



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

Making government work better

Official Audit Report – Issued April 4, 2014

Norfolk County Division of the Probate and Family Court Department

For the period July 1, 2010 through September 30, 2012





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April 4, 2014

The Honorable John D. Casey, First Justice
Norfolk County Division of the Probate and Family Court Department
35 Shawmut Road
Canton, MA 02021

Dear First Justice Casey:

I am pleased to provide this performance audit of the Norfolk County Division of the Probate and Family Court Department. This report details the audit objectives, scope, methodology, findings, and recommendations for the audit period, July 1, 2010 through September 30, 2012. My audit staff discussed the contents of this report with court personnel, and their comments are reflected in this report.

I would also like to express my appreciation to the Norfolk County Division of the Probate and Family 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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EXECUTIVE SUMMARY

In accordance with Chapter 11, Section 12, of the Massachusetts General Laws, the Office of the State Auditor (OSA) performed an audit of various activities of the Norfolk County Division of the Probate and Family Court Department (NCPFC) for the period July 1, 2010 through September 30, 2012. The objectives of our audit were to determine (1) whether custodial account assets are current or should be transferred to the Office of the State Treasurer (OST) in accordance with state law and Trial Court policies; (2) whether NCPFC is complying with laws and regulations pertaining to the waiver of fees as well as to the type and number of cases involving waived fees; (3) whether NCPFC is complying with Chapter 647 of the Acts of 1989, An Act Relative to Improving the Internal Controls within State Agencies; (4) whether NCPFC's case records are adequately secured and protected; (5) whether NCPFC has adequate internal controls over financial and fund management activities related to the collection, accounting, and depositing of all fees and assessments; (6) whether the court is managing accounts receivable in accordance with established guidelines; and (7) the status of the issues identified in our prior audit of NCPFC (No. 2005-1224-3O) and any other internal audits affecting the current audit objectives.

Summary of Findings

- Custodial accounts totaling \$545,256 were not being properly maintained, including \$436,582 for cases that could have been eligible to be forwarded to OST as abandoned property. Because of the improper account maintenance, the funds contained in these accounts are at risk of fraud, theft, and abuse; potential beneficiaries cannot be properly notified about funds that they may be owed; and even when funds are returned to claimants, they may not represent the full amount to which claimants are entitled.
- NCPFC is not sufficiently monitoring its weekly reports on balances it is owed. As a result, the \$21,909 labeled as owed to the court as of March 15, 2013 is inaccurate; accounts are vulnerable to loss and misuse; and, because the court cannot perform regular follow-up on past-due accounts, it may not be able to collect money and transfer it to the Commonwealth as appropriate.
- NCPFC did not ensure that only designated cashiers conducted receipting of cash as required by the Trial Court's Fiscal Systems Manual (FSM). This practice places cash at risk of fraud, theft, or loss.
- The issuance of manual receipts was not consistently processed as required by the FSM. As a result, there is no audit trail to properly document these cash transactions, and the court cannot be certain that the correct amount of cash has been collected and deposited into the correct accounts and that funds are therefore adequately safeguarded against fraud, theft, and loss.

- Since our previous audit, NCPFC still has not adequately updated its internal control plan or conducted a risk assessment and did not report two cash shortages to OSA. Our previous audit report had disclosed that the court did not have an updated internal control plan and did not conduct periodic risk assessments. It recommended that NCPFC obtain and review a copy of the Trial Court's Internal Control Guidelines; conduct a risk assessment; document its high-level internal control plan that addresses the risks and requirements specific to NCPFC; and report all unaccounted-for variances, losses, shortages, or thefts of funds or property to OSA in accordance with Chapter 647 of the Acts of 1989. These issues have not been resolved.
- Since our previous audit, improvements have not been made to NCPFC's contract for the management of its vending machines. Our prior audit report disclosed that NCPFC was not benefiting as much as possible from its contract with an out-of-state vendor for three coin-operated copy machines. The contract stated that the vendor would provide the court with as many as 80 cases (400,000 sheets) of copy paper annually in lieu of a commission (a percentage of the revenue collected) for accommodating the copiers. However, the vendor stopped supplying paper in August 2004, although the contract was to expire in February 2006. Our previous audit report recommended that the Trial Court Procurement Section of the Fiscal Affairs Department review its procurement policies and then review the existing contract to determine whether it was best serving the needs of the public, the court, and the Commonwealth. We also recommended that, if adjustments were necessary, the Procurement Section advise NCPFC on how to proceed with this contract and that future policies for procurement of vending-machine contracts be amended to encourage contracts that maximize benefits to the court and the Commonwealth. Our current audit noted that when its copy-machine vendor's contract expired, NCPFC allowed the vendor to continue its arrangement without a contract and without any benefit to the court or Commonwealth. In addition, there are three food/beverage vending machines located in the court that are supplied by another vendor that has no contract with NCPFC.
- Since our previous audit, improvements have been made to bank-account reconciliation procedures. During our previous audit, we found that NCPFC had not completed its monthly bank reconciliations in accordance with the FSM and did not report the resulting variances to OSA as required. Our follow-up review of nine non-statistical judgmentally selected bank reconciliations for the 27-month audit period noted that NCPFC has addressed this issue and by documenting any reconciling items, like deposits in transit and checks still outstanding, and no longer has unexplained variances on its reconciliations that would require Chapter 647 reporting. We consider this matter resolved.

Recommendations

- NCPFC should review the ages of all the accounts in its custody to determine which accounts should be transferred to OST as unclaimed property; it should make this review a priority. In cases where no docket or custodial account information is available, NCPFC should seek guidance from the Trial Court on how to dispose of the property.
- NCPFC should seek direction from the Trial Court on how to enter old cases with limited information or missing case docket information into MassCourts and should make the posting of interest to custodial accounts a priority.

