REPORT OF THE
JOINT LEGISLATIVE
AUDIT AND REVIEW COMMISSION ON

Funds Held in Trust by Circuit Courts

TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA

Senate Document No. 19

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PREFACE

Trust funds can be held by any of the 121 circuit courts in Virginia. A circuit court judge orders funds to be held in trust if the beneficiary cannot be located, cannot administer the funds, or needs to be determined following a legal proceeding. The judge has two options for determining who will administer the funds for the court. The judge may either appoint a general receiver or have the clerk of the court administer the funds for the court.

JLARC was directed by Senate Joint Resolution 147 to study funds held in trust by general receivers and clerks of the court. The resolution mandated that JLARC determine the total amount of monies held in trust. At the end of FY 1987, clerks of the court and general receivers held approximately $56 million in trust funds, of which $2.3 million should have been transferred to the State's Division of Unclaimed Property.

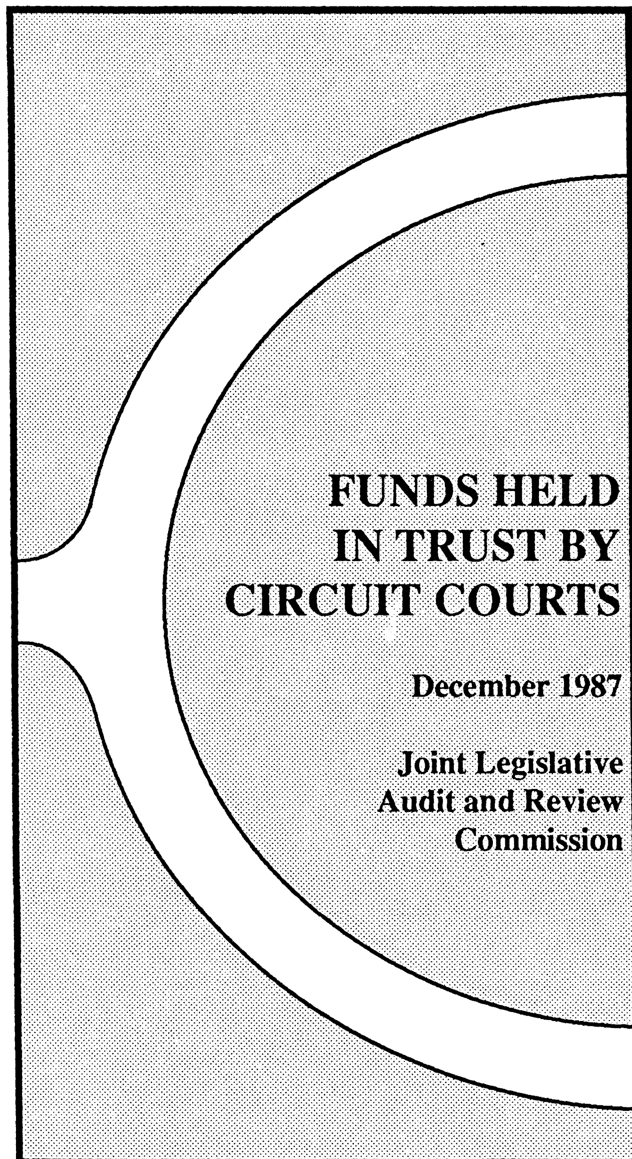
In addition, JLARC was directed to assess the current practices of administering the funds and determine how to improve trust fund administration. Generally, Virginia has a logical system for the administration of trust funds, which protects the interests of the beneficiaries. However, there are several problems with the ways in which trust funds are being administered by the courts.

Specific deficiencies were found in financial management practices and the oversight of trust funds. These deficiencies include statutory noncompliance, lack of attention to investment selection, lack of record keeping standards, and lack of oversight. However, administrators in many courts are doing a good job of administering trust funds. Therefore, the recommendations in this report focus on modifying and improving the current system, not replacing it.

On behalf of the JLARC staff I would like to thank all of the clerks, general receivers, and judges involved in this study for their cooperation. I would also like to express special appreciation to the staff of the Auditor of Public Accounts for auditing and accounting assistance during the course of the study.

Philip A. Leone
Director

December 24, 1987



There are 121 circuit courts in Virginia. These courts are located in all counties and many cities throughout the Commonwealth. Any case coming before the circuit court can result in monies being held in trust.

Circuit courts order funds to be held in trust to protect a beneficiary's financial interests. The courts also make decisions regarding who shall administer the trust funds. They may appoint one or more general receivers. Courts which do not appoint a general receiver administer all funds through the clerk of the court.

At the end of FY 1987, clerks of the court and general receivers held approximately $56 million in trust funds. The *Code of Virginia* directs how these trust funds should be administered.

There are several problems with the ways in which trust funds are being administered. Specifically, many trust fund administrators are not in compliance with the statutory requirements for transfer of unclaimed property and bonding. In addition, there are problems in the ways in which investments are selected and fees are taken by trust fund administrators. Further, the oversight of trust funds and record keeping procedures should be improved to better protect beneficiaries' interests.

The recommendations in this report focus on improving the management of trust funds using the current administrative structures. Significant structural changes are not recommended. However, judges should place trust fund administration with the clerk of the court whenever possible. At the same time, the option to appoint a general receiver to administer trust funds for the court should be retained and used if the need arises. The system should be further strengthened by clarification of numerous procedures which govern trust fund administration, development of a manual which would provide uniform guidance on procedures, and dissemination of these procedures.

This report summary briefly references study findings and recommendations. Detailed explanations are contained in the text of the report.

A JLARC REPORT SUMMARY

Many Trust Fund Administrators Are Not in Compliance with Transfer Statutes

Many trust fund administrators are not transferring unclaimed funds to the Division of Unclaimed Property of the Department of the Treasury as required by statute. As of June 30, 1987, clerks and general receivers held a conservative estimate of approximately $2.3 million which should have been transferred to the Division. The Commonwealth is losing between $48,000 and $165,000 in interest income each year the funds are not transferred.

The JLARC staff recommends:

- the Division of Unclaimed Property should audit those clerks and general receivers reporting transferable trust funds and claim the $2,339,709 in unclaimed funds.

Three factors appear to explain some of the reluctance of clerks and general receivers in complying with the transfer statutes. First, the *Code of Virginia* is silent as to responsibility for designating property as unclaimed. Second, the terms "payable" and "unclaimed property" may need to be defined in the *Code*. Third, the current fee structures allow general receivers to profit by not transferring funds to the Commonwealth.

The JLARC staff recommends:

- the General Assembly may wish to designate trust fund administrators as responsible for identifying payable and unclaimed funds for transfer to the Division of Unclaimed Property;

- the General Assembly may wish to amend §55-210.2 of the *Code of Virginia* to include definitions of "payable" and "unclaimed property." Staff of the Division of Unclaimed Property should assist in the drafting of the proposed definitions; and

- the General Assembly may wish to consider amending §8.01-589 of the *Code of Virginia* to prohibit general receivers from charging annual fees to trust funds which have been unclaimed for more than one year.

Trust Fund Administrators Should Make Better Investments

The investment practices of trust fund administrators could be improved. Most of the $56 million in trust funds is invested in instruments offering safety of principal. However, many trust fund administrators are not attempting to earn high yields on the funds. Often trust fund administrators have deposited large amounts of money in low-yielding investments such as passbook savings accounts and money market accounts. Some administrators place trust funds in non-interest bearing accounts.

Some trust fund administrators do not ensure that investments sufficiently protect the beneficiaries' financial interests. A few trust fund administrators place funds in instruments which are not recognized in the *Code of Virginia* as prudent investments. Others may be forfeiting federal insurance coverage because they do not designate the funds as being held for others.

The JLARC staff recommends:

- when deciding how to invest trust funds, trust fund administrators should compare available rates of return offered by different financial institutions and not limit their investments to the closest financial institution;

- trust fund administrators should not invest trust funds in stock mutual funds;

- the General Assembly may wish to amend §8.01-583 of the *Code of Virginia* to require trust fund administrators to invest funds in federally insured financial institutions in a manner which indicates that the funds are held on behalf of another. Administrators who pool funds should keep accurate records of the percentage of the pooled funds held by each beneficiary;

- only those funds which trust fund administrators know will be disbursed within 60 days may be placed in a non-interest bearing checking account. All other funds should be deposited in interest bearing accounts; and

- trust fund administrators should avoid investing trust funds over $1,000 in passbook savings accounts and money market accounts.

Fees Should Be Uniform For All Trust Fund Administrators

Most beneficiaries' accounts are charged fees for the management and investment of trust funds. The majority of the fees charged are taken by general receivers. While most clerks do not charge fees for trust fund administration, those who do generally receive a fixed amount for each disbursement. Some clerks' offices receive indirect fees by not allocating interest earned to the funds which accrued the interest.

The fees charged by all trust fund administrators should be similar since the activities performed by all administrators, including clerks, are similar. However, a uniform fee schedule is not used throughout the Commonwealth. The fees taken by general receivers vary considerably

because they are allowed compensation as each court deems reasonable.

The JLARC staff recommends:

- the General Assembly may wish to amend §8.01-600 of the *Code of Virginia* to provide that interest which accrues from all trust funds, minus the allowed fees and bond costs, be paid to the beneficiaries; and

- fees charged for the administration of trust funds should be uniform for all trust fund administrators, including clerks. The General Assembly may wish to amend §8.01-589 and §8.01-600 of the *Code of Virginia* to allow fees to be taken by all trust fund administrators according to a fixed schedule.

The Majority of Trust Fund Administrators are Underbonded

Most trust fund administrators hold funds which are not sufficiently covered by bond. Beneficiaries could potentially lose trust funds which are not bonded. Although the cost of the general receiver bond is to be paid from the fees charged the accounts, approximately $4 million held in trust by general receivers is not covered by bond. Trust funds held by the clerk of the court, when not specifically designated as general receiver, are covered under the clerks' constitutional officers bond. However, this bond is usually less than the amount of trust funds held by the clerk's office.

The JLARC staff recommends:

- the General Assembly may wish to amend §8.01-588 of the *Code of Virginia* to read "A general receiver shall annually give before the court a bond with surety to be approved by it, in such penalty as the court directs, sufficient at least to cover the probable amount under his control in any one year and he shall give additional bond from time to time if the amount held exceeds the probable amount by $10,000"; and

- clerks' offices should be bonded in an amount sufficient to cover the total amount of trust funds held by each office.

The cost of bond for trust fund administrators varies. Most general receivers negotiate their own bond, the cost of which is usually paid from fees charged. However, the bond for clerks' offices is negotiated and purchased by the Office of Risk Management of the Department of General Services. Centralized purchasing of bond for all trust fund administrators through the Office of Risk Management could help ensure that funds are adequately protected by bond.

The JLARC staff recommends:

- the General Assembly may wish to consider authorizing the Office of Risk Management to negotiate and contract with sureties to provide bond coverage for funds administered by trust fund administrators. Further, the General Assembly may wish to require general receivers to annually obtain bond through the Office of Risk Management; and

- the General Assembly may wish to amend §8.01-589 of the *Code of Virginia* to allow a separate deduction from the trust funds for the bond premium. Trust funds should be assessed a bond fee at the rate required by the Office of Risk Management to cover the cost of obtaining and administering the bond. Any funds under $1,000 should be assessed a flat rate to be determined by the Office of Risk Management.

Stronger External Controls Would Better Protect Beneficiaries' Funds

Judges are responsible for ensuring that administrators comply with the statutory requirements governing trust fund administration. In addition, the *Code of Virginia* directs that external controls be placed on trust funds. However, the external controls and enforcement within the courts are not currently sufficient to protect the beneficiaries' financial interests.

These controls differ by type of administrator. Appointed general receivers are required to submit semi-annual and annual reports to the court on the trust funds they administer. The review of these reports is neither comprehensive nor routine. Funds held by clerks of the court are currently audited by the Auditor of Public Accounts. However, the funds held by general

receivers, including the funds held by clerks in their appointed capacity as general receivers, are not routinely audited. Consistent and comprehensive controls should be placed on trust funds held by all administrators.

The JLARC staff recommends:

- the General Assembly may wish to amend §8.01-582 of the *Code of Virginia* by inserting a statement which gives the Auditor of Public Accounts clear statutory authority to audit trust funds held by all general receivers and to prescribe accounting standards;

- if general receiver trust funds are audited by the Auditor of Public Accounts, the General Assembly may wish to amend §8.01-585 of the *Code of Virginia* to delete the semi-annual reporting requirement for general receivers and insert an annual reporting requirement. This report should be made to the court only. Further, if general receiver trust funds are audited by the Auditor of Public Accounts, the General Assembly may wish to further amend §8.01-585 to delete the requirement for an annual settlement of accounts to the court or a commissioner in chancery. A corresponding amendment should be made to §8.01-617 to delete the provision allowing general receiver accounts to be settled by the commissioner in chancery; and

- the General Assembly may wish to amend §8.01-600 of the *Code of Virginia* to delete the semi-annual reporting requirement for clerks of the court and insert an annual reporting requirement on the trust funds held by all clerks. Section 8.01-600 should be further amended to clarify that the accounting requirement applies to all clerks who hold funds in trust.

Trust Fund Administrators Need to Improve Record Keeping Procedures

Trust fund administrators should be able to accurately account for funds under their control. However, many administrators were unable to provide basic information on the accounts. In addition, the record keeping procedures reported by the trust fund administrators were often insufficient to internally control the funds.

All court orders establishing trust funds should be systematically filed in a separate trust fund order book to be maintained in clerks' offices. These orders should be kept and filed for accounts held by both the general receiver and the clerk. Currently, there is no special mechanism to designate court orders as resulting in trust funds.

The JLARC staff recommends:

- the General Assembly may wish to amend §8.01-585 of the *Code of Virginia* to read "accurate and particular account" instead of "accurate and particular amount";

- the General Assembly may wish to amend §17-28 of the *Code of Virginia* to require clerks of the court to maintain a trust fund order book. The trust fund order book should include copies of all court orders that originate trust fund accounts; and

- all trust fund administrators should issue receipts for all trust funds; maintain a general control ledger or listing, individual account ledgers or listings for each case, and a cash receipts and disbursements journal; record certain information for each case under their control; post interest to each case at least quarterly; reconcile bank statements with the general control ledger on at least a quarterly basis; reconcile the balance reflected in the general control ledger with the total of the individual accounts at least quarterly; document all disbursements; and use a perpetual calendar system to project when funds are payable.

Centralization of Trust Fund Administration Would Present Administrative Problems and Difficulties for Beneficiaries

Although trust funds could be centrally administered at the State or circuit level, each level of centralization would present problems. Implementation of a centralized system could be costly and time consuming. The clerk of the court would continue to have an administrative role. In

addition, beneficiaries might have increased difficulty accessing their funds.

The JLARC staff recommends:

- trust funds should continue to be administered at the circuit court level at this time.

Trust Fund Administration By the Clerk of the Court Is Preferable

Judges should place trust fund administration with the clerk of the court whenever possible. However, they should be allowed the alternative of appointing a general receiver to administer trust funds for the court if the need arises. While neither clerks nor general receivers are consistently better in all aspects of trust fund administration, accountability is somewhat stronger for clerks than for general receivers. In addition, clerks are already a part of the court structure and have established accounting and systems options to assist them in trust fund administration. However, the general receiver system is working well in many courts.

The JLARC staff recommends:

- circuit court judges should use clerks of the court to administer trust funds unless compelling reasons exist to appoint a general receiver. Further, if the decision is made to allow clerks' offices to collect fees for trust fund administration, judges should remove the general receiver designation from currently appointed clerk general receivers. If the court makes the decision to use a general receiver to administer trust funds, only one general receiver should be appointed whenever possible.

Many of the recommended modifications and requirements may result in additional work in some clerks' offices. Therefore, clerks' offices may have additional staffing needs. The Compensation Board should consider the fees paid to the clerks' offices for trust fund administration when evaluating requests for additional staff.

The JLARC staff recommends:

- the Compensation Board may wish to consider staffing requests from clerks' offices assuming trust fund responsibilities.

Problems of Lack of Information, Misinformation, and Non-compliance Must be Addressed

The changes recommended in this report regarding how trust funds should be administered will not be effective unless the problems of lack of information, misinformation, and non-compliance are also addressed. The responsibilities mandated by State and federal statutes need to be clarified for trust fund administrators and judges. Guidelines manuals should be drafted for use by administrators and judges. In addition, training opportunities on the procedures outlined in the manuals should be provided for all trust fund administrators.

The JLARC staff recommends:

- the Executive Secretary of the Supreme Court of Virginia should request a ruling from the National Office of the Internal Revenue Service concerning the tax reporting responsibilities of trust fund administrators. This ruling is necessary to ensure that all trust fund administrators are in compliance with federal tax laws;
- the Supreme Court of Virginia should draft administrative manuals for trust fund administrators and judges. The manuals should specify procedures for record keeping, investing, and compliance with State and federal laws. Portions of the manuals should be developed with the assistance of the Auditor of Public Accounts, the Division of Cash Management, and the Division of Unclaimed Property; and
- the Supreme Court of Virginia should coordinate training on the procedures outlined in the manual for trust fund administrators. Training could be provided during meetings of the Circuit Court Clerks Association. General receivers should be invited to attend.

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I. INTRODUCTION

The circuit court system in Virginia is comprised of 121 courts grouped into 31 circuits. Circuit courts are located in all counties and many cities in Virginia. The presiding judge is the authority in each circuit court.

Cases coming before the circuit court may result in monies being held in trust. Circuit court judges order funds to be held in trust because the beneficiary cannot be located, cannot administer the funds, or needs to be determined following a legal proceeding.

Decisions regarding who shall administer trust funds are made by the courts. Two primary options are available. Courts may appoint one or more general receivers to administer trust funds. Courts which have not appointed a general receiver administer all trust funds through the clerk of the court.

JLARC was directed by Senate Joint Resolution 147 to study the funds held in trust by general receivers and clerks of the court. The resolution mandated that JLARC determine the total amount of money held in trust as well as the practices and costs of administering the trust funds. JLARC was further directed to determine how to improve the current administrative practices associated with these funds.

FUNDS HELD IN TRUST BY CIRCUIT COURTS

Any circuit court case can potentially result in funds held in trust. The trust funds are placed with a general receiver or clerk of the court who serves as a trust fund administrator and manages the funds pursuant to court order. The *Code of Virginia* directs how the funds should be managed by the trust fund administrators. At the end of FY 1987, trust fund administrators held approximately $56 million in trust funds.

Cases Which Result in Trust Funds

Funds held in trust are primarily the result of four types of cases. More than two-thirds of trust fund administrators reported holding funds from infant settlements, estate settlements, condemnation actions, and land partitions. Examples of each of these types of cases follow.

> *A minor suffers injuries resulting from the defendant's negligent operation of an automobile. Judgment is entered in favor of the minor for $25,000. Since minors are not legally competent to handle their own affairs, the court orders that the funds be held in trust until the minor reaches majority.*

* * *

An elderly widower dies and provides in his will that the proceeds from the sale of his property are to be paid to his children. He has many children, several of whom live outside the United States. After the decedent's property is sold, the proceeds are distributed to the children. Funds belonging to those children who cannot be located are held in trust until they appear and claim their funds.

* * *

Dilapidated real estate is condemned and sold at auction to a developer. The owners of the property cannot be located, so the proceeds from the sale are paid into the court to be held in trust until claimed by the owners.

* * *

The sole owner of valuable land dies leaving three adult children as heirs. Two of the heirs wish to sell the property and obtain their share of the proceeds. They cannot convey the property by deed because they cannot locate the third heir. The two heirs who wish to sell ask the court to partition the land. The court then orders that the land be sold and the proceeds be divided among the three heirs. The third heir's share is held in trust.

Types of Trust Fund Administrators

Trust funds are administered by either appointed general receivers or clerks. While this distinction appears to be rather clear-cut, there are a total of six different types of administrative scenarios under which money can be held in trust. Three of these types concern the appointed general receiver and the remaining three pertain to clerks.

Appointed General Receivers. Eighty-seven circuit courts have appointed general receivers pursuant to §8.01-582 of the *Code of Virginia* (Table 1). This includes 37 courts which have appointed individuals, usually attorneys, and 22 courts which have appointed financial institutions. Clerks have been appointed general receiver in 28 courts.

Clerks of the Court. In addition to being formally appointed as a general receiver, there are three scenarios under which clerks administer trust funds. In all three scenarios, the clerk of the court is administering trust funds as an elected officer of the court. The majority of funds administered by the clerks in all three instances are those funds which are anticipated to be paid out shortly after receipt.

First, in 17 courts where the clerk is appointed as general receiver, the clerk also administers some funds in his or her capacity as clerk. In these situations, one individual is administering trust funds in two different capacities.

Table 1

NUMBER OF COURTS WHICH USE EACH TYPE OF TRUST FUND ADMINISTRATOR

Type of Administrator	Number of Courts Which Use the Type of Administrator
Individual General Receivers	37
Financial Institution General Receivers	22*
Clerk General Receivers, Funds Held as General Receiver	28
Clerk General Receivers, Funds Held as Clerk	17
Clerks in Courts with General Receivers	37
Clerks in Courts without General Receivers	34

*Three courts have appointed more than one financial institution general receiver. There are 27 financial institution general receivers.

Note: Table does not add to 121 courts because some courts use more than one type of administrator.

Source: JLARC staff analysis of data supplied by general receivers and clerks of the court.

Second, in 37 of the courts where appointed individual or financial institution general receivers hold monies, the clerk may also administer some funds. In these courts, responsibility for trust fund administration is shared by two individuals.

Third, 34 circuit courts have not appointed -- or if one was appointed, have not used -- a general receiver. When funds come under the control of the court, they are administered by the clerk as part of the duties of clerk of the court.

Throughout this report, the term "general receiver" includes individuals, financial institutions, and clerks appointed as general receivers.

The term "trust fund administrator" is all-encompassing and includes all entities with responsibilities for trust fund administration.

Administration of Trust Funds

General responsibilities of trust fund administrators are outlined in the *Code of Virginia*. Clerks and appointed general receivers reported a variety of reasons for accepting trust fund administration duties. The majority of trust fund administrators manage the trust funds on a part-time basis.

