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John Friend, Clerk of the District Court
Douglas County, Nebraska
300 Hall of Justice
1701 Farnam Street, 3rd Floor
Omaha, NE 68183

Dear Mr. Friend,

In response to inquiries from both the Supreme Court and your office regarding the Douglas County District Court's (Court) upcoming conversion from its current Criminal Justice Information System (CJIS) to the State of Nebraska's Judicial Users System to Improve Court Efficiency (JUSTICE) accounting and case management system, we have completed our evaluation. We evaluated the following regarding the Court's daily/monthly accounting and balancing procedures, including, but not limited to:

- Evaluated fee books.
- Evaluated the bank statements and related reconciliations.
- Evaluated trust accounting, including investments.
- Evaluated claiming of court costs.
- Evaluated Unclaimed Property remittance procedures.

Based on our evaluation, we offer the following recommendations:

1. We strongly recommend a new bank account be opened and used immediately upon "go-live" implementation for all JUSTICE financial activity, so as to separate clearly the JUSTICE activity from the Court's CJIS bank accounts and activity. While we understand the Court's JUSTICE conversion process will not occur all at once, but will be staged with various types of cases added to JUSTICE throughout the coming weeks and/or months, it will be essential that all new monies coming into the Court be properly receipted and disbursed through the JUSTICE system and the new bank account – not run through the CJIS system and its bank account. The continued existence of the CJIS system and related bank account should not be used as a work-around solution when processing transactions after the JUSTICE system has been implemented. Subsequent to the JUSTICE "go-live" date, as Court personnel become increasingly familiar with JUSTICE functionality, the Court should then begin to transfer into JUSTICE and its new bank account those cases and balances which were/are complete and accurately accounted for in the CJIS system and bank account. As a starting point, the court should consider evaluating and prioritizing the transfer of fiscally significant CJIS trust cases and balances in categories such as

restitution (055), court orders (056), liens (061), sheriff sale proceeds (062), investments (063), stipulations (064), referee sales (068), bonds (090), etc. When converting cases into JUSTICE, we recommend the Court be very cautious to ensure, particularly when converting cases with an "open" status, that costs are recorded in JUSTICE completely and accurately. In doing so, the Court should be mindful to record properly in JUSTICE any costs previously paid and receipted into the CJIS system.

2. **Accounts Receivable:** Neb. Rev. Stat. § 33-120 (Reissue 2008) authorizes the clerks of the district courts, among others, to "require the party for whom any service is to be rendered to pay the fees in advance of the rendition of such service[.]" In light of this statutory provision, it should be noted that JUSTICE does not have accounts receivable functionality. Rather, when a case is opened, JUSTICE automatically generates statutory filing fees, which must be collected by the Court at the time of filing in order to maintain the correct asset-liability balancing of the Court. If the Court utilizes an "off-line" accounts receivable, the Court's JUSTICE assets and liabilities will not balance. Therefore, it will be vital that all fees and/or charges are collected at the time transactions are entered into JUSTICE. This will be a change from the Court's current practice of allowing cases to be filed and receiving payment at a later date.
3. **Judgments:** Judgments and any orders which create judgments, regardless of case type, must be recorded in JUSTICE immediately upon being rendered by the Court. JUSTICE functionality is set to administer all aspects of judgment administration, such as recording of judgment information, issuing of judgment documents, and judgment financial accounting, including disbursement of funds and maintenance of judgment balances. When used properly, the JUSTICE Payment History (PAYHIST) screen displays, by date, a history of amounts due, paid, and delinquent, as well as a total amount due on specific judgments – thus, providing a comprehensive accounting of judgment financial activity. Occasionally, the Court will receive payments prior to receipt of the precedent judgments; however, this would be an exception to the normal process. In addition, during the JUSTICE conversion process, individuals may attempt to pay on judgments that have not converted into JUSTICE. In such instances, the Court can receipt those payments into a holding account. However, every effort should be made to record in JUSTICE as soon as possible the related judgments, including the correct, up-to-date balances, so payments can be adjusted to the judgments. When payments are placed into the holding account, active monitoring needs to occur to ensure subsequent adjustment; therefore, use of the holding account should be limited. Furthermore, the Court should not withhold disbursement of funds once a judgment has been rendered and entered into JUSTICE, but should apply payments received against rendered judgments and pay those funds out to the appropriate creditor(s). This will be a change from the Court's current practice of not tracking judgment activity sufficiently to determine readily case financial activity, including balances due.
4. **Foreclosures:** Foreclosure of tax liens are generally filed by the County Attorney, and foreclosure of tax sale certificates or tax deeds are generally filed by private entities. Neb. Rev. Stat. § 77-1904 (Reissue 2009) provides, "In all foreclosure proceedings, including in the complaint, it is sufficient to designate the township, range, section, or part of section and the number and description of any lot or block by initial letters, abbreviations, and figures." It should be noted, however, that this current statutory language is the result of LB 876 (2002). Prior to the adoption of that legislation, § 77-1904 read, "In all foreclosure proceedings, the plaintiff may include in one petition as many tax sale certificates, tax deeds or tax liens as the plaintiff may hold, regardless of whether they are upon the same or different tracts of real

