

STATE OF NORTH CAROLINA

ADMINISTRATIVE OFFICE OF THE COURTS

FINANCIAL RELATED AUDIT

SEPTEMBER 2013

OFFICE OF THE STATE AUDITOR

BETH A. WOOD, CPA

STATE AUDITOR

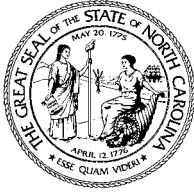
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ADMINISTRATIVE OFFICERS

THE HONORABLE JOHN W. SMITH, DIRECTOR



Beth A. Wood, CPA
State Auditor

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AUDITOR'S TRANSMITTAL

September 18, 2013

The Honorable Pat McCrory, Governor
The General Assembly of North Carolina
The Honorable John W. Smith, Director

This report presents the results of our financial related audit at the Administrative Office of the Courts. Our work was performed by authority of Article 5A of Chapter 147 of the *North Carolina General Statutes* and was conducted in accordance with the performance audit standards contained in *Government Auditing Standards*, issued by the Comptroller General of the United States.

The results of our audit disclosed deficiencies in internal control and/or instances of noncompliance or other matters that are considered reportable under *Government Auditing Standards*. These items are described in the *Audit Findings and Responses* section of this report.

North Carolina General Statutes require the State Auditor to make audit reports available to the public. Copies of audit reports issued by the Office of the State Auditor may be obtained through one of the ways listed in the back of this report.

A handwritten signature in cursive script that reads "Beth A. Wood".

Beth A. Wood, CPA
State Auditor

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BACKGROUND

As authorized by Article 5A of Chapter 147 of the *North Carolina General Statutes*, we have conducted a financial related audit at the Administrative Office of the Courts (AOC). There were no special circumstances that caused us to conduct the audit, but rather it was performed as part of our effort to periodically examine and report on the financial practices of state agencies and institutions.

State law establishes the AOC as a state agency within the judicial branch of government. The law provides that there shall be a Director appointed by the Chief Justice of the Supreme Court to supervise the agency. The basic responsibility of the AOC is to aid in maintaining an efficient court system and provide statewide administrative support to judicial organizations such as county clerk of superior court offices within the State. The agency's administrative duties include budgeting, financial reporting, purchasing, human resources, information technology, legal, and research and planning services.

AUDIT SCOPE AND OBJECTIVES

The general objective of this financial related audit was to identify improvements needed in internal control over selected fiscal matters. Management is responsible for establishing and maintaining effective internal control. Internal control is a process designed to provide reasonable assurance that relevant objectives are achieved. Errors or fraud may nevertheless occur and not be detected because of the inherent limitations of internal control. Also, projections of any evaluation of internal control to future periods are subject to the risk that conditions may change or that compliance with policies and procedures may deteriorate. Our audit does not provide a basis for rendering an opinion on internal control, and consequently, we have not issued such an opinion.

Our audit scope covered the period of July 1, 2012 – March 31, 2013 and included selected internal controls in the following organizational units:

Research and Planning Division

This organizational unit is responsible for conducting research and generating reports on court statistics, managing grants and contracts, maintaining the Court Performance Measures System, and developing and analyzing workload data.

Technology Services Division (TSD)

This organizational unit is responsible for providing information technology services and solutions by developing and maintaining computer systems to support the day-to-day work of the North Carolina Judicial Department. To provide access to these systems, TSD maintains and supports desktop and office computer hardware and software in more than 260 court offices statewide, including 400 district and superior courtrooms. TSD also maintains and operates a statewide communications network to support the Judicial Department, including data and network operations centers in Raleigh, which is the hub of its operations. In addition to court users, TSD supports and maintains access to its criminal systems for more than 30,000 law enforcement users statewide.

Internal Audit Division

This organizational unit is responsible for performing audits and reviews of processes and controls within the Judicial Department and AOC with the objective of adding value and improving operations. The scope of the Internal Audit Division is broad, but would include: the evaluation and disclosing potential weaknesses in the effectiveness of internal controls in the court system for the purpose of safeguarding public funds and assets and minimizing incidences of fraud, waste, and abuse; analyzing the design and effectiveness of administrative and procedural operations; ensuring overall compliance with federal and state laws, internal and external regulations, rules and procedures, and other applicable requirements; and executing routine audits of the Judicial Department's systems and controls including, but not limited to, accounting systems and controls, administrative systems and controls, and electronic data processing systems and controls.

