



Town of Livonia Justice Court

Report of Examination

Period Covered:

January 1, 2013 – March 17, 2015

2015M-76



Thomas P. DiNapoli

Table of Contents

	Page
AUTHORITY LETTER	1
INTRODUCTION	2
Background	2
Objective	2
Scope and Methodology	2
Comments of Local Officials and Corrective Action	2
JUSTICE COURT	4
Pending Bail and Accountability Analysis	4
Monthly Reports and Remittance of Funds	7
Enforcement of Unpaid Tickets	7
Annual Audit	9
Recommendations	9
APPENDIX A Response From Local Officials	11
APPENDIX B Audit Methodology and Standards	18
APPENDIX C How to Obtain Additional Copies of the Report	19
APPENDIX D Local Regional Office Listing	20

State of New York Office of the State Comptroller

Division of Local Government and School Accountability

July 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 Livonia, 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 Livonia (Town) is located in Livingston County and has a population of approximately 7,800. The Town is governed by an elected Town Board (Board) comprising four Council members and the Town Supervisor (Supervisor). The Supervisor is the Town's chief executive and chief fiscal officer. The Board has the overall responsibility for overseeing the Town's financial activities, including an annual audit of the Justice Court (Court). For 2014, the Town reported net revenues from fines and surcharges of approximately \$40,300.

The Town has two elected Justices who are responsible for hearing certain types of civil and criminal cases and adjudicating misdemeanors, minor violations and traffic infractions. Justices are personally responsible for all money received and disbursed by their Court and for safeguarding Court resources. During our audit period, three Justices¹ were responsible for adjudicating cases and a Court clerk (clerk) was responsible for performing all the Court's financial activities.

Objective

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

- Did the Justices accurately and completely collect, record, deposit and report Court money in a timely manner?

Scope and Methodology

We examined the Court's financial operations for the period January 1, 2013 through March 17, 2015. We extended our audit scope period back to January 1, 2012 to review retained bail.

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 are 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 agreed with our recommendations and have implemented corrective action.

¹ Justice Lemen commenced his four-year term on January 1, 2014 and Justice Mahoney's term of office began on January 1, 2013. Former Justice Kemp left office on December 31, 2013.

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 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 them, accounting for all money received by their Court, reporting all Court-related financial activities and implementing effective internal controls to oversee operations. Such controls ensure that all money is deposited in a timely manner, Court collections are reconciled to corresponding liabilities and Court transactions are reported to the Office of the State Comptroller's Justice Court Fund (JCF) in a timely manner.

If justices employ a clerk to perform any or all of these functions, it is the justices' responsibility to provide timely and effective oversight of these activities to ensure that transactions are properly recorded and reported and that all money is accounted for. Routine bank account reconciliations and accountability analyses enable the justices to verify the accuracy of the Court's financial records. Justices must also report traffic ticket dispositions to the New York State Department of Motor Vehicles (DMV). The governing board is responsible for annually auditing the justices' books and records or engaging the services of an independent public accountant to conduct the audit.

The Justices did not require the clerk to perform monthly bank reconciliations or accountabilities for their review to ensure that all collections were accurately accounted for and any discrepancies were promptly identified and corrected. Therefore, we performed reconciliations of the Justices' bank statements with their records of bail for pending cases, cash books and JCF reports and determined that, as of December 4, 2014, Justice Lemen and Justice Mahoney both had small overages. Additionally, we found that former Justice Kemp did not report unidentified money totaling \$2,896 to the JCF on his final report, as required, or close his official bank account at the end of his term.

We also found that the Justices did not routinely submit monthly reports to the JCF and did not remit more than \$151,000 collected to the Supervisor in a timely manner. Furthermore, neither the Justices nor the clerk adequately monitored defendant cases with unpaid fines and surcharges so that appropriate action could be taken when these fines and fees were not paid in a timely manner. Finally, the Board did not conduct an annual audit of the Justices' books and records as required by New York State Town Law (Town Law).

Pending Bail and Accountability Analysis

At any point in time, Court liabilities such as bail held on pending cases and unremitted fines and fees should equal the justices' available cash. Periodic analyses should identify the source and amount of all

revenue held in the justices' bank accounts and detect any overages or shortages so that corrective action may be taken in a timely manner.

