

ATTESTATION ENGAGEMENT

District Court 23-2-02
Berks County, Pennsylvania
For the Period
January 1, 2011 to December 31, 2016

March 2018



Commonwealth of Pennsylvania
Department of the Auditor General

Eugene A. DePasquale • Auditor General



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EUGENE A. DePASQUALE
AUDITOR GENERAL

Independent Auditor's Report

The Honorable C. Daniel Hassell
Secretary
Pennsylvania Department of Revenue
Harrisburg, PA 17128

We have examined the accompanying statement of receipts and disbursements (Statement) of District Court 23-2-02, Berks County, Pennsylvania (District Court), for the period January 1, 2011 to December 31, 2016, pursuant to the requirements of Section 401(c) of *The Fiscal Code*, 72 P.S. § 401(c). The District Court's management is responsible for presenting this Statement in accordance with the criteria set forth in Note 1. Our responsibility is to express an opinion on this Statement based on our examination.

Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants and the standards applicable to attestation engagements contained in *Government Auditing Standards* issued by the Comptroller General of the United States. Those standards require that we plan and perform the examination to obtain reasonable assurance about whether the Statement is presented in accordance with the criteria described above, in all material respects. An examination involves performing procedures to obtain evidence about the statement of receipts and disbursements. The nature, timing and extent of the procedures selected depend on our judgement, including an assessment of the risks of material misstatement of the Statement, whether due to fraud or error. We believe that the evidence we obtained is sufficient and appropriate to provide a reasonable basis for our opinion.

We are mandated by Section 401(c) of *The Fiscal Code* to audit the accounts of each district court to determine whether all moneys collected on behalf of the Commonwealth have been correctly assessed, reported and promptly remitted. *Government Auditing Standards* issued by the Comptroller General of the United States include attestation engagements as a separate type of audit. An attestation engagement performed pursuant to *Government Auditing Standards* involves additional standards that exceed the standards provided by the American Institute of Certified Public Accountants. Accordingly, this attestation engagement complies with both *Government Auditing Standards* and Section 401(c) of *The Fiscal Code*.

Independent Auditor's Report (Continued)

In our opinion, the Statement referred to above, for the period January 1, 2011 to December 31, 2016, is presented in accordance with the criteria set forth in Note 1, in all material respects.

In accordance with *Government Auditing Standards*, we are required to report all deficiencies that are considered to be significant deficiencies or material weaknesses in internal control; fraud and noncompliance with provisions of laws or regulations that have a material effect on the Statement; and any other instances that warrant the attention of those charged with governance; noncompliance with provisions of contracts or grant agreements, and abuse that has a material effect on the Statement. We are also required to obtain and report the views of responsible officials concerning the findings, conclusions, and recommendations, as well as any planned corrective actions. We performed our examination to express an opinion on whether the Statement is presented in accordance with the criteria described above and not for the purpose of expressing an opinion on internal control over reporting on the Statement or on compliance and other matters; accordingly, we express no such opinions.

Our consideration of internal control over reporting on the Statement was for the limited purpose of expressing an opinion on whether the Statement is presented in accordance with the criteria described above and was not designed to identify all deficiencies in internal control over reporting on the Statement that might be material weaknesses or significant deficiencies and therefore, material weaknesses or significant deficiencies may exist that were not identified. However, as described below, we identified certain deficiencies in internal control that we consider to be material weaknesses and significant deficiencies.

A *deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A *material weakness* is a deficiency, or a combination of deficiencies, in internal control such that there is a reasonable possibility that a material misstatement of the Statement will not be prevented, or detected and corrected on a timely basis. We consider the deficiencies listed below to be material weaknesses:

- Receipts Were Not Always Deposited On The Same Day As Collected - Recurring.
- Bank Deposit Slips Were Not Validated - Recurring.

A *significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance. We consider the deficiencies listed below to be significant deficiencies:

- Evidence Of Authorizing The Disposition Of Citations Was Not Available.
- Inadequate Arrest Warrant And DL-38 Procedures - Recurring.

