



Little Duplication in Court-Related Services; Clerk/Court Cooperation Should Be Improved

at a glance

Clerks of circuit court and court administrators perform a range of activities that support the state courts system. These court-related functions are assigned to clerks by statute, court rule, and administrative order and are assigned to court administrators by the chief judge of their circuit. These assignments generally are consistent across the state with little duplication between those performed by clerks and those performed by court administrators. These activities are funded through filing fees, service charges, court costs, fines, state general revenue, and local county dollars.

Current performance measures do not adequately assess the efficiency of court-related functions, which can be affected by insufficient cooperation between clerks and the courts as well as circuit geography and disproportionate caseloads. The clerks are working to establish unit cost metrics, and additional performance measures and standards should be developed for the courts as well.

Scope

Chapters 2009-61 and 2009-204, *Laws of Florida*, directed OPPAGA, in consultation with the Auditor General and Chief Financial Officer, to examine the court-related functions of the clerks of circuit court and the state courts system. Our review addressed six questions.

- What specific court-related functions are currently performed by clerks and court administration staff?
- How are court-related functions funded?

- Are court-related functions being performed efficiently?
- What are challenges to the efficient delivery of court-related functions?
- Is the current clerk of court budget process efficient?
- What steps could the court and clerks take to reduce administrative overhead without compromising quality of services?

OPPAGA was also directed to describe in detail the base budgets for each of the clerks and for the state courts system. Due to space and cost considerations, this information is available on our website and not included in the printed report.

Background

Article V of the Florida Constitution establishes the judicial branch of state government, including trial and appellate courts. The constitution also delineates the state courts system's key participants including judges, state attorneys, public defenders, and clerks of the court. These elected constitutional officers and their staff interact as part of a complex, interdependent system that also includes several entities charged with developing budgets and distributing appropriations to these groups. This report focuses on the activities of clerks and the courts.

Clerks of Circuit Court. Voters in each of Florida's 67 counties elect a clerk of circuit court, who administers a variety of court-related and

non-court-related functions at the county and state level. Clerks' county duties include serving as custodian of public records and as their county's fiscal officer.¹ Clerks' state duties include record keeping, collecting tax and dispersing documentary stamps, and collecting fees and assessments for a number of trust funds. As discussed below, clerks' specific responsibilities relating to the state courts system are outlined in statute, court rules, and administrative orders.

Clerks of Court Operations Corporation. To implement part of Revision 7 to Article V of the Florida Constitution, which took effect on July 1, 2004, the Legislature created the Clerks of Court Operations Corporation to establish a process for reviewing and certifying proposed court-related budgets for each clerk. The corporation is also responsible for

- developing and certifying performance measures and standards;
- identifying deficiencies and implementing corrective action plans when clerks fail to meet performance standards; and
- recommending changes in court-related fines, fees, service charges, and court costs established by law.

Court Administration. Each of Florida's 20 judicial circuits employs a court administrator who reports to, and is hired by, the chief judge of the circuit, subject to the majority vote of the judges within the circuit. The chief judge is constitutionally responsible for the administrative supervision of all courts within the circuit, and may delegate some of this responsibility to the court administrator. While there is no specific statutory section outlining the functions for which court administration is responsible, s. 29.004, *Florida Statutes*, identifies elements of the state courts system that are the state's responsibility to fund (see Appendix A).

Trial Court Budget Commission. The Trial Court Budget Commission was created by the Supreme Court in 2000 to oversee the preparation and implementation of the trial court component of the judicial branch budget. The commission is responsible for

recommending budgeting and funding policies and procedures for the trial courts to the Florida Supreme Court.

Questions and Answers —

To examine the court-related functions of the clerks of circuit court and state courts system, we reviewed relevant literature and contacted other states. We also surveyed clerks and court administrators regarding their functions and perspectives on the efficiency of the current process, and visited nine counties in seven judicial circuits to observe operations and interview clerks, judges, court administrators, and their staff members.²

What specific court-related functions are currently performed by clerks and court administration staff?

Court-related functions are assigned to clerks by statute, court rule, and administrative order and to court administration by the chief judge of the circuit. The functions performed by clerks and court administration are generally consistent across the state, with limited exceptions based on local contractual arrangements or preferences. We found little duplication between functions performed by clerks and those performed by court administration.

Clerks' court-related functions are specifically delineated in statute, court rule, and administrative order. Article V, Section 16 of the state constitution specifies that clerks of the circuit court are part of the judicial branch. Section 28.35(3)(a), *Florida Statutes*, identifies the specific court-related functions that clerks may perform and receive state funding for, including

- case maintenance, which includes recording information in court files and preparing these files for court activity;
- records management;
- preparing for and attending court proceedings;
- processing case opening and reopening, and case assignments and reassignments;
- processing appeals;

¹ In seven Florida counties, the elected clerk and appointed county fiscal officer are two separate positions.

² We received survey responses from all 67 clerks of circuit court and the 20 court administrators.

- collecting and distributing fines, fees, service charges, and court costs;
- processing bond forfeiture payments;
- paying jurors and witnesses;
- paying expenses for meals or lodging provided to jurors;
- collecting and reporting data;
- processing jurors;
- determining indigent status; and
- providing reasonable administrative support to enable the clerk to carry out these functions.

In addition, s. 28.215, *Florida Statutes*, requires clerks to provide ministerial assistance to pro se litigants.³ Chief judges may assign other court-related duties to the clerks, pursuant to the *Florida Rules of Judicial Administration* and administrative orders.

Court administration's court-related functions are assigned by the chief judge in each circuit. Rule 2.215, *Florida Rules of Judicial Administration*, directs chief judges to develop an administrative plan for the efficient and proper administration of all courts within their circuit. That plan is carried out by the court administrator and staff. While there is no specific section of statute outlining the court-related functions for which court administration is responsible, s. 29.004, *Florida Statutes*, identifies those elements of the state courts system that are the state's responsibility to fund, while s. 29.008, *Florida Statutes* identifies county responsibilities. In contrast to clerks, who generally have county and state duties in addition to their court-related functions, all functions performed by court administration are court-related. These functions include oversight of due process services such as court reporting and interpreting services; supervision of mediation programs; approval of expenditures; and budget management, human resources and procurement services.

There appears to be little duplication between functions performed by clerks and those performed by court administration. We found little duplication in the court functions provided

by court administrators and clerks of circuit court. This is consistent with the findings of a joint workgroup established by the Office of the State Courts Administrator and the Florida Association of Court Clerks and Comptrollers, Inc. (a private, non-profit corporation) during the implementation of Revision 7 to Article V, Florida Constitution. This workgroup was charged with clarifying the court-related roles, responsibilities and tasks of the court administrators, chief judges, and clerks. The workgroup evaluated the functions performed by each group and concluded that there was no overlap or duplication of effort between them. In general, the workgroup reported clerks performed 'case maintenance,' while judges and court administration performed 'case management.' Although not specifically defined by the workgroup, case maintenance includes recording information in court files and preparing these files for court activity, while case management involves the processes used by the court to resolve and dispose of cases.

How are court-related functions funded?

As a result of changes implemented by the 2009 Legislature, court-related functions are now funded through general revenue appropriations, as well as trust funds supported by filing fees, service charges, fines, and court costs. While all counties provide funding to the state courts system and clerks as required by law, some counties also fund additional local court requirements at the request of the chief judge of the circuit.⁴

Court-related functions are funded by a combination of filing fees, service charges, court costs, fines, state general revenue, and county funds. The Florida Constitution provides that funding for the state courts system shall be provided from state revenues appropriated by general law, while funding for the clerks' court-related functions must be provided by adequate and appropriate filing fees, service charges, and court costs assessed to parties accessing the courts as required by general law.⁵ Counties are

³ Pro se litigants are persons who represent themselves in court without an attorney.

⁴ See Appendix B for a brief history of recent constitutional revisions related to funding Florida's state courts system.

⁵ The Legislature established the State Courts Revenue Trust Fund and the Clerks of Court Trust Fund to create a dedicated state revenue stream for court-related activities. In practice, both the

required to fund some court-related functions, including communications services, radio systems, and multi-agency criminal justice information systems. Counties must also fund the construction or lease, maintenance, utilities, and security of facilities for the trial courts, as well as the facilities that house the clerks.

The state courts system is funded via general revenue appropriated by the Legislature as well as several trust funds. The state courts system is primarily funded by state general revenue and the State Courts Revenue Trust Fund, which is supported by filing fees assessed for probate cases and certain other types of civil cases.⁶ In addition, the State Courts Revenue Trust Fund receives funds from traffic fines as well as from an Article V assessment on all moving and non-moving traffic violations under Ch. 316, *Florida Statutes*. Some court administrators also reported additional funding sources, including state and federal Title IV-D child support enforcement grants and funds for teen court programs provided by the county.

In 2009, the Legislature adjusted the funding model for the clerks to require legislative appropriation. Clerks have been funded from the Clerks of Court Trust Fund since implementation of Article V, Revision 7. However, Ch. 2009-204, *Laws of Florida*, revised how money from this trust fund is made available to the clerks. Under this law, the court-related revenue collected by clerks is remitted to the state and deposited in the Clerks of Court Trust Fund. The Legislature appropriates these funds to the clerks after consideration of a legislative budget request prepared by the Clerks of Court Operations Corporation for all the clerks. The Legislature set a \$451 million statewide budget cap for clerks in Fiscal Year 2009-10, a 17% reduction from the \$542 million Fiscal Year 2008-09 budget for clerks. In

addition, 10% of all court-related fines collected by the clerk are deposited into the clerk's Public Records Modernization Trust Fund to be used exclusively for additional clerk court-related operational needs and program enhancements.

Some counties fund additional "local requirements" at the request of the chief judge of the circuit. By law, counties must pay salaries and expenses of the state courts system necessary to meet local requirements, which can include special programs, non-judicial staff, and resources required in a local jurisdiction due to special circumstances.⁷ The state is not obligated to pay for local requirements that serve the needs of the local community but are not essential on a statewide basis. These local requirements may be specified in law or local ordinance, or may be established when circumstances necessitate the commitment of resources to the court's jurisdiction to address unique local needs.⁸ The most commonly reported local programs are family pro se, child support hearing officers, and teen courts.

Are court-related functions being performed efficiently?

