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**INDEPENDENT STATE AUDITOR'S REPORT ON
CERTAIN ACTIVITIES OF THE
WORCESTER COUNTY DISTRICT ATTORNEY'S
OFFICE (MIDDLE DISTRICT)
JULY 1, 2006 TO JULY 31, 2007**

**OFFICIAL AUDIT
REPORT
FEBRUARY 25, 2008**

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The Middle District Attorney's Office (MDAO) was established under the provisions of Chapter 12, Section 13, of the Massachusetts General Laws (MGL), which provides for the administration of criminal law and the defense of civil actions brought against the Commonwealth in accordance with MGL Chapter 258 (claims and indemnity procedures for the Commonwealth, its municipalities, counties and districts, and its officers and employees). As of July 31, 2007, the MDAO consisted of 143 employees, including prosecutors/assistant district attorneys and administrative and program staff employees that represent approximately 725,000 citizens of the Commonwealth in criminal and civil proceedings, within a jurisdiction of 59 cities and towns in Worcester County and the Norfolk County town of Bellingham. Pursuant to the Middle District's mission of administering the criminal laws of the Commonwealth, the Middle District Asset Forfeiture Unit seizes assets for potential forfeiture in accordance with Chapter 94C, Section 47, of the General Laws, in order to prevent criminals from profiting from illegal narcotics distribution.

In accordance with Chapter 11, Section 12, of the General Laws, the Office of the State Auditor has conducted an audit of the MDAO for the period July 1, 2006 to July 31, 2007. Our audit was conducted in accordance with applicable generally accepted government auditing standards. The purpose of the audit was to review internal controls over financial and program activities to determine whether financial records are accurate, up-to-date, and maintained in accordance with established criteria; costs and expenditures, including payroll and administrative costs, are appropriate and reasonable; controls over revenues, including forfeited funds, are proper and adequate; and the internal control structure is suitably designed and implemented to safeguard the MDAO's assets in compliance with the Office of the State Comptroller (OSC) Internal Control Guides and Chapter 647 of the Acts of 1989, An Act Relative to Improving the Internal Controls within State Agencies.

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Our audit disclosed that MDAO had prepared and developed an Internal Control Plan (ICP) that was generally in compliance with Chapter 647 of the Acts of 1989 and OSC requirements. Chapter 647 of the Acts of 1989 (An Act Relative to Improving the Internal Controls within State Agencies) requires that departments develop an ICP in accordance with OSC guidelines. However, our audit noted improvements are needed in key areas and sections of the ICP. Specifically, the MDAO needs to better define its control environment and include statements on integrity and ethical values expected of all staff, including top management; to update and expand its risk assessments to better define the potential fiscal and programmatic risks within identified categories in the ICP; to develop written fiscal and programmatic policies and procedures that can be used to mitigate these risks; to identify information and communication systems in place to support the daily activities of its operations; and to identify related monitoring activities in place throughout the MDAO. In response to our audit report, the MDAO plans to update its internal control plan to ensure

its compliance with all provisions of Chapter 647 of the Acts of 1989 and the guidelines established by the Office of the State Comptroller.

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INTRODUCTION

Background

The Middle District Attorney's Office (MDAO) was established under the provisions of Chapter 12, Section 13, of the Massachusetts General Laws (MGL), which provides for the administration of criminal law and the defense of civil actions brought against the Commonwealth in accordance with MGL Chapter 258 (claims and indemnity procedures for the Commonwealth, its municipalities, counties and districts, and its officers and employees). As of July 31, 2007, the MDAO consisted of 143 employees, including prosecutors/assistant district attorneys and administrative and program staff employees that represent approximately 725,000 citizens of the Commonwealth in criminal and civil proceedings, within a jurisdiction of 59 cities and towns in Worcester County and the Norfolk County town of Bellingham. Pursuant to the Middle District's mission of the administration of the criminal laws of the Commonwealth, the Middle District Asset Forfeiture Unit seizes assets for potential forfeiture in accordance with Chapter 94C, Section 47, of the General Laws, in order to prevent criminals from profiting from illegal narcotics distribution.

