



**STATE OF TENNESSEE
COMPTROLLER OF THE TREASURY**

TENNESSEE COURT SYSTEM

Performance Audit Report

July 2015

Justin P. Wilson, Comptroller



**Division of State Audit
Risk-Based Performance Section**

DEBORAH V. LOVELESS, CPA, CGFM, CGMA
Director

KANDI B. THOMAS, CPA, CFE, CGFM, CGMA
Assistant Director

TERESA L. KENNEDY, CPA
Audit Manager

Laura Isbell, CPA, CFE, CGFM, CGMA
In-Charge Auditor

Tomas Bystriansky
George Goodwin, CPA
Aaron Kistler
Jimmy Stewart
Staff Auditors

Amy Brack
Editor

Amanda Adams
Assistant Editor

Comptroller of the Treasury, Division of State Audit
Suite 1500, James K. Polk State Office Building
505 Deaderick Street
Nashville, TN 37243-1402
(615) 401-7897

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STATE OF TENNESSEE
COMPTROLLER OF THE TREASURY
DEPARTMENT OF AUDIT
DIVISION OF STATE AUDIT

SUITE 1500, JAMES K. POLK STATE OFFICE BUILDING
505 DEADERICK STREET
NASHVILLE, TENNESSEE 37243-1402

PHONE (615) 401-7897
FAX (615) 532-2765

July 28, 2015

Members of the General Assembly
State Capitol
Nashville, Tennessee 37243

and

The Honorable Sharon G. Lee
Chief Justice of the Supreme Court
Supreme Court Building
Nashville, Tennessee 37243

Ladies and Gentlemen:

We have conducted a performance audit of selected programs and activities of the Tennessee Court System for the period January 1, 2012, through May 31, 2014.

Our audit disclosed certain findings that are detailed in the Objectives, Methodologies, and Conclusions section of this report. Management of the court system has responded to the audit findings; we have included the responses following each finding. We will follow up on the audit to examine the application of the procedures instituted because of the audit findings.

We have reported other less significant matters involving internal control and instances of noncompliance to the court system's management in a separate letter.

Sincerely,

Deborah V. Loveless, CPA
Director

DVL/tlk
14/049

State of Tennessee

Audit Highlights

Comptroller of the Treasury

Division of State Audit

Performance Audit
Tennessee Court System
July 2015

AUDIT SCOPE

We have audited the Tennessee Court System for the period January 1, 2012, through May 31, 2014. Our audit scope included a review of internal control and compliance with laws and provisions of contracts and grant agreements in the areas of indigent defense; reporting requirements; access to justice; juvenile and family courts; judicial and attorney performance; case management data and mediation; board, commission, and committee appointments; and miscellaneous fiscal and administrative functions. Management of the court system¹ is responsible for establishing and maintaining effective internal control and for complying with applicable laws, regulations, and provisions of contracts and grant agreements.

For our sample design, we used nonstatistical audit sampling, which was the most appropriate and cost-effective method for concluding on our audit objectives. Based on our professional judgment, review of authoritative sampling guidance, and careful consideration of underlying statistical concepts, we believe that nonstatistical sampling provides sufficient, appropriate audit evidence to support the conclusions in our report. We present more detailed information about our methodologies in the individual report sections.

We conducted our audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the 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 a reasonable basis for our findings and conclusions based on our audit objectives.

¹ For the purposes of our report, “management of the court system” as a whole refers to the Supreme Court. In our detailed audit report sections, we assign responsibility for establishing and maintaining certain internal controls and complying with applicable laws, regulations, and provisions of contracts and grant agreements to individual courts and personnel.

CONCLUSIONS

FINDINGS

Courts across the state do not consistently apply Supreme Court rules and *Tennessee Code Annotated* provisions involving indigent defense, increasing the risk of unequal application of the law

Our testwork revealed inconsistencies in the eligibility information included in Supreme Court rules and state law, as well as the courts' adherence to indigent determination guidelines (page 13).

Both Administrative Office of the Courts personnel and court clerks should implement improvements to fully comply with state statutes designed to keep firearms out of the hands of individuals with mental health issues

While performing our audit, we found that court system management had not fully complied with state laws regarding mental health and firearms reporting. Management had not ensured that the Administrative Office of the Courts adequately tracked mental health report submissions; had not ensured that court clerks reported submissions in a timely manner; and had not ensured that various courts used compliant automated reporting systems (page 22).

Because the Administrative Office of the Courts was unable to develop appropriate criminal and civil caseload data collection procedures for general sessions, court clerks made incomplete and inaccurate submissions to that office, in violation of state statute

By state statute, the courts must report *all* criminal and civil caseload data, not just the partial criminal case information included on the submission form developed by the Administrative Office of the Courts. We also identified concerns about the reliability of the criminal caseload data that the court clerks have been submitting (page 27).

The Nashville Appellate Court Clerk's Office had still not appropriately segregated duties within the cash receipting function; additionally, the Appellate Court Clerk's Office did not update cash receipting policies and procedures upon introducing new systems and processes*

As noted in the prior audit, clerks at the Nashville Appellate Court Clerk's Office had conflicting duties. We also discovered that cash receipting policies and procedures had not been properly updated (page 55).

OBSERVATIONS

The following topics did not warrant a finding but are included in this report because of their effect on the operations of the court system and on the citizens of Tennessee: consistent assessment and collection of the administrative fee could help maximize revenues for the indigent defense fund (page 16); while problems remain, the Juvenile Court of Memphis and Shelby County continues to make progress in remedying the due process, equal protection, and

* This finding is repeated from the prior audit.

detention facility findings noted in the April 2012 U.S. Department of Justice report (page 41); because the Governor's Commission for Judicial Appointments lacked adequate policies and procedures, the Administrative Office of the Courts did not fully document potential conflicts of interest disclosed by commission members, increasing the risk that biased voting will go undetected (page 46); and the current and three former chairs of the State Law Library Commission did not comply with meeting frequency requirements established in *Tennessee Code Annotated* (page 58).

Performance Audit Tennessee Court System

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Performance Audit Tennessee Court System

INTRODUCTION

POST-AUDIT AUTHORITY

This is the report on the performance audit of the Tennessee Court System. Section 8-4-109, *Tennessee Code Annotated*, authorizes the Comptroller of the Treasury to audit any books and records of any governmental entity created under and by virtue of the statutes of the state of Tennessee that handles public funds when the Comptroller considers an audit to be necessary or appropriate. The Comptroller of the Treasury shall have the full cooperation of officials of the governmental entity in the performance of such audit or audits.

The audit was conducted pursuant to Section 4-3-304, *Tennessee Code Annotated*, which requires the Department of Audit to audit all accounts and financial records of any state department, institution, office, or agency in accordance with both generally accepted auditing standards and procedures established by the Comptroller. An audit may include any or all of the following elements: financial, compliance, economy and efficiency, program results, and program evaluations.

BACKGROUND

The following constitutes a very general discussion of various aspects of the legal system.

General Background

As one of the three basic divisions of both the federal and state government, the judicial branch serves as a check and balance of the powers of the legislative and executive branches.² The legislative branch makes the laws. The executive branch enforces the laws and runs the day-to-day operations of government. Through the power of judicial review, the courts rule on the constitutionality of laws passed by the legislative branch and consider the legality of the executive branch's policies and regulations.

Tennessee's Judicial Foundation

Tennessee's judicial system is derived from a constitutional foundation. According to Article VI, Section 1, of the Constitution of the State of Tennessee, "The judicial power of this

² Unless otherwise indicated, we obtained background information from the Tennessee Supreme Court's *Understanding Your Court System: A Guide to the Judicial Branch* and the Tennessee Secretary of State's *Tennessee Blue Book 2013-2014*.

state shall be vested in one Supreme Court and in such Circuit, Chancery, and other inferior courts as the legislature shall from time to time ordain and establish.”

Tennessee’s Court Structure

The state operates within a non-unified court system, which means that each court enjoys a large degree of autonomy and has its own methods of conducting business.

The Tennessee Supreme Court is the highest court in the state and the court of last resort. The court, which normally meets in Jackson, Knoxville, and Nashville, consists of five justices, who are initially appointed by the Governor and subsequently elected by the state’s citizens on a “yes (retain) - no (replace)” ballot every eight years. The Supreme Court justices elect one of their own to serve as chief justice.

The majority of this court’s workload consists of civil and criminal cases appealed from lower state courts. The Supreme Court justices may also perform the following tasks:

- ❖ interpret the laws and constitutions of Tennessee and the United States;
- ❖ assume jurisdiction over undecided cases in the Court of Appeals or Court of Criminal Appeals when there is special need for a speedy decision; and
- ❖ exercise appellate jurisdiction in cases involving state taxes, the right to hold public office, and issues of constitutional law.

The intermediate appellate courts—the *Court of Appeals* and the *Court of Criminal Appeals*—hear civil and criminal cases, respectively, that are appealed from the trial courts. Each court consists of 12 members who rotate sitting in panels of 3 in Jackson, Knoxville, and Nashville. Like the Supreme Court justices, the appellate judges are elected on a “yes-no” ballot every eight years.

The state’s trial courts include circuit, chancery, criminal, and probate courts. Judges in these courts are chosen by popular election within their judicial districts.

Tennessee’s 95 counties are divided into 31 judicial districts. Each district has circuit courts and chancery courts, as provided by the state constitution. Some districts also have legislatively established criminal courts and probate courts.

Circuit courts are courts of general jurisdiction in Tennessee. Circuit judges hear civil and criminal cases and appeals of decisions from general sessions, municipal, and juvenile courts. Criminal cases are tried in circuit court, except in districts with separate criminal courts established by the General Assembly.

By tradition, *chancery courts* constitute an example of the court system’s English heritage. These equity courts are based on the English system, in which the chancellor acted as the “King’s conscience.” Chancellors may modify the application of strict legal rules and adapt the relief given to the circumstances of individual cases. Chancery courts handle a variety of

issues including lawsuits, contract disputes, application for injunctions, and name changes. A number of matters, such as divorces, adoptions, and workers' compensation, can be heard in either chancery or circuit court.

Criminal courts are established by the General Assembly in areas where they are justified by heavy caseloads. In addition to having jurisdiction over criminal cases, criminal court judges hear misdemeanor appeals from lower courts and certain appeals from juvenile courts. In districts without criminal courts, circuit court judges handle criminal cases at the trial level.

Probate courts, created by the General Assembly, are given exclusive jurisdiction over probate of wills and administration of estates. These courts also handle conservatorships and guardianships.

The fourth level of courts in Tennessee is composed of the Courts of Limited Jurisdiction: general sessions, juvenile, and municipal courts. These courts are funded by their respective counties.

General sessions court jurisdiction varies by county and is based on state laws and private acts. Each of Tennessee's 95 counties is served by the court, which hears civil and criminal cases. Civil jurisdiction is restricted to specific monetary limits and types of actions. Furthermore, criminal jurisdiction is limited to preliminary hearings in felony cases and misdemeanor trials where defendants waive the right to a grand jury investigation and trial by jury in circuit or criminal court. General sessions judges also serve as juvenile judges, except in counties where the General Assembly has established separate juvenile courts.

The state's 98 *juvenile courts* have exclusive jurisdiction in proceedings involving minors alleged to be delinquent, unruly, dependent, or neglected. Additionally, juvenile courts have concurrent jurisdiction with circuit, chancery, and probate courts in some areas.

Municipal courts, also known as city courts, have jurisdiction in cases involving violations of city ordinances. About 300 Tennessee cities have municipal courts with varying authority and jurisdiction.

Legal System Cases

The legal system consists of two types of cases, civil and criminal. Differences are explained in Table 1 on the following page.

**Table 1
Civil Versus Criminal Cases**

	Civil	Criminal
Case Origination	One party (the plaintiff) who feels he or she was harmed brings a complaint against another party (the defendant).	The government (the plaintiff) prosecutes a person who it believes has broken the law (the defendant).
Burden of Proof	Reasonable doubt is not required. A “preponderance of evidence” (proposition is more likely to be true than not true) is enough in most cases.	The guilt must be proven beyond a reasonable doubt.
Consequences	The plaintiff may request either monetary or equitable relief. <u>Monetary relief</u> is when the plaintiff asks for a cash award to remedy the situation. <u>Equitable relief</u> is when the plaintiff asks for the court to order the other party to do or not to do something.	If the defendant is convicted, he or she may have to serve time in jail or pay a fine.

Source: Website for The Leadership Conference on Civil and Human Rights/The Leadership Conference Education Fund.

Court Administration

The Administrative Office of the Courts (AOC) provides support to the Tennessee Supreme Court and the entire court system. The Supreme Court appoints a director to oversee the AOC. This office prepares the court system’s annual budget; provides judicial education, law libraries, computers and other equipment, and training and technical support for judges and other court personnel; assists judges with case assignments; administers payroll for the entire system; conducts orientation for new judges; administers the official state criminal court reporters system; provides assistance to judicial committees; compiles data; and disburses funds to court-appointed attorneys.

In the performance of these duties, the AOC director administers the business unit codes associated with the following functional areas or programs:³

1. Appellate and Trial Courts (302.01): Salaries and benefits for judges of the state trial and appellate courts and for their law clerks and other staff are paid from this code, which also includes funds for judges’ travel expenses, law books, and other operational expenses.

³ We obtained this information from *The Budget Fiscal Year 2013-2014*.

2. Supreme Court Buildings (302.05): Funds for the operation, maintenance, and security of the Supreme Court buildings in Nashville, Knoxville, and Jackson are disbursed from this code.
3. Child Support Referees (302.08): This code is used to account for the Child Support Referees Program, which provides personnel and operational funding to ensure the timely fulfillment of parents' financial obligations in child support cases.
4. Guardian ad Litem (302.09): This code funds the Guardian ad Litem Program, which provides payments to court-appointed advocates to represent the best interests of an indigent child or an incompetent person involved in dependency, neglect, abuse, or custodial disputes.
5. Indigent Defendants' Counsel (302.10): The Indigent Defendants' Counsel Program, accounted for in this code, provides funding for court-appointed counsel, experts, investigators, and other support services for indigents in criminal cases.
6. Civil Legal Representation Fund (302.11): The Civil Legal Representation Fund is used to provide payments for legal services for indigent clients in civil matters.
7. Verbatim Transcripts (302.12): Personnel and operational costs of court reporting and verbatim transcripts are charged to this code.
8. Court Interpreter Services (302.13): This code funds interpreter services, in accordance with the rules prescribed by the Supreme Court, to persons with limited English proficiency who have a matter before the courts.
9. Tennessee State Law Libraries (302.15): Law libraries are maintained in Nashville, Knoxville, and Jackson. Expenses for books and reference materials to ensure the libraries remain current are disbursed from this code.
10. Council of Juvenile and Family Court Judges (302.16): The Council of Juvenile and Family Court Judges informs judges and court staff of services available to children and families and provides training and assistance to juvenile courts on state and federal laws, regulations, and policies affecting children and families. The council is composed of 17 county-approved juvenile judges and general sessions judges who have juvenile court jurisdiction. The operational costs of the council are paid from this code.
11. Judicial Conference (302.18): This code funds the Tennessee Judicial Conference, an organization consisting of members of the Supreme Court, Court of Appeals, and Court of Criminal Appeals, as well as trial court judges across the state. The conference provides continuing legal education and legal updates to judges, in part through annual training events.

