

MINUTES
FLORIDA CLERKS OF COURT OPERATIONS CORPORATION
EXECUTIVE COUNCIL
WEDNESDAY, JANUARY 7, 2009
TELEPHONIC

Chairman Howard Forman called the January 7, 2009 special telephonic meeting of the Executive Council of the Florida Clerks of Court Operations Corporation (CCOC) to order at 2:00 pm. He welcomed members and guests. Members of the Executive Council present were the Honorable Howard Forman, Honorable Harvey Ruvlin, Honorable Richard Weiss, Honorable John Crawford, Honorable Marsha Ewing, and Honorable Bob Inzer. Honorable Tim Sanders was unable to attend.

AGENDA

Mr. Forman requested a motion to approve the Agenda. Mr. Weiss so moved with Mr. Crawford seconding his motion. The motion passed unanimously. For those listening on the phone, Mr. Dew noted that the packet for today's meeting is on the website.

REVENUE TRENDS

Mr. Dew reported that the CCOC Legislative Committee, at their meeting last month, asked Mr. Forman as Chair of the CCOC to call a special Council meeting to discuss the loss of revenues statewide by Clerks. The Committee further asked CCOC staff to provide information to the Council showing the trend of loss of revenues. Mr. Dew noted that revenues for Clerks have been declining steadily since July and to date that revenues in forty-five counties are running below projections used for the rebasing process. Even worse, just looking at revenues for November and December, Mr. Dew noted that 65 Clerks show a trend toward receiving less revenue than projected for County Fiscal Year 08/09. Mr. Dew turned the presentation over to Mr. Robertson of Glenn Robertson and Associates.

Mr. Robertson noted that, with four years of data, we are now able do a more complete multi-year analyses. Taking current economic climate into consideration, we have reviewed the data submitted to CCOC and we've made projections with particular emphasis on the critical challenges for the remainder of the year and into the next budget year.

Given the current economic indicators, most economists feel that the economic situation could get worse before it gets better. We hope to seen an up-trend in mid-2009 but it could be late in 2009. We have focused on the effects of the current economy on revenue sources for Clerks with particular attention

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to the solvency of the Clerks' Trust Fund. We also hope that as the year progresses and we have more data, we can provide a lot of good information to Clerks throughout the state in terms of where things might be going and when we can predict a turnaround.

Mr. Isabelle, on contract with the CCOC, reported that we specifically compared the 2008 November actual revenue and collections data to the 2007 actual revenue and collections hoping to discover the causes of and discern the impact of the downward trend. Compared to this time last year we see decreases in fines (16.1%), court costs (14.6%), forfeitures (24.9%), and interest (400%). We are seeing slight increases in filing fees (up 5.4%), due mostly to increased numbers of foreclosures, and service charges (3.1%). Reading the chart provided in the packets, fines represented 22% (\$121 million) of the FY07-08 budget. Court costs represented 21% (\$115 million) of the FY07-08 budget, etc. Revenue increases / decreases vary from county to county. Mr. Dew said that CCOC staff will be monitoring this data on a monthly basis.

Cases are a major revenue producer. In comparing the six-months running from April through September FY06-07 to the same period in FY07-08, all criminal divisions are down. County and Circuit Civil are up, 6% and 34% respectively. The increases are a result of foreclosures (Circuit Civil) and evictions (County Civil). Circuit civil is up in sixty-six counties while county civil is up in fifty-four counties. On the other side, fifty Clerks have decreasing numbers in County Criminal and fifty-five Clerks are experiencing decreasing numbers in Criminal Traffic. Ms. Ewing noted that another reason for the increase in County Civil is credit card default. Mr. Inzer noted that evictions in Leon County have decreased dramatically since the landlord eviction filing fee increased. It appears that some landlords have discovered that it's cheaper to pay for the tenant to leave than to pay the filing fee for an eviction.

Mr. Weiss asked why Civil Traffic is down so much. Mr. Isabelle suggested that with trooper and city police cutbacks, there are fewer tickets issued causing an overall decrease. Mr. Inzer said he has met with the highway patrol in his area. He said they have eliminated overtime and have maintained some unfilled positions. Furthermore, with the summer gas increases, there were fewer patrol cars on the road. All of this equates to fewer officers writing fewer tickets. And with people losing jobs and the fees increase, officers report that they are writing more warnings and fewer tickets.

Mr. Robertson reported that in October and November 2008, the sixty-seven counties averaged a 10.5% decrease in revenues over the same time period last year. Additionally, counties are experiencing a 16% shortfall between projected revenues and actual collections. Annualizing the data provided for these two months, only two counties will generate revenues greater than their projections. Sixteen counties will fall less than 10% below projections; twenty-nine will fall between 10 – 20% below projections; and twenty will fall more than 20% below projections. Mr. Dew added that small counties are most harmed by the decreases due mainly to civil traffic losses.

