



# Town of Hinsdale

## Justice Court

### Report of Examination

Period Covered:

January 1, 2010 — September 3, 2011

2012M-126



Thomas P. DiNapoli

# Table of Contents

	<b>Page</b>
<b>AUTHORITY LETTER</b>	2
<b>INTRODUCTION</b>	3
Background	3
Objective	3
Scope and Methodology	4
Comments of Local Officials and Corrective Action	4
<b>JUSTICE WITZIGMAN</b>	5
Bank Reconciliation and Accountability Analysis	5
Monthly Reports	6
Issuing and Recording of Receipts, Timeliness of Deposits	8
DMV Disposed Cases	9
Outstanding Bail	9
Internal Controls	10
Financial and Case Management Software	11
Security Over Records	12
Recommendations	12
<b>APPENDIX A</b> Response From Local Officials	14
<b>APPENDIX B</b> Audit Methodology and Standards	16
<b>APPENDIX C</b> How to Obtain Additional Copies of the Report	18
<b>APPENDIX D</b> Local Regional Office Listing	19

# State of New York Office of the State Comptroller

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

August 2012

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 Town of Hinsdale, 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 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 Hinsdale (Town) is located in Cattaraugus County and has a population of approximately 2,200. The Town is governed by an elected Town Board (Board), including the Town Supervisor (Supervisor) and four Council members. The Board is responsible for the general management and control of the Town's financial affairs.

The Town's Justice Court (Court) has jurisdiction over vehicle and traffic, criminal, civil, and small claims cases brought before it. The two Justices' principal duties involve adjudicating legal matters within the Court's jurisdiction and administering moneys collected from fines, bails, surcharges, civil fees, and restitutions. For the year ended December 31, 2010, the Town reported revenues from fines and surcharges of \$15,575.

The Town Justices are personally responsible for all moneys received and disbursed by the Court and for safeguarding Court resources. The Board also shares responsibility to ensure an effective system of internal controls for overseeing Court operations.

Jennifer Witzigman was Town Justice from January 1, 2010 until September 3, 2011.<sup>1</sup> A Court clerk was employed by the Town, who worked for Justice Witzigman for the duration of the Justice's tenure and performed many of the Justice's bookkeeping functions. This Court clerk also worked for the other Town Justice from March 2011 through December 31, 2011.

## Objective

The objective of our audit was to examine internal controls over Justice Witzigman's Court operations. Our audit addressed the following related question:

- Were the internal controls for Justice Witzigman's Court operating effectively, to help ensure that all moneys received by the Court were recorded, deposited, disbursed, and reported in a timely and accurate manner?

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<sup>1</sup> Her resignation letter stated that she was resigning effective September 3, 2011. However, this letter was sent to the New York State Commission on Judicial Conduct via fax on November 18, 2011. Judicial Conduct then sent a copy of the letter to the Town Supervisor. The Town Board held a special meeting on November 28, 2011 to accept Jennifer Witzigman's resignation as Justice. There was no indication that Justice Witzigman held court again after we conducted our cash count on September 2, 2011.

**Scope and  
Methodology**

We examined the internal controls over Justice Witzigman’s Court operations for the period January 1, 2010 to September 3, 2011.<sup>2</sup>

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 generally agreed with our recommendations.

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.

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<sup>2</sup> We reviewed Court records of the other Justice subsequent to Jennifer Witzigman’s resignation for activity that may have occurred related to cases that were begun during her tenure as Justice.

## Justice Witzigman

Justices are charged with accounting for their court's financial transactions, safeguarding public resources and ensuring that an effective system of internal controls is in place to help protect public resources from misuse, loss or fraud. Justices are responsible for adjudicating cases brought before their court and must maintain sufficient records to render a full accounting of all moneys received, all disbursements made and the balance of moneys remaining. Justices are also responsible for processing and recording court financial transactions timely, and filing accurate and timely financial reports with the Office of the State Comptroller's Justice Court Fund (JCF). Furthermore, they should regularly monitor and review court personnel's work performance. Upon a justice's resignation, there are also requirements for transferring pending cases and moneys. Town boards share the responsibility for ensuring that an effective system of internal controls is in place. The Board is required to perform an annual audit of the Justice's records, by themselves or by engaging the services of an independent public accountant. The Board must also ensure controls over recorded information and sensitive or personal information are adequate. If internal controls are lacking or ineffective, accountability over a court's financial resources is greatly diminished.

