

**PICKENS COUNTY CIRCUIT  
AND FAMILY COURT SYSTEM**

**PICKENS, SOUTH CAROLINA**

**STATE AUDITOR'S REPORT**

**JUNE 30, 2010**

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# State of South Carolina



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### INDEPENDENT ACCOUNTANT'S REPORT ON APPLYING AGREED-UPON PROCEDURES

December 17, 2010

The Honorable Nikki R. Haley, Governor  
State of South Carolina  
Columbia, South Carolina

The Honorable Harold P. Welborn, Clerk of Court  
Pickens County Circuit and Family Court System  
Pickens, South Carolina

The Honorable Dale Looper, Treasurer  
Pickens County  
Pickens, South Carolina

We have performed the procedures described below, which were agreed to by the County of Pickens and the Pickens County Circuit Court and Family Court, solely to assist you in evaluating the performance of the Pickens County Circuit and Family Court System for the fiscal year ended June 30, 2010, in the areas addressed. The County of Pickens and the Pickens County Circuit Court and Family Court are responsible for its financial records, internal controls and compliance with State laws and regulations. This agreed-upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of the specified parties in this report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

The procedures and the associated findings are as follows:

#### 1. **Clerk of Court**

- We gained an understanding of the policies and procedures established by the Clerk of Court to ensure proper accounting for all fees, fines, assessments, surcharges, forfeitures, escheatments, or other monetary penalties.
- We obtained the General Sessions' beginning and ending indictment numbers for all cases for the period under review from the Clerk of Court. We randomly selected twenty-five cases and recalculated the fine, fee, assessment and surcharge calculation to ensure that the fine, fee, assessment or surcharge was properly allocated in accordance with applicable State law. We also determined that the fine, fee, assessment and/or surcharge adhered to State law and to the South Carolina Court Administration fee memoranda.

The Honorable Nikki R. Haley, Governor  
and  
The Honorable Harold P. Welborn, Clerk of Court,  
The Honorable Dale Looper, Treasurer  
Pickens County  
December 17, 2010

- We obtained the population of case numbers for all new cases filed in the Court of Common Pleas during the period under review from the Clerk of Court. We randomly selected twenty-five case numbers to determine that filing and motion fees adhered to State law and the Clerk of Court Manual.
- We obtained the population of case numbers for all new cases filed in Family Court during the period under review from the Clerk of Court. We randomly selected twenty-five cases to determine that filing fees, motion fees, support collection fees, and fines adhered to State law and the Clerk of Court Manual.
- We obtained the population of marriage license numbers for all new marriage licenses issued by the Probate Court during the period under review from the Probate Judge. We randomly selected twenty-five licenses to determine that the marriage license fee adhered to State law.
- We tested recorded court receipt transactions to determine that the receipts were remitted in a timely manner to the County Treasurer in accordance with State law.
- We agreed amounts reported on all monthly court remittance reports to the Court's cash receipts ledger.

Our findings as a result of these procedures are presented in Adherence to Fine Guidelines, Assessment and Collection of Fees, Installment Fee, Accurate Reporting, and Continuing Jurisdiction Over Court-Ordered Payments in the Accountant's Comments section of this report.

## **2. County Treasurer**

- We gained an understanding of the policies and procedures established by the County to ensure proper accounting for court fines, fees, assessments, surcharges, forfeitures, escheatments, or other monetary penalties.
- We obtained copies of all State Treasurer's Revenue Remittance Forms submitted by the County which reported court generated monies for the fiscal year ended June 30, 2010. We agreed the line item amounts reported on the State Treasurer's Revenue Remittance Forms to the monthly court remittance forms and to the State Treasurer's receipts. We also agreed the total revenue due to the State Treasurer to the general ledger.
- We determined if the State Treasurer's Revenue Remittance Forms were submitted in a timely manner to the State Treasurer in accordance with State law.
- We verified that the amounts reported by the County on its supplemental schedule of fines and assessments for the fiscal year ended June 30, 2009 agreed to the State Treasurer's Revenue Remittance Forms and to the County's general ledger.

We found no exceptions as a result of the procedures.

The Honorable Nikki R. Haley, Governor  
and  
The Honorable Harold P. Welborn, Clerk of Court,  
The Honorable Dale Looper, Treasurer  
Pickens County  
December 17, 2010

### 3. **Victim Assistance**

- We gained an understanding of the policies and procedures established by the County to ensure proper accounting for victim assistance funds.
- We made inquiries and performed substantive procedures to determine that any funds retained by the County for victim assistance were accounted for in a separate account.
- We tested judgmentally selected expenditures to ensure that the County expended victim assistance funds in accordance with State law and South Carolina Court Administration Fee Memoranda, Attachment L.
- We determined if the County reported victim assistance financial activity on the supplemental schedule of fines and assessments in accordance with State law.
- We inspected the County's general ledger to determine if the Victim Assistance Fund balance was retained as of July 1 from the previous fiscal year in accordance with State law.

