

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

Payroll, Personnel, Procurement, and
Budget Practices



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Clerk of the Circuit Court and Comptroller

During the period of our audit, Sharon R. Bock served as Clerk of the Circuit Court and Comptroller until January 5, 2021, when Joseph C. Abruzzo was sworn in as the Clerk of the Circuit Court and Comptroller.

The team leader was Jeffrey M. Brizendine, CPA, and the audit was supervised by Derek H. Noonan, CPA.

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PALM BEACH COUNTY CLERK OF THE CIRCUIT COURT AND COMPTROLLER

SUMMARY

This operational audit of the Palm Beach County Clerk of the Circuit Court and Comptroller (Clerk) focused on payroll, personnel, procurement, and budget practices. Our operational audit disclosed the following:

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.

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.

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.

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.

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.

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 March 31, 2021, the Clerk employed approximately 600 employees and had a net operating budget totaling \$70.5 million.

FINDINGS AND RECOMMENDATIONS

Finding 1: Separation Agreements

Pursuant to State law,¹ on or after July 1, 2011, an employee may receive severance pay that is not provided for in a contract or employment agreement if the severance pay represents the settlement of an employment dispute except that severance pay may not exceed an amount greater than 6 weeks of compensation. Severance agreements pursuant to the settlement of an employment dispute may not include provisions that limit the ability of any party to the settlement to discuss the dispute or settlement. Severance pay, as defined by this law, includes actual or constructive compensation, including salary, benefits, or perquisites, for employment services yet to be rendered which is provided to an employee who has recently been or is about to be terminated. However, pursuant to law, severance pay does not include compensation for earned and accrued leave, early retirement, or any subsidy for the cost of a group insurance plan available to an employee upon normal or disability retirement that is available to all employees.

Palm Beach County Clerk of the Circuit Court and Comptroller (Clerk) policies² 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. In addition, the policies include examples of actions constituting termination for cause, such as willful and material breach of job duties, fraud or breach of trust in connection with job duties, conviction of a crime involving dishonesty or breach of trust, gross negligence with the performance of job duties, or the willful failure or refusal to perform job duties. In the case of involuntary separation, the Clerk Employee Handbook³ provides that employees may request a meeting in writing with the Clerk within 5 business days after separation to discuss the reasons for separation. Additionally, Clerk policies⁴ provide paid time off (PTO) to employees to use for leave purposes; however, unused PTO is not eligible for payout when employment is terminated.

Our discussions with Clerk personnel and examination of Clerk records disclosed that, during the period October 2019 through February 2021, 130 employees terminated from Clerk employment. Additionally, during the period February 2020 through November 2020, the former Clerk entered into separation agreements with 14 of those employees, and the agreements contained clauses such as satisfaction of claims, general release, and non-disparagement that were intended to finalize the relationship between the former Clerk and the employee and satisfy all claims. Clerk personnel indicated that the separation agreements served to minimize the possibility of potential postemployment claims against the former Clerk and the associated monetary costs. However, although we requested, Clerk records were not provided to demonstrate how the agreements minimized the possibility of potential postemployment claims by those 14 employees against the former Clerk.

¹ Section 215.425(4)(b), Florida Statutes.

² Administrative Policy 08-03 – *Wages in Lieu of Notice*.

³ Employee Handbook Section 03-09 – *Types of Separation*.

⁴ Administrative Policy 04-02 – *Paid Time Off Program*.

We examined Clerk records, including the separation agreements and resulting payments, and as shown in Table 1, we found that the separation agreements included additional compensation totaling \$116,165, including \$89,495 for severance pay and \$26,670 for unused PTO.

Table 1
Separation Agreement Payments
February 2020 Through November 2020

| Job Position Title of Employee | Agreement Date | Severance Pay | | | Unused PTO | Total Payments |
|--|----------------|------------------|------------------------------|-----------------|-----------------|------------------|
| | | Salary Severance | COBRA Severance ^a | Total Severance | | |
| 1 Payroll Specialist | 02/25/20 | \$ 1,414 | \$ - | \$ 1,414 | \$ - | \$ 1,414 |
| 2 Assistant Manager – Financial Services | 03/12/20 | 8,954 | - | 8,954 | - | 8,954 |
| 3 Court Specialist IV | 03/31/20 | 2,701 | - | 2,701 | - | 2,701 |
| 4 Legal Counsel | 05/22/20 | 15,750 | 2,903 | 18,653 | - | 18,653 |
| 5 Senior Training Specialist | 06/15/20 | 6,808 | - | 6,808 | - | 6,808 |
| 6 Senior Administrative Assistant | 06/25/20 | 3,803 | 936 | 4,739 | - | 4,739 |
| 7 Chief Operating Officer | 06/29/20 | 17,423 | - | 17,423 | - | 17,423 |
| 8 Courtroom Administrator | 07/02/20 | 1,920 | - | 1,920 | - | 1,920 |
| 9 Administrative Specialist I | 07/17/20 | 1,286 | - | 1,286 | - | 1,286 |
| 10 Legal Compliance Officer | 09/25/20 | - | 1,817 | 1,817 | 3,846 | 5,663 |
| 11 Court Specialist III | 10/07/20 | 1,212 | - | 1,212 | - | 1,212 |
| 12 Court Operations Supervisor | 10/07/20 | 2,274 | - | 2,274 | - | 2,274 |
| 13 Chief Operating Officer – Finance | 10/30/20 | 16,085 | 2,648 | 18,733 | 22,824 | 41,557 |
| 14 Lead Court Specialist | 11/12/20 | 1,561 | - | 1,561 | - | 1,561 |
| Totals | | \$81,191 | \$8,304 | \$89,495 | \$26,670 | \$116,165 |

^a Consolidated Omnibus Budget Reconciliation Act (COBRA) insurance coverage premium payments.

