



ERIE COUNTY CLERK'S OFFICE

RESPONSE TO JUNE 2023 AUDIT BY THE ERIE COUNTY COMPTROLLER'S OFFICE

**HON. MICHAEL P. KEARNS
ERIE COUNTY CLERK
ERIE COUNTY HALL
92 FRANKLIN STREET
BUFFALO, NEW YORK 14202**

TABLE OF CONTENTS

Summary iii

Responses to Findings.....1

Exhibit “A”: Data Sheet (2022) 35

Exhibit “B”: Catalis (NewVision) Response 36

Exhibit “C”: Audit of Erie County Law Department June 2023 50

SUMMARY OF THE AUDIT RESPONSE OF THE ERIE COUNTY CLERK’S OFFICE

Introduction

The following report contains the response of the Erie County Clerk’s Office (“Response”) to what the Erie County Comptroller’s Office describes as an audit of the “Registrar Division” for the period of January 1, 2022 through December 31, 2022 (“Audit”). This Audit took approximately five (5) months to complete, with the completed Audit report being released on June 30, 2023. As is plainly visible from the Audit and our Response, the Comptroller’s Office investigated far more than the Registrar Division, to the point that a second audit was announced on May 4, 2023. The Clerk’s Office is currently under this second audit, and in total is now entering its eighth (8th) month of auditing by the Comptroller’s Office.

Due to the ongoing criminal investigation, certain matters raised in the Audit simply cannot be responded to at this time. The Clerk’s Office has been fully cooperating with the Comptroller’s Office and law enforcement to ensure the integrity of the investigation. Other matters are not fully responded to herein due to them being the subject of the second audit. Any matters that could not be fully responded to at this time are acknowledged in the Response accordingly. A summary Data Sheet is also attached to this Response as **Exhibit A**.

The Audit Was Long Overdue And Provided Some Constructive Feedback.

At the outset, the Clerk’s Office notes that this was the first significant audit by the Comptroller’s Office in nearly twenty (20) years. As the chief fiscal officer of Erie County, the Clerk’s Office depends on the Comptroller’s Office to ensure that all policies and regulations are being followed. A delay of this magnitude is inexcusable and should not have been allowed between prior administrations of both the Clerk and the Comptroller.

The Clerk’s Office welcomes the opportunity for constructive feedback and recommendations for improvement. As detailed further in the Response, certain critiques (the Comptroller alternates between words like “Finding”, “Significant Finding”, and “Comment” throughout the Audit, without explanation) are accepted by the Clerk’s Office without objection. In fact, the Clerk’s Office has already implemented new policies and procedures based on this Audit.

Some Audit Claims Are False, Inflammatory, And Unrelated To the Clerk’s Office.

An objective analysis of the Audit “Findings” revealed that several of the Comptroller’s Office’s conclusions are either exaggerations or patently false. For example, and as more fully answered in the Response, the claims that cashiers had “blanket permissions to record, receipt, void, adjust and waive a fee transaction” with “virtually no oversight” and that “there is no authority for a county or county clerk to waive payment” of pistol permit fees are not only inaccurate but borderline inflammatory in their accusatory language. The fees that the Clerk’s Office has been charging regarding pistol permits have been, and still are, accurate and allowed under law.

A significant number of other “Findings” in the Audit relate to legacy software and agreements that long predate the current administration of the Clerk’s Office, and perhaps would have been examined more closely had the Comptroller’s Office conducted more frequent audits. We submitted these Findings to our software vendor for a detailed analysis, which is attached hereto as **Exhibit B**. In addition, the Clerk’s Office has already begun the process of meeting with other County Clerks and potential software vendors to improve operations, and it is expected that a Request for Proposals (“RFP”) will be sent out this Fall.

Perhaps the most troubling “Finding” in the entire Audit relates to a discovery directed at the Comptroller’s Office, not the Clerk’s. It was discovered that the Comptroller’s Office “approved the monthly Statement of Mortgages Recorded without verifying the accuracy of mortgage expense deducted based on the approved budget amount.” This Finding, at minimum, calls into question the objectivity of the Comptroller’s Office on this issue. It is also important to note that the Comptroller did not highlight this “Finding” when publicizing the Audit, despite the Comptroller being the “chief fiscal, accounting, reporting and auditing officer of the County” pursuant to Article 18 of the Erie County Charter. This duty would include all areas under this Audit and the second audit currently ongoing in the Clerk’s Office.

In addition, on page 12 of the Audit, the Auditor stated that the Clerk’s Office was not submitting the required monthly document of monies received by day to the Comptroller’s Office. The Auditor stated that this served “as a concrete example of deficient oversight of the Office.” The Auditor concluded that, “without daily reporting, the Office of the Comptroller is unable to perform its own legal obligations.” Until this Audit, at no time did the Comptroller’s Office request any monthly documents. These documents, if not automatically provided, were always available. Thus, if the Comptroller’s Office could not perform its own legal obligations, but nevertheless did so in certifying payments, then this is a concrete example of deficient oversight of the *Comptroller’s* Office, by the Comptroller’s Office. It is unclear whether this acknowledged deficiency has been subject to further audit or analysis by the Comptroller’s Office internally or externally, as the results or existence of such review do not appear to have been made public.

In pertinent part, Chapter 3 of the Generally Accepted Government Auditing Standards (“GAGAS”), which the Comptroller states was followed in conducting the Audit, reads as follows:

Objectivity (3.11)

Auditors’ objectivity in discharging their professional responsibilities is the basis for the credibility of auditing in the government sector. Objectivity includes independence of mind and appearance when conducting engagements, maintaining an attitude of impartiality, having intellectual honesty, and being free of conflicts of interest.

Despite our concerns about the integrity and objectivity of this Audit, now in its eighth (8th) month, the Clerk’s Office has compiled this Response in order to keep with the principles of GAGAS and for the goal of complete transparency and openness for improvement.

The Timing Of The Audit Further Calls Into Question Its Objectivity.

Instead of taking the time to complete the Audit in its entirety, the Comptroller's Office made the decision to push out their report and announce a *second* audit. The Comptroller's Office published the first Audit with full knowledge that the Clerk himself was going to be out of town for his wedding and honeymoon. It is not unreasonable to call the release of this Audit an ambush on the Clerk and all of the employees in the Clerk's Office.

As an example of the rushed and calculated nature of this Audit, the Comptroller's Office released an audit of the Erie County Department of Law the day before the Audit of the Clerk's Office was released (attached as **Exhibit C**). The Department of Law audit was critical of the Comptroller's Office for paying millions of dollars of invoices without the required approval by the Budget Director and without supporting documentation. The audit also found that the County failed to recover surplus amounts totaling \$555,140, dating back to 2020 and 2021.

While the Clerk's Audit totaled ninety-nine (99) pages, the audit of the Department of Law is a mere nine (9) pages. There was zero (0) publicity around the audit of the Department of Law, while the Comptroller's Office sought to garner significant media attention for the Audit of the Clerk's Office.

In addition, the Comptroller's Office then released a supplemental "Analysis" connected to the first Audit on August 24, 2023. While the Clerk's Office published a statement expressing grave concern of the release of the Analysis in the midst of an ongoing investigation, the actions of the Comptroller's Office may have violated the Erie County Charter as well.

In relevant part, Section 1802(e) of the Erie County Charter states the following duties of the Comptroller:

e. Conduct financial and compliance audits of the records and accounts of all officers and employees charged with any duty relating to county funds or funds for which the County is responsible in conformity with generally accepted auditing standards as prescribed by the American Institute of Certified Public Accountants and the Comptroller General of the United States, and submit such audit reports to the Legislature.

Chapter 8 of the Generally Accepted Government Auditing Standards ("GAGAS"), which the Comptroller is bound to follow under the Erie County Charter, reads as follows:

Investigations or Legal Proceedings (8.29)

Avoiding interference with investigations or legal proceedings is important in pursuing indications of fraud and noncompliance with provisions of law, regulations, contracts, and grant agreements. In some cases, it may be appropriate for the auditors to work with investigators or legal authorities or to withdraw from

or defer further work on the engagement or a portion of the engagement to avoid interfering with an ongoing investigation or legal proceeding.

The public disclosure of the Comptroller's "Analysis" potentially jeopardized months of legitimate investigative work by both the Erie County Sheriff and District Attorney. The public disclosure also, respectfully, appeared to be in violation of the Erie County Charter.

Conclusion

In responding to the Audit, the Clerk's Office set out to stick to the facts, rather than engage in any defensive mudslinging. Unfortunately, the nature of this Response has necessarily been affected by the conduct of the Comptroller's Office in releasing and sensationalizing this Audit.

It is unfortunate that the Comptroller's Office's apparent penchant for hyperbole and desire to sensationalize this Audit detracted from the constructive recommendations that were made and taken to heart by the Clerk's Office.

Nevertheless, the Clerk's Office has been welcoming of the Auditors since the first Audit began, and continues to be accommodating in the midst of the second audit. The Clerk's Office endeavored to adhere strictly to the facts in this Response and, when applicable, provide supporting data. It is disappointing that the Comptroller's Office chose to sensationalize this process, necessitating a reply in certain portions of the Clerk's Office's Response. Those issues notwithstanding, we thank the Comptroller's Office for this opportunity to improve the Clerk's Office and hope to continue the productive relationship between both offices going forward.

Respectfully Submitted,



Hon. Michael P. Kearns
Erie County Clerk

Audit Response Team:

Kevin M. Linder
First Deputy County Clerk

William A. Lorenz Jr., Esq.
Deputy County Clerk - Legal

RESPONSES TO FINDINGS

Daily Fee Deposits Reconciliation Discrepancies:

- *Finding #1: Office gave cashiers blanket permissions to record, receipt, void, adjust and waive a fee transaction in NewVision with virtually no oversight.*

CLERK RESPONSE:

Denies that cashiers have “blanket permissions” with “virtually no oversight.” Same-day receipt revisions are allowed by cashiers and monitored by managers from the nightly close-out reports. Next-day and all historical receipt revisions can only be made with the permission of a manager.

Recording, revision, voids, and waivers are part of the daily operations in the Clerk’s Office and are a necessary part of business to keep the Office running. Staff have assigned user roles, access level controls and procedures in place to control these processes.

Revisions and voids accounted for less than half of 1% of all transactions handled in 2022. Specifically, of the 196,466 transactions processed, only 102 (0.05%) were voids and only 417 (0.21%) were revisions.

“Waived” transactions are also a necessary part of business in the Clerk’s Office and occurred more frequently in 2022 (about 12% of all transactions). These recordings/transactions are completely logged in our system when done and can be reviewed by management at any time.

Contrary to the Comptroller’s Office’s assertion, the Clerk’s Office does have the legal authority to waive fees based on the New York Civil Practice Law & Rules (“CPLR”) and the New York Penal Law. For example, CPLR § 8021(c)(9) states that “no fee shall be charged to any county officer, employee or institution required to file or record any instrument in connection with the official duties thereof, or to any public official in connection with the filing of his undertaking.”

For example, the Department of Social Services (a government agency), filed 123 liens with the Clerk’s Office in 2022. No fee was charged for any of those transactions pursuant to the CPLR. In total, approximately 98% of the 23,467 waived transactions in 2022 were related to government agencies.

The data provided refutes Finding #1 of the Audit.

Management Review of Financial Records and Periodic Reconciliations:

- *Finding #1: There is a critical lack of management oversight regarding financial records.*

CLERK RESPONSE:

Denies that there is a “critical lack of management oversight regarding financial records” and notes that the majority of this Finding appears to be concerned with the fact that one employee in the Clerk’s Office is in charge of both accounting and oversight roles, creating a “segregation of duties” issue.

To that end, the Clerk’s Office has requested the creation of both an Accountant and Senior Accountant position, which the Comptroller has already expressed his support for publicly.

As to the recommendation for the annual audit by an outside firm to include some portion of the Clerk’s Office, the Clerk’s Office agrees, particularly in light of the fact that the Comptroller’s Office has not performed a true audit of the Clerk’s Office in the last twenty (20) years.

