



Audit Report

Boulder Township Constable Revenue and Expenditure Audit

July 2019

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REPORT DETAILS

BACKGROUND

The Boulder Township Constable's Office is one of eleven constable offices in Clark County. Nevada constables are peace officers responsible for serving civil processes such as summonses and complaints, small claims, notices of evictions, notices of hearings, writs of garnishments and subpoenas. Constables are empowered with the authority of a peace officer by Nevada Revised Statutes (NRS) Chapter 258. Constables are entitled to charge fees for their services and a percentage of collections for executions of writs as allowed under NRS 258.125. Fees range from \$2 to \$48.

Constables are elected officials that serve a four year term, until their successors are elected and qualified. Constables take an oath prescribed by law and execute a bond to the State of Nevada. NRS 258.040 provides that the Board of County Commissioners (BCC) establish the compensation of the Clark County Constables. On July 3, 2018, per NRS 258.040, the BCC set the minimum annual compensation for the Boulder Township Constable at \$1,750 plus statutory fees collected per NRS 258.125, effective January 7, 2019. The current Boulder Township Constable was re-elected in 2018.

NRS 258.060 allows constables to appoint deputies who are authorized to perform services for the Constable. In larger townships, certification of deputies as a category II peace officer is required. All appointments of deputies are done in writing and filed, along with an oath of office, with the Clark County Recorder.

As of May 2019, the Boulder Township Constable's Office consists of the Constable, one deputy director, two deputy constables, two on-call process servers, two part-time clerical assistants and one legal office specialist.

Unlike some of the larger urban constable offices, the Boulder Township Constable's office is not operated under an enterprise fund (*a separate accounting fund normally used to account for operations where the intent is to have expenses be recovered through charges to the customers.*) Instead, the office is provided with a small budget from the Clark County General Fund (*the primary account used for traditional government services not required to be accounted for in another fund.*) Any collected service fees are retained and managed by the office.

In Fiscal Year 2019, the Office was provided with a \$96,131 budget from the County General Fund. The budget is for the annual stipend of the Constable, compensation for a single office specialist staff member and modest funding for office supplies, postage, communication services and insurance.

The fees retained by the office are used to pay for operational costs not covered through the County General Fund budget; these costs include all deputy constables' compensation, part-time clerical and operational staff compensation, additional office supplies, additional postage, fuel and other expenditures necessary to perform the duties of the office. Residual fees may be retained by the Constable as part of his compensation. Exhibit 1 shows the total fees collected per calendar year starting 2016. An increase in fees in 2018 is attributed to the acquisition of new high volume customers.



Statutory Fee Collection
Boulder Township Constable's Office
Calendar Year 2016, 2017 and 2018

Exhibit 1

Statutory Fee Category	2016	2017	2018
Notices	\$ 20,540	\$ 21,984	\$ 24,163
Evictions	2,920	2,000	1,920
Small Claims	459	752	442
Garnishment Fees	640	448	90,330
Exec Payments ⁽¹⁾	12,048	27,146	674,524
Garnishment Commissions	145	235	12,501
Subpoenas	1,065	604	420
Summons	1,883	1,046	10,653
Mileage	3,322	2,548	125,180
Copies	3,059	3,018	13,911
Storage/Impound	–	–	300 ⁽²⁾
Total	\$ 46,081	\$ 59,781	\$ 954,344
Less: Exec Payments ⁽¹⁾	12,048	27,174	674,524
Total Constable Fees	\$ 34,032	\$ 32,606	\$ 279,820

Source: Quarterly Financial Reports filed with the Clark County Clerk's Office

⁽¹⁾ Payments on a writ of execution against the debtor that are typically remitted by the debtor's employer. These funds are deposited then remitted to the plaintiff/ judgment creditor.

⁽²⁾ This \$300 fee should be credited to the Copies category. A correction was done after the report was filed.

