



STATE OF NORTH CAROLINA

DURHAM COUNTY CLERK OF SUPERIOR COURT

FISCAL CONTROL AUDIT

DURHAM, NORTH CAROLINA

OFFICE OF THE STATE AUDITOR

LESLIE W. MERRITT, JR., CPA, CFP

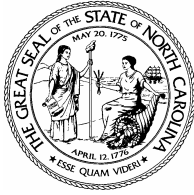
STATE AUDITOR

DURHAM COUNTY CLERK OF SUPERIOR COURT

FISCAL CONTROL AUDIT

DURHAM, NORTH CAROLINA

THE HONORABLE ARCHIE L. SMITH, III



STATE OF NORTH CAROLINA
Office of the State Auditor

Leslie W. Merritt, Jr., CPA, CFP
State Auditor

2 S. Salisbury Street
20601 Mail Service Center
Raleigh, NC 27699-0601
Telephone: (919) 807-7500
Fax: (919) 807-7647
Internet
<http://www.ncauditor.net>

AUDITOR'S TRANSMITTAL

The Honorable Michael F. Easley, Governor
The General Assembly of North Carolina
The Honorable Archie L. Smith, III, Clerk of Superior Court

This report presents the results of our fiscal control audit of the Durham 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 standards contained in *Government Auditing Standards* issued by the Comptroller General of the United States. The objective of a fiscal control audit is to gather and evaluate evidence about internal control over selected fiscal matters, such as financial accounting and reporting; compliance with finance-related laws and regulations; and/or management of financial resources.

The results of our audit disclosed deficiencies in internal control that are considered reportable under *Government Auditing Standards*. These matters are described in the Audit Findings and Recommendations 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.

Leslie W. Merritt, Jr.

Leslie W. Merritt, Jr., CPA, CFP
State Auditor

TABLE OF CONTENTS

	PAGE
BACKGROUND INFORMATION	1
OBJECTIVES, SCOPE, METHODOLOGY, AND RESULTS	3
AUDIT FINDINGS AND RECOMMENDATIONS.....	5
ORDERING INFORMATION	9

BACKGROUND INFORMATION

The office of the Clerk of Superior Court is created by the North Carolina Constitution which mandates that there be a Clerk of Superior Court for each county. Under the constitution, it is the responsibility of the General Assembly to prescribe jurisdiction and the powers of the Clerk. Laws of the General Assembly regarding clerks must be uniformly applied in every county in the State.

Voters of each county elect the Clerk of Superior Court to a four-year term. Clerks are paid by the State, with their salaries scaled in accordance with the population of their counties. The Clerk appoints the assistants, deputies and employees in his or her office. The number of assistants and deputies that each clerk may employ varies from county to county depending on the volume of business. Assistant and deputy clerks are paid on a salary schedule fixed by the Administrative Office of the Courts based on education and years of service in the Clerk's office; the maximum and minimum salaries within that scale are fixed by the General Assembly.

The responsibilities of the Clerk are numerous and varied. The Clerk, as a judicial officer of the Superior Court, has judicial responsibilities. The Clerk is judge of probate; that is, the Clerk handles the probate of wills (proceedings to determine if a paper writing is a valid will) and the administration of estates of decedents, minors and incompetents. The Clerk also hears a variety of special proceedings such as adoptions, incompetency determinations and partitions of land and is empowered to issue arrest and search warrants and to exercise the same powers as a magistrate with respect to taking pleas of guilty to minor littering, traffic, wildlife, boating, marine fisheries, alcoholic beverage, State park recreation and worthless-check offenses.

The Clerk is also responsible for all clerical and record-keeping functions of the Superior Court and District Court. The Clerk operates a unified record-keeping system for all civil actions, special proceedings, estates, criminal actions, juvenile actions, minutes of the court, judgments, liens, lis pendens, and numerous other records required by law. The Clerk maintains the judgment docket, is custodian of evidence in civil and criminal trials, and issues civil summons and subpoenas. In addition, the Clerk invests money received and held by his or her office in trust and receives and administers insurance or other money on behalf of minors and incapacitated adults.

