



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

Making government work better

Official Audit Report – Issued October 2, 2014

Middlesex Division of the Superior Court Department

For the period July 1, 2011 through June 30, 2013





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

Making government work better

October 2, 2014

Michael A. Sullivan, Clerk of Courts
Middlesex Division of the Superior Court Department
200 Trade Center, First Floor
Woburn, MA 01801

Maureen J. McEachern, Chief Probation Officer
Middlesex Division of the Superior Court Department
200 Trade Center, First Floor
Woburn, MA 01801

Dear Clerk of Courts Sullivan and Chief Probation Officer McEachern:

I am pleased to provide this performance audit of the Middlesex Division of the Superior Court Department. This report details the audit objectives, scope, methodology, findings, and recommendations for the audit period, July 1, 2011 through June 30, 2013. My audit staff discussed the contents of this report with management of the agency, and their comments are reflected in this report.

I would also like to express my appreciation to the Middlesex Division of the Superior Court Department for the cooperation and assistance provided to my staff during the audit.

Sincerely,

A handwritten signature in blue ink, appearing to read "SMB", written in a cursive style.

Suzanne M. Bump
Auditor of the Commonwealth

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EXECUTIVE SUMMARY

The Middlesex Division of the Superior Court Department (MSC) presides over civil and criminal matters falling within its territorial jurisdiction of Middlesex County. This audit was undertaken to determine whether MSC's (1) financial records were accurate, up to date, and maintained in accordance with established criteria; (2) inventory systems were adequate to safeguard furniture and equipment; (3) evidence exhibits were appropriately tracked and secured by the Clerk of Courts' Office (the Clerk's Office); (4) internal controls over civil escrow fund and bail fund management were adequate; and (5) overall internal control structure was suitably designed and implemented to safeguard Commonwealth assets in compliance with Chapter 647 of the Acts of 1989, An Act Relative to Improving the Internal Controls within State Agencies. In addition, we assessed the status of issues that were identified in our prior audit report (No. 2010-1110-3O).

Summary of Findings

- The Clerk's Office did not maintain an updated centralized evidence log. As a result, MSC lacks a sufficiently detailed description of evidence (including amounts/quantities) in its possession. The lack of a properly maintained log creates a risk that the Clerk's Office will not be able to locate such evidence when required to produce it for official purposes (e.g., when a criminal-case decision is appealed and the evidence is needed during the appellate stage of the case). In addition, high-risk evidence could be misplaced or misappropriated, and such losses may not be detected because the evidence's location is not documented.
- MSC did not consistently comply with requirements for the collection of legal counsel fees and the reporting of uncollected fees, including notifying the appropriate state agencies of outstanding fees and ensuring that bail was not returned to sureties until fees were paid. As a result, the Commonwealth may not be receiving all the money to which it is entitled.
- During our previous audit period, MSC needed to make improvements to its check inventory control log (its inventory of blank checks). Specifically, the receipts and releases of disbursement checks from its supply were not recorded in the control log. During our current audit, we found that MSC had assigned the head bookkeeper the task of routinely updating the check inventory control log. The check inventory is updated as needed; MSC's office manager reviews it at least once every six months; and the reviewer then initials and dates the log to show that the review has been completed.
- During our previous audit period, MSC did not comply with the Trial Court Fiscal Systems Manual's (FSM's) requirement of making refunds by processing the required Request for Refund form, with appropriate signoffs, properly ensuring the segregation of duties. During our current audit, we reviewed all six of the refunds made by the Clerk's Office during our audit period and noted that the office had processed them in compliance with the FSM.

- During our previous audit period, the Clerk's Office did not reconcile the monthly revenue it transmitted to the Office of the State Treasurer (OST) to the revenue recorded by the Office of the State Comptroller's Massachusetts Management Accounting and Reporting System (MMARS). During our current audit, we determined that MSC properly performed monthly reconciliations of revenue sent to OST to amounts credited to MSC's revenue accounts in MMARS.
- During our previous audit period, MSC needed to improve its internal controls to comply with the Massachusetts General Laws and Trial Court rules and regulations regarding processing and forfeiting bail and civil escrow accounts where money should be remitted to OST's general revenue fund or returned to private parties. During our current audit, we determined that all cases that were eligible for abandonment or return were being turned over to OST or private parties consistently and in the time frame required by Chapter 200A, Section 6, of the General Laws.
- During our previous audit period, improvements were needed in procurement and management of copy-machine services. Specifically, MSC did not receive any compensation for allowing an outside vendor to operate three coin-operated copy machines in the court's facilities. During our current audit, MSC stated that it was still awaiting a response and directive from the Trial Court's Executive Office on what course of action should be taken, since the Trial Court was surveying all courts in an effort to develop a uniform policy on copy machines.

