



# Town of Ellery Justice Court

## Report of Examination

Period Covered:

January 1, 2009 — August 6, 2014

2014M-269



Thomas P. DiNapoli

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# State of New York Office of the State Comptroller

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## **Division of Local Government and School Accountability**

February 2015

Dear Town Officials:

A top priority of the Office of the State Comptroller is to help local government officials manage government resources efficiently and effectively and, by so doing, provide accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of local governments statewide, as well as compliance with relevant statutes and observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations and Town Board governance. Audits also can identify strategies to reduce costs and to strengthen controls intended to safeguard local government assets.

Following is a report of our audit of the Town of Ellery, entitled Justice Court. This audit was conducted pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the New York State General Municipal Law.

This audit's results and recommendations are resources for local government officials to use in effectively managing operations and in meeting the expectations of their constituents. If you have questions about this report, please feel free to contact the local regional office for your county, as listed at the end of this report.

Respectfully submitted,

*Office of the State Comptroller  
Division of Local Government  
and School Accountability*

# Introduction

## Background

The Town of Ellery (Town) is located in Chautauqua County and serves approximately 4,500 residents. The Town is governed by the Town Board (Board), which comprises four elected council members and an elected Town Supervisor. The Board is the legislative body responsible for managing Town operations, including establishing appropriate internal controls over financial operations including the Justice Court (Court).

The Court has jurisdiction over certain criminal and civil matters as well as motor vehicle and traffic violations. The Justices impose and collect fines and bail money and are responsible for reporting on adjudicated cases heard in their respective courts. Each Justice is required to report monthly to the Office of the State Comptroller Justice Court Fund (JCF) the financial activities of the preceding month. The Town currently has two elected Justices who preside over the Court. The Town also employs a Court Clerk (Clerk) to assist with the financial responsibilities related to Court operations. The Court reported collecting approximately \$636,000 in fines, fees and surcharges during our audit period.

Justice Lawrence Wallace and Justice Randall L. Present have held their positions throughout our audit period. The Clerk, Sharon Thompson, was also employed by the Town during our audit period. On February 7, 2014, on behalf of the Board, the Supervisor notified the Clerk that it was not necessary for her to report to work while the audit was being conducted and officially terminated her position as Clerk on February 14, 2014.

We have referred our findings to the appropriate law enforcement authority.

## Objective

The objective of our audit was to examine the Court's financial activity. Our audit addressed the following related question:

- Are internal controls over Court operations appropriately designed and operating effectively to allow for the proper accounting and reporting of financial activity and the safeguarding and remitting of collections?

## Scope and Methodology

We examined the Court's records and reports for the period January 1, 2009 through August 6, 2014.

We conducted our audit in accordance with generally accepted government auditing standards (GAGAS). More information on such standards and the methodology used in performing this audit is included in Appendix B of this report.

**Comments of  
Local Officials and  
Corrective Action**

The results of our audit and recommendations have been discussed with Town officials, and their comments, which appear in Appendix A, have been considered in preparing this report. Town officials generally agreed with our recommendations and indicated they plan to take corrective action.

The Board has the responsibility to initiate corrective action. A written corrective action plan (CAP) that addresses the findings and recommendations in this report should be prepared and forwarded to our office within 90 days, pursuant to Section 35 of the General Municipal Law. For more information on preparing and filing your CAP, please refer to our brochure, *Responding to an OSC Audit Report*, which you received with the draft audit report. We encourage the Board to make this plan available for public review in the Town Clerk's office.

## Justice Court

Justices are responsible for adjudicating cases brought before their Court and for the accounting and reporting of Court-related financial activities. Justices are responsible for ensuring that all money collected is deposited in a timely manner; performing reconciliations of Court collections to corresponding liabilities; and reporting Court transactions to the JCF and the New York State Department of Motor Vehicles (DMV), when applicable.

