TO:        Ken Burke, CPA  
          Clerk of the Circuit Court  
          Ex Officio County Auditor  

FROM:      Hector Collazo, Jr., Director  
           Division of Inspector General  

SUBJECT:   Follow-Up Audit of Clerk of the Circuit Court Sealed Court Records  

DATE:      December 8, 2011  

I am enclosing a copy of the follow-up audit dated December 8, 2011 on the above-referenced audit.

cc:        Myriam Irizarry, Chief Deputy Director, Court and Operational Services Division  
           David J. Bateman, Director, Court and Operational Services Division  
           Diane Elliott, Manager, Probate Court Records  
           Jim Bennett, County Attorney  
           Claretha N. Harris, Chief Deputy Director, Finance Division  
           Ernst & Young
FOLLOW – UP AUDIT OF CLERK OF THE CIRCUIT COURT SEALED COURT RECORDS

Audit Services
Division of Inspector General

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Clerk of the Circuit Court
Ex Officio County Auditor

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Division of Inspector General

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DECEMBER 8, 2011
REPORT NO. 2011-20

*Regulated by the State of Florida
**Accredited Office of Inspector General
By the Commission of Florida Law Enforcement Accreditation
December 8, 2011

The Honorable Ken Burke
Clerk of the Circuit Court

We have conducted a follow-up audit of the Clerk of the Circuit Court Sealed Court Records. The objectives of our review were to determine the implementation status of our previous recommendations.

Of the eleven recommendations contained in the audit report, we determined that five have been implemented, and six have been partially implemented. The status of each recommendation is presented in this follow-up review.

We appreciate the cooperation shown by the staff of the Probate and Civil Departments during the course of this review.

Respectfully Submitted,

Hector Collazo, Jr., Director
Division of Inspector General

*Accredited Office of Inspector General by the Commission of Florida Law Enforcement Accreditation
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>4</td>
</tr>
<tr>
<td>Status of Recommendations</td>
<td>9</td>
</tr>
<tr>
<td>1. In The Clerk’s Probate Department, Interpretation Of Florida</td>
<td>9</td>
</tr>
<tr>
<td>Statutes And The Sixth Judicial Circuit Of Florida Administrative</td>
<td></td>
</tr>
<tr>
<td>Orders Has Not Always Been Readily Justified And/Or Documented.</td>
<td></td>
</tr>
<tr>
<td>2. In The Clerk’s Civil Department, Some Physical Court Documents</td>
<td>20</td>
</tr>
<tr>
<td>Are Not Sealed.</td>
<td></td>
</tr>
<tr>
<td>3. No Standardized Procedures Exist For Similar Activities Within</td>
<td>23</td>
</tr>
<tr>
<td>Departments And Branches.</td>
<td></td>
</tr>
</tbody>
</table>
INTRODUCTION

Scope and Methodology

We conducted a follow-up audit of the Clerk of the Circuit Court Sealed Court Records. The purpose of our follow-up review is to determine the status of previous recommendations for improvement.

The purpose of the original audit was to:

1) Determine if the Clerk’s Departments comply with the legal requirements for the sealing of court records, files, and documents.
2) Determine if the internal controls for sealed court records, files, and documents are adequate.
3) Determine if the processes for sealing court records, files, and documents are efficient and effective to maximize cost savings.

To determine the current status of our previous recommendations, we surveyed and/or interviewed management to determine the actual actions taken to implement recommendations for improvement. We performed limited testing to verify the process of the recommendations for improvement.

Our follow-up audit was conducted in accordance with the International Standards for the Professional Practice of Internal Auditing and the Standards for Offices of Inspector General, and, accordingly, included such tests of records and other auditing procedures, as we considered necessary in the circumstances. Our follow-up testing was performed during the month of September 2011. The original audit period for the Probate Department consisted of all open cases from January 1, 2007 to March 1, 2008. The original audit period for the Civil Department was July 25, 2006 to February 19, 2008. However, transactions and processes reviewed were not limited by the audit period.