Recommendations

- MSC should create a centralized evidence log that includes the defendant name, docket number, location, and detailed description of all evidence for all cases. The exhibit list currently placed in the case file and exhibit box could be scanned or copied and cross-referenced to the central log.
- The Clerk's Office should give proper notification to the Registry of Motor Vehicles (RMV), Department of Transitional Assistance (DTA), and Department of Revenue (DOR) of any legal counsel fees that are not paid within 60 days of assessment.
- Upon a surety's request for the return of bail, the Clerk's Office staff should review the case file before releasing the outstanding bail to the surety to ensure that the defendant has paid the legal counsel fee. The bail should not be returned to the surety until the legal counsel fee is paid in full.
- MSC should ensure that it conducts a competitive solicitation for copy-machine services and consider including a provision that MSC will receive some form of compensation for allowing the contractor to place these machines in the court's facilities.

Post-Audit Action

After we finished our audit, MSC hired an evidence officer, who is consolidating all prior evidence lists into an Excel spreadsheet with all the required information. The Clerk's Office stated that with the implementation of the MassCourts computer system (scheduled to occur before the end of the

calendar year), the tracking of legal counsel fees will be improved and electronic notification to RMV, DTA, and DOR may even be possible. The implementation of MassCourts also simplifies fee collection by requiring all fees to be collected by the Clerk's Office. In addition, MSC has implemented a new procedure that requires the appropriate personnel, including a bookkeeper and check signer, to review the payment status of all fees before any bail is released. The Clerk's Office also stated that it would reach out to the procurement department of the Office of Court Management for guidance in procuring copy-machine services.

OVERVIEW OF AUDITED AGENCY

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 centralized administrative office managed by a Chief Justice for Administration and Management (CJAM), who was 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, 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. Legislative changes that took effect July 1, 2012 eliminated the CJAM position and created two new Trial Court leadership positions: the Chief Justice of the Trial Court (CJTC) and the Court Administrator. The CJTC is considered the judicial head of the Trial Court and is responsible for all matters of judicial policy. The Court Administrator is the administrative head of the Trial Court, operating from the Office of Court Management (OCM) and working with the CJTC, with the overall responsibility for budget preparation and oversight, labor relations, information technology, capital projects, and personnel policy (thereby performing the many administrative functions of the former CJAM position).

Chapter 211B of the Massachusetts General Laws established the Superior Court Department (SCD), which has original jurisdiction in civil actions valued at more than \$25,000 or where equitable relief is sought. It also has original jurisdiction in actions involving labor disputes where injunctive relief is sought, and it has exclusive authority to convene medical malpractice tribunals. According to its website, the SCD has exclusive original jurisdiction in first-degree murder cases, all felony matters, and other crimes, although it shares jurisdiction over crimes where other Trial Court departments have concurrent jurisdiction. It also has appellate jurisdiction over certain administrative proceedings. The SCD has established 14 divisions, each with a specific territorial jurisdiction, to preside over matters that are brought before the court. Each division's organizational structure consists of two main offices: the Clerk of Courts' Office (the Clerk's Office), headed by a Clerk of Courts who is an elected official, and the Probation Office, headed by a Chief Probation

Officer. The Clerk of Courts and the Chief Probation Officer have responsibility for the internal administration of their respective offices.

The Middlesex Division of the Superior Court Department (MSC) presides over civil and criminal matters falling within its territorial jurisdiction of Middlesex County. MSC is responsible for scheduling, holding, and recording proceedings in civil and criminal matters and for the care and custody of all the records, books, and papers that pertain to, or are filed or deposited in, the Clerk's Office.

