

MINUTES
FLORIDA CLERKS OF COURT OPERATIONS CORPORATION
EXECUTIVE COUNCIL
WEDNESDAY, SEPTEMBER 17, 2008
ORLANDO, FLORIDA

Mr. Forman called the September 17, 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 Marsha Ewing, and Honorable Bob Inzer. Honorable Tim Sanders, Honorable John Crawford, and Honorable Harvey Ruvin attended telephonically. Honorable Charlie Green was unable to attend.

AGENDA

Mr. Forman asked for a motion to approve the Agenda. Ms. Ewing so moved and Mr. Weiss seconded her motion. The motion passed unanimously.

MINUTES

Ms. Ewing made a motion to approve the Minutes of June 24, 2008 and July 15, 2008 as distributed. Mr. Weiss seconded the motion which passed unanimously.

TREASURER'S REPORT

Mr. Weiss reported that at the end of the first month of our fiscal year, CCOC is well within its budget expending only 3.6%. We started the fiscal year with \$686,110.34 and finished with a cash balance of \$517,687.70.

COMMITTEE REPORTS

FINANCE AND BUDGET COMMITTEE

Mr. Culp reported that the Finance and Budget Committee met September 3, 2008. The Agenda is provided in the packet for today's meeting.

HARDEE COUNTY BAR

Hardee County requests the ability to expend up to their approved FY 07-08 expenditure cap of \$1,125,314. They are currently budgeted to expend \$1,115,248. As Hardee County currently receives a monthly remittance from the Trust Fund, this BAR would cause \$14,063 to be sent from the Trust Fund to Hardee County. This amount includes \$10,066 in additional budget authority and \$3,997 that was added for Juror funding and has yet to be received. The Finance and Budget Committee has approved

FINAL Minutes

Approved November 18, 2008

this BAR and moves it to the Executive Council for its approval. Mr. Weiss moved approval of the BAR. Mr. Inzer seconded the motion which passed unanimously.

AUDITOR GENERAL REPORT UPDATE

Section 28.35(6)(a), Florida Statutes, requires the Attorney General's Office to audit the CCOC annually. The FY 06/07 audit began January 2008. The exit conference was held on August 20 and a preliminary report was sent to CCOC on August 28. CCOC began verification of accuracy of the information in the report and sent a copy of the audit to each county mentioned in the audit. Mr. Dew noted that we are awaiting a response from those counties. Once this information has been gathered, we will respond to the audit within the allotted 30 day time frame.

Mr. Dew discussed the recommendations of the report.

#1 – Recommended CCOC should review the monthly tracking reports for accuracy, reconcile the tracking reports to the Department of Revenue's receipts records, examine the CFO's budget reviews reports, and timely resolve any difference. Also, the CCOC should monitor the remittances to the Trust Fund and General Revenue Fund by the clerks and ensure that the appropriate monthly and final amounts are promptly remitted. Mr. Dew reported that there was a similar finding last year, but we didn't have sufficient staff to be able to accomplish reconciling all the information. The Council however in the FY 07/08 CCOC budget approved a position for us to help the reconciliation process. That position was filled in January 2008 and we've been able to reconcile since that time. This audit was for FY 06/07 so they haven't looked at what we are doing in FY 07/08.

#2 – Recommended that the Legislature consider replacing the remittance requirement of one-third of revenues collected with the methodology utilized by the CCOC, including a requirement for CCOC to recalculate the surplus or deficit for each clerk based on actual revenues and expenditures during the fiscal year (e.g., quarterly or at mid-year) and adjust required remittances accordingly. In the interim, to ensure that remittances to the State are made in a more timely manner, CCOC should recalculate the surplus or deficit for each clerk based on actual revenues and expenditures during the fiscal year (e.g., quarterly or at mid-year) and adjust required remittances accordingly. CCOC should also provide additional assistance and training to aid in the preparation of the clerks' court-related budgets to improve the accuracy and reliability of the data and help ensure that budgets and surplus / deficit calculations are more realistic. Mr. Dew stated that we do have an agreement with DFS and Legislative staff as to how we should handle and are handling the methodology for the one-third remittance issue even though the law can be interpreted differently. He stated that CCOC staff already conducts mid-year assessments of revenues and what's been sent to the State. When warranted, staff contact the Clerks to talk with them about sending additional dollars. CCOC staff is also already providing training on revenue projections during the year and especially at the regional budget workshops. Revenue projections have been improved each year. It's