Internal controls over the Court's financial activities were deficient. These internal control weaknesses resulted in Justice Witzigman's known liabilities exceeding available Court assets for a cash shortage of \$5,394, as of September 2, 2011. Justice Witzigman resigned effective September 3, 2011, but failed to finalize and submit her records to Town officials. We identified numerous control deficiencies in the Court's operations.

The lack of basic controls has placed Court moneys at significant risk of loss, misuse and fraud. The Town Supervisor contacted our office in August 2011 and the New York State Police in September 2011, when it appeared that Justice Witzigman did not have sufficient funds on hand to cover the collections for the June, July and August monthly reports. The State Police deferred any investigation of the Court until after our audit was completed.

### **Bank Reconciliation and Accountability Analysis**

It is important for Court personnel to verify the accuracy of financial records and establish control over cash by reconciling the bank accounts monthly. They also should compare cash on hand and on deposit in the bank to detailed lists of Court liabilities (outstanding bails and amounts due to JCF and others). This comparison is referred

to as an accountability analysis. Performing bank reconciliations and accountability analyses are critical procedures to ascertain the status of moneys held by the Court. The Court's liabilities, such as bail held on pending cases and unremitted fines and fees, should equal the Justice's available cash. The documentation of a bank reconciliation and analysis of liabilities helps to ensure that the Court is appropriately addressing its custodial function.

A Justice is personally responsible for moneys received by the Court and may be liable for money paid to the Court that was lost or stolen. Therefore, it is essential that each Justice maintain a current, accurate and complete list of all moneys held. This was a recommendation in our prior Report of Examination dated June 2010.

Neither the Justice, nor her Court clerk performed bank reconciliations or accountability analyses. We performed a cash count of undeposited Court funds with Justice Witzigman on September 2, 2011 and prepared an accountability analysis as of that date, as follows:

<b>Table 1: Court Accountability Analysis</b>	
<b>Assets as of September 2, 2011</b>	
Justice bank account balance as of August 31, 2011	\$6,940
Deposits in Transit	\$3,945
Cash on Hand (from cash count)	\$880
Credit Card Payments (subsequently posted to bank account)	\$620
Duplicate/Over Payments to JCF	\$1,775
Undeposited Money Orders found in Courtroom	\$380
<b>Total Court Assets</b>	<b>\$14,540</b>
<b>Less Known Liabilities as of September 2, 2011</b>	
Fines and fees reported to JCF for June, July and August of 2011	\$13,692
Three manual receipts not reported to JCF	\$85
Receipts issued for more than amount reported to JCF	\$2,037
Money orders with no receipt, not reported to JCF	\$455
Undeposited Money Orders, not reported to JCF	\$245
Reported to DMV as disposed, but not reported to JCF	\$2,120
Outstanding Bail	\$1,300
<b>Total Known Liabilities</b>	<b>\$19,934</b>
<b>Cash Shortage</b>	<b>(\$5,394)</b>

## Monthly Reports

Accurate and timely reports can provide a means for effectively monitoring Court operations. Town and JCF officials can analyze such reports and investigate any unusual or incomplete information. The late filing or non-filing of required reports can be an indication of

operational problems. Justices are required to submit monthly reports of Court activities to JCF by the tenth day of the succeeding month.<sup>3</sup>

When Justices resign before the end of their term, they are required to transfer all pending cases and any moneys received for those cases to the succeeding Justice. The resigning Justice must also file a final report with JCF accounting for all activity, remit any fines and fees due, and close all bank accounts.

Following her resignation, Justice Witzigman failed to file a final report with JCF, transfer all remaining moneys from pending cases to her successor, or close her official bank account. In addition, she did not arrange for the transfer of her computerized records to her successor. Manual records (e.g., tickets, printed receipts and case files) maintained by the Justice and her Court clerk were in such disarray that it was difficult to identify the status of many of the pending cases.

