

**MINUTES**  
**FLORIDA CLERKS OF COURT OPERATIONS CORPORATION**  
**EXECUTIVE COUNCIL**  
**TUESDAY, SEPTEMBER 13, 2005**  
**SARASOTA, FLORIDA**

The September 13, 2005 meeting of the Executive Council of the Florida Clerks of Court Operations Corporation (CCOC) was called to order at 1:00 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 Ken Burke, Honorable Annie Mae Murphy, Honorable Harvey Ruvin, Honorable Tim Smith, John Dew, Joseph Boyd, and Judy Zorn. Honorable Howard Forman and Honorable Richard Weiss were present by telephone. Ms. Morse announced that a quorum was present. Mr. Burke was warmly welcomed as a new Council member.

**MINUTES**

Ms. Morse asked for a motion to accept the Minutes of the August 24, 2005 teleconference as distributed. Mr. Forman so moved with Mr. Smith seconding. The motion passed unanimously.

**SUBCOMMITTEE REPORTS**

**TREASURER'S REPORT**

Mr. Barton stated that the Corporation's new fiscal year began July 1 and as of September 7, 2005 the Corporation balance is \$178,722.11 with pending revenues of \$218,000 from DFS and pending payments of \$61,998.49. The expenditures are broken out by category on page two of the report. The grand total of expenditures for this fiscal year is \$63,140.39, which is 6.9% of the total budget. Mr. Dew explained that we have received \$105,000 from DFS since the report was prepared. Mr. Barton moved the Financial Report be filed for audit. Seconded by Mr. Burke, the motion passed unanimously.

**PERFORMANCE MEASURES**

Ms. Murphy reported that we now have collections data from fifty-eight counties. Nine clerks have not yet responded. Today we need to adopt the Fiscal Management / Business Rules which were approved by the Executive Council at their September 2004 meeting. Once approved, Clerks will need to send this data to CCOC by October 20. The form involves questions with Yes / No check boxes, the questions applying to the fiscal year indicated by each question. Mr. Dew reviewed each question on the Business Rules.

Mr. Fry, Clerk of St. Lucie County, recommended that consideration be given to counties impacted by catastrophic events such as hurricanes with regard to the timely filing of performance measures reports. Ms. Morse responded that there is consideration given to this since the standard being set is that the Clerk would meet 8 out of 12 months

the first year. Mr. Ruvin moved to accept the Business Rules. The motion, seconded by Mr. Burke, passed unanimously.

Mr. Barton moved that the fiscal management annual reports should be due annually by October 20 of each year. The motion, seconded by Ms. Murphy, passed unanimously.

### **BUDGET AMENDMENT REQUEST – PASCO COUNTY**

Mr. Dew stated that revenues in Pasco County have not come in as projected. Pasco County's certified revenue projection for FY04-05 was \$10.5 million. Their actual revenues are expected to be approximately \$9.7 million. They have determined that they will not exceed their total expenditure cap which is \$10.5 million. Rather, expenditures should be in the range of \$10.1 million. They are requesting \$454,658 in monies from the Trust Fund to offset their lack of projected revenues in order to meet their expected expenses. Mr. Smith moved to approve the Pasco County BAR and Ms. Murphy seconded the motion. It passed unanimously.

### **PERSONNEL**

Mr. Smith reported that he has nothing at this time.

### **LEGISLATIVE**

There was no Legislative report at this time.

### **BUDGET CERTIFICATIONS**

Mr. Barton requested that Mr. Dew and Mr. Robertson present the FY05-06 budgets for certification. Mr. Dew thanked Clerks and their staff for submitting the budgets in a timely manner. The technical review is complete; when necessary, Clerks have been contacted; and questions were answered. We now need to certify these budgets and then the CCOC is required to provide a report to the Speaker of the House, President of the Senate, DFS, and DOR with the certified budget amounts and how much money is being used from the Trust Fund. Mr. Dew pointed out to those listening in, that all the information with regard to the budgets being presented today is currently on the website. He asked Mr. Robertson to provide an overview of the budgets.

Mr. Robertson reported that the methodology for calculation of the 05/06 expenditure cap is now based on projected revenue growth rate of court fines, fees, service charges, and court costs of each Clerk in fiscal year 05/06, that number multiplied by the 04-05 approved budget for the county. He noted that the Title IV-D child support payments are no longer part of the expected revenues for Clerks in the court-related budgets. However, forfeitures are separated out in the projected revenues in the 05-06 budget. The other adjustment to the final cap will come as a result of the Legislative Budget Commission's decisions regarding the increases in expenditures allowed for new judges and magistrates.

The new statewide total cap is \$421.1 million. With projected revenues of \$464.3 million minus projected expenditures and reserves of \$419.3 million, we estimate a \$45 million surplus to Trust Fund. Compared to last year, we see a growth rate of 6.4% in revenues. The expenditure cap grew at a rate of 6.5% and the caseloads of criminal courts by 3.3% and civil courts by 1.1%. All clerks have met the criteria on the Budget Approval Checklist. There are forty-seven surplus counties and twenty deficit counties with the

surplus counties generating \$54.2 million and the deficit counties needing \$9.2 million from the Clerks' Trust Fund.