AUDIT SCOPE AND OBJECTIVES (CONCLUDED)

During our audit, we considered internal control related to the following control objectives:

Risk Assessment and Monitoring in Driving While Impaired (DWI) Dismissal Rates – This objective would include determining what policies and procedures exist, if any, to identify exceptions in DWI dismissal rates that should be evaluated to determine if internal controls are operating effectively. We examined internal control designed to ensure that the AOC monitors DWI dismissal rates.

System Access – This objective would include determining what policies and procedures exist, if any, over monitoring access to the Automated Criminal Infraction System (ACIS) and Financial Management System (FMS) systems, for proper segregation of duties and unauthorized access to data. We examined internal control designed to ensure that the AOC monitors system access rights and performs applicable follow-up(s) on internal and external audit findings related to system access.

METHODOLOGY

To accomplish our audit objectives, we gained an understanding of internal control over matters described in the *Audit Scope and Objectives* section of this report and evaluated the design of the internal control. Specifically, we interviewed personnel, observed operations, reviewed policies, and examined supporting documentation, as considered necessary in the circumstances.

As a basis for evaluating internal control, we applied the internal control guidance contained in professional auditing standards. As discussed in the standards, internal control consists of five interrelated components: (1) control environment, (2) risk assessment, (3) control activities, (4) information and communication, and (5) monitoring.

We conducted this audit in accordance with generally accepted government auditing standards applicable to performance audits. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

RESULTS AND CONCLUSIONS

The results of our audit disclosed deficiencies in internal control and/or instances of noncompliance or other matters that are considered reportable under generally accepted government auditing standards. These items are described in the *Audit Findings and Responses* section of this report. Management's responses are presented after each audit finding. We did not audit the responses, and accordingly, we express no opinion on them.

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AUDIT FINDINGS AND RESPONSES

1. DWI TRANSPARENCY AND ACCOUNTABILITY IMPROVEMENTS WERE NOT MADE

The Administrative Office of the Courts (AOC) does not make detailed driving while impaired (DWI) case data readily available to the public. AOC has not made this information publicly available although AOC has been asked to do so by the media in 2004 and the Legislature in 2006. Consequently, there is a lack of transparency and accountability for DWI case decisions.

AOC Annual Reports Lack Detailed DWI Case Data

Although legislation¹ was enacted almost seven years ago to improve public availability of DWI case data, AOC annual reports still do not provide detailed DWI case information.

AOC provides general DWI case information in its annual “Analysis of Fiscal Year Impaired Driving Charges” statistical report that is posted on its public website. For example, AOC reports:

- Impaired driving charges and implied consent charges² filed and charges disposed by county, by original charge, by agency, by accident code;
- Impaired driving charges and implied consent charges filed by race, by sex, by age of defendant;
- Impaired driving charges and implied consent charges disposed by agency, by county, by charge convicted.

However, the annual report does not provide other useful DWI case data. For example, the annual report does not:

- Show the types of dispositions for the entire State by county, by judge, by prosecutor, and by defense attorney;
- Include the amount of fines, costs, and fees ordered at the disposition of the charge;
- Include the amount of any subsequent reduction, amount collected, and the amount still owed; and
- Disclose compliance with sanctions of community service, jail, substance abuse assessment, treatment, and education.

¹ S.L. 2006-253 (H 1048)

² North Carolina’s “implied consent” law says any person who drives a vehicle on a highway or any area used by the public for vehicular traffic, gives consent to a chemical analysis if they are charged with an offense involving impaired driving, death by motor vehicle, or certain other alcohol-related offenses.

AUDIT FINDINGS AND RESPONSES (CONTINUED)

AOC Asked To Make Detailed DWI Case Data Publicly Available In 2004 And 2006

The media and the Legislature have both asked AOC to provide detailed DWI case data to the public.

In 2004 the Charlotte Observer noted that AOC had the ability to improve transparency and accountability but was not inclined to do so. The Charlotte Observer issued a series of articles on DWI conviction rates that varied throughout North Carolina from more than 90 percent to less than 10 percent. In one article³ the Charlotte Observer reported,

“Keeping tabs on judges’ records isn’t easy.

