



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

Making government work better

Official Audit Report – Issued December 7, 2011

Worcester Probate and Family Court

For the period July 1, 2008 through May 31, 2010



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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. Chapter 211B of the Massachusetts General Laws established the Probate and Family Court Department, which created 14 divisions, each having a specific territorial jurisdiction to preside over probate and family matters brought before it. The Worcester Division of the Probate and Family Court Department (WPFC) presides over probate and family matters falling within its territorial jurisdiction of Worcester County. During the audit period July 1, 2008 through May 31, 2010, WPFC collected revenues of \$3,153,114, which it disbursed to the Commonwealth as either general or specific state revenue. In addition to the funds collected and transferred to the Commonwealth, WPFC was in control of 381 custodial bank accounts valued at \$3,826,604 as of May 31, 2010. According to the Commonwealth's records, expenditures associated with the operation of WPFC for the audit period totaled \$5,074,790.

In accordance with Chapter 11, Section 12, of the General Laws, the Office of the State Auditor (OSA) conducted an audit of the financial and management controls over certain operations of WPFC. The scope of our audit, which focused on activities of WPFC's Register of Probate's Office, included a review of WPFC's controls over administrative and operational activities, including cash management and revenue, for the period July 1, 2008 through May 31, 2010. In addition, we conducted a follow-up review of the conditions noted in our prior report of WPFC (No. 2005-1229-30).

Based on our review we have concluded that, for the period July 1, 2008 through May 31, 2010, except for issues noted in the Audit Results section of our report, WPFC maintained adequate internal controls over cash management and revenue collection and processing activities and complied with applicable laws, rules, and regulations for the areas tested.

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6. NONCOMPLIANCE WITH CHAPTER 647 OF THE ACTS OF 1989 REPORTING REQUIREMENTS **17**

Our audit found that, contrary to the reporting requirements of Chapter 647 of the Acts of 1989, WPFC did not report 16 missing Domestic Relations entry fees totaling \$3,495 (see Audit Result No. 2) to the OSA. Therefore, the OSA was precluded from carrying out its responsibilities under Chapter 647, which requires that the OSA identify internal control weaknesses that may have contributed to the problems documented, make recommendations to correct the conditions found, identify necessary modifications to internal control policies and procedures, and report the matter to management and appropriate law enforcement officials.

INTRODUCTION

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 central administrative office managed by a Chief Administrative Justice (CAJ), who is responsible for the overall management of the Trial Court. The CAJ charged the central office, known as the Administrative Office of the Trial Court (AOTC), with developing a wide range of centralized functions and standards for the benefit of the entire Trial Court, including a budget for the Trial Court; central accounting and procurement systems; personnel policies, procedures, and standards for judges and staff; and the management of court facilities, security, libraries, and automation.

Chapter 211B of the Massachusetts General Laws established the Probate and Family Court Department (PFCD), which has jurisdiction over family matters such as divorce, paternity, child support, custody, visitation, adoptions, termination of parental rights, and abuse prevention. Along with general equity jurisdiction, the PFCD's jurisdiction extends over all probate matters, including wills, administrations, guardianships, conservations, and name changes. The PFCD established 14 divisions, each having a specific territorial jurisdiction, to preside over probate and family matters brought before it. Each division's organizational structure consists of three main areas: the Judge's Lobby, headed by a First Justice; the Register of Probate's Office, headed by a Register of Probate, who is an elected official; and the Probation Office, headed by a Chief Probation Officer. The First Justice is the administrative head of the division, whereas the Register of Probate and the Chief Probation Officer have responsibility for the internal administration of their respective offices.

The Worcester Division of the Probation and Family Court Department (WPFC) presides over probate and family matters falling within its territorial jurisdiction of Worcester County. During the audit period July 1, 2008 through May 31, 2010, WPFC collected revenues of \$3,153,114, which it disbursed to the Commonwealth as either general or specific revenue.

The following table shows the breakdown of the revenues collected and transferred to the Commonwealth:

<u>Revenue Type</u>	<u>Total</u>	<u>July 1, 2008 through June 30, 2009</u>	<u>July 1, 2009 through May 31, 2010</u>
General Revenue	\$2,984,783	\$1,438,172	\$1,546,611
Surcharges	167,880	80,810	87,070
Miscellaneous	<u>451</u>	<u>186</u>	<u>265</u>
Total	<u>\$3,153,114</u>	<u>\$1,519,168</u>	<u>\$1,633,946</u>

In addition to the funds collected and transferred to the Commonwealth, WPFC was in control of 381 custodial bank accounts valued at \$3,826,604 as of May 31, 2010. These accounts, established pursuant to the provisions of Chapter 206 of the General Laws, are considered assets held in trust by WPFC and are kept in custody of the Register of Probate's Office. These accounts 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 that cannot be located at the time of settlement.