Independent Auditor's Report (Continued)

As part of obtaining reasonable assurance about whether the Statement is free from material misstatement, we performed tests of the District Court's compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the determination of Statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our engagement, and accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

Three of the four examination findings contained in this report cite conditions that existed in the operation of the District Court during the previous engagement period and were not corrected during the current examination period. The District Court should immediately take corrective action to implement the recommendations and corrective actions noted in this report.

The purpose of this report is to determine whether all moneys collected on behalf of the Commonwealth have been correctly assessed, reported and promptly remitted. This report is not suitable for any other purposes.

We appreciate the courtesy extended by the District Court 23-2-02, Berks County, to us during the course of our examination. If you have any questions, please feel free to contact Michael B. Kashishian, CPA, CGAP, CFE, Director, Bureau of County Audits, at 717-787-1363.



Eugene A. DePasquale
Auditor General

February 27, 2018

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DISTRICT COURT 23-2-02
 BERKS COUNTY
 STATEMENT OF RECEIPTS AND DISBURSEMENTS
 FOR THE PERIOD
 JANUARY 1, 2011 TO DECEMBER 31, 2016

Receipts:

Department of Transportation		
Title 75 Fines	\$	335,931
Motor Carrier Road Tax Fines		150
Overweight Fines		1,424
Littering Law Fines		1,373
Child Restraint Fines		3,805
Department of Revenue Court Costs		367,941
Crime Victims' Compensation Bureau Costs		38,077
Crime Commission Costs/Victim Witness Services Costs		27,143
Domestic Violence Costs		10,366
Emergency Medical Service Fines		101,646
CAT/MCARE Fund Surcharges		295,114
Judicial Computer System Fees		162,533
Access to Justice Fees		45,873
Criminal Justice Enhancement Account Fees		9,022
Judicial Computer Project Surcharges		55,232
Constable Service Surcharges		29,418
Miscellaneous State Fines and Costs		<u>154,512</u>
 Total receipts (Note 2)		 1,639,560
 Disbursements to Commonwealth (Note 3)		 <u>(1,639,428)</u>
 Balance due Commonwealth (District Court) per settled reports (Note 4)		 132
 Examination adjustments (Note 5)		 <u>(132)</u>
 Adjusted balance due Commonwealth (District Court) for the period January 1, 2011 to December 31, 2016	 <u>\$</u>	 <u><u>-</u></u>

Notes to the Statement of Receipts and Disbursements are an integral part of this report.

DISTRICT COURT 23-2-02
BERKS COUNTY
NOTES TO THE STATEMENT OF RECEIPTS AND DISBURSEMENTS
FOR THE PERIOD
JANUARY 1, 2011 TO DECEMBER 31, 2016

1. Criteria

The Statement of Receipts and Disbursements provides a summary of receipts and disbursements by category. The categories and the amounts of fines, costs, fees, and surcharges assessed are based on Pennsylvania laws and regulations.

The Statement was prepared in accordance with reporting requirements prescribed by the Pennsylvania Department of Revenue. Under this method, only the Commonwealth portion of cash receipts and disbursements are presented, revenues are recognized when received, and expenditures are recognized when paid.

2. Receipts

Receipts are comprised of fines, costs, fees, and surcharges collected on behalf of the Commonwealth. These fines, costs, fees, and surcharges represent collections made on traffic, non-traffic, civil, and criminal cases filed with the District Court.

3. Disbursements

Total disbursements are comprised as follows:

District Court checks issued to:

Department of Revenue	<u>\$ 1,639,428</u>
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4. Balance Due Commonwealth (District Court) For The Period January 1, 2011 To December 31, 2016

This balance reflects the summary of monthly transmittal reports as settled by the Department of Revenue.

5. Examination Adjustment

During our prior audit, January 1, 2007 to December 31, 2010, we determined that there was a balance due to the County of \$132.00. This credit was taken in March 2013.

