

**STATE OF FLORIDA
AUDITOR GENERAL**



*OPERATIONAL AUDIT
OF THE*

*OFFICE OF THE PUBLIC DEFENDER
EIGHTEENTH JUDICIAL CIRCUIT*

For the Period January 1, 1997, Through December 31, 1997

Dated: May 13, 1998

13240

***STATE OF FLORIDA
AUDITOR GENERAL***

***OPERATIONAL AUDIT
OF THE***

***OFFICE OF THE PUBLIC DEFENDER
EIGHTEENTH JUDICIAL CIRCUIT***

For the Period January 1, 1997, Through December 31, 1997

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**OFFICE OF THE PUBLIC DEFENDER
EIGHTEENTH JUDICIAL CIRCUIT**

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STATE OF FLORIDA
AUDITOR GENERAL
TALLAHASSEE

CHARLES L. LESTER, CPA
AUDITOR GENERAL

May 13, 1998

The President of the Senate, the Speaker of the
House of Representatives, and the
Legislative Auditing Committee

Pursuant to the provisions of Section 11.45, Florida Statutes, and as part of the
Legislature's oversight responsibility for operations of State agencies, I have directed that an
operational audit be made of the

***OFFICE OF THE PUBLIC DEFENDER,
EIGHTEENTH JUDICIAL CIRCUIT,***

For the Period January 1, 1997, Through December 31, 1997.

The results of the audit of the Office of the Public Defender are presented herewith.

Respectfully submitted,

Charles L. Lester
Auditor General

Audit supervised by:
Brenda C. Racis

Audit made by:
John E. Rebhann

***OPERATIONAL AUDIT
OF THE***

***OFFICE OF THE PUBLIC DEFENDER
EIGHTEENTH JUDICIAL CIRCUIT
For the Period January 1, 1997, Through December 31, 1997***

AUDIT REPORT SUMMARY

This audit report summary highlights the scope, objectives, methodology, and findings of audit report No. 13240, dated May 13, 1998. It is intended to present the findings of our report in a condensed fashion. The entire audit report should be read for a comprehensive understanding of our audit findings.

SCOPE/OBJECTIVES

The Auditor General, as part of the Legislature's oversight responsibility for operations of State agencies, makes operational audits to evaluate management's performance in administering assigned responsibilities in accordance with applicable laws, administrative rules, and other guidelines and to determine the extent to which the internal control, as designed and placed in operation, promotes and encourages the achievement of management's control objectives in the categories of compliance, economic and efficient operations, reliability of financial records and reports, and safeguarding of assets.

The scope of this audit of the Office of the Public Defender, Eighteenth Judicial Circuit, focused primarily on assets, liabilities, fund equities, expenditures and disbursements, budgetary controls, management reporting, and motor vehicle assignment and use. For each of these areas, our audit included examinations of various transactions (as well as events and conditions) during the period January 1, 1997, through December 31, 1997.

METHODOLOGY

We conducted our audit in accordance with generally accepted auditing standards and applicable standards contained in *Government Auditing Standards* issued by the Comptroller General of the United States.

FINDINGS

A matter coming to our attention relating to noncompliance with various guidelines for those operations audited is as follows:

Salary Rate and Authorized Positions

Contrary to Section 216.181(9)(b), Florida Statutes, the Office of the Public Defender exceeded its approved salary rate by \$34,971 at June 30, 1997. Further, contrary to the provisions of Section 216.262, Florida Statutes, at June 30, 1997, the number of positions filled (80.5 on a full-time equivalent basis) exceeded the number of positions authorized by law (77.5) for Office operations. (See paragraphs 18 through 21.)

The Public Defender's written response to the audit findings and recommendations included in audit report No. 13240 is presented as Exhibit D.

**OPERATIONAL AUDIT
OF THE**

**OFFICE OF THE PUBLIC DEFENDER
EIGHTEENTH JUDICIAL CIRCUIT
For the Period January 1, 1997, Through December 31, 1997**

Par.
No.