Mr. Barton moved to approve each clerks budget expenditure cap approved as laid out in the spreadsheet entitled 05-06 expenditures and reserves Caps and Differences on sheet number 1, Tab #4 of our meeting packet to approve each Clerk's submitted expenditure cap at a statewide total of \$421,127,347 and each Clerks submitted budget at a total of \$419,337,869. Mr. Weiss seconded the motion. The vote to approve was unanimous.

### **SAFEGUARDING THE TRUST FUND**

Earlier this year we passed a policy regarding how we would assist a Clerk affected by a hurricane or other natural disaster. The policy provided that the Clerks' Trust Fund would provide funds to Clerks that loss revenue due to a catastrophic event such as a Hurricane. It further provided that the Clerks could be given dollars from the Trust Fund if their projected revenues were lower than expected, but only to a certain percentage. Determining the percentage amount was to be delayed until after all the budgets were submitted so the Council would know how much surplus was projected to be in the Trust Fund.

For purposes of discussion, Ms. Morse suggested that we could propose that the Clerk would be responsible for their 1<sup>st</sup> 1% of a shortfall and the CCOC would potentially aid the Clerk with up to another 2% of their projected revenue shortfall. Ms. Morse cautioned that counties not realizing their projected revenues should first try to cut expenditures if they see revenues are falling short of projections.

Mr. Dew pointed out that there would potentially be sufficient funds in the Clerks' Trust Fund to handle a 2% safeguard after the Clerks handled the first 1% shortfall. Mr. Weiss made a motion to adopt the policy as discussed and seconded by Mr. Barton. The motion passed unanimously.

### **EFFICIENCY FUND**

Mr. Dew pointed out that with a projected \$45 million surplus in the Trust Fund for FY 05/06 that the Council might also want to consider working with the Legislature to be allowed a 2% set aside to help Clerk offices that have been historically under-funded. He noted that one of the purposes for the passage of Revision 7 was to bring up the funding in a number of jurisdictions throughout the state where there appeared to be unequal justice because of a lack of proper funding. If a Clerk was under-funded in 2004, and received only a 3% increase in 2005, and is unable to increase their revenues by only a small percentage, then they will continue to be under-funded. Therefore the intent of Revision 7 is not being realized in those jurisdictions.

Discussion took place concerning the term "Efficiency Improvement Investment Fund" used to describe this set aside. Ms. Morse stated that until we have definitions for what we mean by "efficiency improvement", she is not necessarily in favor of reserving monies for that purpose. She recommended that we discuss the feasibility of establishing an efficiency task force to assist deficit clerks determine why they are deficit and possibly suggest remedies. She doesn't ever foresee that all sixty-seven counties would be surplus counties.

Mr. Burke suggested that being deficit doesn't mean a county is inefficient and asked if efficiency could be self-reporting. Ms. Morse suggested that a task force might

find something the Clerk hasn't thought of which could be a help to the Clerk suggesting that information exchanged between the taskforce and the clerk be kept between the task force and the Clerk.

Ms. Morse suggested tabling this issue until the November meeting. Mr. Ruvin moved with Mr. Burke's second that we table this discussion until November. The motion passed unanimously.

### **BUDGET CERTIFICATION REPORT DRAFT FORMAT**

Ms. Morse introduced the form for the Annual Budget Certification Report due to the State October 15<sup>th</sup> as found in the member's packet . She asked if any members had suggestions or concerns with the format of the report. There were none.

Ms. Morse asked if the Council members had any questions or concerns with the draft Monthly Revenue - Expenditure Report that will be used to collect data beginning October 2005 as found in their packet. There were no questions. Mr. Ruvin moved to accept the forms. Seconded by Mr. Barton, the motion passed unanimously.

### **CONTRACTS**

#### **DFS CONTRACT**

Mr. Boyd distributed the proposed contract with DFS which he received yesterday. He noted that while many of the provisions are the same as the current contract, the changes include 1) adding the Legislative Budget Commission process – DFS envisions the LBC to be a place of last resort for funding, not first, 2) including performance standards quarterly seminars, 3) provisions about timeliness and deliverables, delegation of authority and all work done on task assignment basis, 4) presenting proposed changes in the Plan of Operations prior to implementation, and 5) a decrease of \$120,000 from what we'd requested for this year and \$20,000 from last year's budgeted amount which we are checking.

Ms. Murphy stated that she feels performance measures need not be done at every quarterly training session. Ms. Morse agreed that it might be overkill to do it every quarter, annually or twice a year being sufficient. Mr. Pittman, Pasco County Clerk suggested that passing the contract would impact him, and he would like to have more time to review the contract.

Ms. Morse suggested that we could flush out the issues today and then negotiate and approve the contract by telephone meeting before September 30. Mr. Boyd stated that his receiving this contract last night and working as late as this morning on the FACC Education contract has made this very difficult. He said he understands from discussions with DFS that they feel strongly about their role and feels strongly that they want us to succeed. Mr. Ruvin asked if it would be possible to defer the vote today and allow time for the Council to review the contract since we just received it and also allow time for Mr. Boyd to meet with DFS afterward. He is concerned that we could be opening ourselves to problems for approving the contract without due review. Mr. Boyd said we, by our Plan of Operations, can continue this meeting and issue until a time certain. Mr. Ruvin moved to continue this meeting until a date certain for the purpose of discussing the DFS contract; Mr. Burke seconded the motion. The motion passed unanimously. It was agreed that we would continue the discussion of this issue at a time

certain of 10:00 a.m. Tuesday, September 20. Mr. Dew said he would mail out a copy of the draft DFS contract to all the Clerks this week.