Overall, the statutory requirements are similar for clerks and appointed general receivers (Exhibit 1). However, there are some differences in the requirements for the two groups.

Both groups are required to keep an accurate accounting of trust funds, invest prudently, and transfer unclaimed funds to the Commonwealth in a timely manner. Both general receivers and clerks are subject to contempt citations for failure to comply with these requirements.

Requirements for submitting reports and for taking fees differ for the two groups. General receivers are required to submit a semi-annual report and to make an annual settlement of accounts to the court. Clerks are required to report only as directed by the individual court. Appointed general receivers may deduct fees from the accounts for services rendered. Clerks are not allowed to deduct fees for administering the trust accounts. Clerks are allowed a "miscellaneous clerk's fee," which is usually a nominal amount deducted for processing withdrawals from accounts.

The following examples illustrate the administrative responsibilities of clerks and general receivers for managing trust funds.

> *An infant receives a judgment against a negligent defendant. The judge determines that the funds should be held in trust with the clerk until the infant reaches majority. Usually the defendant's attorney sends the check to the clerk. The clerk sets up a file for the beneficiary. The clerk reviews the court order to see how the funds should be invested. If the order does not specify how the funds should be invested, the clerk decides. An account is opened in a financial institution in the locality. Other than the regular posting of interest, little activity takes place in the account until the clerk receives an order to disburse the funds. The clerk closes the account and pays the funds as directed in the order. The clerk will usually charge a fee of up to $10 for each check written on the account.*

* * *

> *The owners of condemned property cannot be located, and the court orders funds held in trust by the general receiver. The order does not specify how the funds are to*

Exhibit 1

STATUTORY PROVISIONS CONCERNING TRUST FUND ADMINISTRATION

Section	Summary of *Code of Virginia* Provision	General Receiver	Clerk
8.01-582	Courts may appoint a general receiver, who may be the clerk.	o	
8.01-583	Securities shall be held by the general receiver in his or her name unless the court orders otherwise.	o	
8.01-584	General receivers shall collect dividends and interest from investments and reinvest them in like securities, unless the court orders otherwise.	o	
8.01-585	General receivers shall keep an accurate account of funds received, invested, or disbursed; general receivers shall file a semi-annual report and make an annual settlement of accounts.	o	
8.01-586	Courts may order the general receiver to try to locate a beneficiary whose whereabouts are unknown; general receivers have the power to summon witnesses and take evidence for this purpose.	o	
8.01-587	General receivers are liable for all trust funds; if a general receiver fails to invest or disburse within 60 days of receiving funds, then the general receiver must pay interest to the beneficiaries, unless court orders otherwise.	o	
8.01-588	General receivers shall annually give bond covering the probable amount of trust funds they expect to hold during the year.	o	
8.01-589	Courts determine general receiver fees; fees are to be apportioned among the trust funds; general receivers shall pay bond premium from their fees; only general receivers who are performing all duties specified under the *Code of Virginia* may receive fees.	o	
8.01-590	General receivers who do not account for funds or file the required reports are subject to fines of not less than $100 nor more than $1,000.	o	
8.01-600	Money under the control of the court may be deposited to the credit of the general receiver. In the alternative, the court may order the person holding court funds to deposit them to the credit of the court and obtain a certificate of deposit to be held by the clerk. The court may authorize this person to write checks on the account.	o	
	If a clerk has an automatic accounting system, the court may order the clerk to pool trust funds. The clerk must file a semi-annual report.		o
	Funds received under 8.01-600 of the *Code of Virginia* are subject to APA audits.		o

Exhibit 1 (Continued)

Section	Summary of *Code of Virginia* Provision	General Receiver	Clerk
8.01-602	Funds under the court's control which have been unclaimed for over three years shall be reported and transferred to the State Treasurer.	o	o
55-210.9:1	Intangible property held by a court for over a year after it became payable is presumed abandoned.	o	o
55-210.12	Property presumed abandoned is to be reported to the State Treasurer. If the holder of abandoned property has an address of the owner, he or she must attempt to locate the owner.	o	o
55-210.14	Property presumed abandoned shall be transferred to the State Treasurer.	o	o
14.1-112	Clerks may charge a fee of $10 for service rendered in any court proceeding where no specific fee is set by statute.		o
14.1-143.2	Fees charged by clerk general receivers are revenue to the clerk's office.	o	
26-40	Fiduciaries may invest in the following: securities of the Commonwealth, securities of Virginia counties and cities, securities of the United States, securities of other states, real estate bonds, bonds of Virginia educational institutions, securities of the RF&P, obligations of railroads meeting certain requirements, obligations of leased railroads, equipment trust obligations issued under the "Philadelphia Plan", securities of public utilities meeting certain requirements, securities of AT&T, obligations of municipally owned utilities, securities of industrial corporations meeting certain requirements, securities of finance corporations meeting certain requirements, real estate loans insured by the Federal Housing Authority, certificates of deposit with banking and savings institutions, obligations issued by the International Bank for Reconstruction and Development, obligations issued by the Asian Development Bank, obligations issued by the African Development Bank, certificates evidencing ownership of undivided interests in pools of mortgages, and shares of any credit union authorized to do business in Virginia.	o	o
26-45.1	Fiduciaries shall invest and manage the funds of others as a person of reasonable prudence, discretion, and intelligence would invest his or her own funds.	o	o

o indicates to which trust fund administrators the statute applies.

Source: JLARC staff review of the *Code of Virginia.*

be invested. Upon receipt of the funds, the general receiver deducts a fee from the principal. A file is set up for the beneficiary. The funds are invested in a financial institution in the locality. The general receiver collects a fee based on a percentage of the interest earned. Annually, the general receiver obtains bond covering the trust funds. A report is filed with the court every six months showing the activity in each of the general receiver's trust accounts. Once a year, the general receiver makes a formal settlement of accounts before the court. Little activity takes place in the account until the general receiver is ordered to disburse the funds. The general receiver closes the account and pays the funds as directed in the court order. A fee is usually deducted from the account for disbursement.

Reasons For Accepting Trust Fund Responsibilities. Individual and financial institution general receivers reported various reasons for accepting trust fund responsibilities. Most individual general receivers are attorneys. Many of them said that they accepted the appointment as a favor to the local judge. The majority of financial institutions reported that they accepted appointment as general receiver as a service to the community in which they are located.

Most clerk general receivers were appointed when the clerk's compensation was based on fees collected by the clerk's office. A clerk could increase his or her income by earning fees as general receiver. In 1982, the General Assembly enacted legislation providing that clerks be paid salaries by the Commonwealth. This legislation prohibits clerks from personally receiving any fees. All fees collected by the clerks are now revenue for the clerks' offices.

Time Spent on Trust Fund Administration. Most general receivers and clerks who administer trust funds do so on a part-time basis. Clerks and general receivers reported that, on average, the amount of time spent on trust fund administration is minimal. Over 75 percent of clerks and general receivers reported that eight hours or less is spent on trust fund administration during a typical month.

Amount Held in Trust

Trust fund administrators reported that they held a total of $56,074,740 in trust funds at the end of FY 1987 (Table 2). These funds were about evenly divided between general receivers and clerks (Figure 1). Clerks in courts without general receivers held the highest percentage (37 percent) of the funds.

On average, trust fund administrators administered 58 cases totaling $344,017 in trust funds. Clerks in courts without appointed general receivers held the highest average amount of funds -- $608,478 per clerk. Financial institution general receivers held the highest average number of cases -- 89 per financial institution. Additional information on the amounts held in trust is provided in Appendix B.

Table 2

Summary of Account Activity by Type of Administrator

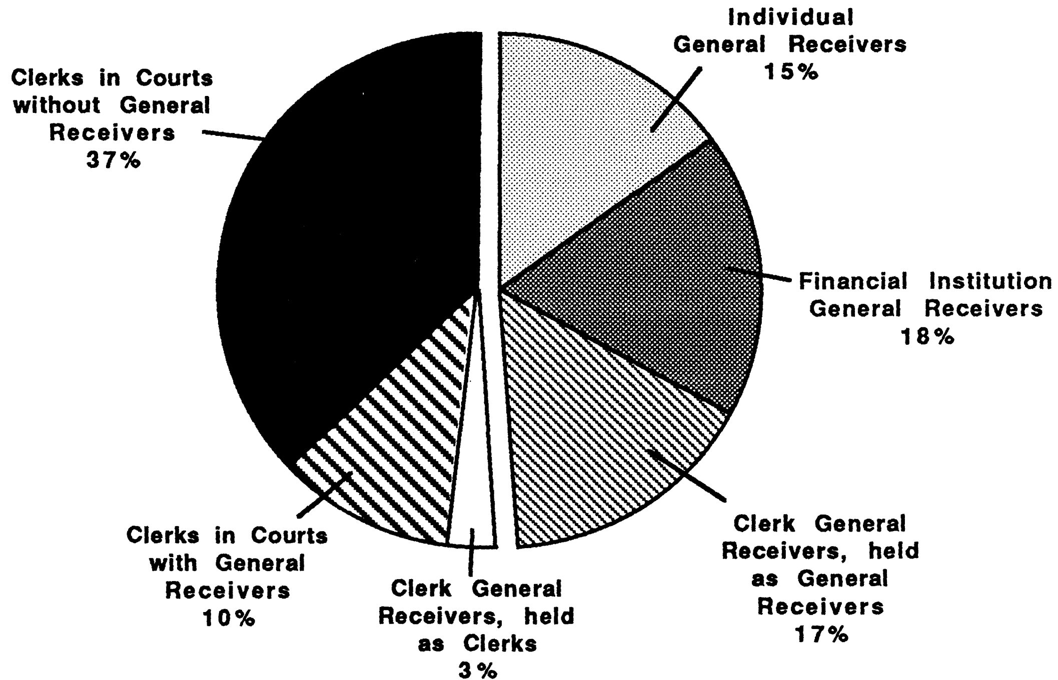
	Total Amount Held in Trust as of June 30, 1987	Total Amount Disbursed to Beneficiaries During FY 1987	Total Amount Transferred to the Division of Unclaimed Property During FY 1987	Total Amount Payable as of June 30, 1986, But Not Yet Disbursed	Total Fees Taken During FY 1987
Individual General Receivers	$8,370,031 (1,957)	$1,288,637 (180)	$534,290 (535)	$714,231 (377)	$156,460
Financial Institution General Receivers	$10,049,160 (2,415)	$2,470,784 (209)	$235,380 (117)	$261,405 (1,584)	$37,750
Clerk General Receivers, as General Receivers	$9,262,636 (2,047)	$2,077,419 (178)	$81,257 (34)	$810,836 (396)	$99,141
Clerk General Receivers, as Clerks	$1,857,463 (247)	$4,711,337 (136)	$39,920 (44)	$81,322 (23)	---
Clerks in Courts With General Receivers	$5,847,191 (497)	$4,873,407 (258)	$78,893 (43)	$96,704 (118)	$10
Clerks in Courts Without General Receivers	$20,688,259 (2,293)	$5,744,871 (333)	$527,754 (387)	$375,211 (104)	$2,261
Total	$56,074,740 (9,456)	$21,166,455 (1,294)	$1,497,494 (1,160)	$2,339,709 (2,602)	$295,622

Numbers in parentheses are numbers of cases. --- indicates no information collected.

Source: JLARC staff analysis of data supplied by general receivers and clerks of the court.

Figure 1

Percentage of Total Funds Held in Trust by Type of Administrator



Data reported are for amounts held as of June 30, 1987, or the date of the most recent semi-annual report.

Source: JLARC analysis of data supplied by general receivers and clerks of the court.

Trust fund administrators reported disbursing a total of $21,166,455 to beneficiaries in 1,294 cases during FY 1987. Clerks of the court disbursed nearly three times as much money as did general receivers.

Under Sections 55-210.9:1 and 55-210.14 of the *Code of Virginia*, funds which have remained unclaimed by the beneficiary for more than one year are to be transferred to the Division of Unclaimed Property of the Virginia Department of the Treasury. Unclaimed funds refer to those funds which have been payable or distributable for more than one year but have not yet been paid to the beneficiary.

Trust fund administrators reported transferring $1,497,494 to the Division of Unclaimed Property during FY 1987. They also reported holding another $2,339,709 that should be transferred to the Commonwealth. These funds were reported as payable on June 30, 1986, but had not yet been disbursed at the end of FY 1987.

Senate Joint Resolution 147 of the 1987 Session of the General Assembly directed JLARC to "study funds held by courts in trust with general receivers and clerks of the court." The resolution specifically directed JLARC to (1) determine the total amount of monies held in trust with general receivers and clerks of the court, (2) recommend how best to administer these funds, (3) determine the costs of administering these funds, (4) assess the need for audits of these accounts, and (5) discern the Commonwealth's interest in funds held in trust.

Study Activities

A number of activities were undertaken during this study to collect and analyze data. These include mail and telephone surveys, site visits, and validation and assessment reviews.

Two sets of mail surveys were used to collect data during the study. The first set of mail surveys was used to collect opinions from the chief judge in each of the 31 circuits about current practices and recommendations for improvement. The second set of mail surveys was developed to collect financial information from all 185 clerks and general receivers throughout the Commonwealth. Results show that 22 clerks do not administer trust funds. These clerks are in localities with appointed general receivers. The data in this report are tabulated based on the 163 clerks and general receivers who do administer at least some trust funds in their locality.

Financial data were requested on the actual amounts administered during the period July 1, 1986, through June 30, 1987. Eleven respondents were unable to provide data for this period. For these respondents data were accepted for the most recent period available. Several other respondents were unable to provide actual figures. For these respondents estimates were accepted.

Telephone surveys were conducted with all clerks and general receivers. The telephone surveys focused on administrative procedures and record keeping practices used to account for the funds.

JLARC conducted site visits in 11 localities. The primary purpose of these site visits was to examine and assess the records maintained on trust fund accounts.

Staff from the Office of the Auditor of Public Accounts (APA) conducted one-day record reviews in another 15 localities. These reviews were with individual general receivers, financial institution general receivers, and clerk general receivers. The localities were randomly chosen based on a mix of types of appointed general receiver and geographic location within the Commonwealth. The purpose of the reviews was to validate the information collected from the mail and telephone surveys.

The APA also conducted a special review of one locality. This locality was chosen because of specific concerns about the integrity of trust fund management. The on-site portion of this review took approximately five days to complete.

Report Organization

This chapter has provided a brief overview of funds held in trust with general receivers and clerks in circuit courts. In Chapter II, the financial management practices used in administering these monies are examined. An assessment of the oversight of trust funds is made in Chapter III. Chapter IV discusses alternatives for improvement in trust fund administration.

II. FINANCIAL MANAGEMENT PRACTICES

The *Code of Virginia* outlines the financial management practices to be followed by trust fund administrators. Analysis of these practices identified four general problems related to monies held in trust.

First, many trust fund administrators are out of compliance with statutes governing the transfer of unclaimed property. The *Code of Virginia* dictates that trust funds are to be transferred to the State if they remain unclaimed for one year after they are payable. At the State level, systematic efforts are made to locate the beneficiary and give him or her the funds. Beneficiaries, localities, and the Commonwealth lose financially when the funds are not transferred as required by statute. Only trust fund administrators who continue to take fees on the unclaimed funds benefit.

Second, while most trust fund administrators are in compliance with statutes in terms of investing in instruments which ensure the safety of principal, inadequate attention is often given to obtaining the highest yield on investment. A few administrators delay investing the funds or inappropriately invest in instruments which earn less than maximum yields. This results in a loss of income for the beneficiary.

Third, there is no uniform or systematic schedule of fees for trust fund administration. This results in trust funds being assessed different fees throughout the Commonwealth. Some administrators take fees of varying proportions of principal and interest for managing the trust funds. Others take no fees at all. Further, although the *Code of Virginia* directs that no compensation be awarded until all duties are completed, it appears that fees are being deducted prior to completion of all duties. In addition, clerks' offices appear to be restrained from collecting fees to cover the expenses of trust fund administration. The responsibilities of clerks are generally the same as those of appointed general receivers who can and do collect fees. This inequity should be rectified.

Fourth, most trust fund administrators hold funds which are not sufficiently covered by bond. Sufficient bonding of trust fund administrators is necessary to safeguard the financial interests of the beneficiaries. The *Code of Virginia* has different bonding requirements for clerks and appointed general receivers. However, both groups should maintain bond sufficient to cover the amount of trust funds held.

NONCOMPLIANCE WITH STATUTES GOVERNING TRANSFER OF UNCLAIMED FUNDS

Sections 55-210.9:1, 55-210.14, and 8.01-602 of the *Code of Virginia* provide that funds held by clerks and general receivers which remain unclaimed for over one year are to be transferred to the Division of Unclaimed Property of the Virginia Department of the Treasury. The purpose of the Division is to find the owners of unclaimed property.

Assessment of the practices of trust fund administrators in this area shows that many of them are out of compliance with statute. A conservative estimate of $2.3 million should have been transferred to the Division as of June 30, 1987. When funds are not transferred, or not transferred in a timely fashion, beneficiaries, localities, and the Commonwealth lose financially.

Several actions are necessary to rectify problems and clarify responsibilities in this area. These actions include clarifying responsibility for identifying funds as payable and unclaimed, defining in statute the terms "payable" and "unclaimed," and prohibiting deduction of fees from funds which should have been transferred to the State.

Purpose of Division of Unclaimed Property

The primary purpose of the Division of Unclaimed Property is to find unclaimed property and return it to the owners. Trust funds are unclaimed or abandoned when there has been no activity or correspondence on an account for one year.

The Division has developed several approaches to finding abandoned property. It has implemented an extensive investigation program to locate abandoned property in localities. Part of this program consists of audits of institutions thought to hold unclaimed property.

The Division, which maintains a staff of 28, is currently auditing all circuit courts and general receivers to collect funds which should have been transferred. As of October 1, 1987, the Division had completed 31 audits and collected approximately $4 million from clerks and general receivers. However, the Division does not limit its efforts to unclaimed property in the courts. During FY 1987, $21.3 million from all sources was received by the Division and $7 million was returned to owners.

A combination of several techniques is used to locate beneficiaries. These techniques include newspaper and cable television advertisements. In addition, military personnel and Department of Motor Vehicle records are checked for beneficiaries' addresses. Finally, the State Efforts Are Returning Cash Held (SEARCH) program has community information booths set up in shopping centers throughout the Commonwealth. The SEARCH program uses computerized listings of owners of unclaimed property to inform individuals stopping by the booths if they have unclaimed property.

As the following example illustrates, efforts by the Division of Unclaimed Property have resulted in beneficiaries of trust funds being located.

> *During a 1986 audit of a clerk's office, Division auditors found a court order awarding a 16 year old girl $30,000 in 1973. The funds were to be held by the clerk until the beneficiary turned 18. At the time of the audit, the money was still under the control of the clerk. The settlement had been invested such that the amount was $55,000. No attempts had been made to locate the beneficiary, who was 28. Staff of the Division of*

Unclaimed Property located the beneficiary using a telephone directory, as she had changed neither address nor telephone number in the interim. The $55,000 was delivered to the beneficiary.

While the Division attempts to locate beneficiaries, the funds are deposited in the Literary Fund. The money in the Literary Fund is used to provide low interest loans to localities for financing public school construction. The money remains in the Literary Fund until the beneficiary is located.

Unclaimed funds which had been deposited in interest bearing accounts in the localities continue to earn interest for the beneficiaries when the Commonwealth reinvests the money. The rate of interest allocated to the beneficiary is five percent per year. The rest of the interest earned is retained by the Commonwealth. The majority of the operating expenses of the Division are paid from the retained interest.

Unclaimed funds which were not in interest bearing accounts while held in the localities earn interest for the Commonwealth only. None of the interest earned by the Commonwealth is passed on to the beneficiaries.

Statutory Noncompliance

Clerks and general receivers in most courts are not in compliance with the *Code of Virginia* regarding transfer of unclaimed funds. Trust fund administrators reported that they are holding $2,339,709 which was payable as of June 30, 1986, but had not been disbursed as of June 30, 1987 (Table 3). According to Sections 55-210.9:1, 55-210.14, and 8.01-602 of the *Code of Virginia*, these funds should have been transferred to the Commonwealth.

Section 55-210.9:1 of the *Code of Virginia* provides that "all intangible property held for the owner by any court that has remained unclaimed by the owner for more than one year after it became payable or distributable is presumed abandoned." Section 55-210.14 of the *Code of Virginia* directs that this abandoned property be transferred by the holder to the Division of Unclaimed Property.

The $2.3 million is a conservative estimate of the actual amount which should be transferred to the Division. Many trust fund administrators refused to identify funds as payable but not yet disbursed. In addition, a dispute concerning unclaimed funds in one locality is currently in litigation. The Hampton City charter directs that unclaimed funds held by the Hampton Circuit Court be transferred to the city rather than the Commonwealth. The court currently has $528,053 in unclaimed funds. Litigation to settle the dispute is scheduled for December 1987 in the Hampton Circuit Court.

Rarely are systematic or comprehensive efforts made at the local level to find beneficiaries of unclaimed funds. When unclaimed funds are not transferred to the Division as required by statute, the only benefit is to those trust fund administrators who continue to deduct fees from the funds.

Table 3

TRUST FUNDS PAYABLE ON JUNE 30, 1986
BUT NOT DISBURSED AS OF JUNE 30, 1987

Circuit Court	Dollar Amount Reported
Albemarle	$100,000
Alexandria	81,504
Appomattox	35,700
Arlington	350,942
Augusta	7,520
Carroll	133,853
Charles City	47,024
Chesapeake	3,543
Clarke	25
Colonial Heights	9,995
Greene	6,036
Greensville	273,127
Hanover	131,259
Isle of Wight	2,715
James City	1,555
King George	862
Lee	50,184
Louisa	37,931
Lunenburg	165,775
Madison	2,181
Mathews	31,074
Middlesex	14,000
New Kent	15,662
Nottoway	30,000
Orange	85,688
Page	1,606
Prince George	264,479
Prince William	180,000
Rappahannock	43,694
Roanoke	3,668
Rockbridge	190,060
Surry	812
Warren	27,651
Washington	7,906
Winchester	1,669

Note: In addition, the Hampton Circuit Court had $528,053 in payable but unclaimed funds. Authorization to release the funds is being resolved through litigation.