No N.C. agency tracks or publicizes the conviction rates of judges.

The Administrative Office of the Courts in Raleigh has the data to do it. But the agency isn’t interested in grading judges, a spokesman says.

‘It’s not up to us to inform people about judges’ records...to keep score or grade the judges. That’s up to the people,’ says courts spokesman Dick Ellis. “Judges are elected officials. It’s up to the people to put them in or take them out.”⁴

In 2006 the Legislature took action to make it AOC’s responsibility to “inform people about judges’ records” and to make other detailed DWI case data publically available. In a summary of 2006 North Carolina Legislation, the UNC School of Government reported,

“S.L. 2006-253 proposes to make data about impaired driving prosecutions much more detailed and publicly available... And the Administrative Office of the Courts (AOC) must provide an annual report to the legislature and must maintain a website on vehicle/alcohol case data. That database must include types of dispositions for the whole state and by county, judge, prosecutor, and defense attorney. The database also must include fines and costs imposed and collected and compliance data for community service, jail, and substance abuse assessment, treatment, and education.”

However, the DWI case data legislation enacted in *North Carolina General Statute* §7A-346.3 has not yet been made effective.

When summarizing the legislation, the UNC School of Government noted that “Several of these requirements become effective only after AOC rewrites its criminal information system.”

³ Charlotte Observer, [Judges’ records not easy to track in N.C.](#), August 2004.

⁴ AOC stated that Mr. Ellis has not been a spokesperson for the NCAOC at any time since 2008. AOC also states, “He is not the public official responsible for complying with the 2006 statute.”

AUDIT FINDINGS AND RESPONSES (CONTINUED)

Although it has been almost seven years since the Legislature created the law, AOC has not yet completed the rewrite of its criminal information system that would make the law effective and the disclosure requirements mandatory.

Lack of Detailed DWI Case Data Limits Transparency and Accountability

Because AOC has not made detailed DWI case data readily available on its public website, the public's ability to evaluate court performance and determine if state DWI laws have been applied equitably is limited.

Consequently, the public lacks the detailed data necessary to understand and evaluate the results of court proceedings, actions and operations related to DWI cases. Therefore, transparency and accountability is limited.

Recommendation: The AOC should improve the North Carolina court system transparency and accountability by making more detailed information available to the public regarding DWI cases as intended by legislation.

Agency Response: NCAOC agrees with the finding insofar as the complete data listed in statute is not yet fully reported, and agrees with the recommendation.

Following the enactment of NCGS 7A-346.3 in 2006, the legislature increased the budget of NCAOC for technology services, infrastructure, and development to support a variety of needs from \$24 million in FY 2006 to a peak of \$45 million in FY 2011. More than \$7 million has been invested to date in replacing databases and applications to support more detailed DWI reporting and to enable electronic capture and handling of case data identifying hundreds of individual judges and thousands of attorneys on tens of thousands of DWI cases annually. Complete replacement is estimated to require an additional \$25 million and will support greater functionality throughout the court system. Yet, since the \$45 million peak in FY 2011 the technology budget has been cut repeatedly, to less than \$29 million in FY 2013. The legislature's Program Evaluation Division noted in a very critical 2008 assessment of NCAOC IT project management that NCAOC technology funding was historically unstable and that NCAOC should not undertake major projects without secure funding sources. Yet due to the recession's budget cuts NCAOC to remain in the same position. With a further \$4 million recurring cut in FY 2014 to the primary fund code supporting technology, this transition has become even more challenging with little more than was appropriated in FY 2006. This affects adoption of e-filing and many other priorities.

The primary legacy database for the North Carolina court system is the highly-efficient but hierarchical IBM IMS, which houses more than 40 million criminal and infraction records. Approximately three million new civil, criminal, and infraction cases are added statewide annually (DWI represents approximately 3% of this caseload) and almost 1.5 million transactions are completed daily. The future path is operating in an IBM DB2 relational database environment, which readily supports the greater reporting and analytic tools required. As noted in the audit, the legislature matched the effective date for the

AUDIT FINDINGS AND RESPONSES (CONTINUED)

requirement with completion of this new database and the necessary applications, making it a business requirement of the larger project rather than requiring a custom solution for only DWI cases in the legacy technology.

