



Town of Marion

Misappropriation of Justice Court Cash Collections

2023M-149 | January 2024

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Report Highlights

Town of Marion

Audit Objective

Determine whether the Justices and Town of Marion (Town) Board provided adequate oversight of the Justice Court (Court) to ensure cash collections were properly deposited, recorded, reported and remitted.

Key Findings

The Justices and Board did not provide adequate oversight of Court financial activities. As a result, the former court clerk was able to misappropriate more than \$59,000, or 38 percent of the fines, fees and surcharges collected between January 1, 2016 through May 31, 2021. In August 2023, the former court clerk pled guilty to grand larceny in the second degree, corrupting the government in the second degree, tampering with records in the first degree and official misconduct. In October 2023, the former court clerk was sentenced to serve six months in jail and pay more than \$59,000 in restitution.

The Justices did not:

- Perform a proper review of reports submitted to New York State agencies to ensure that all cases, including any cash collected (e.g., fines and fees), were properly reported and remitted.
- Perform an adequate review of bank reconciliations or accountabilities (compare current assets to current liabilities) to ensure that all collections were accurately accounted for and to promptly identify discrepancies. The Justices also did not review deleted transactions reports.

The Board did not:

- Perform a proper annual audit.

Key Recommendations

- Perform a thorough review of the reports submitted to New York State agencies.
- Perform monthly bank reconciliations and accountabilities, and promptly review and resolve any differences.

Town officials generally agreed with our findings and indicated they plan to initiate corrective action.

Audit Period

January 1, 2019 – May 31, 2021

We extended our testing back to January 1, 2016 to review cash collections by the former court clerk during that period.

Background

The Town of Marion (Town) is located in Wayne County and is governed by an elected Board composed of a Town Supervisor (Supervisor) and four Board members. The Board is responsible for the general oversight of Town operations, including oversight of the Court's financial activities.

The Town's two elected Justices are responsible for monitoring and managing Court financial activity. A court clerk assists the Justices with processing cases and related financial transactions, including submitting monthly financial activity reports and traffic dispositions to various New York State agencies. The former court clerk referred to in this report retired in August 2020 but returned in September 2020, the month that the Town received our audit notification letter.

Quick Facts

January 1, 2016 – May 31, 2021

Total fines, fees and surcharges	\$156,632
Fines, fees, and surcharges not reported to the Justice Court Fund	\$59,293

Misappropriation of Justice Court Cash Collections

The Court has jurisdiction over vehicle and traffic, criminal, civil and small claims cases brought before it. Justices adjudicate legal matters within the Court's jurisdiction and administer money collected from fines, surcharges, civil fees and bail.

The Court holds sessions on Wednesdays and accepts payments made by cash, money order, certified check and credit card. Each Justice maintains separate bank accounts for fines and bail, signs monthly checks and submits monthly reports to the Office of the State Comptroller's (OSC's) Justice Court Fund (JCF).

The court clerk collects and enters cash collections into the Court's computerized software program and issues receipts. In addition, the court clerk is responsible for preparing and making bank deposits, uploading ticket information to the New York State Department of Motor Vehicles (DMV) and preparing monthly reports for submission to the JCF.

How Should the Justices and Board Oversee and Account for Court Funds?

Justices are responsible for maintaining complete and accurate accounting records and safeguarding all money collected by the court. When justices delegate portions of their financial responsibilities to a clerk, the justices retain the overall responsibility for court funds. Therefore, justices must provide adequate oversight of the work performed by their clerk. Justices should provide guidance to the clerk to ensure that all cash collections are properly recorded, reported and accounted for on their behalf. To the extent possible, duties such as collecting, recording, depositing and reconciling should be separated between court staff. When it is not practical or cost effective to segregate duties, justices should provide additional oversight and review the records as a compensating control to reduce the risk of errors or fraud not being detected.

Justices should perform a monthly bank reconciliation and an accountability of funds. This is accomplished by preparing a list of court liabilities and comparing it to reconciled bank balances and money on hand. Court liabilities should equal the available cash balance, and any discrepancies should be investigated and resolved. If justices delegate this task to a clerk, they should review the work performed and document their review (e.g., initial and date the records).

In addition, justices should ensure that all funds are deposited intact (i.e., in the same amount and form as received) as soon as possible, but no later than 72 hours from the date of collection, exclusive of Sundays and State holidays.

