



Commonwealth of Massachusetts
Office of the State Auditor
Suzanne M. Bump

Making government work better

Official Audit Report – Issued July 2, 2015

Berkshire Division of the Superior Court Department

For the period July 1, 2012 through March 31, 2014





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Making government work better

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Deborah S. Capeless, Clerk of Courts
Berkshire Division of the Superior Court Department
76 East Street
Pittsfield, MA 01201

Clifford J. Nilan, Chief Probation Officer
Berkshire Division of the Superior Court Department
76 East Street
Pittsfield, MA 01201

Dear Clerk of Courts Capeless and Chief Probation Officer Nilan:

I am pleased to provide this performance audit of the Berkshire Division of the Superior Court Department. This report details the audit objectives, scope, methodology, findings, and recommendations for the audit period, July 1, 2012 through March 31, 2014. My audit staff discussed the contents of this report with management of the agency, whose comments are reflected in this report.

I would also like to express my appreciation to the Berkshire Division of the Superior Court Department for the cooperation and assistance provided to my staff during the audit.

Sincerely,

A handwritten signature in blue ink, appearing to read "SMB", written over a light blue circular watermark.

Suzanne M. Bump
Auditor of the Commonwealth

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LIST OF ABBREVIATIONS

BSC	Berkshire Division of the Superior Court Department
CJAM	Chief Justice for Administration and Management
CJTC	Chief Justice of the Trial Court
OCM	Office of Court Management
Clerk's Office	Clerk of Courts' Office
OCP	Office of the Commissioner of Probation
OSC	Office of the State Comptroller
OST	Office of the State Treasurer
SCD	Superior Court Department

EXECUTIVE SUMMARY

The Berkshire Division of the Superior Court Department (BSC) presides over civil, criminal, and other matters falling within its territorial jurisdiction of Berkshire County. It is responsible for scheduling, holding, and recording proceedings in civil and criminal matters and for the care and custody of all the records, books, and papers that pertain to, or are filed or deposited in, the Clerk of Courts' Office (the Clerk's Office).

This audit was undertaken to review certain aspects of BSC's operations and determine whether BSC had established adequate internal controls and was complying with applicable laws, regulations, policies, procedures, and other guidance in the areas reviewed.

Below is a summary of our findings and recommendations, with links to each page listed.

Finding 1 Page 8	The Clerk's Office does not consistently verify that legal counsel fees have been paid before bail is returned to the surety. As a result, the Commonwealth may not be receiving all the money to which it is entitled.
Recommendation Page 8	Upon a surety's request for the return of bail, the Clerk's Office should review the case file and its accounting records to ensure that the defendant has paid the legal counsel fee before releasing the outstanding bail to the surety.
Finding 2 Page 8	BSC does not maintain a complete inventory of its assets or perform an annual physical inventory verification. As a result, Commonwealth assets whose historical cost we estimate at \$180,382 may be at risk of loss, misuse, or misappropriation, and inventory may not be properly reported.
Recommendations Page 10	<ol style="list-style-type: none">1. BSC should make sure that it documents historical costs on the inventory list, reconciles the list annually, and provides a record of this reconciliation to the Trial Court once it is completed.2. If the guidance provided in the memoranda on this matter is unclear, BSC should request training from the Trial Court.

OVERVIEW OF AUDITED ENTITY

The Massachusetts Trial Court was created by Chapter 478 of the Acts of 1978, which reorganized the courts into seven Trial Court departments: the Boston Municipal Court, the District Court, the Housing Court, the Juvenile Court, the Probate and Family Court, the Superior Court, and the Land Court. The statute also created a centralized administrative office managed by a Chief Justice for Administration and Management (CJAM), who was also responsible for the overall management of the Trial Court. The CJAM charged the central office, known as the Administrative Office of the Trial Court, with developing a wide range of centralized functions and standards for the benefit of the entire Trial Court, including budget; central accounting and procurement systems; personnel policies, procedures, and standards for judges and staff; and the management of court facilities, security, libraries, and case-management automation. Legislative changes that took effect July 1, 2012 eliminated the CJAM position and created two new Trial Court leadership positions: the Chief Justice of the Trial Court (CJTC) and the Court Administrator. The CJTC is considered the judicial head of the Trial Court and is responsible for all matters of judicial policy. The Court Administrator is the administrative head of the Trial Court, operating from the Office of Court Management (OCM) and working with the CJTC, with the overall responsibility for budget preparation and oversight, labor relations, information technology, capital projects, and personnel policy (thereby performing the many administrative functions of the former CJAM position).