For fiscal year 2007, the MDAO received state maintenance appropriations totaling \$ 8,277,330 to fund its administrative operations. In addition, the MDAO received \$1,102,636 in 2007 in special state appropriations and funding from other sources to support various programs, including overtime for state police investigations, crisis and violence intervention, protection of elders and persons with disabilities, sexual abuse intervention network, consumer protection, stop violence against women, and other programs.

Pursuant to the MDAO's mission of administering the criminal laws of the Commonwealth, the MDAO deposited \$341,769.10 during the period July 1, 2006 to July 31, 2007 in court-awarded forfeited funds with the Office of the State Treasurer. Each case must be fully adjudicated before the asset is considered forfeited. These funds may be used for many purposes as set forth in Chapter 94C, Section 47, of the General Laws, such as defraying the costs of protracted investigations, providing the MDAO with technical equipment or expertise, providing matching funds to obtain federal grants, or such other law enforcement purposes as the District Attorney deems appropriate. The District Attorney may also expend up to 10% of the funds and proceeds for drug rehabilitation, drug education, and other anti-drug or neighborhood crime watch programs, which further law enforcement purposes.

Audit Scope, Objectives, and Methodology

In accordance with Chapter 11, Section 12, of the General Laws, the Office of the State Auditor has conducted an audit of the MDAO for the period July 1, 2006 to July 31, 2007. Our audit was conducted in accordance with applicable generally accepted government auditing standards. The purpose of the audit was to review internal controls over financial and program activities to determine whether financial records are accurate, up-to-date, and maintained in accordance with established criteria; costs and expenditures, including payroll and administrative costs, are appropriate and reasonable; controls over revenues, including forfeited funds, are proper and adequate; and the internal control structure is suitably designed and implemented to safeguard the MDAO's assets in compliance with the Office of the State Comptroller (OSC) Internal Control Guides and Chapter 647 of the Acts of 1989, An Act Relative to Improving the Internal Controls within State Agencies.

To accomplish our objectives, we:

- Reviewed applicable MGLs, OSC Internal Control Guides, and Chapter 647 of the Acts of 1989, An Act Relative to Improving the Internal Controls within State Agencies.
- Reviewed the budgetary process and the spending plan.
- Reviewed the Internal Control Plan (ICP), risk assessment, and internal control structure, along with existing verbal and written administrative and accounting policies and procedures.
- Interviewed various officials.
- Reviewed selected revenue (forfeited funds), expenditure, advance, and payroll transactions to verify that these transactions are appropriately accounted for, recorded, and safeguarded in accordance with established criteria.
- Examined the inventory control system in place for furnishings and equipment during our audit period.

Except as noted in the Audit Results section of this report, we have determined that, for the areas tested, MDAO's financial records are accurate, up-to-date, and maintained in accordance with established criteria; costs and expenditures are appropriate and reasonable; controls over revenue are proper and adequate; and the internal control structure is suitably designed to safeguard the Commonwealth's assets in compliance with OSC's Internal Control Guides and Chapter 647 of the Acts of 1989.

AUDIT RESULTS

IMPROVEMENTS NEEDED IN INTERNAL CONTROL PLAN

Our audit disclosed that the Middle District Attorney's Office (MDAO) had prepared and developed an Internal Control Plan (ICP) in compliance with Chapter 647 of the Acts of 1989 and the Office of the State Comptroller (OSC) requirements. However, improvements are needed in key areas and sections of the ICP.

Chapter 647 of the Acts of 1989, An Act Relative to Improving the Internal Controls within State Agencies, defines the minimum level of quality acceptable for internal control systems in operation throughout the various agencies and departments of the Commonwealth, and constitutes the criteria against which such internal controls systems will be evaluated. Chapter 647 requires departments to develop an ICP in accordance with OSC guidelines. The OSC's Internal Control Guide, Volume II, states, in part:

The Office of the Comptroller defines an internal control plan as, "a high level summarization, on a department-wide basis, of the department's risks (as the result of a risk assessment) and of the controls used by the department to mitigate those risks. This high level summary must be supported by lower level detail, i.e., departmental policies and procedures ..."

