

IMPLEMENTING
STATE FUNDING OF
FLORIDA'S COURTS SYSTEM
*FOR MORE UNIFORM JUSTICE AND
PROTECTION OF CITIZEN RIGHTS*



A Florida TaxWatch Special Report

SEPTEMBER 2006

Over a Quarter of a Century in the Making

“Florida TaxWatch views the eventual elimination by the Legislature of the dual system of state and local funding in the judicial branch as inevitable. If the citizens of Florida are to have a unified court system, with effective and efficient fiscal management, however, the courts must adopt one unified management structure with the centralized leadership necessary to provide for the implementation of one uniform set of guidelines and procedures.

The Legislature must, however, give considerable thought and planning to state assumption of additional judicial costs.

Without the proper external standards of administration and clear authority and responsibility for their implementation, the Judiciary cannot effectively provide the needed accountability to the taxpayers of Florida.”

*Executive Summary
Florida TaxWatch Analysis
“Florida’s Judicial Branch:
Improving Its Administration”
February 3, 1980*



Letter from Florida TaxWatch Chairman and President	2
Summary of Constitutional Revision 7	3
Introduction, Findings, and Recommendations	4
State Courts Study Issues	15
▪ Court Appointed Counsel	16
▪ Certification of New Judgeships	21
▪ Trial Court Law Clerks	27
▪ State Funded Due Process: Court Reporting, Court Interpreting, and Expert Witnesses	29
▪ Mediation	32
▪ Legal Aid, Law Libraries, and Teen Court	36
▪ Justice System Technology	40
▪ Competitive Compensation for State Courts Employees	48
Appendices	
A Judicial Modernization Timeline	62
B Trial Court Administrators' Responses to Questions Concerning Law Libraries	63
C Trial Court Administrators' and Office of State Courts Administrator's Comments on Employee Hiring and Retention	66
Acknowledgements	75

September 2006

Dear Fellow Floridian,

In November 1998, Florida voters approved a constitutional amendment (Revision 7) to Article V of the Florida Constitution, requiring the state, on July 1, 2004, to assume funding responsibility of most operations of the state courts system, state attorneys, public defenders, and the Justice Administrative Commission that previously were funded by counties.

In February 2004, Florida TaxWatch (FTW) published the first in a series of reports entitled *Proper Funding of the State Courts System is Crucial to Rule of Law, Taxpayer Confidence, and a Healthy Economy*. This independent research, a follow-up to several FTW research reports from as early as February 1980, addressed the critical need to properly manage and fund the state's new responsibilities throughout Florida's 20 judicial circuits to help bring equal justice to all Floridians.

A second report, *Proper Management, Accountability and Funding of the State Courts System is Crucial to Rule of Law, Taxpayer Confidence, and a Healthy Economy* (March 2005) addressed nine funding issues under consideration by the 2005 Legislature. This report underscored the need to act responsibly with taxpayer dollars, while urging our leaders to ensure that the formal institution where our battles for justice are fought and won, our judiciary, is neither impeded nor disrupted as the state continues to implement its new constitutional funding obligations and enhanced management practices.

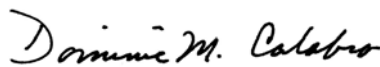
A third report, *Increasing the Safety of All Floridians through Data Integration in the State's Justice System* (April 2006) reviewed recommendations of the Article V Technology Board and presented a strategy for data integration throughout the justice system. Each of these reports can be accessed electronically at www.floridataxwatch.org.

The following report examines progress and work remaining on Revision 7 funding, management, and service delivery issues. The report's major finding is that transition to state funding has been smoother than expected, with uninterrupted court operations and no visible effects on public access. Nonetheless, work remains to be done. The report makes recommendations on twelve issues for consideration during the 2007-08 state budget process, and for substantive consideration by the 2007 Legislature.

Respectfully,



Michael A. Jennings
Florida TaxWatch Chairman



Dominic M. Calabro
Florida TaxWatch President and CEO

SUMMARY OF CONSTITUTIONAL REVISION 7

Funding for the state courts system, state attorney and public defender offices, and court-appointed counsel shall be provided from state revenues.

All funding for clerks of circuit and county courts performing court-related functions shall be from filing fees for judicial proceedings and service charges. The state shall provide funding where the Constitutions of the United States or Florida preclude fees and service charges to fund court-related functions of clerks of circuit and county courts.

Counties shall fund communications services, existing radio systems, existing multi-agency criminal justice information systems, and the construction or lease, maintenance, utilities, and security of facilities for trial courts, public defender and state attorney offices, and offices of clerks of circuit and county courts performing court-related functions.

Counties shall pay salaries, costs, and expenses of the state courts system to meet local requirements as determined by general law.

Summary of Article V, Section 14, Florida Constitution, as amended
by voters in the November 1998 General Election

IMPLEMENTING STATE FUNDING OF FLORIDA'S COURTS SYSTEM FOR MORE UNIFORM JUSTICE AND PROTECTION OF CITIZEN RIGHTS

Introduction

The fundamental purpose of adopting Article V of the Florida Constitution, the judicial branch of government, approved by Florida voters in 1972, was to create an organizationally uniform state courts system. A quarter century later, voters approved Revision 7 to complete the job by requiring the state, on July 1, 2004, to assume funding responsibility of most operations of the state courts system, state attorneys, public defenders, and the Justice Administrative Commission that previously were funded by counties.

This Florida TaxWatch *Special Report* examines progress and work remaining on funding, management, and service delivery issues relating to implementation of Revision 7. The report makes recommendations for consideration during the 2007-08 state budget process, and for substantive consideration by the 2007 Legislature.

Prior to Revision 7, trial courts were dependent on local funding. This created discrepancies between circuits in staffing and service levels. The move to state funding has put trial courts on a level playing field by providing additional resources for circuits that formerly were not able to offer a full complement of court services.

Trial Court Administrators' Survey, August 2006

Amendment's Goal

The 1998 Constitution Revision Commission's (CRC) intent of Revision 7 is seen in the following summary of the Commission's February 12, 1998 discussion of Revision 7; in a statement of intent; and in the Revision 7 ballot language. These statements show that this voter-approved amendment provides for the state to assume uneven county-to-county funding of state courts functions. The purpose of uniform funding is to help ensure citizens' equitable access to essential components of a just courts system statewide in furtherance of the rule of law.

Summary of Revision 7 Statements

- The promise of Article V is a fair and balanced approach to statewide funding at every locality. Small counties (pre-Revision 7) have had major problems in, for example, being able to afford conflict counsel in capital cases and this is a very, very serious matter. These counties with fewer resources have been asking us to help get them some relief. -- *Former Supreme Court Chief Justice and Constitution Revision Commissioner Gerald Kogan's comments, February 12, 1998 CRC meeting*
- The Constitution Revision Commission intends for the state to fund all salaries, costs and expenses necessary to ensure the rights of the people to have access to a functioning and efficient judicial system. Core functions and requirements statewide are the obligation of the state and not of individual localities. -- *Constitutional Revision Commission Statement of Intent*
- The amendment expressly promotes uniformity of justice irrespective of geography. Its intent is to make justice less dependent on a county's size or wealth and, therefore, more equitably funded and consistent with local needs. *Revision 7 Ballot Language Adopted by Florida Voters in November 1998*

RESPONSIBILITY FOR FUNDING STATE COURTS SYSTEM AS OF JULY 1, 2004

New State Funding Responsibilities	Continuing State Funding Responsibilities	Continuing County Funding Responsibilities
Hearing Officers/Magistrates Court Administration Court Reporting Court Interpreting Expert Witnesses Legal Materials for Judges and Staff Attorneys Mediation/Arbitration Case Management	Judges Judicial Assistants/Law Clerks Juror Compensation Supreme Court Appellate Courts Judicial Qualifications Commission	Court Facilities/Security Office Space Existing Communications & Information Systems

Trial Court Administrators' Views

Trial Court Administrators responding to a Florida TaxWatch request for an assessment of successes, surprises, and areas for improvement concerning implementation of Revision 7 provided the following observations:

Successes

- > Extensive statewide planning and coordination resulted in transition to state funding that was smoother than expected, with uninterrupted court operations and no visible effects on public access.
- > Clarification of the fundamental elements of the state court system, as defined in Section 29.004, F.S. to be funded by the state.
- > Transition from funding by numerous sources with broken lines of accountability to a more efficient, effective, and accountable court business.
- > Improved working relationship between the Florida Legislature and trial courts, and a more systematic approach to budget and resource management among the circuits because of the work of the Trial Court Budget Commission.
- > Upgrading the level of services in circuits that formerly were not able to offer a full complement of court services, which was a primary reason for Revision 7.
- > Staff retention and no loss of jobs for court employees.

Revision 7 redefined court administration in Florida. State funding of state courts has increased accountability of court administrators and provided financial, and human resources to support courts infrastructure.

Trial Court Administrators' Survey, August 2006

Surprises

- > Amount of workload associated with assuming Indigent Services Committee responsibilities.
- > Confusion over technology responsibilities, costs, and allocation in working with the counties.

> Confusion by court-related entities as to how the transition from county to state funding affected their work processes.

> Inability to compete for experienced employees, or to replace employees who leave or take new positions, because of low starting salaries and lack of flexibility in pay and benefits compared to other public agencies.

Areas for Improvement

> Fully fund due process services (expert witnesses, court reporting, and court interpreting) so that courts are not reliant on other entities (state attorneys, public defenders, Justice Administrative Commission) in order to meet their constitutional and statutory responsibilities.

> Provide courts with more definition and flexibility in funding across counties to create circuit wide court technology.

> Remove functions such as certification of process servers and approval of guardianship education courses from court responsibilities.

> Restore court self-help and family intake services to assist unrepresented litigants.

> Enhance accountability at the local level for revenues collected to provide court services.

> Index statutory fees charged for mediation services.

> Implement recommendations in the 2005 Management Advisory Group's pay and classification study.

The increased complexity, consequence of error, and level of responsibility of work given to court managers on July 1, 2004, requires an investment to insure that valuable human resources are appropriately classified and compensated.

Trial Court Administrators' Survey, August 2006

STATE COURTS SERVE ALL FLORIDIANS

Every Floridian is likely to be touched by the judicial branch of government. Whether as a plaintiff or a defendant in a business or property dispute, a personal injury case, a child in a custody dispute, a victim of violent crime, an heir in a probate proceeding, or a witness, juror or attorney, most Floridians interact with a court in some direct way during their lifetime.

Floridians get good value for the money spent on their state courts system. The total dollar amount (\$1.15 billion) for the state courts system plus state attorneys, public defenders and the Justice Administrative Commission for FY 2006-07 is 1.6% of Florida's \$71.3 billion budget.

Florida's state courts system is recognized as among the nation's best for innovations, groundbreaking achievements and excellence by the National Center for State Courts, the American Bar Association and others. Since the 1970s, Florida has led the way in openness of court proceedings and records; access to justice for litigants without attorneys; innovations to reduce time spent on jury duty; efficiency and timeliness in processing a large volume of cases; and drug courts that save money—and lives!

Florida's judiciary compares favorably with other states in terms of the number of judges per 100,000 population; the number of trial court filings and dispositions per 100,000 population; and the percentage of state budgets spent on judiciaries as a whole, and as an amount per person.

***Florida's Executive Branch is spending
\$69.7 billion of the 2006-2007 Budget; Judicial/Courts share is \$1.15 billion***

Chart 1. Florida's \$71.3 Billion Budget: Government Spending by Branch

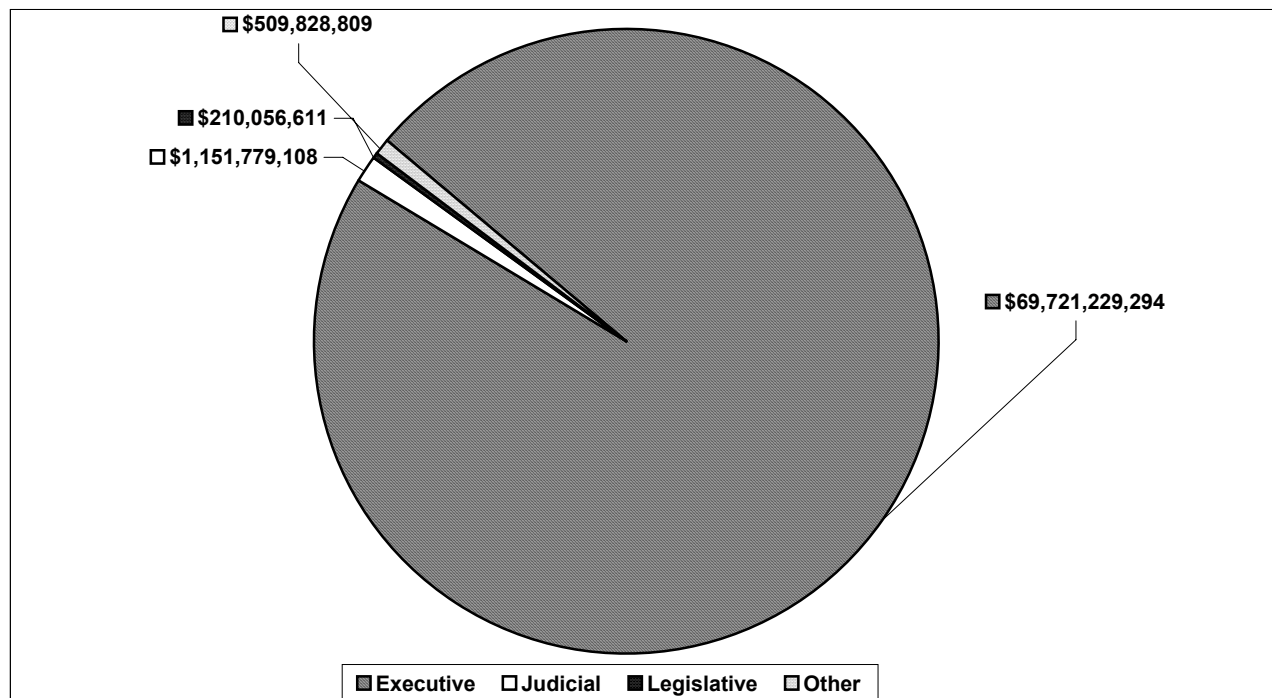
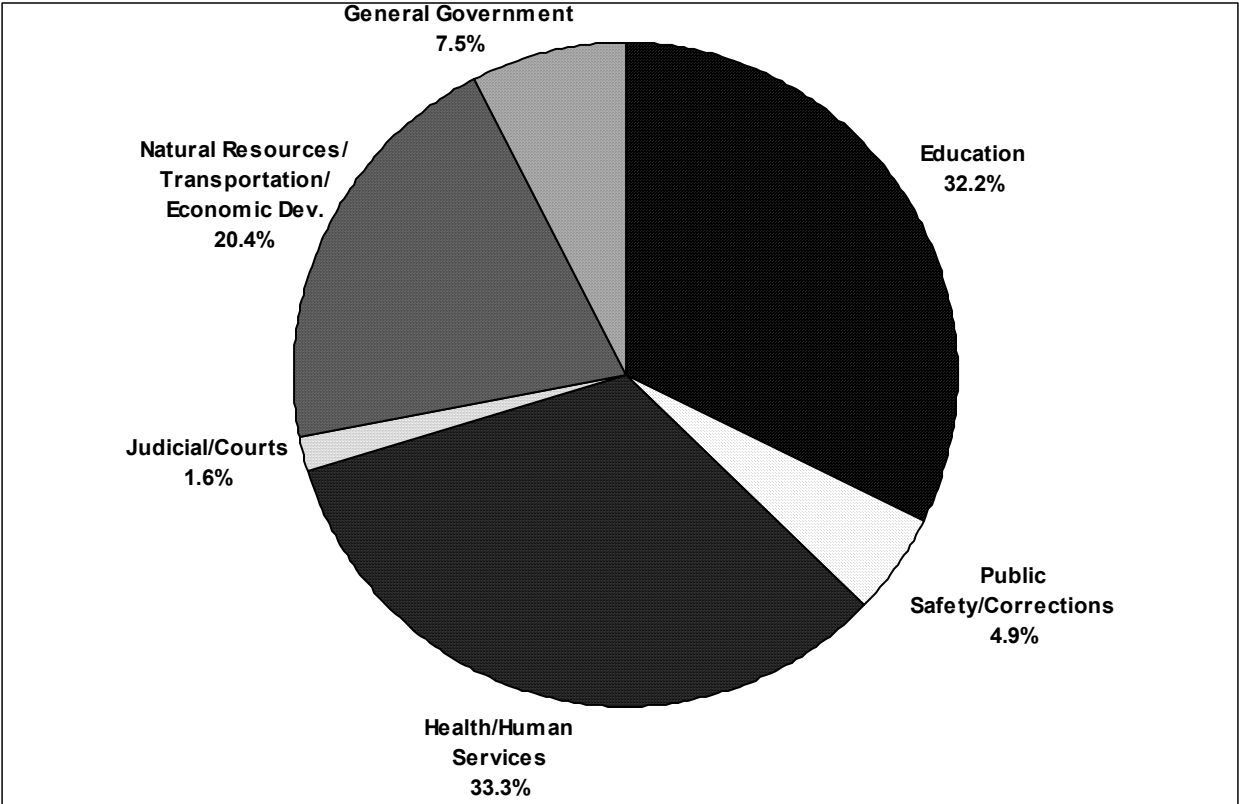


Chart 2. How Florida’s Budget is Spent



Note: Judicial/Courts includes the State Courts System, State Attorneys, Public Defenders, and the Justice Administrative Commission.

SUMMARY OF FLORIDA TAXWATCH FINDINGS AND RECOMMENDATIONS

The State Courts System's transition to state funding pursuant to Revision 7 to Article V of the Florida Constitution has been smoother than expected, with uninterrupted court operations and no visible effects on public access since July 1, 2004.

Trial court administrators attribute the success to a combination of (a) extensive statewide planning and coordination by the state courts system, (b) a more systematic approach to budget and resource management among the circuits because of the work of the Trial Court Budget Commission, (c) transition from funding by numerous sources with broken lines of accountability to a more accountable court business, (d) upgrading the level of services in circuits that formerly were not able to offer a full complement of court services, and (e) an effective working relationship between the Florida Legislature and the courts system.



COURT APPOINTED COUNSEL

FINDINGS

Workload associated with judicial circuits' staffing of indigent services committees and maintaining conflict counsel registries, which was performed by county employees before Revision 7 was implemented, has required the equivalent of approximately 20 unfunded positions statewide.

Consistent with an American Bar Association recommendation, Florida's judiciary is considering recommending that the 2007 Legislature create an independent statewide entity to provide oversight and operational support of the 20 judicial circuits' indigent services committees and maintenance of conflict counsel registries.

RECOMMENDATIONS

The 2007 Legislature should carefully consider creating positions in judicial circuits to staff indigent services committees and maintain conflict counsel registries. These functions were performed by county employees before Revision 7 to Article V of the Florida Constitution was implemented on July 1, 2004.

The 2007 Legislature should carefully consider creating an independent statewide entity to provide oversight and operational support of the 20 judicial circuits' indigent services committees and maintenance of conflict counsel registries.

If the Justice Administrative Commission (JAC) continues to monitor court appointed counsel fees and costs, it should determine the extent to which judges reduce court appointed counsel fees and costs that JAC attorneys determine to be excessive by auditing a sample of bills submitted to it for payment. Additionally, JAC audit deficiency letters should focus on requiring attorneys to justify costs beyond those generally accepted as reasonable expenses.

The Legislature should monitor local use of Section 29.008 (2), Florida Statutes, under which a county and the chief judge of a judicial circuit may enter into an agreement for the county to fund positions to assist in providing court services. This statute has the potential to undermine the mandate of Revision 7 to Article V of the Florida Constitution for a state funded courts system.



CERTIFICATION OF NEW JUDGESHIPS

FINDINGS

The Supreme Court likely will continue certifying the need for additional trial court judgeships, in part because of growth and in part because the Legislature's nearly three-decade average approval rate of approximately two-thirds of new judgeships sought by the Court fell to less than two-fifths between 2000 and 2004. Thus, some catching up may be necessary.

Adding a new appellate court judgeship(s), based on an improved methodology outlined in this report, would be highly preferable to a more costly and disruptive option of creating an additional District Court of Appeals to handle Florida's growing appellate needs.

RECOMMENDATIONS

Careful legislative consideration should be given to the Supreme Court's 2006-07 certification of the need for new trial court judgeships.

Careful legislative consideration should be given to adding the first new appellate court judgeship(s) since 1999.



TRIAL COURT LAW CLERKS

FINDING

Progress has been made toward a Florida TaxWatch supported goal of reaching a ratio of one trial court law clerk for every two circuit court judgeships as a cost effective way of helping meet the state court system's increasing workload. The ratio as of July 1, 2006 was 1 to 2.66.

RECOMMENDATION

Florida TaxWatch continues to recommend a ratio of one trial court law clerk for every two circuit court judgeships.



