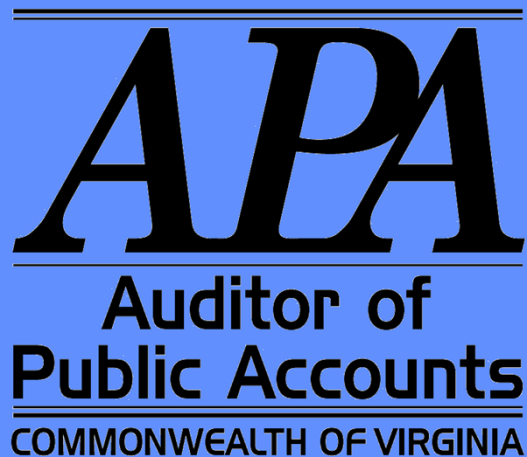


**GARY M. CLEMENS
CLERK OF THE CIRCUIT COURT
FOR THE
COUNTY OF LOUDOUN**

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



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Commonwealth of Virginia

Auditor of Public Accounts

Walter J. Kucharski
Auditor of Public Accounts

P.O. Box 1295
Richmond, Virginia 23218

August 3, 2011

The Honorable Gary M. Clemens
Clerk of the Circuit Court
County of Loudoun

Board of Supervisors
County of Loudoun

Audit Period: April 1, 2009 through December 31, 2010
Court System: County of Loudoun

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 Thomas D. Horne, Chief Judge
Tim Hemstreet, County Administrator
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.

Follow Competitive Procurement and Maintain Documentation

In November, 2009 the Clerk hired a former employee to work remotely as a consultant and paid him \$32,450 through May, 2010. The Clerk did not provide any documentation of competitive procurement for these consulting services.

For the seven payments to this consultant, the Clerk could not provide original invoices supporting the payments until two months after the completion of the audit. All payments to other vendors we tested were supported by original invoices that were maintained and immediately available to us from the bookkeeper's file.

The Clerk should competitively procure services in accordance with the Virginia Procurement Act and retain such documentation. In addition, the Clerk should follow office procedure and provide the bookkeeper with supporting documentation, such as vendor invoices, when requesting payments to be processed.

Appropriately Charge the Court House Security Fee

The Clerk did not appropriately charge the Court House Security Fee as adopted by local governing body. The Board of Supervisors adopted an increase in the fee from \$5 to \$10 in October, 2007. However, the Clerk does not charge this increased fee, resulting in a potential loss to the locality of \$16,410 based on a calculation of 3,282 concluded cases. The Clerk should immediately implement charging the correct fee for court house security.

Improve Recording Information in the Accounting System

The Clerk does not properly enter fines and costs in the court's automated financial accounting system or maintain supporting documentation. In 18 of 40 cases tested we found the following errors.

- In seven cases, defendants were charged the Public Defender fees totaling \$5,598 without documentation supporting the fee, two defendants were given time to pay with no Time to Pay Agreement, and the Clerk did not charge Commonwealth Attorney costs of \$12.50 in two other cases.
- In two cases, the Clerk did not charge the defendants for Court-Appointed Attorney fees resulting in a loss to the Commonwealth of \$890; and in one of these cases, the Clerk included a fine of \$445 not ordered by the Court.
- In one case, costs of \$51 were coded to the wrong general ledger account.
- In two cases, the Clerk billed the defendant for District Court costs that the District Court did not send to the Clerk, resulting in an overcharge to the defendant and the Commonwealth receiving an overpayment of \$122.
- In five cases, the Clerk did not include the "Tried in Absence" costs from the District Court, resulting in a lost to the Commonwealth of \$115. In addition, for one of these cases, the Clerk entered a state fine as a local charge, resulting in a loss to the Commonwealth of \$150.

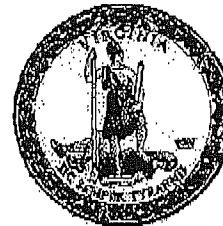
- In one case, the Clerk did not include District Court Public Defender fees of \$120 and included \$158 in Circuit Court Attorney fees without supporting documentation.

We recommend the Clerk research all similar cases, make the appropriate corrections to case paperwork, and where appropriate, the Clerk staff should accurately enter data into the court's automated accounting system.



COMMONWEALTH OF VIRGINIA
COUNTY OF LOUDOUN
OFFICE OF THE CLERK OF CIRCUIT COURT

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Brenda S. Butler
Chief Deputy

Gary M. Clemens
Clerk

William L. Loy
Assistant Chief Deputy

August 2, 2011

VIA FACSIMILE

Mr. Walter Kucharski
Auditor of Public Accounts

Dear Mr. Kucharski:

The Auditor of Public Accounts has issued a final report of its audit findings related to an audit conducted in the office of the Clerk of the Circuit Court. At the conclusion of the audit, the field auditors discussed the preliminary findings and my office acknowledges the cooperation extended to my management team during the audit engagement.

I appreciate the opportunity to respond to the findings in the recent audit and my responses and corrective action information is provided in the same order as the audit report that will be issued by your office.

