

FLORIDA CLERKS OF COURT OPERATIONS CORPORATION

Operational Audit



**FLORIDA CLERKS OF COURT OPERATIONS CORPORATION
EXECUTIVE COUNCIL AND EXECUTIVE DIRECTOR**

The Executive Council and Executive Director for the Florida Clerks of Court Operations Corporation who served during the period February 1, 2009, through January 31, 2010, are listed below:

Current Members

Honorable Howard Forman, Chair
Honorable Harvey Ruvin, Vice-Chair
Honorable Richard Weiss, Secretary/Treasurer
Honorable John Crawford
Honorable Bob Inzer
Honorable Tim Sanders
Honorable Buddy Irby (June 9, 2009) replaced
Marsha Ewing
Honorable Scott Ellis

Clerk

Broward County Clerk of Courts
Miami-Dade Clerk of Courts
Polk County Clerk of Courts
Nassau County Clerk of Courts
Leon County Clerk of Courts
Madison County Clerk of Courts
Alachua County Clerk of Courts
Brevard County Clerk of Courts

Ex Officio Members

Honorable Sharon Bock, Palm Beach County
Clerk of Courts
Senate President Appointee
Honorable Lydia Gardner, Orange County
Clerk of Courts
House of Representatives Appointee
Honorable Margaret Steinbeck,
Circuit Judge, 20th Circuit
Chief Justice Appointee

Former Member

Honorable Marsha Ewing
Martin County Clerk of Courts

CCOC Staff

John Dew, Executive Director

The audit team leader was Michael Nichols and the audit was supervised by Hardee Ratliff, CPA. Please address inquiries regarding this report to Marilyn D. Rosetti, CPA, Audit Manager, by e-mail at marilynrosetti@aud.state.fl.us or by telephone at (850) 487-9031.

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FLORIDA CLERKS OF COURT OPERATIONS CORPORATION

SUMMARY

Section 28.35(5)(a), Florida Statutes¹, requires the Auditor General to conduct an annual audit of the operations of the Florida Clerks of Court Operations Corporation (CCOC). The summary of our findings is as follows:

Finding No. 1: CCOC did not timely pay trust fund service charges due pursuant to Section 215.20, Florida Statutes.

Finding No. 2: Amounts reported to CCOC for monthly clerk remittances differed, for many clerks, from remittance amounts per Florida Department of Revenue (DOR) records, and CCOC staff did not obtain explanations for these differences in a timely manner.

Finding No. 3: CCOC approved and made payments for accrued leave in excess of amounts stipulated under contract.

Finding No. 4: CCOC needed to enhance its efforts to ensure clerks submit performance measure reports timely.

Finding No. 5: Quarterly collection rate performance measure data reported to CCOC for all clerks tested was either incomplete or inconsistent.

Finding No. 6: Our test of 20 clerks disclosed 13 that had not met one or more timeliness performance standards and CCOC did not timely obtain from the clerks corrective actions plans addressing the failures to meet performance standards.

BACKGROUND

Section 28.35(1)(a), Florida Statutes, created the CCOC and it is administratively housed within the Justice Administrative Commission (JAC), but it is not subject to JAC's control, supervision, or direction. CCOC is comprised of all clerks in an ex officio capacity and the Executive Council performs functions assigned to CCOC pursuant to the plan of operation approved by the members. The Executive Council is composed of eight clerks elected by the members for a term of two years with two clerks from each of four designated population ranges, and three ex officio members, including a designee of the President of the Senate, a designee of the Speaker of the House of Representatives, and a designee of the Chief Justice of the Supreme Court. Although CCOC is administratively housed within the JAC and is not subject to its direction, CCOC is a budget entity with the JAC and its employees are State employees. Sections 28.35 and 28.36, Florida Statutes, prescribe the CCOC's functions and duties, which include:

- Adopting a plan of operation;
- Conducting an election of directors;
- Recommending to the Legislature changes in various court-related fines, fees, service charges, and court costs established by law;
- Submitting proposed legislation relating to preparation of budget requests of the clerks to the Governor, President of the Senate, and Speaker of the House of Representatives;
- Developing and certifying a uniform system of performance measures and applicable performance standards;

¹ All references to Florida Statutes are to the 2009 statutes unless otherwise noted.

- Reviewing and adjusting, as necessary, proposed budgets submitted by clerks pursuant to Section 28.36, Florida Statutes, and making budget recommendations to the Legislature and Supreme Court;
- Releasing appropriations to clerks;
- Developing and conducting clerk education programs; and
- Publishing a uniform schedule of actual fees, service charges, and costs charged by a clerk pursuant to general law.

During the 2009 Legislative session, the Legislature passed Chapter No. 2009-204, Laws of Florida, which significantly changed the operations of both CCOC and the clerks. Subsequent to this legislation and effective July 1, 2009, CCOC is responsible for the preparation of a Legislative budget request for the resources necessary to perform its duties pursuant to Chapter 216. For the 2009-10 fiscal year, CCOC was appropriated \$1,730,586. In accordance with the General Appropriations Act, the Legislature appropriated \$451,380,312 to fund the court-related operations of the clerks’ offices for the 2009-10 fiscal year. The enacted legislation required that appropriations for the 2009-10 fiscal year be released in an amount equal to one-twelfth of each clerk’s approved budget each month; however, as revised by Chapter 2010-162, Laws of Florida, beginning in the 2010-11 fiscal year, CCOC will release appropriations to each clerk quarterly and the amount of the first three quarterly releases will be based on one quarter of the estimated budget for each clerk as identified in the General Appropriations Act. The amount of the fourth quarter release will be based on the approved unit costs times the estimated number of units of the fourth quarter.

