

POST AUDIT DIVISION

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Timothy Miley
fish@ifl «³ ;'''



LEGISLATIVE AUDITOR'S LETTER REPORT

January 7, 2020

Supreme Court of Appeals of West Virginia - Follow-up Audit on Policies & Procedures

GENERALLY ACCEPTED GOVERNMENT AUDITING STANDARDS STATEMENT

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards (**GAGAS**). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

LEGISLATIVE AUDITOR'S STAFF CONTRIBUTORS

Aaron Allred..... Legislative Auditor

Justin Robinson..... Director
Adam Fridley, CGAP..... Audit Manager
Judy Strawderman..... Senior Auditor
Nathan Hamilton..... Referencer

WEST VIRGINIA LEGISLATIVE AUDITOR'S OFFICE

Post Audit Division

1900 Kanawha Blvd. East, Room W-329
Charleston, WV 25305-0610
(304) 347-4880



Justin Robinson
Director

January 7, 2020

The Honorable Mitch Carmichael, President
West Virginia State Senate
Post Audits Subcommittee, Co-Chair
Room 229 M, Building 1
State Capitol Complex
Charleston, WV 25305

The Honorable Roger Hanshaw, Speaker
West Virginia House of Delegates
Post Audits Subcommittee, Co-Chair
Room 228 M, Building 1
State Capitol Complex
Charleston, WV 25305

Mr. President and Mr. Speaker:

In 2018, the Legislative Auditor released a series of reports on the Supreme Court of Appeals of West Virginia (the Court). These reports identified issues and deficiencies in several areas of the Court's operations including state-provided travel, purchasing and contracting, and use of state issued purchasing cards (P-Card). The Legislative Auditor determined that many of the Court's policies were outdated or ineffective, and in some instances the Court lacked policies and procedures altogether, which were causes for many of the deficiencies noted.

As a follow-up to the 2018 reports, the Legislative Auditor sought to determine whether the Court has since developed and implemented policies, procedures, and a system of internal controls to govern its operations to correct those deficiencies. In addition, the Legislative Auditor sought to determine if the design of these policies and procedures is adequate to provide for an effective system of internal controls, and that those policies were effectively communicated to all staff. Given the fact these policies are newly implemented, the Legislative Auditor did not conduct an audit of the effectiveness of these policies, and therefore the focus of this report was limited to the adequacy of the policies' design. In order to determine effectiveness, policies would need to be in place for a year or more in order to provide enough evidence to make such a determination.

Since June of 2018, The Court Has Designed and Implemented Nearly A Dozen Policies and Procedures to Govern Its Operations.

In February of 2019, the Court issued a press release, on the Court’s website, announcing the addition to its website of several new policies and procedures. The Legislative Auditor obtained copies of numerous Court policies from these releases. In addition, the Legislative Auditor requested that the Court provide any additional policies it had established, and to indicate whether any other policies were actively under the Court’s consideration.

As of December 2019, the Court has implemented eleven sets of policies and procedures governing operation-areas. Six policies cover areas that previously lacked policies and five policies cover areas that had outdated policies in place. Many of the newly established policies cover operation-areas where the Legislative Auditor had identified significant issues in previous audits, such as purchasing, P-card use, and travel. Figure 1 shows the 11 policies established by the Court and the respective effective date for each set of policies.

Figure 1 Policies and Procedures Established by the Supreme Court of Appeals of West Virginia	
Policy	Effective Date
Travel Policy and Standards (Revised)	6/26/2018
Acceptable Use of Information Systems and Resources Policy (New)	1/7/2019
Asset Management Policy and Procedure (New)	1/7/2019
General Accounting Policies and Procedures (Revised)	1/7/2019
Purchasing Card Policy and Procedure (Revised)	1/7/2019
Body Armor Policy (New)	3/1/2019
Procurement Policies and Procedures (Revised)	3/11/2019
Removable Media Policy (New)	3/11/2019
User Password Policy (New)	3/11/2019
Probation Drug Testing Policy and Protocol (New)	9/9/2019
Employee Handbook (Revised)	10/18/2019
<i>Source: Policies provided or released publicly by the Court.</i>	

Six of the Newly Implemented Policies Provide Internal Controls Over Operations That Were Not Previously Governed by Any Policies or Procedures.

