



**Date:** 5/22/2017

This audit was requested by Acting District Attorney Bokelman via an email on March 12<sup>th</sup>, 2017. The Acting DA Bokelman specifically asked for an audit of the “District Attorney’s Special Account to confirm there are no issues”. Our audit was expanded further to include the District Attorney’s Petty Cash account in order to locate forfeiture funds retained by the District Attorney’s Office.

**Objectives:**

- Are all transactions properly accounted for in the District Attorney Special Account?
- Are proper internal controls in place over the District Attorney Special Account?
- Were State Statutes followed regarding forfeiture funds?
- Were County policy and procedures followed?

**Scope:** 1/1/12 – 3/31/17 *\*\*Our original audit scope was 1/1/15 – 12/31/16 but was extended after initial review\*\**

**District Attorney Special Account - Background**

The internal audit department had no knowledge of this account prior to the requested audit. Acting DA Bokelman informed us that it was his understanding that this account was for the receipt of funds from forfeitures conducted pursuant to New York State Civil Practice Law and Rules (1349). Acting DA Bokelman also provided us with a copy of Resolution 692-08 passed by the Wayne County Board of Supervisors on October 21, 2008 (see Appendix 1), that stated the same. While reviewing Board of Supervisors committee minutes from October 2008, we found the District Attorney requested the establishment of these accounts, yet documentation supplied to our office show that the first check issued out of this account was in 1991. The statutory requirements of law had also been in place prior to the 2008 resolution.

While sorting and organizing documentation for this audit we did find a single correspondence that referred to this account as a petty cash account. After reviewing the deposits to this account a majority of them were from forfeitures. For the purpose of this audit we have determined this to be an account for forfeiture funds conducted under New York State Civil Practice Law and Rules (1349). The full text of Civil Practice Law and Rules (1349) can be found in Appendix 2.

While researching Civil Practice Law and Rules (1349) we found an Albany County, NY Comptroller’s internal audit completed in 2008 of the Albany County District Attorney’s State and Federal forfeiture accounts. This audit provided a valuable reference point for this audit and interrupted the New York State law in the same manner we did.

## **Bank Account Access**

The funds of this account are deposited with Lyons National Bank (LNB), which is the primary banking institution of the County. The checkbook and check register for this account were found to be in the possession of the District Attorney's office and not with the County Treasurer as required by Resolution 692-08, further New York State Comptroller Opinion 95-8 states, "Forfeiture moneys distributed to a claiming authority or claiming agent under section 1349(2) (e) and (f) of the Civil Practice Law and Rules (CPLR) must be remitted to the custody of the county treasurer." Also, County law 700 (2) [District Attorney, powers and duties] states that "within thirty days after the receipt of any fine, penalty, recovery upon any recognizance or other money belonging to the county, the district attorney shall pay the same to the county treasurer." The County Treasurer's office confirmed that they are able to see this account via their online banking system with LNB, but do not receive bank statements or have the ability to issue checks against this account.

## **Bank Reconciliations**

As part of our audit we requested bank statements and copies of bank reconciliations. The district attorney's office only had bank statements available in their file through December 31, 2007. Through the audit departments view only online banking access to the County's LNB accounts, we were able to print out current statements. We prepared a bank reconciliation for calendar year 2016 using the hand written check register kept by the District Attorney's office and the bank statements we obtained for calendar year 2016. At the end of 2016 the register (book) balance was greater than the bank balance by \$885.16. For this reason we expanded our scope back as many years as necessary to determine where this difference occurred.

When we prepared the year end 2013 bank reconciliation we found check number 387517 for \$885.21 cleared the bank on 6/3/2013 but was not recorded in the register. When we prepared the year end 2012 bank reconciliation register balance was \$0.05 less than the bank balance this difference was determined to be immaterial.

We could not find any documentation to support check number 387517 in the records provided to us. Also, this check is not in the current sequence of checks currently being written. The last check recorded in the register was written in December of 2016 and was check 232.

It appears that no one has been watching the account activity to ensure only authorized transactions are taking place.

*\*After issuing our draft report to the District Attorney's Office, they reached out to LNB who was able to locate an image of this check. Check 387517 was a County Payroll Check that was erroneously cleared against this account.\**

## **Checks Issued**

During our review of checks issued out of the account from 1/1/2012 through 3/31/17 we found that all checks were signed by the District Attorney. We also noticed during this time that 5 checks were issued payable to cash totaling \$2,300.00. We obtained check images for the 5 checks using the read only online banking access the County Auditor has for County accounts.

