



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

Official Audit Report-Issued January 11, 2013

The Southeast Division of the Housing Court Department

For the period July 1, 2009 through September 30, 2011



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INTRODUCTION AND SUMMARY OF FINDINGS AND RECOMMENDATIONS

The Southeast Division of the Housing Court Department (SHC) is authorized by Chapter 211B, Section 1, of the Massachusetts General Laws and serves 47 cities and towns in Bristol and Plymouth counties. The SHC's main courthouse is located in the city of Fall River, and the SHC operates additional courthouses in New Bedford, Brockton, Plymouth, and Taunton. The SHC has jurisdiction over residential housing matters, including zoning, general nuisance, consumer protection, criminal jurisdiction, evictions, and landlord-tenant matters such as contracts, torts, and equity matters. The SHC also provides mediation services to encourage and facilitate the resolution of pending cases to assist parties in reaching mutually acceptable agreements.

The objectives of our audit, which covered the period July 1, 2009 through September 30, 2011, were to assess the adequacy of the SHC's internal controls over cash receipts, expenses, housing court fees, payroll, time and attendance records, and fixed asset inventory and to assess its maintenance of housing case files and determine whether a case backlog exists. Further, we performed testing of various SHC records to determine whether the SHC was in compliance with applicable state laws, rules, regulations, and policies and procedures in the areas reviewed.

Highlight of Audit Findings

Our audit determined that the SHC has established adequate internal controls; was properly maintaining its case files; and was in compliance with applicable laws, rules, regulations, and policies and procedures in the areas examined.

Other Matters

During our audit period, a total of 63% of the individuals who initiated civil and small claims cases at the SHC did not pay a fee to do so because they submitted information to the SHC that qualified them for a fee waiver as authorized by Chapter 261, Section 27C, of the General Laws. In order to be eligible for a fee waiver, individuals must complete an Affidavit of Indigency form, which they sign under penalty of perjury attesting that they are eligible for the waiver; however, this statute does not contain any provisions requiring verification of the information on this form. Accordingly, we suggest that the Housing Court Department and the Administrative Office of the Trial Court review the waiver-of-fee process established by Chapter 261, Section 27C, of the General Laws and

consider taking measures, including amending that section, to require courts such as the SHC to verify the information submitted by individuals who request a waiver of fees.

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 centralized administrative office managed by a Chief Justice for Administration and Management (CJAM), who is 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 (AOTC), 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.

Chapter 211B of the Massachusetts General Laws established the Housing Court Department (HCD), which has jurisdiction over the use of any real property and activities conducted thereon that affect the health, welfare, and safety of any resident, occupant, user, or member of the general public and that are subject to regulation by local cities and towns under the state building code, state specialized codes, state sanitary code, and other applicable statutes and ordinances. The HCD established five divisions, each having a specific territorial jurisdiction, to preside over the housing-related matters that are brought before it. Each division's organizational structure consists of three separately managed offices: the Judge's Lobby, headed by a First Justice; the Clerk-Magistrate's Office, headed by a Clerk-Magistrate; and the Housing Specialist Department, headed by a Chief Housing Specialist. The First Justice is the administrative head of the division and is responsible for appointing the Chief Housing Specialist. The Clerk-Magistrate is responsible for the accounting of the division's revenues and the internal administration of the office. The Chief Housing Specialist provides support to the presiding justices; conducts state sanitary code violation inspections for the Court; and serves as a mediator in litigation relating to housing-related issues.

The Southeast Division of the Housing Court Department (SHC) presides over housing-related matters falling within its territorial jurisdiction, which encompasses 47 cities and towns in Bristol and Plymouth counties. Its main court is located in the city of Fall River, and it operates additional courthouses in New Bedford, Brockton, Plymouth, and Taunton. The SHC has jurisdiction over residential housing matters, including zoning, general nuisance, consumer protection, criminal

jurisdiction, and evictions. Furthermore, the SHC has jurisdiction in landlord-tenant matters such as contracts, torts and equity matters. The SHC also provides mediation services to encourage and facilitate the resolution of pending cases to assist parties in reaching mutually acceptable agreements.

During the audit period (July 1, 2009 through September 30, 2011), the SHC collected revenues totaling \$1,787,191, which it transferred to the Commonwealth as either general or specific state revenue. In addition to funds collected and transferred to the Commonwealth, the SHC was in control of five civil escrow accounts totaling \$638 as of September 30, 2011. These fiduciary accounts are held in trust by the SHC and kept in custody of the Clerk-Magistrate pending disposition by the SHC.

According to the AOTC's MassCourts application system, for the fiscal year ended June 30, 2010, the SHC processed 8,055 housing cases and disposed 7,813 cases. For the fiscal year ended June 30, 2011, the SHC processed 8,094 cases and disposed 8,116 cases. For the quarter ended September 30, 2011, the SHC processed 2,383 cases and disposed 2,291 cases, as detailed below:

Case Activity from July 1, 2009 through September 30, 2011

Case Type	July 1, 2009 to June 30, 2010		July 1, 2010 to June 30, 2011		July 1, 2011 to September 30, 2011	
	Number of Cases Filed	Number of Cases Disposed	Number of Cases Filed	Number of Cases Disposed	Number of Cases Filed	Number of Cases Disposed
Criminal	196	212	214	218	52	37
Civil	692	668	735	717	210	210
Probable Cause	531	532	555	548	132	124
Small Claims	885	783	540	560	207	229
Summary Process	4,941	4,809	5,558	5,576	1669	1588
Supplementary Process	46	46	37	38	9	8
Tickets	764	763	455	459	104	95
Total	8,055	7,813	8,094	8,116	2,383	2,291

AUDIT SCOPE, OBJECTIVES, AND METHODOLOGY

In accordance with Chapter 11, Section 12, of the Massachusetts General Laws, the Office of the State Auditor conducted a performance audit of the Southeast Division of the Housing Court Department (SHC) for the period July 1, 2009 through September 30, 2011. The scope of our audit included a review of the certain administrative and operational activities of the SHC during the audit period.