We found no exceptions as a result of the procedures.

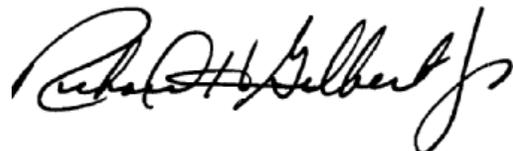
### 4. **Calculation of Over/(Under) Reported Amounts**

- We prepared a schedule of fines, fees, assessments and surcharges for the County for the 36 months ended June 30, 2010 using the Court's cash receipts records and monthly remittance reports. We compared amounts from this schedule to amounts reported on the State Treasurer's Revenue Remittance Forms and calculated the amount over/(under) reported by the County by category.

The results of our procedures disclosed that the County had underreported amounts due to the State. See Attachment 1 in the Accountant's Comments section of this report for further detail.

We were not engaged to and did not conduct an audit, the objective of which would be the expression of an opinion on compliance with the collection and distribution of court generated revenue at any level of court for the twelve months ended June 30, 2010, and, furthermore, we were not engaged to express an opinion on the effectiveness of internal controls over compliance with the laws, rules and regulations described in paragraph one and the procedures of this report. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of the Governor, Chairman of the House Ways and Means Committee, Chairman of the Senate Finance Committee, Chairman of the House Judiciary Committee, Chairman of the Senate Judiciary Committee, members of the Pickens County Council, Pickens County Clerk of Court, Pickens County Treasurer, State Treasurer, State Office of Victim Assistance, and the Chief Justice and is not intended to be and should not be used by anyone other than these specified parties.



Richard H. Gilbert, Jr., CPA  
Deputy State Auditor

**ACCOUNTANT'S COMMENTS**

**SECTION A – VIOLATIONS OF STATE LAWS, RULES OR REGULATIONS**

Management of the entity is responsible for establishing and maintaining internal controls to ensure compliance with State Laws, Rules or Regulations governing court collections and remittances. The procedures agreed to by the entity require that we plan and perform the engagement to determine whether any violations of State Laws, Rules or Regulations occurred.

The conditions described in this section have been identified as violations of State Laws, Rules or Regulations.

## **ADHERENCE TO FINE GUIDELINES**

During our test of General Sessions Court collections and remittances, we noted one instance in which the judge did not fine a defendant who pled guilty to driving under the influence, blood alcohol content less than .10, second offense, in accordance with State law.

Section 56-5-2930(A) of the 1976 South Carolina Code of Laws, as amended, states, "A person who violates the provisions of this section is guilty of the offense of driving under the influence and, upon conviction, entry of a plea of guilty or of nolo contendere, or forfeiture of bail must be punished as follows: (2) For a second offense, by a fine of not less than two thousand one hundred dollars nor more than five thousand one hundred dollars, and imprisonment for not less than five days nor more than one year. However, the fine imposed by this item must not be suspended in an amount less than one thousand one hundred dollars."

The Deputy Clerk of Circuit Court stated the correct fine guidelines were written on the sentence sheet, but it was the judge's decision not to order the fine.

We recommend the General Sessions Court implement procedures to ensure defendants are sentenced in accordance with State law.

## **ASSESSMENT AND COLLECTION OF FEES**

### **Motion Fee**

During our test of the Court of Common Pleas collections and remittances, we noted one instance where the Court did not collect the \$25 motion fee for a drug forfeiture case commenced with a consent order.

Section 8-21-320 of the 1976 South Carolina Code of Laws, as amended, states, "There is assessed for every motion made in the court of common pleas and family court...a fee of twenty-five dollars."

The Deputy Clerk of Circuit Court stated she was not aware of this requirement.

### **Filing Fee**

During our test of Family Court collections and remittances, we noted one instance where the Court did not collect the \$150 filing fee for a medical insurance case filed by the Department of Social Services (DSS).

Section 8-21-310(11)(a) of the 1976 South Carolina Code of Laws, as amended, states, “for filing first complaint or petition...in a civil action or proceeding, in a court of record, one hundred dollars” is to be collected. Section 14-1-204(B)(1) further states, “There is added to the fee imposed pursuant to Section 8-21-310(11)(a) an additional fee equal to fifty dollars.”

The Assistant Clerk of Court stated she was not aware of this requirement.

