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Second Judicial Circuit

Adair County

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CITIZENS SUMMARY

Findings in the audit of the Second Judicial Circuit, Adair County

Accounting Controls and Procedures	The Circuit Clerk has not adequately segregated accounting duties or limited user access rights in the Judicial Information System (JIS), and adequate independent and/or supervisory reviews of accounting records are not performed. The Circuit Clerk does not have adequate receipting and depositing procedures and does not review and approve voided and non-monetary transactions, and adjustments in the JIS. The Circuit Clerk does not periodically review accrued costs owed to the court and does not follow the court's formal administrative plan for collection of court debt.
Month-End Reconciliations	The Chief Deputy Clerk does not complete bank reconciliations for the fee account timely, and the court does not monitor and apply amounts paid to cases held in suspense that have been disposed. As of December 31, 2013, JIS records indicate 14 checks, totaling $871, had been outstanding for over a year.
Circuit Court Budgets	The Circuit Clerk did not prepare a budget for the Circuit Clerk's Interest Fund or Time Payment Fee Fund for 2013 or 2014. For 2014, the Circuit Clerk prepared a document showing just the combined actual beginning and ending balances of both funds for 2013. The Presiding Judge did not include detailed receipts or disbursements information and did not document the prior years' comparative receipts and disbursements for the 2013 and 2014 Law Library Fund and the 2014 Drug Court Fund budgets.
Law Library Fund Controls and Procedures	The Presiding Judge has not adequately segregated accounting duties and does not perform supervisory reviews of the Law Library bank account and financial activities. The Presiding Judge used $1,938 in law library monies for a router and Internet services at his residence. The Presiding Judge has repaid the monies.

In the areas audited, the overall performance of this entity was **Fair**.*

*****The rating(s) cover only audited areas and do not reflect an opinion on the overall operation of the entity. Within that context, the rating scale indicates the following:

Excellent: The audit results indicate this entity is very well managed. The report contains no findings. In addition, if applicable, prior recommendations have been implemented.

Good: The audit results indicate this entity is well managed. The report contains few findings, and the entity has indicated most or all recommendations have already been, or will be, implemented. In addition, if applicable, many of the prior recommendations have been implemented.

Fair: The audit results indicate this entity needs to improve operations in several areas. The report contains several findings, or one or more findings that require management's immediate attention, and/or the entity has indicated several recommendations will not be implemented. In addition, if applicable, several prior recommendations have not been implemented.

Poor: The audit results indicate this entity needs to significantly improve operations. The report contains numerous findings that require management's immediate attention, and/or the entity has indicated most recommendations will not be implemented. In addition, if applicable, most prior recommendations have not been implemented.

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Second Judicial Circuit
Adair County
Table of Contents

State Auditor's Report 2

Introduction
Background 4

Management Advisory Report - State Auditor's Findings
1. Accounting Controls and Procedures 7
2. Month-End Reconciliations 13
3. Circuit Court Budgets 14
4. Law Library Fund Controls and Procedures 15

Organization and Statistical Information 20

Appendix - Auditee's Response 21

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Presiding Judge and Court en Banc
and
Circuit Clerk of the
Second Judicial Circuit
Adair County, Missouri

We have audited certain operations of the Second Judicial Circuit, Adair County, in fulfillment of our duties under Chapter 29, RSMo. The scope of our audit included, but was not necessarily limited to, the year ended December 31, 2013. The objectives of our audit were to:

1. Evaluate the court's internal controls over significant financial functions.

2. Evaluate the court's compliance with certain legal provisions.

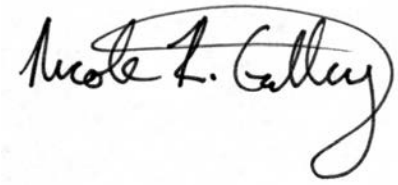
3. Evaluate the court's compliance with certain court rules.

Our methodology included reviewing written policies and procedures, financial records, and other pertinent documents; interviewing various personnel of the court, as well as certain external parties; and testing selected transactions. We obtained an understanding of internal controls that are significant within the context of the audit objectives and assessed whether such controls have been properly designed and placed in operation. We also obtained an understanding of legal provisions that are significant within the context of the audit objectives, and we assessed the risk that illegal acts, including fraud, and violations of other legal provisions could occur. Based on that risk assessment, we designed and performed procedures to provide reasonable assurance of detecting instances of noncompliance significant to those provisions.

We conducted our audit in accordance with the standards applicable to performance audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform our audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides such a basis.

The accompanying Organization and Statistical Information is presented for informational purposes. This information was obtained from the court's management, the Office of State Courts Administrator, and Adair County and was not subjected to the procedures applied in our audit of the court.

For the areas audited, we identified (1) deficiencies in internal controls, (2) noncompliance with legal provisions, and (3) noncompliance with court rules. The accompanying Management Advisory Report presents our findings arising from our audit of the Second Judicial Circuit, Adair County.



Nicole R. Galloway, CPA
State Auditor

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Background

The purpose of this section is to explain the relationship between Adair County and the Adair County Circuit Court and various issues that pertain to both the county and the circuit court, and the handling of those issues by the State Auditor's office (SAO). The same information is being included in Report No. 2015-043, *Adair County*, and Report No. 2015-044, *Second Judicial Circuit, Adair County*.

The Second Judicial Circuit consists of Adair County as well as Knox and Lewis Counties. The Second Judicial Circuit consists of one circuit judge and three associate circuit judges. The circuit judge hears cases in all three counties in the circuit and the associate circuit judges hear cases in their respective counties. The scope of our audit only includes the operations of the Second Judicial Circuit, Adair County. The circuit court operation is funded both with state and county resources and operations are managed utilizing both state and county employees.

The Office of the State Courts Administrator (OSCA) is responsible for providing administrative, business and technology support services to the courts. The OSCA conducts periodic Judicial Information System (JIS) reviews of circuit courts. It most recently conducted a review of the Adair County Circuit Court during 2012 (report issued February 29, 2013), and a follow up of that review in November 2013. The review identified numerous procedural and control problems, and the follow up determined the majority of the recommendations were either not implemented or partially implemented, with only a few recommendations implemented.

The SAO has authority to conduct court audits. In conjunction with the regularly scheduled audit of Adair County for calendar year 2013, the SAO also conducted an audit of the Adair County Circuit Court. The SAO completed the audits and met with county and court officials in October 2014 to discuss the draft audit reports and obtain auditee responses for inclusion in the audit reports.

Disputes exist between the counties in the circuit and the Presiding Judge, resulting in the need for outside parties to evaluate arrangements and make rulings, settlements, and judgments to guide/govern the budgetary arrangements and operations of the Adair County Circuit Court. Disputes also exist within the court regarding appointing authority responsibilities and administrative functions of the court. There continues to be ongoing legal proceedings involving current and former court personnel and officials.

On February 12, 2014, the County Commissioners of Adair and Lewis Counties (as part of the Second Judicial Circuit) filed a petition for review with the Judicial Finance Commission (JFC) regarding the 2014 budgeted operational costs of the court, as allowed by Section 50.640, RSMo. The

parties disputed the reasonableness of budget requests by the Circuit Court for the drug court, the juvenile justice center, court administration, the Circuit Clerk's budget, and the budget for the circuit's court reporter. The JFC concluded "the dispute had been exacerbated by poor relationships and lack of trust between the parties, but that it would be best for all concerned to resolve this protracted and expensive litigation through settlement." After several rounds of mediation, further disputes and disagreements about the wording of the settlement agreement led the parties to submit post-hearing filings with the JFC on September 10, 2014.

In an October 2014 decision, the JFC determined the Circuit Court budget request to be unreasonable. Many of the matters raised by the counties in their filings were outside the scope of the JFC, such as the classification of certain employees as state employees rather than county employees, and the JFC declined to consider them. The JFC found that all but one component of the Circuit Court's budget request were reasonable. However, because the JFC does not consider the individual budget requests in isolation, the JFC ruled the Circuit Court's budget request in its entirety to be unreasonable. The JFC found that because the Circuit Court asked that money be appropriated from the general revenue of the counties to fund fringe benefits for state employees, when another source of funding was available, the entire budget request of the Circuit Court was unreasonable. The Presiding Judge appealed that decision. The Adair County Commission and the Presiding Judge then engaged in further mediation under the supervision of a specially appointed Court, and reached a settlement agreement resolving all but one issue in dispute between the parties, resulting in the voluntary dismissal of the Presiding Judge's appeal of the JFC's decision.

