

STATE OF FLORIDA
AUDITOR GENERAL



OPERATIONAL AUDIT
OF THE

OFFICE OF THE CAPITAL COLLATERAL REPRESENTATIVE

FOR THE PERIOD FEBRUARY 1, 1996,
THROUGH JANUARY 31, 1997,

AND

SELECTED ACTIONS
TAKEN THROUGH MAY 31, 1997

DATED: AUGUST 7, 1997

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OFFICE OF THE CAPITAL COLLATERAL REPRESENTATIVE

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STATE OF FLORIDA
AUDITOR GENERAL
TALLAHASSEE

CHARLES L. LESTER, CPA
AUDITOR GENERAL

August 7, 1997

The President of the Senate, the Speaker of the
House of Representatives, and the
Legislative Auditing Committee

Pursuant to the provisions of Section 11.45, Florida Statutes, and as part of the
Legislature's oversight responsibility for operations of State agencies, I have directed that an
operational audit be made of the

OFFICE OF THE CAPITAL COLLATERAL REPRESENTATIVE

For the Period February 1, 1996, Through January 31, 1997,
and Selected Actions Taken Through May 31, 1997.

The results of the audit of the Office of the Capital Collateral Representative are presented
herewith.

Respectfully submitted,

Charles L. Lester
Auditor General

Audit supervised by:
Ben H. Cox

Audit made by:
Anna Beth Griffin

OPERATIONAL AUDIT
OF THE

OFFICE OF THE CAPITAL COLLATERAL REPRESENTATIVE
For the Period February 1, 1996, Through January 31, 1997
and Selected Actions Taken Through May 31, 1997

AUDIT REPORT SUMMARY

This audit report summary highlights the scope, objectives, methodology, and findings of audit report No. 13038, dated August 7, 1997. It is intended to present the findings of our report in a condensed fashion. The entire audit report should be read for a comprehensive understanding of our audit findings.

SCOPE/OBJECTIVES

The Auditor General, as part of the Legislature's oversight responsibility for operations of State agencies, makes operational audits to evaluate management's performance in administering assigned responsibilities in accordance with applicable laws, administrative rules, and other guidelines and to determine the extent to which the system of internal control, as designed and placed in operation, promotes and encourages the achievement of management's control objectives in the categories of compliance, economic and efficient operations, reliability of financial records and reports, and safeguarding of assets.

The scope of this audit of the Office of the Capital Collateral Representative focused primarily on budgetary controls; revenues and cash receipts; payroll, personnel, and leave records; and procurement of goods and services for the period February 1, 1996, through January 31, 1997, and selected actions taken through May 31, 1997. During our audit field work, we became aware of various Office memoranda, dated beginning in January 1997, which acknowledged potential budgetary problems for the

1996-97 fiscal year. Further, the former Capital Collateral Representative had communicated to the Courts and the Governor that the Office did not have adequate resources. To assist oversight entities such as the Legislature and the Executive Office of the Governor in evaluating the financial status of the Office, we performed expanded audit procedures relating to Office management's monitoring of available budgetary authority and current commitments to expend appropriated resources. However, as described in the REPORT ON INTERNAL CONTROL AND LEGAL COMPLIANCE section of this report, our review of the processes used by the Office to seek Federal court compensation and reimbursement was limited by restrictions relating to public access to active capital case files.

As described further in paragraphs 59 and 60, the 1997 Legislature, in Chapter 97-313, Laws of Florida, provided for the Office of the Capital Collateral Representative to be replaced by three Capital Collateral Regional Councils appointed within the northern, middle, and southern regions of the State. The law provides that the Governor shall appoint each Capital Collateral Regional Counsel no later than August 1, 1997. Each Regional Counsel shall assume office on October 1, 1997. With regard to terminology used in this report, "Office" refers to administrative functions as currently structured and as may be restructured to accommodate the offices of the three Regional Councils.

METHODOLOGY

Except as described in the REPORT ON INTERNAL CONTROL AND LEGAL COMPLIANCE section of this report, we conducted our audit in accordance with generally accepted auditing standards, and Government Auditing Standards issued by the Comptroller General of the United States.

FINDINGS

The Office of the Capital Collateral Representative's approved operating budget (as of June 13, 1997) was, from an overall perspective, sufficient to fund total 1996-97 fiscal year expenditures, including commitments estimated on audit as payable subsequent to May 31, 1997, from the Office's 1996-97 fiscal year appropriations. The approved operating budget shown reflects a June 13, 1997, reallocation of approved budgetary authority proposed by the Executive Office of the Governor, Office of Planning and Budgeting, to facilitate the Office's payment of the estimated expenditures. The Office of Planning and Budgeting recorded this reallocation on June 26, 1997, after consideration by the legislative appropriations committees pursuant to Section 216.177(2)(a), Florida Statutes.

Notwithstanding that the Office's approved operating budget was, from an overall perspective, sufficient to fund total 1996-97 fiscal year expenditures, our audit disclosed that Office processes and records for authorizing and recording the costs of collateral proceedings and for monitoring available budgetary authority need significant improvement in order to provide the Legislature and the Executive Office of the Governor assurances as to the validity of annual and interim funding requests and to promote the effective management of the day-to-day costs of pursuing the completion of active capital cases. Improvements in Office budgetary processes and records would also assist the Courts in evaluating management's representations regarding the Office's financial condition and the potential impact of such financial condition on the Office's capabilities to proceed with collateral proceedings within the time periods prescribed by applicable laws and Court rules. Specifically, as further described in this report under applicable subheadings, we noted the following:

Caseload/Workload Methodology

It is clear that the Office needs to develop a current caseload/workload methodology that will provide a basis for both legislative appropriations and the management of the day-to-day costs of pursuing the completion of active capital cases. Analysis of the nature and timing of the planned activities shown in the Office's litigation calendar in relation to a properly established caseload/workload methodology would assist tremendously in providing the Legislature and Executive Office of the Governor assurances as to the validity of annual and interim funding requests. (See paragraphs 69 through 73.)

Summary Information on Operating Costs

While the SAMAS provides an excellent source of expenditure information, such as by appropriation category and by object code, we noted that the Office did not use the SAMAS or other records systems to accumulate summary information on operating costs, other than those subject to Federal reimbursement, directly related to the conduct of collateral proceedings for individual cases. We believe that summary information, by individual case, for operating costs that are directly related to the conduct of collateral proceedings would, if linked to a properly established caseload/workload methodology, assist tremendously in providing the Legislature and Executive Office of the Governor assurances as to the validity of annual and interim funding requests.

Consideration of Budgeting Authority

While the former Capital Collateral Representative's various authorizations of overtime, travel, expert witnesses, and requests for records production may have included some consideration of available budget authority, the Office did not have a formal overall process in place to encumber planned costs of such activities against available budgetary authority and to provide current information regarding the potential impact of such encumbrances. Specifically, the Office did not utilize the encumbrance capabilities of the State Automated Management Accounting Subsystem (SAMAS). Absent an effective encumbrance system which provides summary information on planned expenditures for all significant types of case-related activities and operating costs, the Office's consideration of available budgetary authority was, at best, an educated guess. For several significant operating costs, we noted the following:

- The extensive use of overtime which was paid or accrued on a one and a half-time basis had a negative effect on Office operations in that overall salary costs increased significantly without a corresponding increase in the number of hours actually spent on operations. Obviously, the negative effect of extensive overtime must be balanced against the needs of the Office to timely pursue capital collateral proceedings. (See paragraphs 74 through 84.)
- The document used to authorize case-related travel did not, in form or format, provide evidence of management's consideration of available budgetary authority and the Office did not appear to have a formal process in place to

encumber the costs of planned travel against available budgetary authority. (See paragraphs 91 through 95.)

- The document used to authorize the use of professional services (i.e., expert witnesses) did not, in form or format, provide evidence of management's consideration of available budgetary authority. Although the Office did record some summary information on planned expenditures for professional services, it is not clear that this summary information was routinely available to Office management when approving such planned expenditures. (See paragraphs 96 through 100.)
- The Office incurs internal operating costs for the filing and service of requests for records production. The records custodian typically provided the Office an estimate of the production costs prior to producing copies. However, the Office did not encumber budgetary authority for requests for records production based either on filings made or custodial estimates provided. (See paragraphs 101 through 108.)

The written responses of the Interim Capital Collateral Regional Counsel, Northern Region, and the Executive Office of the Governor, Office of Planning and Budgeting Director, to the audit findings and recommendations included in audit report No. 13038 are presented as Exhibit E.

OPERATIONAL AUDIT
OF THE

OFFICE OF THE CAPITAL COLLATERAL REPRESENTATIVE
For the Period February 1, 1996, Through January 31, 1997,
and Selected Actions Taken Through May 31, 1997

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REPORT ON INTERNAL CONTROL
AND LEGAL COMPLIANCE

- (1) Office of the Capital Collateral Representative management is responsible for administering numerous operating units, programs, activities, functions, and classes of transactions in accordance with governing provisions of laws, administrative rules, and other guidelines. Additionally, the proper administration of public funds requires that management establish and maintain a system of internal control to provide reasonable assurance that specific entity objectives will be achieved. The Auditor General, as part of the Legislature's oversight responsibility for operations of State agencies, makes operational audits to determine the extent to which Office management has fulfilled those responsibilities.
- (2) The scope of this audit focused primarily on budgetary controls; revenues and cash receipts; payroll, personnel, and leave records; and procurement of goods and services. For each of these areas, our audit included examinations of various transactions (as well as events and conditions) during the period February 1, 1996, through January 31, 1997, and selected actions taken through May 31, 1997. During our audit field work, we became aware of various Office memoranda, dated beginning in January 1997, which acknowledged potential budgetary problems for the 1996-97 fiscal year. Further, the former Capital Collateral Representative had communicated to the Courts and the Governor that the Office did not have adequate resources. To assist oversight entities such as the Legislature and the Executive Office of the Governor in evaluating the financial status of the Office, we performed expanded audit procedures relating to Office management's monitoring of available budgetary authority and current commitments to expend appropriated resources.

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(3) Except for the limitation described in paragraph 4 regarding our review of the processes used by the Office to seek Federal court compensation and reimbursement, we conducted our audit in accordance with generally accepted auditing standards, and Government Auditing Standards issued by the Comptroller General of the United States. Our audit objectives for the operating units, programs, activities, functions, and classes of transactions within the scope of audit were:

- To evaluate the Office's performance in administering its assigned responsibilities in accordance with applicable laws, administrative rules, and other guidelines.
- To determine the extent to which the Office's system of internal control, and selected relevant controls, promoted and encouraged the achievement of management's objectives in the categories of compliance with controlling laws, administrative rules, and other guidelines; the economic and efficient operation of the Office; the reliability of financial records and reports; and the safeguarding of assets.
- To determine whether the Office had corrected, or was in the process of correcting, the deficiency disclosed in the prior audit (report No. 12527).

(4) Section 27.702(3), Florida Statutes (1996 Supplement), required that the Capital Collateral Representative file motions in the Federal courts seeking compensation and reimbursement relating to the Office's representation of indigent persons in the Federal courts. Information provided to us regarding Federal compensation and reimbursement indicates that during the 1996-97 fiscal year the Office received \$505,690.16. Because Florida Supreme court case findings (Kight v. Dugger, 574 So.2d 1066, 1069 [Fla 1991]) prohibit public access to certain records contained in capital case files, it was not possible for us to review all Office capital case files and related records to satisfy ourselves as to the status of each of the capital cases within the Federal court system. Absent the application of such procedures, it was not possible for us to determine the extent to which the Office had sought all available compensation and reimbursement as required by Section 27.702(3), Florida Statutes (1996 Supplement).

- (5) Office management is responsible for compliance with applicable laws, administrative rules, and other guidelines. As a part of our audit, we examined, on a test basis, evidence supporting transactions (as well as events and conditions) which occurred; performed analytical procedures; and reviewed management's administrative constructions of law. Our objective was to evaluate management's compliance with significant provisions of laws, administrative rules, and other guidelines governing those operating units, programs, activities, functions, and classes of transactions within the scope of audit. However, the objective of our audit was not to provide an opinion on overall compliance with such provisions.
- (6) The results of our tests of compliance indicate that, with respect to the Office's approved operating budget and consideration of available budgetary authority, the Office did not have a formal overall process in place to encumber planned costs of activities against available budgetary authority and to provide current information regarding the potential impact of such encumbrances. Specifically, the Office did not utilize the encumbrance capabilities of the State Automated Management Accounting Subsystem (SAMAS). Matters coming to our attention relating to noncompliance with various guidelines for those operations audited are noted in the FINDINGS AND RECOMMENDATIONS section of this report.
- (7) Office management is responsible for establishing and maintaining a system of internal control. In fulfilling this responsibility, estimates and judgments by management are required to assess the expected benefits and related costs of controls. The objectives of internal control are to provide management with reasonable, but not absolute, assurance of compliance with applicable laws, administrative rules, and other guidelines; the economic and efficient operation of the Office; the reliability of financial records and reports; and the safeguarding of assets. Because of inherent limitations in any system of internal control, noncompliance, errors, or irregularities may nevertheless occur and not be detected. Also, projection of any evaluation of internal control to future periods is subject to the risk that controls may become inadequate because of changes in conditions or that the effectiveness of the design and operation of controls may deteriorate.

- (8) In planning and performing our audit, we obtained an understanding of the system of internal control established by Office management. With respect to internal control, we obtained an understanding of the components of internal control sufficient to understand the design of controls relevant to those operating units, programs, activities, functions, and classes of transactions within the scope of audit; determine whether they had been placed in operation; and assess control risk. Our purpose in obtaining an understanding of internal control and assessing the level of control risk was to determine the nature, timing, and extent of substantive audit tests and procedures necessary to the accomplishment of our audit objectives. However, our purpose was not to provide an opinion on internal control; accordingly, we do not express such an opinion.
- (9) We noted certain matters involving the design and operation of the Office's system of internal control that we consider to be reportable conditions under generally accepted government auditing standards. Reportable conditions involve matters coming to our attention relating to significant deficiencies in the design or operation of the system of internal control that, in our judgment, could adversely affect Office management's assurance of compliance with applicable laws, administrative rules, and other guidelines; the economic and efficient operation of the Office; the reliability of financial records and reports; and the safeguarding of assets. Those matters coming to our attention for the operating units, programs, activities, functions, and classes of transactions within the scope of audit are noted in the FINDINGS AND RECOMMENDATIONS section of this report.
- (10) A material weakness is a reportable condition in which the design or operation of one or more of the internal control structure elements does not reduce to a relatively low level the risk that errors or irregularities in amounts that would be material in relation to the financial records and resources of the programs, activities, and functions and classes of transactions being audited may occur and not be detected within a timely period by Office employees in the normal course of performing their assigned functions.
- (11) Our consideration of the internal control structure would not necessarily disclose all matters in the internal control structure that might be reportable conditions and, accordingly,

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would not necessarily disclose all reportable conditions that are also considered to be material weaknesses as defined above. However, we noted certain matters discussed in the FINDINGS AND RECOMMENDATIONS section of this report under various subheadings which we believe collectively represented a material weakness in the Office's internal control policies and procedures applicable to the budgetary process.

- (12) This report is intended for the information of the Legislative Auditing Committee, members of the Florida Senate and the Florida House of Representatives, and applicable management. Copies of this report are available pursuant to Section 11.45(7), Florida Statutes, and its distribution is not limited.

BACKGROUND

Authority

- (13) The Legislature established Part IV of Chapter 27, Florida Statutes, to provide for the representation of any person convicted and sentenced to death in this State who is unable to secure counsel due to indigency, so that collateral legal proceedings to challenge such conviction and sentence may be commenced in a timely manner, and so as to assure the people of this State that the judgments of its courts may be regarded with the finality to which they are entitled in the interests of justice.
- (14) Chapter 27, Part IV, Florida Statutes, created within the judicial branch of State government the Office of the Capital Collateral Representative. (See paragraphs 27 through 32 for a detailed description of the capital collateral proceedings process.) Through June 16, 1997, the head of the Office was the Capital Collateral Representative for the State who was appointed by the Governor, subject to confirmation by the Senate, to serve a term of four years. Michael J. Minerva served as Capital Collateral Representative during the audit period through April 25, 1997. Roger Maas was appointed Interim Capital Collateral Representative effective May 5, 1997, and served through June 16, 1997.
- (15) As described further in paragraphs 59 and 60, the 1997 Legislature, in Chapter 97-313, Laws of Florida, provided for the Office of the Capital Collateral Representative to be replaced by three Capital Collateral Regional Counsels appointed within the northern, middle, and southern regions of the State. The law provides that the Governor shall appoint each Capital Collateral Regional Counsel no later than August 1, 1997. Each Regional Counsel shall assume office on October 1, 1997. Effective June 16, 1997, Gregory C. Smith was appointed Interim Capital Collateral Regional Counsel, Northern Region.
- (16) During the audit period, the principal office of the Capital Collateral Representative was located in Tallahassee. Pursuant to Section 27.701, Florida Statutes, the Office established branch offices in Miami and Tampa on November 4, 1996, and December 16, 1996,

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respectively. The Office of the Capital Collateral Representative was authorized 72.5 positions at April 30, 1997, of which 67.5 positions were filled.

Related Audits

- (17) Our audit did not extend to an examination of the Office of the Capital Collateral Representative's financial statements. On January 30, 1997, the Auditor General issued audit report No. 12907, with accompanying general purpose financial statements of the State of Florida as of and for the fiscal year ended June 30, 1996. The Office is an integral part of the reporting entity of the State of Florida. The financial information relative to the Office was included by the State Comptroller in the general purpose financial statements that accompany that report. A similar audit of the general purpose financial statements of the State of Florida for the fiscal year ended June 30, 1997, will be the subject of a separate audit report.

FINDINGS AND RECOMMENDATIONS

Financial Status - 1996-97 Fiscal Year

- (18) The operations of the Office of the Capital Collateral Representative were funded by legislative appropriations of General Revenue moneys and Federal Criminal Justice Act moneys deposited to the Capital Collateral Representative (CCR) Trust Fund. During our audit field work, we became aware of various Office memoranda, dated beginning in January 1997, which acknowledged potential budgetary problems for the 1996-97 fiscal year. Further, the former Capital Collateral Representative had communicated to the Courts and the Governor that the Office did not have adequate resources. To assist oversight entities such as the Legislature and the Executive Office of the Governor in evaluating the financial status of the Office, we performed expanded audit procedures relating to Office management's monitoring of available budgetary authority and current commitments to expend appropriated resources.
- (19) As described further in paragraphs 59 and 60, the 1997 Legislature, in Chapter 97-313, Laws of Florida, provided for the Office of the Capital Collateral Representative to be replaced by three Capital Collateral Regional Councils appointed within the northern, middle, and southern regions of the State. The law provides that the Governor shall appoint each Capital Collateral Regional Counsel no later than August 1, 1997. Each Regional Counsel shall assume office on October 1, 1997. With regard to terminology used in this report, "Office" refers to administrative functions as currently structured and as may be restructured to accommodate the offices of the three Regional Councils.
- (20) Table A presents a comparison of the Office's budgeted with actual expenditures and commitments for the 1996-97 fiscal year. As summarized in Table A, the Office's approved operating budget (as of June 13, 1997) was, from an overall perspective, sufficient to fund total 1996-97 fiscal year expenditures, including commitments estimated on audit as payable subsequent to May 31, 1997, from the Office's 1996-97 fiscal year appropriations. The approved operating budget shown reflects a June 13, 1997, reallocation of approved budgetary authority proposed by the Executive Office of the Governor, Office of Planning and Budgeting, to facilitate the Office's payment of the estimated expenditures. The Office of Planning and

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Budgeting recorded this reallocation on June 26, 1997, after consideration by the legislative appropriations committees pursuant to Section 216.177(2)(a), Florida Statutes.

Table A -- Estimated Financial Status					
Fund Type/ Appropriation Category	Approved Operating Budget As of 06-13-97 (1)	Actual Expenditures of Current Appropriations Through 05-31-97	Estimated Commitments of Budgeted Resources (2)	Total Expenditures and Estimated Commitments of Current Appropriations	Estimated Unexpended Operating Budget As of 06-30-97
GENERAL REVENUE FUND					
Salaries and Benefits	\$2,794,012.00	\$2,645,421.83	\$148,443.00	\$2,793,864.83	\$ 147.17
Other Personal Services	161,977.00	141,378.54	20,000.00	161,378.54	598.46
Expenses	1,090,849.00	896,248.44	40,000.00	936,248.44	154,600.56
Operating Capital Outlay	112,707.00	105,122.42	2,500.00	107,622.42	5,084.58
Data Processing Services:					
Other Data Processing Services	69,708.00	68,657.92		68,657.92	1,050.08
SAMAS User Charge	4,506.00	4,506.00		4,506.00	
Non-Operating Expenses	<u>9.45</u>	<u>9.45</u>		<u>9.45</u>	
TOTAL GENERAL REVENUE FUND	<u>4,233,768.45</u>	<u>3,861,344.60</u>	<u>210,943.00</u>	<u>4,072,287.60</u>	<u>161,480.85</u>
CCR TRUST FUND					
Salaries and Benefits	137,554.00		127,000.00	127,000.00	10,554.00
Other Personal Services	49,013.00	28,324.25	9,890.00	38,214.25	10,798.75
Expenses	317,693.00	239,662.80	70,091.00	309,753.80	7,939.20
Non-Operating Expenses	<u>43,473.38</u>	<u>16,379.76</u>	<u>18,469.00</u>	<u>34,848.76</u>	<u>8,624.62</u>
TOTAL CCR TRUST FUND	<u>547,733.38</u>	<u>284,366.81</u>	<u>225,450.00</u>	<u>509,816.81</u>	<u>37,916.57</u>
TOTAL FUNDS	<u>\$4,781,501.83</u>	<u>\$4,145,711.41</u>	<u>\$436,393.00</u>	<u>\$4,582,104.41</u>	<u>\$199,397.42</u>

Notes: (1) Amounts shown are from Table D -- Approved Operating Budget.

(2) Amounts shown are estimated based on records, information, and other representations provided by Office staff. Explanations of these estimates are provided under the subheading Processing of Current Commitments. Estimated commitments have been allocated within appropriation category to reflect the availability of budgetary authority as reallocated on June 13, 1997, by the Executive Office of the Governor, Office of Planning and Budgeting. The June 13, 1997, action included a \$25,006 reserve amount to reduce unexpended release authority for the estimated cash balance deficit of \$25,005.70 described in paragraph 52 and Table G.