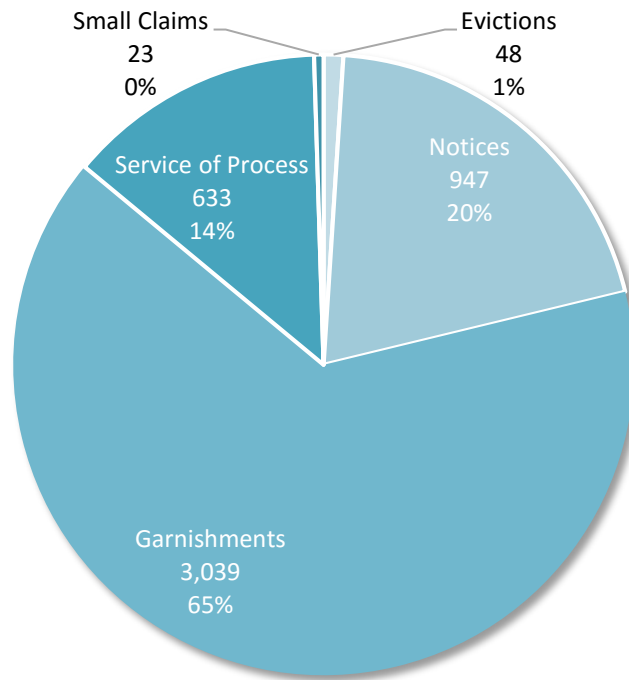
The office is responsible for managing their caseload. Case initiation requires detailed review of the customer provided service application, data input in to a case management system, mailing of certain documents and periodic case review to ensure adherence to legal timelines. With garnishment cases, ongoing administrative case management includes: reviewing, receipting, depositing and remitting payments that are received from employers/defendants. The office also manages customer billings and receivables. In addition, office staff handle inquiries from plaintiffs, defendants and other parties. The office uses CourtView Justice Solutions, an integrated judicial case management system used by various County departments, to assist with their case management needs. The office uses Intuit QuickBooks, an accounting application, to augment CourtView and assist with their financial management.

The Boulder Township Constable's Office initiated 4,690 new cases in calendar year 2018, with the majority of the caseload pertaining to garnishment cases. Exhibit 2 illustrates the case volume by type.



**Boulder Township Constable’s Office
New Cases, by Type
Calendar Year 2018**

Exhibit 2



Source: Boulder Township Case Management System Reporting

OBJECTIVES, SCOPE, AND METHODOLOGY

The objectives of this audit were to:

- Determine whether revenue and expenditure transactions are timely, properly accounted, properly recorded and supported in accordance with governing laws and regulations;
- Determine whether adequate controls are in place to safeguard assets; and
- Review compliance with applicable Nevada Revised Statutes.

To accomplish our objectives, we conducted a preliminary survey that included reviewing applicable policies, procedures and statutes. We also interviewed staff and performed a walkthrough observation of the Boulder Township Constable’s office identifying key areas and operations. Based on the risks noted during our preliminary survey and discussions with staff, we developed an audit program. We then performed the following testing procedures:

- Identified current business practices and controls then evaluated them against best practices related to payment handling, asset safeguarding, general banking management and general financial management.



- Examined County General Fund financial records for fiscal years 2016 through 2019 to determine if any business reimbursements requests had been made to review for accuracy, support and appropriateness.
- Reviewed all bank reconciliations performed in calendar year 2018 to determine if they were reviewed and in agreement with the office's financial records.
- Reviewed all bank statements in calendar year 2018 to determine whether funds held in trust were generally kept separate from operating funds.
- Reviewed all bank transactions recorded to the operating account and trust account in calendar year 2018 to determine whether the transaction generally appeared to be business related.
- Used professional judgment to select a sample of three months in 2018 to re-perform the bank statement reconciliations to verify that reconciliations are accurate and reconciled items are addressed timely.
- Used professional judgment to select a sample of 50 garnishment payment receipts (*out of 2,585*) received in calendar year 2018 to determine whether the funds were deposited timely and not comingled with operating funds. Also, randomly selected an additional 50 garnishment payments (*out of 2,585*) to determine whether the funds were subsequently remitted to the correct party, for the correct amount and in a timely manner.
- Used professional judgment to select a sample of 12 deposits in calendar year 2018 (out of 51) to determine whether receipted funds were properly recorded, completely accounted for and deposited in a timely manner to the appropriate bank account.
- Reviewed all client billing statements in calendar year 2018 to determine whether clients were billed accurately based on transactions recorded in the case management system.
- Used professional judgment to select a sample of two months in calendar year 2018 to review the client payment transactions to determine whether account receivables activity is reasonably resolved and whether funds, in their entirety, are being deposited in a timely manner.
- Used professional judgment to select a sample of 50 general service fee payment receipts (*out of 7,624*) in calendar year 2018 to determine whether the fees charged by the Office were consistent with the fees allowed by NRS.
- Used professional judgment to select a sample of 50 general service fee receipts (*out of 7,624*) in calendar year 2018, that included a mileage fee payment, to determine whether the distance recorded in the case management system was reasonable and the mileage fee charges were in accordance with NRS.
- Reviewed all reversed payment transactions in calendar year 2018 (consisting of 36 reversals) to determine whether the reversal was appropriate, recorded, supported and a subsequent correcting transaction was processed, if applicable.
- Used professional judgment to select a sample of 21 voided cases (out of 71) recorded in the case management system to determine whether the void was supported and reasonable.
- Reviewed compliance with applicable NRS Chapter 258 requirements related to peace officer certifications, oaths of offices, bonds, and quarterly financial statement filings. Used professional judgment to select a sample of three quarterly financial statement filings in calendar year 2018 to review for accuracy.
- Reviewed selected controls for the CourtView application to ensure controls are adequate, sufficient and in compliance with Clark County Information Technology Directives. Also,