The Justices failed to establish appropriate internal controls over the Court's financial processes. Court money was not properly recorded, deposited or reported to the JCF during the audit period. The Court's liabilities of \$66,297 exceeded the Justices' total available cash as of February 6, 2014 of \$2,661, resulting in a cash shortage of \$63,636. Because the Clerk controlled all phases of the Court's cash collection processes, she was able to manipulate the records and apparently misappropriate funds. By letting the Clerk have complete control over the collection and reporting process, the Justices failed to provide proper oversight of their financial activity. In addition, neither the Justices nor the Clerk performed monthly accountabilities. We also found no indication that the Board conducted, or retained anyone to conduct, the required annual audit of the Justices' records since July 2011.

We have referred our findings to the appropriate law enforcement authority.

### Cash Shortage

Justices must safeguard cash and other resources, ensure that financial transactions are processed in a timely manner, and ensure that accounting records are complete and accurate. Justices are personally responsible for money received by the Court and may be liable for money paid to the Court that was lost or stolen.

On the surface, the Court records appeared to be well maintained. Daily cashbook report amounts agreed with bank deposits, manual receipt records and monthly reports. However, upon examination of bank records, including compositions of deposits,<sup>1</sup> we determined that not all collections from individuals had corresponding duplicate receipts or appeared on the daily cashbook reports and monthly JCF reports.

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<sup>1</sup> The Court's bank provided copies of checks or money orders that were deposited in the Court's bank accounts.

We compared reported fines totaling \$635,922 with computerized cashbook reports, manual receipts, bail and other payment reports<sup>2</sup> and compositions of deposits for the period January 1, 2009 through February 6, 2014. We identified \$62,753<sup>3</sup> that was collected but not reported and remitted to the JCF or other parties. Although the amounts recorded in the Court receipt records (computerized daily cashbook reports and manual duplicate receipts) agreed in amount with bank deposits and monthly remittances and reports to the JCF, 446 payments to the Court totaling \$59,752 made by personal or certified check, credit card or money order were not remitted and reported on monthly JCF reports. The Clerk was able to do this because she controlled the information that was input into the system from which JCF reports are generated. For example, two individuals made cash payments of \$50 each. The Clerk wrote each a manual receipt, recorded the payments in the computerized daily cashbook report, generated the JCF report and remitted the payment to the JCF. However, rather than depositing the \$100 cash, she substituted \$100 of another individual's payment of \$350 (made with a cashier's check) and recorded \$250 as their payment in the system. In addition to reporting \$250 for this individual, it appears the Clerk also altered the original fine amount from \$350 to \$250 on the ticket and in the system to make it appear that the fine had been paid in full.

In addition, if the Clerk was not available to accept a payment, an individual could put the payment in an envelope and place it in the Town's lockbox. The Clerk would informally recognize collections by documenting the amount paid on the payment envelopes. Using envelopes found in Court files, we identified an additional 17 payments totaling \$2,240 that had not been recorded, remitted or reported during our audit period.<sup>4</sup> Court records on file also showed \$761 in restitution and overpayments that were collected prior to our audit period but had not been remitted to the appropriate party. Additional liabilities included February 2014 Court activity that was not yet reported of \$1,694 and bail pending of \$1,850.

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<sup>2</sup> The Clerk did not maintain a list of bail pending or other types of payments received by the Court (e.g., restitution).

<sup>3</sup> Includes collections and unremitted restitution and overpayments as noted in Figure 1 (\$59,752 + \$2,240 + \$761).

<sup>4</sup> We sent confirmation letters to 23 individuals and received seven responses indicating they had paid a fine but were unable to produce evidence of payment to or receipt by the Court.

