

**SHARRON S. MITCHELL  
CLERK OF THE CIRCUIT COURT  
FOR THE  
CITY OF FREDERICKSBURG**

**REPORT ON AUDIT  
FOR THE PERIOD  
APRIL 1, 2008 THROUGH JUNE 30, 2009**





# Commonwealth of Virginia

**Walter J. Kucharski, Auditor**

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

December 15, 2009

The Honorable Sharron S. Mitchell  
Clerk of the Circuit Court  
City of Fredericksburg

City Council  
City of Fredericksburg

Audit Period: April 1, 2008 through June 30, 2009  
Court System: City of Fredericksburg

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.

## Financial Matters

We noted instances of improper recording and reporting of financial transactions in the Court's financial management system.

## Internal Controls

We noted matters involving internal control and its operation necessary to bring to management's attention.

## Compliance

The results of our tests of compliance with applicable laws and regulations disclosed instances of noncompliance that are required to be reported.

The issues identified above are discussed in the section titled Comments to Management. Any response and written corrective action plan to remediate these issues 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 J. Martin Bass, Chief Judge  
Beverly R. Cameron, 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

### Internal Controls / Compliance

We noted the following matters involving internal control and its operation that could lead to the loss of revenues, assets, or otherwise compromise the clerk's fiscal accountability. The results of our tests of compliance with applicable laws and regulations disclosed the following instances of noncompliance.

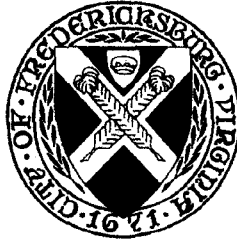
#### Report Unpaid Court Debt to the Department of Taxation's Debt Set-Off Program

As of January 2009, the clerk has not reported unpaid court debt totaling \$2.4 million under the Debt Set-Off Program. Beginning in 2006, the Department of Taxation converted this program from a manual process to an automated process, and neither the clerk nor any of the court staff have taken the actions necessary to use the automated system and therefore cannot report unpaid Court debt to Taxation.

Section 58.1-521 of the Code of Virginia, requires that all Courts use the Debt Set-Off Program to collect unpaid fines and costs. Both the Supreme Court of Virginia and the Department of Taxation have developed processes for accessing the new automated system, Integrated Revenue Management System.

The Clerk should take immediate corrective action that will allow her and her staff to participate in the Taxation's Debt Set-Off Program and make every effort to assist in the collections of fees, fines and other costs on behalf of the local government and the Commonwealth of Virginia. Lack of participation greatly undermined the Court's ability to collect unpaid fees, fines and other costs; and resulted in a loss of revenues to both the local government and the Commonwealth of Virginia.

**Sharron S. Mitchell**  
Clerk of Circuit Court



City of Fredericksburg  
P.O. Box 359  
Fredericksburg, VA 22404-0359  
Telephone: 540 372 1066

**November 18, 2009**

**Leslie Pochkar**  
2122 Ginter Street  
Richmond, Va. 23228

**RE: Audit Report April 1, 2008 through June 30, 2009**

**This is written in response to the Comments to Management attached to the audit report.**

**First, I would like to make a correction to the report. The statement that "neither the Clerk nor any of the Court staff have taken the actions necessary to use the automated system" is inaccurate. In 2005, two (2) members of my staff and myself completed the system authorization request forms. The only thing we did not do was provide our social security numbers. We used the office's employer identification number. We were not allowed to even train on the automated system because of this. I believe that denial of our applications was unreasonable. No one at the Department of Taxation was able to give me a good, logical, legal explanation of why our individual social security numbers would be required or how they would be used.**

**Second, I have made efforts to be allowed to participate. On April 22, 2005, I wrote the Tax Commissioner objecting to the policy of requiring our individual social security numbers to participate. (A copy of that letter is attached.) The policy was not changed.**

**On July 17, 2006, I again wrote the Tax Commissioner asking that the policy be reconsidered or, in the alternative, that we be allowed to participate by the paper method. (A copy of that letter is attached.) My request was denied.**

**[Unfortunately, because of two (2) very hurried moves in 2007, I am unable to locate the letters in response.]**

**Last year I expressed my concerns with the staff from the Supreme Court of Virginia.**

Third, I am more than willing to participate. In August, 2008, I again submitted to the Department of Taxation the Security Administration Authorization and the System Authorization Requests. However, I again used my office's EIN rather than my social security number. [It must be remembered that it is the office that has the mandate, not the individual.] Their e-mail response is attached. I signed up to take the course, but have not had time to proceed very far.