important to note that Clerks have no control over the realized revenue. Some things are difficult to forecast as with the number of foreclosures. We explain this issue to the Auditor General's staff each year and will explain it again in our response. Clerks have historically under-projected revenue projections by about 5%. Mr. Dew noted that it is better to have a Clerk under-project than over-project. If a Clerk over-projects revenue, we wouldn't have sufficient dollars in the Trust Fund to cover deficit Clerks and a number of Clerks would not have sufficient revenues to meet their approved budget needs.

#3 – Recommended CCOC management should implement written policies and procedures related to ensuring that all performance measure information is reported as required and reviewing reports filed to ensure the completeness, accuracy, and timeliness of this information. When inconsistencies and unusual fluctuations are noted in the data, CCOC staff should determine the cause and document the resolution of any such instances in their records, including obtaining corrected reports from the Clerks. Approximately six months ago CCOC staff sought guidance from the Council on if we should utilize limited staff to contact Clerks that meet performance measures but their data might appear inconsistent. The Council agreed as did the Performance Measure Workgroup. We are now doing this. We did not do this during the audited time period due to lack of staff.

#4 – Recommended to ensure payment for services performed, CCOC should submit deliverables specified in the contract by the required due dates. We've been doing much better with this issue since we increased our staff. Since January 2008, we have improved greatly with submitting deliverables timely and we do not expect this will be an issue in future audits.

#5 – CCOC should ensure that bank reconciliations are prepared and reviewed in a timely manner and signed and dated by the preparer and reviewer. Mr. Dew stated that he did not believe the wording of the finding was fair since it was only the QuickBooks computer process that was not reconciled. However on a weekly basis, during 06/07 we reviewed the bank statement, checks written and cashed, and cash available. We reported this information on at a monthly basis to the CCOC Treasurer and quarterly basis to the Council. The QuickBooks issue only began when our internal auditor, Lanigan & Associates, recommended that we pay our health insurance premiums using a liability check and trained our staff to do this. This, in turn, created another problem such that we couldn't timely reconcile the bank account using the QuickBooks software. But again, while we weren't reconciling using the QuickBooks software, we were still doing weekly reconciliations of the bank account. Since the issue of timely reconciling through QuickBooks was raised, the process has been remedied through additional staff training. And as of January 2008, QuickBooks reconciliations have also been done timely.

#6 – CCOC should require reimbursement of the \$2,004 of unsupported travel. This was an issue last year as well. Mr. Dew explained last year that the auditors took a one-year period and multiplied how much he would have been paid using the per diem mileage rate versus how much he was paid with the car allowance. The Council last year agreed that he was under an employment agreement that provided a car allowance and therefore there were no dollars due to the Corporation from him. However, because the

Auditor General's made it a finding last year, according to their staff, they are required to report the same finding each year until it is resolved. Mr. Dew stated that if the auditors wanted to consider comparing the car allowance supplement to a state per diem rate then they should consider the total time period he has been a full time employee and not just 12 months. He said he would therefore take into consideration the time period from July 1, 2004 through August 30, 2007 and estimate the miles traveled and what the Corporation would have paid him if he were receiving a mileage per diem. It was his opinion that during many of those months he was paid less, after taxes, than what he would have received if he were paid on a mileage per diem rate. He said he will do the research and bring it back to the Council Chairman for resolution.

