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State Auditor

# The State Commission on Judicial Conduct

September 16, 2002

Members of the Legislative Audit Committee:

The Legislature and other oversight bodies can rely on the State Commission on Judicial Conduct's (Commission) financial information as being reasonably accurate and complete. This statement is based on our testing of the Commission's financial and reporting process in place as of August 31, 2001. Our review found minor weaknesses in specific areas of the Commission's financial processes, particularly in the performance of routine reconciliations. While the Commission accurately reported its performance measure results for fiscal year 2001, inadequate controls over its Case Management System (CMS) create a risk that future performance information may not be accurate.

The Commission's expenditures have generally been in accordance with applicable laws and regulations. However, we found that the Commission and a former employee entered into a \$15,000 contract for consulting services within one year of the employee's termination, which violates the Texas Government Code and purchasing regulations. The Commission was unaware of the applicable laws and regulations with which it must comply upon entering such a contract. Also, the regulations used by the Commission to reimburse its commissioners for travel expenses do not clearly support the Commission's payments and have been questioned by the Comptroller of Public Accounts.

The Commission's performance is poorly aligned with its expenditures. The Commission's performance is measured by the number of cases disposed expressed as a percentage of the number of cases received during the year. The percentage has dropped for the last two fiscal years, while expenditures have been constant. We project that the percentage will decline further in fiscal year 2002, while expenditures will increase. The Commission identified employee turnover as a significant cause for the decline, which our analysis supports. During the last four years, the Commission has lost all of its long-term employees and has not retained many of its new employees.

The Commission's CMS lacks basic access and data integrity controls. Our review of this system and the Commission's local area network (LAN) revealed significant weaknesses in password protection procedures. A standard CMS report contains a processing error that affects the accuracy of performance information. The CMS also lacks standard edits on data entry and common audit trails on updating records. The Commission was appropriated \$20,000 for CMS upgrades during fiscal years 2002 and 2003.

## Objectives, Scope, and Methodology

The project objectives were to answer the following questions:

- Do the Commission's reporting processes allow it to provide legislative budget committees and Commission management with accurate and reliable financial information?
- Is the Commission using appropriated funds in accordance with applicable state laws and regulations?
- Is there alignment between funds expended and outcomes?
- Does the Commission protect its information resources and use them efficiently?
- Has the Commission implemented recommendations made by the Sunset Advisory Commission?

To achieve these objectives, we reviewed financial reports, expenditures, revenues, transfers, lapses, and fund balances. We also examined the relationship between expenditures and the expected outcomes.

The audit methodology consisted of collecting information, performing selected audit tests and other procedures, and analyzing and evaluating the results against established criteria. We conducted fieldwork between May and July 2002 and tested transactions that occurred from fiscal year 1998 through fiscal year 2001. The State Auditor's Office did not request or receive confidential Commission data during the course of the audit.

This audit was conducted in accordance with generally accepted government auditing standards.

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The Commission has complied with the two nonstatutory recommendations made in the Sunset Advisory Commission's report to the 77th Legislature.

This financial review was an extension of work we conducted during fiscal year 2001 at the request of the Senate Finance Committee and the House Appropriations Committee. We reviewed the Commission's financial system and tested selected financial transactions that occurred between September 1, 1997, and August 31, 2001. The attachment to this letter contains additional details on the results of our work.

We appreciate the Commission's cooperation. If you have any questions, please contact Julie Ivie, Audit Manager, at (512) 936-9500.

Sincerely,

Lawrence F. Alwin, CPA  
State Auditor

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Attachment

cc: State Commission on Judicial Conduct  
Ms. Margaret Reaves, Executive Director  
Commission Members

## ***Do the Commission's Reporting Processes Allow It to Provide Legislative Budget Committees and Commission Management With Accurate and Reliable Financial Information?***

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The State Commission on Judicial Conduct's (Commission) reported financial information has been reasonably accurate. To ensure continued accuracy, the Commission should strengthen its financial controls by routinely reconciling its financial records and performing timely physical inventories of its fixed assets.

The Commission uses the Uniform Statewide Accounting System (USAS) as its accounting system of record. The Commission does not issue standard interim financial reports internally or to the Commissioners but monitors its expenditures against its budget by using a financial control spreadsheet.

