

CLERK OF THE COURT OF COMMON PLEAS
AND PUBLIC DEFENDER'S OFFICE
BEAVER COUNTY
AUDIT REPORT
FOR THE PERIOD
JANUARY 1, 2003 TO DECEMBER 31, 2005

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Independent Auditor's Report

Mr. Steven H. Stetler
Acting Secretary
Pennsylvania Department of Revenue
Harrisburg, PA 17128

We have audited the accompanying statement of receipts and disbursements – cash basis of the Clerk of the Court of Common Pleas And Public Defender’s Office, Beaver County, Pennsylvania (County Officers), for the period January 1, 2003 to December 31, 2005, pursuant to the requirements of Section 401(b) and 902 of *The Fiscal Code*. This financial statement is the responsibility of the county offices’ management. Our responsibility is to express an opinion on this statement based on our audit.

Except as discussed in the fourth paragraph, we conducted our audit in accordance with auditing standards generally accepted in the United States of America and *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statement is free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statement. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

As described more fully in Note 1, the accompanying financial statement was prepared using accounting practices prescribed by the Pennsylvania Department of Revenue, which practices differ from accounting principles generally accepted in the United States of America. The effects on the financial statement of the variances between these regulatory accounting practices and accounting principles generally accepted in the United States of America, although not reasonably determinable, are presumed to be material. The financial statement presents only the Commonwealth portion of cash receipts and disbursements and is not intended to present fairly the financial position and results of operations of the County Officers, in conformity with accounting principles generally accepted in the United States.

Independent Auditor's Report (Continued)

As discussed in Finding No. 1, the Public Defender's Office refused to grant us access to audit their accounting records and refused to furnish us with written management representations. Transactions originating from these accounting records represent a portion of the statement of receipts and disbursements. As a result of not having access to these records and written representations from the management of the Public Defender's Office, the scope of our audit was limited, and we were unable to satisfy ourselves by other auditing procedures.

In our opinion, because of the effects of the matter discussed in the third paragraph, the financial statement referred to above does not present fairly, in conformity with accounting principles generally accepted in the United States of America, the financial position of the County Officers, as of December 31, 2005, the changes in its financial position, or where applicable, its cash flows for the period then ended.

In our opinion, except for the effects, if any, of the matters noted in the fourth paragraph, the financial statement referred to above presents, in all material respects, the operations of the County Officers, as it pertains to receipts made on behalf of the Department of Revenue and other state agencies for the period ended December 31, 2005, in conformity with the criteria set forth in Note 1.

In accordance with *Government Auditing Standards*, we have also issued our report dated January 11, 2008, on our consideration of the County Officers' internal control over financial reporting and on our tests of its compliance with certain provisions of laws and regulations. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* and should be read in conjunction with this report in considering the results of our audit.

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

January 11, 2008

JACK WAGNER
Auditor General

CLERK OF THE COURT OF COMMON PLEAS
AND PUBLIC DEFENDER'S OFFICE
BEAVER COUNTY
STATEMENT OF RECEIPTS AND DISBURSEMENTS – CASH BASIS
FOR THE PERIOD
JANUARY 1, 2003 TO DECEMBER 31, 2005

Receipts:

Department of Transportation		
Title 75 Fines	\$	87,746
Overweight Fines		532
Department of Revenue Court Costs		75,165
Crime Victims' Compensation Costs		195,542
Crime Commission Costs/Victim Witness Services Cost		134,378
Domestic Violence Costs		14,846
Emergency Medical Services Fines		20,583
DUI - ARD/EMS Fees		21,948
CAT/MCARE Fund Surcharges		130,549
Judicial Computer System/Access to Justice Fees		18,929
Offender Supervision Fees		730,535
Constable Service Surcharges		1,712
Criminal Laboratory Users' Fees		26,261
Probation and Parole Officers' Firearm Education Costs		18,542
Substance Abuse Education Costs		96,912
Office of Victims' Services Costs		22,878
Miscellaneous State Fines and Costs		<u>126,366</u>
 Total receipts (Note 2)		 \$ 1,723,424
 Disbursements to Commonwealth (Note 3)		 <u>(1,723,778)</u>
 Balance due Commonwealth (County) per settled reports (Note 4)		 (354)
 Audit adjustment (Note 5)		 <u>11</u>
 Adjusted balance due Commonwealth (County) for the period January 1, 2003 to December 31, 2005		 <u><u>\$ (343)</u></u>

Notes to the financial statement are an integral part of this report.