Mr. Smith said he is happy that DFS takes its role in this seriously. He appreciates that they are on the phone; however, he noted that it would also be helpful if they could send someone to the meetings in case we have specific questions.

### **FACC EDUCATION CONTRACT**

Mr. Long and Mr. Boyd have worked diligently to negotiate the contract. Mr. Long is in agreement with the contract as it is being presented today pending review by Mr. Baggett. Mr. Boyd recommends the resulting contract be approved. Mr. Long asked when the contract will take affect if it is approved today and will expenses of the current FACC Conference taking place this week is meeting be covered. Mr. Boyd assured him that it would take affect today and the expenses would be covered. This is the \$400,000 contract between the Corporation and FACC. At issue is the performance training sessions DFS is requesting be done quarterly. The language to be included in the FACC Education Contract will state that Article V Revision VII Budget Provisions will include quarterly performance standards training and best business practices training (Section II-A). Mr. Boyd cautioned that if the Corporation does not approve the DFS contract before September 30, there will be no funding for education after that date.

Mr. Ruvin moved the adoption of the FACC Education contract. Mr. Barton seconded the motion. The motion carried unanimously.

### **PROFESSIONAL SERVICES**

CCOC was prepared to submit for your approval a contract with FACC for Professional Services. It was drawn in the same format that DFS requires and includes no guarantee of a minimum amount of work, task assignments, and no sole-sourcing. Mr. Boyd and Mr. Baggett have not yet been able to iron out that contract but hope to have it ready for Executive Council review by the meeting continuation on September 20.

### **LEGISLATIVE BUDGET COMMISSION BUDGET REQUESTS PROCESS**

The Staffing Strategy Workgroup, made up of Clerks' staff representing small, medium, and large counties who are receiving a judge in November 2005 or in January 2006 was charged with determining how many FTE's to allocate for staffing new judges and the base salary for those new staff. The workgroup recommended that for small counties, 1.5 FTE's, medium counties, 2.5 FTE's, and for large counties, 3 FTE's. While these numbers may not be optimal for every county, these numbers are justifiable due to surveys submitted by Clerks back in July. The staff can be hired at the beginning salary (including benefits package) of an entry level staffer for this work or \$35,000 per FTE, whichever is lower .

Pursuant to these recommendations, Mr. Shea, Pasco County, presented his staffing costs. Mr. Smith noted that every county has a different pay scale and different costs and asked why we can't just let it be that. Ms. Morse stated that we were asked to develop a staffing strategy and financial impact so that the Legislative Budget Commission will know what to expect cost-wise when approving new support staff for these judges. The LBC asked for only salary and benefits, not associated operating and modular costs. Mr. Forman suggested that since we are doing so well, and we have the ability to help deficit counties through the Trust Fund, it will be hard for us to complain.

Ms. Morse also reported that if a county projects a revenue increase, the LBC may question their requesting additional monies saying they can be funded through their increased revenue – especially if that county is not expending to their budget cap. She feels we need to lobby the individuals on the LBC and seek resolution through DFS and legislative staff. Mr. Barton asked about funding for magistrates counties received a year ago. Ms. Morse reported that magistrates received a year ago will be included in the requests for funding from the LBC. Mr. Forman moved to accept the proposal and Mr. Weiss seconded the motion. The motion carried unanimously.

#### **DETERMINATION OF MEETING PERFORMANCE STANDARDS**

Ms. Morse noted that the staffing strategy group also provided recommendations on how the CCOC could determine if a Clerk was meeting performance standards. As part of the budget request, the CCOC has to determine that each Clerk seeking a budget request has met or exceeds their performance standards.

We have tried to come up with a realistic guideline regarding performance standards realizing that few could meet or exceed every standard with only having one quarter worth of data. The recommendations from the workgroup are, regarding timeliness, if you meet or exceed ten of the twenty standards, you meet the timeliness standard. Regarding business rules / fiscal management, if you meet six of the nine business rules, you meet the standard. Regarding collections, if you meet four of the nine standards, you meet the collections standard. When we go before the LBC, we need only indicate that you meet the timeliness (10 of /20), and collections (4 of 9). We may not have the fiscal management reports from the Clerks yet but if we do they will have to meet 6 of 9.

Ms. Morse stated that if you are getting a new judge and you haven't submitted your collections data, it MUST be in the CCOC office no later than Monday, September 19. If it has not been received by Monday, we will not take your request to the LBC. Mr. Burke moved that we approve the proposal for meeting or exceeding performance standards criteria. Mr. Smith seconded the motion.

Ms. Ewing asked when we'll be taking these requests to the LBC. Ms. Morse believes they will meet the 20<sup>th</sup> of October, but we have not yet been given a firm date or time. Mr. Dew will distribute all the information as soon as we have it. The motion passed unanimously.

#### **REVENUE – EXPENDITURE REPORT**

Mr. Dew stated that July revenues were approximately \$40 million with expenditures of approximately \$35 million. We are tracking the Trust Fund to make sure there are enough dollars in the Trust Fund. The Trust Fund has built back to over \$7 million after having been swept. Mr. Dew has talked with the offices in jeopardy of going over their expenditure cap.