Source: Clerk records.

We also found that none of the 14 employees had an employment agreement with the former Clerk; therefore, severance pay could only be paid in settlement of an employment dispute. In response to our request for records supporting the underlying employment disputes, we were provided with forms describing counseling meetings, coaching plans, and documents indicating recommendations for termination. The records provided related to issues such as unsatisfactory job performance, violations of standards of conduct, violations of Clerk policies, failure to perform job duties, providing untruthful information, or indications of job eliminations. However, Clerk records did not include grievances or appeals filed by the employees, documentation that the employees had requested a meeting with the former Clerk to discuss reasons for their termination, or any other evidence indicating that the 14 employees disputed or planned to dispute their employment termination or management’s evaluation of their job performance. Insofar as Clerk records did not evidence that the severance payments totaling \$89,495 represented the settlement of an employment dispute, such payments were contrary to State law.⁵ The severance payments included payments authorized by the former Clerk for:

⁵ Section 215.425(4)(b), Florida Statutes.

- 2 to 6 weeks of salary for 13 employees. Our discussion with Clerk personnel disclosed that the Clerk did not have a policy addressing how the number of weeks of severance pay would be determined.
- COBRA insurance coverage premium payments for periods ranging from 2 to 4 weeks for 4 employees (employee Nos. 4, 6, 10, and 13). Under COBRA, Clerk employees and their families have the right to choose to continue group health insurance benefits for limited periods of time. However, as these payments were made on behalf of the employees and were not a subsidy for the cost of a group insurance plan available to an employee upon normal or disability retirement that is available to all employees, these payments represent severance pay.

Clerk records did not evidence the basis for variances in the types of severance pay provided or how the number of weeks was determined for the severance payments. In response to our inquiries, Clerk personnel indicated that the payment amounts were determined and authorized by the former Clerk, and the Clerk personnel did not know how the former Clerk determined the number of weeks of salary and COBRA benefits paid to each employee.

Also, contrary to Clerk policies, the Clerk authorized payments totaling \$26,670 for unused PTO for 2 of the 14 employees (employee Nos. 10 and 13). As unused PTO is not to be included in severance pay pursuant to State law,⁶ and is prohibited from being paid to a terminating employee pursuant to Clerk policies, there was no legal basis for these payments.

According to Clerk personnel, the separation agreements were issued on a case-by-case basis as a result of assessing employment status and other factors to determine the risk of potential post-employment claims against the former Clerk and related costs, and the former Clerk authorized designated amounts based on the potential for employment claims and costs to defend in each instance. However, although we requested, we were not provided records evidencing the determination of these potential claims and costs. Additionally, in response to our inquiry, Clerk personnel indicated that there is no policy addressing the use of separation agreements. Implementation of such a policy may have prevented the use of separation agreements and the resulting payments that were contrary to State law or Clerk policies.

Recommendation: The Clerk should 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.**

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

⁶ Section 215.425(4)(d)1., Florida Statutes.

Included in the Clerk’s stewardship and fiduciary responsibilities associated with managing public resources is the responsibility to ensure that Clerk controls provide for the effective and efficient procurement of contractual services in accordance with applicable laws, contracts, and Clerk policies and procedures. To promote responsible spending and improved accountability, it is important that the Clerk consistently utilize an effective and efficient process for procurement.

Finding 2: Procurement Policies and Procedures

The Legislature has recognized in State law⁷ that fair and open competition is a basic tenet of public procurement and that such competition reduces the appearance and opportunity for favoritism and inspires public confidence that contracts are awarded equitably and economically. In its *Public Procurement Guide for Elected and Senior Government Officials* and *Global Best Practices*, the NIGP⁸ provides guidance and best practices for public procurement. For example, regarding the request for proposals (RFP) process, the NIGP provides in its *Global Best Practices* that “procurement policies and procedures are the foundation for a consistent, ethical, and transparent process for selecting a proposer for contract award. Entities should dedicate a section of their procurement policies and procedures to describe the use of a competitive process from development of the RFP through contract award.”

The Clerk’s Office established certain policies⁹ and procedures¹⁰ for procuring goods and services that provide for standardization and transparency of the appropriate and authorized use of public funds. As part of our audit, we evaluated the Clerk’s policies and procedures and found that, although the policies and procedures generally provide detailed guidance regarding the acquisition of goods and services, the policies and procedures could be enhanced. For example:

- Although Clerk policies indicate that competitive solicitations will be posted on the Clerk Web site and require a determination as to whether a public posting is necessary for the solicitation, the policies did not identify the employees responsible for making this determination or under what circumstances a solicitation would not be required to be publicly posted in a trade journal, newspaper, or other media form. Policies and procedures that prescribe the circumstances under which a solicitation would be required to be publicly posted and identify the employees responsible for making that determination would provide additional assurance that qualified vendors offering the desired goods or services are aware of the solicitation.
- While Clerk policies indicate that use of an invitation to negotiate (ITN) “may be necessary in order for the agency to receive the best value,” no specific guidance is provided for determining whether to use an RFP or an ITN, nor do the policies address who is responsible for making this determination or how the determination is to be documented. Policies and procedures that explicitly identify the proper solicitation process, and how the process should be documented, would provide additional assurance to demonstrate that the most appropriate solicitation process

⁷ Section 287.001, Florida Statutes

⁸ NIGP: The Institute for Public Procurement, is a membership-based, nonprofit organization composed of members representing Federal, state, provincial, and local government levels throughout the United States and Canada and provides support to professionals in the public sector procurement profession.

