



**COUNTY of LUZERNE**

P E N N S Y L V A N I A  
ESTABLISHED 1786

**OFFICE OF THE CONTROLLER**

***Review of  
Bail Forfeitures  
as related to Clerk of Courts and  
Wilkes-Barre Law Library  
2008 - 2014***

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Luzerne County Controller**

**Fieldwork Performed by:  
Wendy Saxe**

## **Background**

### Bail Process

When a defendant is arrested, a judge may set bail. If the bail is posted, the defendant will be released from jail as he awaits trial or sentencing.

This bail may have conditions set upon it (e.g., "10%", meaning ten percent of the bail amount must be posted in order for the defendant to be released while he awaits trial or "straight bail", meaning the full amount of bail must be posted in order for release while awaiting trial). Therefore, if \$10,000 bail is set, then:

"10% bail" would amount to \$1,000 that must be posted

"Straight bail" would amount to \$10,000 that must be posted

Bail is posted by a surety, who may be the defendant, another person, or a professional bail bondsman. Bail is tracked electronically using the Common Pleas Case Management System (CPCMS) and is posted as follows: cash bail is posted in person at the Clerk of Courts Office and deposited into the Bail Account; professional bail bonds are posted with the Law Library and deposited into the Law Library Bail Trust Account; or either can post to the Magisterial District Judge's office, who then forwards the bail accordingly.

The most common type of bail is where 10% is posted; however, the surety is liable for the full amount of bail if the bail is forfeited. Bail is returned to the surety when final disposition of the case has occurred.

Bail fees, including poundage (which is a percentage-based bail fee), and most forfeited bail are revenue to the County.

### Bail forfeitures

A judge could order that bail be forfeited; this would typically occur if the defendant fails to appear for a scheduled hearing. A defendant could present evidence to the judge to show why the bail should not have been forfeited. If the defendant is successful and the judge is sufficiently convinced that bail should not have been forfeited, the judge can vacate the forfeiture and reinstate the bail. If a judge orders that bail be forfeited and does not vacate the forfeiture, the surety loses his/her right to have the bail returned.

Bail forfeitures are distributed in different ways. Forfeited bail as a result of a motor vehicle violation goes to the Commonwealth of Pennsylvania; all other forfeited bail goes to the County.

Forfeited bail is distributed as follows. If it was cash bail, the forfeiture is sent to the Clerk of Courts, who then shares a portion with the District Attorney's office (generally, ten percent). If the bail was through a professional bail bondsman, however, the

forfeiture occurs through the court system, with paper transactions occurring instead of cash changing hands.

A professional bail bondsman/company must have at least \$10,000 in an escrow account to be eligible to post bail. Additionally, a bondsman must have real property in the county in which he or she is writing bail; this ensures the Court can verify that the bondsman's assets are sufficient to cover any forfeited bail that exceeds the amount in the escrow account. In the event the defendant flees and is unable to be located resulting in bail forfeiture, the forfeited amount is transferred from the \$10,000 that is held in the bail bondsman/company's escrow account to the Law Library Bail Trust Account, and no other bail may be posted until the escrow balance is re-established at \$10,000. If there are no changes one year after the forfeiture, these monies are then transferred to the Law Library Association Bank Account, per Local Rule of Court 536(d).

These accounts are all overseen by the Wilkes-Barre Law Library (Law Library). Over the preceding seven years (2008-2014), four professional bail forfeitures occurred, totaling \$75,000.

### Law Library

Founded in 1850, the Wilkes-Barre Law & Library Association is the official name of the Luzerne County Bar Association. It is comprised of the Law Library and the Association.

The Law Library contains over 20,000 volumes of law books, reports, and journals. Additionally, various electronic software programs and legal websites are available for research of regulations, compliance, and legal matters. The Law Library is available to members of the bar, as well as to the general public.

The Association has been funding the Law Library since 1855. The Association has been able to fund the Law Library due to the revenue generated through professional bail forfeitures, lawyer memberships, and the Association's *Luzerne Legal Register*.

