

**MINUTES
FLORIDA CLERKS OF COURT OPERATIONS CORPORATION
EXECUTIVE COUNCIL
TUESDAY, JUNE 24, 2008
DAYTONA BEACH, FLORIDA**

Mr. Forman called the June 24, 2008 meeting of the Executive Council of the Florida Clerks of Court Operations Corporation (CCOC) to order at 1:00 pm. He welcomed members and guests. Members of the Executive Council present were the Honorable Howard Forman, Honorable Richard Weiss, Honorable John Crawford, Honorable Marsha Ewing, Honorable Bob Inzer, and Honorable Tim Sanders. Honorable Charlie Green and Honorable Harvey Ruvin were unable to attend.

AGENDA

Mr. Forman called for approval of the Agenda. Mr. Weiss moved we accept the Agenda as presented. Mr. Sanders seconded the motion. Vote was taken and the motion was approved unanimously.

MINUTES

Mr. Forman asked if there were any corrections to the Minutes of the April 8, 2008 Executive Council meeting. Mr. Sanders moved we approve the Minutes as distributed. Seconded by Mr. Inzer, the motion passed unanimously.

CCOC COUNCIL MEMBER ELECTIONS RESULTS

Mr. Weiss reported that the elections results as certified by the CPA firm of Lanigan and Associates are as follows:

- Group 1 – Honorable John Crawford and Honorable Tim Sanders
- Group 2 – Honorable Marsha Ewing and Honorable Bob Inzer
- Group 3 – Honorable Charlie Green and Honorable Richard Weiss
- Group 4 – Honorable Howard Forman and Honorable Harvey Ruvin

TREASURER'S REPORT

Mr. Weiss reported that we as of May 31, we have expended only 59.5% of our Corporation budget. This is well within the budget. In addition, at 68.2%, we are well within the annual budget for Education. Our account cash balance as of May 31, 2008 is \$740,610.45. Mr. Weiss moved we accept the report and Mr. Inzer seconded the motion which passed unanimously.

COMMITTEE REPORTS

Finance and Budget Committee

Mr. Culp reported that the Finance and Budget Committee met telephonically June 10, 2008. We are bringing seven items they discussed to this meeting today.

Bradford County submitted a Budget Amendment Request authorizing them to remit fewer dollars to the Trust Fund. Original projections of \$1,043,931 in revenues and \$705,230 in expenditures created an annual surplus of \$338,701. Revenues have not come in as projected. Taking into account dollars already remitted, approval of this BAR would modify their monthly scheduled remittance payments from approximately \$28,225 to \$14,920. Mr. Crawford moved approval of the BAR. Seconded by Ms. Ewing, the motion was approved unanimously.

Mr. Culp reported that CCOC has developed and scheduled six regional budget training sessions to aid Clerks and staff with the FY 08-09 budgeting process. To date, we have conducted sessions in Crestview, Marianna, Viera, and Gainesville. Participants represented forty-two Clerks' offices. The remaining two sessions are scheduled for the second week of July in Sarasota and Palm Beach Counties.

Mr. Culp updated members regarding the Clerk Collection Agent Data. CCOC contracted with FACC to provide updated data. Through a survey sent to each Clerk, we have determined that 64 Clerk offices currently contract with Collection Agents. Approximately \$36 million was collected during FY 06-07, an increase of approximately \$10.4 million over FY 05-06. This amount represents approximately 7.2% of the FY 06-07 overall Clerks' court-related revenues, an increase from 5.5% of the total FY 05-06 court related revenues.

Mr. Culp updated the Council regarding the statewide civil traffic collections study being done in direct response to the OPPAGA report indicating this is a potential area for Clerks' collection improvement. CCOC, with contractual assistance provided by FACC, is scheduled to visit fourteen offices to determine why some offices have higher or lower than average collections rates for civil traffic. To date we have visited eight counties with six to be visited in the near future.