⁹ Administrative Policy 08-04 – *Contract Policy* and 08-05 – *Procurement Policy*.

¹⁰ *Competitive Solicitation Guidelines*.

is used to procure the desired goods or services at the most economical price consistent with desired quality.

- While Clerk policies indicate that the department initiating a request for the purchase of goods or services must identify those departments impacted by the goods or services to be solicited and select an evaluation committee representative of those departments, the policies do not sufficiently describe the evaluation committee selection process. Specifically, the policies and procedures did not indicate which Clerk personnel are responsible for appointing the committee members, require that committee members have sufficient knowledge or expertise related to the types of goods or services being procured, specify the minimum number of evaluation committee members, or prescribe procedures to follow to ensure committee members are free of any conflict of interest regarding the vendors being evaluated. Policies and procedures that adequately describe the evaluation committee selection process would provide additional assurances regarding the vendor selection process.
- Clerk policies provide that the evaluation committee will review all vendor responses to the solicitation document, score the responses according to the established criteria, and select the highest-ranked vendor response. However, Clerk policies do not require that committee members be provided written guidance regarding how to apply prescribed criteria based on the information vendors were required to provide in their response or require that committee members make notes or otherwise document the basis for their scores. Such policies and procedures would help ensure a consistent approach in scoring proposals against predetermined criteria and provide more transparency in the competitive selection process.
- Clerk policies provide certain exceptions to competitive solicitation requirements for purchases of sole source items and staffing and employment placement services. However, the policies and procedures do not address the process for determining and documenting whether desired goods or services are only available from a sole source. In addition, the benefit of exempting these services from competitive selection is unclear as some governmental entities, including the State and Palm Beach County,¹¹ do not exempt staffing and employment placement services from competitive selection. Subjecting staffing and employment placement services to a competitive selection process would provide additional assurance that the Clerk obtains quality temporary staffing services and hires qualified candidates at a reasonable cost.
- Clerk policies indicate that “Procurement” will keep all documents involved with a procurement solicitation. Clerk personnel indicated that documents from the solicitation process, including vendor proposals, are initially held in “Procurement” but, once the contract has been awarded, the documents are kept in the Legal Department; however, this is not stated in Clerk policies and procedures. Policies and procedures that clearly and accurately prescribe responsibilities for maintaining solicitation-related records would provide additional assurance that the Clerk’s Office maintains public records in accordance with State law¹² and consistent with the Clerk’s intent.
- Clerk policies and procedures do not require periodic assessments or performance of 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, negotiate better fees, or, at a minimum, provide justification for not subjecting the services to a competitive selection process.

¹¹ Section 287.057, Florida Statutes, and Palm Beach County Purchasing Code (Chapter 2, Article III, Division 2 - Purchases, Section 2-51(f) of the Palm Beach County Code of Ordinances).

¹² Chapter 119, Florida Statutes.

Recommendation: Clerk procurement policies and procedures should 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.

Finding 3: Collection Agency Services

State law¹³ provides that a clerk of court shall pursue the collection of any fees, service charges, fines, and court costs that remain unpaid after 90 days by referring the account to a private attorney or collection agent. In pursuing the collection of such unpaid financial obligations through a collection agent, the clerk must have attempted to collect the unpaid amount, find the use of a collection agency to be cost-effective, and follow applicable procurement practices. In addition, Florida Clerks of Court Operations (CCOC) *Best Practices* provide that the collection of court cost and fines is a priority for clerks and, in pursuing the collection of accounts, clerks should consider use of multiple collection agencies. Accordingly, collection agency services should be cost-effective and acquired through an appropriate procurement process that results in contracts that maximize collections and best meet the Clerk's needs.

When procuring collection agency services, collection agency fees and related fee percentages should be considered along with the agency's historical collection recovery rate. Collection agencies considered by the Clerk should have a proven track record with an established basis for individuals to pay debts using various electronic mediums and payment plans, and established processes for interacting and communicating with debtors. To promote transparency and demonstrate that the selection process was appropriate and effective, it is also important for records to be maintained to document the process and that the most suitable collection agencies were selected.

Once a collection agency is selected, the contract should require the collection agency to provide records demonstrating compliance with the contract and supporting the amounts collected and the basis for the agency's fee calculations. Such records should enable the Clerk to recalculate and reconcile the agency's fees to the contract provisions.

The Clerk contracts with collection agencies to provide professional collection services for specified delinquent accounts, such as those for felony and misdemeanor court assessments and traffic, municipal, and county ordinance violation fines. The total amount due from the debtor (principal plus Clerk-assessed late fees and interest) is referred by the Clerk to a collection agency, which adds a collection fee to the amount due.¹⁴ Upon collection from the debtor, the collection agency retains the collection fee and remits the referred amount to the Clerk.¹⁵ Clerk records demonstrate that Clerk personnel periodically reconciled the amounts remitted by the collection agency to the amounts the Clerk referred to the collection agency.

