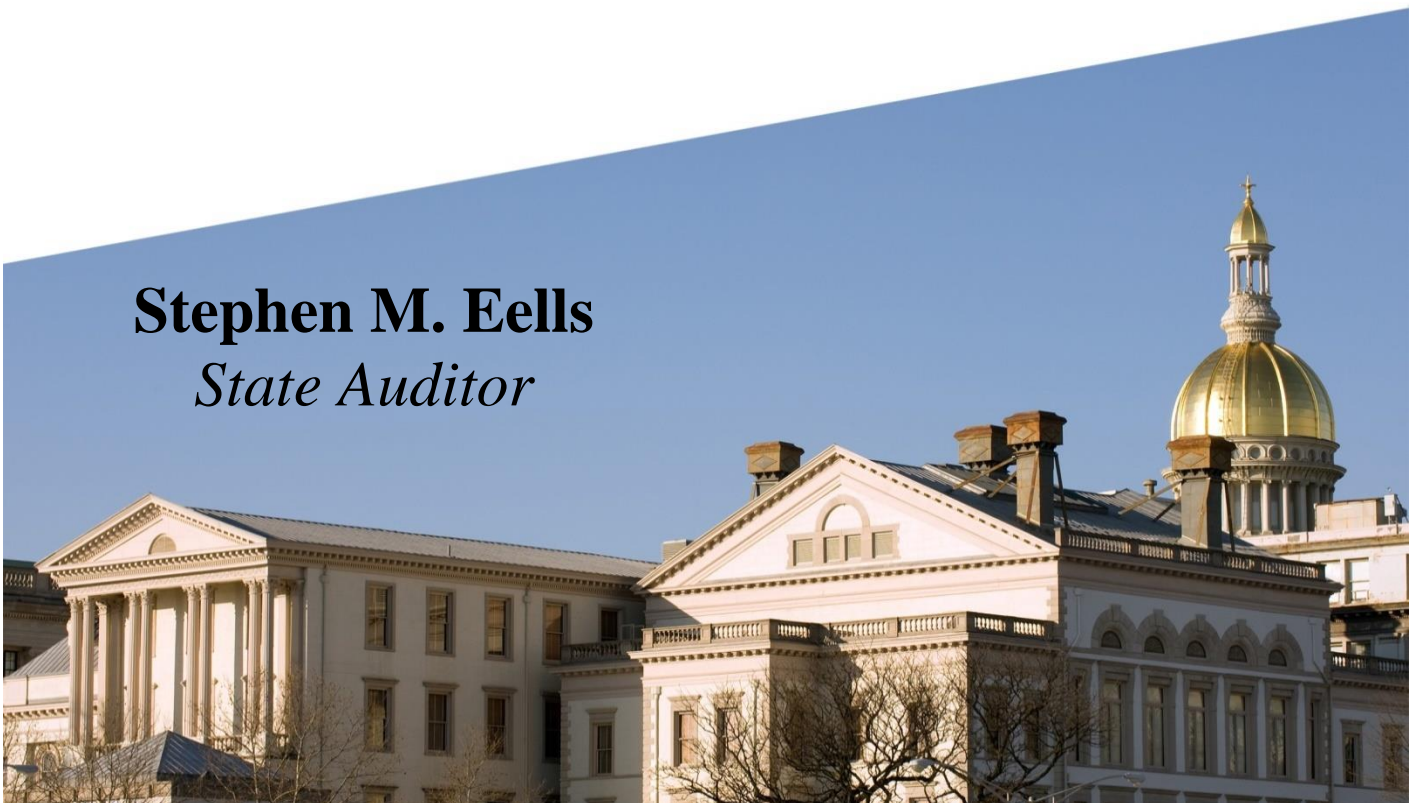


New Jersey Legislature
★ *Office of* LEGISLATIVE SERVICES ★
OFFICE OF THE STATE AUDITOR