Although this Finding is aimed at the Clerk’s Office, Article 18 of the Erie County Charter places the oversight of the “fiscal affairs of the County” on the Comptroller, as the “chief fiscal, accounting, reporting and auditing officer of the County”. It is the duty of the Comptroller to “[m]aintain the official accounting records for all receipts and disbursements of the County”.

The Clerk’s Office relies on the Comptroller for these duties, and recommends the Comptroller consider quarterly meetings with the Clerk to review these records.

- *Finding #2: Office isn't collecting \$20.00 service charge incurred when payment returned due to insufficient funds (NSF).*

CLERK RESPONSE:

The Clerk's Office notes that, while not universally applied, there was an adequate policy in place regarding insufficient funds. Any transaction paid for with insufficient funds was subject to "restricted image" status (i.e., not viewable as a public document until the transaction was paid in full.) If the transaction involved a pistol permit, the application is placed on hold and red-lined in the Gun Keeper database for ten days until a new payment is made. This was done in good faith for customers, who may have been experiencing financial hardship or who may have inadvertently overdrawn their checking account, to make good on the payment. It is further noted that only 43 checks were returned in 2022 (or 0.02% of the 196,466 transactions processed).

The Clerk's Office has already implemented a code in New Vision to charge the \$20 service fee and will initiate collection efforts in accordance with County policy.

- *Finding #3: Clerk's Office not reporting shortages in cash transactions required by County of Erie Accounting Policy.*

CLERK RESPONSE:

The Clerk's Office notes that, while not universally applied, there was an adequate policy in place regarding loss reporting.

As noted by the Auditor, the discrepancies found were after reviewing the Concentration bank account, not from reviewing the daily close-out operations. Any discrepancies noted at the daily close-out are immediately corrected.

However, regarding bank deposits, the Clerk's Office recently had an instance where a deposit was adjusted as an overage (without any specific details given such as cash or check(s)), and which was subsequently debited weeks later when the bank realized it processed a check incorrectly. The Clerk's Office investigates all overages locally, and only if it is unable to resolve the discrepancy is a referral made to the Comptroller or Sheriff. The County policy does not place a timeframe on when documented losses must be reported to either the Comptroller's Office or the Sheriff's Department.

Due to vendor inaccuracies and delays, either by the County's designated bank depository or the contracted armored car deposit pick-up service, the Clerk's Office is simply unable to immediately report discrepancies in some instances. Although accounting and calculation errors are the exception to the County's reporting requirement, this is often difficult to ascertain at the time of a shortage, which is when the bank debited the account. It is not the duty of the Clerk's Office to look for adequate vendors for the County to contract with.

Regarding improvements to the current system, cashiers are now photocopying all checks to maintain a record of their deposits while we explore other technological options with our financial institution. The Clerk's Office will also be providing training to staff regarding the Erie County Cash Management policy and following the recommendation of the Comptroller's Office to work with our financial institution to obtain more detailed day-to-day data.

Completeness, Accuracy and Timeliness:

- *Finding #1: The majority of the financial reports generated from the New Vision system and given to Auditors could not be reconciled.*

CLERK RESPONSE:

This Finding appears to be directed more at New Vision than the Clerk's Office. As such, the Clerk's Office submitted this Finding to New Vision (now known as Catalis) for a direct analysis. A copy of New Vision's report is attached to our Response as Exhibit B, which in pertinent part acknowledges that system errors and bugs were found in certain reports that were not caused by any action by the County Clerk staff or any form of human interference.

It is noted that the inability of the Auditor to reconcile daily or monthly reports is problematic, but does not logically warrant a conclusion that said inability is because the data and/or reports in New Vision is inaccurate.

To properly analyze reports, one must understand the purpose of the report and where the information contained in the report is derived. An accurate report that is misinterpreted, used for the wrong purpose, or which is reconciled improperly by an auditor, are all plausible explanations for why a report cannot be reconciled.

It is worth noting that the Comptroller's Office's reference to the Mortgage Tax Report in this Finding is inappropriate and beyond the scope of this Audit, as the Comptroller's Office notified us in writing that this issue was going to be the subject of a second audit.

New Vision has been the system utilized by the Clerk's Office for many years and through many prior administrations. It is a complex system which previous Clerks have declined to change due to the inherent difficulty in implementing a new system. The high turnover of cashiers in the Clerk's Office only adds to the difficulty in such an attempt.

Nevertheless, the Clerk's Office has already begun looking to other County Clerks for alternative systems. In addition, the Clerk's Office is in the process of engaging with New Vision to arrange for enhanced training of our cashiers and managers regarding usage of their system and reporting, and will ensure that this knowledge is shared with the Comptroller to ensure reports provided by the Clerk's office can be easily reviewed and reconciled. If necessary, the Clerk will ensure that New Vision create new reports to ensure reports generated meet the requirements of both the Clerk's office and the Comptroller's office.

The Clerk's Office will continue to work with New Vision in the interim but will be issuing an RFP for the services currently provided by New Vision, as their contract with Erie County will expire on December 31, 2023.

- *Finding #2: The Erie County Clerk is not submitting the required monthly document of monies received by day to the Comptroller's Office.*

CLERK RESPONSE:

The Clerk's Office acknowledges that a monthly breakdown of monies received each day is to be submitted to the Comptroller's Office. However, while reports may not have been sent, the Comptroller's Office did not request any missing reports, and this issue did not arise until the bringing of this Audit. As the chief fiscal officer of Erie County, the Clerk depends on the Comptroller to ensure that all policies and regulations are being followed.

The Clerk's Office has met with both New Vision and the Comptroller's Office regarding the feasibility of developing a tool or process to upload daily transactions into SAP for month-end reconciliation of fees. The contract with New Visions expires on December 31, 2023 unless it is extended or renewed. Because the Clerk's Office is not on SAP, the County's accounting software system that the rest of the County has been on since May 2004, additional training will be required.

It is worth noting that the Comptroller's staff has conceded that this legacy software, when first introduced, could not be integrated due to the complexity of the transactions handled by the Clerk's Office, and in fact is not going to be supported by SAP in the next few years. In addition, the Comptroller's staff conceded that SAP would not be able to provide training to the Clerk's Office's staff.

Safeguarding assets and periodic reconciliation:

- ***Finding #1: Clerk did not provide daily or monthly reconciliation of all fees to Clerk's Office M&T Concentration bank account.***

CLERK RESPONSE:

In order to not jeopardize ongoing investigations, the Clerk's Office cannot fully respond to this Finding.

We are in the process of reviewing our financial systems, including considering the use of SAP. A meeting was held with the Comptroller's Office regarding the merits of SAP. We are in agreement that New Vision is not an accounting system and we in the process of issuing a Request for Proposals ("RFP") for software that would include an accounting component.

Regarding ACH, the Clerk's Office notes that the prior Clerk researched this issue and there were impediments identified at the time to moving across the board to an ACH transfer system for recipients of monies from the Clerk's Office. Specifically, doing so would result in fees likely being charged by banks which would need to be borne by the County or the recipient. Nonetheless, the Clerk's Office agrees that safeguarding County assets is the highest of priorities and it will investigate the feasibility of this changeover moving forward.

- *Finding #2: Clerk's Office not restrictively endorsing all checks immediately upon receipt.*

CLERK RESPONSE:

Currently, all checks are recorded in New Vision and the back of the checks are automatically restrictively endorsed during input, which is when the Clerk's Office considers the check received.

The County policy addressing processing checks and money orders states:

To be accepted, each presented check must:

- *Be payable to the County of Erie, NY. This includes a check payable to an individual who must restrictively endorse it payable to the County of Erie*
- *Be current dated - post dated or "stale dated" (over six months or shorter period if noted on the face of the check) checks are not acceptable*
- *Be properly signed or endorsed by the presenter*
- *Be in agreement with respect to numeric and written amounts*
- *Be typed or legibly written in ink*
- *Have Federal Reserve routing codes printed (as part of the MICR encoding) at the bottom of the check. The routing codes printed in the upper right hand corner are no longer required by the Federal Reserve and are not always printed on the checks. The routing codes will be separated from the other numbers in the MICR line by a small, centered rectangle followed by two small squares with one above the other. The location within the MICR line may vary, but the symbol described above will precede and follow the routing code.*
- *Not be altered or grossly mutilated*
- *Not have any unreasonable restrictions placed on the face which excessively limit its application*
- *Contain sufficient information to permit tracing the presenter (e.g. account number, address, telephone number, property [SBL] number etc.)*

The Clerk's Office is a front-facing office that must process hundreds of incredibly time-sensitive transactions each day. Strict adherence of this policy, which does not seem to consider the complexity of the transactions handled by the Clerk's Office, would very likely lead to a severe backlog of transactions. The Clerk's Office does not wish to find itself repeating the situation faced by a previous Clerk in 2012, when approximately \$3 million in checks was left languishing in the mail.

Accordingly, the Clerk's Office considers "receipt" when the cashier has verified that the check is acceptable per the aforementioned County policy. Mail is usually processed the same day it is received, with the only exceptions being if a large amount of mail arrived, and there was a shortage of personnel working that day. Until the check is processed by the cashier, it is kept in a safe location and left undisturbed from the contents of the mailing. An

envelope often contains multiple checks and multiple documents. It is a best practice to leave the checks appended to the documents as is rather than separate the checks.

The mail sorter is not the cashier who is qualified to verify that the payment sent meets all the criteria for check acceptance and is for the correct amount of the transaction.

Furthermore, the mail sorter does not have the time to individually review the documents to the payments made. If the check does not meet the criteria, it is returned to the sender as is. Cashiers are also photocopying all checks received as a record of their deposits.

Two employees in Land Records, who are not involved in accounts receivable or other cash handling processes and who are familiar with mail sorting in Land Records, are assigned these duties.

Pistol Permits:

- ***Finding #1: It was found that the Clerk's Office unlawfully waived pistol permit fees in 2022.***

CLERK RESPONSE:

Denies. The Auditor's statement that "There is no authority for a county or a county clerk to waive payment" of pistol permit fees is patently false. Pursuant to New York Penal Law § 400.00(14), fees for processing a license or renewal "shall be waived in all counties" (emphasis added) for the following list of individuals: **qualified retired police officers; qualified retired sheriffs, undersheriffs, or deputy sheriffs of the city of New York; qualified retired bridge and tunnel officers, sergeants, or lieutenants of the triborough bridge and tunnel authority; qualified retired uniformed court officers in the unified court system; qualified retired court clerks in the unified court system in the First and Second judicial departments; and retired corrections officers.** See NY Penal Law § 400.00(14).

In 2022, RecordsNG recorded seven (7) Pistol Permit Application Fees being waived out of the 4,757 applications processed, a mere 0.15% and only \$140 in waived fees (\$20 per application). Some valid reasons for fee waivers are below:

- 1. Fee was paid in 2020 and permit issued in 2021. Fee was waived in 2022 when Cashier went to index and scan an old application that didn't have a previous index, this doc code required a fee in which the permit holder already paid, so the fee was waived.**
- 2. Fee was paid in 2021 and permit issued in 2021. Fee was waived in 2022 when Cashier went to index and scan an old application that didn't have a previous index, this doc code required a fee in which the permit holder already paid, so the fee was waived.**
- 3. Retired Law enforcement (fee is waived pursuant to New York Penal Law).**
- 4. Fee was paid in 2018 and permit issued in 2023. Fee was waived in 2022 because applicant provided improper character references with application and didn't resolve quickly. In 2022 she updated her paperwork, no additional fee was collected.**

Upon investigation, only three (3) fee waivers could not be validly accounted for, which would amount to a mere \$60. While the Clerk's Office strives for perfection, this small amount is a clear outlier. Nevertheless, the Clerk's Office will be reminding all employees to consult with management for approval to waive fees according to the Penal Law and ensuring that any unlawful, unauthorized waiving of fees may result in termination.

- *Finding #2: Daily and monthly NewVision reports for recording and receipting pistol permits had conflicting amounts and did not reconcile.*

CLERK RESPONSE:

This Finding appears to be directed more at New Vision than the Clerk's Office. As such, the Clerk's Office submitted this Finding to New Vision (now known as Catalis) for a direct analysis. A copy of New Vision's report is attached to our Response as Exhibit B, which in pertinent part acknowledges that system errors and bugs were found in certain reports that were not caused by any action by the County Clerk staff or any form of human interference.