We conducted this audit in accordance with generally accepted government auditing standards (GAGAS), which define performance audits as follows:

Performance audits are defined as audits that provide findings or conclusions based on an evaluation of sufficient, appropriate evidence against criteria. Performance audits provide objective analysis to assist management and those charged with governance and oversight in using the information to improve program performance and operations, reduce costs, facilitate decision making by parties with responsibility to oversee or initiate corrective action, and contribute to public accountability.

GAGAS requires 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.

The objectives of our audit were to assess the adequacy of the SHC's internal controls over cash receipts, expenses, housing court fees, payroll, time and attendance records, and fixed asset inventory and to assess its maintenance of housing case files and determine whether a case backlog exists. Further, we performed testing of various SHC records to determine whether the SHC was in compliance with applicable state laws, rules, regulations, and policies and procedures in the areas reviewed.

To achieve our audit objectives, we performed the following audit procedures:

- Reviewed and tested the collection, recording, and disbursement of all court fees for the period July 1, 2009 through September 30, 2011. Our testing in this area involved interviews with senior SHC officials and a review of information provided by the SHC from the Administrative Office of the Trial Court's (AOTC's) MassCourts application system. We compared this information to information in the Office of the State Comptroller's (OSC's) Massachusetts Management Accounting and Reporting System (MMARS) to assess the consistency and completeness of the SHC data. We determined that the data was sufficiently reliable for the purposes of this report.

- Reviewed monthly accounting closing and revenue reporting functions and verified whether the SHC was adhering to policies and procedures outlined in AOTC's Fiscal Systems Manual for these activities.
- Performed compliance testing of a statistical sample of 108 case files that comprised 54 summary process cases (evictions) and 54 civil and small claim cases. We examined these particular case files because summary process, civil, and small claim cases represented over 90% of the revenue collected by the SHC during our audit period. We performed testing to ensure that the fees charged by the SHC were accurate and complete. Further, we tested these case files to determine whether any fees were waived, whether a completed and approved affidavit of indigency authorizing the fee waiver was present, whether the case file contained authorized signatures, and whether the case was disposed within the required AOTC timeframe.
- Obtained and reviewed statistical data provided by the AOTC to determine the types of cases and complaints handled by the SHC and whether a case backlog exists.
- Conducted interviews with SHC management and other staff and reviewed prior audit reports; various OSC MMARS reports; the SHC's organizational charts; applicable statutes, policies, and procedures; accounting records; and other source documents.
- Performed a limited test of payroll, leave time, and attendance activities by comparing daily timesheets over a two-week period to the weekly attendance calendar maintained by the SHC. We then compared the SHC's attendance calendar to AOTC time reporting forms. Further, we tested employee leave balances by comparing the balances maintained by the SHC to the leave records maintained by the Office of the State Comptroller.
- Performed a fixed asset inventory control test on a statistical sample of 60 items from the SHC's inventory record to verify equipment location as well as whether the correct serial and tag numbers were assigned to the equipment.
- Reviewed and evaluated policies and procedures relating to the duties and responsibilities of the SHC's Housing Specialist Department.

Our audit determined that the SHC has established adequate internal controls; was properly maintaining its case files; and was in compliance with applicable laws, rules, regulations, and policies and procedures in the areas reviewed.

At the conclusion of our audit, the results of our audit were discussed with SHC officials, and any verbal comments made by these officials were considered in the drafting of the final report.

OTHER MATTERS

COURTS SHOULD CONSIDER PERFORMING VERIFICATION OF FEE WAIVER INFORMATION

Individuals filing claims in courts are subject to fees. However, according to the provisions of Chapter 261 of the Massachusetts General Laws, individuals are 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 putting themselves or their dependents in financial hardship. In order to be eligible for a fee waiver, individuals must complete an Affidavit of Indigency form,¹ which they sign under penalty of perjury and submit to the Court Clerk. Chapter 261, Section 27C of the General Laws requires the Court Clerk to waive fees if an Affidavit of Indigency that appears to be complete is submitted, as follows:

(2) 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.

However, the current waiver application process as established by Chapter 261 does not provide for courts to verify any of the information an individual submits unless the Affidavit that is filed by the person seeking the waiver does not appear to be complete. Of the total \$379,833 in fees from civil and small claims cases that the Southeast Division of the Housing Court Department (SHC) assessed during our audit period, \$240,368, or 63%, was waived, as detailed in the following table:

	Total	Civil	Small Claims
Cases in Population	3,282	1,642	1,640
Indigency Waivers	1,316	1,204	112
Potential Income	\$379,833	\$330,633	\$49,200
Indigency Waivers in Dollars	\$240,368	\$234,208	\$6,160
Percentage Waived – Indigent	63%	71%	13%

Based on our conversations with SHC officials and our review of other court data, the high percentage of waivers granted is not unique to the SHC and affects all five housing court divisions.

¹ Persons 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.

Since the amount of fees being waived by the SHC and possibly other courts can constitute a significant amount of the court's revenue, the AOTC and the Housing Court Department should consider taking measures, including amending Chapter 261, Section 27C, of the General Laws, to require courts such as the SHC to verify the information submitted by individuals who request a waiver of fees.