The clerks of circuit court and the state courts system currently lack sufficient performance data to assess how efficiently court-related functions are performed throughout the state. While some measures of court and clerk efficiency exist, these metrics are too broad to assess individual court-related functions. Both the clerks and the courts should develop better performance measures and data; the clerks should do this by developing unit costs for the discrete functions they perform. Both clerks and courts should work together to develop standards for levels of service.

Current measures are too broad to meaningfully assess the efficiency of court-related functions. OPPAGA identified two generally accepted measures of efficiency related to court and clerk operations—case clearance rates and the cost to collect revenue. Case clearance rates assess court

clerks and the courts are funded with revenues assessed by the courts and collected by the clerks; courts also receive General Revenue appropriations.

⁶ Ch. 2009-61, *Laws of Florida*. Specifically, these civil cases include: actions with economic damages under a contract, claims of indebtedness, condominium association actions with economic damages, antitrust or trade regulations with economic damages, business transactions with economic damages, declaratory judgments on claims covered by insurance policies, intellectual property or trade secret rights with economic damages, and dissolution of marriage or simplified dissolution of marriage.

⁷ Section 29.008(2), *F.S.*; please see Appendix A for the full text of this section of the *Florida Statutes*.

⁸ Examples include the statutory directives to fund legal aid programs and an alternative sanctions coordinator (s.29.008 (3)(a and b), *F.S.*).

efficiency and are calculated by adding open cases to new cases filed, and dividing the result by cases disposed.⁹ The cost to collect revenue assesses clerk efficiency and is calculated by dividing total collections by how much clerks spend to collect assessed fines, fees, and court costs. In addition, the Clerks of Court Operations Corporation also has developed timeliness measures for placing docketed entries into court files, opening new court files, and issuing juror payments within specified time frames.

While these measures are broad indicators of efficiency, they are limited because they do not assess how efficiently individual court functions are performed, and in the case of the clerks, the timeliness standards do not take accuracy into consideration. Thus, court administration and clerks cannot use these measures to improve the delivery of all of the court-related services they perform.

To better measure efficiency and contain costs, the 2009 Legislature required the clerks to develop and report unit cost measures for each discrete function, or service unit, they perform within four core service areas—case processing, financial processing, jury management, and information and reporting.¹⁰ The unit costs reported by individual clerks are to be compared to those of peers that serve comparable counties based on similar population and number of filings.

Once in place, these unit cost measures should improve the state's ability to assess the efficiency of clerks' court-related functions. For instance, the measures will allow the state to assess each clerk's efficiency in drawing jury pools and determining whether defendants are indigent. However, the Clerks of Court Operations Corporation did not identify service units to be provided within each core service area in its Fiscal Year 2010-11 budget request, nor did it propose a unit cost for each service unit, as directed by the Legislature. Therefore, these

metrics will not be available for consideration during the 2010 legislative session. The corporation should work to ensure that these measures are in place in time for use in the Fiscal Year 2011-12 budget cycle.

In addition, the judiciary and clerks should jointly develop statewide service level standards for court services to avoid debate over, and unnecessary changes to, existing service levels. To do so, the judiciary and clerks should reach mutual agreements on issues that affect court efficiency, such as what types of court hearings deputy clerks are to attend, which would allow clerks to optimize deployment of their staff and allow the courts to predict deputy clerk availability in advance of court proceedings. The judiciary and clerks should also work to standardize the content and format of summary caseload reports provided to judges using clerk information systems. This would allow all chief judges to obtain consistent case reports for all circuits and avoid the need to cross-train judges who serve in multiple counties.

What are challenges to the efficient delivery of court-related functions?

Clerks and court administrators reported that several factors impede the efficient delivery of court services. These include insufficient cooperation between clerks and the courts in some areas, as well as circuit geography and disproportionate caseloads.

Insufficient cooperation between clerks and chief judges, who are both independently elected constitutional officers, can reduce court efficiency. The Florida Association of Court Clerks and Comptrollers and the Office of the State Courts Administrator agree that the clerks' court-related duties are ministerial and that chief judges exercise administrative supervision over their circuit. The two groups also agree that chief judges have authority to issue administrative orders that direct clerks to perform specific court-related actions and may, after consultation with the clerk, determine the priority of services provided by the clerk to trial courts. However, the Florida Association of Court Clerks and Comptrollers and the Office of the State Courts Administrator disagree about how clerks are to perform their court-related duties. The Florida Association of Court Clerks

⁹ The court's Long-Range Program Plan calculates this measure slightly differently, dividing the number of cases disposed by the number of cases filed in the same year.

¹⁰ Section 28.36(4), *F.S.* Examples of these discrete functions in the case processing core service area could include creating the case file, issuing subpoenas and processing bench warrants.

and Comptrollers asserts that clerks are to decide how to perform these duties based on the needs and resources of their offices. In contrast, the Office of the State Courts Administrator cites case law where the court asserts that clerks, in performing ministerial court-related duties, may not exercise discretion and have no authority to contest any court action done in performance of the court's judicial function.

This difference of opinion can result in conflicts between courts and clerks. There is effective cooperation between the chief judge and the clerk in many counties, which enhances court efficiency and reduces conflicts over administrative orders. However, in other counties, cooperation between the two officials is limited, hindering court operations. Notably, both court officials and clerks indicated that there is frequently insufficient coordination in dealing with technology issues. Clerks asserted that judges should rely less on paper files and embrace technology, while court administrators reported that clerks should design their computer systems to provide the data elements and functionality that the judiciary needs. This lack of cooperation over technology issues was evident in October 2009 when the Office of the State Courts Administrator issued a Request for Information to develop an electronic case filing portal, although the clerks had been developing such a system since 2007.

Both the clerks and courts also cited work processes that reduced efficiency. Clerks often asserted court efficiency would be improved if case file structures and processing were standardized among judges, while court administrators often indicated court efficiency would be enhanced if clerks provided faster and more accurate filing of case pleadings and more timely responses to judicial requests. While some clerks asserted that administrative orders issued by chief judges created unnecessary work and expense for their office, such as requirements that deputy clerks be present for all circuit civil cases, including those held in the judges' chambers, the majority of clerks who reported that administrative orders directed them to perform work within the last five years said that they were discussed with them

prior to implementation.¹¹ Court administrators reported that chief judges do consult with clerks before issuing administrative orders, and that the use of such orders is not excessive or inappropriate. Court rules and the state constitution allow chief judges to issue administrative orders as necessary in order to carry out justice.

Geographically large circuits and those with dispersed population centers, such as the Third and Sixteenth Circuits, can be costly to manage. Courts in such circuits may operate in several counties, or have multiple courthouses. As a result, judges and other court personnel must sometimes travel and files must be transferred among courthouses, which increase costs.

Finally, caseloads can also vary among counties and court divisions, affecting both court and clerk timeliness and costs. For example, the collapse of Florida's real estate market created a marked increase in foreclosures in some counties, while counties that house correctional institutions often receive a disproportionate share of prisoner lawsuits, which generate significant workload.

Is the current clerk of court budget process efficient?

The budget process established by Ch. 2009-204, *Laws of Florida*, has not yet been in place for a complete state fiscal year funding cycle, making assessment of its efficiency speculative. The new process offers increased transparency and accountability, and is now more similar to the budgeting process used for other recipients of state funding, including the courts. However, there is room for improvement.

Though not identical, the clerks' budgeting process is now more similar to other agencies receiving state money. Beginning with the Fiscal Year 2010-11 funding cycle, clerks submitted their budgets to the Legislature and will receive an appropriation. The Clerks of Court Operations Corporation (CCOC) is responsible for approving clerk budgets and, as

¹¹ A January 2010 KPMG study, contracted by Florida Association of Court Clerks and Comptrollers, found that there are 6,600 administrative orders statewide that have increased variability among clerk offices impeding standardization, decreasing efficiency, and increasing the net cost of government.

a budget entity under the Justice Administrative Commission, receives legislative appropriations on behalf of the clerks. CCOC held four regional budget workshop meetings where individual clerks answered detailed questions about their budget requests that were posed by the CCOC's Finance and Budget Committee, which is composed of fellow clerks. These questions addressed clerks' staffing levels and salaries, performance standards, the allocation of court-related and county-related costs, and reasons for rising health insurance expenses. The Finance and Budget Committee made recommendations to the CCOC's executive council, which submitted the aggregate clerks' budget request to the Legislature.

This process is a fundamental change from the prior budget process in which clerks were self-funded based on their aggregate collections, and they transferred surplus funds to the state after funding their own operations. The new process requires clerks to undergo a legislative budget request process that is similar to that used for other recipients of state general revenue, which places them on equal footing when competing for scarce resources.

The budget review process has controls in place to increase transparency and accountability, but the process is not complete. As part of the new budget process, CCOC developed peer groups to examine each clerk's budget request, and developed unit cost measures in four core service areas (case processing, financial processing, jury management, and information and reporting), but not for individual service units as directed by the Legislature. The new process requires CCOC to hold budget hearings where its Finance and Budget Committee conducts peer reviews of clerks' proposed budgets. The CCOC must review and approve justifications for clerks whose expenditures, unit costs, or proposed budgets differ significantly from their peer group, and recommend corrective action when clerks fail to meet statewide performance standards. These processes help ensure that clerks are spending state dollars only on those functions authorized by statute, and that clerks with significantly higher costs than their peers must either reduce these costs or explain why they cannot. However, without

individual service unit costs, transparency and accountability are diminished, and implementing appropriate corrective action is difficult.

The development of peer groups for the core service areas should be improved by using a less arbitrary statistical methodology. A key component of the new budget process is the use of peer groups that enable CCOC to compare clerks' unit costs. The law currently requires the CCOC to use population and case filings to develop these peer groups. To do so, CCOC has added these two numbers together, which effectively neutralizes the effect of case filings because the population numbers are much larger. A better approach would be one that appropriately considers and weights both of the factors explicitly stated in statute. One such methodology might include using per-capita filing rates for each division. This could be calculated by taking the number of case filings in a division, such as probate, dividing them by the county population, and multiplying the result by one thousand to get a rate. The Legislature may wish to consider directing the CCOC to specifically consider additional factors beyond filings and population when constructing peer groups in the future.