- NCPFC should follow up with banks on the whereabouts of data that it requested in order to enter accounts in MassCourts. If the issue is not resolved satisfactorily, then NCPFC should pursue all legal avenues for resolution.
- NCPFC should research its non-MassCourts bank accounts that have been depleted by bank service charges or bank adjusting entries and have those funds restored and remitted to their rightful owners.
- NCPFC should ensure that it reconciles its report of amounts owed to it with the amounts reflected in MassCourts in accordance with Trial Court requirements.
- NCPFC should request guidance from the Trial Court on how to enter bad-check accounts in MassCourts.
- NCPFC should emphasize to staff the importance of segregation of duties by limiting the cashiering function to primary and backup cashiers designated by the court's management.
- NCPFC should train additional court employees to properly perform the responsibilities of designated cashiers.
- NCPFC should train the appropriate employees on the correct procedures for entering manual cash receipts in the corresponding case dockets maintained in MassCourts.
- The Register's Office should ensure that its internal control plan addresses the risks and internal control requirements specific to all fiscal, administrative, and, if applicable, program operations. Also, the Register's Office should seek guidance from the Trial Court on how to perform annual risk assessments and should perform them accordingly. Lastly, the Register's Office should ensure that its internal control plan is updated based on the results of the risk assessments, as necessary.
- NCPFC should report all unaccounted-for variances, losses, shortages, or thefts of funds or property to OSA as required by Chapter 647 of the Acts of 1989.
- NCPFC should review its procurement policies for vendor contracts to ensure that they benefit the court and the Commonwealth and prevent vendors from operating in the court without contracts. In addition, NCPFC should amend its existing vending-machine arrangements to solicit bids, compare the value of commission revenue against other benefits in return for permitting vendors to operate in the court, and procure the most advantageous vendor contracts. If NCPFC needs assistance in these matters, it should seek guidance from the Procurement Section on how to procure vendor contracts that maximize benefits to the court and the Commonwealth.

Other Matters

During our audit, we identified an issue that, although it does not constitute an audit finding, affects the amount of revenue collected by NCPFC, as well as by other courts that handle civil matters, and

is therefore being disclosed in this report for consideration by the Chief Justice of the Trial Court (CJTC) and the Legislature.

During our audit period, 35% of the individuals who initiated civil proceedings (e.g., divorce or paternity matters) at NCPFC did not pay a fee to do so because they submitted information to NCPFC that qualified them for a fee waiver as authorized by Chapter 261, Section 27C, of the General Laws. In order to be eligible for a fee waiver, individuals must complete an Affidavit of Indigency form,¹ which they sign under penalty of perjury, attesting that they are eligible for the waiver. Chapter 261, Section 27C, does not allow the court to verify the information in the form but rather states that if the form is complete on its face, the court must accept the affidavit and the clerk must grant the request. As a result, fees may have been waived for individuals who misrepresented their status as indigent. Accordingly, the CJTC and the Legislature may want to consider taking whatever measures are necessary (including amending Chapter 261, Section 27C, of the General Laws) to allow courts such as NCPFC to verify the information included in Affidavit of Indigency and Supplement to Affidavit of Indigency forms.

¹ Persons indicating that they cannot pay the fees and costs of the proceeding “without depriving [themselves or their] dependents of the necessities of life, including food, shelter and clothing” must also complete a “Supplement to Affidavit of Indigency” form.

OVERVIEW OF AUDITED AGENCY

Background

The Massachusetts Trial Court was created by Chapter 478 of the Acts of 1978, which reorganized the courts into seven Trial Court departments: the Boston Municipal Court, the District Court, the Housing Court, the Juvenile Court, the Probate and Family Court, the Superior Court, and the Land Court. The statute also created a centralized administrative office managed by a Chief Justice for Administration and Management (CJAM), who was also responsible for the overall management of the Trial Court. The CJAM charged the central office, known as the Administrative Office of the Trial Court, with developing a wide range of centralized functions and standards for the benefit of the entire Trial Court, including budget; central accounting and procurement systems; personnel policies, procedures, and standards for judges and staff; and the management of court facilities, security, libraries, and case-management automation. Legislative changes that took effect July 1, 2012 eliminated the CJAM position and created two new Trial Court leadership positions: the Chief Justice of the Trial Court (CJTC) and the Court Administrator. The CJTC is considered the judicial head of the Trial Court and is responsible for all matters of judicial policy. The Court Administrator is the administrative head of the Trial Court, working with the CJTC with the overall responsibility for budget preparation and oversight, labor relations, information technology, capital projects, and personnel policy (thereby performing the many administrative functions of the former CJAM position).

Chapter 211B of the Massachusetts General Laws established the Probate and Family Court Department (PFCD), which has jurisdiction over probate and family matters such as divorce, paternity, child support, custody, visitation, adoption, termination of parental rights, and abuse prevention. All probate matters fall under PFCD's purview, including wills, administrations, guardianships, conservatorships, and name changes. PFCD established 14 divisions, each having a specific territorial jurisdiction, to preside over the probate and family matters brought before it. Each division's organizational structure consists of three separately managed offices: the Judge's Lobby, headed by a First Justice; the Register of Probate's Office, headed by the 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 the Chief Probation Officer have responsibility for the internal administration of their respective offices.

The Norfolk County Division of the Probate and Family Court Department (NCPFC) presides over probate and family matters falling within its territorial jurisdiction of Norfolk County. NCPFC is authorized by Chapter 217 of the General Laws and serves 26 towns and 2 cities in Norfolk County. The NCPFC courthouse is located in the town of Canton and presides over probate and family matters falling within its territorial jurisdiction. According to the PFCD website, NCPFC's mission is to "deliver timely justice to the public by providing equal access to a fair, equitable and efficient forum to resolve family and probate legal matters and to assist and protect all individuals, families and children in an impartial and respectful manner."