As of a result of this finding noted during our fieldwork, the Court requested reimbursement from DSS on October 14, 2010.

### **Public Defender Application Fee**

During our test of General Sessions Court collections and remittances, we noted eight instances where the Court did not collect the \$40 public defender application fee from defendants that applied for a public defender.

Section 17-3-30(B) of the 1976 South Carolina Code of Laws, as amended, states “A forty dollar application fee for public defender services must be collected from every person who executes an affidavit that he is financially unable to employ counsel. The person may apply to the clerk of court or other appropriate official for a waiver or reduction in the application fee. If the clerk or other appropriate official determines that the person is unable to pay the application fee, the fee may be waived or reduced, provided that if the fee is waived or reduced, the clerk or appropriate official shall report the amount waived or reduced to the trial

judge upon sentencing and the trial judge shall order the remainder of the fee paid during probation if the person is granted probation.” Section 17-3-45(B) of the 1976 South Carolina Code of Laws, as amended, further states that the application fee must be paid “by a time payment method if probation is not granted or appropriate.”

The Deputy Clerk of Circuit Court stated the fee was not collected for these cases because it was waived during bond hearing and the waiver was not reported to the trial judge during sentencing.

### **Breathalyzer Fee**

During our test of General Sessions Court collections and remittances, we noted one instance where the Court collected the \$25 breathalyzer fee from an individual who refused a breath test at the time of arrest. The refusal was documented on the uniform traffic ticket issued by the trial officer.

According to Section 56-5-2950(B)(1) of the 1976 South Carolina Code of Laws, as amended, a person “does not have to take the test or give the samples, but that his privilege to drive must be suspended or denied for at least six months if he refuses to submit to the test and that his refusal may be used against him in court.” In addition, Section 56-5-2950(E) of the 1976 South Carolina Code of Laws, as amended, states, “The costs of the tests administered at the direction of the law enforcement officer must be paid from the general fund of the state. However, if the person is subsequently convicted of violating Section 56-5-2930, 56-5-2933, or 56-5-2945, then, upon conviction, the person must pay twenty-five dollars for the costs of the tests.” Further, Section I.A.10 of the South Carolina Court Administration Memorandum dated June 26, 2009, states the twenty-five dollar fee is charged to a person “who was administered a breathalyzer examination at the time of arrest.”

The Deputy Clerk of Circuit Court stated she was not aware the breath test was refused.

## **Recommendation**

We recommend the Court implement procedures to ensure fees are properly assessed and collected in accordance with State law.

### **INSTALLMENT FEE**

During our test of General Sessions Court collections and remittances, we noted one instance where the Court assessed and collected the three percent installment fee from a defendant that had paid the total amount due in one payment. The Court's policy is to charge and collect the three percent installment fee on all cases where the defendant does not pay on the date of the plea.

The Deputy Clerk of Circuit Court stated she was not aware the Court's policy was not in compliance with State law.

Section 14-17-725 of the 1976 South Carolina Code of Laws, as amended, states, "... where criminal fines, assessments, or restitution payments are paid through installments, a collection cost charge of three percent of the payment also must be collected by the clerk of court."

We recommend the Court revise its policy to ensure the installment fee is charged and collected in accordance with State law.

### **ACCURATE REPORTING**

During our testing of the County's State Treasurer's Revenue Remittance Forms (STRRF), we noted the Court did not report and remit family court fines to the State Treasurer in accordance with State law. Section 14-1-205 of the 1976 South Carolina Code of Laws, as

amended, states, "...fifty-six percent of all costs, fees, fines, penalties, forfeitures, and other revenues generated by the circuit courts and the family courts ... must be remitted to the county in which the proceeding is instituted and forty-four percent of the revenues must be delivered to the county treasurer to be remitted monthly by the fifteenth day of each month to the State Treasurer...".

We also noted one instance during our testing of Family Court collections and remittances where the Court did not remit Title IVD filing fees to the State Treasurer in accordance with State law. Section 14-1-204(A) of the 1976 South Carolina Code of Laws, as amended, states, "The one hundred dollar filing fee for documents and actions described in Section 8-21-310(11)(a) must be remitted to the county in which the proceeding is instituted, and fifty-six percent of these filing fee revenues must be delivered to the county treasurer to be remitted monthly by the fifteenth day of each month to the State Treasurer." Section 14-1-204(B)(1) of the 1976 South Carolina Code of Laws, as amended, states, "There is added to the fee imposed pursuant to Section 8-21-310(11)(a) an additional fee equal to fifty dollars. One hundred percent of the revenue from this additional fee must be remitted to the State Treasurer."

