



A REPORT
TO THE
MONTANA
LEGISLATURE

FINANCIAL-COMPLIANCE AUDIT

*Office of the State Public
Defender*

*For the Two Fiscal Years Ended
June 30, 2016*

NOVEMBER 2016

LEGISLATIVE AUDIT
DIVISION

16-28

FINANCIAL-COMPLIANCE AUDITS

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§5-13-202(2), MCA

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Financial-compliance audits are conducted by the Legislative Audit Division to determine whether an agency's financial operations are properly conducted, the financial reports are presented fairly, and the agency has complied with applicable laws and regulations. In performing the audit work, the audit staff uses standards set forth by the American Institute of Certified Public Accountants and the United States Government Accountability Office. Financial-compliance audit staff members hold degrees with an emphasis in accounting. Most staff members hold Certified Public Accountant (CPA) licenses.

The Single Audit Act Amendments of 1996 and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards require the auditor to issue certain financial, internal control, and compliance reports in addition to those reports required by Government Auditing Standards. This individual agency audit report is not intended to comply with these reporting requirements and is therefore not intended for distribution to federal grantor agencies. The Legislative Audit Division issues a statewide biennial Single Audit Report which complies with the above reporting requirements. The Single Audit Report for the two fiscal years ended June 30, 2015, was issued March 29, 2016. The Single Audit Report for the two fiscal years ended June 30, 2017, will be issued by March 31, 2018. Copies of the Single Audit Report can be obtained by contacting:

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November 2016

The Legislative Audit Committee
of the Montana State Legislature:

This is our financial-compliance audit report on the Office of the State Public Defender (office) for the two fiscal years ended June 30, 2016. The report contains four recommendations related to internal controls over revenues, internal controls over access to a claims processing system, compliance with state law regarding rule-making requirements over evaluation of contract attorneys, and timely communication of theft, whether actual or suspected.

The office's written responses to the audit recommendations are included in the audit report beginning at page C-1. We thank the commissioner and staff of the office for their cooperation and assistance throughout the audit.

Respectfully submitted,

/s/ Angus Maciver

Angus Maciver
Legislative Auditor

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APPOINTED AND ADMINISTRATIVE OFFICIALS

		<u>Term Expires</u>
Public Defender Commission	Richard “Fritz” Gillespie, Chair (through November 2016)	2019
	Ann Sherwood, Acting Chair (as of November 2016)	2017
	Roy Brown	2018
	Brian Gallik	2019
	Terry Jessee	2017
	Larry Mansch	2018
	Dr. Michael Metzger	2019
	Margaret Novak	2019
	Bonnie Olson	2018
	Mark Parker	2017
	Maylinn Smith	2018

Office of the State Public Defender	William F. Hooks, Chief Public Defender
	Wade Zolynski, Chief Appellate Defender (through October 2015)
	Chad Wright, Chief Appellate Defender (as of January 2016)
	Kristina Neal, Conflict Coordinator
	Harry Freebourn, Administrative Director (through September 2016)
	Scott Cruse, Chief Administrator (through December 2016)

For additional information concerning the Office of the State Public Defender, contact:

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MONTANA LEGISLATIVE AUDIT DIVISION

FINANCIAL-COMPLIANCE AUDIT

Office of the State Public Defender

For the Two Fiscal Years Ended June 30, 2016

NOVEMBER 2016

16-28

REPORT SUMMARY

The Office of the State Public Defender provides legal defense services to low income Montanans. The office spent approximately \$35.3 million and \$32 million in fiscal years 2016 and 2015, respectively, to provide these services. As a result of our audit, we determined internal controls over the completeness and accuracy of public defender fee revenue can be improved.

Context

The Office of the State Public Defender (office) is divided into four programs. The Public Defender program provides non-appellate representation to qualifying individuals, including criminal defense, child abuse or neglect, and involuntary commitment services. The Appellate Defender program provides appellate representation to qualifying individuals. The Conflict Coordinator program provides appellate and non-appellate representation to qualifying individuals in circumstances where a conflict of interest prohibits the other programs from representing the defendant. In fiscal year 2016, the Chief Administrator's Office was established to provide support to the Public Defender Commission and existing programs.

The office's operations are funded primarily by the state's General Fund, although the office also collects public defender fees in the state special revenue fund. Additionally, in fiscal year 2015, the office received an allocation of approximately \$4.5 million from the Governor's Operations Account established in the 2013 Legislative Session. Of the \$35.3 million spent in fiscal year 2016, approximately 99.1 percent was charged to the General Fund. Of the \$32 million spent in fiscal year 2015, approximately 84.3 percent was charged to the General Fund.

Accounts receivable resulting from public defender fee assessments has increased over the last four years. The year-end balance was \$1.6 million and \$2.4 million for fiscal years 2013 and 2014, respectively. The accounts receivable balance for fiscal year 2015 was \$3.1 million, and in fiscal year 2016, the balance had increased to \$3.9 million.

Results

The report contains four recommendations to the office related to internal controls over revenues, internal controls over access to a claims processing system, compliance with state law regarding rule-making requirements over evaluation for contract attorneys, and timely communication of theft, whether actual or suspected.

Of the four recommendations from the prior audit for the two fiscal years ended June 30, 2014, the office fully implemented two recommendations and did not implement two recommendations. Recommendations not implemented included a recommendation that the office comply with state law and accounting policy by implementing procedures for the financial management of public defender fee accounts receivable. The other recommendation suggested the office work with the Judicial Branch and

(continued on back)

courts to obtain detailed public defender fee assessment and payment information. This recommendation further suggested that the office account for public defender fee assessments and payments on an individual account basis, to facilitate compliance with state law and policy governing the financial management of accounts receivable and the annual reporting of assessment data.

Recommendation Concurrence	
Concur	3
Conditionally Concur	1
Do Not Concur	0
Source: Agency audit response included in final report.	

For a complete copy of the report (16-28) or for further information, contact the Legislative Audit Division at 406-444-3122; e-mail to lad@mt.gov; or check the web site at <http://leg.mt.gov/audit>
 Report Fraud, Waste, and Abuse to the Legislative Auditor's FRAUD HOTLINE
 Call toll-free 1-800-222-4446, or e-mail ladhotline@mt.gov.

