



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

Making government work better

Official Audit Report-Issued January 31,2014

Hampden Division of the Superior Court
Department – Clerk of Courts’ Office
For the period July 1, 2011 through December 31, 2012





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Office of the State Auditor
Suzanne M. Bump

Making government work better

January 31, 2014

Laura S. Gentile, Esq.
Clerk of Courts
Hampden Division of the Superior Court Department
50 State Street, Third Floor
Springfield, MA 01102-0559

Dear Clerk of Courts Gentile:

I am pleased to provide this performance audit of the Clerk of Courts' Office of the Hampden Division of the Superior Court Department. This report details the audit objectives, scope, methodology, findings, and recommendations for the audit period, July 1, 2011 through December 31, 2012. My audit staff discussed the contents of this report with management of the Clerk of Courts' Office, and their comments are reflected in this report.

I would also like to express my appreciation to the Clerk of Courts' Office for the cooperation and assistance provided to my staff during the audit.

Sincerely,

A handwritten signature in blue ink, appearing to read "SMBump".

Suzanne M. Bump
Auditor of the Commonwealth

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EXECUTIVE SUMMARY

This report considers whether, during our audit period of July 1, 2011 through December 31, 2012, the Clerk of Courts' Office of the Hampden Division of the Superior Court Department (the Clerk's Office) administered the applicable laws and policy directives to ensure that it had adequate controls over bail and civil escrow funds, cash management, inventory, and evidence.

The newly elected Clerk of Courts was sworn in on January 2, 2013. The findings in this report, covering the period July 1, 2011 through December 31, 2012, reflect the status of the office operations during the prior administration. This audit was initiated at the request of the newly elected Clerk of Courts to inform her of the status of certain fiscal and administrative operations as of the date she assumed office, to enhance the transition from the prior administration to the new administration, and to identify any areas needing corrective action and improvement. In addition, we examined issues that were identified in our prior audit report (No. 2006-1113-3O).

Summary of Findings

- An assistant clerk for the Clerk's Office, who was also authorized to take bail for district-court cases after normal court hours, did not transmit all the bail money he collected to the Clerk's Office. As a result, there is at least a \$5,000 bail shortage (bail that has not been turned in to the Clerk's Office), and the office cannot be certain that all the bails collected by the assistant clerk have been accounted for.
- At the time of our audit, the Clerk's Office was not maintaining accurate records of the furniture and equipment in its inventory, nor had it fully implemented the required annual physical inventory verification procedures. As a result, the Commonwealth's assets in the custody of the Clerk's Office, which have an estimated historical cost of \$731,107, may be at risk of loss, misuse, or misappropriation, and inventory may not be properly reported.
- Monthly bank account reconciliations were not always completed on time, prepared by the appropriate employee, completed accurately, or approved by the appropriate court official. As a result, there is no assurance that errors or irregularities occurring in the Clerk's Office's monthly bank balances (which averaged approximately \$2 million) are detected and resolved in a timely manner.
- The Clerk's Office did not maintain an accurate centralized evidence log that always identified the storage location and a sufficiently detailed description of evidence (including amounts/quantities) and accounted for evidence returned. As a result, the office cannot be certain that evidence in its possession related to 1,323 criminal cases, which could include high-risk evidence like drugs, money, and weapons, is properly secured and accounted for.

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- Our prior audit (No. 2006-1113-3O) identified the following deficiencies that the Office of the State Auditor (OSA) determined were either unresolved or partially resolved during the current audit:
 - During our previous audit period, Clerk's Office personnel did not reconcile revenue that the office remitted to the Commonwealth with the state's Massachusetts Management Accounting and Reporting System (MMARS) as required by the Trial Court in its Fiscal Year 2007 Memo #6. Our current audit revealed that the Clerk's Office still did not perform the required revenue reconciliations.
 - During our previous audit period, the Clerk's Office did not file the report required by Chapter 647 of the Acts of 1989 when it discovered that its monthly detailed account trial balance was \$1,000 greater than its reconciled bank balance. During our current audit period, the office did not file the required Chapter 647 report when its inventory liaison discovered that furniture and equipment items could not be located during the annual physical inventory (Finding 2). Additionally, the Clerk's Office did not file the required Chapter 647 report when it found that bail funds had not been turned in by an assistant clerk (Finding 1).
 - During our previous audit period, the Clerk's Office had not developed an internal control plan (ICP) or conducted periodic risk assessments as required by state law and Trial Court rules and regulations, such as the Internal Control Guidelines for the Trial Court. During our current audit period, the Clerk's Office developed an ICP, but still was not performing a periodic risk assessment, which, if performed, would have identified the risks associated with untimely depositing of funds.
 - During our previous audit period, the Clerk's Office was in possession of 167 bails, totaling \$157,360, for which the associated court cases were completed and the bails could have been either returned to the rightful owner or transmitted to the State Treasurer as unclaimed property. During our current audit, we determined that the Clerk's Office had taken measures to implement the recommendations made in our prior audit report about bails that could qualify as unclaimed or abandoned property. However, similar effort is needed when it comes to old civil escrow accounts on hand. The Clerk's Office maintained one account, valued at \$6,215 on December 31, 2012, that applied to a case completed more than three years ago. As a result, the office is in possession of funds that should be either returned to the rightful owner or transmitted to the Commonwealth.
 - During our current audit, OSA identified the following deficiencies that had been corrected since our previous audit (No. 2006-1113-3O):
 - During our previous audit period, the Clerk's Office allowed its cashiers to perform bookkeeping functions and allowed two or more cashiers to receive funds on any given day, working from a single cash drawer, and not prepare separate daily cash sheets. During our current audit, we determined that in accordance with the recommendations in our previous audit report, (1) there was adequate segregation of duties between the cashing and bookkeeping functions; (2) there were only two employees functioning as cashiers each business day; and (3) each cashier worked from a separate cash drawer and performed separate cash closeout procedures.
-

- In our previous audit, a sample of bails processed by the Clerk's Office indicated that the office was receiving, validating, and recording after-hours out-of-jurisdiction bails submitted by bail magistrates and then transferring those bails to courts that had jurisdiction over the cases. During our current audit, we determined that the Clerk's Office had taken measures to implement the recommendations made in our prior audit report about after-hours out-of-jurisdiction bails. Specifically, during the period July 2011 through October 2011, the office received, validated, and recorded 157 bails, totaling \$299,205, that it subsequently transferred to the appropriate courts that had jurisdiction over the cases. However, the Clerk's Office subsequently discontinued the practice of accepting out-of-jurisdiction bails and complied with the Trial Court's Fiscal Systems Manual (FSM) for the remainder of the audit period.

