

MINUTES
FLORIDA CLERKS OF COURT OPERATIONS CORPORATION
EXECUTIVE COUNCIL
TUESDAY, NOVEMBER 24, 2009
ORLANDO, FL

Mr. Forman called the November 24, 2009 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 Harvey Ruvin, Honorable John Crawford, Honorable Scott Ellis, Honorable Buddy Irby, Honorable Bob Inzer, Honorable Tim Sanders, Honorable Judge Steinbeck and Honorable Sharon Bock. Honorable Richard Weiss attended by telephone.

SWEARING IN NEW MEMBERS OF EXECUTIVE COUNCIL

Mr. Forman swore in ex officio members of the Executive Council, Judge Margaret Steinbeck appointed by the Supreme Court and Clerk Sharon Bock appointed by the Senate.

MINUTES

Mr. Forman called for approval of the minutes of the Executive Council meetings held October 13th and October 23rd, 2009. Mr. Inzer moved approval of the Minutes as distributed and Mr. Irby seconded his motion. Mr. Irby noted that the Minutes are very comprehensive and suggested we consider concentrating on the motions and actions taken. Vote was taken and the Minutes were approved as distributed.

TREASURER'S REPORT

Mr. Inzer delivered the Treasurer's Report. He noted that we are within our approved budget in all categories. While we are roughly one-third of the way through our fiscal year, we have expended only 21.8% of our budget.

FY 2010-2011 LEGISLATIVE BUDGET REQUEST

Giving background, Mr. Inzer reported that in mid-June 2009 the Governor signed the legislation which put the new process in place. Clerks' budgets for July 1 through September 30, 2009 were cut forcing the Executive Council to revise budgets for those three months. Immediately CCOC had to put in place a process for creating a nine-month budget running from October 1, 2009 through June 30, 2010. And just as quickly, staff had to move from a revenue-based model to a needs-based model. They had to determine what information was needed and what format should be used for the 2010-11 budget process. Once the process was defined and forms created, training was done, and forms and instructions were released. Using the forms with which Clerks were familiar, the Finance & Budget

Committee added a section H on which the Clerks could identify those factors that drive their particular budget, e.g. healthcare costs, number of courthouses, etc.

Budget Instructions were not released until early September and budgets were due back by October 1. With limited training done telephonically, Clerks interpreted things differently. The Budget Workshops, at which every Clerk had an opportunity to explain those factors which drive his/her individual budget, were very informative. The Committee looked at whether Clerks were able to meet performance standards with existing staff. They looked at where the Clerks stood with respect to others in their peer groups. They looked at controllable and uncontrollable costs. Interestingly, they found a high level of disparity in healthcare coverage between counties. With a few exceptions Clerks followed the county model and for most the healthcare benefits offered are less than what is offered by the state in terms of percentage paid by the employer. Additionally, for some counties family coverage is not an option. Other issues considered included differences in processing cases and audit requirements, number of courthouses and shifting paperwork, jury processing and the number of jurors called, summary trials, the requirement in some counties that a clerk be present in all civil proceedings, the willingness or unwillingness of judges to use technology, and the inconsistency in level of service provided to judges.

The majority of increases recommended were for those Clerks who were well below others in their peer group. The process also gave the committee an opportunity to consider and to help those Clerks who have been underfunded since this process began. The good news is that the disparity in unit cost is decreasing. It was noted however by the committee that in the future peer groupings need to be adjusted. He further noted that Clerks are structured differently. Most budgets are structured around reporting units, i.e. budgets for each department. Mr. Inzer stated he felt that we are collecting data that is inconsistent with the way a number of offices are structured. Therefore when we look at details concerning the unit costs we may find anomalies that are contributed significantly to the allocation methodology.