WPFC operations are funded by appropriations under the control of either WPFC (local) or AOTC or the Commissioner of Probation Office (central). Under local control for the audit period were appropriations for personnel-related expenses of the Register of Probate's Office and Judge's Lobby support staff, and certain administrative expenses (e.g., supplies, periodicals, law books). Other administrative and personnel expenses of WPFC were paid by centrally controlled appropriations and included expenses for leases, telephones, office supplies, Probation Office personnel-related costs, and judges' salaries. According to the Commonwealth's records, local and central expenditures¹ associated with the operation of WPFC for the audit period totaled \$5,074,790.

Audit Scope, Objectives, and Methodology

In accordance with Chapter 11, Section 12, of the General Laws, the Office of the State Auditor conducted an audit of the financial and management controls over certain operations of WPFC.

¹ This amount does not include certain controlled expenditures, such as facility lease and related operational expenses; personnel costs attributable to judges, court officers, security officers, and probation staff; and related administrative expenses of the Probation Office, since they are not identified by court division in the Commonwealth's accounting system.

The scope of our audit included a review of WPFC's controls over administrative and operational activities, including cash management and revenue, for the period July 1, 2008 through May 31, 2010. In addition, we conducted a follow-up review of the conditions noted in our prior audit report of WPFC (No. 2005-1229-3O).

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.

Our audit objectives were to assess the adequacy of WPFC's internal controls over cash management and revenues and determine the extent of controls for measuring, reporting, and monitoring effectiveness and efficiency regarding WPFC's compliance with applicable state laws, rules, and regulations; other state guidelines; and AOTC and PFCD policies and procedures. Our review focused on the activities and operations of WPFC's Register of Probate's Office, where we reviewed cash management activity and transactions involving the collection and processing of revenue to determine whether policies and procedures were being adhered to.

To achieve our audit objectives, we conducted interviews with WPFC management and staff, reviewed prior audits reports, Office of the State Comptroller's Massachusetts Management Accounting and Reporting System reports, AOTC statistical reports, and WPFC's organizational structure. In addition, we obtained and reviewed copies of statutes, policies and procedures, accounting reports, and other source documents. Our assessment of internal controls over cash management and revenue collection and processing activities was based on these interviews and review of documents.

Our recommendations are intended to assist WPFC in developing, implementing, or improving its internal controls and overall financial and administrative operations to ensure that WPFC's systems covering cash management and revenue collection and processing activities operate in an economical, efficient, and effective manner and in compliance with applicable laws, rules, and regulations.

Based on our review we have concluded that, for the period July 1, 2008 through May 31, 2010, except for issues noted in the Audit Results section of our report, WPFC maintained adequate internal controls over cash management and revenue collection and processing activities and complied with applicable laws, rules, and regulations for the areas tested.

AUDIT RESULTS

1. STATUS OF PRIOR AUDIT RESULTS — RISK ASSESSMENTS AND INTERNAL CONTROL PLAN

Our prior audit report (No. 2005-1229-30) of the Worcester Division of the Probate and Family Court Department (WPFC), which covered the period July 1, 2003 through April 30, 2005, disclosed that, contrary to Chapter 647 of the Acts of 1989 and the Administrative Office of the Trial Court's (AOTC) Internal Control Guidelines for Trial Court Departments and Offices, WPFC had not developed its own internal control plan independent of AOTC or conducted a risk assessment of its internal controls. We recommended that WPFC conduct a risk assessment and prepare an internal control plan, which should be periodically reviewed and updated, as necessary.

Our follow-up review found that WPFC had addressed this prior issue and implemented our prior audit recommendations. Specifically, WPFC staff conducted a risk assessment and correlated the results thereof to an internal control plan. However, we identified additional risks (see Audit Results No. 2 through 6) that WPFC may not have considered and that should be factored into WPFC's future risk assessments and correlated to its internal control plan.

Recommendation

WPFC should conduct a risk assessment of the areas identified throughout this report and correlate the results thereof to its internal control plan.