The remaining issue in dispute was the classification of 6 Juvenile Office/Juvenile Court employees. On December 16, 2014, in Case No. 14AR-CV00603, Judge Gary Oxenhandler rendered a judgment approving the settlement agreement between the County Commission and the Presiding Judge, and holding the 6 employees at issue are to be classified and designated as employees of the county for the purposes of the payment of salary, health insurance, retirement plan, and fringe benefits. The Presiding Judge has since filed a motion to enforce the settlement agreement, and a hearing has been set for June 17, 2015. It was during the timeframe the SAO was working with county and court officials to obtain responses and finalize the audit reports, that these various rulings, settlements, and judgments became available. Because finding number 1 in the county audit report pertains to both the county and the court, responses were obtained from multiple county and court officials.

In addition, issues addressed in the county and court audit reports include the period of time during which the Presiding Judge amended the court consolidation agreement. The Presiding Judge, Associate Circuit Judge, and

Circuit Clerk entered into a consolidation agreement effective June 1, 2008, giving appointing and administrative authority to the Circuit Clerk. On May 2, 2013, the Presiding Judge amended the consolidation agreement of the clerical functions of the Adair County Circuit Court. The changes included relieving the Circuit Clerk of her appointing authority and giving the Presiding Judge sole authority to hire, discipline, discharge, or terminate deputy clerks in the Circuit Clerk's office. In addition, other changes included the Presiding Judge becoming responsible for the establishment and implementation of policies and procedures for the operation of the clerical and all other functions of the Circuit Clerk's office, maintaining control over the funds budgeted for the offices of the Circuit Clerk and judges, and having the discretion to assign authority to a duly appointed representative. Effective April 1, 2014, the Court en Banc amended the consolidation agreement to shift these responsibilities from the Presiding Judge to the Adair County Associate Circuit Judge. As a result, appointing and administrative authority over the Circuit Court has shifted from the Circuit Clerk to the Presiding Judge to the Adair County Associate Circuit Judge during the audit period and over the course of the audit process. The changes in appointing and administrative authority over the Circuit Court made it appropriate to obtain responses from multiple court officials.

Because various rulings, settlements, and judgments discussed earlier resolved some issues addressed in finding number 1 in the county audit report, recommendations are no longer needed. These findings identify important concerns and relevant corrective actions and remain in the report; however, recommendations are not provided and the associated responses from various county and court officials are omitted. Also, responses provided to the SAO for county audit report findings number 1 and 2 and Circuit Court audit report findings number 1 through 4 were voluminous and came from multiple officials. The responses were largely unresponsive to the specific recommendations, did not clearly convey plans for corrective action, and inappropriately comment on other officials and/or the audit process as opposed to focusing on remedies. Thus, auditee responses have been modified to present portions specifically addressing recommendations and to omit portions evaluated as ineffective - those commenting on other officials or the audit process, or providing additional information not specific to the findings. However, full auditee responses without edit, including those pertaining to now deleted recommendations, are presented in the audit report appendix.

1. Accounting Controls and Procedures

We identified significant weaknesses with accounting controls and procedures.

According to court records, receipts collected during the year ended December 31, 2013, totaled approximately $789,000. Fines, court costs, and bonds are collected; recorded in the JIS, the Missouri Courts automated case management system; and deposited into the Circuit Clerk's fee account by personnel of the Circuit Clerk's office.

1.1 Segregation of duties and supervisory review

The Circuit Clerk has not adequately segregated accounting duties or limited user access rights in the JIS, and adequate independent and/or supervisory reviews of accounting records are not performed. The Circuit Clerk has not implemented a recommendation related to segregation of duties made by the OSCA in its recent report.

The Circuit Clerk and 7 deputy court clerks have the ability to process receipts, record transactions, record voids and fee adjustments, prepare deposits, and print checks. As a result, deputy court clerks may sometimes be responsible for monetary transactions from initial receipt to disbursement without independent and/or supervisory review. There is no procedure in place for an independent and/or supervisory review of the deputy court clerks' accounting records to be performed. In addition, the Presiding Judge's secretary has unneeded access and user rights to the JIS since she does not perform accounting functions related to the Circuit Clerk's office. Also, a deputy court clerk terminated from the Circuit Clerk's office in August 2013 was still on the JIS users listing as of July 22, 2014. While the deputy court clerk could be reinstated pending the outcome of litigation, keeping the former clerk as an active user exposes the court to the unnecessary risk that an unauthorized user could access the court's files.

Proper segregation of duties or thorough independent and/or supervisory reviews help ensure all transactions are accounted for properly and assets are adequately safeguarded. Internal controls would be improved by segregating duties to the extent possible and limiting user access rights within the JIS. If proper segregation of duties are not implemented, documented independent and/or supervisory reviews of work performed by deputy court clerks is necessary.

1.2 Receipting and depositing

The Circuit Clerk does not have adequate receipting and depositing procedures in place. The Circuit Clerk has not implemented a recommendation related to making timely deposits made by the OSCA in its recent report. We noted the following issues:

- A deputy court clerk does not record monies received in the mail on a mail log or restrictively endorse checks and money orders immediately upon receipt. The deputy court clerk delivers the mail to various deputy

court clerks and those clerks then record and process the monies received.

- Deputy court clerks do not always record manual receipt slips timely in the JIS. As a result, the corresponding monies are not deposited timely. Of 359 manual receipt slips issued during the year ended December 31, 2013, 128 (36 percent) manual receipt slips were not recorded in the JIS within 2 business days after receipt. Three manual receipts slips were not recorded in the JIS for over 30 days. In addition, 24 (7 percent) of the 359 manual receipt slips were not deposited within 5 days of being entered into the JIS.

- Deputy court clerks left 15 cashier sessions open for 2 to 7 days from August 1, 2013, through August 29, 2013. Receipts collected during this time totaled $23,479. For example, a deposit totaling $14,433 was made on August 7, 2013, and included 8 cashier sessions opened between August 1, 2013, and August 6, 2013, with 5 sessions left open for at least 4 days before they were closed. Closing cashier sessions untimely can result in delays in depositing and completing reconciliations, and increases the possibility of errors going undetected.

- Deputy court clerks do not always post credit card payments and debt collection payments in the JIS timely. Credit card payments totaling $1,137 received from August 9, 2013, through August 23, 2013, were not receipted and posted in the JIS until September 11, 2013. In addition, a $645 reimbursement from the state, received electronically on August 8, 2013, was not receipted and posted into the JIS until October 4, 2013. The Circuit Clerk does not always review the court bank account activity timely through the bank's website to account for these transactions, even though they are updated daily on the account. As a result, updating case files for financial transactions is delayed and errors may not be detected timely.

An initial record of monies received in the mail combined with procedures to restrictively endorse checks promptly and reconcile these monies to the JIS and deposit records is necessary to adequately safeguard receipts. In addition, timely posting of receipts to the JIS, closure of cashier sessions, and depositing reduces the risk of loss, theft, or misuse of funds.

1.3 Voided and non-monetary transactions, and adjustments

The Circuit Clerk does not review and approve voided and non-monetary transactions, and adjustments in the JIS. The Circuit Clerk has not implemented a recommendation related to documented supervisory reviews made by the OSCA in its recent report.

Non-monetary transactions, including judicial orders, garnishments, and application of bonds, are transactions where no monies are received; however, a credit is applied or the amount due is changed to the account balances. Adjustment transactions include the reduction or non-assessment

of fines and court costs due to the correction of errors in the assessment of court costs, reallocation of costs for state reimbursement, and removal of court costs when cases are dismissed. All 7 deputy court clerks, the Circuit Clerk, and the Associate Circuit Judge, are allowed to enter voided and non-monetary transactions, and adjustments in the JIS. Voided and non-monetary transactions, and adjustments should be supported by documentation or a judicial order, and should be reviewed by a supervisor. An independent and/or supervisory review of voided and non-monetary transactions, and adjustments, is not always performed. For example, of 10 voided transactions we reviewed 8 were initiated and voided by the same deputy court clerk without a documented supervisory review. Also, of 25 non-monetary transactions and adjustments we reviewed all 25 were performed without a documented supervisory review.

An independent and/or supervisory review and approval of voided and non-monetary transactions and adjustments is necessary to help ensure such transactions are appropriate and reduce the risk of loss, theft, or misuse of funds.

1.4 Accrued costs

The Circuit Clerk does not periodically review accrued costs owed to the court (fines and court costs, incarceration costs, and court-ordered restitution). As of January 6, 2014, 1,275 of 1,363 cases with balances due totaling approximately $2.35 million were not associated with payment plans in the JIS. The Circuit Clerk has not implemented a recommendation related to reviewing accounts receivable periodically and establishing payment plans made by the OSCA in its recent report.

The court does not follow its formal administrative plan for collection of court debt (effective April 1, 2013), including establishing payment plans and reviewing outstanding balances periodically for collection and to write off amounts deemed uncollectible. In addition, the state court operating rules requires the establishment of payment plans in the JIS for most amounts not paid in full at case disposition. The Circuit Division does not generally use payment plans, does not actively pursue amounts outstanding, and does not periodically review balances due for collectability. As stated in the court's administrative plan for the collection of court debt, "It is ultimately the responsibility of each court to ensure the collection of court debt."

