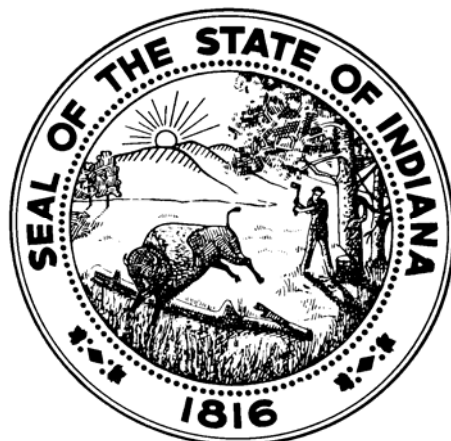


STATE BOARD OF ACCOUNTS
302 West Washington Street
Room E418
INDIANAPOLIS, INDIANA 46204-2765

AUDIT REPORT
OF

CITY COURT
CITY OF EAST CHICAGO
LAKE COUNTY, INDIANA

January 1, 2005 to December 31, 2005



FILED
10/30/2006

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CITY OFFICIALS

<u>Office</u>	<u>Official</u>	<u>Term</u>
Chief Probation Officer	Kim Sullivan	01-01-05 to 12-31-06
Judge	Honorable Sonya A. Morris	01-01-04 to 12-31-07
Mayor	George Pabey	12-29-04 to 12-31-07
City Controller	Charles Pacurar	01-01-05 to 12-31-06
President of the Common Council	Richard Medina	01-01-05 to 12-31-06
President of the Board of Public Works and Safety	Charles Pacurar	01-01-05 to 12-31-06



STATE OF INDIANA

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TO: THE OFFICIALS OF CITY OF EAST CHICAGO

We have audited the records of the City Court for the period from January 1, 2005 to December 31, 2005, and certify that the records and accountability for cash and other assets are satisfactory to the best of our knowledge and belief, except as stated in the Audit Results and Comments. The financial transactions of this office are reflected in the Annual Report of the City of East Chicago for the year 2005.

STATE BOARD OF ACCOUNTS

August 5, 2006

CITY COURT
CITY OF EAST CHICAGO
AUDIT RESULTS AND COMMENTS

COMMUNITY SERVICE IN LIEU OF PAYING FEES

The judge or probation officer will allow defendants to perform community service in lieu of paying probation user fees and administrative costs. The amount and type of community service to be performed is determined by the judge or probation officer on a case by case basis. There are no predetermined guidelines.

We cannot find authority for community service to be performed in lieu of paying fees.

Indiana Code 35-38-2-1 (e) states:

"In addition to any other conditions of probation, the court may order each person convicted of a misdemeanor to pay:

- (1) not more than a fifty dollar (\$50) initial probation user's fee;
- (2) a monthly probation user's fee of not less than ten dollars (\$10) nor more than twenty dollars (\$20) for each month that the person remains on probation;
- (3) the costs of the laboratory test or series of tests to detect and confirm the presence of the human immunodeficiency virus (HIV) antigen or antibodies to the human immunodeficiency virus (HIV) if such tests are required by the court under section 2.3 of this chapter; and
- (4) an administrative fee of fifty dollars (\$50); to either the probation department or the clerk.

Indiana Code 35-38-2-1.7 states:

"(c) An order to pay a probation user's fee under section 1 or 1.5 of this chapter:

- (1) is a judgment lien that:
 - (A) attaches to the property of the person subject to the order;
 - (B) may be perfected;
 - (C) may be enforced to satisfy any payment that is delinquent under section 1 or 1.5 of this chapter; and
 - (D) expires; in the same manner as a judgment lien created in a civil proceeding;
- (2) is not discharged by the completion of the person's probationary period or other sentence imposed on the person; and
- (3) is not discharged by the liquidation of a person's estate by a receiver under IC 32-30-5.

(d) If a court orders a person to pay a probation user's fee under section 1 or 1.5 of this chapter, the court may garnish the wages, salary, and other income earned by the person to enforce the order.

CITY COURT
CITY OF EAST CHICAGO
AUDIT RESULTS AND COMMENTS
(Continued)

(e) If:

- (1) a person is delinquent in paying the person's probation user's fees required under section 1 or 1.5 of this chapter; and
- (2) the person's driver's license or permit has been suspended or revoked or the person has never been issued a driver's license or permit;

the court may order the bureau of motor vehicles to not issue a driver's license or permit to the person until the person has paid the person's delinquent probation user's fees."