[This Page Left Blank Intentionally]

OBJECTIVES, SCOPE, METHODOLOGY, AND RESULTS

OBJECTIVES

As authorized by Article 5A of Chapter 147 of the *North Carolina General Statutes* and in accordance with the standards contained in *Government Auditing Standards* issued by the Comptroller General of the United States, we have conducted a fiscal control audit at the Durham County Clerk of Superior Court.

The objective of a fiscal control audit is to gather and evaluate evidence about internal control over selected fiscal matters, such as financial accounting and reporting; compliance with finance-related laws and regulations; and/or management of financial resources. Our audit does not provide a basis for issuing an opinion on internal control, and consequently, we have not issued such an opinion.

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. Because of inherent limitations in internal control, errors or fraud may nevertheless occur and not be detected. Also, projections of any evaluation of internal control to future periods are subject to the risk that conditions may change or compliance with policies and procedures may deteriorate.

SCOPE

Our audit scope covered the period July 1, 2006, through December 31, 2006. During our audit, we considered select internal controls and compliance related to the following accounts and control objectives:

Cash and Cash Equivalents – This classification includes change funds and cash on deposit with private bank accounts. We examined internal control designed to ensure that the Clerk properly safeguards and accounts for these assets. As of December 31, 2006, the Clerk had \$1,296,024.72 in Cash and Cash Equivalents.

Investments – This classification includes certificates of deposit and pooled savings accounts. We examined internal control designed to ensure that the Clerk properly safeguards and accounts for these assets. We also examined evidence to support compliance with finance-related laws and regulations over these assets. These laws and regulations set limits on authorized investments, set timing requirements for investing funds, provide for the Clerk to receive a fee for administering the investments and provide for allocation of interest to the beneficial owner or owners of the funds. As of December 31, 2006, the Clerk had \$5,770,669.77 in Investments.

Trusts – This classification includes funds held by the Clerk for minors, incapacitated adults, and others according to the terms of a court order, will or deed. We examined internal control designed to ensure that the Clerk properly safeguards and accounts for trust accounts. We also examined evidence to support compliance with finance-related laws and regulations. These laws and regulations set guidelines for the receipt, administration and disbursement of these accounts. As of December 31, 2006, the Clerk had \$5,635,707.06 in Trust accounts.

OBJECTIVES, SCOPE, METHODOLOGY, AND RESULTS (CONCLUDED)

METHODOLOGY

To accomplish our audit objectives, we gained an understanding of internal control, performed tests of control effectiveness, and/or performed direct tests of the accounts and transactions as we considered necessary in the circumstances. Specifically, we performed procedures such as interviewing personnel, observing operations, reviewing policies, analyzing accounting records and examining documentation supporting recorded transactions and balances.

RESULTS

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

AUDIT FINDINGS AND RECOMMENDATIONS

1. INADEQUATE SEGREGATION OF DUTIES AND ACCESS CONTROLS

Responsibilities for cash receipts are not divided among staff members properly. As a result, there is an increased possibility of error or fraud occurring and not being detected by employees.

One cashier had the ability to perform cashiering functions, void receipts and perform daily close-out functions. Since this individual did not have assigned security access to perform these functions within the Financial Management System another person's security access and passwords were used.

The Clerk of Superior Court Financial Policies and Procedures Manual describes sound internal controls, including controls applicable to segregation of duties and security access within the Financial Management System. Segregation of duties is a basic internal control that requires assigning different people the responsibilities of authorizing transactions, recording transactions and maintaining custody of assets to reduce opportunities that could arise where a person in a position could both perpetrate and conceal errors or fraud in the normal course of his or her duties.

Recommendation: The Clerk should strengthen and monitor internal controls over the cash receipting functions to ensure adequate segregation of duties. Access rights within the Financial Management System should be assigned and used according to the Clerk of Superior Court Financial Policies and Procedures Manual. Policies prohibiting the sharing of passwords should be implemented.

