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**INDEPENDENT STATE AUDITOR'S REPORT ON
CERTAIN ACTIVITIES OF THE
ESSEX DIVISION OF THE PROBATE AND
FAMILY COURT DEPARTMENT
JULY 1, 2007 TO DECEMBER 31, 2008**

**OFFICIAL AUDIT
REPORT
JUNE 23, 2009**

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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. Chapter 217 of the Massachusetts General Laws authorized the Probate and Family Court Department (PFCD), which established 14 Divisions, each having a specific territorial jurisdiction to preside over probate and family matters brought before it. Each Division's organizational structure consists of three main areas: the Judge's Lobby, headed by a First Justice; the Register's Office, headed by a Register of Probate, who is an elected official; and the Probation Office, headed by a Chief Probation Officer. The First Justice is the administrative head of the Division, whereas the Register of Probate and the Chief Probation Officer have responsibility for the internal administration of their respective offices.

The Essex Division of the Probate and Family Court Department (EPFC) presides over probate and family matters falling within its territorial jurisdiction of Essex County. During the audit period, EPFC collected revenues of \$2,399,461 and disbursed them to the Commonwealth as either general or specific state revenue. In addition to the funds collected and transferred to the Commonwealth, EPFC was in control of 54 custodial bank accounts valued at \$631,588 as of December 31, 2008.

EPFC operations were funded by appropriations under the control of either EPFC (local) or the Administrative Office of the Trial Court (AOTC) or Commissioner of Probation Office (central). According to the Commonwealth's records, expenditures associated with the operation of EPFC for the 18-month audit period totaled \$3,401,185.

The purpose of our audit was to review EPFC's internal controls and compliance with applicable laws and regulations regarding administrative and operational activities, including cash management and revenue. Our review focused on activities of EPFC's Register's Office for the period July 1, 2007 to December 31, 2008.

AUDIT RESULTS

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1. IMPROVEMENTS NEEDED IN BANK RECONCILIATION PROCEDURES

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We found that EPFC's Register's Office did not complete its monthly bank reconciliations in accordance with the AOTC Fiscal Systems Manual. During the first 13 months of the 18-month audit period July 1, 2007 through December 31, 2008, the Register's Office prepared the monthly bank reconciliations timely, accurately, and in compliance with the AOTC Fiscal Systems Manual. However, since August 2008, when EPFC converted to the MassCourt Financial System, the Register's Office has not prepared the required monthly bank reconciliations. Moreover, the Register's Office accounting staff were not familiar with the new MassCourt System's accounting reports, reconciliation format, and method of dealing with adjustments. It was not until April 17, 2009 that an accountant from AOTC completed the reconciliations for the period

August through December 2008. The lack of timely reconciliations compromises EPFC's ability to properly control cash.

2. IMPROVEMENTS NEEDED OVER THE REVENUE RECONCILIATION PROCESS 6

Our audit found that the Register's Office accounted for and transmitted revenues to the Commonwealth in accordance with established procedures. However, we found that Register's Office personnel did not reconcile revenues transmitted to the Commonwealth for the 18-month period ended December 31, 2008 as required by AOTC. With the Commonwealth's implementation of an upgraded automated accounting system, EPFC was no longer able to reconcile its revenue transmittals with the Commonwealth's Massachusetts Management Accounting and Reporting System. As a result of these issues, there is inadequate assurance that revenues were properly received and credited to the appropriate general or specific state revenue account.

3. IMPROVEMENTS NEEDED IN PROCUREMENT AND MANAGEMENT OF PHOTOCOPY VENDING MACHINE SERVICES 7

Our audit found that both AOTC and EPFC needed to improve their procurement and management of photocopying services. Our audit found that the current arrangement with the photocopy machine vendor, which the Register of Probate indicated was in place when she took office in 1997, is recorded on a one-page, undated memorandum that is not signed by the vendor or an authorized Commonwealth official. Under the arrangement, the vendor provides the court with four coin-operated machines, charges the public \$.25 per copy, and retains all revenue. In return, EPFC receives the unlimited use of five other photocopiers without charge. EPFC needs to perform a cost/benefit analysis to determine whether the current arrangement provides better value than receiving commissions from the vendor and paying for its photocopying needs.