Overall Conclusion

Of the eleven recommendations in the report, we determined that five were implemented and six were partially implemented. We commend management for implementation of most of our recommendations and continue to encourage management to fully implement the remaining recommendations.
## Status

<table>
<thead>
<tr>
<th>OFI NO.</th>
<th>PREVIOUS RECOMMENDATION</th>
<th>IMPLEMENTATION STATUS</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td><strong>In The Clerk’s Probate Department, Interpretation Of Florida Statutes And The Sixth Judicial Circuit Of Florida Administrative Orders Has Not Always Been Readily Justified And/Or Documented.</strong></td>
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<td>A. Consult with the County Attorney to determine if Probate’s Guardianship Audit Checklists are public records in accordance with the Attorney General’s Opinion.</td>
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<td>B. Consult with the County Attorney to ensure compliance with Florida Statute 382.008. Procedures should be established to ensure consistent application throughout the Clerk’s Office.</td>
<td>✓</td>
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<td>E. Develop a formal procedure to ensure citizens cannot view exempt documents or remove case files from their custody.</td>
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<td>F. Develop a procedure and train staff requiring the employee filing the case to inspect the envelopes to ensure they are physically sealed.</td>
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</tr>
<tr>
<td></td>
<td>G. Establish a standardized method to seal/secure envelopes used for exempt documents.</td>
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</tr>
<tr>
<td>2</td>
<td><strong>In The Clerk’s Civil Department, Some Physical Court Documents Are Not Sealed.</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td>A. Ensure policies and procedures are updated to include the appropriate verbiage for sealing the Notice of Social Security Number document.</td>
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</tr>
<tr>
<td>OFI NO.</td>
<td>PREVIOUS RECOMMENDATION</td>
<td>IMPLEMENTATION STATUS</td>
</tr>
<tr>
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<td>---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
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</tr>
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<td><strong>B.</strong> Consult with the County Attorney to determine if sealed envelopes are required to reference Florida Statute citations and develop procedures, as appropriate.</td>
<td>✓</td>
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<td><strong>C.</strong> Consult with the County Attorney to determine if sealed documents should be retained or removed from the case file prior to public viewing and subsequently implement a uniform policy documenting the requirement.</td>
<td>✓</td>
</tr>
<tr>
<td>3</td>
<td><strong>No Standardized Procedures Exist For Similar Activities Within Departments And Branches.</strong></td>
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</tr>
<tr>
<td></td>
<td>Review similar activities, policies, procedures, and practices throughout the Clerk's operations with the primary objective of the standardization of similar activities, policies, procedures, and practices.</td>
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</tr>
</tbody>
</table>
**Background**

The Probate Court Records Department is located in the main Clearwater Courthouse at 315 Court Street. The Probate Court Records Department consists of three primary sections, which include:

1. **Intake:**
   - Has the responsibility of case initiation and processing, cashiering, customer assistance, mental health and incapacity case processing, and calendaring.

2. **Audit:**
   - Has the responsibility of auditing estates and guardianships, court registry, and appeals.

3. **Imaging:**
   - Has the responsibility of processing mail, estate claims, preparation of documents, scanning documents, index and docketing, verifying and releasing, and file control.

Probate case documents are imaged and are accessible by Clerk employees, citizens and public agencies, if not exempted by law. There are 30 Probate employees at the Clearwater Courthouse location where the physical court files are maintained. The St. Petersburg Branch has a Probate section with nine employees. The North County branch Probate area is limited to the intake of Probate cases.

The Probate Department has made significant progress converting to a paperless environment. Redaction software has been selected by Probate Management for redacting privacy content to achieve statutory compliance for electronic court documents. Software testing is currently being implemented to achieve the desired level of accuracy and compliance with Florida Statutes by January 1, 2011. Chapter 119, Public Records, Florida Statute 119.0714(2), court files; court records; official records; will require that all social security, bank account, debit, charge, and credit card numbers be confidential and exempt from public view. Currently, a person must request redaction.

The Civil Court Records Department is located in the Clearwater Courthouse. The department consists of six sections:

1. **Front Counter**
2. **New Cases/Certification**
3. Miscellaneous Process – includes jury, evidence and customer Call Center (Call Center moved to the Criminal Justice Center June 30, 2008)
4. Final Process (Legal) – reports, foreclosures, appeals and court registry
5. Child Support
6. Night Shift

The Civil Department processes cases which include small claims, County and Civil actions, and family actions (including adoption, domestic violence, paternity, and dissolution of marriage). At the time the original audit was conducted: 1) The Civil Department had 94 employees; 2) The St. Petersburg Branch, civil section, had 10 employees; and 3) The St. Petersburg, Tyrone and North County Branches were full service branches handling civil recording, marriage licenses and passports. As of February 17, 2009, the North County and Tyrone Branches no longer provide civil recording services; they serve as drop off points for recordable documents.

