



Commonwealth of Massachusetts
Office of the State Auditor
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Making government work better

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The Dukes Division of the Superior Court Department

For the period July 1, 2010 through September 30, 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: 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 automation.

The Dukes Division of the Superior Court Department (DSC) presides over civil, criminal, and other matters falling within its territorial jurisdiction of Dukes County. During the audit period July 1, 2010 through September 30, 2011, the DSC collected revenues totaling \$36,884 which it disbursed to the Commonwealth as either general or specific state revenue. The DSC Clerk of Courts' Office held seven cash bails totaling \$21,700; 11 removal bonds totaling \$1,100; and four civil escrow accounts in trust totaling \$171,004 as of September 30, 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. Removal bonds are required by statute to satisfy any potential claims for costs incurred in the case. Civil escrow accounts are held in trust by the court and kept in the custody of the Clerk of Courts pending disposition by the court.

In accordance with Chapter 11, Section 12, of the Massachusetts General Laws, we performed an audit of selected internal controls at the DSC for the period July 1, 2010 through September 30, 2011. The scope of our audit included a review of the DSC's controls over cash management, including cash receipts and reconciliations, escrow account management, removal bonds (removal receivers), and bail activities.

Highlight of Audit Finding

- The DSC had not reviewed the abandoned property status of removal bond accounts, some dating back to 1978, to determine whether the bond accounts should be transferred as

abandoned property to the Office of the State Treasurer (OST). As a result, the DSC and the OST may not have accurate and complete records regarding accounts that should be considered abandoned property.

Recommendation of the State Auditor

- We recommend that the Clerk of Courts perform a review of the status of all custodial funds at the DSC and determine whether any such funds should be transferred to the OST as abandoned property.
- The DSC should conduct a monthly review of all accounts in accordance with AOTC policies and procedures to identify any abandoned funds that should be transferred to the OST.

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 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, 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 matters that are brought before the court. The Dukes Division of the Superior Court Department (DSC) presides over civil and criminal matters falling within its territorial jurisdiction of Dukes County. The DSC's Clerk's Office is managed by a Clerk of Courts, who is an elected official responsible for the internal administration of the DSC. In addition, the DSC utilizes a Probation Officer assigned from the Barnstable Superior Court on an as-needed basis.

During the audit period July 1, 2010 through September 30, 2011, the DSC collected revenues totaling \$36,884, which it disbursed to the Commonwealth as either general or specific state revenue. As of September 30, 2011 the DSC Clerk of Courts' Office held seven cash bails totaling \$21,700; 11 removal bonds totaling \$1,100; and four civil escrow accounts in trust totaling \$171,004. 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 bonds are required by statute to satisfy any potential claims for costs incurred in the case. Civil escrow accounts are held in trust by the court and kept in the custody of the Clerk of Courts pending disposition by the court.

DSC operations are funded by appropriations under the control of the DSC, AOTC, or the Office of the Commissioner of Probation. According to the Commonwealth's records, expenditures associated with the operation of the DSC were \$314,092¹ for the period July 1, 2010 through September 30, 2011.

¹ 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 any probation staff; and related administrative expenses of the Probation Office because they are not identified by court division in the Commonwealth's accounting system.

AUDIT SCOPE, OBJECTIVES, AND METHODOLOGY

In accordance with Chapter 11, Section 12, of the Massachusetts General Laws, we performed an audit of selected internal controls at the Dukes Division of the Superior Court Department (DSC) for the period July 1, 2010 through September 30, 2011. The scope of our audit included a review of the DSC's controls over cash management, including cash receipts and reconciliations, escrow account management, removal bonds (removal receivers), and bail activities.

Our audit was conducted in accordance with applicable generally accepted government auditing standards for performance audits and, accordingly, included such audit procedures and tests as we considered necessary under the circumstances. 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 determine whether the internal control environment adequately supported the DSC's mission and whether the DSC was complying with applicable laws, rules, and regulations. To accomplish our objectives, we sought to access internal controls over cash receipts, deposits, bank reconciliations, escrow accounts, removal bonds, and bail activities. Further, we sought to determine whether the DSC was complying with applicable state laws, rules, and regulations; other state guidelines, and the Administrative Office of the Trial Court (AOTC) policies and procedures.

To achieve our audit objectives, we conducted interviews with DSC personnel, including the Clerk of Courts, and reviewed prior audit reports conducted by the Office of the State Auditor and AOTC's Internal Audit Department. In addition, we obtained and reviewed copies of statutes, policies and procedures, accounting records, and the DSC's internal control plan. Our assessment of internal controls over financial activities at the DSC was based on those interviews and the review of documents.

