

# STATE OF NORTH CAROLINA

**PERFORMANCE AUDIT**

**JUDICIAL DEPARTMENT**

**COURT-ORDERED FINES, FEES, AND RESTITUTION**

**JUNE 2011**

**OFFICE OF THE STATE AUDITOR**

**BETH A. WOOD, CPA**

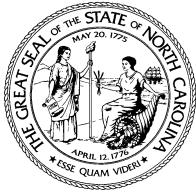
**STATE AUDITOR**

**PERFORMANCE AUDIT**

**JUDICIAL DEPARTMENT**

**COURT-ORDERED FINES, FEES, AND RESTITUTION**

**JUNE 2011**



Beth A. Wood, CPA  
State Auditor

STATE OF NORTH CAROLINA  
**Office of the State Auditor**

2 S. Salisbury Street  
20601 Mail Service Center  
Raleigh, NC 27699-0601  
Telephone: (919) 807-7500  
Fax: (919) 807-7647  
Internet  
<http://www.ncauditor.net>

June 7, 2011

The Honorable Beverly E. Perdue, Governor  
Members of the North Carolina General Assembly  
Honorable John W. Smith, Director, North Carolina Administrative Office of the Courts

Ladies and Gentlemen:

We are pleased to submit this performance audit titled *Court-Ordered Fines, Fees, and Restitution*. The objective was to determine if the Judicial Department effectively manages court-ordered fines, fees, and restitution.

Judge Smith reviewed a draft of this report. His written comments are included in the appendix.

The Office of the State Auditor initiated this audit to improve the management and collections of court-ordered fines, fees, and restitution levied against offenders.

We wish to express our appreciation to the staff of the Judicial Department for the courtesy, cooperation, and assistance provided us during the audit.

Respectfully submitted,

A handwritten signature in cursive script that reads "Beth A. Wood".

Beth A. Wood, CPA  
State Auditor

# TABLE OF CONTENTS

---

|   | PAGE |
|---|------|
| SUMMARY .....                           | 2    |
| INTRODUCTION                            |      |
| BACKGROUND.....                         | 5    |
| OBJECTIVE, SCOPE, AND METHODOLOGY ..... | 5    |
| FINDINGS AND RECOMMENDATIONS.....       | 7    |
| APPENDIX                                |      |
| AUDITOR’S RESPONSE .....                | 14   |
| DEPARTMENT RESPONSE .....               | 18   |
| ORDERING INFORMATION .....              | 22   |

**SUMMARY**

**PURPOSE**

This audit report evaluates the management of court-ordered fines, fees, and restitution for motor vehicle criminal and infractions cases (herein referred to as “traffic” cases) and for cases that resulted in unsupervised probation. It makes recommendations so the General Assembly and the Judicial Department (Department) can take appropriate corrective action.

**RESULTS**

The Department does not effectively manage court-ordered fines, fees, and restitution owed to the State, local governments, crime victims, and other beneficiaries because the Department lacks adequate computer information systems and does not use all available collection techniques.

To properly manage amounts owed to the State, the Department should have clear and accurate management reports for the amount assessed (owed), the amount paid, and the amount still outstanding. However, the Department’s case management and accounting systems can not readily generate summary reports of court-ordered fees, fines, and restitution assessed, paid,<sup>1</sup> and outstanding for any particular time period. As a result, the Department does not have the information necessary to determine how much money is owed by offenders in total or to ensure that the amounts are promptly collected.

The Department is required by law to promptly bill, collect, and deposit moneys due either to the State or a local governmental unit of the State.<sup>2</sup> The Department issues warrants, charges failure to comply fees for non-compliant offenders, and also notifies the Division of Motor Vehicles for driver’s license suspension when a traffic offender is non-compliant. However, the Department is not exercising all available collection techniques and funding opportunities cited in law.

The Department does not use legally available collection techniques such as assessing a collection assistance fee for amounts past due or entering into collection contracts with third parties. Furthermore, the Department does not intercept tax refunds to recover past due fines, fees, and restitution from offenders not sentenced to unsupervised probation. It should be noted, however, that the Department does intercept tax refunds to recover attorneys fees associated with the defenses of the indigent.

Due to the Department’s lack of accountability and use of limited collection efforts for the recovery of court-ordered fines, fees, and restitution, the State, local governments, crime victims, and other beneficiaries may not receive the full amounts owed to them.

---

<sup>1</sup> The Department can identify the amount of court-ordered fines, fees, and restitution paid during a particular time period; however, the Department can not readily identify amounts assessed for a given time period and thus can not readily compute and monitor a collection rate.

<sup>2</sup> Codified in *North Carolina General Statute 147-86 Article 6A*.

## PERFORMANCE AUDIT

---

The Department contends that it has no legal mandate to manage monies owed to the courts as accounts receivables,<sup>3</sup> but that it nevertheless manages unpaid court-ordered fines, fees, and restitution by issuing court orders and notifying the Department of Motor Vehicles on non-compliant traffic offenders. The Department also points to other legal, technical, and financial obstacles it faces in implementing some of the collection techniques available to it as well as a lack of resources and other Department priorities.