whether current access to the application was appropriate based on active employment and job function.

Our review included an assessment of internal controls in the audited areas. Any significant findings related to internal control are included in the detailed results. Our procedures considered the period of January 1, 2018 through December 31, 2018. The last day of fieldwork was May 16, 2019.

While some samples selected were not statistically relevant, we believe they are sufficient to provide findings for the population as a whole.

Nevada Senate Bill 462 passed on June 1, 2019 and becomes effective October 1, 2019. This bill revises certain provisions related to Nevada constables. We believe the passage of this bill does not impact our findings.

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

CONCLUSION

Generally, the Boulder Township Constable’s Office has adequate procedures in place to safeguard assets, record transactions accurately and timely and perform core duties in accordance with governing laws and regulations. However, we found that the office is charging a mileage fee on documents that are served via mail, in what appears to be a contradiction of statute. We also found the following:

- A tiered service fee structure has not been implemented for pre- eviction notices served at the same location;
- Reviews of bank reconciliations, reversed payments and case voids can be improved;
- A process for reviewing CourtView user access and rights should be implemented and audit logs should be produced;
- A small amount of cases that had additional mileage fees charged based on the distance traveled; and
- Certain practices that need to be reviewed for compliance with regulatory standards.

Each finding includes a ranking of risk based on the risk assessment that takes into consideration the circumstances of the current condition including compensating controls and the potential impact on reputation and customer confidence, safety and health, finances, productivity, and the possibility of fines or legal penalties.

Auditee responses were not audited and the auditor expresses no opinion on those responses.



FINDINGS, RECOMMENDATIONS, AND RESPONSES

FINDING 1 – MILEAGE FEES ADDED TO CASES WHERE DOCUMENTS WERE SERVED THROUGH THE MAIL (HIGH)

NRS 258.125(1) states that constables are entitled to a \$2 per mile fee, for each mile necessary and actually traveled, in going only, for service of certain documents. A flat \$2 mailing fee is allowed for mailing a notice of a writ of execution. The statute states:

“NRS 258.125 Fees; expenses; accounting.

1. *Constables are entitled to the following fees for their services: Except as otherwise provided in subsection 3, for mileage in serving summons, attachment, execution, order, venire, subpoena, notice, summary eviction, writ of restitution or other process in civil suits, for each mile necessarily and actually traveled, in going only..... 2 For mailing a notice of a writ of execution.....2”*

Between January 1, 2018 and December 31, 2018, we identified 1,082 cases where garnishment documents were served, to an employer, through the United States Postal Service to a service address outside of Southern Nevada. In all of these instances, a set mileage fee was added to the case for a total amount of \$33,207. At \$2 per case, the amount charged should have been \$2,164, for a total overcharge amount of \$31,043. The 1,082 identified cases represent 22.97% of the total caseload in calendar year 2018.

The Constable implemented a standard mileage charge for all cases, including those served via mail, to provide certain customers with a better means of forecasting their costs and managing fees. It also reduces work for his staff, as they do not need to compute mileage for each case. However, there is no statutory authority for the Constable to charge in excess of the \$2 mailing fee for documents that are mailed.

RECOMMENDATION

1. Consult with the Deputy District Attorney assigned to the office to confirm whether current practices related to documents served via mail are allowed.
2. Implement a \$2 mailing fee, instead of a mileage fee, on documents served via mail, unless instructed otherwise by the District Attorney.