Auditee's Response

In response to this issue, the First Justice stated:

The judge's lobby concurs with the auditor's recommendation including the addition of identifiable risks to the risk assessment plan. Please note that on June 14, 2011 the Register, the Administrative Deputy Assistant, the Chief of Probation and the First Justice attended a mandatory training program of the Trial Court entitled "Fiscal Integrity Protocols: An Overview for Managers." The program is designed to educate court managers to ensure strict compliance with and clarity of existing trial court fiscal policies and protocols governing the collection and accounting of funds. Effective July 1st, the First Justice, the Register, the Chief of Probation and the Administrative Deputy will meet quarterly to assure compliance with fiscal integrity protocols.

Additionally, the Register of Probate stated:

WPFC did address the issues raised in the previous audit. I am also pleased to inform you that additional risks discussed further have been addressed and will be factored into the WPFC's future risk assessment and internal control plan.

2. INTERNAL CONTROL DEFICIENCIES CONTRIBUTED TO \$3,495 IN MISSING FUNDS AT THE REGISTER OF PROBATE'S OFFICE

Our audit revealed that the Register of Probate's Office was missing \$3,495 in Domestic Relations entry fees² for 16 cases that were generally paid for in cash between March 2009 and August 2009. Almost all (15 of 16 cases) were processed by the same docket clerk. During this period, the Register of Probate's Office kept the money with the case papers as they went through the intake process rather than deposit them immediately. This procedure is contrary to the AOTC Fiscal Systems Manual and MassCourts implementation guidance, which require that all such funds be processed by a cashier and deposited as soon as possible.

The variance was first identified with the implementation of MassCourts, the automated case and financial management system. A new report generated from that system in August 2009 identified the 16 Domestic Relations cases (as well as other cases for which discrepancies were resolved by court personnel) as having outstanding balances, since either no fees or authorized waivers were processed for those cases. The Register of Probate stated that when he was made aware of the discrepancies, he was not fully convinced that this money was actually missing and decided to wait until the adjustments that the office financial staff routinely were completed make to determine whether the new report resolved these problems. However, when the next report generated the same discrepancy, the Register of Probate had top administrative staff conduct a review of the case specifics, including examining the case papers and accounting records, as well as interviewing certain employees connected with the transactions. As a result of the Register of Probate's review, he concluded that the variance was a system error and that it would eventually correct itself.

Notwithstanding the Register of Probate's conclusion, our review of the transactions in question determined that the funds actually appear to be missing, since although 11 of the 16 associated case papers contained handwritten evidence that currency was received, there was no record of

² Domestic Relations entry fees represent the initial filing fees for complaints, petitions, or other civil actions involving such matters as divorce, annulments, name changes, adoptions, domestic violence injunctions, child custody, etc., as established under Chapter 262, Section 4C, of the Massachusetts General Laws.

such money being deposited. Based on audit observations and interviews with WPFC staff, these types of cases in which the parties involved are self-represented (without attorneys) are generally paid in cash, and not by check. Additionally, there was no indication that fees were requested to be waived for any of the 16 cases. Although several docket clerks handle cases and receive fees, the only cases in which fee discrepancies were noted were all processed by the same docket clerk (except one case processed by another person, but under the supervision of that docket clerk), which raises questions as to whether the fees had been misappropriated. Furthermore, additional weaknesses in the internal control system existed, making it difficult to determine at what time the money actually became separated from the case papers. For example, upon implementing the MassCourts system in February 2009, office practice was to attach money to the case docket papers as they were being processed into the system. This is the same time period in which the full MassCourts accounting and management computerized system was implemented, and there was a significant backlog of cases to be processed.

The Register of Probate stated that he believes that the money in question is not missing and that some type of clerical error caused this discrepancy. The Register of Probate's Office has since changed procedures to ensure that cash is immediately given to the cashier and processed independent of where the case papers are in the system.

Recommendation

The First Justice should contact AOTC to review the situation to determine the reasons for the missing funds. In addition, the Register of Probate's Office should strengthen its supervisory oversight of the collection of fees.

Auditee's Response

In response to this issue, the First Justice stated:

The judge's lobby concurs with the auditor's recommendation. AOTC shall be contacted to review the situation to confirm the auditor's findings relating to the missing funds and to determine whether there are any explanations for the discrepancy. If in fact the discrepancy is not a clerical error and the person(s) involved can be identified, appropriate disciplinary measures shall be taken including a referral to the District Attorney's Office.