Mr. Culp reported that current FY 07-08 rebasing trends show that many Clerks are projecting that their initial budget cap may be increased. This is due to actual revenues exceeding projected revenues. Current overall Clerk cumulative actual revenues are approximately 4.08% higher than projected. This increase will potentially rebase the Clerk's initial FY 07-08 budget cap by \$21.1 million. It appears that the Clerks, in aggregate, should have sufficient budgeted revenues for FY 08-09 to meet their overall expenditure needs. While many Clerks have experienced significant growth through rebasing, some Clerks appear to be disadvantaged through this process. In addition, several Clerks may experience large increases as a result of one-time or non-recurring revenue sources. This will require special planning during the upcoming budgeting cycle. CCOC will continue working with Clerks experiencing any type of rebasing issues to help ensure that each office's expenditure needs are met.

Mr. Fry, Clerk of Court from St. Lucie County, addressed the Executive Council to explain the budget issue he's facing regarding court-related filing fees, primarily

generated from civil actions. In 2006 these fees generated \$1,949,000. In 2007 they were \$2,653,664. Mr. Fry projects the fees generated for this fiscal year will be \$3,890,000. The biggest force driving this is fees from foreclosures. He noted they have experienced well over a ten-fold increase in foreclosures over the past two years. In addition, when the real estate market suffers, construction suffers; so many people are unemployed leading to credit card deficiencies, filings and evictions. At some point these exorbitant filing fees will return to their 'normal' \$2 million level. This year his office is projecting revenues of \$8,640,000. The projected revenues increase of \$1.9 million represents a 22% increase in their total projected revenues. At the same time, projected expenditures are \$8,492,000. If his office takes 22% of his certified budget expenditures for this year, that would be \$1,868,000. At some point the drop back to normal levels will occur. Looking at the average employee costs of \$51,300 (salary and benefits), his office would have to make the cut in the budget that is required by state law and rebasing, which would be thirty-six positions out of 144 fulltime employees that would be eliminated or 25% of his staff. Mr. Fry said he has done about everything he can do to maximize revenues. He is using a collections agency and has a collections court in place. He has spoken with every judge and they are rendering judgments and requiring defendants pay or set up a payment plan. These efforts will not offset a \$2 million drop-off in revenue.

Mr. Fry would like to see CCOC add another goal for this coming year. In thinking about alternatives, he believes it would be beneficial to set a floor on the budgets such that no matter how much revenues drop, a budget cannot go below 103% of the previous year. As for other alternatives, he suggested that the CCOC, because it has good credibility with the process and with DFS and the LBC, should be given budget authority to help Clerks that may be under-funded as long as it stayed within the total Clerks' expenditure caps. It would be a sharing of expenditure authority with Clerks that have not utilized their full expenditure cap as approved by the CCOC. He stated he would like for CCOC to move forward with these suggestions. Mr. Forman thanked Mr. Fry for his presentation and stated that he too would like for us to look at the impact of foreclosures which have increased by 2.5 times what they were two years ago. In his office he had to hire eight additional people to handle the foreclosure filings growth. He further noted that when foreclosures increase, tech dollars decrease because there are fewer closings. In addition criminal filings increase and these don't have the same financial impact as civil cases. He thanked Mr. Fry for articulating the issue and stated that we would be happy to work with him on this issue.

Mr. Inzer added that the issue Mr. Fry raises is actually one of multiple issues. He hopes that in our budget training we are discussing the use of revenue streams that are actually anomalies. Second, at this time, when other units are seeing reductions in their budgets, requesting the Legislature to set a floor that includes an increase in budgets will probably not be well-received. That said, he does agree that this is a problem many Clerks will be facing. The increased fees from additional foreclosures have helped us get through difficult financial times, but it will be a very painful process when it returns to a normal level.

Mr. Crawford noted that Mr. Fry brought this issue of determining a better way to fund Clerks to the Council last year. He too is very fearful of the impact of this issue for all Clerks. He asked Mr. Dew if there is a way to give this goal a higher priority. Mr.

