

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

JAMES P. MCDERMOTT,

A Justice of the Chester Town Court,
Warren County.

**AGREED
STATEMENT OF FACTS**

Subject to the approval of the Commission on Judicial Conduct

(“Commission”):

IT IS HEREBY STIPULATED AND AGREED by and between Robert H. Tembeckjian, Administrator and Counsel to the Commission, and Honorable James P. McDermott (“Respondent”), who is represented in this proceeding by John M. Silvestri, Esq., that further proceedings are waived and that the Commission shall make its determination upon the following facts, which shall constitute the entire record in lieu of a hearing.

1. Respondent has been a Justice of the Chester Town Court, Warren County, since January 1998. His current term expires on December 31, 2021. Respondent is not an attorney. Respondent is the sole justice of the Chester Town Court.

2. The Chester Town Court has had the same court clerk since in or about 1988. At various times during Respondent’s judgeship, there have also been additional, part-time clerks.

3. Respondent was served with a Formal Written Complaint dated June 18, 2018. He filed an Answer dated July 16, 2018.

As to Charge I

4. Respondent failed to account for the receipt of over \$15,000 in court funds or to promptly remit these funds to the person or agency entitled to same, as required by Section 27 of the Town Law, Section 99-a of the State Finance Law, Section 1803 of the Vehicle and Traffic Law, and Sections 2020 and 2021 of the Uniform Justice Court Act. As of January 2011, Respondent had over \$10,000 in in his court bank account and could not identify the source of the majority of those funds. Notwithstanding a January 2011 audit report published by the State Comptroller's office, recommending that Respondent remit the accumulated funds and alter the court's accounting procedures, Respondent failed to remit the funds in a timely manner. As of December 2016, Respondent had accumulated an additional surplus of over \$5,000, the sources of which he could not identify and which he did not timely remit.

As to the Specifications to Charge I

5. On February 4, 1998, one month after Respondent assumed the bench, approximately \$15,487.36 in court funds, which had accumulated during the tenure of prior judges, was deposited into Respondent's court bank account at Glens Falls National Bank and Trust Company.

6. In January 2011, the State Comptroller published a report summarizing the findings of an audit of the Chester Town Court's financial records for the period of January 1, 2007, to December 31, 2009. A copy of the 2011 audit report is annexed as Exhibit A.

7. The 2011 audit report indicated that the court's accounting procedures were inadequate, with the result that, *inter alia*, the court bank account had an unidentified balance of \$10,165 as of December 31, 2009. The auditors found that internal controls were not appropriately designed or operating effectively and that, consequently, one out of every 22 cash receipt entries had errors, including eight receipts that were issued out of sequence, and numerous differences between the amounts recorded as received and the amounts that were actually deposited. In addition, the dollar amounts reflected in three of the six monthly reports reviewed did not correspond with the accounting records, and the court clerk did not prepare monthly accountabilities or maintain complete records of bails on deposit.

8. The 2011 audit report further found that Respondent did not ensure that the records kept by the court clerks were accurate or corresponded with the supporting documentation. There were inaccuracies and errors throughout the accounting records, including deposits that did not agree with the receipts. The audit report noted that inconsistencies in the court records made it "virtually impossible" to confirm with certainty whether the court was collecting the fines, fees and surcharges individuals were sentenced to pay, or that all funds collected were properly recorded and paid over to the State Comptroller.

9. In its report, the State Comptroller provided seven recommendations, including that Respondent determine the source of the unidentified surplus and, if the money in the account could not be identified, report and remit the unidentified balance to

the State Comptroller as unidentified money. The State Comptroller did not recommend a time frame to implement its recommendations.

10. A subsequent audit by the State Comptroller, for the period of January 1, 2015, to December 28, 2016, again indicated that Respondent's accounting procedures were inadequate, with the result that, *inter alia*, the court bank account had an average unidentified balance of \$15,700 during the audit period. The Comptroller again recommended that Respondent identify the source of the unidentified money and remit any unidentified funds to the Justice Court Fund (JCF). The State Comptroller did not recommend a time frame to implement its recommendations. A copy of the 2017 audit report is annexed as Exhibit B.

11. Between the publication of the first audit report in January 2011 through the publication of the second audit report in June 2017, Respondent did not report or remit the unidentified funds in the court's bank account.

12. Respondent did not begin to remit the unidentified funds until November 2017, when he reported and remitted \$5,000 in unidentified funds to the State Comptroller.

13. In March 2018, Respondent reported and remitted an additional \$5,000 in unidentified funds to the State Comptroller.

14. In April 2018, after the Commission first communicated with Respondent about the matters herein, the Town of Chester retained a forensic accounting firm to determine, *inter alia*, the source of the unidentified surplus funds. The accounting firm informed Respondent that it would be cost prohibitive to identify the source of the

surplus funds that had not yet been remitted to the State Comptroller. A copy of the accounting firm's report is annexed as Exhibit C.

15. In May 2018, after receiving the accounting firm's report, Respondent reported and remitted an additional \$5,513.12 in unidentified funds to the State Comptroller.

16. By reason of the foregoing, Respondent should be disciplined for cause, pursuant to Article 6, Section 22, subdivision (a), of the Constitution and Section 44, subdivision 1, of the Judiciary Law, in that Respondent failed to uphold the integrity and independence of the judiciary by failing to maintain high standards of conduct so that the integrity and independence of the judiciary would be preserved, in violation of Section 100.1 of the Rules; failed to avoid impropriety and the appearance of impropriety, in that he failed to respect and comply with the law and failed to act in a manner that promotes public confidence in the integrity of the judiciary, in violation of Section 100.2(A) of the Rules; and failed to perform the duties of judicial office impartially and diligently, in that he failed to ensure that his judicial duties take precedence over all his other activities, in violation of Section 100.3(A) of the Rules, failed to be faithful to the law and maintain professional competence in it, in violation of Section 100.3(B)(1) of the Rules, and failed to diligently discharge his administrative responsibilities and maintain professional competence in judicial administration, in violation of Section 100.3(C)(1) of the Rules.

Additional Factors

17. The February 4, 1998 deposit into Respondent's court account of funds accumulated by prior judges contained unidentified funds that appear to account for a

portion of the surplus identified by the State Comptroller in its two audit reports.

Respondent acknowledges, however, that the surplus amount increased by approximately \$5,000 between the publication of the 2010 and 2017 audit reports, indicating that inappropriate and/or ineffective accounting practices during his tenure also contributed to the surplus of unidentified funds in the court's bank account.

18. Respondent avers that after the State Comptroller conducted both audits, he attempted to identify the source(s) of the surplus funds and requested that the Town of Chester provide accounting assistance. That assistance was not provided until April 2018.

19. Respondent acknowledges that he is responsible for accounting for all money collected by the court and deposited into his bank account, for remitting funds to the Comptroller by the 10th day of the month following collection, that he must supervise the clerk's activities with regard to the receipt, documentation and deposit of court funds, and that he must reconcile his bank account monthly. Respondent pledges to timely seek assistance from the Justice Court Fund and/or Judicial Resource Center with any accounting concerns and questions. He avers that he has undertaken steps to improve accounting procedures, such as obtaining accounting software and separating the court bank account into designated fine and bail accounts.

