

Ken Burke, CPA Pinellas County EXECUTIVE COUNCIL CHAIR	Stacy Butterfield, CPA Polk County VICE-CHAIR	Tara S. Green Clay County SECRETARY/TREASURER
Sharon R. Bock, Esq. Palm Beach County	John Crawford Nassau County	Pat Frank Hillsborough County
Ron Ficarrotta 13th Judicial Circuit Judge SUPREME COURT APPOINTEE	Kyle Hudson Holmes County SENATE APPOINTEE	Paula S. O'Neil, Ph.D Pasco County HOUSE APPOINTEE
		Todd Newton Gilchrist County
		Jeffrey R. Smith, CPA Indian River County
		John Dew EXECUTIVE DIRECTOR
		Joe Boyd GENERAL COUNSEL

DRAFT Agenda

Executive Committee Meeting

July 13, 2017

Date: July 13, 2017
Time: 1pm EST
Location: Conference Call: (904) 512-0115, Code 412463

- Call to Order.....Ken Burke
- Roll CallCCOC Staff
- Approval of Agenda and WelcomeKen Burke
- 1) Approval of Minutes from 06/21/17 Executive Committee Meeting Tara Green
- 2) Update from Committee ChairsKen Burke
- 3) Update on CCOC Office Policy and Procedures Stacy Butterfield
- 4) Uniform Case Management Database System Study.....Ken Burke
- 5) Update on Distribution Schedule Tara Green
- 6) Discussion on Holland and Knight Opinion.....Ken Burke
- 7) Other BusinessKen Burke

Executive Committee Members: Ken Burke, Chair; Stacy Butterfield, Vice-Chair; and Tara Green, Secretary/Treasurer.



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Executive Committee Meeting

June 21, 2017

Summary Minutes of the June 21, 2017 CCOC Executive Committee Meeting

The CCOC June 21st Executive Committee meeting was advertised in advance. A telephone number was provided in advance on the CCOC agenda for all interested participants to attend. The telephone conference meeting was called to order at 9:00 AM.

Roll was taken with Chair Ken Burke, Vice-Chair Stacy Butterfield and Secretary/Treasurer Tara Green present. A quorum was present.

Chair Burke called the meeting to order and thanked those in attendance. Clerk Stacy Butterfield moved to approve the draft agenda and Clerk Burke seconded the motion. The agenda as provided and advertised was approved.

Chair Burke asked Clerk Butterfield if she would continue to work with Mr. Dew on the CCOC office Policies and Procedures and give a report at the next Executive Council meeting. She agreed.

Chair Burke moved to approve the minutes from the April 20, 2017 Executive Committee meeting. Clerk Butterfield seconded the motion. The minutes were approved with no revisions.

Chair Burke wanted to take care of some administrative items prior to discussing agenda item #2. Chair Burke noted materials about the lease were sent before the meeting. Mr. Boyd, General Counsel for the CCOC gave his recommendation to extend the present lease for another three years. Chair Burke asked if there were any questions. Motion was made by Clerk Butterfield to authorize Mr. Dew to exercise the extension of the office lease for another three years and any other extensions that may be brought forward per discussion with the landlord. Seconded by Clerk Green. Motion carried unanimously.

Chair Burke turned the meeting over to Clerk Bock to discuss item #2 labeled "funding sources". Clerk Bock noted a concern that the Clerks may not all be collecting and distributing fees correctly. In other words, are we all complying with what the Legislature told us to do concerning collecting and distributing fees properly? Her staff noted several areas of concern and suggested we get an outside legal opinion. Therefore, she would suggest that the CCOC hire an independent law firm to review and provide a legal opinion on the collection and distribution of fines and fees. Based on research she recommended that the CCOC select the Holland and Knight law firm due to their extensive knowledge in this area. Clerk Bock asked if there were any questions.

Chair Burke asked if the basic premise, that the statutes are being followed as they were written, is the question that is being sought. He asked if Clerk Bock agreed. Yes, she said that is absolutely correct. From their premises, the statutes have not been followed properly and they need to be followed properly. He asked Amanda Coffey of his legal team and her reaction was that someone should do the research and get a determination. Chair Burke asked if Holland and Knight would work with Palm Beach's, Clay's, Polk's, and Pinellas' legal staff. The firm may know the statutes, but do not know the Clerks' procedures.



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Following the presentation on Funding Sources by Clerk Bock, Clerk Butterfield made a motion to engage the firm of Holland and Knight for an approximate fee of \$15,000.00 to ensure that court fees, fines and costs are being remitted to the proper entity and fund in accordance with Florida Statutes. The firm would also work with those Clerk's staff as requested above. Clerk Green seconded the motion and the motion passed with a unanimous vote.

Chair Burke shared that the Clerks have always relied on the FCCC to come up with the fee and distribution schedule and send it out. The Clerks need some direction to the new fees with this legislation. He believes it would be damaging for FCCC to put out a new schedule if the old information is improper. Clerk Bock answered after re-reading the duties of the CCOC, the distribution schedule in the future should be a responsibility of the CCOC. She believes that it is improperly placed at the FCCC. The CCOC has the duty to look at fines, fees and identifying Clerks' costs as they were created by the Legislature to be the budget entity for all Clerks on behalf of the State.

Clerk Burke asked Clerk Butterfield if she has any questions. She noted that she has been questioning for years the interpretation of the distribution schedule on this issue and concerns have been raised. She also thinks that working with legal staff at the counties will help with the history. The distribution schedule revision can be a lot of work for the CCOC. However, she agrees it should be a CCOC responsibility with the FCCC being used as a resource. The schedule should be provided to CCOC leadership and Clerks for approval.

