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INDEPENDENT STATE AUDITOR'S
REPORT ON CERTAIN ACTIVITIES
OF THE COMMITTEE FOR PUBLIC COUNSEL SERVICES

OFFICIAL AUDIT
REPORT
OCTOBER 29, 1999

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people who were eligible for state-funded legal counsel. Our follow-up review revealed during the three fiscal years ended 1999 that CPCS spent approximately \$246 million for legal counsel services, court costs, and administrative expenses to represent the indigent. Since our prior review, studies and legislative initiatives have been made, but no procedures have been put in place to ensure that only eligible people are being provided state-funded legal council. CPCS responded that it is involved with a task force on indigency and that court assignments were down in fiscal year 1999 to date. CPCS also indicated that the courts have collected \$29 million from indigent clients.

2. CPCS Was Overbilled for Investigations by a Private Investigator Who Was Paid \$374,108: A private investigator overbilled CPCS \$651,319 during a three-year period for investigations. CPCS stopped the payment to the private investigator, which totaled \$374,108, and initiated an audit. The investigator was subsequently found guilty of overbilling, and was prosecuted and sentenced. CPCS responded that it has implemented internal controls such as bill reviews and chief counsel's approval of bills of \$5,000 or more. CPCS's response also indicated that it was aware of the overbilling early in the three years but that payments were not terminated in order to cooperate with the Attorney General's investigation. 12

3. Supplemental Funding Needed for Legal Services: CPCS acts as a third-party payor for indigent attorney fees and indigent court costs. This is due to the decisions being made in various courtrooms regarding who receives services and a disproportionate number of bills being received by CPCS in July of the following fiscal year. It is not until CPCS receives actual bills that it knows how much its actual expenditures will be. For fiscal years 1997, 1998, and 1999 CPSC has requested supplemental funds of \$6,827,175; \$14,038,538; and \$3,200,000, respectively. CPCS responded that these issues are caused by its not being fully funded for its budget request. 14

INTRODUCTION

Background

The Committee for Public Counsel Services (CPCS) was established by Chapter 673 of the Acts of 1983, which added Chapter 211D to the Massachusetts General Laws. Chapter 211D established CPCS as the sole state agency responsible for providing legal services to indigent persons who are entitled by law to be represented by legal counsel.

The primary responsibility of CPCS as mandated by Chapter 211D is to “plan, oversee, and coordinate the delivery of criminal and certain noncriminal legal services by all salaried public counsel, bar advocate and other assigned counsel programs, and private attorneys serving on a per case basis.” Chapter 211D also requires that CPCS establish a definition of indigency; establish standards for the Public Counsel Division and the Private Counsel Division; and monitor and evaluate compliance with the standards and performance of counsel in its divisions in order to ensure competent representation of defendants in all courts of the Commonwealth.

Currently, CPCS consists of 15 members appointed by the Supreme Judicial Court (SJC) to three-year terms. It is the responsibility of CPCS to select a Chief Counsel and two Deputy Chief Counsels and to establish policies to carry out its mandate. The Chief Counsel acts as the chief executive officer of CPCS and is responsible for carrying out its day-to-day functions. CPCS meets monthly and at such other times as necessary to carry out its business, elects its officers annually, and performs its functions through the following operating divisions/units:

Public Counsel Division: This division consists of the Trial Unit, the Appeals Unit, and the Youth Advocacy Project. According to Chapter 211D, the Public Counsel Division’s full-time public defenders are to be assigned all appeals cases and all criminal cases except misdemeanors (unless the misdemeanor is in conjunction with a felony charge). However, in situations in which there is a conflict of interest or a public defender has reached his/her maximum caseload limit, the case may be assigned to the Private Counsel Division.