The *Luzerne Legal Register*, Luzerne County's official law journal and the reporter of the decisions of the Court of Common Pleas, is a privately owned business, which was purchased in 1905 by lawyers, and is a separate entity from the Law Library. As a courtesy to the County, the *Luzerne Legal Register* routinely runs informational items, court rule changes, and court notices, at no cost to the County. Any charges by the *Luzerne Legal Register* relating to sheriff sales is separate from the County, as these charges are paid by banks and lenders who then pass the fees on to the property purchaser.

Pennsylvania statute, namely Title 42 Pa. C.S.A. § 3724, requires the County to pay the expenses and provide space for the Law Library. It also puts all county libraries, including those paid and maintained by bar associations, under the authority of the

Court. However, since 1855, the County and the Association have had an agreement that the Association will pay for the costs of the Law Library as long as there be space within the Law Library for the *Luzerne Legal Register*. As a result of this agreement, the County has been spared substantial costs. For instance, the costs of the Law Library for the years 2012, 2013, and 2014 were \$232,703.49, \$218,830.22, and \$192,283.24, respectively. As stated above, these costs were paid by the Association. The Law Library is housed in the Luzerne County Courthouse in Wilkes-Barre, PA.

It is noteworthy to mention that there was a large settlement received by the Association from 7/30/99 – 6/14/02 in relation to a professional bail forfeiture, which totaled \$1,087,008.35, including interest. These monies were placed in an investment fund established by the Association and used over the years to pay the costs of the Law Library, as needed. In July 2013, the final drawdown from that fund occurred and the fund was terminated.

### **Objective and Scope**

The objective of this review was to determine whether bail forfeitures occurred and confirm that the monies were deposited and distributed properly. The Controller's Office obtained records from as far back as 2001. It is important to note that in any given year that a bail forfeiture takes place, the case upon which the forfeiture is ordered might be several years old.

In order to accomplish the objective, the Controller's Office:

- Obtained all bail forfeiture cases in this time frame
- Acquired bank statements and deposit slips for Clerk of Courts Bail Forfeiture Account for years 2009 through 2014
- Reviewed bank statements for Clerk of Courts Bail Account for relevant years
- Acquired bank statements for each professional bail bondsman/company
- Tracked bail forfeitures from the Law Library Bail Trust Account to the Law Library Association Bank Account
- Obtained available reports submitted by professional bail companies

The Luzerne County Controller's Office strives to objectively and systematically evaluate functions, procedures, and activities to ensure that each are executed in the best, most efficient way. Our reviews are tailored to the unique circumstances of each office, and we work with management to ensure accountability and direction.

The Luzerne County Controller's Office is authorized by the Home Rule Charter of Luzerne County (Charter) Section 3.08 to conduct fiscal, performance, management, contract, grant, compliance, and related audits of any County division, bureau, office, agency, board, commission, elective office, The Judiciary, Office of Court Administration, or other administrative office. This review is an internal function, authorized by the Charter. Therefore, the Controller is required to transmit this review

to the Manager of Luzerne County and County Council and post for public inspection in the Controller's Office and on the County website and/or other electronic medium for a period of at least 60 days after it is issued. The Controller will also follow up on any recommendations, to the extent practical, in order to determine if they have been considered and/or implemented.

Auditors assigned to the engagement are employed by Luzerne County under the Controller's Office and report directly to the elected Controller. The audit staff is considered organizationally independent to conduct and report on the audit.

## **Methodology**

The Controller's Office obtained bail forfeiture cases that occurred within the time period 2008 through 2013, reviewing both bail forfeitures as documented by the Clerk of Courts and bail forfeitures received by the Law Library.

### Clerk of Courts

Cash bail forfeiture hearings—which are initiated by the Clerk of Courts—are typically held only two or three times a year and are comprised of approximately ten to twelve cases per hearing. There were no forfeiture hearings held and, hence, no cash bail forfeitures in 2014.

