

MINUTES
FLORIDA CLERKS OF COURT OPERATIONS CORPORATION
EXECUTIVE COUNCIL
TUESDAY, MAY 25, 2010
ORLANDO, FLORIDA

Mr. Forman called the May 25, 2010 meeting of the Executive Council of the Florida Clerks of Court Operations Corporation (CCOC) to order at 5:00 pm. Mr. Forman welcomed members and guests. Members of the Executive Council present were the Honorable Howard Forman, Honorable Richard Weiss, Honorable Sharon Bock, Honorable Bob Inzer, Honorable Buddy Irby, and Honorable Tim Sanders. Honorable Harvey Ruvin, Honorable John Crawford, Honorable Scott Ellis, and Honorable Meg Steinbeck attended telephonically.

FINANCE AND BUDGET COMMITTEE UPDATE

Mr. Weiss noted that the Finance and Budget Committee met on May 17th in Orlando and had a lengthy meeting. He had several issues to bring forward as recommendations from the Committee for Council review and approval.

Methodology for Distribution of Foreclosure Appropriation

Mr. Weiss said the Committee recommends that the Council in their allocation of \$3.6 million dollars to Clerks to help handle backlogged foreclosure cases should consider using the following methodology. Circuits should be provided dollars based first on the number of backlogged cases with that circuit compared to other circuits, and secondly on how the Courts will be distributing their allocation of \$9 million. The methodology would allocate \$1.8 million among the Clerks based on case comparisons and the other \$1.8 million based on the Court's allocation of their dollars. Mr. Weiss pointed out that on page # 52 of the Council material the methodology was applied and the dollars were allocated to each circuit for their review. Mr. Weiss made a motion that was seconded by Mr. Inzer that the Council approved the methodology for allocation of dollars as provided on page #52 of the meeting packet. The motion passed.

Mr. Dew asked for more guidance regarding foreclosures and the distribution that was passed by the Council. The allocation was made by circuit. Mr. Dew requested guidance particularly with distributions for Clerks within a multi-county circuit. Mr. Weiss stated that he met with his Chief Judge who has determined that all of the court dollars for his circuit will be allocated to Polk County. He feels

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that once we know how the Chief Judge of each circuit plans to allocate his/her funds, we can allocate our funds accordingly. Judge Steinbeck said she understands Chief Judges have been asked to develop a plan and submit that plan to the Trial Court Budget Commission (TCBC). Ms. Slayden from OSCA reported that the TCBC last Friday directed the Chief Judges to work with Clerks to develop a plan for use of court funds allocated to help clear the backlog of cases. While the TCBC did not set a deadline, they will meet again next week and should have more direction for Chief Judges on that date. Ms. Slayden further reported that Chief Judges have received their allocations. They are advertising positions and will be prepared to begin this program July 1. She feels it would be appropriate for Clerks to meet with their Chief Judges now and begin dialog about how they can best work together. Mr. Irby recommended that Clerks from each circuit be permitted to develop a methodology that works for all of them and relay that to CCOC. Mr. Inzer feels that the Clerks allocation needs to follow the allocation of judicial resources. The Finance and Budget Committee recommended that we allocate our dollars for each circuit proportionately to the Chief Judge's allocation. Mr. Inzer moved that we send a letter to the Chief Judge of every circuit asking for a percent allocation of resources and that we allocate our dollars based on those responses. Mr. Weiss seconded the motion. While Mr. Weiss is concerned that the allocation be determined quickly so Clerks will know and can hire staff, he also feels we need exact numbers before allocating any dollars. Mr. Dew stated CCOC is required by law to provide a budget amendment that will be sent to JAC allowing at least ten days for legislative staff to review and express concerns. Therefore any such letter should be sent out soon with a short timeframe to receive back the information in order to meet imposed deadlines. The motion to send a letter to the Chief Judges asking them to provide us their percent allocation passed. Mr. Forman said he would send the letter within the next few days.

Mr. Inzer requested clarification regarding the special allocation for judicial backlog. When these dollars come to Clerks, will they come as a separate budget appropriation where Clerks have to capture the costs separately and account for them separately or is this an amendment to the existing budget? The workload, as defined by the Courts, will be the number of cases processed. For Clerks, particularly in smaller offices, there may not be a lot of revenue but Clerks may have to provide for overtime, reallocation of employees, and possibly temporary help. Some hearings may require trained staff so using less expensive OPS will not work. Mr. Inzer wants to know what level of transparency we will need to account for expenditure of these dollars. He feels this could be very difficult to track.

