



Commonwealth of Massachusetts
Office of the State Auditor
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Official Audit Report – Issued June 11, 2013

The Barnstable County Division of the Probate and Family Court Department

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



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INTRODUCTION AND SUMMARY OF FINDINGS AND RECOMMENDATIONS

The Barnstable County Division of the Probate and Family Court Department (BCPFC) is authorized by Chapter 217 of the Massachusetts General Laws and serves 15 towns in Barnstable County. The BCPFC courthouse is located in the town of Barnstable and presides over probate and family matters falling within its territorial jurisdiction. According to information published by the Probate and Family Court Department, the BCPFC'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."

The objectives of our audit, which covered the period July 1, 2010 through September 30, 2012, were to determine (1) whether unclaimed custodial account (passbook¹) assets in the custody of BCPFC are being deemed abandoned property and transferred to the Office of the State Treasurer (OST) in accordance with state law and Administrative Office of the Trial Court (AOTC) policies; (2) whether BCPFC is complying with laws and regulations pertaining to the waiver of fees, as well as to the type and number of cases involving waived fees; (3) whether BCPFC is complying with Chapter 647 of the Acts of 1989, An Act Relative to Improving the Internal Controls within State Agencies; and (4) the status of the issues identified in our two prior two audits of BCPFC (Nos. 2003-1230-3S and 2009-1230-3O).

Highlight of Audit Finding

Our prior audits of BCPFC (No. 2003-1230-3S and No. 2009-1230-3O) found that BCPFC was not transferring unclaimed custodial account (passbook) assets to OST as abandoned property as required by Chapter 200A, Section 6, and Chapter 206, Sections 25 and 26, of the General Laws and by AOTC policies. Our current audit found that BCPFC is now complying with the applicable abandoned-property requirements as they pertain to passbook accounts.

Other Matters

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

¹ Passbook 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 who cannot be located at the time of settlement.

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

During our audit period, 13% of the individuals who initiated civil proceedings (e.g., divorce or paternity matters) at BCPFC did not pay a fee to do so because they submitted information to BCPFC that qualified them for a fee waiver as authorized by Chapter 261, Section 27C, of the General Laws. In order to be eligible for a fee waiver, individuals must complete an Affidavit of Indigency form,² which they sign under penalty of perjury, attesting that they are eligible for the waiver. Chapter 261, Section 27C, does not allow the court to verify the information in the form but rather requires courts to accept the Affidavit of Indigency—if complete on its face—as accurate, and requires that the clerk grant the request. As a result, fees may have been waived for individuals who misrepresented their status as indigent. Accordingly, we suggest that the CJTC and the Legislature review the waiver-of-fees process established by Chapter 261, Section 27C, of the General Laws and consider taking appropriate measures, including amending that section, to allow courts such as BCPFC to verify the information submitted by individuals who request a waiver of fees.

² Persons indicating that they cannot pay the fees and costs of the proceeding “without depriving [themselves or their] dependents of the necessities of life, including food, shelter and clothing” must also complete a “Supplement to Affidavit of Indigency” form.

OVERVIEW OF AUDITED AGENCY

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 on 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, whereas the Court Administrator is the administrative head of the Trial Court, working collaboratively with the CJTC with the overall responsibility for budget preparation and oversight, labor relations, information technology, capital projects, and personnel policy (thereby performing the many administrative functions of the former CJAM position).

Chapter 211B of the Massachusetts General Laws established the Probate and Family Court Department (PFCD), which has jurisdiction over probate and family matters such as divorce, paternity, child support, custody, visitation, adoptions, termination of parental rights, and abuse prevention. Along with general equity jurisdiction, all probate matters fall under PFCD's purview, including wills, administrations, guardianships, conservatorships, and name changes. PFCD established 14 divisions, each having a specific territorial jurisdiction, to preside over the probate and family matters brought before it. Each division's organizational structure consists of three separately managed offices: the Judge's Lobby, headed by a First Justice; the Register of Probate Office, headed by the Register of Probate, 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 Barnstable County Division of the Probate and Family Court Department (BCPFC) presides over probate and family matters falling within its territorial jurisdiction of Barnstable County. During the audit period, July 1, 2010 through September 30, 2012, BCPFC collected revenues of \$2,036,641, which it disbursed to the Commonwealth as either general or specific state revenue.

Additionally, as of September 30, 2012, BCPFC controlled five custodial accounts valued at \$275,849. These accounts, established pursuant to the provisions of Chapter 206 of the General Laws, are considered assets held in trust by BCPFC and are kept in the custody of the Register of Probate. 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 who cannot be located at the time of settlement.

