



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

Making government work better

Official Audit Report – Issued June 3, 2014

Franklin Division of the Superior Court Department

For the period July 1, 2012 through August 31, 2013





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

Making government work better

June 3, 2014

Susan Emond, Clerk of Courts
Franklin Division of the Superior Court Department
101 Munson Street
Greenfield, MA 01301

Sheila Moriarty, Chief Probation Officer
Franklin Division of the Superior Court Department
101 Munson Street
Greenfield, MA 01301

Dear Clerk of Courts Emond and Chief Probation Officer Moriarty:

I am pleased to provide this performance audit of the Franklin 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 August 31, 2013. My audit staff discussed the contents of this report with court personnel, and their comments are reflected in this report.

I would also like to express my appreciation to the Franklin 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 background.

Suzanne M. Bump
Auditor of the Commonwealth

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EXECUTIVE SUMMARY

The Franklin Division of the Superior Court Department (FSC) presides over civil, criminal, and other matters falling within its territorial jurisdiction of Franklin County. The audit was undertaken to determine whether FSC's (1) financial records are accurate, up to date, and maintained in accordance with established criteria; (2) inventory systems are adequate to safeguard furniture and equipment; (3) evidence exhibits are appropriately tracked and secured by FSC's Clerk of Courts' Office (the Clerk's Office); (4) internal controls over civil escrow fund and bail fund management are adequate; and (5) overall internal control structure is suitably designed and implemented to safeguard Commonwealth assets in compliance with Chapter 647 of the Acts of 1989, An Act Relative to Improving the Internal Controls within State Agencies. In addition, our audit assessed the status of issues that were identified in our prior audit report (No. 2006-1116-3O).

Based on our audit, we have concluded that for the period July 1, 2012 through August 31, 2013, FSC's financial records are current and maintained according to established criteria; evidence is adequately secured and tracked; and civil escrow accounts and cash bails are sufficiently controlled. Additionally, FSC has corrected deficiencies cited in our prior audit report (No. 2006-1116-3O), which included conducting a risk assessment and developing an internal control plan; performing monthly revenue reconciliations; and processing, depositing, and accounting for cash activity. However, FSC needs to improve its procedures for encumbering property accepted for bail; fully implementing furniture and equipment inventory procedures in the Probation Office; and complying with the statutory requirements over assessment of monthly probation supervision fees and legal counsel fees.

Summary of Findings

- The FSC Probation Office has not fully implemented procedures for maintaining its furniture and equipment inventory records or its annual physical inventory verification. As a result, Commonwealth assets with an estimated historical cost of \$52,682 may be at risk of loss, misuse, or misappropriation, and inventory may not be properly reported.
- FSC does not always perform the granting of waivers of the monthly probation supervision fee in accordance with state law. A waiver of the monthly probation supervision fee requires the probationer to perform monthly community service instead of paying the fee. Contrary to policy, the Probation Office does not regularly perform administrative hearings with probationers who have fallen behind two consecutive months on the payment of their monthly probation supervision fee or performance of community-service hours to assess their ability and

willingness to pay the fee or perform community service. As a result, the Probation Office has inadequate assurance that probationers are complying with their probation conditions, and the Commonwealth may not be receiving the funds from monthly probation supervision fees, or the hours of community service, to which it is entitled.

- The Probation Office staff records the performance of community service in probationers' files, but the office lacks a centralized system to track all the hours of community service performed through the Office of Community Corrections (OCC)¹ or independent work arrangements made outside OCC. As a result, the Probation Office cannot readily determine how many community-service work hours are owed, what community service amounts to in dollars, and whether offenders will be able to fulfill the requirements of court orders on schedule.
- FSC is not consistently complying with the statutory requirements for the collection of legal counsel fees.² As a result, the Commonwealth may not be receiving all the money to which it is entitled and the Commonwealth may be paying for legal services for which the recipients do not qualify.
- During the audit period, the Clerk's Office held custody of a surety's motor-vehicle title posted as bail to secure the defendant's future court appearance(s). However, the Clerk's Office did not have the ability to express a claim on this vehicle, since the court was not listed as a lienholder on the title. As a result, the vehicle title posted for bail had no monetary value, and therefore, the court's ability to use it as leverage to secure the defendant's future court appearances was questionable. In addition, the surety could dispose of the vehicle without the court's permission.
- During our previous audit period, FSC had not developed an internal control plan (ICP) or conducted periodic risk assessments as required by state law and Trial Court regulations. Therefore, our prior audit report recommended that FSC review the Trial Court's Internal Control Guidelines, conduct a risk assessment, and document a high-level ICP that addressed the risks and internal control requirements specific to its operations. During our current audit, we determined that FSC had developed an ICP and performed a risk assessment in accordance with state law and Trial Court regulations.
- During our previous audit period, FSC office personnel could not reconcile revenue that FSC remitted to the Commonwealth as required by Trial Court fiscal policy. Therefore, our prior audit report recommended that FSC use the information from the Trial Court's internally prepared revenue summary as a source for reconciling the local court revenue to the local court records. During our current audit, we determined that FSC performed monthly reconciliations of revenue remitted to the Commonwealth to revenue credited to FSC's revenue accounts in the Commonwealth's Massachusetts Management Accounting and Reporting System.
- During our previous audit, the Probation Office needed to improve its internal controls over segregating duties for its cash-collection process, safeguarding cash receipts, and posting entries to its accounting records. Therefore, our prior audit report recommended that the Probation

¹ OCC is the office within the Trial Court's Probation Department that administers the Community Service Program throughout Massachusetts.

² The legal counsel fee is an amount, usually \$150, that an indigent defendant who is provided with a court-appointed lawyer is responsible for paying.

