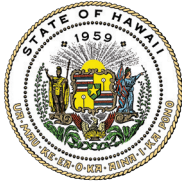

Review of Special Funds, Revolving Funds, Trust Funds, and Trust Accounts of the Judiciary

A Report to the Governor
and the Legislature of
the State of Hawai'i

Report No. 20-17
November 2020



OFFICE OF THE AUDITOR
STATE OF HAWAII



OFFICE OF THE AUDITOR STATE OF HAWAII

Constitutional Mandate

Pursuant to Article VII, Section 10 of the Hawai'i State Constitution, the Office of the Auditor shall conduct post-audits of the transactions, accounts, programs and performance of all departments, offices and agencies of the State and its political subdivisions.

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Hawai'i Revised Statutes, Chapter 23, gives the Auditor broad powers to examine all books, records, files, papers and documents, and financial affairs of every agency. The Auditor also has the authority to summon people to produce records and answer questions under oath.

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To improve government through independent and objective analyses.

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We report our findings and make recommendations to the Governor and the Legislature to help them make informed decisions.

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<http://auditor.hawaii.gov>

Foreword

This is a report of our review of the special funds, revolving funds, trust funds, and trust accounts administered by the Judiciary.

Section 23-12, Hawai‘i Revised Statutes (HRS), requires the Auditor to review all existing special, revolving, and trust funds once every five years. Although not mandated by statute, we included trust accounts as part of our review. This is our sixth review of the revolving funds, trust funds, and trust accounts, and our second review of the special funds of the Judiciary.

We wish to express our appreciation for the cooperation and assistance extended to us by the officials and staff of the Judiciary.

Leslie H. Kondo
State Auditor



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Chapter 1

Introduction

This review encompasses the special funds, revolving funds, trust funds, and trust accounts administered by the Judiciary. Section 23-12, Hawai‘i Revised Statutes (HRS), requires the Auditor to review each state department and the Judiciary’s special, revolving, and trust funds every five years. For each fund, the Auditor’s review must include:

1. An evaluation of the original intent and purpose of the fund, both as expressed by the Legislature and as understood by the expending agency;
2. The degree to which the fund achieves its stated and claimed purposes;
3. An evaluation of the fund’s performance standards as established by the agency; and
4. A summary statement reflecting total fund transactions in the preceding five fiscal years, including the fund balance at the beginning of each fiscal year, total deposits and withdrawals, amount of interest earned, total expenditures made from the fund, and the ending balance for each fiscal year.

This is our sixth review of the Judiciary’s revolving funds, trust funds, and trust accounts.¹ It is our second review of the Judiciary’s special funds, since Act 130, Session Laws of Hawai‘i (SLH) 2013, amended Section 23-12, HRS, to require review of special funds along with revolving funds and trust funds. Although not mandated by Section 23-12, HRS, we have included trust accounts as part of our review. Trust accounts, like special, revolving, and trust funds, are funded outside of the general fund appropriation process and are therefore generally subject to less legislative scrutiny than the State’s general fund. We last examined these funds and accounts in 2015.

¹ Prior to 2013, Section 23-12, HRS, did not require reviews of departments’ special funds.

Description of Special Funds, Revolving Funds, Trust Funds, and Trust Accounts

Special funds

Section 37-62, HRS, defines a special fund as one that is “dedicated or set aside by law for a specified object or purpose, but excluding revolving funds and trust funds.” According to the State’s Accounting Manual, special funds are funds used to account for revenues earmarked for particular purposes and from which expenditures are made for those purposes.

Revolving funds

Section 37-62, HRS, defines a revolving fund as one “from which is paid the cost of goods and services rendered or furnished to or by a state agency and which is replenished through charges made for the goods or services or through transfers from other accounts or funds.” Activities commonly financed through revolving funds include loan programs, which are initially established by general fund seed moneys and are then replenished through the repayment of loans.

Trust funds

Section 37-62, HRS, defines a trust fund as one in which “designated persons or classes of persons have a vested beneficial interest or equitable ownership, or which was created or established by a gift, grant, contribution, devise or bequest that limits the use of the fund to designated objects or purposes.” Trust funds invoke a fiduciary responsibility of state government to care for and use only for those designated to benefit from the funds. A pension fund is an example of a trust fund. Contributions and payments are to be held for the beneficiaries of the pension fund. Another example is tenants’ security deposits, which are held in trust for the future benefit of tenants and landlords. Until forfeited or returned, deposits are the property of the tenants and should be accounted for accordingly.

Trust accounts

The Department of Accounting and General Services (DAGS) defines a trust account as a separate holding or clearing account for state agencies. Trust accounts also serve as accounting devices to credit or charge agencies or projects for payroll or other costs.

Criteria for Reviewing Special Funds, Revolving Funds, Trust Funds, and Trust Accounts

Special and revolving fund criteria

In 2002, the Legislature set the requirements for establishing and continuing special and revolving funds. Sections 37-52.3 and 37-52.4, HRS, state that special and revolving funds may only be established by statute. The criteria used to review special and revolving funds are the extent to which each fund:

- Serves a need, as demonstrated by: (a) the purpose of the program to be supported by the fund; (b) the scope of the program, including financial information on fees to be charged, sources of projected revenue, and costs; and (c) an explanation of why the program cannot be implemented successfully under the general fund appropriation process;
- Reflects a clear nexus between the benefits sought and charges made upon the program users or beneficiaries, or a clear link between the program and the sources of revenue – as opposed to serving primarily as a means to provide the program or users with an automatic means of support, removed from the normal budget and appropriation process;
- Provides an appropriate means of financing for the program or activity that is used only when essential to the successful operation of the program or activity; and
- Demonstrates the capacity to be financially self-sustaining.

Trust fund and trust account criteria

Unlike the requirements for special and revolving funds, the law is silent on whether a trust fund or trust account must be established by statute. The criteria used to review trust funds and trust accounts are the extent to which each fund and account:

- Continues to serve the purpose and intent for which it was originally created, and
- Meets the definition of a trust fund or trust account, respectively.

The first criterion is derived from the objectives of Section 23-12, HRS, which requires the Auditor to evaluate the original intent of each fund and the degree to which each fund achieves its stated purpose. The second criterion assesses whether a fund is held by the State only for the benefit of those with a vested interest in the assets or an account is held as a separate or clearing account.

