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**State Auditor**

An Audit Report on

**The Court of Criminal Appeals'  
Administration of Grant Funds  
from the Judicial and Court  
Personnel Training Fund**

April 2009

Report No. 09-028



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## *Overall Conclusion*

The Court of Criminal Appeals (Court) should improve its administrative processes to ensure that grants from the state Judicial and Court Personnel Training Fund (judicial education program) are used efficiently and effectively and that grantees are held accountable for providing agreed-upon services.

The Court awarded 8 judicial education program grants totaling \$8.44 million in fiscal year 2007 and 7 grants totaling \$8.47 million in fiscal year 2008. According to the Court's records, a total of 204,443 training hours were provided to 16,437 participants<sup>1</sup> in fiscal year 2008. The Court has processes to ensure that grantees' requests for funds are reviewed and do not exceed the grantees' total award amounts.

The Court should develop written policies and procedures for its financial monitoring of judicial education program grants and expand the scope of its financial monitoring of grantees. Although the Court's staff reports that it reviews 100 percent of grant expenditures, it does not limit the amount of grant funds that can be expended on grantee administrative costs. Grantees' administrative expenditures in fiscal year 2008 ranged from 36.5 percent to 75.1 percent, with an average administrative expenditure rate of 49.5 percent across the seven grantees. The Court also should improve its financial monitoring by requiring grantees to report budget-to-actual expenditures and ensuring that audits of state and non-state funds are conducted as required by the grant provisions.

The Court also should develop written policies, procedures, and performance measures to monitor grantees' program performance. The number of training

### **Background Information**

The Court of Criminal Appeals (Court) administers the Judicial and Court Personnel Training Fund, which is a State Treasury fund. Grants from this training fund provide for continuing legal education, technical assistance, and other support programs to (1) judges; (2) prosecuting attorneys and their personnel; (3) criminal defense attorneys who regularly represent indigent defendants in criminal matters; (4) justices of the peace and their court personnel; (5) district and county clerks; (6) law enforcement officers; (7) law students; and (8) other judicial personnel.

As part of the Court's oversight of the training program, it is required by Texas Government Code, Section 56.006 (b), to monitor both the financial performance and the program performance of entities receiving grant funds.

The Court was appropriated \$8.9 million in fiscal year 2007 and \$9.7 million in fiscal year 2008 from the Judicial and Court Personnel Training Fund.

<sup>1</sup> This sum may not represent total individuals because participants may have attended more than one training event.

events proposed by grantees varied from the actual number of training events they conducted. These variances ranged from the grantees providing 8 fewer events than they proposed to providing 17 more events than they proposed. The Court also should improve its program monitoring by analyzing training participant evaluations to assess the quality of the training provided by the grantees. Without implementing performance standards and monitoring grantee performance, the Court cannot effectively ensure that grantees comply with grant agreements or use state funds efficiently.

The Court lacks formal, written policies and procedures for awarding and administering grants. While the Court ensures that grant applications considered for evaluation are substantially complete, it does not document the rationale it uses to make award decisions. In addition to \$16.9 million in judicial education program grants, the Court reported that it awarded approximately \$171,626 in supplemental grants during fiscal years 2007 and 2008; however, the Court did not have a written agreement to document the purposes and amounts of supplemental grants awarded. As a result, the Court could not ensure that these supplemental grant funds were used as intended. Also, these supplemental grants were awarded through a noncompetitive process.

The Court's Education Committee is required by Texas Government Code, Section 56.005, to provide curriculum recommendations to the Court. However, the Court could not provide any documentation showing that the Education Committee had formally met or issued an annual report of recommendations since the committee was created in fiscal year 2004. As a result, the Court primarily relies on the grantees' curriculum committees to identify training needs of state judicial and court personnel.

## ***Key Points***

**The Court should monitor grantees' administrative expenditures.**

The Court lacks a standard against which it can assess the reasonableness of grantees' administrative expenditures, which averaged 49.5 percent of total grantees' expenditures in fiscal year 2008.

**The Court should improve its monitoring of grantee expenditures.**

The Court lacks a standardized process and written procedures for monitoring grantees' financial performance. Additionally, the Court did not conduct its reviews of grantee expenditures in a timely manner and it did not monitor grantees' budgets.

**The Court should utilize additional controls to monitor grantees' financial performance.**

The Court did not ensure that grantees obtain annual independent audits of state and non-state funds as required by grant provisions. Additionally, the Court did not actively monitor grantees' compliance with grant provisions requiring grantee bank accounts to maintain balances of less than \$100,000 so that funds are protected by insurance offered by the Federal Deposit Insurance Corporation.

**The Court should develop and implement performance targets to ensure the effective operations of grantee programs.**

The Court's agreements with grantees lacked specific performance requirements, and the Court had not identified any specific performance measures to monitor grantees' program activities.

**The Court should develop written policies and procedures for program monitoring.**

The Court did not require any performance information or reports on program performance from grantees during fiscal years 2007 and 2008.

**The Court should develop written policies and procedures for the awarding and administering of grant funds.**

The Court lacks written criteria for awarding judicial education program grants, and it did not document its rationale for award decisions in fiscal years 2007 and 2008, including award amounts.

**The Court should develop procedures that address the award of supplemental grants from its administrative funds.**

The Court did not require a written agreement to document the purpose and amounts of \$171,626 in supplemental grant funds it awarded in fiscal years 2007 and 2008.

**The Court's Education Committee should make annual recommendations for judicial training needs.**

The Court was unable to provide any documentation showing that its Education Committee had formally met or issued an annual report as required by Texas Government Code, Section 56.005.

**The Court should ensure that grant acceptance forms are complete and accurate.**

The Court's staff did not review grantee acceptance forms, which govern the use of funds awarded, in fiscal years 2007 or 2008. As a result, multiple forms were not signed by grantees for fiscal years 2007 and 2008. Auditors identified other miscellaneous errors, such as a grantee that modified the terms of its grantee acceptance form, grantee acceptance forms that were missing award amounts, and incorrect identification of a grantee's name. Without ensuring that the grantee acceptance forms are accurate, complete, and signed, the Court risks awarding state funds without a legally binding agreement to govern the use of those funds.

**The Court should monitor grantees' third-party agreements.**

Grantees did not provide the Court with copies of all applicable third-party agreements in fiscal year 2008 as required by the Court's grant provisions. Auditors identified one instance in which Court staff were unaware that they were making multiple payments to a third party, rather than directly to the grantee.<sup>2</sup>

## ***Summary of Management's Response***

The Court generally agrees with the recommendations in this report, and it provided the following summary of its responses:

*The Court generally agrees with the Auditor's recommendations. The Court is always open to constructive criticism as it strives to continually improve judicial and legal education in Texas. The Court's establishment of a grant for actual innocence training and the establishment of the Texas Criminal Justice Integrity Unit are two examples of this type of leadership. While many of the Auditor's recommendations will be satisfied by documenting existing policies and procedures, others will need additional research, development, and collaboration with the grantees, who were not interviewed during the audit process. The court will continue with its commitment to ensuring that the Judicial and Legal Education Fund is operated in the most efficient and accountable manner possible.*

Detailed management responses are included in the Detailed Results section of this report.

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<sup>2</sup> The Court's auditor verified that these funds were used for judicial education training in fiscal year 2007.

## ***Summary of Objectives, Scope, and Methodology***

The objectives of this audit were to:

- Determine whether the Court has processes that provide reasonable assurance that grant funds from the Judiciary and Court Personnel Training Fund are being awarded and used in accordance with Texas Government Code requirements, the terms of grant agreements, administrative and Court rules, and Court policy.
- Determine the status of implementation of the recommendations contained in the September 5, 2006, performance review report prepared by MTG Management Consultants, L.L.C.

The scope of this audit included the Court's awarding and monitoring procedures, grant documentation, and financial records for fiscal years 2007 and 2008, and the Court's response to recommendations made in the 2006 report by MTG Management Consultants, L.L.C.

The audit methodology included collecting and reviewing documentation on the Court's grant processes; interviewing Court staff and judges; reviewing documentation on individual grants; analyzing grant expenditure data, budgets, award decisions, and grant findings; and determining the status of recommendations made in the 2006 report by MTG Management Consultants, L.L.C. The Court did not have information systems that were significant to the objectives of this audit.

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# Detailed Results

Chapter 1

## ***The Court of Criminal Appeals Should Obtain Timely and Complete Information on Grantees' Financial Performance***

The Court of Criminal Appeals (Court) should improve its administration of grants from the Judicial and Court Personnel Training Fund (judicial education program) by monitoring grantees' administrative expenditures, developing a standardized process and written policies and procedures for expanded monitoring of grantees' financial performance, and implementing additional controls to monitor grantees' compliance with grant provisions.

The Court did not limit the amount of judicial education program funds that grantees can expend on administrative costs. In fiscal year 2008, grantees' administrative expenditures ranged from 36.5 percent to 75.1 percent. While the Court's staff reported that they review 100 percent of grant expenditures, they could more effectively monitor the program by analyzing budget-to-actual expenditures and ensuring that audits of state and non-state funds are conducted and reviewed on a regular basis.

Chapter 1-A

### **The Court Should Monitor Grantees' Administrative Expenditures**

The Court lacks a standard against which it can assess the reasonableness of grantees' administrative expenditures. In fiscal year 2008, seven grantees reported they expended a combined \$4.7 million on administrative expenditures, including salaries. These administrative expenditures represented 49.5 percent of the \$9.6 million grant funds expended by all grantees in fiscal year 2008 (see Table 1).

