



CLERK OF THE COURT OF COMMON PLEAS/
PUBLIC DEFENDER'S OFFICE/JUVENILE SERVICES DIVISION

BEAVER COUNTY

EXAMINATION REPORT

FOR THE PERIOD

JANUARY 1, 2006 TO DECEMBER 31, 2008

CONTENTS

	<u>Page</u>
Independent Auditor's Report	1
Financial Section:	
Statement Of Receipts And Disbursements	5
Notes To The Statement Of Receipts And Disbursements	6
Findings And Recommendations:	
Finding No. 1 - Access To Accounting Records Was Denied - Public Defender's Office.....	9
Finding No. 2 - Receipts Were Not Always Deposited On The Same Day As Collected - Clerk Of The Court Of Common Pleas/Juvenile Services Division	13
Report Distribution	15



**Department of the Auditor General
Commonwealth of Pennsylvania
Harrisburg, Pennsylvania 17120-0018**

**JACK WAGNER
AUDITOR GENERAL**

Independent Auditor's Report

The Honorable Daniel P. Meuser
Secretary
Pennsylvania Department of Revenue
Harrisburg, PA 17128

We have examined the accompanying statement of receipts and disbursements (Statement) of the Clerk of the Court of Common Pleas/Public Defender's Office/Juvenile Services Division, Beaver County, Pennsylvania (County Officers), for the period January 1, 2006 to December 31, 2008, pursuant to the requirements of Section 401(b) of *The Fiscal Code*, 72 P.S. § 401(b). This Statement is the responsibility of the county office's management. Our responsibility is to express an opinion on this Statement based on our examination.

Except as discussed in the fourth paragraph, our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants and the standards applicable to attestation engagements contained in *Government Auditing Standards* issued by the Comptroller General of the United States. An examination includes examining, on a test basis, evidence supporting the Statement and performing such other procedures as we considered necessary in the circumstances. We believe that our examination provides a reasonable basis for our opinion.

We are mandated by Section 401(b) of *The Fiscal Code* to audit the accounts of each county officer to determine whether all moneys collected on behalf of the Commonwealth have been correctly assessed, reported and promptly remitted. *Government Auditing Standards* issued by the Comptroller General of the United States include attestation engagements as a separate type of audit. An attestation engagement performed pursuant to *Government Auditing Standards* involves additional standards that exceed the standards provided by the American Institute of Certified Public Accountants. Accordingly, this attestation engagement complies with both *Government Auditing Standards* and Section 401(b) of *The Fiscal Code*.

Independent Auditor's Report (Continued)

As discussed in Finding No. 1, the Public Defender's Office refused to grant us access to examine 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 examination was limited, and we were unable to satisfy ourselves by other examination procedures.

In our opinion, except for the effects if any, of the matter discussed in the fourth paragraph, the 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 Commonwealth for the period ended December 31, 2008, in conformity with the criteria set forth in Note 1.

In accordance with *Government Auditing Standards*, we are required to report findings of significant deficiencies in internal control, violations of provisions of contracts or grant agreements, and abuse that are material to the Statement and any fraud and illegal acts that are more than inconsequential that come to our attention during our examination. We are also required to obtain the views of management on those matters. We performed our examination to express an opinion on whether the Statement is presented in accordance with the criteria described above and not for the purpose of expressing an opinion on the internal control over reporting on the Statement or on compliance and other matters; accordingly, we express no such opinions.

A control deficiency exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect misstatements on a timely basis. A significant deficiency is a control deficiency, or combination of control deficiencies, that adversely affects the County Officers' ability to initiate, authorize, record, process, or report data reliably in accordance with the applicable criteria such that there is more than a remote likelihood that a misstatement of the County Officers' Statement that is more than inconsequential will not be prevented or detected by the County Officers' internal control.

Independent Auditor's Report (Continued)

We consider the deficiencies described in the findings below to be significant deficiencies in internal control over the reporting on the Statement:

- Access To Accounting Records Was Denied – Public Defenders Office.
- Receipts Were Not Always Deposited On The Same Day As Collected – Clerk Of The Court Of Common Pleas/Juvenile Services Division.

