

**PALM BEACH COUNTY CLERK OF THE
CIRCUIT COURT AND COMPTROLLER**

Prior Audit Follow-Up



Sherrill F. Norman, CPA
Auditor General

Clerk of the Circuit Court and Comptroller

During the period of our audit, Joseph C. Abruzzo served as the Palm Beach County Clerk of the Circuit Court and Comptroller.

The team leader was Yuling Liu, CPA, and the audit was supervised by Gina Bailey, CPA, CFE, CISA.

Please address inquiries regarding this report to Derek H. Noonan, CPA, Audit Manager, by e-mail at dereknolan@aud.state.fl.us or by telephone at (850) 412-2895.

This report and other reports prepared by the Auditor General are available at:

FLAuditor.gov

Printed copies of our reports may be requested by contacting us at:

State of Florida Auditor General

Claude Pepper Building, Suite G74 · 111 West Madison Street · Tallahassee, FL 32399-1450 · (850) 412-2722

PALM BEACH COUNTY CLERK OF THE CIRCUIT COURT AND COMPTROLLER

SUMMARY

In our operational audit report No. 2022-062 of the Palm Beach County Clerk of the Circuit Court and Comptroller (Clerk), we noted five findings related to various Clerk functions and activities. This operational audit focused on the progress that the Clerk had made, or was in the process of making, in addressing the findings and recommendations in report No. 2022-062.

Our audit disclosed that the Clerk had:

- Corrected 1 finding (Finding 4)
- Partially corrected 3 findings (Findings 1, 2 and 3)
- Not corrected 1 finding (Finding 5)

BACKGROUND

The Palm Beach County Clerk of the Circuit Court and Comptroller (Clerk) was established by the Florida Constitution as an independent officer of the Palm Beach County Board of County Commissioners (BCC) elected by the citizens of Palm Beach County. The Clerk serves as the BCC's Chief Financial Officer, Treasurer and Auditor, Clerk of the Circuit Court, County Recorder, and Clerk of the Board of County Commissioners, and provides services from seven physical locations throughout Palm Beach County. Funding for the Clerk comes primarily from court fees, fines and service charges, and payments from the BCC for services. As of June 2023, the Clerk employed approximately 600 employees and had a net operating budget¹ totaling \$82.2 million.

FINDINGS AND RECOMMENDATIONS

Finding 1: Separation Agreements

Previously Reported

The former Clerk entered into 14 separation agreements whereby employees who did not have employment contracts received severance pay totaling \$89,495 without documentation evidencing an employment dispute, contrary to State law.² Two of the 14 employees were also paid a total of \$26,670 for unused paid time off, contrary to Clerk policies. Additionally, a formal policy on separation agreements had not been established.

¹ The net operating budget excludes interfund activity provided by the internal service fund, while the consolidated budget includes such activity totaling \$105.6 million.

² Section 215.425(4)(b), Florida Statutes.

We recommended that the Clerk establish policies addressing the use of separation agreements. The policies should:

- Prohibit severance pay unless provided for in an employment agreement or paid to settle an employment dispute.
- Limit severance pay to those amounts specified in State law.
- Clearly define what constitutes an employment dispute and specify the types of records to be prepared and maintained to evidence the existence of employment disputes.
- Specify how the number of weeks of severance pay is to be determined (e.g., by establishing a range of the number of weeks of severance pay) to settle such disputes and how such determinations are to be documented.

In addition, we recommended that the Clerk enhance procedures to ensure that future termination payments, including payments for unused leave, are in accordance with State law and Clerk policies.

Results of Follow-Up Procedures

The Clerk partially corrected this finding. During the period October 2021 through February 2023, the Clerk paid \$7,855 to 54 employees for paid time off (PTO). Our examination of records supporting ten PTO payments totaling \$5,934 disclosed that, consistent with Clerk policies,³ none of the selected payments were for unused PTO upon separation from employment.

Our review of Clerk records and discussion with Clerk personnel disclosed that the Clerk declared the administrative policies⁴ related to terminal pay to be obsolete,⁵ eliminated the use of separation agreements, and had not adopted policies to address severance payments. According to Clerk personnel, the Clerk's Office does not intend to adopt specific policies and procedures for severance pay and will instead follow State law.⁶

We examined Clerk records and noted that, from October 2021 through February 2023, 163 employees separated from Clerk employment by retirement, resignation, death, or termination of position. Contrary to State law,⁷ the Clerk paid 4 employees⁸ severance payments totaling \$22,490. None of the 4 employees had entered into a contract or employment agreement with the Clerk that contained a provision for severance pay.