Dew said that to address Mr. Fry's issues last year there were meetings with FACC and their leadership, CCOC and its leadership, and others after the Annual Corporation Meeting at which this issue was brought up. Because of the situation with the state and the economy, it was decided that this was not the year to go to the Legislature and try to get increased budget cap authority. However the decision was made to again request an increase in fees, court costs, and service charges as was done in the previous year.

Mr. Dew noted that the same fiscal constrains will probably be facing the state again this year. However he felt we should look at Mr. Fry's suggestion to look at the Clerks' budgets as a whole. He agreed that we have continued to build credibility with DFS and the Legislature. While the total expenditure cap allowed for all Clerks in 07/08 is \$515 million, the actual approved budget total was approximately \$502 million. The difference is that some Clerks, through rebasing, could have had a higher expenditure cap but choose to not request expenditure authority at the maximum level. At the same time there are those Clerk's offices that due to rebasing have less budget authority than they had in 06/07 and the CCOC has no authority to help them. Mr. Fry's suggestion would be that the Legislature allows the CCOC to look at the possibility of taking some of the unused expenditure authority and sharing it with a Clerk whose budget authority might actually be decreasing due to rebasing.

Mr. Culp reported that CCOC staff is in the process of reconciling the monthly Trust Fund remittances reported to CCOC via the Revenue and Expenditure Report to the dollars reportedly received by the Department of Revenue. This was an issue that was part of the Auditor General's prior year audit concerns. To date, CCOC has contacted twenty offices to resolve reconciling items with approximately two-thirds (13) of the noted issues being modified. Mr. Culp noted that he anticipates all reconciling discrepancies will be modified shortly.

In conclusion, Mr. Culp reported that as CCOC staff monitors and analyzes Clerks' court-related revenues, expenditures, remittances to and payments from the Trust Fund on a monthly basis, they have noticed that several revenue-challenged offices may have sufficient funding available for the remainder of FY 07-08. During the June 10 CCOC Finance and Budget Committee Meeting, CCOC staff was directed to contact these offices and ask that they reassess their needs and, if applicable, possibly discontinue receiving Trust Fund payments.

Performance Measures Committee

Ms. Ewing noted that last year the Performance Measures Workgroup recommended that Information Reporting be considered as a performance measure beginning in FY 08-09. This recommendation was approved by the Executive Council. Information Reporting will require a report from Clerks on their efforts in submitting statutory and court-rule required reports. The Performance Measures Workgroup met via telephone June 16 to discuss the Information Reporting list that was provided to all Clerks for their feedback. The Workgroup moved to forward the list provided you today to the Performance Measures Committee for its approval.

The Performance Measures Committee met via telephone June 17 to discuss the recommendation. The committee approved the list and moved that it be brought to the

Executive Council for its approval. The Council approval today would mean that beginning October 1, 2008 Clerks would track their reporting compliance and would then submit an annual report due to CCOC by October 20, 2009 for the FY 08-09 performance measure. Ms. Ewing moved the Council approve Information Reporting as a new performance measure for FY 08-09. Mr. Inzer seconded the motion which passed unanimously.

Ms. Ewing also noted that fifty-two counties were at least one measure below performance standards requiring a Corrective Action Plan. It is anticipated that this number will increase. She said she did not believe this is indicative of a Clerk not performing well but rather it's a sign of the economic times we are facing. Mr. Forman reiterated that the need for more staff may be there now. Ms. Ewing asked how many Clerks are using temporary or part-time employees to help with the increased load. Many do not have the funds to do this because this year's budget is based on last year's load but this year's load is much larger. Mr. Inzer reminded Clerks that they can save the cost of benefits by hiring temporary or part-time employees. Ms. Frank, Clerk of Court for Hillsborough County, noted that she has moved staff from Records, where the workload has decreased, to handle the extra work resulting from foreclosures.

