

NAPA COUNTY

Audit Report

RESTITUTION FINES AND COURT-ORDERED RESTITUTION

July 1, 2001, through June 30, 2002



STEVE WESTLY
California State Controller

February 2004



STEVE WESTLY
California State Controller

February 25, 2004

The Honorable Pamela A. Kindig
Auditor-Controller
County of Napa
1195 Third Street, Room B-10
Napa, CA 94559-3097

Mr. Stephen Bouch
Court Executive Officer
Napa County Courts
1111 Third Street
Napa, CA 94559

Dear Ms. Kindig and Mr. Bouch:

The State Controller's Office has completed an audit to determine the propriety of court restitution fines reported to the State of California and court-ordered restitution reported to the Victim Compensation and Government Claims Board (Board) by Napa County for the period of July 1, 2001, through June 30, 2002.

The audit disclosed that:

- The county did not distribute the 10% rebate revenues to county agencies responsible for restitution collection;
- The 10% administration fee levied on court-ordered restitution was included in the restitution claims reimbursed to the Board; and
- The court did not maintain a complete record of cash distributions in accordance with *Government Code* Section 68101.

If you have any questions, please contact Jerry McClain, Chief, Special Audits Bureau, at (916) 323-1573.

Sincerely,

VINCENT P. BROWN
Chief Operating Officer

VPB:jj/ams

cc: Catherine Close, Executive Director
Victim Compensation and
Government Claims Board
Laura Hill, Manager
Revenue Recovery Division
Victim Compensation and
Government Claims Board

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Audit Report

Summary

The State Controller's Office (SCO) performed an audit to determine the propriety of court restitution fines reported to the State of California and court-ordered restitution reported to the Victim Compensation and Government Claims Board (Board) by Napa County for the period of July 1, 2001, through June 30, 2002. The last day of fieldwork was May 28, 2003.

Napa County remittances to the State Treasurer for restitution fines and warrants paid to the Board for restitution court orders were correct. The points discussed in the Findings and Recommendations section may affect the amount of those remittances through enhanced collection efforts or additional fees collected.

In addition, the reimbursement of court-ordered restitution is hindered due to various reasons. For example, pursuing the reimbursement for claims that are remitted after the sentencing date may not be cost-effective due to the additional court costs involved, unless the courts and the county are willing to implement a coordinated process among the courts, the District Attorney's Office, and the Probation Department.

Background

State statutes govern the distribution of court revenues, which include restitution fines and court-ordered restitution. Whenever the State is entitled to a portion of such money, the court is required by *Government Code* Section 68101 to deposit the State's portion of court revenues with the county treasurer as soon as practical and to provide the county auditor with a monthly record of collections. This section further requires that the county auditor transmit the fund and a record of the money collected to the State Treasurer at least once a month.

Government Code Section 68103 requires that the State Controller determine whether or not all court collections remitted to the State Treasurer are complete. *Government Code* Section 68104 authorizes the State Controller to examine records maintained by any court. Furthermore, *Government Code* Section 12410 provides the SCO with general audit authority to ensure that state funds are properly safeguarded.

The Board was concerned with the accurate and effective administration of restitution fines and court-ordered restitution with respect to the victim compensation program. Consequently, on January 1, 2003, an interagency agreement was made between the SCO and the Board to conduct six field audits of county and court collection systems as they relate to restitution fines and court-ordered restitution.

Objective, Scope, and Methodology

In accordance with the terms of the agreement, the objective of this audit was to determine whether the county and the courts completely and accurately remitted restitution fines and Board court-ordered restitution in a timely manner to the State Treasurer for the period of July 1, 2001, through June 30, 2002.

Pursuant to the interagency agreement, the SCO conducted a field audit of the Napa County Superior Court and collections entities to assess whether:

- The courts have properly ordered restitution fines and orders in accordance with *Penal Code* Section 1202.4; and
- The policies and procedures established by the courts and the county collection entities ensure that financial assistance made by the Board in accordance with *Government Code* Sections 13959 through 13969 was properly collected and reimbursed to the Restitution Fund.

In order to meet the objectives, the auditors reviewed the revenue processing systems within the county's Superior Court, Probation Department, District Attorney's Office, and Auditor-Controller's Office.

The auditors performed the following procedures:

- Reviewed the accuracy of distribution reports prepared by the county, which show court revenue distributions to the State, the county, and cities located within the county;
- Gained an understanding of the county's revenue collection and reporting processes by interviewing key personnel and reviewing documents supporting the transaction flow (Appendix);
- Analyzed the restitution accounts reported in the county's monthly cash statement for unusual variations and omissions;
- Performed tests to identify any incorrect distributions and expanded any test that revealed errors, to determine the extent of any incorrect distributions; and
- Selected 50 cases from the Board's restitution schedule of accounts receivable to determine the timeliness and status of repayments (Schedule 1).

