

**MINUTES**  
**FLORIDA CLERKS OF COURT OPERATIONS CORPORATION**  
**EXECUTIVE COUNCIL**  
**WEDNESDAY, JANUARY 13, 2010**  
**ORLANDO, FL**

Mr. Forman called the January 13, 2010 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 Richard Weiss, Honorable Sharon Bock, Honorable John Crawford, Honorable Scott Ellis, Honorable Buddy Irby, Honorable Bob Inzer, Honorable Judge Steinbeck, and Honorable Tim Sanders.

Mr. Cowan explained use of the sound system.

**APPROVAL OF MINUTES**

Mr. Weiss moved approval of the Minutes from the November 24, 2009 Executive Council meeting. Mr. Ruvin seconded the motion. Ms. Steinbeck asked if she is a member or ex-officio member of the Executive Council. Mr. Rob Boyd stated that Ex Officio means that the person holds office by position but this does not affect voting privileges. All members of the Executive Council can vote. The motion passed unanimously.

**TREASURER'S REPORT FOR CORPORATION BUDGET**

Through November 30, 2009 we have completed 42% of our budget year. Each area of the budget is within parameters. The total operational budget is at 29.23% and education is at 10.25%. Mr. Weiss moved approval of the Treasurer's Report and Mr. Inzer seconded the motion. The motion passed unanimously.

**CORPORATION CONTRACTS**

Mr. Sanders, Personnel and Administration Committee Chair, reported that CCOC uses contract assistance in the areas of Audit, Research, Legal, Budgeting, Financial Assistance, Education, and Technology services. Committee recommendations were brought forward for Executive Council approval. Mr. Sanders reported, as he did at the Committee meeting, that his daughter works for one of the vendors. Mr. Rob Boyd noted that there is no conflict of interest in Mr. Sanders' vote because his daughter does not stand to gain from that vendor being accepted as a provider.

Mr. Dew reported that, after considering the vendors who bid to provide Audit Services, the committee recommends Lanigan & Associates. In addition to them being the lowest bidder, CCOC has

used their services before. Mr. Weiss moved approval of the recommendation and Mr. Inzer seconded the motion which passed unanimously.

Mr. Sanders reported that we had several bids for research services. While EHIS provided the lowest bid, they have no experience with Clerks. Proctor Services provided the next lowest bid and has 20 years experience with Clerks and CCOC. The Committee recommended Proctor's Solution. Mr. Inzer moved approval of Proctor's Solution to provide research services and Mr. Sanders seconded the motion. The motion passed unanimously.

Mr. Sanders reported that, after considering Budget Services, the Committee recommends Robertson and Associates. He noted that the committee received two proposals for budget services. Robertson and Associates provided the lower bid and has extensive experience with CCOC. Mr. Inzer moved approval with Ms. Bock seconding the motion. The motion passed unanimously.

Mr. Sanders reported that for Financial and Accounting services the committee recommends BPM Company, but asked that staff negotiate a lower rate than was included with the proposal. Of the three bids, Proctor's Solution provided the lowest bid but does not have a CPA which the committee felt was important. Mr. Inzer moved approval of the committee recommendation and Mr. Sanders seconded the motion. Ms. Steinbeck asked what would happen if staff cannot reach agreement with BPM to lower its bid. Mr. Dew responded that in that case, we would come back to the Council with a different recommendation. Mr. Irby asked how this service differs from audit services. Mr. Dew noted that this involves looking at DFS and state requirements so that we understand and meet their requirements. Mr. Inzer noted that, after Enron, it was decided that companies are precluded from using their auditors to also provide financial contracting services. The motion passed unanimously.