The amount of fines, fees, and restitution assessed, paid, and outstanding are large enough that they should be properly managed. We estimate that \$183.2 million<sup>4</sup> was owed, \$156 million<sup>5</sup> was paid, and \$27.2 million was outstanding as of March 31, 2009, for traffic cases resolved in calendar year 2008. For cases that resulted in unsupervised probation<sup>6</sup> decided during the three year period ending December 31, 2008, we estimate that \$82.1 million<sup>7</sup> was owed, \$69.2 million<sup>8</sup> was paid, and \$12.9 million was outstanding as of March 31, 2009. While a portion of the estimated unpaid and past due amounts are likely uncollectable, the Judicial Department does not have any historical data to estimate the uncollectable amount. It is also important to note that these estimates are limited to the defined time periods, and therefore the cumulative amount outstanding fines, fees, and restitution is likely greater.

Auditors estimated that collection rates<sup>9</sup> for traffic and unsupervised probation are 85.1% and 84.3%, respectively. Although the Department contends that these rates compare favorably to other states it surveyed, the Department's computing systems do not produce reliable data to determine:

- If the auditor-determined collection rate is typical of the Department's collection efforts;
- If the Department's collection rate is improving over time or getting worse;
- If amounts owed to the Department are increasing or decreasing; or
- If additional collection efforts could cost-effectively increase collection rates.

The assessed, paid, and outstanding amounts are significant and it is the opinion of the Office of the State Auditor that these amounts should be understood and managed by the Department in a manner consistent with government accountability expectations.

---

<sup>3</sup> Most state agencies must comply with the Statewide Accounts Receivable Program as codified in *North Carolina General Statute 147-86 Article 6B*. The General Court of Justice, along with community colleges, local school administrative units, and area mental health, developmental disabilities, and substance abuse authorities are specifically exempt from the statute.

<sup>4</sup> 95% confidence that the amount is between \$164.3 million and \$202.1 million.

<sup>5</sup> 95% confidence that the amount is between \$111.6 million and \$200.4 million.

<sup>6</sup> Traffic cases that resulted in a sentence of unsupervised population were removed from the traffic population to avoid overlap of outstanding amounts.

<sup>7</sup> 95% confidence that the amount is between \$71.6 million and \$92.7 million.

<sup>8</sup> 95% confidence that the amount is between \$54.2 million and \$84.2 million.

<sup>9</sup> The collection rate (amount assessed divided by the amount paid) is a common calculation for entities to monitor and track the results of their collection efforts.

## **PERFORMANCE AUDIT**

---

### **RECOMMENDATIONS**

The Department should seek clarification from the General Assembly as to the Department's responsibility to manage amounts due to the courts. The Department should also bring to the attention of the General Assembly any obstacles the Department faces in implementing collection techniques available by General Statute.

The Department, in consultation with the Office of the State Controller and other independent and appropriate sources, should assess and revise its business procedures and controls so that Department management has reasonable assurance that fines, fees, and restitution are properly accounted for and managed in accordance with cash management laws<sup>10</sup> and general business practices for managing amounts owed.

The Department should upgrade its computerized accounting and case management systems to properly account for amounts assessed, paid, and due to the courts.

The Department should implement available collection techniques such as entering into collection contracts with third parties, intercepting tax refunds, and assessing collection fees when allowed.

The General Assembly should ensure that funding for the Judicial Department is sufficient for the proper accounting and collection of fines, fees, and restitution.

The General Assembly should consider revising law to make the Judicial Department subject to the Statewide Accounts Receivable Program in the same manner it is subject to the cash management laws.

The General Assembly should consider asking the Joint Legislative Program Evaluation Oversight Committee to conduct follow up hearings to determine if the Department has implemented recommended processes so that the General Assembly has reasonable assurance that fines, fees, and restitution are properly accounted for and managed in accordance with state law and regulation.

The General Assembly should consider revising the state's cash management laws so that the provisions of the law clearly apply to crime victims and other beneficiaries of court-ordered restitution.

### **AGENCY'S RESPONSE**

The Agency's response is included in the appendix.

---

<sup>10</sup> *North Carolina General Statute 147-86.14*

## **INTRODUCTION**

### **BACKGROUND**

The courts impose fees, fines, and restitution in criminal and infraction cases to help offset the costs of services related to the criminal process, to punish offenders, and to compensate victims for damages. *North Carolina General Statute 7A-304* lists most of the general court fees and specifies the distribution of those amounts to the various areas that either contribute to covering the costs of services related to the criminal process or to the State's General Fund for the support of the General Court of Justice.