Data reported as of June 30, 1987.

Source: JLARC staff analysis of data reported by general receivers and clerks of the court.

Localities are not getting use of the money through the Literary Fund. Until funds are released to the Division of Unclaimed Property, the Commonwealth cannot reinvest the funds, earn interest, and carry out its intensive efforts to locate beneficiaries.

As of September 1987, the Commonwealth was earning 7.06 percent interest on monies deposited in the Literary Fund. Depending on whether the funds are held in interest or non-interest bearing accounts in the locality, the Commonwealth would earn interest of either 2.06 or 7.06 percent on the approximately $2.3 million of unclaimed funds. Each year that these unclaimed funds are not transferred to the Division, the Commonwealth loses between $48,000 and $165,000.

Recommendation (1). The Division of Unclaimed Property should audit those clerks and general receivers reporting transferable trust funds and claim the $2,339,709 in unclaimed funds.

Corrective Actions

Three factors appear to complicate the transfer of property to the Commonwealth. First, the statutes do not specify who is responsible for the identification of unclaimed funds. Second, there is a need to define the terms "payable" and "unclaimed property" in statute. Third, trust fund administrators can profit by not transferring funds to the Commonwealth.

Clear Articulation of Responsibility for Identifying Funds as Payable and Unclaimed. The statutes are silent as to who is responsible for identifying funds as unclaimed. Many clerks and general receivers are using this silence as a reason not to transfer unclaimed funds to the Division of Unclaimed Property.

Court orders signed by the judge are necessary for any action on trust fund accounts. Often orders for disbursement to a beneficiary are prepared by the clerk or general receiver for the judge to sign. However, clerks and general receivers are reluctant to prepare orders for the transfer of funds to the Division of Unclaimed Property. Therefore, orders for transfer are rarely presented to the judge.

There appears to be a need to clarify in statute the responsibility for the identification of trust funds which are unclaimed. Many trust fund administrators reported that they are not responsible for the identification of funds as unclaimed. Therefore, funds are not transferred to the State.

Clerks and general receivers should be directed to prepare court orders identifying those funds which are unclaimed and should be transferred to the State. This identification should be done annually.

Recommendation (2). The General Assembly may wish to designate trust fund administrators as responsible for identifying payable and unclaimed funds for transfer to the Division of Unclaimed Property.

Clear Definitions of "Payable" and "Unclaimed Property." Trust fund administrators need a clear definition of the terms "payable" and "unclaimed

property" used in Sections 8.01-602 and 55-210.9:1 to determine when funds should be transferred to the Division of Unclaimed Property. Funds must have been payable or distributable for one year to be designated as unclaimed property. Many trust fund administrators are not familiar with the term "payable" as used in the statutes. They reported that no funds are payable until a court order directing payment is signed by the judge.

The determination of payable depends on the type of legal action originating the trust funds. For example, trust funds that result from an infant settlement are payable when the infant turns 18. These funds are unclaimed if the infant has not claimed, or corresponded about, the funds one year after turning 18. However, trust funds resulting from estate settlements, land partitions, and condemned property settlements are payable on the date the final judgment is entered. These funds become unclaimed property one year after the date of final judgment, providing there has been no activity concerning the funds.

Recommendation (3). The General Assembly may wish to amend §55-210.2 of the *Code of Virginia* to include definitions of "payable" and "unclaimed property". Staff of the Division of Unclaimed Property should assist in the drafting of the proposed definitions.

Elimination of Fees Collected on Funds Which Should Be Transferred. General receivers can profit by not identifying funds as unclaimed. Since most general receivers have not been ordered to attempt to locate the beneficiaries, administration of unclaimed funds is not different from administration of other trust funds. Most general receivers take a fee for all accounts they hold. Therefore, the more accounts held, the more fees taken.

The following example indicates what may happen to funds when the beneficiary is not located and the funds are not transferred to the Commonwealth.

> *In 1959, an individual's estate was settled which provided that the interest on $11,000 be left to the needy people of a small Virginia town. In 1971, the funds were transferred to the appointed general receiver. At that time the funds totalled $15,100. No determination has been made of who the needy people are. The estate has now grown to $31,785. Each year the general receiver receives 6.5 percent of the interest and 1.5 percent of the principal for managing the account. Additional fees are taken by the commissioner in chancery and an accountant. Federal and state taxes are paid for the estate. In calendar year 1986, fees were taken on the account in the amount of $707 and taxes of $95. The general receiver and commissioner in chancery have deducted total fees of $5,941 since 1971, when the funds were transferred to the general receiver. It is anticipated that another $773 in fees will be deducted from the account in calendar year 1987.*

Prohibiting general receivers from deducting fees from accounts which should be transferred to the Division of Unclaimed Property would

eliminate the incentive to retain unclaimed trust funds. Therefore, the General Assembly may wish to amend the *Code of Virginia* to limit the accounts on which fees may be taken.

Recommendation (4). The General Assembly may wish to consider amending §8.01-589 of the *Code of Virginia* to prohibit general receivers from charging annual fees to trust funds which have been unclaimed for more than one year.

INVESTMENT PRACTICES AND RETURN ON INVESTMENT

General receivers and clerks are placing the majority of trust funds in investments which offer safety of principal. However, the return on investment obtained by trust fund administrators could be improved by better investment selection. Analysis of the investment practices reported by trust fund administrators shows that on average these investments are producing a return on investment of approximately seven percent. Minor modifications in investment selections would earn higher returns without jeopardizing safety of principal.

Some administrators are selecting investments which are not listed in the *Code of Virginia* and do not ensure safety of principal. For example, investments are being made in mutual funds, which are not listed as prudent investments. These investments should not be made with trust funds.

Investment Selection

Examination of investment selection practices by trust fund administrators revealed three areas which need improvement. First, minor modifications in the types of investments selected would yield higher rates of return while continuing to ensure safety of principal. Second, several trust fund administrators risk losing federal insurance coverage on investments over $100,000 held in financial institutions. Third, trust fund administrators should limit the amount of funds held in non-interest bearing checking accounts.

Criteria for Investment Selection. There are three primary factors which determine how funds are invested: proximity of the financial institution to the administrator's office, length of time funds are to be held, and rate of return on investments offering safety of principal. A combination of these factors is considered when investing the funds.

Trust fund administrators reported that they generally invest the funds in financial institutions which are in close proximity to their offices. Often administrators reported selecting the closest financial institution without comparing rates of return offered by other local financial institutions.

Administrators who know that beneficiaries will be claiming trust funds in a short period of time or will require frequent disbursements reported that they usually invest in passbook savings accounts, money market accounts,

or interest bearing checking accounts. Administrators reported that trust funds which are to be held for several years are usually invested in long-term certificates of deposit.

As illustrated by the following examples, some trust fund administrators also reported seeking a high rate of return as a basis for investment decisions.

> *The Roanoke City Circuit Court has established an investment committee to assist the clerk in making investment decisions. The committee consists of a judge, the city treasurer, and at least one member of the local bar association. The clerk is an ex officio member. The committee meets periodically to review present investments and investment procedures, and to advise on future investments.*

* * *

> *The clerk in the Hopewell Circuit Court invests all of the trust funds in a certificate of deposit exceeding $100,000. On a monthly basis, the clerk calls at least three financial institutions and asks what interest rate the funds will earn if she invests all of the trust funds with the institution. She invests in the financial institution paying the highest interest rate.*

All trust fund administrators should be using the criterion of obtaining the highest reasonable interest rates when selecting investment instruments. Instruments should be chosen which minimize risk to principal and maximize return on investment.

Recommendation (5). When deciding how to invest trust funds, trust fund administrators should compare available rates of return offered by different financial institutions and not limit their investments to the closest financial institution.

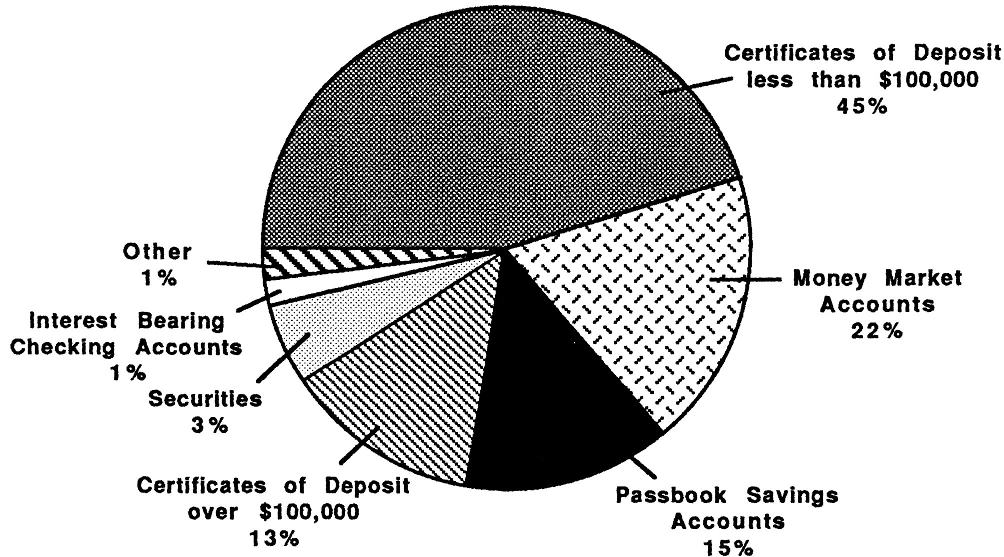
Types of Investments. Trust fund administrators reported investing primarily in five types of investments (Figure 2). These include certificates of deposit, money market accounts, passbook savings accounts, securities, and interest bearing checking accounts. Information on rates of return for each investment type can be found in Appendix C.

Approximately 45 percent of the trust funds are invested in certificates of deposit less than $100,000. These certificates of deposit earn a high rate of return and offer maximum safety of principal.

Twenty-two percent of the trust funds are held in money market accounts. Even though they earn a lower return than some of the other investment types, money market accounts are the second most utilized investment by trust fund administrators. Checks may be written on these accounts while the funds earn higher interest rates than if deposited in passbook savings accounts.

Figure 2

Percentage of Total Funds Held in Trust by Type of Investment



Investments listed in the category "other" are those which could not be classified using our investment typology. Data reported are for amounts held as of June 30, 1987, or the date of the most recent semi-annual report.

Source: JLARC staff analysis of data supplied by general receivers and clerks of the court.

Fifteen percent of the trust funds are deposited in passbook savings accounts, which earn the lowest rate of return of any of the investment types. Trust fund administrators frequently invest their smaller cases in these accounts.

Thirteen percent of the funds are invested in certificates of deposit over $100,000. Most trust fund administrators pool their smaller accounts to invest in certificates of deposit over $100,000.

Approximately $1.8 million is reported invested in securities such as stock mutual funds and real estate bonds. Securities generally earn higher rates of return than do the other investment types, but they also carry greater investment risk.

One financial institution general receiver reported that $165,595 of its $341,726 trust fund portfolio is invested in a mutual fund. This mutual fund purchases stocks that comprise the Dow Jones Industrial Average. The rate of return on its stock mutual fund was 24 percent for FY 1987 since the stock market rose dramatically during this

period. On October 30, 1987, the investment was reported to earn a 13.5 percent return on the original investment, due to recent market fluctuations.

* * *

One general receiver reported holding $651,227 on June 30, 1987. This general receiver reported that $643,800 was invested in real estate bonds. This general receiver lends money to individuals purchasing residential real estate. Loan amounts may not exceed 80 percent of the appraised value of the property pursuant to statute and are secured by a lien on the borrower's real estate. The rates of return for funds invested in real estate loans reported for FY 1987 ranged from 8.5 to 12 percent.

Although investments such as those in real estate bonds comply with §26-40 of the *Code of Virginia*, mutual funds are not listed as a prudent investment. Therefore, fiduciaries who invest in mutual funds are not immune from personal liability suits for breach of fiduciary duties. In addition, the risk of losing money is much greater in these investments than in certificates of deposit. Finally, the profitability of investments in real estate bonds and mutual funds is directly dependent upon present market conditions.

As of June 30, 1987, $618,450 was held in interest bearing checking accounts. Only passbook savings accounts earn a lower rate of return than interest bearing checking accounts.

Recommendation (6). Trust fund administrators should not invest trust funds in stock mutual funds.

Federal Coverage of Investments. Funds invested in banking and savings institutions may be insured up to $100,000 by the Federal Deposit Insurance Corporation (FDIC) and the Federal Savings and Loan Insurance Corporation (FSLIC). Federal coverage is only provided for investments in financial institutions which are insured by these two corporations. Therefore, trust fund administrators should continue to invest only in those financial institutions with this coverage.

Representatives of the FDIC and FSLIC informed JLARC of the requirements for federal insurance coverage for investments over $100,000. To ensure federal coverage of these deposits, trust fund administrators must follow two procedures. First, the administrator must not invest over $100,000 for any one beneficiary in any one financial institution. Second, the administrator must set up the accounts so that the financial institutions' records clearly indicate that the funds are held on behalf of others. This requires that the funds be listed in the beneficiaries' names or the name of the trust fund administrator and the beneficiaries.

When trust fund administrators pool accounts, they have an additional requirement for federal insurance. The records must be sufficient to identify all beneficiaries and to determine each beneficiary's share of the pooled funds.

The *Code of Virginia* needs to be amended to require trust fund administrators to hold trust funds in a manner which indicates that they are held for one or more beneficiaries. Pursuant to §8.01-583 of the *Code of Virginia,* general receivers are required to hold trust funds in the general receiver's name unless otherwise directed by the court. Approximately one-third of trust fund administrators reported that they invest funds without specifying that the funds are held for the benefit of another. The funds are invested in the name of the general receiver, clerk, or circuit court.

Recommendation (7). The General Assembly may wish to amend §8.01-583 of the *Code of Virginia* to require trust fund administrators to invest funds in federally insured financial institutions in a manner which indicates that the funds are held on behalf of another. Administrators who pool funds should keep accurate records of the percentage of the pooled funds held by each beneficiary.

Funds Not Invested. As of June 30, 1987, trust fund administrators reported that over $1.3 million in trust funds were deposited in non-interest bearing checking accounts. Pursuant to §8.01-587 of the *Code of Virginia*, general receivers must invest trust funds within 60 days of receipt or be personally obligated to pay interest.

Funds which are not invested do not earn interest. If these funds were deposited in interest bearing checking accounts, they would earn interest for the beneficiaries. For example, if the $1.3 million were held for six months in interest bearing checking accounts yielding 5.6 percent annual interest, the funds would earn approximately $36,400 of interest revenue.

Trust fund administrators generally reported two reasons for depositing funds in non-interest bearing checking accounts. First, many of the funds in non-interest bearing accounts are from condemnation actions. These funds are usually paid out in a short period of time; however, this does not always happen. With the availability of interest bearing checking accounts, trust funds can be readily accessed while interest is earned for the beneficiaries.

Second, some clerks and general receivers who pool their trust funds deposit them in non-interest bearing accounts to avoid having to allocate interest to the accounts. If these accounts are held for over 60 days, they should be earning interest for the beneficiaries.

Recommendation (8). Only those funds which trust fund administrators know will be disbursed within 60 days may be placed in a non-interest bearing checking account. All other funds should be deposited in interest bearing accounts.

Return on Investment

Many trust fund administrators could improve the return on investment by selecting higher yielding investments. Other administrators are earning adequate rates of return. The type of investment in which a fund is placed directly affects the amount of interest earned. Administrators who

place large portions of trust funds in passbook savings accounts and money market accounts earn low rates of return.

Return on investment refers to the rate at which the invested funds earn interest. The return on investment was estimated by weighting the average interest rate earned by the amount of funds each administrator reported holding.

The rate of return on investment varies from 7.5 percent for financial institution general receivers to 5.5 percent for clerks in courts with general receivers (Table 4). The lower rate for clerks in courts with general receivers could be due to clerks holding funds which are disbursed shortly after receipt. The variation in return on investment is fairly small among general receivers and clerks in courts without general receivers. The return on investment for all administrators is approximately seven percent.

The type of investment in which a trust fund is placed directly affects the amount of money the beneficiary receives at disbursement. The highest overall return on investment was earned by administrators who

Table 4

RETURN ON INVESTMENT BY TYPE OF ADMINISTRATOR

Type of Administrator	Return on Investment
General Receivers	
Individual	6.85
Financial Institution	7.47
Clerk	6.82
Clerks in Courts With General Receivers	5.54
Clerks in Courts Without General Receivers	7.43
All Trust Fund Administrators	7.06

Note: Return on investment is an estimate of the rate of income earned using the reported mix of investments.

Data reported are for amounts held as of June 30, 1987, or the date of the most recent semi-annual report.

Source: JLARC staff analysis of data supplied by general receivers and clerks of the court.

reported investing major portions of their funds in certificates of deposit less than $100,000. The lowest return was earned by administrators who reported investing primarily in money market accounts and passbook savings accounts.

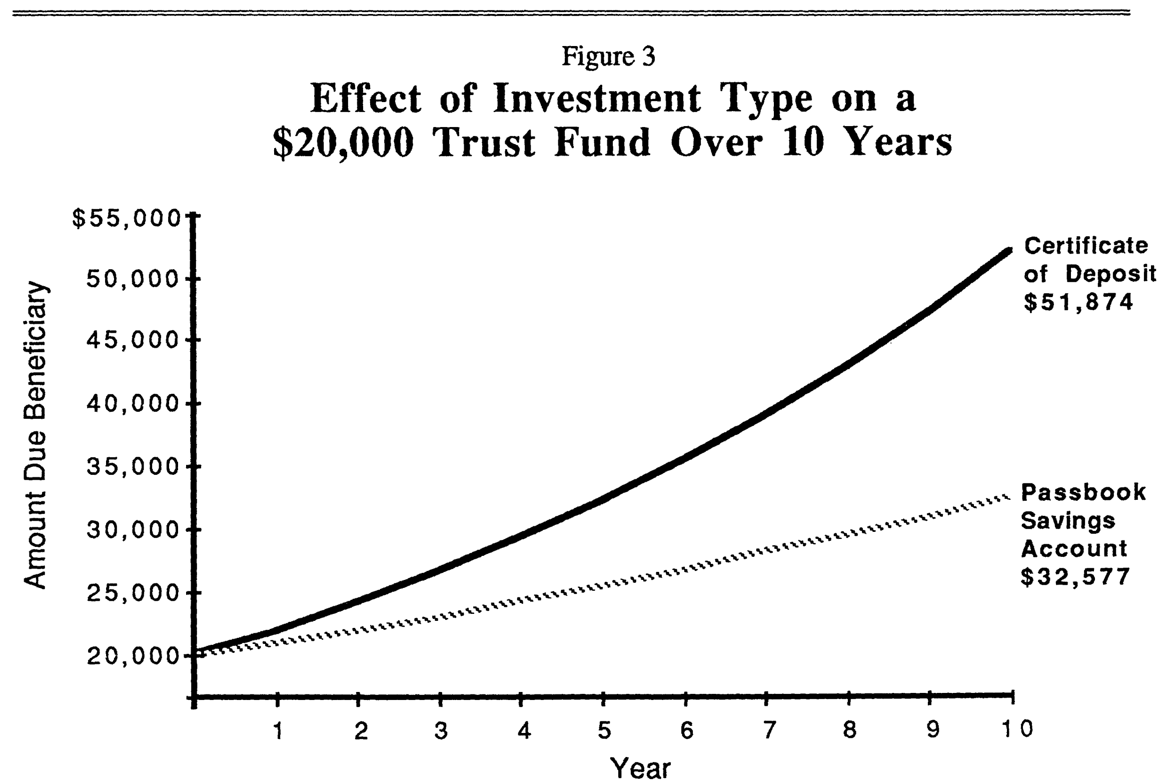
For example, two trust funds for $20,000 each are invested for ten years (Figure 3). One is invested in a certificate of deposit earning ten percent per year. The other is invested in a passbook savings account earning five percent per year. At the end of ten years the fund invested in the certificate of deposit would earn almost $20,000 more for the beneficiary.

Many administrators are not earning high rates of return on investment. They are not investing the funds in the most advantageous manner for the beneficiaries. The following examples describe investments reported by two trust fund administrators.

One clerk placed a $27,888 trust fund in a passbook savings account earning 5.5 percent interest rather than placing the fund in a certificate of deposit which would produce an estimated average yield of 8.1 percent. This fund has been in a passbook savings account for approximately two years. The beneficiary loses approximately $725 in interest each year by having the fund deposited in the lower yielding investment.

Figure 3

Effect of Investment Type on a $20,000 Trust Fund Over 10 Years



Interest rates used were actual rates cited by trust fund administrators and were current as of June 30, 1987.

Source: JLARC staff analysis of data supplied by general receivers and clerks of the court.

* * *

One general receiver placed all trust funds totalling $189,000 in money market accounts earning 5.96 percent rather than in certificates of deposit, which generally earn 8.1 percent interest per year. The general receiver stated that funds were routinely placed in money market accounts because they earn more than if placed in passbook savings accounts. However, the beneficiaries lose a total of approximately $4,045 in interest each year by having the funds in money market accounts rather than higher yielding certificates of deposit.

Trust fund administrators should be encouraged to place trust funds in investments offering the greatest return on investment with minimal risk to principal. Most financial institutions offer certificates of deposit with a minimum balance of $1,000. These certificates typically have a higher yield than passbook savings and money market accounts.

Recommendation (9). Trust fund administrators should avoid investing trust funds over $1,000 in passbook savings accounts and money market accounts.

FEES PAID FOR TRUST FUND ADMINISTRATION

Most beneficiaries' accounts are charged fees for the management and investment of their trust funds. However, uniform fee schedules and practices are not used throughout the Commonwealth. Section 8.01-588 of the *Code of Virginia* allows general receivers compensation as the court deems reasonable. Since the definition of reasonable is left to each court, there is much variation in the fees taken by general receivers.

The *Code of Virginia* also directs that no compensation be allowed until the general receiver has performed the duties of his or her position. It appears that general receivers deduct fees from the accounts regardless of whether the general receiver duties have been completed.

Most clerks of the court do not charge fees for administering trust funds. The *Code of Virginia* does not directly address whether fees may be taken by clerks' offices for the administration of trust funds. Clerks who charge fees do so pursuant to §14.1-112 of the *Code of Virginia,* which authorizes a miscellaneous clerk's fee.