Additionally, the Register of Probate stated:

Beginning in February 2009, the Worcester Probate and Family Court was required by the Administrative Office of the Trial Court to implement the new computer and docketing system called MassCourts. This new system completely changed the manner in which the staff docketed and entered cases, filed pleadings and accepted funds. The staff was trained for two days in Boston, but as a practical matter the training was not nearly enough. Trial Court auditors and staff were on site to assist, but many of the problems could not be fixed or required more time to be resolved. Some of the staff also received fiscal training, but again learning the system required time. This new system and the constant breakdowns caused a tremendous filing and docketing backlog and caused much confusion with respect to the internal operations of the office. During this initial period, the system had many problems. The server failed to work, docket codes were wrong, and the entire process was much more time consuming. As a part of the fiscal protocol process and as a significant internal control, we were to review outstanding obligation reports sent by TCIS [Trial Court Information Services] on a weekly basis. In our most recent meeting of June 14, 2011 at a mandatory training program entitled "Fiscal Integrity Protocols – An Overview for Managers" we learned that the outstanding obligation report was the most significant factor in maintaining our fiscal integrity. It was emphasized that the outstanding obligation report sent to us on a weekly basis should be constantly monitored. Unfortunately, at a time when we needed it the most, the TCIS was unable to produce or run the outstanding obligation report for us to review. From March of 2009 through August 2009 the outstanding obligation report was unavailable to the Worcester Probate and Family Court. On or about August 17, 2009, a 78-page report listing outstanding obligations was finally received. It was reviewed immediately by several of the staff and over the course of several weeks it was determined that 16 cases could not be reconciled. The policy that we initially put into place in February of 2009 had been discussed with the Registry management staff, Administrative Office staff as well as the Trial Court auditors. The biggest adjustment for us was the fact that the new system would not allow us to enter cash until a new case had been initiated and was assigned a docket number, which was contrary to the way we had processed cases previously. In any event, after meeting with the staff and discussing the issue with Registry management, we revisited the issue and changed our internal policy. After discussing this matter with the Chief Justice and the Chief Financial Officer, I sent letters to the 16 plaintiffs who allegedly paid a filing fee. Out of the 16, three responded, two of whom said they paid a fee, one of whom indicated that they did not pay. After further reviewing the 16 cases, it appears that the majority of the plaintiffs would have qualified for a fee waiver. During that same period when TCIS could not produce the outstanding obligation reports there were significant problems with the server which caused certain data entries to be deleted even though it appeared that they had been entered. During this period, we met with all the staff employees who were involved in the handling and processing of these cases. In any event, I welcome any further investigation of particular individuals and/or system operations.

Auditor's Reply

We acknowledge that the Register of Probate's Office took action to account for the missing funds by contacting plaintiffs in writing. However, this action, which should have been conducted immediately, was not performed until the Trial Court Chief Financial Officer, with the concurrence of the Chief Administrative Justice, required the Register of Probate's Office to

do so in a letter dated October 29, 2010, which stated, in part: “Review the cases and determine whether payments were made or waived on the outstanding obligations. This may require that you request each plaintiff provide a written response.” Waiting more than 12 months to contact each plaintiff diminishes the likelihood of resolving the outstanding obligations.

With respect to the Register’s assertion that a majority of the plaintiffs would have qualified for a fee waiver, our review of documents indicates that this is not the case. According to court files, six parties (38%), might have qualified for fee waivers, but only if they completed a request for waiver of fees and costs form and had it approved by the Register or Judge. However, none of these cases had evidence of completed waiver requests. Also, eleven of the case papers indicated that the filing fees were paid at the time of filing the case. Finally, the review conducted by Register of Probate employees indicated that four³ individuals paid to have summons served (the next step in the process) at the Sheriff’s Office, which they would not have done had they actually been granted waivers.

We concur with the corrective action plan in the First Justice’s response. The Register of Probate’s Office should pursue disciplinary action, including referral to law enforcement agencies, against any employee found to be involved with the loss or theft of public funds.