Chapter I – Introduction

Introduction

We performed a financial-compliance audit of the Office of the State Public Defender (office) for the two fiscal years ended June 30, 2016. The objectives of the audit were to:

1. Obtain an understanding of the office’s control structure to the extent necessary to support the audit of its financial schedules and, where necessary, make recommendations for improvement in the office’s management and internal controls.
2. Determine the office’s compliance with selected state laws and regulations during the two fiscal years ending June 30, 2016.
3. Determine whether the office’s financial schedules present fairly its financial position and results of operations as of, and for each of the fiscal years ended June 30, 2016, and June 30, 2015.
4. Determine the implementation status of prior audit recommendations.

In order to accomplish our objectives, we reviewed the presentation of the financial schedules and note disclosures to determine if the information was supported by the underlying accounting records. This process included comparing activity on financial schedules to previous years and reviewing the notes for consistency with the financial schedules and supporting documentation. We also evaluated the reasonableness of expenditures for the General Fund and state special revenue fund by reviewing supporting documentation, and we determined the office’s compliance with selected laws.

Background

The statewide public defender system was created in 2005 by the Montana Public Defender Act. The system unifies the state’s public defense services in order to provide more effective assistance of counsel to qualifying citizens of Montana. Oversight of the system comes from the Public Defender Commission (commission). The commission is comprised of 11 members who are appointed by the Governor and serve staggered three-year terms.

The statewide public defender system was initially comprised of two programs, the Public Defender program and the Appellate Defender program. As of 2011, §47-1-118, MCA, required the commission to establish a conflicts office. In fiscal years 2012 and 2013, the financial activity of the conflicts office was included within the Public Defender program. In fiscal year 2014, the conflicts office financial activity was included in a new program titled “Conflict Coordinator.” In fiscal year 2016, a new

program titled “Chief Administrator Office” was established. The financial activity for the services provided by the Chief Administrator Office program were previously reported as part of the Public Defender program.

State law tasks the commission with appointing a Chief Public Defender, Chief Appellate Defender, and Conflict Coordinator, to oversee these three programs. The Chief Public Defender, Chief Appellate Defender, and Conflict Coordinator hire staff to carry out the functions of the public defender system. The commission also appoints the Chief Administrator, who hires staff to provide administrative support to the commission and the three other programs. The commission appointed a Chief Administrator who assumed the position in August of 2016. More information on the four programs and the associated full-time equivalent (FTE) positions is presented below.

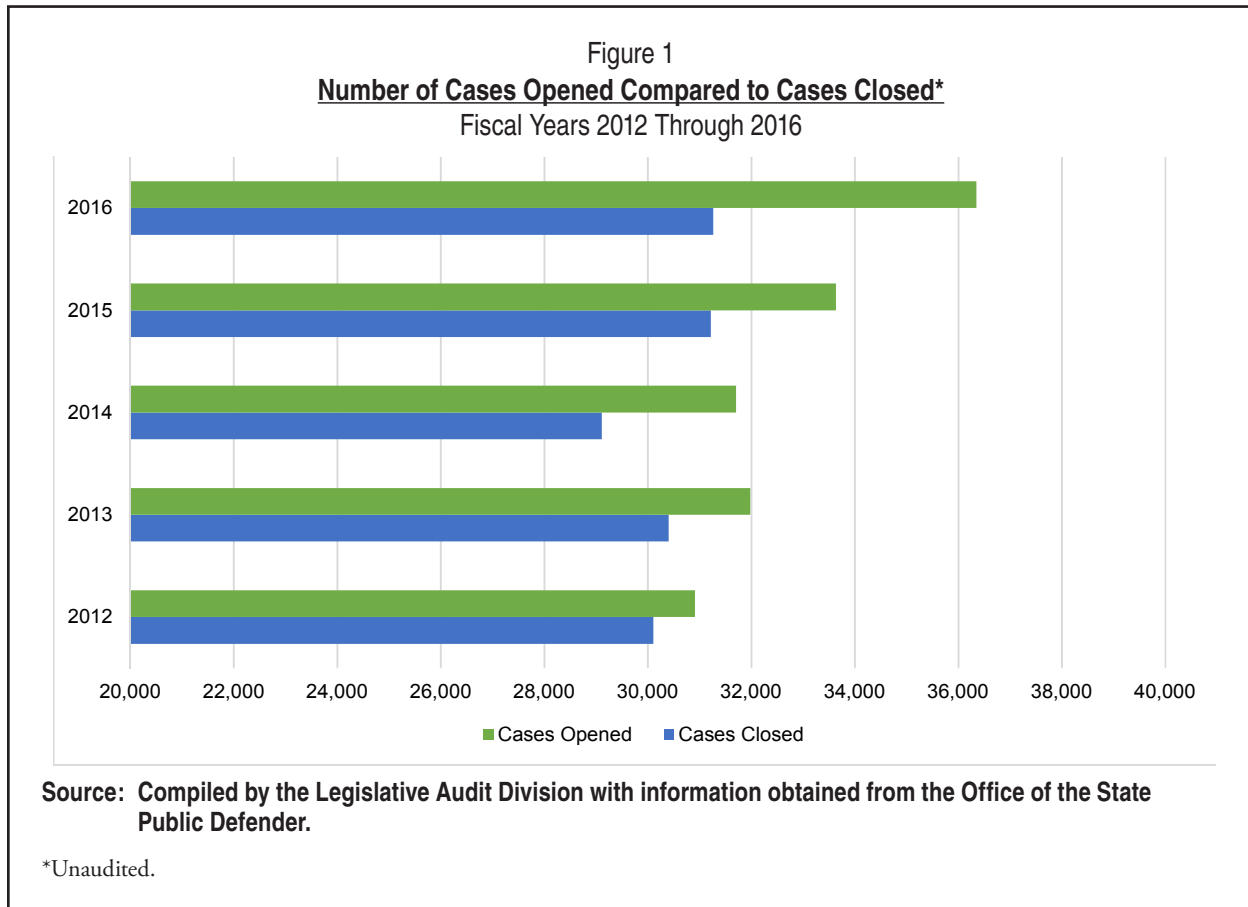
Office of Public Defender Program (207 FTE): The program is organized into 11 regions, with a regional deputy public defender supervising each region. The regional offices are located in Kalispell, Missoula, Great Falls, Helena, Butte, Havre, Lewistown, Bozeman, Billings, Glendive, and Miles City. These regional offices provide legal services to qualifying individuals, by contracting with attorneys. The contracted attorneys provide legal representation including criminal defense, child abuse or neglect, and involuntary commitment services. The program also includes a Major Crimes Unit located in Helena, which provides legal services in major felony cases throughout the state.

