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

AUDIT REPORT

OF

SUPERIOR COURT III

CLARK COUNTY, INDIANA

January 1, 2008 to December 31, 2010

FILED
03/22/2012

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COUNTY OFFICIALS

Office	Official	Term
Judge	Steven M. Fleece	01-01-05 to 12-31-08
	Joseph P. Weber	01-01-09 to 12-31-12
President of the County Council	David Abbott	01-01-08 to 12-31-09
	Jack Coffman	01-01-10 to 12-31-10
	Kevin Vissing	01-01-11 to 12-31-11
	Barbara Hollis	01-01-12 to 12-31-12
President of the Board of County Commissioners	M. Edward Meyer	01-01-08 to 12-31-11
	Les Young	01-01-12 to 12-31-12

STATE OF INDIANA

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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 CLARK COUNTY

We have audited the records of the Superior Court III for the period from January 1, 2008, to December 31, 2010, 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 Reports of Clark County for the years 2008, 2009 and 2010.

STATE BOARD OF ACCOUNTS

December 13, 2011

PROGRAM FINANCIAL ACCOUNTABILITY

The County has established an Alcohol and Drug Program User Fee Fund to account for the financial activity associated with the County's Alcohol and Drug Services Program. The purpose of establishing a separate fund is to provide a separate accountability of the revenue and expenditures associated with the alcohol and drug program to ensure that the fees generated by the program are only used for the related program. A review of the Fund's financial activity recorded on the County Auditor's financial records identified a substantial amount of financial activity unrelated to the alcohol and drug services program. The following is a summary of the Fund's financial activity for the year 2010:

Receipt Activity

	2010	
	Amount	%
Program Receipts:		
Alcohol and Drug Program Fees	$ 86,491	9%
Reimbursements/Transfers	14,415	2%
Total Program Receipts	100,906	10%
Receipts Unrelated to Program:		
Defensive Driving Fees (A)	219,481	25%
Traffic Tickets - Additional Fees (B)	255,450	29%
Infraction Judgments (C)	295,916	34%
Community Drug Free Receipts (D)	8,259	1%
Total Non-Program Receipts	779,106	88%
Total Receipts (E)(F)	$ 880,012	98%

Notes to Receipt Activity Schedule:

(A) See Audit Result and Comment titled "Defensive Driving School Fee."

(B) See Audit Result and Comment titled "Additional Fees Collected Without Providing Services - Prior to June 21, 2010".

(C) See Audit Result and Comment titled "Infraction Judgments Not Remitted to State – Beginning June 21, 2010".

(D) Monies belonging to the Drug Free Community Fund were incorrectly receipted to the Alcohol and Drug User Fee fund by the County Auditor.

(E) The amounts per the receipt categories shown above may differ from amounts presented in other comments in the report. The receipt figures shown throughout the other comments in the report present the fees collected at the initial collection point of the County departments (Clerk of the Circuit Court and Superior Court III Probation Department). There is a timing difference between when the monies collected are remitted by the County departments to the County Auditor for recording in the County Auditor's financial records.

(F) A historical review of the funds receipts for the years 2008 and 2009 showed similar percentages in the types of receipts for the fund.

Expenditure Activity

The following schedule classifies expenditures as "Program Expenditures", "Expenditures Unrelated to Program", and "Other Expenditures":

	2010	
	Expenditures	%
Program Expenditures		
Alcohol and Drug Education Class Instructor	$ 16,600	3%
Salaries:		
Secretary/Clerical	32,333	5%
Director (A)	5,862	1%
Probation Officers - Substance Abuse Assessments (B)	78,914	12%
Home Incareration Curfew Coordinator Salary (C)	8,740	1%
Employee Benefits (D)	32,525	5%
Toxicology Drug Testing	1,772	0%
Total Program Expenditures	176,746	26%
Expenditures Unrelated to Program		
Salaries - Traffic Violations Bureau Employees (E)	30,418	5%
Salaries - Superior Court III Employees (E)	17,085	3%
Defensive Driving Class Instructor	53,840	8%
Probation Department Expenditures:		
Computer Hardware/Software Maintenance Costs	25,454	4%
Employee Benefits (D)	12,277	2%
Cell Phone Services (F)	10,675	2%
Donations (G)	219,150	33%
Total Non-Program Expenditures	368,899	23%
Other Expenditures (H)	115,857	17%
Total Fund Expenditures	$ 661,502	100%

Notes to Expenditure Activity Schedule:

(A) During the year 2010, a portion of the Director's salary was also paid from the General Fund which could be eligible to be paid from the Alcohol and Drug User Fee Fund.

(B) Alcohol and Drug officials stated that probation officers provide substance abuse assessments related to the alcohol and drug program and also perform probation duties. However, no time records were presented for audit that prorated probation officers' salaries between probation duties and alcohol and drug program duties. As a result, it could not be determined if the cost indicated above are reflective of the actual portion of the employees' salary related to services provided for the alcohol and drug program.

(C) This position is identified in the Clark County Alcohol and Drug Services Policy and Procedure Manual.

(D) The amount shown for employee benefits was prorated based on percentage of salaries directly related to the alcohol and drug program and those salaries not related to the alcohol and drug program.

(E) The payment of salaries for court clerks is the responsibility of the County's General Fund. These salaries were also paid from the Alcohol and Drug User Fee Fund in the years 2008 and 2009 as shown in the following schedule:

Position	2008	2009
Traffic Bureau Clerks	$ 28,406	$ 35,151
Superior III Court Clerks	30,144	22,364
Totals	$ 58,549	$ 57,515

(F) Cell phone bills were reviewed for a three month period. Supporting documentation showed payments for cell phones for twenty four employees; however, only three of the employees could be identified as having direct duties associated with the alcohol and drug program.

(G) See Audit Result and Comment titled "Donations."

(H) "Other Expenditures" represent expenditures that were not analyzed to determine their relationship to the alcohol and drug program. Other expenditures included disbursements for the following: gas and oil ($4,053); office supplies ($15,951); travel ($12,389); vehicle maintenance ($1,229); law books ($1,069); printing ($7,730); equipment repair ($8,915); dues ($2,480); lease payments for three copiers ($11,334); equipment ($20,855); internet services ($11,770); storage facility rental ($1,937); insurance ($3,478); water cooler ($951), and miscellaneous expenses (11,716). Similar disbursements were also noted in the years 2008 and 2009.

Expenditures Unrelated to Program for the years 2008 and 2009

Expenditures unrelated to the alcohol and drug program for the year 2009 were similar to the year 2010. However, expenditures unrelated to the alcohol and drug program for the year 2008 were significantly more than the years 2009 and 2010 and included donations totaling $1,007,098 (see Audit Result and Comment titled "Donations").

Indiana Code 12-23-14-6(a) states:

"A program may provide for eligible individuals a range of necessary intervention services, including the following:

(1) Screening for eligibility and other appropriate services.

(2) Clinical assessment.

(3) Education.

(4) Referral.

(5) Service coordination and case management."

Indiana Code 12-23-14-12 states:

"Program employees or contractors shall perform duties the court assigns, including the following:

(1) Providing places for the program and the program's services.

(2) Providing intervention, treatment, and rehabilitation services for eligible individuals.

(3) Compiling information and statistics on the program's activities.

(4) Reporting periodically to the court on program activities."

Section 28 of the Indiana Judicial Center's "Rules for Court-Administered Alcohol & Drug Programs" states in part:

"Money a program receives from a county user fee fund must be used to fund program services in compliance with IC 33-37-8-5."

Indiana Code 33-37-8-5 states in part:

"(a) A county user fee fund is established in each county to finance various program services. The county fund is administered by the county auditor.

(b) The county fund consists of the following fees collected by a clerk under this article and by the probation department for the juvenile court under IC 31-37-9-9: . . . (4) The alcohol and drug services program fee. . . ."

The Clark County Alcohol and Drug Services Policy and Procedure Manual page 21 states in part:

"All fees may only be used for expenses related to the program." "The supervising Judge is responsible for ensuring that all disbursements for the user fee fund are in accordance with IC 33-19-8-5." Indiana Code 33-19-8-5 has subsequently been recodified to Indiana Code 33-37-8-5.

Sources and uses of funds should be limited to those authorized by the enabling statute, ordinance, resolution, or grant agreement. (Accounting and Uniform Compliance Guidelines Manual for Counties of Indiana, Chapter 1)

Payments or transfers which are not authorized by statute, ordinance, resolution or court order must be reimbursed or transferred to the appropriate fund. (Accounting and Uniform Compliance Guidelines Manual for Counties of Indiana, Chapter 1)

ADDITIONAL FEES COLLECTED WITHOUT PROVIDING SERVICES – PRIOR TO JUNE 21, 2010

The Superior Court III Traffic Violations Bureau collected, in addition to the court costs and infraction judgments for moving traffic violations, an additional fee described as an "alcohol and drug fee." The fee ranged from $18 to $50 per traffic offense depending upon the type of violation. However, these offenses were not substance use-involved offensives and the traffic offenders did not receive alcohol and drug program services and would be ineligible for admission into the program based upon the eligibility guidelines established for the program. The fee being charged was not listed in a schedule of fees presented for audit per the court's alcohol and drug services policy and procedure manual. The traffic offenders were simply informed via a pamphlet distributed with the traffic ticket that the alcohol and drug program services were available through the County and informed of the various affects of alcohol. The additional fees were deposited in Clark County's Alcohol and Drug User Fee Fund. The following is a schedule of additional fees collected on non-alcohol/drug traffic offenses for the period January 1, 2006 to June 20, 2010.

Period	Amount
2006 (A)	$ 533,832
2007 (A)	623,367
2008	580,442
2009	568,413
01-01-10 to 06-20-10	213,178
Total	$ 2,519,232

Note to Schedule:

(A) Information regarding receipts for the years 2006 and 2007 were included for additional information to provide background information on how the Alcohol and Drug User Fee Fund was allowed to accumulate sufficient funds to support donations totaling $1,007,098 (see Audit Result and Comment titled "Donations"). Monies coming into the fund increased substantially beginning in the year 2006 due to an increase in traffic citations issued by the Indiana State Police as a result of increased patrols during road construction and the associated fee being charged on the traffic violations.