The Administrative Office of the Courts (AOC) and clerks of superior court are part of the Judicial Department. The Director of the AOC is responsible for prescribing uniform administrative and business methods, systems, forms, and records to be used in the clerk of superior courts.<sup>11</sup> AOC is also charged with establishing procedures for the receipt, deposit, protection, investment, and disbursement of all funds coming into the hands of the clerk of superior court.<sup>12</sup> Clerks of superior court are charged with performing all clerical, administrative, and fiscal functions required in the operation of district and superior courts within their county.<sup>13</sup>

The clerks of superior court collect (receive payments) court-ordered fines, fees, and restitution and distribute collected receipts to the appropriate entity such as the State, local governments, and victims of crimes. Executive branch agencies, including the Division of Motor Vehicles and the Department of Correction, may assist in some enforcement activities associated with court orders. For example, the Division of Motor Vehicles revokes licenses of offenders after being notified of non-payment of traffic-related fees and fines. The Department of Correction also works with offenders' who receive supervised probation to ensure compliance with probation terms including payment of court-ordered fines, fees, and restitution.

The Judicial Department reports<sup>14</sup> that 2,547,473 criminal and infraction cases were disposed in District Court during the State's fiscal year 2008. Motor vehicle charges accounted for 1,045,086 cases; 853,501 cases were infractions; and non-motor vehicle charges were 648,886 cases.

### **OBJECTIVE, SCOPE, AND METHODOLOGY**

The audit objective was to determine if the Judicial Department effectively manages court-ordered fines, fees, and restitution.

The State Auditor initiated this audit to improve management and collections of court-ordered fines, fees, and restitution levied against offenders.

---

<sup>11</sup> *North Carolina General Statute 7A-343 (3)*

<sup>12</sup> *North Carolina General Statute 7A-108*

<sup>13</sup> *North Carolina General Statute 7A-180 (2)*

<sup>14</sup> North Carolina Courts Annual Report 2007-2008



## PERFORMANCE AUDIT

---

The audit scope included motor vehicle-related cases and cases that resulted in an unsupervised probation sentence. We reviewed motor vehicle-related (traffic) infractions and criminal cases decided between January 1, 2008 and December 31, 2008. We also reviewed criminal cases decided between January 1, 2005 and December 31, 2008, which resulted in a sentence of unsupervised probation. We conducted the fieldwork from March 2009 to December 2009.

To achieve our audit objectives, we reviewed state laws and interviewed North Carolina Judicial Department personnel, including Administrative Office of the Court personnel and clerk of superior court office personnel throughout the State. We obtained an understanding of the information systems used to process court-ordered fines, fees, and restitution. We used a statistically valid sampling methodology to estimate court fines, fees, and restitution ordered, collected, and outstanding for our audit period.

Because of the test nature and other inherent limitations of an audit, together with limitations of any system of internal and management controls, this audit would not necessarily disclose all performance weaknesses or lack of compliance.

We conducted this performance audit according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence that provides a reasonable basis for findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We conducted this audit under the authority vested in the State Auditor of North Carolina as codified in *Article 5A of North Carolina General Statute Chapter 147*.

## FINDINGS AND RECOMMENDATIONS

---

### **COURT-ORDERED ASSESSMENTS ARE NOT EFFECTIVELY MANAGED**

The Judicial Department (Department) does not effectively manage court-ordered fines, fees, and restitution owed to the State, local governments, crime victims, and other beneficiaries because the Department lacks adequate computer information systems and does not use all available collection techniques.

Consequently, summary data about fines, fees, and restitution assessed, paid, and outstanding can not be readily determined even though the Department has a responsibility to manage these amounts. The Department contends that state law does not require it to actively manage fines, fees, and restitution and that its approach is effective.

#### **Deficient Computer Systems**

The Judicial Department's computer systems and process for managing amounts ordered, paid, and owed is deficient and requires manual processes to determine all amounts owed.

The two computer systems used to manage cases and receive and disperse payments, the Automated Case Information System (ACIS) and the Financial Management System (FMS), are legacy database systems that were not designed to manage amounts owed to the courts. The systems primarily function independent of each other and no one system contains the details necessary to manage amounts assessed, paid, and outstanding, requiring double entry of some information.

To properly manage amounts owed to the State, the Department should have clear and accurate records about the amount assessed (owed), the amount paid, and the amount still outstanding for each offender. However, the Department's case management and accounting systems can not readily determine a summary of court-ordered fees, fines, and restitution assessed, paid,<sup>15</sup> and outstanding for any particular time period. Currently, the systems do not produce reports that provide managers with complete detailed or summary information such as:

- Amounts of court fines, fees, and restitution ordered;
- Percentages of ordered amounts paid; or,
- Amounts of court fines, fees, and restitution unpaid and still due to the State.

Court personnel can determine the amount owed, paid, and outstanding by defendant, but only after reviewing case documents<sup>16</sup> and multiple computer systems. Even then this process is prone to error because amounts owed are not located on a single document in the manual file.

---

<sup>15</sup> The Department can identify the amount of court-ordered fines, fees, and restitution paid during a particular time period; however, the Department can not readily identify amounts assessed for a given time period and thus can not readily compute and monitor collection rates.

