



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

Making government work better

Official Audit Report – Issued July 1, 2015

Suffolk County Registry of Probate and Family Court

For the period July 1, 2013 through December 31, 2014





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July 1, 2015

Felix D. Arroyo, Register
Edward W. Brooke Courthouse
24 New Chardon Street
Boston, MA 02114

Dear Register Arroyo:

I am pleased to provide this performance audit of the Suffolk County Registry of Probate and Family Court. This report details the audit objectives, scope, methodology, findings, and recommendations for the audit period, July 1, 2013 through December 31, 2014. My audit staff discussed the contents of this report with management of the Registry, whose comments are reflected in this report.

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

Sincerely,

A handwritten signature in blue ink, appearing to read "SMB", written over a light blue circular stamp.

Suzanne M. Bump
Auditor of the Commonwealth

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LIST OF ABBREVIATIONS

CJAM	Chief Justice for Administration and Management
CJTC	Chief Justice of the Trial Court
OSA	Office of the State Auditor
OSC	Office of the State Comptroller
OST	Office of the State Treasurer
PFCD	Probate and Family Court Department
SCRPFCD	Suffolk County Registry of Probate and Family Court

EXECUTIVE SUMMARY

In accordance with Chapter 11, Section 12, of the Massachusetts General Laws, the Office of the State Auditor performed an audit of various activities of the Suffolk County Registry of Probate and Family Court (SCRPFPC) for the period July 1, 2013 through December 31, 2014. The newly elected Register of SCRPFPC was sworn in on January 14, 2015; the findings in this report refer to office operations during the prior administration. The newly elected Register requested the audit to learn the status of certain fiscal and administrative operations as of the date he assumed office, to ease the transition from the prior administration, and to identify any areas needing corrective action and improvement. Below is a summary of our findings and recommendations, with links to each page listed.

Finding 1 Page 7	SCRPFPC did not perform timely annual inventories or properly maintain required information about its fixed assets. Lack of proper inventory practices puts assets at risk of loss, misuse, and theft and may cause inaccurate reporting of assets to the Trial Court.
Recommendation Page 8	SCRPFPC should implement internal controls to ensure that its inventory list is properly maintained and updated. The list should include the tag number, description, cost, and location of each item.
Finding 2 Page 8	SCRPFPC has not reviewed its 96 custodial accounts (totaling \$1,451,596) to determine whether they should be considered abandoned funds and transferred to the Office of the State Treasurer (OST).
Recommendation Page 9	SCRPFPC should establish policies and procedures that provide for the periodic review of all custodial accounts to determine whether they are eligible for transfer to OST or members of the public.

OVERVIEW OF AUDITED ENTITY

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 (PFCDD), 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 PFCDD's purview, including wills, administrations, guardianships, conservatorships, and name changes. PFCDD 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 are responsible for the internal administration of their respective offices.

The Suffolk County Registry of Probate and Family Court (SCRPF) presides over probate and family matters falling within its territorial jurisdiction of Suffolk County. SCRPF is authorized by Chapter 217 of

the General Laws; is located in Boston; and serves Boston, Chelsea, Revere, and Winthrop in Suffolk County. According to PFCD's website, SCRPFPC'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, 2013 through December 31, 2014, SCRPFPC collected \$2,867,007 of revenue, which it disbursed to the Commonwealth as either general or specific state revenue.

Additionally, as of December 31, 2014, SCRPFPC controlled 96 custodial accounts, valued at \$1,451,596. These accounts are considered assets held in trust by SCRPFPC 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.

AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Chapter 11, Section 12, of the Massachusetts General Laws, the Office of the State Auditor (OSA) has conducted a performance audit of certain activities of the Suffolk County Registry of Probate and Family Court (SCRPF) for the period July 1, 2013 through December 31, 2014.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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

Objective	Conclusion
1. Does the Registry have internal controls that are supported by a written internal control plan and that comply with Chapter 647 of the Acts of 1989?	Yes
2. Is the Registry's inventory safeguarded and maintained in accordance with Trial Court policies and procedures?	No; see Finding <u>1</u>
3. Does the Registry collect, process, and deposit revenue generated from probate fees in accordance with Trial Court policies and procedures?	Yes
4. Was the contract for public copy machines made in accordance with Trial Court procurement policies and procedures, and was revenue that was generated from the machines received, recorded, and remitted to the Commonwealth General Fund in accordance with the contract and Trial Court policies and procedures?	Yes
5. Are the Registry's expenditures reasonable, allowable, applicable, and in accordance with Trial Court policies and procedures?	Yes
6. Are custodial accounts kept in interest-bearing accounts, reconciled, and maintained in accordance with Trial Court policies and procedures?	No; see Finding <u>2</u>
7. Does the Registry grant fee waivers in accordance with Chapter 261 of the General Laws?	Yes

To achieve our audit objectives, we gained an understanding of the internal controls we deemed significant to our audit objectives and evaluated the design and effectiveness of those controls. In addition, we performed the following procedures:

- We reviewed SCRPFPC's records to determine whether it had filed any reports with OSA in accordance with Chapter 647 of the Acts of 1989¹ and identified one filed report for an incident that had occurred on April 1, 2014.
- We conducted interviews, obtained the November 2014 inventory list of assets valued over \$100, and reviewed Trial Court policies and procedures for inventory. We prepared a narrative detailing our review of SCRPFPC's key inventory controls.
- We reviewed and observed SCRPFPC's fee-collection process. We reviewed the Trial Court Fiscal Systems Manual and SCRPFPC's internal control plan; observed the cashier and bookkeeper opening, closing, and recording cashier's logs; and reviewed the bookkeeper's bank deposit slips and month-end reconciliations.
- We obtained and reviewed the current vendor agreements for the two public copy machines at SCRPFPC. We reviewed the fees collected during our audit period to determine whether payments were accurate, timely, and in accordance with the agreements.
- We verified that revenue generated from public copy machines was received, recorded, and remitted to the Commonwealth's General Fund for each month of the audit period.
- We reviewed non-payroll expenditures to determine whether they complied with Trial Court policies and procedures.
- We observed the bookkeeper's management of bank statements, which included recording interest reported on bank statements in MassCourts (the state's case-management system) for each custodial account.
- We selected a sample of 10 out of 96 custodial accounts that were more than three years old to determine whether they were eligible to be transferred to the Office of the State Treasurer's Division of Abandoned Property.
- We conducted interviews with SCRPFPC's bookkeeper, Deputy Registers, and front-counter employees to verify that the fee-waiver process was functioning in accordance with Trial Court procedures.

For the purposes of our audit, we used random non-statistical sampling in order to eliminate bias by giving all items in the population an equal chance of being chosen for our review of equipment inventory, daily receipts, non-payroll expenditures, custodial accounts, and the granting of fee waivers.

1. Chapter 647 of the Acts of 1989, An Act Relative to Improving the Internal Controls within State Agencies, requires agencies to file a report with the Office of the State Auditor if they find any "unaccounted for variances, losses, shortages or thefts of funds or property."

Therefore, we did not project the results of our samples to the population. More specifically, we chose samples as follows:

- For the review of inventory, we selected a total of 45 items (20 pieces of electronic equipment and 25 pieces of furniture) to determine whether SCRPFPC's inventoried assets were properly maintained.
- For safeguarding of evidence, we reviewed all four exhibits held by the court during our audit period to determine whether adequate controls were in place.
- For our review of daily cash receipts, we selected 25 out of a total population of 376 days within the audit period to determine whether funds were collected, processed, and deposited in accordance with Trial Court policies and procedures.
- For the review of non-payroll expenditures applicable to our audit objectives, we limited our testing to expenditures for guardians ad litem (adult guardians assigned to protect the interests of minors and others who require this service) and Process Services, the department that files and serves legal documents. We reviewed 30 expenditures for guardians ad litem and 39 expenditures for Process Services to determine whether required approvals for payments were documented and processed correctly.
- For custodial accounts, we reviewed a judgmental sample of 10 accounts out of a total population of 96 to verify that the accounts were interest bearing and were reconciled and safeguarded in accordance with Trial Court policies and procedures.
- For the waiver of fees, we reviewed a judgmental sample of 10 granted waivers out of a total population of 94 to determine whether the process of granting fee waivers was in accordance with Chapter 261 of the General Laws.

