

Audit Report

Office of the Public Defender

December 2007



OFFICE OF LEGISLATIVE AUDITS
DEPARTMENT OF LEGISLATIVE SERVICES
MARYLAND GENERAL ASSEMBLY

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Karl S. Aro
Executive Director

DEPARTMENT OF LEGISLATIVE SERVICES
OFFICE OF LEGISLATIVE AUDITS
MARYLAND GENERAL ASSEMBLY

Bruce A. Myers, CPA
Legislative Auditor

December 10, 2007

Delegate Steven J. DeBoy, Sr., Co-Chair, Joint Audit Committee
Senator Nathaniel J. McFadden, Co-Chair, Joint Audit Committee
Members of Joint Audit Committee
Annapolis, Maryland

Ladies and Gentlemen:

We have audited the Office of the Public Defender (OPD) for the period beginning June 10, 2004 and ending April 30, 2007.

Our audit disclosed that OPD had not recorded or pursued for collection administrative fees for cases opened during fiscal years 2006 and 2007, and that a significant backlog of unrecorded billings for cases opened prior to July 2005 also existed. Our audit also disclosed that OPD did not refer two instances of possible criminal or unethical employee conduct to the Office of the Attorney General – Criminal Division and to the Governor’s Chief Legal Counsel as required by a related Executive Order.

Respectfully submitted,

Bruce A. Myers, CPA
Legislative Auditor

Background Information

Agency Responsibilities

The Office of the Public Defender (OPD) is primarily responsible for providing legal services to eligible indigent individuals charged with violating State, county, and/or municipal laws involving possible incarceration. Legal representation is provided in criminal and juvenile proceedings, post-conviction proceedings, probation and parole revocations, involuntary commitments to public or private institutions, and termination of parental rights proceedings. OPD provides these services through a central headquarters and 41 field offices (including 12 district offices). According to the State's records, during fiscal year 2007, OPD operating expenditures totaled approximately \$85.3 million.

Current Status of Findings From Preceding Audit Report

Our audit included a review to determine the current status of the five findings contained in our preceding audit report dated March 15, 2005. We determined that OPD satisfactorily resolved three of these items. The remaining two findings are repeated in this report.

Findings and Recommendations

Accounts Receivable

Finding 1

OPD had not accounted for and pursued for collection any administrative fees for cases opened during fiscal years 2006 and 2007. In addition, OPD estimated it had a backlog of 30,000 unrecorded administrative fees billings applicable to cases opened prior to July 2005.

Analysis

OPD was not recording its client administrative fees in its accounts receivable records and was not pursuing them for collection. In accordance with State law, OPD charges administrative fees of \$50 for adults and \$25 for juveniles. At the time that services are to be rendered, clients sign administrative fee agreements and are instructed to mail these fees to a lockbox account. However, these fees

have not been accounted for as to paid or unpaid, and unpaid accounts have not been subject to subsequent collections efforts. Our review disclosed the following conditions:

- As of June 30, 2007, client administrative fees totaling approximately \$10.2 million, applicable to cases opened during fiscal years 2006 and 2007, had not been recorded in the accounts receivable records. To the extent the accounts remained unpaid, they had not been pursued for collection.
- OPD estimated that it had a backlog of approximately 30,000 client billings for administrative fees related to cases opened prior to July 2005.

Unpaid accounts can be sent to the State's Central Collection Unit (CCU) where collection is pursued via the State's Tax Refund Intercept Program (TRIP). Timely recordation of the administrative fee billings and referral of unpaid accounts to CCU for collection assistance could result in additional General Fund revenues. For example, during fiscal year 2007, OPD collected administrative fees totaling approximately \$1.4 million of which \$748,000 was collected via TRIP.

This condition has been commented upon in our four preceding audit reports dating back to December 1995 and, as stated in our preceding audit report, OPD estimated that the backlog of unrecorded billings numbered approximately 100,000 as of September 2004. Prior to July 2005, the administrative fee agreements were prepared at OPD's district offices, and the accounts were then submitted to its headquarters location for recordation. In July 2005—when OPD implemented a new automated case management system—the district offices became responsible for directly recording the billings in the case management system. Although OPD's procedures required that this recorded billing data be periodically downloaded to the accounts receivable records, we were advised that, as of June 30, 2007, this procedure had not been performed since the system was implemented.