DISTRICT COURT 23-2-02
BERKS COUNTY
NOTES TO THE STATEMENT OF RECEIPTS AND DISBURSEMENTS
FOR THE PERIOD
JANUARY 1, 2011 TO DECEMBER 31, 2016

6. Magisterial District Judges Serving During Examination Period

Timothy M. Dougherty served at District Court 23-2-02 for the period January 1, 2011 to May 16, 2016.

Senior Judge Nicolas M. Bentz, served at District Court 23-2-02 for the period May 17, 2016 to December 31, 2016.

DISTRICT COURT 23-2-02
BERKS COUNTY
FINDINGS AND RECOMMENDATIONS
FOR THE PERIOD
JANUARY 1, 2011 TO DECEMBER 31, 2016

Finding No. 1 - Receipts Were Not Always Deposited On The Same Day As Collected - Recurring

We cited the issue of receipts were not always deposited on the same day as collected in the three prior examination reports with the most recent being for the period January 1, 2007 to December 31, 2010. Our current examination found that the district court did not correct this issue.

Our examination disclosed that receipts were not always deposited on the same day as collected. Of 273 receipts tested, 171 were not deposited on the same day as collected. The time lapse from the date of receipt to the subsequent date of deposit ranged from 2 days to 30 days. In addition, 2 deposits slips were not available for review. These exceptions occurred between January 28, 2011 and September 28, 2015.

Good internal accounting controls require that all monies collected be deposited in the bank at the end of every day. The *Magisterial District Judge Automated Office Clerical Procedures Manual* (Manual) establishes the uniform written internal control policies and procedures for all district courts. The Manual requires that:

All money, including partial payments received by the Magisterial District Judge office (e.g. cash, checks, and money orders), must be deposited in the bank at the end of every business day. A bank night depository may be used by all (night) courts as well as by any court that cannot get to the bank during banking hours. Money should not be taken home, left in the office overnight, or unattended. The Daily Cash Balancing procedure must be completed every day.

This condition existed because the former Magisterial District Judge made all banking deposits during his time in office. The office manager noticed that the district court's deposits were not being made timely and reported the issue to the county's district court administrator. After an investigation, it was determined that the former Magisterial District Judge mishandled approximately \$15,000 in district court funds. As of October 6, 2015, there were 14 outstanding deposits totaling \$15,057.15. These funds were deposited by the former Magisterial District Judge on October 28, 2015.

The former Magisterial District Judge admitted to mishandling more than \$15,000 from the District Court and stealing approximately \$97,780 from a local volunteer fire company where he served as treasurer. In September, 2017 the former Magisterial District Judge plead guilty to charges of theft by unlawful taking, a third-degree felony, and misapplication of public funds.

DISTRICT COURT 23-2-02
BERKS COUNTY
FINDINGS AND RECOMMENDATIONS
FOR THE PERIOD
JANUARY 1, 2011 TO DECEMBER 31, 2016

**Finding No. 1 - Receipts Were Not Always Deposited On The Same Day As Collected -
Recurring (Continued)**

Without a good system of internal control over funds received by the office, the possibility of funds being lost or misappropriated increases significantly. The deficiencies described above contributed to mishandling of funds totaling \$15,057.

Adherence to the uniform internal control policies and procedures, as set forth in the Manual, would have ensured that there were adequate internal controls over collections.

Recommendation

We strongly recommend that the district court deposit all receipts at the end of each day as required by good internal accounting controls and the Manual.

Management's Response

The Magisterial District Judge responded as follows:

Financial concerns were addressed since October 2015. Procedural concerns were addressed by Senior Magisterial District Judge Nicholas Bentz. The entirety of the audit predated Magisterial District Judge Eric J. Taylor's time in office.

Auditor's Conclusion

This is a recurring finding. It is imperative that the district court immediately take corrective action to comply with our recommendation. During our next examination, we will determine if the district court complied with our recommendation.

DISTRICT COURT 23-2-02
BERKS COUNTY
FINDINGS AND RECOMMENDATIONS
FOR THE PERIOD
JANUARY 1, 2011 TO DECEMBER 31, 2016

Finding No. 2 - Bank Deposit Slips Were Not Validated - Recurring

We cited the issue of bank deposit slips not being validated in the prior examination for the period January 1, 2007 to December 31, 2010. Our current examination found that the district court did not correct this issue.

