

# STATE OF NORTH CAROLINA

OFFICE OF THE STATE AUDITOR

BETH A. WOOD, CPA



## LINCOLN COUNTY CLERK OF SUPERIOR COURT

LINCOLNTON, NORTH CAROLINA

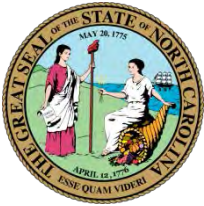
FINANCIAL RELATED AUDIT

NOVEMBER 2015



**NCOSA**  
The Taxpayers' Watchdog

STATE OF NORTH CAROLINA  
**Office of the State Auditor**



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## AUDITOR'S TRANSMITTAL

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November 10, 2015

The Honorable Pat McCrory, Governor  
The General Assembly of North Carolina  
The Honorable Fred R. Hatley, Lincoln County Clerk of Superior Court

This report presents the results of our financial related audit at the Lincoln 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/or 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 the Lincoln 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 March 31, 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 \$9,774,971 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 \$97,385 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, \$472,800 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 deficiencies in internal control and/or 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.

*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 findings are not minimized or misrepresented, we have provided an auditor response when appropriate.

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

Staff within 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 increase the risk that errors, unauthorized transactions, and fraud could have occurred and remained undetected. The Clerk's office handled \$9,774,971 in receipts during the audit period of July 1, 2014 to March 31, 2015.

Specifically, three employees had access to the Financial Management System (FMS) and to the Civil Case Processing System (VCAP) as follows:

- Two employees had head bookkeeper access in FMS and update access in VCAP; which allows the same person to potentially edit cost bills and payee amounts and delete civil case information.
- One employee had cashier access in FMS and update access in VCAP; which allows the same person to potentially enter or divert receipts and enter, change, or delete civil case information.

In addition, four former employees had update access within Criminal Court Information System (CCIS) and one former employee had inquiry access in FMS even though the employees were no longer employed by the Clerk's office.

While no instances of fraud were identified during the audit period, the access rights assigned to the employees could have allowed the individuals to misappropriate funds by collecting cash for a civil payment, bypassing the receipt entry in FMS, and updating VCAP to indicate that the costs have been paid.

Per the Clerk, the removal of conflicting accesses has not been made due to the limited number of staff in the Clerk's office. Additionally, the Clerk's office had not properly implemented the procedures prescribed by NCAOC to compensate for incompatible access between FMS and VCAP.

Also during the audit period, the North Carolina Administrative Office of the Courts (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 until it was brought to his attention by the auditors.

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.



*Recommendations:* The Clerk should ensure that 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*.

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:* The Clerk's response asserts a struggle to segregate duties due to limited staff resources and that improper access for former employees has been removed. Other information in the response regarding staffing function/levels, while informative, should not be considered to sufficiently mitigate the access risk existing at the time of the audit.

One of the objectives of the audit of the Lincoln County Clerk's Office was to audit policies and procedures to ensure cash is protected and to report the findings. This finding identified increased risks for fraud (the cashier and head bookkeeper having access to the Financial Management System AND the Civil Case Processing System AND former employees with access to the Criminal Court Information System). No matter who was responsible for granting the access rights or why, the risk of fraud existed at the Clerk's Office, not NCAOC.

This audit report is intended to provide information, especially when there are findings, that will, among other things, alert users of the report (NCAOC, General Assembly, Governor, Citizens of North Carolina) to areas that need to be corrected at the Clerk's Office. Excluding this finding from the Clerk's report would result in a failure to meet the intended objectives of the audit.

*Clerk Response:* The segregation of duties in small Clerk's Offices like ours in Lincoln County presents a particular challenge. We have twenty (20) staff members in addition to the elected Clerk. At the time of the audit, our staff was allocated as follows:

- 1 Bookkeeper
- 2 Cashiers (1 fulltime and 1 part-time)
- 9 Criminal Clerks (7 fulltime and 2 part-time)
- 4 Civil Clerks
- 2 Estates Clerks
- 1 Child Support Clerk
- 1 Juvenile Clerk

As a matter of necessity, we draw back-up cashiers from the child support and civil departments. These back-up cashiers have update access in VCAP in order to do the work required in their primary departments while FMS access is required for their periodic cashiering. In short, segregating duties is a struggle due to limited staff resources.

