

ATTESTATION ENGAGEMENT

Clerk of the Court of Common Pleas Northampton County, Pennsylvania For the Period January 1, 2011 to December 31, 2015

November 2016



Commonwealth of Pennsylvania
Department of the Auditor General

Eugene A. DePasquale • Auditor General



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EUGENE A. DePASQUALE
AUDITOR GENERAL

Independent Auditor's Report

The Honorable Eileen H. McNulty
Secretary
Pennsylvania Department of Revenue
Harrisburg, PA 17128

We have examined the accompanying statement of receipts and disbursements (Statement) of the Clerk of the Court of Common Pleas, Northampton County, Pennsylvania (County Officer), for the period January 1, 2011 to December 31, 2015, pursuant to the requirements of Section 401(b) of *The Fiscal Code*, 72 P.S. § 401(b). The county office's management is responsible for this statement. Our responsibility is to express an opinion on this Statement based on our examination.

Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants and the standards applicable to attestation engagements contained in *Government Auditing Standards* issued by the Comptroller General of the United States and, accordingly, included examining, on a test basis, evidence supporting the Statement and performing such other procedures as we considered necessary in the circumstances. We believe that our examination provides a reasonable basis for our opinion.

We are mandated by Section 401(b) of *The Fiscal Code* to audit the accounts of each county officer to determine whether all moneys collected on behalf of the Commonwealth have been correctly assessed, reported and promptly remitted. *Government Auditing Standards* issued by the Comptroller General of the United States include attestation engagements as a separate type of audit. An attestation engagement performed pursuant to *Government Auditing Standards* involves additional standards that exceed the standards provided by the American Institute of Certified Public Accountants. Accordingly, this attestation engagement complies with both *Government Auditing Standards* and Section 401(b) of *The Fiscal Code*.

In our opinion, the Statement referred to above presents, in all material respects, the operations of the County Officer as it pertains to receipts made on behalf of the Commonwealth for the period January 1, 2011 to December 31, 2015, in conformity with the criteria set forth in Note 1.

Independent Auditor's Report (Continued)

In accordance with *Government Auditing Standards*, we are required to report all deficiencies that are considered to be significant deficiencies or material weaknesses in internal control; fraud and noncompliance with provisions of laws or regulations that have a material effect on the Statement; and any other instances that warrant the attention of those charged with governance; noncompliance with provisions of contracts or grant agreements, and abuse that has a material effect on the Statement. We are also required to obtain and report the views of responsible officials concerning the findings, conclusions, and recommendations, as well as any planned corrective actions. We performed our examination to express an opinion on whether the Statement is presented in accordance with the criteria described above and not for the purpose of expressing an opinion on internal control over reporting on the Statement or on compliance and other matters; accordingly, we express no such opinions.

A *deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A *material weakness* is a deficiency, or a combination of deficiencies, in internal control such that there is a reasonable possibility that a material misstatement of the Statement will not be prevented, or detected and corrected on a timely basis. A *significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control over reporting on the Statement was for the limited purpose of expressing an opinion on whether the Statement is presented in accordance with the criteria described above and was not designed to identify all deficiencies in internal control over reporting on the Statement that might be material weaknesses or significant deficiencies. Given these limitations, during our engagement we did not identify any deficiencies in internal control that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified.

As part of obtaining reasonable assurance about whether the Statement is free from material misstatement, we performed tests of the County Office's compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the determination of Statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our engagement, and accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*. However, we did note another matter that, while not required to be included in this report by *Government Auditing Standards*, has been included in the finding below:

- Inadequate Assessment Of Fines, Costs, Fees, And Surcharges.

Independent Auditor's Report (Continued)

This report is intended solely for the information and use of the Pennsylvania Department of Revenue, the Administrative Office of Pennsylvania Courts, and the County Officer and is not intended to be and should not be used by anyone other than these specified parties.

We appreciate the courtesy extended by the Clerk of the Court of Common Pleas, Northampton County, to us during the course of our examination. If you have any questions, please feel free to contact Michael B. Kashishian, CPA, CGAP, CFE, Director, Bureau of County Audits, at 717-787-1363.

