

STATE OF NORTH CAROLINA

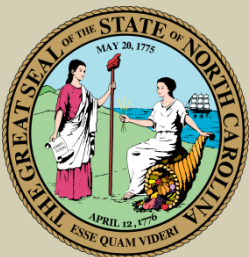
OFFICE OF THE STATE AUDITOR

BETH A. WOOD, CPA



MONTGOMERY COUNTY CLERK OF SUPERIOR COURT

TROY, NORTH CAROLINA
FINANCIAL RELATED AUDIT
JUNE 2019



NCOSA
The Taxpayers' Watchdog

STATE OF NORTH CAROLINA
Office of the State Auditor



Beth A. Wood, CPA
State Auditor

2 S. Salisbury Street
20601 Mail Service Center
Raleigh, NC 27699-0600
Telephone: (919) 807-7500
Fax: (919) 807-7647
<https://www.ncauditor.net>

AUDITOR'S TRANSMITTAL

The Honorable Roy Cooper, Governor
The General Assembly of North Carolina
The Honorable John K. Deaton, Montgomery County Clerk of Superior Court

This report presents the results of our financial related audit at Montgomery 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 cursive script 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 Montgomery 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 \$3,129,798 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 \$33,860 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 \$1,937,264 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 \$15,437 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 \$251,361 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. UNTIMELY OR 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 28 estates that required an inventory to be filed in the audit period. Ten (36%) estates were not compelled or not compelled timely. Specifically,

- For 6 (22%) estates, the Clerk's written requests requiring inventory filings were issued 43 to 134 days after the three-month inventory deadline.
- For 4 (14%) estates, the Clerk failed to issue written requests requiring inventory filings.

Failure to compel timely filing of inventories delays 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.

According to the Clerk, extensions were granted on inventory filings without maintaining documentation of the approvals in the estate file.

North Carolina General Statute 28A-20 and the *North Carolina Clerk of Superior Court Procedures Manual*, Chapter 74, require the filing of an estate inventory within three months after the Clerk's appointment of the estate's personal representative. If an inventory is not filed, the Clerk must send a written request requiring the personal representative to file the inventory or explain why the personal representative should not be replaced.

Recommendation: The Clerk should maintain documentation of any deviation from inventory filing requirements, such as extensions granted by the Clerk.

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

2. FAILURE TO IDENTIFY AND TRANSFER UNCLAIMED FUNDS TO THE STATE TREASURER OR RIGHTFUL OWNER

The Clerk's Office did not identify and transfer unclaimed funds to the North Carolina Department of State Treasurer (Treasurer) or rightful owners in accordance with state law.

Auditors examined the February 2019 aging report¹ for items held over one year and identified 85 unclaimed items totaling \$117,371. Thirty-two (38%) items totaling \$12,143 should have been transferred to the rightful owner or to the Treasurer during 2013-2018, but instead remained on deposit with the Clerk's Office. There was no evidence that the Clerk's Office attempted to contact the rightful owners.

As a result, the return of unclaimed funds to the rightful owners has been delayed. Additionally, there was a potential loss of earnings on the Unclaimed Property Fund, or

¹ The monthly aging report reflects all case level account funds being held by the Clerk and the amount of time the funds have remained in the Clerk's Office without any activity.

Escheats Fund. A loss of Escheats Fund earnings reduces the amount of funds available for transfer to the North Carolina State Education Assistance Authority.²

According to the Clerk, funds were not identified or transferred because of the small staff size of the office and a misunderstanding of policies and procedures related to the escheat process.

*North Carolina General Statutes*³ and the *North Carolina Clerk of Superior Court Escheats Manual*⁴ require the Clerk's Office to:

- Review monthly aging reports to identify funds that should be disbursed to the rightful owners or escheated.
- Determine that unclaimed funds are eligible for delivery to the Treasurer and transfer those funds at the appropriate time.

Recommendation: The Clerk should ensure responsible employees receive proper training. The Clerk should also implement effective monitoring procedures over the escheat process, such as a secondary review of the aging reports.

Clerk's Response: See page 9 for the Clerk's response to this finding.

