



COUNTY OF LEHIGH
OFFICE OF THE CONTROLLER

LEHIGH COUNTY GOVERNMENT CENTER
17 SOUTH SEVENTH STREET
ALLENTOWN, PA 18101-2400
(610) 782-3082 FAX: (610) 871-2897

GLENN ECKHART
COUNTY CONTROLLER

JOHN A. FALK
DEPUTY CONTROLLER

TO: Final Report Distribution
FROM: Glenn Eckhart, County Controller G.E.
DATE: October 14, 2013
RE: Audit of Collection of Forfeited Bail Bonds

We have completed our financial audit of Department of Law Collection of Forfeited Bail Bonds for the period January 1, 2009 to December 31, 2012. Our audit report number 13-52 is attached.

The results of our audit are:

- Increased department of law involvement in monitoring increase cash collections when controller's office audits are initiated.
- The basis for negotiated settlements of insurance backed bail forfeitures are not documented. Negotiated settlements reduced county collections by \$266,076.
- Payment for 50% of insurance backed bail forfeitures were over 120 days late.

Attachment

COUNTY OF LEHIGH, PENNSYLVANIA

DEPARTMENT OF LAW

Financial Audit

*Collection of Forfeited Bail Bonds (Bonding Agents /Insurance Companies)
For the Period January 1, 2009 to December 31, 2012*

REPORT NO. 13-52

COUNTY OF LEHIGH, PENNSYLVANIA
DEPARTMENT OF LAW
COLLECTION OF FORFEITED BAIL BONDS

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COUNTY OF LEHIGH, PENNSYLVANIA
DEPARTMENT OF LAW
COLLECTION OF FORFEITED BAIL BONDS

Background Information

The court grants the following types of bail: cash bail; 10% cash bail; unsecured bail; released on own recognizance (ROR); and bail bond (insured appearance). This audit focused on court activities where the defendant obtained a bail bond and subsequently failed to appear in court.

The clerk of judicial records–criminal division processes the defendant’s bail bond activity. In cases where the defendant fails to appear for the scheduled court hearing/trial, the bail bond is declared forfeited by the judge presiding over the case. The management of the clerk of judicial records – criminal division furnishes a list (along with the appropriate court documents) of defendants who fail to appear for their scheduled court hearing/trial to the department of law. The department of law then makes a claim with the insuring bail bonding agent, insurance company or individual for payment to the County of Lehigh. There are situations that may mitigate collecting the amount of the forfeited bail bond (defendant already incarcerated, vacated or voided cases by judicial order or the financial condition of the bail bondsman or related insurer, etc). The department of law has overall responsibility for monitoring the amount of uncollected defendant bail bonds and the actual collection of the forfeited bail bonds.



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Matthew R. Sorrentino, Esquire, County Solicitor
Department of Law
Lehigh County Government Center
17 South Seventh Street
Allentown, PA 18101-2400

We have audited the accompanying forfeited bail bond financial statements of the department of law for the period January 1, 2009 to December 31, 2012 as listed in the Table of Contents. The financial statements are the responsibility of the department of law's management. Our responsibility is to express an opinion on the forfeited bail bond financial statements based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the generally accepted government auditing standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe our audit provides a reasonable basis for our opinion.

As discussed in Note 1, the financial statements were prepared on the basis of cash receipts and disbursements, which is a comprehensive basis of accounting other than generally accepted accounting principles.

Also, as discussed in Note 1, the financial statements present only the department of law's financial activity and does not purport to, and does not, present fairly the assets, liabilities, and results of operations of the County of Lehigh for the period January 1, 2009 to December 31, 2012 in conformity with the cash receipts and disbursements basis of accounting.

In our opinion, the forfeited bail bond financial statements referred to above present fairly, in all material respects, the financial activity arising from cash transactions of department of law for the period January 1, 2009 to December 31, 2012 on the basis of accounting described in Note 1. However, we noted control deficiencies or other management issues that are described in the accompanying "*Schedule of Audit Findings and Recommendations*". We also noted the current status of issues raised in our prior audit report #9-65 (refer to the "Schedule of Prior Audit Findings and Recommendations") issued on December 31, 2009.

In accordance with *Government Auditing Standards*, we have also issued our report dated October 7, 2013 our consideration of the department of law's management's internal control over financial reporting and our tests of its compliance with certain provisions of laws, regulations, and other matters. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* and should be considered in assessing the results of our audit.



