

**TINA E. SINNEN
CLERK OF THE CIRCUIT COURT
FOR THE
CITY OF VIRGINIA BEACH**

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



– TABLE OF CONTENTS –

	<u>Pages</u>
COMMENTS TO MANAGEMENT	1-3
AUDIT LETTER	4-5
CLERK’S RESPONSE AND CORRECTIVE ACTION PLAN	6-9

COMMENTS TO MANAGEMENT

System Funding Issues

Background

In lieu of the free case management system for all circuit courts provided by the Supreme Court of Virginia, in 2003 the Clerk's office began looking for a new case management system and requested vendor proposals. The Clerk at that time wanted an independent system because he believed it would better meet his needs. The current Clerk, Tina Sinnen, continued to pursue an independent case management system.

In 2005, the Clerk issued a Request for Quotation to American Cadastre (AmCad), who was already providing the courts' land records management system. The Clerk did not request quotations from any other vendors. Based on the Request for Quotation, the Clerk signed a contract for the new case management system at a cost of \$500,000. In 2008, without any other solicitations, the Clerk signed an amended contract for additional software enhancements at a revised contract price of \$1,200,245.

The majority of funding for this new system has come from the Technology Trust Fund (TTF). The TTF is a fee that a court collects on deed instruments and civil actions, which the court can spend on new and enhanced technology-related equipment and records. The TTF fee is \$5, which the Clerk sends to the Commonwealth. The Clerk and locality receive back \$4 of the fee and the remaining \$1 goes into a pool, which is administered by the Compensation Board. The Compensation Board approves each Clerk's budget for the \$4 portion of the fee and allocates the \$1 fee pool to localities based on need.

Between fiscal years 2007 through 2010 the Virginia Beach Circuit collection of the \$4 portion of the TTF fee totaled \$1,374,222, and amounts collected each year declined from a high of \$500,000 in fiscal year 2007 to \$110,850 in fiscal year 2010. Two factors affected the decline in TTF funding. The first factor was the use of TTF monies to offset budget reductions in the Circuit Clerk's offices, as recommended by the Virginia Circuit Court Clerks Association and adopted in the Appropriation Act. The second and most significant factor was the decline in home sales, which generates the most significant portion of TTF collections.

The Clerk has used TTF funds as payment towards AmCad expenses for the new case management system implementation as well as annual maintenance agreements for secure remote access to the court's land records. As of January 2011, the Clerk still owed AmCad \$855,531.

In reaction to the reduction in funds, the Clerk cancelled part of the original contract for data conversion which reduced the total cost by \$305,415; and, cancelled the maintenance agreement on the land records computer equipment. Also, in an attempt to reduce ongoing yearly costs, the Clerk renegotiated with AmCad and reduced the yearly maintenance costs beginning in November 2011 from \$277,150 to \$150,000 resulting in a yearly savings of \$127,150.

The AmCad contract provides that 85 percent of the Clerk's available TTF will pay for the cost of their services. In 2010 there was \$110,851 in TTF money available and the Clerk used all of it to pay AmCad. As noted previously, in January 2011 the unpaid AmCad balance totaled \$855,531 and AmCad continues to bill the Clerk an additional \$150,000 annually for software support and maintenance.

Issues

The future amount of TTF money Virginia Beach Circuit receives will depend on home sales and whether the Commonwealth's funding of clerks' office will restore the TTF funds. Therefore, we are unable

to predict with certainty when the Clerk may actually pay off the balance due to AmCad, but we estimate it will take at least until fiscal year 2016.

We performed the following analysis using a Compensation Board report showing that Virginia Beach Circuit should estimate receiving \$357,817 in TTF funds during fiscal year 2011. Assuming Virginia Beach Circuit realizes the Compensation Board's 2011 estimate, and assuming future TTF amounts continue at the 2011 rate, we estimate the Clerk will take five years to pay off the AmCad current balance and continued software maintenance charges.

Year	Software Maintenance	Payment for Services from TTF	Balance Due To AmCad
2011 Balance			\$ 855,531
2011	150,000	357,817	647,714
2013	150,000	357,817	439,897
2014	150,000	357,817	232,080
2015	150,000	357,817	24,263
2016	150,000	174,263	\$ -

As an additional concern, assuming future TTF amounts continue at the 2011 rate, the Clerk may not have sufficient funding in both the near and long-term to meet the ongoing technology maintenance and replacement needs of her office. Because the Clerk is using all her TTF to pay AmCad, she may not be able to afford other technology equipment and data upgrades and replacements.