As previously mentioned, the Court lacked policies and procedures for several areas of its operations. To correct this issue, the Court has established, communicated, and implemented the following policies to govern its operations as follows:

Acceptable Use of Information Systems and Resources Policy:

The Court's policy on acceptable use establishes that Court resources are to be used for Court business and establishes security and confidentiality requirements. Many of the provisions in this policy are reflected in other state government units' acceptable use policies, such as the Joint Committee on Government and Finance's Acceptable Use Policy.

Asset Management Policy and Procedure:

The Court's lack of policies governing asset management and inventorying of state-owned assets was documented in the 2018 legislative audits of the Court. Prior to the implementation of this policy, the Court lacked formalized policies for asset management. The Legislative Auditor's review of the policy identified that many of the provisions of the Court's policy mirror the requirements of the Surplus Property Operations Manual, including the dollar thresholds for reportable assets and the requirement that all firearms be inventoried. Moreover, the Legislative Auditor notes that the Court's policy contains provisions requiring routine monitoring of the policy, which reflects one of the five core components of effective internal controls

Body Armor Policy:

The Court's Body Armor Policy governs the distribution, maintenance, and storage of body armor for probation officers. Prior to March 2019, the Court had no policy governing this area as it is a new program.

User Password Policy:

The Court's User Password Policy establishes the specific requirements for employee passwords, establishes standards for the protection of user passwords, and requires passwords to be changed at least every 120 days.

Probation Drug Testing Policy and Protocol:

Prior to September of 2019, the Court had no formal policies or procedures in place for the drug testing of probation program participants. The Court's new policies provide a framework for collecting drug test samples using a variety of different methods. In addition, the policy establishes requirements for maintenance of the chain of custody, documentation via collection logs, and appropriately identifies risks and strategies to mitigate them.

Removable Media Policy:

The Court's Removable Media policy establishes that only Court-provided media (CDs, DVDs, disks, USBs, external hard drives, etc.) may be connected to the Court's workstations. The policy also establishes that Court data may only be transferred onto any form of removable media when required in the performance of job duties. This policy, along with the acceptable use and user password policies, provide security controls to protect the Court's information systems and provide security for Court data.

The Court Has Established Five Policies Which Update and Replace Antiquated or Piecemeal Policies That Were Previously in Place.

In prior reports, the Legislative Auditor noted issues with some of the policies and procedures the Court did have, including its travel policy and its P-Card use policy. In regard to those policies and others the Court has modified to improve its operations, the Legislative Auditor reviewed the following revised policies:

Travel Policy and Standards:

The Court began updating its travel policies in 2016 after being informed by the State Auditor's Office that it would no longer be honored for the purposes of travel reimbursements because it was out of date. The Legislative Auditor's reports in 2018 further identified weaknesses in the Court's controls related to travel, travel reimbursements, and the use of state-owned or paid-for travel resources, particularly where the Justices of the Court were concerned.

The Court's current policies establish clear standards for each method of travel and incorporate provisions from the U.S. General Services Administration and the State of West Virginia's Rules Regarding State-Owned Vehicles (148 CSR 3). The policy requires thorough documentation for travel reimbursements, consistent with those of other state spending units, and requires information regarding the dates, destination, and purpose for all travel in a state-owned vehicle. In addition, the Court's travel policy includes provisions regarding lodging, conference registrations, and travel for educational seminars.

Purchasing Card Policy and Procedure:

The Court updated its P-Card policies to reflect and incorporate the State Auditor's Office P-Card policies and procedures. Of note, the Court's current P-Card policies indicate that:

*The P-card may be used for the purchase of gift cards, where authorized by applicable law, rules and regulations or other governing instrument, **only** upon prior approval of the Transaction by the P-card Coordinator. Gift card purchases are not to be made until **AFTER** prior approval has been received. The name (and signature, if possible) of the recipient must be documented.*

The Legislative Auditor's prior audits identified a number of issues with the Court's use of P-Cards, primarily in the Adult Drug Court Program, where gift cards were being purchased routinely and without prior authorization. This policy change clearly requires prior authorization of the purchase and documentation.