In response to our inquiries in June 2023, Clerk personnel indicated that the Clerk considered all four payments as settlements of employment disputes authorized by the Clerk after consultation with the Chief Human Resources Officer. However, although we requested, we were not provided records evidencing that the severance payments represented settlement of employment disputes. In response to further inquiries, Clerk personnel indicated that employment disputes naturally exist when an employee desires

³ Administrative Policy 04-02 – *Paid Time Off Program*.

⁴ Administrative Policy 08-03 – *Wages in Lieu of Notice* provide that, in the event an employee is terminated without cause, he or she may be asked to leave immediately and, at the Clerk's sole discretion, may be given wages in lieu of notice or severance pay in an amount determined by the Clerk.

⁵ According to Clerk personnel, the Clerk's office reviews its policies annually, and if the Clerk declares that a policy is "obsolete," the policy is removed from the Clerk's online policy manual.

⁶ Section 215.425(4)(b), Florida Statutes.

⁷ Section 215.425(4)(b), Florida Statutes.

⁸ Three of the employees were involuntarily terminated when their positions were eliminated and one employee resigned.

to retain their employment with the Clerk’s office and the Clerk desires to end the employee’s employment with the office. Notwithstanding, State law⁹ only provides for the payment of severance made pursuant to a contract or employment agreement or when the payment represents the settlement of an employment dispute, not in all instances of involuntary termination of public employment.

Recommendation: We recommend that the Clerk ensure that future severance payments are consistent with State law and that Clerk records clearly demonstrate such consistency.

Follow-Up to Management’s Response

Management’s response indicates that “an employment dispute naturally exists” for any involuntary employment separation and that “separations were evaluated based on risk.” However, State law requires the payment of severance represent the settlement of an actual employment dispute with the four involuntarily terminated employees, which is inconsistent with the Clerk’s interpretation that severance is permitted based on purely hypothetical risk. Consequently, the finding and related recommendation stand as presented.

PROCUREMENT

Finding 2: Procurement Policies and Procedures

Previously Reported

Clerk procurement policies and procedures needed enhancement to comprehensively address procurement best practices and be sufficiently complete to ensure that all procurements of goods and services are consistent with best practices and the Clerk’s intent, are obtained at the lowest cost consistent with desired quality, and records demonstrate compliance with State law records retention requirements.

We recommended that Clerk procurement policies and procedures be enhanced to comprehensively address procurement best practices and be sufficiently complete to ensure that all procurements of goods and services are consistent with best practices and the Clerk’s intent, are obtained at the lowest cost consistent with desired quality, and records demonstrate compliance with State law records retention requirements.

Results of Follow-Up Procedures

The Clerk partially corrected this finding. Our examination of Clerk records disclosed that in June 2023, the Clerk enhanced its policies¹⁰ and procedures¹¹ for procuring goods and services to:

- Prescribe the circumstances under which competitive solicitations are to be publicly advertised as well as posted on the Clerk’s Web site and identify the employees responsible for making that determination.

⁹ Section 215.425(4)(b), Florida Statutes.

¹⁰ Administrative Policy 23-04 *Procurement and Contract Policy*.

¹¹ *Competitive Solicitation Evaluator’s Guide*.

- Identify the staff responsible for determining whether to use a request for proposals (RFP) or an invitation to negotiate (ITN).
- Identify the Clerk personnel responsible for appointing evaluation committee members with the appropriate knowledge necessary to competently evaluate vendor responses to a competitive solicitation and with no conflicts of interest.
- Provide written guidance on how to apply prescribed criteria based on the information vendors are required to provide in their response or require that committee members make notes or otherwise document the basis for their scores.
- Require documentation and authorization to address the reason why certain desired goods or services are exempt from the competitive solicitation requirements.
- Identify the Clerk personnel responsible for maintaining solicitation-related records and where all documents are to be stored once a contract has been awarded.

In June 2023, the Clerk’s Office adopted a new policy¹² to require contract review and vendor performance assessments to be performed prior to the execution of a contract renewal or a new contract with an existing vendor to determine if additional amendments are necessary or viable alternatives are available. Although the policy provides for vendor performance assessments of existing vendors, the policy does not require periodic assessments or market research to determine whether it could be more economically beneficial to obtain certain services, such as software licensing and related support, software maintenance, and health insurance program administrator services, from other vendors. While the vendors for these types of services are not easily replaced, the assessments and research could result in information allowing Clerk staff to assess the reasonableness of the cost of the current vendor services and negotiate better fees.

Recommendation: We recommend that the Clerk further enhance policies and procedures to require periodic assessments or market research to determine whether it could be more economically beneficial to obtain certain services, such as software licensing and related support, software maintenance, and health insurance program administrator services, from other vendors offering similar services of acceptable quality.