Mr. Sanders reported that, for Tech services, the committee forwards a recommendation to divide the contract between Techz3 and FACC. Mr. Sanders moved approval of the committee's recommendation and, for purposes of discussion, Mr. Ruvin seconded the motion. Mr. Inzer, who provided the dissenting vote on the Personnel and Administration Committee, explained that the committee decided to split the contract between two vendors because system problems can be very time sensitive. Five Points was the lowest bidder and Techz3 was second lowest. He dissented because this is not a core service provided by FACC, and he felt it would be inappropriate to contract with FACC rather than to select a qualified lower bidder. He suggested that we should have selected Five Points rather than FACC as the other provider of technology services. Mr. Irby asked if it was felt that Five Points was not selected because they did not have experience. Mr. Dew answered that staff recommended Five Points feeling that they do have the experience needed for technology work but the committee went against staff recommendation. Mr. Irby suggested that, hiring two vendors might open the door to finger pointing between the vendors when problems aren't solved properly or timely. Mr. Forman asked if roles would be adequately defined in the individual contracts. Mr. Dew said that they would. Mr. Weiss asked if Five Points met RFP requirements to provide the services. Mr. Dew answered that they did and that they are qualified to provide the services. Mr. Weiss suggested that the technology vendors do not need to understand Clerks; they need to understand technology. Ms. Bock

made a substitute motion that CCOC go with the staff recommendation of Techz3 and Five Points. Mr. Inzer seconded Ms. Bock's motion. The motion passed unanimously.

Mr. Sanders moved that on the committee's recommendation, we contract with FACC to provide education services for no more than \$340,000. There were three bids for education services: Gabriel Consulting, Inc., FACC and AK Consulting Group. Mr. Inzer seconded the motion. Ms. Steinbeck asked if FACC was the lowest bidder and how the recommendation was made. Mr. Dew reported that FACC was not the lowest bidder. The difference between FACC and the lowest bidder, approximately \$60,000 to \$70,000, was because FACC proposed a greater number of programs. The factor that decided the committee recommendation was that staff felt FACC has experience with Clerk education and Gabrielle did not. Ms. Steinbeck asked how any bidder could get the experience necessary to be granted this contract in the future. Mr. Inzer suggested that a company could look for contracts with the Judiciary or with other Clerk staff to get this experience. He felt the learning curve would be too great at this point and not cost effective. Ms. Bock and Mr. Inzer would like to discuss, for future bid processes, we not look solely for the lowest bid but, where necessary, that experience be a strong part of the criteria and needs to be spelled out in the RFP. Mr. Crawford asked who develops the curriculum for Clerk education. Mr. Dew answered that, according to the RFP, whoever is chosen will develop curriculum and provide that curriculum to CCOC. Dr. Gabrielle relayed through Mr. Cowan that you don't have to be a content expert to be a good educator. She has extensive experience with law enforcement, healthcare, the military, and other governmental entities. Additionally, she does have her doctorate and is a professional educator. Mr. Irby asked the amounts of the two bids. Dr. Gabrielle's bid was \$237,900 and FACC's bid was \$345,500. FACC's bid included more training modules for new clerks. Ms. Bock asked if the statute specifies what educational services CCOC should be providing to Clerks. Mr. Dew answered that the Supreme Court states, by order, the areas in which Clerks should be trained and we have followed that in developing our contractual requirements. Mr. Irby asked about the contract timeframe. Mr. Dew said the contract would run for one year with potentially two 1-year extensions. Ms. Bock asked that, since this provides for one year with possible but not automatic extensions, will the Executive Council receive objective criteria as to how well the contract was carried out. Mr. Dew agreed that it would be good to bring the evaluations provided by attendees at each session to the Personnel and Administration Committee for its review. Ms. Gabrielle asked Mr. Cowan to relay to the Council that she has extensive experience with online training which allows her to reach many more people. Mr. Dew stated that there is \$440,000 available for Clerk training and suggested that possibly some of those dollars could be used for training to be done by other vendors. The motion passed with dissenting votes casted by Mr. Ellis and Mr. Irby.

## **CASH FLOW ISSUE**

Mr. Weiss reported that the Finance and Budget Committee met Monday and discussed the cash flow issue extensively. The bottom line is if the state applies the 8% administration fee to the Trust Fund, there will be a potential \$21.16 million shortfall for funding Clerks' budgets. Mr. Dew reported that the State originally over-projected revenues to the Clerks' Trust Fund. After revisiting their

numbers, it was recognized that there would not be sufficient dollars in the Trust Fund to pay the 8% fee and fund the Clerks offices with the \$451 million appropriation. An email stating this was sent from EDR staff to Legislative staff December 11th. Legislative staff requested CCOC staff to attend a meeting December 17<sup>th</sup> with staff from the Governor's office, DFS, and the House and the Senate. Bob Inzer from the Council and also FACC had a representative at the meeting. At that meeting, legislative staff requested that we provide them with a plan to solve our \$21 million problem.

