

STATE OF NORTH CAROLINA

OFFICE OF THE STATE AUDITOR

BETH A. WOOD, CPA



DURHAM COUNTY CLERK OF SUPERIOR COURT

DURHAM, NORTH CAROLINA

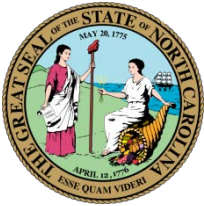
FINANCIAL RELATED AUDIT

NOVEMBER 2015



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STATE OF NORTH CAROLINA
Office of the State Auditor



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AUDITOR'S TRANSMITTAL

November 13, 2015

The Honorable Pat McCrory, Governor
The General Assembly of North Carolina
The Honorable Archie L. Smith, III
Durham County Clerk of Superior Court

This report presents the results of our financial related audit at 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 performance audit standards contained in *Government Auditing Standards*, issued by the Comptroller General of the United States.

The results of our audit identified a deficiency in internal control that is considered reportable under *Government Auditing Standards*. This item is 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, reading "Beth A. Wood".

Beth A. Wood, CPA
State Auditor



Beth A. Wood, CPA
State Auditor

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As authorized by Article 5A of Chapter 147 of the *North Carolina General Statutes*, we have conducted a financial related audit at the Durham 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, 2014 through February 28, 2015. 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 \$13,066,896 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 \$503,036 in estate fees.

Bond Forfeitures – The Clerk’s Office ensures that all motions or orders to set aside bond forfeitures meet specified criteria and are supported by required documentation. We examined internal controls designed to ensure compliance with laws and regulations related to the processing of these bond forfeitures. During the audit period, \$2,988,950 in bond forfeitures were set aside.

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 but not quantify the sampling risk.

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 generally accepted government auditing standards applicable to performance audits. 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 a deficiency in internal control that is considered reportable under *Government Auditing Standards*. This item is described in the *Audit Findings, Recommendations, and Responses* section of this report. Management's response is presented after the audit finding. We did not audit the response, and accordingly, we express no opinion on the response.

Government Auditing Standards require that we add explanatory comments to the report whenever we disagree with an audit finding response or when the response is inconsistent or conflicts with the finding or recommendation. In accordance with this requirement and to ensure that the nature and seriousness of the finding is not minimized or misrepresented, we have provided an auditor response.

IMPROPER SYSTEM ACCESS 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, resulting in inadequate segregation of duties. Improper segregation of duties increased the risk that errors, unauthorized transactions, and fraud could have occurred and remained undetected. The Clerk's Office handled \$13,066,896 in receipts during the audit period July 2014 to February 2015.

Specifically, six out of 86 employees had inappropriate access to the Financial Management System (FMS), the Automated Criminal/Infractions System (ACIS) / Criminal Court Information System (CCIS), and/or the Civil Case Processing System (VCAP) as follows:

- Three employees had head cashier rights in FMS and update access to VCAP, which allowed the same person to potentially enter or divert receipts and enter, change or delete civil case information. One of these employees also had update capability within ACIS/CCIS to enter, change or delete criminal case information. In addition, there was one employee with cashier rights in FMS with update capability within CCIS.
- Two employees had head bookkeeper rights in FMS and update access to VCAP, which allowed the same person to potentially edit cost bills and payee amounts and delete civil case information.

While no instances of fraud were identified during the audit period, an increased risk of undetected fraud existed because access rights and duties were not properly segregated.

The Clerk's Office did not ensure system access rights assignments created the proper segregation of duties. Additionally, the Clerk's Office had not properly implemented the procedures prescribed by the North Carolina Administrative Office of the Courts (NCAOC).

Also during the audit period, the NCAOC executed the update functionality within CCIS and in doing so, access rights were automatically assigned within the system based on outdated roles and responsibilities. Appropriate communication between the two parties prior to this system update did not take place to ensure employee access rights were consistent with proper segregation of duties. As a result, the Clerk was unaware of the access rights assignments within the criminal system. Once the Clerk was made aware, CCIS update access for the head cashier and cashier was removed in August 2015.

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. The manual also requires semi-annual reviews of employee system access rights.

Recommendations: The Clerk should reassign system access rights to properly segregate duties and perform semi-annual reviews of employee system access rights in accordance with the *Clerk of Superior Court Financial Policies and Procedures Manual*.

Also, prior to the implementation of, or changes to, computer systems used in the Clerk's Office, the Clerk should be proactive in working with NCAOC to ensure access rights are properly assigned and are consistent with proper segregation of duties in accordance with guidance contained in the *Clerk of Superior Court Financial Policies and Procedures Manual*.

