

STATE OF NORTH CAROLINA

OFFICE OF THE STATE AUDITOR

BETH A. WOOD, CPA

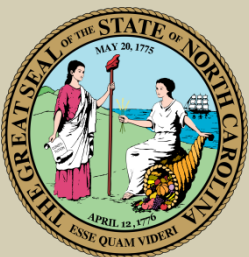


MECKLENBURG COUNTY CLERK OF SUPERIOR COURT

CHARLOTTE, NORTH CAROLINA

PERFORMANCE AUDIT

JULY 2022



NCOSA
The Taxpayers' Watchdog

STATE OF NORTH CAROLINA
Office of the State Auditor



Beth A. Wood, CPA
State Auditor

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AUDITOR'S TRANSMITTAL

The Honorable Roy Cooper, Governor
The General Assembly of North Carolina
The Honorable Elisa Chinn-Gary, Mecklenburg County Clerk of Superior Court

Ladies and Gentlemen:

We are pleased to submit this performance audit report for Mecklenburg County Clerk of Superior Court. The audit objective was to identify improvements needed in internal control over selected financial matters, as listed on pages 2-3.

This audit was conducted in accordance with Chapter 147, Article 5A of the North Carolina General Statutes.

The results of our audit identified deficiencies in internal control and instances of noncompliance that are considered reportable under *Government Auditing Standards*. These items are described in the FINDINGS, RECOMMENDATIONS, AND RESPONSES section of this report.

We appreciate the courtesy and cooperation received from management and the employees of Mecklenburg County Clerk of Superior Court during our audit.

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".

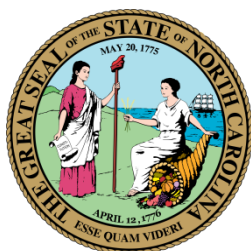
Beth A. Wood, CPA
State Auditor



Beth A. Wood, CPA
State Auditor

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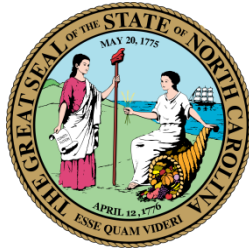


BACKGROUND

We have conducted a performance audit of Mecklenburg County Clerk of Superior Court, as authorized by Chapter 147, Article 5A of the North Carolina General Statutes, which requires the Office of the State Auditor to periodically examine and report on the financial practices of state agencies.

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.



OBJECTIVES, SCOPE, AND METHODOLOGY

The objective of this performance audit was to identify improvements needed in internal control over selected financial 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 scope covered the period July 2021 through February 2022. In conducting our audit, we observed, documented, and evaluated the effectiveness of selected internal controls related to:

- *Cash* – The Clerk’s office collects various fines, fees, and court costs daily, as well as bonds, judgments, and other amounts. We examined internal controls to determine whether such controls were designed and implemented to ensure that the Clerk properly safeguarded and accounted 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 \$85,349,041 in cash.
- *Estates* – The Clerk’s office is to ensure that all estates are charged an application fee plus an assessment based on the value of each estate’s inventory. An estate inventory is to be filed by the representative of the estate. We examined internal controls to determine whether such controls were designed and implemented to ensure that the Clerk properly obtained 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 \$1,123,002 in estate fees related to estates.

The Clerk’s office is to ensure that all estate guardians¹ are properly bonded based on the value of each annual estate inventory. An annual estate inventory is to be filed by the estate guardian of a minor or incapacitated adult. We examined internal controls designed to ensure that the Clerk properly obtained an inventory for each guardianship in compliance with laws and regulations. We also examined internal controls to determine whether such controls were designed and implemented to ensure that bonds assessed and collected were sufficient and in compliance with laws and regulations. During the audit period, auditors examined \$14,995,267 in estate guardian bonds retained by the Clerk related to 65 estates.