INTRODUCTION

Background

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 central administrative office managed by a Chief Administrative Justice (CAJ), who is responsible for the overall management of the Trial Court. The CAJ charged the central office, known as the Administrative Office of the Trial Court (AOTC), with developing a wide range of centralized functions and standards for the benefit of the entire Trial Court, including a budget for the Trial Court; central accounting and procurement systems; personnel policies, procedures, and standards for judges and staff; and the management of court facilities, security, libraries, and automation.

Chapter 217 of the Massachusetts General Laws authorized the Probate and Family Court Department (PFCD), which has jurisdiction over family matters such as divorce, paternity, child support, custody, visitation, adoptions, termination of parental rights, and abuse prevention. Along with general equity jurisdiction, the PFCD's jurisdiction extends over all probate matters, including wills, administrations, guardianships, conservations, and name changes. The PFCD established 14 Divisions, each having a specific territorial jurisdiction, to preside over probate and family matters brought before it. Each Division's organizational structure consists of three main areas: the Judge's Lobby, headed by a First Justice; the Register's Office, headed by a Register of Probate, who is an elected official; and the Probation Office, headed by a Chief Probation Officer. The First Justice is the administrative head of the division, whereas the Register of Probate and the Chief Probation Officer have responsibility for the internal administration of their respective offices.

The Essex Division of the Probation and Family Court Department (EPFC) presides over probate and family matters falling within its territorial jurisdiction of Essex County. During the audit period, EPFC collected revenues of \$2,399,461 and disbursed them to the Commonwealth as either general or specific revenue. The following table shows the breakdown of the revenues collected and transferred to the Commonwealth:

	July 1, 2007 to August 15, 2008
General State Revenue:	
Probate	\$1,034,493
Divorce	495,725
Certificates	149,877
Copies	36,421
Tapes	11,875
Summons	9,560
Modifications	4,950
Miscellaneous	4,300
Separate Support	<u>2,755</u>
	\$1,749,956
Designated State Revenue:	
Surcharge	<u>89,615</u>
Revenue (July 1, 2007 to August 15, 2008)	\$1,839,571

	August 16, 2008 to December 31, 2008
General State Revenue	\$ 534,615 ¹
Designated State Revenue:	
Surcharge	<u>25,275</u>
Revenue (August 16, 2008 through December 31, 2008)	<u>\$ 559,890</u>
Total Revenue (July 1, 2007 to December 31, 2008)	<u>\$2,399,461</u>

In addition to the funds collected and transferred to the Commonwealth, EPFC was in control of 54 custodial bank accounts valued at \$631,588 as of December 31, 2008. These accounts, established pursuant to the provisions of Chapter 206 of the General Laws, are considered assets held in trust by the court and kept in custody of the Register's Office. These accounts usually result from the settlement of probate proceedings at the request of a fiduciary who cannot distribute the funds to the beneficiary because they are either a minor or an heir that cannot be located at the time of settlement.

EPFC operations were funded by appropriations under the control of either EPFC (local) or the Administrative Office of the Trial Court (AOTC) or Commissioner of Probation Office (central). Under local control for the 18-month audit period were appropriations for personnel-related expenses of the Register's Office and Judge's Lobby support staff, and certain administrative expenses (supplies, periodicals, law books, etc.). Other administrative and personnel expenses of EPFC were paid by centrally controlled appropriations and included expenses for leases, telephone,

¹ On August 16, 2008 EPFC converted to the MassCourt Financial System for revenue and trust accounting, after which the system did not report general revenues by category.

office supplies, Probation Office personnel-related costs, and judge's salaries. According to the Commonwealth's records, local and central expenditures² associated with the operation of EPFC for the 18-month audit period totaled \$3,401,185.

Audit Scope, Objectives, and Methodology

In accordance with Chapter 11, Section 12, of the General Laws, the Office of the State Auditor conducted an audit of the financial and management controls over certain operations of EPFC. The scope of our audit included a review of EPFC's controls over administrative and operational activities, including cash management and revenue, for the period July 1, 2007 to December 31, 2008.

Our audit was conducted in accordance with applicable generally accepted government auditing standards for performance audits and, accordingly, included such audit procedures and tests as we considered necessary under the circumstances.

