



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

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## Norfolk Division of the Superior Court Department

For the period July 1, 2009 through February 28, 2011



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## INTRODUCTION AND SUMMARY OF FINDINGS AND RECOMMENDATIONS

The Massachusetts Trial Court was created by Chapter 478 of the Acts of 1978, which reorganized the courts into seven Trial Court Departments, including the Superior Court Department (SCD). SCD established 14 divisions, each having a specific territorial jurisdiction to preside over civil and criminal matters brought before it. The Norfolk Division of the Superior Court Department (NSC) presides over civil and criminal matters falling within its territorial jurisdiction, Norfolk County.

In accordance with Chapter 11, Section 12, of the Massachusetts General Laws, the Office of the State Auditor (OSA) conducted a performance audit of certain activities of the NSC Clerk of the Courts' Office and Probation Office for the period July 1, 2009 through February 28, 2011. Our audit objectives were to (1) assess the adequacy of NSC's internal controls over cash management, bail funds, and revenues 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 of NSC (No. 2006-1112-3O).

### *Highlight of Audit Findings*

- Our prior audit of NSC (No. 2006-1112-3O), which covered the period July 1, 2004 to August 18, 2006, revealed that NSC needed to strengthen its internal controls over the forfeiture of bail funds after a defendant does not make his or her required court appearance and the judge issues an order of default. Under these circumstances, the law provides for the forfeiture of these bail funds to the Commonwealth. However, our prior audit found that NSC had 22 bails (totaling \$105,900) that had not been ordered forfeited, even though the defendants were in default, because forfeiture proceedings could not begin without a motion from the Norfolk District Attorney. Our current audit found that NSC had at least 21 bails, totaling \$136,400, that had not been ordered forfeited even though the defendants were in default. As a result, the Commonwealth may not have received all the bail funds to which it was entitled.
- We found that, contrary to state law and the court systems' fiscal policies during our audit period, NSC had not transferred 40 unclaimed and forfeited bails, totaling \$74,485, to the Office of the State Treasurer (OST), and had 46 civil escrow deposits on hand, totaling \$423,290, that pertained to court cases initiated more than three years ago that may qualify as abandoned property. As a result of this noncompliance, the Commonwealth and other parties may have been denied timely access to and use of these funds.
- NSC was not following the Administrative Office of the Trial Court's procedures for reconciling the amounts of revenue it transmits to the Commonwealth – which total approximately \$800,000 annually – with the Commonwealth's Massachusetts Management Accounting and Reporting System. In fact, according to NSC's staff, NSC has not

performed these reconciliations since July 1, 2004, when the Commonwealth made significant changes to its accounting system. As a result, NSC and the Commonwealth cannot be sure that all revenues transmitted by NSC are being credited to the appropriate accounts.

***Recommendations of the State Auditor***

- NSC's Clerk of the Courts' Office should follow the procedures it developed after we finished our audit fieldwork, which include forfeiting bails directly to the Commonwealth, rather than through the Norfolk District Attorney; scheduling a court forfeiture proceeding when a defendant defaults; and reviewing the bail trial balance at least twice a year to identify cases in default.
- NSC's Clerk of the Courts' Office should attempt to determine the status of old, unclaimed, or forfeited bail and civil escrow accounts and transmit all appropriate funds to OST.
- NSC's employees should familiarize themselves with revenue reconciliation procedures and reconcile income transmitted to the Commonwealth.

***Agency Progress***

After we finished our audit fieldwork, NSC obtained guidance from SCD allowing for the forfeiture of bails to the Commonwealth under the direct authority of the court, without requiring the Norfolk District Attorney to initiate bail forfeiture proceedings. NSC has also instituted procedures to schedule a court forfeiture proceeding when a defendant defaults and to review the bail trial balance at least twice a year to identify, and follow up on, cases in default. Following these procedures should allow for more timely and efficient forfeiture of the defaulted bails.

## OVERVIEW OF AUDITED AGENCY

The Massachusetts Trial Court was created by Chapter 478 of the Acts of 1978, which reorganized the courts into seven Trial Court Departments: the Boston Municipal Court, the District Court, the Housing Court, the Juvenile Court, the Probate and Family Court, the Superior Court, and the Land Court. The statute also created a central administrative office managed by a Chief Justice for Administration and Management (CJAM), who is responsible for the overall management of the Trial Court. The CJAM charged the central office, known as the Administrative Office of the Trial Court (AOTC), with developing a wide range of centralized functions and standards for the benefit of the entire Trial Court, including a budget for the Trial Court; central accounting and procurement systems; personnel policies, procedures, and standards for judges and staff; and the management of court facilities, security, libraries, and case management automation.

