

**ASHBY R. PRITCHETT
CLERK OF THE CIRCUIT COURT
FOR THE
CITY OF MARTINSVILLE**

**REPORT ON AUDIT
FOR THE PERIOD
JANUARY 1, 2011 THROUGH JUNE 30, 2012**



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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.

Properly Bill Public Defender Fees

In six of 15 cases tested, the Clerk did not bill the locality \$948 for public defender fees in cases when a public defender represented a defendant on local charges. Additionally, in these same cases, the Clerk did not bill the defendants for these fees. The Clerk should correct these cases and bill the locality for the public defender fees. Further, the Clerk should bill and collect public defender fees as required by the Code of Virginia.

Properly Collect Taxes on Wills and Administrations

In two of 15 estates tested, the Clerk did not bill the estates for additional state and local probate taxes totaling \$219 after receiving the inventories. Additionally in one of these estates, the Clerk issued a qualification certificate to an individual before collecting the state and local probate taxes. The Clerk should consider changing his procedures for reviewing inventories and determining if additional probate taxes are due. Further, the Clerk should collect the state and local probate taxes before permitting anyone to qualify and act as an administrator or executor as required by the Code of Virginia.



Commonwealth of Virginia

Auditor of Public Accounts

Walter J. Kucharski
Auditor of Public Accounts

P.O. Box 1295
Richmond, Virginia 23218

August 2, 2012

The Honorable Ashby R. Pritchett
Clerk of the Circuit Court
City of Martinsville

Kim Adkins, Mayor
City of Martinsville

Audit Period: January 1, 2011 through June 30, 2012
Court System: City of Martinsville

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 David V. Williams, Chief Judge
Leon Towarnicki, Interim 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 Martinsville

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ASHBY R. PRITCHETT, CLERK



August 6, 2012

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

Audit Period: January 1, 2011 through June 30, 2012
Court System: City of Martinsville

Dear Mr. Kucharski:

Randy Johnson instructed me to send a corrective action plan to you within 10 days of receiving the preliminary audit report. Below you will find my response and corrective action plan for each item reported on the preliminary report. It is lengthy, but I believe you will find it worth your time to read.

First Item Reported: Properly Bill Public Defender Fees

In six of 15 cases tested, the Clerk did not bill the locality \$948 for public defender fees in cases when a public defender represented a defendant on local charges. Additionally, in these same cases, the Clerk did not bill the defendants for these fees. The Clerk should correct these cases and bill the locality for the public defender fees. Further, the Clerk should bill and collect public defender fees as required by the Code of Virginia.

Response and Corrective Procedures

These cases were resolved prior to the conclusion of the Audit, with no loss of revenue. For the six cases reported, all involved active FMS accounts. FMS was updated and the City was billed for the services of the Public Defender. Notice of the increase in account balance was mailed to each defendant.

For current and future cases, the Clerk or Chief Deputy will review daily the New Accounts Listing (BU003). Local cases will be identified. The file will be searched for the Public Defender's form DC-52. If no form is found, the bookkeeper will assess and post in FMS the fee authorized for Public Defender services established by Order of this Court on 2/04/2010. The Clerk will bill the City for each assessment.

AUG 9 '12 AM 10:07

**Second Item Reported:
Properly Collect Taxes on Wills and Administrations**

In two of 15 estates tested, the Clerk did not bill the estates for additional state and local probate taxes totaling \$219 after receiving the inventories. Additionally in one of these estates, the Clerk issued a qualification certificate to an individual before collecting the state and local probate taxes. The Clerk should consider changing his procedures for reviewing inventories and determining if additional probate taxes are due. Further, the Clerk should collect the state and local probate taxes before permitting anyone to qualify and act as an administrator or executor as required by the Code of Virginia.

Response and Corrective Procedures

These cases were resolved prior to the conclusion of the Audit, with no loss of revenue. For the two cases reported, both estates were still under administration. The Clerk would have billed for the additional tax prior to final distribution by the fiduciary. To show the Auditor how these cases would be cleared, both estates were billed and the additional tax was collected prior to the conclusion of the audit.

For current and future cases, I will compare probate tax returns with inventories when they are filed in my Office, to better comply with Code of Virginia section 58.1-1717. Following the Attorney General's 2010 opinion to Frey, set out in more detail below, I observe that this statute is unambiguous. I must advise the APA that in order to comply with this statute, I will discontinue using a procedure that I have employed for twenty-five years and believe to be a "best practice".

