Enclosed is our report on the audit of the Judiciary, Administrative Office of the Courts, Judiciary Bail Fund for the period July 1, 1997 through March 1, 1999.

If you would like a personal briefing, please call me at (609) 292-3700.

Richard L. Fair
State Auditor
April 15, 1999
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The Judiciary
Administrative Office of the Courts
Judiciary Bail Fund

Scope

We have completed an audit of the Judiciary, Administrative Office of the Courts, Judiciary Bail Fund for the period July 1, 1997 through March 1, 1999. Our audit included financial activities accounted for in the Judiciary Bail Fund.

Total additions and deductions to the fund were approximately $390 million during the audit period. 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 bails and bail filing fees to the proper governmental agency.

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 significant issues noted in our prior reports dated December 1, 1994 and April 18, 1997 and an Administrative Office of the Courts (AOC) internal report on bail forfeitures dated May 14, 1997.

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, circular letters promulgated by the State Comptroller, and policies of the agency. 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 reviewed financial trends and interviewed agency personnel to obtain an understanding of the program and the internal controls. As part of the audit, we visited the Judiciary Cash Control Unit and Atlantic, Bergen, Burlington, Mercer and Monmouth vicinages and performed tests of internal controls, reconciliations, and the validity of recorded data.

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.

**Conclusions**

We found that the financial transactions included in our testing were related to the agency's programs, were reasonable and were recorded properly in the accounting systems. In making this determination, we noted significant control weaknesses and other matters warranting management’s attention.

We found that issues raised in our previous reports dated December 1, 1994 and April 18, 1997 and an Administrative Office of the Courts (AOC) internal report on bail forfeitures dated May 14, 1997 have not yet been resolved. These issues have been updated and restated in our current report.

**Auditee’s Response**

We have reviewed the Judiciary Bail Fund report and welcome this opportunity to comment on the report.

Overall we find the recommendations to be of great value to the Judiciary as we go about the process of establishing uniform practices throughout all fifteen vicinages. I would like to point out that during the course of the audit, the Judiciary began the task of creating a finance division in each vicinage. Each division is now headed by a finance manager who is responsible and accountable for all financial activities within the vicinage in conjunction with the AOC. As financial staff have begun to assume financial responsibilities for Bail and collaborate with
Criminal Division case processing staff, we have been able to address the control weaknesses reported.

During the last several months the Judiciary has been actively implementing bail forfeiture practices as recommended in the Report to the Conference of Criminal Presiding Judges from the Ad Hoc Committee on Bail Forfeiture which was approved by the Judicial Council. Most of that report’s ten recommendations have been implemented statewide. We continue to work with county counsel and to monitor performance of bond surties in order to enable timely collection of forfeitures.

Thank you and your staff for a comprehensive audit and the opportunity to respond to the findings.
Internal Controls

An adequate system of internal control is necessary for any process which involves the collection and disbursement of cash in order to safeguard these items from loss or misappropriation. Management has failed to correct weaknesses in the system as disclosed in our previous audit reports dated December 1, 1994 and April 14, 1997.

Control weaknesses in bail processing procedures, including inadequate segregation of duties and lack of supervisory review, compounded by system weaknesses in the Central Automated Bail System (CABS) allow for the possible diversion of bail assets to unauthorized persons. Bail cash collections statewide exceeded $30 million in fiscal year 1998. Collections are eventually refunded to the surety, forfeited or escheated.

CABS allowed the bail clerks to change surety names, addresses and amounts. System edit reports were not generated to alert an independent reviewer of changes made. The clerks also had the ability to manipulate existing bond or property bails, create fictitious bond or property bails, change the bonds to cash bails and initiate a refund to a fictitious surety, or inappropriately reinstate and subsequently refund forfeited bails. Although changing bails from property or bond to cash was part of the daily activity reports, these reports were not independently reviewed at two of the five vicinages visited. The bail clerks in four vicinages were able to process bail refunds with no independent comparison of the CABS check register to the source documents validating the refund, surety, surety address and amount. In the remaining vicinage visited, there was an independent review, although that person also had the capability to make changes.

Sureties who failed to respond to address verifications or claim their bail remained on a refund pending list indefinitely. Bail refunds unclaimed for more than ten years are presumed abandoned per N.J.S.A. 46:30B-

Internal controls over the bail process should be improved to minimize the risk of misappropriation.
41 and subject to escheat; while funds outside the Superior Court unclaimed for more than one year are presumed abandoned per N.J.S.A. 46:30B-41.2. As of July 28, 1998, $1 million of cash refunds pending prior to 1998 remained on CABS. These refunds are vulnerable to demographic changes by clerks who recognize they may never be claimed. If claimed at a later date, the ability to manipulate the system would allow a refund to be processed to the surety by changing another bail.

