



Nicole R. Galloway, CPA  
Missouri State Auditor

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# Forty-Third Judicial Circuit

## Clinton County



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October 2015  
Report No. 2015-098

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<http://auditor.mo.gov>



# CITIZENS SUMMARY

## Findings in the audit of the 43rd Judicial Circuit Clinton County

Background	In 2005, the judges of the Forty-Third Judicial Circuit, which consists of Clinton County as well as Caldwell, Daviess, DeKalb, and Livingston counties, created an internal Court Services Program to provide misdemeanor probation and pre-trial/bond supervision services. In 2011, the judges decided to discontinue the Court Services Program and outsource these services to a not-for-profit entity.
Probation Services	<p>The judges of the Forty-Third Judicial Circuit participated in the formation of a not-for-profit entity established to provide misdemeanor probation supervision services and pre-trial/bond supervision services to the court and paid some start-up costs for this entity. To avoid the appearance that there is a relationship between the judges and the bidder for services, the circuit judges should not be involved with the appointment and startup costs of a potential bidder. In addition, the bid documents issued by the circuit court for the misdemeanor probation services contract appeared to give the not-for-profit an unfair advantage in the bidding process, and did not include important financial details that could have influenced the proposal process.</p> <p>Fees collected by the original, internal Court Services Program were held in a bank account outside the county treasury. In January 2012, this account had a balance of over \$400,000. Payments from this account were approved by the circuit judges and made by the Clinton County Circuit Clerk, instead of going through the normal county payment process, which requires most payments from the circuit courts to be paid out of the county treasury. Additionally, annual budgets were not prepared as required by state law.</p>
Accounting Controls and Procedures	The Clinton County Circuit Clerk does not timely complete the monthly general bank reconciliations, and does not adequately review cases with liabilities to ensure monies are disbursed timely. Garnishments receipts are not paid out within the required 10-day holding period. Furthermore, the Circuit Clerk is not reviewing costs owed to the court as required by the court's formal debt plan and thus, has not worked with the judges to evaluate if any accounts are uncollectible and need to be written off.

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

\*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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# Forty-Third Judicial Circuit

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## **NICOLE R. GALLOWAY, CPA**

### **Missouri State Auditor**

Presiding Judge and Court en Banc  
and  
Circuit Clerk of the  
Forty-Third Judicial Circuit  
Clinton County, Missouri

We have audited certain operations of the Forty-Third Judicial Circuit, Clinton County in fulfillment of our duties under Chapter 29, RSMo. The scope of our audit included, but was not necessarily limited to, the year ended December 31, 2013. The objectives of our audit were to:

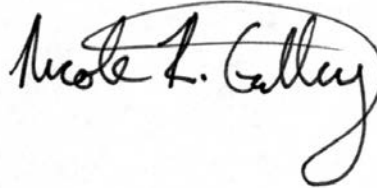
1. Evaluate the court's internal controls over significant financial functions.
2. Evaluate the court's compliance with certain legal provisions.
3. Evaluate the court's compliance with certain court rules.

Our methodology included reviewing 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 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 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, the Office of State Courts Administrator, and Clinton County 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) noncompliance with legal provisions, and (3) noncompliance with court rules. The accompanying Management Advisory Report presents our findings arising from our audit of the Forty-Third Judicial Circuit, Clinton County.

A handwritten signature in black ink, reading "Nicole R. Galloway". The signature is fluid and cursive, with a large loop at the end of the last name.

Nicole R. Galloway, CPA  
State Auditor

The following auditors participated in the preparation of this report:

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# Forty-Third Judicial Circuit

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

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#### **1. Probation Services**

We identified concerns with the transition from probation services provided by the Court Services Program operated by the Forty-Third Judicial Circuit (Circuit) to the services now provided through contracts with a not-for-profit entity (NFP).