Follow-Up to Management’s Response

Management’s response indicates that “the Clerk’s office has contracted with several vendors that are considered key strategic business partners,” that “these vendors have demonstrated an ability to adapt and respond to changing business needs and meet budget and time demands,” and that “the true effectiveness of these strategic partnerships can only be achieved through a mutual relationship that evolves over time and is evaluated against performance metrics established for the individual vendor itself.” Notwithstanding, the point of our finding is that periodic assessments or market research to determine the reasonableness of the costs of vendor services and could provide the Clerk leverage to negotiate lower fees. Consequently, the finding and related recommendation stand as presented.

¹² Administrative Policy 23-04, *Procurement and Contract Policy, Contract Administration & Management*.

Finding 3: Collection Agency Services

Previously Reported

The former Clerk entered into three contracts with collection agencies to provide professional collection services; however, Clerk policies did not address the selection of collection agencies and Clerk personnel were unable to provide records evidencing how the agencies were selected or the collection fee rates were determined.

We recommended that the Clerk:

- Establish policies for procuring collection agency services that ensure and document the most collections consistent with the best quality of services.
- Periodically compare collection fee percentages and collection rates of the Clerk's contracted collection agencies with percentages and rates of collection agencies that serve other clerks in the State, analyze the impact of collection fees on debtors' ability to pay, and negotiate lower fee percentages and establish minimum expected collection rates with collection agencies, when appropriate.
- Investigate the causes for any collection rates below the State average and consult with the collection agencies, as appropriate.

Results of Follow-Up Procedures

The Clerk partially corrected this finding. In June 2023, the Clerk adopted new policies¹³ and updated procedures¹⁴ to enhance procurement and contracting processes. However, the policies and procedures do not specifically address collection agency services.

Although the Clerk's policies and procedures do not specifically require competitive selection of collection agency services, in January 2022, the Clerk selected three collection agencies pursuant to an RFP that included "Collection Agency Surcharge" as an evaluation criterion. Our review of the RFP evaluator scoring sheets disclosed that lower agency surcharge rates received higher evaluation scores, and our examination of the three collection agency contracts entered into pursuant to the RFP process disclosed that all three contracts included a 25 percent collection fee rate, a reduction from the 30 percent collection fee rate in prior contracts. However, there was no evidence that the Clerk's office conducted a periodic assessment of collection fees charged to debtors, established minimum expected collection rates, or investigated collection rates below the State average.

In July 2023, we inquired as to whether the Clerk's office had conducted a comparison of the collection fee percentages and collection rates of the Clerk's contracted collection agencies to the collection fee percentages and collection rates of collection agencies that serve other clerks in the State. The Deputy Clerk indicated that they had not performed such a comparison but that a comparison of collection agency

¹³ Administrative Policy 23-04 - *Procurement and Contract Policy*.

¹⁴ *Competitive Solicitation Evaluator's Guide*.

rates would be performed subsequent to the Florida Clerks of Court Operations Corporation (CCOC)¹⁵ publishing its 2022-23 fiscal year *Collection Agent Annual Report*.

We obtained the CCOC *Collection Agent Annual Report* for the 2021-22 fiscal year, the most recent report available at the time of our fieldwork in July 2023, and noted that the 66 Florida clerks listed in the report used a total of 15 different collection agencies and that the 3 agencies used by the Clerk were included in the 15. Using the amounts in the report, we calculated a 93 percent Statewide collection rate for accounts referred by the Florida clerks. In comparison, the average collection rate for accounts referred by the Clerk for collection was 82 percent.

Documented efforts to obtain the lowest collection fee percentage consistent with the best quality of collection agency services, would provide additional assurance that the Clerk contracted with the most suitable collection agencies under the most favorable terms.

Recommendation: We continue to recommend that the Clerk periodically compare collection fee percentages and collection rates with those of other clerks in the State, conduct a periodic assessment of collection fees charged and analyze the impact of collection fees on debtors' ability to pay, establish minimum expected collection rates, and investigate and consult with the contracted collection agencies regarding collection rates below the State average.

Finding 4: Legal Services

Previously Reported

The former Clerk paid \$68,708 for legal services using public funds without documented evidence that she had been charged with a crime or was the subject of an investigation.

We recommended that the Clerk:

- Establish policies and procedures addressing payments for legal services for representation of the Clerk or a Clerk employee. Such policies and procedures should address the circumstances under which such payments are permitted.
- Ensure that executed contracts for legal services include provisions requiring law firms to submit billings with sufficient details of activities and actual time spent performing those activities and to provide supporting documentation for reimbursable expenses.
- Enhance contract monitoring controls to ensure that, prior to payment, amounts billed are consistent with agreed-upon compensation terms.
- In consultation with legal counsel, take appropriate action to recover the \$2,322 overpayment to the former Clerk as reimbursement for excess charges invoiced by one law firm.