The formal administrative plan for collection of court debt requires the court to review accounts receivable reports developed by the OSCA and the debt collection vendor. In addition, the court should continuously pursue outstanding amounts owed and periodically review balances due. Accounts deemed to be uncollectible may be written off by court order by the assigned judge. Adherence to the provisions of Court Operating Rule (COR) 21, as adopted by the Missouri Supreme Court, is required for courts automated on the JIS. COR 21.07 requires all courts using the JIS to participate in the tax offset and debt collection programs and requires the

court to create payment plans in the JIS for all amounts not paid in full at case disposition. Failure to follow these guidelines could result in lost revenue and in the loss, theft, or misuse of funds.

Recommendations

The Court en Banc and Circuit Clerk:

1.1 Segregate accounting duties to the extent possible, limit user access rights within the JIS to only those necessary for the user to perform job duties, and implement appropriate reviews and monitoring procedures.

1.2 Require an initial record of monies received by mail be prepared and reconciled to the JIS, restrictively endorse checks and money orders immediately upon receipt, ensure cashier sessions are closed and receipts are deposited timely, and record all credit card and electronic payments in the JIS timely.

1.3 Require an independent and/or supervisory review and approval of all voided and non-monetary transactions, and adjustments made in the JIS.

1.4 Follow established policy and ensure collection of accrued costs in accordance with the court's administrative plan and court operating rules, and perform periodic reviews of cases with outstanding amounts due to determine their collectability.

Auditee's Response

The Circuit Clerk provided the following responses:

1.1 The Adair County Circuit Clerk's staff is small in number and our primary duty to the Courts is processing to completion all cases handled by the Courts. It does not make sense to restrict the Deputy Clerks from being able to receipt and issue checks. Timely case processing would be severely affected and clerk absences would create problems with completing case filings and refunds.

The Circuit Clerk verifies the cashiers sessions to complete the deposit process. Voids and fee adjustments are reviewed, but not documented. The Circuit Clerk will document voids and adjustment reviews.

If the Presiding Judge wants to give the Circuit Clerk written authority to direct OSCA on the proper security of his Secretary and the Drug Court Staff, she will gladly complete that task.

1.2 The Circuit Clerk does not currently keep mail logs concerning incoming mail. Time for this additional duty is not available. All

Deputy Circuit Clerks endorse checks and/or money orders when receipting in the JIS system.

As of January 1, 2014, the Circuit Clerk's Office no longer issues manual receipts. All Circuit Courts per Supreme Court Order are not allowed to use manual receipts unless receiving a special court order for their use. No special order has been requested or issued.

The Circuit Clerk response concerning the Deputy Circuit Clerk having cashier sessions open for 2-7 days is as follows. I recognize that the Auditor's Office recommends new cashier sessions be opened daily. However, all money during this current audit and all previous audits were deposited and accounted for in an appropriate manner.

Credit card payments were a fairly new process for this office in 2012 and 2013. We now have a process in place and are current on receipting all credit card payments in the month received-as soon as we have verification from the bank on those transactions.

1.3 *The Circuit Clerk is now reviewing the non-monetary transactions. Only one Deputy Clerk has processed those judicial non-monetary requests. There is always a written Judicial Order in the case file for non-monetary adjustments. The Circuit Clerk will in the future document and verify voids for further compliance.*

1.4 *The Circuit Clerk and Deputy Clerks review costs to comply with requests received from Probation and Parole officers and defendants. The Circuit Clerk does not need to review costs on Associate level cases as those are completed by the Associate Circuit Judge in reviews of her own case load. The Circuit Clerk does not have the authority to order the Presiding Judge to enact or enforce payment plans or debt collection programs.*

The Presiding Judge provided the following response:

1.4 *The findings in subsection 1.4 that the Court does not follow its formal administrative plan for collection of court debt, including establishing payment plans, are not accurate and omit evidence of the actual policies and practices utilized by the Court.*

A payment plan is rarely ordered immediately upon case disposition since most offenders are either unemployed or underemployed. For those offenders on supervised probation under the supervision of the Board of Probation and Parole, the supervising probation officer has been directed to develop payment plans with the offenders, taking into consideration their current financial

circumstances. While those payment plans are not typically entered into JIS in order to avoid an automatic referral to the state debt collection system, which adds an additional 20% to the outstanding obligations, those offenders who fall behind in payments after those payment plans are developed are summoned to appear in court and explain their circumstances to the court. If the explanation is unsatisfactory, they are placed on a regular payment review schedule, usually every 90 days, when they must appear in court to review their compliance with the payment plan. If they continue to demonstrate what would be characterized as willful noncompliance, the prosecuting attorney is directed to file a motion to revoke their probation. For offenders who are on court supervised probation, their cases are scheduled for compliance review every 90 days. If there is no payment plan at disposition, a payment plan is typically established at the first review hearing. These cases are otherwise handled similarly to cases supervised by the Board of Probation and Parole. It is the role of the Court, not a distant debt collector, to make a diligent effort to collect court debt and reasonable efforts to do that are utilized.

Further, court debt is routinely written off as uncollectible, excluding restitution and crime victims' compensation fund judgments, for offenders who are sentenced to prison and whose sentences are executed. For offenders who are no longer on probation, they are either summoned to court to show cause why they should not be held in contempt, or, if that is not feasible, their debts are referred to debt collection. If still uncollected after good faith efforts to collect the debt, those are written off.

The Associate Circuit Judge provided the following response:

I was not the presiding judge, circuit clerk, or appointing authority during the time period covered by the audit. I am unaware of what accounting controls and procedures were put in place by the circuit clerk. I am unaware of what changes, if any, the presiding judge made to the accounting controls and procedures employed by the circuit clerk after he purported to make himself appointing authority.

I am unaware of whether the circuit division places defendants on payment plans. I do know that the circuit division generally handles collections for felony cases. Pursuant to the accounts receivable report for Adair County prepared by OSCA, $1,530,120 (nearly 56%) remains outstanding out of $2,846,056 assessed for felony cases.

Subject to this response, I agree with the auditor's recommendations where implementation is feasible under the circumstances.

2. Month-End Reconciliations

Bank reconciliations are not prepared timely, liabilities are not reviewed to ensure monies received are applied or disbursed, and there are no procedures to follow up on outstanding checks.

2.1 Bank reconciliations

The Chief Deputy Clerk does not complete bank reconciliations for the fee account timely. The Circuit Clerk has not implemented a recommendation related to the timely preparation of bank reconciliations made by the OSCA in its recent report. Bank reconciliations for January through March 2013 were completed in May 2013, April through October 2013 reconciliations were completed in November 2013, and November and December 2013 reconciliations were completed in March 2014, resulting in bank reconciliations being performed 1 to 6 months late. As a result, there is less assurance payments received and/or disbursements have been properly handled and recorded.

Monthly bank reconciliations are necessary to ensure all accounting records balance, transactions have been properly recorded, and errors or discrepancies are detected and corrected timely.

2.2 Suspense accounts

The court does not monitor and apply amounts paid to cases held in suspense that have been disposed. The court has collected $4,510 on 68 cases (63 civil, 4 juvenile, and 1 criminal) and held the monies in suspense as of December 31, 2013, instead of applying the monies to the cases. All of the cases had been disposed prior to September 2012. A review of 11 of these cases determined $1,344 should have been applied or disbursed and the Circuit Clerk indicated the court is planning to review the remaining 57 cases, totaling $3,166. The oldest disposition for these cases dates back to 2000.

Procedures to routinely investigate monies remaining on the liabilities list over a specific period of time are necessary to properly monitor and ensure monies are appropriately applied to cases and disbursed as provided by state law.

2.3 Outstanding checks

The Circuit Clerk has not developed adequate procedures to follow up on outstanding checks. As of December 31, 2013, JIS records indicate 14 checks, totaling $871, had been outstanding for over a year. Some checks have remained outstanding since 2010.

To properly monitor disbursements and ensure monies are appropriately disbursed to the payee or as otherwise provided by state law, procedures should be established to routinely investigate outstanding checks.

Recommendations

The Court en Banc and Circuit Clerk:

2.1 Perform timely monthly bank reconciliations.

2.2 Establish procedures to review the status of liabilities monthly to determine the appropriate disposition of funds held in suspense.

2.3 Establish procedures to routinely follow up on outstanding checks and reissue them if necessary, or dispose of these monies in accordance with state law.

Auditee's Response

The Circuit Clerk provided the following responses:

2.1 Monthly bank reconciliations are current with the exception of the Adair County Law Library, to which the Circuit Clerk has not been granted access.