Mr. Dew reported that this issue was discussed at the TCBC meeting on what tracking process needs to be in place for the Courts to show what the dollars were expended on. They voted that in order to comply, these dollars must be used solely to fund backlog reduction. It was approved that the Budget Management Committee, a TCBC Committee, will monitor expenditures on a monthly basis to insure resources are being used only for the purpose of cases backlog reduction. Mr. Dew asked how difficult it would be for Clerks to do something similar. Ms. Bock asked if each time there is a distribution of these dollars, Clerks will be reporting to CCOC on the cases they were able to close as well as other information? Mr. Dew stated that the courts will be reporting on the number of cases they closed. They've set a standard, he believes, of 62% of the backlog. They will need Clerks help to

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accomplish this. Clerks can also report using the same standard because they are providing support to the Senior Judges and Case Managers to help close the cases.

Ms. Bock raised the issue of the amount of time the Clerk needs to spend per case as opposed to what the court spends on a per case basis. This might give Clerks an opportunity to be more transparent regarding what it takes to get a case through the system. She suggested that we not only be consistent on the number of cases closed as reported by the judiciary, but that we also track on our own what we are doing with the dollars.

Mr. Weiss noted that no one accounting will work with every county or every circuit. Every Chief Judge will design his/her own program. Until we understand the program for each circuit, we will not know what support is needed. It's difficult to talk about what needs to be captured when we don't even know what will be required. Ms. Bock agreed but feels that once we know the program and begin implementing, we need a separate tracking system to explain transparently what we've done with the \$3.6 million appropriation. She would like to work with Mr. Dew and come back to the Executive Council in June with a motion.

Mr. Ruvin stated that this began with a judicial request for dollars to work on the backlog. Clerks then requested dollars to be able to support the judges in this endeavor. But the judges are designing the program and the test of whether the dollars are being well-spent should be a test they have to pass. Clerks will support them but their mandate is to come back and say all the dollars were spent for that purpose. He's not sure what's accomplished by separate tracking on our part. Mr. Forman agreed but stated that any agency receiving an appropriation has to provide a good accounting of expenditures related to the appropriation.

Mr. Inzer noted that for larger counties with a significant number of employees dedicated to the program, the tracking makes more sense and works well. Smaller counties will give greater difficulty and tracking makes less sense. The work generated in some cases will be greater than the dollars provided.

Ms. Bock moved that Mr. Dew, CCOC staff, and Clerks create a tracking system that will be simple for large and small counties. Whether the appropriation is large or small, that tracking will be done and reported back to CCOC and that report will be provided to the State Legislature. This tracking system will be presented at the June 29 Executive Council meeting. Mr. Irby seconded the motion. The motion passed.

Recommended Budget Forms for SFY 10/11

Mr. Weiss made a motion, per recommendation of the Finance and Budget Committee, that the Council approve the following as outlined in the Council packet. First, that the CCOC staff provide budget forms to Clerks for SFY 2010/11 that will update their previous budget requests sent in to provide the budget category dollar and FTE allocation changes due to the legislature's SFY 10/11 appropriations. Further, that prior to the Clerks receiving these forms that the CCOC staff make changes to the budget exhibits to collect updated data and information. Mr. Irby seconded the motion.

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A question was asked about the Certification Letter in the budget packet being amended which stated that the 10/11 budgets as provided by the Clerks would contain no pay raises or bonuses for staff. Mr. Forman explained that a Clerk may promote someone at a higher salary, but Clerk's staff may not receive raises. Mr. Sanders said he is concerned about offices sharing Clerk funded and Board funded employees where the Board is not prohibited from giving salary increases. He asked if the Board offers to fund salary increases for all employees, could a Clerk accept this. Mr. Inzer stated that this would not be a problem as the dollars used for such salary increases were not those collected and reported as revenues in this budget. The Clerk is certifying on Exhibit I that state dollars are not being used to fund salary increases from those revenues that are to be sent to the State on a monthly basis.

Mr. Inzer noted that this is a very sensitive issue and most counties are not providing raises. However, if an employee primarily, but not totally, funded by the County is given a raise, is there some small portion of that raise that comes from state monies? He suggested Clerks be careful.