NCAOC will continue to advocate for the resources necessary to carry out the legislative mandate, and NCAOC's chief information officer will continue to review the allocation of existing technology resources to ensure progress that will enable this reporting. One element required to be reported by the statute, compliance data with the terms of DWI judgments, is not kept within the judicial system's records. These are held by the probation division in the Department of Public Safety. NCAOC will work with DPS and CJLEADS in the Office of the State Controller to integrate this reporting, and with the General Assembly as needed.

2. COUNTIES WITH HIGH DWI DISMISSAL RATES NOT AUDITED

The Administrative Office of the Courts (AOC) does not evaluate driving while impaired (DWI) dismissal rate anomalies or perform audits to determine causes of exceptions in DWI dismissal rates. Audits or reviews into the cause could detect if internal control weaknesses exist. As a result, there's an increased risk that errors or fraud could occur and not be detected and corrected.

DWI Dismissal Rates Not Evaluated

AOC does not use higher-than-average DWI dismissal rates or changes in the annual DWI dismissal rates as risk factors when selecting Clerks of Court to audit.

DWI dismissal rates in some counties vary significantly from the 23 percent statewide rate. For example, Table 1 below shows that some counties have DWI dismissal rates nearly twice the statewide rate.

Table 1

County	DWI Dismissal Rates⁵
Mecklenburg	47%
Vance	43%
Granville	42%
Harnett	42%
Warren	41%

Source: AOC "Analysis of FY2011-2012 Impaired Driving Charges" report and auditor calculations.

⁵ Calculated by dividing the "Voluntary Dismissal By Prosecutor" cases by the total number of cases.

AUDIT FINDINGS AND RESPONSES (CONTINUED)

However, AOC has not performed any audits or reviews in counties specifically identified with higher-than-average or with significant changes to the annual DWI dismissal rates to identify root causes and ensure that internal controls are working properly.

Best Practices Require Evaluation of Operational Anomalies

Best practices require AOC to evaluate higher-than-average or significant changes in DWI dismissal rates as operational anomalies to identify internal control weaknesses. For example, the COSO⁶ Internal Control - Integrated Framework states,

“Where appropriate, monitoring activities identify and examine expectation gaps relating to anomalies and abnormalities, which may indicate one or more deficiencies in an entity’s system of internal control. When reviewing and investigating expectation gaps, management often identifies root causes of such gaps.”

Furthermore, state law requires AOC to evaluate and disclose internal control weaknesses in the court system. For example, *North Carolina General Statute §7A-343(3a)* includes the following AOC duties:

- Inspects and reviews the effectiveness and efficiency of processes and proceedings conducted by judicial officers.
- Examines and analyzes the design and effectiveness of administrative and procedural operations.
- Evaluates and discloses potential weaknesses in the effectiveness of internal controls in the court system for the purposes of safeguarding public funds and assets and minimizing incidences of fraud, waste, and abuse.

Errors, Fraud, and Abuse Could Go Undetected

Failure to audit counties with higher-than-average dismissal rates or with significant changes in the annual DWI dismissal rate could prevent AOC from identifying significant internal control weaknesses. As a result, there’s an increased risk that errors or fraud could occur without being detected in a timely manner.

For example, a weakness in authorization procedures resulted in over 30 fraudulent DWI dismissals in Johnston County.

The issue first came to public attention when local media reported that Johnston County had a 46 percent DWI dismissal rate in 2006 when the statewide dismissal rate was

⁶ Committee of Sponsoring Organizations of the Treadway Commission

AUDIT FINDINGS AND RESPONSES (CONTINUED)

21 percent.⁷ Although not reported, the 2006 DWI dismissal rate was also a significant increase over the 2005 Johnston County DWI dismissal rate of 39 percent (18% increase).

AOC did not select Johnston County for an audit when the higher-than-average DWI dismissal rate was reported.

However, a law enforcement investigation into the dismissals later found that defense attorneys had used the signature of a former Johnston County assistant district attorney to illegally authorize DWI dismissals.⁸ Although the former assistant district attorney was not employed by Johnston County at the time of the dismissals and had no authority to dismiss cases, internal controls at the Clerk of Court did not detect the illegal dismissals or prevent them from occurring.