REPORT ON COMPLIANCE AND INTERNAL CONTROL

- (1) Office of the Public Defender, Eighteenth Judicial Circuit, management is responsible for administering numerous operating units, programs, activities, functions, and classes of transactions in accordance with governing provisions of laws, administrative rules, and other guidelines. Additionally, the proper administration of public funds requires that management establish and maintain a system of internal control to provide reasonable assurance that specific entity objectives will be achieved. The Auditor General, as part of the Legislature's oversight responsibility for operations of State agencies, makes operational audits to determine the extent to which management has fulfilled those responsibilities.
- (2) The scope of this audit focused primarily on assets, liabilities, fund equities, expenditures and disbursements, budgetary controls, management reporting, and motor vehicle assignment and use. For each of these areas, our audit included examinations of various transactions (as well as events and conditions) during the period January 1, 1997, through December 31, 1997.
- (3) We conducted our audit in accordance with generally accepted auditing standards and applicable standards contained in *Government Auditing Standards* issued by the Comptroller General of the United States. Our audit objectives for the operating units, programs, activities, functions, and classes of transactions within the scope of audit were:
 - To evaluate the Office's performance in administering its assigned responsibilities in accordance with applicable laws, administrative rules, and other guidelines.
 - To determine the extent to which the Office's system of internal control, and selected relevant controls, promotes and encourages the achievement of management's objectives in the categories of compliance with applicable laws, administrative rules, and other

guidelines; the economic and efficient operation of the Office; the reliability of financial records and reports; and the safeguarding of assets.

- To determine whether the Office has corrected, or is in the process of correcting, all deficiencies disclosed in the prior audit (report No. 12820).

- (4) As a part of our audit, we examined, on a test basis, evidence supporting transactions (as well as events and conditions) which occurred; performed analytical procedures; reviewed management's administrative constructions of law; and performed such other procedures as we considered necessary in the circumstances. Our objective was to evaluate management's compliance with significant provisions of laws, administrative rules, and other guidelines governing those operating units, programs, activities, functions, and classes of transactions within the scope of audit. However, providing an opinion on compliance with those provisions was not an objective of our audit.
- (5) The results of our tests of compliance indicated that, with respect to the items tested, the Office had generally complied with the significant provisions of laws, administrative rules, and other guidelines governing those operating units, programs, activities, functions, and classes of transactions within the scope of audit. Matters coming to our attention relating to noncompliance with various guidelines for those operations audited are noted in the ***FINDINGS AND RECOMMENDATIONS*** section of this report.
- (6) In planning and performing our audit, we considered the Office's internal control relevant to those operating units, programs, activities, functions, and classes of transactions within the scope of audit. Our purpose in considering internal control was to determine the nature, timing, and extent of substantive audit tests and procedures necessary to the accomplishment of our audit objectives, not to provide assurance on internal control.
- (7) Our consideration of internal control would not necessarily disclose all matters in the Office's internal control that might be material weaknesses. A material weakness is a condition in which the design or operation of one or more of the internal control components does not reduce to a relatively low level the risk that operating deficiencies, material in relation to the financial records and resources of the operating units, programs, activities, functions, and classes of transactions being audited, may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions. We noted no matters

involving the system of internal control and its operation that we consider to be material weaknesses.

- (8) This report is intended for the information of the Legislative Auditing Committee, members of the Florida Senate and the Florida House of Representatives, and applicable management. Copies of this report are available pursuant to Section 11.45(7), Florida Statutes, and its distribution is not limited.

BACKGROUND

Authority

- (9) Section 27.50, Florida Statutes, provides that there shall be a Public Defender for each of the judicial circuits of the State who shall be elected at the General Election by the qualified electors of the circuit. The duties of the Public Defender as prescribed by Chapter 27, Part III, Florida Statutes, include representing, without additional compensation, any person who is determined by the court to be indigent as provided in Section 27.52, Florida Statutes, and who is: (1) under arrest for, or is charged with, a felony; (2) under arrest for, or is charged with, a misdemeanor, a violation of Chapter 316, Florida Statutes, which is punishable by imprisonment, criminal contempt, or a violation of a municipal or county ordinance in the county court, unless the court, prior to trial, files in the cause an order of no imprisonment which states that the defendant will not be imprisoned if he or she is convicted; (3) alleged to be a delinquent child pursuant to a petition filed before a circuit court; or (4) sought by petition filed in such court to be involuntarily placed as a mentally ill person or involuntarily admitted to residential services as a person with developmental disabilities.