A material weakness is a significant deficiency or combination of significant deficiencies that results in more than a remote likelihood that a material misstatement of the Statement will not be prevented or detected by the County Officers' internal control. Our consideration of the internal control over reporting on the Statement would not necessarily disclose all matters in the internal control that might be significant deficiencies and, accordingly, would not necessarily disclose all significant deficiencies that are also considered to be material weaknesses. We consider all the significant deficiencies described above to be material weaknesses.

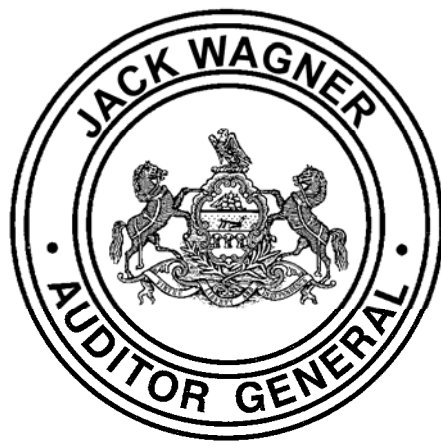
The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

We are concerned in light of the Public Defender Office's failure to correct a previously reported finding and give us access to accounting records for examination and that the Clerk of the Court of Common Pleas' failed to correct a previously reported finding regarding inadequate internal control over receipts. These significant deficiencies increase the risk for funds to be lost or misappropriated. The County Officers should strive to implement the recommendations and corrective action noted in this examination report.

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 7, 2010

JACK WAGNER
Auditor General



CLERK OF THE COURT OF COMMON PLEAS/PUBLIC DEFENDER'S
OFFICE/JUVENILE SERVICES DIVISION
BEAVER COUNTY
STATEMENT OF RECEIPTS AND DISBURSEMENTS
FOR THE PERIOD
JANUARY 1, 2006 TO DECEMBER 31, 2008

Receipts:

Department of Transportation		
Title 75 Fines	\$	82,407
Overweight Fines		209
Department of Revenue Court Costs		66,078
Crime Victims' Compensation Costs		178,156
Crime Commission Costs/Victim Witness Services Costs		116,482
Domestic Violence Costs		11,460
Liquor Control Board		22
Department of Treasury		65,686
Game Commission Fines		50
Emergency Medical Services Fines		13,407
DUI - ARD/EMS Fees		24,042
CAT/MCARE Fund Surcharges		115,306
Judicial Computer System/Access to Justice Fees		30,755
Offender Supervision Fees		793,506
Constable Service Surcharges		1,180
Criminal Laboratory Users' Fees		17,613
Probation and Parole Officers' Firearm Education Costs		15,360
Substance Abuse Education Costs		145,641
Office of Victims' Services Costs		38,096
Miscellaneous State Fines and Costs		<u>129,311</u>
		\$ 1,844,767
Total receipts (Note 2)		<u>(1,848,978)</u>
Disbursements to Commonwealth (Note 3)		
Balance due Commonwealth (County) per settled reports (Note 4)		(4,211)
		<u>4,211</u>
Examination adjustments (Note 5)		
Adjusted balance due Commonwealth (County) for the period January 1, 2006 to December 31, 2008		<u><u>\$ -</u></u>

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

CLERK OF THE COURT OF COMMON PLEAS/PUBLIC DEFENDER'S
OFFICE/JUVENILE SERVICES DIVISION
BEAVER COUNTY
NOTES TO THE STATEMENT OF RECEIPTS AND DISBURSEMENTS
FOR THE PERIOD
JANUARY 1, 2006 TO DECEMBER 31, 2008

1. Criteria

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

The Statement was prepared in accordance with reporting requirements prescribed by the Pennsylvania Department of Revenue. Under this method, only the Commonwealth portion of cash receipts and disbursements are presented, revenues are recognized when received, and expenditures are recognized when paid.

