July 1, 2001 to January 31, 2003
The Honorable James E. McGreevey  
Governor of New Jersey

The Honorable John O. Bennett  
President of the Senate

The Honorable Richard J. Codey  
President of the Senate

The Honorable Albio Sires  
Speaker of the General Assembly

Mr. Albert Porroni  
Executive Director  
Office of Legislative Services

Enclosed is our report on the audit of the Department of the Treasury, Office of the Public Defender for the period July 1, 2001 to January 31, 2003. If you would like a personal briefing, please call me at (609) 292-3700.

August 8, 2003
# Table of Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scope</td>
<td>1</td>
</tr>
<tr>
<td>Objectives</td>
<td>1</td>
</tr>
<tr>
<td>Methodology</td>
<td>1</td>
</tr>
<tr>
<td>Conclusions</td>
<td>2</td>
</tr>
<tr>
<td>Findings and Recommendations</td>
<td></td>
</tr>
<tr>
<td>Pool Attorneys</td>
<td>3</td>
</tr>
<tr>
<td>Case Management and Billing System</td>
<td>5</td>
</tr>
</tbody>
</table>
Department of the Treasury  
Office of the Public Defender  

**Scope**  
We have completed an audit of the Department of the Treasury, Office of the Public Defender (OPD) for the period July 1, 2001 to January 31, 2003. The OPD is considered in but not of the Department of the Treasury.

The prime responsibility of the OPD is to provide for the realization of the constitutional guarantee of counsel in criminal cases for indigent defendants. Total expenditures of the OPD during the audit period were $115 million. Primary expenditures were payrolls of $89 million and professional services expenditures (e.g. pool attorneys, expert witnesses, transcriptions services, etc.) totaling $19 million, which were accounted for in the state’s General Fund. Revenues amounted to $8 million, with the major component of revenues being client reimbursements for services rendered.

**Objectives**  
The objectives of our audit were to determine whether financial transactions were related to the agency's programs, were reasonable, and were recorded properly in the accounting systems. We also tested for resolution of the significant conditions noted in our prior report.

This audit was conducted pursuant to the State Auditor's responsibilities as set forth in Article VII, Section 1, Paragraph 6 of the State Constitution and Title 52 of the New Jersey Statutes.

**Methodology**  
Our audit was conducted in accordance with *Government Auditing Standards*, issued by the Comptroller General of the United States.

In preparation for our testing, we studied legislation, administrative code, circular letters promulgated by the State Comptroller, and policies of the OPD. Provisions that we considered significant were documented and compliance with those requirements
was verified by interview and observation, and through our samples of financial transactions. We also read the budget message, reviewed financial trends, and interviewed agency personnel to obtain an understanding of the programs and the internal control.

A nonstatistical sampling approach was used. Our samples of financial transactions were designed to provide conclusions about the validity of transactions as well as internal control and compliance attributes. Sample transactions were sorted and transactions were judgmentally selected for testing.

To ascertain the status of findings included in our prior report, we identified corrective action, if any, taken by the OPD and performed tests on the system to determine if the action taken was effective.

Conclusions

We found that the financial transactions included in our testing were related to the OPD's programs, were reasonable, and were recorded properly in the accounting systems. In making this determination we noted certain internal control weaknesses meriting management's attention. We found that the OPD has resolved the significant issues noted in our prior report, except for matters relating to the case management billing system. This issue has been restated in our current report.
Pool Attorney hours and costs should be more closely monitored and reviewed.

Pool Attorneys

Pool attorneys are utilized when there is a conflict, that is, when more than one defendant is charged with a crime and more than one is assigned to the OPD. The OPD would defend one person and the others are assigned to pool attorneys. The office used more than 600 pool attorneys during fiscal year 2002. During our review period pool attorney costs amounted to $14 million. Pool attorneys are reimbursed $25 an hour for out-of-court time and $30 an hour for in-court time plus reasonable costs. At the completion of the case, pool attorneys are required to submit separate invoices along with time sheets indicating hours worked and the type of work performed. Invoices and time sheets for a specific case are initially reviewed and approved by a regional public defender; however, an overall review of an attorney’s billings are not routinely performed.

