



Minutes of December 18, 2006, ISC Emergency Meeting

Committee members in attendance: Hugh Hayes, Chief Judge
Robert Jacobs, Public Defender
Sheldon Finman, Esquire
Peter Ringsmuth, Esquire

Others in attendance: Jose Calvo
Diane Dramko
Suzanne Ederr
Brian Edwards
Eric Fishbeck
Sebough Gourjian
Betty Gourley
Robert Hines
Helen Jones
Leonid Kremenchuker
Ray LeGrande
Deborah Leoci (C. Gaspri)
Steven Leskovich
Ian Mann
Marcia Miller
Carrie Smith
Philip H. Taylor
Carol Vlachos
Steven Wetter

Phone attendance: JAC Staff - Victoria Montanaro
Steven Presnell

1. Report as to JAC funding shortage.
 - Chairman Hayes stated that the emergency meeting was called in response to the JAC's declaration that the court-appointed counsel funding would run out again, as soon as the first week of January 2007. He stated that the problem is two-pronged: [1] JAC payment stoppages (short-term), [2] legislative reform (long-term).
 - Steven Presnell of the JAC confirmed that the Q3 funds would be depleted within three weeks and that an accelerated Q4 disbursement would be needed.
 - The Chairman expressed his concern over the Governor's letter, delivered to the Chairman of the Florida Conference of Circuit Court Judges (Chief Judge Kim Skievaski), that indicated the Q4 disbursement would not be accelerated unless a plan was developed by the ISCs to readjust compensation rates to ensure that the remaining funds will last until the end of the fiscal year. The Chairman recommended that a letter

should be drafted and delivered to all relevant decision makers which states that any future stoppages of JAC payments will lead to the deprivation of constitutionally-protected due process rights.

- Mr. Jacobs supported the idea of the letter, and reminded the other Committee Members that last fiscal year's \$4 million ISC deficit was balanced from the 20 Public Defenders' office budget surpluses.
- Mr. Finman also supported the idea of the letter, and stated that he is not inclined to reduce the current ISC rates, but would welcome suggestions on how to reduce total expenditures.
- The Chairman reminded the other Committee Members that the ISC suffered the same projected \$12 million deficit last year, but that this year there is no carryover from the prior fiscal year. Further, he stated that he found it incredible that the SAO has decided that "they don't have a dog in this fight." He continued, that he has concluded that the system must be "fixed and fixed immediately." Firstly, he suggested, that the Committee Members should recommend that the Governor begin by "stopping the hemorrhaging" via authorizing the early release of the 4Q funds. Thereafter, he advised, it would be proper to go back and decide who is at fault for wrecking the system. For example, if abuse within the system were discovered, then additional oversight would be appropriate.
- Mr. Wetter inquired into how the ISC funding is appropriated, specifically, whether it is indexed.
 - Victoria Montanaro offered a history of the ISC's funding system beginning in 2002 with data accumulated from then various Florida counties' indigent funding systems. However, she emphasized, that the \$41 million 2004 inaugural budget was reduced by \$6 million during a committee conference, and that this year the legislature appropriated the same baseline from 2004, plus a contingency fund that is equal to the shortfall from last year. Ms. Montanaro indicated that the present stalemate has been brought about by the threat that the 4Q and contingency funds will not be released, as necessary, ahead of schedule.
- Mr. Mann suggested that the JAC's financial reporting should to be simplified in order to persuade the relevant decision makers. For example, if a simple report could be crafted to demonstrate that (even after discounting all cases that exceed the statutory caps and/or potential financial wrongdoing) the ISC's budget remains funded below the necessary level, then the Legislature would be more likely moved to act.
 - Mr. Finman concurred that the Legislature has failed to adequately fund the ISC system from its inception.
 - The Chairman expressed his preference that the Legislature create a better system, rather than choosing to place pressure on the Chief Judges to make a failed system work.
- Ms. Dramko inquired into when the JAC would inform the registry-attorneys whether the 4Q disbursement will be made, for she stated that another two-month payment-stoppage could not be financially borne by her and the other Lee County dependency attorneys.
 - Ms. Montanaro could only state that she knew of the Governor's threat to withhold the 4Q funds from the necessary accelerated disbursement, but, she emphasized, that the letter was directed to the ISCs, not the JAC.
 - Chairman Hayes reiterated that an SOS letter should be drafted and delivered to the Governor in order to communicate the dire situation that will be created by withholding the 4Q accelerated disbursement.

