

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

**REPORT ON AUDIT
FOR THE PERIOD
JANUARY 1, 2011 THROUGH MARCH 31, 2012**



COMMENTS TO MANAGEMENT

We noted the following or matters involving internal control and its operation that could lead to the loss of revenues, assets, or otherwise compromise the Clerk's fiscal accountability.

Monitor and Disburse Liabilities

As of the audit period end, the Clerk held over \$2.7 million that may be eligibility for escheatment in accordance with Section 55-210.12E of the Code of Virginia as unclaimed property. The Clerk should monitor liability accounts and promptly disburse funds when a case concludes or if eligible, remit to the Division of Unclaimed Property.

Improve Recordkeeping

In a sample of 58 cases, we noted the following errors.

- The Clerk charged the defendants public defender fees of \$12,073 without timesheets.
- The Clerk did not include Public Defender fees of \$1,080 certified from the District Courts in the amount charged defendants.
- The Clerk improperly coded as state costs Public Defender fees of \$240 instead of local fees in two cases.
- Defendants were overcharged court costs and fixed fees in the amount of \$446.
- Defendants were uncharged court costs and fixed fees in the amount of \$90.
- The Clerk inappropriately charged state fines totaling \$165 in three Commonwealth cases as local.
- A \$400 local fine was inappropriate charged to the defendant as a Court Appointed Attorney Fee.
- In 13 cases, the Clerk did not promptly enter the judgment into the Judgment Lien Docket as required per Section 8.01-446 of the Code of Virginia.

Additionally, test work revealed the court is not ordering the defendant to pay \$50 to the Trauma Center Fund on multiple alcohol related violations per Section 18.2-270.01 of the Code of Virginia.

Improve Internal Controls Over the Case Management System

During test work, we found the Case Management System had two cases recorded as dismissed when the court order stated the case was resolved and removed from the docket. The Clerk should ensure that the Court's Case Management System reflects Judge's order.

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



Commonwealth of Virginia

Auditor of Public Accounts

Walter J. Kucharski
Auditor of Public Accounts

P.O. Box 1295
Richmond, Virginia 23218

August 20, 2012

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

Scott K. York, Chairman
County of Loudoun

Audit Period: January 1, 2011 through March 31, 2012
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.

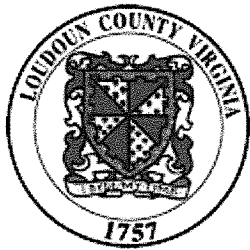
We noted matters involving internal control and its operation necessary to bring to management's attention. These matters are discussed in the section titled Comments to Management. Any response and written corrective action plan to remediate these matters provided by the Clerk are included as an enclosure 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: clj

cc: The Honorable James H. Chamblin, 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



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 14, 2012

Mr. Walter J. Kucharski
Auditor of Public Accounts
Commonwealth of Virginia
James Monroe Building
101 North 14th Street, 8th Floor
Richmond, Virginia 23219

Dear Mr. Kucharski:

Your office has provided audit findings from a recent audit engagement in the offices of the clerk of the circuit court. The purpose of this correspondence is to provide a response and/or corrective action plan to the Comments to Management report prepared by your agency.

Monitor and Disburse Liabilities

Fifty percent (50%) of liability accounts pertain to condemnation cases and upon my review of these accounts, there are no issues related to potential loss of revenue or assets, nor issues that would compromise fiscal accountability. The majority of the other liability accounts pertain to garnishments and criminal restitution.

With respect to garnishments, the clerk has a statutory duty to verify these funds before disbursement. For the majority of the garnishment accounts cited in the audit findings, delays in disbursement were experienced when the parties or counsel did not promptly take action in those court cases which subsequently required the clerk's office to verify the funds before disbursement. Workload in garnishment cases has increased substantially since Fiscal Year 2010. There were 203 garnishment cases in Fiscal Year 2010 and 542 garnishment cases in Fiscal Year 2012. While the garnishment workload more than doubled over the past two years, the clerk's office received no additional state funding during the same period. Despite an increasing workload in garnishment liabilities with no additional resources provided by the

Commonwealth, there were no issues related to potential loss of revenue or assets, nor issues that would compromise fiscal accountability.

With respect to criminal restitution, the clerk's office diligently attempts to disburse restitution payments to the victims of crime as ordered by the Court before escheating any restitution funds to the Commonwealth. Some victims of crime from Loudoun County are very transient individuals, making delivery of restitution payments very challenging. The clerk's office works in a partnership with the Victim-Witness program staff in the Office of the Commonwealth's Attorney to locate victims for the purpose of disbursing payment to the victim directly. It is not uncommon for the clerk's office to make numerous attempts to disburse restitution to the victim before escheating funds to the Commonwealth. It is good public policy to use all possible resources to provide restitution payments to the proper individuals before providing those funds to the Commonwealth through the escheatment process. There is significant workload associated with criminal restitution which continues to increase in Loudoun County. Despite these workload increases and no additional state funding to manage restitution accounts, there were no issues related to potential loss of revenue or assets, nor issues that would compromise fiscal accountability.