The original aggregate request from the 67 Clerks totaled \$471,832,000. It was clear after the first budget workshop that a number of Clerks felt constrained about what they could request for their 2010-11 budget given the state economic climate. Mr. Weiss, Chair of the Finance and Budget Committee, asked Clerks who hadn't requested funds adequate to fund their office, to resubmit a revised budget with corrected numbers since the Committee needed to understand the true funding necessary to operate the offices. The revised numbers increased the aggregate amount by approximately \$5 million. The Finance and Budget Committee elected not to include any salary increases which then decreased the aggregate by \$7.2 million. The adjusted budget at that point was \$469 million.

At the Finance & Budget Committee meetings on November 18th and 19th all budgets were reviewed and the aggregate was reduced by another \$5.1 million bringing the total to \$464.1 million. This is the budget request amount brought to the Executive Council today. Extracting FRS and healthcare premium increases, this leaves \$2.5 million to cover replacing staff furloughs and restoration of FTE's and removing costs to run Clerks' offices from County subsidy. \$2.5 million is roughly one-half

of 1% of the total budget request. The estimated increase in workload for the fiscal year is 1.38% so the unit cost for controllable costs is actually decreasing.

Mr. Inzer noted that there are some outstanding issues. For example, Clerks submitted budgets with projected FRS contributions of 1-2%. FRS increases will be different for different classes of employees. We will need to allow staff to decrease their budgets should they become aware that their FRS increase is not as high as originally anticipated.

Mr. Irby noted that, while we have come a long way in a short time, developing a unit cost cannot be a one-year process. Through this budget process, we have narrowed the gap in unit cost. If unit cost is to be accomplished, we will need data over time.

Judge Steinbeck said she came away from the Budget Workshops with a true appreciation of how hard the Clerks are working for the citizens and for the judiciary. She realizes that it will be very difficult to accomplish the budget process in a very short time frame. She echoed Mr. Irby's comment that we are narrowing the gap in unit costs. She is concerned however that the request may not meet the legislative expectations regarding specific unit cost comparison. While she understands the issue, she hopes we'll be able to articulate the request in detail such that it satisfies legislative requirement of explaining why certain Clerks' unit costs are greater than that of their peer group. Mr. Inzer responded that there is no way to capture the actual cost affect related to certain issues, e.g. multiple courthouses with the minimal amount of time the Legislature has provided for us this year. The Committee cut budgets where they felt Clerks did not justify their costs. There was just not enough time to completely analyze the specific reasons Clerks have varying unit costs. The bottom-line in this request is that the total cost decreased and the unit cost decreased while the expected case load increased and that occurred after Clerks had already taken a \$90 million cut last year.

Mr. Crawford agreed with Judge Steinbeck that the request may not be in the exact form expected by the legislature. However as the Committee reviewed each county budget, he noted that there was great concern that they stay as close to the intent of the legislation as humanly possible.

DADE COUNTY ISSUE

Mr. Ruvin commended the Finance & Budget Committee for their work. He noted there was a split vote in the committee regarding the Dade County Budget. His original budget submission was a maintenance budget but it contained \$3.5 million for merit and cola increases resulting from the county collective bargaining agreement. These increases are totally out of his or CCOC's control. Even if the Council elects to not grant the \$3.5 million to cover the salary and COLA increases, they will have to be paid. With the previous budget cut, Mr. Ruvin was forced to lay off 142 staff; without the \$3.5 million, he would have to cut another eighty people. Dade County was already unable to meet performance standards. Staff has been working weekends on the backlog of foreclosures. With eighty fewer staff and with expected case load and foreclosure increases, backlogs will grow. Mr. Ruvin noted that SB 2108 recognizes the effect of collective bargaining agreements specifically stating that justification for high expenditures includes but is not limited to collective bargaining agreements, county civil service agreements, and the number and distribution of courthouses. He understands the Committee's need to

make a statement about salary increases but he asked the Council to carefully consider his issue and grant Dade County budget as originally submitted increasing the aggregate budget request from \$464.1 million to \$467.6 million. Mr. Inzer seconded Mr. Ruvin's motion.