For the ICP to be considered an effective high-level summarization, five interrelated components of internal control must be present: control environment, risk assessment, control activities, information and communication, and monitoring.

The MDAO has developed a high-level summarization and prepared an ICP which contains the five components of internal control; however, we noted that improvements need to be made to each area to better define the role of internal controls within the MDAO. Specifically, we noted that improvements are needed as follows:

MDAO needs to:

- Better define and broaden its control environment to include management's attitude toward internal control and the integrity and ethical values expected of all staff, including top management.

- Expand its risk assessment to better define the potential fiscal and programmatic risks within the identified categories in the ICP. MDAO should develop written fiscal and programmatic policies and procedures that can be used to mitigate these risks.
- Identify information and communication systems in place to support the daily activities of its operations.
- Identify related monitoring activities in place throughout the MDAO.

Control Environment

MDAO's ICP does not clearly define and identify its control environment. The ICP does not contain within its high-level summarization direct statements from top management on the expectations of staff concerning integrity and high ethical standards, or definitive statements that set the tone for the importance of internal controls within the MDAO. While the ICP does discuss MDAO's organizational structure, written statements defining its control environment and management's attitude and supervision concerning its philosophy and operations, which provide a framework for achieving the agency's mission and objectives, were absent or unclear in the ICP.

The OSC's Internal Control Guide for Managers, Vol.1, states, in part:

The control environment of a state agency sets the tone of the organization and influences the effectiveness of internal controls within the agency. Control environment, an intangible factor and the first of the five components, is the foundation for all other components of internal control, providing discipline and structure and encompassing both technical competence and ethical commitment. Managers must evaluate the internal control environment in their own unit and department as the first step in the process of analyzing internal controls. Many factors determine the control environment, including those on the following list.

Management's attitude, actions, and values set the tone of an organization, influencing the control consciousness of its people. Internal controls are likely to function well if management believes that those controls are important and communicates that view to employees at all levels. If management views internal controls as unrelated to achieving its objectives, or even worse, as an obstacle, this attitude will also be communicated. Despite policies to the contrary, employees will then view internal controls as "red tape" to be "cut through" to get the job done. Management can show a positive attitude toward internal control by such actions as including internal control in performance evaluations, discussing internal controls at management and staff meetings, and by rewarding employees for good internal control practices.

Commitment to competence includes a commitment to hire, train, and retain qualified staff. It encompasses both technical competence and ethical commitment. Management's commitment to competence includes both hiring staff with the necessary skills and

knowledge and ensuring that current staff receives adequate on-going training and supervision.

The OSC's Internal Control Guide for Managers, Vol.1, Chapter 5, Part B states, in part, that an ICP would:

briefly state the integrity and ethical values expected of all staff, and especially, the ethical values top management expects of itself (control environment)...

Currently MDAO's ICP contains a brief statement on integrity that discusses the principal mission of the MDAO; specifically, that of the fiscal department. However, it does not identify the philosophy of the MDAO in holding employees to high ethical standards and outlining its organizational structure. MDAO can enhance its ICP by adding a brief explanation of how the structure, policies, and procedures act to control and link all units and segments of its operation, as well as a statement that clearly defines the ethical standards to which employees are expected to adhere. This addition would serve to enhance the MDAO's existing ICP while conveying management's attitude regarding ethical expectations.

Risks Assessment and Control Activities for Mitigating Risks

Our review found that MDAO identifies seven potential fiscal risk categories in its ICP; however, it does not provide an adequate assessment of the risks and the impact of the ICP on MDAO's overall operation. Additionally, MDAO's ICP did not identify any programmatic areas where potential risks may exist.

