

**SEMINOLE COUNTY
COURT ADMINISTRATION
18TH JUDICIAL CIRCUIT
AND
SEMINOLE COUNTY ATTORNEY'S OFFICE**

**LIMITED REVIEW OF THE
COURT-APPOINTED ATTORNEY PROGRAM**

JUNE 2000

Prepared by:
Internal Audit Division
Clerk of the Circuit Court

June 15, 2000

The Honorable Carlton Henley,
Chairman
The Board of County Commissioners
Seminole County, Florida
1101 East First Street
Sanford, FL 32771

Dear Mr. Chairman:

I am very pleased to present you with the attached audit of the Seminole County Court-Appointed Attorney Program. Management's responses have been incorporated into the final report.

I would like to thank management and staff of Court Administration, the Department of Fiscal Services and the County Attorney's Office for their cooperation and assistance throughout the course of the audit. Their assistance is deeply appreciated.

With warmest personal regards, I am

Most cordially,

Maryanne Morse
Clerk of the Circuit Court
Seminole County

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LIMITED REVIEW OF THE COURT-APPOINTED ATTORNEY PROGRAM

The Internal Audit Division of the Clerk of the Circuit Court has completed a limited review of the Court-Appointed Attorney Program for the Eighteenth Judicial Circuit (Seminole County). Each judicial circuit has a Circuit Conflict Committee comprised of the chief judge or designee, one representative from each board of county commissioners within the circuit, and the Public Defender. The Circuit Conflict Committee shares management responsibilities for the Court-Appointed Attorney program along with Seminole County Attorney's Office, and the Court Administrator's Office for the Eighteenth Judicial Circuit. The responsibility of the Circuit Conflict Committee is to select and approve attorneys for all appointments pursuant to Sections 925.035 and 27.53(3), Florida Statute. The County Attorney's Office has the responsibility of drafting contracts between Seminole County and the conflict attorneys. The Court Administrator is responsible for monitoring caseloads and assigning conflict attorneys to cases.

PURPOSE

The purpose of the review was to determine if the administrative controls over the Court-Appointed Attorney Program are adequate and operating as intended in compliance with applicable laws, regulations, and other Seminole County policies and procedures. Specifically, to determine if payments to court-appointed attorneys are in compliance with contractual agreements between those attorneys and Seminole County.

BACKGROUND

The Court-Appointed Attorney Program provides legal counsel to indigents when court proceedings have been brought against them; and when representation by the Seminole County Public Defender's Office would constitute a conflict of interest for the public defender. For example, if charges are brought against multiple defendants in a crime and a public defender is assigned to one of those defendants, it would constitute a "conflict of interest" for that same public defender, or the Public Defender's Office, to be assigned to represent any of the other defendants. Before appointing a public defender or "conflict attorney", Florida Statute requires the court to consider a completed affidavit that contains the financial information specified in Section 27.82 (1)(f) and to make a preliminary determination of indigency, pending

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verification by the indigency examiner. The determination of indigency for purposes of appointing the public defender or conflict attorney may be made at any stage of the proceedings.

Payments to court-appointed attorneys are set forth under Florida Statute 27.53(3); compensation is calculated per Florida Statute 925.036 and Administrative Order 96-33.

SCOPE OF WORK

The review was limited to an examination of payments to contract attorneys for the period of October 1, 1998 through September 30, 1999. Actual payments to contract attorneys for the year ending September 30, 1999 were \$1,188,274.00. All source documents related to the Court-Appointed Attorney Program were subject to review.

Our audit coverage included:

- Testing of County Finance records to determine if payments were made in accordance with contractual provisions and based on a bona fide legal proceeding;
- Interviews with the Senior Deputy Court Administrator and County Attorney regarding procedures on appointment and terms of appointment of conflict attorneys;
- Interviews with the Department of Fiscal Services as to the formulation of the fiscal budget;
- Analysis of expenditures by attorney and by case type between felony, probate, juvenile and others for the fiscal years ending Sept. 30, 1996, Sept. 30, 1997, Sept. 30, 1998 and Sept. 30, 1999; and,
- Review of financial statements and applicable administrative orders and other applicable policies and procedures.

The audit fieldwork was started on November 8, 1999 and completed on December 22, 1999. The audit was conducted by Gail A. Joubran.

OVERALL EVALUATION

It is our opinion that the administrative controls over the Court-Appointed Attorney Program are adequate and operating as intended in compliance with applicable laws, regulations and other Seminole County policies and procedures. Payments to court-appointed attorneys are in compliance with contractual agreements.

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Certain conditions exist, however, that warrant management's further attention:

- The County does not have an adequate forecast of future expenditures;
- Trial Judges are establishing rates of pay for court-appointed attorneys higher than rates of pay in surrounding counties; and,
- Contracts for four special public defenders expired on September 30, 1999, however these attorneys continue to render services with pay, but without a contract.

The details of the findings and recommendations follow:

FINDING NO. 1

The county does not have an accurate forecast of future expenditures.