Justices are required to account for cash receipts and disbursements on the reports submitted to the JCF each month. In addition, justices should determine accountability by preparing a list of Court liabilities and comparing it with reconciled bank balances each month. Justices are responsible for keeping track of cash bail when imposed on defendants for pending cases. Bail for pending cases is similar to a customer deposit and is generally paid by defendants (or others on their behalf) to guarantee appearance in court to answer charges, after which the bail money is returned. Consequently, it is essential that justices maintain an accurate accounting of bail.

Further, when a justice leaves office all pending cases and any money received on those cases must be transferred to the succeeding justice. The justice must also file a report with the JCF reporting all activity, remit any fines and fees collected and unidentified money to the Supervisor and close all bank accounts. The governing board is responsible for ensuring that a justice meets these requirements.

Each Justice maintained two bank accounts, one for fines and surcharges and the other for bail. The clerk used a computerized software program to issue receipts, record financial data and prepare monthly reports to the JCF. Although the clerk did not perform formal monthly bank reconciliations of the Justices' bank accounts, she visually matched deposits shown on the bank statements with copies of the weekly cash receipt reports and noted any outstanding deposits or other discrepancies on the bank statements. She then prepared a packet for each Justice containing copies of the bank statements, weekly and monthly cash receipt reports and the monthly report that the Justices submit electronically to the JCF. Both Justices told us they compared the information shown on the reports to their bank statements to ensure that all money recorded on the cash receipt reports had been deposited.

We performed a cash count of Court funds that were not yet deposited, obtained a list of pending bail and prepared an accountability analysis as of December 4, 2014 for each Justice. We found that both current Justices had small overages in their bank accounts. The \$183 overage in Justice Lemen's fines bank account appeared to be due to a duplicate credit card transaction that occurred in February 2014, which the clerk was aware of and has been trying to verify and resolve. The overage in Justice Mahoney's fines bank account related to two cash receipt transactions, \$80 from August 2013 and \$100 from August 2014, that were deposited but not recorded in the software program. The clerk was aware of and has been trying to verify and resolve the \$100 error.

However, she was unaware of the \$80 error because accountabilities were not performed.

Our analysis also identified two errors on Justice Mahoney's list of pending bail report. The list incorrectly included a defendant whose bail in the amount of \$1,000 was returned. The list also included negative bail in the amount of \$2,500 for another defendant because the former clerk failed to record the transfer of bail from Justice Kemp's account but recorded the return of the bail by Justice Mahoney.

Although former Justice Kemp filed a final report with the JCF and remitted the fines and fees collected during his last month in office, his official bank accounts were not closed and all remaining cash from pending cases was not transferred to successor Justice Lemen. We performed an accountability analysis for former Justice Kemp as of December 4, 2014 and identified an overage of \$2,895 as follows:

Figure 1: Court Accountability Analysis – Former Justice Kemp	
Court Assets as of December 4, 2014	
Fines Bank Account Balance	\$1,980
Bail Bank Account Balance	\$2,615
Total Court Assets	\$4,595
Known Court Liabilities as of December 4, 2014	
Identified Pending Bail	\$1,700
Total Court Liability	\$1,700
Total Bank Account Overage	\$2,895

Our analysis determined that the combined overage in former Justice Kemp's two bank accounts existed before the beginning of our audit period. Our analysis also determined that the computerized list of pending bail for the former Justice was inaccurate and unreliable. Specifically, the report, which listed the names of 144 defendants with bail deposit amounts totaling \$90,863 and dates going back as far as 1998, was accurate for four of the defendants listed on the report.²

These errors and irregularities occurred because proper and periodic reconciliations of Court cash assets and known liabilities were not performed and the Justices did not provide adequate oversight of the clerk.

² An additional defendant's name listed on the report was determined to still have pending bail being held, but the amount of bail shown on the report was inaccurate.

Monthly Reports and Remittance of Funds

Accurate and timely reports provide a means for effectively monitoring Court operations. Town and JCF officials can analyze such reports and investigate any unusual or incomplete information. When required reports are not filed in a timely manner or not filed at all, it can be an indication of operational problems.