Competitive Procurement and Maintain Documentation

The Clerk's Office conducted a competitive procurement process by soliciting prospective bids from various sources and subsequently received responses from prospective offerors. Information was provided to the Auditor of Public Accounts related to this process. The selection of the successful offeror was based upon the most responsive and responsible bid and the lowest price proposed in compliance with the Virginia Procurement Act.

The approach pursued by the clerk's office to contract with an outside consultant for technology projects is similar to the approach taken by the Office of the Executive Secretary of the Virginia Supreme Court. The Office of the Executive Secretary has hired former deputy clerks from circuit court clerks' offices in Virginia as consultants and contractors, many of whom work in remote locations as opposed to being located in the offices of the Executive Secretary. The model established by the Office of Executive Secretary for their circuit court team is successful,

efficient and effective. The Office of the Executive Secretary model of using consultants or contractors was adopted by my office for technology projects from 2009 – 2010.

Documentation related to this procurement was not readily available when the field auditors visited my office. My office offered to submit the documentation to the field auditors when it was available. Copies of the documentation were mailed to the field auditors since the field auditors were no longer present on the premises of my office. My office experienced delays in retrieving the documentation as records were stored in a remote location due to a lack of adequate storage facilities in my office. One of the storage areas where records are maintained was experiencing water leaks and the infestation of mold which resulted in delays in retrieving some records.

The only corrective action that I concur is necessary is to maintain procurement documentation in the immediate vicinity of my office and not in a remote storage location. Additionally, it would be helpful for the field auditors to request specific documents at the commencement of the site visits so my staff can retrieve and assemble these records in preparation for the audit.

Appropriately Assess the Courthouse Security Fee

The adjustments to the courthouse security fee involved a revision of a local ordinance. The Clerk was not notified of a revision in the local ordinance related to the courthouse security fee. My office has contacted the appropriate County agencies to discuss this situation and has received assurances that my office will be properly notified of local ordinance changes related to the assessment of local fees by my office. My office is taking action to recover appropriate courthouse security revenue/fees for the Sheriff's Office in Loudoun County.

Therefore, the appropriate corrective action has been taken related to this matter.

Improve Recording Information the Accounting System

In 2000, the clerk's office experienced problems with receiving timesheets from court-appointed counsel to allow my staff to properly assess the public defender fees at time of conviction in criminal cases. As the Auditor of Public Accounts understands, the Clerk has a statutory duty to assess the court appointed attorney fees upon conviction. To resolve this issue, the chief judge for the 20th Judicial Circuit issued a judicial mandate that permitted the Clerk to assess the maximum of the public defender fees when timesheets were not provided to the Clerk.

Several years later, as the Auditor of Public Accounts was conducting an audit of my office, a field auditor recommended that my office acquire a court order establishing the judicial mandate to authorize the Clerk to collect the maximum amount of court appointed attorney fees when counsel for the defendant does not provide timesheets. Pursuant to the recommendations of this field auditor, a court order was subsequently entered by the Court authorizing the Clerk to assess the maximum amount of court appointed attorney fees in the absence of timesheets. This court order has been used to assess the maximum amount of court appointed attorney fees to ensure proper assessment of these fees in the absence of timesheets. This standing court order was discussed with the field auditors during the most recent deployment.

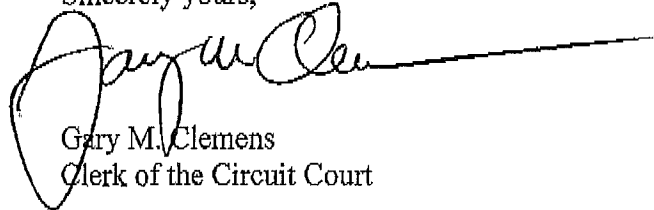
The court order authorizing the assessment of the maximum amount of fees provides the documentation necessary to assess all court-appointed counsel fees, including the public defender fees. The Court has the authority to appoint private attorneys and attorneys who are

employed by the Commonwealth, otherwise known as public defenders, to represent criminal defendants when the Court determines the criminal defendant qualifies for legal representation by a court-appointed attorney. Therefore, the court order acquired by virtue of the recommendation of the Auditor of Public Accounts in a previous audit includes the authority to assess the maximum amount of any court-appointed attorney fees, including public defender fees. However, the Clerk will review this matter in greater detail with the chief judge of the circuit to determine if any additional judicial action is necessary.

All other findings as stated in the audit report related to court-appointed attorney fees, costs, and fines, have been reviewed with appropriate staff and resolved. The necessary corrective actions, including necessary corrections to the automated accounting system and corrections to the legal paperwork have been completed or will be completed.

My management team appreciates the collaborative and cooperative approach extended to my office by the field auditors during their deployment and in subsequent communications following the on-site meetings.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Gary M. Clemens", with a long horizontal line extending to the right.

Gary M. Clemens
Clerk of the Circuit Court

CC: The Honorable Thomas D. Horne, Chief Judge, 20th Judicial Circuit
Mr. Tim Hemstreet, County Administrator
Mr. G. Paul Nardo, Chief Policy and Communications Advisor to the Speaker, General Assembly
Ms. Robyn de Socio, Executive Secretary, State Compensation Board
Mr. Paul DeLosh, Director of Judicial Services, Office of the Executive Secretary
Mr. Martin Watts, Court Financial Analyst, Office of the Executive Secretary