20. The State Comptroller did not find evidence that court funds were lost or misappropriated. However, Respondent recognizes that failing to properly account for large sums of money could result in at least the appearance that court funds were being mismanaged or misappropriated, undermining public confidence in the integrity of the

court. Therefore, Respondent avers that he is committed to avoid any repetition of the deficient financial practices addressed herein.

IT IS FURTHER STIPULATED AND AGREED that Respondent withdraws from his Answer any denials or defenses inconsistent with this Agreed Statement of Facts.

IT IS FURTHER STIPULATED AND AGREED that the parties to this Agreed Statement of Facts respectfully recommend to the Commission that the appropriate sanction is public Censure based upon the judicial misconduct set forth above.

IT IS FURTHER STIPULATED AND AGREED that if the Commission accepts this Agreed Statement of Facts, the parties waive oral argument and waive further submissions to the Commission as to the issues of misconduct and sanction, and that the Commission shall thereupon impose a public Censure without further submission of the parties, based solely upon this Agreed Statement. If the Commission rejects this Agreed Statement of Facts, the matter shall proceed to a hearing and the statements made herein shall not be used by the Commission, the Respondent or the Administrator and Counsel to the Commission.

Dated: 10/19/18



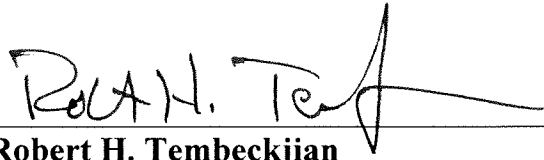
Honorable James F. McDermott
Respondent

Dated: 10/19/18



John M. Silvestri, Esq.
Attorney for Respondent

Dated: 10/19/18

A handwritten signature in black ink, appearing to read "Robert H. Tembeckjian", written over a horizontal line.

Robert H. Tembeckjian
Administrator & Counsel to the Commission
(**Cathleen S. Cenci** and **Eteena J. Tadjogueu**, Of
Counsel)

OFFICE OF THE NEW YORK STATE COMPTROLLER



DIVISION OF LOCAL GOVERNMENT
& SCHOOL ACCOUNTABILITY

Town of Chester

Justice Court

Report of Examination

Period Covered:

January 1, 2007 — December 31, 2009

2010M-159



Thomas P. DiNapoli

EXHIBIT

A

tabbles

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State of New York Office of the State Comptroller

Division of Local Government and School Accountability

January 2011

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 Town 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 the Town of Chester 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 Chester (Town) is located in Warren County. The Town is governed by an elected Town Board (Board) consisting of the Town Supervisor (Supervisor) and four Council members. The Supervisor is the chief executive and chief fiscal officer of the Town. The Board has the overall responsibility for overseeing the financial activities of the Town, including the financial activity of the Justice Court (Court). The Town currently has one elected Justice who has presided over the Court since January 1998.

The Justice is responsible for adjudicating legal matters within the Court's jurisdiction and properly accounting for all moneys collected and disbursed by the Court. Justices are required to report monthly to the State Comptroller's Justice Court Fund (JCF) on the financial activities of the preceding month. The Justice is assisted by a full time Court Clerk and two part-time clerks.

During our audit period, the Justice adjudicated a total of 8,270 cases and remitted approximately \$1.1 million dollars in fines, fees, and surcharges to the Supervisor to be distributed among New York State, Warren County, and the Town of Chester. During our audit period, the Court returned \$36,000 in bail to various defendants. The Justice maintains one official bank account.

Objective

The objective of our audit was to review internal controls over the financial operations of the Court. Our audit addressed the following related question:

- Are internal controls over the financial operations of the Court appropriately designed and operating effectively to adequately safeguard Court assets?

Scope and Methodology

We examined the financial operations of the Justice Court for the period January 1, 2007 to December 31, 2009.

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 B 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. Town officials generally agreed with our recommendations and indicated they planned to initiate corrective action.

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

Town Justice

Justices are responsible for adjudicating cases brought before their Court and accounting for and reporting Court-related financial activities. To meet this responsibility they must maintain complete and accurate accounting records and safeguard all moneys collected. Justices are responsible for the timely deposit of all moneys collected, reconciling Court collections to corresponding liabilities, and for reporting Court transactions to the Justice Court Fund (JCF) in a timely manner. Routine reconciliation of bank accounts enables Court personnel to verify the accuracy of the financial records and establish control over cash.

Town Justices are responsible for the money received by their Court even if that money is received by personnel under their supervision. It is the responsibility of the Justice to see that internal controls are in place and working effectively. This responsibility includes overseeing and carefully monitoring the work performed by Court employees. The Town Justice is also responsible for providing an annual accounting to the Town Board. The Board is responsible for annually auditing the books and records of the Court or hiring a professional auditor for that purpose.

We found that internal controls were not appropriately designed or operating effectively. Consequently, one out of every 22 cash receipt entries had errors, including eight receipts that were issued out of sequence, and numerous differences between the amounts recorded as received and the amounts that were actually deposited. In addition, three of the six monthly reports reviewed did not agree with the accounting records, and the court clerk did not prepare monthly accountabilities or maintain complete records of bails on deposit. Finally, although the Court's records were audited twice during our audit period, the Board never requested that the Justice take corrective action for the discrepancies identified by the audit committee. As a result, the unidentified balance in the Justice's account amounted to \$10,165 as of December 31, 2009.

Record Keeping

To properly account for the Court's financial activities, it is important that Justices maintain complete, accurate, and updated accounting records in accordance with legal requirements and other guidance such as outlined in the State Comptroller's Handbook for Town and Village Justices and court clerks. Moneys received by the Court should be reconciled with the supporting case documentation and the financial information should be promptly and properly recorded in the cash book or accounting system. This means that the moneys collected should agree with:

- The amounts recorded on the duplicate receipt forms issued for those collections
- The receipt amounts recorded in the cash receipts section of the cash book or accounting records
- The deposits made from those same collections
- The recorded amounts in the case files.

We found the Justice did not ensure that the records kept by the court clerks were accurate or agreed with the supporting documentation. There were inaccuracies and errors throughout the accounting records. Errors included deposits that did not agree with the receipts recorded in the accounting records as to the composition, amount, or date of disposition. For example, 15 entries totaling \$2,250 were represented as cash in the cash book, but were actually checks or credit card charges, and three receipts totaling \$50¹ were missing from the cash book completely. Record keeping errors led to timing errors in monthly reports; consequently, certain Court activity was not properly reported in the month it occurred.

