



OHIO AUDITOR OF STATE
KEITH FABER



**CITY OF LIMA – MUNICIPAL COURT
ALLEN COUNTY**

TABLE OF CONTENTS

| TITLE | PAGE |
|--|-------------|
| Fraud Examination Report | 1 |
| Supplement to the Fraud Examination Report | |
| Objective 1 – Civil Division Daily Receipts..... | 4 |

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OHIO AUDITOR OF STATE KEITH FABER



FRAUD EXAMINATION REPORT

City of Lima Municipal Court – Civil Division
109 North Union Street
Lima, Ohio 45801

To the City of Lima Council Members, Mayor and Citizens:

Summary

The Auditor of State (AOS) conducted a criminal investigation and special audit of the City of Lima Municipal Court – Civil Division (the Court) based on an allegation of theft reported by the Clerk of Court to the AOS financial auditors who were completing the 2016 audit of the City. Our investigation identified just over \$93,000 in misappropriated revenues for which we issued a finding for recovery and also supported criminal charges against former Chief Deputy Sue Barnett.

Background

Clerk of Court, Jim Link, took office on January 17, 2013. On this date he was advised of a reconciling item of \$78,469 on the bank reconciliation. Mr. Link then began researching the 2010 software conversion looking for possible ties to the reconciling item and exploring the possibilities of extracting and rebuilding receipt transactions from the Court's case management system. In October 2013, Mr. Link requested numerous reports from CMI (the court's software vendor) in an effort to identify the source and nature of the reconciling item. In March 2014, a check clearing report that dated back to 1997 was requested and received from CMI. The Court spent the remainder of 2014 clearing each of these checks in the CMI system. During 2015 and 2016, the Court reviewed and corrected various adjustments in the CMI system. Towards the end of 2016, the Court began to review records in instances where the bank deposit amount did not agree to the receipts in CMI. During this time, Citizens National Bank was able to provide the supporting items that made up each bank deposit to the Court. Once the Court began to match up the supporting items from the bank deposits a fraudulent check substitution scheme emerged.

On April 13, 2017, the Financial Audit West Region submitted a noteworthy memorandum regarding the Court. During the planning phase of the 2016 financial audit, AOS audit staff met with the Clerk of Court, who believed a reconciling item on the books, was being used to cover up theft by former Chief Deputy Barnett for over \$78,000. Ms. Barnett retired in May of 2012.

After preliminary meetings with the Clerk of Court and County Prosecutor, as well as a preliminary examination of available documentation, the information was considered by the AOS Special Audit Task Force on May 31, 2017; the Task Force declared a special audit of the Court.

The Court conducted its own audit for the period of January 1, 1997 through December 31, 2008.

On April 12, 2018, Ms. Barnett was indicted by the Allen County grand jury on six counts, including two counts of theft in office, one count of telecommunications fraud, one count of engaging in a pattern of corrupt activity, one count of aggravated theft and one count of receiving stolen property.

On July 8, 2019, Ms. Barnett entered a negotiated plea of guilty to one count of theft in office, a felony of the third degree, in violation of R.C. 2921.41(A)(1), 2921.41(B)(3) and one count of telecommunications fraud, a felony of the third degree, in violation of R.C. 2913.05(A), 2913.05(B).

On September 5, 2019, Ms. Barnett agreed to a restitution amount of \$331,706, based both on our audit and the internal audit conducted by the Court.

On October 18, 2019, Judge Jeffrey L. Reed sentenced Ms. Barnett to 36 months in prison for each count, to be served concurrently. In addition, Judge Reed ordered restitution of \$331,706 against Ms. Barnett in favor of the Lima Municipal Court.

Scope

In conducting our special audit of the Court, we used the information from the complaint and our preliminary findings to define the areas we should investigate and the relevant time period for our review. This helped define our specific objectives, or questions, which could be audited (i.e. whether documents existed, or at least should exist, which could be tested; were there relevant laws or internal procedures in place), and would answer whether the Court's daily receipts collected were deposited intact in the Court's bank account. In order to answer whether the Court's daily receipts collected were deposited intact in the Court's bank account, we audited for compliance with internal procedures governing collection and deposit of receipts.

We defined our audit period as covering January 1, 2009 through June 30, 2012 (the Period) based on the risk factors identified. Having defined our objective and period, we developed specific procedures designed to address the objective.