It is noted that the inability of the Auditor to reconcile daily or monthly reports is problematic, but does not logically warrant a conclusion that said inability is because the data and/or reports in New Vision is inaccurate.

To properly analyze reports, one must understand the purpose of the report and where the information contained in the report is derived. An accurate report that is misinterpreted, used for the wrong purpose, or which is reconciled improperly by an auditor, are all plausible explanations for why a report cannot be reconciled.

New Vision has been the system utilized by the Clerk's Office for many years and through many prior administrations. It is a complex system which previous Clerks have declined to change due to the inherent difficulty in implementing a new system. The high turnover of cashiers in the Clerk's Office only adds to the difficulty in such an attempt.

Nevertheless, the Clerk's Office has already begun looking to other County Clerks for alternative systems. In addition, the Clerk's Office is in the process of engaging with New Vision to arrange for enhanced training of our cashiers and managers regarding usage of their system and reporting, and will ensure that this knowledge is shared with the Comptroller to ensure reports provided by the Clerk's office can be easily reviewed and reconciled. If necessary, the Clerk will ensure that New Vision create new reports to ensure reports generated meet the requirements of both the Clerk's office and the Comptroller's office.

The Clerk's Office will continue to work with New Vision in the interim but will be issuing an RFP for the services currently provided by New Vision, as their contract with Erie County will expire on December 31, 2023.

- *Finding #3: Office is overcharging for initial pistol permit application, changes from paper to plastic, inter-county transfers and various amendments.*

CLERK RESPONSE:

Denies. The Clerk's Office has been, and still is, charging the correct statutory fees, however the additional services provided create a higher, but still permissible, amount, which can appear confusing without being properly researched or explained (and indeed, the Auditor only states that it "believes" certain fees to be "impermissible" in this Finding).

For example, the cost of an application is \$20, which includes the \$10 statutory fee plus a \$10 digitized image capture (photo) fee. Pursuant to New York Penal Law § 400.00(14), Erie County is authorized to collect up to \$10 for a firearms license. Subject to the Memorandum of Understanding effective April 13, 1987 between the County of Erie and the New York State Unified Court System, and COMM. 7E-13 (2006)- a Resolution passed April 27, 2006 by the Erie County Legislature; *and* as acknowledged by the Auditor in this very finding, "the \$10 application photo fee is permitted because the photograph is required by law and the Clerk is providing a service of convenience."

Regarding the \$18 charge for a change of a permit from paper to plastic (considered a replacement or duplicate), New York Penal Law § 400.00(14) allows for a \$5 statutory fee. Again, adding the \$10 permissible photo fee, plus a \$3 processing fee for the new plastic card (again, a service of convenience), leads to a higher total amount.

Turning again to New York Penal Law § 400.00(14), transfers are \$5.00 and amendments are \$3.00. Adding in the permissible convenience service charge leads to the higher amount.

The Clerk's Office acknowledges that the above authority for each fee was not explicitly spelled out on its website, however the fees it has been charging for applications has been, and still is, accurate and allowed under law.

Nevertheless, the Clerk's Office has been in the process of verifying and documenting specific legal authority to collect all current fees, in accordance with the Auditor's recommendation. Calculation of fees and legal authority to collect will be reviewed on an annual basis. An updated Schedule of Fees will be made public both on the Clerk's website and in paper form at the Clerk's Office. The Clerk's Office will also be providing training to cashiers handling Pistol Permit transactions in accordance with New York Penal Law.

- *Finding #4: The process for voiding pistol permit fees results in flawed calculations for monthly totals and causes discrepancies in cash and the reporting of pistol permit revenue in NewVision system.*

CLERK RESPONSE:

The Clerk's Office disagrees with the recommendation that all individual applications should be on separate receipts if they are family members. It is an approved Office procedure to record multiple documents on one receipt. For example, if a Husband and Wife both apply for a pistol permit or co-register a weapon, both will be recorded separately and both fees charged appropriately but only one can be listed on the receipt if paying together. This can also happen on any document recorded in our office. However, the Clerk's Office will work to ensure non-related applications are on separate receipts.

The transaction examples cited in this Finding are outliers. Of the 15,412 receipts processed by the Pistol Permit department in 2022, only five (5) were voided, or 0.03%. The Clerk's Office strives for perfection, but urges the Auditor to keep things in perspective on transactions which comprise less than half of 1% of those processed.

As to the portions of this Finding directed at New Vision, the Clerk's Office submitted this Finding to New Vision (now known as Catalis) for a direct analysis. A copy of New Vision's report is attached to our Response as Exhibit B, which in pertinent part acknowledges that system errors and bugs were found in certain reports that were not caused by any action by the County Clerk staff or any form of human interference. The Clerk's Office will continue to work with New Vision in the interim but will be issuing an RFP for the services currently provided by New Vision, as their contract with Erie County will expire on December 31, 2023.

- *Finding #5: The County Clerk's Office lacks adequate internal and systems controls protecting the fee collection process within the pistol permit division.*

CLERK RESPONSE:

Due to the reliance upon existing “legacy” systems, there is extremely limited connectivity between the license management software (Gun Keeper), document imaging and cashiering system (New Vision), and application tracking software (BatchScan). These systems, by their design, do not interface. However, each system is fully functional on its own.

Because of the highly sensitive nature of the information stored in Gun Keeper and the ability of pistol permit holders to opt out of disclosing certain information publicly under New York law, the Clerk's Office could not provide unrestricted access to the Auditor. The Auditor could have requested this information from other New York State agencies or through the judicial system.

The Clerk's Office has been examining the possibility of increased connectivity between the existing software versus the implementation of new software going forward, and has already met with both New Vision and potential vendors as well as the Comptroller's Office on this issue.

As previously stated, the Clerk's Office will continue to work with New Vision in the interim but will be issuing an RFP for the services currently provided by New Vision, as their contract with Erie County will expire on December 31, 2023.

- ***Finding #6: A portion of the hunting and fishing license fees that the Clerk collects on behalf of the NYS Department of Environmental Conservation (DEC) is misdirected to the Comptroller's Office.***

CLERK RESPONSE:

Out of every hunting and fishing license, the New York State Department of Environmental Conservation (DEC) automatically debited by ACH withdrawal the State portion of the fees. On average for the period from December 2021 through December 2022, this was less than \$130/month. The Clerk's Office forwards the County's portion of the hunting and licensing fees to the Comptroller each month. This is a much larger amount, and inadvertently included the smaller amounts that the State already debited. The Clerk's Office has stopped remitting the State DEC portion to the Comptroller's Office.

The Clerk's Office did not receive any earlier notice of these payments from the Comptroller's Office prior to this audit. None of the payments for the one period from December 2021 through December 2022 were ever returned to the Clerk's Office for correction by either the County or the State.

Although this Finding is aimed at the Clerk's Office, Article 18 of the Erie County Charter places the oversight of the "fiscal affairs of the County" on the Comptroller, as the "chief fiscal, accounting, reporting and auditing officer of the County". It is the duty of the Comptroller to "[m]aintain the official accounting records for all receipts and disbursements of the County". The Clerk's Office relies on the Comptroller for these duties.

The Clerk's Office concurs with the recommendation regarding monthly fee reconciliations of New Vision transactions to the Clerk's Office Concentration bank account. The Clerk's Office would also recommend that the Comptroller's Office perform monthly fee reconciliations of its own bank account.

- *Significant Finding #1: Clerk's Office personnel had access to New York State Office of Mental Health "OMH" records for pistol permit applicants without proper authorization.*

CLERK RESPONSE:

The County Clerk's Office denies this "significant finding" and notes that the related analyses concerning access to mental health records appear to be beyond the scope of the authority of a County Audit. The New York State Office of Mental Health ("NYS OMH") is a New York State office rather than an Erie County office, and NYS OMH was aware that a small number of County Clerk employees formerly had access to the NYS OMH user-portal for pistol permitting purposes. Whether a NYS Office acted properly in granting or allowing County Clerk employees to maintain access to their user-portal is a question more properly addressed by the NYS Comptroller's Office, NYS Inspector General's Office, or NYS OMH itself, rather than the County Comptroller.

Prior to commencement of the present Audit, the County Clerk's Office discontinued access to the NYS OMH user-portal for the small number of employees who previously had been credentialed. The shift of responsibility for that function to law enforcement came about after extensive discussions relating to improving the overall pistol permitting process in Erie County between the County Clerk's Office, County Sheriff's Office, and County Pistol Permit Licensing Officer (Hon. M. William Boller, J.S.C.).

The policy that formerly resulted in the County Clerk's Office becoming responsible for obtaining NYS OMH records and adding them to pistol permit applications, rather than the law enforcement agencies that conduct background investigations, was instituted years ago by a prior County Clerk and a prior County Sheriff. *It is believed that process began sometime around 2013 when the NYS SAFE Act took effect*, which had imposed numerous additional responsibilities on County Pistol Permit Offices and law enforcement agencies as part of the pistol permitting process.

Any suggestion or inference that NYS OMH records were improperly obtained, utilized, or disseminated by County Clerk employees is denied and disputed. Any suggestion that NYS OMH was unaware that a small number of County Clerk employees had access to their user-portal is denied and disputed. The County Clerk's Office has on multiple occasions had correspondence with NYS OMH regarding technical issues with the user-portal when it was still being used by County Clerk employees. The County Clerk's Office has also actively engaged with NYS OMH as well as Town and Village law enforcement agencies in Erie County to facilitate their assuming responsibility for that pistol permitting function. At no time has NYS OMH indicated to the County Clerk's Office that our former access to the user-portal or records was improper or unauthorized. Nor has the County Pistol Permit Licensing Officer at any time indicated to the County Clerk's Office that our employee access to the NYS OMH user-portal to obtain records for inclusion with pistol permit applications was improper or unauthorized.

The Erie County Clerk's office restricted access to NYS OMH records to the minimum number of employees necessary to complete the task of obtaining those records and placing them in pistol permit application files. Names and contact information for County Clerk employees also needed to be provided to NYS OMH before they were allowed access to the NYS OMH user-portal. It is also worth noting that the NYS OMH user-portal is a restricted access program that requires a user to have an individualized user-account created for them by NYS OMH, which can be only be done by requesting that NYS OMH authorize the individual as a user and create a user-account for them. In the case of the County Clerk employees who formerly were granted access to the user-portal, that request would have been made by the County Sheriff's Office on behalf of the County Clerk's Office employees. Additional safe-guards built into the NYS OMH user-portal include individualized user passwords and a NYS OMH dual authentication requirement prior to accessing their user-portal.

In regards to the blanket conclusion stated in the Audit that there is no way for the County Clerk's Office to access, maintain, or handle confidential mental health records without violating State and Federal law, per HIPAA and Section 400 of the NY Penal Law, that assertion is denied and disputed. It betrays a lack of basic understanding of the pistol permitting process and the roles of the County Licensing Officer and County Clerk's Office in that process, and presumes it is the job of a County Comptroller to question the wisdom of decisions made by NYS Agencies. As the person ultimately responsible for all County pistol permit licensing determinations, the County Pistol Permit Licensing Officer is necessarily and statutorily required to have access to NYS OMH records and information when evaluating whether to issue a pistol permit, suspend a permit, reinstate a permit, and/or revoke a permit. Those determinations are premised upon Judicial and Licensing Officer review of relevant findings under the Mental Hygiene Law and as a matter of public safety those determinations should be made as expeditiously as possible. It is unclear how the County Pistol Permit Licensing Officer could effectively carry out these important functions without at least some employees assigned to pistol permit work by the County Clerk's Office being granted at least limited access to NYS OMH mental hygiene determinations and records on an as needed basis.