2.2 The Circuit Clerk is currently reviewing and disbursing money on the appropriate accounts and working through them as quickly as time allows.

2.3 Outstanding checks have been reviewed and new checks issued when requested. Unclaimed funds were distributed to the State of Missouri.

The Associate Circuit Judge provided the following response:

I was not the presiding judge, circuit clerk, or appointing authority during the time period covered by the audit. I am unaware of what month-end reconciliation procedures were put in place by the circuit clerk. I am unaware of what changes, if any, the presiding judge made to the month-end reconciliation procedures employed by the circuit clerk after he purported to make himself appointing authority.

Subject to this response, I agree with the auditor's recommendations where implementation is feasible under the circumstances.

3. Circuit Court Budgets

We noted weaknesses in the budgeting process for the Circuit Court's funds. A total of $36,103 was disbursed through these funds for the year ended December 31, 2013.

- The Circuit Clerk did not prepare a budget for the Circuit Clerk's Interest Fund or Time Payment Fee Fund for 2013 or 2014. For 2014, the Circuit Clerk prepared a document showing just the combined actual beginning and ending balances of both funds for 2013 and included a statement indicating the Presiding Judge would determine the disbursements for the 2014 budget year.

- The Presiding Judge did not include detailed receipts or disbursements information and did not document the prior years' comparative receipts

and disbursements for the 2013 and 2014 Law Library Fund and the 2014 Drug Court Fund budgets.

Preparing a complete and accurate budget for all public funds aids in the fiscal management of the monies, provides a means to effectively monitor actual costs and revenues and provides an avenue for the court, county, and the public to be fully informed of the court's financial status.

Recommendation

The Circuit Clerk ensure annual budgets are prepared for the Circuit Clerk's Interest Fund and the Time Payment Fee Fund. In addition, the Circuit Clerk should ensure budgets contain detailed receipts and disbursements information and prior years comparative receipts and disbursements. The Presiding Judge should ensure the Law Library Fund and Drug Court Fund budgets contain detailed receipts and disbursement information and prior years comparative receipts and disbursements.

Auditee's Response

The Circuit Clerk provided the following response:

The Circuit Clerk has annually prepared a budget for the Circuit Clerk's Interest account for the past 24 years and presented the same to the Adair County Clerk. However, I will gladly conform to the request of the Auditor's office and prepare future budgets with requested additional information.

The Circuit Clerk has been through many budgets and recommendations from OSCA and the State Auditor's office. While money needs to be receipted and disbursed through this office and remains an important element of our daily work, it is not our most important duty. Case processing is our main priority and will remain our first priority as long as we are responsible for processing the Court's information.

The Presiding Judge provided the following response:

The Presiding Judge has submitted annual budgets to the County for receipts and disbursements for the Law Library Fund and the Drug Court Fund, although it is unclear why that is legally required. Previous audits had not recommended that actual receipts and disbursements for the two previous years be included in the annual budget.

4. Law Library Fund Controls and Procedures

Controls and procedures for the Law Library Fund need improvement. The Law Library Fund had receipts of $12,889 and disbursements of $11,369 during the year ended December 31, 2013.

4.1 Segregation of duties and supervisory review

The Presiding Judge has not adequately segregated accounting duties and does not perform supervisory reviews of the Law Library bank account and

financial activities. The Presiding Judge's secretary performs all of the accounting duties including recording receipts, depositing monies, and preparing checks. In addition, court officials indicated bank reconciliations are performed in their computer system; however, no documentation of the reconciliations is maintained. The Presiding Judge does not review and approve accounting records to ensure they are accurate and complete.

Internal controls would be improved by segregating duties. If proper segregation of duties is not possible, independent and/or supervisory reviews of the records should be performed and documented. In addition, monthly bank reconciliations should be prepared and reviewed by someone independent of the accounting functions.

4.2 Disbursements

The Presiding Judge used law library monies from the counties in the Second Judicial Circuit (Adair, Knox, and Lewis Counties) totaling $1,938 for a router and Internet services at his residence from September 2011 through August 2013. These disbursements are not necessary Law Library expenses and were not related to courtroom renovations or technology enhancements as required by Section 488.429, RSMo. The Presiding Judge repaid all of these monies in December 2013 and April 2014. In addition, the Court en Banc did not approve these Law Library Fund disbursements as required by Local Court Rule 5.3.

Section 488.429, RSMo, restricts Law Library Fund expenditures to disbursements for maintaining the law library, courtroom renovation, technology enhancement, debt service on county bonds for such renovation or enhancement projects, and the county's or circuit's family services and justice fund. In addition, for expenses that are not considered necessary for Law Library functions, Local Court Rule 5.3 provides ". . . with the approval of the Court en Banc of each county, the funds may be used as otherwise authorized by statute."

Recommendations

The Court en Banc:

4.1 Ensure accounting duties are adequately segregated or independent and/or supervisory reviews are performed periodically. In addition, the Court en Banc should ensure documentation of bank reconciliations is maintained.

4.2 Ensure disbursements from the Law Library Fund are expended in compliance with state law and local court rule.

Auditee's Response

The Presiding Judge provided the following responses:

4.1 Monthly reconciliations have regularly been prepared using Microsoft money, which is an appropriate financial Auditing software. This procedure maintains an accurate daily ledger and

allows comparison with the monthly bank statements, which was routinely performed, but also provides more current reconciliation information and is a preferred financial and Auditing tool to the simple monthly bank statement reconciliation. Monthly bank statement reconciliations are also being performed.

The finding that Auditing duties have not been adequately segregated and an independent and/or supervisory review is not performed on the law library account is simply not accurate. The Circuit Clerk actually receipts for the law library funds collected and delivers a monthly check to the Presiding Judge's Secretary for deposit. Checks for necessary library expenses are written at the direction of, and signed by, the Presiding Judge, not by the Presiding Judge's Secretary. The Audit Report does not explain how, with a staff of one, Auditing duties could be further segregated, as suggested in the Report.

Also, contrary to the finding in the Audit Report, the law library fund has been periodically reviewed, or "audited", by Wendy Potter, the Juvenile Office employee responsible for bookkeeping and financial reports at the Juvenile Office.

Auditing practices relating to the law library fund are adequate and are in compliance with accepted Auditing practices, as noted above.

4.2 *My court docket includes virtually all felony cases, substantial civil cases, and juvenile cases in the three counties in the Second Circuit as well as other cases outside the Second Circuit as assigned by the Supreme Court. This involves hundreds of cases and requires that, periodically, files be taken home to work on them since there is often not enough time during regular working hours to complete all required work or it is sometimes more productive to get away from the usual office activity and distractions that impede the ability to focus on a case with particularly unique or complex issues.*

My law library for many years consisted primarily of compact discs (CDs) from Thomson-Reuters. Periodically, a sales representative from Thomson-Reuters would try to convince me to convert to Westlaw, which is an internet based library. I resisted, valuing the convenience and flexibility of having a library that could be used anywhere that I had my laptop, regardless of the availability of internet service. However, the cost of the CDs increased each year (candidly, he told me, to try to force subscribers to abandon them in favor of Westlaw). After the price got so high that I thought it unjustifiable to continue using them, I reluctantly switched to Westlaw. This was in February, 2011.

The absence of internet service at home renders the law library and other research resources unavailable. In addition to Westlaw, federal statutes and cases, including Supreme Court cases, and other legal resources are available via the internet. This created the need for home internet service in order to conduct legal research while at home. There is also a "Research" directory on my office computer, which is only accessible via the internet, and which forms a part of my legal research resources. In addition, when I do not have a court file at home, it may be necessary to access the file via "Case.net", which is also an internet based service.

Further, internet service is required to access the court and government based email service, LotusNotes, which is one of the primary means of communicating with juvenile officers, clerks, law enforcement officials, attorneys, probation officers, OSCA, and other court related personnel. This is my most common and efficient communication tool and I access and use it regularly while at home. For example, if a juvenile officer removes a child from the home, he or she is able to send a copy of the motion for removal and proposed order for my review via LotusNotes. I can then print and sign the order or affix my electronic signature and fax or email it back to the juvenile officer. It is not uncommon for defense attorneys to seek expedited bond releases for their incarcerated clients, and having access at home to my office computer and directory, which contains form templates for court orders, allows me to expeditiously and efficiently process those requests, and, if approved, prepare and fax the bond or other orders to the jail.

In short, while working at home, in order to conduct research, to have access to my office computer files, to have access to my research directory and to prepare orders and judgments or case memos, to obtain case information via case.net, and to communicate via email with court staff or court related personnel, internet service is essential, and is a reasonable business expense. For these reasons, since I did not have home internet service at this time, I believed it was reasonable to assess the cost of the internet service to the law library fund. That was done in July, 2011.