The Civil Department is in the process of acquiring an imaging system for conversion to a paperless environment. Software vendors have been selected and plans are underway for implementation.
STATUS OF RECOMMENDATIONS

This section reports our follow-up on actions taken by management on the Recommendations for Improvement in our original audit of the Clerk of the Circuit Court Sealed Court Records. The recommendations contained herein are those of the original audit, followed by the current status of the recommendations.

1. In The Clerk’s Probate Department, Interpretation Of Florida Statutes And The Sixth Judicial Circuit Of Florida Administrative Orders Has Not Always Been Readily Justified And/Or Documented.

During our review of sealed records in the Clerk’s Probate Department, we noted the following concerns:

A. Management has not established the basis of the exemption that requires guardianship audits and reviews to be sealed. There is no statutory requirement and/or The Sixth Judicial Circuit of Florida Administrative Order (Administrative Order) that requires Probate’s checklist of Guardianship reports and accountings submitted for audit be sealed, which may be a potential violation of Chapter 119, Public Records, Florida Statute 119.07(e), which states:

"Inspection and copying of records; photographing public records; fees; exemptions; If the person who has custody of a public record contends that all or part of the record is exempt from inspection and copying, he or she shall state the basis of the exemption that he or she contends is applicable to the record, including the statutory citation to an exemption created or afforded by statute."

The Clerk’s Office is required by Florida Statutes to perform reviews and audits of Guardianship reports filed with the Court.

The responsibilities of the Clerk of the Circuit Court, Florida Statute 744.368, states:

1) In addition to the duty to serve as the custodian of the guardianship files, the clerk shall review each initial and annual guardianship report to ensure that it contains information about the ward addressing, as appropriate:

a. Physical and mental health care;
b. Personal and social services;
c. The residential setting;
d. The application of insurance, private benefits, and government benefits;

e. The physical and mental health examinations; and

f. The initial verified inventory or the annual accounting.

2) The clerk shall, within 30 days after the date of filing of the initial or annual report of the guardian of the person, complete his or her review of the report.

3) Within 90 days after the filing of the verified inventory and accountings by a guardian of the property, the clerk shall audit the verified inventory and the accountings. The clerk shall advise the court of the results of the audit.

4) The clerk shall report to the court when a report is not timely filed.

A tickler system, which is an electronic filing system that serves as a reminder, provides the Probate Department with the dates the audits and/or reviews of Guardianship cases are required to be reviewed and an audit checklist performed.

Our testing of the Guardianship files determined that 100% of the Probate audit checklist records are sealed with the applicable documents required to be sealed by Florida Statutes. In addition, the checklists are sealed from public view in the Pinellas County Public Records website. Management understands that the Guardianship checklists have been sealed because the reviewed documents (filed reports and accountings) are required to be sealed by law; therefore, the checklists are protected under the same rule of law. However, Florida Statute 744.3701(1) states:

"Unless otherwise ordered by the court, any initial, annual, or final guardianship report or amendment thereto is subject to inspection only by the court, the clerk or the clerk’s representative, the guardian and the guardian’s attorney, and the ward, unless he or she is a minor or has been determined to be totally incapacitated, and the ward’s attorney."

The Statute is specific on what guardian records must be sealed. Audit checklists or probate work products related to probate audits are not cited in the statute. This is confirmed by an Attorney General’s Opinion.

In Attorney General Opinion NumberAGO 2004-33, the Florida Attorney General concluded:

"Chapter 744, Florida Statutes, contains no exemption from the Public Records Law for audit reports on guardianship files prepared by the clerk of court or for the work papers and notes related to these audit reports. Only those public records that are provided by law to be confidential or that are prohibited from being inspected by the public... are exempt from
the disclosure provisions of section 119.07(1), Florida Statutes. Thus, it is my opinion that an audit prepared by the clerk of court pursuant to section 744.368(3), Florida Statutes, is a public record. . ."

Therefore, it appears that Probate could potentially be in violation of Florida Statutes, Chapter 744 and Chapter 119, Public Records, and further research must be performed.

B. There is inconsistency between the Probate and Recording Departments regarding the procedure for sealing the different death certificates.

A management memo dated September 26, 2002 to the Probate staff stated that it was determined that all death certificates showing the cause of death and filed in our Court falls under the jurisdiction of Florida Statute 382.008. The sealing will include all death certificates in-state, out-of-state, and out-of-country effective October 1, 2002.