STATE FUNDED DUE PROCESS

FINDINGS

Judicial circuits gradually are transitioning to digital court reporting. In 2005, the Trial Court Performance and Accountability Commission found that, applied appropriately in most, but not all, circumstances, it is the best option to effectively and efficiently provide this service.

Difficulty in hiring well qualified court interpreters to provide constitutionally required due process services to the state's non-English speaking population at the current minimum salary of \$32,428 likely will be exacerbated by a certification mandate of the 2006 Legislature. This is particularly problematic in Miami-Dade County. More than half of its 2.3 million residents are foreign-born, which reportedly results in nearly twice the number of language interpretations needed in criminal and civil courts versus the other 19 circuits combined.

Trial courts are now responsible for a greater amount of funding for expert witnesses, including evaluation of the mental condition of defendants in criminal cases. Uncertainty over the total cost of this responsibility is reflected by a \$7.7 million "placeholder" in the state courts system's 2006-07 budget until actual monthly expenditures are obtained to project a more accurate number.

RECOMMENDATIONS

To the extent practicable, judicial circuits budget requests should reflect the Trial Court Performance and Accountability Commission's 2005 finding that digital court reporting, in most cases, is the best option to effectively and efficiently provide this service.

The 2007 Legislature should help assure that well qualified court interpreters can be hired at competitive salary rates.



MEDIATION

FINDINGS

A systematic "best practices" review of alternative dispute resolution (ADR) is needed in order to advance optimum usage of ADR in Florida.

A cost/benefit analysis of the use of court staff mediators versus contract and volunteer mediators also is needed.

RECOMMENDATIONS

As the State Courts System re-evaluates its mediation funding model, it should review "best practices" statewide, and conduct a cost/benefit analysis of the use of court staff mediators versus contract and volunteer mediators.

To help inform decisions concerning cost effective use of mediation statewide, the Office of State Courts Administrator should complete spreadsheets for the latest available period that display the following data:

- a. By county, within circuit, categories of cases for which mediation is available (county civil, including small claims, family, dependency or in need of services; circuit; and appellate)
- b. Number of cases going to mediation, by circuit and category
- c. Number of mediations conducted by type of provider (volunteer, contract, or staff)
- d. Number of cases going to mediation where the parties pay fees, and number of cases involving indigents, by county within circuit and category
- e. Fees collected, by county within circuit
- f. General Revenue, by circuit, for 2005-06 to provide a baseline for assessing how the courts' 2006-07 model compares
- g. Percentage of agreements achieved by type of case by county within circuit



LEGAL AID, LAW LIBRARIES, AND TEEN COURT

FINDINGS

The 2002 Legislature approved the Florida Access to Civil Legal Assistance Act, and appropriated \$2 million to fund pilot programs in seven judicial circuits to advise low-income eligible clients regarding their rights and duties under family and juvenile law, protection from domestic violence, elder and child abuse, and immigration. The 2006 Legislature appropriated \$2.5 million for this purpose but made all 20 circuits eligible for funding. Thus, there is proportionately less funding per judicial circuit in 2006-07 than in 2002-03.

Florida TaxWatch's survey of trial court administrators shows wide variation in law library services.

Some counties fund teen court programs by ordinance while others fund them under Section 939.185, Florida Statutes. Clarification of the distribution of revenue collected under the latter needs legislative attention.

RECOMMENDATIONS

Legislative consideration should be given to providing a stable funding source for service delivery under the 2002 Florida Access to Civil Legal Assistance Act. The 2002 Legislature appropriated \$2 million to fund pilot programs in seven judicial circuits. The 2006 Legislature appropriated \$2.5 million and made all 20 circuits eligible.

A cooperative effort among judicial circuits and counties, assisted by law library associations, university and community college resources, and the Florida Department of State, should be considered in order to work toward standardizing law library facilities and public access to legal

information in large, medium and small counties. Emphasis should be placed on access to electronic law materials.

The 2007 Legislature should clarify the distribution of revenue collected by counties that impose an extra \$65 court cost under Section 939.185, F.S., and fund their Teen Court program under Chapter 2005-236, Laws of Florida.



JUSTICE SYSTEM TECHNOLOGY

FINDINGS

The 2004 Legislature imposed a \$4 service charge on most documents recorded and maintained as official records by clerks of court to fund technology. Earmarking \$1 of this charge to trial courts for circuit wide administration, and \$.50 each for state attorney and public defender offices in each circuit, would help ensure that these entities have clearly defined revenue for the technology necessary to accomplish its prescribed tasks, particularly in rural counties where the amount of revenue generated from the service charge is insufficient to fund court technology.

Since release of Florida TaxWatch's April 2006 report, *Increasing the Safety of All Floridians through Data Integration in the State's Justice System*, the Florida Association of Court Clerks and Comptrollers (FACC) has (a) committed to provide the Legislature with a copy of the annual independent audit report regarding the Comprehensive Case Information System (CCIS); (b) expressed the FACC's intent to meet with legislative appropriations staff periodically to provide CCIS status and budgetary reports, including proposed functional expansions together with detailed costs, and (c) agreed to escrow the source code and related software for CCIS to the state in order to assure the public investment that has been made in the CCIS application will continue regardless of FACC participation.

Statewide policies are needed for development of data security and access, including standards and protocol in areas such as user authentication, disaster recovery and continuity of operations, individual logins, and risk assessments and cyber-security audits

Creation and maintenance of a unified statute table is needed to facilitate greater uniformity in the criminal charging process, which would promote greater uniformity of individuals' criminal history records

Independent statewide oversight of justice system data integration is needed to help assure systems compatibility and user effectiveness.

RECOMMENDATIONS

Because trial courts have a broader mission than state attorneys and public defenders, state law should earmark \$1 of the \$2 for trial courts in each circuit, and \$.50 each of the remaining \$1 for the state attorney and public defender in each circuit. This would help ensure that these entities have clearly defined revenue for the technology necessary to accomplish their prescribed tasks.

The 2007 Legislature should carefully consider the following technology-related items:

- ▶ Development of statewide policies for data security and access, including standards and protocol in areas such as user authentication, disaster recovery and continuity of operations, individual logins, and risk assessments and cyber-security audits.
- ▶ Creation and maintenance of a unified statute table to facilitate greater uniformity in the criminal charging process, which would promote greater uniformity of individuals' criminal history records
- ▶ Independent statewide oversight of justice system data integration. Otherwise, integration will likely occur in an inefficient manner with unintended consequences that could cost taxpayers.
- ▶ Based on findings by the independent auditor retained by the Florida Association of Court Clerks and Comptrollers concerning the use of public funds to operate and maintain the Comprehensive Case Information System (CCIS) the public service charge levied for this purpose should be adjusted upward or downward.



COMPETITIVE COMPENSATION FOR STATE COURTS EMPLOYEES

FINDINGS

Documentation provided by trial court administrators (see Appendix C) suggests the need for legislative consideration of compensation and classification adjustments recommended in a 2005 Supreme Court consultant study, and a Florida TaxWatch comparative analysis of compensation of selected executive/judicial branch positions that is summarized in this report.

Additional use of competitive geographic pay differentials, particularly in large metropolitan areas, likely can help trial courts attract and retain needed talent.

RECOMMENDATIONS

The 2007 Legislature should carefully consider compensation adjustments for state courts system employees to help ensure competitive hiring and retention.

Careful consideration should be given to tying part of future compensation increases to documented exemplary performance.

Careful consideration should be given to additional use of competitive geographic pay differentials, particularly in large metropolitan areas, in order to attract needed talent. Cost of living data should be used to determine geographic pay differentials.

STATE COURTS STUDY ISSUES

COURT APPOINTED COUNSEL

Individuals who cannot afford attorneys have a legal right to public defenders in criminal, guardianship, child dependency, and termination of parental rights cases. When a public defender cannot represent an individual due to a conflict of interest¹, the court appoints a private attorney – referred to as “private, court-appointed counsel” – whose fees, costs, and expenses are paid from government funds.

Prior to the implementation of Revision 7 to Article V of the Florida Constitution (requiring a state-funded courts system as of July 1, 2004), counties paid for and staffed the administration of court-appointed counsel and related due process costs of court reporting, foreign language interpretation, and court appointed expert witnesses. County staff also maintained constantly changing registries of qualified private attorneys wanting to serve as court-appointed counsel.

Indigent Services Committees

Legislation implementing Revision 7 created Article V Circuit Indigent Services Committees (CISCs) in each of Florida's 20 judicial circuits. These committees are composed of four members: the circuit's chief judge or designee, who serves as chair; the circuit's public defender; an experienced private criminal defense attorney; and an experienced private or public civil trial attorney.

CISCs, which must meet at least quarterly (see Table One), are tasked with overseeing appointment and compensation of court-appointed counsel. Funding for CISC expenses, court-appointed counsel fees, and due process costs is appropriated to the Justice Administrative Commission in the annual state budget.²

The Legislature did not provide funding for CISC staffing or managing the court-appointed counsel registry when it became a state responsibility on July 1, 2004. Rather, each circuit's trial court administrator's office took on this task and assigned these additional duties to existing staff (see Table Two).

Legislative Directive

The 2006 Legislature directed the Justice Administrative Commission (JAC) and the Office of State Courts Administrator (OSCA), by January 31, 2007, to submit joint recommendations for improving governance and operations of court-appointed counsel and due process services for indigent individuals.

The Legislature specified that the JAC/OSCA report describe advantages and disadvantages of the current Circuit Indigent Services Committees and their administrative support arrangements; and describe, analyze and, if justified, recommend alternative models for governing and providing these functions. Criteria must include the degree to which the models:

- ▶ Assign responsibilities that are appropriate for the entities involved, including avoiding conflicts of interest
- ▶ Ensure provision of court-appointed counsel and related due process services
- ▶ Facilitate oversight and control of costs and
- ▶ Detail any statutory changes that might enhance governance and provision of these services

Staffing of CISCs and Conflict Counsel Registries

In a March 2005 report, *Proper Management, Accountability and Funding of the State Courts System is Crucial to Rule of Law, Taxpayer Confidence, and a Healthy Economy*, Florida TaxWatch cited two issues needing resolution. The first issue is responsibility for staffing the 20 circuits' CISCs and maintaining conflict counsel registries.

In its 2006-07 budget request, the Judicial Branch sought 27 positions and approximately \$1.5 million to perform indigent services committee and conflict counsel registry functions.³ However, the branch abandoned this request when it could not reach consensus on whether the judiciary or another entity should perform these functions.

As of September 2006, the State Courts System and Justice Administrative Commission had not reached agreement on the appropriate role of trial courts in regulating, managing, and operating court-appointed attorney qualifications, selection, and fees. This is largely because the 20 judicial circuits continue working to develop a consensus on whether court or JAC employees, or another entity, should staff the CISCs and the registries. The Trial Court Performance and Accountability Commission, the Trial Court Budget Commission, and the Judicial Administration Section of the Conference of Circuit Judges are collaborating to establish a consensus.

Counties Comprising Judicial Circuits

- 1st Circuit:** Escambia, Okaloosa, Santa Rosa, and Walton
- 2nd Circuit:** Franklin, Gadsden, Jefferson, Leon, Liberty, and Wakulla
- 3rd Circuit:** Columbia, Dixie, Hamilton, Lafayette, Madison, Suwannee, and Taylor
- 4th Circuit:** Clay, Duval, and Nassau
- 5th Circuit:** Citrus, Hernando, Lake, Marion, and Sumter
- 6th Circuit:** Pasco and Pinellas
- 7th Circuit:** Flagler, St. Johns, Volusia, and Putnam
- 8th Circuit:** Alachua, Baker, Bradford, Gilchrist, Levy, and Union
- 9th Circuit:** Orange and Okaloosa
- 10th Circuit:** Hardee, Highlands, and Polk
- 11th Circuit:** Miami-Dade
- 12th Circuit:** DeSoto, Manatee, and Sarasota
- 13th Circuit:** Hillsborough
- 14th Circuit:** Bay, Calhoun, Gulf, Holmes, Jackson, and Washington
- 15th Circuit:** Palm Beach
- 16th Circuit:** Monroe
- 17th Circuit:** Broward
- 18th Circuit:** Brevard and Seminole
- 19th Circuit:** Indian River, Martin, Okeechobee, and St. Lucie
- 20th Circuit:** Charlotte, Collier, Glades, Hendry, and Lee

Table One Circuit Indigent Services Committee (CISC) Meetings		
Circuit	7/1/04 to 6/30/05	7/1/05 to 6/30/06
1	10	04
2	11	05
3	03	02
4	07	05
5	06	06
6	04	04
7	05	03
8	11	06
9	05	03
10	04	04
11	06	03
12	05	03
13	06	05
14	08	05
15	04	06
16	04	05
17	07	06
18	10	09
19	10	06
20	09	05
Total	135	95

Table Two Trial Court Administrators' Offices Assumed CISC And Conflict Counsel Registry Functions Without Additional Positions		
Circuit	Staff Positions 2006-07	Staff Positions Prior to 7/1/2004
1	1.0	0.0
2	1.0	0.67
3	1.0	0.0
4	2.0	1.0
5	2.0	0.0
6	4.1	1.0
7	0.5	0.0
8	1.5	1.5
9	1.5	0.0
10	1.0	0.25
11	4.25	2.0
12	0.75	0.0
13	2.0	0.0
14	1.0	1.0
15	1.0	0.0
16	0.25	0.0
17	1.0	0.0
18	2.0	0.0
19	1.0	---
20	1.5	1.0
Total	30.4	8.4

Source: Florida TaxWatch Survey of Trial Court Administrators
August 2006

Summary of Trial Courts Survey Responses

Florida TaxWatch's August 2006 survey found that three urban circuits prefer the state courts system to staff Indigent Services Committees and Registries, if properly funded. Seven circuits prefer having the Justice Administrative Commission perform these functions. Ten circuits did not express a preference, deferring to the current efforts of the Trial Court Performance and Accountability Commission, the Trial Court Budget Commission, and the Judicial Administration Section of the Conference of Circuit Judges to establish a consensus.

Nationally Recommended Staffing Option Being Considered

The American Bar Association has recommended that the public defense function, including conflict counsel, should be independent and subject to supervision by judges only to the same extent and manner as retained counsel.⁴ To ensure judicial independence, the judiciary should be removed from oversight and that function should be performed by a nonpartisan board.⁵

The appointment process should be according to a coordinated plan under the direction of a full-time attorney administrator familiar with the requirements of practice in the jurisdiction.⁶ Since the provision of defense services is a state responsibility, there should be state funding and a statewide structure responsible for ensuring uniform quality throughout the state.⁷

Florida's judiciary is considering whether indigent services committees and circuit registries should be housed under an independent body, similar to the Statewide Guardian Ad Litem (GAL) Office, for which the Justice Administrative Commission (JAC) currently provides administrative support and service. If a new entity were placed under the JAC for administrative purposes, the 2007 Legislature would decide how many employees are necessary for state oversight and how much additional work, if any, JAC staff can handle without additional resources.

Regardless of whether a statewide oversight body is created, it is clear that most of the 20 trial court administrators' offices (TCAs) took on additional unfunded duties in administering indigent services committees and conflict counsel registries, thereby enabling them to function on short notice beginning July 1, 2004. Table Two shows that staff in Trial Court Administrators' Offices assumed CISC and conflict counsel registry functions, amounting to workload equivalent to approximately 20 full time positions statewide, without additional resources.

Oversight of Conflict Counsel Costs

The second issue addressed in the March 2005 Florida TaxWatch report is responsibility for monitoring court-appointed counsel fees and due process costs, and contesting those considered excessive. TaxWatch recommended that Tallahassee-based Justice Administrative Commission (JAC) attorneys perform this function, either by traveling to the circuits or making contact via telephone. However, JAC attorneys generally are submitting letters to judges when they object to fees and costs.

If the JAC continues to monitor court appointed counsel fees and costs, it should determine the extent to which judges reduce court appointed counsel fees and costs that JAC attorneys determine to be excessive by auditing a sample of bills submitted to it for payment. Additionally, JAC audit deficiency letters should focus on requiring attorneys to justify costs beyond those generally accepted as reasonable expenses.

Maintaining Florida Voters' Intent

Section 29.008 (2), Florida Statutes, authorizes a county and the chief judge of a judicial circuit to enter into an agreement under which the county funds personnel positions to assist in the circuit's operation.

This statute has the potential to undermine the mandate of Revision 7. The 1998 amendment to the state constitution was adopted to create a state funded courts system. The impetus for Revision 7 originated, in part, because some counties were better able than others to fund their local courts systems. Uneven funding led to uneven court services statewide. The Legislature

should monitor the use of this statute to ensure that it does not recreate the imbalance that Revision 7 was adopted by Floridians to eliminate.

Recommendations

1. As recommended by the American Bar Association and considered by Florida's judiciary, the 2007 Legislature should carefully consider creating an independent statewide entity to provide oversight and operational support of the 20 judicial circuits' indigent services committees and maintenance of conflict counsel registries.
2. The 2007 Legislature should carefully consider creating positions in judicial circuits to staff indigent services committees and maintain conflict counsel. These functions were performed by county employees before Revision 7 to Article V of the Florida Constitution was implemented on July 1, 2004.
3. If the Justice Administrative Commission (JAC) continues to monitor court appointed counsel fees and costs, it should determine the extent to which judges reduce court appointed counsel fees and costs that JAC attorneys determine to be excessive by auditing a sample of bills submitted to it for payment. Additionally, JAC audit deficiency letters should focus on requiring attorneys to justify costs beyond those generally accepted as reasonable expenses.
4. The Legislature should monitor local use of Section 29.008 (2), Florida Statutes, under which a county and the chief judge of a judicial circuit may enter into an agreement for the county to fund positions to assist in providing court services. This statute has the potential to undermine the mandate of Revision 7 to Article V of the Florida Constitution for a state funded courts system. Revision 7 was prompted, in part, by inequalities resulting from the ability of some counties to fund positions to perform court services while others could not.

Endnotes

¹ A conflict arises when multiple, indigent defendants are involved in a single crime, such as selling or distributing drugs, and one defendant is willing to reach an agreement with the state attorney in exchange for testifying against the others. In such circumstances, a public defender cannot zealously represent each defendant.

² The Justice Administrative Commission administratively serves the offices of State Attorneys, Public Defenders, Capital Collateral Regional Counsels, and Statewide Guardian Ad Litem Program; and, provides compliance and financial review of the court appointed attorney due process costs. It provides services in relationship to accounting (disbursements and revenue), budget preparation and transfers, payroll, benefits, etc. It also provides compliance and financial review of court-appointed counsel due process costs.

³ FY 2006-2007 Judicial Branch Legislative Budget Request, See Tab: Court Operations Circuit Courts at 71. The FTEs were: 7.0 Administrative Assistant IIs; 7.0 Court Operations Managers; and 13.0 Court Program Specialist IIs.

⁴ The Ten Principles of a Public Defense Delivery System [Principle 1], Adopted by the American Bar Association House of Delegates, February 5, 2002.

⁵ *Id.*

⁶ *Id.* at Principle 2

⁷ *Id.*

CERTIFICATION OF NEW JUDGESHIPS

Florida's Constitution provides for the Supreme Court to establish uniform criteria to determine the need for additional or fewer judges, and for decreasing, increasing, or redefining appellate districts and judicial circuits.¹

When one of these determinations is made, the Court certifies it to the Legislature. At the next regular session, the Legislature must act on the Court's recommendations and may create fewer or more judgeships than recommended only by a two-thirds vote of the membership of each house.

Trial Courts

Since 2000, the Supreme Court has used a legislatively requested, funded and approved methodology, developed by the National Center for State Courts (NCSC), to certify the need for new county and circuit court judges.²

The State Courts System currently is updating trial court case weights to determine if they need to be adjusted in response to any operational, procedural, or law changes. The court has contracted with the NCSC to assist in completing this process by June 30, 2007. Updating case weights every five years was recommended in the NCSC's 1999 study for the Supreme Court. This is because trial court workload changes over time as a result of population growth, the ratio of law clerk positions to judgeships, improved technology, and changes in the proportion of types and complexity of cases heard.

The NCSC contract includes developing a workload measure for hearing officers and magistrates who enable Florida to operate a highly regarded judicial system with proportionately fewer judges than the average of the 10 most populous states.³ Since 2000, growth in case filings has exceeded growth in new judgeships by nearly 10%. Among the 10 largest states, Florida ranks 2nd in filings per judge, Florida judges handle about 45% more than the national average. Florida's 3.1 judges per 100,000 population compares to a national average of 3.5 judges.⁴

The 2005 and 2006 Legislatures created about two-thirds of the new trial court judgeships certified by the Supreme Court, which was consistent with the approval rate between 1972 and 1999. However, between 2000 and 2004, it created just 17% of the judgeships certified, based on the Court's use of legislatively approved judicial certification methodology. Because some catching up appears necessary, it is reasonable to expect the Supreme Court to continue certifying the need for more trial court judgeships.

Election or Appointment of New Trial Court Judgeships?

