

# STATE OF NORTH CAROLINA

OFFICE OF THE STATE AUDITOR  
BETH A. WOOD, CPA



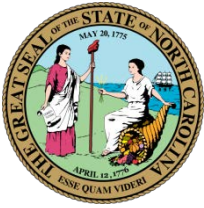
## PENDER COUNTY CLERK OF SUPERIOR COURT

BURGAW, 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 17, 2015

The Honorable Pat McCrory, Governor  
The General Assembly of North Carolina  
The Honorable Robert W. Kilroy, Pender County Clerk of Superior Court

This report presents the results of our financial related audit at the Pender 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 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 the Pender 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 \$4,053,774.89 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 \$65,787.63 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, \$383,000.00 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 when 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 where appropriate.

## 1. IMPROPER SYSTEM ACCESS

System access rights that are inconsistent with proper segregation of duties were assigned to employees. Two employees had cashier rights in the Financial Management System (FMS) and update access in the Criminal Court Information System (CCIS).

While no instances of fraud were identified during the audit period, the access rights assigned to the employees could have allowed an individual to misappropriate funds by collecting cash from a criminal payment, bypassing receipt entry into FMS, and updating CCIS to indicate all costs have been paid.

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.

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:* 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's Response:*

The Clerk's response refers to a previous audit performed by this Office. That audit was issued in 2011 and reported a finding that also identified a deficiency in segregation of duties. The Clerk indicated in his response to that finding that sufficiency of staff prohibited adequate segregation.

The Clerk's current response continues to assert that staffing is not adequate to segregate duties and stated "we will continue to operate on trust and personnel management."

Internal control principles require management to assess risk of error and fraud and implement policies and procedures to reduce the risk to an acceptable level. The Clerk's response does not demonstrate an understanding of these principles.



*Clerk's Response:*

I can only direct you to my written response to the last Audit finding on this matter. Nothing has changed. We continue to operate a railroad: taking-on and dropping-off passengers and freight; maintaining track and operating equipment, all of us. I do not have the luxury of operating a railroad with boutique employees who only ring the bell or blow the whistle. If the General Assembly provides additional staff and funds, then I can have a cashier whose only function is to take payments and issue receipts without any access to critical programs. In the meantime, we will continue to operate on trust and personnel management.

**2. FAILURE TO COMPEL ESTATE INVENTORY FILINGS OR FEE COLLECTION**

The Clerk's Office did not compel the timely filing of estate inventories or collect estate fees in accordance with state law, resulting in a loss or delay in the collection of court costs and fees.

Auditors examined all 35 estates in the audit period that required an inventory to be filed and identified 24 (69%) estates whose personal representatives were not compelled or were not compelled timely to file inventories. No inventory had been filed for five of these estates at the time of our audit. For the 30 estates where an inventory had been filed, auditors identified two (7%) estates in which fees of \$240.20 were not collected when the inventory was filed. The Clerk's orders requiring the inventory filings were issued 12 to 117 days late.

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.

The Clerk's Office did not have procedures in place to ensure the timely compelling of an estate inventory. The review of the 'Estate Cases with Filing Due' report from the Civil Case Processing System (VCAP) for an estate needing to be compelled to file, was not performed timely. Also, personal representatives were not made to pay the required fees at the time the inventory was filed. Instead, the fees were allowed to be paid at the final inventory.

*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 issue an order requiring the personal representative to file the inventory or give reason why the personal representative should not be replaced. Additionally, *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 and collect estate fees at the time inventory is filed.

*Auditor's Response:*

The Clerk's response to this finding includes a process used by the Clerk that is noncompliant with state law.

The Clerk's response states that "The Clerk also exercises judicial discretion in the administration of decedent's estates. This discretion includes when to execute Orders to file an Inventory and/or collect a fee when filed."

*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 Clerk's assertion that he may use his discretion as to when to execute orders to file an inventory and when to collect the fees is not supported by this statute.

*North Carolina General Statute 7A-307(a)(2)* requires the fee **shall be computed** from the information reported in the inventory and **shall be paid** when the inventory is filed with the Clerk (emphasis added). The Clerk's assertion that it is not the job of the Clerk of Superior Court/Judge of Probate to calculate dates and fees or use discretion as to when to collect a fee is not supported by this statute.