During the audit period, July 1, 2011 through June 30, 2013, MSC collected revenue totaling \$4,436,463,¹ which it disbursed as either general or specific state revenue as shown in the following table:

Revenue Type	July 1, 2011 through June 30, 2012	July 1, 2012 through June 30, 2013	Total
General Revenue	\$ 1,611,140	\$ 1,874,908	\$ 3,486,048
Probation and Administrative Supervision Fees	355,739	340,586	696,325
Victim/Witness Fund	30,545	25,915	56,460
Surcharge	67,140	73,035	140,175
Reimbursement for Indigent Counsel	34,203	16,150	50,353
Drug Analysis Fund	3,020	1,500	4,520
Other	1,977	605	2,582
Total	<u>\$ 2,103,764</u>	<u>\$ 2,332,699</u>	<u>\$ 4,436,463</u>

In addition to the funds collected and transferred to the Commonwealth, MSC was the custodian of 332 cash bails, totaling \$1,865,985, as of June 30, 2013.² MSC held custody of 66 civil escrow accounts, totaling \$2,661,739, as of June 30, 2013. (Civil escrow accounts are considered assets held in trust by the court pending case disposition.)

¹ Some revenue, like probation supervision fees, is collected and transmitted by the Probation Office; however, MSC is given copies of these transmittals so it can reconcile revenue transmitted by the court division to the Commonwealth's records.

² Bail is the security given to the court by defendants or their sureties to obtain release 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.

MSC operations are funded by appropriations under OCM control from which MSC receives periodic allotments. According to the Commonwealth's records, expenditures³ associated with the operation of MSC were \$8,305,726 for the period July 1, 2011 through June 30, 2013.

³ This amount does not include certain 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 OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Chapter 11, Section 12, of the Massachusetts General Laws, the Office of the State Auditor has conducted a performance audit of certain activities of the Middlesex Division of the Superior Court Department (MSC) for the period July 1, 2011 through June 30, 2013.

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.

MSC presides over civil and criminal matters falling within its territorial jurisdiction of Middlesex County. This audit was undertaken to determine whether MSC's (1) financial records were accurate, up to date, and maintained in accordance with established criteria; (2) inventory systems were adequate to safeguard furniture and equipment; (3) evidence exhibits were appropriately tracked and secured by the Clerk of Courts' Office (the Clerk's Office); (4) internal controls over civil escrow fund and bail fund management were adequate; and (5) overall internal control structure was suitably designed and implemented to safeguard Commonwealth assets in compliance with Chapter 647 of the Acts of 1989, An Act Relative to Improving the Internal Controls within State Agencies. In addition, we assessed the status of issues that were identified in our prior audit report (No. 2010-1110-3O).

To achieve our audit objectives, we reviewed our prior audit report, reports on MSC's revenue and expenses produced by the Office of the State Comptroller's Massachusetts Management Accounting and Reporting System (MMARS), and Trial Court statistical reports. The financial data we obtained from MMARS about the court division's activities during our audit period were not used in our audit testing; they were used solely for the purpose of presenting background information in our report. Consequently, we did not assess the reliability of these data.

We gained an understanding of the internal controls we deemed significant to our audit objectives and evaluated the design and effectiveness of those controls. Specifically, we performed procedures such as interviewing MSC managers and other staff members and reviewing relevant documents, statutes, and regulations as well as MSC's policies, procedures, and accounting records. We obtained

and analyzed case data from selected case docket records and traced and compared the data to Forecourt, MSC's case-management system, for consistency and completeness. We also interviewed agency officials who were knowledgeable about Forecourt data-input activities. Since the court case docket record is the source document used to update Forecourt and the principal document that identifies all court activity about a civil or criminal case, including the assessment and collection of various fees and fines, civil judgments, and criminal case adjudication, we did not rely on Forecourt for the purposes of our audit. We believe the information we obtained from case docket records was sufficient for the purposes of our analysis and findings. Also, for the purposes of our audit, we used random non-statistical sampling during our examination of bail funds, civil escrow accounts, civil and criminal case activities, inventory, and evidence. We did not rely on computer-processed data for our audit purposes. We relied on hardcopy source documents, interviews, and other non-computer-processed data as supporting documentation on which we based our conclusions. Our tests included a selection of transactions, using a combination of judgmental and non-statistical random sampling, to achieve our audit objectives:

- For tests of escrow receipts, we used a non-statistical approach and randomly sampled 10 escrow receipts from a population of the 92 escrow deposits received during our audit period to determine whether MSC was complying with the Trial Court Fiscal Systems Manual (FSM).
- For tests of escrow disbursements, we used a non-statistical approach and randomly sampled 5 escrow disbursements out of a population of 32 escrow funds disbursed during our audit period to determine the validity of the disbursements.
- For tests of civil filing fee waivers, we used a non-statistical judgmental sampling approach to select 25 waived civil filing fees out of a population of 261 fees waived during our audit period to determine whether waiving of civil filing fees was verifiably due to indigence and whether the waivers were approved in accordance with regulations set forth in Chapter 261, Sections 27A–27G, of the General Laws.
- For tests of criminal receipts, we generated a non-statistical random sample of 20 days with criminal receipts, out of a population of 211 days when criminal receipts occurred in our audit period, to determine whether receipts for criminal cases were consistent with court orders.
- For tests of bail receipts, we generated a non-statistical random sample of 30 bail receipts out of a population of 673 to determine whether bails were remitted in a timely manner, properly validated, and recorded in the bail book.
- For tests of bail disbursements, we selected a non-statistical random sample of 25 bail disbursements out of a population of 375 to determine whether bail disbursements were

properly returned, forfeited, or surrendered as abandoned property in accordance with the General Laws and the FSM.

- For tests of inventory of furniture and equipment of the Clerk's Office and Probation Office, we selected a non-statistical judgmental sample of 25 items from a population of 2,355 in the Clerk's Office and 22 items from a population of 251 in the Probation Office. We determined whether they had a Trial Court Fixed Asset tag affixed and could be found on the Court's inventory list. We also traced assets' locations back to the inventory list.
- For tests of probation fees, we used a non-statistical judgmental sample of 40 individuals on probation out of a population of 1,000 to determine whether they were either paying a probation fee or performing community service as ordered by the judge. We also tested to determine whether the judge's orders for community service complied with Chapter 276, Section 87(a), of the General Laws.
- For tests of evidence, we selected a non-statistical sample of six evidence files. (Because MSC did not have an updated centralized evidence log, we were unable to determine the population size.) We compared the six evidence files to a list of evidence contained in the corresponding case files to determine whether they agreed. We also determined, based upon its physical location, whether evidence at MSC was properly safeguarded.

Based on our audit, we have concluded that for the period July 1, 2011 through June 30, 2013, MSC administered the applicable laws and policy directives to ensure that it had adequate controls in place and that its (1) financial records were accurate, up to date, and maintained in accordance with established criteria; (2) inventory systems adequately safeguarded furniture and equipment; (3) internal controls over civil escrow fund and bail fund management were adequate; and (4) overall internal control structure was suitably designed and implemented to safeguard Commonwealth assets in compliance with Chapter 647 of the Acts of 1989. Additionally, MSC has corrected deficiencies cited in our prior audit report (No. 2010-1110-3O). The corrections included improving its check inventory control log; properly processing refunds in compliance with the FSM; routinely reconciling monthly revenue transmitted to the Office of the State Treasurer; processing unclaimed, forfeited, and defaulted bail in a timely manner; and returning unclaimed civil escrow deposits on time. However, we identified the following deficiencies: MSC was not maintaining an up-to-date centralized evidence log as required; MSC was not complying with the statutory requirements on collection of legal counsel fees and the reporting of uncollected fees; and improvements were needed in the procurement and management of copy-machine services.

At the conclusion of our audit, we discussed the results with MSC officials, and we considered these officials' comments in the drafting of our final report.

DETAILED AUDIT RESULTS AND FINDINGS WITH AUDITEE'S RESPONSE

1. The Clerk of Courts' Office did not maintain an updated centralized evidence log containing sufficient identifying information.

The Clerk of Courts' Office (the Clerk's Office) did not maintain an updated centralized evidence log. As a result, the Middlesex Division of the Superior Court Department (MSC) lacks a sufficiently detailed description of evidence (including amounts/quantities) in its possession related to 1,397 criminal cases filed during our audit period and thousands of cases filed before our audit period. The evidence includes high-risk items like drugs, money, and weapons, which may not be properly accounted for. The lack of a properly maintained log creates a risk that the Clerk's Office will not be able to locate such evidence when required to produce it for official purposes (e.g., when a criminal-case decision is appealed and the evidence is needed during the appellate stage of the case). In addition, high-risk evidence could be misplaced or misappropriated, and such losses may not be detected because the evidence's location is not documented.