##### **Background**

In July 2005, the Court Services Program was created to provide 2 different services; (1) misdemeanor probation supervision and (2) pre-trial/bond supervision. Fees collected were maintained in a bank account held by the Clinton County Circuit Clerk. The Court en Banc made a determination in 2011 to discontinue the Court Services Program and contract with a NFP for these services. The Court en Banc was involved with the formation of a pro forma NFP, the Association for the Friends of Justice of the 43rd Judicial Circuit (Friends), by appointing the Board of Directors. Friends was formally created through a court order in September 2011. The Court en Banc solicited proposals in December 2011 for the Circuit's misdemeanor probation supervision and received only a proposal from Friends. The Court en Banc awarded Friends the contract, effective in February 2012. Friends had previously been awarded a contract to provide pre-trial/bond supervision services of defendants in the Circuit in January 2012.

In 2010, at the former Presiding Judge's request, our office performed a limited review of the Court Services Program and issued a letter (dated July 22, 2010, and released as Report No. 2010-86) containing some concerns regarding the program. One item addressed in that review was the significant accumulated cash balance, approximately \$400,000 at December 31, 2009, and the need for a rate and cost analysis to support the fees charged to defendants. Our current audit determined a significant cash balance (approximately \$400,000) still remained in the account in January 2012, and no rate and cost analysis had been formally prepared. In addition, the Circuit was unable to provide statutory authority for maintaining the court services bank account outside the county treasury and had not adopted budgets to support the disbursement of those funds. Between January 2012 and September 2014, the majority of these funds were spent by the court and as of September 30, 2014, the balance of the account was \$101.

Due to the transition from the Circuit to the NFP in handling misdemeanor probation supervision and pre-trial/bond supervision, we evaluated the relationship between the Court en Banc and Friends and reviewed disbursements made by Friends to ensure judges in the Circuit were not benefiting improperly from this arrangement. We found no evidence that occurred. We also reviewed disbursements from the court services bank account.

##### **1.1 Formation**

The Court en Banc was involved with the formation of the NFP providing misdemeanor probation supervision and pre-trial/bond supervision services to the Circuit. The Board of Directors for Friends was appointed in 2011 by



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the Court en Banc, prior to petitioning the court for formation. The Court en Banc filed a request with the Missouri Supreme Court for a temporary assignment of personnel in August 2011, and an Associate Judge from another county was assigned to hear the petition for the formation of Friends, which was approved in September 2011. Subsequent to the formation approval, the Court en Banc approved contracts with Friends to provide misdemeanor probation supervision and pre-trial/bond supervision services to the Circuit. The Articles of Agreement for Friends states each Associate Judge will nominate one member from their county and the 2 Circuit Judges will each nominate an at-large member, subject to approval by the Court en Banc. It also says vacancies on the Board are filled by the Court en Banc. In addition, a review of the disbursements from the court services bank account (see finding section 1.3) determined the Court en Banc approved some payments for costs associated with forming Friends and approved paying the filing fee charged by the Internal Revenue Service (IRS) for Friends to become a 501(c)3 corporation.

To ensure the appearance of an arm's length relationship with the NFP, the judges in the Circuit should not be involved with the appointment of Board members for Friends and the Court en Banc should not authorize county funds be used to pay costs for a contracted vendor.

## 1.2 Request for proposal

The request for proposals (RFP) on the contract for misdemeanor probation supervision services was worded in such a manner that it appeared to give Friends an unfair advantage in the bidding process. The RFP did not disclose essential financial details that could have impacted the proposal process.

In June 2011, the Court en Banc entered into a lease to rent 3,100 square feet of office space from the City of Hamilton at a building that was to be constructed in Hamilton. The contract covered a 10 year period with the rent set at \$1,500 per month, but the lease called for a lump sum prepayment of the rent, totaling \$180,000. The building was available for occupancy in February 2012 and in January 2012 the Circuit paid the \$180,000 rental cost from the court services bank account. The building currently houses the Juvenile Division of the Clinton County court, in addition to Friends. The lease specifically indicates the Circuit may not sublet any portion of the building, except to an NFP providing services to the court. Friends has a lease with the court for its portion of the building space, with the cost paid by Friends set at \$100 per year. The Presiding Judge indicated Friends uses approximately one-third of the leased space.

