

**STATE OF NEW HAMPSHIRE
JUDICIAL COUNCIL**

**INTERNAL CONTROL REVIEW
REVENUES AND EXPENDITURES
OCTOBER 2024**



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To The Fiscal Committee Of The General Court:

This report presents the results of our assessment of the internal controls in place over the receipt, deposit, recording, and reporting of revenues and the authorization, payment, recording, and reporting of expenditures of the Judicial Council during the nine months ended March 31, 2024.

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.

The purpose of this audit was to determine whether the controls in place over the receipt, deposit, recording, and reporting of the Judicial Council's revenues and the authorization, payment, recording, and reporting of the Judicial Council's expenditures paid during the nine months ended March 31, 2024 were properly designed, implemented, and operating effectively. Additionally, our audit was designed to determine whether the Judicial Council's revenues and expenditures were processed in accordance with applicable laws, rules, contracts, Department of Administrative Services (DAS) policies and procedures, and the Judicial Council's policies and procedures.

The Judicial Council provided auditee responses which are included with each finding in this report. We did not audit the responses provided by the Judicial Council.

Office of Legislative Budget Assistant

Office of Legislative Budget Assistant

October 2024

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JUDICIAL COUNCIL
INTERNAL CONTROL REVIEW – REVENUES AND EXPENDITURES**

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ABBREVIATIONS USED

CASA	Court Appointed Special Advocates of New Hampshire
DAS	Department of Administrative Services
DoIT	Department of Information Technology
GAL	Guardian ad Litem
IDS	Indigent Defense System, database used as a case management and billing system
IT	Information Technology
NH FIRST	New Hampshire State Government Accounting and Financial Reporting System
NHLA	New Hampshire Legal Assistance
NHPD	New Hampshire Public Defender
SOPP	Standard Operating Policies and Procedures

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STATE OF NEW HAMPSHIRE
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EXECUTIVE SUMMARY

The Judicial Council has not established adequate internal controls over revenues and expenditures, including the receipt, deposit, recording, and reporting of revenues and the authorization, payment, recording, and reporting of expenditures for the nine months ended March 31, 2024. The financial accounting control environment in place during the audit period exhibited weaknesses that impacted the Judicial Council’s ability to effectively design and implement a system of internal controls, and to provide effective oversight of financial operations.

During the audit, we found:

- The Judicial Council has not established policies and procedures to effectively manage the complexity of the indigent defense delivery system, including the public defender contract, contracted attorneys, and assigned counsel. The structure and fees established for paying indigent defendant counsel services is unsupported, not fully compliant with laws, and is not designed to provide an optimal balance of compensation to ensure there is a quality indigent defense delivery system in the State of New Hampshire.
- The Judicial Council’s case management and billing system is ineffective, unsecure, and needs to be replaced. The system is comprised of an unsupported database application and spreadsheets to record payments made to attorneys, guardians, and other providers for indigent defense services. The system provides no ad hoc reporting, little summary information, requires redundant manual input, and requires the Executive Director to perform many financial and clerical duties that should be done by personnel with financial expertise.
- The Judicial Council, comprised of 24 members responsible for issues affecting the administration of justice in the State of New Hampshire, is unable to perform its statutory duties due to poor attendance at meetings and unfilled vacancies.
- The Judicial Council lacks a formal policy to address conflicts of interest and related party transactions, and is not in full compliance with statutory requirements for filing of statements of financial interests.
- The Judicial Council neither has a formal risk assessment process nor formal strategic, business continuity, and disaster recovery plans to identify, analyze, and respond to risks and support financial activities.

The procurement of an effective case management and billing system and the hiring of a financial manager could help the Judicial Council with resolving many of the observations contained in this report.

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RECOMMENDATION SUMMARY

Observation Number	Page	Legislative Action May Be Required	Recommendations	Agency Response
1	11	Yes	Ensure that indigent defendants are provided with the timely assistance of counsel. Review the overall structure and authority for setting fees for indigent defendant counsel and related services to determine if the fee structure is appropriate and serves the purpose of ensuring there is a quality indigent defense delivery system. Document the basis and methodology applied for established or recommended fees and propose a change to the Legislative and Judicial Branches for review and acceptance. Ensure fees and the delivery of the indigent defense delivery system are in compliance with laws and rules.	Concur
2	16	No	Replace the current case management and billing system with a new system that meets operational needs while seeking assistance from the Department of Information Technology and cooperation from the Judicial Branch to ensure the new system is effectively designed and developed.	Concur
3	17	No	Improve oversight and contract monitoring activities to help ensure funded entities operate in compliance with administrative, fiscal, and other program requirements and objectives. The monitoring process should include a timely review of financial statements and financial reports, including a review of the annual Management Letter provided by each entity's independent auditor to ensure control deficiencies that may put the State's funds at risk are satisfactorily resolved.	Concur

Observation Number	Page	Legislative Action May Be Required	Recommendations	Agency Response
4	20	No	Strengthen core financial accounting resources by establishing a financial manager position to oversee the daily financial operations, including providing effective oversight and guidance to staff and performing other critical functions such as designing, implementing, and monitoring internal controls.	Concur
5	21	No	Replace the current case management and billing system with a new system that meets operational needs and could help detect duplicate payments prior to processing. In the meantime, establish policies and procedures to include a systematic process for performing a detailed and thorough review of invoices prior to payment to ensure erroneous payments, such as duplicates, are not made.	Concur
6	22	No	Establish a policy to address conflicts of interest and related party transactions.	Concur
7	23	Yes	Ensure that all Judicial Council members have filed their financial disclosures by the required due date. Members who have not filed should not be permitted to serve on the Judicial Council. The Legislature should consider amending RSA 15-A to require the filing of statements of financial interests by all members of the Judicial Council, including members appointed by the Court system and members of the New Hampshire Bar Association, to provide transparency and help ensure that the performance of official duties does not give rise to a conflict of interest.	Concur

Recommendation Summary

Observation Number	Page	Legislative Action May Be Required	Recommendations	Agency Response
8	25	No	<p>Judicial Council members should fulfill their obligations according to law. Full attendance at every meeting is important to ensure that all decisions reflect the collective intent of the Judicial Council. The Chair of the Judicial Council should add an agenda item to discuss vacant positions and issue actionable items to follow up with appointing authorities until vacancies are filled.</p> <p>Ensure all members of the Judicial Council are aware of their statutory responsibilities. If members cannot fulfill their duties, a replacement should be sought through the statutory process.</p> <p>Meeting documentation, such as agendas, attendance records, and minutes documenting decisions made, should be maintained and made available to the public.</p>	Concur
9	26	No	<p>A system of standard operating policies and procedures should be established to increase efficiencies and effectiveness in the Judicial Council's role with regard to the administration of justice.</p>	Concur
10	27	No	<p>Establish and document a formal risk assessment process for recognizing, evaluating, and responding to risks that could affect the Judicial Council's ability to achieve its financial accounting and compliance objectives. Regularly review financial and operational activities for indicators of risk exposure and establish and monitor controls to address those risks.</p>	Concur

Observation Number	Page	Legislative Action May Be Required	Recommendations	Agency Response
11	28	No	Work with DoIT to ensure acceptance of the 2026-2027 draft IT plan and implement procedures to continue to comply with RSA 9:4-b.	Concur
12	29	No	Prepare, implement, and maintain plans that are fundamental to an effective system of internal controls including formal strategic, continuity of operations, and disaster recovery plans.	Concur
13	30	No	Establish formal policies and procedures to address attorney debt in the event of termination of counsel services for indigent defendants prior to the case's final disposition. Include in contracted attorney agreements additional provisions for instances when counsel terminates services to assigned indigent defendants for circumstances not already included in those agreements such as medical reasons, death, or other employment.	Concur
14	32	No	Adhere to the statutory requirement of submitting a biennial report to the Governor and Council on Judicial Council activities and with recommendations, if any, for improving the administration of justice.	Concur

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INTERNAL CONTROL REVIEW – REVENUES AND EXPENDITURES

BACKGROUND

The Judicial Council was established in 1945 pursuant to RSA 494. The Judicial Council consists of a 24-member board established to provide assistance and information about the State's courts and justice system to all branches of State government as well as to the New Hampshire Bar Association. In accordance with RSA 494:5, the Judicial Council is required to meet in January, April, and October of each year, and at such other times as the Judicial Council or its Chair may determine.

