



Commonwealth of Massachusetts
Office of the State Auditor
Suzanne M. Bump

Making government work better

Official Audit Report – Issued March 31, 2022

Land Court Department

For the period July 1, 2019 through June 30, 2021





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March 31, 2022

The Honorable Gordon H. Piper, Chief Justice
Land Court Department
3 Pemberton Square
Boston, MA 02108

Dear Chief Justice Piper:

I am pleased to provide this performance audit of the Land Court Department. This report details the audit objectives, scope, methodology, findings, and recommendations for the audit period, July 1, 2019 through June 30, 2021. My audit staff discussed the contents of this report with management of the agency, whose comments are reflected in this report.

I would also like to express my appreciation to the Land Court Department for the cooperation and assistance provided to my staff during the audit.

Sincerely,

A handwritten signature in blue ink, appearing to read "SMBump".

Suzanne M. Bump
Auditor of the Commonwealth

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LIST OF ABBREVIATIONS

EOTC	Executive Office of the Trial Court
LCD	Land Court Department
OST	Office of the State Treasurer
UPD	Unclaimed Property Division

EXECUTIVE SUMMARY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor has conducted a performance audit of various activities of the Land Court Department (LCD) for the period July 1, 2019 through June 30, 2021. The purpose of this audit was to determine whether LCD administered escrow funds in accordance with Sections 1.9, 3.2.3, and 3.9 of the Executive Office of the Trial Court's *Fiscal Systems Manual*, as well as Section 6 of Chapter 200A of the General Laws, and whether LCD oversaw its partition commissioner¹ list and appointments in accordance with Section 12 of Chapter 241 of the General Laws and Sections 1–4, 5d, 6, and 7 of Rule 1:07 of the *Massachusetts Rules and Orders of the Supreme Judicial Court*.

Below is a summary of our findings and recommendations, with links to each page listed.

Finding 1 Page 10	LCD did not include accurate information on, and omitted 38 partition commissioner appointments from, its publicly available master list of partition commissioners.
Recommendation Page 11	LCD should develop policies and procedures to track partition commissioners assigned to cases and ensure that the master list of partition commissioners is complete and accurate based on their assignments to cases.
Finding 2 Page 11	Funds totaling \$58,018 that were held in seven abandoned escrow accounts were not transferred promptly to the Office of the State Treasurer's Unclaimed Property Division (UPD) three years after the cases were closed.
Recommendations Page 12	<ol style="list-style-type: none">1. LCD should establish and implement procedures for abandoned escrow account funds.2. LCD should notify real estate stakeholders 60 days before transferring property to UPD.
Finding 3 Page 13	LCD did not retain notarized "Commissioner Oaths" for 11 of 58 partition commissioner appointments in either MassCourts or its hardcopy files.
Recommendation Page 15	LCD should amend its policies and procedures to ensure that "Commissioner Oaths" are maintained in its hardcopy files and uploaded to MassCourts.

1. A partition commissioner is an attorney appointed by a judge to determine how a property should be divided.

OVERVIEW OF AUDITED ENTITY

The Land Court Department (LCD), established under Section 1 of Chapter 211B of the Massachusetts General Laws, is one of seven departments of the Massachusetts Trial Court. Chapter 478 of the Acts of 1978 restructured the Trial Court into seven departments: the Boston Municipal Court, the District Court, the Housing Court, the Juvenile Court, the Probate and Family Court, the Superior Court, and LCD.

According to LCD's website,

The court has exclusive, original jurisdiction over the registration of title to real property and over all matters and disputes concerning such title subsequent to registration. The court also exercises exclusive original jurisdiction over the foreclosure and redemption of real estate tax liens [under Section 1 of Chapter 185 of the General Laws]. . . . The court has concurrent jurisdiction over specific performance of contracts relating to real estate and over petitions for partitions of real estate. . . . The court shares jurisdiction over matters arising out of decisions by local planning boards and zoning boards of appeal. Both the Land Court and the Superior Court Department have jurisdiction over the processing of . . . mortgage foreclosure activity. Additionally, the court has superintendency authority over the registered land office in each registry of deeds.

