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STATE BOARD OF ACCOUNTS
302 West Washington Street
Room E418
INDIANAPOLIS, INDIANA 46204-2769

AUDIT REPORT
OF

CITY COURT
CITY OF EAST CHICAGO
LAKE COUNTY, INDIANA

January 1, 2009 to December 31, 2009



FILED
10/06/2010

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CITY OFFICIALS

<u>Office</u>	<u>Official</u>	<u>Term</u>
Judge	Sonya A. Morris	01-01-08 to 12-31-11
Mayor	George Pabey	01-01-08 to 12-31-11
City Controller	Charles Pacurar	01-01-09 to 12-31-10
President of the Common Council	Richard Medina	01-01-09 to 12-31-10



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STATE BOARD OF ACCOUNTS
302 WEST WASHINGTON STREET
ROOM E418
INDIANAPOLIS, INDIANA 46204-2769

Telephone: (317) 232-2513
Fax: (317) 232-4711
Web Site: www.in.gov/sboa

TO: THE OFFICIALS OF THE CITY OF EAST CHICAGO

We have audited the records of the City Court for the period from January 1, 2009 to December 31, 2009, 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 2009.

STATE BOARD OF ACCOUNTS

July 15, 2010

CITY COURT
CITY OF EAST CHICAGO
AUDIT RESULTS AND COMMENTS

FIRST OFFENDERS FEE

In 2006, the Common Council approved Ordinance 06-0016 allowing the city court judge to assess a \$220 first offenders fee to defendants who are charged with the first offense for dealing or possession of marijuana or hashish as a Class A Misdemeanor pursuant to Indiana Code 35-48-4-10 and 35-48-4-11. The \$220 fee is not an allowable fee under Indiana Code 33-37-4-1 and local units do not have the authority under Home Rule (Indiana Code 36-1-3-8) to prescribe such a penalty.

IC 36-1-3-8(a) governing Home Rule states in part: "A unit does not have the following: . . .

(8) The power to prescribe a penalty for conduct constituting a crime or infraction under statute."

IC 33-37-4-1 states in part:

"(a) For each action that results in a felony conviction under IC 35-50-2 or a misdemeanor conviction under IC 35-50-3, the clerk shall collect from the defendant a criminal costs fee of one hundred twenty dollars (\$120). (b) In addition to the criminal costs fee collected under this section, the clerk shall collect from the defendant the following fees if they are required under IC 33-37-5:

- (1) A document fee (IC 33-37-5-1, IC 33-37-5-3, or IC 33-37-5-4).
- (2) A marijuana eradication program fee (IC 33-37-5-7).
- (3) An alcohol and drug services program user fee (IC 33-37-5-8(b)).
- (4) A law enforcement continuing education program fee (IC 33-37-5-8(c)).
- (5) A drug abuse, prosecution, interdiction, and correction fee (IC 33-37-5-9).
- (6) An alcohol and drug countermeasures fee (IC 33-37-5-10).
- (7) A child abuse prevention fee (IC 33-37-5-12).
- (8) A domestic violence prevention and treatment fee (IC 33-37-5-13).
- (9) A highway work zone fee (IC 33-37-5-14).
- (10) A deferred prosecution fee (IC 33-37-5-17).
- (11) A document storage fee (IC 33-37-5-20).
- (12) An automated record keeping fee (IC 33-37-5-21).
- (13) A late payment fee (IC 33-37-5-22).
- (14) A sexual assault victim's assistance fee (IC 33-37-5-23).
- (15) A public defense administration fee (IC 33-37-5-21.2).

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

(16) A judicial insurance adjustment fee (IC 33-37-5-25).

(17) A judicial salaries fee (IC 33-37-5-26).

(18) A court administration fee (IC 33-37-5-27).

(19) A DNA sample processing fee (IC 33-37-5-26.2).

(c) Instead of the criminal costs fee prescribed by this section, except for the automated record keeping fee (IC 33-37-5-21), the clerk shall collect a pretrial diversion program fee if an agreement between the prosecuting attorney and the accused person entered into under IC 33-39-1-8 requires payment of those fees by the accused person. The pretrial diversion program fee is:

(1) an initial user's fee of fifty dollars (\$50); and

(2) a monthly user's fee of ten dollars (\$10) for each month that the person remains in the pretrial diversion program."