In December 2011, a RFP for misdemeanor probation supervision services was provided to each County Clerk in the Circuit for distribution to potential vendors, as well as advertised in 2 local papers in the Circuit. Our



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review of the RFP and sole proposal submitted identified the following concerns:

- The RFP was limited by restricting bidders to only pro forma or statutorily formed not-for-profit corporations that are located within the counties of the Circuit.
- The RFP failed to disclose office space would be provided to the selected bidder for \$100 per year.
- Friends submitted the only proposal, and the organization's address listed on the proposal was the same address as the building leased by the court in June 2011. This gives the impression that the court had already made arrangements with this NFP to provide these services prior to soliciting proposals for these services. In fact, the court had already entered into a contract with Friends to provide other services, as discussed in the next paragraph.

Friends was awarded the contract for misdemeanor probation supervision services in February 2012. Previously, in January 2012, the court entered into a contract with Friends to provide pre-trial/bond supervision services to defendants for a one year period (2012). The balance of the court services bank account was almost \$400,000 at the time the pre-trial/bond supervision contract was entered into with Friends. The Court en Banc paid Friends \$100,000 from this account on the pre-trial/bond supervision contract in January 2012, even though the contract makes clear the actual services will be paid for by the defendants. In April 2013, the Circuit entered into an identical contract with Friends for pre-trial/bond supervision services for a 2 year term (2013 and 2014), and this second contract called for no payment by the Circuit. The Court en Banc was unable to provide documentation that any services were provided to the court to justify this payment, which was apparently start-up money for Friends. Proposals were not solicited for either of the pre-trial/bond supervision contracts.

Given that the Court en Banc was involved in the formation of the NFP, restricted the types of entities that could submit proposals, and did not properly disclose important financial terms in the invitation, the selected vendor could have received an unfair advantage over other potential vendors.

### 1.3 Disbursements

Fees collected by the Court Services Program, which handled misdemeanor probation and pre-trial/bond supervision services prior to January 2012, were deposited to a bank account maintained by the Clinton County Circuit Clerk outside the county treasury. In addition, disbursements from this account were approved by the Court en Banc and made by the Circuit Clerk





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and did not go through the normal county disbursement process. Budgets were not prepared for this account, as required by state law.

In January 2012, the balance of this account was approximately \$400,000, and an additional \$27,650 was deposited in February 2012 for January fees collected by the court. The balance was \$101 by September 2014 and between January 2012 and September 2014, we noted the following payments made:

Purpose/Payee	Amount
Building Rent	\$180,000
Pre-Trial Services	100,000
Final Payroll	22,462
Security	12,399
Caldwell County	32,715
Clinton County	32,952
DeKalb County	19,571
Attorney and IRS Fees	11,572
Daviess County courthouse improvements	12,664

At least a portion of the attorney fees shown listed above related to costs associated with forming Friends, based on a review of legal invoices submitted to the court. There were other miscellaneous smaller dollar payments made for things like moving expenses (juvenile offices) and final expenses associated with shutting down the Court Services Program. In addition, the court made an \$850 payment to the IRS in January 2012 from this account. The payment was for Friends' 501(c)3 corporation filing fee. The Court en Banc had no documentation explaining how it determined the amounts paid to counties from this account.

Section 476.270, RSMo, states, "All expenditures accruing in the circuit courts, except salaries and clerk hire which is payable by the state, except all expenditures accruing in the municipal divisions of the circuit court, and except as otherwise provided by law, shall be paid out of the treasury of the county in which the court is held in the same manner as other demands." Chapter 50, RSMo, requires the preparation of annual budgets for all funds to present a complete financial plan for the ensuing year. By preparing or obtaining budgets for all county funds and activities, the County Commission is able to more effectively evaluate all county financial resources.

