

**State of Delaware  
Office of Auditor of Accounts**

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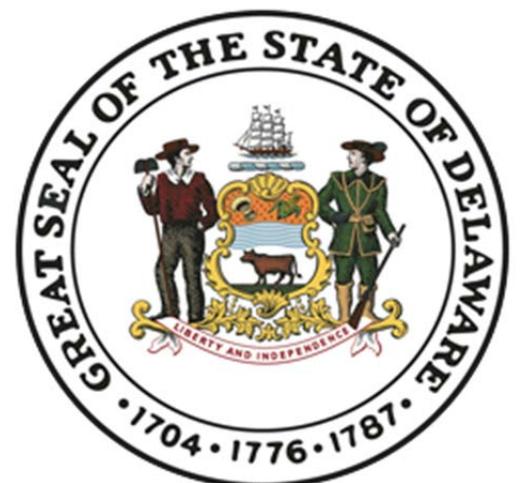
**Superior Court Continuously Sent Jury  
Summonses  
to Deceased Residents**

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**Special Investigation**

**Fieldwork End Date: October 15, 2012  
Issuance Date: December 4, 2012**

R. Thomas Wagner, Jr., CFE, CGFM, CICA  
Auditor of Accounts





**State of Delaware  
Office of Auditor of Accounts  
R. Thomas Wagner, Jr., CFE, CGFM, CICA**

# At a Glance

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## Background

The Superior Court of the State of Delaware supplies jurors for all jury trials in the State including civil and criminal Superior Court trials, civil trials in the Court of Common Pleas, landlord tenant trials in the Justice of the Peace Courts, and the Grand Jury process.

Superior Court selects and summons Delaware citizens for jury duty on a random basis. The pool of candidates includes citizens who have registered to vote and those who have obtained a Delaware driver's license or identification card.

The investigation was performed in accordance with the Council of the Inspectors General on Integrity and Efficiency, *Quality Standards for Investigations*.

**For further information on this release, please contact:  
Kathleen Davies  
(302) 857-3919**

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## Why We Did This Review

The Office of Auditor of Accounts (AOA) received an allegation that the State of Delaware Superior Court's jury summons process allows mailing of jury summonses to deceased Delaware residents.

## What We Found

Superior Court was fully aware that they were sending jury summonses to deceased people and did nothing to correct the issue. Superior Court had the information to manually identify and omit deceased persons from the Master List as far back as November 2009, but did not act to remove those persons from the Master List.

Superior Court offered several reasons why jury notifications continued to be sent to deceased people, all of which AOA refuted. Excuses such as cost, inaccurate source data from other agencies, and lack of information from the Office of Vital Statistics (OVS) to update the Master List proved to hold no merit in resolving the problem.

Additionally, Superior Court initially informed AOA that they were going to develop a software program to resolve the issue. However, after a year and a half, no progress had been made. All along, Superior Court had various alternatives to correct the jury summons process including running the Master List more frequently and performing manual updates using the Death Extract file from OVS.

The development of the jury pool list is the backbone of the entire jury selection process for all three counties in the State. AOA found that Superior Court has never documented the process used in developing a new jury pool list and did not know the process for generating it. Superior Court, as the project lead, should have a complete understanding of this procedure and should document and periodically review the process to ensure on-going accuracy.

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## ***Background***

The Superior Court of the State of Delaware (Superior Court) supplies jurors for all jury trials in the State including:

- civil and criminal Superior Court trials,
- civil trials in the Court of Common Pleas,
- landlord tenant trials in the Justice of the Peace Courts, and
- the Grand Jury process.

Superior Court maintains the pool of eligible jurors in what is referred to as the Master List, which consists of citizens who have registered to vote and citizens who have obtained a Delaware driver's license or identification card. Superior Court selects and summons Delaware citizens for jury duty on a random basis from the Master List.

