



**LINDA BATCHELOR SMITH  
CLERK OF THE CIRCUIT COURT  
FOR THE  
CITY OF HAMPTON**

**REPORT ON AUDIT  
FOR THE PERIOD  
APRIL 1, 2012 THROUGH SEPTEMBER 30, 2013**

## COMMENTS TO MANAGEMENT

We noted the following matter 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.

### Timely Investment of Money under Control of the Court

The Clerk did not receipt and invest six trust funds totaling \$443,720 within sixty days of the court order as required by Section 8.01-600(F) of the Code of Virginia. This resulted in loss of interest, totaling \$8,678, which would have been earned between July 2011 and August 2013. The Clerk is personally liable for the loss of interest and should deposit to the six trust funds an amount equal to that loss. In the future, the Clerk should ensure that all trust funds are deposited upon receipt and invested in accordance with the Code of Virginia.

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# Commonwealth of Virginia

## *Auditor of Public Accounts*

Martha S. Mavredes, CPA  
Auditor of Public Accounts

P.O. Box 1295  
Richmond, Virginia 23218

February 24, 2014

The Honorable Linda Batchelor Smith  
Clerk of the Circuit Court  
City of Hampton

George Wallace, Mayor  
City of Hampton

Audit Period: April 1, 2012 through September 30, 2013  
Court System: City of Hampton

We have audited the cash receipts and disbursements of the Clerk of the Circuit Court for this Court System 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 a matter involving internal control and its operation necessary to bring to management's attention. This matter is 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

MSM:ljh

cc: The Honorable Bonnie L. Jones, Chief Judge  
Mary Bunting, 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



## City of Hampton

OLDEST CONTINUOUS ENGLISH SPEAKING SETTLEMENT IN AMERICA

Linda Batchelor Smith, Clerk  
CIRCUIT COURT  
(8TH JUDICIAL CIRCUIT)

CHRISTOPHER W. HUTTON, JUDGE  
WILFORD TAYLOR, JR., JUDGE  
BONNIE L. JONES, JUDGE  
LOUIS R. LERNER, JUDGE



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PLEASE REPLY TO:  
P.O. BOX 40  
HAMPTON, VA 23669-0040

January 28, 2014

Martha Mavredes  
Auditor of Public Accounts  
Attn: Laurie Hicks, Director  
P.O. Box 1295  
Richmond, Virginia 23218

RE: Response to Audit Period April 1, 2012 – September 30, 2013

Dear Ms. Mavredes,

This letter is my official response and corrective action plan as it relates to the Hampton Circuit Court Clerk's Office Audit for the period April 1, 2012 through September 30, 2013.

As Clerk of the Circuit Court for the City of Hampton, I take great pride in the performance of my staff and will continue to be diligent in our actions to serve this community and comply with the Code of Virginia.

As I greatly appreciate and welcome any recommendation of the Auditor of Public Accounts, I have a concern with the audit finding cited in the section entitled **Management's Responsibility**, "Timely Investment of Money under Control of the Court."

A few items to note:

- 1) Pursuant to Virginia Code 8.01-582 it clearly states that **PRIOR** to or at the time of entry of any order placing monies under control of the general receiver, an affidavit **SHALL** be filed with the court providing the beneficiary's name, date of birth, and social security number, as well as the proposed dates of final and periodic disbursements. The statute clearly states the order should not have been entered by the court without the affidavits to allow proper investment.
- 2) Upon receipt of the court file, the endorsed court order and the six trust fund checks in question, the attorney was immediately notified that the affidavits were needed before the checks could be receipted and deposited. He informed the civil clerk the affidavits would be forthcoming. Per their communication, the checks were placed in the file with the proper notation and the entire file sealed as the court order directed, then placed in our secure location with all sealed files.

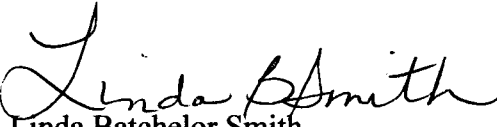
- 3) Because the court had ordered the entire file sealed due to the nature of the Petition For Approval Of Compromise Of Claim And Division Of Award Pursuant To 8.01-54, we had no reason to further access the file until further correspondence was received (e.g. affidavits).
- 4) On 07/10/2013, a letter was received from one of the children requesting his share, now that he had reached the age of majority. The sealed file was retrieved only to discover the attorney had never submitted the required affidavits, therefore, resulting in the funds never being receipted or invested. The attorney was immediately notified of the circumstances and also told that the original checks were stale dated and replacement checks would be needed along with the affidavits. The replacement checks along with the required affidavits were not received until 07/24/2013. After passing through both the civil and bookkeeping divisions, the monies were invested on 08/16/2013.
- 5) The attorney admitted his former bookkeeper had continuously overlooked the extra \$443,720 sitting in his bank account, month after month, resulting in her later being terminated but claimed no interest accrued while the monies were in his possession. Legally, it is the duty of the attorney who represented these beneficiary's to adhere to the statute and supply the required information and should be liable for the loss of interest.
- 6) This office also communicated with the Supreme Court of Virginia and they too were of the opinion that the monies should not have been receipted without the affidavits and referred us to Chapter 11 – Trust Fund Administration Accounting Procedures of the Financial Management System User's Guide Manual.
- 7) I have also been in communication with Ms. Melton of the Division of Risk Management and based on the unique circumstances surrounding this case, they have agreed to pay the \$8,678 plus any additional interest within 30 days and will make every effort to recover funds from the attorney involved.

I have had several meetings with both the civil and bookkeeping divisions and although policy and procedure tells us otherwise; in the absence of any future affidavits as required by Virginia Code 8.01-582, we will automatically receipt incoming funds in hopes of preventing the same situation from occurring.

Ms. Martha Mavredes  
January 28, 2014  
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In closing, I would like to thank Stephanie Serbia for her guidance and professionalism as well as the opportunity to share my response.

Respectfully Submitted,

  
Linda Batchelor Smith  
Clerk of Court

cc: The Honorable Bonnie L. Jones, Chief Judge  
George Wallace, Hampton Mayor  
Mary Bunting, Hampton City Manager  
Robyn M. de Socio, Executive Secretary, Compensation Board  
Paul F. DeLosh, Director of Judicial Services, Supreme Court of Virginia  
Martin Watts, Court Analyst, Supreme Court of Virginia  
Ms. Melton, Division of Risk Management