By way of information, the only time we were able to follow statute and send a full 1/12 disbursement to Clerks at the beginning of the month was July 3, 2009 thanks to receiving a loan from the State of \$35 million dollars. CCOC staff tracks the Trust Fund daily so we can, as soon as funds are available, submit a batch report to JAC for disbursement of funds to Clerks. Clerks have still not received a disbursement for the last week of this month. We cannot disburse those dollars until there are sufficient dollars in the Trust Fund to cover that amount.

Mr. Cowan reported on the potential impact to Clerks budgets if this fee were imposed. He emphasized that staff is only reporting the possible impact to Clerks if these dollars were swept from the Trust Fund. Mr. Crawford noted that if Clerks were to take a \$21 million reduction this late in the year it would mean losing another 1,400 staff on top of the 1,300 staff lost last year. He noted that there comes a point after which Clerks cannot function properly. He suggested all Clerks look at the possible impact as laid out by CCOC staff to understand how problematic such a reduction would be. Ms. Steinbeck asked if (looking at page 15 of the materials which shows the calculations) the revenue estimate of \$469.5 million is the downward adjusted revenue. Mr. Dew answered that it is a downward adjustment from their July conference revenue estimate of over \$500 million. Ms. Steinbeck asked if collections are fairly close to the new revenue estimate. Mr. Dew answered that collections are at approximately \$470 million. She asked if this was a problem for this fiscal year because the monies collected this past June were actually spent in June while EDR and others thought they would be available to fund the offices in July. Mr. Dew stated that we had expected that some of these dollars would be spent in June meaning that there would not be a \$40 million infusion into the Trust Fund from June. Mr. Inzer noted that the state usually provides state agencies appropriations on a quarterly basis at the beginning of each quarter. This would hold true for Clerks as well beginning this July 1. He further stated that while we have a cash flow problem this year, we will have a greater cash flow problem in order to meet the requirements of law beginning July 1, 2010. The source of the money to be appropriated was not defined and legislators didn't realize the implications of the process they put in place. Compounding existing cash flow problems is the 8% Administrative Fee that is being charged on Trust Fund dollars. Although the Clerks' Trust Fund has existed since FY 04-05, the 8% Administrative Fee has never previously been charged. There was no mention of an administrative fee to CCOC or the Clerks during the legislative session. It first came to CCOC's attention in August. Ms. Bock asked if all trust funds are subject to the 8% administrative fee or are some statutorily exempt. Mr. Dew replied that there are a number of Trust Funds that are statutorily exempt from an 8% administrative fee. Mr. Ruvn questioned the spirit of the assessment in that Clerks do all of the work to collect and send dollars to the Trust Fund. He would like for the Council to authorize our General Counsel to investigate the legality of the Trust Fund administrative fee. He feels we may be able to gain leverage from filing a

lawsuit. Mr. Ruvin moved we ask our General Counsel to research the question as to whether we have legal grounds to refuse to pay the fee. Mr. Ellis seconded the motion. Mr. Ellis suggested this would only work for one year and that next year the Legislature would cut Clerks by \$35 million off the top. The motion passed by an 8-1 vote with abstention. Mr. Irby voted against the motion. Judge Steinbeck abstained on the grounds that the research may lead to the filing of a lawsuit and under those circumstances, it would not be appropriate for a judge to vote.

Mr. Cowan gave a presentation on the potential impact to Clerk's offices of the \$21 million shortfall. Staff provided historic, current, and estimated data regarding Clerk budgets. EDR (Economic Demographic Research) estimated the cost of the 8% to be approximately \$21 million decreasing the total appropriation from \$451 million to \$430 million. Staff used a straight FTE model and noted that we have only five months to absorb this cost. Assuming an average cost of \$35,000 per employee (which cost for five months would be \$14,583 per employee), Clerks would need to eliminate 1,451 FTE's to raise the \$21 million over the next five months. Mr. Cowan noted this assumes the dollars would be raised solely by eliminating FTE's rather than utilizing a combination of cutbacks such as furloughs, office closings, etc. With the limited amount of time we have to raise the dollars, the affect on Clerks' offices will be dramatic. Examining current and past FTE's, we note that in FY 04-05 we were at 8,568 FTE's and currently we are at 8,454 FTE's. With the 1,451 reduction in FTE's, Clerks' offices would be running with 7,003 FTE's, more than 18% below FY 0405 FTE's. This is further complicated by the fact that there is no reduction in workload and no reduction in performance standards. Staff has further applied this model estimating lay-offs for each of the sixty-seven counties.