The Clerk has responsibility for managing the circuit court and has the right to pursue an independent system rather than using the Supreme Court's system. In 2006 the Clerk believed that future TTF funds would be sufficient to pay AmCad fully and timely, and made a decision to develop her own independent system. The Clerk entered into the AmCad contract with the knowledge that TTF was her primary source of money to pay for the system and no additional funding was available from either the Commonwealth through the Compensation Board or the City of Virginia Beach.

We recommend the Clerk consider various options to rectify this situation.

Option 1 – The Clerk may negotiate with AmCad to further reduce the annual software maintenance expenses and/or the current unpaid balance. AmCad may be willing to accept a lower amount in exchange for a more timely payment. The Clerk could request a loan from the City to pay AmCad a lower renegotiated amount and then allow the Clerk to repay the City from future TTF money.

Option 2 – The Clerk may request that the City provide funds to pay AmCad or agree to provide for future technology purchases as the TTF money will likely be insufficient to maintain the office's current technologies.

Option 3 – The Clerk could continue to pay AmCad only what TTF money is available. This option will likely result in significant issues as the Clerk's existing technologies, such as computers, become outdated and insufficient money exists to replace them.

Properly Pay Excess Copy Fees to the Commonwealth

Section 17.1-275(A)(8) of the Code of Virginia authorizes the Clerk to charge a fee for copies and pay the City for any maintenance and other costs for providing copiers. The Clerk is to send the excess of the fees collected, after deducting the payment to the City, to the Commonwealth.

The Clerk owes the Commonwealth \$49,427 for excess copy fees. Instead of paying the excess fees to the Commonwealth, the Clerk used these funds to pay the court's software vendor. The Clerk should record this amount as due to the Commonwealth and determine how repayment will occur.

Properly Record and Collect Criminal Court Costs

The Clerk does not properly record and collect criminal court costs. Specifically, we tested 30 cases, both paid and unpaid accounts, and determined six had one or more errors.

- In two local cases, the Commonwealth paid for public defenders, but the Clerk failed to request reimbursement from the locality, resulting in a loss of revenue to the Commonwealth totaling \$436.
- In one case, the Clerk did not charge defendant for various fees associated with statutorily authorized deferred findings including "fixed misdemeanor fee," "local courthouse security fee," "local training academy fee," "Commonwealth Attorney fees," and "Internet Crimes Against Children Fund fee." These errors resulted in revenue losses to the Commonwealth of \$85 and to the locality of \$45.
- In one case, the Clerk incorrectly entered a local fine as a state fine, resulting in an overpayment to the Commonwealth of \$105.
- In one case, the Clerk overcharged defendant for "ignition interlock fee" resulting in overpayment of \$20.
- In one case, the Clerk did not charge defendant for the "jail admission fee," resulting in a loss of \$25 to the locality.

We recommend the Clerk research all similar cases, make the appropriate corrections to case paperwork, refund overpayments to defendants, and where appropriate, bill the locality for the applicable public defender fees.



Commonwealth of Virginia

**Auditor of Public Accounts
P.O. Box 1295
Richmond, Virginia 23218**

Walter J. Kucharski, Auditor

June 6, 2011

The Honorable Tina E. Sinnen
Clerk of the Circuit Court
City of Virginia Beach

City Council
City of Virginia Beach

Audit Period: October 1, 2009 through December 31, 2010
Court System: City of Virginia Beach

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 a matter involving system funding necessary to bring to management's attention. Further, we noted a matter involving compliance with applicable laws and regulations and a matter involving internal control. These matters are discussed in the section titled Comments to Management. Any response and written corrective action plan to remediate this matter provided by the Clerk are included as an enclosure to this report.

We discussed this comment 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 Frederick B. Lowe, Chief Judge
James K. Spore, 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

Office of the Clerk of the Circuit Court

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TINA E. SINNEN
CLERK

June 6, 2011

Mr. Walter J. Kucharski, Auditor
Commonwealth of Virginia
Auditor of Public Accounts
P.O. Box 1295
Richmond, Virginia 23218

Re: State Audit for the period of October 1, 2009 through December 31, 2010

Dear Mr. Kucharski:

As Clerk of the Circuit Court for the City of Virginia Beach, I wholeheartedly understand my role and the trust that the public and city government has put in me as a public servant. While I am grateful for and welcome the Auditor of Public Accounts at any time into my office, I have some concerns with the findings of this year's audit and will address all my concerns here.