During the audit period, July 1, 2010 through September 30, 2012, NCPFC collected \$3,696,525 of revenue, which it disbursed to the Commonwealth as either general or specific state revenue.

Additionally, as of September 30, 2012, NCPFC controlled 80 custodial accounts valued at \$555,706. These accounts are considered assets held in trust by NCPFC and are kept in the custody of the Register of Probate. They usually result from the settlement of probate proceedings at the request of a fiduciary who cannot distribute the funds to a beneficiary because the beneficiary is either a minor or an heir who cannot be located at the time of settlement.

According to NCPFC records, court proceedings occurred on 15,590 domestic relations and probate cases during the audit period.

AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Chapter 11, Section 12, of the Massachusetts General Laws, we performed an audit of various activities of the Norfolk County Division of the Probate and Family Court Department (NCPFC) for the period July 1, 2010 through September 30, 2012. We also examined two Chapter 647 variances that occurred before our audit period but had not yet been reported, and we reviewed a Civil Outstanding Obligations Report dated March 15, 2013, which was the most recent report available at the time of the audit.

The objectives of our audit were to determine (1) whether custodial account assets are current or should be transferred to the Office of the State Treasurer (OST) in accordance with state law and Trial Court policies; (2) whether NCPFC is complying with laws and regulations pertaining to the waiver of fees as well as to the type and number of cases involving waived fees; (3) whether NCPFC is complying with Chapter 647 of the Acts of 1989, An Act Relative to Improving the Internal Controls within State Agencies; (4) whether NCPFC's case records are adequately secured and protected; (5) whether NCPFC has adequate internal controls over financial and fund management activities related to the collection, accounting, and depositing of all fees and assessments; (6) whether the court is managing accounts receivable in accordance with established guidelines; and (7) the status of the issues identified in our prior audit of NCPFC (i.e., bank-reconciliation procedures, compliance with Chapter 647 as it relates to conducting periodic risk assessments and reporting variances, and Trial Court protocols over vending machine contracts). We also considered any other internal audits affecting our current audit objectives.

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.

To accomplish our objectives, we performed the following audit procedures:

- Gained an understanding of the internal controls we deemed to be significant to our audit objectives and evaluated the design and effectiveness of those controls. Specifically, we performed procedures such as interviewing court officials and other staff members and

reviewing relevant documents, statutes, and regulations as well as NCPFC's policies, procedures, and accounting records.

- Verified that custodial accounts were maintained in a secure locked setting and reviewed custodial account assets to determine whether they were current or should be transferred to OST. Our testing in this area involved interviews with NCPFC personnel and a review of case-record information provided by NCPFC.
- Verified that any waivers of civil entry fees were supported by completed, signed, and approved Affidavits of Indigency in the case files.
- Conducted interviews with NCPFC personnel and reviewed applicable statutes, policies, procedures, accounting records, and other source documents.
- Reviewed and evaluated NCPFC's internal controls to determine whether NCPFC is complying with Chapter 647 of the Acts of 1989. We also reviewed two unreported Chapter 647 variances that occurred before our audit period.
- Examined the court's accounts-receivable records to determine whether the court is managing accounts receivable in accordance with established guidelines.
- Reviewed the results of our prior audit (No. 2005-1224-3O) and the results of the internal audit dated April 6, 2011 affecting these current audit objectives and performed tests accordingly.
- Examined the court case records to determine that they are adequately secured and protected.
- Reviewed fund management activities through observation of the cashiering function, daily closeout, and issuance of manual receipts.
- Reviewed manual receipts to determine whether receipt numbers were properly recorded in the MassCourts docket.

To obtain audit evidence, we used non-statistical, judgmental sampling in the testing of custodial accounts, waivers, accounts receivable, bank reconciliations, court case records, and dockets. We selected a cross-section of samples from throughout the audit period and accounted for the likelihood of an error based on the details of the transactions. The results of these tests cannot be projected to those populations.

To accomplish our objectives regarding financial and fund management activities, we obtained receipt, disbursement, and fee waiver information from the MassCourts system² maintained by the Massachusetts Trial Court and NCPFC. We compared this information with other source

² MassCourts is a statewide comprehensive case-management system that features the electronic filing of civil cases, criminal complaints, warrant processing, docketing, scheduling, management reporting, and related civil and criminal fees and fines.

documents and interviewed knowledgeable NCPFC and Trial Court officials about the data. We determined that the data were sufficiently reliable for the purposes of this report.

To accomplish our objective regarding the reviewing of court records for annual revenue collections, we analyzed data from the Commonwealth's Massachusetts Management Accounting and Reporting System to identify revenue collected by the Commonwealth for NCPFC. The electronic data sources used for this analysis constitute the official accounting records of the Commonwealth, are widely accepted as accurate, and form the basis for the Commonwealth's audited financial statements. Accordingly, our audit did not involve a comprehensive assessment of the reliability of source Commonwealth data. However, we did perform analytical procedures, such as comparisons and reconciliations to available revenue summary totals in NCPFC's accounts, to confirm that the Commonwealth database information we used was consistent with other available information. Based on that analysis, we concluded that the data were of sufficient reliability for the background information, sampling methodology, and other purposes of our report.

Based on our audit, we have concluded that for the period July 1, 2010 through September 30, 2012, NCPFC improved its bank-reconciliation procedures; complied with applicable laws and regulations over granting civil fee waivers; sufficiently secured case files; and adequately processed, deposited, and accounted for cash received. However, NCPFC needs to improve its controls over monitoring and reconciling accounts receivable; recording custodial accounts and disposing of old escrow accounts in accordance with the statutes; complying with Chapter 647 of the Acts of 1989 as it relates to conducting periodic risk assessments and reporting of any variances to the Office of the State Auditor; and following Trial Court protocol over public use vending machine contracts.

