



Memorandum

Date: June 7, 2022
From: Roger Trca, Inspector General
To: Amy Borman Esq.,
Chief Legal Officer & Chief Operating Officer of Courts
Subject: Collection Efforts for Civil Cases

Background:

The Clerk of the Circuit Court & Comptroller (Clerk's office) Division of Inspector General (Clerk's IG) performed a risk-assessed audit of Court Operations & Official Records Receipts Processing (Receipts Processing Audit). The Clerk's IG published the results of the Receipts Processing Audit in a separate audit report and included observations specifically related to cash handling processes for the Clerk's office locations reviewed. During the Receipts Processing Audit, we noted opportunities for improvement related to the collection efforts on civil cases, which are reported here in this separate memorandum.

The Clerk's office is responsible for collecting outstanding balances on civil cases as it does not engage a third party collection agency. On August 20, 2020, management published the Civil Department Collecting Fees Due Procedure (Collections Procedure) to increase collections at the Main Courthouse operations. The Collections Procedure requires supervisors to review the Balance Due Report (which includes civil cases with fees outstanding) on a monthly basis, contact attorneys or pro se individuals when balances are due, document collection notes as well as identify and correct errors. Section 95.11, Florida Statutes, limits the collection of such fees to four (4) years from the date the fee was assessed on the case.

Court Operations & Official Records is led by Amy Borman Esq., Chief Legal Officer & Chief Operating Officer of Courts. Ms. Borman is supported by nine (9) direct reports and reports to Shannon R. Chessman, Chief of Staff & Chief Deputy Clerk.

Objective, Scope, and Methodology:

The review of the process to collect outstanding fees on civil cases was not originally included in the scope of the Receipts Processing Audit. However, during the course of the audit, we noted opportunities to improve the process and developed audit steps to further evaluate the collection effort on civil cases. The scope included open civil case fees outstanding from October 1, 2017 to September 30, 2021 (as of February 17, 2022) at the Main Courthouse, South County, North County, Mid County, and West County. Our scope included a limited review of collection efforts conducted on sampled civil cases and walkthroughs to determine current practices were aligned with related Clerk's procedures. In order to meet the objectives, we conducted interviews, reviewed departmental policies and procedures, and identified pertinent Florida Statutes and other laws and regulations.

Conclusion:

The review determined the process to collect unpaid fees assessed on civil cases was not consistently implemented at all the Clerk's office locations reviewed. Our review identified the Collection Procedure was not implemented at all Clerk's office operations, though collection efforts existed on miscellaneous cases at some locations.

Relevant Laws, Regulations and Clerk's office Procedures:

Section 95.11, Florida Statute, states:

"...Limitations other than for the recovery of real property. Actions other than for recovery of real property shall be commenced as follows:

95.11(3): Within Four (4) Years:

- (f) An action based on a statutory liability.*
- (k) A legal or equitable action on a contract, obligation, or liability not founded on a written instrument..."*

The Civil Department Collecting Fees Due Procedure, published on August 20, 2020, states:

"...Supervisors are to run the "Balance Due" Report every 30 days.

- Initially when running the report, do not go back beyond 4 years.*
- The report should also be run no closer than 30 days to your date.*
- Print balance due report.*

The report is to be reviewed for errors. If an error is found, it is to be corrected in Showcase.

- If it was clerk error, the clerk is to be advised of the error.*

If money is due:

- Email attorney of record or mail to pro se if no email address.*
- Make a note on your balance due report when you emailed the parties.*
- If no response send another email with 2nd request and case number in the subject line 30 days later regarding the balance due (this has the most effect for collecting)..."*

Review of Balance Due Report:

The Balance Due Report provides details of the outstanding fees for civil cases as well as the following information: type of fee assessed, case number, user name and fee assessed date. The fees assessed can be the result of errors, non-sufficient funds (NSF) fees due to returned check payments, mortgage foreclosure fees, and various other reasons. The Accounting Department pursues collection of NSF fees and writes off uncollected amounts.

We obtained the Balance Due Report from October 2017 to September 2021 (as of February 17, 2022). Details are summarized on the following page related to balances due by fiscal year (Table 1) and balances due by department (Table 2).

| | Balance Due Report | |
|--|--------------------------------|--------------|
| | As of February 17, 2022 | |
| | AMOUNT | COUNT |
| FY 2021 - Oct-2020 to Sept-2021 (Note 2) | \$ 163,631.55 | 1,154 |
| FY 2020 - Oct-2019 to Sept-2020 | \$ 140,412.48 | 1,165 |
| FY 2019 - Oct-2018 to Sept-2019 | \$ 184,931.19 | 1,669 |
| FY 2018 - Oct-2017 to Sept-2018 | \$ 197,848.25 | 1,651 |
| GRAND TOTAL (Note 1) | \$ 686,823.47 | 5,639 |

Table 1: Source: Civil Cases – ShowCase Balance Due Report as of February 17, 2022.

| Department | AMOUNT | COUNT |
|------------------------|----------------------|--------------|
| Circuit Civil (Note 3) | \$ 433,796.49 | 3,895 |
| Family Law (Note 3) | \$ 158,900.01 | 1,012 |
| County Civil | \$ 42,828.14 | 214 |
| Probate | \$ 31,770.09 | 331 |
| Guardianship | \$ 15,496.27 | 117 |
| Mental Health | \$ 1,873.44 | 15 |
| Marriage License | \$ 1,652.03 | 40 |
| Domestic Violence | \$ 507.00 | 15 |
| GRAND TOTAL | \$ 686,823.47 | 5,639 |

Table 2: Source: Civil Cases – ShowCase Balance Due Report as of February 17, 2022.