(21) The information summarized in Table A is based on the Office's approved operating budget (as of June 13, 1997), recorded 1996-97 fiscal year expenditures through May 31, 1997, and commitments estimated on audit as payable subsequent to May 31, 1997, from the Office's 1996-97 fiscal year appropriations. Table A-1 presents updated information based on the Office's final approved operating budget and expenditures through June 30, 1997:

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Table A-1 -- Year-End Financial Status

Fund Type/ Appropriation Category	Approved Operating Budget As of 06-30-97 (1)	Actual Expenditures of Current Appropriations Through 06-30-97 (2)	Estimated Certified Forward Expenditures (3)	Total Expenditures and Estimated Certified Forward Expenditures	Operating Budget Balance As of 06-30-97
GENERAL REVENUE FUND					
Salaries and Benefits	\$2,794,012.00	\$2,794,012.00	\$	\$2,794,012.00	\$
Other Personal Services	161,977.00	150,441.04	11,605.00	162,046.04	(69.04)
Expenses	1,082,811.00	978,804.82	104,006.18	1,082,811.00	
Operating Capital Outlay	112,707.00	105,122.42	7,414.00	112,536.42	170.58
Data Processing Services:					
Other Data Processing Services	69,708.00	69,708.00		69,708.00	
SAMAS User Charge	4,506.00	4,506.00		4,506.00	
Non-Operating Expenses	<u>9.45</u>	<u>9.45</u>		<u>9.45</u>	
TOTAL GENERAL REVENUE FUND	<u>4,225,730.45</u>	<u>4,102,603.73</u>	<u>123,025.18</u>	<u>4,225,628.91</u>	<u>101.54</u>
CCR TRUST FUND					
Salaries and Benefits	137,554.00	113,254.99	23,442.69	136,697.68	856.32
Other Personal Services	49,013.00	27,824.25	5,300.00	33,124.25	15,888.75
Expenses	317,693.00	239,529.84	15,000.00	254,529.84	63,163.16
Non-Operating Expenses	<u>51,239.84</u>	<u>42,614.89</u>		<u>42,614.89</u>	<u>8,624.95</u>
TOTAL CCR TRUST FUND	<u>555,499.84</u>	<u>423,223.97</u>	<u>43,742.69</u>	<u>466,966.66</u>	<u>88,533.18</u>
TOTAL FUNDS	<u>\$4,781,230.29</u>	<u>\$4,525,827.70</u>	<u>\$166,767.87</u>	<u>\$4,692,595.57</u>	<u>\$88,634.72</u>

Notes: (1) Amounts shown are from Exhibit A, Approved Changes to and Reserves of Appropriations.

(2) Amounts shown are actual expenditures through June 30, 1997, as recorded in the Office's SAMAS Schedule of Allotment Balances by Fund as of July 16, 1997.

(3) Amounts shown are certification forward requests as recorded in the Office's SAMAS Certification Forward Request Detail Report as of July 31, 1997.

(22) Notwithstanding that the Office's approved operating budget was, from an overall perspective, sufficient to fund total 1996-97 fiscal year expenditures, our audit disclosed that Office processes and records for authorizing and recording the costs of collateral proceedings and for monitoring available budgetary authority need significant improvement in order to provide the Legislature and the Executive Office of the Governor assurances as to the validity of annual and interim funding requests and to promote the effective management of the day-to-day costs of pursuing the completion of active capital cases. Improvements in Office budgetary processes and records would also assist the Courts in evaluating management's representations regarding the Office's financial condition and the potential impact of such financial condition on the Office's capabilities to proceed with collateral proceedings within the time periods prescribed by applicable laws and Court rules.

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- (23) The results of our expanded audit procedures relating to Office management's monitoring of available budgetary authority and the current commitments to expend appropriated resources are described under applicable subheadings of this report.

Authority for Operations

- (24) Chapter 27, Part IV, Florida Statutes (1996 Supplement), entitled Capital Collateral Representative, provides that the Legislature's intent is to provide for the collateral representation of any person convicted and sentenced to death in this State so that collateral legal proceedings to challenge any Florida capital conviction and sentence may be commenced in a timely manner and so as to assure the people of this State that the judgments of its courts may be regarded with the finality to which they are entitled in the interests of justice. Section 27.701, Florida Statutes, created in the judicial branch of State government the Office of the Capital Collateral Representative, the head of which was the Capital Collateral Representative for the State. The Capital Collateral Representative was appointed by the Governor from nominations submitted by elected public defenders, subject to confirmation by the Senate.
- (25) Section 27.702(1), Florida Statutes (1996 Supplement), provides that the Capital Collateral Representative shall represent each person, convicted and sentenced to death by a Florida State court, for the purpose of instituting and prosecuting collateral actions challenging the legality of the judgment and sentence imposed against such person in the State courts, Federal courts in this State, the United States Court of Appeals for the Eleventh Circuit, and the United States Supreme Court. Section 27.702(2), Florida Statutes (1996 Supplement), provides that the Capital Collateral Representative shall represent each person convicted and sentenced to death in this State in collateral postconviction proceedings, unless a court appoints or permits other counsel to appear as counsel of record.
- (26) Representation by the Capital Collateral Representative (or Regional Counsel after October 1, 1997) shall commence automatically upon termination of direct appellate proceedings in State or Federal courts. In direct appellate proceedings, the defendant and his/her counsel appeal the conviction or sentence based on alleged trial court errors or other

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grounds. These direct appeals are generally handled by the appellate divisions within the public defenders' offices or by private counsel. Pursuant to Article V, Section 3(b)(1) of the State Constitution, the Florida Supreme Court has mandatory jurisdiction over direct appeals in capital cases. As a part of the direct appeal process, the defendant and his/her counsel may file a petition for certiorari requesting that the United States Supreme Court review the judgment entered by the Florida Supreme Court.

Capital Collateral Proceedings

- (27) Table B summarizes the processes and courts through which direct and collateral proceedings for capital cases progress:

Table B -- Capital Cases: Processes and Courts		
Direct Appeal	Collateral (Postconviction) Proceedings (Including Petitions for a Writ of Habeas Corpus)	
	<u>State Courts</u>	<u>Federal Courts</u>
▶▶ Trial Court Judgment and Decision	▶▶ Collateral Motion in State Trial Court	▶▶ Collateral Motion in Federal District Court
➡ Mandatory Appeal to State Supreme Court	➡ Appeal to State Supreme Court	➡ Appeal to United States Court of Appeals for the Eleventh Circuit
➡ Petition for Certiorari to United States Supreme Court	➡ Petition for Certiorari to United States Supreme Court	➡ Appeal to United States Supreme Court
<u>Petition for Certiorari</u> -- A formal written request to a court to grant certiorari; i.e., a writ from a higher court to a lower court requiring the production of a certified record of a particular case tried therein in order that the record may be revised and corrected in matters of law. Denial of such petition means the court refuses to hear the appeal and the judgment below stands. <u>Habeas Corpus</u> -- An original civil proceeding used to obtain the release of persons who are illegally detained or kept from the control of the person entitled to their custody.		

- (28) Section 27.702(1), Florida Statutes (1996 Supplement), provides that, after the date the State Supreme Court issues a mandate on a direct appeal or the United States Supreme Court denies a petition for certiorari, whichever is later, the Capital Collateral Representative

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shall file a notice of appearance in the trial court in which the judgment and sentence were entered and shall secure all direct-appeal files for collateral representation. Upon receipt of files from the public defender or other counsel, the Capital Collateral Representative shall assign each such case to personnel in his or her Office for investigation, client contact, and such further action as the circumstances may warrant.

(29) Chapter XVII, Florida Rules of Criminal Procedure (FRCP), entitled Postconviction Relief, governs collateral proceedings for prisoners in custody under a sentence of a Florida State court. FRCP Rule 3.850, entitled Motion to Vacate, Set Aside, or Correct Sentence, provides rules governing the procedures for these collateral postconviction proceedings, including motions, procedure, evidentiary hearings, disposition, and appeals. FRCP Rule 3.850 provides that the Rule does not authorize relief on grounds that could have or should have been raised at trial and, if properly preserved, on direct appeal of the judgment and sentence. Collateral review generally involves allegations of ineffective assistance of counsel, the withholding of exculpatory evidence, or newly discovered exculpatory evidence. FRCP Rule 3.851, entitled Collateral Relief After Death Sentence Has Been Imposed, requires that any Rule 3.850 motion to vacate judgment of conviction and sentence of death shall be filed by the prisoner within one year after the judgment and sentence become final. FRCP Rule 3.851 provides that the one-year time limitation is established with the understanding that each death-penalty prisoner will have counsel assigned and available to begin addressing the prisoner's postconviction issues within 30 days after the judgment and sentence become final.

- FRCP Rule 3.850 provides that a prisoner may make a motion to vacate, set aside, or correct the judgment or sentence on the grounds that the judgment was entered or that the sentence was imposed in violation of the Constitution or laws of the United States or of the State of Florida, that the court was without jurisdiction to enter the judgment or impose the sentence, that the sentence was in excess of the maximum authorized by law, that the plea was given involuntarily, or that the judgment or sentence is otherwise subject to collateral attack.

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- With regard to relief, FRCP Rule 3.850 provides that if the court finds that the judgment was rendered without jurisdiction, that the sentence imposed was not authorized by law or is otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set aside the judgment and shall discharge or resentence the prisoner, grant a new trial, or correct the sentence as may appear appropriate.

(30) FRCP Rule 3.850 provides that a motion for postconviction relief be filed in the trial court that entered the judgment or imposed the sentence. FRCP Rule 3.851 provides that all petitions for extraordinary relief in which the Florida Supreme Court has original jurisdiction (including petitions for writ of habeas corpus) must be filed in the Supreme Court simultaneously with the initial brief filed on behalf of the death-sentenced prisoner in the appeal of the circuit court's order. Section 924.055(4), Florida Statutes (1996 Supplement), provides that the Supreme Court shall render a decision within 200 days of the filing date of an appeal from an order of the trial court or an extraordinary writ in a postconviction proceeding. As a part of the collateral appeal process, the defendant and his/her counsel may file a petition for certiorari requesting that the United States Supreme Court review the collateral judgment entered by the Florida Supreme Court.

(31) After the completion of collateral review in the State courts, the defendant and his/her counsel may file collateral proceedings in the Federal courts. As in State courts, a Federal habeas corpus proceeding generally involves allegations of ineffective assistance of counsel, the withholding of exculpatory evidence, or newly discovered exculpatory evidence. Section 924.055(5), Florida Statutes (1996 Supplement), provides that petitions for writ of habeas corpus must be filed in the United States District Court within 90 days after issuance by the Florida Supreme Court of a mandate in the postconviction proceeding. However, the Antiterrorism and Effective Death Penalty Act of 1996, Public Law 104-132, effective April 24, 1996, amended Title 28 United States Code, Section 2244, to impose a new time limitation on the application for a Federal writ of habeas corpus. Generally, the Statute imposes a one-year period after the direct review in which the application must be filed. Certain other

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factors are delineated in the Statute that could extend the time limitation, and the time during which a properly filed application for State postconviction or other collateral review is pending tolls the one-year period.

- (32) An essential part of the collateral postconviction representation process is the securing of all direct-appeal files from the public defender or other counsel and the filing of requests for the production of public records. As described above, Section 27.702(1), Florida Statutes (1996 Supplement), provides that the Capital Collateral Representative shall secure all direct-appeal files for collateral representation. Also, FRCP Rule 3.852, entitled Capital Postconviction Public Records Production, is a rule of discovery applicable to all requests for production of public records to which Chapter 119, Florida Statutes, applies and which are on behalf of named capital postconviction defendants relating to proceedings for relief pursuant to FRCP Rules 3.850 and 3.851. FRCP Rule 3.852 requires that all requests or objections to the production of public records be filed in the trial court, and the trial court has the authority to compel or deny the production of the records. The Rule also provides various time limitations for requesting the production of public records and for compliance with the request by the records custodian. Records not requested within the specified time limitations are waived for purposes of any capital postconviction proceeding on behalf of the defendant.

Budgetary Authority

Approved Operating Budget

- (33) The 1996 Legislature, in Specific Appropriations 617 through 621A of Chapter 96-424, Laws of Florida, the 1996-97 General Appropriations Act, appropriated to the Office of the Capital Collateral Representative amounts totaling \$4,970,520 for the 1996-97 fiscal year. Table C provides the detail of these appropriations:

Table C -- 1996-97 Fiscal Year Appropriations				
617	Salaries and Benefits	Positions	77	
	From General Revenue Fund		\$2,959,622	
	From CCR Trust Fund			\$76,554
618	Other Personal Services			
	From General Revenue Fund		170,068	
	From CCR Trust Fund			70,013
619	Expenses			
	From General Revenue Fund		822,670	
	From CCR Trust Fund			81,622
620	Operating Capital Outlay			
	From General Revenue Fund		85,465	
621	Lump Sum			
	Appellate Defense Workload	Positions	9	
	From General Revenue Fund		200,000	
	From CCR Trust Fund			500,000
	From the funds in Specific Appropriation 621, 9 positions and \$500,000 shall be contingent on the Capital Collateral Representative receiving Federal funds to replace the services provided by the Volunteer Lawyers Resource Center.			
621A	Data Processing Services			
	SAMAS User Charge			
	From General Revenue Fund		<u>4,506</u>	<u> </u>
	Total		<u>\$4,242,331</u>	<u>\$728,189</u>
	From the funds provided in Specific Appropriations 617 through 621A, 4 FTE and \$236,084 from the General Revenue Fund are provided to operate a separate and distinct unit to handle conflict cases and shall be used solely for that purpose.			

- (34) Section 216.011(1)(kk), Florida Statutes, indicated that for purposes of Chapter 216, Florida Statutes, the Office of the Capital Collateral Representative was to be considered a State agency. As authorized by Chapter 216, Florida Statutes, the Executive Office of the Governor, Office of Planning and Budgeting, authorized cumulative changes to General Revenue

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appropriations totaling \$-8,572 (a net reduction) and cumulative changes to and reserves of CCR Trust Fund appropriations totaling \$344,402 (a net increase) and \$-525,006 (a net reduction), respectively. The State Comptroller also provided refund authority totaling \$9.45 from General Revenue and \$148.38 from the CCR Trust Fund. Exhibit A provides the details of these changes and reserves. Significant changes and reserves were as follows:

- As described under the subheading Appropriated Grant Funding, subsequent to the legislative appropriation of the \$500,000 lump-sum amount (Specific Appropriation 621), the former Capital Collateral Representative determined that the subject Federal funds were not available to the Office. Based on this determination, the Office notified the Executive Office of the Governor, Office of Planning and Budgeting, that the \$500,000 would not be available. On July 1, 1996, the Office of Planning and Budgeting recorded the \$500,000 lump-sum amount in an unbudgeted reserve account.
- The \$200,000 lump-sum amount (Specific Appropriation 621) from the General Revenue Fund was intended to be used for expenses associated with the opening of two Capital Collateral Representative field offices (one each in Tampa and Miami). On October 23, 1996, the Office of Planning and Budgeting recorded a budget amendment allocating this lump-sum amount to other appropriation categories.
- Proviso language for Specific Appropriations 617 through 621A indicated that four of the positions authorized were provided to operate a separate and distinct unit to handle conflict cases. To assure an appropriate separation of responsibilities, these four positions and related funding were transferred to the Justice Administrative Commission. On November 7, 1996, the Office of Planning and Budgeting recorded a budget amendment reflecting this transfer.
- During the fiscal year, the Office identified collections of Federal Criminal Justice Act reimbursements that were available to provide additional budgetary authority in the CCR Trust Fund. On January 28, 1997, the Office of Planning and Budgeting recorded a budget amendment totaling \$250,000 providing additional budgetary authority in the

expenses category (\$135,000), the other personal services category (\$15,000), and a special category for overtime (\$100,000).

- On May 29, 1997, the Office of Planning and Budgeting recorded a budget amendment intended to provide additional resources to fund additional commitments identified by Office personnel as payable from the Office's 1996-97 fiscal year appropriations. Specifically, on May 28, 1997, the Governor and Cabinet acting as the Administration Commission granted (pursuant to Section 216.231(2), Florida Statutes) the Office an additional General Revenue appropriation of \$163,835 (\$16,909 in the other personal services category and \$146,926 in the expenses category). Subsequently, on June 18, 1997, the Office of Planning and Budgeting reduced the additional \$146,926 expenses category appropriation by \$8,038 due to an error in the drafting of the budget amendment.

The Commission also provided additional budgetary authority totaling \$201,077 in the CCR Trust Fund's expenses category. This \$201,077 in additional budgetary authority was based on the reallocation of the above-described \$100,000 overtime amount and an assumption that sufficient cash balances of Federal Criminal Justice Act reimbursements were available to provide \$101,077 of additional budgetary authority. However, as described under the subheading Federal Criminal Justice Act Reimbursements, estimated unexpended release balances based on cash available through June 13, 1997, totaled only \$76,071.30.

- On June 13, 1997, the Executive Office of the Governor, Office of Planning and Budgeting, proposed a reallocation of budgetary authority within CCR Trust Fund appropriation categories to reflect commitments estimated on audit as payable subsequent to May 31, 1997, from the Office's 1996-97 fiscal year appropriations. The Office of Planning and Budgeting recorded this reallocation on June 26, 1997, after consideration by the legislative appropriations committees pursuant to Section 216.177(2)(a), Florida Statutes. The June 13, 1997, action included a \$25,006 reserve amount to reduce unexpended release authority for the estimated cash balance deficit of \$25,005.70 described in paragraph 52 and Table G.

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(35) Table D summarizes the Office's approved operating budget totaling \$4,781,501.83 as of June 13, 1997, as amended by the above-described changes and reserves:

Table D -- Approved Operating Budget			
617	Salaries and Benefits	Positions	72.5
	From General Revenue Fund		\$2,794,012.00
	From CCR Trust Fund		\$137,554.00
618	Other Personal Services		
	From General Revenue Fund		161,977.00
	From CCR Trust Fund		49,013.00
619	Expenses		
	From General Revenue Fund (1)		1,090,849.00
	From CCR Trust Fund		317,693.00
620	Operating Capital Outlay		
	From General Revenue Fund		112,707.00
621	Lump Sum		
	Appellate Defense Workload		
	From General Revenue Fund		0.00
	From CCR Trust Fund		0.00
621A	Data Processing Services		
	Other		
	From General Revenue Fund		69,708.00
	SAMAS User Charge		
	From General Revenue Fund		<u>4,506.00</u>
	Total - Operating		4,233,759.00 504,260.00
n/a	Non-Operating Expenses (2)		
	Service Charge to General Revenue		
	From CCR Trust Fund		43,325.00
	Refunds		
	From General Revenue Fund		9.45
	From CCR Trust Fund		<u>148.38</u>
	Total		<u>\$4,233,768.45</u> <u>\$547,733.38</u>

Notes: (1) On June 18, 1997, the Office of Planning and Budgeting reduced a May 29, 1997, amendment to the expenses category appropriation due to an error of \$8,038 in the amount of available funds.

(2) On June 13, 1997, the Office of Planning and Budgeting increased non-operating transfer authority to provide for a \$7,766.46 interagency transfer to the Florida Department of Children and Family Services.

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Appropriated Grant Funding

- (36) The 1996 Legislature, in Specific Appropriation 621 of Chapter 96-424, Laws of Florida, the 1996-97 General Appropriations Act, authorized the Capital Collateral Representative to pursue a Federal grant which, if available, could have provided an additional \$500,000 in funding for the 1996-97 fiscal year. Table E provides the detail of this appropriation:

Table E -- Proviso on Contingent Federal Funding

621	Lump Sum Appellate Defense Workload	Positions	9
	From General Revenue Fund (1)		\$200,000
	From CCR Trust Fund		\$500,000
	From the funds in Specific Appropriation 621, 9 positions and \$500,000 shall be contingent on the Capital Collateral Representative receiving Federal funds to replace the services provided by the Volunteer Lawyers Resource Center.		

Note: (1) The \$200,000 from the General Revenue Fund was intended to be used for expenses associated with the opening of two Capital Collateral Representative field offices (one each in Tampa and Miami).

- (37) Historically, private attorneys have provided representation for a portion of Florida's active capital cases with a significant number of cases being represented by the Volunteer Lawyers Resource Center (VLRC). On February 26, 1996, former Attorney General Robert L. Shevin submitted to the Chief Justice of the Supreme Court of Florida the results of his Study of the Capital Collateral Representative (Shevin Report). Regarding the Volunteer Lawyers Resource Center, the Shevin Report stated that the VLRC had "announced that it was losing its federal funding and that the representation of some or all of its 41 clients might be passed to CCR."

- (38) Clearly, the potential addition of up to 41 active capital cases would significantly affect the Office's caseload and related funding. The Shevin Report recommended that the Legislature provide additional funding to handle these cases. This Shevin Report recommendation also noted that 19 of the 41 VLRC cases would be conflict cases which would

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require support outside the Office. As described in paragraph 55, through June 4, 1997, 12 former VLRC cases had been assigned to the Office for representation.

(39) In the Office's October 1, 1995, Final Legislative Budget Request for the 1996-97 fiscal year, the former Capital Collateral Representative requested additional staffing and General Revenue appropriations to address these cases. Based on discussions with staff of the legislative appropriations committees and staff of the Executive Office of the Governor, Office of Planning and Budgeting, it appears that the \$500,000 lump-sum appropriation (with nine positions) described in Table E was intended to supplant the requested General Revenue funding.

(40) It is our understanding that, subsequent to the legislative appropriation of the \$500,000, the former Capital Collateral Representative determined that the Federal funds received by the VLRC were no longer available and that such Federal funds could not be received by any entity, such as the Office, who concurrently received Federal Criminal Justice Act reimbursement funds. (See Title 18, United States Code, Section 3006A(g)(2)(B).) Based on this determination, the Office notified the Executive Office of the Governor, Office of Planning and Budgeting, that the \$500,000 would not be available. On July 1, 1996, the Office of Planning and Budgeting recorded the \$500,000 lump-sum amount in an unbudgeted reserve account.

(41) To evaluate the former Capital Collateral Representative's conclusion that the subject Federal moneys were not available, we contacted the Director of the Defense Services Division of the Administrative Office of the United States Courts. The Director indicated that Federal funding was abolished by Congress on April 1, 1996, for the operation of any community defender organization as defined by Title 18, United States Code, Section 3006A(g)(2)(B).

(42) Notwithstanding that the former Capital Collateral Representative was aware that the subject Federal funding was not available for the operation of the Office, we noted that the Office's September 1, 1996, Final Legislative Budget Request for the 1997-98 fiscal year included a request for similar funding. Absent information that accurately reflects the actual

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availability of funding sources, oversight entities (i.e., the Legislature and the Executive Office of the Governor) may be precluded from making appropriate decisions regarding the funding of Office operations. The Office should make efforts to improve the quality and accuracy of the information presented in its Legislative Budget Request.

Federal Criminal Justice Act Reimbursements

(43) Section 27.702(3), Florida Statutes (1996 Supplement), requires that the Capital Collateral Representative file motions in the Federal courts seeking compensation for representation and reimbursement for expenses relating to the Office's representation of indigent persons in the Federal courts and deposit all such payments received into the CCR Trust Fund. The Federal Criminal Justice Act (Title 18, United States Code, Section 3006A) authorizes the Federal courts to pay claims for compensation and reimbursement relating to the Office's representation of indigent persons in the Federal courts in accordance with the Guide to Judiciary Policies and Procedures promulgated by the Administrative Office of the United States Courts. An October 28, 1994, memorandum from the United States District Court, Middle District of Florida, established a procedure wherein reimbursements could be requested at the end of each of nine stages of postconviction proceedings within applicable courts.