The Court uses three types of receipts: handwritten receipts, credit card receipts and computer generated receipts. For our audit testing, we selected three months of Court receipt activity; January 2007, December 2008 and September 2009, a total of 648 entries. The Court uses a computerized accounting system, where the amounts entered as received are recorded as cash receipts and posted automatically to an electronic docket that can be printed. Therefore, we traced the receipt entries from the accounting system to duplicate deposit tickets and credit card batch reports to determine the accuracy of the accounting system entries and whether the recorded amounts agreed with the bank deposits. We found 29 record keeping errors in these receipts, or about one for every 22 recorded entries. In addition to the errors discussed previously, we found eight receipt numbers that were issued out of sequence, one recorded receipt of \$185 was not deposited, and a \$260 receipt was recorded as \$75. The Town Justice explained that these were the result of corrections made to the court records subsequent to the original transactions, which were posted automatically to the electronic docket. We selected six monthly reports and traced the reported activity back to entries in the accounting system. For three of the six months tested, the information on the monthly report did not agree with information recorded in the

¹ Court personnel were unable to determine the amount received, if any, for two of the receipts because they did not retain hard copies of the receipts for audit purposes.

accounting system. For example, the September 2008 monthly report did not include \$580 of receipts recorded in the accounting system which were instead subsequently reported as the following month's activity on the October report. We found that the three monthly reports were inaccurate because the Court Clerk was incorrectly trying to make the receipts per the monthly reports agree with the amount of money on hand, instead of the amount of the cases disposed during the month.

Town personnel were unable to reconcile daily deposits to the daily deposits recorded in the accounting system because deposits from multiple days were grouped together and/or receipts for one day were split between two deposits and combined with receipts from other days. The inconsistencies in the Court records make it virtually impossible to confirm with certainty whether the Court is collecting those fines, fees and surcharges which individuals are sentenced to pay or that all funds collected are properly recorded and paid over to the State, County and Town.

The failure to maintain complete and accurate financial records results in fines, fees and other funds not being accounted for or reported properly and increases the overall risk that errors or irregularities could occur and remain undetected.

Accountability

It is important for Court personnel to periodically verify the accuracy of the financial records and establish adequate control over cash by routinely reconciling the Court's bank accounts. The amount of cash on hand and on deposit in the bank should be compared to detailed lists of amounts due to the Justice Court Fund (JCF) and other outstanding liabilities such as pending bail. This comparison is referred to as an accountability analysis. Performing bank reconciliations and accountability analyses are critical procedures that serve to document the status of moneys held by the Court at any point in time. The creation of a bank reconciliation and accountability analysis provides a means of verifying that the Court is properly addressing its custodial responsibilities. During our audit period the responsibilities for preparing monthly bank reconciliations and accountability analyses were delegated to the full-time Court Clerk.

We reviewed the bank statements and check registers for a total of six months during our audit period including two months from each calendar year 2007-09 to determine whether proper bank reconciliations and accountability analyses had been prepared. We found that although the Court Clerk had prepared bank reconciliations, which reconciled adjusted bank balances to the checkbook register balance, the Court Clerk had not kept an accurate accounting of pending bail for several years and did not prepare monthly accountability analyses.

The Court's accounting system produces a record of current pending bail but does not create pending bail reports from previous periods. Although the court clerk also recorded bail in a supplemental manual bail book, these two records do not agree. In an attempt to determine the amount in the Justice's bank account that constitutes outstanding bail, we subtracted the amount payable to the Supervisor for the month's Court activity from the account balance and found discrepancies between the amount of bail recorded in the Court records and the cash balance in the Justice's account. For example, as of January 31, 2007 the cash balance in the Justice's account was \$46,586 with \$12,085 due to the Supervisor for the month's Court activity and \$12,150 recorded as pending bail by the Court Clerk leaving a balance of \$22,351, which was unidentified. Similarly, the unidentified balance in the Justice's account amounted to \$10,165 as of December 31, 2009. Due to poor record keeping in the Court, especially for bail, Town officials could not determine what the unidentified balances in the Justice account comprised.

Due to the lack of a monthly accountability and the significant unaccounted balances in the Justice's account, we traced all checks written against the account during our audit period to determine that they were written for legitimate Court purposes. We reviewed 138 checks written during the period January 1, 2007 through December 31, 2009 and found that all checks were written for legitimate purposes.

When pending bail records are not properly maintained and a monthly accountability analysis is not prepared, there is a risk that errors or irregularities can occur and remain undetected for several months or years.

Annual Audit

Town Law and the Uniform Justice Court Act require Town Justices to present their records and dockets to the 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 a public accountant for that purpose. An annual audit provides assurance that accounting records are properly maintained, cash assets are properly accounted for and Court moneys are properly disposed of.

The Town has an audit committee composed of two members of the Board that audited the Justice's books and records for the 2007 and 2008 fiscal years. The audit committee reports to the Board indicated that questions arose regarding accounting in the court. Discrepancies identified in the report dated January 7, 2008 (for 2007) were attributed to computer glitches, and adjustments had to be made to the cash book reports by the Court Clerk to adjust the records. The next audit report, dated December 29, 2008 (for 2008), reflects that

although questions arose again regarding accounting in the Court, no explanation was provided at the time of the audit because the Court Clerk was absent from the meeting and the temporary part-time Court Clerk was not working at the time of these events.

These questions were never answered to the satisfaction of the Board, and the Board failed to request that the Justice take corrective action. The lack of follow-up on recurring findings in successive audits and failure to audit the books and records for the 2009 fiscal year allowed the same types of errors to continue without corrective action being implemented.

Recommendations

1. The Justice should routinely review the Court accounting records to ensure that they are accurate and agree with the supporting documentation. In addition, duplicate receipts should be issued in sequence, and copies of those receipts should be retained on file.
2. The Justice should direct Court personnel to deposit all funds received, intact, and reconcile funds to be deposited as recorded on the cash receipts.
3. The Justice should ensure that the Justice Court Fund monthly reports accurately reflect the activity of the Court.
4. The Justice should keep an accurate accounting of pending bail in the Justice Court account.
5. The Justice should ensure that a monthly accountability analysis is prepared and that the amount of pending bail agrees with this accountability analysis. The Justice should review the accountability each month to verify its accuracy and timeliness.
6. The Justice should determine the source of the unidentified moneys in the Justice Court bank account. If the money in the account cannot be identified, the Justice should report and remit the unidentified balance to the State Comptroller as unidentified money.
7. The Board should require that the Town Justice take corrective action when an audit reveals discrepancies in the Court records.

APPENDIX A
RESPONSE FROM LOCAL OFFICIALS

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

TOWN JUSTICE



TOWN OF CHESTER

WARREN COUNTY

P.O. BOX 486, CHESTERTOWN, NEW YORK 12817

Tel. 494-3133

TOWN OF CHESTER
JUSTICE COURT
REPORT OF EXAMINATION
2010M-159

RECOMMENDATION: 1

THE JUSTICE SHOULD ROUTINELY REVIEW THE COURT ACCOUNTING RECORDS TO ENSURE THAT THEY ARE ACCURATE AND AGREE WITH THE SUPPORTING DOCUMENTATION. IN ADDITION, DUPLICATE RECEIPTS SHOULD BE ISSUED IN SEQUENCE, AND COPIES OF THOSE RECEIPTS SHOULD BE RETAINED ON FILE.