Results of Follow-Up Procedures

The Clerk corrected this finding. Our examination of Clerk records disclosed that, in March 2022, the Clerk adopted a policy¹⁶ to address the use of legal services. During the period March 2022 through

¹⁵ Pursuant to Section 28.35, Florida Statutes, the CCOC was created as a public corporation organized to perform specified functions including, for example, recommending to the Legislature changes in the amounts of the various court-related fines, fees, service charges, and costs established by law to ensure reasonable and adequate funding of the clerks in the performance of their court-related functions.

¹⁶ Administrative Policy 23-03, *The Use of Outside Counsel*.

June 2023, the Clerk entered into two contracts for legal services and paid four invoices totaling \$1,740. Our examination of the two contracts and four invoices disclosed that the Clerk executed the contracts in accordance with its policies, and the invoices were in sufficient detail to demonstrate that they complied with the contract terms and conditions.

In response to our inquiries regarding recovering the \$2,322 overpayment disclosed in our report No. 2022-062, Clerk personnel indicated that the Clerk had decided not to pursue recovery of the overpayment due to a very low likelihood of collection.

Finding 5: Budgetary Controls and Transparency

Previously Reported

The Clerk had not established a formal budget policy. Additionally, the budgetary information provided to the public through the posting of budget documents on the Clerk Web site and reported in the Clerk's financial statements was not consistent and did not always include final budget amounts reflective of changes to the budget throughout the fiscal year.

We recommended that the Clerk adopt a budget policy as part of its administrative policies. The policy should include essential features of the budget development process and principles to guide in budgetary decision making. Additionally, we recommended that the Clerk revise procedures and consult the Palm Beach Board of County Commissioners (BCC) to ensure that budget information is reported in accordance with State law and in a consistent and fully transparent manner.

Results of Follow-Up Procedures

The Clerk did not correct this finding. According to Clerk personnel, as of July 2023, the Clerk had not established a formal budget policy.

Our review of the BCC's Web site in May 2023 disclosed that, the Clerk's final approved budget for 2023-22 fiscal year was not posted on BCC's Web site; rather, inconsistent with State law,¹⁷ the BCC Web site only included a link to the Clerk Web site. The budget documents posted on the Clerk Web site included a Summary of Expenditures by Funding Source (Summary) for the 2022-23 fiscal year.

As similarly noted in our report No. 2022-062, and as shown in Table 1, for the 2022-23 fiscal year, General Fund budgeted expenditures reported in the Summary posted to the Clerk Web site were \$4.8 million less than the final budgeted expenditures and other financing uses reported in the Clerk's financial statements¹⁸ for its General Fund. The difference was primarily due to the \$4.3 million transfer from the Clerk's Public Records Modernization Trust Fund¹⁹ (Public Records Fund) for technology purchases. Similarly, for the 2021-22 fiscal year, the \$5.2 million difference was also primarily due to \$4.8 million in transfers from the Public Records Fund for technology purchases.

¹⁷ Section 218.35(4), Florida Statutes.

¹⁸ Schedule of Revenues, Expenditures, and Changes in Fund Balance – Budget to Actual.

¹⁹ The Public Records Modernization Trust Fund is funded by legal document recording fees and is used to improve access to public records and for the Clerk's technology-related costs incurred in supporting the courts. The Clerk reports the Public Records Modernization Trust Fund as a special revenue fund in its accounting records.

Table 1
Palm Beach County
Clerk of the Circuit Court and Comptroller
General Fund Budgeted Expenditures and Other Financial Uses

Source	Fiscal Year	
	2021-22	2022-23
Summary of Expenditures by Funding Source	\$60,994,181	\$63,656,446
Clerk Accounting Records	66,171,144	68,435,127
Difference	<u>\$ 5,176,963</u>	<u>\$ 4,778,681</u>

Source: Clerk records.

In response to our inquiry, Clerk personnel indicated that the funds transferred for technology purchases from the Public Records Fund to the General Fund were excluded from the General Fund budget as they ideally represent Public Records Fund expenditures, but identifying the actual costs from the General Fund operating departments that incur the technology purchase costs and allocating those costs to the Public Records Fund is more difficult than recording a transfer from the Public Records Fund to the General Fund. While the Clerk did transfer the funds to the General Fund as indicated in Clerk accounting records, the exclusion of the transfer from the Summary creates an inconsistency in budget reporting. Inconsistent reporting of budget amounts between budget documents and accounting records limits the transparency of Clerk operations.

