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**INDEPENDENT STATE AUDITOR'S REPORT ON  
CERTAIN ACTIVITIES OF THE  
MIDDLESEX DIVISION OF THE  
PROBATE AND FAMILY COURT DEPARTMENT  
JULY 1, 2007 TO DECEMBER 31, 2008**

**OFFICIAL AUDIT  
REPORT  
MARCH 31, 2009**

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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 217 of the Massachusetts General Laws authorized the Probate and Family Court Department (PFCD), which established 14 divisions, each having a specific territorial jurisdiction, to preside over probate and family matters brought before it. The Division's organizational structure consists of three main areas: the Judge's Lobby, headed by a First Justice; the Register of Probate's Office (RPO), 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 and has authority over all personnel. The Register of Probate and Chief Probation Officer have responsibility for the internal administration of their respective offices.

The Middlesex Division of the Probate and Family Court Department (MPFC) presides over probate and family matters falling within its territorial jurisdiction of Middlesex County. During the audit period, MPFC collected revenues of \$4,368,666 and disbursed them to the Commonwealth as either general or specific state revenue. In addition to the monies collected and transferred to the Commonwealth, MPFC was in control of 207 custodial bank accounts valued at \$1,487,849 as of December 31, 2008.

MPFC operations were funded by appropriations under the control of either the Division (local) or the Administrative Office of the Trial Court (AOTC) or Commissioner of Probation Office (central). According to the Commonwealth's records, expenditures associated with the operation of the Division for the 18-month audit period amounted to \$7,315,560.

The purpose of our audit, which was done at the request of newly elected Register of Probate, was to review MPFC's internal controls and compliance with applicable laws and regulations regarding administrative and operational activities, including cash management and revenue. Our review focused on the activities of the RPO for the period July 1, 2007 to December 31, 2008.

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Our prior audit (No. 2005-1222-30) disclosed that MPFC needed to take corrective action to comply with state laws and regulations regarding conducting risk assessments and developing an internal control plan, improving controls over assets held in trust, revenue reconciliations, and procurement policies for photocopy vending machines. Our current review found that additional corrective action is still necessary.

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## 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 217 of the Massachusetts General Laws authorized 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, PFCD's jurisdiction extends over all probate matters that include wills, administrations, guardianships, conservatorships, and change of name. The PFCD established 14 divisions, each having a specific territorial jurisdiction, to preside over probate and family matters brought before it. The division's organizational structure consists of three main areas: the Judge's Lobby, headed by a First Justice; the Register of Probate's Office (RPO), 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 and has authority over all personnel; however, the Register of Probate and the Chief Probation Officer have responsibility for the internal administration of their respective offices, including personnel, staff services, and record keeping.

The Middlesex Division of the Probate and Family Court Department (MPFC) presides over probate and family matters falling within its territorial jurisdiction consisting of Middlesex County. During the audit period, MPFC collected revenues of \$4,368,666 and disbursed them to the Commonwealth as either general or specific state revenue. The following table shows the breakdown of the revenues collected and transferred to the Commonwealth:

	July 1, 2008 to December 31, 2008	July 1, 2007 to June 30, 2008
General State Revenue	\$1,029,419	\$3,102,876
Miscellaneous Revenue	1,058	30,248
Designated State Revenue:		
Surcharge	<u>55,335</u>	<u>149,730</u>
Total	<u>\$1,085,812</u>	<u>\$3,282,854</u>

In addition to the monies collected and transferred to the Commonwealth, MPFC was in control of 207 custodial bank accounts valued at \$1,487,849 as of December 31, 2008. These accounts, established pursuant to the provisions of Chapter 206 of the General Laws, are considered assets held in trust by MPFC and kept in the custody of the RPO. These accounts usually result from the settlement of probate proceedings at the request of a fiduciary who cannot distribute the funds to the beneficiary because he or she is either a minor or an heir that cannot be located at the time of settlement.

MPFC operations were funded by appropriations under the control of either the Division (local) or the AOTC or Commissioner of Probation Office (central). Under local control for the 18-month audit period were appropriations for personnel-related expenses of the RPO and Judge's Lobby support staff, and certain administrative expenses (supplies, periodicals, law books, etc.). Other administrative and personnel expenses of the Division were paid by centrally controlled appropriations, and included expenses for leases, telephone, office supplies, probation office personnel-related costs, and judges' salaries. According to the Commonwealth's records, local and central expenditures<sup>1</sup> associated with the operation of the Division for the 18-month audit period amounted to \$7,315,560.