Recommendations

- If, on further investigation, the Trial Court concludes that there was malfeasance on the part of the assistant clerk, then the Clerk's Office should pursue all necessary legal action against the individual. It should determine whether additional bails remain outstanding and complete the Chapter 647 reporting process.¹ Further, as no process exists that notifies courts of the receipt of bail after hours, the Massachusetts Rules Governing Persons Authorized to Take Bail should be amended to require holding facilities like county jails and police department lockups to report to the Clerk-Magistrate's Office of the appropriate court that an individual has been released on bail. This way the court division will be able to follow up on bails not turned in after three court days.
- The Clerk's Office should establish the historical cost values for all items appearing on its inventory record 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 Clerk's Office should consider increasing the \$100 threshold above which items must be included on its inventory, in order to eliminate the items that are less vulnerable or likely to be misused or misappropriated.
- The Clerk's Office should make sure its inventory list includes all items of value in its care and control, particularly high-value electronic equipment like computers and audio/visual recording equipment.
- The Clerk's Office should follow Trial Court regulations on the disposal of equipment. The required equipment disposal form should be prepared by the inventory liaison for equipment ready to be disposed of. The Clerk of Courts 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 should be developed. The Clerk's 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 equipment inventory still cannot be located, the Clerk of Courts should file a Chapter 647 report with OSA.

¹ This process occurs under Chapter 647 of the Acts of 1989, An Act Relative to Improving the Internal Controls within State Agencies, which requires agencies to file a report with the State Auditor's Office if they find any "unaccounted for variances, losses, shortages or thefts of funds or property."

- The Clerk's Office should reassign the responsibility for annually verifying the inventory record to the individuals assigned to each of the physical areas where the Clerk's Office maintains inventory. The individuals performing the physical inventory should be employees other than the inventory liaison to ensure proper segregation of duties. Additionally, the physical inventory should be performed as close as possible to the end of the fiscal year, and employees involved in the inventory process should receive adequate training.
- The Clerk's Office should notify the Administrative Office of the Trial Court (AOTC) of untagged computer and court recording equipment so that AOTC can tag the items to help the Clerk's Office maintain proper control over their use and safeguarding.
- The bookkeeper for the Clerk's Office should be assigned the task of performing the bank reconciliations in accordance with Section 8.6 of the FSM (Monthly Closing and Reporting). Also, the bookkeeper should reconcile the office's records of individual accounts comprising the civil escrow trial balance monthly to bank account statements received, recording any interest earned for the month. Moreover, the monthly reconciliations should be reviewed and approved in a timely manner and any discrepancies resolved expeditiously. The backup bookkeeper should also be trained by the Trial Court in the performance of bookkeeping duties, including the preparation of monthly bank reconciliations.
- The Clerk's Office should update its evidence log to include the defendant, docket number, location, amount, and type of high-risk evidence maintained for all cases where the office maintains such evidence. It may be necessary for the office staff to review each case of evidence maintained and ensure that the evidence log properly documents the docket number, defendant, amount, and type of high-risk evidence maintained and the location of that evidence.
- The Clerk's Office should review and comply with the Trial Court Fiscal Year 2007 Memo #6 requiring the completion of monthly revenue reconciliations to ensure that revenue is transmitted and credited to the correct court and proper accounts (general or specific) in MMARS.
- The Clerk's Office should revisit its most recent physical inventory performed and file a Chapter 647 report with OSA for the items it cannot locate. It should also file a Chapter 647 report with OSA for all bail funds not turned in to the Clerk's Office within three business days. The Clerk's Office should also make sure that its staff is aware of the requirement to file such reports when variances occur and is adequately trained in preparing the form.
- The Clerk's Office should review the Internal Control Guidelines for the Trial Court and conduct a risk assessment. Annually, the Clerk's office should conduct risk assessments and update its ICP based on the results of these risk assessments, as necessary.
- The Clerk's Office should notify the rightful owners of civil escrow funds that are eligible for abandonment, allowing the owners sufficient time to claim the funds. If the funds still remain unclaimed after due process, then the Clerk's Office should transmit them to the Commonwealth as abandoned property.

Other Matters

During our audit, we identified an issue that, although it does not constitute an audit finding, affects the amount of revenue collected by the Clerk's Office, as well as by other courts that handle civil matters, and is therefore being disclosed in this report for consideration by the CJTC and the Legislature.

During our audit period, 153 individuals who initiated civil proceedings at the Hampden Division of the Superior Court Department did not pay a fee to do so because they submitted information to the Clerk's Office that qualified them for a fee waiver as authorized by Chapter 261, Section 27C, of the Massachusetts General Laws. In order to be eligible for a fee waiver, individuals must complete an Affidavit of Indigency form,² which they sign under penalty of perjury, attesting that they are eligible for the waiver. Chapter 261 does not allow the court to verify the information in the form but rather states that if the form is complete on its face, the court must accept the affidavit and the Clerk must grant the request. As a result, fees may have been waived for individuals who misrepresented their status as indigent. Accordingly, the CJTC and the Legislature may want to consider taking whatever measures are necessary (including amending Chapter 261, Section 27C, of the General Laws) to allow courts to verify the information included in Affidavit of Indigency and Supplement to Affidavit of Indigency forms.

² Persons indicating that they cannot pay the fees and costs of the proceeding "without depriving [themselves or their] dependents of the necessities of life, including food, shelter and clothing," according to the affidavit, must also complete a "Supplement to Affidavit of Indigency" form.

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. Regarding criminal matters, the SCD has exclusive original jurisdiction in first-degree murder cases. It also has jurisdiction over all felony matters and other crimes, although it shares jurisdiction over crimes where other Trial Court Departments have concurrent jurisdiction. Finally, the SCD has appellate jurisdiction over certain administrative proceedings. The SCD has established 14 divisions, each having 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, 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 Hampden Division of the Superior Court Department presides over civil and criminal matters falling within its territorial jurisdiction of Hampden County. The Clerk of Courts' Office of the Hampden Division of the Superior Court Department (the Clerk's Office) is responsible for scheduling, holding, and recording proceedings in civil and criminal matters, as well as 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, 2011 through December 31, 2012, the Clerk's Office collected revenue totaling \$1,087,130,³ which it disbursed as either general or specific state revenue as shown in the following table:

Revenue Type	July 1, 2011 through June 30, 2012	July 1, 2012 through December 31, 2012	Totals
General Revenue	\$ 302,550	\$ 125,256	\$ 427,806
Probation and Administrative Supervision Fees	297,090	123,112	420,202
Victim/Witness Fund	26,785	12,443	39,228
Surcharge	31,775	14,215	45,990
Reimbursement for Indigent Counsel	63,582	28,586	92,168
Drug Analysis Fund	18,082	8,780	26,862
Other	19,858	15,016	34,874
Totals	<u>\$ 759,722</u>	<u>\$ 327,408</u>	<u>\$ 1,087,130</u>

In addition to the funds collected and transferred to the Commonwealth, the Clerk's Office was the custodian of 269 cash bails, totaling \$1,657,150, as of December 31, 2012.⁴ According to the agency's records, the Clerk's Office was also in custody of six civil escrow accounts in trust, totaling \$208,295; 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, the Clerk's Office is given copies of these transmittals so it can reconcile revenue transmitted by the Hampden Division of the Superior Court Department to the Commonwealth's records.

⁴ Bail 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.

The Clerk's Office's operations are funded by appropriations under OCM's control from which the office receives periodic allotments. According to the Commonwealth's records, expenditures associated with the operation of the Clerk's Office were \$2,694,063⁵ for the period July 1, 2011 through December 31, 2012.

⁵ Based on queries for the Clerk's Office unit/location. This number could include personnel and administrative expenses of the Probation Office. We did not examine appropriation expenditures as part of this audit.