In addition, the Judicial Council provides funding for the New Hampshire Public Defender (NHPD), Court Appointed Special Advocates (CASA) of New Hampshire, New Hampshire Legal Assistance (NHLA) for civil matters and guardian ad litem (GAL) in guardianship, termination of parental rights, and abuse and neglect matters.

Organization

The Judicial Council is comprised of the following members pursuant to RSA 494:1:

- The five-member Judicial Branch Administrative Council, appointed pursuant to Supreme Court Rules;
- The Attorney General or designee;
- A clerk of the Superior Court, selected by the Chief Justice of the Superior Court;
- A clerk of the Circuit Court, selected by the Administrative Judge of the Circuit Court;
- The president-elect of the New Hampshire Bar Association;
- The chairperson of the Senate Judiciary Committee or a designee from such Committee appointed by the chairperson;
- The chairperson of the House Judiciary Committee or a designee from such Committee appointed by the chairperson;
- Eight other members appointed by the Governor and Council, 3 of whom shall be members of the New Hampshire Bar Association of wide experience who have been admitted to practice in the state for more than 5 years, and 5 of whom shall be members of the public who are not lawyers; and
- Five other members appointed by the Chief Justice of the Supreme Court, 3 of whom shall be members of the New Hampshire Bar Association of wide experience who have been admitted to practice in the state for more than 5 years, and 2 of whom shall be members of the public who are not lawyers.

The Judicial Council has an administrative staff of three: the Executive Director, an Administrative Assistant, and an Accounting Technician. The Executive Director communicates regularly with the Chair of the Judicial Council.

Responsibilities

The duties of the Judicial Council as defined in RSA 494:3 are as follows:

- I. To serve as an institutional forum for the on-going and disinterested consideration of issues affecting the administration of justice.
- II. To survey and study continuously the administration of justice within the state and the organization, procedure, practice, rules and methods of administration and operation of the courts of the state.
- III. To devise ways of simplifying judicial procedure, expediting the transaction of judicial business, and of improving the administration of justice.
- IV. To recommend and provide general information to the general court, to the supreme court, to the superior court, to the circuit court, to any public official, department or agency or to the state bar association, either upon request or upon the council's own motion, such changes in the law or in the rules, organization, operation or methods of conducting the business of the courts, or with respect to any other matter pertaining to the administration of justice, as it may deem desirable.
- V. To serve as a catalyst for the discussion of legal and judicial issues through seminars, forums and special studies, and any other means, within the limits of available state and private funding.
- VI. To administer the indigent defense delivery system and ensure its quality and cost effectiveness, pursuant to RSA 604-A [Adequate Representation for Indigent Defendants in Criminal Cases] and RSA 604-B [Public Defender Program].
- VII. To provide legal and guardian-ad-litem services in child protection cases, pursuant to RSA 169-C:10 [Attorneys and Guardians Ad Litem], RSA 604-A, and RSA 170-C:13 [Termination of Parental Rights - Fees and Court Costs].
- VIII. To provide legal services for indigent proposed wards in guardianship proceedings brought under RSA 463 [Guardianship of Minors and Estates of Minors] and RSA 464-A [Guardians and Conservators].

RSA 490:26-f grants the Judicial Council with authority to pay for guardian ad litem bills. Guardian ad litem appointments may be for probate matters such as guardianships of minors and adults, and representation by both attorneys and guardians ad litem in termination of parental rights matters pursuant to RSA 170-C.

Financial Activity

The Judicial Council records its financial activity in the State's General Fund. During the nine months ended March 31, 2024, the Judicial Council recorded approximately \$185,000 of revenues and \$40.3 million of expenditures in the State's accounting system, NH FIRST as shown in greater detail on page 8.

Revenues and Expenditures for the Nine Months Ended March 31, 2024 (UNAUDITED)

	<u>General Fund</u>
<u>Unrestricted Revenues</u>	
Miscellaneous Revenue	\$ 183,056
Guardians ad Litem - Probate Recovery	1,938
Total Unrestricted Revenues	<u>\$ 184,994</u>
<u>Expenditures</u>	
Contracts for Program Services	\$ 30,711,596
Provider Payments Legal Services	9,243,774
Salaries and Benefits	270,869
Training of Providers	20,820
Other	18,865
Total Expenditures	<u>\$ 40,265,924</u>

Source: NH FIRST State Accounting System

The Judicial Council contracts with the NHPD to provide counsel and other representation for indigent defendants in criminal cases or for juveniles charged as delinquents, as required by RSA 604-B. The Judicial Council pays the NHPD in advance for their services. During the audit period, \$183,056 was returned from the NHPD for funds not used during State fiscal years 2022 and 2023. The Judicial Council recorded these unused funds as unrestricted revenues.

The majority of Judicial Council expenditures are for contract payments to attorneys and legal service providers who provide indigent defense in criminal cases. Individuals who are in need of an attorney but cannot afford one are considered to be eligible for indigent defense in New Hampshire. When an individual is charged with a crime and needs an attorney, the court will refer the case to the NHPD to determine if they can take on the assigned case. Payments under the NHPD contract totaled \$27.8 million for the nine months ended March 31, 2024. If the NHPD cannot take on the case due to a conflict of interest, the case is referred to a contracted attorney. Contracted attorneys enter into contracts with the Judicial Council to take on a certain number of cases in a defined period of time. Any case not handled by the NHPD or a contracted attorney is assigned to a private lawyer, known as "assigned counsel". The Judicial Council is also responsible for the payment of attorneys representing parents in abuse and neglect cases, and guardians ad litem appointed in delinquency cases.

OBJECTIVES, SCOPE, AND METHODOLOGY

Audit Objectives

1. Assess the control environment, including management's policies and procedures for the establishment and maintenance of an effective internal control system over the receipt, deposit, recording, and reporting of the Judicial Council's revenues, and the authorization, payment, recording, and reporting of its expenditures.
2. Assess the adequacy of the design of internal controls over the receipt, deposit, recording, and reporting of the Judicial Council's revenues, and the authorization, payment, recording, and reporting of its expenditures.
3. Assess the establishment/implementation of the internal controls as designed.
4. Assess the operation of the internal controls, including:
 - Functional compliance with laws, rules, contracts, and written policies and procedures related to the Judicial Council's revenues and expenditures.
 - Functional compliance with stated (but not necessarily documented) policies and procedures related to the receipt, deposit, recording, and reporting of the Judicial Council's revenues, and the authorization, payment, recording, and reporting of its expenditures.
 - Adequacy of segregation of duties and responsibilities related to the receipt, deposit, recording, and reporting of the Judicial Council's revenues, and the authorization, payment, recording, and reporting of its expenditures.

Audit Scope

The scope of our audit included a review of internal controls over the Judicial Council's revenues and expenditures, including the receipt, deposit, recording, and reporting of revenues; the authorization, payment, recording, and reporting of expenditures; and review of the Judicial Council's compliance with laws, rules, contracts, State-wide policies and procedures, and the Judicial Council's internal policies and procedures.

The audit period was July 1, 2023 through March 31, 2024.

Audit Methodology

1. Interviewed Judicial Council's personnel.
2. Reviewed internal control documentation, including the State's and the Judicial Council's:
 - Policies and procedures;
 - Revenues and expenditures documentation;

- Documentation of systems, and other relevant information; and
 - Significant contracts relative to expenditures.
3. Reviewed laws, rules, and policies and procedures over the receipt, deposit, recording, and reporting of revenues and the authorization, payment, recording, and reporting of Judicial Council expenditures including:
- State laws,
 - Federal laws,
 - Supreme Court rulings,
 - State contracts,
 - Department of Administrative Services Manual of Procedures,
 - State-wide policies and procedures, and
 - Agency-based policies and procedures.
4. Observed the revenue and expenditure processes.
5. Reviewed the design and operation of controls through tests of transactions, review, and evaluation of supporting documentation.

