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NO. 2009-1230-30

**INDEPENDENT STATE AUDITOR'S REPORT ON
CERTAIN ACTIVITIES OF THE
BARNSTABLE DIVISION OF THE
PROBATE AND FAMILY COURT DEPARTMENT
JULY 1, 2007 TO JUNE 30, 2009**

**OFFICIAL AUDIT
REPORT
DECEMBER 17, 2009**

TABLE OF CONTENTS/EXECUTIVE SUMMARY

INTRODUCTION

1

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 Barnstable Division of the Probate and Family Court Department (BPFC) presides over probate and family matters falling within its territorial jurisdiction of Barnstable County. During the audit period, BPFC collected revenues of \$1,666,182 and disbursed them to the Commonwealth as either general or specific state revenue. In addition to the funds collected and transferred to the Commonwealth, BPFC was in control of 289 custodial bank accounts valued at \$1,489,198 as of June 30, 2009.

BPFC 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, local and central expenditures associated with the operation of the Division for the 24-month audit period totaled \$2,661,665.

The purpose of our audit, which was conducted at the request of the newly elected Register of Probate, was to review BPFC'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 June 30, 2009.

AUDIT RESULTS

5

PRIOR AUDIT RESULTS UNRESOLVED: CONTROLS OVER ASSETS HELD IN TRUST (CUSTODIAL ACCOUNTS) NEED IMPROVEMENT

5

Our prior audit (No. 2003-1230-3S), which covered financial and management controls over certain BPFC operations for the period July 1, 2002 to December 31, 2003, identified numerous custodial account assets that may be abandoned and subject to transfer to the Office of the State Treasurer (OST) in accordance with state law. Our follow-up review found that numerous passbooks are still on hand that may qualify as abandoned property. Specifically, our review determined that as of June 30, 2009, BPFC had approximately 264 passbooks valued at \$1,163,843 (with the oldest dating back to 1957) that may be considered abandoned and eligible for transfer to the OST. The new

Register of Probate, who took office in January 2009, indicated that she would devote the resources necessary to resolve the status of these old accounts.

SCHEDULE I	7
Expenditures, Services, and Operations Account, Appropriation Accounts, July 1, 2007 to June 30, 2009	7
<hr/>	
SCHEDULE II	8
Register of Probate's Office Cash Balance, As of June 30, 2009	8

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 name changes. 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 Barnstable Division of the Probate and Family Court Department (BPFC) presides over probate and family matters falling within its territorial jurisdiction consisting of Barnstable County. During the audit period July 1, 2007 to June 30, 2009, BPFC collected revenues of \$1,666,182 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, 2007 to June 30, 2008	July 1, 2008 to June 30, 2009
General State Revenue	\$781,713	\$808,084
Designated State Revenue: Surcharge	<u>37,950</u>	<u>38,435</u>
Total	<u>\$819,663</u>	<u>\$846,519</u>

In addition to the funds collected and transferred to the Commonwealth, BPFC was in control of 289 custodial bank accounts valued at \$1,489,198 as of June 30, 2009. These accounts, established pursuant to the provisions of Chapter 206 of the General Laws, are considered assets held in trust by BPFC 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.

BPFC 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 24-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 expenditures¹ associated with the operation of the Division for the 24-month audit period amounted to \$2,661,665.

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 BPFC operations. The scope of our audit included a review of BPFC's controls over administrative and operational activities, including cash management and revenue, for the period July 1, 2007 to June 30, 2009. In addition, we reviewed the

¹ 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.

status of BPFC's appropriation account activity for the audit period as well as the cash balance as of June 30, 2009, as presented in Schedules I and II.

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 BPFC's internal controls over cash management and revenues and (2) determine the extent of controls for measuring, reporting, and monitoring effectiveness and efficiency regarding BPFC'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 BPFC'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 Massachusetts Management Accounting and Reporting System reports, AOTC statistical reports, and BPFC'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 BPFC was based on these interviews and review of documents.

Our recommendations are intended to assist BPFC in developing, implementing, or improving internal controls and overall financial and administrative operations to ensure that BPFC'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.

We determined that, except for the issue noted in the Audit Results section of our report, BPFC maintained adequate internal controls over cash management and revenue collection and processing activities, and complied with applicable laws, rules, and regulations for those areas reviewed.

AUDIT RESULTS

PRIOR AUDIT RESULTS UNRESOLVED: CONTROLS OVER ASSETS HELD IN TRUST (CUSTODIAL ACCOUNTS) NEED IMPROVEMENT

Our prior audit (No. 2003-1230-3S), which covered financial and management controls over certain operations of the Barnstable Division of the Probate and Family Court Department (BPFC) for the period July 1, 2002 to December 31, 2003, identified numerous custodial account assets that may be abandoned and subject to transfer to the Office of the State Treasurer (OST) in accordance with state law. The prior audit noted that the last transfer took place in 1993 and recommended that the Register of Probate's Office review the status of accounts and transfer abandoned accounts to the OST.