Clerk Green said she felt that the right place for it to be is with the CCOC because it is a funding mechanism.

Chair Burke asked Clerk Green to coordinate the effort of transitioning the responsibility of the fee distribution schedule to the CCOC. She agreed that she would do this. Clerk Green made a motion that we will look at a transition plan to evaluate the distribution schedule and any legal changes with a partnership with FCCC and a handoff to the Corporation for the implementation of any changes of fees and fines. Clerk Butterfield seconded the motion. Chair Burke asked if there was any discussion. Hearing none, the vote was taken. Motion passed.

The next item for discussion was the committees. Clerk Butterfield and Clerk Green head two significant committees, the PIE and Budget Committees. They also have obligations as officers at the FCCC. Chair Burke wanted to discuss if there needed to be a succession/transition plan for each of those committees. Clerk Butterfield said she would like to continue to be the Budget Committee Chair for the next year. However, after that year it would be beneficial to make a transition to a new Chair. Chair Burke then asked Clerk Green her ideas on a transition for the PIE Committee. Clerk Green noted that since there are a lot of open items the committee is working on, she would like to continue this year as Chair and work with a Clerk during this time for them to transition in as Chair the year after.

Chair Burke asked Clerk Butterfield to give a status update on analyzing the needs-based budgets. She noted that staff have been going through the budgets and have not calculated any of the weighted workload yet. There are two reasons, one is that they are still going through needs-based budgets with the technical reviews and contacting Clerks if there are issues. Two, we do not have the revised case counts from all of the Clerks yet.

Chair Butterfield noted that with the law change, she and Mr. Dew have to go through and make some calculations of the 1/12th calculation for the rest of the year. Since the 10% is to be remitted to the fine and forfeiture fund, that is going to mean changes. She pointed out that even though the 10% money is going to the fine and forfeiture fund, we have received information from the Revenue Estimating Conference that they want us to continue to track the 10% separately. A memo went out yesterday, June 20th from her saying that there is a new law change and we are working on getting some guidance.

Chair Burke noted that he asked Tiffany Moore Russell, the Orange County Clerk, to head up a committee to look at a new model of funding for the Clerks. Clerk Green asked how that will work with the Financial Analysis Workgroup that currently resides under the PIE Committee. She would like to make sure that the two are working together in conjunction, because that workgroup has looked at revenue funding models in the past. Chair Burke said that would be taken into consideration. Chair Burke stated the Clerks cannot ask for a spending model if they cannot say what the cost of business is. That part of Clerk Green's committee is going to be extremely important and necessary for Clerk Russell's work.

Chair Burke asked Mr. Dew that when sending any correspondence to Clerks for information to state very clearly the reason why the Clerks are being asked for this information especially if it has to do with something from the Legislature, statute inquiry, and asking for Clerk input, etc. We need to be mindful of the reduced staff Clerks have to respond to information. Mr. Dew agreed.

Chair Burke asked if there was any other business. Hearing none, the meeting was adjourned at approximately 10:04 AM.

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Agenda Item 3

Executive Committee Meeting

July 13, 2017

Date: July 13, 2017

Subject: Update on CCOC Office Policy and Procedures

Committee Action: Update from Clerk Butterfield

Overview: Chair Burke at the June 21, 2017 Executive Committee meeting asked Clerk Butterfield to continue to work with CCOC staff on reviewing the current office policy and procedures and bring back recommendations to the Committee. CCOC staff have compiled the current policies and procedures and in the process of drafting suggestions for Clerk Butterfield's review. Clerk Butterfield has asked CCOC staff to work first with her staff to help expedite the process.



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Agenda Item 4

Executive Committee Meeting

July 13, 2017

Date: July 13, 2017

Subject: Uniform Case Management Database System Study

Committee Action: Direction to CCOC Leadership and Staff

Overview: The 2017 Legislature passed SB 2500, General Appropriation Act, which contained language requiring the Office of the State Courts Administrator (OSCA) to work with the CCOC and FCCC to develop common definitions for all clerks and courts to use to ensure uniformity in reporting. The report is due to the Legislative Appropriation Chairs by December 1, 2017.

Attachment: Proviso language from SB 2500.



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Agenda Item #4 Attachment– Uniform Case Management Database System Study

General Appropriation Act, SB 2500,
SECTION 7 - JUDICIAL BRANCH

STATE COURT SYSTEM

From the funds provided in Specific Appropriations 3145 through 3212, the Office of the State Court Administrator shall submit quarterly reports on all travel related to training, seminars, workshops, conferences, or similarly purposed travel that was completed by judges, court administrators, senior management employees, and division or program directors. Each quarterly report shall include the following information: (a) employee name, (b) position title, (c) purpose of travel, (d) dates and location of travel, (e) confirmation of agency head authorization if required by SB 2502, and (f) total travel cost. The report shall be submitted to the chair of the Senate Committee on Appropriations, the chair of the House of Representatives Appropriations Committee, and the Executive Office of the Governor. The first report shall be submitted on July 15, 2017, for the period of April 1, 2017, through June 30, 2017, and quarterly thereafter.

From the funds in Specific Appropriation 3145 through 3212, the Office of the State Courts Administrator shall submit a plan to develop, within existing appropriations, a statewide uniform case management database system for the purpose of caseload data collection and reporting. The Office of the State Courts Administrator shall work with the Florida Clerks of Court Corporation and the Florida Association of Clerks of Court to develop common definitions for all clerks and courts to use to ensure uniformity in reporting. The case management system must be searchable, have information about the workload of each judge in the circuit and have the ability to be aggregated by division, circuit, and statewide for reporting purposes. The plan shall examine recurring appropriations in the State Courts System to identify appropriation categories and budget entities with funds which may be reallocated to fund all costs associated with a unified state-wide judicial case management system. The plan must provide an itemized estimate of all projected costs associated with the development, implementation and recurring maintenance of the system. The plan must also account for the costs of making the system accessible by all trial court judges, appellate court judges, Supreme Court justices and other authorized staff of the courts. The Office of the State Courts Administrator shall submit the plan to the chair of the House Appropriations Committee and the chair of the Senate Appropriations Committee by December 1, 2017.