estate and whether the land covered by them is owned by the same or different persons.” Under that earlier statutory language, it was clearly permissible to include as many liens as desired in one petition, regardless of whether on “the same or different tracts” or whether the land was “owned by the same or different persons.” As a result, before January 1, 2003, when the section of LB 876 that amended § 77-1904 became operative, the Court was correct to allow the joinder of liens in one action, notwithstanding that all the causes of action did not affect all of the parties defendant. Given the present statutory language, however, relevant case law appears to indicate that there should be only one case filing for each foreclosed parcel and/or property, unless multiple parcels, owned by one defendant, have been joined in the plaintiff’s filing.¹ This will be a change from the Court’s current practice of allowing multiple unassociated defendants to be included in one foreclosure petition.

5. **Cost Claiming:**

Neb. Rev. Stat. § 33-106.03 (Reissue 2008) requires the clerk of the court to collect an additional seventy-five dollars in docket fees for dissolution of marriage cases, which is to be remitted to the State Treasurer for credit of twenty-five dollars to the Nebraska Child Abuse Prevention Fund and fifty dollars to the Parenting Act Fund. Neb. Rev. Stat. § 25-2303 (Reissue 2008) requires that, in any civil or criminal case in which a party is permitted to proceed in forma pauperis, the expense of process by publication be paid by the county in the same manner as other claims are paid. Claims submitted to the County are to include all assessed costs payable to other entities. For example, in the case of an in forma pauperis dissolution of marriage, of the \$157 in court costs, the Court should claim \$107 to the County, with the remaining \$35 county docket fee and \$15 complete record fee automatically waived. Review of the Court’s November and December 2010 claims to Douglas County noted that, for in forma pauperis dissolution of marriage cases, the Court claimed \$57 to Douglas County, rather than \$107, with the \$50 Parenting Act Fund fee not being claimed. We recommend the Court correctly charge the County for all fees established by statute.

6. **Appearance Bond Reductions:** Neb. Rev. Stat. § 29-901(3)(a) (Cum. Supp. 2010) provides that, when an appearance bond is subsequently reduced by the court after the original bond has been posted, no additional appearance bond costs are to be retained by the court, and the difference in the costs between the original bond and the reduced bond are to be returned to the defendant. This will be a change from the Court’s current practice of not returning reduced bond costs to defendants.