According to BCPFC records, court proceedings occurred on 9,856 domestic relations and probate cases during the audit period.

AUDIT SCOPE, OBJECTIVES, AND METHODOLOGY

In accordance with Chapter 11, Section 12, of the Massachusetts General Laws, we performed an audit of various activities of the Barnstable County Division of the Probate and Family Court Department (BCPFC) for the period July 1, 2010 through September 30, 2012. The objectives of our audit were to determine (1) whether unclaimed custodial account (passbook³) assets in the custody of BCPFC are being deemed abandoned property and transferred to the Office of the State Treasurer (OST) in accordance with state law and Administrative Office of the Trial Court (AOTC) policies; (2) whether BCPFC is complying with laws and regulations pertaining to the waiver of fees, as well as to the type and number of cases involving waived fees; (3) whether BCPFC is complying with Chapter 647 of the Acts of 1989, An Act Relative to Improving the Internal Controls within State Agencies; and (4) the status of the issues identified in our two prior two audits of BCPFC (Nos. 2003-1230-3S and 2009-1230-3O).

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.

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

- Reviewed all Transmittal Sheets for abandoned property provided by BCPFC and compared these to the total amount received by the OST to verify the amounts reconciled. Additionally, we reviewed the individual balances on the BCPFC Open Item Case Listing Report to verify that all accounts that should have been transferred to the OST were in fact transmitted.
- Verified that any waivers of civil entry fees were supported by completed, signed, and approved Affidavits of Indigency contained in the case files. This verification was accomplished through a judgmentally selected sample of 35 from a universe of 926 cases that we believed were representative of the populations being tested.
- Conducted interviews with BCPFC management and other staff and reviewed prior audit reports; BCPFC's organizational charts; applicable statutes, policies, and procedures; accounting records; and other source documents.

³ Passbook 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 who cannot be located at the time of settlement.

- Reviewed and evaluated BCPFC's internal controls to determine whether BCPFC is complying with Chapter 647 of the Acts of 1989.

We obtained abandoned-property reports and fee waiver information from systems maintained by the Commonwealth, the Massachusetts Trial Court, and BCPFC. We compared this information with other source documents and interviewed knowledgeable BCPFC and Trial Court officials about the data. We determined that the data were sufficiently reliable for the purposes of this report.

We assessed internal controls by verifying that custodial passbooks were maintained in a secure locked setting and were transferred to OST as abandoned property when they became eligible according to state law. Additionally, we verified that indigence docket cases contained signed affidavits and that the internal control plan was updated annually. We used a non-statistical random sampling approach to validate the accuracy of waived fees, as well as a judgmental sample approach to assess custodial accounts greater than \$10,000. Based on our audit we have determined that, during the period July 1, 2010 through September 30, 2012, BCPFC maintained adequate management controls and complied with applicable laws, rules, and regulations for the areas tested.

AUDIT FINDING

PRIOR AUDIT FINDING RESOLVED – CONTROLS OVER ASSETS HELD IN TRUST (CUSTODIAL ACCOUNTS) IMPROVED

Our prior audits of this department (Nos. 2003-1230-3S and 2009-1230-3O) disclosed that the Barnstable County Division of the Probate and Family Court Department (BCPFC) was not complying with provisions of Chapter 200A, Section 6, and Chapter 206, Sections 25 and 26, of the Massachusetts General Laws and Administrative Office of the Trial Court policies for transferring abandoned custodial account (passbook) assets to the Office of the State Treasurer (OST). In fact, our most recent prior audit (No. 2009-1230-3O) determined that, as of June 30, 2009, BCPFC had approximately 264 passbook accounts (valued at \$1,163,843), with the oldest dating back to 1957, that might have been considered abandoned property in accordance with the aforementioned statutes but had not been transferred to the OST. During this prior audit, the Register of Probate, who took office in January 2009, indicated that she would devote the necessary resources to resolving the status of these old accounts.

Our current audit found that BCPFC is now complying with the applicable abandoned-property requirements by periodically verifying the status of passbook accounts and appropriately distributing the funds in these accounts either to the rightful owners or to the OST, if the funds are unclaimed and determined to be abandoned. As of September 30, 2012, BCPFC had transferred 256 passbook accounts, totaling \$1,389,461, to the OST as abandoned property. Additionally, another 14 passbook accounts, totaling \$213,766, were disbursed to beneficiaries.

