

**STATE OF FLORIDA
AUDITOR GENERAL**



*OPERATIONAL AUDIT
OF THE*

*OFFICE OF THE PUBLIC DEFENDER
FIFTH JUDICIAL CIRCUIT*

For the Period July 1, 1997, Through June 30, 1998

STATE OF FLORIDA

AUDITOR GENERAL

*OPERATIONAL AUDIT
OF THE*

*OFFICE OF THE PUBLIC DEFENDER
FIFTH JUDICIAL CIRCUIT*

For the Period July 1, 1997, Through June 30, 1998

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

Table of Contents

LETTER OF TRANSMITTAL

AUDIT REPORT SUMMARY

SCOPE/OBJECTIVES

METHODOLOGY

FINDINGS

BACKGROUND

AUTHORITY

ORGANIZATIONAL STRUCTURE

RELATED AUDITS

REPORT ON COMPLIANCE AND INTERNAL CONTROL

FINDINGS AND RECOMMENDATIONS

PAYROLL DIRECT DEPOSIT PROGRAM

PRIOR AUDIT FINDINGS

STATEMENT FROM AUDITED OFFICIAL

EXHIBITS



CHARLES L. LESTER, CPA
AUDITOR GENERAL

STATE OF FLORIDA
AUDITOR GENERAL
TALLAHASSEE

January 13, 1999

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,
FIFTH JUDICIAL CIRCUIT,***

For the Period July 1, 1997, Through June 30, 1998.

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

Respectfully submitted,

A handwritten signature in cursive script that reads "Charles L. Lester".

Charles L. Lester
Auditor General

Audit supervised by:
James G. Drake

Audit made by:
Daniel J. Kearns

***OPERATIONAL AUDIT
OF THE***

***OFFICE OF THE PUBLIC DEFENDER
FIFTH JUDICIAL CIRCUIT
For the Period July 1, 1997, Through June 30, 1998***

AUDIT REPORT SUMMARY

This audit report summary highlights the scope, objectives, methodology, and findings of audit report No. 13373. 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, Fifth Judicial Circuit, focused primarily on assets, liabilities, fund equities, expenditures and disbursements, budgetary controls, and management reporting. For each of these areas, our audit included examinations of various transactions (as well as events and conditions) during the period July 1, 1997, through June 30, 1998.

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

Payroll Direct Deposit Program

Section 110.113(2), Florida Statutes, requires all persons appointed to a position in State government on or after July 1, 1996, to participate in the payroll direct deposit program (receipt of salary payments via electronic funds transfers made directly to the employee's financial institution) as a condition of such employment. While Office of the Public Defender policy regarding the payroll direct deposit program was to provide new employees with the forms necessary to enroll in the program and to inform the employees that enrollment is a condition of employment, the Office had not established effective follow-up procedures to ensure that all new employees eventually enrolled in the program. Our tests disclosed several instances in which employees had not enrolled in the program within three months after their respective hire dates. (See paragraphs 19 through 22.)

The Public Defender's written response to the audit findings and recommendations included in audit report No. 13373 is presented as Exhibit D.

**OPERATIONAL AUDIT
OF THE
OFFICE OF THE PUBLIC DEFENDER
FIFTH JUDICIAL CIRCUIT
For the Period July 1, 1997, Through June 30, 1998**

Par.
No.

BACKGROUND

Authority

- (1) 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

- (2) Howard H. Babb, Jr., is the Public Defender of the Fifth Judicial Circuit. The Public Defender of the Fifth Judicial Circuit is responsible for performing the duties described above, as provided by law, in Citrus, Hernando, Lake, Marion, and Sumter Counties. Offices are maintained at Inverness in Citrus County, Brooksville in Hernando County, Tavares in Lake County, Ocala in Marion County, and Bushnell in Sumter County. At June 30, 1998, the Office of the Public Defender employed 70 people in 70.5 full-time equivalent positions to perform the duties of the Office. An organizational chart of the Office of the Public Defender is presented as Exhibit C.