**Figure 1: Court Accountability Analysis**

<b>Assets as of February 6, 2014</b>	
Justices' bank account balances as of February 6, 2014	\$3,535
Cash on hand (from cash count)	\$283
Outstanding checks	(\$1,157)
<b>Total Court Assets</b>	<b>\$2,661</b>
<b>Less: Known Liabilities as of February 6, 2014</b>	
Collections based on checks, money orders or credit cards, not reported to JCF	\$59,752
Collections based on envelopes, not reported to JCF	\$2,240
Unremitted restitution and overpayments	\$761
Fines and fees reported to JCF for February 2014	\$1,694
Outstanding bail	\$1,850
<b>Total Known Liabilities</b>	<b>\$66,297</b>
<b>Cash Shortage</b>	<b>(\$63,636)</b>

Furthermore, there were checks and money orders deposited totaling \$4,221 that could not be readily assigned to an individual or Court action. For example, the name on the money order was illegible or a payment was made by an individual other than the one who incurred the fine. Because we could not relate them to a Court action that had not been reported to JCF, we did not add them to the Court's unrecorded liabilities.

## Justice Oversight

Justices must ensure that an effective system of internal controls is in place and provides sufficient segregation of duties to prevent one individual from controlling all phases of a transaction (i.e., collecting, depositing, recording and reconciling money). When this is not practical, the Justices should review and provide adequate oversight of the work performed by the Clerk.

The Justices must also ensure that the Clerk issues appropriate receipts to acknowledge collection of all money paid to the Court. These receipts should be pre-numbered and issued consecutively, and the Court should retain a duplicate copy of each receipt. Justices are required to appropriately account for cash receipts and disbursements and determine accountability by preparing a list of Court liabilities and comparing it with reconciled bank balances on a monthly basis. Bail for pending cases is similar to a customer deposit, posted by defendants (or by others on their behalf) to guarantee their appearance in Court to answer charges, after which bail is returned. Consequently, it is essential that the Justices maintain an accurate accounting of bail, including a list of bail, pending which is a Court liability. Finally, Justices should periodically update and reconcile DMV reports



(pending and disposed tickets) with current caseload activity to determine if unpaid tickets are being subject to the scofflaw process and to question those that are not.

Segregation of Duties – The Clerk was responsible for collecting Court revenues, writing manual receipts, recording those receipts in the computer system, preparing monthly reports to the JCF, reporting Court transactions to the DMV, preparing and making deposits and performing monthly bank reconciliations. Because the Clerk controlled all phases of the Court’s cash collection, recording and reporting processes with minimal oversight by the Justices,<sup>5</sup> she was able to manipulate Court records to record and report those receipts that she wanted to report. As a result, she was able to apparently misappropriate \$63,636 in Court receipts.

Receipts – The Clerk issued manual receipts and prepared and deposited collections. Either no receipt or inaccurate receipts were issued for all the deposited collections of \$59,752 noted in Figure 1, with the exception of one credit card payment of \$175. Had the Justices deposited the collections and compared the collections to recorded receipts prior to the deposit being made, they should have identified the same irregularities that we found in our review.

Accountability – Neither Justice performed, or ensured the Clerk performed, an accountability analysis on a monthly basis. In addition, the Clerk did not maintain a list of bail pending and other types of unremitted payments received by the Court (e.g., restitution). We initially prepared accountabilities for each Justice as of December 31, 2013 and found that liabilities exceeded cash assets by \$125 for Justice Wallace and \$933 for Justice Present. The Clerk indicated that these shortages were due to checks for payment of fines that had been returned for insufficient funds<sup>6</sup> but were reported to JCF.

In an attempt to cover the shortage amount, the Clerk deposited \$175 into Justice Wallace’s account and \$934 into Justice Present’s account in January 2014. Initially, she stated these individuals had come in to pay their fines but later indicated that she had deposited the \$175 from her personal funds to cover the shortage in Justice Wallace’s account. The Clerk also indicated that the \$934 was from December fine collections, but she had not made the deposit until January 2014.<sup>7</sup> However, we found the deposit was made up of January 2014

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<sup>5</sup> The Justices perform a cursory review of the monthly reports and compare deposit slips to the deposits on the bank statements.

<sup>6</sup> Dating back to December 2005 for Justice Wallace and March 2005 for Justice Present

<sup>7</sup> This was listed as a deposit in transit on her December 2013 monthly bank reconciliation.

collections.<sup>8</sup> We also found large transfers between the two Justices' bank accounts just prior to the onset of our audit. We questioned why these transfers were being made and the Clerk indicated that she was preparing for the audit. Although the Justices authorized the transfers<sup>9</sup> and questioned the need for them, they accepted the Clerk's explanation.