While the Legislature now oversees the clerks' collective budget allocation, it has limited control over critical expenditure categories such as salaries and benefits. Although clerks' staff members are performing court-related duties on behalf of the state, they are county employees whose salary rates and benefit packages are determined by their respective county governments. As a result, the Legislature lacks the control that it normally exerts over employee compensation in state funded agencies. While statute sets the salary levels of clerks, there is no state approved classification and pay plan for their employees. There has been controversy over the salaries and benefits provided to clerks' employees, including raises, bonuses, and severance packages. Staffing levels among clerk offices also do not require legislative authorization.

Because of historical precedent and former funding allocation models, there is a high degree of variability among clerks regarding personnel costs and practices. For example, some clerks

pay only a portion of their employees' health insurance premiums, while others pay the full cost. Given that salary and benefits are approximately 92% of clerk office costs, the Legislature's lack of control over these costs limits its ability to control overall expenditures made by individual clerks.

Clerks have not generated revenues sufficient to permit full monthly disbursements from the Clerks of Court Trust Fund. For the 2009-10 fiscal year, one twelfth of each clerk's appropriation was to be released each month from the trust fund. However, while most clerks have historically met their performance standards for collections, by July 1, 2009, they had not collected sufficient revenues to meet the disbursement goal. As a result the CCOC requested and received a \$35 million loan from the state in order to release funds to the clerks. The CCOC has not yet begun to repay this debt, nor has it paid the 8% administrative fee for its trust fund as authorized by statute.

The CCOC continued to receive insufficient collection revenues to fund its scheduled August and September one-twelfth disbursements to the clerks. Instead, the CCOC reduced its scheduled disbursements, and issued multiple payments during the months of August, September and October. By November, collections began to improve and clerks received three-quarters of their scheduled monthly disbursement initially, and one-quarter of the disbursement later in the month. This pattern continued in December.

While clerks have eventually received a one-twelfth disbursement of their appropriation each month since July, so far revenues have not been sufficient to allow for clerks to contribute to state general revenue as they did under the previous funding model. The CCOC reports that this situation is the result of multiple factors, including redirection of funds from the clerks to the State Courts Revenue Trust Fund and a decline in assessments, particularly civil traffic citations. The CCOC also indicates that clerks have had more difficulty collecting assessed fines, fees, and court costs due to the economic recession and staffing reductions. Projections from the November 2009 Revenue Estimating Conference on Article V Fees and Transfers predicted that by the end of state Fiscal Year

2009-10 clerks would have collected sufficient revenues to fully fund their \$451 million appropriation, as well as an \$11.2 million surplus that could be transferred to general revenue, but not until state Fiscal Year 2010-11. However, more recent projections which take into account repayment of the \$35 million loan and payment of the 8% administrative fee show \$21.2 million in projected unfunded trust fund authority.

What steps could the court and clerks take to reduce administrative overhead without compromising quality of services?

Court administrators and clerks both report that they have reduced management-level staff positions and salaries in response to legislative directives to reduce expenditures. However, both could improve their information reporting on administrative overhead costs. The courts report most administrative overhead using a separate accounting organizational code, but this code does not capture costs related to some staff that perform both administrative and operational functions. While clerks have not historically had a consistent system to report administrative overhead, the recent mandate to itemize administrative overhead across the four core service areas, coupled with additional training for clerks, should make it possible to begin to evaluate these costs starting in Fiscal Year 2010-11.

Court administrators and clerks both reported that they reduced management positions and salaries within the last two years in response to legislative directives to reduce expenditures. In response to our survey, 90% of court administrators and nearly half of the clerks reported they had reduced management level staff positions as a result of their budget reductions. Half of the court administrators and nearly one-third of clerks also reported that they had reduced management salaries.

Both court administration and clerks should improve reporting of administrative overhead expenses. The majority of administrative overhead costs for the 20 circuit courts are contained in the Trial Court Administration accounting organizational code, which includes fiscal, human resource, and technology functions that support the courts. However, the

courts also report some administrative overhead costs in other categories. For example, certain managerial employees, such as court reporting managers and administrative general magistrates, perform both administrative functions and operational functions.

The 67 Clerks have historically used different methods to calculate administrative overhead. Prior to the passage of Ch. 2009-204, *Laws of Florida*, the CCOC developed statewide standards for clerks' administrative overhead rates. Individual clerks, however, routinely varied from these standards and used local data and procedures to allocate their administrative overhead. For example, some clerks assigned the elected clerk's salary to administrative overhead, while others, particularly in smaller counties, excluded this cost because it represented a disproportionately large portion of their office's budget and because these clerks often performed operational tasks such as filling in for sick employees. This resulted in inconsistent methods of allocating these costs. CCOC did not track or address these variations, but instead focused on comparing each individual clerk's costs over time.

With the passage of Ch. 2009-204, *Laws of Florida*, the Legislature directed the clerks to allocate central administrative costs among the four core service categories.¹² The budget process now compares clerks' budgets to peer groups, and the CCOC has issued budget instructions that specify how the percentage of shared administrative overhead costs is to be allocated to court-related and non-court-related administrative overhead and that the clerk's position is to be included in administrative overhead calculations. Additionally, the CCOC conducted training sessions to inform clerks how to properly allocate their expenses, and anticipates that these efforts will result in greater consistency in administrative overhead calculations in the future.

Both the clerks and court administration should use additional tools to better assess administrative overhead. For example, both could use supervisor-to-employee staff ratios to provide a means to compare administration

within and between specific divisions and functions. These ratios could assess, for example, the number of clerks' jury management employees per supervisor, or the number of courts' support positions per supervisor. The courts and clerks could also develop a standard administrative overhead rate.

Conclusions

Currently, responsibility for court-related functions is divided between two groups of independently elected constitutional officers—clerks of circuit court and chief judges. While there is little duplication in the functions performed by the two groups, limited coordination in critical areas such as court technology and standards of service impair the efficiency of the overall state courts system. Therefore, cooperation between the chief circuit judges and clerks is essential.

Given the variation among the judicial circuits in their caseloads, size, technology, and local needs, it would be difficult to uniformly implement any statewide changes to the existing structure of Florida's trial courts system without significant further study. The Technology Review Workgroup is currently preparing a report that reviews the variety of information technology systems and platforms, which often differ from county to county—even within the same circuit—that are used throughout the state. As this and other information becomes available, OPPAGA will continue to explore options to increase efficiency in the state courts system. Potential approaches to addressing this issue, and their caveats, are discussed in Appendix C.

Agency Response

In accordance with the provisions of s. 11.51(5), *Florida Statutes*, a draft of our report was submitted to the Clerks of Court Operations Corporation, The Florida Association of Court Clerks and Comptrollers, and the Supreme Court to review. Their responses have been reproduced in Appendices D, E and F respectively.

¹² Section 28.36(3), *F.S.*, provides that central administrative costs shall be allocated among the core-services categories.

Appendix A

Elements of the State Courts System Provided from State and County Revenue

Chapter 29, *Florida Statutes*, relates to court system funding and identifies which entity pays for which specific elements. Table A-1 lists the elements to be paid by the state as specified by s. 29.004, *Florida Statutes*, and Table A-2 lists the elements to be paid by the counties as specified in s. 29.008, *Florida Statutes*. The total dollar amount of county funded court-related functions for Fiscal Year 2007-08 is provided in Table A-3.

Table A-1
Elements to Be Provided by the State

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- (1) Judges appointed or elected pursuant to chapters 25, 26, 34, and 35.
 - (2) Juror compensation and expenses.
 - (3) Reasonable court reporting and transcription services necessary to meet constitutional requirements.
 - (4) Construction or lease of facilities, maintenance, utilities, and security for the district courts of appeal and the Supreme Court.
 - (5) Court foreign language and sign-language interpreters and translators essential to comply with constitutional requirements.
 - (6) Expert witnesses who are appointed by the court pursuant to an express grant of statutory authority.
 - (7) Judicial assistants, law clerks, and resource materials.
 - (8) General magistrates, special magistrates, and hearing officers.
 - (9) Court administration.
 - (10) Case management. Case management includes:
 - (a) Initial review and evaluation of cases, including assignment of cases to court divisions or dockets.
 - (b) Case monitoring, tracking, and coordination.
 - (c) Scheduling of judicial events.
 - (d) Service referral, coordination, monitoring, and tracking for treatment-based drug court programs under s. 397.334.

Case management may not include costs associated with the application of therapeutic jurisprudence principles by the courts. Case management also may not include case intake and records management conducted by the clerk of court.
 - (11) Mediation and arbitration, limited to trial court referral of a pending judicial case to a mediator or a court-related mediation program, or to an arbitrator or a court-related arbitration program, for the limited purpose of encouraging and assisting the litigants in partially or completely settling the case prior to adjudication on the merits by the court. This does not include citizen dispute settlement centers under s. 44.201 and community arbitration programs under s. 985.16.
 - (12) Basic legal materials reasonably accessible to the public other than a public law library. These materials may be provided in a courthouse facility or any library facility.
 - (13) The Judicial Qualifications Commission.
 - (14) Offices of the appellate clerks and marshals and appellate law libraries.
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Source: Section 29.004, *F.S.*