I will suspend my current agreement with the local Commissioners of Accounts, which provided that I delay billing for the additional tax until the Commissioner has decided on the sufficiency of the surety on the fiduciary's bond and obtained a preliminary estimate on the value of the estate under administration. Although this agreement has resulted in improved collection of unpaid probate taxes, and I have considered it a "best practice", it does not strictly comply with the duty imposed by the above statute. Therefore, in the future, I will assess and collect additional probate tax in accord with the statute.

Regarding the requirement to first collect state and local probate taxes before permitting anyone to qualify, Code of Virginia section 58.1-1715 states "No one shall be permitted to qualify and act as executor or administrator until the tax imposed by § 58.1-1712 has been paid."

Code of Virginia section 64.1-136 provides *"No person appointed by a will executor thereof shall have the powers of executor until he qualifies as such by taking an oath and giving bond in the court in which or before the clerk by whom the will or an authenticated copy thereof is admitted to record, except that he may provide for the burial of the testator, pay reasonable funeral expenses and preserve the estate from waste."*

Neither of these laws, interpreted together, prohibit the Clerk from issuing a single Certificate of Qualification to a fiduciary, who has taken his oath and given bond, for the limited purpose of opening a fiduciary account at a bank, to pay the probate taxes and the costs of initial qualification.

In the case observed by the auditor, the facts of the case are as follows:

- The Clerk qualified a local attorney as an Administrator C.T.A. of a very large estate. The attorney could not advance payment of the taxes and costs from his trust fund accounts, because he is not allowed by law to do so.
- His clients, the beneficiaries of the estate, were not residents of Virginia, and could not advance the costs.
- Evidence indicated the estate was subject to waste.
- After taking the attorney's oath and accepting his fiduciary bond, the Clerk issued one certificate for the sole purpose of authorizing him to obtain the required Federal Identification Number for the estate, take charge of the decedent's assets on deposit at the bank, and convert the decedent's account to an estate account.
- The attorney returned to my Office the next day, paid the taxes and fees of qualification, and received full testamentary letters.

This is a clear case in which I have discretion to interpret the law, and choose a solution based upon facts as are presented to me under oath. I rely on the 2010 Opinion to John Frey as my authority to do this. *"If a statute specifically directs the manner in which a clerk performs a duty, the clerk must comply with the statute. Where, as here, the statute is silent or ambiguous as to how a clerk is to comply with a duty, how the duty is discharged lies within the sound discretion of the clerk."* The opinion is located at the below link:
[http://www.oag.state.va.us/Opinions%20and%20Legal%20Resources/OPINION S/2010opns/10-011_Frey.pdf](http://www.oag.state.va.us/Opinions%20and%20Legal%20Resources/OPINION%20S/2010opns/10-011_Frey.pdf)

While the powers and duties of a constitutional officer are those prescribed by statute, Old v. Commonwealth, 148 Va. 299, 138 S.E. 485 (1927), except as limited by law, the constitutional officer is free to discharge his prescribed powers and duties in the manner in which he deems appropriate. 1984-85 Op. AG 284.

Neither of the two statutes cited above specifically limit the "clerk" to a single, all-or-nothing action. Specifically, section 58.1-1712 does not say that the clerk can do nothing until the probate tax is paid. Section 64.1-136 requires a personal representative to give oath and bond before any grant of fiduciary power, however limited, can be conferred.

More specifically, payment of tax is prerequisite to qualification. Therefore, during the process of qualification, as here, granting limited access to the funds to pay such tax is an expedient part of the process. In fact, this qualification took two days. The first day, oath and bond were given. Limited authority to acquire control of assets to pay the costs of qualification is given. The second day, payment is made, the qualification process is completed, and the attorney is allowed to depart with full letters of administration (Certificates of Qualification, Certified copies of the Will and supporting documents needed to administer the estate).

It is my customary practice to qualify a personal representative only after first obtaining full payment of taxes and fees. The Auditor notes a case in which I extended the qualification process to two days to obtain payment. Regarding this case, I conclude I acted correctly in discharging my duty.

I thank your auditors for bringing these items to my attention. The matters involving potential loss or revenues, assets, or which seem to compromise fiscal accountability will be addressed. I appreciate the cooperation and professionalism of Randy Johnson and Brenda Watkins, who participated in the audit of my Office this year.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ashby R. Pritchett".

Ashby R. Pritchett, Clerk