Our examination of the district court's accounting records disclosed that the office copy of the bank deposit slip was not validated by the bank in 143 of the 273 deposits tested. The district court received a validated receipt from the bank, but this only confirmed the total amount deposited and not the actual make-up of the deposit (i.e. cash and check mix).

This condition existed because the district court failed to establish adequate internal controls over bank deposit slips as recommended in the prior examination report.

Good internal accounting controls require that the amount of each check and the total amount of cash deposited are identified on the deposit slip. The office copy of each deposit should be brought to the bank to be validated. If the bank cannot validate the deposit slip, the district court should obtain a deposit ticket from the bank that validates total cash and the total deposit. After the district court receives the validation from the bank, it should be reconciled to the receipts by someone other than the person preparing or making the deposit.

Without a good system of internal control over funds received by the office, the possibility of funds being lost or misappropriated increases significantly.

Recommendations

We strongly recommend that the district court immediately secure the bank's validation on the court's copy of the deposit slip. We further recommend that the validation is reconciled to receipts by someone other than the person preparing or making the deposit.

Management's Response

The Magisterial District Judge responded as follows:

Financial concerns were addressed since October 2015. Procedural concerns were addressed by Senior Magisterial District Judge Nicholas Bentz. The entirety of the audit predated Magisterial District Judge Eric J. Taylor's time in office.

DISTRICT COURT 23-2-02
BERKS COUNTY
FINDINGS AND RECOMMENDATIONS
FOR THE PERIOD
JANUARY 1, 2011 TO DECEMBER 31, 2016

Finding No. 2 - Bank Deposit Slips Were Not Validated - Recurring (Continued)

Auditor's Conclusion

This is a recurring finding. It is imperative that the district court immediately take corrective action to comply with our recommendations. During our next examination, we will determine if the district court complied with our recommendations.

DISTRICT COURT 23-2-02
BERKS COUNTY
FINDINGS AND RECOMMENDATIONS
FOR THE PERIOD
JANUARY 1, 2011 TO DECEMBER 31, 2016

Finding No. 3 - Evidence Of Authorizing The Disposition Of Citations Was Not Available

During our examination of the district court's case files, we tested 70 cases with dispositions of not guilty, dismissed, discharged, or withdrawn, and cases that had a guilty plea disposition without an accompanying full payment. There was no evidence in 12 cases that the disposition was authorized by the Magisterial District Judge.

Good internal accounting controls ensure that there is evidence that the disposition on these cases was authorized by the Magisterial District Judge. The failure to follow this procedure increases the risk for funds to be lost or misappropriated.

Adherence to good internal controls would have ensured that there were adequate internal controls over citations.

This condition existed because the office failed to establish and implement an adequate system of internal controls over documenting that disposition was authorized by the Magisterial District Judge.

Recommendation

We recommend that there is evidence that the Magisterial District Judge authorized the disposition of these cases and it is available for examination.

Management's Response

The Magisterial District Judge responded as follows:

Financial concerns were addressed since October 2015. Procedural concerns were addressed by Senior Magisterial District Judge Nicholas Bentz. The entirety of the audit predated Magisterial District Judge Eric J. Taylor's time in office.

Auditor's Conclusion

During our next examination, we will determine if the district court complied with our recommendation.

DISTRICT COURT 23-2-02
BERKS COUNTY
FINDINGS AND RECOMMENDATIONS
FOR THE PERIOD
JANUARY 1, 2011 TO DECEMBER 31, 2016

Finding No. 4 - Inadequate Arrest Warrant And DL-38 Procedures - Recurring

We cited the issue of inadequate arrest warrant and DL-38 procedures in the three prior examination reports with the most recent being for the period January 1, 2007 to December 31, 2010. Our current examination found that the district court did not correct this issue. Warrants and Requests For Suspension Of Operating Privileges (DL-38s) are used to enforce the collection of monies on traffic and non-traffic cases in which defendants failed to make payments when required. A Warrant of Arrest (AOPC 417) is used to authorize an official to arrest a defendant, to collect fines and costs from the defendant after a disposition, or to collect collateral for a trial. If the defendant does not respond within ten days to a citation or summons, a Warrant of Arrest may be issued. A Request for Suspension of Driving Privileges for Failure to Respond to a Citation or Summons or Pay Fines and Costs Imposed (AOPC 638A) is used to notify the defendant in writing that his/her license will be suspended if he/she fails to respond to the traffic citation or summons. A DL-38 cannot be issued for a parking violation.