Organizational Structure

- (10) James Russo is the Public Defender of the Eighteenth Judicial Circuit. The Public Defender of the Eighteenth Judicial Circuit is responsible for performing the duties described above, as provided by law, in Brevard and Seminole Counties. Offices are maintained at Titusville and Viera in Brevard County and Sanford in Seminole County. At June 30, 1997, the Office of the Public Defender had 77.5 full-time equivalent positions authorized. An organizational chart of the Office of the Public Defender is presented as Exhibit C.
- (11) The Office of the Public Defender, Eighteenth Judicial Circuit, was funded by State appropriations for 1996-97 and 1997-98 fiscal years, respectively, pursuant to Chapters 96-424 and 97-152, Laws of Florida, the General Appropriations Acts. The following is a summary of released appropriations by appropriation category for the 1996-97 fiscal year:

| Appropriation <u>Category</u> | Amount <u>Released</u> |
|----------------------------------|---------------------------|
| Salaries and Benefits | \$ 3,310,814.95 |
| Other Personal Services | 14,301.74 |
| Expenses | 263,531.51 |
| Data Processing Services | 470.00 |
| Operating Capital Outlay | 52,774.32 |
| Special Category: | |
| Acquisition of Motor Vehicles | 79,046.73 |
| Public Defenders - Law Library | <u>11,054.75</u> |
| Total | <u>\$ 3,731,994.00</u> |

- (12) As required by Section 27.54, Florida Statutes, the counties which comprise the Eighteenth Judicial Circuit provided facilities and services to the Office of the Public Defender. These facilities and services included office space, utilities, telephone service, and other support as itemized in Section 27.54(3), Florida Statutes.
- (13) The Public Defender's salary was governed by Section 27.5301(1), Florida Statutes, and applicable General Appropriations Acts of the Legislature. Section 27.5301(2), Florida Statutes, provides that the salary for each assistant public defender shall be set by the Public Defender at an amount not to exceed 100 percent of the Public Defender's salary. The *Classification and Pay Procedures for the Employees of the Public Defender Offices of the State of Florida*, promulgated by the Florida Public Defender Association, Inc., as required by Section 27.53(1), Florida Statutes, was used to set the salary ranges for the several classes of employees.
- (14) A comparison of the Office of the Public Defender's budgeted with actual expenditures and commitments for the 1996-97 fiscal year, the last complete year subject to audit, is presented as Exhibit A. The purpose of this budgetary comparison is to provide information useful to an understanding of the budgetary structure and operations of the Office of the Public Defender. This comparison presents both budgetary and actual amounts on the basis specified in Chapter 216, Florida Statutes, and the applicable portions of the 1996-97 General Appropriations Act, as further described in the notes to the Exhibit. The Exhibit was prepared by us from the Office's records and was reviewed by Office management.
- (15) The objectives of this audit did not include the expression of an opinion on the comparison of budgeted with actual expenditures and commitments, which is presented on the basis specified

in Chapter 216, Florida Statutes, and includes several elements and accounts relating to the Office's budgetary operations. Therefore, an independent auditor's report on the budgetary comparison, as contemplated by *AU Section 623, Special Reports, Codification of Statements on Auditing Standards*, is not included herein.

Related Audits

- (16) Our audit did not extend to an examination of the Office of the Public Defender's financial statements. On January 29, 1998, this Office issued audit report No. 13138, with accompanying general purpose financial statements of the State of Florida as of and for the fiscal year ended June 30, 1997. The Office of the Public Defender is an integral part of the reporting entity of the State of Florida. The financial information relative to the Office of the Public Defender was included by the State Comptroller in the general purpose financial statements that accompany that report. A similar audit of the general purpose financial statements of the State of Florida for the fiscal year ended June 30, 1998, will be the subject of a separate audit report.