The objective and procedures are described more fully in the attached Supplement to the Fraud Examination Report for the Period.

The specific objective we tested to determine whether fraud was committed at the Court and, if so, to what extent is as follows:

- Determine whether daily receipts collected by the Court were deposited intact in the Court's bank account.

In order to test this objective, we reviewed available documentation provided by the Court, subpoenaed bank records, and interviewed key Court personnel.

This engagement was conducted in accordance with the Quality Standards for Inspection and Evaluation established by the Council of Inspectors General on Integrity and Efficiency (January 2012).

Findings

After completing our audit work, we determined there were numerous instances in which cash was misappropriated from the daily deposits. Our report includes a finding for recovery. A finding for recovery generally constitutes a finding that an individual or entity (e.g. a vendor) illegally received public money. Pursuant to Ohio Rev. Code Section 117.28, when the Auditor of State's office issues a finding for recovery, the individual or entity can repay the amount voluntarily; however, the finding for recovery empowers the public office's statutory legal counsel or the Attorney General's office to institute legal proceedings to collect that amount.

We issued a finding for recovery in the amount of \$95,571 against Ms. Barnett for misappropriated cash during our period. In addition, based upon an Order of Restitution entered by Judge Jeffrey L. Reed we issued a finding for recovery in the amount of \$238,699 against Ms. Barnett for misappropriated cash covering the period January 1, 1997 through December 31, 2008. Former Clerk of Court, Robert Holmes was named jointly and severally liable in the amount of \$198,569. Former Clerk of Court, Ben Diepenbrock

was named jointly and severally liable in the amount of \$134,284. The details are discussed more fully in the attached Supplement, but below is a summary of the finding we are issuing:

Susan Barnett was promoted to Chief Deputy on October 2, 1995. As Chief Deputy, Ms. Barnett was responsible for ensuring each cashier's batch for the day agreed to the respective cashier's drawer and subsequently preparing and making the deposit at the bank. During the Period, Ms. Barnett failed to deposit \$96,009 in cash. In addition, based upon an audit conducted by the court supporting the Order of Restitution, for the period of January 1, 1997 through December 31, 2008, Ms. Barnett failed to deposit \$238,699 in cash. After restitution was ordered, an additional \$2,564 of cash not deposited by Ms. Barnett during the Period was identified.

We issued management recommendations regarding segregation of duties, and daily deposit reconciliation procedures.

On May 7, 2020, we held an exit conference with the following individuals representing the Court:

Jim Link, Clerk of Court
David Berger, Mayor
Carla Thompson, Council Member
Jon Neeper, Council Member

Randy Bartels, City Auditor
Tony Geiger, City Prosecutor
Pam Wright, Chief Deputy-Civil Division of Court

The attendees were informed that they had five business days to respond to this fraud examination report. A response was not received by the City.



KEITH FABER
Auditor of State

March 3, 2020

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SUPPLEMENT TO THE FRAUD EXAMINATION REPORT

Objective No. 1 - Determine whether daily receipts collected by the Municipal Court – Civil Division (the Court) were deposited intact in the Court’s bank account.

PROCEDURES

We documented the receipts per the Daily Cash Breakdown Reports and the Daily Cash Drawer Worksheet to identify all Court receipts collected during the Period.