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The conclusion of the allegation is defined as follows:

Substantiated:	The allegation has been verified by competent evidence.
Partially Substantiated:	A portion of the allegation has been verified by competent evidence; however, competent evidence to verify the entire allegation could not be provided by the agency or obtained by AOA, or competent evidence was found to dispute a portion of the allegation.
Unsubstantiated:	Competent evidence was found to dispute the allegation.
Unable to Conclude:	Competent evidence to verify the allegation could not be provided by the agency or obtained by AOA

## ***Allegation and Conclusion***

### **Allegation**

The State of Delaware Superior Court's jury summons process allows mailing of jury summonses to deceased Delaware residents.

### **Conclusion – Allegation Substantiated**

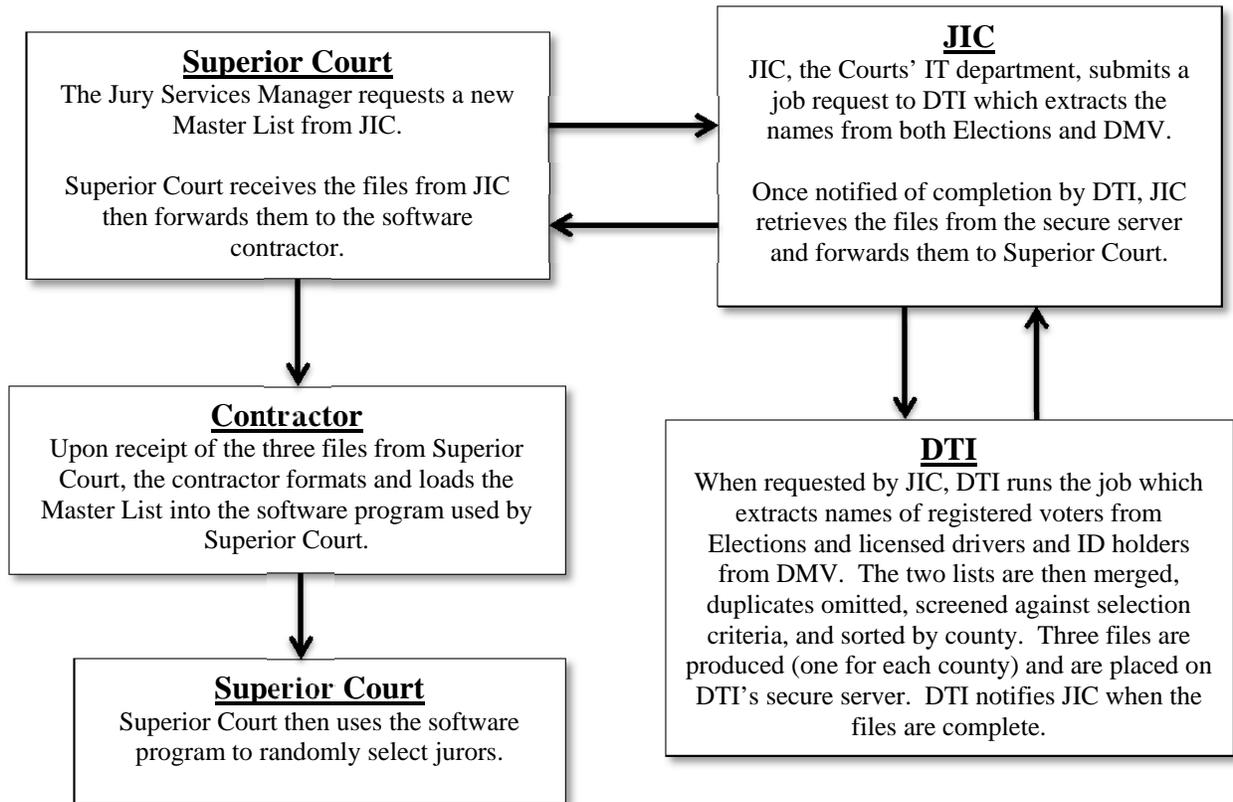
Superior Court was fully aware that they were sending jury summonses to deceased people and did nothing to correct the issue. Further, Superior Court had the information to, at a minimum, manually identify and omit deceased persons from the Master List as far back as November 2009, but did not act to remove those persons. Superior Court did not take the appropriate level of ownership for the contents of the Master List and allowed jury duty summonses to be sent to deceased Delaware residents.