FINDINGS AND RECOMMENDATIONS

- (17) Chapter 27, Part III, Florida Statutes, provides general authority for the financial administration of the Office of the Public Defender. In addition, the Florida Public Defender Association, Inc., has provided guidance for the financial administration of the Office of the Public Defender. Such guidance includes the adoption of the *Classification and Pay Procedures for the Employees of the Public Defender Offices of the State of Florida*, pursuant to the provisions of Section 27.53(1), Florida Statutes, and the adoption of the *Public Defender Uniform Purchasing Manual*, as required by Chapter 82-215, Laws of Florida. Our detailed findings and recommendations concerning noncompliance with governing laws, administrative rules, and other guidelines for those operations audited are presented below.

Salary Rate and Authorized Positions

- (18) Contrary to Section 216.181(9)(b), Florida Statutes, the Office of the Public Defender exceeded its approved salary rate by \$34,971 at June 30, 1997. Further, contrary to the provisions of Section 216.262, Florida Statutes, at June 30, 1997, the number of positions filled (80.5 on a full-time equivalent basis) exceeded the number of positions authorized by law (77.5) for Office operations.
- (19) Sections 216.181 and 216.262, Florida Statutes, include provisions pertinent to the employment and compensation of personnel by State agencies. Section 216.011(1)(kk), Florida Statutes, indicates that for purposes of Chapter 216, Florida Statutes, Public Defenders are to be considered State agencies. Section 216.181(9)(b), Florida Statutes, provides that no agency may exceed its maximum approved salary rate for the fiscal year. However, at any time during the fiscal year, an agency may exceed its approved rate for all budget entities by no more than 5 percent, provided that, by June 30 of every fiscal year, the agency has reduced its salary rate so that the salary rate for each budget entity is within the approved rate limit for that budget entity. Section 216.262, Florida Statutes, generally limits the number of positions that may be filled to the number of positions authorized by a fiscal year's appropriations act.
- (20) To determine the extent to which the Office of the Public Defender had complied with the provisions of Sections 216.181(9)(b) and 216.262, Florida Statutes, we reviewed monthly and fiscal year-end Florida Justice Administrative Commission (JAC) salary rate reports applicable to the Eighteenth Judicial Circuit. The salary rate reports provide a comparison of the actual

and approved salary rates and a comparison of the number of filled and authorized positions. Our review of these reports and related Office payroll records disclosed the following:

- Contrary to the requirements of Section 216.181(9)(b), Florida Statutes, at June 30, 1997, the Office's actual salary rate of \$2,660,118 exceeded by \$34,971 the approved salary rate of \$2,625,147.
- Contrary to the provisions of Section 216.262, Florida Statutes, at June 30, 1997, the number of positions filled (80.5 on a full-time equivalent basis) exceeded the number of positions authorized by law (77.5) for Office operations. Further, our review disclosed that 6 assistant public defender positions filled by full-time employees were each shown on the Office's June 30, 1997, salary rate report as part-time employees (.5 full-time equivalent) rather than as full-time employees. As a result, the salary rate report did not accurately reflect the actual number of filled positions at June 30, 1997. In response to our inquiry, the Executive Director indicated that, in the absence of a sufficient position allotment, the practice of recording certain full-time positions as .5 full-time equivalent enables the Office to employ the necessary personnel to carry out its constitutional duty of providing representation to indigent clients charged with a crime.

(21) We recognize that Office management is responsible for taking appropriate actions to ensure that the necessary personnel are available for the conduct of the Office's assigned responsibilities. Nevertheless, to ensure a proper balance between the amounts budgeted for salaries and benefits and the positions authorized, we recommend that the Office maintain its actual salary rates within the approved salary rate limits established pursuant to Section 216.181, Florida Statutes. We also recommend that the number of positions filled be limited to the number authorized by law.