Ms. Frank, Clerk of Court Hillsborough County, asked how many surplus counties are still surplus and how many have become revenue challenged as a result of decreased revenues. Mr. Robertson reported that 65 of 67 Clerk offices are facing a revenue shortfall. The twenty-seven 'revenue-challenged' counties have experienced, over these two months, an average 17% revenue shortfall. These counties are particularly vulnerable because their only relief is through the BAR process for loss of

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revenues but with this process they can only request 2% of their total revenue. If their revenue shortfall is above that 2%, they will have to consider very serious management and budget cuts. The forty surplus counties can augment their spending by retaining collections scheduled for remittance to the Trust Fund. In November 2008 six offices retained all of their surplus dollars scheduled for remittance and seven offices retained a portion of those dollars scheduled for remittance to the Trust Fund. If we continue to see decreasing revenues, those numbers may grow, and the dollars needed in the Trust Fund may not be there. Surplus counties are not immune to the possibility that they'll need to make budget cuts. Mr. Dew added that, with the downward trend, rebasing will hurt Clerks as well in 09/10.

Mr. Robertson said that the focus of the current 2009 Special Legislative Session is to deal with a \$2.3 billion shortfall for the state's current fiscal year which goes through June 2009. Court budgets may be cut by 1.25%, less than the average state agency, so cases will still be heard. Legislators will be looking for Trust Fund surpluses to off-set cuts. And they will be looking at increasing court fees and fines which may impact Article V collections because increasing fees can negatively affect the number of cases filed as well as the number of traffic tickets written.

The focus of the FY 2009-2010 regular session will be to deal with the projected \$2.7 billion revenue shortfall minus whatever is cut from budgets during the Special Session. Cuts will most likely be even more severe. We will monitor cuts closely. Cuts in courts and the Highway Patrol will definitely impact Clerk costs and revenues and collections so we will need to be looking for additional revenue sources.

We are facing great challenges for FY 2008-2009. Approximately 73% of the Clerks' offices could experience between 10% and 44% in revenue shortfall. These shortfalls could negatively impact services provided to both the public and the courts as well as impact their ability to collect revenues. Maintaining a Trust Fund sufficient to cover basic budget commitments, juror expenses, and BAR's is a source of great concern. And with Clerks having fewer FTE's available, it will be increasingly more difficult to maximize the collection of revenues and provide needed levels of courtroom and public case processing timeliness and support.

Looking to FY 2009-2010, challenges include: 1) that forty-seven Clerks' budgets could be rebased down at the end of FY 2008-2009; 2) that final FY 2009-2010 expenditure caps could be below FY 2008-2009 spending authority levels; and 3) that revenue collection and court performance capacities could lessen further.

Mr. Dew noted that we must respond to the challenges now as every month that goes by makes it more difficult for a Clerk's office. This includes assuring Clerks' offices 1) stay alert to monthly changes in revenue, 2) find revenue enhancement options, 3) review and creatively revise operating strategies to save dollars, 4) act expeditiously to increase revenues and cut costs where possible to off-set revenue shortfalls, and 5) share "best practices" with other Clerks' offices. He noted that a discussion on possible legislative relief is the next item on the meeting agenda.

Mr. Weiss stated that he would like for the Supreme Court to mandate a totally electronic records system. He feels he could save a great deal of money if he did not have to provide paper records. Mr.

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Inzer agreed but stated that it's difficult to get some judges to use electronic files, a fact that was noted by Chris Polischuck (of Thomas, Howell, Ferguson) in the Efficiency Study of the Clerks done two years ago. Mr. Inzer said he provided OPPAGA with a copy of the Efficiency Study to aid with their study of court efficiencies in hopes they would recommend moving toward a paperless system. The OPPAGA report has not yet been released.

Both Mr. Inzer and Mr. Weiss would like for this to be a major push for us in the regular legislative session. Mr. Inzer is releasing a report today to his Chief Judge, State Attorney, Public Defender, and County Commission that states that revenues are down and absent efficiencies such as a move to paperless records, service levels will decline because he will not have sufficient personnel to maintain services in the manner the office is currently operating. Ms. Bock requested a copy of Mr. Inzer's report. Ms. Frank noted that, if mandated, the move to a paperless system would be difficult for Hillsborough because of lack of staff and lack of funds needed to accomplish it. Mr. Ruvin warned that we should not be seduced into thinking that going paperless is an easy answer. He uses a paperless system for traffic and family courts and is moving to paperless with all courts. He suggested that Clerks will need to reengineer the whole workload and bring everything onto an electronic platform or they will end up running both systems simultaneously. He suggested that another complication is that funding for technology is coming through those who are county recorders and that money is drying up due to lack of recordings. A separate dedicated source of funding designated by the court and the Legislature for seed money is needed to initiate this suggestion. He invited anyone who would like to see a demonstration of Dade's Spirit system to visit Dade County. Ms. Frank suggested that part of the problem deals with how long Clerks must keep the paper. Mr. Weiss suggested that this would not be an issue with a paperless system.