Periodically, the fiscal unit will select a number of pool attorneys for a desk audit based on a predetermined amount paid during a particular period. Invoices and time sheets are retrieved and hours billed are tabulated by day. The OPD considers any day for which a pool attorney billed 12 or more hours to be excessive. The pool attorney is contacted and required to justify the hours billed or reimburse the OPD for any amount overbilled. Between December 1999 and July 2002, the OPD performed 21 desk audits. In 13 cases, pool attorneys were required to either refund or perform “pro-bono” work totaling $173,650. During our review of invoices and time records submitted by three pool attorneys totaling $237,000, we found that 350 hours were billed in excess of 12 hours per day amounting to $8900 in possible overpayments.

Recommendation

We recommend that the OPD implement procedures to more closely monitor and review pool attorneys’ hours billed. In addition, the OPD should consider monitoring pool attorneys’ billings on an ongoing
basis. This could be accomplished by establishing a system which would accumulate pool attorneys’ hours to detect excessive billings in a timely manner.

**Auditee’s Response**

While the Public Defender concurs with this finding, funding in the present (FY 2003) and the next fiscal years (FY 2004) is unavailable to accommodate its implementation. To provide sufficient review of pool attorney billings, an ongoing adequately staffed audit program must be implemented. According to the audit finding and recommendation, the investment in additional auditors and concurrent costs to conduct this function may very well be cost effective. The conclusion that a four-year program by one OPD staff member applying part-time effort to desk audits netted $173,650 in overpayments is an indicator that the investment in full-time auditing would net substantial benefit. It is the Public Defender’s intention to request funding in the fiscal year 2005 Planning and Budget cycle for this effort.

With respect to the second recommendation that “the OPD should consider monitoring pool attorney’s billings on an ongoing basis” suggests the creation of an automated timekeeping system that would demand pool attorneys to provide the OPD with daily data entry for each of the annual 14,000 plus pool cases they handle. The pool attorney would argue that the hourly rate of compensation of $25 for out-of-court work would not provide sufficient remuneration for this work. In either case, a daily effort by the pool attorney, and/or the OPD clerical staff would be required. It is our contention that the present clerical staffing level in each OPD office could not carry out this function in terms of both volume of data entries required and the logistics of daily case file availability. Unless a process can be identified that would simplify the effort i.e., scanning of time sheets, etc., it would not be cost effective to conduct this effort. However, it is the intention of the Public Defender to review how this effort is being conducted in other Public Defender jurisdictions. Concurrently, we will perform a
feasibility review of automation options with the Public Defender Management and the Management Information Unit to investigate a cost effective approach to achieve this end.

**Case Management and Billing System**

The OPD’s case management and billing system includes a component which generates billings to clients for services rendered. In our previous audit, we noted certain conditions which indicated inaccuracies in the billing system. Those conditions still exist and have been restated below.

The regional public defender offices enter client case information and charges incurred into the case management system. At the completion of the case, attorney and investigator hours and any other charges including related professional services are tabulated and billed to the client. Our review of 49 case files disclosed 17 instances where the attorneys’ hours and four instances where the investigators’ hours were not properly entered into the system resulting in both over and under billings. In 22 instances, case files did not contain attorney’s and/or investigator’s time records to support the hours billed. In six instances there was evidence of time worked by an attorney which was not recorded in the system. In addition, twenty seven files did not include a signed client reimbursement agreement and 21 files lacked the required completed disposition sheet, which summarizes the case activity.

We also reviewed 40 selected payments totaling $19,881 to pool attorneys, experts and court transcribers and found that 11 totaling $1471 were not entered into the case management system.

**Recommendation**

We repeat our recommendation that the OPD institute procedures to ensure that case files are

*Controls over the recording and accumulation of client charges need to be improved.*
properly closed out and that all costs associated with the case are accurately entered into the case management and billing system. We also recommend that management periodically review case files to verify regional offices are complying with established policies and procedures.

Auditee’s Response

The Public Defender agrees with this finding and recommendation and will once again establish the priority of accurate case closing information to all Public Defender Offices. We will reissue a memo dated July 19, 2001 to all Public Defender Deputies and Head Secretaries reinforcing these directives. Further, the Public Defender will institute a program of random file review by each Assistant Public Defender for their respective jurisdiction.