General Accounting Policy and Procedure:

The Court indicated to the Legislative Auditor that its new General Accounting policy was an update to older policies governing its accounting practices. These policies are based, in large part, on the State Treasurer's Office policies and cover the basic requirements for cash and credit card handling, detail the required segregation of duties, and includes safeguards for handling payments and sensitive payment information (i.e., credit card information).

Procurement Policy and Procedures:

As with the General Accounting policy, the Court indicated that its new Procurement Policy serve as an update to the previous version of these policies that were in place. Thus, these new policies establish purchasing procedures for routinely purchased items (office supplies, etc.), and incorporates best practices for larger purchases by requiring three written bids.

Employee Handbook:

The current Employee Handbook is a total rewrite of the Court's old Personnel Manual. The Court provided documentation to the Legislative Auditor demonstrating that the Court used numerous examples to guide in the development of this handbook, including the personnel manuals from five other states' judicial branches¹, and several personnel policies/manuals from in-state spending units. The Handbook covers a myriad of topics such as the employment process, work schedules, benefits, leave and time off from work, and performance expectations. In addition, the Employee Handbook references employees to all of the Court's policies via their intranet and requires that each employee certify that they have read, understand, and agree to abide by the policies.

The Court's Current Policies Could Be Strengthened by Clarifying Their Applicability to Justices of the Court.

The first policy adopted by the Court, the Travel Policy and Standards, was put into effect in June 2018. This policy established the rules and guidelines for all manner of travel by Court employees. In its scope, the policy specifically indicates that its applicability extends to all "Judicial Officers," which is defined as, "*elected officers such as Circuit Court Judges, Family Court Judges, and Magistrates.*" The Legislative Auditor determined that this language was copied into each of the 10 subsequent sets of policies developed and implemented by the Court.

While there is evidence, in subsequent policies, that the Court intends for this definition to include Justices of the Court, those policies do not specifically include the Justices as they do all other elected judges in the State. The absence of clear language including the Justices of the Court are subject to the policies potentially leaves the applicability of those policies open to interpretation.

This ambiguity creates a potential significant weakness in the Court's internal controls. The Court's current policies were designed and implemented in the context of recently identified fraud and misuse of the Court's resources. If the policies and standards that were put in place by the Court do not specifically apply to its Justices, it is the Legislative Auditor's opinion that no controls would be in place to detect or prevent such fraud or misuse from occurring in the future. **Therefore, the Legislative Auditor recommends that the Supreme Court of Appeals of West Virginia modify its current Policies to clarify their applicability to the Justices of the Court.**

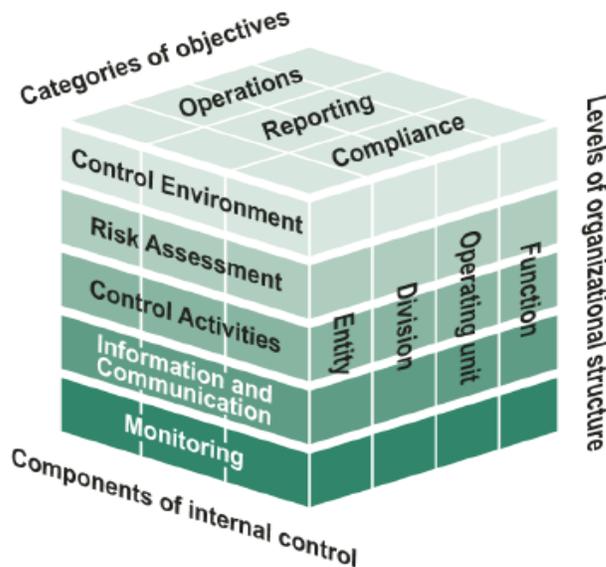
The Court's Policies Are Designed to Provide an Effective System of Internal Controls

An effective internal controls system increases the likelihood that an entity will achieve its objectives. The most widely accepted standards for effective internal controls are the U.S. Government Accountability Office's *Standards for Internal Controls in the Federal Government* and the *COSO Framework*. These standards establish the core components and underlying

¹ The Court modeled its Employee Handbook on the personnel policies/manuals from Arizona, Colorado, Idaho, Kentucky, Maryland, the West Virginia Department of Administration, West Virginia University and the West Virginia Division of Personnel.

principles that all effective systems of internal controls must possess. Figure 2 provides an overview of the *COSO Framework*.