FINDINGS AND RECOMMENDATIONS

Finding No. 1: Timely Payment of Trust Fund Obligations

Chapter 2009-204, Laws of Florida, revised the methodology for funding CCOC and clerk operations. Beginning July 1, 2009, funding for both CCOC and the clerks’ court-related operations is appropriated by the Legislature from the Clerks of the Court Trust Fund (Trust Fund). Generally, all court-related fines, fees, service charges, and costs are considered State funds and are remitted monthly to the State for deposit into the Trust Fund. However, ten percent of all court-related fines collected by the clerks are deposited into the clerks’ Public Records Modernization Trust Funds to be used exclusively for additional clerk court-related operational needs and program enhancements.

Pursuant to Section 215.20, Florida Statutes, a service charge of eight percent, representing the estimated pro rata share of the cost of general government paid from the General Revenue Fund, is appropriated from all income of a revenue nature deposited in all trust funds except those exempted within Section 215.20, Florida Statutes, and those enumerated in Section 215.22, Florida Statutes. The Trust Fund was not exempted and is therefore required to pay the service charge. Pursuant to Section 215.23, Florida Statutes, service charges shall be paid into the appropriate fund by the Chief Financial Officer for quarterly periods ending March 31, June 30, September 30, and December 31 of each year, and when so paid shall thereupon become a part of that fund to be accounted for and disbursed as provided by law.

CCOC and the clerks’ court-related operations are funded solely from the Trust Fund. For the 2009-10 fiscal year, the Legislature appropriated \$1.7 million to fund CCOC and \$451.4 million to fund the clerks’ court-related operations. Revenues deposited into the Trust Fund during the 2009-10 fiscal year totaled \$456.5 million and, by law, a service charge totaling \$36.5 million was due to the General Revenue Fund from the revenues deposited.

The quarterly service charges for the 2009-10 fiscal year due to the General Revenue Fund from the Trust Fund were as follows:

Table 1

Quarter Ended	Service Charge
September 30, 2009	\$8,017,148
December 31, 2009	9,245,473
March 31, 2010	9,545,543
June 30, 2010	9,708,988
Total	<u>\$36,517,152</u>

As of January 31, 2010, no payments had been made from the Trust Fund to the General Revenue Fund for the service charges due. In a letter to CCOC, dated February 4, 2010, the Director of the Division of Accounting and Auditing, Department of Financial Services, stated “The Department of Financial Services understands that court-related revenues have not been meeting projections on which individual clerks of court based their court-related budgets for FY 2009-2010. Nevertheless, it is vitally important that the CCOC, as a state agency, administer its trust fund in accordance with applicable law that requires every non-exempt trust fund to pay a service charge to General Revenue.” The letter went on to state “We believe that all extenuating circumstances, including court-related revenue collection levels, must be taken into consideration, but it is imperative that the CCOC take immediate steps to pay down its liabilities. We request that the CCOC submit to the Department a reasonable and feasible plan containing a realistic payment schedule under which the service charges due under Section 215.20(1), Florida Statutes, will be paid off by the CCOC.”

In a letter dated March 24, 2010, to the Chief Financial Officer (CFO), the Chairman of the CCOC Executive Council made reference to a March 2, 2010, letter from the CFO that provided proposed dates for transferring the funds from the Trust Fund to the General Revenue Fund to retroactively pay the service charge. The Chairman noted that it would be wise to wait until clerks submitted their monthly collection reports before he could establish a timeframe for suggested payment of the service charge and that the amount of excess revenues the CFO suggested would be available was not reached. The Chairman further stated that “In fact, we were unable to provide the 1/12th disbursement to Clerks as required by law once again. Therefore we suggest another plan that would have to wait until the end of April to consider making any payment toward the 8% administrative fee.”

In a subsequent letter from the Chairman of the CCOC Executive Council dated April 29, 2010, the Chairman stated that “funding remitted by the Clerks into the Trust Fund during the month of April has allowed a full one month disbursement to the Clerks for their May business. This is the first time we have been able to follow the law requiring the 1/12th disbursement since July 2009. After the disbursement is made we will be able to pay part of the 8% obligation.” Each clerk received his/her one-twelfth appropriations release each month during our audit period; however, the releases were generally in two or three installments during the month.

The 2010 Legislature enacted Chapter 2010-162, Laws of Florida, which transferred \$18.6 million from the State Courts Revenue Trust Fund to the Trust Fund for the purpose of paying a portion of the outstanding balance of the service charge. In addition, CCOC paid \$3,000,000 and \$5,208,164 of the outstanding balance in May and June 2010, respectively. On August 17, 2010, CCOC paid the \$9,708,988 service charge for the quarter ended June 30, 2010.