#### **OTHER BUSINESS**

There being no further business, the meeting was recessed at 4:07 p.m. to be continued by telephone conference at 10:00 a.m. September 20, 2005.

**MINUTES**  
**FLORIDA CLERKS OF COURT OPERATIONS CORPORATION**  
**EXECUTIVE COUNCIL**  
**TUESDAY, SEPTEMBER 20, 2005**  
**TELECONFERENCE**

The September 20, 2005 continuation of the September 13, 2005 Executive Council of the Clerks of Court Operations Corporation (CCOC) was called to order at 10:00 a.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 Ken Burke, Honorable Howard Forman, Honorable Annie Mae Murphy, Honorable Tim Smith, Honorable Richard Weiss, John Dew, Joseph Boyd, and Judy Zorn. Honorable Harvey Ruvin was absent due to the hurricane coming across Dade County this morning. Ms. Morse announced that a quorum was present.

**FACC EDUCATION CONTRACT**

Mr. Boyd announced that we need to amend the CCOC – FACC Education Contract entered into at the Executive Council meeting in Sarasota on September 13, 2005. Since that meeting, Mr. Boyd met with DFS staff who were receptive to having the performance measures standards training be included only semiannually at the FACC meetings focusing on court functions. We need to amend the Education Contract, II, A, 8 to say “includes semiannual performance standards training and best business practice training to be done at the January Court Track Seminar and the Summer Training Seminar. Mr. Boyd stated he will work with FACC and with DFS to ensure that this language or other substantially similar language is acceptable. The CCOC-DFS Contract will also reflect this change.

**DFS CONTRACT**

Ms. Morse decided that the best approach to discussing outstanding issues with the DFS contract would be to utilize the memo Mr. Dew prepared outlining changes between last year’s CCOC-DFS contract and the current draft contract before the Executive Council. She invited Mr. Boyd to interject whenever he felt it necessary to clarify the issue being discussed.

**Page 1, Section 2.2** – Ms. Morse invited discussion of the amended language in this section of the contract stating that CCOC will develop a method for determining whether and to what extent a Clerk may be entitled to seek an increase in its maximum annual budget to accommodate increased judicial staffing via the Legislative Budget Commission. There was no discussion.

**Page 2, last sentence of 2.2A** – Ms. Morse invited discussion of the amended language referring to language passed by the Legislature increasing Miami-Dade’s expenditure cap. There was no discussion.

**Page 2, Section 2.2B** – Ms. Morse noted that this is a new section which provides the methodology employed in determining the Clerks’ 05-06 expenditure caps. There was no discussion.

**Page 2, Section 2.2C** – Ms. Morse stated that this is a new section requiring the Corporation to provide DFS the documentation supporting requests for increases in funding which will be submitted to the Legislative Budget Commission (LBC) so that they can review them for accuracy and completeness. Mr. Boyd stated that he and Mr. Dew were told by House and Senate staff and DFS that, although their role in the LBC Process would be defined and limited, DFS would be actively involved in the LBC process. Through negotiation and compromise, DFS has, with this contract, defined their role to be one of reviewing for accuracy and completeness. At the same meeting, Mr. Dew and Mr. Boyd were told that applying to the LBC should be a matter of last resort and should be pursued only when absolutely necessary.

Mr. Pittman, Pasco County Clerk, remarked that he is glad the Clerks have the opportunity to participate in discussion of the Contract. He feels that the Contract is not even a contract, that it is dictatorial and heavy-handed, and that it is a terrible document which demeans clerks and forces them to do many things beyond the scope of the CFO. He feels it will be disastrous for his office and that the proposal should simply be rejected and reworked or replaced. Mr. Shea, Finance Director of Pasco and Mr. Cason, Clerk of Columbia County, also commented that they believe this is a move on the part of DFS to take over the operation of the CCOC. Mr. Smith said that the LBC would most likely approach DFS once we submit our request(s) to the LBC anyway. He also stated that this would be the same document we would be sending to the LBC, so the provision does not require more work on our part. Mr. Forman stated that although DFS is not mentioned in the statute, they have long been involved in the process. Ms. Morse feels that if there is an error in the documentation, she would like to know that and be able to make the correction before we take it to the LBC.

**Page 2, section 2.2D** – Ms. Morse stated that this is a new section requiring CCOC to submit quarterly reports to DFS regarding LBC requests, results of such requests, and the balance of the 2% allocated under the law.

Mr. Dew stated that the quarterly report will apprise DFS of how much of the 2% (approximately \$8 million) available for these requests has been used. Ms. Morse asked Mr. Boyd to get clarification on this language.

Mr. Boyd suggested that with the redaction issue still out there, this may be related to the possibility that we will have to go back to the LBC regarding that issue for additional funding. He said that he and Mr. Dew will seek clarification from DFS.

**Page 3, Section 2.3B** – Ms. Morse stated that this is a new section which requires the Corporation to develop a uniform system of performance standards as required by the statute. Ms. Morse related that, although adopt these as annual performance standards, they should be met quarterly such that if the annual performance standard is 40%, Clerks should be meeting a standard of 10% per quarter. Her opinion was derived from an email

from Mr. Jim Dwyer, Auditor General's Office stating, "While reducing the standard to one-half for the six-month period might be appropriate, I feel it is the CCOC's responsibility to establish one-half of the annual rate as the six-month standard and I am reluctant to do so in the guidelines. If the CCOC adopts the six-month standard, we will cite that in the guidelines." She will open this issue for more discussion at the September 30 continuance of this meeting.