## Recommendations

The Court en Banc:

- 1.1 Request the NFP providing services to the court amend its bylaws regarding appointments of Board members to remove the judges from that role.



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- 1.2 Continue to periodically bid for probation services and ensure future invitations to bid are offered in a fair and competitive manner.
- 1.3 Turn over custody of the court services bank account to the County Treasurer.

## Auditee's Response

*Prior to 2005 misdemeanor probation could be supervised by the Court or by the Missouri Department of Probation and Parole. However, the Department of Probation and Parole discontinued misdemeanor probation supervision, leaving the Court to fill that gap in services. Recognizing that most courts did not have the time or personnel, the Legislature enacted laws permitting courts to utilize private entities, and other "court approved" entities to provide misdemeanor probation supervision.*

*The judges of the 43rd Circuit attempted to use private, for-profit, probation supervision, but soon determined that these companies were not effectively supervising their clients. In fact, these companies had adverse economic interests to the goals of supervision, in that the less effectively they supervised their clients, the less likely they were to report violations, and thus would have longer periods of supervision (and more fees). This resulted in probationers that were violating the law and/or using drugs; not maintaining employment or community service; and not paying court costs and fines.*

*In 2005, under the leadership of then Presiding Judge Stephen Griffin, the 43rd Judicial Circuit Court instituted its own misdemeanor probation supervision and bond (pretrial release) supervision program. The Court enacted Rule 67.11, which provided that the monies received for supervision services were to be received by the 43rd Circuit Court Services Program and to be used for supervision services and to provide other court services which the Court en Banc may authorize. The program was initially coordinated out of DeKalb County; but in January, 2008, the monies were transferred to the Clinton County Circuit Clerk. Bond and probation services were controlled and operated by the Court. In 2005, the Court received a statewide award from the Missouri Association of Counties for "Innovative Efforts to Serve Missouri Citizens" for its operation of supervision services.*

*From 2005 to 2009 supervision caseload increased rapidly. Throughout that same period the juvenile office caseload had also increased. The court services and juvenile offices had outgrown their current space; and their offices were not secure or centrally located.*

*In October 2009, after a lengthy bid process, and under the leadership of then Presiding Judge Warren McElwain, the Court accepted a bid from the City of Hamilton to build a facility and rent it to the Court for the juvenile office and supervision services. In 2011 the Court fulfilled its obligations*



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*and leased the new office space. The juvenile office and court supervision services offices moved into the space in late 2011. Hamilton is the ideal location as it is almost dead center, geographically, of the entire circuit. The facility has greatly enhanced security measures (cameras, bullet proof glass, and metal detectors) and is connected to the Hamilton Police Department, providing for immediate law enforcement response when needed. A 3,100 square foot facility has been rented to the Court, with 960 square feet, or about one-third of the space, reserved for supervision service providers. The balance of the facility is occupied by the Circuit Marshall, the Juvenile Office, and common areas.*

*In 2010 the Court was advised that the operation of Court Services directly by the Court might unduly expose the Court (and thus its counties) to liability. As a result, and with advice of counsel, the Court determined that the best approach was to contract for supervision services with a not-for-profit corporation. The challenge facing the Circuit was the complete lack of a non-profit oriented professional group to undertake this mission. As establishing such a group would be a clear public benefit to both the Court and the citizens, the investment of Court Supervision dollars in that process appeared both lawful and appropriate. The Friends of Justice (dba Supervision Services), a not-for-profit corporation, was created to fill the complete void of a non-profit motivated provider of supervision services.*

*As the audit reveals, no judges have, or ever had, any financial interest in its operation; and received no financial benefit from its operation. It should also be noted that no tax dollars were expended in the formation or operation of the probation and bond services provided by the Friends of Justice or any other probation service utilized by the 43rd Circuit. All monies were derived from fees paid by persons being supervised on bond or probation. In other words, only those persons requiring the service paid for it.*