The financial data we obtained from the Massachusetts Management Accounting and Reporting System about SCRPFPC activities during our audit period were not used in our audit testing; the data were used solely for the purpose of presenting background information in our report. Consequently, we did not assess the reliability of these data.

DETAILED AUDIT FINDINGS WITH AUDITEE'S RESPONSE

1. The Registry did not have sufficient internal controls to maintain and report its inventory properly.

The Suffolk County Registry of Probate and Family Court (SCRPFPC) did not properly maintain required information about its fixed assets or perform a timely annual inventory of these assets. Consequently, these assets were at risk of loss, misuse, or theft and may not have been properly reported to the Trial Court.

Specifically, we reviewed the list of 581 items that SCRPFPC provided to us and determined that it did not include the items' locations or costs. Further, 10 of the 45 items that we selected from the list for review did not have unique identification tag numbers but instead had the same identification tag number as another item. Finally, the last inventory was taken in November 2014, rather than being finished and reported to the Trial Court by the deadline of October 1.

Authoritative Guidance

In its Internal Control Guide, the Office of the State Comptroller (OSC) requires state agencies, including courts, to institute controls to protect their equipment, information, documents, and other resources that could be wrongfully used, damaged, or stolen. OSC also requires that assets that originally cost \$1,000 or more be recorded in a department's perpetual inventory record, reconciled to the physical inventory at least annually, and included on the inventory list with the following identifiers at a minimum: date of purchase, cost, description, location, and disposal of an inventory item.

In Fiscal Year 2004 Memo #16 (see appendix), the former Chief Justice for Administration and Management delegated the responsibility for maintaining inventory to the manager of each court division because these assets are in the divisions' care and control, requiring court divisions to maintain records as follows:

The information on the inventory spreadsheet must be reconciled by courts and offices at the end of each fiscal year. The information must then be reported, via email, to the Fiscal Affairs Department no later than October 1 each year.

The same memo included furniture and equipment inventory procedures and was supplemented with Fiscal Year 2009 Memo #8 (see appendix), which required court divisions to inventory and tag all fixed

assets with a value over \$100, perform an annual physical inventory, and report the inventory results to the Trial Court by October 1.

Reasons for Inventory Problems

SCRPFPC did not have up-to-date policies and procedures to ensure that the inventory was maintained correctly and reviewed annually. In addition, contrary to Trial Court recommendations, it had not designated an employee as its internal control liaison; the previous internal control liaison resigned April 1, 2014, without a secondary liaison to fill the position. Further, because of multiple changes in management, this process was not prioritized in line with Trial Court inventory policies and procedures.

Recommendation

SCRPFPC should implement internal controls to ensure that its inventory list is properly maintained and updated. The list should include the tag number, description, cost, and location of each item.

Auditee's Response

As you noted, an inventory has been conducted during FY 2015, but the inventory listing was not prepared according to the standards referenced in your Report. During my tenure as Register, the Registry will have such controls in place and will be in full compliance with all requirements with regard to its inventory. I have named [the First Assistant Register] as the internal control liaison, to ensure that the annual inventory is conducted, the updated inventory list is maintained properly, and an annual inventory report is filed in a timely manner, as required.

2. SCRPFPC did not review custodial funds to determine whether they should be transferred to the Office of the State Treasurer.

SCRPFPC has not implemented adequate internal controls over its custodial accounts to ensure that any custodial accounts that are more than three years old are designated as abandoned and are transferred to the Office of the State Treasurer (OST) in accordance with state law. Without routine reviews of these accounts, eligible funds may not be transferred to the proper individuals, or to OST, which could use them to fund government operations.

As of the end of our audit period, SCRPFPC was maintaining 96 custodial accounts, totaling \$1,451,596. During our review of the SCRPFPC custodial-account records, we found accounts that dated back as far as 1930. We reviewed 10 accounts, totaling \$331,361, to determine whether they should be treated as abandoned funds. Nine of the 10 accounts tested had been inactive for at least three years, with only bank interest applied to each account. SCRPFPC did not have policies or procedures requiring its staff to

review custodial accounts periodically and determine whether any should be designated as abandoned property.