Before Revision 7 was approved by voters in November 1998, the Legislature generally required newly created judgeships to be filled by gubernatorial appointment in odd numbered years, and by voters in even numbered election years. Since 1998, all new judgeships have been filled by appointment, with two exceptions:

► 2002 legislation that provided for some judgeships to be filled by appointment and some to be filled in the November 2002 election.⁵

► 2006 legislation creating new judgeships to be filled by election. The Governor allowed this legislation to become law without his signature.⁶ In his June 9, 2006 transmittal letter to the Secretary of State, the Governor expressed concern about the constitutionality of portions of the bill prohibiting him from filling the new judgeships by appointment.

On July 14, 2006, the Florida Supreme Court denied a petition for writ of mandamus by the Eleventh Circuit (Miami-Dade County) Judicial Nominating Commission, which sought to have the Court direct the Secretary of State to expunge, from the official records of the state, provisions of the bill providing for election of the newly created judgeships.⁷ While this action by the Court resolved the case on the merits, the controversy is not likely to go away.

District Courts of Appeal

Over the past decade, a shift in types of cases appealed has occurred. Criminal and post-conviction filings have increased, while complex civil cases have decreased.

Based on the Supreme Court's concern that some criteria under Rule of Judicial Administration 2.035 were not good measures or predictors of appellate workload, the court charged the Commission on District Court of Appeal (DCA) Performance and Accountability to review criteria for certifying increases or decreases in the number of judges on DCAs.

The Commission recommended a workload measure whose factors include case filings, case mix, backlog, relative weight of cases disposed of on merits, and changes in statutes, rules, and case law. Through a modified Delphi process, it developed relative case weights and a method to calculate relative weighted appellate workload.^{8,9} Going forward, the Commission will review workload trends and consider adjustments in relative case weights every four years.

Criteria for New DCA Judgeships

In July 2006, the Supreme Court adopted new criteria for certifying the need to increase or decrease DCA judges.¹⁰ These criteria encompass the following factors:

► **Workload**, including trends in case filings; trends in changes in case mix; trends in the backlog of cases ready for assignment and disposition; trends in the relative weight of cases disposed on the merits per judge; and changes in statutes, rules of court, and case law that directly or indirectly impact judicial workload.

► **Efficiency**, including a court's ability to stay current with its caseload, as indicated by measures such as trend in clearance rate; trend in a court's percentage of cases disposed within the time standards set forth in the Rules of Judicial Administration and explanation/justification of cases not resolved within established time standards; and a court's utilization of resources, case management techniques, and technologies to maximize the efficient adjudication of cases, research legal issues, and prepare and distribute decisions.

► **Effectiveness**, including the extent to which judges have adequate time to thoroughly research legal issues, review briefs, and memoranda of law, participate in court conferences on pending cases, hear and dispose of motions, and prepare correspondence, orders, judgments, and opinions; expedite appropriate cases; prepare written opinions, when warranted; develop, clarify, and maintain consistency in the law within their districts; review all decisions rendered by the court; perform administrative duties relating to the court; and participate in administration of the justice system through work on statewide committees.

► **Professionalism**, including the extent to which judges report that they have time to participate, including teaching, in education programs designed to increase the competency and efficiency of the judiciary and justice system as well as the competency of lawyers; provide guidance and instruction for the professional development of court support staff; and participate in appropriate activities of the legal profession at both the state and local levels to improve the relationship between the bench and bar, to enhance lawyer professionalism, and to improve the administration of justice.

Using these new criteria, which are said to be more accurate and meaningful than those in place for the last decade, the Supreme Court will certify to the 2007 Legislature the need to increase or

decrease the number of DCA judges. The improved criteria could prompt legislative creation of the first new DCA judgeship since 1999.

Modification of Appellate Districts

In September 2004, the Supreme Court created the Committee on District Court of Appeal (DCA) Workload and Jurisdiction to make recommendations on uniform criteria to determine the need to increase, decrease or redefine the number of DCAs.

In February 2006, the Supreme Court issued an opinion creating Rule 2.036, Florida Rules of Judicial Administration, which adopts uniform criteria and addresses the disruption that would result from a change in district court jurisdiction. This opinion is available at <http://www.floridasupremecourt.org/decisions/2006/sc06-01.pdf>.

The Court also charged the above committee with conducting a review in accordance with the criteria, factors, and certification process outlined in Rule 2.036. See http://www.flcourts.org/gen_public/dca_review.shtml for information about the work of this Committee, whose report is due by November 2006.

The new rule directs examination of five criteria when considering whether to increase, decrease, or redefine appellate districts:

► **Effectiveness.** Factors considered are the extent to which each court functions in a collegial manner, expedites appropriate cases, and the court's workload permits judges to: (a) prepare opinions in a timely manner; (b) maintain consistency between written and unwritten opinions; (c) harmonize decisions with those of other district courts or certify conflict when appropriate; (d) have adequate time to review all decisions rendered by the court; and (e) serve on management committees for that court and the judicial system.

► **Efficiency.** Factors considered are the extent to which each court stays current with its caseload; adjudicates a high percentage of its cases within established time standards; and uses its resources, case management techniques, and technology to improve case processing and adjudication.

► **Access to Appellate Review.** Factors considered are the extent to which litigants have meaningful access to a district court for review of their cases; and orders and opinions being available in a timely manner.

► **Professionalism.** Factors considered are the extent to which each court's workload permits its judges and staff adequate time and resources to participate in continuing education opportunities; and each court being capable of recruiting and retaining qualified staff.

► **Public Trust and Confidence.** Factors considered are the extent to which each court's workload permits its judges adequate time to conduct public outreach; each court's geographic territory and demographic composition fosters public trust and confidence; and each court attracts an adequate, diverse group of well qualified applicants for judicial vacancies.

Rule 2.036 also provides:

► Assessment by a committee appointed by the Supreme Court at least once every eight years to

review the capacity of DCAs to fulfill their constitutional and statutory duties. The Supreme Court directed completion of an assessment and recommendations by November 15, 2006.

► A certification process to balance the impact and disruption of changes in appellate districts against the need to address circumstances limiting the quality and efficiency of, and public confidence in, the appellate review process.¹¹

Before recommending a change in districts, the Committee and Supreme Court must consider less costly alternatives, such as:

- Additional judges
- Creation of branch locations
- Geographic or subject matter divisions
- Deployment of new technologies and
- Increased ratios of support staff per judge

Three Decades of Appellate District Evaluation

Numerous evaluations of the need to modify appellate districts have been conducted over the past three decades:

► **1979:** The Commission on the Florida Appellate Court Structure recommended establishment of a 5th District Court of Appeal. Following an affirmative Supreme Court recommendation, the 1979 Legislature created the new DCA, headquartered in Daytona Beach.

► **1980:** The Legislature authorized the Tampa-based Second DCA to establish a “branch headquarters” within its district. The 2000 Legislature expanded this authorization to permit any DCA to designate other locations within the district as “branch headquarters.”

► **1986:** The Commission to Study the Need for Increased Appellate Districts and for Redefining Judicial Circuits found that current data reflected no need for creation of a new DCA.

► **1993:** The District Courts of Appeal Workload, Organization, Boundaries, and Jurisdiction Committee of the Judicial Council recommended no changes in the jurisdiction or geographic boundaries of the DCAs, and no new DCAs.

► **1998:** A subcommittee of the Judicial Management Council Committee to Study the Need for Additional District Courts of Appeal foresaw a need for two additional DCAs within five years. Its report was not endorsed by the full Judicial Management Council.

► **2004:** The Committee on District Court of Appeal Workload and Jurisdiction began work to develop uniform criteria for determining the necessity to increase, decrease, or redefine appellate districts, in accordance with a mandate in Article V of the Florida Constitution.

► **2005:** A report of the Commission on District Court of Appeal Performance and Accountability recommended uniform criteria and an outcomes-based approach to determine the need to increase, decrease, or redefine appellate districts. The report does not support use of arbitrary numeric thresholds for determining when caseloads or the number of judges in a DCA is too great.

Recommendations

1. Careful legislative consideration should be given to the Supreme Court's certification of the need for new trial court judgeships, which will occur later this year while the court is updating a legislatively prescribed methodology scheduled to be completed by November 2007. The 2005 and 2006 Legislatures created about two-thirds of new trial court judgeships certified under a legislatively prescribed methodology. These actions were consistent with approval rates between 1972 and 1999, versus a 17% average approval rate between 2000 and 2004. Because some catching up from 2000-2004 appears necessary, it is reasonable to expect the Supreme Court to continue certifying the need for more trial court judgeships.

2. Careful legislative consideration should be given to any future certification of the need for a new appellate court judgeship(s), which will be based on an improved methodology outlined in this report, and is highly preferable to the more costly and disruptive option of creating a 6th District Court of Appeals. Criteria set forth in Supreme Court Rule 2.036 seem to make it unlikely that this option will be recommended absent evidence that additional judges, staff, or technology cannot handle Florida's growing appellate court workload.

Endnotes

¹ Article V, section 9, of the Florida Constitution

² Based in part on a report authored by the Legislature's audit arm, the Office of Program Policy Analysis and Government Accountability (OPPAGA), the 1998 and 1999 Legislatures appropriated a total of \$155,000 for the Office of the State Courts Administrator (OSCA) to revise the underlying methodology the Supreme Court was using to certify the need for additional trial judges. OSCA contracted with the National Center for State Courts (NCSC), a nationally recognized organization that had performed similar work in eleven other states.

³ Hearing officers and magistrates assist judges by expediting discovery disputes in civil and family law cases, hearing temporary relief and post-judgment matters (especially those involving self-represented litigants), reviewing probate and guardianship cases, accelerating child support establishment and enforcement, and hearing traffic infraction cases. They submit findings and recommend orders, thereby enabling judges to concentrate on matters that only they can constitutionally decide.

⁴ Sources: Office of the State Courts Administrator, August 2006, and National Center for State Courts, *Examining the Work of State Courts*, 2003 (Brian J. Ostrom et al. editors, 2004)

⁵ Ch. 2002-388 Laws of Fla.

⁶ HB 113, now Chapter 2006-166, Laws of Florida

⁷ *Judicial Nominating Commission, Eleventh Circuit In and For Miami-Dade County, Florida v. Sue M. Cobb, Etc.*, Supreme Court of Florida, Case No. SC06-1294 (July 14, 2006).

⁸ "Delphi process" generally relates to the process where judges assign weights to types of cases. The 2000 NCSC study on trial courts involved three components:

1. determination by judges of a set of relative weights identifying how cases of varying types relate to each other
2. determination by judges of a set of specific weights identifying the time they believed should be spent by judges to handle various types of cases
3. a time study wherein a set of judges produced a set of case weights showing the amount of time judges actually spend on various types of cases

It should be noted that missing from the methodology for DCA judges are steps 2 and 3 (above) used for trial judges.

⁹ "Relative case weights" were arrived at as follows [See Tab 3, Appendix B]:

- Appeal from a criminal judgment and sentence case was assigned a value of 100 points, the baseline case category.

- Judges in the study were asked to assign a point value to the other 14 case categories depending upon how much more or less work the study participant thought the “average” case within a category was compared to the baseline case category.
- This exercise resulted in the “relative case weights” found in Appendix A under Tab 3.

“Relative weighted caseload per judge” is calculated by multiplying the relative case weight for each case category times the number of dispositions by a DCA during the fiscal year then total all the weighted case dispositions and divide by the number of judges on the court [See Tab 3, Appendix A].

Based on the new case weight methodology and workload measure, a December 15, 2005 Supreme Court order relating to DCA judges certified a different DCA for a judge compared to the previous year’s certification order.

¹⁰ In Re: *Report of the Commission on District Court of Appeal Performance and Accountability – Rule of Judicial Administration 2.035*, Florida Supreme Court No. SC06-397 [July 6, 2006].

¹¹ The following is from Rule 2.036, appended to a February 16, 2006 Supreme Court opinion:

(c) Certification Process. The certification process balances the potential impact and disruption caused by changes in appellate districts against the need to address circumstances that limit the quality and efficiency of, and public confidence in, the appellate review process. Given the impact and disruption that can arise from any alteration in judicial structure, prior to recommending a change in districts, the assessment committee and the supreme court shall consider less disruptive adjustments including, but not limited to, the addition of judges, the creation of branch locations, geographic or subject-matter divisions within districts, deployment of new technologies, and increased ratios of support staff per judge.

(1) The supreme court shall certify a necessity to increase, decrease, or redefine appellate districts when it determines that the appellate review process is adversely affected by circumstances that present a compelling need for the certified change.

(2) The supreme court may certify a necessity to increase, decrease, or redefine appellate districts when it determines that the appellate review process would be improved significantly by the certified change.

TRIAL COURT LAW CLERKS

Trial court law clerks, also referred to as staff attorneys, generally are recent law school graduates who perform tasks in support of circuit court judges.

Law clerks help prepare for trials by researching issues such as witness qualification, motions for disqualification of the court, and suppression of evidence. They draft judicial orders and review briefs submitted in appeals from county court. And they assist court administration and circuit court judges with special projects such as preparation of administrative orders, and contract revision and review.

A primary function of many law clerks is reviewing motions for post-conviction relief filed by prisoners. They often are responsible for determining which motions require hearings, attending hearings, and using their knowledge of the evidence to prepare orders in consultation with judges.

Cost Effectiveness

Law clerk starting salaries are less than one-third that of circuit judges, making them a cost-effective tool for Florida's trial courts to handle increasing workloads. Law clerks free judges to focus on decision-making requirements of their constitutionally mandated adjudicatory function.

In its March 2005 report, *Proper Management, Accountability and Funding of the State Courts System is Crucial to Rule of Law, Taxpayer Confidence, and a Healthy Economy*, Florida TaxWatch noted that the judiciary considers a one-to-one ratio of law clerks to circuit judges optimal. However, TaxWatch suggested a one-to-two ratio as a target. The state court system's Trial Court Budget Commission concurred that this ratio would provide at least adequate legal support for every circuit.

The 2006 Legislature funded 38 additional law clerk positions beyond those tied to new judgeships. Table Three shows that as of July 1, 2006, the statewide ratio is one law clerk for every 2.66 circuit judges. The range is 1 clerk to 1.75 judges in Circuit Three, to 1 clerk to 3.10 judges in Circuit Twenty.

Table Three Ratio of Law Clerks to Circuit Court Judges, 2006-07			
Circuit	Law Clerks	Judges	Ratio
1	09	24	1 to 2.38
2	07	16	1 to 2.29
3	04	07	1 to 1.75
4	13	35	1 to 2.69
5	11	31	1 to 2.82
6	17	45	1 to 2.65
7	11	27	1 to 2.45
8	06	13	1 to 2.17
9	15	43	1 to 2.87
10	11	28	1 to 2.55
11	29	80	1 to 2.76
12	07	21	1 to 3.00
13	17	45	1 to 2.65
14	05	11	1 to 2.20
15	14	35	1 to 2.50
16	01	04	1 to 4.00
17	22	58	1 to 2.64
18	09	26	1 to 2.89
19	07	19	1 to 2.71
20	10	31	1 to 3.10
Total	225	599	1 to 2.66

Source: Office of State Courts Administrator,
July 2006

Summary of Trial Courts Survey Responses

Work relating to post-conviction motions is a principal focus for most of the 38 new law clerk positions authorized by the 2006 Legislature.

According to trial court administrators, continuing unmet needs for additional law clerks include:

- ▶ Resources to help with regular workloads
 - Assistance to county judges (1st, 6th, 9th, 11th, 16th circuits)
 - Civil and family court assistance (1st, 5th, 6th, 11th, 16th circuits)
 - Criminal division processing of requests for assistance by repeat offender courts (4th, 11th circuits)
 - Additional post-conviction relief legal help (11th, 13th circuits)
 - Administrative legal assistance (11th circuit)
- ▶ Resources to help handle unique workloads
 - Extraordinary number of civil prisoner petitions as a result of being the location of state agency headquarters (2nd circuit)
 - Substantial workload generated by Florida's only Civil Commitment center (12th Circuit)

Recommendation

Florida TaxWatch continues to recommend a target ratio of one trial court law clerk for every two circuit court judgeships as a cost effective way of helping meet the state court system's increasing workload. The ratio as of July 1, 2006 was 1 to 2.66.

STATE FUNDED DUE PROCESS

Court Reporting

Under Revision 7 to Article V of Florida's Constitution, court reporting is a legislatively established, state-funded service.¹ It is provided by a combination of state employees and contracts with individuals and court reporting firms.

Digital recording is recommended by the American Bar Association's Committee on Judicial Administration. Florida's state courts system has determined that in most, but not all, circumstances, it is the best option to effectively and efficiently provide this service.² Principal reasons are that electronic recordings of court proceedings can be provided in lieu of preparing transcripts, and multiple proceedings can be covered by one person.

Florida TaxWatch's March 2005 report, *Proper Management, Accountability and Funding of the State Courts System is Crucial to Rule of Law, Taxpayer Confidence, and a Healthy Economy*, found that the judiciary's initiative to move toward digital court reporting will reduce costs over the long term, and the increased uniformity of court reporting should result in greater accountability through development of a unit cost measure that could be applied across circuits.

The 2005 Legislature authorized 17 positions from contingency funds, plus 25 new positions and \$2.4 million in General Revenue (GR). The 2006 Legislature authorized 10 new positions and just under \$2 million.

Court Interpreting

Defendants appearing in court in certain cases have a right to a foreign language interpreter.^{3,4} Since implementation of Revision 7 beginning July 1, 2004, this service has been paid from state revenues.⁵

The 2006 Legislature directed the Supreme Court to establish minimum standards and procedures for qualification, certification, professional conduct, discipline, and training for foreign language interpreters.⁶ It directed the Court to charge applicants a fee to offset the cost of administering the certification program. To help implement regulation of court interpreters, it created one position and appropriated \$240,000 as follows: \$75,000 recurring, \$75,000 non-recurring, and \$90,000 trust

Court Reporting Technology

Court reporting uses several technologies:

- ▶ Stenography - primarily in capital cases and trials of felony cases;

- ▶ Analog audio recording of proceedings on magnetic tape; and

- ▶ Digital court reporting, using the following:

- **Stand alone system**, which may be portable, such as a laptop computer or a hand held device (MP3 player), or stationary, such as a desk-top computer. This type of system is similar to what the Legislature uses to record committee meetings.

- **Network-enabled device**, which is monitored from a control room, typically found in larger courthouses. A digital court reporter simultaneously monitors recordings in several courtrooms and views proceedings via a video camera in each courtroom. The term "device" refers to a microphone in front of a participant in a proceeding.

- **Remote monitoring of network-enabled device**, which involves a court reporter simultaneously monitoring digital audio recordings in courtrooms in several different courthouses from an off-site control room.

fund.⁷ It also approved a request for four additional interpreter positions in the circuit courts, plus additional recurring contractual due process funds for court interpreting.⁸

Implementation of court interpreter certification requirements, although generally a positive move, will require additional contractual or state employee positions, a dramatic increase in availability of training and testing by the Office of State Courts Administrator, possible reimbursement of student costs (perhaps after six months or a year of satisfactory service for employees or independent contractors), and a lengthy period to phase in these requirements.

Second Judicial Circuit

(Franklin, Gadsden, Jefferson, Leon, Liberty, and Wakulla Counties)

Expert Witnesses

When Revision 7 took effect on July 1, 2004, the cost of expert witnesses became an element of the state courts system to be provided from state revenue. The following year, the Legislature amended two provisions of the law implementing Revision 7 that relate to expert witnesses:

► Section 29.004(6), F.S., provides that only expert witnesses appointed by the court, as opposed to those requested by litigants, are an element of the state courts system.⁹

► Section 916.301, F.S., provides that the state, rather than a county, pays for expert witnesses appointed to evaluate the mental condition of defendants in criminal cases.¹⁰

The judiciary acknowledged that trial courts are now responsible for a much greater number of expert witness appointments by inserting a \$7.7 million “placeholder” in its 2006-07 budget request until a sufficient number of monthly expenditures are obtained to project a more accurate number.¹¹

Recommendations

1. To the extent practicable, judicial circuits’ budget requests should reflect the Trial Court Performance and Accountability Commission’s 2005 finding that digital court reporting, applied appropriately in most but not all circumstances, is the best option to effectively and efficiently provide this service.

2. As part of its consideration of state courts system employee compensation, the 2007 Legislature should help assure that well qualified court interpreters can be hired to provide due process services to the state’s non-English speaking population. The current minimum salary of \$32,428 is particularly problematic in Miami-Dade County. Court interpreter certification mandated by the 2006 Legislature likely will exacerbate this problem.

Endnotes

¹ Section 29.004(3), F.S. (2005)

² *Court Reporting in Florida's Trial Courts Post Revision 7*, Commission on Trial Court Performance and Accountability, Supreme Court of Florida (February 2005) at 8.

³ House Staff Analysis for CS/HB 849 (April 18, 2006) at 2.

⁴ *Id.* States with high numbers of persons who do not understand English well have approached the issue of regulating court foreign language interpreters in different ways. Several legislatures have directed the court to engage in regulation, and one legislature has assigned this responsibility to the executive branch. The judiciary in one state regulates interpreters under its inherent authority. Other states do not certify interpreters.

