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Kevin Gardner  
Treasurer, Oswego County  
46 E. Bridge Street  
Oswego, NY 13126

Report Number: 2022-C&T-5

Dear Treasurer Gardner:

Oswego 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 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 examination findings.

Pursuant to the New York State Constitution, Article V, Section 1 and further authority granted to the State Comptroller by Articles 2 and 12 of New York State Finance Law and Section 42 of New York State Executive Law, we examined certain records and reports for the County's court and trust funds for the period January 1, 2019 through September 7, 2022.

### **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.<sup>1</sup> These actions are recorded in the County Clerk's office when payments are deposited as required by court order. Additionally, in certain circumstances,<sup>2</sup> 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.

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<sup>1</sup> Security interest in property filed to ensure payment for contracted services rendered on the property

<sup>2</sup> When the whereabouts of any person entitled to payment from the estate is unknown

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 Treasurer, County Clerk, and Surrogate’s Court. 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. The scope of our review does not constitute an audit under generally accepted government auditing standards (GAGAS).

## Results

Pursuant to New York State Finance Law Section 184, the Treasurer is required to submit a report on an annual basis to the State Comptroller accounting for all money, securities and other properties deposited into a court and ordered into the Treasurer’s custody.

We reviewed the Treasurer’s, County Clerk’s and Surrogate’s Court’s processes, procedures and records for the receipt and management of court and trust funds as well as estates in the Treasurer’s custody. We found the records maintained by the Treasurer were generally up to date and complete. We also found 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 that improperly remained in the Treasurer’s custody that should have been turned over to the State Comptroller as abandoned property.

Pursuant to New York State Abandoned Property Law Section 600, money that has remained in the hands of the Treasurer for a period of three years, together with all accumulated interest, less the Treasurer’s statutory fees, is deemed abandoned property. The Treasurer should, after public notice, pay all such abandoned property to the State Comptroller by the tenth of April of the next year. We identified unclaimed funds from two actions totaling \$20,050 that were not turned over to the State Comptroller (Figure 1). The Treasurer stated that he was aware the actions should be turned over and is in the process of taking corrective action.

<b>Figure 1: Schedule of Abandoned Property</b>			
<b>Date of Origination</b>	<b>Abandoned Property Due Date</b>	<b>Title of Action</b>	<b>Amount</b>
3/31/2016	4/10/2020	Estate of Martha E. Knighton for Anthony Giuliani	\$10,025
3/31/2016	4/10/2020	Estate of Martha E. Knighton for Michael Giuliani	\$10,025
Total			\$20,050

Additionally, we found that the County Clerk is not maintaining appropriate court and trust fund records. New York State County Law Section 530 requires each county clerk to maintain a record of all money and securities paid, transferred or deposited, or ordered to be paid, transferred or deposited into a court.

Although the County Clerk maintains all court orders for each individual action that was handled in the County, a court and trust register of the money ordered to be paid into a court was not maintained during the period we reviewed. As a result, the County Clerk was unable to readily identify assets ordered to be paid into a court. In addition, the records could not be used to verify

that all court-ordered deposits had been properly received and deposited by the Treasurer. The Deputy County Clerk told us that the County Clerk's office does not receive money from court and trust actions, and court and trust money is received directly by the Treasurer. However, having the County Clerk maintain a register of all money ordered to be paid into a court helps to provide a check and balance to ensure all court and trust funds are received, accounted for and properly reported.

Finally, we reviewed the Surrogate's Court records and found that the Surrogate's Court Clerk (Court Clerk) did not maintain appropriate court and trust fund records. Pursuant to New York Consolidated Laws, Surrogate's Court Procedure Act Section 2502, the Court Clerk is responsible for keeping a court and trust fund register. The Court Clerk must enter the following information into the surrogate's register:

- A reference to any proceeding in which the decree or order directs the deposit of money,
- The date of transaction,
- The amount to be deposited,
- Any receipt generated, and
- The name of the person for whom the deposit was made.

Although the Court Clerk maintained all court orders filed in her office, she did not make entries into a surrogate's register to record money ordered to be paid into the court. As a result, there is a risk that the Court Clerk may be unable to identify quickly all assets ordered to be paid into a court. Also, her records could not be used to verify that all court-ordered deposits had been properly received and deposited by the Treasurer.

We would like to thank County officials and staff for the courtesies and cooperation that were extended to our examiners.

## **Recommendations**

The Treasurer should:

1. Ensure that all money deemed abandoned property is paid to the State Comptroller in a timely manner as required.

The County Clerk should:

2. Ensure that a court and trust fund register is maintained as required by law.

The Court Clerk should:

3. Enter all court and trust fund actions into the surrogate's register.

Sincerely,

Elliott Auerbach  
Deputy Comptroller

cc: Philip Church, County Administrator  
James Weatherup, Chairman of the Legislature  
Terry M. Wilbur, County Clerk  
Honorable Spencer Ludington, Surrogate's Court Judge  
Daniel R. Johnson, New York State Unified Court System, Chief Internal Auditor