Audit of the Judiciary's Management of Its Resources

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

Report No. 95-1
February 1995

THE AUDITOR
STATE OF HAWAI'I

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.

4. *Sunrise analyses* are similar to sunset evaluations, but they apply to proposed rather than existing regulatory programs. Before a new professional and occupational licensing program can be enacted, the statutes require that the measure be analyzed by the Office of the Auditor as to its probable effects.

5. *Health insurance analyses* examine bills that propose to mandate certain health insurance benefits. Such bills cannot be enacted unless they are referred to the Office of the Auditor for an assessment of the social and financial impact of the proposed measure.

6. *Analyses of proposed special funds* and existing *trust and revolving funds* determine if proposals to establish these funds and existing funds meet legislative criteria.

7. *Procurement compliance audits* and other *procurement-related monitoring* assist the Legislature in overseeing government procurement practices.

8. *Fiscal accountability reports* analyze expenditures by the state Department of Education in various areas.

9. *Special studies* respond to requests from both houses of the Legislature. The studies usually address specific problems for which the Legislature is seeking solutions.

Hawaii's laws provide the Auditor with broad powers to examine all books, records, files, papers, and documents and all financial affairs of every agency. The Auditor also has the authority to summon persons to produce records and to question persons under oath. However, the Office of the Auditor exercises no control function, and its authority is limited to reviewing, evaluating, and reporting on its findings and recommendations to the Legislature and the Governor.

THE AUDITOR
STATE OF HAWAII

Kekuanao'a Building
465 South King Street, Room 500
Honolulu, Hawaii 96813

OVERVIEW

THE AUDITOR
STATE OF HAWAII

Audit of the Judiciary's Management of Its Resources

Summary

Senate Concurrent Resolution No. 259, House Draft 2 of 1994, directed the State Auditor to perform a management audit of the Judiciary's budget office and civil service personnel system. The resolution noted the Legislature's continuing concern with the Judiciary and its "purposeful disregard for established budgetary and management practices."

Our audit found weaknesses in both the Judiciary's budgeting and personnel management systems, although both systems had improved significantly since our 1989 audit. Budgeting operations, under the recently created Budget and Statistics Division, and personnel functions, under the Personnel Division, both report to the administrative director of the courts who is appointed by the chief justice with the approval of the Supreme Court.

We found that the Judiciary's budgeting system is undermined by arbitrary and unpredictable actions by its Budget and Statistics Division. The actions have no basis in written guidelines or procedures. The division restricts appropriations to create a reserve fund for contingencies. It makes "leveling adjustments" or shifts among categories within an appropriation, and it makes transfers among appropriations. These actions impair planned use of resources and lead to questions about the real budget needs of the Judiciary. We also found that the Judiciary does not consistently expend appropriations in accordance with legislative intent.

We found some continuing weaknesses in the Judiciary's financial management. It has yet to implement recommendations made in our 1989 audit that it terminate contingency purchases of equipment from savings, reconcile trust accounts, and dispose of unclaimed bails and stale and returned checks in a timely manner. In FY1993-94, it made contingent or unbudgeted purchases of $1.6 million for equipment from savings when the Legislature had appropriated only about $250,000. Its failure to reconcile trust accounts is a significant deficiency that has been brought to its attention in each of the last five years.

We found that management controls over several key areas of the personnel system are either insufficient or non-existent. The system still lacks adequate measures of effectiveness, time standards for the processing of personnel action requests, and an affirmative action plan.

The Judiciary has undermined the credibility of its personnel system by allowing some personnel actions which have created a perception of unfair or preferential treatment. These actions include the assignment of the functions of the administrative director

of the courts to a circuit court judge, the extended temporary appointment of the deputy administrative director, and the use of temporary assignments for extended periods of time.

Recommendations and Response

We recommend that the Judiciary improve its budgeting system by establishing written guidelines and criteria for restrictions, adjustments or transfers, and include in its budget requests a contingent fund similar to the one created for the governor. We also recommend that the Judiciary expend legislatively mandated appropriations in accordance with legislative intent.

The Judiciary should institute better management controls over the personnel system including, but not be limited to, establishing time standards for recruitment and classification actions and clarifying its policies and practices on temporary appointments and temporary assignments. The Judiciary should also appoint an administrative director who holds no other office or employment.

The Judiciary responded that it agrees with most of the recommendations in our report. At the same time, it disagrees with the findings that led to and supported the recommendations.

The Judiciary defends its budgeting practices as necessary to achieve a responsible and fiscally prudent budget. We believe that the same goal can be achieved with better information on priorities and written guidelines and criteria for changes to program appropriations.

The Judiciary defended the transfer of the functions of the administrative director to the first division of the First Circuit Court as being in accordance with the constitutional authority of the Chief Justice as administrative head of the courts. The Judiciary also pointed to a Citizen's Panel Report which concluded that the "administrative director should be a judge." In addition, the Judiciary stated that the statute, 601-3 HRS, is unconstitutional and should be amended by the Legislature.

We disagree. Article VI, section 6 of the Hawaii Constitution states that the chief justice may assign judges *from one circuit court to another for temporary service.* The Judiciary also misinterprets the 1986 Citizen's Panel Report. The report does state that the administrative director should be a judge, but the report also stated that the Judiciary should appoint a former judge until legislation is formulated which would allow the administrative director to be a sitting judge. With regard to the constitutionality of Section 601-3 HRS, we note that in a number of cases, courts have affirmed the fundamental rule that there is a presumption in favor of the constitutionality of a legislative enactment. A statute remains presumptively valid and constitutional until duly adjudicated to be in whole or in part in conflict with law.

Marion M. Higa
State Auditor
State of Hawaii

Office of the Auditor
465 South King Street, Room 500
Honolulu, Hawaii 96813
(808) 587-0800
FAX (808) 587-0830

Foreword

In 1989 our office conducted a management and financial audit of the Judiciary. This current management audit reexamines the budget and personnel systems of the Judiciary because of legislative concern over the Judiciary's budgetary and personnel management practices.

We wish to express our appreciation to the Chief Justice, the Administrative Director of the Courts, and other Judiciary personnel for the cooperation and assistance extended to us during the course of this audit.

Marion M. Higa
State Auditor

Table of Contents

List of Exhibits

Chapter 1
Introduction

Senate Concurrent Resolution No. 259, House Draft 1 of the 1994 legislative session directed the State Auditor to perform a management audit of the Judiciary's budget office and civil service personnel system. In a 1989 management and financial audit of the Judiciary, the Auditor had found significant problems in its budget and personnel systems. The resolution requesting this audit expressed a continuing concern with the Judiciary and its "purposeful disregard for established budgetary and management practices."

The resolution stated that the audit shall include but not be limited to the Judiciary's: 1) resource planning and allocation decision-making process; (2) process for developing the budget base and the manner in which the budget is implemented; and (3) extent to which the Judiciary has implemented the personnel management recommendations of previous legislative audits including adherence to policies and procedures governing personnel management, recruitment, reorganization, and reallocations.

Background

The Judiciary is co-equal with the legislative and executive branches of Hawaii's state government. Until the 1970s, however, the Judiciary's budget and personnel systems were included in that of the executive branch. In 1974, Act 159 separated the Judiciary's budget process from that of the executive branch. In 1977, Act 159 established a separate personnel system for the Judiciary.

Today, Hawaii's courts function as a unified system administered by the chief justice of the State Supreme Court. Under the chief justice, a central administrative office, headed by the administrative director of the courts, directs the operations of the Judiciary. Appointed by the chief justice with the approval of the Supreme Court, the administrative director oversees the Judiciary's budgeting system and its civil service (merit based) personnel system.

Budget responsibilities

In March 1994, the Judiciary announced it had reorganized the Planning, Budget and Evaluation Division into two separate divisions. The Budget and Statistics Branches were combined to create a new Budget and Statistics Division, while all planning responsibilities and the Program Evaluation Branch were combined to form the Planning and Program Evaluation Division. The main effect of the reorganization was to

elevate the Budget Branch to a division level office headed by an administrator. Although the reorganization is not yet official, budget preparation and budget execution functions were being carried out according to the reorganization during the course of this audit.

The new Budget and Statistics Division consists of three branches—a Program Budget Branch, Statistics Branch, and Purchase of Services Branch. Responsibilities for managing budget preparation and budget execution functions are carried out primarily by the acting division administrator and four budget analysts in the Program Budget Branch. The division administrator reports to the administrative director of the courts.

Personnel responsibilities

Section 76-9, Hawaii Revised Statutes established a separate system of personnel administration for the Judiciary. Act 159 of 1977 gave the Judiciary the authority to classify, reclassify, allocate, and reallocate positions and to advertise and fill positions. The Judiciary is to follow merit principles of personnel administration in accordance with law. The Judiciary is also responsible for developing a compensation plan for its employees.

Personnel functions are carried out by the Judiciary's Personnel Division under a personnel administrator reporting to the administrative director of the courts. The Personnel Division has six branches: an Administrative Services Branch, Labor Relations Branch, Classification and Pay Branch, Training and Safety Branch, Recruitment and Examination Branch, and Workers' Compensation Branch. Under a recent proposal, the Training and Safety Branch would be abolished, with the one position in the branch transferred to the Workers' Compensation Branch.

Objectives of the Audit

The objectives for this audit were to:

1. Evaluate the adequacy of the Judiciary's management of its personnel system to determine if resources are utilized efficiently and effectively.

2. Assess the adequacy of the Judiciary's management of its budget development and implementation processes to ensure resources are being used effectively and in accordance with legislative intent.

3. Evaluate the Judiciary's progress towards the implementation of the personnel and budget management recommendations of the *Management and Financial Audit of the Judiciary of the State of Hawaii.*

4. Make recommendations as appropriate.

Scope and Methodology

To accomplish our objectives, we examined the organization and management of the Judiciary. We reviewed the laws and regulations pertaining to the Judiciary's personnel and budget systems. Our work included reviewing annual reports, budget documents, minutes of staff meetings, memoranda, manuals, plans, and internal communications.

We reviewed the Judiciary's management controls over its personnel and budget systems and its compliance with applicable laws and regulations. We also reviewed literature on budget and personnel administration in state courts. As criteria and guides for our evaluation, we used management texts, administrative plans, applicable laws and regulations, the Judiciary's *Personnel Manual of Policies and Procedures*, personnel rules, budget instructions and memoranda, and its *Financial Administration Manual*.

We met with administrators and staff in the office of the administrative director of the courts, the Personnel Division, and Budget and Statistics Division, as well as administrative judges, court administrators, and staff in the circuit, family, and district courts of each judicial circuit. Our audit did not include a review of capital improvement projects or of the duties and activities of judicial staff.

Our work was performed from June 1994 through November 1994 in accordance with generally accepted government auditing standards.

Chapter 2

Budget System Findings and Recommendations

In this chapter, we examine the Judiciary's budgeting system and discuss weaknesses that we believe contribute to the Legislature's concerns. We also examine the Judiciary's implementation of our 1989 recommendations.

Summary of Findings

1. The Judiciary's budgeting system is undermined by arbitrary and unpredictable actions of the Budget and Statistics Division.

2. The Judiciary does not consistently expend appropriations in accordance with legislative intent.

3. The Judiciary has yet to implement certain recommendations that were made in our 1989 audit including the termination of contingency purchases of equipment from savings, reconciliation of trust accounts, and escheating of unclaimed bails and stale and returned checks.

Certain Management Approaches Weaken Budgeting

Budgeting is an essential management tool for focusing attention on goals and the resources needed to achieve them. The process of budgeting should result in a detailed operating plan that identifies estimated costs, needed revenues, and anticipated results. Proper budget planning occurs both from the top down and from the bottom up. Top administrators set goals, directions, and priorities for the organization. Program managers identify the services to be provided in line with overall goals, the resources needed to accomplish the services, the estimated costs, and other requirements. For budgeting to work well, top administrators must establish and communicate clearly the goals, directions, and priorities of the organization.

Once appropriations are made, budget execution should follow the approved budget plan to the extent possible, with adjustments and changes made for good reason. Budget preparation and budget execution are built one on the other. Otherwise, budgeting becomes a mere exercise and budget documents lose their value for current operations and future budgeting.

The Judiciary has designed a relatively sound mechanical process for development and execution of its budget. We found, however, that Judiciary-wide objectives and priorities are not adequately

communicated to programs so that they can focus or coordinate their funding requests. Furthermore, in executing the budget, the Judiciary's Budget and Statistics Division (B&S) makes changes to individual program budgets that are arbitrary and undermine the budgeting process. B&S restricts, shifts, and transfers appropriations. Consequently, programs have to manipulate their expenditure plans, the benefits of budgeting are lost, and the real budget needs of programs become obscured.