Figure 2. COSO Framework



Source: COSO and GAO | GAO-14-704G

The Legislative Auditor limited this evaluation to the design of the Court’s newly established system of internal controls. The design of the Court’s controls demonstrates a strong control environment by addressing numerous policy areas where no previous policy existed. In addition, the Court has further demonstrated a commitment to a strong control environment by updating outdated policies and incorporating elements and best practices from comparable policies. The Court’s system of controls uses its organizational structure to assign and delegate responsibility and authority throughout the organization and includes accountability provisions for breaches of Court policy.

In addition, the Court’s internal controls system, as designed, addresses many of the risk areas identified in prior audits, and many of the Court’s policies contain specific controls to detect fraud and prevent it from occurring. Finally, the Court’s new policies represent control activities established by the Court to ensure that it achieves its objectives and responds to known operational risks.

While this system of internal controls is adequate in design, the Court should ensure that quality information is communicated throughout the chain of command and engage in routine monitoring of its control activities to ensure that any deficiencies are detected and remedied in a timely fashion.

In designing these policies, the Court used numerous policies and procedures established by other governmental bodies as guidance. This included many state-level policies such as the West Virginia State Auditor’s P-Card Policies and Procedures, the West Virginia Purchasing Manual, and the Department of Administration Employee Handbook.

The Legislative Auditor requested that the Court describe its process for communicating and implementing all of the newly established policies. In response, the Court indicated that it had disseminated its new Employee Handbook to all Court personnel, which incorporates by reference each policy. The Court also provided the Legislative Auditor with documentation showing the Court's communication of its policies to all of its employees. Finally, the Court indicated that while, *schedules and agendas for the various 2020 education and training conferences are not finalized at this time. . . it is anticipated the Employee Handbook will be discussed at these sessions.*

Conclusion

In the year since the Legislative Auditor concluded its audit of the Court, the Court has taken steps to address the issues identified, establish appropriate policies and procedures, and design an effective overall system of internal controls over its operations. The Legislative Auditor commends the Court for its quick actions to establish thorough and well-researched controls.

The current review provides an opinion on the overall design of the Court's controls, but it should be noted that the overall effectiveness of a system of controls is dependent not just on good design, but also on implementation that includes effective communication of information and routine monitoring of controls, activities that could not be included in this review. As such, to ensure the effectiveness of its system of internal controls, the Court should focus on routine monitoring of its internal controls to detect weaknesses and risk, and appropriately respond to those risks and any other significant changes.

Although the design of the Court's policies appears thorough overall, the Legislative Auditor is concerned about the ambiguity with respect to their applicability to the Justices. While it appears to be the intent and interpretation of the current Justices of the Court to include themselves within the scope of these policies, the Court can significantly strengthen its system of internal controls by clearly establishing applicability to the Justices in the same manner as they currently do with respect to Circuit, Family, and Magistrate Court judicial officers.

UPDATE:

On January 2, 2020, the Court responded to the Legislative Auditor's draft letter-report (Appendix B). The Court's response indicated its agreement with the Legislative Auditor's report and recommendation. Further, the Court indicated that it *"has already adopted revisions to the policies to ensure their applicability to the Justices of the Supreme Court of Appeals."*

Recommendation

1. The Legislative Auditor recommends that the Supreme Court of Appeals of West Virginia modify its current policies to clarify their applicability to the Justices of the Court and the operations of the Supreme Court of Appeals of West Virginia where such applicability is vague or ambiguous.

Respectfully Submitted,



Justin Robinson

Appendix A - Report Transmittal Letter

WEST VIRGINIA LEGISLATIVE AUDITOR'S OFFICE

Post Audit Division

1900 Kanawha Blvd. East, Room W-329
Charleston, WV 25305-0610
(304) 347-4880

Justin Robinson
Director



December 26, 2019

The Honorable Elizabeth D. Walker, Chief Justice
West Virginia Supreme Court of Appeals
State Capitol Complex
Building 1, Room E-302
Charleston, WV 25305

Dear Chief Justice Walker:

This is to transmit a draft copy of our letter-report on the Supreme Court of Appeals of West Virginia. This report will be presented during the January interim meeting of the Post Audits Subcommittee which is currently scheduled to meet on **January 7, 2020 at 11:00 a.m.** in the Senate Finance Room (451-M) It is expected that a representative from the Court be present at the meeting to respond to the report and answer any questions committee members may have during or after the meeting.

