



**JEFF ATWATER
CHIEF FINANCIAL OFFICER
STATE OF FLORIDA**

Florida Department of Financial Services

**OSCEOLA COUNTY
CLERK OF THE CIRCUIT COURT
PERFORMANCE AND COMPLIANCE REVIEW**

**Report No. 2013-02
January 16, 2013**

SUMMARY

The Chief Financial Officer for the State of Florida is authorized by law to conduct performance and compliance reviews for each of the Clerk of the Circuit Court's accounting of Article V State funding. The Department of Financial Services has completed a review of the Osceola County Clerk of Circuit Court's Office as required by Section 28.36(8), Florida Statutes (F.S.). It is the practice of the Department of Financial Services to conduct these reviews for each Clerk of the Circuit Court every three years.

- The Osceola County Clerk of Circuit Court serves a population of 273,867.
- The review verified the Clerk's budgeting practices for each county fiscal year (CFY), October through September, and each state fiscal year (SFY), July through June, are in compliance with the Florida Clerks of Court Operations Corporation (CCOC) guidelines.
- The review verified the Clerk's remittances and recording of revenues/liabilities due to the State were accurate and timely as required by Section 28.245, F.S.
- The review verified the Clerk's court-related expenditures were not limited to those that are allowable and compliant with Sections 28.35(3) and 29.008, F.S.
- The Clerk's office was able to meet or exceed all performance standards established by the CCOC.

BACKGROUND

In 1998, revisions to Article V, Section 14, of the Florida Constitution, specified portions of the state courts system and court-related functions that were to be funded from State revenues derived from statutory fines, fees, service charges, and court costs collected by the Clerks of Court.

Prior to July 1, 2009, Clerks prepared budgets using a revenue-based model independent of the State appropriations process. Clerks collected fines, fees, service charges, and court costs to fund their approved budgets and remitted any excess revenues to the Department of Revenue for deposit into the Clerks of Court Trust Fund. The Florida Legislature passed Florida Laws Chapter 2009-61 and Chapter 2009-204, placing the Clerks' court-related budgets under the State appropriations process beginning July 1, 2009. The Florida Legislature appropriates the total amount for the Clerks' budgets in the General Appropriations Act (GAA).

The organization that governs the Clerks, the CCOC, is now administratively housed in the Justice Administrative Commission. The CCOC is responsible for developing the budgets and certifying a uniform system of performance measures for Clerks. Under the current model, all fines, fees, service charges, and court costs, except as otherwise provided in Sections 28.241 and 34.041, F.S., are collected by the Clerks' offices and remitted to the Department of Revenue for deposit into the Clerks of the Court Trust Fund, in accordance with Section 28.37, F.S. Beginning July 2009, Section 28.245, F.S., requires Clerks' collections of court-related fines, fees, service charges, and costs to be considered liabilities due to the State and are required to be remitted to the Clerks of Court Trust Fund by the 20th of the month immediately following the month in which the monies are collected. Beginning July 2010, Section 28.245, F.S., requires Clerks to remit liabilities to the Clerks of Court Trust Fund by the 10th of the month immediately following the month in which the monies are collected. The Clerks are now funded by the State appropriations process.

SCOPE

The Article V performance and compliance review of the Osceola County Clerk of the Circuit Court's Office covered CFY 08-09, SFY 09-10, SFY 10-11, and SFY 11-12 court-related budgets certified by the CCOC, pursuant to Section 28.35, F.S. The review was conducted November 26, 2012 through November 29, 2012 at the Osceola County Clerk of Circuit Court's Office.

OBJECTIVES & METHODOLOGY

The performance and compliance review was conducted to ensure Clerk budget methodologies, expenditures, revenues/liabilities due to the State, and performance measures were accurately implemented and recorded according to law.

BUDGETS

The review of the Clerk's budgets verified that the budgets were funded from fines, fees, service charges, and court costs, pursuant to Section 28.37(1), F.S., and were prepared according to the CCOC instructions.

The table below reflects the budgeted expenditures and revenues/liabilities for each fiscal year reviewed, and reflects the budgeted surplus/deficit amounts certified by the CCOC.

Fiscal Year	Expenditures	Revenues/ Liabilities	Surplus/ (Deficit)
CFY 08-09	\$ 8,924,643	\$ 10,815,022	\$ 1,890,379

The Clerk's office was budgeted as a "surplus" county by the CCOC for CFY 08-09. The Clerk's office was scheduled to remit monthly payments to the Clerks of Court Trust Fund based on the "surplus" county designation.

