

**MINUTES**  
**FLORIDA CLERKS OF COURT OPERATIONS CORPORATION**  
**EXECUTIVE COUNCIL**  
**TUESDAY, NOVEMBER 18, 2008**  
**ORLANDO, FLORIDA**

Mr. Forman called the November 18, 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 John Crawford, Honorable Marsha Ewing, and Honorable Tim Sanders. Honorable Bob Inzer and Honorable Richard Weiss attended telephonically. Honorable Harvey Ruvin was unable to attend.

**MINUTES**

Mr. Forman asked for a motion to approve the September 17, 2008 Council meeting draft minutes as found in the meeting packet under agenda item #1 . Mr. Crawford requested that we replace the initials "RW" to Mr. Weiss. Mr. Dew reported one other change to the September 17, 2008 Minutes. On page 10 under Filing Fee for Counter-Petition the wording, "Mr. Ruvin stated that he is going to charge the \$295" should be "Mr. Ruvin stated that he is thinking about charging the \$295." With these two changes, Mr. Crawford moved approval of the Minutes. The motion was seconded by Ms. Ewing. The motion passed unanimously.

**TREASURER'S REPORT**

Mr. Weiss reported that we are one-third through the year. He noted that our expenditures are well within 33% of our annual budget. He further noted that our ending balance as of October 31, 2008 is \$543,468.77. Mr. Weiss moved approval of the Treasurer's Report. The motion was seconded by Mr. Crawford and passed unanimously.

**COMMITTEE REPORTS**

**Finance and Budget**

Mr. Weiss noted that there is no report from the Finance and Budget Committee since there were no budget amendment requests from Clerks.

**Performance Measures**

Ms. Ewing reported that the Performance Measures Workgroup met in Orlando on October 23, 2008 to review and discuss possible changes to current standards. The consensus of the workgroup is that we will leave our performance measures as they are.

The group feels that by leaving the measures as they are, the data will better document the affects of the economy on collections and on our budgets and it will also help build a base for historical data to aid in making future decisions. There was a recommendation that we combine the Cases and Timeliness data into one report to eliminate reporting duplicative data. The group would like to study the benefits of the payment plan to determine specifically whether the costs of collecting the monies through the payment plan are greater than the monies collected. Mr. Forman agreed that a study would be helpful. He did note that payment plans are necessary for those people who cannot afford to pay the total amount at one time. Ms. Ewing also suggested looking at counties where payment plans have not caused an increased workload to see what they are doing that might be used to help other Clerks.

Mr. Dew asked if we need to approve the forms change. Ms. Ewing moved approval of combining Cases and Timeliness (format included in the packet). Mr. Sanders seconded the motion. Mr. Forman further thanked Ms. Morse, the Honorable Clerk of Seminole County, for her assistance. The motion passed unanimously.

### **Personnel Committee**

Mr. Sanders reported that he had nothing to report on behalf of the Personnel Committee at this time.

### **Legislative Committee**

Mr. Inzer reported that the Legislative Committee has not met yet, but plans are moving along for the Committee to get together in December to discuss legislative initiatives regarding the budget process and CCOC responsibilities. Information will be distributed as it becomes available.

## **FILLING EXECUTIVE COUNCIL VACANCY**

Mr. Forman reported that we are working toward filling the position created by the resignation of Honorable Charlie Green, Lee County Clerk of Court. Mr. Green represented counties in the 500,000 to 1,000,000 population group.

Mr. Weiss reported the procedure and timeline for the election of a replacement for this position. Announcing the vacancy today, on November 25 we will provide a request to Clerks in this population grouping to determine their interest in running for the Council position. Signed letters of interest are to be submitted to the CCOC office by December 8. A memorandum from the CCOC staff and a ballot with instructions will be mailed to each Clerk by December 15 with a January 9 deadline for returning ballots to the CPA firm conducting the election. Ballots will be opened January 22 by the CPA firm, and the newly elected Council member will be sworn in January 27 at the Council Meeting in San Destin, Florida.

## **DFS CONTRACT DISCUSSION**

Mr. Boyd reported that there were several issues related to the DFS contract that required further review and discussion. Language in Exhibit B which states “other unauthorized clerk expenditures for FY 09-10 shall include: vehicles, repairs, fuel, gift cards, food, party supplies, and water for employees,” caused concern. He thanked the CFO for changing the language from FY 08-09 to FY 09-10 to allow us time for discussion and resolution of this issue. Mr. Boyd reported that discussions are taking place about this issue and hopes that between now and the time this would take affect in 09/10 we will be able to resolve this issue.

Mr. Forman suggested that this issue be reviewed by committee and brought back to our January 27 meeting in San Destin. He requested that Mr. Sanders serve as Chair of the committee and he would like to see membership include Mr. Boyd and someone from FACC. The committee’s responsibility would be to develop language to resolve this issue. Mr. Forman asked if there were any objections to forming the committee. There were none.