- (3) The Office of the Public Defender, Fifth Judicial Circuit, was funded primarily by State appropriations for the 1997-98 fiscal year pursuant to Chapter 97-152, Laws of Florida, the General Appropriations Act. The following is a summary of released General Revenue appropriations by appropriation category for the 1997-98 fiscal year:

| <u>Appropriation Category</u> | <u>Amount Released</u> |
|---|----------------------------|
| Salaries and Benefits | \$ 3,134,139 |
| Other Personal Services | 28,248 |
| Expenses | 143,497 |
| Data Processing Services | 33,810 |
| Operating Capital Outlay | 10,761 |
| Special Category: | |
| Public Defenders - Law Library | 2,040 |
| Risk Management Insurance | 4,417 |
| Transfer to State Employees' Group Health Self-Insurance Trust Fund | <u>36,420</u> |
| Total | <u>\$ 3,393,332</u> |

- (4) As required by Section 27.54, Florida Statutes, the counties which compose the Fifth 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.
- (5) The Public Defender's salary was governed by Section 27.5301(1), Florida Statutes, and the General Appropriations Act 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.
- (6) A comparison of the Office of the Public Defender's budgeted with actual expenditures and commitments for the 1997-98 fiscal year 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 1997-98 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.

- (7) 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

- (8) Our audit did not extend to an examination of the Office of the Public Defender's financial statements. The general purpose financial statements of the State of Florida as of and for the fiscal year ended June 30, 1998, will be the subject of a separate audit report. The financial information relative to the Office of the Public Defender will be included by the State Comptroller in the general purpose financial statements that accompany that report.



CHARLES L. LESTER, CPA
AUDITOR GENERAL

STATE OF FLORIDA
AUDITOR GENERAL
TALLAHASSEE

December 22, 1998

REPORT ON COMPLIANCE AND INTERNAL CONTROL

- (9) Office of the Public Defender, Fifth 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.
- (10) The scope of this audit focused primarily on assets, liabilities, fund equities, expenditures and disbursements, budgetary controls, and management reporting. For each of these areas, our audit included examinations of various transactions (as well as events and conditions) during the period July 1, 1997, through June 30, 1998.
- (11) 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. 12987).
- (12) 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, and accordingly, we do not express such an opinion.
- (13) 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. A matter coming to our attention relating to noncompliance with various guidelines for those operations audited is noted in the ***FINDINGS AND RECOMMENDATIONS*** section of this report.
- (14) 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.
- (15) We noted a matter involving the design and operation of the Office's internal control that we consider to be a reportable condition. Reportable conditions involve matters coming to our attention relating to significant deficiencies in the design or operation of internal control that, in our judgment, could adversely affect management's assurance 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. A matter coming to our attention for the operating units, programs, activities, functions, and classes of transactions within the scope of audit is noted in the ***FINDINGS AND RECOMMENDATIONS*** section of this report.

- (16) 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. Our consideration of internal control would not necessarily disclose all matters in the Office's internal control that might be reportable conditions and, accordingly, would not necessarily disclose all reportable conditions that are also considered to be material weaknesses. However, we believe the reportable condition described in the *FINDINGS AND RECOMMENDATIONS* section of this report is not a material weakness.
- (17) 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.

Respectfully submitted,



Charles L. Lester, CPA
Auditor General

FINDINGS AND RECOMMENDATIONS

- (18) 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 as well as those concerning deficiencies in the design or operation of the system of internal control for those operations audited are presented below.