There appears to be no basis for the differences in fees charged by trust fund administrators. There are no major differences in the duties required of the administrators. The amount of the beneficiaries' trust funds at disbursement can vary greatly from one locality to another due to the varying fee structures.

Fees Taken by General Receivers

There are two problems with the fees taken by general receivers. First, most general receivers are deducting fees from the trust funds even though they have not fulfilled the statutory requirements of the position. Second, the fees allowed each general receiver are dependent on each court's interpretation of "reasonable."

Fulfillment of Statutory Responsibilities. The majority of general receivers are not in compliance with the *Code of Virginia.* Approximately 75 percent of the general receivers deduct their fees without having fulfilled the basic requirements of their position. These general receivers reported that they had either not submitted the required reports or were not sufficiently bonded. Section 8.01-589 of the *Code of Virginia* states that general receivers are not allowed compensation until they have completed all duties of general receiver. General receivers should not be taking fees until all duties have been completed.

Variation in Fees. The amount and type of fees taken by general receivers vary widely throughout the Commonwealth. Most general receivers take a fee; a few do not. Section 8.01-589 of the *Code of Virginia* allows general receivers reasonable fees for administering trust funds. However, each court defines "reasonable." What appears reasonable to one court may be different from another court's interpretation.

General receivers reported that $293,351 in fees were deducted from the trust funds they administered during FY 1987. Approximately 90 percent of this total was charged by individual and clerk general receivers.

Substantially lower fees were charged by financial institution general receivers. These general receivers reported less total fees for administering about 20 percent more cases and almost $2 million more than the other general receivers.

Eight general receivers do not charge fees for administering trust funds. These administrators hold a total of $3,046,562 in trust funds. Five of these general receivers are financial institutions. Three clerk general receivers do not charge fees.

There is much variation in the percentages charged for fees as well as the time at which fees are taken. The most frequent fee taken is five percent of the interest income. This fee is usually taken annually. In addition, many general receivers deduct fees from the principal either at receipt or disbursement of the funds. Still others take a percentage of the combined principal and interest either periodically or at disbursement. Most general receivers take some amount of interest income periodically along with a percentage of the principal. There are 57 combinations of percentages of interest income and principal which are taken as fees by the 92 general receivers.

The following examples illustrate some of the variation in fees charged by general receivers.

One individual general receiver takes a fee at receipt of five percent of the first $1,000 of the trust fund and two percent of the amount over $1,000. In addition, she takes five percent of the interest income every 12 months. At disbursement an additional one-tenth of one percent is taken from the principal. When the court orders her not to invest the funds, she receives $10 to $35 per account. As of June 30, 1987, this general receiver reported holding $94,143 for 17 cases. During FY 1987, she reported receiving fees totalling $564.

* * *

One financial institution general receiver charges fees of two percent of the principal at receipt, five percent of the interest income every 12 months and $1 for each check written. In addition, this financial institution deducts 2.5 percent of the total funds transferred to the Division of Unclaimed Property. As of June 30, 1987, the general receiver reported holding $592,687 for 48 cases. During FY 1987, the financial institution reported taking $4,422 in fees.

* * *

One clerk general receiver deducts two percent of the principal when the fund is received. In addition, one percent of the principal and interest is taken every six months after an initial 18-month holding period. As of June 30, 1987, the clerk general receiver reported holding $267,462 for 44 cases. During FY 1987, the clerk general receiver reported deducting $7,071 in fees.

Some general receivers take a flat fee in addition to a percentage-based fee. These flat fees may be used to pay for the bond premium or other administrative costs. They are the minimum fees received by these general receivers each year. The following examples show the variation in flat fees that may be taken by general receivers.

One individual general receiver reported receiving $7,500 per year as fixed compensation to be apportioned among the cases he holds. In addition, he reported compensation of two percent of the principal at receipt, five percent of the interest income every 12 months, and two percent of the principal at disbursement. As of June 30, 1987, this general receiver reported holding $699,780 in 192 cases. He reported receiving a total of $11,549 in fees during FY 1987.

* * *

Another individual general receiver reported that he receives $625 per year to cover the cost of his bond. In

addition, he reported receiving two percent of the principal at receipt, five percent of the interest income every 12 months, and two percent of the principal at disbursement. As of June 30, 1987, he held $112,905 in 107 cases. This general receiver reported deducting $995 for fees and bond costs during FY 1987.

Fees Taken by Clerks of the Court

Most clerks reported that they do not take fees from the trust fund accounts that they administer. However, clerks in courts without appointed general receivers are more likely to deduct a fee for trust fund administration. Clerks who charge fees generally receive a fixed amount for each disbursement made. In addition, some clerks indirectly take a fee by not allocating accrued interest to the accounts.

The majority of the 71 clerks who administer trust funds do not charge fees. However, 21 clerks do charge fees. These clerks reported deducting fees of $2,271 for administering $8,556,557 in trust funds during FY 1987.

Fees charged by clerks of the court vary depending upon whether a general receiver has been appointed to the court. Twenty of the 34 clerks in courts without general receivers reported charging a fee for administering trust funds during FY 1987. The fee charged was typically $10 for the first check written and $1 for each additional check. Only one of the 37 clerks in courts with appointed general receivers reported charging a fee during FY 1987. As with the clerks in courts without general receivers, this clerk charged a $10 fee for disbursing money from a trust fund.

Some clerks indirectly receive fees for administering trust funds. These clerks reported that they do not allocate interest to the funds which accrue interest. The interest is not paid to the beneficiaries. Rather, the interest from these funds is recorded on the monthly report to the Compensation Board as miscellaneous clerk's fees. The clerk in one such court said that the non-allocated interest is used to pay some office expenses. This reduces the amount needed from the Compensation Board.

When clerks receive indirect fees from condemnation suits, they are in violation of §33.1-124 of the *Code of Virginia* which states that "any interest which has accrued on the funds shall be payable to the person or persons entitled to receive such funds." The number of courts which are failing to properly allocate interest earned on condemnation funds is not known.

The *Code of Virginia* should be amended to ensure that all interest due the beneficiaries is being paid to them. The provision for condemnation cases should apply to all types of trust funds.

Recommendation (10). The General Assembly may wish to amend §8.01-600 of the *Code of Virginia* to provide that interest which accrues from all trust funds, minus the allowed fees and bond costs, be paid to the beneficiaries.

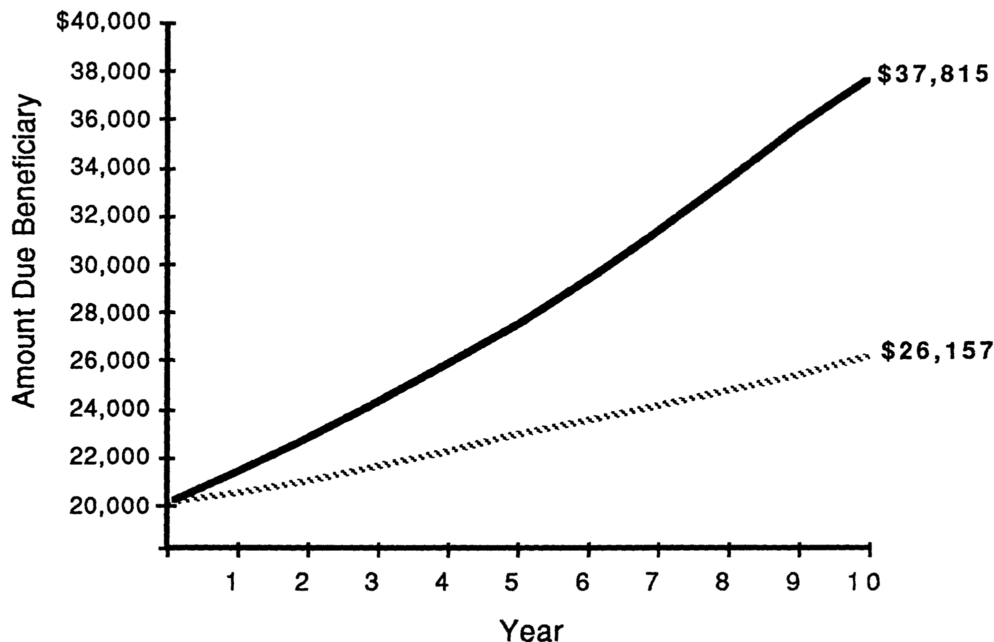
Fee Structure

There are no reported differences in investment and administrative practices of trust fund administrators which warrant different fee structures for general receivers and clerks. The activities necessary to properly invest and account for these funds are the same. Therefore, a uniform fee structure is appropriate.

The differences in allowable fees affect how much money a beneficiary in a locality receives at disbursement. For example, two trust funds for $20,000 are each invested at seven percent for ten years (Figure 4). One is invested by the general receiver in Locality A. The other is invested by the general receiver in Locality B. At the end of ten years the fund invested

Figure 4

Effect of Fee Structure on a $20,000 Trust Fund Over 10 Years



Key:

——— LOCALITY A (financial institution general receiver)
Fee: *5% of interest every 12 months and 1% of principal and interest at disbursement.*

\`\`\`\`\`\`\` LOCALITY B (individual general receiver)
Fee: *4% of principal and interest every 12 months and 4% of principal and interest at disbursement.*

Assumes average return on investment of 7%

Fee structures used were actual fee structures cited by general receivers and were current as of June 30, 1987.

Source: JLARC staff analysis of data supplied by general receivers.

by the general receiver in Locality A would be almost $12,000 more than if it had been invested by the general receiver in Locality B. The difference shown in amount payable to the beneficiary at the end of ten years is due entirely to differences in fees.

All trust fund administrators must perform certain tasks to administer funds. These tasks include setting up an account when the trust fund is received by the administrator, writing checks for periodic disbursements, posting interest, and eventually closing out the account.

All trust funds should be assessed a flat fee not to exceed $10 for each of these activities (Exhibit 2). Ten dollars was reported as the average fee taken by clerks for these activities. The difficulty and time involved with these tasks does not depend on the size of the trust fund nor on how long the fund will be held. Therefore, a flat fee is appropriate compensation for these tasks.

Exhibit 2

PROPOSED FEE STRUCTURE FOR TRUST FUND ADMINISTRATORS

Fee schedule for all trust funds:

- A fee not to exceed $10 for setting up an account.
- A fee not to exceed $10 for closing an account.
- A fee not to exceed $10 per check for periodic disbursements.

In addition, for trust funds which are held for over one year:

- A fee not to exceed five percent of the annual interest income for investment activities.

Source: JLARC staff analysis.

Trust fund administrators should receive up to five percent of the annual interest income for accounts held longer than one year. It is expected that funds which are held for more than one year would require greater investment activity on the part of the administrator than those held for less than one year.

Recommendation (11). Fees charged for the administration of trust funds should be uniform for all trust fund administrators, including clerks. Fees charged by clerks would be revenue for the clerks' offices. The General Assembly may wish to amend §8.01-589 and §8.01-600 of the *Code of Virginia* to allow fees to be taken by all trust fund administrators according to the following schedule. For all trust funds, trust fund administrators should be allowed a fee not to exceed:

$10 for setting up an account,
$10 for closing an account, and
$10 per check for periodic disbursements.

For trust funds held for over one year, trust fund administrators should be allowed an additional fee not to exceed five percent of the annual interest income. For trust funds held less than one year, no fee based on annual interest would be allowed.

BONDING OF TRUST FUND ADMINISTRATORS

Most trust fund administrators hold funds which are not sufficiently covered by bond, even though the cost of the bond is to be deducted from the beneficiaries' accounts. Approximately $4 million held in trust by appointed general receivers on June 30, 1987, was not covered by bond. The amount of the clerk's constitutional officer's bond is usually less than the amount of trust funds held.

Bonding sufficient to cover the total amount of trust funds held by each trust fund administrator is necessary to protect the financial interests of the beneficiaries. Beneficiaries could potentially lose trust funds which are not bonded.

The bonding requirements for clerks and appointed general receivers differ. General receivers (including clerks appointed as general receivers) must annually obtain bond which will at least equal the probable amount of funds to be held during the year. When trust funds are held by the clerk (in the capacity of clerk of the court), Virginia statutes do not require a bond specifically covering trust funds.

By qualifying for bond the general receiver formally states his or her liability for the funds held. When surety is given, a third party accepts responsibility for reimbursing beneficiaries whose funds are stolen, mishandled, or lost by the general receiver if the general receiver is unable to personally reimburse the beneficiaries.

In accordance with the *Code of Virginia,* the cost of the bond for general receivers is to be paid from the fees generated by each account. The reported costs for 1987 varied from $1.22 to ten dollars per $1,000 of bond coverage.

Centralized purchasing of bonds by the Office of Risk Management of the Department of General Services could help ensure that trust fund administrators are fully bonded. Using the amount of trust funds and number of cases held on June 30, 1987, average bond costs are estimated at $18 per account per year.

General Receivers

There are two areas of non-compliance with the bond requirements for general receivers. Many general receivers do not maintain bond sufficient

to cover the amount of funds held as general receiver. In addition, many general receivers do not appear annually before the court to show that bond is maintained. Section 8.01-588 of the *Code of Virginia* requires general receivers to annually obtain bond sufficient to cover the probable amount of funds in their hands during the year. Clerk general receivers must maintain bond to cover trust funds held as general receiver. The court must approve the amount of the bond.

The bond requirements in §8.01-588 may not apply to financial institution general receivers. Section 6.1-18 of the *Code of Virginia* provides that financial institutions which have $50,000 in unencumbered funds do not have to guarantee their performance as trust fund administrators under a bond with a surety company. None of the financial general receivers reported maintaining a bond specifically to cover the trust funds administered as general receiver.

Fifty-five percent of the individual and clerk general receivers did not maintain bond sufficient to cover the amount of trust funds they held on June 30, 1987 (Table 5). A total of $4,100,118 of the $17.1 million in trust

Table 5

Total Dollar Amount and Percentage of Trust Funds Not Covered by Bond for Individual and Clerk General Receivers

	Trust funds not covered by bonds	Percentage of trust funds not covered by bonds	Percentage of general receivers holding trust funds not covered by bond	Average amount of unbonded trust funds per general receiver holding trust funds not covered by bond
Individual General Receivers	$1,785,418	21%	51%	$85,020
Clerk General Receivers	$2,389,475	26%	61%	$140,557
TOTAL	$4,174,893	24%	55%	$115,969

Data reported are for amounts held as of June 30, 1987, or the date of the most recent semi-annual report.

Source: JLARC staff analysis of data supplied by general receivers.

funds held by these general receivers was not covered by bond. General receivers who were not fully bonded, held an average of $115,969 in unprotected trust funds.

Many general receivers do not annually appear before the court to show that bond is maintained. This annual bond appearance demonstrates that a third party is protecting trust funds from losses, such as theft. Twenty-two percent and 50 percent of the individual and clerk general receivers, respectively, do not appear before the court on an annual basis to give bond. In addition, 37 percent of the individual and clerk general receivers reported that they qualified for bond only at the time of appointment. Three clerk general receivers reported that they do not maintain a bond separate from their clerk's bond to cover funds held in trust as general receiver.

Clarification is needed in §8.01-588 to ensure that all trust funds held by general receivers are covered by bond. Some general receivers who do not maintain bond sufficient to cover all trust funds held may be interpreting the phrase "sufficient to cover the probable amount in his hands" as applying only to uninvested or not deposited funds. However, as general receivers have access to all trust funds they administer, bond should cover the total amount of funds under their control. Another reason for insufficient bonding may be the inability to accurately project the probable amount of funds which will be held during the year. This problem could be corrected by setting thresholds on the amounts over the probable amount which need additional coverage. It seems reasonable to require trust fund administrators to obtain additional bond when the amount of funds held exceeds the amount bonded by $10,000.

Recommendation (12). The General Assembly may wish to amend §8.01-588 of the *Code of Virginia* to read "A general receiver shall annually give before the court a bond with surety to be approved by it, in such penalty as the court directs, sufficient at least to cover the probable amount under his control in any one year, and he shall give additional bond from time to time if the amount held exceeds the probable amount by $10,000." A comparable amendment should be made to the *Code of Virginia* to cover the bonding requirement for clerks.

Clerks' Offices

The amount of bond presently maintained by many clerks' offices does not cover the total amount of trust funds reported. Trust funds held by the clerk are covered under the public officials bond for constitutional officers, the amount of which is set by each circuit court. These bonds are purchased through the Office of Risk Management. The median amount of these bonds is $25,000. A second bond of $50,000 covers each employee of the clerk's office. However, clerks who administer trust funds hold on average $384,572 in trust funds.

Clerks' offices have suffered losses resulting from theft and incorrect disbursement of funds. Some of these losses exceeded the bond maintained by the Office of Risk Management. At least one circuit court maintains an additional bond on funds held by the clerk. The cost of this bond is paid by the locality. The following are examples of some of the losses which were covered by bond.

In 1984, an audit by the APA revealed that a deputy clerk in one clerk's office had embezzled $42,437. As cash and checks were paid, the deputy clerk stole the cash and deposited the checks. Checks received on the following day were deposited in place of the cash stolen on the previous day. When the records were reconciled at the end of the month, the deputy clerk listed the difference as deposits in transit to the bank. Balances in the accounting records gave the appearance that the deputy clerk was one day behind in depositing funds. In fact the funds had been stolen. A bond purchased through the Office of Risk Management covered $13,683 of the loss. Bond purchased by the locality paid for the remainder.

* * *

One clerk's office disbursed approximately $13,000 in trust funds to the wrong individual. A person misrepresented herself as the true heir and claimed the funds. The mistake was discovered when the true heir attempted to claim her funds. Since the funds were covered by bond, the true heir received her funds without much delay. The individual who misrepresented herself was ordered to repay the funds over a period of three months.

To protect the interests of the beneficiaries, clerks' offices should obtain bond to cover the total amount of trust funds held.

Recommendation (13). Clerks and their employees should be bonded in an amount sufficient to cover the total amount of trust funds held by each office.

Cost of Bond

Section 8.01-589 of the *Code of Virginia* directs that the cost of obtaining bond covering the trust funds be paid out of the fees charged by general receivers. Most individual and clerk general receivers pay bond from fees charged. Others are awarded a separate fee to cover bond. The average bond cost for general receivers ranges from $3.87 per $1,000 of coverage to $3.61 per $1,000.

The Department of General Services' Office of Risk Management negotiates and oversees the purchasing of the bond covering all clerks and their employees. All costs of purchasing the clerk's bond are passed on to the clerks as part of the premium they pay. The current cost per $1,000 of bond coverage for clerks is estimated to be $2.49 per year.

Staff of the Division of Risk Management estimate they could obtain a blanket bond for general receivers at a cost of $4.00 per $1000. Using the number of cases and total amount of trust funds held as of June 30, 1987, the estimated bond premium would be $70,531. This would result in an

estimated cost of $18 per account for each year of bond coverage. These numbers are conservative estimates. It is possible that through the competitive bid process, these costs could be reduced somewhat.

The deduction of the cost of the bond should be separate from the fee structure. Trust fund administrators should directly assess the funds for the cost of maintaining bond. Bond costs are calculated based on coverage for each $1,000 held. Those trust funds under $1,000 should be assessed the flat rate.

Recommendation (14). The General Assembly may wish to consider authorizing the Office of Risk Management to negotiate and contract with sureties to provide bond coverage for funds administered by trust fund administrators. Further, the General Assembly may wish to require general receivers to annually obtain bond through the Office of Risk Management. Trust fund administrators should be required to report the amount of their holdings to the Office of Risk Management at the beginning of each year along with the amount of trust funds they expect to come into their possession during the year.

Recommendation (15). The General Assembly may wish to amend §8.01-589 of the *Code of Virginia* to allow a separate deduction from the trust funds for the bond premium. Trust funds should be assessed a bond fee at the rate required by the Office of Risk Management to cover the cost of obtaining and administering the bond. Any funds under $1,000 should be assessed a flat rate to be determined by the Office of Risk Management.

III. OVERSIGHT OF TRUST FUNDS

The legislative intent that there be oversight of trust funds held by clerks and general receivers is clear. The *Code of Virginia* directs that both external and internal controls be placed on these funds. Judges are responsible for ensuring that trust fund administrators comply with the statutory requirements. However, the controls and enforcement within the courts are not currently sufficient to protect the beneficiaries' financial interests.

External controls on trust funds differ by type of administrator. Funds held in trust by clerks of the court are currently audited by the Office of the Auditor of Public Accounts (APA). However, funds held by general receivers are not routinely audited. Instead, general receivers are statutorily required to periodically report to the court or a commissioner in chancery on the funds they hold.

The current system of oversight of funds held by general receivers is inadequate. The level of oversight through reports varies greatly throughout the Commonwealth. The potential for fraud and abuse is great without routine and comprehensive audits of all funds held in trust.

The *Code of Virginia* directs that trust fund administrators be able to properly account for all cases under their control. However, many administrators were not able to give accurate balances for the cases they hold. The records maintained and the procedures performed to internally control the funds are often insufficient.

EXTERNAL CONTROLS

Trust fund administration is externally controlled through reports and audits. However, the oversight of trust fund administrators varies significantly by type of administrator and by court.

Section 8.01-585 of the *Code of Virginia* requires general receivers to report semi-annually to the court and to annually make a formal settlement of accounts with the court or a commissioner in chancery. Commissioners in chancery are appointed by the court to examine and report upon any matters referred to them by the court. Some general receivers file their annual settlement of accounts with commissioners of accounts. Commissioners of accounts are appointed by circuit court judges to supervise fiduciaries and settle their accounts. Many general receivers do not file reports.

External control of trust funds administered by clerks of the court is primarily exercised through audits. Trust funds held by clerks, except for those funds held by clerks as general receiver, are subject to annual audit by the Auditor of Public Accounts. In addition, clerks must report to the court on the trust funds they administer when directed to do so by the judge. Only one clerk makes written reports to the court.

Reporting by General Receivers

The reporting process for general receivers is neither comprehensive nor routine. There are numerous areas of non-compliance with the reporting requirements detailed in statute, primarily related to reports which are not being filed. In addition, simply filing a report does not ensure that the funds are being properly administered. The review process of the filed report is not uniform throughout the Commonwealth.