## **FEE FOR FILING COUNTER PETITION**

Mr. Boyd noted that this issue has been discussed at previous meetings of the Council. At issue, F.S. 28.241 requires a Clerk of Court to charge \$295 for the filing of a counter-claim, cross-claim, or third-party complaint. The words “counter-petition” are not specifically included in the statute language. Mr. Boyd is of the opinion that the fee should also be charged for the filing of a counter-petition. He noted that Mr. Ruvin has requested an Attorney General opinion regarding this issue and we are awaiting this opinion. We understand that the clean-up bill concerning the 1790’s fee will specifically include the language “counter-petition”. We believe most Clerks are collecting the filing fee for counter-petitions. He stated that information will be distributed as it becomes available.

## **07-08 and 08-09 BUDGET PRESENTATION**

Mr. Culp reported that Clerks collected approximately \$27 million more than projected in 07/08 and under-expended their approved budgets in that same year by \$25.1 million. Accuracy of revenue projections varied from county to county, but, in the aggregate, counties realized approximately 105.3% of their projected revenues. Mr. Dew commented that, looking at the breakout, it is easy to discern how difficult it is for Clerks to accurately project revenues. Mr. Culp detailed data from the FY 07-08 budgets. Mr. Dew further noted that Clerks have actually collected more than what the State had projected they would collect. Mr. Culp also noted that initially twenty-five offices were scheduled to receive a monthly remittance from the Trust Fund but by the end of the year, only nineteen had required that monthly remittance to make them whole. In addition, initially only two offices were budgeted to remit one-third of their overall revenues to the state but through year-end, eight offices had this capability.

Mr. Culp reported that projected revenues for FY 08-09 are \$550.7 million while expenditures are projected to be \$539.2 million resulting in an \$11.5 million surplus. The overall court-related budget cap for FY 08-09 is \$551.9 million, \$1.2 million greater than estimated overall revenues. He further detailed data from the FY 08-09 budgets.

Mr. Weiss requested a report that shows the total amount of monies that the Clerks sent to the state from all sources, to include the \$80, the excess fees under SB 1790, etc. He feels the total amount would have a greater impact on legislative staff. Mr. Dew stated that he and Mr. Culp can get this number for Mr. Weiss by the January 27<sup>th</sup> meeting in Destin.

## **CIVIL TRAFFIC STUDY**

As noted in the OPPAGA report, Clerks are doing a good job with collections, but Civil Traffic collections remains a problem. Many counties continue to have difficulty meeting the collections performance measure for Civil Traffic. As a result CCOC has contracted with a vendor to conduct a study that will be used to determine how collections in the area of Civil Traffic can be improved. Mr. Dew explained that the study included visiting a number of Clerks to review their collection efforts in the civil traffic area. He expects that it will be early 2009 before all county visits can be completed and the report finalized. It is Mr. Dew's hope that once this study is complete, we can do a similar study for criminal misdemeanor and other collections categories.

He asked Mr. Isabelle, from the FACC, who has been hired to help CCOC staff conduct the study to provide a status report on the Civil Traffic Study. Mr. Isabelle reported that while he and CCOC staff have gathered data on county visits, they have also taken time to share information and discuss methods other Clerks are employing that might also help that particular Clerk's office. The good news is that Clerks are willing to make changes to increase their collections. He noted that they are not advocating increasing the number of traffic tickets but rather improving methods of collecting the fines for those that have been issued.

CCOC staff and Mr. Isabelle have visited fourteen counties, seven of which were not meeting the 90% standard. They visited counties in all population groups and reviewed over 2,000 citations filed with the Clerks in July 2006. They reviewed collection research studies, researched other state's traffic procedures, and reviewed DHSMV Uniform Citation and Disposition Annual Reports. The study is not exhaustive in that it does not include costs of processing cases and / or enforcement actions. It also does not include DHSMV procedures or those of the collection agents.

While not all counties experienced increases, from 2003 through 2007, the number of civil and criminal traffic tickets issued increased by 21%, from 4.3 million to 5.2 million. Civil Traffic collections have hovered at about 87% (performance standard 90%) for the past two years. The traffic assessment in FY 07-08 was roughly \$470 million. If we can increase the collections by 3%, it would mean almost \$14 million in increased revenues. Therefore, it is important that we invest the resources of time and monies.

There are many factors that affect civil traffic collections and it is difficult to isolate one particular factor that could 'fix' collections. Clerks have no control over the

number of citations or the judicial discretion regarding adjustments to those assessments. Cutback by law enforcement agencies can adversely impact traffic revenues. The type of tickets written will also impact revenues.

