

**SPARTANBURG COUNTY CIRCUIT
AND FAMILY COURT SYSTEM
SPARTANBURG, SOUTH CAROLINA**

STATE AUDITOR'S REPORT

JUNE 30, 2012

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State of South Carolina



Office of the State Auditor

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RICHARD H. GILBERT, JR., CPA
DEPUTY STATE AUDITOR

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INDEPENDENT ACCOUNTANT'S REPORT ON APPLYING AGREED-UPON PROCEDURES

July 31, 2013

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

The Honorable Hope Blackley, Clerk of Court
Spartanburg County Circuit and Family Court System
Spartanburg, South Carolina

The Honorable Oren L. Brady, Treasurer
Spartanburg County
Spartanburg, South Carolina

We have performed the procedures described below, which were agreed to by the County of Spartanburg and the Spartanburg County Circuit Court and Family Court, solely to assist you in evaluating the performance of the Spartanburg County Circuit and Family Court System for the fiscal year ended June 30, 2012, in the areas addressed. The County of Spartanburg and the Spartanburg 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 County of Spartanburg and the Spartanburg County Circuit Court and Family Court. 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 fines, fees, assessments, surcharges, forfeitures, escheatments, or other monetary penalties.
- We obtained the General Sessions' Case Filed Report for the fiscal year ended June 30, 2012, from the Clerk of Court. We randomly selected 25 cases from the report 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 whether 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 Hope Blackley, Clerk of Court
The Honorable Oren L. Brady, Treasurer
Spartanburg County
July 31, 2013

- We obtained the population of case numbers for all new cases filed in the Court of Common Pleas for the fiscal year ended June 30, 2012, from the Clerk of Court. We randomly selected 25 cases 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 for the fiscal year ended June 30, 2012, from the Clerk of Court. We randomly selected 25 cases to determine that filing fees, motion fees, support collection fees, and fines adhered to State law and the Clerk of Court Manual.

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

2. **Probate Judge**

- We obtained the Probate Court's S.C. Court Administration List report for the fiscal year ended June 30, 2012, from the Probate Judge. We randomly selected 25 marriage license applications to determine that the marriage license fee adhered to State law.

We found no exceptions as a result of the procedures.

3. **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 for the fiscal year ended June 30, 2012. We agreed the line item amounts reported on the State Treasurer's Revenue Remittance Forms to the monthly court remittance reports 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, 2012 agreed to the State Treasurer's Revenue Remittance Forms and to the County's general ledger. We also determined if the supplemental schedule of fines and assessments contained all required elements in accordance with State law.

Our findings as a result of these procedures are presented in Timely Submission of State Treasurer's Revenue Remittance Form, Accurate Reporting and Supplementary Schedule in the Accountant's Comments section of this report.

4. **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.

The Honorable Nikki R. Haley, Governor
and
The Honorable Hope Blackley, Clerk of Court
The Honorable Oren L. Brady, Treasurer
Spartanburg County
July 31, 2013

- We tested all victim assistance 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.

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.

5. 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, 2012 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, 2012, 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. Accordingly, we do not express such an opinion. 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 Spartanburg County Council, Spartanburg County Clerk of Court, Spartanburg County Treasurer, Spartanburg County Probate Judge, 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 where the individual was not fined for a hit and run, duties of driver involved in accident with death, violation.

Section 56-5-1210 (A) of the 1976 South Carolina Code of Laws, as amended, states, "A person who fails to stop or to comply with the requirements of this section is guilty of: (3) a felony and, upon conviction, must be imprisoned not less than one year nor more than twenty-five years and fined not less than ten thousand dollars nor more than twenty-five thousand dollars when death results."

The Accounting Supervisor for the Clerk of Court's Office stated the judge chose not to impose a fine in this case.

We recommend the General Sessions Court implement procedures to ensure that fines levied by the court adhere to applicable State law.

ASSESSMENT AND COLLECTION OF FEES

Common Pleas Court Filing Fee

During our testing of Common Pleas Court collections and remittances, we noted one instance where the Court did not collect the \$150 filing fee for a foreclosure case as required by State law.

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. One hundred percent of the revenue from this additional fee must be remitted to the State Treasurer".

The Accounting Supervisor for the Clerk of Court's Office stated the clerk who processed the transaction voided the filing fee and no longer works for the Clerk of Court so they are unable to determine what happened.