Table 1

Grantee Administrative Expenditures for Fiscal Year 2008			
Grantee	Total Expenditures	Administrative Expenditures	Percent of Administrative Expenditures
Center for American and International Law <sup>a</sup>	\$ 299,696	\$ 109,249	36.5%
Texas Association of Counties	489,220	247,474	50.6%
Texas Criminal Defense Lawyers Association <sup>b</sup>	1,098,670	824,834	75.1%
Texas Center for the Judiciary	1,738,265	724,576	41.7%



Grantee Administrative Expenditures for Fiscal Year 2008			
Grantee	Total Expenditures	Administrative Expenditures	Percent of Administrative Expenditures
Texas District and County Attorneys Association	1,798,289	859,017	47.8%
Texas Justice Court Training Center	1,931,037	977,961	50.6%
Texas Municipal Courts Education Center	2,127,274	950,209	44.7%
<b>Totals</b>	<b>\$9,482,451</b>	<b>\$4,693,320</b>	<b>49.5%</b>
<p><sup>a</sup> Excludes an innocence training grant with total expenditures of \$97,584, including total administrative expenditures of \$32,692.</p> <p><sup>b</sup> Excludes an innocence training grant with total expenditures of \$77,115, including total administrative expenditures of \$5,636.</p>			

Source: Unaudited expenditure information provided by the grantees.

As Table 1 shows, grantees’ administrative expenditures ranged from 36.5 percent to 75.1 percent of total expenditures. This degree of variation indicates that some grantees may not have used the grant funds in an efficient manner. A 2001 study of general expenditures at nonprofits conducted as part of the Nonprofit Overhead Cost Project<sup>3</sup> reviewed tax returns for fiscal year 1999 from 160,000 nonprofit organizations. Organizations specializing in education with \$500,000 to \$5 million in revenues—similar to the size of the Court’s grantees—spent an average of approximately 16 percent of total expenditures on administrative costs. It should be noted, however, that there was a wide variation in the accounting practices used by individual nonprofits included in the study.

The Court is ultimately responsible for determining whether grantees’ administrative expenditures are reasonable. Increased monitoring of grantees’ administrative expenditures could help the Court determine whether grantees are using state grant funds for excessive spending on items such as rent, equipment, or overstaffing.

## Recommendations

The Court should:

- Assess the appropriateness of grantees’ administrative expenditures and establish a maximum acceptable administrative rate. Once this rate is established, the Court should periodically calculate grantees’

<sup>3</sup> “Understanding Management and General Expenses in Nonprofits,” presented by Thomas H. Pollak, Patrick Rooney, and Mark A. Hager at the 2001 annual meeting of the Association for Research on Nonprofit Organizations and Voluntary Action. A copy of the report can be found at <http://nccsdataweb.urban.org/kbfiles/525/M&G.pdf>.

administrative expenditures. The Court may also consider developing financial penalties to enforce compliance with the maximum rate.

- Conduct additional reviews of administrative expenditures of grantees that spent the highest percentage of funds on administrative costs in fiscal year 2008 to determine whether these expenditures were reasonable.

### Management's Response

*Management generally agrees that there should be a review of the Auditor's research regarding benchmark data on administrative expenses in order to determine if it is reasonable to establish an appropriate and realistic allowable rate for administrative overhead. Additionally, the Court will review FY08 administrative expenses in order to determine if the expenditures were necessary and reasonable.*

*While management generally agrees with the Auditor's recommendations, it should be noted that the Auditor did not mention that all expenses, both administrative and programmatic, are carefully reviewed by the Court's auditor in order to determine if they comply with grant conditions. If any expenditure is found to be out of compliance, the grantee is required to reimburse the grant from private funds. This could have been verified had the auditor team interviewed any grantee.*

*Again, the Court will research the establishment of an allowable administrative rate, including the feasibility of implementing an enforcement mechanism to ensure compliance with any administrative targets.*

*The Court's grant staff will complete this review and implement any changes within 180 days.*

## The Court Should Improve Its Monitoring of Grantee Expenditures

### Grant Findings

Court staff periodically review grantees' expenditures from the prior fiscal year. When a questionable expenditure is identified, the Court's staff issues a "grant finding." These findings may be issued for:

- Unallowable expenditures.
- Unsupported transactions.
- Travel expenses that are more than state-approved limits.
- Transactions that require additional explanation.

Court staff consider grant findings resolved once they determine whether the grantee should pay back the grant funds.

As of February 2009, the Court lacked a standardized process or written policies and procedures for the monitoring of grantees' financial performance. Court staff did not review expenditures or resolve grant findings in a timely manner. Court staff also did not monitor grantees' budgets. For the effective operation of the judicial education program, the Court should ensure it conducts timely reviews of grantees' expenditures and expands its oversight activities to include the monitoring of grantees' budgets.

The Court's oversight consisted primarily of annual reviews of grantee expenditures conducted after the end of each grant period. If a questionable expenditure is identified, the Court issues a grant finding (see textbox). Auditors reviewed the Court's grant findings for fiscal year 2007 and verified that the Court consistently identified unallowable and unsupported expenditures.

The Court should improve the efficiency and timeliness of its monitoring of grantee expenditures. Court staff reported they reviewed 100 percent of state-funded grant expenditures to ensure they were allowable and supported. These reviews identified and resolved \$9,169 in fiscal year 2007 grantee expenditures that had not been spent in accordance with grant provisions. However, the Court had not yet resolved some additional grant findings or recouped all grant funds from fiscal year 2007.

These reviews do not provide the Court with timely information because they occur after all grant funds have been expended for each fiscal year. For example, as of February 2009, the Court had not finished reviewing grantee expenditures for any grantee that received funds in fiscal year 2008. In addition, the Court's current practice of reviewing grantee expenditures includes Court staff reviewing all expenditures regardless of dollar amount or grantees' compliance history.

The Court also lacks clear standards and a standardized process for resolving grant findings in a timely manner. As of February 2009, the Court had not resolved 60 (25.9 percent) of 231 grant findings from fiscal year 2007. Currently, a single staff member reviews all grant findings and has full discretion to decide whether a finding should be referred to a judge for review. All referrals are sent to the judge who manages the judicial education section for review or referral to the full court. Because the Court lacks written, detailed policies and procedures for the review and resolution of grant findings, there is no assurance that grant findings are processed in a consistent manner. For example, auditors identified one instance in which a staff member recommended that a grant finding be referred for judicial review; later, the staff member decided to resolve that finding even though the issue was never forwarded to a judge for consideration. The lack of clear

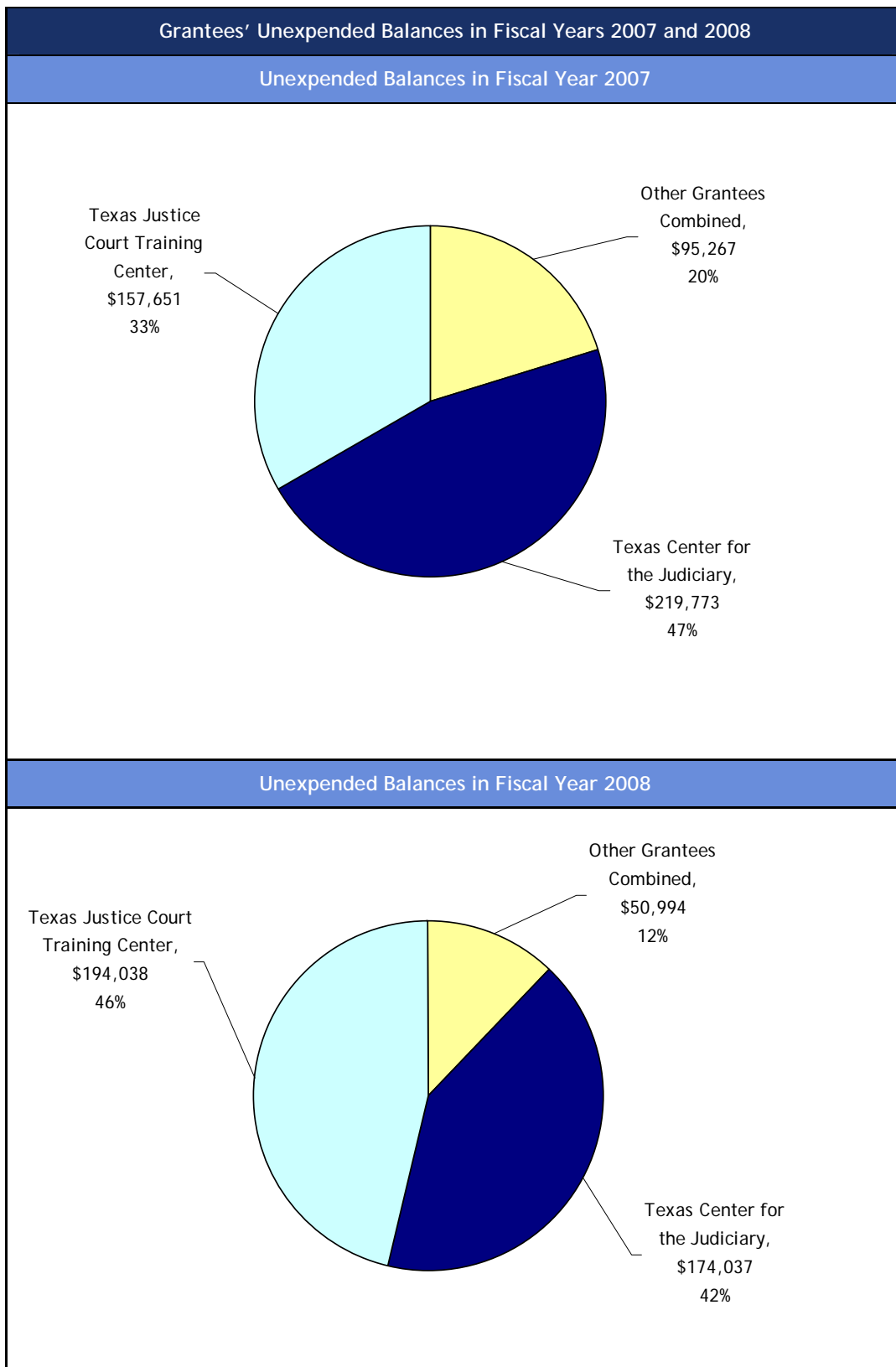
procedures and responsibilities increases the risk that grant findings may not be resolved appropriately.