The cash balance in the Trust Fund at July 1, 2009, was \$6 million. This balance, plus the \$456.5 million of revenue collections, less the \$26.8 million service charge due during the 2009-10 fiscal year (the \$9.7 million service charge for the quarter ended June 30, 2010, was not due until August 2010) and the \$453.1 million appropriated for the CCOC and clerks’ court-related operations for the 2009-10 fiscal year, resulted in a \$17.4 million shortfall. If not for the \$18.6 million transfer from the State Courts Revenue Trust Fund, the Trust Fund would have had a cash deficit

balance of \$17.4 million at June 30, 2010, but instead ended with a cash balance of \$1.2 million because of the transfer.

Section 216.221(10), Florida Statutes, indicates that when advised by the Revenue Estimating Conference, the CFO, or any agency responsible for a trust fund that a deficit will occur with respect to the appropriations from a specific trust fund in the current fiscal year, the Governor for the executive branch, or the Chief Justice for the judicial branch, shall develop a plan of action to eliminate the deficit.² As the agency responsible for disbursing funds from the Trust Fund, CCOC is responsible under this law for reporting anticipated deficits to the Chief Justice to initiate a plan of action to eliminate the deficit.

While CCOC did not officially notify the Chief Justice of an anticipated deficit in the Trust Fund, all parties involved (CCOC, the CFO, legislative staff, and Supreme Court staff) were aware early in the 2009-10 fiscal year that the Trust Fund was in financial difficulty considering projected revenues, the service charge, and anticipated expenditure levels. The anticipated financial difficulty was confirmed in October 2009 when the Trust Fund did not have sufficient resources to pay the service charge due for the first quarter of the 2009-10 fiscal year (July 1, 2009, through September 30, 2009). The factors contributing to this inability to pay legal obligations of the Trust Fund, which persisted throughout the fiscal year, were continuously discussed and evaluated by the parties throughout the fiscal year. The Legislature ultimately took action to avoid a deficit at or near fiscal year-end by virtue of the \$18.6 million transfer noted previously.

For the 2010-11 fiscal year, appropriations for CCOC and the clerks' court-related operations totaled \$453.1 million, which is the same amount appropriated for the 2009-10 fiscal year. Because the Trust Fund will be required to make four service charge payments in the 2010-11 fiscal year (the service charge for the fourth quarter of the 2009-10 fiscal year and the service charges for the first three quarters of the 2010-11 fiscal year), additional revenues of \$33.5 million, or a 7.3 percent increase over the amount collected for the 2009-10 fiscal year, will be required to fully fund the 2010-11 fiscal year appropriations and the service charge payments due during the 2010-11 fiscal year. Because of the uncertainty of the level of revenue collections that will occur in the 2010-11 fiscal year, the Trust Fund cash balance will again need close monitoring to determine whether the CCOC will need to take action pursuant to Section 216.221(10), Florida Statutes. The need for close monitoring is further illustrated by the fact that CCOC obtained a loan of \$18.87 million in July 2010 to pay the monthly operating expenses of the clerks. The loan is required to be paid back by June 30, 2011.

Recommendation: CCOC should monitor projected and actual revenues deposited into the Trust Fund during the fiscal year. When a determination is made that a deficit will occur, CCOC should notify the Chief Justice to initiate a proposed plan to eliminate the deficit. CCOC should also consult with the Justice Administrative Commission's Executive Director and the Department of Financial Services' Division Director of Finance and Accounting regarding the prioritization of its financial obligations when funds are insufficient in the Trust Fund to fully fund the appropriation releases and the service charges, when due.

Follow-up to Management's Response

The Chairman, in his response to this finding, stated that CCOC disagrees that it is the responsibility of the Chief Justice to develop a plan to eliminate a deficit in the Trust Fund. The Chairman also stated that "It is ultimately the Legislature, with assistance of the CCOC that approves the CCOC's plan to eliminate deficits

² Before implementing a plan of action, the Governor or the Chief Justice must comply with the provisions of Section 216.177(2), Florida Statutes, and actions to resolve deficits in excess of \$1 million must be approved by the Legislative Budget Commission.

that may occur in the Trust Fund.....We will continue to work with and consult others to develop resolutions, but it is ultimately the responsibility of the CCOC to recommend a solution to the Legislature.”

Notwithstanding the Chairman’s assertion that it is ultimately the responsibility of CCOC to recommend a solution to the Legislature, the Chairman has provided no specific authority that exempts CCOC from the provisions of Section 216.221(10), Florida Statutes. Therefore, we remain of the opinion that the provisions of Section 216.221(10), Florida Statutes, apply to CCOC.

Finding No. 2: Monitoring Clerk Remittances

Chapter 2009-204, Laws of Florida, and Section 28.37, Florida Statutes, revised the remittance requirements that were in effect prior to July 1, 2009. The law, as amended, requires that, except as otherwise provided in Sections 28.241 and 34.041, Florida Statutes, all court-related fines, fees, service charges, and costs are considered State funds and shall be remitted monthly by the clerks to the Florida Department of Revenue (DOR) for deposit into the Clerks of the Court Trust Fund within JAC. However, ten percent of all court-related fines collected by the clerks shall be deposited into the clerks’ Public Records Modernization Trust Fund to be used exclusively for additional clerk court-related operational needs and program enhancements.