MANAGEMENT RESPONSE

To construct an efficient and cost-effective process, the Boulder Constable’s Office implemented a document pick up service for select clients. Each of these clients is located approximately 35 miles from the Boulder Constable Office. The Constable provides this pick up service four days a week (the Constable’s Office is closed on Fridays) often making more than one round trip of 70 miles in a day, traveling several hundred miles a week. The volume of paperwork varies unpredictably between a single document, to over a hundred. Approximately 10% of those documents (writs) are designated as “mailers” to be processed and distributed by the Constable via certified mail. The Constable



But if two or more notices are served at the same general location during the same period, mileage may only be charged for the service of one notice”

We reviewed the hearing minutes from the 1991 State of Nevada legislative session where Assembly Bill 122 was passed. This bill introduced the same location language in NRS 258. In reviewing the legislative minutes, it appears that “same location”, as used in NRS 258, is in reference to apartment complexes.

The difference between the lowest tiered fee and the highest tiered fee is \$11. By not using the tiered fee structure, the office’s customers are charged a higher fee than allowed by NRS.

Analysis of Pre-Eviction Notice Fees, Calendar Year 2018

Exhibit 3

Month	Location	Notices Served	Tiered Fee	Fee Charged	Difference
August	Apartment Complex A	22	\$ 17	\$ 26	\$ 198
September	Apartment Complex A	18	17	26	162
October	Apartment Complex A	22	17	26	198
November	Apartment Complex A	31	15	26	341
December	Apartment Complex A	36	15	26	396
August	Apartment Complex B	27	15	26	297
September	Apartment Complex B	37	15	26	407
October	Apartment Complex B	19	17	26	171
November	Apartment Complex B	21	17	26	189
December	Apartment Complex B	30	15	26	330
July	Apartment Complex C	2	20	26	12
August	Apartment Complex C	3	20	26	18
August	Apartment Complex D	2	20	26	12
September	Apartment Complex C	3	20	26	18
September	Apartment Complex D	3	20	26	18
October	Apartment Complex C	3	20	26	18
November	Apartment Complex C	2	20	26	12
December	Apartment Complex D	2	20	26	12
Total					\$ 2,809

Source: Auditor Review of Case Fees

RECOMMENDATION

1. Implement the NRS 258.125 required service fee structure for multiple pre-eviction notices that are served to the same location.

MANAGEMENT RESPONSE



The intent of the legislation is to provide a cost matrix for apartment complexes; the cases above are not apartment complexes per the definition of the statute. Rather, they involve large condominium neighborhoods with individual street addresses as indicated by the County Assessor records.

CourtView is the information management system for the Constables’ offices. There is no provision for calculating a tiered cost structure for condominium complexes with individual street addresses. Perhaps this issue could be reviewed by County Management and the IT Department for further clarification and/or technical modifications.

FINDING 3 – CASES WHERE ADDITIONAL MILEAGE FEES WERE CHARGED (LOW)

NRS 258.125(1) states that constables are entitled to a \$2 per mile fee, for each mile necessary and actually traveled, in going only, for service of certain documents. NRS 258.125(3) allows for the Board of County Commissioners to, establish, by ordinance, an optional flat fee for the mileage allowed under subsection (1). The statute states:

“NRS 258.125 Fees; expenses; accounting.

3. For each service for which a constable is otherwise entitled pursuant to subsection 1 to a fee based on the mileage necessarily and actually traveled in performing the service, a board of county commissioners may provide by ordinance for the constable to be entitled, at the option of the person paying the fee, to a flat fee for the travel costs of that service.”

During our testing, we sampled 50 random cases where a mileage fee was imposed. We identified 7 cases where the mileage fee exceeded the amount allowed based on distance traveled from the office. The total overage was \$76. For the same sample, we also found mileage was undercharged in 10 cases, resulting in a shortage of \$272.

The Constable implemented a flat mileage rate for customers to simplify charging. However, a Clark County ordinance allowing a flat fee for mileage has not been established. The charging of a flat rate, without the ordinance allowing it, results in overcharges in some instances based on the per mile NRS rate. Due to the small number of overcharges compared to undercharges, we rated the risk of this finding as low.

RECOMMENDATION

1. Consult with the Deputy District Attorney assigned to the office to determine whether the office should petition the Board of County Commissioners to create a flat rate mileage ordinance.
2. Until such an ordinance is enacted, when the standard flat rate mileage fees exceed the fee that would be allowed based on actual distance, the lower fee should be charged to ensure adherence to NRS 258.125.