**Checks Payable to CASH**

<b>Check Number</b>	<b>Date</b>	<b>Amount</b>
208	1/22/13	\$200.00
220	1/16/15	\$650.00
221	1/29/15	\$500.00
225	1/15/16	\$650.00
232	12/14/16	\$300.00
		<b><u>\$2,300.00</u></b>

Per the New York State Comptroller’s guide to Internal Controls on cash disbursements 2-1-3, “make checks payable to a specific payee or custodian – never to cash or petty cash”. By making a check payable to a specific payee you reduce the risk of fraud or abuse. We scanned the check register for this account provided to us and noticed this was a practice going all the way back to the 1990’s. Also, we found that all 5 checks were endorsed with what appears to be the District Attorney’s signature as it appears to be the same signature that appears on the front of the check.

Further we found that these checks appear to be travel advances for trainings that were attended by the District Attorney. Since December 17, 2013 (Resolution 743-13) the County Travel policy has specifically stated that no travel advances will be issued unless authorized by the Board of Supervisors.

**Deposits**

We reviewed the deposits for this account and found that they were made up of 2 items, money taken by forfeiture and reimbursements for expenses paid out of this account. During the scope of this internal audit \$36,371.64 was deposited into this account. The following chart shows the breakdown of deposits between moneys collected through forfeiture and expense reimbursements:

<b>Date</b>	<b>Forfeitures</b>	<b>Expense Reimbursements</b>
2/28/12	\$175.50	
2/28/12	\$1,226.00	
7/24/12	\$50.00	
11/16/12	\$157.57	
2/15/13		\$200.00
7/25/13	\$2,018.30	
7/26/13	\$119.50	
6/5/14	\$437.40	
2/12/15		\$920.41

2/12/15		\$25.00
2/27/15	\$210.60	
2/27/15		\$1,095.00
2/27/15	\$270.00	
7/17/15	\$163.08	
10/2/15		\$150.00
2/11/16		\$945.79
4/25/16	\$27,957.49	
7/29/16		\$250.00
<b>Total</b>	<b>\$32,785.44*</b>	<b>\$3,586.20</b>

*\*It should be noted that not all of the forfeited funds were retained by the District Attorney's office, portions of these were distributed in accordance with CPLR 1349.*

When tracing the expense reimbursement deposits we found that these were supported by checks issued by the County to the District Attorney personally for travel expenses. Given that these checks were issue by the County to the District Attorney personally there is no mechanism in place to ensure that these amounts are redeposited into the "District Attorney Special Account". Also, we found it interesting that all of these training cost could potentially be allowed cost as discussed later, yet they were budgeted for in the District Attorney's County budget.

### **Disbursements**

Our review of disbursements found that they were made up of two categories, disbursements to others for their portion of forfeiture funds and expenditures for the District Attorney's office. We reviewed the expenditures for the District Attorney's office against the requirements for use of funds in CPLR 1349 2 (h) ii.

CPLR 1349 (h) ii states: the remaining twenty-five percent of such moneys shall be deposited to a prosecution services subaccount of the general fund of the state where the claiming authority is the attorney general or the political subdivision of which the claiming authority is a part, to be used for the prosecution of penal law offenses.

Based on the requirements of CPLR 1349 (h) ii we found that the following expenses did not meet this requirement:

<b>Date</b>	<b>Check #</b>	<b>Description</b>	<b>Amount</b>
1/6/12	202	Cellphone Charger	\$32.39
4/10/13	209	Retirement Plaque	\$59.40
7/3/13	210	Cellphone Holster	\$32.39
12/11/13	214	Retirement Plaque	\$55.00
12/13/13	215	Retirement Lunch	\$64.14
12/18/13	216	Shield for Employee	\$75.00
12/14/16	232	Retirement Party	\$300.00
			<b>\$618.32</b>

## Division of Forfeiture Funds

Again CPLR outlines in detail the process for division of forfeited funds and who they are to be remitted to. A summary of these requirements can be found in Appendix 3. We reviewed three forfeitures during our audit period for compliance with CPLR 1349 fund disbursement requirements.