The Court should monitor grantees' budgets. The Court requires grantees to report financial information into an accounting system used by the Court. However, the template designed by the Court—known as the “chart of accounts”—does not have the capability to fully track the programs and fund years related to the reported expenditures. As a result, the Court cannot fully track grantees' use of grant funds from funding sources restricted by the General Appropriations Act for specific constituent groups (see Appendix 4 for excerpts from the General Appropriations Act).

For example, Rider 7, page IV-6, the General Appropriations Act (80th Legislature), requires the Court to designate at least \$1 million in each fiscal year for the training of court clerks and personnel at each of the judicial court systems in the State (see Appendix 4 for full text of Rider 7). However, because of the weaknesses in the accounting system template that the Court requires grantees to use to report grant expenditures, the Court cannot track all of the funds restricted for training specific constituent groups or designated for specific fiscal years. In some cases, the Court's accounting system template allows grantees to track expenditures for specific constituent groups, such as those for travel, meals, and lodging. However, grantees did not code other expenditures such as those for faculty, course materials, and conference rooms, so that the Court could link them to a specific constituent group. As a result, the Court cannot ensure full compliance with Rider 7.

Additionally, Court staff did not complete monthly budget monitoring reports for any grantees from March 2008 to January 2009. Without timely information about grantees' budgeted amounts, actual expenditures, and unexpended fund balances, the Court cannot (1) ensure that grantees are expending funds for the purposes and events agreed upon in the grant agreement or (2) accurately assess grantees' needs for supplemental funding (see Chapter 3 for more information about supplemental grants). This is significant because many grantees do not spend all grant funds awarded to them in each fiscal year. At the end of fiscal year 2007, six grantees had unexpended balances totaling \$472,691. Two grantees accounted for 80 percent of the total unexpended balances. At the end of fiscal year 2008, three grantees reported unexpended balances totaling \$419,069, and the same two grantees accounted for 88 percent of the total unexpended balances (see Figures 1 on the next page).

Figure 1



Source: Grantee budget documents provided by the Court.

The grantees refunded to the Court the unexpended balances at the end of each fiscal year, in compliance with Rider 6, page IV-6, the General Appropriations Act (80th Legislature), which required that the Court recoup unexpended balances at the end of each fiscal year (see Appendix 4 for the full text of Rider 6). However, these unexpended balances may indicate that grantees had not accurately planned for the use of grant funds or inaccurately identified the amount of training needed by specific constituent groups. Grantees' unexpended balances may provide an additional funding source for supplemental grants in the event that the Court identifies additional training needs. (See Chapter 3-B for more information regarding supplemental grants.)

## Recommendations

The Court should:

- Improve the efficiency and timeliness of its review process by:
  - ♦ Reviewing a sample of monthly expenditures.
  - ♦ Establishing a minimum dollar threshold of grant expenditures to review.
  - ♦ Selecting expenditures to review based in part on grantees' compliance history.
- Develop written policies and procedures that provide grant review timelines and clearly assign responsibilities for the review and resolution of grant findings.
- Develop and implement written policies and procedures for monitoring grantee's financial performance. These policies and procedures should consider incorporating the best practices identified in the *State of Texas Contract Management Guide* and should include:
  - ♦ Timely reviews and resolutions of grant monitoring issues.
  - ♦ Regular reviews of grantees' budgeted costs to actual expenditures.
- Ensure that its auditor reviews monthly budgets for each grantee.
- Modify the accounting system's template (chart of accounts) to allow Court staff and grantees to track and report all grant funds awarded for use in different years, for different programs, and for different constituent groups, as required by the General Appropriations Act.

## Management's Response

*Management generally agrees that there should be written policies and procedures regarding the monitoring of grant expenses and will research the best practices referenced by the Auditor to see if there is a fit with this program. The Court will also research the Auditor's recommendation to review monthly expenditures based on minimum dollar thresholds and the compliance history of each grantee. The Court does maintain, however, that there is value in its current policy of performing annual audits based on 100% of expenditures. This practice ensures compliance. Still, the Court will consider the integration of this with the monthly sampling of current year expenditures subject to the availability of sufficient staff time.*

*While management also generally agrees that internal timelines would be beneficial to both the Court and the grantees, it must be noted that current policy requires that all grant decisions be made by a majority vote of all judges on the Court. Management will research the feasibility of these kinds of targets, but due to the rigorous workload of the judges, it may not be practical to impose these types of restrictions.*

*Management generally disagrees that the chart of accounts lacks the ability to track and report funds for different purposes and constituent groups. In addition, grantees track funds in greater detail than is required in different ways according to their unique needs. Additionally, each year is tracked independently in a distinctive set of books. Therefore, the need to track funds by year within the chart of accounts would not be useful.*

*The Court's grant staff will draft appropriate policies and procedures within 180 days.*

### Chapter 1-C

## The Court Should Utilize Additional Controls to Monitor Grantees' Financial Performance

### Grantee Funding Sources

The Court's grant provisions differentiate between state grant funds and other sources of funding. These other sources include non-state grants that the grantee obtains from other organizations and private funds. The Court's grant provisions also require that grantees obtain annual independent financial audits of all funding sources.

The Court did not ensure that grantees obtain annual independent audits of state and non-state funds as required by their grant provisions. Grantees are required to obtain annual audits of all funding sources and send the results to the Court within 180 days of the fiscal year's end (see text box). As of January 2009 (487 days after the end of fiscal year 2007), the Court had not received audit reports from 5 (62.5 percent) of the 8 grantees receiving grant awards in fiscal year 2007. As a result, the Court lacked complete information on grantee funding sources for these five grantees. The remaining three grantees submitted audit reports that covered the state and non-state funds they received in fiscal year 2007. Audits of state and non-state funds for fiscal year 2008 were not available

for State Auditor's Office review because grantees were within the six-month timeframe to provide these reports during audit fieldwork.

Although the Court's grant provisions require grantees to obtain and submit audit reports for state and non-state funds within six months of the end of the fiscal year, the Court does not have procedures to require Court staff to review these audit reports. These reports could provide the Court additional assurance that the financial information grantees submit to the Court is accurate and complete, and they could help the Court focus its monitoring efforts on grantees that present the most risk.

In addition, the Court did not actively monitor grantees' compliance with grant provisions requiring accounts receiving deposits of grant funds to maintain balances less than \$100,000 so that funds are protected by insurance offered by the Federal Deposit Insurance Corporation (FDIC). Five of seven grant organizations receiving grant funds in fiscal year 2008 did not comply with this grant provision. Those five grantees exceeded the \$100,000 limit by transferring more than \$100,000 into their bank accounts on 65 different occasions, or 56 percent of the 116 transfers that occurred between the Court and grantees from fiscal year 2007 to fiscal year 2008. Account balances that are more than the FDIC insurance limit could potentially put state funds at risk in the event of bank insolvency. It is important to note that this risk is significantly reduced from October 2008 until December 2009, when the FDIC increased its insurance on bank deposits from \$100,000 to \$250,000 for accounts at participating bank institutions. However, this change was not reflected in the Court's grant provisions as of February 2009.

## Recommendations

The Court should:

- Ensure that grantees obtain and submit audits of state and non-state funds within the timelines required by grant provisions. The Court may also consider issuing penalties included in the grant agreements to enforce grantee compliance.
- Ensure that staff review audit reports that cover state and non-state funds to determine the accuracy and completeness of financial information that grantees self-report to the Court and focus monitoring efforts on areas of higher risk.
- Develop and implement policies and procedures to prohibit Court staff from approving transfers of grant funds to grantee accounts that have balances higher than FDIC-insured limits.



- Ensure that grantees comply with all grant provisions. To do this, the Court should consider incorporating penalties in its grant provisions to encourage compliance by grantees.