Glenn Eckhart
County Controller

October 7, 2013
Allentown, Pennsylvania

xc: The Honorable Kelly Banach, Administrative Judge, Criminal Division
William Berndt, Court Administrator
Board of Commissioners
Matthew Croslis, County Executive
Brian Kahler, Fiscal Officer
James Martin, District Attorney
The Honorable Carol K. McGinley, President Judge
Andrea Naugle, Clerk of Judicial Records

County of Lehigh, Pennsylvania

Department of Law

Forfeited Bail Bonds (Bonding Agents / Insurance Companies) Activity

Turned over for Collection by Clerk of Judicial Records- Criminal Division

January 1, 2009 to December 31, 2012

Year the Case Originated	Total Cases ----To Be Collected----		Total ----Cases Vacated----		Total ----Cases Settled----		Total Open Cases --December 31, 2012--	
	Total # of Cases	Total Face Amount of Bonds	Total # of Cases	Total Face Amount of Bonds	Total # of Cases	Total Face Amount of Bonds	Total # of Cases	Total Face Amount of Bonds
Current Audit								
2012	11	\$ 228,000	4	\$ 28,000	1	\$ 20,000	6	\$ 180,000
2011	12	130,500	6	57,000	1	2,500	5	71,000
2010	8	66,000	6	49,000	1	2,000	1	15,000
2009	17	230,000	10	119,500	5	103,000	2	7,500
Total Current Audit	48	654,500	26	253,500	8	127,500	14	273,500
Prior Audit - Open Cases								
2008	8	\$ 183,000	1	\$ 25,000	7	\$ 158,000	-	\$ -
2007	2	35,000	-	-	2	35,000	-	-
2006	5	21,000	-	-	5	21,000	-	-
2005	7	135,000	1	50,000	4	65,000	2	20,000
2004	5	50,000	-	-	4	40,000	1	10,000
2003 and Prior	20	213,000	-	-	8	86,000	12	127,000
Total Prior Audit	47	637,000	2	75,000	30	405,000	15	157,000
Grand Total	95	\$ 1,291,500	28	\$ 328,500	38	\$ 532,500	29	\$ 430,500

County of Lehigh, Pennsylvania

Department of Law

Detail of Forfeited Bail Bonds Settled (Bonding Agents / Insurance Companies)

January 1, 2009 to December 31, 2012

<u>Year the Case Originated</u>	<u>Total # of Cases</u>	<u>Amount Received</u>	<u>Amount Not Received</u>	<u>Total Face Amount of Bonds</u>
<u>Current Audit</u>				
2012	1	\$ 5,000	\$ 15,000	\$ 20,000
2011	1	-	2,500	2,500
2010	1	2,000	-	2,000
2009	5	83,303	19,698	103,000
Total Current Audit	<u>8</u>	<u>90,303</u>	<u>37,198</u>	<u>127,500</u>
<u>Prior Audit - Open Cases</u>				
2008	7	73,331	84,669	158,000
2007	2	16,755	18,245	35,000
2006	5	12,300	8,700	21,000
2005	4	15,252	49,748	65,000
2004	4	6,935	33,065	40,000
2003 and Prior	8	51,548	34,453	86,000
Total Prior Audit	<u>30</u>	<u>176,121</u>	<u>228,879</u>	<u>405,000</u>
Grand Total	<u>38</u>	<u>\$ 266,423</u>	<u>\$ 266,077</u>	<u>\$ 532,500</u>

County of Lehigh, Pennsylvania
Department of Law
Detail of Forfeited Bail Bond Settlements by Insurance Company
January 1, 2009 to December 31, 2012