PRIOR AUDIT

There are no prior audits that specifically addressed internal controls over the Judicial Council's receipt, deposit, recording, and reporting of revenues and authorization, payment, recording, and reporting of expenditures. The Office of Legislative Budget Assistant issued a financial audit report of the Judicial Council for the nine months ended March 31, 2014. The Current Status of Prior Audit Findings beginning on page 33 of this report presents the status, as of October 2024, of those prior findings that are applicable to the scope of this Internal Control Review. A copy of the prior audit report can be accessed at the Office of Legislative Budget Assistant's website at: www.gencourt.state.nh.us/lba/auditreports/financialreports.aspx.

FINDINGS AND RECOMMENDATIONS

Observation No. 1

Counsel Fees And Services Should Be Reviewed And Compliant With Laws

The fee structure to pay for indigent defendant counsel services in New Hampshire is unsupported, not fully compliant with State law, and not designed to provide an optimal balance of compensation to ensure there is a quality indigent defense delivery system.

RSA 494:3, VI, requires the Judicial Council to administer the State's indigent defense delivery system and ensure its quality and cost effectiveness, pursuant to RSA 604-A [Adequate Representation for Indigent Defendants in Criminal Cases] and RSA 604-B [Public Defender Program].

In administering the State's indigent defense delivery system, the following laws apply:

- The U.S. Constitution Sixth Amendment provides for the accused with the right to a speedy and public trial and to have the assistance of counsel. If the accused cannot afford counsel, then counsel can be appointed.
- RSA 604-A:2 *Appointment of Counsel*, paragraph II, requires the court in making an appointment of counsel to first use the public defender program. If the public defender program is not available, a contracted attorney is appointed. If a contracted attorney is not available, any qualified attorney, known as assigned counsel, is appointed.
- RSA 604-A:2-b *Contract Attorneys*, states, "The state of New Hampshire, by the judicial council and with the approval of governor and council, may, with the limits of available appropriations, contract with any qualified attorney in the state to provide for the representation of indigents in circumstances where, pursuant to RSA 604-B, the public defender program is unavailable to provide such representation. No contract providing for the representation of children in proceedings arising under RSA 169-B [Delinquent Children] shall be based on payment of a **predetermined fee per case** [emphasis added] or other payment structure which creates a financial disincentive for attorneys to provide effective representation in such cases."
- RSA 604-B:5 *Supervision*, states, "The supreme court shall recommend a fee schedule for assigned counsel which shall be graduated to reflect years of legal experience of such counsel."

The indigent defense delivery system needs improvements as noted below:

- Indigent defendants' rights for a speedy trial and assistance of counsel are not being met. The number of attorneys willing to provide adequate defense representation to indigents does not meet the demand, causing some indigent criminal defendants to be incarcerated while they wait for counsel. According to Judicial Council personnel, during the month of

March 2024, the number of incarcerated defendants awaiting counsel services ranged from 20 to 40, non-incarcerated defendants awaiting counsel services ranged from 100 to 125, and there were approximately ten juveniles awaiting counsel services. The lack of timely assignment of counsel to indigent defendants violates the Sixth Amendment of the U.S. Constitution, and the rights of the defendants. The Judicial Council reports this is the result of the noncompetitive fee structure.

- Rates and compensation limits for contracted counsel and assigned counsel are set in contract or Supreme Court Rule; and established by two separate branches of government for similar services performed.
 - Contracted attorney compensation for indigent defense counsel services is based on a fee per unit and number of units by case type (i.e., felony, misdemeanor, etc.), and administrative fees are set by the Judicial Council without any formal policies, procedures, or methodologies. During the nine months ended March 31, 2024, the Judicial Council paid contracted attorneys \$1.6 million. The Judicial Council could not provide support to demonstrate how it determined its \$300 per unit fee, number of units by case type, or administrative fees. Unit values for legal representation and administrative fees in effect during the audit period were as follows:

Legal Representation	Units
Felony I	10.40
Felony II	3.75
Circuit Court Misdemeanor	1.50
Superior Court Misdemeanor/Complaint	1.75
Misdemeanor Appeal from Circuit Court	1.75
Juvenile Delinquency Proceeding	1.50
Juvenile Review and Related Work	0.50
Juvenile Sununu Youth Services Center Review	1.00
Preparation of a Notice of Appeal	1.00
Habeas Corpus Petition in Superior Court	1.00
Specialty Court Appearance	0.25
"Others" as Defined by Contract	0.75
Administrative Fee Description	Fee
Contract of 1-149 Units per Fiscal Year	\$20/unit
Contract of 150-180 Units per Fiscal Year	\$4,500
Contract of 181-220 Units per Fiscal Year	\$5,250
Contract of 221-260 Units per Fiscal Year	\$6,250
Contract of 261-299 Units per Fiscal Year	\$7,500
Full Contract (300 Units per Fiscal Year)	\$9,500
Each Additional Full Contract	\$8,500
Arraignment Representation Only - 2 or More Arraignments on One Date	\$100

Source: Contract template submitted to and authorized by Governor and Council on June 28, 2023, item #98.

- Assigned attorney fees and fee limits for indigent defense counsel services are based on Supreme Court Rule, along with fees and fee limits for guardianships. During the nine months ended March 31, 2024, the Judicial Council paid assigned attorneys and guardian ad litem \$3.5 million and \$716 thousand, respectively. The Judicial Council made recommendations to the Judicial Branch on the fee amounts and fee limits without any formal policies, procedures, or methodologies to support the recommended amounts. Fees and fee limits are identified and set in Supreme Court Rules as follows:

Hourly Rate	Indigent Criminal Cases (Supreme Court Rule 47)
\$125	Major Crimes (Capital Murder, Homicide, etc.) and Supreme Court Appeals
\$90	All Other Cases
Not to Exceed \$40	Paralegal
Maximum Fee	Indigent Criminal Cases (Supreme Court Rule 47)
\$20,000	Homicides Pursuant to RSA 630:1-2 (per Co-Counsel)
\$12,500	Aggravated Felonious Sexual Assault, Felonious Sexual Assault, and First Degree Assault
\$10,000	Supreme Court Appeal
\$5,500	All Other Felonies
\$2,000	Misdemeanors
Hourly Rate	Other Indigent Cases and Parental Notification Cases (Supreme Court Rule 48)
\$90	Other Indigent Cases and Parental Notification Cases, and All Other Cases
Not to Exceed \$40	Paralegal
Maximum Fee	Other Indigent Cases and Parental Notification Cases (Supreme Court Rule 48)
\$3,000	Appeals to the Supreme Court, other than Parental Notification Cases, in all Juvenile Cases
\$2,550	Juvenile Cases Pursuant to RSA 169-B, C, and D; and Termination of Parental Right Cases Pursuant to RSA 170-C
\$1,800	Guardianship Pursuant to RSA 463
\$1,500	Parental Notification Cases Pursuant to RSA 132:34, Excluding Any Appeal to the Supreme Court
\$1,350	Guardianship Pursuant to RSA 464-A
\$750	Appeals to the Supreme Court in Parental Notification Cases Pursuant to RSA 132:34
\$600	Involuntary Admissions Pursuant to RSA 135-C
\$450	Annual Review Hearings for Guardianships; and Court Review Hearings of Juvenile Cases Pursuant to RSA 169-B, C, and D
Hourly Rate	Guardians Ad Litem (Supreme Court Rule 48-A)
\$90	All Cases
Maximum Fee	Guardians Ad Litem (Supreme Court Rule 48-A)
\$2,100	Abuse and Neglect Cases Pursuant to RSA 169-C:19; Termination of Parental Rights Cases Pursuant to RSA 170-C; Guardianship Cases Pursuant to RSA 463 or 464-A
\$1,500	Parental Notification Cases Pursuant to RSA 132:34, Excluding any Appeal to the Supreme Court
\$1,350	Children in Need of Services Cases Pursuant to RSA 169-D or Delinquency Cases Pursuant to RSA 169-B; Appeals to the Superior Court
\$750	Appeals to the Supreme Court in Parental Notification Cases Pursuant to RSA 132:34
\$450	Court Review Hearings in Guardianship of Minor or Adult Cases or Abuse and Neglect Cases

Source: New Hampshire Supreme Court Rules 47, 48, and 48-A

- The Judicial Council is not in compliance with RSA 604-A:2-b, *Contract Attorneys*. The payments to counsel on contracts providing for the representation of children in proceedings arising under RSA 169-B were based upon a predetermined fee per case, contrary to law. According to Judicial Council personnel, there were 40 delinquency cases assigned under these contracts during the audit period, excluding appointments for reviews or other miscellaneous representations for juveniles. Payments to counsel in this manner, based upon a predetermined fee per case, creates a financial disincentive for attorneys to provide effective representation in such cases. Violations of RSA 604-A:2-b could result in cases being appealed for unlawful counsel representation.
- The Judicial Council is not in compliance with RSA 604-B:5, *Supervision*. The New Hampshire Supreme Court Rules do not contain a fee schedule for assigned counsel that is graduated to reflect the years of legal experience of such counsel, contrary to law.
- The Judicial Council does not have a formal methodology, or analyses, to demonstrate how the fees for counsel are established, or to support the fee amounts it recommends to the Judicial Branch.