### Management's Response

*Management generally agrees that a mechanism to ensure compliance with the requirement to provide the Court with copies of annual audits of both state and non-state funds should be implemented. However, since these audits use different standards and criteria than those required by the grant, this information is not seen to be of significant value. Rather, it will be used as a piece of the overall risk profile of each grantee.*

*Management generally agrees that controls should be implemented to guarantee that all grantees have measures in place to ensure compliance with FDIC-insured limits. Since February 2009, the Court has implemented a process to verify that each grantee has such a mechanism in place. Additionally, the Court will implement a policy to prevent grantees from receiving draws that would exceed current FDIC-insured limits.*

*The Court's grant staff has implemented controls to ensure compliance with FDIC-insured limits.*

*The Court's grant staff will implement controls to ensure that all audits are submitted in a timely fashion within 90 days. (We will insert management's responses here.)*

## *The Court's Staff Should Actively Monitor Grantee and Program Performance*

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The Court should incorporate performance targets in its grant provisions and employ performance measurement to help ensure the effective administration of judicial training grants. The Court does not have a formal system of performance measures to ensure that grantees (1) comply with grant provisions, (2) measure efficiency, (3) determine quality of training, and (4) report results to Court management. Without these fundamental controls, the Court cannot ensure that state funds are used efficiently and that the services provided are consistent with grant agreements.

The Court should develop and implement performance targets to measure the effectiveness of grantee program operations.

The Court's agreements with grantees lack specific performance requirements. When grantees accept a grant, the acceptance notice states they acknowledge and agree to comply with grant rules, provisions, and orders of the Court. Although the grant provisions stipulate that the Court may monitor grantees' program activities, the Court has not identified any specific performance measures that would be used. The *State of Texas Contract Management Guide*<sup>4</sup> states that monitoring performance is a key administrative function to ensure that a grantee is performing all duties in accordance with the terms of the agreement and is essential to diagnose and mitigate problems in a timely manner.

The Court should monitor grantee deliverables. Court staff did not verify that grantees provided the level of service stated in their grant agreements; as a result, grantees provided different amounts of training than they proposed to conduct in their grant agreements. Each grant proposal includes a list of proposed training events and an estimated number of participants. When the grantee signs the grantee acceptance form accepting the judicial education program funds, the proposal should form the basis for expected deliverables; therefore, the number of training events in the proposal can serve as a performance standard to determine grantee compliance with grant provisions.

No grantee provided the same number of training events as stated in its original proposal in fiscal year 2008. The differences ranged from grantees providing 8 fewer events than they proposed to grantees providing 17 more events than they proposed. Six of seven grantees provided more events than they proposed. This indicated that grantees significantly underestimated the number of events they can provide. In addition, conducting site visits could be a useful tool to help the Court evaluate grantee performance; however,

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<sup>4</sup> *State of Texas Contract Management Guide*, pages 62-67. A copy of the guide can be found at [http://www.window.state.tx.us/procurement/pub/contractguide/CMG\\_Version\\_1\\_6.pdf](http://www.window.state.tx.us/procurement/pub/contractguide/CMG_Version_1_6.pdf).

Court staff do not conduct regular site visits of grantee programs. Table 2 lists grantees' proposed events and actual events in fiscal year 2008.

Table 2

Fiscal Year 2008 Proposed and Actual Training Events						
Grantee	Events			Participants		
	Proposed Events	Actual Events	Difference	Projected Participants	Actual Participants	Difference
Center for American and International Law	9	14	5 (55.6%)	425	684	259 (60.9%)
Justice Court Training Center	31	48	17 (54.8%)	2,942	3,113	171 (5.8%)
Texas Association of Counties	14	23	9 (64.3%)	528	642	114 (21.6%)
Texas Center for the Judiciary	7	8	1 (14.3%)	1,062	1,002	-60 (-5.6%)
Texas Criminal Defense Lawyers Association	20	33	13 (65.0%)	1,755	2,657	902 (51.4%)
Texas District and County Attorneys Association	13	25	12 (92.3%)	3,280	3,466	186 (5.7%)
Texas Municipal Courts Association	65	57	-8 (-12.3%)	3,828	3,595	-233 (-6.1%)

Source: Unaudited data provided by the Court.

The Court should assess the appropriateness of grantees' costs. Court staff attempted to measure a grantee's efficiency by calculating an estimated cost per course hour of training the grantee offered. Auditors also calculated this measure for fiscal year 2008 using the expenditures and course attendance that grantees reported to the Court as of February 2009. Auditors' calculation identified a wide range of costs per course hour among the grantees from \$32 to \$131<sup>5</sup> per hour for fiscal year 2008.

The significant difference between the highest cost per hour and the lowest cost per hour could indicate that some grantees' costs are excessive (see Appendix 3 for more information on grantee costs). The Court had not

<sup>5</sup> The calculation for this grantee's costs excluded \$295,907 in training provided by third-party organizations (see discussion of third-party agreements in Chapter 3-E).

established criteria to determine an appropriate cost per hour or cost range. These criteria could include a program-wide benchmark that would be applicable to all grantees, or they could be based on a grantee's own historical data. The range in cost per hour or the number of training events alone do not indicate whether a grantee is a good or bad performer, but viewed in relation to a performance benchmark or other performance metrics, these measures could provide insight into the efficiency of a grantee's operations.

The Court should use course evaluations to analyze quality of grantees' training and standardize the design of these evaluations. The Court collected completed training evaluations from each grantee, but it did not use this information to evaluate programs or grantee performance. In addition, the Court did not require grantees to submit information needed to calculate the evaluation response rates of course participants for each course. Grantees' course evaluations also lacked consistency. For example, each grantee's course evaluation included different numbers and types of open- and close-ended questions. Because of these weaknesses, the evaluations provide limited information on (1) future training needs, (2) improvements needed to existing courses, or (3) any positive or negative outcomes of training events.

The Court should develop written policies and procedures for program monitoring.

The Court is required by statute to monitor programmatic performance of entities receiving grant funds (see text box); however, the Court did not require grantees to submit any performance information or reports on program performance during fiscal years 2007 and 2008. As a result, the Court could not effectively ensure that grantees complied with the terms of grant agreements. The Governmental Accounting Standards Board's (GASB) special report on reporting performance information<sup>6</sup> suggests that performance reports include information that is timely, complete, accurate, and relevant.

**Texas Government Code,  
Section 56.006 (b)**

"The Court of Criminal Appeals ... shall monitor both the financial performance and the program performance of entities receiving a grant of funds under this chapter."

## Recommendations

The Court should:

- Ensure that its grant administrators develop and implement programmatic and financial performance measures to evaluate whether grantees are meeting program objectives and complying with the terms of grant agreements. Examples of the types of measures the Court should consider include:

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<sup>6</sup> *Reporting Performance Information: Suggested Criteria for Effective Communication*, August 2003, Governmental Accounting Standards Board, Norwalk, CT, [http://www.seagov.org/sea\\_gasb\\_project/suggested\\_criteria\\_report.pdf](http://www.seagov.org/sea_gasb_project/suggested_criteria_report.pdf).

- ♦ Comparison of proposed to actual deliverables (output). For example, the number of classes, participants, and course hours.
- ♦ Cost per hour of training and/or cost per attendee (efficiency).
- ♦ Information from attendee evaluations (effectiveness).
- Ensure that its grant agreements incorporate performance targets. The Court may also consider developing penalties to enforce compliance with performance targets.
- Consider implementing random site visits by its staff of grantees' programs to monitor grantees' performance. These visits may include:
  - ♦ Reconciling registrants with attendees.
  - ♦ Obtaining first-hand feedback on grantee performance and the quality of speakers.
  - ♦ Inspecting facilities.
- Incorporate specific questions on grantees' course evaluations to allow the Court to:
  - ♦ Obtain information on participants' training needs.
  - ♦ Compare the quality of each grantee's courses in addressing training needs and use this information in awarding future grants.
- Require grantees to submit data on response rates of course evaluations. Once acquired, the Court should review each course's evaluation response rate to determine whether it is adequate to rely on the evaluation results.
- Ensure that its grant administrators develop and implement policies and procedures for program performance monitoring. These policies and procedures should consider the best practices identified in the *State of Texas Contract Management Guide* and should focus on the efficiency and effectiveness of program operations. These may include:
  - ♦ The number of proposed training events compared with the number of actual events and with the percentage of the grant award that was expended.
  - ♦ Determination of customer satisfaction based on evaluation results.
  - ♦ Cost of each training conducted.

## Management's Response

*Management generally agrees that additional output, efficiency and effectiveness measures for grant funded programs should be researched, developed and implemented. The Court will review the resources provided by the Auditor in order to determine how to best implement this recommendation. It should be noted that the Auditor did not mention that the Court's grant conditions require grantees to submit a grant adjustment request when changing the number of planned programs. These adjustment requests are required to detail the change, the reason for the change and the financial impact to the grant. The numbers in Table 2 are supported by the amended grant applications on file with the Court. While the proposed number of events differs with the actual number of events, program changes are done with the Court's knowledge and approval.*

*The Court has conducted site and program visits in order to monitor various aspects of grantee performance. The Court will increase this schedule.*

*Curriculum committees for each grantee conduct regular surveys of constituents regarding training. The Court will utilize the grantee's course surveys in order to obtain information regarding the quality and relevance of programming. The Court will also research other mechanisms in order to collect feedback from participants.*

*Grant staff will conduct this review now and implement any changes during the FY11 grant cycle.*

## ***The Court Should Establish and Implement Processes That Will Enable It to Effectively Administer Its Grants Program***

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The Court lacked written policies and procedures for awarding and administering grants. While the Court ensured that grant applications considered for evaluation were substantially complete, it did not document the rationale it used to make award decisions in fiscal years 2007 and 2008. In addition to the \$16.9 million in judicial education program grants that the Court awarded in fiscal years 2007 and 2008, the Court reports that it awarded approximately \$171,626 in supplemental grants through a noncompetitive process. However, the Court did not adequately document or track the purpose and the individual amounts of the supplemental grants awarded and lacked a formal agreement governing the use of these supplemental funds.