MANAGEMENT RESPONSE



In responding to the requests from clients to establish a flat fee, we set a mileage rate that was in the lower third tier of actual miles traveled for the service of documents. One obvious challenge is our geographic location; to be competitive we must be more efficient, cost effective, and work harder than anyone else. In designing a business model, the Boulder Constable’s Office conducted cost analysis studies to determine our ability to service high volume clients. We implemented a document pick up service (as stated earlier) and set up a brisk schedule to meet the needs of the clients.

The Audit Report does not take into consideration the previously addressed “pick up service” provided by the Constable. These are miles “necessarily and actually traveled” [per NRS 258.125] to transport the documents. This pick up service adds a pro rata amount of mileage to each document in addition to the actual miles traveled to serve the document. For example, the Constable travels 35 miles (one way) and picks up 10 documents. At \$2 per mile, this adds \$70 in mileage fees to the batch. \$70 divided by 10 documents equals \$7 in additional mileage for each document. Although the Audit report states that there is a small percentage of “over-charges” for mileage; in actuality, when the pick-up mileage is calculated, there are virtually no over charges.

To simplify this matter, the Constable would like to petition the County Commission for an ordinance pursuant to NRS 258.125-3 establishing a flat fee for mileage.

FINDING 4 – REVIEW OF BANK RECONCILIATIONS, REVERSED PAYMENTS AND VOIDED CASES CAN BE IMPROVED (LOW)

The office’s review of bank reconciliations, reversed payments and voided cases can be improved with better documentation and review.

Bank Reconciliations

The office has two bank accounts – one for funds held in trust, and an operating account for business income and expenses. These accounts are reconciled monthly by staff that also performs transactions. We found the reconciliations are completed timely and accurately. However, there is no formal independent review.

As a good business practice, when a bank reconciliation is performed by a party that also performs financial transactions, the bank reconciliation should be reviewed by an independent party to verify that it was performed properly and accurately reflects the activity for the period. Additionally, an independent verification can ensure that reconciling items are addressed timely.

By not performing a review of the bank reconciliation, errors or intentional misappropriations in the reconciliation or reconciling items may go undetected or unaddressed.

Reversed Payments and Voided Cases

We found reversals of payments and voiding of cases are able to be performed by all staff members without additional review or authority in the case management system. Universal permissions were granted, due to a small staff environment that would not be able to fully function in the absence of an authorizing staff member.



In practice, the office clerk typically assigns the work that part time-staff members perform. Part-time staff verbally alert the lead clerk if there is a need to reverse a payment or void a case prior to performing the reversal or void – this includes discussing the reason and obtaining verbal permission. Although a verbal review and approval of payment reversals and case voids is performed at the time of the transaction, there is no documentation to support this.

Reversed payments and voiding cases are common ways that dishonest employees attempt to steal. They can also result in errors that require staff time to research. Relying on verbal approval increases the risk that erroneous or fraudulent transactions would go undetected.

As a good business practice, a supervisor should review and approve case voids and payment reversals. If a supervisor is not available at the time of the void or reversal, a second staff member, independent of the transaction, should review the transaction for reasonableness and approve. Any review performed should be documented to increase accountability should future research and/or investigation need to be performed. After the initial discussion of this finding, office staff began documenting the approval and reasoning for voids and reversals.

RECOMMENDATION

1. Implement an independent review of bank account reconciliations. The reviewer should review the reconciliation to verify that the reconciliation is accurate and reconciling items are addressed timely.
2. Document the bank account reconciliation review by signing or initialing and dating the reconciliation documentation.
3. Continue documenting the reason, approval and/or review of reversed payments and voided cases. Documentation should be retained in accordance with record retention requirements (audit clearance), either physically or electronically.
4. Request that the case management support team periodically provide a listing of reserved payments and voided cases. Review this listing to ensure payment reversals and case voids are appropriate and being approved.

MANAGEMENT RESPONSE

Based upon the recommendation of this Audit, the Constable has implemented a policy that all reversals and reconciliations will be reviewed by the Constable or Deputy Chief and has adopted the other recommendations proposed by the Auditors under this section.

FINDING 5 – CASE MANAGEMENT SYSTEM ACCESS PRIVILEGES AND AUDIT LOGS NEED TO BE REVIEWED (LOW)

We identified two areas of concerns with the case management system used by the Boulder Township Constable’s office. These concerns relate to system access and the availability of audit logs for security monitoring.



