



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

Making government work better

Official Audit Report – Issued June 24, 2022

Hampden County Probate and Family Court Register's Office

For the period January 1, 2019 through December 31, 2020





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

Making government work better

June 24, 2022

Ms. Rosemary Saccomani, Register of Probate
Hampden County Probate and Family Court Register's Office
50 State Street
Springfield, MA 01102

Dear Ms. Saccomani:

I am pleased to provide this performance audit of the Hampden County Probate and Family Court Register's Office. This report details the audit objectives, scope, methodology, findings, and recommendations for the audit period, January 1, 2019 through December 31, 2020. 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 Hampden County Probate and Family Court Register's Office for the cooperation and assistance provided to my staff during the audit.

Sincerely,

A handwritten signature in blue ink, appearing to read "S M Bump".

Suzanne M. Bump
Auditor of the Commonwealth

cc: Honorable Jeffrey A. Locke, Chief Justice of the Massachusetts Trial Court

TABLE OF CONTENTS

EXECUTIVE SUMMARY	1
OVERVIEW OF AUDITED ENTITY	2
AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY	4
DETAILED AUDIT FINDINGS WITH AUDITEE’S RESPONSE.....	7
1. The internal control plan for the Hampden County Probate and Family Court Register’s Office did not cover all required components and principles.	7
2. The HCPFC Register’s Office did not schedule show cause hearings or assign guardians ad litem when conservators did not submit accounts within required timeframes.	9
3. When guardians did not submit documentation within required timeframes, the HCPFC Register’s Office did not always send notices of noncompliance, schedule show cause hearings, or appoint guardians ad litem.	10

LIST OF ABBREVIATIONS

ACL	Audit Command Language
COSO	Committee of Sponsoring Organizations of the Treadway Commission
CTR	Office of the Comptroller of the Commonwealth
HCPFC	Hampden County Probate and Family Court
ICP	internal control plan
PFCD	Probate and Family Court Department

EXECUTIVE SUMMARY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor has conducted a transition audit of the Hampden County Probate and Family Court (HCPFC) Register's Office for the period January 1, 2019 through December 31, 2020.

In this transition audit, we examined HCPFC's compliance with the Office of the Comptroller of the Commonwealth's *Internal Control Guide* and its administration and monitoring of conservatorships and guardianships.

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

Finding 1 Page 7	The internal control plan (ICP) for the HCPFC Register's Office did not cover all required components and principles.
Recommendation Page 8	The HCPFC Register's Office should update its ICP to include all required components and principles of the enterprise risk management framework of the Committee of Sponsoring Organizations of the Treadway Commission.
Finding 2 Page 9	The HCPFC Register's Office did not schedule show cause hearings or assign guardians ad litem when conservators did not submit accounts within required timeframes.
Recommendation Page 10	The HCPFC Register's Office should appoint a staff member to schedule show cause hearings and assign guardians ad litem when conservators do not submit accounts within required timeframes.
Finding 3 Page 10	When guardians did not submit documentation within required timeframes, the HCPFC Register's Office did not always send notices of noncompliance, schedule show cause hearings, or appoint guardians ad litem.
Recommendation Page 11	The HCPFC Register's Office should appoint a staff member to send notices of noncompliance, schedule show cause hearings, and assign guardians ad litem.

OVERVIEW OF AUDITED ENTITY

The Hampden County Probate and Family Court (HCPFC) is authorized by Chapter 478 of the Acts of 1978, which organized Massachusetts's courts into seven Trial Court departments: the District Court, Boston Municipal Court, Housing Court, Juvenile Court, Land Court, Probate and Family Court, and Superior Court.

The Probate and Family Court Department (PFCD) oversees 14 divisions, including HCPFC—each with a specific territorial jurisdiction—to preside over the probate and family matters brought before it. Each division is organized into three separately managed offices: the Judge's Lobby, headed by a First Justice; the Register of Probate's Office, headed by a Register of Probate, an elected official; and the Probation Office, headed by a Chief of Probation. The First Justice is the administrative head of the division, and the Register of Probate and Chief Probation Officer are responsible for the internal administration of their respective offices. The Register of Probate serves a six-year term. HCPFC's current Register of Probate, Rosemary Saccomani, was elected on November 4, 2020 and took office after our audit period. She was preceded by Register Suzanne Seguin, who served one term in office. HCPFC serves the residents of Hampden County, which had a population of 466,372 in 2019, from the fourth floor of the Roderick L. Ireland Courthouse at 50 State Street in Springfield. HCPFC relies on the annual state appropriation given to the entire Probate and Family Court; the appropriation was \$34,340,235 in fiscal year 2020.