Objectives of the Review

1. Identify and review all special funds, revolving funds, trust funds, and trust accounts of the Judiciary.
2. For each special fund, revolving fund, trust fund, and trust account, determine whether the fund or account meets the respective criteria.
3. Provide a five-year (FY2016 – FY2020) unaudited financial summary for each fund and account of the Judiciary.

Scope and Methodology

We reviewed all special funds, revolving funds, trust funds, and trust accounts directly administered by the Judiciary during the five-year period under review (FY2016 – FY2020). Funds and accounts included those established by statute as well as by administrative authority.

To identify funds subject to this review, we used a variety of sources, including our prior reviews, accounting reports from DAGS, non-general fund reports, legislative budget briefing documents, and other records. To gain an understanding of fund operations, we reviewed applicable agency administrative rules and interviewed key fiscal and program personnel, as necessary.

We obtained a summary statement for each fund that reflects total fund transactions in the preceding five fiscal years (July 1, 2015 to June 30, 2020), including beginning fund balances, total revenues, amount of interest earned, total expenditures, transfers, and ending fund balances for each fiscal year. We requested explanations for discrepancies

between ending balances for FY2015 reported in our last review and opening balances reported for FY2016. We did not audit the Judiciary's financial data, which we provide for informational purposes only.

Procedures were performed on each fund using relevant criteria as stated above. We reviewed fund information for consistency with the intent of each fund's use and to ascertain the relationship between charges on users and expenditures. We reviewed information on performance standards established for the funds or accounts and performed other procedures as necessary.

Where appropriate, we relied on our prior reports, including Report No. 15-16, *Review of Special Funds, Revolving Funds, Trust Funds, and Trust Accounts of the Judiciary*.

Our review was conducted from August to October 2020. Recommendations were made where applicable.

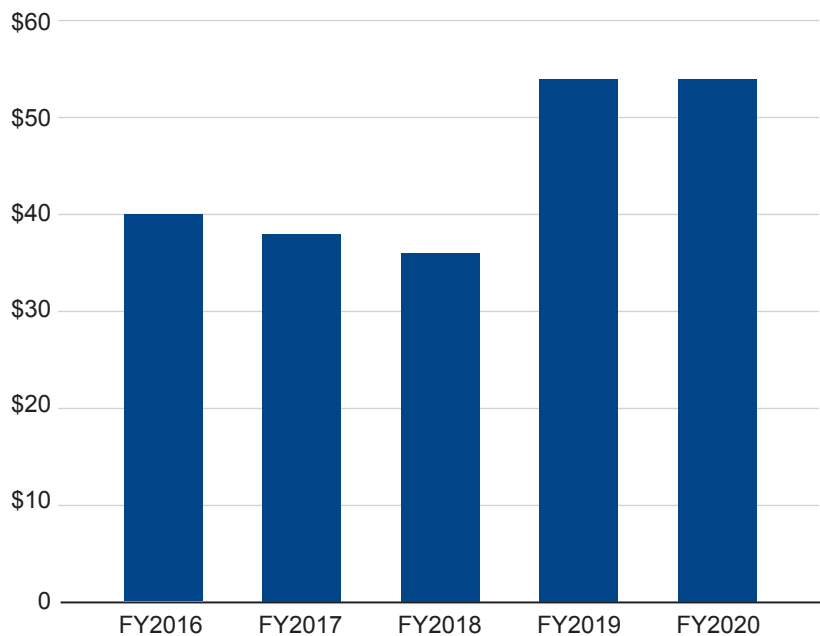
Chapter 2

Judiciary

This section presents the results of our review of 6 special funds, 2 revolving funds, 17 trust funds, and 4 trust accounts. Total fund fiscal year-end balances amounted to at least \$36 million per year during the period reviewed.

Exhibit 2.1 summarizes the totals for these fund balances at the end of each fiscal year.

Exhibit 2.1
Cash Balances for Judiciary Non-General Funds
FY2016 – FY2020 (in millions)



Source: Office of the Auditor

Substantial amounts were also collected and expended by the funds annually. In FY2020, the special funds, revolving funds, trust funds, and trust accounts collected approximately \$83 million and spent or transferred more than \$83 million.

Exhibit 2.2 presents totals for the combined revenue and interest, expenses, transfers, and ending fund balances for the different fund types for FY2020.

Exhibit 2.2 Judiciary Fund and Account Totals by Type, FY2020

Fund Type	Revenue and Interest	Expenses and Transfers	FY2020 End Cash Balance
Special Funds	\$8,580,000	\$10,613,000	\$3,893,000
Revolving Funds	14,000	14,000	50,000
Trust Funds/Trust Accounts	74,442,000	72,610,000	50,087,000
Total	\$83,036,000	\$83,237,000	\$54,030,000

Source: Office of the Auditor

For each fund or account, we present a five-year financial summary, the purpose of the fund or account, and conclusions about its use and whether it meets the definition of a special fund, revolving fund, trust fund, or trust account. This review does not include an assessment of the effectiveness of the program or its management. Funds and accounts are presented in alphabetical order.

Special and Revolving Fund Accounts with Inactive or Excess Balances

In Report No. 20-06, *Report on Special and Revolving Fund Accounts with Inactive or Excess Balances*, we identified accounts associated with departments' special and revolving funds that either had no financial activity during the past five fiscal years (FY2015 through FY2019) or whose outflows during the past three fiscal years (FY2017 through FY2019) averaged 50 percent or less of the average account balances during those years. The purpose of the report was to provide the Legislature with *potential* sources of state funds to be used to address budget shortfalls caused by the COVID-19 pandemic. A supplement to Report No. 20-06, provided additional information about the accounts, and specifically whether the moneys in the accounts can be transferred to the State's General Fund or otherwise repurposed.

Both reports identified the following Judiciary account with moneys the Legislature potentially can transfer without affecting the program:

- Court Interpreting Services Revolving Fund

Exhibit 2.3 presents the Judiciary’s funds and accounts that did not meet criteria for continuance and should be closed or reclassified.

