

**UNION COUNTY CIRCUIT  
AND FAMILY COURT SYSTEM**

**UNION, SOUTH CAROLINA**

**STATE AUDITOR'S REPORT**

**JUNE 30, 2009**

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# *State of South Carolina*



## *Office of the State Auditor*

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

July 12, 2010

The Honorable Mark Sanford, Governor  
State of South Carolina  
Columbia, South Carolina

The Honorable William F. Gault, Clerk of Court  
Union County Circuit and Family Court System  
Union, South Carolina

We have performed the procedures described below, which were agreed to by Union County and the Union County Circuit Court and Family Court, solely to assist you in evaluating the performance of the Union County Circuit and Family Court System for the period January 1, 2006, to June 30, 2009, in the areas addressed. Union County and the Union 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 fee, fine, 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.

- 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 and motion fees 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, Timely Submission of Clerk of Court's Monthly Remittance Form, 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 fees, fines, assessments, surcharges, forfeitures, escheatments, or other monetary penalties.
- We agreed amounts reported on all monthly court remittance reports to the County's general ledger.
- We obtained copies of all State Treasurer's Revenue Remittance Forms submitted by the County which reported court generated monies for the period January 1, 2006 through June 30, 2009. We agreed the amounts reported on the State Treasurer's Revenue Remittance Forms to the monthly court remittance forms and to the State Treasurer's receipts.
- 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 years ended June 30, 2009, 2008, 2007 and 2006 agreed to the State Treasurer's Revenue Remittance Forms and to the County's general ledger.

Our findings as a result of these procedures are presented in Timely Submission of Clerk of Court's Monthly Remittance Form and Timely Submission of State Treasurer's Revenue Remittance Form in the Accountant's Comments section of this report.

3. **Victim Assistance**

- We gained an understanding of the policies and procedures established by the County to ensure proper accounting for victim assistance funds.

The Honorable Mark Sanford, Governor  
and  
The Honorable William F. Gault, Clerk of Court  
Union County  
July 12, 2010

- 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 that 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.

Our finding as a result of these procedures is presented in Accounting for Victim Assistance Funds in the Accountant's Comments section of this report.

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

- We prepared a schedule of fines, fees, assessments and surcharges for the County for the 42 months ended June 30, 2009 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 County reported Court collections outside our engagement period on State Treasurer's Revenue Remittance Forms submitted during our engagement period. We did not include these amounts on our schedule.

The results of our procedures disclosed that the County had underreported amounts due to the State and Victim Assistance fund. 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 forty-two months ended June 30, 2009, 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, Senate Finance Committee, House Judiciary Committee, Senate Judiciary Committee, members of the Union County Council, Union County Clerk of Court, Union 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**

## **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 the following instances in which the judge did not sentence the defendant according to State law:

1. Of the two individuals who pled guilty to distribution of a controlled substance within the proximity of a school, one was given a suspended sentence of nine months and neither individual was assessed a fine. Section 44-53-445(B)(2), of the 1976 South Carolina Code of Laws, as amended, states, "When a violation involves the distribution, sale, manufacture, or possession with intent to distribute crack cocaine, the person is guilty of a felony and, upon conviction, must be fined not less than ten thousand dollars and imprisoned not less than ten nor more than fifteen years."
2. An individual who pled guilty to driving under the influence, second offense, was given a suspended sentence of no jail time. Section 56-5-2930(A)(2), of the 1976 South Carolina Code of Laws, as amended, states, "For a second offense . . . imprisonment for not less than five days nor more than one year." Subsection (B) further states, "For a second or subsequent offense of this section, the service of the minimum sentence is mandatory."

The Deputy Clerk of Court stated she was told by the previous solicitor that the defendants were sentenced in accordance with State law.

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

## **ASSESSMENT AND COLLECTION OF SURCHARGES AND FEES**

### **Criminal Justice Academy Surcharge**

During our test of General Sessions Court collections and remittances, we noted three instances where the Court did not assess and collect the \$5 criminal justice academy surcharge.