The Clerk's Office has developed guidelines to properly account for the receipt of evidence in a centralized log; however, these guidelines were not followed. As a result, evidence was not centrally logged to enable identification of the evidence retained in the custody of the Clerk's Office and the location of this evidence, particularly quantities and types of controlled substances, money, and weapons. Instead, the Clerk's Office maintained a record of each case's evidence exhibits within the case file itself and a copy of the record with the exhibits.

We randomly reviewed six criminal evidence files and found five files containing high-risk evidence, like weapons, illegal drugs, and/or money, that was not logged on a centralized record. One file contained cash totaling \$286; four files contained what appeared to be illegal substances like marijuana, cocaine, heroin, and prescription pills of undetermined quantities; and one file contained a knife. All evidence is secured in multiple storage-room locations, either with lock and key or with an electronic passkey system. However, none of these evidence items/locations was specifically identified in the evidence log.

Authoritative Guidance

The Clerk's Office's internal control plan provides guidelines for maintaining an adequately documented evidence log:

An evidence log must be maintained by the Middlesex Division (Criminal Department) to record the receipt of all case evidence. Necessary information includes a description of the evidence, person(s) from whom it was received and the docket number of each case.

The Massachusetts General Laws (see Appendix A for excerpts from Chapter 94C) require that evidence be documented while the convicted individual remains in state custody or on probation or parole.

Reasons for Not Maintaining a Centralized Evidence Log

We asked the Clerk of Courts why his office did not have an up-to-date evidence log to centrally track the receipt and return of evidence exhibits. He stated that MSC stopped maintaining the log in 2006 because of time constraints and a lack of sufficient court personnel to complete the task. He noted that instead of a log, MSC placed in each case file and exhibit box a list of all evidence exhibits pertaining to the case. He also stated that MSC had recently approved, and budgeted for, at least one new employee whose responsibilities would include making sure MSC's evidence log was properly maintained.

Recommendation

MSC should create a centralized evidence log that includes the defendant name, docket number, location, and detailed description of all evidence for all cases. The exhibit list currently placed in the case file and exhibit box could be scanned or copied and cross-referenced to the central log.

Auditee's Response

With regard to our development of a centralized evidence log, we are making great progress. We were able to hire through grant funds an evidence officer. This employee is completing the task of consolidating all of our evidence lists. These lists were in different formats, since the evidence we have dates back to the 1970s in some cases. The end result will be a comprehensive Excel spreadsheet of every thing we have, cross referenced by docket number, defendant name, type of case, location, and a description of the evidence. This task is expected to be completed by the end of the calendar year.

2. MSC did not properly collect court-ordered legal counsel fees.

MSC did not consistently comply with the statutory requirements for the collection of legal counsel fees and the reporting of uncollected fees.⁴ As a result, the Commonwealth may not be receiving all the money to which it is entitled.

⁴ The legal counsel fee is an amount, usually \$150, that an indigent defendant who is provided with a court-appointed lawyer is responsible for paying.

We judgmentally selected a sample of 20 criminal cases disposed of during the audit period to determine MSC's compliance with statutes covering legal counsel fees. We identified 14 cases where defendants were appointed legal counsel and ordered to pay the \$150 legal counsel fee. In all 14 cases, the legal counsel fee was not paid within 60 days of legal counsel appointment and the Clerk of Courts did not notify the appropriate state agencies of the outstanding balance as required by the General Laws. In addition, two legal counsel fees were not paid at all, and in one of these cases, contrary to the General Laws, the Clerk's Office returned bail to the surety without collecting the legal counsel fee.

Authoritative Guidance

Chapter 211D, Section 2A, of the General Laws requires defendants to pay a legal counsel fee if they have had counsel appointed and are found to be "indigent" or "indigent but able to contribute" (to the cost of counsel). Chapter 211D of the General Laws (see Appendix C) requires the Clerk of Courts to notify the Registry of Motor Vehicles (RMV), the Department of Transitional Assistance (DTA), and the Department of Revenue (DOR) upon a defendant's failure to pay the fee within 60 days from its assessment. The same statute requires the defendant to pay the legal counsel fee before bail is released to the surety.

Reasons for Not Collecting Fees and Notifying State Agencies about Unpaid Fees

The First Assistant Clerk stated that MSC did not have an assigned employee to notify the appropriate agencies when legal counsel fees were not paid within 60 days of assessment. According to this official, with the increasing workload and cases filed at MSC, a shortage of available employees makes it unfeasible to report legal counsel fees that are not paid after 60 days. Court officials did not state why two fees were not collected at all.

