Judiciary
Administrative Office of the Courts
Judiciary Bail Fund

July 1, 2002 to December 31, 2003
The Honorable James E. McGreevey  
Governor of New Jersey

The Honorable Richard J. Codey  
President of the Senate

The Honorable Albie Sires  
Speaker of the General Assembly

Mr. Albert Porroni  
Executive Director  
Office of Legislative Services

Enclosed is our report on the audit of the Judiciary, Administrative Office of the Courts, Judiciary Bail Fund for the period July 1, 2002 to December 31, 2003. If you would like a personal briefing, please call me at (609) 292-3700.

April 5, 2004
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Judiciary
Administrative Office of the Courts
Judiciary Bail Fund

Scope

We have completed an audit of the Judiciary, Administrative Office of the Courts (AOC), Judiciary Bail Fund for the period July 1, 2002 through December 31, 2003. Our audit included financial activities related to forfeited bail accounted for in the Judiciary Bail Fund and processed through the Central Automated Bail System (CABS) which records the collection, disbursement, and reporting of bail statewide.

Outstanding default judgments against surety companies and individuals reported on CABS through September 3, 2003 were $71.5 million and $98.2 million, respectively. The prime responsibility of the Judiciary Bail Fund is to serve as a repository for the collection of bail, to ensure the return of bail to the surety and individuals, and to remit forfeited bails and bail filing fees to the proper governmental agency.

Objectives

The objective of our audit was to determine whether procedures for the collection of forfeited bail from sureties and individuals are adequate.

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, Rules Governing the Courts of the State of New Jersey, circular letters promulgated by the State Comptroller, and policies of the Judiciary. 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 reviewed financial trends, and interviewed agency personnel to obtain an understanding of the program and the internal controls.

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 judgmentally selected for testing.

**Conclusions**

We found that procedures for the collection of forfeited bail from sureties and individuals are not adequate.

**Auditee Response**

The audit report identifies as inadequate three areas associated with existing procedures for the collection of forfeited bail from sureties and individuals. Since the time that the audit was conducted, the Attorney General has made significant progress toward correcting the identified inadequacies in each of those areas, which are addressed following in turn.
Negotiated Bail Forfeitures

A bail bond is a written document provided by an insurance company (surety) that guarantees a defendant’s appearance in court and holds the surety liable for the amount of the bond if the defendant fails to appear. Failure to appear in court results in a forfeiture of the bail and a bench warrant being issued for the defendant’s arrest. The County Counsel is responsible for the collection of forfeited bail.

Typically, most sureties file a motion to vacate a forfeiture when a defendant has been apprehended. After the motion is filed, the court schedules a hearing in which the judge determines a settlement amount. Prior to the hearing, however, County Counsel can choose to resolve the matter by negotiating a settlement with the surety and having the results agreed upon by the judge. Effective November 26, 2003, the Office of the Attorney General must approve all settlements. Negotiated settlements are typically much less than the original bond amount.

An ad hoc committee of presiding judges in 1997 advised that seven criteria should be considered in negotiating bail. The criteria include the costs incurred by the state and county, the bondsman’s efforts to return the fugitive, and the length of time the defendant was a fugitive and the resulting harm to the public.

Currently there are no approved procedures to ensure the above criteria are considered when determining a settlement. At an absolute minimum, negotiated settlements should recoup county and state costs. Our review of 8632 negotiated settlements for ten sample counties reported on CABS disclosed the average negotiated settlement was approximately ten percent of the bond amount. Average settlements by county ranged from 1.83 percent to 20.36 percent of
In addition, 275 of 4,156 cases involving bonds with a face value of at least $10,000 were settled for $300 or less.

There have been recent court decisions involving the remission of forfeited bail to surety companies that address the percentage of the bail amount to be returned and the factors including the level of supervision over a defendant. Standard procedures incorporating the results of the court decisions could be developed and distributed to County Counsel to ensure a consistent and fair negotiation process statewide.

**Recommendation**

We recommend that standard procedures for the negotiation of bail forfeitures be established by the Office of the Attorney General and distributed to County Counsels. The procedures should incorporate the criteria established in the ad hoc report and court decisions.

**Auditee Response**

The audit report recommends that the Attorney General formulate standard procedures for the negotiation of bail forfeitures for distribution to County Counsel. In light of the accumulation of unpaid bail forfeiture judgments, uneven settlement practices relating to bail forfeiture judgments, and an increase in appellate challenges to bail forfeiture judgments, on November 26, 2003, the Attorney General withdrew settlement authority from County Counsel with respect to all bail forfeiture matters. The Attorney General had previously communicated settlement authority to the County Counsel in these cases in a May 17, 1995 letter. On December 11, 2003, the Attorney General distributed to County Counsel draft guidelines for the settlement of bail forfeitures. The draft settlement guidelines mirror the guidelines distributed by the Administrative Office of the Courts to Superior Court Judges hearing bail forfeiture matters and reflect the recent Appellate Division decisions in this area. The draft settlement guidelines prohibit the settlement of any bail forfeiture judgment in which the defendant
remains a fugitive, place strict time limits on the payment of negotiated settlements, and ensure the recovery of the costs incurred as a result of bail forfeitures. Since December 11, 2003, County Counsel, with the consent of the Attorney General, have operated within the confines of the draft settlement guidelines while final guidelines are completed. Final settlement guidelines are expected to be distributed to County Counsel in the near future.

