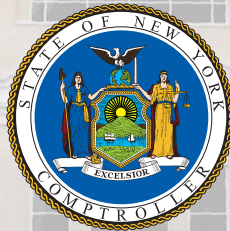




Office of Court Administration

New York and Queens County Clerk's Offices: Control and Accountability over Court and Trust Funds

Report 2009-S-58



Thomas P. DiNapoli

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State of New York Office of the State Comptroller

Division of State Government Accountability

February 10, 2010

Honorable Ann Pfau
Chief Administrative Judge
Office of Court Administration
25 Beaver Street
New York, NY 10004

Dear Chief Judge Pfau:

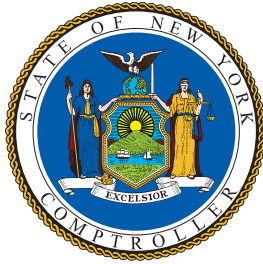
The Office of the State Comptroller is committed to helping State agencies, public authorities and local government agencies manage government resources efficiently and effectively and, by so doing, providing accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit of the Office of Court Administration's control and accountability over court and trust funds at the New York and Queens County Clerk's Offices. This audit was performed pursuant to the State Comptroller's authority under Article V, Section 1 of the State Constitution and Article 11, Section 8 of the State Finance Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

*Office of the State Comptroller
Division of State Government Accountability*



State of New York Office of the State Comptroller

EXECUTIVE SUMMARY

Audit Objectives

The objectives were to determine whether court and trust funds collected at the New York and Queens County Clerk's Offices are adequately controlled and appropriately safeguarded, deposited and remitted timely to the New York City Department of Finance for safekeeping.

Audit Results - Summary

The Office of Court Administration (OCA) is responsible for directing and overseeing the administrative operations of all courts in the New York State Unified Court System. All monies paid into the New York City courts are to be forwarded to the New York City Department of Finance (Finance) for safekeeping.

We found that court and trust funds collected at the New York and Queens County Clerk's Offices, which act as the clerk of the respective county's Supreme Court, are adequately controlled, and appropriately safeguarded and deposited. However, such funds are not remitted to Finance timely by the New York County Clerk's Office. Further, we found the New York County Clerk's Office needs to make some improvements to its monthly bank reconciliations.

Court and trust funds collected by New York City courts often involve large sums of money. During the two-year period ended December 31, 2008, the New York County Clerk's Office reported collecting court and trust funds totaling \$65.6 million from 206 transactions, an average of about \$318,000 per transaction. Twelve transactions exceeded \$1 million, with the largest being nearly \$21.1 million. The law requires that these funds be remitted to Finance within two days after receipt.

We determined that only 10 of the 206 receipts were remitted to Finance within two days. For the remaining 196 (95 percent), totaling \$62.5 million, the funds were remitted between one and 15 days late, averaging six days late. Since Finance deposits the funds it receives into interest-bearing accounts, such delays reduce the amount of interest earned. Had the 196 payments been remitted to Finance timely, an additional \$67,163 in interest income could have been earned for the fund beneficiaries and New York City.

The New York County Clerk's Office is required to perform a proper monthly bank reconciliation of court and trust accounts. We randomly selected 5 of 24 monthly bank reconciliations and found

that the bank balance agreed with the book balance. However, we found that the reconciliations were done informally. We did not see any indications of who prepared the reconciliations and when they were prepared, or whether they had been reviewed by a supervisor.

Our report contains three recommendations to maximize interest income and improve accountability over court and trust funds at the New York County Clerk's Office. OCA officials reported that the New York County Clerk has implemented all three recommendations.

This report, dated February 10, 2010, is available on our website at: <http://www.osc.state.ny.us>.

Add or update your mailing list address by contacting us at: (518) 474-3271 or

Office of the State Comptroller

Division of State Government Accountability

110 State Street, 11th Floor

Albany, NY 12236

Introduction

Background

The Office of Court Administration (OCA) is responsible for directing and overseeing the administrative operations of all courts in the New York State Unified Court System. This system serves the State's 62 counties through 12 districts. The 1st Judicial District, one of the largest court districts in the State, covers the borough of Manhattan (New York County) in New York City. The 11th Judicial District covers Queens County.