To report the required remittances, the clerks complete and submit to CCOC a copy of the Court Expenditure and Clerks’ Trust Fund Collections Tracking Report (EC report). This document is used to monitor the clerks’ fiscal activity, both monthly and in aggregate, and has been designed to include data regarding budgeted and actual appropriations, expenditures, collections, and remittances to DOR. The CCOC compares the EC reports to the Accumulated Clerk of Court Remittance Distribution Report, which is DOR’s monthly report of remittances received from clerks for the preceding month.

We compared total remittances by clerks to the Clerks of the Court Trust Fund, as reported on the EC reports, to DOR’s records for the period July 1, 2009, through January 31, 2010. This comparison disclosed significant differences as to the amount of remittances between the EC reports and DOR’s records for several clerks. In May 2010, we requested explanations from CCOC for differences noted for the 18 clerks with the most significant differences. The net differences for these 18 clerks totaled \$2.1 million. While CCOC provided explanations for some of the differences in June 2010, we were not provided with explanations for all of the differences until August 2010. Explanations for differences included misreported amounts to DOR and untimely remittances to DOR. As a means of providing assurance as to the reliability of amounts reported by the clerks on the EC reports, it is important that CCOC staff resolve identified differences on an ongoing basis and in a timely manner.

Recommendation: CCOC should continue its efforts to reconcile reported remittance balances to DOR in a timely manner and, in so doing, increase accountability of the clerks and the accuracy of the reported data.

Finding No. 3: Unauthorized Compensatory Leave Payments

CCOC authorized payments of accrued leave balances for certain employees in June 2009. These payments were prompted by Chapter 2009-204, Laws of Florida, which changed CCOC to a budget entity housed within the JAC. Provisions within these employees’ employment contracts allowed for the payment of annual leave balances; however, the employment contracts placed limitations on the portion of compensatory leave balances eligible for payment. Our review of the employment contracts and the provisions governing leave payouts disclosed the following

:

- The Executive Director's employment contract included no provision for payment of compensatory leave. However, the Executive Director was paid \$13,445 for 236.75 hours of unused compensatory leave
- The Technology and Information Resources Coordinator's employment contract provided for payment of compensatory leave in an amount not to exceed 160 hours. However, this employee was paid \$6,740 for 220.25 hours of unused compensatory leave. This payment exceeds the allowable amount by \$1,844, for the 60.25 additional hours.

On June 7, 2010, the Executive Director stated "The CCOC Executive Council made a decision to pay for unused comp leave at their June 25, 2009, meeting. An attempt to take much of our earned comp leave could have been done prior to July 1, 2009... However it was recognized in light of the changes that had to take place in implementing new legislation that it would be in the best interest of the Council and the State that we made ourselves available to help assure a smooth transition to a new budgeting process."

While we recognize the practical considerations concerning the increased workload for these two employees during this time period, we are unaware of any exception that would override the terms of each of the employees' employment contracts as they relate to the payment of leave.

Recommendation: CCOC should require the employees to repay the \$15,289 in unallowable leave payments.

Follow-up to Management's Response

The Chairman, in his response to this finding, explained the Executive Council's rationale in approving the questioned leave payments and indicated that the actions taken by the Executive Council in June 2009, in his opinion, constituted an amendment to the CCOC leave policy for these two employees, thus authorizing the payments in question. However, the Chairman does not address the provisions of the employees' employment contracts which, as stated in our finding, did not authorize the payments.

Performance Measures and Standards

Section 28.35(2)(d), Florida Statutes, requires CCOC to develop and certify a uniform system of performance measures and applicable performance standards for the court-related functions specified under law. Beginning July 1, 2009, performance measures and standards are to be developed in consultation with the Legislature and Supreme Court and the Legislature may modify the clerk performance measures and standards in legislation implementing the General Appropriations Act or other law. The performance measures are to be designed to facilitate an objective determination of the performance of each clerk with minimum standards for fiscal management, operational efficiency, and effective collection of fines, fees, service charges, and other court-related costs. Beginning July 1, 2009, CCOC is required to notify the Legislature and Supreme Court of any clerk not meeting performance standards and provide a copy of any corrective action plans.

CCOC has developed a uniform system of performance measures and applicable performance standards consistent with the requirements of Section 28.35(2)(d), Florida Statutes, over the past several years. In August 2009, the CCOC Executive Council met and established the Performance Improvement and Efficiencies (PIE) Committee and tasked it with reviewing current performance measures and recommending improvements. The PIE Committee, at its October 15, 2009, meeting agreed not to recommend any new performance measures and standards and determined that reporting timeliness performance measure data semiannually posed logistical problems due to the clerks operating on a county fiscal year yet budgeting on the State fiscal year. Consequently, in October 2009, the PIE Committee instituted quarterly reporting for timeliness performance measures.

Collection Rate Measures and Standards

Clerks are required to submit collection data, including assessments (amounts imposed by the court), collections, and a calculated collection rate, on a quarterly basis. Assessments in a given quarter are tracked over five quarters (a 15-month period). The collection rate standard adopted by CCOC consisted of collection rates for each of four types of criminal court cases (circuit, county, juvenile delinquent, and traffic) and five types of civil court cases (circuit, county, traffic, probate, and family) reported for each of four 15-month periods.