In addition to bringing a measure of uniformity to the recovery of funds arising from bail forfeitures, distribution of the draft settlement guidelines resulted in a significant legal victory for the state. Because the Attorney General refused to consent to the settlement of any bail forfeitures matter on appeal, a legal challenge to the state’s bail forfeiture procedures was brought before the Appellate Division for decision. Previously, certain bail bond enterprises created a significant delay in the collection of bail forfeiture judgments by filing numerous appeals raising the same frivolous challenge to the state’s bail bond forfeiture procedures, and settling or withdrawing each of those appeals on the eve of their submission to the court for a substantive decision. By doing so, payment of the underlying bail forfeiture judgments was delayed for months at a time. Refusal to settle those appeals or permit their withdrawal forced the legal argument to be presented for decision to the court, which upheld the state’s bail forfeiture procedures in their entirety. In addition, the court found that the appellate practices of certain bail bond enterprises described above constituted an abuse of the appellate process, and, as a result, the court sua sponte dismissed hundreds of pending appeals challenging bail forfeiture judgments.
Procedures for the collection of default judgments from surety companies need to be established.

Collection of Forfeited Bail From Surety Companies

As of September 3, 2003, CABS reported 28 surety companies with a total of 2,845 default judgment cases amounting to $71.5 million in uncollected corporate surety bonds. Of this amount, $23.9 million is due from companies that are now insolvent. Collection procedures that include a course of action for the refusal of payment by a surety company have not been established to ensure County Counsels initiate a thorough and timely collection effort.

Recommendation

We recommend that standard procedures for the collection of forfeited bail from surety companies be established by the Office of the Attorney General and provided to County Counsels.

Auditee Response

The audit report recommends that the Attorney General establish standard procedures for the collection of forfeited bail from surety companies. Recognizing the accumulation of uncollected bail bond forfeiture judgments, in November 2003, the Attorney General began an aggressive campaign to collect outstanding bail forfeiture judgments from the responsible sureties. Working in coordination with the Clerk of the Superior Court and the Department of Banking and Insurance, the Attorney General has contacted sureties in writing and in person to demand payment of outstanding bail forfeiture judgments. Although collection from the sureties was delayed by the initiation of global settlement negotiations, those negotiations have not been successful and collection efforts have, as a result, been redoubled. The Attorney General is exploring the process of filing claims in the liquidation proceeding of insolvent sureties responsible for outstanding bail forfeiture judgments.

While we believe that collection efforts by the Attorney General will make significant inroads toward eliminating the backlog of outstanding bail forfeiture judgments, our office recognizes the need
to facilitate collection activity by County Counsel at the time that bail forfeiture judgments are entered and we are formulating statewide procedures in this regard. Included in this effort is the anticipated distribution to County Counsel of model motion papers to revive bail forfeiture judgments prior to their expiration.

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**Collection of Forfeited Bail From Individuals**

The County Counsel is responsible for the collection of forfeited bail with oversight by the Office of the Attorney General. As of September 3, 2003, forfeited bail judgments against individuals totaled $98.2 million. County Counsels are not proactive in their approach to collecting forfeited bail from individuals because standard procedures providing guidance have not been established. One source not used is the state’s Set-off of Individual Liabilities (SOIL) program which withholds tax refunds as payment against outstanding debts. Other state resources that could also be used to locate and initiate collection proceedings are the Department of Labor (DOL) wage reporting and unemployment systems. We compared 129 individuals in default from CABS to the above DOL systems. We identified 40 individuals who collected unemployment, earned wages or both after forfeiting their bail. In addition, four of these 40 individuals are still fugitives. After identification, collections could be processed through garnishment or through the Comprehensive Automated Probation System (CAPS). CAPS is the primary system used by the Judiciary to account for the collection and disbursement of court ordered fines, penalties and restitutions.

**Recommendation**

We recommend that the Office of the Attorney General establish procedures for the collection of forfeited bail from individuals. The procedures
should include collection efforts through SOIL, DOL and/or CAPS.

**Auditee Response**

The Attorney General acknowledges the need to increase collection of forfeited bail from individuals who are responsible for outstanding bail forfeiture judgments and has undertaken an analysis of whether the SOIL, DOL and/or CAPS systems mentioned in the audit report are available for such collection efforts. We note that on February 13, 2004, the Attorney General secured a significant legal victory when the Appellate Division issued an opinion upholding the preclusion of an individual bail bond agent from the bail bond registry based on his personal liability for outstanding bail forfeiture judgments. This decision is expected to increase collection activity from individual bail bond agents and/or the capture of fugitives.