

**MINUTES**  
**FLORIDA CLERKS OF COURT OPERATIONS CORPORATION**  
**MONDAY, DECEMBER 18, 2017 4:00 PM EST**  
**EXECUTIVE COUNCIL MEETING**  
**CONFERENCE CALL**

The December 18, 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 4:00 PM (EST). Chair Burke thanked all for attending and asked that roll call be taken by Clerk Green, the CCOC Secretary/Treasurer. Council members on the call were the Honorable Ken Burke, Honorable Stacy Butterfield, Honorable Tara Green, Honorable John Crawford, Honorable Pat Frank, Honorable Todd Newton, Honorable Jeff Smith, and Honorable Ron Ficarrotta. Those unable to attend were Honorable Paula O’Neil, Honorable Sharon Bock and Honorable Kyle Hudson. Clerk Green stated that there was a quorum.

**APPROVAL OF AGENDA**

Chair Burke noted that the agenda is posted on the CCOC website and asked if there were any revisions to be made today for the meeting. There were no changes.

**APPROVAL OF MINUTES – OCTOBER 10, 2017 EXECUTIVE COUNCIL MEETING**

Clerk Green presented the minutes that were in the meeting packet. Clerk Newton made the motion to approve the minutes. Clerk Butterfield seconded. Vote was taken and the motion passed unanimously.

**APPROVAL OF CCOC OFFICE CONTRACTS**

Clerk Green noted that 2018 was the last year for the extensions to the current contracts before CCOC goes back out and rebids the contracts. There were seven contract extensions being asked for approval. These were contracts for the CCOC annual financial audit; internal auditing; clerk education; technology; budget services; HR help; and CCOC office cleaning. All the vendors have agreed to the 2018 contract extensions at their current rate and current services. Clerk Green made a motion that these extensions be approved. A second was made by Clerk Smith. There were no questions, so the vote was taken and the motion passed. Clerk Green next introduced for the Council’s approval, the Request for Quote for a technology audit of the CCOC office. She made a motion of acceptance and Clerk Butterfield seconded. There was no discussion and the vote was taken. The motion passed.

## **REVIEW OF THE DRAFT CCOC ANNUAL REPORT**

Chair Burke stated that the Annual Report is a statutory obligation. Jason Harrell of the CCOC has been working with Clerk Bock's staff in writing this report. Mr. Harrell gave a brief overview of the document. He noted that there are a few edits still to do. He thanked Clerk Bock's staff for their input. Chair Burke asked if there were any questions for Jason. Hearing none, Chair Burke asked for a motion to approve the report and giving him the authority to work with staff to make minor adjustments to finalize the report. Clerk Butterfield made the motion. Clerk Green seconded. Clerk Frank asked if Clerks had any comments could they make them. Chair Burke said yes and asked that they address them to Jason at the CCOC and he would take the comments into consideration. There was no more discussion. The vote was taken and the motion passed unanimously.

## **BUDGET COMMITTEE REPORT**

Chair Burke called upon Clerk Butterfield, Chair of the Budget Committee to give her report. The Budget Committee last met on December 12, 2017. The focus was to discuss the issues that were left to close out fiscal year 2017 as well as providing an update on the revenue situation. Four motions were approved by the Budget Committee that are recommendations to be brought to the Council today. Clerk Butterfield said she would go through all four recommendations and then open it up for questions.

The first motion is to give the Budget Chair the authority to work with the CCOC staff to finalize the settle-up figures to close out CFY 16-17. Those figures have been given to all the Clerks and there are possibly a few minor tweaks. The second motion is to ask the Council to approve asking Clerks to submit an operational budget for fiscal year 17-18. This would tie to the \$409.4 million budget. The deadline would be January 12<sup>th</sup>. Also, part of the motion is to give the Budget Chair the authority to work with the CCOC and Clerk staff to finalize the forms.

The third motion relates to being prepared for the REC meeting in January. Clerk Butterfield is asking for the Clerks to re-project their revenues for 17-18 and submit those to the CCOC by January 4<sup>th</sup>. The only projections that are available from Clerks now were those submitted as part of the budget submittal in the summer. These need to be updated in time to be analyzed and be prepared for the REC meeting on January 11<sup>th</sup>. Chair Burke asked if the projections would be two projections with one to include revenue that relates to the Holland & Knight and other law firms' legal opinion to those numbers for the potential revenue. Clerk Butterfield stated that normally when they re-project it is numbers that go into the Trust Fund. If the Council would like that expanded, a separate projection can be asked for the five revenue areas in the Holland & Knight opinion. Clerk

Frank made a motion to amend and separate those out. Chair Burke stated if no one disagreed, it would be a friendly amendment. No one disagreed.