### ***Audit Scope, Objectives, and Methodology***

In accordance with Chapter 11, Section 12, of the General Laws, and at the request of the newly elected Register of Probate, the Office of the State Auditor conducted a transition audit of the financial and management controls over certain operations of the Middlesex Division of the Probate

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<sup>1</sup> This amount does not include certain centrally controlled expenditures, such as facility lease and related operational expenses, as well as 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.

and Family Court Department (MPFC). The scope of our audit included a review of MPFC's controls over administrative and operational activities, including cash management and revenue for the period July 1, 2007 to December 31, 2008. In addition, we reviewed the status of MPFC's appropriation account activity for the audit period, as presented in Schedules I, II, and III.

Our audit was conducted in accordance with applicable generally accepted government auditing standards for performance audits and, accordingly, included audit procedures and tests that we considered necessary under the circumstances.

Our audit objectives were to (1) assess the adequacy of MPFC's internal controls over cash management and revenues and (2) determine the extent of controls for measuring, reporting, and monitoring effectiveness and efficiency regarding MPFC's compliance with applicable state laws, rules, and regulations; other state guidelines; and AOTC and PFCD policies and procedures.

Our review centered on the activities and operations of MPFC's Register of Probate's Office. We reviewed cash management activity and transactions involving the collection and processing of revenue to determine whether policies and procedures were being followed.

The purpose of our review was to inform the new Register of Probate of the status of fiscal and administrative operations, to enhance the transition from the prior administration to the new administration, to identify systems and accounting and administrative internal controls that may need corrective action and improvement, and to determine the completeness of financial activities and records and compliance with applicable laws, rules, and regulations.

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

Our recommendations are intended to assist MPFC in developing, implementing, or improving internal controls and overall financial and administrative operations to ensure that MPFC's systems covering cash management and revenue collection and processing activities operate in an

economical, efficient, and effective manner and in compliance with applicable rules, regulations, and laws.

We determined that, except for the issues noted in the Audit Results section of our report, MPFC (1) maintained adequate internal controls over cash management and revenue collection and processing activities and (2) complied with applicable laws, rules, and regulations.

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## AUDIT RESULTS

### 1. STATUS OF PRIOR AUDIT RESULTS

Our prior audit (No. 2005-1222-3O) covered financial and management controls over certain operations of the Register of Probate's Office (RPO) at the Middlesex Division of the Probate and Family Court Department (MPFC) for the period July 1, 2003 to June 30, 2005. The prior audit disclosed that certain improvements were needed at MPFC. Our current audit included a review of the following prior Audit Results that were pertinent to our current audit objectives: (a) MPFC did not develop an internal control plan or conduct periodic risk assessments, (b) controls over assets held in trust (custodial passbooks) needed improvement, (c) internal controls for the collection and accounting of funds needed improvement, and (d) procurement policies for photocopier vending machine services could be improved. Our follow-up review noted that these deficiencies have not been fully resolved.

#### a. Improvements Needed in Developing an Internal Control Plan and Conducting Periodic Risk Assessments—Partially Resolved

Our prior audit found that MPFC did not develop an internal control plan or conduct risk assessments as required by state law and Trial Court rules and regulations. We recommended that MPFC conduct a risk assessment and develop an internal control plan in accordance with state law and Trial Court rules and regulations.

Our follow-up audit disclosed that MPFC conducted risk assessments and developed an internal control plan. While the plan is a good first step at documenting internal controls, further refinements would make the plan stronger and more relevant to MPFC's operations. Additionally, MPFC may be implementing a number of changes due to the new Register of Probate taking office as well as the planned conversion to MassCourts. Any policy and procedural changes that the new Register of Probate may implement as well as changes required by MassCourts should be considered for inclusion in MPFC's internal control plan.

#### ***Recommendation***

MPFC should continue to improve its risk assessments and internal control plan by reviewing these documents, at least annually, and making any changes necessary. Also, recommendations made in this audit report should be considered for the impact they will have on MPFC's risk assessment and related internal control plan.