Office continue its efforts to realign staff responsibilities to adequately segregate duties between cashiering and bookkeeping functions. Additionally, we recommended that it modify its practice and make more frequent bank deposits, allowing sufficient time for the bookkeeper to balance the books and for the deposit to be made on the same day. We also recommended that FSC continue to maintain its accounting records in the manner prescribed by the Trial Court. During our current audit, we determined that the Probation Office had improved its internal controls to properly segregate cashiering and bookkeeping duties, safeguard cash receipts by depositing the funds with the bank in a timely manner, and record entries in the accounting records in a timely manner.

Recommendations

- FSC's Probation Office should establish the historical cost values for all items appearing on its inventory list based on actual invoices, the Trial Court's established values list, or comparative values of similar equipment (from catalogues, state purchasing agent records, etc.).
- In consultation with the Trial Court, the Probation Office should consider increasing the \$100 threshold for inclusion on its inventory list to eliminate the items that are less vulnerable or less likely to be misused or misappropriated.
- The Probation Office should include all items of value in its care and control, particularly high-value electronic equipment like computers and printers, on the inventory list.
- The Probation Office should follow Trial Court regulations on the disposal of equipment. The inventory disposal form should be prepared by the inventory liaison for equipment inventory ready to be disposed of. The Chief Probation Officer should review whether the equipment has reached the end of its useful life and, if so, approve the form. The form should be retained with the physical inventory list. If inventory cannot be located during the physical count, a list of missing items should be developed. The Probation Office should make all reasonable efforts to determine whether the inventory was moved or misplaced without the inventory liaison being notified and the equipment inventory list updated. If the Probation Office still cannot locate the equipment, the Chief Probation Officer should file a Chapter 647 report with the Office of the State Auditor.
- The Probation Office should request that the Trial Court conduct training on inventory procedures to ensure that all Probation Office employees know and understand proper procedures for recording and physical verification of inventory.
- FSC should comply with the requirements of Chapter 276 of the Massachusetts General Laws for the imposition and waiving of probation supervision fees and the restitution made for nonpayment of those fees. Specifically, it should make sure that it documents whether, based on court order, a probationer will pay a monthly probation supervision fee or a finding of fact has been held to allow the fee to be waived and community service performed instead. If FSC finds the statute too restrictive, then it should seek input from the Trial Court on getting an exemption from the requirement or look at legislative changes that could be put forward to better suit its needs.

- The Probation Office should hold an administrative hearing after a probationer fails to pay the monthly probation supervision fee for two consecutive months or fails to perform the required community-service hours in lieu of payment. After the hearing, the Probation Office should assess the probationer's ability and willingness to pay the fee to decide whether a court hearing should be held to determine whether payment of the fee would create an undue hardship on the probationer. If so, the fee should be waived. If not, the Probation Office should either require the probationer to pay delinquent fees owed or issue a notice of surrender for failing to pay the monthly probation supervision fee.
- The Probation Office should ensure that supervising probation officers promptly report all hours of community service performed by each probationer, as well as the payment of monthly probation supervision fees, on the bookkeeper's account ledger cards to be able to readily determine the status of a probationer's account. It should also consider implementing a more centralized system that would allow it to track community service performed by probationers on a timely basis to be able to readily determine the status of a probationer's account.
- FSC should establish formal procedures in order to comply with statutory requirements regarding unpaid legal counsel fees. These procedures should include adequate instruction and training provided to staff to ensure that the Probation Office reports to the Clerk's Office any unpaid legal counsel fees that are not paid within 60 days of assessment, so that the latter can give proper notification to the Registry of Motor Vehicles (RMV), the Department of Transitional Assistance, and the Department of Revenue. Instruction and training should also be sufficient to ensure that the Probation Office performs indigence reassessments as required by Chapter 211D, Section 2A, of the General Laws.
- FSC should contact the Trial Court to determine the best method for claiming an interest in the vehicle it holds as bail, and the Trial Court should update its Fiscal Systems Manual's policy on property posted as bail to include the RMV's process for adding a lien to a motor-vehicle title. Additionally, FSC should request that judges specifically order liens on property posted as bail at the time the bail is set in order to secure the court's interest in the property.

OVERVIEW OF AUDITED AGENCY

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 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 Franklin Division of the Superior Court Department (FSC) presides over civil and criminal matters falling within its territorial jurisdiction of Franklin County. FSC 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 August 31, 2013, FSC collected revenue totaling \$108,697,³ which it disbursed as either general or specific state revenue as shown in the following table:

Revenue Type	July 1, 2012 through June 30, 2013	July 1, 2013 through August 31, 2013	Total
General Revenue	\$50,373	\$ 8,186	\$ 58,559
Probation and Administrative Supervision Fees	38,671	4,522	43,193
Victim/Witness Fund	900	90	990
Surcharge	1,905	195	2,100
Reimbursement for Indigent Counsel	2,865	300	3,165
Drug Analysis Fund	300	0	300
Other	380	10	390
Total	<u>\$95,394</u>	<u>\$13,303</u>	<u>\$108,697</u>

In addition to the funds collected and transferred to the Commonwealth, FSC was the custodian of 15 cash bails, totaling \$107,200, and one motor-vehicle title held as bail, as of August 31, 2013.⁴ FSC held custody of one civil escrow account, totaling \$6,022, as of August 31, 2013. (Civil escrow accounts are considered assets held in trust by the court pending case disposition.)

³ Some revenue, like probation supervision fees, is collected and transmitted by the Probation Office; however, FSC is given copies of these transmittals so it can reconcile revenue transmitted by the court division to the Commonwealth's records.