The Clerk of Court stated this was a result of oversight by Court personnel.

Proviso 90.7 of the 2009-2010 Appropriations Act and Proviso 90.11 of the 2008-2009 Appropriations Act state, "In addition to all other assessments and surcharges, during the current fiscal year, a five dollar surcharge to fund training at the South Carolina Criminal Justice Academy is also levied on all fines, forfeitures, escheatments, or other monetary

penalties imposed in the general sessions court or in magistrates' or municipal court for misdemeanor traffic offenses or for nontraffic violations. No portion of the surcharge may be waived, reduced, or suspended."

### **Public Defender Fee**

During our test of General Sessions Court collections and remittances, we noted ten instances where the Court did not collect the \$500 public defender fee from defendants that were placed on probation and represented by a public defender or appointed counsel. We also noted one instance where the Court allocated an individual's payments to court costs first and then to the public defender fee.

The Clerk of Court stated this was a result of oversight by Court personnel.

Proviso 47.13 of the 2008-2009 Appropriations Act and Proviso 35.13 of the 2006 through 2008 Appropriations Act state "every person placed on probation on or after July 1, 2003, who was represented by a public defender or appointed counsel, shall be assessed a fee of five hundred dollars...This assessment shall be collected and paid over before any other fees."

### **Recommendations**

We recommend the Clerk of Court implement procedures to ensure fees are properly levied and collected in accordance with State law. We also recommend the Clerk of Court ensure the public defender fee is collected and paid before any other fees in accordance with State law.

## **INSTALLMENT FEE**

During our testing of General Session Court collections and remittances, we noted four instances where the County assessed and collected the three percent installment fee from defendants that had paid the total amount due in one payment after the plea date. County personnel stated that the Court's policy requires the three percent installment fee to be assessed on all cases where the defendant does not pay on the date of plea.

The Deputy Clerk of Court stated she was unaware that this policy was not in accordance 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.

## **TIMELY SUBMISSION OF CLERK OF COURT'S MONTHLY REMITTANCE FORM**

We noted thirty-four instances where the Clerk of Court did not submit the Court's financial data to the County Treasurer on the first Wednesday in each month or within ten days thereafter as required.

We used the received date written on the clerk of court's monthly remittance form by the County Treasurer's Office to determine if the forms were submitted timely. The forms were submitted from nine days to eighteen months late. County personnel attributed the late submissions to the former Clerk of Court.

Section 14-17-750 of the 1976 South Carolina Code of Laws, as amended, requires every clerk of court, on the first Wednesday in each month or within ten days thereafter, to make in writing to the auditor and treasurer of his county a full and accurate statement of all moneys collected on account.

We recommend the County implement procedures to ensure the Clerk of Court's monthly remittance form is submitted to the County Treasurer in compliance with State law.

### **TIMELY SUBMISSION OF STATE TREASURER'S REVENUE REMITTANCE FORM**

We noted 19 out of 48 instances where the County did not submit its State Treasurer's Revenue Remittance Form (STRRF) to the State Treasurer by the fifteenth day of the month as required. The forms were submitted from approximately three to eighteen months late. County personnel attributed most of the late submissions to the former Clerk of Court, stating that he did not submit monthly remittance reports to the County Treasurer in a timely manner. The other late submissions were attributed to personnel absences within the County Treasurer's Office.

Section 14-1-206(B) of the 1976 South Carolina Code of Laws, as amended, requires the County to remit the balance of the assessment revenue to the State Treasurer on a monthly basis by the fifteenth day of each month and make reports on a form and in a manner prescribed by the State Treasurer.

We recommend the County implement procedures to ensure the STRRF is submitted by the fifteenth day of each month in compliance with State law.

