

— JULY 26, 2018 —

ADMINISTRATIVE OFFICE OF THE COURTS SPECIAL EXAMINATION

Budget Review Subcommittee on Justice and Judiciary

Office of Auditor Mike Harmon



Administrative Office of the Courts *Special Examination*

- ▶ Began in 2017 after request from AOC Director Laurie Dudgeon & Chief Justice John Minton.
- ▶ Report released July 12, 2018.
- ▶ First time there has been a comprehensive external audit or examination of AOC.



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AOC Special Exam

Scope & Timeframe

- ▶ Special examination into the policies, internal controls and operations of the Administrative Office of the Courts.
 - ▶ Not a traditional, financial statement audit.
- ▶ Looked at AOC's operations between July 1, 2015 and June 30, 2017.



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Administrative Office of the Courts

Background

- ▶ In 1976, the Judicial Article to the KY Constitution established the court system essentially as we know it today.
 - ▶ Established the Supreme Court, and the position of Chief Justice, who is elected by the Supreme Court to serve a four-year term.
- ▶ AOC is the operational arm of the Judicial Branch of government, used by the Chief Justice to carry out his or her role as executive head of the court system.



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Overview of Findings

- ▶ Our report contains 20 findings on a wide range of topics, including:
 - ▶ Overall Weak Control Environment
 - ▶ Inventory Controls
 - ▶ Employee Transaction Controls
 - ▶ Facility Controls
 - ▶ KYCourts II Logical Security (IT Security)
- ▶ Full report available at auditor.ky.gov.



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AOC's Weak Control Environment Led To A Lack of Accountability

- ▶ Overall we found disorganized and unchecked leadership in a number of areas at AOC.
- ▶ AOC failed to follow its own policies and often didn't have sufficient policies in place to provide transparency and oversight.
- ▶ For example, documentation was not consistently required or maintained for things like exceptions to competitive bidding, private sector leases, credit card transactions, and employee personal mileage.



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Special Treatment for Officials

- ▶ Elected and appointed officials at AOC failed to set a proper tone regarding consistent treatment between those officials, and other government employees at the agency.
- ▶ Elected or appointed officials at AOC submit reimbursement requests directly to the Division of Accounting and Purchasing with no other authorization required before processing.
- ▶ Supreme Court Justices are reimbursed for meals at a rate \$16 to \$39 higher than other employees.



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Personal Mileage

- ▶ AOC acknowledged it does not follow its Vehicle Use Policy requiring monthly reporting of personal mileage.
- ▶ For example, Justice Wright had failed to report personal mileage for nearly a two-year period but continued to be provided a take-home vehicle.
 - ▶ After auditors inquired, he reported personal mileage for a 17-month period in a single submission, which he reported down to the tenth of a mile for that period.
 - ▶ His personal mileage for a period of approximately 4 months was not reported and is unaccounted for.
- ▶ Even when it was reported, AOC failed to properly report taxable personal benefits from take-home vehicles assigned to justices and other AOC personnel. (Issues referred to IRS & Dept. of Revenue)



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A Pervasive Lack of Accountability

- ▶ We recommend AOC require all levels of management and elected officials to comply with administrative rules consistently.
- ▶ Failure to comply with policies should have consequences such as removal of privileges.
- ▶ ***AOC responded to our recommendation that it has no role in holding elected officials accountable, and suggested that is the responsibility of the voters.***
 - ▶ This response validates the lack of a culture of accountability at AOC.
- ▶ No one, including judges, should be considered above the law.



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Surplus Property Sales

- ▶ AOC did not follow advice from its own legal counsel in 2010 about how to conduct surplus property sales.
- ▶ Instead, AOC held employee-only surplus sales and engaged in individual sales transactions from 2012 - 2017.
- ▶ Former Executive Officer of Administrative Services participated in sales as a buyer and also determined what would be sold, set prices, and coordinated the sales.



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Surplus Property Sales

- ▶ Of the 15 vehicles sold during employee-only sales, the mileage was advertised incorrectly on 10.
- ▶ The two with the largest discrepancies were both purchased by the former Executive Officer - they were advertised as having 47,000 and 79,000 more miles than they actually had.
 - ▶ This finding was referred to the Attorney General's office for further investigation.



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Surplus Property Sales

- ▶ Also, two Supreme Court Justices purchased surplus property in private transactions that were not advertised and not part of the employee sales events.
 - ▶ Former Justice Scott purchased a vehicle, and former Justice Noble purchased furniture.
- ▶ AOC revised its policy on surplus sales in April 2017 after media coverage of the employee-only sales.
- ▶ Prior to that, there were no effective policies or controls in place to prevent these activities.



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“Fractured” Policymaking

- ▶ Auditors found policies at AOC are scattered, conflicting, and ambiguous with each department often creating its own policies with no centralized review process or location for policies.
 - ▶ AOC Director described the policymaking process as “fractured” and “all over the place.”
- ▶ We learned that the Chief Justice shares administrative policymaking decisions with the other members of the state Supreme Court.
- ▶ Sharing authority on administrative policymaking has led to a slow process. For example, the creation of personnel policies for AOC under this management structure took two years to complete.
- ▶ Also, these policy decisions are made by the court in closed-door meetings.



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Lack of Open Meetings

- ▶ In one instance, it was reported to our auditors that the Chief Justice was outvoted by other members of the Court on policy changes related to lodging reimbursements for the Justices that would have reduced the amount of the reimbursements.
- ▶ If the Supreme Court continues to set administrative policies as a body, we recommend these decisions be made in open meetings.
- ▶ To do otherwise fails to have the same level of transparency that applies to other governmental bodies.