We do have control over the collection of the assessments. While utilizing collection agents help; the more quickly we process cases and collect assessments, the greater the percentage of assessments actually collected. Providing a variety of payment options and conveniences greatly aids collection efforts. Conversely delayed court time and payment extensions negatively affect collections. Criminal companion cases can have a positive (if both citations are assessed) or negative (if one citation is dropped) impact. Finally, the study shows we need stronger enforcement methods for cases of driving without a valid and/or with a revoked license.

Studies show that in addition to offering a discount for early payment, state and local agencies outside of Florida use more coercive enforcement actions to collect outstanding governmental fines and fees. For example, they “boot” cars, garnish wages, suspend city services, college registration, and college diplomas, and charge interest on outstanding debt. They also offer early payoff discounts. Implementation of these efforts would require additional resources.

Investing time and dollars to collect revenues will impact Clerk budgets and State general revenues. Counties need to update case processing automation and reporting. Additionally, it is important for counties to know their clientele and their resources. This will enable them to discern which methods / programs are fiscally plausible and will offer a reasonable return on the investment needed to set up and operate the method / program.

Mr. Isabelle noted that they have developed a Collections Best Practice which has been revised during and after site visits. They have developed a Best Practice Website and are in the process of developing a Sharing Corner and conducting Process Improvement Training. Plans are being made to complete site reviews and finalize the report to CCOC with suggestions in early 2009.

Mr. Forman thanked CCOC staff and Mr. Isabelle for their efforts with the study.

## **JUROR EXPENSE FOR CLERKS**

Mr. Dew requested that the Executive Council approve an increase in Clerks’ budget authority for juror expense of \$1,066, 478.18 for the period of October through December 2008. If approved, CCOC will extend each Clerk’s budget by the amount listed on the spreadsheet provided to assure Clerks will have enough to cover these juror expenses. SB 1790 provided \$3.5 million (\$1,188,184 per quarter) for the first nine months of CFY 08/09. We were able to stay within the amount allocated and provide a \$121,000 surplus only because Dade and Palm Beach Counties did not require additional funds for juror expenses saving approximately \$200,000.

This process will take place again for each of the next two quarters. Once it is completed for the last quarter of this fiscal year, the juror dollars will have been built into each Clerk’s budget. He also noted that we have taken the highest quarterly juror expense in the past three years and made that the amount you will receive each quarter for the Clerk’s offices from small counties. It is hoped that this will allow those small

counties to have enough dollars to cover juror expenses for any big trials should they be faced with them.

Mr. Crawford moved approval of distributing \$1,066,478.18 in expenditure authority for the 65 Clerks for juror expenses as listed on the attached document in their packet. Ms. Ewing seconded the motion which passed unanimously.

### **AUDITOR GENERAL REPORT**

Mr. Dew noted that while the draft report was provided at the previous Executive Council meeting that this report in their packet now includes Mr. Forman's response. We are required to respond to the report within thirty days. We have provided a response for each of the six findings. The response for Findings 1-5 answer the findings. We have taken exception to Finding 6 – unsupported travel reimbursements.

Mr. Boyd reported that in 2003, Chairman James Watkins negotiated a compensation package, subject to Executive Council approval, with Executive Director, John Dew. This compensation package included a pre-tax monthly car allowance which is legal. Some months Mr. Dew traveled a lot and in others he traveled less. In the audit report for last year, mileage was audited only for the time period January 2006 through December 2006. The auditor's conclusion was that it would have saved the Corporation \$2,004 to have reimbursed Mr. Dew for mileage during that time as opposed to providing a car allowance. Mr. Dew has done calculations of his mileage from July 1, 2004 through August 30, 2007. We have spot audited these calculations. Using these calculations rather than Mr. Dew owing the Corporation \$2,004, the Corporation would actually owe Mr. Dew \$1,971 if he were given a mileage per diem rate instead of the monthly car allowance. Mr. Boyd allowed that the calculations have not been audited by an auditor. He asked the Council whether they would prefer to employ Lanigan and Associates at \$135-\$140 / hour to audit these numbers or if they would prefer, as prudent business practices, to not have the three-year window audited and call it even subject to DFS approval. Ms. Ewing moved that we accept the calculations and call it even subject to DFS approval. Mr. Crawford seconded the motion.

Mr. Forman interjected that when the contract was initiated, everyone believed that it would be less expensive to pay for a car allowance than it would to pay per diem. He further stated that he feels now that it would cost more to pay the auditor to find out that in the end we actually underpaid Mr. Dew for all his travel.