Timeliness Measures and Standards

The timeliness standards adopted by CCOC relate to the percentage of new cases opened within a specified number of business days after initial court documents are clocked in for each of four types of criminal court cases (circuit, county, juvenile delinquency, and traffic), and the percentage of docket entries recorded within a specified number of business days after either initial court documents are clocked in or action is taken for each of six types of civil court cases (circuit, county, traffic, probate, family, and juvenile dependency). The data is summarized and reported quarterly for each standard, by court case type, resulting in 20 timeliness performance standards (two performance measures for 10 types of court cases).

Our specific findings related to collection rate and timeliness performance measures and standards are discussed in finding Nos. 4 through 6.

Finding No. 4: Performance Measures and Standards – Timely Report Submission

The performance measures created under Section 28.35(2)(d), Florida Statutes, are reported by the clerks to CCOC on a quarterly basis. According to CCOC's instructions, the collection rate and timeliness performance measure reports for all 67 clerks for the quarter-ended December 31, 2009, were to be provided to CCOC no later than January 20, 2010, and February 20, 2010, respectively. The submittal process is generally through electronic mail. In an effort to help ensure timely submission of performance measure reports, CCOC staff, when warranted, will remind clerks' staff of submission deadlines through telephone calls, e-mails, and occasionally make on-site visits. However, as discussed below, such efforts may need to be enhanced.

For the clerk reporting period October 1, 2009, through December 31, 2009, we reviewed the report submissions for 20 of the 67 Clerks. We noted that 3 of the 20 clerks submitted collection rate performance measure reports 5 to 14 days after the deadline, and 8 of the 20 clerks submitted timeliness performance measure reports 30 to 34 days after the deadline.

The data reported within these measures is used in the determination of the performance of each clerk in the areas of fiscal management; operational efficiency; and fine, fee, service charge, and court cost collection. Untimely receipt of the performance data precludes CCOC from effectively and efficiently making fiscal and operational decisions, and creates delays in evaluating corrective action plans for clerks that fail to meet the timeliness standards.

Recommendation: CCOC, in consultation with the clerks, should continue its efforts to ensure that clerks submit performance measure reports within the timeframes established.

Finding No. 5: Performance Measures and Standards – Collection Rate

The collection rate standards adopted by CCOC consist of collection rates for nine court divisions and are reported on a quarterly basis. The assessments for a given quarter, and the collections thereon, are tracked over five quarters (a 15 month period). Instructions sent to clerks by CCOC concerning completion of collection rate reporting forms include the following statement: “assessments should generally remain the same or go down as assessment amounts are waived. Collections, on the other hand, are generally expected to remain the same or increase because it is very rare that once an assessment is collected that it will be refunded.”

A review of collection rate data reported by 20 clerks disclosed, for all 20 clerks, instances in which reported assessment data significantly fluctuated. Table 2 provides a description of examples of significant data fluctuations for eight clerks for which the more significant fluctuations were noted and contains data reported for the quarter ended December 31, 2008. For example, the DeSoto County Clerk initially reported that assessments for the quarter ended December 31, 2008, totaled \$125,616; however, the next four quarterly reports for the assessments for the quarter ended December 31, 2008, totaled \$113,901, \$84,315, \$ 77,239, and \$ 218,642, respectively. As noted above, assessments should generally remain the same or go down as assessment amounts are waived. However, a large increase from \$77,239 to \$218,642 in one quarter is not consistent with the anticipated direction of assessment amounts from quarter to quarter. In addition, although reported assessment data for several clerks decreased, which may have been due to waivers, the amounts of the fluctuations were significant. These fluctuations are indicative of possible reporting errors that should warrant further inquiry by CCOC of the applicable clerk to obtain an explanation for such unexpected changes in the assessment amounts reported. Similar issues were also noted in report No. 2010-024, finding No. 3.

Table 2

Clerk	Case Type	1st Quarter Assessment	2nd Quarter Assessment	3rd Quarter Assessment	4th Quarter Assessment	5th Quarter Assessment
Broward	Civil Traffic	\$13,710,560	\$10,931,651	\$11,099,158	\$11,027,012	\$11,032,796
DeSoto	Circuit Criminal	125,616	113,901	84,315	77,239	218,642
Dixie	Civil Traffic	37,630	-	-	-	104,101
Dixie	County Criminal	37,630	11,705	11,905	12,575	12,193
Gilchrist	Circuit Criminal	20,289	21,124	21,074	274,074	274,074
Hillsborough	Circuit Criminal	12,419,100	11,899,845	11,887,456	11,345,290	10,788,447
Miami-Dade	Civil Traffic	32,050,092	24,553,318	22,484,669	21,849,551	21,363,631
Polk	Circuit Criminal	3,048,770	2,908,393	2,749,605	2,584,115	2,520,800

While CCOC has a system in place requiring clerks to submit corrective action plans when they have failed to achieve a specific performance standard during a quarterly reporting period, it does not presently have formal procedures in place providing for follow-up on significant fluctuations in the reported data such as the instances cited in Table 2. This increases the risk that data reported by the clerks may not be reliable. CCOC staff indicated that another factor

affecting the reliability of the collection rate data was an inability on the part of some clerks to properly report collection rate data due to insufficient computing capabilities. CCOC staff stated that 21 (31 percent) of the 67 clerks did not possess the computer software to properly record and report collections data. Consequently, the performance measure data reported by approximately one-third of the clerks may be less reliable than the data reported by the remaining clerks. CCOC staff further noted that most of these 21 clerks are “awaiting upgrades to Clericus when the economic situation is better.” Clericus is a Florida-based case maintenance system developed exclusively for Florida clerks. This system will provide an upgrade to the current case maintenance applications supported by the Florida Association of Court Clerks and Comptrollers.