<u>Case Number</u>	<u>Insurance Company</u>	<u>Face Amount of Bond</u>	<u>Amt Paid To Lehigh County</u>	<u>% of Face Amount Received</u>
<u>Negotiated Settlements:</u>				
2002/2019	Sirius	\$ 25,000	\$ 7,500	30%
2002/3977	Sirius	20,000	6,000	30%
2007/844	Bankers	75,000	75,000	100%
2007/844	Bankers	-	(2,960)	
2003/550	Bankers	4,000	1,048	26%
2004/1475	Bankers	2,000	78	4%
2006/3735	Bankers	5,000	750	15%
2007/4519	Bankers	3,000	750	25%
2008/326	Bankers	100,000	28,781	29%
2007/3134	Bankers	10,000	4,251	43%
2007/3131	Bankers	10,000	4,251	43%
2008/4140	Bankers	5,000	10	0%
2005/497	Seneca	3,000	300	10%
2005/2398	Seneca	6,000	1,500	25%
2006/1030	Seneca	5,000	4,000	80%
2006/3636	Lexington	2,000	1,500	75%
2009/4571	ICNA	2,500	-	0%
2007/1020	Lexington	30,000	16,005	53%
2003/2267	Seneca	15,000	1,500	10%
2000/2683	Bankers	3,000	358	12%
2004/702	Seneca	20,000	5,000	25%
2007/2383	Lexington	5,000	3,800	76%
2007/5256	Seneca	10,000	-	0%
2004/3055	Bankers	25,000	2,548	10%
2004/2101705	Harco	10,000	2,500	25%
2003/1263	Bankers	10,000	205	2%
2003/3189	Harco	20,000	10,000	50%
2009/2088	Kloss	3,000	2,750	92%
2010/5335	ICNA	20,000	5,000	25%
Total Negotiated Settlements		\$ 448,500	\$ 182,423	41%
<u>Full Amount :</u>				
1999/2089	Bankers	\$ 2,000	\$ 2,000	100%
1999/3850	Bankers	2,000	2,000	100%
1999/3095	Bankers	3,000	3,000	100%
2002/3916	Sirius	25,000	25,000	100%
2006/752	Bankers	5,000	5,000	100%
2007/2873	Bankers	5,000	5,000	100%
2008/2756	Bankers	15,000	15,000	100%
2002/2312	Bankers	5,000	5,000	100%
2010/3161	First Indemnity	2,000	2,000	100%
2008/1112	Contintental	20,000	20,000	100%
Total Full Amount		\$ 84,000	\$ 84,000	100%
Grand Total County		\$ 532,500	\$ 266,423	50%

COUNTY OF LEHIGH, PENNSYLVANIA
DEPARTMENT OF LAW
COLLECTION OF FORFEITED BAIL BONDS

Notes to Financial Statements
For the Period January 1, 2009 to December 31, 2012

1. **Summary of Significant Accounting Policies**

A. Reporting Entity

The department of law's financial activity is a part of the County of Lehigh's reporting entity, included in the general fund and is subject to annual financial audit by external auditors. This report is only for internal audit purposes.

B. Basis of Accounting

The accounting records of the County of Lehigh and forfeited bail bond financial statements are maintained on the cash receipts and disbursements basis of accounting. Under this basis of accounting, revenue is recognized when cash is received and expenditures are recognized when paid. This differs from Generally Accepted Accounting Principles (GAAP) which requires the accrual basis of accounting.



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We have audited the financial statements of the department of law forfeited bail bonds for the period January 1, 2009 to December 31, 2012 and have issued our report thereon dated October 7, 2013. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the generally accepted government auditing standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States.

In planning and performing our audit, we considered the department of law's management internal control over financial reporting as a basis for designing our auditing procedures for the purpose of expressing our opinion on the forfeited bail bond financial statements, but not for the purpose of expressing an opinion on the effectiveness of the department of law's management's internal control over financial reporting. Accordingly, we do not express an opinion on the effectiveness of the department of law's internal control over financial reporting.

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 misstatements on a timely basis. A significant deficiency is a deficiency, or 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.

A material weakness is a deficiency, or combination of deficiencies, in internal control, such as there is reasonable possibility that a material misstatement of the entity's financial statements will not be prevented or detected and corrected on a timely basis.

Our consideration of internal control over financial reporting was for the limited purpose described in the first paragraph of this section and would not necessarily identify all deficiencies in internal control that might be significant deficiencies or material weaknesses. We did not identify any deficiencies in internal control over financial reporting that we consider to be material weaknesses, as defined above.

As part of obtaining reasonable assurance about whether the department of law's financial statements are free of material misstatement, we performed tests of its 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 financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit, 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*.

We noted certain matters that we reported to the management of the department of law in a separate section titled "Schedule of Audit Findings and Recommendations" and "Schedule of Prior Audit Findings and Recommendations".

Department of law's response to our audit is included in this report. We did not audit the department of law's response and, accordingly, do not express an opinion on it.

This report is intended solely for the information and use of management and other affected county offices and is not intended to be and should not be used by anyone other than these specified parties. However, this report is a matter of public record and its distribution is not limited.