Overall priorities are not clearly communicated to the programs

The Judiciary's budgeting process is premised on building budgets based on the overall priorities of the Judiciary. However, the Judiciary has not given programs a sufficiently explicit overview of its direction and priorities that would help them in planning their budgets. During our audit, programs had to submit their budget requests before the Judiciary had decided on its overall budget priorities. This made it difficult for programs to align their priorities appropriately and to fully justify their budgets.

The Judiciary uses a priority system to merge requests from the individual programs into the overall Judiciary budget. Programs are supposed to prioritize their budget requests based on their individual needs and overall Judiciary priorities. Judiciary administration then evaluates the individual program budgets and tries to give each program its top priority requests. Without prior knowledge of the Judiciary's priorities, program priorities are diverse and may conflict. This makes it difficult for the Judiciary to merge the program budgets into one overall budget that it can fully justify in terms of the Judiciary's priorities.

Programs are subject to arbitrary reserve

Programs are supposed to develop realistic budgets based on their needs. However, the amounts they actually receive differ from their planned expenditures for the year.

B&S restricts appropriations to programs to create a "reserve contingency fund" for emergencies or unanticipated needs. B&S states that the restrictions are minimal—approximately 1 percent of the operating budget. Individual fiscal officers and court administrators, however, expressed concern about these after-the-fact restrictions that were not planned for during the budget preparation process. The reserve is viewed as an arbitrary restriction imposed outside of the budgetary process.

Decisions on what is restricted are sometimes difficult to understand. For example, the Judiciary maintains that the Legislature significantly underfunds its payroll. However, in FY1993-94, B&S took the entire reserve of $605,900 from the payroll allotments of programs. A majority of the FY1994-95 reserve also comes from the payroll allotment.

Questionable effectiveness of reserve

Imposing the reserve impairs an orderly budgeting process and has been questionable for a number of reasons. B&S has no written policies, procedures, or guidelines on the maintenance or use of the reserve. The B&S division administrator, with the approval of the chief justice, determines the programs and the amounts to be restricted and for what emergencies or unanticipated needs the reserves would be used. Programs have no say about the restrictions or their use.

The policy for the return of the reserve to the programs is also unclear. Programs are told to assume that any moneys restricted will not be returned. Yet the B&S administrator says that the use of the restricted moneys has never been required and it has always been returned to the originating programs after a mid-year review of the Judiciary's financial situation. This means that a program must have an emergency or unanticipated need by the middle of the fiscal year for it to receive any of the reserve funds. A budget analyst noted that all programs can request a portion of the reserve for their unmet needs and B&S tries to return the reserve to the originating program, but this is not required by policy. The B&S administrator stated he decides whether the program needs the money.

Documents on the release of the reserve during FY1993-94 show that B&S technically returned the reserves to the originating program, but immediately transferred approximately $50,700 to other Judiciary programs. In at least two cases, B&S sought approval from the originating program for the transfer, but one court administrator did not believe she could refuse the request.

Contingency fund is an alternative

Having a reserve fund for emergencies or unanticipated needs is reasonable, but the Judiciary's creation of the reserve by restricting appropriations is outside the budget process; appears to be arbitrary, poorly understood and undocumented; and lacks adequate input from program personnel.

As an alternative, the Judiciary should consider requesting appropriations specifically for a contingent fund. Section 37-71(f), HRS requires the executive budget to contain such a fund that the governor can use to meet contingencies as they arise. The governor's contingent fund serves the same purpose as the Judiciary's reserve fund, is included in the budgetary process, and is subject to legislative review. We believe that the Judiciary should include a similar contingent fund, in its future biennium budget requests to the Legislature.

Shifts occur in budget appropriations

B&S shifts budget appropriations by also making "leveling adjustments" and "housekeeping" transfers.

"Leveling adjustments"

Leveling adjustments shift appropriations before giving programs their allotments. Leveling adjustments move moneys between "A" (personal services expenses, mainly payroll) and "B" (other current expenses).

To stay within anticipated payroll expenses, B&S "leveled" each program's payroll allotments to the equivalent of an 11 percent vacancy rate, regardless of the actual vacancy rate of the program. Again, program staff had no say regarding these initial adjustments.

"Housekeeping" transfers

B&S requires all programs to operate within their allotment. To ensure that all Judiciary programs operate in the black, B&S makes "housekeeping" transfers of appropriations at the end of the fiscal year. The B&S administrator states that these transfers are open processes involving B&S and the fiscal officers of programs affected by the transfers. B&S initiates these transfers and handles and signs all required paperwork. In order to retain control of transfer priorities, B&S discourages initiation of similar transfers by the programs.

Some transfers take place after the end of the fiscal year. During the year-end closeout, the Fiscal and Support Services Division (FSS) furnishes B&S with a worksheet detailing the status of the programs, including those that exceeded their allotment. B&S determines which programs will give and which will receive a last minute transfer of funds and informs FSS.

The fund transfer process is disorganized. "Housekeeping" transfers are made late in the year without clear documentation of explanations. Although budget execution policies and instructions require written explanations to accompany each request for an amended allotment, the B&S administrator states that no written explanation have accompanied these transfers.

In one instance, moneys lapsed because the transfer was made so late that the receiving program could not expend the funds before the end of the fiscal year. In another instance, a budget analyst could not track the transferred funds within the circuit court program because funds from other activities within the program were also being transferred. In addition, several individual programs informed us or recorded fund lapses at the end of FY1993-94, apparently unaware that B&S had already transferred these funds to other programs.

Questionable base budget

Although programs receive numerous budget adjustments, the impact of these adjustments on their base budget is not examined. The B&S administrator has noted that a program may continually require transfers or infusion of funds because of poor management. B&S may also transfer funds to programs that are consistently underfunded, but it does not evaluate why programs exceed their allotment or seek to address these reasons.

We believe the numerous "leveling adjustments" and year-end transfers contribute to the Judiciary's difficulty in communicating and justifying its fiscal needs. In addition, B&S takes the lead in fiscal decisions but its budget analysts acknowledge that program fiscal officers actually have the most up-to-date information regarding their program expenditures. Program fiscal officers possess more current tracking documents than B&S' budget analysts. The individual programs are in a better position to make decisions on their fiscal requirements, but it is B&S that decides when transfers are necessary and who will provide and receive the transferred funds.

Expenditures Often Do Not Comply with Legislative Intent

One objective of our audit, based on concerns articulated by the Legislature, was to examine whether the Judiciary is implementing its budget in accordance with legislative intent. The conference committee report accompanying the Judiciary Supplemental Appropriations Act of 1994 expressed disappointment with the Judiciary's poor execution of budget policies mandated by the Legislature.

To determine the extent to which the Judiciary had complied with legislative intent, we tracked expenditures under six budget provisos from four appropriations or supplemental appropriations acts. The expenditures were difficult to track. We found that the Judiciary took no action on some, complied partially with others, or used the moneys for other purposes.

Some funds were lapsed

In two instances, some or all of the appropriated funds were lapsed to the state's general fund. In the first instance, Section 17, Act 315, SLH 1989 appropriated $45,336 for each year of the 1989-91 fiscal biennium to fund the position of chief information officer. The position was not filled until August 16, 1990. The Judiciary informed us that unused funds were lapsed. In the second instance, Section 11A, Act 301, SLH 1992 appropriated $10,000 for FY1992-93 for training in mental health issues for the criminal division judges in the First Circuit Court. The Judiciary informed us that the judges did not receive the training and that the funds lapsed.

Some expenditures cannot be traced

Section 16A, Act 301, SLH 1990 provided $92,000 to the Traffic Violations Bureau (TVB) in fiscal year 1990-91 for computers, software, and networking. Under that appropriation, $66,979 in purchase orders for equipment were actually issued. Based on the documentation provided by the Judiciary, we were unable to determine whether the remaining appropriation was expended. One of the purchase orders provided by the Judiciary to document the expenditure of this appropriation was for a computer for the First District Court, not for TVB.

Some appropriations were used for other purposes

Sections 9, 12 and 14, Act 277, SLH 1993, together appropriated approximately $1 million for each year of the fiscal biennium 1993-95 to reduce the backlog in cases as follows: (1) $530,352 each year for two circuit court judges to adjudicate felonies, (2) $251,560 each year for two district court per diem judges to adjudicate domestic violence cases, and (3) $251,560 each year for two district court per diem judges to adjudicate DUI cases.

The Judiciary informed us that the appropriations were used to establish two new divisions of the circuit court, assign a second circuit court division to the First Circuit Family Court, fund jury fees and per diem judge expenses above previously budgeted levels, and support a fourth judgeship in the Intermediate Court of Appeals (ICA). The Judiciary spent all the funds appropriated but did not specifically track the expenditures because it saw all expenditures as "extensions" of normal court operations.

We have two concerns. First, the Judiciary transferred $101,560 of the appropriation mandated for two district court per diem judges to adjudicate DUI cases to fund the establishment of a fourth ICA judgeship. This appears to be contrary to legislative intent since the ICA is not involved in adjudicating DUI cases.

Second, the Judiciary used a portion of the appropriations to cover operating deficits in some courts. For example, the Judiciary used only $138,000 of the $530,352 provided in FY1993-94 for the two circuit court judges. It used $281,850 to cover operating deficits at the First Circuit Court. Toward the end of the fiscal year, B&S transferred the remaining $110,000 to cover operating deficits in other circuit court and Judiciary programs. It is unclear how the $110,000 was spent since B&S had specific information for only $36,000 of the money.

Judiciary says provisos could not be implemented

Judiciary personnel had testified in favor of the three provisos appropriating funds for the six judges, but claims that the final wording of the provisos made compliance impossible. For example, according to one judiciary official, per diem judges cannot carry out the duties described in two of the provisos.

The Judiciary also maintains that it had informed the Legislature that it lacked the space and resources to fully implement the three provisos. The Chief Justice appointed a Project Resource Management Team to determine the availability of space and resources for the six additional judges. The team's recommendations included the establishment of two permanent and two temporary trial divisions in the First Circuit Court. Originally, the Judiciary had set aside the money appropriated through the three provisos to implement this recommendation and returned to the Legislature to request additional appropriations to fully implement the recommendation. When the Legislature would not approve additional funds, the Judiciary released most of the original appropriations to the courts to use as needed.

Administrators in the Judiciary do not agree with legislators that funds appropriated for a specific purpose under a proviso must be spent in accordance with the proviso. One administrator views the budget as a goal only, not an absolute expenditure plan. The administrator believes that budget provisos do not limit how an appropriation can be spent and that money appropriated through the budget need only be used to meet the total operating requirements of the Judiciary. According to another Judiciary administrator, the issue of whether these funds can be used for other activities is a legal question.

Transfer authority blurs the issue

The issue is confused because the Legislature, through a recurring budget proviso, has given the chief justice authority to transfer appropriations and positions among programs. This allows the chief justice to transfer any appropriation in the interests of administering an equitable and expeditious judicial process. The transfer authority does not exclude appropriations mandated by the Legislature for a specific purpose.

If the Legislature intends for its budget provisos to be taken seriously, it should clarify the proviso language to clearly state its intent and restrict the authority of the chief justice to make certain transfers. This would hold the Judiciary accountable for how the appropriation is spent. If logistical, legal, or other problems prevent the Judiciary from fulfilling legislative intent, it is responsible for so informing the Legislature.

Progress Since 1989 Audit Is Mixed

The Judiciary has made significant progress in implementing the recommendations in our 1989 audit. It has established a budgeting process similar to that of the executive branch. Even though the Judiciary is exempt from many of the provisions of Chapter 37, Hawaii Revised Statutes (HRS) on the state budget, the Judiciary generally meets its requirements. For example, the Judiciary's current *Multi-Year*

Program and Financial Plan and recent biennium budget requests, supplemental appropriation requests, and variance reports appear to meet the general requirements of Chapter 37.

Despite the progress, however, some issues raised in our 1989 audit remain unresolved. These include contingency purchases of equipment and weaknesses in internal controls.

Contingency purchases of equipment continues

The Judiciary defines a contingency purchase as a purchase of goods or services that had not been budgeted for. Our 1989 audit noted that the Judiciary had a long standing unofficial policy of not routinely budgeting for replacement equipment or ordinary or relatively inexpensive equipment unless directly related to a new position. Instead it used program savings or surplus funds to make contingency purchases of needed equipment. We recommended the Judiciary discontinue this practice and present all of its equipment needs to the Legislature. The Judiciary informed us that it adopted policies to prohibit the replacement of equipment using program savings and to ensure that savings are only used to purchase equipment essential for program services. We found, however, that program savings are still being routinely used to purchase equipment.

