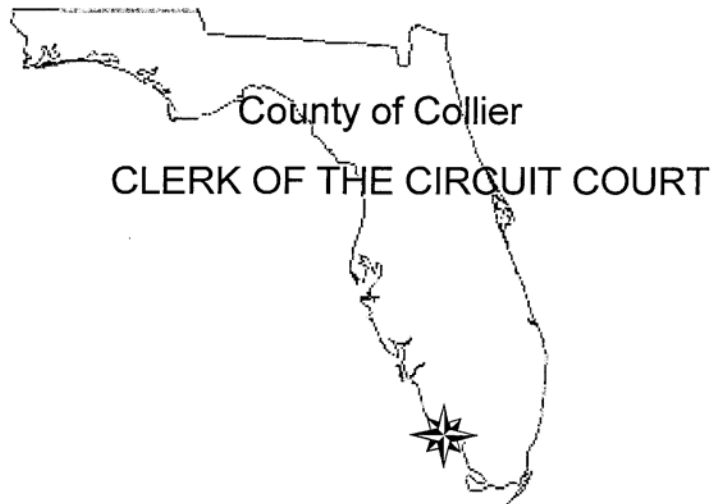


**Collier County Clerk of the Circuit Court
Internal Audit Department**



Audit Report 2005 - 7

Article V – Appeals



**Collier County Clerk of the Circuit Court
Internal Audit Department**

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Memo

To: The Honorable Dwight E. Brock, Clerk
Through: Crystal Kinzel, Finance Director *CKK*
From: Anthony Fernandez, Internal Audit Manager *ACF*
Date: November 9, 2005
Re: Article V – Appeals Audit

Please find attached our audit report on Article V – Appeals. Ilonka E. Washburn, Lead Senior Internal Auditor, led development of this report. Please note that we discussed the audit results and recommendations with the Courts Director and staff. The Appeals Department's written comments are included as applicable throughout the report.

Internal Audit gratefully acknowledges the cooperation and assistance of the Appeals Department management and staff. If you have any questions about this report, please contact me at 774-8075.

Article V – Appeals

Background Information

Audit Objectives, Scope, and Methodology

The objectives of this audit were to evaluate procedures, applicable statutes and appropriate Article V revisions relating to all aspects of the Appeals Department.

Specific objectives of this review were to:

- Determine the efficiency and effectiveness of the Department's process for processing and forwarding appeals within the authority granted to the Department;
- Evaluate written procedures and determine their effectiveness in actual practice; and
- Evaluate the Department's performance in achieving compliance with Article V revisions, controlling laws, administrative rules and the Florida Rules of Appellate Procedures.

To accomplish our objectives we interviewed Appeals Department and legal staff, observed processes and procedures, examined transactions and records, and performed various other procedures necessary in the circumstances.

Our audit was performed in accordance with generally accepted government auditing standards and included examinations of various transactions relating to Article V revisions (as well as events and conditions) occurring during the calendar year 2004.

Background

Article V of the Florida Constitution provides for the judicial branch of state government, including its structure and responsibilities, and designates funding responsibilities of the counties, the state, and court users relative to the courts system. In 1998, voters passed Revision 7 to Article V, which shifted some of the cost responsibilities from counties to the state. Revision 7, by law, was set for implementation on July 1, 2004 due to the need to inventory court system expenditures and revenues. In 2004, the legislature approved additional changes to the cost structure of the courts system. Article V Revisions impacted the Appeals Department by providing:

- Changes to administrative fees, charges, costs and the distribution of the collections.
- Exemption from court-related fees and charges. Judges and those court staff acting on behalf of judges, state attorneys, guardians ad litem, public guardians, attorneys ad litem, court-appointed private counsel, and public defenders, acting in their official capacity, and state agencies, are exempt from all court-related fees and charges assessed by the Clerks of the Circuit Courts.

Given the number of statutory changes in effect and the continuing objective of maximizing resources, the Internal Audit Department is conducting a review of court system departments, including Appeals, to ensure compliance with Article V and other requirements and determine possibilities of increasing efficiency.

In addition to Article V requirements, the Appeals Department must adhere to the following:

- Florida Rules of Appellate Procedure 2005
- Florida Statutes (F.S.)
 - Ch. 35 F.S. Filing fees for notice of appeals
 - Ch. 28 F.S. Court related filing fees, charges and exemptions
 - Ch. 39 F.S. Appeal proceedings relating to children
 - Ch. 985 F.S. Juvenile Delinquency appeals
- Administrative Orders
 - 2.26 Circuit Article V Indigent Services Committee (Establishment of)
 - 9.1 Motions and Orders in Appellate Proceedings
 - 9.2 Processing and Distribution of Opinions in Appellate Proceedings

The Appeals Department manages Circuit and County court appeals paperwork and collects related payments. The decision of any court case can be appealed. Depending on the case an appeal can be forwarded to the Circuit Court (e.g., County misdemeanor case) or District Court of Appeals (e.g., Circuit Court felony case). A Notice of Appeal must be filed within thirty days of the lower court's decision. The Appeals Department processes, prepares and mails to the higher courts all Notices of Appeal and related documents including the Appellate Record Index, bound documents and the billings and receipts.