⁵ Section 29.004(5), F.S. (2006).

⁶ Chapter 2006-253, Laws of Fla.

⁷ Proviso to Specific Appropriation 3238, Ch. 2006-25, Laws of Fla.

⁸ Judicial Branch Legislative Budget Request, Fiscal Year 2006-2007, Court Operations Circuit Courts at 79.

⁹ Section 29.004(6), F.S. (2004)

¹⁰ Chapter 2005-236, Laws of Fla. at s. 14.

¹¹ *Id.* at s. 60.

MEDIATION

Mediation is an informal, non-adversarial process whereby a neutral third person (a mediator) facilitates communication and negotiation and promotes voluntary decision making by the parties to a dispute. When parties participate in development of solutions to a dispute, they often are more satisfied with the result, which ideally is tailored to their specific interests. For example, for divorcing parents, mediation can help avoid the high cost of litigation, both monetarily and emotionally. While not all cases are appropriate for or resolved in mediation, it is a cost effective method for the state courts system because resolving cases by mediation avoids trials and appeals.

Legislation implementing Revision 7 to Article V of the Florida Constitution on July 1, 2004, includes mediation as a state-funded element.¹ Prior to Revision 7, the availability of court mediation services, eligibility for services, and cost recovery varied widely among Florida's 20 judicial circuits. Post-Revision 7, the state courts system has sought to standardize availability and eligibility for mediation services. While the Legislature has partially standardized cost recovery, 2005-06 data provided to Florida TaxWatch by Trial Court Administrators shows wide variation.

When Is Mediation Ordered?²

If requested by one or more parties to a dispute, a court must refer to mediation a civil action involving monetary damages if the requesting party is willing to pay the cost of mediation, or the cost can be divided equitably between the parties. This requirement does not apply to landlord/tenant disputes where there is no claim of personal injury, to debt collection, or to medical malpractice. However, courts can refer any or all parts of civil actions to mediation, whether or not required.

If a circuit has a family mediation program, a court must order it for all or part of disputes concerning custody, visitation, or other parental responsibility issues. An exception is made when the court finds a history of domestic violence that could compromise the mediation process.

Types of Mediation

Florida law defines five types of mediation.³ While a mediator is always present, negotiations in the following three types are conducted primarily by the parties; legal counsel is not required to attend:

- ▶ **County court mediation** of civil cases, including small claims.
- ▶ **Family mediation** for married and unmarried persons, both before and after judgments involving dissolution of marriage; property division; shared or sole parental responsibility; and child support, custody, and visitation involving emotional or financial considerations.
- ▶ **Dependency, or in need of, services mediation** pertaining to dependency, child, or family in need of services matters.

Two remaining types, **circuit and appellate court mediation**, require counsel of record to appear. The former is for civil cases other than family matters, while the latter occurs during appeal of civil cases.

Who Provides Mediation Services?⁴

Mediation services are provided by a combination of volunteers, court system staff, and contract mediators. Volunteer mediators' expenses, such as meals and parking, may be paid. Non-volunteer mediators are compensated by government funds or by the parties, as provided by court rule. If a party is indigent or insolvent, that party's pro rata share is paid by the government.

Although employees are generally less expensive than contract mediators, it is good to have a mix of both to cover peak demands, employee leave, unforeseen emergencies, etc.

Second Judicial Circuit
(Franklin, Gadsden, Jefferson, Leon, Liberty, and Wakulla Counties)

Funding Mediation

A filing fee of \$1 is levied on all proceedings in circuit and county courts to help fund mediation services.

As mediation was becoming a state-funded service on July 1, 2004, the Trial Court Budget Commission developed a funding model for services relating to small claims, residential eviction, county-civil, dependency, and family cases. The model is composed of a threshold formula based on circuit size, and a workload formula based on number of case filings.

► For 2004-05, the Court requested approximately \$10 million in General Revenue (GR) to fully fund the model, and authority to spend cost recovery dollars collected from participants. The Legislature authorized the latter and essentially provided GR funding at the level of counties' 2003-04 expenditures. The amount was nearly \$3 million below that needed to fully fund mediation, according to the model.

► For 2005-06, the Court requested \$2.9 million GR (\$1.2 million for 20 positions and \$1.7 million for contractual services) to fully fund the model, plus authority to spend cost recovery dollars collected from participants. The Legislature provided only the latter. Due to increased case filings, the gap between mediation costs and funding continued to grow.

► For 2006-07, the Court requested \$2.3 million to fund 29.5 new positions and \$0.5 million for contract mediation services. The Legislature funded 12 positions and approved spending cost recovery dollars collected from participants.⁵

The Funding Methodology Committee of the Trial Court Budget Commission is undertaking a review of the mediation funding model.

Cost Recovery

Cost recovery relates to amounts that parties are required to pay for mediation services.⁶

Prior to implementation of Revision 7 on July 1, 2004, there were disparities among circuits regarding indigent and non-indigent income eligibility for family mediation and dependency cases. Since then, cost recovery has been partially standardized. By statute, when court-ordered mediation services are provided, the following fees apply:

► No cost to parties for small claims, residential tenancy, dependency, and indigent family law cases.

► For county civil and family law cases, \$40 per party per session with a total income of less than \$50,000, and \$80 per party per session with a total income of \$50,000 to \$100,000.

When mediation is ordered in family cases for parties with combined income of \$100,000 or more, they must use a private mediator and pay market rates.

In 2005-06, statewide cost recovery totaling \$1.9 million was just under its expected share of 22.7% of the total budget for mediation.

Disparities Among Circuits

Using Office of State Courts Administrator categories of circuit size (small, medium, large, and Miami-Dade County, which is a category unto itself), 2005-06 operating budgets showed that recovery of costs varied widely among comparable circuits:

- In Large Circuits and Miami/Dade County, the 9th (Orange and Osceola Counties) and 13th (Hillsborough County) collected close to \$300,000 while the 15th (Palm Beach County) collected nearly \$200,000, the 6th (Pasco and Pinellas Counties) collected \$110,000, the 11th (Miami-Dade) and the 17th (Broward County) both collected less than \$100,000.
- Medium size circuit collections ranged from a high of \$218,000 in the 20th (Charlotte, Collier, Glades, Hendry, and Lee Counties) to a low of over \$14,000 in the 7th (Flagler, St. Johns, Volusia, and Putnam Counties)
- Small circuits ranged from over \$50,000 in the 8th (Alachua, Baker, Bradford, Gilchrist, Levy, and Union Counties) to less than \$3,500 in the 14th (Bay, Calhoun, Gulf, Holmes, Jackson, and Washington Counties) and the 16th (Monroe County).

It is difficult to explain these disparities solely by differences in circuit demographics or cases coming before the courts.

Recommendations

1. As the State Courts System's Trial Court Budget Commission re-evaluates the mediation funding model, it should conduct a cost/benefit analysis of the use of court staff mediators versus contract and volunteer mediators.
2. To help inform decisions concerning cost effective use of mediation statewide, the Office of State Courts Administrator should complete spreadsheets for the latest available period that display the following data:

- a. By county, within circuit, categories of cases for which mediation is available (county civil, including small claims, family, dependency or in need of services; circuit; and appellate)
 - b. Number of cases going to mediation, by circuit and category
 - c. Number of mediations conducted by type of provider (volunteer, contract, or staff)
 - d. Number of cases going to mediation where the parties pay fees, and number of cases involving indigents, by county within circuit and category
 - e. Fees collected, by county within circuit
 - f. General Revenue, by circuit, for 2005-06 to provide a baseline for assessing how the courts' 2006-07 model compares
 - g. Percentage of agreements achieved by type of case by county within circuit
3. A systematic best practices review of alternative dispute resolution (ADR) is suggested in order to advance optimum usage of ADR in Florida.

Endnotes

¹ S. 29.004(11), F.S. (2005)

² S. 44.102(2), F.S. (2005)

³ S. 44.1011(2), F.S. (2005)

⁴ S. 44.102(4), F.S. (2005). S. 44.108(1), F.S. (2005) provides for the \$1 filing fee noted in the text.

⁵ The Office of the State Courts administrator explains that the difference between the two legislative budget requests does not reflect a shift from contractual services to state positions, but rather reflects a greater increase in the need for positions versus less of an increase in the need for contractual funding from general revenue.

For FY 2005-06, the model for mediation services had a deficit of approximately \$3 million. In light of the \$3 million deficit, the judicial circuits were contacted and asked if they needed positions, contractual funding, or both. A compilation of the circuit responses yielded that of the \$3 million deficit, \$1.2 million of it was a need for 20 positions and \$1.7 million of it was a need for contractual funds. Further, mediation trust fund authority was requested from the Legislature so that mediation fees collected from parties could be funneled back and used by the circuits in support of the programs. The trust authority was approved by the Legislature, but the new positions and contractual funding were not.

For FY 2006-07, the circuits were again asked to report their need for positions or contractual funding. These requests were then compared to the mediation model funding threshold for each circuit (updated with projected FY 2006-07 filings). Positions and contractual funding that kept a circuit within their model funding threshold were approved for inclusion in the Legislative Budget Request. The request for positions and contractual funds totaled \$2.3 million, of which \$1.7 million was for 29 positions and \$0.5 million for contractual. The Legislature appropriated 12 of the 29 positions requested for FY 2006-07, with 2 of the positions funded through trust.

During FY 2005-06, trust authority allowed the circuits to begin using mediation fees that they collected to pay for contractual services. This likely explains why the circuits requested more positions and not as much contractual funding for FY 2006-07, despite the newness and instability of trust collections. It is probable that trust collections will continue to be used increasingly for contractual services, and perhaps even positions, as the circuit mediation programs become fully operational and trust collections become a more reliable source of revenue. However, a circuit's ability to collect on mediation fees is directly correlated with their ability to provide mediation services as statutorily required.

⁶ S. 44.108(2), F.S. (2005)

LEGAL AID, LAW LIBRARIES, AND TEEN COURT

Funding for legal aid, law libraries, and teen courts has been authorized, de-authorized, and reinstated in several statutes prior to and since the July 1, 2004 implementation of Revision 7 to Article V of the Florida Constitution.

Legal Aid

Provision of legal aid affords indigent persons the opportunity for representation in the judicial system.

Prior to Revision 7, counties with legal aid programs had a dedicated and stable source of revenue: a service charge imposed on probate and civil proceedings pursuant to both local ordinances and legislatively enacted special laws.

The 2002 Legislature passed the “Florida Access to Civil Legal Assistance Act”¹ and appropriated \$2 million to fund pilot programs in seven judicial circuits. The purpose of this legislation and funding was to provide legal assistance and education to low-income eligible clients regarding their rights and duties under family and juvenile law, entitlement to federal government benefits, protection from domestic violence, elder and child abuse, and immigration. Legislative funding flows through the Florida Department of Community Affairs to The Florida Bar Foundation, which provides grants for local programs.

The 2004 Legislature repealed pre-Revision 7 statutes permitting local funding ordinances, but not the 2002 Civil Legal Assistance Act, and enacted section 939.185, Florida Statutes. It authorizes counties to impose up to an additional \$65 in court costs when a person pleads guilty or *nolo contendere*, or is found guilty of a felony, misdemeanor, or criminal traffic offense.²

The 2004 Legislature also specified that then existing legal aid programs were a “local requirement” that counties would be required to fund at a level equal to, or greater than, the amount provided for the period October 1, 2002 through September 30, 2003 from service charges collected on probate and civil cases filed under the old law. Thus, existing legal aid programs were guaranteed comparable funding under the new law. Some counties that had not previously supported legal aid from filing fees adopted the court cost authorized under section 939.185 to fund legal aid programs to the extent of revenue collected.

At the time of Florida TaxWatch’s March 2005 report, *Proper Management, Accountability and Funding of the State Courts System is Crucial to Rule of Law, Taxpayer Confidence, and a Healthy Economy*, it was unclear whether funding under 939.185 would be sufficient to sustain these programs. This uncertainty was acute in locations where funding had not been from filing fees prior to implementation of Revision 7. The reason was that legislative funding for local programs under the Access to Civil Legal Assistance Act declined between 2002 and 2004.³

Florida Legal Services

Florida Legal Services, Inc. (FLS), founded in 1973, is a nonprofit organization that helps local agencies provide assistance in specific areas of civil law to persons who otherwise could not afford an attorney.

The Tallahassee-based FLS support office and its field staff work with local legal aid programs to coordinate advocacy on common client problems and information sharing, and provide substantive advice, technical assistance, counseling, and training to field program staff. Local programs include direct client intake, individual and group services for low-income residents. Every county in Florida is served by at least one field program.

The 2005 Legislature appropriated \$5 million for legal aid programs, which the Governor vetoed.⁴ The 2006 Legislature appropriated \$2.5 million, which the Governor did not veto.⁵ The Legislature also removed the 2002 restriction that limited funding to seven pilot programs. Thus, 2006-07 funding of \$2.5 million is for distribution by the Florida Bar Foundation among the 20 judicial circuits, whereas the \$2 million funding in 2002-03 was for the seven pilot circuits.

Law Libraries

Law libraries, generally housed in county courthouses or annexes, maintain treatises on specific legal areas, case compendiums, and statutes for use by public and private attorneys and their staff, the general public, and persons appearing in court without a lawyer.

Prior to implementation of Revision 7, law libraries, like legal aid programs, were funded by a service charge imposed on probate and civil proceedings. At the time of Florida TaxWatch's March 2005 report cited above, it was clear, at least for Miami-Dade County, that the new funding source likely would not be sufficient to maintain its law library at the pre-Revision 7 level.

The 2005 Legislature provided law libraries with an additional source of funding. Under Section 318.18(13)(a), Florida Statutes, a county or unit of local government may impose a surcharge of up to \$15 on non-criminal traffic infractions or certain criminal violations for the purpose of funding state court facilities. The 2005 Legislature amended this statute to allow a county or unit of local government to use up to 25% of revenue from the surcharge to support law libraries that provide a level of service equal to that provided before July 1, 2004, including continuation of library facilities in or near county courthouses or annexes.⁶

Trial courts administrators' responses to questions concerning law libraries are in Appendix B.

Summary of Trial Courts Survey Responses

Court administration satisfied with law library operations in Broward, Duval, and Hillsborough Counties

Court administration dissatisfied with law library operations in Escambia and Miami-Dade Counties

Law library support is through public library systems in Orange and Osceola Counties

Law library is consolidated with county libraries in DeSoto and Monroe Counties

Law library is maintained by local Bar Associations in Charlotte and Collier Counties

No law libraries, or limited facilities, or limited access to legal information in Baker, Calhoun, Clay, Franklin, Glades, Gulf, Hardee, Hendry, Holmes, Jackson, Levy, Liberty, Nassau, Putnam, St. John's, Wakulla, Walton, Washington Counties.

Teen Court

Teen court is an alternative to the traditional juvenile justice system. It operates on the premise that positive peer pressure can help change illegal behavior. Participants in teen court proceedings, including prosecuting and defense counsel and other court personnel, except for judges, are youth.

Most teen courts require defendants to plead guilty prior to participating in the program. Offenders are held accountable for substance use and misdemeanor offenses, and are sentenced by a jury of their peers to community service, counseling, restitution, or a combination of these.

Pre-Revision 7, the teen court program, like legal aid and law libraries, had a revenue source dedicated solely to it. Teen Courts were funded pursuant to a Florida law authorizing counties to enact ordinances assessing up to a \$3 court cost in circuit and county courts against persons who violated criminal laws, municipal and county ordinances, or paid fines or civil penalties in traffic cases.

At the time of Florida TaxWatch's March 2005 report cited above, it was unclear whether the new funding source for teen courts authorized under Section 939.185, Florida Statutes (which lumped funding for this program in with legal aid and law libraries) would generate sufficient revenue to match that collected under the prior statutory funding source.

The 2005 Legislature provided teen court programs an alternative source of funding similar to the one that existed prior to July 1, 2004. It also authorized counties to re-enact the above mentioned \$3 court cost. If a county enacts such an ordinance, the teen court program in that county may not receive court costs collected under s. 939.185(1)(a)4.

Summary of Trial Courts Survey Responses Concerning Teen Court		
<u>Counties reported to have adopted ordinances to separately fund Teen Court under 938.19</u>		
Alachua	Flagler	Palm Beach
Baker	Gadsden	Pasco
Bradford	Hernando	Pinellas
Brevard	Highlands	Polk
Broward	Leon	Sarasota
DeSoto	Manatee	St. Johns
Duval	Marion	St. Lucie
Escambia	Miami-Dade	Volusia
<u>Counties reported to be funding Teen Court under 939.185</u>		
Bay	Okaloosa	
Charlotte	Orange	
Collier	Osceola	
Hendry	Pasco	
Hillsborough	Pinellas	
Holmes	Santa Rosa	
Jackson	Volusia	
Lee	Washington	
Monroe		

Counties that have adopted ordinances to separately fund Teen Court pursuant to Section 938.19 are prohibited from using 939.185 funds to also fund Teen Court.⁷

Recommendations

1. Legislative consideration should be given to providing a stable funding source for service delivery pursuant to the 2002 Florida Access to Civil Legal Assistance Act. Under this Act, assistance is provided to low-income eligible clients regarding their rights and duties under family and juvenile law, protection from domestic violence, elder and child abuse, and immigration. The 2002 Legislature appropriated \$2 million to fund pilot programs in seven judicial circuits. The 2006 Legislature appropriated \$2.5 million and made all 20 circuits eligible.
2. A cooperative effort among judicial circuits and counties, assisted by law library associations, university and community college resources, and the Florida Department of State, should be considered in order to work toward standardizing law library facilities and public access to legal information in large, medium and small counties. Emphasis should be placed on access to electronic law materials.
3. The 2007 Legislature should clarify the distribution of revenue collected by counties that impose an extra \$65 court cost under Section 939.185, F.S. and fund their Teen Court program under Chapter 2005-236, Laws of Florida.

Endnotes

¹ Sections 68.094 through 68.104, Florida Statutes

² Revenue is allocated equally for a) legal aid programs required under Section 29.008(3)(a), F.S.; b) personnel and legal materials for the public as part of a law library; c) teen court programs, juvenile assessment centers, and other juvenile alternative programs; and d) innovations to supplement state funding for the elements of the state courts system identified in Section 29.004, F.S and county funding for local requirements under Section 29.008(2)(a) 2., F.S.

³ Funding was \$2 million in 2002-03 per Specific Appropriation 1599A, ch. 2002-394, Laws of Fla.. In 2003-04, it was reduced to \$1.5 million, per Specific Appropriation 1476A, ch. 2003-397, Laws of Fla. It dropped to \$1 million in 2004-05 per Specific Appropriation 1535A, ch. 2004-268, Laws of Fla. Funding in these years was for seven pilot programs in circuits 1, 4, 9, 12, 13, 17, and 20. For 2005-06, the Governor vetoed a \$5 million appropriation, providing no funding during that year. For 2006-07, the Governor approved \$2.5 million for up to all 20 circuits as opposed to just the seven pilot circuits funded in 2003-04, and 2004-05.

⁴ See Specific Appropriation 1560A, Chapter 2005-70, Laws of Fla.

⁵ See Specific Appropriation 1650, ch. 2006-25, Laws of Fla.

⁶ See s. 48, ch. 2005-236 Laws of Fla.

⁷ See 938.19(7) and 939.185(1)(a)4.

JUSTICE SYSTEM TECHNOLOGY

Statutory Mandate of an Integrated Information System Has Not Yet Been Achieved

Florida TaxWatch's March 2005 report, *Proper Management, Accountability and Funding of the State Courts System is Crucial to Rule of Law, Taxpayer Confidence, and a Healthy Economy*, examined two initiatives of the 2004 Legislature that were intended to bring justice system technology up to 21st century standards, while implementing Revision 7 to Article V of the Florida Constitution:

► An Article V Technology Board, charged with developing a plan for technology governance to achieve information sharing throughout the justice system¹ and

► Technology acquisition and maintenance for trial courts, state attorneys, and public defenders, using revenue from a service charge on documents recorded and maintained by clerks of court.

Following is a summary of progress made on these issues, and remaining work.

Article V Technology Board

Court access to justice system information statewide is crucial to informed and appropriate disposition of criminal and civil cases. To help achieve this goal, the 2004 Legislature created an Article V Technology Board with the following charge²:

► Identify minimum data elements and functional requirements needed by each state courts system entity to conduct business transactions, and needed by the Legislature to maintain policy oversight

► Identify security and access requirements needed to establish and maintain data integration

► Identify information standards and protocols for data integration, including common identifiers, common data field elements, and a common data dictionary

► Recommend policy, functional, and operational changes to achieve access to needed data and

What Is Court Technology?

Under state law, court technology includes all facilities and equipment owned, leased, or used by judges and staff of the state courts system, plus technology used by state attorneys, public defenders and their staff, and clerks of circuit and county courts and their staff performing court-related functions. Such facilities and equipment provide "communications services," which are statutorily defined as reasonable and necessary transmissions, emissions, and receptions of signs, signals, writings, images, and sounds of intelligence of any nature by wire, radio, optical, audio equipment, or other electromagnetic system.