There was no legal source referenced in the memo determining that in-state, out-of-state, or out-of-country death certificates showing the cause of death must be sealed. We were unable to determine if a Florida Statute or an Administrative Order existed requiring the sealing of these death certificates. Florida Statute 382.008, Vital Statistics, Death, and Fetal Registration, addresses that the cause of death is confidential and exempt. However, there is no legal authority requiring that the entire death certificate be sealed. The memo also stated that Probate would not go back and seal prior death certificates showing the cause of death.

Probate management stated that prior to the October 1, 2002 memo, there was some confusion as to whether out-of-state death certificates showing the cause of death should be sealed.

In the Recording Department, death certificates are primarily sent in for filing from title companies to have a deceased person removed from the title to real property.

Florida Statute 382.008(6), Vital Statistics, Death, and Fetal Registration, states:

"The original certificate of death or fetal death shall contain all the information required by the department for legal, social, and health research purposes. All information relating to cause of death in all death and fetal death records and the parentage, marital status, and medical information included in all fetal death records of this state are confidential and exempt from the provisions of s. 119.07(1), except for the health research purposes as approved by the department; nor may copies of the same be issued except as provided in Florida Statute 382.025."
The Recording Department provides:

- Out-of-state death certificates showing the cause of death are available to subscribers of the Clerk's Public Record website and in the Official Records Department.
- In-state death certificates with the cause of death are redacted.

It is important that the law be followed consistently throughout the Clerk's Office.

C. There is no formal procedure which has been implemented to seal all Guardianship Examining Committee Reports. This practice may be a potential violation of:

- Chapter 456, Health Professions and Occupations: General Provisions, Florida Statute 456.057(10)(a), Ownership and control of patient records; report or copies of records to be furnished.
- Florida Statute 456.059, Communications confidential; exceptions.
- Administrative Order No. 2007-042.

A memo dated October 12, 2007 from Judge Morris to Ken Burke states:

"The report of the Guardianship Examining Committee as I interpret the law is a medical record or a psychological evaluation and thus these reports are sealed by operation of law. Please ensure that Guardianship Examining Committee reports are sealed in accordance with those statutory provisions."

A memo dated October 17, 2007 from Ken Burke to Judge Morris states:

"In accord with your recent instructions, please be assured that the Clerk's office will, from this point forward, seal Guardianship Examining Committee reports in the same way as other medical records are currently being handled."

During our testing of incapacity cases, we noted that 10% of 110 case files reviewed did not have the Guardianship Examining Committee reports sealed. However, the files reviewed were dated prior to Ken Burke's memo dated October 17, 2007. Currently, Probate does not have a procedure that would instruct employees to seal the prior Guardianship Examining Committee reports when the physical file is requested to be viewed by the public. The prior Guardianship Examining Committee reports may be overlooked because the sealing requirement for these documents did not take effect until October 17, 2007 through the current filings. The Court's interpretation should be clear to employees that all Guardianship Examining Committee reports must be sealed before the file is released to the public in order to be in compliance with the statutory provisions and Administrative Orders."
The Guardianship Examining Committee Reports, which have been imaged prior to October 17, 2007, are still available for public view in the Pinellas County Public Records website. There is no plan and/or procedure to seal the prior reports.

It appears the reports prior to October 17, 2007 must be sealed per the following statutory provisions and Administrative Order:

Chapter 456 Health Professions and Occupations: General Provisions, Florida Statute 456.057(10)(a) Ownership and control of patient records; report or copies of records to be furnished states, "All patient records obtained by the department and any other documents maintained by the department which identify the patient by name are confidential and exempt from Florida Statute 119.07(1) and shall be used solely for the purpose of the department and the appropriate regulatory board in its investigation, prosecution, and appeal of disciplinary proceedings. The records shall not be available to the public as part of the record of investigation for and prosecution in disciplinary proceedings made available to the public by the department or the appropriate board."

Chapter 456 Health Professions and Occupations: General Provisions, Florida Statute 456.059 Communications confidential; exceptions states, "Communications between a patient and a psychiatrist, as defined in Florida Statute 394.455, shall be held confidential and shall not be disclosed except upon the request of the patient or the patient's legal representative. Provision of psychiatric records and reports shall be governed by Florida Statute 456.057." Both Florida Statutes are referenced in Administrative Order No. 2007-042.

The Sixth Judicial Circuit of Florida Administrative Order No. 2007-042 states, "When a document within a court file is sealed by operation of law pursuant specific statute, rule, or other legal authority, the Clerk of the Circuit Court of Pasco County and the Clerk of the Circuit Court of Pinellas County are hereby authorized and directed to seal such document according to the scope and terms of the authority. No order of court or public notice shall be required before such sealing may be undertaken. Legal authorities which authorize and require the sealing of particular documents include but are not limited to the following:

1) Domestic Violence Petitioner’s Request for confidential filing of Address, sections 119.071(2)(j)(1) and 741.30, Florida Statutes, and Florida Family Law Form 12.980(h).

