

STATE OF NORTH CAROLINA

OFFICE OF THE STATE AUDITOR

BETH A. WOOD, CPA



SCOTLAND COUNTY CLERK OF SUPERIOR COURT

LAURINBURG, 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 12, 2015

The Honorable Pat McCrory, Governor
The General Assembly of North Carolina
The Honorable Philip McRae, Scotland County Clerk of Superior Court

This report presents the results of our financial related audit at the Scotland 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

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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 Scotland 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 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 \$3,258,574 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 \$67,284 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, \$823,318 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 findings 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 RISK OF UNDETECTED ERRORS AND FRAUD

Some Clerk's Office staff 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 \$3,258,574 in receipts during the audit period July 1, 2014 to March 31, 2015.

Specifically, two out of twenty employees had cashier access rights to the Financial Management System (FMS) and update access in the Automated Criminal/Infractions System (ACIS) and the Criminal Court Information System (CCIS), which allowed the same person to potentially enter or divert receipts and enter, change or delete criminal 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 that the initial system access rights assignments created the proper segregation of duties.

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: In the Clerk's response below, the Clerk agreed with the finding and indicated that the access status has been adjusted. One of the objectives of the audit of the Scotland County Clerk's Office was to audit policies and procedures to ensure cash is protected and to report the findings. This finding identified an increased risk for fraud (two employees having access to the Financial Management System AND the Criminal Court Information System). No matter who was responsible for the granting of the access rights, the risk for fraud existed at the Clerk's Office, not AOC.

Clerk Response: The audit finding alleges improper system access which increased risk of undetected errors and fraud. I express my general agreement with this finding. However, the following explanation should be considered to keep the matter in context.

The designated status was conferred upon the two employees in question remotely by the Administrative Office of Courts without our knowledge during the introduction of a new computer application. Upon being advised of the potential risk by the "AOC," the status was promptly modified to bring us in compliance.

We are conscious of the importance of this issue and will make appropriate evaluations whenever duties are assigned. The circumstances which gave rise to this finding were extraordinary and unlikely to recur.

2. UNTIMELY OR 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 delay and potential loss in the collection of court costs and fees.

Eighteen of the 45 estates requiring inventories to be filed during the audit period were examined. Ten of the 18 estates (55%) 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 five (28%) estates. Four of the five estate inventories were filed 45 to 126 days late, while one remained unfiled as of the end of the audit.
- The Clerk's written request requiring the inventory filings were issued 43 to 111 days late in five (28%) estates. Two of the five estate inventories were filed between 70 and 114 days late, while three remained unfiled as of the end of the audit.
- The Clerk's office did not collect \$8,477 in fees when the inventory was filed in four of the 18 (22%) 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.

According to the Clerk, attorneys are allowed to delay payment of fees until the final accounting and closeout of the estate occurs, which could take six months or longer. Additionally, the Clerk's office does not have a system in place to track and identify estate cases with filings approaching the three month due date.

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. 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, as well as collect fees at the time inventories are filed.

Auditor Response: In the Clerk's response below, the Clerk agrees with the finding and describes corrective actions to address the finding.

The Clerk asserts the existence of judicial discretion that allows the clerk, as the judge of probate, to balance the need for strict enforcement with more pressing needs in other areas is out of context. 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.

Finally, the Clerk states the local practice has survived scrutiny of numerous previous audits by our office. The scope of audits change as necessary dependent on assessments of risk related to the audit objectives. Audits are not designed to affirm all management practices. Compelling estates inventories and collecting associated fees may not have been identified as a previous audit objective.

Clerk Response: The finding alleges untimely or failure to compel estate inventory filing or fee collection. By a purely objective standard the facts upon which you base your finding appear to be literally true. Therefore, I express my general agreement with this finding. However, for a fuller understanding of the context of the finding the following subjective factors should be considered to keep the matter in context.

Your proposed finding does not acknowledge the existence of judicial discretion which is available to the clerk as the judge of probate to balance the need for strict enforcement with more pressing needs in other areas.

Due to funding cuts by the legislature and two long term employee absences, we have at times done more work with 12 employees than we formerly did with 17 when I started in 2007.

Our staff must multitask in a stressful environment. My assistant clerk who is responsible for the relevant items supervises not only estates, but special proceedings, special proceedings confidential, civil superior, deposits, and the front counter. She is also the backup for domestic violence, civil district court, and small claims.

She must prioritize her activities and do the best she can considering the time available. To our credit, not a single complaint has been lodged against us by any creditor or beneficiary of any of the estate files in question.

Notwithstanding any of the above, we have made a thorough review of the issues which you raise and have undergone a revival of efforts to comply with the black letter of the law.

We have implemented our own tickler system for tracking orders, notices, and show causes which is in addition to and separate from VCAP. We have enacted a policy that all pro se¹ parties must "pay as they go." The local bar has been educated concerning statutory requirements and we are more conscious of enforcing payment of costs and fees in a timely manner.

We are also amenable to any reasonable suggestions.

In further mitigation please note that the circumstances raised by the finding have been local practice and survived scrutiny through numerous previous audits by your office over several decades.

¹ Pro se is a Latin phrase meaning "for oneself" or "on one's own behalf". In the context used here, it refers to a personal representative who is a non-attorney.

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This audit was conducted in 309 hours at an approximate cost of \$29,426.