According to PFCD's website,

The Probate and Family Court Department's mission is to deliver timely justice to the public by providing equal access to a fair, equitable, and efficient forum to solve family and probate legal matters and to help and protect all individuals, families, and children impartially and respectfully.

The Probate and Family Court Department has jurisdiction over family-related and probate matters, such as divorce, paternity, child support, custody, parenting time, adoption, ending parental rights, abuse prevention, wills, estates, trusts, guardianships, conservatorships, and name changes.

The HCPFC Register's Office is responsible for court administration and recordkeeping. The office is broken into three departments: the Domestic Department, the Estate Department, and the Vault. The Domestic Department handles areas such as divorce, child custody, paternity, child support, and drug testing. The Estate Department handles probate, wills, equities, adoptions, name changes, guardianships, and conservatorships. These departments also file paperwork and maintain dockets for court documents. The Vault handles the storage and retention of case files.

Conservatorships and Guardianships

When a guardian or conservator files for qualification, the Register's Office files the paperwork. Employees of the office also attend any court dates for the guardian or conservator and file any paperwork handed from the judge. The office also tracks guardianship and conservatorship case files.

According to Section 5-101 of Chapter 190B of the Massachusetts General Laws,

[A conservator is] a person who is appointed by a court to manage the estate of a protected person and includes a limited conservator, temporary conservator and special conservator.

According to PFCD's website, a conservator is responsible for the following:

- *To serve as a fiduciary responsible for managing the protected person's property, but only as the court authorized in the decree.*
- *To encourage the protected person to participate in decisions, act on their own behalf, and regain the ability to manage their estate and business matters to the extent possible.*

According to Section 5-101 of Chapter 190B of the General Laws,

[A guardian is] a person who has qualified as a guardian of a minor or incapacitated person pursuant to court appointment and includes a limited guardian, special guardian and temporary guardian, but excludes one who is merely a guardian ad litem.

According to PFCD's website,

An incapacitated person is someone with a clinically diagnosed condition that keeps them from being able to make or communicate decisions about their physical health, safety, or care. . . .

[Guardians are responsible for acting] in the best interest of the incapacitated person and [taking] their desires and personal values into consideration. . . .

A guardian [of a child] is a person chosen to make all decisions for a child, just like a parent would.

A child's guardian is also responsible for acting in the child's best interest.

If a conservator or guardian does not submit specific paperwork (such as annual accounts or care plan reports) within the required timeframes, the HCPFC Register's Office assigns a guardian ad litem, a professional who looks into the circumstances surrounding a conservator's or guardian's noncompliance and reports the results to the court.

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 transition audit of certain activities of the Hampden County Probate and Family Court (HCPFC) Register’s Office for the period January 1, 2019 through December 31, 2020.

We conducted this transition 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 the current internal control plan (ICP) of the HCPFC Register’s Office contain all eight components of the Committee of Sponsoring Organizations of the Treadway Commission’s (COSO’s) ¹ enterprise risk management framework, as required by the Office of the Comptroller of the Commonwealth’s (CTR’s) <i>Internal Control Guide</i> ?	No; see Finding 1
2. Did HCPFC track conservatorships in accordance with Section 5-418(a) of Chapter 190B of the General Laws, HCPFC’s Decree and Order of Appointment of Conservator, and the Massachusetts Trial Court’s “Best Case Practice for Failure to File a Conservator Account”?	No; see Finding 2
3. Did HCPFC track guardianships in accordance with Sections 5-209(b)(6) and 5-309(b) of Chapter 190B of the General Laws and the Trial Court’s “Judicial Best Case Practice for Failure to File an Adult Guardianship Care Plan Report”?	No; see Finding 3

To achieve our audit objectives, we gained an understanding of the HCPFC Register’s Office’s internal control environment related to the objectives by reviewing the office’s policies and procedures, as well as conducting inquiries with the office’s staff members and managers.

1. According to its website, COSO was formed by a group of five professional associations and provides “thought leadership dealing with three interrelated subjects: enterprise risk management (ERM), internal control, and fraud deterrence.”