The Public Counsel Division's Trial Unit consists of 114 attorneys, 17 investigators, and three social workers working out of 13 regional offices throughout the state. The Appeals Unit consists of 13 staff attorneys working out of the Boston office. Appellate attorneys review transcripts, submit briefs, and argue cases before the Appeals Court, the SJC, and the federal courts, when appropriate. The Appeals Unit handles all cases that the Trial Unit appeals and such other matters as may be assigned by the Chief Counsel. The Youth Advocacy Project consists of eight attorneys and five social workers.

Private Counsel Division: This division consists of four staff attorneys who offer courtroom training and technical assistance to new and inexperienced attorneys, as well as support services to the approximately 2,500 private attorneys who provide the legal services in over 90% of the cases assigned to CPCS. The division is also responsible for monitoring and evaluating these private attorneys.

According to Chapter 211D, CPCS is required to retain the services of private sector attorneys to represent its clients who are accused of misdemeanors and noncriminal offenses, and to handle criminal cases in which there is a conflict of interest or in which the CPCS staff attorney has an excessive caseload. In order to ensure that there is adequate private sector legal representation for its clients, CPCS has contracted with 12 county bar advocate associations to establish programs whereby private attorneys could be assigned to represent CPCS clients. These programs, called bar advocate programs, are administered by the county bar advocate associations. Under this system, each bar advocate program maintains a list of attorneys who have met qualification standards established by CPCS and thus are eligible to accept case assignments. Bar advocate program administrators select attorneys from these lists and schedule them to appear at the various district and superior courts each day and judges assign particular cases to the attorneys who are assigned court duty on that day.

Noncriminal cases (e.g., Children in Need of Services) are assigned directly to qualified private attorneys by judges, who select the attorneys from lists provided by CPCS.

Administrative Services Division: The division consists of the Accounting, Personnel, Office Support, Purchasing, and Budget and Facilities Management units. Each of these units provides support for the staff of the Public Counsel and Private Counsel divisions.

Special Units: These units include (1) the Training Unit, which is responsible for the development and presentation of all training programs for the Public Counsel and Private Counsel divisions; (2) the Legislative Unit, which is responsible for legislative liaison on all budget and legislative matters; and (3) the Technology Unit, which oversees the planning and operation of CPCS's computer system. Computer operations include the assignment and bill processing system, a public counsel record system, a litigation support system for the Trial Unit, and a word processing system for the entire office.

Although CPCS is responsible for providing legal counsel to indigent individuals, it is the court, not CPCS, that determines who is entitled to receive legal representation from CPCS. Under Supreme Judicial Court (SJC) Rule 3:10, a Trial Court judge must first determine whether the law requires the individual to be represented by legal counsel. Once the judge has determined that an accused individual is entitled to legal counsel, the judge must then assess the individual's ability to pay for legal representation (i.e., the individual's level of indigency). According to the CPCS definition of indigency, which has been approved and promulgated by the SJC, a person is considered totally indigent if he/she meets one or more of the following conditions: (1) the person is receiving some form of public assistance, (2) the person is committed to a mental health facility, (3) the person is serving a sentence for a crime and is in the custody of a jail or correctional institution, or (4) the person has an income that is less than 125% of the current federal poverty threshold.

If an accused individual does not fall into one of these categories, the individual will be required to assist a court probation officer in completing what is called a "determination of indigency" report. This report is essentially a list of the individual's available funds and is used by the court to determine to what extent the individual is able to meet the cost of his/her legal counsel. If a person has limited available funds, the court may classify the individual as "indigent but able to contribute." In these instances, the individual is required to pay a portion of the cost of legal counsel as determined by the court.

These funds are collected by the Commonwealth's Probation Department and are deposited into the state's General Fund.

If a judge finds that an individual is indigent or indigent but able to contribute, the judge will assign the case to CPCS so that it can provide legal representation for the individual. All cases assigned to CPCS by a court are recorded on a Notice of Assignment of Counsel (NAC) form. NAC forms are prepared and signed by an authorized court official and forwarded to CPCS.