¹³ Section 28.246(6), Florida Statutes.

¹⁴ Section 28.246(6), Florida Statutes, provides that the collection fee may not exceed 40 percent of the amount owed at the time the account is referred to the collection agency.

¹⁵ If only a partial amount of the total due from the debtor is collected, the partial payment is allocated pro rata between principal, late fees, interest, and the collection fee amounts.

The former Clerk had contracts with the three collection agencies (referred to in this report as Collection Agency 1, 2, and 3) during the period October 2019 through February 2021 and equitably referred accounts to Collection Agency 1 and 2 for collection. According to Clerk personnel, as of June 2021, Collection Agency 3 was contracted to provide collection services for unpaid misdemeanor case assessments; however, no accounts had been referred to Collection Agency 3 due to technical issues with the referral and retrieval system, which was in the final stages of testing as of that date.

Our review of Clerk records and discussions with Clerk personnel disclosed that the Clerk's procurement and use of collection agencies could be enhanced. Specifically, we noted that:

- Clerk policies¹⁶ require goods and services costing \$5,000 or more be acquired by a competitive selection process. However, as Clerk policies did not specifically address competitive selection of collection agency services, and because debtors directly pay the collection agencies the amount due to the Clerk along with collection fees, the former Clerk did not apply these policies to the procurement of collection services from the three agencies. In response to our inquiries in June 2021, Clerk personnel indicated that they intend to apply the competitive selection requirements prescribed in the Clerk procurement policies to future procurements of collection agency services. However, it is not clear that the competitive selection requirements prescribed in the policies would adequately address the procurement of collection agency services, as Clerk procurement policies do not address the unique manner in which collection agencies are compensated for services.
- Although we requested, Clerk personnel did not provide records evidencing the process used to select Collection Agencies 1, 2, and 3. However, according to Clerk personnel, Collection Agency 2 had been utilized by the Palm Beach County Board of County Commissioners since at least 2004; therefore, local historical performance may have been considered. Absent records supporting effective processes for selecting the collection agencies under contract, Clerk records do not demonstrate that the most suitable collection agencies were selected.
- For Collection Agency 1 and 2, the contracts originally provided for a collection fee of 40 percent; however, the fee was amended to 30 percent effective September 1, 2018. According to an annual collection agency report issued by the CCOC¹⁷ for the period October 2019 through September 2020, the 67 Florida clerks used 11 collection agencies. The CCOC report indicated that Collection Agency 1 and 2 were the most commonly utilized by Florida clerks¹⁸ and the agencies' fees ranged from 20 to 40 percent. Using the amounts stated in the CCOC report, we calculated that, on a Statewide basis, the 11 collection agencies achieved a collection rate¹⁹ of 83 percent for accounts referred by the clerks. In comparison, Collection Agency 1 and 2 utilized by the former Clerk achieved collection rates of 76 and 77 percent, respectively, for accounts referred by the Clerk.

In response to our inquiries, Clerk personnel did not provide explanations or records evidencing how the collection fees included in the collection agency contracts and subsequently amended were determined. Such records could have included, for example, correspondence maintained by Clerk personnel to demonstrate the fee collection rates the agencies assessed other clerks in

¹⁶ Administrative Policy 08-05 – *Procurement Policy*.

¹⁷ 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.

¹⁸ Collection Agency 1 had 28 contracts with Florida clerks and Collection Agency 2 had 35 contracts with Florida clerks.

¹⁹ For purposes of our calculation, collection rate is the total accounts receivable amounts collected by the collection agencies as a percentage of the total accounts receivable amounts referred to the collection agencies. The cited collection rates were calculated using data included in CCOC's annual collection agency report for the period October 2019 through September 2020.

the State and collection agency fee negotiations. Insofar as higher collection fee percentages increase amounts due from the debtor, higher percentages could affect debtors' ability to pay, thus impacting the collection of accounts referred. Absent documented efforts to obtain the lowest collection fee percentage consistent with best quality of collection agency services, there is an increased risk that the Clerk may not receive the most from these services.

Recommendation: The Clerk should:

- **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.**

Finding 4: Legal Services

The Florida Attorney General has opined that any expenditure of public funds must be for a primarily public purpose, with only incidental or secondary benefit to private interests.²⁰ Our examination of Clerk records and inquiry of Clerk personnel disclosed that policies and procedures addressing payments for legal services to provide legal representation for the Clerk or Clerk employees had not been established.

In September 2018, a United States District Court issued a subpoena instructing the "Custodian of Records, Office of the Clerk and Comptroller of Palm Beach County" to appear in Court to testify before the Court's Grand Jury and to provide certain specified records²¹ pertaining to certain individuals or entities, including Collection Agency 2 discussed in Finding 4. Attached to the subpoena was a "Declaration Certifying Records of Regularly Conducted Activity" form that was to be completed by a Clerk employee regarding the records submitted to the Court in response to the subpoena.