During the period from July 2004 through June 2007, OPD collected client administrative fees, including TRIP collections, totaling approximately \$4.4 million. On July 13, 2007, CCU authorized OPD to write off 574,563 accounts, totaling approximately \$27.8 million, representing unpaid administrative fees dating as far back as 1993 that were previously recorded in OPD's accounts

receivable records. According to CCU, the vast majority of these accounts, totaling approximately \$25 million, had been subject to tax refund intercept collection efforts at least three times.

Recommendation 1

We again recommend that OPD take immediate steps to address the backlog of administrative fee billings. We also again recommend that OPD ensure that the aforementioned 30,000 administrative fee billings, as well as the unpaid fees related to all cases established since July 2005, are recorded in the accounts receivable records, accounted for, and pursued for collection.

Reporting of Possible Criminal or Unethical Conduct

Finding 2

OPD did not refer for further investigation two instances of possible criminal or unethical employee conduct as required by a related Executive Order.

Analysis

OPD did not refer for further investigation the following two instances of possible criminal or unethical employee conduct as required by a related Executive Order.

- In May 2006, OPD was advised that a staff attorney had possibly sought payment for acting as an agent on behalf of a private attorney who was retained to represent a defendant in a murder case in which OPD was representing certain of the co-defendants. State law expressly prohibits OPD staff attorneys from engaging in the private practice of criminal law. The Public Defender considered the employee's actions a violation of the Rules of Professional Responsibility and, as a result, required the employee to forfeit 15 days of annual leave. The employee subsequently resigned from OPD, effective December 2006.
- On July 7, 2005, the Public Defender was advised that a panel attorney (a private attorney paid by OPD to represent an indigent person) assigned to a murder case had accepted a payment from the family of the accused that was supposed to be used to hire a private investigator for the case. It was alleged that the responsible OPD attorney was aware that the panel attorney accepted this payment and knowingly failed to communicate the matter to OPD management; this OPD attorney subsequently resigned. State regulations provide that a panel attorney may not accept any fee, gratuity, or other

valuable consideration from the accused, his family, or his friends. The regulations further provide that if such an offer is made, the information shall be promptly communicated to OPD management for appropriate action.

Executive Order 01.01.2007.01, effective February 14, 2007, requires that all departments and agencies of the State immediately refer to the responsible Assistant Attorney General or the Office of the Attorney General - Criminal Division, and to the Governor's Chief Legal Counsel, any instance of possible criminal or unethical conduct by any employee, for such action as the Office of the Attorney General deems appropriate. (This Executive Order replaced a previous one with similar provisions.)

A similar condition was commented upon in our preceding audit report dated March 15, 2005.

Recommendation 2

We again recommend that OPD report all instances of possible criminal or unethical employee conduct, including the two aforementioned incidents, as required.

Audit Scope, Objectives, and Methodology

We have audited the Office of the Public Defender (OPD) for the period beginning June 10, 2004 and ending April 30, 2007. The audit was conducted in accordance with generally accepted government auditing standards.

As prescribed by the State Government Article, Section 2-1221 of the Annotated Code of Maryland, the objectives of this audit were to examine OPD's financial transactions, records and internal control, and to evaluate its compliance with applicable State laws, rules, and regulations. We also determined the current status of the findings contained in our preceding audit report.

In planning and conducting our audit, we focused on the major financial related areas of operations based on assessments of materiality and risk. Our audit procedures included inquiries of appropriate personnel, inspection of documents and records, and observation of OPD's operations. We also tested transactions and performed other auditing procedures that we considered necessary to achieve our objectives. Data provided in this report for background or informational purposes were deemed reasonable, but were not independently verified.

Our audit scope was limited with respect to OPD's cash transactions because the Office of the State Treasurer was unable to reconcile the State's main bank accounts during a portion of the audit period. Due to this condition, we were unable to determine, with reasonable assurance, that all OPD cash transactions prior to July 1, 2005 were accounted for and properly recorded on the related State accounting records as well as the banks' records.