3. FAILURE TO COMPEL INVENTORY FILINGS OR ASSESS AND COLLECT SUFFICIENT BONDS FOR ESTATES OF MINORS AND INCAPACITATED ADULTS

The Clerk's Office did not compel the timely filing of guardianship estate inventories or assess and collect sufficient⁵ bonds to protect wards (minors or incapacitated adults) in accordance with state law.

Auditors examined all nine guardianship estates for wards that required bonds and the filing of an annual inventory of the ward's assets. For five (55%) of the guardianship estates, the Clerk's Office failed to issue written requests requiring inventory filings and failed to assess and collect sufficient bonds. Specifically,

- For three (33%) of the guardianship estates, the Clerk failed to compel an annual inventory filing. Because no inventory was filed, the bond amount required could not be determined.
- For two (22%) of the guardianship estates, bonds assessed and collected were insufficient as of the last inventory filing. Assets in these estates totaled \$23,815 and required \$29,769 in bonds. However, the Clerk only assessed and collected \$12,500. The Clerk also failed to compel an annual inventory filing.

² The State Education Assistance Authority provides loans and grants to worthy and needy North Carolina students attending state-supported colleges and universities.

³ NCGS 116B-53(c) and 116B-60(d)

⁴ Sections C1 and C2

⁵ *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). Bond amounts should be reviewed upon the filing of the inventory and each account to ensure sufficiency.

Failure to compel the timely filing of inventories prevents the Clerk from assessing and collecting sufficient bonds from guardians and 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, monitoring procedures were not in place to ensure inventory filings were compelled and bonds were sufficient for the guardianship estates. In addition, the staff was not maintaining documentation of their efforts to notify guardians that bonds were insufficient or inventories were due.

North Carolina General Statutes 35A-1230 and 35A-1231 require the Clerk to assess and collect sufficient bonds before appointing a guardian to the estate. *North Carolina General Statute 35A-1238* states that the Clerk shall be liable for all loss and damages sustained. *North Carolina General Statutes 35A-1264 and 35A-1265* require the annual filing of an inventory of the ward's personal property. If an inventory is not filed, the Clerk must send a written request requiring the guardian to file the inventory or explain why the guardian should not be removed.

Recommendation: The Clerk should implement monitoring procedures, such as a continual review of ward assets to ensure the bond assessed and collected remains sufficient, as well as maintain documentation of communications made with guardians regarding inventory filings and bond sufficiency.

Clerk's Response: See page 9 for the Clerk's response to this finding.



JOHN K. DEATON
CLERK OF SUPERIOR COURT
EX OFFICIO JUDGE OF PROBATE

JUDICIAL DISTRICT 20A
MONTGOMERY COUNTY

KEVIN M. BRIDGES
SENIOR RESIDENT SUPERIOR COURT JUDGE

PO BOX 527, TROY, NC 27371
O 910-571-3700 | F 910-571-3701

June 17, 2019

The Honorable Beth A. Wood, State Auditor
Office of the State Auditor
2 South Salisbury Street
20601 Mail Service Center
Raleigh, North Carolina 27699-0600

Dear Auditor Wood:

Thank you for your recent audit of the office of Montgomery County Clerk of Superior Court. I appreciate the opportunity to uncover areas of deficiency which need to be corrected in order to provide superior service to our stakeholders and ensure that our office operates in compliance with North Carolina law. My response to your audit findings are provided below.

1. UNTIMELY OR FAILURE TO COMPEL ESTATE INVENTORY FILINGS

OSA Recommendations:

The Clerk should maintain documentation of any deviation from inventory filing requirements, such as extensions granted by the Clerk.

Agency Response:

I agree with your findings and recommendations.

I am taking several steps to address this finding. First, I have developed a face sheet to include in each estate file which contains a section to make note of all contacts with the personal representative, other fiduciary or persons interested in the estate. This is designed to capture all conversations related to the filing of inventories and accounts including any informal extensions granted. Secondly, estate staff has been instructed that any requested extensions beyond a few days need to be made formally by motion. The estates clerk will inform the personal representative or his/her counsel of an AOC form available for that purpose. Lastly, I am looking at shifting some job responsibilities amongst a few clerks so that I will have a clerk other than my single estates clerk who can provide backup for estates and be primarily responsible for the timely mailing of Notices and Orders to File utilizing the capabilities of the Estates Tracking System web application provided by AOC.