Contingency purchases exceed total budgeted equipment purchases by a substantial margin. For FY1992-93, contingent purchase requests totalled $1.64 million compared to budgeted equipment appropriations of $955,016. For FY1993-94, contingency purchase requests totalled $1.60 million compared to $256,687 actually appropriated for equipment purchases for the fiscal year. Contingency requests range from judicial robes and cellular telephones to recycling equipment, computers, and consultant study costs.

Some were for larger purchases. The Judiciary has used program savings to make major computer purchases. For example nine programs purchased local area networks and seven others also made significant purchases of computer equipment. The Judiciary reported in FY1992-93, that $2.87 million of computer related equipment had been purchased, including $1.11 million in unbudgeted or contingent purchases. For FY1993-94, we documented computer related contingency purchases of approximately $1.01 million. This represents substantial purchases of equipment made without legislative oversight.

A budget proviso contained in Act 299, SLH 1991, allowed Judiciary programs to use program savings to purchase computer related equipment. The B&S administrator stated that the proviso shows that although the Legislature tells the Judiciary to budget for computer purchases, it also says to purchase such equipment with program

savings. He also acknowledged, however, that the proviso is no longer in effect since similar language was not included in the fiscal biennium 1993-95 appropriations act.

Policies are unclear

Judiciary practice and policy on equipment purchases are not completely clear. Budget execution policies for FY1993-94 and FY1994-95 say that future equipment needs should be reflected in budget requests. At the same time, equipment needs are not seen as a high priority and only a certain amount is included in the Judiciary's budget request. In addition, programs have almost always had surplus funds that they used to purchase equipment. Court officials we interviewed also blame the Legislature for failing to fund equipment requests.

Contingent purchases of equipment should not be a substitute for planned and budgeted purchases. Many of the recent contingent purchase requests appear to exceed the bounds of ordinary or relatively inexpensive equipment. They represent major purchases that the Judiciary should properly plan, budget, and present to the Legislature for its review and approval.

Significant weaknesses in internal controls continue

Our 1989 audit identified numerous deficiencies in the Judiciary's financial accounting and internal control systems. Since then, the Judiciary has implemented many of our recommendations. However, problems continue with trust fund accounts as well as unclaimed bail and stale and returned checks.

Trust fund accounts

The Judiciary receives bail and appeal deposits from individuals who are awaiting court appearances. The deposits are placed in a trust fund. The Judiciary records the details in subsidiary ledgers and the totals in the general control ledger. The Judiciary's *Financial Administration Manual* requires the subsidiary ledgers to be reconciled monthly to the control ledgers.

In 1989 we found that several district courts were not reconciling the ledgers regularly and the trust fund accounts were out of balance. The Judiciary informed us then of target dates it had set for correcting the situation. However, subsequent financial audits of the Judiciary conducted by independent certified public accountants have found continued problems.

Independent financial audits for the fiscal years ending June 30, 1992, and June 30, 1993, found, as a reportable condition, the continuing failure by several courts to reconcile the trust accounts. Reportable conditions are significant deficiencies in the design or operation of the internal control structure that, in the judgment of the independent auditor, could adversely affect the organization's ability to record, process, summarize, and report financial data consistent with the assertions of management in the combined financial statements.

We note that the failure to reconcile trust accounts is an ongoing problem that has been brought to the Judiciary's attention each of the last five years.

Unclaimed bail and stale and returned checks

Section 804-2, HRS requires that all bail or bond moneys not declared forfeited and not claimed within two years of final disposition of the case shall be paid to the State after due notice and upon court order. The Judiciary's *Financial Administration Manual* provides for the escheating of unclaimed moneys in accordance with statutory provisions. In our 1989 audit, we found that most court divisions were not disposing of unclaimed bails held over two years on a timely basis. In response to our recommendations, the Judiciary again provided target dates for the disposition of the unclaimed bails. However, several courts throughout the state are still not disposing of unclaimed bails in a timely manner.

Stale dated and returned checks are also a problem. Section 523A-13, HRS states that intangible property remaining unclaimed by the owner for more than one year after becoming payable is presumed abandoned. In our 1989 report, we noted that the Honolulu division of the First District Court had approximately $29,000 in stale and returned checks with dates in excess of one year. Again, the Judiciary set target dates for disposing of all stale dated and returned checks but has not been completely successful. For example, although the Honolulu division of the First District Court has made significant progress, a financial audit covering FY1992-93 reported it still had outstanding checks of approximately $9,500.

The Judiciary's continuing disregard of deficiencies in the reconciliation of trust accounts and escheating of unclaimed bail and stale and returned checks and its failure to comply with the statutes and its own *Financial Administration Manual* reflects significant weakness in its financial management. The Judiciary should immediately correct these deficiencies.

Conclusion

The Judiciary has made significant progress in improving its budgeting system since our 1989 audit. The system could be further improved if the Judiciary gave programs clearer and more timely information about overall directions and priorities for budgeting. Without this vital information, programs have difficulty focusing and justifying their budget requests. This weakens the justification supporting the overall Judiciary budget and leads to legislative concerns about the Judiciary's real fiscal needs.

The Judiciary also needs to make budget implementation more predictable, rational, and better understood. Currently, the operations of its new Budget and Statistics Division weaken the entire budgeting system. B&S restrictions, adjustments, and transfers are arbitrary and impair planned use of resources by programs. These actions also lead to questions about the real budget base of programs.

Recommendations

1. To improve its budgeting system, the Judiciary should do the following:

    a. Include in its budget instructions to programs the overall direction and priorities of the Judiciary for the budget period under consideration;

    b. Establish and include in its budget requests a contingent fund similar to the one for the executive branch described in Section 37-71(f), Hawaii Revised Statutes;

    c. Establish written guidelines and criteria for the calculation and use of any restrictions, adjustments, and transfers of appropriations to programs.

2. The Judiciary should expend legislatively mandated appropriations in accordance with legislative intent.

3. The Legislature should clarify proviso language to clearly state its intent in making appropriations to the Judiciary and tighten the authority provided to the Chief Justice to transfer certain appropriations.

4. The Judiciary should budget for all of its equipment needs and present them in its budget request to the Legislature. It should comply with its policy of not using program savings to purchase equipment.

5. The Judiciary should ensure that all trust account subsidiary ledgers are regularly reconciled to their general control ledgers and immediately investigate and correct any differences discovered.

6. The Judiciary should escheat unclaimed bails, stale dated checks, and returned checks in accordance with the provisions of the Hawaii Revised Statutes and the Judiciary's *Financial Administration Manual*.

Chapter 3

Personnel System Findings and Recommendations

This chapter presents our findings and recommendations on the Judiciary's personnel system. The chapter reviews recommendations from our 1989 audit, notes the Judiciary's progress in implementing the recommendations, and discusses areas that still need improvement.

Summary of Findings

1. The Judiciary's personnel system has improved substantially, but the Personnel Division still needs to institute stronger management controls in certain areas.

2. The Judiciary has allowed some personnel actions that have created a perception of preferential treatment and self-interest for its top administrators, thereby undermining the credibility of the personnel system.

3. Training for non-judicial employees is still insufficient.

Some Recommendations from the 1989 Audit Were Not Implemented

The Judiciary's personnel system has improved since our 1989 audit. As we recommended, it has developed organizational policies, clarified the role of the personnel administrator, and established functional statements for the Personnel Division. In addition, it has completed a manual of policies and procedures for personnel transactions. The Personnel Division has also reduced the backlog in its Classification and Pay Branch, reduced the time to fill vacant positions and process personnel action requests, and eliminated the backlog in filing performance evaluations.

The Judiciary still needs better management controls over its personnel operations. The Personnel Division lacks useful measures of effectiveness that would inform management of how it is doing. Without adequate performance measures, the Personnel Division does not know where problems may be occuring and where improvements are needed. In addition, the Personnel Division has yet to implement time standards for classification and recruitment actions, properly classify some clerical positions, and implement an affirmative action program.

Time standards are needed as a management control

Our 1989 audit of the Judiciary recommended that the personnel administrator develop time standards for classification and recruitment actions. The personnel administrator reports that "time standards for classification actions have been developed and are in place. The Recruitment Branch has developed a tracking form that has identified problem areas and some of the unnecessary steps which has shortened the processing time to fill vacant positions."

However, we found no evidence of any time standards for either classification or recruitment actions. Personnel employees have reported that time standards have not been implemented for their particular personnel actions.

Employees have also complained that the Personnel Division shows preferential treatment by being more timely with requests from some than others. In reviewing requests for classification actions, we found variations in processing times, but no discernible pattern that would suggest preferential treatment. However the failure to implement time standards or communicate any performance measures opens the office to charges of arbitrariness.

For example, according to the Judiciary's *Personnel Manual of Policies and Procedures* the Classification Branch is supposed to give divisions/ programs a periodic report on the status of all their classification requests. However, the branch has not done this. The branch could establish accountability for itself, improve communication, and give programs better service if it distributed regular status reports on classification requests.

Classification still needs management attention

In 1989 we reported numerous problems with the Judiciary's personnel classification system. The number of position classes had proliferated, some class differences were meaningless, and often personnel performed functions that were not related to their classification.

The Judiciary contracted with a consultant to review its classification system. As a result of the study, the Judiciary instituted a new position classification system in 1991. Despite changes in the classification system, Judiciary employees charge the Classification Branch with delaying decisions or making arbitrary and capricious decisions.

For example, in 1989 we had found that differences in the SR (salary range) rating of circuit and district court clerks were questionable. The 1991 consultant's study also recommended that the Judiciary address this issue. The Judiciary has made some adjustments, but district court clerks continue to have lower SR ratings based on questionable grounds such as frequency in court(see Exhibit 3.1). Salary steps for district court clerks are two to three steps lower than those of circuit court clerks even though they perform similar functions.

Exhibit 3.1
Salary Ranges

Circuit Court Clerks	SR	District Court Clerks	SR
Circuit Court Clerk I	SR 17	District Court Clerk I	SR 15
Circuit Court Clerk II	SR 20	District Court Clerk II	SR 17
Circuit Court Clerk III	SR 22	District Court Clerk III	SR 19

An in-depth study of the actual duties and tasks of each position must be undertaken to ensure equity.

Change classification system

As part of any in-depth study, the Judiciary should consider changing the way positions are classified. Currently, classification is based upon individual narrative descriptions of every position in the Judiciary. This practice is cumbersome, time consuming and, as noted above, may result in job classification distinctions that are questionable.

The Judiciary's classification system organizes classes into four categories—clerical, professional, blue collar, and administrative. The system has 286 classes for 1,384 employees or approximately one classification for every five employees. The number of classes in each category varies: from 114 clerical classifications for 913 clerical employees to 20 administrative classifications for 24 administrative employees, or almost one separate class for each administrator. Reducing the number of classifications could improve the effectiveness of the classification branch.

Move to broad banding

We believe that the Judiciary could manage its personnel resources more effectively if it moved to a broad banding system. Broad banding reduces the number of job classifications by classifying work rather than positions. Salaries are linked to skill and knowledge rather than position descriptions.

The National Academy of Public Administration has developed a model system for the federal government. Some states have adopted this model. Broad banding simplifies classification and ties salary more closely to performance. Key features of broad banding include fewer grade levels and titles, wider salary ranges based on market pricing and pay equity, career tracks for managerial and technical personnel, and skill- and knowledge-based pay for nonmanagerial employees.

For example, clerical positions have certain common job requirements, skill levels, and training needs. These characteristics are independent of the location of the position. Under broad-banding, a series of common clerical classifications would be developed rather than separate classifications for district or circuit court or judicial and non-judicial positions.

Broad-banding also uses wider salary ranges that give line managers the flexibility to make salary adjustments without having to reclassify positions. It fosters career development and reduces the layers of management within an organization.

In conjunction with broad banding, the Judiciary could consider developing an automated classification system. The U.S. Navy instituted an automated position description generator in 1986. Line agencies using this program can generate position descriptions "in a matter of minutes" by answering computer generated questions. The majority of classification actions can be completed in three to four working days.

The Judiciary has begun to take some steps toward broad banding. Recently, it abolished eight classes in the judicial clerk series. The Judiciary could do a great deal more toward improving the efficiency and manageability of the classification process.

Review of classification actions conflicts with rule

According to the *Personnel Manual of Policies and Procedures*, employees affected by a classification action are entitled to request an administrative review of the action or to appeal the action to the Judiciary Appeals Board. Where an administrative review is requested, the personnel administrator reviews the request and recommends the appropriate action.

The policy of having the personnel administrator review the request for administrative review conflicts with the Judiciary's Personnel Rule 22-13-6(d). This states that requests for administrative review of classification actions are to be filed with the administrative director of the courts.

We believe that it is a conflict of interest for the personnel administrator to review a decision made by his own division. Employees in other divisions may not perceive this to be fair. The Judiciary should amend the manual to require requests for administrative reviews to be filed by the administrative director of the courts who will review the matter and recommend action.