2) Inventory of Personal Representative, section 733.604(1), Florida Statutes.

3) Guardianship Reports, section 744.3701(1), Florida Statutes.
4) Birth Records, section 382.025, Florida Statutes.

5) Clinical Records of Detained Criminal Defendants Found Incompetent to Proceed or Acquitted by Reason of Insanity, section 916.107(8), Florida Statutes.

6) Medical Records, section 456.057(10), Florida Statutes.


8) Pre-sentence Reports, Florida Rule of Criminal Procedure 712.


12) Violation of probation reports, section 945.10(1) (b), Florida Statutes."

As a result of not sealing the Guardianship Examining Committee Reports, which have been imaged prior to October 17, 2007, an ongoing non-compliance with Administrative Order No. 2007-042 may exist.

D. Baker Act documents were not properly sealed in the physical case files. The Probate Department may be in potential violation of Administrative Order Nos. 2006-082 and 2007-042, and Florida Statute, Chapter 394 Mental Health, 394.4615(1) Clinical Record: Confidentiality and Chapter 119 Public Records.

Management stated that prior to the issuance of Administrative Order No. 2007-042, signed May 11, 2007, all Baker Act documents were being sealed by the Probate Department. Further, they had no confirmed written documentation to support the interpretation of laws for Baker Act cases.
Management stated there were meetings with Court Services Management regarding what types of Baker Act documents should be sealed. Despite prior and current Administrative Orders, legal interpretation remained unresolved.

On October 12, 2007, a memo received from Judge Morris to Ken Burke interpreting the Baker Act law stated, "The Court examined the legal authority to seal Baker Act files and reluctantly came to the conclusion that only the clinical record can be sealed. We were unable to find authority to seal the entire Baker Act file."

We noted:

- Five percent of 110 Baker Act files reviewed did not have the clinical records sealed in the physical file.
- In seventeen percent of 110 files reviewed, all the documents were sealed in the physical file except for the Finding of Facts of the General Magistrate (not required to be sealed by law).

The occurrences of the improper sealing of these cases were dated between October 2006 and September 2007, prior to the interpretation of Administrative Order No. 2007-042 issued by Judge Morris and during the period of Administrative Order No. 2006-082. These Administrative Orders state:

"If the Clerk of the Circuit Court for Pasco County or the Clerk of the Circuit Court of Pinellas County receives a request for public access to court records governed by this subsection, the Clerk shall respond as follows:

1) The Clerk shall not release any of the following materials absent an order of:

   a) the court authorizing such release in accordance with applicable statutory provisions;
   b) clinical records under the Baker Act; or
   c) client records under the Marchman Act.

2) Any other materials shall be released only after the Clerk carefully reviews the materials to ensure that any information that reveals the identity of the patient, client, minor or abuse victim, including the names of any family members of such persons, is redacted from the record prior to release."

Chapter 394 Mental Health, Florida Statute 394.4615(1) Clinical Records; Confidentiality states:

"A clinical record shall be maintained for each patient. The record shall include data pertaining to admission and such other information as may be
required under rules of the department. A clinical record is confidential and exempt from the provisions of Florida Statute 119.07(1). Unless waived by express and informed consent, by the patient or the patient's guardian or guardian advocate or, if the patient is deceased, by the patient's personal representative or the family member who stands next in line of intestate succession, the confidential status of the clinical record shall not be lost by either authorized or unauthorized disclosure to any person, organization, or agency."

It is essential that legal guidelines be carefully followed to prevent unauthorized disclosure and to ensure the public has information to which it is entitled by law.

E. No formal procedure has been implemented to monitor citizens reviewing physical case files. The potential exists that citizens could open sealed envelopes containing exempt documents, which would violate the applicable Florida Statutes to not disclose confidential information. Further, citizens could potentially leave the building with the physical case file, which the Probate Department may not be able to recover.

Management stated that when a citizen requests to view a physical file, the case file is checked out to the front desk. Fiscal Records Specialists (FRS) Clerks at the front counter will try to monitor the citizens reviewing the case files. However, the FRS Clerks have ongoing responsibilities, such as assisting citizens with probate matters, which would make it difficult to continually monitor citizens viewing case files. The case files contain envelopes, which have exempt documents not allowed to be viewed by the public. There are several areas where citizens view the case files:

- At the front counter, if time permits.
- By the public computers near the entrance of the Probate Department.
- At the desk beside the front counter.

