



# Town of Wayne Justice Court

## Report of Examination

Period Covered:

January 1, 2010 — August 31, 2012

2013M-52



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	3
Comments of Local Officials and Corrective Action	3
<b>JUSTICE COURT</b>	5
Accountability Analysis, Bail Records and Bank Reconciliations	5
Issuing and Recording of Receipts	6
Timely and Intact Deposits	7
Monthly Reports and Remittance of Funds	8
Annual Audit	9
Recommendations	9
<b>APPENDIX A</b> Response From Local Officials	11
<b>APPENDIX B</b> OSC Comments on the Justice’s Response	15
<b>APPENDIX C</b> Audit Methodology and Standards	16
<b>APPENDIX D</b> How to Obtain Additional Copies of the Report	17
<b>APPENDIX E</b> Local Regional Office Listing	18

# State of New York Office of the State Comptroller

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

May 2013

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 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 Wayne, 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 Wayne (Town) is located in Steuben County and has a population of approximately 1,000. The Town is governed by an elected Town Board (Board) comprising four councilpersons and the Town Supervisor (Supervisor). The Supervisor is the chief executive and chief fiscal officer of the Town. The Board is responsible for overseeing the financial activities of the Town, including the Justice Court (Court).

The Town has one elected Justice who is responsible for hearing certain types of civil and criminal cases and adjudicating misdemeanors, minor violations, and traffic infractions. Justices are personally responsible for all moneys received and disbursed by their Court and for safeguarding Court resources. These responsibilities include ensuring that an effective system of internal controls is in place to properly safeguard cash and other resources; that appropriate financial reports are accurate and filed in a timely manner; and that applicable laws, rules and regulations are observed. The Justice, who did not employ a Court clerk, was responsible for performing all the financial activities of the Court. The Board is responsible for conducting an annual audit of the Justice's records and docket. For the fiscal year ended December 31, 2011, the Town reported net revenues from fines and surcharges of \$2,510.

## Objective

The objective of our audit was to examine the financial activity of the Justice. Our audit addressed the following related question:

- Did the Justice accurately and completely collect, record, deposit, and report Court moneys in a timely manner?

## Scope and Methodology

We examined the financial activity of the Justice of the Town of Wayne for the period January 1, 2010 to August 31, 2012. We extended our audit scope back to January 1, 2008 to determine Court accountability.

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 C 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. The Board agreed with our recommendations and indicated that it intends to take corrective action. The Justice's response also indicated that she agreed with our

findings, and that she plans to make restitution of some of the missing funds while attending more training.

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 Town to make this plan available for public review in the Town Clerk's office.

## Justice Court

Justices are responsible for adjudicating cases brought before their Court and accounting for and reporting Court-related financial activities. The Justices must ensure that an effective system of internal controls is in place for properly safeguarding cash and other resources, processing financial transactions in a timely manner, and maintaining complete and accurate accounting records. Justices are responsible for depositing all moneys collected in a timely manner, issuing appropriate receipts, reconciling Court collections to corresponding liabilities, and reporting Court transactions to the Office of the State Comptroller's (OSC) Justice Court Fund (JCF). Routine reconciliation of bank accounts enables the Court to verify the accuracy of its financial records.

Justices are also responsible and accountable for all moneys received by their Courts. At any point in time, the liabilities of the Court, such as bail held on pending cases and unremitted fines and fees, should equal the Justices' available cash. Justices must also report traffic ticket dispositions to the New York State Department of Motor Vehicles (DMV). In addition, the Justices should provide an annual accounting to the Board. The Board is responsible for annually auditing the books and records of the Court or hiring an independent public accountant (IPA) or certified public accountant (CPA) for that purpose.

The Justice failed to account for all moneys received and the Board did not provide effective oversight of Court operations, resulting in a \$2,910 shortage in the Justice's account. The Justice did not prepare monthly bank reconciliations or accountabilities, issue appropriate receipts for all money received, deposit money in a timely manner, file accurate and timely financial reports, maintain an accurate listing of bail, or properly report ticket dispositions to the DMV.