In a memorandum dated November 7, 2018, a former Deputy Legal Counsel for the former Clerk responded to the question of whether the former Clerk must or may pay legal expenses of a public official subpoenaed to testify before a Federal Grand Jury. The memorandum indicated that, because the former Clerk was defending herself in a Federal Grand Jury proceeding where liability may arise, as a public official, the former Clerk was entitled to a legal defense at public expense under common law if she was successful in her defense.²²

Subsequently, according to Clerk records, the former Clerk incurred expenditures totaling \$68,708 for legal services provided by two law firms in connection with the Federal Grand Jury investigation. As

²⁰ Florida Attorney General Opinion No. 79-14.

²¹ The specified records were requested for the period January 1, 2009, through the subpoena date and included, but were not limited to, e-mails, correspondence, voice mail messages, and text messages regarding (or with) certain specified individuals or entities and any records related to donations, gifts, or transportation offered or received from any of the specified individuals or entities.

²² The memorandum stated that "success has been defined in many ways, including but not limited to an acquittal and a lack of charges being brought."

shown in Table 2, that amount included \$45,174 paid by the Clerk’s Office directly to Law Firm 1 and \$23,534 reimbursed to the former Clerk for amounts she directly paid to Law Firm 2.

Table 2
Payments for Legal Services – Grand Jury Investigation

| Law Firm | Service Dates | Amount Paid |
|------------|----------------------------------|-------------|
| Law Firm 1 | November 2018 through April 2019 | \$45,174 |
| Law Firm 2 | February 2019 through April 2019 | 23,534 |

Source: Clerk records.

Our review of the information included in the aforementioned memorandum from the former Deputy Legal Counsel disclosed that:

- Although the memorandum indicated that the former Clerk was defending herself in a Federal Grand Jury proceeding where liability may arise, the Federal subpoena was not specifically directed to the former Clerk. In addition:
 - A Clerk employee, not the former Clerk, signed the “Declaration Certifying Records of Regularly Conducted Activity” form regarding the subpoenaed records.
 - The memorandum indicated that a letter accompanying the subpoena stated, “Anything that you do or say may be used against you by the grand jury or in a subsequent legal proceeding” and did not reference any immunity provisions. However, although we requested, we were not provided a copy of the letter that allegedly accompanied the subpoena or any other records evidencing that the subpoena was directed personally toward the former Clerk as opposed to the Clerk’s Office.
- The memorandum indicated that, if the former Clerk was either not charged or was ultimately found not guilty of any charges brought, she would have been successful in her defense. However, Clerk records did not evidence that the Grand Jury was investigating the possibility that the former Clerk had committed a Federal crime or that the former Clerk had been, or was about to be, charged with a Federal crime. Additionally, Clerk records²³ indicated that the former Clerk was advised by legal counsel in March 2019 that she was not the subject of, and was not implicated by, the investigation. As such, it was not apparent from Clerk records that the former Clerk required “defense” regarding possible or actual criminal charges.
- The memorandum indicated that payment for the former Clerk’s defense was permissible before or after the case (i.e., before or after the Grand Jury investigation concluded). Florida courts have recognized that public officials and employees have a right to legal representation at public expense pursuant to common law and independent of any statutory authorization. However, we are not aware of any statutory provision, case law, or Attorney General opinion that specifically addresses the use of public funds for legal representation of an officer or employee prior to criminal charges or litigation being brought.

Consequently, Clerk records did not clearly demonstrate that the aforementioned legal services were necessary to serve a public purpose or that the associated costs primarily benefitted the Clerk’s Office as-a-whole and only incidentally benefitted the former Clerk as an individual. Absent Clerk policies and procedures addressing the provision of legal representation, there is an increased risk that payments for such services may serve a private, rather than a primarily public, purpose.

²³ Transcript of texts between the former Clerk and the principal attorney for Law Firm 2.

Effective contract monitoring procedures are essential to ensure that contracted law firms comply and are paid in accordance with applicable contract terms and conditions. As part of our audit procedures, we reviewed Clerk records related to the law firm contracts, including the contract documents and billing and payment records.

The former Clerk executed a contract with a law firm in February 2009 which provided that the former Clerk would consult with the firm on various legal issues that may arise from time to time. The contract provided that, for each particular consultation, the firm would confirm in writing with the former Clerk the scope of the consultation and the agreed-upon hourly rates. Regarding the Grand Jury subpoena, the firm sent the former Clerk an engagement letter dated November 15, 2018, specifying hourly rates for work to be performed by firm personnel, including hourly rates of \$785 for the principal attorney and \$425 to \$475 for associates. However, neither the February 2009 contract nor the November 2018 engagement letter required the vendor to submit billings with sufficient details of activities and actual time spent performing those activities, or to provide supporting documentation for reimbursable expenses.

Our examination of the \$45,174 in billings submitted by Law Firm 1 disclosed that \$32,558 was adequately supported by invoices and documentation supporting expenses. However, for the remaining \$12,616 we found that:

- \$10,375 was for work performed by law firm personnel at rates not prescribed in the contract, including a partner who was paid at an hourly rate of \$1,090 and other paralegal personnel who were paid at hourly rates ranging from \$215 to \$360.
- \$2,241 was for reimbursable costs described as “E-Discovery Costs,” of which \$1,310 was not supported by any documentation, and \$931 was supported by documents provided by the “E-Discovery Costs” vendor that did not evidence that the costs were incurred in connection with services provided to the Clerk’s Office.

