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Memorandum

Date: June 11, 2019
From: Roger Trca, Inspector General
To: Cindy Guerra, Esq., Chief Officer – Courts & Official Records
Subject: Mental Health Case Reporting Audit – Additional Testing

The Audit Services Unit of the Clerk & Comptroller's Division of Inspector General conducts financial, operational, and compliance audits intended to improve the effectiveness of governance, risk management and control processes within the Clerk's office and Palm Beach County government.

A. Scope, Objective and Methodology

As required by Section 790.065, Florida Statutes, the Clerk & Comptroller (Clerk's office) is responsible for reporting criminal and civil (involuntary and voluntary) incompetency adjudications to the Florida Department of Law Enforcement (FDLE). The Clerk's Division of Inspector General (Clerk's IG) completed an audit of criminal and civil mental health case reporting to the FDLE Mental Competency Database (MECOM), with a final report issued on April 17, 2019. The audit included testing for a three-year period from July 1, 2015 to June 30, 2018. Management subsequently requested the Clerk's IG to conduct supplemental testing. As a result, additional testing was performed for mental health cases reported from February 1, 2007 (inception of the statutory requirement) through June 30, 2015 and from July 1, 2018 to April 15, 2019.

The objective was to verify that mental health cases were completely reported to FDLE in compliance with pertinent laws and regulations and that no backlog of unreported cases existed during the expanded scope period. The review did not include tests for accuracy and timeliness of the cases reported, which were included in the initial audit. In order to meet the objective, we performed data analytical procedures and tests utilizing the Audit Command Language (ACL) tool to evaluate all transactions during our scope period. We obtained both the ShowCase MECOM report and the FDLE MECOM report for the same periods for civil and criminal orders as well as dispositions (orders). We then compared both reports to identify any mental health cases included in ShowCase that were not reported to FDLE as required.

B. Conclusion

Our review of criminal and civil mental health orders entered into FDLE MECOM from February 1, 2007 through June 30, 2015 and from July 1, 2018 to April 15, 2019 determined that there was no current backlog. Audit testing identified instances of orders not properly entered into MECOM, though all such instances occurred prior to December 31, 2014.

Specifically, the testing identified 100 of 7,131 (1.4%) civil defendants from 2007 to 2014 and 22 of 775 (2.8%) criminal defendants from 2007 to 2012 that were not properly entered into MECOM. The exceptions identified were related to orders prior to the implementation of the updated procedures for Civil Operations (December 2017) and for Criminal Operations (June 2018). These enhanced procedures established several checks and balances, including dual and triple reviews as well as quality assurance checks on all orders.

C. Background

Section 790.065, Florida Statutes requires all licensed importers, manufacturers, or firearm dealers in the State to contact FDLE before transferring any firearm to a potential buyer. FDLE is responsible for conducting the background check to determine whether information has been recorded that would disqualify the potential buyer from purchasing firearms under State or Federal law. Pursuant to Section 790.065(2)(a)4, Florida Statutes, non-approval is issued for anyone who is adjudicated mentally defective or has been committed to a mental institution.

Section 790.065, Florida Statutes, requires the Clerks of Court to report to FDLE any individuals adjudicated mentally defective, committed to a mental institution by a court order, or have a judicial finding of incapacity. Authorized by the statute, FDLE created the Mental Competency Database (MECOM) in February 2007 as its official application to collect and maintain official records from the Clerks of Court in Florida's 67 counties. MECOM interfaces with the FBI's National Instant Criminal Background Check System (NICS) and it is available nationwide for firearm related background checks.

After July 1, 2013, Section 790.065(2)(a)4.c., Florida Statute, required voluntary orders to be submitted into MECOM. Voluntary orders refer to individuals deemed by a physician to be of imminent danger, but were allowed to transfer to voluntary status. Involuntary orders refer to individuals adjudicated mentally defective or committed to a mental

institution. Voluntary orders are to be submitted into MECOM within 24 hours after the rendition of the adjudication or commitment and involuntary orders within one month.

From February 2007 to June 2013, the Clerk's office processed all individuals adjudicated mentally defective or with mental institution commitments through direct entry into MECOM or submission of facsimiles to FDLE. By July 2013, civil (voluntary and involuntary), juvenile and criminal orders were entered directly into MECOM by the Main Courthouse and three branches (North, South and West County). Court Operations is led by Cindy Guerra, Esq., Chief Operating Officer - Courts & Official Records.