Affirmative action plan is still not adopted

Our 1989 audit recommended that the Judiciary establish an affirmative action plan and a grievance procedure for complaints relating to equal employment opportunity.

The Judiciary hired an affirmative action officer in December 1990. This position, located in the Staff Attorney's Office, is responsible for developing and implementing the affirmative action plan; providing training to Judiciary employees on equal employment opportunities, affirmative action, and applicable state and federal statutes; and reviewing complaints of discrimination filed by the employees. The Judiciary has adopted a draft affirmative action plan but has yet to adopt a final plan.

Some Appointments and Assignments Undermine Credibility of Personnel System

The Judiciary recognizes the importance of maintaining its integrity. It has stated that an independent and honorable judiciary is indispensable to justice in our society. It has issued a code of conduct for judges to ensure public confidence. However, some of its recent personnel actions undermine public confidence. These actions have included the appointment of top two administrators and the use of temporary assignments.

Our 1989 audit noted that the Judiciary had no policies on how its top administrators are selected and appointed. This was of concern because several administrative appointments made at that time had met with controversy. The issue is still of concern because there are still no policies on the selection of the Judiciary's top administrators. Furthermore, appointments of the administrative director of the courts and the deputy administrator have again met with controversy. The appointments bring into question basic principles of fairness, equity, and impartiality.

These two positions are clearly important. The administrative director of the courts assists the chief justice in administering the entire Judiciary. The administrative director is also responsible in particular for administering the Judiciary civil service and compensation systems and supervises directly the personnel administrator of the Judiciary. The deputy administrative director assists the administrative director of the courts and is responsible for the efficient operation of the courts and all judicial business. The administrative director and deputy director are responsible for the overall administration of the Judiciary's personnel system.

Controversy over the assignment of functions to the administrative director

In August 1993, the chief justice ordered all administrative operations that report to the Office of the Administrative Director to report to Judge Daniel G. Heely. Judge Heely is the first judge of the Criminal Division of the First Circuit Court. The chief justice also ordered the functions of the Office of the Administrative Director to be transferred to the First Division of the First Circuit Court. Documents and directives from the Office of the Administrative Director are now issued by the judge signing "for the Office of the Administrative Director." This unusual arrangement appears to be an accommodation to allow the judge to retain benefits accruing to judicial personnel.

Controversy arises, however, because the arrangement appears to violate Section 601-3 HRS which states that "the administrative director of the courts shall hold no other office or employment." Some view the judge as holding two offices—that of a judge in the First Circuit Court as well as that of the administrative director of the courts. The fact that the judge physically occupies the office space of the administrative director adds to the impression that he is, indeed, the administrative director. The Judiciary appears to have been aware of the problems it would face with the *appointment* of the judge to the director's position. The order of the Supreme Court *assigns the functions* of the office to the judge. The Judiciary also requested the attorney general's approval of this scenario. In an informal verbal opinion, the attorney general responded that the assignment of duties was legal, but the appointment to the position would not be. We believe that the assignment does compromise the spirit of the law.

In addition, the transfer of functions of the Office of the Administrative Director to the First Circuit Court is clearly not intended to be taken seriously since the Judiciary has taken no further action to follow up with the reorganization steps that would routinely accompany a transfer of functions. The Judiciary has not complied with its *Personnel Manual of Policies and Procedures* which requires a reorganization whenever there is an addition, deletion, or transfer of functions.

We believe that the chief justice has the right to appoint the person he sees as the best qualified and in whom he has the most confidence. But the Judiciary of all institutions should be in strict compliance with the law. It should deal directly with this issue by abiding by the statute and appointing an administrative director who holds no other office or employment.

Temporary appointment of the deputy administrative director is questionable

The appointment of the deputy administrative director has also been questioned. The Judiciary filled the position on an interim basis for approximately four years with a "temporary appointment" of the administrator of the First Circuit Court. This appears to be contrary to

the Judiciary's personnel rules which stipulate that temporary appointments can only be made for *work of a temporary nature*. In temporary appointments, the services of an additional employee will not be required once the temporary work is completed. However, the work responsibilities of the deputy administrative director are ongoing and not of a temporary nature. Therefore, a temporary appointment for that position is not appropriate.

The temporary appointment of an interim administrative director had other adverse impacts. It resulted in unstable leadership at both the Office of the Administrative Director and the First Circuit Court. It left a vacancy at the circuit court that had to be filled, in turn, by the temporary assignment of a social service manager who did not have the minimum qualifications for a circuit court administrator.

Temporary appointments are confused with temporary assignments

The Judiciary confuses its use of temporary appointments and temporary assignments. Temporary appointments apply to non-judicial personnel and are governed by the Judiciary's Personnel Rules. They are for work of a temporary nature for a period of up to a year. Temporary assignments are for civil service personnel and are governed by the Judiciary's *Personnel Manual of Policies and Procedures* (3-5). A temporary assignment is defined as the assignment of a person by a competent authority to the duties and responsibilities of another position. The purpose of a temporary assignment is to ensure the continuance of essential functions. A temporary assignment shall not exceed 120 working days. If circumstances warrant, an additional period of assignment not to exceed 60 days may be granted.

The Judiciary treated the temporary appointment of the deputy administrative director like a temporary assignment. It extended it every two to three months for a period of almost four years. In making the temporary assignment of a social service manager to the position of circuit court administrator, the Judiciary first called the action a temporary appointment.

The Judiciary needs to clarify for itself and for all its administrators the difference between the two types of temporary personnel actions, when they should be used, and for what purposes, and implement the actions consistently.

Temporary assignments are misused

Complaints have alleged that the Judiciary uses temporary assignments to place otherwise unqualified individuals into positions so that they will gain the experience needed to qualify for the position. Some temporary assignments have been extended for unreasonable time periods. For example, the temporary assignment of a social service manager to circuit court administrator was extended 24 times from

August 1990 to April 1994 or almost four years. Several other employees have also been in temporary assignments for extended periods of time ranging from 17 months to four years. Some of them also did not meet the minimum qualifications for the positions.

Using temporary assignments for extended lengths of time can create a perception of unfair or preferential treatment. In addition, these assignments deny individuals who may be more qualified the opportunity to fill the vacant position on a permanent basis. The Judiciary should be more prudent in its use of temporary assignments. The Judiciary should also clarify its policy on temporary assignments and place a limit on the number of extensions that may be granted. We believe that a temporary assignment of 120 days with a one-time extension of 60 days for exceptional circumstances should be the rule.

Training for Non-Judicial Employees Insufficient

The administrative director of the courts is responsible for the overall training and employee development program of the Judiciary. In addition, the administrative director advises the Chief Justice on training needs and plans, and evaluates the training programs and activities of the Judiciary.

The Judiciary's training program is not sufficient, particularly for non-judicial employees. Training has either been unavailable or not applicable to the work and responsibilities of non-judicial employees. For example, employees complain they receive no training in such basic areas as workers' compensation or labor relations. Court administrators of the neighbor island circuits are particularly concerned about the lack of training for their employees.

Training will be deemphasized

The one position allocated to the Training and Safety Branch of the Personnel Office became vacant in October 1994 and will be transferred to the Workers' Compensation Branch of the office. The Personnel Office will then seek to abolish the Training and Safety Branch, and the Judicial Education and Resource Development Program (JERD) will assume the judicial and non-judicial training responsibilities.

So far, the Judiciary has no training plan for its non-judicial employees. The Training and Safety Branch developed a draft training plan that has yet to be completed. According to the director of JERD, the training plan is basic and straightforward, but the employees need training beyond the basic or generic types of training listed in the plan. However, this will have to wait because the priority for JERD, as directed by the Judicial Education Committee, is judicial training. This must be taken care of before JERD can focus its efforts on the training plan and non-judicial training.

The Judiciary should give higher priority to training and development for non-judicial employees. It should consider developing a training plan and budgeting more resources for non-judicial training.

Conclusion

We find that the personnel system of the Judiciary has improved substantially. A majority of Judiciary administrators we interviewed were either satisfied with the system or had no particular problems with it. In fact, many employees stated that the current personnel system is much better than the system of old. However, further improvements are needed, particularly in instituting better management controls over classification and personnel actions. The Judiciary should also consider moving to a broad banding classification system. In addition, appointments and assignments of administrators should be made with greater care. These further improvements should help the Judiciary continue its efforts to establish an effective and efficient personnel system.

Recommendations

1. The Judiciary should continue to implement recommendations from our 1989 audit and to institute better management controls. This should include:

    a. Establishing time standards for recruitment and classification actions;

    b. Distributing status reports on classification actions to the courts and programs;

    c. Assessing the duties and responsibilities of the district and circuit court clerk positions to ensure equity;

    d. Considering broad banding the classification system;

    e. Amending the Personnel Manual so that administrative reviews of classification actions are performed by the administrative director;

    f. Clarifying its policies and practices on temporary appointments and temporary assignments;

    g. Adopting an affirmative action plan.

2. The Judiciary should appoint an administrative director who holds no other office or employment.

3. The Administrative Director should pay greater attention to training for non-judicial staff. The Judiciary should consider developing a training plan and increase the resources allocated for this purpose.

Response of the Affected Agency

Comments on Agency Response

We transmitted a draft of this report to the Judiciary on December 13, 1994. A copy of the transmittal letter to the Judiciary is included as Attachment 1. The Judiciary's response is included as Attachment 2.

The Judiciary agreed with most of the recommendations in our report. However, it disagrees with many of the findings that support the recommendations.

The Judiciary strongly disagrees that the actions of the Budget and Statistics Division (B&S) impair the budgeting system. It says that "it makes every effort to operate in a very 'open' environment and that its objective is to produce a fair and executable budget for all programs." We believe that the establishment of written guidelines and criteria for *both the calculation and use* of any restrictions, adjustments, and transfers of appropriations to programs would improve budgeting.

The Judiciary believes that it has made a good faith effort to comply with legislative intent in the expenditure of appropriations. It does not support the concept of restricting the Chief Justice's authority to transfer funds that are appropriated through certain budget provisos.

The Judiciary states that we seek to elevate equipment requirements to an "unreasonably high priority." On the contrary, we believe that contingency purchases of equipment should not be a substitute for planned and budgeted purchases. The Judiciary disagrees with our conclusion that significant weaknesses in internal controls continue. But it acknowledges problems regarding the reconciliation of trust account ledgers and escheating of unclaimed bail and stale and returned checks. We reiterate that for the fiscal years ending June 30, 1992 and June 30, 1993, auditors found, as a reportable condition, the continuing failure by several courts to reconcile their trust accounts. A reportable condition reflects a serious problem in the internal control structure of an organization.

The Judiciary agrees that establishing time standards for recruitment and classification actions has the potential for improving personnel operations. The Judiciary also agrees that issuing status reports on pending classification actions will be helpful to the program administrators throughout the Judiciary. The first status report should be released by January 1995. In addition, the Judiciary agrees that a reassessment of the duties and responsibilities of the district and circuit court clerk positions is appropriate. A second consultant study is being

planned. The Judiciary supports the concept of broad banding the classification system and has reviewed the system for applicability. The Judiciary also agrees to complete the draft affirmative action plan.

With regard to the recommendation that the Judiciary should appoint an administrative director who holds no other office or employment, the Judiciary responded that the chief justice transferred the functions of the administrative director to the first division of the First Circuit Court in accordance with his constitutional authority as administrative head of the courts. The Judiciary also pointed to a Citizen's Panel Report which concluded that the "administrative director should be a judge." In addition, the Judiciary stated that Section 601-3 HRS, is unconstitutional and should be amended by the Legislature.

We disagree. Article VI, section 6 of the Hawaii Constitution states that the chief justice may assign judges *from one circuit court to another for temporary service*. The Judiciary also misinterprets the 1986 Citizen's Panel Report. The report does state that the administrative director should be a judge, but the report also states that the Judiciary should appoint a former judge until legislation is formulated which would allow the administrative director to be a sitting judge. With regard to the constitutionality of Section 601-3 HRS, we note that in a number of cases, courts have affirmed the fundamental rule that there is a presumption in favor of the constitutionality of a legislative enactment. A statute remains presumptively valid and constitutional until duly adjudicated to be in whole or in part in conflict with law.

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

December 13, 1994

COPY

The Honorable Ronald T.Y. Moon
Chief Justice of the Supreme Court
The Judiciary
Ali'iolani Hale
417 S. 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 Judiciary's Management of Its Resources*. We ask that you telephone us by Friday, December 16, 1994, 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 Friday, December 23, 1994.