Recommendation:

We recommend the Judicial Council:

- **Ensure that indigent defendants are provided with the timely assistance of counsel.**
- **Review the overall structure and authority (Judicial Council or Judicial Branch) for setting fees for indigent defendant counsel and related services to determine if the fee structure is appropriate and serves the purpose of ensuring there is a quality indigent defense delivery system in the State of New Hampshire. For any fees established or recommended, document the basis and methodology applied during the development process and propose a change to the Legislative and Judicial Branches for review and acceptance.**
- **Develop policies and procedures for the periodic formal evaluation of counsel fees for the representation of indigent defendants.**
- **Ensure that its fees and the delivery of its indigent defense delivery system are in compliance with laws and rules. If it is determined that any fee structure creates a financial disincentive for attorneys to provide effective representation or do not provide for a quality and effective indigent defense delivery system, the Judicial Council should seek to amend such laws or rules. The Judicial Council should seek clarification with regards to the intention and appropriateness of two branches of government establishing fees and fee limits for indigent defense delivery services.**

Auditee Response:

We concur with these recommendations. Ensuring adequate representation for indigent defendants is at the core of the Judicial Council's mission. Addressing this issue is the top priority for the director. To further this goal, in the last 12 months the Judicial Council has:

- 1. Recommended increases to the assigned counsel rate to encourage additional assigned counsel to accept cases.*
- 2. Recommended a revision to the current contract for contract attorneys to encourage additional counsel to join the contract attorney program.*
- 3. Recommended a revision to the current contract for contract attorneys to remove juvenile delinquency cases from the contract program.*
- 4. Adopted new standards for the representation of children as required by law [RSA 604-A:10 (V)].*
- 5. Provided trainings through the Criminal Defense Academy to train potential new attorneys for indigent defense.*
- 6. Set up an additional training in January 2025, to provide additional training for attorneys who represent children.*
- 7. Recommended necessary budgetary increases for indigent defense generally to ensure that the State can meet its constitutional obligations.*

The Judicial Council's FY26/27 budget recommendation is an important step towards ensuring that the Judicial Council can meet its statutory obligations.

We also concur with the recommendations related to the procedure for setting rates for appointed counsel. Currently, the responsibility for setting compensation for court appointed counsel (contract and assigned) is split between the Judicial Council (for contracts) and the Supreme Court (for assigned cases). This split has not led to responsive pricing on either contract or assigned rates. The authority for setting rates should be vested with a single entity. The director believes the Judicial Council is the entity best suited for these determinations as it oversees the day-to-day oversight and provision of appointed counsel and is responsible for the budget for these expenditures. The director will place a proposal related to this issue before the council no later than January 2025.

The Judicial Council intends to form a compensation subcommittee made of individuals who can focus, without conflict, on the compensation of appointed counsel and who can make these decisions on a yearly basis (or more frequently as needed). Such a committee could recommend the appropriate rates across the types of counsel (contract vs. assigned) and be responsive to market conditions. Setting up such committee will be on the agenda for the Judicial Council no later than January of 2025.

A formal metric should also be applied to determine rates across counsel types. The rates currently set are not competitive (as evidenced by the lack of attorneys taking assigned cases). The director has relied upon factors such as rates set in other states, the number of attorneys per capita in the state and the willingness of attorneys to accept cases at a given rate as influencing contract/assigned rate recommendations. However, these factors and the decision-making process

can and should be formalized. The director intends to implement formal rate setting policy and procedures no later than the end of February 2025.

Observation No. 2

Case Management And Billing System Should Be Replaced

The Judicial Council's case management and billing system is ineffective, unsecure, and needs to be replaced.

The Judicial Council's operations suffer from continued use and reliance on its case management and billing system. The need for a new system was identified in the Judicial Council's draft Information Technology Plan for State fiscal years 2026-2027 as critical in carrying out its statutory duties.

The system is comprised of an unsupported database application along with spreadsheets to record payments to attorneys and GALs for indigent defense services. The following deficiencies in the Judicial Council's case management and billing system were identified:

- The system does not provide for electronic filing of case information and does not allow for the exchange and storage of electronic documents between the courts and the Judicial Council. Judges' approvals of invoices for payment and other case-related information must be manually signed on the physical documents before being sent through the mail causing delays in payment processing to service providers.
- The unsupported database system and spreadsheets were not designed properly to provide the Judicial Council with the capability to adequately quantify information and perform simple analyses. The current system does not identify discrepancies and anomalies, or provide reliable data and statistics required to make informed decisions. The Judicial Council was unable to generate reports by case type, defendant, or by payments made to attorneys who are contracted or assigned.
- All staff within the Judicial Council share the same user identification and password to access the system. If the system had secure access, it does not offer an audit log to identify who input data or when the data was input.

With the replacement of any IT system, there is a risk that the new system will be designed to recreate current methods and processes or only capture the same information rather than improving the efficiency of operations. The successful design and implementation of the Judicial Council's new IT system will depend upon a full understanding of current Judicial Council operations and needs, including financial accounting, as well as consideration of anticipated future needs of the Judicial Council.

In May of 2024, the Judicial Council issued a Request for Information for a new case management and billing system as a first step in determining what system will best meet the needs of the Judicial Council.

A similar comment was noted in our 2014 financial audit report of the Judicial Council.

Recommendation:

We recommend the Judicial Council, in consultation with the Department of Information Technology, replace its current case management and billing system with a new system that is secure and meets its operational needs. The Judicial Council should also seek cooperation from the Judicial Branch for the electronic exchange of data. The new system should be effectively designed and developed to ensure data security, confidentiality, and integrity while enhancing efficiency and effectiveness in operations.

Auditee Response:

We concur with this recommendation. The Judicial Council posted a Request for Information related to a new database in May of 2024. The Judicial Council also sought and received federal funds to replace this system. The Judicial Council reviewed proposals and demonstrations from vendors and is in discussions with a vendor to start a new program. The Judicial Council aims to submit a contract for approval by the Governor and Executive Council by the end of the year. Should this contract be approved, a new system should be operational by the end of 2025. Adoption and implementation of this system is a top priority for the agency.

The Judicial Council fully embraces technology to reduce costs and promote efficiencies. Alongside the goal of increased use of technology, the Judicial Council has engaged with the Lean office to streamline payment processes for certain services.

Observation No. 3

Improve Oversight Of Funded Entities

The Judicial Council does not have policies and procedures to provide effective oversight of the financial activity of entities it provides funding to including: the New Hampshire Public Defender (NHPD), Court Appointed Special Advocates (CASA), and New Hampshire Legal Assistance (NHLA).

New Hampshire Public Defender

RSA 604-B:4 requires the Judicial Council, with the approval of Governor and Council, to contract to operate the public defender program and provide representation for indigent defendants in criminal cases. RSA 604-B:5 requires the Judicial Council to supervise the NHPD on matters pertaining to, but not limited to, the allocation of cases between the public defender program and assigned counsel, performance, professional competence, and fiscal and budgetary matters.