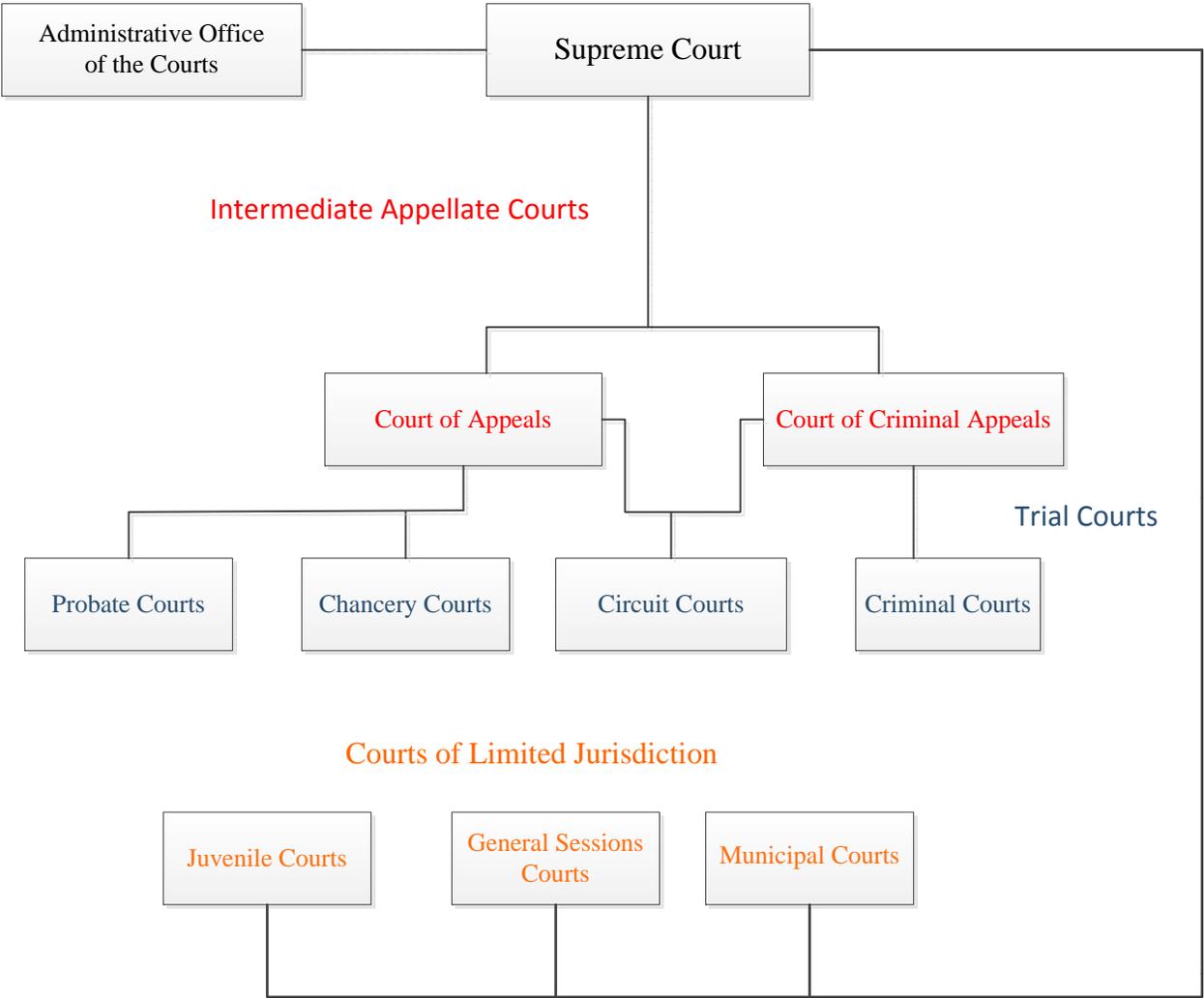
12. Judicial Programs and Commissions (302.20): This code is used to provide operational funding for commissions appointed by the Supreme Court to study issues, monitor judicial programs, and make recommendations. The programs and commissions included under this code are the Court of the Judiciary, the Victim Offender Reconciliation Program, the Alternative Dispute Resolution Commission, the Governor's Commission for Judicial Appointments, and the Judicial Evaluation Program.
13. State Court Clerks' Conference (302.22): This conference, organized by the Administrative Office of the Courts, provides education and legal updates to the clerks, as required by law. Expenses related to the conference are paid from this code.
14. Administrative Office of the Courts (302.27): Salaries and operating expenses of the Administrative Office of the Courts are disbursed from this code.
15. Appellate Court Clerks (302.30): Salaries and operating costs for the Appellate Court Clerk's Offices are paid from this code. The offices are located at the Supreme Court buildings in each of the three grand divisions of the state—Middle Tennessee in Nashville, East Tennessee in Knoxville, and West Tennessee in Jackson. The clerk of the appellate courts is appointed by the Supreme Court for a six-year term and is based in Nashville. The clerk oversees the chief deputies and deputy clerks who serve each grand division. The Appellate Court Clerk's Offices maintain court dockets and records and are responsible for administrative matters of the Supreme Court, Court of Appeals, and Court of Criminal Appeals.
16. Board of Court Reporting (302.34): The Board of Court Reporting is responsible for the licensing of court reporters working in the state. In addition, the board investigates complaints against licensees, establishes and maintains requirements for continuing education, and oversees ethical standards. The board is funded from a dedicated biennial licensure fee paid by court reporters. The board's activities are accounted for in this code.
17. Board of Law Examiners (302.35): The Board of Law Examiners governs the examination and admission of attorneys applying to practice law in Tennessee. Administering the state bar exam is the principal function of this board, and the state bar examination fees and annual licensing fees it receives allow it to be self-supporting. All operating revenues and costs are reported in this code.
18. Board of Professional Responsibility (302.40): This code is used to account for the Board of Professional Responsibility, which reviews and investigates allegations of attorney misconduct and imposes disciplinary action on those who violate professional standards. The board also publishes ethics opinions, conducts seminars, and operates an ethics hotline for attorneys. The board is funded from a dedicated annual registration fee that is set by Supreme Court rule and paid by each attorney.

19. Tennessee Lawyers Assistance Program (302.50): The Tennessee Lawyers Assistance Program provides education and assistance to members of the bench and bar suffering from physical or mental disabilities that impair their ability to practice or to serve. The program is funded from a dedicated annual registration fee that is set by Supreme Court rule and paid by each attorney. The fees collected and expenses incurred are recorded in this code.
20. Continuing Legal Education (302.60): The Continuing Legal Education staff administers Supreme Court Rule 21 governing continuing legal education annual requirements. Supreme Court Rule 21 authorizes the collection of annual certification or recertification fees from each attorney for operation of the program. All operating revenues and costs are reported in this code.
21. Client Protection Fund (302.65): This fund is used to reimburse claimants for losses caused by misconduct of attorneys licensed to practice in this state and is funded from the annual registration fee collected by the Board of Professional Responsibility.

In addition, the AOC provides administrative support to 16 boards, commissions, and committees. Expenditures for these boards, commissions, and committees are reported in the above business unit codes. See the Appendix on page 60 for further information.

An organization chart of the court system is on the following page.

Tennessee Court System
Organization Chart
July 2014



AUDIT SCOPE

We have audited the Tennessee Court System for the period January 1, 2012, through May 31, 2014. Our audit scope included a review of internal control and compliance with laws and provisions of contracts and grant agreements in the areas of indigent defense; reporting requirements; access to justice; juvenile and family courts; judicial and attorney performance; case management data and mediation; board, commission, and committee appointments; and miscellaneous fiscal and administrative functions. Management of the court system⁴ is responsible for establishing and maintaining effective internal control and for complying with applicable laws, regulations, and provisions of contracts and grant agreements.

For our sample design, we used nonstatistical audit sampling, which was the most appropriate and cost-effective method for concluding on our audit objectives. Based on our professional judgment, review of authoritative sampling guidance, and careful consideration of underlying statistical concepts, we believe that nonstatistical sampling provides sufficient, appropriate audit evidence to support the conclusions in our report. We present more detailed information about our methodologies in the individual report sections.

We conducted our audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the 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 a reasonable basis for our findings and conclusions based on our audit objectives.

PRIOR AUDIT FINDINGS

The prior financial and compliance audit report of the court system, which was released in July 2006 and covered the period March 1, 2003, through February 28, 2006, contained two findings. Section 8-4-109, *Tennessee Code Annotated*, requires that each state department, agency, or institution report to the Comptroller of the Treasury the action taken to implement the recommendations in the prior audit report. The court system filed its report with the Department of Audit on December 29, 2006. We conducted a follow-up of the prior audit findings as part of a limited review covering the period March 1, 2006, through February 28, 2011. At that time, based on the limited review, we determined that management had corrected one of the two prior findings. We conducted a follow-up of the unresolved prior audit finding as part of the current audit.

⁴ For the purposes of our report, “management of the court system” as a whole refers to the Supreme Court. In our detailed audit report sections, we assign responsibility for establishing and maintaining certain internal controls and complying with applicable laws, regulations, and provisions of contracts and grant agreements to individual courts and personnel.

RESOLVED AUDIT FINDING

The limited review disclosed that the Board of Professional Responsibility had corrected the previous audit finding concerning its lack of adequate written policies and procedures to address the risks of misappropriation of cash receipts, checks, and equipment.

REPEATED AUDIT FINDING

The prior audit report also contained a finding concerning ineffective internal controls over cash receipting for the Western Appellate Court System and a lack of segregation of duties within the Nashville Appellate Court Clerk's Office. The follow-up review team found that while problems at the Western Appellate Court System had been corrected, the segregation of duties issues at the Nashville Appellate Court Clerk's Office remained. Since the latter portion of the finding was not resolved at the time of our review, it is repeated in the applicable section of this report. The follow-up review team additionally noted that the Appellate Court Clerk's Office had not updated its cash receipting policies and procedures to reflect the use of new procedures and technology. This issue is also included in the finding.

OBJECTIVES, METHODOLOGIES, AND CONCLUSIONS

INDIGENT DEFENSE

Administration of Tennessee's Indigent Defense Fund

The State of Tennessee's indigent defense program provides legal services for those individuals who are constitutionally entitled to legal counsel but who are unable to pay for such services. The Administrative Office of the Courts (AOC) administers Tennessee's indigent defense fund, which uses set fees to compensate attorneys, interpreters, expert witnesses, and investigators who provide services to indigent defendants based on specific guidelines outlined in Tennessee Supreme Court Rule 13. The indigent defense fund constitutes a major portion of the Tennessee Court System's expenditures. For fiscal year 2012, the court system's indigent defense fund expenditures were \$31,460,045, or 25% of the total budget. For fiscal year 2013, the court system's indigent defense fund expenditures were \$30,423,563, or 23% of the total budget.

U.S. Supreme Court Rulings

The Sixth Amendment to the U.S. Constitution guarantees all people accused of a crime the right to legal counsel. In the 1963 decision of *Gideon v. Wainwright*, the U.S. Supreme Court ruled that individuals who have been charged with a serious crime and cannot afford to hire an attorney are entitled to the appointment of one at the government's expense. After that landmark ruling, the U.S. Supreme Court issued a series of decisions to clarify the type of cases

that include the right to counsel. The types of cases for which legal services are available include the following: criminal, juvenile delinquency, child welfare matters, judicial hospitalization, and contempt.

Although the U.S. Supreme Court has provided guidance on appointing attorneys for indigent individuals, neither constitutional law nor congressional statute nor U.S. Supreme Court interpretation has mandated a methodology for states to fund indigent defense programs. The State of Tennessee has opted to fund its program primarily with general fund state tax dollars.

Process for Appointing Legal Counsel

As of May 31, 2014, Tennessee's indigent defense system allowed the presiding case judge to appoint the public defender or a private attorney to represent the indigent defendant. In 1989, Tennessee created a statewide public defender system, which includes a popularly elected district public defender in each judicial district. If the public defender has a conflict of interest that prevents representation, the judge overseeing the case appoints a private attorney instead. A judge also appoints a private attorney if the public defenders make a clear and convincing case that the additional appointment would prevent them from providing effective representation to their current caseload.

Assessment of Administrative Fee

Sections 37-1-126 and 40-14-103, *Tennessee Code Annotated*, direct the courts to charge a defendant who is provided with court-appointed counsel a nonrefundable administrative fee. In accordance with state law, the court assesses the administrative fee at the time of appointment of counsel, and the fee assessed should equal at least \$50, unless the court finds that the defendant lacks financial resources to pay that amount. Upon such a finding, the court possesses the authority to waive or reduce the administrative fee. Conversely, if the court finds that the defendant has financial resources to pay a higher administrative fee, then the court has the authority to charge up to \$200. State law stipulates that the defendant must pay the administrative fee prior to the disposition of the case or within two weeks following the appointment of counsel, whichever occurs first.

Information Systems Used to Process Claims

The court system uses two automated systems, the Indigent Claims Entry (ICE) system and the Tennessee Indigent Expenditure System (TIES), to process indigent defense claims. ICE serves as a web-based application that allows attorneys and interpreters to submit claims electronically for their appointed cases. The information entered into ICE feeds into TIES, the database of record, where AOC staff reviews and then pays the eligible claims for indigent services provided. Expert witnesses and investigators still submit paper claims, which AOC personnel manually enter in TIES.

Administrative Office of the Courts Directed to Study Indigent Defense

In the 2009-2010 appropriations bill (Public Chapter 1108), the 107th General Assembly included an appropriation for the AOC to study the state's increasing indigent defense fund expenditures. The General Assembly specifically requested that the AOC examine the eligibility requirements; fee rates, including sliding scale options; limits; verification process; and fund utilization by judicial districts, with the ultimate goal of developing a plan for cost savings. The AOC completed the study and presented its findings in *Tennessee's Indigent Defense Fund: A Report to the 107th General Assembly*, released January 15, 2011. In its study, the AOC noted that "time spent by appointed counsel waiting in court for a case to be called may vary from place to place." The AOC indicated that it would "attempt to assist jurisdictions in adopting best practices so that claims costs based on 'down time' can be reduced."

Our objectives in reviewing indigent defense were to determine whether

- the Supreme Court ensured that all courts had adequate guidelines or rules in place that documented who qualified for indigent defense;
- each court had sufficient procedures to verify information received from individuals seeking to be declared indigent;
- the courts consistently assessed and collected administrative fees from indigents;
- controls over ICE and TIES were operating as described by AOC management;
- AOC management was following the indigent defense reimbursement policies and guidelines promulgated in Supreme Court rules and *Tennessee Code Annotated*; and
- AOC management followed up and reviewed the issue of attorney downtime referenced in the AOC's January 2011 report to the General Assembly.

To achieve all of our objectives, we conducted interviews with applicable AOC personnel. We originally planned to test the determination process by obtaining a population of individuals who attempted to declare indigency and comparing the information the individual provided to available records. Based on discussions with staff from the AOC and the Comptroller of the Treasury's Offices of Research and Education Accountability, however, we determined that the AOC did not have a way to track and monitor individuals who attempted to declare indigency. We then modified our testwork to survey the judges involved in our reimbursement claims testwork.

To test the indigent defense fund reimbursement process, we obtained a list of all 8,223 claims entered for the month of January 2014 (totaling \$2,713,285.92). From this list, we selected a nonstatistical, random sample of 60 (totaling \$17,615.56) to verify that AOC personnel properly reviewed and then approved or denied the claims according to the procedures described in Supreme Court rules and *Tennessee Code Annotated*.

From our claims sample, we identified the judges associated with the indigent cases, and we distributed an anonymous electronic survey to the 41 judges who had declared an individual "indigent." We analyzed the judges' survey responses to evaluate the indigency determination

criteria used, any verification procedures performed, and administrative fee assessment and collection frequency.

We reviewed the AOC's *Administrative Fee for Appointed Counsel* reports for calendar years 2011 and 2012. Using the information provided in the reports, we calculated the percentage of cases where the courts waived the administrative fee and the percentage of cases where the courts charged the administrative fee, as well as the average amount collected per case. We also projected the revenue the courts would receive if they charged a flat fee at various rates.

For the information system controls objective, we performed walkthroughs with AOC Information Technology staff.

Based on procedures performed, we determined that

- the Supreme Court and the General Assembly should work together to provide more detailed guidance regarding the indigency determination process; additionally, the two entities should coordinate to ensure that provisions governing indigency determination mirror each other in *Tennessee Code Annotated* and Supreme Court rule (see Finding 1);
- the Supreme Court and the General Assembly should jointly develop a standard level of verification of indigency determination criteria to ensure the state courts consistently determine indigent status (see Finding 1);
- the Supreme Court should work with the General Assembly to add an exemption from the administrative fee only for individuals who provide sufficient proof that they are unable to pay it (see Observation 1);
- the information system controls were working as described by AOC management;
- AOC management followed the established indigent defense fund reimbursement policies and guidelines; and
- AOC management had initiated a pilot project involving juvenile court cases in an effort to reduce attorney downtime.

Finding 1 – Courts across the state do not consistently apply Supreme Court rules and Tennessee Code Annotated provisions involving indigent defense, increasing the risk of unequal application of the law

In accordance with the Sixth Amendment to the U.S. Constitution and various U.S. Supreme Court decisions, all individuals accused of a criminal offense have the right to legal counsel. Individuals unable to afford an attorney (deemed “indigent” defendants) are entitled to the appointment of one at the government’s expense. In Tennessee, these federal mandates are fulfilled in part through the indigent defense fund, which compensates attorneys, interpreters, expert witnesses, and investigators for providing services to indigent defendants. Individual courts possess the authority to determine whether an individual is indigent based on specific

criteria outlined in Tennessee Supreme Court Rule 13 and Section 40-14-202, *Tennessee Code Annotated*. State statute also gives the Administrative Office of the Courts (AOC) the authority to administer the indigent defense fund. Through our review of the program, we noted examples of inconsistent guidance and application of guidance involving the following areas:

1. presentation of eligibility information in Supreme Court Rule 13 and Section 40-14-202, *Tennessee Code Annotated*; and
2. among the 20 judges who responded to our survey, adherence to indigent determination guidelines in Supreme Court Rule 13.

