion, our obligation may be complete and we should follow that opinion. If Dade County doesn't like the opinion, then for \$7.5 million, Dade County will probably sue the CFO, Mr. Ruvin, CCOC and/or DFS.

Mr. Smith moved that we seek an Attorney General opinion with an explanation as to why Miami-Dade is not joining us. Mr. Barton seconded the motion. Ms. Morse said that while we wait on the Attorney General opinion, we need to determine today if the \$7.5 million should be included as part of the expected revenues to the state Trust Fund or be kept by Dade County until the issue has been resolved. Mr. Barton suggested we amend the motion to certify Dade's budget with the \$7.5 million included to force Miami-Dade to join us in seeking an Attorney General opinion. Mr. Ruvin said he can't support that motion and asked that we seek an Attorney General opinion on our own in hopes Miami-Dade will join us. Extended debate between the Council members occurred on this issue.

Mr. Smith called the question for the original motion that CCOC request an Attorney General's opinion and continue to encourage Miami-Dade to join us in seeking that opinion. There being no further discussion, a vote was taken. The motion passed with Mr. Ruvin abstaining and Mr. Barton voting against the motion.

Returning to the issue of budget certification, Ms. Morse stated we have forty-two counties with no reserve, an additional four budgets with no more than 2% reserves,

seven with 2-5%; one between 5-7%; and only thirteen between 7-10% reserves. For the record, Ms. Morse expressed concern that businesses/clerks' offices must have a reserve for unexpected occurrences, and 54 of the 67 counties of Florida are operating with inadequate or no reserves. Budget caps were set for the clerks with a lack of understanding of how clerk offices work and were mandated to the clerks. If the offices are not able to run effectively due to a lack of necessary funds, they cannot generate the excess revenues expected by the state of Florida. Ms. Morse added that this problem needs to be addressed as soon as possible in a very logical, meaningful, and business-like way or it could mean problems for individual offices and for the state of Florida.

Mr. Robertson resumed his presentation. He stated that all budgets meet certification criteria. This means they have been reviewed by staff and meet the following: the budgets include only state-approved court functions; the budgets are technically accurate; any reserves are less than or equal to 10% and the budgets are within the 103% or 105% authorized expenditure cap; performance standards are in place; and the Clerks' Trust Fund can support the revenue deficit. Twenty-eight counties are in true deficit totaling \$18.4 million and 39 are balanced or in surplus with \$35.47 million being contributed to the State Trust Fund. The Council discussed a range of budget problems being experienced by clerks state-wide.

Mr. Dew recommended that we certify all budgets today at the level listed for a total of \$405,649,369 (expenditures). In addition, he requested that we document problems and work with CFO and legislature to resolve these problems. Finally he suggested that we either seek a contingency fund or go back and take another look at reserves (which were based on 03-04) because there were reserves spent in 03-04 that were not allowed to be calculated in the 04/05 budget cap. Mr. Forman moved to approve the 04-05 expenditures and cap summary of \$405,649,369. Mr. Weiss seconded the motion. Mr. Smith suggested that we should be able to use the excess of \$16 million projected to be in the Trust Fund at the end of the fiscal year to help solve the budget problems. There being no further discussion, the vote was taken and the motion passed unanimously.

Ms. Morse recommended that each county document budget problems and send that documentation to CCOC. In addition, she recommended that staff analyze May and June actual expenditures for each Clerk to see how the actual expenditures compare to the estimated expenditures the CCOC used to develop maximum caps. Lastly, Ms. Morse announced that clerks do have the authority to move monies between line items within their certified budgets without having to seek approved from the Council.

TRUST FUND REPORT

Mr. Dew reported that as of September 13, 2004 we have \$5.5 million in the Trust Fund. Since our last meeting, DOR has written checks to the deficit counties and to Hardee County totaling \$3.372 million. Clerks have already remitted \$2.2 million to the Trust Fund. One problem that we need to resolve is that the State in the Appropriations Act has authorized \$20 million from the Trust Fund to go to the Clerks through June 30, 2004. The DOR has already disbursed over \$10 million to deficit counties in last three months. We predict that between now and end of year, deficit counties will need an additional \$14 million meaning we will need at least \$24 million for clerks in deficit

counties for this year. In a conversation with Mr. Dew, Skip Martin, Senate Appropriations staff, stated that DOR could approach the Legislature to seek authorization for additional dollars. Mr. Dew and Mr. Ansley from DOR are working together on this issue to be sure the clerks are adequately funded.

Mr. Forman asked when CCOC would consider approaching the Legislature regarding a more reasonable method of calculating spending caps. Ms. Morse responded that we need at least six months of hard data before we can go to legislature with this request. Ms. Morse suggested that as soon as feasible the Executive Council define and work on legislative issues.

CFO CONTRACT DELIVERABLES

Mr. Dew stated that CCOC has requested \$85,000 from the Department of Financial Services for deliverables based on the contract with the CFO. The request has been approved and we are awaiting a check to be cut for this amount.

03-04 BUDGET SUMMARIES BY COUNTY

Included in today's packet is the 4th Quarter 03-04 Budget Report. Mr. Dew said the 4th Quarter 03-04 Budget Report and transmittal letter will be sent to the legislature this week or early next week. The 04-05 certified budgets and all required summary information will be submitted to the Legislature by October 15 as required by law. Mr. Dew pointed out that the 04/05 report will be in a similar format as the 03/04 4th quarter report. Once the report is complete it will also be placed on the CCOC website and each Clerk will be notified.

BREAKDOWN OF FISCAL YEAR 2004/2005 LOCAL REVENUES

The contract between the CCOC and CFO requires that the CFO provides a breakout of "detailed" revenues in the budget information packet. Because the original budget packets were sent out prior to the contract being executed, the CCOC staff had to create and send out a separate form for this information. As of September 21, 2004, 45 Clerks having submitted the detailed revenue breakout. Mr. Dew went over the form that was provided to each Clerk and noted he has gotten back good results from those returned. Ms. Morse pointed out that the breakout of revenues in the form requested by the CFO contract would only be an estimate by many Clerks since they may not have the history in their offices of tracking this information. Therefore it is hoped that no one tries to be critical later of the breakout effort but sees this merely as a starting point.

COURT REVENUE/EXPENDITURE TRACKING REPORTS

Ms. Morse presented these reports which are to be completed quarterly. She stated the top part of this form is for the 4th Quarter 03-04 budgets. We are deleting the column, "% of Budgeted Revenue" and "% of Projections" because this information is not essential. A revised form will be sent to each clerk. For clarification, court cases are reported quarterly, and revenues and expenditures monthly.

OTHER BUSINESS

Mr. Dew has requested that CCOC be permitted to have a debit or credit card. In order to take advantage of our tax exempt status, some businesses require that the purchase must be paid by a Corporation credit card or by check. Our checks require two signatures, so check-writing is not a viable option. Ms. Morse asked if any member(s) of the Council object to CCOC staff having a corporation credit card. Mr. Smith suggested that we find a credit card use policy and adapt it for CCOC's purposes. Mr. Dew said he would develop such a policy for the Corporation.

The next CCOC Executive Council meeting is scheduled for 1:00 pm October 20 either in Orlando or by telephone to discuss any submitted Budget Amendment Requests. If there are no Budget Amendment Requests, we will cancel the meeting.

There being no further business, the meeting was adjourned at 3:45 p.m.