



**Thomas A. Schweich**  
Missouri State Auditor

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## JUDICIARY

# Missouri Court of Appeals

## Western District

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# CITIZENS SUMMARY

## Findings in the audit of the Missouri Court of Appeals, Western District

Bidding Procedures	The court does not have a formal bidding policy; some purchases were not bid, and documentation of sole source awards was not retained. Audit staff identified 6 items during the 3 years ended June 30, 2012, totaling almost \$200,000 for which no bids or proposals were obtained.
Payroll and Personnel Policies and Procedures	Court employees do not prepare timesheets and no formal record of leave taken is prepared and submitted for law clerks and judicial administrative assistants, making it difficult to ensure hours worked and leave taken by court employees is properly documented. The court has not established a leave policy for law clerks and judicial administrative assistants. Most law clerks and judicial administrative assistants do not accrue annual or sick leave but are given time off at the discretion of the judge for whom they work, and, as such, the court cannot ensure all employees are treated equally. The auditor's survey of the judges revealed some have not established standard amounts of time off for those staff. A written leave policy for law clerks and judicial administrative assistants is necessary to ensure these employees are treated equitably and to prevent misunderstandings.
Law Library	A physical inventory of law library assets is not periodically conducted. Controls could be improved by performing periodic physical inventories of law library materials and reconciling to the court's inventory listing of law library materials.

In the areas audited, the overall performance of this entity was **Good**.\*

American Recovery and Reinvestment Act (Federal Stimulus)	The Missouri Court of Appeals, Western District received and expended \$125,074 from the Federal Budget Stabilization - Medicaid Reimbursement Fund to fund general operations of the court.
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\*The rating(s) cover only audited areas and do not reflect an opinion on the overall operation of the entity. Within that context, the rating scale indicates the following:

- Excellent:** The audit results indicate this entity is very well managed. The report contains no findings. In addition, if applicable, prior recommendations have been implemented.
- Good:** The audit results indicate this entity is well managed. The report contains few findings, and the entity has indicated most or all recommendations have already been, or will be, implemented. In addition, if applicable, many of the prior recommendations have been implemented.
- Fair:** The audit results indicate this entity needs to improve operations in several areas. The report contains several findings, or one or more findings that require management's immediate attention, and/or the entity has indicated several recommendations will not be implemented. In addition, if applicable, several prior recommendations have not been implemented.
- Poor:** The audit results indicate this entity needs to significantly improve operations. The report contains numerous findings that require management's immediate attention, and/or the entity has indicated most recommendations will not be implemented. In addition, if applicable, most prior recommendations have not been implemented.

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# Missouri Court of Appeals

## Western District

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# **THOMAS A. SCHWEICH**

## **Missouri State Auditor**

Chief Judge and Court en banc  
Missouri Court of Appeals, Western District  
Kansas City, Missouri

We have audited certain operations of the Missouri Court of Appeals, Western District, in fulfillment of our duties under Chapter 29, RSMo. The scope of our audit included, but was not necessarily limited to, the years ended June 30, 2012, 2011, and 2010. The objectives of our audit were to:

1. Evaluate the court's internal controls over significant management and financial functions.
2. Evaluate the court's compliance with certain legal provisions.
3. Evaluate the economy and efficiency of certain management practices and operations, including certain financial transactions.

Our methodology included reviewing minutes of meetings, written policies and procedures, financial records, and other pertinent documents; interviewing various personnel of the court, as well as certain external parties; and testing selected transactions. We obtained an understanding of internal controls that are significant within the context of the audit objectives and assessed whether such controls have been properly designed and placed in operation. We tested certain of those controls to obtain evidence regarding the effectiveness of their design and operation. We also obtained an understanding of legal provisions that are significant within the context of the audit objectives, and we assessed the risk that illegal acts, including fraud, and violations of contract or other legal provisions could occur. Based on that risk assessment, we designed and performed procedures to provide reasonable assurance of detecting instances of noncompliance significant to those provisions.

We conducted our audit in accordance with the standards applicable to performance audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform our 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 such a basis.

The accompanying Organization and Statistical Information is presented for informational purposes. This information was obtained from the court's management and was not subjected to the procedures applied in our audit of the court.

For the areas audited, we identified (1) deficiencies in internal controls, (2) no significant noncompliance with legal provisions, and (3) the need for improvement in management practices and procedures. The accompanying Management Advisory Report presents our findings arising from our audit of the Missouri Court of Appeals, Western District.