The Controller's Office reviewed 100% of the cash bail forfeiture cases that went to bail hearings from the period 2/12/09 through 11/15/13. There were 156 such cases. Of those, 20 cases resulted in the bail being returned to the surety; this was verified by viewing each cancelled check. The receipt of bail forfeiture revenue was confirmed for the remaining 136 cases by verifying bank deposits, which totaled \$128,200. Bank statements for the Clerk of Courts Bail Forfeiture Account were reviewed and deposit slips were tied to specific cash bail forfeiture amounts, as shown by case number and hearing date, and verified on the bank statement. Bank statements for the Clerk of Courts Bail Account were also reviewed for the relevant years. Note that when cash bail is posted it goes into the Bail Account; if it is forfeited, it is then transferred to the Bail Forfeiture Account.

A portion of the abovementioned amount was distributed to the District Attorney's office. A review of the District Attorney's receipts from bail forfeiture was outside of the scope of this audit, but cancelled checks written to the District Attorney's office were randomly viewed and generated no cause for concern.

### Professional Bail Bond Companies

For 2012 and 2013, the Controller's Office verified that the balances in all thirteen professional bail bond companies' escrow bank accounts were each at least \$10,000. In total, there were thirteen companies and forty bondsmen listed. One or multiple

bondsmen are associated with each company. The Controller's Office also compared the list of professional bail bondsmen/companies recognized by the Law Library with the list of professional bail bondsmen/companies recognized by the Clerk of Courts, noting some discrepancies.

- The Law Library listed two companies and five bondsmen that were not on the Clerk of Courts' list.
- The Clerk of Courts listed four bondsmen that were not on the Law Library's list.
- One of those thirteen companies had set up an escrow account and deposited the required deposit of \$10,000, but did not take the next steps to get Court approval for agents to write bail; accurately, this company did not appear on the Clerk of Courts' or the Law Library's list.

Further, the Controller's Office requested the professional bail bond companies' monthly reports for 2012 and 2013 from the Court Administrator. Per Local Rule of Court 536(h), each professional bondsman is to submit a monthly report to the Court Administrator, setting forth the details of bail bonds posted in the preceding month. However, it was discovered there were many discrepancies with regard to this.

- Some of the reports were quarterly, instead of monthly
- Seven companies did not submit any reports, while others submitted regular reports even if there was no activity
- One company, who is not shown on the approved list, submitted reports
- Two bail bondsmen were not listed on the approved agents list but were shown on reports

### Law Library

Bank statements for the Law Library Association were reviewed for 2012, 2013, and 2014. Revenues were generated through professional bail forfeitures, lawyer memberships, and the Association's privately owned *Luzerne Legal Register*. Expenses were attributable as follows: 90.8% for law books, research sites, and law journals; 4.8% for continuing law education courses; 0.7% for internet/communications costs; and 3.7% for wages.

Since a professional bail forfeiture would ultimately flow from the Law Library Bail Trust Account to the Law Library Association Bank Account, it was confirmed that \$35,000 in 2011 and \$25,000 in 2012 were withdrawn from the Bail Trust Account and deposited into the Law Library Association Bank Account. These two deposits represent 50% of the four professional bail forfeiture deposits from 2008-2014. Additionally, these two forfeitures represent 80% of the total \$75,000 in professional forfeitures during this period.

## **Condition 1—Need for Improved Recordkeeping**

Since the computerized system CPCMS is used at the County, it was disheartening to discover the lack of understandable records. Initially, the Controller's Office planned to request bail forfeitures that occurred during a specific time period, with the expectation being that a computerized printout would be generated, which would be used to choose random cases on which to conduct a detailed investigation. However, that is not what occurred.

The Controller's Office received no master list of all bail forfeitures. Instead, boxes of information packets, with each packet representing a bail forfeiture hearing and including the corresponding details for each of those cases, were received. Note that the only evidence to state which cases were in each bail forfeiture hearing was a handwritten list, which could not be confirmed using CPCMS or any other method. Each case included both computerized documents and handwritten notes. Judges' orders were often reversed, which added to the perplexity.