Clerk Butterfield noted that the fourth and last motion was to request that the Clerks begin to report the number of indigency cases filed in their office in civil to the CCOC as part of the outputs report. She is asking to go back to October 1<sup>st</sup>, 2017. She asked to be able to work with staff to get that form out. The reason for this is that we are finding trends with indigency cases increasing and we are making a number of analyses and projections of the cost as well as the revenue lost as related to these cases where the fee is waived. Each local Clerk's office has that data, but we do not have the numbers at a statewide level. Before there is a motion, Chair Burke asked if there were any questions of Clerk Butterfield. There were none.

Clerk Butterfield made a motion to approve her report with the action items and the amendment to collect revenues for both, the current and the additional revenues of those mentioned by the law firms. Clerk Green seconded the motion. Clerk Spencer asked if this will be sent out to all the Clerks so they will know what is being asked. Chair Burke said it would be and asked Clerk Butterfield to work with staff on that communication. The vote was taken and the motion passed unanimously.

### **RESPONSE TO REQUEST FOR LEGAL OPINION AND LETTER FROM CLERK FRANK**

Chair Burke asked the CCOC's General Counsel Joe Boyd to address the next two items on the agenda. The Chair noted that the CCOC wants to be very receptive to any Clerk that has a concern with the legality and the proper reading of the Florida Statutes and what we are doing. He appreciates Clerk Frank bringing up two concerns and asking that Counsel address them. Chair Burke turned the meeting over to Mr. Boyd.

Mr. Boyd thanked Chair Burke and the Council. He began by saying that the two issues are intertwined with each other. Both revolve around the issue of what Clerks should do and when they should do it. Also tied to that is what efforts the CCOC should go with in regard to notifying the Revenue Estimating Conference (REC) as to what we perceive as Clerk's revenue and numbers that might make a difference in their forecast. He noted that the opinion that you have from his office is related to Clerk Frank's question but it goes to what we are talking about. He paraphrased what Clerk Frank's question was. Basically, is a Clerk barred from being a deficit Clerk if the reason for that is if they have sent funds to state general revenue instead of keeping it in their own fines and forfeitures fund. It is his opinion they do not forfeit their entitlement to be a deficit clerk and receive funds from the Trust Fund. That is not what the statute says.

Mr. Boyd said the bigger picture is how do we go from here to try and share with the REC any increase its revenue estimates for the Clerks. There is a two-step process and it is unconditional. The Council agrees with the Holland & Knight opinion. With how it is implemented, it is unclear to us as to what the Legislative intent is. So, the answer to the question would in fact be, if the Holland & Knight Opinion is the law of Florida and it accurately reflects Legislative intent, then it would be appropriate for Clerks to retain those funds in the fines and forfeiture fund. Those revenues would be part of their budgeting process under ss. 28.35 and 28.36 F.S. Related to that it would still be capped under the spending cap that the REC does. Clerks cannot spend more than REC's forecast. He stated that it would be appropriate for the Executive Council to advise the REC of their concerns and information and numbers.

He did not know what the Legislative intent was and it is outside of his opinion. If the Holland & Knight and the Legislative opinion merge, then there is no doubt that REC should raise its estimates for Clerks. Clerks should retain those funds in the fine and forfeiture account accordingly and their spending authority would increase. His group advises CCOC and not individual Clerks. If Clerks have legal advice they follow, then that is their constitutional authority. That summarizes his opinion on the two issues.

Chair Burke recognized Clerk Frank to ask any questions she has of Joe Boyd. She agreed with his assessment because it is in line with the opinion she got from attorneys John Mills and Steve Zach. As far as Legislative intent, it was addressed by John Mills. She feels the Courts will look seriously at that because that was included in the document. He also refers to the fact that funding of Clerks is not based upon revenue, but based upon need. She noted that is what the Constitution requires. The REC is an inappropriate body to determine what the budget level should be. It should be the CCOC based upon standards that are set and the Legislature approves.