***Auditee's Response***

The First Justice and Register of Probate provided the following response:

*The Register, in conjunction with the First Justice, is reviewing the current Internal Control Plan for Middlesex Probate and Family Court (MPFC) for updates to its' current organizational chart and segregation of duties based on reallocation of staff. Risk assessment procedures are also being reviewed in light of the implementation of the MassCourts system which affords the Registry with more accountability over revenue.*

**b. Controls over Assets Held in Trust (Custodial Accounts) Need Improvement—Partially Resolved**

Our prior audit found that improvements were made to controls over custodial account assets held in trust at MPFC, but recommended additional improvements. Specifically, we recommended that MPFC: research case papers to support bank accounts it maintains, obtain docket numbers or federal tax identification numbers for accounts missing such information, research accounts that may have been transmitted to the State Treasurer as abandoned property in error by the respective banks, and continue to review the trial balance for accounts that could be subject to abandoned property treatment and transmit those to the State Treasurer.

Our current audit disclosed that MPFC has implemented some changes, but additional improvements are necessary.

With respect to corrective actions taken, accounts were reviewed and matched to case papers. Also, docket numbers and federal tax identification numbers were obtained for accounts missing such information. MPFC personnel also attempted to obtain information from the State Treasurer regarding accounts that may have incorrectly been transferred as abandoned property by banks; however, this process is still ongoing.

Since personnel were implementing the above-mentioned corrective actions, they did not have time to continue to review and transmit abandoned accounts to the State Treasurer. We aged the trial balance of custodial accounts dated October 31, 2008, which contained 207 accounts totaling \$1,487,849, and determined that 60 accounts totaling \$193,770 were on hand for more than 18 years, with the oldest account having been opened in the year 1961. Since these types of accounts were often opened for minors to be held by MPFC

pending the beneficiary reaching the age of majority, we believe many of these accounts may be subject to treatment as abandoned property.

***Recommendation***

MPFC should continue its efforts to contact the State Treasurer's Office to determine if it should retain any accounts previously transferred by banks as abandoned property. Additionally, MPFC personnel should review the custodial account trial balance and determine if any accounts should be transmitted to the State Treasurer as abandoned property.

***Auditee's Response***

The First Justice and Register of Probate provided the following response:

*The Registry has assigned the Office Manager to make contact with the State Treasurer's Office to investigate the possibility that older custodial passbooks have already been transferred from banks to the State Treasurer's Office as abandoned property.*

*The Registry is in the process of gathering other passbooks for review by the Judicial Case Manager to identify those that may be transmitted to the State Treasurer's Office as abandoned property. As all Probate and Family Courts are courts of record, this process needs to be handled by someone with knowledge of the abandoned property laws, but also the laws governing the Court's responsibility to the beneficiaries.*

**c. Improvements Needed in Revenue Reconciliation—Unresolved**

Our prior audit found that MPFC was not in compliance with AOTC's Fiscal Systems Manual and the Office of the State Comptroller's requirements because they were not reconciling revenues transmitted to the State Treasurer with the State Comptroller's official accounting records.

Our current audit found that, although MPFC transmitted revenues to the Commonwealth in accordance with established procedures, they were still not reconciling revenues as required. As a result, MPFC would not be aware of any discrepancies between what was transmitted as revenue and the Comptroller's revenue records.

Effective August 16, 2006, AOTC issued Fiscal Year 2007 Memo #6, which addressed new procedures for revenue transmittal, reporting, and reconciliation. The new procedure allows courts to verify revenue transactions and addresses the revenue reconciliation requirements.

MPFC officials said that they were unfamiliar with the procedure for reconciling revenues in accordance with the AOTC Memo #6, but would plan on reconciling revenues in the future.

***Recommendation***

MPFC should institute a procedure to reconcile its monthly revenues in accordance with the updated AOTC requirements to ensure that all revenues disbursed to the Commonwealth have been properly applied to the correct court and fund.

***Auditee's Response***

The First Justice and Register of Probate provided the following response:

*This administration has been made aware of Fiscal Year 2007 Memo #6 and will implement a monthly reconciliation between the monies transferred to the State Treasurer's Office pursuant to M.G.L. Ch. 217, Sec. 20 and those reported to the State Comptroller's Office. Such reconciliation shall be done by the Bookkeeper.*

**d. Improvements Needed in Procurement Policies and Procedures for Vending Machines—Unresolved**

Our prior audit found that MPFC should improve its procurement policies for vending machines. Specifically, our prior review found that MPFC had a vendor install four photocopying machines to provide copying services to the public. The arrangement with the vendor was done without competitive bidding and without a written contract. Although the needs of the public are served by having the copy machines available, MPFC and the Commonwealth may not have received as much benefit as they otherwise might have, as MPFC was not receiving commission payments. We also noted that the prior vendor was an out-of-state vendor that did not register to do business in the Commonwealth. Procurement provisions issued by AOTC require the Courts to seek competitive bids for these types of contracts to best serve the needs of the public, the Court, and the Commonwealth.