Our review of the financial and performance reports found the following:

- With minor exceptions, the Commission's legislative appropriations requests (LAR) have reasonably stated past financial and performance information. Future caseloads and expenditure projections have been reasonably accurate, and the operating budget is consistent with the LAR. Data presented in the LAR was consistent with USAS and the Commission's Case Management System.
- With minor exceptions, the Commission's Annual Financial Report (AFR) fairly reflects the Commission's financial activity. The expenditures detailed in the AFR could be reconciled within reason to USAS records. However, the Commission understated the value of its fixed assets for fiscal year 2001. The amount of \$102,034 reported as the value of "Furniture and Fixtures" was understated by a net amount of \$18,285 (or 15 percent) because the Commission did not complete an annual inventory of its property and reconcile it to the state property report. The equity account of "Investments in General Fixed Assets" was understated by an equal amount.
- With noted exceptions, the internal spreadsheet used by management to monitor budget activity was reasonably accurate. Exceptions included a net \$5,700 understatement of expenses because the Commission had not formally reconciled the financial control spreadsheet with USAS records.

### **Recommendations**

The Commission should:

- Develop and enforce procedures to routinely reconcile its financial control spreadsheet with USAS.
- Conduct annual inventories and ensure that fixed assets are accurately recorded.

## Management's Response

*Financial reports are provided to the Executive Director at least quarterly and as frequently as requested. The Executive Director provides budget/financial data to the Chair of the Commission. We will provide copies of these reports to the SAO [State Auditor's Office].*

*The Commission acknowledges that the fiscal year 2001 annual inventory was not completed for inclusion in the Annual Financial Report. However, the Commission was housed in temporary quarters from September 8, 2001 to December 10, 2001. Most of the Commission's fixed assets were in storage during this period and not accessible for audit. The Commission agrees to resume annual inventories of fixed assets. The fiscal year 2002 annual inventory has been completed.*

*The Commission will establish procedures requiring reconciliation of its internal financial control spreadsheet with actual data from the Uniform Statewide Accounting System. The Commission routinely reconciles financial control audit reports as required by the Comptroller of Public Accounts on a quarterly basis.*

## Auditor's Follow-Up Comment

The only financial report provided to the auditors included a comparison of year-to-date expenditures with the Commission's budget. As noted in Chapter 1, this report is not reconciled with USAS records and is therefore subject to error. Standard financial reports such as balance sheets or operating statements would give the commissioners a more complete picture of the Commission's financial position.

### Chapter 2

## ***Is the Commission Using Appropriated Funds in Accordance With Applicable State Laws and Regulations?***

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Overall, the Commission's expenditures have been reasonable and in accordance with applicable laws and regulations. The Commission was appropriated \$706,000 in fiscal year 2001. Of this amount, \$614,000 (or 87 percent) was for payroll and related costs and \$92,000 (13 percent) was for operating and capital expenditures.

As a small agency with limited administrative capabilities, and possibly as a result of high employee turnover (see Chapter 3), the Commission was unaware of applicable laws and regulations that apply to certain transactions. An example is the consulting contract noted below. Our testing revealed other minor payments that lacked adequate support or documentation, as is also reported below. None of these exceptions, however, were significant enough to change our overall conclusion.

- A \$15,000 consulting services contract to help establish Amicus, a judicial disciplinary and education program, did not comply with the Texas Government Code and purchasing regulations:

- ◆ The contract was with a former employee who terminated employment two weeks before returning as a contractor. Texas Government Code, Section 2252.901(a), prohibits agencies from entering into a contract with an ex-employee for one year after the date of termination if the contract is to be paid with appropriated funds.
- ◆ The Commission did not request bids for the contract. Texas Government Code, Section 2155.132, requires that three formal bids from contractors on the Centralized Master Bidders List be solicited.
- ◆ The Commission paid the contractor before receiving services. The advance payment did not comply with the Comptroller's Purchase Policies and Procedures, §2.002.

Statutes and regulations do not clearly support the Commission's payments to its commissioners for travel expenses. Travel reimbursements to commissioners during fiscal year 2001 totaled \$32,900.

Although travel reimbursements have been paid as submitted by the Commission, it is the opinion of the Comptroller of Public Accounts that the six commissioners who are not judges should have been paid no more than the standard \$95 per diem and that the five judges on the Commission should be reimbursed by the legal entity they serve, not the Commission.

The Commission asserts that all of its Commissioners are judicial officers and are eligible to receive up to \$190 per diem for food and lodging. The Commission reimbursed them accordingly during fiscal year 2001. (This per diem amount was twice the state standard rate of \$95 per diem for state employees. The General Appropriations Act [76th Legislature] authorizes a higher per diem for judicial officers.)

We tested a number of travel reimbursements and vendor payments made in fiscal years 1999, 2000, and 2001. The most common error was inadequate documentation and support for the expenditure, such as missing receipts, and several payments lacked proper approval. Where documentation was not available, we could not determine whether the expenditures were reasonable and necessary.