LCD consists of six associate justices and one Chief Justice. The Chief Justice is subject to the authority of the Supreme Judicial Court and is the administrative head of LCD. LCD is located at 3 Pemberton Square in Boston. As of June 30, 2021, it had approximately 57 employees. LCD judges normally sit in Boston; LCD also holds trials in other locations as needed. Between July 1, 2019 and June 30, 2021, LCD had 13 escrow accounts (totaling \$1,050,674) that were opened before the audit period, and it established an additional 10 escrow accounts (totaling \$3,014,258) during the audit period. LCD disbursed \$2,134,751 from 7 escrow accounts to real estate stakeholders during this time.

During the audit period, LCD transferred \$58,018 to the Office of the State Treasurer's (OST's) Unclaimed Property Division (UPD) from seven escrow accounts that were considered abandoned because the real estate stakeholders did not come forward within three years after the cases had been closed.

Effective January 1, 2003, LCD was granted jurisdiction over petitions for partitions² of real estate property under Section 1 of Chapter 185 of the General Laws. A real estate attorney can apply to become a partition commissioner and be placed on a master list of partition commissioners that is maintained by LCD. When an amicable sale by all owners of a property is not possible, a judge may appoint a partition commissioner

2. A partition occurs when real estate property value is divided between real estate stakeholders.

from the master list. The partition commissioner manages the sale of the property and the collection of the proceeds to seek the highest possible return for all the real estate stakeholders. The stakeholders may also recommend an attorney they choose from the master list to the judge for appointment. For each case, the appointed partition commissioner is required to submit to the court a signed and notarized “Commissioner Oath,” which is valid for the duration of the case. Partition commissioners also prepare reports detailing activities (negotiating, preparing legal documents, and serving real estate stakeholders) and expenses (hours charged and fees paid for title examination, survey work, and postage) for each partition case and submit them to judges for reimbursement.

If the real estate stakeholders do not claim the proceeds from the sale of the property, or the rightful owners cannot be located, the judge orders that the funds will be kept in an escrow account established by LCD. After LCD gives the final judgment for the partition case, the stakeholders have three years to claim the funds in the escrow account. Any funds remaining in the escrow account after this three-year period are considered abandoned and are transferred to UPD.

Escrow

Once a judge issues an order to establish an escrow account, an LCD session clerk³ notifies the LCD head account clerk.⁴ The order details whether the escrow account will be an internal account,⁵ which is a non-interest-bearing account in People’s United Bank that is maintained by OST, or an external account, which is an interest-bearing account in a different commercial bank. The LCD recorder and deputy recorder⁶ are both authorized signatories for the court and physically go to the bank to set up the account in the judge’s name when an external account is ordered.

One of the prerequisites for escrow accounts is that no fees can be applied. When choosing a commercial bank for external accounts, the head account clerk compares interest rates between banks that are

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3. Session clerks are responsible for administering oaths and receiving and recording documents, exhibits, and dispositions.
 4. The head account clerk is responsible for collecting and processing all funds related to LCD cases, disbursing funds from escrow accounts, maintaining and balancing court bank accounts, and preparing financial reports.
 5. Judges establish accounts as internal or external depending on the length of time they are expected to take to adjudicate. Internal accounts are established for cases that judges estimate to have shorter timeframes.
 6. The LCD recorder is responsible for the internal administration of the LCD office, which includes maintaining court records, attending court sessions, keeping a docket of all case events, and affixing the LCD seal to all processes and papers. The deputy recorder is appointed by the recorder and maintains order and decorum in proceedings, ensures that real estate stakeholders have due process, and maintains public access to court records.

approved by OST and recommends the one that has the highest interest rate to the LCD recorder and deputy recorder. Any interest is recorded in MassCourts, a Trial Court database of court records.

A disbursement from an escrow account is initiated during the court case by the issuance of a judge's order of disbursement to cover various administrative expenses, such as partition commissioner fees, property maintenance expenses, taxes, and utility bills. It is not uncommon to have multiple disbursements from escrow accounts. For funds to be disbursed, the Executive Office of the Trial Court's *Fiscal Systems Manual* requires a signed Request for Taxpayer Identification Number and Certification (Internal Revenue Service Form W-9) from the real estate stakeholders. Once LCD receives the W-9s, the bookkeeper prepares the paperwork to release the funds. For an external account, the LCD recorder or deputy recorder physically goes to the bank to have the check issued and signs the check. For an internal account, the head account clerk issues a check via MassCourts and the LCD recorder or deputy recorder signs it. Finally, the LCD judicial secretary mails the check either to the stakeholders or directly to the administrative expense recipients.