7. **Protection Orders:** Neb. Rev. Stat. § 42-924.01 (Reissue 2010) states: "Fees to cover costs associated with the filing of a petition for a protection order or the issuance or service of a protection order seeking only the relief provided by the Protection from Domestic Abuse Act shall not be charged, except that a court may assess such fees and costs if the court finds, by clear and convincing evidence, that the statements contained in the petition were false and that the protection order was sought in bad faith." Any costs assessed by the court for filing a petition for a protection order in bad faith should be paid to the appropriate governmental entity, whether to the State of Nebraska and/or Douglas County, based on the relevant

¹ Though predating LB 876 by almost a century, the Nebraska Supreme Court's decision in *McNish v. Perrine*, 14 Neb. 582, 16 N.W. 837, 838 (1883) states: "A party seeking the foreclosure of a tax lien may join as many tracts of land belonging to one defendant upon which he holds a tax lien as he may see fit." (Emphasis added.)

statutory guidelines for the costs being assessed. This will be a change from the Court's current practice of remitting entirely to the County all fees related to petitions filed in bad-faith.

8. **Internal Controls:** A comprehensive system of internal controls should include the design, implementation, and maintenance of policies and procedures which serve to protect all of the public and private funds held by the Court. When segregating duties, the authority of individual employees to process and/or approve various transactions should be restricted to only those individuals with a functional need for certain access and should be limited to as few individuals as possible. The goal of segregating duties is to avoid placing a single individual in a position of being able both to commit and to conceal irregularities. JUSTICE has been designed to include a number of prevention and detection controls. Control elements in place at the Court, such as an overall segregation of duties, proper authorization processes, adequate document and records retention, proper recordkeeping procedures, and physical controls over assets, should serve to enhance the JUSTICE controls. During implementation, it may be tempting for Court personnel to "work-around" or circumvent control processes in order to transact day-to-day business of the Court in a timely manner; however, this should **not** be done. Internal controls are in place for a distinct reason – to prevent, detect, or otherwise deter the fraud, theft, or misuse of assets. We recommend the Court function, on a day-to-day basis, strictly within the confines of both its own established internal control structures and those of JUSTICE.
9. **Disposition of Trust Funds (including bonds, judgments, restitution, etc.):** Neb. Rev. Stat. § 33-106.02(1) (Reissue 2008) states, in part, "The clerk of the district court of each county shall not retain for his or her own use any fees, revenue, perquisites, or receipts, fixed, enumerated, or provided in this or any other section of the statutes of the State of Nebraska or any fees authorized by federal law to be collected or retained by a county official." Neb. Rev. Stat. § 25-2214.01 (Reissue 2008) charges the clerk of the district court with carefully managing monies and properties received by the court. Neb. Rev. Stat. §29-901 (Cum. Supp. 2010) requires the refund of bond deposits, less any applicable bond costs, to defendants upon the performance of their appearances. It appears the Court does not initiate the return of bonds when defendants have successfully completed their obligations within the Court system, but instead leaves pursuit of return largely up to the individual defendants. We **strongly** recommend the Court implement pro-active procedures to ensure **all trust balances, including bonds, judgments, restitution, etc.,** are reviewed on an on-going and timely basis to determine the completeness and accuracy of the balances and to direct appropriate disposition. Specifically regarding bail, it appears to be well established in State statute that bail money must be returned upon the performance of all required appearances. Therefore, the Court should have procedures in place to refund automatically such bond amounts to defendants and/or sureties when appropriate. The Court should **not** withhold disbursement of funds, including disbursement of payments received on rendered judgments and return of appearance or bail bonds when defendants have satisfied their obligations within the Court system. The Court should **not**, without review, indefinitely hold trust fund balances pending further disbursement orders and/or filings.
10. **Transfer Disbursements:** Occasionally, the Court will be presented with payments made out directly to third-parties for cases in which judgments have been rendered. For example, in the case of garnishments, the Court could be presented with checks made payable directly to judgment creditors. In such instances, JUSTICE has an established process for the issuance of a **non-monetary** receipt, which creates an accounting of the transaction – i.e., lowers the amount due on a recorded judgment. This would not require the funds to be deposited into the Court's

bank account. Once non-monetarily receipted, such third-party payments could then be mailed by the Court directly to the third-party/judgment creditor without any additional disbursement orders. We encourage the Court to utilize this system to account for third-party receipts.