## **ACCURATE REPORTING**

During our testing of the County's State Treasurer Revenue Remittance Forms (STRRF), we noted several amounts reported on the clerk of court's monthly remittance forms used to prepare the STRRF did not agree to the Court's cash receipt records. Also, during our testing of General Sessions Court collections and remittances, we noted 17 instances where the Court did not report and remit the \$40 public defender application fee to the State. Due to the nature of these reporting errors, we prepared a Schedule of Court Fines and Fees for the 42 months ended June 30, 2009 to determine if the Court over or underreported amounts reported to the State. See Schedule at Attachment 1.

The County's Assistant Clerk of Court stated the former Clerk of Court reported the amounts and agreed that the reported amounts do not agree with the cash receipt records. The County's current Clerk of Court stated the public defender fee was not reported and remitted due to oversight of Court personnel.

Section 14-17-750 of the 1976 South Carolina Code of Laws, as amended, requires every clerk of court to make in writing to the auditor and treasurer of his county a full and accurate statement of all moneys collected on account of licenses, fines, penalties and forfeitures during the past month. In addition, Section 17-3-30(B) of the 1976 South Carolina Code of Laws, as amended, requires that 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. This section also states that the clerk of court or other appropriate official shall collect the application fee imposed and remit the proceeds to the state fund on a monthly basis.

We recommend the County implement procedures to ensure all court collections are reported and remitted to the State Treasurer in accordance with State law and have been reconciled to accounting records and reviewed for accuracy. We also recommend the County revise and submit an amended STRRF in accordance with Attachment 1.

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

During our testing of General Sessions Court collections and remittances, we noted ten instances where the Court did not receive payments for court-ordered fines, fees, assessments or surcharges from defendants whose probation or parole had concluded.

Section 17-25-323(B) of the 1976 South Carolina Code of Laws, as amended, states, “When a defendant has been placed on probation by the court or parole by the Board of Probation, Parole, and Pardon Services...and the defendant is in default in the payment of any installment or of any criminal fines, surcharges, assessments, costs, and fees ordered, the court, before the defendant completes his period of probation or parole, on motion of the victim or the victim's legal representative, the Attorney General, the solicitor, or a probation and parole agent, or upon its own motion, must hold a hearing to require the defendant to show cause why his default should not be treated as a civil judgment and a judgment lien attached. The court must enter (1) judgment in favor of the State for the unpaid balance, if any, of any fines, costs, fees, surcharges, or assessments imposed.”

The Clerk of Court stated he was not aware of this requirement.

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

## **ACCOUNTING FOR VICTIM ASSISTANCE FUNDS**

During our testing of victim assistance expenditures we noted the County charged \$2,565 for handbooks purchased for law enforcement officers to victim assistance funds. We also noted during our testing that the County charged a \$50 invoice for snacks, a portion of which were for meetings with law enforcement officers, to victim assistance funds. According to personnel, the County was unaware these were unallowable charges.

Section 14-1-206(D) of the 1976 South Carolina Code of Laws, as amended, states, "The revenue retained by the county under subsection (B) must be used for the provision of services for the victims of crime including those required by law. These funds must be appropriated for the exclusive purpose of providing victim services as required by Article 15 of Title 16." In addition, the South Carolina Court Administration Memorandum, Attachment L, dated June 19, 2008, sets forth guidelines for expenditures of monies collected for crime victim services as recommended by the South Carolina Victims Assistance Network.

We recommend the County reimburse the victim assistance funds for the expenditures improperly charged to Victims Assistance and establish and implement policies and procedures to ensure victim assistance revenue is used only for allowable expenditures in accordance with State law. The County should contact the State Office of Victim Assistance in cases where the County is unsure if the charge is allowable.