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 Clerk of Courts' Office of the Hampden Division of the Superior Court Department (the Clerk's Office) for the period July 1, 2011 through December 31, 2012.

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.

Our audit objectives were to (1) assess the adequacy of the Clerk's Office's controls over cash management, bail funds, civil escrow accounts, inventory, and evidence and its compliance with applicable laws, regulations, policies, and procedures in these areas and (2) follow up on the audit findings reported in our prior audit (No. 2006-1113-3O).

To achieve our audit objectives, we reviewed our prior audit report, reports on the court division's revenue and expenses produced by the Office of the State Comptroller'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 also gained an understanding of the internal controls we deemed to be significant to our audit objectives and evaluated the design and effectiveness of these controls. Specifically, we performed procedures such as interviewing Clerk's Office managers and other staff members and reviewing relevant documents, statutes, and regulations as well as the office's policies, procedures, and accounting records. We also obtained and analyzed case data from selected case docket records and traced and compared them to Forecourt, the Clerk's Office'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 related to 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. We also requested that court management sign a Representation Letter, which is a standard auditing document that confirms certain representations made to us during our audit. Court personnel were advised against signing this letter per Trial Court officials, who thought it was too broadly worded. Since this is a performance audit, not a financial audit, government auditing standards do not require us to consider this a limitation of our audit scope.

At the conclusion of our audit, we discussed the results with Clerk's Office officials, and we considered these officials' comments in the drafting of our final report.

Based on our audit, we have concluded that, except for the issues addressed in the Detailed Audit Results and Findings section of this report, for the period July 1, 2011 through December 31, 2012, the Clerk's Office maintained adequate internal controls in the areas tested.

DETAILED AUDIT RESULTS AND FINDINGS WITH AUDITEE'S RESPONSE

Audit Findings

1. An employee of the Clerk of Courts' Office did not turn in bails in accordance with established rules.

An assistant clerk at the Clerk of Courts' Office of the Hampden Division of the Superior Court Department (the Clerk's Office), who was also authorized to take bail for district-court cases after normal court hours, did not transmit all the bail money he collected to the Clerk's Office. As a result, there is at least a \$5,000 bail shortage (bail that has not been turned in to the Clerk's Office), and the office cannot be certain that all the bails collected by the assistant clerk have been accounted for.

Authoritative Guidance

The Massachusetts Rules Governing Persons Authorized to Take Bail apply only to out-of-court releases of defendants (which occur after normal court business hours) and require people authorized to take bail, including assistant clerks of the Superior Court, to transmit received bail to the appropriate court division by the third court day after the day on which the release was authorized.

Current Practices

Bail can be posted during or after normal court hours. If a court employee collects bail after normal court hours, the employee has up to three court business days to turn it in to the court where the criminal case originated. Most bails apply to criminal cases brought in either district court or superior court. If the criminal case to which the bail applies originated in district court and is a felony matter, the district court usually transfers the case, along with the bail, to the superior court. When a bail is turned in to the superior court, the Clerk's Office staff processes it on receipt by recording the amount received on a daily cash sheet, posting it to a cash journal, and entering it into a bail book and on the detailed trial balance.⁶ However, there is no process that notifies the office when bail is collected outside normal court hours and the court should expect to receive it.

While performing on-site audit fieldwork, we were alerted to a \$500 bail that was received by the Clerk's Office long after the criminal case had been transferred from the district court to the

⁶ The detailed trial balance itemizes, by case and receipt category, all money held by the court at the end of the month.

superior court (the Hampden Division of the Superior Court Department). Upon further review, we determined that the employee who collected the \$500 bail for a district court criminal case (an assistant clerk for the Clerk's Office) did not turn in the bail to the district court until after the case was transferred to the superior court and the Clerks' Office staff requested that the district court transfer the bail. We were able to confirm that the Clerk's Office eventually received the bail, but that it was received six weeks after the assistant clerk collected it, and only after the district court requested that the assistant clerk turn over the bail. We also identified a criminal case where, on September 9, 2012, the same assistant clerk collected \$5,000 in bail after hours; by the end of our on-side audit fieldwork, on March 29, 2013, the bail had not been transmitted to the Clerk's Office. Further review of bails collected by the assistant clerk noted other instances where bails were not transmitted to the appropriate court by the third court day.

Reasons for Untimely Bail Transmittals and Outstanding Bails

Trial Court legal counsel advised Clerk's Office officials not to comment on untimely transmittals and outstanding bails collected by the assistant clerk. We were informed that the assistant clerk was placed on paid administrative leave in February 2013 as the matter was further reviewed.

Post-Audit Action

After we finished our fieldwork, the surety who posted the \$5,000 bail collected by the assistant clerk requested its return from the Clerk's Office. The Clerk of Courts complied and returned the \$5,000 bail to the surety on June 21, 2013. The Clerk's Office eventually received the bail 23 days after returning \$5,000 to the surety and 309 days after the assistant clerk originally collected the bail.

Recommendations

If, on further investigation, the Trial Court concludes that there was malfeasance on the part of the assistant clerk, then the Clerk's Office should pursue all necessary legal action against the individual. It should determine whether additional bails remain outstanding and complete the Chapter 647 reporting process.⁷ Further, as no process exists that notifies courts of the receipt of bail after hours, the Massachusetts Rules Governing Persons Authorized to Take Bail should be amended to require

⁷ This process occurs under Chapter 647 of the Acts of 1989, An Act Relative to Improving the Internal Controls within State Agencies, which requires agencies to file a report with the State Auditor's Office if they find any "unaccounted for variances, losses, shortages or thefts of funds or property."

holding facilities like county jails and police department lockups to report to the Clerk-Magistrate's Office of the appropriate court that an individual has been released on bail. This way the court division will be able to follow up on bails not turned in after three court days.

Auditee's Response

In response to this issue, the Clerk of Courts stated,

The incidents referred to in the audit report occurred during the prior administration and prior to me taking office on January 2, 2013. I discovered the incidents just weeks after taking office and took immediate action. The employee in question was suspended and the matter was turned over to authorities. The matter remains in the control of the Attorney General's Office. The policy which was in place during the prior administration was ineffective. I have implemented a comprehensive policy which is in force to ensure the timely processing and transmittal of bail money collected after court hours. Also, a procedure has been implemented to ensure the timely transfer of money from district court cases to the Superior Court.

2. The Clerk's Office has not fully implemented an effective process for managing its inventory of furniture and equipment.

At the time of our audit, the Clerk's Office was not maintaining accurate records of the furniture and equipment in its inventory, nor had it fully implemented the required annual physical inventory verification procedures. As a result, the Commonwealth's assets in the custody of the Clerk's Office, which have an estimated historical cost of \$731,107, may be at risk of loss, misuse, or misappropriation, and inventory may not be properly reported.

The Clerk of Courts maintains the inventory of furniture and equipment for the Clerk's Office, which consists of eight courtrooms, the attorneys' lounge, the grand jury room, the jury pool room, the judges' lobby (offices), and the civil and criminal sections. The Clerk's Office created an inventory list in 2004 and conducted an annual physical verification of inventory under its care and control. However, based on our audit work, it appears that the inventory record was not always updated when items were moved; it lacked essential cost data and other important data; it contained obsolete inventory items and inventory items that did not meet the minimum dollar threshold for inclusion; and items that could not be located during the physical inventory verification process were not reported, removed, or properly reflected on the record. In addition, inventory items were not always tagged as required by the Trial Court.

