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

Judiciary
Administrative Office of the Courts
Judiciary Bail Fund

July 1, 2005 to September 30, 2007

Richard L. Fair
State Auditor
The Honorable Jon S. Corzine  
Governor of New Jersey

The Honorable Stuart Rabner  
Chief Justice of the Supreme Court

The Honorable Richard J. Codey  
President of the Senate

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

Mr. Albert Porrone  
Executive Director  
Office of Legislative Services

Enclosed is our report on the audit of the Judiciary, Administrative Office of the Courts for the period of July 1, 2005 to September 30, 2007. If you would like a personal briefing, please call me at (609) 292-3700.

Richard L. Fair  
State Auditor  
December 27, 2007
# 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>Access to CABS System</td>
<td>3</td>
</tr>
<tr>
<td>Negotiated Bail Forfeitures</td>
<td>4</td>
</tr>
<tr>
<td>Civil Lien for Forfeited Cash Bail</td>
<td>7</td>
</tr>
<tr>
<td>Auditees Response</td>
<td>10</td>
</tr>
</tbody>
</table>
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, 2005 through September 30, 2007. Our audit included financial activities accounted for in the Judiciary Bail Fund and processed through the Central Automated Bail System (CABS).

The prime responsibility of the Judiciary Bail Fund is to serve as a repository for the collection of bail, the return of bail to the surety, and remittance of forfeited bail and bail filing fees to the proper governmental agency. The objectives of CABS were to automate the recording of the collection, disbursement, and reporting of bail, provide the ability to track modifications to the bail, support central disbursement of all bail funds and allow local and statewide bail inquiry. According to CABS, there are 40,000 open bail cases representing approximately $700 million as of September 30, 2007.

Objectives

The objectives of our audit were to determine whether procedures for the collection of forfeited bail from sureties and individuals are adequate and to determine the adequacy of security controls over the access of CABS data. We also tested for resolution of the significant conditions noted in our prior report dated April 5, 2004.

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, *Rules Governing the Courts of the State of New Jersey*, and policies of the Judiciary. Additional guidance for the conduct of the audit was provided by standards set forth in *Control Objectives for Information and Related Technology* (CobiT) by the Information Systems Audit and Control Association (ISACA). Provisions that we considered significant were documented and compliance with those requirements was verified by interview, observation, and through our samples of bail transactions. We also read the budget message, reviewed financial trends, and interviewed Judiciary personnel to obtain an understanding of the program and the internal controls.

A nonstatistical sampling approach was used. Our samples of bail transactions were designed to provide conclusions about the validity of transactions as well as internal control and compliance attributes. Sample populations 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 agency and walked through the system to determine if the corrective action was effective.

**Conclusions**

We found that procedures for the collection of forfeited bail from sureties and individuals are adequate and security controls over the access of CABS data are adequate. In making this determination, we noted certain internal control weaknesses meriting management’s attention.

We also found that the Judiciary has resolved the significant issues noted in our prior report dated April 5, 2004, except for matters related to negotiated bail forfeitures. This issue involves the Office of the Attorney General and has been updated and restated in our current report.
Access to CABS System

The Central Automated Bail System (CABS) was developed as the result of the court unification that took place in 1995 in order to maintain statewide bail postings. For employees to obtain transaction access in CABS, a security request form is completed which requires signatures of the Vicinage Finance Manager and the Administrative Office of the Courts (AOC) management. However, the access profiles requested are not being monitored or reviewed. Therefore, individuals are granted access privileges without regard to their job responsibilities and proper segregation of duties. In accordance with the Control Objective for Information and Related Technology framework, user access should be designed with consideration to segregation of duties and no one individual having control to all aspects of a transaction or event.

We reviewed the 223 employees with CABS transaction access and found that 121 employees (54 percent) do not have job duties and responsibilities that warrant this access. Included were Information Technology employees at the AOC who have the ability to create and alter data. When these exceptions were brought to AOC management’s attention, they responded immediately and took corrective action.

We also found that of the 205 employees who have the ability to modify a surety address, 123 (60 percent) can also process a payment. Additionally, we found that of the 176 employees who can modify the municipal address information, 80 (45 percent) can also process transfers and forfeitures. As a result, these individuals have the ability to execute a payment to themselves. It should be noted that nothing came to our attention indicating such a payment occurred.
The Promis/Gavel system is an automated criminal tracking system that captures information concerning defendants charged with indictable offenses throughout the life cycle of the case. Linking CABS and Promis/Gavel by case is performed by Judiciary employees in order to increase coordination between the finance and criminal divisions resulting in more accurate accounting of judgments and more timely collections. When cases are transferred to another court, unlinking of the two systems is required. That unlinking privilege within CABS should be limited to one or two individuals per county, based upon AOC’s instructions supporting the security request form. Our review of the 21 counties found that 11 have more than two individuals per county with this capability.

