REPRESENTING

ALEX SINK

CHIEF FINANCIAL OFFICER
STATE OF FLORIDA

HARDEE COUNTY

CLERK OF CIRCUIT COURT

BUDGET REVIEW

REPORT DATE:
February 11, 2009

TABLE OF CONTENTS

ALEX SINK
CHIEF FINANCIAL OFFICER

INTRODUCTION

The Department of Financial Services (DFS) has completed a review of the budget certifications made by the Hardee County Clerk of Circuit Court's Office to the Clerks of Court Operations Corporation (CCOC), pursuant to Section 28.35(3)(b), Florida Statutes (F.S.). The scope of our review focused on validating the processes and methodologies utilized in the development of the Clerk's budgets for fiscal years 2006-2007 (FY 06-07) and 2007-2008 (FY 07-08).

The Chief Financial Officer (CFO) has contracted with CCOC to establish a process for review and certification of court-related budgets submitted by the Clerks of Circuit Courts. The CCOC is responsible for calculating the maximum authorized annual budget, identifying budgets exceeding the maximum expenditure amounts for a standard list of court-related functions and identifying budgets that have insufficient revenues to cover court-related expenditures, pursuant to Section 28.36, F.S.

SUMMARY

- The FY 06-07 and FY 07-08 approved budgets were $1,003,876, and $1,125,314 respectively.

- Hardee County has a population of 27,520 and had 19.15 and 20.30 Full Time Employees (FTEs) budgeted to support court-related activities for FY 06-07 and FY 07-08 respectively.

- Budgeted revenues and expenditures for FY 06-07 were $776,522 and $1,003,876 respectively, resulting in a budgeted deficit of $227,354. Actual revenues and expenditures as reported by the Clerk for FY 06-07 detailed a surplus of $191,267. The Clerk remitted the FY 06-07 surplus to the Department of Revenue (DOR) on December 28, 2007 for deposit in the General Revenue Fund, pursuant to the provisions of Section 28.37(4), F.S.

- Budgeted revenues and expenditures for FY 07-08 are $903,500 and $1,125,314 respectively, resulting in a $221,814 budgeted deficit. Monthly payments from the Clerks of the Court Trust Fund are scheduled to fund the Clerk's projected deficit pursuant to CCOC directive.

- The Clerk has an internal system and reporting procedures for measuring and reporting on all required performance standards.

SCOPE, OBJECTIVES AND METHODOLOGY

Scope

The Scope of our review included an analysis of the development of the Clerk's FY 06-07 and FY 07-08 budgets. Our review was conducted on September 24 - 25, 2008 at the Hardee County Clerk of Circuit Court's Office.

Objectives and Methodology

The budget review was conducted with the following objectives:

- Each Clerk shall develop a budget funded from fees, services charges, court costs and fines, pursuant to Sections 28.35, 28.36 and 28.37, F.S. Clerks must provide detailed information on expenditures necessary for the performance of court-related functions using the court-related codes in the Uniform Accounting System Manual (UASM). The budget shall be submitted annually to CCOC for review and approval. The CCOC budget approval process focuses on the following key components:

    - Overhead Cost Allocation – The Hardee County Clerk's Office applied a 100 percent cost allocation rate to the FY 06-07 certified annual budget. A 69.70 percent cost allocation rate is being utilized for the FY 07-08 budget.

    - Our review of supporting documentation disclosed that the methodologies used to calculate and distribute overhead costs were reasonable.

    - Distribution of Court-Related FTEs – The Hardee County Clerk's Office budgeted 19.15 of 19.15 and 20.30 of 29.13 FTEs for FY 06-07 and FY 07-08 respectively, to support court-related functions.

    - General Fund Expenditures – The final approved budget for FY 06-07 was $1,003,876. Major expenditure categories were: Personal Services ($923,654), Operating Expenses ($73,222), and Capital Expenses ($7,000). The final approved budget for FY 07-08 was $1,125,314. Major expenditure categories are: Personal Services ($1,017,617) and Operating Expenses ($107,697).

    - Revenue Forecasting – Budgeted revenues of $776,522 and $903,500 were calculated for FY 06-07 and FY 07-08 respectively, based on prior period data and management's assessment of future operational activities.