Office Appellate Defender Program (15 FTE): The program provides appellate representation to clients of the statewide public defender system and is located in Helena. The program employs and contracts with attorneys to provide legal representation of indigent clients who qualify for an appointed attorney under state statutes governing appeals and post-conviction relief.

Conflict Coordinator Program (5.5 FTE): The program provides appellate and non-appellate representation to indigent defendants in circumstances when, because an ethical conflict of interest exists, the Public or Appellate Defender programs are unable to provide representation. The office is located in Helena.

Chief Administrator Office Program (19.75 FTE): The program provides administrative support to the commission, as well as the Public Defender, Appellate Defender, and Conflict Coordinator programs. The office is located in Butte.

The following figure compares the unaudited number of cases opened and cases closed in fiscal years 2012 through 2016.



Prior Audit Recommendations

The prior audit for the two fiscal years ended June 30, 2014, contained four recommendations to the office. The office fully implemented two recommendations. The office complied with state accounting policy by implementing internal controls to ensure payments received by mail were deposited. The office also recorded revenues for reimbursements received that were recurring and routine in nature, analyzed the remaining errors resulting from improper expenditure abatements recorded in fiscal years 2013 and 2014, and made correcting entries, as necessary.

Recommendations not implemented included a recommendation that the office comply with state law and accounting policy by implementing procedures for the financial management of public defender fee accounts receivable. The other recommendation suggested the office work with the Judicial Branch and courts to obtain detailed public defender fee assessment and payment information. This recommendation further suggested that the office account for public defender fee assessments and payments

on an individual account basis, to facilitate compliance with state law and policy governing the financial management of accounts receivable and the annual reporting of assessment data. The following section provides background on public defender fee assessments and discusses the status of these recommendations.

Public Defender Fee Assessments

Section 46-8-113, MCA, allows judges to assess public defender fees against individuals represented by the statewide public defender system, based on the individual's financial ability to pay. Assessed public defender fees are included in the court's judgment, and can be reduced by the court if paying the fees will impose manifest hardship on the defendant or the defendant's family.

Section 46-8-114, MCA, allows the court to order payment within a specific period of time or in specified installments. The law also establishes the method by which defendants are required to pay public defender fees. Chapter 344, Laws of 2011, changed the method of payment, effective July 1, 2011. For fees assessed prior to July 1, 2011, payments must be made to the Office of the State Public Defender (office). For fees assessed on or after July 1, 2011, payments must be made to the clerk of the sentencing court. All payments made are deposited into a public defender state special revenue account and are used to fund a portion of the office's operations.

In accordance with state accounting policy, the office records revenue for the public defender fees received. The unpaid public defender fee assessments meet the definition of accounts receivables in state accounting policy, as the assessments are claims for money that the office holds against others. Accordingly, the office records the unpaid assessments as accounts receivable, along with an allowance for uncollectible accounts for the amount estimated to be uncollectible. Table 1 summarizes the fee assessment revenues and ending accounts receivable and allowance for uncollectible account balances for the last four fiscal years.

The approximate \$3.95 million accounts receivable balance at June 30, 2016, represents the office's estimate of unpaid public defender fee assessments. These unpaid assessments represent money due to the office that could be used to fund a portion of the office's operations instead of the General Fund.

Table 1
**Public Defender Fee Collections and
Receivable Balances**

Fiscal Year	Fee Revenue Collected	Accounts Receivable Balance as of June 30	Allowance for Uncollectible Accounts
2013	\$255,732	\$1,658,584	(\$1,201,509)
2014	\$285,194	\$2,416,079	(\$1,715,416)
2015	\$312,602	\$3,117,611	(\$2,213,503)
2016	\$290,079	\$3,953,833	(\$2,807,221)

Source: Compiled by the Legislative Audit Division from the Statewide Accounting, Budgeting, and Human Resources System.

Compliance Issues Concerning Management of Accounts Receivable

The office is required to comply with state accounting policy, issued by the Department of Administration in accordance with §17-1-102(2), MCA. Policy specifically addresses the collection of accounts receivable, stating “agencies should have policies in place to ensure timely billing of receivables to help lower the number of uncollectible receivables recorded on the accounting system.” Policy further states that accounts should not sit permanently idle on the state’s accounting records. In addition, §17-4-104(1), MCA, requires agencies to make all reasonable efforts to collect money owed to the agency.

Office management does not believe the office has statutory authority to perform the accounts receivable financial management activities required by state law and state accounting policy. Office management stated these requirements are “inconsistent, incompatible, and irreconcilable” with provisions in Title 46 - Criminal Procedure, which provides the framework for assessing fees and the mechanism by which fees are paid. From office management’s perspective, the legal framework for assessing fees, paying fees, and enforcing payment of fees essentially serves as the mechanism for collecting public defender fees, and resides within the court system.

A key factor in the office’s ability to comply with these requirements is knowing the dollar amounts owed by individual clients. In fiscal years 2014 through 2016, the office did not account for fee assessments or payments on an individual client basis. Instead, the office recorded summary information for fee assessments and payments for public defender fees. The office does not know how much money individual clients owe on their public defender fee assessments as of June 30, 2016. As a result, the office is not in a position to comply with state law and state accounting policy requirements governing the financial management and collection of accounts receivable.

A meeting between office staff and individuals from the Judicial Branch in January 2013 resulted in the office receiving summary reports from the Judicial Branch outlining total dollar fees assessed by and paid to each court. As a result, the Public Defender Commission (commission) passed a resolution in October 2013 that reads, in part: “1. The Commission understands that OPD can only record cash collected in summary...because the agency does not receive detailed information from the courts and therefore will be out of compliance with state law and accounting policy.” Although the commission passed its resolution, the resolution does not absolve the office from complying with requirements in state law and state policy.