Recommendation: CCOC and the 21 clerks identified should take steps to address the problem of insufficient computer capabilities to ensure the accuracy and completeness of all performance measure data. CCOC should also formalize its procedures for review of performance measure data. Where significant data fluctuations are noted, the follow-up process should be fully documented and require obtaining explanations in a timely manner and, where appropriate, the filing of amended reports.

Finding No. 6: Performance Measures and Standards – Timeliness

Timeliness standards include two measures: the percentage of new cases opened within a specified number of business days after initial court documents are clocked in, and the percentage of docket entries recorded within a specified number of business days after either initial court documents are clocked in or action is taken. There are 10 types of court cases and each is assigned between 2 and 4 days as the threshold for meeting the performance standard. With two separate performance measures and 10 types of cases filed, there are 20 timeliness performance standards for each clerk.

For 20 clerks, we reviewed timeliness performance standards data reports for the period October 1, 2009, through December 31, 2009. Our test disclosed that 13 of the 20 clerks did not meet between 1 and 8 of the 20 performance measures as noted in Table 3.

Table 3

Clerk	No. of Standards Met	No. of Standards Not Met	Percentage of Standards Not Met
Madison	12	8	40
Palm Beach	12	8	40
Broward	13	7	35
Monroe	14	6	30
Brevard	15	5	25
Hillsborough	15	5	25
Miami-Dade	16	4	20
Hendry	16	4	20
Suwannee	16	4	20
St. Lucie	18	2	10
Dixie	19	1	5
Jackson	19	1	5
Orange	19	1	5

According to Section 28.35(2)(d), Florida Statutes, when CCOC identifies a clerk that has not met the performance standards, it must identify the nature of the deficiency and the corrective actions of the clerk. In this manner, CCOC has been tasked with receiving corrective action plans from the clerks regarding failures to meet performance standards and assessing the quality of those plans. CCOC staff review the quarterly performance measure reports and prepare a partially completed corrective action plan document for any standard that has not been met. CCOC staff then provides the incomplete corrective action plan document to the applicable clerk via e-mail. The clerk is required to complete the document by describing the process by which any unmet performance standards will be addressed and return the completed document to CCOC.

In response to our request in April 2010 for corrective action plans relating to timeliness performance measures and standards for the quarter ended December 31, 2009, CCOC staff advised us that they did not have the plans on hand and subsequently contacted the clerks and asked them to send their corrective action plans for timeliness measures to the CCOC office. While CCOC staff did ultimately provide the requested information, absent timely receipt of the corrective action plans by CCOC, a proper and timely review of the plans by CCOC staff was not completed. Such a timely review would help ensure their completeness and accuracy and, more importantly, help determine whether the planned corrective action actually corrected the problem that had prevented the achievement of the applicable performance standard.

Pursuant to Section 28.35(2)(d), Florida Statutes, CCOC is required to notify the Legislature and the Florida Supreme Court of any clerk not meeting performance standards and provide a copy of the corrective action plan. Although the law does not specify the frequency for CCOC to report clerks that failed to meet performance standards, CCOC has indicated its intent to provide this data on a quarterly basis. CCOC posted the information required by Section 28.35(2)(d), Florida Statutes, for the quarters ended December 31, 2009, and March 31, 2010, on the CCOC Web site in late August 2010. However, as of August 30, 2010, CCOC had not informed either the Legislature or the Florida Supreme Court that the data had been posted on the CCOC Web site.

Recommendation: CCOC should enhance its procedures to ensure the timely submission of corrective action plans, when appropriate, and a timely review of such plans by CCOC staff with appropriate follow-up to ensure the plans address the problems that prevented the achievement of the performance standards. Furthermore, CCOC should post the data to its Web site on a timely basis and promptly inform the Legislature and the Florida Supreme Court as to its availability. The Legislature should consider amending Section 28.35(2)(d), Florida Statutes, to require quarterly notification of clerks not meeting performance standards and submission of corrective action plans, and the dates on which these quarterly reports must be provided.

SCOPE, OBJECTIVES, 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.

We conducted this operational audit from February 2010 to June 2010 in accordance with applicable 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 CCOC activities related to the budgeting processing for clerks; the performance measure systems of the clerks; remittance of court-related fines, fees, service charges, and costs; and CCOC operations including competitive selections of contractors, timely depositing of moneys received by CCOC, transitional issues as CCOC emerges as a State agency, and follow-up on prior audit findings. The overall objectives of the audit were:

- To evaluate the effectiveness of established internal controls in achieving management's control objectives in the categories of compliance with controlling laws, administrative rules, and other guidelines; the economic and efficient administration of the functions assigned to CCOC; the relevance and reliability of records and reports; and the safeguarding of assets.
- To evaluate management's performance in achieving compliance with controlling laws, administrative rules, and other guidelines; the economic and efficient administration of the functions assigned to CCOC; the relevance and reliability of records and reports; and the safeguarding of assets.
- To determine whether management had corrected, or was in the process of correcting, all applicable deficiencies disclosed in report No. 2010-024.