D. Relevant Statutes

Section 790.065, Florida Statutes, requires the Clerks of Court to report individuals adjudicated mentally defective, committed to a mental institution by a court order, or have a judicial finding of incapacity to FDLE.

Section 790.065(2)(a)4.c.(I) Fla. Stat. (Involuntary) states: *"Except as provided in sub-sub-paragraph (II), clerks of court shall submit these records to the department within 1 month after the rendition of the adjudication or commitment..."*

Section 790.065(2)(a)4.c.(II) Fla. Stat. (Voluntary) states: *"...If the judge or magistrate determines that the record supports the classifying of the person as an imminent danger to himself or herself or others, to order that the record be submitted to the department. If a judge or magistrate orders the submittal of the record to the department, the record must be submitted to the department within 24 hours".*

E. Observations & Recommendations

The audit disclosed that some defendants with incompetency adjudications were not reported into MECOM as statutorily required. Civil and criminal defendants were tested and reported separately below.

1. Civil defendants were not always reported into MECOM.

Civil voluntary and involuntary orders are entered directly into MECOM at each location (Main, North, South and West). Civil orders are categorized as follows (docket codes are noted in parentheses):

- Baker Act: involuntary examination for emergency or involuntary commitment
 - Order for Involuntary Inpatient Placement §394.467 (ORIP)
 - Order for Involuntary Outpatient Placement §394.4655 (OOP)
 - Voluntary Treatment §394.463 (ONVA)
- Marchman Act: involuntary and voluntary assessment, stabilization and treatment of a person supposedly abusing alcohol or drug
 - Order for Involuntarily Substance Abuse Assessment and Stabilization §397.6818 (ORIA)
 - Order for Involuntary Substance Abuse Treatment §397.6957 (ORIT)
- Incapacity Orders are related to guardianship incapacitation
 - Order determining Incapacity §744.331(6)(a) (ORIN)

Juvenile cases are also handled by Civil Operations for both voluntary and involuntary commitment cases. Juvenile cases follow the same procedure as an adult and are reported to FDLE (Order Adjudging the Child Incompetent to Proceed and Commitment §985.19 (OFCI)).

We performed a data analysis to test whether all defendants with adjudicated mental health orders in ShowCase during the audited period from February 1, 2007 through June 30, 2015 and from July 1, 2018 to April 15, 2019 were entered into MECOM. The ShowCase report extraction for this period identified 7,131 unique defendants that should have been entered into MECOM. We then retrieved the MECOM report for this same period from FDLE and compared both reports. We noted that 148 defendants were not included in MECOM. Further analysis is provided below.

- We determined that 48 of the 148 defendants were not entered into MECOM for appropriate and various reasons. For instance, defendants had various court orders or incomplete records, which resulted in not requiring these defendants to be entered into MECOM.
- The remaining 100 of the 148 defendants were improperly not entered into MECOM (100 of total 7,131 or 1.4%).
 - We noted 36 of 100 defendants had order dates ranging from June 26, 2007 to May 22, 2008 and from July 16, 2013 to December 18, 2014. Management stated that during this period, the Clerk's office was required to enter orders directly into MECOM. Management stated that these orders were not input at the time due to incorrect docket codes and lack of proper notification of information required to enter the orders (e.g., date of birth).

- We noted 64 of 100 defendants had order dates ranging from June 30, 2008 to June 17, 2013. Management stated that during this period, FDLE was responsible for entering the defendants' information into MECOM based on the records sent via facsimiles by the Clerk's office Civil Operations. We requested the supporting facsimiles. We verified facsimiles were sent to FDLE for 27 defendants; however, there was no evidence that the Clerk's office sent facsimiles for the remaining 37 defendants.

The exceptions identified above were related to defendants' orders ranging from June 26, 2007 through December 18, 2014, prior to the implementation of enhanced review procedures in December 2017. The procedures established a double and triple check review at each branch location to ensure that the data in ShowCase matched the data in MECOM. In addition, a Quality Assurance (Q/A) team was centralized at the Main Branch to review 100% of all civil and criminal orders.

Recommendation:

- A. Civil Operations management should review the 100 defendants (related to 122 orders) that were not entered into MECOM and collaborate with FDLE to provide copies of the facsimiles (when applicable) so that these can be entered into MECOM if they met the required criteria. FDLE agreed to enter these orders once the documentation is provided to them.