Payroll Direct Deposit Program

- (19) While Office of the Public Defender policy regarding the payroll direct deposit program was to provide new employees with the forms necessary to enroll in the program and to inform the employees that enrollment is a condition of employment, the Office had not established effective follow-up procedures to ensure that all new employees eventually enrolled in the program. Our tests disclosed several instances in which employees had not enrolled in the program within three months after their respective hire dates.
- (20) Section 110.113(2), Florida Statutes, requires all persons appointed to a position in State government on or after July 1, 1996, to participate in the payroll direct deposit program (receipt of salary payments via electronic funds transfers made directly to the employee's financial institution) as a condition of such employment. Section 110.113(2), Florida Statutes, does not apply to persons who were in the employment of the State on July 1, 1996, and subsequently receive promotion appointments, transfers, or other changes in positions within the same personnel system after July 1, 1996. An employee may request an exemption from the requirement when the employee can demonstrate a hardship or when the employee is in an other personal services position.
- (21) Office of the Public Defender policy was to provide new employees with the forms necessary to enroll in the payroll direct deposit program and to inform the employees that enrollment in the program is a condition of employment. However, the Office had not established effective

follow-up procedures to ensure that all new employees eventually enrolled in the program. Our review of the personnel files established for the 22 applicable employees hired during the 1997-98 fiscal year disclosed that 11 of the employees (50 percent) had not enrolled in the program within three months after their respective hire dates. We considered the employee's participation in the program within three months after his or her hire date to be timely. In response to audit inquiry, Office management indicated that the payroll direct deposit program enrollment forms for these 11 employees were subsequently mailed to the State Comptroller.

- (22) The direct deposit of payroll warrants by electronic funds transfers reduces the processing time and cost of the payroll function of the State of Florida. To ensure that newly appointed employees are in compliance with Section 110.113(2), Florida Statutes, regarding mandatory participation in the payroll direct deposit program, we recommend that the Public Defender establish effective follow-up procedures to verify the timely enrollment of new employees.

Prior Audit Findings

- (23) 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. 12987.

STATEMENT FROM AUDITED OFFICIAL

- (24) 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, Fifth Judicial Circuit. The Public Defender's written response to the audit findings and recommendations included in this report is shown as Exhibit D.

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
FIFTH JUDICIAL CIRCUIT
COMPARISON OF BUDGETED WITH ACTUAL
EXPENDITURES AND COMMITMENTS – BY STATE FUND TYPE
For the Fiscal Year Ended June 30, 1998

| 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 | \$ 3,134,139.00 | \$ 3,133,699.09 | \$ - | \$ 3,133,699.09 | \$ 439.91 |
| Other Personal Services | 28,248.00 | 28,247.26 | - | 28,247.26 | 0.74 |
| Expenses | 143,497.00 | 135,030.33 | 8,464.32 | 143,494.65 | 2.35 |
| Data Processing Services | 33,810.00 | 31,523.30 | - | 31,523.30 | 2,286.70 |
| Operating Capital Outlay | 10,761.00 | 2,704.00 | 8,057.00 | 10,761.00 | - |
| Special Category: | | | | | |
| Public Defenders - Law Library | 2,040.00 | 2,040.00 | - | 2,040.00 | - |
| Risk Management Insurance | 4,417.00 | 4,417.00 | - | 4,417.00 | - |
| Transfer to State Employees' Group Health Self-Insurance Trust Fund | <u>36,420.00</u> | <u>36,420.00</u> | <u>-</u> | <u>36,420.00</u> | <u>-</u> |
| TOTAL GENERAL REVENUE FUND | <u>3,393,332.00</u> | <u>3,374,080.98</u> | <u>16,521.32</u> | <u>3,390,602.30</u> | <u>2,729.70</u> |
| TRUST FUNDS | | | | | |
| Current: | | | | | |
| Salaries and Benefits | 64,218.00 | 63,717.18 | - | 63,717.18 | 500.82 |
| Other Personal Services | 17,492.00 | 17,325.13 | - | 17,325.13 | 166.87 |
| Expenses | 11,800.00 | 11,800.00 | - | 11,800.00 | - |
| Special Category: | | | | | |
| Transfer to State Employees' Group Health Self-Insurance Trust Fund | <u>484.00</u> | <u>484.00</u> | <u>-</u> | <u>484.00</u> | <u>-</u> |
| TOTAL TRUST FUNDS | <u>93,994.00</u> | <u>93,326.31</u> | <u>-</u> | <u>93,326.31</u> | <u>667.69</u> |
| TOTAL FUNDS | <u>\$ 3,487,326.00</u> | <u>\$ 3,467,407.29</u> | <u>\$ 16,521.32</u> | <u>\$ 3,483,928.61</u> | <u>\$ 3,397.39</u> |

