



OFFICE OF THE AUDITOR GENERAL

P. O. BOX N-3027

NASSAU, BAHAMAS

Phone Nos. 242-322-2521/323-8939/326-6015

OAG/C.9/1/038

Reference No.....

Mrs. Camille Gomez
Registrar of Supreme Courts
Ansbacher House
Bank Lane
Nassau, The Bahamas

June 30th, 2020

**AUDIT REPORT
ON THE EXAMINATION OF THE OFFICE OF THE JUDICIARY
(MAGISTRATE COURTS)
FOR THE PERIOD JULY 1, 2016 TO DECEMBER 31, 2019**

Reference is made to your memorandum dated 17th January 2020.
Please find attached the above captioned for your review.

Thank you for your co-operation.

Terrance Bastian (Mr.)
Auditor General
Commonwealth of the Bahamas

AG/da/cf

OFFICE OF THE AUDITOR GENERAL
REPORT OF FACTUAL FINDINGS - OFFICE OF THE JUDICIARY – MAGISTRATE COURTS

Executive Summary

As a result of matters raised in our Audit Report dated January 9th, 2020 with respect to a myriad of Sentences inclusive of “**Conditional Discharge**”, “**Probation**” and “**Ordered to Attend Counseling**” we have been requested by the management of the Office of the Judiciary to undertake further review/audit of all Magistrate Courts in New Providence. However, our review did not include Court numbers 3 (Family Court) and 13 (Night Court).

After attaining a global appreciation of the operation of the Magistrate Courts, we identified inconsistencies relating to counseling and bail application procedures in two (2) courts.

When a defendant is placed on “**Conditional Discharge**” or “**Probation**” an alternative provision such as counseling is allowed in the criminal justice system instead of incarceration. Defendants who are placed on “**Conditional Discharge**” by its very nature circumvents a criminal record whereas “**Probation**” avoids incarceration.

A typical condition required for a defendant under a “**Conditional Discharge**” or “**Probation**” order is that the individual is required to attend counseling which is intended to correct the deviant behavior which brought them to court in the first instance.

Where the Sentence ordered by two (2) courts involved counseling, the defendant was directed to enroll in and pay the Counseling Institution prior to being released from custody or face incarceration. However, this is not the established process adapted by the Magistrates and the Department of Rehabilitative and Welfare Services (herein after referred to as DRWS). The required practice entails communication with DRWS to administer the counseling process.

Audit Procedure

We have performed the procedures below to assist in the evaluation of a myriad of imposed Sentences of defendants inclusive of “**Probation**”, “**Conditional Discharge**” and “**Ordered to Attend Counseling at an Institution of His Choice**”.

This was undertaken to determine whether the process of assigning counseling was in accordance with procedures consistently used by the Magistrate Courts and the DRWS for the period July 1st, 2016 to December 31st, 2019.

The procedures listed below were discussed with the management of the Magistrate Courts. However, an examination was conducted that did not include an extensive review of the operations of the Magistrate Courts either for the purpose for which this report has been requested or for any other purpose.

The procedures performed and findings are summarized as follows:

- (1) **We inquired and interviewed the Chief Magistrate and Magistrates of Court numbers 1, 2, 5, 6, 7, 8, 9, 10 & 11.**

Findings

We found for the period under review that there was a consensus as courts were using the DRWS to provide counseling services based on the procedures listed below by the Magistrate Courts and the DRWS. However, we noted that these procedures were not being used consistently in all of the courts when counseling is ordered.

PROCEDURES FOUND TO BE FOLLOWED BY MAGISTRATES DURING OUR AUDIT REVIEW WITH CERTAIN EXCEPTIONS WHEN COUNSELING IS ORDERED BY THE COURTS:-

- Defendant is given a **“Conditional Discharge”** and ordered to attend counseling by a Magistrate;
- Magistrate informs the Defendant of his return date to report in order to satisfy that the condition has been met;
- Magistrate prepares a letter addressed to the DRWS requesting their assistance in providing counseling as per court order
- DRWS assigns a counseling institution to the Defendant (in the event DRWS cannot accommodate the defendant, an approved private Counseling Institution is recommended);
- When the defendant completes counseling, the Counseling Institution and/or Welfare Officer would prepare a report noting their observations. If a defendant does not complete the counseling, the Magistrate is notified in writing by the DRWS;
- The DRWS/ approved Counseling Institutions, would prepare a detailed report addressed to the Magistrate based on the

Counseling Institution's/Welfare Officer's findings and recommendation.

Recommendation

We recommend that management address this issue and ensure that all Magistrates adhere to the procedures adapted.

- (2) We inquired and interviewed Court Clerks of Court numbers 1, 2, 5, 6, 8, 9, 10, & 11.**

Findings

During our interview with the Court Clerks we found that they were familiar with the procedures listed above. We further inquired as to whether collection of cash was a part of their job function. The Court Clerks denied that it was; and stated that all cash transactions take place at the cashier's window. However, Stakeholders advised the audit team that several Court Clerks were collecting cash on behalf of a Counseling Institution. Cash collection is not a function of the Court Clerks.

Recommendation

We recommend that the Court Clerks cease the collection of cash earmarked for counseling service immediately.

- (3) We inquired and interviewed representatives from the Prosecutions Office.**

Findings

Results of our interview disclosed that the administration and daily responsibility of recording the summation of criminal proceedings of defendants by the Prosecution office are consistent with the court dockets.

Recommendation

We recommend that this process continue.

