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Paul M. Wendel, Jr.  
County Executive  
Chautauqua County  
3 North Erie Street  
Mayville, NY 14757

Report Number: 2020-C&T-1

Dear County Executive Wendel:

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 or statutory authorization, or both, 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 New York State Finance Law and Section 42 of New York State Executive Law, we examined certain records and reports for court and trust funds of Chautauqua County (County) for the period January 1, 2017 through February 11, 2020.

### **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.<sup>1</sup> Payments made pursuant to court orders commonly involve surplus money from foreclosures and contract disputes resulting in a mechanic's lien.<sup>2</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>3</sup> funds from estates are entrusted to the Director of Finance for safekeeping by order of the Surrogate's Court. Together, the Director of Finance, County Clerk and Surrogate's Court must develop sound procedures and processes

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1 According to the Chautauqua County Administrative Code, the Director of Finance will take on powers, duties, obligations and liabilities required by any law to be performed by or imposed upon a County Treasurer, the Chief Fiscal Officer of a county or other county officers in relation to the collection of taxes.

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

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

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 Director of Finance, County Clerk and Surrogate's Court for the period January 1, 2017 through February 11, 2020. 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**

We found the records maintained by the Director of Finance were generally up-to-date and complete. We also found the Director of Finance 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 Director of Finance's custody that should have been turned over to the State Comptroller as abandoned property.

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

We identified funds from 90 actions totaling \$4,405 that were not properly turned over to the State Comptroller.<sup>4</sup> The Director of Finance and her secretary stated that they were aware they should be turned over and were in the process of taking corrective action.

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 paid, transferred or deposited, or ordered to be paid, transferred or deposited into a court. Although the Clerk maintains all court orders for each individual case that was handled in County Court, he does not maintain a court and trust 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. In addition, his records could not be used to verify that all court-ordered deposits had been properly received and deposited by the Director of Finance. The Deputy County Clerk told us that the County's Director of Finance maintains a register and that they are in constant communication so they could obtain the information if needed. However, it is an important internal control that the Clerk also maintain a separate register.

We also found for the Surrogate Court's records that there were no open court and trust fund actions involving that Court.

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<sup>4</sup> See Appendix A for detail of actions with the 10 highest dollar values. The range in dollar values for all 90 actions ranged from \$0.45 to \$500.

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

### **Recommendations**

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

Sincerely,

Elliott Auerbach  
Deputy Comptroller

cc: Ms. Kitty Crow, Director of Finance  
Mr. Larry Barmore, County Clerk  
Honorable Stephen W. Cass, Surrogate's Court Judge  
Mr. George Danyluk, New York State Unified Court System, Chief Internal Auditor

## Appendix A

### Schedule of Abandoned Property Ten Highest Dollar Amounts of 90 Actions Totaling \$4,405

| <u>Date of Origination</u> | <u>Abandoned Property Due Date</u> | <u>Title of Action</u> | <u>Amount</u> |
|----------------------------|------------------------------------|------------------------|---------------|
| September 2015             | April 2019                         | Dejesus-Colon, Luis    | \$500.00      |
| September 2015             | April 2019                         | Dejesus-Colon, Luis    | \$485.00      |
| September 2015             | April 2019                         | Ellis, Zack            | \$485.00      |
| September 2015             | April 2019                         | Morrison, Andrew       | \$485.00      |
| September 2015             | April 2019                         | Goldmith Jr, Mark      | \$250.00      |
| September 2015             | April 2019                         | Berry, Robert          | \$242.50      |
| September 2015             | April 2019                         | Mays, Jonathan         | \$242.50      |
| September 2015             | April 2019                         | Santiago, Dominic      | \$242.50      |
| September 2015             | April 2019                         | Mccoy, Lawrence        | \$100.00      |