The fiscal year 2024 contract between the Judicial Council and the NHPD totaled \$27.8 million. Contract provisions require the NHPD to provide the State with periodic reporting and full access to records to help the Judicial Council maintain effective oversight. Specifically, the NHPD must provide progress reports within 30 days of each quarterly period, audited financial statements, a personnel listing, job descriptions, and salary levels upon request, and make all records available for examination by the State at any reasonable time.

In addition, the contract for fiscal years 2024 and 2025 requires the NHPD to continue to implement recommendations made by Berry Dunn, an independent accounting firm, in its *October 9, 2020 Operational Assessment* and *April 5, 2023 Review of Implementation of Assessment Recommendations*, and conduct further assessments or implementation reviews as requested by the Judicial Council.

During inquiry of the Judicial Council's procedures for the NHPD contract monitoring, we noted the following:

- while the NHPD submitted quarterly progress reports regarding case statistics and audited financial statements to the Judicial Council, there was no evidence the financial activity of the NHPD was reviewed by the Council; and
- the Judicial Council did not request a current status update of Berry Dunn's *April 5, 2023 Review of Implementation of Assessment Recommendations* report to ensure identified deficiencies were resolved.

Court Appointed Special Advocates of New Hampshire

RSA 169-C:10 and RSA 604-A:1-a require the appointment of guardians ad litem to assist abused and neglected children with court proceedings. The Judicial Council contracts with the CASA annually to provide guardian ad litem services. The fiscal year 2024 contract between the Judicial Council and the CASA totaled \$1.1 million. The contract requires the CASA to provide annual audited financial statements and a copy of its annual operating budget to the Judicial Council and gives the Judicial Council authority to prescribe and inspect the CASA's records and reports.

The CASA submitted quarterly progress reports regarding case statistics but had not submitted its fiscal year 2023 audited financial statements or its fiscal year 2024 annual budget. Upon auditor inquiry on March 4, 2024, the Judicial Council requested and received the missing documents.

New Hampshire Legal Assistance

RSA 525-A:2 requires funds appropriated to New Hampshire Legal Assistance be used to provide civil legal services to low-income persons for such issues as housing, social security, and other government benefits, health care, domestic violence, and consumer issues. NHLA is required to report semi-annually to the Judicial Council as to its use of the funds. The Judicial Council does not have a contract with the NHLA but has a statutory obligation and paid NHLA \$2.5 million during the nine months ended March 31, 2024.

The NHLA submitted semi-annual reports to the Judicial Council but there was no evidence the financial activity of the NHLA was reviewed by the Judicial Council, and there is no statutory requirement for the Judicial Council to perform such a review.

While the Judicial Council received required reports and audited financial statements for the NHPD and the CASA, it has not requested or received a copy of the independent auditor's communications on internal control related matters identified in an audit, commonly referred to as a Management Letter, for any of the funded entities. Monitoring activities such as the review of financial statements and financial reports, follow up on audit findings, and periodic meetings should be performed as a control procedure to ensure the financial condition of the funded entities is sufficient to support their funded activities, and the financial activity appears reasonable based upon the size of the entity and the services it provides.

A similar comment was noted in our 2014 financial audit report of the Judicial Council.

Recommendation:

We recommend the Judicial Council improve oversight and contract monitoring activities to help ensure funded entities operate in compliance with administrative, fiscal, and other program requirements and objectives. In particular, the monitoring process should include a timely review of financial statements and available reports, including a review of the annual Management Letter provided by each funded entity's independent auditor to ensure control deficiencies that may put the State's funds at risk are satisfactorily resolved.

Written policies and procedures should be established to formalize the oversight and monitoring process for funded entities and strengthen internal controls.

Auditee Response:

We concur with this recommendation. The Judicial Council reviews the reports and information submitted from the entities it funds and meets with the leadership of these entities. However, formal policies and procedures would be beneficial to formalize the financial review of these entities.

In response to this recommendation, the director of the Judicial Council has set up regular, formal meetings with the Director of the New Hampshire Public Defender to regularize financial reporting. The director believes that a formal system of record keeping related to oversight and contract monitoring is appropriate to formalize the oversight of NHPD and CASA. The formal policies and procedures will be in place by the end of this calendar year.

The director of the Judicial Council has requested and received the internal controls letter from CASA. The director has also confirmed that NHPD has not received such a letter. The Judicial Council plans to include the annual request and review of the management letters and other relevant audit documents from NHPD and CASA as part of its revised policies.

Observation No. 4

Strengthen Core Financial Accounting Resources

The financial accounting control environment in place at the Judicial Council during the audit period exhibited weaknesses that impacted the Judicial Council's ability to effectively design and implement a system of internal controls and provide effective oversight of financial operations.

A primary component of an entity's overall control system is its control environment. An entity's control environment includes, among other things, its organizational structure and assignment of authority and responsibility. The control environment has a pervasive influence on the way an entity's business activities are structured and controlled. Weaknesses in the Judicial Council's control environment during the nine months ended March 31, 2024 were exacerbated by employee turnover, inadequate staff size, and lack of financial accounting expertise. These weaknesses have led to many of the observations in this report.

The Judicial Council's staff includes an Executive Director, Senior Accounting Technician, and an Administrative Assistant. During fiscal year 2024, there was turnover in the Executive Director position, and one of the full-time classified employees was out on extended leave.

The Executive Director is responsible for the overall success of the entity, including its vision, long-term goals, and culture. The job description of the Judicial Council's Executive Director notes the Director's purpose is to ensure that the Judicial Council effectively and reliably fulfills the agency's multiple statutory responsibilities, particularly with regard to the administration and oversight of the indigent defense delivery system. The Executive Director also supports the Judicial Council's role as a forum for the development of ideas on improving New Hampshire's justice system.

The Executive Director was hired in October 2023 and spent a substantial amount of time supervising staff and reviewing and authorizing payments. There are no other positions in the Judicial Council with power of attorney to approve transactions in NH FIRST, the state accounting system, causing processing delays when the Executive Director is unavailable.

Recommendation:

We recommend the Judicial Council strengthen its core financial accounting resources by establishing a financial manager position to oversee the daily financial operations of the Judicial Council, which include providing effective oversight and guidance to staff and performing other critical functions in an organization such as designing, implementing, and monitoring internal controls.

Auditee Response:

We concur with this recommendation. For all the reasons listed in the above recommendation, an individual with additional financial and accounting expertise would greatly aid the Judicial Council in its ability to effectively oversee the financial reporting of the agencies it funds and improve how it processes transactions.

The Judicial Council has requested a financial director position in its budget request. If such a request is approved, a new financial director would be in place by the beginning of Fiscal Year 2026.

Observation No. 5

Controls Should Be Strengthened To Prevent Duplicate Payments

The Judicial Council's system of processing payments for its indigent defense delivery system lacks effective control procedures to ensure that duplicate payments are not made.

Two separate overpayment transactions made to the same attorney during the nine months ended March 31, 2024 were not detected by the Judicial Council. The first payments occurred on November 27, 2023 and totaled \$3,705 and \$4,552, and the second payments occurred on November 30, 2023 for the same amounts. NH FIRST did not flag these as duplicate payments as different invoice numbers were input for the same transaction. The attorney, in receipt of the duplicate payments, notified the Judicial Council and returned both overpayments.

While the Judicial Council staff are required to review prior payment information to ensure duplicate payments do not occur, the process is not always performed effectively or efficiently due to technology limitations. As reported in Observation No. 2, the Judicial Council's case management and billing system does not provide information in a format that allows staff to easily retrieve information by attorney and case type that would allow for timely and effective detection of duplicate payments.

Recommendation:

As recommended in Observation No. 2, the Judicial Council should replace its current case management and billing system with a new system that meets its operational needs and could help detect duplicate payments prior to processing. In the meantime, the Judicial Council should establish policies and procedures for performing a detailed and thorough review of invoices prior to payment to ensure erroneous payments, such as duplicates, are not made.

Auditee Response:

We concur with this recommendation. The Judicial Council reviews each bill it receives for appropriateness and possible duplication. However, the Judicial Council is limited in the review it can conduct with the current state of its technology.