Our current review found that a new photocopy machine vendor was brought in to replace the previous vendor. Contrary to AOTC requirements, and our recommendations, the vendor was not selected as a result of a competitive procurement process, as MPFC could

not provide us with documentation showing how the vendor was selected. Our prior audit estimated that approximately \$49,000 per year of gross revenue was generated from the operation of these machines and neither this vendor nor the previous vendor paid commission payments to MPFC.

Recently, AOTC became involved in helping MPFC select a new photocopier vendor through a competitive procurement process. As of the completion of our audit fieldwork, negotiations were in progress for selecting a new vendor.

***Recommendation***

MPFC should continue to monitor the status of the contract approval from AOTC. MPFC should also review compliance with the terms of the contract, particularly in terms of commission payments. Commission payments should also be monitored and any variances followed up for corrective action, as necessary.

***Auditee's Response***

The First Justice and Register of Probate provided the following response:

*As stated in the audit, MPFC is working with the Procurement Office of the AOTC to resolve the outstanding issues arising from the lack of information on the public copy machine vendor/contract. The Register and First Justice are resolving the usage of the current vending machine(s) in the Court without the benefit of an existing contract or commission payment. They are also following up on collecting useful information to provide to potential vendors to begin the competitive bidding process so a written contract for public copy machines may be established for MPFC. MPFC will also train personnel to monitor compliance with the terms of contract and take any corrective action as necessary.*

**2. ACCOUNTING CONTROLS OVER ASSETS HELD IN TRUST (CUSTODIAL ACCOUNTS) NEED IMPROVEMENT**

Our audit found that MPFC has a detailed trial balance to support the value of the amount of assets held in trust (custodial accounts) maintained by the bookkeeper. The individual that has physical custody of the custodial accounts also keeps a list of accounts; however, the two lists do not reconcile and format issues make reconciliation difficult.

As part of MPFC's efforts to improve controls over assets held in trust, MPFC implemented an electronic Excel spreadsheet recordkeeping system for these accounts maintained by the Register of Probate's Office bookkeeper. This system was called the master ledger and it produces a

detailed account trial balance to support the amount reported to AOTC as custodial passbooks. The individual that has physical custody of the accounts, the Account Manager, also maintains a list, but it is kept on a Microsoft Word document. When we compared the two lists, there was a variance of about \$31,570. Although there were only seven accounts that appeared to account for the variance, the different formats of the two systems (Excel vs. Word) made comparison difficult, necessitating a detailed review of the 168 accounts on each list

Good business practices suggest that for a control procedure to be effective, ease of use is an important consideration. If both lists were kept in the same format, MPFC personnel would have an easier time determining which accounts do not agree and time could be more efficiently used to determine why particular variances are present.

We discussed this situation with MPFC officials, and they agreed that standardizing the formats of the two systems would provide for easier review and identification of variances.

#### ***Recommendation***

MPFC should review the current procedure of maintaining two systems in different formats and implement a change to one format for both records. Alternatively, MPFC may consider having a single document with restricted access by both parties responsible for assets held in trust. The system could be set up to allow each party access to a particular portion of the combined document.

#### ***Auditee's Response***

The First Justice and Register of Probate provided the following response:

*The Court is moving forward on changing one of the accounting systems to Excel to provide for easier reconciliation of account balances.*

### **3. IMPROVEMENTS NEEDED OVER RECEIPTING AND ACCOUNTING FOR FUNDS IN THE REGISTER OF PROBATE'S OFFICE**

Our audit found that the Register of Probate's Office needs to improve controls over the receipting and accounting for cash in order to protect the integrity of cash collections. Provisions of AOTC's Fiscal Systems Manual and the Trial Court's Internal Control Guidelines promote sound internal control practices over the Fund Receipt and Accounting Cycles.

Noncompliance with these practices allows for a breakdown in internal controls that threatens the integrity of cash collection.