What it all boils down to is that I, as a constitutional officer, have been prevented from complying with a statutory mandate because of the tax department's unreasonable and illegal requirement. (The attached letters explain my position in greater detail.) The requirement is also in violation of §2.2-3808.A of the Code of Virginia.

The corrective measures I will be taking are as follows:

- 1) I will attempt to complete the on-line training as time allows.
- 2) Upon completion of the training, I will re-apply for participation. However, I will NOT apply with my social security number, nor will I require any member of my staff to do so.

Also on the report were negative comments under Financial Matters and Internal Controls. The response that these referred to the Comments to Management Section is inconsistent with last year's audit report which had the same Comments to Management but had negative comments only under the Compliance section. I respectfully request that the audit report be changed to remove the negative comments from the Financial Matters and Internal Controls sections.

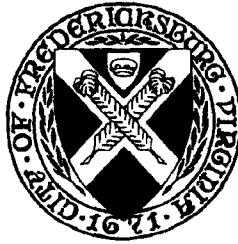
I have also noted that the on-line audit report from 2008 omits my response to that report. I respectfully request that my response be included with that on-line report.

Sincerely,



Sharron S. Mitchell  
Clerk

Sharron S. Mitchell  
Clerk of Circuit Court



City of Fredericksburg  
P.O. Box 359  
Fredericksburg, VA 22404-0359  
Telephone: 540 372 1066

April 22, 2005

Kenneth W. Thorson  
Commissioner of the Department of Taxation  
Commonwealth of Virginia  
P. O. Box 1880  
Richmond, VA 23218-1880

Dear Mr. Thorson:

This letter is written to object to a policy of your agency which prevents me from carrying out one of my statutorily mandated duties.

As you know, circuit court clerks are required, by statute, to participate in the tax set-off program. My attempts to register for the new IRMS program have been thwarted because I would not give my social security number, nor require my employees to give theirs. My registration form had our office employer identification number. While I understand that number might not be acceptable because it is not unique to each individual, there are other unique numbers that could be used, such as driver's license numbers or the numbering system recommended by Martin Watts from the Supreme Court.

My conversation with Joni Montalbano of your staff yielded no good reason why the social security number should be required to participate. According to her, "(t)he social security number is required so that our security desk can issue ID's and temporary passwords." However, no reason was given why it had to be the social security number and not some other unique number. In this age of identity theft, the Department of Taxation should be at the forefront of encouraging individuals to use their social security numbers for taxation and social security purposes only, as originally intended, and not as a convenient identification number.

Letter to Kenneth W. Thorson

April 22, 2005

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It should be noted that it is not the individual clerk or deputy clerk who is registering for the program, but the clerk's *office*. So the password should be issued to the office, based on the office's employer ID number, rather than on anyone's social security account number. This also would be more in compliance with the provisions of Virginia Code Section 2.2-3808(A) which makes it unlawful for any agency to require the disclosure of social security numbers or to refuse service to any individual merely because the individual does not furnish the number, "unless the disclosure or furnishing of such number is specifically required by federal or state law." Since I do not see where state law specifically requires the furnishing of a clerk's or deputy's social security number in order to register as a claimant agency under the Setoff Debt Collection Act, it seems your refusal to register my office unless we furnish our social security numbers is not only an unjustified intrusion into our privacy rights, but a violation of state law.

I ask that you revise your policies to permit constitutional officers to carry out their mandated duties without sacrificing their privacy.