- *Escheats* – The Clerk’s office is to transfer abandoned property to the state. The transfer results when the person legally entitled to the property fails to make a valid claim on the property within a prescribed period of time. After that time, all abandoned property held by the Clerk is required to be transferred to the North Carolina Department of State Treasurer. We examined internal controls to determine whether such controls were designed and implemented to ensure that the Clerk properly identified escheatable funds. We also examined internal controls designed to ensure compliance with laws and regulations related to escheating unclaimed funds after a

¹ Guardianship is a legal relationship in which a person(s) or agency (the guardian) is appointed by the court to make decisions and act on behalf of a minor or incapacitated adult.

prescribed period of time. During the audit period, the Clerk transferred \$3,444,999 in escheats to the Department of State Treasurer.

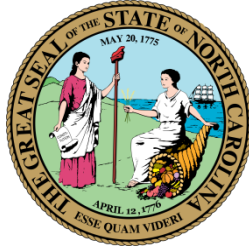
- *Trusts* – The Clerk’s office receives, administers, and disburses trust funds for minors and incapacitated adults. We examined internal controls to determine whether such controls were designed and implemented to ensure that disbursements from minor and incapacitated adult trust accounts were proper to ensure compliance with laws and regulations. During the audit period, the Clerk disbursed \$874,249 from minor and incapacitated adult trust accounts.

To accomplish the audit objective, auditors gained an understanding of the Clerk’s internal control over matters and evaluated the design of 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 as applicable but not quantify the sampling risk. This approach was determined to adequately support our audit conclusions.

Because of the test nature and other inherent limitations of an audit, together with limitations of any system of internal and management controls, this audit would not necessarily disclose all deficiencies in internal control or instances of noncompliance.

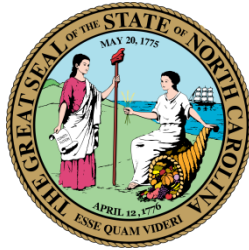
As a basis for evaluating internal control, we applied the internal control guidance contained in professional auditing standards. However, our audit does not provide a basis for rendering an opinion on internal control, and consequently, we have not issued such an opinion. See the Appendix for internal control components and underlying principles that were significant to our audit objectives.

We conducted this performance audit in accordance with *Generally Accepted Government Auditing Standards*. 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.



RESULTS AND CONCLUSIONS

Based on the results of audit procedures described in the OBJECTIVES, SCOPE, AND METHODOLOGY section of this report, auditors identified deficiencies in internal control and instances of noncompliance that are considered reportable under *Government Auditing Standards*. These items are described in the 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.



FINDINGS, RECOMMENDATIONS, AND RESPONSES

1. FAILURE TO COMPEL ESTATE INVENTORY FILINGS

The Clerk's office did not compel the filing of estate inventories in accordance with state law.

Auditors examined 65 of 721 estates in the audit period that required an inventory to be filed. For 32 (49%) estates, the inventories were not filed timely and the Clerk failed to issue written requests requiring inventory filings.

The Clerk's failure to compel the filing of inventories could allow unauthorized transactions to occur, such as the removal of estate assets without the knowledge of qualified heirs. It could also delay the family of the deceased from finalizing the estate.

According to the Clerk, the Clerk's office experienced a significant amount of turnover as well as a large caseload increase within the estate division over the last two years, primarily resulting from the COVID-19 pandemic. As a result of the increased caseload and personnel shortage, the Clerk's office prioritized working with the personal representatives at the initial phase of the estate process over reviewing the inventory reports for filing deadlines.

Chapter 28A, Article 20 of the North Carolina General Statutes 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 compel the inventory by issuing written requests requiring the personal representative to file the inventory or explain why the personal representative should not be replaced.

Recommendation: The Clerk should develop contingency plans to ensure estates are compelled to file an inventory in the event of caseload increases or personnel shortages.

Clerk's Response: See page 7 for the Clerk's response to this finding.