During our audit, we performed the following tests and examinations:

- Reviewed and judgmentally tested the collection, accounting, and disbursement of all DSC fees for the period July 1, 2010 through September 30, 2011.
- Reviewed monthly closing and revenue reporting functions and verified whether the DSC was adhering to policies and procedures outlined in AOTC's Fiscal Systems Manual.

- Verified that all funds deposited from July 1, 2010 through September 30, 2011 were recorded and accounted for by comparing monthly revenue transmittal and reporting sheets prepared by the DSC to the Office of the State Treasurer's Monthly Activity Report.
- Judgmentally tested all civil escrow accounts, removal bonds, and bail activities held in the custody of the DSC. We tested the accounts for ownership, account creation date, original and current balances, approved expenditures from the accounts, and the posting of earned interest.
- Reviewed the adequacy of internal controls regarding the recording and reconciliation of bail funds and examined 15 months of bail receipt activity totaling \$45,700 and bail distributions totaling \$19,000.

We also obtained information relative to expenditures from the Commonwealth's accounting system. Given that this information is presented for background purposes, we did not assess its reliability.

Our recommendations are intended to assist the DSC in developing, implementing, or improving internal controls and overall financial and administrative operations to ensure the DSC's systems covering cash management, including cash receipts and reconciliations, escrow account management, removal bonds (removal receivers), and bail activities, operate in an economical, efficient, and effective manner and in compliance with applicable laws, rules, and regulations.

Based on our review we have determined that, except as reported in the Audit Findings section of this report, during the period July 1, 2010 through September 30, 2011, the DSC maintained adequate management controls and complied with applicable laws, rules, and regulations for the areas tested.

AUDIT FINDINGS

IMPROVEMENTS NEEDED IN THE TRANSFER OF ABANDONED REMOVAL BONDS TO THE STATE TREASURER

Our audit found that the Dukes Division of the Superior Court Department (DSC) needed to improve its internal controls to comply with state law and the Administrative Office of the Trial Court (AOTC) rules and regulations by promptly notifying the rightful owners of unclaimed removal bonds and promptly transferring unclaimed removal bonds held for more than three years from release date to the Office of the State Treasurer (OST) as abandoned property. Specifically, our audit disclosed that the DSC held 11 removal bond accounts totaling \$1,100 for cases that were completed as far back as 1978. These funds should have been either returned to the rightful owner or transmitted to the OST as abandoned property.

A removal bond is a \$100 deposit paid to Superior Court pending disposition of a civil matter brought before it for a civil case originally filed in a district court. According to Chapter 231, Section 106, of the Massachusetts General Laws, removal bonds are returnable upon completion of the case:

Any party, in lieu of filing the bond required in section one hundred and four, may deposit with the clerk the sum of one hundred dollars. A certificate of such deposit shall be issued to the depositor by the clerk, and the deposit shall be transmitted by him, with the papers, to the clerk of the superior court, who shall receipt therefor and hold said deposit until the final disposition of the case, when he shall apply the same to the satisfaction of any costs awarded against the depositor, and pay the balance, in any, to the depositor or his legal representatives.

If the person who posted the removal bond cannot be located, then Administrative Office of the Trial Court (AOTC) regulations and state law allow for the funds to be treated as abandoned property. Specifically, AOTC's 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, the Fiscal Systems Manual's procedures require courts to review custodial funds on a monthly basis to identify abandoned funds that should be forwarded to the OST.

Chapter 200A, Section 6, of the General Laws provides for the disposition of unclaimed funds, as follows:

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

We determined that neither the DSC nor AOTC had reviewed the abandoned property status of these accounts, which date back to 1978, to determine whether the bond accounts should be transferred as abandoned property to the OST. As a result, the DSC and the OST may not have accurate and complete records regarding accounts that should be considered abandoned property.

At the time of our audit, we found no evidence that the DSC made any attempt to notify the bond account holders that it continued to hold their assets well after the resolution of their individual cases. However, after we notified the Clerk of Courts of this issue, the DSC attempted to notify the individuals involved.

Recommendation

The Clerk of Courts should review the status of all custodial funds at the DSC and determine whether any such funds should be transferred to the OST as abandoned property. In addition, the DSC should comply with AOTC's Fiscal Systems Manual policies and procedures, which require a monthly review of all accounts to identify any abandoned funds that should be transferred to the OST.

Auditee's Response

The Clerk of Courts Office for the County of Dukes County has notified all the parties that have posted Bonds. The Bond monies have been returned to those parties that have responded. The Bond monies of those parties that have not responded have been transferred to the Office of the State Treasurer as abandoned property.

We are in the process of notifying the parties of two of our custodial fund accounts and if we receive no reply, the funds will be transferred to the Office of the State Treasurer as abandoned property. The Dukes County Superior court is now in compliance with the Policies and Procedures as required by the AOTC Fiscal Systems Manual. All accounts will be reviewed on a monthly basis to determine the possibility of abandonment.