    - Our review determined that the Clerk's FY 06-07 and FY 07-08 budgets were prepared pursuant to CCOC instructions and submitted in accordance with the provisions of Section 28.36, F.S.

- Expenditures during the review period were not limited to court-related functions as specified in Section 28.35(4)(a), F.S. The Hardee County Clerk's Office reported $36,971 for information technology software & hardware expenses, $2,500 for security system expenses, and $4,260 for gifts & celebratory expenses in FY 06-07. The Clerk reported $8,140 for information technology software & hardware expenses and $4,740 for gifts & celebratory expenses through the time of our review (based on report data through August 2008) for FY 07-08.

- Revenues for fees, services charges, court costs and funding for court-related functions for FY 06-07 were assessed pursuant to the provisions of Chapter 28, F.S. The Clerk's budget for FY 07-08 was based on projected revenues from the same sources, pursuant to Section 28.36, F.S.

- Clerks are required to maintain a partial fee payment system, pursuant to Section 28.246, F.S. The Hardee County Clerk's Office is currently utilizing an internal database system to account for partial fee payments. The Clerk is contracting with an external collection agency to assist with collecting delinquent accounts 90 days past due. However, our review concluded that the Hardee County Clerk's Office is receiving administrative fees from the contracted collection agency.

- Hardee County Clerk of Court was designated a "recipient" office for FY 06-07 by CCOC based upon a budgeted deficit of $227,354. Monthly payments from the Clerks of the Court Trust Fund were scheduled to fund the Clerk's projected deficit pursuant to CCOC directive. The Clerk reported a FY 06-07 surplus of $191,267 based on actual revenues and expenditures of $1,088,562 and $897,295 respectively. The Clerk remitted the FY 06-07 surplus to DOR on December 28, 2007 for deposit in the General Revenue Fund, pursuant to the provisions of Section 28.37(4), F.S.

- Hardee County Clerk of Court is designated a "recipient" office for FY 07-08 by CCOC based upon a budgeted deficit of $221,814. Projected revenues and expenditures for FY 07-08 are $903,500 and $1,125,314 respectively. Through the time of our review (based on report data through August 2008), the Clerk's Office reported an actual FY 07-08 surplus of $108,163 based on revenues and expenditures of $952,031 and $843,868 respectively.

- The following performance measures were adopted by CCOC, pursuant to Section 28.35, F.S., for FY 05-06, FY 06-07 and FY 07-08:

    - Outputs – The outputs consist of the number of civil cases filed and the number of criminal defendants handled, by Court Divisions, as identified by the Clerk's Office. The Clerk reported 10,454 new cases filed and 3,206 defendants during FY 06-07. The Clerk reported 4,257 new cases filed and 1,575 defendants for the first half of FY 07-08.

- Outcome Measures – Timeliness and Collection Rate:

    - Timeliness – New cases opened within a designated number of business days after the initial filing. The Clerk has the ability to collect data and report timeliness measures on new cases. The Clerk reported meeting or exceeding 20 of 20 performance standards to CCOC for FY 06-07. The Clerk reported meeting or exceeding 20 of 20 performance standards to CCOC for the first half of FY 07-08.

    - Collection Rate – The collection rate is calculated by dividing collections by the adjusted assessments. The Clerk reported meeting or exceeding 7 of 9 collections performance standards to CCOC for FY 06-07. The Clerk reported meeting or exceeding 7 of 9 collections performance standards to CCOC through the third quarter of FY 07-08.

- Fiscal Management Measures – Fiscal Management Standards:

    - Status Report – The Clerk reported meeting or exceeding 9 of 9 fiscal management standards to CCOC for FY 05-06. The Clerk reported meeting or exceeding 9 of 9 fiscal management standards to CCOC for FY 06-07.

- Jury Management Measures – Percentage of juror payments issued timely:

    - Jurors Report – The Clerk reported meeting or exceeding 100 percent of juror payments issued timely to CCOC for the first half of FY 07-08.