Also, pursuant to Section 11.45(7)(h), Florida Statutes, our audit may identify statutory and fiscal changes to be recommended to the Legislature.

Our audit included examinations of various transactions, as well as events and conditions occurring during the period February 2009 through January 2010, and selected actions prior and subsequent thereto. In conducting our audit, we:

- Interviewed selected CCOC personnel.
- Obtained an understanding of internal controls and tested processes and procedures related to areas within the scope of the audit, including, as appropriate, a walk-through of relevant internal controls through observation and examination of supporting documentation and records.
- Tested the court-related budgets submitted by 20 of the 67 clerks to CCOC to determine compliance with CCOC adopted budget submission, review, and certification procedures for the period February 2009 through January 2010.
- Tested the performance measure reports prepared and submitted by 20 of the 67 clerks to determine compliance with uniform system of performance measures and applicable performance standards developed and approved by CCOC for the court-related functions of clerks for the period October 2008 through December 2009.

- Tested the review and approval of CCOC payroll transactions for the period February 2009 through January 2010.
- Tested the timeliness and accuracy of remittances of fines, fees, service charges, and costs collected by the 67 clerks and remitted to the Department of Revenue from July 2009 through January 2010.
- Tested P-Card purchases made by CCOC to determine compliance with the provisions of the CCOC P-Card policies and procedures for the period February 2009 through January 2010.
- Reviewed CCOC procedures for acquiring contractual services to determine whether CCOC had used a competitive selection process in the acquisition of such services for the period February 2009 through January 2010.
- Reviewed the procedures and actions taken to close the CCOC checking account and to properly dispose of the existing check supply for the period June 2009 through January 2010.
- Obtained an understanding of CCOC's practices and transitional procedures for the implementation of legislative changes.
- Evaluated CCOC's actions taken to correct the deficiencies disclosed in audit report No. 2010-024.
- Performed various other auditing procedures as necessary to accomplish the objectives of the audit.

Specific information describing the work conducted to address audit objectives is also included in the individual findings.

AUTHORITY

Pursuant to the provisions of Sections 28.35(5)(a) and 11.45, Florida Statutes, I have directed that this report be prepared to present the results of our audit.

A handwritten signature in blue ink, appearing to read "David W. Martin".

David W. Martin, CPA
Auditor General

MANAGEMENT'S RESPONSE

In a letter dated October 29, 2010, the Chair of CCOC provided a response to our preliminary and tentative findings. The letter is included in this report as Exhibit A.

EXHIBIT A
MANAGEMENT'S RESPONSE



October 29, 2010

Honorable Richard Weiss
Polk County
Chair

Honorable Bob Inzer
Leon County
Vice Chairman

Honorable Sharon Bock
Palm Beach Clerk
Secretary/Treasurer

Honorable John Crawford
Nassau County

Honorable Scott Ellis
Brevard County

Honorable Buddy Irby
Alachua County

Honorable Harvey Ruvin
Dade County

Honorable Tim Sanders
Madison County

Honorable Joseph Farina
Judge

Senate
Honorable Pat Frank
Hillsborough County

House
Honorable Lydia Gardner
Orange County

Joe Boyd
General Counsel

John Dew
Executive Director

2560-102 Barrington Circle
Tallahassee, Florida 32308

Phone: 850.386.2223
Fax: 850.386.2224

David W. Martin
Auditor General
G74 Claude Pepper Building
111 West Madison Street
Tallahassee, FL 32399-1450

Re: Florida Clerks of the Court Operations Corporation Annual Audit

Dear Mr. Martin:

Thank you for providing us with the preliminary and tentative findings and recommendations of your audit of the Florida Clerks of Court Operations Corporation.

OAG Finding No. 1 Recommendation: *CCOC should monitor projected and actual revenues deposited into the Trust Fund during the fiscal year. When a determination is made that a deficit will occur, CCOC should notify the Chief Justice to initiate a proposed plan to eliminate the deficit. CCOC should also consult with the Justice Administrative Commission's Executive Director and the Department of Financial Services' Division Director of Finance and Accounting regarding the prioritization of its financial obligations when funds are insufficient in the Trust Fund to fully fund the appropriation releases and the service charges, when due.*

The CCOC has monitored projected and actual revenues for the Trust Fund for the last few years. In instances of projected shortage of revenues we have also developed plans to resolve the deficit. CCOC for several years has formally updated the Council members and public at numerous Council meetings throughout each year. When it appears a deficit in the Trust Fund might occur the Council has worked with and consulted others to develop resolutions. According to the CCOC General Counsel, the potential shortfalls are governed by section 28.35 and section 28.36, F.S. with guidance and direction by the Florida Legislature. The CCOC is a statutory corporation, created by the Florida Legislature, specifically charged with approving and adjusting budgets of the Clerks of Court.