- Note 1: The total balance outstanding for the last four (4) fiscal periods from October 2017 to September 2021 was \$686,823.47 as of February 17, 2022. The Clerk’s office is limited to collecting fees up to four (4) years from the date the fee was assessed as per Section 95.11, Fla. Stat. The total balance does not include juvenile delinquency and juvenile dependency fees, which totaled approximately \$1.6 million from fiscal periods from Oct 2017 to Sept 2021. Management stated that most juvenile fees are uncollectible.
- Note 2: The outstanding balance on fees assessed on civil cases from October 1, 2020 to September 30, 2021 totaled \$163,632.55 as of February 17, 2022. This represents 0.09% of the total receipts (\$178,433,609) in ShowCase during the same period.
- Note 3: Circuit Civil (\$433,796.49) and Family Law (\$158,900.01) accounted for 86% of outstanding fees for the last four (4) fiscal periods.

Results of the Review:

- We performed a walkthrough of the process to collect balances due on civil orders in four (4) locations: Main Courthouse Circuit Civil, Main Courthouse County Civil, South County and North County. The following was noted:
 - Circuit Civil had not implemented the Collections Procedure. The supervisor stated most fees are collected at the time of filing. However, for fees that are added later (e.g., filing counter claim on existing cases), collection letters are

initially submitted to the customers. Circuit Civil does not have an employee assigned to collect outstanding fees. Balances due are generally reviewed only when inquiries are received from customers or management.

- County Civil implemented collection efforts based on the Collections Procedure; however, the review was not performed monthly as required.
 - The North and South County Branches do not review the Balance Due Report for all types of fees. Their review and collection efforts are limited to miscellaneous fees. The North County manager stated the Collections Procedure was not rolled out to the branch.
- We selected four (4) cases with fees unpaid. In three (3) cases, fees were assessed in error (e.g., duplicate fees). In one (1) case, fees were outstanding since July 20, 2016, and there was no evidence of collection efforts (e.g., collection letters/emails).
 - Management stated there are several challenges to collect balances due on civil cases, as noted below:
 - The Balance Due Report includes some mortgage foreclosure filing fees that are difficult to collect.
 - Management stated foreclosure fees are statutorily driven based on the claimed property value and fees are assessed on a sliding scale from \$401 to \$1,906. Individuals filing foreclosures may initially undervalue the property, which results in lower foreclosure filing fees assessed. However, these properties are generally sold at a higher value and additional fees are applicable based on the mandatory sliding scale.
 - The Clerk's office can adjust the filing fee to the higher fee amount; however, individuals rarely pay the additional filing fees owed, and these fees remain on the Balance Due Report indefinitely. Management stated individuals are not required or court ordered to pay the additional filing fees owed **prior** to closing the case, which further decreases the possibility of collection.
 - Management stated the Clerk's office has opted to adhere to the Florida Court Clerk & Comptrollers (FCCC) best practices and not engage third party agencies (e.g., collection agencies) to collect past due fees for civil orders. Management noted that, unlike criminal cases, civil cases are generally not court ordered, which further decreases the possibility of collection. We did not perform further review of best practices, statutes or regulations related to the usage of third-party collection agencies for civil cases.

Recommendation:

The Operations departments should:

- A. Implement consistent collection efforts of unpaid civil fees assessed at all Clerk's office locations by utilizing the Balance Due Report and adhering to existing procedures. Consideration should be given to engaging the Clerk's Legal Counsel to determine if additional actions are appropriate (e.g., issuing collection letters). In addition, management should assess whether there are types of civil cases (e.g., foreclosure filing fees) that can be sent to third-party collection agencies.

Management Response:

- A. Management met with Chief Legal Officer Amy Borman and Deputy Clerk Shannon Ramsey-Chessman on May 11, 2022 and determined that it would not be appropriate to send outstanding civil fees to collection agencies. This practice would not be aligned with FCCC best practices and would be against public policy. However management will do the following to help increase civil collection efforts and be consistent in our collection efforts:
1. Management will comply with the existing collection procedures as recommended above and run the balance due report, sending invoice collection letters as appropriate, on a monthly basis. Management will utilize leads, interns, and, if necessary, finance personnel to ensure that civil collection efforts are up to date. This will include cases with outstanding balances in all branches and across all civil departments (with the exception of Juvenile Delinquency). This process has already begun in our County Civil and Circuit Civil divisions, but will begin to be implemented in other civil areas commencing June 13, 2022.
 2. Management will provide reminders and additional training to staff to ensure that fees are properly assessed to a case, particularly in foreclosure and other real property cases. This will be completed by June 3, 2022.
 3. Management will address fee collection with Court Administration in an attempt to have judges include outstanding fees to the clerk in their final judgments. This will be done on an ongoing basis in our regular meetings with court administration.

cc: Shannon R. Chessman, Chief of Staff & Chief Deputy Clerk
Karina Rodriguez-Matzen, Director – Civil Court Services