FINDINGS AND RECOMMENDATIONS

Finding Number 1:

Based upon our review, we found the Clerk's budgeting practices and expenditure and revenue methodologies for State funds to be efficient and accurate. We concluded the Hardee County Clerk's Office is currently able to report on all required performance standards. However, the Clerk's Office is receiving administrative fees from a contracted collection agency. The Clerk of the Court is not authorized to charge fees to a collection agent or attorney for support services provided by the Clerk, when an unpaid amount owed to the Clerk is referred to an agent for collection, pursuant to the Florida Attorney General's Opinion (AGO 2007-52). Any administrative support costs incurred by the Clerk after referring unpaid fines and fees for collection should most appropriately be paid from "filing fee, service charges, court costs, and fines" as provided in section 28.35(4)(a), F.S.

Recommendation Number 1:

The Hardee County Clerk's Office should closely adhere to the Attorney General's Opinion regarding unauthorized collection of administrative fees received from collection agents and should provide DFS with an amended contract within 30 days of receiving this report.

Clerk Response:

The Clerk has concluded that the five percent payment represents moneys recovered from fines and costs, and does not involve any type of administrative fee or charge. The Clerk states there would not be a difference between the current payment as required by the contract, and modifying the agreement to require a flat 65 percent payment required on collected fines and cost.

DFS Response:

Attorney General Opinion (AGO 2007-52) states that a Clerk is not authorized to charge a fee to a collection agent or attorney for support services provided by the Clerk when an unpaid amount owed to the Clerk is referred to an agent for collection. In addition, a Clerk proposing to charge a contracted collection agency a fee for generating additional revenues is considered inconsistent with the requirements of Chapter 119, F.S.

Finding Number 2:

We concluded the Hardee County Clerk's Office had expenditures during the review period that were not limited to court-related functions, as specified in Sections 28.35(4)(a) and 29.008, F.S. The Clerk reported expenditures that were outside the scope of State funding authority. The unallowable expenditures totaled $43,731 for FY 06-07 and $12,880 through the time of our review for FY 07-08 (based on report data through August 2008).

Recommendation Number 2:

The Hardee County Clerk's Office should closely adhere to and follow all expenditure requirements prescribed in Florida Statutes. The Clerk should reimburse the Clerks of the Court Trust Fund for the unallowable expenditures totaling $43,731 for FY 06-07 and $12,880 for FY 07-08, within 30 days of receiving this report, pursuant to Section 28.36(4)(b), F.S.

Clerk Response:

The Clerk concluded that it is reasonable and necessary for his office to purchase information technology equipment to administratively support his records management, data collections and reporting functions. Additionally, the Clerk states that "celebratory expenses" are aimed at fostering employee performance and morale, and are for a valid public purpose.

DFS Response:

The Department's interpretation of Florida Statues is not based on implied authority. Expenditures specified for court-related functions are described in Sections 28.35(4)(a) and 29.008(1)(f)(2), F. S. Rule 69I-40.103, Florida Administrative Code, prohibits the spending of State funds on employee administrative expenses. Our recommendation remains that these expenditures are not specifically authorized and the Clerk should reimburse the Clerk of the Court Trust Fund.

REVIEW TEAM

Burton Marshall, *Chief, Bureau of Local Government*
Priscilla Bailey-Brown, *Financial Administrator*
Mark Gressel, *Professional Accountant Specialist*
Angie Lawson, *Professional Accountant Specialist*
Jessica Robinson, *Professional Accountant Specialist*
Jeremy Smith, *Professional Accountant Specialist*

APPENDIX

Appendix A

REPRESENTING
ALEX SINK
CHIEF FINANCIAL OFFICER
STATE OF FLORIDA

June 26, 2008

The Honorable B. Hugh Bradley
Clerk of Circuit Court
Hardee County
417 West Main Street, Room 214
Wauchula, Florida 33873

Dear Mr. Bradley:

The Department of Financial Services (DFS) has scheduled a review of your budget processes in accordance with Section 28.35, Florida Statutes. The dates mutually selected for this review are September 24 – 25, 2008. Our review will encompass the following objectives: Analyze the methodologies used to develop both the current and prior fiscal years Clerks of Court Operations Corporation (CCOC) certified budget; review expenditures to ensure compliance with Florida Statutes; analyze projected and year-to-date revenues; and review methods used to collect and report data regarding performance measures.

