

STATE OF NORTH CAROLINA

OFFICE OF THE STATE AUDITOR

BETH A. WOOD, CPA

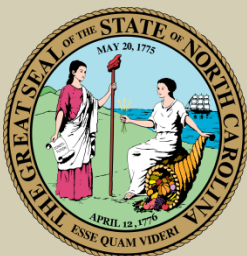


CHEROKEE COUNTY CLERK OF SUPERIOR COURT

MURPHY, NORTH CAROLINA

FINANCIAL RELATED AUDIT

JULY 2019



NCOSA
The Taxpayers' Watchdog

STATE OF NORTH CAROLINA
Office of the State Auditor



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AUDITOR'S TRANSMITTAL

The Honorable Roy Cooper, Governor
The General Assembly of North Carolina
The Honorable Roger D. Gibson, Cherokee County Clerk of Superior Court

This report presents the results of our financial related audit at Cherokee County Clerk of Superior Court. Our work was performed by authority of Article 5A of Chapter 147 of the *North Carolina General Statutes* and was conducted in accordance with the performance audit standards contained in *Government Auditing Standards*, issued by the Comptroller General of the United States.

The results of our audit identified deficiencies in internal control and instances of noncompliance that are considered reportable under *Government Auditing Standards*. These items are described in the *Audit Findings, Recommendations, and Responses* section of this report.

North Carolina General Statutes require the State Auditor to make audit reports available to the public. Copies of audit reports issued by the Office of the State Auditor may be obtained through one of the options listed in the back of this report.

A handwritten signature in black ink that reads "Beth A. Wood".

Beth A. Wood, CPA
State Auditor



Beth A. Wood, CPA
State Auditor

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Article V, Chapter 147 of the *North Carolina General Statutes*, gives the Auditor broad powers to examine all books, records, files, papers, documents, and financial affairs of every state agency and any organization that receives public funding. The Auditor also has the power to summon people to produce records and to answer questions under oath.

As authorized by Article 5A of Chapter 147 of the *North Carolina General Statutes*, we have conducted a financial related audit at Cherokee County Clerk of Superior Court. There were no special circumstances that caused us to conduct the audit, but rather it was performed as part of our effort to periodically examine and report on the financial practices of state agencies and institutions.

The voters of each county elect a Clerk of Superior Court for a four-year term. Clerks are responsible for all clerical and record-keeping functions of the superior court and district court. The Clerks' Offices collect, invest, and distribute assets in a fiduciary capacity. For example, the Clerks' Offices collect fines and court costs, hold cash and property bonds, administer estates on behalf of minors, and distribute resources to governmental and private parties as required.

The North Carolina Administrative Office of the Courts (NCAOC) provides statewide support services for the courts, including court programs and management services; information technology; human resources services; financial, legal, and legislative support; and purchasing services. In addition, the NCAOC prepares and administers the court system's budget.

The general objective of this financial related audit was to identify improvements needed in internal control over selected fiscal matters. Management is responsible for establishing and maintaining effective internal control. Internal control is a process designed to provide reasonable assurance that relevant objectives are achieved. Errors or fraud may nevertheless occur and not be detected because of the inherent limitations of internal control. Also, projections of any evaluation of internal control to future periods are subject to the risk that conditions may change or that compliance with policies and procedures may deteriorate. Our audit does not provide a basis for rendering an opinion on internal control, and consequently, we have not issued such an opinion.

Our audit scope covered the period July 1, 2018 through February 28, 2019. During our audit, we considered internal control related to the following objectives:

Cash – The Clerk’s Office collects various fines, fees, and court costs daily, as well as collections for bonds, judgments, and other matters. We examined internal controls designed to ensure that the Clerk properly safeguards and accounts for cash receipts. We also examined internal controls designed to ensure compliance with laws and regulations related to depositing cash receipts. During the audit period, the Clerk collected \$6,145,269 in cash.

Estates – The Clerk’s Office ensures all estates are charged an application fee plus an assessment based on the value of the estate’s inventory. An estate inventory is to be filed by the representative of the estate. We examined internal controls designed to ensure that the Clerk properly obtains an inventory for each estate in compliance with laws and regulations. We also examined internal controls designed to ensure compliance with laws and regulations related to the appropriate assessment and collection of estate fees. During the audit period, the Clerk collected \$90,052 in estate fees.

The Clerk’s Office ensures that all estate guardians are properly bonded based on the value of the annual estate inventory. An annual estate inventory is to be filed by the estate guardian of a minor or incapacitated adult. We examined internal controls designed to ensure that the Clerk properly obtains an inventory for each guardianship in compliance with laws and regulations. We also examined internal controls designed to ensure that bonds assessed and collected are sufficient and in compliance with laws and regulations. During the audit period, auditors examined \$1,209,195 in estate guardian bonds retained by the Clerk.

