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**INDEPENDENT STATE AUDITOR'S REPORT
ON CERTAIN ACTIVITIES OF THE
FALL RIVER DIVISION OF THE
DISTRICT COURT DEPARTMENT OF THE
MASSACHUSETTS TRIAL COURT
JULY 1, 2005 TO DECEMBER 31, 2006**

**OFFICIAL AUDIT
REPORT
AUGUST 7, 2007**

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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 211B of the Massachusetts General Laws authorized the District Court Department to establish 62 Divisions, each having a specific territorial jurisdiction, to preside over civil and criminal matters that are brought before it. The Division's organizational structure consists of three separately managed offices: the Judge's Lobby, headed by a First Justice; the Clerk-Magistrate's Office, headed by a Clerk-Magistrate; and the Probation Office, headed by a Chief Probation Officer. The First Justice is the administrative head of the Division and is responsible for preparing the Division's budget and accounting for its revenues; however, the Clerk-Magistrate and the Chief Probation Officer are responsible for the internal administration of their respective offices.

The Fall River Division of the District Court Department (FDC) presides over civil and criminal matters falling within its territorial jurisdiction of the municipalities of Fall River, Freetown, Somerset, Swansea, and Westport. During the audit period July 1, 2005 to December 31, 2006, FDC collected revenues totaling \$2,958,533, which it disbursed to the Commonwealth and to those municipalities within its jurisdiction. In addition to processing civil entry fees and monetary assessments on criminal cases, FDC was custodian of approximately 1,361 cash bails amounting to \$790,594 as of December 31, 2006.

FDC is also responsible for conducting civil motor vehicle infraction (CMVI) hearings. Although FDC does not collect the associated monetary assessment when a motorist is found responsible for a CMVI, it is required to submit the results of the hearing to the Registry of Motor Vehicles, the agency that is responsible for the collections.

FDC operations are funded by appropriations under the control of either the Division, the Administrative Office of the Trial Court (AOTC), or the Office of the Commissioner of Probation. According to the Commonwealth's records, expenditures associated with the operation of the Division were \$2,488,430 for the period July 1, 2005 to December 31, 2006.

The purpose of our audit was to review FDC's internal controls and compliance with state laws and regulations regarding administrative and operational activities, including cash management, bail funds, and criminal- and civil-case activity for the period July 1, 2005 to December 31, 2006.

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Our prior statewide audit report disclosed that FDC was not in compliance with state laws and regulations relating to the proper handling of bail funds. Our current review found that FDC has corrected many of the issues disclosed in our prior audit report, but noted that additional improvements over the bail process are still necessary.

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<p>Our current audit found that the FDC needs to improve its internal controls to comply with state law and Trial Court rules and regulations regarding the prompt transfer of revenue to the State Treasurer. It was noted that the FDC Clerk Magistrate’s Office is not processing revenue transmittals received from the Probation Office in a timely manner. As a result, the unprocessed revenues are susceptible to loss or misuse, and revenue transmittals to the Commonwealth and others are delayed. Provisions of the General Laws and the AOTC Fiscal Systems Manual state that all revenues collected should be processed and deposited daily.</p>	

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 also 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; 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 211B of the Massachusetts General Laws authorized the District Court Department (DCD), which has civil jurisdiction over money-damage cases involving tort and contract actions; small claims; summary process; civil motor vehicle infractions (CMVI); mental health, alcoholism, and drug abuse commitments; and juvenile matters in Districts without a Juvenile Court. Its criminal jurisdiction extends over all misdemeanors and certain felonies. The DCD established 62 Divisions, each having a specific territorial jurisdiction, to preside over the civil and criminal matters that are brought before it. The Division's organizational structure consists of three separately managed offices: the Judge's Lobby, headed by a First Justice; the Clerk-Magistrate's Office, headed by a Clerk-Magistrate; and the Probation Office, headed by a Chief Probation Officer. The First Justice is the administrative head of the Division and is responsible for preparing the Division's budget and accounting for its revenues; however, the Clerk-Magistrate and the Chief Probation Officer are responsible for the internal administration of their respective offices.