⁴ 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.

FSC operations are funded by appropriations under OCM control from which FSC receives periodic allotments. According to the Commonwealth's records, expenditures⁵ associated with the operation of FSC were \$391,310 for the period July 1, 2012 through August 31, 2013.

⁵ 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 Franklin Division of the Superior Court Department (FSC) for the period July 1, 2012 through August 31, 2013.

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.

FSC presides over civil, criminal, and other matters falling within its territorial jurisdiction of Franklin County. The audit was undertaken to determine whether FSC's (1) financial records are accurate, up to date, and maintained in accordance with established criteria; (2) inventory systems are adequate to safeguard furniture and equipment; (3) evidence exhibits are appropriately tracked and secured by FSC's Clerk of Courts' Office; (4) internal controls over civil escrow fund and bail fund management are adequate; and (5) overall internal control structure is suitably designed and implemented to safeguard Commonwealth assets in compliance with Chapter 647 of the Acts of 1989, An Act Relative to Improving the Internal Controls within State Agencies. In addition, we assessed the status of issues that were identified in our prior audit report (No. 2006-1116-3O).

To achieve our audit objectives, we reviewed our prior audit report, reports on the court division's revenue and expenses produced by the Commonwealth's Massachusetts Management Accounting and Reporting System (MMARS), and Trial Court statistical reports. The financial data we obtained from MMARS about the court division's activities during our audit period were not used in our audit testing; they were used solely for the purpose of presenting background information in our report. Consequently, we did not assess the reliability of these data.

We gained an understanding of the internal controls we deemed to be significant to our audit objectives and evaluated the design and effectiveness of those controls. Specifically, we performed procedures such as interviewing FSC managers and other staff members and reviewing relevant documents, statutes, and regulations as well as FSC's policies, procedures, and accounting records. We obtained and analyzed case data from selected case docket records and traced and compared

them to Forecourt, FSC's case-management system, for consistency and completeness. We also 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. Also, for the purposes of our audit, we used random non-statistical sampling during our examination of bail funds, civil escrow accounts, civil and criminal case activities, inventory, and evidence. We did not rely on computer-processed data for our audit purposes. We relied on hardcopy source documents, interviews, and other non-computer-processed data as supporting documentation on which we based our conclusions.

Based on our audit, we have concluded that for the period July 1, 2012 through August 31, 2013, FSC's financial records are current and maintained according to established criteria; evidence is adequately secured and tracked; and civil escrow accounts and cash bails are sufficiently controlled. Additionally, FSC has corrected deficiencies cited in our prior audit report (No. 2006-1116-3O), which included conducting a risk assessment and developing an internal control plan; performing monthly revenue reconciliations; and processing, depositing, and accounting for cash activity. However, FSC needs to improve its procedures for encumbering property accepted for bail; fully implementing furniture and equipment inventory procedures in the Probation Office; and complying with the statutory requirements over assessment of monthly probation supervision fees and legal counsel fees.

DETAILED AUDIT RESULTS AND FINDINGS WITH AUDITEE'S RESPONSE***Audit Findings*****1. The Franklin Division of the Superior Court Department has not fully implemented the process for managing its inventory of furniture and equipment.**

The Franklin Division of the Superior Court Department (FSC) Probation Office has not fully implemented procedures for maintaining its furniture and equipment inventory records or its annual physical inventory verification. As a result, Commonwealth assets with an estimated historical cost of \$52,682 may be at risk of loss, misuse, or misappropriation, and inventory may not be properly reported.

The Probation Office maintains the inventory of furniture and equipment for all office space used by its staff. The office created an inventory list but did not conduct an annual physical verification of inventory under its care and control. Additionally, the inventory list was not always updated when items were moved; it lacked essential cost data and other important data; and it contained obsolete inventory items and inventory items that did not meet the minimum dollar-value threshold for inclusion.

Required historical cost data for inventoried items were not recorded on the most recent inventory list. We estimated the historical cost at \$52,682 by assigning values to each of the 70 items using either a cost list that the Trial Court had provided to the Probation Office or cost comparisons for similar items found through Web searches (when an item did not appear on the Trial Court list). The Trial Court cost list identified values for office furniture like desks, chairs, tables, and files; however, it did not provide values for items, such as computers, monitors, televisions, and other office equipment, that we consider to be more vulnerable to misuse and misappropriation. Another inventory-list deficiency was that 4% of the items listed (3 items), based on our auditors' judgment, did not appear to meet the minimum dollar value threshold of \$100 for inclusion on the inventory list.

We also selected⁶ 20 items to determine whether the Probation Office properly tagged, maintained, and accounted for furniture and equipment in its care and control. (We tested the Probation Office furniture and equipment inventory by judgmentally selecting these items to determine whether they

⁶ We selected the judgmental sample of 20 items from 69 inventory items that were considered to be of high dollar value and/or more vulnerable to misuse/misappropriation.

were properly reflected on the list, with tag number, correct location, etc.) We found that the Probation Office was not fully compliant with Trial Court regulations regarding the accounting for, and full reporting of, furniture and equipment inventory for the items judgmentally selected.

- One of 20 inventory items, or 5%, sampled from the inventory list could not be located by Probation Office personnel upon our request because the list had not been properly updated to reflect the fact that the inventory item (a computer) had been disposed of.
- Twelve of 20 inventory items, or 60%, sampled from the various locations in the Probation Office were not properly recorded on the inventory list or had the wrong location recorded on the inventory list. (Eight items were computers or office equipment; four items were office furnishings.)