To obtain sufficient, appropriate audit evidence to address our audit objectives, we conducted the following procedures.

ICP

To determine whether the ICP of the HCPFC Register's Office contained all eight components and 17 principles of COSO's enterprise risk management framework, as required by CTR's *Internal Control Guide*, we reviewed the office's most recent ICP, which was in effect during our entire audit period and had been created by the prior Register of Probate. We used the "Internal Control Plan Checklist" section of CTR's *Internal Control Guide* and analyzed the HCPFC Register's Office ICP to determine whether all eight components and 17 principles were present.

Conservatorships

To determine whether the HCPFC Register's Office tracked conservatorships in accordance with Section 5-418(a) of Chapter 190B of the General Laws, HCPFC's Decree and Order of Appointment of Conservator, and the Trial Court's "Best Case Practice for Failure to File a Conservator Account," we obtained a list of all conservatorships that had active ticklers² in MassCourts³ during the audit period. Using Audit Command Language (ACL) software, we selected a nonstatistical, random sample of 40 conservatorship case files from the population of 342 on this list. We examined the case files to determine whether conservators filed the following required documents: an inventory of the estate, due 90 days from qualification date (the date a judge declares a conservator qualified); an initial account,⁴ due 15 months from qualification date; and annual accounts for calendar years 2019 and 2020. If the required initial or annual accounts were not in a case file, we examined the hearing notice to determine whether a show

-
2. A tickler is a notification in MassCourts, created by the staff when a conservator or guardian is appointed and the associated docket is filed, to remind the court that a required document should be submitted based on the date entered by the staff (the conservator's or guardian's qualification date). When the required document is submitted, the staff member updates the docket with the submitted document and creates a new tickler for the next date a document needs to be submitted (the next anniversary of the qualification date).
 3. MassCourts is a statewide, comprehensive case management system for the electronic filing of civil cases, criminal complaints, warrant processing, docketing, scheduling, management reporting, and related civil and criminal fees and fines.
 4. According to Section 5-418(c) of Chapter 190B of the General Laws, "An account shall state or contain: (1) a listing of the balance of the prior account or inventory, receipts, disbursements and distributions during the reporting period and the assets of the estate under the conservator's control at the end of the reporting period; (2) a listing of the services provided to the protected person; [and] (3) any recommended changes in any conservatorship plans as well as a recommendation as to the continued need for conservatorship and any recommended changes in the scope of conservatorship."

cause hearing⁵ was scheduled. In addition, we looked through all the case files that did not have initial or annual accounts to determine whether a guardian ad litem had been assigned to investigate each case.

For this objective, we used nonstatistical sampling methods and could not project the results of our testing to the population.

Guardianships

To determine whether the HCPFC Register's Office tracked guardianships in accordance with Sections 5-209(b)(6) and 5-309(b) of Chapter 190B of the General Laws and the Trial Court's "Judicial Best Case Practice for Failure to File an Adult Guardianship Care Plan Report," we obtained a list of all guardianships that had active ticklers in MassCourts during the audit period. Using ACL, we selected a statistical sample, with a 95% confidence level, a 5% tolerable error rate, and a 0% expected error rate, of 60 guardianship case files from the population of 2,901 on this list. We examined the case files to determine whether guardians filed the following required reports: an initial care plan report (generated for incapacitated adults⁶ and due 60 days after a guardian is appointed) and annual care plan reports for calendar years 2019 and 2020. If the required care plan reports were not in a case file, we examined the hearing notice to determine whether a show cause hearing was scheduled. In addition, we looked through all the case files without care plan reports to determine whether a guardian ad litem had been assigned to investigate each case.

Data Reliability

We obtained a list of all conservatorship and guardianship cases that had active ticklers for annual reports due for the period January 1, 2019 through December 31, 2020. To confirm the completeness and accuracy of the list, we traced a sample of 20 case numbers from the list to the case files and traced a sample of 20 case numbers from the case files back to the list. In addition, we conducted tests to identify any duplicates to determine the integrity of the information on the list. We determined that the data on the list were sufficiently reliable for our audit purposes.

-
5. At a show cause hearing, the respondent is required to appear before a judge to explain why the respondent did not fulfill an obligation or take a certain action. In the Probate and Family Court, the respondent explains why a required document was not filed, and the respondent is ordered to provide the document.
 6. A guardian of an incapacitated adults has to file a care plan report within 60 days of appointment; a guardian of a child does not.