During the Fiscal Year 1997-98 budget process, Seminole County Court Administration and the Office of Fiscal Services projected a \$550,000.00 need to the Board of County Commissioners for conflict attorneys. This projection was grossly understated, as actual payments for the year totaled \$960,352.00. Similarly, for Fiscal Year 1989-99, the Department of Fiscal Services and Seminole County Court Administration projected a need of \$650,000.00; actual expenses incurred for Fiscal Year 1998-99 were \$1,188,274.00.

It appears that the Office of Fiscal Services and Seminole County Court Administration did not adequately plan for the rise in felony and juvenile expenditures. For the Fiscal Year 1998-99, felony alone experienced a 73 percent increase in legal costs.

Recommendation

We recommend that the Department of Fiscal Services resubmit a forecast for the remaining year based on actual expenses incurred for the fiscal year to the Board of County Commissioners for approval. Future budgets for the Court-Appointed Attorney Program need to be prepared in light of the prior year's actual expense reports, arrest reports and open conflict case reports.

Management Response

The following is a response from the Director of Fiscal Services: "On April 25, 2000, the Board of County Commissioners approved an additional \$800,000.00 to the budget of the Court Appointed Attorney account line, bringing the total budget to \$1,600,00.00. Annual expenditure changes in this account line have ranged from a negative 3% change to a positive 89% change over the past five years, making a statistical analysis impossible. We selected the \$800,000.00 increase based on a six-month year-to-date expenditure of \$731,965.00. If future

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average monthly expenditures mirror expenditures in the month of March, this increase will be low and will necessitate additional funding. However, if future average monthly expenditures mirror expenditures in the month of April, we will have adequate funding. We will continue to monitor the expenditures.”

Audit Comment

In light of the growth of court-appointed expenditures, we continue to recommend that the fiscal year budget submitted to the Board of County Commissioners be based on an analysis of the actual expense for the previous year, as well as an analysis of arrest reports and open case reports. Although we agree that the cost of the program can fluctuate, we encourage the County to fund the program sufficiently to minimize large mid-year adjustments.

FINDING NO. 2

Trial judges are establishing rates of pay for court-appointed attorneys higher than rates of pay in surrounding counties.

An attorney appointed pursuant to Section 925.035 or 27.53, Florida Statute shall, at the conclusion of the representation, be compensated at an hourly rate fixed by the chief judge or senior judge of the circuit in an amount not to exceed the prevailing hourly rate for similar representation rendered in the circuit.

The hourly rate for court-appointed attorneys in Seminole County, per Administrative Order No. 96-33, varies from not less than \$60.00 per hour to not more than \$150.00 per hour.

From a random review of cases for the years ending Sept. 30, 1996, Sept. 30, 1997, Sept. 30, 1998 and Sept. 30, 1999, Seminole County paid an average rate of \$100.00 per hour for court-appointed attorneys (based on hours-billed and dollars-spent).

Internal Audit reviewed administrative orders for Polk, Dade, Palm Beach, Pasco, Pinellas, Broward and Orange Counties. We found that these counties all had established fixed rates for reimbursing their court-appointed attorneys (Seminole's is adjustable). For example, Orange County pays \$75.00 an hour for most of its cases. By establishing a fixed rate of pay similar to those rates charged by surrounding counties, we believe Seminole County could save approximately \$400,000.00 in legal fees over a three-year period. This savings was estimated by taking the average rate of \$100.00 now being paid in Seminole County versus the fixed rate of \$75.00 being paid in Orange County for similar cases.

Recommendation

We recommend that the current Administrative Order No. 96-33 be amended to

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set fixed hourly rates for court-appointed attorneys similar to that of surrounding counties.

Management Response

The following is a response from the Office of the Court Administrator: "We are working to assist the county in analyzing the costs of court-appointed counsel. It would be improper at this time to draw any conclusions or make any recommendations until an analysis is concluded."

Audit Comment

An analysis of the costs of court-appointed counsel already has been completed, with this audit, by Internal Audit. Our findings were based on an analysis of expenditures by attorney and by case between felony, probate, juvenile and others for the fiscal year ending Sept. 30, 1999.

Therefore, we continue to recommend that the current Administrative Order No. 96-33 be amended to set fixed hourly rates for court-appointed attorneys.

FINDING NO. 3

Four contracts for special public defenders expired on September 30, 1999.

As of September 30, 1999, Seminole County had contracts with seven attorneys. Testing of County Finance records showed that four of these contracts had expired on September 30, 1999, however these four attorneys continued to provide services and were paid \$1,500.00 per month without a valid contract.

Recommendation

The Senior Deputy Court Administrator should verify that contracts for special public defenders be reviewed annually with the county Legal Department and revised accordingly. The county, Public Defender and the Circuit Conflict Committee should monitor the status of these contracts to ensure that contracts are renewed or renegotiated on a timely basis.

Planned Corrective Action

The County Attorney's Office has renegotiated the four expired contracts. The agreement was made January 25, 2000 among Seminole County, the Public Defender, the Eighteenth Judicial Circuit and the Conflict Attorney. The planned corrective action is in response to the condition noted above.

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