In response to our inquiries, Clerk personnel indicated that these costs were associated with electronic document production necessary to respond to the subpoena and entailed the receipt, review, analysis, and logistics of generating and handling potentially responsive documents. However, the law firm’s invoices and accompanying vendor support documentation did not evidence that the law firm incurred these expenses specifically to respond to the subpoena or itemize the costs.

Clerk personnel provided us a copy of a six-page contract dated January 17, 2019, between Law Firm 2 and the former Clerk signed by Law Firm 2 but not signed by the former Clerk. Subsequently, we were provided the signature page (last page) of a five-page contract dated January 17, 2019, that included the former Clerk’s signature dated February 8, 2019. Because we were not provided the other four pages of the five-page contract, Clerk records did not demonstrate, with certainty, that the six-page unsigned contract was the final version of the contract that the former Clerk entered into with Law Firm 2. Although the unsigned six-page contract specified hourly rates for work to be performed by firm personnel, including hourly rates of \$900 for the principal attorney, \$400 to \$900 for other attorneys, and \$60 to \$300 for paraprofessionals, it did not require the law firm to submit billings in sufficient detail to evidence the nature of the services provided, the actual time and hourly rates associated with performing those activities, and adequate documentation of reimbursable expenses.

Our examination of billings submitted by Law Firm 2 disclosed that of the \$23,534 paid:

- \$4,554 was not supported by invoices in sufficient detail (i.e., firm employee names, hours, and hourly rates) to determine whether the agreed-upon hourly rates were properly assessed.
- \$18,980 was supported by two invoices, \$12,523.50 and \$6,456.50, that included hourly rates for the principal attorney of \$1,035, or \$135 more than the agreed-upon amount, resulting in total excess charges of \$2,322. Also, the \$6,456.50 invoice included \$1,178 of charges for other law firm employees but did not identify the employees as attorneys or paraprofessionals. Consequently, Clerk records did not demonstrate whether the contractual agreed-upon rates were properly assessed.

Absent properly executed contracts requiring detailed billings and effective contract monitoring controls to ensure invoices are consistent with contract terms, there is limited assurance that desired services are received at agreed-upon rates and there is an increased risk of overpayments and limited ability to require satisfactory performance in the event of a dispute.

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.**

Finding 5: Budgetary Controls and Transparency

State law²⁴ requires the Clerk to establish an annual budget that must be balanced so that total estimated receipts, including balances brought forward, equals the total of estimated expenditures and reserves. The Clerk must prepare the budget in two parts related to the functions they perform: Court-related costs and board of county commissioners (BCC) requirements.²⁵ Additionally, the Clerk’s final approved budget²⁶ must be posted on the BCC’s official Web site within 30 days after adoption and may be included in the BCC’s budget. State law²⁷ also requires the Clerk to provide for an annual financial audit, and the Rules of the Auditor General²⁸ require budgetary comparison schedules as part of the basic financial statements of the Clerk’s annual financial audits.

²⁴ Section 218.35, Florida Statutes.

²⁵ Section 218.35(2)(b), Florida Statutes, provides that BCC requirements include the Clerk’s duties as clerk of the board of county commissioners, county auditor, and custodian or treasurer of all county funds and other county-related duties.

²⁶ Section 218.35(2)(a), Florida Statutes, provides that the portion of the budget for court-related functions by submitted to the CCOC in accordance with Section 28.36, Florida Statutes, and provides that the portion of the budget related to BCC requirements be submitted to the BCC.

²⁷ Section 218.39, Florida Statutes.

²⁸ Section 10.557(3)(k), Rules of the Auditor General.

Government Finance Officers Association (GFOA) Best Practices²⁹ recommend that governments adopt formal basic financial policies including a policy regarding the operating budget. Such a policy should describe the essential features of the budget development process and form, as well as principles that guide budgetary decision making. Formal policies typically outlive their creators and promote stability and continuity.

Upon inquiry, Clerk personnel indicated that a budget policy is included in the Clerk’s budget book, which is an informal document prepared for informational purposes for taxpayers and other interested parties. However, the budget policy is not included in the Clerk’s official administrative policies, and an official budget policy would provide stability and continuity of the budget process in the event of employee turnover.

The Court-related and BCC-required parts of the Clerk’s General Fund operating budget and amendments thereto for the 2019-20 and 2020-21 fiscal years are shown in Table 3.

Table 3
Palm Beach County
Clerk of the Circuit Court and Comptroller
General Fund Operating Budgets

| Budget Elements | Fiscal Year | |
|--|----------------------------|----------------------------|
| | 2019-20 | 2020-21 |
| Initial Approved Budget – Court-related | \$31,433,512 | \$28,821,021 |
| Initial Approved Budget – BCC-required | 26,576,978 | 28,334,503 |
| Amount Reserved – Transfer to County for Excess Fees | (500,000) | (500,000) |
| Initial Total Budget | \$57,510,490 | \$56,655,524 |
| Budget Amendment #1 – BCC-required | 1,645,000 | - |
| Transfer from Special Revenue Fund | 3,695,558 | 3,771,574 |
| Transfer to BCC for Excess Fees | 500,000 | 500,000 |
| Revised Total Budget | \$63,351,048 | \$60,927,098 |
| Budget Amendment #2 – Court-related | (4,061,899) | - |
| Final Total Budget | <u>\$59,289,149</u> | <u>\$60,927,098</u> |

Source: Clerk records.