3. CONCERNS ASSOCIATED WITH HEAD ADMINISTRATIVE ASSISTANT POSITION

Our audit identified certain issues associated with the WPFC’s Head Administrative Assistant’s (HAA) position. Specifically, we noted that the HAA , who was paid \$104,477 by WPFC during the period July 1, 2008 through May 31, 2010, taught 21 courses between the spring 2009 semester and fall 2010 semester and was teaching courses at three institutions of higher learning during times when WPFC attendance records indicated that this individual was working at WPFC. Although some courses were held outside of normal WPFC work hours, the starting time of the courses and the distance to be traveled were such that it would be questionable for the HAA to have been able to teach the courses at their scheduled times without leaving WPFC before the end of the HAA’s scheduled work hours. Additionally, we noted that the HAA was not performing all of the duties required by the union job description for the HAA position.

³ The total number of the above cases exceeds the 16 in question because certain cases affected more than one category.

Based on our review of payments processed through the Massachusetts Management Accounting and Reporting System (MMARS), it appeared that the HAA was receiving a higher level of compensation than what the individual should have been receiving for the position as HAA at WPFC. Further analysis of payroll information disclosed that the discrepancy was due to this individual's receiving compensation in addition to his regular pay (between approximately \$3,000 to \$4,000 per course) for teaching these courses at state institutions of higher education, all of which was listed under the same employee number in MMARS. We expanded our audit work to obtain more information about what courses were being taught, when the courses were held, and whether the HAA was teaching at other state or private schools. Through this expanded audit work, we determined that the HAA worked at three institutions of higher education (two public, one private) where he taught 21 courses (16 public, 5 private) between the spring 2009 semester and the fall 2010 semester. During this time the HAA earned \$55,431 in compensation for the 16 courses he taught at the two public institutions. Based on the information obtained two areas of concern were noted. First, the scheduled starting time of some courses (e.g., 1:00 p.m., 4:00 p.m.) were during normal WPFC work hours (8:00 a.m. to 4:30 p.m.) when WPFC attendance records indicated that the HAA was working at the court. Second, we noted that for other courses that were held after normal WPFC work hours, the starting time of the class (5:30 p.m.) and the distance to be traveled were such that it would be questionable for the HAA to have left WPFC at the end of the normal work day and make it to teach the class in time.

Accordingly, based on the information provided to us, it appears that the HAA was paid by WPFC for hours in which the individual did not work, and no leave time was used to account for this absence. (As noted in Audit Result No. 4, we have little reliance on the WPFC's attendance logs to indicate employees' time of departure, so we could not rely on the information indicated on those logs as proof that the HAA was actually working at WPFC). This matter regarding outside employment will be referred by the OSA to the State Ethics Commission for its review.

Our review also indicated that the HAA was performing only three of the 19 duties listed in the union job description for the HAA position. Specifically, although the HAA performed confidential administrative support duties for the department head; served on various committees, task forces, or advisory groups; and performed lower-level duties (e.g., transporting

bank deposits) as required, the HAA did not perform 16 higher-level duties and functions (e.g., coordinating the annual budget process; performing fiscal planning; functioning as the court's purchasing agent; reviewing, verifying, and monitoring encumbrance transactions; and other such budgetary, payroll, and purchasing duties). We were told that the HAA had other duties and functioned more as a Special Assistant Register of Probate in that this individual would often do special assignments for the Register of Probate, such as making presentations to various groups about the work that the Register of Probate's Office does and the availability of services through the Register of Probate's Office. However, it is our understanding that the individual did not possess the minimum educational and experience requirements for the position of Assistant Register of Probate, a non-union position. The fact that the HAA was not performing all of the functions of that position resulted in other lesser ranking employees being required to perform the HAA's duties along with their other regular responsibilities. Nevertheless, this individual was compensated at the full rate for the HAA position.

Recommendation

WPFC should review its attendance procedures to ensure that employees are paid only for the actual hours worked. In addition, AOTC should review the HAA's duties and responsibilities in light of the job description and recommend appropriate corrective action. Further, a detailed review should be conducted of the HAA's past outside activities that overlapped with the HAA's hours working for the court. Any compensation paid inappropriately for court time should be reimbursed to the Commonwealth.

Auditee's Response

In response to this issue, the First Justice stated:

The judge's lobby concurs with the auditor's recommendation. The matter regarding the HAA's outside employment should be referred by the OSA to the State Ethics Commission. In addition, the First Justice shall request that AOTC review the HAA's duties and responsibilities in light of his job description and recommend that appropriate corrective action be taken.