The Collier County Appeals Department consists of two full time employees and one shared supervisor. The workload for calendar year 2004 was at an average of 19 appeals a month. The spread of monthly appeals was anywhere from 9 to 25 appeals. The number of appeals rose slightly for the first six months of 2005 by 7%. The present staff of two is considered ample to handle the casework.

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Findings

Unless indicated below the Appeals Department is in compliance with Article V Revisions, controlling laws, Administrative Rules and the Florida Rules of Appellate Procedures. There are, however, several examples of the Department’s non-compliance with governing requirements that warrant corrective action. In addition, we uncovered business process issues, such as poor record keeping, insufficient procedures and lack of training.

Overview of Findings

Finding	Criteria	Condition	Cause	Effect
1. Cost recovery process for unpaid appeals fees is limited	Section 28.241, Florida Statutes, allows the clerk to pursue the collection of fees and service charges that are overdue by at least 90 days. This may include using the services of a private attorney or collection agent after having attempted collection through a collection court or other similar avenue. In addition, section 28.246, Florida Statutes, notes that court costs “shall be enforced by order of the courts.”	In appeals cases of a criminal nature cost recovery is limited to sending a statement and follow-up letter. Staff close out the file once an appeals case is settled and no further action regarding unpaid fees is taken. Additionally, the Appeals Department does not have a tracking mechanism in place for unpaid fees. While a number of these outstanding accounts are uncollectible because of the circumstances of the appellant, the Department lacks a procedure to pursue additional follow-up on collectable accounts.	Cost recovery can be problematic in cases involving indigents and enforcement options are sometimes limited (e.g., appellant is in prison).	A revenue stream is foregone due to the policy of not pursuing collections on unpaid accounts. For example, a brief follow-up call on a delinquent account, which was closed out and no further action was planned, yielded a \$711 payment by the next day.

Finding	Criteria	Condition	Cause	Effect
2. Process of distributing appeals records is not statutorily required	<p>Florida Rules of Appellate Procedures 2005 9.141(2)(B) states that for appeals cases without an evidentiary hearing:</p> <p>“Unless otherwise directed by court, the clerk of the lower tribunal shall not index or paginate the record or send copies of the index or record to the parties”.</p>	<p>Our review of the appeals records for 2004 found that copies were sent to the Attorney General in Tampa for appeals from Post-Conviction Proceedings “cases without Evidentiary Hearing”. No written directions from the court to disseminate these copies could be located.</p>	<p>Management received verbal instruction from the 2nd DCA directing the Appeals Department to forward copies to the Attorney General.</p>	<p>The additional effort necessary to prepare, copy and send the records for cases is labor and cost intensive (e.g. 24 cases in 2004). Additionally the risk of exposure increases as items are sent through the mail.</p>
3. Discrepancies exist between case files and electronic records	<p>Dates listed in the system showing the status and timing of various steps should match each other. For example the date an appeals notice is sent should be the same on the notice as it is marked as having been sent in the system.</p>	<p>Our review of the appeals records disclosed that of 24 appeals files 9 had conflicting dates. The dates on the letters/ records sent did not match the dates that were docketed in the system.</p>	<p>The reason for this mismatch could not be determined; the underlying assumption is that it was due to human error.</p>	<p>The inherent risk present in inaccurate record keeping is the possibility of missed deadlines and misrepresentation of information requested by either government entity or the party involved in the appeal.</p>
4. Appeals fees paid erroneously	<p>Section 28.345 Florida Statutes states that the State and any court appointed attorney are exempt from paying court related fees assessed by the clerk.</p>	<p>Our review of 24 appeals files uncovered one case in which the clerk billed the court appointed attorney for appeals fees related to an indigent defendant. The State then paid the bill in December 2004.</p>	<p>The oversight seemed to stem from a clerical error due primarily to a lack of training and rules and procedures.</p>	<p>Incorrect record keeping and lack of controls create the potential risk of exposure to the court system. Time and cost implications are involved with the correction of these issues.</p>

