
Audit of the Collection of Fines, Forfeitures, and Restitutions in the Judiciary

A Report to the
Governor
and the
Legislature of
the State of
Hawaii

Report No. 98-2
January 1998



THE AUDITOR
STATE OF HAWAII

The Office of the Auditor

The missions of the Office of the Auditor are assigned by the Hawaii State Constitution (Article VII, Section 10). The primary mission is to conduct post audits of the transactions, accounts, programs, and performance of public agencies. A supplemental mission is to conduct such other investigations and prepare such additional reports as may be directed by the Legislature.

Under its assigned missions, the office conducts the following types of examinations:

1. *Financial audits* attest to the fairness of the financial statements of agencies. They examine the adequacy of the financial records and accounting and internal controls, and they determine the legality and propriety of expenditures.
2. *Management audits*, which are also referred to as *performance audits*, examine the effectiveness of programs or the efficiency of agencies or both. These audits are also called *program audits*, when they focus on whether programs are attaining the objectives and results expected of them, and *operations audits*, when they examine how well agencies are organized and managed and how efficiently they acquire and utilize resources.
3. *Sunset evaluations* evaluate new professional and occupational licensing programs to determine whether the programs should be terminated, continued, or modified. These evaluations are conducted in accordance with criteria established by statute.
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OVERVIEW

THE AUDITOR
STATE OF HAWAII

Audit of the Collection of Fines, Forfeitures, and Restitutions in the Judiciary

Summary

Among their many activities, courts of Hawaii's Judiciary impose and process a variety of fines, forfeitures, and restitutions and attempt to ensure their enforcement and collection. The State Auditor initiated this audit to assess the Judiciary's management of these collections.

In our report, a fine is a monetary penalty against a person who has committed an offense against the public, regardless of whether the offense is managed as a criminal case or a civil case. By forfeiture, we mean the money surrendered by a defendant in a criminal case (or typically the bail bondsperson) as a penalty for not appearing in court. Restitution refers to a court-ordered monetary payment by an offender to the victim to compensate for the injury.

We concluded that the Judiciary should strengthen its collection of fines and restitutions. The Judiciary has taken steps to improve collections, but more vigorous efforts are needed. The collection of forfeitures, however, does not pose a major problem.

Reasons for ensuring that fines are enforced and collected include preserving the integrity of the court, rehabilitating offenders, teaching responsibility, preventing further illegal activity, and bringing revenue to the State. For restitutions, an additional reason is to compensate victims of crime.

Despite the importance of this effort, we found that the Judiciary has insufficient knowledge of what is owed in fines and restitutions and has allowed millions of dollars in outstanding fines and restitutions to go uncollected over the years. One Judiciary report estimated that the district courts alone had about \$28 million in uncollected traffic fines representing over 588,000 individual cases. Based on other data from the individual courts, we estimate \$1.8 million in unpaid fines in the circuit courts and \$20,000 in unpaid fines in the family courts.

We also found that the Judiciary has not established management controls sufficient to ensure the maximum collection of fines and restitutions. Stronger commitment, central accountability, and strategies are needed. Collection is inconsistent and fragmented among the courts, there is a lack of uniform policies and procedures for collections, computer systems are inadequate, and monitoring and enforcement are weak.

The Judiciary's efforts to address collection problems include the Supreme Court Fine Enforcement Committee, the Committee on the Uniform Enforcement of Judicial Orders, the Attorney General Collections Project, the Clean Slate Project, and planning for a new statewide computer system. Expansion, coordination, and follow-through on collection efforts is needed. Also, alternative collection practices—including garnishment, income tax setoffs, adverse credit reporting, and an internal collections unit—should be examined.

Recommendations and Response

We recommend that the chief justice assign to the administrative director of the courts the responsibility of planning, directing, monitoring, and evaluating collection efforts of the courts, and ensuring that information kept on outstanding fines and restitutions is complete and accurate. The administrative director also should ensure adequate management controls including a clear strategy for collections; a statewide collections policies and procedures manual; a reliable accounts receivable system; and a realistic strategy for a uniform automated computer system linking the accounts receivable information of all courts. Other controls should include a system for ascertaining whether each court has adequate policies and procedures for monitoring and enforcing financial obligations; coordination of and follow-through on Judiciary initiatives to improve collections; and a system for examining alternative enforcement mechanisms.

The Judiciary concurs that improvements are needed to the system of managing and collecting fines and restitution. It says that our report will aid it in continuing to improve its efforts. While questioning parts of our report, the Judiciary provided us with its new four-point plan to improve collections through an automated collection and accounting system, standard statewide procedures for fine collections in all courts, additional coercive collection procedures, and educational programs for the public, judges, and court staff.

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Submitted by

THE AUDITOR
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Foreword

This audit of the collection of fines, forfeitures, and restitutions in the Judiciary was performed pursuant to Section 23-4, Hawaii Revised Statutes, which requires the Auditor to conduct postaudits of the transactions, accounts, programs, and performance of all departments, offices, and agencies of the State and its political subdivisions.

We wish to express our appreciation for the cooperation and assistance extended to us by judges, other officials, and staff of the Judiciary during the course of the audit.

Marion M. Higa
State Auditor

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Chapter 1

Introduction

The Judiciary of the State of Hawaii is an independent branch of government whose mission is to administer justice in an impartial, efficient, and accessible manner in accordance with the law. Among their many activities, courts of the Judiciary impose and process a variety of fines, forfeitures, and restitutions and attempt to ensure their enforcement and collection.

The State Auditor initiated this audit to assess the Judiciary's management of these collections. The audit was performed pursuant to Section 23-4, Hawaii Revised Statutes, which requires the Auditor to conduct postaudits of the transactions, accounts, programs, and performance of all departments, offices, and agencies of the State and its political subdivisions.

In this report, a fine is a monetary penalty against a person who has committed an offense against the public, regardless of whether the offense is managed as a criminal case or a civil case. Fines for traffic offenses, for example, may be handled criminally or civilly in Hawaii depending on the seriousness of the violation. By forfeiture, we mean the money surrendered by a defendant in a criminal case (or by someone acting as the defendant's surety, typically a bail bondsperson) as a penalty for not appearing in court. Restitution refers to a court-ordered monetary payment by an offender to the victim to compensate for the injury.

Importance of Examining Court Collections

Judicial systems across the nation are interested in improving their collection of court fines, fees, and costs. These moneys range from document filing fees to fines imposed on convicted felons as part of their sentence. A failure to collect these moneys undermines the authority, credibility, and effectiveness of the courts and the justice system. In addition, court fees, fines, and costs are significant sources of revenues.

The national literature addressing this issue indicates that the flow of money from court fines, fees, and costs is a major management challenge. This challenge can be addressed. A court's philosophy and strategy for the collection of outstanding fines and fees, the community's perception of fine enforcement, and the resources committed to the collections process all directly affect the efficiency and effectiveness of the court's collection system.

Our audit focused on the collection of fines, forfeitures, and restitutions. We did not focus on court fees and charges that are collected up front before a service is rendered (for example, basic fees for filing a case or for obtaining copies of case documents).

Hawaii's Unified System of Courts

In examining the management of collections, it is important to note that Hawaii's courts "have evolved from a fragmented collection of county and state courts with overlapping jurisdictions and separate financing into a system of courts that is completely unified and centralized."¹

The unified system has four main features: (1) an integrated court structure, (2) centralized administration, (3) centralized rulemaking power, and (4) unitary financing and budgeting. Exhibit 1.1 shows the Judiciary's organizational structure.

Integrated court structure

All of Hawaii's courts are part of state government. There are four integrated levels of appellate and trial courts: the Supreme Court, the Intermediate Court of Appeals, the circuit courts, and the district courts. The system also includes three specialized courts: the land court, the family court, and the tax appeal court.