<sup>16</sup> The Judicial Department considers documents in the case file to be the source document for all judicial proceedings. The Judicial Department reports that 2,547,473 criminal and infraction cases were disposed during the fiscal year ending June 30, 2008.

## FINDINGS AND RECOMMENDATIONS

---

### Available Collection Tools Not Used

The Judicial Department is not exercising all available collection techniques and funding opportunities available by law. Techniques not used by the Department include assessing a collection assistance fee for amounts past due, entering into collection contracts with third parties, and intercepting tax refunds.

Effective August 1, 2007, state law<sup>17</sup> allowed the Department to assess a collection assistance fee for amounts past due more than 30 days for offenders not sentenced to supervised probation. The collection fee was limited to the lesser of the average cost of collecting the debt or 20%. However, the Department does not attempt to assess and collect this fee. Department officials stated that it was likely that many of these amounts would not be paid in full and therefore no collection fee revenue would be realized.<sup>18</sup>

The same law allows the Department to enter into contracts with third-party collection agencies for offenders not sentenced to supervised probation. However, the Department has not pursued third-party collection agency contracts because the courts can not extract information needed by collection agencies to effectively collect on past due amounts.

Enacted in 1979, the Setoff Debt Collection Act<sup>19</sup> allows state agencies to intercept an individual's tax refunds to satisfy debts owed to state agencies. The Department stated that they do not use the Setoff Debt Collection program for fines, fees, and restitution because the law does not allow the Department to file on behalf of the true claimants and that most of the monies associated with fines, fees, and restitution are ultimately passed on to other organizations, municipalities, and individuals.

However, since August 2007, *General Statute 7A-321(b)(3)* specifically allows the Department to "intercept tax refund checks under Chapter 105A of the General Statutes, the Setoff Debt Collection Act" for fines, fees and costs owed to the courts by offenders not sentenced to supervised probation.

Furthermore, the Department currently uses the setoff debt program to collect unpaid attorney's fees associated with legal defense of the indigent although the Department says it cannot use the setoff debt program to satisfy fines, fees, and restitution ordered by the courts. The Department of Revenue reports that since January of 2000, more than \$29.5 million has been intercepted from individuals deemed indigent by the courts and returned to the Department.

---

<sup>17</sup> Session Law 2007-323 section 30.9 – *North Carolina General Statute 7A-321(b)(1)*.

<sup>18</sup> Amounts paid are then disbursed in priority order. Disbursement of late fees is the last priority.

<sup>19</sup> *North Carolina General Statute 105A*

## FINDINGS AND RECOMMENDATIONS

---

### **Responsibility to Collect Fines, Fees, and Restitution**

The Judicial Department has a legal responsibility to collect amounts owed to the State. The State's Cash Management Plan<sup>20</sup> states that "moneys due to a State agency by another governmental agency or by private persons shall be promptly billed, collected and deposited." State law specifies that the Cash Management Plan is applicable to the General Court of Justice "whenever the beneficial owner of the funds is either the State or a local government unit of the State."<sup>21</sup> The Cash Management Plan also requires action to attempt collections for unpaid billings.

The Department also has a responsibility to carry out court decisions and ensure that offenders are punished. Organizations such as the National Association for Court Management and the National Center for State Courts encourage the courts and its managers to ensure offenders comply with punishments such as court mandated fines, fees, and restitution. The National Association for Court Management and the National Center for State Courts express the need to ensure compliance in order to preserve the courts' integrity and the public's trust. In a 1995 report entitled, "Internal Control of Court-Collected Funds", the National Center for State Courts stated:

*It is incumbent on court managers to (1) identify and account for cases in which money is due the court as the result of orders or judgments; and (2) identify delinquent accounts for purposes of collection actions or write-off procedures.*

The report goes on to note that there should be a system in place to identify assessed amounts, accounts that have not been paid, and other management reports that would "reveal the potential for collection, the success of collection efforts, and the incidence of deferred and installment payments within the system."

The Department also has a responsibility to distribute funds to the rightful recipients. Efforts to actively manage and collect funds show citizens that the Department makes a diligent effort to enforce court decisions and distribute awards to the rightful recipients. By law, court-ordered fines, fees, and restitution collected by the courts are disbursed to victims, municipalities, local school systems, and the State. If the Department does not actively manage court-ordered fines, fees, and restitution, lawful beneficiaries will receive less of the amounts owed to them.

### **Department Contends That Active Management of Amounts Owed is Not Required**

The Judicial Department contends that state law does not require them to actively manage fines, fees, and restitution as accounts receivables. In response to a draft audit finding, Department officials wrote:

---

<sup>20</sup> Codified in *North Carolina General Statute 147-86 Article 6A*.