### **Accountability Analysis, Bail Records and Bank Reconciliations**

Court justices do not account for financial transactions on a fiscal-year basis, and are not required to complete annual financial statements as other municipal operations do. Instead, they are required to account for cash receipts and disbursements from month to month, and determine accountability – by preparing a list of Court liabilities and comparing it with reconciled bank balances – on a monthly basis. Furthermore, when cash bail is imposed, justices are responsible for keeping track of it. Bail for pending cases is similar to a customer deposit and is posted by defendants (or by others on their behalf) generally to guarantee appearance in court to answer charges, after which the bail moneys are returned. Consequently, it is essential that

justices maintain an accurate accounting of bail. 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.

The Justice maintained a single bank account for bail, fines, and fees and used a computerized software program to track cases, issue receipts, and report to the JCF. She used both a computerized software program and a manual checkbook to record deposits and disbursements and checked the running balance in the checkbook against the bank statement to verify that balances matched. However, the Justice did not prepare bank reconciliations or perform accountability analyses on a monthly basis. We performed a cash count of undeposited Court funds and prepared an accountability analysis as of June 12, 2012, as follows:

<b>Court Assets as of June 12, 2012:</b>	
Justice bank account balance as of May 31, 2012	\$129
Cash on hand	\$0
Bad check reported to the JCF <sup>a</sup>	\$50
<b>Total Court Assets</b>	<b>\$179</b>
<b>Known Court Liabilities as of June 12, 2012:</b>	
Receipts reported to the DMV and JCF, but not transmitted	\$735
Cash bail pending	\$500
Partial payments collected, not transmitted	\$220
Partial payments collected and deposited, but not recorded or reported to the JCF	\$894
Fine and fee payments collected and deposited, but not recorded or reported to the JCF	\$705
Scofflaw fee collected and deposited, but not recorded or reported to the JCF	\$ 35
<b>Total Court Liability</b>	<b>\$3,089</b>
<b>Unaccounted-For Funds</b>	<b>\$2,910</b>
<sup>a</sup> The JCF refunds moneys to the courts in limited circumstances, e.g., for checks returned due to insufficient funds.	

The known Court liabilities are higher than cash available by \$2,910. Our analysis of bank deposits found the primary cause of the shortage to be a pattern of substitution where money orders were not recorded as received, but were deposited in place of other collections received in cash that were properly recorded, but not deposited. Because the Justice never provided a proper accountability analysis to the Board and controlled all key financial functions of the Court, the missing cash was not detected.

### **Issuing and Recording of Receipts**

General Municipal Law requires justices to issue acceptable receipt forms to acknowledge collection of all moneys paid to the court. A two-part receipt must be prepared immediately whenever moneys are received, one part to be retained by the Court and one part given to

the person making the payment. Receipts must be pre-numbered and issued consecutively, and must document the date, the person paying, the amount paid, the form of payment (cash, money order, or check), and the purpose. If receipts are generated from a computerized system, the software controls must prevent the alteration of receipt numbers. If they can be altered, then pre-numbered receipts should be used instead.

The Justice received all moneys remitted to the Court and used a computerized software program to generate sequentially numbered receipts with two parts, one retained by the Justice and the other for the defendant. However, the Justice has the ability to override any of the assigned receipt numbers. Because of this weakness and the Justice's sole control of all aspects of the financial transaction, we reviewed the 97 receipts and 17 deposits prepared by the Justice for the period January 1, 2010 to June 30, 2012 and found the following discrepancies:

- Six receipts were issued to six defendants using only three receipt numbers
- Six sequential receipt numbers were not used
- One receipt could not be located
- Receipts were not issued for 11 collections totaling \$9,126.<sup>1</sup>

The ability to override receipt numbers significantly increases the risk that money could be lost or stolen.

### **Timely and Intact Deposits**

State regulation requires Court personnel to deposit all moneys received into the justices' official bank accounts as soon as possible but no later than 72 hours after receipt. Moneys received must be deposited intact (not split or grouped into lump sum amounts, but deposited in the same amounts and composition, or form, as received). To properly account for moneys received and deposited, it is essential that justices establish control procedures that require accurate identification of the type of collections deposited so that they can be easily traced to cash receipt and computerized deposit records.