- 1.1 The Auditor's comments regarding the formation of the Friends of Justice are duly noted. The Court did initially play a role in selecting its board members, however this involvement was done so only under the independent review of a disinterested judge appointed by the Missouri Supreme Court. This independent judge presided over the incorporation process. No judge, nor the Court en Banc, has ever attended any of the Friends of Justice board meetings. No judges have any financial interest in its operation; and have received no financial benefit from its operation. In any event, the Court requested Friends of Justice amend its bylaws divesting judges of any involvement in board appointments. That process has been completed.*
- 1.2 The Court appreciates the observations of the auditor, and will continue to strengthen and improve its solicitation and selection process. The 43rd Judicial Circuit is the only circuit in North*



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*Missouri, and perhaps the State, that went through the formal bidding process seeking entities to provide probation supervision services. Perhaps this is because formal bidding is not actually statutorily required under these circumstances. The Court, therefore, exceeded what is required at law, and certainly exceeded what other Courts have done in seeking supervision service proposals. That being said, the Court looks forward to continuing to adjust and improve that process in the future, and appreciates the recommendations provided.*

*With regard to the provision of office space, Friends of Justice was the only entity that responded to the bid. The Court had secured the space in Hamilton to support a variety of Court functions, and so use of that space by the new not-for-profit, instead of use by the previous Court-run system, seemed a natural fit. The current sublease is, in effect, a month to month lease, as it provides for termination by either party on thirty days' notice. The sublease further provides that the tenancy will automatically terminate in the event Friends of Justice no longer provides supervision services to the Court. Should another not-for-profit eventually assume duties to provide services, the space will be equally available to it.*

*The Auditor's comments regarding listing office space in future bid specifications are well taken, and will be incorporated into future bid packets. The Court is unaware of any other group that even considered submittal in prior requests, but to the extent this benefit of contracting can be made plain, it can only help to encourage a robust response. The Court would welcome additional entities that could provide services to participate in the process.*

*In an abundance of caution, the Court will make certain that future requests for proposals will indicate whether the Court will consider providing office space in Hamilton at a reduced rate of rent. In late 2014, the Court did request for proposals to contract for bond and misdemeanor supervision; and entered into 3-year term contracts for those services (1-1-15 through 12-31-17) with no payment being made by the Court for such services. The Court will review the supervision contracts and lease in December of each year, and will then also reevaluate the rent charges to determine whether to affirm, modify, or terminate any such agreements or leases.*

*As to the Auditor's comments regarding funding expenditures it should again be noted no tax dollars were expended in the formation or operation of the probation and bond services provided by the Friends of Justice. All monies expended were derived from fees paid by persons supervised on bond or probation and were, by local court rule, under the direct control of the Circuit Courts. The initial investment of these monies assured that probation services in*



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*the circuit could continue, uninterrupted. Had another non-profit come forward with a proposal, payment of these monies would not have been necessary. As none did, it was essential to the transition of operations that the new organization receive funding until adequate receipts for supervision were available to support operations independently. As Section 559.604, RSMo, specifically prohibited the State or County from bearing these costs, these funds were the only available means to achieve continued supervision.*

*When the first year of the contract was completed, Friends indicated that it could renew the bond supervision agreement for two years and proceeded from that point forward on revenues generated from supervision fees. In December 2012, the Court en Banc chose to affirm the misdemeanor probation agreement (for the balance of the 2-year term); and to renew the bond supervision agreement. In January, 2014, the Court again chose to affirm the agreements, including the lease of space to Friends of Justice d/b/a Supervision Services.*

*The community (and therefore the Court) have benefited greatly from the execution of these agreements with Friends of Justice, as it is clearly worthwhile to have a non-profit agency, locally headquartered, to provide effective supervision services that are results-driven (as opposed to profit-driven). This could not have occurred without the initial \$100,000 payment to fund initial operations until supervision payments normalized. Since the initial startup, the Circuit has benefited from these services as follows:*