DETAILED AUDIT RESULTS AND FINDINGS WITH AUDITEE'S RESPONSE

Audit Findings

1. Custodial accounts were not properly maintained.

Of the 80 custodial accounts that the Norfolk County Division of the Probate and Family Court Department (NCPFC) provided to the Office of the State Auditor (OSA) as of September 30, 2012, 79 (totaling \$545,256) were not being properly maintained. Therefore, the funds contained in them were at risk of fraud, theft, and abuse. Furthermore, without NCPFC transferring unclaimed accounts to the Office of the State Treasurer (OST) on a timely basis, potential beneficiaries cannot be properly notified about funds that they may be owed. Also, if the account balances are not updated with interest, claimants may not receive the full amount to which they are entitled. We found the following account-maintenance irregularities.

- a. Twenty-nine of the accounts, totaling \$108,674,³ were not accounted for in MassCourts⁴ because they had not been converted to the court's new accounting system in 2009.**

NCPFC performs month-end closing procedures that include reconciling its bank statements (including custodial accounts) to what is recorded in MassCourts; however, the balances of the 29 accounts omitted from MassCourts are not part of this reconciliation process and do not appear on the detailed trial balance.⁵ We were satisfied with documentation that supported the current balances in 4 of these accounts, which totaled \$10,368. The remaining 25 accounts, which we calculated from court records as totaling \$98,306, could not be supported with current bank statements. Moreover, bank statements for 3 of these accounts showed zero balances: 2 depleted by monthly bank-service fees and 1 depleted by a \$147,439 "bank adjustment" about which court officials could not provide us with any details.

Authoritative Guidance

Section 1 of the Trial Court's Fiscal Systems Manual (FSM)⁶ states, in part,

All Trial Court divisions, including satellite locations, must use MassCourts to receipt all funds collected. In the event the system is unavailable for use, all offices must utilize

³ These balances are based on the September 30, 2012 bank statement or last available statement provided by personnel.

⁴ MassCourts is the Trial Court's case management and financial information system that went into effect in April 2009.

⁵ A detailed trial balance is a detailed list of closing balances of accounts as of a certain date.

⁶ The Fiscal Systems Manual (FSM) is a manual containing detailed policies and procedures for users of MassCourts.

their designated One-Write Receipting System for the collection of funds. All One-Write receipts must be entered into MassCourts when it is again available.

Reason for Not Establishing Accounts in MassCourts

MassCourts does not allow entry of a case if any of the relevant information is missing; therefore, for any case lacking information, the court staff was unable to transfer the case record to MassCourts. The staff attempted to research court records and found that the case docket information was not always available or complete because the relevant data that are now required were not necessary before the implementation of MassCourts.

NCPFC officials also indicated that in order to obtain complete information to enter in MassCourts, they attempted to confirm the status of some of the accounts with their respective banks and went so far as to subpoena the banks for account information. NCPFC officials stated that they received no response to the subpoenas; they did make the Trial Court aware of the situation, but neither they nor the Trial Court has yet pursued the matter further.

b. Fifty accounts (valued at a total of \$436,582), although in MassCourts, may potentially qualify as unclaimed property transferable to OST as abandoned property.

The court does not monitor the age of custodial accounts to determine when they should be transferred to OST as abandoned property. The court does not transfer custodial accounts with special circumstances (e.g., a beneficiary who is a minor without a legal guardian) when legally allowable.

Authoritative Guidance

The Massachusetts General Laws require probate courts that have been ordered to pay money to lawful beneficiaries to remit the money to OST if it remains unclaimed after a certain period of time. This period of time changed during our audit period; however, regardless of the specific period, OSA believes that the court has not transferred money to OST as required.

Until March 31, 2012, Chapter 206, Section 25, of the General Laws stated, in part,

If money which a decree of a probate court has ordered to be paid over remains for six months unclaimed, said money shall be presumed abandoned and the executor, administrator, guardian, conservator or trustee who was ordered to pay the same shall remit said money to the state treasurer as abandoned property

That law is no longer in effect, and unclaimed property must be handled according to Chapter 200A of the General Laws. Section 6 of that chapter 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.

Additionally, Section 10.15 of the FSM requires the periodic review of surety funds held at the court, written notification to funds' owner after one year, and the transfer of unclaimed funds more than three years old to OST.

Reasons for Not Abandoning Custodial Accounts

The court has not transferred money to OST because court personnel were concerned that beneficiaries who were minors at the time of settlement and are now of age, and beneficiaries who could not be located at the time of settlement, might come forward to claim the money after it had been transferred. However, abandoned property held by OST can be claimed at any time by its rightful owner. Moreover, OST publishes the names of the owners of abandoned property every year by March 1 and concurrently notifies owners with known addresses.

In addition, court personnel were unsure of the proper procedures for handling abandoned property when no docket and/or custodial-account information was available and therefore MassCourts could not be used.

Finally, court staff did not monitor the age of account balances for abandonment because of staffing shortages that prevented this task from being a top priority.

c. Four of these 50 accounts in MassCourts had not had interest posted from August 2011 through the end of the audit period.

The court does not consistently have custodial accounts updated with interest or accordingly update account balances in MassCourts. The four accounts for which NCPFC had supporting documentation, which were passbook savings accounts, had not been brought to the bank for annual updating so that these accounts would reflect any interest earned.

Authoritative Guidance

Section 10.15 of the FSM requires courts to post interest to custodial accounts at least once a year. This section also requires court divisions to account for money on deposit in custodial accounts accurately and in a timely manner by preparing detailed trial balances and verifying account activity and monthly reconciliations.