The audit was conducted in accordance with *Government Auditing Standards*, issued by the Comptroller General of the United States. The SCO did not audit the county's financial statements. The auditors considered the county's management controls only to the extent necessary to plan the audit. This report relates to an examination of court-ordered restitution and restitution fines remitted and payable to the State of California. Therefore, the SCO does not express an opinion as to whether the county's court revenues, taken as a whole, are free from material misstatement.

Conclusion

Napa County restitution fines in the amount of \$227,308 remitted to the State through the TC-31 process for fiscal year 2001-02 were determined to be correct. Napa County reported \$29,500 in direct reimbursement payments for court-ordered restitution to the Board during the fiscal year.

The Board remitted \$40,656 to the county under statutory rebate provisions during the fiscal year. These monies are intended to enhance the collection effort related to restitution fines and orders. The county deposited the rebate into the county's Miscellaneous Trust Fund for future undisclosed activities.

**Views of
Responsible
Officials**

The SCO issued a draft audit report on November 6, 2003. Pamela A. Kindig, Auditor-Controller, responded by letter dated December 15, 2003 (Attachment A), agreeing with the audit results. In addition, Stephen A. Bouch, Court Executive Office, responded by letter dated December 18, 2003 (Attachment B), agreeing with the audit results.

Restricted Use

This report is solely for the information and use of Napa County and the SCO; it is not intended to be and should not be used by anyone other than these specified parties. This restriction is not intended to limit distribution of this report, which is a matter of public record.

JEFFREY V. BROWNFIELD
Chief, Division of Audits

Schedule 1— Random Sample Results July 1, 2001, through June 30, 2002

A random sample of 50 cases was selected from the Victim Compensation and Government Claims Board's Schedule, VCP Paid Out vs. Restitution Ordered. These cases were analyzed in three ways: (1) destination of offender, (2) claim date, and (3) current collection effort. Each of these areas may have an impact on the accuracy and effectiveness of the court-ordered restitution collection process. From these cases the following percentages were derived:

A. Destination of Offender

State:

State Correctional Facility	46%
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Local:

Formal Probation	50%
Conditional Sentencing	4%
Juvenile	0%
Not Convicted	0%

B. Claim Dates

Before Sentencing	44%
After Sentencing	56%
No Record	0%

C. Current Collection Effort*

No Further Action to Be Taken	62%
Continuing Effort	8%
Collection Satisfied or in Process (State)	6%
Collection Satisfied or in Process (Local)	24%

* Information provided by county staff.

Findings and Recommendations

FINDING 1— 10% restitution rebate not applied to collection activity

The Napa County Auditor-Controller's Office did not distribute the state restitution rebate revenues to the Probation Department or other county agency responsible for the collection. The revenues have been placed in a miscellaneous departmental trust fund. The fund balance as of June 2002 is \$160,025. The error occurred because the county is still reviewing various options for allocating the rebate revenue. Failure to make the required distribution has not provided the intended collection enhancement meant for the rebate.

Government Code Section 13963(f) requires the State to pay a rebate to the county probation department or the county agency responsible for collection of funds owed to the Restitution Fund under Section 13967. In addition, the rebate shall be considered an incentive for collection efforts and shall be used for furthering these collection efforts. The rebates shall not be used to supplant county funding.

Recommendation

The Auditor-Controller's Office should take steps to allocate the rebate revenues to the Probation Department or other county agencies responsible for collection of funds owed to the Restitution Fund.

In addition, the county should institute procedures to ensure that the funds are used to supplement the funding of current collection efforts and are not used to supplant existing funding sources. If the county does not intend to use the funds for the purpose for which they were received, the county should contact the Board and discuss returning the funds.

Auditor-Controller's Response

During the fiscal year ended June 30, 2002, \$6,750 was transferred to the Probation Department to offset costs of enhancing collections. During the fiscal year ended June 30, 2003, \$8,013 was transferred to Central Services to offset costs of enhancing collections.

On July 1, 2002, the responsibility of the Trust was turned over in its entirety to the County Executive Office staff. CEO staff within the Napa County Executive Office is responsible for determining the County agency that should receive funds from the 10% Rebate Trust (Trust).

County Executive Office Response

The County Executive Office will take the necessary steps to insure that the allocation of the 10% rebate revenues is distributed to all County agencies responsible for collection of Court Ordered Restitution and state restitution fines. The General Fund supports these agencies and funds will be allocated proportionately.

**FINDING 2—
County 10%
administration fee
not distributed to
the county General
Fund**

The Probation Department levied a 10% administration fee on court-ordered restitution during fiscal year (FY) 2001-02. The fee was included in the restitution claims reimbursed to the Board. The fee should have remained with the county. The error occurred because county personnel were not aware of the distribution requirement of the 10% administrative fees.