SENATE BILL 1790 FEES REPORT

CCOC's new contractual agreement with DFS requires that CCOC provide detail regarding new State revenues collected under SB 1790. Mr. Dew noted that staff attached a DRAFT worksheet approved by the Finance and Budget Committee showing a quarterly detail of seven issues relating to new State revenues as approved by the 2008 Legislature. This quarterly report will aid in categorizing those dollars, detailing the areas these fees come or don't come from. This data will be even more important if dollars from excess fees fall below what has been projected. A provision of our contract with DFS requires we provide them with an accounting of the revenue to include a detailed breakdown of those revenues by Clerk. Mr. Dew said we have tried to keep the form simple so as to not inundate Clerk staff with a difficult new report to complete. Ms. Ewing asked if we would be getting projections from the information counties provided to FACC during the legislative process. Mr. Dew responded that if we were able to get our contract finalized by DFS we could ask FACC to help Clerks project these revenues if they need help. Ms. Ewing moved approval of the form. Her motion was seconded by Mr. Inzer. It passed unanimously.

UPDATE JUROR EXPENDITURES

At its July 15, 2008 Executive Council meeting, the Council approved increasing Clerks' budgets to accommodate juror expense for July through September 2008. This distribution took into account that Dade and Palm Beach agreed that they would not need additional funds to cover juror expenses and Broward agreed to receive a reduced amount to cover these expenses. For the sixty-five counties receiving expenditure authority to cover juror expenses, we have updated and increased their expenditure caps by the approved amounts. Mr. Dew stated that each Clerk has received an update Budget Certification Letter detailing the amount of budget increase. He further stated that based on the Council's earlier approval, this same process will be used over the next three quarters to determine and distribute the approximately \$3.56 million allocated by the legislature for juror expenses. Mr. Weiss commended Dade and Palm Beach for agreeing that they needed no additional funding for this quarter and Broward for agreeing to less than they could have received. Mr. Dew also noted that juror expense invoices and juror

expense reimbursements for the period prior to July 1, 2008 that were mistakenly sent to the CCOC have been forwarded to the state.

Mr. Dew noted that the Council agreed that if a juror expense for the July thorough September quarter was more than anticipated for a Clerk's office then they would consider increasing that Clerk's budget as necessary. Lee County Clerk's staff provided information to CCOC staff that their increased budget for juror expenses would not be sufficient. The juror expense allocation for Lee County for July 1 through September 30 was approximately \$42,000. In just two of those months, Lee County expended approximately \$38,000 and project that they will need a total of \$53,000 for this quarter. They provided documentation to CCOC staff that demonstrates that the \$53,000 projections are reasonable. A request for increased expenditure authority was heard at the September 3rd Finance and Budget Committee and approved. The Committee request that the Council approve an additional \$11,787.36 in expenditure authority be provided to Lee County to cover juror expenses for the rest of the quarter. Mr. Inzer moved Lee County be granted an additional \$11,787.36 in expenditure authority to cover juror expenses for the quarter from July 1 through September 30. Ms. Ewing seconded the motion. It passed unanimously.

PERFORMANCE MEASURES

Ms. Ewing reported that the Performance Measures Workgroup that met in April has recommended leaving the performance standards at their current levels. This will allow us consistent history and show the impact of not meeting the standards due to circumstances outside the Clerks' control. However, as part of our normal review, the Workgroup will be meeting October 23 to again discuss the current standards and whether they should be changed. Ms. Ewing requested Council input today on this issue. Ms. Ewing noted that Civil Traffic is the area in which we are struggling most to meet the performance standard.

Mr. Weiss stated that they are having difficulties in Circuit Civil with regard to indigent cases. With the change in law pertaining to indigency, Clerks are now required to set up payment plans and assess an additional \$25. So indigents are paying more than others to file a civil claim. Also there is confusion with how much can be assessed under the "2% rule". Mr. Weiss stated a payment plan can cause an extended period for payment, but at the same time period the performance standard is measured is usually only for one year. He requested that the Performance Measures Workgroup should look at this standard again. He stated that there is some confusion as to when a \$25 payment plan fee is to put on the assessment and collection report form. He questioned if the fee should only be added to the assessment report when it is collected or prior to this?

