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**INDEPENDENT STATE AUDITOR'S REPORT ON
CERTAIN ACTIVITIES OF THE
NEW BEDFORD DIVISION OF THE
DISTRICT COURT DEPARTMENT OF THE
MASSACHUSETTS TRIAL COURT
JULY 1, 2006 TO JUNE 30, 2007**

**OFFICIAL AUDIT
REPORT
JANUARY 23, 2008**

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The Massachusetts Trial Court was created by Chapter 478 of the Acts of 1978, which reorganized the courts into seven Trial Court Departments: the Boston Municipal Court, the District Court, the Housing Court, the Juvenile Court, the Probate and Family Court, the Superior Court, and the Land Court. Chapter 211B of the Massachusetts General Laws authorized the District Court Department to establish 62 Divisions, each having a specific territorial jurisdiction, to preside over civil and criminal matters that are brought before it. The 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 Probation Office, headed by a Chief Probation Officer. The First Justice is the administrative head of the Division and is responsible for preparing the Division's budget and accounting for its revenues; however, the Clerk-Magistrate and the Chief Probation Officer are responsible for the internal administration of their respective offices.

The New Bedford Division of the District Court Department (NBDC) presides over civil and criminal matters falling within its territorial jurisdiction: the municipalities of Acushnet, Dartmouth, Fairhaven, Freetown, New Bedford, and Westport. During the period July 1, 2006 to June 30, 2007, NBDC collected revenues totaling \$1,710,254, which it disbursed to the Commonwealth and those municipalities. In addition to processing civil entry fees and monetary assessments on criminal cases, NBDC was custodian of approximately 633 cash bails amounting to \$887,597 as of June 30, 2007.

NBDC is also responsible for conducting civil motor vehicle infractions (CMVI) hearings. Although NBDC does not collect the associated monetary assessment when a motorist is found responsible for a CMVI, it is required to submit the results of the hearing to the Registry of Motor Vehicles, the agency that is responsible for the collections.

NBDC operations are funded by appropriations under the control of either the Division, the Administrative Office of the Trial Court (AOTC), or the Office of the Commissioner of Probation. According to the Commonwealth's records, expenditures associated with the operations of the Division were \$1,119,060 for the period July 1, 2006 through June 30, 2007.

The purpose of our audit was to review NBDC's internal controls and compliance with state laws and regulations regarding administrative and operational activities, including cash management, bail funds, and criminal- and civil-case activity for the period July 1, 2006 to June 30, 2007.

AUDIT RESULTS

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IMPROVEMENTS NEEDED IN BANK RECONCILIATION PROCEDURES AND BAIL FUND PROCESSING

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Our review found that the NBDC needed to strengthen its internal controls over reconciling revenues and bail fund processing.

a. Improvements Needed over the Bank Reconciliation Process **5**

We found that the NBDC Clerk Magistrate's Office and Probation Office did not prepare bank reconciliations in a timely manner. As part of the required month-end closing and reporting procedures, during the audit period both the Clerk-Magistrate's Office and the Probation Office should have completed and submitted monthly bank reconciliations to AOTC by the tenth of the following month. However, during the twelve months ended June 30, 2007, only five bank reconciliations were completed and submitted on time, four by the Clerk Magistrate's Office and one by the Probation Office.

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Our audit found that the NBDC needed to improve its internal controls to comply with policies and procedures established by AOTC as well as the Office of Bail Administration regarding the processing of out-of-jurisdiction bails collected after normal court hours. Our review of the accounting records at NBDC found that Bail Magistrates routinely delivered out-of-jurisdiction bails, which they collected after regular court hours, to their Division's bookkeeper for processing, resulting in the inappropriate validation and recording of 1,239 bails totaling \$2,331,620. NBDC subsequently transferred the out-of-jurisdiction bails to the courts that had jurisdiction over these cases.

INTRODUCTION

Background

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

Chapter 211B of the Massachusetts General Laws authorized the District Court Department (DCD), which has civil jurisdiction over money-damage cases involving tort and contract actions; small claims; summary process; civil motor vehicle infractions (CMVI); mental health, alcoholism, and drug abuse commitments; and juvenile matters in Districts without a Juvenile Court. Its criminal jurisdiction extends over all misdemeanors and certain felonies. The DCD established 62 Divisions, each having a specific territorial jurisdiction, to preside over the civil and criminal matters that are brought before it. The 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 Probation Office, headed by a Chief Probation Officer. The First Justice is the administrative head of the Division and is responsible for preparing the Division's budget and accounting for its revenues; however, the Clerk-Magistrate and the Chief Probation Officer are responsible for the internal administration of their respective offices.