For the bills noted above, the Judicial Council first relies on a judicial authorization of payment, and then screens the payment in the current system to determine if there has been a prior payment on the invoice. If multiple authorized bills are submitted but have incorrect or missing invoice numbers or other unique information, the Judicial Council has difficulty detecting duplication. The Judicial Council believes that the implementation of new billing system, as well as process improvements with the Courts, would greatly assist with billing accuracy.

In response to this observation, the director is working with the Senior Accounting Technician and Administrative Assistant to revise the standard operating procedures related to payments. Some revised procedures have already been drafted and implemented. If a new system is approved and implemented, the agency will adopt new procedures for that system by the end of FY 2025.

Observation No. 6

Conflicts Of Interest Policy Should Be Established

The Judicial Council lacks a formal policy to address conflicts of interest and related party transactions.

A conflicts of interest policy is intended to ensure that, when an actual or potential conflict of interest occurs, an entity has a process in place under which the affected parties, or individuals, will advise the governing body about the relevant facts and circumstances concerning the situation providing full transparency to the public. Public officials are expected to put public service ahead of their personal interests. A related party transaction is any transaction, deal, or arrangement made between two parties who are joined by a preexisting relationship and that have or will have a direct or indirect common interest.

We reviewed expenditure payments to Judicial Council members for the nine months ended March 31, 2024, and for the fiscal year ended June 30, 2023. Two attorneys, while serving as members of the 24-member Judicial Council established under RSA 494:1, received payments in each of the periods reviewed for providing assigned counsel services to indigent defendants. One Judicial Council member received \$9,000 and another member received \$7,500 during the nine months ended March 31, 2024, and the members received \$20,000 and \$18,000, respectively, during fiscal year 2023. The payments made to each member lacked transparency to the public and were not formally identified by the Judicial Council as a conflict of interest. While the Judicial Council reported the members recused themselves during discussions of rates for assigned counsel services, there was no mention of the recusals or lack of participation in Judicial Council meetings due to these conflicts of interest.

Without formal conflict of interest policies and procedures to promote transparency, it could be perceived that members and employees of the Judicial Council are receiving favoritism that is inconsistent with, and contradicts, the organization's best interests.

Recommendation:

We recommend the Judicial Council establish a policy to address the handling of conflicts of interests and related party transactions. The policy and procedures should require the Judicial Council members to properly report actual or perceived conflicts of interest to maintain the public's trust and confidence.

Auditee Response:

We concur with this recommendation. To date, the Judicial Council has had a policy whereby members have abstained from votes which would implicate a conflict of interest. However, this policy can and should be formalized to avoid the appearance of a conflict and to maintain public trust and confidence.

Regarding payments to attorneys on the Council, the Judicial Council notes that there have been efforts to recruit private attorneys, such as those on the Judicial Council, to take indigent defense cases. See, New Hampshire Supreme Court, Report on the Recommendations of the Criminal Defense Task Force, October 27, 2021. The Council has been grateful for private attorney assistance in addressing a need for adequate indigent defense. All payments to assigned counsel are also available to the public. Despite this, more formal policies can and should be adopted to prevent even the appearance of impropriety.

The Judicial Council will put this item on its agenda for its next meeting (October 31st, 2024).

Observation No. 7

Statements Of Financial Interests Should Be Filed As Required

Not all members of the 24-member Judicial Council established under RSA 494:1 have filed, or are specifically identified as required by law to file, a statement of financial interests.

RSA 15-A *Financial Disclosure* was established [RSA 15-A:1] “...to ensure that the performance of official duties does not give rise to a conflict of interest, by requiring the following persons to file a statement of financial interests with the secretary of state. **This chapter shall be liberally construed to effect this purpose** [emphasis added].”

RSA 15-A:3, I (c), which applies to the Judicial Council, requires the following members to file a statement of financial interests...“Every person appointed by the governor, governor and council, president of the senate, or the speaker of the house of representatives to any board, commission, committee, board of directors, authority, or equivalent state entity whether regulatory, advisory, or administrative in nature.”

RSA 15-A:6 *Deadlines for Filing* states, “All persons subject to this chapter shall file a statement of financial interests annually no later than the third Friday in January...No person required to file a statement of financial interest pursuant to RSA 15-A:3, I, shall be eligible to serve in his or her appointed capacity prior to filing a statement in accordance with this section.” The 2024 statement of financial interests was due to be filed on January 19, 2024, the third Friday of the month.

The purpose of the law is to ensure that officials performing State business are not participating in activities that could give rise to a conflict of interest, or the appearance of a conflict of interest.

During the audit period, there were 24 Judicial Council member positions authorized by RSA 494:1 and four of those positions were not filled. As of March 31, 2024, there were three Judicial Council members appointed by Governor and Council that had not filed a statement of financial interests.

Additionally, the following Judicial Council members were not specifically identified as required by law to file statements of financial interests or other financial disclosures and, with the exception of the Judicial Council Chair, they did not file:

- Director of Administrative Office of the Courts appointed to the Judicial Branch Administrative Council pursuant to Supreme Court Rules in accordance with RSA 494:1, I.
- Judicial Council Vice Chair appointed to the Judicial Branch Administrative Council pursuant to Supreme Court Rules in accordance with RSA 494:1, I.
- Clerk of the Superior Court selected by the Chief Justice of the Superior Court pursuant to RSA 494:1, III.
- Clerk of the Circuit Court selected by the Administrative Judge of the Circuit Court pursuant to RSA 494:1, IV.
- President-elect of the New Hampshire Bar Association pursuant to RSA 494:1, V.
- Two members of the Judicial Council appointed by the Chief Justice of the Supreme Court pursuant to RSA 494:1, IX.

Recommendation:

We recommend the Judicial Council ensure that all members required to file a statement of financial interests in accordance with RSA 15-A submit the required filing in a timely manner. Members who have not filed should not be permitted to serve on the Judicial Council.

The Legislature should consider amending RSA 15-A to require the filing of statements of financial interests by all members of the Judicial Council, including members appointed by the court system and members of the New Hampshire Bar Association, to provide full transparency and help ensure that the performance of their official duties does not give rise to a conflict of interest.

Auditee Response:

We concur with this recommendation. The director will review the filings prior to the next meeting. Those who have not filed and are required to do so will not be allowed to participate.

The Judicial Council takes no position on the recommendation directed to the Legislature.

Observation No. 8

Judicial Council Members Should Fulfill Their Statutory Obligations

The Judicial Council, comprised of 24 members responsible for issues affecting the administration of justice in the State of New Hampshire, is unable to perform its statutory duties due to poor attendance at meetings and unfilled vacancies.

RSA 494:1 established a Judicial Council which consists of the following:

- I. The five members of the judicial branch administrative council appointed pursuant to supreme court rules.
- II. The attorney general or designee.
- III. A clerk of the superior court, selected by the chief justice of the superior court.
- IV. A clerk of the circuit court, selected by the administrative judge of the circuit court.
- V. The president-elect of the New Hampshire Bar Association.
- VI. The chairperson of the senate judiciary committee or a designee from such committee appointed by the chairperson.
- VII. The chairperson of the house judiciary committee or a designee from such committee appointed by the chairperson.
- VIII. Eight other members appointed by the governor and council, 3 of whom shall be members of the New Hampshire Bar Association of wide experience who have been admitted to practice in the state for more than 5 years, and 5 of whom shall be members of the public who are not lawyers.
- IX. Five other members appointed by the chief justice of the supreme court, 3 of whom shall be members of the New Hampshire Bar Association of wide experience who have been admitted to practice in the state for more than 5 years, and 2 of whom shall be members of the public who are not lawyers.

RSA 494:5 requires regular meetings of the Judicial Council be held in January, April, and October of each year, and at such other times as the Judicial Council or its chairman may determine. During the period of October of 2022 through January 2024, the Judicial Council scheduled eight meetings. Issues identified relative to those meetings were as follows:

- The Judicial Council was not able to provide us with copies of an agenda, meeting minutes, or any other record to document the October 2022 meeting was held or who may have attended. The Judicial Council reported it gathered for a meeting but did not have a quorum.
- Four members of the Judicial Council were not in attendance for seven of the meetings that occurred between January 2023 and January 2024, more than half of the meetings that took place.
- Four positions on the Judicial Council were vacant. Two of the positions were subject to appointment by the Chief Justice of the Supreme Court and two positions were subject to appointment by the Governor and Council.

