

STATE OF NORTH CAROLINA

OFFICE OF THE STATE AUDITOR
BETH A. WOOD, CPA



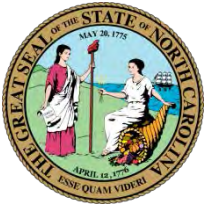
WAKE COUNTY CLERK OF SUPERIOR COURT

RALEIGH, 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 Jennifer Knox, Wake County Clerk of Superior Court

This report presents the results of our financial related audit at the Wake 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 Wake 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 January 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 \$57,097,850 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 \$928,957 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, \$6,548,500 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 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 \$57,097,850 in receipts during the audit period July 2014 to January 2015.

Specifically, six out of 161 employees had inappropriate access to the Financial Management System (FMS) and the Automated Criminal/Infractions System (ACIS) / Criminal Court Information System (CCIS) and/or the Civil Case Processing System (VCAP) as follows:

- Five employees had 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. These employees also had update capability within ACIS/CCIS to enter, change or delete criminal case information.
- One employee 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 that the initial system access rights assignments created the proper segregation of duties. Additionally, the Clerk's Office did not properly perform the quarterly reviews of employee system access rights to identify inadequate 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, granted full access rights to all staff with current ACIS access rights. 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 her 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. The manual also requires quarterly reviews of employee system access rights.

Recommendations: The Clerk should reassign system access rights to properly segregate duties and perform 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 below, the Clerk acknowledges that the five employees with access between FMS and VCAP and ACIS/CCIS results in an inadequate segregation of duties. However, the clerk asserts that due to staffing limitations, she has accepted that risk and, subsequent to the audit, has filed the CSC Internal Control Exception form for each of these employees. The CSC Internal Control Exception form documents mitigating controls to compensate for the lack of segregation of duties.

The Clerk acknowledges that NCAOC's updating access rights in CCIS using ACIS access rights created the possibility of fraud, but does not agree that the Clerk should be held responsible for the actions of NCAOC.

One of the objectives of the audit of the Wake 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 (the cashier 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** (*emphasis added*), not at NCAOC, and therefore is appropriately reported in the Wake County Clerk's Office report.

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. Excluding this finding from the Clerk's report would result in a failure to meet the intended objective of the audit.

Clerk's Response:

- a. There are five employees who have both update access in VCAP and cashier rights in FMS. Their primary duties involve regular duties within their respective divisions, but they also have smaller, secondary roles as cashiers within those divisions. Because of the small number of cashiering transactions in those divisions, and because the Wake County Clerk's office is understaffed, the proper segregation of those duties is not feasible for those employees, and the Clerk has excepted those employees from this standard internal control and has documented that exception by filing a CSC Internal Control Exception (form AOC-FS-0200) with the Administrative Office of the Courts. The work of these employees is closely scrutinized to detect abuse and fraud. The Clerk understands that the State Auditors take exception to this deviation.

One employee did mistakenly have head bookkeeper rights in FMS and update access in VCAP. However, he was not aware of this access, and no fraud occurred. His access has been changed. I concur with this part of the audit.

- b. When CCIS-CC was implemented in 2014, the NCAOC automatically assigned the same updating access rights to all employees who had ACIS access, without regard for whether the employees' ACIS access was inquiry-only or updating access. In so doing, the NCAOC did not abide by the Financial Policies and Procedures Manual for the Clerks of Superior Court, which allows only the hiring authority (the elected Clerk), or her designee to make changes to security access. In addition, the NCAOC did not inform the former Clerk that they were not abiding by the security policy. The Clerk could never have imagined that the NCAOC would violate its own security procedures and implemented the roll-out in this manner. The Director of the NCAOC has acknowledged that the NCAOC failed to follow policy and failed to notify the elected Clerks of Court of this action. While I agree that the NCAOC's actions created the possibility of fraud, I do not concur that the Clerk should be held responsible for the actions of the NCAOC.

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

Auditors examined 60 of 566 estates in the audit period that required an inventory to be filed and identified 34 (57%) estates that were not compelled to file inventories. The Clerk was not current in compelling the inventory and no written requests requiring the inventory filings were issued during the audit period. In addition, auditors identified 21 of the 60 (35%) estates in which fees of \$2,431 were not collected when the inventory was filed.

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, estate tracking is a year behind and they do not have adequate staffing to ensure that the estate inventories are tracked, compelled, and filed, and fees are collected timely.

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 send a written request 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 concurs that they did not compel the timely filing of estate inventories and described corrective actions now being taken to bring required filings up-to-date. However, the Clerk's response includes:

- An interpretation of law in defense of a noncompliant process used by the Clerk that is not supported by the law or NCAOC, and
- NCAOC policy references, to support the Clerk's position, that are not related to estates.

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 asserts in her response that:

- the fee on the estate value cannot be calculated until the inventory is approved, and
- "as ex-officio Judge of Probate she has judicial discretion to establish her own interpretation of the statutes when there is an obvious conflict between the Clerk's duty to collect fees (NCGS 7A-307(a)(2)) and her duty to review and assess costs (NCGS 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 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).

NCAOC policy references, to support the Clerk's position, that are not related to estates

The Clerk's response references NCAOC Rules of Recordkeeping (RRK) as defense of the untimely collection/attempts to collect inventory filing fees. The Clerk references Rule 3.4 Comment B and Rule 4.4 Comment B. Rule 3 of the RRK applies to Civil

District and Civil Superior and Rule 4 applies to Small Claims Cases Assigned to Magistrates, again, neither of which are applicable to the administration of Estates. It is Rule 6, which is not referenced in the Clerk's response, that applies to the administration of Estates and Rule 6 does not support the current process practiced by the Wake County Clerk.

Clerk's Response:

- a. I concur with the finding that we did not compel the timely filing of estate inventories. A recent workload study shows that the Wake County Clerk's Office should have 47 more employees than it currently does. This ongoing understaffing by the legislature has led to a backlog of cases within the Estates Division. However, an ongoing restructuring of the Division to better utilize the resources that we do have will help to alleviate this issue. We expect the backlog to be eliminated by the end of 2015.

- b. North Carolina General Statute 7A-307(a)(2) outlines the costs that must be paid in the administration of estates. This cost includes not only a flat fee but also a sum based on the gross value of the estate based on the inventory of the estate. This second fee cannot be calculated until the inventory is approved by the Clerk. Approval by the Clerk cannot be completed simultaneously with the filing of the inventory. As the ex-officio Judge of Probate, the Clerk has the judicial discretion to establish her own interpretation of the statutes when there is an obvious conflict between the Clerk's duty to collect fees (NCGS 7A-307(a)(2) and her duty to review and assess costs (NCGS 28A-20-1). Further, the AOC's Rules of Recordkeeping (Rule 3.4 Comment B and Rule 4.4 Comment B), state that in situations in which filings are presented without the appropriate fees, the Clerk may still accept the filing as long as efforts are made to collect the appropriate fee by notifying the filer. These statutes create an obvious conflict and impossible task for the Clerk to follow. Therefore, as the ex-officio Judge of Probate, I do not concur with this finding.

ORDERING INFORMATION

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This audit was conducted in 547.5 hours at an approximate cost of \$52,895.