Problems with Compliance. Few general receivers file the two reports required by §8.01-585 of the *Code of Virginia.* Although 55 percent of all general receivers reported that they had submitted one or the other report in FY 1987, less than one-third had submitted both reports (Table 6). The timeliness of filing reports is also a problem in many courts. However, it does not appear that judges are utilizing the disciplinary measures -- fines or contempt of court citations -- available to them to force general receivers to comply with the statutory reporting requirements. Most of the general receivers who do not submit reports stated that they have not done so because the judge does not require reports from them.

Only the judge can discipline the general receiver for failure to report. When general receivers report to a commissioner in chancery or a commissioner of accounts rather than to the judge, these commissioners can issue a subpoena to the general receiver requiring that he or she produce the report. Sections 8.01-612 and 26-8.1 of the *Code of Virginia* give commissioners in chancery and commissioners of accounts, respectively, subpoena power. The commissioner could certify to the judge that the report had not been submitted as required. However, these commissioners have no enforcement powers. More than one commissioner has indicated that having no "police powers" with which to enforce the reporting requirements is a problem in overseeing the general receiver.

Commissioners in chancery and commissioners of accounts are generally attorneys. This places attorneys in the uncomfortable position of overseeing other attorneys who are general receivers. The following examples are especially illustrative of the problems with compliance.

> *One of the commissioners of accounts who settles the general receiver accounts reported that he has difficulty every year in getting the annual settlement of accounts from the general receiver. This commissioner stated that he always has "to get after him [the general receiver] to make the report." The commissioner has requested that the court appoint a special commissioner to settle the general receiver accounts because of the repeated tardiness in submitting reports. The report due in September of 1986 was not filed until September of 1987. The commissioner indicated that he has had the general receiver before the judge on prior occasions but not this time. The commissioner also stated that he does "not like to drag a fellow attorney before the judge."*

* * *

Table 6

PERCENTAGE OF GENERAL RECEIVERS THAT FILED REPORTS IN FY 1987 AS REQUIRED BY STATUTE

	Type of Report		
	Semi-annual Report	Annual Settlement of Accounts	Both Reports
General Receivers That Filed	55% (50)	62% (56)	32% (29)
General Receivers That Did Not File	45% (41[a])	38% (34[b])	68% (61[b])

[a]Excludes one general receiver that did not file a report since no funds were held during FY 1987.

[b]Excludes two general receivers: one did not hold funds during FY 1987 and the other had served as general receiver for less than one year.

Note: Numbers in parentheses are numbers of general receivers. Numbers do not add across, as categories are not mutually exclusive.

Data are for FY 1987.

Source: JLARC staff analysis of data reported by general receivers.

A commissioner in chancery reported that, since 1976, only four reports have been submitted on trust funds for that locality. The commissioner stated that he has never received an accounting from the present general receiver, who was appointed in 1984. He indicated that he has contacted the general receiver and was informed that a report is forthcoming.

Filed Report Does Not Indicate Proper Administration. The filing of a report is not sufficient proof that trust funds are being properly administered. One commissioner stated that he does not feel very qualified to examine these reports since he is not an accountant and would not be able to pinpoint serious problems. Administrative deficiencies may not be recognized through a report alone. For example, records may not be maintained nor disbursements made as reported.

The general receiver in one locality filed a report with the judge. His report to the court indicated that all cases

were properly accounted for. Records were not checked against the balances reported. An on-site review by JLARC of the general receiver's records revealed that he does not keep documentation to support the reported balance for each account under his control. The only records available to JLARC were files for each case administered. The information contained in each file varied greatly. Older cases which had initially been administered by the previous general receiver included a copy of court orders, any correspondence on the case, and bank statements. However, the newer cases generally only included bank statements. Some case files were empty. The general receiver does not maintain any ledgers.

In addition, the general receiver himself, the resident judge, and the clerk for this court reported that numerous complaints have been lodged against this general receiver. (A circuit court judge is considered a resident judge in the court where he most frequently presides.) Beneficiaries have complained to the court that they are not receiving disbursements in a timely manner. According to the general receiver, he and the resident judge have agreed that funds must be disbursed within 30 days after the court order is entered.

Review of Reports Filed. Copies of filed reports indicate that most general receivers file their annual settlement of accounts directly with the judge or the clerk of the court. Others who file do so with either a commissioner in chancery or a commissioner of accounts. When reports are filed, there is no uniformity in the items reviewed by the commissioners.

Three commissioners in chancery and three commissioners of accounts were contacted to determine the oversight activities they undertake when reviewing the reports. While all check for mathematical correctness of the balances reported, only one routinely checks these balances against the ledgers maintained. Two of these commissioners indicated that they check receipts and disbursements against court orders. Five check for the appropriateness of the fees charged. Four routinely review some bank records. One commissioner simply checks the report against the one filed the previous year, accepting cancelled checks as proof that disbursements were made properly. Still another does a sample check of the appropriateness of disbursements and fees deducted.

In addition to the fees charged by the general receiver, the commissioners who review the reports receive a fee for this service. The type of fee taken varies. Some commissioners charge a flat fee for each account reviewed, others charge a flat fee for the entire review, and still others receive a fee based on the percentage of funds held or income earned.

Generally, these fees are additional deductions from the accounts rather than paid from the fees already charged by the general receiver. The amount of the flat fees taken ranges from $12.50 per account to $250 per review. One of the commissioners who charges fees on a percentage basis receives one-third the amount of compensation allowed the general receiver. In 1986, this commissioner received approximately $2,000 for reviewing one report on 36 cases.

Audits of General Receivers

The trust funds held by most general receivers are not routinely audited. However, the majority of chief judges have indicated that funds held by all trust fund administrators should be audited. The potential for fraud and abuse of these funds is great without routine and comprehensive audits.

Current Audits. Currently, very few trust funds held by general receivers are audited. Only four general receivers have an accounting firm or a certified public accountant audit their general receiver funds at least annually. Financial institution general receivers reported that random audits are performed internally as well as by State and federal auditors. These audits are on all funds held by the bank, not just for those held as general receiver.

Chief Judges Request Audits of General Receivers. Seventeen of the 24 chief judges who responded to a JLARC survey indicated that the funds held by all trust fund administrators, including general receivers, should be audited by the APA. These judges generally cited the public interest in trust funds as a reason for audits. Of the seven chief judges who did not see a need for APA audits of these funds, two indicated that certified public accountants audit the funds in their courts. Another stated that the commissioner of accounts provides this function.

Potential for Fraud and Abuse Without Audits. Without comprehensive and routine audits of trust funds, the potential for fraud and abuse is great. The JLARC study was not designed to systematically test for fraud and abuse. However, some administrators reported past problems related to trust fund administration in their courts. The APA also conducted a special review of one general receiver which disclosed some questionable practices.

Administrators in three different courts each cited an incident in which allegations of improper investment of trust funds had been made. These cases were heard in court. The judge ruled in favor of the administrator in two cases and for the beneficiary in the third. In two other localities problems related to timely disbursement of trust funds were noted. In another locality problems with a previous administrator were cited. According to the current administrator, allegations of excessive fees and missing money were made against the former administrator. However, the administrator in question died and no further action was taken.

A special review by the APA of one general receiver's accounts indicated numerous problems. The APA had difficulty tracing the flow of funds because the general receiver keeps very few records. The APA special review was further complicated as the general receiver had moved from the area. In several instances transactions for funds which should have been received or disbursed could not be documented. In addition, the general receiver did not always invest the funds in a timely manner. These problems were discovered during the JLARC and APA reviews.

> *Undocumented reductions were found in 18 cases totalling in excess of $9,000. Due to the lack of records, the reasons for the unidentified reductions could not be determined. It is possible that these reductions were for*

fees, court ordered disbursements, or erroneous reporting of prior balances.

* * *

Disbursements totalling nearly $85,000 for another four cases were supported by court order only. There was no check or purchaser's copy of a cashier's check to support that the beneficiary received the payment as ordered.

* * *

The general receiver's report to the court indicated that an account held for a minor had been transferred to the parents and a separate accounting would be prepared. However, review of the files disclosed that two certificates of deposit and one savings account passbook were still open and in the possession of the general receiver. The total estimated value of these funds is more than $45,000. Follow-up by the APA with the financial institution revealed that the accounts had been closed and the certificates and passbooks were non-negotiable.

* * *

A court order entered in November of 1985 indicated that two checks totalling more than $9,000 were delivered to the general receiver before the court. They were to be held for the benefit of a minor until 1994, when the child reaches majority. Although the general receiver had no record of the funds being received or otherwise accounted for, follow-up subsequent to the on-site review revealed that the checks had been received and were still being held by the general receiver.

As of November 1987, these checks had not been deposited nor otherwise negotiated. Therefore, funds were not invested nor earning interest for a two-year period. After these discrepancies were discovered and the judge notified by the APA, the general receiver requested reissue of the checks from the issuing insurance companies. Pursuant to §8.01-587 of the Code of Virginia, the general receiver was held liable for paying the interest that would have been earned on these funds.

* * *

Two certificates of deposit in amounts exceeding $25,000 and $6,000 matured. The certificates of deposit did not automatically renew. The general receiver failed to reinvest them for 20 and 51 days, respectively.

* * *

In June of 1987, four checks in excess of $6,000 each were paid to the general receiver to be administered for four children. At the time of the APA review in September, the checks were still in the file, paper-clipped to the court order.

They were being held by the general receiver for the children's social security numbers and dates of birth before investment or deposit in the bank. Therefore, no interest has been earned on the funds. These checks, which totaled slightly more than $25,000, were openly endorsed and could have been cashed by anyone with access to the files. Under §8.01-587 of the Code of Virginia, the general receiver should be held personally liable to pay the interest which would have been earned on the funds had they been invested, unless "for good cause shown to the court, it shall order otherwise."

Funds held in trust by general receivers are public funds which require that the beneficiaries' interests be protected through external controls. The only statutory controls in place to protect these interests are the reporting requirements. Reports to the judge are necessary to inform the court of the status of the funds. However, these reports do not sufficiently protect the beneficiaries' interests. Control should be exercised from outside the court system with audits by the Auditor of Public Accounts.

Section 8.01-600 of the *Code of Virginia*, which governs trust funds held by clerks, provides that all funds received under that section are subject to audit. Since the section also references funds held by general receivers, the audit authority could be interpreted as extending to general receiver funds. However, the APA has conservatively interpreted its audit authority as applying only to funds under the control of the clerk. The APA should be given clear statutory authority to audit general receiver funds.

Recommendation (16). The General Assembly may wish to amend §8.01-582 of the *Code of Virginia* by inserting a statement which gives the Auditor of Public Accounts clear statutory authority to audit trust funds held by all general receivers and to prescribe accounting standards.

Recommendation (17). If general receiver trust funds are audited by the Auditor of Public Accounts, the General Assembly may wish to amend §8.01-585 of the *Code of Virginia* to delete the semi-annual reporting requirement for general receivers and insert an annual reporting requirement. The annual report should be submitted at the end of each fiscal year. The report should contain the information currently prescribed in statute for the semi-annual report. The report should also include the approximate payment date on each case. This report should be made to the court only. Further, if general receiver trust funds are audited by the Auditor of Public Accounts, the General Assembly may wish to further amend §8.01-585 to delete the requirement for an annual settlement of accounts to the court or a commissioner in chancery. A corresponding amendment should be made to

§8.01-617 to delete the provision allowing general receiver accounts to be settled by the commissioner in chancery.

Reporting by Clerks of the Court

All clerks but one reported that they do not submit a written accounting of trust funds to the court. Most also stated that they are not required to report any information to the judge.

A 1986 amendment to §8.01-600 of the *Code of Virginia* inserted requirements for clerks to "keep an accurate and particular account" of funds received, invested, and disbursed as well as to report semi-annually to the court on the funds they hold in trust. Courts are interpreting these requirements as applying only to those clerks who have automated accounting systems, since they are contained in the paragraph which begins "in addition, when the clerk has available an automated system..."

Additional clarification of §8.01-600 is needed to ensure that the accounting requirement applies to all clerks who administer trust funds. The requirement would clearly apply to all clerks who hold trust funds if the qualifier of an automated system were removed. This could be done by making the accounting requirement a separate paragraph.

There is no apparent reason to require only clerks with automated systems to make reports. Regardless of whether they use manual or automated accounting systems to administer trust funds, clerks should report to the court. These reports are necessary because the court is ultimately responsible for the administration of trust funds and should be made aware of the total balances held and the activity in these accounts. The reporting should be done annually since the APA is now auditing clerks' offices.

Recommendation (18). The General Assembly may wish to amend §8.01-600 of the *Code of Virginia* to delete the semi-annual reporting requirement for clerks of the court and insert an annual reporting requirement on the trust funds held by all clerks. The annual report should be submitted at the end of each fiscal year. The report should contain the information currently prescribed in statute for the semi-annual report. The report should also include the approximate payment date on each case. Section 8.01-600 should be further amended to clarify that the accounting requirement applies to all clerks who hold funds in trust.

Audits of Clerks of the Court

Two issues developed from recent APA audits of trust funds held in clerks' offices. First, the audits revealed that many clerks' offices were not maintaining accurate records to account for the trust funds under their control. Therefore, the APA sent all clerks of the court a memorandum in May of 1985 detailing the statutory provisions prescribed for the administration of trust funds. Second, the courts contended that funds under the control of the court could not be audited. In 1986, the *Code of Virginia* was amended to give the APA clear authority to audit trust funds held by clerks of the court.

The 1985 memorandum instructed clerks to begin implementing the APA recommendations regarding records to be maintained and reconciliation procedures to be performed. Clerks were advised that their offices would be audited for FY 1986. As of October 1987, all clerks' offices had been audited at least once. The initial audits have provided the clerks with technical assistance in setting up new records and procedures to account for these funds.

Funds held in trust by clerks of the court are public funds. The beneficiaries' interests in these funds should continue to be protected. The recent legislation authorizing the APA to audit trust funds held by clerks recognizes that such audits are an appropriate control. The APA should continue to audit these funds.

INTERNAL CONTROLS

JLARC compared the internal controls used by trust fund administrators to the standards recommended by the APA for clerks' offices. The APA's standards reflect practices and requirements generally employed in the accounting profession. The internal controls reported by trust fund administrators were often insufficient to adequately account for the funds.

Many administrators had difficulty providing accurate balances for the funds under their control. While most administrators reported that they maintain some form of ledger to account for these funds, few of them perform reconciliation procedures to ensure that the entries in the ledgers are correct. Several administrators do not routinely post the interest income due to beneficiaries at the time it is earned. Most trust fund administrators reported that they rely on court orders to determine when funds are payable, rather than maintaining a system to inform them that funds should be disbursed.

All trust fund administrators reported the amount of funds under their control as well as the administrative records and procedures maintained to account for these funds. The APA reviewed the accounting records of 15 general receivers to verify the financial data reported and assess the record keeping and accounting practices used.

Accurate and Particular Account

Sections 8.01-585 and 8.01-600 of the *Code of Virginia* require trust fund administrators to account for the funds under their control. However, many administrators had difficulty providing JLARC with basic summary information. In addition, one section of the *Code of Virginia* needs to be amended. There appears to be a typographical error in this section.

Reporting by Trust Fund Administrators. The inability of some administrators to provide basic summary information in a timely manner suggests that these administrators may not be adequately accounting for the funds under their control. All trust fund administrators were asked to provide the total dollar amount held in trust and the total dollar amount invested as of June 30, 1987. One general receiver stated that much of the data requested,

including the amount invested, was inaccessible. According to this general receiver, extracting the information from the individual files would be a major undertaking and would require at least an additional month. One clerk stated that he had not been able to get accurate balances but that he could provide estimates. Other administrators could report the total balances but were unable to specify the number of cases they held as of June 30, 1987. JLARC accepted "best estimates" from administrators who could not provide specific information.

Some administrators reported an amount for the total held that was inconsistent with the amount reported for the total invested. When administrators submitted surveys with such discrepancies, JLARC conducted follow-up telephone calls with the administrators to determine the correct totals. However, a few administrators were not able to provide the requested data even after intensive follow-up.

The clerk in one court stated that none of the figures reported could be "sworn to" because they were just estimates of the amounts held in bank accounts. After repeated follow-up, the clerk did provide a corrected total for the amount held. However, the clerk could not specify how these funds were invested nor the number of cases involved.

* * *

The clerk in another court returned the survey listing the total amount held as $82,000 and the total invested as $60,000. Follow-up revealed that the clerk had directed his staff to complete the survey with any numbers they wished to use. During follow-up, the clerk reported new amounts which were significantly different from those initially reported.

In addition, the reviews of 15 general receivers' accounting records by the APA revealed that only four of these general receivers had accurately reported the balance for the total dollar amount of funds held in trust as of June 30, 1987 (Table 7). The other 11 general receivers reported balances which were incorrect by as little as $27 and as much as $40,492. The difference between the amounts verified by the APA and the amounts reported by these administrators was $79,386. This difference includes both underreporting and overreporting of the amounts held. Four of the general receivers reported an amount greater than what they actually held. The other seven reported an amount which was less than that held. The reviews were conducted on funds held by only 15 general receivers. Therefore, JLARC does not have information about the accuracy of the amounts reported by other general receivers and clerks.

The reasons for the discrepancy in the amounts verified by APA and those reported to JLARC varied. At least two general receivers did not include current year interest earned in the amounts reported. Another two gave reasons related to careless and hurried completion of the survey. In one

Table 7

DIFFERENCE BETWEEN THE TOTAL DOLLAR AMOUNT OF FUNDS HELD IN TRUST AS REPORTED TO JLARC AND VERIFIED BY THE APA FOR 15 GENERAL RECEIVERS

	Total Dollar Amount of Funds Held In Trust		
General Receiver	Verified By APA	Reported To JLARC	Difference
Bath	$ 94,901	$101,901*	($ 7,000)
Brunswick	253,807	265,268*	(11,461)
Caroline	223,947	223,920	27
Chesapeake	600,352	600,352	0
Frederick	53,468	53,205	263
Giles	258,330	258,301	29
Goochland	67,907	67,907	0
Greene	6,112	6,036	76
Greensville	342,174	339,862*	2,312
Isle of Wight	451,087	463,482*	(12,395)
Lynchburg	45,381	45,490	(109)
Nelson	83,733	83,733*	0
Pittsylvania	612,705	607,483*	5,222
Russell	802,337	761,845	40,492
Shenandoah	226,657	226,657*	0

*Amount reported to JLARC during follow-up interviews.

Data reported are for amounts held as of June 30, 1987.

Source: JLARC staff analysis of data reported by general receivers and findings submitted by APA.

instance, the difference was due to outstanding checks. Another general receiver reported the May 31 balance as the June 30 balance. Other amounts reported could not be supported by the records reviewed.

Amendment to the Code of Virginia. The *Code of Virginia* outlines how accounts are to be kept by trust fund administrators. Section 8.01-585 specifies that general receivers "shall keep an accurate and particular amount" of all funds received, invested, and disbursed. In prior statutes "amount" appeared as "account." A typographical error appears to have been made when §8.01-585 was amended in 1977.

Recommendation (19). The General Assembly may wish to amend §8.01-585 of the *Code of Virginia* to read "accurate and particular account" instead of "accurate and particular amount."

Procedures and Records at Receipt of Funds

At the time trust funds are originated, certain records should be established. Court orders establishing trust funds should be systematically filed in a separate order book, and the receipt of funds should be systematically recorded.

Specific ledgers and journals should also be used to account for trust funds from the time of origination. Most administrators reported that they maintain at least an individual account ledger for each case under their control. This ledger and other records should be established when funds are received. Information related to each case should be kept in the ledgers or in case files. This information should identify the origin of funds, the amount held, and the intended beneficiary. The "style" of the suit, which refers to the parties' names as they appear on the court records, should also be recorded.

Trust Fund Origination. When funds are to be held in trust by either the clerk or the general receiver, a court order specifies the amount to be paid as well as other case information. After the court order is entered, two procedures should be systematically performed to document the establishment of the trust fund.

First, the clerk of the court should maintain, in a trust fund order book, a copy of each court order which results in trust funds. This book should be maintained for all trust funds administered by the clerk and general receiver.

All court orders currently maintained in clerks' offices are indexed annually by the style of the suit in court order books. When a court order awards trust funds, no special filing mechanism designates these orders as resulting in trust funds. Because of this, the trust fund administrator may have difficulty identifying how many cases he or she should be responsible for. For example, if a settlement check from an insurance company were misplaced and never received by the trust fund administrator, the administrator would have no readily available means for identifying this problem. In addition, the trust fund order book would aid the APA in verifying that all trust funds are accounted for by the trust fund administrator.

Copies of court orders which result in trust funds being administered should be filed in a separate court order book. This would result in another set of records being maintained to account for trust funds. Since the clerk is the record keeper for the court, the clerk is the appropriate individual to maintain the trust fund order book for all court orders which originate trust funds.

Some records currently maintained in the law and chancery order books would be duplicated. However, this procedure is necessary to adequately protect the beneficiaries' interests.

Second, adequate documentation should be maintained to account for all amounts received by trust fund administrators. The APA reviews revealed that only one of the 15 general receivers reviewed gives a signed receipt whenever trust funds are delivered. Two others occasionally give signed receipts -- one with cash only, the other upon request. All trust fund administrators should maintain receipt books from which a cash receipt is issued for all trust funds delivered. When funds are received, basic information identifying the case should be noted on the receipt.

Recommendation (20). The General Assembly may wish to amend §17-28 of the *Code of Virginia* to require clerks of the court to maintain a trust fund order book. The trust fund order book would include copies of all court orders that originate trust fund accounts.

Recommendation (21). All trust fund administrators should issue receipts for all trust funds delivered to them. The receipt should show the name of the person delivering the funds, the style of the suit, the name of the beneficiary -- if known, and the amount received. Copies of the receipts should be retained.

Ledgers and Journals. Most trust fund administrators maintain some accounting records. Fifty-five percent of the administrators reported keeping a general control ledger (Table 8). The general control ledger serves as a control account in which the aggregate balance of the individual accounts is recorded.

Each case should also have a subsidiary ledger or an individual account ledger in which more specific information is recorded. Individual ledgers show the cumulative effect of account entries over a period of years. Seventy percent of the administrators reported maintaining an individual account ledger for each case.