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 has exclusive authority to convene medical malpractice tribunals. Regarding criminal matters, 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, SCD has appellate jurisdiction over certain administrative proceedings. SCD established 14 divisions, each having a specific territorial jurisdiction, to preside over civil and criminal matters brought before it. Each division's organizational structure consists of two main offices: the Clerk of the Courts' Office, headed by a Clerk of the Courts who is an elected official; and the Probation Office, headed by a Chief Probation Officer. The Clerk of the Courts and the Chief Probation Officer have responsibility for the internal administration of their respective offices.

The Norfolk Division of the Superior Court Department (NSC) presides over civil and criminal matters falling within its territorial jurisdiction, Norfolk County. During the audit period, NSC collected revenues totaling \$1,439,958, which it disbursed to the Commonwealth as either general or specific state revenue, as shown in the following table:

Revenue Type	July 1, 2009 to June 30, 2010	July 1, 2010 to February 28, 2011	Totals
General Revenue	\$ 675,718	\$ 415,268	\$ 1,090,986
Probation and Administrative Supervision Fees	149,705	96,109	245,814
Victim/Witness Fund	15,743	12,490	28,233
Surcharge	32,725	19,455	52,180
Reimbursement for Indigent Counsel	12,320	9,325	21,645
Drug Analysis Fund	450	-	450
Victims of Drunk Driving	<u>650</u>	<u>-</u>	<u>650</u>
Totals	<u>\$ 887,311</u>	<u>\$ 552,647</u>	<u>\$ 1,439,958</u>

The NSC Clerk of the Courts' Office was the custodian of approximately 275 cash bails, totaling \$2,397,455, as of February 28, 2011. 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.

In addition to the funds collected and transferred to the Commonwealth, NSC controlled 60 civil escrow accounts, valued at \$1,138,656, as of February 28, 2011. These accounts are considered assets held in trust by the court and are kept in the custody of the Clerk of the Courts pending disposition by the court.

NSC operations are funded by appropriations under the control of either NSC (local) or AOTC or the Office of the Commissioner of Probation (central). For fiscal years 2010 and 2011, appropriations for personnel-related expenses of the Clerk of the Courts' Office support staff and certain administrative expenses (e.g., supplies, periodicals, law books) were under local control. Other NSC administrative and personnel expenses were paid by centrally controlled appropriations. According to the Commonwealth's records, local expenditures, and certain central expenditures, associated with the operation of NSC for the 20-month period amounted to \$2,187,134.<sup>1</sup>

<sup>1</sup> This amount does not include certain centrally controlled expenditures, such as facility lease and related operational expenses; personnel costs attributable to court officers, security officers, and probation staff; or related administrative expenses of the probation office, since they are not identified by court division in the Commonwealth's accounting system.

## **AUDIT SCOPE, OBJECTIVES, AND METHODOLOGY**

In accordance with Chapter 11, Section 12, of the Massachusetts General Laws, the Office of the State Auditor (OSA) conducted a performance audit of certain activities of the Norfolk Division of the Superior Court Department (NSC) Clerk of the Courts' Office and the Probation Office for the period July 1, 2009 through February 28, 2011. Our audit objectives were to (1) assess the adequacy of NSC's internal controls over cash management, bail funds, and revenues 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 of NSC (No. 2006-1112-3O).

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.

To achieve our audit objectives, we conducted interviews with NSC management and other staff and reviewed our prior NSC audit report (No. 2006-1112-3O). We also obtained and reviewed various financial reports produced by the Office of the State Comptroller's Massachusetts Management Accounting and Reporting System (MMARS), the Administrative Office of the Trial Court's statistical reports, and NSC's organizational charts. In addition, we obtained and reviewed copies of applicable statutes, regulations, policies, and procedures; NSC accounting records; and other source documents. Our assessment of internal controls over financial and management activities at NSC was based on those interviews and documents. We also reviewed bail and cash management activity and transactions involving the collection and processing of revenue to determine whether applicable policies and procedures were being followed.

During our audit, we obtained expenditure data from MMARS that was used for background information purposes only. Therefore, we did not assess the reliability of that data.