Office management stated they have attempted to obtain the detailed information from some courts but have been unsuccessful. Office management does not believe the office has sufficient staff resources to contact each of the state’s courts to obtain the

client-specific details. The office also needs to obtain the detailed information from the clerk of each sentencing court when public defender fees are waived or reduced by the judge. In addition, there is a hierarchy per §46-1-251, MCA, to which payments by offenders must be applied to assessed fees, costs, and other payments, such as restitution, and the office would need current and accurate information from each clerk of a sentencing court to know where public defender fees fall in this hierarchy. The cost to obtain client-specific data is believed to be significant. Currently, the courts use the same case management system to track sentences and payments. However, the courts do not share a central database. While a central database could resolve the issue, implementation is anticipated to be costly.

Without individual client fee assessments and collection information for 2015 and 2016, the office does not have the information necessary to comply with reporting requirements of §47-1-201(10)(b), MCA, which requires the office to report annually to the Legislative Fiscal Analyst, by September 30, the amount of public defender fees collected, including the number of cases on which collections were made, the number of cases on which an amount is owed, the amount collected, and the amount remaining unpaid.

Although we recognize the cost to obtain the information needed for fee assessments and collections may be substantial, it does not negate the office's responsibility to comply with state laws and state accounting policy. The information is also needed to perform basic management duties and help ensure the office operates as efficiently as possible.

Chapter 386, Laws of 2015, established the Task Force on State Public Defender Operations. The task force considered the infrastructure of the office and will propose legislation, in the form of LC440, which would transfer the responsibility of collection of fee assessment revenue assessed by the courts to the Department of Revenue. Due to this, we make no further recommendations at this time. We will continue to evaluate financial management of accounts receivable related to public defender fee assessments, including accounting for fee assessments and payments on an individual account basis to facilitate compliance with state law and accounting policy in the future.

Recommendation #1 on pages 7 and 8 discusses a related issue concerning accuracy and completeness of revenues resulting from public defender fees.

Chapter II—Findings and Recommendations

Internal Control Issues Over Revenues

Internal controls over the completeness and accuracy of public defender fee revenue can be improved.

Per state accounting policy, “state agencies are responsible for implementing internal control procedures to ensure all transactions necessary for compliance with generally accepted accounting principles (GAAP) are recorded in SABHRS before fiscal year-end.” State accounting policy further states “each agency must perform a monthly reconciliation of the revenue collected by the third-party to what is reported on SABHRS.” We consider the clerks of the sentencing courts to be third parties. The policy continues by noting “this reconciliation should be part of an agency’s internal control environment to insure that the proper amount of revenue is recorded on SABHRS, and that the agency’s systems have also been updated properly.”

The majority of payments for public defender fees assessed by judges are collected by clerks of the sentencing courts and sent to the Department of Revenue. The Department of Revenue deposits the revenues collected into a state special revenue fund. The Office of the State Public Defender (office) records revenues for amounts received only. However, the office does not have internal controls in place to determine the accuracy and completeness of the revenues collected by the clerks of the sentencing courts or deposited by the Department of Revenue. The office receives reports from the Department of Revenue and the Judicial Branch providing summary information for fee collections. The office reconciles the amount deposited in the state special revenue fund to the report provided by the Department of Revenue, but the office has been unable to reconcile the clerk of the court collections reported by the Judicial Branch to the amount reported by the Department of Revenue. The Judicial Branch reported clerk of the court collections of approximately \$53,000 more in fiscal year 2015 and \$41,000 more in fiscal year 2016 than the Department of Revenue deposited in those respective years. Neither we nor the office have determined the source of the differences. The differences could be due to differences in timing of reporting by the Judicial Branch and the Department of Revenue.

The report from the Department of Revenue documents collection amounts by county on a monthly basis. The report provided by the Judicial Branch shows clerk of the court collections by court on a monthly basis. The office could use these reports to determine from which courts the differences in Department of Revenue and the Judicial Branch

data resulted. The office could work with the Department of Revenue and the clerks of courts to determine the nature of these differences.

As is the case with fee assessments, the case management system used by the courts has the functionality to provide collection information, but there is currently no centralized database from which to obtain the information. Therefore, the office would need to obtain payment information from the clerk of each sentencing court that received payments applicable to public defender fees based on the hierarchy of assessed fees, costs, and other payments established by §46-1-251, MCA.

RECOMMENDATION #1

We recommend the Office of the State Public Defender:

- A. *Develop and implement internal controls to ensure completeness and accuracy of revenues collected and deposited by third parties for public defender fees.*
 - B. *Determine which courts are the source of differences in collections reported by the Judicial Branch and the Department of Revenue and work directly with the clerks of the courts and the Department of Revenue to obtain information needed to reconcile the amounts reported.*
-

Review Procedures for System Access

The office did not develop or implement review procedures for system access for the Online Claims Processing System.

The office contracts with service providers, including private attorneys, investigators, and consultants, to perform support services for clients. In early fiscal year 2016, the office implemented the Online Claims Processing System. As of the end of fiscal year 2016, attorneys were the only service provider group with the ability to submit claims through the system.

Per state policy, “management is responsible for establishing and maintaining agency internal controls.” State policy further states “part of that responsibility encompasses establishing internal control policies and procedures designed to safeguard agency assets, check the accuracy and reliability of financial data, promote operational efficiency, and encourage adherence to prescribed managerial policies and compliance with applicable laws and regulations.” State policy requires information system accounts for the state

to be reviewed on an annual basis for compliance with requirements. Policy requires that accounts be created, modified, disabled, or removed by account managers. Requirements also include assignment of specific access privileges and that accounts be disabled when no longer needed or when not used for 90 days. We determined that the office had not developed or implemented review procedures for system access. In the absence of review procedures, inappropriate assignment of system access may remain undetected and allow staff to circumvent controls.

The office's management noted the system is new, and there have been limited changes to system access since the system's implementation as the reason they have not developed procedures. In addition, the office's management stated they intend to develop and implement review procedures for system access in the future.

RECOMMENDATION #2

We recommend the Office of the State Public Defender develop and implement review procedures for system access for the Online Claims Processing System by June 30, 2017.

Rules Requiring Evaluation of Contract Attorneys

The office did not adopt rules requiring the evaluation of contract attorneys on a biennial basis, as required by state law.

Per §47-1-216 (10), MCA, "the commission shall implement rules requiring evaluation of every contract attorney on a biennial basis by the chief contract manager based on written evaluation criteria." The office did not adopt administrative rules to fulfil the requirement set forth in §47-1-216 (10), MCA, and are not in compliance with state law.