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

October 4, 2016

Eugene A. DePasquale
Auditor General

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CLERK OF THE COURT OF COMMON PLEAS
NORTHAMPTON COUNTY
STATEMENT OF RECEIPTS AND DISBURSEMENTS
FOR THE PERIOD
JANUARY 1, 2011 TO DECEMBER 31, 2015

Receipts:

Department of Transportation		
Title 75 Fines	\$	363,775
Overweight Fines		6,206
Department of Revenue Court Costs		275,503
Crime Victims' Compensation Costs		572,112
Crime Commission Costs/Victim Witness Services Costs		392,096
Domestic Violence Costs		39,473
Emergency Medical Services Fines		42,318
DUI - ARD/EMS Fees		94,431
CAT/MCARE Fund Surcharges		398,987
Judicial Computer System/Access to Justice Fees		404,684
Offender Supervision Fees		1,004,564
Constable Service Surcharges		3,930
Criminal Laboratory Users' Fees		175,933
Probation and Parole Officers' Firearm Education Costs		54,208
Substance Abuse Education Costs		735,459
Office of Victims' Services Costs		110,846
Miscellaneous State Fines and Costs		<u>910,240</u>
 Total receipts (Note 2)		 5,584,765
 Disbursements to Commonwealth (Note 3)		 <u>(5,584,765)</u>
 Balance due Commonwealth (County) per settled reports (Note 4)		 -
 Examination adjustments		 <u>-</u>
 Adjusted balance due Commonwealth (County) for the period January 1, 2011 to December 31, 2015	 \$	 <u><u>-</u></u>

Notes to the Statement of Receipts and Disbursements are an integral part of this report.

CLERK OF THE COURT OF COMMON PLEAS
 NORTHAMPTON COUNTY
 NOTES TO THE STATEMENT OF RECEIPTS AND DISBURSEMENTS
 FOR THE PERIOD
 JANUARY 1, 2011 TO DECEMBER 31, 2015

1. Criteria

The Statement of Receipts and Disbursements provides a summary of receipts and disbursements by category. The categories and the amounts of fines, costs, fees, and surcharges assessed are based on Pennsylvania laws and regulations.

The Statement was prepared in accordance with reporting requirements prescribed by the Pennsylvania Department of Revenue. Under this method, only the Commonwealth portion of cash receipts and disbursements are presented, revenues are recognized when received, and expenditures are recognized when paid.

2. Receipts

Receipts are comprised of fines, costs, fees, and surcharges collected on behalf of the Commonwealth. These fines, costs, fees, and surcharges represent collections made on summary and criminal cases filed with the Clerk of the Court of Common Pleas' Office.

3. Disbursements

Total disbursements are comprised as follows:

Clerk of the Court checks issued to:	
Department of Revenue	\$ 5,515,112
Commonwealth of Pennsylvania	39,253
Office of the Attorney General	3,257
Liquor Control Board	181
State Police	6,953
Commission on Crime and Delinquency	5,586
Department of Transportation	1,668
Department of Public Welfare	5,043
Labor and Industry	4,541
Office of the Inspector General	3,171
	\$ 5,584,765

4. Balance Due Commonwealth (County) For The Period January 1, 2011 To December 31, 2015

This balance reflects a summary of monthly transmittal reports as settled by the Department of Revenue. The balance also reflects a summary of any receipts disbursed directly to other state agencies.

CLERK OF THE COURT OF COMMON PLEAS
NORTHAMPTON COUNTY
NOTES TO THE STATEMENT OF RECEIPTS AND DISBURSEMENTS
FOR THE PERIOD
JANUARY 1, 2011 TO DECEMBER 31, 2015

5. County Officer Serving During Examination Period

Leigh Ann Fisher served as the Clerk of the Court of Common Pleas for the period January 1, 2011 to December 31, 2015.