Based on our audit, we have determined that, except for the issues noted in the Audit Findings section of our report, NSC maintained adequate internal controls and complied with applicable laws, rules, and regulations in the areas reviewed.

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## AUDIT FINDINGS

### 1. PRIOR AUDIT FINDING UNRESOLVED: IMPROVEMENTS NEEDED IN PROCESSING OF BAIL FUNDS SUBJECT TO FORFEITURE

Bail in cash and other forms is the security given to a court in order for defendants to obtain their release and to ensure their appearance in court at a future date.

Should the defendant fail to appear in court in accordance with the terms of release, Chapter 276, Section 80, of the General Laws allows for the forfeiture of bail to the Commonwealth as follows:

*At any time after default of the defendant, the court may order forfeited the money, bonds or bank books deposited at the time of the recognizance and the court or clerk of the court with whom the deposit was made shall thereupon pay to the state treasurer any money so deposited.*

Our prior audit (No. 2006-1112-3O) of the Norfolk Division of the Superior Court Department (NSC), which covered the period July 1, 2004 to August 18, 2006, revealed that NSC needed to strengthen its internal controls over the forfeiture of bail funds after a defendant does not make his or her required court appearance and the judge issues an order of default. As noted above, under these circumstances, the law provides that these bail funds can be forfeited to the Commonwealth. However, our prior audit found that NSC had 22 bails, totaling \$105,900 that had not been ordered forfeited even though the defendants were in default.

Our current audit found that NSC still had several bails on hand that could have been ordered forfeited because they pertained to criminal cases where the defendants defaulted on their court appearances. As of February 28, 2011, NSC had 275 bails, totaling \$2,397,455. We selected all cases more than three years past their dates of receipt for further testing (64 bails, totaling \$246,385). Of the 64 bails tested, 21 bails, totaling \$136,400, had not been ordered forfeited even though the defendants were in default. As a result, the Commonwealth may not have received all the bail funds to which it was entitled. NSC's Clerk of the Courts stated that these cases require a motion from the Norfolk District Attorney to begin forfeiture proceedings. The Clerk of the Courts also told us that he had informed the Norfolk District Attorney of the status of these cases, but has no control over what motions are brought or when they are brought before the court. Court officials also indicated that other priorities assigned to the court's shrinking workforce precluded them from following up on this issue.



After we finished our audit fieldwork, NSC obtained guidance from the Superior Court Department (SCD) allowing for the forfeiture of bails without motions brought by the Norfolk District Attorney. NSC has also instituted procedures to schedule a forfeiture proceeding when a defendant defaults and to review its bail accounting records at least twice a year to identify, and follow up on, cases in default. The Office of the State Auditor (OSA) believes that these new procedures will allow for the more timely processing of defaulted bails to the Commonwealth.

***Recommendation***

We recommend that NSC's Clerk of the Courts' Office follow the guidance provided by SCD with respect to forfeiting bails directly to the Commonwealth without requiring the Norfolk District Attorney to begin forfeiture proceedings. NSC should also continue to follow its newly implemented procedures of scheduling forfeiture hearings at the time of default as well as periodically reviewing its bail records to monitor defaults.

***Auditee's Response***

In response to this issue, NSC's Clerk of the Courts stated, in part:

*The trial balance is reviewed twice a year to identify cases in which the defendant is defaulted and schedule the forfeiture hearing. . . .*

*It is important to note that there have been several times when the Judge presiding over a forfeiture hearing determines not to forfeit bail. Pursuant to Ch. 276, Sec. 80, the decision to forfeit bail is discretionary with the Justice presiding over the hearing. The statute reads the Judge "may" order forfeited the money.*

In addition, the Clerk of the Courts stated that NSC had identified and transferred \$270,500 in forfeited bail under the new procedure.

***Auditor's Reply***

We recognize that the presiding Judge has discretion over whether or not to forfeit bail under the statute. Our recommendation is limited to those matters in which a defendant has defaulted and no forfeiture determination has been made.