Chair Burke asked Mr. Boyd if he would like to comment. Mr. Boyd stated that he thought Steve Zach and John Mills opinions were outstanding. He agrees with most of what was said. He thinks that CCOC is limited in what it can do to only what is statutorily delegated to them. He thinks unless we can work within that framework, it cannot legally sustain anything. Whether it is needs-based or revenue-based is outside his opinion. The Legislature has decided that it is revenue-based. Mr. Mills and Mr. Zach's opinion is that it is needs-based. He respects that opinion.

He noted from what authority and the provision CCOC has under s. 28.35 F.S. in the Plan of Operations is probably best limited regarding the REC to make those numbers available and inform them of what we are looking at. He noted that CCOC cannot go beyond arguing that it is a needs-based budget versus a revenue-

based budget at least not under CCOC's statutory mandate. Clerk Frank responded that the Clerks should exhaust all the administrative remedies first. If all else fails, then there are other avenues to pursue. We have to go to the REC and tell them that we received consistent opinions on this issue. It is not just one law firm. REC has not had anything to say in return and we have asked for an opinion from the Legislature which we have been denied. The Clerks have to follow the law. There is no choice but to move ahead.

Clerk Frank suggested that the next step has to be to ask the REC to include the funds which the Clerks anticipate getting from the sources that we have been denied and been diverted to GR and add that to the REC's budget for the Clerks. This is what she is asking the CCOC to do. Chair Burke asked her if she wanted to put that in the form of a motion. Clerk Frank said yes. Chair Burke restated the motion. The motion is the CCOC Executive Council is to relay to the REC the legal opinions we received and secondly, provide them the figures including the income that relates to the Holland & Knight opinion that specified the five revenue streams that would be going to Clerks. He then asked Clerk Frank if that was her motion. Yes, but she wanted to clarify that the CCOC is comprised of all members of the Clerks Corporation. Clerk Burke said that was correct. He asked for a second to this motion. Clerk Butterfield stated that the only action is the Council will provide to the REC with the opinion or opinions and secondly, the estimates. It is just providing information to the REC. It is not directing Clerks to do anything and is not directing REC to do anything. We are just providing information. Clerk Burke agreed. Clerk Jeff Smith seconded the motion.

Lee County Court Clerk Linda Doggett said she agrees with Clerk Frank and has reverted funds to her fine and forfeiture fund already instead of going to state general revenues. Chair Burke reiterated that the motion is not giving instructions to Clerks by the CCOC to withhold money into the Trust Fund or retain that money. Clerk Spencer had a question about how to know the amount of these funds. Further discussion by Clerk Spencer centered around Legislative intent.

Chair Burke wanted to make it clear that the motion has nothing to do with legal opinions. It is to communicate information to the Revenue Estimating Conference(REC). Clerk Green make it extremely clear that CCOC is just sharing and providing information to the REC without any direction or interpretation. Clerk Newton agreed with Clerk Green. Clerk Butterfield asked that Clerk Green restate the motion. The motion on the table is to allow, based on statutory requirements, the CCOC to provide to the REC the legal opinions and information regarding the amount of money collected based on the five from Holland & Knight. Clerk Butterfield clarified that since CCOC has only accepted the Holland & Knight opinion, that one is the only one to be included. There

are others, but CCOC has not officially acted on those. Chair Burke stated that CCOC is only sharing and could state that Holland & Knight is the approved opinion of the CCOC. Clerk Butterfield said she could support the motion. The vote was taken. Motion passed.

### **REPORT ON FINDINGS OF THE AUDITOR GENERAL AUDIT OF THE CCOC OFFICE**

The next item on the agenda was the discussion of the findings of the Auditor General review of the CCOC office. Chair Burke considered the items minor. There has been a response. There was concurrence with all of their findings but he did not concur with all their recommendations. He noted that there was a recommendation to financially penalize Clerks who did not send in certain reports on time. It was made very clear by Chair Burke did not agree with this especially with the Clerks' budget situation. The Auditor General's report and the response is part of the packet. There is no action required. Chair Burke asked if there were any questions. Clerk Smith noted that he appreciated the Chair standing up for what was proper.

### **PIE COMMITTEE REPORT**

Clerk Green was asked to give a review and approval of the 3<sup>rd</sup> and 4<sup>th</sup> quarter performance reports. She noted that these Quarterly Performance Reports were in the packet. Since the packet was publicized, there are a few minor revisions that need to be made. She made a motion to accept the reports and asked if the Council would approve her working with CCOC staff and Clerks' offices staff on these revisions to get the final reports out. Clerk Butterfield seconded the motion. Chair Burke asked if there was any discussion. Hearing none, the vote was taken. The motion passed.