11. **Unclaimed Property:** Neb. Rev. Stat. § 24-345 (Reissue 2008) requires that all money, other than witness fees, fines, penalties, forfeitures, and license money, that comes into the possession of the clerk of the district court and remains uncalled for by the party for a period of three years following the close of litigation in relation to the money be remitted to the State Treasurer on the first Tuesday in January, April, July, or October, respectively, following the expiration of the three-year period, with such funds to be deposited into the Unclaimed Property Cash Fund pursuant to Neb. Rev. Stat. § 69-1317 (Reissue 2009). Unclaimed property would consist not only of checks returned to the Court as “unable to deliver,” or “unable to locate,” etc., but also of outstanding checks never returned or cashed and inactive trust funds. The Court’s most recent remittance of unclaimed property to the State Treasurer on October 21, 2010, included 61 outstanding checks totaling \$10,317 and covered a one-year period ending December 31, 2006. JUSTICE provides an automated process for the review and disbursement of all unclaimed property held by the Court to the State Treasurer. The review of unclaimed property to be included in the Court’s remittance to the State Treasurer should include evaluation of all funds with a receipt date more than three years prior. This, combined with the expanded definition of unclaimed property discussed above, will be a change from the Court’s current practice of remitting to the State Treasurer, on a calendar year basis, only those checks which were not cashed and/or undeliverable.

12. **Trust Accountability:** As the Court is already aware, there are a number of issues related to the reconciliation and accountability of trust funds under the Court’s control, including:

a. As of October 31, 2010, the Court’s balancing records indicated a trust fund balance of \$7,938,280. Included in the trust fund balance total were seven negative trust account categories, totaling \$30,986.

i. Maintenance	\$25,020
ii. Child Care	\$265
iii. House Payment	\$3,914
iv. Refund	\$475
v. Interest Bearing Accts	\$1,039
vi. Supreme Court	\$200
vii. County Court	\$73

b. Court personnel indicated the \$7,938,280 trust fund balance was supported, to the extent known by the Court, through a combination of prior day and/or month receipt activity, as well as through month-end CJIS trust fund activity reports by distribution code and docket number (report acronym GDCPC125). The APA's comparison of the \$7,938,280 trust fund balance to these indicated sources determined a net variance of \$13,603, which could not be readily detailed or traceable to prior day and/or month activity.

c. Trust account categories, when detailed and supported by CJIS trust fund activity reports, were noted to include dockets with negative ending trust balances. For example, distribution code 055, Restitution, which totaled \$552,741 as of October 31, 2010, included six dockets with negative ending balances, totaling \$2,803, and distribution code 090, Bonds, which totaled \$3,045,131 as of October 31, 2010, included 22 dockets with negative ending balances, totaling \$8,426.

During the conversion to JUSTICE, we strongly recommend the Court move only complete and accurate trust balances into JUSTICE. The Court should not convert negative dockets. We also strongly recommend the Court work with the State Court Administrator to establish a documented plan to address administratively and financially discrepancies in trust accounts, including CJIS trust accounts with negative/deficit balances. Going forward, the Court must closely monitor the CJIS trust balances until all accounts have been resolved and/or converted over to JUSTICE, and any unresolved variances are addressed in agreement with the State Court Administrator.

Again, we do understand that the CJIS conversion to JUSTICE will not occur all at once, but will be staged with various types of cases added at varying times in the coming weeks and/or months. At a future date, once the Court has fully implemented JUSTICE, we will consider whether a further evaluation/audit is necessary to determine the effectiveness of the Court's efforts to resolve and move away from any continued use of CJIS. Throughout the Court's conversion process, we strongly encourage you to continue to work closely with the State Court Administrator to resolve issues as they arise. The longer problems are allowed to persist, the more time consuming and complex resolutions can become.

We hope this information is both informative and helpful as you undertake this system conversion. If you would like any clarification or interpretation of statutory guidance provided herein, we would direct you to the Nebraska Attorney General's Office for an official legal interpretation and/or opinion.

Sincerely,

Signed Original on File

Mike Foley, State Auditor

cc: Janice Walker, State Court Administrator