DETAILED AUDIT FINDINGS WITH AUDITEE'S RESPONSE

1. The internal control plan for the Hampden County Probate and Family Court Register's Office did not cover all required components and principles.

The internal control plan (ICP) for the Hampden County Probate and Family Court (HCPFC) Register's Office did not cover all the components and principles of the Committee of Sponsoring Organizations of the Treadway Commission's (COSO's) enterprise risk management framework. A lack of a compliant ICP impedes the ability of the HCPFC Register's Office to identify vulnerabilities that could prevent it from achieving organizational goals and exposes it to heightened risks in its operations.

Six of the eight components were not complete, and 9 of the 17 principles were not complete. The incomplete areas are described below, in the terms used in the "Internal Control Plan Checklist" section of the Office of the Comptroller of the Commonwealth's (CTR's) *Internal Control Guide*:

- The Internal Environment component was missing the following principles from the *Internal Control Guide*: "Tone at the Top, Mission Statement, Ethical Expectations, Standards, and Adherence to Conduct."
- The Objective Setting component was missing descriptions of how "Goals and Objectives are defined, and aligned to the Mission Statement," discussed in the *Internal Control Guide*.
- The Event Identification component was missing the identification of "risks that may impede the achievement of each objective" and the "[link] to objectives," described in the *Internal Control Guide*.
- The Control Activities component was missing descriptions of "policies and procedures" and "Preventive and Detective controls," discussed in the *Internal Control Guide*.
- The Information and Communication component was missing information about how "quality information is generated for and/or from both external and internal sources" and how "internal communication is disseminated throughout the organization, and information to external parties is appropriately communicated," described in the *Internal Control Guide*.
- The Monitoring component was missing documentation of how HCPFC evaluates "whether each of the components of [the enterprise risk management framework] is present and functioning," described in the *Internal Control Guide*.

Authoritative Guidance

The "Internal Control Plan Checklist" section of CTR's *Internal Control Guide* states that an ICP should cover the following areas, steps, and questions, which are based on COSO's enterprise risk management framework:

-
1. *Internal Environment—Leadership demonstrates a commitment to integrity, ethical values and competence*
 - a. *Tone at the Top, Mission Statement, Ethical Expectations, Standards and Adherence to Conduct. . . .*
 2. *Objective Setting—measurable targets or purpose of the organization's efforts*
 - a. *Goals and Objectives are defined, and aligned to the Mission Statement*
 3. *Event Identification—occurrences that could prohibit the accomplishment of objectives*
 - a. *Have risks that may impede the achievement of each objective been identified?*
 - b. *Are risks linked to objectives? . . .*
 6. *Control Activities—mitigation steps that are linked to risk events*
 - a. *Policies and procedures*
 - b. *Preventive and Detective controls. . . .*
 7. *Information and Communication—internal and external*
 - a. *Information—quality information is generated for and/or from both external and internal sources*
 - b. *Communication—internal communication is disseminated throughout the organization, and information to external parties is appropriately communicated*
 8. *Monitoring—each component is evaluated to keep the Internal Control Plan up to date*
 - a. *Ongoing and separate evaluations are used to ascertain whether each of the components of [enterprise risk management] is present and functioning.*

Reasons for Incomplete ICP

Officials at the HCPFC Register's Office told us that the office's previous administration was responsible for creating and updating the ICP.

Recommendation

The HCPFC Register's Office should update its ICP to include all required components and principles of COSO's enterprise risk management framework.

Auditee's Response

To address this issue, a staff member has been given the responsibility to review the Internal Control Plan on a quarterly basis and update accordingly, with immediate attention given to the areas identified as incomplete.

Specifically, regarding information and Communication—internal/external:

Once weekly the Office Manager will have a meeting either in-person or virtual with department supervisors. Minutes from the meeting will be emailed to the First Assistant Register, Assistant Register and communicated with the Register. All minutes will be retained and kept in a log for review.

All communication regarding time-off, and any other office procedures, processes and information will be emailed to the appropriate staff member and kept in a log for review.

Auditor's Reply

Based on its response, HCPFC is taking measures to address our concerns on this matter.

2. The HCPFC Register's Office did not schedule show cause hearings or assign guardians ad litem when conservators did not submit accounts within required timeframes.