Reasons for Not Posting Interest to Accounts

Court staff did not consistently post interest to custodial accounts because staffing shortages prevented this task from being a top priority.

Recommendations

- NCPFC should review the ages of all the accounts in its custody to determine which accounts should be transferred to OST as unclaimed property; it should make this review a priority. In cases where no docket or custodial account information is available, NCPFC should seek guidance from the Trial Court on how to dispose of the property.
- NCPFC should seek direction from the Trial Court on how to enter old cases with limited information or missing case docket information into MassCourts and should make the posting of interest to custodial accounts a priority.
- NCPFC should follow up with banks on the whereabouts of the previously subpoenaed data; if the issue is not resolved satisfactorily, then NCPFC should pursue all legal avenues for resolution.
- NCPFC should research the non-MassCourts bank accounts that were depleted by bank service charges or bank adjusting entries and have those funds restored and remitted to their rightful owners.

Auditee's Response

In response to this issue, the Register of Probate stated,

A majority of custodial accounts held at the Norfolk Probate Court, established in the name of the First Justice are updated yearly with their respective banking establishments.

- 1.a. Norfolk County Probate & Family Court (NCPFC) upon sufficient instruction from [the Office of Court Management, or OCM] will make all conversions necessary to ensure that all custodial passbooks are accounted for in MassCourts. As noted in the Draft Audit Report, NCPFC has taken extensive measures to obtain the information necessary to enter all accounts into MassCourts and awaits further instruction from OCM or any other Managing Agency for further necessary steps. . . .*

- 1.b. *Many of these custodial accounts are unique in that they involve funds which have been deposited in conjunction with on-going divorce and equity litigation which may last longer than the OST established 3 year time frame. Additionally, funds left through estates to minors or unascertained heirs have historically been held by the Registry for a period of no less than 18 years which would ensure that any minors would reach the age of majority and could then come to the court to claim their account. Chapter 200A of the General Laws, section 6 would tend to uphold this policy, to wit: ". . . shall be presumed abandoned if not claimed within three years after the date of payment into the court, or as soon after the three year period as all claims filed in connection it have been disallowed or settled by the court."*

NCPFC acknowledges that some of its custodial accounts would be more appropriately addressed by forwarding said accounts to OST and will do so upon receipt of sufficient instruction by appropriate authorized personnel.

- 1.c. *As noted in your Draft Audit Report, 92% of all custodial accounts held by the NCPFC have been updated appropriately. A majority of our custodial accounts are established with the Dedham Institution for Savings which is local to this Court and allows for efficient yearly updating.*

Auditor's Reply

In his response, the Register acknowledges the need for NCPFC to transmit various unclaimed accounts to OST in order to get the money held in these old custodial bank accounts to its rightful owners. To accomplish this task, the Register's Office should follow the procedures established in the FSM to transmit unclaimed/abandoned property. If employees are having difficulty completing the steps, then they should look to the OCM for guidance.

Regarding the posting of interest, the FSM requires that it be done for all custodial accounts on at least an annual basis. We reiterate our recommendation to update all accounts annually, at a minimum.

The Register's response does not address the status of the subpoenaed bank records or non-MassCourts custodial accounts that were depleted by bank service charges or bank adjustments. We reiterate our recommendation that both these matters be further reviewed by the court, with OCM involvement, if necessary.

2. NCPFC is not sufficiently monitoring its Civil Outstanding Obligations Reports⁷ in accordance with the Trial Court's requirements.

Our review of MassCourts' most recent Civil Outstanding Obligations Report (COOR), dated March 15, 2013 and totaling \$21,909, showed that it did not reflect the actual amount of \$8,178 owed the court. Because NCPFC does not account for all amounts owed in MassCourts, the court cannot attain an accurate accounts-receivable balance that can be reconciled with the COOR. If accounts cannot be reconciled, they are vulnerable to loss and misuse. Furthermore, the court cannot perform regular follow-up on past-due accounts, so it may not be able to collect money and transfer it to the Commonwealth as appropriate. Since the court is not properly accounting for amounts owed, there is no assurance that the balance of the COOR in any one week is an accurate representation of the court's accounts receivable. We found the following accounting weaknesses in the COOR, which, if taken into account, would reflect the correct COOR balance of \$8,178 as of March 15, 2013:

- The COOR does not account for bad checks received by the court before the implementation of MassCourts. There are 55 checks, worth a total of \$2,782, maintained on a separate bad-check register. These checks apply to court cases started between 1993 and 2007.
- The COOR contains 72 accounts, totaling \$16,513, that apply to court cases where the fees were previously waived but not adjusted for in MassCourts.

Further review of the cases appearing on the COOR confirms that for the 20 tested cases amounting to \$2,130 (non-statistical judgmental sample taken from the COOR population of 123 cases, which cannot be extrapolated over the entire population), the court staff was not following protocol on monitoring or collection of accounts receivable.

Authoritative Guidance

Section 5 (Case Management) of the FSM states,

Courts that receive the Civil Outstanding Obligations Report email . . . must review all cases listed within the report to determine why payments are outstanding, and the appropriate actions must be taken. Any cases which cannot be resolved must be reported to the Fiscal Help Desk.

⁷ The Civil Outstanding Obligations Report (COOR)—a weekly report generated and e-mailed by Trial Court Information Services, a division of the Trial Court—shows the cumulative balances owed by case type, such as estates, domestic relations, paternity, equity, and guardianship, along with detailed information by specific case docket number.

In August 2011, the Trial Court issued a memo titled “Trial Court Fiscal Integrity Protocols” that required court personnel to perform a weekly review of the weekly outstanding obligation reports sent by Trial Court Information Services. In a meeting on June 14, 2011, at a mandatory Trial Court training program entitled “Fiscal Integrity Protocols—An Overview for Managers,” court personnel were informed that the COOR was the most significant factor in maintaining fiscal integrity. It was emphasized that the COOR sent to them on a weekly basis should be consistently monitored.