Mr. Inzer asked that they consider making a distinction between criminals being incarcerated and criminals being released. It is much more difficult to collect if the defendant is being incarcerated. He feels the statistic will be more meaningful if the two were separated. Ms. Ewing responded that the Workgroup members realized this and that's why the standard for circuit criminal was set much lower than as an example the standard for county criminal. She said they will discuss it.

Responding to Mr. Weiss' comment, Mr. Inzer noted that Leon County looks at the 2% rule as guidance, not that 2% is the most they can collect. They are currently being challenged by North Florida Legal Services over this issue. They feel the law is unclear. Leon County's standard is higher than 2% and they require a defendant to negotiate it down if the higher amount is a problem.

Mr. Inzer reported that the State Attorney in Leon County has concluded in plea negotiations that the cost of prosecution will be the first dollars paid from collections and they won't sign off on the plea until those dollars are paid. Mr. Inzer said he doesn't believe this process is the schedule provided for in the statute. The State's Attorney is present at plea negotiations to monitor that the first dollars paid go to cover the cost of prosecution, even before paying public defender fees. When approached by the Clerk, Judges have said that they don't want to get between the Clerk and the State's Attorney. They are agreeing in concept in that they are signing off on the order. Mr. Inzer has had discussions with FACC's Legal Counsel, Mr. Baggett and plans to continue to question this issue. He is concerned that this will decrease the Clerks' revenue stream. He stated that they may need to take legal action, but that legal action will be against the order that was signed by the Judge. Therefore, the action won't be against the State Attorneys per se, but against the order the Judge signed. Mr. Dew asked if this is something we can track at the CCOC office or can it only be tracked at the county level. Mr. Inzer feels it's difficult to track at any level because the Clerk doesn't even know the money has been collected. There's no way to know how much of what's collected could have been applied to State revenue.

Mr. Inzer also reported that Leon County has a diversion program that the State Attorney has operated for the last ten or twelve years. With misdemeanor cases, the fine doesn't go through the court. Rather, the State Attorney decides how much to charge and he collects and keeps the dollars. Mr. Baggett is monitoring this issue as well.

Mr. Dew concluded that the Legislature is always looking at Collections since it relates to the dollars available to their general revenue. He reminded the Council that the CCOC is looking at how to improve collections particularly in the Civil Traffic area. Mr. Isabelle reported on that study in June and are continuing to work toward finding ways for Clerks to improve collections.

PERSONNEL

Mr. Sanders requested that Mr. Dew present the report from the Personnel and Administration Committee concerning contracts with the CCOC. Mr. Dew reported that CCOC has a put a couple of new contracts out for bid, one for Research and Reporting Services and the other for Technology Services. We held two bidders conferences on Monday, September 15th at 9:00 am and 1:00 pm. Request for Proposals are due by 4 pm Friday, September 19 at which time CCOC staff will open the bids and check them for completeness. The contracts will be brought before the Personnel and Administration Committee for review and then to the next Executive Council meeting for approval.

For your information, current contracts for Clerk Education, Budget Services, and the external Financial Audit are up for renewal by extension. In addition, we are currently

FINAL Minutes

Approved November 18, 2008

negotiating the DFS contract for FY 08/09. Mr. Dew, Mr. Culp, and Mr. Boyd met with DFS staff last week. We now have their contract and will be reviewing it. Mr. Dew asked the Council if they could provide a member to help review the DFS contract with CCOC staff. Mr. Inzer was asked by the Council to help in the process and he agreed.

LEGISLATIVE

Mr. Inzer reported that last week, the FACC reviewed recommendations and proposals from Clerks as it related to FACC issues. As Chair of the CCOC Legislative Committee he is willing to take into consideration any recommendations or proposals relating to CCOC issues separate from those already being reviewed by FACC. He does however plan to work closely with the FACC Legislative Committee.