The Fall River Division of the District Court Department (FDC) presides over civil and criminal matters falling within its territorial jurisdiction of the municipalities of Fall River, Freetown, Somerset, Swansea, and Westport. During the period July 1, 2005 to December 31, 2006, FDC collected revenues totaling \$2,958,533, which it disbursed to the Commonwealth and to those municipalities within its jurisdiction. The majority (approximately 97%) of revenue collected by

FDC was paid to the Commonwealth as either general or specific state revenue, totaling \$2,872,179, as follows:

Revenue Type	Total	July 1, 2006 to Dec 31, 2006	July 1, 2005 to June 30, 2006
General Revenue	\$1,311,281	\$424,670	\$886,611
Victim/Witness	150,357	46,377	103,980
Surcharges	98,999	34,678	64,321
Victim of Drunk Driving	15,801	4,022	11,779
Indigent Counsel	318,304	95,061	223,243
Highway Fund	7,935	2,495	5,440
Drug Analysis Fund	4,055	885	3,170
Head Injury Program	62,120	19,405	42,715
Probation Fees	813,183	240,093	573,090
Environmental Fines	18,680	10,100	8,580
Alcohol Fees	70,444	23,977	46,467
Indigent Enhancement Trust Fund	<u>1,020</u>	<u>450</u>	<u>570</u>
Total	<u>\$2,872,179</u>	<u>\$902,213</u>	<u>\$1,969,966</u>

Approximately \$1,878,829 of those funds consisted of suspended fines and costs that were collected by the Probation Office and submitted to the Clerk-Magistrate's Office for transmittal to the Commonwealth. The Probation Office collected approximately \$496,452 of restitution money that it paid directly to the parties owed the funds.

In addition to processing civil case-entry fees and monetary fee assessments on criminal cases, FDC was custodian of approximately 1,361 cash bails amounting to \$790,594 as of December 31, 2006. Bail in the form of cash is the security given to the Court by defendants or their sureties to obtain release and 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.

FDC is also responsible for conducting civil motor vehicle infraction (CMVI) hearings, which are requested by the alleged violator and heard by a Clerk-Magistrate or judge who determines whether the drivers are responsible for the CMVI offenses cited. FDC does not collect the associated

monetary assessment when a violator is found responsible, but it is required to submit the results of the hearing to the Registry of Motor Vehicles, which follows up on collections.

FDC operations are funded by appropriations under the control of either the Division (local) or the AOTC or Commissioner of Probation Office (central). Under local control was an appropriation for personnel-related expenses of the Clerk-Magistrate's Office and Judge's Lobby support staff and certain administrative expenses (supplies, periodicals, law books, etc.) Other administrative and personnel expenses of the Division were paid by centrally controlled appropriations. According to the Commonwealth's records, local and certain central appropriation expenditures associated with the operation of the Division for the period of July 1, 2005 to December 31, 2006 totaled \$2,488,430¹.

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 FDC. The scope of our audit included FDC's controls over administrative and operational activities, including cash management, bail funds, and criminal- and civil-case activity, for the period July 1, 2005 to December 31, 2006.

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

Our audit objectives were to (1) assess the adequacy of FDC's internal controls over cash management, bail funds, and civil- and criminal-case activity and (2) determine the extent of controls for measuring, reporting, and monitoring effectiveness and efficiency regarding FDC's compliance with applicable state laws, rules, and regulations; other state guidelines; and AOTC and DCD policies and procedures.

¹ This amount does not include certain centrally controlled expenditures, such as facility lease and related operational expenses, as well as 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 review centered on the activities and operations of FDC's Judge's Lobby, Clerk-Magistrate's Office, and Probation Office. We reviewed bail and related criminal-case activity. We also reviewed cash management activity and transactions involving criminal monetary assessments and civil case entry fees to determine whether policies and procedures were being followed.

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

Our recommendations are intended to assist FDC in developing, implementing, or improving internal controls and overall financial and administrative operations to ensure that FDC's systems covering cash management, bail funds, and criminal- and civil-case activity operate in an economical, efficient, and effective manner and in compliance with applicable rules, regulations, and laws.