The Court's Education Committee is required by Texas Government Code, Section 56.005, to provide curriculum recommendations to the Court. However, the Court was unable to provide any documentation showing that the committee had met or issued an annual report since the committee was formed in fiscal year 2004. The Court primarily relied on the grantees' curriculum committees to identify the training needs of state judicial and court personnel.

### Chapter 3-A

## **The Court Should Develop Written Policies and Procedures for the Awarding and Administering of Grant Funds**

The Court lacks written criteria for awarding judicial education program grants. Additionally, the Court made its award decisions for fiscal years 2007 and 2008 during conference committee meetings and did not document the rationale for the award decisions, including award amounts. Because competition for the grants has been limited, the Court awarded funding to primarily the same seven grantees in fiscal years 2006 through 2009 based in part on funding limitations outlined in the Texas Government Code and the General Appropriations Act (see Appendix 4 for more information on the statutory limitations). Developing written policies and procedures could help the Court ensure that its award decisions are objective and that grant amounts are based on a grantee's ability to meet financial and program performance standards.

In addition, the Court's solicitation method for grant proposals has been limited to posting of grant opportunities in the *Texas Register*. As of February 2009, the Court's grant application was not available on the Court's Web site, and interested parties must request grant applications from Court staff. Expanding the marketing of the grant opportunities may increase the competition for the judicial education program grants.

Since fiscal year 2006, judicial education program grants have been awarded to primarily the same seven grantees (see Table 3). Although the Court indicated that competition for the grants is limited, developing procedures for its awards process could still help the Court ensure it is making the appropriate award decisions. Additionally, increased competition could help the Court ensure that training costs are reasonable (see Chapter 1-A for more information on grantee administrative costs).

Table 3

Judicial Grant Awards Fiscal Years 2006 to 2009						
Grantee	Location	Constituency Served	Fiscal Year 2006 Awards	Fiscal Year 2007 Awards	Fiscal Year 2008 Awards	Fiscal Year 2009 Awards
Center for American and International Law	Plano, TX	Criminal defense attorneys, prosecuting attorneys, and staff	\$ 210,000	\$ 185,000	\$ 185,000	\$ 231,835
Justices of the Peace and Constables Association of Texas	Offices throughout Texas	Justices of the peace and court personnel	\$1,613,497	\$1,613,497	\$1,813,497	\$1,813,497
Texas Association of Counties	Austin, TX	Constitutional county court judges	\$ 460,750	\$ 460,750	\$ 460,750	\$ 460,750
Texas Center for the Judiciary	Austin, TX	Appellate, district, and statutory county court judges, and court personnel	\$1,788,497	\$1,783,497	\$1,813,497	\$1,741,497
Texas Criminal Defense Lawyers Association	Austin, TX	Criminal defense attorneys	\$1,052,500	\$1,052,500	\$1,052,500	\$1,056,415
Texas District and County Attorneys Association	Austin, TX	Prosecuting attorneys and staff	\$1,333,000	\$1,333,000	\$1,333,000	\$1,324,250
Texas Justice Court Judges Association	Austin, TX	Justices of the peace and court personnel	\$ 200,000	\$ 200,000	\$ 0	\$ 0
Texas Municipal Courts Education Center	Austin, TX	Municipal court judges and court personnel	\$1,813,497	\$1,813,497	\$1,813,497	\$1,813,497

Source: Unaudited data from the Court.

In addition to a lack of written policies and procedures for awarding and administering the grants, the Court lacks a policy to address potential conflicts of interest between the grantees seeking funding and the Court staff and judges involved in making award decisions. It is possible that some of the Court's judges hold positions or may have otherwise been involved with organizations requesting grants. For example, one Court judge was identified as a liaison on a grantee's federal disclosure form listing officers, directors, trustees, and key employees. Written policies and procedures addressing conflicts of interest could help the Court ensure that its award decisions are



objective and fair. The *State of Texas Contract Management Guide*<sup>7</sup> offers guidance on solicitation of grant proposals and the types of evaluation methods that may help the Court to improve the weaknesses in its grant administration process.

## Recommendations

The Court should:

- Develop and implement written policies and procedures for the awarding and administering of its judicial education program grants. The Court should consider the best practices identified in the *State of Texas Contract Management Guide* in developing these policies and procedures, which include procedures for:
  - ♦ Objectively evaluating proposals. This could include a review of the applicants' ability to perform.
  - ♦ Documenting the rationale for making awards, including award amounts.
- Consider alternative marketing strategies to enhance the competition for grant awards.
- Develop and implement written policies and procedures for addressing potential conflicts of interest.

## Management's Response

*Management generally agrees that there should be written policies and procedures for the objective evaluation, awarding and administration of the grant funded proposals and programs. The Court will place into writing the already existing policies and procedures. The Court will research, develop and implement this recommendation to include policies regarding the issue of potential conflicts of interest.*

*Management generally disagrees with the findings regarding the documentation of the awards process during committee conference meetings. However, the Court will document the rationale for any recommendations made by the grant staff in preparation for consideration by the Court.*

*Management generally agrees that there is a lack of competition for grant funds.*

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<sup>7</sup> *State of Texas Contract Management Guide*. A copy of the guide can be found at [http://www.window.state.tx.us/procurement/pub/contractguide/CMG\\_Version\\_1\\_6.pdf](http://www.window.state.tx.us/procurement/pub/contractguide/CMG_Version_1_6.pdf).

*In 2003, the Court worked with the Legislature to amend the statutory language which opened the grant to allow for greater competition among grantees. Additionally, the Court has openly solicited several organizations in an effort to expand the pool of grantee applicants. Cross-training among grantees has occurred as have many joint training projects. At the Court's request, separate training for public defenders has been and continues to be accomplished all of which is paid for through administrative funds.*

*It is also worth noting that the type of training provided by the Fund 540 grants is specialized and specific to the constituent groups served. For this reason, it is understandable that the constituents would rely on their associations to provide this training. However, the Court will enhance its efforts to expand the pool of applicants applying for grant funds. For example, grant applications will be added to the Court's website.*

*Grant staff will research, develop and implement written policies and procedures detailing the awards process within 90 days. These policies will include addressing any potential conflicts of interest.*

*The Court will place the application and instructions on its website in the "Rules and Procedures" section.*

Chapter 3-B

### **The Court Should Develop Procedures That Address the Award of Supplemental Grants from Its Administrative Funds**

The Court did not require a written agreement to document the purpose and amount of supplemental funds it awarded in fiscal years 2007 and 2008.

Because recipients of supplemental grant funds did not have a formal agreement, the Court did not have a legally binding agreement to govern the use of those funds.

The Court was authorized to expend no more than \$266,512 in fiscal year 2007 and \$292,037 in fiscal year 2008 for the administration of the judicial education training program (see text box). The Court provides supplemental grant awards from these administrative funds. According to information provided by the Court, it awarded a total of \$171,626 in supplemental grants to grantees in fiscal years 2007 and 2008.

The Court awards supplemental grants to grantees who request additional funding. The Court does not advertise the availability of these supplemental funds and does not award these grants using a competitive process. Grantees can request a supplemental grant by contacting the Court via telephone or e-mail. In addition, as discussed in Chapter 1-B, the Court does not consistently monitor grantees' budgets. As a result, the Court lacks a means to verify a grantee's need for additional funds.

**General Appropriations Act  
(80th Legislature), Rider 2B,  
Page IV-5**

The Court may not use more than 3 percent of judicial education training funds for the administration of the judicial education function. The term administration shall include, but not be limited to, administrative oversight functions, accounting and auditing functions, management studies, performance audits, and other studies initiated by the Court or the Office of Court Administration.

## Recommendations

For the effective administration of the judicial education training program, the Court should develop and implement a standardized process and written policies and procedures for awarding and monitoring supplemental grants. This process should require:

- A signed agreement for all supplemental grants that documents the services to be provided.
- Adequate documentation supporting the decision of each award amount.
- Advertising available funds for supplemental grants.
- Awarding the supplemental grants based on competition among qualified grantees.

## Management's Response

*Management will place into writing the already existing policies and procedures.*

*It should be noted, however, that these supplemental grants identified by the Auditor are not from the general pool of grant funds. These are funds specifically identified as those for the Court to use for the administration of the grant as stated in Ch. 56.003(a) of the Government Code. This statute is further defined by the GAA, Rider 2(b) to state that "the term administration shall include, but not be limited to, administrative oversight functions, accounting and auditing functions..."*

*Based on this language, the Court's policy has been to use any additional administrative funds to help current grantees provide additional programming to their constituents or to fill an unmet need as identified by the Court such as training the state's public defenders. The Court believes these additional administrative funds were awarded in a fair manner. In each instance, every grantee was contacted and given the opportunity to obtain the additional funds.*

*However, as noted above, the Court will place its already existing procedures into writing and will work to better define its policy on the awarding of these funds.*

*Grant staff will implement this recommendation within 180 days.*

## The Court's Education Committee Should Make Annual Recommendations for Judicial Training Needs

### Education Committee

Texas Government Code, Section 56.005, requires the Court to appoint an education committee that must meet at least twice a year to review and recommend course content. Additionally, the education committee shall:

- Recommend to the Court the minimum education requirements for judges and court personnel.
- Issue an annual report to the Court that lists the courses, credits, and standards for the judges and court personnel.