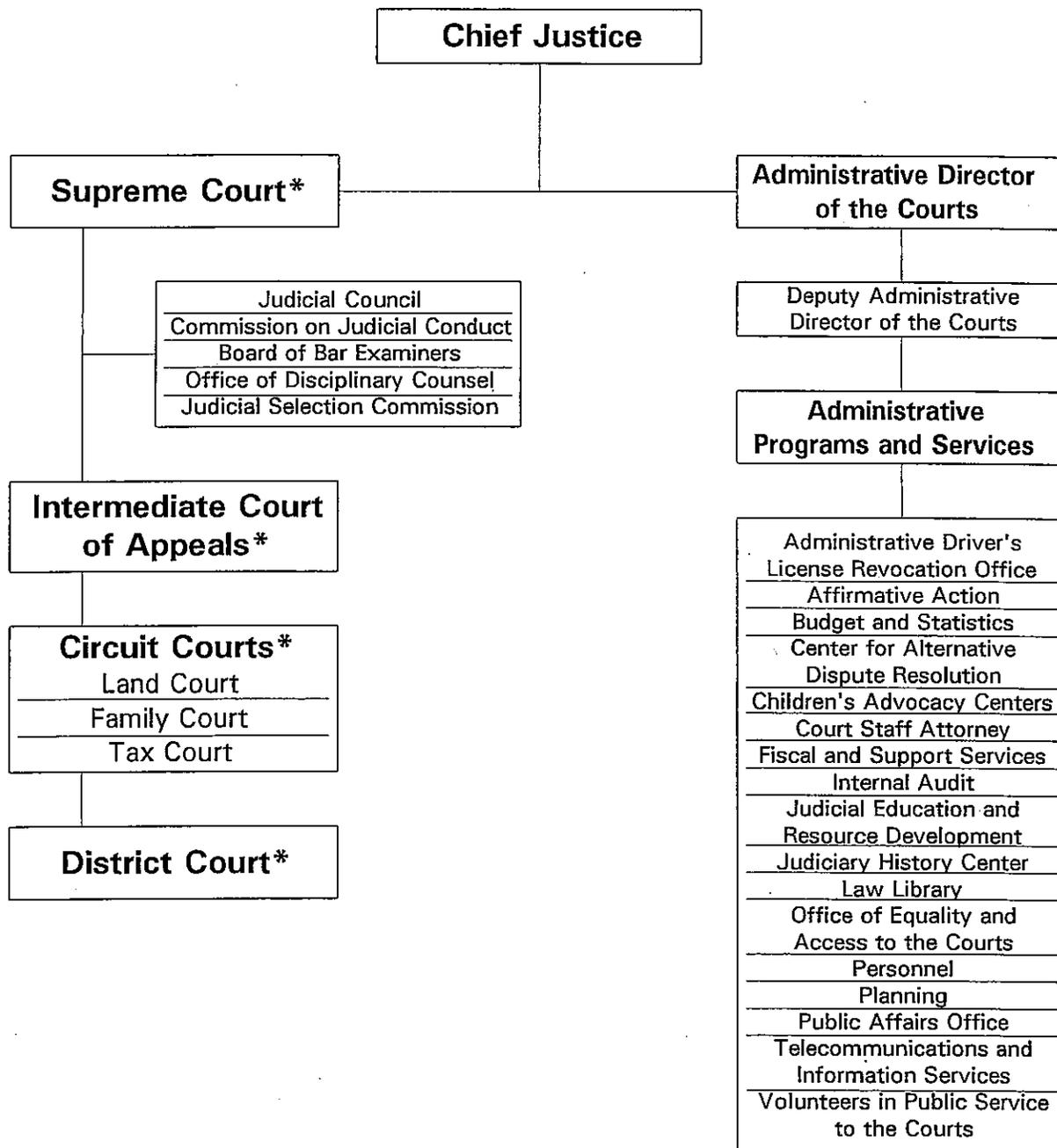
Each of Hawaii's counties is served by a separate judicial circuit: Honolulu (First Circuit), Maui (Second Circuit), Hawaii (Third Circuit), and Kauai (Fifth Circuit). There is no fourth circuit. Each circuit is served by at least one circuit court, a system of district courts, and a family court. The Land Court and the Tax Appeal Court are statewide courts of record based in Honolulu.

Jurisdiction of the various courts

The Judiciary's highest court, the Supreme Court, hears appeals from the decisions of trial courts and has a principal duty of selective review and formulation of decisional law. The Intermediate Court of Appeals, the second highest court, has similar jurisdiction to the Supreme Court but takes the more routine cases of reviewing trial court determinations for errors.

The circuit courts are general trial courts that handle felony criminal cases; probate and guardianship proceedings; and civil lawsuits involving the higher dollar amounts. The district courts are also general trial courts (but non-jury). They handle criminal misdemeanors (unless the defendant demands a jury trial), traffic offenses, violations of county ordinances, violations of the rules of state regulatory agencies, civil cases of lower dollar amounts, landlord-tenant cases, small claims, and temporary restraining orders and injunctions against harassment.

**Exhibit 1.1
Organization of the Judiciary**



*Court administrators and staff provide administrative support to the individual courts.

Certain traffic matters, known as “decriminalized” traffic offenses, are handled on a civil standard; others are handled on a criminal standard. Numerous traffic violations bureaus are involved in case processing in various geographic areas.

The family courts are specialized divisions of the circuit courts that deal with family conflict and juvenile offenders. This includes, for example, handling offenses committed by minors or against minors by their parents; and cases involving divorce, child custody, guardianship, paternity, and incapacitated individuals.

The Land Court specializes in matters involving registration of title to land and the Tax Appeal Court specializes in appeals from property tax assessments.

Centralized administration

The chief justice of the Supreme Court is the administrative head of the Judiciary, with authority over its budget, court operations, judicial assignments, and uniform statistics. The chief justice is responsible for the effective and expeditious operation of all courts in the state. The administrative director of the courts assists the chief justice in the day-to-day administration of the courts, and manages the administrative programs and services required to support all court and auxiliary operations.

The Supreme Court has authority to prescribe rules of procedure governing judicial proceedings as a means of preserving the integrity of the judicial process. These rules, which have the force and effect of law, cover civil and criminal proceedings for all courts relating to processes, practices, procedures, and appeals.

Unitary financing and budgeting

The Judiciary is funded by appropriations from the Legislature. In FY1996-97, the Judiciary’s general fund appropriation totaled about \$84.6 million.

The Judiciary has its own budgetary system. The budget and related documents are submitted directly to the Legislature, free of the budget preparation control of the executive branch. The governor cannot item veto the budget and the state comptroller must make available to the Judiciary the full amount of its legislative appropriation.

Separate personnel system

The Judiciary has its own personnel management system separate and apart from that of the executive branch. Neither judges nor staff are subject to the civil service regulations governing employees of the executive branch.

Collections by the Courts

The Judiciary deposits moneys collected from fines, forfeitures, and restitutions into the state general fund. These revenues, mostly resulting from fines collected in the trial courts (circuit, district, and family), totaled about \$15.2 million in FY1994-95.

The circuit courts collected over \$645,000 in fines and forfeitures for FY1994-95, of which approximately \$390,000 was for fines. The district courts collected over \$13.9 million in fines and forfeitures for FY1994-95, of which about \$13.3 million was fines. These fines were largely for law violations that ranged from minor infractions such as littering or illegal parking to criminal violations such as reckless driving. The family courts collected approximately \$37,000 in fines and forfeitures for FY1994-1995.

Restitutions go to the victim of a crime and are normally not realized by the State as revenues. However, in some cases restitutions go to the State as a victim. Such cases are probably rare. Aggregate information on restitutions in the various courts—and on the percentage that goes to the State as a victim—is not readily available.

Objectives of the Audit

1. Assess the Judiciary's management controls over the collection of fines, forfeitures, and restitutions.
2. Make recommendations as appropriate.

Scope and Methodology

Our audit assessed the Judiciary's management of the collection of fines, forfeitures, and restitutions through the circuit, district, and family courts. We focused on determining whether the Judiciary has a sound, system-wide strategy and process for collections and the extent to which these are followed in practice. This determination included a review of whether the Judiciary has an adequate system for establishing what is owed, collecting it, and enforcing the collection of amounts not immediately paid. We did not assess how payments received (receipts) are handled.

To accomplish our objectives, we examined the organization and management of the Judiciary's collection system for fines, forfeitures, and restitutions. We reviewed collection criteria from national literature, including guides published by the National Center for State Courts. We reviewed relevant Hawaii statutes. We reviewed the Judiciary's policies and procedures.

In the Judiciary's central offices, we met with the chief justice and the office of the administrative director of the courts. We also interviewed various administrative judges, court administrators, and probation and fiscal personnel of the courts in each judicial circuit. We surveyed each court's collection, monitoring, and enforcement measures and examined court records. We examined the Judiciary's annual reports, court action plans, minutes of administrative judges' meetings, and minutes of various other committee meetings.