Authoritative Guidance

In its Internal Control Guide, the Office of the State Comptroller (OSC) requires state agencies, including courts, to institute controls to protect their equipment, information, documents, and other resources that could be wrongfully used, damaged, or stolen. OSC also requires that assets that originally cost \$1,000 or more be recorded in a department's inventory perpetual record, reconciled with the physical inventory at least annually, and included on the inventory list 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 (see Appendix A), 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.

The same memo included furniture and equipment inventory procedures and was supplemented with Fiscal Year 2009 Memo #8 (see Appendix A), 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. It also stated that any inventory items that could not be located during the physical inventory must be reported to the Office of the State Auditor (OSA) using a "Report on Unaccounted Variances, Losses, Shortages or Thefts of Funds or Property," also referred to as a Chapter 647 report (see Appendix B).

Reasons for Inadequate Implementation of Inventory Process

The inventory liaison (the Probation Office employee assigned the duty of maintaining the inventory list) and former Chief Probation Officer were not aware of the requirement to physically verify the existence of inventory items at the end of every fiscal year and submit the results to the Trial Court. In addition, the list of values established by the Trial Court was not all inclusive, as it omitted most electronic equipment like computers and electronic recording equipment. Therefore, the inventory liaison was unable to enter costs for these items on the list.

Our review of Trial Court inventory control procedures also revealed that computer-related 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

To properly control and maintain its furniture and equipment inventory and ensure compliance with OSC regulations and Trial Court policies and procedures, the Probation Office should:

- Establish the historical cost values for all items appearing on its inventory list based on actual invoices, the Trial Court's established values list, or comparative values of similar equipment (from catalogues, state purchasing agent records, etc.).
- In consultation with the Trial Court, consider increasing the \$100 inventory threshold to eliminate the items that are less vulnerable or less likely to be misused or misappropriated.
- Include all items of value in its care and control, particularly high-value electronic equipment like computers and printers, on the inventory list.
- Follow Trial Court regulations on the disposal of equipment. The inventory disposal form should be prepared by the inventory liaison for equipment inventory ready to be disposed of. The Chief Probation Officer should review whether the equipment has reached the end of its useful life and, if so, approve the form. The form should be retained with the physical inventory list. If inventory cannot be located during the physical count, a list of missing items should be developed. The Probation Office should make all reasonable efforts to determine whether the inventory was moved or misplaced without the inventory liaison being notified and the equipment inventory list updated. If the Probation Office still cannot locate the equipment, the Chief Probation Officer should file a Chapter 647 report with OSA.
- Request that the Trial Court conduct training on inventory procedures to ensure that all Probation Office employees know and understand proper procedures for recording and physical verification of inventory.

Auditee's Response

In response to this issue, the Clerk of Courts and Chief Probation Officer stated,

Franklin Superior Court has moved to a new temporary facility as of February 14, 2014. The Trial Court Administrative Office will be providing us a detailed listing of all current inventory assets, once received the Court will verify and have a completed inventory. Franklin Superior Court has no authority to raise the inventory threshold. The Probation Department will request training on inventory once inventory records are received from the Trial Court Administrative Office.

Auditor's Reply

Based on its response, the Probation Office is taking measures to address our concerns in this area. However, increasing the \$100 inventory threshold would be more in line with OSC's non-fixed-asset (inventory) guidance and, in OSA's opinion, will streamline the physical inventory verification process and allow Franklin Superior Court staff to work on other important court tasks. Therefore, we again recommend that the Franklin Superior Court consider working with the Trial Court on increasing the inventory dollar-value threshold to eliminate items of lesser value.

2. FSC does not always assess or waive monthly probation supervision fees as required and needs to improve fee collection and tracking of community service.

Some judges allow a defendant's probation officer to choose whether the defendant must pay a monthly probation supervision fee or perform community service, which is contrary to Chapter 276 of the Massachusetts General Laws. In addition, when probationers fall behind on their monthly payment obligation, the Probation Office does not perform administrative hearings to address nonpayment. Finally, the Probation Office has no consistent method in place to track probationers' performance of community-service hours to ensure that probationers are fulfilling their legal obligation to compensate the state for probation supervision services. As a result, probationers may not be complying with their probation conditions; the Commonwealth may not be receiving fees to which it is entitled; and the Probation Office cannot readily determine the value, performance, and likelihood of completion of community-service hours.

a. Exceptions were noted in the assessment, waiver, collection, and monitoring of the monthly probation supervision fee.

FSC does not always perform the granting of waivers of the monthly probation supervision fee in accordance with state law. A waiver of the monthly probation supervision fee requires the probationer to perform monthly community service instead of paying the fee. Contrary to

policy, the Probation Office does not regularly perform administrative hearings with probationers who have fallen behind two consecutive months on the payment of their monthly probation supervision fee or performance of community-service hours to assess their ability and willingness to pay the fee or perform community service. As a result, the Probation Office has inadequate assurance that probationers are complying with their probation conditions, and the Commonwealth may not be receiving the funds from monthly probation supervision fees, or the hours of community service, to which it is entitled.

We judgmentally sampled 30 criminal cases in which an individual was placed on probation. Of the 30, there were 14 instances in which the court ordered the individual to either pay a monthly probation supervision fee or perform unpaid community-service work (whichever the probation officer chose). There was no indication that a finding of fact had been held to allow the fee to be waived. This practice is contrary to statutory requirements.

We also reviewed 20 of these 30 cases to determine whether the Probation Office enforced the requirement of monthly probation supervision fee payment or community service by the probationers. Our testing found 7 of 20 instances in which the Probation Office allowed probationers to fall behind at least three months on their monthly probation supervision fee / community-service obligation without any repercussions. No administrative hearing between the Probation Office and probationers to determine a plan to catch up on payment of fees or performance of community service was noted. Additionally, no court hearing was noted for a probation violation for these cases, and no notice of surrender was issued. Both practices are contrary to instructions provided by the Office of the Commissioner of Probation (OCP).