The Court's Education Committee is required by Texas Government Code, Section 56.005, to provide curriculum recommendations to the Court. However, the Court was unable to provide any documentation showing that this committee had formally met or issued an annual report since the committee was formed in fiscal year 2004. As a result, the Court primarily relied on the grantees' curriculum committees to identify the training needs of state judicial and court personnel.

An active Education Committee is an important tool for ensuring that state judicial training needs are identified and incorporated into programs funded by judicial education program grants.

### Recommendations

The Court should ensure that its Education Committee:

- Meets at least twice a year, as required by Texas Government Code, Section 56.005.
- Establishes guidelines and timelines for the creation and submission of its annual report identifying the training needs of state court personnel.

### Management's Response

*Management generally disagrees. The Court has appointed the required Education Committee and has ensured that grantees have appointed similar committees. The grantees' committees report participant numbers, planned courses, course hours, future planned events, and other pertinent program data. However, the Court will take steps to ensure that the Education Committee and other similar committees meet at least twice a year and that all reports required by Ch. 56 are submitted to the Court.*

*This recommendation has been implemented.*

## The Court Should Ensure That Grant Acceptance Forms Are Complete and Accurate

The Court's staff did not review grantee acceptance forms for fiscal years 2007 and 2008 to ensure they were complete and accurate. Grantee acceptance forms can provide assurance that the grantee has agreed to comply

with the terms and provisions of grant agreements. However, auditors reviewed all 15 grantee acceptance forms for fiscal year 2007 and 2008 and identified several weaknesses. Specifically:

- Seven of the eight grantee acceptance forms for fiscal year 2007 were not signed by the grantees. In fiscal year 2008, one of the seven grantee acceptance forms was not signed by the grantee.
- One grantee modified the terms of its fiscal year 2008 grantee acceptance form, and the Court was unaware of the potential risk that the modification could have voided the grant's provisions.
- One fiscal year 2007 grantee acceptance form was completely blank.

Auditors also identified other miscellaneous errors, such as missing grant award amounts and incorrect identification of the grantee's name. Without ensuring that the grantee acceptance forms are accurate, complete, and signed, the Court risks awarding state funds without a legally binding agreement to govern the use of those funds.

### Recommendation

The Court should ensure that grantee acceptance forms are free from errors, omissions, and alterations. To do this, the Court could consider establishing a checklist for staff to use in reviewing the grantee acceptance forms.

### Management's Response

*The Court has implemented new policies that will ensure that all grantees are bound by the terms and provisions of the grant agreements. These policies include language stating that by applying for and accepting funds from the Court the grantee agrees to comply with all terms and provisions regardless of signatures.*

*This recommendation has been implemented.*

Chapter 3-E

## The Court Should Monitor Grantees' Third-party Agreements

In fiscal year 2008, grantees did not provide the Court copies of all applicable third-party agreements, as required by the Court's grant provisions. Auditors identified one instance in which Court staff were unaware that they were making multiple payments to a third party, rather than making the payments directly to the grantee.<sup>8</sup> Auditors also noted more than five instances in which

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<sup>8</sup> The Court's auditor verified that these funds were used for judicial education training in fiscal year 2007.

grantees had agreements with third parties to provide services, such as outsourced training, but the grantees had not provided information to the Court about these agreements. Obtaining information on third-party agreements could help the Court ensure that grant funds are used for their intended purposes.

## Recommendations

The Court should:

- Ensure that grantees report all third-party agreements as required by the Court's grant provisions.
- Review grant payments to ensure that payments are made to the correct recipient.

## Management's Response

*Management generally agrees. The Court will develop and implement procedures to ensure that all grantees report any third-party agreements and provide the grant office with copies of any agreements.*

*It should be noted, however, that payments documented by the Auditor's office as being made to third-parties were not for the purpose of providing judicial education. The cited contracts were either: 1) based on a long standing relationship between the grantee and another state entity (the Court has a copy of the original agreement document) for the purpose of providing administrative support; 2) between a grantee and a lessor; or 3) between two grantees for the purpose of providing a joint program.*

*Additionally, all transactions made to and by grantees are reviewed by the Court's auditor. In each of the cases cited by the Auditor, any risk to the grant was minimal.*

*Grant staff will implement this recommendation within 180 days.*

# Appendices

Appendix 1

## **Objectives, Scope, and Methodology**

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### Objectives

The objectives of this audit were to:

- Determine whether the Court of Criminal Appeals (Court) has processes that provide reasonable assurance that grant funds from the Judiciary and Court Personnel Training Fund (judicial education program) are being awarded and used in accordance with Texas Government Code requirements, the terms of grant agreements, administrative and Court rules, and Court policy.
- Determine the status of implementation of the recommendations contained in the September 5, 2006, performance review report prepared by MTG Management Consultants, L.L.C.

### Scope

The scope of this audit included the Court's awarding and monitoring procedures, grant documentation, and financial records for fiscal years 2007 and 2008 and the Court's response to recommendations made in the 2006 report by MTG Management Consultants, L.L.C.

### Methodology

The audit methodology included collecting and reviewing documentation on the Court's grant processes; interviewing Court staff and judges; reviewing documentation on individual judicial education program grants; analyzing grant expenditure data, budgets, award decisions, and grant findings; and determining the status of recommendations made in the 2006 report by MTG Management Consultants, L.L.C. The Court did not have information systems that were significant to the objectives of this audit.

Information collected and reviewed included the following:

- Grantees' automated files containing information on funds received from the judicial education program.
- Requests for funds, warrants, and corresponding Uniform Statewide Accounting System statements.
- Court's grantee expenditure reviews and findings.

- Independent audits of state and non-state funds.
- Grant solicitations.
- Grant applications and acceptance forms.
- Grantee prepared attendance reports and evaluations.
- Prior performance audits.

Procedures and tests conducted included the following:

- Interviewing Court personnel involved in awarding and administering grants.
- Reviewing grant provisions, applications, agreements, and evidence of deliverables.
- Analyzing grantee expenditure data to evaluate grant monitoring procedures.
- Analyzing Court audits and resolution of findings to evaluate the effectiveness of the Court's monitoring and oversight functions.

Criteria used included the following:

- *State of Texas Contract Management Guide*, Version 1.6, Office of the Comptroller of Public Accounts, last updated February 9, 2009.
- Texas Government Code, Chapter 56 (Judicial and Court Personnel Training Fund).
- Court of Criminal Appeals, Judicial and Court Personnel Training Program Grant Conditions, effective September 1, 2007.
- *Comptroller Manual of Accounts*, Office of the Comptroller of Public Accounts, effective November 1, 2008.

## **Project Information**

Audit fieldwork was conducted from December 2008 through February 2009. 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 following members of the State Auditor's staff performed the audit:

- Courtney Ambres-Wade, CGAP (Project Manager)
- Kels Farmer, MBA, CISA (Assistant Project Manager)
- Cain Kohutek
- Jeremy Schoech
- Dana Musgrave, MBA (Quality Control Reviewer)
- John Young, MPAff (Audit Manager)

TEXAS GOVERNMENT CODE

CHAPTER 56. JUDICIAL AND COURT PERSONNEL TRAINING FUND

§ 56.001. JUDICIAL AND COURT PERSONNEL TRAINING FUND.

(a) The judicial and court personnel training fund is created in the state treasury and shall be administered by the court of criminal appeals.

(i) On requisition of the court of criminal appeals, the comptroller shall draw a warrant on the fund for the amount specified in the requisition for a use authorized in Section 56.003. A warrant may not exceed the amount appropriated for any one fiscal year. At the end of each state fiscal year, any unexpended balance in the fund in excess of \$500,000 shall be transferred to the general revenue fund.

Added by Acts 1987, 70th Leg., ch. 148, § 2.78(a), eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 347, § 5, eff. Oct. 1, 1989; Acts 1993, 73rd Leg., ch. 896, § 1, 2, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 165, § 30.187, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 390, § 2, eff. Aug. 31, 1999; Acts 2003, 78th Leg., ch. 209, § 85(a)(10), eff. Jan. 1, 2004.

§ 56.002. FEES COLLECTED BY CLERKS OF COURTS OF APPEALS. Fifty percent of the fees collected by the clerks of the courts of appeals under Section 51.207 shall be deposited in the state treasury in the judicial and court personnel training fund for the continuing legal education of judges and of court personnel.

Added by Acts 1987, 70th Leg., ch. 148, § 2.78(a), eff. Sept. 1, 1987.

§ 56.003. USE OF FUNDS. (a) Unless the legislature specifically appropriates or provides additional money for purposes of this subsection, the court of criminal appeals may not use more than three percent of the money appropriated in any one fiscal year to hire staff and provide for the proper administration of this chapter.

(b) No more than one-third of the funds appropriated for any fiscal year shall be used for the continuing legal education of judges of appellate courts, district courts, county courts at law, county courts performing judicial functions, full-time associate judges and masters appointed pursuant to Chapter 201, Family Code, and full-time masters, magistrates, referees, and associate judges appointed pursuant to Chapter 54 as required by the court of criminal appeals under Section 74.025 and of their court personnel.

(c) No more than one-third of the funds appropriated for any fiscal year shall be used for the continuing legal education of judges of justice courts as required by the court of criminal appeals under Section 74.025 and of their court personnel.

(d) No more than one-third of the funds appropriated for any fiscal year shall be used for the continuing legal education of judges of municipal courts as required by the court of criminal appeals under Section 74.025 and of their court personnel.