Our review of the BCC’s Web site in June 2021 disclosed that the Clerk’s final approved budgets for the 2019-20 and 2020-21 fiscal years were not posted. Rather, the BCC’s Web site included a link to the Clerk Web site, which is not consistent with State law.³⁰ The budget documents posted on the Clerk Web site included a Summary of Expenditures by Funding Source (Summary) that Clerk personnel indicated was the document that complied with the requirements of State law.³¹ However, as shown in Table 4, we noted inconsistencies in the reporting of final budget amounts between the Summary and the Clerk’s accounting records.³²

²⁹ GFOA Best Practices – *Adopting Financial Policies*.

³⁰ Section 218.35(4), Florida Statutes.

³¹ Section 218.35, Florida Statutes.

³² The 2019-20 fiscal year audited financial statements and the Clerk’s 2020-21 fiscal year accounting records as of June 30, 2021.

Table 4
Palm Beach County
Clerk of the Circuit Court and Comptroller
Budgeted Expenditures and Other Financial Uses

| Source | Fiscal Year | |
|---|---------------------|---------------------|
| | 2019-20 | 2020-21 |
| Summary of Expenditures by Funding Source | \$57,510,490 | \$56,655,524 |
| Clerk Accounting Records | 63,351,048 | 60,927,098 |
| Difference | \$ 5,840,558 | \$ 4,271,574 |

Source: Clerk records.

For the 2019-20 fiscal year, General Fund budgeted expenditures reported in the Summary posted to the Clerk Web site were \$5.8 million less than the final budgeted expenditures and other financing uses reported in the Clerk’s audited financial statements³³ for its General Fund. The difference was primarily due to a \$3.7 million transfer from the Clerk’s Public Records Modernization Trust Fund³⁴ (Public Records Fund) for technology purchases and a \$1.6 million budget increase from the BCC for a Judicial Records Reduction Project. Similarly, for the 2020-21 fiscal year, the \$4.3 difference was also primarily due to a \$3.8 million transfer from the Public Records Fund for technology purchases.

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 purchases 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.

Additionally, for the 2019-20 fiscal year, we noted that the final budget amounts reported did not include a budget reduction totaling \$4.1 million imposed by the CCOC on August 5, 2020, related to reductions in court revenues impacted by the COVID-19 pandemic. According to Clerk personnel, due to the Clerk’s funding methodology, the Clerk functions are on a cash basis and, rather than post the budget reduction in the accounting records, spending was controlled through the use of worksheets. Clerk personnel cited the \$6.3 million positive variance between the budget to actual comparison in the 2019-20 fiscal year audited financial statements as evidence of the effectiveness of the Clerk’s use of worksheets to track funding reductions rather than updating the official accounting records. Notwithstanding, the inconsistent reporting of budget amounts between budget documents and accounting records limits the transparency of Clerk operations.

Recommendation: The Clerk should 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

³³ Schedule of Revenues, Expenditures, and Changes in Fund Balance – Budget to Actual.

³⁴ The Public Records Modernization Trust Fund is funded by legal document recording fees and is used to improve access to public records and 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.

consult 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 submitted to the GFOA, and the Clerk's 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 and the budget is not posted on the BCC's official Web site pursuant to State law. Consequently, the finding and related recommendation stand as presented.

OBJECTIVES, SCOPE, AND METHODOLOGY

The Auditor General conducts operational audits of governmental entities to provide the Legislature, Florida's citizens, public entity management, and other stakeholders unbiased, timely, and relevant information for use in promoting government accountability and stewardship and improving government operations. Pursuant to Section 11.45(2)(j), Florida Statutes, the Legislative Audit Committee, at its February 18, 2021, meeting, directed us to conduct this operational audit of the Palm Beach County Clerk of the Circuit Court and Comptroller.

We conducted this operational audit from March 2021 through September 2021 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the 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 operational audit focused on selected Clerk processes including payroll, personnel, procurement and budget practices. The objectives of this audit were to:

- Evaluate management's performance in establishing and maintaining internal controls, including controls designed to prevent and detect fraud, waste, and abuse, and in administering assigned responsibilities in accordance with applicable laws, rules, regulations, contracts, grant agreements, and other guidelines.
- Examine internal controls designed and placed in operation to promote and encourage the achievement of management's control objectives in the categories of compliance, economic and efficient operations, reliability of records and reports, and the safeguarding of assets, and identify weaknesses in those internal controls.
- Identify statutory and fiscal changes that may be recommended to the Legislature pursuant to Section 11.45(7)(h), Florida Statutes.

This audit was designed to identify, for those programs, activities, or functions included within the scope of the audit, deficiencies in management's internal controls, instances of noncompliance with governing laws, rules, or contracts and instances of inefficient or ineffective operational policies, procedures, or practices. The focus 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 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 the selection and examination of transactions and records for the period October 2019 through February 2021 and selected transactions prior and subsequent thereto. Unless otherwise indicated in this report, these transaction and records were not selected with the intent of statistically projecting the results, although we have presented for perspective, where practicable, information concerning relevant population value or size and quantifications relative to the items selected for examination.

An audit by its nature does not include a review of all records and actions of management, staff, and vendors, and as a consequence, cannot be relied upon to identify all instances of noncompliance, fraud, abuse, or inefficiency.