CPCS is included in the state budget as a part of the Massachusetts Judiciary. During fiscal years 1997, 1998, and 1999 CPCS received the following legislative appropriations:

	<u>Fiscal Year</u>		
	<u>1997</u>	<u>1998</u>	<u>1999</u>
Appropriation	\$80,315,623	\$86,111,744	\$87,332,720
Expenditures	\$79,781,756	\$84,995,928	\$86,654,583

Audit Scope, Objectives, and Methodology

The scope of our audit included an examination of the processes CPCS has established for providing legal services to its clients and for compensating, evaluating, and monitoring the activities of the attorneys who provide these services. Our audit, which covered the period July 1, 1996 to June 30, 1997, was conducted in accordance with applicable generally accepted government auditing standards for program audits issued by the Comptroller General of the United States and, accordingly, included such procedures and tests considered necessary by the Office of the State Auditor to meet these standards.

Our specific objectives of the audit were to:

1. Determine whether proper internal administrative controls are in place to ensure the appropriateness and accuracy of all expenditures, including payments made to private attorneys and court costs.
2. Determine whether proper budgets are prepared to ensure necessary funding levels to meet the expenditures listed above during the fiscal year.
3. Conduct a follow-up review of corrective action taken on prior audit results.

To achieve our audit objectives, we reviewed private attorneys' bills (both Request for Payments and Telebills) budgets, payrolls, inventories, personnel records, and related information applicable to our audit

period. We also reviewed all applicable Massachusetts General Laws, rules, and regulations, as well as CPCS's own internal policies and procedures.

Based on our review, we have concluded that, except as noted in the Audit Results section of this report, CPCS had proper internal administrative controls to ensure the appropriateness and accuracy of all financial activity, and complied with all applicable rules, laws, and regulations.

AUDIT RESULTS

1. Status of Prior Audit Results

Our prior audit report of the Committee for Public Counsel Services (CPCS) identified three issues which warranted management's attention: (a) bill verification and overbilling issues; (b) attorney performance evaluation issues; and (c) client eligibility issues. Our follow-up review indicated that CPCS had taken some action to address these issues.

a. Bill Verification and Overbilling Issues: Our prior report disclosed that attorneys had billed and received payment from CPCS for more than 24 hours of service in one day. Further, CPCS had not established formal written procedures on when and how to conduct audits of attorney bills in order to verify their accuracy, or what criteria should be used to determine whether an attorney should be audited. Because CPCS did not adequately verify the accuracy of bills received from private attorneys, there was inadequate assurance that all the compensation paid to private attorneys was for services actually provided to its clients, and CPCS may have been overcharged as much as \$500,000 during the prior audit period.

Our follow-up review revealed that CPCS had implemented formal written procedures and instituted computer controls, which prevented bills from being paid for billings of more than 10 hours per day (with the exception of murder cases), waiting time to be billed up to one hour per client per day, and a maximum of 1,800 hours billed by an attorney in one year. CPCS implemented Telebill, a billing process in which the attorney enters the data over the telephone. Moreover, CPCS will be implementing a system where attorneys will bill CPCS using their personal computers. CPCS also established an Audit and Oversight Unit, which audits bills submitted by private attorneys in accordance with their internal control plan and audit plan. This unit audited the bills of attorneys who billed more than 2,200 hours and received compensation in excess of \$70,000, and attorneys who billed more than three hours of waiting time in a single day.

During fiscal year 1997, these audits resulted in assessments of \$202,637. CPCS uses a schedule of hourly rates to compensate all private attorneys. Attorneys submit bills to CPCS by one of two methods: submitting bills by a Request for Payment (RFP) forms or by a Telebill. Effective October 15, 1996, all bills that meet the Telebill criteria, which is for bills up to a \$350 maximum and up to eight lines of service dates, must be filed using the Telebill system.