Justices are also responsible to submit monthly reports detailing all fines, fees, surcharges and forfeited bail collected and any dismissed cases to the JCF within the first 10 days of the ensuing month. Furthermore, justices should ensure

vehicle and traffic ticket dispositions are reported to DMV. When justices delegate these responsibilities to a clerk, they should compare the reports to the JCF and DMV with a listing of disposed cases to ensure that all cases, including any fines and fees, were properly reported.

Finally, justices must at least annually present their records and docket to the board. The board must audit, or hire a public accountant to audit, these records.

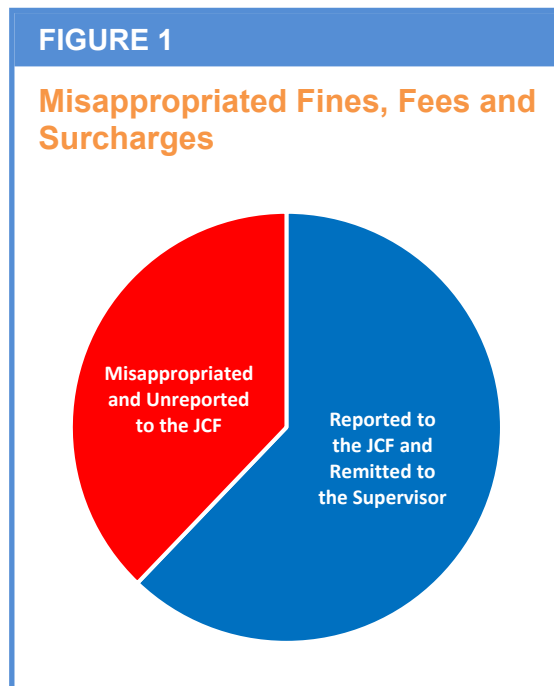
The Former Court Clerk Misappropriated Over \$59,000 of Court Funds

The Justices did not provide adequate oversight of Court financial activities, which allowed the former court clerk to misappropriate more than \$59,000 (38 percent) in fines, fees and surcharges collected between January 1, 2016 through May 31, 2021 (Figure 1).

Based on our review of transactions totaling \$33,722 for the initial audit period, we identified 90 transactions totaling \$11,437 that were not reported to the JCF. The former court clerk told us that these transactions were still pending cases and the Court had not yet received any cash collections for those cases. To support her assertion, the former court clerk provided a report that showed that 88 of the 90 cases were still pending cases. The former court clerk told us that she might have accidentally disposed of one of the remaining two cases and did not have a reason for why the other case was not on the

pending cases report. However, we obtained reports of deleted transactions and found that 89 of the 90 questionable transactions were deleted between the date that we first contacted the Town about the audit and the date of the entrance conference. The other questionable transaction was deleted the same date that we told the former court clerk about the discrepancy with the pending cases report.

As a result, we sent out confirmation letters to the individuals associated with the questionable transactions and identified individuals who indicated that they had made payments, some of which were able to provide receipts signed by the



former court clerk. However, these receipts were not the same as the receipts from the Justices' official receipts books and appeared to be from a computer-generated template. Therefore, we extended our testing of cash collections back to January 1, 2016.

Based on the extended testing of transactions totaling \$122,910, we identified an additional \$47,856 in fines, fees and surcharges that were not reported to the JCF. Unlike the initial 90 questionable transactions, most of the transactions (89 percent) outside of the initial audit period were not deleted from the software.

In total, we identified \$59,293 in fines, fees and surcharges that were not reported on the Justices' monthly reports to the JCF and their corresponding cash collections were not remitted to the Supervisor. In August 2023, the former court clerk pled guilty to grand larceny in the second degree, corrupting the government in the second degree, tampering with records in the first degree and official misconduct. In October 2023, the former court clerk was sentenced to serve six months in jail and pay more than \$59,000 in restitution.

The Justices Did Not Provide Adequate Oversight of Court Financial Activities

The former court clerk prepared monthly reports detailing fines, fees and surcharges that the Justices submitted to the JCF. However, prior to signing the checks or submitting their monthly reports to the JCF, the Justices did not review the reports by comparing them to listings of disposed cases to ensure that all the cases, including any fines and fees collected, were properly reported. In addition, they did not compare the reports to the DMV reports that included disposed vehicle and traffic tickets. Neither Justice could explain why they did not review these reports other than that they trusted the court clerk.

In addition, the Justices did not adequately review bank reconciliations or ensure the former court clerk completed monthly accountabilities (compared current assets to current liabilities). While the former court clerk prepared monthly bank reconciliations, neither the Justices nor the court clerk prepared monthly accountabilities to ensure that all collections were accurately accounted for and discrepancies could be promptly identified.

