Memorandum 2012-03

TO: Myriam Irizarry, Chief Deputy Director and General Counsel
Court and Operational Services Division
Clerk of the Circuit Court

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

DIST: Ken Burke, Clerk of the Circuit Court
James Lenas, Investigator, State Attorney’s Office
Carol Sciannimeo, Complainant

SUBJECT: Investigative Review - Policies and Procedures on Claim of Liens

DATE: June 14, 2012

The Division of Inspector General’s Public Integrity Unit (PIU) received allegations of Fraud, Waste, and Abuse on the Fraud Hotline. We investigated the following allegations related to the Clerk of the Circuit Court Policies and Procedures on Claim of Liens. The caller alleged:

1. The Clerk’s Office is accepting documents for lien filings without checking the documents for accuracy and/or for legitimacy.
2. This has caused the complainant unnecessary expenses in the form of attorney’s fees and court costs in order to contest the liens, which should not have been accepted by the Clerk’s Office due to apparent flaws in the documents.

The complainant has supplied the following documentation to assist with the investigation:

Claim of Lien filed May 23, 2011, #2011135638
Claim of Lien filed May 3, 2012, #2012126841
Other relevant documentation
To determine whether the allegations were substantiated, we reviewed policies, procedures, and any other records deemed appropriate. We also conducted interviews of staff and other parties, as needed. Our investigation was performed according to the *Principles and Standards for Offices of Inspector General* and *The Florida Inspectors General Standards Manual* from The Commission for Florida Law Enforcement Accreditation.

The Division of Inspector General (IG) investigation of the allegations has determined:

1. The Clerk’s Office is accepting documents for lien filings without checking the documents for accuracy and/or for legitimacy. *Unfounded.*
2. This has caused the complainant unnecessary expenses in the form of attorney's fees and court costs in order to contest the liens, which should not have been accepted by the Clerk’s Office due to apparent flaws in the documents. *This was a civil matter and determined to be non-jurisdictional.*

Our analysis determined that the Clerk’s Office does not have the statutory authority to conduct a review of the submitted Claim of Lien documents for accuracy and/or for legitimacy.

Florida Statute 713.08(1) addresses the form and the information that should be contained in the Claim of Lien document for filing. However, the Florida Statute also states, "The claim of lien shall be sufficient if it is in substantially the following format..." Florida Statute 713.08(4)(a) addresses the omission and errors on the Claim of Lien as at the discretion of the "trial court". Furthermore, Florida Statutes do not require the Clerk’s Office to perform a review of the information contained in the Claim of Lien document for accuracy and/or for legitimacy. In addition, any review of the Claim of Lien document by the Clerk’s Office would be considered legal advice that is prohibited by Florida Statutes.

The complainant filed dual complaints with the State Attorney’s Office (SAO) and the IG. In cooperation with the SAO, we limited our investigation to administrative issues and research. As of the date of this memo, the SAO review is ongoing.