**Exhibit 2.3
Judiciary Funds and Accounts Not Meeting Criteria**

Fund Name	Fund Type	FY2020 Ending Balance (rounded)	No longer serves original purpose and/or does not serve a need	No clear nexus between benefits sought and user charges or a clear link between the program and revenue sources	Inappropriate financing mechanism	Not financially self-sustaining	Does not meet special fund, revolving fund, trust fund, or trust account definition
Probation Services Special Fund	Special Fund	\$209,000				✓	
Supreme Court Bar Examination Fund	Trust Fund	485,000					✓
Total		\$694,000					

Source: Office of the Auditor

**Agency Fund
(trust account)****Administratively
established**

Financial Data for Fiscal Years 2016 – 2020 (in thousands)					
	FY2016	FY2017	FY2018	FY2019	FY2020
Beginning Balance	\$24,438	\$29,851	\$28,759	\$26,875	\$47,442
Revenues	119,827	73,388	58,815	100,964	73,839
Interest	0	0	0	0	0
Expenditures	(114,414)	(74,480)	(60,699)	(80,397)	(72,129)
Transfers	0	0	0	0	0
Ending Balance	\$29,851	\$28,759	\$26,875	\$47,442	\$49,152
Encumbrances	\$0	\$0	\$0	\$0	\$0

This account meets the criteria of a trust account and continues to serve the purpose for which it was originally established. Administratively established in 1980, the account is used to record funds held outside the State Treasury and collected by the Judiciary in a trustee or agency capacity. Revenues are from moneys deposited with the courts, such as appeal deposits, bails, bonds, case deposits, court costs, court expenditure reimbursements, court fees, fines, restitutions, unclaimed estates, and naturalization fees. Expenditures include trust disbursements, government realizations, reimbursements of expenditures, and agency disbursements.

**Commercially Sexually
Exploited Children
Human Trafficking
Initiative
(trust fund)**

**Administratively
established**

Financial Data for Fiscal Years 2017 – 2018 (in thousands)

	FY2017	FY2018
Beginning Balance	\$0	\$0
Revenues	0	49
Interest	0	0
Expenditures	0	(49)
Transfers	0	0
Ending Balance	\$0	\$0
Encumbrances	\$0	\$0

This fund was closed in FY2018. Administratively established in 2016, the fund was used to hire three consultants to prepare educational resources and conduct human trafficking training for judicial officers, court practitioners and criminal justice partners. Revenues were from a State Justice Institute grant. Expenditures included compensation for three consultants for their time in preparing educational resources and their travel expenses to conduct the training.

***Court Interpreting
Services Revolving
Fund
(revolving fund)***

Section 607-1.5, HRS

Financial Data for Fiscal Years 2016 – 2020 (in thousands)					
	FY2016	FY2017	FY2018	FY2019	FY2020
Beginning Balance	\$49	\$49	\$44	\$44	\$37
Revenues	7	12	16	13	8
Interest	0	0	0	0	2
Expenditures	(7)	(17)	(16)	(20)	(10)
Transfers	0	0	0	0	0
Ending Balance	\$49	\$44	\$44	\$37	\$37
Encumbrances	\$0	\$6	\$0	\$0	\$0

This fund meets the criteria of a revolving fund and continues to serve the purpose for which it was originally established. Statutorily established in 2005, the fund is used to support educational services and activities relating to the training, screening, testing, and certification of court interpreters through the Court Interpreter Certification Program. Revenues are from fees, charges, and other moneys collected for programs relating to interpreter issues and training, screening, testing, and certification of court interpreters; monies received from public or private sources; and interest and other earnings. Expenditures include facility costs, materials, supplies, travel and related expenses, and contracted services.

***Detention Home
Donation Fund
(trust fund)***

***Administratively
established***

Financial Data for Fiscal Years 2016 – 2020 (in thousands)					
	FY2016	FY2017	FY2018	FY2019	FY2020
Beginning Balance	\$16	\$16	\$16	\$16	\$16
Revenues	0	0	0	0	0
Interest	0	0	0	0	0
Expenditures	0	0	0	0	0
Transfers	0	0	0	0	0
Ending Balance	\$16	\$16	\$16	\$16	\$16
Encumbrances	\$0	\$0	\$0	\$0	\$0

This fund meets the criteria of a trust fund and continues to serve the purpose for which it was originally established. Administratively established approximately 40 years ago, the fund is used to account for donations to the Detention Services Division of the Family Court of the First Circuit, which operates a detention facility for juveniles awaiting disposition of their cases. Expenditures include purchases for detainees during the holiday season and items detainees will use after leaving the facility, such as water bottles, personal hygiene supplies, and shoes. The Judiciary reported in recent years, donations were not deposited or expended because food and other items were donated directly to the facility during the holiday season.

**Driver Education and
Training Fund
(special fund)**

Section 286G-2, HRS

Financial Data for Fiscal Years 2016 – 2020 (in thousands)					
	FY2016	FY2017	FY2018	FY2019	FY2020
Beginning Balance	\$2,018	\$2,146	\$1,983	\$1,955	\$1,581
Revenues	2,464	2,308	2,549	2,348	2,025
Interest	9	12	11	11	45
Expenditures	(2,345)	(2,483)	(2,588)	(2,733)	(2,803)
Transfers	0	0	0	0	0
Ending Balance	\$2,146	\$1,983	\$1,955	\$1,581	\$848
Encumbrances	\$118	\$66	\$84	\$103	\$101

This fund meets the criteria of a special fund and continues to serve the purpose for which it was originally established. Statutorily established in 1974, the fund is used by the Administrative Director of the Courts for driver education and training programs established by the Judiciary. The Division of Driver Education operates five offices statewide and administers a traffic safety education program for persons referred by the courts for a variety of traffic offenses. Revenues are from driver education assessments levied against violators of statutes or county ordinances relating to vehicles, their drivers, or their owners; persons convicted of operating a vehicle under the influence of an intoxicant; persons required to attend a child passenger restraint system safety class under Section 291-11.5, HRS; and persons convicted of excessive speeding. The Judiciary reported this fund also receives a portion of the driver education underwriter's fee levied against each motor vehicle insurance policy in the State pursuant to Section 431:10C-115, HRS. Expenditures include personnel costs, office lease rent, educational supplies and instruction materials, office supplies, travel costs to fill positions or for training purposes, and other operational costs.

Foreclosure Assistance Program (trust fund)

Administratively established

Financial Data for Fiscal Years 2016 – 2020 (in thousands)					
	FY2016	FY2017	FY2018	FY2019	FY2020
Beginning Balance	\$351	\$277	\$99	\$57	\$13
Revenues	236	1	0	0	0
Interest	0	0	0	0	0
Expenditures	(310)	(179)	(42)	(44)	0
Transfers	0	0	0	0	0
Ending Balance	\$277	\$99	\$57	\$13	\$13
Encumbrances	\$12	\$5	\$0	\$0	\$0

This fund meets the criteria of a trust fund and continues to serve the purpose for which it was originally established. Administratively established in 2012, the fund was used to pay for five temporary, exempt Foreclosure Legal Researcher positions to assist the courts in the processing of foreclosure cases. Revenues are from the Department of the Attorney General’s Foreclosure Assistance Program, which was created pursuant to a federal court consent judgment. Expenditures included salary and wages (including a composite fringe benefit rate) and associated office equipment.