The table below reflects the revised budgeted expenditures and revenues/liabilities following the budget reductions implemented in May 2009.

Fiscal Year	Expenditures	Revenues/ Liabilities	Surplus/ (Deficit)
CFY 08-09¹	\$ 6,316,866	\$ 9,504,224	\$ 3,187,358
SFY 09-10	\$ 7,341,542	\$ 10,934,826	\$ 3,593,284
SFY 10-11	\$ 7,236,778 ²	\$ 10,405,608	\$ 3,168,830
SFY 11-12	\$ 7,416,849 ³	\$ 9,160,528	\$ 1,743,679

Note 1: CFY 08-09 budgeted expenditures and revenues/liabilities are for the nine month period of October 2008 through June 2009.

Note 2: SFY 10-11 the budgeted expenditures total was changed 5/6/11 due to the 4th quarter true-up process conducted by the CCOC for all clerks as required by Section 28.36(b), F.S. The budgeted surplus decreased as a result of the reduction.

Note 3: SFY 11-12 the budgeted expenditures total was changed 6/6/12 due to the 4th quarter true-up process conducted by the CCOC for all clerks as required by Section 28.36(b), F.S. The budgeted surplus decreased as a result of the reduction.

Clerks are now required to budget according to State Fiscal Year (July 1 through June 30) and are provided funding through the State General Appropriations Act. The CCOC released appropriations in the amount of one-twelfth of each Clerk's approved budget each month for SFY 09-10, SFY 10-11 and SFY 11-12.

The table below reflects the budgeted FTEs for each fiscal year reviewed and the court-related allocation percentages applied for shared overhead.

Fiscal Year	Direct Court-Related FTEs	Indirect Overhead FTEs	Total Court-Related FTEs	Total Court & Non-Court FTEs	Cost Allocation Percentage
CFY 08-09	146.33	0.00	146.33	180.00	81.29%
SFY 09-10	145.64	0.00	145.64	176.00	82.75%
SFY 10-11	126.14	7.15	133.29	161.00	82.79%
SFY 11-12	134.39	0.00	134.39	161.00	83.47%

The cost allocation percentages are applied to overhead costs budgeted to support court-related activities for all fiscal years. The allocation is based on the percentage of time each overhead position's duties are performed for court-related activities. The allocation methodologies applied by the Clerk's office are within the approved budget guidelines set by the CCOC. The budgeted total court-related FTEs decreased from CFY 08-09 to SFY 11-12 by approximately 8.16%. The budgeted cost allocation increased from CFY 08-09 to SFY 11-12 by approximately 2.68%.

EXPENDITURES

The review sampled various court-related expenditure accounts and transactions to determine if the Clerk's office was in compliance with Section 28.35, F.S. The expenditure review confirmed court-related expenditures that were not in compliance with Section 28.35, F.S., and court funds were expended for unallowable costs. The Osceola County Clerk's Office reported \$200.88 for awards in FY 09-10 and \$27,483.80 for printers and awards in FY 10-11 for a total of \$27,684.68 in unallowable expenditures for the review period.

The Clerk's CCOC Technology Expense Monthly Tracking Report was in compliance with guidelines set by the CCOC. The Clerk's salary was within the salary requirements developed by the Office of Economic and Demographic Research. The Clerk provided 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 review confirmed the accuracy of the expenditures listed on the Clerk's General Ledger by reconciling with the expenditures reported on the CCOC Clerks' Trust Fund Collections Tracking Report for each fiscal year.

The table below reflects the budgeted and actual expenditures for each fiscal year reviewed.

	Budgeted	Actual
CFY 08-09'	\$ 6,316,866	\$ 5,679,451
SFY 09-10	\$ 7,341,542	\$ 6,772,378
SFY 10-11	\$ 7,236,778	\$ 7,045,069
SFY 11-12	\$ 7,416,849	\$ 7,287,050

Note 1: CFY 08-09 budgeted and actual expenditures are for the nine month period of October 2008 through June 2009.

The budgeted expenditures increased from CFY 08-09 to SFY 11-12 by 17.41%. The Clerk's actual expenditures were below budgeted expenditures from CFY 08-09 to SFY 11-12.

The Clerk's office budgets personnel related costs (employee salaries and benefits) in the budget category of personal services. The total budgeted expenditures in each fiscal year reviewed were approximately 87% personnel related.