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MEMORANDUM

PRIVILEGED AND CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION

TO: Florida Clerks of Court Operations Corporation

FROM: Nathan A. Adams, IV
Patrick O'Bryant

DATE: July 13, 2017

RE: Clerk's Fine and Forfeiture Fund

Question

You have asked (1) whether revenues generated pursuant to Florida Statutes 28.241(d), 57.082(1)(d), 318.14(10)(b), 318.18(11)(a) and (18) must be deposited in the fine and forfeiture fund established pursuant to Florida Statute 142.01 for use by the clerks of the courts in performing court-related functions and (2) the effect of section 47 of the Laws of Florida 2008-111, the Florida Chief Financial Officer Memorandum No. 3 dated Sept. 19, 2008, and Ch. 2017-126, Laws of Florida, regarding redirection of these enumerated fees to the fine and forfeiture fund.

Brief Answer

It is our pleasure to assist. Subject to the limitation mentioned next, and after an analysis of the relevant authorities, we conclude that the several fees and fines implicated in the statutes discussed in this memorandum belong in the clerks' fine and forfeiture fund at least up to the value of the clerks' respective budgets established in accordance with Florida Statute 28.36.

Limitation

We have examined exclusively the statutes identified in the question posed as they pertain to future receipt of revenue, not retrospective receipt of revenue from them. Our representation is of the Florida Clerks of Court Operations Corporation (CCOC) as a public corporation and not of the individual interests of any of its members. This memorandum may not be relied upon by, furnished to, referred to, quoted, in whole or part, by, or filed with, any person besides CCOC without our prior written consent.¹

Background

Funding for offices of the clerks of the circuit and county courts is addressed in at least two constitutional provisions. Article V, section 14 of the Florida Constitution states, in pertinent part:

(b) All funding for the offices of the clerks of the circuit and county courts performing court-related functions, except as otherwise provided in this subsection and subsection (c), shall be provided by adequate and appropriate filing fees for judicial proceedings and service charges and costs for performing court-related functions as required by general law. Selected salaries, costs, and expenses of the state courts system may be funded from appropriate filing fees for judicial proceedings and service charges and costs for performing court-related functions, as provided by general law. Where the requirements of either the United States Constitution or the Constitution of the State of Florida preclude the imposition of filing fees for judicial proceedings and service charges and costs for performing court-related functions sufficient to fund the court-related functions of the offices of the clerks of the circuit and county courts, **the state shall provide, as determined by the legislature, adequate and appropriate supplemental funding from state revenues appropriated by general law.**

(c) No county or municipality, except as provided in this subsection, shall be required to provide any funding for the state courts system ... or the offices of the clerks of the circuit and county courts performing court-related functions. Counties shall be required to fund the cost of ... construction or lease, maintenance, utilities and security of facilities for the trial courts ... and the offices of the clerks of the circuit and county courts performing court-related functions....

Art. V, § 14, Fla. Const.

¹ It is expected that this memorandum will be disclosed to CCOC members. However, such disclosure will not create an attorney-client relationship with them or entitle them to rely upon this memorandum. Nor shall Holland & Knight's (H&K) representation of CCOC establish or constitute an attorney-client relationship, nor give rise to any duties of loyalty, confidentiality or other duties of a lawyer to a client, between H&K and the individual members of CCOC.

Likewise, article I, section 21 of the Florida Constitution states:

The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay.

Art. I, § 21, Fla. Const.²

Fine and Forfeiture Fund

The fine and forfeiture fund dates back to 1895. Ch. 4323, Laws of Fla. (1895). Chapter 4672, Laws of Florida (1899), established a fine and forfeiture fund in every county. From the beginning, the clerks of the court were authorized to pay for services out of the fund. § 8, Ch. 4672, Laws of Fla. (1899). By 1977, Florida Statute 142.01 was already in a recognizable form. § 2, Ch. 77-452, Laws of Fla. Then, the fine and forfeiture fund consisted of fines and forfeitures collected in the county under the penal laws of the state. *Id.* Beginning in 1982, any surplus funds remaining in the fine and forfeiture fund at the end of a fiscal year were to be transferred to the county general fund. § 1, Ch. 82-107, Laws of Fla.

Ch. 2003-402, Laws of Fla.

In 2003, the legislature made plain for the first time that that the clerks of the circuit court were to establish the fine and forfeiture funds, already enacted in each county, “for use by the clerk of the court in performing court-related functions,” and added to the funds “allocations of court costs and civil penalties pursuant to ss. 318.18 and 318.21.” § 81, Ch. 2003-402, Laws of Fla. Also in 2003, the legislature created the CCOC to review and certify budgets to ensure completeness and compliance with budget procedures and to provide public accountability for the revenues that the clerks of the court collect. § 36, Ch. 2003-402, Laws of Fla. All clerks of the court are members of the CCOC. § 28.35(1)(a), Fla. Stat. Clerks of court may access revenues from the Clerks of the Court Trust Fund created under this law to address deficits. § 37, Ch. 2003-402, Laws of Fla.

Ch. 2005-236, Laws of Fla.