Prior Audit Findings

(22) For those operating units, programs, activities, functions, and classes of transactions within the scope of this audit, the Office of the Public Defender has substantially corrected the deficiencies noted in audit report No. 12820.

STATEMENT FROM AUDITED OFFICIAL

- (23) In accordance with the provisions of Section 11.45(7)(d), Florida Statutes, a list of audit findings and recommendations was submitted to the Office of the Public Defender, Eighteenth Judicial Circuit. The Public Defender's written response to the audit findings and recommendations included in this report is shown as Exhibit D.

AUDIT AUTHORITY

- (24) Pursuant to the provisions of Section 11.45(7), Florida Statutes, I have directed that this audit report, including all Exhibits thereto, be prepared to present the results of the operational audit of the Office of the Public Defender, Eighteenth Judicial Circuit.

Respectfully submitted,



Charles L. Lester, CPA
Auditor General

EXHIBITS

The following Exhibits are attached to and form an integral part of this report:

[EXHIBIT - A](#) *Comparison of Budgeted With Actual Expenditures and Commitments - By State Fund Type.*

[EXHIBIT - B](#) *Notes to Comparison of Budgeted With Actual Expenditures and Commitments - By State Fund Type.*

[EXHIBIT - C](#) *Organizational Chart.*

[EXHIBIT - D](#) *Statement from Audited Official.*

EXHIBIT – A
OFFICE OF THE PUBLIC DEFENDER
EIGHTEENTH JUDICIAL CIRCUIT
COMPARISON OF BUDGETED WITH ACTUAL
EXPENDITURES AND COMMITMENTS – BY STATE FUND TYPE
For the Fiscal Year Ended June 30, 1997

| Fund Type/ Appropriation Category | Final Operating Budget | Actual Expenditures of Current Appropriations | Other Commitments of Budgeted Resources | Total Expenditures and Other Commitments of Current Appropriations | Variance - Favorable (Unfavorable) |
|--------------------------------------|------------------------------|--------------------------------------------------------|--------------------------------------------------|-----------------------------------------------------------------------------------|------------------------------------------|
| GENERAL REVENUE FUND | | | | | |
| Current: | | | | | |
| Salaries and Benefits | \$ 3,310,814.95 | \$ 3,310,814.95 | \$ - | \$ 3,310,814.95 | \$ - |
| Other Personal Services | 14,301.74 | 14,301.84 | - | 14,301.84 | (0.10) |
| Expenses | 263,531.51 | 249,032.84 | 14,498.67 | 263,531.51 | - |
| Data Processing Services | 470.00 | 470.00 | - | 470.00 | - |
| Operating Capital Outlay | 52,774.32 | 35,774.32 | 17,000.00 | 52,774.32 | - |
| Special Category: | | | | | |
| Acquisition of Motor Vehicles | 79,046.73 | 64,056.73 | 14,990.00 | 79,046.73 | - |
| Public Defenders - Law Library | <u>11,054.75</u> | <u>10,865.75</u> | <u>189.00</u> | <u>11,054.75</u> | <u>-</u> |
| TOTAL GENERAL REVENUE FUND | <u>\$ 3,731,994.00</u> | <u>\$ 3,685,316.43</u> | <u>\$ 46,677.67</u> | <u>\$ 3,731,994.10</u> | <u>\$ (0.10)</u> |

The accompanying notes to this Exhibit describe in more detail the information included in this comparison.