A risk assessment is an entity's identification and analysis of risks relevant to the achievement of its goals and objectives and forms a basis for determining how the risks should be managed. Risk assessments are an integral part of an ICP because they identify and analyze risks and assist management in prioritizing those activities where controls are most needed. Management is responsible for evaluating and implementing, at least annually or as conditions warrant, any changes necessary to maintain the integrity and effectiveness of the internal control system. MDAO was able to identify its risks in areas such as personnel changes; computer use; budgetary issues; and purchasing, inventory, and receipt of funds; however, the ICP needs to be expanded to include a more detailed description of these risks in addition to the steps being taken to mitigate them.

Additionally, the MDAO needs to further expand upon how its identified risks will be mitigated by either improving references to existing control activities related to areas of risk specified in its ICP, or by providing new or additional control activities. The mitigation of identified risks was primarily limited to fiscal control procedural activities. Our review disclosed that control activities were implemented and functioning as intended; however, MDAO did not have detailed documented policies and procedures to support these controls. Control activities occur at all levels and are an integral part of ensuring that an agency meets its mission, goals, and objectives. Control activities include planning and reviewing agency operations, reconciliations, and performance reviews. The OSC's Internal Control Guide, Vol. II, states:

Control activities is the term used to describe the lower level detail supporting the higher level summary that comprises the internal control plan. While departments must develop a high-level department-wide plan that references policies and procedures, functional areas and subdivisions also require internal controls. Every department needs to ensure that policies and procedures are in place on multiple levels to support both the higher-level internal control plan, and all the other risks to department operations. Once managers identify and assess risks, they need to evaluate and develop, if necessary, methods to minimize these risks.

The ICP did not identify or refer to internal control activities needed to mitigate those risks, which affect specific programmatic activities such as Case Management and Court Activities, Victim Witness, and Domestic Violence and Child Advocacy units of the MDAO. The MDAO should determine how these risks would be managed and addressed in the ICP through direct statements or by referring to existing control activities implemented by the MDAO to mitigate these risks. The effectiveness of these units has been publicly recognized in meeting risks associated with prosecution, victim witness rights, and prevention and prosecution of child abuse. Identifying these units' controls for mitigating risks either by inclusion or reference is necessary to improve and further enhance the ICP. Linking or identifying these units' control activities for mitigating these risks within the ICP ensures that internal control activities are properly defined and in place within the organization.

Administrative and programmatic units and service areas of the MDAO, including Elder Abuse and Persons with Disabilities, Community Education, and Consumer Protection activities, were not included or referenced in the ICP, and should be included in the ICP as areas where potential risks to the mission may occur. Identifying the correlation of these areas, several of which were

critical in nature to support MDAO's mission, and identifying any risks mitigated by their activities can only enhance the overall quality of the ICP. Other specific risks that were not identified in these units or service areas should be assessed and considered as to how they could impede MDAO's achievement of goals and objectives. This assessment should be done during the next annual review of the ICP.

Information and Communication

Information and communication consists of the identification, capture, and exchange of information in a form and time frame that enables people to carry out their responsibilities. Effective internal control requires that "pertinent information be stored, captured and communicated both within the organization and to external parties" such as state agencies, trustees, vendors, etc. Communication must be ongoing both within and between various levels and activities of the organization.

MDAO's ICP could be improved by identifying and incorporating more specific references to information and communication data in place, such as systems used during the daily activities of its operations (e.g., DAMION, Case Management, and any other management information or information technology (ITD) systems in use by MDAO). General statements to the application and relationship of these various systems to the MDAO risks and corresponding control activities would serve to improve and enhance its ICP.

Monitoring

Monitoring is a process that assesses the quality of the internal control performances over time. The effectiveness of internal controls needs to be monitored periodically to ensure that controls continue to be adequate and function properly, accomplished through ongoing management and supervisory activities as outlined in OSC's Internal Control Guide for Managers, Chapter 3.