Under Local Court Rule 5.3, the Presiding Judge is the treasurer of the law library accounts and is authorized to pay necessary law library expenses without approval of the Court en Banc. In fact, payments for subscriptions, library materials, and other necessary law library expenses for all the judges in the Circuit are and have been routinely paid by the Presiding Judge without approval of the Court en Banc, as specifically authorized by Local Court Rule 5.3. This has always been the practice since I have been presiding judge. Consider that, when the local rule and the statute upon which it is based were adopted, libraries consisted largely of books on a

shelf. That is no longer the case. Virtually all library resources are now internet based and, while the need for internet service for library access was not contemplated at the time the statute and rule were adopted, such service is now essential to access our modern libraries. Under the foregoing circumstances, home internet service is certainly a "necessary law library expense", as contemplated by Local Rule 5.03.

However, since the internet was also available and was used for personal use, although at no additional cost, I concluded in August, 2013, that I would no longer charge this service to the law library accounts and, thereafter paid for it with my own funds. Upon the advice of counsel, I fully reimbursed those accounts in December, 2013, with the exception of the cost of the WiFi router of approximately $70.00, which was repaid in April, 2014 after it was brought to my attention that this expense had not yet been reimbursed. Those reimbursements were not made because of any belief that the expenditures were improper, but, rather, because it appeared that others intended to make them controversial and the repayment was intended to minimize that controversy.

Disbursements are in compliance with applicable local court rules, as noted above.

The Associate Circuit Judge provided the following response:

I agree with the auditor's recommendations where implementation is feasible under the circumstances. I further recommend that additional controls and procedures be put in place to eliminate the waste, insufficient accounting and reporting, and/or inappropriate expenditures by the treasurer of the law library fund.

The Lewis County Associate Circuit Judge provided the following response:

I agree with the Auditor's conclusions and recommendations. As to the specific expenditures made by Judge Steele for his home internet and the router, I had no knowledge of this until the Court en Banc meeting in March of 2014. I was never asked to approve it. I would not have approved it if it had been presented to me. I am pleased to see the Judge has repaid it. As to future expenditures, I agree that controls should be in place. Presently, only the Presiding Judge or his designee have access to the law library account. I believe that the only meaningful control that would insure the expenditures are only made for statutory purposes is to require checks be signed by at least two judges designated by the Court en Banc after the expenditures have been approved by the Court en Banc.

Second Judicial Circuit
Adair County
Organization and Statistical Information

The Second Judicial Circuit consists of Adair County as well as Knox and Lewis Counties.

The Second Judicial Circuit consists of one circuit judge and three associate circuit judges. The circuit judge hears cases in all three counties in the circuit. The associate circuit judges hear cases in their respective counties; however, the scope of our audit only includes Adair County.

Personnel

At December 31, 2013, the judges, Court Administrator, Circuit Clerk, and Juvenile Officer of the Second Judicial Circuit, Adair County, were as follows:

Title	Name
Circuit Judge	Russell E. Steele
Associate Circuit Judge[1]	Kristie J. Swaim
Court Services Administrator	Mathew Holt
Circuit Clerk	Linda S. Decker
Juvenile Officer	Jeff Hall

[1] Granted appointing authority over the Second Judicial Circuit, Adair County effective April 1, 2014. Appointing authority was previously held by Circuit Judge Steele.

Financial Information

Receipts of the Second Judicial Circuit, Adair County, were as follows:

	Year Ended December 31, 2013
Court deposits, fee, bonds, and other	$764,230
Drug court	25,056
Interest income	22
Total	$789,308

Caseload Information

From the Office of State Courts Administrator Missouri Judicial Reports, case filings of the Second Judicial Circuit, Adair County, were as follows:

	Year Ended June 30, 2013
Civil	891
Criminal	1,695
Juvenile	58
Probate	155
Total	2,799

The following comments were provided by the Circuit Clerk:

ADAIR COUNTY CIRCUIT CLERK'S RESPONSE TO AUDIT REPORT

1.1 Segregation of Duties and Supervisory Review.

The Adair County Circuit Clerk's staff is small in number and our primary duty to the Courts is processing to completion all cases handled by the Courts. It does not make sense to restrict the Deputy Clerks from being able to receipt and issue checks. Timely case processing would be severely affected and clerk absences would create problems with completing case filings and refunds.

Circuit Clerk verifies the cashiers sessions to complete the deposit process. Voids and fee adjustments are reviewed, but not documented. Circuit Clerk will document void and adjustment reviews.

If the Presiding Judge wants to give the Circuit Clerk written authority to direct OSCA on the proper security of his Secretary and the Drug Court Staff, she will gladly complete that task. The Circuit Clerk was aware and of this issue and made the Presiding Judge aware of his approval of the inappropriate JIS user access with his staff, but nothing has been completed to rectify the situation. The Deputy Circuit Clerk that was terminated – could be reinstated in the future-pending a ruling from the Federal Court. Her access remains for possible future use.

1.2 Receipting and Depositing

Circuit Clerk does not currently keep mail logs concerning incoming mail. Time for this additional duty is not available. All Deputy Circuit Clerks endorse checks and/or money orders when receipting in the JIS system.

As of January 1, 2014 the Circuit Clerk's office no longer issues manual receipts. All Circuit Courts per Supreme Court Order are not allowed to use manual receipts unless receiving a Special Court Order for their use. No special request has been requested or issued.

Circuit Clerk response concerning the Deputy Circuit Clerks having their cashier sessions open for 2 – 7 days is as follows. I recognize that the Auditor's Office recommends new cashier sessions be opened daily. However, all money during this current audit and all previous audits were deposited and accounted for in an appropriate manner.

August, 2013, the month checked by the Auditor's office, was a troubling and difficult month for this office. The Circuit Clerk and the Deputy Circuit Clerks had witnessed the Presiding Judge threaten a Deputy Clerk about closing a door and announcing that he controlled the environment in the Circuit Clerk's office. The Presiding Judge ordered the Deputy Clerk to move her work station to another area of the Courthouse, which the County Commissioners deemed hazardous and declared the space uninhabitable. This Deputy Circuit Clerk's

employment was terminated by the Presiding Judge and a Federal lawsuit is pending. In addition the Deputy Clerk's witnessed the Presiding Judge order the Circuit Clerk to vacate her office space in the Circuit Clerk's office. The office functioned daily under a haze of hostility and intimidation from the Presiding Judge. I find it amazing and I am grateful that due to the commitment and dedication of the Deputy Circuit Clerks, the Circuit Clerk's office continued to function AND make ANY deposits in August of 2013.

Credit card payments were a fairly new process for this office in 2012 and 2013. We now have a process in place and are current on receipting all credit card payments in the month received-as soon as we have verification from the Bank on those transactions.

1.3 The Circuit Clerk is now reviewing the non-monetary transactions. Only one Deputy Clerk has processed those Judicial non-monetary requests. There is always a written Judicial Order in the case file for non-monetary adjustments. The Circuit Clerk will in the future document and verify voids for further compliance to the State Auditor's Office.

1.4 Accrued Costs

The Circuit Clerk and Deputy Clerks review costs to comply with requests received from Probation and Parole Officers and Defendants. The Circuit Clerk does not need to review costs on Associate level cases as those are completed by Judge Swaim in review of her case load. The Circuit Clerk does not have the authority to order the Presiding Judge to enact or enforce payment plans or debt collection programs.

2.1 Bank Reconciliations

Monthly bank reconciliations are current with the exception of the Adair County Law Library which the Circuit Clerk has not been granted access. Previously stated issues of distrust, unrest and confusion generated by the Presiding Judge in late 2012 and 2013, contributed to unsettling times and disruption of prior accounting schedules. We are currently on track.

2.2 Suspense Accounts

The Circuit Clerk is currently reviewing and disbursing money on the appropriate accounts and working thru them as quickly as time allows.

2.3 Outstanding checks have been reviewed and new checks issued when requested. Unclaimed funds were distributed to the State of Missouri.

3 Circuit Court Budgets

The Circuit Clerk has annually prepared a budget for the Circuit Clerk's Interest account for the past 24 years and presented the same to the Adair County

Clerk. However, I will gladly conform to the request of the auditor's office and prepare future budgets with additional information.

The Circuit Clerk has never had any input or authority to work on or review the Adair County Law Library account or budget. Due to a bank statement being delivered to my office by mistake, I discovered that this account is titled as "Adair County Circuit Clerk"- Adair County Law Library – c/o Russell Steele. I contacted the Bank where the account was located to made inquiry and was denied any access or records as my name was not on the signature cards. I have discussed this issue with the Auditor's office as I believe it is unethical to have an account listed under another elected officials' title.

In addition the Circuit Clerk would note that the Law Library disbursements for home internet service by and for the benefit of the Presiding Judge should result in criminal charges being pursued by the Auditor's Office. The Presiding Judge knowingly having the use of public funds for his personal benefit should not be tolerated.

