

ATTESTATION ENGAGEMENT

Clerk of Judicial Records Lackawanna County, Pennsylvania For the Period January 1, 2016 to December 31, 2018

July 2020



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 C. Daniel Hassell
Secretary
Pennsylvania Department of Revenue
Harrisburg, PA 17128

We have examined the accompanying statements of receipts and disbursements (Statements) of the Clerk of Judicial Records, Lackawanna County, Pennsylvania (County Officer), for the period January 1, 2016 to December 31, 2018, pursuant to the requirements of Sections 401(b) and 401(d) of *The Fiscal Code*, 72 P.S. § 401(b) and § 401(d). The County Office's management is responsible for presenting these statements in accordance with the criteria set forth in Note 1. Our responsibility is to express an opinion on these Statements 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. Those standards require that we plan and perform the examination to obtain reasonable assurance about whether the Statements are presented in accordance with the criteria described above, in all material respects. An examination involves performing procedures to obtain evidence about the statements of receipts and disbursements. The nature, timing and extent of the procedures selected depend on our judgement, including an assessment of the risks of material misstatement of the Statements, whether due to fraud or error. We believe that the evidence we obtained is sufficient and appropriate to provide a reasonable basis for our opinion.

We are mandated by Sections 401(b) and 401(d) 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 Sections 401(b) and 401(d) of *The Fiscal Code*.

Independent Auditor's Report (Continued)

In our opinion, the Statements referred to above, for the period January 1, 2016 to December 31, 2018 is presented in accordance with the criteria set forth in Note 1, in all material respects.

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 Statements; 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 Statements. 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 Statements are presented in accordance with the criteria described above and not for the purpose of expressing an opinion on internal control over reporting on the Statements 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 Statements 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 Statements was for the limited purpose of expressing an opinion on whether the Statements are presented in accordance with the criteria described above and was not designed to identify all deficiencies in internal control over reporting on the Statements that might be material weaknesses or significant deficiencies and therefore, material weaknesses or significant deficiencies may exist that were not identified. 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. We did identify a certain deficiency in internal control, described in the finding listed below, that we consider to be a significant deficiency:

- Inadequate Outstanding Check Procedures - Criminal Division.

As part of obtaining reasonable assurance about whether the Statements are 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 an instance of noncompliance that is required to be reported under *Government Auditing Standards*:

- Inadequate Assessment of Fees - Civil Division.

Independent Auditor's Report (Continued)

The purpose of this report is to determine whether all moneys collected on behalf of the Commonwealth have been correctly assessed, reported and promptly remitted. This report is not suitable for any other purposes.

We appreciate the courtesy extended by the Clerk of Judicial Records, Lackawanna County, to us during the course of our examination. If you have any questions, please feel free to contact the Bureau of County Audits at 717-787-1363.



Eugene A. DePasquale
Auditor General

January 30, 2020

CONTENTS

	<u>Page</u>
Financial Section:	
Statements Of Receipts And Disbursements:	
Clerk Of Judicial Records - Criminal Division.....	1
Statements Of Receipts And Disbursements:	
Clerk of Judicial Records - Civil Division.....	2
Notes To The Statements Of Receipts And Disbursements	3
Findings And Recommendations:	
Finding No. 1 - Inadequate Outstanding Check Procedures - Criminal Division	6
Finding No. 2 - Inadequate Assessment of Fees - Civil Division	7
Observation:	
Observation - Inadequate Community Service Credit Adjustments - Criminal Division	8
Summary Of Prior Examination Recommendations.....	9
Report Distribution	10

CLERK OF JUDICIAL RECORDS - CRIMINAL DIVISION
LACKAWANNA COUNTY
STATEMENT OF RECEIPTS AND DISBURSEMENTS
FOR THE PERIOD
JANUARY 1, 2016 TO DECEMBER 31, 2018

Receipts:

Department of Transportation		
Title 75 Fines	\$	92,547
Overweight Fines		940
Department of Revenue Court Costs		117,646
Crime Victims' Compensation Costs		259,026
Crime Commission Costs/Victim Witness Services Costs		179,105
Domestic Violence Costs		33,064
Emergency Medical Services Fines		10,623
DUI - ARD/EMS Fees		23,296
CAT/MCARE Fund Surcharges		48,311
Judicial Computer System/Access to Justice Fees		305,221
Offender Supervision Fees		1,624,006
Constable Service Surcharges		23
Criminal Laboratory Users' Fees		17,503
Probation and Parole Officers' Firearm Education Costs		24,605
Substance Abuse Education Costs		157,648
Office of Victims' Services Costs		20,179
Miscellaneous State Fines and Costs		<u>480,491</u>
 Total receipts (Note 2)		 3,394,234
 Disbursements to Commonwealth (Note 3)		 <u>(3,394,234)</u>
 Balance due Commonwealth (County) per settled reports (Note 4)		 -
 Examination adjustments		 <u>-</u>
 Adjusted balance due Commonwealth (County) for the period January 1, 2016 to December 31, 2018		 <u>\$ -</u>

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

CLERK OF JUDICIAL RECORDS - CIVIL DIVISION
LACKAWANNA COUNTY
STATEMENT OF RECEIPTS AND DISBURSEMENTS
FOR THE PERIOD
JANUARY 1, 2016 TO DECEMBER 31, 2018

Receipts:

Writ Taxes	\$ 6,922
Divorce Complaint Surcharges	15,100
Judicial Computer System/Access To Justice Fees	446,923
Protection From Abuse Surcharges and Contempt Fines	1,047
Criminal Charge Information System Fees	<u>6,128</u>
Total Receipts (Note 2)	476,120
Commissions (Note 3)	<u>(208)</u>
Net Receipts	475,912
Disbursements to Commonwealth (Note 4)	<u>(475,912)</u>
Balance due Commonwealth (County) per settled reports (Note 5)	-
Examination adjustments	<u>-</u>
Adjusted balance due Commonwealth (County) for the period January 1, 2016 to December 31, 2018	<u><u>\$ -</u></u>

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

CLERK OF JUDICIAL RECORDS - CRIMINAL AND CIVIL DIVISIONS
LACKAWANNA COUNTY
NOTES TO THE STATEMENTS OF RECEIPTS AND DISBURSEMENTS
FOR THE PERIOD
JANUARY 1, 2016 TO DECEMBER 31, 2018

1. Criteria

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

The Statements were 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

Clerk of Judicial Records - Criminal Records

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 Judicial Records Office.

Clerk of Judicial Records - Civil Division

Receipts are comprised of taxes, surcharges, fees, and fines collected on behalf of the Department of Revenue and the Administrative Office of Pennsylvania Courts.

These include monies collected for the following taxes, surcharges, fees, and fines:

- Writ Taxes represent a \$.50 or \$.25 tax imposed on taxable instruments filed with the Clerk of Judicial Records - Civil Division.
- Divorce Complaint Surcharges represent a \$10 surcharge imposed on all divorce decrees.
- Judicial Computer System/Access To Justice Fees represent a \$35.50 fee imposed for the filing of any legal paper to initiate a civil action or proceeding. Effective October 30, 2017, Acts 40 and 44 increased the fee to \$40.25.
- Protection From Abuse Surcharges represent a \$100 surcharge imposed against defendants when a protection order is granted as a result of a hearing. Protection From Abuse Contempt Fines represent fines of not less than \$300 nor more than \$1,000 imposed against a defendant who is found to be in violation of a protection from abuse order.

CLERK OF JUDICIAL RECORDS - CRIMINAL AND CIVIL DIVISIONS
LACKAWANNA COUNTY
NOTES TO THE STATEMENTS OF RECEIPTS AND DISBURSEMENTS
FOR THE PERIOD
JANUARY 1, 2016 TO DECEMBER 31, 2018

2. Receipts (Continued)

Clerk of Judicial Records - Civil Division (Continued)

- Criminal Charge Information System Fees represent a fee imposed on all custody cases. Of the fee imposed, 80% is payable to the Administrative Office of Pennsylvania Courts (AOPC) and 20% is payable to the County in which the action took place. The fee was \$8.00 for the period January 1, 2016 to December 31, 2018. The statement of receipts and disbursements only reflects the portion collected on behalf of the AOPC.

3. Commissions

Acting in the capacity of an agent for the Commonwealth, the Clerk of Judicial Records is authorized to collect a commission of 3 percent on the Commonwealth portion of writ taxes. Accordingly, commissions owed the county are not included in the balance due the Commonwealth.