DRIVING SCHOOL

The City Judge orders defendants to attend and complete driving school. The driving school approved by the City Court is the Highway Control Driving School. On the night of the class, defendants pay \$70 to the Highway Control Driving School. The driving school then issues a check for approximately half of the amount collected based on the number of attendees to the driving school. Per the Indiana Bureau of Motor Vehicles, neither the Highway Control Driving School nor the fee collected has been approved by them in accordance with Indiana Code 9-30-3-16.

IC 9-30-3-16 states:

"(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.
- (2) Place the person on probation for up to one (1) year.
- (3) Suspend the person's driver's license for up to thirty (30) days.

(b) A driver improvement course required under subsection (a) may be financed by assessing a reasonable charge as determined by the course provider and approved by the bureau."

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

DISBURSEMENTS

Travel

Although a per diem can be paid for meals while in travel status, this per diem is to be paid after the travel has taken place. Accounts payable vouchers for the City Judge indicate that the per diem is paid prior to the date of travel.

City Ordinance 06-0005, Section 2.58.305 regarding travel states in part: "The members of the common council, the city judge and the city clerk may, at their option, be reimbursed for their expenses either by reimbursement, as provided above for other employees, or by per diem rate as follows: (1) One hundred dollars per day for meals. . . ."

IC 5-11-10-1.6 (c) states in part: "The fiscal officer of a governmental entity may not draw a warrant or check for payment of a claim unless:

- (1) there is a fully itemized invoice or bill for the claim;
- (2) the invoice or bill is approved by the officer or person receiving the goods and services;
- (3) the invoice or bill is filed with the governmental entity's fiscal officer;
- (4) the fiscal officer audits and certifies before payment that the invoice or bill is true and correct;
and
- (5) payment of the claim is allowed by the governmental entity's legislative body or the board or official having jurisdiction over allowance of payment of the claim.

. . . This subsection does not prohibit a municipality from making meal expense advances to a municipal employee who will be traveling on official municipal business if the municipal fiscal body has adopted an ordinance allowing the advance payment, specifying the maximum amount that may be paid in advance, specifying the required invoices and other documentation that must be submitted by the municipal employee, and providing for reimbursement from the wages of the municipal employee if the municipal employee does not submit the required invoices and documentation."

Contractual

Payments made for contractual services not supported by a written agreement included payment for psychological evaluations ordered by the City Judge.

Payments for services provided by an organization should go directly to the organization and not to an individual employee of the organization. All payments for services should be supported by a written contract. Compensation should be made in such a manner that will facilitate compliance with state and federal reporting requirements. (Accounting and Compliance Guidelines Manual for Cities and Towns, Chapter 7)

Payments made or received for contractual services should be supported by a written contract. Each governmental unit is responsible for complying with the provisions of its contracts. (Accounting and Uniform Compliance Guidelines Manual for Cities and Towns, Chapter 7)

CITY COURT
CITY OF EAST CHICAGO
EXIT CONFERENCE

The contents of this report were discussed on July 15, 2010, with Sonya A. Morris, City Judge; and Jon F. Schmoll, Attorney to the City Judge. The official response has been made a part of this report and may be found on pages 8 through 10.



ATTORNEYS AT LAW

Where Client Service Comes First

STEVEN L. LANGER, J.D.

A PROFESSIONAL CORPORATION

MICHAEL A. LANGER, J.D.

A PROFESSIONAL CORPORATION

STEVEN R. PRIBYL, J.D.

TARA M. WOZNIAK, J.D.

219.464.3246 PHONE

219.462.4198 FAX

1.877.LANGER1 TOLL FREE

15 NORTH WASHINGTON STREET

VALPARAISO, INDIANA 46383

August 31, 2010

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

ATTN: 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 which she and I attended on August 24, 2010. This letter will address each of the concerns of the audit team.

FIRST OFFENDER'S FEE

Drug possession, drug usage, and drug related offenses are a nationwide epidemic. The Indiana Legislature has classified certain offenses related to possession of small amounts (less than 30 grams of marijuana or less than 2 grams of hash oil or hashish) as a Class A Misdemeanor. I.C. 35-48-4-10 and I.C. 35-48-4-11.