Department of Law and Public Safety
Division of Law

July 1, 2014 to December 22, 2017

Stephen M. Eells
State Auditor



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OFFICE OF LEGISLATIVE SERVICES

OFFICE OF THE STATE AUDITOR
125 SOUTH WARREN STREET
PO BOX 067
TRENTON NJ 08625-0067

OFFICE OF THE STATE AUDITOR
(609) 847-3470
FAX (609) 633-0834

STEPHEN M. EELLS
State Auditor

DAVID J. KASCHAK
Assistant State Auditor

JOHN J. TERMYNA
Assistant State Auditor

PERI A. HOROWITZ
Executive Director
(609) 847-3901

The Honorable Philip D. Murphy
Governor of New Jersey

The Honorable Stephen M. Sweeney
President of the Senate

The Honorable Craig J. Coughlin
Speaker of the General Assembly

Ms. Peri A. Horowitz
Executive Director
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Enclosed is our report on the audit of the Department of Law and Public Safety, Division of Law for the period of July 1, 2014 to December 22, 2017. If you would like a personal briefing, please call me at (609) 847-3470.

A handwritten signature in black ink, appearing to read "Stephen M. Eells".

Stephen M. Eells
State Auditor
September 20, 2018

Table of Contents

Scope.....	1
Objectives	1
Methodology.....	1
Conclusions.....	2
Findings and Recommendations	
Disaster Recovery Testing	3
Monitoring of Super User Access.....	3
Vulnerability Scanning	4
Ethics.....	4
Client Billing Process	5
Legal Services Expenditures.....	6
Auditee Response.....	8
Auditor’s Follow-up Response	13

Scope

We have completed an audit of the Department of Law and Public Safety (department), Division of Law (division) for the period July 1, 2014 to December 22, 2017. Our audit included financial activities accounted for in the state's General Fund. Annual expenditures of the division during fiscal years 2015, 2016, and 2017 were \$113 million, \$82 million, and \$87 million, respectively, of which \$70 million, \$70 million, and \$71 million, respectively represented payroll expense. The primary responsibility of the division is to provide legal services to all offices, departments, and entities of state government; render legal opinions to government agencies; and represent the state in litigation and appeals in state and federal court. Annual revenues of the division were \$62 million, \$63 million, and \$63 million during fiscal years 2015, 2016, and 2017, respectively. The major component of revenue was client billings to state agencies.

Objectives

The objectives of our audit were to determine whether financial transactions were related to the division's programs, were reasonable, and were recorded properly in the accounting systems.

This audit was conducted pursuant to the State Auditor's responsibilities as set forth in Article VII, Section I, 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. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

In preparation for our testing, we studied legislation, the administrative code, circulars promulgated by the Department of the Treasury and the New Jersey Office of Information Technology, and policies of the agency. Provisions we considered significant were documented and compliance with those requirements was verified by interview, observation, and through our testing of financial transactions. We also read the budget messages, reviewed financial trends, and interviewed division personnel to obtain an understanding of the programs and the internal controls.

A nonstatistical sampling approach was used. Our samples of financial transactions were designed to provide conclusions on our audit objectives as well as internal controls and compliance. Sample populations were sorted and transactions were judgmentally selected for testing.

Conclusions

We found that the financial transactions included in our testing were related to the division's programs, were reasonable, and were recorded properly in the accounting systems. In making these determinations we identified areas where improvements can be made to testing of the disaster recovery plan, monitoring of the super user access, scanning the system for vulnerability, adherence to the department's Supplementary Code of Ethics and the State Ethics Commission requirements, the client billing process, and compliance with outside counsel guidelines.

Disaster Recovery Testing

The department should perform disaster recovery testing of the division's billing and timekeeping system.