A handwritten signature in dark ink, appearing to read "Glenn Eckhart", with a long horizontal flourish extending to the right.

Glenn Eckhart
County Controller

October 7, 2013
Allentown, Pennsylvania

COUNTY OF LEHIGH, PENNSYLVANIA
DEPARTMENT OF LAW
COLLECTION OF FORFEITED BAIL BONDS

Schedule of Audit Findings and Recommendations

1. Bail Forfeiture Monitoring

Condition: Increased department of law involvement and cash collections increase when Controller's Office audits are initiated. During our last audit, our audit fieldwork was performed from June to October 2009. During 2009 there were no insurance company collections from January 2009 to September 2009. Collections from October 2009 through March 2010 totaled \$197,570. There were no collections from April 2010 through December 2010.

The current audit was started in July 2013. During January to July 2013, the only insurance company collections related to \$50,000 (Case 3048/11) estreated in February 2012 and paid in four \$12,500 installments during 2013. No other insurance company collections were noted until the current audit was initiated in July 2013. Cash collections for five cases totaling \$35,750 were received since the start of our current audit (July–August 2013).

The management of the department of law has implemented some monitoring improvements since the last audit (Report #09-65 issued December 31, 2009), however, supervision of staff charged with the collection of forfeited bail bonds is not adequate. (Refer to prior audit finding #1. Inadequate Supervision, Current Status, on page 13.)

Recommendation: Quarterly status reports should be prepared. Department of Law management should monitor bail bond forfeiture collection on a regular basis.

2. Basis for Negotiated Settlement

Condition: Reasons for negotiated settlement of forfeited bail bonds are not documented. Negotiated settlements cost \$266,076 or 50% of the issued bail bond amount. Our current audit covered the collection of forfeited bonds for the period January 1, 2009 through December 31, 2012. Collection activity was:

<u>#of Open Cases 12/31/08</u>	<u>Year Case Turned Over to Law</u>	<u># of Cases Funds Collected</u>	<u>Total Bond Face Amount</u>	<u>Amount Collected</u>	
20	2003 & Prior	8	\$ 86,000	\$ 51,548	
5	2004	4	\$ 40,000	\$ 6,935	
7	2005	4	\$ 65,000	\$ 15,252	
5	2006	5	\$ 21,000	\$ 12,300	
2	2007	2	\$ 35,000	\$ 16,755	
8	2008	7	\$158,000	\$ 73,331	
Cases Turned over Since 12/31/08					
17	2009	5	\$103,000	\$ 83,303	
8	2010	1	\$ 2,000	\$ 2,000	
12	2011	1	\$ 2,500	\$ 0	
11	2012	<u>1</u>	<u>\$ 20,000</u>	<u>\$ 5,000</u>	
	Total	<u>38</u>	<u>\$532,500</u>	<u>\$266,424*</u>	<u>50%</u>

* An additional \$35,750 was collected since the start of our audit (July-August 2013)

Condition: The reasons for negotiating (insurance backed) forfeited bail bonds should be documented in the case files by Department of Law management. All negotiated settlements should be approved by the Criminal Court Administrative Judge.

3. Late Payments

Condition: Payments for 19 out of 38 cases (50%) of insurance backed bail forfeitures were over 120 days late. After a hearing before a judge, a signed "Order of Court" is issued. The "Order of Court" spells out the amount to be paid to Lehigh County to exonerate the insurance company. Also, payments can come from judgments that are filed when an insurance company fails to communicate with the department of law management about the forfeiture. Once an "Order of Court" or a judgment is filed, there is inadequate collections follow-up by the department of law management.

No. of Days from Order of Court/ <u>Judgment to Receipt</u>	<u># Cases</u>	<u>%</u>
30 or less	14	36
31 to 60	1	3
61 to 90	0	0
91 to 120	4	11
121 to 180	2	5
181 and over	<u>17</u>	<u>45</u>
	<u>38</u>	<u>100</u>

Condition: Department of law management should properly follow-up on the collection of insurance-backed bail forfeitures on a regular basis.

The department of law management should request the fiscal officer include court-approved, agreed-on amounts on the county's accounts receivable system.