The Justice did not make intact or timely deposits, substituting money orders for cash. Cash receipts totaling \$1,455 were recorded but never deposited: six receipts for fines totaling \$735, one receipt for bail of \$500, and four partial payments totaling \$220. Instead, the Justice deposited money orders totaling \$1,634 in their place – which were not recorded – resulting in an adjusted bank balance of \$179

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<sup>1</sup> Five collections were for bail totaling \$8,000 and six collections were for fines totaling \$1,126.

(i.e., in excess of the amount recorded as received). In addition, most of the payment deposits were not timely. Of the 96 payments totaling \$25,098 made from January 1, 2010 to June 30, 2012, 75 payments totaling \$21,416 were not deposited within 72 hours of receipt. For example, the money collected in the first two months of 2010 and the first week in March, totaling \$4,120, was not deposited until March 11, 2010. The Justice said she was not aware of the 72-hour deposit requirement. In addition, six receipts totaling \$735 could not be traced to any deposits. (Our accountability analysis therefore includes this amount as a liability.)

The pattern of substituting money orders for cash deposits, in addition to the missing evidence of the deposit of funds that the Justice apparently received, indicates potential theft and is being examined by investigators from our office.

### **Monthly Reports and Remittance of Funds**

Accurate and timely reports 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 indicate of operational problems. Justices are required to submit monthly reports of Court activities to the JCF by the tenth day of the succeeding month. All moneys reported as collected, electronically or otherwise, must also be submitted to the Supervisor by the tenth of the following month. The JCF determines the final distribution of Court funds for the Town based on the monthly report filed by the Justice; the Supervisor is then notified by JCF of the amount due be retained by the Town. Partial payments result from the Justice allowing the defendant to pay over a period of time. As with full payment, partial payments should be immediately recorded, reported, and remitted to the Supervisor along with other collections for the month. Additionally, the Justice should ensure that a record of amounts collected and receivable for defendants making partial payments is maintained.

The Justice did not submit monthly reports to JCF or funds collected to the Supervisor in a timely manner. The Justice submitted 16 of the 30 monthly reports that were due during our audit period between five and 97 days late to the JCF, and submitted eight of the 30 checks to the Supervisor between eight and 42 days late. In addition, the Justice did not report and submit all payments received. Seven partial payments totaling \$894, three fully paid fine and fee payments totaling \$705, and one scofflaw fee of \$35 were not reported or submitted. Our accountability analysis therefore includes these amounts as a liability. The Justice stated that she did not submit or report partial payments when received, but only after final payment was made. In addition, the Justice did not keep a record of partial payments collected and receivable.

The lack of timely reports and up-to-date records not only impedes the processing of payments due the Town, but increases the risk of loss or misappropriation of funds.

## **Annual Audit**

Town Law and the State's Uniform Justice Court Act require town justices to present their records and dockets to their governing board for audit at least once a year. The Board is responsible for annually auditing the books and records of the Court or contracting with an IPA or CPA for that purpose. An annual audit helps Town officials ensure that the Justice is maintaining accurate and proper accounting records and properly accounting for and disbursing the Court's moneys. Such an audit is particularly important when there is no Court clerk and Court duties are not adequately segregated. The audit should be entered in the minutes of the Board's proceedings and documentation filed with the New York State Office of Court Administration (OCA) detailing the records reviewed and audit results.

The Board did not conduct an annual audit of the Justice as required. After the OCA requested a copy of the audit for fiscal years 2009 and 2010, the Board delegated this responsibility to an individual who performed a review. However, the Supervisor could not provide any proof that this individual had the appropriate credentials to perform this review on behalf of the Board. The reviewer's memorandum to the Board at the conclusion of the review stated that the review was not an audit, and contained disclaimers leading us to believe that the review was insufficient for purposes of Board oversight. Furthermore, the Justice stated that this review lasted almost three months and that she did not have her records while they were under review, resulting in the late filing of the monthly reports to the JCF.

Had the Board properly conducted the annual audit of the Court, it would likely have identified the lack of reconciliations, accountability analysis, and accurate bail reports, as well as other deficiencies found during our audit, in a timelier manner and could have implemented corrective action.