Authoritative Guidance

Section 2 of the Trial Court's Fiscal Systems Manual states that funds that are unclaimed and held by the court for three years after the related case is closed must be treated as abandoned funds and submitted to OST in accordance with Chapter 200A, Section 6, of the Massachusetts General Laws.

Reasons for Lack of Review

SCRPFPC officials told us that it was not prioritizing the review of its custodial accounts because the review is a time-consuming process and the court currently has a staff shortage.

Recommendation

SCRPFPC should establish policies and procedures that provide for the periodic review of all custodial accounts to determine whether they are eligible for transfer to OST or members of the public.

Auditee's Response

It is my intention, during my tenure as Register, to ensure that the Registry is in full compliance with all statutory and regulatory requirements regarding abandoned custodial funds by conducting the appropriate review and taking the appropriate action on a regular basis throughout the year. Again, I have named [the First Assistant Register] as the person responsible for ensuring that this is done. An Interim Policy and Procedure for periodic review of all custodial accounts has been developed . . . such a review is underway currently, and the appropriate action will be taken in the immediate future.

Please note that this is an issue that affects all of the Registries of the Probate and Family Courts in the Commonwealth, and is somewhat complicated. The Fiscal Department of the Trial Court is currently engaged in a project that involves reviewing all custodial accounts held by the Registries and developing an appropriate protocol.

As your Report points out, M.G.L. c. 200A, regarding Disposition of Unclaimed Property, sets forth requirements for managing and reporting on abandoned property, which, pursuant to sec. 6, applies to funds paid into a court, such as the custodial funds held by Registries. However, determining when the court has settled all claims in a particular case could be subject to differing interpretations.

Once the Trial Court's Fiscal Department establishes a protocol that is to be followed consistently by all departments and divisions within the Trial Court, I will ensure that this Registry is in full

compliance with that new protocol. In the meantime, the Registry will follow the . . . Interim Policy and Procedure.

APPENDIX

Trial Court Inventory Procedure Memorandums

The Trial Court implemented inventory procedures in Fiscal Year 2004 Memo #16, issued to the Clerks of the Trial Court on May 28, 2004. These procedures superseded previous inventory procedures issued by the Trial Court. The memo states,

The fixed asset inventory must contain all fixed assets with a value over \$100 that are in the care and control of a court/office. There should be one fixed asset inventory for each court division or office. . . .

Fixed assets that become lost or stolen must be reported using the "Report on Unaccounted Variances Losses Shortages or Thefts of Funds or Property" form contained in Section 1.5.8 of the Fiscal Systems Manual. . . .

Each court and office must . . . conduct a physical inventory of the fixed assets to create the data for the initial inventory. . . . A physical inventory must be performed each year before the information is . . . sent to the [Trial Court]. Additionally, courts and offices must ensure that all equipment with a value over \$100 has an inventory tag.

The Trial Court's fiscal year 2004 inventory procedures detail the information required in the inventory list, including inventory tag numbers, item descriptions, year received (if known), cost, room or location of the fixed asset, and date of disposal or transfer.

The Trial Court supplemented the fiscal year 2004 inventory procedures with updated equipment inventory procedures issued in Fiscal Year 2009 Memo #8, issued to the Clerks of the Trial Court on October 3, 2008. The memo states,

Courts and offices should diligently research to determine the original purchase date and cost of all equipment. In instances where documentation is unavailable, courts and offices should use the attached listing . . . as the approximate cost of the equipment and a purchase date of July 1, 2000.

The responsibility for determining when assets have exceeded their useful life . . . has been delegated to the Administrative Heads and the Department Heads of each court or office. If it is determined that equipment should be disposed of and removed from the inventory list, documentation must be kept on file to certify that the equipment was no longer useful to the Trial Court. The attached [disposal form] must be used to document the disposal of all assets. The completed form is to be kept on file with the annual inventory listing.