Public Defender Fee

During our test of General Sessions Court collections and remittances, we noted two instances where the Court did not assess and collect the \$500 public defender fee.

Proviso 47.9 of the 2011-2012 Appropriations Act states, "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."

The Accounting Supervisor for the Clerk of Court's Office stated this was a result of oversight by Court personnel.

Public Defender Application Fee

During our test of General Sessions Court collections and remittances, we noted fourteen instances where the Court did not assess and/or 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 Accounting Supervisor for the Clerk of Court's Office stated the fee was not collected for these cases because the defendant was in jail at the time the application was made. The amount waived was not reported to the trial judge during sentencing.

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 two out of twenty-five instances where the Court assessed and collected the three percent installment fee from individuals that paid the total amount due in one payment after the plea date.

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.”

The Accounting Supervisor for the Clerk of Court's office stated that the former Accounting Supervisor advised the clerks to collect the full payment if there was a lapse in time between the sentence date and the initial payment.

We recommend the Court implement procedures to ensure the installment fee is assessed and collected only from individuals who pay in installments.

TIMELY SUBMISSION OF STATE TREASURER'S REVENUE REMITTANCE FORM

During our testing of the County's State Treasurer's Revenue Remittance Forms (STRRF), we noted eleven out of twelve STRRF were not submitted to the State Treasurer by the fifteenth day of the month as required by State law. The forms were submitted from approximately one to six days late.

The Deputy County Treasurer stated the late submissions were due to the Magistrates using the full amount of time prescribed by State law to submit their monthly remittance reports. State law allows Magistrates to submit their monthly remittance reports on the first Wednesday in each month or within ten days thereafter.

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 are submitted by the fifteenth day of each month in compliance with State law.

ACCURATE REPORTING

During our testing of the County's STRRF, we noted the Clerk of Court did not report and remit the Circuit/Family Court Filing Fee (Line H) 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.” According to the County’s Clerk of Court, the Clerk’s former Accounting Supervisor inadvertently reversed the State and County portions on its monthly court remittance reports for Line H.

We also noted one instance where amounts reported for Family/Alimony/Child Support Fee (Line F); Circuit/Family Fines, Fees and Other Revenue (Line G); and Circuit/Family Filing Fee - \$50 Filing Fee Increase (Line I), did not agree to amounts recorded in the County’s court accounting records. The County’s Clerk of Court stated the differences were a result of spreadsheet formula errors.

Section 14-1-220 of the 1976 South Carolina Code of Laws, as amended, states, "Each county clerk of court, magistrate, or other person who receives monies from the cost of court assessments in general sessions or magistrates courts shall transmit all these monies to the county treasurer of the county. The county treasurer shall then forward the total sum collected to the State Treasurer...". Due to the nature of these reporting errors, we prepared a schedule of court fines and fees for the 36 months ended June 30, 2012 to determine if the Court over or underreported amounts reported to the State. (See Schedule at Attachment 1).

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.

SUPPLEMENTARY SCHEDULE

During our testing of the schedule of court fines, assessments and surcharges included in the County's financial statements for the fiscal year ended June 30, 2012, we noted amounts reported for Magistrate Court Collections – Assessments and Magistrate Court Retainage – Assessments did not agree to amounts reported on the County's State Treasurer's Revenue Remittance Forms or to amounts recorded in the County's general ledger. We noted the variance was comprised of Other Assessments – Magistrate. The County's Deputy Finance Director stated the schedule was prepared by the former Deputy Finance Director. She stated she does not know why the amounts were excluded from the schedule.

Also, because the County did not separately report victim assistance revenue on its general ledger, victim assistance beginning balance, ending balance and current year victim assistance revenue recorded in the general ledger did not agree to amounts reported on the required schedule. (See also Accountant's Comment entitled **Accounting for Victim Assistance Funds**).

Section 14-1-206(E)(1) of the 1976 South Carolina Code of Laws, as amended, states, "The supplementary schedule must include the following elements: (a) all fines collected by the clerk of court for the court of general sessions; (b) all assessments collected by the clerk of court for the court of general sessions; (c) the amount of fines retained by the county treasurer, (d) the amount of assessments retained by the county treasurer, (e) the amount of fines and assessments remitted to the State Treasurer pursuant to this section; and (f) the total funds, by source, allocated to victim services activities, how those funds were expended, and any balances carried forward."