CLERK OF THE COURT OF COMMON PLEAS
NORTHAMPTON COUNTY
FINDING AND RECOMMENDATION
FOR THE PERIOD
JANUARY 1, 2011 TO DECEMBER 31, 2015

Finding - Inadequate Assessment Of Fines, Costs, Fees, And Surcharges

Our examination disclosed that the office did not assess certain fines, costs, fees, and surcharges as mandated by law. Of 161 cases tested, we noted the following discrepancies:

- 69 cases in which the DNA Cost was not assessed.
- 8 cases in which the County Probation and Parole Officers' Firearm Education and Training Cost was not assessed.
- 7 cases in which the Criminal Justice Enhancement Account Fee was incorrectly assessed.
- 3 cases in which the Catastrophic Fund Surcharge was not assessed.

The following state statutes address the assessment of fines, costs, fees, and surcharges that were not properly assessed:

- Effective January 31, 2005, 44 P.S. § 2322, specifies that all felonies, regardless of offense, misdemeanors § 2910 (relating to luring a child into a motor vehicle) and § 3126 (relating to indecent assault), authorizes the automatic assessment of a \$250 DNA cost when a DNA sample is taken.
- Title 61 Pa.C.S. § 332.8 provides for the collection of the County Probation and Parole Officers' Firearm Education and Training Cost. A \$5 cost is assessed against any defendant who accepts Accelerated Rehabilitative Disposition or pleads guilty or nolo contendere or is convicted of a felony or misdemeanor.
- Effective November 10, 2007, 42 Pa.C.S. § 3575 (b) provides for the collection of a \$50 Criminal Justice Enhancement Account (CJEA) fee if a defendant accepts Accelerated Rehabilitative Disposition, is convicted of or enters a plea of guilty or nolo contendere for a felony, misdemeanor of the first degree or misdemeanor of the second degree as set forth in the Pennsylvania Crimes Code (18 Pa.C.S.) or is convicted of or enters a plea of guilt or nolo contendere for a violation of 35 Pa. C.S. §780-113(a)(16) (The Controlled Substance, Drug, Device and Cosmetic Act).
- Title 75 Pa. C.S. § 6506(a) provides for the collection of the Catastrophic Fund Surcharge.

CLERK OF THE COURT OF COMMON PLEAS
NORTHAMPTON COUNTY
FINDING AND RECOMMENDATION
FOR THE PERIOD
JANUARY 1, 2011 TO DECEMBER 31, 2015

Finding - Inadequate Assessment Of Fines, Costs, Fees, And Surcharges (Continued)

The improper assessment and/or collection of these costs and fees resulted in the defendant not being assessed the proper amount of costs and fees associated with the violation; and/or a loss of revenue to the Commonwealth and County.

These incorrect assessments occurred because the office was not aware or up-to-date on laws and regulations regarding the proper assessment of Commonwealth fines, costs, fees, and surcharges.

Recommendation

We recommend that the office review the laws noted above to ensure that fines, costs, fees, and surcharges are assessed as mandated by law.

Management's Response

The County Officer responded as follows:

My office had a turnover of employees. Current staff has been reminded of state fees and they will appropriately assess these fees on cases. Excel spreadsheets have been updated to assist employees with assessing the correct state fees.

The President Judge responded as follows:

I received a telephone call from District Attorney (DA), in which he raised a complaint that our Clerk of Criminal Court was inappropriately assessing DNA fees for cases that he has approved for Accelerated Rehabilitative Disposition (ARD). The DA noted that he does not approve sex offenses for ARD or other predicate felonies that would require mandatory ARD testing. Further, the DA was under the opinion that Act 185, requiring DNA testing in Criminal and Juvenile cases, merely allows the District Attorney to condition ARD acceptance upon DNA testing, at his discretion. [See Pa.C.S.A. 2316 (c) "...(c) Certain ARD cases,--Acceptance into ARD as a result of a criminal charge for a felony sex offense or other specified offense filed after June 18, 2002, may be conditioned upon the giving of a DNA sample."]

When I reviewed this issue with our Clerk of Criminal Court, she provided me with the Exit Conference Memorandum issued by the auditor, which suggested to her that DNA testing is mandatory for ARD cases.