2. FAILURE TO COMPEL INVENTORY FILINGS AND ASSESS AND COLLECT SUFFICIENT BONDS FOR ESTATES OF MINORS AND INCAPACITATED ADULTS

The Clerk's office did not compel the filing of guardianship estate inventories or assess and collect sufficient² bonds to protect wards (minors or incapacitated adults) in accordance with state law.

Auditors examined 65 of 367 guardianship estates for wards in the audit period that required bonds and the filing of an annual inventory of the ward's assets. For 25 (38%) of the guardianship estates examined, the Clerk failed to compel an annual inventory filing and/or failed to assess and collect sufficient bonds. Specifically:

- For 24 of the guardianship estates, annual inventories were not filed and the Clerk failed to issue written requests requiring the inventory filings.

² North Carolina General Statutes 35A-1230 and 35A-1231 require bonds for estate guardians to equal 125% of the ward's personal property (if less than or equal to \$100,000) or 110% of personal property (if greater than \$100,000). Per the *North Carolina Clerk of Superior Court Procedures Manual*, Chapter 86, bond amounts should be reviewed upon the filing of annual inventories to ensure they remain sufficient.

- For one of the guardianship estates, the bond assessed and collected was insufficient as of the current inventory filing. Assets in this estate totaled \$418,591 and required a bond of \$460,450. However, the Clerk only assessed and collected a bond of \$425,000.

Failure to compel the filing of inventories prevents the Clerk from assessing and collecting sufficient bonds from guardians and could result in financial loss to the ward if the guardian misuses the assets in the estate. Additionally, the Clerk may be liable³ for the financial loss if bonds are not sufficient.

According to the Clerk, the Clerk's office experienced a significant amount of turnover as well as a large caseload increase within the estate division over the last two years, primarily resulting from the COVID-19 pandemic. As a result of the increased caseload and personnel shortage, the Clerk's office prioritized working with the guardians at the initial phase of the estate process over reviewing the inventory reports for filing deadlines and bond sufficiency.

North Carolina General Statutes 35A-1230 and 35A-1231 require the Clerk to assess and collect sufficient bonds before appointing guardians to the estates of minors and incapacitated adults or permitting guardians from receiving the wards' property. North Carolina General Statutes 35A-1264 and 35A-1265 require the annual filing of an inventory of the ward's personal property. If an annual inventory is not filed, the Clerk must compel the inventory by issuing written requests requiring the guardian to file the inventory.

Recommendation: The Clerk should develop contingency plans to ensure estates are compelled to file an inventory and that the bonds assessed and collected are sufficient in the event of caseload increases or personnel shortages.

Clerk's Response: See page 7 for the Clerk's response to this finding.

³ Chapter 35A, Article 7 of the North Carolina General Statutes.



CLERK OF SUPERIOR COURT

MECKLENBURG COUNTY
JUDICIAL DISTRICT 26

PO BOX 37971, CHARLOTTE, NC, 28237-7971
O 704-686-0420
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ELISA CHINN-GARY, ELECTED CLERK
EX OFFICIO JUDGE OF PROBATE

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SENIOR RESIDENT JUDGE
LISA C. BELL
RESIDENT JUDGE
KAREN E. EADY-WILLIAMS
RESIDENT JUDGE
LOUIS A. TROSCH, JR.
RESIDENT JUDGE
GEORGE C. BELL
RESIDENT JUDGE
KIMBERLY Y. BEST
RESIDENT JUDGE
REGGIE E. MCKNIGHT
RESIDENT JUDGE

July 1, 2022

The Honorable Beth A. Wood, State Auditor
Office of the State Auditor
2 South Salisbury Street
20601 Mail Service Center
Raleigh, North Carolina 27699-0600

Dear Auditor Wood:

I, Elisa Chinn-Gary, elected Mecklenburg County Clerk of Superior Court, offer the following response to the State Auditor's findings and recommendations dated June of 2022. Notable findings include a Failure to Compel Estate Inventory Filings, and a Failure to Compel Inventory Filings and Assess and Collect Sufficient Bonds for Estates of Minors and Incapacitated Adults.