(44) Because Florida Supreme Court case findings (Kight v. Dugger, 574 So.2d 1066, 1069 [Fla 1991]) prohibit public access to certain records contained in capital case files, it was not possible for us to review all Office capital case files and related records to satisfy ourselves as to the status of each of the capital cases within the Federal court system. Absent the application of such procedures, it was not possible for us to determine the extent to which the Office had sought all available compensation and reimbursement as required by Section 27.702(3), Florida Statutes (1996 Supplement).

(45) In audit report No. 12527, paragraphs 25 through 30, we noted that, as of April 28, 1995, the Office had not received any revenues relating to the Office's representation of indigent persons in the Federal courts during the 1993-94 and 1994-95 fiscal years. As a result, Federal moneys, estimated by the Office's Administrative Services Director in correspondence

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dated March 1, 1995, to be approximately \$110,800, were not timely available to fund Office operations. Subsequent to our audit inquiry in May 1995, the Office began submitting to the applicable Federal courts requests for compensation for representation and reimbursements for expenses relating to the applicable cases.

- (46) Table F presents, by month, the Federal Criminal Justice Act reimbursements deposited into the CCR Trust Fund during the 1995-96 and 1996-97 fiscal years:

Table F -- Federal Criminal Justice Act Reimbursements		
	1995-96 <u>Fiscal Year</u>	1996-97 <u>Fiscal Year</u>
July	\$ 11,875.00	\$131,370.11
August	75,226.46	31,690.00
September	11,350.00	68,816.70
October	155,405.21	
November	17,980.62	47,825.00
December	8,950.00	
January		
February		93,211.97
March		32,570.00
April	15,700.00	
May	3,650.00	90,231.29
June	<u>7,175.00</u>	<u>0.00</u> (1)
Subtotal	307,312.29	495,715.07
June 27, 1997, Receipt	<u>0.00</u>	<u>9,975.09</u> (1)
Total	<u>\$307,312.29</u>	<u>\$505,690.16</u>

Note: (1) There was \$16,280.50 in reimbursement requests outstanding as of May 31, 1997. For one request, the Office received a \$9,975.09 reimbursement on June 27, 1997. For another request totaling \$6,305.41, the court reduced the amount to \$3,247.91 subject to the Office filing an amended request.

- (47) The Office is eligible to file reimbursement requests at the end of each of the nine stages of postconviction proceedings described in the October 28, 1994, memorandum from the United States District Court, Middle District of Florida, if an order of appointment has been made or upon receipt of an applicable court mandate. The Federal reimbursement form (CJA Form 30), entitled Death Penalty Proceedings: Appointment of and Authority to Pay Court

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Appointed Counsel, provides for the recording of, for example, the stage of proceedings and the categories of services or expenses claimed and requires that specified records be submitted in support of the reimbursement request. The applicable Federal court approves, denies, or reduces the request. For some denials, the courts may issue an order/mandate. To monitor the status of reimbursement requests, the Office has implemented an automated tracking system which provides a monitoring report entitled CJA Filing Status. Our review of this report indicated that, as of May 31, 1997, the Office had outstanding reimbursement requests of \$6,305.41, dated February 4, 1997, and \$9,975.09, dated May 7, 1997. The Office received the \$9,975.09 reimbursement on June 27, 1997, and was notified that the \$6,305.41 request amount was reduced by the court to \$3,247.91 and would have to be refiled by the Office.

(48) To evaluate Office procedures and records, we reviewed a sample of nine reimbursement requests. We noted that these reimbursement requests were submitted an average of 114 calendar days after the date of eligibility (i.e., end of a stage or receipt of a court order/mandate). The Office received payments for eight of these requests an average of 113 calendar days after submission of the request. Payments were generally timely deposited on the date of receipt. The amounts of these nine reimbursement requests totaled \$229,404.42, with payments received for eight requests totaling \$183,505.65 and court denials/reductions totaling \$45,898.77.

(49) In reviewing Office records, we noted a September 19, 1996, Administrative Office of the United States Courts memorandum stating that the Office of the Capital Collateral Representative had advised the Administrative Office that some Federal reimbursement checks had been made payable to individual attorneys employed by the Office. Our inquiries of the Administrative Office of the United States Courts and review of Office of the Capital Collateral Representative records disclosed 22 checks totaling \$374,779.07, dated from June 23, 1995, through February 21, 1997, which had been made payable to five individual attorneys. The monitoring procedures (CJA Filing Status report) described above provided some assurance that such checks would be obtained for deposit to the CCR Trust Fund. Further, we verified that these 22 checks were deposited into the CCR Trust Fund. However, this practice increases the risk that reimbursement checks could be diverted for unauthorized purposes.

(50) We also reviewed the CJA Filing Status report to evaluate whether any denials by the Federal courts evidenced deficiencies in the Office's supporting documentation. For one reimbursement request totaling \$30,500, the Federal court denied the request stating, "The supporting information (time records) are wholly insufficient to allow this court to determine the reasonableness of the reported hours spent (both as to subject matter and to time)." It is our understanding that the Office considers the supporting documentation to be adequate and has filed (on May 30, 1997) with the court a motion for reconsideration of the denial. Our separate findings relating to the Office's process for maintaining attendance and leave records are presented under the subheading Attendance and Leave Records.

(51) Complete and accurate information as to the extent of Federal funding available for the operation of the Office is important to the budgetary process. However, we noted that the Office's tracking system did not include estimated amounts for Federal court proceedings in progress but for which eligibility had not been determined. Further, although the Office provided estimated Federal Criminal Justice Act receipts in support of its Legislative Budget Request for the 1997-98 fiscal year, the estimate was based on historical costs and did not appear to reflect reimbursable Office costs for Federal court proceedings in progress and/or planned through the fiscal year. Absent information that accurately reflects the actual availability of funding sources, oversight entities (i.e., the Legislature and the Executive Office of the Governor) may be precluded from making appropriate decisions regarding the funding of Office operations.

(52) For example, on May 28, 1997, the Governor and Cabinet acting as the Administration Commission provided additional budgetary authority totaling \$201,077 in the CCR Trust Fund's expenses category. This \$201,077 in additional budgetary authority (recorded on May 29, 1997) was based on the transfer of \$100,000 from a special category for overtime and on an assumption that sufficient cash balances (i.e., unexpended release balances) of Federal Criminal Justice Act reimbursements would be available to provide \$101,077 of additional budgetary authority. However, we estimate that unexpended release balances actually available through June 30, 1997, totaled only \$76,071.30, or \$25,005.70 less than the additional budgetary authority provided. Table G presents the estimated impact of this

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budgetary action on the unexpended release balances of the CCR Trust Fund as of June 30, 1997:

Table G -- Estimated June 30, 1997, Cash Balance

May 31, 1997, Actual Cash Balance		\$262,158.50
Unexpended Release Balances:		
Balance as of May 28, 1997	\$186,087.20	
Additional Authority Provided	<u>101,077.00</u>	<u>287,164.20</u>
Estimated June 30, 1997, Excess of Release Authority Over Actual Cash Balance		<u>\$(25,005.70)</u>

Subsequent to audit inquiry, the Executive Office of the Governor, Office of Planning and Budgeting, recorded, on June 26, 1997, a \$25,006 reserve amount to reduce unexpended release authority for the above-described estimated cash deficit.

- (53) In response to our prior audit findings, the Office has made significant improvements in its procedures for requesting and monitoring the reimbursement of costs incurred in conducting collateral proceedings before the Federal courts. Further, established State control procedures external to the Office will preclude disbursements which exceed the actual cash on deposit in the CCR Trust Fund. However, we recommend that the Office further improve its procedures so that reasonably accurate estimates of future reimbursements are available to Office management and oversight entities responsible for planning and monitoring the funding of Office operations. Further, the Office should continue working with the Administrative Office of the United States Courts to ensure that reimbursement checks are made payable to the Office rather than to individual attorneys.

Issues Affecting Resource Requirements

- (54) The Office's capability to operate within the appropriations provided by the Legislature and/or the approved budgetary authority as amended by the Executive Office of the Governor, Office of Planning and Budgeting, is dependent, in part, on whether the caseload/workload estimates on which such funding is based are consistent with the actual

caseload/workload during the subject fiscal year. Factors to be considered in allocating approved budgetary authority to the operations of the fiscal year include the status of each active capital case and an estimate of activities required during the fiscal year; an estimate (developed with the assistance of the Executive Office of the Governor) of potential new warrant cases; and an estimate (developed with the assistance of the applicable courts) of capital cases which may conclude direct appeal and be referred to the Office for postconviction proceedings.

(55) We noted the following factors affecting caseload/workload and resulting resource requirements which were, to a great extent, outside the control of Office management:

- FRCP Rule 3.851 requires that, for capital cases with dates of final judgment and sentence after January 1, 1994, any Rule 3.850 motion to vacate judgment of conviction and sentence of death shall be filed by the prisoner within one year after the judgment and sentence become final. The previous time limit was two years. FRCP Rule 3.851 provides that the one-year time limitation is established with the understanding that each death-penalty prisoner shall have counsel assigned and available to begin addressing the prisoner's postconviction issues within 30 days after the judgment and sentence become final. Although the most significant operational impact of the change from two years to one year should have occurred in prior years, the 30-day requirement for the assignment of counsel may limit the flexibility of Office management in assigning staff to other priorities such as cases under warrant and requests for records production.
- FRCP Rule 3.852 is a rule of discovery applicable to all requests for production of public records to which Chapter 119, Florida Statutes, applies and which are on behalf of named capital postconviction defendants relating to proceedings for relief pursuant to FRCP Rules 3.850 and 3.851. Effective October 1, 1996, FRCP Rule 3.852 prescribed specific timetables and procedures for requesting and receiving public documents. Although prescribed procedures remained in effect, the State Supreme Court tolled the time periods of FRCP Rule 3.852 until March 3, 1997. FRCP Rule 3.852 requires that initial requests for production be filed and served within 30 days after counsel is designated. The 30-day

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period applies to public records in the custody of specified law enforcement agencies, the state attorney's office that prosecuted the defendant, the medical examiner, the Attorney General, and the Florida Department of Corrections. Implementation of the specific timetables and procedures of this Rule may require that the Office incur additional costs (such as overtime, certified mail, overnight mail, etc.) and may limit the flexibility of Office management in assigning staff to other priorities.

- As noted in paragraph 37, the Volunteer Lawyers Resource Center (VLRC) announced that it was losing its Federal funding and that the representation of some or all of its clients might be passed to the Office. According to Office personnel, of the 45 clients who had been represented by the VLRC through June 4, 1997, VLRC private counsel had voluntarily retained 15 clients, 18 cases identified as conflict cases had been referred to a Circuit Judge of the State's Sixth Judicial Circuit, and 12 cases had been assigned to the Office. The Office is currently litigating its assignment as counsel for 1 of these 12 cases.

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- (56) Table H summarizes changes occurring from June 13, 1995, through June 4, 1997, in the assigned caseload of the Office of the Capital Collateral Representative:

Table H -- Changes in Assigned Caseload	
	Number of <u>Cases</u>
Cases Assigned as of June 13, 1995	142
Final Judgments Referred - Through June 4, 1997	48
Resolved by Change in Sentence	(3)
Resolved by Execution	(5)
Conflicted Out	(8)
Assigned from VLRC	<u>12</u>
Cases Assigned as of June 4, 1997	<u>186</u>
Cases Under Warrant as of June 13, 1995	0
New Warrants - 1995-96 FY	3
Warrants Executed	(2)
Warrants Expired or Denied by Courts	<u>(1)</u>
Cases Under Warrant as of June 30, 1996	0
New Warrants - 1996-97 FY	5
Warrants Executed	<u>(3)</u>
Cases Under Warrant as of June 4, 1997 (1)	<u>2</u>
Note: (1) The courts have temporarily stayed these warrants.	
Source: Information provided by Office staff.	

1997-98 Fiscal Year Appropriations

- (57) The 1997 Legislature, in Specific Appropriations 598 through 602A of Chapter 97-152, Laws of Florida, the 1997-98 General Appropriations Act, appropriated to the Office amounts totaling \$4,588,276 for the 1997-98 fiscal year. Table I provides the detail of these appropriations:

Table I -- 1997-98 Fiscal Year Appropriations

598	Salaries and Benefits	Positions	77	
	From General Revenue Fund		\$3,344,906	
	From CCR Trust Fund			\$76,554
599	Other Personal Services			
	From General Revenue Fund		120,068	
600	Expenses			
	From General Revenue Fund		933,657	
	From CCR Trust Fund			81,622
601	Operating Capital Outlay			
	From General Revenue Fund		5,890	
602	Special Categories			
	Risk Management Insurance			
	From General Revenue Fund		21,073	
602A	Data Processing Services			
	SAMAS User Charge			
	From General Revenue Fund		<u>4,506</u>	<u> </u>
	Total		<u>\$4,430,100</u>	<u>\$158,176</u>

(58) As described under the subheading Approved Operating Budget, legislative appropriations and approved operating budget (as of June 13, 1997, excluding nonoperating expenses) for the 1996-97 fiscal year totaled \$4,970,520 and \$4,738,019, respectively. Table J presents a comparison of the appropriations for the 1996-97 fiscal year, the approved operating budget (as of June 13, 1997) for the 1996-97 fiscal year, and the appropriations for the 1997-98 fiscal year:

Table J -- Comparisons of Appropriations and Budget

	General Revenue <u>Fund</u>	CCR Trust <u>Fund</u>
1996-97 Fiscal Year Appropriations	\$4,242,331	\$728,189
1996-97 Approved Operating Budget (1)	4,233,759	504,260
1997-98 Fiscal Year Appropriations	4,430,100	158,176

Note: (1) Excludes Non-Operating Expenses shown on Table D.

(59) The 1997 Legislature, in Chapter 97-313, Laws of Florida, provided for the Office of the Capital Collateral Representative to be replaced by three Capital Collateral Regional Counsels appointed within the northern, middle, and southern regions of the State. This law provides that the three Capital Collateral Regional Counsels shall function independently and

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that the Regional Councils shall be the office heads for all purposes. Regarding transition, the law provides that the Governor shall appoint each Capital Collateral Regional Counsel no later than August 1, 1997. Each Regional Counsel shall assume office on October 1, 1997. This law also created the Commission on Administration of Justice in Capital Cases to review the administration of justice in capital collateral cases, receive relevant public input, review the operation of the Capital Collateral Regional Councils, and advise and make recommendations to the Governor, Legislature, and Supreme Court. The Commission shall be staffed by the Joint Legislative Management Committee.

- (60) Given that the three Capital Collateral Regional Councils to be appointed pursuant to Chapter 97-313, Laws of Florida, are required to assume office on October 1, 1997, it is important that timely and appropriate decisions be made regarding the planned and actual commitments of 1997-98 fiscal year appropriations, especially those expenditures to be incurred in the fiscal quarter July through September 1997. Important issues that must be addressed include the assignment of cases to each Regional Counsel; the status of collateral proceedings for each assigned case; the assignment and relocation of attorneys, investigators, and other staff consistent with the proposed assignment of cases; the location and adequacy of currently leased office space; and the fiscal impact of such decisions on planned expenditures by region. In implementing the requirements of Chapter 97-313, Laws of Florida, and in resolving the budgetary deficiencies described in this report, the Interim and/or Appointed Regional Councils should seek the assistance of the Executive Office of the Governor, Office of Planning and Budgeting, and the Justice Administrative Commission which, pursuant to Section 43.16, Florida Statutes, is the central State office responsible for providing administrative assistance to and on behalf of the State Attorneys, Public Defenders, and the Office. Chapter 97-313, Laws of Florida, provides that the Justice Administrative Commission shall provide administrative support and service to the three Capital Collateral Regional Councils established pursuant thereto.

Financial Aspects of Collateral Representation

(61) Participation in collateral postconviction proceedings, including motions, records requests, evidentiary hearings, and appeals, requires that Office management expend State appropriations to obtain the personnel resources and operational support necessary to the professional and timely conduct of such proceedings. As shown on Table A, we estimate that Office expenditures for the 1996-97 fiscal year will total \$4,582,104.41.

- The direct involvement of attorneys and support staff (i.e., investigators and legal secretaries) is essential to the day-to-day conduct of capital collateral proceedings. As of April 30, 1997, the Office was authorized 72.5 positions and had established 30 attorney positions (excluding the Capital Collateral Representative), 14 investigator positions, 4 document specialist/investigator positions, and 8 legal secretary positions, with the balance being established as administrative positions. For the 1996-97 fiscal year, estimated expenditures for salaries and benefits totaled \$2,920,864.83, or approximately 64 percent of total expenditures. This amount includes a significant amount of overtime (\$141,469) directly related to the conduct of capital collateral proceedings. The results of our analyses and tests of the Office's management of its authorized positions and employee overtime are described under the subheadings Authorized Positions and Compensatory Time, respectively.
- Other Office expenditures during the 1996-97 fiscal year totaled \$1,661,239.58. Expenditures directly related to the conduct of capital collateral proceedings included: (1) expenditures for travel by Office personnel and consultants (i.e., such as to an evidentiary hearing in a State Circuit Court); expenditures for professional services by independent contractors (i.e., expert witnesses); and expenditures relating to records production pursuant to FRCP Rule 3.852. The results of our analyses and tests of these types of expenditures are described under the subheadings Travel Expenditures, Case-Related Professional Services, and Case Documents/Records.

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- During the 1996-97 fiscal year, the Office leased office space in three locations: in Tallahassee at \$17,772.29 per month; in Miami, effective October 1996, at \$5,545.17 per month; and in Tampa, effective November 1996, at \$7,940.25 per month. For the 1996-97 fiscal year, expenditures for leases and related utilities totaled \$349,213.67.

(62) Exhibits B and C present, by object code within appropriation category by month, Office of the Capital Collateral Representative expenditures for the 1996-97 and 1995-96 fiscal years, respectively. Amounts shown for June 1997 are estimated based on records, information, and other representations provided by Office staff. Explanations of these estimates are provided under the subheading Processing of Current Commitments. Exhibit D presents, by appropriation category by month, a comparison of Office expenditures for the 1996-97 and 1995-96 fiscal years.

Case Management and Resource Commitments

(63) The operations of the Office of the Capital Collateral Representative were funded by legislative appropriations of General Revenue moneys and Federal Criminal Justice Act moneys deposited to the CCR Trust Fund. The Capital Collateral Representative and other Office supervisors were responsible for utilizing such funding to accomplish the Legislature's intent that the Capital Collateral Representative provide for the collateral representation of any person convicted and sentenced to death in this State so that collateral legal proceedings to challenge any Florida capital conviction and sentence may be commenced in a timely manner and so as to assure the people of this State that the judgments of its courts may be regarded with the finality to which they are entitled in the interests of justice.

(64) As described under the subheadings Authority for Operations, Capital Collateral Proceedings, and Financial Aspects of Collateral Representation, activities relating to collateral legal proceedings to challenge any Florida capital conviction and sentence include, in part, the following:

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- The appointment of counsel. Pursuant to FRCP Rule 3.851, counsel shall be assigned and available to begin addressing the defendant's postconviction issues within 30 days after the judgment and sentence become final.
- Counsel's appearance before the court. Section 27.702(1), Florida Statutes (1996 Supplement), provides that, after the State Supreme Court issues a mandate on a direct appeal or the United States Supreme Court denies a petition for certiorari, whichever is later, the Capital Collateral Representative shall file a notice of appearance in the trial court in which the judgment and sentence were entered.
- Obtain case-related documents and records. Section 27.702(1), Florida Statutes (1996 Supplement), provides that the Capital Collateral Representative shall secure all direct-appeal files for collateral representation. Also, FRCP Rule 3.852 (a rule of discovery applicable to all requests for production of public records to which Chapter 119, Florida Statutes, applies and which are on behalf of named capital postconviction defendants relating to proceedings for relief pursuant to FRCP Rules 3.850 and 3.851) provides time limitations for the filing and serving of records production requests.
- Filing of motions to vacate, set aside, or correct. FRCP Rule 3.850 provides that a motion for postconviction relief be filed in the trial court that entered the judgment or imposed the sentence. FRCP Rule 3.851 requires that any Rule 3.850 motion to vacate judgment of conviction and sentence of death shall be filed by the prisoner within one year after the judgment and sentence become final.
- Preparation for and conduct of evidentiary hearings. This requires, for example, interviews and conferences with the defendant, obtaining and reviewing court records, investigations and witness interviews, consultations with investigators and experts, legal research and writing, travel, and appearances before the court.
- Preparation and presentation of appeals. Appeals of the dispositions of the trial court and other collateral proceedings (such as a writ of habeas corpus) are filed in the State

Supreme Court, the United States District Court, the United States Court of Appeals for the Eleventh Circuit, and the United States Supreme Court.

- Representation of warrant cases. Upon signing of a death warrant by the Governor, the Capital Collateral Representative files additional motions and appeals under expedited time frames.

(65) To accomplish all of the above responsibilities in a reasonably organized manner, the Office has established a calendar which identifies Office activities (i.e., appearances, filings of records production requests, evidentiary hearings, motions and appeals, requests for writ of certiorari, etc.) scheduled for each case. Additionally, the Office maintains a historical docket book to record activities conducted for each capital case. The Office assigns individual capital cases to a Litigation Team which generally consists of a lead attorney (experienced with postconviction proceedings), a second chair attorney, and an investigator. Document specialists/investigators, legal secretaries, and other staff provide support to the Litigation Team. Once assigned, the Litigation Team, under the guidance of the lead attorney, has primary responsibility for all decisions as to how the defense is to be carried out, including the extent to which Office resources will be used to fund overtime, records production, travel, and expert witnesses.

(66) Clearly, as implemented, the calendar is an essential tool for the day-to-day management of collateral proceedings and the identification of each Litigation Team's commitment to activities relating to specific capital cases. However, we noted that the information shown in the calendar was not integrated into the applicable financial management systems of the Office. Specifically, as further described under applicable subheadings within this report, we noted the following:

- It is clear that the Office needs to develop a current caseload/workload methodology that will provide a basis for both legislative appropriations and the management of the day-to-day costs of pursuing the completion of active capital cases. Analysis of the nature and timing of the activities shown in the calendar in relation to a properly established

caseload/workload methodology would assist tremendously in providing the Legislature and Executive Office of the Governor assurances as to the validity of annual and interim funding requests. (See paragraphs 69 through 73.)

- The extensive use of overtime which was paid or accrued on a one and a half-time basis had a negative effect on Office operations in that overall salary costs increased significantly without a corresponding increase in the number of hours actually spent on operations. Obviously, the negative effect of extensive overtime must be balanced against the needs of the Office to timely pursue capital collateral proceedings. However, by linking the planned activities shown in the calendar with estimates of any required overtime and related costs, the Office could make informed scheduling decisions which consider both the timing of necessary activities and the availability of budgetary authority. (See paragraphs 74 through 84.)
- The document used to authorize case-related travel did not, in form or format, provide evidence of management's consideration of available budgetary authority and the Office did not appear to have a formal process in place to encumber the costs of planned travel against available budgetary authority. By linking the planned activities shown in the calendar with estimates of any required travel and related costs, the Office could make informed scheduling decisions which consider both the timing of the required travel and the number of travelers expected for the planned activity and the availability of budgetary authority. (See paragraphs 91 through 95.)
- Although the document used to authorize the use of professional services (i.e., expert witnesses) did not, in form or format, provide evidence of management's consideration of available budgetary authority, the Office did record some summary information on planned expenditures for professional services. By linking the planned activities shown in the calendar with estimates of any required professional services, the Office could make informed scheduling decisions which consider both the number and cost of planned expert witnesses and the availability of budgetary authority. (See paragraphs 96 through 100.)