CLERK OF THE COURT OF COMMON PLEAS
AND PUBLIC DEFENDER'S OFFICE
BEAVER COUNTY
NOTES TO THE FINANCIAL STATEMENT
FOR THE PERIOD
JANUARY 1, 2003 TO DECEMBER 31, 2005

1. Summary Of Significant Accounting Policies

Basis Of Presentation

The financial statement was prepared in accordance with the requirements of the Pennsylvania Department of Revenue. This financial statement is not intended to present either financial results of operations or financial position in conformity with generally accepted accounting principles.

Basis Of Accounting

The financial statement was prepared on the cash basis of accounting. Under this method, revenues were recognized when received and expenditures were recognized when paid.

Audit Requirement

The financial presentation has been prepared in accordance with Title 72 P.S. Section 401 (b) of *The Fiscal Code*, which requires the Department of the Auditor General to determine whether all money collected on behalf of the Commonwealth has been remitted properly and to provide the Department of Revenue with a report to enable them to settle an account covering any delinquency. A statement of assets and liabilities was not a required part of the financial presentation because of the limited reporting scope by the Clerk of the Court of Common Pleas. Therefore, a statement of assets and liabilities was not audited and is not a part of this report.

2. Receipts

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

CLERK OF THE COURT OF COMMON PLEAS
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BEAVER COUNTY
NOTES TO THE FINANCIAL STATEMENT
FOR THE PERIOD
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3. Disbursements

Total disbursements are comprised as follows:

Clerk of the Court checks issued to:

Department of Revenue	\$ 1,723,237
Attorney General	165
Bureau of Victims' Services	<u>376</u>
Total	<u><u>\$ 1,723,778</u></u>

4. Balance Due Commonwealth (County) For The Period January 1, 2003 to December 31, 2005

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

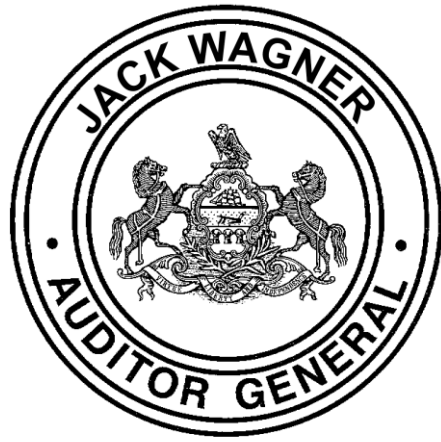
5. Audit Adjustment

Amount represents a prior period payment for the period January 1, 2000 to December 31, 2002.

6. County Officers Serving During Audit Period

Judy R. Enslin served as the Clerk of the Court of Common Pleas for the period January 1, 2003 to December 31, 2005.

Joseph M. Budicak, Esquire, served as the Chief Public Defender of the Public Defender's Office for the period January 1, 2003 to December 31, 2005.



Report On Compliance And On
Internal Control Over Financial Reporting

Mr. Steven H. Stetler
Acting Secretary
Pennsylvania Department of Revenue
Harrisburg, PA 17128

We have audited the statement of receipts and disbursements – cash basis of the Clerk of the Court of Common Pleas And Public Defender’s Office, Beaver County, Pennsylvania (County Officers), for the period January 1, 2003 to December 31, 2005, and have issued our report thereon dated January 11, 2008. In our report, our opinion was qualified because the Public Defender’s Office refused to grant us access to audit their accounting records and refused to furnish us with written management representations. Transactions originating from these accounting records represent a portion of the statement of receipts and disbursements. As a result of not having access to these records and written representations from the management of the Public Defender’s Office, the scope of our audit was limited, and we were unable to satisfy ourselves by other auditing procedures.

Except as discussed in the preceding paragraph, we conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States.

Compliance

As part of obtaining reasonable assurance about whether the County Officers’ financial statement is free of material misstatement, we performed tests of its compliance with certain provisions of laws and regulations, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance that are required to be reported under *Government Auditing Standards*.