In our sample of 40 conservatorship case files during our audit period, there were 41 instances where the HCPFC Register's Office did not schedule show cause hearings and assign guardians ad litem to investigate cases after conservators did not submit accounts within required timeframes. If the office does not take these actions, it cannot ensure that the assets of individuals with conservators are adequately protected.

The 41 instances were as follows: 19 of 40 conservators did not file their first accounts within 15 months of the date of qualification, 7 of 40 conservators did not file annual accounts in calendar year 2019, and 15 of 40 conservators did not file annual accounts in calendar year 2020.

Authoritative Guidance

Section 5-418(a) of Chapter 190B of the Massachusetts General Laws states,

Each conservator shall account to the court for administration of the trust not less than annually unless the court directs otherwise, upon resignation or removal and at other times as the court may direct.

HCPFC's Decree and Order of Appointment of Conservator states,

The first Account of the Conservator must be presented . . . within fifteen (15) months of the date of this decree unless otherwise ordered by the Court.

The Trial Court's "Best Case Practice for Failure to File a Conservator Account" states,

- ✓ *The court shall schedule a "show cause" hearing for all [conservators who did not file required accounts]. . . .*
- ✓ *At the "show cause" hearing, if the Conservator **FAILS** to appear, the Judge should [order a guardian ad litem to be assigned].*

Reasons for Issue

HCPFC officials told us that the prior administration of the HCPFC Register's Office had not appointed a staff member to schedule show cause hearings and assign guardians ad litem when conservators did not submit accounts within required timeframes.

Recommendation

The HCPFC Register's Office should appoint a staff member to schedule show cause hearings and assign guardians ad litem when conservators do not submit accounts within required timeframes.

Auditee's Response

To address this issue, a staff member has been given the responsibility to identify cases requiring show cause hearings and present to Assistant Judicial Case Managers for scheduling.

The same staff member will also identify cases needing Guardian Ad Litem's and present those cases to the Assistant Judicial Case Managers for appointment.

Auditor's Reply

Based on its response, HCPFC is taking measures to address our concerns on this matter.

3. When guardians did not submit documentation within required timeframes, the HCPFC Register's Office did not always send notices of noncompliance, schedule show cause hearings, or appoint guardians ad litem.

From our review of 60 guardianship case files during our audit period, we identified 71 instances where the HCPFC Register's Office did not send notices of noncompliance, schedule show cause hearings, or appoint guardians ad litem when guardians did not submit documentation within required timeframes.

Without taking these actions, HCPFC cannot ensure that individuals with guardians have stable living conditions and receive the care needed to maintain an appropriate quality of life.

In 70 of the 71 instances, the office did not send a notice of noncompliance (Order to File) to the guardian; in 69 of the 71 instances, the office did not schedule a show cause hearing; and in 69 of the 71 instances, the office did not appoint a guardian ad litem to investigate the guardian.

Authoritative Guidance

The "Best Practices" section of the Trial Court's "Judicial Best Case Practice for Failure to File an Adult Guardianship Care Plan Report" states,

- ✓ *[When a guardian does not submit a care plan report within the required timeframe, the] court shall send an Order MPC-822 (Order to File) (signed by the Judge or Judicial Designee) requiring the Guardian to either appear or file the Care Plan Report. . . .*
- ✓ *If the Guardian does not appear or file a Care Plan Report on the scheduled date, the following procedure is considered the best case practice:*
 - *The court shall schedule a "show cause" hearing. . . .*
 - *If the Guardian **FAILS** to appear at the "show cause" hearing, the Judge should [order a guardian ad litem to be assigned].*

Reasons for Issue

HCPFC officials told us that the prior administration of the HCPFC Register's Office had not appointed a staff member to send notices of noncompliance, schedule show cause hearings, and assign guardians ad litem.

Recommendation

The HCPFC Register's Office should appoint a staff member to send notices of noncompliance, schedule show cause hearings, and assign guardians ad litem.

Auditee's Response

To address this issue, a staff member has been given this responsibility. The staff member will utilize the MassCourts Tickler reporting to identify the Guardians/Conservators who are non-compliant and send out the applicable notices.

These processes have been implemented as recommended. In addition, additional staff is being trained and will be designated to perform these responsibilities on a regular basis.

Auditor's Reply

Based on its response, HCPFC is taking measures to address our concerns on this matter.