The Department of Law and Public Safety, Division of Law utilizes its billing and timekeeping system to record and process client billings to state agencies for the services it provides. Client billing/revenue averaged \$62.4 million for fiscal years 2015 through 2017, and the system processed approximately 120,000 timesheets annually. The system was not tested for disaster recovery (DR) general application system controls during our audit period. We were informed that the division's billing and timekeeping system was tested in sections, however, we were not provided with any reports of DR test(s) conducted during our audit period. The division further stated a complete DR test, which would include a total fail-over of the live system to the DR site, has never been conducted because the disruption to the business operation would be significant. New Jersey Office of Information Technology Circular 14-02-NJOIT requires agencies to document their DR testing. Such testing would identify risk and vulnerabilities that could delay the billing cycle.

Recommendation

We recommend the division comply with New Jersey Office of Information Technology Circular 14-02-NJOIT and perform a disaster recovery test of its billing and timekeeping system and document its results.



Monitoring of Super User Access

The department should monitor super user access.

There were five individuals who had access in a supervisory role to the division's billing and timekeeping system. These individuals are "super users" and can prepare pre-bills, run quarterly bills, create client agreements, and adjust bills. Not only was the function within the supervisory role not segregated, it was also not monitored.

We requested a copy of a report that would provide evidence of substantial monitoring of the super users activity, however, we were provided with a report prepared by a super user. Best practices suggest monitoring of super user access as a compensating control if segregation of duties is not feasible. Access controls are necessary to prevent unauthorized access to stored data and segregation of duties reduces the risk of improper transactions.

Recommendation

We recommend the department require that an individual independent of the function of super

user periodically review the activity of super user access and report to management any improprieties.



Vulnerability Scanning

The department should perform vulnerability scans periodically.

The Department of Law and Public Safety, Office of Attorney General (OAG) information technology unit last performed a network vulnerability assessment scan in July 2016, in which a number of weaknesses were highlighted. The OAG did not provide us with a subsequent vulnerability scan to verify those weaknesses were corrected. The division's continued use of Oracle 9.2 (Database Management System) for its billing and timekeeping system does not cover new updates and security patches. Per New Jersey Office of Technology Circular 12-04-NJOIT, departments and agencies shall apply patches in a timely manner to protect against the introduction of malicious software and other network attacks. Departments and agencies are required to participate in enterprise and individual scanning as well as maintenance of a patch management process.

Recommendation

We recommend the department comply with New Jersey Office of Information Technology Circular 12-04-NJOIT and periodically perform scans of the system to ensure weaknesses have been corrected and no new weaknesses exist.



Ethics

Division attorneys need to comply with the department's Supplementary Code of Ethics and the State Ethics Commission training requirements.

N.J.S.A. 52:13D-23 and the department's Supplementary Code of Ethics address the particular ethical issues of the department. Pursuant to the department's Supplementary Code of Ethics Section VI-E (Prohibition on the Private Practice of Law by Attorneys) and VI-H (Procedures for Approval of Outside Employment or Other Activity by Legal Staff), no department officer or employee who is an attorney may engage in the private practice of law or provide other legal services without the prior approval of the Attorney General or his/her designee.

When initially hired, and before engaging in a new outside activity, employees shall complete the Outside Activity Questionnaire (OAQ) issued by the State Ethics Commission in accordance with the procedures adopted by the department. The Request for Approval of Outside Employment or Other Activity (OAR) is required to be submitted and approved

annually. In addition, all department employees must complete mandatory ethics training every three years and an ethics briefing in years they do not receive ethics training.

We completed a match of division payroll data against the Department of Labor and Workforce Development's Wage and Hour database for the period January 2016 to June 2016. We tested the 25 division attorneys with wages earned from the State of New Jersey and from other employers. We found the following.

- Twelve attorneys received wages from a labor union without the required prior approval by the department. Also, these individuals did not submit an OAQ/OAR. The division was unaware of this until we informed management.
- Eight additional attorneys did not submit the OAQ/OAR.
- Ten attorneys did not complete the three-year mandatory ethics training.
- Eight attorneys did not complete the annual ethics briefing.

Completion of the three-year mandatory training program and the annual briefing on ethical standards provided by the State Ethics Commission could have increased the awareness for the necessity to submit an outside activity questionnaire.