Regarding the former employees who had update access in CCIS and FMS, their access has been revoked and this oversight has been corrected. In the future, we will ensure that access to all systems is promptly revoked when employment ends.

Finally, we join in the Conference of Clerks of Superior Court's response to this finding. Specifically, without the permission or knowledge of Clerk's Offices across the State, the Technical Services Division ("TSD") of the Administrative Office of the Courts erroneously provided cashiers with access rights to CCIS-CC in violation of regular security procedures. In this instance, TSD unfortunately created a segregation conflict in its rush to roll out this new system. We understand that measures are being taken centrally to avoid such problems in the future.

## 2. UNTIMELY OR FAILURE TO COMPEL ESTATE INVENTORY FILINGS OR FEE COLLECTIONS

The Clerk's office did not compel the timely filing of estate inventories in accordance with state law, resulting in a delay and potential loss in the collection of fees.

Thirty of the 72 estates requiring inventories to be filed during the audit period were examined. Twenty-three of the 30 estates (77%) were not compelled or not compelled timely to file the required inventories as follows:

- The Clerk's office did not take action to compel the personal representative to file the inventory in nine (30%) estates. Six of the nine estate inventories were filed 50 to 296 days late, while three remained unfiled as of the end of the audit.
- The Clerk's written request requiring the inventory filings were issued 40 to 146 days late in 14 (47%) estates. Seven of the 14 estate inventories were filed between 43 and 146 days late, while seven remained unfiled as of the end of the audit.
- The Clerk's office did not collect \$2,275 in fees when the inventory was filed in eight of the 30 (27%) estates.

In addition to the delay and potential loss in fee collections, the untimely filing of inventories could delay the family of the deceased from finalizing the estate and could allow unauthorized transactions from the estate not being detected.

During the audit period, the Clerk had identified procedures to use the Estates Tracking System (ETS) to identify estate cases with filings approaching the three-month due date; however, the Clerk failed to enforce these procedures. Also according to the Clerk, they do not have adequate staff to ensure that estate inventories are compelled timely and that fees are collected when they are due.

*North Carolina General Statute 28A-20* and the *North Carolina Clerk of Superior Court Procedures Manual* 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 issue an order requiring the personal representative to file the inventory or give reason why the personal representative should not be replaced. *North Carolina General Statute 7A-307(a)(2)* requires the Clerk to assess and collect the estate fees at the time the inventory is filed.

*Recommendation:* The Clerk's office should follow state law and the *North Carolina Clerk of Superior Court Procedures Manual* to ensure appropriate action is taken to compel the timely filing of estate inventories, as well as collect fees at the time inventories are filed.

*Auditor Response:* In the Clerk's response below, the Clerk described corrective actions now being performed to bring required filings up-to-date. However, the Clerk's response includes:

- A misunderstanding of the relationship of audit sampling results to the audit objectives, and
- An interpretation of the law in defense of a noncompliant process used by the Clerk that is not supported by the law or NCAOC.

### Misunderstanding of audit sampling results to audit objectives

The Clerk asserts that only ten (10) cases of the 30 the auditors examined remained unfiled at the end of the audit indicating that compliance had been achieved for 20 out of the 30 cases audited. The audit objective was to determine compliance with the laws requiring the Clerk to issue an order to file inventories when they are not received within the 90 day period. The finding clearly states that 23 of the 30 inventories were not compelled or not compelled timely by the Clerk, **for the period under audit** (*emphasis added*).

The Clerk's response also included documentation that fees were collected subsequent to the audit for 5 of the 8 inventories noted in the finding. The audit objective was to determine compliance with state law requiring the collection of fees at the time inventories are filed. The finding clearly speaks to the fact that fees were not collected at the time of filing and collections after the audit period are irrelevant to the finding **for the period under audit** (*emphasis added*).