RESTITUTION

The City Court handles cases in which restitution is ordered for an injured party. In such cases, the defendant makes payment to the City Court in the form of a money order made payable to the injured party. A receipt is then issued to the defendant by the City Court, which is not a prescribed or approved form. Subsequently, the injured party is telephoned and notified of the payment received. At that point the injured party is asked to pick up the money order. At the time of pick up, a second receipt is issued and must be signed by the injured party as proof of the receipt of funds.

A trust fund and checking account have not been established for the receipt and distribution of restitution remittances. Therefore these payments are never deposited or posted. The money orders are simply stapled to the case files where they remain until they are picked up by the injured party. We observed cases in which restitution was picked up on the same day it was collected, but we also observed restitution payments being held anywhere from one to eleven months after the date of the money order.

This record (Register of Trust Funds General Form No. 102) is commonly referred to as the "trust fund register." It is a register wherein money received for the benefit of all persons or parties is entered in detail. The posting to this record is made from the duplicate receipts and checks and from the trust column of the court cash book. Items entered in other columns of the cash book must not be posted in the trust fund register. The total of all unpaid items as shown by the trust fund register must agree with the balance in trust as shown by the court cash book. (Accounting and Uniform Compliance Guidelines Manual for City and Town Courts, Chapter 1)

All funds collected by a city or town court shall be deposited not later than the business day following the receipt of funds in depositories selected by the city or town as provided in an ordinance adopted by the city or town. [IC 5-13-6-1(d)]

All funds should be deposited in the same form in which they were received. (Accounting and Uniform Compliance Guidelines Manual for City and Town Courts, Chapter 4)

Each city and town court is required to use official records and forms that are designated by the legislature or prescribed or approved by the State Board of Accounts or the State Court Administration office of the Supreme Court. (Accounting and Uniform Compliance Guidelines Manual for City and Town Courts, Chapter 4)

CITY COURT
CITY OF EAST CHICAGO
AUDIT RESULTS AND COMMENTS
(Continued)

TRAFFIC SCHOOL

Defendants convicted of various moving violations can be sentenced to attend traffic school. The traffic school used is called Highway Control Driving School, and it is run by Robert Nesse & Associates, Inc. A fee in the amount of \$70, payable only by money order, is charged and collected by the traffic school, with one-half of the fees being returned to the City if enrollment exceeds 36 students. The City is depositing the traffic school fees into the Grant Fund, a special revenue fund. Such defendants, as long as they complete the course, do not pay any court costs or deferral fees.

Indiana Code 36-1-6-3 (c) states: "An ordinance defining a moving traffic violation may not be enforced under IC 33-36 and must be enforced in accordance with IC 34-28-5."

Indiana Code 34-28-5-5 (a) states: "A defendant against whom a judgment is entered is liable for costs. Costs are part of the judgment and may not be suspended except under IC 9-30-3-12."

Indiana Code 9-30-3-12 (d) states: "Notwithstanding IC 33-37-4-2, any court may suspend one-half (1/2) of each applicable court cost for which a person is liable due to a traffic violation if the person enrolls in and completes a defensive driving school or a similar school conducted by an agency of the state or local government."

Indiana Code 9-30-3-16 states in part:

"(a) If a person has been found to have committed a traffic offense, the court may do the following:

- (1) Require the person to attend and satisfactorily complete a driver improvement course that has been approved by the court and the bureau or by the bureau."

General Fund - The General Fund is the chief operating fund of the municipality. Tax revenues and other receipts that are not allocated by law or contractual agreement to another fund are accounted for in this fund. (Accounting and Uniform Compliance Guidelines Manual for Cities and Towns, Chapter 2)

CITY COURT
CITY OF EAST CHICAGO
EXIT CONFERENCE

The contents of this report were discussed on October 5, 2006, with Kim Sullivan, Chief Probation Officer; and Honorable Sonya A. Morris, Judge. The official response has been made a part of this report and may be found on pages 8 through 11.

**SPANGLER,
JENNINGS &
DOUGHERTY, PC**

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October 16, 2006

Indiana State Board of Accounts
Porter County Administration
155 Indiana
Valparaiso, Indiana 46383

Attention: Audit

To Whom It May Concern:

I am the legal advisor to the Honorable Sonya A. Morris, Judge of the East Chicago City Court. Judge Morris has asked me to respond on her behalf to the Exit Conference of the East Chicago City Court on October 5, 2006.

After being elected Judge of the East Chicago City Court, Judge Morris took the bench in January, 2004. Judge Morris has implemented numerous changes within the East Chicago City Court but the basic structure of the Community Service Program, the Restitution Program and the Traffic School Program are the same as had been previously used by Judge Morris' duly elected predecessors to the bench.

