

**THOMAS E. ROBERTS
CLERK OF THE CIRCUIT COURT
FOR THE
CITY OF STAUNTON**

**REPORT ON AUDIT
FOR THE PERIOD
JULY 1, 2009 THROUGH DECEMBER 31, 2010**



–TABLE OF CONTENTS–

	<u>Pages</u>
AUDIT LETTER	1
COMMENTS TO MANAGEMENT	2
CLERK’S RESPONSE AND CORRECTIVE ACTION PLAN	3-7



Commonwealth of Virginia

Auditor of Public Accounts

Walter J. Kucharski
Auditor of Public Accounts

P.O. Box 1295
Richmond, Virginia 23218

July 5, 2011

The Honorable Thomas E. Roberts
Clerk of the Circuit Court
City of Staunton

City Council
City of Staunton

Audit Period: July 1, 2009 through December 31, 2010
Court System: City of Staunton

We have audited the cash receipts and disbursements of the Clerk of the Circuit Court for this Court System and for the period noted above. Our primary objectives were to test the accuracy of financial transactions recorded on the Court's financial management system; evaluate the Court's internal controls; and test its compliance with significant state laws, regulations, and policies.

Management's Responsibility

Court management has responsibility for establishing and maintaining internal controls and complying with applicable laws and regulations. Internal control is a process designed to provide reasonable, but not absolute, assurance regarding the reliability of financial reporting, effectiveness and efficiency of operations, and compliance with applicable laws and regulations. Deficiencies in internal controls could possibly lead to the loss of revenues or assets, or otherwise compromise fiscal accountability.

We noted matters involving internal control and its operation necessary to bring to management's attention. These matters are discussed in the section titled Comments to Management. Any response and written corrective action plan to remediate these matters provided by the Clerk are included as an enclosure to this report.

We discussed these comments with the Clerk and we acknowledge the cooperation extended to us by the court during this engagement.

AUDITOR OF PUBLIC ACCOUNTS

WJK:alh

cc: The Honorable Humes J. Franklin, Jr., Chief Judge
Stephen F. Owen, City Manager
Robyn M. de Socio, Executive Secretary
Compensation Board
Paul F. DeLosh, Director of Judicial Services
Supreme Court of Virginia
Director, Admin and Public Records
Department of Accounts

COMMENTS TO MANAGEMENT

We noted the following matters involving internal control and its operation that has led or could lead to the loss of revenues, assets, or otherwise compromise the Clerk's fiscal accountability.

Improve Recording Information in the Accounting System

In 20 of 60 criminal cases tested, we found the following errors.

- In 14 cases, the Clerk did not charge fines and costs of \$3,111 which could result in a loss to the Commonwealth, which represents public defender fees of \$2,811 certified from the District Court and \$300 in fines from a defendant.
- In three cases, the Clerk did not charge fines of \$450 as directed by court order. Instead, he included them as cost.
- In one case, the Clerk did not collect the Courthouse Security fee of \$10, resulting in a loss to the locality.
- The Clerk improperly recorded three cases in the court system as "Dismissed" according to the court order one case resulted in a "Guilty" verdict and other two cases resulted in "Not Guilty" outcomes.

The Clerk should collect the fees above and correct the court records for the improperly recorded cases in the court system. The Clerk should also review all cases certified by the district courts to determine if the Clerk has collected all appropriate amounts.

Collect the Internet Crimes Against Children Fee

The Clerk did not charge and collect the Internet Crimes Against Children Fee of \$10 for each conviction per Section 17.1-275.12 of the Code of Virginia, effective July 1, 2010. The Clerk should immediately implement charging the fee for all convicted cases.

Charge the Commonwealth Attorney Fees for the State and Locality Cases

The Clerk did not charge the state and local share of Commonwealth Attorney Fees for each felony and misdemeanor conviction per Section 15.2-1627.3 of the Code of Virginia effective July 1, 2010. The Clerk should immediately implement charging the fees for all convicted cases.

Appropriate Back-Up Personnel

In order to intercept tax refunds from individuals that owe the court unpaid fines and fees, the court must have someone certified to use the Virginia Department of Taxation's Integrated Revenue Management System. Only the clerk has this certification and in his absence no one else in the office can intercept the refunds. We again recommend that the Clerk have another employee obtain the certification.