The clerk's office will continue to conduct a regular review of financial reports to monitor all liability accounts to determine if further action is required by the parties or counsel to properly disburse funds.

Improve Recordkeeping

Assessment of Court-Appointed Attorney Fees:

There is no issue with charging the public defender fees when the public defender neglects to submit court-appointed attorney timesheets at the conclusion of a criminal case. The public defender's office does not regularly submit court-appointed attorney timesheets as required for the clerk to properly assess these fees. Since the clerk has a statutory duty to promptly and properly assess the fines, costs and fees in a criminal case, the clerk obtained a judicial mandate in 2000 that permitted the clerk to assess the maximum court-appointed counsel fee if counsel fails to provide a court-appointed attorney timesheet. In 2009, the auditor of public accounts recommended that the clerk's office obtain a court order to authorize the clerk to assess the maximum court-appointed counsel fees in the absence of a court-appointed attorney timesheet. The Court entered an order in October 2009 that authorized the policy of assessing the maximum court-appointed attorney fees when counsel neglects to provide a court-appointed attorney timesheet.

Black's Law Dictionary defines a court-appointed attorney as "an attorney appointed by the court to represent a person, usually an indigent person." (Black's Law Dictionary, Thompson-West, 8th Edition, page 374.) A court-appointed attorney is either a private attorney in private practice or a state government employee in the office of the public defender. Therefore, the Court's order from October 2009 authorizing the clerk to assess the maximum court-appointed attorney fees provides specific authority for the clerk's office to assess the maximum court-appointed attorney fees when any court-appointed attorney, including a public defender, fails to provide the court-appointed attorney timesheets. This policy ensures the proper collection of revenues or assets for the Commonwealth to reasonably cover the expenses for public defender offices in the Commonwealth which promotes fiscal accountability.

Assessment of Fines, Costs and Fees from General District Court:

Some of the other matters cited in the audit report involve appeals from the General District Court where the lower court coded state costs versus local costs or coded local costs as opposed to state costs. Since these matters were originally adjudicated by the General District Court, the clerk's office processed these appeals using the same codes as the General District Court. Additionally, warrants in these cases that were prepared by the magistrate and subsequently filed with the General District Court provided information related to coding of local or state offenses. The circuit court clerk's office will review the codes cited in the General District Court appeals and consult with the General District Court, the magistrate's office and/or the Office of the Commonwealth's Attorney for clarification on the codes

Docketing Criminal Judgments:

The audit report cites delays with docketing criminal judgments in the judgment lien docket. Upon review of those cases, there were indeed delays in six (6) of the cases cited in the audit report. Action was taken to properly docket these criminal judgments at the conclusion of the audit. Changes in procedures have been implemented to improve docketing of criminal judgments.

Workload related to docketing judgments in Loudoun County increased by 17% from calendar year 2009 to calendar year 2011. (State Compensation Board, Record Workload Information, Loudoun County, January 2012.) The clerk's office received no additional state funding or state resources during this same time period. Despite this workload increase and no additional state resources allocated for docketing judgments, there are no issues related to potential loss of revenue or assets, nor issues that would compromise fiscal accountability.

Other Recordkeeping Matters:

One issue cited in the audit report involved a clerical error where a deputy clerk transposed the numbers in an account code. This error will be resolved by amending the account code to reflect the proper code for the local fine. With respect to other issues cited in the audit report, action has been or will be taken to correct and/or collect the court costs and fees identified in the audit report.

The clerk's office implemented an internal audit program within the past year and staff involved with the internal audit will continue with this internal audit more frequently. Additionally, the internal audit team will consult with the General District Court, the Commonwealth's Attorney and/or the Office of the Executive Secretary for the Virginia Supreme Court for clarification on any court costs and fees discrepancies.

Trauma Center Fund

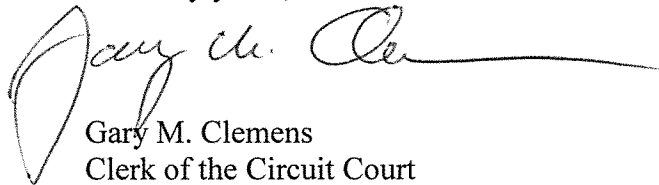
I have consulted with the chief judge of the 20th Judicial Circuit regarding the trauma center fund and this matter will be resolved consistent with statute.

Improve Internal Controls for Case Management System

The clerk's office will consult with the Court regarding orders that resolve cases and remove them from the Court's docket to ensure proper entry of case management coding is used to reflect a dismissal or some other conclusion to the case.

In conclusion, I appreciate the cooperation of the field auditors who visited my office and conducted the audit. There was a substantial investment of time in discussions of these matters and I acknowledge the professional cooperation of your staff during this deployment.

Sincerely yours,

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

Gary M. Clemens
Clerk of the Circuit Court