Table A-2
Elements to Be Provided by the Counties

- (1) Counties are required by s. 14, Art. V of the State Constitution to fund the cost of communications services, existing radio systems, existing multiagency criminal justice information systems, and the cost of construction or lease, maintenance, utilities, and security of facilities for the circuit and county courts, public defenders' offices, state attorneys' offices, guardian ad litem offices, and the offices of the clerks of the circuit and county courts performing court-related functions. For purposes of this section, the term "circuit and county courts" includes the offices and staffing of the guardian ad litem programs, and the term "public defenders' offices" includes the offices of criminal conflict and civil regional counsel. The county designated under s. 35.05(1) as the headquarters for each appellate district shall fund these costs for the appellate division of the public defender's office in that county. For purposes of implementing these requirements, the term:
- (a) "Facility" means reasonable and necessary buildings and office space and appurtenant equipment and furnishings, structures, real estate, easements, and related interests in real estate, including, but not limited to, those for the purpose of housing legal materials for use by the general public and personnel, equipment, or functions of the circuit or county courts, public defenders' offices, state attorneys' offices, and court-related functions of the office of the clerks of the circuit and county courts and all storage. The term "facility" includes all wiring necessary for court reporting services. The term also includes access to parking for such facilities in connection with such court-related functions that may be available free or from a private provider or a local government for a fee. The office space provided by a county may not be less than the standards for space allotment adopted by the Department of Management Services, except this requirement applies only to facilities that are leased, or on which construction commences, after June 30, 2003. County funding must include physical modifications and improvements to all facilities as are required for compliance with the Americans with Disabilities Act. Upon mutual agreement of a county and the affected entity in this paragraph, the office space provided by the county may vary from the standards for space allotment adopted by the Department of Management Services.
1. As of July 1, 2005, equipment and furnishings shall be limited to that appropriate and customary for courtrooms, hearing rooms, jury facilities, and other public areas in courthouses and any other facility occupied by the courts, state attorneys, public defenders, guardians ad litem, and criminal conflict and civil regional counsel. Court reporting equipment in these areas or facilities is not a responsibility of the county.
 2. Equipment and furnishings under this paragraph in existence and owned by counties on July 1, 2005, except for that in the possession of the clerks, for areas other than courtrooms, hearing rooms, jury facilities, and other public areas in courthouses and any other facility occupied by the courts, state attorneys, and public defenders, shall be transferred to the state at no charge. This provision does not apply to any communications services as defined in paragraph (f).
- (b) "Construction or lease" includes, but is not limited to, all reasonable and necessary costs of the acquisition or lease of facilities for all judicial officers, staff, jurors, volunteers of a tenant agency, and the public for the circuit and county courts, the public defenders' offices, state attorneys' offices, and for performing the court-related functions of the offices of the clerks of the circuit and county courts. This includes expenses related to financing such facilities and the existing and future cost and bonded indebtedness associated with placing the facilities in use.
- (c) "Maintenance" includes, but is not limited to, all reasonable and necessary costs of custodial and groundskeeping services and renovation and reconstruction as needed to accommodate functions for the circuit and county courts, the public defenders' offices, and state attorneys' offices and for performing the court-related functions of the offices of the clerks of the circuit and county court and for maintaining the facilities in a condition appropriate and safe for the use intended.
- (d) "Utilities" means all electricity services for light, heat, and power; natural or manufactured gas services for light, heat, and power; water and wastewater services and systems, stormwater or runoff services and systems, sewer services and systems, all costs or fees associated with these services and systems, and any costs or fees associated with the mitigation of environmental impacts directly related to the facility.
- (e) "Security" includes but is not limited to, all reasonable and necessary costs of services of law enforcement officers or licensed security guards and all electronic, cellular, or digital monitoring and screening devices necessary to ensure the safety and security of all persons visiting or working in a facility; to provide for
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security of the facility, including protection of property owned by the county or the state; and for security of prisoners brought to any facility. This includes bailiffs while providing courtroom and other security for each judge and other quasi-judicial officers.

- (f) "Communications services" are defined as any reasonable and necessary transmission, emission, and reception of signs, signals, writings, images, and sounds of intelligence of any nature by wire, radio, optical, audio equipment, or other electromagnetic systems and includes all facilities and equipment owned, leased, or used by judges, clerks, public defenders, state attorneys, guardians ad litem, criminal conflict and civil regional counsel, and all staff of the state courts system, state attorneys' offices, public defenders' offices, and clerks of the circuit and county courts performing court-related functions. Such system or services shall include, but not be limited to:
 1. Telephone system infrastructure, including computer lines, telephone switching equipment, and maintenance, and facsimile equipment, wireless communications, cellular telephones, pagers, and video teleconferencing equipment and line charges. Each county shall continue to provide access to a local carrier for local and long distance service and shall pay toll charges for local and long distance service.
 2. All computer networks, systems and equipment, including computer hardware and software, modems, printers, wiring, network connections, maintenance, support staff or services including any county-funded support staff located in the offices of the circuit court, county courts, state attorneys, public defenders, guardians ad litem, and criminal conflict and civil regional counsel; training, supplies, and line charges necessary for an integrated computer system to support the operations and management of the state courts system, the offices of the public defenders, the offices of the state attorneys, the guardian ad litem offices, the offices of criminal conflict and civil regional counsel, and the offices of the clerks of the circuit and county courts; and the capability to connect those entities and reporting data to the state as required for the transmission of revenue, performance accountability, case management, data collection, budgeting, and auditing purposes. The integrated computer system shall be operational by July 1, 2006, and, at a minimum, permit the exchange of financial, performance accountability, case management, case disposition, and other data across multiple state and county information systems involving multiple users at both the state level and within each judicial circuit and be able to electronically exchange judicial case background data, sentencing scoresheets, and video evidence information stored in integrated case management systems over secure networks. Once the integrated system becomes operational, counties may reject requests to purchase communications services included in this subparagraph not in compliance with standards, protocols, or processes adopted by the board established pursuant to former s. 29.0086.
 3. Courier messenger and subpoena services.
 4. Auxiliary aids and services for qualified individuals with a disability which are necessary to ensure access to the courts. Such auxiliary aids and services include, but are not limited to, sign language interpretation services required under the federal Americans with Disabilities Act other than services required to satisfy due-process requirements and identified as a state funding responsibility pursuant to ss. 29.004, 29.005, 29.006, and 29.007, real-time transcription services for individuals who are hearing impaired, and assistive listening devices and the equipment necessary to implement such accommodations.
 - (g) "Existing radio systems" includes, but is not limited to, law enforcement radio systems that are used by the circuit and county courts, the offices of the public defenders, the offices of the state attorneys, and for court-related functions of the offices of the clerks of the circuit and county courts. This includes radio systems that were operational or under contract at the time Revision No. 7, 1998, to Art. V of the State Constitution was adopted and any enhancements made thereafter, the maintenance of those systems, and the personnel and supplies necessary for operation.
 - (h) "Existing multiagency criminal justice information systems" includes, but is not limited to, those components of the multiagency criminal justice information system as defined in s. 943.045, supporting the offices of the circuit or county courts, the public defenders' offices, the state attorneys' offices, or those portions of the offices of the clerks of the circuit and county courts performing court-related functions that are used to carry out the court-related activities of those entities. This includes upgrades and maintenance of the current equipment, maintenance and upgrades of supporting technology infrastructure
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and associated staff, and services and expenses to assure continued information sharing and reporting of information to the state. The counties shall also provide additional information technology services, hardware, and software as needed for new judges and staff of the state courts system, state attorneys' offices, public defenders' offices, guardian ad litem offices, and the offices of the clerks of the circuit and county courts performing court-related functions.

- (2) Counties shall pay reasonable and necessary salaries, costs, and expenses of the state courts system, including associated staff and expenses, to meet local requirements.
- (a) Local requirements are those specialized programs, nonjudicial staff, and other expenses associated with specialized court programs, specialized prosecution needs, specialized defense needs, or resources required of a local jurisdiction as a result of special factors or circumstances. Local requirements exist:
1. When imposed pursuant to an express statutory directive, based on such factors as provided in paragraph (b); or
 2. When:
 - a. The county has enacted an ordinance, adopted a local program, or funded activities with a financial or operational impact on the circuit or a county within the circuit; or
 - b. Circumstances in a given circuit or county result in or necessitate implementation of specialized programs, the provision of nonjudicial staff and expenses to specialized court programs, special prosecution needs, specialized defense needs, or the commitment of resources to the court's jurisdiction.
- (b) Factors and circumstances resulting in the establishment of a local requirement include, but are not limited to:
1. Geographic factors;
 2. Demographic factors;
 3. Labor market forces;
 4. The number and location of court facilities; or
 5. The volume, severity, complexity, or mix of court cases.
- (c) Local requirements under subparagraph (a)2. must be determined by the following method:
1. The chief judge of the circuit, in conjunction with the state attorney, the public defender, and the criminal conflict and civil regional counsel only on matters that impact their offices, shall identify all local requirements within the circuit or within each county in the circuit and shall identify the reasonable and necessary salaries, costs, and expenses to meet these local requirements.
 2. On or before June 1 of each year, the chief judge shall submit to the board of county commissioners a tentative budget request for local requirements for the ensuing fiscal year. The tentative budget must certify a listing of all local requirements and the reasonable and necessary salaries, costs, and expenses for each local requirement. The board of county commissioners may, by resolution, require the certification to be submitted earlier.
 3. The board of county commissioners shall thereafter treat the certification in accordance with the county's budgetary procedures. A board of county commissioners may:
 - a. Determine whether to provide funding, and to what extent it will provide funding, for salaries, costs, and expenses under this section;
 - b. Require a county finance officer to conduct a preaudit review of any county funds provided under this section prior to disbursement;
 - c. Require review or audit of funds expended under this section by the appropriate county office; and
 - d. Provide additional financial support for the courts system, state attorneys, public defenders, or criminal conflict and civil regional counsel.
- (d) Counties may satisfy these requirements by entering into interlocal agreements for the collective funding
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of these reasonable and necessary salaries, costs, and expenses.

- (3) The following shall be considered a local requirement pursuant to subparagraph (2)(a)1.:
 - (a) Legal aid programs, which shall be funded at a level equal to or greater than the amount provided from filing fees and surcharges to legal aid programs from October 1, 2002, to September 30, 2003.
 - (b) Alternative sanctions coordinators pursuant to ss. 984.09 and 985.037.
- (4)(a) The Department of Financial Services shall review county expenditure reports required under s. 29.0085 for the purpose of ensuring that counties fulfill the responsibilities of this section. The department shall compare county fiscal reports to determine if expenditures for the items specified in paragraphs (1)(a)-(h) and subsection (3) have increased by 1.5 percent over the prior county fiscal year. The initial review must compare county fiscal year 2005-2006 to county fiscal year 2004-2005. If the department finds that expenditures for the items specified in paragraphs (1)(a)-(h) and subsection (3) have not increased by 1.5 percent over the prior county fiscal year, the department shall notify the President of the Senate and the Speaker of the House of Representatives and the respective county. The Legislature may determine that a county has met its obligations for items specified in this section if the prior county fiscal year included nonrecurring expenditures for facilities or information technology that is not needed in the next county fiscal year or expenditures or actions that enable a county to attain efficiencies in providing services to the court system. The Legislature may direct the Department of Revenue to withhold revenue-sharing receipts distributed pursuant to part II of chapter 218, except for revenues used for paying the principal or interest on bonds, tax anticipation certificates, or any other form of indebtedness allowed under s. 218.25(1), (2), or (4), from any county that is not in compliance with the funding obligations in this section by an amount equal to the difference between the amount spent and the amount that would have been spent had the county increased expenditures by 1.5 percent per year.
 - (b) The department shall transfer the withheld payments to the General Revenue Fund by March 31 of each year for the previous county fiscal year. These payments are appropriated to the Department of Revenue to pay for these responsibilities on behalf of the county.