We recommend the County implement procedures to ensure amounts reported on the supplementary schedule are accurately reported in accordance with State law.

ACCOUNTING FOR VICTIM ASSISTANCE FUNDS

During our testing of the County's STRRF, we determined that the County had not established a separate general ledger account to account for its victim assistance revenue and expenditure transactions as required by State law. Instead the County commingled victim assistance activity with other accounting transactions in its general fund. Using the Court's cash receipt records and STRRF, we determined that the County collected \$471,915.89 in victim assistance revenue and expended \$518,093.76 during the fiscal year ended June 30, 2012. The County's finance manager stated a separate account for victim assistance is not maintained because the County's victim assistance expenditures always exceed victim assistance revenue.

Also, during our testing of victim assistance expenditures, we noted the salaries and benefits for six detention facility employees were charged 100% to the victim services fund even though the employees performed other duties. The County could not provide any statistical data or time and activity reports, as required by the State Office of Victim Assistance (SOVA), to support charging the costs to the victim assistance fund; therefore, we deem the victim assistance expenditures to be unallowable. According to the County's Director of Budget Management, the County was unaware of the time and activity form requirement during the period of our engagement; however they are now working with SOVA to resolve the issue.

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." Also, the South Carolina Court Administration memorandum, Attachment L, dated June 30, 2011, and the South Carolina Victim Service Coordinating Council, Approved Guide for Expenditures of Monies Collected for Crime Victim Service in Municipalities and Counties, effective January 2010, set forth guidelines for expenditures of monies collected for crime victim services.

We recommend the County establish a separate account for victim assistance activities and transfer the victim assistance funds from its general fund accounts to the victim assistance account. We also recommend the County reimburse the victim assistance fund for the expenditures that were not adequately supported by documentation and establish and implement policies and procedures to ensure victim assistance revenue is used only for expenditures that benefit the victim assistance program in accordance with State law.

Spartanburg County Circuit/Family Court
 Schedule of Court Fines and Fees Over/(Under) Reported
 For the 36 months ended June 30, 2012

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 (1)	Circuit/Family Fines, Fees and Other Revenue (1)	Filing Fee - \$100	Filing Fee Increase - \$50 (1)	Boating Under The Influence (BUI)	DUI Assessment - \$12	DUI Surcharge	DUI DPS Prolong - \$100	DUI DPS Auto Fee - \$40 Per Auto	DUI/DUAC Breathalyzer Test Conviction Fee - SLED - \$25	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 2010	406,855.29						406,855.29													
Total FYE June 2011	417,148.22						417,148.22													
Total FYE June 2012	466,174.45				45,842.24	9,642.31	381,481.34	29,208.56												
Total Court Collections per Cash Receipt Records	1,290,177.96	-	-	-	45,842.24	9,642.31	1,205,484.85	29,208.56	-	-	-	-	-	-	-	-	-	-	-	-
Remittances per State Treasurer's Revenue Remittance Forms	1,231,078.75				44,062.63	9,466.31	1,149,371.25	28,178.56												
	<u>(59,099.21)</u>																			
Balance Due From/(Due to) State	(59,099.21)	-	-	-	(1,779.61)	(176.00)	(56,113.60)	(1,030.00)	-	-	-	-	-	-	-	-	-	-	-	-
State Treasurer Revenue Remittance Form Line		A	C	E	F	G	H	I	L	O	Q	S	U	VA	W	Y	AA	DD	FF	

(1) We have only reported revenue from March 2012. No differences were noted in other months.

COUNTY'S RESPONSE

Spartanburg County

Spartanburg County Court House
180 Magnolia Street
P. O Box 3483
Spartanburg, SC 29304-3483

Phone (864) 596-2591
Fax (864) 596-2239



M. Hope Blackley
Clerk of Court

Gail Moffitt
Assistant Clerk of Court

October 22, 2013

Richard Gilbert
SC Office of the State Auditor
1401 Main Street, Suite 1200
Columbia, SC 29201

Mr. Gilbert,

The following are responses to the Spartanburg County audit preliminary draft dated October 7, 2013.