Mr. Dew added that he has always tried to save money for the Corporation. In order to be prudent, and assure the Corporation was saving money by providing him a car allowance, he made it a rule to drive to central and south Florida and took staff with him in his vehicle which saved thousands of dollars when they could have more easily flown. He felt it was unfair that the auditors cited this issue as the car allowance was part of a contractual agreement. He also felt it was unfair because during the year they chose to audit, issues better handled from Tallahassee decreased his travels. During the total period of time he had the car allowance, calculations show the Corporation would owe him monies based on per diem rates. However he stated he feels that because he had a contractual agreement with the Corporation that despite being owed money he is

honoring the agreement. He would like to see this issue settled with DFS so the Corporation can move on from what he feels is an unfair audit criticism.

Mr. Crawford asked where we go from here. Mr. Sanders explained that based on Mr. Dew's request we have discontinued the car allowance and Mr. Dew has been operating on a mileage per diem basis since October 2007. Mr. Dew would not ask the Corporation to reimburse him for travel during the period of time he had the car allowance. And the issue would be resolved pending DFS approval. Mr. Crawford further asked if we would get something in writing that DFS has approved it and we are deemed to be clean with regard to this issue. Mr. Boyd agreed that he will write the letter to DFS asking for their response in writing. If they disapprove, Mr. Boyd will bring the issue back to the Executive Council.

The motion passed unanimously.

## **CLERKS' TRUST FUND UPDATE**

Mr. Culp noted that the Department of Revenue is sweeping funds from the Trust Fund on a monthly basis maintaining a minimum balance of \$5 million for emergencies. Through October 2008, a total of \$17,000,000 has been swept from the Trust Fund and deposited into General Revenue. The balance as of November 1, 2008 was \$5,837,161.

## **OTHER BUSINESS**

### **FUTURE MEETINGS**

Mr. Dew noted that we have dates for all of our meetings except Summer Conference. He further noted that we like to plan our meeting for a mid-Conference day to make it easier for Clerks to attend. Mr. Dew will meet with Mr. Kent to decide on a date and time for the CCOC annual and quarterly meetings during Summer Conference. Dates of future CCOC Executive Council meetings are January 27<sup>th</sup> in San Destin; April 14<sup>th</sup> in Orlando; September 1<sup>st</sup> in Sarasota; and November 17<sup>th</sup> in Orlando.

### **UPDATE ON REVENUES FROM SB 1790**

Mr. Dew reported that CCOC is to provide DFS, on a quarterly basis, data comparing projected versus actual 1790 revenues as they are submitted quarterly. In addition, if revenues are not coming in as projected, CCOC is to contact the Clerk's office to determine the reason.

Mr. Culp noted that the Legislature estimated that 1790 fees would generate approximately \$120 million for State general revenue in FY 08-09. During July – Sept 2008, Clerks collected \$31,247,565.61. If this continues, the annual amount will be approximately \$124 million. The annual number will be modified as actual data becomes available. Mr. Culp provided further detail. Mr. Dew added that it appears, looking at this quarter's data, Clerks are bringing more revenues than had been projected. Mr. Culp

thanked the Clerks' offices for gathering the data, segregating new fees data from old fees data, and getting the data to CCOC.

### **Chief Financial Officer Memorandum Number # 03 (2008-2009)**

This memorandum from the State's Chief Financial Officers allows that Clerk offices that receive monthly remittances from the Trust Fund may offset the need for the monthly remittance by using a portion or all of the increased fees associated with SB 1790. This means that the fees from SB 1790 which were to be classified as liabilities due to the State of Florida may be reclassified as revenues to be used to offset their budgeted deficit. The amount due from the Trust Fund to these budgeted deficit offices would either be reduced or eliminated by the reclassification.

Currently Brevard, Manatee, Pasco, and Pinellas are participating in this activity having reclassified approximately \$467,204. Pinellas and Manatee were able to offset their monthly remittance entirely while Brevard and Pasco offset a portion of their monthly remittance. We will be talking with the other Clerks eligible for this process. Mr. Dew reported that in the report to the Legislature, we noted which counties are using the process and how much money has been offset by the new fees. In addition, we've added a new line to the monthly Revenue-Expenditure Report to account for the reclassification of new fees. Some counties have expressed that they prefer to forego the process because of the extra work involved in reclassifying the dollars. We will also provide this explanation to the Legislature.

### **MR. FRY COMMENTS**

Mr. Fry, Clerk of Court, St Lucie County, expressed concern that, while it is good that counties are experiencing growth and increased revenues, at some time the increased monies being collected will stop. He is concerned that there is no rainy day fund, that at the end of the year all excess revenues go to the state. He requested that we work with the Legislature so that when we are experiencing the inevitable shortfall, Clerks are not looking at having to make large cuts in their budgets.

Mr. Dew noted that Mr. Inzer, Chairman of the Legislative Committee, is aware of this issue and it is a focus for the upcoming Legislative Committee meeting and for CCOC this year. Mr. Forman thanked Mr. Fry for his concerns and input and hard work as Clerk of St Lucie County.

The meeting was adjourned at 3:59 pm.