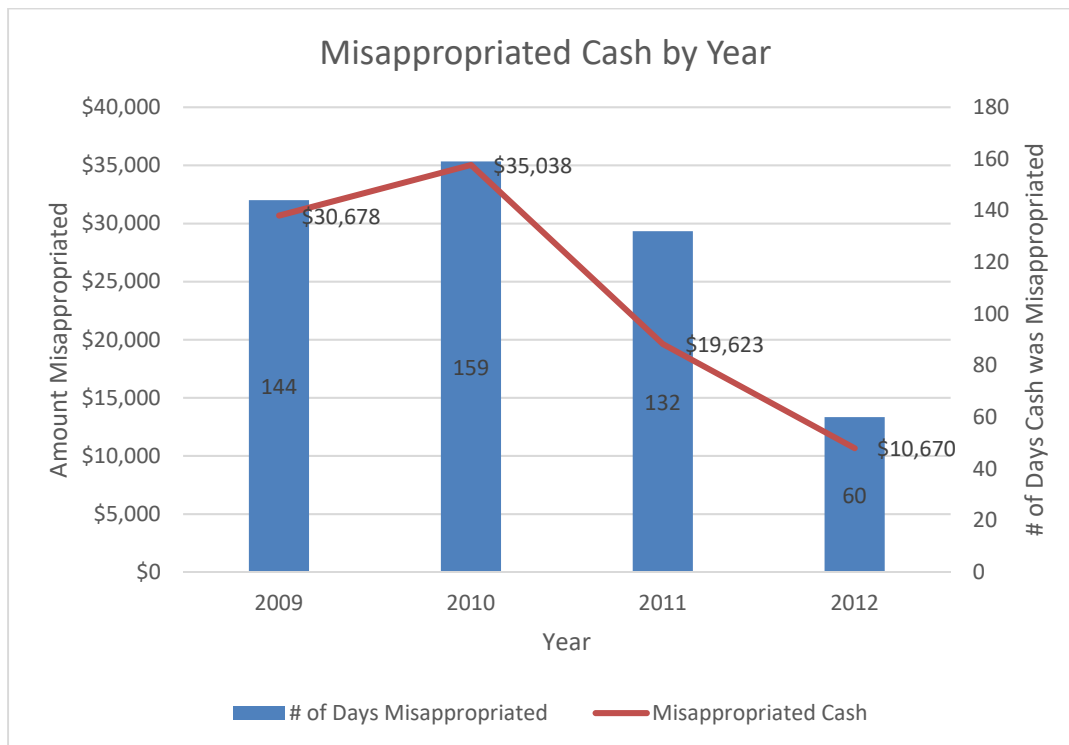
We compared the individual receipts identified in the procedure above to those deposited to determine whether Court receipts collected were deposited intact.

We examined each day in which a variance existed between total cash received into the accounting system and total cash deposited into the bank account.

RESULTS

On November 7, 1983, Ms. Barnett was hired as a Deputy Clerk. Ms. Barnett was promoted to Chief Deputy Clerk on October 2, 1995. The Court received payments for civil complaints, judgments, evictions, rental escrow, trusteeships, miscellaneous fees and filing fees by cash, check or money order. As Chief Deputy Clerk, Ms. Barnett was responsible for ensuring each cashier’s batch(es) for the day agreed to the respective cashier’s drawer. A Daily Cash Drawer Worksheet was then prepared by Ms. Barnett which listed the date, batch number(s), batch totals, list of checks received, total checks received, cash in drawer amount and total deposit. The deposit was then taken to the bank by Ms. Barnett.

A total of 655 deposits, totaling \$6,667,336 were examined for the Period. We applied the procedures documented above to all of these deposits. Of the 655 deposits examined, we noted 495 deposits with misappropriated cash totaling \$96,009. A breakdown of this amount by year is as follows:



SUPPLEMENT TO THE FRAUD EXAMINATION REPORT

Ms. Barnett used multiple schemes to conceal the misappropriation of cash during the Period. The schemes included:

- Ms. Barnett listed the individual/company name on the Daily Cash Drawer Worksheet as a check payment when, in fact, cash was paid. These cash payments were subsequently misappropriated by Ms. Barnett.
- Ms. Barnett would alter the receipt amount in the CMI system in order for the CMI system and the bank deposit to agree in total. As Chief Deputy Clerk she had rights within the CMI system to add, edit and delete transactions of the Deputy Clerk's batches prior to posting in the CMI system.
- Ms. Barnett substituted an unrelated check issued to the Court in place of a cash receipt. The cash receipt was subsequently misappropriated by Ms. Barnett. Check substitution occurs when cash is stolen and replaced with a check intended for other purposes. This creates the impression no money is missing. Wage garnishments were the main type of checks substituted. A wage garnishment occurs when the Court orders a debtors' employer to divert a portion of the debtors' paycheck to the creditor or person to whom the debtor owes money. Wages continue to be garnished until the debt is paid off. In many instances the debtor owed multiple creditors, which took years to be paid in full and was not monitored by the debtor. Ms. Barnett took advantage of the lack of oversight by the debtor regarding the amount paid in and out of their case.
- Ms. Barnett transferred money from one case to an unrelated case that previously had cash misappropriated in order to process a pay-out from the misappropriated case. Many of the cases used to transfer money were open, satisfied or bankruptcy cases. An open case has an unsatisfied judgement. These were the most risky cases to transfer from, as the potential for the plaintiff and/or their attorney to question what happened to a payment was likely. To avoid this risk, Ms. Barnett instructed her staff to route all of these inquiries to her. A satisfied case is one in which the plaintiff or their legal counsel filed a notice with the Court stating all monies had been paid on the case. Any excess funds belong to the defendant and should have been returned. In many cases the defendant and/or their attorney did not keep accurate accounting of total garnishments compared to the balance owed to the plaintiff(s); as a result, they were unaware their case was overpaid. A bankruptcy case is one in which the defendant has filed bankruptcy in Federal Court and the Municipal Court is issued a stay order. The stay order freezes the funds held in the case until the bankruptcy case is disposed of and the Municipal court receives an order instructing whom to distribute the frozen funds. The CMI software system only gave access to Ms. Barnett to make these transfers.
- From January 1, 2009 to October 31, 2010 Ms. Barnett also used the lapping scheme. A lapping scheme involves the initial misappropriation of a receipt by using a subsequent receipt to apply to the initial misappropriated receipt to conceal the theft with the pattern repeating.

As Chief Deputy, Ms. Barnett was responsible for ensuring each cashier's batch for the day agreed to the respective cashier's drawer. A Daily Cash Drawer Worksheet was then prepared by Ms. Barnett to agree the total batches for the day to the total deposit. The batch deposit was prepared and deposited at the bank by Ms. Barnett. This allowed Ms. Barnett to have control over all phases of the transaction.

During Ms. Barnett's last month of employment, we noted two cash deposits entered into the accounting system under Ms. Barnett's user ID: \$2,538 on May 25, 2012 and \$464 on May 29, 2012. During the interview with Ms. Barnett on June 20, 2017, she admitted to sometimes using checks that were not receipted to be able to take the cash. In addition, she admitted to making two cash deposits into the Court's bank account as a form of repayment prior to her retirement.

After the repayment of \$3,002 by Ms. Barnett, the remaining cash receipts misappropriated from the court was \$93,007.

The Court audited all days for the Period where a variance did not exist between total cash receipted into the accounting system and total cash deposited into the bank account. The Court identified an additional 11 days where cash was misappropriated. We examined these eleven days and identified \$2,564 of misappropriated cash. (Note: this amount was not included in the restitution ordered by Judge Jeffrey L.

SUPPLEMENT TO THE FRAUD EXAMINATION REPORT

Reed).

We also examined the leave usage of all civil division employees of the Court during the Period. Ms. Barnett was at work 492 days out of 493 days when deposits were misappropriated. For the one day that Ms. Barnett was not at work we compared the deposit slip to other deposit slips in which cash was misappropriated and the handwriting was the same. Therefore, we believe she took the deposit home with her the previous day and made the deposit while she was off on leave. All other civil division employees were off work at least 50 days or more on days when deposits were misappropriated.

FINDING FOR RECOVERY

We identified 495 deposits totaling \$96,009 in which checks issued to the Court for unrelated cases were substituted in the deposits for the removal of cash.

The court's audit identified \$238,699 in misappropriated cash.

During Ms. Barnett's last month of employment, we noted two cash deposits entered in the accounting system under Ms. Barnett's user ID: \$2,538 on May 25, 2012 and \$464 on May 29, 2012. During the interview with Ms. Barnett on June 20, 2017, she admitted to making two cash deposits in the Court's bank account as a form of repayment.

On April 18, 2019, Ms. Barnett appeared before Judge Jeffrey L. Redd and pled guilty to theft in office in violation of R.C. 2921.41(A)(1), a felony of the third degree, and to telecommunications fraud, in violation of R.C. 2913.05(A), a felony of the third degree. A restitution hearing was scheduled.

On September 18, 2019 Ms. Barnett signed a Restitution Agreement, which was filed with the Court, in which she agreed to a total restitution finding in the amount of \$331,706

On October 18, 2019, at sentencing for the conviction, Judge Jeffrey L. Reed ordered Ms. Barnett to pay restitution in the amount of \$331,706 to the Lima Municipal Court.