COUNTY OF LEHIGH, PENNSYLVANIA
DEPARTMENT OF LAW
COLLECTION OF FORFEITED BAIL BONDS

Schedule of Prior Audit Findings and Recommendations
(Report #09-65 issued December 31, 2009)

1. Inadequate Supervision

Condition: The management of the department of law did not adequately supervise the staff charged with the collection of forfeited bail bonds.

- The law department spreadsheet that tracks the status of all outstanding forfeitures is not updated as to forfeiture activity.
- Civil judgments were not filed in 22 percent of forfeiture cases involving bonding agents/insurance companies for cases turned over for collection during the period January 1, 2005 to December 31, 2008.
- Civil judgments were not filed in 75 percent of forfeiture cases involving unsecured, ROR (released on recognizance), or percentage cash bail turned over for collection during the period January 1, 2005 to December 31, 2008.
- No follow-up has taken place since January 25, 2008 on the forfeiture cases where an “Interrogatories in Aid of Execution” has been filed (but no response was received).

Recommendation: The management of the department of law should supervise more closely the staff handling the collection of outstanding bail forfeitures. Quarterly status reports should be distributed to the county fiscal officer, the district attorney, the president judge of the court of common pleas and the clerk of judicial records as to how many cases have been settled and for how much. Civil judgments should be filed for all open bail forfeitures (unsecured, released on recognizance, percentage cash and bail bondsmen/insurance companies). Also, management should investigate the possibility of turning over the collection of all outstanding bail forfeiture cases (except for bail bonds involving a bonding agent/insurance company) to a private collection agency.

Current Status

- Excel Spreadsheet is up to date.
- Civil judgments are filed in all cases involving bonding agents/insurance companies.
- Civil judgments are not filed for cases involving Unsecured and Percentage Cash Bail.
- No follow-up on four cases where an “Interrogatories in Aid of Execution” has been filed.
- Quarterly status reports on settled forfeiture cases are not issued.
- Department of Law management still is in charge of collecting bail forfeitures.

2. Negotiated Settlements Reduced Collections by \$345,519

Condition: The staff of the department of law negotiated down the court-ordered bail amount on 86 percent of the cases (25 of 29) settled during the period January 1, 2005 to December 31, 2008 that involved a bail bondsmen/insurance company. The defendant or another individual paid a fee to the bail bondsmen for a guaranteed coverage in the amount of the bail bond, however, only 27% was collected because \$345,519 was given up in negotiated settlements.

<u>Year the Case Originated</u>	<u>Total No. of Cases</u>	<u>Amount Received</u>	<u>Amount Not Received</u>	<u>Total Face Amount of Bonds</u>
2008	0	\$ ---	\$ ---	\$ ---
2007	1	6,646	18,354	25,000
2006	6	5,790	86,710	92,500
2005	5	6,300	58,700	65,000
Not Estreated	5	9,300	50,700	60,000
<i>Subtotal Current Audit</i>	<u>17</u>	<u>\$ 28,036</u>	<u>\$ 214,464</u>	<u>\$242,500</u>
		12%	88%	100%
2004	11	\$ 95,075	\$108,925	\$204,000
2003 and Prior	<u>1</u>	<u>2,870</u>	<u>22,130</u>	<u>25,000</u>
<i>Subtotal Prior Audit</i>	<u>12</u>	<u>\$ 97,945</u>	<u>\$131,055</u>	<u>\$229,000</u>
		43%	57%	100%
Grand Total	<u>29</u>	<u>\$125,981</u>	<u>\$345,519</u>	<u>\$471,500</u>
		27%	73%	100%

Recommendation: The management of the department of law should not negotiate court-ordered bail amounts with bail bondsmen/insurance companies. Bail bondsmen and/or their insurance companies should be required to meet their obligations as to the full amount of the bail forfeiture.

Current Status: See Finding #2 on page 11 for negotiated settlements since December 2008.

3. Negotiated Settlement Amounts Could Not Be Confirmed (\$35,269)

Condition: In 84% of cases (21 of 25) where a negotiated settlement took place, the bail bondsmen paid the settlement amount to the County of Lehigh. We attempted to confirm directly with the insurance companies involved, the amount paid out and to whom it was paid for each of the 25 cases. The insurance companies involved did not supply us with the requested information for 60% (15 of 25) of the cases. Without a written confirmation from the insurance company, there is no way to determine if the County of Lehigh received the correct amount of money from the bail bondmen.