- Mr. Mann added that the Governor's demand that the ISC system be overhauled within mere months is unrealistic, and that holding the Q4 funds hostage is unreasonable.
 - Mr. Jacobs stated that several of the neighboring PDs' offices are attempting to institute a case-sharing system where PD offices in adjacent circuits would handle each other's cases. Thus, eliminating the need for private-practice court appointed counsel.
 - Mr. Sullivan expressed the desire that the Committee Members not make promises to prohibit cases from exceeding the statutory cap. He contended that extraordinary cases, such as death penalty cases, simply do not conform to conventional billing ranges.
 - Mr. Hines concurred that cost-cutting commitments should not be made at this time.
 - Ms. Dramko indicated that the 20th's ISC civil cases do not exceed the caps, so she sees little room for improvement on the civil side of this budgetary emergency.
 - Mr. Finman asked the JAC what the other ISCs are doing in response to the Governor's letter.
 - Ms. Montanaro stated that most ISCs are meeting to discuss the Governor's letter, and then having subsequent meetings to take action. The 18th Circuit is contemplating OSCA's memo regarding the inherent power of the Judicial Branch to make pro bono appointments, while the 1st Circuit is contemplating reducing the number of hourly-registry attorneys in favor of more contracted-registry attorneys.
 - Mr. Finman stated that he was certain that the Governor's charge was made in good faith, but that it is an impossible mandate for the ISCs to fulfill.
 - The Chairman stated that the immediate dispatching of any such SOS letter is the most critical factor to it persuading the relevant decision makers, including: Jeb Bush, Charlie Crist, Jeff Kottkamp, R. Fred Lewis, Marco Rubio, and Ken Pruitt.
 - **Action:** Motion to approve that the ISC staff a draft letter according to the Committee Members' instructions to be signed by Chairman Hayes and dispatched within forty-eight hours passed.
2. Minutes of the meeting held November 13, 2006 (Agenda Item #1).
- **Action:** Motion to approve the minutes passed.
3. Public Comment (Agenda Item #2).
- No public comments were delivered pursuant to the open-forum agenda item.
4. Review of additional applications for ISC Registry:
- New Applicants:
- Gourjian, Sebouh (*reapplication*)
 - Vlachos, Carol C. (*reapplication*)
- Applicants amending categories of service:
- Gennett, Gregory A. (*removal from registry at JAC request – F.S. §27.40*).
 - Smith, Laurence J. (*removal from registry*).
- **Action:** After the ISC Staff provided a report as to applications received, the Committee Members engaged in a discussion, and made a motion that approved all applications, and amended applications, with the following exceptions:

[a] Mr. Sebouh Gourjian resubmitted his application, which lacked the CLE requirement. Mr. Gourjian stated that he is presently working to earn the requisite number of CLE hours.

- **Action:** The Committee Members agreed to conditionally approve Mr. Gourjian's application with instructions that he fulfill the CLE requirement and submit an amended application attesting to compliance with the CLE requirement no later than January 2, 2007.

[b] Ms. Carol Vlachos sought a waiver from the ISC's Florida Bar CLE requirement based on her good standing with the Michigan Bar and the Florida Bar's acceptance of Michigan's ICLE credits.

- Mr. Finman inquired in whether an additional attorney on the registry in Lee County's Category 10 and 11 would be advantageous to the Court. Ms. Diane Dramko indicated that Judge Seals welcomes new attorneys to the registry so long as they abide by the specific manner and method that he conducts his court.

- **Action:** The Committee Members stated that Michigan's Institute of Continuing Legal Education (ICLE) credit would serve as an adequate substitute for the ISC's Florida CLE requirement if, and only if, the same heightened number of CLE hours were met or exceeded. That is, regardless of whether the CLE hours have been earned via Michigan's ICLE or the Florida Bar, each category's requirement must be met. The Committee Members agreed to conditionally approve Ms. Vlachos' application with instructions that she is to submit a completed application no later than January 2, 2007.

5. Public Comment (Agenda Item #2).

- Mr. Phillip Taylor inquired into whether the ISC staff determined, pursuant to the Committee Members' instruction at the previous ISC meeting, if a shortage of attorneys on the registry in Charlotte County's Category 10 exists. ISC staff indicated that such a determination had not been made. Further, Mr. Taylor, supported by Ms. Jones, stated that he would like to know the origin to the ISC's qualification standard for Category 10. He expressed concern that Category 10's "unusually high bar" would substantially prevent any further additions to this registry category. The Committee Members agreed that this matter should be an agenda item for the next meeting.

Staff Follow-up:

- a. Update and deliver the ISC documents to the JAC, Chief Justice, Clerks, Court Administration points-of-contact; post updated documents on the ISC web page.
- b. Draft a letter to the Governor communicating the Committee Members' concern over the Q4 funding issue.
- c. Investigate the origin of Category 10's qualification standard, draft report recommending any needed changes, and invite Judge Seals and Judge Anderson to offer input into the possible impact of changing the qualification standard.
- d. Prepare for a meeting to be held on February 12, 2007.