County Clerk employees assigned to pistol permit work function as the support staff for the County Licensing Officer and handle all, or virtually all, data processing, record keeping, file updating and maintenance, secretarial duties, and correspondence with applicants and licensees on his behalf. The County Licensing Officer otherwise would have no support staff in his capacity as Licensing Officer. The County Pistol Permit Licensing Officer does have two (2) employees that work for him as a member of the NYS Judiciary, however they are NYS Court employees who serve him in a distinctly different capacity than his separate role as County Pistol Permit Licensing Officer. Unless the County Licensing Officer personally, or the County Sheriff's Office, were to assume responsibility for all functions currently filled by County Clerk employees, thereby essentially eliminating any role for the County Clerk's Office in pistol permitting, the County Clerk's Office requires at least limited access to NYS OMH information to facilitate the County Licensing Officer's determinations relating to issuing, upgrading, suspending, revoking, and/or reinstating pistol permits in Erie County.

It is also worth noting that the Erie County Clerk is the Clerk of the County and Supreme Courts within Erie County. As such, the County Clerk's Office is the record keeper for all court files for County Court and Supreme Court cases that have been adjudicated; the County Clerk's Actions and Proceedings Office is where all civil legal papers for Erie County and Supreme Court are filed; and employees of the County Clerk's Actions and Proceedings Office process on-line filings for Erie County and Supreme Courts submitted via the New York State Courts E-File system ("NYSCEF"). The County Clerk's responsibilities as Clerk of the Erie County and Supreme Courts thus require employees of the County Clerk's Office to handle court files that may explicitly or implicitly involve determinations and/or litigation premised upon the NYS Mental Hygiene Law, and such files may include NYS OMH records as part of the file if they are relevant to the case.

The Auditor's assertion that the County Clerk's Office is blanketly prohibited from access to NYS OMH records is incorrect, poorly reasoned, and contrary to longstanding NYS law and policy.

- *Significant Finding #2: The Clerk's Office had electronic access to fingerprinting, criminal history and wanted and/or missing persons data contained on the NY DCJS database.*

CLERK RESPONSE:

The County Clerk's Office notes that the Comptroller's "significant finding" and related analyses relating to County Clerk Office access to fingerprinting, criminal history, and wanted and/or missing persons data contained on the NY DCJS database is likely beyond the scope of authority of a County Audit. The New York State Division of Criminal Justice Services ("NYS DCJS") is a New York State office rather than Erie County office, and DCJS has explicitly authorized the County Clerk's Office to access, obtain and utilize the criminal justice information ("CJI") it provides, subject to specific statutory and contractual terms and conditions. Whether a NYS Office acted properly in granting or allowing County Clerk employees to maintain access to CJI is a question more properly addressed by the NYS Comptroller's Office, NYS Inspector General's Office or NYS DCJS itself, rather than by a County Comptroller, and NYS DCJS has explicitly answered that question in the affirmative.

It is also worth noting that NYS DCJS audits County level users of its CJI, including the County Clerk's Pistol Permit Office which was audited in 2022. Thus, even if a County Comptroller had authority to audit a County Clerk's Office's use of CJI provided to it by NYS, a premise that is dubious at best, such an audit would be duplicative, unnecessary, and a waste of limited County government resources. The CJI that NYS DCJS provides to the County Clerk's Office via its user-portal includes fingerprinting, criminal history and wanted and/or missing persons data.

NYS DCJS has explicitly authorized, and continues to explicitly authorize, the County Clerk's Pistol Permit Office to access, obtain and utilize the CJI provided to the County Clerk's Office through its user-portal for pistol permit licensing and employment determinations. This is evidenced by the explicit language of the "Use and Dissemination Agreement" ("UDA") executed between the County Clerk's Pistol Permit Office and NYS DCJS. The most recent UDA was executed between the Erie County Clerk's Pistol Permit Office and NYS DCJS in 2022. A UDA was in effect prior to, during, and subsequent to the period covered by the audit, which the auditors were provided a copy of and which they also appended to their audit findings.

Court Fees:

- *Finding #1: Daily and monthly NewVision reports for recording and receipting court fees had conflicting amounts and did not reconcile.*

CLERK RESPONSE:

This Finding appears to be directed more at New Vision than the Clerk's Office. As such, the Clerk's Office submitted this Finding to New Vision (now known as Catalis) for a direct analysis. A copy of New Vision's report is attached to our Response as Exhibit B, which in pertinent part acknowledges that system errors and bugs were found in certain reports that were not caused by any action by the County Clerk staff or any form of human interference.

It is noted that the inability of the Auditor to reconcile daily or monthly reports is problematic, but does not logically warrant a conclusion that said inability is because the data and/or reports in New Vision is inaccurate.

To properly analyze reports, one must understand the purpose of the report and where the information contained in the report is derived. An accurate report that is misinterpreted, used for the wrong purpose, or which is reconciled improperly by an auditor, are all plausible explanations for why a report cannot be reconciled.

New Vision has been the system utilized by the Clerk's Office for many years and through many prior administrations. It is a complex system which previous Clerks have declined to change due to the inherent difficulty in implementing a new system. The high turnover of cashiers in the Clerk's Office only adds to the difficulty in such an attempt.

Nevertheless, the Clerk's Office has already begun looking to other County Clerks for alternative systems. In addition, the Clerk's Office is in the process of engaging with New Vision to arrange for enhanced training of our cashiers and managers regarding usage of their system and reporting, and will ensure that this knowledge is shared with the Comptroller to ensure reports provided by the Clerk's office can be easily reviewed and reconciled. If necessary, the Clerk will ensure that New Vision create new reports to ensure reports generated meet the requirements of both the Clerk's office and the Comptroller's office.

The Clerk's Office will continue to work with New Vision in the interim but will be issuing an RFP for the services currently provided by New Vision, as their contract with Erie County will expire on December 31, 2023.

- *Finding #2: The Unified Court System – Office of Budget & Finance (UCR) report does not reconcile to the monthly 4-Court Report generated by New Vision.*

CLERK RESPONSE:

This Finding appears to be directed more at New Vision than the Clerk's Office. As such, the Clerk's Office submitted this Finding to New Vision (now known as Catalis) for a direct analysis. A copy of New Vision's report is attached to our Response as Exhibit B, which in pertinent part acknowledges that system errors and bugs were found in certain reports that were not caused by any action by the County Clerk staff or any form of human interference.

It is noted that the inability of the Auditor to reconcile daily or monthly reports is problematic, but does not logically warrant a conclusion that said inability is because the data and/or reports in New Vision is inaccurate.

To properly analyze reports, one must understand the purpose of the report and where the information contained in the report is derived. An accurate report that is misinterpreted, used for the wrong purpose, or which is reconciled improperly by an auditor, are all plausible explanations for why a report cannot be reconciled.

New Vision has been the system utilized by the Clerk's Office for many years and through many prior administrations. It is a complex system which previous Clerks have declined to change due to the inherent difficulty in implementing a new system. The high turnover of cashiers in the Clerk's Office only adds to the difficulty in such an attempt.

Nevertheless, the Clerk's Office has already begun looking to other County Clerks for alternative systems. In addition, the Clerk's Office is in the process of engaging with New Vision to arrange for enhanced training of our cashiers and managers regarding usage of their system and reporting, and will ensure that this knowledge is shared with the Comptroller to ensure reports provided by the Clerk's office can be easily reviewed and reconciled. If necessary, the Clerk will ensure that New Vision create new reports to ensure reports generated meet the requirements of both the Clerk's office and the Comptroller's office.

The Clerk's Office will continue to work with New Vision in the interim but will be issuing an RFP for the services currently provided by New Vision, as their contract with Erie County will expire on December 31, 2023.

- *Finding #3: Certain County revenue totals were never collected by the Clerk's Office, nor remitted to the County as revenue.*

CLERK RESPONSE:

Admits in part. As this Finding points out, no entity, including the administration of the Eighth Judicial District, several departments of the NYS Comptroller's Office, the NYS Department of Treasury, and OCA's administrative headquarters in Albany was ever able to produce the fee breakdown which guides County Clerks in executing their statutory duty, despite being requested by the Comptroller's Office. If the Comptroller's Office could not verify the fee breakdown guidance, it is questionable how the Comptroller's Office could conclude there is even an issue at the Clerk's Office on this matter.

This is clearly a larger issue that extends beyond the Erie County Clerk's Office and affects the entire State. The Clerk's Office welcomes additional guidance from any of these entities on fee breakdowns, and intends to meet with the Chief Judge to discuss fee breakdown guidance and will present this issue to the New York State County Clerk's Association.

In addition, the Clerk's Office has already been conducting the process of verifying and documenting specific legal authority to collect all current fees, including working with OCA on court fees due to Erie County. Calculation of fees and legal authority to collect will be reviewed on an annual basis and made available to the public on the Clerk's website and in paper form.

- *Finding #4: Clerk's Office is not reconciling daily court e-file credit card payments to the Clerk's M&T Concentration account.*

CLERK RESPONSE:

The Clerk's Office concurs with the recommendation to perform monthly reconciliations for deposits from Merchant Services (MS) and American Express (AMEX) to ensure all revenue transactions through the e-file system are accurately reported in New Vision and deposited into the Clerk's Concentration bank account. Unfortunately, the Global e-file Statement received from the Courts for NYSCEF fees does not separate the MS and AMEX deposits. The Clerk's Office's New Vision software predates the creation of NYSCEF and mandatory e-filing in Erie County.

The Clerk's Office submitted this Finding to New Vision (now known as Catalis) for a direct analysis. A copy of New Vision's report is attached to our Response as Exhibit B.

Comment #1: Proper signatures missing from County of Erie Bank Deposit Transmittals (BDT).

CLERK RESPONSE:

The Clerk's Office concurs with the recommendation for a written process to verify that the information contained in the monthly bank deposit transmittal is true and accurate. A procedures document has been prepared for this purpose. The Clerk's Office also concurs with the recommendation to ensure that the proper authorizing signatures are on the bank deposit transmittal prior to transmittal. However, it should be noted in the one instance where the Depositor's signature was missing on the transmittal (June 2022), the deposit was made by ACH transfer by the Depositor himself based on the transmittal prepared by him and approved by the Approver.

Mortgage Tax:

- *Finding #1: The Clerk's Office did not withhold the proper amount of mortgage expense prior to remitting the revenue to the Comptroller's Office.*

CLERK RESPONSE:

No response is being given at this time due to this issue being outside the scope of the initial audit and now the subject of a subsequent audit.

- *Finding #2: The Erie County Comptroller's Office approved the monthly Statement of Mortgages Recorded without verifying the accuracy of mortgage expense deducted based on the approved budget amount.*

CLERK RESPONSE:

The Clerk's Office concurs with this Finding and recommendation to the extent it is directed to the Comptroller's Office. It is troubling that the Comptroller's Office would include a Finding *against itself* on the issue of mortgage tax, particularly in light of the fact that mortgage tax was not originally purported to be part of the initial Audit.

There has not been a full audit of the Clerk's Office by the Comptroller's Office in the last twenty (20) years, and the second that one is performed, an issue is found with the Comptroller's Office that certainly calls into question the objectivity of that office on this issue.

In pertinent part, Chapter 3 of the Generally Accepted Government Auditing Standards ("GAGAS"), which the Comptroller states was followed in conducting the Audit, reads as follows:

Objectivity (3.11)

Auditors' objectivity in discharging their professional responsibilities is the basis for the credibility of auditing in the government sector. Objectivity includes independence of mind and appearance when conducting engagements, maintaining an attitude of impartiality, having intellectual honesty, and being free of conflicts of interest.

Nevertheless, the Clerk's Office notes that it was not previously asked to provide any supporting documentation along with the Statement of Mortgages Recorded to the Comptroller's Office. The Clerk's Office intends to provide the MT-3 Form to the Comptroller's Office at the beginning of the year so that the Comptroller knows what expenses have been approved for the next 12 months. At the request of the Comptroller's Office, a report will be provided of the monthly reconciliation of mortgage tax collected.

- ***Finding #3: Escrow Accounts held by the Clerk's Office are co-mingled with County funds in the Clerk's Office M&T Concentration bank account.***

CLERK RESPONSE:

The Clerk's Office has offered this escrow service for several years as a convenience and benefit to customers who do frequent business with the Clerk's Office, such as The Buffalo News. If frequent customers were required to pay each time by charge card there would be additional fees incurred by the customer, possibly deterring future business.