The office does have an internal policy, which requires biennial evaluation of each contract attorney. Based on discussion with office staff, the requirement of completing these evaluations biennially is not always met due to staff workload and the number of contract attorneys. The office does have written criteria on which evaluations are based. Office management stated they overlooked this requirement. Without established rules, evaluation may not occur as frequently as required.

RECOMMENDATION #3

We recommend the Office of the State Public Defender implement administrative rules requiring evaluation of every contract attorney on a biennial basis by the chief contract manager based on written evaluation criteria, as required by state law.

Notification of Suspected Theft

The office's management did not immediately notify the attorney general and the legislative auditor of suspected theft as required by law.

During fiscal year 2016, the office conducted a review of the claims submitted by a contract investigator. As a result of the office's review, the office suspected the investigator submitted claims for work that had not been completed or for amounts not justified by the actual work performed. Upon discovery, the office discontinued payment to the contractor for disputed work.

Per state law, "the head of each state agency shall immediately notify both the attorney general and the legislative auditor in writing upon the discovery of any theft, actual or suspected, involving state money or property under that agency's control or for which the agency is responsible."

As a result of our audit work, we communicated to the office's management the need to report the incident to the attorney general and the legislative auditor. In addition, we compared accounting records to the invoices determined to be in dispute by the office during their review to determine if any disputed claims had been paid. We identified approximately \$1,700 of disputed claims paid by the office. An additional \$7,600 in disputed claims were not paid by the office. While the office did not recover the \$1,700, the contract with the investigator was terminated. The office's management noted they overlooked the reporting requirement set forth in state law and did not send written notification.

Without notification of incidents, such as this one, the legislative auditor does not have an opportunity to determine the effect of the incident on audits, and the attorney general does not have an opportunity to determine if a crime has occurred.

After bringing the issue to the offices's attention, the office sent written notification to the attorney general and legislative auditor reporting the incident.



RECOMMENDATION #4

We recommend the head of the Office of the State Public Defender notify the attorney general and the legislative auditor in writing immediately upon discovery of actual or suspected theft involving state money or property under agency control for which the agency is responsible, as required by state law.



Independent Auditor's Report and Office Financial Schedules

LEGISLATIVE AUDIT DIVISION

Angus Maciver, Legislative Auditor
Deborah F. Butler, Legal Counsel



Deputy Legislative Auditors:
Cindy Jorgenson
Joe Murray

INDEPENDENT AUDITOR'S REPORT

The Legislative Audit Committee
of the Montana State Legislature:

Introduction

We have audited the accompanying Schedules of Changes in Fund Equity, Schedules of Total Revenues & Transfers-In, and Schedules of Total Expenditures & Transfers-Out of the Office of the State Public Defender (office) for each of the fiscal years ended June 30, 2016, and 2015, and the related notes to the financial schedules.

Management's Responsibility for the Financial Schedules

Management is responsible for the preparation and fair presentation of these financial schedules in accordance with the regulatory format prescribed by the Legislative Audit Committee, based on the transactions posted to the state's accounting system without adjustment; this responsibility includes recording transactions in accordance with state accounting policy; and designing, implementing, and maintaining internal controls relevant to the preparation and fair presentation of the financial schedules that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express opinions on these financial schedules based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial schedules are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial schedules. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial schedules, whether due to fraud or error. In making those risk assessments, the auditor considers internal controls relevant to the office's preparation and fair presentation of the financial schedules in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the office's internal control, and accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as the overall presentation of the financial schedules.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinions.

Basis for Adverse Opinions on U.S. Generally Accepted Accounting Principles

As described in Note 1, the financial schedules are prepared from the transactions posted to the state's primary accounting system without adjustment, in the regulatory format prescribed by the Legislative Audit Committee. This is a basis of accounting other than accounting principles generally accepted in the United States of America. The financial schedules are not intended to, and do not, report assets and liabilities.

The effects on the financial schedules of the variances between the regulatory basis of accounting described in Note 1 and accounting principles generally accepted in the United States of America, although not reasonably determinable, are presumed to be material.

Adverse Opinions on U.S. Generally Accepted Accounting Principles

In our opinion, because of the significance of the matter discussed in the "Basis for Adverse Opinions on U.S. Generally Accepted Accounting Principles" paragraph, the financial schedules referred to above do not present fairly, in accordance with accounting principles generally accepted in the United States of America, the financial position of the office as of June 30, 2016, and June 30, 2015, or changes in financial position for the years then ended.

Unmodified Opinions on Regulatory Basis of Accounting

In our opinion, the Schedules of Changes in Fund Equity, Schedules of Total Revenues & Transfers-In, and Schedules of Total Expenditures & Transfers-Out, present fairly, in all material respects, the results of operations and changes in fund equity of the Office of the State Public Defender for each of the fiscal years ended June 30, 2016, and 2015, in conformity with the basis of accounting described in Note 1.

Other Reporting Required by Government Auditing Standards

In accordance with *Government Auditing Standards*, we have also issued our report dated September 21, 2016, on our consideration of the office's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the department's internal control over financial reporting and compliance.

Respectfully submitted,

/s/ Cindy Jorgenson

Cindy Jorgenson, CPA
Deputy Legislative Auditor
Helena, MT

September 21, 2016

PUBLIC DEFENDER
SCHEDULE OF CHANGES IN FUND EQUITY
FOR THE FISCAL YEAR ENDED JUNE 30, 2016

	<u>General Fund</u>	<u>State Special Revenue Fund</u>
FUND EQUITY: July 1, 2015	\$ <u>(1,416,820)</u>	\$ <u>(859,498)</u>
ADDITIONS		
Budgeted Revenues & Transfers-In	5,483	290,094
Direct Entries to Fund Equity	<u>33,627,850</u>	<u>875,929</u>
Total Additions	<u>33,633,333</u>	<u>1,166,023</u>
REDUCTIONS		
Budgeted Expenditures & Transfers-Out	35,060,933	273,926
Nonbudgeted Expenditures & Transfers-Out	(4,283)	
Prior Year Expenditures & Transfers-Out Adjustments	<u>(3,261)</u>	
Total Reductions	<u>35,053,389</u>	<u>273,926</u>
FUND EQUITY: June 30, 2016	\$ <u>(2,836,876)</u>	\$ <u>32,599</u>

This schedule is prepared from the Statewide Accounting, Budgeting, and Human Resources System (SABHRS) without adjustment. Additional information is provided in the notes to the financial schedules beginning on page A-9.

