

MINUTES
FLORIDA CLERKS OF COURT OPERATIONS CORPORATION
EXECUTIVE COUNCIL
WEDNESDAY, AUGUST 24, 2005
TELECONFERENCE

The August 24, 2005 teleconference of the Executive Council of the Clerks of Court Operations Corporation (CCOC) was called to order at 2:00 p.m. by Chairman Maryanne Morse who welcomed members and guests. Members and staff of the Executive Council of the Corporation present were the Honorable Maryanne Morse, Honorable Jeffrey K. Barton, Honorable Howard Forman, Honorable Annie Mae Murphy, Honorable Harvey Ruvin, Honorable Tim Smith, Honorable Richard Weiss, John Dew, Joseph Boyd, and Judy Zorn. Ms. Morse announced that a quorum was present.

APPROVAL OF MINUTES FROM JUNE 12, 2005

Ms. Morse asked if there were any revisions to the Draft Minutes from the July 14, 2005 meeting. There being none, a motion to approve the Minutes was made by Mr. Forman and seconded by Mr. Barton. The minutes were approved as circulated.

SUBCOMMITTEE REPORTS

PERFORMANCE MEASURES

Ms. Murphy stated that 100% of the Clerks had provided performance data to the CCOC on cases/defendants and timeliness for the 3rd quarter within the established deadline. However, most Clerks were not able to get collection reports in. Ms. Morse stated that we are still trying to get collections reports. Mr. Dew stated that we've been getting collections reports daily from the Clerks and this data is important to have especially in light of needing this information prior to going before the Legislative Budget Commission to seek additional funding.

BUDGET REPORT

Mr. Barton reported that all the budgets have been submitted to CCOC and staff is currently conducting technical reviews. Mr. Dew reported that he will be calling approximately 35 Clerks to clarify some technical issues on their submitted budgets.

PERSONNEL

Mr. Smith stated that a CCOC staff member has been ill and is running out of leave and believed it would be important to allow staff to transfer leave from one staff member to another to help out in this situation. He stated it was his opinion that the issue of allowing the transfer of leave from one CCOC staff member to another should be left up to the Executive Director. He asked if the Council agreed. Ms. Morse stated that she

concurred with Mr. Smith that the decision will be left up to the Executive Director. Ms. Morse asked if there was any objection. Hearing none the decision was given to the Executive Director to determine what leave could be transferred.

LEGISLATIVE

Mr. Forman stated that it's still early to be tracking bills although some have been filed. He also reported that Mr. Dew has been communicating with Legislative staff regularly to discuss CCOC issues.

TREASURER'S REPORT

Mr. Barton stated that our new budget year began July 1, 2005. Since that date the CCOC has disbursed \$42,183.80. The current balance of the Corporation is \$68,223.89. Mr. Barton said that there are pending bills we are holding to pay while we wait for DFS to pay invoices we have submitted them.

Ms. Morse asked Mr. Dew to report on what bills were pending and when DFS was expected to provide us funding. By way of update, Mr. Dew stated that we did receive and deposited a \$60,000 check from DFS on August 22 after the Treasurer's report was distributed and will begin paying some of these pending invoices. We are still expecting an additional \$50,000 from DFS. We have been told that the slower turnaround from DFS is a result of their waiting for clerks to send in their monies earmarked for education. The problem for CCOC having so many bills at one time occurred when FACC held their invoices from previous months for several weeks and then submitting all of them together. Mr. Dew is checking to make certain all bills are paid.

CONTRACTS

Ms. Morse thanked Joe Boyd, Richard Weiss, and John Dew for their hard work in preparing the contracts before you today. Ms. Morse appointed Mr. Weiss in August when it was recognized that a number of contracts had to be reviewed and in order to expedite the process a Council member was needed to help. Joe Boyd announced that the Executive Council has four contracts to review today. All of which has been provided in the meeting packet.