Finding	Criteria	Condition	Cause	Effect
<p>5. Records to the 2nd District Court of Appeals (DCA) sent late</p>	<p>Florida Rules of Appellate Procedures 9110(4) (e) states that within 50 days of filing the notice, the clerk shall prepare the record prescribed by rule 9.200 and serve copies of the index on all parties. Within 110 days of filing the notice, the clerk shall transmit the record to the court.</p>	<p>During our review of 24 appeal files it was determined that in two cases the records were transmitted late to the 2nd DCA. In one case it was one month late; in the other case only a few days. The designated attorneys are advised in a memorandum that all outstanding fees have to be paid and that failure to pay may result in a delay of the appeal records being transmitted to the Appellate court. This is contrary to the Florida Rules of Appellate Procedures, which have very specific timelines.</p>	<p>The records were sent late due to the fact that appeals staff were awaiting payment of fees due.</p>	<p>The risk of conveying appeals records late is the potential exposure to legal implications. As the Appeal proceedings are very specific in their timelines one possibility could be sanctions imposed by the state.</p>
<p>6. Incorrect file number on appeals report</p>	<p>The file numbers listed on the monthly appeals reports being sent to the AP banc demand accuracy to ensure proper recording, review and handling for each appeal submitted.</p>	<p>During our review of 24 appeals files it was disclosed that in one case the case number listed on the report sent to the AP banc was incorrect. The file numbers listed on the Appeals Report of May 2004 sent to the AP banc were incorrect. While the name of the parties and the last four digits had been listed correctly the preceding two digits determining the year had been listed incorrectly on the report.</p>	<p>The reason for this error could not be determined; the underlying assumption is that it was due to human error, which again could be attributed to a lack of training.</p>	<p>The risk of this type of error lies in the fact that the appeal received by the AP banc, while processed, cannot be backtracked to review its accuracy and timeliness. This is the aim of the monthly reports sent to the AP banc. If the file numbers are inaccurate, the personnel charged with ensuring proper timekeeping may not be able to determine and assure such.</p>

Recommendations

1. Cost recovery process for unpaid appeals fees should be strengthened

A procedure should be instituted to ensure that collectable accounts are pursued and a standard report on unpaid fees should be developed and furnished regularly to the Courts Director.

2. Reevaluate the process of distributing appeals records

As this request was made by the 2nd DCA and honored by management an administrative decision should be made regarding the performance of functions fulfilled by the Clerk without obligation to perform such.

3 – 6. Instituting a process to improve case management

There is a need for continuous training and updating of procedures (e.g. to determine if attorney is court appointed and exempt from paying filing fees) to ensure proper handling of appeals as well as implementation of all ongoing appeals changes as they arise. We recommend that the appeals department evaluate measures to improve case management, such as instituting a formal training process and conducting periodic reviews of case files to ensure adherence to applicable requirements.

5. Records should be sent to District Court of Appeals within statutory time limitations

While it is essential to receive payment of all outstanding fees the department should ensure that delaying the forwarding of appeals information is well within their statutory rights. Consequently, we recommend the department re-evaluate, for statutory compliance, the assertion that records may be withheld due to lack of payment of fees, on the "Statement for Preparation of Appellate Court Record".

Appeals Department's Response:

1. A more comprehensive plan will be established to better monitor unpaid fees involved with Appeal cases filed in the Clerk's office. Staff is aware that these fees are easily collected from an attorney and already notify their supervisor if no payment is received within a reasonable amount of time.

Appeals fees associated with Pro Se filings can be more difficult to collect. We will review our billing form letter and maintain a file on any unpaid Appeal fees. If the fees have not been paid after a reasonable amount of time, we will explore other reasonable avenues of collection.

The new unified court system that is currently under development will have the ability to monitor and report any unpaid fees.

2. No Comment.

3-6. I understand that the stated purpose of this audit was to determine if the Appeals department's procedures follow Florida Statutes and Rules of Court. Item number 3 was probably caused by human error. As to item number 4, the best I can determine is that we sent the court appointed attorney a file preparation billing and she sent it to the JAC for them to pay. This was probably caused by not being aware of or a misunderstanding of the new statute language found 28.345. The staff in the Appeals department are now aware of the new directive concerning court appointed attorneys and Clerk's fees. As mentioned in item number 5, the old policy was to hold any case until the appropriate fees were paid or a determination of indigence was made. We no longer follow this procedure and follow the time standards set in the statute and Rules. I have to agree with the audit that item number 6 was attributed to human error.

We anticipate a vast improvement in processing appeals when the new unified court system is in place. Errors associated with using incorrect case numbers, incorrect numbering, etc., will be addressed and greatly reduced when this system comes on-line. We appreciate the efforts made by the auditors and welcome the criticisms from the audit. We anticipate a better Appeals department when the audit is discussed with the department.

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Conclusion

A number of the findings included in this report resulted from a lack of formal policies and procedures, as well as ongoing training. Until April 2005, the Appeals Department lacked policies and procedures on the appeals process. Moving forward, the Appeals Department would benefit from cross-referencing existing policies and procedures to statutory requirements to ensure appropriate coverage and instituting measures to update disseminate, and provide training on policies and procedures as necessary. These steps should help to alleviate the compliance and recordkeeping issues discussed in this report.

We also noted that the Department has approximately fifty saved forms for various circumstances; while the pre-development of forms can create efficiencies, excessive accumulation may have the opposite effect. We recommend the Appeals Department evaluate the possibility of consolidating forms where possible.

In closing we would like to thank the personnel of the Appeals Department for their cooperation and support during this audit.