The Circuit Clerk has never had any input or authority to work on or review the Drug Court Budget.

The Circuit Clerk has been through many budgets and recommendations from OSCA and the State Auditor's office. While money needs to be receipted and disbursed thru this office and remains an important element of our daily work, it is not our most important duty. Case processing is our main priority and will remain our first priority as long as we are responsible for processing the Court's information. My ability to segregate accounting duties is hampered by the size of our staff and Judicial demand on our time.

I continue to recognize my financial duty to the public and do not take that lightly. There has been no misappropriated or missing money in the Adair County Circuit Clerk's office identified in prior audits, the 2012 OSCA or 2014 State Audit. I will continue to be respectful of my duties and obligations as I have been for the past 24 years.

Respectfully Submitted,

Linda Decker

Linda Decker
Adair County Circuit Clerk

The following comments were provided by the Presiding Judge:

RESPONSE OF PRESIDING JUDGE RUSSELL E. STEELE TO
2014 AUDIT REPORT – SECOND JUDICIAL CIRCUIT/ADAIR COUNTY

A. Introduction

The Circuit Court strives to use the best available practices and procedures to fulfill its responsibilities to the public and to ensure the safe, secure, effective, and efficient use of the public's resources. While it is impossible to achieve perfection, that is always the goal. The Court and its staff take those responsibilities seriously and welcome merit-based audit recommendations. That is the case with this audit. However, as more specifically set forth below, while this Audit Report asserts that this audit was conducted in accordance with the standards applicable to performance audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, a careful review and analysis of those *Standards* and this Audit Report lead to the conclusion that many aspects of this audit were not, in fact, conducted in accordance with the *Government Auditing Standards.* The analysis that leads to this conclusion is set forth below.

This audit is a performance audit. Under *Government Auditing Standards* Section 2.10, **performance** audits are defined as audits that provide findings or conclusions based on an evaluation of sufficient, appropriate evidence against criteria. Compliance audit objectives relate to an assessment of compliance with criteria established by provisions of laws, regulations, contracts, or grant agreements, or other requirements that could affect the acquisition, protection, use, and disposition of the entity's resources and the quantity, quality, timeliness, and cost of services the entity produces and delivers. As provided in Section 6.03 of the *Government Auditing Standards,* performance audits that comply with generally accepted government auditing standards, must obtain reasonable assurance that evidence is sufficient and appropriate to support the auditors' findings and conclusions in relation to the audit objectives. Under Section 6.05, the findings, conclusions, recommendations, or assurance should not be improper or incomplete as a result of evidence that is not sufficient and/or appropriate, or intentional omissions or misleading information. Section 6.15 requires that there should be an understanding of the law applicable to the objectives, which often provides the criteria for evaluating performance. Sections 6.56, 6.57, 6.60, 6.67, and 6.71 require that findings and conclusions have a reasonable basis supported by sufficient and appropriate evidence. Evidence is not sufficient or not appropriate when using the

evidence carries an unacceptably high risk that it could lead to an incorrect or improper conclusion, or the evidence does not provide an adequate basis for addressing the audit objectives or supporting the findings and conclusions. Such evidence should not be used as support for findings and conclusions. Section A7.02 provides additional guidance and indicates that the audit report be accurate and complete. To be accurate, it must be supported by sufficient, appropriate evidence with key facts, figures, and findings being traceable to the audit evidence. The report should be complete, which means that the report contains sufficient, appropriate evidence needed to satisfy the audit objectives and promote an understanding of the matters reported. It also means that the report states evidence and findings without omission of significant relevant information related to the audit objectives.

As more specifically discussed below, the Audit Report does not comply with the *Government Auditing Standards* (1) by including findings or conclusions which are not based on sufficient, appropriate evidence against criteria; (2) by including findings and conclusions that are contrary to applicable law; and (3) by failing to provide a report that is accurate or complete. This failure to comply with the *Government Auditing Standards* renders many of the findings and recommendations in the Audit Report invalid.

Responses will be provided to specific Sections of the Audit Report below.

B. Responses to Specific Sections

1. Auditing Controls and Procedures.

1.1. Segregation of duties and supervisory review. It appears that the findings and recommendations in this subsection relate to practices, policies and procedures of the Circuit Clerk's office. That office is under the supervision of the Adair County Associate Circuit Judge, per the Administrative Order adopted by the Court en banc on April 1, 2014.

1.2. Receipting and depositing. It appears that the findings and recommendations in this subsection relate to practices, policies and procedures of the Circuit Clerk's office. That office is under the supervision of the Adair County Associate Circuit Judge, per the Administrative Order adopted by the Court en banc on April 1, 2014. The Audit Report's recommendations that the Court en banc take action to address the findings in these subsections ignores the supervisory responsibility assigned by the Court en banc to the Adair County Associate Circuit Judge. The Court en banc has no direct role in addressing or implementing the recommendations from these

subsections since that responsibility lies with the Adair County Associate Circuit Judge. Such recommendation ignores the applicable criteria and does not comply with applicable *Government Auditing Standards*

1.3 Non-monetary transactions, adjustments, and voids. It appears that the findings and recommendations in this subsection relate to practices, policies and procedures of the circuit clerk's office. That office is under the supervision of the Adair County Associate Circuit Judge, per the Administrative Order adopted by the Court en banc on April 1, 2014. The Audit Report's recommendations that the Court en banc take action to address the findings in these subsections ignores the supervisory responsibility assigned by the Court en banc to the Adair County Associate Circuit Judge. The Court en banc has no direct role in addressing or implementing the recommendations from these subsections since that responsibility lies with the Adair County Associate Circuit Judge. Such recommendation ignores the applicable criteria and does not comply with applicable *Government Auditing Standards.*

1.4. Accrued costs.

a. The findings in subsection 1.4 that the Court does not follow its formal administrative plan for collection of court debt, including establishing payment plans, are not accurate and omit evidence of the actual policies and practices utilized by the Court.

A payment plan is rarely ordered immediately upon case disposition since most offenders are either unemployed or underemployed. For those offenders on supervised probation under the supervision of the Board of Probation and Parole, the supervising probation officer has been directed to develop payment plans with the offenders, taking into consideration their current financial circumstances. While those payment plans are not typically entered into JIS in order to avoid an automatic referral to the state debt collection system, which adds an additional 20% to the outstanding obligations, those offenders who fall behind in payments after those payment plans are developed are summoned to appear in court and explain their circumstances to the court. If the explanation is unsatisfactory, they are placed on a regular payment review schedule, usually every 90 days, when they must appear in court to review their compliance with the payment plan. If they continue to demonstrate what would be characterized as willful noncompliance, the prosecuting attorney is directed to file a motion to revoke their probation. For offenders who are on court supervised probation, their cases are scheduled for compliance review every 90 days. If there is no payment plan at disposition, a payment plan is typically established at the

first review hearing. These cases are otherwise handled similarly to cases supervised by the Board of Probation and Parole. It is the role of the Court, not a distant debt collector, to make a diligent effort to collect court debt and reasonable efforts to do that are utilized.

b. Further, court debt is routinely written off as uncollectible, excluding restitution and crime victims' compensation fund judgments, for offenders who are sentenced to prison and whose sentences are executed. For offenders who are no longer on probation, they are either summoned to court to show cause why they should not be held in contempt, or, if that is not feasible, their debts are referred to debt collection. If still uncollected after good faith efforts to collect the debt, those are written off.

c. The foregoing information was provided but was omitted from the Audit Report, rendering the Report incomplete, contrary to the requirements of applicable *Government Auditing Standards*. Such omission also means that these findings are not supported by sufficient and appropriate evidence, contrary to the requirements of applicable *Government Auditing Standards*.

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Recommendations.

The recommendation that the Court en banc take action to address the findings in subsections 1.1, 1.2, and 1.3 ignores the supervisory responsibility assigned by the Court en banc to the Adair County Associate Circuit Judge. The Court en banc has no direct role in addressing or implementing the recommendations from these subsections since that responsibility lies with the Adair County Associate Circuit Judge. The Audit Report's failure to apply the appropriate applicable law as the criteria for establishing these recommendations is a failure to comply with applicable *Government Auditing Standards*.

As discussed above, the Court has adopted an effective method of debt collection and review of accounts receivable. The recommendation in subsection 1.4 is not based on a finding that is supported by sufficient appropriate evidence and, thus, does not comply with applicable *Government Auditing Standards*.

2. Month-End Reconciliations.

It appears that the findings and recommendations in this section and its subsections relate to practices, policies and procedures of the Circuit Clerk's office. That office is under the supervision of the Adair County Associate Circuit Judge, per the Administrative Order adopted by the Court en banc on April 1, 2014.

Recommendations.