I do not dispute the above findings offered by the Office of the State Auditor. The findings reveal the crippling dilemma the Clerk's Office faced when one-third of its workforce resigned or retired during the height of the COVID pandemic. Specifically, the Estates Division experienced an attrition rate of 100% among highly skilled and experienced auditors charged with managing estate cases. Immediately following this mass exodus, aggressive efforts to hire and train new auditors were frustrated by frequent COVID outbreaks resulting in employee quarantines, hospitalizations and in the most severe cases, employee deaths.

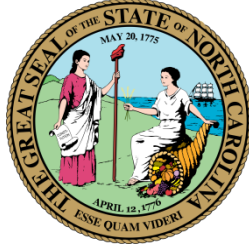
Retaining and restoring employee knowledge, expertise, skillsets, and experience is crucial to reestablishing alignment with statutory requirements. To date, all vacancies in the Estates Division have been filled. Staff are working up to 50 hours each week in managing new and backlogged cases. Customers may engage newly trained auditors in-person or virtually. Delays have been reduced and case dispositions are steadily increasing. It is also anticipated that newly funded clerk positions, recently allocated by the North Carolina General Assembly, will be assigned to the Mecklenburg County Clerk of Superior Court to increase efficiency, and concentrate specifically on compelling inventories and collecting sufficient bonds.

The Executive Management Team of the Estates Division, led by Assistant Clerk Grant Harris, is responsible for overseeing the full restoration of our workforce, statutory compliance, and quality service.

Sincerely,

Elisa Chinn-Gary

★★★



APPENDIX

Internal Control Components and Principles Significant to the Audit Objectives

Our general audit objective was to identify improvements needed in internal control over selected financial matters.

Internal control components and underlying principles that were significant to our audit objectives are identified in the table below.

COMPONENTS AND PRINCIPLES	AUDIT OBJECTIVES			
	CASH	ESTATES	ESCHEATS	TRUSTS
CONTROL ENVIRONMENT				
1. The oversight body and management should demonstrate a commitment to integrity and ethical values.	X	X	X	X
2. The oversight body should oversee the entity's internal control system.	X	X	X	X
3. Management should establish an organizational structure, assign responsibility, and delegate authority to achieve the entity's objectives.	X	X	X	X
4. Management should demonstrate a commitment to recruit, develop, and retain competent individuals.				
5. Management should evaluate performance and hold individuals accountable for their internal control responsibilities.				
RISK ASSESSMENT				
6. Management should define objectives clearly to enable the identification of risks and define risk tolerances.				
7. Management should identify, analyze, and respond to risks related to achieving the defined objectives.	X	X	X	X
8. Management should consider the potential for fraud when identifying, analyzing, and responding to risks.				
9. Management should identify, analyze, and respond to significant changes that could impact the internal control system.	X	X	X	X

CONTROL ACTIVITIES				
10. Management should design control activities to achieve objectives and respond to risks.	X	X	X	X
11. Management should design the entity's information system and related control activities to achieve objectives and respond to risks.				
12. Management should implement control activities through policies.	X	X	X	X
INFORMATION AND COMMUNICATION				
13. Management should use quality information to achieve the entity's objectives.	X	X	X	X
14. Management should internally communicate the necessary quality information to achieve the entity's objectives.	X	X	X	X
15. Management should externally communicate the necessary quality information to achieve the entity's objectives.	X	X	X	X
MONITORING ACTIVITIES				
16. Management should establish and operate monitoring activities to monitor the internal control system and evaluate the results.	X	X	X	X
17. Management should remediate identified internal control deficiencies on a timely basis.	X	X	X	X

ORDERING INFORMATION

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919-807-7666



This audit required 293 hours at an approximate cost of \$31,058.