The first two steps above have already been implemented. The shifting of job duties as described should be fully implemented over the next three months. In the interim, the elected clerk is reviewing the Estates Tracking System lists and sending Notices and Order as appropriate.

2. FAILURE TO IDENTIFY AND TRANSFER UNCLAIMED FUNDS TO THE STATE TREASURER OR RIGHTFUL OWNER

OSA Recommendations: The Clerk should ensure responsible employees receive proper training. The Clerk should implement effective monitoring procedures over the escheat process such as a secondary review of aging reports.

Agency Response:

I agree with your findings and recommendations.

The problems in failure to timely escheat funds involved accounts held on behalf of deceased persons in estate files. To address this issue, I have implemented a procedure designed to prevent these estate files from being inactive files and to insure timely identification of escheatable funds and transfer of these funds to the appropriate accounts to be paid to the State Treasurer. First, when funds are initially received on behalf of a deceased person, the estates clerk is to review the file for any contact information for potential heirs or creditors. If such contact information is present, a letter will be sent to that contact to have them contact our office to discuss options for opening an estate administration or otherwise sufficiently distributing funds pursuant to NC law. The files with no contact information will be later addressed through a review of the monthly aging reports. In addition to the procedure above to address this issue on the front-end, an additional procedure requires the bookkeeper to deliver to the estates clerk each month a copy of the aging report for the "Trusts" account which generally involves "E" files. The estates clerk will review the file for each entry thereon to determine whether there is some action pending in the file. For those entries with no activity for more than sixty days, the list will be notated as such and the list with the escheatable files indicated thereon will be given to the bookkeeper for entry into the escheats spreadsheet for appropriate processing in preparation of transfer to the State Treasurer. As a further safeguard, the elected clerk will review all aging reports quarterly to insure that all funds required to be escheated are being addressed. We plan to review these procedures with our FMA to make sure my bookkeeper is clear on how to enter these "E" file funds into the escheats spreadsheet.

A form letter for use during the initial receipt of "payments to the clerk of funds owed to a decedent" has already been created. The procedures have been communicated to the bookkeeper and estates clerk for immediate execution. We hope to have a visit with our FMA to review the process in the next few weeks.

3. FAILURE TO COMPEL INVENTORY FILINGS OR ASSESS AND COLLECT SUFFICIENT BONDS FOR ESTATES OF MINORS AND INCAPACITATED ADULTS.

OSA Recommendations: The Clerk should implement monitoring procedures, such as continual review of ward assets to ensure the bond assessed and collected remains sufficient, as well as maintain documentation of communications made with guardians regarding inventory filings and bond sufficiency.

Agency Response:

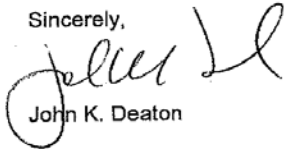
I agree with your findings and recommendations.

I am taking several steps to address this finding. First, I have developed a face sheet to include in each estate file which contains a section to make note of all contacts with the guardian or

persons interested in the estate. This is designed to capture all conversations relevant to the filing of inventories and accounts. Estate staff has been instructed that any requested extensions beyond a few days need to be made formally by motion with the estates clerk. The estates clerk will inform the personal representative or his/her counsel of an AOC form available for that purpose. Secondly, for guardianship estates, an additional tracking sheet for calculating and notating the sufficiency of bonds will be included in each file. Lastly, I am looking at shifting some job responsibilities amongst a few clerks in my office so that I will have a clerk other than my single estates clerk who can provide backup for estates and be primarily responsible for the timely mailing of Notices and Orders to File utilizing the capabilities of the Estates Tracking System web application provided by AOC.

The first two steps above have already been implemented. The shifting of job duties as described should be fully implemented over the next three months. In the interim, the elected clerk is reviewing the Estates Tracking System lists and sending Notices and Order as appropriate.

Sincerely,



John K. Deaton

ORDERING INFORMATION

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20601 Mail Service Center
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For additional information contact:
Brad Young
Director of External Affairs
919-807-7513



This audit was conducted in 232 hours at an approximate cost of \$23,896.