<sup>21</sup> As written, the law could be interrupted to omit any Department collection responsibility for restitution to crime victims

## FINDINGS AND RECOMMENDATIONS

---

*According G.S. 147-86.20, court costs and fees are specifically excluded from the definition of accounts receivable. It is the legal opinion of the NCAOC (North Carolina Administrative Office of the Courts) that this definition exempts the Judicial Department from actively managing these monies due as accounts receivables.*

The General Statute cited is for the Statewide Accounts Receivable Program which specifically excludes the General Court of Justice from its provisions. However, exclusion from the provisions of this chapter does not provide statutory relief to the Department for collecting sums owed to it. Exclusion does mean that the Judicial Department does not have to submit its internal policies and procedures for collecting accounts receivable to the State Controller for review and report to the State Controller at least quarterly such information as:

- Types of accounts receivable owed to the Court;
- An aging of accounts receivable;
- Any attempted collection activity and any costs incurred in the collection process;
- Any accounts receivable that have been written off.

Consequently, the Department still has a responsibility to manage amounts due it as required by cash management laws, Office of the State Controller policy, and the inherent responsibilities of government managers.

Department officials contend that they manage unpaid fines, fees, and restitution by issuing court orders such as failure to appear, failure to comply, and contempt of court and reporting these instances to the Department of Motor Vehicles in traffic cases. While these legal remedies may enhance collections, they do not provide effective management of amounts owed in a manner that is consistent with basic business processes and government accountability expectations.

Department officials point out that they have no financial incentive to actively manage unpaid fines, fees, and restitution. Department officials also commented that the Department has historically been underfunded and that additional resources would first be used to address core issues such as the time it takes to dispose of cases.

### **Amounts Assessed, Collected, and Outstanding Are Significant**

The amount of fines, fees, and restitution assessed, collected, and outstanding are large enough that they should be properly managed. We estimate that \$183.2 million<sup>22</sup> was owed, \$156 million<sup>23</sup> was paid, and \$27.2 million was outstanding as of March 31, 2009, for traffic cases resolved in calendar year 2008. For cases that resulted in unsupervised

---

<sup>22</sup> 95% confidence that the amount is between \$164.3 million and \$202.1 million.

<sup>23</sup> 95% confidence that the amount is between \$111.7 million and \$200.4 million.

## FINDINGS AND RECOMMENDATIONS

---

probation<sup>24</sup> decided during the three year period ending December 31, 2008, we estimate that \$82.1 million<sup>25</sup> was owed, \$69.2 million<sup>26</sup> was paid, and \$12.9 million was outstanding as of March 31, 2009. While a portion of the estimated unpaid and past due amounts are likely uncollectable, the Judicial Department does not have any historical data to estimate the uncollectable amount. It is also important to note that these estimates are limited to the defined time periods, and therefore the cumulative amount outstanding fines, fees, and restitution is likely greater.

We determined these estimated amounts using a statistical sample of cases that provided a 95% confidence level with a 10% precision (accuracy). Using a smaller precision provides a tighter range, but it increases the sample size, requiring more time, effort, and resources to conduct the sample. However, after considering known limitations of the Department's Automated Case Management System and Financial Management System and the need to review the case documents on file at the 100 clerk of court offices, we determined that it was not necessary to spend the additional time and resources for a tighter range on the estimated amounts in order to demonstrate that the size of the assessed and outstanding amounts were significant enough to warrant adoption of customary accounts receivable management techniques and controls.

The Department has a responsibility to provide reliable, useful, and timely information to demonstrate accountability of its operations. The U.S. Government Accountability Office (GAO) states that government managers have fundamental responsibilities for carrying out government functions. Specifically, GAO states that management of the audited entity is responsible for "ensuring that management and financial information is reliable and properly recorded."<sup>27</sup> The GAO also recommends that when considering control activities, government auditors consider whether:

- The documentation is readily available;
- Documentation of transactions and other significant events is complete and accurate; and
- Documentation, whether in paper or electronic form, is useful to managers in controlling their operations and to any others involved in evaluation or analyzing operations.

The Department can not produce summary reports or analyze and evaluate amounts assessed, paid, and outstanding for any given time period and can not readily calculate the collection rate.

---

<sup>24</sup> Traffic cases that resulted in a sentence of unsupervised population were removed from the traffic population to avoid overlap of outstanding amounts.

<sup>25</sup> 95% confidence that the amount is between \$71.6 million and \$92.7 million.

<sup>26</sup> 95% confidence that the amount is between \$54.2 million and \$84.2 million.

<sup>27</sup> Government Auditing Standards (July 2007 Revision) and the Internal Control Management and Evaluation Tool (August 2001)

## FINDINGS AND RECOMMENDATIONS

---

Based on the sample, the estimated collection rates for traffic cases and unsupervised probation cases are 85.1% and 84.3%, respectively. The Department compared the auditor-estimated rates to other states and reported that North Carolina compares favorably to those states.

However, it is important to note that until auditors estimated the collection rates for these cases, the Department did not know the percentage of uncollected dollars. Furthermore, the Department does not know:

- If the auditor-determined collection rate is typical of the Department's historical collection rate;
- If the Department's collection rate is improving over time or getting worse;
- If amounts owed to the Department are increasing or decreasing; and
- If additional collection efforts could cost-effectively increase collections.