We noted that the desk area is not easily viewable by the front counter FRS Clerks, and management stated monitoring is a group/team effort, again leaving no one individual responsible for the monitoring. Since citizens viewing the case files are not required to disclose their name, if one walked out with the file, it would be impossible to recover the file.

Assigning a monitor to supervise citizens reviewing case files or removing sealed envelopes from the file before it is given to the citizen are options that could be considered. However, removing sealed envelopes will not guarantee that the file could be removed from the Probate Department without immediate detection.

It should be noted that due to the Clerk's efforts to have a paperless environment, the number of physical case file viewings has dropped significantly. However, the risk outlined above still exists and must be eliminated to ensure we have adequate internal controls over custody of files.
F. Documents required to be sealed are placed in envelopes; however, there is no seal securing the envelopes; a potential violation of rules set forth by Administrative Order No. 2007-042 and applicable Florida Statutes that require the sealing of particular documents.

Envelopes are not sealed by use of a seal (special tape labeled “SEALED”) due to possible employee oversight in the sealing and unsealing process. During our testing of probate estate files, we noted that 8.3% of 60 cases had envelopes which were not sealed in the physical file. Management stated that typically a citizen will not request to view the physical file; however, there is a risk that documents required to be sealed could be read if envelopes are not properly secured and the physical file is requested.

We noted that some of the estate files did not have the inventory of property records properly sealed. Florida Statute, Chapter 733 Probate Code, states:

"Unless an inventory has been previously filed, a personal representative shall file a verified inventory of property of the estate, listing it with reasonable detail and including for each listed item its estimated fair market value at the date of the decedent's death. Unless otherwise ordered by the court for good cause shown, the inventory or amended or supplementary inventory is subject to inspection only by the clerk of the court, the clerk's representative, the personal representative, the personal representative's attorney, and other interested persons."

When a new case file is prepared, the Verifier will complete a quality control review, and the file is returned to the intake section to prepare the file for the court to review. Once the file is returned from the court, the intake section seals any applicable documents in the envelopes and signs the stamp (rubber stamp) verifying that the envelopes have been sealed.

Subsequent documents for existing cases are received by the mail desk. The documents are then sent to the Scanner, Indexer, and Verifier. After the Verifier completes the quality control review, the Verifier seals any applicable documents in an envelope and signs the stamp verifying that the envelopes have been sealed.

There is no assigned employee that is required to file the cases on the shelves in the Probate Department. Probate employees work as a team and it is expected that any employee will assist in filing the cases. Management indicated that the envelopes are unsealed by Clerk employees when adding or reviewing documents. The envelopes may be inadvertently left unsealed in the process. The filer of the case is the last employee who has access to the case file before it is put on the shelves in the Probate Department. Administrative Order No. 2007-042 states:
Status of Recommendations
Follow – Up Audit of Clerk of the Circuit Court Sealed Court Records

“When used in connection with a particular document, "sealing" means to place the document within an envelope or other type of container and to physically seal the container by use of a seal.”

G. Management has not established a consistent sealing method, and therefore, envelopes may not be properly secured to protect confidential information. Envelopes are used to seal exempt documents from public view. Each envelope is then secured in the physical case file. During our testing of the Probate files, we noted there were different methods of sealing envelopes for exempt documents, such as standard office tape, heavy-duty tape, waxed envelopes and Clerk provided seals. We noted instances where envelopes with exempt records were not secured/sealed in the sealing process. Consistency creates reliability and predictability. By acting in accordance with established means of consistency, the security of sealed envelopes is enhanced.

In Opportunity for Improvement No. 1F, we recommended the development of a procedure for the final case filer to review the case file before placing it back on the shelf. This would be even more crucial by establishing a key point for ensuring sealing exempt records. In addition, there would be conformity to allow new employees to recognize whether an envelope is properly sealed and would eliminate confusion as to what type of sealing is required to secure an envelope.

We Recommended Management:

A. Consult with the County Attorney to determine if Probate’s Guardianship Audit Checklists are public records in accordance with the Attorney General’s Opinion.

B. Consult with the County Attorney to ensure compliance with Florida Statute 382.008. Procedures should be established to ensure consistent application throughout the Clerk’s Office.

C. Consult with the County Attorney to determine if Probate is required to implement a plan to seal all Guardianship Examining Committee Reports.