ANSWER: 1

THE JUSTICE WILL REVIEW MORE ROUTINELY TO MAKE SURE ALL FUNDS ARE ACCURATE. DUPLICATE RECEIPTS ARE CURRENTLY IN SEQUENCE AND ARE KEPT WITH DISPOSED TRAFFIC TICKETS AND CASES.

RECOMMENDATION: 2

THE JUSTICE SHOULD DIRECT COURT PERSONNEL TO DEPOSIT ALL FUNDS RECEIVED, INTACT, AND RECONCILE FUNDS TO BE DEPOSITED AS RECORDED ON THE CASH RECEIPTS.

ANSWER: 2

JUSTICE PERSONNEL ARE MAKING DAILY BANK DEPOSITS BY 3:00 PM OR IN A NIGHT DROP AT LOCAL BANK. THE PERSONNEL ARE CHECKING THE WORK DONE EACH DAY. THIS STARTED DEC. 1, 2010.

RECOMMENDATION: 3

THE JUSTICE SHOULD ENSURE THAT THE JUSTICE COURT FUND MONTHLY REPORTS ACCURATELY REFLECT THE ACTIVITY OF THE COURT.

ANSWER:3

JUSTICE IS REVIEWING THE MONTHLY REPORTS TO ENSURE THAT THEY REFLECT THE COURTS ACTIVITY. THIS STARTED APRIL 1, 2010.

RECOMMENDATION: 4

THE JUSTICE SHOULD KEEP AN ACCURATE ACCOUNTING OF PENDING BAIL IN THE JUSTICE ACCOUNT.

ANSWER: 4

THE JUSTICE COURT IS IN THE PROCESS OF GOING THROUGH THE BAIL BOOK FOR THE LAST 10 YEARS TO GET AN ACCURATE AMOUNT OF BAIL. THIS STARTED DEC. 1, 2010

RECOMMENDATION: 5

THE JUSTICE SHOULD ENSURE THAT A MONTHLY ACCOUNTABILITY ANALYSIS IS PREPARED AND THAT THE AMOUNT OF PENDING BAIL AGREES WITH THIS ACCOUNTABILITY ANALYSIS. THE JUSTICE SHOULD REVIEW THE ACCOUNTABILITY EACH MONTH TO VERIFY ITS ACCURACY AND TIMELINESS.

RECOMMENDATION: 6

THE JUSTICE SHOULD DETERMINE THE SOURCE OF THE UNIDENTIFIED MONEYS IN THE JUSTICE COURT BANK ACCOUNT. IF THE MONEY IN THE ACCOUNT CANNOT BE IDENTIFIED, THE JUSTICE SHOULD REPORT AND REMIT THE UNIDENTIFIED BALANCE TO THE STATE COMPTROLLER AS UNIDENTIFIED MONEY.

ANSWER: 5 & 6

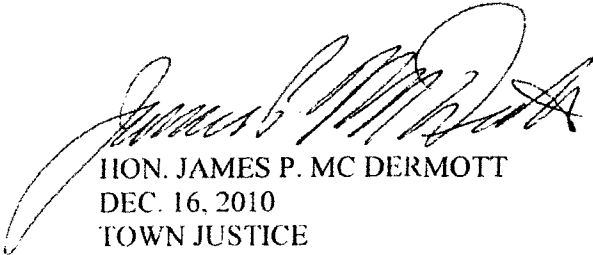
AFTER GOING THROUGH THE BAIL BOOK THE JUSTICE WILL SEND ALL MONIES NOT IDENTIFIED AS OVERAGE TO THE STATE COMPTROLLER. STARTED WORKING ON THIS DEC. 1, 2010.

RECOMMENDATION: 7

THE BOARD SHOULD REQUIRE THAT THE TOWN JUSTICE TAKE CORRECTIVE ACTION WHEN AN AUDIT REVEALS DISCREPANCIES IN THE COURT RECORDS.

ANSWER: 7

THE JUSTICE PERSONNEL WILL ONLY USE RECEIPTS GENERATED BY COMPUTER UNLESS COMPUTER IS DOWN, AND RECEIPTS FOR CREDIT CARDS. THE JUSTICE OFFICE HAS NOT BEEN USING HAND WRITTEN RECEIPTS SINCE MARCH OF 2010.



HON. JAMES P. MC DERMOTT
DEC. 16, 2010
TOWN JUSTICE
TOWN OF CHESTER

APPENDIX B

AUDIT METHODOLOGY AND STANDARDS

The objective of this audit was to review internal controls over the financial operations of the Court. More specifically our objective was to determine whether the internal controls over the financial operations of the Court are appropriately designed and operating effectively to adequately safeguard Court assets.

To accomplish the objective of this audit and obtain valid audit evidence we performed the following audit procedures.

- We interviewed Town officials and employees to gain an understanding of the procedures used to control cash receipts in the Town Justice Court.
- We assessed the reliability of computer-processed data in the Justice Court.
- We reviewed the financial records and reports, tested selected records and transactions and examined pertinent documents to determine whether cash transactions had been properly recorded.
- We reviewed monthly bank reconciliations and performed accountability analyses for the Town Justice Court.
- We reviewed audit committee reports to the Board for the audits performed during our audit period.

We conducted our 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 objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

APPENDIX C

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DIVISION OF LOCAL GOVERNMENT
AND SCHOOL ACCOUNTABILITY

Steven J. Hancox, Deputy Comptroller

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Town of Chester

Justice Court Operations and Credit Card and Employee Reimbursements

JULY 2017



OFFICE OF THE NEW YORK STATE COMPTROLLER
Thomas P. DiNapoli, State Comptroller



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Report Highlights

Town of Chester

Audit Objective

Determine whether Justice Court moneys were collected, recorded, deposited, disbursed and reported in a proper and timely manner.

Determine whether internal controls over credit cards and employee reimbursements were adequately designed and operating effectively.

Key Findings

- The Justice's cash exceeded known liabilities for each of the 22 months in our audit period by an average of \$15,700.
- Employees made 12 Town credit card purchases without receipts totaling \$1,916.
- Employees were not required to obtain prior authorization to make 204 reimbursed purchases totaling \$9,078.

Key Recommendations

- Determine why the Justice's cash exceeds known liabilities and remit any unidentified funds to the Office of the State Comptroller's Justice Court Fund (JCF).
- Ensure the Court receives three credit card authorizations totaling \$533 that were not deposited.
- Adopt policies and procedures that limit the use and reimbursement of personal funds used for Town purchases.

Town officials generally agreed with our recommendations and indicated they planned to initiate corrective action.

Background

The Town of Chester (Town) is located in Warren County. The Town is governed by an elected five member Town Board (Board) which is composed of the Town Supervisor (Supervisor) and four council members. The Board is responsible for the general management and control of Town finances and overseeing financial activities, including the Justice Court (Court). The Town has one elected Justice and one full-time Court clerk.

The Supervisor, as chief fiscal officer and chief executive officer, is responsible for the Town's day-to-day management, including basic accounting functions and maintaining accounting records, under the Board's direction.

