

MINUTES
FLORIDA CLERKS OF COURT OPERATIONS CORPORATION
MONDAY, July 24, 2017 2:00 PM EDT
EXECUTIVE COUNCIL MEETING
TELECONFERENCE

The July 24, 2017 meeting of the Executive Council of the Florida Clerks of Court Operations Corporation (CCOC) was called to order by Executive Council Chair Ken Burke at approximately 2:00 PM (EDT). The Executive Council Meeting was conducted through GO-TO-TRAINING. Roll call was taken by John Dew. Council Members present were the Honorable Ken Burke, Honorable Stacy Butterfield, Honorable Tara Green, Honorable Sharon Bock, Honorable John Crawford, Honorable Pat Frank, Honorable Todd Newton, Honorable Jeff Smith, Honorable Ron Ficarrotta and Honorable Paula S. O’Neil. Honorable Kyle Hudson did not join the meeting. Mr. Dew stated that there was a quorum.

Chair Burke informed the audience that on Saturday, July 22, 2017, Judge Ron Ficarrotta, who is a member of the Trial Court Budget Committee along Mr. John Dew, Clerk Stacy Butterfield, Clerk Angela Vick and Clerk Laura Roth attended the TCBC meeting that was held in Orlando. Chair Burke thanked them for attending the meeting on a Saturday.

Chair Burke introduced Agenda Item #1 by giving the history to the Holland & Knight Opinion. He began that the Senate and House approved Senate Bill 2506 this year. Senate Bill 2506 added certain changes to the fees that needed to take place and these changes had to be reprogrammed into the Clerks’ systems in order to implement the bill. Palm Beach County when changing their system, began looking at some of the other fee statutes that gave Clerks authority to distribute certain fees to certain entities. They questioned why certain fees were going to certain areas like State General Revenue when the statutes seem to indicate they should be going into the Clerks’ Fine and Forfeiture Fund. As a result of this, during one of the CCOC’s Executive Committee meetings, this was brought to committee’s attention and we as the CCOC, engaged the national firm of Holland & Knight. Mr. Nathan Adams of Holland & Knight, who is highly regarded as an expert in the area of state revenues, Department of Revenue items, and looking at statutes from the revenue perspective, was engaged by CCOC to look into this issue to see if these certain fees were being properly distributed. He prepared the legal memorandum which is part of the meeting packet which clearly states that these fees have been improperly distributed in the past and should be distributed to the Clerks’ Fine and Forfeiture Fund. This opinion is a well-defined legal memo and is very direct in saying that the proper distribution of these fees should be the Fine and Forfeiture Fund. Attorneys from some Clerks’ offices were asked to review this draft. These attorneys were Hampton Peterson, Palm Beach County; Amanda Coffey, Pinellas County; Justin Horan, Clay County; and Leanne Parker, Polk County. These attorneys are from the Executive Committee members’ offices. They were unanimous in their consent that the opinion from

Holland & Knight was clearly and directly correct. The Executive Committee on the afternoon of July 13, 2017 had a meeting by telephone and voted to adopt the opinion as the Committee's official position and have the CCOC's Executive Council to approve it as CCOC's official position. Since FCCC is responsible for the distribution schedule, that CCOC will work with them jointly to correct the fee schedule and distribute it to Clerks. This was a thoughtful process and moved as quickly as possible. On Friday morning, July 14, 2017, Chair Burke sent correspondence to Clerk Marsha Johnson, President of the FCCC giving her a copy of the legal memo and asking for their cooperation in correcting the fee distribution schedule. In the afternoon of July 14, 2017, the legal memo was sent to the Executive Council with a cover letter informing them of the action the Executive Committee took. The CCOC Budget Committee and Legislative Committee were also copied. The Executive Council meeting was set for July 24, 2017.

Chair Burke in closing, stated that as elected Clerks, we all took an oath of office and part of that oath is a duty to follow the Florida Statutes and the Florida Constitution. He pointed out that is the overriding factor here that Clerks have an elected duty to follow the Statutes as best known to them. There is now a legal opinion which makes it very clear of what the Statutes say on these particular fees. Therefore, it is the Clerks' obligation to follow the Statutes as has been determined.

Chair Burke stated that the Executive Committee is asking the Executive Council to approve this legal memorandum as the official position of CCOC. Clerk O'Neil made a motion to approve the legal memorandum as CCOC's official position. Clerk Smith seconded the motion. Chair Burke asked the Executive Council members if they had any questions.

Clerk Frank, Hillsborough County, was recognized. She has read the Holland & Knight memo three times and was impressed with the documentation. The memo stated that we could go back to 2008-09 to recuperate, but it should be prospective. She is assuming that the position would be that 08-09 would be left as is and we would go prospectively from now in our request to have the money posted in the Fines and Forfeitures Fund. Chair Burke responded that was correct.