Additionally, the Register of Probate stated:

The Head Administrative Assistant discussed has been an adjunct college professor for over 20 years. At no time was he permitted to teach or perform any other duties during work hours except for his responsibilities with Probate and Family Court and/or as

directed by the Register. However, the HAA was asked at the last second to fill in for a professor at Worcester State College for a class that went from July 6, 2009 to August 15, 2009. He accepted this assignment with my knowledge and permission and with the understanding that he would use his lunch break, personal time and compensatory time for these classes. Because he was a late fill in, he did not have to teach all of the classes and did have guest lecturers for several of the classes. He accepted a 4:00 p.m. course at Quinsigamond Community College with my knowledge and permission with the understanding that he would use his lunch break and/or personal or compensatory time. It was always my understanding that he communicated this information to our HR (Human Resources) person. This HAA was not aware that time worked after regular business hours should have been reported as compensatory time earned. He also taught another course which started after work, which does not show up under HRCMS, but again used his personal time to leave early in order to be there in a timely manner. As a result of the lack of funding to fill the vacancy of a First Assistant Register and an Administrative Deputy Assistant to the Register, this HAA has performed several functions outside of normal business hours that a First Assistant Register or Administrative Deputy Assistant to the Register would perform but without receiving additional pay. Having knowledge of the Registry duties performed by the HAA outside of regular hours, I can attest that the amount of compensatory time the HAA was not compensated for is more than the amount of time the HAA would have used as a result of the teaching issue. I am confident that this HAA did not intend and/or actually perform other duties during work hours without prior approval. It is not the character or nature of this individual to intentionally misappropriate time and would not have done so since he had adequate time to cover this period of time. Having said that, I believe that our record keeping was less than adequate as it relates to this individual. These issues have been addressed both in terms of record keeping as well as actually teaching during the day. Finally, the record keeping issues have been addressed for the HAA and clarified for the entire office.

I agree that this HAA's duties and responsibilities do not coincide with the job description of the HAA. This is a problem throughout the Trial Court and throughout the Worcester Probate and Family Court. Because of unprecedented staffing shortages, by necessity many employees have duties and responsibilities that do not coincide with their job descriptions. For example, our bookkeeper performs fiscal functions even though her official job title is a judicial secretary. Another Registry HAA performs minimal back up functions of payroll only and no other duties set forth in the job description of an HAA, but instead performs the functions of a judicial secretary. For many years, I have requested that employees' job duties and responsibilities be accurately reflected by changing their job titles accordingly. I have requested that people be paid in accordance with their job duties and responsibilities. I have asked that the management structure of the Probate and Family Court reflect the actual duties and responsibilities of the individuals working in the Registry. All of these requests have been denied, but I welcome a complete audit of all positions within the Worcester Probate and Family Court, including the management structure so that appropriate action be taken.

Auditor's Reply

The Register of Probate's response acknowledges that record keeping for the HAA was less than adequate, which we agree with, and that this issue has been addressed for the entire office. The Register states that the HAA would have received compensatory time for work he performed outside normal business hours. However, we were not provided with a record of time that the

HAA worked outside normal business hours and, according to the collective bargaining agreement, the HAA's immediate manager (the Register in this case) is responsible for maintaining records necessary to administer the provisions of the agreement and the Fair Labor Standards Act. The Register states that the HAA used personal time to teach a class at a private institution, but did not provide us with specifics of what class this was or when it was offered, and did not provide us with copies of time and attendance records supporting this assertion. Moreover, our review of the HAA's sign-in/sign-out logs and attendance calendars indicated that the HAA generally worked a 7½-hour day, with little or no compensatory time used.

The Register's response also acknowledges that the HAA was functioning as a First Assistant Register or Administrative Deputy Assistant to the Register, positions that are not covered by the collective bargaining agreement. However, the HAA position is covered in the collective bargaining agreement, and therefore the HAA should be performing the duties provided for in the job description since the compensation for that position is tied to the specific job responsibilities.

4. INADEQUATE CONTROLS OVER TIME AND ATTENDANCE REPORTING FOR EMPLOYEES OF THE REGISTER OF PROBATE'S OFFICE

Our review found that the Register of Probate's Office did not always properly maintain time and attendance records for its employees. Specifically, our tests of daily sign-in/sign-out logs found that although employees in the Register of Probate's Office followed AOTC procedures for signing in to work in the morning, they did not sign out at the end of the work day in accordance with these procedures. Since payroll costs represent a substantial portion of the Register of Probate's expenditures, it is important to have strong internal controls to support their validity.