Auditor Response: In the Clerk's response, the Clerk understood the finding and recommendations and described corrective action taken to address the finding. However, the Clerk's response includes reference to a resolution issued by the Executive Committee of the NC Conference of Clerks of Superior Court as it relates to the CCIS system access issues included in this finding. The resolution is irrelevant to the finding since it is already acknowledged that NCAOC granted the access rights to CCIS and not the Clerk.

Clerk's Response: See pages 7 to 10 for the Clerk's response.



State of North Carolina
General Court of Justice
ARCHIE L. SMITH III
CLERK OF SUPERIOR COURT
EX OFFICIO JUDGE OF PROBATE
Durham County, North Carolina

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Durham, NC 27701

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September 28, 2015

Kristina L. Autio, CPA
Audit Manager
2 S. Salisbury Street
20601 Mail Service Center
Raleigh, North Carolina 27699-0601

Re: Durham County CSC Audit Findings

Dear Ms. Autio:

This is to acknowledge and thank you for your August 18, 2015 correspondence concerning the 2015 audit of the Durham County Clerk of Court's Office.

During the course of this audit, those items mentioned in your correspondence received immediate attention. I understand the findings and recommendations you report and concur with such subject, however, to those things and matters set out in the attached Resolution passed by the N.C. Conference of Clerks Executive Committee, a duly statutorily authorized agency of the State of North Carolina. This Resolution addresses the Durham County finding.

As of April 2, 2015, the daily AOC STAND-audtabs1 access report is checked by an assistant clerk of court and if conflicts are found, they are cured. With every good wish, I am

Yours truly,
A handwritten signature in black ink, appearing to read "Archie L. Smith III".

Archie L. Smith III
Durham County Clerk of Superior Court

ALSIII/tc



SERVING CLERKS. UNIFYING EFFORTS. IMPROVING JUSTICE.

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September 21, 2015

Interim Director Judge Marion Warren

Dear Judge Warren:

Recent audits prepared by the NC Office of the State Auditor are producing two specific findings to which we as a body do not concur. The purpose of this letter is to encapsulate the issues, state our position, and to act as a foundation to change outcomes for future Clerks in their state audits.

1. According to recent State Auditor's findings, any clerk of court's office who had a cashier with add/update access to the criminal database system (CCIS-CC) will receive an audit finding for a conflict of segregation in the duties of that staff member (having the capacity to receipt funds and update the status of a criminal case is prohibited by NC Administrative Office of the Courts' (NCAOC) financial procedures standards). This has and will occur notwithstanding that the NCAOC Technical Services Division (TSD) provided such access without acquiring the required approval to do so from the clerk's office in question. The access given to the cashier was done without the permission of or even the knowledge of the clerk's office in question; access was granted in violation of NCAOC's own required security procedures and was clearly done in error as the NCAOC Director has confirmed. It is our position that TSD violated established procedures by granting access to the CCIS-CC database without the necessary authorization from the hiring authority or their designee. Due to this failure by NCAOC's TSD, many clerks have or will unjustly receive this audit finding. TSD should never grant access to any of its systems without proper authorization from the hiring authority, in this case the elected clerk or his/her designee. In this instance TSD unilaterally created a segregation conflict automatically in its rush to roll out this new system as mandated by the NC General Assembly. It is a reasonable conclusion that this should and would never happen; better planning and oversight by NCAOC leadership should have, and in the future, needs to take place.
2. According to the State Auditor, any clerk's office which does not require payment of the statutory filing fees for the filing of an inventory in a decedent's estate administration at the time of filing will receive an audit finding. Pursuant to the NCAOC Rules of Recordkeeping ("RRK") 3.4 Comment B and