Quick Facts

\$713,000	Fines, fees and bail collected during audit period
\$24,700 and \$14,000	Credit Card Purchases and Employee Reimbursements
\$4.4 Million	2017 Budgeted Appropriations

Audit Period

January 1, 2015 - October 31, 2016. We extended our scope to December 28, 2016 for bails.

Justice Court Operations

The Court has jurisdiction over vehicle and traffic, criminal, civil and small claims cases. Justices adjudicate legal matters within the Court's jurisdiction and administer money collected from fines, surcharges, civil fees, restitution and bail. The clerk, who is appointed by the Justice, collects payments, issues receipts,¹ posts payments in the computer system, prepares and makes deposits and prepares monthly reports to the JCF.

How Should Justices Account for Court Funds?

Justices are required to issue receipts to acknowledge the collection of all funds paid to the Court, record each receipt in the accounting records and deposit all funds intact (i.e., in the same amount and form as collected) as soon as possible but no later than 72 hours from the date of collection, exclusive of Sundays and holidays. Justices should also submit monthly reports detailing all fines, fees, surcharges and forfeited bail collected to the JCF by the tenth day of the succeeding month.

On a monthly basis, Justices should perform a bank reconciliation to the checkbook and an accountability of funds by preparing a list of court liabilities and comparing it to reconciled bank balances and money on hand. Court liabilities should equal the cash balance and any unidentified funds should be remitted to the JCF. Justices collect bail² from defendants to ensure their appearance in Court to answer charges. The Justice should maintain records of the date of receipt, who paid it and to which case it relates. Disbursements generally involve returning bail, transferring moneys to other courts and monthly remittances to the Town Supervisor or JCF. The clerk can prepare the checks but they must be reviewed and signed by the Justice.

Collections Were Largely Receipted, Deposited and Reported

We reviewed 676 computerized receipts totaling \$121,921 and found they were issued in sequential order, deposited in a timely manner and accurately reported to the JCF. Except for a few minor exceptions that we discussed with Court officials, all collections were deposited intact.

¹ Receipts were printed out of the Court's computer system.

² Bail is returned when the case has been adjudicated or used to pay fines and fees imposed by the Court.

Bank Reconciliations Were Not Accurate and Accountabilities Were Not Prepared

The clerk calculated a monthly adjusted bank account balance on a timely basis. However, she did not always compare the adjusted bank balance to her checkbook register balance. Additionally, none of the adjusted bank balances calculated for our audit period included deposits in transit or identified and resolved discrepancies related to credit card payment deposits. We prepared a bank reconciliation for all 22 months in our audit period and found the adjusted bank balances exceeded the checkbook register balances by between \$730 and \$5,000 for all the months. In addition, we identified three credit card authorizations totaling \$533 that were not deposited into the Court's bank account.

In addition, the clerk did not prepare monthly accountability analyses to ensure liabilities agreed with cash. We prepared an accountability analyses for all months in our audit period and found the cash on hand exceeded known liabilities (unremitted fines and fees and bail held on pending cases) by approximately \$15,200 to \$16,000 for each month during our audit period, with an average variance of approximately \$15,700. The clerk and the Justice believe the excess cash related to old outstanding and unreturned bail. However, because they maintained poor records, they could not accurately determine the composition of the unidentified balance in the bank account.

In our prior audit report issued in 2011 [Report 2010M-159], we identified a similar finding that the clerk did not prepare monthly accountability analyses and that cash on hand exceeded the known liabilities by \$10,165 as of December 31, 2009. Town officials could not determine the composition of the unidentified balance in the Justice account in 2009 and the unidentified funds were not remitted to the JCF as required. When monthly bank reconciliations are inaccurate and monthly accountability analyses are not prepared, there is a risk that unidentified funds can remain on deposit and that errors or irregularities can occur and remain undetected for several months or years.

Pending Bail Report Was Not Accurate

The Court's computer system produces a record of current pending bail as of the date the report is printed and the clerk records bail in a supplemental manual bail book. We reviewed records as of December 28, 2016³ to calculate the

³ The Court did not accept or return bail from November 1, 2016 through December 28, 2016.

outstanding bail. We found that the pending bail report included bails totaling \$3,670 for 11 individuals, but did not include bails totaling \$750 for two individuals recorded in the manual bail book.

This occurred because the clerk did not regularly generate a current pending bail report or reconcile the balance in the manual bail book to the bank account. The pending bail reports must be regularly generated because the computer system cannot provide a report as of a previous point in time. As discussed previously, the Justice used only one bank account for fines, fees and bails and we found that bank account contained approximately \$15,200 to \$16,000 more than the known liabilities. As a result, the Justice cannot accurately reconcile the bail in the accounting records to the bail on deposit.

In our prior audit report [Report 2010M-159], we identified similar findings for the same clerk and Justice. The Justice's failure to correct the deficiencies in our prior audit report resulted in continuing problems with the accounting for bail proceeds. Without accurate and complete bail records, the Justice is unable to ensure bail is properly accounted for and appropriately disbursed. Had pending bail reports been generated and compared to the manual bail book and the bank account, these errors likely would have been detected.

Disbursements Were Appropriate but Were Not Always Processed Properly

We reviewed all 69 checks totaling \$710,700 disbursed during our audit period and found they were for appropriate purposes. However, 15 checks totaling \$438,800 that were payable to the Supervisor were not cashed because they were voided by the bookkeeper who instead electronically transferred the amounts out of the Justice's bank account into the Supervisor's bank account.⁴ The Justice was aware the bookkeeper sometimes made these transfers and did not specifically authorize the bookkeeper to make these transfers but also did not ask the bookkeeper to stop making the transfers or contact the bank to remove the bookkeeper's access. When someone other than the Justice or clerk has access to court bank accounts, there is a risk that errors or irregularities can occur and remain undetected.

⁴ The bookkeeper wrote void on these checks and retained them with the documentation for electronic transfers.

What Do We Recommend?

The Justice should:

1. Ensure bank reconciliations are prepared monthly and that they include deposits in transit and card payment deposits.
2. Ensure the Court receives the three credit card authorizations that were not deposited into the Court's bank account.
3. Ensure accountability analyses are prepared monthly, whereby known liabilities are reconciled to available cash. Any differences should be promptly investigated and resolved.
4. Identify the source of the overage in the Court's bank account and remit any unidentified funds to the JCF.
5. Regularly generate a current pending bail report and reconcile that report to the manual bail book and the bank account.
6. Update the Court's computer system to reflect the bails held for two individuals totaling \$750 that were recorded in the manual bail record.
7. Ensure that no individuals have access to his bank account without formal authorization.

Town Credit Cards and Employee Reimbursements

How Should Officials Control Credit Cards and Employee Reimbursements?

Because credit cards can be used almost as easily as cash, it is critical that the Board establish policies and procedures for credit cards that identify authorized users, define credit limits, describe the purchases allowed and the prior approval and documentation required. If credit cards are used by more than one employee, Town officials should implement controls over custody to ensure accountability. Also, there is an increased risk if employees make Town purchases with their personal funds and seek reimbursement. Since the Town has credit cards that can be used for this purpose, the practice of employees making purchases with their own funds and then seeking reimbursement should be stopped.