We reviewed 42 bank reconciliations and determined they lacked any documentation or indication that the Justices reviewed them, such as their initials and a date. Furthermore, the reconciliations for the accounts for both Justices contained minor variances that the court clerk labeled as "overages" that carried forward from month to month along with small amounts of unclaimed exonerated bail that should have been turned over to the Supervisor. Both Justices told us that they reviewed the bank reconciliations but could not explain why they did not document the review. We question the effectiveness of the bank reconciliation

review considering the Justices did not address the overages or unclaimed exonerated bail that were included in each of the monthly reconciliations we reviewed.

Furthermore, the Justices did not review deleted transactions reports from the computerized software program. Both Justices told us that they did not review these reports because they did not know that the reports were available. Consequently, by not utilizing available OSC guidance regarding their fiscal responsibilities¹ and thoroughly reviewing and reconciling available reports, the Justices did not identify the irregularities and the former court clerk was able to misappropriate Court funds for years without detection.

The Board Did Not Perform a Proper Annual Audit

The Board did not perform a proper annual audit or hire a public accountant to audit on its behalf. While the Board received records from the Court to review annually and passed resolutions stating that it performed annual audits of the Town's financial records, the Board's audits were not adequate. Two Board members told us that they did not maintain any documentation of what was included in their review and that they did not utilize the OSC checklists.²

One Board member told us that the Board's review consisted of that Board member looking through the Court's records and "tracing a couple of transactions" to ensure that they were correct. However, that is not an adequate audit and would not identify transactions that were intentionally not included in the Court's records. Two Board members told us that they did not perform more thorough annual audits because they did not have accounting backgrounds and they did not know what to look for as part of their audits. However, if Board members did not feel comfortable conducting a proper annual audit, the Board could have hired a public accountant to conduct the audit. One Board member told us that the Board did not hire a public accountant due to the cost of auditing services. However, this does not absolve the Board of its responsibility to ensure that a thorough annual audit is completed. By not ensuring that the Court's records had a complete annual audit, the court clerk was able to misappropriate more than \$59,000 in fines, fees and surcharges without detection.

1 To assist town justices in their oversight responsibilities OSC provides a "Monthly Checklist for Review of Justice Court Records" in its publication the *Justice Court Fund: Handbook for Town and Village Justices and Court Clerks*. *Justice Court Fund Handbook for Town and Village Justices and Court Clerks* (<https://www.osc.ny.gov/files/local-government/publications/pdf/justice-court-fund-handbook.pdf>)

2 To assist town boards in performing a thorough audit of their town's justice court, OSC provides an "Annual Checklist for Review of Justice Court Records" in its publication *Justice Court Fund: Handbook for Town and Village Justices and Court Clerks*. *Justice Court Fund Handbook for Town and Village Justices and Court Clerks* (<https://www.osc.ny.gov/files/local-government/publications/pdf/justice-court-fund-handbook.pdf>)

What Do We Recommend?

The Justices should:

1. Ensure that all cases, including any fines and fees collected, are included in the reports submitted to the JCF and DMV and match the corresponding check to the Supervisor.
2. Ensure that monthly accountabilities of all Court accounting records, including the reconciliation of cash assets and known liabilities, are completed and reviewed for accuracy, and any discrepancies are promptly investigated and resolved. The Justices should document the reviews on the reconciliations and accountabilities (e.g., with initials and date).
3. Turn over any unclaimed exonerated bail to the Supervisor.
4. Ensure that receipts are sequentially issued from the official receipt books.
5. Provide thorough oversight of the court clerk's financial responsibilities and regularly review reports from the Court's computerized software program, such as deleted transactions reports.
6. Report previously unreported cases and the related fines and fees to the JCF.

The Board should:

7. Conduct a thorough, complete and independent audit of the Court's books and records at least annually or retain an independent public accountant to perform the audit.

Appendix A: Response From Town Officials

PAUL F. BENDER
MARION TOWN JUSTICE
3823 North Main Street
Marion, New York 14505-0220
(315) 926-4461

January 10, 2024

RE: Audit Report of
Dec. 15th, as amended

Office of the State Comptroller
Attn: [REDACTED]
110 State Street
Albany, New York 12236

Re: Audit of Marion Town Court

Dear [REDACTED]:

Justice Bonafede and I have reviewed the draft Audit Report, #2023M-149, of December 8, 2023, and the Comptroller's revisions to that report which were based upon our joint meeting on December 15, 2023 (reference the Comptroller's email of January 8, 2024).

We acknowledge that 2 reports are required, #1, this letter, ie. our Audit Response Letter, and #2, the CAP (Corrective Action Plan), to outline procedures which we believe should assure that this type of embezzlement problem can not happen again.