Recommendation: We continue to recommend that the Clerk adopt a budget policy as part of its administrative policies. The policy should include essential features of the budget development process and principles to guide in budgetary decision making. Additionally, the Clerk should revise procedures and consult with the BCC to ensure that budget information is reported in accordance with State law and in a consistent and fully transparent manner.

Follow-Up to Management’s Response

Management’s response indicates that the Clerk’s Office has a budget policy, which is included in the annual budget submission to the GFOA, and the Clerk’s annual approved budget is available on the Clerk’s Web site. Notwithstanding, the policy is not in the Clerk’s official administrative policies to help provide stability and continuity of the budget process in the event of employee turnover, the budget is not posted on the BCC’s official Web site as required by State law, and the Clerk’s summary budget posted on the BCC’s Web site is inconsistent with the budget reported in the Clerk’s financial statements. Consequently, the finding and related recommendation stand as presented.

OBJECTIVES, SCOPE, AND METHODOLOGY

Pursuant to Section 11.45(3)(a), Florida Statutes, we conducted an operational audit of the Palm Beach County Clerk of the Circuit Court and Comptroller (Clerk) and issued our report No. 2022-062 in December 2021. Pursuant to Section 11.45(2)(j), Florida Statutes, the objective of this audit was to perform, no later than 18 months after the release of that report, appropriate follow-up procedures to determine the Clerk’s progress in addressing the findings and recommendations contained within report No. 2022-062.

We conducted this follow-up audit from May 2023 through July 2023 in accordance with applicable generally accepted government auditing standards. Those standards require that we plan and perform the follow-up audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

This audit was designed to identify, for those programs, activities, or functions included within the scope of the follow-up audit, weaknesses in management's internal controls, instances of noncompliance with applicable laws, rules, regulations, contracts, grant agreements, and other guidelines; and instances of inefficient or ineffective operational policies, procedures, or practices. The overall objective of this audit was to identify problems so that they may be corrected in such a way as to improve government accountability and efficiency and the stewardship of management. Professional judgment has been used in determining significance and audit risk and in selecting the particular transactions, legal compliance matters, records, and controls considered.

As described in more detail below, for those programs, activities, and functions included within the scope of our follow-up audit, our audit work included, but was not limited to, communicating to management and those charged with governance the scope, objectives, timing, overall methodology, and reporting of our audit; obtaining an understanding of the program, activity, or function; exercising professional judgment in considering significance and audit risk in the design and execution of the research, interviews, tests, analyses, and other procedures included in the audit methodology; obtaining reasonable assurance of the overall sufficiency and appropriateness of the evidence gathered in support of our audit's findings and conclusions; and reporting on the results of the audit as required by governing laws and auditing standards.

Our audit included transactions, as well as events and conditions, occurring during the audit period October 2021 through February 2023, and selected Clerk actions taken prior and subsequent thereto. Our audit included the examination of pertinent Clerk records and transactions, inquiry of Clerk personnel, observation of procedures in practice, and additional follow-up procedures as appropriate. Unless otherwise indicated in this report, records and transactions were not selected with the intent of projecting the results, although we have presented for perspective, where practicable, information concerning the relevant population value or size and quantifications relative to the items selected for examination.

In conducting our audit, we:

- Reviewed applicable laws, rules, Clerk policies and procedures, and other guidelines, and interviewed Clerk personnel to obtain an understanding of Clerk processes.
- Evaluated the adequacy of Clerk policies and procedures for employee terminal leave and severance payments.
- From the population of 163 employees who separated from Clerk employment during the audit period, we examined four severance payments totaling \$22,490 to determine whether severance payments were made pursuant to Section 215.425(4)(b), Florida Statutes.
- From a total of \$7,855 paid to 54 employees for paid time off (PTO) at separation of employment, examined records supporting \$5,934 of PTO paid to ten selected employees to determine whether the payments were adequately supported, properly calculated, and paid in accordance with Section 215.425, Florida Statutes, and Clerk policies and procedures.