I.C. 35-48-4-12 provides:

Conditional discharge for possession as first offense.

If a person who has no prior conviction of an offense under this article or under a law of another jurisdiction relating to controlled substances pleads guilty to possession of marijuana or hashish as a Class A misdemeanor, the court, without entering a judgment of conviction and with the consent of the person, may defer further proceedings and place him in the custody of the court under such conditions as the court determines. Upon violation of a condition of the custody, the court may enter a judgment of conviction. However, if the person fulfills the conditions of the custody, the court shall dismiss the charges against him. There may be only one)1) dismissal under this section with respect to a person.

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ACCIDENTS, PERSONAL INJURY & WRONGFUL DEATH
FAMILY LAW: DIVORCE • CUSTODY • VISITATION • SUPPORT
MEDICAL, HOSPITAL & NURSING HOME MALPRACTICE
REAL ESTATE, CONTRACTS & LANDLORD/TENANT LAW
APPELLATE PRACTICE

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Porter County Administration Center
August 31, 2010

The audit team has questioned the authority of the court to assess a \$220.00 first offender fee pursuant to East Chicago City Ordinance 6-0016.

When Judge Morris requested that I draft an Ordinance establishing the deferral/conditional fund, I reviewed other provisions of the Indiana Code which authorize a court to establish DRUG AND ALCOHOL SERVICES PROGRAM, I.C. (12-23-14-1) and provide for fees up to \$400.00 (I.C. 23-14-16). Moreover, THE DRUG ABUSE, PROSECUTION, INTERDICTION AND CORRECTION STATUTE (I.C. 33-37-5-9) authorizes a fee of at least \$200.00 and no more than \$1,000.00 against a person convicted of an offense under I.C. 35-48-4.

Since I.C. 35-48-4-12 provides for a dismissal of charges against a person accused for the first time possession of marijuana or hashish as a Class A misdemeanor, the \$220.00 fee for entry into the program is certainly in accordance with fees authorized for court established Drug and Alcohol Services and in line with the fees allowed for Drug Abuse, Prosecution, Interdiction and Correction. For this reason, I must respectfully disagree with the contention of the audit team that East Chicago City Ordinance 06-0016 violates the Home Rule Act (I.C. 36-1-3-8).

DRIVING SCHOOL

As I had previously mentioned, Judge Morris is concerned that unsafe drivers pose a particular danger to the health, safety and finances of the citizens of East Chicago. For the reasons previously stated, 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.

At the time of the last Exit Conference in 2006, there were concerns about fees associated with driving school and suspension of the court costs for a person who enrolls in and completes a defensive driving school or similar school. At the time of that Exit Interview on October 5, 2006, nothing was mentioned that the Highway Control Driving School operated by Stephan Nesse and Associates, Inc. was not approved by the Indiana Bureau of Motor Vehicles or that the fees were not approved by the Indiana State Board of Accounts. As I had indicated in my correspondence of October 16, 2006, Judge Morris changed her procedures for the 2006 concerns in regard to the traffic school.

Since the Exit Conference on August 24, 2010, Judge Morris has requested that the Indiana Highway Control Driving School obtain approval from the Indiana Bureau of Motor Vehicles and for the fees associated with the driving school.

DISBURSEMENTS - TRAVEL

You have questioned prepayment of per diem travel expenses for Judge Morris.

You have cited City Ordinance 06-0005, § 2.58.305. Please direct your attention to Ordinance 06-0005, § 2.58.305 (B)(5).

Both City Ordinance 06-0005, § 2.58.305 and I.C. 5-11-10-1.6 envision and authorize prepayment of per diem travel expenses.

DISBURSEMENTS - CONTRACTUAL SERVICES

In regard to the contractual services by healthcare providers for psychological/psychiatric evaluations, Judge Morris has now corrected the lack of written contracts with certain providers and has in place written contracts for all psychological/psychiatric evaluations ordered by the East Chicago City Court.

CONCLUSION

Judge Morris remains 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. Thank you for including Judge Morris' response as part of your report regarding the East Chicago City Court.

Very truly yours,

LANGER & LANGER


Jon F. Schmoll

JFS:slw

cc: The Honorable Sonya Morris