Supreme Court Rule Versus *Tennessee Code Annotated*

We compared Supreme Court Rule 13 and Section 40-14-202, *Tennessee Code Annotated*, and discovered that the types of cases for which an individual may qualify as indigent conflicted. Specifically, we noted that Section 40-14-202 only mentions indigency determination in felony cases; however, Supreme Court Rule 13 allows for this determination in a variety of cases, including

- cases in which an adult is charged with a felony or a misdemeanor and is in jeopardy of incarceration;
- contempt of court proceedings in which the defendant is in jeopardy of incarceration;
- cases in which a juvenile is charged with juvenile delinquency for committing an act which would be a misdemeanor or a felony if committed by an adult; and
- in all other proceedings where required by law.

The AOC assistant general counsel explained that the two sources contradict each other because the Tennessee Supreme Court regularly updates Rule 13 to reflect decisions made by the U.S. Supreme Court involving indigent determination and the types of cases for which individuals are guaranteed legal counsel. The assistant general counsel believed that the differences had not been brought to the General Assembly's attention due to the complexity of updating *Tennessee Code Annotated*.

By not ensuring consistency between Supreme Court rule and *Tennessee Code Annotated* provisions, the court system is potentially increasing the risk that members of the public will rely on outdated information when researching whether they are able to receive indigent defense fund services.

Application of Indigent Defense Determination Guidelines

Section 40-14-202, *Tennessee Code Annotated*, and Supreme Court Rule 13 endow court judges with the authority to decide whether an individual is indigent or not based on the following criteria:

- ❖ the nature of services to be rendered in defense of the individual;

- ❖ the usual and customary charges for an attorney in that area;
- ❖ the accused's income;
- ❖ the poverty level income guidelines compiled and published by the U.S. Department of Labor;
- ❖ any ownership of or equity in any real or personal property;
- ❖ the amount of the appearance or appeal bond; and
- ❖ any other circumstances presented to the court that are relevant to the issue of indigency.

According to Supreme Court Rule 13, any individual requesting to be declared indigent must fill out a signed Uniform Affidavit of Indigency, which compiles the information that a judge needs to make an indigency determination.

To gather information about the application of established determination guidelines, we distributed an anonymous electronic survey to 41 judges. Twenty-one judges responded to our survey, one of whom informed us that our questions were not applicable to his or her duties. Our review disclosed that not all of the remaining 20 judges were using the required criteria to make indigency determinations or implementing the critical internal control of verifying the applicants' information. While all 20 judges who considered the survey applicable reported relying upon some form of income and expenditure data in making the indigency determination, 15 (75%) said they specifically used the Uniform Affidavit of Indigency.

The judges who provided further details about their processes indicated that the nature and extent of their procedures used to verify the indigent applicants' information differed substantially. The breakdown is as follows: 6 of the 20 judges (30%) reported that they inspected the income and expenditure data submitted and then questioned the applicants, whereas the other 14 (70%) took the information and did no further investigating. Of the 20 judges, 9 judges (45%) had been notified by an attorney that the attorney's client was not truly indigent after the judge had already declared indigency.

Based on our review of the 20 judges' responses and the guidelines provided in Supreme Court Rule 13 and Section 40-14-202, *Tennessee Code Annotated*, as well as conversations with AOC staff, we believe that the inconsistency arose due to (1) a lack of awareness of established guidelines; (2) the absence of detailed verification procedures; and (3) maintenance of a non-unified (also known as decentralized) court system. Multiple AOC staff informed us that since the Tennessee Court System is non-unified, the AOC is unable to enforce the application of any official guidance.

By not ensuring that judges consistently follow the guidance provided in Supreme Court Rule 13 and Section 40-14-202, *Tennessee Code Annotated*, the Supreme Court increases the likelihood that indigent defense legal services, which are significantly funded by tax dollars, will be provided to individuals who are actually financially capable of retaining legal services.

Recommendation

We recommend that the Tennessee Supreme Court and the General Assembly work together to

- enhance *Tennessee Code Annotated* and Supreme Court rule so that the two match and comply with recent U.S. Supreme Court decisions; and
- provide more detailed guidance and procedures for the indigency determination process, with specific instructions for verifying information submitted by applicants and for maintaining all relevant documentation related to the determination.

Management's Comment

We concur in part. Most judges in Tennessee are applying the proper indigency guidelines, but we agree there should be more uniformity in application. To that end, the Tennessee Supreme Court will review Supreme Court Rule 13 for compliance with U.S. Supreme Court rulings and will make any necessary changes. The Court will make this information available to the General Assembly so that amendments may be made to applicable statutes to achieve consistency with Rule 13.

Judges will be provided with information regarding the need for consistent indigency guidelines. This will be accomplished through any necessary revisions to the judicial bench book and judicial orientation manual. In addition, an educational program will be conducted at a judicial conference detailing the procedures, criteria and forms required for indigency determinations pursuant to the respective provisions of Rule 13 and the applicable statutes.

Further, the Supreme Court will establish a task force devoted to the study of indigent representation in Tennessee. One focus of that Task Force will be a study of the indigency determination by judges. The AOC has applied to the Department of Justice for a grant to assist the Task Force in its work. If the funds are approved, they will be applied toward consulting with experts, researching best practices and procedures utilized by other states, and determining potential efficiencies in the overall administration of the fund.

Observation 1 – Consistent assessment and collection of the administrative fee could help maximize revenues for the indigent defense fund

State law directs court judges to charge individuals who have been determined to be indigent an administrative fee at the time counsel is appointed and directs county clerks to collect these assessed fees. Sections 40-14-103 and 37-1-126, *Tennessee Code Annotated*, state the following:

A defendant, who is provided with court-appointed counsel . . . shall be assessed by the court at the time of appointment a nonrefundable administrative fee in the amount of fifty dollars (\$50.00). The administrative fee shall be assessed only

one time per case and shall be waived or reduced by the court upon a finding that the defendant lacks financial resources sufficient to pay the fifty-dollar fee.

These sections additionally (a) allow the court to charge up to \$200 upon finding that the defendant has financial resources to pay a higher amount and (b) require the defendant to pay any assessed fee prior to the disposition of the case or within two weeks following the appointment of counsel, whichever occurs first.

Indigent defense fund expenditures totaled \$29.4 million for fiscal year 2011 and \$31.5 million for fiscal year 2012. Based on our testwork, the courts could maximize revenues and offset a larger portion of the fund's expenditures by consistently assessing and collecting the administrative fee.

Analysis of Administrative Fee

Individual Courts

To assist the General Assembly in its court districting decisions, the Administrative Office of the Courts (AOC) compiles an *Administrative Fee for Appointed Counsel* report every calendar year. This report provides a detailed breakdown by county of the number of court cases, the number of cases that assessed the administrative fee, the number of cases that waived the fee, and the total amount of revenue received from the fees. Based on our review of the AOC's 2011 and 2012 administrative fee reports, we found that the frequency of assessing fees varied significantly between courts. As an illustration, the 2011 report data showed that 2 of the 95 counties in Tennessee (Pickett and Crockett Counties) did not charge the administrative fee to any indigent court case, and our 2012 data analysis revealed that Fayette County did not charge the fee. Coffee and Moore County, in contrast, charged the administrative fee in every indigent case in both 2011 and 2012.

Courts in Aggregate

Upon examining the 2011 and 2012 indigent defense case information in aggregate, also presented in the *Administrative Fee for Appointed Counsel* reports, we noted that of the 446,566 cases heard across the state from January 1, 2011, through December 31, 2012, judges waived the fee for 39% of cases (172,763). In addition, for the cases where the judges assessed the fee, clerks collected a minimal amount. For details, see Table 2 on the following page.

**Table 2
Administrative Fees for Appointed Counsel**

Calendar Year	Number of Indigent Cases	Number of Fees Waived	Number Ordered to Pay	Total Revenues Collected	Average Admin Fee Collected Per Case Where Fee Was Charged
2011	228,932	89,322	139,610	\$1,658,814	\$11.88
2012	217,634	83,441	134,193	\$1,734,561	\$12.93
Total	446,566	172,763	273,803	\$3,393,375	\$12.39

Source: 2011 and 2012 *Administrative Fee for Appointed Counsel* reports, along with auditor calculations.

Survey of Judges

To supplement our analysis of the reports, as part of our anonymous survey of judges described in Finding 1, we included questions about the judges’ processes for charging the administrative fee and deciding the amount to charge. Of 20 judges, 13 (65%) reported charging the administrative fee at least 70% of the time. One judge stated that he or she was not previously aware of the administrative fee but would now start charging it. Another judge dubbed fee assessment as the court clerks’ responsibility, which contradicts state statutory requirements. Just 14 of the 20 judges (70%) indicated that they charged the fee using the criteria established in Section 40-14-103, *Tennessee Code Annotated*. To further illustrate the benefit of a consistent fee assessment process using the 2012 number of indigents ordered to pay (134,193 from the chart above) and assuming the clerks collected \$25 per assessment, the total collections to the fund would be \$3,354,825.

Origin of Inconsistency

Based on the AOC’s *Administrative Fee for Appointed Counsel* reports, judges’ survey responses, and *Tennessee Code Annotated*, we believe that the inconsistent assessment and collection of the administrative fee arose due to a lack of awareness of the fee, lack of detailed assessment procedures, and the courts’ high degree of autonomy.

We recommend that the Supreme Court work with the General Assembly to add an exemption from the fee only for individuals who provide sufficient proof that they are unable to pay it. The Tennessee Supreme Court, the General Assembly, and the AOC should jointly establish the type of proof required. We further recommend that the General Assembly consider incorporating actions to take if an individual fails to pay the assessed administrative fee.

REPORTING REQUIREMENTS

The Tennessee Court System must comply with various reporting requirements promulgated in state statute. As part of our testwork, we reviewed courts' adherence to six different reporting provisions. *Tennessee Code Annotated* stipulates that courts must report the following:

1. Individuals committed to a mental institution or adjudicated as a "mental defective" in a court of law⁵ to the Federal Bureau of Investigation's National Instant Criminal Background Check System (Sections 16-1-117, 16-3-812, 16-10-213, 16-11-206, 16-15-303, 16-16-120, 39-17-1316, and 39-17-1351). This system provides information to both gun dealers running background checks and to the Tennessee Department of Safety and Homeland Security staff processing concealed handgun carry permit applications.
2. Final court disposition information to the Tennessee Bureau of Investigation (Sections 8-4-115, 16-3-803, and 16-3-812). The bureau matches final court dispositions to the corresponding arrest records to update an individual's background after an arrest.
3. Court judgments to the Tennessee Department of Correction to ensure the timely release of inmates found not guilty through the trial or appellate court process (Sections 39-13-206, 40-30-102, 40-30-111 through 113, 40-30-116 through 117, and 40-35-401 through 402).
4. General sessions criminal and civil caseload information to the Administrative Office of the Courts for evaluation of judicial needs (Sections 16-1-117, 16-3-803, 16-3-809, 16-15-303, and 18-1-105).
5. Unpaid court cost records to the Tennessee Department of Safety and Homeland Security. The department uses these records to revoke individuals' driver's licenses until they pay their court costs (Section 40-24-105).
6. Financial transactions so that the Tennessee Department of Revenue can compile the state litigation report and ensure proper remittance of litigation fines and fees (Sections 16-18-310 and 67-4-213).

The court clerks use a variety of case management systems to comply with applicable reporting requirements. The Administrative Office of the Courts (AOC) maintains the Tennessee Court Information System (TnCIS), which provides an integrated case management and accounting software system that addresses the statutory responsibilities of the clerks of the general sessions, chancery, circuit, and juvenile courts. In addition, TnCIS provides statewide reporting and data transfer capabilities to the AOC, Tennessee Bureau of Investigation, Department of Safety and Homeland Security, and Department of Revenue. Some court clerks

⁵ "Adjudicated" means pronounced by a judge. Additionally, *Tennessee Code Annotated* defines a "mental defective" as those individuals who are a danger to themselves or others, lack the ability to manage their own affairs, receive a finding of insanity, or cannot stand trial.

operate in-house case management systems rather than TnCIS. State law requires, however, that all automated case management systems have the same functionality as TnCIS.

Our objectives in reviewing reporting requirements were to determine whether

- controls over TnCIS were operating as described by management;
- the courts had implemented TnCIS or a functionally equivalent system as required by state law; and
- the court system complied with state statutory requirements involving
 - mental health and firearms reporting;
 - final court disposition reporting;
 - court judgment dissemination;
 - general sessions caseload data collection;
 - unpaid criminal court costs and driver's license suspension reporting; and
 - the state litigation report.

To achieve our objectives, we conducted interviews with applicable personnel at the AOC, county courts, the Court of Criminal Appeals, the Federal Bureau of Investigation (FBI), the Tennessee Bureau of Investigation, the Department of Safety and Homeland Security, and the Department of Revenue. We also inspected *Tennessee Code Annotated* provisions and Supreme Court rules related to each reporting requirement. For the Tennessee Court Information System (TnCIS) objectives, we performed walkthroughs with the AOC Information Technology staff and reviewed system documentation. We obtained the Information Technology Division's TnCIS rollout schedule. For counties not operating an automated case management system, we analyzed the court revenues and expenditures listed in their fiscal year 2013 *Comprehensive Annual Financial Reports* to assess the level of funding available for such a system.

We tested all 62 courts that, according to AOC management, were required to make mental health submissions to the FBI's National Instant Criminal Background Check System. For the period July 2013 through March 2014, we compared the courts' mental health submissions recorded in the AOC's Mental Health Commitment Reporting spreadsheet to the submissions actually listed in the FBI's Tennessee database. We specifically focused on whether the AOC effectively tracked report submissions, whether the courts submitted reports in a timely manner, and whether all case management systems uniformly submitted reports. With regard to the remaining courts, we reviewed evidence supporting their exemption from mental health reporting.

For each calendar year from 2010 to 2013, we calculated the total number of fingerprint arrest records received by the Tennessee Bureau of Investigation versus the final court dispositions received by the bureau. We then compared our results to the number of fingerprint arrest records received versus the number of final dispositions received for calendar years 1995 to 2003. In addition, we obtained the AOC-submitted final court dispositions for April 2014 to verify that court clerks followed the requirements delineated in *Tennessee Code Annotated*.

To fulfill our court judgments objective, we obtained the entire population of 113 reversed and 13 dismissed cases from the Court of Criminal Appeals from January 1, 2012,

through March 31, 2014. From this list, we selected all 30 cases that involved a reversal or dismissal with an accompanying previous sentence of incarceration in order to ensure that court clerks properly executed the Court of Criminal Appeals' opinions by releasing the individuals.

We reviewed the Misdemeanor Defendant Counting Form that the AOC provided as instructions to the court clerks to submit caseload data, along with actual data submitted for the 25th Judicial District from July 2012 through June 2013, in order to verify that courts submitted proper and adequate general sessions information in accordance with *Tennessee Code Annotated*. Additionally, we read various judicial caseload studies published by the Comptroller of the Treasury's Offices of Research and Education Accountability.

We obtained from the Department of Safety and Homeland Security a list of the 1,291 unpaid electronic criminal court records encompassing 10 of the state's 95 counties (selected through nonstatistical, random means) and covering the months of March 2013 and January 2014. We used PivotTables (a data summarization tool in Excel) to evaluate whether the records contained a driver's license number, Social Security number, date of birth, and address, in accordance with Department of Safety and Homeland Security and *Tennessee Code Annotated* requirements.

For the state litigation reports objective, we selected a nonstatistical, random sample of 25 counties to verify that court clerks submitted Form 401 (Litigation Tax Return) and Form 414 (Litigation Fines and Fees Return) for January 2012 and January 2014 to the Department of Revenue in order to comply with *Tennessee Code Annotated* provisions.

Based on the procedures performed, we determined that

- TnCIS controls were working as described by AOC management;
- some courts used information systems incapable of reporting the mental health and firearms information set forth in state law (see Finding 2);
- multiple deficiencies exist within the court system's mental health and firearms reporting procedures (see Finding 2);
- the court system's adherence to final court disposition reporting requirements improved from the period 1995 through 2003 to the period 2010 through 2013;
- with one exception involving the timeliness of case closure, the court clerks followed the opinions handed down by the Court of Criminal Appeals;
- the court system did not fully comply with requirements governing the collection of general sessions caseload data (see Finding 3);
- the court clerks followed established guidelines for submitting unpaid criminal court cost information to the Department of Safety and Homeland Security, with minor exceptions; and
- the court clerks submitted the state litigation returns as required, with immaterial differences.

Finding 2 – Both Administrative Office of the Courts personnel and court clerks should implement improvements to fully comply with state statutes designed to keep firearms out of the hands of individuals with mental health issues

While performing our audit, we found that Tennessee Court System management had not fully complied with state laws regarding mental health and firearms reporting by ensuring that

- the Administrative Office of the Courts (AOC) adequately tracked mental health report submissions,
- court clerks timely reported submissions, and
- various courts used compliant automated reporting systems.

