New Jersey State Legislature
Office of Legislative Services
Office of the State Auditor

Office of the Public Defender

July 1, 2006 to August 31, 2008
The Honorable Jon S. Corzine  
Governor of New Jersey

The Honorable Richard J. Codey  
President of the Senate

The Honorable Joseph J. Roberts, Jr.  
Speaker of the General Assembly

Mr. Albert Porroni  
Executive Director  
Office of Legislative Services

Enclosed is our report on the audit of the Office of the Public Defender for the period of July 1, 2006 to August 31, 2008. If you would like a personal briefing, please call me at (609) 292-3700.

Stephen M. Eells  
Assistant State Auditor  
December 4, 2008
# 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>Human Resources/Payroll</td>
<td>4</td>
</tr>
<tr>
<td>Auditee Response</td>
<td>5</td>
</tr>
</tbody>
</table>
Office of the Public Defender

Scope

We have completed an audit of the Office of the Public Defender for the period July 1, 2006 to August 31, 2008. Our audit included financial activities accounted for in the state’s General Fund.

The prime responsibility of the Office of the Public Defender is to provide the constitutional guarantee of counsel in criminal cases for indigent defendants. Total expenditures of the agency during the 26 month audit period were $207.4 million comprised primarily of payrolls totaling $156 million and professional services expenditures (pool attorneys, expert witnesses, etc.) totaling $40.7 million. Revenues totaled $10.4 million, with the major component 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 dated August 8, 2003.

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 Department of the Treasury, and policies of the Office of the Public Defender.
Provisions that we considered significant were documented and compliance with those requirements was verified by interview, 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 controls.

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

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

Conclusions

We found that the financial transactions included in our testing were related to the Office of the Public Defender's programs, were reasonable, and were properly recorded in the accounting systems. In making these determinations, we noted internal control weaknesses relating to payroll and a significant issue noted in our prior report that has not been adequately resolved. This issue has been updated and restated in our current report.
Pool Attorneys

Pool attorneys are primarily utilized when more than one defendant is charged with a crime and more than one defendant is assigned to the Office of the Public Defender (OPD). The OPD staff attorney would defend one person and the remaining defendants would be assigned to pool attorneys. The office used approximately 950 pool attorneys during our 26 month audit period. Annual costs for pool attorneys were $12.9 million. Pool attorneys are reimbursed at a rate of $50 per hour for out-of-court time and $60 per hour for in-court time plus reasonable expenses. At the completion of a case, pool attorneys are required to submit invoices and time sheets indicating hours worked and a description of work performed. The invoices and time sheets are reviewed and approved by a regional public defender; however, there is no routine review to determine the number of hours charged per day by an individual attorney who may work on several cases in a day and may also be working in different OPD districts on the same day.

The OPD considers any day for which a pool attorney billed 12 or more hours to be potentially excessive. 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 pool attorney is contacted and is required to justify any excessive hours billed or reimburse the OPD for any amount overbilled. During our audit period, the OPD performed desk audits on six pool attorneys. Two pool attorneys were required to either reimburse OPD or perform “pro-bono” work totaling $12,822.50. Our review of invoices totaling $332,572 and time records submitted by three of the more active pool attorneys during fiscal year 2008 disclosed that 141.1 hours were billed in excess of 12 hours per day resulting in possible overpayments.
In response to our prior audit recommendation, the OPD is developing a pool attorney timekeeping system which would recognize daily charges exceeding 12 hours.

**Recommendation**

We recommend that the OPD continue with its efforts to develop a pool attorney timekeeping system which would hasten the review process and serve as a deterrent to future overbillings.

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**Human Resources/Payroll**

We noted internal control weaknesses in the Human Resources/Payroll functions. Human Resources personnel that process the payroll have the ability to add/remove individuals from the Personnel Management Information System (PMIS). These employees also receive the checks from Centralized Payroll for the paycheck distribution function. Opportunities exist for improprieties to occur that may not be detected in the normal course of business. In addition, there are approximately 80 timekeepers and back-up timekeepers who have the ability to make current pay period adjustments to their own time through the Time and Leave Reporting System (TALRS). Additional procedures were performed to address the risks and no discrepancies were noted.

**Recommendation**

We recommend that personnel with the ability to add/remove individuals in PMIS not be involved in the payroll processing function. We also recommend the receipt and distribution of paychecks be assigned to someone independent of the payroll processing function. Furthermore, timekeeper access to their own record on the TALRS system should be eliminated.