	<u>Cases</u>	<u>Negotiated Amounts</u>	<u>Amount Not Received</u>	<u>Total Face Amount of Bonds</u>
No insurance co. funds paid out	4	\$ 1,837	\$ 63,163	\$ 65,000
Amounts paid out by insurance co. agree to the amounts recorded	<u>6</u>	<u>34,375</u>	<u>75,625</u>	<u>110,000</u>
<i>Subtotal – Confirmed</i>	<u>10</u> 40%	<u>\$ 36,212</u>	<u>\$138,788</u>	<u>\$175,000</u>
Insurance company did not confirm amount paid out and to whom it was paid	9	\$ 27,411	\$144,589	\$172,000
Confirmation not returned	<u>6</u>	<u>7,858</u>	<u>62,142</u>	<u>70,000</u>
<i>Subtotal – Not Confirmed</i>	<u>15</u> 60%	<u>\$ 35,269</u>	<u>\$206,731</u>	<u>\$242,000</u>
Grand Total	<u>25</u> 100%	<u>\$ 71,481</u>	<u>\$345,519</u>	<u>\$417,000</u>

Recommendation: The management of the department of law should only accept insurance company checks made payable to the “County of Lehigh” to settle bail forfeiture cases. If the bonding agent decides to pay the negotiated forfeit amount and not make a claim with the insurance company, the bonding agent should include a certifying letter from the insurance company confirming what amounts, if any, were paid to the bonding agent.

Current Status: Most bail forfeiture payments are still being made either by the bonding agent/ bonding company or the attorney for the bonding agent/bonding company. Occasionally, the insurance company will pay the bail forfeiture.

4. Compliance Monitoring Not Done

Condition: The staff of the department of law does not monitor compliance to Lehigh County Criminal Procedure 531 (Leh.R.Cr.P.531), which states:

“No bond shall be executed by any corporate surety where the aggregate maximum amount of unsettled and outstanding bail forfeitures, as determined by the Lehigh County Solicitor, Department of Law, is \$250,000 or more.”

“No bond shall be executed by any surety agent of a corporate surety authorized to do business in Lehigh County where the aggregate amount of unsettled and outstanding bail forfeitures for all corporate sureties for which the surety agent is writing bonds, as determined by the Lehigh County Solicitor, Department of Law, is \$100,000 or more.”

We noted two instances where the surety agent aggregated outstanding bail forfeitures in excess of \$100,000.

Recommendation: The management of the department of law should monitor compliance to Lehigh County Criminal Procedure 531 (Leh.R.Cr.P.531).

Current Status: Compliance monitoring to Criminal Procedure 531 is now being performed. The management of the department of law is now notifying by letter all interested parties when a surety agent or corporate surety is over the limits.

5. Inadequate Monitoring of Nolle Prosequi Cases

Condition: The staff of the department of law did not follow-up on forfeited bail in three criminal cases that were closed by “Nolle Prosequi”. Current department of law bail forfeiture procedures, Section III, Collection/Judgment Process states: “*If a criminal case is Nolle Prossed or 314'd, the criminal matter is concluded and collection is no longer pursued (where no court order upon bench warrant return specifies that the forfeiture stands)*”. The three criminal cases are:

<u>Criminal Case #</u>	<u>Amount of Forfeited Bail</u>
1991/663	\$10,000
1993/1643	10,000
2004/3997	<u>10,000</u>
Total	<u>\$30,000</u>

Recommendation: The management of the department of law should follow-up on the “Nolle Prosequi” cases and request the Court to make a determination as to the bail forfeiture status.

Current Status: Besides the cases listed above, there are two additional Nolle Prosequi cases 2001/2426 (\$5,000) and 1998/564 (\$20,000). None of the five cases above have been adjudicated by the Court as to the status of the bail forfeiture.



COUNTY OF LEHIGH
Department of Law

Matthew R. Sorrentino
County Solicitor

October 7, 2013

Glenn Eckhart, County Controller
Lehigh Government Center
17 South Seventh Street
Allentown, PA 18101-2400

Re: Response to Draft Audit of Collection of Forfeited Bail Bonds for
the Period of January 1, 2009 to December 31, 2012

Dear Controller Eckhart:

This will acknowledge receipt of the draft Department of Law Financial Audit, Collection of Forfeited Bail Bonds (Bonding Agents/Insurance Companies) For the Period January 1, 2009 to December 31, 2012 (the "Draft Audit Report") on September 30, 2013. Please accept the following comments for inclusion in the final audit report.