Beginning in 2005, the Legislative Budget Commission (LBC) could approve increases to the maximum annual budgets approved for the clerks if additional funding was necessary to pay the cost of performing new or additional functions required by changes in law or court rule or additional funding was necessary to pay the cost of supporting increases in the number of judges or magistrates authorized by statute. § 11, Ch. 2005-236, Laws of Fla.

Ch. 2008-111, Laws of Fla.

Chapter 2008-111, Laws of Florida, increased various charges for services rendered by the clerks of the circuit courts in recording documents and instruments and performing other duties,

² Under this provision, user fees are permitted, but a tax imposed as a precondition to access to the courts is not permitted. *Crist v. Ervin*, 56 So. 3d 745, 748 (Fla. 2010) (*citing State v. City of Port Orange*, 650 So. 2d 1, 3 (Fla. 1994)). A “tax” means “an enforced burden imposed by sovereign right for the support of the government, the administration of law, and the exercise of various functions the sovereign is called on to perform,” and a “user fee” is a charge “based upon the proprietary right of the governing body permitting the use of the instrumentality involved.” *City of Port Orange*, 650 So. 2d at 3.

increased filing fees for civil actions in civil court, and increased service charges that the clerks of the courts are authorized to charge in probate matters. The law became effective on July 1, 2008. § 48, Ch. 2008-111, Laws of Fla. As relates to the statutes that are the subject of this memorandum, chapter 2008-111 amended:

Florida Statute 28.241(1)(d), so that it states in its current form:

The clerk of court shall collect a service charge of \$10 for issuing an original, a certified copy, or an electronic certified copy of a summons. The clerk shall assess the fee against the party seeking to have the summons issued.³

Florida Statute 57.082(1)(d), so that it states in its current form:

A person who seeks appointment of an attorney in a proceeding under chapter 39, at shelter hearings or during the adjudicatory process, during the judicial review process, upon the filing of a petition to terminate parental rights, or upon the filing of any appeal, or if the person seeks appointment of an attorney in a reopened proceeding, for which an indigent person is eligible for court-appointed representation must pay a \$50 application fee to the clerk for each application filed. A person is not required to pay more than one application fee per case. However, an appeal or the reopening of a proceeding shall be deemed to be a distinct case. The applicant must pay the fee within 7 days after submitting the application. If the applicant has not paid the fee within 7 days, the court shall enter an order requiring payment, and the clerk shall pursue collection under s. 28.246. The clerk shall transfer monthly all application fees collected under this paragraph to the Department of Revenue for deposit into the Indigent Civil Defense Trust Fund, to be used as appropriated by the Legislature. **The clerk may retain 10 percent of application fees collected monthly for administrative costs prior to remitting the remainder to the Department of Revenue.** If the person cannot pay the application fee, the clerk shall enroll the person in a payment plan pursuant to s. 28.246.

Florida Statute 318.14(10)(b), so that it states in its current form:

Any person cited for an offense listed in this subsection shall present proof of compliance before the scheduled court appearance date. For the purposes of this subsection, proof of compliance shall consist of a valid, renewed, or reinstated driver license or registration certificate and proper proof of maintenance of security as required by s. 316.646. Notwithstanding waiver of fine, any

³ Underlining and strike-outs reveal amendments to the law. Bolding is added for emphasis of text.

person establishing proof of compliance shall be assessed court costs of ~~\$25~~ 22, except that a person charged with violation of s. 316.646(1)-(3) may be assessed court costs of ~~\$8~~ 7. One dollar of such costs shall be remitted to the Department of Revenue for deposit into the Child Welfare Training Trust Fund of the Department of Children and Family Services. One dollar of such costs shall be distributed to the Department of Juvenile Justice for deposit into the Juvenile Justice Training Trust Fund. ~~Fourteen~~ Twelve dollars of such costs shall be distributed to the municipality and ~~\$9~~ 8 **shall be deposited by the clerk of the court into the fine and forfeiture fund established pursuant to s. 142.01**, if the offense was committed within the municipality. If the offense was committed in an unincorporated area of a county or if the citation was for a violation of s. 316.646(1)-(3), the entire amount **shall be deposited by the clerk of the court into the fine and forfeiture fund** established pursuant to s. 142.01, except for the moneys to be deposited into the Child Welfare Training Trust Fund and the Juvenile Justice Training Trust Fund. This subsection does not authorize the operation of a vehicle without a valid driver license, without a valid vehicle tag and registration, or without the maintenance of required security.

Florida Statute 318.18(11)(a), so that it states in its current form:

In addition to the stated fine, court costs must be paid in the following amounts and **shall be deposited by the clerk into the fine and forfeiture fund established pursuant to s. 142.01**:

For pedestrian infractions.	\$ 4 <u>3</u>
For nonmoving traffic infractions.	\$ 18 <u>16</u>
For moving traffic infractions.	\$ 35 <u>30</u> .

Florida Statute 318.18(18), so that it states in its current form:

In addition to any penalties imposed, an administrative fee of \$12.50 must be paid for all noncriminal moving and nonmoving violations under chapters 316, 320, and 322. Revenue from the administrative fee shall be deposited by the clerk of court into the fine and forfeiture fund established pursuant to s. 142.01.

None of these statutes has been amended since 2008. Florida Statute 28.241(1)(d) orders the clerk of the court to collect the service charge for issuance of the summons, but does not explicitly indicate where the clerk is to deposit the revenue. Florida Statute 57.082(1)(d) authorizes the clerk to retain a percentage of application fees, but, once again, does not dictate where the clerk is to

deposit the revenue. Florida Statutes 318.14(10)(b) and 318.18(11)(a) and (18) explicitly direct the amount to be deposited by the clerk into the fine and forfeiture fund, depending upon whether a traffic offense was committed in an incorporated or unincorporated area of the county.