Ms. Ewing stated that a request was made that something be done legislatively about the way we arrive at the budget cap. She asked Mr. Dew if there is anything being done legislatively related to this issue. Mr. Dew reported that Mr. Fry, St. Lucie Clerk, requested in June that we look at and possibly tweak the rebasing methodology. He further suggested at that time that the Council be given Legislative authority for the total budget; and if a Clerk chooses to not go to their allowable cap, that some of those monies be available to help other Clerks. Mr. Dew said that if Mr. Inzer agrees, we could set up a Legislative Committee Meeting within the next two months. He suggested we ask Clerks and FACC for suggestions as to issues they would like for the Committee to discuss and bring back to the Council.

On a related issue Mr. Inzer reported that Mr. Baggett and the FACC Legislative Committee are looking at the possibility of revenue enhancements to help Clerks. He feels that a possible combination of minor changes in the budget process and revenue enhancements would serve the Clerks well. Mr. Dew stated that in earlier years, FACC provided CCOC with a list of issues pertaining to CCOC issues. He expected that they are in the process of gathering recommendations and once the list is ready, he feels they will share it with us.

PRESENTATION ON THE STATE ECONOMY

Mr. Inzer reported that he and Mr. Robertson had an opportunity to speak before several groups in and around Leon County regarding the State's budget process, revenues available, and currently where the State economy is and where it's going.

Mr. Robertson gave an overview of what the state economists have given to the state legislature in the past week or so as to where the economy is. Everyone is quite concerned as it has a direct impact on the revenues to be received at both the State and local level. He shared some of the statistics available in the member's packet.

Mr. Robertson extended the discussion by noting the impact of these statistics on the court and judicial system. Without regard to States Attorneys, Public Defenders, and others and taking into account only the court activities, the courts had in FY 06/07 a \$458 million appropriation. In 07/08 that appropriation increased to \$491 million. During FY 07/08 there were two special sessions to discuss revenue shortfalls and all State agency budgets, including FINAL Minutes

Approved November 18, 2008

the courts, were cut by about 11% that year. In FY 08/09 appropriations for the courts was cut to \$438 million.

There is concern that the Legislature will have to cut budgets even more in 08/09 due to revenue projection shortfalls. However, the Legislature will wait until November for economists' projections as to impact on revenues to decide the potential amount that may need to be cut. Options to deal with revenue shortfalls include using more reserves, using Trust Fund surpluses, using the Chiles Foundation (monies from tobacco legislation) and/or cut spending. If they cut spending, Mr. Robertson said the economist project a need to cut about 5% across the board to raise the additional \$800 million necessary to cover a projected \$1.4 billion shortfall. This would obviously affect the courts. Looking at the FY 09/10 budget, they are looking at possibly cutting every state agency budget by 10%. This is not unusual in that every year, agencies are asked to give the Governor and Legislature a 10% cut list in case it's needed. This year the exercise is much more serious than it has been previously.

08/09 CLERKS BUDGETS AND PROCESS

Mr. Dew gave an overview of the FY 08/09 budget process timeline to include possible LBC and CCOC amendments, and potential BAR's after budgets have been submitted and certified. He also reviewed Clerk collection contributions to the State of Florida including non-court related collections, the \$50 off the top of filing fees, SB 1790 increases, and other revenues.

Mr. Robertson then summarized the 08/09 budget requests as submitted to the CCOC staff and reviewed and approved by the Finance and Budget Committee. Clerks' local revenue collections are projected for 08/09 to be an estimated \$550.7 million. Clerks have requested expenditures of \$539.2 million leaving an estimated surplus of \$11.5 million. Mr. Robertson reminded the members that we will potentially need up to \$3.5 million of that surplus for juror expense authorizations leaving then an \$8 million estimated surplus.

In comparing the approved 07/08 budgets to the 08/09 budget requests he noted we have a \$36.1 million increase in the expenditure cap (6.5%). The requested expenditure and reserve budgets increased by \$36.5 million (6.8%). In FY 07/08 we experienced requests that were \$13.1 million (2.5%) below the cap and in FY 08/09 budgets are \$12.7 million (2.3%) below the cap. Summarizing, FY 08/09 Expenditure/Reserve request is \$539.2 million, expenditures \$533.3 million and reserves \$5.9 million (1.1%). Like last year, we see that 90% of the full expenditure requests from the Clerks is in personnel services, 9.5% in expenses, very little in capital expenses, and none in debt service.