Legislative Committee

Mr. Forman noted that during this year's Legislative Session, we followed two major bills affecting Clerks. SB 1790 – He said ramifications of this bill would be discussed later in the meeting. The Clerks' Auditing Bill passed the House but did not pass the Senate. Mr. Forman said he understands that the bill will potentially be brought back up again next year. Also of interest was a bill related to monies for traffic hearing officers. This bill did pass. There could possibly be a four percent holdback this year by the end of the year which could cause more problems for traffic hearing officers and ultimately for Clerks' offices. In conclusion, Mr. Forman noted that it was a tough year for the Legislature. Last year's budget was \$71 billion and this year's \$66 billion. The year before the budget was \$74 billion, a decrease of \$8 billion in two years. He noted that the Florida courts could be facing the toughest year we've ever had.

Personnel Committee

Mr. Sanders reported that the Personnel Committee met June 11. The committee recommended approval of the proposed FY 08-09 CCOC Budget which total budget continues to provide operations at no increase over the current 07-08 budget.

Mr. Dew reported that staff from the Auditor General's Office was set to meet with him on June 10, but they were ill and could not make the meeting. It is expected that the meeting will be rescheduled within a short time. The Auditor General's Office audits us annually spending approximately two months reviewing all CCOC operations. We usually have the potential findings at this point in time. The issues Mr. Dew has discussed verbally with the auditor have been much the same as in the past. We are on task with all issues discussed verbally. There are no major findings that he knows of. As

soon as we're given that report, we will work with the Personnel Administration Committee to provide that report to the Committee and the Council Chair for response.

Mr. Culp reported that regarding the CCOC staff retirement program, we have been told by the Department of Management Services Staff that CCOC is considered to be a "compulsory unit" of the State. The DMS rendered a legal opinion that employees of CCOC should have been under the Florida Retirement System since its inception. We have received written notification of this and have been working with the CCOC General Counsel to convert from our current retirement system. He further reported that we will begin with FRS in July and make our first contribution to the Florida Retirement System as soon as the details are worked out.

Mr. Sanders announced that we have several contracts expiring at the end of September. Mr. Dew reported that we will be utilizing the RFP process to bid these contracts. As an RFP is developed, it will be distributed to interested parties and listed on the myflorida website. A bidders' conference will take place and updates maintained on our website. After the deadline for returning RFP's, we will evaluate the returns and bring that information to the Personnel Committee for their decision as to which is the best vendor for the contract. In addition, we will need to negotiate our contract with DFS which also expires September 30. DFS is looking to amend certain parts of our current contract, particularly those relating to SB 1790.

JUROR EXPENSE PROCESS & POLICIES

The Finance and Budget Committee met June 10, 2008 to determine the best way to ensure that Clerks are made whole in receiving the dollars necessary for funding juror expenses. This is especially important since Clerks have little control over juror expenses. Members emphasized at that meeting that we needed to develop a model quickly as SB 1790 was just signed and has a start-up date of July 1. The Committee's emphasis was on finding a process under which everyone would be taken care of. Two particular methods were discussed by the Committee.

Method 1 – Pro-rate the \$4.7 million distribution to Clerks based on historic use. The problem is that history doesn't necessarily repeat itself and there may not be sufficient budget authority statewide for all the Clerks.

Method 2 (Status Quo) – Clerks provide to the CCOC office, their anticipated needs for the next three months. The dollars would be distributed with settle up at the end. This is similar to the process currently being used and it was the Committee's choice. However, the DFS has expressed concerns with this model.

Mr. Boyd reported that this method holds the Clerk harmless should they be faced with a catastrophically expensive case. At issue is the legislative intent of the bill. Mr. Boyd said CCOC staff will be meeting with DFS this Friday, June 27 to discuss methods of handling these payments. It may be that Clerks will hold back from their revenues, those funds necessary to meet their juror needs. This does not leave much time to resolve the issue but everyone is determined to make this happen.

Mr. Dew noted that we may need to have a process in place whereby the Finance and Budget Committee can give the CCOC staff the authority to do what we need to do to the budgets to implement the system for handling this issue. Mr. Inzer moved to give

the Finance and Budget interim authority to make decisions until the Council meets on July 15, if necessary. Mr. Weiss seconded the motion. The motion passed unanimously.

