

Myth vs. Fact

House Bill 1121 and Senate Bill 2108 transfer the court-related duties of the elected Clerk of the Court to the appointed Court Administrator. These two bills were introduced as part of the ongoing efforts of the Court to control the Clerk. When will this senseless conflict end?

Florida Constitution, to today

The Florida Constitution states, *"there shall be in each county a Clerk of the Circuit Court who shall be selected pursuant to the provisions of Article VIII section 1..."* (section 16, Article V, Florida Constitution). One might think that this constitutional provision is clear, but the supporters of these bills suggest that legislatively removing the duties of the Clerk does not fly in the face of the Constitution.

In 2002, while preparing for the implementation of Revision 7 to Article V which dramatically affected how clerks and judges were funded, the Court sought legislative authority to take over the duties of the Clerk. This initiative resulted in the legislature urging the courts and clerks to resolve the debate once and for all regarding the roles and responsibilities of both the Clerk and the Court Administrator.

A workgroup was formed, and the result was a document that delineated the roles of court administration and the Clerk. The transcripts of the Senate Appropriations Subcommittee hearing, dated March 20, 2003, reflects Judge Belvin Perry Jr., speaking on behalf of the workgroup, reported to the legislature that the issues were resolved, and that there was no duplication of duties.

Then, in September of 2004, it was reported in the Florida Bar News that:

"The Bar Board of Governors has asked the Rules of Judicial Administration Committee to modify a proposed rule about the circuit chief judge oversight of court clerks before it is submitted to the Supreme Court. At stake are suggested revisions to Rules of Judicial Administration 2.050 intended to clarify the relationship between courts and clerks in the wake of Revision 7 Art. V. of the state Constitution. The constitutional amendment went into effect July 1 and transferred most of the funding of trial courts from the counties to the state. Critics of the proposed rule amendment, including some state lawmakers, said the committee was overstepping its bounds and giving chief judges too much say in court clerk operations. They also said a state law already set out the relationship.

Board member Dude Phelan said Judges have been quick to defend separation of powers to protect the courts, and they have to understand how it works the other way. I think that we, together with the court, owe it to intellectual honesty to stand up for the principles of separation of powers when it pinches our toes, rather than just when it feels good." — Article by Gary Blankenship, Senior Editor, Florida Bar News, Sept. 1, 2004

Following the implementation of Revision 7, the clerks asked the Chief Justice to designate a circuit judge to participate in a judicial relations committee sponsored by the Florida Court Clerks, recognizing that meeting the needs of the Court was very important to Florida clerks. During the next four year period, none of the concerns recently voiced were raised.

On December 16, 2008, the President of the Florida Association of Court Clerks wrote to Senator Victor Crist, Chair of the Committee on Criminal and Civil Justice Appropriations, and expressed support for an adequately funded judiciary.

Legislative session 2009, we're back to the same song, second verse. Only this time, rather than pushing for control of the Clerks, the effort is to wipe them out.

Insinuating that Clerks' spending grew at a faster rate than the Court during a financial crisis got the attention of many in the legislature. Fortunately, since these allegations, the numbers have been audited and I am pleased to report that the rate of spending grew less for the Clerks than the Courts.

Clerks are accountable

I have heard accountability, performance and transparency as the reasons for this proposed legislation, so I want to leave you with these facts:

Clerks report to internal auditors, external auditors, the Auditor General and the Department of Financial Services, and have performance measures which are set statewide, with many Clerks exceeding the state standard, as I do. The Clerk's funding mechanism was established into law, and Clerks follow the laws governing the budget process.

The budget process is approved in a publicly-noticed hearing, then sent through two legislatively- established and controlled layers of state government: The Legislative Budget Commission and the Department of Financial Services. Therefore, it is unclear why the Judges continue to raise the issue of no oversight. Also, it must be noted that a judge has never appeared in the public budget hearings to ask any questions.

It is unfortunate that the Courts did not understand the budgeting process. When they notified the Legislature of a 33 percent increase in budgets for Clerks, it alarmed the Legislature and required clerks from all over the state to provide documentation, to both the Legislature and the Governor's staff, to clear up the misunderstanding. Here are the financially audited numbers: Total dollars paid by taxpayers reflect Courts have grown by 38.5 percent, and Clerks have grown 26.5 percent for the period of 2004 to 2008. What was left out of the Courts presentation to the Legislature was the additional supplement they received from county governments to fund additional court personnel, which totals \$50 million (with four circuits yet to report). The legislatively-imposed mechanism was designed to support not only the Clerk, but the State. The Clerk returned 1.4 billion dollars to the State. It is at the discretion of the Legislature how these financial resources are allocated.

Had the courts leadership behind this issue asked clerks how the budget process worked, since it is different than their budget process, the confusion surrounding the numbers would not have occurred. Are clerks accountable, and is this system transparent? —I think so.

The proposal would be more expensive and less transparent

Clerks around the state have terminated staff, furloughed staff, and are now trying to identify how to minimize the effect that will be brought on by continued cuts. Anyone who knows even just a little about the responsibilities of the office of the Clerk knows that a transition of this magnitude would be disruptive and costly. The cost savings claimed by the Court has already been realized by sharing expenses across the three major functions of the Clerk: The Recorder, The Comptroller and The Clerk of the Court. For our constituents, our efforts should be towards working together to deliver the best possible service in these difficult times, not wasting time and money fighting amongst ourselves.

This said, I once again extend the olive branch— in the hope that we can end this senseless conflict.

Note: Karen E. Rushing is the Clerk of the Circuit Court and County Comptroller in Sarasota, FL. Rushing is also former president of the Florida Association of Court Clerks (FACC), and currently serves on the Florida Supreme Court Committee for Electronic Filing. Rushing has received the Excellence in Financial Reporting Award from the Government Finance Officers Association for 24-consecutive years.