If Johnston County had been selected for an audit based on its higher-than-average DWI dismissal rates or the significant change in its annual DWI dismissal rate, an audit of the controls over DWI dismissals may have identified the weaknesses that allowed the fraud to occur.

Recommendation: AOC should use higher-than-average DWI dismissal rates or changes in the annual DWI dismissal rates as risk factors when selecting Clerks of Court to audit.

Agency Response: NCAOC agrees with the finding that it does not audit county clerks of court because of high DWI dismissal rates by prosecutors. While not accepting without further study that dismissal rates are the proper indicator for auditing clerks, NCAOC agrees that the duty to protect against fraud, waste, and abuse extends to identifying broad risk factors for audit.

The current focus of NCAOC's limited audit staff is on fiscal control auditing, protecting in excess of \$773.9 million in funds collected and disbursed by 100 independently elected clerks of court each year. The emphasis on systematic fiscal control audits, rather than just special investigation-based financial audits, began in NCAOC five years ago. This has improved control compliance, as well as prevention and detection of fraud. Plans to add two more staff auditors were cancelled due to budget cuts. Using auditors to review clerks' records of prosecutor's decisions will have to be studied as one possible way to proceed, but the larger point of considering non-financial risk is understood.

As a result of your report NCAOC is now examining its overall audit program within a broader enterprise risk assessment model to include non-fiscal forms of risk, such as the specific recommendation regarding DWI dismissal data. This work and adoption of a risk-based assessment to guide allocation of audit resources will be complete by December 31, 2013, led by NCAOC's internal audit director. NCAOC also will analyze historical variability in DWI dismissal rates by county in context to determine whether the known past instances of fraud would have been detected by such variance, and

⁷ WWW.WRAL.COM, Johnston has a high rate of DWI dismissal, May 22, 2008

⁸ WWW.WRAL.COM, Indictments prove prosecutors wield great power with pen, April 2, 2009

AUDIT FINDINGS AND RESPONSES (CONTINUED)

whether these or other data can be used to guide the use of limited audit resources to improve controls and prevent or detect future misconduct.

3. INAPPROPRIATE INFORMATION SYSTEM ACCESS ISSUES REMAIN UNRESOLVED

The Administrative Office of the Courts (AOC) has not adequately resolved inappropriate information system access audit findings.

The Office of the State Auditor (OSA) has historically reported multiple audit findings related to inappropriate information system access at individual county clerk of superior court offices. For example, in previous year OSA audits have found:

- 2012 – 8 out of 17 (47%) clerks audited had access findings;
- 2011 – 12 out of 32 (38%) clerks audited had access findings;
- 2010 – 1 out of 7 (14%) clerks audited had access findings;
- 2009 – 1 out of 3 (33%) clerks audited had access findings;
- 2008 – 5 out of 15 (33%) clerks audited had access findings.

Best practices require prompt resolution of audit findings and internal control weaknesses. Specifically, the General Accounting Office (GAO) says government agencies should have a “mechanism to ensure the prompt resolution of findings from audits and other reviews.”⁹

AOC has taken some action to address the information system access findings. In response to these findings, AOC’s management initiated a Task Force charged with designing and implementing compensating controls to mitigate risks associated with improper segregation of duties and unauthorized access within and between the Financial Management System (FMS) and the Automated Criminal Infraction System (ACIS).

However, AOC’s actions have not resolved the problems. As indicated by the examples above, OSA has continued to report findings of inappropriate information system access since the initiation of the Task Force in December 2011.

As a result, there remains an increased risk of unauthorized system access or inappropriate transactions.

Recommendation: The AOC should continue to work on resolving the inappropriate information system access issues found from internal and external audits and reviews. Greater emphasis should be placed on utilizing the Task Force to resolve the issues in a timely manner and strengthening overall system access controls.

⁹ GAO, Internal Control Management and Evaluation Tool, 2001

AUDIT FINDINGS AND RESPONSES (CONCLUDED)

Agency Response: The NCAOC agrees with this finding and recommendation. The NCAOC field accounting manager will continue to lead the Task Force to strengthen system access controls and compliance.

ORDERING INFORMATION

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