During our audit period, we found that monthly reports were not submitted in a timely manner, ranging from one to 76 days late. For example, the reports for July and August 2011 were not received by JCF until September 13, 2011. Checks for those two reports and for the June 2011 report were not submitted to the Supervisor as of September 2, 2011.<sup>4</sup> The total for the three reports (\$13,692) was included as a liability in Table 1.

We also found that reports were submitted multiple times, usually to correct errors. For example, a monthly report was submitted on three separate occasions, January 5, 2011, March 30, 2011, and April 20, 2011. However, even after multiple report filings, we found errors during our audit testing that remained uncorrected by the Justice or her Court clerk. We found duplication and over reporting discrepancies totaling \$1,775. Because these resulted in payments greater than what were necessary, this amount was included as an asset in Table 1.

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<sup>3</sup> If the reports are submitted electronically, moneys reported as collected should be submitted to the Town Supervisor. The JCF has a reporting arrangement where a Justice may remit Court funds to the Supervisor. The JCF determines the final distribution based on the monthly report filed by the Justice with JCF. The Supervisor is then notified by JCF of the amount due, submits payment to JCF and retains the Town's share.

<sup>4</sup> At our cash count on September 2, 2011, the Justice presented us with two uncashed checks in amounts that agreed with the June and the July monthly JCF reports. The checks were not dated; however, they had the Justice's signature on them.

## Issuing and Recording of Receipts, Timeliness of Deposits

Accurate recording of receipts is an essential process needed to properly account for and safeguard Court moneys. Moneys should be handled only by authorized Court personnel. A two-part receipt should be prepared immediately whenever moneys are received. One part should be retained by the Court and one part should be given to the person making the payment. Receipts should be pre-numbered and issued consecutively.<sup>5</sup> Each receipt should document the date, the person paying, the amount paid, form of payment (cash or check) and the purpose of the payment. Each receipt should be signed by the person issuing it to establish accountability. Receipts should be recorded in the Justice's accounting system promptly.

Further, to reduce the risk that moneys could be lost or stolen, all receipts should be deposited in a timely manner. Justices are required to deposit intact (in the same amounts and form – cash, check or money order – as received) all moneys collected by the Court into the official bank accounts as soon as possible but no later than 72 hours from the date of receipt, excluding Sundays and holidays.

When the Justice began her term, the Court used manual receipts. Shortly after taking office, the Court began using a computerized system to generate receipts. However, manual receipt books were still used. One of the Court's four manual receipt books was generally kept in the Supervisor's office and used by the Court clerk, Justice Witzigman, the Supervisor and the Supervisor's secretary to issue receipts for Court moneys they collected. We traced the carbon copy of the 33 receipts that were apparently issued<sup>6</sup> from this book to JCF reports or to a voided receipt. We also examined the receipts for the remaining three books verifying that all unused receipts were intact in the book. The receipts from these books were issued by the Court clerk or Justice Witzigman; one receipt did not have a signature. We could not trace three of the receipts, totaling \$85 to a JCF report. All three of these receipts appeared to have been issued by the Court clerk. The \$85 was included as a liability in Table 1.

Computerized receipts generally did not bear the signature of either the Court clerk or the Justice, both of whom had the ability to print these receipts. In addition, they generally did not reflect the accurate form of payment. We found 26 receipts that were issued for \$2,037 more than the amount reported to JCF. In addition, we found four

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<sup>5</sup> Receipts should only be voided for legitimate business purposes. Both parts of each voided receipt should be retained and there should be a documented explanation of the reason for the void, as well as a supervisory sign-off (approval) for the void.

<sup>6</sup> Based on the signatures on the carbon copies - Justice Witzigman issued one, the Court Clerk issued four, the Supervisor issued one and the Supervisor's Secretary issued 25 receipts and voided two.

money orders totaling \$455 that were deposited, but a receipt was not issued and they were not recorded in the system or reported to JCF. Both of these amounts (\$2,037 and \$455) were included as liabilities in Table 1.