- Evaluated the sufficiency of Clerk procurement policies and procedures to comprehensively address procurement best practices and ensure that all procurements of goods and services are consistent with best practices and the Clerk's intent and obtained at the lowest cost consistent with desired quality, and that Clerk records demonstrate compliance with records retention requirements in State law.
- Examined Clerk records to determine whether the three contracted collection agencies as of May 2023 had been competitively selected in accordance with Clerk policies and good business practices.
- Inquired of Clerk personnel to determine whether the Clerk had conducted periodic comparisons of the collection fee percentages and collection rates of the Clerk's three contracted collection agencies to the collection fee percentages and collection rates of collection agencies that serve other clerks in the State.
- Evaluated the adequacy of Clerk policies and procedures for legal services and examined Clerk records supporting four payments for legal services totaling \$1,740 to determine whether the payments were adequately supported and made in accordance with the contracts. Also, inquired of Clerk personnel to determine whether the Clerk's office would seek reimbursement for the excess charges of \$2,322 for legal services disclosed in our audit report No. 2022-062.
- Examined Clerk-adopted budgets for the 2021-22 and 2022-23 fiscal years to determine whether the budgets complied with Section 218.35, Florida Statutes.
- Determined whether the final Clerk's 2022-23 fiscal year budget was posted to the County's Web site in compliance with Section 218.35(4), Florida Statutes.
- Compared 2021-22 fiscal year budgeted expenditures reported in the Clerk's Summary of Expenditures by Funding Source document to the final adopted budget and budgeted amounts reported in the Clerk's accounting records and 2021-22 fiscal year audited financial statements.
- Compared 2022-23 fiscal year budgeted expenditures reported in the Summary of Expenditures by Funding Source posted to the County's Web site to the final adopted budget and budgeted amounts reported in the Clerk's accounting records.
- Inquired of Clerk personnel to determine whether the Clerk had made any expenditures or entered into any contracts under the authority granted by a state emergency declared or renewed on or after July 1, 2021.
- Communicated on an interim basis with applicable officials to ensure the timely resolution of issues involving controls and noncompliance.
- Performed various other auditing procedures, including analytical procedures, as necessary, to accomplish the objectives of the audit.
- Prepared and submitted for management response the findings and recommendations that are included in this report, and which describe the matters requiring corrective actions. Management's response is included in this report under the heading **MANAGEMENT'S RESPONSE**.

AUTHORITY

Pursuant to the provisions of Section 11.45, Florida Statutes, I have directed that this report be prepared to present the results of our operational audit.

A handwritten signature in blue ink that reads "Sherrill F. Norman". The signature is fluid and cursive, with the first name being the most prominent.

Sherrill F. Norman, CPA
Auditor General

MANAGEMENT'S RESPONSE



JOSEPH ABRUZZO
CLERK OF THE CIRCUIT COURT & COMPTROLLER
PALM BEACH COUNTY

Governmental Center
301 N. Olive Ave, 9th Floor
West Palm Beach, FL 33401
P: (561) 355-2996

September 19, 2023

Sherrill F. Norman, CPA
Auditor General
Claude Denson Pepper Building, Suite G74
111 West Madison Street
Tallahassee, Florida 32399-1450

Dear Ms. Norman,

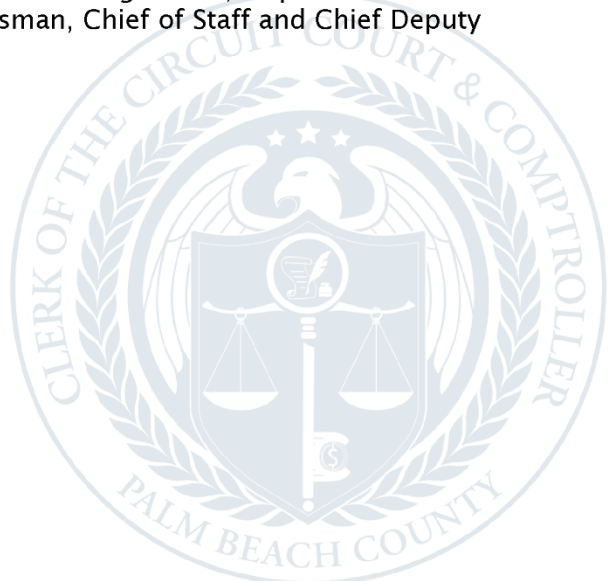
This letter is in response to the preliminary and tentative audit findings and recommendations as a result of the recent Auditor General Office follow-up audit dated August 29, 2023.

Our management responses to the audit findings and recommendations are enclosed with this letter.

Should you have any questions, please contact Roger Trca, Inspector General at 561-355-2722 or Shannon Ramsey-Chessman, Chief of Staff and Chief Deputy Clerk at 561-355-4277.