Source: Section 29.008, *F. S.*

Table A-3
Total Local Requirement Expenditures for Fiscal Year 2007-08 by County

County	State Attorney	Public Defender	Clerk of Circuit Courts	State Courts ¹	Guardian ad litem	Non-Entity ²	TOTAL
Alachua	--	--	--	--	--	\$ 278,007.00	\$ 278,007.00
Baker	--	--	--	\$ 4,807.00	--	28,591.00	33,398.00
Bay	--	--	--	--	--	576,499.00	576,499.00
Bradford	--	--	--	--	--	66,894.45	66,894.45
Brevard	--	--	--	--	--	1,917,554.73	1,917,554.73
Broward	\$ 143,727.00	--	--	995,925.00	--	5,906,731.00	7,046,383.00
Calhoun	--	--	--	--	--	6,525.00	6,525.00
Charlotte	--	--	--	--	--	736,468.17	736,468.17
Citrus	--	--	--	--	--	338,212.00	338,212.00
Clay	--	--	--	--	--	291,825.00	291,825.00
Collier	--	--	--	--	--	949,631.71	949,631.71
Columbia	--	--	--	--	--	47,272.75	47,272.75
Desoto	--	--	--	--	--	74,515.00	74,515.00
Dixie	--	--	--	10,223.42	--	--	10,223.42
Duval	--	--	--	--	--	1,621,985.00	1,621,985.00
Escambia	--	--	--	68,230.06	--	302,344.49	370,574.55
Flagler	--	--	--	--	--	731,177.00	731,177.00
Franklin	--	--	--	--	\$ 6,235.98	17,555.73	23,791.71
Gadsden	--	--	--	--	--	125,735.67	125,735.67
Gilchrist	5,737.56	--	--	40,314.15	--	--	46,051.71
Glades	--	--	--	--	--	--	--
Gulf	--	--	--	--	--	166,093.35	166,093.35
Hamilton	--	--	--	--	--	--	--
Hardee	--	--	--	--	--	29,881.42	29,881.42
Hendry	--	--	--	--	--	--	--
Hernando	--	--	--	--	--	249,376.96	249,376.96
Highlands	--	--	--	--	--	507,853.27	507,853.27
Hillsborough	--	--	--	2,108,496.00	--	2,302,605.00	4,411,101.00
Holmes	--	--	--	2,805.08	--	6,716.28	9,521.36
Indian River	--	--	--	66,969.00	--	196,517.00	263,486.00
Jackson	--	--	--	--	--	50,002.75	50,002.75
Jefferson	--	--	--	--	--	9,763.64	9,763.64
Lafayette	--	--	--	\$4,080.70	--	--	4,080.70
Lake	--	--	--	--	--	496,565.00	496,565.00
Lee	164,430.00	--	--	18,150.00	--	9,508,170.42	9,690,750.42
Leon	--	--	--	--	--	664,046.46	664,046.46
Levy	--	--	--	--	--	31,601.63	31,601.63
Liberty	--	--	--	35,801.00	--	--	35,801.00
Madison	--	--	--	--	--	--	--
Manatee	--	--	--	--	--	750,858.11	750,858.11
Marion	--	--	--	--	--	598,784.00	598,784.00
Martin	--	--	--	--	--	148,939.81	148,939.81
Miami-Dade	--	--	--	--	--	3,433,125.00	3,433,125.00
Monroe	--	--	--	--	--	456,199.00	456,199.00
Nassau	--	--	37,762.00	109,824.00	--	--	147,586.00
Okaloosa	--	--	--	--	--	374,434.18	374,434.18
Okeechobee	--	--	--	--	--	23,100.00	23,100.00
Orange	--	--	--	--	--	4,096,729.00	4,096,729.00
Osceola	--	--	--	--	--	4,495,835.00	4,495,835.00
Palm Beach	--	--	--	--	--	3,445,623.95	3,445,623.95
Pasco	2,666.79	4,290.98	--	8,453.21	389.97	827,700.72	843,501.67
Pinellas	--	--	--	--	--	2,487,441.00	2,487,441.00
Polk	--	--	--	--	--	2,938,345.92	2,938,345.92
Putnam	--	--	--	--	--	226,225.00	226,225.00
St. Johns	--	--	--	--	--	3,630,676.99	3,630,676.99
St. Lucie	--	--	--	--	--	1,031,668.07	1,031,668.07

County	State Attorney	Public Defender	Clerk of Circuit Courts	State Courts ¹	Guardian ad litem	Non-Entity ²	TOTAL
Santa Rosa	--	--	--	--	--	\$ 193,863.12	\$ 193,863.12
Sarasota	--	--	--	--	--	910,195.56	910,195.56
Seminole	--	--	--	--	--	1,159,823.74	1,159,823.74
Sumter	--	--	--	--	--	93,883.51	93,883.51
Suwannee	--	--	--	--	--	137,602.63	137,602.63
Taylor	--	--	--	--	--	--	--
Union	--	--	--	--	--	6,102.54	6,102.54
Volusia	--	--	--	--	--	5,990,688.63	5,990,688.63
Wakulla	--	--	--	\$ 3,948.68	\$19,477.15	239,490.99	262,916.82
Walton	--	--	--	--	--	87,832.70	87,832.70
Washington	--	--	--	5,374.85	--	9,586.08	14,960.93
TOTAL	\$316,561.35	\$4,290.98	\$37,762.00	\$ 3,483,402.15	\$26,103.10	\$66,031,473.13	\$69,899,592.71

¹ Includes funding of circuit court and county courts needs.

² Refers to programs or services that are not specifically attributable exclusively to one of the entities listed.

Source: Department of Financial Services report *Statement of County Funded Court-Related Functions FY 2007-2008*, published February 28, 2009.

Appendix B

History of Recent Constitutional Revisions Related to Funding of Florida's State Courts System

Article V of the Florida Constitution establishes the judicial branch of state government, including trial and appellate courts. The Supreme Court and the district courts of appeal have primarily appellate jurisdiction; circuit and county courts conduct hearings and trials and dispose of other cases. The constitution also delineates the trial courts system's key participants, including judges, state attorneys, public defenders, and clerks of court. These elected independent officials interact as part of a complex interdependent system.

Florida's courts were not always organized in this manner. Prior to 1972, Florida's courts were a mixture of municipal courts, county courts, justices of the peace and other court venues with varying jurisdictions and funding sources. In 1972, voters revised the constitution to reorganize the trial courts into a unified courts system funded by the counties, the state, and court users. These changes simplified the organization of the judiciary by reducing the number of courts to four levels: Supreme Court, district courts of appeal, circuit courts and county courts. These constitutional changes created Florida's two tier trial court system, requiring a circuit court in each judicial circuit and a county court in each county with at least one resident judge within the county. The changes also created Florida's current uniform system of courts that follow rules of procedure that are applicable statewide.

State and county governments disagreed on how much each should contribute to the operation of the state courts system. County governments believed that the state should assume a larger share of the costs than occurred. In 1998, the Constitution Revision Commission proposed and the voters adopted Revision 7 to Article V. This revision allocated more costs to the state and set a deadline of July 1, 2004 for the state to fully fund its share of the court system. This revision provided that counties were to pay for "the cost of communications services, existing radio systems, existing multi-agency criminal justice information systems, and the cost of construction or lease, maintenance, utilities, and security of facilities for the trial courts, public defenders' offices, state attorneys' offices and the offices of the clerks of the circuit and county courts performing court-related functions. Counties shall also pay reasonable and necessary salaries, costs, and expenses of the state courts system to meet local requirements as determined by general law." (Article V Section 14(c) of Florida's Constitution.)

To implement Revision 7 to Article V of the Florida Constitution, the Legislature enacted Chapter 2000-237, *Laws of Florida*, to specify the elements of the state court system and the responsibilities of the state and counties in providing these elements. The state is to pay for the "essential elements" of the state courts system, and the law provided a four-year phase-in schedule for the Legislature to review the major components of the system and determine their costs. The 2003 Legislature passed Chapter 2003-402, *Laws of Florida* which further clarified the state and county

responsibilities. This act expanded the list of elements of the state courts system to be provided from state revenues appropriated by general law. The 2004 Legislature also passed Ch. 2004-265, *Laws of Florida*, as a glitch bill to adjust other fees, and continue to implement Revision 7 which “allocates state court system funding among state, counties, and users of courts.” Revision 7 was required to be “fully effectuated” by July 1, 2004. For more information, please see OPPAGA Report No. 01-54, *Many Article V Trial Courts Funding Issues Still Need to Be Resolved*.

Appendix C

Potential Approaches to Modifying the Division of Responsibilities between Clerks and Courts Administration

Currently, responsibility for court-related functions is divided between two groups of independently elected constitutional officers—clerks of circuit court and chief judges. While there is little duplication in the functions performed by the two groups, limited coordination in critical areas such as court technology and standards of service impair the efficiency of the overall state courts system. Also, while court-related services performed by clerks are state services that are paid for with state funds, the Legislature’s ability to manage these costs is limited.

There are several potential approaches to addressing these issues.

- Maintain status quo with elected clerks, elected judges, and court administration performing tasks on behalf of the judiciary but take steps to improve coordination among these groups.
- Provide the Legislature greater budgetary control over salaries and benefits paid to staff that perform court-related functions by designating the clerk employees who perform court-related functions as state employees.
- Transfer some or all court-related functions currently performed by clerks to the courts.
- Transfer some functions that are currently performed by courts to clerks.

However, each of these potential approaches has significant caveats, as discussed below. The approaches also would have major implications on the information technology systems that are used by both the clerks and court administration to carry out court-related functions. The Legislature’s Technology Review Workgroup is currently analyzing these information systems. Accordingly, any of the options other than maintaining the status quo would require additional analysis before implementation would be warranted.

Maintain status quo but improve coordination among elected clerks, elected judges and court administration. This approach would continue the current allocation of responsibilities of clerks of circuit court, judges, and court administration. Maintaining the status quo would not require changes to the constitution, statutes or existing county or state infrastructure. However, the Legislature could direct the courts and clerks to work together to address the issues that exist in the current division of responsibilities through steps such as jointly developing service level standards for court services to avoid debate over and unnecessary changes to existing service levels. The judiciary and clerks should also work to resolve issues related to technology, such as standardizing the content and format of summary caseload reports provided to judges using clerk information systems. The Legislature may wish to formally clarify which entity has ultimate authority over the delivery of court-related services performed by the clerks if the status quo option is maintained.