Reasons for Returning Bail Funds before Payment of Legal Counsel Fee

The First Assistant Clerk stated that it was an oversight by his office that allowed bail to be returned to the surety before the legal counsel fee was paid.

Recommendations

- The Clerk's Office should give proper notification to the RMV, DTA, and DOR of any legal counsel fees that are not paid within 60 days of assessment.

- Upon a surety's request for the return of bail, the Clerk's Office staff should review the case file before releasing the outstanding bail to the surety to ensure that the defendant has paid the legal counsel fee. The bail should not be returned to the surety until the legal counsel fee is paid in full.

Auditee's Response

We are working to change our procedure for collecting the fee. Until now, the fee was assessed during a defendant's initial appearance in Superior Court, but not collected until the case was resolved, which usually occurs after 60 days. The reason for this is that occasionally the fee is adjusted or waived by the judge at sentencing, when most fee issues are addressed.

We intend to address this issue by clearing stating in open court upon appointment of counsel that the fee is due in 60 days and then following up as the 60 day deadline approaches. We expect that the tracking of these fees will become easier with the implementation of Masscourts, which is likely to occur before the end of the calendar. As you know, the implementation will move the entirety of fee collection from the probation department to the clerk's office. The software also has features that will enable our office to [be] automatically alerted when the 60 days is imminent. It may even be possible to send electronic notification to the RMV, DTA and DOR.

With regard to the instance where the bail was returned to the surety, the criminal department is normally very diligent in reviewing the indigent counsel fee assessment before returning the bail. We have redoubled our efforts in this regard by requiring a new form that includes the status of the fee. This form must be reviewed by the criminal department, the bookkeeper preparing the check, and the signer of the clerk before bail can be returned.

3. Since the prior audit, MSC has improved its check inventory control log.

During our previous audit period, MSC needed to make improvements to its check inventory control log (its inventory of blank checks). Specifically, the receipts and releases of disbursement checks from its supply were not recorded in the control log. During our current audit, we found that MSC had assigned the head bookkeeper the task of routinely updating the check inventory control log. We reviewed the check inventory control log and found that it was updated as needed; MSC's office manager reviewed it at least once every six months; and the reviewer then initialed and dated the log to show that the review was completed.

4. Since the prior audit, MSC has been processing refunds in compliance with the Trial Court's Fiscal Systems Manual.

During our previous audit period, MSC did not comply with the Trial Court Fiscal Systems Manual's (FSM's) requirement of making refunds by processing the required Request for Refund form, with appropriate signoffs, properly ensuring the segregation of duties. During our current audit, we reviewed all six of the refunds made by the Clerk's Office during our audit period and noted that the office had processed them in compliance with the FSM.

5. Since the prior audit, MSC has routinely reconciled monthly revenue transmitted to the State Treasurer.

During our previous audit period, the Clerk's Office did not reconcile the monthly revenue it transmitted to the Office of the State Treasurer (OST) to the revenue recorded by the Office of the State Comptroller's Massachusetts Management Accounting and Reporting System (MMARS). During our current audit, we determined that MSC properly performed monthly reconciliations of revenue sent to OST to amounts credited to MSC's revenue accounts in MMARS.

6. Since the prior audit, MSC has improved its processing of unclaimed, forfeited, and defaulted bail and unclaimed civil escrow case deposits.

During our previous audit period, MSC needed to improve its internal controls to comply with the General Laws and Trial Court rules and regulations regarding processing and forfeiting bail and civil escrow accounts where money should be remitted to OST's general revenue fund or returned to private parties. During our current audit, we determined that all cases that were eligible for abandonment or return were being turned over to OST or private parties consistently and in the time frame required by Chapter 200A, Section 6, of the General Laws.

7. Since the prior audit, MSC has not improved its procurement and management of copy-machine services.

During our previous audit period, improvements were needed in procurement and management of copy-machine services. Specifically, MSC did not receive any compensation for allowing an outside vendor to operate three coin-operated copy machines in the court's facilities. During our current audit, MSC stated that it was still awaiting a response and directive from the Trial Court's Executive Office on what course of action should be taken, since the Trial Court was surveying all courts in an effort to develop a uniform policy on copy machines.