Management Response:

- A. Civil has reviewed the 100 defendants (related to 122 orders) that were provided to us for review. For 24 defendants (or 34 orders), we have the documentation showing that the information was provided to FDLE (we do not believe we are responsible for inputting this information into MECOM). The remaining 55 defendants (or 60 orders) were corrected and placed into MECOM. Also, 21 defendants (related to 28 orders) represent defendants who have passed away (I do not believe it is proper to place someone who has passed away into the MECOM).

Target Completion Date: Completed

2. Criminal defendants were not always reported into MECOM.

Criminal cases originate in the Main, North, South and West branches; however, they are input directly into MECOM by Circuit Criminal Operations at the Main Courthouse. The following types of criminal cases are processed (docket codes are noted in parentheses):

- Found Incompetent (FI) and Adjudicated Not Guilty by Reason of Insanity (I) dispositions
- Order for Involuntary Commitment of Defendant Determined to be Incompetent to Proceed §916.302(2) and §916.13 (OINC)
- Order Adjudging Defendant Not Guilty by Reason of Insanity §916.15 (ADNG)
- Order for Mental Competence to Proceed §916.3012 (OINC)
- Order for Conditional Release §916.17 (OINC)

We performed a data analysis of criminal mental health orders or dispositions (herein referred to as orders) in Clerk's ShowCase from February 1, 2007 through June 30, 2015 and from July 1, 2018 to April 15, 2019. The ShowCase Criminal Report for this period identified 775 defendants that should have been entered into MECOM. We then retrieved the MECOM report for this same period from FDLE and compared both reports.

We noted that 22 of 775 (2.8%) defendants were improperly not entered into MECOM as follows:

- For 15 of the 22 defendants, the order dates ranged between 2011 and 2012. Management stated that during this period, FDLE was responsible for entering the defendants' information into MECOM based on the records sent via facsimiles by the Circuit Criminal at the Clerk's office. We obtained copies of the facsimile cover sheets and noted that the date and time stamps were not included on the cover sheets. However, manual annotations of date, time and report number were recorded on the cover sheets. As such, we could not verify submission to FDLE.
- For seven of the 22 defendants, with order dates between 2007 and 2009, there was no evidence that the Clerk's office sent facsimiles to FDLE. Our inquiry with FLDE disclosed that there was no documentation in their archives related to the seven orders referenced. An FDLE representative also stated their agency was responsible for entering the defendants' information into MECOM based on the records sent via facsimiles by the Clerk's office. Based on our discussions with

management, it was unclear which Clerk department was responsible for sending facsimiles with these orders during this period to FDLE for entry into MECOM.

The exceptions identified above were related to defendants' orders ranging from 2007 through 2012, prior to Circuit Criminal's implementation of a dual verification process in June 2018. Specifically, this is a manual dual review process to ensure that all mental health orders recorded in ShowCase are entered into MECOM. Circuit Criminal personnel examine all cases that have ever been held in the Mental Health division by docket code, court event date, and disposition created or modified for the previous day.

Recommendation:

- A. Management should review the 22 defendants that were not entered into MECOM and collaborate with FDLE to provide copies of the facsimiles so that these can be entered into MECOM if they met the required criteria. FDLE agreed to enter these orders upon receipt of the documentation.

Management Response:

- A. Faxes were provided to FDLE for 15 of the 22 defendants, as was the process until 2013; FDLE was responsible for entering the information into their own database. We cannot determine what FDLE did, nor are we responsible for the information provided to FDLE. However, based on FDLE's statement to the IG, we will resubmit the information on the 15 defendants in question. For the remaining 7 cases within the time period between 2007 and 2009, the Clerk's office was not responsible for entering Orders into the MECOM database. We cannot substantiate who or what department was responsible for reporting information to FDLE.

Target Completion Date: 06/14/2019

- cc: The Honorable Sharon R. Bock, Esq. – Clerk & Comptroller
Shannon Ramsey-Chessman - Chief Operating Officer
Hampton Peterson - Legal Counsel & Ethics Officer
Kathy Savor - Director, Civil Court Operations
Louis Tomeo - Director, Criminal Court Operations
Ralph Foreman - Manager, South County Branch
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