- (4) We conducted a number of interviews with court officials and stakeholders.**

Findings

We obtained firsthand information from court officials and Stakeholders regarding a number of inconsistencies in two (2) courts that appeared throughout our review which included issues such as:-

1. Defendants were not receiving full disclosure in order to make an informed decision in selecting a Counseling Institution during the court proceedings. However, the court dockets indicated that the defendants were given Counseling Institution options.
2. The defendant's family felt pressured to enroll and pay for counseling at the end of the defendant's court proceedings.

This process is inconsistent with established policies and procedures and requires redress.

Recommendation

We recommend that management of the courts investigate this matter further and controls be strengthened to prevent recurrence of this practice.

- (5) **We randomly selected a sample of cases from Court numbers 1,2,5,6,8,9,10 & 11 with the sentences "Conditional Discharge", "Probation", "Ordered To Attend Counseling", "Ordered To Attend Counseling At An Institution Of His Choice".**

Findings

We found that Court numbers 1, 2, 5, 6, 8, 9, 10 and 11 were imposing the following Sentences in certain limited circumstances; i.e. **"Conditional Discharge", "Probation" and "Ordered to Attend Counseling"**. We noted however, that at times when the following Sentence was imposed: **"Ordered to Attend Counseling at an Institution of His Choice"** notwithstanding the nature and seriousness of the offence, counseling was being ordered at a specific Counseling Institution by two (2) courts.

In many instances, we observed that defendant's files did not include the name of the Counseling Institution neither a completion report.

- ✓ Additionally, we noted that when a defendant pleads guilty, he is obligated to pay a fine, attend counseling, and apply for bail. The defendant is directed to enroll in and pay the counseling costs on the day the court proceedings ends or face incarceration. This is not the established policy and the practice must be discontinued.

Recommendation

We recommend that defendant's files be properly maintained and they be given full disclosure with respect to Counseling Institution options during their court proceedings and duly noted in the court records.

- (6) ***We requested and obtained copies of AS400 summaries from the Prosecutions Office for sample cases selected from Court numbers 1, 2, 5, 6, 8, 9, 10 & 11 and compared the printouts to the court dockets.***

Findings

We noted that the reports contained summaries of court proceedings and were consistent with the court dockets.

Recommendation

We recommend that this procedure continue.

- (7) ***We interviewed personnel from the DRWS.***

Findings

We noted that there is an established procedure for imposed Sentences of "Probation" for both Juveniles and Adults.

Recommendation

We recommend that the established procedures be adapted and continue to be adhered to by all Magistrates.

- (8) ***We interviewed representatives from three (3) private Counseling Institutions.***

Findings

Comments made by the Counseling Institution's representatives were:-

1. They are qualified and adequately staffed to provide counseling for all defendants;
2. They were willing to assist and render counseling services for those defendants who were able or unable to afford their services;
3. They felt that they were being underutilized;

4. They felt that the Counseling Institution options should be fully disclosed to defendants.

Recommendation

We recommend that all Stakeholders be given full disclosure of Counseling Institution options which would enable them to make an informed decision.

- (9) ***We requested and obtained a list of Counseling Institutions approved by the DRWS.***

Findings

We noted that there were five (5) Government owned Counseling institutions based on information received from the DRWS. We requested but were not provided at the time of this audit review an official approved listing of private Counseling Institutions from the Department of Social Services.

Recommendation

We recommend that the Department Of Social Services establish an official approved listing of all private Counseling Institutions.

- (10) ***We requested information from the DRWS identifying Counseling Institutions used during the period under review.***

Findings

We noted that when counseling is ordered and the procedures listed on pages 2 and 3 were followed, a large percentage of adults and juveniles who could not be accommodated through the government facilities, were consequently referred to a private Counseling Institution.

Recommendation

We recommend that this process continue.

- (11) ***We requested a copy of the documented procedures for approval of private Counseling Institutions from the Department of Social Services.***

Findings

The Department of Social Services does not have an established documented procedure with respect to the vetting and approval of private Counseling Institutions utilized by the department.

Recommendation

We recommend that the Department of Social Services establish documented procedures for vetting and approving private Counseling Institutions.

CONCLUSION

Based on our findings we note the following:-

1. Most notably a Counseling Institution was used more than others for defendants who were granted "**Conditional Discharge**" and "**Ordered to Attend Counseling at an Institution of His Choice**" for various offences. Further to our interviews and information received from Stakeholders, our findings revealed that they were not given options to choose the Counseling Institution of their choice.
2. A number of inconsistencies in two (2) courts were discovered during our review. The Magistrate's Support Staff were identified by Stakeholders as the individuals acting jointly or alone in collecting cash payments and issuing receipts on behalf of a Counseling Institution paid by the defendant's relatives.
3. A procedure was adapted by two (2) courts whereby defendants', granted a "**Conditional Discharge**" were also ordered to pay a Queen's Fine, attend counseling and apply for bail. The defendants' were forced to comply with payment for counseling services on the same day that their court proceedings ended. Counseling Enrolment Costs ranged from \$750.00 to \$1,500.00 and failure to pay these costs would result in incarceration. The defendants were given the option to pay the Queen's Fine at a later date; therefore deferring the collection of government's revenue (Queen's fine).
4. As a result of the aforementioned procedure, a number of defendant's Bail Suretors were not satisfied with the court system and they felt that they were not dealt with fairly.

5. The Department of Social Services should implement criteria/requirements for vetting and approval of private Counseling Institutions.
6. Defendant's files were not properly maintained. The files were void of Counseling Completion Reports and as a result we could not determine the status as to whether the Counseling Order was duly complied with.

As a result of our findings, we recommend that this matter be given serious attention by management of the Judiciary and corrective measures be taken and implemented; as the reputation and integrity of the Judiciary is important to the public trust of the Bahamian people. This requires good governance and consistency in all aspects of court administration throughout the court system.

The details of this report has been discussed with the management of the Judiciary and we await their response.