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

EXHIBIT – B
OFFICE OF THE PUBLIC DEFENDER
FIFTH JUDICIAL CIRCUIT
NOTES TO COMPARISON OF BUDGETED WITH ACTUAL
EXPENDITURES AND COMMITMENTS – BY STATE FUND TYPE
For the Fiscal Year Ended June 30, 1998

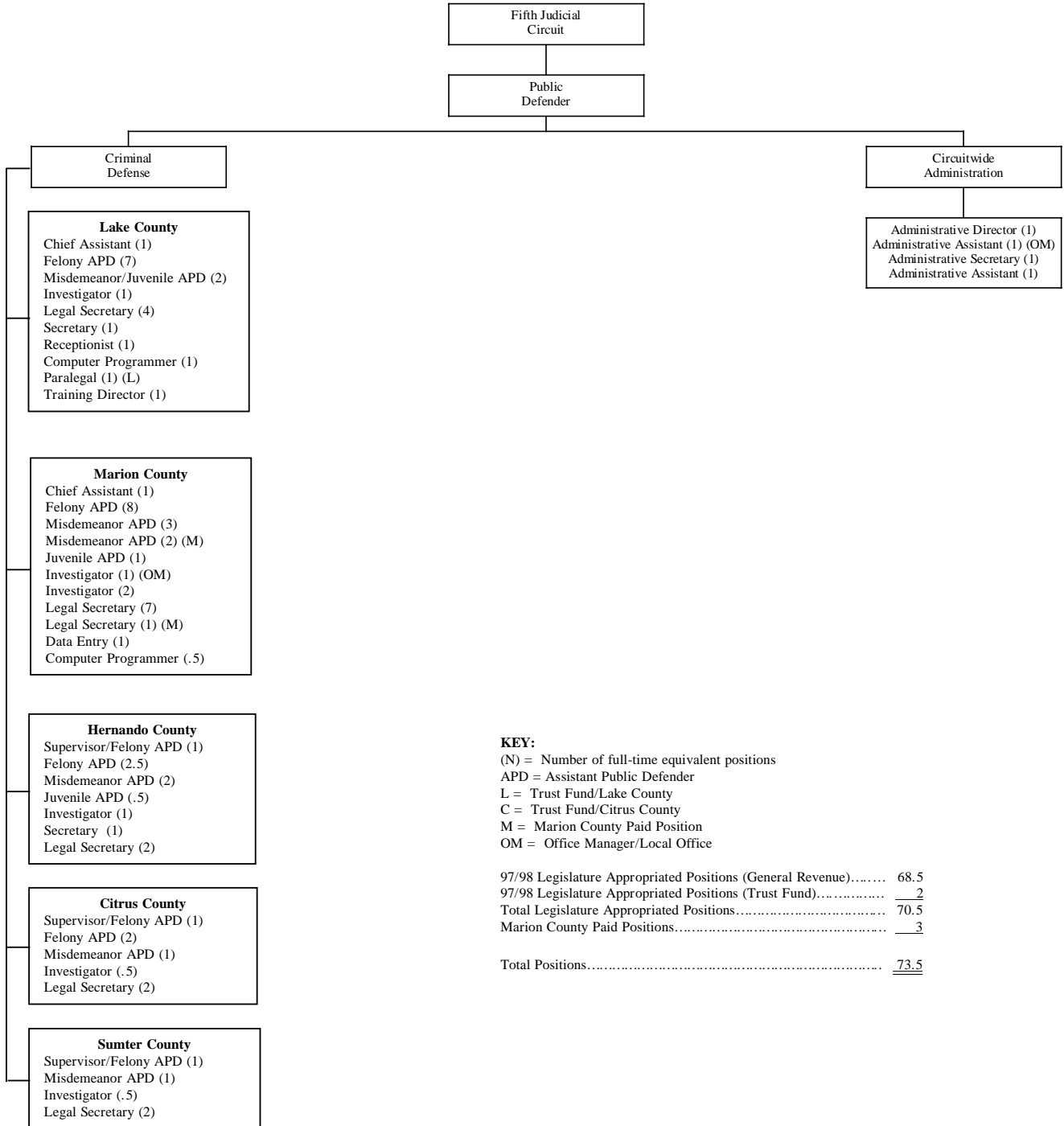
- (1) The following procedures are used in adopting, amending, and reporting budgets and budgetary data:
- Section 216.011(1)(mm), Florida Statutes, indicates that for purposes of Chapter 216, Florida Statutes, Public Defenders are to be considered State agencies. Accordingly, budgets are prepared and 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 1997-98 fiscal year appropriations have been shown in the “Actual Expenditures of Current Appropriations” column. Additionally, encumbrances at June 30, 1998, which were approved for certification forward to be paid in the 1998-99 fiscal year are shown in the “Other Commitments of Budgeted Resources” column.