The Judiciary reported that, after FY2016, Foreclosure Legal Researcher positions were phased out due to a lack of funding. The Judiciary plans to return the unexpended balance of funds to the Department of the Attorney General and close the fund.

Historic Preservation Grant (Ali‘iolani) (trust account)

Administratively established

Financial Data for Fiscal Year 2020 (in thousands)

	FY2020
Beginning Balance	\$0
Revenues	7
Interest	0
Expenditures	(7)
Transfers	0
Ending Balance	\$0
Encumbrances	\$0

This account was closed in FY2020. Administratively established in 2020, the account was established to account for grant moneys from the Freeman Foundation in cooperation with the Historic Hawai‘i Foundation. Revenues were from grant funds awarded for a preservation project related to the Judiciary’s Ali‘iolani Hale building. Expenditures included expenses to complete repairs to the entryway of the building, such as removing lead paint, repairing plaster columns, repainting the main entryway, and repairing items related to the building’s security screening and signage.

**Honolulu District
Court Plain Language
English Translation
and Training
(trust fund)**

**Administratively
established**

Financial Data for Fiscal Years 2018 – 2020 (in thousands)			
	FY2018	FY2019	FY2020
Beginning Balance	\$0	\$0	\$0
Revenues	0	24	26
Interest	0	0	0
Expenditures	0	(24)	(26)
Transfers	0	0	0
Ending Balance	\$0	\$0	\$0
Encumbrances	\$0	\$0	\$0

The fund was closed in FY2020. Administratively established in 2018, the fund was used to pay the National Center for State Courts (NCSC) for the translation of District Court forms into plain language, creation of a plain language manual, and training District Court staff in plain language rules and forms. Revenues were from a grant from the State Justice Institute. Expenditures included consultation services provided by NCSC.

**Indigent Legal
Assistance Fund
(special fund)**

Section 607-5.7(f), HRS

Financial Data for Fiscal Years 2016 – 2020 (in thousands)

	FY2016	FY2017	FY2018	FY2019	FY2020
Beginning Balance	\$474	\$362	\$444	\$358	\$491
Revenues	1,326	1,212	1,133	1,244	1,135
Interest	2	1	2	2	12
Expenditures	(1,440)	(1,131)	(1,221)	(1,113)	(1,169)
Transfers	0	0	0	0	0
Ending Balance	\$362	\$444	\$358	\$491	\$469
Encumbrances	\$0	\$0	\$0	\$0	\$0

This fund meets the criteria of a special fund and continues to serve the purpose for which it was originally established. Statutorily established in 1996, the fund is used to fund the indigent legal assistance grant program administered by the Hawai‘i Justice Foundation to distribute moneys annually to eligible nonprofit organizations, such as the Domestic Violence Action Center, the Hawai‘i Appleseed Center for Law and Economic Justice, the Hawai‘i Disability Rights Center, the Legal Aid Society of Hawai‘i, the Mediation Center of the Pacific, the Native Hawaiian Legal Corporation, the University of Hawai‘i Elder Law Program, the University of Hawai‘i Medical Legal Partnership, and Volunteer Legal Services Hawai‘i, which provide civil legal services to indigent clients. Revenues are derived from a filing fee surcharge ranging between \$35 and \$65 assessed against initial filings in civil cases in the circuit courts, district courts, and the courts of appeal. Expenditures include grants to nonprofit organizations providing legal assistance to indigent persons.

In Report No. 15-16, we recommended that this fund be repealed because it failed to meet the clear nexus criterion. We reasoned, in part, that because no charges were made upon the beneficiaries of this program (indigent persons receiving civil legal services), there was no clear nexus between the benefits sought and the charges made.

In response to our fund questionnaire for this report, the Judiciary provided legislative history for the 1996 Act that created this fund. The fund was intended to serve as an additional source of funding for legal services to indigent persons, through the creation of a new court filing fee surcharge on civil cases.² The Legislature found that persons who pay the filing fee surcharge benefit because proceeds from the filing fee surcharge would be used to enable indigents to secure attorneys who expedite client cases allowing courts to hear and decide claims of nonindigent litigants more efficiently.

² Act 305, SLH 1996.

***Innovations Initiative
Management Training –
State Justice Institute
(trust account)***

***Administratively
established***

Financial Data for Fiscal Year 2020 (in thousands)

	FY2020
Beginning Balance	\$0
Revenues	15
Interest	0
Expenditures	(15)
Transfers	0
Ending Balance	\$0
Encumbrances	\$0

This account meets the criteria of a trust account and continues to serve the purpose for which it was originally established. Administratively established in 2019, the account is used as a separate holding account for grant funds intended to provide training for judicial officers and court personnel. Revenues are from a grant from the State Justice Institute. Expenditures include costs associated with providing two training courses. The Judiciary reported this account will be closed upon completion of the training and payment to the vendor for its services.

**Judiciary Computer
System Special Fund
(special fund)**

Section 601-3.7, HRS

Financial Data for Fiscal Years 2016 – 2020 (in thousands)					
	FY2016	FY2017	FY2018	FY2019	FY2020
Beginning Balance	\$3,572	\$3,449	\$3,019	\$3,262	\$3,148
Revenues	5,623	5,274	5,523	5,125	4,450
Interest	19	21	16	20	99
Expenditures	(5,765)	(5,725)	(5,296)	(5,259)	(5,701)
Transfers	0	0	0	0	0
Ending Balance	\$3,449	\$3,019	\$3,262	\$3,148	\$1,996
Encumbrances	\$686	\$629	\$434	\$716	\$709

This fund meets the criteria of a special fund and continues to serve the purpose for which it was originally established. Statutorily established in 1996, the fund is used to support the Judiciary's statewide computer system. Revenues are from moneys collected from administrative fees charged to individuals requesting certified records from the traffic violations bureaus of the district courts; court costs collected pursuant to Sections 607-4(b)(10) and 607-5(c)(32), HRS; and fees prescribed by the Supreme Court for electronic document certification, electronic copies of documents and for providing bulk access to electronic court records and compilations of data. Expenditures include personnel costs, software and hardware purchases and maintenance, services to build software, and infrastructure charges such as telephone and network costs.