## **Recommendations**

1. The Board should contact law enforcement agencies to initiate an investigation into the missing money and take action to recover the amount of the cash shortage.
2. The Justice should maintain an accurate, up-to-date accounting of bail, prepare proper bank reconciliations, and prepare accountability analyses for the Board to review 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 Justice should ensure that signed receipts are issued for all collections. All receipts should be pre-numbered, issued in consecutive order, and include the amount received, from whom, for what, and in what form the money was paid.
4. The Board and Justice should assess the risk areas in the Court software (such as the ability to change records of receipt numbers) and develop compensating controls to mitigate these risks.
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 Justice should submit accurate monthly reports to the JCF and moneys received by the Court to the Town Supervisor no later than the tenth day of the succeeding month.
7. The Board should annually audit the Justice's records and reports or engage a qualified auditor to perform the examination annually.

## **APPENDIX A**

### **RESPONSE FROM LOCAL OFFICIALS**

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

SUPERVISOR  
**TOWN OF WAYNE**

Steuben County, New York

607-292-3450

May 2, 2013

**RECEIVED**  
GENERAL COUNSEL

MAY 07 2013

Office of the State Comptroller  
110 State Street  
Albany, New York 12207

Re: Town of Wayne Justice Court  
Report of Examination

OFFICE OF THE STATE COMPTROLLER  
ALBANY

Dear Sir/Madame:

The Wayne Town Board has reviewed your report of examination of the Town of Wayne Justice Court for the period January 1, 2010 through August 31, 2012. The board has met and agreed to adopt and undertake the following steps.

Counsel for the Town of Wayne has contacted the Steuben County Sheriff's Department, Investigation Unit to request an investigation by that agency. Counsel will follow up with that request and provide any information available.

The Town Board has instructed the Town Justice to provide accurate up to date account of bail receipts, bank reconciliations and prepare an accountability analysis for the board to review on a monthly basis. The Town Board has instructed the Town Justice that all cash on hand and on deposit in the bank should be compared to a listing of court liabilities. Any differences shall be investigated and corrective action taken.

The Town Board has instructed the Town Justice to insure that signed receipts are issued for all collections and all receipts shall be in consecutive order and include the amount received, from whom, for what, and in what form the money was paid.

The Town Board and Town Justice shall assess the risk areas and the current court software and develop compensating controls to mitigate these risks.

The Town Board has instructed the Town Justice to deposit all monies received, intact, within 72 hours within receipt excluding Sundays and holidays.

The Town Board has instructed the Town Justice to submit an accurate monthly report to the town board no later than the 10<sup>th</sup> day of the succeeding month and remit monies received by the court to the Town Supervisor within the month they are collected.

The Town Board shall engage a qualified auditor to perform and examination of the court records annually.

Should you have any further questions or comments concerning this response, please feel free to contact me.

Very truly yours,



STEPHEN BUTCHKO

**TOWN OF WAYNE**  
**OFFICE OF TOWN JUSTICE**

PO Box 182, Wayne, NY 14893  
(607) 292-6003

May 1, 2013

State of New York  
Office of The State Comptroller  
110 State Street  
Albany, New York 12236

Re: Town of Wayne Justice Court Audit

Ladies and Gentlemen:

First, I would like to thank you for this opportunity to respond to your findings. I am just as surprised and mystified as to the outcome of this audit as anyone. I was not aware of any shortage in the justice court funds and would like to state unequivocally that I had no knowledge or participation in said shortage.

See  
Note 1  
Page 15

I took the bench in January of 2000 upon the death of the preceding Judge of 30 plus years. An adjoining Justice, who was covering the Town of Wayne Court until my election, advised me as to the procedures involved. I was advised at that time that deposits were to be made on a monthly basis and then forwarded to the Office of The State Comptroller together with a monthly report and to provide a copy of said report to the Town Board each month as well. As the Town of Wayne is a small town and in a rural area several defendants pay in installments and I was advised that those payments were to be reported once full payment was received by the Court. Each month I checked the running balance in the checkbook against the bank statement and verified the amounts matched. Unfortunately, due to my prior practices, the shortage in the justice court account was not realized due to the installment payments being made and held in the justice court fund account. The above procedures had been my practice for the last 13 years, until my meeting with the Office of The State Comptroller representatives on January 10, 2013 with respect to this audit. **I have now put into practice and will continue to adhere to all of the recommendations in the Report of Examination.**