Court technology and communications services include:

► All computer networks, hardware and software, modems, printers, wiring, and network connections

► Maintenance, support staff, and services, including county-funded support staff in the offices of circuit and county courts, state attorney and public defender offices, and

► Training, supplies, and line charges necessary for an integrated computer system for the above entities³

► Propose alternative integration models. For each model:

- Analyze and describe specific policy, functional, operational, fiscal, and technical advantages and disadvantages, including specific plans and integration requirements for the Judicial Inquiry System and the Comprehensive Case Information System⁴
- Propose a system for maintaining security to prevent unauthorized access to applications or data and
- Propose an operational governance structure to achieve and maintain the required level of integration among users at the state and judicial circuit levels

Consistent with a recommendation in Florida TaxWatch's March 2005 report, the Office of State Courts Administrator and the Florida Association of Court Clerks and Comptrollers (FACC) completed a memorandum of understanding on the use of Comprehensive Case Information System data to populate the Judicial Inquiry System. This was the linchpin for the judicial branch to access relevant sources of information and records in fulfilling its adjudicatory responsibilities, as summarized below and described in Florida TaxWatch's April 2006 report, *Increasing the Safety of All Floridians through Data Integration in the State's Justice System*. This report reviewed recommendations in the Article V Technology Board's January 2006 final report, and presented a strategy for data integration in the state justice system.⁵

As outlined below, some of the Board's recommendations, which were consistent with Florida TaxWatch's review, were considered by the 2006 Legislature.⁶

Technology Governance

The Article V Technology Board report proposed creation of a permanent statewide technology governance board. Florida TaxWatch suggested that this proposal was premature since there was not yet a integrated justice system to govern. Instead, TaxWatch recommended that the existing board be continued until June 30, 2008 in order to complete its critically important work.

A statewide governance board was not part of legislation (HB 7235) passed by the House during the 2006 General Session. Instead, the bill provided for the Article V Technology Board to continue its work by January 1, 2007. Because this bill did not clear the Legislature, the Board ceased to exist after June 30, 2006.

HB 7235 also provided for Article V Technology Advisory Councils in each of the 20 judicial circuits to develop strategic plans to address existing court-related technology and unmet court technology needs. The Councils were to promote secure and reliable data integration among justice system entities including state courts, the state attorney and public defender, clerks of court, sheriffs, counties in each circuit, and state agencies involved in the justice system. However, because HB 7235 did not clear the Legislature, neither the statewide board nor the judicial circuit councils were enacted into law.

This circuit is unable to fulfill the statutory requirements of Section 44.108, Florida Statutes. Current technology does not allow the review of files in each of our counties electronically from one location in the circuit.

Fifth Judicial Circuit
(Citrus, Hernando, Lake, Marion, and Sumter Counties)

Comprehensive Case Information System

The Comprehensive Case Information System (CCIS) is a database and information system that includes data elements relating to cases filed in each county.

Because the CCIS is publicly funded to serve a public function and is maintained by the Florida Association of Court Clerks and Comptrollers (FACC), House Bill 7235 required the Legislature's Joint Legislative Auditing Committee to provide for an annual operational audit of the use of CCIS fees by an independent CPA, Florida's Auditor General, or other entity. In a letter dated April 28, 2006, the Chair of the FACC's Legislative Committee agreed to provide the Legislature with a copy of the annual audit report regarding the CCIS. The letter also states the FACC's intent to meet with legislative appropriations staff periodically to provide CCIS status and budgetary reports, including proposed functional expansions together with detailed costs.⁷

HB 7235 directed the state and the FACC to enter into a memorandum of agreement providing for transfer of CCIS to the state if the FACC fails to maintain the CCIS. In the above cited April 28th letter, the FACC agreed to escrow the source code and related software for CCIS to the state in order to assure that the public investment made in the CCIS application will continue regardless of Association participation.

Consistent with the report of a consultant hired by the Article V Technology Board,⁸ Florida TaxWatch's April 2006 report, *Increasing the Safety of All Floridians through Data Integration in the State's Justice System*, recommended reducing the statutory service charge that funds the CCIS to a rate that matches the cost of maintaining it. House Bill 7235, as introduced, reduced by one half the service charge that funds the CCIS. The House-passed version did not include this provision.

The Florida Association of Clerks of Court and Comptroller is committed to working with the Legislature and the Courts to insure that the CCIS system is developed appropriately and the State's investment is protected in the years to come.

*Chair, Legislative Committee
FACC*

Funding Technology

The 2004 Legislature imposed a \$4 service charge on most documents recorded and maintained as official records by clerks of court.⁹ Half (\$2.00) of the revenue collected from this charge is distributed to the 67 boards of county commissioners to fund trial court technology, plus technology for court-related functions of state attorneys and public defenders.¹⁰ The Legislature did not specify portions to distribute to each entity.

Because trial courts have a broader mission than state attorneys and public defenders, Florida TaxWatch's March 2005 report, *Proper Management, Accountability and Funding of the State Courts System is Crucial to Rule of Law, Taxpayer Confidence, and a Healthy Economy* recommended amending state law to earmark \$1 of the \$2 for trial courts and \$.50 each of the remaining \$1 for state attorneys and public defenders in each of the 20 judicial

Technology continues to be a challenge. While the funding has improved, the fact that each county "controls" the funding source woefully limits the judicial circuit's ability to implement technological change. The technology fund needs to be managed at the circuit level to maximize its economy.

*14th Judicial Circuit
(Bay, Calhoun, Gulf, Holmes, Jackson,
and Washington Counties)*

circuits. This recommendation would help ensure that each entity has clearly defined revenue for the technology necessary to accomplish its prescribed tasks.

In addition, TaxWatch recommended that the \$2 service charge be administered by the judicial circuit, rather than county by county.¹¹ The reason is that, particularly in rural counties, the amount generated by the service charge is insufficient to fund court technology. It should be noted that the Third Circuit in North Florida has accomplished this by agreement among its seven relatively small counties. Achieving similar agreements in circuits with a mix of county sizes may be more problematic.

Justice System Slips Statutory Deadline

Section 29.008, Florida Statutes, requires an “integrated” computer system to be operational by July 1, 2006. While the 2005 Jessica Lunsford Act is an important step forward for the courts’ Judicial Information System (JIS), the Clerks of Courts’ Comprehensive Case Information System (CCIS), and the Florida Department of Law Enforcement, much remains to be done to achieve the statutory goal.^{12,13}

State law defines “integration” as the achievement of minimum requirements to permit authorized users of the state courts system, legislature, and executive access to data reasonably required for the performance of official duties, regardless of where the data are maintained. This access is intended to enable multiple users at the state level, and within each judicial circuit, to securely and reliably transfer and exchange state courts system and legislative reporting data.

An integrated system must permit electronic exchange, over secure networks, of judicial case background data, video evidence information, and sentencing score sheets stored in case management systems. The system must also facilitate exchange of case disposition information plus budgeting, accounting, auditing, and performance accountability data across multiple state and county information systems within each of the 20 judicial circuits.¹⁴

Current Technology Issues

Florida TaxWatch notes three technology issues currently in progress:

► **Catalogue of common data elements.** Developing a catalogue of common data elements is critical to data sharing and integration throughout Florida’s justice system. The Article V Technology Board adopted “Extensible Markup Languages” as the standard for exchanging criminal and non-criminal data elements. The Board also made significant progress in cataloguing data elements from several justice system agencies representing law enforcement and non-law enforcement segments of the system.

Florida TaxWatch’s April 2006 report, *Increasing the Safety of All Floridians through Data Integration in the State’s Justice System*, recommended that the Legislature direct expansion of the Board’s catalogue.

► **Electronic access to court records.** Court records are in the process of being made available electronically over the internet, and the Florida Supreme Court is developing policies in this area. Two administrative orders issued by the Court on June 30, 2006 are steps in the process toward a comprehensive policy on electronic access to court records. Work that has been going on for several years shows signs of bearing fruit.

► **E-filing.** This involves attorneys and pro se litigants (persons representing themselves in court proceedings) electronically filing papers in cases.

Integral to the above issues is court clerks' development of electronic court files. Some clerks, such as in Manatee County, are out front on this issue. Electronic access to court records raises the question of fees to help pay for development of electronic court files, vendors to create them, and fees to access them.

Legislative Directive

Proviso language in the 2006-07 General Appropriations Act created two positions in the Office of State Courts Administrator to integrate the information systems of the state courts system. This will reduce the time and costs of processing criminal and civil cases, and facilitate inter-agency data exchange. These positions are tasked with maintaining the catalogue of common data elements developed by the Board and furthering the use of data exchange tools.¹⁵ Florida TaxWatch views this legislative directive as an important step toward the critical goal of justice system data integration.

Recommendations

1. Because trial courts have a broader mission than state attorneys and public defenders, state law should earmark \$1 of the \$2 for trial courts in each circuit, and \$.50 each of the remaining \$1 for the state attorney and public defender in each circuit. This would help ensure that these entities have clearly defined revenue for the technology necessary to accomplish their prescribed tasks. (See Endnote 11)

2. The \$2 service charge should be administered by judicial circuit, rather than county by county. The reason is that, particularly in rural counties, the amount generated is insufficient to fund court technology.

3. The 2007 Legislature should carefully consider the following technology-related items:

► Development of statewide policies for data security and access, including standards and protocol in areas such as user authentication, disaster recovery and continuity of operations, individual logins, and risk assessments and cyber-security audits

► Creation and maintenance of a unified statute table to facilitate greater uniformity in the criminal charging process, which would promote greater uniformity of individuals' criminal history records

► Independent statewide oversight of justice system data integration. Otherwise, integration will likely occur in an inefficient manner with unintended consequences that could cost taxpayers.

► Judicial circuit technology governance, since most circuits in the state are composed of more than one county

► Based on findings by the auditor retained by the Florida Association of Court Clerks and Comptrollers concerning the use of public funds to operate and maintain the Comprehensive Case

Information System (CCIS), the public service charge levied for this purpose should be adjusted upward or downward.

For details on the preceding recommendations, please see *Increasing the Safety of All Floridians through Data Integration in the State's Justice System* (Florida TaxWatch, April 2006).

Endnotes

¹ Florida's justice system includes the state courts system, public defenders, state attorneys and their staff, and clerks of the circuit and county courts and their staff performing court-related functions.

² This paragraph summarizes Sections 28.24(12)(e)1 and 29.008, Florida Statutes.

³ Once the integrated system becomes operational, counties can reject requests to purchase communication services not in compliance with standards, protocols, or processes adopted by the Article V Technology Board created in 29.0086.

⁴ **JIS** is an information system developed by the Office of the State Courts Administrator (OSCA), which is the administrative arm of Florida's courts system, using a combination of federal grant funds and funding pursuant to the 2005 Jessica Lunsford Act. It is designed to allow judges to access and review information statewide in furtherance of their decision-making responsibilities. **CCIS** is a database and information system that includes data elements relating to cases filed in each county. It was developed by the Florida Association of Court Clerks and Comptrollers (FACC), a private, nonprofit corporation composed of clerks of court and comptrollers in each of Florida's 67 counties.

⁵ Some of the measures were in House Bill 7235, which passed the House, but was not considered by the Senate. There was no Senate companion bill to HB 7235 E 2. Some of the measures are in the 2006-07 General Appropriations Act. See page 44 of this report on common data elements.

⁶ See Section 29.008(1)(f)2. and (h), Florida Statutes.

⁷ Letter dated April 28, 2006 from David Ellspermann, Chair, of the Legislative Committee, Florida Association of Court Clerks and Comptrollers, to Representative Joe Negron, Chair of the House Fiscal Council, and Senator Lisa Carlton, Chair of the Senate Ways and Means Committee

⁸ The consultant's report was adopted by reference in the Board's final report.

⁹ Section 28.24(12)(e)1., Florida Statutes (2005) provides:

Service charges by clerk of the circuit court. –

The clerk of the circuit court shall charge for services rendered by the clerk's office in recording documents and instruments and performing the duties enumerated in amounts not to exceed those specified in this section.

(12) For recording, indexing, and filing any instrument not more than 14 inches by 8¹/₂ inches, including required notice to property appraiser where applicable:

(e) An additional service charge of \$4 per page shall be paid to the clerk of the circuit court for each instrument listed in s. 28.222, except judgments received from the courts and notices of lis pendens, recorded in the official records. From the additional \$4 service charge collected:

1. If the counties maintain legal responsibility for the costs of the court-related technology needs as defined in s. 29.008(1)(f)2. and (h), 10 cents shall be distributed to the Florida Association of Court Clerks and Comptroller, Inc., for the cost of development, implementation, operation, and maintenance of the clerks' Comprehensive Case Information System, in which system all clerks shall participate on or before January 1, 2006; \$1.90 shall be retained by the clerk to be deposited in the Public Records Modernization Trust Fund and used exclusively for funding court-related technology needs of the clerk as defined in s. 29.008(1)(f)2. and (h); and \$2 shall be distributed to the board of county commissioners to be used exclusively to fund court-related technology, and court technology needs as defined in s. 29.008(1)(f)2. and (h) for the state trial courts, state attorney, and public defender in that county. If the counties maintain legal responsibility for the costs of the court-related technology needs as defined in s. 29.008(1)(f)2. and (h), notwithstanding any other provision of law, the county is not required to provide additional funding beyond that provided herein for the court-related technology needs of the clerk as defined in s. 29.008(1)(f)2. and (h). All court records and official records are the property of the State of Florida, including any records generated as part of the Comprehensive

Case Information System funded pursuant to this paragraph and the clerk of court is designated as the custodian of such records, except in a county where the duty of maintaining official records exists in a county office other than the clerk of court or comptroller, such county office is designated the custodian of all official records, and the clerk of court is designated the custodian of all court records. The clerk of court or any entity acting on behalf of the clerk of court, including an association, shall not charge a fee to any agency as defined in s. 119.011 the Legislature, or the State Court System for copies of records generated by the Comprehensive Case Information System or held by the clerk of court or any entity acting on behalf of the clerk of court, including an association.

¹⁰ Section 29.008(1)(f)2. and (h), Florida Statutes (2005) provides:
29.008 County funding of court-related functions. –

(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" shall include the offices and staffing of the guardian ad litem programs. 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:

(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, 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:

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, and public defenders, 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, 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 communication services included in this subparagraph not in compliance with standards, protocols, or processes adopted by the board established pursuant to s. 29.008

(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 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, and the offices of the clerks of the circuit and county courts performing court-related functions.

¹¹ The concept underlying Florida TaxWatch's recommendation was included in 2006 House Bill 7235, passed by the House on May 1, 2006, but died in Senate messages. This bill created a state "Court Technology Trust Fund" into which the service charge would be deposited. The trust fund would be used by each judicial circuit technology advisory council to prepare strategic plans, and the proceeds of the trust fund would be distributed to counties as state financial assistance to offset the costs of meeting court technology needs.

¹² The 2005-06 General Appropriations Act provided the following:

Line Item 2998 - DATA PROCESSING SERVICES

OTHER DATA PROCESSING SERVICES

FROM GENERAL REVENUE FUND \$924,088

FROM GRANTS AND DONATIONS TRUST FUND . . . \$40,000

Funds in Specific Appropriation 2998 from the General Revenue Fund along with recurring funds of \$509,500 and non-recurring funds of \$2,520,500 from other data processing services from the General Revenue Fund as provided for in Section 26 of House Bill 1877, may be used by the Office of State Courts Administrator (OSCA) to accomplish the statewide deployment of the Judicial Inquiry System. The purpose of these funds is to provide for network access to the Department of Corrections, each county clerk database, and circuit and county courts.

OSCA shall submit to the chairs of the Senate Ways and Means Committee and House Fiscal Council by August 15, 2005, a plan detailing how the deployment will be accomplished. The plan shall include a projected timeline and expenditure for each deliverable.

OSCA shall submit to the chairs of the Senate Ways and Means Committee and House Fiscal Council a quarterly project status report describing the progress made to date, actual completion dates, actual costs incurred and current issues and risks being managed. Where appropriate, the status reports should address how the Judicial Inquiry System will comply with any applicable recommendations identified in the Article V Technology Board reports provided to the Legislature.

¹³ Florida TaxWatch's assessment of how well each recommendation had been implemented through the early part of 2006, and what remained to be accomplished, is in its April 2006 report. ⁷ It should be noted that since this report was released, the Florida Association of Court Clerks and Comptrollers (FACC) has (a) committed to provide the Legislature with a copy of its annual audit report regarding the Comprehensive Case Information System (CCIS); (b) expressed the FACC's intent to meet periodically with legislative appropriations staff to provide CCIS status and budgetary reports, including proposed functional expansions together with detailed costs, and (c) agreed to escrow the source code and related software for CCIS to the state in order to assure that the public investment that has been made in the CCIS application will continue regardless of FACC participation.

¹⁴ ch. 2005-28

¹⁵ Specific Appropriation 3238, ch. 2006-70, Laws of Fla. "From the funds in Specific Appropriation 3238, 2 full-time equivalent positions are provided to the Office of State Courts Administrator, Information Services, to integrate the information systems of the state courts system to reduce the time and costs of processing criminal and civil court cases and assist with inter-agency data exchange efforts. Tasks include but are not limited to maintaining the catalogue of common data elements developed by the Article V Technology Board to be accessible to state court system entities and participants and furthering the use of the Justice Information Exchange Model (JIEM) tool or similar tools, Global Justice XML, and Oasis Legal XML by entities within the state court system."

COMPETITIVE COMPENSATION FOR STATE COURTS EMPLOYEES

Florida TaxWatch Update

As requested by the Chief Justice and State Courts Administrator, in the spring of 2006, Florida TaxWatch studied court employee compensation and performed a comparative salary analysis of selected judicial and executive positions. TaxWatch also evaluated a report prepared for the Supreme Court by Management Advisory Group of Tallahassee and Northern Virginia, from three perspectives:

- ▶ Employee hiring and retention issues
- ▶ Any adverse impacts of reported employee compensation deficiencies on court services provided to Florida taxpayers and
- ▶ The cost-effectiveness, fairness, and benefit to all key parties relative to employee compensation adjustments in the SCS 2006-07 legislative budget request

The following material updates last spring's salary analysis for consideration during the 2007-08 state budget development process and the 2007 Legislative Session.

The State Courts System (SCS) is requesting \$12.574 million for 2007-08 to fund a new compensation and classification system. This request is guided by a compensation and classification study conducted by Management Advisory Group of Tallahassee, Florida and Northern Virginia. The compensation system proposed by the consultant would give 74% of SCS positions (2,260 of 3,211 employees, excluding judges) an approximate average \$5,862 salary increase. These raises are intended to make SCS more competitive with counties, municipalities, state attorney and public defender offices statewide, and with executive branch agencies and legislative offices in Tallahassee.

Florida TaxWatch surveys of trial court administrators in April and August 2006 captured system-wide examples of hiring and retention problems due to a combination of below-market starting salaries and subsequent lack of advancement through pay ranges. (See Appendix C)

A Florida TaxWatch analysis shows that current SCS salaries for 72.7% of 844 matched positions are lower than their executive branch counterparts by an average 12.3%, while salaries for 27.3% of the matched SCS positions are higher than in the executive branch by an average of 7.9%. The SCS's \$12.574 million request to fund a new compensation system is close to an estimated \$14.6 million needed to equalize all SCS and executive branch salaries, based on Florida Taxwatch calculations for the matched positions.

Rationale for 2005 Salary Study

The Management Advisory Group study was prompted by two concerns. First, hiring and retention problems reported by trial courts in Florida's 20 judicial circuits and the Office of State Courts Administrator.

Attorneys, and particularly law clerks referred to by the consultant as "the backbone of the courts system," are the most competitive to recruit at the Circuit Court, District Court of Appeals, and Supreme Court levels. Trial Court judges' and administrators' responses to the April and August 2006 Florida TaxWatch surveys cited additional challenges related to hiring and retaining family court specialists, information technology, budget and accounting personnel, court reporters and interpreters, senior level administrators, and judicial assistants.

A second concern that prompted the Management Advisory Group study is internal inequities created since the SCS's last comprehensive pay study in 1990. Especially problematic are approximately 1,200 county-funded court positions, many higher paying and/or functionally different from existing SCS positions, that were established legislatively as SCS assumed new responsibilities under Revision 7 of Judicial Article V of the state constitution, approved by voters in 1998. Morale problems are said to have resulted from some former county employees entering SCS at higher salaries than some incumbents with similar job duties. Former county employees now comprise approximately 30% of the SCS workforce, excluding judges.

The consultant study revealed that compensation inequities exist throughout the Judicial Branch, and it confirmed the Branch's long time belief that salaries are not competitive with the market. The Branch will have the ability to correct these inequities and become a competitive employer only if the Legislature approves funding to implement the new compensation and classification system.