Controls Over Credit Cards Were Not Adequate

The Town had two general credit cards each with a limit of \$2,000 and two store credit cards with limits of \$5,000 and \$3,200. Additionally, the Town had a line of credit with an online retailer with a limit of \$6,000 and a line of credit with a retailer with a limit of \$10,000. All four credit cards were stored in a locked filing cabinet in the bookkeepers' office. Although the general and store cards were not issued in the bookkeeper's name, the bookkeeper had control over them and used them to make purchases. In addition, he allowed other Town officials (e.g., library and parks and recreation employees) to use them to make purchases. For example, one general card that was issued to the former Supervisor who left office on December 31, 2015 was used by other Town officials until it expired in July 2016.

The bookkeeper had custody of the cards, had access to both lines of credit and allowed other employees to use them. Although the Board was aware of this, the Board did not specifically authorize the bookkeeper to do so or establish policies and procedures over their use. Also, the bookkeeper did not record and track the custody of the credit cards or monitor their use.

The Town paid 96 credit card, store card and line of credit claims totaling \$24,679 during our audit period. We reviewed 12 claims for 98 purchases totaling \$10,609 and found that 12 purchases totaling \$1,916 were not supported by receipts or other documentation. From our review of the credit card statements, the claims and conversations with Town officials, we determined certain information for the purchases (e.g., vendor names and brief descriptions of the items purchased) and what some of the purchases were for (e.g., a filing cabinet, wire racks and printer toner). Although we obtained reasonable assurance these purchases were for legitimate purposes, the Board should not have audited and approved these

claims for payment without appropriate documentation. The lack of controls over credit cards increases the risk of unauthorized purchases.

Controls Over Employee Reimbursements Were Not Adequate

Employees are required to complete detailed vouchers and submit receipts for reimbursement. However, Town officials did not establish policies and procedures that limit the types of purchases employees make and are reimbursed for or the circumstances under which they are made. As a result, employees are not required to obtain prior authorization to make Town purchases with personal funds and then seek reimbursement from the Town. In June 2016, the Clerk began reviewing vouchers and receipts prior to submitting them to the Board for approval of payment.

We reviewed 53 vouchers totaling \$14,019 and found all 53 were properly supported with receipts and for valid Town purposes. However, these vouchers included 204 purchases totaling \$9,078 for goods and services for the Town purchased by employees with their personal funds that did not require prior authorization. For example, the Town Clerk who is also the Youth Director made purchases totaling \$2,805 for the youth program (uniforms, umpires and supplies). Also, the bookkeeper made purchases totaling \$4,701 primarily for postage and office supplies using his personal credit card. The Town Clerk and bookkeeper told us they used personal funds because in some cases the balance on the Town's credit card had reached the credit limit and because it was an easier way to pay the umpires and buy supplies for the youth program.

Even though these purchases were properly supported and for valid Town purposes, Town purchases should only be made with personal funds on rare occasions when no other method (i.e., a Town credit card or voucher) is available. Allowing employees to use their personal funds or credit cards circumvents controls such as the Town's credit limit and increases the risk of improper Town purchases.

What Do We Recommend?

The Board should:

8. Adopt policies and procedures for the use of Town credit cards that identify authorized users, define credit limits, and describe the purchases allowed and prior approval and documentation required. If credit cards are to be

used by more than one employee, controls over custody or separate cards should be implemented to ensure accountability.

9. Ensure that credit cards issued to specific employees are canceled when they separate from service and that no employee uses a credit card issued to another current or former employee.
10. Ensure that the custody and/or use of all credit cards and lines of credit are recorded, tracked and monitored by the bookkeeper.
11. Ensure that all credit card charges are for legitimate purposes and supported by receipts or other documentation before approving them for payment.
12. Adopt policies and procedures that strictly limit the practice of allowing employees to use personal funds or credit cards to make Town purchases and seek reimbursement.

Appendix A: Response From Town Officials

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[REDACTED]
NYS Office of the State Comptroller
Division of Local Government and School Accountability
One Broad Street Plaza
Glens Falls, NY 12801

July 17, 2017

Dear [REDACTED]

Attached to this letter is the Town of Chester response to the **Town of Chester Justice Court Operations and Credit Card and Employee Reimbursements Report of Examination 2017M-67 of June 14, 2017.**

The Town of Chester either has taken or is in the process of taking the steps described in our response to the items brought up in the Report of Examination.

The audit process as carried out by the examiners in your office must be commended. The staff here at the Town has commented on how helpful, educational, courteous, and knowledgeable the auditors were throughout the process, especially [REDACTED] who was here from beginning to end.

Please contact me if there is need to clarify any of the items in our response.

Kind regards:

Craig Leggett, Supervisor

**Response from Town of Chester regarding:
Town of Chester : Justice Court Operations and Credit Card and Employee
Reimbursements Report of Examination 2017M-67 (June 14, 2017)**

Justice Court Operations: What Do We Recommend?

The Justice should:

1. **Ensure bank reconciliations are prepared monthly and that they include deposits in transit and card payment deposits.**
Toc Response: The Court Clerk will reconcile bank statements and include in-transit and card payment deposits. The audit committee of the Town Board will check on this periodically.
2. **Ensure the Court receives the three credit card authorizations that were not deposited into the Court's bank account.**
Toc Response: The Court Clerk is pursuing several avenues in order to find the misdirected credit card authorizations and will take action to have the deposits correctly deposited into the Justice Court account once they are located.
3. **Ensure accountability analyses are prepared monthly, whereby known liabilities are reconciled to available cash. Any differences should be promptly investigated and resolved.**
Toc Response: The Court Clerk will prepare monthly accountability analyses of assets and liabilities and resolutions of discrepancies will be resolved in a timely manner. The audit committee of the Town Board will check on this periodically.
4. **Identify the source of the overage in the Court's bank account and remit any unidentified funds to the JCF.**
Toc Response: The source of the overage in the Justice Court's bank account could be from unclaimed bail that has accrued over time and before more accurate recordkeeping was established by the Court. The Court Clerk will prepare monthly accountability analyses in order to determine the exact amount of the current overage in the Justice Court's bank account. Once a stable and accurate overage amount is determined that amount will be remitted to the JCF. This will require a period of 3 to 6 months
5. **Regularly generate a current pending bail report and reconcile that report to the manual bail book and the bank account.**
Toc Response: The Court Clerk will prepare a pending bail report on a monthly basis by using the manual book and the Justice Court bank account. The audit committee of the Town Board will check on this periodically.
6. **Update the Court's computer system to reflect the bails held for two individuals totaling \$750 that were recorded in the manual bail record.**
Toc Response: The Court Clerk has updated the computer system to correlate with the manual bail record.
7. **Ensure that no individuals have access to his bank account without formal authorization.**
Toc Response: The Town Bookkeeper has access to the Justice Court bank account because of the nature of the bank's electronic banking system. The Judge grants

Town of Chester Response to Report of Examination 2017M-67

authorization for the Bookkeeper to electronically access the Justice Court bank account for the purpose of printing bank statements for the Court Clerk. Authorization to electronically access the Justice Court bank account for other purposes will be granted by the Judge on an as-need basis.