If you would like to schedule an exit conference to discuss any concerns you may have with the report, please notify me at 304-347-4880 as soon as possible. In addition, we need your written response by noon on **Friday, January 3, 2020** in order for it to be included in the final report. Thank you for your cooperation.

Sincerely,

A handwritten signature in blue ink, appearing to read "Adam R. Fridley".

Adam R. Fridley, CGAP
Audit Manager

Enclosure

Appendix B - Supreme Court of Appeals' Response to Audit Report



SUPREME COURT OF APPEALS
CAPITOL COMPLEX, BUILDING ONE, ROOM E-307
CHARLESTON, WEST VIRGINIA
304-558-2604

TIM ARMSTEAD
CHIEF JUSTICE

January 2, 2020

Justin Robinson, Director
Adam R. Fridley, CGAP, Audit Manager
West Virginia Legislative Auditor's Office
1900 Kanawha Blvd. East, Room W-329
Charleston, West Virginia 26304-0610

Dear Mr. Robinson and Mr. Fridley:

Thank you for providing the West Virginia Supreme Court of Appeals with a draft copy of your report to President Carmichael and Speaker Hanshaw relating to the recent audit of the Court.

As reflected in the report, the Court has made significant efforts over the past year, working together under the leadership of Chief Justice Beth Walker, to implement and update its policies and procedures relating to internal controls of the Court's operations. We are very pleased that the audit report commends the Court for these efforts.

The Court also appreciates the recommendation contained in the report that provides:

The Legislative Auditor recommends that the Supreme Court of Appeals of West Virginia modify its current policies to clarify their applicability to the Justices of the Court and the operations of the Supreme Court of Appeals of West Virginia where such applicability is vague or ambiguous.

In response to this recommendation, the Court wishes to assure you and the Legislature that it certainly has been our intent, and remains our intent, that the policies referred to in the audit report apply to the Justices of the Supreme Court of Appeals. Accordingly, the Court agrees with the recommendation of the Legislative Auditor that the policies be clarified and has already adopted revisions to the policies to ensure their applicability to the Justices of the Supreme Court of Appeals.

Again, we appreciate the work of the Legislative Auditor in relation to your review of the new and revised policies and thank you for your recommended clarifications.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim Armstead".

Tim Armstead
Chief Justice

Appendix C - Objective, Scope, and Methodology

Objective, Scope, and Methodology

The Post Audit Division within the Office of the Legislative Auditor conducted this review as authorized by Chapter 4, Article 2, Section 5 of the *West Virginia Code*, as amended.

Objectives

The objective of this review was to determine the extent to which the Supreme Court of Appeals of West Virginia (the Court) has developed and implemented new policies and procedures to govern the operations of the Court and the Judicial branch of state government and whether the design of those controls is adequate.

Scope

The scope of this review consists of any and all policies established by the Court since the completion of the legislative audits conducted in 2018. This documentation includes the policies themselves, any state, federal, or other policy document used as a guide or example, and any and all documentation demonstrating the Court's communication of these policies to its employees. The scope is limited to the time period from April 2018 to present. The scope of this objective will **only** include an assessment of the design of the Court's system of controls. Given the recent implementation of many of these policies, the auditors determined that sufficient time and data were not available to fully assess the implementation or overall effectiveness of this system of controls.

Methodology

Post Audit staff gathered and analyzed information from the Court and assessed the sufficiency and appropriateness of the information used as evidence. Testimonial evidence was gathered through formal and informal correspondences with the Court's personnel. The purpose for testimonial evidence was to gain a better understanding or clarification of certain issues, to confirm the existence or non-existence of a condition, or to understand the respective agency's position on an issue. Such testimonial evidence was confirmed by either written statements or the receipt of corroborating or physical evidence.

Audit staff analyzed the various policy documents in accordance with the *Standards for Internal Control in the Federal Government*, which incorporates the COSO model for effective internal controls. Audit staff sought to identify evidence within the design of the Court's controls of the core components and principles of effective internal controls.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.