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Kevin J. Andrews
Genesee County Treasurer
15 Main St.
Batavia, NY 14020

Report Number: 2024-C&T-7

Dear Treasurer Andrews:

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, 2021 through November 21, 2024.

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.

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

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 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. While the records maintained by the Treasurer, County Clerk and Surrogate's Court were generally up to date, the County Clerk and Surrogate's Court records were each missing one entry.

The County Clerk's register did not include an action ordering the County to deposit \$2,000 with the Treasurer during 2022. The County Clerk stated that he did not record it in his register because this was a civil action involving the County to acquire a permanent easement over certain property and the money was not remitted to his office. On its face, New York State County Law Section 530 requires the County Clerk's court and trust fund register to be used solely as a record of money and securities paid, transferred or deposited, or ordered to be paid, transferred or deposited into the court. However, our Office has opined that money paid directly to a county treasurer are considered money paid into court for the purpose of entry into the court and trust fund register (Opn No. 54-6842). Therefore, the County Clerk should record this money in his register regardless of whether it is ordered to be paid to the Court or directly to the Treasurer.

Separately, New York State Surrogate's Court Procedure Act (SCPA) Section 2502 requires, among other record keeping provisions, that the surrogate's court clerk maintain a court and trust fund register. Unlike County Law Section 530, SCPA Section 2502 flatly requires that the surrogate's court clerk's register contain a reference to any proceeding in which a decree or order directs a deposit of money. The Surrogate's Court register did not include an action ordering the executrix to deposit \$5,000 with the Treasurer during 2022. The Surrogate's Chief Court Clerk stated this likely occurred because her predecessor also served as the Chief Court Clerk for another County and she had insufficient oversight of her employees who maintained the register.

Recommendation

1. The County Clerk and Surrogate's Chief Court Clerk should ensure that complete court and trust registers are maintained.

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

Sincerely,

Robin L. Lois, CPA
Deputy Comptroller

cc: Michael T. Cianfrini, County Clerk
L. Matthew Landers, County Manager
Hon. Melissa Lightcap Cianfrini, Surrogate's Court Judge
Stephanie Lewandowski, Surrogate's Court Chief Clerk
Carol Jones, Acting Director of Internal Audit Services, Office of Court Administration