Reasons for Not Reconciling COOR or Accounting for All Amounts Owed on MassCourts

NCPFC is understaffed, and court personnel stated that this reconciliation is not a top priority. Court personnel stated that when they converted to MassCourts in 2009, the system did not allow them to enter the financial information on the 55 “old” bad-check cases. However, Trial Court officials agreed with OSA that these amounts should be in the MassCourts system.

Recommendations

- NCPFC should ensure that it reconciles the COOR with the MassCourts amounts in accordance with Trial Court requirements.
- NCPFC should request guidance from the Trial Court on how to enter the 55 bad-check accounts in MassCourts.

Auditee's Response

In response to this issue, the Register of Probate stated,

*Proper maintenance of the **COOR** report, is time consuming and staffing levels do not allow for a thorough weekly review of said report. The report itself is flawed in its design in that new outstanding obligations appear randomly throughout the report. However, it is reviewed weekly by the Register and/or Bookkeeper. The balance on the COOR fluctuates greatly from week to week based on the ability of the Bookkeeper to enter fee waivers and the number of cases entered into MassCourts on Thursday afternoon after the cashiers have stopped receipting cases for the day.*

*Because of the Trial Court's inability to properly staff this office, most employees are obligated to perform more than one primary function - including our bookkeeper. Due to the long term absence of our Adoption/Equity/Change of Name Clerk, these case processing functions have been assumed by other staff within the office. Our bookkeeper, who functioned as the Adoption Clerk several years ago, has been assigned the processing of all adoption matters in addition to her daily bookkeeping duties. The bookkeeper devotes countless hours weekly on the multiple reports that she is responsible for; however, time constraints are such that **all** duties with this office must be tri-aged so that all operations of the court, including customer service and case processing, continue to function at an acceptable level.*

NCPFC does not understand the conclusion that said accounts are "vulnerable." Any file that has an outstanding obligation is properly documented and held in the bookkeeper office. When/If a party to a case with an outstanding obligation appears at the court (sometimes 20 years after the case has been concluded), the case will not be available for inspection by the litigant and services are not available to them until proper payment is made.

Auditor's Reply

We understand that that the court has fewer staff members than in years past and, in fact, stated in our report that because staff members are handling many different functions, other priorities took precedence over the COOR reconciliation. However, without reconciling the COOR to MassCourts, the court cannot ensure that the balance owed the court is accurately reflected. That is one of the reasons that the Trial Court indicated that weekly monitoring of the COOR was the most significant factor for the court to maintain its fiscal integrity. We reiterate our recommendation that the court work with the Trial Court to address the reconciliation of the COOR to MassCourts, including updating the records to reflect the old bad checks in the court's possession.

3. Internal controls over cash management need improvement for acceptable compliance with the requirements of the FSM.

Although NCPFC notes the importance of safeguarding Commonwealth assets in its internal control plan, the court staff is not adhering to the policies and procedures developed by the Trial Court when performing the cashiering function and issuing manual receipts. Stringent controls in this area are particularly important because, according to Trial Court records, the division transmitted \$3.7 million in cash receipts to the state during the audit period. We found the following internal control weaknesses:

- Based on our observations of cashiering activities and interviews with court personnel, we found that NCPFC did not ensure that only the designated primary and backup cashiers conducted receipting of cash as required by the Trial Court in the FSM. We observed clerical staff members who were not designated cashiers handling payments for filings. For example, these staff members would take in cash at the front counter and place it in the designated cashier's drawer. This practice places cash at risk of fraud, theft, or loss.
- The issuance of manual receipts was not consistently processed as required by the FSM. When the MassCourts system is not available for use, courts must use the approved One-Write Receipting System⁸ for the collection of funds. Of the 80 cases manually receipted during the audit period, using a non-statistical judgmental selection of 10 cases, we found that 8 out of 10, or 80%, of the corresponding case dockets on MassCourts did not have the manual receipt number entered in the designated section. These results were not extrapolated to the population

⁸ The One-Write Receipt Register is the only authorized backup manual system to MassCourts.

because statistical sampling methods were not used. As a result of the deficiencies in processing, there is no audit trail to properly document these cash transactions, and the court cannot be certain that the correct amount of cash has been collected and deposited into the correct accounts and that funds are therefore adequately safeguarded against fraud, theft, and loss.

The Trial Court's internal auditors faulted NCPFC for these same deficiencies in their report that covered calendar year 2010 (dated April 6, 2011), which required that the court division take corrective actions to improve internal controls. However, our audit still found this to be a problem.

Authoritative Guidance

Section 1 of the FSM states, in part,

All Trial Court divisions, including satellite locations, must use MassCourts to receipt all funds collected. In the event the system is unavailable for use, all offices must utilize their designated One-Write Receipting System for the collection of funds. All One-Write receipts must be entered into MassCourts when it is again available. When receipting the One-Write receipts into MassCourts, the One-Write receipt number must be recorded in the comment section of the MassCourts receipting screen. Once the receipt is processed in MassCourts, the MassCourts receipt number must be manually recorded in the "Description" column of the One-Write Receipt Register page.

To ensure proper control over the Courts' collection of funds, strict segregation of duties in the collection process must be maintained. . . . For Trial Courts having several cashiers, this policy also requires that no more than two (2) employees work as Cashiers (designated as Primary and Back-Up) for each MassCourts Point of Sale (POS) drawer during a single day.

Reasons for Not Adequately Safeguarding Revenue Collections

The court had an insufficient number of designated cashiers—both primary and backup—to fill in or relieve other designated cashiers. In addition, designated cashiers were not properly trained in the procedures for entering manual cash receipts in the corresponding case dockets maintained by MassCourts.