The Master List is a snap shot of the eligible juror population at a given time. As the Master List gets older, data inaccuracies increase and affect juror eligibility unless updates are performed for addresses, deaths, and other changes. The Office of Vital Statistics (OVS) reports that there are over 7,600 Delaware resident deaths per year; however, Superior Court stated they generate a new Master List every four to five years based on need. According to the Department of Technology and Information (DTI) records, Superior Court received juror data for new Master Lists in 2010, 2008, and 2005.

AOA first contacted Superior Court on December 1, 2010 to inquire why deceased persons were receiving jury notices. Superior Court acknowledged the problem and responded that they were in the process of developing software that would omit deceased persons from the Master List. However, after a year and a half, Superior Court still had not completed the software update and no deceased persons had been omitted from the Master List. AOA opened a formal investigation regarding this allegation and started fieldwork on June 4, 2012.

Since the Jury Services Manager could not provide a comprehensive description of the jury pool process, AOA interviewed Superior Court as well as all of the agencies involved to gain an understanding of how the Master List is developed. The interviews included the Department of Elections (Elections), the Division of Motor Vehicles (DMV), the DTI, the OVS, and the Judicial Information Center (JIC).

The following flow chart summarizes the process AOA found as a result of our interviews:



***Lack of Ownership for the Contents of the Master List***

When AOA first discussed the allegation with Superior Court, they offered several reasons why jury summonses were being sent to deceased persons. First, they blamed the prohibitive cost to develop a new Master List. Next, they blamed inaccurate data included in the source lists from Elections and DMV. Lastly, they stated they recently started to receive the "Death Extract" file<sup>1</sup> and, therefore, could not have compared that file to the Master List in order to omit deceased persons. AOA has compiled evidence that refutes all of these excuses and identified a number of options for timely updates to the Master List.

***DTI Update List***

Superior Court stated that it was too costly to develop a new Master List more frequently than every 4 to 5 years but could not provide AOA with the actual cost. After interviewing the agencies involved with developing the Master List, AOA found that DTI's total cost to Superior Court for updating the Master List was approximately \$50. In addition, after reviewing the State's accounting system, we found \$2,699 in costs charged to Superior Court for "2011 Juror Data Load" from their software contractor. AOA does not consider these costs excessive enough to preclude Superior Court from generating a Master List at least once a year.

<sup>1</sup> File of names of recently deceased Delaware Residents collected at OVS.

Further, Superior Court should consider utilizing their own IT personnel from JIC instead of paying a contractor to format and load the Master List into the Court's software. Also, DTI stated that the process used to develop the Master List from the source agencies could be scheduled to run on a monthly or even a daily basis, without the need for Superior Court to request it.

#### *Utilize the Office of Vital Statistics File*

The Jury Services Manager stated another reason deceased persons were on the Master List was due to the contents of the source lists received from Elections and DMV. Both Elections and DMV confirmed to AOA that they receive the "Death Extract" file from the Office of Vital Statistics (OVS) and purge their source lists of deceased persons monthly. Therefore, the data received from Elections and DMV is reliable and contains the least names of deceased persons<sup>2</sup>.

#### *Manual Updates*

The Jury Services Manager stated that he only recently started receiving the Death Extract file from OVS; however, AOA obtained evidence showing personnel from Superior Court received this file for the months of November 2009 and November 2010 and each month from June 2011 through June 2012.

Before AOA started its investigation, Superior Court had the tools to manually compare the Master List with the Death Extract file in order to identify and omit deceased persons in a timely manner. However, this was not done. Instead, after AOA's initial inquiry, Superior Court contacted their software vendor to have a program written to compare the two files and omit deceased persons. Superior Court could not provide AOA with an executed contract detailing the cost of creating this program.

Superior Court should work with the agencies involved and leverage off of existing technology within the State to have the Death Extract file purge process automated to reduce time and the effect of human error. Superior Court should strive to ultimately have real-time daily updates of the Master List from mortality data collected by OVS.