However, only 38 percent of the trust fund administrators reported using a cash receipts and disbursements journal or journals. Some administrators maintain a disbursements journal which is separate from their cash receipts journal. Others combine cash receipts and disbursements into one journal. Throughout this report, references to a cash receipts and disbursements journal include separate and combined journals. The cash receipts and disbursements journal controls the flow of funds.

After a receipt is issued, the amount should be recorded in a cash receipts and disbursements journal. Each entry should include the style of the suit and any other information necessary to ensure the amount can be posted to

Table 8

PERCENTAGE OF TRUST FUND ADMINISTRATORS THAT MAINTAIN ACCOUNTING RECORDS, BY TYPE OF ADMINISTRATOR AND TYPE OF RECORD MAINTAINED

	Type of Record		
Type of Administrator	General Control Ledger	Individual Account Ledgers	Cash Receipts & Disbursements Journal
All Administrators (161)	55% (88)	70% (112)	38% (61)
General Receivers (92)	47% (43)	62% (57)	28% (26)
Clerks of the Court* (69)	65% (45)	80% (55)	51% (35)

*No information collected from two clerks of the court.

Note: Numbers in parentheses are numbers of administrators. Numbers do not add across, as categories are not mutually exclusive.

Source: JLARC staff analysis of information provided by general receivers and clerks of the court during telephone interviews.

the proper account. An individual account ledger should be established for each case. The total of receipts should be posted to a general control ledger every month.

Recommendation (22). All trust fund administrators should maintain a general control ledger or listing in which the total balance of all trust funds held is recorded. Individual account ledgers or listings for each case held in trust should also be established.

Recommendation (23). Clerks of the court should record all trust funds received and disbursed in the cash receipts and disbursements journal which they must maintain for all funds in their offices. General receivers may use the receipt book as a cash receipts journal. The receipt numbers should be posted to the general control ledger. If a receipt book is used as a cash receipts journal, general receivers should use a separate cash disbursements journal.

Case Information. Trust fund administrators generally maintain information sufficient to identify funds for each case they hold. Almost all administrators reported that they record the style of the suit and the amount of deposit (Table 9). Approximately 80 percent of the trust fund administrators record the current balance and the date of the order of deposit. Most clerks also record information on the place of deposit and the bank account number or certificate of deposit number.

Some administrators have established files for each case, within which pertinent case information is kept. Others keep this information in the individual account ledgers or listings for each case. Administrators should be able to use these records to identify the amount, origin, and location of funds being held for each case as well as the beneficiary of the funds, when known. Information regarding the probable date of disbursement for each case should also be recorded.

Recommendation (24). Trust fund administrators should record certain information for each case under their control, which should be kept

Table 9

PERCENTAGE OF TRUST FUND ADMINISTRATORS THAT MAINTAIN CASE INFORMATION, BY TYPE OF ADMINISTRATOR AND TYPE OF INFORMATION

Type of Administrator	Type of Information					
	Style of Suit	Date of Deposit	Amount of Deposit	Place of Deposit	Account Number	Current Balance
All Administrators (161)	91% (147)	79% (127)	89% (144)	68% (109)	63% (101)	82% (132)
General Receivers (92)	92% (85)	77% (71)	86% (79)	60% (55)	58% (53)	76% (70)
Clerks of the Court* (69)	90% (62)	81% (56)	94% (65)	78% (53)	70% (48)	90% (62)

*No information collected from two clerks of the court.

Note: Numbers in parentheses are numbers of administrators. Numbers do not add across, as categories are not mutually exclusive.

Source: JLARC analysis of information provided by general receivers and clerks of the court during telephone interviews.

either in the individual account ledgers or in case files. This information includes: the style of the suit, date of the order of deposit, original balance of funds deposited, place of deposit, account numbers in which funds are deposited, transactions affecting accounts, and the current balance. Court orders originating trust funds should also be maintained. If available, the probable date of disbursement and the beneficiary's date of birth and social security number should also be recorded.

Routine Posting and Reconciliation Procedures

Trust fund administrators should routinely perform certain posting and reconciliation procedures. All receipts for trust funds should be recorded in the cash receipts and disbursements journal or the receipt book. The receipts and disbursements should be posted to the general control ledger at the end of each month. In addition, interest earned on the funds should be credited to each account regularly. Reconciliation procedures should also be performed to ensure that amounts have been posted correctly to the various journals.

Posting of Interest. Eighty-six percent of administrators post interest to the cases on a regular basis -- monthly, quarterly, semi-annually, or annually -- depending upon when they receive statements from the financial institution in which the funds are held. However, nine administrators reported that they do not post interest to the accounts. These administrators just place bank statements in the files.

Another 14 administrators reported that they post interest but not on a regular basis. For example, one clerk general receiver stated that interest is posted once every three years or so. Other administrators reported posting interest only before making disbursements.

Trust fund administrators who do not regularly credit accounts with interest risk misplacing or not accounting for funds belonging to beneficiaries. Interest should be posted to each case on a regular basis.

When trust funds are pooled together for investment purposes, the allocation of interest income becomes more complicated. The interest must be allocated to each case which has funds in the pooled account. The amount to be credited to each trust fund should be proportional to the total amount pooled. Formulas must be used to determine the interest due to each case. Therefore, not only must the mathematical accuracy be checked but also the appropriateness of the formula used.

Forty-seven of the 54 trust fund administrators who pool funds reported that they allocate interest to the pooled funds at least annually on a regular basis. However, four administrators indicated that they allocate interest to pooled funds on a non-regular basis: three at disbursement only and the fourth every three years or so. Another three administrators indicated that they never allocate interest to the pooled funds.

Recommendation (25). Trust fund administrators should post interest to each case at least quarterly, or when interest or bank statements are received. When trust funds are invested in passbook savings accounts or other

instruments that do not provide statements of interest earned, trust fund administrators should take the instruments to the financial institution for posting of interest at least quarterly.

Reconciliation. Trust fund administrators reported using two types of reconciliation procedures. Fifty-two percent reconcile bank statements with the general control ledger (Table 10). Forty-six percent reconcile the general control ledger balance with the total of the individual accounts.

Administrators should use reconciliation procedures to monitor the funds. Minimally, they should reconcile bank statements with the general control ledger to ensure that the balance in the bank reflects the balance in the ledgers. In addition, the balance reflected in the general control ledger should be reconciled with the total of the balances of the individual accounts administered. Any inconsistencies should be resolved to ensure the accuracy of the accounts.

Recommendation (26). All trust fund administrators should reconcile bank statements with the general control ledger on at least a quarterly basis. If statements are received less frequently, the amount recorded in the general control ledger should be confirmed with the bank every quarter. Trust fund

Table 10

PERCENTAGE OF TRUST FUND ADMINISTRATORS WHO PERFORM RECONCILIATION PROCEDURES, BY TYPE OF ADMINISTRATOR AND TYPE OF PROCEDURE

	Reconciliation Procedure	
Type of Administrator	Bank Statements With General Control Ledger	General Control Ledger Balance With Total of Individual Accounts
All Administrators (161)	52% (83)	46% (74)
General Receivers (92)	69% (42)	39% (36)
Clerks of the Court* (69)	59% (41)	55% (38)

*No information collected from two clerks of the court.

Note: Numbers in parentheses are numbers of administrators. Numbers do not add across, as categories are not mutually exclusive.

Source: JLARC staff analysis of information provided by general receivers and clerks of the court during telephone interviews.

administrators should also reconcile the balance reflected in the general control ledger with the total of the individual accounts at least quarterly.

Disbursement Procedures and Records

A court order is needed for all disbursements of trust funds. However, trust fund administrators should be able to anticipate disbursements. To do so, administrators need to implement and use a system on which probable disbursement dates were recorded at receipt of funds.

Court Orders. Most trust fund administrators stated that they rely solely on court orders to determine when funds are payable. The APA reviews of 15 general receivers confirmed that they all disburse only with a court order. All 15 either maintain copies of the orders or reference the number of the court order, which is filed in the clerk's office. However, the method of payment varies. Some transfer funds to a checking account for disbursement, others draw checks on money market accounts, and others use cashier's checks.

Trust fund administrators should continue to make all disbursements in accordance with court orders. Copies of these orders should be filed. The amount disbursed and the style of the suit should be recorded in the cash receipts and disbursements journal and the appropriate individual account ledger. On a monthly basis, disbursements should be totaled and posted to the general control ledger. Other documentation to support disbursements, such as the cancelled check or a purchaser's receipt copy of a cashier's check, should be maintained.

Recommendation (27). All disbursements should be documented by trust fund administrators to show that all trust funds were disbursed as directed by court order. Disbursements should be recorded in the cash receipts and disbursements journal, the general control ledger, and the appropriate individual account ledger. Copies of all court orders should be retained. Administrators should continue to make disbursements by check, copies of which should be retained as well.

Systems to Monitor Funds for Disbursement. Thirty-five percent of all trust fund administrators reported that they have a system which could be used to alert them when funds are payable (Table 11). Such a system could be used to determine when a minor has reached majority. The systems which the administrators reported generally fall into one of three categories. Many administrators indicated that they simply note the beneficiary's date of birth on the ledger sheet -- some review these ledger notes periodically, others do not. Some have automated systems. A few administrators maintain perpetual calendar systems or manual tickler systems in card files.

The City of Roanoke has an automated accounting system with a special cash flow function. When funds are received, the probable disbursement date is entered on the system. The system produces reports which project the amounts to be paid out each month through the year 2009. Each amount is identified by the case name. The Roanoke system allows the administrator to project cash needs. Therefore, trust funds can be kept in an investment until immediately prior to disbursement.

Table 11

PERCENTAGE OF ADMINISTRATORS THAT REPORTED HAVING A SYSTEM TO ALERT THEM WHEN TRUST FUNDS ARE PAYABLE, BY TYPE OF ADMINISTRATOR

	Have System	
Type of Administrator	Yes	No
All Administrators (161)	35% (56)	65% (105)
General Receivers (92)	42% (39)	58% (53)
Clerks of the Court* (69)	25% (17)	75% (52)

*No information collected from two clerks of the court.

Note: Numbers in parentheses are numbers of administrators.

Source: JLARC staff analysis of information provided by general receivers and clerks of the court during telephone interviews.

An alternative to the automated system is a manual perpetual calendar system. Several administrators use a simplified version in which an index card for each month is maintained in a card file. When these administrators receive funds, the probable disbursement date is recorded on the appropriate index card along with information identifying the case. For example, when the general receiver for Lancaster receives an order for an infant settlement, she records the date on which the beneficiary attains majority on an index card. If the trust funds became payable on January 17, 1992, she would record the information on the index card for January. She reviews these cards several times each month to determine which accounts will require disbursements. When a disbursement is made, a notation is made on the card.

Orders originating funds may provide administrators with information as to when these funds are due to be disbursed. When funds are received they should be recorded in a manner which will alert the administrator as to when they are due to be disbursed. In this way, funds can be monitored in terms of investment needs. Funds which have remained unclaimed for a year or more after becoming payable can be identified for transfer to the Division of Unclaimed Property.

Recommendation (28). Trust fund administrators should use a perpetual calendar system to project when funds are payable.

IV. ALTERNATIVES FOR SYSTEM-WIDE IMPROVEMENTS

In addition to the specific financial and accountability issues analyzed in previous chapters, broader, system-wide alternatives for improving trust fund administration were considered. Possible improvements were focused in two areas: structural changes in the system and more effective administrative procedures.

Centralization of trust funds and the exclusive use of one type of administrator were among the structural alternatives considered. Assessment in this area indicates that responsibility for trust fund administration should remain at the circuit court level. While centralization of funds either at the State or circuit level remains a possibility, it is not recommended at this time.

Further, trust funds should be administered by the clerk of the court whenever possible. However, flexibility to administer trust funds through an appointed general receiver should be retained and employed as situations may dictate.

Specific recommendations have been made in the previous chapters regarding how trust funds should be administered. However, recommended changes will not be effective unless the problems of lack of information, misinformation, and non-compliance are addressed. Several procedures still need to be clarified. In addition, trust fund administrators and judges must be made aware of interpretations and changes in statute. A guidelines manual for trust fund administrators, directed at clarification of requirements, as well as a companion manual for use by judges, should be drafted.

CONSIDERATION OF STRUCTURAL CHANGES

Structural changes such as centralization and the use of a single type of administrator were considered during the course of the study. Recommendations, however, focus on improving the current system rather than creating a new one.

Although trust funds could be centrally administered at the State or circuit level, centralization would be of minimal utility to beneficiaries. Beneficiaries may have increased difficulty accessing their funds. In addition, implementation could be costly and time consuming.

The advantages and disadvantages of placing all trust funds with one type of administrator were assessed. While there would be some administrative and oversight advantages to placing all trust fund administration with clerks, no one type of administrator was found to be consistently better than the other in the day-to-day administration of trust funds. In addition, chief judges reported satisfaction with the present system of administering funds at the circuit court level as well as the flexibility to place funds with the clerk or a general receiver.

Centralization of Funds

The administration of trust funds in Virginia should remain decentralized at the local circuit court level. Centralization of funds at the State or circuit level as well as the possibility of centralizing the investment function only were considered. However, each level of centralization would present administrative problems as well as difficulties for the beneficiaries of the funds.

State Level Administration. If the trust fund administration function were centralized at the State level, it would most likely be placed in a special unit of an agency such as the Department of Treasury. If complete judicial control were desired, a trust administration unit could possibly be established within the Executive Secretary's Office of the State Supreme Court.

Under a State centralization model, the clerk of the court would most likely play a pivotal role. Court orders concerning the establishment and disbursement of trust funds would be sent to the trust administration unit by the clerk. In addition, to minimize confusion within the local court, all transactions and communications should be processed through a central entity -- the clerk.

Centralization of funds at the State level has certain advantages. First, day-to-day oversight of trust fund administration would be greater than it currently is in many courts where the accountability of trust fund administrators to judges appears to be weak. Since all trust fund administration would occur in one unit of State government, individuals involved in the function would be State employees directly accountable to a supervisor for their activities with the funds. Second, these employees would be full-time trust fund administrators. Investments and records would be maintained at professional standards. Third, the number of individuals involved in the actual administration process would be significantly reduced. Therefore, uniform policies and procedures would be more easily implemented. Fourth, the return on investments would be uniform for all beneficiaries throughout the Commonwealth. Finally, audits of these funds could be conducted in one site.

Although State-level centralization would have advantages, it would also have major drawbacks. Significant expenditures would be incurred to plan and operate a new State unit with the required administrative and clerical positions. A new system for administering trust funds and maintaining the related records would need to be developed.

The transfer of account-related information and monies could also be problematic. While all administration currently occurs within the local jurisdiction, a centralized process would have to be initiated in the local jurisdiction and carried out in Richmond. Case records or checks could be lost "in the mail." Attorneys and beneficiaries could have difficulty accessing trust fund information or money during transfer periods. Further, disbursements could very well be slowed down due to the larger volume of accounts and transactions being handled by a fewer number of people.

The most important drawback, however, concerns the accessibility of the trust funds and the trust fund administrators to beneficiaries and the attorneys representing them. Beneficiaries, often assigned a trust fund administrator because of their inability to handle their own finances, are usually young or not accustomed to dealing with large bureaucratic structures. They understand who in the community holds their trust fund and can readily approach the individual concerning their trust fund. If disbursements are required, the initiating court order can be generated and a transaction quickly transpires. This process would be more complex and time-consuming if the trust administration function were centralized in a State agency located in Richmond. In addition, even though the Department of the Treasury has numerous methods for finding beneficiaries of funds, local trust fund administrators very often know the individuals personally. Because of these drawbacks, centralization at the State level does not appear to be a viable alternative for trust fund administration.

State-Level Investment. Another alternative is to centralize the investment of trust funds at the State level within the Department of the Treasury through the Division of Cash Management. The Division maintains a local government investment pool primarily as a service to local jurisdictions. Localities can place funds in the pool, which invests in money market funds. The Division charges a fee to cover its administrative expenses.

This model would have two primary advantages. First, investment practices would be uniform. Second, funds could be withdrawn with 24 hours notice.

However, investment of trust funds by the Division of Cash Management in their local government investment pool is not recommended for three reasons: necessary size of deposits and withdrawals, the continued need for records to be maintained at each circuit court, and a negligible increase in return on investment.

Deposits and withdrawals must be for $5,000 or more. Many of the cases resulting in trust funds are for amounts less than $5,000. In addition, withdrawals are often in amounts of less than $5,000, particularly if they are for small cases or periodic disbursements.

Use of the local government investment pool would still require each circuit court to keep records and maintain funds at the local level. Some funds might have to be sent to the Division of Cash Management in batches -- with funds for less than $5,000 being held in the clerk's office until supplemented by other funds. Therefore, the administrative responsibilities for clerks' offices would not be significantly reduced.

Placing funds with the Division of Cash Management would be of minimal utility to the beneficiary. The interest rates earned by the local government investment pool are not much higher than those reported by the trust fund administrators. The Division was earning 6.75 percent interest on the funds as of June 30, 1987. After the Division deducts its fee, the net return is 6.3 percent. Many administrators reported rates of return which were as high or higher.

Circuit-Level Administration. A third option for centralization is to centralize all trust fund administration within each circuit. As of June 30, 1987, the number of trust fund administrators within each circuit ranged from one to 21. Under this model, administration responsibilities would be vested in one individual within each circuit, resulting in a total of 31 trust fund administrators statewide.

Centralization of trust funds at the circuit level has some advantages. Circuit-level centralization would involve fewer people than the 163 that currently administer funds. Therefore, uniformity in policies and procedures would be easier to implement. Also due to fewer locations, the costs of APA audits would be incrementally reduced.

Centralization at the circuit level presents many of the same problems as centralization at the State level. Therefore, it is not recommended. Transfer of funds from each of the current administrators to one circuit administrator could be time-consuming. Case records and funds could be lost because of the transfer. Since some of the circuits cover a large geographic area, centralization might present distance problems for trust fund administrators and beneficiaries. The following examples illustrate potential distance problems in two circuits (Figure 5).

> *One individual general receiver currently administers trust funds for five of the 11 courts within the Fifteenth Circuit: Essex, Lancaster, Northumberland, Richmond County, and Westmoreland. This administrator, who is located in Lancaster, reported that increased centralization within the circuit could create distance problems for some beneficiaries. If she had trust fund responsibilities for all 11 courts, beneficiaries might have to travel as many as 100 miles to meet with the general receiver.*

* * *

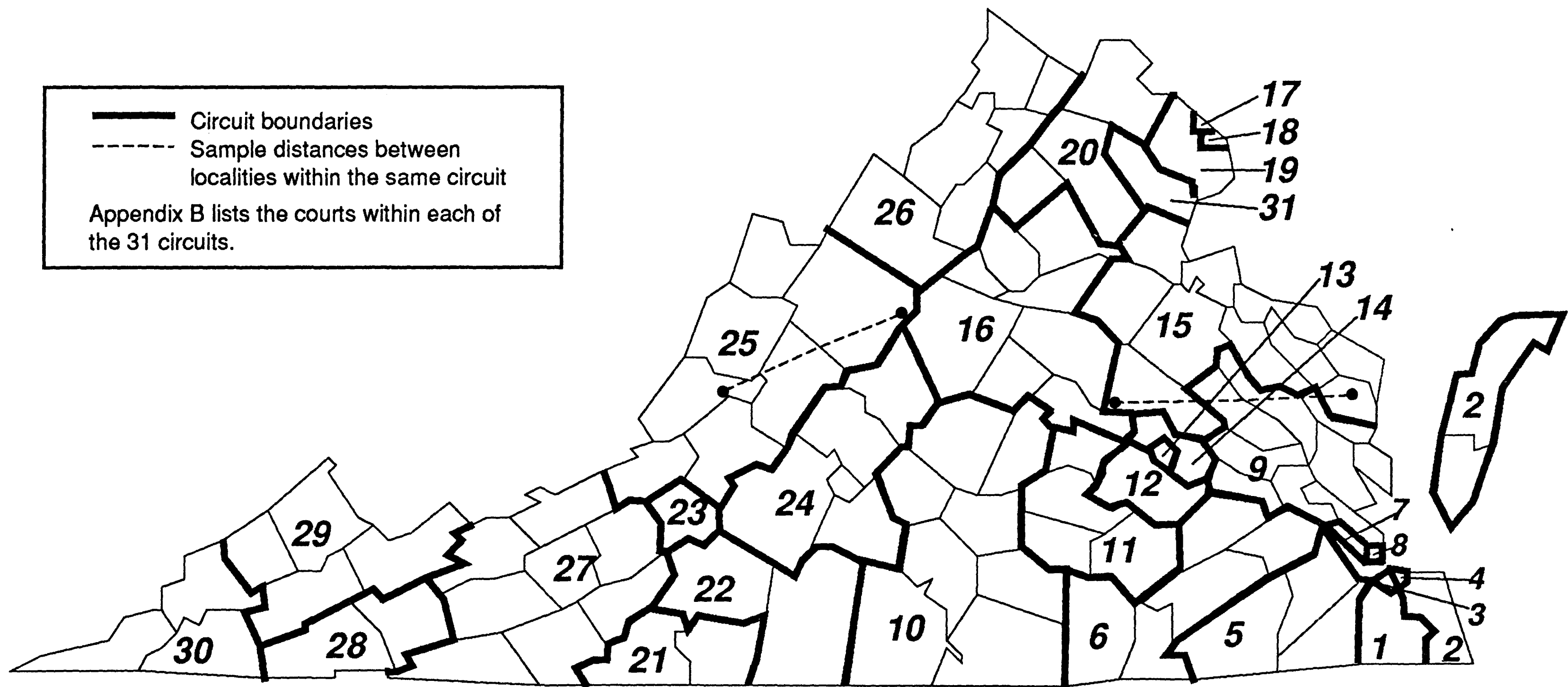
> *If funds were centralized at the circuit level, beneficiaries in the Twenty-Fifth Circuit might have increased difficulty accessing their funds. They could have to travel as many as 95 additional miles over the mountains from Waynesboro to Clifton Forge to meet with the trust fund administrator.*

In addition, the administrative responsibility for monitoring trust fund administrators would rest with the 31 chief judges. Caseloads for circuit court judges restrict time for administrative activities. Most circuit court judges do not appear to have time to supervise trust fund administrators. Placing such responsibilities, which are currently shared among the 121 courts, with only 31 judges would substantially increase the administrative burden on the chief judges.