The escrow service is publicized on the Clerk's website. However, until this Audit, at no time has the Clerk's Office been advised of the need to create a separate account to hold these funds. The Finding states that the Comptroller's Office was "not aware of any escrow funds being held by the Clerk's Office nor does the Auditee use the County accounting system to record, collect or distribute escrow funds." The Comptroller's Office would have known, or should have known, whether the Clerk's Office had a separate escrow account established as the current policy is for the Comptroller to be immediately informed of the creation of any new bank account. In addition, since May 2023, the Comptroller has also had read-only access of the Clerk's bank accounts, or access to monthly bank statements. Further, the Comptroller's Office knows that the Clerk's Office is not on SAP (the County accounting system).

Customers must keep the escrow account open for a minimum of two (2) months, not six (6) months as stated in the Finding. The administrative requirements of having to establish a separate account, transfer funds to the Concentration account, and utilize SAP for tracking of funds may be too burdensome to continue this service and this will be further explored and in particular, since the Clerk's Office is not on SAP. If the Clerk's Office is able to utilize SAP, additional training of staff will be required. Escrow companies often charge fees for managing multiple escrow clients under one account given the time and labor it takes to properly service the account. These fees cannot be imposed by the Clerk's Office.

The Clerk's Office utilizes New Vision as its cashiering and recording system and for the production of the reports used regarding escrow fund activity. Because the current contract with New Vision expires on December 31, 2023, and an RFP will be issued, it is unknown whether a new contractor would even be able to support escrow account activity. If the escrow accounts can be supported without incurring too much time or resources to maintain, the Clerk's office will maintain the escrow account service and establish a separate bank account. The recommendation that the Clerk's Office utilize SAP for tracking is contingent on whether the business of the Clerk's Office can adequately be supported by SAP.

- *Finding #4: Conflicting Amounts of Mortgage Tax Collected on NewVision Cash Code Summary Report and the Monthly Statement of Mortgages Recorded.*

CLERK RESPONSE:

This Finding appears to be directed more at New Vision than the Clerk's Office. As such, the Clerk's Office submitted this Finding to New Vision for a direct analysis, attached hereto as Exhibit B.

No further response is being given at this time due to this issue being outside the scope of the initial audit and now the subject of a subsequent audit.

- *Comment #1: Clerk's Office unable to verify its annual mortgage tax expenses.*

CLERK RESPONSE:

No response is being given at this time due to this issue being outside the scope of the initial audit and now the subject of a subsequent audit.

Other Findings, Comments & Recommendations:

- ***Finding #1: Detailed revenue reports generated by NewVision and used by the Clerk's Office to reconcile the revenues collected by the Clerk's Office are inconsistent with Clerk's Office reports.***

CLERK RESPONSE:

Due to the ongoing investigation, the Clerk's Office cannot fully respond to this Finding.

As to New Vision, it is noted that the inability of the Auditor to reconcile daily or monthly reports is problematic, but does not logically warrant a conclusion that said inability is because the data and/or reports in New Vision is inaccurate.

To properly analyze reports, one must understand the purpose of the report and where the information contained in the report is derived. An accurate report that is misinterpreted, used for the wrong purpose, or which is reconciled improperly by an auditor, are all plausible explanations for why a report cannot be reconciled.

New Vision has been the system utilized by the Clerk's Office for many years and through many prior administrations. It is a complex system which previous Clerks have declined to change due to the inherent difficulty in implementing a new system. The high turnover of cashiers in the Clerk's Office only adds to the difficulty in such an attempt.

Nevertheless, the Clerk's Office has already begun looking to other County Clerks for alternative systems. In addition, the Clerk's Office is in the process of engaging with New Vision to arrange for enhanced training of our cashiers and managers regarding usage of their system and reporting, and will ensure that this knowledge is shared with the Comptroller to ensure reports provided by the Clerk's office can be easily reviewed and reconciled. If necessary, the Clerk will ensure that New Vision create new reports to ensure reports generated meet the requirements of both the Clerk's office and the Comptroller's office.

The Clerk's Office will continue to work with New Vision in the interim but will be issuing an RFP for the services currently provided by New Vision, as their contract with Erie County will expire on December 31, 2023.

- *Finding #2: Corporate filing and notary fees post in SAP but are not recognized as revenue in Erie County Clerk's Office NewVision system.*

CLERK RESPONSE:

The Clerk's Office agrees with the recommendation to develop a process to recognize this revenue in the New Vision receipting system to provide accurate accounting of all revenues collected.

New Vision has been the system utilized by the Clerk's Office for many years and through many prior administrations. It is a complex system which previous Clerks have declined to change due to the inherent difficulty in implementing a new system. The high turnover of cashiers in the Clerk's Office only adds to the difficulty in such an attempt.

Nevertheless, the Clerk's Office has already begun looking to other County Clerks for alternative systems. In addition, the Clerk's Office is in the process of engaging with New Vision to arrange for enhanced training of our cashiers and managers regarding usage of their system and reporting, and will ensure that this knowledge is shared with the Comptroller to ensure reports provided by the Clerk's office can be easily reviewed and reconciled. If necessary, the Clerk will ensure that New Vision create new reports to ensure reports generated meet the requirements of both the Clerk's office and the Comptroller's office.

The Clerk's Office will continue to work with New Vision in the interim but will be issuing an RFP for the services currently provided by New Vision, as their contract with Erie County will expire on December 31, 2023.

- *Comment #1: Clerk's Office charges for bulk data and internet usage fees that were not authorized by the County Legislature.*

CLERK RESPONSE:

Denies. As an initial note- there is no "Exhibit X" to the Audit as referred to in this Comment.

There are longstanding Local Laws enacted by the Legislature for the lease of bulk space by the Clerk's Office. Specifically, Local Law No. 9 (1978) and Local Law No. 5 (1987) provide for the charging of "fair consideration", to be calculated by factors including "the cost of the County to construct and maintain such space, the fair rental value of similar property, and the benefit to be derived by the County and its residents."

The Clerk's Office relied upon said prior authorization and custom in leasing said space.

Some data fees include:

- **\$500 a month for Unlimited Image Searches**
- **\$35 for 1-12 months of data in Excel format (for example, the Buffalo News purchases each previous month's Deed index data for \$35.00)**
- **\$300 for 1 month of Images**

As previously stated, the Clerk's Office has already begun verifying and documenting specific legal authority to collect all current fees. Calculation of fees and legal authority to collect will be reviewed on an annual basis.

Delays:

- *Multiple documents and information not submitted.*

CLERK RESPONSE:

Denies. The Clerk's Office endeavored to comply with the Auditing team and their multiple requests for documentation and/or reports, which in some cases needed to be generated through New Vision and/or other outside entities that took time to produce. That time was out of the control of the Clerk's Office and in no way was an attempt to delay or hinder the audit process. The Clerk's Office is in full cooperation with the Comptroller's Office on the second Audit and in the overall objective of improving the operations of the Clerk's Office for the benefit of Erie County.

Limited Access to New Vision:

- Recommended that Erie County's Division of Budget and Management and Erie County Clerk's Office work together for alternative solutions for receipting, documenting, and reporting of County revenues generated through Clerk's office.

CLERK RESPONSE:

Concur as to the Clerk's Office working together with Erie County's Division of Budget and Management for improving all aspects of revenue reporting.

Due to the ongoing investigation, the Clerk's Office cannot fully respond to this Finding.

As to New Vision, it is noted that the inability of the Auditor to reconcile daily or monthly reports is problematic, but does not logically warrant a conclusion that said inability is because the data and/or reports in New Vision is inaccurate.

To properly analyze reports, one must understand the purpose of the report and where the information contained in the report is derived. An accurate report that is misinterpreted, used for the wrong purpose, or which is reconciled improperly by an auditor, are all plausible explanations for why a report cannot be reconciled.

New Vision has been the system utilized by the Clerk's Office for many years and through many prior administrations. It is a complex system which previous Clerks have declined to change due to the inherent difficulty in implementing a new system. The high turnover of cashiers in the Clerk's Office only adds to the difficulty in such an attempt.

Nevertheless, the Clerk's Office has already begun looking to other County Clerks for alternative systems. In addition, the Clerk's Office is in the process of engaging with New Vision to arrange for enhanced training of our cashiers and managers regarding usage of their system and reporting, and will ensure that this knowledge is shared with the Comptroller to ensure reports provided by the Clerk's office can be easily reviewed and reconciled. If necessary, the Clerk will ensure that New Vision create new reports to ensure reports generated meet the requirements of both the Clerk's office and the Comptroller's office.

The Clerk's Office will continue to work with New Vision in the interim but will be issuing an RFP for the services currently provided by New Vision, as their contract with Erie County will expire on December 31, 2023.

In theory, the Clerk's Office can work with New Vision to program a transfer of generated revenue that can be automatically handed off to a designated accounting system.

EXHIBIT “A”

DATA SHEET (2022)

Registrar Transactions

Total Number of Transactions Processed:	196,466
Number of “Waived” ¹ Transactions:	23,467 (12%)
Number of “Revised” Transactions:	417 (0.21%)
Number of “Voided” Transactions:	102 (0.05%)
Number of Checks Returned (Insufficient Funds):	43 (0.02%)

Pistol Permits

Total Number of Receipts Processed:	15,412
Number of “Voided” Receipts:	5 (0.03%)
Total Number of Pistol Permit Applications Processed:	4,757
Number of “Waived” Application Fees (\$20 each):	7 (0.15%)

Bulk Data/Internet Usage

Unlimited Image Search Fee Per Month:	\$500
Fee for 1-12 Months of Data in Excel:	\$35
Fee for 1 Month of Images:	\$300

¹ Fees are waived on a case by case basis, and there are multiple reasons for doing so, including statutory authority found in the New York Civil Practice Law & Rules (“CPLR”) and the New York Penal Law. For example, CPLR § 8021(c)(9) states that “no fee shall be charged to any county officer, employee or institution required to file or record any instrument in connection with the official duties thereof, or to any public official in connection with the filing of his undertaking.” These recordings/transactions are completely logged in our system when done and can be reviewed by management at any time.

EXHIBIT “B”

Catalis (NewVision) Response



**Catalis (NewVision) Response to Erie County Comptroller's Office
Audit of Erie County Clerk's Office**

August 31, 2023

Table of Contents

Background	39
Comptroller's Identified Significant Control Weaknesses	40
Comptroller's Material Weakness #1: Daily Fee Deposits Reconciliation Discrepancies	40
Comptroller's Identified Report Reconciliation Issues	42
Comptroller's Finding #1: Report Reconciliation Issue : Pistol	42
Comptroller's Finding #2: Report Reconciliation Issue : Court Fees.....	42
Comptroller's Finding #3: Report Reconciliation Issue : Mortgage Tax Report.....	43
Comptroller's Finding #4: Report Reconciliation Issue: Daily Fee Deposit	43
Comptroller's Findings & Recommendations	44
Comptroller's Finding #2: Pistol Permit Reports not Reconciling.....	44
Comptroller's Finding #3: Overcharging (Various).....	44
Comptroller's Finding #4: Voiding Pistol Permit Fees & Subsequent Report Discrepancies	45
Comptroller's Finding #5: Internal & System Control Deficiencies.....	45
Court Fees	46
Comptroller's Finding #1: Conflicting Amounts on Daily & Monthly Court Fee Reports	46
Comptroller's Finding #2: UCR Report Does Not Reconcile.....	47
Comptroller's Finding #4: Not Reconciling E-file CC Payments to Clerk's M&T Concentration Account	47
Mortgage Tax	48
Comptroller's Finding #4: Mortgage Tax Collected Conflicts with Multiple Reports	48
Other Comptroller's Findings, Comments & Recommendations	49
Comptroller's Finding #1: NewVision Revenue Reports Inconsistent with Clerk's Office Reports	49
Comptroller's Finding #2: Corporate Filing & Notary Fees Not Recognized as Revenue	49

Background

Many of the discrepancies in reports seem to stem from a (previous) lack of clarity over the receipt void/revision system. Since March, 2013, the Erie County Clerk's Office has used a receipt void/revision setting different from other installs in the state. Clerk's Office staff cannot confirm the reason for switching to these differing settings (they speculate in response to a previous audit). New versions of reports that factor in this information, as well as a retraining session focusing on the "chain of receipt," will be helpful. See below for information on this void/revision setup.

