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December 12, 2014

Scott German
Genesee County Treasurer
15 Main Street
Batavia, NY 14020

Report Number: 2014M-322

Dear Mr. German:

Genesee County (County) officials are responsible for safeguarding court and trust funds in their care. This responsibility includes establishing and maintaining an internal control structure to provide reasonable, but not absolute, assurance that resources are safeguarded against loss from unauthorized use or disposition, transactions are executed in accordance with court orders and/or statutory authorization and are properly recorded, appropriate reports are prepared and appropriate corrective action is taken in response to audit findings.

Pursuant to the State Constitution, Article V, Section 1 and further authority vested in the State Comptroller by Articles 2 and 12 of the New York State Finance Law and Section 42 of the New York Executive Law, we examined certain records and reports for the County's court and trust funds for the period January 1, 2011 through January 1, 2014.

Background and Methodology

Pursuant to a court order, certain assets may be provided to the court and then delivered to the County Treasurer (Treasurer) for safekeeping. Payments made pursuant to court orders commonly involve surplus money from foreclosures and contract disputes resulting in a mechanic's lien.¹ These actions are recorded in the County Clerk's office when payments are deposited as required by court order. Additionally, in certain circumstances,² funds from estates are entrusted to the Treasurer for safekeeping by order of the Surrogate's Court. Together, the Treasurer, County Clerk and Surrogate's Court must develop sound procedures and processes which, when implemented properly and consistently, provide a system of internal controls to account for and safeguard these funds.

Our objective was to determine whether County officials have established appropriate controls to safeguard and account for court and trust funds. We examined records maintained by the County Clerk, Surrogate's Court and Treasurer for the period January 1, 2011 through January 1, 2014. We interviewed County officials and reviewed relevant financial and court records. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions.

¹ Security interest in property filed to ensure payment for contracted services rendered on the property

² When the whereabouts of any person entitled to payment from the estate is unknown

Audit Results

We found that the records maintained by the Surrogate's Court were generally up-to-date and complete, and we did not find any material discrepancies.

However, we found that the County Clerk (Clerk) is not maintaining appropriate court and trust fund records. New York State County Law requires the Clerk to maintain a record of all money and securities ordered to be paid, transferred or deposited into a court. Although the Clerk maintains scanned copies of all court orders filed in his office, the Clerk does not make an entry into the court and trust fund register of the money ordered to be paid into a court. As a result, the Clerk was unable to readily identify assets ordered to be paid into a court and the Clerk's records could not be used to verify that all court-ordered deposits had been properly received and deposited by the Treasurer.

We found that the Treasurer established adequate procedures, maintained appropriate records and properly reported the condition of court and trust funds to the State Comptroller as prescribed by statute. However, we identified funds which improperly remained in the Treasurer's custody and should have been turned over to the State Comptroller as abandoned property.

Pursuant to the New York State Abandoned Property Law, money which has remained in the hands of the Treasurer for a period of three years, together with all accumulated interest thereon, less the Treasurer's statutory fees, is deemed abandoned property. The Treasurer should, after public notice, pay all such abandoned money to the State Comptroller by the tenth of April of the next year.

We found two actions totaling \$507 that were not properly turned over to the State Comptroller as abandoned property. After we brought these actions to his attention, the Treasurer agreed to take immediate corrective action.

We discussed other minor deficiencies with County officials during our fieldwork.

Recommendations

1. The County Clerk should maintain a court and trust fund register as required by law.
2. The Treasurer should ensure that all money deemed abandoned property is paid to the State Comptroller in a timely manner.

We would like to thank Genesee County officials and staff for the courtesies and cooperation that were extended to our auditors and encourage County officials to take corrective action.

Sincerely,

Gabriel F. Deyo

cc: Hon. Robert Noonan, Genesee County Surrogate Court Judge
Mr. Don M. Read, Genesee County Clerk
Mr. George Danyluk, New York State Unified Court System, Chief Internal Auditor