To minimize disruptions to your daily operations, we request you have the following copies available upon our arrival:

1. Current organization chart.
2. Internal documentation of methodologies used to allocate FTEs to court-related and non-court-related activities.
3. Payroll subsidiary ledger for the most recent pay date and current annual salary listing by employee. Do not include Social Security Numbers on documentation.
4. Listing of General Ledger account codes (6xx.xx – 7xx.xx for expenditures, 348.xxx for revenues) as prescribed by the CFO's UASM Chart of Accounts.
5. General Ledger report of court-related revenues and expenditures for FY 06-07 and FY 07-08 (through August 2008).
6. Revenue and Expenditure Tracking Reports submitted to CCOC for FY 06-07 and FY 07-08 (through August 2008).
7. All monthly transmittals to the Department of Revenue for revenues remitted, pursuant to Sections 28.241(1)(a), 28.37(2) and 28.37(4), Florida Statutes.
8. Report detailing outstanding balance for each partial payment account.

FLORIDA DEPARTMENT OF FINANCIAL SERVICES
Burton S. Marshall, CPA • Chief
Division of Accounting and Auditing • Bureau of Local Government
200 E. Gaines St. • Tallahassee, FL 32399-0354 • Tel. 850-413-5588 • Fax 850-413-5548
Email • Burton.Marshall@myfloridacfo.com
Affirmative Action • Equal Opportunity Employer

Appendix A (continued)

9. Contract, outstanding balance of accounts assigned, and supporting records for remittances by collection agency for FY 06-07 and FY 07-08 (through August 2008), if applicable.
10. Submissions of timeliness, collections and jurors performance measure data and any related supporting documentation to CCOC for FY 06-07 and FY 07-08 (through August 2008).
11. Any internal documentation used to complete a Budget Amendment Request(s) approved by CCOC, if applicable.
12. Audit Report for FY 06-07.
13. Fiscal Management Measures Status Report Form to CCOC for FY 06-07 and FY 07-08.
14. FY 07-08 Rebasing worksheets for Budget Submission to the CCOC.

Please have the requested information available for fiscal years 2006-2007 and 2007-2008, as our review will cover these periods. Mr. Mark Gressel and Mr. Jeremy Smith will represent DFS during this review.

We ask that you provide workspace for DFS and a lead from your staff to assist in the review. It is not our intent to disrupt your operations. You may contact us to reschedule if, for any reason, the dates selected cannot be accommodated. Please use Ms. Priscilla Bailey-Brown as our primary point of contact at (850) 413-5592 or priscilla.bailey-brown@myfloridacfo.com.

Thank you for your advanced preparation. We look forward to working with you and your staff.

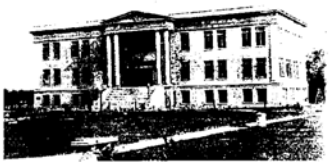
Sincerely,

Burton S. Marshall

BSM:cc

Appendix B

B. Hugh Bradley
Clerk of Circuit Court
P.O. Drawer 1749
Wauchula, FL 33873



Hardee County Courthouse

Telephone: (863)-773-4174
Facsimile: (863) 773-4422
Website: www.hardeeclerk.com

December 23, 2008

Ms. Priscilla Bailey-Brown
Financial Administrator
Bureau of Local Government
Department of Financial Services
200 E. Gaines Street
Tallahassee, FL 32399-0354

Re: Response of Hardee County Clerk of Court to Draft Budget Review Report, dated December 8, 2008

Dear Ms. Bailey-Brown:

This letter is in response to the Draft Budget Review Report you forwarded to my office on December 9, 2008.

As a general objection, the Department of Financial Services (DFS) has conducted a budget review of FY 2006-07 which does not comply with Section 218.39, Florida Statutes. Section 218.39, F.S. requires that any annual audits involving a county officer be completed within 12 months after the end of an entity's fiscal year. Clearly, it has been in excess of 12 months since the end of FY 2006-07. Furthermore, Chapter 28, Florida Statutes appears to limit DFS to the budgeting, approval and certification process. This office's budgets have already been independently audited by a CPA firm as required by Section 218.39, and there were no adverse findings.