Recommendation (29). Trust funds should continue to be administered at the circuit court level at this time.

Figure 5

Judicial Circuits of Virginia



Source: JLARC staff graphic.

Type of Administrator

The relative advantages and disadvantages of requiring judges to use only one type of trust fund administrator were assessed. Under this model, all judges would be restricted to using only the clerk or only a general receiver to administer trust funds.

Assessment in this area indicates that, whenever possible, funds should be administered by the clerk of the court. However, the judge in each court should be allowed the alternative of appointing a general receiver to administer trust funds for the court if the need arises.

Accountability and job performance (rate of return on investment and record keeping considerations) were the primary factors considered in assessing if there is a preferred type of administrator. Both clerks and general receivers can be held accountable for trust fund administration. However, accountability for clerks is somewhat stronger than that for general receivers. The clerk is an elected public official already under the scrutiny of the Auditor of Public Accounts.

Concerning job performance, neither clerks nor general receivers are consistently better in all aspects of trust fund administration. Even though both groups include some problematic administrators, both groups have some administrators who are investing prudently and obtaining good returns as well as maintaining records sufficient to account for trust funds. However, by virtue of being a part of the court structure, the clerks have established accounting and systems options that can aid in trust fund administration.

Accountability. Clerks are accountable both to the people who elect them and to the Auditor of Public Accounts. Clerks are elected for eight-year terms by the voters in the locality they serve. Confidence in the clerk's ability has been expressed by the voters. In addition, the APA audits trust funds as part of the current audit program for clerks of the court. However, the APA does not currently audit the trust funds held by the clerk as clerk general receiver.

General receivers are directly accountable to the judge appointing them. The *Code of Virginia* requires regular reporting by general receivers, but the majority do not comply. The judge can dismiss a general receiver for poor performance at any time, but indications are that this seldom happens. Judges appear to have little time for administrative tasks such as the oversight of trust fund administrators. General receivers are not directly accountable to the public nor are they currently accountable to the Auditor of Public Accounts. However, recommended changes to the *Code of Virginia* would make general receivers accountable to the APA.

Job Performance. As previously stated, neither clerks nor general receivers are consistently better in all aspects of trust fund administration. As reported in Chapter Two, estimated return on investment for most types of trust fund administrators is fairly similar. For example, financial institution general receivers earn an estimated rate of return of 7.47 percent. Clerks in courts without general receivers earn an estimated rate of return of 7.43 percent, while individual general receivers earn an estimated 6.85 percent.

Investment selection by some clerks, however, appears to be based on saving time, not on obtaining a high return on investment. For example, as of June 30, 1987, clerk general receivers and clerks in courts without general receivers held greater proportions of their trust funds in passbook savings accounts than did individual general receivers (Table 12). However, clerks in courts with general receivers went against that general trend and held only nine percent in passbooks.

Another consideration in the area of job performance concerns record keeping and accounting standards and systems. As previously discussed, the APA has imposed a set of accounting standards on clerks which covers all but the trust funds which clerks administer as general receivers. This is a step in the direction of providing for uniform and consistent accounting within the courts. If full responsibility for trust fund administration were vested with clerks, it would be relatively easy to bring all trust fund accounts into conformance with the standards. Clerks could expand their application of the standards to cover all funds which they administer.

If these same standards were applied to general receivers at this time, this would involve indoctrinating 37 individual and 27 financial institution general receivers to the standards and monitoring their compliance.

A final consideration in this area concerns the case management system that is being developed and implemented within the courts. If uniform accounting and reporting of trust fund information is desired, provisions could be made for trust fund accounting within the system. The system is available to clerks but not to general receivers.

Need for Flexibility. Given that neither type of administrator is consistently superior, but that there are some advantages to placement of the function with the clerk, judges should be urged to vest trust fund administration with their clerks. However, having the clerk administer all trust funds in some courts may not be feasible. Many clerks, not currently administering all trust funds in their courts, reported they would have difficulty with additional responsibilities. They stated that they would only be able to administer all trust funds for their courts if they received additional personnel or technical assistance. Others indicated that the judge prefers administration through a general receiver.

The flexibility to appoint a general receiver to administer trust funds should be retained. The resident judge in each court knows the needs of that court and should be the one to make the decision regarding use of a general receiver.

General receiver statutes have appeared in the *Code of Virginia* since 1842. Therefore, the original legislative intent behind the use of a general receiver to administer trust funds cannot be accurately determined. However, judges have had the option of appointing general receivers for 145 years.

Rather than preclude administration through a general receiver, all clerks and general receivers should be brought up to the same standards. There

Table 12

PERCENT OF TOTAL DOLLAR AMOUNT OF FUNDS HELD IN TRUST IN PASSBOOK SAVINGS ACCOUNTS, BY TYPE OF ADMINISTRATOR

Type of Administrator	Percent
Individual General Receiver	8
Financial Institution General Receiver	17
Clerk General Receiver	22
Clerk With General Receiver	9
Clerk Without General Receiver	16

Note: No information collected on investment selection for funds held by clerk general receivers as clerk.

Data are for June 30, 1987.

Source: JLARC staff analysis of data supplied by general receivers and clerks of the court.

is no reason to penalize courts which currently have effective administration through a general receiver. In several courts, general receivers have good record keeping systems and investment practices which provide safety of principal and a good return on investment. In other courts, problems which were detected during the study could be corrected through clarification of some statutes, procedural guidelines, and improved oversight.

Courts which have appointed general receivers to administer trust funds usually reported one of two reasons for doing so. The clerks of some courts would not accept responsibility for trust fund administration. In a few courts administration of trust funds by previous clerks was problematic. Although the judge can hold a clerk in contempt of court for inadequate job performance, only the voters in a locality may remove that clerk from office. The process to remove a clerk from office is lengthy.

Desirable Modifications and Restrictions. Four areas were observed where modifications or restrictions appear to be necessary. First, courts should not appoint clerks as general receiver. Trust funds currently administered by clerk general receivers should be administered by the clerk in his or her capacity as clerk rather than as general receiver. With modifications

to the system of trust fund administration, clerks and general receivers would have the same responsibilities. Clerks' offices would also be able to collect fees for their services, thus rendering the general receiver designation unnecessary and cumbersome.

Second, many of the modifications and requirements recommended may result in additional work in some clerks' offices. Therefore, clerks' offices may have additional staffing needs. It is anticipated that part-time personnel should be adequate to meet these needs. If fees for trust fund administration are paid to clerks' offices, the Compensation Board may wish to consider these fees when evaluating personnel requests from clerks' offices.

Third, when the judge elects to use a general receiver, only one should be appointed for that court whenever possible. Three courts currently have more than one general receiver. The practice of using more than one general receiver further decentralizes the system and may present problems of accountability.

Conversely, there do not seem to be problems with appointing the same general receiver in more than one court. This practice seems to work well. However, care should be taken to ensure that this centralization of funds does not supercede the beneficiaries' need for local administration.

Fourth, one circuit court reported using a different type of trust fund administrator. Some trust funds are administered by the clerk, who is also the appointed general receiver for the court. In addition, this court has interpreted §8.01-600 of the *Code of Virginia* as allowing the court to appoint someone other than the general receiver or clerk to deposit trust funds and write checks on the account. Attorneys in this county are appointed on a case-by-case basis to deposit and write checks on these funds. These attorneys are not bonded and should not have access to trust funds under the control of the court.

All trust funds should be administered by the clerk, and in some instances a general receiver. Only attorneys specifically appointed as general receiver should be depositing or writing checks on trust fund accounts under the control of the court.

Recommendation (30). Circuit court judges should use clerks of the court to administer trust funds unless compelling reasons exist to appoint a general receiver. Further, if the decision is made to allow clerks' offices to collect fees for trust fund administration, judges should remove the general receiver designation from currently appointed clerk general receivers. If the court makes the decision to use a general receiver to administer trust funds, only one general receiver should be appointed whenever possible.

Recommendation (31). The Compensation Board may wish to consider requests for additional part-time staffing from clerks' offices assuming trust fund responsibilities.

RECOMMENDED PROCEDURES FOR MORE EFFECTIVE ADMINISTRATION

The administration of trust funds could be further improved in three ways. The recommended improvements focus on clarification of the procedures which govern trust fund administration, development of a manual which would provide uniform guidance on procedures, and dissemination of these procedures. Clarification of procedures would address the problem of confusion with the statutory requirements. State and federal regulations which govern trust fund administration should also be included in the manual. A companion volume should be developed to assist judges in the judicial oversight of trust fund administrators.

Clarification of Procedures

Trust fund administrators need clarification regarding recommended procedures for record keeping and investment of trust funds. Further, many trust fund administrators indicated a need for clarification of the State and federal statutes which govern procedures for transfer of unclaimed funds and reporting of tax liability.

Record keeping standards should be developed for general receivers. The *Code of Virginia* requires trust fund administrators to accurately account for funds but does not specify any record keeping procedures and practices for them to follow. The Auditor of Public Accounts has directed clerks of the court to follow the guidelines detailed in his memorandum of May 1985. Similar standards should be established for general receivers.

As reported in Chapter Two, analysis of the investment practices of trust fund administrators shows that many administrators need guidance in selecting investments which yield high rates of return and offer safety of principal. Most administrators are not professional investors. Rather, they administer funds as a part-time responsibility and may not know how to measure investment yield and risk.

The responsibility for identifying trust funds as payable and unclaimed as well as the time period which should be used to designate these funds as transferable need to be clarified. Most trust fund administrators are confused about the requirements for transfer of funds to the Division of Unclaimed Property. Many of these administrators reported that they do not take responsibility for identifying funds as payable and unclaimed.

Several issues related to federal tax requirements need to be clarified. Many administrators reported that they are uncertain about their responsibilities in four areas. Issues which need clarification include investment of trust funds without the beneficiary's social security number, reporting requirements for interest earned on funds, preparation of U.S. Form 1099's, and payment of taxes.

Clarification regarding the federal requirements which trust fund administrators must follow to report and pay taxes on the funds under their

control is needed from the U.S. Internal Revenue Service (IRS). It is not clear whether trust fund administrators are considered fiduciaries under federal tax law. Fiduciary status requires special forms and procedures.

Twenty percent of trust fund administrators reported using one of these special forms, the U.S. Form 1099, which they submit to the IRS for the funds they administer. A few trust fund administrators indicated that the bank performs this task. Several stated that they send the U.S. Form 1099 to the beneficiary rather than to the IRS.

A few courts have requested rulings about federal tax requirements from the Richmond District Office of the Internal Revenue Service. Although the Richmond District Office has responded to inquiries, a representative from that office informed JLARC that these responses are not binding on the IRS. Only those opinions originating from the National Office are binding on the IRS.

Recommendation (32). The Executive Secretary of the Supreme Court of Virginia should request a ruling from the National Office of the Internal Revenue Service concerning the tax reporting responsibilities of trust fund administrators. This ruling is necessary to ensure that all trust fund administrators are in compliance with federal tax laws.

Administrative Manuals

Two different administrative manuals should be developed to assist in trust fund administration: one for trust fund administrators and the other for circuit court judges. The manual for administrators should include the record keeping practices to be followed. It should also describe criteria for investment selection and provide procedures to enable trust fund administrators to select high yielding investments. Various requirements outlined in the *Code of Virginia* as well as the federal tax requirements should be clarified.

A companion manual should be drafted for use by judges in overseeing trust fund administrators at the circuit court level. The judge's administrative manual should contain the same information contained in the manual for trust fund administrators. In addition, information related to procedures for selection of general receivers, disciplining trust fund administrators, and reviewing reports of trust fund administrators should be included.

These manuals should be developed by the Supreme Court of Virginia since administrative responsibility for the judicial branch rests with the Court. Assistance should be provided by the Auditor of Public Accounts, the Division of Cash Management, and the Division of Unclaimed Property in their areas of expertise.

The Supreme Court of Virginia should also provide opportunities for trust fund administrators to receive training on the procedures outlined in the administrative manual. Training should be conducted during Circuit Court Clerks Association meetings, which general receivers should be invited to attend.

Recommendation (33). The Supreme Court of Virginia should draft administrative manuals for trust fund administrators and judges. The manuals should specify procedures for record keeping, investing, and compliance with State and federal laws. Portions of the manuals should be developed with the assistance of the Auditor of Public Accounts, the Division of Cash Management, and the Division of Unclaimed Property.

Recommendation (34). The Supreme Court of Virginia should coordinate training on the procedures outlined in the manual for trust fund administrators. Training could be provided during meetings of the Circuit Court Clerks Association. General receivers should be invited to attend.

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APPENDIX A

JLARC STUDY MANDATE

SENATE JOINT RESOLUTION NO. 147

Requesting the Joint Legislative Audit and Review Commission to study funds held in trust by courts.

Agreed to by the Senate, February 27, 1987
Agreed to by the House of Delegates, February 25, 1987

WHEREAS, under Virginia law, general receivers and clerks of the court may be appointed to receive, hold, or invest, and to pay out or dispose of, moneys paid into a court; and

WHEREAS, certain of these funds revert to the general fund of the Commonwealth; and

WHEREAS, there is a need to determine the total sum of money currently held by general receivers and clerks of the court throughout the Commonwealth, and how such funds could best be administered; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the Joint Legislative Audit and Review Commission is requested to study funds held by courts in trust with general receivers and clerks of the court. The study should include, but not be limited to: (i) the determination of the total amount of moneys held by receivers and clerks of the court; (ii) how best to administer these funds; (iii) the need for audits of these accounts, (iv) the Commonwealth's interest, if any, in these moneys and (v) the costs of handling such funds.

The Auditor of Public Accounts is requested to assist the Commission in the preparation and completion of this study; and the courts of this Commonwealth are requested to cooperate and assist the Commission in gathering data and information.

The Joint Legislative Audit and Review Commission shall complete its work no later than November 15, 1987, and submit its recommendations, if any, to the 1988 Session of the General Assembly.

APPENDIX B

TOTAL DOLLAR AMOUNT OF FUNDS HELD IN TRUST AND TOTAL FEES TAKEN BY COURT AND TYPE OF ADMINISTRATOR

Court	Type of Administrator	Total Dollar Amount Held	Total Fees Taken[a]
First Circuit			
Chesapeake	Clerk	$113,773	none
	General receiver	600,352	$15,669*
Second Circuit			
Accomack[b]	Clerk	22,003	none
Northampton	Clerk[c]	24,959	---
	General receiver	106,066	none
Virginia Beach	Clerk[c]	567,533	---
	General receiver	334,378	7,504
Third Circuit			
Portsmouth	Clerk[c]	361,245	---
	General receiver	54,019	1,253
Fourth Circuit			
Norfolk[b]	Clerk	1,073,146	195
Fifth Circuit			
Isle of Wight	Clerk[c]	4,553	---
	General receiver	463,482	9,826
Southampton	Clerk	54,535	none
	General receiver	517,331	10,739
Suffolk	Clerk	54,680	none
	General receiver	525,057	11,138

APPENDIX B (Continued)

Court	Type of Administrator	Total Dollar Amount Held	Total Fees Taken
Sixth Circuit			
Brunswick	Clerk[c]	none	---
	General receiver	$265,268	$5,519
Greensville	Clerk[c]	none	---
	General receiver	339,862	5,915
Hopewell	Clerk[c]	none	---
	General receiver	443,024	9,160
Prince George	Clerk[c]	100,470	---
	General receiver	267,462	7,071
Surry	Clerk[c]	882	---
	General receiver	18,356	163
Sussex	Clerk	16,600	none
	General receiver	225,176	4,305
Seventh Circuit			
Newport News[b]	Clerk	3,271,158	none
Eighth Circuit			
Hampton	Clerk[c]	none	---
	General receiver	2,780,551	25,587
Ninth Circuit			
Charles City	Clerk[c]	56,837	---
	General receiver	21	20
Gloucester[b]	Clerk	172,416	180
James City	Clerk	142,513	10
	General receiver	123,762	2,366
King and Queen[b]	Clerk	201,002	70
King William[b]	Clerk	155,212	none

APPENDIX B (Continued)

Court	Type of Administrator	Total Dollar Amount Held	Total Fees Taken
Mathews[b]	Clerk	$ 53,967	$25
Middlesex[b]	Clerk	34,467	55
New Kent[b]	Clerk	19,408	none
York	Clerk[c]	none	---
	General receiver	939,244	10,385
Tenth Circuit			
Appomattox[b]	Clerk	82,669	none
Buckingham[b]	Clerk	142,260	none
Charlotte[b]	Clerk	42,233	50
Cumberland[b]	Clerk	163,718	none
Halifax[b]	Clerk	485,932	110
Lunenburg	Clerk	none	none
	General receiver	172,966	295
Mecklenburg[b]	Clerk	620,424	none
Prince Edward[b]	Clerk	87,821	50
Eleventh Circuit			
Amelia	Clerk[c]	175,094	---
	General receiver	223,350	1,055
Dinwiddie	Clerk	none	none
	General receiver	655,129	none
Nottoway	Clerk[c]	146,239	---
	General receiver	118,942	1,709
Petersburg[b]	Clerk	401,547	88
Powhatan	Clerk[c]	none	---
	General receiver	113,551	none

APPENDIX B (Continued)

Court	Type of Administrator	Total Dollar Amount Held	Total Fees Taken
Twelfth Circuit			
Chesterfield[b]	Clerk	$649,272	$181
Colonial Heights[b]	Clerk	64,761	50
Thirteenth Circuit			
Richmond City[b]	Clerk	4,102,136	none
Fourteenth Circuit			
Henrico[b]	Clerk	837,902	none
Fifteenth Circuit			
Caroline	Clerk	none	none
	General receiver	223,920	967
Essex	Clerk	4,645	none
	General receiver	187,370	827
Fredericksburg	Clerk	none	none
	General receiver	652,338	4,388
Hanover[b]	Clerk	429,580	none
King George	Clerk	10,542	none
	General receiver	390,775	3,566
Lancaster	Clerk	none	none
	General receiver	94,143	564
Northumberland	Clerk	none	none
	General receiver	111,029	911
Richmond County	Clerk	none	none
	General receiver	133,687	1,040
Spotsylvania	Clerk	none	none
	General receiver	553,967	5,720

APPENDIX B (Continued)

Court	Type of Administrator	Total Dollar Amount Held	Total Fees Taken
Stafford	Clerk	none	none
	General receiver	$592,687	$4,422
Westmoreland	Clerk	none	none
	General receiver	124,384	1,149
Sixteenth Circuit			
Albemarle	Clerk[c]	130,416	---
	General receiver	237,323	650
Charlottesville	Clerk	none	none
	General receiver	28,435	505
Culpeper	Clerk	none	none
	General receiver	18,853	4,297
Fluvanna	Clerk[c]	none	---
	General receiver	none	none
Goochland	Clerk[c]	36,698	---
	General receiver	67,907	1,022
Greene	Clerk[c]	3,342	---
	General receiver	6,036	none
Louisa	Clerk	142,481	none
	General receiver	104,485	1,940
Madison	Clerk[c]	none	---
	General receiver	2,181	184
Orange	Clerk	57,522	none
	General receiver	124,266	1,466
Seventeenth Circuit			
Arlington	Clerk	356,489	none
	General receiver	594,256	7,178

APPENDIX B (Continued)

Court	Type of Administrator	Total Dollar Amount Held	Total Fees Taken
Eighteenth Circuit			
Alexandria	Clerk	$131,313	none
	General receiver	189,059	$7,546
Nineteenth Circuit			
Fairfax	Clerk	2,913,246	none
	General receiver	365,990	9,459
Twentieth Circuit			
Fauquier	Clerk	271,073	none
	General receivers (3)	1,036,960	4,140
Loudoun	Clerk	336,544	none
	General receivers (3)	619,113	4,511
Rappahannock	Clerk	38,598	none
	General receivers (2)	347,261	1,748
Twenth-First Circuit			
Henry	Clerk	none	none
	General receiver	1,203,983	none
Martinsville	Clerk	40	none
	General receiver	340,288	none
Patrick[b]	Clerk	191,784	717
Twenth-Second Circuit			
Danville	Clerk	18,303	none
	General receiver	796,799	2,812
Franklin	Clerk	443,115	none
	General receiver	1,024,939	190
Pittsylvania	Clerk	none	none
	General receiver	607,483	none

APPENDIX B (Continued)

Court	Type of Administrator	Total Dollar Amount Held	Total Fees Taken
Twenty-Third Circuit			
Roanoke City[b]	Clerk	$2,790,775	$200
Roanoke County[b]	Clerk	1,155,516	none
Salem[b]	Clerk	325,644	10
Twenty-Fourth Circuit			
Amherst	Clerk	none	none
	General receiver	147,957	4,819
Bedford	Clerk	60,482	none
	General receiver	140,542	4,802
Campbell	Clerk[c]	none	---
	General receiver	168,103	none
Lynchburg	Clerk	none	none
	General receiver	45,490	2,090
Nelson	Clerk	3,277	none
	General receiver	83,733	2,684
Twenty-Fifth Circuit			
Alleghany	Clerk	68,484	none
	General receiver	228,622	893
Augusta	Clerk	40,478	none
	General receiver	202,184	6,139*
Bath	Clerk	none	none
	General receiver	101,901	1,887
Botetourt	Clerk	15,847	none
	General receiver	232,911	970
Buena Vista	Clerk	none	none
	General receiver	14,026	none

APPENDIX B (Continued)

Court	Type of Administrator	Total Dollar Amount Held	Total Fees Taken
Clifton Forge	Clerk	$44,266	none
	General receiver	30,384	$376
Craig	Clerk	889	none
	General receiver	59,141	338
Highland[b]	Clerk	9,689	none
Rockbridge	Clerk	none	none
	General receiver	199,623	339
Staunton	Clerk	none	none
	General receiver	77,042	2,512*
Waynesboro	Clerk	4,176	none
	General receiver	12,068	none
Twenty-Sixth Circuit			
Clarke	Clerk	9,234	none
	General receiver	1,500	24
Frederick	Clerk	none	none
	General receiver	53,377	425
Page	Clerk	77,368	none
	General receiver	118,469	370
Rockingham	Clerk	105,449	none
	General receiver	699,780	11,549
Shenandoah	Clerk	none	none
	General receiver	226,657	3,847
Warren	Clerk	5,591	none
	General receiver	136,910	483
Winchester	Clerk	32,384	none
	General receiver	17,376	125

APPENDIX B (Continued)

Court	Type of Administrator	Total Dollar Amount Held	Total Fees Taken
Twenth-Seventh Circuit			
Bland	Clerk[c]	$ 5,800	---
	General receiver	41,894	$331
Carroll[b]	Clerk	889,413	none
Floyd[b]	Clerk	50,263	20
Giles	Clerk[c]	none	---
	General receiver	258,301	1,574
Grayson	Clerk[c]	2,061	---
	General receiver	423,649	5,962
Montgomery[b]	Clerk	660,430	60
Pulaski[b]	Clerk	602,297	80
Radford[b]	Clerk	204,972	none
Wythe[b]	Clerk	526,287	120
Twenth-Eighth Circuit			
Bristol	Clerk	19,417	none
	General receiver	240,396	6,975
Smyth	Clerk[c]	4,552	---
	General receiver	112,020	810
Washington	Clerk	209,647	none
	General receiver	395,754	8,362
Twenth-Ninth Circuit			
Buchanan	Clerk[c]	none	---
	General receiver	751,880	1,750
Dickenson	Clerk	none	none
	General receiver	206,994	1,266
Russell	Clerk	234,382	none
	General receiver	761,845	4,824

APPENDIX B (Continued)

Court	Type of Administrator	Total Dollar Amount Held	Total Fees Taken
Tazewell	Clerk[c]	$236,782	---
	General receiver	552,800	$1,396
Thirtieth Circuit			
Lee	Clerk	none	none
	General receiver	232,609	3,675
Scott[b]	Clerk	168,155	none
Wise	Clerk	166,262	none
	General receiver	373,255	5,944
Thirty-First Circuit			
Prince William	Clerk	83,546	none
	General receiver	265,368	4,929
TOTAL		$56,074,740	$295,622

[a] No information collected on fees charged by clerk general receiver as clerk.