For instance, a judge may legitimately order that bail be forfeited. However, after that order, he may vacate the bail forfeiture. It was found that in reviewing several years' worth of data and compiling a spreadsheet listing apparent bail forfeitures, further investigation revealed that oftentimes the order had been reversed and the bail had been returned to the surety. The present recordkeeping system is both confusing and cumbersome to review. Furthermore, much of this information is handwritten on various court documentation, increasing the difficulty of such a review.

### **Effect**

Without proper and complete use of the CPCMS computerized system, fraud can more easily occur. Hand writing "exonerated" or "vacated" on a case does not mean that action occurred. An employee could feasibly process forfeited bail, issue no receipt or forge a receipt outside of CPCMS, pocket the money, and hand write "vacated" on the case. It would appear to all others that the judge revoked the bail forfeiture, when in reality he did not.

### **Cause**

For the CPCMS system to work in a fraud-detering fashion, all activity for each case must be accurately recorded electronically.

## **Condition 2—Need to Reinstate Cash Bail Forfeiture Hearings**

The Clerk of Courts office had employed an administrative assistant who oversaw that forfeiture hearings were held several times a year. However, this individual retired and the position was not filled.

## **Effect**

The effect is two-part. First, defendants who legitimately should be punished with bail forfeiture for their failure to abide by the rules of our judicial system are escaping the consequence, with the bail remaining in the bail account until it is returned to the surety. Second, the County is losing revenues that are legitimately due to them.

## **Cause**

The Controller's Office believes this situation exists due to staffing reductions.

## **Condition 3—Need to Improve Revenue-Forwarding Process**

The Controller's Office found inconsistencies in how monies were forwarded to the District Attorney's office. To use an example, assume a bail forfeiture in the amount of \$1,000 was received by the Clerk of Courts, with \$100 ordered to go to the DA's office. In one instance, the Clerk of Courts deposits the \$1,000 check, then writes a \$100 check to the DA's office. In another instance, the Clerk of Courts deposits \$900 and gives \$100 to the DA's office.

The Controller's Office recommends using the former method, since it leaves a clear cut paper trail of activity and improves transparency. One method should be used consistently.

## **Effect**

Using two different methods to distribute revenues makes it more difficult to monitor and review, thereby making it more prone to fraudulent activity.

## **Cause**

This condition is the result of a failure to establish and follow procedures by which to distribute bail forfeitures. In recent years this has gone unnoticed, since there have been no cash bail forfeitures processed.

## **Condition 4—Need for Accurate Approved Bond Agents List**

The lists of professional bail bondsmen/companies recognized by the Law Library, Clerk of Courts, and Court Administrator all differ.



## **Effect**

Unapproved bondsmen, who might not have appropriate funds deposited into an escrow account, could be posting bail. Since there are three different lists, it is difficult to determine if any one of the three is accurate.

## **Cause**

This is the result of lack of communication and/or short staffing.

## **Condition 5—Need to Require Bail Bondsmen’s Monthly Reports**

Each professional bondsman is to submit a monthly report to the Court Administrator, setting forth the details of bail bonds posted in the preceding month. The Controller’s Office discovered that there were many discrepancies with regard to this.

## **Effect**

If the Court Administrator isn’t monitoring the bail bondsmen, then no one is checking the credentials of these individuals or ensuring that an escrow account exists. Additionally, there were missing reports and unapproved bondsmen/ companies.

## **Cause**

This is a result of a lack of communication. A Local Rule of Law dictates the procedure to follow, but it is unclear if the rule of law was unknown or if there was a failure to assign the duty to be performed.