The Judiciary stated the COVID-19 pandemic worsened an existing downward trend in traffic related collections, but continues to believe the fund has the capacity to be financially self-sustaining.

**Juvenile Detention
Alternatives Initiative
(trust fund)**

**Administratively
established**

Financial Data for Fiscal Year 2016 (in thousands)

	FY2016
Beginning Balance	\$1
Revenues	0
Interest	0
Expenditures	(1)
Transfers	0
Ending Balance	\$0
Encumbrances	\$0

The fund was closed in FY2016. Administratively established in 2009, the fund was used to support the Juvenile Detention Alternatives Initiative, which is designed to address the efficiency and effectiveness of juvenile detention without sacrificing community safety. Revenues were from a grant from the Annie E. Casey Foundation. Expenditures included food and other supplies for meetings, travel expenses, and consultant fees.

**Juvenile Detention
Alternatives Initiative III
(trust fund)**

**Administratively
established**

Financial Data for Fiscal Years 2016 – 2018 (in thousands)

	FY2016	FY2017	FY2018
Beginning Balance	\$2	\$2	\$2
Revenues	0	0	0
Interest	0	0	0
Expenditures	0	0	(2)
Transfers	0	0	0
Ending Balance	\$2	\$2	\$0
Encumbrances	\$0	\$0	\$0

This fund was closed in FY2018. Administratively established in 2010, the fund was used to support the Juvenile Detention Alternatives Initiative, which is designed to address the efficiency and effectiveness of juvenile detention without sacrificing community safety. Revenues were from a grant from the Annie E. Casey Foundation. Expenditures included food and other supplies for meetings, travel expenses, and consultant fees.

**Juvenile Detention
Alternatives Initiative
IV
(trust fund)**

**Administratively
established**

Financial Data for Fiscal Year 2016 (in thousands)

	FY2016
Beginning Balance	\$1*
Revenues	0
Interest	0
Expenditures	(1)
Transfers	0
Ending Balance	\$0
Encumbrances	\$0

*FY2016 beginning balance does not agree to FY2015 ending balance in Report No. 15-16 due to rounding errors made in 2015.

This fund was closed in FY2016. Administratively established in 2013, the fund was used to support the Juvenile Detention Alternatives Initiative, which is designed to address the efficiency and effectiveness of juvenile detention without sacrificing community safety. Revenues were from a grant from the Annie E. Casey Foundation. Expenditures included food and other supplies for meetings, travel expenses, and consultant fees.

**Juvenile Detention
Alternative Initiative V
(trust fund)**

**Administratively
established**

Financial Data for Fiscal Years 2016 – 2018 (in thousands)

	FY2016	FY2017	FY2018
Beginning Balance	\$16	\$5	\$1
Revenues	0	0	0
Interest	0	0	0
Expenditures	(11)	(4)	(1)
Transfers	0	0	0
Ending Balance	\$5	\$1	\$0
Encumbrances	\$1	\$1	\$0

This fund was closed in FY2018. Administratively established in 2015, the fund was used to support the Juvenile Detention Alternatives Initiative, which is designed to address the efficiency and effectiveness of juvenile detention without sacrificing community safety. Revenues were from a grant from the Annie E. Casey Foundation. Expenditures included food and other supplies for meetings, travel expenses, and consultant fees.

**Juvenile Detention
Alternatives Initiative
VI
(trust fund)**

**Administratively
established**

Financial Data for Fiscal Years 2016 – 2018 (in thousands)

	FY2016	FY2017	FY2018
Beginning Balance	\$0	\$25	\$3
Revenues	25	0	0
Interest	0	0	0
Expenditures	0	(22)	(3)
Transfers	0	0	0
Ending Balance	\$25	\$3	\$0
Encumbrances	\$0	\$0	\$0

This fund was closed in FY2018. Administratively established in 2015, the fund was used to support the Juvenile Detention Alternatives Initiative, which is designed to address the efficiency and effectiveness of juvenile detention without sacrificing community safety. Revenues were from a grant from the Annie E. Casey Foundation. Expenditures included food and other supplies for meetings, travel expenses, and consultant fees.

**Juvenile Detention
Alternatives Initiative
VII
(trust fund)**

**Administratively
established**

Financial Data for Fiscal Years 2017 – 2020 (in thousands)

	FY2017	FY2018	FY2019	FY2020
Beginning Balance	\$0	\$0	\$25	\$21
Revenues	0	50	30	0
Interest	0	0	0	0
Expenditures	0	(25)	(34)	(7)
Transfers	0	0	0	0
Ending Balance	\$0	\$25	\$21	\$14
Encumbrances	\$0	\$0	\$1	\$1

This fund meets the criteria of a trust fund and continues to serve the purpose for which it was originally established. Administratively established in 2017, the fund is used to support the Juvenile Detention Alternatives Initiative, which is designed to address the efficiency and effectiveness of juvenile detention without sacrificing community safety. Revenues are from a grant from the Annie E. Casey Foundation. Expenditures include food and other supplies for meetings, travel expenses, and consultant fees.

Memorandum of Agreement – Alcohol and Drug Abuse Division (trust account)

Administratively established

Financial Data for Fiscal Years 2019 – 2020 (in thousands)

	FY2019	FY2020
Beginning Balance	\$0	\$0
Revenues	0	200
Interest	0	0
Expenditures	0	(138)
Transfers	0	0
Ending Balance	\$0	\$62
Encumbrances	\$0	\$0

This account meets the criteria of a trust account and continues to serve the purpose for which it was originally established. Administratively established in 2019, the account is used to hold annual payments received from a fund established by the Hawai‘i Drug Demand Reduction Act for the Driving While Impaired (DWI) Court Program. Revenues are from annual payments made pursuant to a memorandum of agreement between the Hawai‘i Department of Health’s Alcohol and Drug Abuse Division and the Judiciary to provide repeat impaired driving offenders with treatment opportunities and resources to successfully complete rehabilitation. Expenditures include salary costs for a DWI Court Coordinator and DWI Court Case Manager.