The practice of collecting alcohol and drug fees on non-alcohol/drug traffic offenses discontinued on June 21, 2010, when the Clark County Courts and Clerk of the Circuit Court changed to a new case management and financial software system administered by the Judicial Technology and Automation Committee (JTAC), a Division of the Indiana Supreme Court (See Audit Result and Comment titled "Change in Computer System on June 21, 2010")

Indiana Code 12-7-2-12 states:

"'Alcohol and drug services programs', for purposes of IC 12-23, means a service for a person:

(1) charged with or convicted of a misdemeanor or felony; or

(2) against whom a:

(A) complaint for an infraction is filed; or

(B) judgment for an infraction is entered;

which provides intervention, education, referral, treatment, or rehabilitation, under the operation of a court or under private contract."

Indiana Code 12-23-14-16 (a) and (b) states the following:

"(a) The court may require an eligible individual to pay a fee for a service of a program."

"(b) If a fee is required, the court shall adopt by court rule a schedule of fees to be assessed for program services."

Section 19 of the Indiana Judicial Center's "Rules for Court-Administered Alcohol & Drug Programs" states:

"(a) A program must have a written description of the criteria for the acceptance of substance use-involved offenders as clients who are eligible to receive one (1) or more services provided by the court program."

Section VII, Eligibility Determination, of the Clark County Alcohol and Drug Services Policy and Procedure Manual states in part: "An individual is admitted into the Clark County Alcohol and Drug Services Program when he has legal obligations due to alcohol and/or drug use."

Section VIII, Admission Criteria, of the Clark County Alcohol and Drug Services Policy and Procedure Manual states in part: "An individual is admitted into the program when he or she has been arrested and/or convicted of an alcohol and/or drug related offense and the Court or Probation Department has deemed it beneficial for the individual to receive an assessment to determine which alcohol and drug services are appropriate."

Fees should only be collected as specifically authorized by statute or properly authorized resolutions or ordinances, as applicable, which are not contrary to statutory or Constitutional provisions. (Accounting and Uniform Compliance Guidelines Manual for Counties of Indiana, Chapter 1)

CHANGE IN COMPUTER SYSTEM ON JUNE 21, 2010

The Clark County Courts (including the Superior Court III Violations Bureau) and the Clerk of the Circuit Court changed to a new case management and financial software system effective June 21, 2010, called "Odyssey". Effective June 21, 2010, the additional fees collected on non-alcohol/drug moving traffic violations discontinued (See Audit Result and Comment titled "Additional Fees Collected Without Providing Services – Prior to June 21, 2010"). Effective June 21, 2010, the financial records showed that infraction judgments began to be collected in the amount of $35.50 per violation and deposited in Clark County's Alcohol and Drug User Fee Fund rather than being deposited in the Infraction Judgment Fund as more fully explained in Audit Result and Comment titled "Infraction Judgments Not Remitted to State – Beginning June 21, 2010".

INFRACTION JUDGMENTS NOT REMITTED TO STATE - BEGINNING JUNE 21, 2010

Superior Court III Traffic Violations Bureau (Bureau) collected $601,941 in fees reported as infraction judgments between June 21, 2010 and June 30, 2011 on moving traffic violations that were subsequently deposited in the County Alcohol and Drug User Fee Fund instead of the Infraction Judgment Fund as shown on the records of the County Auditor. Fees deposited in the Alcohol and Drug User Fee Fund are to be used to provide drug and alcohol services (See Audit Result and Comment titled "Program Financial Accountability"). Fees deposited in the Infraction Judgment Fund are to be subsequently remitted to the State of Indiana for deposit in the State of Indiana's General Fund (see IC 34-28-5-5(c) cited below).

The infraction judgments collected beginning June 21, 2010, were reported by the Clerk of the Circuit Court to the County Auditor as collections to be deposited to the Infraction Judgment Fund. Superior Court III filed a claim on October 22, 2010, with the County Auditor requesting to transfer $197,364 from the Infraction Judgment Fund to the County Alcohol and Drug Fund. In November of 2010, the Clerk of Circuit began reporting to the County Auditor collections of infraction judgments as fees to be deposited to the Alcohol and Drug User Fee Fund.

A letter dated January 27, 2011, from Annette Trump, Administrative Assistant for Superior Court III, was presented for audit. The letter instructed the County Auditor that collections reported by the Clerk of the Circuit Court as infraction judgments and deposited to the Infraction Judgment Fund should have been deposited to the County's Alcohol and Drug User Fee Fund. Subsequent to the date of this letter, collections previously deposited to the Infraction Judgment fund (June 2010 through October 2010) were transferred to the Alcohol and Drug User Fee Fund.

Superior Court III officials stated that the fees assessed and collected are the same alcohol and drug fees that were collected prior to June 21, 2010, and they were not assessed as infraction judgments. Superior Court III officials stated that the new case management and financial software system that was implemented effective June 21, 2010, called "Odyssey" did not provide for a recording of an alcohol and drug fee so the Bureau recorded the fee as an infraction judgment.

No documentation was presented for audit that the moving traffic violations were substance use-involved offensives or that the traffic offenders received alcohol and drug program services. The County's Alcohol and Drug Services Policy and Procedure Manual admission guidelines states an individual is admitted into the program when he or she has been arrested and/or convicted of an alcohol and/or drug related offense. The traffic offenders were simply informed via a pamphlet distributed with the traffic ticket that the services were available through the County and informed of the various affects of alcohol.

Indiana Code 34-28-5-5(c) states in part: ". . . the funds collected as judgments for violations of statutes defining infractions shall be deposited in the state general fund."

Indiana Code 34-28-5-8 states in part: "The violations clerk or deputy violations clerk shall . . . (3) pay the judgments (including costs) collected to the appropriate unit of government as provided by law."

Fees should only be collected as specifically authorized by statute or properly authorized resolutions or ordinances, as applicable, which are not contrary to statutory or Constitutional provisions. (Accounting and Uniform Compliance Guidelines Manual for Counties of Indiana, Chapter 1)

OTHER INFRACTION JUDGMENTS – BEGINNING JUNE 21, 2010

Amounts intended to be charged by the court as actual infraction judgments on traffic violations were also deposited to the Alcohol and Drug Program User Fee Fund when the Clark County Courts (including the Superior Court III Violations Bureau) and the Clerk of the Circuit Court changed to a new case management and financial software system effective June 21, 2010, called "Odyssey" (see Audit Result and Comment titled "Change in Computer on June 21, 2010"). The software system set up for the County by the Judicial Technology and Automation Committee (JTAC), a Division of the Indiana Supreme Court, automatically generates the applicable fee schedules to be charged as allowed per statute depending upon the type of court case selected. The Court assessed an additional "alcohol and drug" fee on moving traffic violations; however, the software application system did not have a mechanism to account for this fee (see Audit Result and Comment titled "Infraction Judgments Not Remitted to State - Beginning June 21, 2010"). Due to not having the ability to account for the additional "alcohol and drug" fee on infraction case, Court officials recorded the additional fee as an infraction judgment in the financial records along with infraction judgments collected on other traffic violation cases.

The combining of the additional "alcohol and drug" fees with infraction judgments collected on traffic violation cases resulted in infraction judgments assessed on the traffic violations also being deposited in the Alcohol and Drug Program User Fee Fund. The following is an example of an infraction judgment that was assessed, collected, and deposited in the Alcohol and Drug Program User Fee Fund:

> A violator, as shown on case number 10D03-1009-IF-23382, was assessed $300 for a class C infraction equipment violation of which $185.50 was identified in the financial records as an infraction judgment. Of the $185.50 identified as an infraction judgment, $150 should have been remitted to the State of Indiana as required by 34-28-5-5(c) (taking into account that $35.50 was the additional "alcohol and drug" fee. However, all monies identified in the financial records as infraction judgments were deposited in the County's Alcohol and Drug Program User Fee Fund as instructed by the Court (see Audit Result and Comment titled "Infraction Judgments Not Remitted to State – Beginning June 21, 2010") in order for the County to retain the fees that it charged as an additional "alcohol and drug" fee.

Superior Court III Traffic Violations Bureau collected $601,941 in fees reported as infraction judgments between June 21, 2010, and June 30, 2011 (see Audit Result and Comment titled "Infraction Judgments Not Remitted to State – Beginning June 21, 2010"). The Court's financial records do not provide information showing what portion of the $601,941 represented additional "alcohol and drug: fees and what portion represented infraction judgments collected on traffic violations.

Indiana Code 34-28-5-5(c) states in part: ". . . the funds collected as judgments for violations of statutes defining infractions shall be deposited in the state general fund."

Indiana Code 34-28-5-8 states in part: "The violations clerk or deputy violations clerk shall . . . (3) pay the judgments (including costs) collected to the appropriate unit of government as provided by law."

DEFENSIVE DRIVING SCHOOL FEES

The Superior Court III Traffic Violations Bureau collected a $100 defensive driving school fee from traffic offenders for the periods 2008, 2009, and 2010. In January 2011, the fee was increased to $125. The following was noted regarding the fee being charged:

1. Traffic offenders, who attended defensive driving school, were not assessed court costs (see Audit Result and Comment titled "Defensive Driving School Court - Costs Not Assessed").

2. The defensive driving school fee charged was in excess of the $25 per participant fee the County paid to the defensive driving instructor for conducting the class.

3. This fee was accounted for and retained in the County's Alcohol and Drug User Fee Fund; however, the County's Alcohol and Drug User Fee Fund was established to account for the financial activity related to the alcohol and drug program administered by the County (see Audit Result and Comment titled "Program Financial Accountability").

4. No information was presented for audit that the fee charged was approved by the Indiana Bureau of Motor Vehicles. Steven M. Fleece, former Superior Court III Judge, stated in a memorandum to the State Board of Accounts, dated March 30, 2010, that the Court did not require approval from the Indiana Bureau of Motor Vehicles for the fee charged.

In the year 2010, the website for the Clark County Traffic Violations Bureau website stated in part the following:

"To attend traffic school you will pay $100.00 for the class and you do not pay the fine for the citation. . . . And once you attend the class the ticket will be dismissed so it doesn't appear on your driving record. . . ."

"Traffic school is the only program Clark County offers. We do not offer a deferment program. .. ."

The Clark County Traffic Violations Bureau website stated the same information shown above during the year 2011; however, the fee to be paid was increased to $125.