Thomas A. Schweich  
State Auditor

The following auditors participated in the preparation of this report:

Deputy State Auditor:	Harry J. Otto, CPA
Director of Audits:	John Luetkemeyer, CPA
Assistant Director:	Douglas Porting, CPA, CFE
Audit Manager:	Todd M. Schuler, CPA
In-Charge Auditor:	Tania Williams, MBA

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# Missouri Court of Appeals

## Western District

### Management Advisory Report - State Auditor's Findings

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#### **1. Bidding Procedures**

The court does not have a formal written bidding policy. Some purchases were not bid or documentation of sole source was not retained. As a result, the court cannot ensure the best price for services was obtained. Bids or proposals were not solicited for the following purchases during the 3 years ended June 30, 2012:

Item	Cost
Building maintenance (1)	\$ 68,506
Office supplies (1)	72,723
Security services (1)	25,912
Elevator services (1)	13,480
IPADS and accessories (1)	11,151
Printers	3,750

(1) Total amount expended for the 3 years ended June 30, 2012

Court personnel indicated the unwritten office policy is to solicit bids for purchases if the individual item being purchased exceeds \$1,000, regardless of the number of items purchased. Court personnel stated IPADs were sole source purchases; however, this was not documented by the court. In addition, the court has not solicited proposals for elevator, security and building maintenance services since 1990, 1996 and 1992, respectively. Court personnel indicated the elevator contract was renegotiated with the same vendor in 2011, resulting in significant savings.

Formal written bidding procedures for major purchases provide a framework for economical management of court resources. Competitive bidding helps ensure the court receives fair value by contracting with the lowest and best bidders. Bidding also helps ensure all parties are given an equal opportunity to participate in the court's business. Documentation of the selection process and criteria, including justification for sole source procurement, should be retained to support purchasing decisions.

#### **Recommendation**

The Clerk of the Court develop a written purchasing policy and ensure bids are solicited for all applicable purchases and sufficient documentation is maintained, including documentation to support sole source purchases.

#### **Auditee's Response**

*The Clerk and Fiscal Officer will develop written policies for bidding where the collective total for a purchase exceeds \$1,000. The Court will ensure that documentation for sole source procurement of items is maintained.*

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#### **2. Payroll and Personnel Policies and Procedures**

Several concerns related to payroll and personnel policies and procedures were identified. Payroll expenditures total over \$3 million each year, representing approximately 90 percent of the court's total expenditures.



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Missouri Court of Appeals  
Western District  
Management Advisory Report - State Auditor's Finding

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The court has two groups of employees. Court support staff, which includes the fiscal officer, librarian, computer information specialist, maintenance, marshal, staff counsel, and court clerks, work for the court overall and report to the Clerk of the Court. In addition, each judge has one or two law clerks that work directly for them and also share a judicial administrative assistant with another judge. All court employees work full-time and are provided a salary and the same benefits as other state employees, with the exception of annual leave and sick leave for law clerks and judicial administrative assistants.

## 2.1 Timesheets

Records of time worked or leave taken are not adequate. Timesheets are not prepared by any court employees, and while leave request forms are prepared and retained by the fiscal office for leave taken by court support staff, they are not prepared by law clerks and judicial administrative assistants. Without timesheets or a record of leave taken, the court cannot ensure hours worked and leave taken by all court employees are properly documented. The work schedules of the law clerks and judicial administrative assistants are at the discretion of the judge for whom they work. We surveyed the judges and many indicated they consider the law clerks and judicial administrative assistants to be professional staff, who are required to put in the hours needed to complete their tasks and they do not consider timesheets necessary.

To ensure payroll costs are adequately documented, records detailing hours worked or leave taken should be prepared by all employees, approved by their supervisor, and filed with the fiscal office.

## 2.2 Leave records and policies

The court has not established a leave policy for law clerks and judicial administrative assistants. Most law clerks and judicial administrative assistants do not accrue annual or sick leave, but are given time off at the discretion of the judge for whom they work. As a result, the court cannot ensure all employees are treated equally. Each judge is responsible for maintaining leave records for his or her law clerks and the Fiscal Officer is responsible for maintaining leave records for all other court employees. Our survey of the judges indicated some do record when leave is used in their monthly calendars or keep an email record of the request for time off, although permanent leave records are not maintained by any of the judges for the law clerks and judicial administrative assistants.

Our survey of the judges regarding leave practices for law clerks and judicial administrative assistants also revealed some have not established standard amounts of time off for those employees. Some clerks and assistants do not receive a set amount of annual or sick leave, while others receive various amounts of annual leave from 10 to 22 days, and some as much sick and vacation time as they require, with their judge's approval.