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.
- Examined Clerk records to determine whether the Clerk had developed an anti-fraud policy and procedures to provide guidance to employees for communicating known or suspected fraud to appropriate individuals. Also, we examined Clerk records to determine whether the Clerk had implemented appropriate and sufficient procedures to comply with its anti-fraud policy.
- Evaluated the adequacy of Clerk policies and procedures related to identifying potential conflicts of interest and prohibiting the acceptance of gifts from vendors. For selected Clerk officials, reviewed Florida Department of State, Division of Corporations, records, statements of financial interest, and Clerk records to identify any potential relationships that represented a conflict of interest with Clerk vendors.
- Evaluated the adequacy of Clerk policies and procedures for controlling spending through its budget process.
- Examined Clerk adopted budgets for the 2019-20 and 2020-21 fiscal years, and budget amendments for the 2019-20 fiscal year, to determine compliance with Sections 28.36, 129.03, and 218.35, Florida Statutes.
- Examined the Palm Beach County Board of County Commissioners Web site to determine whether the final approved Clerk budget for the 2020-21 fiscal year was posted pursuant to Section 218.35(4), Florida Statutes.
- Examined Clerk records for the audit period to determine whether Clerk procedures for preparing the budget were sufficient to ensure that all potential expenditures were budgeted.

- Evaluated the adequacy of Clerk policies and procedures for employee terminal leave and severance payments.
- From the population of 130 employees who separated from Clerk employment during the audit period, identified 14 separation agreements entered into between the former Clerk and 14 employees and determined whether settlement payments totaling \$116,165, including severance payments totaling \$89,495, were adequately supported, properly calculated, and paid in accordance with applicable laws, rules, and Clerk policies and procedures.
- Evaluated the sufficiency of Clerk policies and procedures for procurement.
- Examined Clerk records supporting the three collection agencies contracts in effect during the audit period to determine that they were competitively selected in accordance with applicable laws, rules, and Clerk policies. Additionally, we examined Clerk records to determine whether collection fees were properly calculated in accordance with contracts.
- From the population of 282 vendors with transactions totaling \$11.9 million during the audit period, examined Clerk records related to 19 selected expenses totaling \$4.2 million related to 10 vendors to determine whether:
 - Selected vendors were competitively selected in accordance with applicable laws and Clerk policies.
 - Selected expenses were in correct amounts and adequately documented; made in accordance with applicable laws, Clerk policies and procedures, contract provisions, and good business practices; and properly authorized and approved.
- Examined Clerk records and inquired of Clerk personnel to determine whether the Clerk performed any construction projects using its own services, employees, and equipment during the audit period that were required to be reported in accordance with Section 255.20(1)(c)(9), Florida Statutes.
- 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.



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

December 5, 2021

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

Dear Ms. Norman,

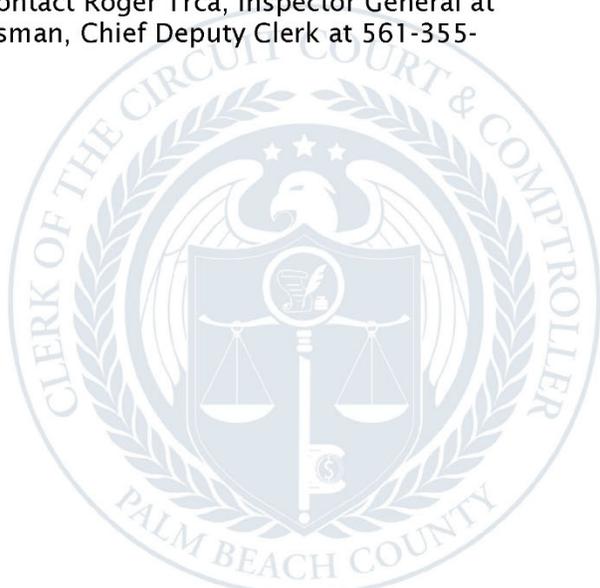
This letter is in response to the preliminary and tentative audit findings and recommendations as a result of the recent Auditor General Office audit dated October 22, 2021.

Our revised 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 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 5-100
Belle Glade, FL

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

MANAGEMENT RESPONSES

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.

Recommendation: The Clerk should 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.

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

Management Response: Upon taking office on January 5, 2021, Clerk Abruzzo eliminated the use of separation agreements. Should the Clerk's Office revisit the policy decision to utilize separation agreements, we will implement the recommendations herein.

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.

Recommendation: Clerk procurement policies and procedures should 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.

Management Response: We concur that Clerk procurement policies and procedures should 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, and records demonstrate compliance with State law records retention requirements. Although Clerk procurement practices are in alignment with current industry best practices for both new contracts and renewals, enhanced policies and procedures will ensure these are carried out more consistently. The Clerk's Office concurs with the recommendation to issue competitive solicitation for health insurance program administrator services.

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.

Recommendation: The Clerk should:

- 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.

Management Response: Upon taking office on January 5, 2021, Clerk Abruzzo instructed staff to issue a competitive solicitation for collection agency services, which has been completed. As part of that process and future competitive solicitation, management concurs with and will implement the recommendations offered by the auditor.

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.

Management Response: The Clerk’s Office concurs with the recommendations from the AGO. As none of the current staff has direct knowledge of the circumstances surrounding the legal issues of the previous Clerk, we are unable to comment of the finding. However, we do believe that implementation of the AGO recommendations will bring additional transparency and accountability to the process of paying for legal services

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.

Recommendation: The Clerk should 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 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 regard 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.