Reconciliations were not performed between NJCFS and the CABS open bail balance at three of the five vicinages reviewed. Without timely reconciliations, there was no assurance that cash on hand was adequate to cover liabilities. In addition, the Judiciary Cash Control Unit did not perform a statewide reconciliation. Our reconciliation disclosed a $1.1 million shortfall partly accounted for by fraud already detected prior to our audit.

**Recommendation**

The AOC should issue and enforce directives to enhance the controls including, but not limited to:

- Limiting and strictly monitoring the ability to manipulate CABS information.
- Requiring CABS input to be compared to deposits daily by a person independent of the process.
- Requiring CABS refunds per the check register to be compared to source documents by a person independent of the process and without CABS access.
- Requiring all vicinages to prepare reconciliations between open bail and bank balances monthly. In addition, the Judiciary Cash Control Unit should possess a statewide reconciliation based on the individual vicinage reconciliations and investigate any differences.
Additionally, the AOC should seek legislative action to change the escheat statute for unclaimed bail to presume abandonment after one year as opposed to the current ten years in order to safeguard cash.

**Auditee’s Response**

The Judiciary’s Conference of Vicinage Finance Division Managers has already begun work on developing uniform financial practices in the bail area. Likewise, the Conference of Criminal Division Managers is working on improving bail case processing practices. As a result, each vicinage fiscal bail unit will be supervised by a financial professional with primary responsibility to implement and maintain such internal controls as timely deposits, authorized disbursements, separation of duties, and reconciliations.

The AOC and vicinage financial management are conducting a review of the currently assigned application security codes within CABS, with the objective of realigning security codes among staff, as appropriate. This measure plus direct supervision and report monitoring will be an effective deterrent to fraud.

The AOC will consider pursuing a statutory change that will lower the threshold to escheat unclaimed bail from the current ten year period to a one year period.
Back loading of pre-unification cash bails onto the CABS system should be terminated.

Back loading is the method utilized to input into CABS, cash bails received by the vicinages prior to the unification in January 1995 and pending disposition into CABS without the system including the cash as part of the daily cash activity. This function necessitated a strong control and monitoring system to timely recognize unusual activity since, once bails were back loaded, the CABS system issued refunds on the premise that cash was collected and deposited. Total cash back loaded statewide through July 28, 1998 was approximately $20 million. Each county transferred the cash collected on these cases to the state in a lump sum.

The ability to back load still exists four years after unification, creating risk of misappropriation. Although the AOC Cash Control Unit has been monitoring cash back load activity through CABS reports, back loaded bonds changed to cash bails did not appear on the reports. In one month $415,000 in back loaded cash for one vicinage did not appear on the report used by AOC for monitoring. In addition, because of the nature of back loading, these cash postings would not appear on the daily activity reports which should be used to reconcile cash receipts recorded to the deposits. The AOC discovered alleged fraud in excess of $300,000 perpetrated via the back loading process; however, monitoring remains insufficient.

**Recommendation**

The AOC should restrict the ability to back load cash since unification occurred four years ago and the need for back loading cash is rare.

**Auditee’s Response**

From time to time there is still a need to back load non-cash bail, and in rare instances, cash bail. To accommodate this process within CABS, the unique backlog application security code will be assigned only to a manager outside the bail unit, from either the Criminal or Finance Division. Furthermore, management will review system back load reports routinely.
The bail forfeiture process should be more equitable and timely.

When an individual fails to meet the conditions of bail, a forfeiture order is executed and the forfeited funds are divided between the state and county. An analysis of information abstracted from CABS revealed that $34 million of bail was in forfeiture status at June 30, 1998, $18 million of which had been in forfeiture status prior to January 1, 1998. Uncollected forfeited bail represents lost revenue to the state and county treasuries.

There is no consistency in the bail forfeiture process. The amounts collected on forfeited bonds at the various vicinages ranged from zero to 100 percent over a 3 month period in 1998.