During fieldwork, we found two undeposited money orders in the courtroom, one from July 2010 (\$175) and the other from October 2010 (\$205). The \$175 was not reported to JCF at all. For the \$205 money order, only \$135 was reported to JCF. Therefore, the total of the money orders (\$380) is included as an asset, while the unreported amount (\$245) is included as a liability in Table 1.

We also found that computerized receipts could be issued out of order, resulting in gaps in the sequence of receipt numbers. In addition, the computerized receipts generally did not, or did not accurately, reflect the form of payment. We found 53 receipt numbers were unaccounted for in the Court's records, 14 receipts totaling \$1,570 had no receipt number noted in the records and 26 receipts totaling \$3,890 appeared to have been issued out of sequence, based upon their dates in the Court records.

Further, we identified 172 receipts totaling \$32,075 that were deposited, on average, 12 days late. We also identified 14 receipts totaling \$2,505 that were deposited prior to the date the money was presumably collected, as noted on the receipt.

### **DMV Disposed Cases**

It is the Justice's responsibility to ensure that payments for vehicle and traffic tickets are reported accurately to the New York State Department of Motor Vehicles (DMV). If a ticket is reported to DMV as being paid, the amount should agree with the Court's receipt records and the amounts deposited. If moneys are reported to DMV but not recorded and deposited in the Court records, this could indicate a misappropriation of funds.

We compared data obtained from DMV against data obtained from the Court's computer system and found 25 cases, 9 totaling \$2,120 and 16 with no dollar amount that were reported as disposed to DMV, but were not reported to JCF. Four of the nine payments for \$1,030 were also supported by receipts issued by the Court. The \$2,120 was included as a liability in Table 1.

### **Outstanding Bail**

In certain cases, bail is levied on defendants to help ensure their appearance in Court to answer the charges against them. Bail is returned either when the case has been adjudicated or may be used by the defendant to pay any fines and fees imposed by the Court. Justices must maintain an appropriate record of all bail received and disbursed, indicating when the bail was paid, by whom, and for whom.

It is important for this record to identify the date, check number and to whom the bail was disbursed.

The computerized bail list provided to us by the Justice indicated that \$1,950 in bail was outstanding. The Justice indicated that this was not correct and that she had only one bail for \$500 as of September 2, 2011. The computerized bail list did not reflect all bail received and disbursed. As a result of our review of Court records and bank activity, we identified outstanding bail totaling \$1,300. This amount was included as a liability in Table 1.

## **Internal Controls**

A well designed system of internal controls is necessary to ensure that court moneys are adequately safeguarded from loss, misuse or theft. If a justice designates an individual (i.e., a court clerk) to perform any or all of these functions, it is the justice's responsibility to provide timely and effective oversight over these activities to help ensure that transactions are properly recorded and reported and that all moneys are accounted for. Town boards are also responsible for auditing the Justices records and reports and overseeing court financial operations.

Oversight – Concentrating key duties (i.e., authorization, recordkeeping, and custody) with one individual with little or no oversight weakens internal controls. When it is not practical to segregate Court duties, effective oversight by the Justice and the Board is essential to help ensure that transactions are properly recorded and reported and that all moneys are accounted for.

Justice Witzigman's Court clerk performed certain Court functions for the Justice's entire tenure. The Clerk was generally responsible for collecting receipts, preparing deposits, inputting cash receipts and disbursements into the software, and maintaining the Court records, excluding the record of bail, which was managed by the Justice herself. Both the Clerk and the Justice stated that only the Justice made bank deposits. The Justice however had the same access and often performed the same duties as the Clerk.

Furthermore, although the Justice generally signed monthly JCF reports submitted to the Town with the monthly payments, there is no indication that the Justice routinely reviewed the work performed by the Clerk to verify that moneys received were properly deposited, accounted for and reported, as required.

When incompatible duties are not adequately segregated, the risk is significantly increased that errors or irregularities could occur and go undetected and uncorrected.