Chapter 211B of the Massachusetts General Laws established the Superior Court Department (SCD), which has original jurisdiction in civil actions valued at over \$25,000 or where equitable relief is sought. It also has original jurisdiction in actions involving labor disputes where injunctive relief is sought, and it has exclusive authority to convene medical malpractice tribunals. According to its website, the SCD has exclusive original jurisdiction in first-degree murder cases, all felony matters, and other crimes, although it shares jurisdiction over crimes where other Trial Court departments have concurrent jurisdiction. It also has appellate jurisdiction over certain administrative proceedings. The SCD has established 14 divisions, each with a specific territorial jurisdiction, to preside over matters that are brought before the court. Each division's organizational structure consists of two main offices: the Clerk of Courts' Office (the Clerk's Office), headed by a Clerk of Courts who is an elected official, and the Probation Office, headed by a Chief Probation Officer. The Clerk of Courts and the Chief Probation Officer have responsibility for the internal administration of their respective offices.

The Berkshire Division of the Superior Court Department (BSC) presides over civil and criminal matters falling within its territorial jurisdiction of Berkshire County. BSC is responsible for scheduling, holding, and recording proceedings in civil and criminal matters and for the care and custody of all the records, books, and papers that pertain to, or are filed or deposited in, the Clerk's Office.

During the audit period, July 1, 2012 through March 31, 2014, BSC collected revenue totaling \$314,828,¹ which it disbursed as either general or specific state revenue as shown in the following table:

Revenue Type	July 1, 2012 through March 31, 2014
General Revenue	\$ 199,945
Probation and Administrative Supervision Fees	90,333
Victim/Witness Fund	5,255
Surcharges	9,435
Reimbursement for Indigent Counsel	7,410
Drug Analysis Fund	2,180
Head Injury*	65
Other	205
Total	<u>\$ 314,828</u>

* A \$250 mandatory assessment upon a conviction, a continuation without a finding, probation, admission to sufficient facts, or a guilty plea for operating a motor vehicle under the influence, operating negligently, or operating a boat under the influence. A portion (the amount varies depending on the charge) of the \$250 mandatory assessment is deposited by the Office of the State Treasurer (OST) in the Head Injury Treatment Services Trust Fund, and the remaining amount of the assessment is credited to the Commonwealth's General Fund. OST is the custodian of the trust fund, for which the funds collected are to be used to develop and maintain residential and nonresidential rehabilitation services for head-injured persons as the Commissioner of Rehabilitation directs.

In addition to the funds collected and transferred to the Commonwealth, BSC was the custodian of 58 cash bails, totaling \$287,225, as of March 31, 2014.² BSC had custody of one civil escrow account, totaling \$74, as of March 31, 2014. (Civil escrow accounts are considered assets held in trust by the court pending case disposition.)

1. Some revenue, like probation supervision fees, is collected and transmitted by the Probation Office; however, BSC is given copies of these transmittals so it can reconcile revenue transmitted by court divisions to the Commonwealth's records.
2. Bail is the security given to the court by defendants or their sureties to obtain release to ensure appearance in court, at a future date, on criminal matters. Bail is subsequently returned, upon court order, if defendants adhere to the terms of their release.

BSC operations are funded by appropriations under OCM control from which BSC receives periodic allotments. According to the Commonwealth's records, expenditures³ associated with the operation of BSC were \$837,778 for the period July 1, 2012 through March 31, 2014.

3. This amount does not include certain expenditures, such as facility lease and related operational expenses; personnel costs attributable to court officers, security officers, and any probation staff; and related administrative expenses of the Probation Office, because they are not identified by court division in the Commonwealth's accounting system.

AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Chapter 11, Section 12, of the Massachusetts General Laws, the Office of the State Auditor has conducted a performance audit of certain activities of the Berkshire Division of the Superior Court Department (BSC) for the period July 1, 2012 through March 31, 2014.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Below is a list of our audit objectives, indicating each question we intended our audit to answer; the conclusion we reached regarding each objective; and, if applicable, where each objective is discussed in the audit findings.