REVENUES/LIABILITIES DUE TO THE STATE

The review confirmed that fines, fees, service charges, and court costs collected by the Clerk's office were remitted to the Department of Revenue for deposit into the Clerks of Court Trust Fund. The collections were accurate and timely, which placed the Clerk in compliance with Section 28.245, F.S. Pursuant to Section 28.245, F.S., funds are required to be remitted to the Clerks of Court Trust Fund by the 20th of the month immediately following the month in which the monies were collected. Beginning July 2010, Section 28.245, F.S., requires Clerks to remit liabilities to the Clerks of Court Trust Fund by the 10th of the month immediately following the month in which the monies are collected. The review confirmed the accuracy of the revenues/liabilities listed on the Clerk's General Ledger by reconciling with the revenues/liabilities reported on the CCOC Clerks' Trust Fund Collections Tracking Report for each fiscal year. The Clerk's office is in compliance with Florida Laws Chapter 2008-111 in accurately remitting and recording the collections provided to the State General Revenue Fund.

The table below reflects the budgeted and actual revenues/liabilities for each fiscal year reviewed.

	Budgeted	Actual
CFY 08-09¹	\$ 9,504,224	\$ 9,258,856
SFY 09-10	\$ 10,934,826	\$ 10,447,735
SFY 10-11	\$ 10,405,608	\$ 8,809,640
SFY 11-12	\$ 9,160,528	\$ 8,349,874

Note 1: CFY 08-09 budgeted and actual revenues/liabilities are for the nine month period of October 2008 through June 2009.

The budgeted revenues/liabilities decreased from CFY 07-08 to SFY 11-12 by 3.62%. The Clerk's actual revenues/liabilities were below budgeted revenues/liabilities for CFY 08-09 through SFY 11-12.

The table below reflects the budgeted and actual remittances made to the Clerks of Court Trust Fund for each fiscal year reviewed.

Fiscal Year	Budgeted Surplus/(Deficit) Remittances	Actual Payments from the Trust Fund	Actual Remittances to the Trust Fund	Settle Up Remittance to Trust Fund	Total Remittances to/ (from)Trust
CFY 08-09¹	\$ 3,187,358	\$ -	\$ 3,176,847	\$ 402,558	\$ 3,579,405
SFY 09-10^{2,3}	\$ 3,593,284	\$ 7,341,541	\$ 10,447,735	\$ 569,163	\$ 3,675,357
SFY 10-11	\$ 3,168,830	\$ 7,236,778	\$ 8,809,640	\$ 191,709	\$ 1,764,571
SFY 11-12	\$ 1,743,679	\$ 7,416,849	\$ 8,319,874	\$ 129,799	\$ 1,032,824

Note 1: CFY 08-09 budgeted surplus remittances were based on the nine month period of October 2008 through June 2009.

Note 2: Beginning SFY 09-10, the Actual Payments from the Trust Fund total was the monthly amount received as appropriated by the state, in accordance with 28.36, F.S.

Note 3: Beginning SFY 09-10, the Actual Remittances to the Trust Fund total was the monthly collections remitted by the clerks' offices to the state, in accordance with 28.245 F.S.

PERFORMANCE MEASURES

The CCOC has the responsibility of developing and certifying a uniform system of performance measures and applicable performance standards for the court-related functions, pursuant to Section 28.35(3)(a), F.S. The review confirmed the Clerk's office to be in compliance with the performance measure guidelines and standards defined by the CCOC. The Clerk's independent audit report confirmed the Clerk's office to be in compliance with Section 28.35, F.S., for CFY 08-09, CFY 09-10 and CFY 10-11. The review verified the Clerk maintains a partial fee payment system, pursuant to Section 28.246, F.S.

The table below reflects the standards of timeliness, collections, fiscal management, and juror payments achieved by the Clerk's office for each fiscal year reviewed.