Justices are required to submit monthly reports of Court activity electronically to the JCF by the tenth day of the succeeding month. All money reported as collected, electronically or otherwise, must be submitted to the Supervisor by the 10th of the following month. The JCF determines the final distribution of Court funds for the Town based on the monthly report filed by the Justices. The JCF then notifies the Supervisor of the amount to be retained by the Town and the amount due, which is remitted to the JCF.

We reviewed the dates that the Justices filed the monthly reports and wrote checks to the Supervisor to determine if the reports and corresponding payments were filed and amounts were paid in a timely manner. The Justices did not file their reports with JCF or remit \$152,371 of the \$164,129 collected in fines, fees and bail poundage to the Supervisor in a timely manner.³

Figure 2: Monthly Report Filing Analysis					
	Number of Months				
	Reports Filed On Time	Reports Filed Less Than 30 Days Late	Reports Filed More Than 30 Days Late	Reports Filed More Than 60 Days Late	Total Reports Reviewed
Justice Lemen	0	10	1	0	11
Justice Mahoney	3	15	4	1	23
Totals	3	25	5	1	34

When reports are not filed in a timely manner, processing of payments due the Town is impeded and increases the risk of loss or misappropriation of Court funds.

Enforcement of Unpaid Tickets

Whenever a justice allows a defendant to pay fines and surcharges over a period of time, the amounts owed to the court are similar to a customer accounts receivable. To properly account for the anticipated transactions, a record of these partial payments should be maintained to identify the amounts owed and collected to date. If the justice does not use a computerized system to produce a current and complete list of all cases and amounts owed to the court at any specific point in time, the justices should maintain a supplemental record to provide that information. Regardless of the manner in which the list is maintained, it should be updated and monitored on a regular basis to identify any defendants not paying as ordered by the court so that appropriate action can be taken in a timely manner to enforce payment.

³ The Justices did not remit money in a timely manner to the Supervisor as follows:
Justice Lemen – \$65,852; Justice Mahoney – \$86,519.

The Justices did not establish policies regarding ticket enforcement by Court personnel. As a result, fines were not collected as efficiently and effectively as possible. Many options are available for collecting unpaid tickets, such as using the services of a collection agency or the DMV Scofflaw Program.⁴

The clerk told us she monitors cases with outstanding assessed fines and surcharges by using the Court's financial software, so the cases appear on the Justices' Court calendar dockets to act as a reminder to verify if defendants are making payments as required. The clerk also said she double checks the written case files a number of times throughout the year to verify if defendants are making payments. Currently, the enforcement steps taken by the clerk are sporadically using delinquency notices and occasionally notifying DMV to initiate license suspension procedures. Of particular concern is the lack of oversight and collection of partial payments.

To determine if the clerk effectively monitored cases where defendants made partial payments and took appropriate and timely action for non-payment, we reviewed 53 cases that were listed on partial payment due reports generated from the Court's financial software (32 cases for Justice Lemen with a total amount due of \$8,049 and 21 cases for Justice Mahoney with a total amount due of \$4,530). However, we found these reports did not include all the tickets with unpaid assessed fines and surcharges that were associated with the listed cases for which partial payments were being made. Specifically, Justice Lemen's partial payment due report did not include \$1,361 and Justice Mahoney's report did not include \$175 of fines and fees due. In addition, the clerk was not adequately monitoring partial payment cases in a timely manner so that appropriate action could be taken to enforce payment.

Justice Lemen – We found that payments were not made on 22 cases with unpaid tickets within 60 days of our review. For two of these cases, the defendants were incarcerated and unable to make payments, and for another case the defendant was deceased. For the remaining 19 cases, the number of days that elapsed since the last payment ranged from 84 to 538. Before our review, the clerk had taken action on seven of these cases by either requesting suspension of the defendants' licenses or issuing warrants for the defendants' arrest. After our review, the clerk took action on another seven cases by either requesting suspension of the defendants' licenses or issuing warrants for the defendants' arrest.