Recommendations

NCPFC should:

- Emphasize to staff the importance of segregation of duties by limiting the cashiering function to primary and backup cashiers designated by the court's management.
- Train additional court employees to properly perform the responsibilities of designated cashiers.
- Train the appropriate employees on the correct procedures for entering manual cash receipts in the corresponding case dockets maintained in MassCourts.

Auditee's Response

In response to this issue, the Register of Probate stated,

*NCPFC has doubled the number of staff trained as cashiers from two (2) employees to four (4). Generally, two different cashiers work each day - one for the morning session and one for the afternoon session. All cashiers have been trained in the use of the **One-Write Manual Receipting System**. This resolves all non-compliance issues addressed in this segment of the Draft Audit Report.*

4. NCPFC still needs to resolve previously reported issues regarding developing an internal control plan, conducting risk assessments, and reporting unaccounted-for variances and shortages to OSA.

Our prior audit report (No. 2005-1224-3O) disclosed that the court did not have an updated internal control plan and did not conduct periodic risk assessments. At that time, we recommended that the court obtain and review a copy of the Trial Court's Internal Control Guidelines, conduct a risk assessment, and document its high-level internal control plan that addressed the risks and requirements specific to NCPFC. In addition, we recommended that NCPFC report all unaccounted-for variances, losses, shortages, or thefts of funds or property to OSA in accordance with Chapter 647 of the Acts of 1989, An Act Relative to Improving the Internal Controls within State Agencies. In its response to our recommendation, NCPFC stated,

This court is desirous of developing and maintaining an Internal Control Plan and conducting periodic risk assessments. After this deficiency was brought to our attention by the Audit Staff, much thought was put into this process; we are gathering information and formulating ideas for establishing an Internal Control Plan. At this time, staffing levels are such that addressing the day-to-day workload takes up a majority of each day; however, this item is a priority.

Our current audit revealed that NCPFC still has not adequately updated its internal control plan or conducted a risk assessment and did not report two cash shortages to OSA.

Although the Register's Office provided us with an internal control plan with some modifications since our prior audit, we noted that several key administrative functions and responsibilities were not clearly documented in the plan. Specifically, our audit found that the Register's Office case-management operations, including the case-initiating process (docketing procedures), as well as the operation of the MassCourts system (e.g., user manuals, system flowcharts, and design specifications), were not included in the internal control plan or supporting lower-level documents.

During the current review, we also found two variances of \$65 each that had occurred on January 27, 2010 and March 17, 2010, respectively, and were not reported on a Chapter 647 form and sent to

OSA as required. NCPFC officials stated that the variances were handled internally (the money was paid back and the employee was suspended for two weeks).

Recommendations

- The Register's Office should ensure that its internal control plan addresses the risks and internal control requirements specific to all fiscal, administrative, and, if applicable, program operations. Also, the Register's Office should seek guidance from the Trial Court on how to perform annual risk assessments and should perform them accordingly. Lastly, the Register's Office should ensure that its internal control plan is updated based on the results of the risk assessments, as necessary.
- NCPFC should report all unaccounted-for variances, losses, shortages, or thefts of funds or property to OSA as required by Chapter 647 of the Acts of 1989.

Auditee's Response

In response to this issue, the Register of Probate stated,

Register Patrick W. McDermott has drafted an Internal Control Plan (dated October 2013), and will continue to address a risk assessment of our fiscal operations to be included in this year's revised Internal Control Manual. A risk assessment is planned for this spring.

NCPFC reported the two \$65.00 variances to OCM immediately upon detection and the matter was addressed at that level. In an effort to maintain full disclosure with the audit staff, this incident was voluntarily reported during this audit.

Auditor's Reply

In his response, the Register acknowledges that the court's internal control plan was outdated and states that he is taking appropriate measures to bring the plan into compliance with Trial Court's Internal Control Guidelines. We recommend that, when conducting its annual risk assessment, the court consider administrative and program operations, in addition to the planned risk assessment of fiscal operations, in order to fully develop the internal control plan.

Regarding Chapter 647 reporting, neither the statute nor the Trial Court's Internal Control Guidelines exempt the court from the requirement to notify OSA of any unaccounted-for variances, losses, shortages, or thefts of funds or property because they were handled "internally." We reiterate our recommendation that the court follow the established criteria and immediately notify OSA upon occurrence of such issues.

5. Since our previous audit, NCPFC has still not made needed improvements to its contract management for vending machines.

Our prior audit report disclosed that NCPFC was not benefiting as much as possible from its contract with an out-of-state vendor for three coin-operated copy machines. The contract stated that the vendor would provide the court with as many as 80 cases (400,000 sheets) of copy paper annually in lieu of a commission (a percentage of the revenue collected) for accommodating the copiers. However, the vendor stopped supplying paper in August 2004, although the contract was to expire in February 2006.

Our previous report recommended that the Trial Court Procurement Section of the Fiscal Affairs Department review its procurement policies to determine whether they properly addressed issues with procuring vending contracts and then review the existing contract to determine whether it was best serving the needs of the public, the court, and the Commonwealth. We also recommended that, if adjustments were necessary, the Procurement Section provide guidance to NCPFC on how to proceed with the existing contract. Additionally, we recommended that future vending machine contract procurement policies be amended to compare the benefits of receiving commission revenue against other types of benefits (in this case, copy paper) and encourage contracts that maximize benefits to the court and the Commonwealth.

During our current audit, we noted that when the copy-machine vendor contract expired, NCPFC did not solicit bids or renew the contract, but rather allowed the vendor to continue its arrangement without a contract and without any benefit to the court or Commonwealth. In addition, there are three food/beverage vending machines located in the court that are supplied by another vendor that has no contract with NCPFC.

