



**METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY
OFFICE OF INTERNAL AUDIT**

Professional Audit and Advisory Service

FINAL REPORT

**Audit of the Metropolitan Public Defender's Office
Compliance with Financial and Operational Policies**

Date Issued: July 15, 2010

Office Location and Phone Number

222 3rd Avenue North, Suite 401
Nashville, Tennessee 37201
615-862-6110

*The Metropolitan Office of Internal Audit is an independent audit agency
reporting directly to the Metropolitan Nashville Audit Committee*

EXECUTIVE SUMMARY

July 15, 2010

Background

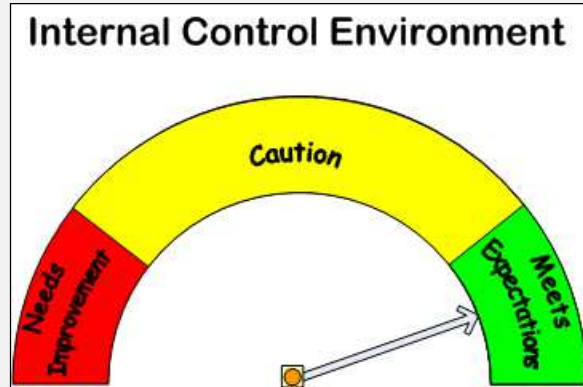
The mission of the Metropolitan Public Defender's Office is "to provide zealous representation and to fight for equal justice for the indigent accused in accordance with the United States Supreme Court mandate and the Metropolitan Government of Nashville and Davidson County Charter."

The Public Defender is an elected official with elections for this office occurring every four years. C. Dawn Deaner became Public Defender in September 2008 when the Metro Council elected her to fill the position in the wake of the untimely death of her predecessor, Ross Alderman. The Office has a staff of 71, comprised of attorney staff, social workers, investigators, and administrative positions.

Internal Control Compliance Results

The Office of Internal Audit tested the Metropolitan Public Defender's Office's compliance with applicable Metro Nashville financial and operational policies for the following areas:

- Ethics
- Safety
- Payroll and Leave Accounting
- Computer Security
- Capital and Tracked Assets
- Petty Cash
- Procurement and Expenditures
- Grant Spending



Overall, compliance met expectations.

However, management needs to be attentive to:

- Consistent application of leave policies and procedures.
- Safeguarding assets by ensuring that doors to the office that should remain locked are actually locked and securing keys to storage cabinets that hold valuables.

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INTRODUCTION

AUDIT INITIATION

The approved Office of Internal Audit annual Audit Work Plan included an audit of the Metropolitan Public Defender's Office. The audit was initiated due to the length of time (in excess of five years) that has elapsed since the last audit was performed of this function.

BACKGROUND

The mission of the Metropolitan Public Defender's Office is "to provide zealous representation and to fight for equal justice for the indigent accused in accordance with the United States Supreme Court mandate and the Metropolitan Government of Nashville and Davidson County Charter."

The Public Defender is an elected official with elections for this office occurring every four years. C. Dawn Deaner became Public Defender in September 2008 when the Metro Council elected her to fill the position in the wake of the untimely death of her predecessor, Ross Alderman. The Office has a staff of 71, comprised of attorney staff, social workers, investigators, and administrative positions.

METRO NASHVILLE FINANCIAL HIGHLIGHTS

The budget summary for the Public Defender's Office, per the 2008, 2009, and 2010 fiscal year Operating Budget follows:

Exhibit A – Public Defender's Office Budget Summary

| Account | Fiscal Year | | |
|--------------------------------------|-------------|-------------|-------------|
| | 2008 | 2009 | 2010 |
| Expenditures & Transfers: | | | |
| GSD General Fund | \$5,988,100 | \$5,637,200 | \$5,639,000 |
| Revenues & Transfers: | | | |
| Other Government Agencies | 1,551,600 | 1,588,500 | 1,544,900 |

Source: Metro Nashville's EnterpriseOne Financial System

Exhibit B - Top Five Metro Nashville Paid Vendors/Contractors

| Vendor/Contractor Name | Amount Paid March 1, 2008 to February 28, 2010 | Purpose |
|--|--|---|
| 1. Parkway Towers, LLC | \$679,226 | Lease of office space and yearly operating expense. |
| 2. Tennessee Department of Revenue | 32,400 | Professional privilege tax. |
| 3. Ikon Financial Services / Ikon Office Solutions, Inc. | 9,431 | Rental expense, repair and maintenance of copiers. |
| 4. Douglas Printing Co. | 4,804 | Printing and binding. |
| 5. Thompson West | 3,620 | Legal reference books. |

Source: Metro Nashville's EnterpriseOne Financial System

OBJECTIVES AND CONCLUSIONS

Ethics

1. *Have employees received ethics training?*

Yes. No significant issues or control observations were noted. The Metropolitan Public Defender's Office Employee Handbook includes topics on ethics, employees sign a Confidentiality Policy, and the State of Tennessee requires attorneys to complete three hours per year of continuing legal education dedicated to ethics training.