Report On Compliance And On
Internal Control Over Financial Reporting (Continued)

Internal Control Over Financial Reporting

In planning and performing our audit, we considered the County Officers' internal control over financial reporting in order to determine our auditing procedures for the purpose of expressing our opinion on the financial statement and not to provide assurance on the internal control over financial reporting. However, we noted certain matters involving the internal control over financial reporting and its operation that we consider to be reportable conditions. Reportable conditions involve matters coming to our attention relating to significant deficiencies in the design or operation of the internal control over financial reporting that, in our judgment, could adversely affect the County Officers' ability to record, process, summarize, and report financial data consistent with the assertions of management in the financial statement. The reportable conditions described in the findings are as follows:

- Access To Accounting Records Was Denied - Public Defender's Office.
- Receipts Were Not Always Deposited On the Same Day As Collected - Clerk Of The Court Of Common Pleas.

A material weakness is a condition in which the design or operation of one or more of the internal control components does not reduce to a relatively low level the risk that misstatements in amounts that would be material in relation to the financial statement being audited may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions. Our consideration of the internal control over financial reporting would not necessarily disclose all matters in the internal control that might be reportable conditions and, accordingly, would not necessarily disclose all reportable conditions that are also considered to be material weaknesses. We consider all the reportable conditions described above to be material weaknesses.

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

January 11, 2008

JACK WAGNER
Auditor General

PUBLIC DEFENDER'S OFFICE
BEAVER COUNTY
FINDINGS AND RECOMMENDATIONS
FOR THE PERIOD
JANUARY 1, 2003 TO DECEMBER 31, 2005

Finding No. 1 - Access To Accounting Records Was Denied – Public Defender's Office

In Beaver County, the Public Defender's Office (Office) manually receipts money received from defendants. This money can consist of restitution, state costs and fees, and county costs. The Office sometimes manually disburses restitution directly to the victim and in other instances, remits it to the Clerk of the Court of Common Pleas to transact the disbursement.

Because the Office collects money that includes state funds, we asked the current Chief Public Defender for records of receipts, disbursements, and bank statements for the period January 1, 2003 to December 31, 2005 in order to complete our required audit procedures.

The current Chief Public Defender refused multiple written and verbal requests to give us the accounting records and written representations we requested. Consequently, we were unable to perform our necessary audit procedures. Because of the scope limitation this created for our audit, we qualified our auditor's opinion on financial transaction matters relating to the Office.

Without the ability to audit the financial transactions of the Office, the potential is increased that funds could be lost, stolen, or misappropriated and not be detected.

Although the Office stated that the funds were maintained in an Interest On Lawyers Trust Account (IOLTA), we disagree that this fact would justify the refusal to provide us access for the purpose of this audit. We note that certain judges are required to establish Minor Judiciary Interest On Trust Accounts (MJ-IOTA), a special type of IOLTA for which there appears to be no equivalent created for public defenders, and that the department has unhindered access to such accounts. Even if such an IOLTA account were appropriate for public defenders, it is not clear why the form of the account would render the funds in that account anything other than what they are -- public funds subject to audit.

Recommendations

We recommend that the Pennsylvania Administrative Office of Pennsylvania Courts (AOPC) review this matter and take any action that it deems necessary. Further, we recommend that the Office create receipt and disbursement transactions utilizing the AOPC's Common Pleas Case Management System (CPCMS). We are also forwarding a copy of this report to the Pennsylvania IOLTA Board for its review and whatever further action it deems appropriate.

PUBLIC DEFENDER'S OFFICE
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Finding No. 1 - Access To Accounting Records Was Denied – Public Defender's Office
(Continued)

Management's Response

The Clerk of the Court of Common Pleas responded as follows:

I have spoken with the [current] chief public defender on several occasions regarding funds held by the Public Defender's Office, which may at some point, be due to the clerk of courts office as payment towards an individual's fines, costs and restitution, as ordered by the court. My main concern is the funds which may be due to the clerk of courts as payment towards fines and costs are not remitted to the Clerk of Courts Office in a timely fashion; further it creates an additional burden on my staff to obtain any funds which may be held. I have also suggested any funds which they collect could be held by the Clerk of Courts Office as a Pre-Paid Deposit. I have also mentioned that I would be willing to speak with the AOPC to see if it would be possible for the Public Defender to receipt these funds and deposit them into the Clerk of Courts Escrow Account.

The current Chief Public Defender responded as follows:

To my knowledge, this is the first time the Public Defender's Office has been included in an audit of the Clerk of Courts. There is no relationship between the two offices. They are entirely separate entities. The Public Defender's Office has a separate budget whereby all expenses incurred in operating the office are paid from Beaver County's general fund. The Public Defender's Office does not charge clients for its services and therefore does not generate any revenue for Beaver County.