- The Office incurs internal operating costs for the filing and service of requests for records production. The records custodian typically provided the Office an estimate of the production costs prior to producing copies. However, the Office did not encumber budgetary authority for requests for records production based either on filings made or custodial estimates provided. By linking the status of required requests for records production shown in the calendar with internal operating costs and estimates of custodial production costs, the Office could make informed scheduling decisions which consider both the extent and nature of such requests and the availability of budgetary authority. (See paragraphs 101 through 108.)

(67) While Office management's various authorizations of overtime, travel, expert witnesses, and requests for records production may have included some consideration of available budget authority, the Office did not have a formal overall process in place to encumber planned costs of such activities against available budgetary authority and to provide current information regarding the potential impact of such encumbrances. Specifically, the Office did not utilize the encumbrance capabilities of the State Automated Management Accounting Subsystem (SAMAS). Absent an effective encumbrance system which provides summary information on planned expenditures for all significant types of case-related activities and operating costs, Office management's consideration of available budgetary authority was, at best, an educated guess.

(68) We recommend that the Office consult with the Justice Administrative Commission as to those steps necessary to immediately implement the SAMAS encumbrance system. Since the calendar identifies Office activities (i.e., appearances, filings of records production requests, evidentiary hearings, motions and appeals, requests for writ of certiorari, etc.) scheduled for each case, we recommend that the lead attorneys and fiscal staff work together to develop, for each of the above-described case-related costs, a system to link scheduled activities recorded in the calendar with expenditure estimates, for all significant case-related activities and operating costs, that can be concurrently recorded in the SAMAS encumbrance system.

Personnel Resources

Authorized Positions

- (69) The 1996 Legislature, in Chapter 96-424, Laws of Florida, the 1996-97 General Appropriations Act, authorized a significant increase in positions for the Office. As described in Table K, this legislative authorization resulted in a net increase, as of April 30, 1997, of 21 authorized positions over the number of authorized positions at June 30, 1996:

Table K -- Comparison of Authorized Positions			
Authorizing Action	Number of Positions		
	By Action	Reserved (3)	Authorized
Positions as of June 30, 1996	<u>52.00</u>	<u>(0.50)</u>	<u>51.50</u>
Chapter 96-424, Laws of Florida:			
Specific Appropriation 617 - Salaries and Benefits	77.00	(0.50)	76.50
Specific Appropriation 621 - Lump Sum	<u>9.00</u>	<u>0.00</u>	<u>9.00</u>
Authorized by Legislature	86.00	(0.50)	85.50
Transfer Conflict Case Positions (1)	(4.00)	0.00	(4.00)
Reserve Lump Sum Positions (2)	<u>0.00</u>	<u>(9.00)</u>	<u>(9.00)</u>
Positions as of April 30, 1997	<u>82.00</u>	<u>(9.50)</u>	<u>72.50</u>
Net Increase in Authorized Positions			<u>21.00</u>

- Notes: (1) Proviso language for Specific Appropriations 617 through 621A indicated that 4 of the positions authorized were provided to operate a separate and distinct unit to handle conflict cases. To assure an appropriate separation of responsibilities, these 4 positions and related funding were transferred to the Justice Administrative Commission.
- (2) Proviso language for Specific Appropriation 621 indicated that the lump-sum funding and 9 positions were contingent on the receipt of certain Federal funding. As described under the subheading Appropriated Grant Funding, such funding was not received. As a result, the Executive Office of the Governor, Office of Planning and Budgeting, reserved these positions at the request of the former Capital Collateral Representative.
- (3) The Executive Office of the Governor, Office of Planning and Budgeting, reserves certain positions pursuant to specific direction to do so (such as proviso language or actions by the Administration Commission). Such reserving action withholds the positions from being established.

- (70) As a part of our audit, we reviewed actions taken by the Office of the Capital Collateral Representative, the Justice Administrative Commission, and the Executive Office of the Governor to accomplish the employment of 21 additional personnel. Required actions included establishing position numbers, recording applicable rate, creating position descriptions, establishing the positions in the Cooperative Personnel Employment System

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(COPES), and completing the actual employment process (i.e., advertising, interviewing, performing background checks, etc.). The Justice Administrative Commission notified the Office of the new position numbers in June 1996 and the Executive Office of the Governor recorded the positions in its Position and Rate Ledger in July 1996. For the most part, the position descriptions for these positions were completed in September 1996 and the positions were recorded in COPES in October 1996. As shown in Table L, the Office employed personnel in these positions on dates ranging from August 12, 1996, through February 3, 1997:

Table L -- 21 Additional Positions: Titles and Dates Filled

Position Title		Position Number	Date (2) Position Filled
Accountant I		10726	08-12-96
Legal Trainee	(1)	10727	10-07-96
Document Specialist/Investigator		10728	10-14-96
Document Specialist/Investigator		10729	10-14-96
Investigator		10730	10-07-96
Legal Assistant	(1)	10731	12-09-96
Legal Trainee	(1)	10732	10-28-96
Legal Trainee	(1)	10733	10-01-96
Investigator		10734	12-02-96
Legal Trainee	(1)	10735	11-12-96
Investigator		10736	10-22-96
Legal Trainee	(1)	10737	11-18-96
Assistant Capital Collateral Representative I	(1)	10738	12-16-96
Legal Secretary II		10739	12-09-96
Legal Trainee	(1)	10740	12-02-96
Investigator		10741	02-03-97
Document Specialist/Investigator		10742	12-02-96
Document Specialist/Investigator		10743	01-21-97
Staff Assistant		10744	11-18-96
Staff Assistant		10745	01-02-97
Legal Secretary II		10746	09-24-96

Notes: (1) The position descriptions for these attorney positions describe essentially the same duties, which include: participates in rendering legal advice and counsel to death-sentenced inmates; conducts complex legal research; prepares briefs, pleadings, and motions; conducts hearings and oral arguments; and prepares and conducts major litigation.

(2) The 21 additional positions were filled an average of 136 days after the beginning of the fiscal year.

(71) As described under the subheading Financial Aspects of Collateral Representation, the conduct of collateral proceedings for an active capital case requires the services of both

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attorneys and investigators. Also, the implementation of FRCP Rule 3.852 requires Office staff to accomplish the production of applicable public records. As shown in Table L, of the 21 additional authorized positions, the Office established 8 attorney positions, 4 investigator positions, 4 document specialist/investigator positions, and 2 legal secretary positions, with the balance being established as administrative positions. Table M demonstrates the effect of these actions on the Office's staffing ratios and compares the resulting ratios with corresponding ratios presented in the February 1987 study, A Caseload/Workload Formula, prepared by the Spangenberg Group (see paragraph 72) and the Office's Final Legislative Budget Request for the 1997-98 fiscal year:

Table M -- Staffing Ratios							
	Attorney Positions (1)	Investigator Positions		Document Specialist /Investigator Positions		Legal Secretary Positions	
		Number	Ratio	Number	Ratio	Number	Ratio
As of June 30, 1996	21	11	52 %			6	29 %
Increase of 21 Positions	8	4	50 %	4	50 %	2	25 %
As of April 30, 1997 (2)	30	14	47 %	4	13 %	8	27 %
Spangenberg Group (3)			50 %		n/a		50 %
1997-98 Final Legislative Budget Request (4)			100 %		n/a		50 %

Notes: (1) The number of attorney positions shown includes the Litigation Director, Assistant Capital Collateral Representatives, Legal Assistants, and Legal Trainees, but does not include the Capital Collateral Representative.

(2) The number of positions shown as of April 30, 1997, does not equal the sum of the above numbers of positions because of position reclassifications.

(3) In its February 1987 study, A Caseload/Workload Formula , the Spangenberg Group estimated the following staffing ratios based on attorney units: 50 percent for investigator, 50 percent for legal secretary, and 10 percent for administrative assistant positions.

(4) In the Office's September 1, 1996, Final Legislative Budget Request for the 1997-98 fiscal year, the former Capital Collateral Representative requested additional staffing and funding using the following staffing ratios based on attorney units: 100 percent for investigator and 50 percent for legal secretary positions.

(72) The 1996 Legislature's appropriations resulted in a net increase of 21 authorized positions for the operations of the Office and the 1997 Legislature has appropriated an additional 4 positions. These appropriations represent legislative expectations as to the level

of staffing necessary to timely pursue the completion of active capital cases. However, it is clear that the Office needs to develop a current caseload/workload methodology that will provide a basis for both legislative appropriations and the management of the day-to-day costs of pursuing the completion of active capital cases. For example:

- The Office's Final Legislative Budget Request for the 1997-98 fiscal year clearly stated that attorney workload estimates were based on the February 1987 study, A Caseload/Workload Formula, by the Spangenberg Group and acknowledged potential difficulties in applying that study to the Office's current operations. In requesting new positions, the former Capital Collateral Representative applied these dated attorney workload estimates to the Office's predicted overall caseload. In addition, the Office's Final Legislative Budget Request did not include empirical data to support the Office's predicted overall caseload. Such empirical data, properly related to attorney hours, could include, for example: the status of each active capital case and an estimate of activities required during the next fiscal year; an estimate (developed with the assistance of the Executive Office of the Governor) of potential new warrant cases; and an estimate (developed with the assistance of the applicable courts) of capital cases which may conclude direct appeal and be referred to the Office for postconviction proceedings.
- By including in the Office's Final Legislative Budget Request for the 1997-98 fiscal year staffing ratios of 100 percent for investigator and 50 percent for legal secretary positions as shown in Table M, the former Capital Collateral Representative appears to have concluded that the Spangenberg Group's staffing ratios were no longer applicable to Office operations and that an increase in staffing assistance was needed to support each attorney's workload.
- The addition of 4 document specialist/investigator positions, with a resulting staffing ratio of 13 percent, as shown in Table M, indicates that the former Capital Collateral Representative concluded that additional staffing was needed to further assist in implementing FRCP Rule 3.852 requiring staff to accomplish the production of applicable

public records. This conclusion was not separately reflected in the staffing ratios presented in the Office's Final Legislative Budget Request for the 1997-98 fiscal year.

- (73) We recommend that the Office, in consultation with the Commission on Administration of Justice in Capital Cases (see paragraph 59), the Executive Office of the Governor, the Attorney General, the Supreme Court, and appropriate legislative committees, immediately establish a task force to develop a caseload/workload methodology and applicable staffing ratios for the Office. The methodology and staffing ratios should be timely completed so as to be available for consideration by the 1998 Legislature and by the Executive Office of the Governor, Office of Planning and Budgeting, in monitoring the expenditure of 1997-98 fiscal year appropriations.

Compensatory Time

- (74) The Fair Labor Standards Act (FLSA) prescribes the responsibilities of employers who utilize and make payments for overtime by covered employees. Within the Office of the Capital Collateral Representative, investigator, legal secretary, and various other support positions were included as covered employees, whereas attorney and investigator supervisor positions were excluded as covered employees. Office policy, as implemented, regarding overtime by included employees provided two options for compensatory time. Under the payment option, the employee received payment for compensatory time worked at one and one-half times the employee's base rate of pay. Under the accrual option, the employee accrued compensatory leave at one and one-half hours for each overtime hour worked.
- (75) To evaluate the impact of compensatory time on Office operations, we analyzed compensatory time earned, paid, and/or used by employees during the period July 1, 1996, through April 27, 1997. Table N summarizes the results of our analysis for the total (1½ times) and incremental (½ time) hours and related salaries and State match (i.e., employer amounts for Social Security, Medicare, and Retirement):

Table N -- Compensatory Time Payments and Use July 1, 1996, Through April 27, 1997					
<u>Class of Employee/ Compensatory Time Paid/Used</u>	<u>Hours @ 1.0 Time</u>	<u>Paid @ 1.0 Time</u>	<u>Paid @ ½ Time</u>	<u>Total @ 1½ Times</u>	<u>Used @ 1.0 Time</u>
Investigators:					
Compensatory Time Paid	3,519	\$57,909	\$28,944	\$86,853	
Compensatory Time Used	571				\$9,398
Legal Secretaries:					
Compensatory Time Paid	544	7,790	3,893	11,683	
Compensatory Time Used	325				4,091
Other Staff:					
Compensatory Time Paid	1,571	23,720	11,861	35,581	
Compensatory Time Used	<u>427</u>	<u> </u>	<u> </u>	<u> </u>	<u>6,027</u>
Total All Staff:					
Compensatory Time Paid	<u>5,634</u>	<u>\$89,419</u>	<u>\$44,698</u>	<u>\$134,117</u>	
Compensatory Time Used	<u>1,323</u>				<u>\$19,516</u>

(76) Based on our analysis as summarized in Table N, we compared the total incremental payments (i.e., paid @ ½ time) for compensatory time to the average annualized salaries and State match for two classes of included employees (i.e., investigators and legal secretaries):

- For the investigators, the total overtime hours (4,090) for which compensatory time (4,090 @ 1½ times = 6,135) was paid resulted in regular (i.e., paid @ 1.0 time) and incremental (i.e., paid @ ½ time) Office expenditures totaling \$57,909 and \$28,944, respectively. This incremental dollar amount (\$28,944) would fund 84.6 percent of one position at the average annualized salaries and State match (\$34,202) for the subject investigators.
- For the legal secretaries, the total overtime hours (869) for which compensatory time (869 @ 1½ times = 1,303.5) was paid resulted in regular (i.e., paid @ 1.0 time) and incremental (i.e., paid @ ½ time) Office expenditures totaling \$7,790 and \$3,893, respectively. This incremental dollar amount (\$3,893) would fund 14 percent of one position at the average annualized salaries and State match (\$27,734) for the subject legal secretaries.

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(77) We also analyzed the costs of payments (i.e., paid @ 1.0 time) for compensatory leave used. Because compensatory time balances were used as straight time but earned at one and one-half times (a $\frac{2}{3}$ ratio), one third ($\frac{1}{3}$) of the payments for the use of such balances represent services foregone. The total compensatory leave hours for which salaries and State match were paid resulted in incremental (i.e., @ $\frac{1}{3}$ of the amount paid) Office expenditures totaling \$3,133 for investigators, \$1,364 for legal secretaries, and \$2,009 for other staff.

(78) We also determined the accrued balances for compensatory leave as of April 27, 1997. For those included employees under the payment option, the total balance of 1,954.5 hours (@ $1\frac{1}{2}$ times) resulted in overtime payments (including State match) on May 19, 1997, totaling \$31,470. This \$31,470 payment for accrued balances is included in the amounts shown in Table N for compensatory time paid (@ $1\frac{1}{2}$ times). For those included employees under the accrual option, the total balance of 398.25 hours represents time that these employees may not be available to perform future services. By authorizing overtime of 265.5 hours to complete prior projects, the Office will have to forego 398.25 hours (i.e., @ $1\frac{1}{2}$ times) of future services. This represents net services foregone of 132.75 hours, or 6.4 percent of one position.

(79) Although the Office's established policy for authorizing and paying/accruing compensatory time appears to have been consistent with the FLSA, the Office's actual procedures and practices for authorizing and paying/accruing may not have been in compliance with the FLSA and significantly limited Office management's capability to make reasonable projections of related costs. Deficiencies noted are as follows:

- The FLSA provides that employers and individual employees may enter into agreements or understandings providing compensatory time off in lieu of overtime payment in cash. Such agreements may include other provisions governing the preservation, use, or cashing out of compensatory time. However, the agreement or understanding must be arrived at before the performance of the work. Although not specifically required by the FLSA, agreements changing the employee election from the accrual option to the payment option (i.e., cashing out) should also be documented for the purposes of budgetary planning and monitoring. In conducting the analysis summarized in Table N, we noted several

instances in which employees were allowed to change from the accrual option to the payment option, and vice versa, on numerous occasions without a documented agreement or understanding being arrived at before the performance of the work. For example, we noted that some employees were paid for banked compensatory time accrued for the performance of work during the months prior to the employees' elections to receive payments. The practice of allowing employees to change options after the performance of the work may not only represent noncompliance with the FLSA, but severely limited management's capability to reasonably plan future payments for compensatory time, thereby directly affecting management's budgetary processes.

- The Office had a well-established process for maintaining time and attendance records. Any compensatory time worked or taken as leave was documented by attendance records which were signed by designated supervisors. However, our audit inquiries disclosed that prior to March 31, 1997, procedures were not in place to document management's prior authorization for overtime work or management's consideration of available funds to make the resulting payments therefor. Subsequent to March 31, 1997, the Office established a procedure requiring employees to complete a form (Form CCR-23) describing the case and justification for the overtime and requiring the signature of the supervisor and the Capital Collateral Representative prior to the date for which the overtime was requested. However, our review of the implementation of this form disclosed that required approvals were often obtained after the date the overtime was worked, thereby limiting the usefulness of the procedure as a budgetary control.
- Our review of Investigator Timesheets disclosed that, although the Timesheet instructions required employees to sign out anytime Office work was not being performed (i.e., lunch, personal appointments, etc.), in numerous instances employees recorded 12 or more consecutive hours for a given day. The Timesheets related to these instances were approved by supervisory personnel; however, it was not apparent from the information recorded on the Timesheets why the employees were unable to take a lunch, dinner, or other noncompensable break from Office work. Most of the instances resulted in the payment of compensatory time to the applicable employees.

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- From our review of Office records, we noted several memoranda from the former Capital Collateral Representative regarding the relationship of overtime to funding issues. In a memorandum dated January 22, 1997, he limited overtime to 30 hours per month per investigator and 15 hours per month for other employees. In a memorandum dated April 17, 1997, he limited the activities for which overtime would be authorized. In a memorandum dated April 24, 1997, he stated, "Overtime cannot be approved, except for those who had elected to accrue compensatory time instead of payment and made that election before Friday, April 11, 1997." Since the FLSA requires agreement between the employer and its employees regarding compensatory time off in lieu of overtime compensation, such unilateral decisions could potentially impact the Office's compliance with the FLSA.

(80) Clearly, as described above, the extensive use of overtime which was paid or accrued on a one and a half-time basis had a negative effect on Office operations in that overall salary costs increased significantly without a corresponding increase in the number of hours actually spent on operations. However, the negative effect of extensive overtime must be balanced against the needs of the Office to timely pursue capital collateral proceedings. In the Office's September 1, 1996, Final Legislative Budget Request for the 1997-98 fiscal year, the former Capital Collateral Representative stated, "CCR's work hours are often governed by the immediacy of pleadings due especially when under warrant and the extensive travel to all parts of this State and other states to locate witnesses and records and to gather needed information from them."

(81) Given the significant additional costs and/or future services foregone as a result of overtime hours, we recommend that the Office consult with the Florida Department of Management Services and take appropriate actions to ensure that Office policy and practices for authorizing and paying/accruing overtime are consistent with the Fair Labor Standards Act. Also, the Office should review its recent procedure requiring employees to complete a form (Form CCR-23) and ensure that the required supervisory approvals are properly linked to the availability of approved budgetary authority.

Attendance and Leave Records

(82) As described in paragraph 61, as of April 30, 1997, the Office was authorized 72.5 positions and had established 30 attorney positions (excluding the Capital Collateral Representative), 14 investigator positions, 4 document specialist/investigator positions, and 8 legal secretary positions, with the balance being established as administrative positions. To monitor employee attendance and leave, the Office had established various attendance records that employees were required to submit on a weekly basis. Based on our review of Office procedures and records, the primary purposes of the attendance and leave records appeared to be to provide support for Office expenditures for salaries and benefits; to monitor the use of overtime and the subsequent use of or payment for compensatory time (See related findings under the subheading Compensatory Time.); and to provide a documented basis for requesting Federal Criminal Justice Act reimbursements for work relating to collateral proceedings before the Federal courts (See related findings under the subheading Federal Criminal Justice Act Reimbursements.).

(83) Although the Office had a well-established process for maintaining attendance and leave records and our tests disclosed that such records generally provided adequate support for the above-described purposes, we noted that the required information was not sufficiently complete to facilitate the development of a caseload/workload methodology and applicable staffing ratios for the Office as well as expected annual operating costs per case. Specifically, we noted the following:

- The Attorney Timesheet and the Investigator Timesheet provided for the recording, by category of activity (i.e., in-court hearings, interviews/conferences with clients, obtaining and reviewing the court record, travel, etc.), of all activities (type of work) performed. Our review of submitted Attorney Timesheets and the Investigator Timesheets disclosed that this required information was generally recorded. However, the Legal Secretaries Attendance Record, the Records Attendance Record, and the Office's generic Weekly Timesheet did not require that such information be recorded.

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- The Attorney Timesheet and the Investigator Timesheet also provided for the recording of specific information regarding the performance of work relating to collateral proceedings before the Federal courts, including the case number, the court/document, and the category of activity. However, the Legal Secretaries Attendance Record did not require that such information be recorded.
- In addition, the Investigator Timesheet provided for the recording of case number information for all hours worked. However, the Attorney Timesheet and the Legal Secretaries Attendance Record did not require that such information be recorded, thus limiting the information available as to hours worked on specific cases and/or collateral proceedings before State courts.

(84) Under the subheading Authorized Positions, we recommended that the Office consult with other State entities responsible for the capital collateral process to immediately establish a task force to develop a caseload/workload methodology and applicable staffing ratios for the Office. Clearly, the recorded information regarding attorney and investigator activities relating to collateral proceedings before the Federal courts, as well as the recorded case numbers for all investigator hours, could be used to partially support the development of a caseload/workload methodology and applicable staffing ratios. However, to provide complete and effective support for a caseload/workload methodology and applicable staffing ratios, as well as expected annual operating costs per case, we recommend that the Office revise the attendance and leave record forms and instructions to require that all staff record activities relating to capital proceedings before both State and Federal courts. In revising Office attendance and leave record forms and instructions, management should review the categories used to describe the various activities relating to capital proceedings and ensure that such categories encompass all applicable activities before both State and Federal courts as well as applicable activities relating to the implementation of FRCP Rule 3.852.

Performance Evaluations

- (85) The Office had developed a Classification and Pay Rules for the Employees of the Capital Collateral Representative of the State of Florida (Classification and Pay Rules) pursuant to Section 27.705(4), Florida Statutes. The Classification and Pay Rules stated that a performance evaluation is an overall rating given any employee for the employee's performance during a specific period of service. Also, Section 3.06(1) of the Classification and Pay Rules, which pertains to salary increases, provided for merit salary advancements for employees who had received satisfactory or better performance evaluations.
- (86) Our review of 28 personnel files, for which 18 employees were subject to the performance evaluation requirements of the Classification and Pay Rules, disclosed that 4 employees did not have performance evaluations of record for periods ranging from 1 year, 8 months to 3 years, 7 months. In addition, 5 employees who received merit increases during the audit period did not have current performance evaluations of record to evidence satisfactory or better performance, a requirement as stated in Section 3.06(1) of the Classification and Pay Rules.
- (87) Written performance evaluations document that employees have been informed of their progress in meeting work performance objectives and assist in demonstrating management's basis for personnel decisions (merit increases). We recommend that the Office, as a good management practice, ensure that periodic written employee performance evaluations are completed.