This approach has the advantages of avoiding changes to current system, which could be disruptive and incur transition costs, and it maintains accountability of the clerks and judges for court functions to the electorate. This approach would also provide time to evaluate and improve the new clerk budgeting process, and it would avoid the potential appearance of impropriety that could arise if responsibility for collecting court

assessments were assigned to the judiciary, which is also responsible for adjudicating guilt or innocence and imposing fines and court costs.

However, this approach also has caveats. It would continue to divide responsibility for court-related functions between different independently elected officials. It also would not address the Legislature's current limited control over clerks' personnel costs, which comprise the majority of their budgets, and thus limits the Legislature's ability to control overall costs. Finally, the approach would not resolve existing issues related to what entity has ultimate authority over the delivery of court-related services provided by the clerks.

Provide the Legislature greater budgetary control over salaries and benefits paid to staff that perform court-related functions by designating the clerk employees who perform these as state employees. In this approach, the Legislature would amend statutes to designate the clerks' court-related personnel as state employees who would be administratively placed under the Justice Administrative Commission. The 2009 Legislature designated employees of the CCOC to be state employees and it set statewide salary ranges and benefit levels for these staff. The CCOC estimates that 92% of clerks' costs are salaries and benefits, which are determined by clerks, county commissions, or other local authorities and vary considerably among counties. As a result, the Legislature has limited ability to control the overall costs of clerks' court-related functions.

This approach has the potential advantage of giving the Legislature the same level of control over clerks' employee compensation and staffing levels that it normally exerts over employees in state funded agencies. It would enable the Legislature to set statewide ceilings for salary and benefits, require counties who wish to offer more to clerk-supervised employees to contribute the difference, and would reduce the variability in cost to the state among clerks regarding personnel costs and practices. This approach would also avoid the potential appearance of impropriety that could arise if responsibility for collecting court assessments were assigned to the judiciary, which is also responsible for adjudicating guilt or innocence and imposing fines and court costs.

However, this approach also has several caveats. It would continue to divide responsibility for court-related functions between different independently elected officials. It would require the state to recover, from each county, the funds necessary to pay out accrued annual and sick leave for all clerk employees performing court-related duties. It could reduce institutional knowledge in the clerk's office, disrupting office operations if employees chose not to become state employees and left. Finally, it would reduce clerks' control over compensation of staff that they must supervise to perform court-related activities.

Transfer some or all court-related functions currently performed by clerks to the courts. In this approach, the Legislature would transfer certain functions performed by the clerks to the courts. These functions could be limited to the case processing and maintenance activities, or could include all court-related functions performed by the clerks. Such an extensive transfer would essentially mean that all clerk staff performing court-related functions would become employees of the judicial branch. Article V Section 16 of the Florida Constitution provides for the possibility of two county officers—one serving as the clerk of court and the other serving as ex officio clerk of the board of county commissioners, auditor, recorder, and custodian of all county funds. This approach has precedent both in Florida and in other states. Currently, there are seven Florida counties in which the court-related and county-related duties of clerks

are separated. At least seventeen other states have courts systems in which at least some clerks of court are appointed by the judiciary. However, we did not identify national studies that have compared the efficiency of these systems to those used in other states, including Florida, in which these functions are divided between the courts and local clerks.

This approach has the potential advantage of increasing standardization and efficiency in how court functions are provided both within and among judicial circuits, as a single entity would be responsible for performing these duties. It would allow clerks to continue to provide county services and be accountable to local voters for these services. It could facilitate a single unified information system that incorporates the information needed to track and document activity on a case from filing to final disposition and all points in between, and could allow for the consolidation of IT staff, and associated cost savings through elimination of positions, redundant software licensing, and reduced need for hardware maintenance. This approach is also consistent with the model for the clerk of the court in Florida's appellate courts.

However, this approach would have substantial caveats. It could increase costs in smaller counties because case processing activities are performed by clerks' staff that also perform other non-court-related functions; these activities would be performed by different staff if responsibilities were transferred. It could also require developing new computer programs to consolidate multiple counties into using a single system which could be costly. Some computer systems currently used by clerks to process court cases don't meet court requirements for their case management activities. If all court-related functions are transferred, this approach could require a constitutional amendment. While Article VIII Section 1(d) of the Florida Constitution indicates that any county office may be abolished when all the duties of the office prescribed by general law are transferred to another office, it requires the electors of the county to approve the change. Therefore, a statewide transfer of functions that also included abolishing the elected clerk of the court position statewide could require a constitutional amendment. Court administrators are primarily responsible to their chief judge, whereas clerks must balance customer service among their constituency with being responsive to the chief judge. If responsibility for collections were transferred, this step could create a potential appearance of impropriety, as the courts would be responsible for both imposing and collecting fines that support the courts system. Courts noted that this could raise concerns that judges have an incentive to find people guilty and impose the maximum fine in order to fund their operations. This would also require court administrators who may have little related experience to be responsible for collections, and contracts with private collection agencies may need to be renegotiated.

Transfer some functions that are shared by the two entities to the clerks. In this approach, the Legislature could transfer responsibility for some functions that are currently performed by court administration to the clerks. There are few major statewide functions that could be reasonably transferred, as the functions performed by the courts are generally an extension of their constitutional responsibility to ensure that adequate due process services are provided to court participants. Thus, transferring functions such as providing foreign and sign language interpreters and translators and court reporting and transcription services is not feasible as this action would raise constitutional challenges.

However, there are some limited functions performed by court personnel in some judicial circuits and counties and by clerk staff in other areas, such as initial case assignment, providing basic legal materials to the public and ministerial assistance to

pro se litigants. Also, administering juror compensation and expenses is performed by court personnel in two counties but is done by clerks in most areas of the state; in contrast, judicial calendaring is done by court staff in most counties but is performed by clerks in some counties for some court divisions. It may be feasible to transfer these functions to clerks in additional counties. Existing arrangements typically reflect local preferences and capabilities. If clerks are responsive to chief judges' directives, it also may be feasible to shift responsibility for information technology services to the clerks. Currently in some counties and circuits both entities have information technology responsibilities, with the clerks performing a range of case and records maintenance functions and the courts performing case and workload management functions. These functions are performed using a variety of information technology systems and platforms which often differ from county to county, even within the same circuit; in some counties the clerks and court maintain separate information technology systems while in other counties they share some systems.

One potential advantage of this approach is that it could provide more statewide consistency in how these functions are handled. However, this approach also has caveats. There is little evidence that transferring the functions in additional counties would produce substantive benefits. The current division of these responsibilities reflects local conditions and capabilities, and forcing a consistent statewide allocation of these responsibilities could disrupt local arrangements that are working well.

Overall conclusions. Given the variation among the judicial circuits in their caseloads, size, technology, and local needs, it would be difficult to uniformly implement any approach that would require wholesale changes in the current allocation of responsibilities between the courts and the clerks. Fundamentally, cooperation between the chief circuit judges and clerks is essential. All of the approaches would affect the information technology systems that are currently used by both the clerks and the courts to manage judicial caseload. The Technology Review Workgroup is currently preparing a report on these information technology issues. OPPAGA will continue to explore these approaches as needed to assist the Legislature in this area.

Appendix D



Honorable Howard Forman
Broward County
Chair

Honorable Harvey Ruvin
Dade County
Vice Chairman

Honorable Richard Weiss
Polk County
Secretary/Treasurer

Honorable John Crawford
Nassau County

Honorable Scott Ellis
Brevard County

Honorable Bob Inzer
Leon County

Honorable Buddy Irby
Alachua County

Honorable Tim Sanders
Madison County

Honorable
Margaret Steinbeck
Judge

Senate
Sharon Bock
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House
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January 13, 2010

Gary R. VanLandingham
Director, Office of Program Policy Analysis & Government Accountability
111 West Madison Street, Room 312
Claude Pepper Building
Tallahassee, Florida 32399-1475

Mr. VanLandingham,

As Chairman of the Florida Clerks of Court Operations Corporation, let me express my appreciation for the work of the staff at OPPAGA toward the completion of their reporting requirement as specified in Chapters 2009-61 and 2009-204, *Laws of Florida*. The complicated task of examining the court-related functions of the Clerks of Circuit Court and the state courts system was not made any easier given the short timeframe in which to accomplish the task. Having noted this, many of the deficiencies cited with regard to the CCOC budgeting process could well be remedied by time. The legislation which completely changed the budget process was signed by the Governor in late June and required not only a revision of the 09/10 budget but also establishing and approving a 10/11 budget process. All done as mentioned above in an extremely short time period.

We are pleased the draft report clearly denotes little duplication of functions between the operations of the clerks and court administration. We also acknowledge the second broad finding indicating that improved cooperation between clerks and chief judges is an imperative. We would like to add to this second point that only through the active cooperation between clerks, chief judges, and other leaders within the two entities will cooperation at a more operational level ever be achieved.

There are, however, a number of specific points in the draft report with which we would like to identify some concerns:

- On page 5 you state that current performance measures are too broad to meaningfully assess the efficiency of court-related functions. We do have specific detailed measures such as examining, by each Clerk, the number of days it takes to establish a case file by division as an example. In addition, when a Clerk is not meeting a timeliness, collections, juror payment, or other measure the CCOC works quarterly with those Clerks not meeting the measure to establish and implement corrective action plans. Also, annually the CCOC examines ways to improve the performance measurement process and has increased the number of measures. We will continue to do so and believe your office should recognize the amount of work done so far and that we have a pattern each year of doing more.