## **Observations**

1. No monies were determined to be unaccounted or missing during the time frame of this audit.
2. The ending balances as of December 31, 2014, for each of the accounts were:
  - a. Clerk of Courts Bail Account \$218,043.75
    - these funds will be returned to the sureties, providing bail is not forfeited
  - b. Clerk of Courts Bail Forfeiture Account \$47,840.61
    - the balance after the District Attorney’s portion has been paid
    - historically has been used by the Clerk of Courts office to reimburse the General Fund for special projects or overtime pay
    - no funds have been used from this account since October 2013

- c. Law Library Bail Trust Account \$7,382.81
  - these funds are from a past forfeiture and will be transferred to the Law Library Association Bank Account in September 2015
- d. Law Library Association Bank Account \$36,275.04
  - these funds are used to pay Law Library expenses

## Recommendations

1. The Controller's Office recommends using an electronic system to record and monitor every aspect of a defendant's case file.
2. The Controller's Office acknowledges that the former administrative assistant, who oversaw cash bail forfeiture hearings, has retired and was not replaced. However, revenue has been lost. The Controller's Office recommends that consideration be given to filling the position and reinstating cash bail forfeiture hearings on a semi-annual or quarterly basis.
3. The Controller's Office recommends procedures be written and implemented with regard to the above issues, especially in relation to:
  - a. bail bondsmen and what is required of them,
  - b. the process by which bail bondsmen are documented as "approved", and
  - c. the process that will be used to conduct bail forfeitures.

### Please Note:

**Luzerne County Home Rule Charter: Section 3.08 (C.) 3.**

***The audited entity shall respond in writing, specifying agreement with the audit findings and/or recommendations or the reasons for disagreement with the findings and/or recommendations, along with any plans and timetable for implementing remedies. The response shall be provided to the Controller within 14 days after the audited entity's receipt of the draft audit. The Controller shall include the audited entity's response in his/her final audit report.***

Please respond to this audit as prescribed, by 5:00 pm, September 24, 2015.

**Signature Page  
Bail Forfeitures  
2008 - 2014**

**Controller's Office:**

*Michelle A. Bednar* 9/10/15  
Michelle A. Bednar, Controller Date

*Wendy Saxe* 9/10/15  
Wendy Saxe, Senior Auditor Date

**County Manager's Office:**

*Robert C. Lawton* 9/6/15  
Robert C. Lawton, County Manager Date

**Clerk of Courts:**

*Joan Hoggarth* 10/5/15  
Joan Hoggarth, Division Head, Judicial Services Date

*James Haddock* 10-5-2015  
James Haddock, Manager Date

**Law Library:**

*Joseph P. J. Burke III* 9/15/15  
Joseph P. J. Burke III, Secretary-Treasurer Date

**Court Administration:**

*Michael Shucosky* 9/15/15  
Michael Shucosky, Court Administrator Date

Paul Hindmarsh, Deputy Court Administrator Date

JUDICIAL SERVICES AND RECORDS  
RESPONSE TO REVIEW OF BAIL FORFEITURES AUDIT  
BY LUZERNE COUNTY CONTROLLER'S OFFICE  
2008-2104

**Condition 1 – Need for Improved Recordkeeping**

The Clerk of Courts Office has no control over the use of handwritten disposition sheets. To correct this condition the Courts will need to be live with CPCMS (the State computerized system) in the courtrooms. The disposition sheets are available electronically through OnBase imaging software, maintained by the Clerk of Courts Office.

**Condition 2 – Need to Reinstate Cash Bail Forfeiture Hearings**

The Clerk of Courts Office readily recognizes the need to reinstate cash forfeiture bail hearings. The Office is currently working with the office solicitor and Court Administrator to ensure proper legal procedures are followed. The Office believes the hearings can begin no later than the 2<sup>nd</sup> quarter of FY2016. Note – the revenue from bail forfeitures is not lost, but delayed.

**Condition 3 – Need to Improve Revenue-Forwarding Process**

The Clerk of Courts Office agrees with this finding and will disburse individual checks per account to create a clear audit trail.

**Condition 4 – Need for Accurate Approved Bond Agents List**

Local Court Rule assigns this responsibility to the Court Administrator. The Clerk of Courts office is always available to assist in any way we can.

**Condition 5 – Need to Require Bail Bondsmen's Monthly Reports**

Local Court Rule assigns this responsibility to the Court Administrator. The Clerk of Courts office is always available to assist in any way we can.