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

ATTACHMENT 2

SUPREME COURT OF HAWAII
ALIIOLANI HALE
P.O. BOX 2560
HONOLULU, HAWAII 96804

CHAMBERS OF
RONALD T.Y. MOON
CHIEF JUSTICE

December 23, 1994

Ms. Marion M. Higa
State Auditor
Office of the Auditor
465 S. King Street, Room 500
Honolulu, Hawai'i 96813-2917

Dear Ms. Higa:

Thank you for the opportunity to respond to your draft report, *Audit of the Judiciary's Management of Its Resources*. Attached are our detailed responses to your findings and various recommendations. As you will note, there are several instances where we disagree with your findings and therefore cannot concur with your conclusions nor the recommendations which were generated as a result of them. We believe that in some instances your findings are based on incomplete or inaccurate information which seems to have led to mistaken conclusions. In those instances where we have identified conclusions and recommendations that are inappropriate based on information which has been provided to you in our responses, we strongly urge you to consider either amending or deleting such conclusions and/or recommendations. For those conclusions and recommendations with which we do agree, we have noted our agreement and included a statement as to our intent to implement various changes.

We appreciate your review of the progress which the Judiciary has made in regards to implementing recommendations offered during the 1989 audit of the Judiciary. We also appreciate your acknowledgement that in many instances substantial progress has been made in various areas.

The Judiciary is committed to providing the people of Hawai'i with the highest level of judicial services possible. We appreciate the work which has been done by the

Legislative Auditor in pointing out any deficiencies which exist in the Judiciary and look forward to working with the Auditor and the members of the Legislature in developing a Judiciary which we can all be proud of.

Yours very truly,

Ronald T. Y. Moon
Chief Justice, State of Hawai'i

Attachments

The Judiciary's Response To
"Audit of the Judiciary's Management of Its Resources"
December 1994

Introduction:

In most instances, our responses are organized so that they correspond to a specific recommendation or finding in the report. For the sake of easy reference, we have included the appropriate page number on which the finding or recommendation is included prior to our response. We have not responded to all findings, but, just to those which we found particularly significant either from the standpoint of our agreement or disagreement.

Chapter 1: Introduction

"Background": Page 1

"Objectives of the Audit": Page 2

"Scope and Methodology": Page 3

The Judiciary has reviewed the sub-sections of the report outlined above and has identified no discrepancies in the information included.

Chapter 2: Budget System Findings and Recommendations
"Summary of Findings": Page 5

The Judiciary strongly objects to the Auditor's use of terms such as "undermined", "arbitrary" and "unpredictable" as being inconsistent with the professionalism with which the Budget and Statistics Division carries out its responsibilities. Further, use of such terms suggests a recklessness on the part of the Judiciary in the management of its resources.

While we acknowledge that the communication process can be improved between the Budget and Statistics Division and the other Judiciary programs, the summary's first finding is inconsistent with what we believe to be basic facts. Three times a year, the Budget & Statistics Division conducts a statewide review of the budgetary process. These reviews include the Chief Justice, the Administrative Director of the Courts, the Deputy Administrative Director, the administrative judges, court administrators and family court directors from each court, and the individual program administrators and fiscal officers from each program. The meetings are designed to enhance full understanding of the budgeting process and address the current issues that are important for the effective operation of the Judiciary. In brief, the first meeting held in late spring addresses the impact of the recently adjourned legislative session on the Judiciary's budget. This meeting also addresses the problems and issues associated with closing out the current budget year such as fund shortages, year-end priorities, and other matters. The second meeting, held in mid-summer, addresses budget execution issues and planning for the forthcoming budget cycle. Finally, the third meeting held in the fall addresses the budget recommendations to be presented to the upcoming Legislature in addition to the programs' current execution status. The meetings are open; and there is full opportunity for all participants to present their views, concerns, and comments. Participants have full access not only to the Budget Administrator, but the Administrative Director, the Deputy Administrative Director and the Chief Justice. Budgeting, by its very nature, is inherently a process of prioritization which some managers may consider "arbitrary" as they advocate their programs, but which are necessary in order that the very limited resources can be allocated among a number of imminently worthy program activities. To the extent possible, factual data and objective reasoning are injected into the resource planning and allocation decision-making process. In the end, however, "difficult" (not arbitrary or capricious) decisions must be made to ensure the availability of funds and the continued operation of all Judiciary programs which have been authorized by the Legislature.

On the issue of expending appropriations in accordance with legislative intent, the Judiciary believes that it has made a good faith effort to comply with such intent.

The dynamics of the operating environment have sometimes led to the lapsing of certain funds that were appropriated for specific purposes and the reallocation of other funds. In some cases, as in the backlog reduction effort, the approach had to be modified, but the Judiciary diligently continued to pursue the legislative guidance to achieve a reduction in the caseload backlog, and has made, in fact, dramatic progress, particularly in the case of domestic violence and circuit court criminal actions. A plan of action to deal with the DUI backlog was put on hold in anticipation of a Supreme Court ruling on the issue of penalties. The Supreme Court's recent decision in this area clears the way for dealing with the DUI backlog.

The Judiciary also feels that the issue of contingency purchases of equipment was misrepresented. The Auditor seems to suggest that equipment requirements be elevated to an unreasonably high priority, so that all program requests would be included in the budget. The Auditor failed to consider that the Judiciary works extremely hard at submitting a responsible and prudent budget that allows it to accomplish its total mission. In these difficult economic times, this means validating only the most urgent of all program budget requests without giving undue emphasis (and an unproportionately large amount of a very limited appropriation ceiling) to any single area, such as equipment. The audit further fails to consider that the fiscal years reviewed were difficult funding years, not only for the Judiciary but also for the entire State. Program requests were reduced significantly in preparing the budget prior to its submission to the Legislature which subsequently approved only a small portion of these requests. In its 1993-95 biennium request to the Legislature, the Judiciary submitted a zero growth budget that included no new requests. As a result, no new equipment requests were included. Finally, and perhaps most important, the Auditor fails to note the benefits gained through the use of savings for legitimate requirements, thereby eliminating the need for higher appropriation levels and the consequent increased potential for lapsing of funds.

This section of the audit also discussed the "reconciliation of trust accounts and escheating of unclaimed bails and stale and returned checks", These are fiscal issues and have nothing to do with the Judiciary's budgeting system. The Judiciary's combined fiscal and budget functions were reorganized into separate activities on December 14, 1989. In reality, trust fund accounting and escheating procedure is the responsibility of the Judiciary's Fiscal and Support Services Division and the fiscal staffs in the various court programs. The Budget and Statistics Division has no responsibility for these functions. The Judiciary's concern stems not from the identification of this deficiency, as such, but rather in its placement and the implication that the Budget and Statistics Division is in a position to bring about improvements in the Judiciary's fiscal/accounting processes.

"Certain Management Approaches Weaken Budgeting": Page 5, 6

Contrary to statements in the audit report, the Budget and Statistics Division does not make changes to a program's budget without advising the program administrator and definitely not without obtaining the express approval of the Administrative Director and the Chief Justice. The Budget and Statistics Division makes every effort to operate in a very "open" environment; however, it is unrealistic to expect that they can please all administrators and programs, especially in these difficult economic times. Nevertheless, the Judiciary's objective is, and has always been, to produce a fair and executable budget for all programs, not merely for programs with strong advocates.

The Auditor's reference to manipulation of expenditure plans is a misrepresentation of our requirement for programs to develop realistic expenditure plans. Programs are required to submit an expenditure plan which is balanced against the appropriation that is available, as opposed to an expenditure plan based on a program's "needs" which may exceed the resources that are available.

The Auditor criticizes the Budget and Statistics Division for making adjustments to program requests, but fails to consider two very critical points. First, the Judiciary allows the programs to make submissions unconstrained by state economic conditions so that the total needs of the Judiciary can be evaluated. Second, and perhaps most important, the Auditor fails to consider that all adjusted requests are returned to the program for reassessment and prompt resubmittal prior to final approval by the Administrative Director and the Chief Justice.

"Overall priorities are not clearly communicated to the programs": Page 6

As previously indicated, the Judiciary's priorities are openly discussed in the statewide budget meeting that addresses the budget development instructions. Judiciary-wide special interest items are presented in writing along with the criteria for evaluating the individual request's potential impact on the Judiciary. The evaluation criteria are based on the goals and mission of the Judiciary.

"Programs are subject to arbitrary reserve": Page 6

The Auditor refers to the budget restrictions being "after-the-fact restrictions" that were not planned for during the budget preparation process. This is incorrect. These restrictions are a part of the budget process as all legislative reductions to the Judiciary budget requests are also part of the process. The Auditor seems to suggest that the Chief Justice should not exercise the same prudent management actions that the Governor finds necessary. Because of difficult economic conditions, the Governor

has made several "after-the-fact" major restrictions to the Executive Branch programs during recent years. To not take any action to insure the financial health and the viability of the Judiciary to meet unexpected program requirements would certainly not be prudent and, in fact, would be a matter of grave concern. The budget execution process is a dynamic one, influenced by factors which may not have been foreseen at the time that funds were appropriated.

"Questionable effectiveness of reserve": Page 7

The Auditor fails to note that both the necessity for the reserve (to assure that the Judiciary can meet any unexpected unprogrammed requirements in the least disruptive manner possible); and conditions under which the reserve is returned to programs are fully explained during the statewide meetings which involve all administrators. Written information is also distributed to all administrators.

The Auditor seems to suggest that it is improper to advise programs that restricted funds may not be returned. The purpose of the reserve is to provide for the unexpected situation or an emergency; to assume the full return of the restricted funds would be inconsistent with the purpose for the reserve and not be fiscally sound. The Judiciary's administration has been very forthright with the programs concerning the need for, and the timing of the return of these restricted funds. The fact that all of the funds have been returned to the programs to which appropriations were authorized clearly support the fact that management does not misuse these reserves.

The audit's inference that the use of payroll accounts is not an appropriate source to obtain this reserve ignores basic facts. Approximately 65 percent of all Judiciary appropriations are for payroll. Furthermore, there are equally urgent requirements such as purchase of services (a legislative special interest area and the second largest single item in the Judiciary's budget), jury-related costs, and other items that must be funded from the balance of the resources available. The reference to the Judiciary obtaining "the entire reserve of $605,000, from the payroll allotments of programs," fails to consider significant transfers from the "other operating expense" budget to the payroll fund allocation, prior to the creation of the reserve. The Auditor implies that underfunding of Judiciary payroll accounts are unsupported. In fact, payroll shortfalls are, in large part, a product of the current economically difficult times and the subsequent 1992 legislative adjustment to the Judiciary's payroll base which exceeded $3 million. This legislative action resulted in the need to transfer approximately $2 million from the Judiciary operating expense budget to provide for anticipated payroll shortfalls in FY 1994, as well as FY 1995. Furthermore, the Legislature's 1992 payroll base adjustment was followed by an

additional $2 million adjustment to the Judiciary's operating expense budget in 1993--an adjustment which has made the allocation of adequate payroll resources only that much more difficult.

The decision to create a reserve by restricting payroll funds was intended to ensure fairness and equity among all Judiciary programs by providing each and every program with at least 89 percent payroll funding. In responding to the Judiciary-wide payroll shortfall situation, this method of restricted distribution provided for a realistically achievable, though austere, level of continued program operations.

"Contingency fund is an alternative": Page 7

The Auditor's suggestion that the Judiciary establish a "contingency fund" similar to the Governor's contingency fund is a valid suggestion. However, the reference to the Governor's $150,000 fund fails to recognize that this very limited fund is not the only source of funds available for the Executive Branch to meet its unexpected and emergency program requirements.

"Shifts occur in budget appropriations": Page 8
"Leveling adjustments"

The Auditor seems to ignore one of the major responsibilities of a central budget office, which is to assure that all programs, within the resources available, have a reasonable level of funds to execute their mission. To allow some programs to be "fully-funded", while leaving other programs without the resources to accomplish their basic mission, would not be prudent on the part of the Judiciary. These "leveling adjustments" address the issue of fairness and equity and are an attempt to ensure that all Judiciary programs "share" in the effort to remain within the overall appropriated level of financial resources. This way, no one program could be perceived as being permitted to be fully staffed at the expense of other, equally important Judiciary program. Further, these adjustments were explained and fully discussed with program administrative and fiscal staff first at scheduled meetings, and, subsequently, in further discussions with the respective program budget analysts. Finally, contrary to the Auditor's statement on page 8 that, "program staff had no say regarding these initial adjustments," exceptions to the basic 89 percent funding allocation were, in fact, provided where program indications of nearly 100 percent staffing made operating at an 89 percent fund allocation level a virtual impossibility.