**Mental Health Training
(trust fund)**

**Administratively
established**

Financial Data for Fiscal Years 2016 – 2018 (in thousands)

	FY2016	FY2017	FY2018
Beginning Balance	\$0	\$2	\$0
Revenues	5	0	0
Interest	0	0	0
Expenditures	(3)	(2)	0
Transfers	0	0	0
Ending Balance	\$2	\$0	\$0
Encumbrances	\$0	\$0	\$0

This fund was closed in FY2018. Administratively established in 2015, the fund was used to pay for costs associated with the Judiciary’s Mental Health Training Initiative for state and local juvenile justice systems. Revenues were from a grant from the John D. and Catherine T. MacArthur Foundation. Expenditures included meals for the training participants, use of motor pool vehicles, and office supplies.

**Parent Education
Special Fund
(special fund)**

Section 607-5.6, HRS

Financial Data for Fiscal Years 2016 – 2020 (in thousands)					
	FY2016	FY2017	FY2018	FY2019	FY2020
Beginning Balance	\$272	\$258	\$242	\$236	\$217
Revenues	120	118	119	111	106
Interest	1	2	1	2	8
Expenditures	(135)	(136)	(126)	(132)	(119)
Transfers	0	0	0	0	0
Ending Balance	\$258	\$242	\$236	\$217	\$212
Encumbrances	\$20	\$27	\$36	\$26	\$15

This fund meets the criteria of a special fund and continues to serve the purpose for which it was originally established. Statutorily established in 1997, this fund is used to fund Kids First, a parent education program intended to educate parents on the impact separations have on children and to help separating parties avoid future legal disputes. Revenues are from a \$50 surcharge on the initial complaint or petition filed in a matrimonial action where either party has a minor, or any family court proceeding under Hawai‘i’s Uniform Parentage Act, Chapter 584, HRS. Expenditures include security, office supplies, interpreter fees, presenter/facilitator fees, judicial education and training, cameras and computer equipment, and refreshments for participating children.

**Probation Services
Special Fund
(special fund)**

Section 706-649, HRS

Financial Data for Fiscal Years 2016 – 2020 (in thousands)					
	FY2016	FY2017	FY2018	FY2019	FY2020
Beginning Balance	\$749	\$722	\$636	\$493	\$364
Revenues	394	374	334	326	297
Interest	4	5	4	4	14
Expenditures	(425)	(465)	(481)	(459)	(466)
Transfers	0	0	0	0	0
Ending Balance	\$722	\$636	\$493	\$364	\$209
Encumbrances	\$9	\$5	\$11	\$12	\$8

This fund does not appear to be self-sustaining after experiencing a significant reduction in its cash balance due to operating losses in each year of this review period.

The Judiciary reported that recent measures were implemented to offset the fund's increasing costs and decreasing revenues. Specifically, Judiciary reported that the number of positions funded by the fund will be reduced in fiscal year 2021 and certain contract costs previously associated with this fund will be covered by the Adult Client Services Branch's general fund appropriation in the future, allowing the fund to be financially self-sustaining.

Notwithstanding, during this review period, expenditures exceeded revenues in each year, resulting in a \$500,000 decrease in the fund's cash balance and raising concerns about the fund's capacity to be self-sustaining. Based on the financial data for the review period, this fund does not meet all the criteria of a special fund and should be repealed.

Statutorily established in 2000, the fund was established to deposit probation services fees used to defray the costs of administering probation services. The fund is used to monitor and enforce terms and conditions of probation and other supervision programs for defendants and to support other duties and activities related to the supervision of defendants consistent with Section 706-649, HRS. Revenues are from fees of either \$75 or \$150 assessed on a defendant when a court sentences the defendant to probation or grants a plea deferral, and from interstate transfer fees. Expenditures include support and maintenance of a statewide probation case management system, web-based applications and assessment instruments, and training and salaries for probation staff, including an interstate coordinator.

**Rent Trust Fund
(trust fund)**

Section 666-21, HRS

Financial Data for Fiscal Years 2016 – 2020 (in thousands)					
	FY2016	FY2017	FY2018	FY2019	FY2020
Beginning Balance	\$538	\$1,603	\$2,163	\$2,105	\$282
Revenues	1,443	1,431	757	528	189
Interest	0	0	0	0	0
Expenditures	(378)	(871)	(815)	(2,351)	(173)
Transfers	0	0	0	0	0
Ending Balance	\$1,603	\$2,163	\$2,105	\$282	\$298
Encumbrances	\$0	\$0	\$0	\$0	\$0

This fund meets the criteria of a trust fund and continues to serve the purpose for which it was originally established. Statutorily established in 1984, the fund is used to hold disputed rent payments in landlord-tenant cases. Disputed rent payments are deposited into the Rent Trust Fund by order of the court and held in trust until the court orders payment of the disputed rent.

**Restitution, Family
Courts
(trust fund)**

**Administratively
established**

Financial Data for Fiscal Years 2016 – 2020 (in thousands)					
	FY2016	FY2017	FY2018	FY2019	FY2020
Beginning Balance	\$46	\$46	\$45	\$43	\$42
Revenues	0	0	0	0	0
Interest	0	0	0	0	0
Expenditures	0	(1)	(2)	(1)	(2)
Transfers	0	0	0	0	0
Ending Balance	\$46	\$45	\$43	\$42	\$40
Encumbrances	\$0	\$0	\$0	\$0	\$0

This fund meets the criteria of a trust fund and continues to serve the purpose for which it was originally established. Administratively established in 1989, the fund is used to account for donations to the Family Court's Juvenile Monetary Restitution Program. The program allows juvenile offenders to earn credits based on the minimum wage for each hour of community service performed. Revenues are donations from the Jean and William Mau Foundation. Expenditures include payment of restitution to the victims of the juvenile offenders.

**Spouse and Child
Abuse Special Account
(special fund)**

Section 601-3.6, HRS

Financial Data for Fiscal Years 2016 – 2020 (in thousands)					
	FY2016	FY2017	FY2018	FY2019	FY2020
Beginning Balance	\$630	\$503	\$344	\$206	\$125
Revenues	412	389	420	432	383
Interest	4	4	2	3	6
Expenditures	(543)	(552)	(560)	(516)	(355)
Transfers	0	0	0	0	0
Ending Balance	\$503	\$344	\$206	\$125	\$159
Encumbrances	\$40	\$49	\$46	\$13	\$27

This fund meets the criteria of a special fund and continues to serve the purpose for which it was originally established. Statutorily established in 1994, the fund is used for a broad range of programs, projects and activities statewide, which address intervention and prevention of domestic violence and child abuse, including, among other things, victim advocacy and support counseling, assistance with preparing temporary restraining orders, and providing a victim hotline. Revenues are from fees charged by the Department of Health for copies of vital statistics (e.g., birth, death, and marriage certificates) to the general public, tax contributions, and fines imposed upon persons violating orders of protection under Section 586-11, HRS. Expenditures are used to cover costs for domestic violence and child abuse intervention and prevention programs.