System Access Privileges Need to be Established and Reviewed

The office has five active users in the case management system. We found that the Constable does not perform a periodic system access privilege review. All users have the same level of access. Further, we found that users have access to a variety of functions which are not currently in use by the Boulder Office, such as Accounts Receivable Aging reports, Accounts Receivable Notice Printing, and Warrant Selection. We also found that users have access to certain system administrator function which are outside their job function.

Without a review of system access, there is a potential that users will have access to areas that are outside of their job functions, increasing the risk of unauthorized transactions, erroneous transactions or fraudulent transactions being performed. Further, having universal system access hinders the ability to segregate duties in such a way that one person is not able to fully control the entire financial cycle. County security standards require that rights be controlled. The Directive states:

“Information Technology Directive 1: IV. PROCEDURE, C. System Access Control, 2. Authentication, b. User Accounts

Authorized user access to County Computing Systems and Networks must be controlled on the basis of rights and permissions that are assigned to each user or group. Each authorized user or group shall be granted the minimum set of rights and permissions necessary to accomplish their assigned departmental tasks. Users who are granted access to excluded/exempt data or information are subject to a background check conducted by Human Resources.”

Case Management Security Audit Logs Should Be Reviewed

We found that log in and off dates and times are being logged by the system. However, the Constable’s Office does not receive a copy of the log for review. Clark County Information Technology Security Directive #1 requires that certain activities be monitored and recorded; the directive states:

“Information Technology Directive 1: IV. PROCEDURE, M. Security Monitoring, 3. Monitoring and Reporting, c. Log-in Monitoring

County Computing Systems and Networks logs will be monitored for exception anomalies. Systems shall be deployed to: Log user access to network components, critical systems, and systems that create, collect, process, store, and transmit excluded/exempt data and information; to record and report any failed login attempts; and provide immediate notifications for response to potential network and critical applications breaches of security. The following attempted access activities shall be monitored and recorded: Logons and logoffs; failed logon attempts; failed file access attempts; and all privileged user actions. Weekly exception reports must be generated.”

While the system cannot currently log other events as required by the Information Technology Directive, the Constable’s Office should obtain and review the log in and off reports to identify unusual or inappropriate activity.

RECOMMENDATION

1. Establish the level of access users should have to the case management system, based on job functions, and work with the case management Information Technology support team to begin



- the process of tailoring the user access privileges.
2. Once user access is established, implement procedures to review the access at least annually to ensure the level of access remains satisfactory.
 3. Request that the user log in and log off report be periodically sent from the case management Information Technology support team. Establish procedures to review the report and notify the case management support team of any unusual activity.
 4. Consider working with the case management support team to expand the reportable information in the log in, log off report to include who accessed the office’s data from a system that was not located in the Constable’s office.

MANAGEMENT RESPONSE

The Constable is in the process of implementing items 1-4 of the Auditors’ report.

FINDING 6 – CERTAIN PRACTICES NEED TO BE EXAMINED FOR REGULATORY COMPLIANCE (LOW)

We identified two practices in place at the Boulder Township Constable’s office that should be reviewed by legal counsel to determine if they are in adherence with applicable statutes.

Private Non-Deputy Staff Performing Limited Constable Services

NRS 258 specifies the type of services to be provided by the Constable’s Office. The statute allows the appointment of deputies to transact all official business. The statute also allows the appointment of operational and clerical staff.

The Boulder Constable’s Office currently has non-deputy personnel that perform limited constable services. These services are confined to serving notices and documents related to garnishment and small claim cases. This staff does not carry weapons in the performance of the services.

The Constable sought approval of County Management for the appointment and compensation of said staff. We believe this arrangement should be further reviewed by the District Attorney assigned to the office to determine what duties are allowed to be performed by the current non-deputy staff members. In doing so, the office and Constable would limit any potential legal liability and ensure full compliance with NRS 258 and any other applicable statute.

Holding and Remittance of Property Exempt From Garnishment

Occasionally defendants file a motion with their jurisdictional court to exempt earnings from garnishment. When this occurs, the defendant provides a copy of the motion to the Constable’s Office. If the office receives a garnishment payment from an employer after this, they hold the check, mark the case as an exemption and do not process the payment.