OPD's management is responsible for establishing and maintaining effective internal control. Internal control is a process designed to provide reasonable assurance that objectives pertaining to the reliability of financial records, effectiveness and efficiency of operations including safeguarding of assets, and compliance with applicable laws, rules, and regulations are achieved.

Because of inherent limitations in internal control, errors or fraud may nevertheless occur and not be detected. Also, projections of any evaluation of internal control to future periods are subject to the risk that conditions may change or compliance with policies and procedures may deteriorate.

Our reports are designed to assist the Maryland General Assembly in exercising its legislative oversight function and to provide constructive recommendations for improving State operations. As a result, our reports generally do not address activities we reviewed that are functioning properly.

This report includes a condition that we consider to be a significant deficiency in the design or operation of internal control that could adversely affect OPD's ability to maintain reliable financial records, operate effectively and efficiently and/or comply with applicable laws, rules, and regulations. Our report also includes a condition regarding a significant instance of noncompliance with applicable laws, rules, or regulations. One less significant finding was communicated to OPD that did not warrant inclusion in this report.

OPD's response to our findings and recommendations is included as an appendix to this report. As prescribed in the State Government Article, Section 2-1224 of the Annotated Code of Maryland, we will advise OPD regarding the results of our review of its response.

APPENDIX

STATE OF MARYLAND

**OFFICE OF THE PUBLIC DEFENDER
ADMINISTRATION
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NANCY S. FORSTER
PUBLIC DEFENDER
MICHAEL R. MORRISSETTE
DEPUTY PUBLIC DEFENDER

ROBERT L. EHRLICH, JR.
GOVERNOR

December 6, 2007

Mr. Bruce A. Myers, CPA, Legislative Auditor
State of Maryland
Office of Legislative Audits
State Office Building, Room 1202
301 West Preston Street
Baltimore, MD 21201

Dear Mr. Myers:

Enclosed is the response of the Office of the Public Defender, (OPD), to the draft audit covering the period beginning June 10, 2004 and ending April 30, 2007. Initially, I would like to thank you and your staff auditors for the professionalism shown throughout this process.

Finding One - Accounts Receivable

Finding: Agree

Recommendation: Agree

Agency Response:

The backlog of unprocessed pre-numbered administrative fee billings have all been entered and recorded in the accounts receivable records. In addition, the Administrative Services Unit has taken steps to ensure that all pre-numbered administrative fee billings are recorded in the accounts receivable records accounted for and pursued for collection. The OPD is currently capturing client information through its case management system and transferring this information to an accounts receivable environment. Implementation of this process was anticipated to have started at the end of fiscal year 2006; however, this process has presented data migration challenges that have been successfully resolved.

**Finding Two - Reporting of Possible Criminal or
Unethical Employee Conduct**

Finding: Agree

Recommendation: Agree

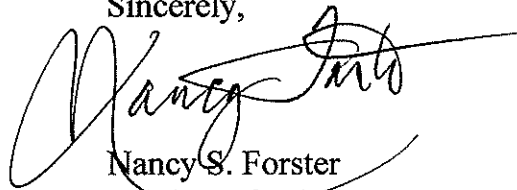
Agency Response:

The OPD acknowledges that Executive Order 01.01.2007.01 requires this Agency to refer any instance of criminal or unethical conduct by its employees to the Office of the Attorney General and to the Chief Legal Counsel to the Governor. Inherent in this Order is the requirement that the Public Defender exercise discretion in determining whether or not conduct of an employee actually constitutes "possible criminal" or "unethical" conduct.

In exercising this discretion, the Public Defender has, in the past, referred clear instances of criminal or unethical conduct to the Office of the Attorney General and the Governor's Chief Legal Counsel as required. With regard to the two matters cited in Finding Two, the OPD concurs in the recommendation and, on October 31, 2007, the identified employees were referred to both the Office of the Attorney General and Chief Legal Counsel to the Governor.

Should you require any additional information please do not hesitate to let me know.

Sincerely,


Nancy S. Forster
Public Defender

NSF/jps

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