"Housekeeping Transfers"

The Judiciary does not agree with the Auditor's statement that the "fund transfer process is disorganized". Further, the Auditor fails to make a very critical distinction in the types of "housekeeping transfers" which are made. That is, that except for a very limited number of transfers (eight, including all year-end appropriation adjustments for FY 1994), all transfers referenced were between administrative subdivisions of Judiciary appropriations as opposed to transfers between appropriations. To the extent possible, the movement of funds between appropriations (Circuit Court, Family Court, District Court, etc.) is held to an absolute minimum consistent with management decisions at the Chief Justice level. On the other hand, movements between administrative subdivision of funds occur more frequently because of the lack of flexibility associated with relatively small programs and the need to fully provide for program operating expenses. The sole purpose of the transfers between programs is to assure the smooth functioning of these programs. The transfers are in no way driven by requirements of the central Budget and Statistics Division, except in the context of overall central management responsibilities.

Again, contrary to the suggestion by the Auditor that the "housekeeping" transfer process is disorganized, virtually all such adjustments are made as a result of requests by the central Fiscal and Support Services Division or the individual program fiscal officers. The remaining group of transfers occurs when programs have legitimate year-end requirements, but no resources. At that point, the Budget and Statistics Division will attempt to identify available resources and execute a fund transfer. In no instance during the year-end transfers, were funds taken from a program that had an executable, legitimate requirement and transferred to another program. As a final point, the transfers made at the end of the year are documented by a report that is prepared by the central Fiscal and Support Services Division and approved by the Budget and Statistics Division. It should also be noted that because of the distinction between appropriations and administrative subdivisions thereof (the funding available to individual programs), the Auditor was not looking at the appropriation level to determine if funds were lapsed or not lapsed.

"Questionable base budget": Page 8

The statements that refer to the Judiciary's "questionable base budget" ignores the fact that resource allocation recommendations must, out of necessity, be made by a central administrative body to ensure that sufficient financial resources are available to provide for the entire Judiciary operation. As the body designated by the Administrative Director to make such recommendations, the Budget and Statistics Division must recommend "when transfers are necessary and who will provide and receive the transferred funds." While the Budget and Statistics Division acknowledges

that individual programs may be "in a better position to make decisions on their (individual) fiscal requirements," the central administration must decide on the overall fiscal requirements and the welfare of the entire Judiciary. The audit report, again, totally fails to distinguish between the needs of individual programs and the need to provide a balanced program for the Judiciary as a whole. Furthermore, the statement that the Budget and Statistics Division "does not evaluate why programs exceed their allotment or seek to address these reasons," is not true. The Budget and Statistics Division continuously tracks expenditures, develops trends and tendencies, and identifies potential problem areas. Potential program deficit situations are then discussed with program administrative and fiscal staff to determine the cause and appropriate course of action, including fund transfers when necessary. Program administrators can attest to the fact that they have received, not only reports from the Budget and Statistics Division, but calls from the Administrative Director as well. The Auditor failed to note that the Budget and Statistics Office completes a Judiciary-wide payroll review every two weeks to determine how well programs are adhering to their allotment and expenditure plans (again, this represents 65 percent of the Judiciary funding). Likewise, the Budget and Statistics Office does a monthly review of all Judiciary expenditures. These reports are prepared and reviewed with the Administrative Director and Deputy Director on a recurring basis. As necessary, they are also relayed to the Chief Justice.

"Expenditures often do not comply with legislative intent"
"Some funds were lapsed": Page 9

In reference to funding provided for the chief information officer, the Judiciary can only offer that the reorganization of the Telecommunication and Information Services Division and the hiring of a chief information officer took longer than anticipated. However, it should be noted that the Legislature was made aware of this situation as noted in our 1990 Budget testimony that the funds were lapsed as required (as opposed to being diverted to fund other requirements).

With regard to the appropriation of $10,000 for the purpose of training judges in the area of mental health, it should be noted that this appropriation was originally introduced as part of House Bill 3757, during the 1992 legislative session. The Judiciary opposed House Bill 3757 on the grounds that the legislative appropriation would be too restrictive. Further, a question was raised as to the appropriateness of having certain mental health advocates provide training to a group of judges who are bound by the record when ruling. Against the Judiciary's opposition, the Legislature appropriated these funds in the form of a legislative proviso. The funds were not expended as the Judiciary did not feel that such training was appropriate.

"Some expenditures cannot be traced": Page 10

The Auditor properly notes that the Judiciary provided source documents totaling $66,976 for computers, software and networking that referenced Section 16A Act 301; however, the Auditor failed to note that the Judiciary provided documentation totaling $126,000 for Traffic Violations Bureau computers, software and networking purchases for the fiscal year. This amount in total substantially exceeded the proviso amount of $92,000.

"Some appropriations were used for other purposes": Page 10

The Judiciary has worked diligently over the past two years to comply with the "intent" of Sections 9, 12, and 14 of Act 277, SLH 1993. The results have been impressive, if not precisely as envisioned by the Legislature. Nonetheless, the provisos provided the emphasis and, to a substantial degree, the means for the improvements we can now document. The reduction of the court caseload backlog is not a simple procedure of hiring a judge and putting that person to work. The Judiciary's facilities are overcrowded, and a complete review of the process and options was necessary before courtroom facilities could be made available. The reduction of the backlog involves the entire Judiciary, and not just a single element such as a judge. The process includes, for example, calendaring; additional jurors; processing legal documents; and, in fact, the total support staff.

The Judiciary feels that it was also complying with legislative intent when it "diverted" funds to cover the requirements for a fourth Intermediate Court of Appeals judge that was approved during the 1994 Legislative session. In approving the judgeship but not providing the resources to fully fund the required actions, the Legislature tacitly acknowledged that the Judiciary would have to obtain the required resources through the transfer of existing appropriations.

"Transfer authority blurs the issue": Page 11

The Judiciary very strongly objects to the implication that it does not take legislative provisos seriously. In expending the appropriations made available to it, the Judiciary must take into account its total mission as currently defined through the constitution as well as a series of legislative mandates. There have not been enough resources to fully fund all such mandates for the past several years. Consequently, the Chief Justice must make very difficult decisions relating to the management and execution of the Judiciary's programs. The Legislature has recognized this need and provided the authority to transfer funds when necessary for operational purposes. This, however, is not an unrestricted authority, and requires full reporting to the Legislature. The Judiciary believes that it can show that it has been very cautious and

prudent in exercising this transfer authority, keeping in mind at all times basic legislative intent relating to individual program appropriations. Further, the Auditor's statement that "If logistical, legal, or other problems prevent the Judiciary from fulfilling legislative intent, it is responsible for so informing the Legislature.", ignores the fact that legislative provisos are usually drafted during the last days of a legislative session and are not discussed with impacted programs. The only way for the Judiciary to inform the Legislature of a flaw in the language of a proviso is to wait until the following Legislative session. Since many issues included in the various Legislative provisos deal with serious and current problems, the Judiciary attempts to clarify intent of a particular proviso after the session adjourns. In all cases, the Judiciary attempts, always, to comply with the spirit of all provisos, even when complying with the precise letter of the proviso is not possible.

"Progress since 1989 audit is mixed": Page 11
"Contingency purchases of equipment continues": Page 12

The Auditor's recommendation relative to this issue seems to have been driven not by a desire for the Judiciary to follow prudent management practices and to maximize the overall benefit to the Judiciary and, thus, the state, from the limited resources that are appropriated, but by the desire to show that the Judiciary failed to comply with a previous audit recommendation.

The Judiciary has no desire to avoid budgeting for equipment; and in fact, would prefer to budget for, and have all equipment requirements funded. However, this appears to be an unrealistic goal. Every year, the Judiciary reduces the program budget requests by large amounts (in the current biennium, the requests were reduced by well over 50 percent) in order to submit a fiscally prudent, conservative budget that represents the Judiciary's most urgent requirements and is consistent with the economic conditions of the state.

To require the Judiciary to limit equipment purchases to only those items included in the budget suggests that it is more appropriate to lapse "savings" than it is to apply them to urgently needed requirements. The "savings" are not generated for the purpose of purchasing of equipment; rather, they are the result of the dynamics of an operation the size and scope of the statewide Judiciary.

"Policies are unclear": Page 13

The Auditor properly notes the Judiciary policy of budgeting for equipment requirements, but criticizes the Judiciary for not including <u>all</u> program requests in the budget. The Auditor did not review the priorities assigned to the requests which are included in the budget. The Judiciary follows rigorous procedures in determining what

items are or are not included in the budget. This is not to suggest that equipment requests are not a high priority item. The function which the equipment will be used to support is reviewed in determining whether it should or should not be included in the budget.

"Conclusion": Page 15

The Judiciary strongly disagrees with the Auditor's statement that, "the operations of its new Budget and Statistics Division weakens the entire budgeting system". Efforts have been made to create an open and honest budgeting and budget execution process in the Judiciary. The current Budget and Statistics Division Administrator has made significant progress in this regard. The current budget staff has provided the leadership, the analysis, and the back-up data for the Administrative Director and the Chief Justice to make the kinds of decisions necessary to accomplish the overall judicial mission within the very limited resources available.

"Recommendations": Page 15

1. To improve its budgeting system, the Judiciary should do the following:

   a. Include in its budget instructions to programs the overall direction and priorities of the Judiciary for the budget period under consideration.

   The Judiciary will expand and further clarify its overall direction and priorities for budget requests in future budget instructions.

   b. Establish and include in its budget requests a contingent fund similar to the one for the executive branch described in Section 37-71(f), Hawaii Revised Statutes.

   The Judiciary will request a contingency fund for the Chief Justice similar to the one that the Governor currently has in its next budget (1995 supplemental budget). However, it should be noted that the Judiciary does not believe this fund will eliminate the need for future reserves. The Governor currently has a contingency fund, but still finds it necessary to restrict funds appropriated to the Executive Branch.

   c. Establish written guidelines and criteria for the calculation and use of any restrictions, adjustments, and transfers on appropriations to programs.

   The Judiciary will further expand its guidelines and criteria for calculating the use of any restrictions, adjustments, and transfers.

2. The Judiciary should expend legislatively mandated appropriations in accordance with legislative intent.

The Judiciary will continue to expend funds as legislatively mandated and in accordance with legislative intent.

3. The Legislature should clarify proviso language to clearly state its intent in making appropriations to the Judiciary and tighten the authority provided to the Chief Justice to transfer appropriations.

In some instances language used to explain a legislative proviso can be very clear, i.e: "purchase computer equipment for the Violations Bureau". In these instances it would be simple for the Judiciary to comply with the letter of the legislative proviso. In other instances, though, a legislative proviso may attempt to address a problem or issue which has not yet been clearly defined. For example, in 1993 the Legislature passed a proviso which talked about reducing the caseload backlog in domestic violence. On its face this proviso would appear to be very clear, that is, that the Judiciary should develop a program to reduce the number of domestic violence cases. The legislative proviso also appropriated funds to hire per diem judges to deal with the domestic violence caseload backlog. After reviewing the caseload backlog statistics in this area, it became clear to the Judiciary that it would be impossible to comply with the exact letter of this Legislative proviso since the backlog in the domestic violence area dealt with jury trials. Per diem judges are not authorized to conduct jury trials, therefore, in this instance, it would not be impossible to use per diem judges to deal with the domestic violence backlog. This would make it impossible for the Judiciary to comply with the exact letter of the law. The spirit of this proviso, though, was obviously clear to the Judiciary. The Legislature wanted something done about the backlog of domestic violence.

Our domestic violence backlog reduction program called for the reassignment of judges from Family and Circuit Courts. In the case of family district judges, per diem family district judges were called in to cover the calendars assigned to those judges transferred to the special backlog reduction program. If the Judiciary were forced to comply with the letter of the proviso, the success of this program would not have been possible.

Further, the recommendation as presently worded could be construed to mean that the Auditor is recommending that the Chief Justices' authority to transfer any funds should be restricted. Ms. Heather Sanchez of the Legislative Auditors Office indicated that it was not the intent of the Auditor to recommend that the Chief Justices' general authority to transfer funds be restricted. Rather, she indicated that if the Legislature wished to restrict the

transferring of funds which are specifically appropriated for a particular purpose (via budget provisos), the Legislature should "clear state its intent".

The Judiciary would suggest that if the Auditor chooses to leave this recommendation in the report, it should be reworded to avoid any misunderstanding. If it is the Auditors intent to recommend that the Legislature consider restricting the Chief Justices' ability to transfer funds appropriated via a specific budget proviso, the recommendation should be limited to "special" appropriations. We offer the following suggested language, "The Legislature should clarify proviso language to clearly state its intent in making special appropriations to the Judiciary and tighten the authority provided to the Chief Justice to transfer such appropriations".