The office retains the check payment and keeps the physical check in a locked drawer. The office is able to identify all the checks being held through a search in the case management system. The office holds the garnishment checks until a court makes a ruling and they receive the judge’s order.



On average, it takes about a month for a court to make a decision on the exemption request. If the judge exempts the earnings, the Constable’s Office returns the check to the issuer, with the expectation that the company will then return the funds to the employee.

We believe this practice should be reviewed by the District Attorney assigned to the office to ensure compliance with applicable statutes. There is an inherent risk that the employer will not return the funds to the defendant in a timely manner and checks held in the office may be misplaced or unaccounted for.

RECOMMENDATION

1. Consult with the Deputy District Attorney assigned to the office to determine what duties are allowed to be performed by private non-deputy operational staff and whether an oath of office is required.
2. Consult with the Deputy District Attorney assigned to the office to determine whether current practices related to the garnishment exemptions are appropriate.

MANAGEMENT RESPONSE

The Constable will review this policy and obtain further clarification from the District Attorney’s Office.

FINDING 7 – OATH OF OFFICE FILED LATE (LOW)

During our review, we noted that a deputy was appointed to their position on April 9, 2018 but an oath of office and appointment documentation was not filed with the Clark County Recorder until May 7, 2019. NRS 258.060 requires that all deputy appointments be in writing and must be filed and recorded together with the oath of office within 30 days after the appointment. We rated this risk as low, as this is an isolated error.

RECOMMENDATION

1. Implement a checklist to ensure future filings of both new and revoked deputy oaths are recorded in accordance with NRS requirements.

MANAGEMENT RESPONSE

The Constable has implemented a policy to review and track oaths, revocations, and appointments per the recommendation of the Auditors.



APPENDICES

APPENDIX A – MEMO FROM BOULDER CONSTABLE TO DISTRICT ATTORNEY

BOULDER TOWNSHIP CONSTABLE

MEMORANDUM

TO: CONSTABLE DEPUTY DISTRICT ATTORNEY

FROM: STEPHEN J. HAMPE, BOULDER CONSTABLE

DATE: JULY 10, 2019

SUBJ: CONSTABLE FEES

The Boulder Constable's office received a memo during an Audit meeting on July 2, 2019, that was dated May 31, 2019, by a Senior Deputy District Attorney regarding certain business practices related to constables. Although your name does not appear on the CC distribution, we were informed that you were provided a copy of this opinion. As legal counsel for our agency, we would like to request a review of these matters and obtain an opinion as several relevant facts appear to have been omitted.

Mileage Fees

Can a Constable charge a mileage fee for the pick-up and transport of civil process documents including documents that are sent by mail?

NRS 258.125 (1) delineates fees to be charged by Constables. The section reads:

"Except as otherwise provided in subsection 3, for mileage in serving summons, attachment, execution, order, venire, subpoena, notice, summary eviction, writ of restitution or other process in civil suits, for each mile necessarily and actually traveled, in going only.....\$2."

The Boulder Constable's Office implemented a document pick up service for select clients. Each of these clients is located approximately 35 miles from the Boulder Constable Office. The Constable provides this pick up service four days a week (the Constable's Office is closed on Fridays) often making more than one 70-mile round trip a day, traveling several hundred miles a week. The volume of paperwork per batch varies between a single document, to over a hundred. Approximately 10% of these documents to be served are designated as "mailers" to be processed and distributed by the Constable via certified mail. The Constable implemented a flat rate mileage fee based upon NRS 258. 125(3) and grouped the mailers into the same rate category. This was based upon miles "necessarily and actually traveled" to pick up and transport the documents for processing and distribution. It should be noted that our clients requested a flat rate for each transaction (including mailers) to simplify accounting and cost forecasting.

During a meeting with the Auditors on July 2, 2019, the Constable was presented with an opinion on this practice from their Senior Deputy District Attorney, which opines that NRS 258.125 does not support charging mileage for mailers and states that the \$2 mailing fee should be utilized instead. It is unclear in the opinion whether the miles traveled to pick up the documents was considered. The Constable believes that the miles required to pick up and transport these documents clearly fall under the



description of miles “necessarily and actually traveled” to effect service of these documents and are therefore authorized by state statute.

According to NRS 258.125 (1), two things are required to authorize a Constable to collect mileage on documents for service:

- 1) The document must be in the category described by NRS, and;
- 2) The mileage incurred must be “necessarily and actually traveled.”