Based on our review, we determined that, except for the issues noted in the Audit Results section of this report, FDC (1) maintained adequate internal controls over cash management, bail funds, and civil and criminal-case activity; (2) properly recorded, collected, deposited, and accounted for all receipts; and (3) complied with applicable laws, rules, and regulations for the areas tested.

AUDIT RESULTS

1. STATUS OF PRIOR AUDIT RESULTS INVOLVING BAIL

Our prior audit (No. 2000-5076-3) of the financial and management controls over the receipting, accounting, and reporting of bail funds at various District Court Divisions disclosed that certain improvements were needed at the Fall River District Court (FDC): (a) sureties that posted the bail were not being notified that the bail was available for release, (b) bail collected after hours was not being transmitted to the court in a timely manner, (c) a detailed bail trial balance was not being prepared to support the amount of bail funds on hand, (d) there was inadequate supporting documentation in case papers (i.e. docket sheet or bail recognizance form) to support bail activity, (e) there was inadequate documentation to support the return of bail to defendants or sureties who had lost their bail receipts, (f) the processing of unclaimed, forfeited, and abandoned bail was not in compliance with state laws and regulations, and (g), FDC did not declare bails forfeited when defendants failed to appear in court. Our follow-up review noted that many of those bail deficiencies at FDC have been fully corrected, whereas others were partially corrected, as follows.

a. Bail Issues—Resolved

Our follow-up audit disclosed that FDC has implemented procedures to comply with several of our prior audit recommendations. Items a.) through e.) noted above have had corrective action implemented, and we therefore consider these issues resolved. Specifically, current procedures provide for: sureties being notified when bail is available for release; bail collected after hours is being promptly transmitted to the court; a bail trial balance is being prepared and reconciled to the court records; there is adequate supporting documentation to support bail activity; and there is adequate documentation for instances where sureties have lost their bail receipt and are seeking the return of the bail funds.

b. Improvements Needed to Comply with State Laws and Regulations in the Processing of Unclaimed, Forfeited, and Abandoned Bail—Partially Resolved

Our prior audit found that FDC did not comply with state laws and regulations or AOTC's Fiscal Systems Manual in its processing of unclaimed, forfeited, and abandoned bails. We recommended that FDC immediately process and forward forfeited bail funds to the State Treasurer, review cases for bails that could be processed to the State Treasurer as abandoned property, notify sureties of unclaimed bail one year after the resolution of the case, and perform monthly reviews of bail records to ensure future compliance with bail laws, rules, and regulations.

Our follow-up audit disclosed that FDC is in the process of implementing procedures to comply with our prior audit recommendations. Since April 2005, personnel in the Clerk Magistrate's Office have reviewed cases and transmitted \$43,237 to the State Treasurer as abandoned property. They have also been attempting to determine which cases have been closed and to notify sureties of the availability of bail funds. As of January 31, 2007, the FDC bail account trial balance contained 1,361 accounts totaling \$790,594. We examined 52 cases totaling \$21,235 that were on hand for more than three years and identified 28 cases totaling \$6,285 that could be considered abandoned property and transmitted to the State Treasurer.

We discussed the status of these accounts with personnel in the Clerk-Magistrate's Office who informed us that although they are implementing corrective action, they have not been able to fully catch up on all of the outstanding bail accounts. Since the bail trial balance is large, with over 1,300 accounts, it takes time to research all of the cases to determine the current status of the bail. It was further noted that a significant amount of staff time has been devoted to implementing the MassCourts Lite court management software, limiting the amount of time available to address this issue in full.

Recommendation

The FDC should continue to review cases and process bails identified as unclaimed, abandoned, or forfeited. The case research being done to implement the MassCourts

Lite software should aid the court in updating the status of both the cases and their respective bails.