Objective	Conclusion
1. Was cash that BSC received properly reported to the Trial Court and transmitted to the Office of the State Treasurer (OST)?	Yes
2. Did BSC have adequate controls in place to safeguard evidence?	Yes
3. Did BSC assess or waive monthly probation supervision fees in accordance with Chapter 276, Section 87A, of the General Laws?	Yes
4. Did BSC monitor the payment of monthly probation supervision fees and follow the Office of the Commissioner of Probation's (OCP's) instructions when payments were overdue?	Yes
5. Did BSC properly disburse bail funds?	No; see Finding <u>1</u>
6. Did BSC have adequate controls in place to safeguard Commonwealth furniture and equipment?	No; see Finding <u>2</u>
7. Did BSC remit unclaimed funds to OST in accordance with Chapter 200A of the General Laws?	Yes

To achieve our objectives, we gained an understanding of the internal controls we deemed significant to our audit objectives and evaluated the design and effectiveness of those controls. In addition, we performed the following procedures:

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- We interviewed BSC managers and other staff members and reviewed relevant documents, statutes, and regulations as well as BSC's policies, procedures, and accounting records.
 - We reviewed our prior audit report (No. 2006-1115-30) as well as internal audits conducted by the Trial Court to determine whether any weaknesses in internal controls had been identified that pertained to our current audit objectives.
 - We obtained and analyzed case data from selected court case docket records and traced and compared them to Forecourt, BSC's case-management system, for consistency and completeness. We interviewed agency officials who were knowledgeable about Forecourt data-input activities. Since the court case docket record is the source document used to update Forecourt and the principal document that identifies all court activity about a civil or criminal case (including the assessment and collection of various fees and fines, civil judgments, and criminal case adjudication), we did not rely on Forecourt for the purposes of our audit. We believe the information we obtained from case docket records was sufficient for the purposes of our analysis and findings. In most instances, we did not rely on computer-processed data for our audit objectives. We relied on hardcopy source documents, interviews, and other non-computer-processed data as supporting documentation on which we based our conclusions.
 - We obtained and analyzed information regarding probationers from the probationers' hardcopy files and traced and compared them to Forecourt for consistency and completeness. Since the probationer's file is the source document that identifies all the probationer's activity (including documentation of assessment, waiving, and collection of monthly probation supervision fees and monitoring of monthly probation supervision fees and/or performance of community service), we did not rely on computer-processed data. We believe the information we obtained from the probationers' files was sufficient for the purposes of our analysis and findings.
 - We obtained and reviewed BSC's most recent furniture and equipment inventory list and spoke to BSC inventory liaisons to determine whether BSC inventory records and procedures followed Trial Court memoranda.
 - We selected transactions primarily by using random, non-statistical sampling, in order to eliminate bias by giving all items in the population an equal chance of being chosen, for our examination of cash received, bail funds disbursed, evidence, probation supervision fees, and remittance of unclaimed funds. Therefore, we did not project the results of our samples to the population. More specifically,
 - For cash received, out of the 21 months in our audit period, we randomly selected 5 months in the Clerk of Courts' Office (the Clerk's Office) and 5 months in the Probation Office to test whether cash received was properly reported to the Trial Court and transmitted to OST.
 - For safeguarding of evidence, we reviewed all 28 exhibits held by the court during our audit period to determine whether adequate controls were in place.
 - For probation supervision fees, we randomly sampled 25 criminal cases from the 291 cases in which an individual had been placed on probation and ordered to pay a monthly probation supervision fee or perform community service during the audit period. We used this sample to test whether the court was assessing, waiving, collecting, and monitoring probation supervision

fees and/or community service as required by Chapter 276, Section 87A, of the General Laws and an OCP December 2009 directive.

- For remittance of unclaimed funds, we examined all 74 bail, escrow, and restitution funds that might have been eligible for remittance to OST as of March 31, 2014. Of the six bail funds that were more than three years old, all were examined and none were eligible for remittance. There were no civil escrow or restitution accounts noted as eligible for remittance.
- For bail funds disbursed, we randomly selected 10 of the 94 bail funds disbursed during the audit period to determine whether the court was properly disbursing bail.

The financial data we obtained from the Massachusetts Management Accounting and Reporting System about BSC's activities during our audit period were not used in our audit testing; the data were used solely for the purpose of presenting background information in our report. Consequently, we did not assess the reliability of these data.

At the end of our audit, we gave a draft copy of this report to BSC for its review and comments. BSC's Probation Department responded with written comments, which are included in this report. The Clerk's Office did not submit any separate written comments.

DETAILED AUDIT FINDINGS WITH AUDITEE'S RESPONSE

1. The Clerk of Courts' Office does not comply with statutory requirements regarding the return of bail.

The Clerk of Courts' Office (the Clerk's Office) at the Berkshire Division of the Superior Court Department (BSC) does not consistently verify that legal counsel fees have been paid before bail is returned to the surety. As a result, the Commonwealth may not be receiving all the money to which it is entitled.