The New Bedford Division of the District Court Department (NBDC) presides over civil and criminal matters falling within its territorial jurisdiction: the municipalities of Acushnet, Dartmouth, Fairhaven, Freetown, New Bedford, and Westport. During our audit period, July 1, 2006 to June 30, 2007, NBDC collected revenues totaling \$ 1,710,254, which it disbursed to the Commonwealth and to those municipalities. The majority (approximately 99.04%) of revenue collected by NBDC was

paid to the Commonwealth as either general or specific state revenue, totaling \$1,693,769, as follows:

Revenue Type	Amount
General Revenue	\$ 947,638
Civil Surcharges	82,180
Victim Witness Fund	66,234
Alcohol Fees	29,135
Probation Fees	341,203
Drug Analysis Fund	1,490
Fish and Game Violations	4,250
Legal Counsel Fees	172,213
Victims of Drunk Driving	7,495
Indigent Salary Enhancement Trust Fund	1,545
Head Injury Program	39,295
Miscellaneous	<u>1,091</u>
Total	<u>\$1,693,769</u>

The court also collected \$295,019 of restitution money that is paid directly to the parties owed the funds.

In addition to processing civil-case entry fees and monetary assessments on criminal cases, NBDC was custodian of approximately 633 cash bails amounting to \$887,597 as of June 30, 2007. Bail is the security given to the court by defendants or their sureties to obtain release and to ensure appearance in court, at a future date, on criminal matters. Bail is subsequently returned, upon court order, if defendants adhere to the terms of their release.

NBDC is also responsible for conducting civil motor vehicle infractions (CMVI) hearings, which are requested by alleged violators and heard by a Clerk-Magistrate or judge who determines whether the drivers are responsible for the CMVI offenses cited. NBDC does not collect the associated monetary assessment when a violator is found responsible, but it is required to submit the results of the hearing to the Registry of Motor Vehicles, which follows up on collections.

NBDC operations were funded by appropriations under the control of either the Division (local) or the AOTC or Commissioner of Probation Office (central). Under local control was an appropriation for personnel-related expenses of the Clerk-Magistrate's Office and Judge's Lobby support staff and certain administrative expenses (supplies, publications, law books, etc.). Other administrative and personnel expenses of the Division were paid by centrally controlled appropriations and included expenses for telephone, judges' travel, non-employee services, maintenance and repairs, Probation Office personnel-related costs, and judges' salaries. According to the Commonwealth's records, local and central appropriation expenditures associated with the operation of the Division for the period July 1, 2006 to June 30, 2007 totaled \$1,119,060¹.

Audit Scope, Objectives, and Methodology

In accordance with Chapter 11, Section 12, of the General Laws, the Office of the State Auditor conducted an audit of the financial and management controls of NBDC. The scope of our audit included NBDC's controls over operational activities, including cash management, bail funds, and criminal- and civil-case activity, for the period July 1, 2006 to June 30, 2007.

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

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

Our review centered on the activities and operations of NBDC's Judge's Lobby, Clerk-Magistrate's Office, and Probation Office. We reviewed bail and related criminal-case activity. We also reviewed cash management activity and transactions involving criminal monetary assessments and civil case fees, to determine whether policies and procedures were being followed.

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

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

Our recommendations are intended to assist NBDC in developing, implementing, or improving internal controls and overall financial and administrative operations to ensure that NBDC's systems covering cash management, bail funds, and criminal- and civil-case activity operate in an economical, efficient, and effective manner and in compliance with applicable rules, regulations, and laws.

Based on our review, we determined that, except for the issues noted in the Audit Results section of this report, NBDC (1) maintained adequate internal controls over cash management, bail funds, and civil- and criminal-case activity; (2) properly recorded, collected, deposited, and accounted for receipts; and (3) complied with applicable laws, rules, and regulations for the areas tested.

AUDIT RESULTS

IMPROVEMENTS NEEDED IN BANK RECONCILIATION PROCEDURES AND BAIL FUND PROCESSING

Our review found that the New Bedford District Court (NBDC) needed to strengthen its internal controls over bank reconciliation and bail fund processing.

a. Improvements Needed over the Bank Reconciliation Process

We found that the NBDC Clerk Magistrate's Office and Probation Office did not prepare bank reconciliations in a timely manner. During the audit period (July 1, 2006 to June 30, 2007), as part of the required month-end closing and reporting procedures, both the Clerk-Magistrate's Office and the Probation Office should have completed and submitted monthly bank reconciliations to AOTC by the tenth of the following month. However, during the 12 month period ended June 30, 2007, only five bank reconciliations were completed and submitted on time, four by the Clerk Magistrate's Office and one by the Probation Office.

The AOTC Fiscal Systems Manual emphasizes the importance of reconciling bank statements as promptly as possible. Section 12.7 of the Manual states:

Bank Statements are not always received on a timely basis, but the importance of a proper reconciliation cannot be overstated. If the Bank Account Reconciliation Form cannot be sent with the other month-end reports by the tenth of the following month, every effort must be made to send in this report as soon after submission of the other month-end reports as possible.