Respectfully,

Joseph Abruzzo
Clerk of the Circuit Court & Comptroller
Palm Beach County



Main Courthouse
205 N. Dixie Hwy.
West Palm Beach, FL

North County Courthouse
3188 PGA Blvd.
Palm Beach Gardens, FL

Midwestern Service Center
200 Civic Center Way, Suite 500
Royal Palm Beach, FL

West County Courthouse
2950 State Road 15, Room S-100
Belle Glade, FL

South County Courthouse
200 W. Atlantic Ave.
Delray Beach, FL

MANAGEMENT RESPONSES

Previously Reported Finding 1: The former Clerk entered into 14 separation agreements whereby employees who did not have employment contracts received severance pay totaling \$89,495 without documentation evidencing an employment dispute, contrary to State law. Two of the 14 employees were also paid a total of \$26,670 for unused paid time off, contrary to Clerk policies. Additionally, a formal policy on separation agreements needs to be established.

Results of Follow-Up Procedures: *The Clerk partially corrected this finding.*

Recommendation: We recommend that the Clerk ensure that future severance payments are consistent with State law and that Clerk records clearly demonstrate such consistency.

Management Response: Clerk Abruzzo greatly respects the findings of the State Auditor and respectfully requests to make note of the following information:

The separation of any employee who is considered to be in a “protected class” such as age, race, color, religion, military status, marital status, sexual orientation, national origin, citizenship, pregnancy, disability, gender, gender identity by nature, can create an employment dispute opportunity between the Clerk’s office and the employee. Separations were evaluated based on risk.

It is important to note that when an employee desires to retain their employment with the Clerk’s office and the Clerk desires to end the employee’s employment with the office, an employment dispute naturally exists. Therefore, creating the need to evaluate risk to minimize expending public funds on frivolous lawsuits.

1) The Clerk’s office believed it was complying with **F.S. 215.425 Separation Agreements** with regard to the requirement of allowing up to six weeks of *severance pay* for employment disputes (Considering the following example of “Employment Dispute”: Clerk desiring separation of employee; Employee desiring to continue employment).

Previously Reported Finding 2: Clerk procurement policies and procedures need enhancement to comprehensively address procurement best practices and be sufficiently complete to ensure that all procurements of goods and services are consistent with best practices and the Clerk’s intent, are obtained at the lowest cost consistent with desired quality, and records demonstrate compliance with State law records retention requirements.

Results of Follow-Up Procedures: *The Clerk partially corrected this finding.*

Recommendation: We recommend that the Clerk further enhance policies and procedures to require periodic assessments or market research to determine whether it could be more economically beneficial to obtain certain services, such as software licensing and related support, software maintenance, and health insurance program administrator services, from other vendors offering similar services of acceptable quality.

Management Response: We understand the objective of the recommendation and believe strongly that the approach outlined below in our response, achieves the objective. The Clerk's Office did issue a competitive solicitation for health insurance program administrator services in August 2022.

Best practices by market leaders such as Gartner recommend that procurement decisions are not based solely on price, but other factors, such as fit for business use and purpose, quality, strategic alignment, etc. The result of this change is that the vendor relationship model has switched to strategic business partnerships that are more like a continuous process, not an occasional event. As stated by Gartner, "strategic partnerships (SPs) are external relationships that directly support key business processes, outcomes, and revenues. They are integral to IT's ability to deliver business results to the enterprise."

The Clerk's office has contracted with several vendors that are considered key strategic business partners. These vendors have demonstrated an ability to adapt and respond to changing business needs and meet budget and time demands. The true effectiveness of these strategic partnerships can only be achieved through a mutual relationship that evolves over time and is evaluated against performance metrics established for the individual vendor itself. Results of such evaluations can trigger consideration of the need to do a RFI, RFP or ITN.

Previously Reported Finding 3: The former Clerk entered into three contracts with collection agencies to provide professional collection services; however, Clerk policies did not address the selection of collection agencies and Clerk personnel were unable to provide records evidencing how the agencies were selected or the collection fee rates were determined.

Results of Follow-Up Procedures: *The Clerk partially corrected this finding.*

Recommendation: We continue to recommend that the Clerk periodically compare collection fee percentages and collection rates with those of other clerks in the State and conduct a periodic assessment of collection fees charged and analyze the impact of collection fees on debtors' ability to pay.

Management Response: We believe the new procurement and contract policy Section IV.D.3.c and Section IV.E.1.b respectively, covers the periodic assessment and required analysis of collection agencies and fee percentages. Section IV.D.3.c states "Except for cases in which there is substantial capital

investment, contracts shall not extend beyond a five-year term including the initial term and renewal(s)...". Section IV.E.1.b states "Contract review and vendor performance assessments in collaboration with the Authorized Designee will be performed prior to the execution of a contract renewal or new contract with an existing vendor to determine if additional amendments are necessary or viable alternatives are available.....Copies of the evaluations must be signed by the Authorized Designee and Procurement Manager and stored in the Clerk's Contract Management System".

Our office reviews the collection agency rates on an annual basis when providing data to the CCOC for the annual Collection Agency Report. Effective 2023, we will compare our collection agency collection rates with other Clerks in the State.