Annual Audit – According to the Uniform Justice Court Act and Town Law, Justices are required to present their records and dockets to the Board for audit at least once each year. The Board must audit the records, or engage an independent public accountant to do so. The Town Clerk must document in the Board minutes that an audit was performed and should indicate the results of the audit.

The Board failed to conduct an examination of the Court’s records or contract with an auditor to examine the Court’s records. The failure to audit the Justice’s records and reports allowed errors to occur and remain uncorrected and resulted in the poor accountability practices discussed previously to continue unabated.

**Financial and Case  
Management Software**

Financial and case management software should produce complete and accurate records and reports. Once information is entered into the system, its integrity should be maintained through controls that limit access and changes to the data. Effective software should provide a means to determine the identity of users who access the software and, what transactions were processed by those users. The software must also prevent users from making retroactive changes to the system to ensure that all transactions are reflected as of the date they were recorded in the system and are free from alteration.

Our audit disclosed weaknesses in the Court’s use of the software that raise significant questions about the integrity of the Court’s data. User passwords are not adequately protected and anyone with access can change or delete data after it has been entered, with no clear record of the change or deletion.

We were told by the Justice and the Court clerk, and confirmed through observation, that all user passwords were visible to system users. This weakness virtually eliminates any accountability for transactions entered or subsequently altered in the system. An individual can login as another user and the system will associate the activity with the other user’s login identity. Justice Witzigman and the Court clerk acknowledged that they were aware that changes could be made to the information entered into the software and that activity could be deleted.

Easily changed or deleted entries increase the possibility that the electronic data may not be reliable. Without reliable data, accountability cannot be effectively established and moneys are at risk of loss.

## Security Over Records

Justices should ensure that Court records are protected from loss or misuse and are used only for their intended purpose. Court records frequently contain personally identifiable information,<sup>7</sup> including credit cardholder data, and must be safeguarded and maintained in a secure environment. The Board must establish policies that address information security and restrict physical access to cardholder data. Once such data is used to process a credit card transaction, it should be redacted.

The Court retained credit card authorization forms on file showing the cardholder's name, card number, and expiration date within case file folders that contained the defendant's name, address, and in some cases, other identifying information such as date of birth, and driver's license number. Further, these case file folders were stored in an unlocked closet in the Court room. The failure to redact cardholder data may result in unauthorized access of case records and the loss, exposure or misuse of sensitive information.

## Recommendations

1. The Supervisor should contact law enforcement officials regarding the identified cash shortage.
2. The Court should prepare proper bank reconciliations and accountability analyses on a monthly basis. All cash on hand, and on deposit in the bank, should be compared to a listing of Court liabilities. Differences should be promptly investigated and corrective action taken.
3. The Board should ensure that the Court submits accurate monthly reports to JCF no later than the tenth day of the succeeding month.
4. The Justices should ensure that signed receipts are issued for all collections, with only authorized Court personnel issuing them. All receipts should be pre-numbered, issued in consecutive order, and include from whom, for what and in what form paid.
5. The Justice should ensure that the Court deposits all moneys received intact within 72 hours from the date of receipt, excluding Sundays and holidays.
6. The Justices should maintain a current and complete list of all bail held and disbursed.

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<sup>7</sup> Personally identifiable information could include financial transactions, criminal or employment history, as well as information that can be used to establish an individual's identity, such as name, social security number, date and place of birth.

7. The Justices should develop policies and procedures providing for the segregation of incompatible duties within the Court and requiring a routine review of the Court clerk's work and the documentation thereof.
8. The Board should examine the Justice's records and reports or engage an auditor to perform the examination at least annually.
9. The Board and Justices should assess the risk areas in the software (i.e., password weaknesses and the ability to change records) and develop compensating controls to mitigate these risks.
10. The Board should establish policies and procedures to address the security over sensitive or personal information.

**APPENDIX A**  
**RESPONSE FROM LOCAL OFFICIALS**

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

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# TOWN OF HINSDALE

Monroe B. Bishop, Town Supervisor

August 13, 2012

New York State  
Office of the State Comptroller  
Division of  
Local Government and School Accountability  
110 State Street  
Albany, New York 12236 – 0001

**Attention Chief Examiner**

Dear Chief Examine:

On Friday, August 10, 2012, The justice, Court Clerk and Myself met with [REDACTED] a Comptroller from your office and went over the finding of Justice Jennifer Witzigman.