The recommendations that the Court en banc take action to address the findings in these subsections ignores the supervisory responsibility assigned by the Court en banc to the Adair County Associate Circuit Judge. The Court en banc has no direct role in addressing or implementing the recommendations from these subsections since that responsibility lies with the Adair County Associate Circuit Judge. Such recommendation ignores the applicable criteria and does not comply with applicable *Government Auditing Standards.*

3. Circuit Court Budgets

a. The Presiding Judge does not have control of the Circuit Clerk's Interest Fund or Time Payment Fee Fund and has no information about those funds, so would have no way of determining disbursements. Those funds are under the exclusive control of Associate Circuit Judge Kristie Swaim and Circuit Clerk Linda Decker.

b. Contrary to the finding in the Audit Report, budgets for the Law Library Fund and the Drug Court Fund were provided to the County for 2013 and 2014. Notwithstanding that fact, the Audit Report does not provide the legal basis or other criteria for the assumption that budgets for those funds must be submitted to the County since those funds involve no County general revenue, relate to funds generated solely by the operation of the Court, and do not involve County general revenue, so there is no appropriation of those funds by the County. The misstatement of the relevant evidence and the absence of any legal basis as the criteria for this finding constitutes a failure to comply with applicable *Government Auditing Standards.*

Recommendations. The Presiding Judge has submitted annual budgets to the County for receipts and disbursements for the Law Library Fund and the Drug Court Fund, although it is unclear why that is legally required, as noted above. Previous audits had not recommended that actual receipts and disbursements for the two previous years be included in the annual budget.

4. Law Library Fund Controls and Procedures.

4.1 Segregation of duties and supervisory review.

a. Monthly reconciliations have regularly been prepared using Microsoft money, which is an appropriate financial Auditing software. This procedure maintains an accurate daily ledger and allows comparison with the monthly bank statements, which was routinely performed, but also provides more current reconciliation information and is a preferred financial and Auditing

tool to the simple monthly bank statement reconciliation. Monthly bank statement reconciliations are also being performed. The omission of this evidence from the Audit Report constitutes a failure to comply with applicable *Government Auditing Standards.*

b. The finding that Auditing duties have not been adequately segregated and an independent and/or supervisory review is not performed on the law library account is simply not accurate. The Circuit Clerk actually receipts for the law library funds collected and delivers a monthly check to the Presiding Judge's Secretary for deposit. Checks for necessary library expenses are written at the direction of, and signed by, the Presiding Judge, not by the Presiding Judge's Secretary. The Audit Report does not explain how, with a staff of one, Auditing duties could be further segregated, as suggested in the Report. This failure of the Audit Report to apply suitable criteria to support the finding constitutes a failure to comply with applicable *Government Auditing Standards.*

c. Also, contrary to the finding in the Audit Report, the law library fund has been periodically reviewed, or "audited", by Wendy Potter, the Juvenile Office employee responsible for bookkeeping and financial reports at the Juvenile Office. This evidence was omitted from the Audit Report which omission constitutes a failure to comply with applicable *Government Auditing Standards.*

4.2 Disbursements.

The finding that the cost of home internet is not a necessary law library expense is not supported by applicable criteria or sufficient appropriate evidence, as required by applicable *Governmment Auditing Standards.*

My court docket includes virtually all felony cases, substantial civil cases, and juvenile cases in the three counties in the Second Circuit as well as other cases outside the Second Circuit as assigned by the Supreme Court. This involves hundreds of cases and requires that, periodically, files be taken home to work on them since there is often not enough time during regular working hours to complete all required work or it is sometimes more productive to get away from the usual office activity and distractions that impede the ability to focus on a case with particularly unique or complex issues.

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and flexibility of having a library that could be used anywhere that I had my laptop, regardless of the availability of internet service. However, the cost of the CDs increased each year (candidly, he told me, to try to force subscribers to abandon them in favor of Westlaw). After the price got so high that I thought it unjustifiable to continue using them, I reluctantly switched to Westlaw. This was in February, 2011.

The absence of internet service at home renders the law library and other research resources unavailable. In addition to Westlaw, federal statutes and cases, including Supreme Court cases, and other legal resources are available via the internet. This created the need for home internet service in order to conduct legal research while at home. There is also a "Research" directory on my office computer, which is only accessible via the internet, and which forms a part of my legal research resources. In addition, when I do not have a court file at home, it may be necessary to access the file via "Case.net", which is also an internet based service.

Further, internet service is required to access the court and government based email service, LotusNotes, which is one of the primary means of communicating with juvenile officers, clerks, law enforcement officials, attorneys, probation officers, OSCA, and other court related personnel. This is my most common and efficient communication tool and I access and use it regularly while at home. For example, if a juvenile officer removes a child from the home, he or she is able to send a copy of the motion for removal and proposed order for my review via LotusNotes. I can then print and sign the order or affix my electronic signature and fax or email it back to the juvenile officer. It is not uncommon for defense attorneys to seek expedited bond releases for their incarcerated clients, and having access at home to my office computer and directory, which contains form templates for court orders, allows me to expeditiously and efficiently process those requests, and, if approved, prepare and fax the bond or other orders to the jail.

In short, while working at home, in order to conduct research, to have access to my office computer files, to have access to my research directory and to prepare orders and judgments or case memos, to obtain case information via case.net, and to communicate via email with court staff or court related personnel, internet service is essential, and is a reasonable business expense. For these reasons, since I did not have home internet service at this time, I believed it was reasonable to assess the cost of the internet service to the law library fund. That was done in July, 2011.

Under Local Court Rule 5.3, the Presiding Judge is the treasurer of the law library accounts and is authorized to pay necessary law library expenses without approval of the court en banc. In fact, payments for subscriptions, library materials, and other necessary law library expenses for all the judges in the Circuit are and have been routinely paid by the Presiding Judge without approval of the Court en banc, as specifically authorized by Local Court Rule 5.3. This has always been the practice since I have been presiding judge. Consider that, when the local rule and the statute upon which it is based were adopted, libraries consisted largely of books on a shelf. That is no longer the case. Virtually all library resources are now internet based and, while the need for internet service for library access was not contemplated at the time the statute and rule were adopted, such service is now essential to access our modern libraries. Under the foregoing circumstances, home internet service is certainly a "necessary law library expense", as contemplated by Local Rule 5.03.

However, since the internet was also available and was used for personal use, although at no additional cost, I concluded in August, 2013, that I would no longer charge this service to the law library accounts and, thereafter paid for it with my own funds. Upon the advice of counsel, I fully reimbursed those accounts in December, 2013, with the exception of the cost of the WiFi router of approximately $70.00, which was repaid in April, 2014 after it was brought to my attention that this expense had not yet been reimbursed. Those reimbursements were not made because of any belief that the expenditures were improper, but, rather, because it appeared that others intended to make them controversial and the repayment was intended to minimize that controversy.

This evidence was omitted from the Audit Report. The Audit Report contained absolutely no evidence or criteria to support this finding. This constitutes a failure to comply with applicable *Government Auditing Standards.*

There are two very curious things about this particular finding in the Audit Report. First, the original draft did not contain this finding, and the audit staff repeatedly advised that no changes would be made to the findings. Notwithstanding that assurance, on the eve of the release of the final Audit Report, this additional finding was added. When asked about this finding, the audit staff candidly admitted that they could not provide any objective standard or criteria or evidence to support this finding; rather, it was simply our opinion. This confirms that

this finding was made without appropriate criteria or sufficient appropriate evidence to support it and constitutes a failure to comply with applicable *Government Auditing Standards*.

Recommendations.

4.1. Auditing practices relating to the law library fund are adequate and are in compliance with accepted Auditing practices, as noted above.

4.2. Disbursements are in compliance with applicable local court rules, as noted above.

The following comments were provided by the Adair County Associate Circuit Judge:

KRISTIE J. SWAIM
Associate Circuit Judge
Adair County Courthouse
106 West Washington Street
Kirksville, Missouri 63501

Telephone 660-665-3877 *Telefax 660-785-3222*

March 13, 2015

Mr. Chris Vetter, Audit Manager
Via Email Chris.Vetter@auditor.mo.gov

RE: Audit of Second Judicial Circuit, Adair County, Missouri

Dear Mr. Vetter:

This letters is in reference to the updated circuit court audit report that you emailed to me on February 27, 2015. It is my understanding that this is your audit document for the Second Judicial Circuit, Adair County, Missouri, for the year ended December 31, 2013. As I have previously indicated to you, I am not now, and never have been, the presiding judge or the circuit clerk. In addition, I was not the appointing authority for the time period covered by the audit. After court consolidation, I did not assume the position of appointing authority until April 1, 2014.