Missouri Court of Appeals  
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Management Advisory Report - State Auditor's Finding

Court personnel indicated this arrangement was established many years ago and is traditionally how law clerks and judicial administrative assistants are handled. A written leave policy for law clerks and judicial administrative assistants is necessary to provide assurance these employees are treated equitably and to prevent misunderstandings. Leave records should be maintained for all court employees and monitored to provide assurance the balances are accurate and in compliance with the leave policy, and employees are treated equitably.

## Recommendations

The Clerk of the Court:

- 2.1 And the Court en banc require a record of hours worked or leave taken be prepared and signed by all employees, approved by their supervisor, and filed with the fiscal officer.
- 2.2 And the Court en banc establish a leave policy for law clerks and judicial administrative assistants, ensure leave records are maintained for all employees, and periodically monitor those records for compliance with the court leave policy.

## Auditee's Response

- 2.1 &
- 2.2 *The Court appreciates the Auditor's recommendation in regard to the leave issue. However, the Court is convinced that its long standing practice regarding leave is not only consistent with the other appellate courts including the Missouri Supreme Court but also allows for the flexibility needed to conduct the business of the Court effectively and efficiently.*

## 3. Law Library

A physical inventory of law library assets is not periodically conducted. Expenditures for law library publications and subscriptions, which represent approximately 30 percent of all court expenditures, excluding payroll, totaled approximately \$390,000 during the 3 years ended June 30, 2012.

The law library, which includes legal publications kept in the library and each of the judges offices, is maintained for use by court personnel only. The court librarian indicated she regularly inserts updates into the law books and would be aware of any books missing from the library and not checked out by a judge or law clerk. Controls could be improved by performing periodic physical inventories of law library materials and reconciling to the court's inventory listing of law library materials. Physical inventories of law library materials and reconciliation of those inventories to the inventory records are necessary to ensure inventory records are accurate, identify unrecorded additions and dispositions, detect and deter theft of assets, and identify obsolete materials.

## Recommendation

The Clerk of the Court ensure periodic physical inventories of law library materials are performed, reconciled to inventory records, and documented.





Missouri Court of Appeals  
Western District  
Management Advisory Report - State Auditor's Finding

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## Auditee's Response

*The Clerk will ensure that periodic inventories of the library are conducted, reconciled to electronic inventory records and documented.*

# Missouri Court of Appeals Western District Organization and Statistical Information

The Missouri Court of Appeals, Western District, was formed in 1884, and is governed by Article V, Missouri Constitution, and Chapter 477, RSMo. The court has appellate jurisdiction over 45 counties in Western Missouri, except for those cases within the exclusive jurisdiction of the Supreme Court. The court has its offices in Kansas City, Missouri. The court holds oral arguments year round in Kansas City but sessions are also routinely conducted in Jefferson City, Columbia, St. Joseph, Kirksville and at other locations within the Western District. The court is composed of 11 judges who sit in 4 divisions, each with 3 judge positions, that rotate on a quarterly basis.

The salaries of the judges are set by statute. Judges are selected under the Missouri Plan, which includes selection by the Appellate Judicial Commission, appointment by the Governor, and retention by voters. Judges must be at least 30 years old, residents of their district, United States citizens for at least 15 years, and Missouri voters for 9 years before their selection. Judges serve 12-year terms. The judges elect a chief judge to serve a 2-year term. At June 30, 2012, the judges of the Missouri Court of Appeals, Western District, were as follows:

## Judges and Court Personnel

Name and Title	Term Expires
Lisa White Hardwick, Chief Judge	December 31, 2014
James M. Smart, Jr.	June 28, 2015 (1)
Joseph M. Ellis	October 25, 2016 (1)
Victor C. Howard	July 9, 2022 (1)
Thomas H. Newton	December 31, 2012
James Edward Welsh	May 26, 2018 (1)
Alok Ahuja	December 31, 2022
Mark D. Pfeiffer	December 31, 2022
Karen King Mitchell	December 31, 2022
Cynthia L. Martin	December 31, 2012
Gary D. Witt	December 31, 2012

(1) Represents the date on which the judge will reach mandatory retirement age.

Terence Lord has served as the Clerk of the Court since July 1995. The Clerk of the Court supervises the internal administrative functions of the court and reports directly to the chief judge. In addition to the judges and Clerk of the Court, the court employed 43 full-time employees at June 30, 2012.

