

OFFICE OF THE STATE COURTS ADMINISTRATOR
2017-18 CRC – JUDICIAL IMPACT STATEMENT

PROPOSAL NUMBER: P 28

DATE: November 22, 2017

SUBMITTED BY: Commissioner Coxe

ARTICLE(S) AFFECTED: Article V, Sections 14 and 16, Florida Constitution

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I. SUMMARY OF PROPOSAL:

The proposal requires the state, rather than counties, to fund the cost of communications services for trial courts and specifies that communications services includes, but is not limited to, all technology. The proposal also designates the clerk of the circuit court or county court as the official records custodian for court records and specifies that court records be stored, maintained, transmitted, and made available to the courts by the clerk in accordance with standards and requirements established by the Supreme Court.

II. ARTICLE/SECTION NUMBER:

Article V, s. 14 and 16, Fla. Const.

III. HISTORY:

Communications Services for Trial Courts

Prior to Revision 7 to Article V, Fla. Const. (1998), there were no provisions specifically addressing state versus county funding. At that time, counties had been funding the needs of the judicial system not funded by the state, including technology. Revision 7, adopted by voters in 1998, substantially revised Section 14 to address specifically how Article V was to be funded, with the state paying a greater share of the cost. It specifies the counties as responsible for funding the cost of communications services, existing radio systems, and existing multi-agency criminal justice information systems for the trial courts and their justice system partners. The 1997-98 Constitution Revision Commission statement of intent expressed that communications services be limited to reasonable and necessary data communications-related cabling, hardware and software, and telephone system equipment and infrastructure. In 2000, the Florida Legislature passed s. 29.008(1)(f),

Florida Statutes, to define “communications services” broadly, including, among other things, computer networks, systems and equipment, including computer hardware and software, modems, printers, wiring, network connections, maintenance, and support staff or services.

The 1997-98 Constitution Revision Commission statement of intent also explained that the state’s obligation includes, but is not limited to, funding for all core functions and requirements of the state courts systems and all other court-related functions and requirements which are statewide-in-nature.

To assist counties in meeting their court-related technology-funding responsibilities, in 2004 the Florida Legislature created a dedicated funding stream in s. 28.24(12)(e)1., F.S., of \$2 from every \$4 collected by the clerk of court on certain instruments recorded in the official records to supplement their general revenue funds. This revenue is 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), F.S., split among the state trial court, state attorney, public defender, and criminal conflict and civil region counsel. Additionally, s. 28.24(12)(e)2., F.S., requires the \$4 be remitted to the Department of Revenue for deposit into the General Revenue Fund if the state becomes legally responsible for the cost of court-related technology.

Custodian of Court Records

Article V, s. 16 Fla. Const., creates the clerks of the circuit courts, selected pursuant to the provisions of Article VIII, s. 1. Article V, s. 2, Fla. Const., specifies the chief judges as responsible for the administrative supervision of the circuit courts and county courts in their circuits. Florida case law provides that the clerk’s role in the performance of court-related functions is ministerial and subject to the direction and control of the court.¹ A number of statutory provisions address the clerk’s service to the court and judicial oversight, including in the areas of records maintenance, provision of case-related information, and uniform case reporting.² The constitution does not currently specify that the clerks are the official records custodian for court records and does not address the clerk’s duty to store, maintain, transmit, and make records available to the courts in accordance with standards and requirements established by the Supreme Court.

¹ See, e.g., State v. Almand, 75 So. 2d 905 (Fla. 1954); Corbin v. State, 324 So. 2d 203 (Fla. 1st DCA 1975).

² See, e.g., ss. 28.35(3)(a), 28.13, 43.26, 28.44, 28.211, 28.22205, 28.29, and 25.075, F.S.