To add the \$2 per mile fee, a document must be classified as one of the following:

A “summons, attachment, execution, order, venire, subpoena, notice, summary eviction, writ of restitution or other process in civil suits...”

In this case, the civil process documents being transported by the Constable are **Attachments and Executions**, and therefore qualify as valid documents per statute.

The second provision under NRS 258.125 (1) is that mileage can be charged “for each mile necessarily and actually traveled...”

As stated earlier, each client is located approximately 35 miles from the Boulder Constable Office. The Constable provides this pick up service four days a week and travels several hundred miles weekly. There is no dispute that actual miles are being traveled by the Constable. These miles are required to take possession of these service documents and are therefore “necessarily and actually traveled.” The primary question is whether or not the Constable can legally recover costs on mailers as a mileage fee.

The NRS does not differentiate between *actual miles necessarily* traveled to *obtain* a document, and *actual miles necessarily* traveled after *receipt* of a document. In the case at hand, if the Constable received these documents from a third party runner, the statute is clear that the Constable would only be authorized to charge a \$2 mailing fee. However, since actual miles are being traveled to pick up the documents, the Constable is entitled to compensation for costs expended in the performance of his duty. The next section under NRS 258.125 (2)a reads:

“2. A constable is also entitled to receive:

- (a) For receiving and taking care of property on execution, attachment or order, and for executing an order of arrest in civil cases, **the constable’s actual necessary expenses**, to be allowed by the court which issued the writ or order, upon the affidavit of the constable that the charges are correct and the expenses necessarily incurred.”

This section of NRS 258.125 serves to clarify the legislative intent behind the statute: Constables are to be *compensated for actual and necessary expenses* incurred during statutorily authorized duties. The Constable travels 140 miles roundtrip to pick up a batch of service documents. This creates costs for labor, fuel, vehicles, and additional expenses. Because these are “service” documents, the NRS already provides a mileage fee for the service of *attachment and execution* documents. This is not a new fee or



a new service as outlined in NRS 258.170. This is an established fee (mileage) charged for a statutorily permitted activity (service of process) and consequently completely reasonable and well within the parameters of State Law.

Summation

1. The service of documents with mileage fees are set by NRS as an authorized service of the Constable.
2. The mailing documents picked up by the Constable qualify for mileage fees as *executions and attachments*.
3. The actual miles traveled by the Constable to pick up these documents are necessarily traveled to effect service of these items.
4. The NRS makes no distinction between mileage required to obtain a document and mileage required after receipt of a document; the only requirement is that the miles are “necessarily and actually” traveled.
5. The practice of charging mileage for mailing execution and attachment documents is permitted by statute when the Constable is required to travel to transport those documents.

Flat Rate for Mileage

Should the Boulder Constable’s Office petition the Clark County Board of County Commissions for an ordinance for flat rate mileage fees pursuant to NRS 258.125 (3)?

NRS 258.125 (3) reads:

3. For each service for which a constable is otherwise entitled pursuant to subsection 1 to a fee based on the mileage necessarily and actually traveled in performing the service, a board of county commissioners may provide by ordinance for the constable to be entitled, at the option of the person paying the fee, to a flat fee for the travel costs of that service.

In response to client requests for a flat fee, the Constable established a mileage rate that was in the lower third tier of actual miles traveled for the service of documents. Based on the location of the Boulder Constable’s Office, our analysis indicated that our flat rate was well below the limits set by statute, and therefore did not require an authorizing ordinance by the Clark County Board of County Commissions.

Additionally, the Constable implemented a document pick up service and this pick up service falls under the definition of miles “necessarily and actually traveled” per NRS 258.125. This pick up service adds a pro rata amount of mileage to each document in addition to the actual miles traveled to serve the document. For example, the Constable travels 35 miles (one way) and picks up 10 documents. At \$2 per mile, this adds \$70 in mileage fees to the batch. \$70 divided by 10 documents equals \$7 in additional mileage for each document. Although the Audit report states that there is a small percentage of “over-



charges” for mileage; in actuality, when the pick-up mileage is calculated, there are virtually no over charges.

To simplify this matter, the Constable is willing to petition the County Commission for an ordinance pursuant to NRS 258.125-3 establishing a flat fee for mileage if that is the recommendation of the District Attorney’s Office.

CC: Mary-Ann Miller, County Counsel
Commissioner James B. Gibson
Commissioner Tick Segerblom
Commissioner Michael Naft
Angela Darragh, Audit Director