Background Information

Courts Required to Report

Section 16-1-117(a)(6)(A), *Tennessee Code Annotated*, requires that court clerks submit reports to the Federal Bureau of Investigation (FBI) National Instant Criminal Background Check System (NICS) database within three business days whenever a court of law

- commits an individual to a mental institution, or
- adjudicates him or her as a “mental defective.”

According to Section 16-10-213(a)(1), adjudication as a mental defective means

- (A) A determination by a court in this state that a person, as a result of marked subnormal intelligence, mental illness, incompetency, condition or disease:
 - (i) Is a danger to such person or to others; or
 - (ii) Lacks the ability to contract or manage such person’s own affairs due to mental defect;
- (B) A finding of insanity by a court in a criminal proceeding; or
- (C) A finding that a person is incompetent to stand trial or is found not guilty by reason of insanity. . . .

Both gun dealers and the Department of Safety and Homeland Security must check the NICS database before making eligibility determinations involving firearms. Therefore, without a complete and accurate database, individuals with mental health issues may still be able to obtain a firearm from a gun dealer or a concealed carry permit from the Department of Safety and Homeland Security.

State law requires the following courts to submit mental health reports:

Table 3
Courts Required to Submit Mental Health Reports

Court Type	<i>Tennessee Code Annotated Section</i>
Circuit	16-10-213
Criminal	16-10-213
Chancery	16-11-206
General Sessions	16-15-303
County	16-16-120

Role of the Administrative Office of the Courts

Effective July 1, 2013, the General Assembly revised Section 16-1-117(a)(6)(B), *Tennessee Code Annotated*, to require the AOC to submit mental health reports to the FBI within three business days for all court clerks unable to make the submissions themselves. Additionally, pursuant to Section 16-1-117(a)(6)(D), the AOC must provide written notification to any court not found to be in compliance with reporting requirements. If noncompliance continues for another reporting period, then the AOC is also responsible for notifying the judges, district attorneys general, public defenders, and court clerks in the district where the noncompliant office is located.

In order to keep track of whether the courts have submitted information to the NICS database, the AOC application support manager has requested that each clerk submit one of the following email notifications on a monthly basis:

- (1) a statement regarding whether the court made a mental health report submission;
- (2) a carbon copy of the report submission to the NICS database; or
- (3) a request for the AOC to make the submission to the database on behalf of the court.

The application support manager developed a Mental Health Commitment Reporting spreadsheet to track whether or not courts submitted information to the NICS database. The spreadsheet contains columns for county name, clerk name, clerk type, and jurisdiction. Furthermore, the application support manager established a column for each month and used clerks' emails to mark whether the commitments had been reported or to mark if the courts had no mental health commitments to report.

For the period July 2013 to March 2014, we reviewed the reporting spreadsheet, which listed 62 courts that, according to AOC management, were required to submit mental health reports to the NICS database. The director of Information Technology noted, and we verified, that the remaining courts did not submit data because a licensed mental health facility was unavailable in their county or because the clerks informed the AOC via email that their courts did not hear mental health cases.

Results of Testwork

Administrative Office of the Courts' Reporting Spreadsheet Was Inadequate

Based on our testwork, we determined that AOC management did not have an adequate system to ensure that the clerks submitted mental health reports to the NICS database so that AOC staff could report on the clerks' behalf when needed, as delineated in Section 16-1-117(a)(6)(D), *Tennessee Code Annotated*. When we compared an extract of mental health reports from the NICS database to the AOC's Mental Health Commitment Reporting spreadsheet, we found that the AOC's reporting spreadsheet contained errors for 16 of the 62 courts (26%). The spreadsheet listed submissions for courts that did not report per the database and listed no submissions for courts that did report per the database. Specifically, our testwork revealed that the AOC did not correctly track mental health submissions for 1 probate court, 1 chancery court, 4 circuit courts, and 10 general sessions courts.

We discussed the spreadsheet's inaccuracies with the AOC application support manager, who provided several possible explanations for the errors:

- typographical mistakes she made;
- a timing difference between when the court clerks submitted the mental health reports and when FBI personnel entered the information into the database; or
- a reporting delay caused by the clerks waiting on information from the FBI to link case information to a particular county.

The AOC director of Information Technology and the AOC director of Fiscal Services provided additional details. According to the director of Information Technology, AOC staff rely on the court clerks to send them accurate information, and the FBI does not consistently forward confirmation emails to the AOC. As a result, the AOC is not able to verify when the FBI entered the mental health reports into the NICS database. The director of Information Technology additionally remarked that the courts have experienced difficulties with understanding the reporting requirements.

Court Clerks Did Not Report Within the Required Timeframes

In addition, we determined that clerks in 6 of the 62 courts we reviewed (10%) did not submit mental health reports to the NICS database within 3 business days following receipt of the court order, which is required by Sections 16-1-117(a)(6)(B), 16-10-213(b), 16-11-206(b), and 16-15-303(g)(2), *Tennessee Code Annotated*. Specifically, we found that three general sessions courts, two circuit courts, and one probate court did not submit reports timely.

To obtain an explanation for these problems, we met with the application support manager, the director of Information Technology, and the director of Fiscal Services. The application support manager stated that the court clerks told her they did not submit the mental health reports timely for the following reasons:

- mental institutions failed to promptly notify the clerk of committals for fear of taking away citizens' gun rights;
- before implementing TnCIS in August 2013, one clerk placed records in a safe due to a judge's instruction to keep records confidential;
- one clerk wanted to ensure that another court involved in the case had reported to the NICS database in order to avoid a duplicate report; or
- the reason was unknown.

We could not calculate the number of days each submission was late since the application support manager did not maintain court order dates or dates of the clerks' submissions on the reporting spreadsheet.

Courts Used Automated Reporting Systems That Did Not Meet Requirements

Based on interviews with the application support manager and the director of Information Technology, we determined that court clerks operated automated systems that were incapable of submitting information to the NICS database. Section 18-1-105(d)(1), *Tennessee Code Annotated*, requires courts to:

[i]nstall and maintain the Tennessee court information system (TnCIS) as provided by the administrative office of the courts (AOC) or a functionally equivalent computer system. The implementation of TnCIS in the offices of the court clerks shall be determined by the TnCIS steering committee and shall be based on the availability of adequate funding. The TnCIS software shall be made available to all offices of court clerks, including those offices previously automated and those offices within Shelby, Davidson, Knox and Hamilton counties.

We determined through inquiry and inspection that TnCIS does allow for automated mental health reporting to the FBI. We found, however, that 14 of the 62 courts required to make mental health report submissions (23%) operated a case management software system that did not have the ability to submit reports to the NICS database. Specifically, we noted that four circuit courts, six general sessions courts, and four chancery courts used systems that lacked this reporting ability.

We discussed this system issue with the application support manager and the director of Information Technology, both of whom acknowledged this was a problem. They said that some court clerks chose a case management system other than TnCIS because they did not want the AOC having direct access to their systems. Even though the director of Information Technology sent all clerks and case management vendors a memo on April 12, 2013, reminding them of required system functionality, four vendors still operate noncompliant systems, as described below:

1. Icon—Two counties use Icon. The AOC director of Information Technology met with the Icon vendor on May 12, 2014, to discuss the mental health reporting

requirements established in *Tennessee Code Annotated*. The Icon vendor informed the director that the company would start field-testing the mental health reporting within the next two months.

2. Saratoga—Two counties use this system. The AOC application support manager stated that Saratoga had purchased another software system to gain more copy business from the court clerks. The Saratoga group did not realize the software was outdated. The director of Information Technology reported to us that the Saratoga group had informed the court clerks that it would cease supporting the software system. She anticipates that the court clerks currently using Saratoga will move to either TnCIS or Icon.
3. New Dawn—The director of Information Technology remarked that only one county uses this system, which has not gone live yet. The AOC understands from the county’s project manager, however, that mental health reporting was part of the system requirements.
- 4) HTE—The director of Information Technology explained that HTE operated in one county, which implemented TnCIS in January 2015 (following the conclusion of our fieldwork).

Based on discussion with the application support manager, the FBI is currently pilot testing phase one of the Law Enforcement Enhancement Portal (LEEP), which is a website that allows users with an authorized username and password to upload mental health reports directly to the NICS database. LEEP will provide court clerks with the ability to make report submissions whether or not they operate an automated case management system. In the meantime, AOC personnel—when appropriately notified by the clerks—strive to complete submissions for any courts whose software does not have the capability to report to the FBI.

Effects of Noncompliance

Mental health reporting helps prevent those individuals found to be a danger to themselves or others from obtaining a firearm from a gun dealer or a concealed carry permit from the Department of Safety and Homeland Security. The AOC cannot ensure that court clerks properly submit cases to the FBI without effectively tracking each court. Because the court clerks did not submit reports to the FBI within the required timeframe, the FBI could not timely enter the courts’ reports in the NICS database. Also, using systems that were not designed to report to the FBI increases the risk that individuals will not be timely placed on the NICS database to prevent them from purchasing firearms and obtaining concealed carry permits.

Recommendation

The AOC’s director of Information Technology and application support manager should implement an effective tracking system to ensure courts comply with state law. The clerks should ensure they submit all instances where a court commits an individual to a mental institution or adjudicates him or her as a mental defective to the NICS database within three

business days of written notification. In addition, the court clerks should ensure they operate an automated system that is functionally equivalent to TnCIS.

Management's Comment

We concur. This is partly due to a funding issue. In the short term, we will devote the resources necessary to more accurately track the mental health report submissions. As to a long-term solution, we have applied for grant funds to create an automated monitoring system to verify the timely reporting to the NICS Index by county court clerks. This request only became possible this year because of a relief process that was drafted with the cooperation of eight state agencies and stakeholder groups over the past year. The proposed systems also would include a periodic verification that those courts that are currently marked as exempt still qualify for that status.

We also have requested grant funding for contract personnel to do on-site audits annually. If approved, those grant funds would be available October 1, 2015. We could begin the onsite audits shortly thereafter. We estimate that the implementation of an automated monitoring system would take 12 to 18 months to complete.

In the interim, we have contacted all 33 of the clerks who are currently exempt and verified via phone or email in early 2015 that they are still eligible for exemption. If these grant funds do not become available, we will request funding in the next budget cycle similar to that which was requested in our fiscal memorandum in 2013 but was not adopted in the budget. Without funds, we will have to continue with our limited, manual tracking system, including monitoring counties that are exempt from reporting.

We will also notify the locally elected court clerks of the statutory requirement that their non-TnCIS systems must be functionally equivalent to TnCIS. The AOC will continue to manually report for those clerks whose systems are unable to report to the FBI.

Finding 3 – Because the Administrative Office of the Courts was unable to develop appropriate criminal and civil caseload data collection procedures for general sessions, court clerks made incomplete and inaccurate submissions to that office, in violation of state statute

Section 16-1-117(a)(1–3), *Tennessee Code Annotated*, requires the Administrative Office of the Courts (AOC) to “collect, develop, and maintain” court caseload data, including for general sessions courts. To assist the AOC, the clerks of each court must report “uniform statistical information,” such as the case verdict, on all criminal and civil cases. But the AOC director of Information Technology stated in an interview that the general sessions court clerks had not been submitting data on all criminal and civil cases since this reporting requirement first went into effect more than 10 years ago. She additionally categorized the data that the clerks do submit as unreliable because of the temporary data collection method. She further disclosed to

us that the general sessions court clerks had been following the AOC's instructions for reporting statistical information.

Background Information

Each of the state's 95 counties operates a general sessions court or a similar court with limited jurisdiction. General sessions courts hear civil, misdemeanor, felony, traffic, environmental, and metropolitan violation cases. These courts are often the public's first interaction with the judicial process.

In 2001, the Comptroller of the Treasury's Offices of Research and Education Accountability (OREA, then the Office of Research) issued a report titled *The Need for Standardized Caseload Data in Tennessee Courts*. In its report, OREA concluded that the state lacked accurate, standardized caseload data from general sessions courts and that without this data, the Comptroller of the Treasury could not provide updates to the weighted caseload studies used to allocate judicial resources. To remedy this deficiency, OREA recommended, in part, that the judicial system establish a repository to collect general sessions caseload data statewide. OREA further suggested that, beginning in fiscal year 2003, the General Assembly require all general sessions courts to report caseload data to the AOC using a standard case definition.

In response to the OREA report, the General Assembly, with the passage of legislation that became Section 16-1-117(a)(1-3), *Tennessee Code Annotated*, established a standard case definition and directed the general sessions courts to begin submitting—and the AOC to begin collecting—caseload data on July 1, 2003. In order to address the requirement in Section 16-1-117(a)(4) to “create forms to be used by each court in reporting the caseload data,” the AOC developed the General Sessions Misdemeanor Defendant Counting Form to use as a temporary reporting tool for criminal cases. The AOC did not develop any procedures for reporting civil cases.

In instructions for completing the misdemeanor counting form, the AOC tells court clerks to count the following cases:

- cases involving the District Attorney's Office;
- cases disposed in a manner other than bound over to trial;
- traffic cases involving driving under the influence or driving with a revoked or suspended license;
- one case per defendant each day; and
- misdemeanors.

Furthermore, the form instructs the clerks not to count the following cases:

- cases not involving the District Attorney's Office;
- bound-over cases;

- traffic cases not involving driving under the influence or driving with a revoked or suspended license;
- juvenile cases;
- city ordinance cases; and
- more than one case per defendant per day.

The AOC director of Information Technology explained that the court clerks' methodology for counting cases and completing the form differs depending on whether their counties use an automated or manual case management system. The Tennessee Court Information System (TnCIS)—which is an integrated case management and accounting software system that provides statewide reporting and data transfer capabilities—and functionally equivalent systems automatically populate the form in accordance with the AOC's instructions. For counties not on TnCIS or a comparable system, the clerks have to manually add a hash mark to the form after every applicable case (otherwise known as the "hash method").

Results of Testwork

Since the courts only reported the limited information listed in AOC's instructions for the General Sessions Misdemeanor Defendant Counting Form, we concluded that their submissions were incomplete and not in full compliance with the requirements in Section 16-1-117(a)(1-3). By state statute, the courts should report *all* criminal and civil caseload data, not just the partial criminal case information included on the form developed by the AOC.

The director of Information Technology also expressed concerns about the accuracy of the criminal caseload data that the court clerks have been submitting. For the unautomated counties, she told us that she does not rely on the caseload data because the clerks use the hash method and may inadvertently miss recording a case. She added that the AOC cannot rely on the TnCIS-provided data either, since the system requires the court clerk to use a drop-down menu to identify district attorney involvement in a case. Therefore, the director of Information Technology deduced that both user- and TnCIS-counted data are susceptible to an unacceptably high risk of human error. Because the general sessions court clerks only submit a case total instead of a detailed breakdown, neither we nor the AOC could trace the information on the counting form back to supporting documentation.

In addition to the director of Information Technology's statements and our review of completed counting forms, OREA has published a series of reports and memoranda since 2001 that have questioned the reliability of available statistical information. In fact, OREA's latest memorandum on weighted caseload studies, issued on February 1, 2013, referenced problems involving "the accuracy and consistency" of reported general sessions criminal caseload data.

Causes of Noncompliance

We discussed the general sessions caseload data requirements with the director of Fiscal Services and the director of Information Technology, both of whom agreed that the lack of complete and accurate caseload data constituted a problem. The director of Information

Technology commented that two primary problems prevent full compliance with *Tennessee Code Annotated* requirements:

1. *Case data inconsistently recorded*—As recommended in the 2001 OREA report, the General Assembly included a standard case definition in Section 16-1-117, *Tennessee Code Annotated*, instructing the general sessions courts to record related crimes occurring within a 24-hour period as one case. Despite this guidance, the courts still do not uniformly record case data. In order to make recording more consistent, the General Assembly passed legislation that became Public Chapter 673, which went into effect on July 1, 2014, and stipulates that courts should record related crimes occurring on the same date as one case.
2. *Lack of funding to build data repository*—The director of Information Technology informed us that the AOC had originally implemented the General Sessions Misdemeanor Defendant Counting Form as a stopgap measure. The AOC’s existing information systems could not handle the complexity and volume of general sessions caseload data that would be received; therefore, as recommended in the 2001 OREA report, management planned to implement a new, automated data repository before July 1, 2004. The director of Information Technology noted that when Section 16-1-117 (a)(1–3), *Tennessee Code Annotated*, went into effect, however, the General Assembly did not allocate any additional funding for the AOC to acquire the servers, other equipment, software licenses, and programmers necessary to develop such a system. The director of Fiscal Services remarked that the general sessions reporting requirement was an “unfunded mandate” at the time of enactment.

The director of Information Technology recounted that in 2006, AOC management again requested funding to actualize a general sessions data repository but was unsuccessful. The AOC did not petition for funding for the data repository during the economic downturn because of required budget reductions. In fall 2012, AOC management requested and then received \$1.25 million for use in fiscal year 2014 to conduct a study to determine system requirements for a general sessions data repository. Upon completion of the analysis phase, management plans to outline the total costs to design, construct, implement, and maintain this project. Both the director of Information Technology and the director of Fiscal Services affirmed that the AOC would further develop data collection policies and procedures after receiving adequate funding to implement the data repository.