As to Finding Number 1, there are no provisions in the Collection Services Agreement, dated March 3, 2004, between the Hardee County Clerk and S.C. Services & Associates, Inc., which could be interpreted as a charge or fee by the Clerk's office for administrative support costs. If your concerns include Section 3. B.iii. on page 3 of the Collection Services Agreement, that section indicates that if the Consultant manages to collect the entirety of a particular debt, then he, the Consultant, agrees to pay the Clerk an additional 5 percent of the debt. You should note that this agreement was an arms length agreement, the particular provision was included in the contract at the request of the Consultant, and the provision was included as an incentive for the Clerk to utilize the

services of the Consultant. The 5% payment represents moneys recovered from fines and costs, and does not involve any type of administrative fee or charge as alleged. There would be no difference between this payment as currently required by the agreement, and modifying the agreement to require a flat 65% payment requirement on collected fines and cost. Based on the foregoing, Finding Number 1 should be deleted in its entirety.

As to Finding Number 2: In connection with any portion of the findings related to the budget expenditures for FY 2006-07, as mentioned above, Section 218.39 requires that any annual audits involving a county officer be completed within 12 months after the end of an entity's fiscal year. This office has already been audited for FY 06-07 and there were no adverse findings. DFS appears to be exceeding its scope of authority in examining budgets beyond the time requirements of Section 218.39, F.S. Any request for the Clerk to reimburse the Clerk of Court Trust Fund for items in FY 2006-07 should be deleted in its entirety.

As to the various IT matters included within Finding Number 2, I agree that counties are responsible for funding those items specified in Section 29. 008, F.S.. I further agree that pursuant to Section 28.24, F.S. where counties maintain legal responsibility for the costs of court related technology needs, then the funds deposited by a clerk in the Modernization Trust Fund can only be used for funding court-related technology needs as defined by Section 29.008, F.S. However, I have not found any statutory authority which indicates that the sole source of funds for court-related information technology is through Sections 28.24 and 29.008, F.S. In my opinion, the expenditures which DFS has indicated are "outside the scope of State Funding authority", were properly made pursuant to Section 28.35(4)(a), F.S. That section states in pertinent part that court-related functions must include the following: .....records management; .....data collection and reporting; ....and reasonable administrative support costs to enable the clerk of the court to carry out these court related functions. In my opinion, it is reasonable and necessary for my office to purchase IT equipment and supplies to administratively support and carry out our records management and data collection and reporting obligations and functions. As you are aware, every aspect of carrying out governmental functions requires the use of information technology. It is an unreasonable interpretation by DFS to think that all IT purchases are required to come via Sections 28.24 and 29.008, F.S. Please provide the legal authority you have that Sections 28.24 and 29.008, F.S. are the sole source funding of IT equipment for the clerks of Florida. Any request for the Clerk to reimburse the Clerk of Court Trust Fund for the specified items should be deleted in its entirety.

As to the items under Finding Number 2 that were disallowed because they were considered restricted expenditures under Rule 69I-40.103, Florida Administrative Code, please note that those "celebratory expenses" are aimed at fostering employee performance and morale, and are for a valid public purpose. Please note that Rule 69I-40.103, F.A.C. disallows certain employee expenses unless "expressly provided by law." Various celebratory expenses are specifically permitted under

Appendix B (continued)

Hardee County Ordinance 02-04, a copy of which is attached for your reference. Please provide the legal authority you rely on to use the Administrative Code to supercede a validly adopted county ordinance. Even if you believe that such expenses are disallowed under Rule 69I-40.103, F.A.C., in my opinion these expenses are permitted under Section 28.35(4)(a) as "reasonable administrative support costs to enable the clerk of the court to carry out court related functions". Any request for the Clerk to reimburse the Clerk of Court Trust Fund for the specified items should be deleted in its entirety.

I have tried to be as specific as possible in responding to the Findings in the Draft Budget Review Report. I appreciate your attention to these issues, and look forward to receiving a response regarding this matter soon.

Sincerely,

B. Hugh Bradley

B. Hugh Bradley
Clerk of Courts