Recommendation:

Judicial Council members should fulfill their obligations according to law. Full attendance at every meeting is important to ensure that all decisions taken reflect the collective intent of the Judicial Council. The Chair of the Judicial Council should add an agenda item to discuss vacant positions and issue actionable items to follow up with appointing authorities until vacancies are filled.

The Judicial Council should ensure all members are aware of their statutory responsibilities. If members are unable to fulfill their duties on the Judicial Council, a replacement should be sought through the statutory process.

Meeting documentation, such as agendas, attendance records, and minutes documenting decisions made, should be maintained and made available to the public. Minutes should also report when a meeting was adjourned, and whether there was sufficient attendance for a quorum.

Auditee Response:

We concur with these recommendations. One of the above noted vacancies has been filled by the Supreme Court. However, the Judicial Council is unable to compel appointment of members. The Judicial Council has reached out to appointing authorities regarding vacancies, but it cannot take action beyond reminders and requests. The Judicial Council will reach out again to appointing authorities by the end of this calendar year.

The director will bring this recommendation [regarding member awareness of statutory responsibilities] to the attention of the members of the council prior to the next meeting.

The Judicial Council notes that the lack of minutes for the October 2022 meeting was due to a lack of a quorum at the meeting. Since the time of the audit, agendas have been posted for each meeting, and minutes have been generated and kept for public inspection.

Observation No. 9

System Of Standard Operating Procedures Should Be Established

The Judicial Council does not have an effective system of standard operating policies and procedures (SOPPs) in place for employees who hold key positions, such as the Executive Director and two administrative staff.

The current Executive Director was hired in October 2023. No formal policies or procedures existed to provide guidance or insight into the responsibilities of the position, including key responsibilities involving financial operations. Current office policies and procedures are informal and outdated. There is no system for documenting and periodically reviewing policies and procedures to determine whether they remain relevant or are in need of revision.

Maintaining current and detailed SOPPs promotes continuity of operations and includes the documentation of key employee responsibilities to minimize business interruptions in the event of an unforeseen occurrence. The SOPPs should also serve as useful guidance for holding each employee accountable to their job duties and serve as a reference for newer employees when other resources are unavailable.

Recommendation:

A system of standard operating policies and procedures should be established by the Judicial Council to increase efficiencies and effectiveness in the Judicial Council's role with regard to the administration of justice in the State of New Hampshire. The SOPPs should communicate management's expectations, provide detailed instructions and guidance on how to perform routine tasks, promote consistency in operations regardless of who is performing the task, and help to ensure continuity in operations in the event of unplanned employee turnover.

Auditee Response:

We concur with this recommendation. As noted elsewhere in the report, the Judicial Council has recently experienced staffing shortages and turnover. The agency was not at full staff capacity during the audit period and has only reached its current full staff capacity as of October 2024. At one point, the agency operated solely with a single employee and the director.

In response to this observation and recommendation, the Judicial Council has started to create, update, and revise its policies and procedures relating to bill payment. The Council has a goal of a comprehensive drafting and revision of all SOPPs by the end of the 2025 fiscal year.

The creation of a financial director position would greatly assist the agency in its ability to create and implement SOPPs, especially those related to financial management and oversight.

Observation No. 10

Formal Risk Assessment Process Should Be Established

The Judicial Council does not have a formal risk assessment process in place for its financial accounting and compliance functions.

According to the Judicial Council, risks are identified and responded to through an informal process on an as needed basis. A formalized risk assessment process may have assisted the Judicial Council in detecting and responding to many of the weaknesses and instances of noncompliance noted in this report.

Management's assessment of and response to risks facing an organization is an integral component of internal control. The purpose of an entity's risk assessment efforts is to identify, analyze, and respond to risks, including the risks of errors or fraud, that could adversely affect the entity's ability

to achieve its objectives. A prerequisite to an effective risk assessment is the establishment of objectives, and the identification of risks that may put the achievement of those objectives in jeopardy. A documented risk assessment process is a core element of management's planning activities, and is an ongoing process.

A formal and well-planned risk assessment process increases the likelihood that an appropriate balance between the costs and benefits of implementing controls can be understood and become the basis for controls put into operation. As risks change over time due to changes in processes, information technology, and environment, controls intended to mitigate risk may become inefficient and ineffective. Without ongoing risk assessment processes, the identification and response to risk often occurs in a reactive mode, after a risk has been realized and a loss incurred.

A similar comment was noted in our 2014 financial audit report of the Judicial Council.

Recommendation:

We recommend the Judicial Council:

- **establish and document a formal risk assessment process for recognizing, evaluating, and responding to risks that could affect its ability to achieve its financial accounting, and compliance objectives; and**
- **regularly review its financial and operational activities for indicators of risk exposure and establish and monitor controls to address those risks. A periodic, documented review of the risk assessment by the Executive Director in conjunction with the Judicial Council should be incorporated into the process.**

Auditee Response:

We concur with this recommendation. As noted above, a financial manager with prior experience in drafting such policies and procedures would greatly benefit the agency. The Judicial Council aims to draft and adopt initial policies by the end of the 2025 fiscal year and to review and revise these procedures with a financial director by the end of the 2025 calendar year.

Observation No. 11

Information Technology Plan Should Be Developed In Accordance With Law

The Judicial Council did not submit an information technology (IT) plan to the Department of Information Technology (DoIT) as required by RSA 9:4-b.

RSA 9:4-b states, "Each executive department, with the necessary assistance of the chief information officer, shall prepare an information technology plan and submit it to the information technology council. The portion of each plan which addresses the upcoming biennium shall define the capital and operating budgets necessary for implementing the plan...Each information technology plan shall

identify a process for collaborative involvement of stakeholders representing other levels of government within the state in the development, design, and deployment of information technology systems that involve or impact such other political subdivisions of the state.”

Having an effective IT strategy can improve an organization’s operations, streamline processes, increase productivity, and reduce costs. A comprehensive IT plan outlines how an organization will use technology to achieve its goals and objectives.

The Judicial Council did not prepare an IT plan for the 2024-2025 biennium as required by law. A draft IT plan prepared by the Executive Director in April 2024 for the 2026-2027 biennium was submitted to DoIT in accordance with RSA 9:4-b. The draft IT plan notes a Request for Information is in process to replace the current billing and case management system, which is currently unsupported, susceptible to failure, and inefficient. A new system will help to automate payment processes and reduce data entry errors in the payment process.

Recommendation:

We recommend the Judicial Council work with DoIT to ensure acceptance of the 2026-2027 draft IT plan, and implement procedures to continue to comply with RSA 9:4-b.

Auditee Response:

We concur with this recommendation. As outlined above, the Judicial Council is seeking to implement a new database system as soon as possible. The Judicial Council is in regular contact with DOIT regarding updating the current database and other IT issues.

Observation No. 12

Plans Fundamental To An Effective System Of Internal Controls Should Be Developed

The Judicial Council has not implemented certain plans that are generally regarded as fundamental to an effective system of internal controls. During the nine months ended March 31, 2024, the Judicial Council did not have strategic, continuity of operations, or disaster recovery plans.

Strategic planning is a process that helps organizations develop a vision for the future and create a plan to achieve it. It involves identifying goals and objectives, developing a strategy, and creating a plan to achieve these goals.

Continuity of operations plans are put into place to ensure that an entity will be able to maintain all areas of its essential operations or be able to resume essential operations as quickly as possible in the event of a crisis or emergency.

Disaster recovery planning is a subset of continuity of operations planning that focuses on recovering information technology infrastructure and systems. Disaster recovery plans should identify the strategies, essential resources, and procedures necessary to implement a timely

recovery process. Effective disaster recovery plans are developed using best practices designed to prevent or minimize data loss and disruption in operations resulting from catastrophic events.

Each of these processes and plans are generally regarded as central to an organization's ongoing system of internal controls. By not formally addressing these control fundamentals, the risk that operations could be negatively impacted by foreseeable, but unplanned for, events is increased.