4. Disbursements

Clerk of Judicial Records - Criminal Division

Total disbursements are comprised as follows:

Department of Revenue	\$ 3,382,755
Office of Attorney General	1,200
State Police	2,223
Department of General Services	352
Department of Human Resources	427
Department of State	564
Department of Transportation	870
Department of Public Welfare	250
Department of Labor and Industry	2,403
Liquor Control Board	1,885
Office of Inspector General	1,305
 Total	 \$ 3,394,234

CLERK OF JUDICIAL RECORDS - CRIMINAL AND CIVIL DIVISIONS
LACKAWANNA COUNTY
NOTES TO THE STATEMENTS OF RECEIPTS AND DISBURSEMENTS
FOR THE PERIOD
JANUARY 1, 2016 TO DECEMBER 31, 2018

4. Disbursements (Continued)

Clerk of Judicial Records - Civil Division

Total disbursements are comprised as follows:

Clerk of Judicial Records checks issued to:

Department of Revenue	\$ 469,784
Adminstrative Office of Pennsylvania Courts	<u>6,128</u>
Total	<u><u>\$ 475,912</u></u>

5. Balance Due Commonwealth (County) For The Period January 1, 2016 To December 31, 2018

Clerk of Judicial Records - Criminal Division

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 Judicial Records - Civil Division

This balance reflects a summary of monthly transmittal reports as settled by the Department of Revenue. The balance also reflects a summary of receipts that were disbursed directly to the Administrative Office of Pennsylvania Courts.

6. County Officer Serving During Examination Period

Mauri Kelly served as the Clerk of Judicial Records for the period January 1, 2016 to December 31, 2018.

CLERK OF JUDICIAL RECORDS
LACKAWANNA COUNTY
FINDINGS AND RECOMMENDATIONS
FOR THE PERIOD
JANUARY 1, 2016 TO DECEMBER 31, 2018

Finding No. 1 - Inadequate Outstanding Check Procedures - Criminal Division

Our examination of the office checking account disclosed that the office was carrying 670 outstanding checks totaling \$42,083.31, dated from July 3, 2013 to June 21, 2018, that were still outstanding as of December 31, 2018.

Good internal accounting controls require that the office follow-up on all outstanding checks. If a check is outstanding for a period over 90 days, efforts should be made to locate the payee. If efforts to locate the payee are unsuccessful, the amount of the check should be removed from the outstanding checklist, added back to the checkbook balance, and subsequently held in escrow for unclaimed escheatable funds.

The failure to follow these procedures results in a weakening of internal controls over the cash account and inefficiency caused by the needless record-keeping of outstanding checks.

This condition existed because the office failed to establish adequate internal controls over its outstanding check procedures.

Recommendation

We recommend that the office establish and implement a procedure whereby outstanding checks are reviewed monthly to determine if there are any long outstanding checks. If checks remain outstanding and attempts to contact payees after 90 days are unsuccessful, the office should reinstate the amount of outstanding checks to the checking account and subsequently hold these monies in escrow for unclaimed escheatable funds.

Management's Response

The County Officer responded as follows:

My office has taken the recommendation of the auditors, implemented a suggested practice to review outstanding checks monthly and to escheat monies when appropriate.

Auditor's Conclusion

We appreciate the officeholder's efforts to correct this issue. During our next examination, we will determine if the office complied with our recommendation.

CLERK OF JUDICIAL RECORDS
LACKAWANNA COUNTY
FINDINGS AND RECOMMENDATIONS
FOR THE PERIOD
JANUARY 1, 2016 TO DECEMBER 31, 2018

Finding No. 2 - Inadequate Assessment of Fees - Civil Division

Our examination disclosed that the office did not assess certain fees as mandated by law. Of 45 divorce complaints tested, we noted the following discrepancies:

- There were 11 cases in which the Judicial Computer System/Access To Justice (JCS/ATJ) Fees were not assessed properly. Beginning in 2017, the office did not assess the fee for each count in the divorce complaint.

The following state statute addresses the assessment of these fees that were not properly assessed:

- Title 42 Pa. C.S.A. § 3733 provides for the collection of Judicial Computer System/Access to Justice (JCS/ATJ) Fees. An additional fee shall be charged and collected by the prothonotaries for each initial filing for which a fee, charge or cost is authorized.