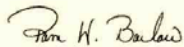
September 21, 2015

Page 2

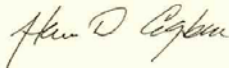
4.4 Comment B, the clerk's offices have been advised that it is in their discretion to accept or reject a filing when presented without the appropriate fees associated therewith. Both these rules have instructed that in those situations it is perfectly acceptable to file an inventory without payment of the associated filing fee as long as efforts are made to collect the appropriate fee by notifying the filer of the oversight. Moreover, it is our understanding the audit finding does not concern or address that lack of collection of the appropriate fees is the subject issue; rather the audit finding raises the issues of the timing of the fee collection. The two RRK cited above strongly suggest that it is the clerk's office discretion to file the inventory and promptly seek collection of the fees if not paid at the time of filing. We, the Executive Committee support the state's elected Clerks of Superior Court in their collective ability as ex-officio Judges of Probate to have control over the estate's administration that is within their original exclusive jurisdiction. The term "filed" is not defined as used in the NC General Statutes § 7A(a)(2); does it mean when the inventory is presented to the clerk's office, or does it mean after audit and acceptance of the inventory by the clerk's office? Is it the intention of the legislature to insure the prompt collection of the fee in question, or is it rather the accurate collection of the fee in question after a review of the inventory has been performed to insure the accuracy of its content and therefore the accuracy of the fee collected? This is a matter of judicial interpretation that the clerk as the judge of probate should have the discretion to make. We are disappointed in the lack of NCAOC support in defense of the various practices of Clerks across the State who perform a review of the (ninety-day) inventory to ensure it is a true and accurate reflection of the estate assets prior to filing it and then recording it. We strongly encourage NCAOC to assist the Conference of Clerks of Superior Court in seeking clarification of the statutes, to promote a formal procedure that will be accepted by the State Auditor while allowing a thorough review of the (ninety-day) inventory prior to assessing costs to maintain efficiency in the process. This Executive Committee does not concur with State Auditor's findings in these two issues. We believe that NCAOC should be held solely accountable for the CCIS-CC segregation of duties conflict issue, and we believe elected Clerks have the judicial discretion to establish their own interpretation of the statutes when there is an obvious conflict between our duty to collect fees (NCGS § 7A-307(2)) and our duty to review and assess costs (NCGS § 28A-20-1). It is our desire to work with NCAOC to prevent Clerks in the future from having similar audit findings.

We make the following attached resolution which may be published and appended to each Clerk's response to an audit report prepared by the NC State Auditor in which said finding(s) as set out above may appear, insofar as such findings are not properly grounded under facts and practice. Thank you for your attention to this matter.

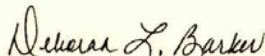
The Honorable Pam Barlow, President, North Carolina Conference of Clerks of Superior Court



The Honorable Steven Cogburn, 1st VP




The Honorable Deborah Barker, Secretary



The Honorable Archie L. Smith III, Immediate Past President



The Honorable Carol Allen White, 2nd VP



The Honorable Mark Hammonds, Treasurer



Cc: The Honorable Mark Martin, Chief Justice, North Carolina Supreme Court

Cc: Ms. Beth A. Wood, CPA, North Carolina State Auditor

EXECUTIVE COMMITTEE OF THE NC CONFERENCE OF CLERKS OF SUPERIOR COURT



RESOLUTION OBJECTING TO FINDINGS BY THE STATE AUDITOR

Whereas, the Technical Service Division (TSD) of the North Carolina Administrative Office of the Courts (NCAOC) granted access to CCIS-CC without the required authorization from the hiring authority;

Whereas, TSD of NCAOC failed to notify the elected Clerk of Courts in the State of this action;

Whereas, the Clerks cannot accept responsibility for an action undertaken independently by the statewide administrative division of the NCAOC without prior knowledge of the elected CSC;

Whereas, the State Auditor is making a finding on the individual Clerk of Courts effected by this action;

Whereas, it must be noted that fees are routinely collected at time of approval of the filing;

Whereas, this may occur subsequent to the machine clock stamping of the instrument presented;

Whereas, insofar as it is the duty of the Clerk to approve (i.e.: audit) filed instruments;

Whereas, it is not possible to approve all instruments simultaneously as of the moment of machine clock stamping;

Whereas, a finding by the Auditor's Office does not take into account the statutory requirement that accountings must be approved by the Clerk and as such said filing(s) are antithetical to the proper and orderly administration of decedent's estates under NC law; now, therefore, be it

Resolved, that the Executive Committee of the North Carolina Conference of Clerks of Superior Court:

1. Objects to the NC State Auditor's findings regarding these two issues;
2. Believes that NCAOC should be held solely accountable for the CCIS-CC segregation of duties conflict issue;
3. Believes elected Clerks should have the judicial discretion to establish their own interpretation of the statutes when there is an obvious conflict between our duty to collect fees (NCGS § 7A-307(2)) and our duty to review and assess costs (NCGS § 28A-20-1), particularly in light of the currently adopted NCAOC Rules of Recordkeeping that ratify such discretion.

Respectfully submitted this the 21st day of September, 2015.

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For additional information contact:
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This audit was conducted in 459 hours at an approximate cost of \$43,146.