While performance standards are mandated in the statute, there was discussion among Council members as to how realistic our standards are. Ms. Morse agreed that we may or may not have standards too high, but stated that currently we do not have enough data to make that decision. Counties' submission of collections data to CCOC will enable us, over time, to determine whether these standards are realistic. With the current method of applying performance standards, approximately 50% of the clerks would be cited for not meeting all performance standards. Clarifying the application of performance standards should assure Clerks that auditors are not applying annual standards to each quarter.

Ms. Morse further stated that the current model under which Clerks are working is flawed. The model assumes that in July 2004, all Clerks were fully staffed or over-staffed and that all Clerks do the same things in the same way. With neither being true, we need to correct the model. Ms. Murphy stated that she struggles daily to fulfill the duties for which she was elected, and this is made more difficult by having to submit reports to make the state of Florida understand that she is doing her job. Ms. Morse recognized that small counties often do not have the staff to get this paperwork done; but with performance standards being required statutorily, we must find a way to get our performance standards reports completed and submitted.

Mr. Barton noted that the contract states that we need to submit changes for DFS approval before implementation. Ms. Morse responded that statutorily it is up to the Clerks and CCOC to establish performance standards. Mr. Shea reported that the section of the contract to which Mr. Barton was referring is on Page 4, Section 2.7. Ms. Morse said this refers to the CCOC Plan of Operations and will be taken up later during the meeting as performance measures are not mentioned in the Plan of Operations.

Mr. Burke requested that we add clarifying language to Section 2.3 stating that Section 2.7 has no affect on Section 2.3. Mr. Boyd stated that while he doesn't believe the two sections are in conflict, he will work on having this language added.

**Page 3, Section 2.4** – Ms. Morse stated that this is a new section requiring the Corporation to provide training for Clerks with respect to performance standards. Such training was to have been required quarterly. However, after discussions with DFS, they have agreed that semi-annual training would be sufficient. It is noted that Legislative staff has expressed concern that the Corporation needs to do a better job of collecting and reporting performance standards data.

When asked if FACC can deal with this language, Mr. Baggett, FACC General Counsel, reported that FACC doesn't see the need for limiting or for requiring performance standards training but can accept the language that it will be provided twice a year. FACC considers this more of a potential for limitations than an opportunity. He later stated that he would prefer performance training be left out of the contract entirely and that there is nothing in the statute regarding the number of training sessions to be provided.

**Page 4, Section 2.7** – Ms. Morse stated that this is a new section requiring the CCOC to present to the CFO or his designee, for their review and approval, any proposed changes to the Plan of Operations no later than ninety days before the proposed implementation of the proposed changes.

Mr. Smith requested that the sentence, “These changes shall be reviewed by the CFO for approval,” be stricken. Mr. Barton and Ms. Murphy concurred with Mr. Smith. Mr. Boyd clarified that changes to the Plan of Operations could be approved with implementation of changes taking affect ninety days after the approval date. He explained that the DFS concern was that this past year, the Plan of Operation was put forth and adopted immediately. A section of the Plan required a fourteen day notice of the Agenda. Within weeks, Florida had three hurricanes; and with Clerks’ offices in dire need of CCOC action, there was extreme consternation as to how we could meet the fourteen day provision. The Governor’s declaration of a state of emergency allowed the Corporation to suspend the rules enabling the Executive Council to have a meeting without fourteen day notice. DFS is also concerned that they have a contract with an entity which could make a substantial unanticipated change to their Plan of Operations without the DFS knowing what the change or its impact to this contract might be. The statute does not state that the Plan of Operations is subject to their approval. But it does state that, with regard to the contract, they have the right to terminate the contract if they find themselves under contractual obligation with an entity whose Plan of Operations they find untenable. He further stated that the intent of this language is not to micromanage the Corporation.

Ms. Morse’s concern was not with submitting proposed changes, but rather with the ninety days being an extraordinarily long time between submittal and implementation. She also stated, with Mr. Boyd’s concurrence, that there is a provision in the Plan of Operations that states that changes take affect at time of adoption. Mr. Boyd reported that the Plan of Operations can be changed to accommodate this provision of the contract and that he would address with the DFS the possibility of shortening the ninety-day time frame.

Mr. Baggett stated that it is his firm’s opinion that this section of the contract clearly exceeds the authority of DFS. The s. 28.35, F.S. language requiring that CCOC conduct certain operations pursuant to a contract with DFS does not extend to the Plan of Operations which is a decision of all sixty-seven clerks, not of the Executive Council and not statutorily subject to any involvement by DFS. He further stated that “in discussions with the CFO, not with staff but with the CFO, there was a question as to where this language originated as it was not (his) understanding that his staff initiated such language.” From FACC’s perspective and on behalf of the sixty-seven Clerks, he warned that there would most assuredly be a challenge to the contract if this provision remained in any manner.

Mr. Forman asked for Mr. Baggett’s opinion as to what we should do in the alternative. Mr. Baggett responded that to those aspects dealing with statutory provisions which shall be done pursuant to a contract with the CFO, he is in agreement. But the Plan of Operations reaches far beyond the CFO’s statutory responsibility dealing with the budget process found in s. 28.35 and 28.36 F.S. DFS’s role is supervisory to insure the appropriateness of the CCOC’s actions, to insure they are following the mandates of the

statute, not to be directives of the operations of CCOC. Mr. Forman asked Mr. Baggett if Mr. Gallagher, CFO, knows this. Mr. Baggett responded that “he knows now”.