Mr. Weiss noted that the four contracts up for review and approval today are: 1) Contract Services to the CCOC for research/report preparation and budget training; 2) services to the CCOC for legal counsel; 3) services for budget implementation related to stakeholder coordination support, information technology support, FY 2005-2006 budget implementation, performance measure system, and FY 2006-2007 budget preparation and implementation; and 4) contract services for Clerk education. Mr. Boyd stated that our current contract with DFS requires that DFS has the right to approve any of our subcontractors. DFS has reviewed each of the four contracts being presented to the Council today and are fine with each of the contracts.

Mr. Boyd asked that we consider the contracts in the following order. The first contract considered to be the Boyd contract for legal services renewable for one year beginning October 1, 2005 and terminable by either party with thirty days notice; the second be the Robertson contract for budget consulting services beginning October 1, 2005 for one year, terminable by either party with thirty days notice; and the third contact

for Clerk education with FACC beginning the date both parties sign the contract and run through September 30, 2006. Mr. Boyd said the FACC this morning has asked that the other contract for services from FACC to provide the CCOC with research/report assistance and budget education training be postponed until the September 13th Council meeting. Ms. Morse said that since the current contract with FACC does not expire until September 30, 2005 we have some flexibility and could postpone it if that is what FACC is requesting. There was no objection to postponing the services contract until the September 13, 2005 Council meeting.

Mr. Boyd noted that the three draft contracts with the Boyd, Lindsey, and Sliger Firm; Glenn Robertson & Associates; and the FACC Services contract were all nonexclusive service contracts meaning the Executive Council could also hire other contractors at a later date to do some of these same services. This is important because there was an issue during the Auditor General's audit that we should not sole source our contracts. There is an exception if we can justify it and because of the nature of services we may not have to do bids. But again, these are nonexclusive contracts and as such each of the contracts has language that states no level of work is guaranteed as a result of the contract. New language has been added to each of the contracts that requires that all work requested by the Council be done on a task assignment basis. Task Assignments and Task Assignment Change Orders are to be executive by the Contract Manager of the Corporation, in consultation with the Chair of the Executive Council. A majority vote of the Council may terminate a task assignment at any time. There has been language added in each of the contracts that states invoices from the vendors that are more than 15 days late are subject to a reduction of payment by 2% for each month it is past due. Mr. Boyd said this is important because our contract with DFS requires specific work be done within certain timeframes as well and if we do not meet the deadlines set they could refuse payment to CCOC. Finally, there has been a clause added to the Boyd contract and Robertson contract providing that services shall be performed at the Corporation's principal place of business unless otherwise provided in the Task Assignment Order.

Ms. Morse asked if there were any questions prior to taking up each of the contracts for discussion and approval. Mr. Ruvin stated that, regarding Section 6 of the Boyd and Robertson contracts, he does not see the CFO as a party to the contract and yet their role seems to be more than that of just a third party beneficiary. Mr. Boyd responded that this provision is required by our contract between CCOC and Mr. Gallagher. This language has been included in previous contracts and is part of our master funding contract with the CFO.

Mr. Smith asked for clarification of the 2% penalty for invoices being untimely submitted. Specifically would there also be a 2% penalty for our not paying invoices in a timely manner. Mr. Boyd responded that there are Florida Statutes dealing with the state and state ombudsman where there are liabilities for late payment. The question is whether we are technically deemed for this purpose to be a state agency. Ms. Morse said that if we get the invoices from the vendors to us timely, get a payment from DFS in a timely manner, then there is never an issue there since we have consistently paid our bills on time.

Mr. Forman moved to approve the Boyd contract. Seconded by Mr. Ruvin, approval of the Boyd contract was unanimous. Mr. Weiss moved to approve the Glenn Robertson contract. Seconded by Mr. Ruvin, the Glenn Robertson contract was approved

unanimously. Mr. Boyd restated that we are working diligently with FACC on the services contract to resolve or at least have them identify their issues. Mr. Boyd anticipates having a contract for the Executive Council at the September meeting.