Impact of Noncompliance

According to the director of Information Technology, collecting the required criminal and civil case information and implementing a fully functioning general sessions data repository system would enable the AOC to evaluate caseload data across the state. This would, in turn, allow

- ✓ the Comptroller of the Treasury to complete the *Tennessee District Attorneys General and District Public Defenders Weighted Caseload Study* to provide both objective

- information for budgetary deliberations and an effective way to project and compare the need for attorneys;
- ✓ the General Assembly to have more accurate information to gauge the potential cost increases or savings from proposed legislation and to evaluate the success of new programs;
 - ✓ the courts to better manage caseloads, as well as the associated personnel and monetary resources; and
 - ✓ the county and city police departments to target certain types of offenses with special initiatives and then measure the reduction in crime.

Furthermore, the director of Information Technology believes that a data repository would better equip the AOC to address the issue of data accuracy, since she could create and run an edit check program to search for anomalies and errors.

Recommendation

The AOC is statutorily required to collect, maintain, and develop caseload data from the general sessions courts in each county. To assist the AOC, the general sessions courts are statutorily required to collect and report caseload statistics to the AOC. The general sessions court clerks should submit complete and accurate caseload data on civil and criminal cases to the AOC.

Due to the complexity and volume of the general sessions caseload data, a reliable data repository or warehouse system would assist the AOC and the courts in complying with the provisions in Section 16-1-117, *Tennessee Code Annotated*. The director of Fiscal Services should continue to actively pursue funding to implement such a system. In addition, the director of Information Technology should continue to design a data repository system that would allow the AOC to receive, collect, and analyze all general sessions caseload data required by state statute.

Management's Comment

We concur. This is a funding issue. The implementation of the collection of general sessions court data is a significant project requiring more personnel and resources than are available at this time. However, the AOC and the general sessions court clerks recognize the importance of this project and are pursuing the means to accomplish it. At this time, the AOC does not have the database or server to house the data or a system to validate data and resources to staff this effort.

We will make it a priority to pursue funding to support the required collection, validation, and maintenance of the general sessions data. To date, we have received one-time funding of \$1.25 million to perform analysis and determine requirements for general sessions data. Substantial additional nonrecurring funding is needed to obtain the database and the server to fully implement the project, and substantial recurring funds are required to maintain it on an ongoing basis.

A broad, representative task force was convened by the AOC and worked for over a year to develop the precise definition of what constitutes a general sessions “case.” This definition was proposed and legislation passed the General Assembly and became effective July 1, 2014. The AOC then contracted with the National Center for State Courts (NCSC) to (1) create a draft plan for the development, implementation, and operation of a state-level data repository for general sessions court case information; (2) provide requirements for the system; and (3) develop cost estimates and timelines for the project. The NCSC draft report was shared with the General Assembly and with focus groups of general sessions clerks statewide during 2015. Following those meetings and input, a report was finalized in March 2015, which can be included in the next budget cycle. The AOC will develop a request for proposal and formulate our next fiscal request based upon this comprehensive plan.

We will use a portion of the remaining one-time state funding to hire a state contract business analyst to assist with the procurement phase. In addition, the AOC has applied for a technical assistance grant from the State Justice Institute to assist in defraying a portion of these costs.

The AOC will continue to design a data repository system for general sessions data while we actively and aggressively pursue the funding needed to meet our statutory obligation to collect the data. This is a massive, statewide undertaking and will be the largest data enterprise the court system has ever embarked upon. We plan to proceed expeditiously, with the appropriate amount of precision to ensure it delivers the necessary results for the Judiciary, the General Assembly, and all policymakers in this arena.

ACCESS TO JUSTICE

I. Access to Justice Commission

Legal Needs Gap in Civil Cases

Unlike in criminal proceedings, Tennesseans do not have a right to an attorney in civil cases. Therefore, many Tennesseans who cannot afford an attorney must handle various legal issues on their own. The nonprofit Tennessee Alliance for Legal Services released the results to their Statewide Comprehensive Needs Survey in 2004, which showed the breadth of the affected population—based on 2000 U.S. census data, slightly more than one million Tennesseans had household incomes falling below 125% of the federal poverty guidelines. The survey additionally disclosed that although almost 70% of these low-income households faced one or more civil legal problems⁶ during the previous year, less than 30% knew where to go to obtain assistance.

⁶ According to <http://www.tennessean.com/story/opinion/contributors/2014/09/10/need-access-free-legal-aid-never-greater/15352447/>, civil legal problems include cases dealing with life-and-death situations and basic human needs, such as safety from domestic violence and other abuse; housing; and access to resources needed to feed and care for a family.

Actions Taken by Tennessee Supreme Court

Access to Justice Commission Creation

In order to close the civil legal needs gap, the Tennessee Supreme Court declared access to justice its number one strategic priority in December 2008. Effective April 2009, Supreme Court Rule 50 created the 10-member Access to Justice (ATJ) Commission to develop a plan to educate the public about the need for legal representation and to inform interested individuals about available legal resources.

Supreme Court Rule Modifications

The Supreme Court further emphasized the importance of access to justice in Rule 10, “Code of Judicial Conduct,” which consists of four canons, numbered rules for each canon, and comments that generally explain each rule. According to the comment section of Canon Rule 1.2, “Promoting Confidence in the Judiciary,” “[j]udges should participate in activities that . . . promote access to justice for all [emphasis added].” The Supreme Court amended multiple other Supreme Court Rules, Rules of Civil Procedure, and Rules of Criminal Procedure to improve access to justice, focusing especially on the facilitation of pro bono representation.

Pro Bono Legal Services Recognition

The Supreme Court, through the ATJ Commission, encourages attorneys to offer and report free and reduced-rate legal services, which has contributed to the increase in the percentage of Tennessee attorneys who provided this pro bono work from 18% in 2010 to 42% in 2013. In 2013, 9,119 of the state’s 21,645 licensed attorneys reported providing an average of 73 hours of pro bono services, for a total of nearly 700,000 hours of pro bono representation. The Supreme Court annually recognizes attorneys who donate more than 50 hours of pro bono time.

Justice for All Website Developed

The Supreme Court facilitates the Justice for All website, developed in November 2011 to target individuals who cannot afford an attorney and need help in civil cases. Individuals may use the website to

- ✓ gather information about the court system and court proceedings;
- ✓ procure simplified, Supreme Court-approved court forms catering to those interested in representing themselves (known as pro se litigants);
- ✓ identify attorneys and agencies to help them with all or part of their case;
- ✓ email an attorney to receive free assistance with a legal issue; and
- ✓ access the statewide toll-free legal hotline (1-844-HELP4TN).

Efforts to Promote Awareness of Available Resources

Methods Used to Inform Civil Judges and Court Clerks

To implement its access-to-justice strategy, the Supreme Court hired, through the Administrative Office of the Courts (AOC), a coordinator to serve as a liaison between the ATJ Commission and the legal community. Based on inquiries with the ATJ coordinator and inspection of supporting documentation, we learned that the AOC and the ATJ Commission work together to increase judges' and court clerks' awareness of resources available through the ATJ Program. The methods that the AOC and ATJ Commission adopted to accomplish this goal include, but are not limited to, the following:

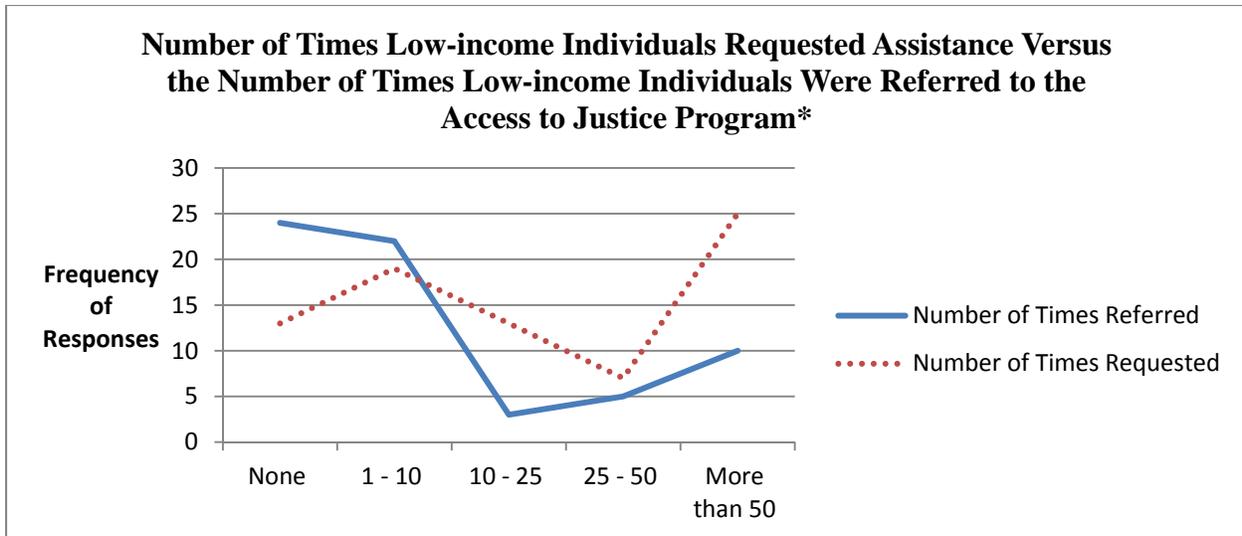
1. sending emails to judges and court clerks regarding ATJ Program updates;
2. distributing a bench book (which provides an overview of legal procedures) to guide courts in their interactions with pro se litigants; and
3. speaking at judge and court clerk conferences about the ATJ Program in general and the bench book in particular.

The ATJ coordinator added that she personally encourages judges and court clerks to refer all eligible individuals to the ATJ Program for resource information.

Testwork Catalyst and Results

The ATJ coordinator reported to us, however, that she has received complaints from pro se litigants that some judges and court clerks improperly informed them that they do not have the right to represent themselves in court or that they could not use the Supreme Court-approved forms to file a motion in court. In response to this information, we selected a nonstatistical, random sample of 150 civil court judges and clerks out of a population of 588 and sent them an anonymous electronic survey to evaluate their awareness of resources available to low-income individuals through the ATJ Program. Our survey included questions about the number of times individuals who could not afford legal representation requested assistance with a civil matter and the number of times the survey respondents referred these individuals to the ATJ Program. Our survey allowed respondents to make selections from the following ranges for each question: none, 1-10, 10-25, 25-50, and more than 50.

We had 57 survey respondents, 11 of whom (19%) selected answers to both questions in the same range (e.g., 25-50 low-income individuals requested assistance and 25-50 were directed to ATJ Program resources). The remaining 46 respondents (81%) referred fewer individuals to the program than requested assistance. (For example, 25-50 individuals requested assistance; yet, respondents indicated directing only 1-10 to program resources.) Our analysis highlighted the gap between the number of low-income individuals requesting assistance and the number receiving information about the ATJ Program. See the chart on the following page for our results.



* In our survey, we requested information about the period January 1, 2013, through May 7, 2014. We did not ask—and the respondents did not volunteer—whether the low-income individuals had been informally advised or directed to resources outside the Access to Justice Program.

When we notified the ATJ coordinator of our testwork results, she postulated that the importance of the ATJ Program might not be “sinking in” with some civil court judges and clerks. Our verbal interview with one judge supported the coordinator’s conclusion and also provided anecdotal evidence that the judges’ and clerks’ busy schedules contributed to the lack of program referrals. The judge stated that although he was unaware of the ATJ Program, he might have received communications about it. According to the judge, his other work duties did not allow him time to investigate the ATJ Program.

The ATJ Commission’s 2014 strategic plan also identified concerns regarding the dissemination of information about existing resources, making it the second of their 14 key areas of focus. The plan describes access to justice resources currently available and then states, “In the Commission’s judgment, however, many of these resources, and others, are underutilized. Public awareness of the available resources, therefore, deserves careful attention over the next two years. One step, for example, will be the creation of a poster to be displayed in clerks’ offices and other locations informing the public of available resources.”

National Recognition Received

Even though the ATJ Commission continues to identify opportunities for improvement, the state has received national recognition for its access-to-justice efforts thus far. In 2014, the Supreme Court and its ATJ Commission received an Advancement of Justice Award from the National Judicial College. In 2015, the Chief Justice of the Tennessee Supreme Court spoke at both a White House forum and a U.S. Senate briefing. National awards have been bestowed upon individual commission members as well.

II. Tennessee Voluntary Fund for Indigent Civil Representation

On May 4, 2006, Public Chapter 589 amended Section 16-3-814, *Tennessee Code Annotated*, to establish the Cy Pres Fund, also known as the Tennessee Voluntary Fund for Indigent Civil Representation. The General Assembly established the fund to provide supplemental funding for civil legal representation for those unable to afford it. The Tennessee Alliance for Legal Services, a nonprofit agency, promotes contributions to the Cy Pres Fund, while the AOC administers the fund. All contributions to the fund are voluntary. By statute, once the fund corpus reaches or exceeds \$1,000,000, the interest will then be used to assist pro se litigants who cannot afford an attorney in civil cases.

To determine whether the AOC properly administered the Cy Pres Fund, we attempted to test the administration of the fund by inspecting relevant documentation and conducting interviews with applicable AOC personnel. We found that due to lack of contributions, the AOC never established the Cy Pres Fund

III. Access to Court Interpreters

For individuals with limited English proficiency (LEP), language may serve as a barrier to understanding and exercising their legal rights and securing meaningful access to the judicial system. In order to remove this barrier, the U.S. Congress passed the Court Interpreters Act in 1978, recognizing an individual's constitutional right to an interpreter during federal proceedings. On August 11, 2000, former President Bill Clinton issued Executive Order 13166, "Improving Access to Services for Persons With Limited English Proficiency," which requires each federal agency and recipient of federal funds to take reasonable steps to provide meaningful access for the LEP population.

In response to this federal guidance, many states have implemented court interpreter programs, including Tennessee, where the number of LEP individuals totaled 159,580 in 2012.⁷ Tennessee Supreme Court Rules 41 and 42 created the state's Court Interpreter Program in 2002 to ensure LEP parties receive adequate court interpretation.

Supreme Court Rule 42 further requires judges to seek interpreters in accordance with the order listed below:

- *certified court interpreters*: individuals who have passed all established procedures to become a certified court interpreter;
- *registered court interpreters*: individuals who are in the process of becoming a certified court interpreter; and
- *non-credentialed interpreters*: individuals who have not received any formal certification or training on courtroom interpreting.

As of April 4, 2014, the state had 56 certified court interpreters who represented 4 different languages and 45 registered court interpreters who represented 7 different languages.

⁷ We obtained this data from the Migration Policy Institute.

In order to assist judges with executing the provisions listed in the Supreme Court rules, the AOC employs a court interpreter coordinator who aids in the search for an adequate court interpreter and promotes the interpreter credentialing process.

To determine whether the statewide access to court interpreters who speak languages other than Spanish was adequate, we tested the Court Interpreter Program. We inquired with key AOC personnel. We also obtained a list of all 101 certified and registered court interpreters in Tennessee as of April 8, 2014, and used this list to determine how many court interpreters in each of the state's three grand divisions were available to interpret languages other than Spanish. Additionally, we evaluated how other means of interpretation could benefit the program. We found that the court system was taking strides to increase the statewide access to court interpreters who speak languages other than Spanish by actively recruiting new interpreters and exploring the use of technology.

JUVENILE AND FAMILY COURTS

Juvenile Courts

Organizational Structure

There are 98 juvenile courts in Tennessee, 17 of which are designated "Private Act" juvenile courts. The remaining 81 are general sessions courts with juvenile jurisdiction. With the exception of the courts in Bristol and Johnson City, the juvenile courts are county-based and administered with at least one court located in each of the state's 95 counties. Due to their decentralized nature, juvenile court systems and practices vary widely and tend to reflect the needs and preferences of the people living in that particular community.

Jurisdiction

Pursuant to state law, a "juvenile" is defined as any individual under the age of 18 who has not been previously transferred to adult court. Juvenile courts deal not only with delinquency and status offenses, but also with issues concerning dependency and neglect; child abuse; child support; custody issues; establishing parentage; visitation; and the need for medical and/or mental health treatment for children.

U.S. Department of Justice Report

Based in part on information received from the Shelby County community, on August 11, 2009, the Civil Rights Division of the U.S. Department of Justice began an investigation into

- the administration of juvenile justice for children facing delinquency charges before the Juvenile Court of Memphis and Shelby County (JCMSC);
- the conditions of confinement and treatment of children at the detention center operated by that court; and

- the court’s compliance with Title VI of the Civil Rights Act of 1964.