Recommendation

MSC should ensure that it conducts a competitive solicitation for copy-machine services and consider including a provision that MSC will receive some form of compensation for allowing the contractor to place these machines in the court's facilities.

Auditee's Response

Unfortunately, we still are awaiting guidance from the Office of Court Management on this issue. We will reach out to the procurement department as to any updates or courses of action they would recommend.

APPENDIX A

Massachusetts General Laws Involving Evidence Retention, Disposal, Forfeiture, and Destruction

Chapter 94C, Section 47, of the General Laws (Controlled Substances Act: Forfeiture of Property)

This law states the following regarding the forfeiture of drugs and money related to a crime committed under the Controlled Substances Act:

(a) The following property shall be subject to forfeiture to the commonwealth and all property rights therein shall be in the commonwealth:

(1) All controlled substances which have been manufactured, delivered, distributed, dispensed or acquired in violation of this chapter.

(2) All materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, dispensing, distributing, importing, or exporting any controlled substance in violation of this chapter.

...

(5) All moneys, negotiable instruments, securities or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of this chapter, all proceeds traceable to such an exchange, including real estate and any other thing of value, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of any provision of section thirty-two, thirty-two A, thirty-two B, thirty-two C, thirty-two D, thirty-two E, thirty-two F, thirty-two G, thirty-two I, thirty-two J, or forty [unlawful manufacture, distribution, dispensing, possession with intent to manufacture, and trafficking of controlled or counterfeit substances].

(6) All drug paraphernalia.

...

(b) Property subject to forfeiture under subparagraphs (1), (2), (4), (5), (6), (7) and (8) of subsection (a) shall, upon motion of the attorney general or district attorney, be declared forfeit by any court having jurisdiction over said property or having final jurisdiction over any related criminal proceeding brought under any provision of this chapter. Property subject to forfeiture under subparagraph (1) of subsection (a) shall be destroyed, regardless of the final disposition of such related criminal proceeding, if any, unless the court for good cause shown orders otherwise.

...

(d) A district attorney or the attorney general may petition the superior court in the name of the commonwealth in the nature of a proceeding in rem to order forfeiture of a conveyance, real property, moneys or other things of value subject to forfeiture under the provisions of subparagraphs (3), (5), and (7) of subsection (a). Such petition shall be filed in the court

having jurisdiction over said conveyance, real property, monies or other things of value or having final jurisdiction over any related criminal proceeding brought under any provision of this chapter. In all such suits where the property is claimed by any person, other than the commonwealth, the commonwealth shall have the burden of proving to the court the existence of probable cause to institute the action, and any such claimant shall then have the burden of proving that the property is not forfeitable pursuant to subparagraph (3), (5), or (7) of said subsection (a). The owner of said conveyance or real property, or other person claiming thereunder shall have the burden of proof as to all exceptions set forth in subsections (c) and (i). The court shall order the commonwealth to give notice by certified or registered mail to the owner of said conveyance, real property, moneys or other things of value and to such other persons as appear to have an interest therein, and the court shall promptly, but not less than two weeks after notice, hold a hearing on the petition. Upon the motion of the owner of said conveyance, real property, moneys or other things of value, the court may continue the hearing on the petition pending the outcome of any criminal trial related to the violation of this chapter. At such hearing the court shall hear evidence and make conclusions of law, and shall thereupon issue a final order, from which the parties shall have a right of appeal. In all such suits where a final order results in a forfeiture, said final order shall provide for disposition of said conveyance, real property, moneys or any other thing of value by the commonwealth or any subdivision thereof in any manner not prohibited by law, including official use by an authorized law enforcement or other public agency, or sale at public auction or by competitive bidding. The proceeds of any such sale shall be used to pay the reasonable expenses of the forfeiture proceedings, seizure, storage, maintenance of custody, advertising, and notice, and the balance thereof shall be distributed as further provided in this section.

The final order of the court shall provide that said moneys and the proceeds of any such sale shall be distributed equally between the prosecuting district attorney or attorney general and the city, town or state police department involved in the seizure. If more than one department was substantially involved in the seizure, the court having jurisdiction over the forfeiture proceeding shall distribute the fifty percent equitably among these departments.