Mr. Boyd introduced the FACC Education contract. The prior FACC Education contract expired on August 1, 2005. FACC presented a contract to CCOC the first week of August. Staff of both organizations met the following week. We then spoke with DFS staff with quick turnaround on this issue. The negotiations have culminated in the contract provided to you for approval today and effective on the signing of both parties. This \$400,000 Education contract will run through September 2006. FACC has two concerns that would keep them from signing this contract today but which may not under further review. Mr. Boyd stated that we have been attempting to resolve these issues as late as within the last hour. The two issues of concern to FACC are the 2% penalty for late invoicing, which penalty we already negotiated down from 5%. FACC would prefer not including the penalty, but would rather they just not be paid until the following month. DFS was not in agreement with the option of removing the penalty completely. The second issue of concern relates to Section II-C, topics for educational seminars. The current list includes "Performance Standards" which was placed in the contract by DFS. DFS is unwavering in their requirement that this seminar be included in the Education Contract. To assure the Executive Council understood FACC's position regarding the Education Contract, Mr. Boyd read an email from Ken Kent. It read, "Dear Joe, thank you for following up on these issues that we discussed yesterday. FACC is in agreement to take forward the education contract at today's CCOC meeting. As you know, we believe that training on Performance Standards is best accomplished through the FACC Services Contract. In regards to the Education Contract, we reserve the right to bring the subject back up at a later date following review by FACC's legal counsel. In regards to the FACC Services Contract, we greatly appreciate your working through these issues with us and agree with you in taking this particular contract up in September rather than today."

Mr. Boyd recommended that the Executive Council consider the Education Contract be approved today. Then before FACC signs the contract, they may resolve the issues, elect to not sign it and have it brought back to the Executive Council at their September meeting, or under extraordinary circumstances have it brought up at a special meeting if time permits.

Mr. Ruvin asked if, under this contract, payments would be invoice-based. Ms. Morse responded that the Education Contract covers the quarterly seminars, summer conference, and new clerk training and are based on invoices showing specific deliverables.

Ms. Murphy asked why, if Clerks do Performance Standards everyday in their office, FACC is being required under this contract to do a seminar on Performance Measures. Mr. Forman explained that, for education purposes and especially for new clerks, it would be great to have Performance Measures included as a part of the Education Program. Ms. Morse stated that the issue is to make certain all Clerks understand the importance of Performance Measures and to make sure they are complying with them. DFS feels strongly that this should be part of the quarterly conferences rather than part of a workshop which some Clerks may not attend. Mr.

Forman moved approval of the FACC Education Contract. Mr. Barton seconded the motion which passed with one dissenting vote by Ms. Murphy.

Mr. Weiss reported that the Executive Council also needs to discuss the issues of funding for services by Glenn Robertson through September 30 and resolving a payment with regard to FACC. Mr. Dew explained that our contract with Mr. Robertson included a maximum disbursement of \$150,000. Several unforeseen issues arose this year requiring more of Mr. Robertson's time than we'd allotted. Two of those issues related to preparing for the Legislative Budget Commission process as required by legislation passed in the 2005 session and the change in Child Support as it impacted the budget process. We are in a position where we need to extend his contract to get us through September 30. Mr. Dew recommended that an additional \$25,000 would be enough to get through the remaining contract period but wanted approval from the Council that the total contract amount be amended to include an additional \$25,000. Ms. Murphy requested clarification that this amount is for work to be done through September 30, 2005. Mr. Dew replied that it was only for work done through that period. Mr. Weiss moved approval of the additional \$25,000. Mr. Ruvin seconded the motion which passed unanimously.

Mr. Boyd noted that the while the contract with FACC for Clerk Education expired on August 1, 2005, the FACC already prepared for and under the contract believes it should receive payment for a training session held later in August. FACC presented a request for payment. Working with them to resolve this issue, we have arranged a settlement of \$40,000 for the preparation and presentation of the August seminar. FACC is in agreement with and DFS has approved this settlement. Mr. Boyd recommended Executive Council approval. Mr. Barton moved approval of the settlement to FACC and Ms. Murphy seconded the motion. The motion carried unanimously.