Safety

2. *Does the department have a building evacuation plan?*

Yes. No significant issues or control observations were noted. Controls and processes were in place to ensure employees' safety.

3. *Does the department have a Business Continuity or Disaster Recovery plan?*

Yes. The Public Defender's Office provides programs that were not considered critical for immediate recovery in case of an unplanned disruption of services. A minimal Base Formation plan encompassing employee communication had been developed.

Payroll and Leave Accounting

4. *Was employee leave time applied according to the Metropolitan Public Defender's Office Employee Handbook?*

Generally yes. Leave is generally accrued and deducted according to the policies set forth in the Metropolitan Public Defender's Office Employee Handbook. However we observed several instances to the contrary (see Observation A, and Observation B, both on page 5).

In addition, we have concerns that the Public Defender's Office does not consistently enter leave time taken in EnterpriseOne payroll which could impact the department's ability to participate in the leave accrual functionality in the future.

Computer Security

5. *Were employees only given access based on need to know basis for their job?*

Yes. No significant issues or control observations were noted. Controls and processes were in place to ensure that employees were only given access based on need to know basis for their job.

Capital and Tracked Assets

6. *Were fixed assets properly accounted for and recorded in Metro Nashville's EnterpriseOne financial system?*

Yes. No significant issues or control observations were noted. Controls and processes were in place to safe guard capital assets. Capital assets were recorded in Metro Nashville's EnterpriseOne financial system.

7. *Was computer equipment adequately safeguarded?*

Generally yes. No significant issues or control observations were noted. The Office of Internal Audit observed computer equipment secured in employees' workspace.

Petty Cash

8. *Were petty cash accounts properly safeguarded and expenditures properly approved?*

Generally yes. Measures have been implemented to safeguard funds; however several simple steps should be taken to enhance security (see Observation C, page 6). Expenditures were properly approved.

Procurement and Expenditures

9. *Were expenditures made in accordance with Metro Nashville's Procurement Code?*

Yes. No significant issues or control observations were noted. Controls and processes were in place to ensure expenditures were made in accordance with Metro Nashville's Procurement Code.

10. *Were travel related expenditures made in accordance to Metro Nashville's Travel Policy?*

Yes. No significant issues or control observations were noted. Controls and processes were in place to ensure travel expenditures were made in accordance to Metro Nashville's Travel Policy.

11. *Were credit card purchases made in accordance with Metro Nashville's Credit Card Policy?*

Yes. No significant issues or control observations were noted. Controls and processes were in place to ensure expenditures were made in accordance with Metro Nashville's Credit Card Policy.

Grants

12. *Was grant spending monitored and were grant conditions followed?*

Yes. No significant issues or control observations were noted. Controls and processes were in place to ensure grant spending was monitored and grant conditions were followed in accordance with the Office of Criminal Justice Programs' American Recovery and Reinvestment Act Manual.

OBSERVATIONS AND RECOMMENDATIONS

A – Authorization of Leave Time is not in Compliance with Stated Policies and Procedures

The Office of Internal Audit found instances where employees took annual leave in excess of their accrued leave time and evidence of written authorization from the Public Defender did not exist to support the extension of leave. Additionally, the Office of Internal Audit noted an instance where an employee took leave without pay and authorization from the Public Defender was not documented in writing.

The Metropolitan Public Defender's Office Employee Handbook outlines leave policies and procedures. Per the *Handbook*, "Employees are not permitted to take annual leave or sick leave in excess of their accrued leave time without first obtaining written authorization by the Public Defender." Similarly, in the event of unusual circumstances, the Public Defender may grant an employee leave without pay, for which authorization must be documented in writing.

Criteria:

Metropolitan Public Defender's Office Employee Handbook, January 2009, Section V, Subsection C "*Extension of Annual and/or Sick Leave*" and Subsection D "*Leave Without Pay*".

Risk:

Applying policies and procedures inconsistently diminishes their perceived value and may present the appearance of inequitable application. Inconsistent application also diminishes the accuracy of leave reporting and payroll records.

Recommendation:

The Metropolitan Public Defender should ensure written authorization for extensions of Annual and/or Sick Leave and Leave Without Pay is obtained according to policies and procedures outlined in the Public Defender's Handbook.

B – Non-compliance of Departmental Polices Regarding Family Medical Leave Act

The Office of Internal Audit found an instance where an employee took unpaid leave under the Family Medical Leave Act but was not required to exhaust accrued vacation time prior to taking unpaid leave.