*Trial Court Administrator
Eleventh Judicial Circuit*

New Compensation System Recommended

The Management Advisory Group's December 2005 report to the Supreme Court recommends a new compensation system to help the State Courts System compete more successfully with other public sector organizations and selected private sector employers in attracting high quality employees, and to create pay equity within and between SCS job classes. The consultant recommended the new system after:

►Evaluating SCS positions, using its copyrighted job analysis questionnaire, to obtain employees' self-ranking of 14 factors in their day-to-day work, which are common to some degree in all jobs. The ranking of each factor for a class of positions was determined by averaging the responses of employees in the class. The employees' supervisors either concurred with, or overrode, their rankings. Total points on each of the 14 factors determined the worth of positions in a job class, compared to other classes.

►Evaluating salary data, by job class, provided by 37 competitor employers in Florida and state courts systems in California, New York, Texas, and Georgia. The data relates to positions that competitor employers determined are comparable to those of SCS, based on job summaries provided to them by the consultant. Comparisons almost exclusively are based on salary ranges, rather than actual employee salaries. Only the City of Tallahassee provided actual employee salaries.

Following evaluation of salary range data, the consultant stipulated that the market value of a class of SCS positions is the midpoint of an average of competitor organizations' salary ranges for comparable positions.

Based on SCS employee responses to the job analysis questionnaire and salary survey data, the consultant concluded that 2,260 (74%) of SCS employees are paid below the market value. The employees were categorized in two overlapping groups: 1,667 (54.7%) who have worked in the same position class for 10 or more years and were paid below minimum salaries proposed by the consultant, and 1,290 (42%) who were paid 10% or less above the SCS minimum salaries for their respective positions.

Based on what the consultant referred to as accepted public sector pay equity methodology, the recommended compensation system proposed higher minimum and maximum salaries for all of SCS's 167 position classes in 69 pay grades. Minimum and maximum salaries would range from about 30% below to about 30% above their market value, noted above as the averaged mid-point of salary ranges of position classes in 37 competitor organizations that the competitors deemed comparable to SCS position classes.

Florida TaxWatch acknowledges that a large, complex project, such as that undertaken by the Management Advisory Group, is fraught with difficulties. TaxWatch staff discussed some reservations concerning the consultant's methods with the consultant and staff of the Office of State Courts Administrator. TaxWatch then checked and triangulated the consultant's findings by (a) computing actual salary differences, based on a comparison developed by the Office of State Courts Administrator, of positions that are common to the Judicial and Executive Branches of Florida's state government, and (b) contacting trial court administrators to document statewide impacts of compensation issues studied by the consultant.

The consultant's recommended \$18.4 million compensation increase was reduced by the Office of State Courts Administrator to \$15.6 million for 2006-07, and it has been further reduced to \$12.574 for 2007-08.

Additional Funding Request

In addition to the \$12.574 request for 2007-08, the SCS also seeks \$1.876 million to create parity between more of its attorney and management positions, and similar positions in the executive and legislative branches of Florida's state and local governments. This request would provide 100% state paid health, life, and short-term disability insurance for 562 attorney positions and up to 93 management positions. It should be noted that the legislatively enacted 2001 civil service reform act¹ resulted in more than 16,000 executive branch positions receiving this benefit. SCS attorneys are currently the only attorneys in state government not receiving it. Senior management retirement benefits would be provided for up to 93 SCS management positions, along with 41 management positions currently receiving this benefit.

Senior Management designation increases the accrual rate for retirement benefits from 1.6% to 2.0% for each year of creditable service. All assistant state attorneys and all assistant public defenders are eligible to participate in the senior management retirement service class.

Court managers point out that the increase would reinstate this benefit to some former county paid court managers who lost it when they moved to the state payroll in July 2004 with the implementation of Revision 7. Court managers also note that Section 121.055 (b)1b, Florida Statutes, provides for up to ten county management positions in senior management retirement. Local agencies with 100 or more positions may add additional positions not to exceed one percent of their positions over 100.

Internal Inequities

As noted above, SCS pay inequities are said to have been created since SCS's last comprehensive pay study more than 15 years ago, and particularly in 2004, with the implementation of Revision 7. Three factors have caused internal inequities and managerial challenges:

► In 2004, SCS placed approximately 1,200 former county-funded positions, which were established legislatively for implementation of Revision 7, into SCS position classes, based primarily on work performed. Although the 2005 consultant study determined that classification matching between former county-funded positions and SCS positions generally was done well, court managers acknowledge that some assignments of county-funded positions to SCS classes were inconsistent with work performed.

These assignments were made to accommodate county employees who had been paid above SCS position classes in which they logically fit, based on the work they would undertake to implement Revision 7. For example, a person who was performing Administrative Assistant I tasks in a county, but was paid equivalent to an SCS Administrative Assistant II was assigned to SCS as an Administrative Assistant II.

The trial courts serve the broadest segment of Florida's citizens, rich or poor, educated or illiterate, joyful or despaired, of any government entity. The competence of employees providing services influences the level of services.

*Trial Court
Administrator Fourth
Judicial Circuit*

► Although matches were made as logically as possible, some county-funded positions that did not have SCS equivalents were assigned to SCS classes based on the incumbents' level of compensation, rather than their primary job functions.

► No former county employees performing the same or similar jobs at higher salaries than SCS employees took pay cuts or demotions in July 2004 or thereafter.

Trial Courts Survey

As noted above, April and August 2006 Florida TaxWatch surveys of trial court judges and administrators (see Appendix C) update the Management Advisory Group's 2005 finding that a major reason for SCS's compensation problems, both salary levels and internal equity, is lack of employee advancement through pay ranges.² The pay practices of counties, SCS's chief competitor for many employees, are more generous than those of the state. As a result, county-funded employees move through pay ranges much faster than state employees.

Summary of Trial Courts Survey Responses

► The Thirteenth Judicial Circuit (Hillsborough County) notes that the county's pay plan provides "step by step" increases within salary grades; a pay-for-performance evaluation process that offers selected employees additional pay incentives, and longevity bonuses at fixed intervals, in recognition of employees' length of service.

► The Eighteenth Judicial Circuit (Brevard and Seminole Counties) reports that, historically, comparing the financial progression of court staff in like positions, but different funding sources, shows county-funded employees have surpassed state funded employees in salary dollars and position advancement.

► The Sixth Judicial Circuit (Pasco and Pinellas Counties) reports that two Court Program Specialists with five and eight years in their positions earn \$496 and \$774 above the minimum, respectively, of a job class with a \$30,000 pay range. An Administrative Assistant with 11 years in the position earns \$2,700 above the minimum in a \$23,000 pay range. The Trial Court Administrator suggests these situations send a message to employees that longevity will not be rewarded.

► The Fourteenth Judicial Circuit (Bay, Calhoun, Gulf, Holmes, Jackson, and Washington Counties) reports that two county salary studies since 1999 have adjusted salaries for all county positions upward.

► The Fifteenth Judicial Circuit in Palm Beach County reports that the county constantly reviews its classification and pay policies to stay current with salary and cost of living trends.

► The Twelfth Judicial Circuit (Sarasota, Manatee, and DeSoto Counties) reports that the circuit's Chief Trial Court Technology Officer is a state employee who is hired at the minimum. All other technology positions are county-funded and can be hired up to the maximum of their pay ranges.

Employee Hiring and Retention

Hiring Competition

Local governments, law firms, and other private sector organizations are the SCS's principal employment competitor outside Tallahassee, where approximately 85% of its employees work. Other state agencies and legislative offices are the principal competitor in the capital city.

Court managers' staff say that non-competitive starting salaries prevent trial courts, in most circuits, and the Office of State Courts Administrator (OSCA), from hiring top applicants to fill positions. The District Courts of Appeal generally have not experienced this degree of difficulty, except in filling selected positions, such as deputy clerks, because they have sufficient resources for greater flexibility.

Hiring Policy

Due to fiscal constraints, since 2003, the trial courts policy, which is also followed by the OSCA, has been to hire employees at the minimum salary of each of all 167 classes of positions.

An exception to this policy can be approved by the Trial Court Budget Commission (TCBC) after a position is advertised twice and a minimally qualified applicant does not accept an offer. Requests for exceptions are submitted to the TCBC Budget Management Committee and Executive Committee.

According to OSCA staff, five exceptions were approved between 2003 and 2005. Although the majority of requests were rejected, managers in most judicial circuits subsequently were able to hire without the chief judge exercising his/her option to appeal the Executive Committee's decision to the full TCBC.

I don't think that state employees expect we can compete salary-wise with private industry, but they do expect us to compete with other governmental agencies. They want to feel they are as important to the court as their friends are to their employers in the counties and cities in our circuit.

*Trial Court Administrator
Twelfth Judicial Circuit*

Florida TaxWatch notes it seems unlikely that candidates selected for SCS jobs, who are considering competing offers, will wait approximately four weeks while the Executive Committee considers a salary exception, and even less likely if an additional four weeks is required for the full TCBC to act on appeal of an Executive Committee decision.

Hiring Difficulties

Common sense suggests that the higher the caliber of employees attracted to SCS, the better the services that SCS can likely provide to taxpayers. Court administrators emphasize that non-competitive starting salaries for selected positions make it difficult to select top applicants to fill selected critical positions, and to retain experienced employees. They say that high job satisfaction does not compensate for wages that are not seen as commensurate with position responsibilities.

Appendix C lists numerous examples of hiring difficulties provided by trial court administrators and the Office of the State Courts Administrator (OSCA) in response to Florida TaxWatch surveys in April and August 2006.

These examples demonstrate, at a minimum, that there is a need for resources to provide increased flexibility for trial court and OSCA managers to hire above the minimum salary for selected, critical positions. In a competitive labor market, it is essential to offer salaries that can attract highly competent people.

The 2005 consultant study notes that recruitment programs are most effective when hiring ranges extend from the minimum to the midpoint of each position's salary range, as opposed to inflexible hiring rates. The study acknowledges that although new employees generally should be hired at the minimum of a range, securing highly skilled technical and managerial personnel sometimes necessitates hiring above the minimum. In such cases, the consultant recommends that the hiring supervisor's salary recommendation be reviewed by the appropriate SCS human resources office and approved by the State Courts Administrator.

An increase in case filings, and customers' demands and expectations on the courts to meet their needs in a timely and efficient manner, makes it imperative to recruit and retain the best employees in order to achieve sustained success.

*Trial Court Administrator
Eighteenth Judicial Circuit*

Retention

Trial Court Administrators responding to the Florida TaxWatch surveys stated that employees are loyal and feel that their jobs make a difference. However, pay structure deficiencies increasingly are causing people to seek other employment. Since July 2004, turnover among new employees hired at the state minimum has been much higher in some circuits than prior to implementation of Revision 7. Administrators also stated that it is becoming more difficult for employees to choose judicial administration as a career because of salary and advancement limitations.

State Courts System employees are held to a high standard, our activities are closely scrutinized, and outside employment may be prohibited. Because court salaries have not kept pace with other state or local government agencies, we often are in the position of losing our most experienced and skilled employees.

*Trial Court Administrator
Sixteenth Judicial Circuit*

Courts are very complex organizations, and there is sometimes a long learning curve involved in acquiring the knowledge base for an employee to be effective. Often, we look among our own for job advancement so that we can move someone into a position who already has court experience. It cannot be overstated how much job retention means once a trial court hires who it believes to be the right employee.

*Trial Court Administrator
Tenth Judicial Circuit*

Impact on Taxpayer Services

The impact of inexperienced staff and excessive turnover on taxpayer services is difficult to quantify. Court managers emphasize that an inability to fill selected positions with qualified applicants means hiring people who are not equipped, when hired, to do their job. Likewise, internal salary inequities can cause discontent and loss of motivation among employees, negatively affecting performance and productivity.

If courts do not have the flexibility to hire well qualified applicants above the minimum, and move good employees up in their pay range, they will experience significant “brain-drain” and delivery of mission-critical due process will suffer.

*Trial Court Administrator
Ninth Judicial Circuit*

Based on available data, Florida TaxWatch is unable to determine whether taxpayer services, to date, have been adversely impacted by hiring and retention difficulties and internal salary inequities. Fortunately, the transition to state funding since Revision 7 took effect on July 1, 2004, has been smoother than expected, with uninterrupted court operations and no visible effects on public access. However, common sense suggests that over time, the impact of hiring and retention problems likely will be felt.

Cost-effectiveness, Fairness, and Benefits of Recommended Compensation and Benefits Adjustments

Comparison of Positions in Florida’s Judicial and Executive Branches

Florida TaxWatch used a salary comparison, developed by OSCA staff, to compute salary differences among matched positions³ common to the Judicial and Executive Branches of Florida’s state government. Table 4 shows that 2005-06 SCS salaries for 72.7% of the matched positions were lower than their Executive Branch counterparts by an average 12.3%, whereas salaries for 27.3% of the matched SCS positions were higher by an average of 7.9%.

Table 4. Comparison of Matched State Courts System and Executive Branch Salaries

Matched SCS Positions	FY 2005-2006		
	# of FTEs	% of FTEs	Average % Salary Difference
Higher Salary than Exec.	230.75	27.3%	7.9%
Lower Salary than Exec.	613.75	72.7%	-12.3%

FTE = full-time equivalent

Source: Office of State Courts Administrator and Florida TaxWatch

SCS’s 2007-08 budget request is for \$12.574 million. Table 5 and Figure 1 compare the \$12.6 million request to an estimated \$14.6 million⁴ needed to equalize all SCS and Executive Branch salaries, based on calculations for the matched positions. However, because SCS’s main employment competitor statewide is higher paying local governments, after the requested pay increase, SCS salaries would remain 9% lower, on average, than competitive market salaries.⁵

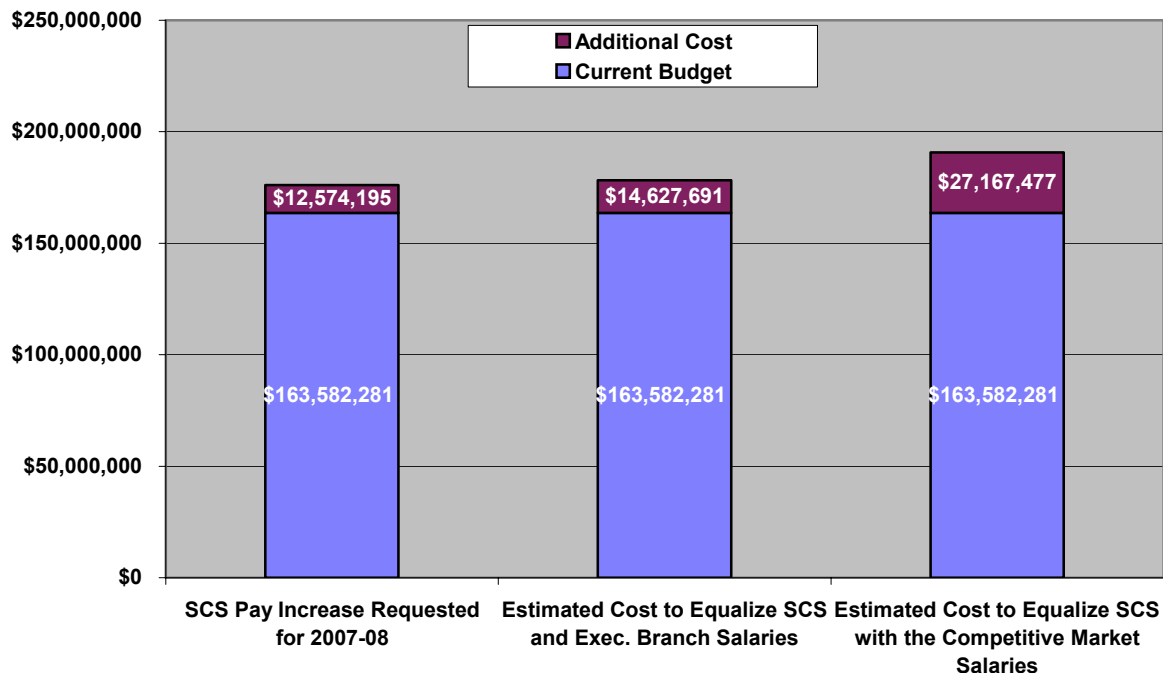
Table 5 and Figure 1 show that SCS's 2007-08 budget request of \$12.6 million⁶ to fund its new compensation system is still lower than an estimated \$14.6 million needed to equalize all SCS and Executive Branch salaries, based on calculations for the matched positions.

**Table 5. State Courts System (SCS) Budget Request For 2007- 08 and
Estimated Cost to Equalize SCS Salaries
With Executive Branch and Local Competitive Market Salaries**

SCS Salary Budget for 2006-07: \$163,582,281			
	2007- 08 SCS Salary Request	To Equalize SCS & Executive Branch Salaries	To Equalize SCS & Local Competitive Market Salaries
Average Salary Increase Per Position	7.7%	8.9%	16.6%
Additional Cost	\$12,574,195	\$ 14,627,691⁴	\$27,167,477
Total Salary Budget	\$176,156,476	\$178,209,972	\$190,749,768

Source: Office of the State Courts Administrator and Florida TaxWatch

Figure 1. Estimated Additional Cost of Pay Increase for State Courts System Employees



Summary

Florida TaxWatch evaluated a compensation and classification study produced for Florida's State Courts System by the Management Advisory Group of Tallahassee and Northern Virginia, from three perspectives:

- ▶ Employee hiring and retention issues
- ▶ Any adverse impacts of reported compensation deficiencies on court services provided to Florida taxpayers and
- ▶ The cost-effectiveness, fairness, and benefit to all key parties relative to employee compensation and benefits adjustments in the SCS 2007-08 legislative budget request

Florida TaxWatch surveys of trial court administrators in April and August 2006 captured system-wide examples of hiring and retention problems due to a combination of below-market starting salaries and subsequent lack of advancement through pay ranges. (See Appendix C)

A Florida TaxWatch analysis shows that current SCS salaries for 72.7% of 844 matched positions are lower than their executive branch counterparts by an average 12.3%, while salaries for 27.3% of the matched SCS positions are higher than in the executive branch by an average of 7.9%. The SCS's \$12.574 million request to fund a new compensation system is close to an estimated \$14.6 million needed to equalize all SCS and executive branch salaries, based on Florida Taxwatch calculations for the matched positions.

New Compensation System

The 2005 Management Advisory Group study recommended compensation system, based on an employee job analysis and salary survey of competing employers, to make SCS more competitive in hiring high quality employees, and create pay equity within and between SCS job classes.

Hiring and Retention Challenges

The state trial court hiring policy, which is followed by the Office of State Courts Administrator, is to start new employees at the minimum salary of their position class. Between 2003 and 2005, the Trial Court Budget Commission has approved just five exceptions to this policy.

The State Courts System's principal competing employers statewide are local governments, law firms, and other private sector organizations, except in Tallahassee, where it is other state agencies.

Responding to April and August 2006 Florida TaxWatch surveys, trial court administrators in the 20 circuits provided numerous examples of hiring and retention problems that result primarily from below market starting salaries and advancement through salary ranges. (See Appendix C)

A Florida TaxWatch analysis shows that SCS employees earn lower salaries in nearly 73% of position classes, similar to those funded in the Executive Branch of state government.

SCS's 2007-08 budget request of \$12.6 million compares with an estimated \$14.6 million needed to equalize all SCS and Executive Branch salaries, based on calculations for the matched positions. However, because SCS's main employment competitor is higher paying local

governments, even with the requested pay increase, SCS salaries would be 8.9% lower, on average, than competitive market salaries.

To reduce hiring problems in selected instances statewide, Florida TaxWatch recommends increased resources for the SCS in order to provide flexibility to hire above the minimum salary for critical positions. In a competitive labor market, it is essential to offer competitive salaries to attract highly competent people. External competitiveness is an important factor in determining pay structure, the lack of which creates difficulties in filling selected positions with preferred applicants.

Internal Inequities

Employee compensation inequities have developed within the State Courts System since the last comprehensive pay study in 1990. These inequities were exacerbated in 2004 when approximately 1,200 county-funded court positions (which now account for approximately 30% of the SCS workforce, excluding judges) were established for the State Courts System to assume new responsibilities under Revision 7 to Article V of Florida's Constitution.

Florida TaxWatch recommends a targeted effort to level out internal inequities through strategic decisions, funding, and attrition.

Additional Funding Request

SCS seeks \$1.876 million to create parity between more of its attorney and management positions, and similar positions in the Executive and Legislative Branches of Florida's state and local governments.

This funding request would provide 100% state paid health, life, and short term disability insurance for 562 attorney positions and up to 93 management positions, and senior management retirement benefits for up to 93 management positions in addition to 41 management positions throughout SCS that currently receive this benefit. Senior management designation increases the accrual rate for retirement benefits from 1.6% to 2.0% for each year of creditable service, a benefit for which all Assistant State Attorneys and Assistant Public Defenders are currently eligible.

Court managers point out that the increase would reinstate this benefit to some former county paid court managers who lost it when they moved to the state payroll in July 2004 to help implement Revision 7. Court managers also note that Section 121.055 (b)1b, Florida Statutes, provides up to ten county management positions in senior management retirement. Local agencies with 100 or more positions may add additional positions not to exceed one percent of their positions over 100. By contrast, SCS has requested five positions per court.