I. Comments to Reply to Schedule of Audit Findings and Recommendations

Under Section 1, Bail Forfeiture Monitoring, you state that "increased Department of Law involvement in cash collections increased when Controller's Office audits are initiated." You further state "the current audit was started in July, 2013" and that "cash collections for five cases totaling \$35,750 were received since the start of our current audit." (July–August 2013)."

The first time that Assistant Solicitor Smith was made aware of the current bail audit was on August 9, 2013 and the initial meeting between the Assistant Solicitor Smith and David Joseph of the Controller's Office was on August 20, 2013. Prior to being notified of the current bail audit the following collections were made during the months of July and August, 2013:

<u>Date</u>	<u>Defendant</u>	<u>Case No.</u>	<u>Amount Collected</u>
7/3/13	Brito, Gregorio	3419/2009	\$15,000.00
7/15/13	Barrientos, Julio	3494/2011	\$15,000.00
8/6/13	Gray, Hakeem Omar	5188/2012	\$ 3,795.66
8/7/13	Martinez, David	517/2011	\$ 1,000.00

There were nominal payments made by individual sureties as well. There is no relationship between the collection of the aforementioned amounts and notice to this office that a bail audit

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was being conducted. On the contrary, the aforementioned were collected during the course and scope of the normal operations of the Law Department.

You also state that "during January to July, 2013, the only insurance company collections related to \$50,000 (Case 3048/11) estreated in February 2012 and paid in four \$12,500 installments during 2013." On the contrary, the following collections were also made:

<u>Date</u>	<u>Defendant</u>	<u>Case No.</u>	<u>Amount Collected</u>
4/9/13	Granese, Jr., Bart J.	853/2012	\$ 2,500
5/3/13	Goodwin, James	1634/2011	\$12,500

In addition, the following collection was made from a private surety:

<u>Date</u>	<u>Defendant</u>	<u>Case No.</u>	<u>Amount Collected</u>
1/4/13	Lugo-Perez, Carlos	3387/2012	\$20,000

(The relevance of the source of the payments is further addressed on page 3 of this letter.)

Under Section 2, Basis for Negotiated Settlement, you state that "the reasons for negotiating (insurance backed) forfeited bonds should be documented in the case files by Department of Law management. All negotiated settlements should be approved by the Criminal Court Administrative Judge."

It is current practice that all bail reductions are accomplished by court order. If a party seeks a reduction in the forfeiture, the proper procedure that party should follow is to file a petition to vacate forfeiture and exonerate surety with the Court of Common Pleas. That petition is then listed for a hearing and relief, if any, is accomplished through court order.

Under Section 3, Late Payments, you state that "Department of law management should properly follow-up on the collection of insurance-backed forfeitures on a regular basis. The department of law management should request the fiscal officer include court-approved, agreed-on amounts on the county's accounts receivable system."

Again, reductions in bail are accomplished through court orders. Each respective order becomes part of the record of the case and, like all criminal court orders, is entered into the CPCMS system.

II. Comments to Reply to Schedule of Prior Audit Findings and Recommendations
(Report #09-65 issued December 31, 2009)

Under Paragraph 3, Negotiated Settlement Amounts Could Not be Confirmed (\$35,269), there is a statement that "most bail forfeiture payments are still being made either by the bonding agent/bonding company or the attorney for the bonding agent/bonding company. Occasionally, the insurance company will pay the bail forfeiture."

The following comment from the Solicitor's letter to former Controller Thomas Slonaker dated December 21, 2009 is relevant:

Section three of the Report expresses concern that the auditor could not confirm that the insurance company (as opposed to the bonding agent) paid the sum ordered by the court to resolve the matter. The recommendation is that the County not accept checks from the bonding agent as payment for the forfeitures, but only accept checks from the insuring company. This recommendation clearly misapprehends the County's position in these matters. The County is not in a position to interfere with the contractual relationship between the bonding agent and the insurance company. If, for whatever reason, the agent remits the forfeited amount, the county's only responsibility is to collect the correct amount directed by the court and not quibble about the source of payment.

Under Paragraph 5, Inadequate Monitoring of Nolle Prosequi Cases, you state "Besides the cases listed above, there are two additional Nolle Prosequi cases 2001/2426 (\$5,000) and 1998/564 (\$20,000.00). None of the five cases listed above have been adjudicated by the Court as to the status of the bail forfeiture."