### April 2012 \$1,226.00 Forfeiture

Due to limited information available we were unable confirm the disbursement amounts, since we did not know the reasons for all disbursements.

### July 2013 \$2,068.30 Forfeiture

The following is the calculation for the disbursements for this forfeiture:

Total Forfeited	\$ 2,068.30
Return Buy Money	\$ 50.00
Balance	<u>\$ 2,018.30</u>
1349 Section E	\$ 302.75
1349 Section F	\$ 100.92
Subtotal	<u>\$ 1,614.64</u>
1349 Section G	\$ 645.86
Subtotal	<u>\$ 968.78</u>
1349 Section H (i)	\$ 726.59
1349 Section H (ii)	\$ 242.20
Remaining	<u><u>\$ -</u></u>

The disbursements were within a few cents of the calculations above. It appears that when the calculations were made they were using the amount of \$2,068.00 not the \$2,068.30 that was deposited. Accordingly \$302.75 should have been remitted to the County Treasurer to offset personnel cost in the District Attorney's operating budget, we found no record of this and determined the amount stayed in this account. Also, \$242.20 should have stayed in this account which it did. All other disbursements were made as required.

### April 2016 Forfeiture

The following is the calculation for the disbursements for this forfeiture:

Total Forfeited	\$27,286.00
1349 Section E	\$ 4,092.90
1349 Section F	\$ 1,364.30
Subtotal	\$21,828.80
1349 Section G	\$ 8,731.52
Subtotal	\$13,097.28
1349 Section H (i)	\$ 9,822.96
1349 Section H (ii)	\$ 3,274.32
Remaining	\$ -

Accordingly \$4,092.90 should have been remitted to the County Treasurer to offset personnel cost in the District Attorney's operating budget. Records indicate that \$3,274.32 was deposited into the District Attorney's budget. Also, \$3,274.32 should have stayed in this account which it did not. All other disbursements were made as required.

It appears that the Section E and Section H (ii) disbursements were switched. This resulted in the section H (ii) funds being used to offset current operating cost which we determined to be an unallowable use. CPLR 1349 3 states, "All moneys distributed to the claiming agent and the claiming authority pursuant to paragraph (h) of subdivision two of this section shall be used to enhance law enforcement efforts and not in supplantation of ordinary budgetary cost including salaries of personnel, and expenses of the claiming authority or claiming agent...".

### **Accounting of Forfeitures as Reported to the State**

The New York State Division of Criminal Justice Services (DCJS) requires that asset forfeiture report be filed at the conclusion of a case or within 30 days of the acceptance of a plea pursuant to CPL 220.50(6). DCJS then compiles an annual report showing by County the total of all forfeitures reported. We compared deposits into both the DA Special Account and DA Petty Cash Account that were documented as forfeitures and compared the annual totals to the totals for Wayne County in the DCJS annual report. The 2016 annual report is not available at this time, historically the annual report is released in August of the following year.

	2015	2014	2013	2012
Claiming Authority – Reported to State	\$1,032.15	\$243.00	\$683.43	\$181.44
In Special Account	\$357.60	\$0.00	\$302.70	\$181.44
In Petty Cash Account	\$300.90	\$243.00	\$380.73	\$0.00
Un-located	<b><u>\$373.65</u></b>	<b><u>\$0.00</u></b>	<b><u>\$0.00</u></b>	<b><u>\$0.00</u></b>
General Fund for Prosecution – Reported to State	\$825.72	\$194.40	\$546.74	\$145.15
In Special Account	\$286.08	\$0.00	\$242.16	\$145.15
In Petty Cash	\$240.72	\$194.40	\$304.58	\$0.00
Un-located	<b><u>\$298.92</u></b>	<b><u>\$0.00</u></b>	<b><u>\$0.00</u></b>	<b><u>\$0.00</u></b>
Total Un-located	<b><u>\$672.57</u></b>	<b><u>\$0.00</u></b>	<b><u>\$0.00</u></b>	<b><u>\$0.00</u></b>

We did find a forfeiture report filed in 2016 with for a forfeiture that was within pennies of the amounts un-located in 2015. However we could locate corresponding deposits into either the Special Account or Petty Cash Account in 2015 or 2016 that corresponded with these amounts.