EXHIBIT – B
OFFICE OF THE PUBLIC DEFENDER
EIGHTEENTH JUDICIAL CIRCUIT
NOTES TO COMPARISON OF BUDGETED WITH ACTUAL
EXPENDITURES AND COMMITMENTS – BY STATE FUND TYPE
For the Fiscal Year Ended June 30, 1997

- (1) The following procedures are used in adopting, amending, and reporting budgets and budgetary data:
- Section 216.011(1)(kk), Florida Statutes, indicates that for purposes of Chapter 216, Florida Statutes, Public Defenders are to be considered State agencies. Accordingly, budgets are prepared and submitted to the Legislature in the form and manner prescribed by Chapter 216, Florida Statutes, for State agencies.
 - As provided by Section 27.60, Florida Statutes, limited transfers of expenditure authority may be made by the Public Defender.
 - Budgetary information is integrated into the accounting system.
 - In accordance with Chapter 216, Florida Statutes, annual appropriations are used for: (1) authorized expenditures incurred during the current fiscal year; (2) encumbrances outstanding at year-end approved for liquidation in the subsequent year; and (3) legal, due, and unpaid obligations relating to the prior year which were not requested and/or approved to be liquidated from appropriations of the prior year.
- (2) Because the budgetary basis of accounting for operating categories described in Chapter 216, Florida Statutes, requires recognition of amounts which are in addition to those used to recognize and report expenditures in accordance with generally accepted accounting principles, the expenditures and commitments presented on Exhibit A have been shown on a basis comparable to the budget. To present these data on a basis comparable to the budget, accrual basis expenditures paid from or charged to 1996-97 fiscal year appropriations have been shown in the “Actual Expenditures of Current Appropriations” column. Additionally, encumbrances at June 30, 1997, which were approved for certification forward to be paid in the 1997-98 fiscal year are shown in the “Other Commitments of Budgeted Resources” column.

EXHIBIT – B (Continued)
OFFICE OF THE PUBLIC DEFENDER
EIGHTEENTH JUDICIAL CIRCUIT
NOTES TO COMPARISON OF BUDGETED WITH ACTUAL
EXPENDITURES AND COMMITMENTS – BY STATE FUND TYPE
For the Fiscal Year Ended June 30, 1997

- (3) Adjustments to reconcile the budget amounts for the operating categories shown on Exhibit A with amounts appropriated are as follows:

| Description | General Revenue Fund |
|---------------------------------------------------------------|----------------------------|
| Appropriated by Chapter 96-424, Laws of Florida | \$ 3,655,813 |
| Changes Authorized by the Executive Office of the Governor | <u>76,181</u> |
| Total Final Operating Budget, Exhibit A | <u>\$ 3,731,994</u> |