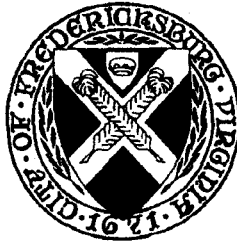
Sincerely,

Sharron S. Mitchell  
Clerk

cc: The Honorable Mark R. Warner, Governor  
The Honorable John H. Chichester, Senator  
The Honorable R. Edward Houck, Senator  
The Honorable William J. Howell, Speaker of the House  
The Honorable Robert D. Orrock, Sr., Delegate  
The Honorable Judith Jagdmann, Attorney General  
The Honorable Paul C. Garrett, President, VCCA  
Paul F. Delosh, Dir. Technical Assistance, Supreme Court of Virginia



Sharron S. Mitchell  
Clerk of Circuit Court



City of Fredericksburg  
P.O. Box 359  
Fredericksburg, VA 22404-0359  
Telephone: 540 372 1066

July 17, 2006

Kenneth W. Thorson  
Commissioner of the Department of Taxation  
Commonwealth of Virginia  
P. O. Box 1880  
Richmond, VA 23218-1880

Dear Mr. Thorson:

This letter is written to request that our office be permitted to participate in the Debt Set-off Program.

Until this past fiscal year, our office had participated in the program since I became Clerk in 1991. We had submitted applications to participate under the new system (IRMS), but our applications were denied because we would not provide our individual social security numbers.

I know that we disagree regarding the legality of requiring a Constitutional officer to provide his/her social security number in order to participate in a statutorily mandated program. [I know that you believe that §58.1-209 of the Code of Virginia gives you this authority. I respectfully disagree as this statute applies to a taxpayer requesting information, not a Constitutional officer in the performance of his/her mandated duty.] However, I am again asking you to reconsider the policy of requiring social security numbers so that my office can participate in the IRMS system. If that continues to remain a requirement, I ask that you permit us to participate under the old "paper" method.

Thank you for your consideration.

Sincerely,

Sharron S. Mitchell  
Clerk

**From:** External Entity DocForms <External\_Entity\_DocForms@tax.virginia.gov>  
*Sent by: Nathan Dryden <Nathan.Dryden@tax.virginia.gov>*  
**To:** smitchell@courts.state.va.us

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**Date:** Wednesday, September 03, 2008 02:43PM  
**Subject:** SA-IRMS-E request

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Ms. Mitchell,

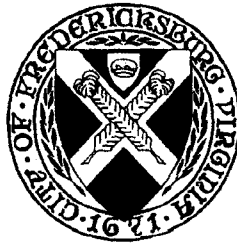
We have received your SA-IRMS-E and after checking I cannot find any record of you having taken the IRMS Training online. Please go to <https://covkc.virginia.gov/tax/external> and register and take the training. When you have completed it please fax in the applications again so the we can create your account. Also : Please submit your social security number instead of your EIN number. We request you SSN for a reason, we cannot process EIN numbers.

Please email [IRMS.SUPPORT@TAX.VIRGINIA.GOV](mailto:IRMS.SUPPORT@TAX.VIRGINIA.GOV) or call the Help Desk at 804-367-2770 with any questions about the training.

Thank you,

Nathan Dryden  
IT Security Administrator  
Department of Taxation

Sharron S. Mitchell  
Clerk of Circuit Court



City of Fredericksburg  
P.O. Box 359  
Fredericksburg, VA 22404-0359  
Telephone: 540 372 1066

December 2, 2009

Leslie Pochkar  
2122 Ginter Street  
Richmond, Va. 23228

RE: Audit Report April 1, 2008 through June 30, 2009

This is written in response to the Comments to Management attached to the audit report.

For the record, I would like to state that the practice of remitting the law library fees directly to the law library was in place long before I became clerk in 1991. I do not know how, when or why the practice developed, and I am more than a little mystified as to why it has taken so long for this to become an issue. Neither the state auditors, the library's auditors, the city's fiscal affairs department or the city treasurer, nor the city auditors ever expressed to me any concern about the practice.

Also, I take exception to the comment under the Financial Matters section (i.e. "We noted instances of improper recording and reporting of financial transactions in the Court's financial management system".) This implies that there were errors in assessing and/or receipting the law library fee. That is not the case, and there is no evidence of such errors. The proper law library fee was always assessed in the correct amount and receipted under the correct account code. The only error was in its distribution, and that was only in the nature of the recipient, not the amount. No revenue was lost or in danger of being lost.

All that being said, I agree that the strict letter of the law was not followed, and the following corrective measures have already been taken:

- 1) The November, 2009, law library fees have been remitted to the city treasurer and we will continue to remit these fees to the city treasurer on a monthly basis as long as I am clerk.
- 2) My bookkeeper has notified the library of this change so they can make the necessary request for distribution from the city treasurer.

Sincerely,

Sharron S. Mitchell  
Clerk