Mr. Dew offered that CCOC will provide routine revenue updates to each Clerk's office. Staff provided the rebasing templates sooner than usual in an attempt to alert Clerks' offices to this issue. He stated that CCOC intends to update the rebasing template monthly so Clerks can stay abreast of where they stand. CCOC staff will also be closely tracking the expenditure data and will talk with those Clerks if trends indicate that they might be in danger of over-expending given their decreased revenues. Staff has visited Escambia and Bradford Counties and worked with Clerk staff on their caseload and decreased revenues issues and made suggestions as to what could be done to help. Mr. Dew also reported that we have hired Russ Duncan who retired from the state of Texas where he worked as an expert in collections. He has already visited Citrus County and has plans to visit Lake County. He will be available to talk with Clerks about how to do revenue enhancements on the front end, before they need to hire Collections Agents. We are also considering some regional budget strategy workshops. CCOC wants to help in any way we can to help Clerks continue meeting their constitutional duty despite a large decrease in revenues.

To recap, Mr. Dew noted that we need to ensure solvency of the Trust Fund. We do have an agreement with DOR staff that they will keep at least \$5 million in the Trust Fund at all times. We found out today however that they swept approximately \$2.5 million in December bringing the balance below \$5 million. Mr. Dew again requested that they try to keep the \$5 million in the Trust Fund to cover potential BAR's and normal expenses throughout the year. CCOC also feels it is very important to communicate the fact that many Clerks' expenditure authority may be less in FY 09-10 than it is in FY

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08-09. Finally, while keeping the revenue based funding model, we need to get more flexibility in using Trust Fund dollars to avoid severe problems in supporting Clerks.

Mr. Weiss asked for the total of the dollars Clerks have sent to the state including the \$80 and the 1790 fees. Mr. Dew noted that he and Mr. Culp are working on this and will have the information for Mr. Weiss at the Finance and Budget Committee meeting and will also bring it to the Executive Council meeting January 27.

Ms. Ewing noted that some Clerks are using the Court Modernization Trust Fund to cover information management costs. She is concerned that this will dry up if the economy doesn't turn around and a serious issue will become more serious. Ms. Ewing asked if the Information Trust Fund dries up, will Clerks go back to their County Commissioners to request funding for Information Systems? Mr. Weiss feels that the Trust Fund was established to make Clerks of Court independent and enable them to fund Information Technology. He feels we cannot go back to the counties for help with this issue but allowed that he has no other suggestion.

Ms. Johnson, Clerk of Court Santa Rosa County, reported that Santa Rosa is in danger of not remaining solvent. She reported that approximately \$150,000 in the last three months has been sent to the state for 1790 excess fees but that Santa Rosa County is \$100,000 in the hole as of December 1. Ms. Johnson asked if they can keep and use any of those funds. She said that she has a small staff and has had to lay off three employees. Mr. Dew stated that he and Mr. Culp will be visiting Santa Rosa County on January 17. He noted that they will discuss problems and solutions in detail and hopes they will be able to make suggestions that will help Santa Rosa.

LEGISLATIVE COMMITTEE

Mr. Inzer, Chair of the CCOC Legislative Committee, said they met on December 17th. The Committee took the legislative package put together by FACC and pulled those issues dealing with revenues and budgets. The Committee will hold a subsequent meeting at Destin prior to the Executive Council Meeting.

Mr. Inzer stated that with the current Special Session, he became aware that there are specific fines and fees that the Courts would like to see the Legislature increase. Additionally, the Courts would like to see bills passed that would transfer the 16% discount for attending traffic school to the Court as revenue rather than to the Clerk as revenue. The Legislative also has a bill that provides dollars from fines related to withholding of adjudications will be removed from Clerks' revenues and provided to a Court Trust Fund instead. Mr. Inzer will discuss pending legislation today with Mr. Baggett, FACC General Counsel. CCOC's job is to advise and inform the Legislature and DFS while lobbying is accomplished through FACC. With particular reference to Leon County, he needs to make DFS and legislative staff aware that while the Leon County caseload is up by 50%, staffing is about ten positions lower than when he was elected Clerk eight years ago. Further he is afraid that increasing filing fees and other charges will decrease his revenues even more.