(e) The court of criminal appeals shall grant legal funds to statewide professional associations of judges and other entities whose purposes include providing continuing legal education courses, programs, and projects for judges and court personnel. The grantees of those funds must ensure that sufficient funds are available for each judge to meet the minimum educational requirements set by the court of criminal appeals under Section 74.025 before any funds are awarded to a judge for education that exceeds those requirements.

(f) The court of criminal appeals shall grant legal funds to statewide professional associations of prosecuting attorneys, criminal defense attorneys who regularly represent indigent defendants in criminal matters, and justices of the peace, and other entities. The association's or entity's purposes must include providing continuing legal education, technical assistance, and other support programs.

(g) The court of criminal appeals shall grant legal funds to statewide professional associations and other entities that provide innocence training programs related to defendants' claims of factual innocence following conviction to law enforcement officers, law students, and other participants.

Added by Acts 1987, 70th Leg., ch. 148, § 2.78(a), eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 896, § 3, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 390, § 3, eff. Aug. 31, 1999; Acts 2003, 78th Leg., ch. 654, § 1, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 149, § 1, eff. September 1, 2007.

§ 56.004. ALLOCATION OF FUNDS. (a) The legislature shall appropriate funds from the judicial and court personnel training fund to the court of criminal appeals to provide for the continuing legal education of judges and court personnel in this state.

(b) The legislature shall appropriate funds from the judicial and court personnel training fund to the court of criminal appeals to provide for:

(1) continuing legal education, technical assistance, and other support programs for prosecuting attorneys and their personnel, criminal defense attorneys who regularly represent indigent defendants in criminal matters, and justices of the peace and their court personnel; and

(2) innocence training programs for law enforcement officers, law students, and other participants.

Added by Acts 1989, 71st Leg., ch. 2, § 8.34(a), eff. Aug. 28, 1989. Amended by Acts 1993, 73rd Leg., ch. 896, § 4, eff. Sept. 1, 1993.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 149, § 2, eff. September 1, 2007.

§ 56.005. JUDICIAL EDUCATION COMMITTEES. (a) The court of criminal appeals shall appoint the court of criminal appeals education committee to recommend educational requirements and course content, credit, and standards for judges and court personnel of appellate courts, district courts, statutory county courts, and county courts performing judicial functions. The court of criminal appeals shall appoint at least two appellate judges, four district court judges, two statutory county court judges, and one judge of a county court performing judicial functions. The court of criminal appeals may appoint not more than six additional members. Members serve at the will of the court of criminal appeals.

(b) An entity receiving a grant of funds from the court of criminal appeals for the education of justices of the peace and their court personnel shall designate a committee to recommend educational requirements and course content, credit, and standards for the purposes of the grant awarded.

(c) An entity receiving a grant of funds from the court of criminal appeals under this chapter for the education of municipal court judges and their personnel shall designate a committee to recommend educational requirements and course content, credit, and standards for the purposes of the grant awarded.

(d) The court of criminal appeals education committee and any committee established as provided by Subsection (b) or (c) shall meet at least twice a year to:

(1) review and recommend course content, credit, and standards for initial and continuing judicial education for judges and court personnel; and

(2) make recommendations and take other action necessary to carry out the purposes of this chapter.

(e) The court of criminal appeals education committee and any committee established as provided by Subsection (b) or (c) shall:

(1) recommend to the court of criminal appeals the minimum educational requirements for judges and court personnel;

and

(2) issue an annual report to the court of criminal appeals that lists the courses, credits, and standards for the judges and court personnel.

Added by Acts 1989, 71st Leg., ch. 2, § 8.34(a), eff. Aug. 28,

1989. Amended by Acts 1993, 73rd Leg., ch. 896, § 5, eff. Sept. 1, 1993.

§ 56.006. RULES; OVERSIGHT. (a) The court of criminal appeals may adopt rules for programs relating to education and training for attorneys, judges, justices of the peace, district clerks, county clerks, law enforcement officers, law students, other participants, and court personnel, including court coordinators, as provided by Section 56.003 and for the administration of those programs, including rules that:

(1) require entities receiving a grant of funds to provide legislatively required training; and

(2) base the awarding of grant funds to an entity on qualitative information about the entity's programs or services and the entity's ability to meet financial performance standards.

(b) The court of criminal appeals, for the proper administration of this chapter and as part of its oversight of training programs for attorneys, judges, justices of the peace, district clerks, county clerks, law enforcement officers, law students, other participants, and court personnel, including court coordinators, as provided by Section 56.003, shall monitor both the financial performance and the program performance of entities receiving a grant of funds under this chapter.

Added by Acts 1993, 73rd Leg., ch. 896, § 6, eff. Sept. 1, 1993.

Amended by Acts 1995, 74th Leg., ch. 718, § 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 45, § 1, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 149, § 3, eff. September 1, 2007.

§ 56.007. ADMINISTRATIVE EXPENSES. An entity receiving a grant of funds from the court of criminal appeals under this chapter for continuing legal education, technical assistance, and other support programs may not use grant funds to pay any costs of the entity not related to approved grant activities.

Added by Acts 1993, 73rd Leg., ch. 896, § 6, eff. Sept. 1, 1993.

## Summary of Grant Expenditures for Fiscal Year 2008

For fiscal year 2008, grantee expenditures totaled \$9.5 million. As Table 5 shows, administrative expenditures totaled \$4,693,320 (49.5 percent) and direct training expenditures totaled \$4,789,130 (50.5 percent). Approximately \$2.5 million of these direct training expenditures were related to participant meals, travel, and lodging; approximately \$1.4 million were related to the training facilities and course materials.

Table 5

Summary of Grant Expenditures for Fiscal Year 2008 <sup>a</sup>								
Category of Expenditures	Center for American and International Law	Texas Association of Counties	Texas Criminal Defense Lawyers Association	Texas Center for the Judiciary	Texas District and County Attorneys Association	Texas Justice Court Training Center	Texas Municipal Court Education Center	Totals
<b>Administrative Expenditures</b>								
<b>Personnel</b>								
Salaries	\$86,084	\$172,969	\$396,926	\$331,793	\$490,314	\$450,735	\$498,292	\$2,427,114
Fringe Benefits	20,033	34,669	103,668	95,699	130,300	141,433	124,113	649,916
Personnel Subtotal	\$106,117	\$207,638	\$500,594	\$427,493	\$620,614	\$592,167	\$622,405	\$3,077,029
<b>Administrative Travel</b>								
In-state Travel	\$0	\$9,003	\$46,269	\$51,195	\$36,474	\$70,123	\$39,551	\$252,615
Out-of-state Travel	0	1,541	284	1,388	433	\$11,209	0	14,854
Administrative Subtotal	\$0	\$10,544	\$46,553	\$52,583	\$36,907	\$81,331	\$39,551	\$267,469
<b>Capital Outlay</b>								
Capital Outlay (Equipment, Furniture, and Computers)	\$2,330	\$12,755	\$2,849	\$1,117	\$0	\$6,582	\$8,702	\$34,335
<b>Operating Expenditures</b>								
Operating Expenditures (Rent, Office Supplies, Equipment, and Professional Services)	\$802	\$16,537	\$274,837	\$243,384	\$201,496	\$297,881	\$279,551	\$1,314,487
<b>Total Administrative Expenditures</b>	<b>\$109,249</b>	<b>\$247,474</b>	<b>\$824,834</b>	<b>\$724,576</b>	<b>\$859,017</b>	<b>\$977,961</b>	<b>\$950,209</b>	<b>\$4,693,320</b>

**Summary of Grant Expenditures for Fiscal Year 2008<sup>a</sup>**

Category of Expenditures	Center for American and International Law	Texas Association of Counties	Texas Criminal Defense Lawyers Association	Texas Center for the Judiciary	Texas District and County Attorneys Association	Texas Justice Court Training Center	Texas Municipal Court Education Center	Totals
<b>Direct Participant Training Expenditures</b>								
<b>Staff Expenditures</b>								
Staff Expenditures	\$808	\$6,863	\$0	\$11,312	\$32,743	\$46,202	\$43,553	\$141,480
<b>Conference Participant Expenditures</b>								
Meals	\$29,363	\$25,093	\$21,264	\$102,468	\$209,123	\$211,794	\$188,416	\$787,521
Lodging	3,106	65,018	10,822	196,371	256,768	312,160	542,725	1,386,971
Travel	3,139	65,166	102	197,187	14,012	16,290	4,566	300,462
Other	9,098	0	12,805	0	0	0	0	21,903
Conference Participant Expenditures Subtotal	\$44,706	\$155,277	\$44,994	\$496,026	\$479,903	\$540,243	\$735,707	\$2,496,856
<b>Faculty Expenditures</b>								
Faculty Expenditures	\$59,024	\$9,181	\$63,744	\$65,386	\$132,190	\$100,187	\$114,481	\$544,193
<b>Seminar Breaks</b>								
Seminar Breaks	\$1,189	\$14,772	\$26,104	\$45,385	\$73,039	\$40,921	\$43,665	\$245,075
<b>Facilities and Course Materials</b>								
Facilities and Course Materials	\$84,720	\$55,653	\$138,993	\$395,580	\$221,397	\$225,522	\$239,660	\$1,361,526
<b>Total Direct Participant Training Expenditures</b>	<b>\$190,447</b>	<b>\$241,746</b>	<b>\$273,836</b>	<b>\$1,013,689</b>	<b>\$939,272</b>	<b>\$953,075</b>	<b>\$1,177,066</b>	<b>\$4,789,130</b>
<b>Total Training Expenditures</b>	<b>\$299,696</b>	<b>\$489,220</b>	<b>\$1,098,670</b>	<b>\$1,738,265</b>	<b>\$1,798,289</b>	<b>\$1,931,037</b>	<b>\$2,127,274</b>	<b>\$9,482,450</b>
<b>Total Grant Awards</b>	<b>\$185,000</b>	<b>\$460,750</b>	<b>\$1,052,500</b>	<b>\$1,813,497</b>	<b>\$1,333,000</b>	<b>\$1,813,497</b>	<b>\$1,813,497</b>	<b>\$8,471,741</b>
<b>Total Budget<sup>b</sup></b>	<b>\$329,130</b>	<b>\$501,429</b>	<b>\$1,100,057</b>	<b>\$1,987,534</b>	<b>\$1,788,573</b>	<b>\$2,169,298</b>	<b>\$2,113,996</b>	<b>\$9,990,017</b>
<b>Total Number of Participants</b>	<b>684</b>	<b>642</b>	<b>2,657</b>	<b>1,002</b>	<b>3,466</b>	<b>3,113</b>	<b>3,595</b>	<b>15,159</b>

<sup>a</sup> Totals may not sum due to rounding.