Indiana Code 9-30-3-16 states the following:

"(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."

DEFENSIVE DRIVING SCHOOL - COURT COSTS NOT ASSESSED

Traffic offenders were not assessed court costs if they attended the County's defensive driving school. Instead, traffic offenders, who attended the defensive driving school, were assessed a defensive driving school fee of $100 during the years 2008, 2009, and 2010 and $125 during the year 2011. The defensive driving school fee collected was in excess of the $25 per participant fee the County paid to the defensive driving instructor for conducting the class.

The following sections:

"Schedule of Statutory Costs and Fees" show the statutory costs and fees that are required to be assessed and collected for moving traffic violations from each traffic offender on an individual violation; and "Summary of Court Costs Not Assessed" showing the total court costs and fees that should have been assessed and remitted to the State of Indiana, cities and towns in Clark County, and to other County Funds for the period January 1, 2006 to July 30, 2011, if the proper fees had been collected.

Schedule of Statutory Costs and Fees

The following is a schedule of courts costs to be collected for a moving traffic violation and the related amounts that should have been remitted to the State of Indiana, cities and towns in Clark County, and the various County funds (County General Fund, Clerk's Record Perpetuation Fund, Local Law Enforcement Continuing Education User Fee Fund and Jury Fee Fund). These fees are based on Indiana Code 33-37-4-2 (full court cost) and court costs to be collected based on Indiana Code 9-30-3-12(d) that 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."

The fees shown below represent the court cost fees in effect as of June 30, 2011. This same fee schedule was in effect for the period July 1, 2008 to June 30, 2011. The fees pertaining to law enforcement continuing education, judicial salaries fee, and court administration fee changed each year during the periods July 1, 2006 to June 30, 2011.

	Notes	Indiana Code 33-37-4-2 Full Court Costs	Indiana Code 9-30-3-12(d) 1/2 Court Costs
Due State of Indiana (State Share):			
Infraction Costs Fee	(1) (2)	$ 49.00	$ 24.50
Automated Record Keeping Fee	(3)	7.00	3.50
Highway Work Zone	(13)	0.50	0.25
Public Defense Administration Fee	(4)	3.00	1.50
Judicial Insurance Adjustment Fee	(5)	1.00	0.50
Judicial Salaries Fee	(6)	18.00	9.00
DNA Sampling Processing Fee	(7)	2.00	1.00
Court Adminstration Fee	(8)	5.00	2.50
Total - State of Indiana		85.50	42.75
Due Clark County (County Share):			
Infraction Costs Fee	(1) (2)	18.90	9.45
Law Enforcement Continuing Education Fee	(9)	4.00	2.00
Jury Fee	(10)	2.00	1.00
Document Storage Fee	(11)	2.00	1.00
Total - Clark County		26.90	13.45
Due Cities and Towns in Clark County (City and Town Share):			
Infraction Costs Fee	(1) (2)	2.10	1.05
Total Statutory Court Costs		114.50	57.25
Due to Clark County (for Driving Class):			
Cost of Defensive Driving School	(12)	25.00	25.00
Total Traffic Violation Cost and Defensive Driving Class		$ 139.50	$ 82.25

Notes to Schedule:

(1) Indiana Code 33-37-4-2(a) states in part: . . . for each action that results in a judgment: (1) for a violation constituting an infraction . . . the clerk shall collect from the defendant an infraction . . . costs fee of seventy dollars ($70). . . ."

The above statute would represent the maximum court cost fees that would be collected for infraction cost fees and shows the amount to be remitted ($49 to State; $18.90 to County; and $2.10 to Cities/Towns) based on Indiana Code 33-37-7-2(a). See Note (2) below.

(2) Indiana Code 33-37-7-2(a) states in part: "The clerk of a circuit court shall distribute semi-annually to the auditor of state . . . for deposit in the state general fund seventy percent (70%) of the amount of fees collected under . . . IC 33-37-4-2(a) (infraction or ordinance violation costs fees) . . ."

Indiana Code 33-37-7-4(a) states: "The clerk of a circuit court shall forward the county share of fees collected to the county auditor in accordance with IC 33-37-7-12(a). The auditor shall retain as the county share twenty-seven percent (27%) of the amount of fees collected under . . . IC 33-37-4-2(a) (infraction or ordinance violation costs fees) . . ."

Indiana Code 33-37-7-6 (a) states in part: "The qualified municipality share to be distributed to each city and town maintaining a law enforcement agency that prosecutes at least fifty percent (50%) of the city's or town's ordinance violations in a circuit, superior, or county court located in the county is three percent (3%) of the amount of fees collected under . . . IC 33-37-4-2(a) (infraction or ordinance violation costs fees) . . ."

(3) Indiana Code 33-37-5-21 states in part: "(a) This section applies to all civil, criminal, infraction, and ordinance violation actions. (b) The clerk shall collect an automated record keeping fee as follows: (1) Seven dollars ($7) after June 30, 2003, and before July 1, 2011 . . . ."

(4) Indiana Code 33-37-5-21.2(b) states in part: "In each action in which a person is: . . . found to have committed an infraction . . . the clerk shall collect a public defense administration fee of three dollars ($3)."

(5) Indian Code 33-37-5-25(b) states in part: "In each action in which a person is . . . found to have committed an infraction . . . the clerk shall collect a judicial insurance adjustment fee of one dollar ($1)."

(6) Indiana Code 33-37-5-26(c) states in part: "(c) In each action in which a person is . . . found to have committed an infraction . . . the clerk shall collect a judicial salaries fee specified in the schedule in subsection (d).

Indiana Code 33-37-5-26(d)(4) states: "after June 30 immediately preceding the third state fiscal year in which salaries are increased under IC 33-38-5-8.1 and ending before July 1 of the fourth state fiscal year after June 30, 2006, in which salaries are increased under IC 33-38-5-8.1, the judicial salaries fee to which this subsection applies is eighteen dollars ($18)" For the period July 1, 2005 to June 30, 2006 the fee was $15. During the period July 1, 2006 to June 30, 2007 the fee was $16. For the period July 1, 2007 to June 30, 2008, the fee was $17. The fee of $18 remained in effect for the period July 1, 2008 to June 30, 2011.

(7) Indiana Code 33-37-5-26.2 states in part: "In each action in which a person is . . . found to have committed an infraction . . . the clerk shall collect DNA sample processing fee of two dollars ($2)."

(8) Indiana Code 33-37-5-27(b) states in part for the period July 1, 2008 to June 30, 2011: "In each action in which a person is . . . found to have committed an infraction . . . the clerk shall collect a court administration fee of three dollars ($5)." During the period July 1, 2005 to June 30, 2006, the fee was $2. For the period July 1, 2006 to June 30, 2008, the fee was $3.

(9) Indiana Code 33-37-5-8(c) stated in part for the period July 1, 2008 to June 30, 2011: "In each action in which a defendant is found to have . . . violated a statute defining an infraction . . . the clerk shall collect a law enforcement continuing education program fee of three dollars ($4)." For the period July 1, 2005 to June 30, 2008 the fee was $3.

(10) Indiana Code 33-37-5-19 (a) states: "The clerk shall collect a jury fee of two dollars ($2) in each action in which a defendant is found to have committed a crime, violated a statute defining an infraction, or violated an ordinance of a municipal corporation."

(11) Indiana Code 33-37-5-20 states: "(a) This section applies to all civil, criminal, infraction, and ordinance violation actions. (b) The clerk shall collect a document storage fee of two dollars ($2)."

(12) This amount represents the actual cost per traffic offender that the County paid to the course provider.

(13) Indiana Code 33-37-5-14 states in part: (a) "The section applies to criminal, infraction, and ordinance violation actions that are traffic offenses (as defined in IC 9-30-3-5). "(b) "The clerk shall collect a highway worksite zone fee of fifty cents ($0.50). . . ."

Indiana Code 9-30-3-16 states the following:

"(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."

Summary of Court Costs Not Assessed

The Court may assess full court costs based on Indiana Code 33-37-4-2 or suspend one-half of the court cases under Indiana Code 9-30-3-12(d) for traffic offenders who complete a defensive driving school.

The following schedule is the amount of court costs that should have been remitted by the County based on Indiana Code 33-37-4-2 (full court costs assessed) or Indiana Code 9-30-3-12(d) (1/2 court costs assessed) for the period January 1, 2006 to June 30, 2011.

Year	Number of Defensive Driver Cases	Indiana Code 33-37-4-2 Full Court Costs (A) Due the State of Indiana	Due Cities and Towns in Clark County	Due Clark County	Totals
2006 (B)	1,663	$ 130,570	$ 3,493	$ 43,080	$ 177,143
2007 (B)	1,828	149,006	3,839	47,353	200,198
2008	2,055	169,517	4,315	53,218	227,050
2009	2,027	173,321	4,257	54,530	232,108
2010	2,153	184,087	4,521	57,917	246,525
01-01-11 to 06-30-11	745	63,715	1,565	20,046	85,326
Totals		$ 870,216	$ 21,990	$ 276,144	$ 1,168,350

Year	Number of Defensive Driver Cases	Indiana Code 9-30-3-12(d) 1/2 Court Costs (A) Due the State of Indiana	Due Cities and Towns in Clark County	Due Clark County	Totals
2006 (B)	1,663	$ 65,285	$ 1,746	$ 21,540	$ 88,571
2007 (B)	1,828	74,503	1,920	23,676	100,099
2008	2,055	84,758	2,157	26,609	113,524
2009	2,027	86,661	2,129	27,265	116,055
2010	2,153	92,043	2,261	28,959	123,263
01-01-11 to 06-30-11	745	31,857	782	10,023	42,662
Totals		$ 435,107	$ 10,995	$ 138,072	$ 584,174

Note to Schedules:

(A) The fees calculated above are based upon the fees multiplied by the number of traffic violations as determined based upon the total defensive driving school collections divided by the defensive driving fee charged. The fees used in the calculation were based upon the fees in effect as of January 1 of each year as it was not practical to determine the number of violations that occurred after July 1 in order to take into consideration the new fee schedules that went into effect as of July 1 of each year.