Mr. Ruvin noted again that, through collective bargaining, raises were granted to employees in Dade County. He reported that, if this decision is upheld by his county, he must comply and this will mean a great number of layoffs in his office. Mr. Ruvin reported Dade County is facing a \$300 million shortfall and noted that the decision to give raises is a political one. There is a provision in the contract wherein the county can retract the raises based on economic difficulties and he believes raises will be retracted. If raises are upheld and he must comply, he agrees to live within the dollars provided and will cut employees. He added, though, that he understood that when there is a labor contract the Clerk must honor this contract, this becomes an issue the CCOC will need to consider. Mr. Forman said that he sympathizes with Mr. Ruvin and hopes that by late September he will know the outcome and the Council can discuss it at that time. Mr. Weiss reminded Mr. Ruvin that FY 10-11 is unique because the Legislature specified the budget allocation for each Clerk rather than making an aggregate appropriation and allowing CCOC to determine the budget allocation for each county based on need and special issues. Mr. Dew clarified that item #3 found on Exhibit I should read that the Clerk is certifying that they are setting the maximum fees, service charges, and costs authorized by Florida Statutes.

The motion passed.

Settle-up Process for Recommended Budget Forms for SFY 10/11

Mr. Weiss reported that the Finance and Budget Committee understands that the law is silent regarding how many days Clerks have to settle up after the state fiscal year closes June 30. The Committee recommendation is that settle-up will be complete by August 15, 2010 and annually thereafter. Mr. Weiss so moved. Mr. Inzer seconded the motion. The motion passed unanimously.

Loan Request for Starting SFY 10/11

Mr. Weiss reported that the Finance and Budget Committee felt that, because the law states Clerks will receive quarterly payouts, the loan should be for one quarter's appropriation. Mr. Weiss

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asked Mr. Dew to update the Executive Council since he spoke with legislative staff. Mr. Dew reported that the law is unclear about how to make disbursements if there are insufficient funds in the Trust Fund to cover the disbursement. During FY 09-10, the language provided for monthly disbursements but disbursements were made sometimes weekly because there were insufficient funds for a whole month's disbursement. Legislative staff feels that Clerks should be given a loan to cover cash flow needs. After having met with staff and JAC Executive Director, Ms. Montanero, it was felt that a two-week distribution would cover cash flow issues. Mr. Dew reported that a request for \$18.8 million to cover the first two weeks of July has been submitted. Clerks will receive checks July 1. Further disbursements will be sent as Trust Fund dollars become available to make those disbursements. We expect that Clerks will receive disbursements on a monthly basis, not quarterly. Mr. Inzer added that legislative staff told those at the meeting that a quarterly disbursement would not be approved. He agreed with the two-week disbursement. Mr. Irby moved affirmation of Mr. Dew's decision to request a two-week disbursement. Mr. Inzer seconded the motion which passed unanimously.

Interpretation for 4th Quarter of SFY 10/11 Distribution Methodology

Mr. Weiss reported there are two issues dealing with the fourth quarter calculations.

First, the Finance and Budget Committee recommended that fourth quarter calculations will be based on the net of cases in each division for the first three quarters. There was discussion that should a Clerk exceed projections for one or more court divisions for the first three quarters, he/she would not be able to get extra dollars for the extra cases in that division. In this case the Clerk would only get the amount that was part of the budget. Clerks would, however, be penalized for not meeting the case projections in one or more divisions. The Committee feels this is contrary to the law. The Committee feels and Mr. Weiss moved that Clerks be able to calculate each division and then use the net of the ten divisions to make the fourth quarter calculation. Mr. Weiss invited Mr. Boyd's opinion. Mr. Boyd believes Clerks will be able to use the net of all ten divisions when calculating for the fourth quarter. Mr. Inzer seconded the motion. Judge Steinbeck abstained because this is a legal issue. Per Mr. Irby's request for clarification, Mr. Weiss stated that if the aggregate of ten courts exceeds the cases projection for the first three quarters, the Clerk would be entitled to the entire fourth quarter distribution, even if one or more divisions falls short of projections. The motion passed 10-0 with Judge Steinbeck abstaining.