The samples show that the assessed, paid, and outstanding amounts are significant and it is the opinion of the Office of the State Auditor that these amounts should be understood and managed by the Department in a manner consistent with government accountability expectations.

### **Recommendations**

The Department should seek clarification from the General Assembly as to the Department's responsibility to manage amounts due to the courts. The Department should also bring to the attention of the General Assembly any obstacles the Department faces in implementing collection techniques available by General Statute.

The Department, in consultation with the Office of the State Controller and other independent and appropriate sources, should assess and revise its business procedures and controls so that Department management has reasonable assurance that fines, fees, and restitution are properly accounted for and managed in accordance with cash management laws and general business practices for managing amounts owed.

The Department should upgrade its computerized accounting and case management systems to properly account for amounts assessed, paid, and due to the courts.

The Department should implement available collection techniques such entering into collection contracts with third parties, intercepting tax refunds, and assessing collection fees when allowed.

The General Assembly should ensure that funding for the Judicial Department is sufficient for the proper accounting and collection of fines, fees, and restitution.

## FINDINGS AND RECOMMENDATIONS

---

The General Assembly should consider revising law to make the Judicial Department subject to the Statewide Accounts Receivable Program in the same manner it is subject to the cash management laws.

The General Assembly should consider asking the Joint Legislative Program Evaluation Oversight Committee to conduct follow up hearings to determine if the Department has implemented recommended processes so that the General Assembly has reasonable assurance that fines, fees, and restitution are properly accounted for and managed in accordance with state law and regulation.

The General Assembly should consider revising the state's cash management laws so that the provisions of the law clearly apply to crime victims and other beneficiaries of court-ordered restitution.



## AUDITOR'S RESPONSE

---

Generally Accepted Government Auditing Standards state:

When the audited entity's comments are inconsistent or in conflict with the findings, conclusions, or recommendations in the draft report, or when planned corrective actions do not adequately address the auditor's recommendations, the auditors should evaluate the validity of the audited entity's comments. If the auditors disagree with the comments, they should explain in the report their reasons for disagreement.

Therefore, audit standards require the Office of the State Auditor (OSA) to provide additional explanation when an agency's response could potentially cloud an issue, mislead the reader, or inappropriately minimize the importance of our findings.

The Judicial Department's (Department) response misleads the reader about (1) OSA's audit objectives, (2) Department's management of court-ordered fines, fees, and restitution; (3) OSA's expectations concerning Department's collection efforts; and (4) Department's evaluation of alternative collection efforts.

Consequently, we offer the following clarification.

### **Audit Objectives**

The Department's response misleads the reader into believing that it was OSA's audit objective and responsibility "to establish an appropriate benchmark for judicial collections."

The Department is incorrect.

The audit objective was to evaluate the Department's management of court-ordered fines, fees, and restitution for motor vehicle criminal and infractions cases and for cases that resulted in unsupervised probation.

In other words, our audit objective was to determine whether the Department followed general business practices. Generally, management is expected to (1) establish goals, expectations, and benchmarks; (2) ensure that relevant, reliable information is available to run, monitor, and control operations; (3) compare actual results to goals, expectations, and benchmarks; and (4) use available methods and resources to take corrective action and achieve organizational goals and objectives.

Our audit found that the Department did not properly manage its collection efforts in accordance with the general business practices listed above.

### **Department's Management of Court-Ordered Fines, Fees, and Restitution**

The Department's response misleads the reader into believing that the Department actively manages its collection efforts.

## AUDITOR'S RESPONSE

---

The Department does not.

As noted above and in the report, (1) the Department has not established goals or benchmarks for its collection efforts; (2) the Department's case management and accounting systems can not readily generate summary reports to determine the total amounts assessed, collected, and outstanding; (3) the Department was unaware of its collection rate until the OSA auditors determined a rate through statistical sampling, and (4) the Department does not use all of the collection methods available.

### **OSA's Expectations Concerning the Department's Collection Efforts**

The Department's response misleads the reader into believing that OSA "assumes that the collection rate should be near 100%" and states that the audit "appears to criticize the Judicial Department for not reaching some undefined reasonable target which the auditors failed to establish."

The Department is incorrect.

OSA did not assume or even focus on a collection rate. As noted above, the audit evaluated the Department on whether it reached the "reasonable target" of following general business practices. The audit report identifies the estimated amount of fines, fees, and restitution assessed, collected, and outstanding. However, the report only states that the amounts are significant and therefore should be properly managed.

Again, our audit found that the Department did not properly manage its collection efforts in accordance with general business practices.

### **The Department's Evaluation of Alternative Collection Efforts**

The Department's response misleads the reader into believing that the Department has performed detailed analysis and determined that legally available alternative collection methods cited in the report "would not be cost-effective."

To the best of our knowledge, this is incorrect.