Judge Morris was born and raised in East Chicago, Indiana and after completing her legal education, has been a full-time resident of East Chicago. As you know, the industrialized areas of northern Lake County have been hard hit by a declining number of employers in heavy industry and by a declining number of employees in those heavy industries which still exist. The citizens of East Chicago have been particularly hard hit by the declining number of stable jobs paying union wages. Judge Morris is keenly aware of all of the problems of the citizens of East Chicago, particularly those who have limited incomes. The law requires Judge Morris to take a criminal defendant's ability to pay a fee or fine pursuant to the ruling of the Court of Appeals of Indiana in the case, Mueller v. State of Indiana, a copy of which is enclosed.

SPANGLER, JENNINGS & DOUGHERTY, PC

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Porter County Administration
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Community Service in Lieu of Paying Fees.

The issue of Community Service in Lieu of Paying Fees has been expressly discussed by the Court of Appeals in the Mueller case at pp. 204-205. Please pay particular attention to the following language from the Mueller decision:

If a defendant is found to be unable to pay the fee, either by a prosecutor acting alone or upon a court's determination, he or she must be offered an alternative to full payment of the fee. This could take the form of complete waiver of the fee, partial waiver, implementation of a reasonable payment schedule, replacement of the fee with a non-financial (but reasonable) requirement such as community service, or some combination of partial waiver and a non-financial requirement.

For this reason, Judge Morris disagrees with your comment, "we cannot find authority for community service to be performed in lieu of paying fees."

Restitution

It has been a longstanding practice of the Probation Department of the East Chicago City Court to collect and disburse funds received for purpose of restitution. Judge Morris handles the manner in which restitution is collected from the wrongdoer and provided to the injured party in the same manner as her predecessors.

Because of the concerns raised during the audit, Judge Morris is in the process of opening an authorized account with a national bank office located in East Chicago, Indiana for sole purposes of receiving restitution funds and disbursing restitution funds in the manner set forth in the audit.

Traffic School

Judge Morris is concerned that unsafe drivers pose a particular danger to the health, safety and finances of the citizens of East

SPANGLER, JENNINGS & DOUGHERTY, PC

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Chicago. Because of the economic situation facing many citizens of the City of East Chicago, Judge Morris is aware that many citizens carry only the minimum amount of insurance required by law and that other citizens simply let their automobile insurance lapse for non-payment of premiums. Judge Morris is of the opinion that corrective action is needed for those persons arrested for traffic offenses in East Chicago because of her belief that advocacy of safe driving practices will ultimately benefit all of the citizens of East Chicago by reducing traffic accidents and motor vehicle violations. For that reason, Judge Morris strongly advocates a traffic school program pursuant to I.C. 9-30-3-12(d). Judge Morris is more liberal in referring people to driving school than the requirements imposed by I.C. 9-30-3-12(a) and (b).

Fees for the deferral program for traffic violations are variable and may be set so that the initial users fee is not to exceed \$52.00 and the monthly users fee is not to exceed \$10.00 for each month the person remains in the program. I.C. 33-37-4-2(e). You correctly note that a court may suspend one-half of the court costs for which a person is liable due to a traffic violation if the person enrolls in and completes a defensive driving school or similar school.

Judge Morris was of the opinion that she was acting appropriately in her handling of the traffic school deferral program. After her discussions during the Exit Conference, Judge Morris' procedures in regard to traffic school will be in accordance with legal requirements taking into account the discretion afforded her by Indiana statute.

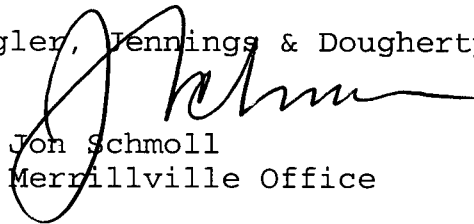
In conclusion, Judge Morris is committed to the rule of law and to the citizens of East Chicago. As the duly elected Judge of the East Chicago City Court, it is her intention to administer the East Chicago City Court according to the rule of law in order to provide programs which benefit the citizens of East Chicago. Thank you for including Judge Morris' response as part of your report regarding the East Chicago City Court.

SPANGLER, JENNINGS & DOUGHERTY, PC

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Porter County Administration
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October 16, 2006

Very truly yours,

Spangler, Jennings & Dougherty, P.C.

By:  Jon Schmoll
Merrillville Office

JS/ts

Enclosure

cc(w/encl.): Honorable Sonya A. Morris
Judge, East Chicago City Court
2301 East Columbus Drive
East Chicago, Indiana 46312