Adherence to Fine Guidelines

Fines are subject to the discretion of the presiding Judge. Court personnel do not have the authority to challenge a Judge's ruling. In cases where it is questionable whether a Judge's ruling is within the guidelines of State Law, the Clerk of Court will defer to Court Administration for guidance.

Assessment and Collection of Fees

In July 2013, the Clerk of Court and staff met with the head Public Defender, Clay Allen, and discussed ways to ensure that the public defender application fee and Public Defender service fees are collected. (See attached email).

The Clerk of Court attempted to have Court Administration revise the sentencing sheet to include a check box for the public defender fee. On September 12, 2013 Court Administration replied that the Circuit Court Judges Advisory Committee discussed this at their advisory committee meeting. They did not believe that a checkbox should be added to the form. Since the Public Defender's office conducts the individual screenings, the Clerk of Court and staff will collaborate procedures with the Public Defender office to ensure the application and public defender fees are collected.

Clerk of Court personnel were instructed to ensure that PD fees are assessed for all individuals acquiring the services of the Public Defender and must be listed on the sentencing sheet and entered into CMS accordingly.

Installment Fee

All court personnel, who collect fine payments, have been instructed to deduct the 3% fee whenever an individual pays the total amount due in one payment after the plea date.

Timely Submission of State Treasurer's Revenue Remittance Form

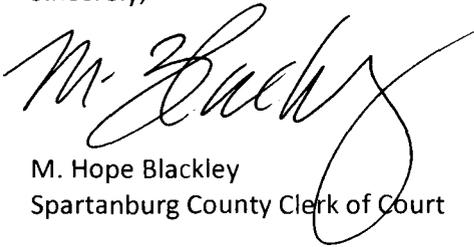
The Accounting Supervisor for the Clerk of Court will submit the STRRF to the County Treasurer by the 12th of every month to ensure the State receives the reporting by the 15th of every month.

Accurate Reporting

When switching duties from the former Accounting Supervisor, Betty Donald to the former Accounting Supervisor, Lisa Coleman an error occurred when the accounting spreadsheets were created. Ms. Coleman inadvertently reversed the State and County portions on the court remittance reports for the family court filing fees. The current Accounting Supervisor, Cornedia Jackson, revised and amended the STRRFs from July 2010 to June 2013 and submitted them to Rick Ziegler, state auditor.

The Clerk of Court has implemented a new procedure requiring the Senior Accountant to review revenue reports for accuracy prior to submission to the County Treasurer.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Blackley", with a large, stylized flourish at the end.

M. Hope Blackley
Spartanburg County Clerk of Court

Jackson, Cornedia

From: Blackley, Hope
Sent: Tuesday, October 22, 2013 4:03 PM
To: Jackson, Cornedia
Subject: FW: Public Defender Application Fee

From Clay.

From: Allen, Clay
Sent: Tuesday, October 22, 2013 3:34 PM
To: Blackley, Hope
Subject: Public Defender Application Fee

Ms Blackley:

As we have discussed, the Public Defender's Office in Spartanburg qualifies applicants and directs them to the Clerk of Court's Office for payment of the application fee. We do not require payment of the application fee for those clients who are in jail (or prison) at the time of the interview. I have been associated with the Public Defender Office in Spartanburg since 2001, and we have never required or collected an application fee from applicants who are in jail. Frankly, I do not think any judge will allow us to refuse to represent jailed defendants simply because of non-payment of an application fee.

Since you have brought the matter of the application fee to our attention, my office has begun to note on the file those clients who have not paid the application fee. I have asked my attorneys to bring the matter of the application fee to the judges' attention when the case is disposed in court. I understand that a few attorneys have done this at times; however, when they have done so, a judge has not ordered payment of the application fee as a condition of any sentence. I do not know how many of the attorneys continue to bring this to the judges' attention, but I believe that this is not done routinely, largely because it seems to have no effect in getting a judge to order payment of the fee.

You and I have also discussed getting Court Administration to add a "check box" on the sentencing sheet to allow a judge to order payment of the application fee, much as they do in ordering payment of the Public Defender Fund fee for those who receive probation. I understand that Court Administration has declined this request.

Unfortunately, I do not know of any method of bringing the payment of the application fee to a judge's attention other than the two suggestions as listed above.

Clay T. Allen
Circuit Public Defender
Seventh Judicial Circuit
864-596-2561

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