IV. PRESENT SITUATION:

Communications Services for Trial Courts

Article V, s. 14, Fla. Const., requires the counties to fund the cost of communications services, existing radio systems, existing multi-agency criminal justice systems, and the cost of construction or lease, maintenance, utilities, and security of facilities for the trial courts, public defenders' offices, state attorneys' offices, and the offices of the clerks of the circuit and county courts performing court-related functions. Currently, the county funds communications services for the trial courts, state attorney, public defender, and criminal conflict and civil regional counsel through revenue generated from the \$2 recording fee and other county general revenue. There are counties that can afford to provide technology funding well beyond the revenue generated from this \$2 source. In contrast, many other counties rely heavily on this revenue source to meet their basic responsibility to the trial courts – plus state attorneys, public defenders, and other justice system partners. However, this source does not produce sufficient revenue to fully fund the technology needs for the trial courts alone. Each year, the Florida Department of Financial Services collects information by county on the level of revenue generated from the \$2 portion of the recording fee. In County Fiscal Year 2015-16, it was reported that 13 of the 67 counties collected less than \$25,000 in total revenue for the year.

Technology has changed significantly since Revision 7. The types and roles of technology in the court system likely were not contemplated in 1998. Further, rather than being an “add-on” or enhancement, technology now is essential to the performance of the courts' adjudicatory function and is an indistinguishable part of daily court operations, supporting all essential elements that are provided from state revenues appropriated by general law, enumerated in s. 29.004, F.S. It is critical to the ability of the trial courts to manage cases, which is a core element that the Florida Statutes recognize as a state-funding responsibility. Technology has become an integral part of these core functions and is needed to fulfill the courts' duties. Further, the advent of electronic filing and cloud storage diminish the significance of county boundaries as a funding paradigm and instead contribute to technology becoming integrated and statewide in nature.

Custodian of Court Records

Florida's 67 clerks of the circuit courts are independent constitutional officers; however, one of their core roles is to receive and maintain records for the 20 judicial circuits, which in turn are responsible for adjudicating cases linked to those records. This structure inherently creates challenges in which the information that the court system needs to effectively manage and adjudicate cases and measure performance statewide is stored in case maintenance systems of the clerks. Those clerk systems contain data records that may be defined and stored differently, even within the same judicial circuit.

V. EFFECT OF CHANGES:

The proposal would require the state to fund the cost of communications services for the trial courts. Counties would continue to provide funding for the public defenders offices, state attorney offices, and the offices of the clerks of the circuit and county courts performing court-related functions. The proposal defines communications services to include but is not limited to all technology. State payment of technology will help ensure uniformity of services and equal access to trial court services provided to the citizens across the state.

The proposal also specifies that the clerk of circuit court or county court are the official records custodian for trial court records and shall store, maintain, and transmit court records in accordance with standards and requirements established by the Supreme Court. Elevation of the clerk's responsibility for serving as custodian of court records to the constitutional level, as well as compliance with Supreme Court standards and requirements, will help promote generation of reliable, relevant, and accurate data for use by the court system in enhancing its performance.

VI. OTHER ENTITIES IMPACTED:

This change would make the state rather than the county responsible for funding communications services for the trial courts. The Florida Legislature would need to determine the amount of resources needed to fund communications services in the trial court and the method and timing for implementing the change. The Florida Legislature would also need to determine the source of funding and would need to address any changes to current statutes related to funding of communications services to the trial court. Other state agencies would be impacted during the implementation as county resources are transferred to state funding (e.g., Department of Management Services if staffing resources were transferred from county to state).

VII. ESTIMATED FISCAL IMPACTS ON THE JUDICIARY:

Trial courts have existing unmet technology needs. To the extent the proposal results in full funding of trial court technology needs, it will have a positive fiscal impact on the judiciary.

VIII. LEGAL ISSUES:

N/A

IX. OTHER ISSUES IDENTIFIED:

When substantial trial court funding changes were adopted during Revision 7 to Article V, Fla. Const., in 1998, there was a phased-in schedule for implementation and funding, starting in fiscal year 2000-01 and fully effectuated by July 1, 2004. The timing of the implementation of the proposal would likely need a schedule for

implementation and funding, given the scope of changes to the state courts system and other entities.

X. AMENDMENTS SUGGESTED:

N/A

XI. RELATED:

N/A