CLERK OF THE COURT OF COMMON PLEAS
NORTHAMPTON COUNTY
FINDING AND RECOMMENDATION
FOR THE PERIOD
JANUARY 1, 2011 TO DECEMBER 31, 2015

Finding - Inadequate Assessment Of Fines, Costs, Fees, And Surcharges (Continued)

Management's Response (Continued)

Finally, the DA and I discussed the possibility that he would request the Court to enter an Administrative Order limiting DNA assessments for ARD cases to felony sex offenses and other offenses specifically designated by the District Attorney; and that otherwise, no DNA assessments and fees would be required of general ARD candidates. I am uncertain that it is necessary to enter an Administrative Order, based upon Act 185. However, if the Act, in your opinion, raises some uncertainties regarding the DNA requirement, I will consider doing so.

The President Judge responded again as follows:

Please know that I have read and re-read Sections 2322 and 3126. Clearly the automatic assessment applies only the ARD cases for felony sex offenses or other specified offenses (including misdemeanors under 18 § 2910 and § 3126). In no other cases is there a requirement that the \$250.00 mandatory cost for DNA testing be assessed for ARD acceptance, unless the District Attorney specifically conditions acceptance into ARD upon giving a DNA sample. Specifically, 44 P.S. § 2322 **does not** require assessments for "ALL felony charges" as claimed in your letter. Therefore, based on the clear dictates of both § 2910 and § 3126, I will be issuing [an] Administrative Order to address this issue.

Auditor's Conclusion

We based our opinion for assessing DNA costs on Act 185 of 2004, 44 P.S. § 2322 which became effective January 31, 2005. Act 185 of 2004, 44 P.S. § 2322, specifies that a \$250 DNA fee "shall automatically be assessed on any person convicted, adjudicated delinquent or granted ARD for a felony sex offense **or other specified offense**, and all proceeds derived from this section shall be transmitted to the fund. The definition section (44 P.S. §2203) of this chapter clearly defines "**other specified offense**" as "1) a felony offense" **in addition to** the sexually-based offenses listed by Management in its response. (Emphasis added.) ALL felonies regardless of offense are therefore subject to this definition as well as misdemeanors § 2910 (relating to luring a child into a motor vehicle), and § 3126 (relating to indecent assault) and ALL require the automatic assessment of the \$250 fee. The Management response neglects to include all felony offenses as required under the definition. Based on the information above, we believe that we are accurate with our finding regarding the assessment of DNA fees. During our next examination, we will determine if the office complied with our recommendations.

CLERK OF THE COURT OF COMMON PLEAS
NORTHAMPTON COUNTY
SUMMARY OF PRIOR EXAMINATION RECOMMENDATION
FOR THE PERIOD
JANUARY 1, 2011 TO DECEMBER 31, 2015

Summary of Prior Examination Recommendation

During our prior examination, we recommended that the office:

- Establish and implement adequate internal controls over its receipts.

During our current examination, we noted that the office complied with our recommendation.

CLERK OF THE COURT OF COMMON PLEAS
NORTHAMPTON COUNTY
REPORT DISTRIBUTION
FOR THE PERIOD
JANUARY 1, 2011 TO DECEMBER 31, 2015

The Honorable Eileen H. McNulty
Secretary
Pennsylvania Department of Revenue

The Honorable Thomas B. Darr
Court Administrator of Pennsylvania
Supreme Court of Pennsylvania
Administrative Office of Pennsylvania Courts

Mr. Thomas J. Dougherty
Director
Division of Grants and Standards
Pennsylvania Board of Probation and Parole

The Honorable Leigh Ann Fisher
Clerk of the Court of Common Pleas

The Honorable Stephen Barron
Controller

The Honorable Leonard (Scott) Parsons
County Council Member of the Board of Commissioners

This report is a matter of public record and is available online at www.PaAuditor.gov. Media questions about the report can be directed to the Pennsylvania Department of the Auditor General, Office of Communications, 229 Finance Building, Harrisburg, PA 17120; via email to: news@PaAuditor.gov.