**Recommendation**

We recommend that AOC implement procedures to review and approve an individual’s security profile for access to CABS assuring that it aligns with the employee’s responsibilities.

---

**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, with the consent of the Office of the Attorney General, 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 rules on 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. Negotiated settlements are typically much less than the original bond amount.

In December 2003, the Attorney General distributed to County Counsel guidelines for the settlement of bail forfeitures. These guidelines were written to bring consistency in settlement practices and a measure of uniformity to the recovery of funds arising from bail forfeitures. Criteria to be considered in the determination of the percentage amount of the bail to be returned include the amount of the posted bail, costs incurred by the state and county, the bondsman's level of supervision over the defendant and efforts to return the fugitive, the length of time the defendant was a fugitive, and the commission of another crime while a fugitive. In addition, the 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.

During the period of July 1, 2006 through May 1, 2007 there were 1,900 bail forfeiture cases resolved through negotiated settlements. The original bail amount for these cases totaled $47 million. Our analysis found that the average negotiated settlement was approximately 18 percent of the original bond amount. Our review found there is no oversight of County Counsel performed by the Attorney General to ensure compliance with the established guidelines. In fact, the guidelines were not consistently followed resulting in lost revenue to the state. Specifically, we found:

- The recovery of state and county costs were not disclosed nor taken for any of these cases based on the CABS system. It should be noted that one vicinage charged an
administrative fee. Administrative fees are not included in the guidelines.

- Over 500 cases where the percentage of bail returned to the surety exceeded the maximum allowed (95 percent).

- Two instances where the commission of another crime while a fugitive was not a factor considering the percentage amount negotiated to the surety’s benefit. According to the guidelines, the amount to be returned ranges from 0 to 60 percent depending on the length of time the defendant was a fugitive and the level of supervision and efforts to recapture were performed by the surety. The amount returned in these two instances exceeded 95 percent.

- Twenty instances where settlements occurred while the defendant remained a fugitive. Eight of those cases involved negotiations where over 95 percent of the original bail amount was returned to the surety. When the defendant remains a fugitive, no negotiated settlement should have occurred, according to the guidelines.

A remittitur case takes place when the surety had previously resolved the case and paid the forfeited bail because the defendant was a fugitive and is requesting reconsideration because he/she was subsequently captured and returned. The request by the surety for reconsideration could occur up to four years after the initial forfeiture was declared, according to N.J.S.A. 2A:162-8. Additional testing was performed for
244 remittitur cases that occurred during July 1, 2006 through May 1, 2007 to ascertain whether state and county costs were considered and disclosed in the court orders. We found only 23 cases where the recovery of costs incurred were disclosed and taken.

**Recommendation**

We recommend the Attorney General implement procedures to effectively monitor the negotiated settlements of bail forfeitures to ensure that the established guidelines are followed.

---

**Civil Lien for Forfeited Cash Bail**

Bail is set in accordance with court rules which may allow it to be satisfied by the deposit of cash in the amount of ten percent of the amount by a non-corporate surety which is typically an individual. A Bail Recognizance document is completed which contractually obligates the defendant for the remaining ninety percent if he/she fails to appear for all court proceedings, thereby forfeiting the bail.

When bail is forfeited, the ten percent cash bail previously deposited is relinquished and a Default Judgment Order is prepared for the remaining ninety percent. After approval by the vicinage judge, the order is filed with the Clerk of Superior Court, placing a civil lien on the defendant. Directive #9-79 entitled, “Bail – Forfeiture”, issued in 1980 addresses judgment filings for bail forfeitures.

During the period of January 1, 2005 through March 31, 2007 there were 2,200 forfeited cash bail cases that required a civil lien to be filed against the defendant, totaling $15,621,000. Our review found the following weaknesses.

- Three vicinages did not generate Default Judgment Orders for any
of their forfeited cash bail cases. As a result, no civil lien was placed on the defendant. This involved 200 cases, totaling $1,697,000. Two of the three vicinages agreed to follow the required process on future cash bail forfeiture cases when we brought this matter to management’s attention.

- Eleven out of 16 cases tested at one other vicinage were not recorded properly in the civil lien system. In seven cases the Default Judgment Order had the incorrect amount and in four cases there was no record of the Default Judgment Order on the civil lien system. It was revealed that these cases were part of an overall project to correct 400 previously filed Default Judgment Orders that incorrectly ordered a lien against the defendant on ten percent instead of ninety percent of the bail amount. That project began in June 2006 and was never completed. Corrective action was taken by the vicinage in August 2007, once we brought this to management’s attention. The total amount involved was $2.3 million.