STATUS OF 05-06 BUDGETS

Mr. Dew reported that all sixty-seven budgets have been submitted. He thanked the Clerks and their staff for their hard work. Mr. Dew, after reviewing all sixty-seven budgets, reports that he needs to call approximately 25 – 30 clerks to clarify numbers and to request answers to questions as needed. Twenty-one clerks have submitted a 5%-8% increase in projected revenues; ten have projected an 8%-12% increase; and six have projected an increase of more than 12%. These numbers could change. If the surplus dollars come in as projected, we will have enough in the Trust Fund to take care of the deficit counties and to fund the 2% increase to cover the staffing of new judges and magistrates issue. Ms. Morse reported that Budget Certification will take place at the next Executive Council meeting on September 13, 2005.

REPORT ON CLERK REVENUE AND EXPENDITURES

The Clerk revenues and expenditures report done by CCOC staff Laura El Kadiri states that in June local revenues were a little higher than in previous months while expenditures were similar to other months. We do realize that expenditures will be higher in September especially given that some Clerks will have three pay periods. At our June meeting, Mr. Dew reported there was a \$9 million in the Trust Fund. Since that

time, DOR has swept \$9 million from the Trust Fund. We did not know about the sweep until sometime after it was done. DFS swept the Fund because the money was coming in every month and it looked as though the sweep would not harm the clerks in any way. It would appear that they were correct considering we have approximately \$4.5 million built back up in the Trust Fund as of the end of last month. Money is continuing to be sent to the Trust Fund. Mr. Dew noted that the DFS report for June is included in the meeting packet for your review.

Mr. Ruvin asked if the money DFS swept went into the state's general revenue fund. Ms. Morse reported that it did go into the general revenue fund but that we are trying to get some of it back. Mr. Ruvin asked if this was contrary to the legislation which states that Clerks will operate on these collections. Ms. Morse stated that the state does have the right to sweep each month and especially at the end of the year. Mr. Ruvin suggested that it would be wiser for them to sweep the Trust Fund at the end of our fiscal year instead of the state fiscal year. Ms. Morse suggested that this would be ideal but reiterated that they have the right to sweep at any time. She expressed that we do need to know before the Fund is swept so we can make sure that all Clerks' needs are met. Mr. Dew noted that it would also be beneficial if the state would allow the Corporation an opportunity to allow a certain percentage of the Trust Fund each year to be used by the Clerks to fund specific additional needs based on established criteria.

OTHER BUSINESS

ISSUES FOR SEPTEMBER 13, 2005 MEETING IN SARASOTA

Issue #1: Ms. Morse reported that by October 15, according to s. 28.35(3)(a), F.S. we must report the performance of each clerk in meeting performance standards to the Legislature, CFO, and DFS. We have requested that all counties get this to us by September 1. If we do not get this data from a county, we will be forced to assume that that county is in non-compliance. This documentation will also be necessary for our request to the LBC regarding the judges and magistrates issue.

Issue #2: CCOC held a workgroup meeting August 18, 2005 to discuss a staffing strategy model for new judges and magistrates. Information from this workgroup will be available very shortly. The salary guideline on which the workgroup tentatively agreed is that any new staff hired would be capped at \$35,000 per year. The question still before the group is how many staff are required to support a new judge/magistrate. The workgroup recommended 2.5 staff persons per judge, magistrate, or hearing officer for counties under population 500,000 and 3.0 for counties over population 500,000. This includes all staff doing any type of work for the new judge. Mr. Forman suggested that he requires more than three staff people for each new judge. Ms. Morse stated that the workgroup tried to strike a happy medium knowing that the recommendations wouldn't fit the needs of all counties. Ms. Morse also recognized that at times a senior judge could be present in addition to a county's existing judges. A one-to-one staffing ratio for this situation would be insufficient. Ms. Morse asked Clerks for any statistical information regarding workloads when senior judges are present.

Mr. Ellsperman, Clerk of Court, Marion County, asked if the \$35,000 cap included benefits. Ms. Morse stated that it does. By example, she suggested that a new employee beginning salary package is approximately \$20,000 with a benefits package of 30%, bringing the total salary to \$26,000. She feels that Clerks, for purposes of staffing a new judge, are more likely to promote an existing employee to this position. If the promoted employee was earning (including benefits) \$30,000 and now will earn \$35,000, this amounts to an approximate net increase of \$5,000 over his/her previous salary. The Clerk must then hire a new person for the vacated position (\$26,000 including benefits). The increased expenditures are \$5,000 for the promoted employee and \$26,000 for a new employee, totaling \$31,000 and leaving a \$4,000 buffer. In some parts of the state salaries will be more or less than these amounts. Mr. Ruvin asked about 40% benefits packages such as Dade County must provide. Ms. Morse reminded the Council that what was discussed is a realistic guideline that hopefully will satisfy the majority of clerks.