Collateral Proceedings - Direct Operating Costs

- (88) As a part of our audit, we analyzed Office of the Capital Collateral Representative expenditures relating to its participation in collateral postconviction proceedings, including motions, records requests, evidentiary hearings, and appeals. In addition to the overtime costs described under the subheading Compensatory Time, we identified three types of significant operating costs that are directly related to the conduct of such proceedings: (1) expenditures for travel by Office personnel and consultants (i.e., such as to an evidentiary hearing in a State

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Circuit Court); expenditures for professional services by independent contractors (i.e., expert witnesses); and expenditures relating to records production pursuant to FRCP Rule 3.852. Table O summarizes, by month, Office expenditures for the 1996-97 fiscal year through May 31, 1997, for these types of operating costs:

Table O -- Direct Operating Costs by Month			
Month Recorded	Travel (1)	Professional Services (2)	Records Production (3)
July 1996	\$ 9,397.44	\$	\$ 10,844.65
August 1996	19,887.30	7,718.03	21,565.26
September 1996	42,339.48	10,213.38	13,768.53
October 1996	31,988.03	13,844.94	27,400.18
November 1996	15,100.57	4,110.00	28,061.18
December 1996	39,528.78	20,792.50	14,736.31
January 1997	31,045.55	17,717.65	12,091.74
February 1997	34,116.57	5,929.24	15,964.82
March 1997	31,527.42	33,774.96	14,892.95
April 1997	27,448.59	1,589.88	16,028.25
May 1997	<u>49,505.56</u>	<u>58,160.05</u>	<u>40,586.00</u>
Total - 1996-97 Fiscal Year	<u>\$331,885.29</u>	<u>\$173,850.63</u>	<u>\$215,939.87</u>
Total - 1995-96 Fiscal Year	<u>\$253,986.87</u>	<u>\$154,431.88</u>	<u>\$112,308.88</u>

Notes: (1) Amounts shown summarize all expenditures recorded to the travel object code (26****) which include payments for per diem, authorized allowances, and other expenses incidental to travel which is authorized by law. Of the total amount, \$275,363.94 was recorded as In-State Travel, object code 261000.
(2) Amounts shown summarize those expenditures recorded to the Professional Services - Independent Contractors object code (13****) directly relating to collateral proceedings, such as for court reporters, expert witnesses, and investigative services (1314**, 1324**, and 1325**).
(3) Amounts shown summarize those expenditures recorded to object codes (22**** and 23****) directly relating to collateral proceedings, such as for postage, freight, and payments to custodians (2250**, 2270**, and 2300**).

(89) To summarize the above operating costs, we relied primarily on Office expenditure information recorded in the State Automated Management Accounting Subsystem (SAMAS). While the SAMAS provides an excellent source of expenditure information, such as by appropriation category and by object code, we noted that the Office did not use the SAMAS or other records systems to accumulate summary information on operating costs, other than those subject to Federal reimbursement, directly related to the conduct of collateral proceedings for individual cases. Absent such summary information, the Office lacked an adequate basis for estimating those direct operating costs necessary to the conduct of planned collateral proceedings. As described under the subheadings Travel Expenditures, Case-Related Professional Services, and Case Documents/Records, we noted that Office procedures for

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authorizing direct operating costs generally did not provide for an adequate consideration of available budgetary authority. Without estimates of direct operating costs, properly derived from systematically recorded summary cost information, management's capability to adequately consider the availability of budgetary authority was further diminished.

- (90) Under the subheading Authorized Positions, we noted that the Office needs to develop a current caseload/workload methodology that will provide a basis for both legislative appropriations and the management of the day-to-day costs of pursuing the completion of active capital cases. We believe that summary information, by individual case, for operating costs that are directly related to the conduct of collateral proceedings would, if linked to a properly established caseload/workload methodology, assist tremendously in providing the Legislature and Executive Office of the Governor assurances as to the validity of annual and interim funding requests. Accordingly, we recommend that Office management implement records systems to accumulate summary information on operating costs directly related to the conduct of collateral proceedings for individual cases. The task force recommended in paragraph 73 to develop a caseload/workload methodology and applicable staffing ratios for the Office could assist in this effort.

Travel Expenditures

- (91) The representation of defendants in capital cases requires that Office personnel and consultants (i.e., individuals providing case-related professional services) travel to the location at which the defendant is incarcerated and to the various courts in which the usual collateral postconviction proceedings (including motions, evidentiary hearings, and appeals) are conducted. Section 27.702(1), Florida Statutes (1996 Supplement), and FRCP Rule 3.850 provide that a motion for postconviction relief be filed in the trial court that entered the judgment or imposed the sentence. Appeals of the dispositions of the trial court and other collateral proceedings (such as a writ of habeas corpus) are filed in the State Supreme Court, the United States District Court, the United States Court of Appeals for the Eleventh Circuit, and the United States Supreme Court.

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- (92) Office travel expenditures were recorded in the State Automated Management Accounting Subsystem (SAMAS) using the travel object code (26****), which includes payments for per diem, authorized allowances, and other expenses incidental to travel that is authorized by law. Travel expenditures are governed by Section 112.061, Florida Statutes. Table P summarizes Office travel expenditures for the 1996-97 fiscal year through May 31, 1997:

Table P -- Travel Expenditures July 1, 1996, Through May 31, 1997		
<u>Object Description</u>	<u>Object Code</u>	<u>Amount</u>
In-State Travel	2610**	\$275,363.94
In-State Travel - Training	2618**	3,589.44
Out-of-State Travel	2620**	41,641.62
Out-of-State Travel - Training	2628**	6,658.29
Class "C" Meal Allowance	2640**	<u>4,632.00</u>
Total		<u><u>\$331,885.29</u></u>

Source: SAMAS expenditures as summarized on Exhibit B.

- (93) We reviewed Office travel procedures and records relating to prior authorization of travel as necessary to the conduct of a collateral proceeding, consideration of available budgetary authority, and submission and processing of travel reimbursement requests. Our audit of Office travel expenditures focused on object code 2610, In-State Travel, which represents 83 percent of the total travel expenditures summarized in Table P, and included analytical procedures for a sample of 50 expenditures: 20 expenditures from the period July 1, 1996, through December 31, 1996; 20 expenditures from the period January 1, 1997, through April 30, 1997; and 10 expenditures identified by Office staff and/or records as payable subsequent to April 30, 1997. These time periods are intended to reflect, respectively, travel expenditures prior to the identification of Office budgetary problems, during the period of internally acknowledged budgetary problems, and after the former Capital Collateral Representative's communications to the courts and the Governor that the Office did not have adequate resources. Our review disclosed the following:

- Management's authorization to incur travel was documented by the completion of a form entitled State of Florida, Authorization to Incur Travel Expense, Capital Collateral Representative (Authorization Form), revised February 28, 1996. The Authorization Form provided spaces for identifying the purpose of the trip, case numbers and names, and whether a hearing was in a State or Federal court. The Authorization Form required the approval of the applicable supervisor and the former Capital Collateral Representative. Our tests of the 50 sample expenditures disclosed that the supporting Authorization Forms generally identified the purpose of the trip, case numbers and names, and, if applicable, whether a hearing was in a State or Federal court and included appropriate approval signatures.
- The Authorization Form did not, in form or format, provide evidence of management's consideration of available budgetary authority. While approval of the Authorization Forms by the former Capital Collateral Representative may have included such consideration, the Office did not appear to have a formal process in place to encumber the costs of planned travel against available budgetary authority. Further, although the Office had separately identified increased travel costs of \$72,450 in its Legislative Budget Request for the 1996-97 fiscal year, it is not clear that the Office utilized this information or a revised, planned level of disbursements in planning case activities or authorizing travel.
- Authorized travelers requested reimbursement for travel expenses by completing Form DBF-AA-15 entitled State of Florida, Voucher for Reimbursement of Travel Expenses (Reimbursement Voucher). The Fiscal office compared the Reimbursement Voucher to the Authorization Form and otherwise preaudited the Reimbursement Voucher for payment. The former Capital Collateral Representative approved the Reimbursement Voucher for payment. Our tests of the 50 sample expenditures disclosed that the travel information shown on the Reimbursement Vouchers was generally consistent with the authorization to incur travel and corollary Office records (i.e., for attorneys, the docket book indicating participation in case activities).

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- (94) Notwithstanding that the sampled travel expenditures appeared to be properly authorized as relating to the conduct of an active capital case, our analytical review disclosed that the reimbursement request and preaudit processes were not always timely completed, thereby negatively affecting the Office's capability to effectively monitor the availability of approved budgetary authority. For example, the average number of calendar days from the date of travel (return) to the date of approval of the Reimbursement Voucher increased from 6.7 days for our sample of 20 travel expenditures paid during the period July 1, 1996, through December 31, 1996, to 27.2 days for our sample of 20 travel expenditures paid during the period January 1, 1997, through April 30, 1997. Table Q summarizes the average number of calendar days required to complete the authorization, reimbursement request, and preaudit processes for the 50 sample expenditures:

Table Q -- Analysis of Sampled Travel Expenditures

	<u>Average Number of Calendar Days</u>		
	<u>Period A</u>	<u>Period B</u>	<u>Period C</u>
From Date of Authorization to Date of Travel (Departure)	9.9	3.5	6.2
From Date of Travel (Return) to Date of Completion of Reimbursement Voucher	5.2	23.4	14.7
From Date of Completion of Reimbursement Voucher to Date of Approval of Reimbursement Voucher	1.5	4.6	12.7
From Date of Travel (Return) to Date of Approval of Reimbursement Voucher	6.7	27.2	27.4
From Date of Completion of Reimbursement Voucher to Date of Completion of Voucher Processing	16.0	9.8	24.6

Period A - July 1, 1996, through December 31, 1996 (Sample Total \$1,937.73)

Period B - January 1, 1997, through April 30, 1997 (Sample Total \$3,736.60)

Period C - Subsequent to April 30, 1997 (Sample Total \$4,500.39)

- (95) To ensure that travel expenditures are authorized and paid within approved budgetary authority, we recommend that the Office establish a planned level of annual disbursements for travel and that the planned level of disbursements be communicated to applicable supervisors and fiscal staff for use in planning case activities and authorizing travel.

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Also, we recommend that the Office implement a formal process to encumber the costs of planned travel against available budgetary authority. The Office should emphasize to all staff that the timely completion of the authorization, reimbursement request, and preaudit processes is essential to management's monitoring of planned travel against available budgetary authority.

Case-Related Professional Services

(96) The representation of defendants in capital cases often requires that the Office contract with consultants to provide case-related professional services. The most common consultants (i.e., expert witnesses) are mental health experts and pathologists. Contracted mental health experts generally review the findings of the prosecution witness that made a trial court assessment of the defendant's mental state and may also evaluate the current mental state of the defendant and testify in collateral evidentiary hearings. Contracted pathologists generally review the findings of the medical examiner or county coroner who issued the original cause of death of the victim and may review all documents related to the cause of death and, if a questionable issue is found, testify in collateral evidentiary hearings. Based on the type of experts used by the prosecution in the trial court, the Office contracts with other consultants, such as DNA experts; forensic medicine experts; laboratory, chemical, and pharmacological experts; photographic, motion picture, and video experts; or other court-recognized experts. The lead attorney for each capital case is responsible for determining the type and number of consultants necessary based on a review of the prior proceeding's files.

(97) The Office's professional services expenditures were recorded in the SAMAS using the professional services - independent contractors object code (13****), which includes payments for services rendered by persons or firms who are independent contractors rather than employees. Table R summarizes Office case-related professional services expenditures for the 1996-97 fiscal year through May 31, 1997:

Table R -- Case-Related Professional Services Expenditures
July 1, 1996, Through May 31, 1997

<u>Object Description</u>	<u>Object Code</u>	<u>Amount</u>
Court Reporters	1314**	\$ 1,338.90
Examination and Testing	1324**	128,013.37
Investigative	1325**	<u>44,498.36</u>
Total		<u>\$173,850.63</u>

Source: SAMAS expenditures as summarized on Exhibit B.

(98) We reviewed Office procedures and records relating to prior authorization of professional services as necessary to the conduct of a collateral proceeding, consideration of available budgetary authority, and the processing of professional services contractor invoices. Our audit included analytical procedures for a sample of 50 expenditures for the periods and reasons described in paragraph 93. Our review disclosed the following:

- Management's authorization to obtain case-related professional services was documented by completion of a form entitled Anticipated Costs for Experts (with a working title of Blue Form), dated December 2, 1996. The Anticipated Costs for Experts form provided spaces for identifying the case name and number, the specific services to be rendered, and the justification for the services. The Anticipated Costs for Experts form was completed by the lead attorney and required the approval of the applicable supervising attorney and the former Capital Collateral Representative. Upon review and approval and prior to the actual performance of the services, the former Capital Collateral Representative issued a letter of authorization, which served as a contract. If court schedules or other circumstances required a change in the extent or timing of the services, an additional Anticipated Costs for Experts form and letter of authorization were completed.

Because Florida Supreme Court case findings (Kight v. Dugger, 574 So.2d 1066, 1069 [Fla 1991]) prohibit public access to certain records contained in capital case files, it was not possible for us to review completed Anticipated Costs for Experts forms since the former Capital Collateral Representative designated these forms as part of the capital case files. However, Office personnel assisted in our review of the sampled expenditures by

retrieving applicable Anticipated Costs for Experts forms and, on a limited basis, verbally providing selected dates, attorney names, consultant names, etc. However, several Anticipated Costs for Experts forms (9 of 45 applicable to the sample expenditures) could not be readily located by Office personnel.

- The letters of authorization in the voucher file generally identified the case name, the services to be rendered, and the agreed upon fee, including a maximum authorized amount, and were signed by the former Capital Collateral Representative. Also, the information shown on the letters of authorization appeared to be consistent with the corollary information shown (based on the verbal representations of Office personnel) on located Anticipated Costs for Experts forms. However, we noted 16 instances in which the initial letters of authorization were approved on or after the first day of services, including 9 instances in which the applicable Anticipated Costs for Experts forms were also dated on or after the first day of service. In 9 instances, we could not determine whether the letters of authorization were approved prior to the services being provided because the invoices did not specify the dates of service. Our audit also disclosed 5 instances in which supplemental letters of authorization were approved after the dates of extended services, including 4 instances in which the applicable Anticipated Costs for Experts forms were also dated after the dates of service.
- The Anticipated Costs for Experts form and the letter of authorization did not, in form or format, provide evidence of management's consideration of available budgetary authority. However, we noted that the Office did record some summary information on planned expenditures for professional services. Specifically, the Anticipated Costs for Experts form and authorization letter were sent to the Fiscal office and planned expenditures were recorded in manual ledgers (or in an "Encumbrance Book" prior to the resignation of the former Accountant IV on March 20, 1997). However, it is not clear that this summary information was routinely available to the former Capital Collateral Representative when approving Anticipated Costs for Experts forms. Further, although the Office had identified increased other personal services costs in its Final Legislative Budget Requests for the 1996-97 and 1997-98 fiscal years, it is not clear that the Office utilized this

information or a revised, planned level of disbursements in planning case activities or authorizing such services.

While a formal system did not appear to be in place to evidence management's consideration of available budgetary authority, from our review of Office records, we noted several memoranda from the former Capital Collateral Representative indicating concerns about the availability of moneys to fund the use of expert witnesses.

- The letter of authorization or contract provided that the professional services contractor was to submit invoices in detail sufficient for a proper preaudit and postaudit thereof. The Fiscal office compared the invoice to the Anticipated Costs for Experts form(s) and letter(s) of authorization and otherwise preaudited the invoice for payment. Our tests of the 50 sample expenditures disclosed that the information shown on the contractor invoices was generally consistent with the authorization to obtain case-related professional services and with corollary Office records (i.e., the docket book to which case activities are posted). However, Office voucher records did not document the lead or supervising attorneys' review and approval of the professional services contractor invoices or the former Capital Collateral Representative's review and approval of the voucher authorizing payment. Further, we noted that the Fiscal office, in paying two invoices (\$2,500 on invoice dated August 1, 1996, and \$2,000 on invoice dated December 19, 1996) from one consultant for two distinct services, inappropriately relied on the same letter of authorization (dated July 25, 1996, in the amount of \$2,500). In addition, we noted two invoices vouchered for payment (\$18,052.50 and \$3,573.37) in May 1997 which included services for extended times periods (December 2, 1996, through March 6, 1997, and May 6, 1992, through February 26, 1997, respectively). The preaudit approval for these two invoices was not supported by required Anticipated Costs for Experts forms and/or letters of authorization. Instead, Fiscal office staff relied, in both instances, on after-the-fact representations of applicable attorneys as to the extent and nature of the services provided.

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- (99) Our analytical review of the authorization and preaudit processes disclosed that the sampled professional services expenditures appeared to be properly authorized as relating to the conduct of active capital cases and that the dates of authorization, on average, provided sufficient time for planned costs to be considered against available budgetary authority. However, the timeliness of the preaudit processes could be improved, thereby enhancing the Office's capabilities to effectively monitor the availability of approved budgetary authority. Table S summarizes the average number of calendar days required to complete the authorization and preaudit processes for the 50 sample expenditures:

Table S -- Analysis of Sampled Professional Services			
	Average Number of Calendar Days		
	Period A	Period B	Period C
From Date of Request to Date of CCR Approval	1.5	3.6	6.5
From Date of CCR Approval to Date of Letter of Authorization	3.0	1.2	1.3
From Date of Letter of Authorization to First Date of Services	35.3	49.3	126.0
From Last Date of Services to Date Invoice Received in Fiscal Office	31.7	42.3	29.1
From Date Invoice Received in Fiscal Office to Date of Payment	10.3	14.0	38.8
Period A - July 1, 1996, through December 31, 1996 (Sample Total \$39,424)			
Period B - January 1, 1997, through April 30, 1997 (Sample Total \$45,818)			
Period C - Subsequent to April 30, 1997 (Sample Total \$39,628)			

- (100) To ensure that case-related professional services expenditures are authorized and paid within approved budgetary authority, we recommend that the Office establish a planned level of annual disbursements for such services and that the planned level of disbursements be communicated to applicable supervisors and Fiscal staff for use in planning case activities or authorizing professional services. Also, we recommend that the Office implement formal processes to encumber the costs of planned professional services against available budgetary authority and to compare subsequent payments for professional services with authorization amounts. The Office should emphasize to all staff that the timely completion of the

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authorization and preaudit processes, including the lead or supervising attorney's review and approval of the invoices, is essential to management's monitoring of planned professional services against available budgetary authority.

Case Documents/Records

(101) As described in paragraph 32, an essential part of the collateral postconviction representation process is the securing of all direct-appeal files from the public defender or other counsel and the filing of requests for the production of public records. Pursuant to Section 27.702(1), Florida Statutes (1996 Supplement), the Capital Collateral Representative must secure all direct-appeal files for collateral representation. Pursuant to FRCP Rule 3.852 (a rule of discovery effective October 1, 1996), the Capital Collateral Representative requests the production of public records (subject to Chapter 119, Florida Statutes) relating to proceedings for relief pursuant to FRCP Rules 3.850 and 3.851. Although FRCP Rule 3.852's prescribed procedures remained in effect, the State Supreme Court tolled the time periods until March 3, 1997.

(102) FRCP Rule 3.852 prescribes specific timetables and procedures for requesting and receiving public documents, including the methods of notice of the requests and procedures when the custodian objects to or does not comply with the request for the production of public documents. FRCP Rule 3.852 requires that requests for production of public records be filed in the trial court where the death sentence was imposed, with a copy to the trial judge; be served upon the custodian designated pursuant to Section 119.021, Florida Statutes; and that copies be served upon the Attorney General and upon all counsel of record in the postconviction proceedings. The request must either be hand-delivered or sent by certified mail to the custodian of the public records which may be a State agency, a clerk of the court, a local law enforcement agency, or any other governmental agency or institution. Then, evidence of the delivery of the request must be filed in the trial court with a copy served upon the Attorney General and all counsel of record no more than five days after service of the request for production on the custodian. FRCP Rule 3.852 requires that initial requests for production be filed and served within 30 days after counsel is designated. The 30-day period applies to public

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records in the custody of specified law enforcement agencies, the state attorney's office that prosecuted the defendant, the medical examiner, the Attorney General, and the Florida Department of Corrections.

(103) Records that the custodian agrees to provide and for which the custodian does not file a formal objection to the production of those records must be provided within 60 days of the request. Generally, within 20 days from the date of the review of the records, all requests for additional copies shall be made by any counsel who desires copies, and copies shall be provided by the custodian within 10 days from the receipt of the request. Copies shall be provided by the custodian for the usual fee charged by the agency or as provided for by statute. If a custodian does not comply with the provisions of FRCP Rule 3.852, and has not otherwise filed a formal objection to the production of public records, a defendant's counsel has 30 days in which to file motion to compel a custodian to produce the requested public records. Failure by the defendant's counsel to file requests for records production or to file motions to compel or complaints within the time limits imposed by FRCP Rule 3.852 waives the right of the defendant to use the applicable public documents in postconviction proceedings.

(104) Office expenditures relating to obtaining case documents and records were recorded in the SAMAS using the object codes for communications and freight (22****) and printing and reproduction (23****). Table T summarizes selected Office expenditures directly relating to obtaining case documents and records for the 1996-97 fiscal year through May 31, 1997:

Table T -- Case Documents/Records Expenditures July 1, 1996, Through May 31, 1997		
<u>Object Description</u>	<u>Object Code</u>	<u>Amount</u>
Communications and Freight:		
Postage	2250**	\$ 21,686.10
Freight	2270**	34,869.58
Printing and Reproduction	2300**	<u>159,384.19</u>
Total		<u>\$215,939.87</u>

Source: SAMAS expenditures as summarized on Exhibit B.

(105)

We reviewed Office procedures and records relating to prior authorization to obtain case documents and records necessary to the conduct of a collateral proceeding, consideration of available budgetary authority, and the processing of related invoices. Our audit included analytical procedures for a sample of 50 expenditures for the periods and reasons described in paragraph 93. Our review disclosed the following:

- The nature of the case documents and records to be requested was determined by the Litigation Team, which generally consisted of two attorneys and one investigator. The Litigation Team's decision was documented by its filing in the trial court a request for production of public records pursuant to FRCP Rule 3.852. Typically, the applicable records custodian provided the Office an estimate of the production costs prior to producing copies. After review of the estimated costs, the Litigation Team authorized the custodian to proceed. It is our understanding that the actual request for public records production as filed with the trial court demonstrated the need for obtaining such records.
- As noted above, the records custodian typically provided the Office an estimate of the production costs prior to producing copies. However, it is not clear that this cost information regarding the production of specific public records was linked to a consideration of available budgetary authority. Also, the Office did not encumber budgetary authority for requests for records production based either on filings made or custodial estimates provided. Further, although the Office had separately identified increased records reproduction costs in its Final Legislative Budget Requests for both the 1996-97 and 1997-98 fiscal years, it is not clear that the Office utilized this information or a revised, planned level of disbursements for FRCP Rule 3.852 records production costs in planning case activities or authorizing the filing of requests for records production.
- Prior to March 1997, Office preaudit procedures for invoices from records custodians did not provide, prior to payment, for review and approval by the applicable attorney or records specialist to verify that invoiced amounts were consistent with the actual records production. Subsequent to March 1997, Office procedures were amended to require the

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review and approval of custodial invoices by the applicable records specialists and Fiscal office preaudit of the invoices for payment based on such approval. Our tests of the 10 sample expenditures processed under the new procedures disclosed that the custodian invoices evidenced the required approval by the records specialist.