We reviewed records and data from FY1992-93 through FY1995-96. Our work was performed from January 1997 through November 1997 in accordance with generally accepted government auditing standards.

Chapter 2

The Judiciary Should Strengthen Its Collection of Fines and Restitutions

Like courts across the nation, Hawaii's courts are struggling to collect fines and other moneys that are owed. The Judiciary has taken steps to improve collections. More vigorous efforts are needed.

The National Center for State Courts asserts that successful management of fine collections requires a strong commitment from judges and administrators. In Hawaii's unified court system, the chief justice, assisted by the administrative director of the courts, should ensure this commitment and support it with appropriate strategies and actions.

Summary of Findings

1. The Judiciary does not know what is owed in fines and restitutions, and large amounts have gone uncollected.
2. The Judiciary has not established management controls sufficient to ensure the maximum collection of fines and restitutions. While recent efforts to improve collections show promise, the Judiciary's central administration must provide stronger guidance and direction.

Judiciary Has Not Determined and Collected What Is Owed

Reasons for ensuring that fines are enforced and collected include preserving the integrity of the court, rehabilitating offenders, teaching responsibility, preventing further illegal activity, and bringing revenue to the State. For restitutions, an additional reason is to compensate victims of crime.

Despite the importance of this effort, we found that the Judiciary has insufficient knowledge of what is owed and has allowed millions of dollars in outstanding fines and restitutions to go uncollected over the years.

The collection of forfeitures, however, does not pose a major problem for the Judiciary. In most cases the court is already in possession of the bail bond when the defendant fails to appear in court, so the money is simply transferred to the appropriate account. We will not discuss forfeitures further.

Judiciary cannot determine total outstanding fines and restitutions

Court managers should be able to (1) identify and account for cases in which money is due the court and (2) identify delinquent accounts. To meet this responsibility, court managers need a system that tracks all unpaid accounts, whether current or delinquent.

The Judiciary did not have information on the total amount of money owed to the courts from outstanding fines and restitutions. Although the individual courts are reported to be responsible for maintaining information on outstanding accounts, central administration does not compile information on total moneys owed to the courts. Therefore, it is unable to determine what is owed through the courts to the State and to monitor and measure the effectiveness of collections.

In addition, the outstanding-account information maintained by the individual courts is inaccurate and incomplete. For example, one district court provided a report identifying outstanding fines for traffic violations. Our file review found about 7,500 additional outstanding accounts that were not listed in the report. Many of these accounts dated back to the early to mid-1970s. Court personnel reported that the accounts had been purged from the court's computer system but were not certain why.

In the circuit and family courts, data on outstanding accounts differed. For example, the probation office of one circuit court reported that \$3,585 in fines was outstanding. However, the court's fiscal office reported \$435,406 in outstanding fines. Similarly, when we asked for outstanding restitutions, the family court director in another circuit provided us with a report that indicated about \$8,300 was outstanding, while the court's fiscal office had more recent information showing \$45,000 outstanding.

Circuit and family court personnel assert that discrepancies in outstanding amounts exist because closed cases have not been deleted from the fiscal records. Once the defendant is no longer on probation or under the supervision of the court, the case is closed because the court cannot enforce the payment of a fine or restitution. These cases may still be reflected on the court's fiscal records although no efforts are made to collect on them. The Judiciary's *Financial Administration Manual* states that an account can be written off with the approval of the state attorney general if the account has been delinquent for two consecutive years. Currently, the courts are neither enforcing payment of these delinquent accounts nor taking steps to write them off. Consequently, large amounts of unpaid fines and restitutions remain on the Judiciary's records.

Millions of dollars in fines and restitutions have gone uncollected

Although information on uncollected amounts is limited, we conclude that a collections problem exists. We found thousands of cases in which fines and restitution have not been paid. Some of these cases were over 40 years old.

The problem seems to be prevalent at the district court level, particularly in the area of traffic violations. One Judiciary report estimated that the district courts alone had about \$28 million in uncollected traffic fines representing over 588,000 individual cases. While these data are incomplete and of questionable accuracy, they do suggest the extent of the problem.

Based on collections data we received from the individual courts, we estimate \$1.8 million in unpaid fines in the circuit courts and \$20,000 in unpaid fines in the family courts. We also estimate \$23.5 million in uncollected restitutions in the circuit courts and \$407,000 in the family courts. While little of the restitution is probably owed to the State as a victim, the outstanding amounts do illustrate a collections problem.

Management controls must be improved

Collections of fines and restitutions are not being maximized. Although efforts to increase collections can themselves be costly, enhancing the effectiveness and efficiency of collections is likely to raise the credibility of the courts, improve their administration of justice, and increase state revenues. The rest of our report identifies the management controls needed to improve collections.

Stronger Management Control Over Collections Is Needed

One of the Judiciary's goals is "to improve the functioning of the statewide court system by employing sound management practices and techniques."¹ We found that insufficient control by the Judiciary's central administration is a major contributor to its collections problem. Central administration needs to establish a strategy and guidelines for collections throughout the Judiciary and ensure that the guidelines are followed.

Another Judiciary goal is to "provide reasonable balance between centralized decision-making and decentralized administrative flexibility in meeting locality-specific requirements."² The responsibility for collections will always be decentralized to a large extent to the various judicial circuits, court levels, and individual courts. Nevertheless, central leadership and accountability at the highest levels is both necessary and appropriate in Hawaii's unified court system. The chief justice, assisted by the administrative director of the courts, should take full responsibility for improving the collection of fines and restitutions on a system-wide basis. Important elements of this responsibility include making improvements in overall commitment, accountability, strategies, policies, information systems, and monitoring.

Stronger commitment, accountability, and strategies are needed

Courts that are most successful with collections have a judicial and administrative commitment to collections, clearly defined responsibility for this effort, and a philosophy of active, even aggressive, collection. One of the most important steps in establishing adequate management controls over collections is an initial commitment by Judiciary administration and the establishment of clear accountability. However, we found that commitment to and accountability for collections is not always clear.

We found no central oversight component that is made specifically responsible for systematically monitoring and enforcing court collections. Judiciary sources report that the responsibility for ensuring that fines and restitutions are collected falls upon the individual courts where the fine or restitution was ordered or processed.

The chief justice considers collections a priority of the Judiciary. But some personnel do not share this perception, particularly those responsible for ensuring that collections are monitored and enforced efficiently. Some personnel say they must contend with other administrative responsibilities.

Some personnel believe that the responsibility to ensure payment of fines and restitution should be placed with another agency or entity. Others view the nonpayment of a fine or restitution as a relatively minor violation of probation. Adding to the burden is the coordination with other agencies—such as the county police and prosecutors and the state attorney general’s office—necessary for collections.

Having a strategy or overall plan to deal with collections is important because it would allow the Judiciary to establish its philosophy and attitude towards collections. It also would allow the Judiciary to analyze its strengths, weaknesses, opportunities, and threats with regard to efficient and effective collections. The collections strategy could be conveyed to judges, administrators, court personnel, and the general public.

However, we found that the Judiciary does not have a comprehensive strategic statement or plan for improving collections. Without providing overall direction and guidance, the Judiciary will continue to struggle with the task of enforcing these financial obligations.

Administrative director should take the lead

Accountability must be assigned to an office responsible for monitoring, evaluating, and improving the collection efforts of the Judiciary. This responsibility should be placed with the administrative director of the courts. This would be consistent with the goals for the administrative director’s office, which include:

- enhancing the effectiveness and efficiency of judicial programs by providing executive direction, program coordination, policy development, resource allocation, fiscal control, and administrative services;
- providing current, accurate, and complete financial and accounting data in a form useful to decision-makers; and
- ensuring adequate and reasonable accounting control over assets, liabilities, revenues, and expenditures.³

Collection is inconsistent and fragmented

We found that collection practices and procedures vary widely among and within the district, circuit, and family courts. For example, some courts send defendants past-due letters on delinquent fines and restitution payments, while others do not. In certain courts, staff will telephone defendants who have not paid their fine or restitution, while other courts do not. Some district courts issue bench warrants for nonpayment of traffic fines, while another district court has not been able to issue warrants for the past seven years. Although some differences among courts may be unavoidable in light of their different circumstances, too much variation is undesirable.