(B) Information regarding receipts for the years 2006 and 2007 were included for additional information to provide background information on how the Alcohol and Drug User Fee Fund was allowed to accumulate sufficient funds to support donations totaling $1,007,098 (see Audit Result and Comment titled "Donations"). Monies coming into the fund increased substantially beginning in the year 2006 due an increase in traffic citations issued by the Indiana State Police as a result of increased patrols during road construction and the associated increase in the number of participants choosing to enroll in the defensive driving class as a result of the citation.

The following is a schedule of defensive driving school fees that were assessed and collected in excess of the participant fee the County paid to the to the defensive driving instructor for conducting the class:

Year	Number of Defensive Driver Cases	Fee Collected in Excess of Fee Paid to Instructor	Total Fees Collected in Excess of Fees Paid to Instructor
2006	1,663	$ 75	$ 124,725
2007	1,828	75	137,100
2008	2,055	75	154,125
2009	2,027	75	152,025
2010	2,153	75	161,475
01-01-11 to 06-30-11	745	100	74,500
Total			$ 803,950

Fees collected in excess of fees paid to the defensive driving school instructor totaled $803,950 or 91 percent of the court costs that would have been due the State of Indiana and cities and towns in Clark County if fees had been assessed as required based on Indiana Code 33-37-4-2 (full court costs assessed). The County received donations from the Alcohol and Drug Fund in excess of the fees "Due Clark County" (see Audit Result and Comment titled "Donations"). As a result of the donations made from the Alcohol and Drug User Fee Fund to other County funds, the County in essence received its share of the court fees that should have been paid to them if the fees had been properly collected per statute.

Fees should only be collected as specifically authorized by statute or properly authorized resolutions or ordinances, as applicable, which are not contrary to statutory or Constitutional provisions. (Accounting and Uniform Compliance Guidelines Manual for Counties of Indiana, Chapter 1)

DONATIONS

The Superior Court III established an Alcohol and Drug Program to provide intervention services for individuals under the court's jurisdiction. Donations totaling $1,007,098, $327,170, and $219,150 were paid from the Alcohol and Drug User Fee Fund in the years 2008, 2009, and 2010, respectively. The donations consisted of both monetary donations and donation of purchased items to other governmental entities, other County Departments or other organizations as shown in the following schedule:

	2008	2009	2010
Monetary Donations:			
Other Governmental Entities	$ 169,900	$ 28,500	$ 7,000
Donations to Non-Profit and Other Organizations (A)	292,770	68,670	20,150
Transfers to Other County Funds	278,440	230,000	192,000
Donation of Purchased Items (B)	265,988	-	-
Totals	$ 1,007,098	$ 327,170	$ 219,150

Notes to Schedule:

(A) Donations to non-profits and other organizations for the year 2008 included donations made to churches, little leagues, school booster clubs, memorial funds, local schools, and half-way houses, etc.

(B) The following is a list of purchases of donated items made during the year 2008:

County Department/Other Entity	Amount	Examples of Items Purchased
County Courts	$ 132,742	Automobiles; carpeting; etc.
County Health Department	58,613	Automobiles; equipment
County Sheriff	3,645	Lawn mower and trailer
County Work Release Program	2,340	defibrillators
City of Jeffersonville Police Department	7,049	Riot helmets and shields
Indiana State Police	51,159	Laser radar guns; motorcycle trailers; etc.
Indiana Department of Natural Resources	5,940	Binoculars
Borden Braves Youth League	4,500	Football equipment
	$ 265,988	

Indiana Code 12-23-14-6(a) states in part:

"A program may provide for eligible individuals a range of necessary intervention services, including the following:

(1) Screening for eligibility and other appropriate services.

(2) Clinical assessment.

(3) Education.

(4) Referral.

(5) Service coordination and case management."

Indiana Code 12-23-14-12 states:

"Program employees or contractors shall perform duties the court assigns, including the following:

(1) Providing places for the program and the program's services.

(2) Providing intervention, treatment, and rehabilitation services for eligible individuals.

(3) Compiling information and statistics on the program's activities.

(4) Reporting periodically to the court on program activities."

It has been the County's practice to establish an individual user fee fund (Alcohol and Drug (User Fee Fund) to account for the receipt and use of alcohol and drug services program fees.)

Section 28 of the Indiana Judicial Center's "Rules for Court-Administered Alcohol & Drug Programs" states in part:

> ". . . Money a program receives from a county user fee fund must be used to fund program services in compliance with IC 33-37-8-5."

Indiana Code 33-37-8-5 states in part:

> "(a) A county user fee fund is established in each county to finance various program services. The county fund is administered by the county auditor.
>
> (b) The county fund consists of the following fees collected by a clerk under this article and by the probation department for the juvenile court under IC 31-37-9-9: . . .
>
> (4) The alcohol and drug services program fee . . ."

The Clark County Alcohol and Drug Services Policy and Procedure Manual page 21 states in part:

> "All fees may only be used for expenses related to the program." "The supervising Judge is responsible for ensuring that all disbursements for the user fee fund are in accordance with IC 33-19-8-5." Indiana Code 33-19-8-5 has subsequently been recodified to Indiana Code 33-37-8-5.
>
> Sources and uses of funds should be limited to those authorized by the enabling statute, ordinance, resolution, or grant agreement. (Accounting and Uniform Compliance Guidelines Manual for Counties of Indiana, Chapter 1)
>
> Governmental funds should not be donated or given to other organizations, individuals, or governmental units unless specifically authorized by statute. (Accounting and Uniform Compliance Guidelines Manual for Counties of Indiana, Chapter 1)

DUPLICATE ALCOHOL AND DRUG FEES

A review of alcohol and drug program service fees charged through plea agreements during the year 2008 showed instances of defendants being charged a duplicate alcohol and drug program service fee and/or fees in excess of the statutory amount. The following is a description of the plea agreement process in regards to the assessing of alcohol and drug program fees:

1. At the time the plea agreement was completed by the Prosecuting Attorney's office, a fee was assessed for the alcohol and drug services program. This fee was paid at the Superior Court III Traffic Violations Bureau along with other court costs assessed. The fee was recorded in the financial and court records by the Superior Court III Traffic Violations Bureau to a miscellaneous case number instead of the applicable defendant's court case.

2. When the defendant appeared in the Superior Court III Probation Department to register for the court ordered alcohol and drug program, the Superior Court III Probation Department would also assess an alcohol and drug program service fee. The Superior Court III Probation Department was not aware of the original payment made to the Superior Court III Traffic Violations Bureau because the payment was not recorded to the defendant's court case.

The following is a specific instance of a defendant paying a duplicate fee:

A defendant paid a $500 alcohol and drug program services fee at the Superior Court III's Traffic Violations Bureau and also paid a $400 alcohol and drug program fee at the Superior Court III Probation Department resulting in a total fee payment of $900.

There were other instances of receipts for alcohol and drug fees showing received from "Miscellaneous" rather than identifying the individual who paid the fee. As a result, there may be additional duplicate payments that were not identified.

IC 12-23-14-16(c) states: "The fee for program services may not exceed four hundred dollars ($400)."

Fees should only be collected as specifically authorized by statute or properly authorized resolutions or ordinances, as applicable, which are not contrary to statutory or Constitutional provisions. (Accounting and Uniform Compliance Guidelines Manual for Counties of Indiana, Chapter 1)

Controls over the receipting, disbursing, recording, and accounting for the financial activities are necessary to avoid substantial risk of invalid transactions, inaccurate records and financial statements and incorrect decision making. (Accounting and Uniform Compliance Guidelines Manual for Counties of Indiana, Chapter 1)

Persons, companies or governmental units that have overpaid amounts to a governmental unit are entitled to a repayment or refund by check or warrant. (Accounting and Uniform Compliance Guidelines Manual for Counties of Indiana, Chapter 1)

FEES REMITTED TO IMPROPER FUND

A review of fees collected during the year 2008 identified instances in which fess were not remitted to the proper funds. The following are examples of fees that were not remitted to the proper funds:

1. A plea agreement, completed by the office of the Prosecuting Attorney and approved by Superior Court III, showed an individual being assessed a $750 fee to be paid to the Infraction Judgment Fund.

   A review of the case showed that the violation was a misdemeanor case rather than an infraction case. The "Fine and Costs Transmittal Slip" prepared by the Superior Court III staff and submitted to the Superior Court III Traffic Violations Bureau showed the fee being directed to the Alcohol and Drug User Fee Fund.

2. A plea agreement, completed by the office of the Prosecuting Attorney and approved by Superior Court III, and the "Fine and Costs Transmittal Slip", prepared by Superior Court III staff, showed $500 designated to the Drug Free Community Fund. When the amount was actually paid, the $500 was collected as an alcohol and drug fee and subsequently remitted to the Alcohol and Drug User Fee Fund.

Controls over the receipting, disbursing, recording, and accounting for the financial activities are necessary to avoid substantial risk of invalid transactions, inaccurate records and financial statements and incorrect decision making. (Accounting and Uniform Compliance Guidelines Manual for Counties of Indiana, Chapter 1)

COLLECTION OF COURT FEES BY TRAFFIC VIOLATIONS BUREAU

Employees of the Traffic Violations Bureau have been authorized to account for and to collect certain court fees and other monies order by the court not involving traffic violations.

Indiana Code 34-28-5-7 states: "Any court may establish a traffic violations bureau and appoint a violations clerk who shall serve under the direction and control of the court."

Indiana Code 34-28-5-9 states in part:

"The court shall:

(1) designate the traffic violations within the authority of the violations clerk, but these violations may not include misdemeanors or felonies . . .

(4) establish a procedure under which any violations clerk or deputy violations clerk shall accept, receipt, and account for all money tendered for designated traffic violations; . . ."

The Clerk of the Circuit Court is the responsible officer to collect court fees under statutes (i.e., Indiana Code 33-37-4-1 for Criminal Actions; Indiana Code 33-37-4-3 for Juvenile Proceedings; Indiana Code 33-37-4-4 for Civil Actions; Indiana Code 33-37-4-6 for Small Claims; Indiana Code 33-37-4-7 for Probate and Related Proceedings).

The clerk is required to be the clerk of the circuit court; clerk of the probate court; clerk of the superior court and county courts in counties where such courts are created; clerk of the criminal court; clerk of the juvenile court. (Accounting and Uniform Compliance Guideline for Clerks of the Circuit Courts of Indiana, Chapter 3)

PARKING VIOLATION

During the year 2010, the Traffic Violation Bureau incorrectly charged the fee associated with a violation for parking in a handicapped space. A fee of $35 was charged for a parking violation in a handicapped space without a placard instead of the $50 fee required by statute.