- At the remaining vicinages, we found 14 of 84 cases (17 percent) sampled that were not recorded properly in the civil lien system. In five cases the Default Judgment Order had the incorrect amount, in five cases there was no record of the lien in the system, in three cases the amount was incorrectly entered into the system, and in one
case the lien was placed on the surety not the defendant. When brought to the attention of management, initial steps were taken to correct the errors found.

The Administrative Office of the Courts does not have a process in place to ensure that all Default Judgment Orders have been filed and recorded properly on the civil lien system. We found that clerical errors occurred because vicinages manually prepared the Default Judgment Orders even though the Central Automated Bail System (CABS) system has the ability to automatically generate them. Also, data entry errors into the civil lien system occurred because incorrect information is captured from the document.

**Recommendation**

We recommend that the AOC implement procedures including a process of reconciling CABS to the civil lien system to ensure that all Default Judgment Orders have been recorded properly. In addition, we recommend all vicinages use the CABS system generated Default Judgment Order. Management should also consider revising the Default Judgment Order to clearly identify the key information required to place the lien and in the future a revision to the CABS system which would allow for an immediate electronic submission to the civil lien system for proper recording.
December 11, 2007

Mr. Richard L. Fair
State Auditor
Office of the State Auditor
P.O. Box 067
Trenton, NJ 08625-0067

Dear Mr. Fair:

This letter is in response to the audit report prepared by the Office of Legislative Services, Office of the State Auditor for the period of July 1, 2005 to September 30, 2007 as it relates to the Judiciary, Administrative Office of the Courts (AOC), Judiciary Bail Fund. We have reviewed the Judiciary Bail Fund audit report and welcome this opportunity to comment.

Access to CABS System

**Recommendation**

*We recommend that AOC implement procedures to review and approve an individual’s security profile for access to CABS assuring that it aligns with the employee’s responsibilities.*

Judiciary Response

Access to CABS has been reviewed and modified based on the OLS recommendations. To ensure that user’s security profile for access to CABS aligns with bail duties, Banking and Cash Management will modify the CABS Security Request Form to require the Vicinage Finance Managers to recommend approval based on specific job duties. Banking and Cash Management will review and approve based on access needs and financial controls. Banking and Cash Management will review, on a six month basis, the status of user profiles versus current job duties and recommend modifications or deletions if needed.

Civil Lien for Forfeited Cash Bail

**Recommendation**

*We recommend that the AOC implement procedures including a process of reconciling CABS to the civil lien system to ensure that all Default Judgment Orders have been recorded properly. In addition, we recommend all vicinages use the CABS system generated Default Judgment Order. Management should also consider revising the Default Judgment Order to clearly identify the key*
information required to place the lien and in the future a revision to the CABS system which would allow for an immediate electronic submission to the civil lien system for proper recording.

Judiciary Response

We agree with the audit findings and recommendations outlined in the report. The Judiciary has already taken corrective actions to eliminate the clerical and procedural weaknesses. The Default Judgment Order has been revised to clearly indicate the defendant name and dollar amount of the outstanding lien. This will eliminate the civil lien data entry errors. The Vicinage Finance Managers have been instructed to only use the CABS generated order and Criminal Division judges have been instructed to follow Directive #9-79. To eliminate the possibility of Default Judgment Orders not being entered into the civil lien system, a system modification request has been submitted to ITO to electronically transfer the judgment data from CABS into the civil lien system after the Judgment has been signed by a judge. This modification is currently scheduled for mid-year 2008.

Thank you and your staff for a comprehensive audit and the opportunity to respond to the findings. Our staff appreciated the recommendations for better internal controls and have implemented or shortly will have these recommendations implemented. We especially appreciate the professionalism of your staff during this audit.

Sincerely,

Christina P. Higgins
Director

C: Philip S. Carchman, P.J.A.D.
Richard L. Fair  
State Auditor  
New Jersey State Legislature  
Office of Legislative Services  
State House  
Trenton, New Jersey 08625

Re: Judiciary Bail Fund

Dear Mr. Fair:

While acknowledging that “the focus of the bail forfeiture procedure is the vindication of the public interest and not primarily revenue raising,” State v. Clayton, 361 N.J. Super. 388, 393 (App. Div. 2003), the Department of Law and Public Safety recognizes that uniform settlement practices among county counsel will ensure that the State and counties recover appropriate amounts of forfeited bail. To effectuate that objective, in December 2003, the Department circulated settlement guidelines to the various county counsel with respect to the settlement of bail forfeiture and remittitur matters. The guidelines articulate the factors relevant to formulating a settlement position in these matters, and set parameters on recovery amounts. The Division of Law will continue to work with county counsel to ensure that the
Department’s guidelines are consistently applied throughout the State.

Sincerely yours,

ANNE MILGRAM
ATTORNEY GENERAL OF NEW JERSEY

By:  
Patrick DeAlmeida
Assistant Attorney General