Page 2

CCOC Response to Provided Draft Report

- On page 5 of the report it indicates the Clerks of Court Operations Corporation (CCOC) “did not identify service units to be provided within each core service area...nor did it propose a unit cost for each service unit, as directed by the Legislature.” While the Legislative Budget Request (LBR) submitted by the CCOC did not explicitly identify “a cost for each service unit,” these service units were developed and included in the calculation used to develop the LBR. Further, when we met with legislative staff immediately after delivering the LBR, we worked with them to indicate how the LBR provided could be used to identify a unit cost for each service area. Subsequent to that meeting we provided them with a detailed spreadsheet of individual unit costs for each service area for all 67 Clerks. As already mentioned, due to the short time frame to develop this budget process the Council fully understood that the development of the proposed units was just a beginning and in future years more detail for units could be added. We believe legislative staff understood this as well since the CCOC staff worked with and consulted them on a regular basis
- On page 7 of the report suggestions are provided related to improving the development of the peer groups. We even noted in our LBR submittal that we ourselves believed we needed to do more work in the development of peer groups. Yet again, with the short time period to implement a new budget process we had to utilize a methodology that seemed at that time most fair. Numerous methods were considered by the CCOC and discussed with legislative staff during the budget development process, including a per-capita method as described in the report. While we all recognized that none of the considered methods provided a perfect methodology, significant problems were identified with the per-capita method. Regardless, as expressed to legislative and OPPAGA staff we will work during the next year to seek better methods and we agree that additional Legislative direction regarding peer group development could be beneficial in future efforts.
- We appreciate acknowledgment in the report on page 8 regarding the difficulty clerks are experiencing in receiving their full one-twelfth appropriation by the state each month. The shortage of revenue is due to the funding methodology implemented by the state, and not due to any significant revenue not collected by the Clerks. In fact, revenues collected for 12 months for the year should be sufficient to fund the Clerk’s budgets and administrative fee but the dollars collected for June are not provided to the state until July. We will be working with the state to help assure this issue is resolved this year and future years in order to be funded the approximately \$451 million dollars as was intended in the 2009 legislative appropriations act.
- At the same time that Clerks have taken steps to reduce administrative overhead as noted in your report, the CCOC office has been working to assure we have detailed information on these efforts. The CCOC Performance Improvement and Efficiency Committee established a workgroup that has been meeting to help develop a process where we can easily gather this information for the Council.

While there may be additional issues in the report that raise concerns among clerks, it has been our effort to raise only those concerns related to the budgetary process falling under the purview of the CCOC.

Thank you for the opportunity given us to respond to this report.

Sincerely,



Howard Forman
Chair, CCOC Executive Council

Appendix E



Florida Association of Court Clerks & Comptrollers

Jim Fuller
Duval County
President

Tim Smith
Putnam County
First Vice President

Ken Burke
Pinellas County
Second Vice President

Rebecca L. Norris
Gulf County
Secretary

James B. Jett
Clay County
Treasurer

Kenneth A. Kent
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January 21, 2010

Mr. Gary VanLandingham, Director
OPPAGA
111 West Madison Street
Tallahassee, FL 32399

Dear Mr. VanLandingham:

Thank you for this opportunity to respond to your January 2010 Report titled, "Little Duplication in Court-Related Services; Clerk/Court Cooperation Should Be Improved."

The Florida Association of Court Clerks (FACC) genuinely appreciates your efforts in studying the complex issues your report addresses. Your report raises several important points which warrant thoughtful discussion between the Clerks and the Courts toward improving the process for all the stakeholders in the court system.

The FACC recognizes that the study with which you were charged was a formidable challenge, particularly given the relatively short time available. Accordingly, we were pleased to provide, at your request, the Performance Audit Report prepared for FACC by KPMG. This performance improvement audit was conducted pursuant to the requirements of Generally Accepted Government Auditing Standards and, while their scope was broader than your study, there were many areas of common interest. The FACC hopes the information in the KPMG Report was useful to you.

The following comments are for your consideration:

1. Section "What are challenges to the efficient delivery of court-related functions?", page 6, first column, 3rd paragraph,: "While some clerks asserted that administrative orders issued by chief judges created unnecessary work and expense in their office,...the majority of clerks...said that they were discussed with them prior to implementation."

As a part of our ongoing study of process improvement opportunities within the Florida Courts system, FACC retained KPMG. The KPMG Engagement Partner for this study was Dave Dennis, CPA, who is KPMG's national local and state government partner. The KPMG Performance Audit included 18 professional staff, with over 200 years of professional audit experience, performing eleven on-site visits, averaging three days per visit, conducting 176 interviews, and surveying all of the Clerks who did not receive an on-site visit. This work included extensive research on administrative orders and their impact on Clerk operations.

KPMG analyzed the data provided by the survey and determined that 93% of the responding Clerks indicated administrative orders have had a negative impact on their operations.

Also, the next sentence in this section of your report states, “Court administrators reported that chief judges do consult with clerks before issuing administrative orders.”

KPMG discussed this issue with Clerks during their eleven on-site visits. 73% of those Clerks interviewed stated that the Chief Judge normally does not provide draft administrative orders for comment prior to issuance.

2. Section “While the Legislature now oversees the Clerks’ collective budget allocation, it has limited control over critical expenditure categories such as salaries and benefits.”, page 7, second column, first paragraph, second sentence: “As a result, the Legislature lacks the control that it normally exerts over employee compensation in state-funded agencies.”

The majority of state agencies contract with non-state entities to perform state functions. In these cases, the state exerts control over the total agency budget; but not line item authority over all expenditures made to perform state functions, including contract employees’ compensation.

Additionally, because Clerks’ staffs are county employees, not state employees, Clerks can design their respective pay plans and benefit packages consistent with local union requirements, population size, geography, cost of living and other factors. Furthermore, employees in a majority of Clerks’ offices provide both county-related and court-related services and as such, it would be impractical to provide a standard pay and benefit structure in these offices.

3. Section “Court administrators and Clerks both reported that they reduced management positions and salaries within the last two years in response to legislative directives to reduce expenditures.”, page 8, second column, first paragraph, first sentence: “90% of court administrators and nearly half of the clerks reported they had reduced management level staff positions as the result of their budget reductions.”

It warrants mention that, in 2009, Clerks employed over 9,400 employees and due to budget reductions over 1,200 positions were cut. Many Clerks have, in part or entirely, reassigned management-level staff positions to performing front line staff functions. Also, Clerks have furloughed more than a third of the remaining employees, significant services have been impacted and branch offices in 31 counties have been closed.

4. Appendix C, “Transfer some functions that are shared by the two entities to the Clerks” section, page 22.

The FACC agrees with the general point that there are functions performed by court personnel which could be transferred to the Clerks; and that this could provide more statewide consistency. In addition to the ones cited in your report, the FACC thinks there are additional functions which warrant consideration for transferring to the Clerks. Take, as an example, the function currently performed by court administration preparing the monthly Summary Reporting System (SRS) reports. Clerks have reported case filing and disposition information to the Office of State Court Administrator (OSCA) for many years. While Clerks have suggested automation of all case types for these reports, the OSCA has

not been able to complete this task, and currently re-processes the information received by the Clerks, which increases the cost of this process. This information is gathered at the local level and could be rolled up into a statewide report by the Clerks to meet the requirements of the judiciary. This would not only improve efficiency and decrease costs, it would also provide independence to the reports, which are used to justify adding new judges.

5. General comments. It warrants attention that your research found that there are no specific duties assigned to court administration in the statutes or court rules. In evaluating your recommendation in the “At A Glance” section (first page) of your report, “additional performance measures and standards should be developed for the courts as well,” it seems relevant that court administration receives state funding but does not have statutorily assigned functions.

Also, your report recommends “the court and clerks should jointly develop statewide service level standards for court services.”

The FACC acknowledges the value of standards of service for both the Clerks of the Court and the Courts. The current Clerk Performance Measures, monitored by the Clerks of Court Operations Corporation (CCOC) and reported to the Florida Legislature, provide an excellent starting point for this effort.

Additionally, the FACC agrees it would be beneficial to approach this complex issue in cooperative partnership with the Courts. The FACC thinks that a necessary first step to jointly developing statewide service level standards for court services is to standardize, statewide, the more than 6,600 Administrative Orders among the 20 Judicial Circuits; and the numerous other directives by Judges in the form of rules, letters, and memorandums. Since these thousands and thousands of individual and unique directives force changes in the Clerks’ processes, and limit opportunities for standardization, the standardization of Court directives is a necessary first step to developing statewide service level standards.

The FACC believes statewide service level standards would benefit the stakeholders in the court system.

Conclusion

The FACC noted with interest your conclusion that there is little duplication in court-related services. The FACC also thought it important that you researched the experiences of 17 states that have at least some Clerks of the Court appointed by the judiciary and determined there are no national studies that provide comparative efficiency data. Finally, the FACC took note of the first sentence in the second paragraph of your Conclusions section, which states, “Given the variation among the judicial circuits in their caseloads, size, technology, and local needs, it would be difficult to uniformly implement any statewide changes to the existing structure of Florida’s trial courts system without significant further study.”

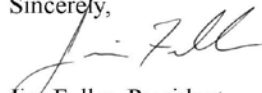
These facts, in conjunction with your determination that current performance measures do not adequately address the efficiency of court-related functions, suggest it would be imprudent to transfer court-related duties between the Clerks and court administration since there is no data on the magnitude of the resulting costs.

Instead, it seems the course which best serves the State is to build on the successful, cooperative partnerships many of the Circuit Chief Judges and Clerks of the Court enjoy, toward the benefit of

Florida's citizens and other stakeholders. These successful, cooperative partnerships can provide a Best Practices approach for improving communications between Judges and Clerks.

Again, thank you for your work on this important study and for this opportunity to provide you with comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Fuller". The signature is written in a cursive style with a large initial "J".

Jim Fuller, President
Florida Association of Court Clerks/Comptrollers

cc: Jan Bush, General Counsel, OPPAGA
Jason A. Gaitanis, Senior Legislative Analyst, OPPAGA

Appendix F



Supreme Court of Florida

500 South Duval Street
Tallahassee, Florida 32399-1925

PEGGY A. QUINCE
CHIEF JUSTICE
BARBARA J. PARIENTE
R. FRED LEWIS
CHARLES T. CANADY
RICKY L. POLSTON
JORGE LABARGA
JAMES E.C. PERRY
JUSTICES

THOMAS D. HALL
CLERK OF COURT

KEVIN WHITE
ACTING MARSHAL

January 22, 2010

Gary R. VanLandingham, Ph.D.
Director, Office of Program Policy Analysis
and Government Accountability
111 W. Madison Street
Room 312, Claude Pepper Building
Tallahassee, Florida 32399-1475

Dear Mr. VanLandingham:

I am writing in response to OPPAGA's email communication of January 19, 2010, advising the court system of further changes to the OPPAGA report entitled "Little Duplication in Court-Related Services; Clerk/Court Cooperation Should be Improved." We recognize that my original response of January 13, 2010 (a copy of which is attached and incorporated herein by reference), may not be entirely consistent with the substantially rewritten section of the report on potential approaches to modifying the division of responsibilities between clerks and court administration. However, since the OPPAGA report continues to change and the reasoning for those amendments is not clear to us, we decline to make further comment.