Authoritative Guidance

Chapter 276, Section 87A, of the General Laws, as amended (see Appendix C), requires the imposition of a designated fee, depending on which type of probation the probationer is placed on. The monthly probation supervision fee can be waived (in which case community service must be performed) upon order of the court after a finding of fact establishing that the probationer cannot pay the fee.

During fiscal year 2010, OCP issued a directive titled “Directive on Collecting Probation Supervision Fees,” which detailed steps the Probation Office should take if a probationer is

delinquent on the payment of the monthly probation supervision fee. After the probationer has failed to pay two consecutive months of monthly probation supervision fees, the supervising probation officer must meet with the probationer to review the reasons the probationer has failed to pay the fee and the probationer's ability and willingness to pay it, as well as to establish a plan to catch up. The Probation Office must schedule a court hearing to determine whether the fee is creating an undue hardship on the probationer and should be waived. If the probationer appears to be willing and able to pay, the supervising probation officer can allow the probationer up to two weeks to make full payment of the fee. If a probationer fails to pay the monthly probation supervision fee for a third consecutive month, the supervising probation officer must issue a notice of surrender (i.e., bring the probationer's case into court to argue that the probationer has violated the terms and conditions of probation) for failing to pay the monthly probation supervision fee.

Reasons for Judges Ordering Either the Monthly Probation Supervision Fees or Community Service in Lieu of the Fees

The Chief Probation Officer noted that sometimes judges order a probationer to either pay the monthly probation supervision fee or perform community service; whichever the probation officer thinks is most appropriate, because the court's schedule is too busy to go through the process of a finding of fact establishing that the probationer cannot pay the fee.

Reasons for Not Performing Administrative Hearings When Probationers Become Delinquent

The Probation Office did not perform administrative hearings when probationers fell behind two consecutive months on their fee/community-service obligation because of transition in the Chief Probation Officer position. The lack of management oversight appears to have resulted in a relaxed environment with regard to ensuring timely administrative hearings.

Recommendations

- FSC should comply with the requirements of Chapter 276 for the imposition and waiving of probation supervision fees and the restitution made for nonpayment of those fees. Specifically, it should make sure that it documents whether, based on court order, a probationer will pay a monthly probation supervision fee or a finding of fact has been held to allow the fee to be waived and community service performed instead. If FSC finds the statute too restrictive, then it should seek input from the Trial Court on getting an exemption from the requirement or look at legislative changes that could be put forward to better suit its needs.

- The Probation Office should hold an administrative hearing after a probationer fails to pay the monthly probation supervision fee for two consecutive months or fails to perform the required community-service hours in lieu of payment. After the hearing, the Probation Office should assess the probationer's ability and willingness to pay the fee to decide whether a court hearing should be held to determine whether payment of the fee would create an undue hardship on the probationer. If so, the fee should be waived. If not, the Probation Office should either require the probationer to pay delinquent fees owed or issue a notice of surrender for failing to pay the monthly probation supervision fee.

Auditee's Response

In response to this issue, the Clerk of Courts and Chief Probation Officer stated,

The Probation Office will adhere to applicable State Laws and the Trial Court directives.

b. Improvements are needed to centrally track community service performed by probationers.

The Probation Office staff records the performance of community service in probationers' files, but the office lacks a centralized system to track all the hours of community service performed through the Office of Community Corrections (OCC)⁷ or independent work arrangements made outside OCC. As a result, the Probation Office cannot readily determine how many community-service work hours are owed, what community service amounts to in dollars, and whether offenders will be able to fulfill the requirements of court orders on schedule.

We reviewed criminal-case activity at FSC to determine how well it documented the fulfillment of community-service orders by judgmentally sampling six cases in which a probationer's monthly probation supervision fee requirement was satisfied by performing community service. We reviewed the probationers' files and copies of community-service records provided to the Probation Office by OCC or by the independent agency where the probationer was performing community service to determine whether Probation Office staff verified the community-service hours. Additionally, we reviewed the tracking system for community-service hours performed by probationers; this review was intended to ensure that the Probation Office staff can easily track whether probationers are performing community service during each period in which it is required. Our testing showed that in six of six cases tested, or 100%, the community service performed by the probationer was not tracked in such a manner as to ensure that the probationer was performing the required hours of community service monthly. Instead, the

⁷ OCC is the office within the Trial Court's Probation Department that administers the Community Service Program throughout Massachusetts.

probationer's file needed to be thoroughly reviewed for any supervisory notes made by the probation officer and for evidence from OCC or the independent agency where the probationer performed community service to verify that community service was performed monthly.

Authoritative Guidance

The Probation Office is responsible for monitoring community service performed by individuals under Chapter 276, Section 87A of the General Laws, titled "Conditions of Probation; Probation Fee":

In lieu of payment of said probation fee the court shall require said person to perform unpaid community work service at a public or nonprofit agency or facility, as approved and monitored by the probation department. . . .

Though the General Laws do not address the issue of a centralized record, they do require adequate monitoring, and best business practices would require the use of a centralized tracking system.

Reasons for Not Maintaining a Central Record of Community-Service Hours

The Probation Office has not established a centralized system to track the community service hours performed by probationers. Instead, hours are documented in the case file of each probationer. The bookkeeper has not been instructed on how to centrally track community-service hours, but instead relies on the probation officers to summarize each probationer's community-service hours toward the end of the probation period rather than reporting it to the bookkeeper monthly. Therefore, the bookkeeper cannot readily determine the aggregate amount of community service owed and its dollar value.