Ms. Morse requested that Mr. Boyd see if we can have this section deleted from the contract. Mr. Boyd said he would take this issue to DFS for their consideration. Mr. Boyd asked, to the extent that DFS wants to see changes before implementation, what is the feeling of the Executive Council. Ms. Morse stated that she agrees that this section exceeds the statutory responsibility of DFS. She further stated that they may look at the changes, but they do not have the right to approve or disapprove them. Mr. Weiss suggested retaining the language, “During the life of this agreement, in order to ensure continuity in the implementation of its Contractual duties and responsibilities, the Corporation agrees to submit any proposed change(s) to its plan of operation,” and deleting the rest of the section. Mr. Boyd will propose this language to DFS.

**Page 6, Section 6.1** – Ms. Morse stated that this section has been amended stating that “All delegations of duties shall be on a task assignment basis subject to the supervision of the Executive Council of the Corporation.” When Mr. Barton asked about deliverables, Mr. Dew stated that there were no changes to the deliverables, so they were not included on this information sheet. Mr. Barton’s asked specifically that under Section 3.4 we are tied to a 5-day limit for review and submission to DFS but DFS is not, under Section 3.6, tied to a specific time limit for their response. He recommends that Section 3.5 also limit DFS to 5 days for review and response. Mr. Boyd stated that, although this is not a change and may not have been an issue in the past, he’ll be happy to address this with DFS.

Mr. Pittman stated that, for housekeeping purposes, Page 4, Section 3.4 provides, in part, that deliverables, which by their nature require additional time for review, will have an alternative time frame for review as stated on Exhibit A. He stated that Exhibit A is silent as to any alternative time frame for review and probably should be modified.

Mr. Baggett asked if a reason was given for changing from deliverables to task assignments given that DFS has the right to approve subcontracts. He feels this is very limiting and that it runs contrary to DFS’ contract with CCOC which is a deliverables contract. He also feels this is outside DFS or the CFO’s statutory responsibility. FACC feels this is restrictive beyond the statute. Mr. Boyd took responsibility for the language stating that DFS has a concern that CCOC has not shown sufficient supervision over the funds that go to subcontractor, FACC. DFS has stated concerns directly to CCOC that the Corporation doesn’t know what FACC has done until after they’ve done it and billed for it. DFS and the auditors have a deep and continuing concern about this issue. DFS feels that if CCOC assigns tasks to its subcontractors, then necessary supervision can be exercised by the Corporation. The language in the contract allows that tasks are not assigned by the Executive Director alone, but rather in conjunction with the Chair of the CCOC Executive Council and further the Executive Council has the right to override and intervene. The compromise, task assignment, was borrowed from the Department of Environmental Protection. The language that the contract does not guarantee work comes from DEP as well. The language that no subcontractor is a sole source comes from CCOC’s audit citation from the Auditor General last year. The FACC education contract is sole-sourced; but the contracts referenced in this section of the contract are not sole-sourced.

Ms. Murphy recommended that Mr. Boyd work to have this section stricken from the contract. Ms. Morse respectfully opposed that recommendation stating that all members of the Executive Council have a fiduciary responsibility. The Council must be aware of, knowledgeable of, and approving of all work being done and paid for by the Corporation. The only way to do that is to be aware of the work being done in advance. This language is not intended to take away or limit work, but to make sure CCOC knows about such work in advance. The same language is in the General Counsel and Robertson and Associates, Inc.'s contracts. The language provides for continuity among these contracts.

Mr. Baggett stated it is his understanding that this was not a DFS demand or and, as such, it falls outside of any statutory provision providing for activities of CCOC pursuant to a contract with DFS. So if it is included, the only assumption is that it is included because CCOC wants it and not DFS. If that's the case, that CCOC wants to limit itself to task-assignment contracts, that of course is your decision. From the standpoint of FACC, we think that Clerks everyday operate on a post-audit basis in their fiduciary responsibilities to their counties, that there is clearly accountability under a deliverables contract for the use of the money."

The Executive Council was split in its opinion as to whether this section of the contract should remain or be stricken. Mr. Burke and Mr. Smith stated, for the record, that he would like to have the section stricken while Mr. Weiss stated, for the record, that he would like to see it remain in the contract. Ms. Morse believes that Mr. Boyd understands both sides of the issue and can negotiate with DFS appropriately.

**Exhibit A, General Deliverables** – Ms. Morse stated that the amount of the contract is \$800,000 which is \$22,000 less than the contract amount for FY04-05. This amount was based on expenditures in FY03-04 and FY04-05. There was no discussion.

**Exhibit D, Methodology for Expenditure Cap** – Ms. Morse reported that this is informational language referring to the Legislative change in Miami-Dade's cap and the LBC process. The language addresses what was passed by the Legislature. There was no discussion.

**Exhibit E, Training Deliverables** – The language in the contract remains the same as in the current contract, whereas CCOC had hoped to change the due dates for deliverables to match the Education Contract established between CCOC and FACC. Mr. Boyd reported that he has spoken with DFS and expects a response this afternoon, but they felt they would be able to accommodate our request in this matter.