Collection practices also are fragmented. Courts operate independently of each other and do not always know one another's practices and procedures. Even within certain courts, the responsibility of monitoring and enforcing collections is delegated to several different divisions. Sometimes the payment of a fine has to be entered into two separate computer systems (the Traffic Violations System, or TRAVIS, and the ALPHA IV system of the district courts of the first circuit) because of the inability of TRAVIS to account for unpaid fines.

There is a lack of uniform policies and procedures for collections

According to the National Center for State Courts, the more successful collection programs have collection policies and procedures and ensure that the procedures are understood and followed by all court personnel, including judges.

The Judiciary lacks uniform policies and procedures for the monitoring and enforcement of collections. Collection procedures in the Judiciary's *Financial Administration Manual* focus on managing cash receipts and fail to address the systematic monitoring and enforcement of unpaid amounts. Consequently, many of the individual courts have developed their own procedures for collections. Also, the district courts have developed a draft procedures manual for the uniform enforcement of judicial orders. We did not find similar, uniform procedures for the circuit or family courts, although certain divisions and offices within these courts have developed some policies and procedures on a piecemeal basis.

Computer systems are inadequate

An accounts receivable system should be able to (1) identify receivables, (2) include these receivables in an accounting system to track outstanding balances, (3) link the system to court records so that an accounting record is created from the case record when a receivable is established, and (4) identify delinquent accounts and initiate an enforcement procedure.

A goal of the Judiciary is “to develop and maintain a management information processing system that is modern, timely, and relevant.”⁴ However, the Judiciary lacks a uniform automated information system to track and account for outstanding fines and restitutions on an organization-wide basis. Several different systems are used throughout the courts and are not linked. Therefore, the Judiciary administration cannot calculate cumulative totals for collections in the courts and measure overall effectiveness.

In one court, personnel report that they do not rely primarily on the information in their computer system. Instead, they use manually intensive procedures such as checking ledger cards for current account balances. The Judiciary’s Telecommunication and Information Services Division (TISD) reports that not all courts have the capability to account for all obligations owed. In fact, in one court, accounting for restitution is not even automated. Representatives from TISD also state that the Judiciary has several automated systems operating on multiple hardware platforms and the information-sharing capability of these systems is fairly limited.

The TRAVIS system in the district court produces inadequate, unreliable data, and is unable to account for and track the payment of fines. This system is old and was not originally designed to be an accounting system. District court personnel are frustrated with the TRAVIS system. They report being forced by its inadequacies to return to manual methods of maintaining court records.

Approximately 7,500 cases in the district court where outstanding balances were due the court have been purged from the system due to age (over 10 years). Judiciary personnel reported no current efforts to collect on these delinquent fines.

Plans are under way to install a Judiciary-wide information system in which all payments and accounts can be tracked uniformly. However, this system may not be implemented for at least another six years.

Regardless of whether a uniform automated information system is in place, the Judiciary should have a system able to (1) identify and account for cases in which money is due the court and (2) identify delinquent accounts for the purposes of collection actions or write-off procedures. The system must track all unpaid accounts, whether current or delinquent. We encourage the Judiciary to continue to improve its information

systems so that those systems can identify and account for cases where money is due the court, identify delinquent cases, and initiate enforcement.

Monitoring and enforcement are weak

We found that most courts are not adequately monitoring and enforcing unpaid fines and restitutions. Court personnel say they are not monitoring cases because they do not have the resources to track all cases or the court has lost jurisdiction over the defendant and can no longer enforce the payment of the fine or restitution. Although court personnel state that many cases identified as delinquent have been closed and are no longer pursued, these cases still remain open on the court's fiscal records and indicate outstanding balances. Thus, these unpaid accounts represent moneys that are owed to the State.

The courts and the central Judiciary need to adequately monitor and enforce all cases so they may gauge the effectiveness of their collection efforts. Without this type of analysis, it becomes difficult for anyone to assess how much has been collected, how much is owed to the courts, and whether revenues are being maximized.

Efforts to improve collections need follow-through

The Judiciary has made several efforts to address the problems associated with collections in the courts. These efforts need follow-through, which has not always occurred.

Supreme Court Fine Enforcement Committee

While there is no official strategy, the chief justice reports that the collection of outstanding fines is a priority. The Judiciary formed a Supreme Court Fine Enforcement Committee in 1994 comprising judges, court administrators, traffic violation bureau managers, TISD's acting director, a court financial officer, and a court management consultant from the National Center for State Courts. This committee examined traffic fine enforcement policies, procedures, and mechanisms in Hawaii's courts.

Among other things, the committee's report recommended that a pilot project be implemented in the fifth judicial circuit using a collections investigator. The project never materialized.

Committee on the Uniform Enforcement of Judicial Orders

The Judiciary currently has another committee—on the uniform enforcement of judicial orders—discussing ways to improve collections and standardize the collection policies and procedures for the district courts. This committee began meeting in 1996. This committee reported that a “courtesy collections process” has been established in the district courts whereby all traffic fines can be paid in any judicial circuit regardless of where the fine originated.

Attorney General Collections Project

The Judiciary has been meeting with the attorney general's Civil Recoveries Unit since June 1996 for assistance in collecting outstanding moving and parking traffic violations. The attorney general's office is sending about 300 demand letters a week for payment on both moving and parking default judgments. As of December 1996, the attorney general had collected about \$10,000.

Clean Slate Project

The Judiciary has also developed the "Clean Slate Project" to reduce the number of delinquent traffic payments owed in the first circuit. The project was tentatively scheduled to run from August 1, 1997 to September 30, 1997. Under this project, individuals who voluntarily settled their outstanding accounts with the district court would not be charged with contempt of court or assessed additional court costs.

Following completion of our fieldwork on this audit, the Judiciary informed us that (1) the clean-slate campaign ended on August 31, 1997 with 1,543 individuals paying off a total of \$290,767 in delinquent traffic fines, and (2) subsequently 153 individuals with outstanding bench warrants were arrested. We have not confirmed these figures.

Planning for new statewide computer system

Judiciary personnel report that the district courts are meeting to develop a new computer system to link all district courts and give reliable and accurate information on the accounts receivable of the courts. A "Phase I Implementation Committee" has been formed and consists of personnel from the district and circuit courts and Judiciary administration. However, as noted above, the new system may not be implemented for several years.

Need for expansion and coordination of efforts

While these efforts are a good start, the majority of them appear to be focused at the district court level, which has the largest volume of unpaid fines. However, the collection efforts and needs of the circuit and family courts should not go unnoticed. During our fieldwork, we found little evidence of discussions relating to improving collections in the circuit and family courts, where policies and procedures are also needed.

The Judiciary needs to implement a more coordinated effort to address collections at every court level. Such an effort would include the development of statewide policies and procedures and a computer system that links the courts at each level.

Recently, the Judiciary informed us that it has established a Restitution Task Force to develop uniform policies and procedures for the collection of restitution. Members of the Task Force reportedly include representatives from Judiciary administration, family court, circuit court's Adult Probation Division, and district court's Counseling and Probation Division. We were informed that the task force is drafting a statewide policy and procedures manual to serve as a guideline for all courts and programs that collect restitution. The task force is also identifying problems, issues, and action steps requiring immediate, short-term, and long-term action. Although we have not confirmed this information, it appears to address some of our concerns about coordination.

Alternative collection practices need examination

In certain collection cases, improving existing management controls may not be sufficient. The Judiciary may need to use more coercive measures to collect outstanding fines and restitutions.

Collection alternatives fall into two major categories: notification systems and coercive systems. In general, notification systems rely primarily on frequent contact with the debtor whereas coercive systems rely heavily on civil, criminal, and administrative sanctions. Some of Hawaii's courts already use notification systems; others may need to do more in this area.

After routine collection efforts have apparently failed to bring about a full payment of the fine or restitution, a court can consider other more coercive means to collect on outstanding accounts. The Judiciary already makes use of some more coercive measures such as license stoppers and vehicle registration stoppers. Most recently, Act 154 of 1997 authorized the courts to impose interest penalties on all outstanding traffic citations and judgments. The Supreme Court is required to adopt rules setting penalties on a scale, with higher penalties for longer delinquencies.

Other possible coercive enforcement mechanisms include garnishment, income tax setoffs, and adverse credit reporting. The Judiciary should also consider dedicating resources to an internal collection unit.

Garnishment of bank account or wages

The Judiciary can consider garnishing bank accounts or employment wages, provided the defendant has a stable job and that employment information is obtainable. The Judiciary also should consider whether the court has a legal basis for initiating a garnishment, who will pursue it, and the costs and benefits of such action.