Before addressing the technology issue, the auditor's second paragraph suggests that I did not request quotes from any other vendor as if we did something deceitful, the RFQ was issued, and there was only one vendor on the GSA Contract list for case management systems.

Years ago, the Clerks around the state lobbied for and were successful in getting a Technology Trust fund put in place to help pay for technology and upgrading outdated technology in our offices. Legislators had put laws in place telling Clerk's Offices that they must make public records more accessible. Clerks went out and secured their vendors to do just that, contracting with vendors to build technology and upgrade technology. THEN, for the past several years, the General Assembly takes money out of the Technology Trust Fund to help balance the state budget. Are we okay with that as the Auditor's letter suggests - NO, can we do anything about it - NO. However, with that said, Virginia Beach has always managed to raise enough funds to pay our vendor a reasonable amount for our technology, until this year, when basically all of our TTF funding was taken and the rules and policies on how we received whatever funding remained changed. This is what the auditor has referred to this year as a "matter involving system funding necessary to bring to management's attention." Again, for the past several years, the General Assembly has raided the funds from the Technology Trust Fund, and for those years, the auditors have never, not once, asked "how" we

were going to pay our vendor for the technology in our office, until this year, the same year Va. Beach decides to build a more robust system, and go away from the state's aging DOS based system. We have more efficient technology in our office now than we have had in the past 25 years. While the SCV Dos software is "free", Va. Beach has had to purchase the hardware from the state, so to refer to the state's system as "free" is factual, its not exactly the truth.

In addition to the Technology Trust Fund, Va. Beach has been steadily trying to find other methods of funding to help pay for the technology put in place in our office. We have E-Filing, E-Commerce, and now we have found that copy money can be used as a source to pay for technology. Copy fee money has not always been allowed to be used, but with a change in the law in 2007, this money, after paying for copiers, is now able to be used to pay for maintenance on Electronic Recording Systems in Clerk's Offices. With this said, I did make an error in sending my vendor a check directly and should have appropriated the funds through the locality. My vendor is in the process of sending me back the check, and my city has already approved and written up the appropriation so that we can correct this error. So, there is no money owed back to the Commonwealth for excess copy fees. This error has been corrected, and any future funds from this account code will be appropriated correctly.

I would also like to address the fact that I did not cancel data conversion for our case management system because of reduction in funds. The Supreme Court of VA would not give me my data so there was no information to convert; therefore, conversion was not necessary and was taken off the bill. I canceled the maintenance on the desktop computers because they were up in age, and we knew that replacement was inevitable and decided it was better financially to just replace as needed which would include new maintenance and warranties with the new equipment. I did re-negotiate the maintenance agreement with our vendor for a savings of approximately \$129,000. We have an IT person on staff so that we don't have to place so many "help" calls to our vendor.

Additionally, I would like to go on record to say that had the Supreme Court of Virginia, Office of the Executive Secretary, taken Va. Beach up on our offer to build a system together for the benefit of the entire state, using Va. Beach Technology Trust Fund money, I know that we could have saved the state thousands, if not millions, of dollars, and technology funding would no longer be an issue.

While I appreciate the fact that the Auditor's office is now concerned with how I am going to pay for my electronic system, AmCad, who was contracted with prior to the General Assembly raids on the TTF money, has not had an issue to this point. I am also in disagreement with the time frame for paying off our current bill. With E-Filing, E-Commerce and Remote Access fees in place, and probably some assistance from my locality, since they have had to take on more financial obligations of the state for my office in the past few years, and NOT considering much in the way of Technology Trust Funds, we should be able to come to a current status within 2 ½ years.

In response to Properly Record and Collect Criminal Court Costs, first and foremost, even though the auditor's report did not make ANY mention of it, this office lost 11 employees with the remaining employees having to take days off without pay in order to save 6 more from being laid off. We were tremendously understaffed during this past year, with the heavy workload still coming in the office. It would be remiss and unfair to the folks who have worked hard to keep this office still running fairly efficiently to NOT mention this.

*1st bullet - a new procedure, with discussions with Kathryn, auditor from last audit, was put into place after the last audit. In the case of CR09-2809, this file was received from General District Court 07/2009 and concluded on 10/29/2009, all prior to the last audit. That being said, these costs have been JV'd to the correct code. In the case of CR09-2084, this file was received from General District Court 05/2009 and concluded January, 2010, partially prior to the last audit. These costs have been JV'd to the correct code as well. Therefore, there was no loss of revenue to the Commonwealth or the City.