Ms. Morse asked if there were any other issues with regard to this contract. There being none, Ms. Morse referred the issues discussed today to Mr. Boyd for further negotiation with DFS. He will bring back the results of that negotiation for discussion at our meeting September 30, 2005 at 10:00 a.m.

## **BUDGET 05/06**

Ms. Morse asked Mr. Dew to report on the Clay County budget change. Clay County is requesting they be allowed to increase their revenue projections for 05-06. The documentation regarding this issue has been posted to our website, [www.flccoc.org](http://www.flccoc.org). Ms. Morse reported that last week we approved a statewide expenditure cap of \$421,127,347 and a total budget amount of \$419,337,869. Clay County as requested to increase their budget (which is within their expenditure cap) by \$138,639 to \$3,191,918. Our collective statewide expenditure cap would now be \$421,265,000 and the statewide approved budget amount \$419,476,000. Mr. Burke moved for approval; Mr. Forman seconded approval. There was no discussion and the motion was approved unanimously.

Ms. Morse recessed the meeting pending telephonic continuation Friday, September 30, 2005 at 10:00 a.m. to discuss final resolution of issues with the CCOC-DFS Contract.

**MINUTES**  
**FLORIDA CLERKS OF COURT OPERATIONS CORPORATION**  
**EXECUTIVE COUNCIL**  
**FRIDAY, SEPTEMBER 30, 2005**  
**TELECONFERENCE**

Ms. Morse stated that this is a continuation of the Executive Council meeting September 13, 2005 continued to September 20, 2005 and subsequently continued until today. This was called to order at 10:00 a.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 Ken Burke, Honorable Annie Mae Murphy, Honorable Harvey Ruvin, Honorable Tim Smith, Honorable Richard Weiss, John Dew, Joseph Boyd, and Judy Zorn. Honorable Howard Forman was absent due to a prior commitment. Ms. Morse announced that a quorum was present.

**PERFORMANCE MEASURES**

After discussion on September 20 regarding breaking down performance measures reporting by quarters, Ms. Murphy moved that all collections standards will be based on a quarterly percentage to equal the amount of the annual standard after four quarters. For example, if the annual standard is 90%, the quarterly standard is 22.5%. The motion was seconded by Richard Weiss. There being no further discussion, the motion passed unanimously.

Ms. Morse asked Mr. Dew to forward this information to the Auditor General today so that they can give the new directions to their external auditors.

**BUDGET AMENDMENT**

Mr. Barton reported that we need to consider a Budget Amendment for Highlands County. Mr. Barton turned the report over to Mr. Dew who stated that Highlands is not seeking funds from the Trust Fund, rather they are seeking relief from having to send projected surplus monies to the Trust Fund. As a result of the three hurricanes last year, projected revenues have not materialized. As revenues did finally increase after the hurricanes, Highlands County sent double payments over several months in attempts to meet their obligation to the Trust Fund. To date this year, they have submitted \$481,392. They are seeking relief from having to send an additional \$111,614. Mr. Weiss moved approval of the BAR. Mr. Barton seconded the motion. The motion passed unanimously.

**BUDGET CHANGES**

Mr. Barton reported that the Executive Council also needs to consider changes to the FY05-06 county budgets for Clay and Levy Counties. The Corporation has more recent numbers for both counties. Mr. Barton moved changing Clay County's projected revenues, formerly \$3,191,918, to \$3,082,922 and Levy County's projected revenues, formerly \$985,083, to \$1,020,217 yielding a new grand total for all sixty-seven counties of \$419,402,646. Ms. Murphy seconded the motion which passed unanimously.

## **LEGISLATIVE BUDGET COMMITTEE**

Ms. Morse announced that we have some preliminary guidelines from the LBC. Information regarding these guidelines will be emailed to the twenty-seven counties indicating that they will ask the Corporation to represent them before the LBC. Ms. Morse cautioned Clerks that we have an extraordinarily tight time frame on this. If a Clerk is requesting the Corporation represent you before the LBC, you will have no more than two or three days to provide the required information to CCOC in order for the Corporation to meet the LBC deadline of October 20. If CCOC does not get this information in time, your request will be postponed until the next LBC meeting which may be January 2006.

## **CCOC – FACC EDUCATION CONTRACT**

Mr. Weiss thanked Mr. Boyd and Mr. Dew for working so closely with DFS in attempting to resolve the issues.

Mr. Boyd requested a motion for modification to the FACC-Education Contract previously approved at the September 13, 2005 meeting in Sarasota, II.-A. (second paragraph) that training will include semi-annual performance standards training / best practices training to be done semi-annually at the January Court Track Seminar and the Summer Training Seminar. Mr. Dew reported that everyone is in agreement that twice a year is sufficient. Mr. Barton made the above motion and Mr. Weiss seconded the motion. The motion passed with one dissenting vote by Ms. Murphy.

## **DFS-CCOC CONTRACT**

Mr. Boyd thanked the DFS staff, especially Mr. Donelan, Mr. Marshall, and Mr. Darling, who were receptive to the concerns of the CCOC Executive Council meeting September 20. He also thanked Mr. Baggett for helping with FACC concerns.

The provision dealing with the Plan of Operations has been deleted. DFS's intent was not to object to changes in the Plan of Operations, but rather to review and make suggestions when necessary. Because of previously expressed concerns, DFS has agreed to withdraw that section entirely.