Required historical cost data for inventoried items were not recorded on the June 30, 2012 inventory list. We estimated the historical cost at \$731,107 by assigning values to each of the 1,002 items using

either a cost list that the Trial Court had provided to the Clerk's 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 electronic equipment like computers, monitors, televisions, typewriters, calculators, and audio/visual recording equipment.

Additional deficiencies noted with the inventory list were as follows:

- Eighteen, or 2%, of the items on the list did not appear to meet the \$100 minimum dollar value threshold for inclusion on the inventory list.
- The Clerk's Office identified 130, or 13%, of the items on the list as previously disposed of, but did not have support proving proper disposal. These items could not be located by the inventory liaison during the three-month physical verification process. Further discussions with the inventory liaison disclosed that the "previously disposed of" designation meant that the items were discarded because they were broken or useless or just could not be found during the annual verification of inventory. We asked the Clerk's Office for documentation of the reason and management authorization for its disposal of these items, or Chapter 647 report filings. However, the office could not provide any disposal forms that documented the reason and authorization for removing these items from the office. We estimated the historical cost of these 130 "previously disposed of" items (mostly desks, chairs, typewriters, and computers) at \$70,740.

We also selected⁸ 50 items to verify that the Clerk's Office properly tagged, maintained, and accounted for furniture and equipment in its care and control. (We tested the Clerk's Office furniture and equipment inventory by judgmentally selecting these items to verify that they were properly reflected on the list, with tag number, correct location, etc.) We found that the office was not fully compliant with Trial Court regulations regarding the accounting for, and full reporting of, furniture and equipment inventory for these 50 items.

- Nine out of 25, or 36%, of the items sampled from the inventory list could not be located by office personnel upon our request.
- Sixteen out of 25, or 64%, of the items sampled from the various locations in the Clerk's Office were not on the office's inventory list, and eight of these items were not properly tagged with an inventory code. Because we had found significant instances of noncompliance, we expanded our testing to include high-end furnishings (e.g., executive desks, conference table, hutches) from the three executive offices of the Clerk's Office (valued at \$5,162), computers less than one year old (31, collectively valued at \$71,000), and sophisticated courtroom audio/visual recording systems (8, collectively valued at \$80,000), none of which appeared on the Clerk's Office inventory

⁸ We selected the judgmental sample from 261 inventory items that were considered to be high in dollar value and/or more vulnerable to misuse/misappropriation (25 items).

record. Of the relatively new computers, nine, or 29%, had never been used; they were installed on vacant desks. These unused computers were relocated to various court rooms during our audit.

Authoritative Guidance

In its Internal Control Guide, the Office of the State Comptroller (OSC) requires state departments 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 perpetual inventory record and reconciled with the physical inventory at least annually and that the inventory record contain the following identifiers at a minimum: date of purchase, cost, description, location, and disposal of an inventory item.

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

The same memo included furniture and equipment inventory procedures and was supplemented with Fiscal Year 2009 Memo #8 (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 inventory items that could not be located during the physical inventory must be reported to the Office of the State Auditor (OSA) with a "Report on Unaccounted Variances, Losses, Shortages or Thefts of Funds or Property," also referred to as a Chapter 647 report (Finding 6 and Appendix B).

Reasons for Inadequate Implementation of Inventory Process

The inventory liaison was not familiar with the Trial Court inventory procedures or trained in this area. According to the employee (who is also the head administrative assistant for the Clerk's Office), her other work responsibilities took precedence over inventorying. Also, giving one person the responsibility of creating and updating the inventory list and performing the annual verification of inventory gives too much control to that one individual, creating a lack of segregation of duties. Mistakes in the inventory list are less likely to be detected and corrected if only one employee is involved in the inventory.

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.

Finally, inquiries with the Clerk's Office inventory liaison and review of Trial Court inventory control procedures revealed that computer-related equipment and court recording equipment need not be tagged by each court. Instead, the Information Technology (IT) department of the Trial Court tags and monitors these items. Of the eight items not tagged, two were court recording equipment, and of the eight items tagged but not on the inventory list, seven were computer monitors or computers with IT tags. While the Clerk's Office is not required to tag these items, it should notify the Administrative Office of the Trial Court (AOTC) that it has these items that require tagging.

Reasons for Delay in Verifying Inventory Record

The record contains some insignificant items, and the inventory liaison is not delegating the verification process to the employees in the appropriate locations. The Trial Court memos require that anything that originally cost \$100 or more be inventoried, along with anything that the Trial Court valued at \$100 or more in its furniture cost guide, which, for example, values office chairs at \$405. The Clerk's Office's inventory contains 569 records for chairs (57% of the inventory list), which by nature move about the various offices as needed and are not generally considered high-risk items. Regardless, the Trial Court policy requires that these 569 items be verified annually. Because there are so many minor items, this can be a difficult and time-consuming task for one employee to perform, causing the verification process to take months, rather than days, to complete.

Recommendations

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

- Establish the historical cost values for all items appearing on its inventory record 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 likely to be misused or misappropriated.

- Make sure the inventory list includes all items of value in the office's care and control, particularly high-value electronic equipment like computers and audio/visual recording equipment.
- Follow Trial Court regulations on the disposal of equipment. The equipment disposal form should be prepared by the inventory liaison for equipment ready to be disposed of. The Clerk of Courts 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 should be developed. The Clerk's 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 equipment inventory still cannot be located, the Clerk of Courts should file a Chapter 647 report with OSA.
- Reassign the responsibility for annually verifying the inventory record to the individuals assigned to each of the physical areas where the Clerk's Office maintains inventory. The individuals performing the physical inventory should be employees other than the inventory liaison to ensure proper segregation of duties. Additionally, the physical inventory should be performed as close as possible to the end of the fiscal year, and employees involved in the inventory process should receive adequate training.
- Notify AOTC of untagged computer and court recording equipment so that AOTC can tag the items to help the Clerk's Office maintain proper control over their use and safeguarding.

Auditee's Response

In response to this issue, the Clerk of Courts stated,

Since taking office, a procedure to manage inventory has been implemented in compliance with the mandates of, and under the direction of, the Trial Court.

3. Clerk's Office staff does not prepare and approve bank reconciliations in a timely and accurate manner.

Monthly bank account reconciliations were not always completed on time, prepared by the appropriate employee, completed accurately, or approved by the appropriate court official. As a result, there is no assurance that errors or irregularities occurring in the Clerk's Office's monthly bank balances (which averaged approximately \$2 million) are detected and resolved in a timely manner.

Of the 18 monthly bank reconciliations reviewed, none were fully compliant with the Trial Court's policies and procedures governing the preparation and approval process. The noncompliant areas we noted were as follows:

- Twelve, or 67%, were untimely, in OSA's opinion, because they took more than 30 days to complete (eight bank reconciliations took between 31 days and 75 days) or there was no preparation date recorded on the reconciliation (four bank reconciliations lacked this information).
- Eighteen, or 100%, were not completed by the bookkeeper as required by the Trial Court's Fiscal Systems Manual (FSM). Instead, the individuals who prepared the reconciliations were the backup bookkeeper (in 14 cases), Trial Court internal auditors (in 2), and unknown individuals (in 2).
- Three, or 17%, were not approved by the former Clerk of Courts or a delegate as required by the FSM.