Indiana Code 5-16-9-5(a) states in part: " Any person who parks a motor vehicle which does not have displayed a placard of a person with a physical disability . . . commits a Class C infraction."

Indiana Code 5-19-9-5(e) states: "Notwithstanding IC 34-28-5-4(c), a civil judgment of not less than fifty dollars ($50) must be imposed for an infraction committed in violation of this section."

Indiana Code 34-28-5-5(a) states in part:

> ". . . Whenever a judgment is entered against a person for the commission of two (2) or more civil violations (infractions or ordinance violations), the court may waive the person's liability for costs for all but one (1) of the violations. This subsection does not apply to judgments entered for violations constituting: (1) Class D infraction; or (2) Class C infractions for unlawfully parking in a space reserved for a person with a physical disability under IC 5-16-9-5 or IC 5-16-9-8."

Fees should only be collected as specifically authorized by statute or properly authorized resolutions or ordinances, as applicable, which are not contrary to statutory or Constitutional provisions. (Accounting and Uniform Compliance Guidelines Manual for Counties of Indiana, Chapter 1)

LATE PAYMENT FEE

Late payment fees were not being properly charged and remitted to the proper fund. From January 1, 2008 through June 20, 2010, a late payment fee of $5 per month was charged to traffic offenders who did not pay the fees by the stated deadline.

A pamphlet distributed to traffic offenders states in part: "An additional fee of $5.00 per month will be imposed for each month a citation remains unpaid after the 30-day grace period. (30-day grace period begins on the Court Date assigned on the citation). (Seatbelt tickets have NO late fees)."

Indiana Code 33-37-5-22(c) states in part: ". . . a court that adopts a local rule imposing a late payment fee . . . shall collect a late payment fee of twenty-five dollars ($25) . . ."

Late payment fees paid on traffic violations were not identified separately in the financial records. When a late payment fee was paid the amount received was classified as an alcohol and drug user fee. Any late payment fees received were then deposited in the Alcohol and Drug User Fee Fund via collections remitted to the County Clerk.

Indiana Code 33-37-7-2(e) states:

> "The clerk of the circuit court shall distribute monthly to the county auditor one hundred percent (100%) of the late payment fees collected under IC 33-37-5-22. The county auditor shall deposit fees distributed by a clerk under this section as follows:
>
> (1) If directed to do so by an ordinance adopted by the county fiscal body, the county auditor shall deposit forty percent (40%) of the fees in the clerk's record perpetuation fund established under IC 33-37-5-2 and sixty percent (60%) of the fees in the county general fund.
>
> (2) If the county fiscal body has not adopted an ordinance described in subdivision (1), the county auditor shall deposit all the fees in the county general fund."

SUPERIOR COURT III
CLARK COUNTY
EXIT CONFERENCE

The contents of this report were discussed on December 13, 2011, with Barbara Hollis, President of the County Council.

The contents of this report were discussed on December 15, 2011, with the Steven M. Fleece, former Judge; and Joseph P. Weber, Judge. The official responses have been made a part of this report and may be found on pages 25 through 49.

The contents of this report were discussed on December 19, 2011, with M. Edward Meyer, former President of the Board of County Commissioners.

COMMENTS OF
SENIOR JUDGE
STEVEN M. FLEECE

IN RESPONSE
TO
STATE BOARD OF ACCOUNTS
CONFIDENTIAL DISCUSSION DRAFT
OF
AUDIT RESULT AND COMMENTS
CONCERNING
CLARK COUNTY
ALCOHOL AND DRUG SERVICES PROGRAM

NOTE: NOW SEMI-RETIRED SENIOR JUDGE STEVEN M. FLEECE
WAS THE ELECTED JUDGE OF THE COUNTY COURT OF
CLARK COUNTY FROM 1985 TO 1995 AND JUDGE OF THE
REDESIGNATED CLARK SUPERIOR COURT NO. 3
FROM 1995 THROUGH 2008.

DURING THOSE TWENTY-FOUR YEARS
HE WAS THE SUPERVISING JUDGE OF
THE CLARK COUNTY ALCOHOL AND DRUG SERVICES PROGRAM
AND GUIDED THE PROGRAM FROM THE BRINK OF SHUT-DOWN
FOR LACK OF AVAILABLE FUNDING
TO A FIRM FINANCIAL FOUNDATION
WITH MINIMAL DRAIN ON THE COUNTY GENERAL FUND

INTRODUCTION
AND
EXPLANATION
OF
STRUCTURE OF COMMENTS

The Gospel of John concludes: "But there are also many other things that Jesus did; if everyone of them were written down, I suppose the world itself could not contain the books that would be written." NRSV John 21:25. One who would comment on the mistakes in this audit faces a similar task of choosing which of its multitude of errors to address. If one were to attempt to address all of them, the memory of a computer could not contain all the comments that would be written.

I have chosen to address three main points which I think are most important and most in need of correction. My administration ended December 31, 2008. In December 2011 I learned that the State Board of Accounts was still examining transactions from my time. I was given a copy of the "Discussion Draft" to review at the start of the holiday season. Between mid-December 2011 and January 6, 2012, I have written the three separate commentaries which are attached. Because they were done at different times, each of the three sections has its own pagination. The copy of the Discussion Draft I had to work with did not have numbered pages. But from the headings in my comments it should be clear which of my comments are addressed to which specific subjects in the audit.

PART A of my comments addresses what the audit had to say about the COURT'S DRIVING SCHOOL FEES. It consists of four (4) pages of comments plus two attachments. Attachment 1 is a memo on the same subject from me to the auditors from Spring 2010. Attachment 2 is a letter from Clark County Prosecuting Attorney Steven D. Stewart, dated 12-23-2011.

PART B of my comments addresses the audit's assertion that we COLLECTED ADDITIONAL FEES WITHOUT PROVIDING SERVICES, an assertion that I consider not only wrong but libelous. It consists of five pages.

PART C of my comments addresses the topic referenced in the audit as PROGRAM FINANCIAL ACCOUNTABILITY asserting we paid for things "unrelated to the alcohol and drug services program," like expenses of the Clark County Drug Court, the Clark County Drug Free Communities Agency, and the half-way houses which fed, clothed, sheltered, guided and helped rehabilitate our mutual clients. It consists of seven pages.

I acknowledge that this audit has identified some areas requiring attention. I cannot respond to specific claims of isolated clerical or administrative errors in particular cases without a case number or other means of identifying the case in question. Certainly, if anyone was double-charged for a service, it was not intentional. In the past, I have felt that I had a decent working relationship with the state board. But this audit, is qualitatively different than any that has occurred before during my administration.

If these comments seem hostile to the State Board of Accounts it is only because I have never before reviewed an audit of such recklessness reflecting so little regard for the judgment and discretion of local elected officials. Many of the board's legal conclusions are, in my opinion, flagrantly wrong. Even if the board were right in all of its critical conclusions, where has the board been for the last twenty-four years while this same service was provided, these same fees were charged, and these same types of expenditures were made? All actions have been taken openly and above board, subject to all local government checks and balances as well as Indiana Judicial Center oversight. After the passage of twenty-four years, a fair person would assume that which has not been condemned is condoned.

In tone and substance this audit appears to me to be a politically inspired hatchet job. I smell an old familiar skunk who would readily destroy a legitimate local government revenue source if he could not control it himself or profit by it. I do not accuse the State Board of Accounts of a conspiracy. I do suggest that the board has somehow been influenced to take a new sharply critical view of actions and practices which were in the past benignly tolerated as unusual but within the realm of acceptability.

I therefore hope that someone higher in the State Board of Accounts will look upon these comments and review this audit with an unprejudiced eye. I hope that someone will cause the audit to be substantially revised, and remove the undue negative insinuations towards myself and other local elected officials.

But most importantly, I hope that a revised audit will reflect a sympathetic attitude toward the county's desire to supplement its general fund by affording it broad discretion, consistent with state law, in the collection and appropriation of alcohol and drug service fees. The main burden of the comments that follow is to show that the practices that have been followed, albeit novel, are in fact consistent with state law and need not be suppressed or penalized as long as local elected officials desire to continue them.

Sincerely,

Steven M. Fleece, Senior Judge
6608 Autumn Ridge
Charlestown, IN 47111

(812) 256-2453
smfleece@hotmail.com (infrequently checked)

Judge Fleece's Response
To Confidential Discussion Draft
Of State Board of Accounts
Audit Result And Comments
Being Proposed As Of December 2011

Court's Driving School Fees

The entire section of the discussion draft titled Defensive Driving School Fees is based upon erroneous premises. It should be omitted.

The State Board of Accounts, hereinafter the board, repeatedly invokes Indiana Code Section **I.C. 9-30-3-16** in its analysis of the court's driving improvement course. Based upon this statute, the board apparently takes the position that the court (1) should have obtained Bureau of Motor Vehicles permission to create the course and (2) should have obtained approval of the Bureau of Motor Vehicles for the fee to be charged.

The board further takes the position that under **IC 33-37-4-2(a) or IC 30-3-12(d)** court costs should have been collected from persons whose infraction cases were **dismissed without a "finding" or a "judgment" of any violation,** upon the State's motion, after the persons had completed the court's driver improvement course.

The proposed Audit Result and Comments refer to my written comments upon this subject delivered to board auditors in the Spring of 2010. I incorporate those comments by reference in this response. They illuminate why the court created its own driving school at a point when the Bureau of Motor Vehicles had unilaterally and without any prior notice discontinued its own driver improvement course. The Bureau's action left the courts to clean up the administrative chaos generated by this irresponsible cessation of a program we had long relied upon.

There were at the time hundreds of persons scheduled to take this Bureau sanctioned course as the agreed resolution of their pending traffic charges. The sudden closing down of these classes without any prior notice confronted the court with an emergency need to supply an alternative. Thus the court's own program came into existence to fulfill as closely as possible the intent of the plea agreements already accepted and approved.

The statute cited by the board in its proposed audit result and comments, **IC 9-30-3-16, is totally inapplicable** to the substitute driver improvement school created by the court.