The MDAO's ICP discusses some fiscal monitoring procedures performed by the Chief Financial Officer and contains other references to monitoring authority. However, although there is a general statement regarding other operations in the MDAO, there is no specific reference to accountability either by responsibility or employee monitoring roles within the programmatic and

other service areas. How these units monitor control activities needs to be identified and should be stated in the ICP. The MDAO needs to clearly identify monitoring activities and responsibilities in its fiscal and program operations that, upon successful application, will ensure that controls to mitigate the identified risks are effective and function as intended.

Subsequent to our fieldwork, the OSC issued new guidance on internal controls. In a memorandum introducing the new Internal Control Guide dated September 13, 2007, the Comptroller commented; “this revised Internal Control Guide streamlines the content of the existing manuals and incorporates the principles of Enterprise Risk Management (ERM) that tie risk to strategic planning. These principles reflect the concepts of broad-based objective setting, event identification and risk response.” Agencies are now required to update their current ICPs to conform to the new guidelines. This ERM model has expanded the methods and definition of the original components of risk assessment and control environment. It stresses that management tie internal controls to the agency’s mission, goals, and objectives while continuing to safeguard assets from loss, unauthorized use, or disposition.

Without an adequate ICP in place, there is inadequate assurance that the MDAO will achieve its objectives efficiently, effectively, and in compliance with applicable state laws and regulations and ensure that its assets are properly safeguarded against loss, theft, or misuse. Updating the ICP is important for the MDAO to ensure the integrity and effectiveness of its internal control system and to respond to changes while maintaining the system’s effectiveness.

Recommendation

The MDAO should update its ICP to better define its internal control environment by including statements of its philosophy on integrity and ethical values expected of all staff, including top management; to update and expand its risk assessment to include identifying control activities in place to mitigate all identified fiscal, and more importantly programmatic, risks; to identify information and communication systems in place within the operation; to include identification of monitoring roles and responsibilities in the ICP; and to ensure compliance with all provisions of Chapter 647 of the Acts of 1989 and the guidelines established on September 13, 2007 by the OSC. In updating its plan and overall system, the MDAO should:

- Review the updated Internal Control Guide established by the Comptroller subsequent to the audit, including the newly incorporated Enterprise Risk Management (ERM) principles and guidelines, and implement them into its ICP.
- Include in its ICP definitive statements from top management concerning the expectations of staff regarding integrity and high ethical standards to set the tone for the importance of internal controls within the MDAO.
- Consider adding language that clarifies how the MDAO's structure, policies, and procedures act to control the risks (control activities) faced by the agency and link these statements through the ICP.
- Consider including identification or reference within the ICP of all administrative and programmatic units or areas of the MDAO, including Case Management and Court Activities, Victim Witness, Domestic Violence and Child Advocacy, Elder Abuse and Persons with Disabilities, Information Technology, Community Education, and Consumer Protection units, as well as any other key service areas.
- Upon adding any updates or changes, re-visit the MDAO's risks to assess the need for modifying or adding additional risks identified within other areas. If deemed necessary, further develop and implement additional written internal controls to mitigate any new identified risks and provide management with the means to identify future control risks.
- Identify and incorporate more specific references to information and communication systems in place that facilitate daily activities.
- Ensure that all supporting documents, including written policies and procedures, are readily available to both management and staff for daily use to assess the integrity of the internal control structure and overall operations.
- Include language describing how and by whom the ICP and its related control activities are to be monitored.
- Ensure that its internal control system is evaluated at least annually or when conditions warrant, that any necessary changes are implemented, and that sufficient controls are in place to address these changes.

Auditee's Response

The Middle District Attorney's Office will update its Internal Control Plan (ICP) to ensure its compliance with all provisions of Chapter 647 of the Acts of 1989 and the guidelines established on September 13, 2007 by the Office of the State Comptroller (OSC).

APPENDIX

Chapter 647, Acts of 1989, An Act Relative to Improving
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chapter 647

THE COMMONWEALTH OF MASSACHUSETTS

In the Year One Thousand Nine Hundred and Eighty-nine

AN ACT RELATIVE TO IMPROVING THE INTERNAL CONTROLS WITHIN STATE AGENCIES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Notwithstanding any general or special law to the contrary, the following internal control standards shall define the minimum level of quality acceptable for internal control systems in operation throughout the various state agencies and departments and shall constitute the criteria against which such internal control systems will be evaluated. Internal control systems for the various state agencies and departments of the commonwealth shall be developed in accordance with internal control guidelines established by the office of the comptroller.