We noted that Register of Probate's Office employees sign in sequentially in the morning based on their time of arrival. However, contrary to AOTC procedures, employees do not sign out sequentially when departing. Instead, they record their sign-out time on the sign-in sheet column opposite their names, making the departure times non-sequential.

AOTC recognized the importance of payroll expenditure accountability and in a July 7, 1998 memorandum to First Justices, Clerk-Magistrates, and Chief Probation Officers (among others) discussed the requirements of Chapter 647 and the safeguarding of Trial Court assets, which

include payroll expenditures. In that memorandum the Chief Justice for Administration and Finance outlined procedures to protect public funds by requiring adequate documentation for such expenditures, as follows:

Time records and attendance calendars must support payroll expenditures for all Trial Court personnel except Judges and elected officials. While the Trial Court Attendance Calendar is system-wide, time records vary across the Trial Court. Some courts and offices use preprinted time sheets. Some use time clocks, some use manually created sign in/sign out sheets and others use computer systems. Internal audits reveal that some locations do not maintain time sheets. Since the purpose of time records is to validate attendance calendars, they are essential internal control documents. It is extremely important that the Trial Court simplify and standardize methods of time keeping. To that end, the following fiscal policies and procedures are to be implemented on July 13, 1998....

3. The proper maintenance and confirmation of time records are as important as the maintenance of attendance calendars. Every court and office must maintain time sheets that require the signature of each employee, in ink, upon arrival and departure from work. All employees will be subject to their use. Department Heads must assign a timekeeper and the timesheets must be retained for audit purposes. Attachment "B" provides a sample time sheet and specific guidelines for its use....

All employees of the Trial court, including court officers, guards, associate probations officers and librarians must complete a daily time sheet by signature and time notation....

4. The columns for arrival and departure represent independent time records. Therefore, an employee must sign each time record on arrival and departure. Ordinarily, an employee's signature will not appear on the same arrival and departure line on the time sheet....

6. We have attached a sample daily time sheet. It may be duplicated as necessary.

Staff members responsible for processing the WPFC's payroll on the Commonwealth's Human Resources/Compensation Management System (HR/CMS) were aware that the Register of Probate's Office employees were not in compliance with AOTC procedures for attendance sheets. They stated that too much time would be spent trying to sort the sign-in/sign-out times if each sheet was only kept in sequential order.

Recommendation

The staff of the Register of Probate's Office should comply with AOTC time and attendance guidelines by completing daily sign-in/sign-out logs in the prescribed manner.

Auditee's Response

In response to this issue, the First Justice stated:

The judge's lobby concurs with the auditor's recommendation. The judge's lobby will partner with the registry to implement use of daily sign-in/sign-out logs as prescribed by AOTC requiring sequential signing-in and signing-out, as well as, assigning a timekeeper responsible for oversight. The First Justice will work with AOTC to develop uniform disciplinary measures and consequences for employees who consistently fail to comply.

Additionally, the Register of Probate stated:

This issue is in the process of being addressed in both the Registry and the Judge's Lobby. We intend to implement the recommendations of the auditors. We are presently in the process of educating the staff on this issue.

5. LACK OF APPROVAL SIGNATURES FOR FEE WAIVER DOCUMENTS

Our review of WPFC fee waiver documents noted that fee waiver applications filed by Domestic Relations petitioners did not contain approval signatures of WPFC officials until May 2009. Without such documentation of approval, there is inadequate assurance that fee waivers have been reviewed by the designated high-level employee responsible for oversight of these transactions prior to further processing of the case. We found that approximately 18% of Domestic Relations cases, valued at approximately \$123,031 annually, did not have approval signatures for waiver of their fees during the first 11 months of our audit period.

Petitioners who are eligible for a fee waiver do not have to pay an entry fee to process their case. For these Domestic Relations divorce cases, the fee is \$200 plus a \$15 surcharge. Since a significant number of cases involve fee waivers at WPFC, it is important to have proper authorization to support the fee waivers. As part of our audit work, we selected the months of January and February, 2009, to determine whether case papers for Domestic Relations proceedings had either the required validation indicating that the fee was paid or an authorized fee waiver on file. Our examination revealed that 71 (16%) of 445 case files reviewed had fees waived for indigency. These figures closely match data recorded in the MassCourts accounting system records, which indicate that fees were waived for 18% of Domestic Relations cases for the year due to indigency.