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While the employees of the CCOC Corporation are state employees, the employees of the individual Clerks of the Court are county employees performing state duties with state funds, including the collection of funds critical to the State General Revenue. As such, our operations are unique. The Legislature's creation of the CCOC, under the Legislature, is charged with specific fiscal duties. We are charged with recommending to the Legislature changes in fines, fees, service charges, court costs and other funding issues. It is ultimately the Legislature, with assistance of the CCOC that approves the CCOC's plan to eliminate deficits that may occur in the Trust Fund. This is the process that has recurred successfully. Furthermore, it is only the CCOC Office, not the individual Clerks, that fall under Chapter 216 F.S. for the budgeting process. The Clerks of the Court are not under section 216.221(10), F.S. We handle the process directly with the Florida Legislature. If the Legislature wishes to relinquish that control, it of course may do so. We will continue to work with and consult others to develop resolutions, but it is ultimately the responsibility of the CCOC to recommend a solution to the Legislature. We therefore disagree that it is the responsibility of the Florida Chief Justice to develop such a plan. The CCOC instead will continue to work with and submit any such plan to the Legislature.

OAG Finding No. 2 Recommendation: *CCOC should continue its efforts to reconcile reported remittance balances to DOR in a timely manner and, in so doing, increase accountability of the clerks and their accuracy of the reported data.*

CCOC has, and will continue, to reconcile the reported remittance balances from Clerks to what is received by DOR. This reconciliation is now done within only a few days from the point the CCOC office has the information from DOR to compare to the reports we receive from Clerks.

OAG Finding No. 3 Recommendation: *CCOC should require the employees to repay the \$15,289 in unallowable leave payments.*

The Corporation had a unique and unexpected legislative requirement passed in the 2009 session which affected our need to assure these two employees were working and not taking their earned comp time prior to July 1, 2009. In such a unique situation the Council did what was in the best interest of the State and the Clerks by providing a payment for earned comp time that otherwise the employees would have had to take prior to July 1, 2009. The Council did have the authority to change its earlier adopted policies since we were not obligated to follow any state requirement. Through a formal vote taken at our June 2009 CCOC Executive Council meeting we amended the policy for these two employees concerning receiving payout for unused comp time. The two CCOC employees are not required to pay any dollars back to the CCOC as the decision we made was both legal and again in the best interest of the State of Florida and the Clerks. These were allowable leave payments as officially approved by the Council and we respectfully disagree with any statement otherwise.

OAG Finding No. 4 Recommendation: *CCOC, in consultation with the clerks, should continue its efforts to ensure that clerks submit performance measure reports within the timeframes established.*

We agree and will continue to work with Clerks to assure the reports are provided within the established time frames.

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OAG Finding No. 5 Recommendation: *CCOC and the 21 clerks identified should take steps to address the problem of insufficient computer capabilities to ensure the accuracy and completeness of all performance measure data. CCOC should also formalize its procedures for review of performance measure data. When significant data fluctuations are noted, the follow-up process should be fully documented and require obtaining explanations in a timely manner and, where appropriate, the filing of amended reports.*

CCOC has already worked with the 21 clerks identified and many have resolved the problem of insufficient computer capabilities. In addition, the CCOC has approved a process that automatically “kicks back” a performance report submitted by a Clerk if there are significant assessment fluctuations and they have not explained the reasons. This will help assure the information is correct and at the same time provide documentation for the reasons if there are significant fluctuations.

Finding No. 6 Recommendation: *CCOC, should enhance its procedures to ensure the timely submission of corrective action plans, when appropriate, and a timely review of such plans by CCOC staff with appropriate follow-up to ensure the plans address the problems that prevented the achievement of the performance standards. Furthermore, CCOC should post the data to its Web Site on a timely basis and promptly inform the Legislature and the Florida Supreme Court as to its availability. The Legislature should consider amending Section 28.35(2)(d), Florida Statutes, to require quarterly notification of clerks notification of clerks not meeting performance standards and submission of corrective action plans, and the dates on which these quarterly reports must be provided.*

CCOC does have procedures to ensure corrective action plans are submitted timely. Clerks not meeting standards are to be notified by CCOC staff within 10 days of receipt of performance reports and Clerks are then given two weeks to return the Corrective Action Plans to the CCOC office. Clerks generally meet these deadlines. The CCOC staff however made a one-time exception to this policy for timeliness measures for the October through December 2009 quarter. This was because it was the first time these timeliness measures were required to be submitted each quarter instead of every 6 months as approved by the CCOC Executive Council in late January 2010. The next report was due in April and it was therefore more efficient for staff to wait a few weeks since both the collections and timeliness reports were due then at the same time. CCOC does post all the quarterly corrective action reports on the CCOC website as approved by the CCOC Executive Council. We provided to the Senate President, the House Speaker, and the Supreme Court Justice our Annual Performance Measure Report on September 1, 2010. We notified them, and their staff that each quarter we also post information on each Clerk’s performance and their corrective action plans. Every quarter, at the publicly advertised Performance Improvement and Efficiency Committee and the CCOC Executive Council these reports are provided as part of the meeting packet for review and approval. As an example, the Performance Committee reviewed and approved the Corrective Action Plans at their September 22th 2009 meeting and the CCOC Executive Council then reviewed and approved the Corrective Action Plans at their September 29th 2009 meeting. The Corrective Action Plans were placed on the CCOC website within a few days of the Council meeting.

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We appreciate the opportunity to provide a response to the latest annual audit recommendations.

Sincerely,

A handwritten signature in blue ink that reads "Richard M. Weiss". The signature is written in a cursive style with a large initial 'R'.

Richard Weiss
Chairman, CCOC Executive Council

Cc: John Dew, CCOC Executive Director
CCOC Executive Council
Corporation Members