The provision dealing with task assignments has been withdrawn notwithstanding CCOC has two other contracts based on task assignments and the CCOC-FACC contract we envision, with FACC approval, could include a combination of deliverables and task assignments. While task assignments as a business practice has not gone away, the requirement that task assignments be the only methodology has been removed from the DFS contract.

The third issue dealt with DFS' responsibility in the LBC process. The contract language regarding their role in the LBC process has been greatly reduced. Shortly after the language was removed, the LBC process guidelines were released and that process put DFS squarely in the middle of it which is to say that what DFS was going to do in the contract was not outside the scope envisioned by the legislature. The current contract language states that CCOC will comply with the LBC process but does not define DFS role in the LBC process.

Other changes include: 1) Performance standards training to be done semi-annually rather than quarterly, and 2) the annual appropriation for CCOC was increased from \$800,000 to \$900,000.

Ms. Morse invited discussion on the changes made to the DFS contract. There being none, she invited discussion on the contract in general. Mr. Ruvin asked about the auditor's language regarding competitive bidding versus sole source. Mr. Dew said the OAG did criticize the Conference for not conducting a competitive bid process. Mr. Ruvin requested that CCOC staff e-mail a copy of this report to each Council member.

Mr. Smith stated that he had been critical of DFS's appearance of non-participation in discussions but that he had been informed later that they had attempted to speak at the last meeting but couldn't get in because of a technology glitch with their phone. Although he has problems with some provisions of the contract, in looking at the big picture, he will vote for the contract. He is happy to see a willing cooperation among CFO staff, FACC staff, and CCOC staff to resolve these issues. As a Council member, he feels that it is his duty to be certain there is a contract in place to ensure the continued funding of the Corporation. He believes we are moving in the right direction and that we need to continue. Mr. Smith moved to approve the contract. Mr. Ruvin seconded the motion. The motion passed by a vote of 5-2 with Ms. Murphy and Mr. Barton voting against approval.

## **DISCUSSION**

Council members invited Ms. Murphy and Mr. Barton to explain their dissenting votes in order for the entire Council to better understand their concerns. Concerns regarding performance standards included requiring performance measures training sessions and the burden placed on small counties that do not have adequate staff to gather performance measures data and submit the reports. While there was an understanding that with the legislature involved, counties will be held accountable; this still creates problems for small counties. Mr. Ruvin envisions legislative involvement as an opportunity to partner with legislators to accomplish even more things we know need to be done.

There was also concern that Clerks are the only Article V officers who are being put to such tests. While this may be a result of Clerks collecting the revenues, they seem to get the least amount of funding.

Mr. Ruvin understands that there are differences between the small and large counties, but he would like for all counties to make strengths from the differences rather than use those differences to create fears that lead to people forming coalitions and fighting a system rather than attempting to understand and work within it. He feels there are people in state government who really do want to help Clerks.

Mr. Weiss asked if CCOC has the right to suggest changes in the law where we see they need to be made. Ms. Morse answered that our right to suggest changes extends mainly to budget issues. CCOC's influence is limited because we cannot lobby as Mr. Baggett can through his association with FACC. At Mr. Weiss' suggestion, the Council determined to define the issues and come up with constructive recommendations as to how we can help all Clerks meet their needs.

Identifying that the problems are bigger than just reports, budget caps, and the budget process, Mr. Weiss moved to have a special meeting to identify the issues. He further requested we have our general counsel and staff available to recommend how best we can proceed with our findings and suggestions, whether through written communication to the legislature, lobbying by Mr. Baggett at FACC, or nothing. Mr. Ruvin seconded Mr. Weiss' motion.

Mr. Boyd suggested that, as a point of new business, under our Plan of Operations we cannot vote on this issue today. However, the Agenda does allow for a Legislative Subcommittee report; and although Mr. Forman is not here, the Chair could initiate a vote to have a meeting to discuss the legislative suggestions. After discussing when to hold such a meeting, Mr. Weiss moved the chair set a meeting time in November to review and focus on the issues affecting Clerks. It was further decided that this meeting will be separate and apart from the regular meeting but could be held before or after the regularly scheduled meeting in November when other Clerks would be available to join the discussions. Mr. Weiss suggested that we leave the Executive Council meeting at 1:00 and begin this meeting when that concludes with the understanding that we'll stay until we finish. Ms. Morse hopes that many members of the FACC Legislative Committee will attend our meeting. Ms. Murphy stated that she hopes Mr. Boyd and Mr. Baggett will be in attendance.

Ms. Frank, Clerk of Hillsborough County, reported that the FACC Legislative Committee will meet in Tallahassee on October 10. Both Ms. Morse and Mr. Smith are on the FACC Legislative Committee. Mr. Boyd cautioned that members of the Executive Council can participate as an individual Clerks and one member of the Executive Council can participate representing the Council, but Council members cannot be collectively there as members of the Council (Sunshine Law). Mr. Boyd will attend the FACC Legislative Committee meeting if invited.

Ms. Morse adjourned the meeting at 11:01 a.m. The next meeting of the CCOC Executive Council will be held telephonically on October 11, 2005 from 1:00 – 4:00 p.m. EST for the purpose of discussing the LBC process and recommendations and other issues as necessary.