On Monday, August 13, 2012, we had our monthly board meeting and each of our Councilmen had received their copy of the Draft on Justice Witzigman. They were well aware of the findings and had nothing further to explore. Motion was made for me to write this letter accepting your findings.

I am Monroe B. Bishop, Town Supervisor, for the Town of Hinsdale, I agree with the findings of this report.

Sincerely

Monroe B. Bishop  
Town Supervisor

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## APPENDIX B

### AUDIT METHODOLOGY AND STANDARDS

The objective of our audit was to determine whether internal controls over Justice Witzigman's Court operations were operating effectively, to help ensure that all moneys received by the Court were recorded, deposited, disbursed, and reported in a timely and accurate manner. During the initial assessment, we interviewed appropriate Town officials, performed limited tests of transactions, and reviewed pertinent documents such as Board minutes, financial records and reports. In addition, we obtained information directly from computerized financial records and then analyzed this information using computer-assisted techniques. Further, we reviewed the Court's internal controls and procedures over computerized financial records to determine whether the information produced by these systems was reliable.

After reviewing the information gathered during our initial assessment we determined where weaknesses existed, and evaluated those weaknesses for the risk of potential fraud, theft and/or professional misconduct. We then decided on the reported objective and scope by selecting for audit those areas most at risk. We selected and audited the internal controls over Justice Witzigman's Court operations. To accomplish the objective of our audit, our procedures included the following:

- We interviewed Town officials to obtain an understanding of operations relating to the Justice Court, to identify key personnel, and gain an understanding of policies and procedures relative to our audit objective.
- We reviewed the minutes of the Board for the audit period to identify evidence of Board oversight of the Court.
- We interviewed Town officials, Justice Witzigman, a current Justice, and the former and current Court clerk. These discussions allowed us to understand the internal control system of the Court and to make an assessment as to whether the established controls were sufficient to provide assurance that resources were protected from possible loss or improper use, to minimize the risk of errors and irregularities, and to ensure compliance with applicable laws, rules and regulations.
- We examined the financial records and reports for the collection and subsequent dispositions of fines, fees, surcharges and bail moneys. These records included deposit information (e.g., deposit reports generated from the financial and case management software, deposit slips and customer receipts provided by the bank), duplicate receipts, computerized receipts, fine notices, checkbook records, cashbook reports (generated from the financial and case management software), Court calendars, case files (dockets), credit card authorization forms, and case receipt and disbursement records. Using this information, we sought to determine if receipts had been properly recorded and deposited, if moneys had been remitted and reported in a timely and accurate manner, and if internal controls over these functions were adequate.

- We requested and received January 2010 through October 2011 bank statements and deposit information from the bank for the former Justice’s account. We used this information to compare the composition of deposits to receipt records to determine if receipts were deposited intact and accurately accounted for in the Court records. We also used this information to examine the timeliness of deposits and ensure that all disbursements were appropriately accounted for.
- We reviewed the January 2010 through August 2011 monthly Court activity reports (AC-1030) as filed by the former Justice with the Office of the State Comptroller’s JCF. We used this information to examine the timeliness of the monthly report filings, and the accuracy and completeness of the records.
- We examined deletions from the Court’s records.
- We reviewed bail records by comparing the names of the individuals paying the bail (per the receipt or case file information) to the names of individuals on canceled checks. For cases where a receipt did not exist in the bail receipt book, we used deposit information obtained from the bank to help determine the source of moneys received.
- We requested a backup of the data in the financial and case management software. We observed the Court clerk backing up this data. Using this backup, we were able to extract raw data and analyze this information using computer-assisted techniques.
- We observed and inquired about security procedures for Court records to determine if both manual and electronic records were adequately safeguarded.

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 objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

## APPENDIX C

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Andrew A. SanFilippo, Executive Deputy Comptroller  
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