In addition, we reviewed 2016 state income tax data of the Department of the Treasury for division attorneys for any net self-employment income and found 26 attorneys reported net self-employment income. We could not verify the source of the self-employment data due to limitations of the provided tax information.

Recommendation

We recommend the division enforce the department's ethics policy by having all its employees submit an OAQ/OAR and obtain prior approval by the Attorney General or his/her designee when required by the department's Supplementary Code of Ethics before engaging in outside activity. In addition, the division should ensure its employees complete mandatory ethics training every three years and the annual ethics briefing in any year they do not receive training.



Client Billing Process

The client billing process between the division and client agencies needs improvement.

The division provides legal representation and counsel to the departments, board offices, and commissions within state government. Every fiscal year, the division prepares Client Agency Reimbursement Agreements for legal services to be provided with projected costs, and renews

them annually. Client agencies receive actual quarterly bills with detailed reports of the work of the assigned division employees on each specific matter. Client billings are based on time incurred by division employees providing legal services and support to client agencies. In fiscal year 2016, the division had 97 authorized reimbursement agreements with different client agencies.

We reviewed the reimbursement agreements and fourth quarter billings (April to June) for fiscal years 2015 and 2016, and selected nine and eight client agencies, respectively. We found the following issues that could prevent the division from maximizing its revenue collections.

- Four client agencies' reimbursement agreements had a different budgeted amount than shown on the Legal Services Quarterly Analysis report, which tracks the amount due.
- Five bills had an incorrect full-time-equivalent (FTE) number of either the attorney or clerical/secretarial employee. The FTE represents the personnel hours assigned per the agreement for the allowable billable hours to the client agency. The division agreed that the client agreement FTE and the legal services agreement section's FTE field on client billings should match.
- We identified incorrect billable rates and improper titles were used when calculating billable costs for seven of the bills we reviewed.

On occasion, client agencies may remit to the division more than required for their bill resulting in a refund. The division will typically process a refund payment to client agencies during fiscal year-end. However, we noted a refund of approximately \$100,000 was not returned to the client agency until two fiscal years later.

Recommendation

We recommend the division implement stronger controls over calculating quarterly bills. Client agreements, quarterly bills, and legal services quarterly analysis reports should be reviewed for accuracy. Refunds to clients should be processed in a timely manner.



Legal Services Expenditures

The division should comply with outside counsel guidelines.

The division serves as the legal representative and counsel for the departments, boards, offices, commissions, and other instrumentalities of the government of the State of New Jersey. At times, the division will retain outside counsel to represent the state due to a variety of reasons including conflict of interest. During our audit period, we tested 23 legal services expenditures totaling \$16.7 million. Eight of the 23 transactions tested were related to settlement and award

payments. Fifteen of the 23 transactions were payments to outside law firms who represented the state in other matters. The division requires these outside counsel firms to utilize the CounselLink system to submit invoices, as well as pertinent information such as receipts, to facilitate the division's review and payment process. The CounselLink system provides for multi-tiered level of review and billing limitations. Our review noted billing invoices for 2 of the 15 outside counsel transactions were submitted by a firm for billable hours over the 10 hours per day limit for each of the firm's attorneys. Per the division's outside counsel guidelines, bills for more than 10 hours per day for each of the firm's attorneys are prohibited unless authorized in advance in writing by the division's management. We were only provided with the legal firm's letter referring to the division's approval of this allowance and not the actual documentation of the division's authorization. Those billings resulted in overpayment of \$11,900 and \$169,000.

Recommendation

We recommend the division comply with its outside counsel guidelines and have any exceptions approved in advance in writing by the division's management.