*2nd bullet - the courtroom clerk did not charge defendant for various fees associated with statutory authorized deferred finding, including "fixed misdemeanor fee, local courthouse security fee, local training academy fee, Commonwealth's Attorney fees, and Internet crimes against children fund - although we have a policy in place to ensure these items are entered properly, we have asked for a monthly report in our new AmCad case management system (something that couldn't be done with the state's Dos system) which will pull cases which are local offenses where court appointed/public defenders have been appointed to further ensure proper accounting on these matters. In CR10-2058, the defendant had 3 charges, costs were assessed for 2 charges (DUI finding of guilty and possession of marijuana was deferred). The defendant was called and costs assessed and collected on deferred 4.1-305 - no loss to the Commonwealth or the locality. With that also being said, and after further review of the file, it is clear that the Judge in his ruling just deferred the case (no mention of pursuant to 4.1-305 in open court), the defendant came to the counter to pay for the 2 charges and it was not until the order was entered at a later time that 4.1-305 was incorporated. It is clear to me that our office is properly collecting criminal court costs in these matters as all courtroom clerks are aware to assess on 4.1-305 (however, the Judge must properly order it in open court if costs are going to be collected immediately after the hearing). Also, the defendant was back on the docket that day for a finding on the 2 deferred findings due to violations. Costs would have been assessed on the 4.1-305 because of the conviction. Our new system, AmCad, unlike our old system, has the ability to have cases pulled by statute. After review, it is clear that courtroom clerks have always understood that costs are assessed in deferred cases pursuant to 4.1-305. Again, no loss to the Commonwealth or the locality.

*3rd bullet - addressing that the courtroom clerk incorrectly entered a local fine as a state fine resulting in an overpayment to the Commonwealth of \$105 - this account is still due and the fine has now been properly assessed. AmCad has the ability to list the code section as written on a summons (just as defendant has been charged). It does not require us to translate the code section from city to state or only limit the data entry leaving off the most important city code of 21-1. With this technology, we are better able to determine simply by review of the summary sheet that a summons is intended to be, whether City vs. Commonwealth. Although we had policies in place to ensure this did not happen in the state's CMS since it could not do what our new system can do, this was an

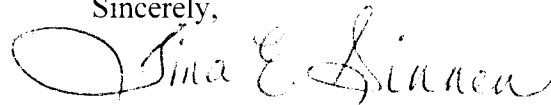
oversight as the defendant had a Commonwealth charge and 2 local charges within the same file and the clerk entering the case in the state's financial system relied solely on the code sections that were mandated by the state's CMS system which were all state charges. Again, no loss was suffered to the Commonwealth or the locality.

*4th bullet - addressing the courtroom clerk overcharging a defendant for "ignition interlock fee" resulting in overpayment of \$20.00 - a \$20.00 check has been mailed to the defendant and there was no gain to the Commonwealth or locality.

Considering all errors pointed out in the audit, there was neither a gain nor a loss to the State nor to the City of Virginia Beach.

Because of the budget cuts and transfer of workload from the criminal division, our office has had one primary employee from the finance department entering these costs. There has been a learning curve as this employee was not a criminal division employee - a necessity due to the budget cuts. Although the transition has been a little bumpy due to lack of staff, I feel the consistency now will benefit this office, the state, and the locality to ensure no loss of revenue to either the Commonwealth or the locality, no matter how small. Also, our Comptroller, for many years, has reviewed cases after entry to again ensure costs are being assessed properly and this practice continues. It is our mission to ensure all costs are assessed properly, and I feel strongly that considering the approximately 4000 criminal cases in which many costs are assessed day in and day out, that our mission is a successful one.

Sincerely,

A handwritten signature in cursive script that reads "Tina E. Sinnen". The signature is written in dark ink and is positioned above the printed name.

Tina E. Sinnen, Clerk
Virginia Beach Circuit Court

cc: The Honorable Frederick B. Lowe, Chief Judge
Mr. James K. Spore, City Manager
Ms. Robyn M. de Socio, Executive Secretary, State Compensation Board
Mr. Paul F. DeLosh, Director of Judicial Services, Supreme Court of VA
Director, Admin and Public Records, Department of Accounts