EXHIBIT – B (Continued)
OFFICE OF THE PUBLIC DEFENDER
FIFTH JUDICIAL CIRCUIT
NOTES TO COMPARISON OF BUDGETED WITH ACTUAL
EXPENDITURES AND COMMITMENTS – BY STATE FUND TYPE
For the Fiscal Year Ended June 30, 1998

- (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 | Trust Funds |
|---|----------------------------|------------------|
| Appropriated by Chapter 97-152, Laws of Florida | \$ 3,311,948 | \$ 55,347 |
| Changes Authorized by the Executive Office of the Governor | <u>81,384</u> | <u>38,647</u> |
| Total Final Operating Budget, Exhibit A | <u>\$ 3,393,332</u> | <u>\$ 93,994</u> |

EXHIBIT – C
OFFICE OF THE PUBLIC DEFENDER
FIFTH JUDICIAL CIRCUIT
ORGANIZATIONAL CHART
As of June 30, 1998



KEY:
 (N) = Number of full-time equivalent positions
 APD = Assistant Public Defender
 L = Trust Fund/Lake County
 C = Trust Fund/Citrus County
 M = Marion County Paid Position
 OM = Office Manager/Local Office

| | |
|---|-----------------|
| 97/98 Legislature Appropriated Positions (General Revenue)..... | 68.5 |
| 97/98 Legislature Appropriated Positions (Trust Fund)..... | <u>2</u> |
| Total Legislature Appropriated Positions..... | 70.5 |
| Marion County Paid Positions..... | <u>3</u> |
| Total Positions..... | <u>73.5</u> |

EXHIBIT – D
OFFICE OF THE PUBLIC DEFENDER
FIFTH JUDICIAL CIRCUIT
STATEMENT FROM AUDITED OFFICIAL
For the Period July 1, 1997, Through June 30, 1998



OFFICE OF
HOWARD BABB, JR.
PUBLIC DEFENDER
FIFTH JUDICIAL CIRCUIT
CITRUS/HERNANDO/LAKE
MARION AND SUMTER COUNTIES

REPLY TO: Lake County Judicial Center
P.O. BOX 7800
550 W. Main Street, Suite 401
Tavares, FL 32778-7800
(352) 742-4270

December 22, 1998

Mr. Charles L. Lester, CPA
Auditor General
111 West Madison Street
Post Office Box 1735
Tallahassee, Florida 32302

Dear Mr. Lester:

We are in receipt of your preliminary and tentative audit findings, and pursuant to the provisions of Section 11.45(7)(d), Florida Statutes, we are providing the following response.

This Agency has enhanced it's current policy with regard to employees participating in the payroll direct deposit program by establishing effective follow-up procedures to verify the timely enrollment of all new employees.

Very truly yours,

Howard H. Babb, Jr.
Public Defender

HHB:bn

Audit
Report
Par. No.

(19-22)