Mr. Weiss reported that the Finance and Budget Committee has spent a great deal of time on this issue. After this meeting, there are plans to distribute a survey, the Possible Budget Reduction Survey, to each Clerk asking them how they would deal with the impact in each of their offices. Mr. Weiss feels this data will afford us an opportunity to explain to the appropriate people in the Senate and the House the ramifications of the cut necessary to provide these dollars, the affect on each Clerk's office, and the affect on the courts and the public. Mr. Weiss moved that the Executive Council adopt the survey form and direct staff to provide it to each of the 67 Clerks with return date of Friday, January 22. Mr. Ellis seconded the motion. Judge Steinbeck suggested we provide more direction on the format to avoid getting 67 different styles of response. She suggested asking specific questions: how many positions would be cut, what positions, services provided by those employees, etc. Mr. Inzer agrees that more structure would be helpful but argued against asking for specific position cuts because employees might have difficulty with this data. Mr. Dew noted that staff will work with Mr. Weiss in developing instructions for completing the survey. Mr. Ruvin noted that this is a perfect issue for Courts and Clerks to work on together because the issue will definitely impact the courts. He asked if there is a process we can use to seek Court support with this issue. Ms. Steinbeck said that she doesn't know if such a process exists. She suggested that CCOC can reach out to Court Administrator, Ms. Lisa Goodner and the Court system. Mr. Inzer stated, having attended the meeting with Mr. Dew, there were approximately six staff from DFS, 2 state employees from EDR, the Governor's office, Legislative staff, and JAC. Our role needs to be to educate and inform Legislative staff and the Committee about the implications of where we are at this time. He would like to work with staff to draft a response

explaining not only where we are but how Clerks got to this point, including a flaw in the methodology imbedded in the legislation and the problem that will recur July 1, 2010 with the repayment of the state loan Clerks received July 1, 2009. Mr. Inzer feels that Legislative staff and DFS understand the implications of how much Clerk budgets have been cut. On the other side, these dollars were built into the state's budget and the committee is looking for Clerks to educate leadership on this issue. As much as this affects Clerks' budgets, the state is currently facing a \$2.1 billion deficit. He further feels we need to keep all options on the table and be open to discussing the options with the committee. But they need to know that should they begin charging this cost February 1, most Clerks won't be able to make payroll and Clerks won't be able to pay the costs associated with lay-offs. He further feels we need to have a partnership with the State whereby we can work with them and with the Courts to find the best solution. Ms. Bock also feels that it needs to be understood that Clerks took the great brunt of the state budget reduction last year and to ask Clerks to take a further reduction or to continue to enhance money through the court system through filing fees, court costs, etc. gets into access to court issues. Mr. Irby asked about ability of the CCOC to pay back the \$35 million dollar state loan. Mr. Dew stated that there should be adequate dollars collected in May and sent to the Trust Fund in June to pay this loan, but there are not adequate dollars in the Trust Fund to begin repayment of the loan at this time. He added that at that point there will not be sufficient dollars to begin the next year and, legislatively, we will need \$100+ million. Mr. Ellis suggested that Clerks will continue to borrow annually until the Legislature allows Clerks to keep a \$35 million reserve to cover the first month each successive fiscal year or \$100+ million if we do a quarterly disbursement as required by statute. Mr. Ellis also suggested that if we don't have a firm Legislative commitment relieving us from the 8% administrative fee by January, we need to apply the budget cuts because every month we delay makes it more difficult. There being no further discussion, the motion to adopt and send out the survey as presented passed unanimously.