From our test of 10 bail funds disbursed, we determined that 8 bails were associated with cases where the defendant was provided with a court-appointed lawyer and was assessed a \$150 legal counsel fee. We examined these 8 cases to determine whether the fees were paid before the bail was released. For 3 (38%) of the 8 cases for which bail was posted and a legal fee assessed, the Clerk's Office returned bail to the surety before the legal counsel fee was paid, contrary to statutory requirements.

Authoritative Guidance

Chapter 211D, Section 2A(g), of the Massachusetts General Laws (Appendix) requires the Clerk of Courts not to release any bail posted on court proceedings until the legal counsel fee is paid.

Reason for Return of Bail before Fee Payment

The Clerk of Courts said that it was most likely an oversight by her office that allowed bail to be returned to the sureties before the legal counsel fees were paid.

Recommendation

Upon a surety's request for the return of bail, the Clerk's Office should review the case file and its accounting records to ensure that the defendant has paid the legal counsel fee before releasing the outstanding bail to the surety.

2. BSC does not adequately safeguard furniture and equipment in the Clerk's Office and Probation Office.

BSC does not maintain a complete inventory of furniture and equipment in its care and control or perform an annual physical verification of items required to be inventoried. As a result, Commonwealth assets with a historical cost that we estimated at \$180,382 may be at risk of loss, misuse, or misappropriation, and inventory may not be properly reported.

We obtained the most recent inventory lists (spreadsheets) available in the Clerk's Office and Probation Office to determine their completeness. No cost was listed for 207 (58%) of 360 items on the spreadsheets. Additionally, neither office reconciled its spreadsheet by annually performing a physical inventory during the audit period.

Authoritative Guidance

The Office of the State Comptroller (OSC), in its Internal Control Guide, requires state agencies, including courts, to institute controls to protect their assets that could be wrongfully used, damaged, or stolen. OSC also requires that items be recorded in a department's inventory perpetual record, reconciled with the physical inventory at least annually, and included on the inventory record with the following identifiers at a minimum: date of purchase, cost, description, location, and disposal of an inventory item.

In Fiscal Year 2004 Memo #16, the former Chief Justice for Administration and Management delegated the responsibility for maintaining inventory to the manager of each court division because these assets are in the divisions' care and control.

This memo also included furniture and equipment inventory procedures and was supplemented with Fiscal Year 2009 Memo #8, which required court divisions to inventory and tag all fixed assets with a value over \$100, account for inventory items disposed of by completing and approving equipment disposal forms, and perform an annual physical inventory and report its results to the Trial Court.

Reasons for Inadequate Implementation of Inventory Process

The inventory liaisons (the Clerk's Office and Probation Office employees assigned the duty of maintaining the inventory) were not aware of the requirement of physically verifying the existence of inventory items at the end of every fiscal year and submitting the results to the Trial Court. In addition, although the Trial Court provides a list of inventory-item costs to probation offices, the list does not include the values for most electronic equipment, like computers and electronic recording equipment. Therefore, the inventory liaisons were unable to enter costs for these items on the lists.

Our review of Trial Court inventory control procedures also revealed that computer equipment and court recording equipment need not be tagged by each court. Instead, the Trial Court's information-technology department tags and monitors these items.

Recommendations

1. BSC should make sure that it documents historical costs on the inventory list, reconciles the list annually, and provides a record of this reconciliation to the Trial Court once it is completed.
2. If the guidance provided in the memoranda on this matter is unclear, BSC should request training from the Trial Court.

Auditee's Response

BSC's Chief Probation Officer provided the following response:

1. *Berkshire Superior Court Probation Department will comply with the audit recommendations and are in the process of updating the inventory list. Inventory will now be done on an annual basis.*
2. *We will also request training from the Trial Court.*

APPENDIX

Chapter 211D, Section 2A(g), of the Massachusetts General Laws: Verification of Claim of Indigency; Waiver by Claimant Allowing Access to Information; Reassessments Following Appointment of Counsel; Reporting

The court may authorize a person for whom counsel was appointed to perform community service in lieu of payment of the counsel fee. A person seeking to work off a counsel fee in community service shall perform 10 hours of community service, in a community service program administered by the administrative office of the trial court, for each \$100 owed in legal counsel fees, which may be prorated. Notwithstanding any general or special law to the contrary, a court proceeding shall not be terminated and the person shall not be discharged if the person owes any portion of the legal counsel fee imposed by this section. The clerk shall not release any bail posted on such court proceeding until the legal counsel fee is satisfied in accordance with this chapter.