See  
Note 1  
Page 15

I would further like to state that I have taken it upon myself to seek extensive training in the clerk duties of the Justice Court. The Justice must obtain 12 hours of training and pass an examination each year in order to be certified to remain on the bench, however, this training does not go into detail the "clerk" functions of the court. I believe that is due to the fact that a majority of the Courts have clerks, who must obtain their own training. However, as a Justice is personally responsible for not only their own but their clerk's actions as well, I feel that all Justices, including Justices with court clerks, should have more training involving the clerk functions of their courts.

Upon my extensive review of the courts financial documents and files, I have discovered the following, which is in accordance with the findings of the recent examination by the Office of the State Comptroller:

See  
Note 2  
Page 15

- Bail funds in the sum of \$500.00 were found in the file. These funds were believed to have been deposited and were disbursed upon the disposition of the file and the poundage was reported and transmitted to OCA. Due to the installment payment funds being held in the account it was not realized that the \$500.00 bail funds were not deposited. These funds have now been deposited into the justice court account.
- Installment payments made and not reported as of this date, totaling \$857.50; fine and fee payments made and not reported as of this date totaling \$841.00; and scofflaw fees made and not reported as of this date totaling \$35.00. All of these funds will be transmitted with the April, 2013 monthly report by the 10<sup>th</sup> of the month.

See  
Note 3  
Page 15

I am in no way making excuses or placing blame elsewhere, I am just stating a fact that due to personal family issues in 2010 and 2011, I did retain the help of another individual in my duties as Town Justice. Notwithstanding, I fully understand that the Justice is personally responsible for all moneys received and disbursed by their Court and for safeguarding Court resources. Accordingly, I have personally deposited the shortage into the justice court account. However, I would like to state again that I had no knowledge of or participation in the shortage.

Very truly yours,

Hon. Sandra K. Orr

## **APPENDIX B**

### **OSC COMMENTS ON THE JUSTICE'S RESPONSE**

#### Note 1

The primary cause of the shortage was a pattern of substitution, which is intentional, not an error or mistake. The Justice was the sole person collecting, depositing, reporting and remitting Court funds.

#### Note 2

Since the discovery of these funds occurred after the completion of our audit work it was not included in the amounts we reported.

#### Note 3

At no time during our audit did the Justice state that another individual assisted her with her duties. Furthermore, the Board never hired or paid another individual to assist the Justice.

## APPENDIX C

### AUDIT METHODOLOGY AND STANDARDS

The objective of our audit was to examine the financial activity of the Court to determine if the Justice accurately and completely collected, recorded, deposited, and reported Court moneys in a timely manner. We interviewed appropriate Town officials, performed a cash count, reviewed the Justice's manual records and case files, and obtained information directly from the Justice's computerized financial records and then analyzed this information using computer-assisted techniques. To accomplish the objective of our audit, our procedures included the following:

- We examined the manual and computerized financial records for the collection and subsequent dispositions of fines, fees, surcharges, and bail moneys for the period January 1, 2008, to June 30, 2012. We compared these records to deposit slips, deposit compositions, bank deposits and disbursements provided by the bank for the period January 2010 through July 2012. Using this information, we sought to determine if receipts had been properly recorded and deposited, and if moneys had been remitted and reported in a timely and accurate manner.
- We requested and received a report from the JCF indicating date of receipt for January 2010 through June 2012 to determine the timeliness of the monthly report filings.
- We reviewed the monthly reports prepared by the Justice and compared them to the receipts issued and deposits made to determine the accuracy of the amounts reported.
- We reviewed bail records, requested a list of active bail from the Steuben County sheriff and interviewed the arraigning judge for a defendant to determine if bail was accurately accounted for and returned.
- We requested a backup of the automated data, observed the backup and used the data extracted for analysis against the JCF and DMV data.

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 D

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**AND SCHOOL ACCOUNTABILITY**

Andrew A. SanFilippo, Executive Deputy Comptroller  
Nathalie N. Carey, Assistant Comptroller

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