Clerk's Response: The Durham County Clerk of Superior Court's Office suffers from chronic understaffing. As a result, there is only one Assistant Clerk of Superior Court assigned to the cashier's division. Historically, a trusted, experienced Deputy Clerk of Superior Court has assumed the duties of the Assistant Clerk of Superior Court in the cashier's division when the Assistant was absent. This has worked well for years as the designated Deputy was trained and qualified to assume these duties. While it is true that the Clerk of Superior Court Financial Policies and Procedure Manual describes an ideal separation of duties protocol, the AOC does not provide the resources necessary to implement such.

Nevertheless, I have assigned an Assistant Clerk of Superior Court from a separate division to step in upon the absence of the Assistant Clerk of Superior Court in charge of the cashier's section to assume these duties, thus insuring that segregation of duties is observed. Password access is changed monthly. Current and future access rights will not be shared with any of the serving deputies in the cashier's section. Per our actions as outlined above, I believe that the policies of this division have been realigned to conform with the best practices protocol suggested in the draft audit findings.

AUDIT FINDINGS AND RECOMMENDATIONS (CONTINUED)

2. MAGISTRATE COLLECTIONS NOT DEPOSITED TIMELY

Magistrate collections were not deposited timely in accordance with established procedures. When deposits are delayed, revenues may be lost and inappropriate or fraudulent activity may go undetected.

The Magistrates Office has a procedure requiring receipts to be transported for deposit to the Clerk Cashier's Office each Monday, Wednesday and Friday. In our test of 74 deposit days, we identified 27 days where magistrate receipts were deposited from one to six deposit days after the required deposit date. For deposits that were made on the required deposit days, not all of the receipts were picked up and deposited.

The Clerk of Superior Court Financial Policies and Procedures Manual describes sound internal controls over magistrate collections, including controls applicable to the timely submission of and accounting for all receipts.

Recommendation: The Clerk should implement procedures to ensure that all receipts are deposited in accordance with established procedures. Procedures should be in accordance with the Clerk of Superior Court Financial Policies and Procedures Manual.

Clerk's Response: In Durham County, operations of the magistrate's office are overseen by the Chief District Court Judge who relies upon a Chief Magistrate to direct the activities of this office. Magistrates are not answerable to the Clerk although the Clerk is responsible for deposits of funds received from the magistrates. The Clerk of Superior Court's Office is located in the Durham County Judicial Building. The magistrates are located in the Durham County Detention Facility (jail). These two buildings are physically located several blocks from one another. Funds are secured in locked deposit bag(s) which are sequestered in a safe, which, in turn, is located in a lock secured chamber in a locked secured building. Collection of funds from the magistrates by the Clerk of Superior Court's Office for deposits is contingent upon secure transportation of the funds from the jail to the Judicial Building which is handled by the Durham County Sheriff's Department.

The practice of thrice weekly collections is driven by personnel availability and while deposits may not be as timely as suggested by the Procedures Manual, such has always occurred with no inappropriate loss.

As a result of the findings concerning the deposit of funds, a meeting was convened with the Chief Magistrate and the Chief Deputy where this matter was discussed. As a result, an application on AOC-FP-3800 for approval for a "Magistrate Internal Control Exception" has been prepared in conformity with the directives of the Clerk of Superior Court Financial Policies and Procedures Manual.

AUDIT FINDINGS AND RECOMMENDATIONS (CONCLUDED)

Public funds have always been afforded diligent stewardship by the responsible personnel within the law enforcement and judicial agencies of Durham County. I appreciate the opportunity to further augment an already high level of accountability as occasioned by the observations of the Office of the State Auditor.

[This Page Left Blank Intentionally]

ORDERING INFORMATION

Audit reports issued by the Office of the State Auditor can be obtained from the web site at www.ncauditor.net. Also, parties may register on the web site to receive automatic email notification whenever reports of interest are issued. Otherwise, copies of audit reports may be obtained by contacting the:

Office of the State Auditor
State of North Carolina
2 South Salisbury Street
20601 Mail Service Center
Raleigh, North Carolina 27699-0601

Telephone: 919/807-7500

Facsimile: 919/807-7647