2. Receipts

Receipts are comprised of fines, costs, fees, and surcharges collected on behalf of the Commonwealth. These fines, costs, fees, and surcharges represent collections made on summary and criminal cases filed with the Clerk of the Court of Common Pleas/Public Defender's Office/Juvenile Services Division' Office.

3. Disbursements

Total disbursements are comprised as follows:

Clerk of the Court checks issued to:

Department of Revenue	\$ 1,783,220
Liquor Control Board	22
Game Commission	50
Department of Treasury	65,686
Total	\$ 1,848,978

CLERK OF THE COURT OF COMMON PLEAS/PUBLIC DEFENDER'S
OFFICE/JUVENILE SERVICES DIVISION
BEAVER COUNTY
NOTES TO THE STATEMENT OF RECEIPTS AND DISBURSEMENTS
FOR THE PERIOD
JANUARY 1, 2006 TO DECEMBER 31, 2008

4. Balance Due Commonwealth (County) For The Period January 1, 2006 To December 31, 2008

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. Examination Adjustment

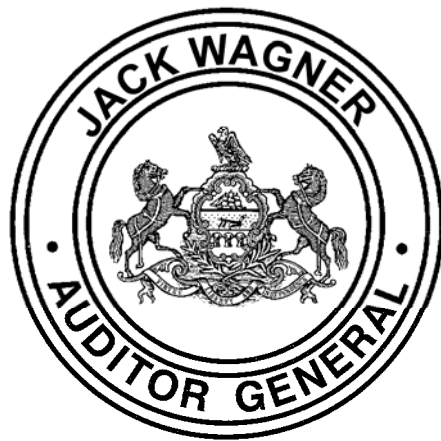
During our prior audit, January 1, 2000 to December 31, 2002, we determined that there was a balance due to the Commonwealth of \$4,211. This balance due was paid to the Department of Revenue in November 2006.

6. County Officers Serving During Examination Period

Judy R. Enslin served as the Clerk of the Court of Common Pleas for the period January 1, 2006 to December 31, 2008.

Paul A. Steff, Esquire served as the Chief Public Defender for the period January 1, 2006 to December 31, 2008.

Robert R. Rose served as the Director of the Juvenile Services Division for the period January 1, 2006 to December 31, 2008.



PUBLIC DEFENDER'S OFFICE
BEAVER COUNTY
FINDINGS AND RECOMMENDATIONS
FOR THE PERIOD
JANUARY 1, 2006 TO DECEMBER 31, 2008

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 Chief Public Defender for records of receipts, disbursements, and bank statements for the period January 1, 2006 to December 31, 2008 in order to complete our required examination procedures.

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

Without the ability to examine the financial transactions of the Office, the potential is increased that funds could be lost 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 examination. 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 examination.

This finding was cited in the prior audit for the period ending December 31, 2005.

Recommendations

We again recommend that the 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
BEAVER COUNTY
FINDINGS AND RECOMMENDATIONS
FOR THE PERIOD
JANUARY 1, 2006 TO DECEMBER 31, 2008

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:

The Clerk of Courts Office has no power of authority over the Public Defender's Office and believes this written finding should not be included in the Clerk of Courts Office's audit.

The Chief Public Defender responded as follows:

To my knowledge, the prior examination, January 1, 2003 to December 31, 2005, was the only time that the Public Defender's Office had 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 this 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. 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.

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

Management's Response (Continued)

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 governmental 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 Court and the Rules of the IOLTA Board 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 the 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 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.

PUBLIC DEFENDER'S OFFICE
BEAVER COUNTY
FINDINGS AND RECOMMENDATIONS
FOR THE PERIOD
JANUARY 1, 2006 TO DECEMBER 31, 2008

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

Auditor's Conclusion (Continued)

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 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 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/JUVENILE SERVICES DIVISION
BEAVER COUNTY
FINDINGS AND RECOMMENDATIONS
FOR THE PERIOD
JANUARY 1, 2006 TO DECEMBER 31, 2008

Finding No. 2 - Receipts Were Not Always Deposited On The Same Day As Collected - Clerk
Of The Court Of Common Pleas/Juvenile Services Division

Our examination disclosed that receipts were not always deposited on the same day as collected in the Clerk of the Court of Common Pleas office (Clerk) and in the Juvenile Services Division office (Juvenile).