Further examination of the June 2012 and July 2012 bank account reconciliations prepared by Trial Court internal auditors noted that the backup bookkeeper started to complete these monthly bank reconciliations but was not able to resolve the issue of a \$10,000 bad check (received from another court division) when reconciling. The Trial Court internal auditor subsequently corrected the issue by properly accounting for the bad check on both monthly reconciliations (by reducing the balances on the appropriate financial records by the \$10,000), but the Clerk's Office staff did not follow up with the other court division for repayment arrangements for the bad check as required by the FSM; Trial Court internal auditors followed up on it six months later.

Additionally, the actual monthly civil escrow bank statement balances were not compared to the corresponding detailed monthly trial balance recorded on monthly bank account reconciliations, resulting in a \$6,015 overstatement (from when one civil escrow account was closed out in January 2011) going undetected by the Clerk's Office until OSA brought it to the office's attention in February 2013, 25 months later.

Without timely and accurate monthly bank account reconciliations that include reconciling items like bad checks and confirming amounts that appear in the detailed monthly trial balance, and without having those reconciliations approved by a court authority, the office faces an increased risk of errors in its fiscal records going undetected and uncorrected for an extended period.

Authoritative Guidance

The FSM contains detailed policies and procedures for court divisions to follow to ensure complete and accurate accounting, reconciling, and reporting of financial transactions. Regarding month-end closing and reporting, the FSM stresses the importance of including a comparison of the detailed

monthly trial balance to the monthly bank reconciliation process. (See Appendix C for selected guidance on civil escrow accounting.)

While the Trial Court's policy requires the bookkeeper to prepare and submit monthly bank reconciliations by the tenth day of each month, it provides a little leeway to allow sufficient time for the court division's receipt of bank statements. Section 8.6 of the FSM (Monthly Closing and Reporting), which details the steps the bookkeeper must take when reconciling, comments on untimely delivery of bank statements:

Bank statements are not always received on a timely basis, but the importance of a proper reconciliation cannot be overstated. If the Bank Account Reconciliation form cannot be sent with the other month-end reports by the tenth day of the following month, every effort must be made to send in this report as soon after submission of the other month-end reports as possible.

Reasons for Untimely and Inaccurate Monthly Bank Reconciliations

Clerk's Office personnel who were involved in the month-end closing and reporting process were aware of the need to complete accurate and timely monthly bank reconciliations, but the bookkeeper (who, according to the FSM, is responsible for preparing the monthly bank reconciliations) was assigned to other court functions. Therefore the task fell to the backup bookkeeper. From inquiry of the backup bookkeeper, we noted that this employee was not initially well trained on how to perform the reconciliation or complete the Monthly Bank Account Reconciliation Form. Rather, this individual primarily functioned as an operations supervisor, whose daily responsibilities were not financial ones. The process was further complicated by the monthly bank reconciliation being cumbersome and requiring a detailed comparison of many aspects of the court division's financial operations that would take into account month-end reconciling items (e.g., deposits made after the bank's close of business and not credited to the account until the following day, checks paid but not posted until the following day, and outstanding checks). The backup bookkeeper is not as involved in the financial operations of the Clerk's Office as the bookkeeper is; the performance of the Monthly Bank Account Reconciliation Form was the only regular role of the backup bookkeeper in financial operations. Therefore, this employee has less familiarity with the office's financial transactions than the bookkeeper does.

Recommendation

The bookkeeper for the Clerk's Office should be assigned the task of performing the bank reconciliations in accordance with Section 8.6 of the FSM (Monthly Closing and Reporting). Also, the bookkeeper should reconcile the office's records of individual accounts comprising the civil escrow trial balance monthly to bank account statements received, recording any interest earned for the month. Moreover, the monthly reconciliations should be reviewed and approved in a timely manner and any discrepancies resolved expeditiously.

The backup bookkeeper should also be trained by the Trial Court in the performance of bookkeeping duties, including the preparation of monthly bank reconciliations.

Auditee's Response

In response to this issue, the Clerk of Courts stated,

The prior administration did not comply with the instructions from the Trial Court auditors in directing the appropriate employee to perform bank reconciliations and in how to do so. This administration instructed the appropriate employee to do her job and the proper procedure for performing bank reconciliations is now in place.

4. The Clerk's Office evidence log does not contain sufficient identifying information.

The Clerk's Office did not maintain an accurate centralized evidence log that always identified the storage location and a sufficiently detailed description of evidence (including amounts/quantities) and accounted for evidence returned. As a result, the office cannot be certain that evidence in its possession related to 1,323 criminal cases, which could include high-risk evidence like drugs, money, and weapons, is properly secured and accounted for. This creates a risk that the Clerk's Office will not be able to locate such evidence when required to produce it for official purposes (e.g., when a criminal case decision is appealed and the evidence is needed during the appellate stage of the case). High-risk evidence could also be misplaced or misappropriated and could go undetected because its location is not documented.

The Clerk's Office has developed guidelines to account for the receipt of evidence properly in a centralized log; however, the evidence that was centrally logged was not sufficiently identified, particularly when it came to quantities and types of controlled substances, money, and weapons. Moreover, these guidelines were silent when it came to logging the return or disposal of evidence.

We randomly reviewed 41 criminal evidence files and found that high-risk evidence was insufficiently documented in the evidence log for 34 of the files. In particular, we noted that 16 files contained cash, totaling \$6,570 (the log might refer to money but not a specific amount); 21 files contained what appeared to be illegal substances like marijuana, cocaine, heroin, and prescription pills of undetermined quantities (the log might refer to drugs but not a specific type or quantity); and 11 files contained weapons like handguns, shotguns, and/or knives (the log might simply say “weapon” or might not include the item).

Additionally, the log did not pinpoint the specific storage location for 18 evidence files, and there were other discrepancies between the evidence log and two case files—one where the log noted evidence on hand even though it was returned and one that listed money although none was found in the file.

Authoritative Guidance

The Massachusetts General Laws (see Appendix D for excerpts from Chapters 278A, 276, and 94C) require that evidence be safeguarded, documented, and preserved while the convicted individual remains in state custody or on probation or parole.

The office’s Internal Control Plan (ICP) provides guidelines for maintaining an adequately documented evidence log:

An evidence log must be maintained . . . to record the receipt of all case evidence. Necessary information includes a description of the evidence, person(s) from whom it was received and the docket number of each case.

Reasons for the Incomplete Evidence Log

We asked the office’s sessions clerk about the issues identified with the evidence log. The employee noted that the evidence log was maintained from 2007 through 2012 by an employee who no longer works for the Clerk’s Office. This employee started the process of maintaining the evidence log in a computer spreadsheet. However, we are unable to determine whether the employee updated the previously maintained notebook evidence logs for updates to evidence received before 2007. The former employee who maintained the evidence log and the former Clerk no longer work for the office, so we could not interview them to inquire why detail was lacking from the evidence log.