Mr. Ellis noted that we have not addressed what action the Executive Council will recommend regarding the cash flow issue as far as a plan of action. He feels we cannot wait until April or May to take action. Mr. Ruvin moved that the Council direct Mr. Inzer to work with staff to respond to the Legislative request for a plan to deal with the implications of this issue. Mr. Weiss seconded the motion. Mr. Ellis said he does not feel this is acceptable. Mr. Inzer noted that he feels that the Legislature understands that the legislation, to the extent that this was not anticipated, is flawed. CCOC will provide this information to Legislative leadership and they will get back with us if it is unacceptable and at that time will provide us with more direction. Mr. Ellis feels that if we have to wait too long for our answer, it could be fatal to Clerks' offices. Mr. Inzer stated that we could have other meetings in the interim. Ms. Steinbeck reiterated that we have been asked for a report on the impact of imposing the 8% fee. But she is concerned that with their reply they may direct the Council to implement the plan. She suggested we should consider solutions today in case this is their response. Possible solutions are not paying the 8% fee, a loan forgiveness for the \$35 million dollars, or permission to repay that loan over a longer period of time. Ms. Steinbeck asked if CCOC is proposing anything today. Mr. Inzer stated that any plan he helps develop will provide alternative solutions. We will also state that to the extent we need to implement a plan to pay the State, these are the positions that will need to be cut and the number of positions will increase the closer we get to the end of the fiscal year before beginning

implementation. Mr. Inzer also noted that the lay-offs would be followed by payouts for unemployment benefits. Ms. Bock asked if the Finance and Budget Committee forwarded a recommendation to the Executive Council that we request the 8% be waived. Mr. Dew agreed that this was the committee's recommendation. However also at that meeting it was also recommended that other options be explored. Staff, with Mr. Inzer's guidance can lay out options and provide them to Legislative staff. Mr. Dew will contact Legislative staff as soon as this meeting is over to tell them what we are doing and to be sure they are alright with next Friday's return date for the survey. Mr. Weiss suggested that, rather than develop alternatives now, the Council give staff, Mr. Inzer and others a short time to develop possible solutions. Mr. Weiss agreed to work with them. He further suggested that after possible alternatives are developed, the Chair could call a meeting if he felt it necessary where these possible solutions can be discussed. The motion passed unanimously.

Mr. Ellis asked if the 8% is a legal question and does the Legislature have the power to waive the fee for the Clerks' Trust Fund. Mr. Forman restated that Mr. Boyd will research the issue and will speak with Mr. Weiss. Mr. Crawford asked if we have a drop dead date by which we expect to have solutions. Mr. Forman said that hopefully in a couple of weeks after we have received the Clerk survey back and have additional information on dollars in the Trust Fund we can have solutions available to give to Legislative staff. Mr. Forman said if a meeting of the full Council is necessary then we will set up an emergency meeting to discuss the solutions.

Mr. Dew reported that legislative staff has asked for information about the 10% fine amount that Clerks are allowed to keep as part of their modernization trust fund dollars. Mr. Dew forwarded this request to the Finance and Budget Committee December 17. The committee approved a form to gather the requested data regarding the 10% fine dollars. He asked the Council to note that the lines "Court" and "Non-Court" at the bottom of the form have been changed to "Court Related Operations" and "Program Enhancements" and added another column "Commitments" which dollars are being saved to purchase something later in the year. Mr. Inzer moved approval of the form to be sent out to Clerks and data collected from July 1, 2009 forward and Mr. Weiss seconded the motion. The motion passed unanimously.

Mr. Dew noted that the rest of material provided relates to collections / compliance efforts. Mr. Russ Duncan is available to visit counties at Clerk's request to provide regional training sessions for collections. Information was provided to the Finance and Budget Committee which approved continuing these efforts. Mr. Irby stated that the best thing we can do over the next five months is to work with the court and collect more dollars.

#### **TECHNOLOGY REPORTS REQUIRED TO BE SUBMITTED BY CCOC**

Mr. Cowan provided an information only report on the two issues related to Technology. Clerks are required to report monthly all technology expenditures exceeding \$25,000, and CCOC is required to provide this information to the legislature on a quarterly basis. Staff has provided a copy of CCOC's first quarterly Technology Report in this packet.