This letter and the letter of January 13, 2010, should be appended as our collective response.

Sincerely,

A handwritten signature in cursive script that reads "Peggy A. Quince".

Peggy A. Quince

PAQ/dgh
Attachment



Supreme Court of Florida

500 South Duval Street
Tallahassee, Florida 32399-1925

PEGGY A. QUINCE
CHIEF JUSTICE
BARBARA J. PARIENTE
R. FRED LEWIS
CHARLES T. CANADY
RICKY L. POLSTON
JORGE LABARGA
JAMES E.C. PERRY
JUSTICES

THOMAS D. HALL
CLERK OF COURT

KEVIN WHITE
ACTING MARSHAL

January 13, 2010

Gary R. VanLandingham, Ph.D.
Director, Office of Program Policy Analysis
and Government Accountability
111 W. Madison Street
Room 312, Claude Pepper Building
Tallahassee, Florida 32399-1475

Dear Mr. VanLandingham:

The following information is provided by the State Courts System in response to OPPAGA's report entitled "Little Duplication in Court-Related Services; Clerk/Court Cooperation Should Be Improved." I have conferred with the chief judges of the district courts of appeal and the circuit courts in preparing this response. My response offers specific comments regarding some of the findings within the report and the policy options identified by OPPAGA.

But first let me state that the courts believe the report is a significant contribution to Florida's ongoing evolution toward a unified and uniform state courts system with the governance and funding structures in place to support efficient and effective access to justice. A judicial branch that is able to rule on cases fairly, impartially, and in an efficient and timely manner fulfills the Founders' vision of the court system's role in the tripartite form of government. In order for this vision to be fully realized, it is important that everyone recognize the fundamental principle that judicial officers are vested by the Florida Constitution with both the responsibility for adjudicating disputes and for the administrative supervision of the courts. OPPAGA's report describes some of the

Gary R. VanLandingham, Ph.D.
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challenges the judicial branch confronts on a daily basis in administering a trial court system in which the business processes that support the adjudication of cases are separated among two constitutional officers.

Comments on Findings

The report includes discussion and findings relating to the question: “**Are court-related functions being performed efficiently?**”

To achieve the efficient and effective administration of justice, we agree that service level standards are appropriate, but also believe that there must be a uniform approach to the development of statewide service level standards for trial court functions. For instance, the State Courts System’s approach to implementing Revision 7 to Article V was to standardize the allocation of resources across the state through the use of funding methodologies, creating a unified budget for the trial courts. This process, led by the Chief Justice and carried out over several years by Supreme Court-appointed commissions, required the 20 judicial circuits to operate as a statewide system, thereby effectuating an equitable allocation of resources across the state. At the same time, chief judges still exercised their constitutional responsibility to oversee the administration of their circuits in determining the best way to implement their circuit’s budget allocations. This approach is consistent with one of the court system’s guiding principles: statewide uniformity must always be balanced with local flexibility. This process for allocating resources continues to be used today by the Trial Court Budget Commission under the oversight and guidance of the Chief Justice and the Supreme Court.

To develop statewide service level standards, common methodologies would need to be applied to all court-related functions performed by the circuit court clerks, as has been done by the courts, to allow for funding levels to be uniformly established for all functions that have a bearing on the trial court process from start to finish. It also would provide an opportunity for workload to be addressed based on common goals for the overall judicial branch in consideration of available and limited resources.

The report also includes a finding that “...the courts should develop better performance measures and data...” For over a decade, the Supreme Court has charged the Commission on Trial Court Performance and Accountability with the

Gary R. VanLandingham, Ph.D.
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responsibility for monitoring performance in the trial courts. Along with its Court Statistics and Workload Committee, the Commission is responsible for the development of trial court performance measures, including those that are currently reported as part of the Legislature's Long-Range Program Planning process as mandated by Chapter 216, Florida Statutes. The Commission is also involved in the development of standards of operation and best practices aimed at improving efficiency, effectiveness, and uniformity statewide for various service delivery areas. Additionally, the Office of the State Courts Administrator produces performance documents for all circuits such as clearance rate reports, jury management dashboards, and profiles on judicial workload and resource usage. Several of these reports are available online at http://www.flcourts.org/gen_public/stats/index.shtml.

However, even with these long-term efforts, the State Courts System has been confronted with many challenges in measuring performance. As discussed in the OPPAGA's January 2009 report, "Judicial Case Management Practices Vary Throughout State; Better Case Data Needed," the lack of availability of standardized and reliable data hampers the efficient management of trial court caseloads. We agree that to improve efficiency, there is a need for standardized and reliable data that will allow for performance monitoring which, in turn, will allow for more informed resource allocation decisions. The court caseload data collection and reporting systems must incorporate the information needs of the individual judges, the administrative judges, the chief judges, and the statewide reporting requirements of a unified system.

Some courts have been able to implement information systems at the county level; however, the use of these systems is limited to the individual county and the systems do not necessarily capture the data necessary to measure performance or address other judicial management or case processing needs. Funding for these systems is also dependent on funding from the counties, hampering the ability to build consistent statewide information. The trial courts have largely relied on data from the circuit court clerks but, as reported by OPPAGA in 2009, judges frequently voice concerns about the accuracy, lack of consistency, and other limitations of case data from circuit court clerks' systems.

The report includes discussion of the question: **"What are challenges to the efficient delivery of court-related functions?"** The report finds that **"Insufficient cooperation between clerks and chief judges, which are both**

Gary R. VanLandingham, Ph.D.
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independently elected constitutional officers, can reduce court efficiency.” A related finding in the report is that “This difference of opinion [between the clerks and court administration over how clerks should perform their court-related duties] can result in conflicts between courts and clerks. There is effective cooperation between the chief judge and the clerk in many counties, which enhances court efficiency and reduces conflicts over administrative orders. However, in other counties, cooperation between the two officials is limited, hindering court operations.”

I agree that local coordination and cooperation on the administration of justice is essential; however, let me state clearly that the challenges the Florida judicial branch confronts on a daily basis in attempting to efficiently operate its trial court system are not simply a matter of personality conflicts, an impression one might have from reading the report, but rather result from systemic issues inherent in working across organizational lines. There are intrinsic inadequacies when business processes operate under the administrative supervision of two separate organizational structures and there is not an organizational mechanism for resolving conflicts that arise.

Our state constitutional framework provides for one State Courts System and our state laws use language that directs uniformity and equity in court services. The courts operate as a unified system. Statewide policies are established by the Florida Supreme Court, as documented by OPPAGA in Report 09-06, which states:

The Rules of Judicial Administration ... address practice and procedures, facilitate the uniform conduct of litigation, and are intended to help secure the speedy and inexpensive determination of court proceedings.... Judicial rules establish chief judge and budget responsibilities, ... case time standards, ... require proactive trial court case management, ... [and] address use of court technology.

Yet, at the trial court level, the court functions are operated by two distinctly separate entities – one of which is unified under the control of the Supreme Court and one of which is made up of 67 independent components with no central governance structure.

Gary R. VanLandingham, Ph.D.
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The 67 circuit court clerks and the State Courts System are discrete entities that may, at times, operate pursuant to somewhat different goals and objectives. Everything the court system does affects the circuit court clerks and, similarly, everything the circuit court clerks do in performance of their court-related functions has consequences for the courts. The inefficiency of one necessarily has ramifications for the other. The judicial branch is not able to properly identify the efficiencies that could be achieved at the trial court level absent a clear articulation of judicial branch goals and a shared understanding between courts and the circuit court clerks of those goals, and a corresponding alignment of our respective business processes to achieve them.

The report includes discussion and findings relating to the question: **“What steps could the court and clerks take to reduce administrative overhead without compromising quality of services?”**

The report reflects that additional tools to better assess administrative overhead should be employed. I would like to point out two important ways the trial courts currently view administrative costs. First, we look at these costs through an approved measure for the State Courts System’s Long Range Program Plan – the percent of administrative costs compared to total trial court costs – and monitor accordingly. (The approved standard for Fiscal Year 2008-09 was 6.7 percent and the actual was 5.2 percent.) Equally as important, the Trial Court Budget Commission uses funding methodology formulas when allocating positions, both operational and managerial, within each element of the court system, to the individual circuits.

Comments on Policy Options

The report assesses four policy options that are designed to address the dilemmas the judicial branch confronts on a daily basis in attempting to operate trial courts whose business processes are separated among two constitutional officers that both support the case adjudication function. The report seems to suggest that solutions to these problems should be developed locally by chief judges and circuit court clerks. While we agree that local coordination and cooperation on the administration of justice is essential, we do not believe the challenges identified in the report are simply local issues but are more precisely statewide problems requiring statewide solutions.

Gary R. VanLandingham, Ph.D.

January 13, 2010

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Rather than respond to the various policy options that have been offered in your report, we offer these general comments. The overall objective of the State Courts System is to have a unified, uniform judicial branch that supports the impartial resolution of disputes, is accountable, and is efficient. For that to occur, certain elements must be in place. First, the governance of the branch must result in decision-making that supports a statewide court system, with control, direction, and oversight by the judiciary as mandated by the state constitution. There must also be statewide standardization of budgets, resource allocations, service level standards, practices, data collection and reporting, and technology systems, while allowing for local flexibility to respond to the diversity within this state. Additionally, there must be full transparency and openness to ensure that decision makers have the opportunity to understand the revenues generated by court-related activity, as well as the financial transactions associated with court-related collections and expenditures. (We note that the report does not inventory or address all of the funding sources for either the circuit court clerks or the courts.) Finally, all components of the judicial branch must work cooperatively toward shared goals. It is critical that the policy decisions by the Legislature support these outcomes.

The courts agree that steps must be taken to improve the business processes of the trial courts. The Florida State Courts System stands ready to work with the Legislature in the coming months to accomplish that goal.

Sincerely,



Peggy A. Quince

PAQ/LG/dgh

The Florida Legislature

Office of Program Policy Analysis and Government Accountability



OPPAGA provides performance and accountability information about Florida government in several ways.

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Gary R. VanLandingham, Ph. D., OPPAGA Director