Recommendation

The Clerk's Office should update its evidence log to include the defendant, docket number, location, amount, and type of high-risk evidence maintained for all cases where the office maintains such evidence. It may be necessary for the office staff to review each case of evidence maintained and ensure that the evidence log properly documents the docket number, defendant, amount, and type of high-risk evidence maintained and the location of that evidence.

Auditee's Response

In response to this issue, the Clerk of Courts stated,

The procedure for evidence retention has been, and continues to be improved in compliance with the laws of the Commonwealth and in accordance with Trial Court directives. Strides to ensure the proper storage of evidence have been made in spite of the lack of available and proper storage spaces within the building. A new policy is in place that identifies the location and description of exhibits, as well as safeguards to ensure the proper preservation and integrity of evidence. Evidence is disposed of in compliance with the laws of the Commonwealth and only as directed by the Trial Court.

5. The Clerk's Office still does not reconcile its revenue transmittals.

During our previous audit period, Clerk's Office personnel did not reconcile revenue that the office remitted to the Commonwealth with OSC's Massachusetts Management Accounting and Reporting System as required by the Trial Court in its Fiscal Year 2007 Memo #6. Our current audit revealed that the Clerk's Office still did not perform the required revenue reconciliations.

Recommendation

The Clerk's Office should review and comply with the Trial Court Fiscal Year 2007 Memo #6 and perform the required monthly revenue reconciliations.

Auditee's Response

In response to this issue, the Clerk of Courts stated,

The prior administration did not comply with the instructions from the Trial Court auditors in directing the appropriate employee to reconcile revenue transmittals. The revenue transmittals are now being reconciled by the appropriate employee.

6. The Clerk's Office still does not always report unaccounted-for variances, losses, shortages, or theft of funds or property.

During our previous audit period, the Clerk's Office did not file the report required by Chapter 647 of the Acts of 1989 when it discovered that its monthly detailed account trial balance was \$1,000 greater than its reconciled bank balance. During our current audit period, the office did not file the required Chapter 647 report when its inventory liaison discovered that furniture and equipment items could not be located during the annual physical inventory (Finding 2). Additionally, the Clerk's Office did not file the required Chapter 647 report when it found that bail funds had not been turned in by an assistant clerk (Finding 1).

Recommendation

The Clerk's Office should revisit its most recent physical inventory performed and file a Chapter 647 report with OSA for the items it cannot locate. It should also file a Chapter 647 report with OSA for all bail funds not turned in to the Clerk's Office within three business days. The Clerk's Office should also make sure that its staff is aware of the requirement to file such reports when variances occur and is adequately trained in preparing the form.

Auditee's Response

In response to this issue, the Clerk of Courts stated,

The current administration of the Clerk's Office has a policy to ensure that bail funds and property are properly reported and in compliance with the Massachusetts Rules Governing Persons Authorized to Take Bail and the laws of the Commonwealth. The missing bail funds from the previous administration, which were found during the current administration were reported the very day they were discovered. The current administration also has a policy in place to ensure bail transfers are done properly.

Auditor's Reply

Since the passage of time does not obviate the need for a Chapter 647 report to be filed, we commend the current administration for its timely reporting of missing bail funds to the Trial Court. However, the steps taken fell short of completing the required Chapter 647 reporting, and we therefore recommend that the reports required by Chapter 647 also be filed with OSA.

7. Since the prior audit, the Clerk's Office has developed an ICP, but further effort is needed in conducting periodic risk assessments and depositing funds on time.

During our previous audit period, the Clerk's Office had not developed an ICP or conducted periodic risk assessments as required by state law and Trial Court rules and regulations, such as the Internal Control Guidelines for the Trial Court. During our current audit period, the Clerk's Office developed an ICP, but still was not performing a periodic risk assessment, which, if performed, would have identified the risks associated with untimely depositing of funds.

Recommendation

The Clerk's Office should review the Internal Control Guidelines for the Trial Court and conduct a risk assessment. Annually,⁹ the Clerk's office should conduct risk assessments and update its ICP based on the results of these risk assessments, as necessary.

Auditee's Response

In response to this issue, the Clerk of Courts stated,

The current administration of the Clerk's Office has a policy in place.

8. The Clerk's Office now transmits bails that remain unclaimed, but needs to implement a similar process for old civil escrow accounts.

During our previous audit period, the Clerk's Office was in possession of 167 bails, totaling \$157,360, for which the associated court cases were completed and the bails could have been either returned to the rightful owner or transmitted to the State Treasurer as unclaimed property. As a result, our prior audit report recommended that account balances be monitored for unclaimed and abandoned bails, which should then be periodically transmitted to the State Treasurer.

During our current audit, we determined that the Clerk's Office had taken measures to implement the recommendations made in our prior audit report about bails that could qualify as unclaimed or abandoned property. Specifically, in response to our prior audit finding, the Clerk's Office staff transmitted \$35,460 of bail as abandoned property to the State Treasurer and sent notices to sureties on 124 additional bails totaling \$121,900. The Clerk's Office should continue to monitor account balances for unclaimed and abandoned bail.

⁹ While the law at the time of our previous audit only required periodic assessments, the current law specifically requires assessments to be annual or as conditions warrant, whichever comes first.

While sufficient attention was given to monitoring the status of bails during our current audit period, similar effort is needed when it comes to old civil escrow accounts on hand. The Clerk's Office maintained one account, valued at \$6,215 on December 31, 2012, that applied to a case completed more than three years ago. As a result, the office is in possession of funds that should be either returned to the rightful owner or transmitted to the Commonwealth.

Authoritative Guidance

Chapter 200A of the General Laws requires that money on hand be delivered to the State Treasurer if the rightful owners cannot be located (Appendix E). The FSM details procedures to follow when it comes to unclaimed and abandoned bail; they include contacting rightful owners within a certain period of time after case completion to return the funds and then transferring the funds to the state if the owners cannot be located. Best business practices would include extending these procedures to civil escrow accounts to ensure proper handling of funds in those accounts.

Reason for Not Fully Complying with Abandoned Property Statute

Clerk's Office personnel indicated that they abandoned civil escrow funds three years after their first notice to the party due the funds that the funds were available, which usually is given after the party has not requested the funds for one year.

Recommendation

The Clerk's Office should notify the rightful owners of civil escrow funds that are eligible for abandonment, allowing the owners sufficient time to claim the funds. If the funds still remain unclaimed after due process, then the Clerk's Office should transmit them to the Commonwealth as abandoned property.

Auditee's Response

In response to this issue, the Clerk of Courts stated,

The current administration of the Clerk's Office has implemented a more effective and timely policy for abandoning bails and has instituted a procedure for civil accounts. Both criminal abandoned bails and civil escrow accounts are in compliance and up to date.

9. Since the prior audit, the Clerk's Office has succeeded in segregating duties in its cashiering and bookkeeping functions.

During our previous audit period, the Clerk's Office allowed its cashiers to perform bookkeeping functions and allowed two or more cashiers to receive funds on any given day, working from a single cash drawer, and not prepare separate daily cash sheets. As a result, our prior audit report recommended that the Clerk's Office (1) modify its cashiering and bookkeeping practices to ensure an adequate level of segregation of duties amongst employees; (2) follow procedures established in the FSM by limiting the number of cashiers; and (3) hold each cashier accountable for the collections that he or she receives.