Tax refund intercept

The Judiciary should also consider an income tax refund intercept program whereby the court would seize a state income tax refund to

satisfy delinquent fines or restitution. Issues to consider in choosing this particular alternative include what types of information will be required of the Department of Taxation to implement such a program, possible statutory amendments, and how the information will be exchanged between the courts and tax department.

Adverse credit reporting

Adverse credit reporting can also be used as a possible sanction for nonpayment of fines and restitution. Many individuals purchase consumer goods on credit, and a threat to their credit ratings can be a strong incentive. Some issues the Judiciary must consider for this alternative include whether the cost of credit reporting is worth the returns and the administrative difficulties in managing credit reporting on debtors.

In-house collection unit

The Judiciary should also consider the possibility of creating an in-house collection unit charged with the responsibility of monitoring and enforcing the accounts receivable of the courts. Collection units can play a key role in the overall collections process of the Judiciary. However, collection staff must be given the authority to determine or recommend for judicial approval the defendant's ability to pay and to recommend a deferred payment plan. A collections unit could reduce the number of accounts receivable by intense front-end investigation at the time of conviction to determine whether deferred payments are necessary, followed by an intense collection effort.

Central Accountability Is Key

With millions of dollars in uncollected fines and restitutions and a lack of overall guidance and direction provided to the courts by the Judiciary administration, a renewed commitment is needed to planning, directing, monitoring, and evaluating the collection efforts of the courts. Otherwise, it is unlikely that the Judiciary will ever know how well the courts are collecting amounts owed and where improvements can be made. Problems in collecting outstanding court obligations will persist.

The Judiciary needs to assign someone the responsibility of overseeing the collection efforts of the courts and ensuring that adequate management controls are in place. As a part of these improvements, the Judiciary should also consider other more coercive collection methods.

The administrative director of the courts appears to be the person best placed organizationally and functionally to carry out these efforts on behalf of the chief justice.

Recommendations

1. To improve the Judiciary's collection of fines and restitutions, the chief justice should assign to the administrative director of the courts the responsibility of planning, directing, monitoring, and evaluating collection efforts of the courts, and ensuring that information kept on outstanding fines and restitutions is complete and accurate.
2. On behalf of the chief justice and in consultation with key administrators of the central Judiciary and key judges and administrators of the circuit, district, and family courts (including the traffic violations bureaus of the district courts), the administrative director should ensure adequate management controls over collections by implementing the following:
 - a. A clear strategy for collections;
 - b. A comprehensive statewide collections policy and procedures manual for all courts including steps to monitor and enforce all fines and restitutions and deal with delinquent and outstanding fines and restitutions;
 - c. A reliable accounts receivable system so that courts are able to determine what fines and restitutions are outstanding and delinquent;
 - d. A realistic strategy for developing a uniform automated computer system that would link the accounts receivable information of all the courts;
 - e. A system for ascertaining whether each court in the Judiciary has adequate policies and procedures to ensure that all financial obligations owed are adequately monitored and enforced for compliance;
 - f. Coordination of, and follow-through on, recent and new Judiciary initiatives to improve collections; and
 - g. A system for examining alternative enforcement mechanisms for outstanding fines and restitutions, such as a collection unit within the Judiciary, wage garnishment, tax refund intercept, and adverse credit reporting.

Notes

Chapter 1

1. Hawaii, The Judiciary, *Comprehensive Planning in the Hawaii Judiciary*, Honolulu, 1981, p. 6.

Chapter 2

1. Hawaii, The Judiciary, *Comprehensive Planning in the Hawaii Judiciary*, Honolulu, 1981, p. 112.
2. Ibid., p. 114.
3. Ibid., p. 131.
4. Ibid., p. 112.

Response of the Affected Agency

Comments on Agency Response

We transmitted a draft of this report to the Judiciary on November 28, 1997. A copy of the transmittal letter is included as Attachment 1. Attachment 2 is the Judiciary's letter of response, not including the following exhibits that the Judiciary attached to its letter: Exhibits A and B (fiscal reports of amounts owed by named defendants), Exhibit C (a closure of a named defendant's account), and Exhibit D (minutes of a meeting of one of the Judiciary's committees). These exhibits are on file at our office; public access will depend on applicable provisions of Hawaii's information practices law, Chapter 92F, HRS. The Judiciary's final exhibit—Exhibit E (a new collections plan)—is included in Attachment 2.

In its response, the Judiciary agreed with us that improvements are needed to the system of managing and collecting fines and restitution. The Judiciary said our report will aid it in continuing to improve its efforts.

The Judiciary also said it will continue its recent efforts to provide stronger direction from its central administration, which will continue to work aggressively with the courts to implement additional central controls where needed.

In addition, the Judiciary said it is developing a uniform automated information system to track and account for outstanding fines and restitution, and to identify delinquent accounts for the purposes of collection and write-off procedures.

The Judiciary also commented that it will seriously consider using additional coercive measures including an in-house collection unit to supplement existing fine and restitution enforcement mechanisms. The Judiciary also identified another alternative: establishing an Office of State Debt Collection in the executive branch.

The Judiciary attached to its response its new four-point plan to improve collections through an automated collection and accounting system, standard statewide procedures for fine collections in all courts, additional coercive collection procedures, and educational programs for the public, judges, and court staff. The Judiciary said the plan should fully address our report.

The Judiciary also questioned our draft report in several areas. We were incorrect, said the Judiciary, in stating that the court administrators and clerks are under the direct supervision of the administrative director of the

courts. The Judiciary commented that administrative functions of the circuit and district courts are managed by chief court administrators supervised by the administrative judge of each court; that administrative functions in the family courts are managed by the family court directors under the supervision of the senior family court judges in the various circuits; and that neither the administrative judges nor the senior family court judges are supervised by the administrative director of the courts.

While the narrative of our draft report did not make the statement attributed to us, the draft did contain an organization chart—Exhibit 1.1—that showed the court administrators and clerks falling under the deputy administrative director of the courts and the deputy falling under the administrative director. Based on the Judiciary’s letter and additional information provided to us, we amended Exhibit 1.1 to address the Judiciary’s concern about reporting relationships and to better reflect current administrative programs and services.

Next, the Judiciary stated—apparently in response to our finding that the Judiciary cannot determine total outstanding fines and restitutions—that the circuit and family courts *do* know the amount of the fine and restitution balances. However, one of our main points was that the Judiciary’s *central administration* does not compile information on *total* amounts owed to the courts and therefore is unable to determine what is owed through the courts to the State and to monitor and measure the effectiveness of collections.

The Judiciary also offered an explanation of why court probation offices and fiscal offices may report differing balances of outstanding restitutions. According to the explanation, it is not a cause for concern that fiscal offices report higher balances than probation offices, because the fiscal office’s jurisdiction is broader and the Probation Division is not responsible for maintaining a compiled record of all restitution balances. We acknowledge this explanation but have not tested its validity. We remain concerned that information on restitution balances is not available centrally in the Judiciary.

The Judiciary raised questions concerning our observation that circuit and family court personnel asserted that discrepancies in outstanding amounts exist because cases have not been deleted from the fiscal records and our related observation that the Judiciary’s *Financial Administration Manual* states that an account can be written off with the approval of the state attorney general if the account has been delinquent for two consecutive years. The Judiciary commented that notwithstanding its manual, it lacks statutory authority to write off uncollected restitutions (at least restitutions that the Judiciary collects on behalf of third parties). We have not evaluated the legal merits of this conclusion. We would simply observe that without some mechanism to remove, separate, or distinguish

restitution accounts that are uncollectible, the State may lack a true picture of restitutions. Also, perhaps uncollectible restitutions owed to the State as a victim, as opposed to a third party, *could* be written off.

The Judiciary also commented that only a portion of the moneys we report as uncollected restitution is actually delinquent, because most of these moneys represent active amounts in the process of being collected. Our review of fiscal records did not reflect this. A large majority of accounts we reviewed on the Judiciary's "trust accounting" system, over 75 percent, were from periods of five years and older meaning that the court ordinarily has lost jurisdiction and efforts to collect on these accounts will cease.

The Judiciary also observed that instead of implementation of a Judiciary-wide information system (in which all payments and accounts can be tracked uniformly) taking six years, as our report suggested might occur, the new system will be implemented in less than two years (September 1999). We believe our statement on the *possible* time period is warranted. We also note that the Judiciary bases its September 1999 implementation date on a *proposed* schedule in which the automation vendor is selected in June 1999. Full implementation of a new system by September of that year seems unrealistic.