Given that, we each acknowledge that my/our review procedure of the fund collection process was not strict enough to assure that all the funds generated after sentencing were properly accounted for by and upon the subsequent monthly reports where those funds, as paid and collected, were delivered to the Town of Marion and the State of New York.

No one wishes to agree that he was in error, but to the extent that I know the facts (ie. I have not seen the Court's decision, just verbal summaries of the same) I will accept the draft Audit report, as amended, so that we may go forward herein.

This Audit response does not constitute my / our CAP, which will follow within 90 days of the final Audit report to the Town of Marion. That CAP from us will be completed consistent with the Comptroller's booklet about how to Respond to an OSC Audit Report.

That CAP will be completed by Justice Bonafede, and me, with Town Board review, and the Town Supervisor's approval of the same, as required in the Audit Report.

We each regret that this Audit, and the related report, were required and we are now working on how to address the audit recommendations in our CAP report to follow.

Very truly yours,

✓ Paul F. Bender
Marion Town Justice

Samuel J. Bonafede
Marion Town Justice

Appendix B: Audit Methodology and Standards

We conducted this audit 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. We obtained an understanding of internal controls that we deemed significant within the context of the audit objective and assessed those controls. Information related to the scope of our work on internal controls, as well as the work performed in our audit procedures to achieve the audit objective and obtain valid audit evidence, included the following:

- We interviewed Town and Court officials and reviewed Board resolutions to gain an understanding of the Court's financial operations.
- We compared adjudicated cases recorded in the Court's computerized software program, including those found in deleted transactions reports, to those reported to the JCF and DMV from January 1, 2016 through May 31, 2021 to identify any fines, fees and surcharges which were not properly reported and remitted.
- We mailed confirmation letters to individuals associated with 89 of the 90 transactions recorded in the computerized software program that were not reported to the JCF from January 1, 2019 through September 30, 2020. We reviewed responses to the confirmation letters and supporting receipts provided by the individuals.
- We reviewed January 1, 2019 through September 30, 2020 bank statements and reconciliations prepared by the court clerk for accuracy and evidence of a review from the Justices.
- We prepared accountabilities for both Justices as of September 30, 2020.

We conducted this performance audit in accordance with generally accepted government auditing standards (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.

Unless otherwise indicated in this report, samples for testing were selected based on professional judgment, as it was not the intent to project the results onto the entire population. Where applicable, information is presented concerning the value and/or size of the relevant population and the sample selected for examination.

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 provided 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 the CAP available for public review in the Town Clerk's office.

Appendix C: Resources and Services

Regional Office Directory

www.osc.ny.gov/files/local-government/pdf/regional-directory.pdf

Cost-Saving Ideas – Resources, advice and assistance on cost-saving ideas

www.osc.ny.gov/local-government/publications

Fiscal Stress Monitoring – Resources for local government officials experiencing fiscal problems

www.osc.ny.gov/local-government/fiscal-monitoring

Local Government Management Guides – Series of publications that include technical information and suggested practices for local government management

www.osc.ny.gov/local-government/publications

Planning and Budgeting Guides – Resources for developing multiyear financial, capital, strategic and other plans

www.osc.ny.gov/local-government/resources/planning-resources

Protecting Sensitive Data and Other Local Government Assets – A non-technical cybersecurity guide for local government leaders

www.osc.ny.gov/files/local-government/publications/pdf/cyber-security-guide.pdf

Required Reporting – Information and resources for reports and forms that are filed with the Office of the State Comptroller

www.osc.ny.gov/local-government/required-reporting

Research Reports/Publications – Reports on major policy issues facing local governments and State policy-makers

www.osc.ny.gov/local-government/publications

Training – Resources for local government officials on in-person and online training opportunities on a wide range of topics

www.osc.ny.gov/local-government/academy

Contact

Office of the New York State Comptroller
Division of Local Government and School Accountability
110 State Street, 12th Floor, Albany, New York 12236

Tel: (518) 474-4037 • Fax: (518) 486-6479 • Email: localgov@osc.ny.gov

<https://www.osc.ny.gov/local-government>

Local Government and School Accountability Help Line: (866) 321-8503

ROCHESTER REGIONAL OFFICE – Edward V. Grant Jr., Chief of Municipal Audits

The Powers Building • 16 West Main Street – Suite 522 • Rochester, New York 14614-1608

Tel (585) 454-2460 • Fax (585) 454-3545 • Email: Muni-Rochester@osc.ny.gov

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