Although computer controls, audit implementation, and Telebill should decrease the amount of attorney overcharges, additional verification steps could be taken to further improve the accuracy of bills being paid. Our test of 16 bills totaling \$710,000 of both RFPs and Telebill records revealed that, although CPCS entered all of the hours on the Telebills, it only totaled the hours column on the RFPs. For example, our sample disclosed one RFP in which the individual line item hours were less than the total column line hours, resulting in an overbilling of \$625 (12.5 hours at \$50 per hour.). Since not all of the hours on the RFP are entered into the computer, there is inadequate assurance that the line item hours are equal to total hours. CPCS informed us that it would require a lot of extra work to enter the individual line items.

Our prior review recommended implementing penalties such as interest charges for attorneys who overbill CPCS. CPCS asserted that it has plans to institute interest charges.

Recommendation: To improve the accuracy of attorney billings, CPCS should:

- Enter all hours for bills submitted on RFPs into the computer so that the accuracy of detail hours can be verified to total hours.
- Follow through with plans to assess an interest charge on attorneys who overbill CPCS in accordance with CPCS interest rate policy.

Auditee's Response: In its response CPCS indicated that it has implemented these recommendations.

b. Attorney Performance Evaluation Issues: Our prior report disclosed that CPCS was not conducting annual evaluations for all of its staff attorneys and that private attorney evaluations were not being performed. Chapter 211D of the Massachusetts General Laws requires CPCS to monitor and evaluate both its public and private attorneys hired to provide legal counsel to its indigent clients.

For its public (staff) attorneys, CPCS established procedures that require its attorneys to be evaluated by their supervisors at least annually. For private attorneys, CPCS has contractually delegated the responsibility of evaluating these attorneys to 12 county bar advocate programs and has prescribed procedures that these programs must follow when performing attorney evaluations.

Our follow-up review revealed that staff attorney evaluations, except for attorney-in-charge evaluations, were being performed. However, our sample of 20 of the 120 evaluations performed during calendar year 1997 disclosed that evaluations for one Chief Appellate Attorney and three Regional Supervisor Attorneys had not been performed for 10 years and that one Regional Supervisor had not been evaluated since 1996.

Section 10 of Chapter 211D of the General Laws requires CPCS to monitor and evaluate these attorneys to ensure that its clients receive competent legal representation. Specifically, it states, in part:

The committee shall monitor and evaluate compliance with the standards and the performance of counsel in its divisions in order to insure competent representation of defendants in all courts of the commonwealth

In addition, Section VIII of CPCS's Hiring Policies and Procedures for the Public Counsel Division states:

- a. All legal staff shall be evaluated by their supervisor at least annually. The Deputy Chief Counsel shall notify Supervisors of whom they are responsible to submit evaluations.
- b. All legal staff employed less than three years shall be evaluated at least semi-annually.
- c. Upon completion, all evaluations will be submitted to the attorney-in-charge of the office and to the Deputy Chief Counsel of the Public Counsel Division. A copy of the evaluation will be reviewed with the employer by the supervisor and the employee may submit comments to the supervisor and/or the attorney-in-charge of the office in writing.

CPCS's Private Counsel Division negotiated contracts with the 12 bar advocate programs to assign and coordinate the private attorneys who are members of the programs' panels. It is the responsibility of each of these bar advocate programs to maintain a list of qualified attorneys and schedule attorneys to appear at the various district and superior courts each day. The directors of these programs are also contractually responsible for supervising, monitoring, and evaluating the activities of these attorneys.

Our review of three of these bar advocate contracts with CPCS disclosed that the attorneys were submitting monthly reports to CPCS detailing scheduling and monitoring evaluations of attorneys.

On July 1, 1997 a new Deputy Chief Counsel of the Public Defender Division was appointed, who informed us that one of his priorities was to conduct annual performance evaluations.

Recommendation: In order to comply with the requirements of Section 10 of Chapter 211D of the General Laws and to ensure that its indigent clients receive competent legal representation, CPCS should ensure that all legal staff for its Public Counsel Division are evaluated at least annually.