#### *Superior Court's Standards Lacked Sufficient Detail Regarding the Master List*

During our investigation, AOA repeatedly requested Superior Court's written procedures for the development of the Master List. Since none were provided, the Jury Services Manager verbally described the process. However, the procedures described by the Jury Services Manager for the development of the Master List were substantially different than what was described by the agencies involved in the process as indicated in the earlier flow chart. This only emphasizes the need for Superior Court to thoroughly document the procedure for developing the Master List including the agencies involved and their roles.

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<sup>2</sup> The Source lists may still contain the names of deceased Delaware residents if they have died in another State because the reporting of Delawareans' deaths occurring in other states is not as timely as the reporting of those that occurred in-State.

The Master List is the bedrock from which the entire jury selection process begins. Without it, a representative random selection of eligible jurors could not be accomplished in a timely manner and without the use of a labor intensive manual selection. This is why AOA found it unacceptable that the entire process, including the agencies involved and their roles, was not included in the *Standards for Juror Use and Management* provided by Superior Court.

Superior Court, as the owner of the Master List, should have written procedures that can be shared with the other agencies involved and define each agency's responsibility, the staff assigned to those responsibilities, time frames for task completion, and important criteria used to identify eligible jurors. Superior Court, as the project lead, should have a complete understanding of this procedure and should document and periodically review the process to ensure optimum efficiency.

Additionally, the *Standards for Juror Use and Management* do not address the need to exclude deceased persons from the Master List nor do they address a process for removing deceased persons in a timely manner. According to *Standard 2*, "Should the Court determine that improvement is needed in the representativeness or inclusiveness of the jury source list, appropriate corrective action should be taken." Having deceased people on the Master List of potential jurors violates the inclusiveness criteria and Superior Court should have taken corrective action prior to the start of AOA's investigation.

In conclusion, Superior Court had various alternatives to correct the jury summons process including running the Master List more frequently and performing manual updates using the Death Extract file from OVS. Superior Court has never documented the process for developing a new jury pool list and did not know the process of generating it. Superior Court, as the project lead, should have a complete understanding of this procedure and should document and periodically review the process to ensure on-going accuracy.

## ***AOA's Evaluation of Superior Court's Response***

The following is AOA's evaluation of Superior Court's written response, included as Appendix A of the report, and a subsequent meeting held with Superior Court personnel. The written response indicated there are "a number of inaccurate statements in your draft report" and requested AOA to meet with the Court's Chief Staff Attorney to "go through the draft in detail to point out the statements that we believe are not correct". Subsequently, AOA met with the Chief Staff Attorney and the Jury Services Manager on October 9, 2012.

During the meeting, Superior Court continued to deflect the blame for this problem to the agencies providing them with the source data, including the Department of Elections and DTI. Instead of blaming these agencies, Superior Court should have been proactively working with them to ensure that the source data met their needs. There was no evidence of collaboration between Superior Court and these agencies to solve the problem. Instead, Superior Court hired a contractor to provide a program that would omit the deceased residents from the list. This took nearly two years after AOA first made Superior Court aware of the problem<sup>3</sup>. Meanwhile, an alternative manual method of omitting deceased persons could have been used until the program was fully tested and utilized.

Superior Court claimed "the List is only as good as the source data" and that the Department of Elections' source data still contains deceased persons. Superior Court did not provide any documentation to prove this assertion. The Department of Elections represented to AOA that they purge their data with the death extract file on a monthly basis and, further, in 2009, linked their system with DMV's so that their data is updated on a daily basis.

Superior Court also stated that the List is "unusable" when received from DTI claiming that additional filtering is needed. However, Superior Court provided the selection criteria to DTI for the extraction of the List. If the List is "unusable" when generated by DTI, then the criteria used to pull the data should have been updated for additional filtering. When shown the criteria and asked when the last time the criteria had been reviewed or updated by Superior Court, neither the Jury Services Manager nor the Chief Staff Attorney had ever seen the criteria before and could not tell us the last time it was updated or reviewed. However, DTI stated that the criteria used to extract the data has been in use for approximately ten years.