But in section 47 of chapter 2008-111, the Legislature added a caveat applicable to the CCOC as relates to the increased revenue generated under the act:

Notwithstanding s. 28.36, Florida Statutes [regarding the budget procedure for the court-related functions of the clerks of the court], the Florida Clerks of Court Operations Corporation may not approve increases to the clerks' budgets based on increased revenue generated under this act. The corporation may increase the clerks' budgets in the aggregate by \$1,188,184 for the period from July 1, 2008, through September 30, 2008, and \$3,564,551 for the period from October 1, 2008 through June 30, 2009 for the increased duties related to paying jurors and juror meals and lodging expenses as provided in this act. These budget increases shall be considered as part of the recurring base budget of the clerks for future budgets approved pursuant to s. 28.36, Florida Statutes.

§ 47, Ch. 2008-111, Laws of Fla.⁴

Memorandum No. 03

On September 19, 2008, the Florida Chief Financial Officer⁵ issued Memorandum No. 03 (2008-2009), interpreting chapter 2008-111, Laws of Florida, and expressly titled “Clerks of Court Accounting Methodology for Chapter 2008-111, Laws of Florida.” Memorandum No. 03 directed that the clerks record all new fees attributable to chapter 2008-111 as liabilities for accounting purposes. The CFO continued:

This accounting methodology will allow a Clerk of Court, who is certified by the ... CCOC as being in a budgeted deficit position and receiving a monthly stipend from the State, to **offset the need for the stipend by using the increased fee collections attributable to Chapter 2008-111 to pay for his or her current certified budget expenditures.** The amount of funds scheduled to be received from the Clerks of Courts Trust Fund administered by the Department of Revenue (DOR) pursuant to Section 28.36, Florida Statutes, will be reduced or eliminated **depending on the amount of increased fees collected by such a Clerk.** If a Clerk of Court, who is certified by the CCOC as being in a budgeted deficit position, collects funds in excess of his or her deficit stipend, all such excess funds shall be remitted to the State.

Memorandum No. 03 creates three classes of clerks: (1) surplus clerks who after receiving increased fees under Chapter 2008-111 must remit the surplus over budget to the Department of

⁴ Section 47 does not address where revenue from chapter 2008-111 should be deposited.

⁵ Alex Sink was CFO from 2007-2011; Jeff Atwater was CFO from 2011-2017; and Jimmy Patronis took over as CFO in June 2017.

Revenue: (2) full offset deficit clerks who receive increased fees under Chapter 2008-111 equal to budget and must forego any deficit stipend; and (3) residual deficit clerks who after receiving the increased fees still have a budget deficit entitling them to a stipend. Presently, the CFO gives the status of Memorandum No. 03 as “active.”

Ch. 2009-204, Laws of Fla.

Chapter 2009-204, Laws of Florida, changed the funding system for the clerks of the court and moved the CCOC to be administratively housed within the Justice Administrative Commission. § 3, Ch. 2009-204, Laws of Fla.⁶ According to the Florida Supreme Court, neither article I, section 21 nor article V, section 14 of the Florida Constitution facially requires that the very money paid for filing fees be used to fund the administration of justice. *Crist v. Ervin*, 56 So. 3d 745, 749 (2010). So the legislature could require the clerks to remit fees, fines, costs and charges to the Department of Revenue for deposit into the Clerks of Court Trust Fund within the Justice Administrative Commission, § 1, Ch. 2009-204, Laws of Fla. (amending § 28.246, Fla. Stat.),⁷ as long as the legislature allocates an amount at least equal to that deposited into general revenue. *Crist*, 56 So. 3d at 749. Under section 4, chapter 2009-204, Laws of Florida (amending § 28.36(9), Fla. Stat.), the legislature agreed to appropriate the total amount of the budgets of the clerks in the General Appropriations Act. For the 2009-2010 fiscal year, the CCOC was directed to release appropriations in an amount equal to 1/12 of each clerk’s approved budget each month. § 4, Ch. 2009-204 (amending § 28.36(10), Fla. Stat.).

Ch. 2013-44, Laws of Fla.

Within just a few years, chapter 2013-44, Laws of Florida, reversed many of the changes to the clerk of court funding system contained in chapter 2009-204, but enhanced the CCOC’s responsibility and oversight functions. It required clerks to submit monthly all revenues collected in the prior month that were in excess of 1/12 of the clerk’s total budget to the Department of Revenue for deposit into the Clerks of the Court Trust Fund. §§ 3 and 8, Ch. 2013-44, Laws of Fla. (amending §§ 28.241(1)(a)1.a. and 28.37(2), Fla. Stat.). The law required the CCOC to conduct annual base budget reviews, conduct cost-comparisons of similarly-situated clerks, report pay and benefit issues, and provide explanation of any clerk expenditure increases over 3%. § 6, Ch. 2013-44, Laws of Fla. (amending § 28.35(2)(f), Fla. Stat.). The law also required the CCOC to use “revenue estimates based on the official estimate for funds accruing to the clerks of the court made by the Revenue Estimating Conference” when “[r]evueing, certifying, and recommending proposed budgets submitted by clerks of the court pursuant to s. 28.36.” *Id.* (amending § 28.35(2)(f)6., Fla. Stat.). Finally, the law directed the LBC to consider the budgets of the clerks and to approve, disapprove or amend and approve the budgets by October 1 of each year. § 2, Ch. 2013-44, Laws of Fla. (amending § 11.90(6)(d), Fla. Stat.).

⁶ Chapter 2009-204 also made clear that all revenues received by the clerks from court-related fees, fines, costs and service charges were state funds, § 5, Ch. 2009-204, Laws of Fla., and made the CCOC’s employees state employees. § 3, Ch. 2009-204, Laws of Fla.