We also reviewed other types of financial transactions and found them to be in compliance with state laws and regulations as follows:

- Transfers to the Commission were for standard, payroll-related purposes only. Because the Commission has only one strategy, the 25 percent transfer limitation between strategies stated in Article IX did not apply.
- The Commission did not exceed its authority to carry forward unexpended balances.
- The Commission correctly recorded its prior lapses, which were reasonable given the number of positions vacant due to turnover (see Chapter 3).

- The Commission spent less than one-third of its appropriations in the fourth quarter of fiscal year 2001, which is in compliance with Article IX, Section 6.07, of the General Appropriations Act.

## Recommendations

The Commission should:

- Work with the Comptroller of Public Accounts to resolve issues related to travel expense reimbursements to commissioners.
- Require training for employees who are responsible for processing travel and vendor vouchers to ensure that all payments are made in accordance with state rules and regulations.
- Require at least one of the individuals who routinely performs purchasing functions to become a Certified Texas Purchaser by participating in training offered by the Texas Building and Procurement Commission.

## Management's Response

*The Commission acknowledges its responsibility to be familiar with all laws and regulations affecting its operation. As a small agency with limited administrative capabilities, unique circumstances and a one-time variance from established rules highlight the continuing difficulty of a small agency which lacks the resources necessary to address exceptional and unique issues. The Commission acknowledges that some payments lacked supporting documentation.*

*The Commission searched the Central Master Bidders List in the fall of 2001 for an Amicus consultant; however, we did not document the search. The Commission was not aware that the grant funds were subject to appropriated funds limitations or that payments could not precede receipt of services. We would note that grant monies were completely accounted for and unused funds were returned to the grantor at the end of the grant period.*

*The Commission will seek guidance regarding reimbursement of commissioners' travel expenses. The Commission acknowledges that travel reimbursements to its Commissioners has been based on historical interpretation of this judicial agency's constitutional mandate. Article V, section 1(a) of the Texas Constitution provides that the legislature will provide for the necessary expenses of the Commission. The Commissioners have traditionally submitted actual expenses, which have been less than the expense cap allotted to judicial officers. The original organization of the Commission was all judges. As the make up of the Commission was expanded to include public and attorney members, there was no provision to distinguish them from the judicial members. The judicial members of the Commission perform a statewide service and do not represent the individual courts where they sit while serving on the Commission.*

*The Commission agrees with SAO recommendation requiring training of employees who process travel vouchers. Such training is already required and staff processing travel vouchers have been trained.*

*The Commission will consider the SAO recommendation to require “at least one of the individuals who routinely performs purchasing functions to become a Certified Texas Purchaser . . .” Few of the Commission’s expenditures meet the \$10,000 threshold requiring certification.*

Chapter 3

***Is There Alignment Between Funds Expended and Outcomes?***

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Since fiscal year 1999, while Commission expenditures have remained constant or have increased, the Commission’s key performance measure results have continued to decline. As a result, we project the average time to dispose of a case to increase from 4.6 months at the end of fiscal year 2001 to 6.9 months at the end of fiscal year 2002.

The number of pending cases had increased to a 10-year high of 594 at the end of fiscal year 2001, and we project it to increase to 839 by the end of fiscal year 2002. Employee turnover appears to be the primary reason the Commission has not met its performance goal for three of the last four fiscal years and will continue to be below its goal in fiscal year 2002.

**How the Commission’s Performance Is Measured**

resolved) as a percentage of the number of cases it receives. The Commission’s goal is 100 percent.

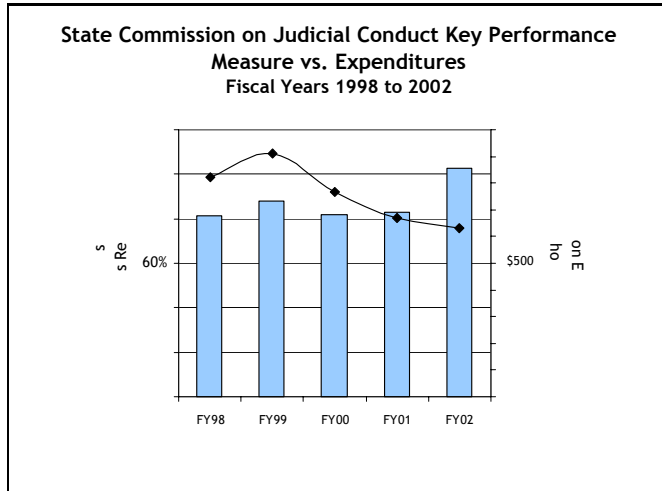
Chapter 3-A

**Performance and Expenditures Are Poorly Aligned**

While expenditures remained constant in fiscal years 2000 and 2001, the percentage of cases disposed declined. The measure is projected to continue to decline in fiscal year 2002, while expenditures are projected to increase.