During our testing of warrant procedures, we noted that warrant procedures established by the *Magisterial District Judge Automated Office Clerical Procedures Manual* (Manual) were not always followed. The Magisterial District Judge did not consistently issue warrants when required. We tested 73 instances in which a warrant was required to be issued. Our testing disclosed that 43 were not issued timely and 6 were not issued at all. The time of issuance ranged from 61 days to 344 days.

In addition, of 61 warrants required to be returned or recalled, 19 were not returned or recalled, and 11 were not returned timely. The time of issuance to the time of return ranged from 182 days to 1,000 days.

Furthermore, we tested 38 instances in which a DL-38 was required to be issued. Our testing disclosed that 21 were not issued timely and 6 were not issued at all. The time of issuance ranged from 72 days to 344 days. The Manual establishes the uniform written internal control policies and procedures for all district courts.

Warrant Issuance Procedures: The Manual states that on October 1, 1998, new warrant procedures took effect for summary cases. Amendments were made to Pa.R.Crim.P. 430, 431, 454, 455, 456, 460, 461, and 462. To comply with the new changes, the Notice of Impending Warrant (AOPC A418) was created with the purpose of informing the defendant that failure to pay the amount due or to appear for a Payment Determination Hearing will result in the issuance of an arrest warrant. The defendant is also informed that his/her response must be made within ten days of the date of the notice.

DISTRICT COURT 23-2-02
BERKS COUNTY
FINDINGS AND RECOMMENDATIONS
FOR THE PERIOD
JANUARY 1, 2011 TO DECEMBER 31, 2016

Finding No. 4 - Inadequate Arrest Warrant And DL-38 Procedures - Recurring (Continued)

According to Pa.R.Crim.P. 430, a Notice of Impending Warrant may be issued in a post-disposition summary case for any of the following reasons:

- A guilty disposition is recorded and no payment is made or a time payment schedule is not created.
- A guilty disposition is recorded and a previously deposited collateral payment, when applied, does not pay the case balance in full.
- A guilty disposition is recorded and the defendant defaults on a time payment schedule.

According to Pa.R.Crim.P. 430, a warrant SHALL be issued in a summary case for any of the following reasons (a Notice of Impending Warrant is not necessary for the following):

- The defendant has failed to respond to a citation or summons that was served either personally or by certified mail, return receipt requested.
- The citation or summons is returned undeliverable.
- The Magisterial District Judge has reasonable grounds to believe that the defendant will not obey a summons.

Warrant Return Procedures: The Manual states that the Administrative Office of Pennsylvania Courts (AOPC) recommends that those in possession of arrest warrants should be notified to return warrants that have not been served. For summary traffic and non-traffic cases, outstanding warrants should be returned to the Magisterial District Judge's office within 60 days of issuance. Returned warrants can either be recorded in the Magisterial District Judge System (MDJS) as unserved, if the defendant is unable to be located; or they can be recalled for reissue, if the server has not exhausted all means of finding the defendant.

DL-38 Procedures: The Manual states that once a citation is given to the defendant or a summons is issued, the defendant has ten days to respond. If on the eleventh day, the defendant has not responded, 75 Pa.C.S. §1533 requires that the defendant be notified that he/she has fifteen days from the date of notice to respond to the citation/summons before his/her license is suspended. In accordance with Section 1533 of the Pennsylvania Vehicle Code, the defendant has 15 days to respond to the defendant's copy of the DL-38. If the defendant does not respond by the fifteenth day, the Magisterial District Judge's office shall notify the Pennsylvania Department of Transportation by issuing the appropriate License Suspension Request (AOPC 638B,D,E).