⁷ As an exception, the clerks could deposit 10% of all court-related fines in the Public Records Modernization Trust Fund for operational needs. § 5, Ch. 2009-204, Laws of Fla.

Chapter 2013-44 modified Florida Statute 142.01, so that it states in its current form:

(1) There shall be established by the clerk of the circuit court in each county of this state a separate fund to be known as the fine and forfeiture fund for use by the clerk of the circuit court in performing court-related functions. The fund shall consist of the following:

(a) Fines and penalties pursuant to ss. 28.2402(2), 34.045(2), 316.193, 327.35, 327.72, 379.2203(1), and **775.083(1)**.

(b) That portion of civil penalties directed to this fund pursuant to s. 318.21.

(c) Court costs pursuant to ss. 28.2402(1)(b), 34.045(1)(b), **318.14(10)(b)**, **318.18(11)(a)**, 327.73(9)(a) and (11)(a), and 938.05(3).

(d) Proceeds from forfeited bail bonds, unclaimed bonds, unclaimed moneys, or recognizances pursuant to ss. 321.05(4)(a), 379.2203(1), and 903.26(3)(a).

(e) Fines and forfeitures pursuant to s. 34.191.

(f) Filing fees received pursuant to ss. **28.241** and 34.041, unless the disposition of such fees is otherwise required by law.

~~(g-f)~~ **All other revenues received by the clerk as revenue authorized by law to be retained by the clerk.**

~~(2) All revenues received by the clerk in the fine and forfeiture fund from court-related fees, fines, costs, and service charges are considered state funds and shall be remitted monthly to the Department of Revenue for deposit into the Clerks of the Court Trust Fund within the Justice Administrative Commission.~~

~~(23)~~ Notwithstanding the provisions of this section, all fines and forfeitures arising from operation of the provisions of s. 318.1215 shall be disbursed in accordance with that section.

§ 142.01, Fla. Stat. (2017).

Since the passage of chapter 2013-44, Laws of Florida, revenues to support the budgets of the clerks of the court have not materialized as projected. On April 4, 2016, Ken Kent of the Florida Court Clerk and Comptrollers Association asked Greenberg Traurig to comment on the continuing applicability of section 47 of Chapter 2008-111, preventing the CCOC from receiving the revenue from the fee increases contained in that law. The firm concluded that section 47 likely ceased to be effective in 2009, but did not recommend seeking a declaration to this effect on the grounds that the legislature could simply reenact it, among other potential political fallout.

Signed by the Governor on Jun 16, 2017, chapter 2017-126, Laws of Florida, once again amended the funding system for clerks of the court by redirecting revenue from certain fines and fees to their fine and forfeiture fund. The law modified, inter alia, the following statutes which became effective upon becoming law:

Florida Statute 28.241(1)(c):

1. A party in addition to a party described in sub-subparagraph (a)1.a. who files a pleading in an original civil action in circuit court for affirmative relief by cross-claim, counterclaim, counterpetition, or third-party complaint shall pay the clerk of court a fee of \$395.

A party in addition to a party described in sub-subparagraph (a)1.b. who files a pleading in an original civil action in circuit court for affirmative relief by cross-claim, counterclaim, counterpetition, or third-party complaint shall pay the clerk of court a fee of \$295. The clerk shall deposit ~~remit~~ the fee into the fine and forfeiture fund established pursuant to s. 142.01 ~~Department of Revenue for deposit into the General Revenue Fund.~~

2. A party in addition to a party described in subparagraph (a)2. who files a pleading in an original civil action in circuit court for affirmative relief by cross-claim, counterclaim, counterpetition, or third-party complaint shall pay the clerk of court a graduated fee of:

- a. Three hundred and ninety-five dollars in all cases in which the value of the pleading is \$50,000 or less;
- b. Nine hundred dollars in all cases in which the value of the pleading is more than \$50,000 but less than \$250,000; or
- c. One thousand nine hundred dollars in all cases in which the value of the pleading is \$250,000 or more.

The clerk shall ~~remit~~ deposit the fees collected under this subparagraph ~~to the Department of Revenue for deposit into the General Revenue Fund~~ fine and forfeiture fund established pursuant to s. 142.01.

Florida Statute 28.35(2):

The duties of the corporation shall include the following:

(a) Adopting a plan of operation including a detailed budget for the corporation.

(f) Approving the Reviewing, certifying, and recommending proposed budgets submitted by clerks of the court pursuant to s. 28.36. The corporation must ensure that the total combined budgets of the clerks of the court do not exceed the total estimated revenues available for court related expenditures as determined by the most recent Revenue Estimating Conference. The corporation may amend any individual clerk of the court budget to ensure compliance with this paragraph and must consider performance measures, workload performance standards, workload measures, and expense data before modifying the budget....

Florida Statute 28.37(5):

Ten percent of all court-related fines collected by the clerk, except for penalties or fines distributed to counties or municipalities under s. 316.0083(1)(b)3. or s. 318.18(15)(a), shall be deposited into the fine and forfeiture ~~clerk's Public Records Modernization Trust Fund~~ to be used exclusively for ~~additional~~ clerk court-related

functions, as provided in s. 28.35(3)(a) operational needs and program enhancements.

Florida Statute 775.083(1):

A person who has been convicted of an offense other than a capital felony may be sentenced to pay a fine in addition to any punishment described in s. 775.082; when specifically authorized by statute, he or she may be sentenced to pay a fine in lieu of any punishment described in s. 775.082. A person who has been convicted of a noncriminal violation may be sentenced to pay a fine. Fines for designated crimes and for noncriminal violations shall not exceed:

(a) \$15,000, when the conviction is of a life felony.