Escheats – The Clerk’s Office transfers abandoned property to the State. The transfer results when the person legally entitled to the property fails to make a valid claim on the property within a prescribed period of time. After that time, all abandoned property held by the Clerk is required to be transferred to the North Carolina Department of State Treasurer. We examined internal controls designed to ensure that the Clerk properly identifies escheatable funds. We also examined internal controls designed to ensure compliance with laws and regulations related to escheating unclaimed funds after a prescribed period of time. During the audit period, the Clerk transferred \$22,733 in escheats to the State Treasurer.

Trusts – The Clerk’s Office receives, administers, and disburses trust funds for minors and incapacitated adults. We examined internal controls designed to ensure that disbursements from minor and incapacitated adult trust accounts are proper to ensure compliance with laws and regulations. As of February 28, 2019, the Clerk had \$481,119 in trust accounts.

To accomplish the audit objectives, auditors gained an understanding of the Clerk's internal control over matters described in the *Audit Objectives and Scope* section of this report and evaluated the design of the internal control. Auditors then performed further audit procedures consisting of tests of control effectiveness and/or substantive procedures that provide evidence about our audit objectives. Specifically, auditors interviewed personnel, observed operations, reviewed policies, analyzed accounting records, and examined documentation supporting recorded transactions and balances, as considered necessary in the circumstances. Whenever sampling was used, we applied a nonstatistical approach, but chose sample sizes comparable to those that would have been determined statistically. As a result, we were able to project our results to the population as applicable but not quantify the sampling risk. This approach was determined to adequately support audit conclusions.

As a basis for evaluating internal control, we applied the internal control guidance contained in professional auditing standards. As discussed in the standards, internal control consists of five interrelated components: (1) control environment, (2) risk assessment, (3) control activities, (4) information and communication, and (5) monitoring.

We conducted this audit in accordance with the performance audit standards contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. 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 objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Based on the results of audit procedures described in the *Methodology* section of this report, auditors identified deficiencies in internal control and instances of noncompliance that are considered reportable under *Government Auditing Standards*. These items are described in the *Audit Findings, Recommendations, and Responses* section of this report. Management's responses are presented after each audit finding. We did not audit the responses, and accordingly, we express no opinion on them.

1. IMPROPER SYSTEM ACCESS AND SEGREGATION OF DUTIES INCREASED RISK OF UNDETECTED ERRORS AND FRAUD

Staff in the Clerk's Office had the ability to change and/or delete information in multiple systems and were assigned job duties inconsistent with proper segregation of duties. The Clerk's Office handled \$6,145,269 in receipts during the audit period July 2018 to February 2019.

Three (33%) out of 9 employees had inappropriate access to the Financial Management System (FMS) and the Criminal Court Information System (CCIS) or had job duties inconsistent with proper segregation of duties. Specifically,

- Two (22%) employees had both cashier rights in FMS and update access in CCIS. As a result, the employees could have potentially misappropriated funds by collecting cash from a criminal payment, bypassing receipt entry into FMS, and updating CCIS to indicate all costs have been paid. In addition, one of these employees had access to delete criminal case information.
- One (11%) employee had the ability to misappropriate funds by generating unauthorized checks because there was no independent review of the daily check register. As a result, the employee could have potentially misappropriated funds by disbursing to unauthorized individuals without detection.

Improper segregation of duties increased the risk that errors, unauthorized transactions, and fraud could go undetected. While no fraud was identified during the audit period, an increased risk of undetected fraud existed because access rights and duties were not properly segregated.

According to the Clerk, the small staff size makes it difficult to achieve proper duty segregation. Additionally, the Clerk was not aware that the North Carolina Administrative Office of the Courts had provided monitoring procedures to serve as compensating controls for employees with this conflicting access.

Adequate segregation of duties is required by the *Clerk of Superior Court Financial Policies and Procedures Manual*. Proper segregation of duties involves assigning duties and access to assets and information systems so that one employee's duties automatically provide a cross-check of the work of other employees.

Recommendation: The Clerk should reassign system access rights and job responsibilities to properly segregate duties in accordance with the *Clerk of Superior Court Financial Policies and Procedures Manual*. If it is not practical to segregate all incompatible duties, then effective monitoring procedures should be implemented to reduce the risk of errors or fraud, such as an independent review of the CCIS tracking reports and daily check register.

Clerk's Response: See page 8 for the Clerk's response to this finding.

2. FAILURE TO COMPEL ESTATE INVENTORY FILINGS

The Clerk's Office did not compel the timely filing of estate inventories in accordance with state law.

Auditors examined all 38 estates in the audit period that required an inventory to be filed. For four (11%) estates, the Clerk's Office failed to take further compelling action after the initial notification to file.

Auditors also examined all 31 guardianship estates for wards (minors or incapacitated adults) that required bonds and the filing of an annual inventory of the ward's assets. For two (6%) of the guardianship estates, the Clerk's Office failed to take further compelling action after the initial notification to file. Because no inventory was filed, the bond amount required could not be determined.