Clerk Jeff Smith, Indian River County, asked if it was important to create a workgroup to look and see if other statutory items may not be correctly distributed to Clerks in the FCCC Distribution Schedule. He wanted to make sure we are complying with statute or has that been done already. Chair Burke answered that it had not been done, but he has thought about it. He hopes that the Executive Committee, now that they have this opinion from Holland & Knight, will decide if it is best to seek the advice of Holland & Knight to look at other matters and hone in on those matters and form a workgroup among our court attorneys to further the cause. Holland & Knight gives an independent authority to this. The Executive Committee will look into what you have asked and see if there are any fees that need to be considered and analyzed to see if they are currently being distributed correctly. The Executive Committee will follow up on that.

Chair Burke opened the discussion to the Clerks and general public. The first to be recognized was Clerk Marsha Johnson, Franklin County. She liked what the opinion said and it will help the Clerks going forward. She asked if the Clerks are able to claim that money now, what is going to stop the Legislature from making new language about the fees. Chair Burke responded that every year starts a new Legislative session. They have the authority over the fines and fees. They can certainly make changes. They can do that every year as they did this past year. That is their responsibility. Clerk Johnson continued that with Section 28.35, it limits the CCOC estimate revenue available to fund Clerks' budgets. Revenue estimates were established at the most recent Revenue Estimating Conference. She asked Chair Burke how that would impact this. Chair Burke answered that Clerk Timmann would be addressing that as part of her report. He continued that we do not have an answer right now because the next Revenue Estimating Conference is July 31st. As soon as the information is gathered on what the figures will be as a result of implementing this legal memorandum, it will be communicated to the parties involved with the Revenue Estimating Conference. Whether we will have it available or if they will accept it for this July 31st or not, we certainly are going to make sure we first have the most accurate projection as possible. If not, we anticipate the next Revenue Estimating Conference meeting will be in November or December. We will have a collections track record by then and solid data to share on the projected revenues. The CCOC then can go in and amend the budgets of Clerks based on the new revenue projections.

Clerk Johnson expressed her concern about the communication between the CCOC and the FCCC. She did not know of the Holland & Knight memo until she received Chair Burke's letter. Chair Burke responded that the CCOC Executive Council did not know what the report was going to say, so the committee did not want to send out alarming messages if it came back benign. He noted that the legal opinion was rendered on July 13, 2017 and he communicated with Clerk Johnson on July 14, 2017. She was communicated with before any of the CCOC Executive Council members. Chair Burke felt that it was that important for FCCC to know when the committee had something that definitive. CCOC meetings are open and the Executive Meeting was advertised.

Clerk Don Spence, Santa Rosa County, was recognized. He acknowledged that he was behind the opinion 100% and was glad that it was done. Clerk Spencer asked if it was possible to get the funds in this year's budget. Chair Burke noted that it was possible, but it depends on the Revenue Estimating Conference(REC) and it goes back to the fact that Clerks cannot spend more than what the REC projects as our income. With the REC meeting July 31st and in November or December, there will be two opportunities to have our position known. Clerk Spencer then asked if they implement the opinion, would CCOC be able to tell us an estimate on the revenues to be generated. Chair Burke answered yes.

Clerk Linda Doggett, Lee County, was recognized. She asked if assuming a positive vote, is it relative to say that the distribution would be changed August 1. Chair Burke asked if this could be discussed after the vote is taken.

Next, Clerk Harvey Ruvin, Miami Dade County, was recognized. He thanked Clerk Bock for bringing this forward. He wanted to make it clear that the FCCC is the body that provides the schedule of the fines and fees. He believes that is where the misinformation is coming from. No one else asked to be heard.

Chair Burke called for the vote on the motion. The vote was taken by roll call. The motion passed unanimously.

Chair Burke noted that the next agenda item is to have a designate to work with FCCC, who is charged statutorily with the fee schedule, and cooperatively with CCOC in correcting the fee schedule as a result of the official position of the CCOC. The work on this should be done as expeditiously as possible as well as giving directions to Clerks to when the implementation would start. He noted that logistically, it takes a while to reprogram the software to make these corrections. Instead of doing it in a hap hazard way, he would like to see an organized, thoughtful way of implementing this official position. Chair Burke would entertain a motion that CCOC work jointly with FCCC to correct the fee schedule expeditiously and come up with an implementation schedule as quickly as possible and further designate Clerk Sharon Bock as the lead person to work with FCCC in this regard. Chair Burke asked a member to make the motion by stating so moved. Clerk Crawford answered so moved. Clerk O'Neil seconded the motion. Chair Burke asked if any of the Executive Council members had any questions or comments on this motion. He asked Clerk Bock if she accepted this assignment. Clerk Bock answered she would accept.