Procedures for waiving fees for civil cases are outlined in Chapter 261, Sections 27A through 27G, of the Massachusetts General Laws, which state that a person may file an affidavit of indigency and request a waiver of the costs or fees. Specifically, Section 27C(2) states:

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.

MassCourts accounting system records indicate that for the period mid-February 2009 through May 31, 2010 divorce entry fees totaled \$872,100 and waivers (dismissed costs) totaled \$158,915, or 18% of the total entry fees. On an annual basis, this amounts to \$123,031 in waivers for divorce entry fees (exclusive of surcharges).

It should be noted that when AOTC installed the MassCourts accounting system at WPFC in February 2009, the Register of Probate's Office adopted a procedure that fee waiver requests were to be signed by a supervisory employee. However, even after that date, waivers were not consistently approved until May 2009. This leaves a significant number of unapproved fee waivers prior to that date. It was not clear why fee waivers were not signed to indicate authorization in the past.

Recommendation

WPFC should continue the current practice of having fee waiver requests approved by an appropriate supervisory-level employee and signed to indicate who granted the waiver.

Auditee's Response

In response to this issue, the First Justice stated:

The judge's lobby concurs with the auditor's recommendation. The court will continue its current practice of having fee waiver requests approved by case managers who shall sign to indicate who granted the waiver.

Additionally, the Register of Probate stated:

As set forth in the report, this issue has been addressed and we will continue the current practice which is acceptable to the auditors.

6. NONCOMPLIANCE WITH CHAPTER 647 OF THE ACTS OF 1989 REPORTING REQUIREMENTS

Our examination found that, contrary to the reporting requirements of Chapter 647 of the Acts of 1989, WPFC did not report unaccounted-for variances, losses, shortages, or thefts of funds or property to the Office of the State Auditor (OSA) with respect to 16 missing entry fees for Domestic Relations cases totaling \$3,495 (see Audit Result No. 2). Therefore, the OSA was precluded from carrying out its responsibilities under Chapter 647, which requires that the OSA identify internal control weaknesses that may have contributed to the problems documented, make recommendations to correct the conditions found, identify necessary modifications to internal control policies and procedures, and report the matter to management and appropriate law enforcement officials.

As described in Audit Result No. 2, our review at WPFC, found that money was not processed through the accounting system for 16 divorce entry fees totaling \$3,495 although indication of payment was made. In accordance with Chapter 647 of the Acts of 1989, all state agencies, including the Trial Court, are required to report all such unaccounted-for variances, losses, shortages, or thefts of property or funds to the OSA. Reporting requirements are also promulgated in the AOTC Internal Control Guidelines, Section 1.5.8, Reporting Unaccounted-for Variances, Losses, Shortages, or Thefts of Funds or Property.

The Register of Probate explained that he believed that the missing funds were the result of a mistake with the new (at that time) accounting system and that the discrepancy would later be identified. After we brought this matter to the Register of Probate's attention, he did file a Chapter 647 report on September 24, 2010.

Recommendation

WPFC should continue to strengthen its internal control plan to ensure compliance with Chapter 647 reporting requirements and report all unaccounted-for shortages, variances, losses, or thefts of funds or property to the OSA.

Auditee's Response

In response to this issue, the First Justice stated:

The judge's lobby concurs with the auditor's recommendation. The First Justice was not made aware of the possible unaccounted-for-funds when first discovered in August of 2009 but rather this matter was brought to the First Justice's attention by the auditors during the audit process. The First Justice shall request that AOTC review this issue and take appropriate action if deemed necessary in the future.

Additionally, the Register of Probate stated:

Both my Deputy Administrative Assistant, who has been performing fiscal functions for many years, and I were both unaware of the reporting requirements of Chapter 647 of the Acts of 1989. Once it was brought to my attention, I did file the appropriate report. Having said that, I first became aware of these outstanding obligations in August and September of 2009 after receiving a 78-page report with a list of outstanding obligations. This report was produced by TCIS and was made available to the Probate and Family Court Administrative Office, the Trial Court auditors, and the Judicial Lobby. This report was unavailable for a period of six or seven months which effectively precluded us from monitoring the outstanding obligations on a weekly basis. It was my understanding based upon e-mails sent that the Trial Court auditors, the Probate Administrative Office and the Judicial Lobby were aware of this information. I did contact the District Attorney's Office, but I was told that because of the amount of money involved, the facts surrounding the discrepancy and the limited resources available, the District Attorney's Office would not get involved.