During our current audit, we determined that the Clerk's Office had taken measures to implement the recommendations made in our prior audit report. Specifically, we found that (1) there was adequate segregation of duties between the cashiering and bookkeeping functions; (2) there were only two employees functioning as cashiers each business day; and (3) each cashier worked from a separate cash drawer and performed separate cash closeout procedures.

10. Since the prior audit, the Clerk's Office has improved compliance with procedures for processing out-of-jurisdiction bails.

In our previous audit, a sample of bails processed by the Clerk's Office indicated that the office was receiving, validating, and recording after-hours out-of-jurisdiction bails submitted by bail magistrates and then transferring those bails to courts that had jurisdiction over the cases. As a result, our prior audit report recommended that the Clerk's Office contact the Trial Court and the Office of Bail Administration to clarify how the bail magistrates should process out-of-jurisdiction bails.

During our current audit, we determined that the Clerk's Office had taken measures to implement the recommendations made in our prior audit report about after-hours out-of-jurisdiction bails. Specifically, during the period July 2011 through October 2011, the office received, validated, and recorded 157 bails, totaling \$299,205, that it subsequently transferred to the appropriate courts that had jurisdiction over the cases. However, the Clerk's Office subsequently discontinued the practice of accepting out-of-jurisdiction bails and complied with the FSM for the remainder of the audit period.

OTHER MATTERS

Legislative Changes Should Be Considered to Enable Courts to Perform Verifications of Fee-Waiver Information

Individuals filing civil claims in courts are subject to filing fees assessed by the court, which are deposited in the Commonwealth's General Fund and are used to support government operations, including the operations of the courts. However, according to the provisions of Chapter 261 of the Massachusetts General Laws, individuals are considered indigent and eligible for a fee waiver if (1) they receive public assistance, (2) their income is at or below 125% of the current federal poverty level, or (3) they cannot afford to pay without placing themselves or their dependents in financial hardship. To be eligible for a fee waiver, individuals must complete an Affidavit of Indigency form,¹⁰ which they sign under penalty of perjury, and submit it to the Clerk of Courts. Chapter 261, Section 27C(2), of the General Laws requires the Clerk of Courts to waive fees if a submitted Affidavit of Indigency appears to be facially complete, as follows:

If the affidavit appears regular and complete on its face and indicates that the affiant is indigent, as defined in section twenty-seven A, and requests a waiver, substitution or payment by the commonwealth, of normal fees and costs, the clerk shall grant such request forthwith without hearing and without the necessity of appearance of any party or counsel.

The current waiver application process as established by Chapter 261 does not allow courts to verify any of the information contained in the Affidavit of Indigency form filed by the individual seeking the waiver unless the form appears to be incomplete. As a result, fees may have been waived for individuals who misrepresented their status as indigent. Our review of the records of the Clerk of Courts' Office of the Hampden Division of the Superior Court Department revealed a total of 153 civil cases with waived civil filing fees due to indigence. The fee collected by the court for each civil filing with one plaintiff is \$275. The estimated total of civil-case fees waived because of indigence is \$42,075.

Because the amount of fees courts waive can constitute a significant amount of the courts' revenue, the Chief Justice of the Trial Court and the Legislature may want to consider taking whatever measures are necessary (including amending Chapter 261, Section 27C, of the General Laws) to

¹⁰Persons indicating that they cannot pay the fees and costs of the proceeding "without depriving myself or my dependents of the necessities of life, including food, shelter and clothing" must also complete a "Supplement to Affidavit of Indigency" form.

allow courts to verify the information included in Affidavit of Indigency and Supplement to Affidavit of Indigency forms.

APPENDIX A

Trial Court Inventory-Procedure 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 number, item description, 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 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 of 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's 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 administrate head of the department, division or office must be notified.*

APPENDIX C

Trial Court Fiscal Systems Manual—Selected Procedures over Civil Escrow Accounting

Section 10.9 of the Trial Court’s Fiscal Systems Manual (Accounting for Civil Escrow Funds) states the following regarding establishing, recording, and reconciling civil escrow activity:

Individual civil escrow passbook interest-bearing savings accounts must be established in a timely fashion for each case using checks issued from the One-Write Disbursement Register after the funds are deposited in the local bank. . . .

. . .

All civil escrow account activity, both receipts and disbursements, must be recorded by the bookkeeper in the Civil Escrow Ledger on the day of the transaction. . . .

The Civil Escrow Ledger must be kept accurate by monthly reconciliations to the standard Detail Account Trial Balance reports.

At least once a year, the actual civil escrow passbooks listed in the Civil Escrow Ledger must be updated for interest earned and all other transactions.

Section 8.6 of the Trial Court’s Fiscal Systems Manual (Monthly Closing and Reporting) states the following regarding reconciling civil escrow:

The combined total of the “AMOUNTS” in the Civil Escrow (or, for Probate and Family Court, Custodial Passbook) “RECEIPT CATEGORIES” of the Monthly Summary Trial Balance and the corresponding amount on the “Escrow/Custodial Passbook Account(s)” line of the Bank Account Reconciliation Form must equal the sum of all active account balances. . . .

APPENDIX D

Massachusetts General Laws Involving Evidence Retention, Disposal, Forfeiture, and Destruction

Chapter 278A, Section 16, of the Massachusetts General Laws (Post Conviction Access to Forensic and Scientific Analysis: Retention and Preservation of Evidence or Biological Material by Governmental Entities; Regulations)

This law was put into effect on May 17, 2012. The law states the following regarding evidence retention:

Any governmental entity that is in possession of evidence or biological material that is collected for its potential evidentiary value during the investigation of a crime, the prosecution of which results in a conviction, shall retain such evidence or biological material for the period of time that a person remains in the custody of the commonwealth or under parole or probation supervision in connection with that crime, without regard to whether the evidence or biological material was introduced at trial. Each governmental entity shall retain all such evidence or biological material in a manner that is reasonably designed to preserve the evidence and biological material and to prevent its destruction or deterioration. The evidence or biological material need not be preserved if it is to be returned to a third party or if it is of such a size, bulk or physical character as to render retention impracticable.

Chapter 276, Section 3, of the General Laws (Search Warrants, Rewards, Fugitives from Justice, Arrest, Examination, Commitment and Bail. Probation Officers and Board of Probation: Seizure, Custody and Disposition of Articles; Exceptions)

If an officer in the execution of a search warrant finds property or articles therein described, he shall seize and safely keep them, under the direction of the court or justice, so long as necessary to permit them to be produced or used as evidence in any trial. As soon as may be, thereafter, all property seized under clause First of section one [property or articles stolen, embezzled or obtained by false pretenses, or otherwise obtained in the commission of a crime] shall be restored to the owners thereof; and all other property seized in execution of a search warrant shall be disposed of as the court or justice orders and may be forfeited and either sold or destroyed, as the public interest requires, in the discretion of the court or justice, except:

...