As Figure 1 shows, expenditures remained relatively constant at around \$700,000 per year for fiscal years 1998 through 2001. For the 2002–2003 biennium, the Commission received an increase in appropriations to fund two additional positions and to make other improvements within the Commission.<sup>1</sup>

Figure 1



Source of expenditure data: USAS actual expenditures for 1998–2001 and projected expenditures for 2002.

Source of performance data: Automated Budget and Evaluation System for Texas for 1998–2001 and projected performance for 2002.

Chapter 3-B

### **Employee Turnover and Other Factors Have Significantly Affected the Commission’s Ability to Dispose of Cases**

Management identified turnover as a significant reason for the decline in the Commission’s achievement of its performance measure. We reviewed personnel data furnished by the Commission and data contained in the State Auditor’s Office’s Human Resource Analysis System (HRAS) and made the following observations:

- The Commission has lost experienced employees. At the beginning of fiscal year 1998, the average length of service or tenure for each employee was 5.1 years. By the beginning of fiscal year 2002, the 11 employees had a combined total of 15 years of service with the Commission, or an average tenure of 1.4 years.
- Turnover of new employees has been high. Of the 15 new employees hired in fiscal years 2000 and 2001, 6 (or 40 percent) left within one year—most within six months.

While the experience level declined due to turnover, the number of cases pending at year-end increased. By the end of fiscal year 2001, the number of pending cases increased to 594, twice the 288 pending at the end of fiscal year 1999. Based on the Commission’s performance through May 2002, we project the number of cases pending at the end of fiscal 2002 to increase by 41 percent to 839. We also project the Commission’s performance measure to decline from 80 percent at the end of fiscal 2001 to 76 percent at the end of fiscal year 2002.

<sup>1</sup> For the 2002–2003 biennium, the Commission received funds to add two new positions and to make improvements in its information systems. As of the end of May 2002, the Commission had been unable to hire and retain a full staff of 17 full-time employees. In addition, the development of a Commission web page cost significantly less than funded. We project that these two items will produce a future lapse of \$25,000 to \$50,000 in General Revenue.



While we agree that turnover has affected the Commission's ability to dispose of cases and to achieve higher levels of performance, determining the reasons for the turnover was outside of the scope of our audit.

Management stated that the following factors also affected the Commission's ability to dispose of cases:

- The number of formal proceedings (substantiated complaints on which the Commission has taken legal actions) has increased.
- The quality of the investigative effort has increased; therefore, cases take a greater amount of time to pursue and close.
- The Commission's staff has increased its support of other activities such as the Amicus program and providing informal opinions on questions of judicial ethics.

The scope of our audit did not include a review of individual case files. Therefore, we did not review investigative time spent on each case. Other explanations offered by the Commission were supported by activity measures provided by the Commission. We verified these activity measures as reasonably accurate during our audit.

#### Chapter 3-C

### **The Commission Has Taken Steps to Increase the Number of Cases Disposed**

Management has taken the following actions to improve the Commission's ability to dispose of cases:

- Based on a Sunset Advisory Commission recommendation, the Commission implemented administrative dismissals in fiscal year 2000 (see Chapter 5). Administrative dismissals allow Commission staff members to recommend the dismissal of complaints that do not allege misconduct. The cases are still presented to the Commissioners, but they do not require the extensive write-up or preparation as required by other cases. According to management, this change has contributed significantly to the Commission's ability to process cases more quickly.
- In fiscal year 2002, Commission staff members began presenting certain cases to the Commissioners orally rather than in writing. According to management, the use of these "oral dockets" has also aided in processing cases.
- At the request of the Commission, the 77th Legislature appropriated funds for two additional full-time equivalent employees (FTE), which increased its FTE cap to 17. Management stated that it had been actively recruiting, but as of the end of May 2002, had not reached its new FTE cap.

## **The Commission Needs to Ensure That It Continues to Report the Correct Percentage of Cases Disposed**

We certified, with qualifications, that the Commission accurately reported the results of its single performance measure (Cases Disposed as a Percent of Cases Received) for fiscal year 2001.

The certification was issued with qualifications because the controls over the Case Management System's (CMS) data accuracy and reporting were not adequate to ensure continued accuracy. For example, the Commission included voided case records in its calculation. The number was not large enough to significantly influence the outcome of the calculation. (See Chapter 4 for additional comments.)