When a case is closed, the judge issues a final order, and the real estate stakeholders have three years to claim the funds in the escrow account before LCD is required to turn the funds over to UPD. LCD's unwritten policy is to notify the stakeholders with a "Letter of Intent to Abandon" three months before sending funds to UPD. If the head account clerk does not receive any response from the stakeholders before the three-year deadline, the head account clerk turns the funds over to UPD.

Partition Commissioner Lists

LCD maintains three types of appointment lists for partition commissioners: the master list, the county lists, and a public hard copy. The master list is sorted alphabetically by active partition commissioner name and includes all cases that have been assigned to each partition commissioner. It also includes a tab for inactive, deceased, and retired partition commissioners. LCD has used this internal list since 2003 as an archive of all partition commissioner appointments. The county lists are used by session clerks and partition commissioners and are organized by the county from which partition commissioners prefer to take cases. The county lists are kept on a Microsoft Excel spreadsheet in a shared LCD folder and used to make successive appointments (i.e., to assign each case to the next available attorney on the county list). These lists are continually updated, and the partition commissioners with active cases are listed at the bottom of each one. Finally, the hardcopy master list details all the appointments made since 2003 and is available for public inspection at LCD's main office. This list mirrors the Excel master list of partition

commissioners, except that it does not include inactive, deceased, or retired partition commissioners. All three types of partition commissioner appointment list are managed by the LCD office manager and reviewed by the deputy recorder.

AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor has conducted a performance audit of certain activities of the Land Court Department (LCD) for the period July 1, 2019 through June 30, 2021.

We conducted this performance audit 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 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.

Below is a list of our audit objectives, indicating each question we intended our audit to answer, the conclusion we reached regarding each objective, and where each objective is discussed in the audit findings.

Objective	Conclusion
1. Does LCD administer escrow funds in accordance with Sections 1.9, 3.2.3, and 3.9 of the Executive Office of the Trial Court's (EOTC's) <i>Fiscal Systems Manual</i> and Section 6 of Chapter 200A of the General Laws?	No; see Finding 2
2. Does LCD oversee its partition commissioners in accordance with Section 12 of Chapter 241 of the General Laws and Sections 1–4, 5d, 6, and 7 of Rule 1:07 of the <i>Massachusetts Rules and Orders of the Supreme Judicial Court</i> ?	No; see Findings 1 and 3

To accomplish our objectives, we gained an understanding of LCD's internal control environment related to the objectives by reviewing applicable department policies and procedures, as well as conducting interviews with LCD management. We tested the operating effectiveness of controls over escrow accounts and assessed whether they operated as intended during the audit period.

To obtain sufficient, appropriate audit evidence to address our audit objectives, we conducted further audit testing as follows.

Escrow

We performed the following tests for the establishment of escrow accounts, disbursement from escrow accounts, and abandonment of property.

- We identified a total population of 10 escrow accounts established during the audit period. To determine whether LCD established escrow accounts in accordance with EOTC's *Fiscal Systems Manual*, we inspected all 10 docket entries to determine the types of accounts that were to be opened, determine whether bank statements or passbooks⁷ were on file, determine whether bank accounts were established, verify bank account numbers, and ensure that the real estate stakeholders linked to the accounts were recorded in MassCourts.
- We identified the total population of 30 escrow account disbursements made during the audit period in accordance with EOTC's *Fiscal Systems Manual*. To determine whether LCD escrow account disbursements were properly recorded in MassCourts, we inspected all 30 escrow account disbursements for dates and check numbers and verified that the interest received was recorded in MassCourts periodically by the head account clerk. We compared disbursement amounts from escrow accounts on the MassCourts docket list to the amounts on the disbursement checks and recalculated balances remaining after partial disbursements were made. We confirmed that disbursement checks were signed and authorized by the recorder or deputy recorder and that the head account clerk obtained W-9s for the real estate stakeholders before disbursement.
- We identified seven accounts that qualified as abandoned during the audit period. To determine whether LCD sent unclaimed escrow funds to the Office of the State Treasurer's Unclaimed Property Division (UPD), we inspected all seven abandoned escrow accounts to verify that funds were sent to UPD three years after the cases associated with the accounts were closed. For each account, we inspected the transmittal letter, as well as the letter of notification sent to the real estate stakeholders before the abandonment was finalized, to determine whether the stakeholders were notified no less than 60 days before the scheduled abandonment date.