The Metropolitan Public Defender's Office Employee Handbook states that employees must exhaust accrued vacation leave prior to requesting up to twelve weeks of unpaid leave per Family Medical Leave Act.

Criteria:

Metropolitan Public Defender's Office Employee Handbook, January 2009, Section V, Subsection C "Extension of Annual and / or Sick Leave" and Subsection G "FMLA Leave".

Risk:

Applying policies and procedures inconsistently diminishes their perceived value and may present the appearance of inequitable application. Inconsistent application also diminishes the accuracy of leave reporting and payroll records.

Recommendation:

The Metropolitan Public Defender should ensure employees are required to exhaust accrued vacation leave prior to taking up to twelve weeks unpaid under the Family Medical Leave Act.

C – Safeguarding of Assets Could be Enhanced

The Office of Internal Audit noted two instances where safeguarding of assets could be enhanced.

Petty cash is stored in a lock box within a locked cabinet. The drawer is routinely accessed by Public Defender staff other than the custodian of petty cash.

A door to the Public Defender's Office, which should remain locked during business hours, was found unlocked. Upon discovery, this matter was immediately addressed by Public Defender staff.

Criteria:

- *Internal Control and Compliance Manual for Tennessee Municipalities*, State of Tennessee, Division of Municipal Audit,
 - Title 3, Risk Assessment, Chapter 1, Identifying Risks, June 2009
 - Title 5, Control Activities, Chapter 11, Petty Cash and Change Funds, June 2009
- Prudent business practice.

Risk:

Inadequate safeguarding of assets increases the potential risk of theft or loss.

Recommendation:

The Metropolitan Public Defender should ensure:

- a) Petty cash funds are stored in a secure location where only the custodian of the funds has access to them.
- b) Entrances to the Public Defender's Office that are not used by the public remain locked at all times.

GENERAL AUDIT INFORMATION

STATEMENT OF COMPLIANCE WITH GAGAS

We conducted this compliance audit from March to May 2010 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our observations and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our observations and conclusions based on our audit objectives.

SCOPE AND METHODOLOGY

The audit period focused primarily on the period March 1, 2008, through February 28, 2010, financial balances, transactions, and compliance on the processes in place during the time of the audit. Certain analyses required the consideration of financial results, performance, and operations outside that period.

The methodology employed throughout this audit was one of objectively reviewing various forms of documentation, including written policies and procedures, financial information and various forms of data, reports and information maintained by the Metropolitan Public Defender's Office.

CRITERIA

In conducting this audit, the existing operations and processes of the Metropolitan Public Defender's Office were evaluated for compliance with:

- Metro Nashville Procurement Policy
- Metro Nashville Finance Department Policy #14, Capital Assets
- Metro Nashville Finance Department Policy #18, Travel
- Metro Nashville Finance Department Policy #19, Credit Card
- Metro Public Defender's Office Employee Handbook
- Metro Nashville Civil Service Rules for Attendance and Leave (Chapter 4)
- Metro Nashville Civil Service Rules for Special Pay Provisions (Chapter 5, Section 7)
- IT Governance Institute's Control Objectives for Information Technology (COBIT 4.1) – DS5.3 Ensure System Security, Identity Management and DS5.4 Ensure System Security, User Account Management
- Office of Criminal Justice Programs, American Recovery and Reinvestment Act Manual

STAFF ACKNOWLEDGEMENT

Joe McGinley, CISSP, Quality Assurance Coordinator
Roxanne Caruso, In-Charge Auditor

APPENDIX A. MANAGEMENT RESPONSE

- Management's Responses Starts on Next Page -

METROPOLITAN PUBLIC DEFENDER'S OFFICE

404 James Robertson Parkway
Parkway Towers, Suite 2022
Nashville, TN 37219

C. Dawn Deaner
Public Defender

(615) 862-5730
(615) 862-5736 Fax

July 12, 2010

Mr. Mark Swann
Metropolitan Auditor
222 Third Ave. North, Suite 401
Nashville, TN 37201

Dear Mr. Swann:

This letter acknowledges the receipt of your audit of the Metropolitan Public Defender's Office Compliance with Financial and Operational Policies. We have reviewed the report and agree with your recommendations. Most of the corrective measures have already been implemented, and I anticipate the remaining measures will be in place by July 31, 2010.

The Metropolitan Public Defender's Office works hard to develop and administer internal policies in a manner that safeguards the taxpayer resources entrusted to our use. We appreciate the efforts you and your staff made during this independent audit to identify areas in which we can improve, and we will take those recommendations to heart.

Sincerely,



C. Dawn Deaner
Metropolitan Public Defender