In a default setup:

- A receipt has a trans_hdr.void value of null by default.
- If the receipt is revised, that original receipt gains a void value of 'V' while a new receipt is created with the changes and a void value of 'R'.
- If a receipt is voided, that original receipt gains a void value of 'V,' and no new receipt is generated.

In Erie County's setup:

- A receipt has a trans_hdr.void value of null by default.
- If the receipt is revised, that original receipt gains a void value of 'C' (nicknamed "Corrected") while a new receipt is created with an inverse (negative) amount counterbalancing the original receipt and a void value of 'R' (nicknamed "Revision"). Finally, a third receipt is created with a transaction number one greater than the previously mentioned 'R' receipt; this third receipt reflects the changes and has a void value of null.
 - Example: If Receipt 123 with a total of 20.00 is later revised to be 30.00. Receipt 123 will be marked 'C,' and a new receipt 174 is created with a void value of 'R' and a total of -20.00. Finally, a new receipt 175 is created with a void value of null and an amount of 30.00.
- If a receipt is voided, that original receipt gains a void value of 'C' while a new receipt is created with an inverse (negative) amount counterbalancing the original receipt and a void value of 'R'.

Comptroller's Identified Significant Control Weaknesses

Comptroller's Material Weakness #1: Daily Fee Deposits Reconciliation Discrepancies

The NewVision Daily Fee Deposit reports used by Auditee for daily close-out procedures and to compile cash and check receipts are calculating inconsistent totals for individual user and daily totals.

Daily Fee Deposit- Erie County, New York					Page :1 of 1
From 12/01/2022 To 12/01/2022					ALL LOCATIONS
Report Date: 12/01/2022 04:51:13 PM					ALL USERS
					GROUP:01104C7
User ID	Count	Net Cash	Check	Check + Cash	
[REDACTED]	8	0.00	15,324.00	15,324.00	✓
[REDACTED]	31	190.00	19,029.50	19,219.50	✓
[REDACTED]	10	0.00	23,352.00	23,352.00	✓
[REDACTED]	39	19.20	909.00	928.20	✓
[REDACTED]	21	0.00	0.00	0.00	
[REDACTED]	5	0.00	0.00	0.00	
[REDACTED]	2	0.00	0.00	0.00	
[REDACTED]	41	218.00	377.00	595.00	✓
[REDACTED]	22	1,880.00	71,372.00	73,032.00	✓
[REDACTED]	43	0.00	0.00	0.00	
[REDACTED]	10	0.00	15,401.50	15,401.50	✓
[REDACTED]	12	0.00	500.00	720.65	✓
[REDACTED]	20	10.00	40,527.18	40,537.18	✓
[REDACTED]	11	37.80	10.00	47.80	✓
[REDACTED]	19	0.00	18,808.50	18,808.50	✓
[REDACTED]	5	0.00	0.00	0.00	
[REDACTED]	25	8.00	0.00	8.00	✓
[REDACTED]	1	0.00	0.00	0.00	
[REDACTED]	23	0.00	0.00	0.00	
[REDACTED]	26	80.00	41,074.58	41,154.58	✓
[REDACTED]	158	0.00	0.00	0.00	
[REDACTED]	15	3.00	80.00	83.00	✓
[REDACTED]	41	97.00	82.75	179.75	✓
[REDACTED]	4	5.00	0.00	5.00	✓
[REDACTED]	2	0.00	0.00	0.00	
[REDACTED]	143	0.00	0.00	0.00	
Total Receipts	733	2,327.80	244,825.97	246,869.62	

Daily Fee Deposit- Erie County, New York
 From 12/01/2022 To 12/01/2022
 Report Date: 12/02/2022 05:00:28 PM
 Page: 1
 ALL LOCATIONS
 ALL USERS
 Check 2019-01-01

User ID	Count	Net Cash	Check	Check + Cash
[REDACTED]	8	0.00	15,324.00	15,324.00 ✓
[REDACTED]	31	190.00	18,029.50	19,219.50 ✓
[REDACTED]	10	0.00	23,352.00	23,352.00 ✓
[REDACTED]	39	19.20	909.00	928.20 ✓
[REDACTED]	21	0.00	0.00	0.00
[REDACTED]	5	0.00	0.00	0.00
[REDACTED]	2	0.00	0.00	0.00
[REDACTED]	41	218.00	377.00	595.00 ✓
[REDACTED]	22	1,800.00	71,372.00	73,172.00 ✓
[REDACTED]	43	0.00	0.00	0.00
[REDACTED]	10	0.00	15,401.50	15,401.50 ✓
[REDACTED]	12	220.85	500.00	720.85 ✓
[REDACTED]	20	10.00	40,527.18	40,537.18 ✓
[REDACTED]	11	37.00	10.00	47.00 ✓
[REDACTED]	19	0.00	18,808.50	18,808.50 ✓
[REDACTED]	5	0.00	0.00	0.00
[REDACTED]	25	8.00	0.00	8.00 ✓
[REDACTED]	1	0.00	0.00	0.00
[REDACTED]	23	0.00	0.00	0.00
[REDACTED]	28	80.00	41,074.56	41,154.56 ✓
[REDACTED]	156	0.00	0.00	0.00
[REDACTED]	15	3.00	60.00	63.00 ✓
[REDACTED]	41	97.00	82.75	179.75 ✓
[REDACTED]	4	5.00	0.00	5.00 ✓
[REDACTED]	2	0.00	0.00	0.00
[REDACTED]	143	0.00	0.00	0.00
Total Receipts	733	2,649.85	244,625.97	247,275.82

Catalis Analysis:

The Daily Fee Deposit report only reflects the latest version of a receipt, such that the void flag is null. If a receipt is revised or voided, this will retroactively change the totals of the day of the original receipt.

Regarding the attached example, Catalis is unable to provide a satisfactory response for that missing value upon being initially run. The Cash + Checks field, which was correct in both versions of the report, pulls from the same data field as the Cash column. Therefore, it is most likely that the Cash column incorrectly displayed "0.00" due to a visual bug, meaning that while the back-end system calculation was correct, a system error/bug failed to show the accurate amount. The inaccuracies were not caused by any action by the County Clerk staff or any form of human interference.

Comptroller's Identified Report Reconciliation Issues

The majority of the financial reports generated from the NewVision system and given to the Auditors for testing purposes could not be reconciled.

Comptroller's Finding #1: Report Reconciliation Issue : Pistol

During testing, we found that the monthly NewVision Pistols Hunting Fishing report totals did not reconcile to the daily Fee Detail Pistol Permits report.

Catalis Analysis:

The “**Fee Detail Pistol Permits Report**” was a new report requested by County Clerk staff for the audit; the report was placed in the **TEST folder**. **Reports deployed to a Test folder are intended for testing purposes to validate all business rules, calculations, etc. Once – and only once – customers verify the report functions as designed, adheres to the defined business rules, and provides the expected outcomes - are they placed into Production for approved use.*

A flaw was detected in the report, which caused it to factor in “revision” (negative) receipts but not the original “corrected” receipt. This issue is fixed in a new version of the report, titled “FEE DETAIL PP V2”, which was provided to Erie County Clerk’s Office on August 15, 2023.

Comptroller's Finding #2: Report Reconciliation Issue : Court Fees

The monthly “Other County Fees for Cash Code Index No County\$25” did not reconcile to the daily Fee Details report for County25 (Court Fees).

Catalis Analysis:

This “**Daily Fee Details report for County25 (Court Fees)**” was a new report requested by County Clerk staff for the audit; the report was placed in the **TEST folder**. **Reports deployed to a Test folder are intended for testing purposes to validate all business rules, calculations, etc. Once – and only once – customers verify the report functions as designed, adheres to the defined business rules, and provides the expected outcomes - are they placed into Production for approved use.*

A flaw was detected which did not factor in the negative totals of a “Revision” receipt. This issue has been fixed in a new version of the report, titled “FEE DETAIL COUNTY 25 V2”, delivered to Erie County Clerk’s Office for testing on June 8, 2023.

Comptroller's Finding #3: Report Reconciliation Issue : Mortgage Tax Report

The monthly Mortgages on Hold Summary report, and the monthly Cash Code Summary report for Mortgage Tax (Additional, Basic, NFTA, SONYMA and Expense) did not reconcile to the monthly Statement of Mortgages Recorded.

Catalis Analysis:

This discrepancy is at least partially related to voids/revisions, with the RECORDING-MONTHLY DOC COUNT report incorrectly factoring in multiple versions of a receipt instead of only the latest + unvoided receipts, hence inflating the count for documents.

This issue was resolved on July 7, 2023.

Comptroller's Finding #4: Report Reconciliation Issue: Daily Fee Deposit

Most significantly, the report titled Daily Fee Deposit, which the Clerk uses to perform daily close-out operations, reports for the same time period but with different run dates, resulted in varying deposit amounts. The vast majority of amount variances discovered pertained to net cash. The Auditee provided additional transaction detail that again did not reconcile to the Daily Fee Deposit totals or the bank deposits. The Erie County Clerk's Office should ensure that transactions for a given time period have been processed, that they are accurate in amount, that they are recorded within the appropriate accounting period and that individual or groups of transactions have not been omitted or misdirected. Each recommendation is based on the County of Erie Internal Controls Policy.

Catalis Analysis:

The Daily Fee Deposit report only reflects the latest version of a receipt, such that the void flag is null. If a receipt is revised or voided, this will retroactively change the totals of the day of the original receipt.

Comptroller's Findings & Recommendations

Comptroller's Finding #2: Pistol Permit Reports not Reconciling

Daily and monthly NewVision reports for recording and receipting pistol permits had conflicting amounts and did not reconcile.

The Auditee provided the Auditors with NewVision daily pistol permit fee detail reports and monthly pistol permit fees transmitted which included County and State hunting and fishing licenses for January through December of 2022. The Auditor tested daily pistol permit fee activity totals to the monthly totals for all transactions from January 2022 through December 2022. The NewVision daily activity totals did not reconcile to the monthly total for any of the months tested. The Auditee stated that the NewVision daily fee reports were new, and he was not aware of the differences between the reports.

Catalis Analysis:

The "Fee Detail Pistol Permits Report" was a new report requested by County Clerk staff for the audit; the report was placed in the **TEST** folder. **Reports deployed to a Test folder are intended for testing purposes to validate all business rules, calculations, etc. Once – and only once – customers verify the report functions as designed, adheres to the defined business rules, and provides the expected outcomes - are they placed into Production for approved use.*

A flaw was detected in the report which caused it to factor in "revision" (negative) receipts, but not the original "corrected" receipt. This issue has been fixed in a new version of the report, titled "FEE DETAIL PP V2", provided to Erie County Clerk's Office on August 15, 2023.

Comptroller's Finding #3: Overcharging (Various)

The Clerk's Office is overcharging for the initial pistol permit application, changes from paper to plastic, inter-county transfers and various amendments. [per the New York State and County Legislative allotted pistol permit fee amounts.

Catalis Analysis:

Based on the description provided by the Comptroller's Office, the fee amounts are correct, but the issue is that the **quantity of those fees can be increased by the recorder**. Outliers 22139962 and 22139966 do not appear to be related to any report issues, and those transactions were entered that way by the recorder (and they would likely have more information).

When a user selects these fees, they are prompted to enter a "QUANTITY" box. (see below). It is possible to remove this quantity option, such that adding multiples of the same fee would become more difficult.

\$ Add Service Fee

Fee Code: (F1 to Lookup) ☒ Add As Separate Item

PISTOL PERM \$ 2 PLASTIC CARD

ENTER NUMBER OF \$2 PROCESSING FEES:

QUANTITY:

OK Cancel

Comptroller's Finding #4: Voiding Pistol Permit Fees & Subsequent Report Discrepancies

The process for voiding pistol permit fees results in flawed calculations for monthly totals and causes discrepancies in cash and the reporting of pistol permit revenue in NewVision system.