Our review noted that, except for four months in the Clerk Magistrate's Office and one month in the Probation Office when reconciliations were completed promptly, bank statement reconciliations were completed anywhere from two to four months after month's end in the Clerk Magistrate's Office and from two to six months after month's end in the Probation Office. For example, in the Clerk Magistrate's Office, bank statements for November 2006 through January 2007 weren't reconciled until March 2007. In the Probation Office, bank statements for October 2006 through January 2007 weren't reconciled until March 2007, and the March 2007 bank statement was not reconciled until September 2007.

These conditions existed primarily because the individuals assigned to complete and file the bank reconciliations were new to these assignments and were still learning, and because there were no designated, trained back-up personnel who could complete these tasks at that time. In

addition, the individual in the Clerk Magistrate's Office was given additional responsibilities, leaving less time to complete the month-end closings. It was noted that bank reconciliations were not completed for a few months during the audit period when the employee responsible for completing and filing the bank reconciliations was out on sick leave due to an extended illness. Both the Clerk Magistrate's Office and the Probation Office recognized this problem and contacted AOTC for assistance regarding the overdue reconciliations, which were subsequently completed by AOTC Audit Staff.

As a result of the delays in preparing bank statement reconciliations, there is an increased risk that errors or irregularities in the NBDC bank accounts may not be detected in a timely manner, potentially resulting in losses.

We discussed this matter with NBDC officials, who designated back-up personnel and re-assigned employee duties so that bank reconciliations will be completed on time in the future.

Recommendation

The NBDC should continue its efforts to ensure that monthly bank reconciliations are conducted in accordance with established policies and procedures. We further recommend that the NBDC request specific training from AOTC relating to the completion and filing of monthly bank reconciliations for primary and designated back-up personnel, and should monitor staff's adherence to completing reconciliations in a timely manner.

Auditee's Response

The First Justice provided the following response:

With respect to the bank reconciliation process in the clerk's office over the past fiscal year, a significant part of the delays in preparing the bank reconciliations had to do with the fact that the account clerk had recently been assigned to the position and then suffered a severe broken leg in a fall which kept her from work for months. The substitute clerks were not able to handle all the tasks in a timely manner. Now that the account clerk has returned, we do not expect there to be a problem with preparing the bank reconciliations each month. In addition, the back-up clerks have been more fully trained in the event of the account clerk's absence. We expect that both departments, the clerk's office and probation, to be able to handle these duties on a timely basis from now on.

b. Improvements Needed in Processing Out-of-Jurisdiction Bails

Our audit found that the NBDC needs to improve its internal controls to comply with policies and procedures established by the AOTC as well as the Office of Bail Administration regarding the processing of out-of-jurisdiction bails collected after normal court hours. During the audit period, NBDC received, validated, and recorded 1,239 bails totaling \$2,331,620, which was subsequently transferred to the courts that had jurisdiction over these cases.

Sections 9.2 and 9.3 of the Fiscal Systems Manual states, in part:

The receipt of bail begins with the bookkeeper verifying that the bail is for a case in his/her court's jurisdiction.

The bookkeeper must not accept bails for other court divisions except for releases authorized by a Judge, Clerk-Magistrate, or Assistant Clerk of their court during regular Court hours only when a defendant appearing before the Court has an outstanding warrant from another court division.

Our review of the accounting records at NBDC found that Bail Magistrates routinely delivered out-of-jurisdiction bails, which they collected after regular court hours, to their Division's bookkeeper for processing. Consequently, the Bail Magistrates did not comply with Rule 39 of the Rules Governing Persons Authorized To Take Bail, promulgated by the Office of Bail Administration, which states:

Every person authorized to take bail must see to it that all recognizance, certificates (affidavits) of sureties, other necessary documents, and all money, bank books, and bonds and other security deposited with him are reasonably transmitted to and reasonably received by the Clerk-Magistrates' Offices of the appropriate Courts.

Based upon Rule 39 and Sections 9.2 and 9.3 of the Fiscal Systems Manual, the NBDC Bail Magistrates should have mailed the bail funds and applicable recognizance forms directly to the appropriate court of jurisdiction. As a result of the Bail Magistrates' improper collection of bails, Division personnel are performing unnecessary duties, improperly using limited resources, and delaying attention to other important matters.

NBDC personnel indicated that out-of-jurisdiction bails have traditionally been processed in this manner, and that they believed that they had better control over bails using the current process.

Recommendation

We recommend that NBDC contact the appropriate regulatory bodies to clarify how Bail Magistrates should process out-of-jurisdiction bails to ensure compliance with AOTC's Fiscal Systems Manual and the guidance set forth by the Office of Bail Administration.

Auditee's Response

The First Justice provided the following response:

As to the processing of out-of-jurisdiction bails, we are mindful of the AOTC policies and procedures but see them as impracticable and unsafe. The clerks who bail have been flawless in accounting for all the bail money they receive and process through this court without establishing a separate bank account. Keep in mind that these clerks are accepting large sums of cash in the middle of the night and that safety issues exist in trying to make a bank drop at that hour of the night. In addition, the bail money is processed much faster at the courthouse since the clerks bring the money to court the next business day. We will continue to discuss this issue with them and work with the AOTC to resolve any remaining concerns.