During the audit, the Department discussed reasons for not implementing alternative collection methods. However, the Department did not provide any documentation as evidence that it had performed a cost-benefit analysis of other collection methods cited in the report. Additionally, OSA asked the Department for any such documentation after we received their official response to our draft audit report. The Department restated reasons and obstacles that, in its opinion, would not make the use of third-party collection agencies and Set-Off-Debt program cost-effective, but did not provide any documentation to support that conclusion.

## AUDITOR'S RESPONSE

---

Additionally, as stated above and in the report, the Department did not know the total amounts assessed, collected, and outstanding until the auditors estimated the amounts through statistical sampling.

Consequently, OSA does not know how or on what basis the Department “considered alternative or supplemental collection procedures and had come to the conclusion that they were not cost-effective.”

The Governor, Legislators, and the citizens of North Carolina should consider the clarification provided above when considering the Judicial Department’s response to the audit report and evaluating the Judicial Department’s management of amounts owed.

[ This Page Left Blank Intentionally ]



NORTH CAROLINA  
ADMINISTRATIVE OFFICE  
*of the* COURTS

Office of the Director  
Judge John W. Smith  
Director

PO Box 2448, Raleigh, NC 27602  
T 919 890-1391 F 919 890-1915

May 26, 2011

The Honorable Beth Wood  
State Auditor  
Raleigh, North Carolina

Re: "Agency Response" from the Judicial Department

Dear Ms. Wood:

I know that your employees have worked hard over the past two years and five months on this performance audit of our collections. We appreciate the opportunity to respond. Unfortunately, we disagree with both the substance and conclusions of the audit and believe you may have misconstrued the role of the courts.

**Orientation Meeting:** When the audit began two years ago, my staff and I met with your staff and I thought we had a substantive conversation which was cordial, cooperative, and productive. The Judicial Department places a high priority on collecting monetary obligations from those responsible, imposing and collecting appropriate monetary sanctions while assuring due process in doing so, and assuring that cost-effective measures are administratively available to assist in that process.

**Benchmarks:** In our initial discussions I thought we had a clear agreement that it was important to establish an appropriate benchmark for judicial collections. It was our belief that our collection rates were quite high when compared with other states, with industry standards, and with collection rates of other state agencies responsible for collections. Rather than determining an appropriate collection rate standard, this performance audit instead assumes that the collection rate should be near 100%, and it appears to criticize the Judicial Department for not reaching some undefined reasonable target which the auditors failed to establish. To suggest that there are millions "outstanding" at year end, and then suggest that only a portion of it is uncollectable when our compliance rate for infractions is at 99% and collections are at 84% for other probationary cases, must assume a collection rate closer to 100%, which nobody would consider remotely reasonable. We believe that using the best models for state court collections or other industry-acceptable benchmark, the amount "outstanding" falls within the range of the "uncollectable." Rather than make that inference, the auditors arbitrarily chose negative inferences not based on any data, and avoided considering whether the marginal recovery would justify the expense to improve on the collection rate, which we believe to be quite high as it is. Any business judgment would include that consideration. This is important only because we believe that we meet or exceed any fair and objective collection rate expected from that population from which our collections are made.

**Cost Effectiveness of Alternatives:** The second and even more important mutual understanding that I thought we had was if the auditors were going to consider recommending alternatives to the two collection measures we currently employ which are considered to be the most effective measures available (the threat of incarceration and revocation of drivers' privileges), that a cost-benefit analysis needed to be done to rebut our

conclusion that those alternatives of which we were already aware would not be cost-effective. We made it clear that we had considered alternative or supplemental collection procedures and had come to the conclusion that they were not cost-effective. The audit report fails to provide any information showing that our conclusion is not sound. Instead, it suggests that we “consider” the very collection techniques that we discussed at the entry conference, and which I personally told them we had considered and deemed not cost-effective.

**Technology:** A third issue we discussed at the initial conference was the current state of our technology. We absolutely agree that the enhancement of technology which is both antiquated and inadequate should be a priority. We have repeatedly requested adequate funding in that area. During the period of this audit, which occurred during the greatest economic crisis since the Great Depression, the Administrative Office of the Courts has endured budget cuts exceeding 11%. We are now confronting, in the upcoming biennium, the single largest technology cut in our history. While the recommendation as to technology needs is consistent with our long-term goals, nothing indicates that additional revenue will be collected or that the costs of these new initiatives can be justified given current priorities and funding constraints. We appreciate the audit’s support of funding needs.

**Courts are More than a Collection Agency:** Finally, I would be remiss if I did not point out that this audit is not an audit of just another agency charged with a simple task of collecting sums of money. Any and all of the fees, restitution orders, fines, costs and other monetary obligations are due from defendants or litigants who are entitled to due process in both assessing the amounts which should be paid and in the procedures to enforce the obligation. We maintain records which accurately reflect the amount ultimately owed, which may differ from the amount originally assessed. Our statutes make clear that with respect to monetary judgments in criminal cases notice and an opportunity to be heard must be afforded before sanctions for nonpayment may be imposed. This means that the amount originally ordered can change over time depending upon judicial determinations of individualized circumstances, including the ability to pay. This can be an expensive and time-consuming process, and may involve participation by recipients and executive branch probation officers who are charged with monitoring the matter. Each of these hearings to enforce judgments contains a cost, and those additional costs were not considered in arriving at the conclusions contained in the audit. As to these monetary obligations, factors not considered in the performance audit should have been given some weight in determining the cost-effectiveness and fundamental fairness of the collection process.