### **Disbursement Timeliness & Required Reporting**

New York State County Law section 700 outlines the powers and duties of the District Attorney. County Law 700 (2) requires that within 30 days of receipt of any fine, penalty, recovery upon any recognizance or other money belonging to the county, the District Attorney shall pay the same to the County Treasurer. Also, the same section requires that no later than the first day of February in each year, the District Attorney shall make in duplicate a verified true statement of all such moneys received and paid to the County Treasurer during the preceding year and at the same time pay to the County Treasurer any balance due. One statement shall be furnished to the County Treasurer and the other to the Clerk of the Board of Supervisors.

We verified that disbursements that were made were within the 30 day time frame as required by law.

We contacted the County Treasurer's office and they informed us they do not receive an annual report as required by law.

We reviewed Board minutes for 2012-2016 looking for the annual report under correspondence and did not find it. We contacted the Clerk of the Board of Supervisors and was informed that she does not receive the annual report as required by law.

### **District Attorney's Petty Cash Account**

After completing our initial audit work on the DA Special Account we were not able to locate all forfeited funds as reported to DCJS. We did find checks issued from an account labeled District Attorney's Petty Cash Account to the Special Account for some of the forfeiture deposits we could trace. After meeting with Acting DA Bokelman we expanded our audit to include the District Attorney Petty Cash Account. This petty cash account was established by resolution 278-13, which set the petty cash account balance at \$1,500.00. As of 4/30/17 this account had a bank

balance of \$3,716.36 and a check register balance of \$3,604.16 causing of difference of \$112.20. The current balance is more than double the board approved amount and it appears that the retainage of forfeiture funds over numerous years has caused this excess.

We again found many of the same issues that had been found in the DA Special Account including, no one reviewing bank statements, bank reconciliation not being completed, questionable expenditures, employees being reimbursed for travel and then depositing checks issued by the County to employees personally being deposited back into the Petty Cash account. We also found that some checks issued were not supported by any documentation. We also found that a check issued for \$350.00 only had supporting receipts totaling \$210.11, leaving the question of what the other \$139.89 was used for.

### **Recommendation**

- 1) The District Attorney's Office should transfer the Special Account to the County Treasurer's Office in accordance with resolution 692-08 and State Law.
- 2) Monthly bank reconciliations should be prepared in accordance with County policy (Resolution 523-13) and proper internal controls.
- 3) The District Attorney's Office should contact Lyons Nation Bank to see if any other information is available about check 387517 to determine if it was a bank error or actual expense of the special account.
- 4) Travel advances should not be issued unless authorized by the Board of Supervisors pursuant to County Policy.
- 5) Expenditures from the Special Account should be made in accordance with CPLR 1349 (h) ii as required by law.
- 6) Use of a standardized form to ensure that proper amounts are disbursed to the correct entities should be implemented.
- 7) The District Attorney's Office should determine what caused the variance between the total amounts reported to the state and actually deposited.
- 8) The District Attorney's Office should consistently deposit forfeiture funds into the same account in accordance with State laws.
- 9) Policies and procedures should be put in place to ensure all local and state reporting is done as required by law.
- 10) The District Attorney's Office should transfer the excess balance in the Petty Cash Account to the State Forfeiture Account.
- 11) The Petty Cash Account should be treated as a true Petty Cash Account were only proper County expenditures are made from the account and the account is replenished by submitting receipts and charging those expenses to the District Attorney's budget.

### **Managements Response**

In an email dated 6/5/17 Acting DA Bokelman provided the following response to the draft audit report:

Mr. Schmitt: First, thank you for the timeliness of completing the audit, particularly given the fact that the scope of the originally requested audit had to

expand in order for it to be properly conducted. Second, thank you for taking the time to explain your findings and your report, as it was helpful to understand both what was determined to exist (or not exist) and what needs to be done going forward. Having reviewed with you on June 2, 2017, the draft of the report, [dated 5/22/2017] this office knows of no exceptions or changes that could be made to the report. Specifically, this office is in agreement with the 11 recommendations as listed. An issue that must be noted with regard to recommendations #3 and #7, is that while efforts will be made to try and determine the source(s) of the discrepancies/variances, with the intentions to correct any error(s), as the information that might resolve these concerns is not within the possession or control of this Office, this Office cannot guarantee the ability to successfully make the appropriate corrections.