4 The bookkeeper wrote void on these checks and retained them with the documentation for electronic transfers.

Town Credit Cards and Employee Reimbursements: What Do We Recommend?

The Board should:

8. **Adopt policies and procedures for the use of Town credit cards that identify authorized users, define credit limits, and describe the purchases allowed and prior approval and documentation required. If credit cards are to be used by more than one employee, controls over custody or separate cards should be implemented to ensure accountability.**
Toc Response: The Town Board will adopt policies and procedures for the use of Town credit cards and store cards that include controls over custody.
9. **Ensure that credit cards issued to specific employees are canceled when they separate from service and that no employee uses a credit card issued to another current or former employee.**
Toc Response: This recommendation will be incorporated into the Town's credit card/store card policy and procedures.
10. **Ensure that the custody and/or use of all credit cards and lines of credit are recorded, tracked and monitored by the bookkeeper.**
Toc Response: The Town Board will produce forms that track credit card/store cards custody and use and these forms will be incorporated into the Town's credit card/store card policy and procedures.
11. **Ensure that all credit card charges are for legitimate purposes and supported by receipts or other documentation before approving them for payment.**
Toc Response: As a regular practice, all credit card charges are correlated with credit card statements by the Town Clerk each month. All charges are coded to the appropriate fund and budget line item and put on the monthly abstract of claims for approval. Copies of receipts and/or other documentation are attached to card statements for reference. The Town Board reviews the claims at their monthly board meeting before approval.
12. **Adopt policies and procedures that strictly limit the practice of allowing employees to use personal funds or credit cards to make Town purchases and seek reimbursement.**
Toc Response: An Expense, Mileage, and Travel Reimbursement policy is included in the Town of Chester Employee Handbook. It includes a provision for the Town to follow the rules for reimbursement of expenses as set forth in the NYS Comptroller's Local Government Management Guides. The Town Board will consider revisions to the existing policies and procedures that clearly prescribe the use of personal funds or credit cards by employees to make Town purchases and seek reimbursement.

Appendix B: Audit Methodology and Standards

We conducted this audit pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the New York State General Municipal Law. To achieve the audit objectives and obtain valid audit evidence, we performed the following audit procedures:

- We interviewed the Justice and the clerk and reviewed financial records and reports to gain an understanding of the Court's financial operations.
- We judgmentally selected four months of receipts totaling \$121,921 to verify that receipts were issued in sequential order. We selected three months based on variances for the accountability testing we did and one month because it was the last month in our audit scope period. We reviewed bank records and reports to determine whether the collections were deposited timely and intact, and reported to the JCF. We excluded collections for bail because we tested bail receipts records when we calculated the outstanding bail.
- We prepared bank reconciliations and accountability analyses for the Justice's bank account for each month during our audit period to determine whether cash on hand agreed with known liabilities.
- We reviewed cash receipt records, the current pending bail report and the manual bail book as of December 28, 2016 to calculate outstanding bail in the Justice's bank account. We selected December 28, 2016 because it was the date our testing was being done.
- We reviewed all checks issued from the Justice's bank account to determine whether they were for appropriate Court purposes and amounts, issued in sequence and signed by the Justice. We inquired about bank transfers to determine whether they were authorized by the Justice.
- We interviewed Town officials and employees to gain an understanding of the internal controls for credit cards and employee reimbursements.
- We selected a judgmental sample of the six largest dollar amounts of credit card payments which included the 12 claims reviewed for the 96 purchases totaling \$10,609 to determine whether the Board required receipts and other documentation and whether they were approved prior to payment. Our review included credit card statements, claims and conversations with Town officials.
- We randomly selected four months of employee reimbursements and the two highest months of employee reimbursements to determine whether the Board required receipts and other documentation and if they were approved prior to payment.

We conducted this performance audit in accordance with GAGAS (generally accepted government auditing standards). 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 objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Unless otherwise indicated in this report, samples for testing were selected based on professional judgment, as it was not the intent to project the results onto the entire population. Where applicable, information is presented concerning the value and/or size of the relevant population and the sample selected for examination.

A written corrective action plan (CAP) that addresses the findings and recommendations in this report should be prepared and provided to our office within 90 days, pursuant to Section 35 of 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 Board to make the CAP available for public review in the Town Clerk's office.

Appendix C: Resources and Services

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Forensic Report & Analysis

*Re: Town of Chester
Justice Court Operations*

Ferraro
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Ferraro
& Amodio
& Zarecki CPAs
Forensic Accountants & Financial Advisors

April 19, 2018

John M. Silvestri, Esq.
Ludemann, McMorris & Silvestri, P.C.
5A Sagamore Street
Glens Falls, NY 12801

*Re: Town of Chester
Justice Court Operations*

Dear John:

The following represents our findings in connection with the above captioned matter. Our opinions were formed based upon our investigation, research, information obtained and documents examined as of this date. Should you have any questions, please do not hesitate to contact our office.

Very truly yours,



Charles S. Amodio, CPA, CFF, MAFF, MBA
Partner

I. INTRODUCTION

A. DESCRIPTION OF THE ASSIGNMENT

Ferraro, Amodio & Zarecki, CPAs was retained by the Town of Chester to provide the following:

- A review of the Town of Chester audits performed by the Office of the State Comptroller ('OSC') dated January 2011 and July 2017, and to determine the reliability and accuracy of those OSC audits;
- Determine the source of the surplus funds for the Town of Chester Justice Court;
- A review of the mandate by the Commission on Judicial Conduct ('CJC') to implement certain bookkeeping practices for the Town of Chester Justice Court; and
- Recommendations regarding the accounting and bookkeeping practices for the Town of Chester Justice Court.

B. SOURCES OF INFORMATION

Numerous sources of information were utilized in the conduct of this analysis including, but not limited to, the following:

- The OSC report dated January 2011;
- The OSC report dated July 2017;
- Letter from the CJC to the Honorable James P. McDermott dated January 25, 2018;
- A response letter from Judge McDermott to the CJC dated February 9, 2018;
- The bail log book for the Town of Chester, Justice Court;
- Cashbook reports for 2014, 2015, 2016, 2017, and January 2018;
- Justice Court Fund reports for the months of March 2017, July 2017, November 2017, and January 2018;

- Monthly AC-1030 reports for March 2017, July 2017, November 2017, and January 2018;
- Monthly bank statements for the Town of Chester, Justice Court;
- Discussions with Court Clerk, Karen Griffen; and
- Discussion with Judge McDermott.

II. BACKGROUND

The Town of Chester (Town) is located in Warren County. The Town is governed by an elected Town Board (Board) consisting of the Town Supervisor (Supervisor) and four Council members. The Board has the overall responsibility for overseeing the financial activities of the Town, including the financial activity of the Justice Court (Court). The Town has one elected Justice, Judge McDermott, who has presided over the Court since January 1998.