Penal Code Section 1203.1(l) allows an administration fee of up to 10% of the total amount to be paid. The fees are to be deposited into the county General Fund for the use and benefit of the county.

Failure to make the required distribution has caused reimbursement claims to the Board to be overstated and the county General Fund to be understated. Measuring the fiscal effect did not appear to be cost-effective or material.

Recommendation

The Probation Department should take steps to allocate the 10% administration fee to the county General Fund.

While the amount of overremittance for one year did not appear to be material, the overremittance for all years in which the error occurred may be material. The county should consider the advisability of seeking a rebate from the Board for the overremittance for all fiscal years in which the error occurred.

Auditor-Controller's Response

The Auditor-Controller's Office was not informed by the Probation Department or any other County agencies that this calculation and transfer needed to occur before the monthly remittance to the Board occurred.

The Auditor-Controller's office will work with the Probation Department to determine the amount of the rebate that will be requested from the Board.

Probation Department's Response

As mentioned, the Probation Department will work with staff of the Auditor-Controller's office to determine the amount of the rebate requested from the Board.

**FINDING 3—
Court collection
detail not reported
at entry level**

The Napa County Court did not maintain a complete record of cash distributions in accordance with *Government Code* Section 68101. Daily cash collections are summarized by account; however, the distribution detail for each revenue account at the case level is not summarized. The cash receipt detail is incomplete. Daily deposit totals for restitution fines cannot be readily verified. This occurred because the accounting system was not updated to generate a detailed record of each cash distribution.

Government Code Section 71380 states, “The State Controller shall establish, supervise, and as necessary revise a uniform accounting system, including a system of audit, to the end that all fines, penalties, forfeitures, and fees assessed by courts, and their collection and appropriate disbursement, shall be properly and uniformly accounted for.” In addition, *Government Code* Section 68101 states that “any judge imposing or collecting such fines or forfeitures shall keep a record of them. . . .”

Failure to record the distribution at the cash receipt level prohibits the verification of such revenues at the source level. State restitution fines may have inappropriate distributions; however, due to this error, they cannot be readily identified.

Recommendation

The court should modify its accounting system to provide a complete detail record of revenue account distributions at the cash receipt level.

Court Executive Officer’s Response

[T]he court is developing an accounting report that will summarize each account distribution at the receipt level. It should be fully operational within the next 90 days.

Appendix— Transaction Flow For Court-Ordered Restitution July 1, 2001, through June 30, 2002

The following narrative describes the court-ordered restitution process for the various entities in Napa County involved in court-ordered restitution.

District Attorney's Office

Claims are first filed by the Victim Compensation and Government Claims Board (Board) with this office. It is this office's responsibility to file the claim with the court and have it placed in each offender's court file.

When the claim is filed **prior** to the sentencing date, the claim should be part of the court proceedings. Restitution claims, victim, and amounts should be documented with the Proceedings Sentence/Probation Order.

When the claim is filed **after** the sentencing date, claims are much more difficult to file against the offender. The offender may have to be brought back into court. If the offender has been sentenced to a state correctional facility, it is often not cost-effective to proceed with the claim. In Napa County, the District Attorney's court-ordered restitution representative is an attorney, which greatly enhances the assessment process.

Superior Court

Upon conviction, the court is responsible for disclosing fines and claims filed against the offender. Upon sentencing, the court prepares a court order (i.e., Sentence/Probation Order) and includes a restitution order (i.e., Judgment and Victim Restitution Order). Each court case has a court docket number assigned. A database docket file is maintained for each case.

If the offender is sent to a state correctional facility, the collection responsibility is under the State.

The collection responsibility is under the county and begins with the Probation Department. The Probation Department delegates the collection activity to the county's collection agency, the California Service Bureau (CSB).

Probation Department

Each offender is assigned a probation officer. A tracking file is kept on each offender. When the offender's file includes a victim compensation claim, the probation restitution specialist prepares a collection order card. This is sent to CSB. The collection agency provides a monthly report to the Probation Department for Board claim payments.

California Service Bureau

CSB is a private organization under contract with the county to provide collection services for the courts. The SCO did not examine the controls or collection efforts provided by CSB.

**Attachment A—
County Auditor-Controller’s Response to
Draft Audit Report**

COUNTY OF NAPA

PAMELA A. KINDIG
Auditor-Controller

December 15, 2003

Mr. Walter Barnes
Chief Deputy Controller, Finance
P.O. Box 942850
Sacramento, CA 94250-5874

Re: California State Controller Letter Dated November 6, 2003 pertaining to the Audit Report of the Restitution Fines and Court-Ordered Restitution for July 1, 2001 through June 30, 2002

Dear Mr. Barnes;

The responses from the Napa County as they pertain to the Audit Report of the Restitution Fines and Court-Ordered Restitution for July 1, 2001 through June 30, 2002 are as follows:

FINDING 1 – 10% restitution rebate not applied to collection activity.