Auditee's Response

The First Justice provided the following response:

Every effort is being made to bring this court into full compliance with applicable standards.

c. Procedures for Forfeiture of Bail if Defendants Fail to Appear in Court—Partially Resolved

Our prior audit disclosed that FDC did not declare bails forfeited if defendants failed to appear in court in accordance with the terms of their release on bail. By failing to appear for scheduled court dates, delinquent defendants waste valuable time and resources of the Commonwealth. Specifically, Division personnel must process additional paperwork associated with continuances; courtroom time and space must be allocated for future litigation; and prosecutors, public defenders, witnesses, and police officers must reappear in order for the case to be completed. We recommended that the FDC immediately declare forfeited the bail of cases in default status, transmit those funds to the State Treasurer, and implement procedures to promptly declare bails forfeited when a defendant defaults.

Our follow-up audit disclosed that although the FDC has begun the process of reviewing bail accounts that are in default status and bringing the defaulted cases to court to obtain orders of forfeiture, further action is still needed. Our sample of 52 cases totaling \$21,235 that were on hand for more than three years from the date of receipt identified 18 cases totaling \$6,850 that were in default status and could be brought before the court to determine if a forfeiture order should be issued.

We discussed the status of these accounts with personnel in the Clerk-Magistrate's Office who informed us that although they are implementing corrective action and have disposed of many old cases that were in default, they have not been fully able to catch up on these accounts. Since the bail trial balance is large, with over 1,300 accounts, it takes

time to research all of the cases to determine the current status of the bail, and the time available for such research has been limited by the significant amounts of time devoted to implementing the MassCourts Lite management software.

Recommendation

The FDC should continue to review cases and process bails identified as being in default status. These accounts should then be brought before the court to determine whether a forfeiture order should be issued, and if so, the Court should transmit these funds to the State Treasurer. The case research being done to implement the MassCourts Lite software should be useful in properly reflecting the current status and disposition of bail.

Auditee's Response

The First Justice provided the following response:

Every effort is being made to bring this court into full compliance with applicable standards.

2. IMPROVEMENTS NEEDED IN PROCESSING REVENUE TRANSMITTALS FROM PROBATION

Our audit found that the FDC needs to improve its internal controls to comply with state law and Trial Court rules and regulations regarding the prompt transfer of revenue to the State Treasurer. The FDC Clerk Magistrate's Office is not processing revenue transmittals collected by the Probation Office in a timely manner. There is a three-month backlog totaling approximately \$298,000 in unprocessed checks that have been transmitted from the Probation Office to the Clerk's Office. As a result, the unprocessed revenues are susceptible to loss or misuse, and revenue transmittals to the Commonwealth and others are delayed. Provisions of the General Laws and the AOTC Fiscal Systems Manual require that all revenues collected be processed and deposited daily.

The AOTC Fiscal Systems Manual, Section 10.3, states as follows:

All money received by a court division must be deposited on a daily basis.

Moreover, under Section 8.3 of the Fiscal Systems Manual, AOTC has established policies and procedures for processing the receipt of funds. That section states, in part:

When funds are receipted, a document related to the case must be validated. Funds, including all checks, must be receipted and deposited on the same business day before the end of the bank's business day.

Not promptly processing and depositing revenues leaves the funds susceptible to loss and misuse, causes delayed transmittal of revenues to the Commonwealth and others, and causes unnecessary outstanding items each month on the Probation Office bank reconciliation.

We discussed this situation with the Clerk-Magistrate, who informed us that the Court is understaffed, and is also in the process of implementing MassCourts Lite, which has contributed to the delays in validating the cases files and processing revenues collected. It was further noted, however, that the court has temporarily reassigned staff to update their records and transfer all revenues collected to the State Treasurer in a more timely manner.

Recommendation

The Clerk-Magistrate's Office should review workload requirements and make necessary adjustments to enable office personnel to process and transfer revenues collected by the Probation Office in a timely manner. If additional help is necessary, the Court should consider contacting AOTC to request additional assistance in processing the revenues and validating the case files.

Auditee's Response

The First Justice provided the following response:

The backlog in probation revenue transmittals is a function of insufficient staffing within the clerk's office. In particular, the implementation of MassCourts Lite has taxed the ability of our staff to stay on top of the substantial demands created by this system. It is time-consuming and labor intensive.

Thank you for the opportunity to review the draft report. Every effort is being made to bring this court into full compliance with applicable standards.