- *Reports on offenders to the Court regarding adjustment to probation and their community*
- *Reduction in costs to each county by eliminating jail board expenses for pre-trial release offenders that are under supervision in lieu of being held*
- *Active alcohol and drug monitoring of those under supervision, and global positioning electronic monitoring to assist in elimination of absconders*
- *Collection of 95.9% of fines and costs for those under supervision*
- *89% employment rate for those under supervision as of June 2015*
- *Community service provided to over 30 community groups and services*
- *Employment programs with local employers*
- *Informational forums to schools and community agencies and groups*
- *Referral to appropriate treatment providers and programs for those under supervision*



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*The Court will ensure that any future payments made on contracts for probation or pretrial supervision services are reasonable. The Court is quite certain that tangible services have been provided. The Court will make certain those tangible services, which greatly benefit the Court and public, will continue to be provided. The Court will reevaluate the rent charges when considering whether to affirm the existing agreements at our en banc meeting in December of each year.*

*The Court appreciates the observations of the audit, and will continue to strengthen and improve its solicitation and selection process.*

- 1.3 *The Court again appreciates the observations of the audit regarding disbursements. In 2010, the Court requested the then State Auditor review its Court Services Program for any recommendations in operations or organization. When completing the 2010 audit, all bank records were provided and it was clear the monies were being managed through the Clinton County Circuit Clerk's office in an account operated by the Circuit Clerk. That audit did not criticize the Court for maintaining these funds. There is no requirement in law that such funds be maintained by a county clerk; nor is there any prohibition that such funds be maintained by a circuit clerk.*

*Section 476.270, RSMo, provides that expenditures for Court purposes need not go through any one County when expended for salaries, state clerk hire, or "as otherwise provided by law." As Section 559.600, RSMo, authorized creation of a "Court approved" entity for supervision services, the Court adopted Local Rule 67.11 to establish this program and administer the fees collected. Certainly the State Auditor referenced this provision in the 2010 letter addressed to the Court about this system and specifically described the 43rd Judicial Circuit's program as "allowed" by that statute.*

*Whatever the circumstances, this issue is now moot in that the Court no longer directly supervises the probation system and has no need to maintain this separate account. The funds have been used for their required purposes, and the small remaining balance will be transferred to the Clinton County Treasurer for provision of courtroom security. All prior funds that were on hand have been fully and accurately accounted for, and all have either been used directly for the benefit of the counties of the Circuit, or paid out to those counties, pro-rata, for use in support of Court operations.*

*Supervision services are now being adopted by other courts throughout the state, often at taxpayer expense. The 43rd Circuit began operating its own supervision program well ahead of its time*





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*and without the need of county (taxpayer) funding. The Court has since used those surplus funds to provide a safe, secure, centrally located, state-of-the art facility for juvenile and probation offices; to fund an award-winning, results-driven, supervision program; and to provide improvements in all five courthouses of the 43rd Circuit. While the Court may not agree with each legal conclusion arrived at during this additional round of audit review, it certainly values the input, believes strongly in transparency of operations, and has no doubt that the contracted supervision services program will continue to strengthen and grow to the benefit of all citizens of the 43rd Judicial Circuit.*

## Auditor Comment

The State Auditor's office is not taking exception to the supervision programs being used in this Circuit, but rather the formation, selection process, and handling of the money. The lack of comment regarding the handling of the bank account in the State Auditor's office's 2010 limited review of the court services program does not eliminate the requirement for compliance with the law. Contrary to the judges' view, we believe Section 476.270, RSMo, requires funds of this nature to be held by the County Treasurer. The local rule, 67.11, cited by the judges only allows the court to control the spending of the fees generated, but does not grant the authority to physically maintain the account where the monies are held.