In a report released on April 26, 2012, the U.S. Department of Justice “concluded that we have reasonable cause to believe that JCMSC fails to protect the rights of children appearing before it on delinquency matters by failing to (1) provide constitutionally required due process,⁸ (2) administer justice in a non-discriminatory manner, and (3) provide reasonably safe conditions of confinement.”

On December 17, 2012, JCMSC and the U.S. Department of Justice entered into a settlement agreement to address the findings noted. As of April 2, 2014, the U.S. Department of Justice continues to monitor JCMSC and release periodic reports on the court’s progress.

Tennessee Commission on Children and Youth Report

To maintain eligibility for the federal Juvenile Justice and Delinquency Prevention Act funding, states must assess and address disproportionate minority contact⁹ within the juvenile justice system every five to seven years. The Tennessee Commission on Children and Youth fulfills this requirement for the state.

In September 2012, the commission released its latest *Study of Disproportionate Minority Contact (DMC) in the Tennessee Juvenile Justice System*. The commission ultimately found that “minority youth are overrepresented at all stages of the juvenile justice process. This is especially evident in secure confinement facilities, with the degree of over-representation being lowest at the point of arrest and increasing at each subsequent stage.”

Specifically, the commission reported that for 2011, 21% of the state’s population between the ages of 10 and 17 was African American, and 6% of the state’s population in that age range consisted of other racial minorities¹⁰. The proportion of minority youth at each juvenile justice stage, however, was as follows in 2011:

⁸ “Due process” encompasses, but is not limited to, the right to counsel, the right to notice of the charges faced, the right to avoid self-incrimination, and the right to confront witnesses.

⁹ “Disproportionate minority contact” is the degree to which the number of minority juveniles who come into contact with the law enforcement and juvenile justice systems differs from that of their numbers in the general population.

¹⁰ The report includes Asian, Native Hawaiian or Pacific Islander, and American Indian or Alaskan Native populations as “other racial minorities.” According to the report, “Hispanic or Latino is an ethnic group and not considered a defined race.”

Table 4
Minority Representation in Juvenile Justice System

Juvenile Justice System Stage	Percentage of Juveniles That Are African American	Percentage of Juveniles That Are Other Racial Minorities
Cases petitioned to juvenile court	26%	9%
Diverted from juvenile court	48%	3%
Involved in delinquency cases	39%	4%
Detained in secure juvenile correctional facilities prior to incarceration	49%	4%
Detained in secure juvenile correctional facilities following adjudication and disposition of a delinquent case	48%	4%
Involved in probation cases	25%	4%
Transferred to adult court	72%	4%

Source: Tennessee Commission on Children and Youth’s September 2012 *Study of Disproportionate Minority Contact (DMC) in the Tennessee Juvenile Justice System*.

The commission proposed nine recommendations to address DMC in Tennessee. In these recommendations, the commission makes clear that the responsibility to reduce DMC lies not only with the court system, but also with other stakeholders—law enforcement, education, health, mental health and substance abuse, and child welfare systems. The recommendations include

1. ongoing and additional cultural sensitivity/competency training for all juvenile court stakeholders;
2. the need to ensure due process and the provision of effective legal representation and procedural fairness;
3. training for law enforcement officers regarding the juvenile justice system’s impact on children;
4. Tennessee Department of Education and local education agency engagement to address the underlying factors in DMC;
5. sufficient mental health and substance abuse prevention and treatment services for children and their parents;
6. strategies to strengthen parenting skills and increase parental involvement in their children’s lives;
7. improved coordination and information sharing among all relevant parties in the juvenile justice system (including juvenile courts, the Tennessee Department of Children’s Services, service providers, and local education agencies);
8. the strengthening and expanding of state and local DMC task forces and other groups focused on addressing DMC; and

9. an improved understanding of the realities of juvenile delinquency and the effect individual stakeholders can have in improving outcomes for youth.

To provide perspective, the commission noted that DMC is a “national issue” and is not limited to Tennessee. The commission also stated that Tennessee has made “significant strides in implementing strategies to reduce disproportionality in the juvenile justice system.” As examples, the Department of Mental Health and Substance Abuse Services developed an instrument to assist juvenile courts in addressing mental health issues; the General Assembly established the Council on Children’s Mental Health; collaboration has increased between the juvenile justice and education systems; the Commission on Children and Youth convened a stakeholders group to develop a detention assessment tool; and various people and agencies have offered cultural competency training.

The commission does not anticipate the publication of an updated report before 2017.

Family Courts

Organizational Structure

Unlike some states, Tennessee does not have a separate court system to exercise jurisdiction over family matters such as divorce, child custody, paternity, and adoption. Family law jurisdiction is instead fragmented across various courts. For example, aspects of divorce proceedings may be heard across four different court divisions:

1. divorce itself: chancery court,
2. issuance of a protective order: circuit court,
3. criminal domestic violence: general sessions court, and
4. truancy of a divorced couple’s minor children: juvenile court.

Court Forms

With the July 27, 2011, implementation of Rule 52, “Forms Approved for Use in Tennessee Courts,” the Tennessee Supreme Court adopted certain standardized forms, including forms for family legal matters, in an effort to increase access to the judicial system for those individuals unable to pay for the assistance of counsel. While use of the Supreme Court-approved forms remains optional for litigants and attorneys, all courts must accept the forms as long as applicable guidelines are followed. The Supreme Court assigned the function of maintaining and updating the court-approved forms to the Administrative Office of the Courts.

Our objectives in reviewing juvenile and family courts were to determine whether

- the Juvenile Court of Memphis and Shelby County (JCMSC) had made progress in correcting problems identified in the U.S. Department of Justice’s April 2012 report;

- the Tennessee Court System was engaged in ongoing efforts to correct applicable deficiencies noted in the Commission on Children and Youth’s September 2012 report on minority contact in the Tennessee juvenile court system; and
- the divorce forms commonly used in family courts were adequately standardized.

For each objective, we inquired with personnel at the Administrative Office of the Courts. We obtained and analyzed the JCMSC corrective action plan; follow-up reports issued by the U.S. Department of Justice through April 2, 2014; and related news articles. We talked to the Commission on Children and Youth’s management about which recommendations the court system was responsible for implementing. Additionally, in order to learn about the availability of disproportionate minority contact workshops, we reviewed agendas from 2009 to 2012 for the annual joint conferences of the Tennessee Council of Juvenile and Family Court Judges and the Tennessee Juvenile Court Services Association.

We discussed standardized court forms with a legal nonprofit organization. We also consulted Tennessee Supreme Court Rule 52 and inspected uniform divorce forms. These uniform forms specifically apply when both spouses agree on the divorce; no dependents are involved; and the spouses do not jointly own land, buildings, or businesses or have retirement benefits.

Based on the procedures performed, we determined that

- although problems remain, JCMSC had made progress in response to the U.S. Department of Justice report (see Observation 2);
- no party had been assigned explicit responsibility for correcting the deficiencies noted in the Commission on Children and Youth report, but the court system had been engaged in ongoing efforts to reduce disproportionate minority contact; and
- while the Tennessee Supreme Court had approved uniform forms for use in agreed divorces, our inquiries revealed that sometimes court clerks declined to accept the forms, and we therefore concluded that making minor wording changes could further encourage clerks to recognize the forms as “universally acceptable as legally sufficient” in accordance with Rule 52.

Observation 2 – While problems remain, the Juvenile Court of Memphis and Shelby County continues to make progress in remedying the due process, equal protection, and detention facility findings noted in the April 2012 U.S. Department of Justice report

Background

On August 11, 2009, the Civil Rights Division within the U.S. Department of Justice launched an investigation into the administration of juvenile justice for children facing delinquency charges before the Juvenile Court of Memphis and Shelby County (JCMSC) and the conditions of confinement and treatment of children at the detention center operated by JCMSC. Sparked in part by concerns raised by members of the Shelby County community, the

department conducted its investigation under provisions of the Violent Crime Control and Law Enforcement Act of 1994 and Title VI of the Civil Rights Act of 1964.

Findings

The department released the results of its investigation on April 26, 2012, finding that

1. “JCMSC fails to provide constitutionally required due process to children of all races;”
2. “JCMSC’s administration of justice discriminates against Black children”; and
3. “JCMSC violates the substantive due process rights of detained youth by not providing them with reasonably safe conditions of confinement.”

Despite the severity of the problems noted, the department praised JCMSC staff and administrators for providing cooperation and assistance throughout the investigation. Furthermore, the department noted that over the course of its investigation, JCMSC had already taken steps to reform its administration of juvenile justice and the detention center.

Settlement Agreement

On December 17, 2012, JCMSC entered into a settlement agreement with the department to address the violations detected. Pursuant to the terms of the agreement, a due process monitor, equal protection monitor, and detention facility consultant must assess compliance on an ongoing basis until the agreement terminates. As of April 2, 2014, each monitor and the consultant had found at least some improvements in JCMSC’s operations.

JCMSC should continue to work diligently toward resolving the findings noted in the U.S. Department of Justice report. Furthermore, other juvenile court systems across Tennessee should consider performing an in-depth analysis to determine whether similar problems plague their systems.

JUDICIAL AND ATTORNEY PERFORMANCE

In Tennessee, the Board of Professional Responsibility, the Board of Judicial Conduct, and the Governor’s Commission for Judicial Appointments serve as key guardians of the integrity of the judicial system.

Board of Professional Responsibility

In 1976, the Tennessee Supreme Court created the Board of Professional Responsibility to aid in its supervision of the ethical conduct of attorneys. In this capacity, the board educates, investigates, and prosecutes attorneys in accordance with Supreme Court Rule 8, “Rules of Professional Conduct,” and Supreme Court Rule 9, “Disciplinary Enforcement.” Attorneys who violate established guidelines become subject to disciplinary sanctions, including

- disbarment (the termination of attorney status);
- suspension (the removal from the practice of law for a specified minimum period of time);
- public censure (a public declaration of the attorney's improper conduct that does not limit the attorney's privilege to practice law);
- private reprimand (a non-public discipline that declares the attorney's conduct improper but does not limit the attorney's privilege to practice law); or
- private admonition (similar to private reprimand, except the misconduct appears to be an isolated or minor incident).

For fiscal year 2013, the board processed 1,536 complaints against attorneys, 1,474 of which were received during the fiscal year and the remainder of which were pending at the beginning of the fiscal year.

The board is composed of nine attorney members and three non-attorney members who offer an enhanced and balanced perspective of the responsibilities of the legal profession. Along with a chief disciplinary counsel appointed by the Supreme Court, the board employs 10 full-time Disciplinary Counsel members and 10 support staff members to help fulfill its mission. Disciplinary proceedings are held before a hearing committee composed of three members of the Tennessee Bar Association from the same district where the attorney under investigation practices law.

Board of Judicial Conduct

Preceded by the Court of Judiciary until June 30, 2012, the Board of Judicial Conduct was established via Section 17-5-201, *Tennessee Code Annotated*, to investigate and, when warranted, act on complaints against judges. Specifically, state statute charges the board with

1. establishing an orderly and efficient method for inquiring about
 - the physical, mental, or moral fitness of any Tennessee judge;
 - whether the judge committed judicial misconduct; and
 - whether the judge committed any calculated act that could reflect unfavorably upon the judiciary of the state or adversely affect the administration of justice in the state;
2. instituting a process by which appropriate sanctions may be imposed; and
3. implementing constitutional provisions for the removal of judges.

Between January 1, 2012, and April 14, 2014, eleven state and local judges received public discipline in the form of public censure or public reprimand. In fiscal year 2013 alone, the board opened 373 complaints and closed 350 complaints.

The board comprises 16 members, including a chair, vice chair, General Assembly liaison, secretary, and 12 regular members (6 judges and 6 non-judges). The board has one disciplinary counsel and one assistant disciplinary counsel.

Governor's Commission for Judicial Appointments

Pursuant to Executive Order No. 34 signed on October 16, 2013, Governor Bill Haslam created the Governor's Commission for Judicial Appointments to assist with the search to fill current and impending vacancies in the appellate and trial courts¹¹. The commission accepts applications from interested parties, interviews the applicants, and then sends a panel of three nominees to the Governor for consideration. The Governor may then appoint one of the recommended applicants to the vacant judicial position.

The commission succeeds the Judicial Nominating Commission, which ceased operations on June 30, 2013. In addition to the 11 former members of the Judicial Nominating Commission, the Governor's Commission for Judicial Appointments includes 6 new members appointed by the Governor in consultation with the Speakers of the Senate and House of Representatives, for a total of 17 members.

Our objectives in reviewing judicial and attorney performance were to determine whether

- adequate procedures were in place to ensure that members of the Disciplinary Counsel, hearing committees, and the Board of Professional Responsibility were independent of any investigation that could require disciplinary action to be taken against a licensed attorney;
- the Board of Professional Responsibility opened and closed complaints against attorneys within a reasonable timeframe;
- the Board of Professional Responsibility complied with Supreme Court rules by making disciplinary actions taken against attorneys publicly available when required;
- the Board of Judicial Conduct made disciplinary actions taken against judges publicly available when required by *Tennessee Code Annotated*; and
- sufficient procedures had been implemented to ensure members of the Governor's Commission for Judicial Appointments were free from conflicts of interest while evaluating candidates for judicial vacancies.

To achieve all of our objectives, we conducted interviews with applicable personnel from the Board of Professional Responsibility, the Board of Judicial Conduct, the Administrative Office of the Courts, and the Governor's Commission for Judicial Appointments. For our

¹¹ On November 4, 2014, the citizens of the state voted to amend Article VI, Section 3 of the Tennessee Constitution relative to the method of judicial selection. In turn, Governor Bill Haslam issued Executive Order No. 41 on November 6, 2014, to rescind Executive Order No. 34 and establish the Governor's Council for Judicial Appointments, a group of 11 members to recommend candidates to fill vacancies for the appellate and trial courts. Following the governor's selection, appellate court appointments must be confirmed by the General Assembly and thereafter subject to a retention election by the voters of the state.

attorney conflict-of-interest objective, we obtained a list of all 15 Board of Professional Responsibility members and 13 Disciplinary Counsel staff between January 1, 2012, and March 14, 2014, as well as a list of all 247 hearing committee members from January 1, 2012, through April 7, 2014. Additionally, we procured a 43-page list of complaints made against attorneys from January 1, 2012, until March 24, 2014. We searched for all complaints made against board members, Disciplinary Counsel members, and hearing committee members. We identified no complaints made against board members, 7 against Disciplinary Counsel members, and 23 against hearing committee members. We verified that the individuals against whom complaints were made did not participate in the complaint disposition process.

To test complaint resolution timeframes, we obtained investigative caseload reports from January 2012 through March 2014 and quarterly backlog reports from January 2012 through December 2013. We performed data reliability testwork on the investigative caseload reports, which involved reperforming average-day pending calculations. We then compared the average number of days it took other jurisdictions to open and close cases in 2011 (according to an American Bar Association survey) with the average number of days it took Tennessee to do the same in 2011 and 2013. We also interviewed two Supreme Court justices regarding their satisfaction with the board's work.

From the population of complaints made against attorneys from January 1, 2012, through March 24, 2014, we generated a nonstatistical, random sample of 25 to ensure that the Board of Professional Responsibility posted public censure, suspension, and disbarment disciplinary actions on its website, as required by Supreme Court rule. We similarly tested the 10 most recent public disciplinary actions as of March 14, 2014.

We obtained the Board of Judicial Conduct's statistical reports from July 2012 through March 2014 to identify any public disciplinary actions issued. Next, we performed testwork to verify that the board made all public disciplinary actions against judges available on its website. To test whether the board made any formal charges filed against a judge publicly available, we acquired the board's quarterly reports for July 2012 through December 2013. We conducted online searches to ensure that the number of formal charges issued per the quarterly reports matched public records.

Furthermore, we compiled a complete list of Governor's Commission for Judicial Appointments members and judicial vacancy applicants during the period October 16, 2013, through May 15, 2014. Our list included 17 commission members, 2 Supreme Court vacancies, 1 Court of Appeals vacancy, and 1 chancery court vacancy. We gathered background information on each member and applicant to identify any potential conflicts of interest. We also inspected the commission's meeting minutes and bylaws.

Based on the procedures performed, we determined that

- adequate conflict-of-interest procedures were in place for members of the Disciplinary Counsel, hearing committees, and the Board of Professional Responsibility;

- despite minor issues, the Board of Professional Responsibility opened and closed complaints within a reasonable timeframe;
- the Board of Professional Responsibility made disciplinary actions publicly available when required to do so;
- when required, the Board of Judicial Conduct members made disciplinary actions publicly available, although we did find two monthly reports with incorrect statistical data on their website; and
- due to the Governor’s Commission for Judicial Appointments’ inadequate policies and procedures, Administrative Office of the Courts personnel did not fully document instances of commission members disclosing potential conflicts of interest that could impair their ability to vote objectively for applicants (see Observation 3).