Our audit objectives were to (1) assess the adequacy of EPFC's internal controls over cash management and revenues and (2) determine the extent of controls for measuring, reporting, and monitoring effectiveness and efficiency regarding EPFC's compliance with applicable state laws, rules, and regulations; other state guidelines; and AOTC and PFCD policies and procedures.

Our review centered on the activities and operations of EPFC's Register's Office. We reviewed cash management activity and transactions involving the collection and processing of revenue to determine whether policies and procedures were being adhered to.

To achieve our audit objectives, we conducted interviews with management and staff reviewed prior audits reports, Office of the State Comptroller's Massachusetts Management Accounting and Reporting System reports, AOTC statistical reports, and EPFC's organizational structure. In addition, we obtained and reviewed copies of statutes, policies and procedures, accounting reports, and other source documents. Our assessment of internal controls over cash management and revenue collection and processing activities was based on these interviews and review of documents.

² This amount does not include certain controlled expenditures, such as facility lease and related operational expenses; personnel costs attributable to judges, court officers, security officers, and probation staff; and related administrative expenses of the Probation Office, since they are not identified by court division in the Commonwealth's accounting system.

Our recommendations are intended to assist EPFC in developing, implementing, or improving internal controls and overall financial and administrative operations to ensure that EPFC's systems covering cash management and revenue collection and processing activities operate in an economical, efficient, and effective manner and in compliance with applicable laws, rules, and regulations.

We determined that, except for issues noted in the Audit Results section of our report, EPFC maintained adequate internal controls over cash management and revenue collection and processing activities and complied with applicable laws, rules, and regulations.

AUDIT RESULTS

1. IMPROVEMENTS NEEDED IN BANK RECONCILIATION PROCEDURES

Our audit found that the Essex Division of the Probate and Family Court Department (EPFC) Register's Office did not complete its monthly bank reconciliations in accordance with the Administrative Office of the Trial Court (AOTC) Fiscal Systems Manual. We found that during the first 13 months of the 18-month audit period July 1, 2007 through December 31, 2008, the Register's Office prepared the monthly bank reconciliations timely, accurately, and in compliance with the AOTC Fiscal Systems Manual. However, since August 2008, when EPFC converted to the MassCourt Financial System, the Register's Office has not prepared the required monthly bank reconciliations. Personnel from AOTC prepared the bank reconciliations for the months of August through December 2008, which were not completed until April 17, 2009. AOTC's Fiscal Systems Manual requires that all accounts be reconciled on a monthly basis and variances be resolved as part of the reconciliation process. Because EPFC is not complying with AOTC's requirements, there is limited assurance that EPFC records are accurate and its assets are adequately protected. Section 8 of AOTC's Fiscal Systems Manual states, in part:

As part of the Standard Accounting System of the Trial Court, all Court divisions are required to reconcile their accounts on a monthly basis. The reconciliation process consists of comparing the month-end Cash Journal balance (plus the amounts in civil escrow and/or custodial passbook accounts, if relevant), to the month-end Check Register balance (plus the amounts in civil escrow and/or custodial passbook accounts, if relevant), to the month-end Central Bank Reconciliation (plus the amounts in civil escrow and/or custodial passbook accounts, if relevant), and the Trial Balance of all monies being held by the Court, to ensure that all four totals are equal. If, upon completion, the four totals do not equal, the bookkeeper must attempt to resolve any discrepancies.

The court must reconcile its bank statements according to this section of the Fiscal Systems Manual in order to meet the Comptroller's reconciliation requirement and all errors must be corrected.

Our examination of the attempted bank reconciliations by the Register's Office for the five months August through December 2008 indicated that the major reason for the failed attempts to reconcile the monthly bank statements was court personnel's unfamiliarity with the new MassCourt System, including its new reconciliation format, accounting reports, and methods of dealing with adjustments. The lack of timely reconciliations compromises EPFC's ability to properly control cash.

Recommendation

EPFC, in conjunction with AOTC, should ensure that the primary and back-up bookkeepers are properly trained in both the process of preparing bank reconciliations and the concepts of processing cash receipts and disbursements through the MassCourt Financial Reporting System.