TIMELINESS	CFY 08-09	SFY 09-10	SFY 10-11	SFY 11-12
Standard	12 of 20	12 of 20	12 of 20	12 of 20
Clerk Reported	18 of 20	18 of 20	19 of 20	18 of 20
COLLECTIONS	CFY 08-09	CFY 09-10	SFY 10-11	SFY 11-12
Standard	5 of 9	5 of 9	5 of 9	5 of 9
Clerk Reported	5 of 9	8 of 9	7 of 9	6 of 9
FISCAL MANAGEMENT	CFY 08-09	SFY 09-10	SFY 10-11	SFY 11-12
Standard	6 of 9	6 of 8	6 of 9	6 of 9
Clerk Reported	9 of 9	8 of 8	9 of 9	9 of 9
JUROR PAYMENTS	CFY 08-09	SFY 09-10	SFY 10-11	SFY 11-12
Standard	100%	100%	100%	100%
Clerk Reported	100.0%	100.0%	100.0%	100.0%

The table below reflects the Clerk's cases, defendants and financial receipts for each fiscal year reviewed.

TOTAL REPORTED	CFY 08-09	SFY 09-10	SFY 10-11	SFY 11-12
Civil	109,282	114,585	101,761	105,137
Criminal	21,235	20,804	27,319	84,653
Financial Receipts	N/A ¹	235,169	208,088	193,689

Note 1: CFY 08-09 financial receipts data not available.

OBSERVATIONS & RECOMMENDATIONS**Observation Number One:**

Based upon our review, we found the Clerk's budgeting practices and expenditures and revenue methodologies for State funds to be efficient and accurate. However, expenditures during the review period were not limited to court-related functions as specified in Sections 28.35 (3) and 29.008, F.S. The Osceola County Clerk's Office reported unallowable expenditures of \$27,684.68 that were outside the scope of State funding authority for the review period of FY 08-09 through FY 11-12.

Recommendation Number One:

The Osceola County Clerk's Office should closely adhere to and follow all expenditures requirements prescribed in Florida Statutes. The Clerk should reimburse the Clerks of the Court Trust Fund for unallowable expenditures totaling \$27,684.68 for the review period of FY 07-08 through FY 11-12. Documentation of any outstanding reimbursements or transfers should be completed and remitted to DFS within 30 days of receiving this report, pursuant to Section 28.36, F.S.



ARMANDO RAMÍREZ
CLERK OF THE COURT
OSCEOLA COUNTY, FLORIDA

2/5/2013

Jeff Atwater
Chief Financial Officer
State of Florida
Florida Department of Financial Services

Dear Florida Department of Financial Services,

Thank you for this opportunity to respond to the Department of Financial Services audit of performance and compliance for the Clerk of Court's Article V State Funding that we received on 1/31/13.

We appreciate DFS doing a review on the Clerk's expenditure and revenue methodologies; we value the fundamental questions the audit examined and the issue area and recommendations you suggested. While the audit's fieldwork involved a previous administration, please be aware that the new administration is taking action and extensive steps to comply with the guidelines provided as a result of this audit.

Audit Finding 1:

State funds were used to purchase plaques/awards for employees and printers.

Observation Number One:

Based upon our review, we found the Clerk's budgeting practices and expenditures and revenue methodologies for state funds to be efficient and accurate. However, expenditures during the review period were not limited to court-related functions as specified in Sections 28.35 (3) and 29.008, F.S. The Osceola County Clerk's Office reported unallowable expenditures of \$27,684.68 that were outside the scope of state funding authority for the review period of FY 2008-09 through FY 2011-12.

Recommendation Number One:

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CLERK OF THE COURT
OSCEOLA COUNTY, FLORIDA**

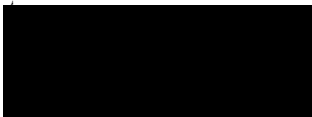
Response:

We agree that the plaque and awards for a total of \$317.29 can be remitted to the state and will be done so within 30 days, pursuant to section 28.36, F.S.

However, we disagree with the opinion that the state should be reimbursed for expenditures related to the printers in the amount of \$27,171. We have attached an independent attorney opinion letter and the CCOC legal opinion stating that technology items purchased for the furtherance of the Clerk's functions set forth in statute 28.35, is an authorized expenditure.

Again, thank you for the opportunity to respond to the recommendations presented in the Article V Performance and Compliance Review.

Sincerely,



Armando Ramirez
Osceola County Clerk of the Circuit Court

January 31, 2013

The Honorable Armando Ramírez
Osceola County Clerk of the Court
2 Courthouse Square
Kissimmee, FL 34741

Dear Clerk Ramírez:

As requested, this is my opinion regarding whether the Clerk may use court money to fund technology. Clerks are authorized under Section 28.35, F.S., to spend state appropriations on functions authorized by law or court rule.