- (106) Because documentation of the authorization for the sampled records production expenditures was generally contained in the capital case files, it was not practicable to evaluate whether the authorization process was completed within a time frame that would provide adequate notice of planned records production expenditures to those Office personnel responsible for monitoring budgetary authority. However, our analytical review disclosed that the preaudit process was generally timely completed, thus ensuring the timely recording of expenditures against approved budgetary authority. Table U summarizes the dates on which these processes were completed for the 50 sample expenditures:

Table U -- Analysis of Sampled Records Expenditures

	Average Number of Calendar Days		
	Period A	Period B	Period C
Processed Under Procedures Prior to March 1997: (1)			
From Date of Invoice Receipt to Date of Voucher Processing	12.5	7.7	
Processed Under Revised Procedures: (1)			
From Date of Invoice Receipt to Date of Approval by Records Specialist			0.6
From Date of Approval by Records Specialist to Date of Receipt in Fiscal Office			0.6
From Date of Receipt in Fiscal Office to Date of CCR Approval			11.1
From Date of CCR Approval to Date of Voucher Processing			7.4
From Date of Receipt in Fiscal Office to Date of Voucher Processing			18.5
Period A - July 1, 1996, through December 31, 1996 (Sample Total \$25,963.08)			
Period B - January 1, 1997, through April 30, 1997 (Sample Total \$23,641.01)			
Period C - Subsequent to April 30, 1997 (Sample Total \$4,361.04)			

Note: (1) See paragraph 105, third bullet for description of changed procedures.

- (107) To ensure that records production expenditures are authorized and paid within approved budgetary authority, we recommend that the Office establish a planned level of annual disbursements for such services and that the planned level of disbursements be communicated to Litigation Teams and fiscal staff for use in planning case activities or authorizing requests for records production. The planned level of disbursements should be based on a thorough case-based analysis of records production needs and costs and should be timely completed so as to be available for consideration by the 1998 Legislature. Also, we recommend that the Office implement a formal process to encumber the costs of planned requests against available budgetary authority. The Office should emphasize to all staff that the timely completion of the authorization and preaudit processes is essential to management's monitoring of planned requests for records production against available budgetary authority.

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(108) In a May 28, 1997, order regarding FRCP Rule 3.852, the State Supreme Court stated, "The Court has determined that it will facilitate orderly discovery if there is adopted by the Court a standard form to be used for the production of public records pursuant to Rule 3.852." The Court directed the Capital Collateral Representative and the Attorney General to confer for the purpose of developing standard forms to be used to notice initial requests for records production pursuant to FRCP Rule 3.852 and to submit within 75 days standard forms containing designations of agreed-upon documents. In implementing this Court directive, the Office should consider our findings and any potential the standard forms may present for cost reduction and for monitoring planned records production costs against available budgetary authority.

Processing of Current Commitments

(109) Table A, under the subheading Financial Status - 1996-97 Fiscal Year, presents a comparison of the Office's budgeted with actual expenditures and commitments for the 1996-97 fiscal year. Completion of that comparison required that we develop estimates, based on records, information, and other representations provided by Office staff, of current commitments to expend appropriated resources designated for 1996-97 fiscal year operations. Estimated amounts shown on Table A were determined as described below for the applicable appropriation categories.

Salaries and Benefits - \$275,443

(110) This amount includes \$245,070 for the estimated June 1997 regular payroll, \$23,021 estimated for supplemental payrolls, and \$7,352 relating to payments for May/June 1997 compensatory time:

- The estimated June 1997 regular payroll is based on the salaries and benefits of Office personnel employed as of May 31, 1997. The \$23,021 estimated for supplemental payrolls included termination payments totaling \$16,025 for the former Capital Collateral Representative.

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- The Office's practice was to pay for compensatory time on a two-month cycle; accordingly, payments for May and June 1997 compensatory time would be made on supplemental payrolls in July 1997. The estimated payments of \$7,352 could possibly be paid from 1997-98 fiscal year appropriations; however, since the compensatory time clearly was earned in the 1996-97 fiscal year, we have included the payments in estimated commitments.

Other Personal Services - \$29,890

(111) This amount includes \$27,290 estimated for services received as of May 31, 1997, but not invoiced and \$2,600 estimated for services to be provided in June 1997 relating to scheduled collateral activities. Amounts were estimated, with the assistance of Office staff, based on an analysis of May 1997 collateral proceedings shown in the Office's docket book (see paragraph 65); an analysis of June 1997 collateral proceedings shown in the Office's calendar (see paragraph 65); and inquiries as to whether applicable case files contained Anticipated Costs for Experts forms (see paragraph 98) that evidenced the authorized use and planned costs of professional services or whether Authorization to Incur Travel Expense forms (see paragraph 93) received by the Fiscal office evidenced the planned use of professional services.

(112) As shown in Table S, since April 30, 1997, the Office has typically paid invoices for professional services an average of 67.9 calendar days after the date of services. Accordingly, we assumed that Office payments for professional services to be provided after June 10, 1997, would be paid from 1997-98 fiscal year appropriations. Our analytical comparisons indicate that the total estimated amount of \$29,890 for June 1997 is 194 percent of the average monthly (\$15,428) expenditures from the other personal services appropriation category during the period July 1, 1996, through May 31, 1997.

Expenses - \$110,091

(113) This amount includes \$49,749 for invoices on hand as of May 31, 1997, and \$60,342 estimated for goods and services received as of May 31, 1997, but not invoiced. These amounts include estimated recurring charges of \$34,542 for leases and related costs (i.e.,

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utilities, janitorial services, insurance, etc.) and \$6,325 for communications services, legal subscriptions, and copy machine contracts.

(114) Amounts estimated for goods and services received as of May 31, 1997, but not invoiced, are based, in part, on an analysis, with the assistance of Office staff, of May 1997 collateral proceedings shown in the Office's docket book (see paragraph 65) and inquiries as to whether applicable case files evidenced that costs had been incurred relating to records production requests or whether related Anticipated Costs for Experts forms (see paragraph 98) and Authorization to Incur Travel Expense forms (see paragraph 93) received by the Fiscal office evidenced that Office personnel and/or consultants had traveled in May 1997.

(115) As shown in Table U, since April 30, 1997, the Office has paid records production costs an average of 18.5 calendar days after the date of invoice receipt. As shown in Table Q, since April 30, 1997, the Office has paid travel reimbursements an average of 52 calendar days after the date of travel. Accordingly, we assumed that Office payments for records production and travel after May 31, 1997, would be paid from 1997-98 fiscal year appropriations. Our analytical comparisons indicate that the total estimated amount of \$110,091 for June 1997 is approximately 107 percent of the average monthly (\$103,265) expenditures from the expenses appropriation category during the period July 1, 1996, through May 31, 1997.

Operating Capital Outlay - \$2,500

(116) This amount includes \$1,250 for invoices on hand as of May 31, 1997, and \$1,250 estimated for goods and services received as of May 31, 1997, but not invoiced.

Non-Operating Expenses - \$18,469

(117) This \$18,469 represents the remaining 1996-97 fiscal year portion of the 7 percent service charge on Federal receipts deposited in the CCR Trust Fund. Section 215.20(1), Florida Statutes, provides that the service charge be deposited in the General Revenue Fund. As shown in Table F, Federal receipts totaled \$495,715.07 for the 1996-97 fiscal year.

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Final June 30, 1997, Expenditures

- (118) The amounts shown in paragraphs 110 through 117 represent estimates by appropriation categories of the Office's fiscal year expenditures subsequent to May 31, 1997. These estimated amounts are shown in Table A -- Estimated Financial Status, on page 15 of this report. The Office's final approved operating budget and expenditures through June 30, 1997, are shown in Table A-1 -- Year-End Financial Status , on page 16 of this report.

Prior Audit Findings

- (119) For those operating units, programs, activities, functions, and classes of transactions within the scope of this audit, the Office had substantially corrected the deficiency noted in audit report No. 12527.

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STATEMENTS FROM AGENCY OFFICIALS

- (120) In accordance with the provisions of Section 11.45(7)(d), Florida Statutes, a list of audit findings and recommendations was submitted to the Office of the Capital Collateral Representative. The written responses of the Interim Capital Collateral Regional Counsel, Northern Region, and the Executive Office of the Governor, Office of Planning and Budgeting Director, to the audit findings and recommendations included in this report are shown as Exhibit E. The former Capital Collateral Representative elected not to respond to the audit findings and recommendations.

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AUDIT AUTHORITY

(121) Pursuant to the provisions of Section 11.45(7), Florida Statutes, I have directed that this audit report, including all Exhibits thereto, be prepared to present the results of the operational audit of the Office of the Capital Collateral Representative.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Charles L. Lester".

Charles L. Lester, CPA
Auditor General

EXHIBITS

The following Exhibits are attached to and form an integral part of this report:

- EXHIBIT - A Approved Changes to and Reserves of Appropriations - For the 1996-97 Fiscal Year.
- EXHIBIT - B Expenditures by Object Code Within Appropriation Category by Month - For the 1996-97 Fiscal Year (Through May 31, 1997, With Estimates for June 1997).
- EXHIBIT - C Expenditures by Object Code Within Appropriation Category by Month - For the 1995-96 Fiscal Year.
- EXHIBIT - D Comparison of Expenditures by Appropriation Category by Month - For the 1996-97 and 1995-96 Fiscal Years.
- EXHIBIT - E Statements from Agency Officials.

OFFICE OF THE CAPITAL COLLATERAL REPRESENTATIVE
APPROVED CHANGES TO AND RESERVES OF APPROPRIATIONS
For the 1996-97 Fiscal Year

EXHIBIT - A

Date of Action	Action Taken	Salaries and Benefits	Other Personal Services	Expenses	Operating Capital Outlay	Lump Sum - Appellate Defense Workload	Special Categories - Law Library	Special Categories - Overtime	Other Data Processing Services	SAMAS User Charge	Non-Operating Amounts
<u>General Revenue Fund</u>											
07/01/96	Appropriations Act	\$ 2,959,622.00	\$ 170,068.00	\$ 822,670.00	\$ 85,465.00	\$ 200,000.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 4,506.00	\$ 0.00
08/08/96	Casualty Insurance Premium			16,651.00							
10/23/96	Startup - CCR Field Offices				78,520.00	(200,000.00)	51,772.00		69,708.00		
11/07/96	Transfer Conflict Cases	(130,581.00)	(50,000.00)	(26,700.00)	(12,748.00)						
12/19/96	3-Percent Salary Adjustment	35,787.00									
12/19/96	Retirement System Adjustment	(4,816.00)									
03/11/97	Category Transfers			90,302.00	(38,530.00)		(51,772.00)				
05/23/97	Category Transfers	(66,000.00)	25,000.00	41,000.00							
05/29/97	Administration Commission		16,909.00	146,926.00							
	Non-Operating Refunds										9.45
05/31/97	Subtotal	2,794,012.00	161,977.00	1,090,849.00	112,707.00	0.00	0.00	0.00	69,708.00	4,506.00	9.45
06/18/97	Correction for 05/29/97 Error			(8,038.00)							
	Total General Revenue Fund	<u>\$ 2,794,012.00</u>	<u>\$ 161,977.00</u>	<u>\$ 1,082,811.00</u>	<u>\$ 112,707.00</u>	<u>\$ 0.00</u>	<u>\$ 0.00</u>	<u>\$ 0.00</u>	<u>\$ 69,708.00</u>	<u>\$ 4,506.00</u>	<u>\$ 9.45</u>
<u>Capital Collateral Representative Trust Fund</u>											
07/01/96	Appropriations Act	\$ 76,554.00	\$ 70,013.00	\$ 81,622.00	\$ 0.00	\$ 500,000.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00
07/01/96	Reserve - Grant Not Available					(500,000.00)					
07/01/96	Service Charge to General Revenue										43,325.00
11/07/96	Budget Authority Deletion		(50,000.00)								
12/16/96	Category Transfers	(25,000.00)		25,000.00							
01/28/97	Additional Federal CJA Money		15,000.00	135,000.00				100,000.00			
05/29/97	Administration Commission			201,077.00				(100,000.00)			
	Non-Operating Refunds										148.38
05/31/97	Subtotal	51,554.00	35,013.00	442,699.00							43,473.38
06/13/97	Proposed Category Transfers and Reserves (1)	86,000.00	14,000.00	(125,006.00)							
06/13/97	Subtotal	137,554.00	49,013.00	317,693.00	0.00	0.00	0.00	0.00	0.00	0.00	43,473.38
06/13/97	Interagency Transfer Authority										7,766.46
	Total Capital Collateral Representative Trust Fund	<u>\$ 137,554.00</u>	<u>\$ 49,013.00</u>	<u>\$ 317,693.00</u>	<u>\$ 0.00</u>	<u>\$ 0.00</u>	<u>\$ 0.00</u>	<u>\$ 0.00</u>	<u>\$ 0.00</u>	<u>\$ 0.00</u>	<u>\$ 51,239.84</u>

Note: (1) This reflects a June 13, 1997, reallocation of approved budgetary authority proposed by the Executive Office of the Governor, Office of Planning and Budgeting, to facilitate the Office's payment of the estimated expenditures. The Office of Planning and Budgeting recorded this reallocation on June 26, 1997, after consideration by the legislative appropriations committees pursuant to Section 216.177(2)(a), Florida Statutes.

Source: 96-97 Appropriation Ledger, Detail Report by Fund Category (BAALRL01 LAS/PBS System).

OFFICE OF THE CAPITAL COLLATERAL REPRESENTATIVE
EXPENDITURES BY OBJECT CODE WITHIN APPROPRIATION CATEGORY BY MONTH
For the 1996-97 Fiscal Year (Through May 31, 1997, With Estimates for June 1997)

EXHIBIT - B

Obj. Appropriation Category/ Code Object Title	Total Expenditures	Total Jul 96	Total Aug 96	Total Sep 96	Total Oct 96	Total Nov 96	Total Dec 96	Total Jan 97	Total Feb 97	Total Mar 97	Total Apr 97	Total May 97	Estimated Jun 97
CATEGORY 01 - SALARIES													
1100 SALARY AND WAGES	\$2,024,513.49	\$141,215.43	\$140,391.29	\$159,607.49	\$157,187.22	\$191,798.15	\$182,790.63	\$224,985.92	\$201,034.84	\$26,526.44	\$190,087.17	\$408,888.91	
1510 SOCIAL SECURITY	150,195.70	10,623.57	10,551.08	11,839.12	11,374.73	13,876.37	12,911.25	16,940.44	15,092.60	2,029.29	14,250.03	30,707.22	
1520 STATE RETIREMENT	356,429.46	24,967.94	24,794.84	28,203.11	27,751.80	33,776.97	32,214.47	39,579.80	35,405.11	4,623.56	33,496.92	71,614.94	
1570 PRETAX ADMINISTRATIVE ASSESSMENTS	2,570.71	179.44	175.99	185.42	193.66	179.42	243.19	271.11	286.49	0.00	291.53	564.46	
1610 STATE HEALTH - EMPLOYER'S CONTRIBUTIONS	108,217.26	7,478.50	7,478.50	8,148.18	8,951.26	9,419.50	11,473.32	11,379.74	11,427.20	0.00	11,339.92	21,121.14	
1620 STATE LIFE - EMPLOYER'S CONTRIBUTIONS	3,495.21	270.09	271.58	288.40	304.56	316.68	330.42	362.21	349.03	0.00	349.93	652.31	
TOTAL CATEGORY 01 THROUGH 5/31/97	<u>2,645,421.83</u>	<u>184,734.97</u>	<u>183,663.28</u>	<u>208,271.72</u>	<u>205,763.23</u>	<u>249,367.09</u>	<u>239,963.28</u>	<u>293,519.22</u>	<u>263,595.27</u>	<u>33,179.29</u>	<u>249,815.50</u>	<u>533,548.98</u>	
TOTAL CATEGORY 01 WITH JUNE EST.	2,920,864.83												275,443.00
CATEGORY 03 - OPS													
1314 PROFESSIONAL FEES - COURT REPORTING	1,338.90	0.00	0.00	0.00	0.00	0.00	0.00	1,338.90	0.00	0.00	0.00	0.00	
1321 GENERAL FEES - CUSTODIAL	9,350.00	0.00	1,870.00	0.00	935.00	935.00	935.00	1,870.00	0.00	935.00	935.00	935.00	
1324 GENERAL FEES - EXAMINATION AND TESTING	128,013.37	0.00	5,425.00	9,300.00	9,125.00	2,400.00	19,687.50	10,600.00	2,500.00	24,090.00	500.00	44,385.87	
1325 GENERAL FEES - INVESTIGATIVE	24,981.25	0.00	0.00	0.00	30.00	1,710.00	80.00	1,000.00	1,500.00	8,115.00	0.00	12,546.25	
1327 DATA PROCESSING	2,319.27	75.00	75.00	75.00	0.00	0.00	0.00	85.00	0.00	255.00	144.50	1,609.77	
1399 INDEPENDENT CONTRACTOR - OTHER	3,700.00	0.00	0.00	1,900.00	0.00	0.00	1,800.00	0.00	0.00	0.00	0.00	0.00	
TOTAL CATEGORY 03 THROUGH 5/31/97	<u>169,702.79</u>	<u>75.00</u>	<u>7,370.00</u>	<u>11,275.00</u>	<u>10,090.00</u>	<u>5,045.00</u>	<u>22,502.50</u>	<u>14,893.90</u>	<u>4,000.00</u>	<u>33,395.00</u>	<u>1,579.50</u>	<u>59,476.89</u>	
TOTAL CATEGORY 03 WITH JUNE EST.	199,592.79												29,890.00
CATEGORY 04 - EXPENSES													
1321 GENERAL FEES - CUSTODIAL	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
1325 GENERAL FEES - INVESTIGATIVE	19,517.11	0.00	2,293.03	913.38	4,689.94	0.00	1,025.00	4,778.75	1,929.24	1,569.96	1,089.88	1,227.93	
1327 DATA PROCESSING	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
1332 EMPLOYMENT ADVERTISING	1,857.83	0.00	0.00	0.00	612.90	0.00	220.11	0.00	0.00	0.00	786.19	238.63	
1399 INDEPENDENT CONTRACTOR - OTHER	968.00	88.00	88.00	0.00	176.00	88.00	88.00	88.00	176.00	0.00	88.00	88.00	
1510 SOCIAL SECURITY	349.61	7.80	33.41	25.67	21.03	42.57	35.16	45.90	24.33	21.77	14.49	77.48	
2210 COMMUNICATIONS & FRT - TELEPHONE	38,175.87	0.00	981.42	2,370.74	2,875.09	1,908.08	5,643.18	6,048.93	5,729.48	3,079.63	3,838.97	5,700.35	
2211 COMMUNICATIONS - CELLULAR TELEPHONES	2,741.92	56.32	93.06	244.93	225.46	353.45	136.68	208.57	141.36	231.82	354.09	696.18	
2250 COMMUNICATIONS & FRT - POSTAGE	21,686.10	2,000.00	2,352.83	85.03	2,732.00	5,564.50	1,200.00	1,012.12	0.00	549.00	101.42	6,089.20	
2270 COMMUNICATIONS & FRT - FREIGHT	34,869.58	995.00	2,549.55	1,628.63	5,491.65	3,295.37	4,192.49	2,732.97	3,230.86	3,236.40	2,804.58	4,712.08	
2290 COMMUNICATIONS & FRT - OTHER	2,431.75	0.00	186.62	13.00	9.00	559.86	0.00	0.00	783.49	293.26	293.26	293.26	
2300 CUR CHGS - PRINTING AND REPRODUCTION	159,384.19	7,849.65	16,662.88	12,054.87	19,176.53	19,201.31	9,343.82	8,346.65	12,733.96	11,107.55	13,122.25	29,784.72	
2420 REPAIRS AND MAINTENANCE - SERVICES	57,036.74	0.00	3,231.43	6,636.48	3,908.41	7,277.23	3,668.98	8,171.45	4,444.10	4,370.82	4,617.41	10,710.43	
2610 IN-STATE TRAVEL	275,363.94	4,902.06	15,102.36	29,721.07	24,030.88	12,636.51	33,111.67	29,487.50	27,357.02	28,641.97	24,597.75	45,775.15	
2618 IN-STATE TRAVEL - TRAINING	3,589.44	250.00	0.00	720.70	2,224.74	295.00	0.00	0.00	99.00	0.00	0.00	0.00	
2620 OUT-OF-STATE TRAVEL	41,641.62	1,868.38	1,440.04	10,271.23	5,271.50	1,589.06	5,958.11	967.05	6,342.55	2,609.45	2,661.84	2,662.41	
2628 OUT-OF-STATE TRAVEL - TRAINING	6,658.29	2,275.00	2,906.90	1,290.48	185.91	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
2630 FOREIGN TRAVEL	65.00	65.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
2640 CLASS C MEAL ALLOWANCE	4,632.00	102.00	438.00	336.00	275.00	580.00	459.00	591.00	318.00	276.00	189.00	1,068.00	
2710 UTILITIES - ELECTRICITY	24,469.12	0.00	2,274.18	2,755.30	2,734.06	2,598.38	2,303.10	2,227.02	2,580.49	2,008.09	2,310.73	2,677.77	
2800 CUR CHGS - EMPLOYEE MOVING EXPENSES	3,564.55	0.00	0.00	0.00	0.00	0.00	2,664.55	0.00	0.00	0.00	900.00	0.00	
2810 CUR CHGS - EMPLOYEE MOV. EXP. - CARRIER	4,615.00	0.00	0.00	0.00	0.00	4,615.00	0.00	0.00	0.00	0.00	0.00	0.00	
3800 CUR CHGS - OFFICE SUPPLIES	54,756.02	1,718.88	6,749.87	1,060.19	7,226.78	6,298.50	9,668.78	6,736.90	2,493.55	4,624.19	3,899.40	4,278.98	
3910 OTHER MAT.& SUPP. - DATA PROC.SUPPLIES	5,043.66	2,241.72	27.65	2.39	41.95	0.00	0.00	2,129.95	100.00	0.00	0.00	500.00	
3990 OTHER MAT.& SUPP. - OTHER	6,454.14	0.00	0.00	2,513.00	0.00	3,501.23	0.00	439.91	0.00	0.00	0.00	0.00	
4120 INS & SURETY - GENERAL LIABILITY INSURANCE	518.00	518.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
4130 INS & SURETY - WORKERS' COMP. INSURANCE	6,128.00	6,128.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
4140 INS & SURETY - FIRE FUND INSURANCE	217.00	217.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
4150 INS & SURETY - CIVIL RIGHTS INSURANCE	14,427.00	14,427.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
4160 INS & SURETY - SURETY BONDS	25.07	0.00	10.47	0.00	0.00	0.00	0.00	0.00	0.00	14.60	0.00	0.00	
4340 RENTALS - FROM NON-GOV. ENTITIES	276,435.53	17,772.29	17,772.29	17,772.29	17,772.29	27,789.46	23,317.46	29,208.61	31,257.71	13,485.42	49,030.00	31,257.71	
4430 RENTAL OF EQUIPMENT - POSTAGE	189.50	0.00	0.00	61.50	0.00	0.00	61.50	0.00	0.00	66.50	0.00	0.00	
4490 RENTAL OF EQUIPMENT - OTHER	3,213.31	26.57	26.57	26.57	26.57	79.07	1,205.87	1,795.52	26.57	0.00	0.00	0.00	
4920 OTHER CUR CHGS - SUBSCRIPTIONS	30,118.72	1,665.00	1,766.62	1,228.58	3,568.53	591.66	433.10	10,850.19	2,320.54	59.75	5,284.16	2,350.59	
4930 OTHER CUR CHGS - DUES	4,287.51	3,990.00	0.00	40.00	0.00	0.00	20.00	95.00	0.00	79.17	0.00	63.34	

