



The Commonwealth of Massachusetts

AUDITOR OF THE COMMONWEALTH

ONE ASHBURTON PLACE, ROOM 1819
BOSTON, MASSACHUSETTS 02108

A. JOSEPH DeNUCCI
AUDITOR

TEL. (617) 727-6200

NO. 2006-1112-30

INDEPENDENT STATE AUDITOR'S REPORT ON
CERTAIN ACTIVITIES OF THE
NORFOLK DIVISION OF THE
SUPERIOR COURT DEPARTMENT OF THE
MASSACHUSETTS TRIAL COURT
JULY 1, 2004 TO AUGUST 18, 2006

OFFICIAL AUDIT
REPORT
FEBRUARY 21, 2007

TABLE OF CONTENTS/EXECUTIVE SUMMARY

INTRODUCTION

1

The Massachusetts Trial Court was created by Chapter 478 of the Acts of 1978, which reorganized the courts into seven Trial Court Departments: the Boston Municipal Court, the District Court, the Housing Court, the Juvenile Court, the Probate and Family Court, the Superior Court, and the Land Court. Chapter 211B of the Massachusetts General Laws authorized the Superior Court Department to establish 14 Divisions, each having a specific territorial jurisdiction, to preside over matters that are brought before it. The Division's organizational structure consists of two main offices: the Clerk's Office, headed by a Clerk of the Courts, who is an elected official; and the Probation Office, which is headed by a Chief Probation Officer. The Clerk and 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, criminal, and other matters falling within its territorial jurisdiction of Norfolk County. During the audit period July 1, 2004 to August 18, 2006, NSC collected revenues of \$2,070,128 and disbursed them to the Commonwealth as either general or specific state revenue. In addition to processing civil entry fees and monetary assessments on criminal cases, NSC was custodian of approximately 154 cash bails amounting to \$754,986, 24 removal/medical malpractice bonds totaling \$2,401, and 17 civil escrow accounts held in trust totaling \$397,955 as of August 18, 2006.

NSC operations were funded by appropriations under the control of either the Division (local) or the Administrative Office of the Trial Court (AOTC) or the Office of the Commissioner of Probation (central). According to the Commonwealth's records, expenditures associated with the operation of the Division were \$3,220,892 for the period July 1, 2004 to August 18, 2006.

The purpose of our audit was to review NSC's internal controls and compliance with state laws and regulations regarding administrative and operational activities, including cash management, bail funds, and revenue. Our review focused on the activities of the Clerk of the Courts and Probation Office for the period July 1, 2004 to August 18, 2006.

AUDIT RESULTS

5

IMPROVEMENTS NEEDED OVER BAIL FUNDS SUBJECT TO FORFEITURE

5

Our audit found that NSC needed to strengthen its internal controls over forfeiting bail funds after a defendant does not make their required court appearance and the judge issues an order of default. Specifically, NSC was in possession of 22 bails totaling \$105,900 in which defendants were in default but their bail had not been ordered forfeited. As a result, the Commonwealth may not have received all of the bail funds to which it was entitled.

INTRODUCTION

Background

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

Chapter 211B of the Massachusetts General Laws authorized 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, 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 established 14 Divisions, each having a specific territorial jurisdiction, to preside over civil and criminal matters brought before it. The Division's organizational structure consists of two main offices: the Clerk's 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 of Norfolk County. During the audit period, NSC collected revenues of \$2,070,128 and disbursed them to the Commonwealth as either general or specific state revenue. The following table shows the breakdown of the \$2,070,128 in revenues collected and transferred to the Commonwealth:

Revenue Type	July 1, 2006 to August 18, 2006	July 1, 2005 to June 30, 2006	July 1, 2004 to June 30, 2005
General Revenue	\$91,639	\$855,079	\$767,559
Probation and Administrative Supervision Fees	10,550	129,157	96,973
Victim/Witness Fund	990	17,736	19,347
Alcohol Fees	--	565	250
Civil Surcharges	2,520	34,365	32,740
Reimbursement for Indigent Counsel	450	6,000	1,827
Head Injury Program	--	1,250	--
Victims of Drunk Driving	--	50	--
Drug Analysis Fund	--	580	500
Miscellaneous	<u>--</u>	<u>1</u>	<u>--</u>
Total	<u>\$106,149</u>	<u>\$1,044,783</u>	<u>\$919,196</u>

The NSC Clerk of the Courts Office was also the custodian of approximately 154 cash bails amounting to \$754,986 and 24 removal/medical malpractice bonds amounting to \$2,401, as of August 18, 2006. 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. Removal and medical malpractice bonds are required by statute to satisfy any potential claims for costs incurred in the case.