Secondly, the Committee recommended that a Clerk, when calculating for the fourth quarter, could possibly exceed the calculation. Once all calculations are made, staff will add totals for all Clerks. The aggregate total however must be less than or equal to \$451,380,312. If it exceeds this amount, then CCOC, by provision in statute, will be required to adjust all budgets to get back to \$451,380,312 million. Mr. Boyd stated that there is a great deal of ambiguity as to intent of the law. He said they are researching the issue and will have an opinion within the next sixty days. Mr. Weiss moved that the Council go with the Committee interpretation that an individual Clerk can exceed his/her budget amount and collectively all Clerks can exceed the \$451 million but under these conditions, CCOC would

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have to adjust all budgets back to the \$451 million. Mr. Irby seconded the motion. Mr. Inzer felt this will not affect Clerks until the fourth quarter. While he supports the direction, he feels we can wait for the legal opinion. Mr. Ruvin moved to table the motion. Mr. Inzer seconded the motion to table. The motion to table the issue passed unanimously.

Process Improvement Suggestions for SFY 11/12 Budget

Mr. Weiss reported that the Finance and Budget Committee suggested CCOC convene a workgroup to develop a more sophisticated unit-costing process. The Committee would like and Mr. Weiss moved that the workgroup concentrate more on having a methodology for unit costs that takes into consideration how workload is impacted. Current methodology does not take into account pending cases, reopens, and things of this nature. Mr. Inzer seconded the motion. Mr. Inzer related that in meeting with legislative staff, they discussed unit costing and other problems. Legislative staff is willing to consider other unit costs and cost drivers. Wanting to make informed decisions, they will review all information. The motion passed unanimously.

Mr. Weiss related that in discussions with the Committee and other groups, it is recognized that there are problems with the methodology used in determining peer groups. Mr. Weiss moved that CCOC consider changes to peer groups when working on the FY 11-12 budget process. Mr. Inzer seconded the motion. Mr. Weiss said he would like for a workgroup to find a peer group methodology that is fairer for all Clerks. The Committee will consider the workgroup's observations and suggestions and bring a recommendation back to the Council. Mr. Dew further suggested that we could seek help from a statistician from one of the universities or an independent consultant to help with this process. The motion passed unanimously.

Mr. Weiss reported that the Committee recognizes that certain cost drivers cause some Clerk offices to be outliers compared to others in their peer group. The Committee discussed at the budget hearings that we need to better understand these cost drivers. And we need to better articulate this for legislative staff and legislators. Mr. Weiss moved that the Finance and Budget Committee and workgroup be authorized to review cost drivers. Mr. Inzer seconded the motion which passed unanimously.

ELECTIONS PROCESS FOR CCOC EXECUTIVE COUNCIL MEMBERS

Mr. Dew reported that all ballots are in. They will be opened May 26 at 3:00 p.m. at the offices of Lanigan and Associates. Mr. Dew and Mr. Boyd will be there. Anyone who would like to attend may do so. CCOC will be happy to provide directions to the Lanigan and Associates office if needed. According to the Plan of Operations and our contract with Lanigan and Associates, the accountant will provide the election results information to each of the Executive Council, Corporation members,

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President of the Senate, Speaker of the House, and the Chief Financial Officer shortly after the ballots are opened.

PLAN OF OPERATIONS

Ms. Bock reported that the CCOC Plan of Operations has been reviewed and is being presented today for Council review and approval prior to its being published.

Mr. Boyd reported that there is repeated reference to the Florida Association of Court Clerks. The proposed change is in no way an effort to alienate or distance the Council from the FACC. It is intended to update where we are, how we have changed things, how the law has changed, and where we have come since the adoption of the original Plan in 2004. He elaborated the suggested changes.

The Council will now lay out its schedule of anticipated meetings for the entire year. Where we can meet with the FACC, we will do so for economic reasons. Separate and apart from that, we will provide seven-day notice for meetings. However, should we need to hold an additional meeting with less than seven days to notice, the seven-day notice can be waived if seven members of the Executive Council vote at the commencement of the meeting to waive the seven-day notice requirement. This provision will help in extraordinary circumstances.

There is no statutory requirement for telephonic capability at meetings. The new language states that all reasonable efforts shall be made to have telephonic access available for all members and allows the Executive Council to attend telephonically.

Language reiterates that all meetings are open to the public.