- (b) Rifles, shotguns, pistols, knives or other dangerous weapons which have been found to have been kept, concealed or used unlawfully or for an unlawful purpose shall be forfeited to the commonwealth and delivered forthwith to the colonel of the state police for destruction or preservation in the discretion of the colonel of the state police.*
- (c) Money seized under clause Third of section one [property or articles the possession or control of which is unlawful, or which are possessed or controlled for an unlawful purpose, except property subject to search and seizure under sections forty-two through fifty-six, inclusive, of chapter one hundred and thirty-eight] shall be forfeited and paid over to the state treasurer.*
- (d) Any property, including money seized under section one, the forfeiture and disposition of which is specified in any general or special law shall be disposed of in accordance therewith.*

Chapter 94C, Section 47, of the General Laws (Controlled Substances Act: Forfeiture of Property)

This law states the following regarding the forfeiture of drugs and money related to a crime committed under the Controlled Substances Act:

(a) The following property shall be subject to forfeiture to the commonwealth and all property rights therein shall be in the commonwealth:

(1) All controlled substances which have been manufactured, delivered, distributed, dispensed or acquired in violation of this chapter.

(2) All materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, dispensing, distributing, importing, or exporting any controlled substance in violation of this chapter.

...

(5) All moneys, negotiable instruments, securities or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of this chapter, all proceeds traceable to such an exchange, including real estate and any other thing of value, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of any provision of section thirty-two, thirty-two A, thirty-two B, thirty-two C, thirty-two D, thirty-two E, thirty-two F, thirty-two G, thirty-two I, thirty-two J, or forty [unlawful manufacture, distribution, dispensing, possession with intent to manufacture, and trafficking of controlled or counterfeit substances].

(6) All drug paraphernalia.

...

(b) Property subject to forfeiture under subparagraphs (1), (2), (4), (5), (6), (7) and (8) of subsection (a) shall, upon motion of the attorney general or district attorney, be declared forfeit by any court having jurisdiction over said property or having final jurisdiction over any related criminal proceeding brought under any provision of this chapter. Property subject to forfeiture under subparagraph (1) of subsection (a) shall be destroyed, regardless of the final disposition of such related criminal proceeding, if any, unless the court for good cause shown orders otherwise.

...

(d) A district attorney or the attorney general may petition the superior court in the name of the commonwealth in the nature of a proceeding in rem to order forfeiture of a conveyance, real property, moneys or other things of value subject to forfeiture under the provisions of subparagraphs (3), (5), and (7) of subsection (a). Such petition shall be filed in the court having jurisdiction over said conveyance, real property, monies or other things of value or having final jurisdiction over any related criminal proceeding brought under any provision of this chapter. In all such suits where the property is claimed by any person, other than the commonwealth, the commonwealth shall have the burden of proving to the court the existence of probable cause to institute the action, and any such claimant shall then have the burden of proving that the property is not forfeitable pursuant to subparagraph (3), (5), or

(7) of said subsection (a). The owner of said conveyance or real property, or other person claiming thereunder shall have the burden of proof as to all exceptions set forth in subsections (c) and (i). The court shall order the commonwealth to give notice by certified or registered mail to the owner of said conveyance, real property, moneys or other things of value and to such other persons as appear to have an interest therein, and the court shall promptly, but not less than two weeks after notice, hold a hearing on the petition. Upon the motion of the owner of said conveyance, real property, moneys or other things of value, the court may continue the hearing on the petition pending the outcome of any criminal trial related to the violation of this chapter. At such hearing the court shall hear evidence and make conclusions of law, and shall thereupon issue a final order, from which the parties shall have a right of appeal. In all such suits where a final order results in a forfeiture, said final order shall provide for disposition of said conveyance, real property, moneys or any other thing of value by the commonwealth or any subdivision thereof in any manner not prohibited by law, including official use by an authorized law enforcement or other public agency, or sale at public auction or by competitive bidding. The proceeds of any such sale shall be used to pay the reasonable expenses of the forfeiture proceedings, seizure, storage, maintenance of custody, advertising, and notice, and the balance thereof shall be distributed as further provided in this section.

The final order of the court shall provide that said moneys and the proceeds of any such sale shall be distributed equally between the prosecuting district attorney or attorney general and the city, town or state police department involved in the seizure. If more than one department was substantially involved in the seizure, the court having jurisdiction over the forfeiture proceeding shall distribute the fifty percent equitably among these departments.

There shall be established within the office of the state treasurer separate special law enforcement trust funds for each district attorney and for the attorney general. All such monies and proceeds received by any prosecuting district attorney or attorney general shall be deposited in such a trust fund and shall then be expended without further appropriation to defray the costs of protracted investigations, to provide additional technical equipment or expertise, to provide matching funds to obtain federal grants, or such other law enforcement purposes as the district attorney or attorney general deems appropriate. The district attorney or attorney general may expend up to ten percent of the monies and proceeds for drug rehabilitation, drug education and other anti-drug or neighborhood crime watch programs which further law enforcement purposes. Any program seeking to be an eligible recipient of said funds shall file an annual audit report with the local district attorney and attorney general. Such report shall include, but not be limited to, a listing of the assets, liabilities, itemized expenditures, and board of directors of such program. Within ninety days of the close of the fiscal year, each district attorney and the attorney general shall file an annual report with the house and senate committees on ways and means on the use of the monies in the trust fund for the purposes of drug rehabilitation, drug education, and other anti-drug or neighborhood crime watch programs.

All such moneys and proceeds received by any police department shall be deposited in a special law enforcement trust fund and shall be expended without further appropriation to defray the costs of protracted investigations, to provide additional technical equipment or expertise, to provide matching funds to obtain federal grants, or to accomplish such other law enforcement purposes as the chief of police of such city or town, or the colonel of state police deems appropriate, but such funds shall not be considered a source of revenue to meet the operating needs of such department.

- (e) Any officer, department, or agency having custody of any property subject to forfeiture under this chapter or having disposed of said property shall keep and maintain full and complete*

records showing from whom it received said property, under what authority it held or received or disposed of said property, to whom it delivered said property, the date and manner of destruction or disposition of said property, and the exact kinds, quantities and forms of said property. Said records shall be open to inspection by all federal and state officers charged with enforcement of federal and state drug control laws. Persons making final disposition or destruction of said property under court order shall report, under oath, to the court the exact circumstances of said disposition or destruction.

APPENDIX E

Massachusetts General Laws Involving the Transmittal of Abandoned Property to the State Treasurer's Office

Chapter 200A, Section 6, of the Massachusetts General Laws

Monies paid into any court within the commonwealth for distribution, and the increments thereof, shall be presumed abandoned if not claimed within three years after the date of payment into court, or as soon after the three year period as all claims filed in connection with it have been disallowed or settled by the court.

Chapter 200A, Section 7A, of the General Laws

If the person in possession of property in an amount of one hundred dollars or more presumed abandoned under this chapter has the last known address of the apparent owner which the person's records do not disclose to be inaccurate, the holder shall at least sixty days before filing the annual report send a notice by first class mail to inform the owner of the process necessary to rebut the presumption of abandonment.

Chapter 200A, Section 8A(a), of the General Laws

A person who has filed [an annual report to the State Treasurer] as provided in section 7 shall, by November 1 or, in the case of life insurance companies and persons holding unclaimed proceeds from demutualization or related reorganization of a life insurance company, May 1, pay or deliver to the treasurer at the time of filing the report all property presumed abandoned specified in the report.