<table>
<thead>
<tr>
<th>COUNTY</th>
<th>TOTAL BOND AMOUNT</th>
<th>PERCENT COLLECTED</th>
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<tbody>
<tr>
<td>ATLANTIC</td>
<td>$819,797.00</td>
<td>38.45%</td>
</tr>
<tr>
<td>BURLINGTON</td>
<td>13,000.00</td>
<td>0.00%</td>
</tr>
<tr>
<td>CAMDEN</td>
<td>35,000.00</td>
<td>57.14%</td>
</tr>
<tr>
<td>CAPE MAY</td>
<td>155,268.00</td>
<td>5.47%</td>
</tr>
<tr>
<td>ESSEX</td>
<td>1,052,500.00</td>
<td>18.34%</td>
</tr>
<tr>
<td>GLOUCESTER</td>
<td>57,500.00</td>
<td>0.00%</td>
</tr>
<tr>
<td>HUDSON</td>
<td>330,000.00</td>
<td>0.00%</td>
</tr>
<tr>
<td>MERCER</td>
<td>271,500.00</td>
<td>5.92%</td>
</tr>
<tr>
<td>MIDDLESEX</td>
<td>642,500.00</td>
<td>100.00%</td>
</tr>
<tr>
<td>MONMOUTH</td>
<td>734,000.00</td>
<td>4.26%</td>
</tr>
<tr>
<td>OCEAN</td>
<td>2,500.00</td>
<td>0.00%</td>
</tr>
<tr>
<td>PASSAIC</td>
<td>127,500.00</td>
<td>3.76%</td>
</tr>
<tr>
<td>SALEM</td>
<td>141,250.00</td>
<td>0.00%</td>
</tr>
<tr>
<td>SOMERSET</td>
<td>20,000.00</td>
<td>85.00%</td>
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<tr>
<td>UNION</td>
<td>2,002,218.34</td>
<td>46.04%</td>
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<tr>
<td>WARREN</td>
<td>98,000.00</td>
<td>83.42%</td>
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<tr>
<td><strong>TOTAL</strong></td>
<td><strong>$6,502,533.34</strong></td>
<td><strong>34.63%</strong></td>
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Large variances between vicinages exist because county counsel, with the judge’s approval, may negotiate a lesser amount as a settlement on a forfeited bond. In addition, forfeiture orders were routinely not entered by the judge in one vicinage, resulting in no forfeiture amounts included in CABS report total.

The Ad Hoc Committee on Bail Forfeiture recognized inconsistencies in the bail forfeiture process and the disparity in settlements between vicinages in an internal report entitled Report to the Conference of Criminal Presiding Judges dated May 14, 1997 and made recommendations to improve and standardize the process. Since our initial review in this area, the AOC has made progress in implementing the recommendations.

Additionally, in one vicinage a bail of $350,000 was on CABS as an open and current item even though the records show that it had been ordered forfeited in March 1994.

**Recommendation**

The AOC should continue to aggressively pursue the implementation of recommendations contained in the Ad Hoc report in order to promote more equitable judgments and timely collections. In addition, the AOC should continue to monitor the process to determine the success of the recommended changes.

**Auditee’s Response**

Much progress has been made throughout the state to uniformly handling bail forfeiture since the adoption of the Criminal Presiding Judge report on bail forfeitures. On September 1, 1998 the Supreme Court revised New Jersey R. 3:26-6. This rule now provides for automatic default judgment in 45 days, thus eliminating the disparity among count counsels moving forfeitures to judgment for collection. In addition, over the last year there has been a concerted effort by the AOC together with vicinage Assignment Judges and Criminal Presiding Judges to establish procedures to preclude a surety from writing bail if default judgments are outstanding. Furthermore, Criminal Presiding Judges recommended that specific
judges be named to handle bail forfeiture matters to promote consistency.

We found the bond forfeiture collections statistics presented in the audit report to be misleading, as they show collections as a percentage of unadjusted bond amount. Since any forfeited bail is subject to negotiation between the Court and the interested parties, it is more meaningful to compare collections to an adjusted bond amount.

All manual checking accounts should be closed.

Manual Checking Accounts

The vicinages maintained manual zero-balance checking accounts to refund pre-unification bails that were to be discharged prior to back loading. A proper control structure would prevent unauthorized or unsupported disbursements to be made from the account. Our tests of this activity in five vicinages found that the Judiciary Cash Control Unit has allowed the accounts in three vicinages to stay open although their intended purpose has been exhausted.

Recommendation

We recommend the Judiciary Cash Control Unit close all manual accounts.

Auditee’s Response

The Judiciary Cash Control Unit (JCCU) will require all vicinages to complete final reconciliations of local bail bank accounts as of April 30, 1999 and submit them to the JCCU, so that the accounts can be closed by the end of May.