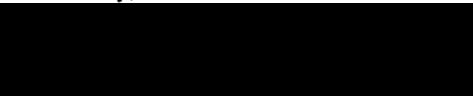
Section 28.35(3) (a), F.S., provides for court-related functions that clerks may perform are limited to the functions expressly authorized by law or court rule. Section 28.35(3) (a), F.S., also provides for a provision that allows for reasonable administrative support to enable the clerk of the court to carry out court-related functions.

However, Section 7, Article V, Florida Constitution, and Section 29.008, F.S., state that counties are to fund a series of needs of the court. Sub-section (2) describes the term “communication services” to include all computer networks, systems, and equipment, including hardware and software, modems, printers, wiring, network...for an integrated computer system. It then describes the anticipated uniform statewide reporting of court-related information and its intent that such system be operating by 2006. It then limits the counties’ obligation to acquire computer resources if they are not in conformance with the state criteria.

The Legislature has defined the Clerk’s spending limitation under Section 28.35(3) (a), F.S., in terms of function, not asset type or any other method. The importance of this is that money may be spent as long as the expenditure is in the furtherance of the functions listed in the statute. Asset type, e.g., technology, is irrelevant.

In conclusion, if technology to be purchased is in the furtherance of the Clerk’s functions set forth in the statute, the expenditure is authorized. Nothing prevents the Clerk from using state funds for IT purposes as reasonable administrative support to enable the Clerk to carry out the specified court-related functions per Section 28.35(3) (a), F.S.

Sincerely,



Arlene M. Vellón, Esq.
ANDRADE & VELLON, P.A.

Appendix: G. General Counsel Opinion Regarding IT Funding

From: [Joe Boyd](#)
To: [John Dew](#)
Subject: Use of State Funds on IT
Date: Wednesday, August 31, 2011 1:13:19 AM

John, the following represents our opinion as General Counsel of the Clerks of Court Operations Corporation. We conclude that a Clerk of Court may use state funds for Information Technology ("IT") needs, as more fully described below. It is not an unbridled authorization but may be done within the statutory parameters.

ANALYSIS

Clerks are authorized under Section 28.35, FS, to spend state appropriations on functions authorized by law or court rule. These include twelve functions described in that statute. They are also authorized in the same section to spend state funds for reasonable administrative support to enable the Clerk to perform these functions. It is this grant of authority that permits Clerks to use state funds for certain, limited IT needs.

Section 28.35(3)(b), FS, prohibits the use of state funds for any use not specified in section (a) discussed above. However, section (a) does provide Clerks authority to use state funds for reasonable administrative support, and therefore such practice is not prohibited, provided it fits the parameter of Section 28.35(3)(a), FS. Further, if the Legislature wished to prohibit any use of state funds whatsoever for IT needs by a Clerk, the Legislature could have done so simply by barring such use in Section 28.35(3)(b), FS.

However, a Clerk must give proper deference to the constitutional and statutory obligations of counties to fund certain needs of the court system, including Clerks of Court when performing court related functions. Pursuant to Section 7, Article V, Florida Constitution, and Section 29.008, FS, counties are to fund a series of needs of the court system.

These needs include certain defined "communications services". Subsection (f) defines that phrase to include a series of nouns such as writings, sounds, and images. It then, in sub-subsection (1), discusses telephone and other similar resources.

In sub-subsection (2), it describes the term "communication services" to include all computer networks, systems, and equipment, including hardware and software, modems, printers, wiring, network connections, maintenance, support staff.....for an integrated computer system. It then describes the anticipated uniform statewide reporting of court related information and it's intent that such a system be operating by 2006. It then limits the counties' obligation to acquire computer resources if they are not in conformance with the state criteria. The conclusion can be easily reached that this definition is focused on the uniform reporting system of the state court system and the counties' obligations to support that system.

IT matters falling under this provision would be the obligation of the county. Nothing herein prevents a Clerk from using state funds for IT purposes as reasonable administrative support to enable the Clerk to carry out the specified court related functions in Section 28.35(3)(a), FS.

Rules of statutory construction and review of limited legislative history were included in this analysis.

CONCLUSION

A Clerk of Court may use state appropriated funds for IT purposes if it is part of administrative support to perform the court related functions delegated to the Clerk of Court under section 28.35(3)(a), FS.

Joe R. Boyd, B.C.S.
Board Certified Marital Law Attorney
Board Certified Real Estate Attorney
Boyd, DuRant & Sliger, P.L.