The Judiciary though, cannot support the concept of restricting the Chief Justices authority to transfer even funds which are appropriated through certain budget provisos. As explained above problems and issues which the Legislature attempts to address via a budget proviso may not always be clearly defined. In some instances it is clear that a problem does exist, but, the magnitude of the problem may still need to be researched. Thus, we believe that it may not always be possible for the Legislature to clearly state how a problem should be addressed in a budget proviso, because they may not have enough information to define the scope or magnitude of the problem. The Judiciary, has, over the years, always attempted to comply with the spirit of the various legislative initiatives which is presented to it by way of budget provisos, bills or resolutions. If the Legislature wishes to use overly restrictive language when creating a budget proviso it may be impossible for action to be taken on a particular problem until the following legislative session since most budget provisos are finalized during the legislative conference committees at or near the end of the session. In the case of the domestic violence backlog problem outlined above, if the Judiciary were to have waited to return to the Legislature to attempt to clarify the language of the proviso, no action would have been taken to deal with the backlog for a year while the Judiciary waited for the next session of the legislature to be convened. As a practical matter, this would result in further delays in resolving these cases. This we believe, does not serve the interest of the courts, the Legislature or the people of our state.

4. The Judiciary should budget for all of its equipment needs and present them in its budget request to the Legislature, and follow its policy of not using program savings to purchase equipment.

The Judiciary will continue to budget for equipment requirements to the extent reasonable under the constrained budgetary environment that exists in the state. Equipment requests will continue to be evaluated along with other items

for inclusion in the Judiciary's overall budget request to the Legislature. Equipment requests will not be elevated to a higher priority level in the Judiciary budgeting procedure than is appropriate for the items in question compared to the other budget requests. The essential element that the Judiciary strives for is a responsible, yet fiscally prudent budget that will allow it to accomplish its constitutional mandates and to properly adjudicate matters that come before the courts.

Chapter 2: Budget System Findings and Recommendations

"Significant Weaknesses in Internal Controls Continue": Page 13, 14

While the audit acknowledges that the Judiciary has implemented many of the recommendations in the 1989 audit report, it cites only two items in concluding that there is significant weakness in the Judiciary's financial management. Considering the scope and magnitude of the Judiciary's fiscal operations, this is not a logical conclusion. The two items cited are reconciliation of trust account ledgers and escheating of unclaimed bail and stale and returned checks.

While the audit correctly states that previous audits conducted by independent certified public accountants found continued problems regarding these items, the audit does not mention that the same independent certified public accountants concluded that these items are not material weaknesses in relation to the combined financial statements audited.

"Trust fund accounts and unclaimed bail and stale and reclaimed checks": Page 13, 14

The Judiciary acknowledges its deficiencies identified in the audit report; however, it should be noted that written policies and procedures aimed at correcting these problems are in place. Thus, the actions required are in the nature of follow up and training.

5. The Judiciary should ensure that all trust account subsidiary ledgers are regularly reconciled to their general control ledgers and immediately investigate and correct any differences discovered.

6. The Judiciary should escheat unclaimed bails, stale dated checks, and returned checks in accordance with the provisions of the Hawaii Revised Statutes and the Judiciary's Financial Administration Manual.

The Judiciary concurs with both recommendations. Over the next few months, a special team of internal auditors, accountants and computer personnel will work with court fiscal personnel not only to clean up existing deficiencies, but to assure operating procedures which will lead to full compliance with existing written policies.

Chapter 3: Personnel System Findings and Recommendation

"Summary of Findings and Recommendations": Page 17

"Some Recommendations from the 1989 Audit Were Not Implemented": Page 17

Findings noted (see comments regarding recommendations on pages 24 - 27 of our responses).

Chapter 3: Personnel System Finding and Recommendations

"Affirmative Action Plan is still not Adopted": Page 21

The Judiciary is committed to equal opportunity and fair treatment for all who seek employment with and all who are employed by the Judiciary. On April 22, 1993, Chief Justice Ronald T. Y. Moon issued the Judiciary's Policy Statements on Equal Employment Opportunity and Affirmative Action, Prohibition of Sexual Harassment and Prohibition of Discriminatory and Racist Conduct and Behavior. These important policies have been distributed to and posted in Judiciary offices throughout the State of Hawai'i.

The Judiciary has also conducted sexual harassment awareness training for its judges and supervisors. In 1994, there were 32 training sessions conducted which resulted in the training of 324 supervisors and administrators. Further, 15 line employees were also trained. In addition to this, sexual harassment training was also provided during the 1993 and 1994 Spring Judicial Education sessions. In 1995, this training will be provided to other Judiciary employees. The Judiciary is also currently implementing its policies for Accommodations for Employees with Disabilities Manual.

As noted in the audit, the Judiciary has also hired an Affirmative Action Officer and has developed a draft Affirmative Action Plan. This draft plan has been referred to the Hawai'i Supreme Court's Committee on Gender and Other Fairness for review. The plan has not been adopted in final form due, in part, to the Affirmative Action Officer's having been on extended leave for personnel-related matters.

The Judiciary expects to obtain all necessary approvals of its Affirmative Action Plan in the very near future. The plan will then be published and distributed as soon as possible.

The Judiciary recognizes and supports the establishment of policies and procedures to ensure equal opportunity and fair treatment for everyone in society who has contact with Hawai'i's court system. We will continue to develop and implement these vital programs throughout the Judiciary.

Chapter 3: Personnel System Finding and Recommendations

"Some Appointments and Assignments Undermine Credibility of Personnel Office": Pages 21, 22

The Auditor acknowledges the importance of integrity, independence, and public confidence to the Judiciary; and then proceeds to impugn the integrity, endanger the independence, and erode the public's confidence in the administration of the Judiciary by attempting to render a legal opinion about the Office of the Administrative Director of the Courts. The Auditor is not competent to render such an opinion, the opinion is wrong, and the Judiciary disagrees with it -- as did the attorney general. Without explanation, the Auditor posits that recent appointments bring into question basic principles of fairness, equity, and impartiality. The Judiciary does not see how.

The Auditor charges that some appointments and assignments undermine the credibility of the personnel office, and then mentions only the Offices of the Administrative Director and the Deputy Administrative Director. Contrary to the Auditor's assertions, the transfer of the functions of the administrative director to the first division of the first circuit court was not an action taken by the Judiciary personnel office. The action was taken by the Chief Justice and the Supreme Court, in the exercise of the Chief Justice's constitutional authority as administrative head of the courts. The action was taken after due consideration of the requirements of HRS § 601-3 and its obvious conflict with authority granted to the Chief Justice under article VI, § 6 of the Hawai'i Constitution. The transfer of functions was made after a selection committee, not the personnel office, reviewed dozens of applications, interviewed candidates, and found no candidate who had the combination of administrative skills, knowledge of the Judiciary, knowledge of judicial process, and knowledge of the law that the Chief Justice and the Supreme Court thought would best fit the needs of the Judiciary.

The lengthy and difficult search for a non-judge administrative director affirmed the conclusion of the 1986 Report of the Citizens' Panel on Judicial Administration in the State of Hawai'i that the administrative director should be a judge. The Citizens' Panel recommended that legislation should be sought that would "provide that the Administrative Director of the Courts shall be a sitting judge from either the Supreme Court, the Intermediate Court of Appeals, or the Circuit Court." The Citizens' Panel did not analyze the statute, HRS § 601-3, to determine whether it was

constitutional, and the Legislature did not amend the statute after the 1986 panel report. Given the problems in the administration of the state courts, with huge backlogs of cases at all levels and with clerk's offices and administrative offices besieged by unmet demands for services, it was obvious that even a skilled non-judge administrator would have had too much to learn about administering the courts of Hawai'i and would have had to rely on on-the-job training. The Judiciary could not continue with non-judge administrators and the problems associated with on-the-job training for such a vital post. The judge to whom the administrative tasks were assigned was the one best qualified to perform them. The Chief Justice had full authority under the state constitution to assign the functions of the Office of the Administrative Director to the judge of the First Circuit Court.

The Auditor asserts that controversy arises because the arrangement appears to violate HRS § 601-3; at the same time she acknowledges the informal attorney-general opinion that there was no violation of HRS § 601-3. The Auditor did not review the constitutional provision regarding the Chief Justice's administrative authority or its history and did not mention the well understood principle in law that constitutional provisions prevail over conflicting statutory provisions. The Auditor's report shows the Auditor's complete misunderstanding of the Chief Justice's constitutional authority as chief administrator of the Judiciary. Although the form of the Auditor's report acknowledges that the Judiciary is a co-equal branch of the state government, the substance of the report pertaining to the Office of the Administrative Director would, if heeded, make the Judiciary subservient to the Legislature. The state constitution plainly does not intend such a result. It gives final authority to make decisions about the administration of the Judiciary to the Chief Justice. The state constitution fetters the Chief Justice's selection of an administrative director only to the extent that it requires the approval of the Supreme Court and, as for all other state officers, that the person selected must not have been convicted of any act, attempt, or conspiracy to overthrow the state or federal government.

The Auditor's report attempts to bind the Chief Justice to the selection of a non-judge administrative director. This it cannot do. In similar circumstances, presumably mindful of article III, § 12 of the state constitution, the courts have declined to interfere with the administration of the houses of the Legislature. For example, the courts refused to enter into the dispute over who should be Senate President in the 1994 Legislature. The Auditor should show similar constitutional restraint about the administration of the Judiciary. Out of respect, the Judiciary requested that the Legislature unilaterally amend HRS § 601-3 to reflect the requirements of the state constitution. Neither house gave the bill a hearing.

The Auditor's speculation that the assignment of the functions of the Office of the Administrative Director to a judge of the first circuit court was "an accommodation to allow the judge to retain benefits accruing to judicial personnel"

is wrong, unfounded, and inappropriate. It is this kind of baseless speculation, not the lawful exercise of constitutional authority, that undermines public confidence.

The assignment of the functions of the Office of the Administrative Director resulted from (1) the Judiciary's need for a judge to lead the administrative side of the Judiciary, (2) the particular qualifications of the judge selected to exercise the functions of the office, and (3) the desire to avoid violating an unconstitutional statute pending its amendment. The assignment of functions was a lawful exercise of the Chief Justice's constitutional authority, and the Auditor has neither the authority nor the qualifications to second guess that decision. The statute is unconstitutional, and the Legislature should take immediate steps to amend it to reflect the fact the Legislature is not constitutionally permitted to interfere with the Chief Justice's selection of an administrative director.

The Auditor's conclusion that "the transfer of functions of the Office of the Administrative Director to the First Circuit Court is clearly not intended to be taken seriously" is likewise wrong. The transfer of the functions of the Office of the Administrative Director was plainly intended by the Chief Justice to be taken seriously. Adherence to that decision is required by order of the Supreme Court. Judiciary employees and all others who deal with the Judiciary certainly understand that proposition, even if the Auditor does not. The Chief Justice's decision is not subject to legislative review, and it is entirely inappropriate for the Auditor to question the motive or intent of the Chief Justice or the court in this manner. At the time of the transfer of functions, of course, it was believed that the Legislature would amend the statute to comply with the constitution. The Legislature failed to act.

The Judiciary has acted reasonably, expeditiously, and constitutionally in selecting the wisest course of action to accomplish its mandated mission. The prerogatives of the Chief Justice as the administrative head of a separate and co-equal branch of government, under the circumstances outlined above, do not and cannot justify the criticism of the Auditor whose observations and rationales are without merit.

Chapter 3: Personnel System Findings and Recommendations:

"Temporary Appointment of the Deputy Administrative Director is Questionable": Pages 22, 23

The position of Deputy Administrative Director of the Courts was established pursuant to Act 82, Session Laws 1976. This position was created as a civil service position subject to chapter 76 but not chapter 77 of the Hawaii Revised Statutes.

On November 1, 1975, Mr. Lester Cingcade, then Administrative Director of the Courts, appointed Mr. Tom Okuda as Deputy Administrative Director of the Courts. The Judiciary terminated Mr. Okuda on July 23, 1990. The Chief Court Administrator of the First Circuit Court received a temporary appointment to fill the position of deputy administrative director of the court in August 1990. A temporary appointment was used as the Judiciary envisioned amending the statute to make the deputy administrative director's position completely exempt from civil service. Further, it was not expected that the change to the statute would take longer than a year to accomplish, therefore, the temporary appointment of the Circuit Court Administrator was not originally envisioned to extend beyond a year as a temporary appointment into a civil service position. When the Legislature amended section 601-3 of the Hawaii Revised Statutes (See Act 130, Session Laws 1991), and the status of the Deputy Administrative Director of the Courts position was changed from civil service to exempt, the Judiciary could have changed the type of appointment being used. Since the Chief Justice has the authority to appointment whoever he or she wishes into an exempt position, the Judiciary did not believe that it was necessary to change the type of appointment being used.