Also related to technology is the e-filing issue. CCOC is required by March 1 to provide the Senate President and Speaker of the House an update on the status of the implementation of e-filing for the 67 Clerks. Staff has been meeting with FACC staff, the Technology Review Workgroup staff, and with Court staff. CCOC Staff will provide the report to the Legislature by the March 1 deadline.

## **OPPAGA REPORT**

Mr. Dew reported that the OPPAGA Report draft was submitted to Mr. Forman December 29. In that submittal, they requested a reply from Mr. Forman by January 12. Mr. Forman asked that the draft report and his draft response be provided to the CCOC Finance and Budget Committee for the members of the Committee to provide feedback to him on how to improve his response. OPPAGA staff attended that meeting telephonically. Due to concerns from Committee members about the report raised during that meeting, OPPAGA staff revised their report. Mr. Dew received the amended report just yesterday.

Mr. Isabelle reviewed the revised report with the Council and highlighted substantive changes related to the budget process. Mr. Dew noted Mr. Forman's reply to the revised report was also included in the packet. Mr. Dew thanked the Clerks and Council members that made suggestions to revise Mr. Forman's response and noted that he would work with Mr. Forman after the meeting was over to have these incorporated into the response. The response is due today by 5:00 pm.

## **UPDATE ON CLERKS' LBR**

Mr. Cowan said to ensure Clerks and others understood what information we were providing to the Legislature and staff he wanted to show all documents provided to legislative staff to date. This included the actual LBR that was submitted on December 1<sup>st</sup> with a follow-up on the 2<sup>nd</sup>. Likewise, Senate legislative staff asked for information by each individual Clerk on the unit cost of each Clerk's core service areas. This was provided as presented to the Council. Finally, legislative staff asked for projected division cases for each of the Clerks for FY 2010-11.

Mr. Cowan then went over the LBR document as provided to the Speaker of House and President of the Senate. The LBR submitted by CCOC on behalf of the 67 Clerks is included in the packet. Looking at the dates associated with completing the LBR, he noted that a lot of work was done in a short period of time. The peer groupings are described on page 8. Page 9 lists the LBR amounts by peer group and the aggregate amount including the average unit cost associated with each of the four core services for each of the five peer groups. He noted that there is some disparity in the numbers and that the disparity is largely a function of allocation in our current budget process and will hopefully be addressed in future budget processes. Staff also provided a historic comparison of FY 08-09, FY 09-10, additions that were included in the 2010-11 budget and the FY 10-11 amount for the LBR submitted to Legislature. Work projections for four core services are also included. Mr. Cowan noted that OPPAGA in their recent report indicated that CCOC did not adequately identify service units. However, as can be

seen by the document in the meeting packet, CCOC did specifically provide the Legislature with adequate service units for each of the four core services.

Mr. Cowan then presented a brief PowerPoint related to the FY 10-11 LBR. Staff reviewed the FY 10-11 LBR for each county, the FY 07-08 expenditures for each county, and two versions of the benchmark budget. The first graph calculated FY 10-11 LBR minus the Benchmark Budget and indicates very little difference between the LBR for those counties and the benchmark budget. There are very few counties whose LBR is distinct from their benchmark budget. The second graph calculated the FY 07-08 expenditures minus the benchmark budget and the FY 10-11 LBR minus the benchmark budget. The graph indicates that the disparity between the FY 07-08 expenditures and the benchmark is greater than the FY 10-11 LBR and the benchmark. This indicates that, through the FY 10-11 budget process, we were able to reduce the degree of variation from the benchmark budgets. That is, we accomplished the Legislative intent.

## **OTHER BUSINESS**

### **PERFORMANCE IMPROVEMENT AND EFFICIENCY COMMITTEE**

Mr. Isabelle reported that the PIE Committee presented an issue for approval at the November meeting. That issue was tabled until today's meeting. Currently Clerks report Cases semi-annually which puts us six months behind in reporting data to EDR. The PIE Committee proposes making Cases a monthly report to enable us to provide more current data to EDR. The Committee is requesting that staff present the first of these monthly reports February 20, 2010 backfilling that form with monthly data back to July 1, 2009. Mr. Inzer so moved. Mr. Weiss seconded the motion which passed unanimously.

Adjourned 3:15 pm