The audit report erroneously states that the Public Defender's Office collects money that includes state funds subject to audit. To the contrary, the Public Defender's Office maintains an IOLTA account which consists entirely of client funds paid into escrow account for disbursement at the direction of the client. These are never public funds while in the IOLTA account. If funds are paid to the Clerk of Courts at the client's request to satisfy state or county costs it is only when those funds are paid to the Clerk of Courts that they become public funds. Before that they are client funds held in an attorney's escrow account. Clients of the Public Defender's Office are entitled to the same attorney/client privilege and right to confidentiality as clients of a private defense attorney. They cannot be treated differently because they are indigent. Further, all criminal defense attorneys maintain IOLTA accounts and make payment to the Clerk of Courts at the request of their clients.

PUBLIC DEFENDER'S OFFICE
BEAVER COUNTY
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Finding No. 1 - Access To Accounting Records Was Denied – Public Defender's Office
(Continued)

Management's Response (Continued)

If we are to follow the logic of the auditors here, then every criminal defense attorney's IOLTA account would be subject to state audit.

As I have stated repeatedly, these are client funds and are in no way the funds of the Clerk of Courts Office or of any other government agency. As an attorney and officer of the Court I am under the jurisdiction of the Supreme Court of Pennsylvania. I have a professional obligation to maintain client confidentiality which I cannot allow to be compromised. My actions have been consistent with the Disciplinary Rules of the Pennsylvania Supreme Courts and the Rules of the IOLTA Boards which govern the escrow of client funds. Your efforts to discredit my efforts on behalf of the clients of my office are irrelevant to my professional responsibilities. I have suggested to you the proper legal procedure for you to contest my position through due process of law, but you have chosen to ignore legal process in favor of this audit report. My position remains the same: These are client funds owned by clients of my office and are not subject to your access, control or audit. It is my duty to protect and maintain the privileged confidences of my clients.

You are asked as a matter of fair reporting to include this response as part of your published audit so that my actions can be judged as matters of legal responsibility rather than as a lack of cooperation.

Auditor's Conclusion

The Beaver County Public Defender's Office (Office) maintains an account for the deposit of monies from defendants as part of their costs, fines, or restitution that are later paid by way of check to the Beaver County Clerk of the Court of Common Pleas to be applied toward each defendant's applicable costs, fines, or restitution.

The Department of the Auditor General (Department) regularly conducts audits of the various county clerks of court offices pursuant to Section 401(c) of *The Fiscal Code*, 72 P.S. § 401(c), to ensure that the clerks of court properly assess, collect, and remit to the Commonwealth defendants' costs, fines, and restitution. Because the Office collects monies that can become Commonwealth funds when remitted to the Clerk of Courts' Office, the Department of the Auditor General has the authority to audit said funds. Despite repeated requests in writing and

PUBLIC DEFENDER'S OFFICE
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Finding No. 1 - Access To Accounting Records Was Denied – Public Defender's Office
(Continued)

Auditor's Conclusion (Continued)

in phone calls from the Department's Office of Chief Counsel, the Department was denied this access to the accounting records of the Office and therefore could not determine how much money was collected on behalf of the Commonwealth.

The Office has been unable to provide this Department with any legal authority that would render an account held by a public entity, such as the Public Defender's Office, to be anything other than a public account that is subject to audit and review. Despite claims that the IOLTA account would be like an account held by a "private defense attorney" or "criminal defense attorney," the account Chief Public Defender is not a private criminal defense attorney, but rather a public criminal defense attorney who is accountable to taxpayers to properly remit fines and costs to the Clerk of Courts (and indirectly to the state treasury). Furthermore, just like our Department's ready access to Minor Judiciary Interest On Trust Accounts (MJ-IOTAs), a special type of IOLTA, the Office must allow the auditors from our Department to review all the Office's records and accounts as needed.

It is notable that the Clerk of Court, who is an important county judicial officer, has expressed great concern about fines and costs held by the Chief Public Defender not being remitted to her office in a timely fashion and that her staff is often burdened with the task of tracking down the fines and costs that his Office routinely holds. This calls into question whether all or some fines and costs from defendants held by the Chief Public Defender may not be remitted as the office should and thereby, could be lost, stolen, or misappropriated.