PUBLIC DEFENDER
SCHEDULE OF CHANGES IN FUND EQUITY
FOR THE FISCAL YEAR ENDED JUNE 30, 2015

	<u>General Fund</u>	<u>State Special Revenue Fund</u>
FUND EQUITY: July 1, 2014	\$ <u>(2,217,430)</u>	\$ <u>(33,316)</u>
ADDITIONS		
Budgeted Revenues & Transfers-In	4,809	312,667
Direct Entries to Fund Equity	<u>28,054,507</u>	<u>3,635,051</u>
Total Additions	<u>28,059,316</u>	<u>3,947,719</u>
REDUCTIONS		
Budgeted Expenditures & Transfers-Out	27,259,503	4,773,900
Prior Year Expenditures & Transfers-Out Adjustments	<u>(797)</u>	<u></u>
Total Reductions	<u>27,258,706</u>	<u>4,773,900</u>
FUND EQUITY: June 30, 2015	\$ <u><u>(1,416,820)</u></u>	\$ <u><u>(859,498)</u></u>

This schedule is prepared from the Statewide Accounting, Budgeting, and Human Resources System (SABHRS) without adjustment. Additional information is provided in the notes to the financial schedules beginning on page A-9.

PUBLIC DEFENDER
SCHEDULE OF TOTAL REVENUES & TRANSFERS-IN
FOR THE FISCAL YEAR ENDED JUNE 30, 2016

	<u>General Fund</u>	<u>State Special Revenue Fund</u>	<u>Total</u>
TOTAL REVENUES & TRANSFERS-IN BY CLASS			
Charges for Services	\$ 5,404	\$ 290,079	\$ 295,483
Grants, Contracts, and Donations		14	14
Miscellaneous	79		79
Total Revenues & Transfers-In	<u>5,483</u>	<u>290,094</u>	<u>295,577</u>
Less: Nonbudgeted Revenues & Transfers-In			0
Prior Year Revenues & Transfers-In Adjustments			<u>0</u>
Actual Budgeted Revenues & Transfers-In	5,483	290,094	295,577
Estimated Revenues & Transfers-In	3,150	274,026	277,176
Budgeted Revenues & Transfers-In Over (Under) Estimated	<u>\$ 2,333</u>	<u>\$ 16,068</u>	<u>\$ 18,401</u>
 BUDGETED REVENUES & TRANSFERS-IN OVER (UNDER) ESTIMATED BY CLASS			
Charges for Services	\$ 2,404	\$ 16,153	\$ 18,557
Grants, Contracts, and Donations		(86)	(86)
Miscellaneous	(71)		(71)
Budgeted Revenues & Transfers-In Over (Under) Estimated	<u>\$ 2,333</u>	<u>\$ 16,068</u>	<u>\$ 18,401</u>

This schedule is prepared from the Statewide Accounting, Budgeting, and Human Resources System (SABHRS) without adjustment. Additional information is provided in the notes to the financial schedules beginning on page A-9.

PUBLIC DEFENDER
SCHEDULE OF TOTAL REVENUES & TRANSFERS-IN
FOR THE FISCAL YEAR ENDED JUNE 30, 2015

	<u>General Fund</u>	<u>State Special Revenue Fund</u>	<u>Total</u>
TOTAL REVENUES & TRANSFERS-IN BY CLASS			
Charges for Services	\$ 2,875	\$ 312,603	\$ 315,478
Rentals, Leases and Royalties	1,920		1,920
Grants, Contracts, and Donations		64	64
Miscellaneous	14		14
Total Revenues & Transfers-In	<u>4,809</u>	<u>312,667</u>	<u>317,476</u>
Less: Nonbudgeted Revenues & Transfers-In			0
Prior Year Revenues & Transfers-In Adjustments			<u>0</u>
Actual Budgeted Revenues & Transfers-In	4,809	312,667	317,476
Estimated Revenues & Transfers-In	4,809	312,667	317,476
Budgeted Revenues & Transfers-In Over (Under) Estimated	<u>\$ 0</u>	<u>\$ 0</u>	<u>\$ 0</u>
 BUDGETED REVENUES & TRANSFERS-IN OVER (UNDER) ESTIMATED BY CLASS			
Budgeted Revenues & Transfers-In Over (Under) Estimated	<u>\$ 0</u>	<u>\$ 0</u>	<u>\$ 0</u>

This schedule is prepared from the Statewide Accounting, Budgeting, and Human Resources System (SABHRS) without adjustment.
Additional information is provided in the notes to the financial schedules beginning on page A-9.

PUBLIC DEFENDER
SCHEDULE OF TOTAL EXPENDITURES & TRANSFERS-OUT
FOR THE FISCAL YEAR ENDED JUNE 30, 2016

	Chief Administrator's Office	Conflict Coordinator	Office of Appellate Defender	Office of Public Defender	Total
PROGRAM (ORG) EXPENDITURES & TRANSFERS-OUT					
Personal Services					
Salaries	\$ 1,065,760	\$ 401,531	\$ 941,819	\$ 12,040,926	\$ 14,450,036
Employee Benefits	377,615	138,761	321,686	4,244,800	5,082,862
Total	<u>1,443,375</u>	<u>540,292</u>	<u>1,263,505</u>	<u>16,285,725</u>	<u>19,532,898</u>
Operating Expenses					
Other Services	265,568	7,742,193	318,152	4,782,536	13,108,449
Supplies & Materials	184,826	13,980	21,185	180,619	400,609
Communications	36,730	13,351	25,842	442,238	518,160
Travel	77,234	10,758	995	71,440	160,427
Rent	147,610	18,001	69,988	1,072,725	1,308,324
Utilities				931	931
Repair & Maintenance	155,312		1,826	37,711	194,850
Other Expenses	16,887	1,521	4,444	51,720	74,572
Total	<u>884,167</u>	<u>7,799,803</u>	<u>442,431</u>	<u>6,639,921</u>	<u>15,766,322</u>
Equipment & Intangible Assets					
Equipment				28,095	28,095
Total				<u>28,095</u>	<u>28,095</u>
Total Expenditures & Transfers-Out	<u>\$ 2,327,543</u>	<u>\$ 8,340,095</u>	<u>\$ 1,705,936</u>	<u>\$ 22,953,741</u>	<u>\$ 35,327,315</u>
EXPENDITURES & TRANSFERS-OUT BY FUND					
General Fund					
State Special Revenue Fund	\$ 2,053,617	\$ 8,340,095	\$ 1,705,936	\$ 22,953,741	\$ 35,053,389
Total Expenditures & Transfers-Out	<u>2,327,543</u>	<u>8,340,095</u>	<u>1,705,936</u>	<u>22,953,741</u>	<u>35,327,315</u>
Less: Nonbudgeted Expenditures & Transfers-Out	(4,283)				(4,283)
Prior Year Expenditures & Transfers-Out Adjustments		(3,256)		(5)	(3,261)
Actual Budgeted Expenditures & Transfers-Out	2,331,826	8,343,351	1,705,936	22,953,746	35,334,859
Budget Authority	2,553,468	8,343,351	1,705,936	22,953,746	35,556,501
Unspent Budget Authority	<u>221,642</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>221,642</u>
UNSPENT BUDGET AUTHORITY BY FUND					
General Fund	\$ 221,642				\$ 221,642
Unspent Budget Authority	<u>221,642</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>221,642</u>