Our follow-up review found that numerous passbooks are still on hand that may qualify as abandoned property. Specifically, our review determined that as of June 30, 2009 BPFC had approximately 264 passbooks valued at \$1,163,843 (with the oldest dating back to 1957) that may be considered abandoned and eligible for transfer to the OST.

Criteria for treatment of abandoned property can be found in Chapters 200A and 206 of the General Laws. The Administrative Office of the Trial Court's (AOTC) Fiscal Systems Manual provides procedures that, in compliance with state law, treats certain funds as abandoned property in accordance with Chapter 200A of the General Laws. Specifically, the AOTC Fiscal Systems Manual, Section 9.2, defines abandoned property as:

Abandoned Property—bail (or other held monies) unclaimed after three years, despite written attempts to contact the surety in accordance with Massachusetts General Law, Chapter 200A, Section 6.

In accordance with the provisions of Chapter 206, Sections 25 and 26 of the General Laws, some of these custodial assets could be transferred to the OST after being unclaimed for six months and held by the OST subject to the provisions of Chapter 200A (Abandoned Property). Chapter 206, Section 25, of the General Laws states, in part:

If money which a decree of a probate court has ordered to be paid over remains for six months unclaimed, said money shall be presumed abandoned and the executor, administrator, guardian, conservator or trustee who was ordered to pay the same shall remit said money to the state treasurer as abandoned property to be held by him subject to the provisions of chapter two hundred A. Such remittance shall be made in the name of the judge of probate on a form prescribed by the state treasurer.

Any money which a decree of a probate court orders to be paid over to a minor, who due to his minority may not receive the money until reaching the age of majority, shall not be remitted to the state treasurer pursuant to this section unless and until the money remains unclaimed for six months after the date on which the minor reaches the age of majority. Said money may be deposited in the name of the first judge of probate for the benefit of such minor pursuant to section twenty-seven.

Chapter 206, Section 26, of the General Laws states:

If the residence of a legatee under a will duly proved or of a person entitled to a portion of a trust fund under an order of distribution provided by section twenty-five of chapter two hundred and three is unknown or if he is a minor without legal guardian, the court may, if satisfied of such fact, order the legacy or share of the trust fund due him to be remitted as provided in and subject to the preceding section.

Register's Office officials said that other priorities assigned to them under the previous Register precluded them from implementing follow-up action on the conditions noted in our previous audit report. Additionally, the new Register of Probate, who took office in January 2009, indicated that she would devote the resources necessary to resolve the status of these old accounts.

Recommendation

BPFC should review its aged trial balance of custodial assets to identify which accounts could be treated as potentially abandoned property. BPFC should attempt to locate parties due money, if possible, and transfer the remaining accounts to the OST.

Auditee's Response

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

The Barnstable Registry of Probate has begun the process of contacting the Office of the State Treasurer (OST) Abandoned Property Division for the procedures necessary to transmit custodial accounts that are considered abandoned property by both the Administrative Office of the Trial Court (AOTC) and OST. In addition, the Barnstable Registry of Probate has met with the audit staff of AOTC to review the necessary trial court procedures for transmitting property to the OST. As the Probate and Family Court is a court of record, the process of turning the custodial passbooks over to the OST must be handled by staff who understand the laws governing the Court's obligation to beneficiaries. The Register has implemented a plan and procedure with appropriate staff to begin the process of transferring the custodial accounts to the OST.

SCHEDULE I

Expenditures, Services, and Operations Account

Appropriation Accounts

July 1, 2007 to June 30, 2009

	Totals	July 1, 2007 to June 30, 2008	July 1, 2008 to June 30, 2009
<u>Account 0333-0100</u>			
Appropriation	\$2,001,280	\$981,581	\$1,019,699
Transfers In	<u>121,054</u>	<u>105,654</u>	<u>15,400</u>
Obligation Ceiling	<u>\$2,122,334</u>	<u>\$1,087,235</u>	<u>\$1,035,099</u>
Expenditures	\$2,121,939	\$1,086,845	\$1,035,094
Uncommitted	<u>395</u>	<u>390</u>	<u>5</u>
Total Expenditures and Uncommitted	<u>\$2,122,334</u>	<u>\$1,087,235</u>	<u>\$1,035,099</u>

SCHEDULE II**Register of Probate's Office Cash Balance****As of June 30, 2009**

Description	Total
Cash in Bank	--
Cash on Hand	\$ 100
Assets Held in Trust—Custodial Accounts	<u>1,489,198</u>
Total	<u>\$1,489,298</u>