## 2. IMPROVEMENTS NEEDED IN PROCESSING OF UNCLAIMED AND FORFEITED BAILS AND UNCLAIMED CIVIL ESCROW CASE DEPOSITS

NSC needs to improve its internal controls over the processing of unclaimed and forfeited bails and unclaimed civil escrow case deposits. Specifically, the Administrative Office of the Trial Court's (AOTC's) Fiscal Systems Manual requires that any funds being held by the court that are available for return and are more than three years old be presumed to be abandoned property and be transferred to the Office of the State Treasurer (OST). Despite this, we found that during our audit period, NSC had 37 bails (totaling \$61,985) for cases decided more than three years ago, and three forfeited bails (totaling \$12,500), that had not been remitted to OST. NSC also had 46 civil escrow deposits on hand, totaling \$423,290, that pertained to court cases initiated more than three years ago – some as far back as 1971 – that may qualify as abandoned property. Because this property was not transmitted to OST, the Commonwealth and other parties may have been denied timely access to and use of these funds.

According to Chapter 200A, Section 6, of the 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.*

The AOTC Fiscal Systems Manual provides for handling of abandoned and forfeited bail funds held in trust in various types of accounts. With respect to bail funds and civil escrows, the AOTC Fiscal Systems Manual, Section 9.2, defines abandoned property as follows:

*Abandoned Property—bail (or other held monies) unclaimed after three years, despite written attempts to contact the surety in accordance with Massachusetts General Law, Chapter 200A, Section 6.*

Moreover, in Section 9.6 of its Fiscal Systems Manual, AOTC has established policies and procedures for the processing of abandoned and forfeited bail. The section states, in part:

*If bail remains unclaimed one year after its release date, the Court division must attempt to contact the owner of the bail in writing by registered mail. If the appropriate individual cannot be found and the bail remains unclaimed for three (3) years after the release date, the bookkeeper transmits the bail to the Office of the State Treasurer as abandoned property in accordance with Massachusetts General Law (M.G.L.) Chapter 200A, Section 6.... If a judge in open court orders the bail forfeited, the bail is reclassified as State General Fund Revenue and must be remitted by the tenth of the following month to the Office of the State Treasurer.*

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As of February 28, 2011, NSC's detailed trial balance reported 275 bails on hand, totaling \$2,397,455, and 60 civil escrow deposits, totaling \$1,138,656.

As part of our audit, we tested all 64 criminal case files associated with these bails listed on the February 28, 2011 trial balance that were more than three years past their dates of receipt. We found 40 bails (totaling \$74,485) that either were held more than three years after the case was disposed, or were ordered forfeited, and should have been transmitted and disbursed as follows:

- Three bails, totaling \$12,500, were ordered forfeited, but the amounts had not been sent to OST as General Fund revenue to the Commonwealth.
- Bails for 37 closed cases, totaling \$61,985, had not been sent to OST as abandoned property.

We also noted that 46 of 60 civil escrow accounts (totaling \$423,290) appearing on NSC's accounting records were received more than three years ago and may qualify as abandoned property. Twelve of those accounts were received more than 10 years ago and date back as far as 1971. Since NSC was not administering these bails and civil escrow deposits in accordance with established policies, it held assets that were rightfully due to others or could have been used by the Commonwealth.

According to court officials, the backlog of old or forfeited bails and old civil escrows exists because the office is shorthanded; the staff is busy attending to necessary day-to-day court activities, and there remains little time to devote to the court's extensive bail and civil escrow inventory. However, as noted in Audit Finding No. 1, during the conduct of our audit field work, the Clerk of the Courts' Office adopted new procedures that include scheduling a forfeiture proceeding when a defendant defaults as well as reviewing its bail accounting records at least twice a year to identify, and follow up on, cases in default.

***Recommendation***

NSC's Clerk of the Courts' Office should attempt to determine the status of old bails and civil escrow deposits or forfeitures and transmit all appropriate funds to OST. Further, the Clerk of the Courts' Office should follow the procedures that it implemented after we finished our audit fieldwork to address the issue of forfeited bail funds and abandoned property.

***Auditee's Response***

In response to this issue, NSC's Clerk of the Courts stated, in part:

*The office has instituted a procedure in which the bail trial balance is reviewed twice a year to verify that all bail unclaimed is abandoned after the appropriate time.*

The Clerk of the Courts also stated that NSC had abandoned and transferred \$10,475 in unclaimed bail under this procedure. In addition, NSC's Assistant Clerk of the Courts verbally responded that NSC is currently in the process of researching cases to ensure the proper distribution of civil escrow funds.

**3. IMPROVEMENTS NEEDED IN REVENUE RECONCILIATION**

During the audit period, NSC was not following the procedures established by AOTC for reconciling the amounts of revenue it transmits to the Commonwealth with the Commonwealth's Massachusetts Management Accounting and Reporting System (MMARS). In fact, according to NSC's staff, it has not performed these reconciliations since July 1, 2004, when the Commonwealth made significant changes to its accounting system. As a result, NSC and the Commonwealth cannot be sure that all revenues transmitted by NSC are being properly credited to the appropriate accounts.