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).

**Other Points of Clarification:**

The Clerk's response also asserts that the State Auditor does not understand what it is that the Clerk of Superior Court does.

As required by auditing standards, auditors are required to gain an understanding of an entity's operations sufficient to address the audit objectives. The staff performing the audit of the Clerk's office take seriously their responsibilities to understand the important processes occurring in a Clerk's operations relevant to the audit objectives only. The auditors do not purport to understand everything the Clerk of Superior Court does.

The Clerk's response also takes exception to the statement in the finding that describes the potential effect when inventories are not filed timely. The law requires the filing of an inventory of the deceased assets. While the inventory is self-reported, the filing requires an attestation of its truthfulness. This action contributes to the safeguarding of the assets for interested parties.

Finally, the Clerk's response asserts that the Clerk's Office is not a revenue stream for the State of North Carolina or for funding the Administrative Office of the Courts. The finding does not state, nor does it imply, that is the case. However, a Clerk's office has a fiduciary duty to collect monies and remit to the appropriate parties as prescribed by *North Carolina General Statutes*.

*Clerk's Response:*

I can not agree with your conclusions. Further, I find your judgments in the matter infringe upon the separation of powers as set forth in the North Carolina Constitution. Pursuant to Article IV Section 9, the Clerk of Superior Court is a constitutional judicial official, ex officio the Judge of Probate who has exclusive jurisdiction over decedent's estates. As such, the Clerk also exercises judicial discretion in the administration of decedent's estates. This discretion includes when to execute Orders to file an Inventory and/or collect a fee when filed. This discretion also requires that Orders be issued changing the Personal Representative, thus extending the time for filing the Inventory.

A recent example is as follows: Husband and wife separated. Wife filed for Absolute Divorce and Equitable Distribution in another county. Husband died after being served. Widow made application for Letters which were issued. Husband's attorneys filed Answer and Counterclaim and Objections to the widow as Administrator. Death abated the divorce action but Equitable Distribution remained. After a hearing on the Objections, we removed the widow as Administrator and appointed one of Husband's sons from a prior marriage. This all ensued over a period of six months after widow's qualification. The succeeding Administrator began a new ninety day period.

To review files and mechanically calculate dates and fees may be an auditor's job but it is not the job of the Clerk of Superior Court/Judge of Probate. This mindless application of dates and amounts ignores the hundreds of decisions made in all probate matters where every case is unique as to the capacity and ability of collectors, administrators and executors. This is a once in a lifetime event for most of these folks and they need assistance and guidance. The Clerk's discretion is why the good folks of Pender County elected and qualified a Clerk of Superior Court and Judge of Probate. While I appreciate the time, talent and energy supporting your conclusion, they are in error and interfere with the judicial discretion of the Pender County Clerk of Superior Court who has the ability to waive and/or reduce fees as well as assess them. Allow me to address your gratuitous remarks: "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." This is pure speculation without any national basis and ignores the plain language of Chapter 28A as to the duties of the Personal Representative. The "family of the deceased" does not finalized the Estate, it is only the Clerk of Superior Court and Judge of Probate.

As to "could allow unauthorized transactions", that, indeed, is painting with a broad brush without any paint. In the absence of malfeasance or malfeasance to support disqualification by the Clerk of Superior Court and Judge of Probate, these are matters between the Personal Representative, heirs and devisees upon an action in Superior Court, probably long after an Estate has been closed and the Personal Representative has been discharged. Like the clouds in the sky, these unauthorized transactions exist. However, they are not a function of timely or untimely Inventories.

Lastly, I fail to perceive what education, experience, skills and training possessed by a bookkeeper could even give any weight to that unnecessary and crude conclusion.

Finally, I believe the real issue in these audits is that the State Auditor does not understand what it is that the Clerk of Superior Court does. We are not a revenue

stream for the State of North Carolina. We are not a source of funding for the Administrative Office of the Courts who control all the State funds flowing to the Clerks, staff, appurtenances and fixtures. The fact is that when all is said and done, there is no money missing. You did your job and we will continue to do ours with the resources allocated and thankful for the taxpayers of North Carolina.

# ORDERING INFORMATION

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This audit was conducted in 240 hours at an approximate cost of \$22,560.