The Council will continue to have eight Clerks elected according to population groupings, but we have structured the possibility of staggered terms to the extent allowed by law. Terms will stagger such that one-half of the Council is elected every other year. Language states that between now and 2012, the Council, by resolution, will have the authority to structure how this will be done. Staggered terms will not apply to the three designees of the Speaker of the House, Senate President, and Chief Justice.

Since it takes at least two months to hold an election, should a Council vacancy occur with six months or less left in the term, there seat shall remain vacant until the next election. Additionally, the Annual meeting will begin with the existing Executive Council and new members will be sworn in at that time. The new Council will hold its organizational meeting at the Executive Council immediately following. Executive Council officers may serve successive terms and all officers of the Executive Council are officers of the Corporation.

Mr. Irby asked if it is a requirement that a CPA count ballots. Mr. Boyd responded that the Plan of Operations provided for an outside CPA to count ballots. This can be changed; there is no statutory requirement for this. There is also no statutory authority for requiring confidential balloting. Lastly, if a candidate is unopposed, no ballot will be necessary.

Regarding ex-officio and other officers, the Executive Director and General Counsel have no voting rights. These positions are professional and both serve at the pleasure of the Council. Section 3-2 describes the position of Executive Director who serves without civil service protection. Under the previous arrangement, the Executive Director was Senior Management. There is a question as to

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whether the state will allow that now. The language in our Plan stating that the Executive Director shall be put into the Senior Management services class at FRS, allows us to seek to have that restored. The Executive Director is responsible for the daily operations of the Corporation. Leadership of CCOC, the Executive Council, and FACC shall meet on a regular basis.

Utilizing our IT capabilities, we will no longer send minutes and announcements to the Speaker of the House, President of the Senate, etc. Rather we will publish them on our website.

Recapping changes made June 25, 2009, Section 1-2 has been changed to reflect that CCOC is now established under 28.35 and 28.36 F. S. CCOC no longer operates under a contract with the Chief Financial Officer and Department of Financial Services. And CCOC no longer has a bank account.

Mr. Boyd stated that with regard to Legislative recommendation, there is still cooperation as there should be between CCOC and FACC. There are still provisions for research and analytical services. FACC is no longer a sole-provider and that language can be removed. He summarized by saying that this Plan of Operations is more reflective of who we are and what we do.

Mr. Boyd thanked Ms. Bock for her hard work helping to review and edit the Plan of Operations. He further reported that if the Council wishes to move this forward at the June meeting, it must be approved today. At the June meeting it can be approved, rejected, or amended.

Mr. Weiss asked if this Plan as amended needs to be approved today. Mr. Boyd stated that should the Council want to move for approval this year, this group needs to either approve it today or meet again prior to the June 29 meeting. Mr. Weiss responded that he felt uncomfortable approving the Plan without reviewing it in more detail. Mr. Boyd suggested allowing the Executive Council to digest it for no more than two weeks. Ms. Steinbeck agreed.

Ms. Bock said she welcomes suggestions to either herself or to Mr. Boyd. The language will be posted on the website in advance. Any other suggestions received by the Council members will also be posted. The answer was that it will be.

OTHER – PIE COMMITTEE

Mr. Isabelle reported that the Executive Council at their April meeting approved the CCOC staff surveying Clerks in three areas. The three are the Cases Survey, The Annual Collection Agents Survey, and the Collections Survey.

The Cases Survey was due back May 16. This survey is important to unit costing, etc. He reported that staff will be analyzing and summarizing the data and follow up. A report will be made to the PIE committee and results brought to the Executive Council.

The Annual Collection Agents Survey is on the CCOC website. Staff will be sending reminders that the survey is ready to be completed and submitted.

Staff is in the midst of testing the links for the Collections survey. This follow up is important because collections is critically important. Staff has been conducting training on collections around the

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state. This survey will give us a great deal of information regarding what Clerks are doing to enhance collections.

OTHER – CASE COUNT METHODOLOGY

Mr. William Pennington from Walton County addressed the Executive Council. He stated that the methodology of using three quarters to determine annual case counts will have a tremendous impact on Walton County because the majority of their cases are done in the three months for which we are not planning to count actual cases. He wants the Executive Council to understand that using the nine-month case count data is not reflective of the true picture. Mr. Inzer stated that the Council will help to the extent allowed by law.

There being no further business, the meeting was adjourned.