D. Consistently follow legal guidelines for sealing Baker Act cases.

E. Develop a formal procedure to ensure citizens cannot view exempt documents or remove case files from their custody.

F. Develop a procedure and train staff requiring the employee filing the case to inspect the envelopes to ensure they are physically sealed.

G. Establish a standardized method to seal/secure envelopes used for exempt documents.
Status:

A. Implemented.

As a result of the consultation from the County Attorney, a memo dated July 26, 2011 was sent to Judge McGady from Ken Burke requesting clarification “on whether or not the Guardianship Audit Checklists are judicial records under Fla. R. of Jud Admin. 2.420 (rather than public records under Chapter 119, Florida Statutes) and, if so, whether the court considers checklists complied from exempt documents to be exempt themselves.”

B. Partially Implemented.

The Probate Department continues to seal the death certificate in its entirety. Management stated that the Probate and Civil Departments are sealing the death certificates in accordance with Administrative Order 2010-065.

Management’s response in the original audit report stated that they consulted with the County Attorney and it was the County Attorney’s opinion that the “exempting authorized the Clerk to redact the protected information only, not to seal the entire record.”

C. Partially Implemented.

Management stated that back scanning of files for cases filed previous to January 1, 1999 began in October 2009. The scanning of estate files has been completed and the guardianship cases are in still in progress.

D. Partially Implemented.

Management stated that back scanning of files for cases filed previous to January 1, 1999 began in October 2009. The scanning of estate files has been completed and the guardianship cases are in still in progress.

E. Partially Implemented.

In light of Management scanning guardianship case files that were filed prior to January 1, 1999 and with the completion of scanning all estate files, the development of formal procedures for viewing exempt physical files is no longer necessary.

F. Partially Implemented.

Management stated that back scanning of files for cases filed previous to January 1, 1999 began in October 2009. The scanning of estate files has been completed and the guardianship cases are in still in progress.
G. Partially Implemented.

Management stated that back scanning of files for cases filed previous to January 1, 1999 began in October 2009. The scanning of estate files has been completed and the guardianship cases are in still in progress.

2. In The Clerk’s Civil Department, Some Physical Court Documents Are Not Sealed.

During our review of files in the Clerk’s Civil Department, we noted the following concerns:

A. Some Notice of Social Security Number documents are not sealed in the physical case file. This is a potential violation of Administrative Order No. 2007-042, which states that, “No order of court or public notice shall be required before such sealing may be undertaken. Legal authorities which authorize and require the sealing of particular documents include, but are not limited to the following: Notice of Social Security Number, Florida Family Law Form 12.902(j).”

During our testing of the files, we noted 7% of 113 files reviewed did not have the Notice of Social Number document sealed in an envelope.

The front counter FRS Clerks accept new family division cases from citizens at the Clearwater, North County, Tyrone, and St. Petersburg branches. The front counter FRS Clerks at the Clearwater Courthouse location type in the docket code, and the word "Sealed" for the Notice of Social Security form, and then physically seal the document. A "Clerk’s Check Sheet" is then initialed by the FRS Clerk indicating that the process is complete. The Intake Section in the Clearwater Courthouse process these documents as described above for the other branches as well as any received through the mail.

Management states that a revised "Clerk's Check Sheet" form has been proposed and is in the approval process. Previously, a committee was formed in the Civil Department to determine what information would be effective on the "Clerk's Check Sheet" form. Our review of the "Clerk's Check Sheet" form indicates there is no verbiage regarding the requirement to seal the Notice of Social Security form. This information was communicated to Management during our audit fieldwork. The front
Several envelopes had only the case number referenced in writing. In other instances, a rubber stamp was used with the words “sealed by statute,” the case number and the Deputy Clerk’s initial added; however, the date was not referenced.

Several envelopes had a stamp, which required the respondent and petitioner’s name, the case number, type of pleading, the Florida Statute reference, date filed and sealed, and the Deputy Clerk’s signature.

Several envelopes had the case number, name of pleading and date written on the envelope, which included the Deputy Clerk’s stamped name.

The cases in the sample were dated subsequent to Management’s letter. Management stated some of the inconsistencies were because other branch locations use their own stamps/writings to reference that the Notice of Social Security Number document is sealed.

Chapter 119 Public Records, Florida Statute 119.07(1)(e), states:

“If the person who has custody of a public record contends that all or part of the record is exempt from inspection and copying, he or she shall state the basis of the exemption that he or she contends is applicable to the record, including the statutory citation to an exemption created or afforded by statute.”