Mr. Dew read a letter written by Mr. Weiss as Chair of the Finance & Budget Committee. Mr. Weiss feels that approving the budget with the Miami-Dade raises is fair and appropriate. He reasoned that 1) the raises are required by the county-wide collective bargaining agreements, 2) since raises are required, it would be necessary for Mr. Ruvin, after having reduced his staff by 142 FTE's and not being able to meet performance standards, to further reduce his staff by approximately eighty FTE's, 3) Section 28.36(6) Florida Statutes provides that justification for higher expenditures may include collective bargaining agreements, 4) the Dade Clerk has already reduced his salaried staff salaries by 3% and did not request restoration of reduced salaries in FY 10-11 budget, and 5) there are additional reasons provided in the document provided to the Finance & Budget Committee that further support the inclusion of the raises in his FY 10-11 budget request. Mr. Weiss further supports the inclusion of raises in the Duval County budget as they are also required by union agreement.

Mr. Ellis noted that Dade County is critical to the aggregate revenue of the state. While he understands the committee's concerns about presenting the legislature a higher request, he feels that Dade County is critical to the state and needs to receive the necessary funds to avoid further loss of staff.

Mr. Sanders thanked the committee for their hard work. He also agreed that since this issue is totally outside the Clerk's control, we need to help Miami Dade and he supports the motion.

Mr. Inzer stated that the Finance & Budget Committee struggled with this issue and, knowing there would be an opportunity for the Executive Council to make equity adjustments, decided to remain consistent in their decision. The foreclosure issue is expected to grow into 2011. Miami-Dade already has staff working weekends to process the backlog of foreclosures. This becomes not an issue of raises but one of the number of staff needed to get the work done.

Ms. Bock noted that Dade County negotiates the contract and that all counties are in a deficit situation. She asked if it's possible that Dade County will renegotiate this contract and could we possibly have more concrete information before our request is considered by the legislature. Mr. Ruvin stated that the county has not designated how it will meet the shortfall between revenue projected and their approved budget. If a change occurs, that change will be reflected in his budget.

Ms. Bock also asked if we submit the request to the legislature in aggregate or do we break it down by counties. Mr. Dew stated we submit it in aggregate but this doesn't mean the legislature won't ask for the detail.

Ms. Bock asked if something changes in a Clerk's budget, is there a mechanism at this end of the process to change that aggregate number. Mr. Inzer answered that we submit a request for a specific amount. The Legislature grants a specific appropriation. The CCOC then reconvenes to modify budgets

as needed subject to the cap presented by the Legislature. Budgets will not be finalized until after we receive our legislative appropriation.

Mr. Crawford, referring to the Dade County issue, stated that if this is a matter of restoring salaries to previous levels or restoring furloughs / FTE's, he would be totally in favor of doing it. If it's a matter of asking everyone in the state to forego raises, merit increases, and COLA's to make sure Dade has the FTE's they need, he would be totally in favor of doing it. But his concern is with asking everyone to forego raises, merit increases, and COLA's so that Dade employees can have raises, merit increases, and COLA's. Mr. Ruvin answered that he understands Mr. Crawford's point and, under other circumstances, he would agree. He asked the Council to understand that should they decide against granting the \$3.5 million, the raises will still be given because he is contractually obligated to pay them. But, if that happens, he will have to lay off eighty people to make it happen and getting the work done will be that much more difficult and take that much more time.

Mr. Irby has no doubt that the Council needs to grant Mr. Ruvin's request and let the Legislature deal with it. In talking with colleagues, a number of Clerks are using the 10% of fines dollars to make sure they have adequate staff. Mr. Ruvin responded that he is using those dollars for operational costs so they are not available to satisfy this need.

Judge Steinbeck asked if there is a proviso which states that the additional funding is required to be paid by the collective bargaining unit even if it is unfunded. That is, the Executive Council is being asked to approve an additional \$3.5 million for Miami-Dade County with the understanding that this is necessary in order for Miami-Dade to pay COLA and salary increases pursuant to your collective bargaining agreement. Mr. Ruvin answered that if, because of some future action, these dollars are not needed, he will happily return them.