Mr. Ellsperman also asked about funding for positions for the magistrates they got last year. Ms. Morse said the direct answer is yes we are moving forward as if we can receive funding for this since we haven't received any negative feedback from either legislative or DFS staff regarding this issue. Mr. Dew reported that in his meeting last week with legislative staff, DOR, and DFS, this question came up again. The question from staff was, "How were clerks able to staff the magistrates when they arrived last year?" He responded that in one particular case, they pulled staff from other areas and performance in those areas suffered. They also asked about magistrates who don't need clerk support. Mr. Dew feels that this is the exception rather than the rule. As we are able to answer their questions, we have agreed to include these magistrates in our staffing model.

Mr. Barton remarked that his budget is break-even. He was impacted last year and will be again this year with the arrival of a new judge who will not be a revenue generator. Ms. Morse stated that the staffing model is not based on whether the judge will generate revenue. It's based on the needs that the Supreme Court and OSCA presented to the Legislature. What we need to help Legislative staff and Legislators to understand is that getting a new judge is not a result strictly of increased case load. If a county has been short-staffed, the existing judges may not have been able to hear the volume of cases already in existence in the county. When a new judge, magistrate, hearing officer is assigned, that person picks up the back log of cases. Probate and Juvenile Dependency cases are revenue neutral at best. As with civil cases, counties will already have collected the fees due. Ms. Morse also stated that if a county requests CCOC go to the LBC to ask for funds for staff for new judges but that county has projected an increase in revenue commensurate with that request, the LBC may ask the county to cover part or all of the request itself. They are asking us to be realistic with our requests. Mr. Ruvin asked about counties that have previously been under-funded. Ms. Morse stated that we are hearing that the LBC is not necessarily going to take that into consideration. Mr. Weiss asked, 'If your revenues increase by 6% but you're offsetting expenses (salaries and benefits) also increased by 6%, would the Clerk have the opportunity to document that before the request is taken to the LBC? Ms. Morse stated that the clerk would have the right to and should present this information. Finally, Ms. Morse reminded Clerks that if a county has not provided CCOC with data on

Performance Measures, timeliness and collections, CCOC will not take that request for additional funds to the LBC.

Mr. Ruvin asked about the make-up of the Legislative Budget Commission. Ms. Morse responded that the Commission is made up of seven House members and seven Senators. Honorable Joe Negron is the current Chairman. Members are appointed for a two-year term with the House and Senate alternating years of chairmanship. Mr. Dew will email the list of members to every clerk.

Ms. Morse reminded everyone that the policies for the staffing strategy and costs will come up for a formal vote at the September 13 meeting. If you have any additional issues or concerns, please be prepared to discuss them then.

ELECTION PROCESS

Mr. Dew provided an update on the election process. He noted that he contacted - by fax, email, and phone - each of the Clerks in the same population group as Mr. Fuller, who's vacated seat we are seeking to fill. These communications went to Mr. Burke, Ms. Gardner, and Mr. Ellis. Mr. Burke indicated that he is interested in serving. Ms. Gardner and Mr. Ellis have indicated that they cannot serve at this time. Mr. Dew spoke with Mr. Boyd regarding the process and it was determined that our Plan of Operations requires a formal election even if there is only one candidate. All of these three clerks technically are candidates and will be listed on the ballot. However the ballot will indicate which candidates have shown an interest in being elected and which have not. Ballots and instructions will be mailed out this week. Our goal is to have someone elected and in place for the September 13 meeting.

NEXT MEETING

The next meeting of the Executive Council will be held at 1:00 p.m. Tuesday, September 13, 2005 in room St Armands I of the Ritz Carlton Hotel in Sarasota. There being no further business, the meeting was adjourned at 3:10 p.m.