**Your Concern about Responsibilities:** We agree that there are ambiguities in the statutes allocating responsibility for the enforcement of judgments and collection of court obligations. The constitution and our statutes makes it clear that it is the responsibility of the Administrative Office of the Courts to provide administrative assistance to the constitutionally elected or appointed officials (Clerks of Superior Court, District and Superior Court Judges, District Attorneys, and appointed Magistrates) who bear the ultimate responsibility for administering justice and collecting judgments. However, the collection process itself is intertwined with the judicial process, which is executed at the county or district level. Indeed, it is the Clerk of Superior Court who is responsible for receipting and applying the rules of record-keeping for all payments. The statutory machinery for enforcement of judgments, which is an issue properly before a judicial official, engages constitutional and policy decisions over which the Administrative Office of the Courts does not have complete authority and control. While we agree that improvements are always possible, we believe our collection rate, which is achieved by using the most efficient tools, balances all interests and achieves a net yield at or near the maximum levels that can reasonably be expected.

**What Exactly is Our Shortcoming:** In the largest group of cases which produces the greatest revenue, traffic matters and infractions, it is well-established in the literature that the single most effective collection mechanism is the sanction of drivers license revocations. North Carolina was in the forefront of adopting that sanction and it has served us well producing a compliance rate of 99%. When all traffic offenses and all

criminal offenses considered by the auditors are added into that mix, even your own audit shows a collection rate exceeding 84%. That 84% includes collections from DWI cases and other criminal defendants, some of whom are sent to prison for failure to comply with their judgments, and from a population often representing the very poorest and most destitute in the state.

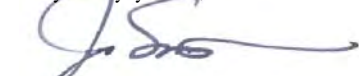
**Comparisons:** As I have spoken with representatives of other agencies over the past two years, I was under the impression that when an appropriate collection benchmark was established that our current procedures would stand us in good stead. Anecdotally, it is my understanding that Indigent Defense Services (IDS), which uses the tax intercept procedure suggested to us by your auditors, yields a collection rate using that procedure of 11%. It is my understanding that the collection rates of executive branch agencies do not exceed ours. When consulting banking executives, they are surprised that our collection rate is as high as it is given the population from whom our collections are made. We note that federal law does not permit tax intercepts to the Internal Revenue Service for court indebtedness, although the National Conference of Chief Justices has consistently sought statutory authorization at the federal level. The costs of processing the tax intercepts to the Department of Revenue are not insignificant. It will require action by our clerks in all 100 counties and it will require modifications in our technology programming. We are currently severely understaffed in these areas, and it is not at all clear that any substantial benefit will result. We will certainly consider implementing that procedure as our circumstances improve.

**Conclusion:** For these reasons, we disagree with both the internal analysis and the ultimate conclusions contained in this performance audit. The lack of substance to show that changes in our collection procedures would be cost-effective is disappointing. In fact the audit confirms that there is no data supporting the proposition that our collection rate will improve after expending precious or nonexistent resources to implement them. To suggest that funds should be spent or appropriations sought in this economic environment to improve our technology is, as the State Auditor is fully aware, unrealistic at this time. We fully concur that technology enhancement is a long-term need which is consistent with our strategic plan, and appreciate the Auditor's support of that need. Assuming appropriations are forthcoming, it has always been our intent to make improvements in that area.

We again appreciate the opportunity to respond to this performance audit and wish we could find it more helpful than it is. Unfortunately, the "Performance Audit" fails to show that current practices are not already maximizing collections, fails to recognize the overarching effectiveness of the two highly effective collection sanctions upon which we have relied, and makes recommendations without any showing that those speculative procedures would in fact be cost-effective. My staff prepared a report after receiving the final draft, and I am sending it to you for further detail as a separate document apart from this formal response.

**Given our high compliance rate, impressive estimated collection rate, and large amount of money actually collected (especially given the population from whom we collect), your staff could have complimented the Judicial Department instead of criticizing us with unrealistic and unattainable expectations.**

Very truly yours,



John W. Smith  
Director

[ This Page Left Blank Intentionally ]



## ORDERING INFORMATION

---

Audit reports issued by the Office of the State Auditor can be obtained from the web site at [www.ncauditor.net](http://www.ncauditor.net). Also, parties may register on the web site to receive automatic email notification whenever reports of interest are issued. Otherwise, copies of audit reports may be obtained by contacting the:

Office of the State Auditor  
State of North Carolina  
2 South Salisbury Street  
20601 Mail Service Center  
Raleigh, North Carolina 27699-0601

Telephone: 919/807-7500

Facsimile: 919/807-7647