This schedule is prepared from the Statewide Accounting, Budgeting, and Human Resources System (SABHRS) without adjustment. Additional information is provided in the notes to the financial schedules beginning on page A-9.

PUBLIC DEFENDER
SCHEDULE OF TOTAL EXPENDITURES & TRANSFERS-OUT
FOR THE FISCAL YEAR ENDED JUNE 30, 2015

	<u>Conflict Coordinator</u>	<u>Office of Appellate Defender</u>	<u>Office of Public Defender</u>	<u>Total</u>
PROGRAM (ORG) EXPENDITURES & TRANSFERS-OUT				
Personal Services				
Salaries	\$ 186,090	\$ 849,717	\$ 11,885,443	\$ 12,921,250
Employee Benefits	82,171	282,261	4,242,484	4,606,916
Total	<u>268,260</u>	<u>1,131,977</u>	<u>16,127,928</u>	<u>17,528,166</u>
Operating Expenses				
Other Services	7,001,147	325,640	4,737,097	12,063,884
Supplies & Materials	2,962	17,114	272,939	293,015
Communications	5,834	26,707	467,817	500,359
Travel	20,280	444	135,987	156,711
Rent	13,763	64,502	1,222,727	1,300,992
Utilities			935	935
Repair & Maintenance		1,964	115,607	117,571
Other Expenses	912	4,053	66,010	70,974
Total	<u>7,044,898</u>	<u>440,424</u>	<u>7,019,119</u>	<u>14,504,440</u>
Total Expenditures & Transfers-Out	<u>\$ 7,313,158</u>	<u>\$ 1,572,401</u>	<u>\$ 23,147,047</u>	<u>\$ 32,032,606</u>
EXPENDITURES & TRANSFERS-OUT BY FUND				
General Fund				
State Special Revenue Fund	\$ 5,209,408	\$ 1,284,551	\$ 20,764,747	\$ 27,258,706
Total Expenditures & Transfers-Out	<u>2,103,750</u>	<u>287,850</u>	<u>2,382,300</u>	<u>4,773,900</u>
Less: Nonbudgeted Expenditures & Transfers-Out	<u>7,313,158</u>	<u>1,572,401</u>	<u>23,147,047</u>	<u>32,032,606</u>
Prior Year Expenditures & Transfers-Out Adjustments			(797)	(797)
Actual Budgeted Expenditures & Transfers-Out	<u>7,313,158</u>	<u>1,572,401</u>	<u>23,147,844</u>	<u>32,033,403</u>
Budget Authority	<u>7,313,158</u>	<u>1,572,401</u>	<u>23,151,143</u>	<u>32,036,702</u>
Unspent Budget Authority	<u>0</u>	<u>0</u>	<u>3,299</u>	<u>3,299</u>
UNSPENT BUDGET AUTHORITY BY FUND				
General Fund				
State Special Revenue Fund	\$ 0	\$ 0	\$ 3,273	\$ 3,273
Unspent Budget Authority	<u>0</u>	<u>0</u>	<u>26</u>	<u>26</u>
	<u>\$ 0</u>	<u>\$ 0</u>	<u>\$ 3,299</u>	<u>\$ 3,299</u>

This schedule is prepared from the Statewide Accounting, Budgeting, and Human Resources System (SABHRS) without adjustment. Additional information is provided in the notes to the financial schedules beginning on page A-9.

Office of the State Public Defender

Notes to the Financial Schedules

For the Two Fiscal Years Ended June 30, 2016

1. Summary of Significant Accounting Policies

Basis of Accounting

The office uses the modified accrual basis of accounting, as defined by state accounting policy, for its Governmental fund category (General and State Special Revenue). In applying the modified accrual basis, the office records:

- ◆ Revenues when it receives cash or when receipts are realizable, measurable, and available to pay current period liabilities.
- ◆ Expenditures for valid obligations when the department incurs the related liability and it is measurable, with the exception of the cost of employees' annual and sick leave. State accounting policy requires the office to record the cost of employees' annual and sick leave when used or paid.

Expenditures and expenses may include: entire budgeted service contracts even though the office receives the services in a subsequent fiscal year; goods ordered with a purchase order before fiscal year-end, but not received as of fiscal year-end; and equipment ordered with a purchase order before fiscal year-end.

Basis of Presentation

The financial schedule format was adopted by the Legislative Audit Committee. The financial schedules are prepared from the transactions posted to the state's accounting system without adjustment.

The office uses the following funds:

Governmental Fund Category

- ◆ **General Fund** – to account for all financial resources except those required to be accounted for in another fund. The substantial portion of the office's financial activity is included in the General Fund.
- ◆ **State Special Revenue Fund** – to account for proceeds of specific revenue sources that are legally restricted to expenditures for specific state program purposes. The office's State Special Revenue Funds includes collections for legal services provided pursuant to MCA, 47-1-110. Additionally, in fiscal year 2015, the office received SB 410 funds from the Governor's Office to assist the office in dealing with statewide caseload growth. Because the office did not receive SB 410 funds in fiscal year 2016 the activity was shifted to the General Fund.

2. General Fund Equity Balance

The negative fund equity balance in the General Fund does not indicate overspent appropriation authority. The office has authority to pay obligations from the statewide General Fund within its appropriation limits. The office expends cash or other assets from the statewide fund when it pays General Fund obligations. The office's outstanding liabilities exceed the assets it has placed in the fund, resulting in negative ending General Fund equity balances for each of the fiscal years ended June 30, 2015 and June 30, 2016.