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Mr. Weiss initiated discussion of the withholding adjudication issue. If judges withhold adjudication in a case, the fine would go to a dedicated trust fund for the courts rather than to the Clerk. Mr. Inzer is concerned that, dollars aside, this will serve to erode the judges' neutrality. Mr. Weiss allowed that if this passes, Polk County stands to lose \$500,000. Mr. Inzer added that the perception is that since the Clerks of Court haven't complained about having sufficient funding, the Clerks are okay. Mr. Inzer stated that Mr. Baggett and Mr. Ellspermann are working on this issue. Ms. Ewing agreed with their assessment. Mr. Dew reported that after legislative staff analysis, appropriations show an \$8.7 million impact from this issue. Not only does this take money from the Clerks; it also takes money from the State's general revenue. Mr. Boyd added that the language has, as drafted, unintended consequences. Public policy issue has now been raised as to whether there will be an economic motive as to whether adjudication is withheld. Mr. Inzer feels we should not put judges in the scramble for dollars over the cost of prosecution. Mr. Boyd said that the plan is to get information to the legislature. Ms. Allman (FACC) reiterated that they are aware of the issue and that the FACC lobbyist are together today meeting with legislators and working on ways to resolve this issue.

Ms. Lydia Gardner, Clerk of Court Orange County, discussed with Mr. Inzer that Clerks provide dollars to the state but they're not being rewarded while at the same time revenues decrease and budget difficulties escalate. She would like to see the Legislature put something into effect that would reward / compensate Clerks for doing outstanding work with collections. She sent a letter in her area to all of the Judges, the State Attorney, the Public Defender, and to Representative Sandy Adams, who chairs the House Appropriations Committee, telling them that revenues are down in the Orange County Clerk's office 17%, or approximately \$6 million, and that the Clerks have other issues as well. She thanked them for their help and patience and cooperation during these trying times. She feels it is important that she went on the record with the judiciary about how dire the situation is. She offered to share her letter if anyone wants to see it and/or use it.

Mr. Dew offered to provide information on the bill as it becomes available.

OTHER BUSINESS

Mr. Inzer shared that he has spent a great deal of time during the last few months looking at budgets and revenues. He advised that the longer Clerks wait to address the situation, the worse the situation will be and the harder it will be to fix. We need to get the word out now to help assure Clerks are working on these issues.

Mr. Forman asked Mr. Dew to send all of the Clerks a communiqué explaining issues discussed at this meeting and the Legislative Committee meeting. He asked that Mr. Dew also include Ms. Gardner's and Mr. Inzer's letters. Mr. Dew agreed to do this.

Mr. Dew said that staff is personally contacting fifteen Clerks of Court after reviewing expenditure data. He further noted that we concur with Mr. Inzer.

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Ms. Bock, Clerk of Court Palm Beach County asked if there is a mechanism in place through either FACC or CCOC wherein Clerks of Court can talk with legislators about revenue-raising ideas. Mr. Weiss commented that this is one of our roles. He further stated that approximately two years ago he chaired a committee that brain-stormed ideas. He asked Mr. Dew what happened to the ideas generated at that committee meeting. Mr. Dew stated that we have a copy of the list of ideas which were given to a joint CCOC-FACC leadership committee for their review. One of the ideas generated by the group was increasing fees by a COLA factor. It was decided in that committee that we would request a fees increase. We did support raising fees last year and through SB 1790 fees were raised, but the increase went directly to the state. Mr. Dew said that we can bring back that document and revisit the group's suggestions.

Ms. Bock feels that no one is in a better position than the Clerks to examine the suggested increases. Right now the Legislature is meeting and considering increasing traffic (for example). Ms. Bock is aware that the municipalities and counties are garnering great revenues from the red light program but the state is missing out on these dollars. There are other such issues, but Clerks need a venue where they can speak with Legislators about new methods of raising funds at the state level. Mr. Dew restated that we studied fees and decided what could be raised to generate the most revenue. This information was given to Mr. Baggett for lobbying purposes. The bill did pass, but the state took the revenues. Making recommendations is one of the chief roles of the CCOC – despite what the Legislature might do with those recommendations.

Mr. Dew further stated that we will be happy to bring back and look at the ideas provided by Mr. Weiss' committee. Ms. Bock said that she is approaching this not only from what can we do to help Clerks but also what we can do to help the State during these difficult times.

Mr. Dew suggested that if Mr. Forman would like, we can bring a committee of Clerks together to brainstorm again on revenue enhancements. Mr. Dew said he would be willing to staff the committee. Mr. Forman announced formation of the committee appointing Mr. Weiss as Chairman. Mr. Forman will appoint others who are willing to serve on this committee. He said he would welcome Ms. Bock or any other Clerk to join the group and provide input

The meeting was adjourned at 3:37 pm

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