Other Compensation Options

In addition to SCS compensation adjustments, Florida TaxWatch recommends that careful consideration be given to tying part of future increases to documented exemplary performance. The Management Advisory Group consultant study endorses a pay for performance system, which Florida TaxWatch has advocated for state government since its 1986 report entitled *Building A Better Florida: A Management Blueprint to Save Taxpayers Over \$1 Billion*. The 2001 state civil service reform act provides for funding of annual employee bonuses in the Executive Branch, and SCS has a bonus policy. Bonuses can be provided when authorized in the General Appropriations Act and an agency has available funds. The Legislature has provided funding for bonuses only

once since 2001. In other years, a bonus, when authorized, had to be paid from existing resources, which court managers say SCS did not have.

Florida TaxWatch also recommends additional use of competitive geographic pay differentials, particularly in large metropolitan areas, in order to attract needed talent. Cost of living data should be used to determine geographic pay differentials.

Impact on Taxpayers

Court managers say that the impact of inexperienced staff on taxpayer services cannot be quantified, but emphasize that an inability to fill selected positions with highly qualified people means accepting people who are not equipped, when hired, to do their job.

Based on available data, Florida TaxWatch is unable to determine whether taxpayer services, to date, have been adversely impacted by hiring and retention difficulties, and internal salary inequities. As noted above, the transition to state funding as of July 1, 2004 has been smoother than expected, with uninterrupted court operations and no visible effects on public access. Common sense suggests that over time, the impact of hiring and retention problems likely will be felt.

Employee satisfaction and loyalty are positive factors contributing to the operation of Florida's State Courts System, recognized as among the nation's best. However, Trial Court Administrators responding to Florida TaxWatch surveys in April and August 2006 stated that pay structure deficiencies increasingly are causing people to seek other employment. Since July 2004, turnover among new employees hired at the state minimum reportedly has been much higher in some circuits than prior to implementation of Revision 7.

Florida's innovations, groundbreaking achievements, and overall excellence have been touted by the National Center for State Courts, the American Bar Association, and others. Since the 1970s, Florida has led the way in openness of court proceedings and records; access to justice for litigants without attorneys; innovations to reduce time spent on jury duty; efficiency and timeliness in processing a large volume of cases; and drug courts that save money—and lives! Adequate compensation is an essential component of continuing this tradition.

Recommendations

1. The 2007 Legislature should carefully consider compensation adjustments deemed necessary by a consultant study and examined in a Florida TaxWatch comparison of selected positions in the judicial and executive branches, and in competitor county governments.
2. Careful consideration should be given to tying part of future compensation increases to documented exemplary performance. The Management Advisory Group consultant study endorses a pay for performance system, which Florida TaxWatch has advocated for state government since its 1986 report entitled *Building A Better Florida: A Management Blueprint to Save Taxpayers Over \$1 Billion*. The 2001 state civil service reform act authorizes funding of annual employee bonuses and SCS has a bonus policy. Bonuses can be provided when authorized in the General Appropriations Act and an agency has available funds. The Legislature has not provided funding for bonuses since 2002. In succeeding years, a bonus, when authorized, would have to have been paid from existing resources, which court managers say SCS did not have.

3. Careful consideration should be given to additional use of competitive geographic pay differentials, particularly in large metropolitan areas, in order to attract needed talent. Cost of living data should be used to determine geographic pay differentials.

Endnotes

¹ Section 110.205, Florida Statutes.

² It should be noted that lack of employee advancement through pay ranges prevails throughout state government, because each time the Legislature funds employee raises, minimum salaries for all classes of positions are also raised.

³ The State Courts System currently has 3,211 full-time equivalent (FTE) positions, of which 844 were identified by OSCA staff as comparable to executive branch positions. Because the matched positions were not intentionally selected, it is assumed they are generally representative of comparability between all Judicial Branch positions and Executive Branch positions. For purposes of market competition, this comparison is conservative, because 85% of SCS employees work outside Tallahassee, where the main competition is higher paying local governments, plus law firms and other private sector organizations.

⁴ The cost estimate is based on the salary budget without benefits for the matched positions. According to the matched position data from FY2006-07 budget, 27.3% of FTEs account for 22% of the SCS salary budget, whereas 72.7% of FTEs account for 78% of the SCS salary budget. This means that in order to close the pay differential for 72.7% of FTEs, the 78% SCS salary budget needs to be increased by 12.3%.

⁵ Competitive market salaries were estimated by the Management Advisory Group survey of 47 SCS positions that were matched largely with local government positions.

⁶ The SCS salary request without benefits for 2007-08 is \$176,156,476, which includes \$12.6 million increase to fund the new pay plan. The figure only includes the salary amount requested for the pay plan and does not include any other salary amounts included in FY2007-08 Legislative Budget Request. The requested \$12.6 million will be used to equalize Judicial Branch salaries with Executive Branch salaries.

APPENDICES

Appendix A

Judicial Modernization Timeline

- 1968: The Constitution Revision Commission proposed revision of Judicial Article V, but the legislature did not act because the revision was viewed as controversial.
- 1969: Another suggested Article V reform failed to get legislative support.
- 1972: Voters approved a rewrite of Article V that organizationally – but not fiscally – unified state courts, eliminated municipal courts, set qualifications for judges, and envisioned fiscal unification of the state courts system.
- 1991: Article V accountability and fiscal unification received a boost from government rightsizing, initiated by the late Governor Lawton Chiles.
- 1991: The Judicial Council of Florida recommended state assumption of most Article V costs, and The Florida Council of 100 urged the legislature to address the courts' funding needs.
- 1992: A constitutional amendment approved by voters required government agencies –including the judicial branch – to implement quality management and accountability programs. The amendment's reforms mirrored those first advocated by Florida TaxWatch in a 1986 publication entitled *"Building A Better Florida: A Management Blueprint To Save Taxpayers Over \$1 Billion"*.
- 1995: An Article V Task Force recommended that the legislature begin the assumption of specific Article V costs.
- 1996: The Supreme Court initiated a strategic planning, consensus building, and zero-base budgeting process in anticipation of the state's eventual assumption of additional circuit and county court costs.
- 1998: Revision 7 approved by voters in the November general election.
- 2000: The legislature passed Chapter 2000-237, Laws of Florida, listing seven judicial functions to be funded by state revenues. It also approved a phase-in schedule, required under Revision 7, to begin paying a very minimal amount of salaries and expenses prior to the state assuming full funding responsibility on July 1, 2004.
- 2002: The legislature contracted with a Tallahassee-based consulting firm, MGT of America, to conduct a nearly \$1 million four-part study of the State Courts System.
- 2003: The legislature enacted House Bill 113-A, amending Chapter 2000-237 to increase the number of judicial functions to be funded under Revision 7 from seven to 14. House Bill 113-A directed Florida's Chief Financial Office (Department of Financial Services) to analyze court-related expenditures incurred and revenues collected by counties in order to inform 2004 legislative consideration of Revision 7 funding.
- House Bill 113-A created an Indigent Services Advisory Board to advise the legislature and Judiciary on due process costs – including those currently paid by counties – and measures to help reduce the cost of implementing Revision 7.
- 2004: The legislature enacted CS/CS/SB 2962 to further refine Revision 7 funding.
- July 1, 2004: Effective date of implementing Revision 7.

Appendix B

Trial Court Administrators' Responses To Questions Concerning Law Libraries

Question: Do you agree with the following statement? Law Libraries for county courthouses are not well defined, nor are they adequately funded. They are left to drift between the responsibility of the court, the clerk of court, the county commission, independent statutory bodies, and other entities. Legislation is needed to better define the responsibilities of law libraries and the constitutional body responsible for it.

Response:

Yes: 2nd, 5th, 6th, 8th, 9th, 11th, 12th, 14th, 15th, 16th, 18th Judicial Circuits

Law libraries are adequately funded, however, there is not much demand for them in our circuit. As the law has gotten more complex and specialized, concurrent with the availability of many legal materials online, the demand for traditional law libraries has fallen dramatically. 2nd Circuit

"Law Libraries" for county courthouses are not well defined, nor are they adequately funded. They are left to drift between the responsibility of the court, the clerk of court, the county commission, independent statutory bodies, and other entities. Legislation is needed to better define the responsibilities of law libraries and the constitutional body responsible for it. 8th Circuit

There is great potential and opportunity to reshape law libraries for the future. Open to all and funded sufficiently, they have the potential to become the *court access* doors for the public. Self-help law libraries would result in more meaningful access to the court for the public, and better-prepared litigants before the courts. The current constitutional body responsible for the delivery of "self help" is the clerk of court. 8th Circuit

Although the legislative language is vague, the counties and the court have worked through the issues. 9th Circuit

That is certainly true at the state level. Counties vary in the level of support. 12th Circuit

Government does need to decide the purpose of the law library – to assist the public or the justice system (i.e., lawyers, judges, etc). Then, the organizational infrastructure can be more clearly aligned once the purpose is redefined. 14th Circuit

If a law library is more than provision of access to legal materials, either in written form or on-line, legislation should specify what more is required. If there is a minimum service level required, the entity responsible for staffing, facilities, and funding must be made clear. 16th Circuit

No: 13th, 17th Judicial Circuits

Hillsborough County is adequately funding the law library. We see no need for statutory changes. 13th Circuit

Broward County's law library is well funded and maintained. 17th Circuit

Yes and No: 1st, 7th, 10th, 20th Judicial Circuits

I agree with the above statement *only* as to the inadequacy of funding. The Escambia County Law Library functions as an Independent Special District of the State of Florida, with an appointed Board of Directors. While I cannot speak for other libraries, this arrangement has always worked well for us. It is my personal opinion that introducing legislation to better define law libraries might only complicate matters. 1st Circuit

I agree that law libraries are not well defined. I think the adequacy of funding, however, depends on the location. Some are adequately funded. Not sure of the need for legislation to define responsible party. May be better left to individual counties to decide what is feasible/necessary in each county. 7th Circuit

Legislation on this topic would be very helpful in defining responsibilities and perhaps a minimum level of service. In Highlands County, the County Commission provides funding and staffing. In Polk County, the County sets aside a portion of the collections they receive for criminal add-ons, pursuant to F.S. 939.185 and funds the Law Library, but the court is responsible for its everyday operation. 10th Circuit

On the whole, our law libraries have received county funding. The opinion of whether the law library staff and materials are adequate varies with who is asked. 20th Circuit

Question: Do you agree with the following statement? A lot of legal information is now available on-line, thereby making law libraries less important than previously.

Response:

Yes: 2nd, 6th, 17th Judicial Circuits

Yes, however, a certain segment of self-represented litigants do not have access to a computer and/or the skill level to use on-line materials. These individuals typically need assistance locating a specific form, statute, or county code provision. 16th Circuit

We definitely agree. Government and the private sector are using current technology. The service and space required for books could and should be used for online services. 17th Circuit

No: 1st, 5th, 6th, 8th, 11th, 12th Judicial Circuits

I disagree with the above statement. While some legal information is available on-line, not all information is necessarily accurate, nor are all resources available. The layperson often has no idea where, how or what to research and no way of determining the accuracy or applicability of information they may locate. The availability of a public law library, properly staffed with knowledgeable librarians, is crucial to the administration of justice. 1st Circuit

Access to any resource is vital and law libraries provide a great service to the public. Not everyone has access to computers. 5th Circuit

It is somewhat of a myth that there is widespread availability of legal related materials on-line. You cannot simply "Google" case law and other needed legal information; typically, a proprietary search engine is required, such as Westlaw or LexisNexis. While our libraries do make access to these systems available to the general public, these propriety search engines have usage fees and costs, and law library staff time is typically required to assist the average pro se litigant or citizen with using these systems. Also, for those materials that are available on the Web, our staff must provide oversight when patrons are accessing the Internet via our law library computers. 6th Circuit

Access to the courts is still as important as it has always been. While it is true that access to legal information has increased with the advent of the Internet, the law library remains the place where the general public and attorneys without financial resources can go and get access to the necessary legal resources to put their case on before the court. 12th Circuit

Yes and No: 4th, 7th, 9th, 10th, 13th, 14th, 15th, 16th, 20th Judicial Circuits

Law librarians provide guidance as to where to look and what information is appropriate. They do not provide legal advice. Law libraries remain important to citizens who may not have access to the Internet or not know how to search for relevant information. Law libraries provide forms approved by the Supreme Court of Florida. 4th Circuit

I agree that a lot of legal information is now available on-line. I'm not sure the importance of law libraries has diminished, as much as the need for a book repository has diminished. Law libraries are still important, but they've had to change their focus to adapt to changing needs. 7th Circuit

While books are now less important, law libraries are no less important. People still need access to the on-line services. As a result, computers have replaced books at the libraries. 9th Circuit

Many materials are available on-line and our libraries take advantage of those materials to reduce costs; however, there are still a considerable number of persons, particularly the pro se litigants, who rely upon the hard copy volumes in the law library because they do not have ready access to the on-line materials. 10th Circuit

We agree with this statement as it relates to attorneys. But, it is our experience that the law library remains a very useful service for non-represented litigants and the general citizenry who wish to do their own legal research. 13th Circuit

Government needs to determine the purpose of the law library. If it is for the citizen who may represent his or herself, then the local government may want to provide on-line service with an available law librarian who can direct and provide guidance to the citizens. The on-line services are beneficial but difficult to maneuver unless you have been specifically trained in the application. If the law library is to provide legal materials for area lawyers, then the on-line access is all that would be needed. However, it is my opinion that public funds should not be used in this way. The library should be for the public and should provide enough support to assist the public. 14th Circuit

(cont. from previous page)

The answer depends on the purpose for which the law library exists. If its purpose is access to legal materials then, yes, on-line access may address the majority of the need. However, there are many materials that are not available in electronic format. If the purpose of the law library is to serve the general public, in addition to the local bar, then the services of a law librarian are invaluable in directing individuals to the materials appropriate to their particular legal issue.

It is true that a lot of legal information is now available online, however, county law libraries serve a varied population including people who are not familiar with legal research as well as computers. Most of the information online can only be found and interpreted by people trained and familiar with legal research. 15th Circuit

Fewer books are needed at the law libraries, but the library has not diminished in importance. 18th Circuit

Question: Do you agree with the following statement? Law libraries are experiencing a decrease in use by law firms (due to on line research options) and an increase in use by the general public.

Response:

Yes: 1st, 5th, 6th, 8th, 10th, 11th, 13th, 15th, 16th, 18th, 20th Judicial Circuits

Yes, before our law libraries consolidated with the county library system, the majority of users were non-lawyers. Lawyers did use the law libraries when they were in trial and needed to research something immediately – and they did so up until the libraries were relocated outside the courthouses. 16th Circuit

Agree, however services to the general public are curtailed because of lack of proper funding. 11th Circuit

Current usage averages 60% public, 40% attorneys. Sole practitioners and attorneys representing low-income clients use the law library more than the attorneys from large law firms. 15th Circuit

Yes and No: 2nd, 4th, 9th, 12th, 17th Judicial Circuits

Yes to the former and no to the latter. The demand for traditional law libraries has fallen dramatically. 2nd Circuit

I agree the general public is using law libraries more. 4th Circuit

While law firms are using law libraries less, it's not clear whether the general public is using law libraries more.

Agree with the reduction in use by law firms. However, I think that the general public use has remained relatively constant (as a percentage of the population). 12th circuit

We agree with the decrease in use by law firms and attorneys. We do not agree with the increase in use by the general public. 17th Circuit

Appendix C

Trial Court Administrators' and Office of State Courts Administrator's Comments on Employee Hiring and Retention

The following examples of hiring difficulties attributed to inadequate starting salaries were provided to Florida TaxWatch by trial court judges and administrators, and the Office of the State Courts Administrator, in April and August 2006.

► **The First Judicial Circuit** (Escambia, Okaloosa, Santa Rosa, and Walton Counties) reports that filling and retaining employees in positions from Clerical Assistant (\$20,580) to Trial Court Law Clerk (\$43,129) and Court Operations Manager (\$44,415) are difficult to fill. For example:

- A Clerical Assistant position advertised in September 2004 attracted 61 applicants. When the position became vacant and was advertised in September 2005, nine people applied. Six months later, the incumbent resigned to find a more financially satisfactory position.
- Law Clerk positions that drew 15 to 25 applicants five years ago now draw five to seven applicants. Reason: The base salary of \$43,129 is not competitive with other agencies that also provide higher leave accruals or assistance in re-paying educational loans.
- A Court Operations Manager position that reports to the Trial Court Administrator was filled by internal promotion of an Administrative Assistant who was the best qualified among 16 candidates. This person has required substantial mentoring and tutoring by higher level managers.
- State employees seeking career growth within state government have reduced interest in court employment inasmuch as many have, through "steps," reached a level of higher pay even through the classification is lower than a court vacancy. The court's "entry level" pay rate precludes applicants who may have to take a pay cut in order to gain a higher level of responsibility being interested in transferring from another state agency to the court.

► **The Second Judicial Circuit** (Franklin, Gadsden, Jefferson, Leon, Liberty, and Wakulla Counties) has had recurring difficulty recruiting trial court law clerks at the minimum salary of \$42,139.20.

- In 2006, we made an offer to our top applicant, for a trial court law clerk position but he declined because he was offered a higher salary, paid benefits, and immediate leave allowances by the state attorney, and another top applicant rescinded her application once the attorney general offered a higher salary, paid benefits, and immediate leave allowances. We only had a total of twenty applicants for two positions, a very low response rate.
- In 2005, the top candidate, a former clerk for a federal judge, declined an offer and accepted a position with the Department of Corrections in Tallahassee whose starting pay was substantially higher and included 100% paid state benefits.
- In 2004, the top candidate for a Law Clerk position was a Hispanic woman with two years of experience in private law practice. She chose to remain in Central Florida to accept a government attorney position. An African-American who recently had graduated from law

school was hired, but this person resigned less than one year later to take a higher paying job at the Public Defender's Office in Daytona Beach.

We have difficulty recruiting for all positions, except clerical staff positions (administrative assistants, secretaries, and administrative secretaries). In particular, we have difficulty filling high-level budget or financial positions, technology positions, and general magistrates and hearing officers. The latter positions in particular are hard to fill because the executive branch offers hearing officers a higher salary, paid benefits, and immediate leave allowances, and does not prohibit employees from practicing law.

We also have difficulty recruiting court interpreters, mediators, and other independent contractors because budget shortfalls require a lower rate of pay per hour or per case than the market usually offers.

► **The Third Judicial Circuit** (Columbia, Dixie, Hamilton, Lafayette, Madison, Suwannee, and Taylor Counties) notes that five Court Reporter positions, the most difficult to fill, were moved from county to state employment to implement Revision 7 on July 1, 2004. As a result, they gave up higher annual cost of living increases and the ability to gain disability insurance.

► **The Fourth Judicial Circuit** (Clay, Duval, and Nassau Counties) reports:

- Difficulty recruiting for all positions, due to a good economy that has brought job growth. It is necessary, in most cases, to accept applicants who meet minimum guidelines or are deficient in some areas.
- Applicants qualified for a General Counsel position are making \$20,000 to \$30,000 more than the current SCS minimum. Turnover among staff attorneys, who perform complex legal research and writing for judges, is above average.
- The Circuit has been able to hire only recent accounting graduates with limited or no government accounting experience. If the pay for these positions is not adjusted, we will lose the knowledge and experience gained by these employees during implementation of Revision 7.
- Newly elected or appointed judges seldom are able to bring their legal assistant with them to the bench due to the minimum State Courts System Salary.

► **The Fifth Judicial Circuit** (Citrus, Hernando, Lake, Marion, and Sumter Counties) reports extreme recruiting difficulties due to low salaries, slow advancement through pay grades, and competition with other state agencies. Because of an extraordinary length of time required to fill open positions, because of too few qualified applicants willing to accept minimum salaries, the Circuit advertises all open positions as "open until filled."

► **The Sixth Judicial Circuit** (Pasco and Pinellas Counties) reports:

- Difficulty finding qualified applicants for digital court reporting positions. As of April 2006, one position has been filled for 18 months, one for less than one year, and one has been vacant for three months.
- Difficulty attracting and retaining Staff Attorneys, in part because of a starting salary of \$41,000 versus \$55,360 in federal court. An attorney in the Sixth Circuit's criminal division

with eight years of experience left his \$48,000 job for another public sector position paying \$60,000.

- Difficulty retaining a qualified Human Resources Manager. In July 2005, we lost a Human Resources manager with nine years of court service who was offered a position with the HR office of the Pinellas County Tax Collector, at a salary \$15,000 more than what we could pay him with state funds. In October 2005, a person with 20 years of HR experience was hired after relocating to Pinellas County from New Orleans after Hurricane Katrina. She left in August 2006 to take a job in Houston paying \$87,500 versus her state salary of \$48,000. She expressed that she could not make a new home for herself in Pinellas County on her state salary.
- Difficulty retaining case managers in our Unified Family Court, which serves some of our most vulnerable citizens, in particular, abused children. Case managers provide an invaluable service to judges by keeping them informed of the status of pending cases, and to litigants who appear before the judges by providing them with competent assistance with navigating the court system and making referrals to outside resources. None of our four case managers have more than a year experience. We have implemented flexible work schedules to alleviate stress and improve job satisfaction, but several former staff have reported to me that while job satisfaction was great, the wage they were making was not a livable one, and not commensurate with the position's responsibilities.