OFFICE OF THE CAPITAL COLLATERAL REPRESENTATIVE
EXPENDITURES BY OBJECT CODE WITHIN APPROPRIATION CATEGORY BY MONTH
For the 1996-97 Fiscal Year (Through May 31, 1997, With Estimates for June 1997)

EXHIBIT - B
(Continued)

Obj. Appropriation Category/ Code Object Title	Total Expenditures	Total Jul 96	Total Aug 96	Total Sep 96	Total Oct 96	Total Nov 96	Total Dec 96	Total Jan 97	Total Feb 97	Total Mar 97	Total Apr 97	Total May 97	Estimated Jun 97
4970 OTHER CUR CHGS - PAY. FOR INFO. & EVIDENCE	2,600.94	36.32	236.00	315.00	10.00	485.00	300.00	158.00	335.00	200.00	0.00	525.62	
4990 OTHER CUR CHGS - OTHER	3,925.95	56.83	263.30	746.66	345.43	263.68	331.71	339.30	511.91	112.11	723.05	231.97	
5110 BOOKS AND OTHER LIBRARY RESOURCES	1,376.75	102.25	267.00	4,400.00	313.00	(4,400.00)	0.00	323.10	129.90	241.50	0.00	0.00	
5120 FURNITURE AND EQUIPMENT	20,120.95	0.00	0.00	341.00	0.00	7,489.81	1,599.91	8,101.73	0.00	0.00	210.00	2,378.50	
5160 DATA PROCESSING EQUIPMENT	2,328.93	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	2,328.93	0.00	0.00	
8910 OTH-NONOP - INT. PD ON LATE PAY OF INV.	126.60	0.00	0.00	2.18	4.10	11.64	0.00	24.04	84.64	0.00	0.00	0.00	
TOTAL CATEGORY 04 THROUGH 5/31/97	1,135,911.24	69,359.07	77,753.48	97,576.87	103,948.75	102,714.37	106,988.18	124,908.16	103,149.70	79,207.89	116,916.47	153,388.30	
TOTAL CATEGORY 04 WITH JUNE EST.	1,246,002.24												110,091.00
CATEGORY 06 - OPERATING CAPITAL OUTLAY													
5110 BOOKS AND OTHER LIBRARY RESOURCES	1,688.42	282.02	0.00	302.00	1,104.40	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
5120 FURNITURE AND EQUIPMENT	42,326.00	0.00	0.00	0.00	0.00	14,327.94	9,632.00	(3,119.94)	0.00	2,491.00	0.00	18,995.00	
5160 DATA PROCESSING EQUIPMENT	61,108.00	0.00	0.00	0.00	40,114.00	0.00	0.00	0.00	0.00	0.00	1,999.00	18,995.00	
TOTAL CATEGORY 06 THROUGH 5/31/97	105,122.42	282.02	0.00	302.00	41,218.40	14,327.94	9,632.00	(3,119.94)	0.00	2,491.00	1,999.00	37,990.00	
TOTAL CATEGORY 06 WITH JUNE EST.	107,622.42												2,500.00
CATEGORY 10 - SPECIAL CATEGORIES													
1325 GENERAL FEES - INVESTIGATIVE	0.00	0.00	0.00	0.00	0.00	701.02	2,027.21	(2,728.23)	0.00	0.00	0.00	0.00	
4920 OTHER CUR CHGS - SUBSCRIPTIONS	0.00	0.00	0.00	0.00	0.00	0.00	3,018.57	(3,018.57)	0.00	0.00	0.00	0.00	
TOTAL CATEGORY 10 (JUNE EST. = 0)	0.00	0.00	0.00	0.00	0.00	701.02	5,045.78	(5,746.80)	0.00	0.00	0.00	0.00	0.00
CATEGORY 21 - DATA PROCESSING													
1327 DATA PROCESSING	11,700.00	0.00	0.00	0.00	6,500.00	0.00	0.00	5,200.00	0.00	0.00	0.00	0.00	
2420 REPAIRS AND MAINTENANCE - SERVICES	1,525.25	0.00	0.00	0.00	0.00	703.61	821.64	0.00	0.00	0.00	0.00	0.00	
3910 OTHER M&S - DATA PROCESSING SUPPLIES	480.00	0.00	0.00	0.00	0.00	480.00	0.00	0.00	0.00	0.00	0.00	0.00	
5160 DATA PROCESSING EQUIPMENT	54,952.67	0.00	0.00	0.00	9,935.40	0.00	32,491.33	0.00	0.00	12,525.94	0.00	0.00	
2230 COMM & FRT - D.P. COMMUNICATIONS	4,506.00	0.00	1,126.50	0.00	0.00	1,126.50	1,126.50	0.00	0.00	0.00	1,126.50	0.00	
TOTAL CATEGORY 21 (JUNE EST. = 0)	73,163.92	0.00	1,126.50	0.00	16,435.40	2,310.11	34,439.47	5,200.00	0.00	12,525.94	1,126.50	0.00	0.00
CATEGORY 31 - NON-OPERATING													
8800 NONOPER-SERV. CHGS. TO GEN. REVENUE	16,231.38	0.00	0.00	1,856.75	(1,875.79)	16,231.38	1,875.79	(1,856.75)	0.00	0.00	0.00	0.00	
2610 IN-STATE TRAVEL - REFUNDS	148.38	0.00	0.00	0.00	0.00	0.00	148.38	0.00	0.00	0.00	0.00	0.00	
8600 NONOPER - REFUNDS	9.45	0.00	0.00	0.00	0.00	0.00	0.00	9.45	0.00	0.00	0.00	0.00	
TOTAL CATEGORY 31 THROUGH 5/31/97	16,389.21	0.00	0.00	1,856.75	(1,875.79)	16,231.38	2,024.17	(1,847.30)	0.00	0.00	0.00	0.00	
TOTAL CATEGORY 31 WITH JUNE EST.	34,858.21												18,469.00
TOTALS - ALL CATEGORIES THROUGH 5/31/97	\$4,145,711.41	\$254,451.06	\$269,913.26	\$319,282.34	\$375,579.99	\$390,696.91	\$420,595.38	\$427,807.24	\$370,744.97	\$160,799.12	\$371,436.97	\$784,404.17	
TOTALS - ALL CATEGORIES WITH JUNE EST.	\$4,582,104.41												\$436,393.00

OFFICE OF THE CAPITAL COLLATERAL REPRESENTATIVE
EXPENDITURES BY OBJECT CODE WITHIN APPROPRIATION CATEGORY BY MONTH
For the 1995-96 Fiscal Year

EXHIBIT - C

Obj. Appropriation Category Code Object Title	Total Expenditures	Total Jul 95	Total Aug 95	Total Sep 95	Total Oct 95	Total Nov 95	Total Dec 95	Total Jan 96	Total Feb 96	Total Mar 96	Total Apr 96	Total May 96	Total Jun 96
CATEGORY 01 - SALARIES													
1100 SALARY AND WAGES	\$1,712,122.37	\$134,823.24	\$140,017.86	\$157,765.44	\$139,111.49	\$154,958.52	\$134,230.02	\$143,701.90	\$140,597.16	\$112,526.77	\$146,174.65	\$158,465.09	\$149,750.23
1510 SOCIAL SECURITY	127,490.75	10,143.65	10,536.53	11,719.00	10,018.68	11,198.51	9,290.37	10,796.98	10,558.43	9,011.30	10,993.45	11,945.27	11,278.58
1520 STATE RETIREMENT	309,103.85	24,186.59	25,099.31	28,217.56	24,940.05	27,724.40	24,082.38	25,903.42	25,355.10	21,800.43	26,340.07	28,510.56	26,943.98
1570 PRETAX ADMINISTRATIVE ASSESSMENTS	2,201.02	170.19	174.92	177.24	180.22	178.47	185.87	196.17	197.19	197.21	188.86	177.34	177.34
1610 STATE HEALTH - EMPLOYER'S CONTRIBUTIONS	90,375.98	7,288.66	7,422.06	7,355.36	7,490.10	7,490.10	7,823.60	7,556.80	7,690.20	7,690.20	7,288.66	7,801.74	7,478.50
1620 STATE LIFE - EMPLOYER'S CONTRIBUTIONS	3,410.72	283.88	289.81	289.81	290.14	290.14	292.98	284.58	284.99	285.78	280.60	268.58	269.43
TOTAL CATEGORY 01	2,244,704.69	176,896.21	183,540.49	205,524.41	182,030.68	201,840.14	175,905.22	188,439.85	184,683.07	151,511.69	191,266.29	207,168.58	195,898.06
CATEGORY 03 - OPS													
1210 TEMPORARY EMPLOYMENT	2,070.01	0.00	770.63	1,299.38	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
1313 PROFESSIONAL FEES - CONSULTING	2,435.00	0.00	0.00	0.00	0.00	2,500.00	(65.00)	0.00	0.00	0.00	0.00	0.00	0.00
1314 PROFESSIONAL FEES - COURT REPORTING	1,010.55	0.00	0.00	0.00	47.00	0.00	0.00	0.00	448.75	40.00	676.05	0.00	(201.25)
1321 GENERAL FEES - CUSTODIAL	11,220.00	0.00	1,870.00	935.00	0.00	1,870.00	0.00	1,870.00	935.00	935.00	0.00	1,870.00	935.00
1324 GENERAL FEES - EXAMINATION AND TESTING	118,149.50	2,187.50	8,446.50	1,575.00	3,225.00	5,062.50	14,200.00	5,087.50	1,900.00	11,350.00	16,212.50	7,337.50	41,565.50
1325 GENERAL FEES - INVESTIGATIVE	24,659.00	0.00	525.00	0.00	6,639.00	4,475.00	0.00	0.00	2,210.00	200.00	4,850.00	0.00	5,760.00
1327 DATA PROCESSING	2,616.12	0.00	150.00	300.00	150.00	300.00	262.50	75.00	112.50	450.00	85.00	225.00	506.12
1328 GENERAL FEES - TRAINING	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
1399 INDEPENDENT CONTRACTOR - OTHER	2,455.56	0.00	0.00	653.00	0.00	0.00	0.00	420.00	0.00	0.00	0.00	155.00	1,227.50
2210 COMMUNICATIONS & FRT - TELEPHONE	9.46	0.00	9.46	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
TOTAL CATEGORY 03	164,625.20	2,187.50	11,771.59	4,762.38	10,061.00	14,207.50	14,397.50	7,452.50	5,606.25	12,975.00	21,823.55	9,587.56	49,792.87
CATEGORY 04 - EXPENSES													
1314 PROFESSIONAL FEES - COURT REPORTING	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
1325 GENERAL FEES - INVESTIGATIVE	10,612.83	0.00	355.41	952.31	409.03	996.55	1,042.82	286.87	1,844.59	942.82	709.22	997.27	2,075.94
1332 EMPLOYMENT ADVERTISING	680.22	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	220.11	0.00	240.00	220.11
1399 INDEPENDENT CONTRACTOR - OTHER	1,806.00	88.00	88.00	88.00	88.00	88.00	88.00	88.00	88.00	88.00	88.00	88.00	88.00
1510 SOCIAL SECURITY	316.44	9.19	26.62	26.82	28.01	25.66	32.34	5.01	38.08	22.52	17.41	31.37	53.41
2210 COMMUNICATIONS & FRT - TELEPHONE	23,216.83	0.00	712.18	1,345.45	1,143.19	1,795.85	1,873.25	1,808.53	1,356.64	2,562.22	1,420.84	2,339.33	6,859.35
2211 COMMUNICATIONS - CELLULAR TELEPHONES	1,996.06	44.50	73.82	141.58	53.40	63.31	263.27	346.12	53.40	80.44	305.77	353.84	216.61
2250 COMMUNICATIONS & FRT - POSTAGE	11,337.37	1,032.00	1,841.00	319.63	1,564.00	0.00	1,175.18	2,064.00	64.64	0.00	1,128.00	1,066.72	1,082.20
2270 COMMUNICATIONS & FRT - FREIGHT	16,954.03	200.25	581.67	2,076.60	1,379.85	1,138.60	2,296.72	1,029.69	567.51	1,989.75	1,222.60	1,959.34	2,511.45
2290 COMMUNICATIONS & FRT - OTHER	2,251.49	15.00	173.29	346.58	0.00	173.29	346.58	0.00	346.58	14.00	199.95	399.90	236.32
2300 CUR CHGS - PRINTING AND REPRODUCTION	84,017.48	2,896.68	9,841.52	5,484.10	8,358.48	4,251.94	9,442.03	7,931.16	6,336.10	4,716.40	6,432.63	6,278.61	12,047.83
2400 REPAIRS AND MAINTENANCE	16,897.72	0.00	0.00	1,613.09	2,290.59	7,239.12	5,754.92	0.00	0.00	0.00	0.00	0.00	0.00
2420 REPAIRS AND MAINTENANCE - SERVICES	30,532.66	559.65	2,435.72	0.00	0.00	286.26	0.00	4,555.37	2,471.03	3,142.46	5,751.14	4,347.33	6,983.70
2610 IN-STATE TRAVEL	181,912.39	6,193.98	9,055.40	9,203.44	10,246.10	10,534.95	22,894.86	13,201.47	14,233.70	20,994.05	17,954.71	17,958.91	29,440.82
2618 IN-STATE TRAVEL - TRAINING	5,017.88	0.00	0.00	302.00	622.45	503.68	271.68	91.28	0.00	560.00	1,207.11	376.53	1,083.15
2620 OUT-OF-STATE TRAVEL	57,606.17	2,959.93	6,271.17	5,003.35	523.70	7,100.47	4,408.08	2,513.33	7,493.11	5,827.55	6,367.19	4,429.08	4,709.21
2628 OUT-OF-STATE TRAVEL - TRAINING	5,183.96	1,900.00	1,146.00	375.00	0.00	0.00	0.00	415.00	649.40	698.56	0.00	0.00	0.00
2630 FOREIGN TRAVEL	9,988.14	2,235.22	4,658.22	0.00	2,955.12	0.00	65.00	0.00	0.00	0.00	0.00	0.00	74.58
2640 CLASS C MEAL ALLOWANCE	4,260.47	120.00	348.00	357.47	372.00	357.00	456.00	66.00	516.00	294.00	228.00	405.00	741.00
2648 CLASS C MEAL ALLOWANCE - TRAINING	6.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	6.00	0.00
2710 UTILITIES - ELECTRICITY	28,899.35	0.00	2,309.37	2,792.07	2,669.77	2,479.84	1,948.61	2,028.17	2,679.65	2,345.08	2,041.49	1,906.38	5,698.92
3800 CUR CHGS - OFFICE SUPPLIES	41,206.95	4,675.15	1,257.19	448.95	4,251.91	4,942.65	2,341.47	7,539.71	3,563.57	531.71	5,678.95	795.05	5,180.64
3910 OTHER MAT. & SUPP.- DATA PROC. SUPPLIES	3,919.07	0.00	233.70	164.83	58.22	1,406.16	0.00	0.00	0.00	0.00	2,056.16	0.00	0.00
3990 OTHER MAT. & SUPP.- OTHER	446.54	0.00	0.00	0.00	13.96	84.50	0.00	0.00	0.00	96.20	251.88	0.00	0.00
4120 INS & SURETY - GENERAL LIABILITY INSURANCE	452.00	433.00	0.00	0.00	0.00	0.00	0.00	19.00	0.00	0.00	0.00	0.00	0.00
4130 INS & SURETY - WORKERS' COMP. INSURANCE	2,983.00	2,790.00	0.00	0.00	66.00	0.00	0.00	127.00	0.00	0.00	0.00	0.00	0.00
4140 INS & SURETY - FIRE FUND INSURANCE	255.00	255.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
4150 INS & SURETY - CIVIL RIGHTS INSURANCE	375.00	359.00	0.00	0.00	0.00	0.00	0.00	16.00	0.00	0.00	0.00	0.00	0.00
4160 INS & SURETY - SURETY BONDS	12.85	0.00	0.00	12.85	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
4308 FACILITIES RENTAL - TRAINING	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
4340 RENTALS - FROM NON-GOV. ENTITIES	205,049.04	17,087.42	17,087.42	17,087.42	17,087.42	17,087.42	17,087.42	17,087.42	17,087.42	17,087.42	17,087.42	17,087.42	17,087.42
4430 RENTAL OF EQUIPMENT - POSTAGE	232.50	0.00	0.00	57.00	0.00	0.00	57.00	0.00	0.00	57.00	0.00	0.00	61.50
4490 RENTAL OF EQUIPMENT - OTHER	363.40	26.57	26.57	26.57	71.13	53.14	0.00	26.57	26.57	26.57	26.57	26.57	26.57

OFFICE OF THE CAPITAL COLLATERAL REPRESENTATIVE
EXPENDITURES BY OBJECT CODE WITHIN APPROPRIATION CATEGORY BY MONTH
For the 1995-96 Fiscal Year

EXHIBIT - C
(Continued)

Obj. Appropriation Category Code Object Title	Total Expenditures	Total Jul 95	Total Aug 95	Total Sep 95	Total Oct 95	Total Nov 95	Total Dec 95	Total Jan 96	Total Feb 96	Total Mar 96	Total Apr 96	Total May 96	Total Jun 96
4920 OTHER CUR CHGS - SUBSCRIPTIONS	25,072.36	1,537.00	790.35	1,128.80	1,757.94	3,902.30	1,112.74	2,653.00	1,729.26	1,211.06	1,963.19	3,005.45	4,281.27
4930 OTHER CUR CHGS - DUES	3,724.99	3,230.00	0.00	0.00	285.00	0.00	0.00	0.00	110.83	63.33	0.00	20.00	15.83
4970 OTHER CUR CHGS - PAY.FOR INFO.& EVIDENCE	4,852.45	18.00	485.00	411.00	230.00	553.45	200.00	175.00	549.00	790.00	411.00	165.00	865.00
4990 OTHER CUR CHGS - OTHER	3,244.85	45.56	445.39	809.26	155.80	143.28	209.35	292.77	238.85	133.14	117.31	171.21	482.93
5110 BOOKS AND OTHER LIBRARY RESOURCES	2,705.35	97.25	411.93	136.75	0.00	302.50	198.50	347.25	210.73	69.00	0.00	595.44	336.00
5120 FURNITURE AND EQUIPMENT	4,783.50	0.00	0.00	0.00	1,933.00	665.00	1,755.52	430.00	(280.00)	0.00	279.98	0.00	0.00
5160 DATA PROCESSING EQUIPMENT	480.00	0.00	0.00	0.00	0.00	200.00	0.00	0.00	280.00	0.00	0.00	0.00	0.00
8910 OTH-NONOP - INT. PD ON LATE PAY OF INV.	76.00	0.00	0.00	16.44	0.00	7.43	0.00	0.00	7.39	23.16	0.00	0.00	21.58
TOTAL CATEGORY 04	793,728.34	48,808.35	60,654.94	50,727.36	58,614.07	66,382.35	75,321.34	65,143.72	62,262.05	64,586.55	72,946.52	65,799.75	102,481.34
CATEGORY 06 - OPERATING CAPITAL OUTLAY													
5110 BOOKS AND OTHER LIBRARY RESOURCES	2,692.35	0.00	0.00	0.00	2,413.75	0.00	0.00	0.00	0.00	0.00	0.00	278.60	0.00
5120 FURNITURE AND EQUIPMENT	673.97	0.00	0.00	0.00	0.00	673.97	0.00	0.00	0.00	0.00	0.00	0.00	0.00
5160 DATA PROCESSING EQUIPMENT	650.00	0.00	0.00	0.00	0.00	650.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
TOTAL CATEGORY 06	4,016.32	0.00	0.00	0.00	2,413.75	1,323.97	0.00	0.00	0.00	0.00	0.00	278.60	0.00
CATEGORY 10 - OVERTIME													
1100 SALARY AND WAGES	49,429.22	0.00	0.00	0.00	0.00	0.00	0.00	8,787.41	0.00	40,641.81	0.00	0.00	0.00
1510 SOCIAL SECURITY	3,181.10	0.00	0.00	0.00	0.00	0.00	0.00	672.23	0.00	2,508.87	0.00	0.00	0.00
1520 STATE RETIREMENT	7,326.68	0.00	0.00	0.00	0.00	0.00	0.00	1,551.87	0.00	5,774.81	0.00	0.00	0.00
TOTAL CATEGORY 10	59,937.00	0.00	0.00	0.00	0.00	0.00	0.00	11,011.51	0.00	48,925.49	0.00	0.00	0.00
CATEGORY 21 - DATA PROCESSING													
5160 DATA PROCESSING EQUIPMENT	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
2230 COMM & FRT - D.P. COMMUNICATIONS	4,506.00	0.00	0.00	0.00	2,253.00	0.00	0.00	0.00	1,126.50	0.00	0.00	1,126.50	0.00
TOTAL CATEGORY 21	4,506.00	0.00	0.00	0.00	2,253.00	0.00	0.00	0.00	1,126.50	0.00	0.00	1,126.50	0.00
CATEGORY 31 - NON-OPERATING													
8800 NONOPER - SERV. CHGS. TO GEN. REVENUE	23,387.64	0.00	1,875.79	0.00	0.00	6,891.60	0.00	0.00	0.00	12,763.50	0.00	0.00	1,856.75
TOTAL - ALL CATEGORIES	\$3,294,905.19	\$227,892.06	\$257,842.81	\$261,014.15	\$255,372.50	\$290,645.56	\$265,624.06	\$272,047.58	\$253,677.87	\$290,762.23	\$286,036.36	\$283,960.99	\$350,029.02

OFFICE OF THE CAPITAL COLLATERAL REPRESENTATIVE
COMPARISON OF EXPENDITURES BY APPROPRIATION CATEGORY BY MONTH
For the 1996-97 and 1995-96 Fiscal Years