### **Recommendation**

The Commission should identify and address the reasons for its high turnover. It should continue to utilize the "Texas Employee Exit Survey" as a resource along with any other reasonable means to identify and address the issue.

### **Management's Response**

*The Commission agrees that personnel turnover creates a significant impact on the agency's ability to maintain a rhythm in production. Training is a significant part of every new employee's productive day and impacts the trainers' schedule as well. The Commission believes that limited salaries and excessive demands of time because of limited staff have contributed significantly to turnover. Many of the professional staff have left for other agencies which offer higher salaries and more predictable workload responsibilities.*

*The constitutional mandate of State Commission on Judicial Conduct is to investigate allegations of misconduct against Texas judges, to insure the integrity of the independent judiciary of our State and to protect the public's right to fair treatment in our courts. In fulfilling this mandate, the Commission has met more often in each of the past three years than it has ever met in any year of the 37 years of the agency's existence. This office is committed to exonerating a judge wrongly accused of a violation of the canons. It is equally committed to determining if a violation occurred. As everyone involved in legal issues can attest, caseload is a factor of production, but not all cases are equal. Some complaints take a matter of days to resolve; others may be in the system for more than a year.*

*In addition to the workload factors noted in the report, there has been a marked increase in the number of cases prepared for appearance (53 in fiscal year 1999 and 78 in fiscal year 2002). Additionally, the number of cases involved in full investigations has increased, and it is anticipated a Supreme Court of Texas rule will be issued soon which will authorize the agency to provide written ethics opinions to all levels of the judiciary in Texas. All of these factors reduce the available staff time for case processing.*

*Management has provided all exiting employees the opportunity to participate in the "Texas Employee Exit Survey." To date, no departing employee has done so. Management feels the turnover issue has been, and will continue to be, addressed in the appropriations process.*

Chapter 4

## **Does the Commission Protect Its Information Resources and Use Them Efficiently?**

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The method in which the Commission assigns passwords for CMS and its local area network (LAN) does not protect the information in CMS and on the LAN from misuse. In addition, CMS lacks controls over data accuracy and reporting. Specifically:

- Current Commission policy is for the executive director and the executive assistant to be notified when an employee changes his or her password to the LAN. We observed a printed list of old, but still active, passwords in a LAN manual shared with several employees. The lack of private passwords exposes the executive director and executive assistant to significant liability because they could be held accountable or blamed for an employee's wrongdoing.
- CMS lacks appropriate security and audit trails. All users share a common password. As a result, a user can log in under another user's name and alter data, leaving an inaccurate record or no record as to the source of the changes.
- CMS lacks input controls to ensure the accuracy of data. For example, the date disposed preceded the date received for a small number of complaints.
- A standard CMS report contains a processing error that counts voided cases as complaints received. This affects the accuracy of the Commission's performance reporting (see Chapter 3).
- CMS is poorly documented. Standard documentation, such as a user's manual and data dictionary, was not part of the original programming effort.
- Users cannot query data to create custom reports or perform analyses. All reports produced by the system are preprogrammed and require time and expense to modify.

The Commission was appropriated \$20,000 for CMS upgrades and improvements to be made during fiscal years 2002 and 2003.

### **Recommendations**

The Commission should:

- Implement a password protection system that adequately ensures controlled access to the LAN and CMS.

- Ensure that upgrades to the CMS include controls for data accuracy, query capabilities, and audit trails for record entry and revisions.

### **Management's Response**

*Individual passwords have been initiated.*

*The Commission accepts the recommendation to upgrade CMS. The 77<sup>th</sup> legislature recognized this need and approved the Commission's request for funding to address this concern. The Case Management System has been upgraded and the concerns expressed had been included in the project.*

#### *Chapter 5*

### ***Has the Commission Implemented Recommendations Made by the Sunset Advisory Commission?***

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The Commission has complied with the two non-statutory recommendations made in the Sunset Advisory Commission's report to the 77th Legislature. The recommendations and the Commission's actions were as follows:

- "The Commission on Judicial Conduct should adopt a policy to allow staff to administratively dismiss certain cases without Commission member approval." As mentioned in Chapter 3, the Commission implemented administrative dismissals in fiscal year 2000. In fiscal year 2001, 18.6 percent of the cases received were disposed using administrative dismissals.
- "The Commission on Judicial Conduct should review whether justices of the peace should be exempt from prohibitions against soliciting certain funds." The Commission fulfilled this request in a letter dated April 18, 2002, to the Supreme Court of Texas. The Commission recommended that the current prohibition against direct solicitation of funds for charitable organizations by Texas justices of the peace remain in force.

### **Management's Response**

*The Commission concurs.*