DISTRICT COURT 23-2-02
BERKS COUNTY
FINDINGS AND RECOMMENDATIONS
FOR THE PERIOD
JANUARY 1, 2011 TO DECEMBER 31, 2016

Finding No. 4 - Inadequate Arrest Warrant And DL-38 Procedures - Recurring (Continued)

In addition, 75 Pa.C.S. §1533 also requires a post-disposition DL-38 (AOPC 638B/E) be issued if the defendant neglects to pay fines and costs imposed at the time of disposition, or fails to make a scheduled time payment.

The failure to follow warrant and DL-38 procedures could result in uncollected fines and unpunished offenders. Additionally, the risk is increased for funds to be lost or misappropriated.

This condition existed because the district court failed to review the tickler reports for warrants and DL-38s daily as recommended in the three prior examination reports. Adherence to the uniform internal control policies and procedures, as set forth in the Manual, would have ensured that there were adequate internal controls over warrants and DL-38s.

Recommendations

We strongly recommend that the district court review the tickler reports for warrants and DL-38s daily and take appropriate action as required by the Manual. We further recommend that the court review warrant control reports and notify police or other officials to return warrants that are unserved for 60 days for summary traffic and non-traffic cases as recommended by the Manual.

Management's Response

The Magisterial District Judge responded as follows:

Financial concerns were addressed since October 2015. Procedural concerns were addressed by Senior Magisterial District Judge Nicholas Bentz. The entirety of the audit predated Magisterial District Judge Eric J. Taylor's time in office.

Auditor's Conclusion

This is a recurring finding. It is imperative that the district court immediately take corrective action to comply with our recommendations. During our next examination, we will determine if the district court complied with our recommendations.

DISTRICT COURT 23-2-02
BERKS COUNTY
SUMMARY OF PRIOR EXAMINATION RECOMMENDATIONS
FOR THE PERIOD
JANUARY 1, 2011 TO DECEMBER 31, 2016

Summary Of Prior Examination Recommendations

During our prior examination, we recommended that the district court:

- Deposit all receipts at the end of each day as required by good internal accounting controls and the *Magisterial District Judge Automated Office Clerical Procedures Manual*.
- Secure the bank's validation on the court's copy of the deposit slip.
- Initiate procedures to ensure that all cases are properly filed and contain appropriate documents as outlined in the *Magisterial District Judge Automated Office Clerical Procedures Manual*.
- Review the tickler reports for warrants and DL-38s daily and take appropriate action as required by the *Magisterial District Judge Automated Office Clerical Procedures Manual*. We further recommended that the court review warrant control reports and notify police or other officials to return warrants that are unserved for 60 days for summary traffic and non-traffic cases as recommended by the *Magisterial District Judge Automated Office Clerical Procedures Manual*.
- Transmit the Commonwealth's portion of fines and costs as required by the *Magisterial District Judge Automated Office Clerical Procedures Manual* and Section 901 of the Fiscal Code.

During our current examination, we noted that the district court complied with our third and fifth bulleted recommendations. However, the district court did not comply with our first, second and fourth bulleted recommendations. Please see the current year Findings No. 1, 2 and 4 for additional information.

DISTRICT COURT 23-2-02
BERKS COUNTY
REPORT DISTRIBUTION
FOR THE PERIOD
JANUARY 1, 2011 TO DECEMBER 31, 2016

This report was initially distributed to:

The Honorable Eileen H. McNulty
Secretary
Pennsylvania Department of Revenue

The Honorable Thomas B. Darr
Court Administrator of Pennsylvania
Supreme Court of Pennsylvania
Administrative Office of Pennsylvania Courts

The Honorable Eric J. Taylor
Magisterial District Judge

The Honorable Christian Y. Leinbach
Chairperson of the Board of Commissioners

The Honorable Sandy Graffius
Controller

Mr. Stephen A. Weber
District Court Administrator

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