IC 9-30-3-16 (a) states: **If a person has been found to have committed a traffic offense, the court may do the following:**

Section (a) thus sets forth the situation to which the statute applies and limits its applicability to those situations in which "a person has been found to have committed a traffic offense."

Only the court, specifically the judge, can make "a finding" that a person has committed a traffic offense.

No such finding is ever made with regard to persons who elect to attend the court's driver improvement course. Instead, the case is dismissed upon the motion of the State. SEE SUPPORTING LETTER OF CLARK COUNTY PROSECUTING ATTORNEY STEVEN D. STEWART, DATED 12-23-2011, ATTACHED HERETO.

It is an essential part of the plea agreement between the Prosecutor and the Defendant that no finding of a violation will be made if the Defendant completes the court's driver improvement course. The Defendant is not required to admit committing a traffic offense. In fact persons often agree to attend the driving course while adamantly protesting their total innocence of any wrongdoing. It is a **compromise** solution acceptable both to the defendant and to the Prosecutor. It is clearly within the authority of the elected Prosecutor and his deputies to enter into such an agreement. It is **mandatory** for the Court to dismiss the case upon the State's motion when the agreement between the State (Prosecutor) and the Defendant has been fulfilled. See, **IC 35-34-1-13.**

The situation is comparable to a prosecutor agreeing to drop child neglect charges in return for a parent's submission to counseling, education and monitoring by a child advocacy group. It is comparable to a decision to drop charges of animal cruelty where a former pet owner agrees to relinquish ownership and perform a set number of hours of public service cleaning cages at the animal shelter. It is comparable to federal prosecutors settling cases of alleged violation of securities and exchange law by the payment of an agreed fine but without any admission of wrongdoing on behalf of the charged institution. **All prosecutors have broad inherent discretion to dismiss cases on grounds they consider just, fair, efficient and in the public interest.**

Under Indiana law a person charged with a traffic infraction has a state constitutional right to a trial by jury, if they so demand. In Clark County it is common for more than 20,000 traffic infractions to be filed in a year. If only **one percent** of the persons charged in a given year protested their innocence and invoked their constitutional right to trial by jury, that would result in **200 jury trials,** with related government expenses, on traffic infractions alone. My court was routinely budgeted with sufficient funding for only **six jury trials** a year of all types, civil and criminal in total. The manpower and court time to try a substantially greater number of cases each year is similarly lacking.

Resolution of many cases by reasonable **compromise** is therefore a practical necessity. The prosecutor is vested with discretion in determining on what conditions a case may be dismissed, be it a major felony or a traffic infraction. The court's driver improvement school is simply a tool for prosecutors and defendants to use in achieving mutually acceptable resolution of pending traffic infraction charges by **reasonable compromise.**

Because the resolution of traffic infractions dismissed upon the driver's completion of the court's driver improvement school does not involve a "finding" of a violation or any admission of wrongdoing on the part of the defendant, IC 9-30-3-16 clearly does not apply. Any criticism of the court for non-compliance with a totally inapplicable statute is unwarranted.

Likewise the sections of the draft report headed, _DEFENSIVE DRIVING SCHOOL--COURT COSTS NOT ASSESSED and SCHEDULE OF STATUTORY COSTS AND FEES are both based upon an erroneous legal conclusion as to the applicability of a statute to the facts in Clark County.

The criticism of the court in these sections is based upon asserted non-compliance with **Indiana Code Sections 33-37-4-2 and / or IC 9-30-3-12(d).** Again, whoever has advised the auditors that these statutes are applicable has either misread the statute or not been adequately advised of the fact situation concerning Clark County.

IC 33-37-4-2 (a) says:
Except as provided in subsections (d) and (e), **for each action that results in a judgment:**
(1) for a violation constituting an infraction; or
(2) for a violation of an ordinance of a municipal corporation . . .
The clerk shall collect from the defendant an infraction or ordinance violation costs fee of

As set out previously, there is no judgment rendered against an individual for whom the prosecutor dismisses the infraction or ordinance violation charge in return for the person's completion of the court's driver improvement school. Because charges are dismissed without a finding, a judgment or any admission of wrongdoing, it would be a true ultra vires act for the court to charge these fees to persons who have not admitted any wrongdoing and have not been found guilty or adjudged guilty of any wrongdoing.

Nor does subsection (e) of IC 33-37-4-2 apply because, to the best of my knowledge and belief, there is no "agreement between the prosecuting attorney or an attorney for a municipal corporation and the person charged with violation . . .(that) requires payment of those fees by the person charged with the violation." The prosecutor might have made the payment of a deferral fee under this section a requirement of the plea agreement, provided the defendant agreed to it, but the fact is that the prosecutor, through his deputies did not incorporate such a provision into the plea agreement. I believe there is no documentation to the contrary and I have never heard of a "deferral fee" under this section ever being mentioned in the resolution of traffic infraction charges in my court. **AGAIN, SEE STATEMENT OF CLARK COUNTY PROSECUTING ATTORNEY STEVEN D. STEWART, ATTACHED HERETO.**

(3)

IC 9-30-3-12 (d) says the court costs otherwise due under IC 33-37-4-2 may be cut in half ("suspended") 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.

As previously shown there are no court costs due under IC 33-37-4-2 in this fact situation because the action does not result in a judgment. Half of nothing is still nothing. It is an error for the audit to assert that the court has failed to fulfill statutory duties when the statutes cited do not apply to the actual situation presented.

(4)

END OF FOUR PAGES OF RESPONSE TO
THAT PORTION OF
STATE BOARD OF ACCOUNTS
CONFIDENTIAL DISCUSSION DRAFT
OF AUDIT RESULTS AND COMMENTS
CONCERNING
CLARK SUPERERIOR COURT NO. 3
DRIVING SCHOOL FEES

ATTACHMENTS TO THIS SECTION OF RESPONSE:

1. WRITTEN COMMENTS CONCERNING TRAFFIC SCHOOL MADE BY JUDGE FLEECE IN RESPONSE TO BOARD'S INQUIRY OF MARCH 30, 2010.

2. LETTER OF CLARK COUNTY PROSECUTING ATTORNEY STEVEN D. STEWART DATED 12-23-2011.

A 1

Response to State Board of Accounts
Inquiry of March 30, 2010
Regarding Clark Superior Court No. 3
Traffic School

As judge of Clark Superior Court No.3 from January 1, 1985 through December 31, 2008, it is my recollection that the questions contained in this inquiry have been asked and answered more than once in previous years. Nevertheless, here, again, are the answers as memory serves:

1. The defensive driving course used by Clark Superior Court No. 3 has never been approved by the Bureau of Motor Vehicles and there is no reason why it ever should be.

The defensive driving course used by this court was created in response to a dereliction of duty and a provocation by the Bureau of Motor Vehicles which occurred sometime in the mid-1990's. From taking office at the start of 1985 up until the mid-1990's, I routinely allowed persons to attend the Bureau's defensive driving course as an alternative to sustaining a conviction for a traffic-related infraction. This was done in accordance with the Clark County Prosecutor's determination that this would be an acceptable disposition in most cases, absent the presence of disqualifying circumstances. The fees were set by the Bureau and persons who completed the course received a four point credit on their driving record, from the Bureau, as well as dismissal of the infraction, from the county prosecutor. At any point in time, we would have scores of persons scheduled to take this course which was administered by local contractors of the Bureau at Jeffersonville High School and other locations.

What upset this arrangement was the Bureau's unilateral and unannounced decision to indefinitely suspend its defensive driving course, which occurred, to the best of my recollection, in the mid-1990's. The first the courts knew of this action was when persons appeared at our Traffic Violations Bureau window telling us they had gone to their scheduled classes only to find no instructor and a note on the door to contact the court. Belatedly, the courts of the state were informed that the Bureau had decided to change the course format and the contractors. The Bureau could not tell us how long the suspension would last. To the best of my recollection, the period of suspension lasted about two years.

Adding insult to injury, the Bureau directly informed court staff that it was their duty to contact all the people signed up for the classes and to make other arrangements for the disposition of their infractions. The BMV was attempting to directly supervise judicial branch county employees, without consultation with the judges, and ordering them to clean up the very considerable mess caused by the BMV's sudden and uncoordinated suspension of the defensive driving course. I and other judges at the time considered this a breach of protocol and recognized lines of authority. This incident happened early in the administration of a new BMV director who apparently imagined himself to have supervisory authority over the state judiciary on a par with the Chief Justice.

It was at this point and in response to these circumstances that Clark Superior Court No. 3 launched its own defensive driving course in full cooperation with the Clark County Prosecutor, under the inherent authority of these two institutions. The prosecutor has ample inherent authority to dismiss an infraction when satisfied that it is reasonable to do so. No points are credited to participants' driving records. The court created a defensive driving course of its own which satisfied the local prosecutor's condition for dismissal.

When, finally, the BMV resumed offering a defensive driving course, it was of shorter duration and less inclusive of certain topics than the course offered by the court. The court's program used materials furnished and approved by the national highway traffic safety commission and included substantial material on the dangers and consequences of driving while impaired by alcohol or drugs. The BMV course could be completed on the WEB, which the BMV considered an improvement. After hearing from a local attorney how easily he had beaten the BMV system by having his secretary take the WEB version of the course posing as him, the court considered this easily-abused option a significant weakness. We therefore declined to terminate our own local-revenue generating class and to resume referrals to what we now considered an inferior course of instruction.

2. For same reasons as noted at number 1, the BMV was never asked to approve the fee structure for the court and prosecutor-approved defensive driving course. The fee was originally intended to be roughly equivalent to the court costs and fines which would have been charged upon a conviction.

In the beginning, the fee charged for this course was set out in the schedule of fees contained in the operations manual for the Clark County Alcohol and Drug Services (CCADS), because of the course emphasis on discouraging impaired driving as well as teaching other aspects of traffic safety. At the inception of the course, CCADS may still have been under the regulatory authority of the Division of Mental Health Services. Later, CCADS came under the regulatory authority of the Indiana Judicial Center. I find that the fee for the defensive driving course is not included in the current CCADS operations manual, which may be an oversight that should be corrected, since these fees are deposited in the CCADS account.