Review of Reports – The Court's pending-ticket log dated January 31, 2014 contained approximately 6,800 pending tickets. The tickets on this report included violations with arrest dates going back to 1983,<sup>10</sup> of which 1,015 (15 percent) had been identified as scofflaw tickets<sup>11</sup> by the Court. Because the Justices did not adequately reconcile DMV reports with current Court caseload activity, they did not question the large amount of unresolved tickets remaining on the pending list. The Clerk was not notifying the DMV of the unresolved tickets in a timely manner because some were actually paid but not recorded, reported and remitted.

The Justices also did not review the "partial pay due" report<sup>12</sup> from the Court's computer system to determine if fines are being paid in a timely manner and to question those that were not. We obtained the report as of March 11, 2014 that showed there are currently 3,685 outstanding cases totaling \$462,216 in unpaid fines in the system. Of these, 3,635 outstanding cases totaling \$454,335 had a date prior to 2014.

## Annual Audit

Every town justice is required to present his or her records and dockets at least once each year to be examined by their town's board, or by an independent public accountant. In conducting the review, it is important for a board to determine whether the court has effective procedures to ensure that financial transactions are properly recorded and reported, and that all money is accounted for properly. This is especially important because justices, or clerks, have the ability to perform multiple tasks, including accepting payments, opening mail, issuing receipts, recording transactions and making deposits.

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<sup>8</sup> All of these individuals were reported to JCF in January 2014.

<sup>9</sup> The transfers were done by writing checks between the two accounts which were signed by the Justices.

<sup>10</sup> The Court started using the computerized system in 1988, but the earliest arrest date was 1983.

<sup>11</sup> The DMV's Scofflaw Program allows local justice courts to notify the DMV when an individual has an unresolved (failure to pay the fine or failure to appear on the court date) traffic ticket for a 60-day period. When this occurs, the DMV notifies the individual and gives them 30 additional days to address the issue. If the individual has not taken action, then the DMV suspends the individual's license until they address the outstanding ticket.

<sup>12</sup> This report lists tickets that have an assigned fine and are currently open in the system.

The Board<sup>13</sup> last conducted an audit of the Justices' records on July 19, 2011 with the Clerk in attendance.<sup>14</sup> The review indicates that 10 random files were selected<sup>15</sup> and all funds were accounted for and deposited into the bank in a timely manner. They traced the sample from the Court appearance date to the date of the deposit in the bank and verified that a receipt was given to each person who appeared before the Court. It also states that the Clerk's procedures for maintaining the office and organizing the Court files were very well organized and that the Clerk was very well informed on procedures concerning the Court and the maintenance of files and records.

Because it appeared that it was the Clerk's practice to record and report the same amount as was deposited, performing the audit steps may have lead the Board to believe that the records were indeed in good order. However, if the Board had questioned why accountabilities were not prepared, bail lists were not available and the amount of cash versus checks on deposit slips was not identified and had requested a composition of deposit from the bank for the sample selected, the Board should have identified the same irregularities that we found in our review.

Without an effective audit of the Court's records, including available cash, bail and monthly accountabilities, the Town cannot provide assurance that all money is properly accounted for. To assist with this responsibility, our office has issued a publication entitled the *Handbook for Town and Village Justices and Court Clerks*. The publication contains sample schedules and questionnaires to assist in completing this annual audit.

## Recommendations

The Board and Justices should:

1. Take action to recover any money due to the Town and New York State.

The Justices should:

2. Ensure that signed receipts are issued for all money collected.
3. Compare duplicate receipts to monthly computerized cashbook reports and daily deposit slips to ensure that all receipts are accounted for.

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<sup>13</sup> One Board member was assigned to complete the review.

<sup>14</sup> The Justices indicated they were not part of this process.

<sup>15</sup> Based on a comparison of the compositions of deposits and JCF reports, we found \$510 in fines deposited and not reported for Justice Present for June 2010.