Due to the nature of these errors, we prepared a schedule of court fines and fees for the 36 months ended June 30, 2010, to determine if the Court over or underreported amounts reported to the State. See Schedule at Attachment 1.

The Assistant Clerk of Court stated she was not aware the Court was required to report and remit these monies to the State Treasurer.

We recommend the Court implement procedures to ensure all court collections are properly reported and remitted to the State Treasurer in accordance with State law. We also recommend the County revise and submit an amended STRRF in accordance with Attachment 1.

## **CONTINUING JURISDICTION OVER COURT-ORDERED PAYMENTS**

During our test of General Sessions Court collections and remittances, we noted one instance where the Court did not receive a payment for court-ordered fines, fees, assessments or surcharges from a defendant. We further noted the Court did not determine if the defendant was an indigent and therefore did not establish a payment schedule.

Section 17-25-350 of the 1976 South Carolina Code of Laws, as amended, requires in any offense carrying a fine or imprisonment, the judge or magistrate hearing the case shall, upon a decision of guilty of the accused being determined and it being established that he is indigent at that time, set up a reasonable payment schedule for the payment of such fine, taking into consideration the income, dependants and necessities of life of the individual. Such payments shall be made to the magistrate or clerk of court as the case may be until such fine is paid in full. Failure to comply with the payment schedule shall constitute contempt of court; however, imprisonment for contempt may not exceed the amount of time of the original sentence, and where part of the fine has been paid the imprisonment cannot exceed the remaining pro rata portion of the sentence.

The Deputy Clerk of Circuit Court stated she was not aware of this requirement.

We recommend the General Sessions Court implement procedures to ensure that defendant's payments are monitored in accordance with State law.

Pickens County Circuit/Family Court  
 Schedule of Court Fines and Fees Over/(Under) Reported  
 For the 36 months ended June 30, 2010

Attachment 1

Allocation in Accordance with State Law

	Total Court Collections	Public Defender Application Fee - \$40	Marriage License Fee	Motion Fee	Family/Child Support Fee	Circuit/Family Fines, Fees and Other Revenue (1)	Filing Fee - \$100	Filing Fee Increase- \$50	DUI Assessment - \$12	DUI Surcharge	DUI DPS Pullout - \$100	DUI DPS Auto Fee - \$40 Per Auto	Drug Surcharge - \$100 per case	Law Enforc. Surcharge - \$25 Per Case	General Sessions - State Assessment	General Sessions - Victim Services Assessment	General Sessions - Victim Services Surcharge
Total FYE June 2008	302,270.24					24,497.18	146,729.74	131,043.32									
Total FYE June 2009	300,829.80					17,166.60	149,843.20	133,820.00									
Total FYE June 2010	303,313.22					12,441.55	153,288.33	137,583.34									
Total Court Collections per Cash Receipt Records	906,413.26	-	-	-	-	54,105.33	449,861.27	402,446.66	-	-	-	-	-	-	-	-	-
Remittances per State Treasurer's Revenue Remittance Forms	775,987.93						409,541.27	366,446.66									
	<u>(130,425.33)</u>																
Balance Due From/(Due to) State	(130,425.33)	-	-	-	-	(54,105.33)	(40,320.00)	(36,000.00)	-	-	-	-	-	-	-	-	-
State Treasurer Revenue Remittance Form Line		A	C	E	F	G	H	I	O	Q	S	U	W	Y	AA	DD	FF

(1) We have only reported Family Court fines in column G. No exceptions were noted during testing of Circuit Court fines.

**COUNTY'S RESPONSE**

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*Office of Clerk of Court*  
PICKENS COUNTY  
**Harold P. "Pat" Welborn, Jr.**  
P.O. BOX 215  
PICKENS, SC 29671

CIVIL RECORDS (864) 898-5862  
CRIMINAL RECORDS (864) 898-5864  
FAMILY COURT (864) 898-5598

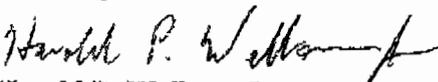
Dear Mr. Ziegler,

In response to the Accountant's comment report.

1. Adherence to Fine Guidelines cannot be corrected in our office. That is a Judge's decision that we have no control over.
2. Assessment and Collection of fees, has been corrected.
3. Filing Fee has been corrected for medical insurance case filed by DSS.
4. Public Defender Application Fee has been corrected.
5. Breathalyzer Fee has been corrected.
6. Installment Fee has been corrected.
7. Accurate Reporting is in process of being corrected.
8. Continuing Jurisdiction over Court-Ordered Payments; The only way we can collect this money is if the defendant is placed on Probation.

Please accept this as our release authorization for the Auditor's Report.

Sincerely

  
Harold P. Welborn Jr.

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