The chain reaction which this appointment had on the Circuit Court administrative office is acknowledged. But, had the Judiciary appointed the Chief Circuit Court Administrator as the permanent exempt Deputy Administrative Director of the Courts, it is unlikely at that time that the individual would have relinquished his Civil Service status since the Judiciary Personnel Rules allow the granting of a leave without pay for the purpose of accepting such an exempt position in the Judiciary. Therefore, the end result, "instability" in the Circuit Court would have existed regardless of the type of appointment used to fill the Deputy Administrative Directors' position.

Chief Justice Moon appointed the former Chief Court Administrator of the Circuit Court as the permanent exempt Deputy Administrative Director of the Courts in August of 1993. The Chief Circuit Court Administrator made a decision to resign from his civil service position with the Circuit Court thereby enabling the Judiciary to fill this position of a permanent basis in March of 1994.

Chapter 3: Personnel System Finding and Recommendations

"Training for Non-Judicial Employees Insufficient": Page 24

This section of the audit report discusses employee training in the Judiciary, and states,"...the Judiciary has no training plan for its non-judicial employees." The audit further states, "[T]he Training and Safety Branch developed a draft training plan that has yet to be completed. According to the director of JERD (Judicial Education and Resource Development Program), the training plan is basic and straightforward, but the employees need training beyond the basic or generic types of training listed

in the plan. However, this will have to wait because the priority of JERD, as directed by the Judicial Education Committee, is judicial training."

These statements by the Auditor are misleading in that they suggest that the Judiciary is disinterested in training its non-judge employees, and that it lacks a genuine commitment to provide training for its employees. This is not true.

Training of Judiciary employees has been one of the Judiciary's concerns since at least 1983. The Management and Financial Audit of the Judiciary of the State of Hawaii compiled in January 1989 specifically noted a deficiency, and recommended that:

> [T]he Judiciary examine its employee development and training program to bring activities in line with existing policies in the areas of judicial and nonjudicial training...The judicial education program should be upgraded to include a more comprehensive orientation program for new judges and orientation and training for per diem judges; the personnel office should have a greater role in coordinating all nonjudicial training. It should conduct a needs assessment in coordination with program managers. The Judiciary should consider making training a separate budget item for all programs....

Audit, p. 106. The Judiciary responded to the 1989 Audit's recommendations in the area of training, convening a Judicial Education Committee which drafted a judicial education plan. The Personnel Office also drafted a plan for nonjudicial employees and hired an educational officer to coordinate nonjudicial training, and began holding orientation sessions for new employees. Follow-up on the Management and Financial Audit of the Judiciary, December 1990, p.4. The Follow-up further informed the Governor and Legislature that "[T]he Judiciary has hired a judicial education officer.... The [Personnel Office] training officer has conducted an initial needs assessment and the findings are being incorporated into a comprehensive training plan." Audit, Appendix, p.23.

As a point of information, the Judicial Education and Resource Development (JERD) program has only been functioning with the mandate to train non-judicial employees since November of 1994. The current Director of JERD was hired in September, 1994. Her staff of one professional and one clerical employee was hired in November. It should also be noted that when the Auditor made contact with the current Director, she had only been on the job for a short period of time and her staff had not yet been hired. At the time of the interview, the priority of the Judicial Education Committee was judicial training. As noted above, this priority has since been adjusted to include the training of non-judicial employees, and JERD has been directed to take over responsibility for all training needs of Judiciary employees, judges and non-judicial employees alike.

As a point of further information, the current JERD director has recently commenced a process to determine the training needs of non-judicial employees. A group of fourteen people came together on two occasions to brainstorm ideas and to formulate a mission statement, goals and objectives for JERD with regard to the training of non-judicial employees as well as judicial training. All facets of the Judiciary were represented on this ad hoc committee: Court administrators, representatives from Administration, Personnel, Adult Probation, Alternative Dispute Resolution, Gender and Other Fairness, District Court, Circuit Court, Planning and Evaluation, etc. Only the neighbor islands were not represented at these meetings, although key persons there were kept fully informed and encouraged to contribute input.

The hard work, energy and commitment of this group of people put current training deficiencies in focus for the Judicial Education Committee. The product of this group, combined with the abolition of the Training and Safety Branch of the Judiciary Personnel Office (which occurred as a practical matter with the vacancy of the training position in Personnel), resulted in the Judicial Education Committee making a commitment to address the training needs of the whole Judiciary. The ability of JERD to accomplish these tasks depends on the allocation of additional resources, both in terms of staff and budget, to the JERD program. In the meantime, however, the Judicial Education Committee has directed the JERD program to proceed with addressing the training needs of non-judge employees as well as judges to the extent practical. In response, JERD is in the process of re-activating the new employee orientation training sessions, is assisting with a program addressing the handling of distraught employees, and also is assisting with a grant-writing training program.

As a point of further information, the Judicial Education Committee has recently submitted a proposal for employee training to the Chief Justice for his consideration. This proposal commits the Judiciary to creating and providing an integrated training program for all of its employees. The proposal includes an organizational structure of direct authority presided over by the Supreme Court and filtering down through the Administrative Director of the Courts and the Judicial Education Committee to JERD which will oversee the implementation of various programs. To aid in the determination of training needs and development of programs to meet those needs, an additional committee will be convened, one comprised of non-judicial employees and a judge from the Judicial Education Committee. The members of this committee will be chosen by the Judicial Education Committee. It will be charged with investigating needs, concerns and desires for training for all non-judge employees, and propose actual training programs to the Judicial Education Committee. These proposals will be considered and a determination made as to the appropriate course of action to be followed. JERD will then follow through and implement those programs which have been approved by the Judicial Education Committee.

The Judiciary believes that it is important that the progress made in this area be reflected as part of the Auditor's Report. The Judiciary has, in fact, committed

itself to providing all of its employees with appropriate training opportunities to the extent that resources can be committed to accomplish this mission. The acknowledgement by the Auditor that additional resources are required to fulfill these training goals and objectives is appreciated. If JERD is expected to service the training needs of all of the Judiciary's employees, it is imperative that it have its own budget sufficient to allow for the planning and execution of training events, and to provide for faculty and resources.

The Judiciary disagrees with the statement made by the Auditor indicating that "employees complain they receive no training in such basic areas as workers' compensation and labor relations."

As a point of information, a schedule of training courses is distributed on a semi-annual basis. Included in the schedules for 1993 and 1994 are courses presented by Judiciary Personnel Specialists on all areas of personnel administration including the areas of workers' compensation, and disciplinary procedures. Training sessions were held, as requested, on a formal and informal basis. Sessions are conducted to specific groups depending on the focus of the topic matter. Materials and presentation are specifically directed to specific groups of employees, i.e., staff, line supervisors, administrators, etc. The personnel specialists will continue to provide and offer orientation and training to the employees of the Judiciary. During calendar year 1994, personnel management specialists have conducted orientation/training on the following topics;

- interview skills - entire range of supervisory personnel, from district courts to supreme court;
- performance evaluation - to supervisors/staff for BU3, 4, 13;
- workers' compensation - to 3rd circuit administrators and fiscal officers, 2nd circuit administrators, detention home personnel clerks;
- classification - to personnel clerks, Adult Probation Division supervisors, family court supervisors;
- administrative services - detention home personnel clerks;

The number of actual orientation/training sessions mentioned above vary. Some of these sessions were repeated at different locations.

Chapter 3: Personnel System Findings and Recommendations

"Recommendations" Page 25

RESPONSES:

1. The Judiciary should continue to implement recommendations from our Auditor's 1989 audit and to institute better management controls. This should include:

   a. Establishing time standards for recruitment and classification actions.

   *The Judiciary concurs that establishing Recruitment and Classification time standards has the potential for improving personnel operations. Thus by using data from the tracking form (and its several derivatives), developed to address concerns in the **1989** Auditor's report regarding the length of time it takes to fill a vacancy, we have established standards that we believe are reasonable for both personnel operations and the programs we serve. The time standards are as follows:*

Type of Selection	*# of Days for Recruitment*
Internal (Non-competitive)	*31 days*
Competitive, Continuous	*53 days*
Competitive, Closing Date	*77 days*

We feel that these standards are reasonable and not just arbitrary figures. The time standards are based on the data collected over the past several years on our Recruitment Tracking Form. It has gone through many revisions since its origin and is today still evolving. The tracking form assists us in determining problem areas for each vacancy by separating the filling process into time in Personnel: recruitment, examination and certification; and time in the division: selection.

As discussed with the Auditor, the number of days for recruitment is calculated from the date form 92-01-01, "request to fill", is received by Personnel, to the date the list of eligibles is referred to the division head. For internal selections, recruitment includes the posting of the vacancy announcement for two weeks, as required by statute, the screening of applications, and the preparing of the internal list of eligibles.

*The figure for competitive selections includes the internal recruitment process stated above, **AND** the internal selection process. The internal selection process includes the number of days the division takes to interview and assess*

the internal applicants, and to request an additional list of eligibles from Personnel. When there is an existing list, Personnel prepares a competitive certificate of eligibles upon notification by the division. The total number of days to recruit for a selection from a continuous recruitment is calculated from the date form 92-01-01 is received by Personnel, to the date the competitive certificate of eligibles (continuous recruitment) is referred to the division.

When there is no existing list, a competitive recruitment with a closing date may be conducted to establish a list of eligibles. The recruitment process for this type of selection includes the internal recruitment ***AND*** *internal selection process explained above,* ***AND*** *a competitive, closing date recruitment. The closing date recruitment includes advertising the vacancy in the newspaper and posting the announcement for a period of 15 days, screening the applications, examination development, testing of applicants and ranking of applicants on a list of eligibles, before a certificate of eligibles can be prepared. The total number of days to recruit for a selection from a closing date recruitment is calculated from the date form 92-01-01 is received by Personnel, to the date the competitive certificate of eligibles (closing date recruitment) is referred to the division.*

For classification actions, the Judiciary has established a time standard of 45 days. The Judiciary has also published priorities for the processing of classification actions in the July 1994 amendment of Section 6-3 of the Judiciary Personnel Manual of Policies.

Time standards will be further refined to reflect different time standards for different priorities and to address different needs; such as the development of new class specifications, proposals for reorganization, or classification studies covering a significant number of positions or classes. Unforeseen delays, such as divisions not responding to requests for additional information in a timely manner, will be continued to be documented on individual action logs for each request. Time standards will be published in the internal operating guidelines for the Classification and Pay Branch.

As mentioned to the Auditor on July 22, 1994, the Classification and Pay Branch had implemented a pilot project in January 1994, due to the significant reduction in backlog. This pilot project involved the establishment of internal time standards for the review of all classification actions. This time standard was set at 30 days, and would begin at the time the classifier was assigned the action and would end at the time the supervisor approved the classifier's recommendation. This time standard was noted by the Auditor as being unpublished at the time of the interview. Also, because this 30 day time standard did not include the entire processing time for classification actions, it was adjusted to 45 days to cover the entire classification process.

b. Distributing status reports on classification actions to the courts and programs.

The Judiciary agrees that status reports on pending classification requests will be helpful to program heads and will transmit them to division heads on a quarterly basis. The first status report will reflect all classification actions pending as of December 31, 1994, and will be transmitted to divisions in early January 1995.

c. Assessing the duties and responsibilities of the district and circuit court clerk positions to ensure equity.

The Judiciary agrees that a reassessment of the duties and responsibilities of the district and circuit court clerk positions is appropriate and will undertake this project. Findings and recommendations of the 1991 Ernst and Young consultant's report and earlier classification findings will be reviewed along with new data. Due to the significance and impact upon the classification of all court clerical positions in the Judiciary, it is felt that funding for a second consultant study in conjunction with the Judiciary's own classification study will be needed to fully implement this action.

d. Considering broad banding the classification system.

The Judiciary supports the concept of broad banding the classification system and has reviewed its system for applicability. As noted by the Legislative Auditor, certain applicable classification concepts have been adopted to broaden, consolidate and simplify the classification system.

e. Amending the Personnel Manual so that administrative reviews of classification actions are performed by the administrative director.

The Judiciary has amended Section 6-11 of the Judiciary Personnel Manual to reflect recommendations of the Legislative Auditor. Amended pages for this section will be transmitted to the divisions by the end of December 1994.

f. Clarifying its policies and practices on temporary appointments and temporary assignments.

See our response on page 19 and 20.

g. Adopting an affirmative action plan.

See our response on pages 16 and 17.

2. The Judiciary should appoint an administrative director who holds no other office or employment.

See our response on pages 17 - 19.

3. The Administrative Director should pay greater attention to training for non-judicial staff. The Judiciary should consider developing a training plan and increase the resources allocated for this purpose.

See our response on pages 20 - 23.