Article XII of the State Finance Law requires that all monies paid into the New York City courts be forwarded to the City's Department of Finance (Finance). These monies include bail postings made on behalf of defendants, payments made pursuant to court orders, trust funds from estates controlled by Public Administrators (such estates have no known heirs or no heirs able or willing to administer the estates), and other miscellaneous funds. Payments made pursuant to court orders commonly involve landlord/tenant disputes and surplus monies from foreclosures.

The County Clerk's Office acts as the clerk of the respective county's Supreme Court. It receives, indexes, and files all Supreme Court documents and miscellaneous papers; and collects all associated filing fees, fines, and surcharges. For the two-year period ending December 31, 2008, the New York and Queens County Clerk's Offices reportedly collected and transferred to Finance, court and trust funds totaling approximately \$65.6 million and \$25.8 million, respectively.

Audit Scope and Methodology

Our audit determined whether court and trust funds collected at the New York County Clerk's Office (New York County) and the Queens County Clerk's Office (Queens County) are adequately controlled and appropriately safeguarded, deposited and remitted timely to Finance for safekeeping. Our audit period was January 1, 2007 through December 31, 2008.

To accomplish our objectives, we interviewed officials and reviewed records at the New York and Queens County Clerk's Offices. At New York County, we selected a random sample of 10 out of the 206 court and trust payments received during our audit period, to determine if they were accounted for, deposited and remitted timely to Finance. We traced the flow of transactions from the initial point of receipt to deposit and remittance to Finance. We reviewed the associated court orders, court and trust receipts, bank deposit slips, checks to Finance, and confirmation receipts from Finance. Also, for all 206 payments, we reviewed the account's bank statements to determine whether all the funds were deposited and the checks to Finance cleared the

account. We also compared the dates of the court and trust receipts with the dates when the funds were remitted to Finance to determine if the funds were remitted within the required time frame (two days of receipt).

To determine whether New York County performed a proper bank reconciliation, we randomly selected and reviewed 5 of 24 monthly bank reconciliations prepared by the New York County's administrative office. We also conducted an unannounced cash count of the court and trust funds at New York County, and evaluated its internal control over such funds.

At Queens County, we selected a random sample of 20 of the 242 court and trust payments that had been received during our audit period. For the 20 transactions, we reviewed court orders, court and trust receipts, and confirmation receipts from Finance. For all 242 transactions, we compared the dates of the receipts with the dates when the funds were remitted to Finance to determine whether the funds were remitted within two days of receipt. Queens County, unlike New York County, does not first deposit these funds into its own bank account, but rather it remits them directly to Finance.

We conducted our performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

Authority

This audit was performed pursuant to the State Comptroller's authority under Article V, Section 1 of the State Constitution and Article 11, Section 8 of the State Finance Law.

**Reporting
Requirements**

A draft copy of this report was provided to OCA officials for their review and comment. Their comments were considered in preparing this report and are included in their entirety at the end of this report.

Within 90 days after final release of this report, required by Section 170 of the Executive Law, the Chief Administrative Judge of the Unified Court System shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reason why.

**Contributors to
the Report**

Major contributors to this report were Frank Houston, Albert Kee, Christine Chu, Irina Kovaneva, Jean-Renel Estime, Menard Petit-Phar, and Sue Gold.

Audit Findings and Recommendations

Accountability and Timeliness of Remittances

New York State Civil Practice Law and Rules requires court and trust funds to be remitted to Finance within two days after receipt. We determined that all the court and trust funds received by the New York and Queens County Clerk's Offices were accounted for and remitted to Finance. We did not identify any missing court and trust funds. However, we found that New York County did not remit funds to Finance in a timely manner.

New York County deposits court and trust funds it receives into its checking account and then writes a check payable to Finance. During the two-year period ending December 31, 2008, the New York County Clerk's Office reported collecting court and trust funds totaling \$65.6 million from 206 transactions, an average of about \$318,000 per transaction. Twelve transactions exceeded \$1 million, with the largest being nearly \$21.1 million.