Chapter 119 Public Records, Florida Statute 119.07(1)(f), states:

“If requested by the person seeking to inspect or copy the record, the custodian of public records shall state in writing and with particularity the reasons for the conclusion that the record is exempt or confidential.”

Consistent procedures throughout the Clerk’s Office should be followed for handling the Social Security Number documents. Otherwise, there is a risk that laws or policies may be violated.

C. No uniform policy has been implemented for all branch locations to specify whether sealed documents should or should not be removed from the case file prior to public viewing.

Per our discussion with Management and staff, it is the Civil Department’s policy to remove sealed documents prior to releasing the case files to the public for viewing, except for the sealed Notice of Social Security Number documents. Probate Management stated their department does not remove sealed documents from case files prior to release to the public for viewing. In addition, we interviewed Criminal Department Management and found that sealed documents were also kept with the case file. We could not find any law, which specifically states that sealed documents should or should not be removed from the case file when being viewed by the public. However, it is the Clerk’s duty to have controls in place that will reasonably ensure compliance with Florida Statutes. It is uncertain if the sealed documents are
required to remain in the case files to assert that the document exists or remove the sealed
documents for optimal safeguarding during public viewing.

We Recommended Management:

A. Ensure policies and procedures are updated to include the appropriate verbiage for
   sealing the Notice of Social Security Number document.

B. Consult with the County Attorney to determine if sealed envelopes are required to
   reference Florida Statute citations and develop procedures, as appropriate.

C. Consult with the County Attorney to determine if sealed documents should be retained
   or removed from the case file prior to public viewing and subsequently implement a
   uniform policy documenting the requirement.

Status:

A. Implemented.

   Management has modified the department’s procedures to include the appropriate
   verbiage for sealing the Notice of Social Security Number documents.

B. Implemented.

   Management stated that, “In accordance with the County Attorney’s recommendation to
   include the written citations to the current AO and underlying statutory authority,
   templates have been created for the different documents received that require sealing.”

   We randomly selected several cases to view in the Civil Department to verify that the
   templates were created and placed with the files. No issues were noted.

C. Implemented.

   We noted that procedures have been modified to include specific instructions for
   referencing the statutes for cases that are sealed in their entirety and for those cases
   that have sealed documents within a case.
3. No Standardized Procedures Exist For Similar Activities Within Departments And Branches.

Our audit disclosed certain similarities in activities, policies, procedures, and practices that, if consistently applied throughout the Clerk’s departments, could improve operations. Standardization would help eliminate uncertainty, confusion, inaccuracy, and inconsistencies. Further, it could allow for a smoother transition when Clerk’s staff move from one department/branch to another due to promotional opportunities and/or staff realignment.

We did not conduct a detailed review of every relevant system, procedure, or transaction. However, we noted that the following situations have occurred or can occur between the aforementioned departments.

A. No clear and/or timely procedure exists to ensure the County Attorney and/or the Administrative Judge of the Sixth Judicial District provide a written clarification and/or interpretation of the Administrative Orders and statutory requirement as needed.

B. No uniform policy has been implemented for all branch locations to specify whether sealed documents should or should not be removed from the case file prior to public viewing.

C. Inconsistency exists between departments regarding the procedure for sealing the different death certificates.

D. Envelopes are not consistently sealed by use of a seal (special tape labeled "SEALLED") due to possible oversight in the sealing and unsealing process creating a risk that documents required to be sealed could be read if envelopes are not properly secured and the physical file is requested.

E. No uniform policy has been implemented to monitor citizens reviewing physical case files.

F. It is uncertain if the sealed documents are required to remain in the case files to assert that the document exists or remove the sealed documents for optimal safeguarding during public viewing.

It is important that the Clerk’s Office treat similar matters in a similar fashion.

We Recommended Management:

Review similar activities, policies, procedures and practices throughout the Clerk’s operations with the primary objective of the standardization of similar activities, policies, procedures, and practices.
Status:

Implemented.

The Probate Department is in the process of scanning physical case files prior to 1999 into the imaging software system, and therefore eliminating the need to implement policies and/or procedures pertaining to the sealing and viewing of case files. Citizens can view the document images that are not sealed at the designated computer terminal in the Probate Department.

The Civil Department has implemented procedures as noted in the status for Opportunity for Improvement No. 2 for referencing applicable Florida Statutes and removing sealed documents prior to public viewing. Per management, the Civil Department is implementing a new imaging software system for case documents predicted to go live in July 2012.
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