4. Maintain an accurate, up-to-date list, accounting for bail and other money received.
5. Ensure that bank reconciliations and accountability analyses are prepared and verified on a monthly basis.
6. Periodically review and reconcile the DMV pending ticket log and system reports with caseload activity to ensure that tickets are properly reported as paid or identified as scofflaw tickets in a timely manner.
7. Segregate duties over receiving and recording cash to the extent possible and provide more oversight of cash accountability.
8. Contact the New York State Office of Court Administration regarding the significant number of pending tickets to determine options available to the Court to address them.

The Board should:

9. Perform, or hire an independent public accountant to perform, a thorough audit of the Court's records on an annual basis. Evidence of an audit indicating the tests performed, the records reviewed and the results of the audit should be retained. Compositions of bank deposits should be requested for a sample of activity and compared with records and reports.

## **APPENDIX A**

### **RESPONSE FROM LOCAL OFFICIALS**

The local officials' response to this audit can be found on the following page.



## TOWN OF ELLERY

OFFICE OF THE SUPERVISOR  
P.O. Box 429  
Bemus Point, NY 14712

ARDEN E. JOHNSON  
Supervisor

Phone: (716) 386-7876  
Fax: (716) 386-6948

January 15, 2015

New York State Comptroller  
Division of Local Government and School Accountability

Re: Town of Ellery Justice Court  
Draft Audit  
2014M-269

Dear Sir/Madam:

This is to confirm that the Town of Ellery Board has received the above referenced draft Report of Examination for the Town's Justice Court. Additionally, the two Town Justices and myself conducted an exit interview with your office on January 6, 2015 wherein the draft report was reviewed.

After reviewing the report, the Town Board of the Town of Ellery does not have any information or documentation to dispute the findings in the report.

The draft report makes nine (9) separate recommendations to insure that all monies received by the Town Justice Court are accurately accounted for. The Town Board agrees with these recommendations and will be contacting you shortly with a corrective action plan.

Thank you.

Very truly yours,

Arden E. Johnson  
Town Supervisor

## **APPENDIX B**

### **AUDIT METHODOLOGY AND STANDARDS**

Our audit objective was to determine whether internal controls were designed effectively to allow for the proper accounting and reporting of Court money for the period January 1, 2009 through August 6, 2014.

To achieve our audit objective and obtain valid audit evidence, we performed the following audit procedures:

- We interviewed the Justices and the Clerk concerning the Court's operations. These discussions allowed us to understand the Court's internal control system and to make an assessment as to whether the established controls were sufficient to ensure that resources were protected from possible loss or improper use, to minimize the risk of errors and irregularities and to ensure compliance with applicable rules and regulations regarding the Court's operations.
- We examined the Court's financial and other records relating to the collection and subsequent disposition of fines and bail. These records included bank statements, copies of deposit slips, canceled checks, manual and computerized cashbooks, manual case files and monthly reports to the JCF. We used this information to determine if money was accurately and completely collected, recorded, deposited and reported.
- We counted the Court's cash on hand on February 6, 2014 and performed a bank reconciliation and accountability analysis to determine whether the total available cash (on hand and deposited) was sufficient to cover the Court's liabilities. We also performed bank reconciliations and accountability analyses for January 31, 2009, January 31, 2012 and December 31, 2013.
- We obtained information electronically from the JCF and the DMV and compared it to computerized Court records. Using this information, we were able to determine whether fines, fees and surcharges were reported, as required, to the JCF and whether the DMV's records were updated.
- We obtained bank deposit compositions for all deposits in our audit period and compared checks and cash deposited against cashbook entries to determine if receipts were deposited timely and intact.
- We sent out payment verification letters to determine if official receipts were issued for cash payments identified through envelope identification.
- We obtained a computerized listing of bail and "other" receipts to verify that recorded and returned amounts agreed with case files.
- We reviewed the last completed audit of the Court.

We conducted this performance audit in accordance with GAGAS. 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 objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.



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**AND SCHOOL ACCOUNTABILITY**

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