Recommendation – The Auditor-Controller's Office should take steps to allocate the rebate revenues to the Probation Department or other county agencies responsible for collection of funds owed to the Restitution Fund.

In addition, the county should institute procedures to assure that the funds are used to supplement the funding of current collection efforts and are not used to supplant existing funding sources. If the county does not intend to use the funds for the purpose for which they were received, the county should contact the Board and discuss returning the funds.

Auditor-Controller's Response – During the fiscal year ended June 30, 2002, \$6,750 was transferred to the Probation Department to offset costs of enhancing collections. During the fiscal year ended June 30, 2003, \$8,013 was transferred to Central Services to offset costs of enhancing collections.

On July 1, 2002, the responsibility of the Trust was turned over in its entirety to the County Executive Office staff. CEO staff within the Napa County Executive Office is responsible for determining the County agency that should receive funds from the 10% Rebate Trust (Trust).

AUDITOR-CONTROLLER'S OFFICE
1195 Third Street • Suite B10 • Napa, CA 94559 • (707) 253-4551
www.co.napa.ca.us FAX (707) 226-9065

Napa County Response to November 6, 2003 letter

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County Executive Office Response – The County Executive Office will take the necessary steps to insure that the allocation of the 10% rebate revenues is distributed to all County agencies responsible for collection of Court Ordered Restitution and state restitution fines. The General Fund supports these agencies and funds will be allocated proportionately.

FINDING 2 – County 10% administration fee not distributed to the county General Fund.

Recommendation – The Probation Department should take steps to allocate the 10% administration fee to the county General Fund.

While the amount of over-remittance for one year did not appear to be material, the over-remittance for all years in which the error occurred may be material. The county should consider the advisability of seeking a rebate from the Board for the over-remittance for all fiscal years in which the error occurred.

Auditor-Controller's Response – The Auditor-Controller's Office was not informed by the Probation Department or any other County agencies that this calculation and transfer needed to occur before the monthly remittance to the Board occurred.

The Auditor-Controller's office will work with the Probation Department to determine the amount of the rebate that will be requested from the Board.

Probation Response – As mentioned, the Probation Department will work with staff of the Auditor-Controller's office to determine the amount of the rebate requested from the Board.

FINDING 3 – Court collection detail not reported at entry level.

Recommendation – The court should modify its accounting system to provide a complete detail record of revenue account distributions at the cash receipt level.

Auditor-Controller's Response – No response required.

Napa County Court's Response – Will be provided under a separate letter.

Respectfully Submitted,

Pamela A. Kindig
Napa County Auditor-Controller

William S. Chiat
Napa County Executive Officer

Mary Butler

Napa County Response to November 6, 2003 letter

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Chief Probation Officer

**Attachment B—
Court’s Response to
Draft Audit Report**

12-16-2003 11:08am

From=NAPA SUPERIOR COURT ADMINISTRATION

707-299-1250

T-726 P.002/002 F-466



Superior Court of California County of Napa

December 18, 2003

Executive Officer
Stephen A. Bouch

Asst. Executive Officers
Richard D. Felstein
Georgene Larsen

Human Resources Manager
Beverly Lane

General Counsel
Joanna Mittman

Telephone
(707) 299-1100

Historic Courthouse
825 Brown Street
Napa, CA 94559-3031
FAX
(707) 299-1250

Criminal Courts Building
1111 Third Street
Napa, CA 94559-3001
FAX
(707) 253-4673

Mr. Walter Barnes
Chief Deputy Controller
State Controller's Office
300 Capitol Mall, Suite 518
Sacramento, CA 95814

Dear Mr. Barnes:

The purpose of this letter is to respond to the findings of the State Controller's Office audit of Napa County collections procedure with regard to restitution fines and court order restitution reported to Victim Compensation and Government Claims Board of California for the period of July 1, 2001 to June 30, 2002.

The auditors have documented three findings resulting from the Audit. The first two dealt with Napa County's Auditor/Controller's handling of the 10% rebate revenues for restitution fines and 10% administration fees levied on court ordered restitution, and it is our understanding that our Auditor/Controller is responding to these findings. However, the third finding recommended that the Superior Court modify its accounting system to better record revenue account distribution at the cash receipt level. In response, the court is developing an accounting report that will summarize each account distribution at the receipt level. It should be fully operational within the next 90 days.

I believe that that this measure will satisfactorily address the audit findings. Should you need further information, please do not hesitate to contact me at your earliest convenience.

Sincerely,

Stephen A. Bouch
Court Executive Officer

SAB:ea

**State Controller's Office
Division of Audits
Post Office Box 942850
Sacramento, California 94250-5874**

<http://www.sco.ca.gov>