Recommendation

The Probation Office should ensure that supervising probation officers promptly report all hours of community service performed by each probationer, as well as the payment of monthly probation supervision fees, on the bookkeeper's account ledger cards to be able to readily determine the status of a probationer's account. It should also consider implementing a more centralized system that would allow it to track community service performed by probationers on a timely basis to be able to readily determine the status of a probationer's account.

Auditee's Response

In response to this issue, the Clerk of Courts and Chief Probation Officer stated,

Community Service records are now provided weekly for proper accounting on a spreadsheet, once MassCourts [the state's case-management system] is fully adapted in the Superior Court the process will be streamlined.

3. FSC is not properly collecting court-ordered legal counsel fees.

FSC is not consistently complying with the statutory requirements for the collection of legal counsel fees.⁸ As a result, the Commonwealth may not be receiving all the money to which it is entitled and the Commonwealth may be paying for legal services for which the recipients do not qualify.

We judgmentally selected a sample of 10 criminal cases disposed of during the audit period to determine FSC's compliance with statutes covering legal counsel fees. We identified 9 cases where defendants were appointed legal counsel and ordered to pay the \$150 legal counsel fee. In 8 of those cases (89%), the legal counsel fee was not paid within 60 days of legal counsel appointment, and the Clerk of Courts did not notify the appropriate state agencies of the outstanding balance as required by the General Laws. Additionally, the Probation Office did not perform indigence reassessments on defendants with court-appointed lawyers six months from the date of the initial indigence assessments and every six months thereafter to ensure that the defendants continued to meet the definition of indigence established by the Committee for Public Counsel Services.

Authoritative Guidance

Chapter 211D of the General Laws (see Appendix D) requires the Clerk of Courts to notify the Registry of Motor Vehicles (RMV), the Department of Transitional Assistance (DTA), and the Department of Revenue (DOR) upon a defendant's failure to pay the legal counsel fee within 60 days from its assessment. Additionally, six months from the initial indigence assessment and every six months thereafter, Chapter 211D of the General Laws requires the Probation Office to conduct a further reassessment of the defendant's financial circumstances to ensure that the defendant continues to meet the definition of indigency.

⁸ The legal counsel fee is an amount, usually \$150, that an indigent defendant who is provided with a court-appointed lawyer is responsible for paying.

Reasons for Not Notifying State Agencies of Unpaid Legal Counsel Fees

The Clerk of Courts stated that she does not notify state agencies when a defendant does not pay the legal counsel fee within 60 days of assessment because no procedure has been formally established to identify how the Probation Office would notify the Clerk of Courts' Office (the Clerk's Office) or how the latter would notify the applicable state agencies when a legal counsel fee remained unpaid for over 60 days after assessment.

Reasons for Not Performing Indigence Reassessments

The former Chief Probation Officer was not aware that the Probation Office was required to perform indigence reassessments six months from initial indigence assessment and every six months thereafter.

Recommendations

FSC should establish formal procedures in order to comply with statutory requirements regarding unpaid legal counsel fees. These procedures should include adequate instruction and training provided to staff to ensure the following:

- That the Probation Office reports to the Clerk's Office any unpaid legal counsel fees that are not paid within 60 days of assessment, so that the latter can give proper notification to the RMV, DTA, and DOR.
- That the Probation Office performs indigence reassessments as required by Chapter 211D, Section 2A, of the General Laws.

Auditee's Response

In response to this issue, the Clerk of Courts and Chief Probation Officer stated,

The court will monitor the collection of outstanding legal counsel fees and await the implementation of MassCourts to automate the process.

4. FSC accepted a motor-vehicle title as bail but had no adequate way to express a claim on the vehicle.

During the audit period, the Clerk's Office held custody of a surety's motor-vehicle title posted as bail to secure the defendant's future court appearance(s). However, the Clerk's Office did not have the ability to express a claim on this vehicle, since the court was not listed as a lienholder on the title. As a result, the vehicle title posted for bail had no monetary value, and therefore, the court's ability

to use it as leverage to secure the defendant's future court appearances was questionable. In addition, the surety could dispose of the vehicle without the court's permission.

We found that FSC initially set a defendant's bail at \$5,000 and three days later changed the bail to include a combination of \$1,100 and title to a motor vehicle. The defendant's surety satisfied the bail by giving the Clerk's Office \$1,100 and the title to the surety's motor vehicle. The Clerk's Office followed protocol by properly receiving and accounting for the \$1,100 cash bail and adequately safeguarded the vehicle title by placing it in the office safe. However, the court did not require a lien to be placed on the motor vehicle or require the Clerk's Office to take physical possession of the property, a 2002 Ford Explorer XLT. Also, there was no indication in the court records maintained by the Clerk's Office that the vehicle owner provided evidence of its value or any encumbrances against the vehicle.

Authoritative Guidance

The Trial Court's Fiscal Systems Manual (FSM) establishes protocols for handling bail, including verification by court employees that security accepted as bail meets all bail requirements. In order for the court to place a claim against bank passbooks and bonds used as security if the defendant does not adhere to the terms and conditions of his or her release on bail, the court must establish liens against such items when they are posted for bail. In situations like this when a judge orders that a motor vehicle be used for bail purposes, the RMV follows a simple process for encumbering the vehicle's title that would secure the lienholder's (in this case, FSC's) interest: it creates a new title identifying a lienholder, thereby preventing the ownership of the vehicle from being transferred without the lienholder's approval, and mails it directly to the lienholder.