Auditee's Response

The primary bookkeeper is responsible for the monthly bank reconciliations. The primary bookkeeper received a total of 40 hours of training prior to the implementation of MassCourt (15 more hours than the bookkeepers in any other division). On 1/9/2009 it came to the attention of management that the bookkeeper was unable to properly perform her duties. She was temporarily relieved from her bookkeeping duties and disciplined. She received additional bank reconciliation training and resumed her duties on May 14, 2009. She is presently performing her duties under the direct supervision of the Register. The training and constant vigilant monitoring of the bookkeeper by management and the internal audit staff of AOTC will assure the timely reconciliation reporting and thus strengthen our ability to properly control cash.

2. IMPROVEMENTS NEEDED OVER THE REVENUE RECONCILIATION PROCESS

Our audit found that the Register's Office accounted for and transmitted revenues to the Commonwealth in accordance with established procedures. However, we found that Register's Office personnel did not reconcile revenues remitted to the Commonwealth for the 18-month period ended December 31, 2008 as required by AOTC. With the Commonwealth's implementation of an upgraded automated accounting system, EPFC was no longer able to reconcile its revenue transmittals with the Commonwealth's Massachusetts Management Accounting and Reporting System (MMARS). As a result of these issues, there is inadequate assurance that revenues were properly received and credited to the appropriate general or specific state revenue account.

AOTC established certain internal controls, incorporated in its Fiscal Systems Manual, that require the Register's Office to reconcile revenue transmittals on a monthly basis. Specifically, Section 8.6 of the manual states, in part:

Since the [Register of Probate's] Office receives the MMARS 466C reports (per next step 2), the [Register of Probate's] Office bookkeepers have the task of revenue reconciliation for each division...

Receive Massachusetts Management Accounting and Reporting System (MMARS) 466C Report – Cash Received by State vs. Cash Reported by Department.

Compare all Revenue Transmittals Sheets (RTS's) remitted by the [Register of Probate's] Office for that monthly period to the MMARS 466C Report for the same period.

If there is a difference between the MMARS 466C report and the Revenue Transmittal Sheets, contact the audit Section of the Fiscal Affairs Department of the Administrative Office of the Trial Court.

In fiscal year 2005, the Commonwealth upgraded its accounting systems. With that upgrade, the MMARS 466C report was longer available. To that end, AOTC provided EPFC with alternative reconciliation procedures to reconcile its Revenue Transmittal and Reporting Sheets (RTRS) amounts to the total amount posted on the Trial Court's intranet web page on a monthly basis.

In August 2006, AOTC issued Fiscal Year 2007 Memorandum No. 6, which provides specific procedures for courts to verify revenue transactions and fulfills the revenue reconciliation requirement in lieu of the former "466C" report and requires such reconciliations to be retained in the monthly closing packets. Register's Office personnel indicated that they were not aware of AOTC's revenue reconciliation requirement.

Recommendation

EPFC should comply with AOTC's Fiscal Year 2007 Memorandum No. 6 by properly completing monthly revenue reconciliation procedures to ensure that revenues are transmitted and credited to the proper accounts in the Commonwealth's MMARS system.

Auditee's Response

All bookkeepers and back up bookkeepers were provided with Fiscal 2007 Memo #6 which provides specific procedures for courts to follow to verify revenue transactions and fulfills the revenue reconciliation requirement. The two backup bookkeepers received Memo #6 on May 1, 2009 and the primary bookkeeper received Memo #6 on May 14, 2009. They all acknowledged receipt of the memo. . . .They were also advised that this function must be performed and recorded. This is currently being performed

3. IMPROVEMENTS NEEDED IN PROCUREMENT AND MANAGEMENT OF PHOTOCOPY VENDING MACHINE SERVICES

Our audit found that both AOTC and EPFC needed to improve their procurement and management for the installation of photocopying machines and perform a cost/benefit analysis of the services in lieu of commissions it receives from its current copier provider. Our audit found that the current arrangement with the photocopy machine vendor, which the Register of Probate indicated was in place when she took office in 1997, is recorded on a one-page, undated memorandum that is not signed by the vendor or an authorized Commonwealth official. Under

the arrangement, the vendor supplies EPFC with four coin-operated copiers with bill changers, charges the public \$.25 per copy, and retains all photocopy machine revenue. In return, the vendor provides the court with five photocopiers for administrative use, and EPFC is allowed to make an unlimited number of copies. The vendor provides all supplies, paper, and customer support for both the administrative and public photocopiers.