A similar comment was noted in our 2014 financial audit report of the Judicial Council.

Recommendation:

We recommend the Judicial Council prepare, implement, and maintain plans that are fundamental to an effective system of internal controls including formal strategic, continuity of operations, and disaster recovery plans.

Auditee Response:

We concur with this recommendation. As noted above, a financial manager with prior experience in drafting such policies and procedures would greatly benefit the agency. The Judicial Council intends to draft and adopt such policies by the end of the 2025 fiscal year.

Observation No. 13

Policies And Procedures Should Be Established For Termination Of Counsel

The Judicial Council does not have policies and procedures for instances when contracted attorneys providing services to indigent defendants terminate a case prior to final disposition. Additionally, there are no procedures in place for subsequently collecting outstanding debts from these contract attorneys upon termination of a case.

Contracted attorneys are often paid in advance for their services based on an agreed upon number of units. The Judicial Council does not have policies and procedures to establish the process for collecting attorney debts, including acceptable payment methods, payment due dates, and the management of delinquent payments.

We identified two instances during the audit period in which contracted attorneys were not appropriately compensated upon terminating counsel services as described below:

- One contracted attorney was assigned to provide 294 units of counsel services to indigent defendants at \$300 per unit, totaling \$88,200, during the audit period. Under this arrangement, a monthly payment of \$7,500 was established. The attorney was paid \$52,500 of the \$88,200 but passed away before completing the assigned units. Several of the attorney's cases were re-assigned to other counsel, as certain cases had not yet been started or were incomplete. Lack of procedures to monitor contracted attorney case statuses, progress, and payments contributed to the Judicial Council being unable to determine how

much was due to the estate of the attorney or back to the State. Consequently, it is not clear how many cases were completed by the attorney or how much work was completed on active cases that were re-assigned. It is also unclear if the money is owed to the estate of the attorney, or if the Judicial Council is owed money from the estate.

- Another contracted attorney was paid \$29,700 as an advance towards providing counsel for 67 cases. However, the attorney stopped practicing law and did not fully complete assigned cases. It is unclear how much of the \$29,700 was owed to the Judicial Council for incomplete services. A demand letter was sent to the attorney on March 29, 2024, requesting \$14,850, half of the amount he was paid. As of the date of this report, the attorney had not made any payments to the Judicial Council.

Recommendation:

We recommend the Judicial Council:

- **Establish formal policies and procedures to address attorney debt in the event of termination of counsel services for indigent defendants prior to the case's final disposition. The policies and procedures should include procedures for amounts paid in advance, tracking closed cases, and collecting attorney debts, including acceptable payment methods, payment due dates, and the management of delinquent payments using a process for an aging of accounts receivable.**
- **Include in contracted attorney agreements additional provisions for instances when counsel terminates services to assigned indigent defendants for circumstances not already included in those agreements, such as medical reasons, death, or other employment.**

Auditee Response:

We concur with both recommendations. A new case management system would resolve issues related to tracking accounts payable and case closures. The Judicial Council also agrees that formal policies related to collections should be implemented. The current level of staffing for contract attorneys (one person) and technology (Access database/spreadsheets) makes it impractical for the Judicial Council to monitor the current case status for the hundreds of cases provided through the contract attorney system.

The Judicial Council has been in contact with the New Hampshire Department of Justice regarding both examples listed above.

The Judicial Council agrees that the attorney contract for indigent defense services should be amended as outlined in the above recommendation (to specifically include provisions for death or incapacity of the contractor). The director is including such provisions in a newly amended contract which will be submitted for approval by the end of the 2024 calendar year.

Observation No. 14

Biennial Report Should Be Filed As Required

The Judicial Council has not filed statutorily required reports.

RSA 494:4 states, “The council shall report to the governor and council biennially on its activities and shall submit with the report its recommendations, if any, for improving the administration of justice.”

The Judicial Council has not been in compliance with State law since it last completed its 2016-2017 biennial report. The Judicial Council reports that lack of adequate staffing and time constraints contributed to noncompliance.

Recommendation:

We recommend the Judicial Council adhere to its statutory requirement of submitting a biennial report to the Governor and Council on its activities and with its recommendations, if any, for improving the administration of justice.

Auditee Response:

We concur with this recommendation. The director has submitted a biennial report retrospectively for the period FY 22/23 to “Transparency NH.” The agency will submit this report formally to the Governor and Council and will ensure future reports are submitted in a timely manner.

The Judicial Council provides a valuable forum for the exchange of information and ideas regarding improving the administration of justice in the state. Recent issues at Judicial Council meetings have included topics ranging from expanding non-lawyer representation at domestic violence hearings to improving rules related to electronic signatures. The director anticipates future reports will be timely and will contain substantive recommendations related to the administration of justice.

CURRENT STATUS OF PRIOR AUDIT FINDINGS

The following is a summary of the status, as of October 2024, of the observations contained in the Judicial Council financial audit report for the nine months ended March 31, 2014. This report can be accessed at, and printed from the Office of Legislative Budget Assistant website:

www.jencourt.state.nh.us/lba/default.aspx

2014 Financial Audit Internal Control Comments

		<u>Status</u>
<u>Significant Deficiencies</u>		
2014-1	<p>Continue Automating And Consolidating Information Technology Systems And Processes <i>Continue automating and consolidating IT systems and processes, and review need to operate multiple IT systems in addition to NH FIRST. Consider whether features within NH FIRST, including the scanning of invoices and electronic approvals could be further used to increase efficiencies, and provide increased controls over payment processes. Establish a current IT plan that provides for a discontinuation of obsolete and unsupported IT systems, and shift to more efficient systems that will allow a move away from paper-based processes and redundant data entry. (See current Observation No. 2)</i></p>	○ ○
2014-2	<p>Strengthen Contract Monitoring <i>Strengthen contract monitoring and establish policies and procedures to support and promote efforts to ensure contracted activity remains in compliance with administrative, fiscal, and other program requirements and objectives. (1) Clarify NHPD contract provisions to establish a defined basis and methodology for calculating the cost of operations and for determining the amount of any excess funding. (2) Monitor and enforce all significant CASA contract provisions, including the timely submission of CASA audited financial statements. (3) Formalize and document the review of CASA quarterly progress reporting to ensure the CASA contract is operating as intended. (See current Observation No. 3)</i></p>	○ ○
2014-3	<p>Improve Controls Over Payments To Providers <i>Improve controls over IDS payments by redesigning the segregation of duties control and strengthening the reconciliation process to ensure that only approved amounts are processed for payment in NH FIRST. Review the IDS payment process, with the assistance of the DAS, to ensure that it incorporates sufficient controls to meet the requirements of the State.</i></p>	● ○

		<u>Status</u>	
2014-4	<p>Develop And Implement Comprehensive Risk Assessment Process And Business Continuity And Disaster Recovery Plans <i>Further develop the risk assessment process and develop and implement business continuity and disaster recovery plans for Judicial Council operations. The risk assessment process should include the input of both the Executive Director and the Judicial Council, and operate on a continual basis to remain current. The business continuity and disaster recovery plans should be tested periodically to ensure staff are knowledgeable of, and trained in, their assigned responsibilities in the event the plans are put into action. (See current Observation No. 10 and No. 12)</i></p>	○	○
2014-5	<p>Revise Interface Coding <i>Review the expenditure account coding in the IDS to NH FIRST interface to better align the two information systems to more accurately report expenditures.</i></p>	●	●
State Compliance Comments			
2014-6	<p>Clarify Authority For Appointing And Compensating The Executive Director <i>Request legislative clarification of the authority for appointing and compensating the Executive Director.</i></p>	●	●
2014-7	<p>Request Revision Or Repeal Of Unapplied Statute <i>Request RSA 604-A:5 be repealed or appropriately amended to eliminate any unconstitutional aspects of the current law.</i></p>	●	●

<u>Status Key</u>	<u>Status</u>		<u>Count</u>
Resolved	●	●	3
Remediation In Process (Action beyond meeting and discussion)	●	○	1
Unresolved	○	○	3