Observation 3 – Because the Governor’s Commission for Judicial Appointments lacked adequate policies and procedures, the Administrative Office of the Courts did not fully document potential conflicts of interest disclosed by commission members, increasing the risk that biased voting will go undetected

Pursuant to Executive Order No. 34 signed on October 16, 2013, Governor Bill Haslam created the Governor’s Commission for Judicial Appointments to assist with the search to fill current and impending vacancies in the appellate and trial courts. The commission accepts applications from interested parties, interviews the applicants, and votes to send the top three applicants to the Governor. The Governor then appoints one of the recommended applicants to the vacant judicial position.

The 17 commission members are required to disclose potential conflicts of interest—situations that could impair their ability to vote objectively for applicants—as an essential method to maintain public trust in the judicial nomination process. Executive Order No. 34 and the commission’s bylaws assign the Administrative Office of the Courts (AOC) the responsibility to maintain commission records. While performing testwork, we found that because the commission lacked adequate policies and procedures, AOC personnel did not fully document members’ disclosures of potential conflicts of interest.

Catalyst for Testwork

During our review of the commission’s November 13, 2013, meeting minutes maintained by the AOC, we encountered the following statement: “While several commission members had attended law school with one or more applicants, practiced before an applicant, or served on a board with an applicant, no conflicts were reported.” The minutes did not specify the members or applicants involved or include the reason these previous interactions did not impair the members’ ability to vote impartially.

When we questioned the AOC director¹², he explained that while the minutes referred to events that could be perceived as a conflict of interest, commission members had alleviated these potential conflicts by providing verbal assurance to the rest of the commission that they remained able to vote for applicants without bias. The director elaborated that, as instructed in the commission's bylaws, the commission members had also taken an oath at the time of appointment stating that they would vote for the person who was, in their opinion, the best candidate for judicial nomination. The director told us there were no other procedures used to identify conflicts of interest between commission members and applicants. Furthermore, he was unaware of any place the AOC might have recorded the potential conflicts of interest other than in the commission meeting minutes.

Review of Bylaws

Based on the director's comments, we inspected the commission's bylaws. We concluded that although the commission members complied with existing guidelines, the bylaws contained deficient conflict-of-interest procedures. In addition to the oath referenced by the director, our review of the bylaws revealed the following statements in Section XIII, "Ethical Considerations":

A Commission member shall disclose to other Commission members any personal and business relationships with an applicant that may directly or indirectly influence the decision of the Commission member. It is anticipated that [a] Commission member will know, or have information about, many of the applicants. Often a Commission member will have worked with, or against, one or more of the applicants in legal, business or civic matters. This assists, and is intended as a part of, this nomination process. It does not disqualify a Commission member from taking part in the hearings or voting. A Commission member should disqualify him or herself from the appropriate portion of the consideration or the voting where the Commission member believes that because of prior information, or relationships, the commissioner will not be able to fairly consider all applicants.

The bylaws, however, neither provided the AOC with a method of documenting the disclosed potential conflicts of interest and their subsequent resolution, nor did they specify the level of detail AOC personnel should incorporate into commission records. The bylaws should cover this basic information as a matter of best practice.

Results of Expanded Conflict-of-Interest Testwork

Because of the above-noted problems, we tested all 19 applicants for the 4 judicial vacancies occurring between October 16, 2013, and May 15, 2014, to determine whether the AOC appropriately recorded commission members' potential conflicts of interest. We discovered the following:

¹² The AOC director announced his acceptance of another position on November 24, 2014, following the end of our fieldwork. The Tennessee Supreme Court appointed his replacement on January 2, 2015.

1. In regard to an upcoming Court of Appeals vacancy, three of the six applicants attended law school with one or more commission members. One of the applicants even graduated from the same law school in the same year as a commission member. The minutes of the November 12, 2013, meeting held to nominate applicants to fulfill this judicial vacancy did not list any potential conflicts.
2. For an upcoming Supreme Court vacancy, one applicant was currently employed at the same law firm where a commission member had been previously employed, but we found no mention of this potential conflict in the minutes of the November 13, 2013, meeting held to nominate applicants.

Potential Effects of Identified Problems

By not having adequate conflict-of-interest policies and procedures in place, the commission increases the risks that a judicial applicant will be unfairly nominated and that this biased voting will remain undetected. Recording the details of potential conflicts is vital to preserving transparency and accountability. Even the appearance of biased voting could deeply erode the public's trust in the commission's decisions.

The Governor's Commission for Judicial Appointments should update its bylaws to provide for a more stringent conflict-of-interest policy. The bylaws should direct the AOC to document in meeting minutes or other records the commission member with a potential conflict, which applicant the potential conflict concerns, and how the potential conflict arose. In those cases where no actual conflict existed, the AOC should record the commission members' reasons for believing they could vote without bias.

CASE MANAGEMENT DATA AND MEDIATION

Criminal Cases

The Sixth Amendment to the U.S. Constitution provides in part that “[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial.” This guarantee is additionally enshrined in Article I, Section 9, of the Tennessee Constitution and in Section 40-14-101, *Tennessee Code Annotated*.

In various rulings, the U.S. Supreme Court has emphasized the importance of the right to a speedy trial to both defendants and the general public. For example, in the 1966 case of *United States v. Ewell*, the Supreme Court said that for defendants, it “is an important safeguard to prevent undue and oppressive incarceration prior to trial, to minimize anxiety and concern accompanying public accusation and to limit the possibilities that long delay will impair the ability of an accused to defend himself.”

Furthermore, in the 1972 case of *Barker v. Wingo*, the Supreme Court ruled as follows:

In addition to the general concern that all accused persons be treated according to decent and fair procedures, there is a societal interest in providing a speedy trial

which exists separate from, and at times in opposition to, the interests of the accused. The inability of courts to provide a prompt trial has contributed to a large backlog of cases in urban courts which, among other things, enables defendants to negotiate more effectively for pleas of guilty to lesser offenses and otherwise manipulate the system. In addition, persons released on bond for lengthy periods awaiting trial have an opportunity to commit other crimes.

In its 2008 revised version of *Improving Caseflow Management: A Brief Guide*, the National Center for State Courts documents that twentieth-century court reform efforts revolved around reducing and even avoiding trial delays. The guide notes that U.S. courts have focused on caseflow management to achieve this mission. A key component of caseflow management involves monitoring and controlling case progression at both the appellate and trial court levels. In Tennessee, the appellate and trial courts keep track of case progression electronically by using information systems. Specifically, all appellate courts have implemented the C-Track case management system (off-the-shelf software), while trial courts in all but 10 of the state's 95 counties utilize the Tennessee Court Information System (TnCIS) for case management.

Civil Cases

Another avenue to promote prompt justice involves the use of mediation, a type of alternative dispute resolution. During mediation, a neutral person facilitates discussions among the disputing parties to help them reach a mutually acceptable agreement. Mediation is an informal, voluntary process that may be scheduled at any time, including before a party files a lawsuit. Disputing parties may opt to use mediation in the following types of cases:

- ✓ landlord and tenant;
- ✓ neighbor and community;
- ✓ business;
- ✓ consumer;
- ✓ employer and employee;
- ✓ divorce and family;
- ✓ juvenile;
- ✓ negligence;
- ✓ products liability;
- ✓ construction;
- ✓ contracts;
- ✓ personal and real property;
- ✓ environmental; and
- ✓ other civil matters.

In 1996, Tennessee Supreme Court Rule 31, "Alternative Dispute Resolution," created a system whereby litigants, courts, and attorneys could locate qualified mediators. The rule also established the Alternative Dispute Resolution Commission, which administers the procedures for training and approving mediators for use by the courts. An Administrative Office of the Courts (AOC) employee serves as a liaison to the commission.

Our objectives in reviewing case management data and mediation were to determine whether

- the court system had data available to allow appellate and trial judges to compare the judge’s performance to their peers in Tennessee in regard to timeliness of resolution for non-capital cases and non-post-conviction proceedings; and
- the Alternative Dispute Resolution Commission, in coordination with the AOC, promoted the use of mediation in civil matters.

To complete our objectives, we interviewed pertinent AOC management and staff. Our research uncovered that Tennessee’s court systems had no benchmarks for case resolution. Also, due to the complex nature of capital cases and post-conviction proceedings, we decided to exclude them from our testwork, along with the 10 counties not on TnCIS that were immaterial in relation to our objective.

To gain a nationwide understanding of case resolution timeliness, we researched the National Center for State Courts website and reports on other states, as well as the Federal Rules of Civil Procedure. Furthermore, we reviewed the appellate courts’ C-Track reports and the trial courts’ TnCIS reports to ensure they contained timeframe data.

We inspected Supreme Court Rule 31 and held discussions with the chair of the Alternative Dispute Resolution Commission. For additional information, we reviewed studies addressing various aspects of mediation, as well as promotional material that the commission and AOC had made available to judges, attorneys, and the public (such as the Rule 31 bench card and the information about mediation on the AOC’s website).

Based on the procedures performed, we determined that

- appellate court judges had reports available through the C-Track system that showed the timeframe between the case hearing date and the opinion issuance date, while trial court judges in counties using the TnCIS system had reports that showed the timeframe between the case filing date and the case disposition date; and
- the commission, in coordination with the AOC, employed multiple strategies to promote the use of mediation in civil matters.

BOARD, COMMISSION, AND COMMITTEE APPOINTMENTS

The Administrative Office of the Courts (AOC) provides administrative support for 16 judicial boards, commissions, and committees that have been established by state statute, Supreme Court rule, or executive order to carry out functions that include

- testing and licensing attorneys and court reporters;
- monitoring continuing education requirements and administering the specialization program for attorneys;
- making recommendations to the Governor for consideration of judicial appointments;

- supervising the ethical conduct of attorneys and investigating alleged violations;
- issuing formal ethics opinions requested by judges;
- supervising the state law libraries;
- supervising and controlling the Supreme Court buildings; and
- studying and making recommendations regarding court rules on practice and procedure.

Each board, commission, and committee must conduct business in a certain manner and must meet specific composition requirements, as outlined in enabling guidelines. Our objective in reviewing board, commission, and committee appointments was to determine whether the composition of the 16¹³ boards, commissions, and committees that the AOC supported as of April 24, 2014, conformed to applicable *Tennessee Code Annotated* provisions, Supreme Court rules, and executive orders. (See the Appendix on page 60 for a list of—and more detailed information about—these boards, commissions, and committees.)

To achieve our objective, we conducted interviews with applicable AOC personnel. We gathered information from the AOC’s website concerning each of the 16 boards, commissions, and committees. We obtained the *Tennessee Code Annotated* provisions, Supreme Court rules, and executive orders and compared the actual composition of the boards, commissions, and committees with the corresponding composition requirements.

Based on the procedures performed, we determined that the 16 boards, commissions, and committees met established composition requirements.

MISCELLANEOUS FISCAL AND ADMINISTRATIVE FUNCTIONS

The Administrative Office of the Courts (AOC) provides fiscal and administrative support to the trial and appellate judges and courts across the state. A director, appointed by the Tennessee Supreme Court, heads the office. Section 16-3-803(a), *Tennessee Code Annotated*, states that the director “shall . . . assist the chief justice in the administration of the state court system to the end that litigation may be expended and the administration of justice improved.” The director oversees approximately 75 personnel, whose duties include completing the annual risk assessment, monitoring contracts held by the court system, assisting the State Law Library Commission, and paying judicial salaries.

Cash Receipting

The Appellate Court Clerk’s Office works for the Supreme Court, Court of Appeals, and Court of Criminal Appeals. The appellate court clerk oversees the operations of individual

¹³ The total excludes the Judicial Performance Evaluation Commission. During the course of our audit, this commission was scheduled to terminate on June 30, 2013, under the Tennessee Governmental Entity Review Law. The General Assembly declined to grant the commission an extension; thus, the commission entered into a one-year wind-down phase and ceased to exist on July 1, 2014.

offices located in the Nashville, Knoxville, and Jackson Supreme Court buildings. Additionally, a chief deputy clerk heads each of the three locations. The Appellate Court Clerk's Office, which employs approximately 30 personnel, is responsible for filing and processing all briefs, motions, and other documents for cases on appeal. A cost center, attached to the Nashville location, processes payments and provides other administrative support for the entire Appellate Court Clerk's Office.

Risk Assessment

According to Section 9-18-104(b), *Tennessee Code Annotated*, the head of each state agency (which includes the AOC) is required to conduct an assessment of the risks and systems of internal control. The agency head must submit a report by December 31 of each year to the commissioner of the Department of Finance and Administration and to the Comptroller of the Treasury. This report should state that the agency acknowledges that it is management's responsibility to establish, implement, and maintain an adequate system of internal control. This report should also indicate whether management's assessment of risk, performed by the agency, provides reasonable assurance of compliance with the assessment's objectives.

Contract Monitoring

A state agency's contract monitoring system consists of the structure, policies, and procedures used to ensure that a vendor accomplishes contract objectives and fulfills its responsibilities. An effective monitoring system mitigates the probability of an event or action having an adverse effect on the state agency. Specific monitoring activities differ based on contract type. During the period January 1, 2012, through March 11, 2014, the Tennessee Court System entered into a wide variety of contracts, acquiring goods and services ranging from building security and technology development to legal resources.

State Law Library Commission

Pursuant to Section 10-4-101, *Tennessee Code Annotated*, the State Law Library Commission was created to supervise the state law libraries located in the Nashville, Knoxville, and Jackson Supreme Court buildings. Rather than being appointed, the members serve on the commission as a result of the positions they hold within the court system. State statute authorizes the commission to

- ✓ employ personnel, either full- or part-time, and to fix their compensation;
- ✓ purchase or otherwise acquire books, furniture, supplies, and other necessary equipment;
- ✓ dispose of books and equipment by sale, exchange, or gift; and
- ✓ make and enforce all necessary rules and regulations for the management and operations of the state law libraries.

Salary Overpayments

Section 8-23-104, *Tennessee Code Annotated*, stipulates that all judicial employees should receive salary payments on a monthly basis. Edison, the state accounting system, is set up for semi-monthly salary payments. The AOC uses a separate Human Resources Information System (HRIS) to account for the accrual of leave for judicial employees. To ensure the accuracy of salary payments, AOC Human Resources staff must enter those transactions affecting payment—leave without pay (used upon the exhaustion of paid leave) and overtime (work in excess of regular hours)—in Edison around the middle of the month for the remainder of the month. Since HRIS and Edison do not interact, Human Resources staff must complete payroll reconciliations at the end of each month to prevent both underpayments and overpayments.

Judicial employees who are out of work for an extended period may apply to, and upon approval receive payment out of, the Sick Leave Bank. The Sick Leave Bank provides sick leave to qualifying member employees who are unable to work as a result of a personal illness, injury, disability, medical condition, or quarantine. The AOC's Human Resources staff makes entries in Edison for employees utilizing the Sick Leave Bank. Upon exhausting eligibility in the Sick Leave Bank, employees may further use leave donated to them by other employees. The Department of Human Resources manages and administers donated leave.

Our objectives in reviewing miscellaneous fiscal and administrative functions were to determine whether

- management and staff corrected the prior finding involving inadequate segregation of cash receipting duties and outdated policies;
- management had fulfilled its responsibilities to formally assess the AOC's risks of errors, fraud, waste, and abuse;
- the AOC's monitoring of vendor contracts was sufficient;
- the State Law Library Commission had been achieving its statutory purpose;
- the AOC ensured that leave without pay entered into HRIS matched the leave recorded in Edison to prevent salary overpayments, and for any salary overpayments detected, whether the AOC recouped the overpayment amount from the applicable employee; and
- management followed information systems' industry best practices and state information system security policies regarding computer access.

To fulfill our objectives, we conducted interviews with key AOC personnel. We held discussions and performed walkthroughs with management and staff from the Nashville Appellate Court Clerk's Office to meet our cash receipting objective. Additionally, we inspected available cash receipting policies and procedures.

We reviewed the AOC's 2013 risk assessment. For the contract monitoring objective, we selected a nonstatistical, random sample of 60 of the 192 payments the AOC made to third-party contract vendors during the period January 1, 2012, through March 11, 2014. We obtained and

read contracts and subsequent amendments associated with the selected payments. We then tested the payments for compliance with applicable contract provisions and internal control procedures.

In addition to examining the *Tennessee Code Annotated* provisions involving the State Law Library Commission, we consulted the following documentation relevant to the commission:

- ✓ the 2013 Sunset Hearing Questionnaire;
- ✓ July 1, 2011, through October 31, 2013, revenues and expenditures;
- ✓ January 10, 2007, and December 1, 2011, meeting minutes (the two most recent); and
- ✓ the May 23, 2014, meeting agenda.