State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
PO BOX 080
TRENTON, NJ 08625-0080

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

GURBIR S. GREWAL
Attorney General

JENNIFER E. FRADEL
Administrator

September 7, 2018

David J. Kaschak
Assistant State Auditor
Office of Legislative Services
Office of the State Auditor
125 South Warren Street
P.O. Box 067
Trenton, New Jersey 08625-0067

Dear Mr. Kaschak:

On behalf of the Office of the Attorney General, thank you for the opportunity to provide comments to the draft audit report regarding the Department of Law and Public Safety, Division of Law issued by your office on August 6, 2018. Enclosed please find our response.

Please do not hesitate to contact me if you have any questions or need additional information.

Sincerely,

William H. Cranford
Deputy Administrator

C: Michelle Miller, Director, Division of Law
Elissa Westbrook-Smith, Chief of Staff, Division of Law
Jennifer E. Fradel, Administrator



Finding

Disaster Recovery Testing

The department should perform disaster recovery testing of the division's billing and timekeeping system.

Recommendation:

We recommend the division comply with the New Jersey Office of Information Technology Circular 14-02-NJOIT and perform a disaster recovery test of its billing and timekeeping system.

See Auditor's
Follow-up
Response
Page #13

Division Response:

The Division of Law's (Division) billing and timekeeping systems are compliant with the New Jersey Statewide Information Security Manual. The 14-02-NJOIT circular referenced in the audit recommendation has been removed from the NJOIT Policy Library. The Division's processes as described to the OLS auditors in the response sent to them on October 17, 2017, are in compliance with the Risk Assessment and Contingency planning sections of the Statewide Information Security Manual.

Finding

Monitoring of Super User Access

The department should monitor super user access.

Recommendation:

We recommend the department require that an individual independent of the function of super user periodically review the activity of super user access and report to management any improprieties.

Division Response:

In December of 2017 an automated report was created which details all super user transactions. The report is emailed to the both the Director and Chief of Staff of the Division on the first of each month for review. (A sample of a Super User report has been provided to OLS). Further, all quarterly bills are printed and reviewed by the section chiefs, who are independent of the super users. In addition, the Division's Chief of Staff and OIT have access to run various monitoring reports to include, but not limited to, cash receipts, billing, and adjustments, in order to review current activity.

New Jersey Division of Law 2018 Audit Response

Finding

Vulnerability Scanning

The department should perform vulnerability scans periodically.

Recommendation:

We recommend the department comply with New Jersey Office of Information Technology Circular 12-04-NJPIT and periodically perform scans of the system to ensure weaknesses have been corrected and no new weaknesses exist.

Division Response:

At the time of the initial audit, the Office of Information Technology had discontinued support of their vulnerability scanning product, Foundstone, which was end of life/end of service in June of 2016. This prevented the Division from scanning the billing and timekeeping system to prove that vulnerabilities had been mitigated. Since the audit, the Division has upgraded all components of the billing and timekeeping system to contemporary versions (as listed below) and has completed a vulnerability scan using the new Rapid 7 product.

Web Application Server OS

Database Server OS Windows 2012

Database Software Oracle 12.1.0.2.0

Summary:

In addition to the modernization of the Division's billing and timekeeping systems; the Office of the Attorney General has taken a proactive approach to ensuring that the Information Technology Systems are maintained to the highest standard by requesting the Office of Homeland Security & Preparedness perform an in-depth assessment known as the 'Cybersecurity Governance, Risk & Compliance Assessment' on all OAG managed Information Technology systems. The Cybersecurity Governance, Risk & Compliance assessment started June of 2018.

Finding

Ethics

Division attorneys need to comply with the department's Supplementary Code of Ethics and the State Ethics Commission training requirements.

Recommendation:

We recommend the division enforce the department's ethics policy by having all its employees submit an OAQ/OAR and obtain prior approval by the Attorney General or his/her designee when required by the department's Supplementary Code of Ethics before engaging in outside activity. In addition, the division should insure its employees complete mandatory ethics training every three years and the annual ethics briefing in any year they do not receive training.

New Jersey Division of Law 2018 Audit Response

Division Response:

The Division is compliant with the New Jersey Conflicts of Interest Law (N.J.S.A. 52:13D-12 et seq.), the rules of the State Ethics Commission (N.J.A.C. 19:61-1.1 et seq.) and the Division's Supplementary Code of Ethics.