⁴ The DMV Scofflaw Program allows local justice courts to notify the DMV when an individual has an unresolved traffic ticket (failure to pay the fine or failure to appear on the court date) 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 driver's license until the outstanding ticket is addressed.

Justice Mahoney – We found that a payment was not made on 17 cases with unpaid tickets within 60 days before our review. For three of these cases, the defendants were incarcerated and unable to make a payment, and for another case the defendant was deceased. For the remaining 13 cases, the number of days elapsed since the last payment ranged from 71 to 1,518. Before our review, the clerk had taken action on nine of these cases by either requesting suspension of the defendants’ licenses or issuing warrants for the defendants’ arrest. After our review, the clerk took action on another three cases by either requesting suspension of the defendants’ licenses or issuing warrants for the defendants’ arrest.

However, because the Justices had not established policies and procedures regarding ticket enforcement by Court personnel, unpaid tickets were not being enforced in a timely manner, resulting in lost revenue to the Town.

Annual Audit

Town Law and the State’s Uniform Justice Court Act require town justices to present their records and dockets to their governing board for audit at least once a year. An annual audit helps town officials ensure that justices are maintaining accurate and proper accounting records and properly accounting for and disbursing court money. The governing board can conduct the audit or contract with a certified public accountant (CPA) to conduct the audit. The audit should be entered in the minutes of the governing board’s proceedings, and documentation should be filed with the New York State Office of Court Administration detailing the records reviewed and audit results.

The Board did not conduct an annual audit of any of the Justices’ books and records or court dockets for any of the years during our audit period. A review of the Board minutes indicated annual audits were performed by a CPA who prepared the Town’s financial statements. However, the clerk told us that none of the Justices’ books and records were requested or reviewed by the Board or the CPA during these audits.

Without an annual audit, Town officials cannot be sure that all Court financial transactions are properly recorded and reported and that all money is accounted for properly. Had the Board properly conducted the annual audit of the Justices’ records, it might have identified the overage in the former Justice’s bank accounts before his term of office ended and the inaccuracy of his bail report and could have taken corrective action.

Recommendations

The Justices should:

1. Require the clerk to prepare proper bank reconciliations and accountability analyses on a monthly basis for their review. Any differences should be promptly investigated and corrected.

2. Submit monthly reports to the JCF and remit money collected to the Supervisor no later than the 10th day of the following month.
3. Develop an accurate and reliable system to identify and adequately monitor all cases which have unpaid fines and fees so that appropriate action can be taken to enforce payment in a timely manner.
4. Establish policies for Court personnel regarding enforcement of unpaid fines.

The Board should:

5. Annually audit the Justices' books and records or engage the services of an independent public accountant to perform the required audit.

APPENDIX A

RESPONSE FROM LOCAL OFFICIALS

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

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Unit Name: Town of Livonia, Justice Court
Audit Report Title: Report of Examination
Audit Report Number: 2015M-76

We would like to take this opportunity to thank the comptroller's office for conducting such a thorough audit of our Justice Court System. During conversations with both of our Town Justices, it was determined that we agree with the findings and recommendations of the audit team. Therefore, this correspondence will serve as our **Response** as well as our **Corrective Action Plan**. This **Response** and **Corrective Action Plan** have been drafted by both Town Justices and the Town Supervisor, and has been approved by the Livonia Town Board on July 16, 2015.

For each recommendation included in the audit report, the following is our corrective action(s) taken or proposed.

Audit Recommendation 1:

Require the clerk to prepare proper bank reconciliations and accountability analysis on a monthly bases for their review. Any differences should be promptly investigated and corrected.

Implementation Plan of Action:

- a) Clerk has been provided with the Bank Reconciliation form
- b) Clerk will utilize the Bank Reconciliation form beginning with the June 15. Each Justice will review his bank records since the beginning of term to assure that current balances are correct.
- c) Each Justice will review monthly bank reconciliation and promptly investigate and correct any differences.

Implementation Date:

Item (a) is complete. Item (b) will be complete by July 31, 2015. Item (c) is ongoing.