- Of the 32 receipts tested in the Clerk's office, we found that in 9 instances the Clerk did not deposit receipts 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 six days.
- The Juvenile office collects monies and then remits these collections to the Clerk for deposit into the bank. Of the eight receipts tested in the Juvenile office, we found that in four instances, the Juvenile office did not remit these receipts to the Clerk on the same day as collected. The time lapse from the date of receipt to the subsequent date received by the Clerk ranged from two days to five days.

Good internal accounting controls ensure that all monies collected are deposited intact on the same day as collected. Additionally, the Juvenile Services Division should submit receipts to the Clerk on the same day as collected to ensure that the Clerk deposits all collections on the same day as received.

Without a good system of internal controls over funds received by the offices, the potential is increased that funds could be lost or misappropriated.

These conditions existed because the office failed to establish and implement an adequate system of internal controls over the safeguarding of daily collections.

The condition of the Clerk not depositing receipts on the same day as collected was cited in the prior examination report for the period January 1, 2003 to December 31, 2005.

Recommendations

We again recommend that the Clerk deposit all receipts at the end of each day as required by good internal accounting controls. Additionally, we recommend that the Juvenile office remit all receipts to the Clerk on the same day as collected.

CLERK OF THE COURT OF COMMON PLEAS/JUVENILE SERVICES DIVISION
BEAVER COUNTY
FINDINGS AND RECOMMENDATIONS
FOR THE PERIOD
JANUARY 1, 2006 TO DECEMBER 31, 2008

Finding No. 2 - Receipts Were Not Always Deposited On The Same Day As Collected - Clerk
Of The Court Of Common Pleas/Juvenile Services Division (Continued)

Management's Response

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

One of the policies of the Clerk of Courts Office is all monies received are to be deposited on a daily basis and the employee making the bank deposit must be escorted to the bank by a deputy sheriff. There are times however, due to scheduling issues, wherein a deputy sheriff may not be available to transport the accounting clerk to the bank. In those circumstances, the daily receipts are locked in a safe until the deposit can be made the next day. The Clerk of Courts Office deposits all receipts from the Juvenile Services Division. Due to Juvenile Services being located outside of the courthouse, there may be a day delay in delivering collected receipts to the Clerk of Courts for deposit. The Juvenile Services Division will be relocating to the courthouse within the next several months, thus eliminating the delay from receipt to deposit.

Auditor's Conclusion

During our next examination we will determine if the offices complied with our recommendations.

CLERK OF THE COURT OF COMMON PLEAS/PUBLIC DEFENDER'S
OFFICE/JUVENILE SERVICES DIVISION
BEAVER COUNTY
REPORT DISTRIBUTION
FOR THE PERIOD
JANUARY 1, 2006 TO DECEMBER 31, 2008

This report was initially distributed to:

The Honorable Daniel P. Meuser
Secretary
Pennsylvania Department of Revenue

Mr. Thomas J. Dougherty
Director
Division of Grants and Standards
Pennsylvania Board of Probation and Parole

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

The Honorable Judy R. Enslen	Clerk of the Court of Common Pleas
The Honorable John H. McBride	President Judge
The Honorable David A. Rossi	Controller
The Honorable Tony Amadio	Chairperson of the Board of Commissioners
Mr. Robert R. Rose	Director, Juvenile Services Division
Paul A. Steff, Esquire	Chief Public Defender, Public Defender's Office
William P. Carlucci, Esquire	Chair, Pennsylvania Interest on Lawyers Trust Account Board
Mr. Alfred J. Azen	Executive Director, Pennsylvania Interest on Lawyers Trust Account Board

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