Auditee's Response: CPCS responded that evaluations are now ongoing throughout the year.

c. Client Eligibility Issues: Our prior report disclosed that, according to CPCS officials, in order to speed up the legal process, some judges ordered state-funded legal counsel to individuals who did not meet the definition of indigence. As a result, there was inadequate assurance that the approximately \$76.8 million that CPCS expended on legal services during our two-year audit period was spent to represent people who were eligible for state-funded legal counsel.

Chapter 211D of the General Laws requires CPCS to provide legal counsel to all individuals who have been deemed by a judge to meet the CPCS's recommended definition of indigency as adopted by SJC Rule 3:10. Specifically, SJC Rule 3:10 places the responsibility for making the "determination of indigency" with the judge in accordance with the definition of indigent. Further, SJC Rule 3:10 places the responsibility for verification of indigency and eligibility for legal counsel with the Probation Department. The Office of the State Auditor (OSA) is precluded from examining tax documents necessary to evaluate compliance with indigency determination guidelines, so we were limited as to the level of specificity with which we can analyze and verify this issue.

Our follow-up review revealed that, during fiscal years 1997 through 1999, CPCS spent approximately \$251 million for private criminal, private noncriminal, public defender administration, and court costs to represent the indigent, as follows:

CPCS Expenditures

	<u>Fiscal Year 1997</u>	<u>Fiscal Year 1998</u>	<u>Fiscal Year 1999</u>	<u>Total</u>
Private Criminal	\$40,751,647	\$43,829,059	\$44,504,361	\$129,085,067
Private Noncriminal	19,921,534	20,737,911	21,385,595	62,045,040
Public Defender	6,759,666	7,060,412	7,178,355	20,998,433
Administration	6,323,009	6,607,967	6,670,217	19,601,193
Court Costs	5,018,616	5,887,431	5,839,539	16,745,586
Other	<u>1,007,284</u>	<u>873,148</u>	<u>1,076,516</u>	<u>2,956,948</u>
Total	<u>\$79,781,756</u>	<u>\$84,995,928</u>	<u>*\$86,654,583</u>	<u>\$251,432,267</u>

*As of August 10, 1999

As shown above, private criminal is the largest expenditure category. In fiscal year 1997, private criminal expenditures were \$40,751,647 and accounted for 51% of the budget. The largest component of this \$40,751,647 was \$30,622,651 for CPCS cases at the District Courts/Boston Municipal Court. The following table shows an eight-year trend of increased assignment by CPCS at the District Courts/Boston Municipal Court. Specifically, in fiscal year 1991, CPCS was assigned 61% of arraignments, and in fiscal year 1998 CPCS was assigned 75% of arraignments.

<u>Fiscal Year</u>	<u>District Court/ BMC Arraignments</u>	<u>CPCS Assignments</u>	<u>Percentage of Cases Counsel Assigned by Courts</u>
1991	260,236	158,062	60.9
1992	257,955	158,169	61.6
1993	251,248	161,092	64.2
1994	250,670	162,650	65.0
1995	252,941	165,096	66.1
1996	241,607	163,011	67.5
1997	243,357	173,063	71.1
1998	236,430	178,363	75.4

Source: CPCS: Why Counsel Costs Rise: An Eight-Year History.

After private criminal expenditures, private noncriminal expenditures are the next-largest expenditures category. In fiscal year 1998, private noncriminal expenditures totaled \$20,737,911 and accounted for 24% of the budget. The largest component of this \$20,737,911 was \$17,184,412 for children and family law cases. From fiscal year 1992 to fiscal year 1998, children and family law case expenditures have increased 97%, from \$8,709,936 to \$17,184,412, as shown in the following table:

Children and Family Law

<u>Fiscal Year</u>	<u>Expenditures</u>
1992	\$8,709,396
1993	\$9,846,511
1994	\$11,356,868
1995	\$12,877,221
1996	\$14,249,708
1997	\$17,163,980
1998	\$17,184,412