## 2. Accounting Controls and Procedures

Significant weaknesses exist with accounting controls and procedures. According to court records, receipts collected during the year ended December 31, 2013, totaled approximately \$2.5 million. Monies collected are recorded in the Judicial Information System (JIS), the Missouri Courts automated case management system, and deposited into the Circuit Clerk's general bank account by office personnel.

### 2.1 Bank reconciliations

The Circuit Clerk is not performing general bank account reconciliations timely. The December 31, 2013, bank reconciliation was not completed until April 15, 2014, and per the Circuit Clerk, the completion of bank reconciliations were still approximately 3 months behind as of December 2014.

Monthly bank reconciliations and routine investigation and follow up procedures for reconciling items are necessary to ensure all accounting records balance, transactions have been properly recorded, and errors and discrepancies are detected and corrected timely.

### 2.2 Liabilities

The Circuit Clerk did not adequately review cases with liabilities to ensure monies were disbursed timely. As of December 31, 2013, the court was holding \$26,493 on pending or suspended cases that have been disposed, including \$12,641 held for cases disposed of more than 5 years ago. In addition, \$66,880 was being held on 74 bonds where the case had been disposed as of December 31, 2013, with \$4,640 held for bonds over 5 years



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old, some dating back to 2004. Amounts being held associated with a disposed case should be applied toward any unpaid costs on the case or refunded to the payee once costs are satisfied, unless otherwise specified by the judge.

Procedures to routinely investigate monies remaining on the liabilities list over a specific period of time are necessary to properly monitor and ensure monies are appropriately disbursed as provided by state law. In addition, the court should attempt to identify and distribute the funds held and dispose of any unclaimed or unidentified funds.

## 2.3 Garnishments

The Circuit Clerk has not disbursed garnishments timely. The court's procedure is to accumulate and disburse garnishment receipts after the garnishment period (ranging from 30 to 180 days) ends, rather than within the 10-day holding period as established by Supreme Court rule. As of December 31, 2013, the court had been holding garnishment monies totaling \$30,049 more than 10 days. As of December 31, 2014, that amount was \$23,131.

Supreme Court Rule 90.11 states garnishments paid shall be disbursed to the garnishor by the clerk, less costs, within 10 days and without an order of the court if the garnishee has not requested an allowance under Rule 90.12(a). Procedures should be established to ensure disbursement of garnishment payments are timely and in accordance with the Supreme Court rule.

## 2.4 Accrued case costs

The Circuit Clerk does not review accrued case costs owed to the court (court costs, incarceration costs, court-ordered restitution, and fines), as required by the court's formal plan for debt. Total accrued costs as of December 31, 2013, were approximately \$2.5 million. The court adopted a formal Administrative Plan for Collection of Court Debt, as required by Court Operating Rule 21.11. This plan calls for the court to review accounts receivable reports (accrued case costs) from the JIS and the debt collection vendor at least monthly and determine if any accounts should be deemed to be uncollectible and written off by court order; however, the plan does not document the specific criteria to be used in determining whether a debt is uncollectible. The court has not reviewed the required reports and thus, has not evaluated debts to determine if any accounts are uncollectible and need to be written off.

## Recommendations

The Circuit Clerk:

- 2.1 Perform timely monthly bank reconciliations.
- 2.2 Establish procedures to review the status of liabilities monthly to determine the appropriate disposition of funds.





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- 2.3 Establish procedures to ensure garnishment payments are disbursed timely and in accordance with the Supreme Court rule.
- 2.4 Develop procedures to review accrued costs at least monthly in compliance with the court's administrative plan and consider establishing specific criteria to identify accounts for possible write off. In addition, the Circuit Clerk should ensure any accounts written off are approved by the Judge with a court order as documentation.