The following comments from the Solicitor's letter to former Controller Thomas Slonaker dated December 21, 2009 are relevant:

Section five of the Report suggests that the County request the Court to make determinations as to the bail status of *nolle prosequi* cases. These are cases in which the District Attorney has elected to dismiss the prosecution. The Department has made the determination that enforcement of the forfeited bail in such cases cannot occur as there is clearly no 'prejudice' to the government. We have chosen not to waste either the Court's time or the County's resources to take these matters any further.

By way of background, a *nolle prosequi* is a voluntary withdrawal by the prosecuting attorney of a present proceeding on a particular bill of indictment. Upon motion of the attorney for the Commonwealth, the court may, in open court, order a *nolle prosequi* of one or more

charges notwithstanding the objection of any person.¹ A bail bond is valid until the full and final disposition of a case.² The entering of a *nolle prosequi* of all charges in a case is a final disposition of a case which consequently terminates the obligation on a bail bond.

III. Discussion of Bail Forfeiture Factors

It might be helpful to provide further background information on bail for your consideration. Bail has long been recognized as a procedure whereby an individual defendant provides a form of collateral in exchange for a defendant's release from custody; it secures his future appearance and other requirements of his bond.³ The trial court's discretion to grant bail forfeiture is not unbounded; an award of forfeiture is subject to remission if justice does not require the full enforcement of the order.⁴ The Pennsylvania Rules of Criminal Procedure give the court discretion to set aside or remit a forfeiture "if justice does not require the full enforcement of the forfeiture order."⁵

A trial court's discretion to determine the interest of justice is properly guided by a three-part standard which includes the following factors: (1) the willingness of the defendant's breach of the bond; (2) the cost, inconvenience and prejudice suffered by the government; and (3) any explanation or mitigating factors.⁶ Pennsylvania appellate courts have adopted the three-prong standard and have found that where the trial record is devoid of any evidence to establish cost, inconvenience and prejudice suffered by the government, the trial court erred in refusing to grant remission of the bail forfeiture.⁷ Under the third prong, i.e., explanation or mitigating factors, Pennsylvania appellate courts have held that remission of forfeitures is a practice calculated to encourage bondsmen to seek actively the return of absent defendants. If the efforts of a bondsman have a substantial impact on the apprehension and return, it may be taken into account by the court.⁸

The courts have stated that the law is clearly established that the purpose of bail forfeiture is to encourage bondsmen to act so as to prevent additional recapture costs for the Commonwealth and to deny full remission when the Commonwealth was spared the cost and difficulty of capturing a defendant does not ensure the bondsman will continue to take responsibility for their bonds.⁹

¹ Pa.R.Crim.P. 585

² Pa.R.Crim.P. 534

³ *Commonwealth v. Mayfield*, 827 A.2d 462 (Pa.Super., 2003)

⁴ Pa.R.Crim.P. 536(A)(2)(d)

⁵ Pa.R.Crim.P. 536(A)(2)(d)

⁶ *U.S. v. Ciotti*, 579 F.Supp. 276 (W.D.Pa. 1984)

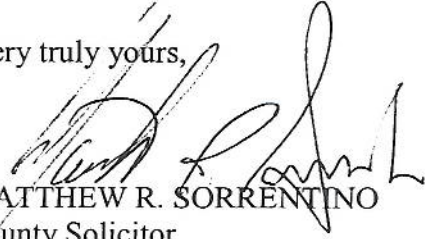
⁷ *Commonwealth v. Mayfield*, 827 A.2d 462 (Pa.Super., 2003)

⁸ *Commonwealth v. Culver*, 46 A.3d 786 (Pa.Super. 2012); *Commonwealth v. Fleming*, 485 A.2d 1130 (Pa.Super., 1984); *Commonwealth v. Hernandez*, 886 A.2d 231 (Pa.Super., 2005)

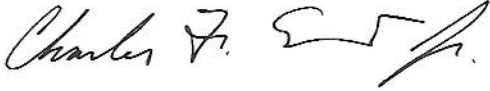
⁹ *Commonwealth v. Riley*, 946 A.2d 696 (Pa.Super. 2008)

Thank you for your consideration and the opportunity to respond to the Draft Audit Report.

Very truly yours,



MATTHEW R. SORRENTINO
County Solicitor



CHARLES F. SMITH, JR.
Assistant County Solicitor

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