Superior Court mentioned that there is a voluntary opt out option for seniors over the age of 70 who do not want to serve as jurors. The *Standards for Juror Use and Management* did not mention anything about a voluntary opt out for seniors nor does it give any additional requirements to participate. This is another example of why Superior Court needs to document the procedure for the development of the Master List. We are certain that some seniors would appreciate this information as well as the requirements to participate.

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<sup>3</sup> AOA first contacted Superior Court about this problem in December, 2010, which they acknowledged. Superior Court stated that the program was tested to omit deceased persons in July 2012.

Lastly, Superior Court insisted that documenting the procedure for the development of the Master List was unnecessary. They stated there are an adequate number of personnel on staff familiar with the procedure and felt they could not document every procedure they use. AOA certainly does not agree with this assessment. The fact that the Jury Services Manager's description of the procedure differed substantially from what the other agencies had indicated, proves that Superior Court does not have an adequate understanding of their own process. AOA explained that the list is too important to go undocumented and, as personnel retire or leave State service, the institutional knowledge will leave with them. Superior Court still failed to see the importance of documenting these procedures.

AOA concludes that it is Superior Court's responsibility to ensure that jury notices are sent to the appropriate persons, and to exclude deceased residents. 10 Del. C. §4507 (3), clearly states that Superior Court is responsible for "The selection of names for master lists" and (6) for the "disqualification, excuse and exclusion of prospective jurors".

## Appendix A

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

JAMES T. VAUGHN, JR.  
PRESIDENT JUDGE

KENT COUNTY COURTHOUSE  
38 THE GREEN  
DOVER, DELAWARE 19901  
TELEPHONE (302) 739-5333

September 29, 2012

Laura Beck, CGFM, CICA, CFE  
Audit Manager  
Office of Auditor of Accounts  
Townsend Building, Suite 1  
401 Federal Street  
Dover, Delaware 19901

**Re: Draft Report - Superior Court**

Dear Ms. Beck:

Thank you for delaying issuance of the Auditor of Accounts ("Auditor's Office") draft report to provide the Superior Court time to respond.

The adoption of a jury selection plan is within the exclusive jurisdiction of the Superior Court. 10 *Del. C.* § 4507.

It appears that there are a number of inaccurate statements in your draft report. The Court's Chief Staff Attorney is willing to meet with you and go through the draft in detail to point out the statements that we believe are not correct if you have an interest in doing that.

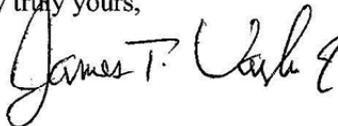
As to the sending of jury summonses to deceased residents, the Court has taken steps to address that issue. In fact, prior to the Auditor's Office first contact with the Superior Court, the Superior Court had begun to develop a method to eliminate deceased residents from its Master List. A jury manager now inputs the Bureau of Vital Statistics "death extract" information into the jury system on a monthly basis. Thus, all deceased residents who are included on the "death extract" list are removed from the system within 30 days from the Superior Court's receipt of the "death extract" list.

**Draft Report - Superior Court**

September 29, 2012

I would like to comment on one further aspect of the investigation. At the top of page four, the draft report states that the Master List can be run on a monthly or even a daily basis from the source agencies. While this is a true statement, it should be remembered that currently the Master List is not in usable form when we receive it from DTL. The lists provided by both the Department of Elections and the Division of Motor Vehicles include individuals who must be removed from the list. Persons removed include persons who are less than 18 years of age, non-citizens (resident aliens), persons over 70 who have indicated that they no longer wish to serve on juries, persons who the Court has previously deemed to be permanently, medically unable to perform jury service, and persons who have served in the last two years. Jury Systems, the Court's vendor, utilizes a software program to perform this filtering process. Whether improved technology can enable us to update the Master List more frequently and in some other manner is something that can be explored.

Very truly yours,



JTVJr:dfm

cc: File