We acquired from Edison a population of leave taken by court system employees between January 1, 2012, and March 17, 2014. We also gathered HRIS reports displaying leave taken and entered by court system employees over that same period. Next, we reconciled the leave without pay listed on the two sets of reports. Leave without pay may fall under either a primary or secondary category. We originally tested the entire population of 12 employees with a primary category of leave without pay per HRIS reports. Because of problems identified, we expanded our testwork to other high-risk transactions, including each date where the 12 employees already tested had leave without pay in the secondary category and each date where Sick Leave Bank members had leave without pay in the secondary category (1 additional employee was tested). We tested a total of 13 employees, encompassing 463 dates when those employees took leave without pay. Furthermore, we received recoupment confirmations and other paperwork related to salary overpayments identified.

We compared management's internal control activities to assess adherence to information systems' industry best practices and state information system security policies.

Based on procedures performed, we determined that

- management did not correct the prior cash receipting finding (see Finding 6);
- although the AOC fulfilled its risk assessment responsibilities, opportunities for improvement exist;
- the AOC sufficiently monitored vendor contracts, with minor exceptions;
- by failing to meet the annual meeting requirements established in *Tennessee Code Annotated*, the State Law Library Commission had not been achieving its statutory purpose (see Observation 4);
- both AOC management and staff ensured that leave without pay matched between the two information systems, with immaterial differences, and recouped salary overpayments from employees; and
- management followed information systems' best practices and also complied with information system security policies, with minor exceptions.

Finding 4 - The Nashville Appellate Court Clerk's Office had still not appropriately segregated duties within the cash receipting function; additionally, the Appellate Court Clerk's Office did not update cash receipting policies and procedures upon introducing new systems and processes

In the July 2006 Tennessee Court System financial and compliance audit report, the Division of State Audit reported a finding on ineffective cash receipting controls at the Western Appellate Court System and inadequate segregation of duties at the Nashville Appellate Court Clerk's Office. Management concurred with this finding and stated, "Appropriate controls have been designed and are in place at our appellate clerks' offices to appropriately mitigate risks."

In 2011, State Audit conducted a follow-up review and found that while problems at the Western Appellate Court System had been corrected, the segregation of duties issues at the Nashville Appellate Court Clerk's Office remained. The follow-up review team additionally noted that the Appellate Court Clerk's Office had not updated its cash receipting policies and procedures to reflect the use of new procedures and technology.

After performing testwork for the current audit, we concluded that cash receipting duties at the Nashville Appellate Court Clerk's Office still had not been adequately segregated and that the Appellate Court Clerk's Office continued to use outdated policies and procedures.

Background Information

Overall Operations

The appellate court clerk oversees the operations of the Appellate Court Clerk's Offices located in Nashville, Knoxville, and Jackson, and a chief deputy clerk heads each of the three individual offices. In accordance with Section 8-21-501, *Tennessee Code Annotated*, the Appellate Court Clerk's Offices may collect fees for certain services. To provide guidelines for employees handling cash collections, the appellate court clerk developed and issued a memorandum regarding cash receipting policies and procedures, which became effective August 21, 2006. The chief deputy clerks are responsible for revising the memorandum to reflect changes to their office's operations.

With regard to technology, the Appellate Court Clerk's Office has implemented the C-Track case management system. The office also uses Edison, the state's accounting system. Within Edison, iNovah serves as the cashiering system, and the Check 21 component of iNovah allows for electronic check deposits and money orders.

Nashville Appellate Court Clerk's Office

The Nashville Appellate Court Clerk's Office houses two sets of deputy clerks who are responsible for collecting fees:

1. The *front desk* of the Nashville Appellate Court Clerk's Office collects money for smaller miscellaneous items such as filings, copies, or certificate of good standing

payments. The front desk normally receives payments via check, but the office also receives cash or money orders on occasion. These payments average approximately \$200 per day.

2. The *cost center* attached to the Nashville Appellate Court Clerk's Office processes payments and provides other administrative support for all three Appellate Court Clerk's Offices. Payments usually consist of court and litigation fees and average approximately \$5,000 to \$6,000 per day.

Nashville's chief deputy clerk directs the daily operations of the front desk and the cost center. Separate deputy clerks work at each location.

Lack of Segregation of Duties

State law requires that each state agency design and implement internal controls. The Financial Integrity Act (Section 9-18-102, *Tennessee Code Annotated*) states,

- (a) Each agency of state government and institution of higher education shall establish and maintain internal controls, which shall provide reasonable assurance that:
 - (1) Obligations and costs are in compliance with applicable law;
 - (2) Funds, property and other assets are safeguarded against waste, loss, unauthorized use or misappropriation; and
 - (3) Revenues and expenditures applicable to agency operations are properly recorded and accounted for to permit the preparation of accurate and reliable financial and statistical reports and to maintain accountability over the assets.

Through inquiry, observation, and inspection, we discovered that while the appellate court clerk's 2006 memorandum encompasses proper segregation of duties within the cash receipting function, the Nashville Appellate Court Clerk's Office implemented these measures incorrectly. The deputy clerks in the cost center performed duties that, according to the memorandum, should be segregated. Specifically, we noted that two deputy clerks performed conflicting duties, as detailed below:

- One deputy clerk at the cost center reconciled the daily receipt amounts, entered the amounts into the Edison system, filled out the deposit slip, and performed reconciliations at the end of the month. She acted as a backup for the check processing through iNovah and had direct custody of the "live" (undeposited) checks located in the storage room until their disposition. This deputy clerk reported that she fulfilled the same duties as she had during State Audit's 2011 follow-up review.

- Another deputy clerk in the cost center opened the mail, updated case information in C-Track, reconciled the daily receipting amounts, and processed deposits through Check 21 in iNovah.

Both the appellate court clerk¹⁴ and the chief deputy clerk of the Nashville Appellate Court Clerk's Office agreed that the clerks' duties were inadequately segregated. The chief deputy clerk explained that lack of funding prevented the office from filling vacant cost center positions. Moreover, she was unaware of the prior finding. The chief deputy clerk said she would involve additional office personnel in the cash receipting function to achieve proper segregation of duties; we will test her assertion during our next audit.

When employees perform duties that should be segregated, the risks of errors and asset misappropriation increase.

Outdated Cash Receipting Policies and Procedures Memorandum

As a matter of best practice, management should update internal policies upon the introduction of new procedures or technology. Based on inquiry and inspection, though, we found that the memorandum regarding cash receipting policies and procedures had not been updated since August 2006. The memorandum is outdated in the following ways:

- Bullet #2 of the memorandum states, "Each Chief Deputy Clerk will designate one person with one backup person to open the mail and/or accept receipt of checks and/or cash at the front desk. Such persons will be known as the Money Receipt Deputy Clerk." The Nashville Appellate Court Clerk's Office did not have a designated clerk to open the mail at the front desk because of budgetary limitations.
- Bullet #2 further states, "When a Money Receipt Deputy Clerk opens mail that includes a check and/or cash, she will immediately stamp the check **'For Deposit Only'** and enter the receipt of check and/or cash in the Money Receipt Log along with her initials which is attached to these procedures." The Appellate Court Clerk's Offices no longer stamp incoming checks "For Deposit Only" due to the use of iNovah.
- Bullet #2 also says, "The Money Receipt Deputy Clerk will also generate an invoice or receipt through JITS [Justice Information Tracking System] and mail/hand the invoice or receipt to the person paying the bill." The Nashville, Knoxville, and Jackson Appellate Court Clerk's Offices replaced JITS with C-Track in 2013.
- Bullet #6 adds, "The Collections Deputy Clerk of the Cost Center will then reconcile the bank deposit slip and Money Receipt Log with the entries in JITS and enter such receipts in the STARS [State of Tennessee Accounting and Reporting System] Accounting system of the Department of Finance and Administration." The Appellate Court Clerk's Offices replaced STARS with Edison in 2009. The offices implemented the iNovah component in 2009 to process checks and the Check 21 feature of iNovah in 2013 to electronically deposit check amounts.

¹⁴ The appellate court clerk who served during our fieldwork retired in June 2014.

The appellate court clerk and the chief deputy clerk at the Nashville Appellate Court Clerk's Office agreed that the memorandum needs updating. The chief deputy clerk was not aware of the results of State Audit's follow-up review and also did not know that the chief deputy clerks are responsible for updating policies and procedures in a timely manner.

Outdated policies and procedures could create confusion for staff, which could in turn increase the number of errors made.

Recommendation

The appellate court clerk should work with the chief deputy clerk of the Nashville Appellate Court Clerk's Office to mitigate the risk of asset misappropriation. Conflicting responsibilities should be adequately segregated.

Additionally, the chief deputy clerks of the Nashville, Jackson, and Knoxville Appellate Court Clerk's Offices should immediately update the cash receipting memorandum to reflect the use of new procedures and technology.

Management's Comment

We concur. The Appellate Court Clerk's Office has undergone several changes since the end of the audit period, including the appointment of a new Appellate Court Clerk in June 2014. The Clerk's policies for appropriate segregation of duties, which were noted as being written but not implemented with respect to the cash receipting process, have been implemented and improved to appropriately mitigate risks. The Clerk is in the process of updating all written policies and procedures, including the cash receipting process. Policies and procedures that had previously been updated in practice, including the cash receipting process, are now being updated in writing to reflect best practices and changes in technology.

Observation 4 – The current and three former chairs of the State Law Library Commission did not comply with meeting frequency requirements established in *Tennessee Code Annotated*

The nine-member State Law Library Commission oversees the care of the state law libraries in the Knoxville, Jackson, and Nashville Supreme Court buildings. The chief justice of the Tennessee Supreme Court serves as the commission chair, as specified in state statute. According to Section 10-4-101, *Tennessee Code Annotated*, "The members of the commission shall hold at least one (1) meeting each year upon call of the chair." Staff at the Administrative Office of the Courts, however, stated that the commission chair did not call meetings as frequently as required. Upon review of meeting minutes, we confirmed that the current¹⁵ and three former commission chairs had not called a meeting since December 1, 2011. The last

¹⁵ Following the conclusion of our fieldwork, another Supreme Court justice was elected by her peers as chief justice and began serving in that position effective September 1, 2014.

called meeting before the December 2011 meeting was January 10, 2007 (almost four years prior).

We discussed this issue with the current chief justice, who stated that since the law libraries are no longer staffed and only the Knoxville library is open to the public (but is rarely used), there has been no business to present to the commission. The chief justice explained that the commission makes operating decisions related to the state law libraries, such as publication holdings and future plans. He added that the commission might find that one year they do not have business to require an annual meeting, while the next year they find that they have enough business to meet more than once. While we agree that this is a reasonable concept, until the General Assembly revises state law, the chief justice remains bound to call a commission meeting annually.

Following our inquiries, the commission held a meeting on May 23, 2014, (two and a half years since the last meeting) to (1) review the state libraries' publications and subscriptions and (2) discuss using judicial clerks to determine the need for replacements and additional supplements.

We recommend that the chief justice of the Tennessee Supreme Court, as chair of the State Law Library Commission, call an annual commission meeting to comply with state statute. Additionally, we recommend for legislative consideration that the General Assembly review the commission meeting requirements and consider allowing the commission to meet as deemed necessary by the chair.

APPENDIX

BOARD, COMMISSION, AND COMMITTEE DESCRIPTIONS (Source: Administrative Office of the Courts website at www.tncourts.gov/boards-commissions as of January 24, 2014, and discussion with management)

The Administrative Office of the Courts supports 16 boards, commissions, and committees. We provide a description of these boards, commissions, and committees (including the business unit code under which expenditures are reported) below.

1. Board of Judicial Conduct (302.20): The Board of Judicial Conduct was created by the legislature to investigate and, when warranted, act on complaints against judges. Members are appointed by multiple authorities, including the Governor, Lieutenant Governor, Speaker of the House, and various judicial conferences.
2. Access to Justice Commission (302.27): The Access to Justice Commission was created by Supreme Court Rule 50 for the purpose of developing a strategic plan to improve access to justice in Tennessee, including educating the public, identifying priorities in improved access to justice, and recommending to the Supreme Court projects and programs that the commission determines to be necessary and appropriate for enhancing access to justice in Tennessee.
3. Advisory Commission on the Rules of Practice and Procedure (302.20): Section 16-3-601, *Tennessee Code Annotated*, established the Advisory Commission on the Rules of Practice and Procedure, which meets periodically to study and make recommendations concerning court rules on practice and procedure. Commission members are appointed by the Supreme Court.
4. Alternative Dispute Resolution Commission (302.20): Created by Supreme Court Rule 31, the Alternative Dispute Resolution Commission administers the procedure for training and approving court mediators. The commission is responsible for evaluating the success of Rule 31 commission proceedings and for suggesting new or revised rules regarding those proceedings. Commission members are appointed by the Supreme Court.
5. Board of Court Reporting (302.34): Section 20-9-604, *Tennessee Code Annotated*, established the Board of Court Reporting. Effective July 1, 2010, court reporters must be licensed to engage in court reporting in Tennessee. The board issues court reporter licenses, conducts disciplinary inquiries for ethical violations, ensures completion of continuing education requirements, and maintains a registry of court reporters.
6. Board of Law Examiners (302.35): Established by Section 23-1-101, *Tennessee Code Annotated*, and Section 12.01, Supreme Court Rule 7, the Board of Law Examiners assists the Supreme Court in licensing attorneys. The board, an administrator, and

staff are responsible for conducting the Tennessee bar examination. Board members are appointed by the Supreme Court.

7. Board of Professional Responsibility (302.40): Supreme Court Rule 9 established the Board of Professional Responsibility, which supervises attorneys' ethical conduct and investigates alleged violations of the Rules of Professional Conduct. The board is composed of nine lawyers and three non-lawyers, and the members are appointed by the Supreme Court. An administrator and staff serve the board.
8. Commission on Continuing Legal Education and Specialization (302.60): Created by Supreme Court Rule 21, the Commission on Continuing Legal Education and Specialization monitors continuing legal education requirements and administers the specialization program for attorneys. The director and staff also serve the Tennessee Lawyers' Fund for Client Protection. Commission members are appointed by the Supreme Court.
9. Governor's Commission for Judicial Appointments (302.20): The Governor's Commission for Judicial Appointments was established by Executive Order No. 34. When there is a vacancy in the trial or appellate courts, the 17-member commission accepts applications from interested parties, interviews the applicants, and then recommends three nominees to the Governor for consideration. The Governor may then appoint one of the recommended applicants to fill the vacancy.
10. Integrated Criminal Justice Steering Committee (302.20): Section 16-3-815, *Tennessee Code Annotated*, established the Integrated Criminal Justice Steering Committee, which was created to

[p]rovide the governmental and technical information systems infrastructure necessary for accomplishing state and local government public safety and justice functions in the most effective manner, by appropriately and efficiently sharing criminal justice and juvenile justice information among law enforcement agencies, judicial agencies, corrections agencies, executive agencies and political subdivisions of the state.

The chief justice of the Tennessee Supreme Court, or his or her designee, is a member of this committee.

11. Judicial Ethics Committee (302.20): Established by Supreme Court Rule 10A, the Judicial Ethics Committee issues formal ethics opinions requested by judges. Ethics opinions are available from the Administrative Office of the Courts or from its website, www.tncourts.gov/boards-commissions. Members are appointed by the Supreme Court.
12. Judicial Information System Advisory Committee (302.20): Section 16-3-809, *Tennessee Code Annotated*, created the Tennessee Judicial Information System Advisory Committee, which oversaw the development and modification of application software for the judicial information system. Some members were appointed, while others served as a result of their positions. The Supreme Court did not appoint members to this committee. Pursuant to state law, the committee had a

termination date of June 30, 2014. The General Assembly declined to renew the committee; therefore, it has ceased to exist.

13. State Law Library Commission (302.15): Section 10-4-101, *Tennessee Code Annotated* created the State Law Library Commission, which supervises state law libraries in the Nashville, Knoxville, and Jackson Supreme Court buildings. Rather than being appointed, members serve as a result of the positions they hold.
14. Supreme Court Building Commissions (302.05): Sections 16-3-701 through 16-3-703, *Tennessee Code Annotated*, created the Supreme Court Building Commissions to supervise and control the Nashville, Knoxville, and Jackson Supreme Court buildings. Rather than being appointed, members serve as a result of the positions they hold.
15. Tennessee Lawyer Assistance Program (302.50): Established by Supreme Court Rule 33, the Tennessee Lawyer Assistance Program assists lawyers, judges, bar applicants, and law students who suffer from physical or mental disabilities that result from disease, disorder, trauma, or age and that impair their ability to practice or serve. Members are appointed by the Supreme Court. An administrator and staff serve the program.
16. Tennessee Lawyers' Fund for Client Protection (302.65): The Lawyers' Fund for Client Protection was established by Supreme Court Rule 25 to reimburse claimants for losses caused by the dishonest conduct of lawyers duly licensed to practice in Tennessee. Members are appointed by the Supreme Court. The director and staff of the Commission on Continuing Legal Education and Specialization serve this group.