In January 1994, AOTC's Chief Justice for Administration and Management provided guidance through a memorandum to courts relating to the competitive procurement of vending machines. Sections 1 and 2 of the memorandum, which provide the overall basic provisions that procurement of vending machine contracts should consider to serve the needs of both to public and the Commonwealth, states, in part:

1. *Vending Machines/Public Use Equipment: Because coin or credit card operated vending machines, photocopiers, FAX units, and other such public convenience can offer significant revenues to the vendor, such vendors should only be selected after a valid bid or RFP process. . . .*

Following the bid or RFP process, a contract must be made between the vendor and the Court division.

Basic Provisions . . . : Requests for Proposals (RFP's) should include provisions which best ensure that the public will be fairly served and the Commonwealth receives a benefit, and that you will be able to fairly compare the vendor's responses. . . .

For all vending machines that are installed in State owned buildings, a file must be retained for audit purposes. This file should contain all agreements/contracts and validation documents when income is received.

When asked for the monthly usage and revenue reports specified in the one-page memorandum, EPFC personnel stated that the vendor did not provide them. We also observed that the photocopiers had no visible counting mechanisms to verify usage. At our request, the Register's Office obtained from the vendor a revenue report for the 18-month audit period. The report showed revenue of \$45,861, which would equate to 183,444 copies (\$45,861/\$.25 per copy). Packing slips accompanying copy paper shipments to the court indicate that 860,000 sheets of paper were delivered to the court by the vendor during the period under audit (172 cases x 5,000 sheets per case). Therefore, coin-operated paper usage equaled 21% of the paper supplied (183,444/860,000).

EPFC personnel indicated that they were aware of the requirement to seek Request for Proposals for photocopying machines. However, they noted that the free use of photocopiers

for EPFC staff is a significant benefit and that the public photocopiers relieve court personnel from having to make copies for the public, allowing them to focus on more important probate and family matters before the court.

We recognize that EPFC is receiving significant services and that the cost to the public for photocopier use appears to be reasonable. Nevertheless, sound business practices advocate that EPFC conduct a cost/benefit analysis to compare the value of the services received (copier use, paper, supplies, and maintenance) versus receiving commissions on coin-operated copier revenue.

Recommendation

EPFC should prepare a cost benefit analysis of the current arrangement. After this analysis is conducted, the Procurement Section of AOTC should review EPFC's current agreement to determine whether it is best serving the needs of the public, the court, and the Commonwealth and provide EPFC with proper guidance on any adjustments deemed necessary. Moreover, given the apparent age of EPFC's current arrangement with its photocopying vendor, EPFC should consider issuing a Request for Proposals for photocopying services. In the meantime, EPFC should ensure that it receives timely revenue reports from the vendor and determine whether there is a way to determine the number of copies made for all the copying machines and that its current agreement for copier machines is formalized in a written and properly authorized contract.

Auditee's Response

In response to this issue, EPFC's Register of Probate stated, in part:

The Register's Office conducted a cost benefit analysis and has determined that the benefit to the public, the court and the Commonwealth outweighs the cost of a self-managed program. Fiscal year 2007 was the sample period reviewed. . . . This cost/benefit analysis substantiates the benefit to the court and the public in having our current coin-op program. In addition, I have requested that the Procurement Section of AOTC review our current agreement. . . .

Auditor's Reply

We commend EPFC for initiating a cost/benefit analysis of the current copier arrangement and seeking AOTC's review of this analysis and the current copier agreement. However, our review of this analysis indicated that it did not include certain relevant factors.

Specifically, we noted that the Register's Office analysis compared the current arrangement (free copier services in lieu of commissions) with the cost of a "self-managed" program in which the Register's Office purchases nine copy machines and related supplies (paper, toner, and developer). The Register's Office then compared yearly anticipated revenue to the purchase of the nine copiers plus supplies and concluded that the cost was greater than the revenue. However, to make this analysis more meaningful, the purchase price of the copy machines would have to be allocated according to the years of anticipated use. Also, costs for copier service, maintenance and in-house labor (adding paper and supplies to copiers and accounting for revenue) would have to be estimated and added to the "self-managed" program costs. The Register's Office should also evaluate the option of receiving commissions from the vendor, perhaps on some sliding scale of vendor revenue or profit. In any case, we reiterate that any agreement for photocopying services should be recorded in a formal, written contract signed by responsible agency officials.