3. I have been unable to locate any documentation on fee changes over the years. Current staff in bookkeeping and the Traffic Violations Bureau were unable to help me in this regard when asked. To the best of my recollection, fee changes were considered each year when it came time to order a new supply of the brochures distributed by the police along with the traffic citations. Those brochures contained a schedule of court costs and fees corresponding to the various charges and dispositions. As court costs increased over the years, the fees for the defensive driving course would have been reviewed as well. Any such revision would have been considered a matter of inherent judicial discretion.

4. It is correct that the instructors have always been paid twenty-five dollars per student.

OFFICE OF THE PROSECUTING ATTORNEY
STEVEN D. STEWART
PROSECUTING ATTORNEY, 4TH JUDICIAL DISTRICT
501 E. COURT AVENUE
215 COUNTY GOVERNMENT BUILDING
JEFFERSONVILLE, IN 47130

CRIMINAL DIVISION
(812) 285-6264/FAX (812) 285-6259

CHILD SUPPORT DIVISION
(812) 285-6261/FAX (812) 285-6259

A 2

December 23, 2011

Steven M. Fleece, Senior Judge
County Government Bldg.
501 East Court Avenue
Jeffersonville, IN 47130

Re: Clark County Traffic Violations Bureau

Judge Fleece:

I am writing at your request to recite my recollection of the history and interaction of the Clark Superior Court #3 (formerly Clark County Court), the Clark County Prosecuting Attorney, and the Clark County Traffic Violations Bureau. As you know, I served as Chief Deputy Prosecutor from 1983 to 1989, and have been the elected Clark County Prosecuting Attorney since 1989.

For as long as I can remember, those receiving traffic citations in Clark County were eligible to attend a traffic school as long as there was a minimal traffic history. Upon successful completion, the citation was dismissed or taken under advisement for up to one year and then dismissed. This policy was continued without interruption when I became Prosecutor. The traffic school could be attended in any jurisdiction as long as a certificate of completion was provided. The fee for the traffic school was substantial, but less than the amount for full payment of the infraction citation.

Years ago, the Indiana Bureau of Motor Vehicles sponsored such a traffic school. At first the classes were conducted in person by BMV representatives, and later the same classes were offered by the BMV online. A fee was charged and collected by the BMV. At some point, the BMV decided not to offer any traffic school classes. In response, the Clark Superior Court #3 decided to offer their own. A fee was charged and collected by the Court.

Clark County has never had, to the best of my knowledge, a statutory Diversion or Infraction Deferral program. If more information is needed, please advise.

Sincerely,

Steven D. Stewart
Clark County Prosecutor

B

Judge Fleece's Response
To Confidential Discussion Draft
Of State Board of Accounts
Audit Result And Comments
Being Proposed As Of December 2011

Additional Fees Collected
"Without Providing Services"
Prior to June 24, 2010

The auditor has simply substituted her opinion of what constitutes a "service" for the judgment of the two successive supervising judges of the Clark County Alcohol and Drug Services Program. It is not revealed by what authority the auditor presumes to substitute her opinion for that of the judges. In the absence of some citation of authority, it would appear that the auditor has no such authority. In the absence of clear authority to the contrary, the opinion of the judges that the activity at issue is, in fact, "a service," should be respected.

The activity which the judges contend to be a "service" and which the auditor claims is not a "service" consists of this:

At the time a person receives a traffic citation in Clark County they are also given by the police officer a pamphlet furnished by the court. This pamphlet serves two purposes: (1) it provides basic contact information for the court, a schedule of costs to be assessed in the event of an admission of violation and a reference to the court's driver improvement school as a possible option for resolving the citation. (2) The pamphlet further provides information, which the judges consider to be important, concerning the dangers of alcohol and drug abuse, especially as related to driving. The exact wording of these messages is altered from time to keep up with recent research and update statistics cited. It also provides information about where persons desirous of help can receive assistance with alcohol and drug problems. Furthermore, the pamphlet provides that anyone who wishes to do so can receive a professional alcohol and drug assessment performed by a certified court alcohol and drug specialist at no additional charge by presenting proof of having resolved the citation. The fee for such an assessment would otherwise be fifty dollars, to the best of my recollection, as of 2008.

It is the provision of alcohol and drug abuse related information, described at (2) above, along with the opportunity for a professional alcohol and drug assessment which the judges consider a service.

The statute authorizing Court Established Alcohol and Drug Services Programs is **IC 12-23-14.** Clark Superior Court No. 3 is certified by the Indiana Judicial Center as required by **IC 12-23-14-13** and is subject to the oversight of that body.

IC 12-23-14-6 says:

A program may provide for eligible individuals a range of necessary intervention services, including the following:

(1) Screening for eligibility and other appropriate services.
(2) Clinical assessment
(3) Education
(4) Referral
(5) Service Coordination and case management.

The statute is clear that the list of five services given is illustrative only and not prohibitive of other services. The statute actually **invites** development of other services at local discretion by specifying that the services to be provided merely **include** the five listed.

The service provided by the court specifically includes a provision for **(2) a Clinical Assessment-- without further costs (usual fee $50.00) for anyone who properly resolves their citation and requests such an assessment.** The periodically updated and revised information concerning alcohol and drug abuse provided is a form of **(3) Education** no less than the information about the dangers of smoking required by federal law and regulation on all packages of cigarettes. The information about sources of help in achieving sobriety is a form of **(4) Referral.**

While it is clear that the service provided is not required to be one of the five illustrative services listed, the court's locally developed service does in fact address three of the five types of services which are explicitly approved.

The word **"service"** is not defined in the chapter of the Indiana Code authorizing Court Established Alcohol and Drug Services Programs, **IC 12-23-14-1.** Likewise, the word **"service"** is not defined in the Chapter of the Indiana Code authorizing the creation of **Drug Courts, IC 12-23-14.5.** Likewise, the word **"service"** is not defined in the chapter of the Indiana Code authorizing grants and other activities pursuant to the **Indiana Drug Free Communities Fund, IC 5-2-6-1 and IC 5-2-10.**

It is a fair and logical conclusion that the legislature has deliberately refrained from defining the word "service" in all these related statutes precisely to allow the exercise of local discretion and/or local community involvement in the definition, creation and design of such services. The lack of a one size fits all definition of the term "service" is consistent with the federal Omnibus Crime Control and Safe Streets Act of 1968 and with the wise recognition of our legislature that no State or Federal bureaucracy has a monopoly on good ideas for combating alcohol and drug abuse.

(2)

Because the legislature has deliberately declined to define the term "service," the plain common English language definition should be used. In law, the accepted sources for such definitions are dictionaries. Consulting a dictionary confirms that there are many definitions of the word "service" and that the term is quite broad.

The comprehensive Oxford English Dictionary of 1971 contains four pages of various definitions of the word "service." There are thirty-seven definitions given, not including those for variants of the word or those expressions associated with the service tree. The most relevant definition for the issue at hand is number 19. It defines "service" as:

The action of serving, helping or benefiting; conduct tending to the welfare or advantage of another.

The American Heritage College Dictionary, Third Edition, provides thirteen numbered definitions of "service" as a noun, with many designated subparts. In addition, there are four definitions of the use of the word "service" as a verb and four more as an adjective. The most relevant definition for the issue at hand is number 8. It defines "service" as:

An act of assistance or benefit to another or others; a favor.

These definitions underscore the broad range of activities that may with perfect legitimacy be termed "services." The highly educated and supremely skilled surgeon who performs a heart transplant obviously performs a service to the patient. But so does the humble bootblack who shines that patient's shoes. The men who stormed Utah Beach performed a great and heroic service to their country at great personal sacrifice. But a person who merely gives directions to an inquiring stranger seeking the nearest Starbucks, also performs what may be commonly called a "service."

A "service" may be either of great importance or very minor importance as long as it in some way helps or benefits the recipient. It may be provided either at great cost to the provider or at negligible cost. It is nevertheless a service. The court has never pretended that the furnishing of the information at issue is of earth-shaking importance in the fight against alcohol and drug abuse. But, it is, at the least, as much a help or benefit to the recipients as the warnings posted on cigarette packages or anti-smoking billboards. Providing it is a "service" within the plain common meaning of the word.

The audit refers to the fact that the persons receiving the pamphlet were not charged with substance abuse related offenses. While that is true in most circumstances, it is also irrelevant. **IC 12-23-14-4 says:**
An alcohol and drug services program and accompanying services and treatment facilities shall be open only to individuals over whom the court has jurisdiction.

The audit is assuming that the court can provide services only to those persons charged with an alcohol or drug related offense. **But, the law just quoted gives the court broader authority to provide services to "individuals over whom the court has jurisdiction."**

The court has jurisdiction over individuals charged with an infraction, whether the infraction is alcohol or drug related or not.

Therefore, the court may provide services to persons charged with an infraction and persons charged with an infraction are eligible individuals as defined by IC 12-23-14-4.

Pursuant to **IC 12-23-14-16, "The court may require an eligible individual to pay a fee for a service of a program."** The only restraint on the amount of the fee set by this statute is that the fee may not exceed four hundred dollars ($400.00). As the audit notes the fee charged for the service which the audit is disputing did not exceed fifty dollars ($50.00).

The audit states that: "The fee being charged was not listed in a schedule of fees presented for audit per the court's alcohol and drug services policy and procedure manual." Having been retired for over three years, I cannot say what is or is not present in the written schedule of fees now or whenever the schedule may have been examined. I do agree with the audit that the fee should be listed in that schedule. This is an administrative oversight which I believe could be fixed within a matter of minutes. **If I were still in office and desirous of continuing to charge the fee, I would immediately amend the schedule to include the fee being questioned.** I do recall that the fee was defined in writing and listed in the schedule at some period in the past. If the fee had not been set and its amount recorded in writing, how would current employees know what to charge?

Likewise, the audit has revealed, to my surprise, that the Admissions Criteria of the Clark County Alcohol and Drug Services Policy and Procedure Manual state that: "An individual is admitted into the program when he or she has been arrested and/or convicted of an alcohol and/or drug related offense and the Court or Probation Department has deemed it beneficial for the individual to receive an assessment to determine which alcohol and drug services are appropriate."

While that language is descriptive of the way in which an individual would be admitted to the full gamut of services that might be offered after an assessment, it does not account for the individuals who receive only the limited service of being presented with the alcohol and drug related information contained in the infractions pamphlet.