Clerk Green was recognized. She wanted to know if there was any projected timeframe for Clerk Bock working with FCCC and a turnaround as to the direction we would go. Chair Burke answered no, that he would leave that to Clerk Bock to move it along as quickly as possible. Hearing no more discussion, Chair Burke called for a vote on the motion. The vote was taken and it passed unanimously.

Chair Burke called on Clerk Carolyn Timmann, the CCOC Legislative Committee Chair to speak about CCOC's communication to the Legislative leaders and staff on what we are doing here and how we can make this a priority item to the Revenue Estimating Conference. Clerk Timmann thanked Chair Burke and began by saying that we need to make sure that staff contacts of the House and Senate have full access to the documents, the legal memorandum and related materials. The documents are on the CCOC website and she is hopeful that both chambers were represented on the phone call today. She will be following up with them after the meeting to make sure if they have any questions at this point. She noted that Chair Burke did a phenomenal job in giving the details of the legal memorandum and how quickly this came about and how quickly we are reacting to make sure we are complying with the Legislative directives they have given us through the Statutes. She commented on Clerk Frank's comments and hopes she can give that comfort to the Legislature that we are moving forward, correcting where we need to correct and adjusting where we need to adjust. Doing so in an open and transparent way in partnership with them. Now that the CCOC has accepted the memorandum with the vote, it will make it easier to have these conversations moving forward. The big piece here in order to have these conversations is the

preliminary survey that will quantify the effect of the memorandum and the changes. Once we have the results, the conversations can move forward not only with the Legislature but also with the Department of Revenue and any other impacted entity. As far as the Revenue Estimating Conference, it is July 31st and that is soon and we are trying to get the preliminary surveys results in so we can gage the impact. The REC is familiar with the revenue streams. They will be given the new updated data if we have it and are comfortable it is correct and at that point, it will be up to them to determine if they have everything they need by July 31st. If not, we will have to work towards the next Estimating Conference date. Our goal here is to look at our legislative partner and our agency partners and work together on this and make sure we are in compliance with the Statutes.

Next on the agenda was Clerk Butterfield to speak to the impact of this legal memorandum. The Executive Committee asked her to work with the staff of the CCOC and gather information about the impact of the Holland & Knight Opinion. The CCOC staff and John Dew worked with her to compile a survey that would go out to Clerks. A couple of Clerks were asking if any of the funds were already being sent to the Fines and Forfeiture and where are they being distributed. The purpose of the survey to find out the dollar amount as well as where this money is currently being distributed. The survey was not sent out to all 67 Clerks, but to a sampling of Clerks and that information is due back to the CCOC tomorrow afternoon at the close of business. So as soon as the surveys are received the data will be analyzed and we may have to follow up with Clerks. With the sampling, we should be able to project for the population as a whole the total impact of the Holland & Knight Opinion.

Clerk Ruvin asked if the results would be sent out. Chair Burke said yes. Clerk Butterfield would send out the results of the survey. Clerk Ruvin said that another meeting may need to be called in order to discuss the results. Chair Burke said that the Plan of Operations allows for the ability to call an emergency meeting by telephone rather than in person. Like the meeting today, we may need to call another one after the results are out.

Clerk Doggett asked why if distribution schedule has been wrong since 2008, why was it not discovered before now. She additionally asked if we go back and review that process. Chair Burke stated that she may want to contact the Association. They are statutorily responsible for the pre-distribution of the fee schedule and that is their process.

Chair Burke recognized Clerk Green and asked her to give her report. The CFY 16/17 Quarter 1 Action Plan Report is available for approval. Some of the highlights are Civil Traffic continues to exceed 33% in not meeting collection standards and Criminal Court divisions continue to be a challenge with 21 counties not meeting the collection standard. On Timeliness, we see it moving from quarter to quarter. If we meet timeliness in one area it will dip in another area. Most of the problems with not meeting performance standards, according to the action plans sent in by Clerks, is due to not having sufficient staff due to personnel reductions. Clerk Green made a motion to accept the CFY 16/17 Quarter 1 Action Plan Report. Clerk Butterfield seconded the motion. There was no discussion. The vote was called and taken. The motion passed unanimously.

Chair Burke noted that there might be another emergency meeting concerning the survey results. He asked the Executive Council members to put on their schedules that on October 10 at 2:00 PM(Tuesday) is the next Executive Council meeting in Orlando. It is an in-person meeting and you will not be able to attend by phone. The Council will probably be meeting in September to do their statutorily duty of approving the Clerks' budgets.

Chair Burke wanted to conclude by thanking Clerk Bock and her staff for bringing this issue forward. They did it in a thoughtful and judicious way.

The meeting was adjourned at approximately 3:00 PM.