**THE CIRCUIT COURT
of the
CITY OF STAUNTON**



Thomas E. Roberts
Clerk

113 E. Beverley Street
3rd Floor
Staunton, Virginia 24401
540-332-3874

Cynthia Nuckols Marshall, *Deputy*
Diane D. Mlinarcik, *Deputy*
Heather Dixon, *Deputy*
Julie W. Sheffer, *Deputy*

June 22, 2011

Mr. Walter Kucharski
Auditor of Public Accounts
P. O. Box 1295
Richmond, VA 23218

Audit Period: July 1, 2009 through December 31, 2010
Court System: City of Staunton

Dear Mr. Kucharski:

Enclosed is my response and written corrective action plan.

Sincerely yours,

Thomas E. Roberts

Clerk's Responses to the Comments to Management

There has been **NO** loss of revenue or assets to the state or city from the cases discussed in the Comments to Management. **ALL** of the issues raised in each of the cases have been corrected. Please see the clerk's responses, in bold, to each specific comment below:

Improve Recording Information in the Accounting System

In 20 of 60 criminal cases tested, we found the following errors.

- In 14 cases, the Clerk did not charge fines and cost of \$3,111 which could result loss to the Commonwealth, which represents public defender fees of \$2,811 certified from the District Court and \$300 in fines from a defendant.

The deputy clerk who posts criminal costs had a discussion with the clerk of another jurisdiction as to how to impose this fee (account code 120, public defender fee). That clerk had surveyed several other clerk's offices about this fee. As a result of that conversation the deputy believed the office was imposing this fee properly. Since the audit the office has corrected the costs imposed in all of these cases. Therefore, there was *no* loss of \$2811 of public defender fees to the Commonwealth. There was no lack compliance with the law, only a misinterpretation of the law made in good faith. The office is now correctly charging this fee.

There were *no* instances of fines not being charged to the defendant and there was *no* loss of \$300 in fines to the Commonwealth. This point concerns the drug offender fee (account code 107). In all cases this fee was correctly entered into the Financial Management System (FMS). There was confusion during the audit because in court orders this "fee" was expressed as a "fine." In every order the correct total amount of fines and costs were imposed. The office has changed procedures and orders will describe this account code as a "cost" in the future. There was no loss of revenue to Commonwealth. There was no lack of compliance with the law—this fee was always correctly entered into FMS and the correct total amount of fines and costs were always charged to the defendant. The office is now expressing the drug offender fee as a "fee" rather than a "fine" in court orders.

In sum, there was *no* loss to the Commonwealth of \$3111 (\$2,811 in public defender fees and \$300 in fines).

- In three cases, the Clerk did not charge fines of \$450 as directed by court order. Instead, he included them as cost.

There were *no* instances of fines not being charged to the defendant and there was *no* loss to the Commonwealth. This point concerns the drug offender fee (account code 107) just as above and the same points apply. In all cases this fee was correctly entered into FMS. In every order the correct total amount of fines and

costs were imposed. The office has changed procedures and orders will describe this account code as a "cost" in the future. There was no loss of revenue to Commonwealth. There was no lack of compliance with the law—this fee was always correctly entered into FMS and the correct total amount of fines and costs were always charged to the defendant. The office is now expressing the drug offender fee as a "fee" rather than a "fine" in court orders.

- In one case, the Clerk did not collect the Courthouse Security fee of \$10 resulting in a loss to the locality.

Prior to July 1, 2010, the deputy clerk who posts criminal costs had imposed this fee per "count." After that date, having received a FMS release that stated the fee should be charged per "case" she began imposing this fee per "case" or sentencing event. This case has been corrected and we are now charging this fee per "count." There was no loss of revenue to the locality. There was no lack of compliance with the law only a misinterpretation of the law made in good faith.

- The Clerk improperly recorded three cases in the court system as "Dismissed" according to the court order one case resulted in a "Guilty" verdict and other two cases resulted in "Not Guilty" outcomes.

No cases were dismissed without documentation to support the dismissal. In each case the judge ordered the case dismissed. In each case the dismissal was properly recorded in FMS. The office form order for dismissals uses the term "not guilty" and this form was used in two of the cases. In the third case even though it was clear from the case notes that the matter was to be "dismissed," that term was not used in the order. In all three cases amended orders have been entered using the term "dismissed." There was no loss of revenue in any of these cases. There was no failure to comply with the law in any of these cases.