I would respectfully ask that the entire contents of this email be included as the “management’s response” portion of the final report.

Thank you.

Patrick Schmitt, CFE  
County Auditor  
6/8/17

Appendix 1

**Board of Supervisors**  
WAYNE COUNTY

**RESOLUTION NO. 692-08: AUTHORIZATION FOR THE DISTRICT ATTORNEY TO ACCEPT DISTRIBUTIONS OF MONEY AND PROPERTY UNDER STATE ASSET FORFEITURE PROGRAM**

Mrs. Bender presented the following:

WHEREAS, pursuant to the State Law (CPLR Art. 13 and County Law) forfeited money and property may be distributed to local law enforcement agencies; and

WHEREAS, any such money and property received by a state or local law enforcement agency must be utilized as a budget enhancement for prosecution services and not as a budget offset; and be it further

RESOLVED, that the District Attorney is hereby designated and authorized to accept money and property distributed to the Wayne County District Attorney's office pursuant to State Law; and be it further

RESOLVED, that all money received through such distributions shall be immediately transferred to the County Treasurer for deposit in a Special Drug Forfeiture Account.

Mr. LeRoy moved the adoption of the resolution. Seconded by Mr. Plant. Upon roll call, adopted.

WAYNE COUNTY  
**Board of Supervisors**  
LYONS, NEW YORK

**This is to Certify** that I, the undersigned, Clerk of the Board of Supervisors of the County of Wayne, have compared the foregoing copy of resolution with the original resolution now on file in this office and which was duly adopted by the Board of Supervisors of said County at a session held on the 21<sup>st</sup> day of October 2008 and that the same is a true copy of said original and of the whole thereof.

**In Witness Whereof**, I have hereunto subscribed my name and affixed the official seal of the Board of Supervisors of the County of Wayne, this 21<sup>st</sup> day of October 2008.

## Appendix 2

§ 1349. Disposal of property. 1. Any judgment or order of forfeiture issued pursuant to this article shall include provisions for the disposal of the property found to have been forfeited.

2. If any other provision of law expressly governs the manner of disposition of property subject to the judgment or order of forfeiture, that provision of law shall be controlling. Upon application by a claiming agent for reimbursement of moneys directly expended by a claiming agent in the underlying criminal investigation for the purchase of contraband which were converted into a non-monetary form or which have not been otherwise recovered, the court shall direct such reimbursement from money forfeited pursuant to this article. Upon application of the claiming agent, the court may direct that any vehicles, vessels or aircraft forfeited pursuant to this article be retained by the claiming agent for law enforcement purposes, unless the court determines that such property is subject to a perfected lien, in which case the court may not direct that the property be retained unless all such liens on the property to be retained have been satisfied or pursuant to the court's order will be satisfied. In the absence of an application by the claiming agent, the claiming authority may apply to the court to retain such property for law enforcement purposes. Upon such application, the court may direct that such property be retained by the claiming authority for law enforcement purposes, unless the court determines that such property is subject to a perfected lien. If not so retained, the judgment or order shall direct the claiming authority to sell the property in accordance with article fifty-one of this chapter, and that the proceeds of such sale and any other moneys realized as a consequence of any forfeiture pursuant to this article shall be apportioned and paid in the following descending order of priority:

(a) Amounts ordered to be paid by the court in satisfaction of any lien or claim against property forfeited. A fine imposed pursuant to the penal law shall not be deemed to constitute a lien or claim for purposes of this section;

(b) Amounts ordered to be paid by the defendant in any other action or proceeding as restitution, reparations or damages to a victim of the crime, which crime constitutes the basis upon which forfeiture was effected under this article, to the extent such amounts remain unpaid;

(c) Amounts ordered to be paid by the defendant in any other action or proceeding as restitution, reparations or damages to a victim of any crime committed by the defendant even though such crime did not constitute the basis for forfeiture under this article, to the extent that such amounts remain unpaid;

(d) Amounts actually expended by a claiming authority or claiming agent, which amounts are substantiated by vouchers or other evidence, for the: (i) maintenance and operation of real property attached pursuant to this article. Expenditures authorized by this subparagraph are limited to mortgage, tax and other financial obligations imposed by law and those other payments necessary to provide essential services and repairs to real property whose occupants are innocent of the criminal conduct which led to the attachment or forfeiture; and