We note that prior to FY2020, this fund’s cash balance had been rapidly declining due to annual operating losses, raising concerns about its capacity to be financially self-sustaining. However, the Judiciary reported that it had negotiated with vendors to reduce expenditures starting in FY2020, resulting in an increase in the fund’s cash balance in FY2020.

**Supreme Court Bar
Examination Fund
(trust fund)**

**Administratively
established**

Financial Data for Fiscal Years 2016 – 2020 (in thousands)*					
	FY2016	FY2017	FY2018	FY2019	FY2020
Beginning Balance	\$243	\$307	\$334	\$398	\$430
Revenues	159	154	188	151	166
Interest	0	0	0	0	0
Expenditures	(95)	(127)	(124)	(119)	(111)
Transfers	0	0	0	0	0
Ending Balance	\$307	\$334	\$398	\$430	\$485
Encumbrances	\$0	\$0	\$0	\$0	\$0

*Judiciary reported that this fund is held outside of the state treasury and is not reported to the Department of Accounting and General Services.

This fund continues to serve the purpose for which it was created, but it functions as, and meets the criteria for a special fund, rather than a trust fund, and should be reclassified as such. Administratively established in 1994, the fund is used to account for filing fees collected from individuals who are applying to take the Hawai'i bar examination. Expenditures include costs associated with the administration of bi-annual bar examinations such as purchasing exam materials, rental of software and hardware for non-standard test accommodations, rent for the test facility, hiring an electrician to provide power in the laptop test room, court reporters, transcription fees, and security at the exam site. However, the fund's expenditures also include providing for staff to travel to grading workshops and conferences, as well as other expenses incidental to the administration of the examination.

This fund operates like a special fund, using revenues for specific purposes rather than being held in trust for designated persons or classes of persons having a vested beneficial interest or equitable ownership in the funds held, and should be reclassified.

**Supreme Court Law
Library Donation Fund
(trust fund)**

**Administratively
established**

Financial Data for Fiscal Year 2016 (in thousands)

	FY2016
Beginning Balance	\$1
Revenues	0
Interest	0
Expenditures	(1)
Transfers	0
Ending Balance	\$0
Encumbrances	\$0

This fund was closed in FY2016. Administratively established more than 40 years ago, the fund was used to account for donations to the Supreme Court Law Library and to purchase library materials. Due to a lack of financial activity, the Judiciary chose to close this fund as it no longer served the purpose for which it was created.

**Supreme Court Law
Library Revolving Fund
(revolving fund)**

Section 601-3.5, HRS

Financial Data for Fiscal Years 2016 – 2020 (in thousands)					
	FY2016	FY2017	FY2018	FY2019	FY2020
Beginning Balance	\$11*	\$13	\$12	\$13	\$13
Revenues	8	7	7	5	4
Interest	0	0	0	0	0
Expenditures	(6)	(8)	(6)	(5)	(4)
Transfers	0	0	0	0	0
Ending Balance	\$13	\$12	\$13	\$13	\$13
Encumbrances	\$1	\$1	\$1	\$0	\$0

*FY2016 beginning balance does not agree to FY2015 ending balance in Report No. 15-16 due to rounding errors made in 2015.

This fund meets the criteria of a revolving fund and continues to serve the purpose for which it was originally established. Statutorily established as a special fund in 1990, and later reclassified as a revolving fund in 1993, the fund is used to replace or repair lost, damaged, stolen, unreturned, or outdated books, serials, periodicals, and other library materials, or to support and improve library services. Revenues are from fines for overdue library materials, replacement costs for lost library materials and lost library cards, and charges for copying, faxing, and printing library materials. Expenditures include subscriptions to legal resources, purchasing updated materials, and lease payments for public copiers.

**Temporary Deposits
– Payroll Clearing
Account
(trust account)**

**Administratively
established**

Financial Data for Fiscal Years 2016 – 2020 (in thousands)					
	FY2016	FY2017	FY2018	FY2019	FY2020
Beginning Balance	\$5	\$6	\$6	\$7	\$7
Revenues	1	0	1	0	0
Interest	0	0	0	0	0
Expenditures	0	0	0	0	0
Transfers	0	0	0	0	0
Ending Balance	\$6	\$6	\$7	\$7	\$7
Encumbrances	\$0	\$0	\$0	\$0	\$0

This account meets the criteria of a trust account and continues to serve the purpose for which it was originally established. Administratively established in 1996, the account is used to temporarily hold installment reimbursements received from employees who were overpaid salaries, temporary disability benefits, and/or workers' compensation benefits through the State's payroll system. Revenues are from employees who had salary, temporary disability benefit, and/or workers' compensation benefit overpayments and elected to repay the overpaid amount on an installment basis. The funds are then disbursed back to the State Director of Finance.

**Workload and
Workflow Assessment
of Court Operations
Staff
(trust fund)**

**Administratively
established**

Financial Data for Fiscal Years 2016 – 2017 (in thousands)

	FY2016	FY2017
Beginning Balance	\$0	\$0
Revenues	11	49
Interest	0	0
Expenditures	(11)	(49)
Transfers	0	0
Ending Balance	\$0	\$0
Encumbrances	\$0	\$0

This fund was closed in FY2017. Administratively established in 2015, the fund was used to conduct a court staff workload and workflow assessment for the First Circuit Court of the Judiciary. Revenues were from a State Justice Institute grant. Expenditures included payments to a consultant hired to conduct a staff workload and workflow assessment intended to provide an accurate model of staffing needs and documentation of work processes.

Chapter 3

Observations on the Judiciary's Reporting and Accounting for Funds

As we reported in our *Study of the Transfer of Non-general Funds to the General Fund*, Report No. 12-04, special, revolving, and other types of non-general funds collectively represent about half of the State's operating budget – moneys that are not subject to the same level of legislative scrutiny as the general fund. Accurate and complete reporting of all funds, as required by law, would greatly improve the Legislature's oversight and control of these funds and provide increased budgetary flexibility. Fund reports are one of the primary means through which the Legislature tracks non-general funds. The reports are used to monitor fund balances and identify excess moneys for possible transfer to the general fund.