The copy-machine vendor provided us with its collection reports, which disclosed copy-machine collections of \$44,473 for the 27-month audit period. The court receives no benefit from this arrangement. The food/beverage vendor disclosed that its revenue totaled \$19,843 for the 27-month audit period.

Recommendation

NCPFC should review its procurement policies for vendor contracts to ensure that they benefit the court and the Commonwealth and prevent vendors from operating in the court without contracts.

In addition, NCPFC should amend its existing vending-machine arrangements to solicit bids, compare the value of commission revenue against other benefits in return for permitting vendors to operate in the court, and procure the most advantageous vendor contracts. If NCPFC needs assistance in these matters, it should seek guidance from the Procurement Section on how to procure vendor contracts that maximize benefits to the court and the Commonwealth.

Auditee's Response

In response to this issue, the Register of Probate stated,

NCPFC acknowledges that its copier and soda machines are currently not covered under any active contracts. These vendors have been in place for many years.

Maintaining NCPFC's current soda/snack vendor benefits the Court by providing a quality product to the staff and its customers at a reasonable price. Insisting on a commission will likely increase the cost of items purchased through this vendor (passing the cost onto the employees) as well as requiring additional bookkeeping functions for the existing staff who will be called upon to track and transmit said commission to the Commonwealth.

Likewise, the Public copy machine vendor benefits our customer base by providing quality copies at an affordable price and again does not require any additional workload on the Court's bookkeeper, which must be considered. The vendor provides all the supplies to run said machines and maintains all repairs and accounts for all cash transactions.

NCPFC will conduct a bidding process for our public copy machines; however, keeping prices affordable while avoiding additional bookkeeping burdens are key to this request for new bids.

Auditor's Reply

We commend the Register for initiating a bidding process for the public copy machines, and we reiterate our recommendation to solicit bids, compare the value of commission revenue against other benefits of permitting vendors to operate in the court, and procure the most advantageous vendor and to do the same for the soda/snack vendor. Doing so will make the process fair and transparent, and each party's responsibilities should be detailed in a contract agreement so that there will be no confusion over what is expected.

6. Since our previous audit, NCPFC has sufficiently documented reconciling items appearing on its monthly bank reconciliations.

Our prior audit report stated that NCPFC did not complete its monthly bank reconciliations in accordance with the FSM, resulting in unaccounted-for variances ranging from \$20 to \$128,865. Additionally, none of these variances were reported to OSA in accordance with Chapter 647 of the Acts of 1989. We recommended that NCPFC review the Trial Court bank-reconciliation procedures

outlined in the FSM and, if variances were discovered, report them to OSA as required by Chapter 647.

Our follow-up review of nine non-statistical judgmentally selected bank reconciliations for the 27-month audit period found that NCPFC has addressed this issue by documenting any reconciling items, like deposits in transit and checks still outstanding, and no longer has unexplained variances on its reconciliations that would require Chapter 647 reporting. We consider this matter resolved.

OTHER MATTERS

Legislative changes should be considered to enable courts to perform verifications of fee-waiver information.

Individuals filing civil claims in courts are subject to filing fees assessed by the court, which are deposited in the Commonwealth's General Fund and are used to support government operations, including the operations of the courts. However, according to Chapter 261 of the Massachusetts General Laws, individuals are considered indigent and eligible for a fee waiver if (1) they receive public assistance, (2) their income is at or below 125% of the current federal poverty level, or (3) they cannot afford to pay without placing themselves or their dependents in financial hardship. To be eligible for a fee waiver, individuals must complete an Affidavit of Indigency form,⁹ which they sign under penalty of perjury, and submit it to the Clerk of Courts. Chapter 261, Section 27C(2), of the General Laws requires the Clerk of Courts to waive fees if an Affidavit of Indigency appears to be facially complete, as follows:

If the affidavit appears regular and complete on its face and indicates that the affiant is indigent, as defined in section twenty-seven A, and requests a waiver, substitution or payment by the commonwealth, of normal fees and costs, the clerk shall grant such request forthwith without hearing and without the necessity of appearance of any party or counsel.

The current waiver application process as established by Chapter 261 does not allow courts to verify any of the information contained in the Affidavit of Indigency form filed by the individual seeking the waiver unless the form appears to be incomplete. Of the total \$762,577 in fees from divorce and paternity cases that the Norfolk County Division of the Probate and Family Court Department (NCPFC) assessed during our audit period, \$245,414, or 35%, was waived, as detailed in the following table:

⁹ Persons indicating that they cannot pay the fees and costs of the proceeding "without depriving myself or my dependents of the necessities of life, including food, shelter and clothing" must also complete a "Supplement to Affidavit of Indigency" form.

	Divorces ¹	Paternity ²	Total
Cases in Population	4,677	1,942	6,619
Indigency Waivers	1,151	1,174	2,325
Potential Income	\$603,333	\$159,244	\$762,577
Indigency Waivers in Dollars	\$148,574	\$ 96,840	\$245,414
Percentage Waived—Indigent	25%	60%	35%

1. We averaged out the indigency cases waived with the actual dollar amount waived because of indigency (\$148,574 divided by 1,151 = \$129.08) and used a potential income of \$129 per case.
2. We averaged out the paternity cases waived with the actual dollar amount waived because of indigency (\$96,840 divided by 1,174 = \$82.49) and used a potential income of \$82 per case.

Because the fees courts waive might otherwise constitute a significant amount of the courts' revenue, the Chief Justice of the Trial Court and the Legislature may want to consider taking whatever measures are necessary, including amending Chapter 261, Section 27C, of the General Laws, to allow courts such as NCPFC to verify the information included in the Affidavit of Indigency and Supplement to Affidavit of Indigency forms.