Partition Commissioner List

We tested LCD's oversight of its partition commissioners as follows.

- We identified a total population of 58 appointments from the audit period and divided the population into two strata because LCD updated its method of tracking partition commissioner appointments in March 2020. The first stratum had a population of 24 appointments for the period July 1, 2019 through March 1, 2020. The second stratum had a population of 34 appointments for the period March 2, 2020 through June 30, 2021.
- We inspected a nonstatistical, random sample of 10 of the 24 partition commissioner appointments in the first stratum and tested all 34 of the appointments in the second stratum. From these two samples, which together totaled 44 appointments, we verified that LCD made successive appointments by obtaining the emails that session clerks sent to determine whether the next partition commissioners on the list were selected. We inspected court orders to verify that each one was signed by the judge and deputy recorder to appoint a partition commissioner. We inspected MassCourts records and/or LCD hardcopy files to confirm that each partition commissioner had a notarized "Commissioner Oath" on file. We verified that LCD received signed partition commissioner reports detailing activities and expenses for each partition case from the

7. A passbook is a booklet issued by a bank to an accountholder to record deposited and withdrawn funds.

assigned partition commissioners. We confirmed that each payment of fees to a partition commissioner was approved by court order after the partition commissioner's report had been submitted to LCD.

We used nonstatistical sampling methods and therefore could not project the results of our testing to the population.

Data Reliability

Escrow Spreadsheet

We received a complete list of escrow accounts established, disbursed, and abandoned during our audit period from the LCD head account clerk in a Microsoft Excel spreadsheet with multiple tabs. We inspected the tabs, which were broken down by type of account. The "Escrow Master" tab listed 23 established internal and external escrow accounts. Citizens Bank had a population of 15 records, People's United Bank had a population of 7 records, and Bank of America had a population of 1 record. The "Escrow Disbursements" tab listed 31 disbursements from escrow accounts. We inspected the population of records from the three banks LCD used, and we identified the escrow accounts that were abandoned and sent to UPD during the audit period.

To determine the reliability of the data, we compared LCD records to MassCourts to ensure the accuracy and completeness of the data on the tabs. We inspected the tabs for hidden rows and columns. We also identified the population of records on each tab and traced the case numbers, receipt numbers, and dollar amounts back to MassCourts for all records on all tabs.

We determined that the spreadsheet provided was sufficiently reliable for our purposes.

Partition Commissioner Spreadsheet

We received from the LCD deputy recorder a digital copy (a Microsoft Excel spreadsheet) of the master list of partition commissioners available for public inspection in LCD's main office. The list had two tabs: "Master List" and "Other." The "Master List" tab listed all partition commissioners who were active during the audit period; the "Other" tab listed retired, deceased, and inactive partition commissioners. This Excel master list is maintained by the LCD office manager on a shared drive on LCD's system.

To determine the reliability of the data, we inspected the document for hidden rows and columns. We traced the names of all the partition commissioners, and the case numbers, from all 232 appointments on this master list to MassCourts to ensure the accuracy and completeness of the data. We compared LCD's organization chart to the list of session clerks who had access and editing rights to determine which specific LCD employees had access.

We determined that the data were sufficiently reliable for our purposes.

DETAILED AUDIT FINDINGS WITH AUDITEE'S RESPONSE

1. The Land Court Department did not include accurate information on, and omitted 38 partition commissioner appointments from, its publicly available master list of partition commissioners.

The Land Court Department (LCD) did not keep an updated, complete, publicly available master list of partition commissioners during the audit period. When comparing the master list to MassCourts, we noted that 38 of 270 partition commissioner appointments were not recorded on the master list. In addition, the master list had six incorrect partition commissioner names and three names that were listed as appointed to cases as title examiners or guardians instead of partition commissioners. Also, three cases assigned to partition commissioners on the master list did not have correct case numbers listed, according to MassCourts, and five partition commissioner appointments on the list were associated with missing or incomplete case numbers and could not be verified through MassCourts.

Without an accurate number of partition commissioners' appointments, the public cannot view an accurate list of partition commissioners and the appropriate case numbers assigned to LCD cases. In addition, real estate stakeholders cannot view an accurate list in order to select partition commissioners.