IMPLEMENTATION OF SB 1790

Mr. Dew thanked Randy Long, Doug Isabelle, and Beth Allman from the FACC for their efforts in pulling together the Legal Courts Roundtable, the culmination of many weeks of work dealing with SB 1790. He also thanked Clerk staff from throughout the State that worked with us on this process. The explanation of SB 1790 was exceptional.

Issue 1 – How to deal with the separation of the ‘new fees’. In the Distribution Schedule provided by FACC, these new fees are actually a liability to the Clerk. With regard to the eviction fees, the service charge, those add-ons, the intent of the Legislature is that those fees go to the state. They are liabilities and will be booked that way. However, Mr. Baggett shared with the Clerks in their Executive Session on June 23rd that he has requested DFS allow revenue-challenged Clerks to keep some of the new revenue to use so they won’t have to get monies from the Trust Fund. So far we think the answer to this may be yes. These dollars would be reported to the CCOC so we can keep track of it for audit purposes. It was asked if this is approved and in writing. Mr. Dew responded that DFS has approved it verbally, but we are waiting for written approval.

Mr. Inzer asked if these fees become liabilities when the dollars are actually received as opposed to, for example, someone setting up a payment plan. Ms. Butterfield, Polk Clerk Finance Director and a member of the Clerk’s workgroup reviewing implementation of SB 1790, stated that the fees are booked when the office receives them. To clarify, Mr. Inzer asked, when he receives a partial payment, do the first dollars received go to his county or to the state. Ms. Butterfield replied that the first dollars go to the state.

Issue 2 – Mr. Dew noted that we will not change the 08-09 Budget Forms to deal with the new fees because the new fees will not be a part of the rebasing process. Section 47 of the bill states that the new fees are not to be included in a Clerk’s revenue for rebasing.

Issue 3 – Mr. Dew said he anticipated that the Department of Financial Services and others will be asking how much money has been collected by the Clerks for the new fees. There is an expectation that this will raise at least \$120 million that the state has allocated in its budget. If those dollars aren’t coming in, Mr. Dew noted that he expects that they will want to know why and in which area(s) revenues are down. He also suggested that DFS will be looking very closely to see that the new revenues haven’t been included with your other revenues.

Issue 4 – Development of new State Indigent Form. The CCOC is charged by statute to create indigent determination forms to be sent to the Florida Supreme Court for their review and approval. Mr. Rob Boyd distributed a draft form for determining civil indigence for dependency and termination of parental right cases. SB 1790, passed this session, created a \$50 application fee and process for determining indigence in these cases. Mr. Boyd noted the Governor signed the bill on June 10 and it will become effective law July 1. He also noted that he has a draft Criminal Indigence Form, that amends the only language concerning the application fee since the same legislative bill

increased the fee from \$40 to \$50. Ms. Ewing noted that she requested the Criminal Indigency form has a signature line for ‘completed with the assistance of’ but not one for the Clerk who will determine indigency. She would like for there to be a line for the signature of the person who makes the determination. The new Civil and Dependency forms have the correct signature area. Making the change on the Criminal form would give consistency. Mr. Boyd suggested that we can also make this change. Ms. Ewing moved that approve the forms as submitted to the CCOC and change the signature line on the Criminal form to match that of the Civil Indigent form. Seconded by Mr. Sanders, the motion passed unanimously.

TRUST FUND

Mr. Culp reported that the DOR has begun to make monthly sweeps from the Trust Fund. However, the Department of Revenue staff has agreed to leave at least a balance of \$5 million in after any sweep of the Fund. He noted that sweeps were made in March, April and May. After the May sweep, there remained \$9.3 million. He reported that the Trust Fund is healthy.

OTHER BUSINESS

Mr. Dew reported that he sent an email asking for Council availability for the July organizational meeting. He thanked Ms. Ewing for offering to change her schedule to open up July 15. We will arrange the meeting at the Tampa Airport for ease of travel. He said he will let everyone know as soon as possible once the final arrangements are made.

Mr. Forman asked if there was other business. There being none, the meeting adjourned at 4:25 pm.