The Judiciary Did Not Report Non-General Funds as Required by Law

Section 601-3.2, HRS, requires the Judiciary to submit to the Legislature an annual report of each non-general fund account, including information such as the intended purpose of the fund, current program activities supported by the fund, and financial data.

Section 37-52.5, HRS, requires the Judiciary and any department that administratively establishes a new fund or account to submit a report to the Legislature. The report must be filed within 30 working days of a fund or account's creation and should include a justification for the fund or account and identification of its sources of revenue. In addition, prior to the start of each legislative session, the law also requires each department to submit to the Legislature a listing of all administratively established funds or accounts along with a statement of their revenues, expenditures, encumbrances, and ending balances for each fund or account. This report is separate and distinct from the non-general fund report required under Section 37-47, HRS.

During our review of the Judiciary's non-general funds, we noted noncompliance with statutory requirements to report financial activity and balances, as required by Section 601-3.2, HRS, as well as fund information for administratively established funds and accounts under Section 37-52.5, HRS.

As shown in Exhibit 3.1, the Judiciary had non-general funds and administratively created non-general funds with balances totaling approximately \$48 million that were not reported to the 2020 Legislature as required by Sections 601-3.2 and 37-52.5, HRS.

**Exhibit 3.1
Judiciary Non-General Funds and Administratively Created Funds Not Reported to the Legislature**

Fund Name	Fund Type	HRS 37-47 (Non-General)	FY2019 Ending Balance (rounded)	HRS 37-52.5 (Admin Created)	FY2019 Ending Balance (rounded)
Agency Fund	Trust Account	✓	\$47,442,000	✓	\$47,442,000
Detention Home Donation Fund	Trust Fund			✓	16,000
Foreclosure Assistance Program	Trust Fund			✓	13,000
Juvenile Detention Alternatives Initiative VII	Trust Fund			✓	21,000
Restitution, Family Courts	Trust Fund			✓	42,000
Supreme Court Bar Examination Fund	Trust Fund	✓	430,000	✓	430,000
Temporary Deposits - Payroll Clearing	Trust Account			✓	7,000
Total			\$47,872,000		\$47,971,000

Source: Office of the Auditor

Office of the Auditor’s Comments on the Judiciary’s Response

Comments on Agency Response

We transmitted to the Judiciary a draft of our review of its special funds, revolving funds, trust funds, and trust accounts on November 12, 2020. The Judiciary provided its written response to the draft report on November 20, 2020 (Attachment 1).

The Judiciary generally agreed with our findings and will take corrective action to ensure that all non-general funds and administratively established funds are reported to the Legislature. However, the Judiciary disagreed with our recommendation to reclassify the Supreme Court Bar Examination Fund from a trust fund³ to a special fund. Based on the information provided to us by the Judiciary about the fund, we determined that the fund meets the criteria of and operates like a special fund, using revenues for specific purposes rather than being held in trust for designated persons or classes of persons having a vested beneficial interest or equitable ownership in the moneys held in the fund. The Judiciary’s response does not provide information that supports or otherwise justifies amending our recommendation.

³ In its response, the Judiciary characterizes the Supreme Court Bar Examination Fund as a trust account, not a trust fund.



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Rodney A. Maile
ADMINISTRATIVE DIRECTOR

Brandon M. Kimura
DEPUTY ADMINISTRATIVE DIRECTOR

November 20, 2020

The Honorable Leslie H. Kondo
State Auditor
Office of the Auditor
465 S. King Street, Room 500
Honolulu, Hawaii 96813-2917

Dear Mr. Kondo:

Thank you for sharing the draft of your report, "Review of Special Funds, Revolving Funds, Trust Funds, and Trust Accounts of the Judiciary", and for providing the opportunity to meet with you and your staff on November 16, 2020 to discuss the draft report. The Judiciary has reviewed the draft report and in conjunction with the information and guidance you and your staff have provided to us, we respectfully submit the following comments:

With regard to Exhibit 3.1, Judiciary Non-General Funds and Administratively Created Funds Not Reported to the Legislature, HRS 37-47 (Non-General) and HRS 37-52.5 (Admin Created), based upon the guidance provided by you and your staff, the Judiciary will take immediate corrective action to: (1) include the Agency Fund and the Supreme Court Bar Examination fund in its annual report to the Legislature; and (2) will also submit, at least twenty days prior to the convening of each regular Legislative session, a report containing a list of all administratively established funds that will include all revenues, expenditures, transfers, encumbrances, and ending balances.

With regard to the Probation Services Special Fund, the Judiciary recognizes the substantial decrease in the Fund's cash fund balance during the review period and the effect on the financial stability of the Fund, and we have taken recent actions, as pointed out in the draft report, to ensure the financial viability and stability of the fund.

With regard to Exhibit 3.1, Judiciary Non-General Funds and Administratively Created Funds Not Reported to the Legislature, of the total \$47,971,000 that was not reported to the Legislature, \$47,872,000 are funds held outside the State Treasury. The funds held outside the State Treasury consist of two administratively established Trust Accounts as listed in the following table:

Judiciary's Response to State Auditor
November 20, 2020
Page 2

Fund Name	Fund Type	FY2018 Ending Balance	Purpose	Revenue Sources	Disbursement
Agency Fund	Trust Account	\$47,442,000	To record funds collected by the Judiciary in a trustee or agency capacity.	Appeal deposits, bails, bonds, case deposits, court costs, court expenditure reimbursements, court fees, court fines restitutions, unclaimed estates, and naturalization fees.	Disbursements from this fund are made as a result of a court ordered mandate or for government realizations.
Supreme Court Bar Examination Fund*	Trust Account*	\$430,000	To defray costs associated with the administration of bi-annual bar examinations.	Filing fees collected from those who apply to take the Hawaii bar examination.	Disbursements from this fund relate to costs associated with the administration of bi-annual bar examinations.
Total Funds Held Outside the State Treasury		\$47,872,000			

*While the Judiciary understands the recommendation in the report, the Judiciary would respectfully request that consideration be given to the continuation of classifying the Supreme Court Bar Examination Fund as a trust account with the commitment from the Judiciary to ensure compliance with the applicable requirements for trust accounts.

The Judiciary is absolutely committed to ensuring complete compliance with all applicable fiscal and reporting requirements, and we greatly appreciate the work that you and your staff have invested into this review, as well as the information and guidance that you have provided to us.

Sincerely,



Rodney A. Maile
Administrative Director of the Courts