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December 3, 2008

Stephen Eells
Assistant State Auditor
Office of Legislative Services
P.O. Box 067
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Re: Audit Report for the Period of July 1, 2006 to August 31,
2008 Confidential Draft of Wednesday, November 19, 2008

Dear Mr. Eells:

The Public Defender appreciated the opportunity to have the legislative auditors certify the propriety of financial transactions related to programs within the Office of the Public Defender (OPD). It is our understanding that the review concluded that financial transactions related to the OPD’s programs, when tested by Generally Accepted Government Audit Standards, were found to be properly recorded and reasonable. The below commentary establishes the position of the Public Defender on the two recommendations listed below.

Subject: Pool Attorneys

Auditor’s Conclusion: We recommend that the OPD continue with its efforts to develop a pool attorney timekeeping system which would hasten the review process and serve as a deterrent to future over billings.
The Public Defender agrees that since pool attorneys submit separate invoices and documentation (time sheets) for each individual client's case they represent, the opportunity to exceed the benchmark number of 12 hours on any given work day may not be readily apparent to those Public Defender managers reviewing work conducted and bills presented for that work. This situation is exacerbated by the fact that pool attorneys represent clients in more than one county, and therefore, those invoices will be reviewed by different Public Defender managers not cognizant of hours noted for a different Public Defender client represented and billed in another county.

The Public Defender has developed an automated process by which pool attorneys must submit their time sheets over the network. We believe that this process will not only streamline (make easy) the documentation for pool attorneys, but guarantee oversight for management by an automated process that instantaneously rejects hours submitted by any pool attorney in excess of the 12 hour per day benchmark for any day worked. The automated system will accumulate hours submitted by pool attorneys on a daily basis, and therefore, eliminate the need for a post audit function in favor of a pre audit process.

The Public Defender is presently engaged in evaluating and fine tuning the software for this process. When satisfied, the Public Defender will pilot the program for a defined period before a statewide rollout. The Public Defender is confident that an automated review process will not only immediately identify over billings, but also serve as a deterrent.

Subject: Human Resources/Payroll

Auditor's Conclusion: We recommend that personnel with the ability to add/remove individuals in PMIS not be involved in the payroll processing function. We also recommend the receipt and distribution of paychecks be assigned to someone independent of the payroll processing function. Furthermore, timekeeper access to their own record on the TALARS system should be eliminated.
The Public Defender is pleased that the Audit has found no improprieties concerning the Human Resources/Payroll functions. We are in agreement that the issues raised in the audit should be addressed.

Due to the limited resources of the OPD, removing the ability to process PMIS transactions from any of the only 6 HR employees involved in this activity (including those responsible for payroll processing) would have a negative impact on the overall operation of the unit. However, we are confident that the following protocols will provide adequate safeguards to address the concerns raised in the state audit.

Pursuant to the recommendations of the state auditors the following protocols will be implemented and will take effect immediately. Specifically, employees who are responsible for the processing of the payroll will no longer receive, handle or distribute the pay checks. Also, the completed key documents necessary to add/remove individuals to/from the payroll (Forms CP-1030 and the OMB Terminations Report) will be initialed by the Personnel Officer or official designee in order to reasonably assure that there are no unauthorized additions/separations to the payroll. Upon final certification of the regular payroll by the personnel officer, all payroll documents will be sent directly to the OPD Fiscal Office for review, certification and hand delivered to Centralized Payroll, thereby effectively eliminating the possibility of unauthorized additions/separations by any individual in the Human Resources/Payroll office.

In addition, time keepers will not be permitted to enter and/or change their own time. To enhance internal controls, the Public Defender will mandate each Manager and Deputy Public Defender certify that all hours recorded on time sheets for employees are in fact consistent with the corresponding closed out TLRS reports.

It is worth noting that within the next calendar year, the OPD is mandated to migrate from TLRS (time and leave recording system) to ECATS (Electronic Cost Accounting and Time
OPD Response

Continued: sheet System). ECATS, an advanced time keeping system will further enhance OPD internal controls.

As usual, the OLS auditors assigned to the Public Defender office conducted themselves in a courteous and professional manner. Interaction with staff is always pleasant and never demanding. Their discussions on process and suggestions for improvement operations are always helpful and insightful. We sincerely appreciate their comments.

Please feel free to present any comments and/or questions on any audit topic to either myself or to our Deputy Director of Administration, Gerald M. Henry.

Sincerely,

Anthony J. Anastasio
Director of Administration

AJA/wg
Yvonne Smith Segars, Public Defender
Joan Richardson, First Assistant Public Defender
Gerald Henry, Deputy Director
Gregory Pica, Assistant State Auditor
Robert Gatti, Principal Auditor