The Division engages in a multi-step approach to ensure compliance to all applicable ethics requirements. At the start of employment, at the onset of new outside activities with potential conflicts, and every three years office-wide, all Division attorneys are required to complete Outside Activity Questionnaires (OAQ) and an in-person ethics training. If a Deputy Attorney General (DAG) is seeking to engage in a new outside activity that may require ethics review for compatibility with the role of DAG, they must complete a Request for Approval of Outside Activity form (OAR). Additionally, the ethics training of all Division attorneys includes an annual on-line ethics briefing

Regarding the DASG who were receiving compensation for union activities in addition to their Division salary, the DASG had only been unionized for a short time and the Division was newly dealing with the question of whether payment by the union to certain DASG was an outside activity to be declared. It was ultimately decided that such activity should be declared on an OAQ and OAR and this process was completed. In September of 2017, in the regular course of business, the Division underwent a triennial office-wide initiative to have all DASG complete updated OAQs and if needed OARs. All DASG who were receiving compensation for union activities during the audit time-period completed updated OAQs.

Finding

Client Billing Process

The client billing process between the division and client agencies needs improvement.

Recommendation:

We recommend the division implement stronger controls over calculating quarterly bills. Client agreements, quarterly bills, and legal services quarterly analysis reports should be reviewed for accuracy. Refunds to clients should be processed in a timely manner.

Division Response:

The Department and the Division continue to strengthen internal controls to ensure accuracy of client agreements, quarterly billings and legal services. The Division will do its best to capture the correct cost and encourage clients to come to a firm FTE agreement. In the rare occasion there is a delay in the client consenting to the number of FTEs contained within an agreement, a note or comments will be made and attached to the agreement stating any significant client issues.

The Division generally processes refund reimbursements in a timely fashion. Refunds are usually processed in the same fiscal year in which the payment was received. The Fiscal Unit continues

New Jersey Division of Law 2018 Audit Response

to look for ways to improve and streamline the billing process for all divisions and will be working with an analyst to review the current system within the Division.

Finding

Legal Services Expenditures

The division should comply with outside counsel guidelines.

Recommendation:

We recommend the division comply with its outside counsel guidelines and have any exceptions approved in advance in writing by the division's management.

Division Response:

OLS stated that there were two outside counsel transactions that included billable hours in excess of the 10 hour per day limit for an individual attorney. The Outside Counsel Guidelines provide, "Absent prior consent, the Division will not pay for more than ten (10) hours of time by a single timekeeper in a single day, but the Designated Attorney may increase that number of permissible hours in matters of special urgency or where cases are in or approaching trial." The Guidelines do not require that a written approval be made in advance by Division management.

An agreement to raise the 10-hour cap only occurs in emergent circumstances when it is clear the volume of work necessary cannot be performed in a given time period without expanding the daily limit. In such a situation, the DOL Designated Attorney would be in consultation with the outside counsel vendor to discuss the needs of the emergent matter and a follow up letter could be issued by either. This letter would memorialize the daily hour exception, however, such memorialization is not required by the Guidelines. The Guidelines only require "prior consent" which is confirmed in the writing submitted to OLS.

The Division undergoes a thorough multi-step review of all outside counsel spending pursuant to the criteria set forth in the Guidelines. That comprehensive review is reflected in the sample of 15 outside counsel billings collected by OLS. The invoices in the sample include reductions for counsel billing in excess of 10 hours a day in addition to other invoiced costs that were not consistent with our Outside Counsel Guidelines. The Division is in compliance with its Outside Counsel Guidelines.

Auditor's Follow-up Response

Comments Related to Disaster Recovery Testing

Circular 14-02-NJOIT was in effect during our audit period. The new manual was not in effect until March 5, 2018. Verification of compliance with the new Statewide Information Security Manual will be performed during our subsequent compliance review of the division.