If these past trends of increased CPCS assignments continue for district court criminal cases and children and family law cases, CPCS's fiscal year 2000 budget will be in excess of \$100 million. While studies of indigency and legislative initiatives have been made, no procedures have been put in place to ensure that only eligible people are being provided state-funded legal counsel. Some of these studies and initiatives are as follows:

- August 23, 1991, CPCS submitted to the SJC Committee on Indigency a memorandum "Prepared Revision of SJC Rule 3:10". The recommendations fell into two categories: (1) proposed revisions to SJC Rule 3:10, several of which have been adopted; (2) procedural changes in the determination of indigency process with the formation of an independent screening agency to determine eligibility for appointed counsel, which has been attempted in pilot project only.
- Chapter 150, Section 330 of the Acts of 1990 amended General Laws, Chapter 211D, Section 2A, the "no-jail-no counsel" rule provides that appointed counsel not be required where the possibility of incarceration does not exist.
- General Laws, Chapter 277, Section 70C states, "Discretion to treat violation of municipal ordinance or misdemeanor offense as a civil infraction."
- Chapter 151, Section 578, of the Acts of 1996 established a pilot indigency verification unit in the Office of the Chief Justice for Administration and Management of the Trial Court. On February 28, 1997, the Chief Justice, pursuant to the provisions of the statute, submitted a report on indigency verification to the House and Senate Committee on Ways and Means. This report made recommendations concerning indigency verification and assignment of counsel but did not address the evaluation of the pilot indigency verification unit or its expansion statewide as required by the statute.
- CPCS's Fiscal Year 1999 Budget Recommendation, Section 195, Emergency Task Force on the Subject of Indigency Verification stated that there shall be created, within the Chief Administrative Justice Office of the Trial Court, an emergency task force on indigency verification. The task force shall consist of the Chief Justice or his designee, the Chief of the district court department or his designee, the Chief Counsel of the CPCS, the Commissioner of Probation, and the President of the District Attorney's Association. The Chief Justice of the Trial

Court shall chair the task force. Within 60 days of the passage of this Act, the task force shall file with the House and Senate Committee on Ways and Means a report recommending procedures establishing an Indigency Verification Program for these persons entitled to representation under SJC Rule 3:10.

- Chapter 194, Section 346, of the Acts of 1998 established the Emergency Task Force on Indigency Verification.

CPCS officials indicated that they recognize the seriousness of this issue and are hopeful for a resolution.

Recommendation: To ensure that only individuals who are entitled to receive legal services from CPCS are in fact receiving these services, CPCS should work with the Emergency Task Force on Indigency Verification to establish procedures to establish a control system for the provision of legal services.

Auditee's Response: CPCS responded, in part:

The task force is functioning with CPCS's complete involvement, and the statistics would indicate that some success is already being achieved. . . . CPCS District Court assignments were down in FY 1999 year-to-date through May, as compared to the prior period, by more than 3 percent. Additionally, . . . the courts have collected \$29 million dollars from indigent clients through FY 1998 for counsel fees and partial indigency fees. . . .

2. CPCS Was Overbilled for Investigations by a Private Investigator Who Was Paid \$374,108

A private investigator billed CPCS \$651,319 during the three-year period July 1993 to June 1996 for investigations under indigent court costs. CPCS stopped payment after paying the private investigator \$374,108 and initiated an audit. The private investigator was subsequently found guilty of overbilling, and was prosecuted and sentenced. CPCS's inadequate internal controls may have contributed to these overbillings.

Chapter 261, Sections 27A to 27G, of the General Laws provides for payment of court costs of indigent persons. Section 27A states:

"Extra fees and costs", the fees and costs, in addition to those a party is normally required to pay in order to prosecute or defend his case, which result when a party employs or responds to a procedure not necessarily required in the particular type of proceeding in which he is involved. They shall include, but not necessarily be limited to, the cost of transcribing a deposition, expert assistance and appeal bonds premiums.