According to NSC's staff, revenue reconciliations have not been performed since July 1, 2004, when the Commonwealth upgraded its automated accounting system, because the reconciliation report (the 466C report) was no longer available on the upgraded system. The 466C report was used by the Clerk of the Courts' office to confirm that its monthly revenue transmittals were properly credited, as detailed by the procedures set forth in AOTC's Fiscal Systems Manual. Section 8.6 of the manual states, in part:

*Since the Clerk-Magistrate's Office receives the MMARS 466C reports (per next step 2), the Clerk-Magistrate's Office bookkeepers have the task of revenue reconciliation for each division...*

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

*Compare all Revenue Transmittal Sheets (RTS's) remitted by the Clerk-Magistrate's Office for that monthly period to the MMARS 466C Report for the same period.*

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

After the accounting system upgrades, AOTC prepared summary revenue reconciliations by comparing information on the Commonwealth's system to AOTC's internally prepared summary of monthly court revenues. These reconciliations were made available to courts periodically on the AOTC intranet. However, they did not include a comparison of the detail amounts to each court's accounting records. This led to the Trial Court collaborating with the Office of the State Comptroller on developing a method to make revenue information available to the local courts for reconciliation purposes.

AOTC's Fiscal Year 2007 Memorandum No. 6, effective August 16, 2006, addressed new procedures for revenue transmittal, reporting, and reconciliation. The new procedures allowed courts to verify revenue transactions and addressed the revenue reconciliation requirements. Specifically, they included an alternative reconciliation procedure that courts could use to reconcile its Revenue Transmittal and Reporting Sheet amounts to the total amount posted on the Trial Court's intranet each month. However, our audit revealed that NSC personnel were not routinely reconciling this information, and in fact, they told us that NSC had not reconciled this information since July 1, 2004. NSC personnel were not aware that Memorandum No. 6 required the monthly reconciliation of revenue transmittals to MMARS, and they believed that AOTC performed the monthly revenue reconciliation. Without performing timely reconciliations, NSC and the Commonwealth cannot ensure that all revenues were properly received and credited to the appropriate general or specific state revenue account.

### ***Recommendation***

NSC should comply with the AOTC Fiscal Year 2007 Memorandum No. 6 requirement of conducting monthly revenue reconciliations to ensure that revenues are transmitted and credited to the correct court and proper accounts (general or specific) in MMARS.

### ***Auditee's Response***

In response to this issue, the Clerk of the Courts stated, in part:

*All revenues have been reconciled. [The bookkeeper] has assured me that the Revenue Transmittal and Reporting Sheet is completed monthly. He has stated that all bookkeeping procedures, rules and regulations are followed.*

**OTHER MATTERS****THEFT OF \$1,550 IN BAIL FUNDS RESOLVED**

During our audit period, because of an inadequate segregation of duties, a cashier at the Norfolk Division of the Superior Court Department (NSC) was able to embezzle \$1,550 in bail funds. NSC's system of internal controls allowed it to detect this loss of funds by identifying a problem with certain accounts when parties who posted bail with the court attempted to reclaim the bail and there was no record of the account. After NSC discovered the embezzlement, the stolen funds were replaced, the employee resigned, and NSC requested that the Administrative Office of the Trial Court's (AOTC's) internal audit staff conduct an audit of this matter. Also, on January 14, 2010, NSC filed a Chapter 647 report with the Office of the State Auditor (OSA). Chapter 647 of the Acts of 1989, An Act Relative to Improving Internal Controls at State Agencies, requires all state agencies and departments to report all unaccounted-for variances, losses, shortages, or thefts of funds or property to OSA.

The AOTC internal auditors determined the amount of money that was misappropriated and the internal control deficiency that allowed this to occur and also made recommendations to NSC as to how to address this problem. During our audit, we reviewed the report issued by the AOTC audit staff, its calculation of misappropriated funds, and the reasonableness of its recommendations. We then confirmed with NSC officials that the appropriate corrective measures had been taken to address this problem.

NSC also referred this matter to the Norfolk District Attorney's Office for further investigation. That investigation resulted in larceny charges being brought against the former employee in the District Court, where the former employee admitted to sufficient facts and was placed on probation.