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Ethics Policies

- ▶ Ethics rules at AOC are scattered, not well developed, and unlike the Executive Branch, AOC has no independent ethics enforcement commission for its staff.
- ▶ APA recommended creating an independent commission to address ethical matters related to AOC employees.
- ▶ *AOC's response disagreed it has the authority to organize an independent body to govern employee ethics.*
- ▶ In 2013, the Supreme Court created the Circuit Court Clerk Conduct Commission, so it is unclear whether AOC believes the Court could also create such a commission for employees.



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Conflicts of Interest

- ▶ Conflicts of interest are not specifically prohibited or subject to punishment under AOC policy.
- ▶ Employees are only required to report a conflict, and the current wording of the policy is vague and open-ended when it comes to addressing conflicts of interest.
- ▶ There is no written policy at AOC to prohibit leasing property from related parties and no policy on whether or when it is acceptable to lease from a related party.



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Conflicts of Interest

- ▶ In one situation, AOC leases office space for Justice Wright from a company owned by his sons.
- ▶ In the case of that particular lease, the documentation contained in the lease file also failed to provide a reason why the property was selected when it cost three times more than an alternative proposal for office space.
 - ▶ In cases with apparent conflicts of interest, creating and maintaining such documentation should be even higher priority than in other circumstances.



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Credit Card Purchases

- ▶ The majority of credit card purchases made by the Chief Justice and the AOC Director lacked any supporting documentation.
- ▶ There was no pre-approval or subsequent review of credit card activity by anyone other than the cardholder, and no cardholder agreements were required for key officials issued a credit card.
- ▶ In addition, several AOC ProCard purchases lacked pre-approval and adequate supporting documentation.
- ▶ In one instance, the AOC Director instructed a staff member to purchase personalized Mint Julep cups for State Justice Institute board members at the request of the Chief Justice's spouse (\$410).



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Internal Audits of Local Courthouse Payments

- ▶ Estimated payments to local governments for court facilities were reviewed by AOC's internal audit division for adjustments to actual figures, but no process was in place to follow up and confirm that the correct adjustments were made after these audits.
- ▶ Lack of communication and follow-up resulted in over \$333,000 in errors in these local facility payments over a two-year period.
- ▶ According to AOC, internal audits related to local courthouse facility payments were modified by the former Executive Officer, which resulted in underpayments to some counties and overpayments to others.



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Inventory Issues

- ▶ Auditors identified at least two million dollars in inventory system errors, which puts AOC at high risk for assets to go missing.
- ▶ For example, two new laptops were reported missing.
 - ▶ Because AOC does not have good inventory controls, it is unclear if two laptops were stolen or if the order was shorted. The employee who confirmed receipt of the order acknowledged he did not actually count the laptops.
- ▶ AOC maintains three separate databases for inventory. The third database was created because one department did not trust the data entry of another department. Rather than addressing the problem, a third database was created.



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IT Security Issues

- ▶ There were many other areas of concern which are discussed in detail among our 20 findings, including issues with IT security giving unnecessary access to some current employees.
- ▶ One issue was not revoking former employees' access to the electronic court records system, in one case, over a year after separation from employment.



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Recommendations & Response

- ▶ Each of our findings is accompanied by specific recommendations for AOC to improve its internal controls and oversight, as well as its overall transparency and accountability.
- ▶ *AOC's response indicated disagreement with some of the key recommendations, including:*
 - ▶ *It's role in holding officials accountable to administrative policies.*
 - ▶ *Statutory requirement of annual financial statement audits.*
 - ▶ *Creation of an independent ethics commission governing AOC staff.*
 - ▶ *Open meetings for policymaking decisions by the Supreme Court.*



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Audit Recommendation

- ▶ One of our recommendations is for the General Assembly to require an annual external audit of AOC, with the Auditor of Public Accounts having a right of first refusal to perform the audit.
 - ▶ This would provide an important layer of external oversight and transparency, but it would also give AOC management an objective look at its financial and internal control practices on an ongoing basis.
 - ▶ Also, the results of this examination show external oversight is needed.
- ▶ *AOC's response argues that discretion on whether to have audits should be left up to the Supreme Court so as to not violate the separation of powers.*



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Audit Recommendation

- ▶ In 1980, the Supreme Court stated in a unanimous opinion that the General Assembly has a legitimate and necessary right to audit funds that are appropriated by the Legislative Branch.
 - ▶ *“Nevertheless, to the extent that it has appropriated funds from the general revenues of the state to the judicial branch of government the legislative body has a legitimate and necessary right to know how those funds have been spent. In short, the legislative body may require that the accounts so financed be audited.”*
 - ▶ *Ex Parte Auditor of Public Accounts*, 609 S.W.2d 682, 685 (Ky. 1980) (emphasis added).
- ▶ Therefore, the Supreme Court’s own prior decision supports our recommendation that the legislature may require an annual financial statement audit of AOC.



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Conclusions

- ▶ No matter whether it is the judicial, legislative, or executive branch, we as leaders in our Commonwealth owe it to the taxpayers of Kentucky to strive toward openness and transparency.
- ▶ The recommendations in our report - if fully supported and implemented - would change the culture of AOC and provide taxpayers with the transparency and accountability they deserve from the judicial branch of government.
- ▶ AOC management, Chief Justice Minton, and the other members of the Supreme Court should take action to address all the issues identified in our examination.



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Questions?

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