Failure to compel the timely filing of inventories results in:

- A delay of the family of the deceased in finalizing the estate. It could also result in unauthorized transactions from the estate including, but not limited to, the removal of estate assets without the knowledge of qualified heirs.
- The Clerk's inability to assess and collect sufficient¹ bonds from guardians. Insufficient bonds could result in financial loss to the ward if the guardian misuses the assets in the estate. Additionally, the Clerk and the State may be liable for the financial loss if bonds are not sufficient.

According to the Clerk, phone calls were made in lieu of written requests in an effort to maintain a positive working relationship with the estate's personal representative and/or guardian. However, there was no documented evidence of the Clerk's phone call discussions.

*North Carolina General Statutes*² and the *North Carolina Clerk of Superior Court Procedures Manual*³ require:

- The filing of an estate inventory within three months after the Clerk's appointment of the estate's personal representative.
- The Clerk to send a written request requiring the personal representative to file the inventory or explain why the personal representative should not be replaced if the inventory is not filed.
- The annual filing of an inventory of the ward's personal property.
- The Clerk to send a written request requiring the guardian to file the inventory or explain why the guardian should not be removed if the inventory is not filed.
- The Clerk to be liable for all loss and damages sustained.

¹ *North Carolina General Statutes* 35A-1230 and 35A-1231 require bonds for estate guardians to equal 125% of the ward's personal property (if under \$100,000) or 110% of personal property (if over \$100,000). Personal surety bond must be double the amount of the ward's personal property. Bond amounts should be reviewed upon the filing of the inventory and each account to ensure sufficiency.

² NCGS 28-20, 35A-1264, 35A-1265, and 35A-1238

³ Chapter 74

Recommendation: The Clerk should ensure appropriate action is taken to compel the timely filing of estate inventories and maintain documentation of all compelling efforts.

Clerk's Response: See page 8 for the Clerk's response to this finding.

3. FAILURE TO NOTIFY APPARENT OWNERS OF UNCLAIMED FUNDS

The Clerk's Office did not attempt to notify the apparent owners of unclaimed funds in accordance with state law.

Auditors examined all 15 unclaimed items requiring notice and found 10 (67%) items totaling \$4,850 where the Clerk's Office did not make a good faith effort to notify the apparent owner prior to transferring funds to the North Carolina Department of State Treasurer (Treasurer).

As a result, the return of unclaimed funds to the apparent owners has been delayed.

According to the Clerk, the employees responsible for escheats misunderstood the procedures related to the escheat process.

North Carolina General Statute 116B-59 and the *North Carolina Clerk of Superior Court Escheats Manual*, Section C5, require a good faith effort to locate and provide notice to an apparent owner of unclaimed funds prior to the transfer of funds to the Treasurer.

Recommendation: The Clerk should ensure responsible employees receive proper training of the escheat process, including the methods for searching and notifying the apparent owners.

Clerk's Response: See page 8 for the Clerk's response to this finding.



State of North Carolina
General Court of Justice
CLERK OF SUPERIOR COURT

ROGER D. GIBSON, CLERK
EX OFFICIO JUDGE OF PROBATE

CHEROKEE COUNTY
75 PEACHTREE STREET, SUITE 243, MURPHY, NC 28906
PHONE: (828) 835-7740
FAX: (828) 835-7741

WILLIAM H. COWARD
RESIDENT JUDGE

1. IMPROPER SYSTEM ACCESS AND SEGREGATION OF DUTIES INCREASED RISK OF UNDETECTED ERRORS AND FRAUD

Recommendation: The Clerk should reassign system access rights and job responsibilities to properly segregate duties in accordance with the *Clerk of Superior Court Financial Policies and Procedures Manual*. If it is not practical to segregate all incompatible duties, then effective monitoring procedures should be implemented to reduce the risk of errors or fraud, such as an independent review of the CCIS tracking reports and daily check register.

Response: I will do a VL Disposition report along with the User Activity Report and Back Up Bookkeeper will review the check register.

2. FAILURE TO COMPEL ESTATE INVENTORY FILINGS

Recommendation: The Clerk should ensure appropriate action is taken to compel the timely filing of estate inventories and maintain documentation of all compelling efforts.

Response: I will keep a log of all the appropriate action taken to compel the timely filings.

3. FAILURE TO NOTIFY APPARENT OWNERS OF UNCLAIMED FUNDS

Recommendation: The Clerk should ensure responsible employees receive proper training of the escheat process, including the methods for searching and notifying the apparent owners.

Response: Bookkeeper will send all notices to the required owners of unclaimed funds and seek the assistance of FMA.

Roger D. Gibson
07-02-19

ORDERING INFORMATION

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This audit was conducted in 165 hours at an approximate cost of \$17,002.