(b) \$10,000, when the conviction is of a felony of the first or second degree.

(c) \$5,000, when the conviction is of a felony of the third degree.

(d) \$1,000, when the conviction is of a misdemeanor of the first degree.

(e) \$500, when the conviction is of a misdemeanor of the second degree or a noncriminal violation.

(f) Any higher amount equal to double the pecuniary gain derived from the offense by the offender or double the pecuniary loss suffered by the victim.

(g) Any higher amount specifically authorized by statute.

Fines imposed in this subsection shall be deposited by the clerk of the court in the fine and forfeiture fund established pursuant to s. 142.01, except that the clerk shall remit fines imposed when adjudication is withheld to the Department of Revenue for deposit in the General Revenue Fund. If a defendant is unable to pay a fine, the court may defer payment of the fine to a date certain. As used in this subsection, the term “convicted” or “conviction” means a determination of guilt which is the result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld.

Ch. 2017-126, Laws of Fla.

Analysis

After a long period of stasis, the funding system for the clerks of the court has been the subject of considerable ferment over the past decade. Nevertheless, most of the statutes that we investigated unambiguously state in their amended final form that the revenue raised thereunder must be deposited by the clerk of the court into the “fine and forfeiture fund established pursuant to s. 142.01.” §§ 28.241(1)(c), Fla. Stat. (2017), 28.37(5), Fla. Stat. (2017), 318.14(10)(b), Fla. Stat., 318.18(11)(a) and (18), Fla. Stat., 775.083(1), Fla. Stat. (2017). The meaning of the language is clear; there is no reason to look beyond the statutory text. “It is well settled that where a statute is

clear and unambiguous, as it is here, a court will not look behind the statute's plain language for legislative intent. A statute's plain and ordinary meaning must be given effect unless to do so would lead to an unreasonable or ridiculous result.” *City of Miami Beach v. Galbut*, 626 So. 2d 192, 193 (Fla. 1993) (internal citations omitted).

The requirement for deposit in the fine and forfeiture fund has been true since 2008 for some of the statutes, §§ 318.14(10)(b), 318.18(11)(a), 318.18(18), Fla. Stat., since 2013 for others, §§ 28.241, 775.083(1), Fla. Stat., and since 2017 for the remainder. Chapter 2017-126, Laws of Florida, explicitly replaced the requirement for remitting the funds to the Department of Revenue for deposit into the General Revenue Fund with depositing them in the fine and forfeiture fund pursuant to Florida Statute 142.01. It is presumed that in adopting an amendment such as this, the legislature intends to change the meaning of a statute. *Equity Corp. Holdings, Inc. v. Dep’t of Banking and Fin., Div. of Fin.*, 772 So. 2d 588, 590 (Fla. 1st DCA 2000). Therefore, when the legislature makes a substantial and material change in the language of a statute, it is presumed to have intended some specific objective or alteration of the law, unless a contrary indication is clear, and the court must give due significance to such a change. *Caruso v. Caruso*, 814 So. 2d 498, 502 (Fla. 4th DCA 2002).

The legislature also reinforced the point by enacting and amending Florida Statute 142.01(2). It reiterates that the fine and forfeiture fund comprises revenue raised from, inter alia, Florida Statutes 28.241, 318.14(10)(b), 318.18(11)(a), and 775.083(1). Second, Florida Statute 142.01(1)(g) states that the fine and forfeiture fund also consists of “[a]ll other revenues received by the clerk as revenue authorized by law to be retained by the clerk.” Just two statutes, unamended since 2008, themselves leave unstated explicitly where the revenue is to be deposited. §§ 28.241(1)(d); 57.082(1)(d), Fla. Stat. But interpreted in light of Florida Statute 142.01(1), there is no ambiguity where the related revenue is to be deposited either. Section 142.01(1)(f) states that the fine and forfeiture fund is comprised, inter alia, of the filing fees receives pursuant to section 28.241, unless otherwise required by law. The language is unambiguous. Florida Statute 57.082(1)(d) states that the “clerk may retain 10 percent of application fees,” while directing the remainder of the fees to the Department of Revenue. § 57.082(1)(d), Fla. Stat. Pursuant to Florida Statute 142.01(1)(g), the 10 percent of application fees is “revenue authorized by law to be retained by the clerk”; and, thus, is required to be deposited in the fine and forfeiture fund. The funds are reserved explicitly for the clerks of the court, and the Department of Revenue has no statutory claim to these funds.

There is yet another reason the revenue from the statutes belongs in the fine and forfeiture fund, especially those unamended since 2008 (i.e., Florida Statutes 28.241(1)(d), 57.082(1)(d), 318.14(10)(b), 318.18(11)(a) and (18)). Memorandum No. 03 interpreted chapter 2008-111, Laws of Florida, to require the clerks to retain increased fees received under chapter 2008-111 to apply against their budgets, with any surplus remitted to the Department of Revenue and any deficit to be supplied by deficit stipend. Memorandum No. 03 is still effective.⁸ The statutes that Memorandum No. 03 interprets are not ambiguous, but if they were the doctrine of contemporaneous construction of a statute by the body that administers the statute in question is generally recognized by the courts. *Andrews v. Borden Co.*, 143 So. 2d 556, 558 (Fla. 2d DCA

⁸ It is unclear whether the CFO will issue a similar memorandum as relates to chapter 2017-126, Laws of Florida.