Ms. Bock noted that when the Finance & Budget Committee met, they established three guiding principles – to be fair, defensible, and explainable. What they noted throughout the Budget Workshops is that there are vast differences between the counties. She suggested that should the legislature not accept the budget in total as submitted, the committee will look at the Dade issue before other county issues. Mr. Ruvin replied that the Council certainly has the authority to look at all type of potential ways to decrease the budget requests if required to do so by the Legislature.

Mr. Irby reminded the Council that Dade County is 16% of the budget. They are the keystone. We need to keep Dade County operational. But if the Legislature does not grant the budget request, he feels we should first look at this issue and at any county over its benchmark.

Mr. Forman called for the vote. The motion passed unanimously.

Mr. Irby noted that the same issue affects Duval County. He moved adding \$323,380 for Duval to cover their collective bargaining agreement issue. Mr. Inzer seconded the motion pursuant to the same constraints as with Dade County. The motion passed unanimously.

Before Mr. Forman reviewed the total budget request, he invited any Clerk who might wish to approach the Council to do so. There was no response. He then reviewed the Legislative Budget Request by peer group inviting comments or questions relating to the budgets in each peer group. Calling each peer group separately, there were no questions or comments.

Mr. Crawford moved that, excepting the counties that have already been approved, he moved approval of the remaining counties. Mr. Inzer seconded the motion.

Mr. Ellis expressed concern that Clerks will not be able to collect the \$451 million and the 8% Trust Fund fee to fund their budgets for this current fiscal year. He is concerned about getting a 'shutdown' notice during the last three months of this fiscal year since Clerks no longer receive an annual appropriation they can spread out to cover the year in such cases. With this being the case now how will we expect to be able to raise even more money next year to support a higher budget. Mr. Forman answered that the budget estimates for this year were greater than \$451 million needed for the Clerks and that the payment of an 8% administrative fee was a surprise to him and other Council members. The revenue estimates for FY 10-11 are projected to be \$489 million. Mr. Forman suggested that the 8% administrative fee will most likely still be an issue next year. Mr. Ellis noted that Clerks, unlike state attorneys and others must collect their appropriation.

Mr. Ruvin suggested that we request to be able to receive a loan from the General Appropriations Fund should revenues collected not meet the cap granted. Mr. Inzer, as Legislative Chair, has had discussions with staff and Legislators regarding revenue enhancements and many of the same issues raised here. In discussing the issue with our General Counsel, it was felt that requesting approval for the dollars we need is appropriate. We need to work on the possibility of a loan if necessary and we need to work on revenue enhancements. Mr. Dew hopes that the Revenue Enhancement Committee will be able to meet in the near future to discuss some of these issues.

Ms. Bock also suggested we look at ways to reduce costs. Of late, using Technology is a great help. Clerks have done an excellent job individually and collectively to use technology to cut unit costs and FTE counts.

Mr. Irby expressed concern that we have no contingency plan built into our budget. Any county can be hit by a huge case or a huge hurricane. If appropriate under state guidelines, he made a motion to have \$2 million set aside in the CCOC statewide budget as a contingency fund. Mr. Inzer seconded the motion. Judge Steinbeck stated that she is not sure we have statutory authority to request a contingency fund. She voted approval of the aggregate of all Clerks' budgets because that was based on a formula delineated by statute. Mr. Boyd stated that we can request a contingency item from the Legislature. The question is whether the Legislature will agree with it. Ms. Bock suggested that since Clerks are restricted by what they raise, it is logical to request a contingency fund as opposed to a fund that allows us to go to General Revenue in the event of a revenue shortfall. Mr. Dew noted that the FY 10-11 budgets do not contain reserves as they have in the past. Mr. Forman suggested we do have the responsibility to discuss fees with the Legislature and suggested this may need to be included in our

legislative packet. If we don't have statutory authority for a contingency fund, he would also like to ask that the possibility of having a contingency fund be discussed with the Legislature.