Debtor's ability to pay is determined by the Court, a debtors filed Indigent Affidavit or when the debtor is establishing a payment plan. There are other factors that vary by county that impact how collections are done. State law allows for a surcharge up to 40%. Palm Beach County has one of the highest average collection rates in the state (18%) compared to the state average of 7%. The 25% collection agency surcharge currently assessed by our three providers perform better in Palm Beach County than these same companies do in other areas of the state. Based on these facts, the Palm Beach County Clerk believes that the contracted collection agencies provide the best quality of collection agency services with the most suitable terms.

Previously Reported Finding 4: The former Clerk paid \$68,708 for legal services using public funds without documented evidence that she had been charged with a crime or was the subject of an investigation.

Recommendation: The Clerk should:

- Establish policies and procedures addressing payments for legal services for representation of the Clerk or a Clerk employee. Such policies and procedures should address the circumstances under which such payments are permitted.
- Ensure that executed contracts for legal services include provisions requiring law firms to submit billings with sufficient details of activities and actual time spent performing those activities and to provide supporting documentation for reimbursable expenses.
- Enhance contract monitoring controls to ensure that, prior to payment, amounts billed are consistent with agreed-upon compensation terms.
- In consultation with legal counsel, take appropriate action to recover the \$2,322 overpayment to the former Clerk as reimbursement for excess charges invoiced by Law Firm 2.

Results of Follow-Up Procedures: *The Clerk corrected this finding.*

Previously Reported Finding 5: A formal budget policy needs to be established. Additionally, the budgetary information provided to the public through the posting of budget documents on the Clerk Web site and reporting in the Clerk financial statements was not consistent and did not always include final budget amounts reflective of changes to the budget throughout the fiscal year.

Results of Follow-Up Procedures: *The Clerk did not correct this finding.*

Recommendation: We continue to recommend that the Clerk adopt a budget policy as part of its administrative policies. The policy should include essential features of the budget development process and principles to guide in budgetary decision making. Additionally, the Clerk should revise procedures and consult with the BCC to ensure that budget information is reported in accordance with State law and in a consistent and fully transparent manner.

Management Response: The Clerk's Office does have a budget policy which is included in the Annual Budget submission to the GFOA as part of its Distinguished Budget Award program. We have submitted our budget to GFOA since FY2012 and proudly received the award for 10 straight years. Part of GFOA's Distinguished Budget Presentation Award criteria #4 (noted below) requires that the process for preparing, reviewing, and adopting the budget be included in the document in order to receive the award. The Clerk's office has received a "meets" or "exceeds" for this requirement every year since we first began participating in this award. In addition, the Annual Budget Award document is posted on the Clerk's external website which includes the Budget Policy & Budget Process in Section IV (A) and (B).

#P4. Mandatory: Describe the process for preparing, reviewing, and adopting the budget for the coming fiscal year. Also, describe the procedures for amending the budget after adoption. Criteria Location Guide Questions 1. Is a description of the process (including amendments) used to develop, review, and adopt the budget included? 2. Is a budget calendar provided to supplement (not replace) the narrative information on the budget process? 3. Is there a discussion of how the public is involved in the budget process? Explanation This criterion requires a concise narrative description of the budget process, including an explanation of relevant legal or policy requirements. This description should include the internal process to prepare the budget, the opportunities for public input, and the actual adoption of the budget. A budget calendar should be included (noting both key operating and capital dates), although its format may vary. Inclusion of dates in the narrative description of the budget process will not satisfy this criterion. The process for amending the budget after adoption should be covered. Clearly identify the legal level of budgetary Include the public in your budget process. Look at GFOA best practice on Adoption of Financial

Policies. Financial Policies Budget Process 5 control. Refer to GFOA's best practice on Public Participation in Planning, Budgeting, and Performance Management as a guide on public involvement in the budget process.

With regards to consulting the BCC, the Clerk's office does submit the clerk of the board of county commissioners, county auditor, and custodian of county funds budget, in the format prescribed by the county, May 1 annually. This budget submission is in accordance with F.S. 218.35 and is included in the county's annual budget, the Clerk's external website, and in the GFOA award winning budget document.

The Clerk's annual approved budget is posted on the external website. Differences between the budget documents and year-end financial statements are a result of reporting formats related to accounting standards. Our budget is prepared, in conjunction with State law and GFOA best practices, to ensure ease of communicating to and understanding by citizens of Palm Beach County as well as other interested parties. These differences are reconciled and validated annually by the external auditors. Additionally, the auditors validate that the Clerk's budgets are submitted pursuant to State Law by the required submission dates.