(A) Internal control systems of the agency are to be clearly documented and readily available for examination. Objectives for each of these standards are to be identified or developed for each agency activity and are to be logical, applicable and complete. Documentation of the agency's internal control systems should include (1) internal control procedures, (2) internal control accountability systems and (3), identification of the operating cycles. Documentation of the agency's internal control systems should appear in management directives, administrative policy, and accounting policies, procedures and manuals.

(B) All transactions and other significant events are to be promptly recorded, clearly documented and properly classified. Documentation of a transaction or event should include the entire process or life cycle of the transaction or event, including (1) the initiation or authorization of the transaction or event, (2) all aspects of the transaction while in process and (3), the final classification in summary records.

(C) Transactions and other significant events are to be authorized and executed only by persons acting within the scope of their authority. Authorizations should be clearly communicated to managers and employees and should

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Include the specific conditions and terms under which authorizations are to be made.

(D) Key duties and responsibilities including (1) authorizing, approving, and recording transactions, (2) issuing and receiving assets, (3) making payments and (4), reviewing or auditing transactions, should be assigned systematically to a number of individuals to ensure that effective checks and balances exist.

(E) Qualified and continuous supervision is to be provided to ensure that internal control objectives are achieved. The duties of the supervisor in carrying out this responsibility shall include (1) clearly communicating the duties, responsibilities and accountabilities assigned to each staff member, (2) systematically reviewing each member's work to the extent necessary and (3), approving work at critical points to ensure that work flows as intended.

(F) Access to resources and records is to be limited to authorized individuals as determined by the agency head. Restrictions on access to resources will depend upon the vulnerability of the resource and the perceived risk of loss, both of which shall be periodically assessed. The agency head shall be responsible for maintaining accountability for the custody and use of resources and shall assign qualified individuals for that purpose. Periodic comparison shall be made between the resources and the recorded accountability of the resources to reduce the risk of unauthorized use or loss and protect against waste and wrongful acts. The vulnerability and value of the agency resources shall determine the frequency of this comparison.

Within each agency there shall be an official, equivalent in title or rank to an assistant or deputy to the department head, whose responsibility, in addition to his regularly assigned duties, shall be to ensure that the agency has written documentation of its internal accounting and administrative control system on file. Said official shall, annually, or more often as conditions warrant, evaluate the effectiveness of the agency's internal control system and establish and implement changes necessary to ensure the continued integrity of the system. Said official shall in the performance of his duties ensure that: (1) the documentation of all internal control systems is readily available for examination by the comptroller, the secretary of administration and finance and the state auditor, (2) the results of audits and recommendations to improve departmental internal controls are promptly evaluated by the agency management, (3) timely and appropriate corrective actions are effected

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by the agency management in response to an audit and (4), all actions determined by the agency management as necessary to correct or otherwise resolve matters will be addressed by the agency in their budgetary request to the general court.

All unaccounted for variances, losses, shortages or thefts of funds or property shall be immediately reported to the state auditor's office, who shall review the matter to determine the amount involved which shall be reported to appropriate management and law enforcement officials. Said auditor shall also determine the internal control weaknesses that contributed to or caused the condition. Said auditor shall then make recommendations to the agency official overseeing the internal control system and other appropriate management officials. The recommendations of said auditor shall address the correction of the conditions found and the necessary internal control policies and procedures that must be modified. The agency oversight official and the appropriate management officials shall immediately implement policies and procedures necessary to prevent a recurrence of the problems identified.

House of Representatives, December 21, 1989.

Passed to be enacted,

George J. Fournier, Speaker.

In Senate, December 22, 1989.

Passed to be enacted,

William W. Budge, President.

January 3, 1990.

Approved,

Richard D. Riordan, Governor.