In addition, Section 27G states,

The clerk shall receive from any indigent party or his attorney all bills and vouchers for any document, service or object rendered to said party for which an order for payment by the commonwealth has been issued, and shall transmit said bills and vouchers and an attested copy of said order to the office of the chief administrative justice, who shall make prompt payment thereon.

Although the appropriation for the payment of these indigent court costs was within the CPCS budget for fiscal year 1997, \$5,018,616 was paid by CPCS for indigent court costs. Chapter 261, Section 27G, of the General Laws states that the Chief Administrative Justice shall make payment for indigent court costs. Changing this process to have CPCS authorize payments would streamline the payment system.

CPCS policies and procedures, dated June 1995, for counsel assigned through CPCS provides for CPCS to pay for psychiatric examinations, medical/lab testing, private investigators, expert witnesses and other related costs. Specifically, CPCS's policies and procedures state:

Committee will pay for any of the above noted services if they have been requested and allowed by motion filed by the defense attorney on behalf of their indigent client, at an amount not to exceed the allowed motion.

CPCS instituted procedures as of March 1, 1997 to prevent overbilling. Prior to this, the safeguards applied to attorney's bills were not used on review of court costs. CPCS now requires attorneys in assigned cases to verify services provided by court ordered experts, investigators, and social service providers by signing and dating the face of the payment voucher and writing the following above their signatures: "I certify that the expert or provider who submitted this bill has provided services in this case."

Also, the Legislature, in Section 474 of the 1997 budget, amended Chapter 211D of the General Laws, CPCS's enabling statute, by adding Section 9(i). This new section directs CPCS to establish qualifications and a range of rates for investigators, experts, and social services providers whose services in assigned counsel cases are billed to CPCS. CPCS has established these rates and qualifications.

Chapter 647 of the Acts of 1989, which became effective on April 3, 1990, establishes the minimum level of quality acceptable for internal control systems for state agencies. The law also requires that all unaccounted-for variances, losses, shortages, or theft of funds or property be immediately reported to the

OSA. The OSA is required to determine the amount involved and the internal control weaknesses that contributed to or caused the condition and make recommendations for corrective action. In this instance, the OSA was not notified as required, which delayed our review of the internal control environment.

Recommendation: To help prevent overbilling of court costs, CPCS should:

- Establish internal controls over the payment of court costs.
- Conduct periodic compliance review of these internal controls.
- Have Chapter 261, Section 27G, amended to have CPCS make payments of court costs instead of the Chief Administrative Justice.
- Notify the OSA immediately in the event of future unaccounted-for variances, losses, shortages, or thefts.

Auditee's Response: CPCS responded, in part:

In addition to the court cost payment internal controls acknowledged in the draft audit, CPCS also: thoroughly reviews each bill for any inappropriate factors; requires the Chief Counsel's personal approval of any bill of \$5,000 or more; and prepares an annual year-to-year comparison by vendor to pinpoint any abnormal increase in billing amounts. . . .

CPCS referred this investigator's overbilling and steering of court assignments to selected attorneys through a clerk-magistrate to the Office of the Attorney General in April, 1994—very early in the three-year period . . . We then cooperated fully with the Attorney General's lengthy criminal investigation. An essential aspect of that cooperation was to delay our internal audit of the investigator until the criminal investigation had borne fruit. . . .

In its response CPCS also indicated that it expanded its internal control manual and will comply with the requirement to immediately notify the OSA of any unaccounted-for variances, losses, shortages, or thefts. Additionally at our exit conference CPCS also indicated that it could recommend that Chapter 261, Section 27G, of the General Laws be amended to have CPCS pay court costs instead of the Chief Administrative Justice.

3. Supplemental Funding Needed for Legal Services

The following table shows how CPCS's appropriations have grown since fiscal year 1996 and the extent to which expenditures exceed CPCS's initial fiscal year appropriation.