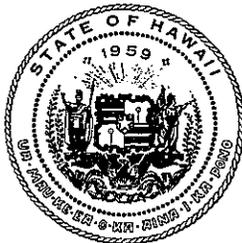
The Judiciary commented that state law suggests the Judiciary is responsible for collecting criminal fines, but because traffic infractions are no longer classified as criminal violations and because the State is the plaintiff in these cases, the attorney general has overall responsibility for collecting these civil judgments. The Judiciary did not clarify how it believes we are in error on this subject. Regardless of who bears "overall" responsibility for collecting civil or criminal fines, the Judiciary must play a major role in ensuring all necessary steps, including coordination, to maximize collection efforts.

The Judiciary challenged our statement that as of December 1996, the attorney general had collected about \$10,000 on outstanding moving and parking traffic violations. According to the Judiciary, the attorney general's office has reported that collections for 1996 were about \$23,000. We have not confirmed the higher amount; perhaps it reflects a different point in time.

Besides some changes to our draft report to address the Judiciary's concerns, we made some editorial changes for purposes of clarity.

ATTACHMENT 1

STATE OF HAWAII
OFFICE OF THE AUDITOR
465 S. King Street, Room 500
Honolulu, Hawaii 96813-2917



MARION M. HIGA
State Auditor

(808) 587-0800
FAX: (808) 587-0830

November 28, 1997

COPY

The Honorable Ronald T.Y. Moon
Chief Justice of the Supreme Court
The Judiciary
Ali'iolani Hale
417 South King Street
Honolulu, Hawaii 96813

Dear Chief Justice Moon:

Enclosed for your information are three copies, numbered 6 to 8 of our draft report, *Audit of the Collection of Fines, Forfeitures, and Restitutions in the Judiciary*. We ask that you telephone us by Tuesday, December 2, 1997, on whether or not you intend to comment on our recommendations. If you wish your comments to be included in the report, please submit them no later than Monday, December 8, 1997.

The Governor and presiding officers of the two houses of the Legislature have also been provided copies of this draft report.

Since this report is not in final form and changes may be made to it, access to the report should be restricted to those assisting you in preparing your response. Public release of the report will be made solely by our office and only after the report is published in its final form.

Sincerely,

Marion M. Higa
State Auditor

Enclosures



Office of the Administrative Director of the Courts — THE JUDICIARY • STATE OF HAWAII
 417 SOUTH KING STREET • ALI'ĪOLANI HALE • HONOLULU, HAWAII 96813-2902 • TELEPHONE (808) 539-4900 • FAX 539-4855

Michael F. Broderick
 ADMINISTRATIVE DIRECTOR

Clyde W. Namu'o
 DEPUTY ADMINISTRATIVE DIRECTOR

December 11, 1997

RECEIVED

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OFF. OF THE AUDITOR
 STATE OF HAWAII

Ms. Marion M. Higa
 State Auditor
 Office of the Legislative Auditor
 465 S. King Street, Room 500
 Honolulu, Hawaii 96813

Dear Ms. Higa:

Thank you for permitting us to respond to your draft report, "Audit of the Collection of Fines, Forfeitures, and Restitutions in the Judiciary." The report will aid us in continuing to improve our efforts in collecting fines and restitution.

I) Introduction

The report notes that the "flow of money from court fines, fees, and costs is a major management challenge." We agree. As we consult with other state judiciaries across the country, this reality is continually confirmed. Indeed, this problem represents a national crisis -- "The non-payment of fines and court costs is a nationwide problem that has reached epidemic proportions." (Palm Beach Florida County Judge Cory Ciklin, quoted in "Full Court Press," the official newsletter of the state courts system of Florida.) Clearly, government has a responsibility to aggressively pursue funds which it is owed. Additionally, the public has a responsibility to satisfy their legal obligations. This is a shared responsibility.

As the Report also makes clear, a successful collections program involves many governmental agencies and individuals. In its collection efforts, the Hawaii Judiciary relies on the assistance of the various county drivers' license agencies, the Attorney General's Office, the Department of Public Safety, and others. A unified and coordinated effort is necessary for an effective collections program.

II) Factual Errors

Before responding to the Report's findings and recommendations, we will identify several factual errors in the report. To the extent these factual errors affect certain of your findings and recommendations, we respectfully request that you consider revising the Report.

A. *The Judiciary's Organizational Structure is Different than Reported in the Report.*

The report states that the court administrators and clerks are under the direct supervision of the Administrative Director of the Courts. This is incorrect. In the Circuit and District Courts throughout the state, the administrative functions of the courts are managed by Chief Court Administrators. These individuals are supervised by the Administrative Judge of each court, and not by the Administrative Director of the Courts. Administrative functions in the Family Courts throughout the state are managed by the Family Court Directors. These individuals are supervised by the Senior Family Court judges in the various circuits, and not by the Administrative Director of the Courts. We have samples of various organizational charts for your review, upon request.

B. *Circuit and Family Courts do know the Amount of the Fine and Restitution Balances.*

In the case of Family and Circuit Court criminal cases, fines are usually imposed as a condition of probation. Both the Family and Circuit Courts throughout the state use the automated "trust accounting" system to track fines and restitution. The Family and Circuit Court fiscal offices are able to determine the amount of fines owed to the state. Enclosed is a sample "trial balance" report which the Circuit Courts routinely produce (see Exhibit A). This report shows that as of December 2, 1997, the amount of collectable fines in First Circuit Court is \$808,545.82. This report is updated each time additional fines are collected. Similar reports are produced in the neighbor island circuit and family courts.

Regarding the balance of restitution in Circuit and Family Court cases, the fiscal offices of the Circuit and Family Courts share the responsibility with the Adult or Juvenile Probation Divisions for accounting for restitution balances. We have enclosed a sample report summarizing the balance of restitution owed in the First Circuit Court (see Exhibit B). Similar reports are maintained for the neighbor island circuit and family courts.

C. *Fiscal and Probation Offices have Different Jurisdictional Responsibilities and Therefore Report Different Balances.*

There are reasonable explanations for probation and fiscal offices reporting different balances. In First Circuit Court on Oahu, the fiscal office is responsible for accounting for all restitution owed. This includes those individuals who are on probation and have restitution included as a condition of probation, as well as those individuals in the custody of the director of the

Department of Public Safety or owe restitution but are not on probation. In addition, the Oahu Circuit Court fiscal office also is responsible for accounting for restitution for individuals who are under the jurisdiction of the Hawaii Paroling Authority. The probation officer, on the other hand, is only responsible for keeping track of those restitution cases that have been referred to the Adult Probation Division for the purpose of supervising the defendant's probation with the court. Further, the probation divisions do not have "on line" access to the automated "Trust Accounting" system, and are therefore not able to access the total balance of all restitution owed. The responsibility of the probation officers are to monitor the individual probationers' accounts and transmit all restitution payments to the fiscal office for collection and disbursement to the victim(s). The probation division is not responsible to maintain a compiled record of all restitution balances. Accordingly, it is entirely reasonable, and not a cause for concern, that the fiscal offices report higher restitution balances than the probation offices report.

D. The Judiciary Is Statutorily Prohibited from Purging Uncollectable Accounts.

The report indicates that "Circuit and Family Court personnel assert that discrepancies in outstanding amounts exist because closed cases have not been deleted from the fiscal records...The Judiciary's Financial Administration Manual states that an account can be written off with the approval of the state attorney general if the account has been delinquent for two consecutive years." Unfortunately, notwithstanding the Financial Administration Manual, the Judiciary does not have the statutory authority to write off restitution. The purpose of HRS § 40-82 is limited to enabling government agencies to write off their business debts, i.e., unpaid claims for goods and services. Furthermore, subsections (1) - (3) of HRS § 40-82 state that an uncollectable account is one in which the debtor or party causing damage to property belonging to the State is not within the jurisdiction, cannot be located, or is unknown. Thus, to be eligible to be written off, the debt must relate to a monetary loss which the State directly sustained. Restitution payments that the Judiciary collects on behalf of third parties do not provide revenues for the State. Based on this analysis, uncollected restitution payments for third parties are not accounts that may be deleted from the accounts receivable records under HRS § 40-82.