## Auditee's Response

- 2.1 *The bank statements are reconciled within a week that I receive them. They may not always balance but I do work on them continuously. Other duties of my office and the fact I don't have enough personnel interferes with this getting done on a timely basis. I will do what I can to get the statements to balance as soon as possible.*
- 2.2 *In 2005, my office was in the process of learning JIS plus the associate court and the circuit court were in the process of consolidating files, financial records, and personnel. It was a very involved process and took time to get procedures for my office in order. As of May 18, 2015 my office has gone paperless and started E-Filing. This has given my clerks and myself more time to spend on other duties of the office. I established procedures in May 2015 to review the status of the liabilities more and the appropriate disposition of funds.*
- 2.3 *I was instructed by the former Associate Judge to not pay out garnishments until 10 days after the return date. Procedures have now been established to disburse payments in a timely manner.*
- 2.4 *These accrued costs have accumulated over a period of 15 years. A vast majority of these accrued costs are on very old cases where a defendant has gone to prison and owes the State large sums on his board bills. Even though the State reimburses the county, the defendant is still responsible to repay the State for the portion of the board bill paid by the State. While the accrued costs remain on the books, Defendant's tax refunds may be intercepted and applied to pay these costs. Some costs are being paid by Defendants as a condition of their probation. Collection of costs from these criminal defendants may be difficult, but not impossible. Writing them off will mean that the costs will no longer be subject to collection. There is no cost to the Court to leave these accrued costs on the books. So, at least to date, the Court has not chosen to write off these accrued costs, because there is no financial benefit to do so. The Court has indicated to me that it will nevertheless review its collection plan*



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*each year to see if there are any possible circumstances where it would be beneficial to the Court, State, or counties to write off these costs; and will develop and amend its criteria accordingly. The Court has also indicated an intention to amend its collection plan such to require an annual, rather than monthly, review of cases to determine if they are uncollectible.*

## Auditor Comment

- 2.4 The State Auditor's office is not suggesting the court is required to write off receivable balances. Rather, the finding points out the court is not following its own adopted plan for the collection of debt. Also, Court Operating Rule 21.11, which requires courts to develop a formal administrative plan for collection of court debt, indicates the plans should address, among other topics, the review and write off of accounts receivables deemed uncollectible.

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# Forty-Third Judicial Circuit

## Clinton County

### Organization and Statistical Information

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The Forty-Third Judicial Circuit consists of Clinton County as well as Caldwell, Daviess, DeKalb, and Livingston counties.

The Forty-Third Judicial Circuit consists of two circuit judges and five associate circuit judges. The circuit judges hear cases in Caldwell, Clinton, Daviess, DeKalb, and Livingston Counties. Of the five associate circuit judges, one is located in each county in the circuit, Caldwell, Clinton, Daviess, DeKalb, and Livingston Counties. Circuit personnel located in Caldwell, Daviess, DeKalb, and Livingston counties are not included in the scope of the audit.

#### Personnel

At December 31, 2013, the judges, Circuit Clerk, and Juvenile Officer of the Forty-Third Judicial Circuit, Clinton County, were as follows:

Title	Name
Circuit Judge, Division I	Thomas N. Chapman
Circuit Judge, Division II	R. Brent Elliott
Associate Circuit Judge	Paul T. Luckenbill, Jr.
Circuit Clerk	Molly Livingston
Juvenile Officer	Adrienne Lloyd

In addition, the Forty-Third Judicial Circuit, Clinton County, employed 7 full-time employees on December 31, 2013.

#### Financial Information

Receipts of the Forty-Third Judicial Circuit, Clinton County, were as follows:

	Year Ended December 31, 2013
Court deposits, fees, bonds, and other	\$2,494,808
Interest income	1,776
Total	\$2,496,584

#### Caseload Information

From the Office of State Courts Administrator Missouri Judicial Reports, case filings of the Forty-Third Judicial Circuit, Clinton County, were as follows:

	Year Ended June 30, 2013
Civil	1,094
Criminal	1,723
Juvenile	81
Probate	60
Total	2,958