In addition to the funds collected and transferred to the Commonwealth, NSC was in control of 17 civil escrow accounts valued at \$397,955, as of August 18, 2006. These accounts are considered assets held in trust by the Court and 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 the Division (local) or the AOTC or the Commissioner of Probation Office (central). Under local control for fiscal years 2005, 2006, and 2007 were appropriations for personnel-related expenses of the Clerk of the Courts' support staff and certain administrative expenses (supplies, periodicals, law books, etc.). Other administrative and personnel expenses of the Division were paid by centrally controlled appropriations. According to the Commonwealth's records, local and certain central expenditures

associated with the operation of the Division for the period July 1, 2004 to August 18, 2006 amounted to \$3,220,892¹.

Audit Scope, Objectives, and Methodology

In accordance with Chapter 11, Section 12, of the General Laws, the Office of the State Auditor conducted an audit of the financial and management controls over certain operations of the NSC. The scope of our audit included a review of NSC's controls over administrative and operational activities, including cash management, bail funds, and revenue for the period July 1, 2004 to August 18, 2006.

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

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

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

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

¹ This amount does not include certain centrally controlled expenditures, such as facility lease and related operational expenses, as well as personnel costs attributable to court officers and security officers since they are not identified by court division in the Commonwealth's accounting system.

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

Based on our review, we have determined that, except for the issues noted in the Audit Results section of our report, NSC (1) maintained adequate internal controls over bail funds, cash management and revenue collection and processing activities, and (2) complied with applicable laws, rules, and regulations for the areas tested.

AUDIT RESULTS

IMPROVEMENTS NEEDED OVER BAIL FUNDS SUBJECT TO FORFEITURE

Our audit found that NSC needed to strengthen its internal controls over forfeiting bail funds after a defendant does not make their required court appearance and the judge issues an order of default. Specifically, NSC was in possession of 22 bails totaling \$105,900 in which defendants were in default but the bails had not been ordered forfeited. The court classified these cases as “Filed Pending Apprehension.” As a result, the Commonwealth may not have received all of the bail funds to which it was entitled.

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. Chapter 276, Section 20D, of the General Laws stipulates that a “court or justice may admit such person to bail by bond or undertaking, with sufficient sureties, and in such sum as such court or justice deems proper, conditioned for his appearance before such court or justice, at a time specified in such bond or undertaking, and for his surrender to be arrested upon the warrant of the governor.”

Should the defendant fail to appear in court in accordance with the terms of release, Chapter 276, Section 20F, of the General Laws provides for the forfeiture of that bail to the Commonwealth and the arrest of the defendant. Further, Chapter 276, Section 80, of the General Laws provides that:

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.

The NSC Clerk of the Courts was in possession of 22 bails totaling \$105,900 for defendants that had defaulted and had warrants issued against them. The Clerk of the Courts stated that these cases are required to have motions brought by the prosecutor to start forfeiture proceedings. The Clerk also noted that he has kept the prosecutor aware of the status of these cases, but has no control over either what motions are brought or when they are brought before the court by the prosecution.

Recommendation

The Clerk of the Court should contact either the Superior Court Department or the AOTC Fiscal Affairs Division to determine whether alternative procedures are available to commence forfeiture proceedings so that these bails can be transmitted to the Commonwealth.

Auditee's Response

The Clerk of the Courts provided the following response:

On August 9, 2006 I wrote to the District Attorney requesting that he bring the cases forward before a Judge for the purposes of the issuance of a forfeiture order. I provided lists of the relevant cases.

On February 2, 2007 I met with Chief Justice Rouse and Regional Administrative Justice Judith Fabricant and brought this issue to their attention. At the end of the meeting, Chief Justice Rouse indicated that she would have her General Counsel review the relevant law and report back to us. Specifically, she was going to determine if it would be legally appropriate for the Office of the Clerk of Courts, on their own initiative, to bring these cases forward for the purpose of a forfeiture order. In addition, the Chief Justice indicated that she would bring this issue to the attention of the Chief Justice for Administration and Management for the purpose of having a policy set for all Clerk's Offices.