An additional 11 deposits totaling \$2,564 during the Period were identified after restitution was ordered.

In accordance with the foregoing facts and pursuant to Ohio Rev. Code Section 117.28, a finding for recovery for public monies converted or misappropriated is hereby issued against Susan Barnett for \$334,270 in favor of the City of Lima Municipal Court.

Under Ohio law, any public official who either authorizes an illegal expenditure of public funds or supervises the accounts of a public office from which such illegal expenditure is made is strictly liable for the amount of the expenditure. *Seward v. National Surety Corp.*, 120 Ohio St. 47 (1929); 1980 Op. Att'y. Gen. No. 80-074; Ohio Rev. Code § 9.39; *State ex rel. Village of Linndale v. Masten*, 18 Ohio St. 3d 228 (1985). Public officials controlling public funds or property are liable for the loss incurred should such funds or property be fraudulently obtained by another, converted, misappropriated, lost or stolen to the extent that recovery or restitution is not obtained from the persons who unlawfully obtained such funds or property. See 1980 Op. Att'y. Gen. No. 80-074.

Former Clerk of Court, Robert Holmes, was responsible for paying over and accounting for these funds coming into the court as required by law from January 1, 1997 to December 31, 2007. Robert Holmes and his bonding company, Ohio Farmers Insurance Company, will be jointly and severally liable in the amount of \$50,745 and in favor of the City of Lima Municipal Court. Robert Holmes will be jointly and severally liable in the amount of \$147,824 and in favor of the City of Lima Municipal Court.

SUPPLEMENT TO THE FRAUD EXAMINATION REPORT

Former Clerk of Court, Ben Diepenbrock, was responsible for paying over and accounting for these funds coming into the court as required by law from January 16, 2008 to June 30, 2012. Ben Diepenbrock and his bonding company, Ohio Farmers Insurance Company, will be jointly and severally liable in the amount of \$134,284 and in favor of the City of Lima Municipal Court.

MANAGEMENT RECOMMENDATIONS

Segregation of Duties

Segregation of duties provides two significant benefits: (1) a deliberate fraud is more difficult because it requires collusion of two or more persons; and (2) it is more likely an error will be detected. When designing the Court's system of internal control and the specific control activities, management should plan for adequate segregation of duties or compensating controls.

Proper segregation of duties is not possible when only one or two people handle all four aspects of the internal control cycle (record keeping, authorization, custody and reconciliation).

Ms. Barnett was responsible for reconciling daily receipts to checks and cash, preparing the bank deposit and taking the deposit to the bank.

The Court did not have adequate segregation of duties in place for these key internal control functions which allowed Ms. Barnett to have unmonitored access to the overall system.

The lack of segregation of duties can lead to fraud, theft, or errors going undetected. In this report, we issued a finding for recovery against Susan Barnett for \$334,270 in civil court receipts misappropriated.

We recommend duties be segregated to ensure no single individual has control over all phases of accounting, reconciling, and depositing of funds to the Court bank account.

Daily Deposit Reconciliation

The Court should have internal controls in place to reasonably assure that receipt collections entered into the system by pay type agree to the amount deposited by pay type.

Ms. Barnett would complete a daily cash drawer worksheet reconciliation, prepare the bank deposit slip and physically take the money to the bank to be deposited. At no point in the process was there an independent verification agreeing the total cash and check amounts on the batch reports to the total cash and check amounts on the daily cash drawer worksheet and bank deposit.

Failure to perform supervisory reviews over the reconciliation and deposit of court funds increases the risk that fraud or discrepancies due to errors or irregularities will not be detected in a timely manner.

We recommend a review process be established that, at a minimum establishes reviews of the detail of the items being deposited to their receipt into the accounting system and the eventual deposit of funds into the Court bank account. These reviews should be documented by the reviewer's signature.

OHIO AUDITOR OF STATE
KEITH FABER



CITY OF LIMA

ALLEN COUNTY

CLERK'S CERTIFICATION

This is a true and correct copy of the report which is required to be filed in the Office of the Auditor of State pursuant to Section 117.26, Revised Code, and which is filed in Columbus, Ohio.

Susan Babbitt

CLERK OF THE BUREAU

**CERTIFIED
JUNE 4, 2020**