When a pistol permit cashier voids a receipt transaction in NewVision, the system removes the initial amount and receipt number. The entire transaction is not reported in the daily total; however, when the cashier voids that transaction it creates a new receipt number, and the voided amount is deducted from the daily total. This flaw presents a shortage in the daily total when there should have been no change in the daily total. If the transaction is not resubmitted, the flaw presents an inaccurate revenue total.

Catalis Analysis:

This may represent a misunderstanding of the void process. When voiding a receipt, the system neither removes the initial amount nor the receipt number. This confusion may come from filtering, in which certain reports only display the most recent version of un-voided documents.

The figure depicts the "FEE DETAIL PP" report. A flaw was detected in this report which caused it to factor in "revision" (negative) receipts but not the original "corrected" receipt. This issue is fixed in a new version of the report, titled "FEE DETAIL PP V2", provided to Erie County Clerk's Office on August 15, 2023.

Comptroller's Finding #5: Internal & System Control Deficiencies

The County Clerk's Office lacks adequate internal and systems controls protecting the fee collection process within the pistol permit division.

The discrepancies resulting from reconciliation failure and siloed systems create a significant opportunity for fraud. Auditors recommend that the Clerk's Office work with the NewVision, Gun Keeper, and BatchScan software providers to facilitate the interface connection of such systems. Until this occurs, the internal and system controls will remain inadequate, and the Clerk's Office

will be unable to reliably reconcile pistol permit fees. In the alternative, the Clerk's Office should assess NewVision and the system's ability to meet the specific needs of the Clerk's Office in providing adequate and reliable financial reporting.

Catalis Analysis:

RecordsNG does not currently provide an interface with third-party software Gun Keeper or BatchScan (nor have such integrations been previously requested).

Potential interface/integrations with third-party systems require in-depth technical discussions with each third-party vendor to determine which data fields would be involved, complexity of integration (i.e., one-way or bi-directional data flow), data schema, data mapping, etc. Based on the findings from those discussions, a detailed Scope of Work can be presented with a cost estimate for each requested integration. Catalis/NewVision cannot presently commit to any potential development delivery schedule based on current development backlog commitments and resource allocation.

Court Fees

Comptroller's Finding #1: Conflicting Amounts on Daily & Monthly Court Fee Reports

Daily and monthly NewVision reports for recording and receipting court fees had conflicting amounts and did not reconcile.

During testing, the Auditor found that the NewVision Fee Detail County-25 reports for recording court fees did not reconcile to the NewVision monthly reports. The Auditors tested daily court fee transaction totals to monthly report totals for all transactions occurring between January 2022 and December 2022. Eleven out of the twelve months tested did not reconcile to the daily totals.

Catalis Analysis:

This "Daily Fee Details report for County25 (Court Fees)" was a new report requested by County Clerk staff for the audit; the report was placed in the **TEST** folder. **Reports deployed to a Test folder are intended for testing purposes to validate all business rules, calculations, etc. Once – and only once – customers verify the report functions as designed, adheres to the defined business rules, and provides the expected outcomes - are they placed into Production for approved use.*

A flaw was detected which did not factor in the negative totals of a "Revision" receipt. This issue is fixed in a new version of the report, titled "FEE DETAIL COUNTY 25 V2", delivered to Erie County Clerk's Office for testing on June 8, 2023.

Comptroller's Finding #2: UCR Report Does Not Reconcile

The Unified Court System - Office of Budget & Finance (UCR) report does not reconcile to the monthly 4-Court Report generated by NewVision.

The Unified Court Report (UCR) is a standardized administrative report that OCA requires County Clerks to complete for record, accounting, and budgetary purposes. The 4-Court Report is the mechanism by which the Auditee prepares the Unified Court Report. However, the Auditor noted that the 4-Court Report does not reconcile with the UCR. By virtue of this fact alone, the Auditor found that the financial information delivered to the Unified Court System was inaccurate.

Catalis Analysis:

Both the Cash Code Summary Report and the 4-Court Report are filtered in the same way to include all versions of a receipt. However, while the Cash Code Summary Report lists all fees received grouped by GL number, the 4-Court report is filtered only to show the following fee codes: (17,805,807,809,811,815,817,818,854,855,889,894,895,929).

Comptroller's Finding #4: Not Reconciling E-file CC Payments to Clerk's M&T Concentration Account

The Clerk's Office is not reconciling daily court e-file credit card payments to the Clerk's M&T Concentration account.

The Auditor found that Am Ex and MS deposits were co-mingled in the Global E-File statement received from the Courts, preventing the Auditor from reconciling the Global Statement with the Clerk's M&T Concentration bank account. The Auditor made several requests for individual merchant service provider statements; however, the Auditor was given the Court E-File Global Payments Charge Statements which could not be reconciled to the Clerk's Office Concentration bank account deposits to the daily NewVision Fee Details report for County25. The Auditee couldn't provide adequate information to reconcile the fees processed by these two providers. To meet the proper testing standard, the Auditor needed to attempt a line-by-line reconciliation with the documentation provided but was ultimately unable to do so. The Auditor noted one primary - but not exclusive - cause for the reconciliation failure. While testing the Auditor found that every time a transaction involving the generation of index numbers was voided, the report provided by the Clerk's Office showed that the NewVision system doubled the amount of the void. This systemic flaw was found to contribute to the differences in daily and monthly court fee totals. The Auditor provided an example of the conflicting reports to the Auditee and the NewVision representatives for further investigation.

Catalis Analysis:

These payments are recorded as transactions by staff with "JV" as the payment type under the Court E-File Global Payments account.

The report discrepancies mentioned appear to be related to "FEE DETAIL COUNTY 25". A flaw was detected which did not factor in the negative totals of a "Revision" receipt. This issue is fixed in a new version of the report, titled "FEE DETAIL COUNTY 25 V2", delivered to Erie County Clerk's Office for testing on June 8, 2023.

Mortgage Tax

Comptroller's Finding #4: Mortgage Tax Collected Conflicts with Multiple Reports

Conflicting Amounts of Mortgage Tax Collected on NewVision Cash Code Summary Report and the Monthly Statement of Mortgages Recorded.

During testing of mortgage tax expenses, the Auditor found variants in the monthly mortgage tax revenue amounts for Additional, Basic, NFTA, and SONYMA tax that was different from the monthly statement of mortgages recorded. Due to mortgage tax revenue is outside the scope of this audit, the Auditor expanded the scope of the 11A sample escrow agreement is attached as Exhibit K. 25 audit and separated the issue herein described from the initial audit. The scope was expanded to include mortgage tax distributions of mortgage tax revenues. A letter sent to the Clerk's Office on May 4, 2023, described the expansion and separation of audits. The expanded audit will commence on the conclusion of this audit.

Catalis Analysis:

While the Cash Code Summary Report and the Basic Tax Summary - C Report are filtered in the same way to include all versions of a receipt, a flaw was found with the third report referenced, RECORDING-MONTHLY DOC COUNT. This report accidentally counted extra receipts from revisions instead of only the latest + unvoided receipts, hence inflating the count for documents.

This flaw was discovered by County Clerk staff and has been fixed as of July 7, 2023.

Other Comptroller's Findings, Comments & Recommendations

Comptroller's Finding #1: NewVision Revenue Reports Inconsistent with Clerk's Office Reports

Detailed revenue reports generated by NewVision and used by the Clerk's Office to reconcile the revenues collected by the Clerk's Office are inconsistent with Clerk's Office reports.

The Auditor requested a report of all monthly revenues collected used to reconcile the revenues recorded and distributed. The Auditee provided a NewVision Cash Code Summary-State-NG report that detailed the individual breakdown of fees collected. After reviewing this report, it was found that not all revenues reconciled to the report. The Auditor requested additional supporting documentation to verify the variances; however, the information was not provided. The Auditor also noted that eight G/L numbers on the report where Auditors needed further information to identify what the dollar amounts reported therein represent. Several requests were made to the Auditee to verify what these dollar amounts represent; however, Auditee was unable to verify the revenue source. In addition, same request was made to NewVision, no response was received.

Catalis Analysis:

Previous correspondence with Erie County Clerk's Office provided descriptors for some of the 8 GL numbers. These descriptions have been copied here for reference:

Comptroller's Finding #2: Corporate Filing & Notary Fees Not Recognized as Revenue

Corporate filing and notary fees are posted in SAP but are not recognized as revenue in Erie County Clerk's Office NewVision system.

During the attempt to reconcile the Clerk's Concentration bank account to NewVision Cash Code Summary-State-NG report, the Auditor noted that both corporate filing and notary fees were received via ACH from New York State into the County's M&T account and then posted by the Comptroller's Office to the Clerk's G/L number 415150. Auditor discussed this with Auditee, and they were unaware that the revenue was being posted to the Clerk's Office G/L under recording fees.

Catalis Analysis:

These figures can be tracked with existing functionality. By working with the Erie County Clerk's Office, and adding these figures as service fees, we can design a workflow where staff members enter these transactions with "ACH" as the payment type. These figures would then appear on existing reports without any additional changes.

Exhibit “C”: Audit of Erie County Law Department June 2023

June 2023

**Audit of the Erie County Department of Law
Contract Expenditures for Indigent Services
January 1, 2022, through December 31, 2022**



**KEVIN R. HARDWICK
ERIE COUNTY COMPTROLLER**

**HON. KEVIN R. HARDWICK
ERIE COUNTY COMPTROLLER'S OFFICE
DIVISION OF AUDIT & CONTROL
95 FRANKLIN STREET
BUFFALO, NEW YORK 14202**



June 29, 2023

Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Dear Honorable Members:

The Erie County Comptroller's Office, Division of Audit has completed an audit of the Erie County Department of Law's Indigent Services Contract Expenditures for the period of January 1, 2022, through December 31, 2022.

The Auditor's objectives were to test and evaluate the expenditure transactions in the operating budget and evaluate the internal controls concerning said transactions.

The scope of the audit included testing and evaluation of expenditure transactions with internal controls relevant to County policies, contracts, and New York State statutory and regulatory authority.

The management of the Department of Law (Law Department) is responsible for establishing and maintaining a system of internal controls. The objectives of such a system are to provide management with reasonable, but not absolute assurance that transactions are properly recorded and executed in accordance with authorization. Due to the inherent limitations in the system of internal controls, errors or irregularities could occur and may not be detected.

The Division of Audit's responsibility is to express an opinion based on the audit. The Auditor conducted this audit in accordance with the generally accepted Government Auditing Standards (GAO or Yellow Book). Those standards require the Auditor to plan and perform the audit in a manner that is designed to obtain sufficient, appropriate evidence that will provide a reasonable basis for the results of the audit and conclusions based on stated audit objectives. The Division of Audit believes that based on the audit objectives, the evidence obtained provides a reasonable basis for the results and comments contained herein.

Opinion

In the Auditor's opinion, the internal controls over the expenditure transactions and internal controls relevant to policies, contracts and New York State regulations are adequately designed but are not universally adhered to.

No other specific matters adversely affecting compliance and procedures came to the Auditor's attention. The audit was conducted for the purposes previously discussed and would not necessarily disclose all instances of noncompliance with respect to areas of operations not audited.

BACKGROUND

The Department of Law consists of three major practice areas - Litigation, Transactional and Family Court. The Indigent Defense Program, funded in the Law Department cost center 16010, fund 110, provides legal services to individuals participating in certain legal proceedings in Erie County Courts who are financially unable to retain an attorney to represent them in the matter. These proceedings include all criminal charges faced in Erie County Court, as well as certain matters handled by Erie County Family Court where the New York State Legislature has created a right to counsel. Indigent services strive to help those who are financially unable to help themselves, and who may struggle with poverty or mental health issues. The Law Department administers this program by entering into contractual relationships with two not-for-profit agencies qualified to provide indigent legal services. The two agencies currently contracted by Erie County are the Erie County Bar Association Aid to Indigent Prisoners Society, Inc. (ACP) and the Legal Aid Bureau of Buffalo, LLC. The former is an Assigned Counsel Program (ACP) governed by Article 18-B of New York County Law, while the latter is what is commonly known as an "institutional provider". Per Article 18-B, the contracts that Erie County has entered into with the ACP and LAB are an indispensable requirement. The resolution authorizing the County to enter into the aforementioned contracts was approved by the Erie County Legislature.