It was agreed by the Council to amend Mr. Crawford's motion to include in the total budget request a contingency fund in the amount of ½ of 1% of the total budget (approximately \$2 million). Mr. Inzer called for the vote. The committee approved the motion unanimously.

Both Mr. Ellis and Mr. Irby stated that they would like for the CCOC Staff to discuss the cash flow issue and collections issues in more depth at the next Council meeting.

UPDATE ON COURT COMMUNICATIONS WORKGROUP

Mr. Inzer and Judge Steinbeck reported that the Court Communications Workgroup met October 29 in Tampa. Issues discussed included: 1) improving the quality of information going to the legislature and public, 2) transfer of Clerk duties, 3) technology benefits, 4) understanding the respective roles of CCOC and FACC, and 5) concerns about the lack of funding and uniformity. They are trying to schedule their next meeting for January. Both Mr. Inzer and Judge Steinbeck feel the dialog is very beneficial. While they recognize that the group has no authority to make final decisions about complicated issues, they feel that the group can facilitate the people who do make the decisions.

Judge Steinbeck invited Clerks who are having issues with their judge(s) to talk with their Chief Judge. If no resolution can be reached at this level, Judge Lee E. Haworth, chair of the Florida Conference of Circuit Judges Judicial Administration Committee welcomes Clerk concerns and will help resolve issues. These concerns should be submitted to Judge Haworth in writing.

AUDITOR GENERAL REPORT

Mr. Dew reported that during 30 days when CCOC had the opportunity to review and respond to the most recent annual Auditor General report findings, staff was too busy working on the budget process. There was no time to adequately consider and respond to the audit criticisms. He expressed to the Council that as soon as time permits he or his staff will do a more thorough review of the report since there are several items in the report that are not correct.

Judge Steinbeck noted that she was asked at the last meeting by a Clerk if the court system is audited. She reported that they are. The Auditor General's Office conducts audits about every two years.

UPDATE ON CLERKS' TRUST FUND

Mr. Dew reported that dollars being submitted to the Trust Fund are still not adequate to allow for a full 1/12 disbursement at the beginning of each month as required by law. Staff monitors the Trust Fund on a daily basis. Once dollars are sufficient, paperwork is submitted to JAC and processed through DOR for disbursement. Mr. Dew is concerned that historically November and December are low collections months.

Regarding the 8% administrative fee and loan repayment, Mr. Weiss wrote a letter sent to legislative staff and the Governor's Office alerting them that we do not have sufficient dollars to begin making payments at this time. They will reevaluate our ability to repay after the first of the year.

Mr. Irby asked if the problem relates to Clerks not sending dollars by the 20th of each month from the prior month's revenues. Mr. Dew noted that CCOC staff calls if dollars are not sent by the 20th of each month. Staff also reconciles the monthly reports with what DOR receives. All Clerks are sending in dollars each month.

OTHER

Mr. Irby reported that, with help from the CCOC Budget Director Doug Isabelle, the PIE Committee met and developed a plan. One item needed to help staff better understand Clerks' revenues is getting case data every month. The PIE Committee approved a form to help collect this data but due to the length of today's meeting today he suggested it could wait until the next meeting.

Mr. Dew thanked the Clerks, the Clerks' staff, the Finance and Budget Committee members, and the CCOC staff for their hard work on the budget process. He expressed that we were able to develop a process with implausible time constraints. Something many of us thought undoable just a few months ago.

Mr. Inzer noted that he would like for the Executive Council to consider developing a budget certification process. He feels that when we make representations about what's in our budget and how it will be spent, we ought to discuss a process whereby we ask Clerks how they use the resources. This would be an in-depth certification of how funds are used. The Executive Council will then need to address any problematic issues.

Mr. Crawford requested we review again the problem of people telephonically attending the meetings not being able to hear what's being discussed at time. Mr. Dew responded that we will seek resolutions.

Mr. Forman asked if there was any other business to come before the Committee. Hearing none he thanked everyone and announced that the next meeting of the Council will be held on January 13th in Orlando.

The meeting was adjourned.