	Fiscal Year			
	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>
Original Appropriation	\$70,730,240	\$73,488,448	\$ 72,073,206	\$84,132,720
Expenditures	<u>68,568,482</u>	<u>79,781,756</u>	<u>84,995,928</u>	<u>86,654,583</u>
Appropriation Over/(Under)				
Expenditures	<u>\$ 2,161,758</u>	<u>\$ (6,293,308)</u>	<u>\$(12,922,722)</u>	<u>\$ (2,521,863)</u>
Supplemental Appropriation	-	<u>\$ 6,827,175</u>	<u>\$ 14,038,538</u>	<u>\$ 3,200,000</u>
Final Appropriation	\$70,730,240	\$80,315,623	\$ 86,111,744	\$87,332,720
Actual Expenditure	<u>68,568,482</u>	<u>79,781,756</u>	<u>84,995,928</u>	<u>86,654,583</u>
Appropriation over Expenditure	<u>\$ 2,161,758</u>	<u>\$ 533,867</u>	<u>\$ 1,115,816</u>	<u>\$ 678,137</u>

In each fiscal year CPCS needed to request supplemental appropriations to pay its bills.

CPCS acts as a third-party payor for indigent attorney fees and court costs. All cases assigned to CPCS by a court are recorded on a Notice of Assignment of Counsel (NAC) form. NACs are prepared and signed by an authorized court official and forwarded to CPCS. These NACs, according to CPCS officials, take 15 days on average to be received by CPCS. These NACs do not contain any monetary information to enable CPCS to set up a liability for attorney fees. It is not until CPCS receives actual bills that it knows how much its actual expenditures will be.

Lawyers are required to submit their bills known as Requests for Payment (RFPs) or Telebills within 30 days of the last date of service or face a 5% penalty. The RFPs are logged onto the CPCS computer system, where they are checked for compliance with certain administrative criteria and reconciled with the NAC submitted by the courts before being processed for payment or selected for review.

CPCS owed \$40,751,647 for fiscal year 1997 private counsel attorneys' fees, of which \$467,527 (1%) remained unpaid as of June 30, 1998. At the end of the 1998 fiscal year accounts payable period, all bills properly submitted had been paid. While the typical bill is paid within one month, some bills may remain outstanding for longer periods if selected for audit. If a bill is submitted after the current fiscal year funds are fully expended, a bill will remain outstanding until the following year's supplemental appropriation is approved because the prior year's bills may not be paid out of the current year's appropriation. In its April 1998 request for supplemental appropriation, although less than 50% of the bills for fiscal year 1998

had been submitted by that date, CPCS requested \$383,538 in additional funding for prior fiscal years and \$13,675,000 in additional funding for fiscal year 1998. By June 30, 1998 that amount had increased to \$467,527. The attorney bills are received by CPCS throughout the fiscal year, but 20% of these bills are received in July of the subsequent fiscal year.

Due to NAC forms not containing notice of impending financial liability in a timely manner and the receipt of a large percentage of attorney bills in July of the following fiscal year, CPCS was not able to estimate its budget more accurately.

Recommendation: In order to more accurately estimate its budget needs, CPCS should:

- Require the courts to submit NAC forms in a more timely fashion.
- Implement a billing system whereby bills would be received more regularly during the year (e.g., monthly billing).

Auditee's Response: CPCS stated, in part:

We agree that the courts must submit NACs in a more timely manner; indeed we have worked for years in pursuit of this goal, with only modest success. In recent years we have attempted to persuade the Trial Court to submit NACs electronically to CPCS as part of its automation initiative. . . .

Additionally, with regard to implementing a monthly billing system, CPCS stated, in part:

[CPCS] will move into a nearly 100% electronic attorney bill submission system over the next year, and will be actively considering the pros and cons of a more frequent billing cycle than exists at present. A six month cycle may provide much of the enhanced predictability and efficiency of payment benefits of a shorter cycle, while mitigating the tending of a shorter billing cycle to increase administrative expenditures and counsel compensation.