Chapter 276 of the General Laws (see Appendix E) allows for property of sufficient, unencumbered value to be posted as bail for certain criminal offenses. The surety is required to provide the court with proof of ownership, the value of the property, and information on any encumbrances.

Reasons for Accepting Vehicle Title as Bail without Placing a Lien on the Property

The judge presiding over the criminal case did not provide any specific instructions that would have authorized the Clerk of Courts to encumber the vehicle using the lien process established by the RMV. Also, the FSM does not provide instructions for handling property, like motor vehicles, taken for bail.

Recommendation

FSC should contact the Trial Court to determine the best method for claiming an interest in the vehicle, and the Trial Court should update its FSM policy on property posted as bail to include the RMV's process for adding a lien to a motor-vehicle title. Additionally, FSC should request that judges specifically order liens on property posted as bail at the time the bail is set in order to secure the court's interest in the property.

Auditee's Response

In response to this issue, the Clerk of Courts and Chief Probation Officer stated,

It will be recommended that cash bail be the only vehicle to be authorized for the release of bail.

5. Since the prior audit, FSC has developed an internal control plan and performed periodic risk assessments.

During our previous audit period, FSC had not developed an internal control plan (ICP) or conducted periodic risk assessments as required by state law and Trial Court regulations. Therefore, our prior audit report recommended that FSC review the Trial Court's Internal Control Guidelines, conduct a risk assessment, and document a high-level ICP that addressed the risks and internal control requirements specific to its operations.

During our current audit, we determined that FSC had developed an ICP and performed a risk assessment in accordance with state law and Trial Court regulations.

6. Since the prior audit, FSC has succeeded in performing monthly revenue reconciliations.

During our previous audit period, FSC office personnel could not reconcile revenue that FSC remitted to the Commonwealth as required by Trial Court fiscal policy. Therefore, our prior audit report recommended that FSC use the information from the Trial Court's internally prepared revenue summary as a source for reconciling the local court revenue to the local court records.

During our current audit, we determined that FSC performed monthly reconciliations of revenue remitted to the Commonwealth to revenue credited to FSC's revenue accounts in the Commonwealth's Massachusetts Management Accounting and Reporting System.

7. Since the prior audit, the Probation Office has succeeded in improving processing, depositing, and accounting for cash.

During our previous audit, the Probation Office needed to improve its internal controls over segregating duties for its cash-collection process, safeguarding cash receipts, and posting entries to its accounting records. Therefore, our prior audit report recommended that the Probation Office continue its efforts to realign staff responsibilities to adequately segregate duties between cashiering and bookkeeping functions. Additionally, we recommended that it modify its practice and make more frequent bank deposits, allowing sufficient time for the bookkeeper to balance the books and for the deposit to be made on the same day. We also recommended that FSC continue to maintain its accounting records in the manner prescribed by the Trial Court.

During our current audit, we determined that the Probation Office had improved internal controls to properly segregate cashiering and bookkeeping duties, safeguard cash receipts by depositing the funds with the bank in a timely manner, and record entries in the accounting records in a timely manner.

APPENDIX A

Trial Court Inventory Procedures Memoranda

The Trial Court implemented inventory procedures in Fiscal Year 2004 Memo #16, issued to the Clerks of the Trial Court on May 28, 2004. These procedures superseded previous inventory procedures issued by the Trial Court. The memo states,

The fixed asset inventory must contain all fixed assets with a value over \$100 that are in the care and control of a court/office. There should be one fixed asset inventory for each court division or office. . . .

. . .

Fixed assets that become lost or stolen must be reported using the "Report on Unaccounted Variances Losses Shortages or Thefts of Funds or Property" form contained in Section 1.5.8 of the Fiscal Systems Manual.

. . .

Each court and office must . . . conduct a physical inventory of the fixed assets to create the data for the initial inventory. . . . A physical inventory must be performed each year before the information is . . . sent to the [Trial Court]. Additionally, courts and offices must ensure that all equipment with a value over \$100 has an inventory tag.

The Trial Court's fiscal year 2004 inventory procedures detail the information required in the inventory listing, including inventory tag numbers, item descriptions, year received (if known), cost, room or location of the fixed asset, and date of disposal or transfer.

The Trial Court supplemented the fiscal year 2004 inventory procedures with updated equipment inventory procedures issued in Fiscal Year 2009 Memo #8, issued to the Clerks of the Trial Court on October 3, 2008. The memo states,

Courts and offices should diligently research to determine the original purchase date and cost of all equipment. In instances where documentation is unavailable, courts and offices should use the attached listing . . . as the approximate cost of the equipment and a purchase date of July 1, 2000.

The responsibility for determining when assets have exceeded their useful life . . . has been delegated to the Administrative Heads and the Department Heads of each court or office. If it is determined that equipment should be disposed of and removed from the inventory list, documentation must be kept on file to certify that the equipment was no longer useful to the Trial Court. The attached [disposal form] must be used to document the disposal of all assets. The completed form is to be kept on file with the annual inventory listing. . . .

APPENDIX B

Guidance on Reporting Unaccounted-For Variances, Losses, Shortages, or Theft of Funds or Property

Chapter 647 of the Acts of 1989, An Act Relative to Improving the Internal Controls within State Agencies, states,

All unaccounted for variances, losses, shortages or thefts of funds or property shall be immediately reported to the state auditor's office, who shall review the matter to determine the amount involved which shall be reported to appropriate management and law enforcement officials. Said auditor shall also determine the internal control weakness that contributed to or caused the condition. Said auditor shall then make recommendations to the agency official overseeing the internal control system and other appropriate management officials. The recommendations of said auditor shall address the correction of the conditions found and the necessary internal control policies and procedures that must be modified. The agency oversight official and the appropriate management officials shall immediately implement policies and procedures necessary to prevent a recurrence of the problems identified.