Person Responsible for Implementation:

Both Justices

Signed:

Justice Robert Lemen

7/20/15

Date

Justice David Mahoney

7/20/15

Date

Audit Recommendation 2:

Submit monthly reports to JCF and remit money collected to the Supervisor no later than the 10th day of the following month.

Implementation Plan of Action:

- a) *Each Justice (or Clerk) will download monthly bank statements and provide them to Court Clerk.*
- b) *Clerk will complete monthly reports by the 8th day of the following month.*
- c) *Each Justice will review and submit monthly reports by the 10th day of the following month.*

Implementation Date:

Items (a), (b) and (c) are complete.

Person Responsible for Implementation:

Both Justices

Signed:

Justice Robert Lemen

7/20/15

Date

Justice David Mahoney

7/20/15

Date

Audit Recommendation 3:

Develop an accurate and reliable system to identify and adequately monitor all cases which have unpaid fines and fees so appropriate action can be taken to enforce payment in a timely manner.

Implementation Plan of Action:

- a) *Evaluate existing reporting capabilities for unpaid fines and fees.*
- b) *Clerk will provide report(s) to Justices each month.*
- c) *Each Justice will review reports each month.*

Implementation Date:

Items (a), (b) and (c) will be complete by August 31, 2015.

Person Responsible for Implementation:

Both Justices

Signed:

Justice Robert Lemen

7/20/15
Date

Justice David Mahoney

7/20/15
Date

Audit Recommendation 4:

Establish policies for court personnel regarding enforcement of unpaid fines.

Implementation Plan of Action:

- a) *Write policy*
- b) *Review with Justice Mahoney and Supervisor.*
- c) *Implement new policy*

Implementation Date:

Items (a) and (b) will be complete by September 30, 2015. Item (c) will be implemented by October 15, 2015.

Person Responsible for Implementation:

Both Justices

Signed:

Justice Robert Lemen

7/28/15

Date

Justice David Mahoney

7/20/15

Date

Audit Recommendation 5:

Annually audit the Justices' books and records or engage the services of an independent public accountant to perform the required audit.

Implementation Plan of Action:

- a) *The Town of Livonia has an independent auditing firm that does the annual audit.*

Implementation Date:

Item (a) has been scheduled for July 13th - 17th 2015. The Justice Court has been included as part of the scope.

Person Responsible for Implementation:

Town Supervisor

Signed:

Eric Gott, Town Supervisor

7-20-15
Date

APPENDIX B

AUDIT METHODOLOGY AND STANDARDS

The objective of our audit was to examine the Courts' financial operations for the period January 1, 2013 through March 17, 2015. We extended our audit scope period back to January 1, 2012 to review retained bail. To accomplish our objective and obtain valid audit evidence, we performed the following procedures:

- We interviewed Court officials to gain an understanding of Court operations for collecting, recording, depositing and reporting money collected.
- We interviewed Court officials and reviewed Board minutes to determine if the Board performed annual audits of the Justices' books, records and court dockets or engaged the services of a CPA to perform the audit.
- We traced all cash receipts during the audit review period from the receipt number⁵ to the daily and monthly cash receipt reports and the deposits shown on bank statements to determine if the clerk properly accounted for and deposited all money received by the Court.
- We performed monthly reconciliations of the Justices' bank statements from January 1, 2013 through December 31, 2014.
- We performed an accountability as of December 4, 2014 by comparing the bank account and cash count balances with the Justices' known Court liabilities based on bail records, cash receipts and disbursement records, imaged checks and the JCF reports.
- We compared the amounts recorded on the daily and monthly cash receipt reports with amounts reported to the JCF during our audit period to determine if all money received was accurately reported in a timely manner.
- We reviewed monthly reports the Justices submitted electronically to the JCF for the period January 1, 2013 through November 30, 2014 to determine if the reports were submitted in a timely manner.
- We performed an analysis of all cases listed on the Justices' partial payment due reports to determine if the clerk was adequately monitoring cases with unpaid fines and fees and taking appropriate action to enforce non-payment.
- We requested a backup of the automated data, observed the backup and used the data extracted for analysis against the JCF and the DMV data.

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.

⁵ Including the copy of the cash receipt when a copy was attached to the monthly cash receipt report

APPENDIX C

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