Additionally, the Clerk asserts, in his response, that "a thorough review of an inventory prior to collecting fees makes good sense." Whether that is true or not is irrelevant if the practice results in noncompliance with state statute.

### An interpretation of law in defense of a noncompliant process used by the Clerk that is not supported by the law or NCAOC

The Clerk's response asserts that he has "judicial discretion when there is tension between the duty to collect fees in N.C.G.S. §7A-307(2) and the duty to review and access costs in N.C.G.S. § 28A-20-1."

*North Carolina General Statute 28A-20-1* requires the filing of an estate inventory within three months after the clerk's appointment of the estate's personal representative, upon oath, and requires the inventory be recorded by the clerk. The referenced law does not support the Clerk's assertion to review the inventory prior to assessing fees.

In fact, the current statute considers that the 90 day inventory that is filed may not be complete or may contain errors so the statutes speak to the fee being collected at the initial filing and then allows for adjustments later in a supplementary inventory as is evidenced by *North Carolina General Statute 7A-307(a)(2)*, which states "...this fee shall

be computed from the information **reported** in the inventory (*emphasis added*) and *North Carolina General Statute 28A-20-3*, which allows for the update or correction of a previous inventory filing by the personal representative.

Therefore, while a clerk has exclusive jurisdiction in certain matters related to probate, exclusive jurisdiction does not give a clerk the authority to interpret a statute in a manner that is contrary to the plain language of the statute. The Supreme Court of the United States has held, "The starting point for interpreting a statute is the language of the statute itself. Absent a clearly expressed legislative intention to the contrary, that language must ordinarily be regarded as conclusive." *Consumer Product Safety Commission et al. v. GTE Sylvania, Inc. et al.*, 447 U.S. 102 (1980).

*Clerk Response:* Since the audit, a deputy clerk has been moved to the estates department from the criminal department. Now, the estates department has two assistant clerks and one deputy clerk. One of the primary responsibilities of the new deputy clerk's position is to use the Estates Tracking Application to assist in tracking delinquent cases so our office can stay "on track" on printing and sending notices and orders to file. Our estates office had not previously been using this Estates Tracking Application to its potential because pertinent data must be entered in VCAP in order for the Estates Tracking Application to work. Now, all three (3) estates clerks are versed in using the Estates Tracking Application in tandem with VCAP. As a result, delinquent cases are being identified and required filings brought up to date. This corrective action is proving to be effective.

With respect to particular numbers and percentages, one of the better results that could be drawn from the auditor's figures is omitted from the finding. Specifically, there were only ten (10) cases in which inventories remained unfiled at the end of the audit. Thus, compliance had been achieved in twenty (20) of the thirty (30) cases audited, or 67.7% compliance, by the end of the audit. Further, we anticipate that this result will improve with our increased staffing and full utilization of the Estates Tracking Application.

Next, this finding points out that we did not collect \$2,275 in fees when the inventory was filed in eight (8) of the thirty (30) cases (27%). Provided herewith is documentation showing that fees have been collected in five (5) of those eight (8) cases. In one case, the receipt for \$1,257.61 which was timely paid on April 24, 2015 when the inventory was filed had been misplaced and was later discovered and placed in the correct file. In four (4) more of the eight (8) cases, the appropriate fees were collected in the month of May, 2015, the same month as the audit.

Finally, we join in the Conference of Clerks of Superior Court's response to this finding. The Conference points out that Clerks should have judicial discretion when there is tension between the duty to collect fees in N.C.G.S. §7A-307(2) and the duty to review and assess costs in N.C.G.S. § 28A-20-1. A thorough review of an inventory prior to collecting fees makes good sense and will help ensure that the correct amount of fees (i.e., \$0.40 per \$100) are assessed. Put another way, if the inventory is wrong and not scrutinized before payment, the amount of the fees will be wrong. Allowing time for the Clerk to review the inventory before collecting the fee will promote the accuracy of the fee and better efficiency overall.

## ORDERING INFORMATION

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This audit was conducted in 241 hours at an approximate cost of \$22,824.