Union County Circuit/Family Court  
 Schedule of Court Fines and Fees Over/(Under) Reported  
 For the 42 months ended June 30, 2009

Attachment 1

	Allocation in Accordance with State Law																
	Total Collections	Public Defender Application Fee - \$40	Marriage License Fee \$20 per license	Motion Fee \$25 per motion	Family/Child Support Fee	Circuit/Family Fines, Fees and Other Revenue	Filing Fee - \$50 Increase	Filing Fee - \$100	DUI Assessment \$12 per case	DUI Surcharge \$100 per case	DUI DPS Payout - \$100	DUI DPS Auto Fee - \$40 Per Auto	Drug Surcharge - \$100 per case	Law Enforc. Surcharge - \$25 Per Case	General Sessions - Victim Services Assessment	General Sessions - Victim Services Surcharge	
Total January 2006 - June 2006	108,871.43	360.00	1,960.00	6,275.00	42,805.92	7,649.18	15,456.00	60.00	542.30			2,677.85	1,468.08	3,714.66	2,513.94	9,588.50	
Total FYE June 2007	223,434.38	120.00	3,880.00	12,725.00	82,331.29	14,451.50	30,128.00	120.00	670.40			8,485.77	4,182.14	10,665.49	6,380.96	22,383.83	
Total FYE June 2008	231,207.47	200.00	3,420.00	14,375.00	85,274.84	12,061.96	35,168.00	96.00	590.92	136.27		6,491.44	4,612.51	10,545.90	6,659.62	20,175.01	
Total FYE June 2009	210,776.85	40.00	2,860.00	13,650.00	81,740.65	10,861.57	32,144.00	84.89	429.51			6,320.80	4,421.44	7,447.38	3,947.12	17,929.49	
Total Court Collections per Cash Receipt Records	774,290.13	720.00	12,220.00	47,025.00	292,152.70	45,124.21	112,896.00	360.89	2,233.13	136.27		23,975.86	14,684.17	32,373.43	19,501.64	70,086.83	
Remittances per State Treasurers Revenue Remittance Forms	763,518.52	40.00	12,200.00	83,419.50	285,461.10	52,495.54	87,531.00	360.89	2,233.13	331.45		24,055.47	14,704.00	32,542.18	19,588.15	69,126.08	
	(10,771.61)																
Balance Due From/(Due to) State	(9,897.37)	(680.00)	(20.00)	36,394.50	(6,691.60)	7,371.33	(25,365.00)	(21,700.00)	195.18	330.03		79.61	19.83	168.75			
Balance Due From/(Due to) Victim Services	(874.24)														86.51	(860.75)	
State Treasurer Revenue Remittance Form Line		A	C	E	F	G	H	I	O	Q	S	U	W	Y	AA	DD	FF

**COUNTY'S RESPONSE**

# State of South Carolina

William F. Gault  
Clerk of Court



## Clerk of Court Union, South Carolina

June 23, 2010

Ms. Jessica Hunt,

I received your e-mail concerning your audit on the Union County Clerk of Court's Office.

When I was appointed as Clerk of Court in October 2009 I soon found that the previous Clerk, Mr. Brad Morris had not filed the monthly reports for the past thirteen months. My office began to work on these monthly reports in order to complete them and forward them to the Union County Treasurers Office. During this process and while an Internal Audit was being conducted by my office it was determined that the funds for the monthly reports was short of the needed amount. It appeared that these were the funds that Mr. Morris was arrested and charged with embezzling.

My office completed the monthly forms with payment to the County Treasurers office in November and December 2009 for the months of April, May and June 2009. I then asked Union County Supervisor Tommy Sinclair for assistance from the County of Union to replace the missing funds so I would be able to go forward with the remaining monthly reports and payments. This was approved by the Union County Council. I then had the monthly reports for October 2008 thru March 2009 submitted in March 2010 with the total payment sent on May 2010.

As to the various amounts reported on the remittance reports not agreeing with the cash receipts the Internal Audit conducted by my office also could not understand the findings by Mr. Morris.

Please accept this letter as that I do agree with your findings during your audit of my office. I would like to note that to the best of my knowledge that since I took office in October 2009 the monthly reports have been completed by the correct time and all amounts have balanced.

I thank you for your assistance during this time.

Sincerely,

A handwritten signature in black ink that reads "William F. Gault".

William. F. Gault

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