The Trial Court Internal Control Guidelines also require the prompt reporting of unaccounted-for variances, losses, shortages, and theft of funds or property. Section 1.5.8 states, in part,

*In compliance with Chapter 647 of the Acts of 1989, all departments, divisions and offices must complete the **Report on Unaccounted For Variances, Losses, Shortages or Thefts of Funds or Property** form immediately following the discovery of one of these occurrences. The form must be signed by the department head and the administrative head of the department, division or office must be notified.*

APPENDIX C

Massachusetts General Laws Involving Monthly Probation Fees and Legal Counsel Fees

Probation Fee, Supervised Probation

Established in accordance with Chapter 276, Section 87A, of the Massachusetts General Laws, this is a required fee if a defendant is placed on either supervised probation or operating-under-the-influence probation. If the defendant is found indigent, he or she must perform one day of community-service work monthly. The fee is \$60 per month plus a \$5 per month Victim Services surcharge. (The fee does not apply to nonsupport convictions where support payments are a condition of probation; individuals who are required to make child-support payments are not required to pay the monthly probation supervision fee.) The fee can be waived or reduced upon a court hearing if the payment of the fee would constitute an undue hardship on the defendant or his/her family, with the defendant required to perform some amount of community service. Additionally, the court hearing can result in the fee being offset by the amount of restitution payments (if applicable) against the defendant.

Probation Fee, Administrative Probation

Established in accordance with Chapter 276, Section 87A, of the General Laws, this is a required fee if a defendant is placed on administrative supervised probation. If the defendant is found indigent, he or she must perform four hours of community-service work monthly. The fee is \$45 per month plus a \$5 per month Victim Services surcharge. (The fee does not apply to nonsupport convictions where support payments are a condition of probation; individuals who are required to make child-support payments are not required to pay the monthly probation supervision fee.) The fee can be waived or reduced upon a court hearing if the payment of the fee would constitute an undue hardship on the defendant or his/her family, with the defendant required to perform some amount of community service. Additionally, the court hearing can result in the fee being offset by the amount of restitution payments (if applicable) against the defendant.

Legal Counsel Fee

Established in accordance with Chapter 211D, Section 2A, of the General Laws, this is a required fee when legal counsel is appointed for a defendant who is found to be “indigent” or “indigent but able to contribute [to the cost of counsel].” The fee is \$150 and can be waived at the court’s

discretion if it is determined that the defendant will be unable to pay the fee within 180 days. If the fee is not waived, the judge may permit the defendant to perform 10 hours of community service for each \$100 owed. The amount can also be remitted (brought to zero) if the defendant is acquitted.

Legal Counsel Contribution

Established in accordance with Chapter 211D, Section 2, of the General Laws and with Supreme Judicial Court Rule 3:10(10)(c), this is a contribution the court can impose when legal counsel is appointed for a defendant who is indigent but able to contribute to the cost of counsel. The amount of the contribution is determined by the court as the “reasonable amount” required toward the cost of counsel, in addition to the above legal counsel fee. The amount can also be remitted (brought to zero) if the defendant is acquitted.

APPENDIX D**Chapter 211D, Section 2A (c, f – h), of the
Massachusetts General Laws: Affidavit of
Indigency; Waiver Authorizing Access to Verifying
Information; Quarterly Reports on Implemented
Procedures**

(c) . . . Not later than 6 months after the appointment of counsel, and every 6 months thereafter, the chief probation officer or the officer's designee shall conduct a further reassessment of the financial circumstances of the person for whom counsel was appointed to ensure that the person continues to meet the definition of indigency. The chief probation officer or the officer's designee shall prepare, sign and file a written report certifying that the person either continues to meet, or no longer meets, the definition of indigency.

. . .

(f) A person provided counsel under this chapter shall be assessed a counsel fee of \$150, which the court may waive only upon a determination from officer's data verification process that the person is unable to pay such \$150 within 180 days. If, upon the biannual reassessment of the person's indigency, the court concludes that the person is able to pay the \$150 counsel fee of which the person obtained a waiver, the court shall revoke the waiver and reimpose the \$150 counsel fee. . . .

(g) . . . 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.

(h) The clerk of the court shall, within 60 days of appointment of counsel, report to the department of revenue, the department of transitional assistance and the registry of motor vehicles the amount of any legal counsel fee owed by the person for whom counsel was appointed under this chapter. The department of revenue shall intercept payment of such fee from tax refunds due to persons who owe all or a portion of such fee. The registry of motor vehicles shall not issue or renew a person's driver's license or motor vehicle registration for any vehicle subsequently purchased by such person until it receives notification from the clerk of the court that the fee has been collected or worked off in community service.

APPENDIX E**Chapter 276, Section 58A, of the Massachusetts
General Laws: Conditions for Release of Persons
Accused of Certain Offenses Involving Physical
Force or Abuse; Hearing; Order; Review**

(2) . . . *If the judicial officer determines that personal recognizance will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community, such judicial officer shall order the pretrial release of the person—*

(A) subject to the condition that the person not commit a federal, state or local crime during the period of release; and

(B) subject to the least restrictive further condition, or combination of conditions, that such judicial officer determines will reasonably assure the appearance of the person as required and the safety of any other person and the community that the person—

. . .

(xi) execute an agreement to forfeit upon failing to appear as required, property of a sufficient unencumbered value, including money, as is reasonably necessary to assure the appearance of the person as required, and shall provide the court with proof of ownership and the value of the property along with information regarding existing encumbrances as the judicial officer may require.