The improper assessing of these fees resulted in a loss of revenue to the Commonwealth.

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

Recommendation

We recommend that the office review the law noted above to ensure that these fees are assessed as mandated by law.

Management's Response

The County Officer responded as follows:

My office reviewed the law noted. As soon as I was made aware that the fees mandated were not being assessed, we took appropriate action and adjusted the fee schedule.

Auditor's Conclusion

We appreciate the officeholder's efforts to correct this issue. During our next examination, we will determine if the office complied with our recommendation.

CLERK OF JUDICIAL RECORDS
LACKAWANNA COUNTY
OBSERVATION
FOR THE PERIOD
JANUARY 1, 2016 TO DECEMBER 31, 2018

Observation - Inadequate Community Service Credit Adjustments - Criminal Division

Our examination of the Lackawanna County Clerk of Judicial Records office found that the County Judges permitted any individual with a case recorded in the Clerk of Judicial Records office who defaulted on payment of fines, costs, or fees to perform community service in lieu of paying those fines, costs, fees and surcharges, including charges that were to be remitted to the Commonwealth. After a contempt hearing before a County Judge for non-payment, each individual was given the choice of either paying the fines, costs, fees and surcharges or performing community service.

We reviewed 42 cases in which there was a community service adjustment during the examination period and found the following:

- The case files did not contain documentation that the judge determined that the defendant was indigent and thus unable to pay fines, costs, fees and surcharges at a hearing or proceeding before the court prior to completing community service, as required by statute. Additionally, these orders suggest that the defendant could resolve the contempt by making a payment, which would contradict any finding of indigency.
- In 38 of the 42 cases, the defendants were assigned to work at the local recycling center which is operated by a private entity.

A review of the office's records found that there were 447 cases that had community service adjustments to compensate for payment of fines, costs, fees and surcharges. These adjustments represent a total of \$196,737.71 in fines, costs, fees and surcharges that were not collected over a three year period. The Commonwealth's portion of the uncollected funds/lost revenue totaled \$96,891.72 for the same period.¹

This condition existed because the Clerk of Judicial Records was required to comply with the judges' orders/directives in crediting the defendant's account for community service in lieu of paying fines, costs, fees and surcharges.

Recommendation

We recommend that Lackawanna County revise their community service credit adjustment program to ensure that it does not contradict the requirements of applicable state statutes.

Management's Response

No formal response was offered at this time.

¹ 42 Pa.C.S. § 3571 (indicating that "the Commonwealth shall be entitled to receive all fines . . . and costs which by law have heretofore been paid or credited to, or which by statute are payable or creditable to, the Commonwealth.")

CLERK OF JUDICIAL RECORDS
LACKAWANNA COUNTY
SUMMARY OF PRIOR EXAMINATION RECOMMENDATIONS
FOR THE PERIOD
JANUARY 1, 2016 TO DECEMBER 31, 2018

Summary Of Prior Examination Recommendations

During our prior examination, we recommended that:

- The Criminal and Civil Divisions establish and implement an adequate system of internal controls over the bank accounts.
- The Criminal Division establish and implement an adequate system of internal controls over manual receipts.
- The Criminal and Civil Divisions obtain a validation from the bank as to the mix of cash and checks deposited. We further recommended that the validation is reconciled to receipts by someone other than the person preparing or making the deposit.
- The Criminal and Civil Divisions review the laws to ensure that costs, fees and surcharges are assessed as mandated by law.

During our current examination, we noted that the office complied with the first three bulleted recommendations. However, the office did not fully comply with the last bulleted recommendation. Please see Finding No. 2 for further information.

CLERK OF JUDICIAL RECORDS
LACKAWANNA COUNTY
REPORT DISTRIBUTION
FOR THE PERIOD
JANUARY 1, 2016 TO DECEMBER 31, 2018

This report was initially distributed to:

The Honorable C. Daniel Hassell
Secretary
Pennsylvania Department of Revenue

The Honorable H. Geoffrey Moulton, Jr.
Court Administrator of Pennsylvania
Supreme Court of Pennsylvania
Administrative Office of Pennsylvania Courts

The Honorable Mauri B. Kelly
Clerk of Judicial Records

The Honorable Gary A. DiBileo
Controller

The Honorable Michael J. Barrasso
President Judge

The Honorable Jerry Notarianni
Chairperson 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.