We determined that only 10 of the 206 court and trust payments received by New York County were remitted to Finance within two business days of receipt. For the remaining 196 (95 percent), totaling \$62.5 million, the funds were remitted between 1 and 15 days late, averaging 6 days late. Since Finance deposits the funds it receives into interest-bearing accounts, such delays reduce the amount of interest earned. For example, New York County received a \$21.1 million check on December 19, 2008, but did not remit those funds to Finance until January 7, 2009, resulting in a loss of \$36,498 in interest. In total, had the 196 payments been remitted to Finance timely, an additional \$67,163 in interest income could have been earned for the fund beneficiaries and New York City.

New York County officials explained that court and trust funds, which are usually paid by bank or certified check, are not remitted to Finance for at least four days to allow the checks to clear the bank. However, according to bank policy, funds from bank and certified checks are available the next day. Therefore, these funds could have been remitted timely.

When Queens County receives court and trust payments, it does not deposit these bank and certified checks into its bank account. Instead, it endorses the checks and remits them directly to Finance on the same or next day of receipt by certified mail. We reviewed the documentation and determined that Queens County forwarded all 242 payments totaling \$25.8 million within the required time frame.

- Recommendation** 1. Monitor the timeliness of court and trust fund remittances at New York County and take corrective action if the remittances are not made within two business days of receipt.

**New York County
Controls**

Monthly Bank Reconciliations

Since New York County deposits court and trust funds into a bank account prior to remitting them to Finance, OCA requires a monthly bank reconciliation be performed of this account. The monthly bank reconciliation is important to ensure that the County Clerk accurately accounts for all transactions.

We randomly selected 5 of the 24 monthly bank reconciliations prepared by New York County's administrative office to determine whether they had been performed properly. We found that the bank balance agreed with the book balance in each case, and no adjustments had been made for any of the five bank reconciliations. However, we found the reconciliations were prepared informally on the front page of the bank statements. For all five reconciliations, we did not see any indications of who prepared them or when they were prepared, or whether they had been reviewed by a supervisor. With proper supervisory oversight, the risk of errors going undetected is reduced. New York County officials indicated they plan to formalize their bank reconciliation process.

- Recommendation** 2. Monitor New York County to ensure it prepares monthly bank reconciliations properly, including preparer signature and supervisory review and approval.

Separation of Duties

An effective system of internal control provides that no one person is responsible for the handling of a transaction from beginning to end. To the extent possible, duties should be separated among employees. For purposes of accountability, cash receipt duties should not be assigned to employees who are also responsible for cash disbursement functions.

We found that at New York County, the cashier who collects the court and trust funds also prepares the checks to Finance for signature. New York County officials stated that they do not consider this to be a problem, since the cashier is not an authorized signatory. We also observed that a supervisor, who is an authorized signatory, collects payments at the cashier's window when the cashier is performing other tasks. Assigning incompatible duties to the same individuals can result in errors, irregularities, and misappropriation of assets. When one person controls multiple phases of a transaction, the risk of fraud increases.

- Recommendation**
3. Review the handling of court and trust checks at New York County to ensure that adequate separation of duties exists.

Agency Comments

*State of New York
Unified Court System*



*Ann Pfau
Chief Administrative Judge*

*25 Beaver Street
New York, N.Y. 10004
(212) 428-2100*

January 5, 2010

Hon. Thomas P. DiNapoli
State Comptroller
110 State Street
Albany, New York 12236

Dear Comptroller DiNapoli:

The Office of the State Comptroller has issued draft audit report 2009-S-58 on Control and Accountability Over Court and Trust Funds in New York County and Queens County Clerks' Offices. I have shared the report with appropriate court officials and offer the following comments.

I am pleased that the audit found that the two County Clerk's Offices adequately controlled and appropriately safeguarded and deposited over \$90 million in court and trust funds during the audit period.

The report contained three recommendations, all directed to the New York County Clerk's Office: (1) monitor the timeliness of court and trust fund remittances and take corrective action if the remittances are not made within two business days of receipt; (2) monitor preparation of monthly bank reconciliations, including preparer signature and supervisor review and approval; and (3) review the handling of court and trust checks to ensure that adequate separation of duties exists.

The New York County Clerk has informed me that all three recommendations have been implemented.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Ann Pfau".

c: Hon. Fern Fisher
Hon. Norman Goodman
Hon. Gloria D'Amico
Maria Logus, Esq.
Dennis W. Donnelly, CPA