Judge McDermott is responsible for adjudicating legal matters within the Court's jurisdiction and properly accounting for all moneys collected and disbursed by the Court. Justices are required to report monthly to the State Comptroller's Justice Court Fund (JCF) on the financial activities of the preceding month. The Justice is assisted by a full time Court Clerk.

I met with Court Clerk, Karen Griffen on March 21, 2018 and again on March 28, 2018. During the initial meeting with Ms. Griffen, she provided a synopsis of how transactions are accounted for and how they are reported. In addition, Ms. Griffen provided a summary of the month end accounting processes and procedures.

I met with Judge McDermott for a brief period on March 28, 2018 to obtain his understanding of the accounting and bookkeeping practices of the Court

III. FINDINGS

As mentioned above, our assignment was to review the audits performed by the Office of the State Comptroller ("OSC") dated January 2011 and July 2017 and to determine the reliability and accuracy of those audits; determine the source of the surplus funds for the Court; and to review of the mandate by the Commission on Judicial Conduct ("CJC") to implement certain bookkeeping practices for the Court.

A. OSC AUDITS IN 2011 AND 2017

The January 2011 report covers the audit period of January 1, 2007 through December 31, 2009. The July 2017 report covers the audit period of January 1, 2015 through October 31, 2016.

In both the January 2011 and July 2017 reports, the underlying theme is poor internal controls, leading to bank reconciliation irregularities, no monthly accountability analysis, and inaccurate accounting of bail proceeds. A proper bank reconciliation requires a comparison of the adjusted bank balance to the checkbook register balance. A comparison of the cash on hand and on deposit in the bank to detailed lists of amounts due the Justice Court Fund (JCF) is referred to as an accountability analysis. Performing accurate bank reconciliations and an accountability analyses are critical to the status of monies held by the Court at any point in time. As a result of the poor internal controls, cash on hand exceeded known liabilities in both the 2011 audit and the 2017 audit. There was an unidentified balance of \$10,165 as of December 31, 2009, per the 2011 report. There was an average unidentified balance of \$15,700 per the 2017 report. With respect to bail, the clerk maintains a manual bail book and the pending bail has not been reconciled to the manual bail book or the bank account.

In my examinations on March 21, 2018 and March 28, 2018, I sampled several accounting periods during 2017, as well as January 2018. The bank reconciliations continue to have inaccuracies and there were no monthly accountability analyses. In regard to accounting for bail, we reviewed the bail activity from January 2014 through January 2018 and determined there were no irregularities in the receipt and disbursement/disposition of bail proceeds. It is my understanding \$10,000 of the unidentified balances have been remitted to the OSC and a separate bank account has been established for the sole purpose of accounting for the bail activity going forward.

Based on my review of the January 2011 and July 2017 audit reports, I consider both audits to be reliable and accurate.

B. SOURCE OF SURPLUS FUNDS

Due to the poor internal controls, as well as inaccurate bank reconciliations and a monthly accountability analyses, the source of the surplus funds is a combination of unremitted fees and fines along with bail held on pending cases. Thus, the surplus may not be a surplus, and could be funds that have simply not been accounted for due to the inadequate bookkeeping practices of the Court. Based on the 2011 and 2017 audit reports, a large portion of the surplus dates back prior to 2009, and may be from prior administrations. In order to determine the precise surplus, an additional forensic audit may be warranted.

C. MANDATE BY THE COMMISSION ON JUDICIAL CONDUCT

The Commission on Judicial Conduct ('CJC') mandates refers to the recommendations included in the January 2011 and July 2017 audit reports.

January 2011 Audit Report Recommendations:

- The Justice should routinely review the Court accounting records to ensure that they are accurate and agree with the supporting documentation. In addition, duplicate receipts should be issued in sequence, and copies of those receipts should be retained on file.
- The Justice should direct Court personnel to deposit all funds received, intact, and reconcile funds to be deposited as recorded on the cash receipts.
- The Justice should ensure that the Justice Court Fund monthly reports accurately reflect the activity of the Court.
- The Justice should keep an accurate accounting of pending bail in the Justice Court account.
- The Justice should ensure that a monthly accountability analysis is prepared and that the amount of pending bail agrees with this accountability analysis. The Justice should review the accountability each month to verify its accuracy and timeliness.
- The Justice should determine the source of the unidentified moneys in the Justice Court bank account. If the money in the account cannot be identified, the Justice should report and remit the unidentified balance to the State Comptroller as unidentified money.

- The Board should require that the Town Justice take corrective action when an audit reveals discrepancies in the Court records.

July 2017 Audit Report Recommendations:

- Ensure bank reconciliations are prepared monthly and that they include deposits in transit and card payment deposits.
- Ensure accountability analyses are prepared monthly, whereby known liabilities are reconciled to available cash. Any differences should be promptly investigated and resolved.
- Identify the source of the overage in the Court's bank account and remit any unidentified funds to the JCF.
- Regularly generate a current pending bail report and reconcile that report to the manual bail book and the bank account.
- Ensure that no individuals have access to his bank account without formal authorization.

The recommendations in both the January 2011 Audit report and the July 2017 Audit report are essential and reasonable recommendations for the ongoing accountability of the Justice Court Operations for the Town of Chester. Although many of the recommendations appear to be straightforward, they may require the assistance of a certified public accountant or experienced bookkeeper.

IV. RECOMMENDATIONS

In addition to the recommendations detailed above, I would also recommend the following:

1. Hire a bookkeeper/accountant to implement the recommendations of the OSC. The bookkeeper would assist the Court for one day per month to streamline the necessary month end reconciliations. Also, it is my understanding Judge McDermott has purchased QuickBooks accounting software. The bookkeeper could also provide training for

account setup and daily entries, which would facilitate a smoother month end reconciliation.

2. Transfer the manual bail records to a computer program for reconciliation and tracking purposes. Since Judge McDermott has purchased the QuickBooks accounting software, the bail payments received and disbursed can be adequately accounted for. Alternatively, the bail payments can also be tracked in Microsoft Excel. As part of my reconciliation of the bail payments from January 2014 through January 2018, I utilized Microsoft Excel to track all activity. Utilizing Excel allowed me to determine the status of every bail payment from January 2014 through January 2018, along with the outstanding bail liability;
3. Engage a CPA to conduct an annual audit. Having an annual engagement with specific procedures designed and performed by a CPA can mean:
 - Testing will be performed on a detailed level to help determine if there is fraudulent activity.
 - Internal controls will be evaluated to ensure there are proper controls over cash.
 - There will be an independent review performed by a CPA who is an expert in auditing and fraud detection.

The detailed procedures performed by a CPA can ensure the Court is complying with their responsibilities and the Town can be assured they are receiving all funds from the JCF that are due to them; and

4. Engage a Forensic CPA to thoroughly investigate the surplus and to determine the exact source of the surplus. However, it is my understanding \$10,000 has been remitted to the OSC and investigating the small remaining surplus may not be cost effective.