In reviewing the number of current and reopened criminal defendant and civil cases, Clerk workloads are projected to increase by 17.6% (21% in civil and 3.9% in criminal). Mr. Robertson said this helps explain the corresponding increase in Clerks' budgets. It further explains why revenues have increased particularly when we see such a dramatic increase in civil cases which generate more revenues than criminal cases.

Mr. Robertson explained the checklist used to approve budgets. He reported that thirty-nine counties will be able to fund their budgets without support from the Clerks' Trust Fund and twenty-eight will receive dollars from the Clerks' Trust Fund to help fund their budgets. The Trust Fund bottom line is that in the beginning the numbers show we expect to have a balance of

\$11.5 million. From that balance however we will need to keep \$5.4 million in reserve in the Trust Fund to cover possible emergency and economic downturn revenue shortfalls during the fiscal year leaving \$6.1 million. From this amount we will need up to \$3.56 million for juror payment authorizations, leaving only a projected \$2.5 million estimated surplus. Additional monies would include any unexpended dollars at the end of the fiscal year.

He also shared a typical budget picture and the budget and performance measures information required by the State. He reported that some clerks are using a Red Flag system to alert them when expenditures or reserve amounts vary more than what has been their average. We are introducing a Red Flag system at CCOC to alert us on changes in the Revenue-Expenditure Reports that could affect the Trust Fund balances and in particular could affect the Clerks in terms of making sure the monies are there for them. We are also putting together a system for analyzing the meaning of the red flags and putting together a list of possible responses to the red flag conditions. We hope to have it available for Clerks in November; so that if the opportunity to put a red flag system together for their county arises, they will have an understanding of how to organize and use the system.

Mr. Dew explained that some Clerks did not realize foreclosures would increase so dramatically. This increase caused expenditure caps in some counties, through rebasing, to increase dramatically. But Clerks realize that the high numbers of foreclosures won't continue at this level, so they have projected lower revenues. In this situation, there is less money going to the Trust Fund. Ms. Ewing suggested that this is another reason for checking the numbers on at least a quarterly basis.

Mr. Weiss is requested that CCOC and FACC get together and be able to show the total revenue Clerks provide to both the State and the counties. He would like to see an annual report demonstrating both the State and the county data that could be shared with the Legislature. Mr. Dew stated that the county data would have to come from the Clerks as DOR would not have access to it. Mr. Weiss stated that Clerks do have access to this data when doing their annual report. Mr. Dew stated that if the Executive Council would like this information, he will be happy to contact Mr. Weiss to determine specifically what data he would like to have included in such an annual report.

Mr. Inzer noted that it appears that the \$2.5 million surplus for Trust Fund seems very thin. Mr. Robertson agreed and reminded the Executive Council that when the four hurricanes hit Florida in one season, it impacted budgets by \$4 to \$4.5 million which is not far under the \$5 million we've requested be kept after each DFS sweep. Mr. Dew also noted that if Clerks had requested up to their allowable caps, there would not be enough dollars in the Trust Fund to aid revenue-challenged Clerks. In this case the Council would have to make decisions about where to make cuts. He also noted that the numbers shown here look very healthy. This is because some Clerks are showing good growth, but we have identified several small-county Clerks who have been hurt by the rebasing process. The Legislature is trying to look at this again.

Mr. Inzer asked if there were a situation such that the Trust Fund would not be healthy enough to fund Clerks who need Trust Fund dollars, would the Executive Council meet to find a way to amend budgets to cover that shortfall. Mr. Dew responded affirmatively. Mr. Weiss is very concerned that when foreclosures fall off, many more counties will become revenue challenged. He feels that in the next few years we will all lose major revenue on which we've become dependent. Ms. Ewing is also concerned about increasing credit card debt.