Despite the fact that I have advised you I am not the judicial official responsible for making official judicial responses to any of the subjects covered in the audit document, you have repeatedly requested me to respond to it. Most recently in your email of February 27, 2015, you have again requested that I respond to Parts 1, 2 and 4. I indicated to you that I would review the updated circuit court audit report that you emailed to me. I have now done so and I will oblige your request to make responses to Parts 1, 2 and 4, subject to the limitations set forth herein.

I have no knowledge of the methodology employed in conducting the audit. At no time during the actual audit of Adair County did any representative of the Office of the State Auditor ask to meet with or interview me. Only as the audit staff was leaving Adair County did they ask to speak with me. On or about April 10, 2014, as she was leaving Adair County, Keisha Williams first made contact with me. That contact was limited to her requesting me to sign off on the audit. I declined to do so because I had not been included in the process. I was then put on the telephone with Steven Re', as he had already left Adair County, who also requested me to sign off on the audit. I also advised him I was declining to do so. That was the extent of the contact made with me by the audit staff until the draft was presented.

I have no knowledge of what written policies and procedures, financial records, and other pertinent documents were reviewed. I am uncertain which personnel of the court were interviewed. I have no knowledge of which external parties were interviewed. I have no knowledge of which selected transactions were tested. Because I was not included in the process, I have no knowledge of the methodology employed in conducting the audit. Therefore, my responses to Parts 1, 2 and 4 are subject to these limitations.

Part 1 of the Management Advisory Report – State Auditor's Findings covers accounting controls and procedures. I was not the presiding judge, circuit clerk, or appointing authority during the time period covered by the audit. I am unaware of what accounting controls and procedures were put in place by the circuit clerk. I am unaware of what changes, if any, the presiding judge made to the accounting controls and procedures employed by the circuit clerk after he purported to make himself appointing authority.

As the associate circuit judge, I am aware that the associate division does place criminal defendants on payments plans. In addition, all cases in the associate division that have outstanding amounts due are consistently scheduled for monthly case reviews so that accounts receivable are continuously monitored until all amounts are paid in full. As proof, the associate division generally handles collections for misdemeanor, conservation, traffic, and municipal certification cases. Pursuant to the accounts receivable report for Adair County prepared by OSCA, only $49,266 (6%) remains outstanding out of $777,699 assessed for misdemeanor cases; $0 remains outstanding out of $283 assessed for conservation cases; only $991 (less than 1%) remains outstanding out of $457,674 assessed for traffic cases; and $0 remains outstanding out of $5,285 assessed for municipal certification cases. The associate circuit judge uses payment plans and enforces them with show cause hearings in the associate division.

I am unaware of whether the circuit division places defendants on payment plans. I do know that the circuit division generally handles collections for felony cases. Pursuant to the accounts receivable report for Adair County prepared by OSCA, $1,530,120 (nearly 56%) remains outstanding out of $2,846,056 assessed for felony cases.

Subject to this response, I agree with the auditor's recommendations where implementation is feasible under the circumstances.

Part 2 of the Management Advisory Report – State Auditor's Findings covers month-end reconciliations. I was not the presiding judge, circuit clerk, or appointing authority during the time period covered by the audit. I am unaware of what month-end reconciliation procedures were put in place by the circuit clerk. I am unaware of what changes, if any, the presiding judge made to the month-end reconciliation procedures employed by the circuit clerk after he purported to make himself appointing authority.

Subject to this response, I agree with the auditor's recommendations where implementation is feasible under the circumstances.

Part 4 of the Management Advisory Report – State Auditor's Findings covers law library fund controls and procedures. The law library funds for the Second Judicial Circuit increased in 2009 after the presiding judge requested a majority of the court en banc members to approve a $15 surcharge to certain filing fees. The presiding judge then announced that he would be the treasurer of the law library accounts for each county.

At least in Adair County, this surcharge generated more funds than had typically been approved for the law library by the Adair County Commission in the regular budget process. Because of this new surcharge, the law library line item in the county budget was eliminated. Law library expenses were instead to be paid out of the court's law library account commencing in 2009.

As a member of the court en banc, I questioned how much money was being held in the law library account and how the funds were being spent. At a public budget hearing held in Adair County on January 8, 2013, I stated that I would like a report from the presiding judge of the law library. The presiding judge said that he would provide me with the information. No such information was ever provided to me in 2013.

I continued to question how much money was being held in the law library account, how the funds were being spent, and why that information was not being provided as requested. At a public budget hearing held in Knox County on December 30, 2013, I again stated that I would like an accounting of the law library fund. The presiding judge's attorney said that he would provide me with the information. In January of 2014, I received an unofficial "summary of transactions" for Adair County.

The associate circuit judge for Lewis County also questioned how much money was being held in the accounts and how the funds were being spent. On April 4, 2014, he requested copies of the bank statements and cancelled checks for the last 5 years. On May 2, 2014, we received copies of bank statements, deposit slips, and cancelled checks for all three counties from the presiding judge's attorney.

These two document drops comprise all of the information I have received regarding the law library accounts. In reviewing the information finally provided by the presiding judge's attorney, I have made several observations pertaining to the Adair County law library account.

At all relevant times herein, LexisNexis online legal research services have been provided to state judges in Missouri at no charge to individual judges or counties. LexisNexis is comparable to Westlaw and/or Thompson/West legal research services. Therefore, with free LexisNexis services, there would be no need to expend any sums for Westlaw online legal research services or Thompson/West CD-rom subscriptions. According to the records provided by the presiding judge's attorney, checks were written to Thompson/West in the amount of $7,656.55 for CD-rom subscriptions in 2009. In 2010, checks were written to Thompson/West in the amount of $11,648.54 for CD-rom subscriptions. In 2011, checks were written to Thompson/West in the amount of $1,389.00 for CD-rom subscriptions. The whereabouts of an Adair County law library that houses over $20,000.00 of CD-roms is unknown to me.

In 2011, a check was written to Magers Construction in the amount of $1,878.99. It is my understanding that this was for a custom-made closet door built at the request of the presiding judge. Checks were also written to Mark Twain Communication in the amount of $337.16 in 2011. It is my understanding that these checks were for the installation of internet equipment and internet services in the presiding judge's personal residence.

In 2012, a check was written to County Binders in the amount of $753.40 for taxes. I have no knowledge of what taxes were paid out of the law library fund. Checks were also written to Mark Twain Communication in the amount of $438.08. It is my understanding that these checks were for internet services in the presiding judge's personal residence.

In 2013, checks were written to Mark Twain Communication in the amount of $358.72. It is my understanding that these checks were for internet services in the presiding judge's personal residence. A check was also written to Hewlett Packard Company in the amount of $501.54 in 2013. I have no knowledge of what Hewlett Packard equipment was purchased. The whereabouts of an Adair County law library that houses this Hewlett Packard equipment is unknown to me.

On December 11, 2013, a deposit slip shows a deposit made in the presiding judge's name in the amount of $1,233.96. This sum appears to match the total amount paid out of the law library account to Mark Twain Communication for the internet installation and services in his personal residence dating back to 2011.

In all years noted above, numerous other checks were written for "miscellaneous." There is no way to discern the purpose of all of the expenditures from the documents provided. Having made these observations, I can state that none of the expenditures from the Adair County law library account were ever presented to me for my approval. I can further state that none of the expenditures were ever presented to the court en banc for its approval. In fact, court en banc meetings have been a rare occurrence. No court en meetings were convened by the presiding judge in 2012 or 2013. Only one court en banc meeting was convened by the presiding judge in 2014.

Subject to this response, I agree with the auditor's recommendations where implementation is feasible under the circumstances. I further recommend that additional controls and procedures be put in place to eliminate the waste, insufficient accounting and reporting, and/or inappropriate expenditures by the treasurer of the law library fund.

If I can be of any further assistance, please do not hesitate to contact me. I appreciate your consideration.

Very truly yours,

Kristie J. Swaim

The following comments were provided by the Lewis County Associate Circuit Judge:

CIRCUIT COURT OF LEWIS COUNTY

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Associate Circuit Judge

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FACSIMILE TRANSMITTAL

DATE: November 25, 2014

TO: Chris Better, Person in Charge,
Audit of Second Judicial Circuit, Adair County
573-751-7984

FROM: Fred L. Westhoff, Lewis County Associate Circuit Judge

I agree with the Auditor's conclusions and recommendations. As to the specific expenditures made by Judge Steele for his home internet and the router, I had no knowledge of this until the Court en Banc meeting in March of 2014. I was never asked to approve it. I would not have approved it if it had been presented to me. I am pleased to see that the Judge has repaid it. As to future expenditures, I agree that controls should be in place. Presently, only the Presiding Judge or his designee have access to the law library account. I believe that the only meaningful control that would insure the expenditures are only made for statutory purposes is to require checks be signed by at least two judges designated by the Court en Banc after the expenditures have been approved by the Court en Banc.