► **The Seventh Judicial Circuit** (Flagler, St. Johns, Volusia, and Putnam Counties) reports difficulties in recruiting qualified candidates for a wide range of positions, with Law Clerks, Court Reporters, and supervisory/managerial positions the most problematic. “Our experience tells us that we simply lack the necessary purchasing power to obtain the talent we are seeking.”

► **The Eighth Judicial Circuit** (Alachua, Baker, Bradford, Gilchrist, Levy, and Union Counties), reports:

- Almost annual turnover in a Court Analyst position, which recently was filled after three advertisements.
- Difficulty filling Court Reporter position because of specialized requirements and 50% higher pay in the private sector.
- High turnover of Family Court positions due to higher paying positions with city and county government.
- A recent advertisement for two staff attorney positions starting at \$42,132 had to be re-advertised as we could not attract sufficiently qualified candidates with the expected legal writing and research skills.
- We are advertising for a replacement for our Criminal Court Operations Manager, who left the job at a salary of \$65,000 to become Court Administrator in the Third Circuit. We have to advertise this position at the base salary of \$53,000. It is apparent from a review of applicants that the replacement will not in all probability have the same skills, education and experience.

► **The Ninth Judicial Circuit** (Orange and Osceola Counties) was unable to fill two Court Reporter positions at the minimum salary of \$42,346. These positions are essential to providing due

process services, and the inability to fill them could affect constitutional protections guaranteed all citizens.

- Upper management positions are the most difficult positions to fill. Retaining and/or recruiting senior management is very difficult under the current compensation system
- Certified court interpreters will be difficult to retain and replace under the current pay structure. Currently, contractual certified court interpreters cost \$55.00 per hour. This is far more than the \$18.00 per hour paid to certified staff interpreters. If we lose a staff position because we cannot pay \$25.00 per hour, we then have to pay \$55.00 per hour for contractual services.

► **The Tenth Judicial Circuit** (Hardee, Highlands, and Polk Counties) reports:

- Upper management positions are the most difficult positions to fill. The most recent example of this is the departure of the Administrative Services Manager to work for the county. This person served also as the Circuit's Budget Manager and had direct oversight responsibilities for the court's state and county budget. She could not resist the offer from Polk County that pays her \$14,000 more than she made with the court. After an exhaustive search to find a capable replacement with the requisite financial background, recruitment efforts resulted in a meager response from the public. The court is struggling with the replacement that was hired. (September 12, 2006 update: this latest Administrative Services Manager left, giving less than one week's notice to take a higher paying job and left a trail of destruction in her wake.)
- Staff Attorneys are also difficult to replace. Eventually, most staff attorneys leave because the private sector offers substantially higher pay. When this circuit was designated a pilot circuit for Staff Attorneys (Law Clerks) in 1986, we were able to recruit a sizeable pool of qualified candidates that sometimes made the selection process very difficult. However, in recent years, the pay scale for Staff attorneys has dropped further behind the private sector and the pool of viable candidates, although qualified, do not have the credentials of previous applicant pools.

► **The Eleventh Judicial Circuit** (Miami-Dade County) reports it has the state's largest non-English speaking population. It was unable to recruit skilled Court Interpreters at a minimum salary of \$32,428. Three offers to experienced interpreters, both in-state and out-of-state, were turned down because the salary was too low relative to the cost of living in Miami-Dade. These three candidates would have forfeited employer-paid health insurance benefits. One indicated she would be better off retiring from her Florida Retirement System-covered job and working freelance. Now the new Court Interpreter Certification requirement will further exacerbate this problem.

- Recruiting and retaining highly qualified Trial Court Law Clerks has been a challenge for the circuit. The base salary of \$43,129 does not compare to the starting salary of comparable positions in other agencies (e.g., the Attorney General's Office, State Attorney's Office, and the 3rd District Court of Appeals). Positions in those agencies generally require similar qualifications and experience for significantly higher pay. In addition, other agencies provide higher leave accruals or assistance with re-paying education loans. Since July 1, 2004, our circuit has lost several highly qualified attorneys to these other state agencies not necessarily for more rewarding careers, but for higher pay.
- The circuit is experiencing difficulty recruiting and retaining qualified employees in general as more and more once county funded court employees resign or retire. Prior to the transition to

state funding, most county funded positions had salary minimums that were higher compared to state positions with equivalent minimum qualifications. In addition to county funded positions having higher salary minimums, the court had discretion hiring above the minimum when the individual exceeded the minimum qualifications and required experience. Furthermore, county funded employees had the ability to progress through the salary range due to regular merit increases. Currently the court cannot hire above the state salary minimum; therefore highly qualified candidates are not attracted when positions are advertised.

- Sometimes the only option available to compensate an individual a fair and appropriate salary level for a position is by internal promotion. This usually allows the court to bring the employee's salary above the salary minimum of the higher position. Often times the internal employee is not necessarily the highest qualified person and requires mentoring and guidance by a senior level manager. This is done in part because the court cannot attract the highly qualified candidates it needs at the state salary minimum. For example, last year the duties and responsibilities of a Family Court Manager position were split to lessen the level of responsibility of the position because no one would accept the duties and responsibilities of the position for \$44,415. The former Family Court Manager's compensation was approximately \$80,000 because the employee was originally county funded. The employee that was promoted to fill the Family Court Manager position in 2005 has now resigned to accept an Associate Attorney position in a private law firm for higher compensation. The circuit is again faced with having to recruit for a senior level manager position at \$44,415.
- The court anticipates difficulty filling the recently vacant Director of Administrative Services Division at \$75,900. This position is a highly responsible position reporting to the Trial Court Administrator and overseeing the circuit's budget, finance, accounting, and procurement divisions. Even a Senior Budget Analyst position with the county which carries significantly less responsibility starts at a higher level than the court's Director position.
- The state should consider including a Competitive Area Differential (CAD) salary additive to all positions in the 11th Judicial Circuit – the largest circuit in the state and the fourth largest in the nation. There is no question that the cost of living, housing, and insurance in South Florida are one of the highest, if not the highest in the entire State of Florida.

► **The Twelfth Judicial Circuit** (DeSoto, Manatee, and Sarasota Counties) reports difficulty across the board in filling positions, including lower pay-range Administrative Assistants who are better paid and have better benefits in county government.

We have experienced difficulties related to the low salary level for a senior law clerk (left to take higher position; replacement promoted from within because of lack of viable applicants at the salary level) and an administrative services manager (formerly titled senior deputy court administrator; incumbent retired; advertisement at minimum salary drew few external responses; first choice turned down offer because of policy of hiring at minimum; then promoted an internal candidate).

New judges have not been able to bring secretaries – either from the public sector or the private sector – because of the disparity in salaries.

► **The Thirteenth Judicial Circuit** (Hillsborough County) reports both recruitment and retention problems.

- In terms of recruitment, the current minimum salaries are not sufficient to attract qualified applicants. For example, the Circuit recruited for an Administrative Services Manager, for budget and accounting. The job was offered to a highly qualified applicant who works for the county, but the offer was turned down. It took almost nine months to find a replacement for the incumbent who left for greater opportunities.
- The circuit is having difficulty keeping Court Program Specialist Positions filled. Applicants are not responding to advertising efforts, and those who do are not willing to take the job for \$29,000. The resulting turnover is creating a training and workload problem because staff is new and less experienced.
- There is continued difficulty retaining Laws Clerks who are not willing to stay when higher salaries are offered by other government agencies or private law firms.
- Court Reporting and Court Interpreters have been difficult to hire. A Court Reporter position was downgraded to that of Scopist, because a candidate with the court reporting skills that were needed could not be attracted at the minimum salary.
- Full-time Court Interpreters are leaving their job to freelance because they can exceed their court salary by taking assignments from other courts, the public defender, state attorney, or federal courts.
- Judicial Assistants positions are difficult to fill because it is well known in the legal community that the circuit's entry level salaries are not competitive. The applicants seem to be lower level secretaries from the Public Defender, State Attorney, and Clerk of the Circuit Court. Since 2004, not one of the new judges.

► **The Fourteenth Judicial Circuit** (Bay, Calhoun, Gulf, Holmes, Jackson, and Washington Counties) reports struggling to hire new employees since implementation of Revision 7 in July 2004. Senior Secretary and Administrative Secretary position announcements have attracted few qualified applicants as a direct result of lower pay scales than other employers. A county judge was unable to hire a Judicial Assistant with legal secretarial experience at the salary offered.

We continue to have difficulties hiring new Trial Court Staff Attorneys, especially if we attempt to home-base a Staff Attorney in Jackson County. The State Attorney's Office has increased the pay of their beginning attorney positions, thus leaving the court with those law school graduates who did not pass the Bar. When they do pass it, they often leave the court. The turn-over is very high in this area.

► **The Fifteenth Judicial Circuit** (Palm Beach County) reports that the most difficult positions to fill are Legal Secretaries and Administrative Assistants, because state salaries for these work groups fall far below those being offered by local governments. Palm Beach County constantly reviews its classification and pay policies to stay current with salary and cost of living trends.

► **The Sixteenth Judicial Circuit** (Monroe County) has been unable to hire a Court Interpreter at an annual salary of \$32,427. As a result, it has paid contract interpreters \$35.00 an hour for this service. This vacancy has remained open more than six months.

► **The Seventeenth Judicial Circuit** (Broward County) reports that the most difficult positions to fill are administrative support positions, trial court law clerks, and accounting staff. The circuit has greatest concern when middle and upper level managers leave the court. Starting salaries are not competitive to attract experienced managerial personnel.

► **The Eighteenth Judicial Circuit** (Brevard and Seminole Counties)

- Cites hiring of Law Clerks as its most difficult challenge. Although experience and exposure to working at a trial court is a plus for recruitment, low starting pay, no financial assistance with payment of student loans, and a minimal career path cause qualified candidates to seek employment within the private sector.
- Judicial Assistants and all types of Court Administration Managers are difficult to hire within the existing pay structure. We may be unable to hire adequate replacements for personnel budget and accounting staff when turnover occurs.
- County pay practices have been much more generous than the state. Employees, in the past and currently, would rather be county employees for compensation reasons. Employees are loyal, but the inadequacies of the pay structure causes many employees to be dissatisfied with their pay. The seriousness of the pay structure may soon cause employees to set aside their loyalty and seek better compensated employment.
- Due to the Revision 7 transition, several positions now perform more complex tasks. Retention and hiring are becoming increasingly problematic. More and more, employees are expressing dissatisfaction with pay levels and annual pay increases. Funding the State Court System's legislative budget request for pay issues will significantly improve our ability to retain and attract quality employees.

► **The Nineteenth Judicial Circuit** (Indian River, Martin, Okeechobee, and St. Lucie Counties) reports that hiring and retention are generally challenging because wages are not competitive with the private sector. The cost of living in the Treasure Coast is said to be growing at a substantially faster rate than salaries for state-funded positions. As a result, the potential pool of qualified applicants for positions is limited, which adversely impacts the Court's ability to provide meaningful access to justice for our community members.

- This Circuit particularly experiences challenges in hiring and retaining qualified staff for case management positions (Court Program Specialist I and II) for the Unified Family Court, as well as Law Clerks.
- This Circuit has had to re-open positions for legal staff due to the limited pools of qualified applicants and inability to provide a competitive salary. Law clerks often conduct research on complex legal issues for the judges, which information may be relied upon by the court in its decision making process. It is essential for the court and the community that circuits are provided with the ability to offer competitive salaries to hire well qualified staff.

► **The Twentieth Judicial Circuit** (Charlotte, Collier, Glades, Hendry, and Lee Counties) reports the following hiring and retention challenges:

- The top five candidates for two law clerk vacancies declined offers. One position was advertised three times before being filled.
- An administrative services manager position is vacant. This position oversees daily court operations for three counties, and supervises several department heads and a budget of approximately \$1.3 million. The starting salary of \$44,415 would require a highly-qualified county-funded employee to take a sizable step backwards in salary and benefits if promoted this vacancy.

- The finance director position was advertised twice.
- A Chief Deputy Court Administrator position, critical to ensure a smooth Revision 7 transition, was advertised three times. Applicants with directly related experience would not consider the minimum salary of \$75,000.
- After extensive advertising, a recent job posting for a top-level professional case management position attracted only two applicants with clerical backgrounds, because of the position's low entry-level salary level.

It is most difficult to fill and retain positions in Lee and Collier counties. The cost of housing is a major factor, as well as matching or beating starting salaries and benefit packages of other governmental and private employers.

*Excerpts of letter from Chief Judge, 20th Judicial Circuit
To Southwest Florida legislative delegation, February 27, 2006*

Local Impact of State Salaries

This letter presents the critical nature of our current employment situation here in Southwest Florida as a result of existing pay disparities. The most significant factors that affect our ability to recruit and retain employees are as follows:

- **Market forces** - The cost-of-living in Southwest Florida is among if not the highest in the State of Florida. To remain competitive with the local private sector, the county and city governments here in Southwest Florida adopted cost-of-living and merit adjustments ranging from 5.4% to 6.5% for FY 2005/06. Similar or higher adjustments were granted consistently over the past several years. Facing a workforce shortage, local government and private sector employers are proactive in recruiting; and they remain competitive in their efforts to retain qualified employees. As a result, the salaries and benefits paid to State-funded employees serving the Twentieth Judicial Circuit have fallen farther and farther behind. This factor has the greatest effect on morale and our ability to recruit and retain qualified employees.
- **Benefits disparities** - During the Article 5 Revision 7 move to State funding, the Courts' staff, whose positions were formerly County-funded, actually took a net cut in pay, due to the difference in health care and other benefits offered to State employees. For example, an employee funded by Lee County pays \$100 per month for health and prescription coverage for his entire family. Under the State's health insurance plans, the average cost for family coverage is \$180. On an annualized basis, this represents a difference of \$960.
- **Affordable housing** – A shortage of affordable housing in Southwest Florida means that employees cannot afford to live close to work. To further compound the problem, they cannot afford to commute due to high gas prices.
- **Geographic differentiation** –Under the State's pay and classification system, an employee in a particular job title (i.e. case manager) is paid the same regardless of whether the employee lives in Collier or Dixie County. A dollar in Collier County buys considerably less than in Dixie County, due to the higher cost-of-living.

The above economic, regional and market factors, either individually or in total, make it extremely difficult to attract and retain employees. Frequent turnover, protracted recruitment delays, and high learning curves as we hire less-qualified employees increases the workload of the remaining employees. In essence, they are doing considerably more work, for less pay. All of these factors hinder the Courts' ability to deliver quality services and fulfill our mission of *Justice for all Floridians* at a time when caseload growth is unprecedented.

(cont. from previous page)

The Pay and Classification Study, recently submitted by the Judicial Branch for your consideration, addresses the most significant of the pay disparities faced by the Courts. Adoption of this important initiative will improve our ability to recruit and retain a competent work force, which is the vehicle by which the State of Florida achieves its goals and provides quality judicial services to its citizens.

Respectfully submitted,

Hugh D. Hayes
Chief Judge

► The Office of State Courts Administrator (OSCA)

- Was unable to hire the preferred applicant for a Human Resource Officer position, at the minimum salary of \$59,520, to handle equal employment opportunity compliance, because a higher counter offer was made by the chosen applicant's employer, the City of Tallahassee, which the OSCA was unable to match.
- Due to low salaries, has had difficulty hiring experienced budget and accounting managers. Promoting employees who were not ready and had steep learning curves consumed an inordinate amount of their supervisor's time.
- Reports that after potential applicants from other state court systems inquired about nationally advertised SCS management positions, they either did not apply or withdrew after salary was discussed. Other applicants withdrew after receiving higher offers from competing employers, or counter offers from their current employers, which the SCS was unable to match.
- Reports that employees occasionally leave to perform similar work for higher pay in other government agencies. This has occurred several times over the past few years, most recently within the OSCA's Budget Services and Information Systems Services units. In the latter case, employees left after receiving education and training at significant cost to the SCS.

The preceding examples demonstrate, at a minimum, that there is a need for resources to provide increased flexibility for trial court and OSCA managers to hire above the minimum salary for selected, critical positions. In a competitive labor market, it is essential to offer salaries that can attract highly competent people. External competitiveness and internal equity are two important factors in determining pay structure. Lack of the former makes it difficult to fill selected positions with preferred applicants. Lack of the latter is unfair and may breed employee discontent.

The consultant study notes that recruitment programs are most effective when hiring ranges extend from the minimum to the midpoint of each position's salary range, as opposed to inflexible hiring rates. The study acknowledges that although new employees generally should be hired at the minimum of a range, securing highly skilled technical and managerial personnel sometimes necessitates hiring above the minimum. In such cases, the consultant recommends that the hiring supervisor's salary recommendation be reviewed by the appropriate SCS human resources office and approved by the State Courts Administrator.

Acknowledgements

This *Special Report* was written by Dave Davis, Senior Research Analyst
with the assistance of
Dr. Necati Aydin, Senior Research Analyst, Contract Consultant Glenn Lang, Esq.,
and Becky Reese, Research and Communications Specialist,
under the direction of John Turcotte, Senior Vice President for Research.

Florida TaxWatch gratefully acknowledges substantial assistance provided by trial court
administrators in the 20 judicial circuits, technical assistance provided by
State Courts Administrator Lisa Goodner and her staff, and review by
Florida TaxWatch Senior Fellows Dr. Neil Crispo, Dr. Earle Klay, and Dr. Harold Peckron.

Michael A. Jennings, Chairman; Dominic M. Calabro, President, Publisher, and Editor;
Steve Evans, Chief Operating Officer.
Florida TaxWatch Research Institute, Inc.

© Copyright Florida TaxWatch, September 2006

Photo Credits:

Cover Photo of the Supreme Court Building courtesy of The Florida Supreme Court
Gavel Photo: ©image100 Ltd

**Florida TaxWatch gratefully acknowledges the support of this research made
possible by a grant from The Florida Bar Foundation.**

About Florida TaxWatch

Florida TaxWatch is a private, non-profit, non-partisan research institute that over its 27 year history has become widely recognized as the watchdog of citizens' hard-earned tax dollars. Its mission is to provide the citizens of Florida and public officials with high quality, independent research and education on government revenues, expenditures, taxation, public policies, and programs, and to increase the productivity and accountability of Florida Government.

Florida TaxWatch's research recommends productivity enhancements and explains the statewide impact of economic and tax and spend policies and practices on citizens and businesses. Florida TaxWatch has worked diligently and effectively to help state government shape responsible fiscal and public policy that adds value and benefit to taxpayers.

This diligence has yielded impressive results: since 1979, policymakers and government employees have implemented three-fourths of Florida TaxWatch's cost-saving recommendations, saving the taxpayers of Florida more than \$6.2 billion--approximately \$1,067 in added value for every Florida family.

Florida TaxWatch has a historical understanding of state government, public policy issues, and the battles fought in the past necessary to structure effective solutions for today and the future. It is the only statewide organization devoted entirely to Florida taxing and spending issues. Its research and recommendations are reported on regularly by the statewide news media.

Supported by voluntary, tax-deductible memberships and grants, Florida TaxWatch is open to any organization or individual interested in helping to make Florida competitive, healthy and economically prosperous by supporting a credible research effort that promotes constructive taxpayer improvements. Members, through their loyal support, help Florida TaxWatch bring about a more effective, responsive government that is accountable to the citizens it serves.

Florida TaxWatch is supported by all types of taxpayers -- homeowners, small businesses, large corporations, philanthropic foundations, professionals, associations, labor organizations, retirees -- simply stated, the taxpayers of Florida. The officers, Board of Trustees and members of Florida TaxWatch are respected leaders and citizens from across Florida, committed to improving the health and prosperity of Florida.

With your help, Florida TaxWatch will continue its diligence to make certain your tax investments are fair and beneficial to you, the taxpaying customer, who supports Florida's government. Florida TaxWatch is ever present to ensure that taxes are equitable, not excessive, that their public benefits and costs are weighed, and government agencies are more responsive and productive in the use of your hard-earned tax dollars.

The Florida TaxWatch Board of Trustees is responsible for the general direction and oversight of the research institute and safeguarding the independence of the organization's work. In his capacity as chief executive officer, the president is responsible for formulating and coordinating policies, projects, publications, and selecting professional staff. As an independent research institute and taxpayer watchdog, Florida TaxWatch does not accept money from Florida state and local governments. The research findings and recommendations of Florida TaxWatch do not necessarily reflect the view of its members, staff, distinguished Board of Trustees, or Executive Committee, and are not influenced by the positions of the individuals or organizations who directly or indirectly support the research.

Florida TaxWatch Values:

◆ *Integrity* ◆ *Productivity* ◆ *Accountability* ◆ *Independence* ◆ *Quality Research*



106 N. Bronough Street (32301)
P.O. Box 10209 (32302)
Tallahassee, FL
www.FloridaTaxWatch.org