ACP and LAB were funded in the calendar year 2022 in the amounts of \$9.16 M and \$4.6 M respectively. Per the contracts, each agency was paid quarterly in four equal installments throughout the contract year based on invoices which required supporting documentation that would allow the Law Department, the Erie County Comptroller, the Erie County Division of Budget and Management (Budget & Management), and the New York State Department of Indigent Legal Services (ILS) to verify the accuracy of the amounts stated. This audit focused on contract payments relating to the Indigent Legal Services Program and how well the contractual parties adhered to the terms contained therein.

AUDIT RESULTS

All audit results were communicated to the Law Department during the course of the audit.

1. Erie County 2022 Indigent Defense Funding Application

Both LAB and ACP are required to abide by certain rules applicable to their respective legal structures. The *Standards for Establishing and Administering Assigned Council Programs* – a set of governing rules promulgated by ILS applicable to assigned counsel programs – requires ACP to prepare and submit a detailed budget for 2022 titled *Indigent Defense Funding Application* to the county funding authority, Budget & Management here, by September 10, 2021. LAB's reporting requirements are set by contractual and regulatory authority.

The Erie County 2022 *Indigent Defense Funding Applications* were obtained from both LAB and ACP dated September 10, 2021. This occurred after the Auditor requested copies of the 2022 Indigent Defense Funding Applications from both Budget & Management and the Law Department. However, neither entity could produce the 2022 *Indigent Defense Funding Applications* submitted by LAB and ACP.

The Auditor recommends that Budget & Management receive and maintain a copy of the *Indigent Defense Funding Applications* with documented approval of the budget submission before forwarding the approved budget to the Law Department prior to executing the contract for Indigent Legal Services.

2. Refund to Erie County of unused surplus monies for Indigent Legal Services

Contracts 22-96-LA and 22-97-LA, applicable to LAB and ACP, respectively, require those entities to refund all unused monies paid to them by Erie County for the prior fiscal year within 90 days of receiving their annual 2022 audit report.

For 2022, both LAB and ACP have not received their annual audit report from Certified Public Accountants as of June 12, 2023, the last day of fieldwork. The Auditor requested the 2021 calculation of unused surplus monies and evidence, documentary or otherwise, that any unused monies were returned to Erie County.

The total refund amount of \$161,302 was remitted to Erie County from ACP for 2021 and was properly recorded in SAP General Ledger Account #423000 Prior Year Refunds, Department of Law Cost Center BD160. This was supported in ACP's *Annual Audit Report - Notes to the Financial Statements* for 2021, and a copy of the cancelled check was examined. No exceptions or irregularities were noted.

In 2020 and 2021, LAB recorded surplus amounts of \$192,362 and \$362,778, respectively. These amounts, totaling \$555,140, should have been refunded to the County timely, but remain unpaid. These amounts are not supported by LAB's *Annual Audit Report - Notes to the Financial Statements* as requested in an email from the Director of Budget and Management to the Chief Financial Officer of LAB December 30, 2021.

An email from the Chief Financial Officer of LAB to the Erie County Budget Director dated April 14, 2023, disclosed a calculation of the unused surplus monies due Erie County for both 2021 and 2020. The Auditor discussed the calculation with the Chief Financial Officer of LAB on June 7, 2023, attesting the calculation was done based on records from prior calculations by the former CFO of LAB. Budget & Management has recorded these amounts in SAP General Ledger Account #423000 Prior Year Refunds, Department of Law Cost Center BD160.

The Auditor recommends that LAB have their Certified Public Accountants formally certify the calculation of unused surplus monies from LAB for 2020 and 2021.

In addition, the Auditor recommends that Budget & Management request a formal certification from LAB for 2022 and beyond containing future calculations of unused surplus monies to be documented in the *Annual Audit Report - Notes to the Financial Statements*, similar to the formal certification currently filed by ACP. The Auditor further recommends that any surplus moneys be refunded timely to prevent county funds from being at risk.

3. Approval for quarterly invoices submitted for payment

Quarterly invoices received from LAB and ACP were not approved by the Budget Director. Contracts with LAB #22-96-LA § 7 and ACP #22-97-LA § 9, stipulate "payments shall be made on invoices submitted to the County's Comptroller and approved by its Budget Director."

The Auditor recommends that the Law Department forward quarterly invoices to the Budget Director for documented approval and verification prior to submitting quarterly invoices to the Comptroller's Office for payment.

4. Supporting documentation for quarterly invoices submitted for payment

Quarterly invoices submitted for payment in 2022 by LAB totaling \$4,634,862 and the ACP totaling \$9,169,256 were approved for payment by the Law Department and paid by the Comptroller's Office without supporting documentation.

Per LAB's contract with the County, administrative costs that LAB incurs over the course of the year may not exceed 10% of the annual value of the full amount paid to LAB by the County. LAB did not submit supporting documentation to the Law Department for 2022 quarterly invoices until May 18, 2023. In addition, the calculated administrative expenses that LAB documented amount to exactly 10% of the invoice total submitted for the year 2022. However, no detail was provided to account for what the 2022 administrative expenses were comprised of.

ACP submitted supporting documentation for 2022 quarterly invoices but not until the following quarter, a 90-day lag after the invoice submission. Erie County Accounting Policy - Accounts Payable/Overview stipulates that transactions must have complete and accurate supporting documentation before the County disburses funds for payment of goods and/or services. Furthermore, the ILS standard for Assigned Council Programs requires ACP to submit records of expenditures to Budget & Management in accordance with laws and regulations.

The Auditor recommends that the Law Department consider revisiting the contracts with LAB and ACP to ensure the quarterly supporting documentation is submitted timely and that the supporting documentation provides detail for the Law Department in order to review and monitor the quarterly invoices for services rendered.

RESULTS OF EXIT CONFERENCE

An exit conference was held on June 21, 2023, with the Erie County Attorney, members of his staff, and the Deputy Budget Director. The draft audit report was reviewed and discussed. The Erie County Attorney and Deputy Budget Director were in general agreement with the audit report. The Erie County Attorney provided a written response to Audit findings 1, 2, 3 & 4.

The Erie County Comptroller's Office would like to thank the Erie County Attorney, the Budget Director, and their staff members for the courtesy extended to the Division of Audit during the course of the audit. The Erie County Comptroller's Office would also like to thank the Erie County Bar Association Aid to Indigent Prisoners Society, Inc. (ACP) and the Legal Aid Bureau of Buffalo, LLC for taking the time to meet with the Auditor and being transparent and responsive throughout the fieldwork and document acquisition stages of the audit.

ERIE COUNTY COMPTROLLER'S OFFICE

cc: Jeremy C. Toth, Erie County Attorney

Hon. Mark C. Poloncarz, Erie County Executive

Hon. Kevin R. Hardwick, Erie County Comptroller

Robert. W. Keating, Director, Division of Budget and Management

Erie County Fiscal Stability Authority

APPENDIX

Appendix A:

Audit Methodology

The goals of this audit were to test and evaluate the expenditure transactions in the operating budget for Erie County's Department of Law Contract Expenditures of Indigent Services for the period of January 1, 2022, through December 31, 2022.

The scope of the audit included testing internal controls relevant to County policies, contracts, and New York State regulatory and statutory authority.

To achieve these goals, the Auditor tested the eight expenditure transactions for Erie County Bar Association Aid to Indigent Prisoners Society, Inc. and Legal Aid Bureau of Buffalo, LLC. The eight transactions were funded in the calendar year 2022 by contracts in the amounts of \$9.16 M and \$4.6 M respectively. Each agency was paid quarterly in four equal installments throughout the contract year based on invoices and required supporting documentation per the contracts.

In addition, Internal Control Questionnaires were used to document discussions and procedures related to policy and procedures followed by the Department of Law to contract, process and record approved financial transactions in the accounting system ("SAP").

Tests of controls were designed, executed, and then reviewed for adequacy. Tests were performed by testing the entire population of 8 invoices transactions recorded in SAP and comparing them to documentation that included:

- 1) The Quarterly Invoices provided by Legal Aid (4) and EC Bar (4)
- 2) The approved Purchase Order/Encumbrance
- 3) The Goods/Invoice Receipts
- 4) Check Payments
- 5) The approved Contract stipulations with Legal Aid and EC Bar
- 6) Budget Submission and Approval process
- 7) Supporting documentation substantiating invoices received from Legal Aid and EC Bar
- 8) Financial Reports – Annual Audited Financial Statements from Legal Aid and EC Bar
- 9) Refund calculations for unused monies by Legal Aid and EC Bar

This evidence, taken as a whole, was used to form an opinion based on the audit objectives.

Appendix B: Auditee's Response to the Draft Audit Report



COUNTY OF ERIE

June 29, 2023

Hon. Kevin R. Hardwick, PhD
Erie County Comptroller
95 Franklin St, Floor 11
Buffalo, NY 14202

RE: Response to Draft Audit of Erie County Department of Law Contract Expenditures for Indigent Services January 1, 2022 through December 31, 2022

Dear Comptroller Hardwick:

The Erie County Department of Law (Law) writes to respond to Draft Audit of Erie County Department of Law Contract Expenditures for Indigent Services January 1, 2022 through December 31, 2022.

We thank you and your Audit Division for their thorough analysis and thoughtful recommendations related to the contractual relationships we maintain annually with the Erie County Bar Association Aid to Indigent Prisoners Society, Inc. for the Assigned Counsel Program (ACP) and the Legal Aid Bureau of Buffalo, LLC (LAB) for the provision of the Indigent Defense Program. As you know, the Department of Law has had a significant amount of employee turnover in the last year and with new Assistant County Attorney's in my office taking on new roles, this is an appropriate time to look at the Indigent Defense Program and both suggest and implement new policies related to the administration of these services.

Our responses follow the audit and use the same section titles.

Erie County 2022 Indigent Defense Funding Application

As noted, the Erie County Division of Budget and Management (Budget) provides both ACP and LAB with a funding application in conjunction with the County's annual budget process to be completed and submitted to Budget in early September and provide the basis for the budget requests submitted as part of Law's Proposed Budget.

While it is correct that neither Law nor Budget produced a copy of the 2022 Indigent Defense Funding Applications upon initial request it is our understanding that upon realization of the failure to meet this request, Budget immediately located and forwarded both the ACP and LAB applications (dated September 10, 2021) to Audit staff on June 15, 2023 in advance of the Exit Conference the following week.

Going forward, Budget has agreed to forward copies of both applications upon receipt to Law to maintain with all other records pertaining to the Indigent Defense Program.

Refund to Erie County of unused surplus monies for Indigent Legal Services

We concur with your recommendations that 1) LAB have their Certified Public Accountants formally certify the calculation of unused surplus monies from LAB for 2020 and 2021, 2) formal certification from LAB of deficit or surplus monies be documented in their Annual Audit Reports – Notes to the Financial Statements, and 3) deficit or surplus monies be paid to or refunded by LAB in a timely manner.

Approval for quarterly invoices submitted for payments

While all quarterly invoices received from ACP and LAB are attached to the Contract Encumbrances and visible to the Budget Director within SAP, going forward, Law will forward these quarterly invoices to the Budget Director for documented approval and verification prior to invoices being submitted to the Comptroller's Office for payment.

Supporting Documentation for quarterly invoices submitted for payment

We concur with your recommendation that ACP and LAB submit the quarterly supporting documentation in a timely fashion and that such documentation provides adequate detail of invoiced expenses. Law will review the current contracts and consider its own revisions (or any suggested by the Comptroller's Office) to further clarify required information for invoice processing.

I look forward to working with the Comptroller's Office going forward to address these issues that will undoubtedly better facilitate the administration of the Indigent Defense Program.

Sincerely yours,



Jeremy C. Toth, Esq.
Erie County Attorney

JCT/mc