Authoritative Guidance

Rule 1:07 of the *Massachusetts Rules and Orders of the Supreme Judicial Court* states,

(2) **Court Lists.** *Every individual court making fee-generating appointments shall maintain a list of persons eligible for each type of appointment made by the court. . . . The lists shall be public. . . .*

(5) **Appointment Docket.** *All clerks, registers, and recorders, for trial and appellate courts, shall establish and maintain, currently indexed, as part of the public records of the court open during regular business hours to public inspection, an appointment docket with respect to the appointment by the court of each fee-generating appointment. . . . The appointment dockets shall include the following . . .*

(d) *commissioner to sell real estate.*

Reasons for Issue

LCD management stated that before the audit period, the master list was maintained on a desktop computer assigned to the previous judicial secretary using an unsupported version of the WordPerfect software program. This judicial secretary went on an extended leave and then retired. Therefore, the list

was not routinely maintained. Other LCD managers could not update the list continuously because they did not have access to WordPerfect. LCD subsequently transferred the master list to a Microsoft Excel spreadsheet and assigned the responsibility of maintaining the list to the office manager. In addition, MassCourts does not have the capability to run a report that displays partition commissioner appointment orders; instead LCD updates the list manually.

Recommendation

LCD should develop policies and procedures to track partition commissioners assigned to cases and ensure that the master list of partition commissioners is complete and accurate based on their assignments to cases.

Auditee's Response

All partition commissioner appointments were accurately entered into the individual case docket records in the MassCourts case management system. The separate and manually maintained partition commissioner appointment Master List contained clerical and data entry errors due to several lists that were maintained by different staff with incompatible software and varying levels of computer skills, as well as the pandemic causing interference with updating.

The Recorder's Office has replaced the manually maintained list by implementing use of a MassCourts generated weekly list so all appointments from the previous week now appear in the Master Public Book. The automated reports eliminate clerical error.

The Office Manager oversees this process under the supervision of the Deputy Recorder.

The MassCourts generated reports for the time frame of January 1, 2021 to the present are available for public inspection in the Recorder's Office.

The procedure and instructions are kept on the Recorder's Office internal shared drive.

Auditor's Reply

Based on its response, LCD is taking steps to address this issue.

2. Funds totaling \$58,018 that were held in seven abandoned escrow accounts were not transferred promptly to the Office of the State Treasurer's Unclaimed Property Division three years after the cases were closed.

During our audit, we identified seven cases that had a combined total of \$58,018 in escrow funds sent to the Office of the State Treasurer's Unclaimed Property Division (UPD) more than three years after they were closed. (The shortest duration was three years and six months; the longest was five years and one

month.) LCD also did not notify real estate stakeholders 60 days before abandonment in four of these seven cases. In those four cases, the stakeholders were notified one day before the funds were sent to UPD.

Not transferring funds to UPD cost LCD time and resources to maintain the funds. In addition, because LCD did not allow the real estate stakeholders enough time to take necessary action to retrieve their funds from LCD, now the stakeholders must file additional paperwork to retrieve their funds from UPD.

Authoritative Guidance

Section 3.9 of the Executive Office of the Trial Court's (EOTC's) *Fiscal Systems Manual* states that funds that are unclaimed and held by the court for three years after the related cases are closed must be submitted to UPD in accordance with Section 6 of Chapter 200A of the Massachusetts General Laws, which states,

Monies paid into any court within the commonwealth for distribution, and the increments thereof, shall be presumed abandoned if not claimed within three years after the date of payment into court, or as soon after the three year period as all claims filed in connection with it have been disallowed or settled by the court.

Section 3.9 of the *Fiscal Systems Manual* states,

No less than 60 days prior to the funds being transmitted to the Abandoned Property Division of the State Treasurer's Office, a letter must be sent notifying the party the funds will be abandoned.

Reason for Issue

LCD officials told us that they had not fully understood the timing of notifications to real estate stakeholders before transferring escrow funds to UPD. In addition, LCD did not have its own written procedures for abandoned escrow accounts.

Recommendations

1. LCD should establish and implement procedures for abandoned escrow account funds.
2. LCD should notify real estate stakeholders 60 days before transferring property to UPD.