Collect the Internet Crimes Against Children Fee

The Clerk did not charge and collect the Internet Crimes Against Children Fee of \$10 for each conviction per Section 17.1-275.12 of the Code of Virginia effective July 1, 2010. The Clerk should immediately implement charging the fee for all convicted cases

When this fee (account code 001) was enacted by the General Assembly the deputy clerk who posts criminal costs had a discussion with the deputy Commonwealth's Attorney who handles the prosecution of sex crimes as to how to impose the fee. As a result of that discussion she charged the fee only in cases related to Internet crimes against children in which there was an actual victim.

There was no lack of compliance with the law, only reliance upon an incorrect interpretation of the law. The office was well aware of the fee and was imposing it when it was believed to be proper.

The costs have been corrected and this fee imposed in all cases involved in this audit so there was no loss of revenue to the Commonwealth from these cases. This fee is now being imposed in all convicted cases so there will be no future loss of revenue to the Commonwealth.

Charge the Commonwealth Attorney Fees for the State and Locality Cases

The Clerk did not charge the state and local share of Commonwealth Attorney Fees for each felony and misdemeanor conviction per Section 15.2-1627.3 of the Code of Virginia effective July 1, 2010. The Clerk should immediately implement charging the fees for all convicted cases.

When these fees (account codes 119 and 203) were enacted by the General Assembly the deputy clerk who posts criminal costs reviewed FMS releases and determined that these fees should be charged per "case" and not per "count." In our office terminology the word "case" generally refers to one sentencing event, which can cover multiple counts. There was no lack of compliance with the law, only a misinterpretation of the law. The office was well aware of these fees and was imposing them when believed proper.

The costs have been corrected and these fees imposed in all cases involved in this audit so there is no loss of revenue to the Commonwealth from these cases. These fees are now being imposed in all convicted cases so there will be no future loss of revenue to the Commonwealth.

Appropriate Back Up Personnel

In order to intercept tax refunds from individuals that owe the court unpaid fines and fees, the court must have someone certified to use the Virginia Department of Taxation's Integrated Revenue Management System. Only the clerk has this certification and in his absence no one else in the office can intercept the refunds. We again recommend that the Clerk have another employee obtain the certification.

All monies due the court were appropriately collected as required by the Code. There was no loss of revenue to the Commonwealth.

To participate in the Integrated Revenue Management System an individual must give his or her social security number to the system. There is no authority allowing a clerk to force a deputy clerk to give her social security number to such a system. We have had no problems with just one individual on this system. In fact,

the system can be used remotely, which has been done numerous times. A deputy clerk has now volunteered to give her social security number and become the back up for the system.

CORRECTIVE ACTION PLAN

1. **Correct cases as described in Comments to Management. (Accomplished)**
2. **Apply fees, costs, and fines as recommended in Comments to Management. (Accomplished)**
3. **Ensure at least one deputy clerk attend Supreme Court regional meetings when possible. (Accomplished in 2011)**
4. **When staffing and workload allows, double-check cases for the correct imposition of fees, costs, and fines.**

A PERSONAL NOTE:

After a series of bad test results during the fall of 2009, I was diagnosed with prostate cancer on November 25, 2009. I underwent a radical retropubic prostatectomy at the Mayo Clinic in Minnesota on March 23, 2010. I received radiation treatment at Memorial Sloan-Kettering Hospital in New York City from August 9, 2010, to October 6, 2010. I have been on hormone therapy since March 23, 2010. The audit period was July 1, 2009 through December 21, 2010.

In September 2010, one of my deputies was diagnosed with pre-cancerous cells in the uterus and had major surgery in December 2010. Another one of my deputies has a son with a heart problem that worsened during the audit period leading to major surgery in Pittsburgh, Pennsylvania in January of 2011. Yet another deputy had a serious personal problem during the audit period.

Because of state and local budget cuts, the office is understaffed. In fact, I have fewer deputies than I had 19 years ago. The office workload during this time has increased significantly. We now have a drug court and are hosting a continuing multi-jurisdictional grand jury.

I do not believe any of these facts directly caused any of the management points. They may have, however, indirectly had an effect. We were not able to send anyone to the Supreme Court's regional meetings in 2010 because we didn't have enough staff available. Because of the workload and the above events we have not been able to do as much double-checking and research as in the past.