When examining cash register transactions, we found a number of voids and no sale transactions. Specifically, for the week of July 28, 2008 to August 1, 2008, there were eight voids and 63 no sale transactions. For the week of November 17 to November 21, 2008, there were 45 voids and seven no sale transactions.

As a result of inquires we made about the number of void and no sale transactions, MPFC personnel told us that the void transactions were made to correct errors made in ringing transactions through the electronic cash register. They also noted that voiding one transaction may result in more than one transaction becoming void because a payment may involve more than one type of fee and adjusting each fee would require a void transaction. We were also told that the no sale transactions were usually the result of opening the cash drawer to provide change to the public.

Good business practice requires care in ringing transactions through the cash register, as this is the original input point of cash receipts. The AOTC Fiscal Systems Manual, Section 8.3, provides that the cash drawer should not be used for making change for the public.

### ***Recommendation***

MPFC should review the void transactions to determine if procedures can be modified to reduce the likelihood of input errors through the cash register. MPFC should review the current procedure of using cash drawers for providing change for the public. If there is a need for such a change fund, MPFC may want to contact the vendor to determine if the vendor can provide a change fund separate from MPFC's funds.

### ***Auditee's Response***

The First Justice and Register of Probate provided the following response:

*The Court is now using the MassCourts system which requires each transaction to be associated with a case and tender type. This allows for the Bookkeeper to reconcile the amounts recorded into the system in cash, check or charge to the amounts within each point of sale drawer.*

*Void transactions may no longer be performed by the cashier. To provide better oversight of transactions, the MassCourts system does not allow the cashier to correct any errors in receipting. All fee reversals must be done by the Bookkeeper with a required reason code. The cashier may then re-enter and process the fee properly.*

*Staff have been informed that change is no longer to be made for the public and that they should direct individuals to the change machine located on the third floor of the Registry of Deeds.*

## SCHEDULE I

### Schedule of Expenditures, Services, and Operations Account

#### Appropriation Accounts

July 1, 2008 to December 31, 2008

	July 1, 2008 to December 31, 2008
<b><u>Account 0333-0900</u></b>	
Appropriation	<u>\$3,508,883</u>
Expenditures	\$1,799,297
Accrued Expenses	3,377
Encumbrances	<u>15,202</u>
Uncommitted	<u>\$1,691,007</u>
Percentage Uncommitted to Appropriation	48%
<b><u>Account 0333-0911</u></b>	
Appropriation	<u>\$201,286</u>
Expenditures	\$100,265
Accrued Expenses	--
Encumbrances	<u>177</u>
Uncommitted	<u>\$100,844</u>
Percentage Uncommitted to Appropriation	50%
<b><u>Account 0333-0913</u></b>	
Appropriation	<u>\$199,164</u>
Expenditures	\$59,127
Accrued Expenses	--
Encumbrances	<u>1,782</u>
Uncommitted	<u>\$138,255</u>
Percentage Uncommitted to Appropriation	69%

## SCHEDULE II

### Schedule of Expenditures, Services, and Operations Account

#### Appropriation Accounts

July 1, 2007 to June 30, 2008

	July 1, 2007 to June 30, 2008
<b><u>Account 0333-0900</u></b>	
Appropriation	\$3,377,715
Transfers In	<u>228,542</u>
Obligation Ceiling	<u>\$3,606,257</u>
Expenditures	\$3,605,466
Uncommitted	<u>791</u>
Total Expenditures and Uncommitted	<u>\$3,606,257</u>
<b><u>Account 0333-0911</u></b>	
Appropriation	\$193,762
Transfers In	<u>6,695</u>
Obligation Ceiling	<u>\$200,457</u>
Expenditures	\$200,457
Uncommitted	<u>--</u>
Total Expenditures and Uncommitted	<u>\$200,457</u>
<b><u>Account 0333-0913</u></b>	
Appropriation	<u>\$191,719</u>
Expenditures	\$190,700
Uncommitted	<u>1,019</u>
Total Expenditures and Uncommitted	<u>\$191,719</u>

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**SCHEDULE III****Schedule of Register of Probate's Office Cash  
Balance****As of December 31, 2008**

Description	Total
Cash in Bank	--
Cash on Hand	\$100
Assets Held in Trust—Custodial Accounts	<u>1,487,849</u>
Total	<u>\$1,487,949</u>