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Marsha Devine  
Yates County Treasurer  
417 Liberty Street  
Penn Yan, NY 14527

Report Number: 2025-C&T-1

Dear County Treasurer Devine:

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, 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, 2022 through December 31, 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.<sup>1</sup> These actions are recorded in the County Clerk's office when payments are deposited as required by court order. Additionally, in certain circumstances,<sup>2</sup> funds from estates are entrusted to the Treasurer for safekeeping by order of the Surrogate's Court. Together, the Treasurer, County Clerk and Surrogate's Court must develop sound procedures and processes which, when implemented properly and consistently, provide a system of internal controls to account for and safeguard these funds.

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

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

Our objective was to determine whether County officials 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. We determined that County officials did not establish appropriate controls to safeguard and account for court and trust funds. Officials did not reconcile the information in the Treasurer's, County Clerk's and Surrogate's Court's records to one another for 2022, 2023 or 2024.

The Treasurer maintained up-to-date and complete records but did not always properly report court and trust funds to the State Comptroller as prescribed by statute. For 2022 through 2024, the Treasurer reported five cases totaling \$128,126, some of which were reported in multiple years. However, two cases, a foreclosure settlement and mechanic's lien refund, were combined and reported together as one case on the annual report. These should have been reported separately with detail for each case. Also, in 2024, the Treasurer excluded three cases totaling \$55,440 from the annual report. The County's Director of Finance, who prepared the report for the Treasurer, told us that she was unaware that these cases should have been reported because they were either disbursed and closed or turned over as abandoned property in 2024. However, all cases with activity in the year should be reported.

Pursuant to New York State Abandoned Property Law Section 600(1), money that has remained in the hands of the Treasurer for a period of three years, together with all accumulated interest, less the Treasurer's statutory fees, is deemed abandoned property. After public notice, the Treasurer should pay all abandoned property to the State Comptroller by the tenth of April of the next year. We identified two actions totaling \$44,940 that were not turned over to the State Comptroller in a timely manner. The Treasurer turned over these funds in May 2024 after the County received a notice from the State Comptroller, which was approximately three years after the date that the funds should have been turned over.

New York State County Law Section 530 requires the County Clerk to maintain a record of all money and securities paid, transferred or deposited – or ordered to be paid, transferred or deposited – into a court. In addition, our Office has opined that money paid directly to a county treasurer is considered money paid into court for the purposes of entry into the court and trust fund register (State Comptroller's Opinion No. 54-6842). Although the County Clerk maintained a computerized court and trust register as required, the register did not include one court and trust

action totaling \$38,253 identified in the Treasurer's records. The County Clerk told us that the previous County Clerk did not maintain a register. When she took office in January 2024, she created a register dating back to 2019 from records available in the County Clerk's office. Because the one court and trust action originated before 2019, the County Clerk did not include it on the register. Upon our request, the County Clerk was able to provide some documentation for this case, including the court order, referee report and surplus money form. However, the County Clerk did not provide adequate supporting documentation to support the amount deposited with the Treasurer. While we determined that the amount deposited was generally reasonable based on the available documentation, officials should maintain more appropriate documentation – such as actual amounts (fees or interest, for general information) listed on the surplus money form or the final total amount of surplus money to be turned over to the County Treasurer – to demonstrate the correct amount was deposited.

Also, the New York State Surrogate's Court Procedure Act (SCPA) Section 2502 requires, among other recordkeeping provisions, the Surrogate's Court clerk to maintain a court and trust fund register. Unlike County Law Section 530, SCPA Section 2502 specifically requires the Surrogate's Court clerk's register to contain a reference to any proceeding in which a decree or order directs a deposit of money. However, the Surrogate's Court register did not include an action ordering the deposit of \$6,687 with the Treasurer during 2017. The Surrogate's Court Chief Clerk said that the case was not recorded because the Surrogate's Court was not made aware of when the funds were turned over to the Treasurer. The Chief Clerk retroactively recorded this case in the register during our review. Upon our request, the Chief Clerk was able to provide appropriate supporting documentation for this case, including the court order.

Although not legally required, if County officials had performed a reconciliation between their records, these errors may have been identified and corrected in a timely manner.

## **Recommendations**

The Treasurer should:

1. Perform an annual reconciliation of court and trust funds with the County Clerk's and Surrogate's Court's records.
2. Ensure that annual reports to the State Comptroller are accurate and all cases are appropriately reported.
3. Ensure that all money deemed abandoned property is paid to the State Comptroller in a timely manner.

The County Clerk should:

4. Ensure that adequate supporting documentation is maintained to support all deposits with the Treasurer.

The County Clerk and Surrogate's Court Chief Clerk should:

5. 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: Jessica Mullins, County Administrator  
Molly Linehan, County Clerk  
Honorable Mackenzie M. Stutzman, Surrogate's Court Judge  
Vanessa Smith, Surrogate's Court Chief Clerk  
Leigh Battin, Director of Finance  
Carol L. Jones, New York State Unified Court System, Chief Internal Auditor