E. The Amount of Outstanding Restitution Is Lower Than Reported:

Your report states that "We also estimate \$23.5 million in uncollected restitutions in the circuit courts and \$407,000 in the family courts." Our records indicate that only a portion of these monies are actually uncollected.

Most of these amounts represent active accounts presently in the process of being collected. In other words, the amounts which the Circuit and Family Court fiscal officers reported to the auditor are not entirely delinquent amounts. Rather, these are the total balances owed to the victim. For example, if the original restitution order required the defendant to pay \$10,000 in restitution to the victim and \$1,000 has been paid to date, the balance of \$9,000 was reported to the Auditor. However, this balance of \$9,000 is not delinquent if the defendant is still on probation with the court. Because probation may last for five (5) years, it is conceivable that these accounts may not be satisfied until the end of the five-year period. Further, because we do not have the authority to write off restitution amounts that are not collected, many of these restitutions relate to stale cases where the restitution is not collectable because the person who owes the restitution does not have the money, has left the state, has died, and so forth. In that sense, the cited figure is illusionary.

Further, the Judiciary does have a procedure whereby the probation officers notify the fiscal office when a restitution account should be closed (see Exhibit C). Accounts are generally closed when the ordered restitution has been paid, or if the judge who ordered the original restitution payments amends the court order to reflect what has been collected at the end of the probation period. Because this procedure is in place, the majority of what has been reported to the Auditor as our restitution balance are amounts currently owing, as compared to "delinquent" accounts.

F. It Will Not Take the Judiciary 6 Years to Implement Its New Computer System.

The report states that "Plans are under way to install a Judiciary-wide information system in which all payments and accounts can be tracked uniformly. However this system may not be implemented for at least another six years." This is incorrect. Attached for your review are the minutes of the September 26, 1997, meeting of the Executive Committee on Court Technology and Information Management (see Exhibit D) which report that the committee has established a time line for the development of the new information system. Based on this proposed schedule, the new system will be implemented in September of 1999, less than two years from now.

G. The Judiciary Collects Criminal Fines, While the Department of the Attorney General Collects Civil Fines.

HRS § 706-643, states in pertinent part:

- (1) The defendant shall pay a fine or any installment thereof to the clerk of the sentencing court. In the event of default in

payment, the clerk shall notify the prosecuting attorney and, if the defendant is on probation, the probation officer.

(2) All fines and other final payments received by a clerk or other officer of a court shall be accounted for, with the names of persons making payment, and the amount and date thereof, being recorded. All such funds shall be deposited with the director of finance to the credit of the general fund of the State...

These sections of HRS §706-643 suggest that the Judiciary is responsible for collecting criminal fines.

The responsibilities assigned to the Attorney General's office are defined in HRS §26-7. That statute states in pertinent part, "The department shall . . . represent the State in all civil actions in which the State is a party..." Consequently, collecting amounts owed as a result of a civil judgment is the responsibility of the Attorney General.

Prior to 1993, many violations of the statewide traffic code or the county traffic ordinances were considered to be criminal in nature. In 1993, the Legislature enacted the state's traffic decriminalization system. HRS § 291D-3 states in pertinent part,

"(a) Notwithstanding any other provision of law to the contrary, all traffic infractions shall be adjudicated pursuant to this chapter, except as provided in subsection (b). This chapter shall be applied uniformly throughout the State and in all counties. Penal sanctions except fines shall not apply to a violation of a county ordinance that would constitute a traffic infraction under this chapter. Traffic infractions shall not be classified as criminal offenses (emphasis added).

Because traffic infractions are no longer classified as criminal violations, and because the state is the plaintiff in these cases, the overall responsibility for collecting these civil judgments rests with the Attorney General's Office. Consistent with this interpretation, the Attorney General's office has assumed the responsibility of collecting delinquent amounts resulting from default judgments relating to parking, moving and non-moving traffic violations.

H. The Attorney General's Collections Are Higher Than Reported.

Regarding the Attorney General's efforts to collect monetary assessments for moving, non-moving and parking traffic infractions, your

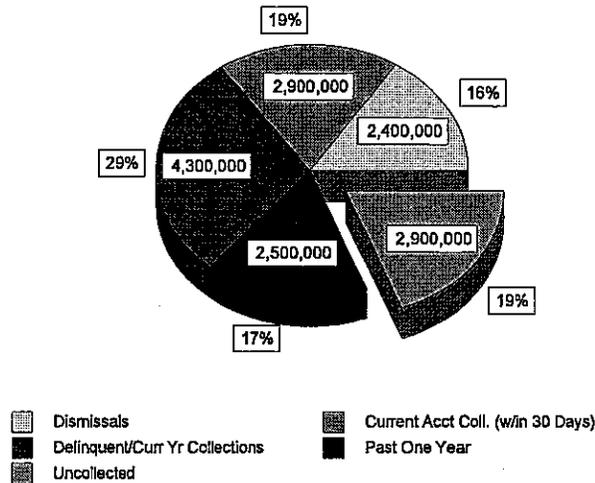
report indicates, "As of December 1996, the attorney general had collected about \$10,000." The Attorney General's Office has advised the Judiciary that their collections for 1996 were approximately \$23,000, not \$10,000 as noted in the report. In addition, as of November 30, 1997, approximately \$279,720 has been collected by the Attorney General's Office or the Traffic Violations Bureau in the District Court of the First Circuit, Honolulu Division.

III) Keeping the Issue in Perspective

The Judiciary concurs that improvements are needed to the system of managing and collecting fines and restitution. We also believe, however, that the Judiciary's efforts to account for and to collect fines and restitution in Circuit and Family court cases have been generally acceptable. As for the District Courts, when the matter is placed in its proper context, the results are not as discouraging as at first blush. Our analysis of 10 years of financial collection data in the District Courts throughout the state indicates that approximately 16 percent of all traffic cases are dismissed. Nineteen percent of the cases involving current fines or assessments are collected within the first 30 days after the citations are issued. Twenty-nine percent of the cases are collected after 30 days, but less than 1 year from the date the citations are issued. Seventeen percent of the cases are collected after one year from the date the citation was issued, but within 5 years from the date the citations are issued. Only 19 percent of the cases are never collected. To summarize, 8 out of 10 traffic citations issued results in dismissal or the collection of the fine or assessment. The graph below summarizes the above-referenced data.

Traffic Collections

Annual Assessment Estimate -Moving, Non-Moving and Parking/\$15,000,000



IV. The Auditor's Findings and Recommendations

The Auditor acknowledges that there are no major problems with forfeitures, and that recently the Judiciary has taken a number of significant steps to improve collections of fines and restitution. The report notes that "...recent efforts to improve collections show promise..." that "...these efforts are a good start..." and that "...it [the Judiciary's uniform policies and procedures for the collection of restitution] appears to address some of our [the Auditor's] concerns about coordination."

The Judiciary's recent efforts include the following:

- ✓ 1994: Chief Justice Moon appointed the Supreme Court Fine Enforcement Committee to examine the existing fine enforcement policies, procedures, and mechanisms used in the District Courts. On December 15, 1994, the Committee issued their report entitled, "An Action Plan to Improve Fine Enforcement in Hawaii." As a result, District Courts throughout the state developed action plans to improve collection efforts. The District Courts are implementing these action plans.
- ✓ 1996: A manual of procedures for the Uniform Enforcement of Judicial Orders, District Court of the State of Hawaii, was developed to ensure efficient and reliable collecting methodologies for all District Courts. The procedures are currently being piloted in the District Courts of the First and Fifth Circuits.
- ✓ 1996: The District Court of the First Circuit established procedures and guidelines pertaining to Payment Court. This pilot project was

established to address the problem of criminal traffic fines payable on a deferred basis.

- ✓ 1996: Judiciary central administration entered an agreement with the Department of the Attorney General for that office to assume the collection of delinquent amounts resulting from default judgments relating to parking, moving, and non-moving traffic infractions.
- ✓ 1997: At Judiciary central administration's request, the Supreme Court Law Library instituted aggressive procedures to collect overdue fines from library patrons.
- ✓ 1997: Judiciary central administration formed the Restitution Task Force to establish uniform and standardized policies and procedures for the collection of restitution. The task force has produced a draft manual of policies and procedures of the restitution process. (The draft is available upon request.)
- ✓ 1997: Judiciary central administration and the Department of Public Safety initiated and completed "Project Clean Slate." The objective was to collect delinquent fines and reduce the number of outstanding bench warrants currently awaiting service by the Department of Public Safety.
- ✓ 1997: Based on a legislative proposal which the Judiciary submitted, the Legislature enacted Act 154, Session Laws of Hawaii. This act authorized the Judiciary to adopt rules to assess penalties on all delinquent traffic citations and judgments. These penalty assessments will provide an additional incentive for individuals with traffic violations or infractions to respond timely. The Hawaii Supreme Court amended a court rule to implement the provisions of Act 154. This rule will become effective on January 1, 1998.