3. Direct Entries to Fund Equity

Direct entries to fund equity in the General Fund and State Special Revenue Fund include entries generated by SABHRS to reflect the flow of resources within individual funds shared by separate agencies.

4. Establishment of the Chief Administrator Program

The office established the chief administrator's office program during fiscal 2016. This program provides administrative support to the commission as well as the public defender, appellate defender and conflict coordinator programs.

Report on Internal Control and Compliance

LEGISLATIVE AUDIT DIVISION

B-1

Angus Maciver, Legislative Auditor
Deborah F. Butler, Legal Counsel



Deputy Legislative Auditors:
Cindy Jorgenson
Joe Murray

REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING AND ON COMPLIANCE AND OTHER MATTERS BASED ON AN AUDIT OF FINANCIAL SCHEDULES PERFORMED IN ACCORDANCE WITH GOVERNMENT AUDITING STANDARDS

The Legislative Audit Committee
of the Montana State Legislature:

We have audited, in accordance with the auditing standards generally accepted in the United States of America and the standards applicable to the financial audits contained in Government Auditing Standards issued by the Comptroller General of the United States, the Schedules of Changes in Fund Equity, Schedules of Total Revenues & Transfers-In, and Schedules of Total Expenditures & Transfers-Out of the Office of the State Public Defender (office) for each of the fiscal years ended June 30, 2016, and 2015, and the related notes to the financial schedules, and have issued our report thereon dated September 21, 2016.

Internal Control Over Financial Reporting

In planning and performing our audit of the financial schedules, we considered the office's internal control over financial reporting to determine the audit procedures that are appropriate in the circumstances for the purpose of expressing our opinions on the financial schedules, but not for the purpose of expressing an opinion on the effectiveness of the office's internal control. Accordingly, we do not express an opinion on the effectiveness of the office's internal control.

A *deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A *material weakness* is a deficiency, or a combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial schedules will not be prevented, or detected and corrected on a timely basis. A *significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal controls was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies and therefore, material weaknesses or significant deficiencies

may exist that were not identified. Given these limitations, during our audit we did not identify any deficiencies in internal control that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified. We did identify certain deficiencies in internal control, described below, that we consider to be significant deficiencies.

- ◆ As described on page 7, the office does not have internal controls in place over revenues collected or deposited by third parties for public defender fees to ensure accuracy and completeness of those revenues.

Compliance and Other Matters

As part of obtaining reasonable assurance about whether the office's financial schedules are free from material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect of the determination of financial schedule amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests did not disclose instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

The Response to Findings

The office's response to the findings identified in our audit are described on page C-1 of this report. The office's response was not subjected to the auditing procedures applied in the audit of the financial schedules and, accordingly, we express no opinion on it.

Purpose of this Report

The purpose of this report is solely to describe the scope of our testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the office's internal control or on compliance. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the office's internal control and compliance. Accordingly, this communication is not suitable for any other purpose.

Respectfully submitted,

/s/ Cindy Jorgenson

Cindy Jorgenson, CPA
Deputy Legislative Auditor
Helena, MT

September 21, 2016

OFFICE OF THE STATE
PUBLIC DEFENDER

OFFICE RESPONSE



Steve Bullock
Governor

OFFICE OF THE STATE PUBLIC DEFENDER STATE OF MONTANA

November 21, 2016

Angus Maciver
Legislative Auditor
P.O. Box 201705
Helena, MT 59620-1705

RECEIVED
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LEGISLATIVE AUDIT DIV.

Re: Response to Legislative Audit Recommendations

Dear Mr. Maciver:

Thank you for the opportunity to respond to the financial audit report for the Office of the State Public Defender. We have reviewed the recommendations in the report and our responses are as follows:

Recommendation #1:

We recommend the office:

- A. *Develop and implement internal controls to ensure completeness and accuracy of revenues collected and deposited by third parties for public defender fees.*
- B. *Determine which courts are the source of differences in collections reported by the Judicial Branch and the Department of Revenue and work directly with the clerks of the courts and the Department of Revenue to obtain information needed to reconcile the amounts reported.*

Response: Part A: We conditionally concur. OPD will develop and implement the internal controls to ensure completeness and accuracy of revenues collected and deposited by third parties for public defender fees to the extent the information is made available to OPD from the county treasurers, courts and the Department of Revenue.

Response: Part B: We conditionally concur. The audit recommends that OPD work with the clerks of the courts and the Department of Revenue to obtain information needed to reconcile the amounts reported. OPD concurs that it will do what it can to get the information to reconcile the amounts reported. However, OPD has attempted to do so in the past and based on that experience there can be no guarantee of how successful this endeavor will now be. It is up to the each clerk of each court to decide what their level of cooperation will be.

Recommendation #2:

We recommend the office develop and implement review procedures for system access for the Online Claims Processing System by June 30, 2017.

Response: We concur. OPD is in the process of developing and implementing the review procedures for its Online Claims Processing System.

Recommendation #3:

We recommend the office implement administrative rules requiring evaluation of every contract attorney on a biennial basis by the chief contract manager based on written evaluation criteria, as required by state law.

Response: We concur. OPD will implement administrative rules requiring the evaluation of every contract attorney on a biennial basis by the chief contract manager based on written evaluation criteria.

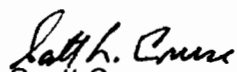
Recommendation #4:

We recommend the head of the office notify the attorney general and the legislative auditor in writing immediately upon discovery of actual or suspected theft involving state money or property under agency control for which the agency is responsible, as required by state law.

Response: We concur. The head of OPD will notify the attorney general and the legislative auditor in writing immediately upon discovery of actual or suspected theft involving state money or property under agency control for which the agency is responsible, as required by state law.

We appreciate the work completed by the legislative staff assigned to this audit and thank them for their cooperation and professionalism during the audit. We look forward to working with your office again in the future.

Sincerely,


Scott Cruse

Chief Administrator

cc: Richard E. "Fritz" Gillespie, Chair, Public Defender Commission
Kristina Neal, Chief Conflict Coordinator
William Hooks, Chief Public Defender
Chad Wright, Chief Appellate Defender