(ii) proper storage, cleanup and disposal of hazardous substances or other materials, the disposal of which is governed by the environmental conservation law, when such storage, cleanup or disposal is required by circumstances attendant to either the commission of the crime or the forfeiture action, or any order entered pursuant thereto;

(e) In addition to amounts, if any, distributed pursuant to paragraph

(d) of this subdivision, fifteen percent of all moneys realized through forfeiture to the claiming authority in satisfaction of actual costs and expenses incurred in the investigation, preparation and litigation of the forfeiture action, including that proportion of the salaries of the attorneys, clerical and investigative personnel devoted thereto, plus all costs and disbursements taxable under the provisions of this chapter;

(f) In addition to amounts, if any, distributed pursuant to paragraph (d) of this subdivision, five percent of all moneys realized through forfeiture to the claiming agent in satisfaction of actual costs incurred for protecting, maintaining and forfeiting the property including that proportion of the salaries of attorneys, clerical and investigative personnel devoted thereto;

(g) Forty percent of all moneys realized through forfeiture which are remaining after distributions pursuant to paragraphs (a) through (f) of this subdivision, to the chemical dependence service fund established pursuant to section ninety-seven-w of the state finance law;

(h) All moneys remaining after distributions pursuant to paragraphs (a) through (g) of this subdivision shall be distributed as follows:

(i) seventy-five percent of such moneys shall be deposited to a law enforcement purposes subaccount of the general fund of the state where the claiming agent is an agency of the state or the political subdivision or public authority of which the claiming agent is a part, to be used for law enforcement use in the investigation of penal law offenses;

(ii) the remaining twenty-five percent of such moneys shall be deposited to a prosecution services subaccount of the general fund of the state where the claiming authority is the attorney general or the political subdivision of which the claiming authority is a part, to be used for the prosecution of penal law offenses.

Where multiple claiming agents participated in the forfeiture action, funds available pursuant to subparagraph (i) of this paragraph shall be disbursed to the appropriate law enforcement purposes subaccounts in accordance with the terms of a written agreement reflecting the participation of each claiming agent entered into by the participating claiming agents.

3. All moneys distributed to the claiming agent and the claiming authority pursuant to paragraph (h) of subdivision two of this section shall be used to enhance law enforcement efforts and not in supplantation of ordinary budgetary costs including salaries of personnel, and expenses of the claiming authority or claiming agent during the fiscal year in which this section takes effect.

4. The claiming authority shall report the disposal of property and collection of assets pursuant to this section to the office of victim services, the state division of criminal justice services and the state division of substance abuse services.

Appendix 3

<b>Section of Law</b>	<b>Required Amount</b>	<b>Designated Purpose</b>
1349 (2) (a)	100% of Court Order	Amounts ordered by court in satisfaction of any lien or claim against forfeited property.
1349 (2) (b)	100% of Court Order	Amount ordered to be paid by defendant in any other action or proceeding as restitution to the victim of the crime resulting in the forfeiture.
1349 (2) (c)	100% of Court Order	Amount ordered to be paid by defendant in any other action or proceeding as restitution to the victim of a crime not resulting in this forfeiture.
1349 (2) (d) (i)	Amounts Actually Paid	Actual expenses of the claiming authority for maintenance and operation of real property.
1349 (2) (d) (ii)	Amounts Actually Paid	Actual expense for proper storage, cleanup and disposal of hazardous substances or other material.
1349 (2) (e)	15% of all money realized through forfeiture	To the claiming authority in satisfaction of actual costs and expenses for forfeiture action.
1349 (2) (f)	5% of all money realized through forfeiture	To the claiming agent in satisfaction of actual cost for protecting, maintaining, and forfeiting property.
1349 (2) (g)	40% of remained after (a) through (f) above	To chemical dependence service fund established pursuant to section ninety-seven-w of the state finance law.
1349 (2) (h) (i)	75% of remained after (a) through (g) above	Deposit into a law enforcement purposes subaccount of the general fund of the claiming agent to be used for law enforcement use in investigation of penal law offenses.

1349 (2) (a) (ii)	25% of remained after (a) through (g) above	Deposit into a prosecution services subaccount of the general fund of the claiming authority to be used for prosecution of penal law offenses.
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