<sup>b</sup> Includes grant awards, unexpended balances, and program income.

Source: Unaudited expenditure information provided by grantees.

## ***Excerpts from General Appropriations Act (80th Legislature)***

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Below are excerpts from the General Appropriations Act (80th Legislature) that include riders that specify requirements for the Court of Criminal Appeals' administration of grants from the Judicial and Court Personnel Training Fund, including the maximum funding limitations for administrative funds; unexpended balances; innocence training; and continuing education contracts for training for prosecuting attorneys, criminal defense attorneys, and clerks and other court personnel.

### **COURT OF CRIMINAL APPEALS**

#### **Rider 2. Judicial Education (page IV-5)**

a. The Court of Criminal Appeals may assign to the Office of Court Administration or to any other agency of the Judicial Branch the necessary administrative and accounting functions for the Judicial and Court Personnel Training Fund appropriation included in this Act to be performed under the direction of the Court of Criminal Appeals in compliance with Government Code, Chapter 56. To implement this provision, the Comptroller is authorized to transfer the appropriation from the Court of Criminal Appeals to the Office of Court Administration, or to any other agency of the Judicial Branch, as directed by order of the Court of Criminal Appeals. Of the amount appropriated for Strategy B.1.1, Judicial Education, \$475,000 in fiscal year 2008 and \$475,000 in fiscal year 2009 shall be expended for the continuing legal education of judges of county courts performing judicial functions.

b. Contingent on the passage of Senate Bill 496 or similar legislation relating to Government Code, Chapter 56 by the Eightieth Legislature, Regular Session, none of the funds appropriated above in Strategy B.1.1, Judicial Education, in excess of 3 percent of the appropriated amount and any additional amounts appropriated for the purposes of this provision (\$90,000 in each fiscal year of the 2008-09 biennium) in any fiscal year shall be expended for the administration of the judicial education function. The 3 percent administrative allocation is estimated to be \$287,838 in fiscal year 2008 and \$266,748 in fiscal year 2009, subject to amounts of refunds of unexpended balances from training entities or other funds that may be provided for judicial and court personnel training.

For the purposes of this provision, the term administration shall include, but not be limited to, administrative oversight functions, accounting and auditing functions, management studies, performance audits, and other studies initiated by the Court of Criminal Appeals or the Office of Court Administration.

c. Funds expended by either the Court of Criminal Appeals or the Office of Court Administration, out of the appropriation made above out of the Judicial and Court Personnel Training Fund, for the purpose of conducting



management studies, performance audits, or other studies, shall be expended only in accordance with a competitive bidding process.

**Rider 3. Continuing Education and Technical Assistance for Prosecutors and Criminal Defense Attorneys (page IV-5)**

a. The Court of Criminal Appeals is authorized to contract with a statewide professional association of prosecuting attorneys and other entities whose purposes include providing continuing legal education courses, programs and technical assistance projects for prosecutors and prosecutor office personnel, provided, however, that such contract shall not exceed \$1,400,000 in fiscal year 2008 and \$1,400,000 in fiscal year 2009.

b. The Court of Criminal Appeals is authorized to contract with a statewide professional association of criminal defense attorneys and other entities whose purposes include providing continuing legal education courses, programs and technical assistance projects for criminal defense attorneys who regularly represent indigent defendants in criminal matters, provided, however, that such contract shall not exceed \$1,250,000 in fiscal year 2008 and \$1,250,000 in fiscal year 2009.

c. Funds may be expended pursuant to this provision only out of the appropriation made above out of the Judicial and Court Personnel Training Fund No. 540.

**Rider 4. Judicial Education: Reimbursement for Travel Expenses (page IV-5)**

Funds appropriated above in Strategy B.1.1, Judicial Education, for the purposes established in § 56.003(b) of the Government Code, may be granted only pursuant to a grant contract which provides for the reimbursement of expenses of judges pursuant to the provisions of § 74.062 of the Government Code. This provision shall not apply to funds granted for the purpose of providing continuing legal education for judges of county courts performing judicial functions.

**Rider 5. Judicial and Court Personnel Training Report (page IV-5)**

The Court of Criminal Appeals shall file a report with the Legislative Budget Board and the Governor within 90 days following February 28 and August 31 of each fiscal year showing the allocation of grants and expenditures from Judicial and Court Personnel Training Fund No. 540, and the results of grant audits.

**Rider 6. Appropriation: Refunds of Unexpended Balances from Training Entities (page IV-6)**

The Court of Criminal Appeals shall maintain procedures to ensure that the state is refunded all unexpended and unencumbered state funds held at the close of fiscal year 2007 and fiscal year 2008 by training entities receiving grants to conduct judicial and court personnel training. Refunds received by

the Court of Criminal Appeals in fiscal year 2008 from training entities are appropriated above in Strategy B.1.1, Judicial Education (not to exceed \$653,000 in fiscal year 2008 out of Judicial and Court Personnel Training Account No. 540.) In addition, under Article IX, § 8.03 of this Act, the Court of Criminal Appeals is authorized to spend an amount not to exceed \$653,000 from refunds received from training entities in fiscal year 2009 for grants awarded in fiscal year 2008.

**Rider 7. Judicial and Court Personnel Training (page IV-6)**

Out of funds appropriated above in Strategy B.1.1, Judicial Education, a minimum of \$1,000,000 per fiscal year is designated for the Court of Criminal Appeals to contract with training entities providing for the training and continuing legal education of the clerks and other court personnel of the appellate courts, district courts, county courts at law, county courts, justice courts, and municipal courts of this State in accordance with Government Code § 74.025.

**Rider 8. Actual Innocence Training (page IV-6)**

Out of funds appropriated above in Strategy B.1.1, Judicial Education, an amount not to exceed \$150,000 in fiscal year 2008 and an amount not to exceed \$150,000 in fiscal year 2009 shall be used by the Court of Criminal Appeals to contract with statewide professional associations and other entities whose purposes include providing continuing legal education courses, programs, and technical assistance projects on actual innocence for criminal defense attorneys, prosecuting attorneys, judges, bailiffs, constables, warrant officers, or other persons as provided by statute. Any unexpended balances of these funds remaining as of August 31, 2008 are hereby appropriated to the Court of Criminal Appeals for the fiscal year beginning September 1, 2008, for the same purpose.

**Rider 9. Appropriation: Unexpended Balance Authority Between Biennia and Within the Biennium for Judicial Education, Administrative Allocation (page IV-6)**

Contingent on the passage of Senate Bill 496 or similar legislation relating to Government Code, Chapter 56 by the Eightieth Legislature, Regular Session, all unexpended balances of funds appropriated to Strategy B.1.1, Judicial Education, at the end of fiscal year 2007 are appropriated to Strategy B.1.1, Judicial Education in fiscal year 2008 (not to exceed \$100,000 in Judicial and Court Personnel Training Fund No. 540, and included in amounts appropriated above). Further, all unexpended balances of funds appropriated to Strategy B.1.1, Judicial Education, at the end of fiscal year 2008 are appropriated to Strategy B.1.1, Judicial Education in fiscal year 2009 (not to exceed \$100,000 in Judicial and Court Personnel Training Fund No. 540) and included in amounts appropriated above.

## ***Summary of the Court's Implementation of Recommendations in MTG Management Consultants' Report***

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The Court of Criminal Appeals (Court) contracted with MTG Management Consultants L.L.C. in February 2006 for a performance report to identify opportunities for improved efficiency and effectiveness within the judicial education program. The Court was dissatisfied with the consultants' analysis and recommendations, and it chose to implement only one of the recommendations in MTG's September 2006 report. The recommendation implemented was to create a central program administration capacity for its judicial education program by hiring a grant program administrator.

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The Honorable Joe Straus III, Speaker of the House, Joint Chair  
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The Honorable Jim Pitts, House Appropriations Committee  
The Honorable Rene Oliveira, House Ways and Means Committee

### **Office of the Governor**

The Honorable Rick Perry, Governor

### **Court of Criminal Appeals**

The Honorable Sharon Keller, Presiding Judge  
The Honorable Cathy Cochran  
The Honorable Barbara Parker Hervey  
The Honorable Charles Holcomb  
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