Auditee's Response

The Barnstable County Probate and Family Court is pleased that the current audit has found that the Court is in compliance with the abandoned property statute. The current Register of Probate devoted a significant amount of time and staff resources to bring the Court in compliance with the abandoned property statute.

OTHER MATTERS

LEGISLATIVE CHANGES SHOULD BE CONSIDERED TO ENABLE COURTS TO PERFORM VERIFICATIONS OF FEE-WAIVER INFORMATION

Individuals filing civil claims in courts are subject to filing fees assessed by the court, which are deposited into the Commonwealth's General Fund and are used to support government operations, including the operations of the courts. However, according to the provisions of Chapter 261 of the Massachusetts General Laws, individuals are considered indigent and eligible for a fee waiver if (1) they receive public assistance, (2) their income is at or below 125% of the current Federal Poverty Level, or (3) they cannot afford to pay without placing themselves or their dependents in financial hardship. To be eligible for a fee waiver, individuals must complete an Affidavit of Indigency form,⁴ which they sign under penalty of perjury, and submit it to the Court Clerk. Chapter 261, Section 27C, of the General Laws requires the Court Clerk to waive fees if a submitted Affidavit of Indigency appears to be facially complete, as follows:

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

The current waiver application process as established by Chapter 261 does not allow courts to verify any of the information contained in the Affidavit of Indigency form filed by the individual seeking the waiver unless the form appears to be incomplete. Of the total \$492,844 in fees from divorce and paternity cases that the Barnstable Division of the Probate and Family Court Department (BCPFC) assessed during our audit period, \$64,252, or 13%, was waived, as detailed in the following table:

	Divorces ⁵	Paternity ⁶	Total
Cases in Population	2,586	1,069	<u>3,655</u>
Indigency Waivers	319	184	503
Potential Income	\$418,932	\$73,761	\$492,693
Indigency Waivers in Dollars	\$ 51,530	\$12,722	<u>\$ 64,252</u>
Percentage Waived – Indigent	12%	17%	13%

⁴ Persons indicating that they cannot pay the fees and costs of the proceeding “without depriving [themselves or their] dependents of the necessities of life, including food, shelter and clothing” must also complete a “Supplement to Affidavit of Indigency” form.

⁵ Divorce fees varied from \$50 to \$200. We averaged out the indigency cases waived with the actual dollar amount waived (\$51,530 divided by 319 = \$161.54) due to indigency. We used \$162 per case as potential income.

⁶ Paternity fees varied from \$50 to \$100. We averaged out the paternity cases waived with the actual dollar amount waived (\$12,722 divided by 184 = \$69.14) due to indigency. We used \$69 per case as potential income.

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

Auditee's Response

With respect to the recommendation that courts should perform verifications of fee waiver information, the present law does not permit or require a court to obtain this information. There are instructions to the courts from the Supreme Judicial Court that state that additional verification information should not be requested when an individual properly completes an Affidavit of Indigence requesting a fee waiver. If the Affidavit of Indigence appears to be properly completed, the Court cannot require any additional verification information and Massachusetts General Laws Chapter 261, Section 27C provides that the court clerk shall grant the request to waive the fees "forthwith." In other words, the law as it is presently written does not require additional verification information when a person requests a fee waiver as long as the Affidavit of Indigence is completed properly.

The purpose and scope of the current audit was to determine whether the Barnstable Probate and Family Court is in compliance with Chapter 647 of the Acts of 1989 and the laws and regulations pertaining to the waiver of fees. The Barnstable Probate and Family Court is in full compliance with Chapter 647 of the Acts of 1989 and the present laws and regulations pertaining to the waiver of fees... Recommendations for such changes in the law or in public policy with respect to the waiver of fees should be pursued with the Chief Justice of the Trial Court and Members of the Massachusetts Legislature.

Auditor's Reply

We agree with BCPFC's point that Chapter 261 does not permit or require a court to obtain additional information to verify applicant-provided data on Affidavit of Indigency and Supplement to Affidavit of Indigency forms. In fact, the lack of such a legal requirement is why this issue is not being disclosed as an audit finding, but as a matter for the CJTC and members of the Legislature, who could consider making changes to the fee waiver process to better ensure that only eligible individuals filing civil claims receive fee waivers.

We also agree that our audit found that BCPFC was in compliance with all applicable laws, regulations, and policies in the areas reviewed and that the issue involving the waiver of fees is not something that BCPFC can address but is an issue to be considered by the CJTC and the Massachusetts Legislature.