As stated earlier, our Department has unhindered access to the MJ-IOTAs. Furthermore, there have not been any other public county offices that collect state funds, whether directly or indirectly, that have denied this Department access to their accounting records. Consequently, as stated above, without the ability to audit the financial transactions of the Office, the potential is increased that funds could be lost, stolen, or misappropriated and not be detected.

As such, we again recommend that the Administrative Office of Pennsylvania Courts (AOPC) review this matter in consultation with the IOLTA Board and take any action it deems necessary.

CLERK OF THE COURT OF COMMON PLEAS
BEAVER COUNTY
FINDINGS AND RECOMMENDATIONS
FOR THE PERIOD
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Finding No. 2 - Receipts Were Not Always Deposited On The Same Day As Collected - Clerk Of

The Court Of Common Pleas

Our audit disclosed that receipts were not always deposited on the same day as collected. Of 41 receipts tested, 13 were not deposited on the same day as collected. The time lapse from the date of receipt to the subsequent date of deposit ranged from two days to nine days.

These conditions existed because the office failed to establish adequate internal controls over its receipts.

Good internal accounting controls ensure that all monies collected are deposited in the bank at the end of every day. Without a good system of internal controls over funds received by the office, the potential is increased that funds could be lost, stolen, or misappropriated.

Recommendation

We recommend that the county office deposit all monies received from collections at the end of each day as required by good internal accounting controls.

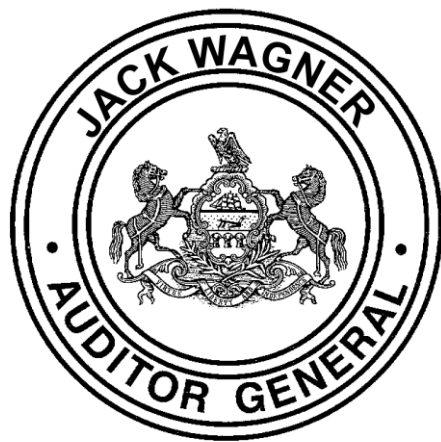
Management's Response

The Clerk of the Court of Common Pleas responded as follows:

My office policy has always been, all bank deposits are to be made daily, and in the company of a Beaver County Deputy Sheriff. What this translates to, is one of the collection's employees must be accompanied to the bank with a Deputy Sheriff escort. There are times however, when the Sheriff's Department does not have a Deputy available to perform this function (i.e. trial weeks, sentence court, shortage of staff.) Any time there is not a daily deposit; the Auditor General can be assured this is solely due to a transportation issue, or some other unforeseen cause.

Auditor's Conclusion

Although we appreciate the Clerk of the Court's concerns of not always having a deputy sheriff available to escort an employee to the bank, we have to reiterate the importance to adequately safeguard all monies collected by making deposits at the end of each day.



CLERK OF THE COURT OF COMMON PLEAS
AND PUBLIC DEFENDER'S OFFICE
BEAVER COUNTY
REPORT DISTRIBUTION
FOR THE PERIOD
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This report was initially distributed to:

Mr. Steven H. Stetler
Acting Secretary
Pennsylvania Department of Revenue

Mr. Thomas J. Dougherty
Director
Division of Grants and Standards
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Office of Probation and Parole Services
1101 South Front Street, Suite 5900
Harrisburg, PA 17104-2545

The Honorable Zygmunt Pines
Court Administrator of Pennsylvania
Supreme Court of Pennsylvania
Administrative Office of Pennsylvania Courts

Clerk of the Court of Common Pleas
Beaver County
Beaver County Courthouse
Beaver, PA 15009-2193

The Honorable Judy R. Enslin	Clerk of the Court of Common Pleas
The Honorable David A. Rossi	Controller
The Honorable Tony Amadio	Chairperson of the Board of Commissioners

CLERK OF THE COURT OF COMMON PLEAS
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BEAVER COUNTY
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Paul A. Steff, Esquire	Chief Public Defender, Public Defender's Office
The Honorable John D. McBride	President Judge
Maureen P. Kelly, Esquire	Chair, Pennsylvania Interest on Lawyers Trust Account Board
Mr. Alfred J. Azen	Executive Director, Pennsylvania Interest on Lawyers Trust Account Board

This report is a matter of public record. Copies of this report may be obtained from the Pennsylvania Department of the Auditor General, Office of Communications, 318 Finance Building, Harrisburg, PA 17120. If you have any questions regarding this report or any other matter, you may contact the Department of the Auditor General by accessing our website at www.auditorgen.state.pa.us.