## American Recovery and Reinvestment Act 2009 (Federal Stimulus)

The court spent American Recovery and Reinvestment Act of 2009 monies of \$125,074 during the year ended June 30, 2010. These monies were appropriated to the court from the Federal Budget Stabilization - Medicaid Reimbursement Fund (see Appendix B) and were used to fund general operations of the court.

Appendix A

Missouri Court of Appeals  
Western District  
Comparative Statement of Receipts

	Year Ended June 30,		
	2012	2011	2010
<b>GENERAL REVENUE FUND</b>			
Court fees	\$ 9,338	9,416	8,056
Copy fees	786	1,135	1,425
Total General Revenue Fund	<u>\$ 10,124</u>	<u>10,551</u>	<u>9,481</u>
<b>BASIC CIVIL LEGAL SERVICES FUND</b>			
Court fees	<u>\$ 2,860</u>	<u>3,160</u>	<u>2,640</u>

Appendix B

Missouri Court of Appeals  
Western District  
Comparative Statement of Appropriations and Expenditures

	Year Ended June 30,								
	2012			2011			2010		
	Appropriation Authority	Expenditures	Lapsed Balances *	Appropriation Authority	Expenditures	Lapsed Balances *	Appropriation Authority	Expenditures	Lapsed Balances *
<b>GENERAL REVENUE FUND</b>									
Personal Service-Judges' Salaries	\$ 1,410,279	1,410,275	4	1,413,583	1,413,580	3	1,410,279	1,285,698	124,581
Personal Service	1,887,954	1,866,902	21,052	1,904,670	1,884,631	20,039	1,717,138	1,703,026	14,112
Expense and Equipment	443,385	443,378	7	423,365	423,362	3	489,126	489,125	1
Total General Revenue Fund	<u>3,741,618</u>	<u>3,720,555</u>	<u>21,063</u>	<u>3,741,618</u>	<u>3,721,573</u>	<u>20,045</u>	<u>3,616,543</u>	<u>3,477,849</u>	<u>138,694</u>
<b>FEDERAL BUDGET STABILIZATION - MEDICAID REIMBURSEMENT FUND</b>									
Personal Service	0	0	0	0	0	0	95,298	95,297	1
Expense and Equipment	0	0	0	0	0	0	29,777	29,777	0
Total Federal Budget Stabilization - Medicaid Reimbursement Fund	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>125,075</u>	<u>125,074</u>	<u>1</u>
Total All Funds	<u>\$ 3,741,618</u>	<u>3,720,555</u>	<u>21,063</u>	<u>3,741,618</u>	<u>3,721,573</u>	<u>20,045</u>	<u>3,741,618</u>	<u>3,602,923</u>	<u>138,695</u>

\* The lapsed balances include the following withholdings made at the Governor's request:

	Year Ended June 30,		
	2012	2011	2010
General Revenue Fund			
Personal Service-Judges' Salaries	\$ 0	0	0
Personal Service	21,051	20,039	0
Total General Revenue Fund	<u>\$ 21,051</u>	<u>20,039</u>	<u>0</u>

Appendix C

Missouri Court of Appeals  
 Western District  
 Comparative Statement of Expenditures (From Appropriations)

	Year Ended June 30,				
	2012	2011	2010	2009	2008
Personal service	\$ 3,277,177	3,298,211	3,084,021	3,106,887	2,936,256
Travel, in-state	23,657	22,769	29,242	21,379	19,270
Travel, out-ofstate	1,423	3,153	2,458	6,419	2,438
Fuel & utilities	56,136	72,842	78,821	74,498	77,244
Supplies	149,676	170,869	174,668	165,669	206,946
Professional development	19,548	18,105	16,990	18,479	17,326
Communication services and supplies	35,018	34,295	35,030	34,825	33,765
Services:					
Professional	19,387	23,319	23,227	21,328	26,575
Housekeeping and janitor services	28,003	29,057	29,323	30,703	31,011
Maintenance and repair	11,791	17,336	11,186	12,629	20,079
Equipment					
Computer	71,492	4,749	26,115	19,211	48,638
Office	4,848	791	16,312	3,213	42,572
Other	732	4,003	30,703	314	13,297
Property and improvements	7,380	8,163	30,297	160	138,349
Equipment rental and leases	7,765	8,539	8,485	8,752	7,290
Miscellaneous expenses	6,522	5,372	6,045	7,804	8,578
Total Expenditures	\$ <u>3,720,555</u>	<u>3,721,573</u>	<u>3,602,923</u>	<u>3,532,270</u>	<u>3,629,634</u>