Auditee's Response

Land Court has implemented or reinforced policies to ensure adherence with Executive Office of the Trial Court policies and procedures ~

Escrow Accounts:

- **§1.9 Docketing and Receipting Escrow/Custodial Accounts**
- **§3.6.2 Central Bank Held Escrow**
- **§3.6.3 Separate Bank Held Escrow Holding Account Disbursements**
- **§3.9 Abandoned Property including §6 of the Mass General Law 200A**

Seven (7) escrow accounts were reviewed:

- a. One (1) escrow account case had a negligible balance of \$2.30 cents for unclaimed interest,*
- b. One (1) escrow account case was set on the docket for a status conference and thus was not ripe for escheating [the government taking ownership of unclaimed property], and*
- c. Five (5) escrow account cases were not in compliance with the escheat timeline. The Pandemic interfered with the process as four (4) cases fell into the 2020 calendar for escheating with judgments on 4/20/17, 6/20/17, 9/13/17 and 10/25/17.*

The Head Account Clerk has implemented a tracking system including a MassCourts tickler to trigger:

- 1. Notice to the party that the escheat process will be completed on a date certain*
- 2. Escheat process—3 years from the decision.*

Auditor's Reply

Based on its response, LCD is taking steps to address this issue.

3. LCD did not retain notarized "Commissioner Oaths" for 11 of 58 partition commissioner appointments in either MassCourts or its hardcopy files.

LCD did not retain notarized "Commissioner Oaths" from the audit period, either in MassCourts or in hardcopy files. Because of the pandemic, processes were changed to allow the partition commissioners to email session clerks their signed and notarized "Commissioner Oaths." Session clerks were to upload the oaths to MassCourts. Eleven "Commissioner Oaths" were not uploaded to MassCourts or retained in LCD's hardcopy files.

Without retaining "Commissioner Oaths" in MassCourts or hardcopy files, LCD cannot be sure partition commissioner appointments are legally binding.

Authoritative Guidance

LCD uses MassCourts to store all court records electronically for all of its cases and considers MassCourts public documentation. The MassCourts website states,

The case information contained within this web site is generated from computerized records maintained by the Massachusetts Trial Court and is deemed to be public information.

The public has no access to case information unless LCD uploads it to MassCourts.

Section 12 of Chapter 241 of the General Laws states,

The commissioners, before entering upon their duties, shall be sworn to execute the warrant faithfully and impartially, and a certificate of the oath shall be made on the warrant by the person administering it.

Section iiC(11)(12) of LCD's "Standing Order 3-20: Supplement to Emergency Measures in Response to Coronavirus Outbreak" states,

For all filings submitted by email, the signed original of the filing must thereafter be sent to the Land Court by mail (or courier delivery) with a notation that the filing was previously submitted by email (with the presiding Judge's authorization).

According to "Part 3: Case Related Papers" within the Trial Court record retention schedule,

The Clerk shall retain ["Commissioner Oaths"] for 6 years from the date of original recording before they may be erased or destroyed.

Rule 5 within Trial Court Rule XIV states that for civil cases, the docket of a specific case is "a publicly available court record [that] shall be made remotely accessible to the public." This rule applies because the "Commissioner Oaths" are considered part of public case files.

Reasons for Issue

This issue occurred during the 2019 coronavirus emergency (March 2020 through the rest of our audit period). During this time, LCD and other Trial Court departments were under emergency orders (which are still in effect) that limited access to court buildings, reduced the number of courtroom staff members, enabled cases to be heard remotely, and allowed online filings via email. LCD officials told us that the limited number of staff members working in rotation and the lack of necessary remote work tools, such as virtual private network access, led to lapses in uploading of documentation to MassCourts. LCD had not updated its policies and procedures to address the emergency orders.

Recommendation

LCD should amend its policies and procedures to ensure that "Commissioner Oaths" are maintained in its hardcopy files and uploaded to MassCourts.

Auditee's Response

The Commissioners are appointed by Order and attached to each Order is the Commissioner Oath.

The test cases determined that some oaths were not docketed and/or uploaded to the MassCourts docket. Two factors contributed to this clerical error:

(a) the COVID-19 Pandemic, and

(b) the personnel change of four of the seven session clerks during the audited period. Within the Court's individual case assignment system, the individual session clerk assigned to each judge is tasked with case calendaring and docketing. The personnel transitions disrupted their following up on the requirement of filing the oath with the court.

To address this issue, the Assistant Clerk sent a reminder email to all session clerks of their responsibility to ensure that the oath is attached to the Appointment Order and tracked for completion, return, docketing and uploading to MassCourts. In addition, when the Office Manager confirms the commissioner appointment on the county lists, she sends a reminder to the session clerk for the oath to be tracked.

Auditor's Reply

Based on its response, LCD is taking steps to address this issue.