EXHIBIT – C
OFFICE OF THE PUBLIC DEFENDER
EIGHTEENTH JUDICIAL CIRCUIT
ORGANIZATIONAL CHART
As of December 31, 1997

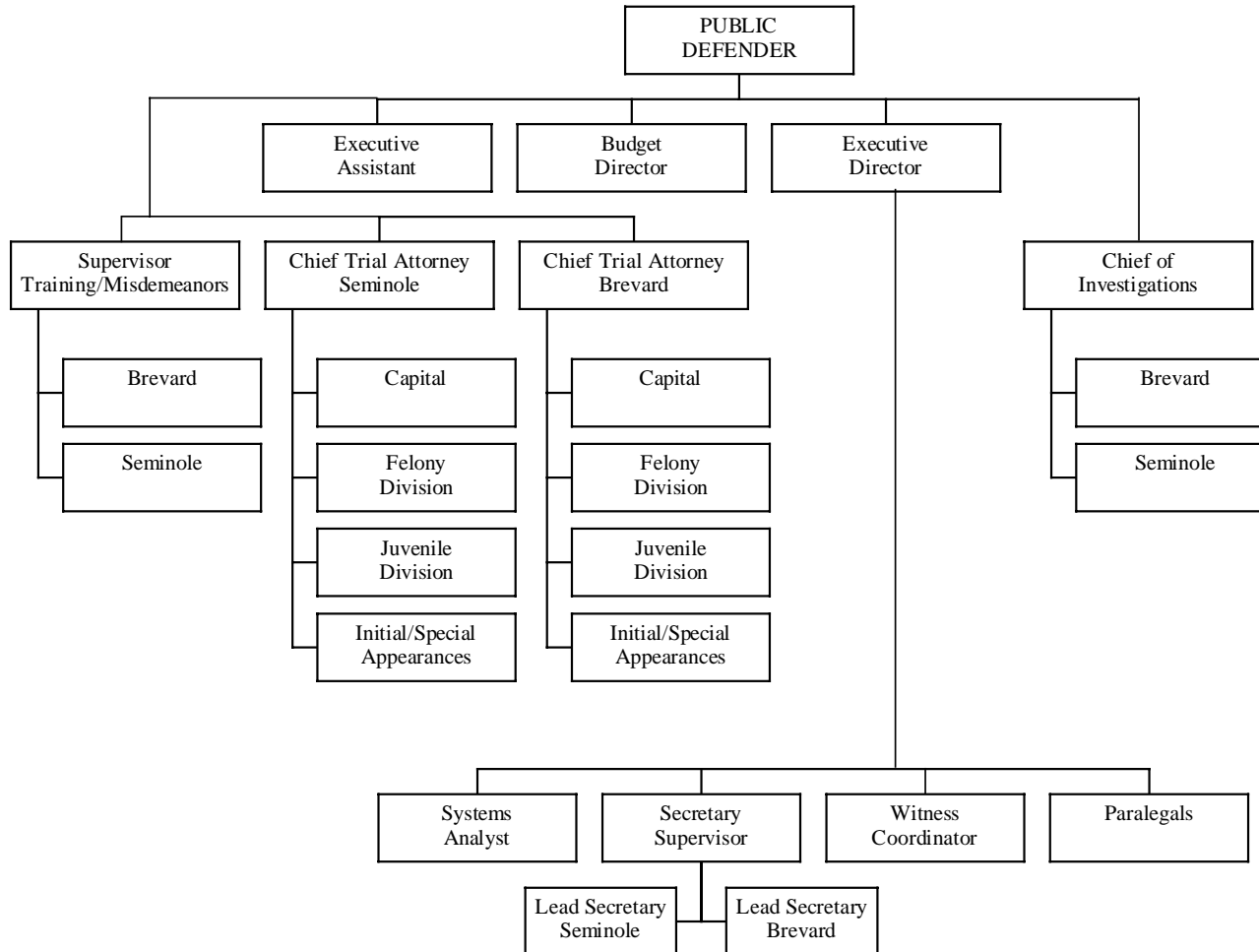


EXHIBIT - D
OFFICE OF THE PUBLIC DEFENDER
EIGHTEENTH JUDICIAL CIRCUIT
STATEMENT FROM AUDITED OFFICIAL
For the Period January 1, 1997, Through December 31, 1997

2725 JUDGE FRANK JAMIESON WAY
BUILDING E
VEERA, FLORIDA 32940
TELEPHONE: (407) 617-7373

SEMINOLE COUNTY COURTHOUSE
SANFORD, FLORIDA 32771
TELEPHONE: (407) 322-6814

OFFICE OF THE
PUBLIC DEFENDER
EIGHTEENTH JUDICIAL CIRCUIT
BREVARD & SEMINOLE COUNTIES

JAMES RUSSO
PUBLIC DEFENDER

BLAISE TRUETT
EXECUTIVE ASSISTANT

MARY LU TOMBLESON
EXECUTIVE DIRECTOR

May 4, 1998

Charles L. Lester
Auditor General
State of Florida
111 West Madison Street
Post Office Box 1735
Tallahassee, FL 32302-1735

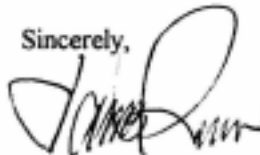
Audit
Report
Par. No.
(18-21)

Dear Mr. Lester:

I have received the preliminary and tentative audit findings and recommendations for the Office of the Public Defender, Eighteenth Judicial Circuit, for the period January 1, 1997, through December 31, 1997. After review of the report I agree with the findings and will make a concerted and diligent effort to have this agency at or below its approved salary rate at the conclusion of the fiscal year. Further, every effort will be made to not exceed the allotted full-time equivalent or have full-time employees classified as part-time.

Again, it has been a pleasure working with your staff.

Sincerely,



James Russo
Public Defender

JR:naw