### **UPDATE ON UNIFORM CASE MANAGEMENT DATABASE REPORT**

Clerk Burke asked Clerk Green to give in update on the Uniform Case Management Database project and report. He thanked Clerk Green on behalf of all the Clerks for her being the point person for the CCOC and work with the association and courts on this. Clerk Green said she is happy to serve on behalf of the Clerks. She began with background information. In the 2017 Legislative session there was proviso language that was passed with the Courts 17/18 fiscal budget. The language required the Office of State Court Administrator (OSCA) to submit a plan to develop with existing appropriations a statewide uniformed case management database system for the

purposes of caseload data collection and reporting. In that proviso language, OSCA is to work with FCCC and CCOC to develop common definitions for all Clerks and Courts to use. On August 17<sup>th</sup> a letter was sent to FCCC President Johnson from Court Administrator, P. K. Jamison with a series of questions. President Johnson, with the help of Clerks and staff, responded to that letter on September 29<sup>th</sup>. This resulted in an in-person meeting on October 5<sup>th</sup>. In that meeting, representatives from both FCCC and CCOC met with OSCA to discuss data elements proposed by OSCA. Also discussed were definitions, data quality and costs. At the end of the meeting, it was determined that 13 of the 15 data elements were already available from Clerks' offices. There are two definitions that need more clarification and discussion around what exactly is meant by these elements and how can we provide them.

Also provided by the letters was costs that were broken down into four options:

1. Local interfaces – Direct interface with Clerk case management systems. Price was around \$2.9 million. Clerk Green prefaced these numbers that Clerks' offices and along with the help of the association tried to compile the cost with not as much knowledge on specifications and roles of responsibilities. These are high-level costs.
2. Replicated databases - \$600,000.
3. Data brokering using existing interfaces - \$62,000.
4. Utilize CCIS as the reporting platform – no cost associated with it.

During the meeting on October 5<sup>th</sup>, in talking about the data elements, the conversation included a discussion about the cost of these options. It was discovered that OSCA's interpretation of the proviso language, as it relates to the cost to find a solution, and the Clerks' interpretation differed. OSCA's interpretation is they are required to identify the cost of the Clerks, but are not responsible for covering the cost of the Clerks. To her knowledge there have been no further conversations specific to those data elements in the proviso language or costs since that meeting. The proviso language also requires that OSCA submit the plan to the Chair of the House Appropriations and the Chair of the Senate Appropriations by December 1<sup>st</sup>. That report is included in the packet. This is a 37-page report and Clerk Green pointed out some of the highlights. She encouraged everyone to read the report.

Clerk Green noted that the plan does not address all specific costs and activities that may need to be undertaken by the Clerks or their association to implement the plan. So that reiterates OSCA's interpretation of the plan related to Clerk's cost in meeting these requirements. Throughout the report there are statements

regarding OSCA's concerns about the ability of Clerks to provide accurate data. The report also notes that if directed by the Supreme Court order AO 1615, the Clerks are required to electronically transmit the data to OSCA through an approved interface from Clerks' CMS's. OSCA's related projected cost, not specifically Clerks projected related cost, is found in Appendix C. It is noted that the amount of costs for Clerks may incur but it is not clear how the costs are going to be covered. There have been several conversations with OSCA and we are looking forward to working with them. Clerk Green has asked for more clarification and examples to their concerns with data quality as well as working with them on the efficient and effective way to meet the requirements of the proviso language.

Chair Burke asked if anyone had any question for Clerk Green. Judge Ficarrota said on behalf of the Courts, they recognize the importance of this issue and the Courts look forward to working with the Clerks on this. Clerk Doggett thanked Clerk Green for her participation. She knows that the Courts need this data and it is important that this gets done. Clerk Green is very optimistic that the Clerks and the Courts can work together on this and be effective for both. She believes that there is a solution out there to make everyone happy.

#### **OTHER BUSINESS**

Chair Burke said there were a couple of items in other business that the Council members could read and did not require any votes. He asked if there was any other business to be brought before the Council. There was none. He wished everyone happy holidays and thanked everyone for their dedication. Meeting was adjourned at approximately 4:55 PM.