Regarding your findings and recommendations, they can be summarized as follows:

- A. Judiciary central administration needs to provide stronger direction;
- B. The Judiciary needs to develop a computer information system that tracks all unpaid accounts; and
- C. The Judiciary should seriously consider "coercive measures" to supplement its management controls.

These recommendations will be addressed in order.

A. *Central Administration Will Continue its Recent Efforts to Provide Stronger Direction:*

The Auditor notes that the primary responsibility for ensuring that fines and restitution are collected rests with the individual court where the particular fine or restitution was ordered or processed. Nevertheless, because of the significant challenges posed by the collection of fines and restitution, challenges experienced by every state across the country, the Judiciary agrees that there is a need for strong central control in the collection of fines and restitution. As evidenced in your Report, over the past few years central administration has provided stronger guidance and direction in the area of collecting fines and restitution. Our efforts have been particularly focused in this area over the past eighteen months since the current Administrative Director was hired. The Judiciary's recent efforts have been consistent with the approach recommended by the Auditor, and central administration will continue to aggressively work with the courts to implement additional central controls where required. The Judiciary's "**Four Point Plan to Improve Collections**" in the courts reflects these additional central controls. A summary of this plan is attached (see Exhibit E).

B. *The Judiciary will Develop a Uniform Automated System:*

The Judiciary concurs with the Auditor's recommendation that the Judiciary must develop a uniform automated information system to track and account for outstanding fines and restitution, and to identify delinquent accounts for the purposes of collection actions or write-off procedures. This need is especially acute in the District Courts because of the large number of daily financial transactions. The Judiciary currently is developing such a uniform automated information system.

The Executive Committee on Court Technology and Information Management has recommended the development of a cash collection and accounting system as the first component of the Judiciary's new automated system. Development of this cash collection and accounting component is scheduled to begin within the next three weeks, and should be completed within one year from the project's initiation. This cash collection and accounting system will enable the courts to track amounts owed for each case, and whether the fine has been paid or is delinquent. The system also will monitor cases where the court has allowed payments to be deferred. Initially, the new cash collection and accounting system will focus on the District Court cash collection and accounting efforts because of the court's

large number of cash transactions. The new centralized, statewide system will provide the following:

- Traffic Violations Bureaus throughout the state will have access to Department of Motor Vehicle car registration information as payments are being received for either moving or parking citations.
- The system will have the ability to automatically update the District Court's existing case management system (TRAVIS).
- The system will have the ability to account for all monies collected and will record partial payments in cases where the courts have allowed individuals deferred payments.
- The system will have the ability to itemize collections and automatically calculate (1) the portion which is collected as a fine; (2) the amount which may be the result of a bounced check; and (3) any delinquent interest payments.

In addition, the Judiciary will enhance its automated trust accounting system currently used in the Circuit and Family Courts throughout the state. These enhancements will allow on-line access by the probation staff and the development of timely delinquent reports and notices to probationers. These enhancements should be completed within a year.

C. The Judiciary will consider Additional Coercive Measures:

The Auditor recommends that the Judiciary consider using "coercive measures" to supplement existing enforcement mechanisms. The Auditor acknowledges that the Judiciary already uses coercive measures such as license stoppers and vehicle registration stoppers. In addition, the Judiciary's recent Project Clean Slate initiative was a coercive measure that generated \$300,000, and resulted in the arrest of 153 individuals with outstanding bench warrants. The Auditor also notes that in the last legislation session, the Legislature passed Act 154, a Judiciary-initiated bill authorizing courts to impose additional monetary penalties on outstanding traffic citations and judgments.

Despite the Judiciary having undertaken the above coercive measures, the Auditor recommends that the Judiciary consider the following additional coercive measures:

- ✓ Garnishment of bank accounts or wages

- ✓ Tax Refund Intercept Program
- ✓ Adverse Credit Reporting
- ✓ In-House Collection Unit

The Audit Report notes that each of these coercive measures has potential down sides such as high labor costs, legal uncertainties, and administrative complexities. Consistent with these qualifiers, when the District Court Administrative Judges met with the Director of Taxation on October 1, 1996 to explore certain approaches, the Director raised legal and statutory concerns regarding such coercive measures as garnishment of bank accounts or wages and tax intercepts. It also must be acknowledged that a certain percentage of the delinquent fines and restitution are simply uncollectable. No amount of coercive measures will help in these cases.

Despite the above limitations, the Judiciary will seriously consider additional coercive measures. Certain of these coercive measures may require statutory amendments, or the enactment of a new law. The Judiciary will consider including such legislation in its legislative package for the 1998 Legislative Session. An alternative approach would be to ask the Legislative Reference Bureau to study the viability and desirability of the coercive measures which the Auditor identifies. Finally, the Judiciary will consider an in-house collection unit. This unit, however, would need to be staffed by additional positions authorized and funded by the Legislature, or from additional positions funded by a legislatively authorized filing surcharge. Another alternative is to establish an Office of State Debt Collection in the executive branch. This office would have the responsibility for collecting all debts owed to the State, regardless of whether the debt is owed to the Judiciary or to an Executive Branch office. The State of Utah takes such an approach. Court debts which are uncollected within a sixty-day period of time would be transferred to this office for further action.

D. Additional Monies and Resources Are Needed.

The Judiciary is committed to implementing its "4 Point Plan to Improve Collections." This plan should fully address the audit report. However, certain of the initiatives, such as establishing collection units and developing public education programs are dependant upon additional funding and/or personnel. In addition, legislation may be necessary. Consequently, to some degree the success of the plan depends on whether the Judiciary is provided the necessary resources.

V) Conclusion

The collection of court fines and restitution is a complex matter which requires an intensive commitment of Judiciary resources and close coordination with, and cooperation from, the many other implicated agencies. In recent years, the Hawaii State Judiciary has made a concerted effort to improve its collection efforts. We are grateful to the Auditor for acknowledging these efforts. We also agree with the State Auditor that more must be done. The Judiciary is committed to doing so.

Very truly yours,



Michael F. Broderick
Administrative Director of the Courts

attachments

Exhibits A through D attached to the Judiciary's letter are not included here, as explained in our Comments on Agency Response (p. 21).

The Judiciary's 4 Point Plan to Improve Collections

Point 1:

Develop An Automated Collection and Accounting System

- ✓ Develop a new cash collection and accounting system for the District Courts throughout the state.
- ✓ Make enhancements to the Automated Trust Accounting system for the Family and Circuit Courts throughout the state.

Point 2:

Establish Standard Statewide Procedures for Fine Collections in All Courts.

- ✓ Analyze current collection procedures and modify where necessary.
- ✓ Expand the use of the Lock Box to all District Courts throughout the state.
- ✓ Develop guidelines for collections and installment payments – "There's Too Much Install in Installment Payments!"
- ✓ Develop a bench book regarding Fine collection procedures for all judges.
- ✓ Begin to implement the new Restitution Collection Procedures.

Point 3:

Implement Additional Coercive Collection Procedures

- ✓ Evaluate the use of current coercive measures.
- ✓ Develop legislation, where required, to establish additional coercive measures, including collection units to monitor compliance with collection measures.
- ✓ Work with state, county and federal agencies to effectuate additional coercive collection measures.

Point 4:

Develop Educational Programs

- ✓ Establish Public Information campaigns regarding "Meeting Your Obligations Now!" (MYON).
- ✓ Develop Educational programs for Judges and Court staff on the importance of enforcing monetary court orders, and methods and tools to do so.
- ✓ Develop a Training Program for the use of the new automated system.

The Goals of our 4 Point Plan:

- Improve the quality and consistency of justice by ensuring compliance with court orders;
- Increase court revenues by 20% within one year and 40% within three years;
- Increase the amount of restitution collected by 20% within one year and by 40% within three years;
- Establish an automated collection and accounting system to improve the efficiency of court operations; and
- Provide greater public access to the courts through improved technology, such as voice response payment systems.