[b] No general receiver appointed in court.

[c] Clerk appointed as general receiver.

* Includes miscellaneous expenses in addition to general receiver fees and bonds.

Notes: Numbers in parentheses indicate number of general receivers for court.

Total dollar amounts held are current as of June 30, 1987, or the date of the most recent semi-annual report.

Total fees taken are for FY 1987.

Source: JLARC analysis of data supplied by general receivers and clerks of the court.

APPENDIX C

Table C-1

INDIVIDUAL GENERAL RECEIVERS:
RATES OF RETURN ON INVESTMENT
FOR EACH TYPE OF INVESTMENT

Type of Investment	Amount Invested	Estimated Interest Income	Return on Investment
Certificates of deposit over $100,000	$1,659,856	$112,012	6.75
Certificates of deposit less than $100,000	3,501,465	255,143	7.29
Passbook and statement savings accounts	687,695	35,772	5.20
Money market accounts	1,660,069	92,620	5.58
Securities	682,803	67,500	9.89
Interest bearing checking accounts	95,501	5,003	5.24
Other investments	0	0	--
Total	$8,287,389	$568,050	--[a]

[a] Return on investment is an estimate of the rate of income earned for each investment type. The overall return on investment -- 6.85 percent -- is the rate of income earned using the reported mix of investments.

Source: JLARC analysis of data supplied by individual general receivers.

APPENDIX C

Table C-2

FINANCIAL INSTITUTION GENERAL RECEIVERS:
RATES OF RETURN ON INVESTMENT
FOR EACH TYPE OF INVESTMENT

Type of Investment	Amount Invested	Estimated Interest Income	Return on Investment
Certificates of deposit over $100,000	$0	$0	--
Certificates of deposit less than $100,000	5,488,862	457,363	8.33
Passbook and statement savings accounts	1,650,805	84,568	5.12
Money market accounts	1,207,829	64,394	5.33
Securities	1,041,488	99,115	9.52
Interest bearing checking accounts	0	0	--
Other investments	464,653	30,174	6.55
Total	$9,853,637	$735,614	--[a]

[a] Return on investment is an estimate of the rate of income earned for each investment type. The overall return on investment -- 7.47 percent -- is the rate of income earned using the reported mix of investments.

Source: JLARC analysis of data supplied by financial institution general receivers.

APPENDIX C

Table C-3

CLERK GENERAL RECEIVERS:
RATES OF RETURN ON INVESTMENT
FOR EACH TYPE OF INVESTMENT

Type of Investment	Amount Invested	Estimated Interest Income	Return on Investment
Certificates of deposit over $100,000	$2,800,311	$194,717	6.95
Certificates of deposit less than $100,000	4,080,045	305,909	7.50
Passbook savings accounts	1,997,509	109,859	5.50
Money market accounts	370,042	20,369	5.50
Securities	0	0	--
Interest bearing checking accounts	1,858	93	5.01
Other investments	0	0	--
Total	$9,249,765	$630,947	--[a]

[a] Return on investment is an estimate of the rate of income earned for each investment type. The overall return on investment -- 7.47 percent -- is the rate of income earned using the reported mix of investments.

Source: JLARC analysis of data supplied by financial institution general receivers.

APPENDIX C

Table C-4

CLERKS IN COURTS WITH GENERAL RECEIVERS:
RATES OF RETURN ON INVESTMENT
FOR EACH TYPE OF INVESTMENT

Type of Investment	Amount Invested	Estimated Interest Income	Return on Investment
Certificates of deposit over $100,000	$461,987	$25,894	5.60
Certificates of deposit less than $100,000	765,912	48,150	6.29
Passbook savings accounts	447,967	24,358	5.44
Money market accounts	3,323,100	178,577	5.37
Securities	0	0	--
Interest bearing checking accounts	73,255	4,029	5.50
Other investments	0	0	--
Total	$5,072,221	$281,008	--[a]

[a] Return on investment is an estimate of the rate of income earned for each investment type. The overall return on investment -- 7.47 percent -- is the rate of income earned using the reported mix of investments.

Note: The funds from nine clerks' offices were not included in this table because the majority of the funds were held in non-interest bearing checking accounts as directed by the court.

Source: JLARC analysis of data supplied by financial institution general receivers.

APPENDIX C

Table C-5

CLERKS IN COURTS WITHOUT GENERAL RECEIVERS:
RATES OF RETURN ON INVESTMENT
FOR EACH TYPE OF INVESTMENT

Type of Investment	Amount Invested	Estimated Interest Income	Return on Investment
Certificates of deposit over $100,000	$1,794,921	$117,517	6.55
Certificates of deposit less than $100,000	10,020,769	855,386	8.54
Passbook and statement savings accounts	3,165,320	189,319	5.98
Money market accounts	4,898,953	321,691	6.60
Securities	7,500	638	8.50
Interest bearing checking accounts	447,836	25,759	5.75
Other investments	0	0	--
Total	$20,335,299	$1,510,310	--[a]

[a] Return on investment is an estimate of the rate of income earned for each investment type. The overall return on investment -- 7.47 percent -- is the rate of income earned using the reported mix of investments.

Note: The funds from nine clerks' offices were not included in this table because the majority of the funds were held in non-interest bearing checking accounts as directed by the court.

Source: JLARC analysis of data supplied by financial institution general receivers.

APPENDIX D

RESPONSES TO DRAFT REPORT

As part of an extensive data validation process, each State entity involved in a JLARC assessment effort is given the opportunity to comment on an exposure draft of the report. This appendix contains responses by the Executive Secretary of the Supreme Court of Virginia, the Division of Unclaimed Property, the Department of General Services, the Virginia Circuit Court Clerks' Association, and an individual general receiver.

Appropriate technical corrections resulting from the written comments have been made in this version of the report. Page references in the responses relate to an earlier exposure draft and may not correspond to page numbers in this version of the report.

EXECUTIVE SECRETARY
ROBERT N. BALDWIN

ASST. EXECUTIVE SECRETARY
FREDERICK A. HODNETT, JR.

SUPREME COURT OF VIRGINIA

ADMINISTRATIVE OFFICES
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MARTIN T. KALLIGHAN
DIR., PERSONNEL
CATHERINE F WIEDEMER
DIR., TECHNICAL ASSISTANCE
R. MILTON CRUMP, JR.

December 3, 1987

Mr. Philip A. Leone, Director
Joint Legislative Audit and Review Commission
General Assembly Building, Suite 1100
Richmond, VA 23219

Dear Mr. Leone:

This is in response to your letter of November 23, 1987, regarding the exposure draft of your report, **Funds Held in Trust By Circuit Courts.** I appreciate very much the opportunity to review this report. I have only a small number of comments. I have not made any attempt to gain input from any circuit court clerks as I understand that you have separately provided that group of individuals an opportunity to review this document. My comments are as follows:

1. While of an insignificant nature, in order to be accurate I would suggest a change to the second sentence on page 1. While population is a factor in the grouping of judicial circuits, the primary factors in establishing the circuit boundaries are caseload of the individual courts and the community of interest among the associated jurisdictions.

2. Recommendation 2 suggests an amendment to § 8.01-602 of the Code to provide for a one-year period before unclaimed funds must be transferred to the Division of Unclaimed Property. This amendment was made by the 1987 Session of the General Assembly and is currently incorporated in the Code.

3. While I am sure that it was not the intent, the wording of recommendation 12 could be interpreted to allow circuit court clerks to charge fees for the administration of trust funds which fees would be received by the clerk personally rather than as a part of the fees for the clerk's office. I assume that these fees are intended to go to the office. If so, the mere change in wording could clarify this point.

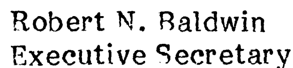
4. Although the reasoning behind recommendation 21 is sound, I am not certain that the court should be required to maintain another order book. With the advent of automation, the trend around the country is to eliminate order books. One difficult in doing so is the great historical precedence that exists merely by the presence of existing order books. While this information can be handled nicely in automated systems, many are tied to the ways of the past. I am certain that the objectives that you seek to accomplish can be achieved in some other fasion and allow the courts to proceed in a more modernized approach to record keeping.

5. As to recommendation 33, we have no objections to coordinating the publication of the administrative manuals recommended. It is my understanding, however, that the staff preparing this report has a general outline of what would be contained in the manuals as well as commitments from various state agencies to prepare portions of these manuals. Without this commitment, the task would be more difficult for our office since we lack both expertise and resources to do a complete drafting of these documents. However, we would have no difficulty in coordinating the work to be accomplished by the other agencies and in publishing the manuals.

Thanks again for the opportunity to respond to this report.

With kind regards and best wishes,

Yours very truly,



Robert N. Baldwin
Executive Secretary

RNB:lgr

COMMONWEALTH of VIRGINIA

WM. CLAY WILEY
TREASURER OF VIRGINIA

VIVIAN E. HERBERT
DIRECTOR OF
UNCLAIMED PROPERTY

Division of Unclaimed Property
P. O. Box 3-R
Richmond, Virginia 23207
(804) 225-2393

December 3, 1987

Mr. Philip A. Leone, Director
Joint Legislative Audit and Review Commission
Suite 1100, General Assembly Building
Capitol Square
Richmond, VA 23219

Dear Phil:

Thanks so much for including me in the review of your study and allowing my comments, which are brief.

- First, and foremost, my sincere appreciation for including the lack of compliance with the Unclaimed Property Act.

- For clarification purposes we can include in our 1988 legislative package the definitions of "payable" and "unclaimed" in 55-210.2.

- On page 19 you may want to include in the first paragraph concerning owner location techniques, the programs set up with the Virginia Employment Commission and the Department of Taxation, as well as the Division of Motor Vehicles. All of these programs are run on social security numbers which should support your recommendation (25) on page 77 concerning Case Information. I was delighted that you included "date of birth" in this recommendation - it should be very helpful in identifying the payable date for the owner.

- I've already been notified that you've corrected the time period reference between 55-210.9:1 and 8.01-602 - this amendment took place at the 1987 Session.

- Issuance of court orders to transfer funds is a real problem as so noted in your draft. Some remedy is sorely needed in this area for the timely transfer of funds when an audit is completed. For us, the story goes - "The Judge has not signed an order to release the funds" - the answer to this is that the Judge is not going to sign an order unless it's placed before him by the clerk. The clerk has got to take the initiative - hopefully your study will bring about this result. This comment is related to paragraph 2 under "Clear Articulation" (pg. 24) and "Clear Definitions" (pg. 25).

- It would certainly be in the best interest of the owner to have all funds invested in some type of interest bearing account in view of the fact that the Unclaimed Property Act provides for the payment of interest to continue on any account reported to us which would have been interest bearing had it remained with the holder (court).

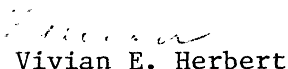
- One remedy that may help in complying with the Unclaimed Property Act would be to require the Circuit Court Judge to sign the reports of the clerk and general receiver each year, while at the same time reviewing the accounts held for date of payment to ensure the court's compliance.

My one question is what corrective/disciplinary measures can be enforced to require courts to comply with the statutes?

I'm enclosing an updated copy of Table 3, which indicates amounts reported by both clerks and general receivers for F/Y 1987. As you know our report date is November 1 for the prior fiscal year ending June 30. A few of the figures are very close - we will initiate follow-up for the unreported amounts.

Again, thanks for being included - we will be very happy to assist in any way in implementing suggested changes and drafting the manuals as they relate to unclaimed property.

Sincerely,



Vivian E. Herbert

VEH:tl

enclosure

P. S. One final comment, in your narrative or comments before the committee it would probably be helpful to differentiate between the scope of the audits performed by the APA and Unclaimed Property.

Table 3

Trust Funds Payable on June 30, 1986
But not Disbursed as of June 30, 1987

Circuit Court	Dollar Amount Reported per JLARC Exposure Draft	Amounts Reported to the Unclaimed Property Division on 11/1/87 for Fiscal Year '87	
		Circuit Court	General Receiver
Albemarle	$100,000	$ 2,335.63	$ -
Alexandria	81,504	9,453.97	-
Appomattox	35,700	-	-
Arlington	350,942	70,244.82	350,941.56
Augusta	7,520	219.30	-
Carroll	133,853	19,406.23	-
Charles City	47,024	-	-
Chesapeake	3,543	49,245.90	-
Clarke	25	55.83	-
Colonial Heights	9,995	-	-
Greene	6,036	-	-
Greensville	273,127	513.00	-
Hanover	131,259	-	-
Isle of Wight	2,715	-	-
James City	1,555	-	-
King George	862	380.31	-
Lee	50,184	-	-
Louisa	37,931	-	37,888.28
Lunenberg	165,775	1,114.10	-
Madison	2,181	-	-
Mathews	31,074	17,069.99	-
Middlesex	14,000	44,975.15	-
New Kent	15,662	15,662.72	-
Nottoway	30,000	3,614.67	-
Orange	85,688	50.00	-
Page	1,606	86.39	-
Prince George	264,479	27.30	-
Prince William	180,000	-	1,960.32
Rappahannock	43,694	100.00	-
Roanoke	3,668	10,365.70	-
Rockbridge	190,060	439.92	-
Surry	812	-	-
Warren	27,651	91,519.33	-
Washington	7,906	25.70	6,217.39
Winchester	1,669	30.37	-

NOTE: In addition to the courts listed above the Division of Unclaimed Property has completed audits in Danville Circuit Court with findings exceeding $250,000 (held by the General Receiver) and in Martinsville and Henry County with findings exceeding $402,000. The audit closings are scheduled for December 1987.

COMMONWEALTH *of* VIRGINIA

DEPARTMENT OF GENERAL SERVICES

December 7, 1987

DIVISION OF RISK MANAGEMENT

9TH FLOOR
805 EAST BROAD STREET
RICHMOND, VIRGINIA 23219
(804) 786-5968

Ms. Barbara A. Newlin
Division Chief
Joint Legislative Audit and Review Commission
11th Floor, General Assembly Building
Richmond, Virginia 23219

RE: General Receivers

Dear Ms. Newlin:

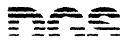
This will serve to confirm the various understandings arrived at during our recent meeting relative to General Receivers in the Commonwealth of Virginia.

In our previous undated submission to you, titled "Bonding of General Receivers of Circuit Court," we stated that where a Clerk of the Circuit Court is appointed as a General Receiver, then an additional bond, as required by Section 8.01 - 588, should be furnished. Regardless of any possibly ambiguous language in the aforementioned report or in your Exposure Draft, we agreed that a General Receiver, duly appointed, must furnish an appropriate Bond.

We also agreed that, for cost comparison purposes, a rate for a General Receiver Bond would be $4.00; furthermore, that the present rate for the rate of the Commonwealth's Bond for Clerk of the Circuit Court would be $2.49.

The concept of centralized management and procurement of Bonds for General Receivers in the Commonwealth is sound from a cost standpoint and provides a consistent approach to this problem. The Division of Risk Management will assist you in any way possible to accomplish this end.

We have carefully reviewed our local file relative to the Bond loss referred to on pages 51 and 52 of your Exposure Draft dated November 23, 1987. This loss involved an employee of the Clerk of the Circuit Court, Roanoke City. This office was notified on the loss by the Auditor of Public Accounts on March 6, 1984. Subsequent investigation established that the mechanics of the loss occurred over an extended period of time and, as such, involved various Bond carriers for the Commonwealth. In addition, the City of Roanoke and the Clerk of the Circuit Court had, independent of the Commonwealth's Bond Program, arranged a Blanket Bond on the Clerk's employees in the INA and the Fidelity



and Deposit Company. The end result of this is that the bond companies agreed amongst themselves as to pro rata sharing of the total loss.

We wish, again, to bring to your attention, the liability exposure to the Commonwealth in the management of financial matters entrusted to the care of the Commonwealth.

Sincerely,

Kenneth G. Jones
Bond Program Manager

KGJ:cmt

Commonwealth of Virginia

COUNTY OF GLOUCESTER

Clerk's Office —— Circuit Court
P. O. Box N
Gloucester, Virginia 23061

CHARLES E. KING, JR.
Clerk

ELIZABETH B. WILBURN
Deputy Clerk

C. ANN GENTRY
Deputy Clerk

TELEPHONE:
(804) 693-2502

December 9, 1987

Mr. Philip A. Leone
Director, JLARC
Suite 1100, General Assembly
Building
Capitol Square
Richmond, Va. 23219

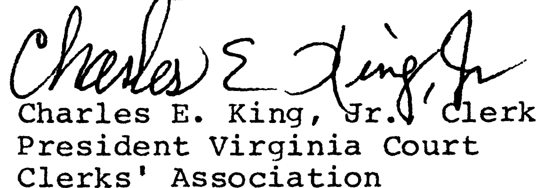
Dear Mr. Leone,

Enclosed is V.C.C.A. Executive Board Position Paper resulting from our meeting on December 8, 1987.

You and your staff are to be commended on making a very thorough and good report. It is quite evident from your findings that Court Funds are handled in a hodge-podge manner at best. It is my judgment that with your help, legislation from the General Assembly and cooperation from V.C.C.A., uniformity and maintenance of a better and proper system may be established.

I thank you on behalf of V.C.C.A. for the briefing on this matter prior to your final draft.

Sincerely,



Charles E. King, Jr. Clerk
President Virginia Court
Clerks' Association

Enc/igs

JOINT LEGISLATIVE AUDIT AND-REVIEW COMMISSION

VIRGINIA COURTS CLERKS' ASSOCIATION
EXECUTIVE BOARD POSITION PAPER

1. UNIFORMITY - All Court Funds to be administered by Circuit Court Clerks

2. NECESSARY AND PROPER - V.C.C.A. deems it proper and necessary to maintain Court Funds in Circuit Court Offices - Recommendation (31) page 98

3. INCREASED WORKLOAD - Request additional funds to be appropriated to Compensation Board for the increased workload created in the Clerks' Offices

4. CLAIRFICATION - Legislation to clairfy when funds are payable to unclaimed property - Sec. 55-210.9:1 - who prepares and presents Court Order to Judge

5. REPRESENTATION - Representative from Clerks' Association for all proposed legislation, such representation to be President of V.C.C.A. or his designated representative

6. BONDING - V.C.C.A. recommends legislation to require sufficient bond to cover all Court Funds, however, the Clerks' Association is divided on how or by whom bond premium is to be paid Recommendation (14) page 52

7. FEES - Legislation to spell out what fees Court Fund Administrators are to receive - Recommendation (12) page 46

   $10.00 for setting up an account
   $10.00 for closing an account
   $10.00 writing checks up to ten (10) and $1.00 per check thereafter

Post Office Box 16238
Chesapeake, Virginia, 23320

December 7, 1987

Ms. Charlotte Kerr
Joint Legislative Audit and Review Commission
Commonwealth of Virginia
Suite 1100
General Assembly Building, Capitol Square
Richmond, Virginia, 23219

Dear Ms. Kerr:

Thank you so very much for the opportunity to review the "exposure draft" with reference to "funds held in trust by Circuit Courts."

The report appears to be pretty accurate and I thought same was excellently done and agree with the majority contained therein. The Committee is to be commended on a job well done.

The recommendations for record keeping is agreed with wholeheartedly. I feel anyone entrusted with holding and investing funds, etc. of another should be under heavy scrutiny.

From a personal standpoint, however, I do not feel that fees for trust fund administrators should be reduced a great deal, if any. I take great pride in my capacity as General Receiver and feel that while I do not deserve more, I certainly do not deserve less. Looking at the "proposed fee structure" on Page 45, I would not be willing to continue serving as General Receiver for the Circuit Court of Chesapeake. I do agree that "fees charged for the administration of trust funds should be uniform for all trust fund administrators."

The strongest point raised in the draft was the Committee's recommendation for audits. This is something I feel should have been done in years past which is why I hired an independent auditor.

As indicated in our telephone conversation of last week, inasmuch as the majority of now trust fund administrators had little or no expenses, my fees indicated in Table B-1 should be shown, less expenses.

Again, thank you and with kindest regards and best wishes for a happy Holiday Season, I am

Very truly yours,

(Mrs.) Mary L. Cutchins

JLARC STAFF

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Deputy Director

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● *Indicates staff with primary assignments to this project*

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