Mr. Weiss referred members of the Council to the three worksheets provided in the packets today. The Finance and Budget Committee approved the Staff Recommendations and are bringing that worksheet to the Council for its review and approval. Mr. Forman asked if the budget numbers provided include the juror expense numbers. Mr. Dew responded that it includes the juror expense dollars for only one quarter. There will be numbers added over the next three quarters as those projections are made. Mr. Weiss moved the Council approve each of the Clerk's budget requests that totals \$539,222,065 as outlined in the meeting packet. Ms. Ewing seconded the motion which passed unanimously.

BUDGET FORM

Mr. Dew presented to the Council the draft form to be used in the annual budget Legislative report that is statutorily due by October 15th of each year. He reported that there is one amendment from previous year's report form. Under "Performance Measures – Outputs" and under "Projected # of", you will see "# of Reports completed (based on approved list)". This language and box for data have been added. Ms. Ewing moved to approve the change to the form. Mr. Inzer seconded the motion which passed unanimously.

FILING FEE FOR COUNTER-PETITION

Mr. Rob Boyd reported that the CCOC General Counsel was asked to render an opinion based on a change in the statutes as it related to charging a fee for counter-petitions. The question, pursuant to Fla.St. 28.241, asks does "the new modification require a Clerk of Court to charge \$295 for filing of a counter-claim? Also, is the Clerk of the Court required to charge the same fee for the filing of a counter-petition? According to Mr. Boyd the answer is yes. He stated that not only are the Clerks authorized to charge the fee, they are required to charge \$295 for a counter-petition. Mr. Boyd looked at the statute, legislative history; they've looked at the circuit trial level, appellate level, and the Florida Rules of Family Law procedure as well as civil procedure and nowhere to have they made a distinction between counter-claim and counter-petition.

Mr. Ruvin noted he will be requesting an opinion from the Attorney General and invites anyone who so chooses to join him in requesting such opinion. Ms. Ewing asked if it was Dade County who proposed the FACC Legislative Committee work on cleaning up the language. She asked how he would feel about moving forward with that suggestion. Mr. Ruvin said that he feels that is a good parallel course to take. He will move ahead with requesting an opinion because he feels that legislation would only apply prospectively. Mr. Forman suggested that this should become part of our legislative package. Mr. Ruvin concurred.

Mr. Dew asked Mr. Ruvin if he is or is not charging \$295 for counter-petitions at this time. Mr. Ruvin stated that he is thinking about charging the \$295 but he plans to hold the monies in escrow until he receives the opinion. Mr. Boyd advised that this is appropriate.

Mr. Inzer asked if Mr. Boyd looked at legislative intent. He was advised that General Counsel did review legislative intent and they believe their opinion is consistent with legislative intent. In particular they reviewed what exactly do counter-claims and counter-petitions do and how do they differ. They are often used interchangeably. Both seek affirmative relief from the court and both retain jurisdiction. Should the original claim or petition be dismissed, the

FINAL Minutes

Approved November 18, 2008

counter-claim or counter-petition still requests affirmative action from the court and still retains jurisdiction. Under this examination, Counsel sees it as the same action with two different names. Mr. Inzer said that appreciates that Mr. Ruvin has a different interpretation of the intent of the legislation. Mr. Inzer suggested that because there are revenues attached to this that someone had to make revenue estimates based on these cases as well, then this would show intent to charge the \$295.

Mr. Forman stated that there is no action required on this issue.

TRUST FUND UPDATE

Mr. Culp stated that as previously reported DOR began making monthly sweeps of the Trust Fund but allows \$5 million to remain in the Trust Fund at all times. We monitor the Trust Fund to ensure that the \$5 million minimum remains should an emergency need arise. Since March, \$21 million has been swept from the Trust Fund and deposited into General Revenue. As of the beginning of August, the balance was \$8,964,793, so the Trust Fund is solvent.

OTHER

Mr. Dew reminded the Council of the September 29, 9:00 am teleconference. Mr. Forman confirmed that this will not conflict with the religious holiday.

The meeting adjourned at 2:45 pm