There shall be established within the office of the state treasurer separate special law enforcement trust funds for each district attorney and for the attorney general. All such monies and proceeds received by any prosecuting district attorney or attorney general shall be deposited in such a trust fund and shall then be expended without further appropriation to defray the costs of protracted investigations, to provide additional technical equipment or expertise, to provide matching funds to obtain federal grants, or such other law enforcement purposes as the district attorney or attorney general deems appropriate. The district attorney or attorney general may expend up to ten percent of the monies and proceeds for drug rehabilitation, drug education and other anti-drug or neighborhood crime watch programs which further law enforcement purposes. Any program seeking to be an eligible recipient of said funds shall file an annual audit report with the local district attorney and attorney general. Such report shall include, but not be limited to, a listing of the assets, liabilities, itemized expenditures, and board of directors of such program. Within ninety days of the close of the fiscal year, each district attorney and the attorney general shall file an annual report with the house and senate committees on ways and means on the use of the monies in the trust fund for the purposes of drug rehabilitation, drug education, and other anti-drug or neighborhood crime watch programs.

All such moneys and proceeds received by any police department shall be deposited in a special law enforcement trust fund and shall be expended without further appropriation to defray the costs of protracted investigations, to provide additional technical equipment or expertise, to provide matching funds to obtain federal grants, or to accomplish such other

law enforcement purposes as the chief of police of such city or town, or the colonel of state police deems appropriate, but such funds shall not be considered a source of revenue to meet the operating needs of such department.

- (e) Any officer, department, or agency having custody of any property subject to forfeiture under this chapter or having disposed of said property shall keep and maintain full and complete records showing from whom it received said property, under what authority it held or received or disposed of said property, to whom it delivered said property, the date and manner of destruction or disposition of said property, and the exact kinds, quantities and forms of said property. Said records shall be open to inspection by all federal and state officers charged with enforcement of federal and state drug control laws. Persons making final disposition or destruction of said property under court order shall report, under oath, to the court the exact circumstances of said disposition or destruction.*

APPENDIX B**Massachusetts General Laws Involving Legal
Counsel Fees*****Legal Counsel Fee***

Established in accordance with Chapter 211D, Section 2A, of the General Laws, this is a required fee when legal counsel is appointed for a defendant who is found to be “indigent” or “indigent but able to contribute [to the cost of counsel].” The fee is \$150 and can be waived at the court’s discretion if it is determined that the defendant will be unable to pay the fee within 180 days. If the fee is not waived, the judge may permit the defendant to perform 10 hours of community service for each \$100 owed. The amount can also be remitted (brought to zero) if the defendant is acquitted.

Legal Counsel Contribution

Established in accordance with Chapter 211D, Section 2, of the General Laws and with Supreme Judicial Court Rule 3:10(10)(c), this is a contribution the court can impose when legal counsel is appointed for a defendant who is indigent but able to contribute to the cost of counsel. The amount of the contribution is determined by the court as the “reasonable amount” required toward the cost of counsel, in addition to the above legal counsel fee. The amount can also be remitted (brought to zero) if the defendant is acquitted.

APPENDIX C**Chapter 211D, Section 2A (f – h), of the
Massachusetts General Laws: Affidavit of
Indigency; Waiver Authorizing Access to Verifying
Information; Quarterly Reports on Implemented
Procedures**

- (f) *A person provided counsel under this chapter shall be assessed a counsel fee of \$150, which the court may waive only upon a determination from officer's data verification process that the person is unable to pay such \$150 within 180 days. If, upon the biannual reassessment of the person's indigency, the court concludes that the person is able to pay the \$150 counsel fee of which the person obtained a waiver, the court shall revoke the waiver and reimpose the \$150 counsel fee. . . .*
- (g) *. . . Notwithstanding any general or special law to the contrary, a court proceeding shall not be terminated and the person shall not be discharged if the person owes any portion of the legal counsel fee imposed by this section. The clerk shall not release any bail posted on such court proceeding until the legal counsel fee is satisfied in accordance with this chapter.*
- (h) *The clerk of the court shall, within 60 days of appointment of counsel, report to the department of revenue, the department of transitional assistance and the registry of motor vehicles the amount of any legal counsel fee owed by the person for whom counsel was appointed under this chapter. The department of revenue shall intercept payment of such fee from tax refunds due to persons who owe all or a portion of such fee. The registry of motor vehicles shall not issue or renew a person's driver's license or motor vehicle registration for any vehicle subsequently purchased by such person until it receives notification from the clerk of the court that the fee has been collected or worked off in community service.*