EXHIBIT - D

Category	Total Expenditures	Total July	Total August	Total September	Total October	Total November	Total December	Total January	Total February	Total March	Total April	Total May	Total June
CATEGORY 01 - SALARIES													
1996-97 TOTALS	\$2,920,864.83	\$184,734.97	\$183,663.28	\$208,271.72	\$205,763.23	\$249,367.09	\$239,963.28	\$293,519.22	\$263,595.27	\$33,179.29	\$249,815.50	\$533,548.98	\$275,443.00 *
1995-96 TOTALS	<u>2,244,704.69</u>	<u>176,896.21</u>	<u>183,540.49</u>	<u>205,524.41</u>	<u>182,030.68</u>	<u>201,840.14</u>	<u>175,905.22</u>	<u>188,439.85</u>	<u>184,683.07</u>	<u>151,511.69</u>	<u>191,266.29</u>	<u>207,168.58</u>	<u>195,898.06</u>
NET INCREASE / (DECREASE)	676,160.14	7,838.76	122.79	2,747.31	23,732.55	47,526.95	64,058.06	105,079.37	78,912.20	(118,332.40)	58,549.21	326,380.40	79,544.94
CATEGORY 03 - OPS													
1996-97 TOTALS	199,592.79	75.00	7,370.00	11,275.00	10,090.00	5,045.00	22,502.50	14,893.90	4,000.00	33,395.00	1,579.50	59,476.89	29,890.00 *
1995-96 TOTALS	<u>164,625.20</u>	<u>2,187.50</u>	<u>11,771.59</u>	<u>4,762.38</u>	<u>10,061.00</u>	<u>14,207.50</u>	<u>14,397.50</u>	<u>7,452.50</u>	<u>5,606.25</u>	<u>12,975.00</u>	<u>21,823.55</u>	<u>9,587.56</u>	<u>49,792.87</u>
NET INCREASE / (DECREASE)	34,967.59	(2,112.50)	(4,401.59)	6,512.62	29.00	(9,162.50)	8,105.00	7,441.40	(1,606.25)	20,420.00	(20,244.05)	49,889.33	(19,902.87)
CATEGORY 04 - EXPENSES													
1996-97 TOTALS	1,246,002.24	69,359.07	77,753.48	97,576.87	103,948.75	102,714.37	106,988.18	124,908.16	103,149.70	79,207.89	116,916.47	153,388.30	110,091.00 *
1995-96 TOTALS	<u>793,728.34</u>	<u>48,808.35</u>	<u>60,654.94</u>	<u>50,727.36</u>	<u>58,614.07</u>	<u>66,382.35</u>	<u>75,321.34</u>	<u>65,143.72</u>	<u>62,262.05</u>	<u>64,586.55</u>	<u>72,946.52</u>	<u>65,799.75</u>	<u>102,481.34</u>
NET INCREASE / (DECREASE)	452,273.90	20,550.72	17,098.54	46,849.51	45,334.68	36,332.02	31,666.84	59,764.44	40,887.65	14,621.34	43,969.95	87,588.55	7,609.66
CATEGORY 06 - OPERATING CAPITAL OUTLAY													
1996-97 TOTALS	107,622.42	282.02	0.00	302.00	41,218.40	14,327.94	9,632.00	(3,119.94)	0.00	2,491.00	1,999.00	37,990.00	2,500.00 *
1995-96 TOTALS	<u>4,016.32</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>2,413.75</u>	<u>1,323.97</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>278.60</u>	<u>0.00</u>
NET INCREASE / (DECREASE)	103,606.10	282.02	0.00	302.00	38,804.65	13,003.97	9,632.00	(3,119.94)	0.00	2,491.00	1,999.00	37,711.40	2,500.00
CATEGORY 10 - SPECIAL CATEGORIES													
1996-97 TOTALS	0.00	0.00	0.00	0.00	0.00	701.02	5,045.78	(5,746.80)	0.00	0.00	0.00	0.00	0.00
1995-96 TOTALS	<u>59,937.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>11,011.51</u>	<u>0.00</u>	<u>48,925.49</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
NET INCREASE / (DECREASE)	(59,937.00)	0.00	0.00	0.00	0.00	701.02	5,045.78	(16,758.31)	0.00	(48,925.49)	0.00	0.00	0.00
CATEGORY 21 - DATA PROCESSING													
1996-97 TOTALS	73,163.92	0.00	1,126.50	0.00	16,435.40	2,310.11	34,439.47	5,200.00	0.00	12,525.94	1,126.50	0.00	0.00
1995-96 TOTALS	<u>4,506.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>2,253.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>1,126.50</u>	<u>0.00</u>	<u>0.00</u>	<u>1,126.50</u>	<u>0.00</u>
NET INCREASE / (DECREASE)	68,657.92	0.00	1,126.50	0.00	14,182.40	2,310.11	34,439.47	5,200.00	(1,126.50)	12,525.94	1,126.50	(1,126.50)	0.00
CATEGORY 31 - NON-OPERATING													
1996-97 TOTALS	34,858.21	0.00	0.00	1,856.75	(1,875.79)	16,231.38	2,024.17	(1,847.30)	0.00	0.00	0.00	0.00	18,469.00 *
1995-96 TOTALS	<u>23,387.64</u>	<u>0.00</u>	<u>1,875.79</u>	<u>0.00</u>	<u>0.00</u>	<u>6,891.60</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>12,763.50</u>	<u>0.00</u>	<u>0.00</u>	<u>1,856.75</u>
NET INCREASE / (DECREASE)	11,470.57	0.00	(1,875.79)	1,856.75	(1,875.79)	9,339.78	2,024.17	(1,847.30)	0.00	(12,763.50)	0.00	0.00	16,612.25
1996-97 TOTALS - ALL CATEGORIES	<u>4,582,104.41</u>	<u>254,451.06</u>	<u>269,913.26</u>	<u>319,282.34</u>	<u>375,579.99</u>	<u>390,696.91</u>	<u>420,595.38</u>	<u>427,807.24</u>	<u>370,744.97</u>	<u>160,799.12</u>	<u>371,436.97</u>	<u>784,404.17</u>	<u>436,393.00</u>
1995-96 TOTALS - ALL CATEGORIES	<u>3,294,905.19</u>	<u>227,892.06</u>	<u>257,842.81</u>	<u>261,014.15</u>	<u>255,372.50</u>	<u>290,645.56</u>	<u>265,624.06</u>	<u>272,047.58</u>	<u>253,677.87</u>	<u>290,762.23</u>	<u>286,036.36</u>	<u>283,960.99</u>	<u>350,029.02</u>
NET INCREASE / (DECREASE)	<u>1,287,199.22</u>	<u>26,559.00</u>	<u>12,070.45</u>	<u>58,268.19</u>	<u>120,207.49</u>	<u>100,051.35</u>	<u>154,971.32</u>	<u>155,759.66</u>	<u>117,067.10</u>	<u>(129,963.11)</u>	<u>85,400.61</u>	<u>500,443.18</u>	<u>86,363.98</u>
1996-97 CUMULATIVE TOTALS	<u>4,582,104.41</u>	<u>254,451.06</u>	<u>224,364.32</u>	<u>843,646.66</u>	<u>1,219,226.65</u>	<u>1,609,923.56</u>	<u>2,030,518.94</u>	<u>2,458,326.18</u>	<u>2,829,071.15</u>	<u>2,989,870.27</u>	<u>3,361,307.24</u>	<u>4,145,711.41</u>	<u>4,582,104.41</u>
1995-96 CUMULATIVE TOTALS	<u>3,294,905.19</u>	<u>227,892.06</u>	<u>485,734.87</u>	<u>746,749.02</u>	<u>1,002,121.52</u>	<u>1,292,767.08</u>	<u>1,558,391.14</u>	<u>1,830,438.72</u>	<u>2,084,116.59</u>	<u>2,374,878.82</u>	<u>2,660,915.18</u>	<u>2,944,876.17</u>	<u>3,294,905.19</u>
NET INCREASE / (DECREASE)	<u>\$1,287,199.22</u>	<u>\$26,559.00</u>	<u>\$38,629.45</u>	<u>\$96,897.64</u>	<u>\$217,105.13</u>	<u>\$317,156.48</u>	<u>\$472,127.80</u>	<u>\$627,887.46</u>	<u>\$744,954.56</u>	<u>\$614,991.45</u>	<u>\$700,392.06</u>	<u>\$1,200,835.24</u>	<u>\$1,287,199.22</u>

* - Estimated June 1997 expenditures.

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LAW OFFICE OF THE
CAPITAL COLLATERAL REPRESENTATIVE

State of Florida

Post Office Drawer 5498
Tallahassee, FL 32314-5498
(904) 488-7200
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Michael J. Minerva
Capital Collateral Representative

Martin J. McClain
Litigation Director

Stephen M. Kissinger
Chief Assistant CCR

July 17, 1997

Mr. Charles L. Lester
Auditor General
Office of the Auditor General
111 West Madison Street
Tallahassee, FL 32302-1735

Re: Response to Preliminary and Tentative Audit Findings

Dear Mr. Lester:

Enclosed please find the agency's response to the Preliminary and Tentative Audit Findings issued by your office June 17, 1997. We appreciate your assistance and the efforts of your staff. Ben Cox and Beth Griffin are to be commended for their diligent efforts and cooperative nature. We intend to implement the suggestions found within your preliminary audit report and ensure the accountability expected of this agency.

Thank you for your assistance.

Sincerely,

Gregory C. Smith
Capital Collateral Regional Counsel
Northern Division

/ehw
Enclosure

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EXHIBIT - E
(Continued)

**RESPONSE TO
PRELIMINARY AND TENTATIVE AUDIT FINDINGS**
(received June 17, 1997)

Audit
Report
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Financial Status -- 1996-97 Fiscal Year

(36-42)

The office has noted requirements for additional efforts respecting Legislative Budget Requests. A recent budget workshop held by JAC was attended by both the new CCRC for the Northern Region and the office manager for that entity. Improvements in the quality of LBR requests is a high priority and will be addressed accordingly.

Federal Criminal Justice Act Reimbursements

(43-53)

Re: Eligibility dates/nine stages of proceedings:

"The Office is eligible to file reimbursement requests at the end of each of the nine stages of postconviction proceedings, etc."

Not all cases actually move through the "nine stages" listed on the CJA30 form under the categories of Habeas Corpus and Other Proceedings. It is possible, but unlikely. For example, not every habeas corpus petition filed with the United States district courts of Florida result in an order granting an evidentiary hearing. Technically, a request for CJA reimbursement can be submitted at **any time** after an order is signed granting nunc pro tunc appointment of counsel pursuant to the Criminal Justice Act. While eligibility for reimbursement is present at all times subsequent to that date, it would be impractical and inefficient to compile and submit a request for reimbursement in a case until the number of hours spent on the case (which determines the amount of money requested) make it worthwhile to do so. It is easy to misinterpret the language found in the CJA30 form. The October 28, 1994, memo containing that language is an instructional memo from one federal district court in Florida merely attempting to explain the proper way to use the CJA30 form which replaced the old CJA20 form. It was not intended to dictate when or how often reimbursement should be requested.

Re: Checks issued in individual attorney's names: The Office of the Capital Collateral Representative has made a continuing effort to resolve this. (Copies of correspondence addressing this issue have been previously supplied to the auditors). Ultimately, the actions of the Administrative Office of the United States Courts in Washington, D.C., are beyond the control of this or any office requesting reimbursement under the Criminal Justice Act.

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(43-53) | Additional efforts have been expended to address the need to have accurate estimates of future reimbursements. Timesheets have been requested on a weekly basis to document attorney time eligible for reimbursement.

Case Management and Resources

(63-68) | We agree that there is the need to link information shown on the office litigation calendar into the financial management systems of the office. Plans have been drafted to create a tracking system which would capture expected litigation costs several months before an expected hearing or event. That information would allow the CCRC to project resource requirements in advance of projected litigation, and measure those costs against available resources.

| We have spoken with JAC about entering encumbrances on the SAMAS system. This procedure is now in place.

Personnel Resources

(69-73) | Consultation with the Executive Office of the Governor, Attorney General and the Florida Supreme Court and legislative staff has begun to establish a caseload/workload methodology applicable to the division of the central CCR office into three CCRCs. This process of applying staffing ratio to caseload will continue, and include the Commission on Administration of Justice in Capital Cases.

(74-81) | The office has begun the process of reviewing and revising office policy and practices for paying/accruing overtime. The office currently has established a procedure to ensure proper supervisory preapprovals of expected overtime. That process is currently linked to the availability of budgetary authority.

(82-84) | Expected revision to the attendance and leave forms should alleviate concerns respecting the proper documentation of staff workload.

Performance Evaluation s

(85-87) | We recognize that periodic written employee performance evaluations must be in place as a good management practice. Therefore we expect to ensure that evaluations are conducted in a timely and routine fashion.

| As indicated in our response to paragraph 73, we noted the importance to establish a caseload/workload methodology. In addition, as noted in response to paragraph 68 we expect to accumulate information on operating costs related to the conduct of collateral proceedings in individual cases.

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EXHIBIT - E
(Continued)

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Travel Expenditures

(91-95) Travel expenses would be tracked by intermediate and top level supervisors to ensure that expenses are within the planned level of annual disbursements for travel. In addition, the staff will be informed that timely completion of necessary forms is a prerequisite to authorized travel.

Case Related Professional Services

(96-100) As noted in response to paragraph 68, the office will implement a formal process to encumber expenses for planned litigation. That includes planned costs of professional services. Again, staff will be told that timely completion of requests for professional services is essential to manage the availability budgetary authority.

Case Documents/Records

(101-108) A planned level of annual expenses related to records production will be established. Records expenses will be related to individual cases to allow accurate tracking and accountability of costs. Additionally, a formal process will be implemented to encumber the costs of records productions expenses and track that expense against the available budgetary authority.

EXHIBIT - E
(Continued)

OFFICE OF THE
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LAWTON CHILES
GOVERNOR

STATE OF FLORIDA
Office of the Governor
THE CAPITOL
TALLAHASSEE, FLORIDA 32399-0001

July 2, 1997

Mr. Charles L. Lester, Auditor General
111 West Madison Street
Tallahassee, Florida 32302-1735

Dear Mr. Lester:

Enclosed is a copy of my staff's comments regarding the preliminary and tentative audit findings and recommendations of the :

Office of the Capital Collateral Representative for the period February 1, 1996, through January 31, 1997, and selected actions taken through May 31, 1997.

If you have any questions regarding these comments, please call T. F. Mannelli or John Hamilton at 922-4020.

Sincerely,

A handwritten signature in cursive script that reads "Robert B. Bradley".

Robert B. Bradley, Director
Office of Planning and Budgeting

RBB/jlh

Enclosures

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EXHIBIT - E
(Continued)

MEMORANDUM


Executive Office of the Governor
Office of Planning and Budgeting
Public Safety Policy Unit
Telephone (904) 922-4020


RECEIVED

JUN 25 1997

Office of Planning
& Budgeting
Office of Director

TO: Robert B. Bradley

Via: T. F. Mannelli 

FROM: John L. Hamilton, Chief Analyst 

SUBJECT: Comments on Capital Collateral Representative Audit

DATE: June 25, 1997

Below is a summary of the recommendations made by the Auditor General in his audit of the:

Office of the Capital Collateral Representative for the period February 1, 1996, through January 31, 1997, and Selected actions taken through May 31, 1997.

Change in Financial Status

Due to an error in the drafting of the budget amendment (EOG # B97-1152) providing funds from the Special Categories State Attorneys on Executive Assignment in General Revenue transferred was in excess of the available budget by \$8,038. A correction was posted to the ledger on 6/18/97 and a corrected copy sent to the Comptroller, to reduce the transfer by that amount. The corrected copy is attached. Due to this change, Table D on page 26 of the audit and the explanation of the budget amendment on page 24 are overstated by \$8,038 General Revenue for the Expense category.

In addition, the audit indicates that the Office of Planning and Budgeting recorded a budget amendment on July 1, 1996 placing \$500,000 from the Capital Collateral trust fund in reserve. This \$500,000 appropriation was made in Lump Sum which is automatically in reserve until a budget amendment is processed to distribute it into operating categories. No budget amendment was necessary to place the appropriation into reserve and no request was made to take the appropriation out of reserve as the federal funds were not available.

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(36-42)

Recommendation #1 - The Office of the CCR should make efforts to improve the quality and accuracy of the information presented in its LBR.

OPB concurs.

(43-53)

Recommendation #2 - The Office further improve its procedures so that reasonably accurate estimates of future reimbursements are available to office management and oversight entities responsible for planning and monitoring the funding of office operations. (Relating to requesting and monitoring federal reimbursements.) Further, the Office should continue working with the Administrative Office of the United States Courts to insure that reimbursement checks are made payable to the Office rather than to individual attorneys.

OPB concurs.

(57-60)

Recommendation #3 - In implementing the requirements of Chapter 97-313, Laws of Florida, and in resolving the budgetary deficiencies described in this report (p. 38), the Interim Capital Collateral Representative and the Interim/or Appointed Regional Counsels **should seek the assistance of the Executive Office of the Governor, Office of Planning and Budgeting**, and the Justice Administrative Commission which, pursuant to section 43.16, F.S., is the central state office responsible for providing administrative assistance to and on behalf of the State Attorneys, Public Defenders, and Office of the Capital Collateral Representative.

OPB concurs. Staff from the CCR, the Office of Planning and Budgeting and the Justice Administrative Commission met on June 24, 1997 to develop a strategy for implementing the requirements of Chapter 97-313, Laws of Florida and improving administration.

(63-68)

Recommendation #4 - We recommend that the Office consult with the JAC as to those steps necessary to immediately implement the SAMAS encumbrance system. Since the calendar identifies Office activities (i.e., appearances, filings of records reproduction requests, evidentiary hearings, motions and appeals, requests for writ of certiorari, etc.) Scheduled for each case, we recommend that the lead attorneys and fiscal staff work together to develop, for each of the above-described case-related costs, a system to link scheduled activities recorded in the calendar with expenditure estimates, for all significant case-related activities and operating costs, that can be concurrently recorded in the SAMAS encumbrance system.

OPB concurs.

CCR will be implementing a monthly management monitoring report relating to CCR's appropriation and expenditures for FY 1997-98. This report will show year-to-date expenditures by category, projected expenditures, both fixed and variable, through the remainder of the fiscal year, and compare the total expenditures, by category, to the appropriate/allocated amounts. The implementation of this recommendation would greatly enhance the accuracy of the projected expenditures on the monthly report.

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EXHIBIT - E
(Continued)

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(69-73)

Recommendation #5 - We recommend that the CCR, in consultation with the Commission on Administration of Justice in Capital Cases, The Executive Office of the Governor, the Attorney General, the Supreme Court and appropriate legislative committees, immediately establish a task force to develop a caseload/workload methodology and applicable staffing ratios for the Office. The methodology and staffing ratios should be timely completed so as to be available for consideration by the 1998 Legislature and by the **Executive Office of the Governor, Office of Planning and Budgeting**, in monitoring the expenditure of 1997-98 fiscal year appropriations.

OPB strongly concurs.

(74-81)

Recommendation #6 - Given the significant additional costs and/or future services foregone as a result of overtime hours, we recommend that the Office consult with DMS and take appropriate actions to ensure Office policy and practices for authorizing and paying/accruing overtime are consistent with the Fair Labor Standards Act. Also, the Office should review its recent procedure requiring employees to complete a form (Form CCR-23) and ensure that the required supervisory approvals are properly linked to the availability of approved budgetary authority.

OPB concurs.

(82-84)

Recommendation #7 - We recommend that the Office revise the attendance and leave forms and instructions to require that all staff level activities relating to capital proceedings before both State and Federal courts. In revising Office attendance and leave forms and instructions, management should review the categories used to describe the various activities relating to capital proceedings and ensure that such categories encompass all applicable activities before both State and Federal courts as well applicable activities relating to the implementation of FRCP Rule 3.852.

OPB concurs.

(85-87)

Recommendation #8 - We recommend that the Office, as a good management practice, ensure that periodic written employee performance evaluations are completed.

OPB concurs.

(88-90)

Recommendation #9 - We recommend that the CCR implement records systems to accumulate summary information on operating costs directly relating the conduct of collateral proceedings for individual cases. **The task force recommended to develop a caseload/workload methodology and applicable staffing ratios for the Office could assist in this effort.**

OPB concurs.

(91-95)

Recommendation #10 - We recommend that the Office develop a planned level of disbursements for travel and that the planned level of disbursements be communicated to applicable supervisors and fiscal staff for use in planning case activities and authorizing travel. We also recommend that the Office implement a formal process to encumber the costs of planned travel against available budget authority. The Office should emphasize to all staff that the timely

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(91-95) | completion of the authorization, reimbursement request, and preaudit processes is essential to management's monitoring of planned travel against available budget authority.

| OPB concurs.

(96-100) | **Recommendation #11** - To ensure that case-related professional services expenditures are authorized and paid within approved budget authority, we recommend that the Office establish a planned level of annual disbursements for such services and that the planned level of disbursements be communicated to applicable supervisors and fiscal staff for use in planning case activities or authorizing professional services. Also, we recommend that the Office implement formal processes to encumber the costs of planned professional services against available budgetary authority and to compare subsequent payments for professionals services with authorization amounts. The Office should emphasize to all staff that the timely completion of the authorization and preaudit processes, including the lead or supervising attorney's review and approval of the invoices, is essential to management's monitoring of planned professional services against available budgetary authority.

| OPB concurs.

(101-108) | **Recommendation #12** - To ensure that records production expenditures are authorized and paid within approved budget authority, we recommend that the Office establish a planned level of annual disbursements for such services and that the planned level of disbursements be communicated to Litigation teams and fiscal staff for use in planning case activities or authorizing requests for records production. The planned level of disbursements should be based on a thorough case-based analysis of records production needs and costs and should be timely completed so as to be available for consideration by the 1998 Legislature. Also, we recommend that the Office implement formal processes to encumber the costs of planned requests against available budgetary authority. The Office should emphasize to all staff that the timely completion of the authorization and preaudit processes is essential to management's monitoring of planned requests for records production services against available budgetary authority.

| OPB concurs.

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(Continued)

DEPARTMENT: Justice Administration Capital Collateral Representative Administered Funds		Fiscal Year: 96-97 Page 1 of Date: 5/13/97 Agency # SAI #: EOG #: B97-1152		Administration Commission Yes Legislative Consultation Chapter 216.212, F.S. Chapter 216.241, F.S. Date Sent: 5-14-97 13-May-97			
Budget Entity/Fund/Appropriation Title LAS/PBS Account Number	CF	REQUESTED			APPROVED		
		Appropriation	Reserve	Release	Appropriation	Reserve	Release
Justice Administration Justice Administrative Commission General Revenue Fund Special Categories State Attorneys on Executive Assignment 21300000-103542-00-1000					(67,823)		(67,823)
Capital Collateral Representative Other Personal Services 21400000-030000-00-1000					16,909		16,909
Expenses 21400000-040000-00-1000					138,888		138,888
Capital Collateral Representative Trust Fund Overtime 21400000-102331-00-2072					(100,000)		(100,000)
Expenses 21400000-040000-00-2072					201,077		201,077
Administered Funds General Revenue Fund Deficiency 49000000-100910-00-1000					(87,974)	(87,974)	
AGENCY HEAD SIGNATURE DATE: REVIEWING ANALYST: John Hamilton PHONE: 488-8269 OPB DIRECTOR APPROVAL: <i>Anderson C. Sartori</i>		EXPLANATION/PURPOSE: Transfers funds to enable the Capital Collateral Representative to complete its statutory duties through the end of the fiscal year. <i>See</i> 6/18/97 CORRECTED COPY					