1962). The well-reasoned views of the agencies implementing a statute constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance. *Bragdon v. Abbott*, 524 U.S. 624, 642 (1998). A court is not bound by the department's interpretation of a statute which it is legislatively charged with administering, but the interpretation is entitled to great weight and should not be overturned unless clearly erroneous. *United Grand Condo. Owners, Inc. v. Grand Condo. Ass'n, Inc.*, 929 So. 2d 24, 25 (Fla. 3d DCA 2006) (citing, *inter alia*, *Cone v. State, Dep't of Health*, 886 So. 2d 1007 (Fla. 1st DCA 2004)).

Section 47 to chapter 2008-111 precluded the CCOC from approving increases to the clerks' budgets based on increased revenue generated under that act. Greenberg Traurig expressed the opinion in its memorandum dated April 4, 2016 that section 47 was no longer effective after July 7, 2009, when the Florida law adopting the official Florida Statutes took effect.⁹ Ch. 2009-19, Laws of Fla. In support, Section 47 primarily deals on its face with the 2008-2009 period. It expressly caps, "notwithstanding s. 28.36," the budgets for the period July 1, 2008 through September 30, 2008 and October 1, 2008 through June 30, 2009, and no other period. As to later periods, section 47 merely states that the budget increases "shall be considered as part of the recurring base budget of the clerks for future budgets approved pursuant to s. 28.36, Florida Statutes." Section 47 of chapter 2008-111, Laws of Florida, does not address where revenue from any statute that is the subject of this memorandum should be deposited.

Chapter 2009-204 amended section 28.36, including as relates to how the clerks are to prepare their budgets. § 4, Ch. 2009-204 (amending § 28.36(3), Fla. Stat.). The amount of the clerks' budgets was set, pursuant to the revised statute, based on the provision of core services such as case processing, financial processing, jury management, and information and reporting to service units, and subject to CCOC review and CFO audit. § 28.36(3)-(4), (6), (8), Fla. Stat. (2009). As such, the provisions could be deemed in conflict. When two statutes are in conflict, the later promulgated statute should prevail as the last expression of legislative intent. *J.M. v. Fla. Agency for Persons with Disabilities*, 938 So. 2d 535, 540 (Fla. 1st DCA 2006). When a general act is an overall revision or general restatement of the law on the same subject, the special act is presumed to have been superseded and repealed. *Town of Palm Bch. v. Palm Bch. Local 1866 of Intern. Ass'n of Fire Fighters*, 275 So. 2d 247, 249 (Fla. 1973). We agree that section 47 is probably no longer binding law.

The composition of the fine and forfeiture fund has become more important in recent years as the legislature has moved progressively to establish the clerks' budget based on a variety of factors including the total revenues available for court-related expenditures. Chapter 2013-44, Laws of Florida, amended Florida Statute 28.35(2)(f)(6) to require the CCOC to "use revenue estimates based on the official estimate for funds accruing to the clerks of the court made by the Revenue Estimating Conference" when "[r]eviewing, certifying, and recommending proposed budgets submitted by clerks of the court pursuant to s. 28.36." Next, chapter 2017-126, Laws of Florida,

⁹ The Greenberg argument was rooted in the fact that while Section 47 became law, it never was incorporated into a statute, and thus was never of a "general and permanent nature." But Section 47 was included in the Florida Statutes in 2008, although only as a footnote to Florida Statute 28.36 (2008). Consistent with the conclusion of the memorandum, but on different grounds, footnotes do not comprise statutory law. *Dockery v. Hood*, 922 So. 2d 258, 261 (Fla. 1st DCA 2006). Section 47 was not included as a footnote in any subsequent versions of the Florida Statutes, evidencing an intent that Section 47 was not to be permanent law.

amended Florida Statute 28.35(2)(f) to require the CCOC to “ensure that the total combined budgets of the clerks of the court do not exceed the total estimated revenues available for court related expenditures as determined by the most recent Revenue Estimating Conference”; and amended Florida Statute 28.35(2)(f)(6) similarly to add, “The total combined budgets of the clerks of the court may not exceed the revenue estimates established by the most recent Revenue Estimating Conference.” As such, sums deposited in the fine and forfeiture fund may act as a statutory cap on the clerks’ budgets, subject to article I, section 21 and article V, section 14 of the Florida Constitution.

Conclusion

For all of these reasons, we conclude that the several fees and fines implicated in the statutes discussed in this memorandum belong in the clerks’ fine and forfeiture fund at least up to the value of the clerks’ respective budgets established in accordance with Florida Statute 28.36. Several of the statutes unambiguously state that the revenue raised thereunder must be deposited by the clerk of the court into the fine and forfeiture fund. §§ 28.241(1)(c), Fla. Stat. (2017), 28.37(5), Fla. Stat. (2017), 318.14(10)(b), Fla. Stat., 318.18(11)(a) and (18), Fla. Stat., 775.083(1), Fla. Stat. (2017). Florida Statute 142.01(1) says likewise about, inter alia, Florida Statutes 28.241, 318.14(10)(b), 318.18(11)(a), and 775.083(1). It also states generally that the fine and forfeiture fund is comprised of “[a]ll other revenues received by the clerk as revenue authorized by law to be retained by the clerk.” § 142.01(1)(g), Fla. Stat. This encompasses the 10 percent of application fees that Florida Statute 57.082(1)(d) provides that the clerk may retain, while directing the remainder of the fees to the Department of Revenue. Memorandum No. 03 also interpreted chapter 2008-111, Laws of Florida, to require the clerks to retain increased fee revenue from various statutes that the law amended to apply against their budgets. §§ 28.241(1)(d), 57.082(1)(d), 318.14(10)(b), 318.18(11)(a), (18), Fla. Stat. A statutory cap on the clerks’ budgets is premised in part upon the revenue deposited in the fine and forfeiture fund. § 28.35(2), Fla. Stat. (2017).