(4)

I do not know if this is the same language included in the policy and procedure manual when I left office three years ago. If it is, I should have more carefully edited the manual, drafted by subordinates, so as to make it clear that persons charged with an infraction are associated with the program in a way which is minimal in terms of the service provided but substantial in terms of the funding of the program. Whoever among my subordinates drafted that language was apparently not thinking of funding ramifications at the time of drafting. If it was done on my watch, I did not catch the possible ramifications either.

However, this administrative oversight is not grounds for the assertion that fees were collected without providing services. As with the administrative deficiency noted above, this problem can be easily and speedily fixed. If I were still in office and desirous of continuing this fee-producing activity, I would simply rewrite the Admissions Criteria in the Policy and Procedures Manual to reflect actual practice in the county. The supervising judge of the program cannot rewrite the relevant state laws (with which we have complied). But, he can rewrite the policy and procedures manual for his own program. The supervising judge is the master not the servant of the manual.

Furthermore, **IC 12-23-14-4** refers to "an alcohol and drug program **and accompanying services,"** thus indicating that some peripheral **"accompanying services"** may be provided outside the scope of the main program elements. And, **IC 12-23-14-15 (3)** refers to **"other forms of financial assistance approved by the court to supplement the budget."** The Clark County Alcohol and Drug Program has legitimately elected to **"supplement the budget"** by providing and charging a modest fee for just such a court approved **"accompanying service."**

The facts remain: **A "service" was provided to "eligible individuals" subject to "the jurisdiction of the court" (IC 12_23-14-4) and a "fee" authorized by statute and not in excess of the statutory limit was charged (IC 12-23-14-16 and IC 33-37-5-8) and deposited with other types of fees in the County User Fee Fund administered by the County Auditor (IC 33-37-8-5). From there, appropriations of the fees collected were made by the County Council (IC 33-37-8-6) for purposes which the supervising judges, the auditors and the county council all agreed were legitimate uses of such funds. This went on for over twenty years, until, when the county was most desperately in need of revenue to supplement the general fund, the board adopted the disapproving attitude evident in this audit.**

The board should retract the false assertion that fees were collected without providing services and admit its true objection that those fees were retained by local government, to meet local needs, at the discretion of local elected officials.

END OF FIVE PAGES OF RESPONSE TO THAT PORTION OF DISCUSSION DRAFT LABELED "ADDITIONAL FEES COLLECTED WITHOUT PROVIDING SERVICES- PRIOR TO JUNE 24, 2010" (RESPONSES TO OTHER SECTIONS SEPARATELY PAGINATED)

C

Judge Fleece's Response
To Confidential Discussion Draft
Of State Board of Accounts
Audit Result and Comments
Being Proposed As Of December 2011

Program Financial Accountability

The initial section of the Audit Results And Comments claims to have "identified a substantial amount of financial activity unrelated to the alcohol and drug services program." Neither here nor elsewhere in the Audit Results and Comments is there any claim that public money has been taken for personal gain, or that any funds have disappeared or cannot be accounted for.

None of the "financial activity **(allegedly)** unrelated to the alcohol and drug services program" has been done in secret. All of the financial activity referred to has been done openly, with much of it reported in the public media. The records of all such transactions have been open to inspection by the appropriate regulatory authority, the Indiana Judicial Center, which has continued to recertify the Clark County Alcohol and Drug Services Program as being in compliance over a period of decades.

The same types of "financial activity **(allegedly)** unrelated to the alcohol and drug services program" have been going on for twenty years. Yet, only now has the State Board of Accounts invoked the specter of referral to the State Attorney General for possible civil action against local elected officials in their personal capacity. The cost of defending such a lawsuit, even with the highest confidence in the ultimate fairness and justice of a jury, could be financially ruinous to those local elected officials targeted.

The mere reference to possible action by the attorney general may have, and is probably calculated to have, a chilling effect on the proper exercise of discretion by local elected officials. By this means the board may effectively coerce Clark County elected officials into accepting the board's narrow and impractical opinion of what should be the scope of the Clark County Alcohol and Drug Services Program.

The dispute boils down to a difference of opinion over what activities of local government and allied non-profit institutions can be financed by Alcohol and Drug Services funds. Under the broad standard adopted and accepted by local elected officials, a range of needs that would otherwise go unmet or else have to be covered by the County General Fund can instead be met by this other source of revenue. Under this broad standard, the programs of local non-profit non-governmental organizations that help fight alcohol and drug abuse can also be assisted.

The statute creating Court-sponsored Alcohol and Drug Programs is **IC 12-23-14.** The statute does not contain a statement of purpose, making such purpose a matter of interpretation.

The broad view of the purpose of the Clark County Alcohol and Drug Services Program, as conceived by its supervising judge for twenty-four years of its existence, has been to reduce the incidence of alcohol and drug abuse in Clark County so as to reduce the number of alcohol and drug related criminal offenses requiring prosecution in the court. The judge, through this program, also sought to alleviate the poverty, violence, abuse, and other consequences of alcohol and drug abuse suffered in the families of addicted persons. The judge, acting upon this broad view of the purposes of the program, sought to assist other government agencies and non-profit non-governmental institutions whose missions were **rationally related to the common goal of achieving a community free of alcohol and drug abuse.**

The State of Indiana itself has adopted the broad, comprehensive view of what it takes to effectively address problems of addiction in a community and has implicitly rejected the narrow, rigid and unrealistic position which the State Board of Accounts applies in this audit and in its comments, e.g. **IC 5-2-10-2 and local comprehensive plans approved under IC 5-2-10-6.** Most of the Clark County Alcohol and Drug Program's challenged financial activities have been in the spirit of the State Drug Free Communities Initiative and consistent with public purposes reflected therein.

Responsibilities of Various Local Elected Officials
Relevant to State Board of Accounts Audit and Comments.

The Judges of Clark Superior Court No. 3 (now a division of a unified Clark Circuit Court) have served as "supervising judges" of the Clark County Alcohol and Drug Services Program. From 1985 through 2008 that person was Judge Steven M. Fleece. From 2009 to the present that person has been Judge Joseph Weber. Both these judges have found that the expenditures which the board termed "unrelated to the alcohol and drug program services" are, in fact, related to the alcohol and drug program services under the broader standard adopted by them as supervising judges of the program.

Alcohol and drug services program fees are one component of the County User Fee Fund established pursuant to **IC 33-37-8-5.** This law states: "The county fund is administered by the **county auditor**." In the twenty or so years that similar expenditures have been made from this fund, no Clark County Auditor has formally or informally expressed any misgivings about these types of expenditures to the supervising judges nor taken any action to block any such expenditures.

Expenditures from the County User Fee Fund can be made only upon appropriation from the "county fiscal body" (in this case, the Clark County Council) **IC 33-37-8-6.** All of the expenditures which the board termed "unrelated to the alcohol and drug program services" have, in fact, been made pursuant to duly authorized appropriation from the Clark County Council. Historically, the Clark County Council has favored an even broader interpretation of how these funds might be used than has been adopted by the supervising judges.

(2)

At the end of 2008, the Clark County Council bestowed upon retiring Judge Steven M. Fleece an **Outstanding Leadership Award,** "in grateful appreciation for your years of superior leadership and devotion to the citizens of Clark County." This award, from a body that Judge Fleece had previously sued over the proper use of probation user fees, illustrates the degree of cooperation, harmony and consensus that had been achieved among local officials by the end of 2008 in defining the proper scope of expenditures from various fee-generated funds, in particular, alcohol and drug program funds.

It is therefore fair to say that two Clark County Superior Court Judges, all Clark County Auditors serving within the last twenty years, and a majority (if not all) of Clark County Councilpersons serving within the last twenty years reject the narrow interpretation of what expenditures are "related to alcohol and drug program services" utilized by the board in this audit.

Instead, all of these local elected decision-makers have, by their actions and in the good faith exercise of their discretion, endorsed the more broad and realistic interpretation that has guided us for two decades.

Role of the Indiana Judicial Center

The oversight of Court-sponsored County Alcohol and Drug Services Programs has been specifically assigned by the legislature to the Indiana Judicial Center, **IC 12-23-14-13.** Among the oversight powers conferred are the authority to:

(1) Ensure that programs comply with rules adopted under this section and applicable federal regulations.

(2) Revoke the authorization of a program upon a determination that the program does not comply with rules adopted under this section and applicable federal regulations.

(3) Make agreements and contracts with . . . (E) a public or private agency; to effectuate the purposes of this chapter.

(4) Directly or by contract approve and certify programs established under this chapter.

(5) Require, as a condition of operation , that each program created or funded under this chapter be certified according to rules established by the Indiana Judicial Center.

During the entire period of time covered by this audit, and for many years preceding, the Clark County Alcohol and Drug Services Program has been subject to the oversight of the Indiana Judicial Center. During this entire time the financial records of the program have been open for purposes of such oversight. Oversight periodically has included on-site visits by teams of trained evaluators and comprehensive review of program records.

The specialized knowledge, experience and credentials of the Indiana Judicial Center and especially its court alcohol and drug program advisory committee, IC 12-23-14-13 (g) are superior to the general knowledge, experience and credentials of the State Board of Accounts auditors in determining what expenditures by a local alcohol and drug program are contrary to statutory authority. The State Board of Accounts should defer to the Indiana Judicial Center's certification process to ensure compliance with appropriate limits on the scope of a court-sponsored alcohol and drug program's activities.

During the entire period of time covered by this audit the Clark County Alcohol and Drug Services Program has remained a certified program in good standing by the Indiana Judicial Center. If the Indiana Judicial Center subscribed to the State Board of Accounts narrow and unrealistic opinion of what expenditures may be legally made from this fund, the Judicial Center could not have repeatedly re-certified the local program.

The certification of the Clark County Alcohol and Drug Program by the Indiana Judicial Center is consistent with the position of the two successive supervising judges of the program, the administrative actions of all Clark County Auditors over the last twenty years, and the appropriations authorized by a majority of Clark County Councilpersons over the last twenty years.

Statutory Interpretation Errors
In The State Board of Account's Analysis
Of Expenditures "unrelated to the
Alcohol and Drug program services."

IC 12-23-14-6 states:

(a) A program may provide, for eligible individuals, a range of necessary intervention services, including the following:
(1) Screening for eligibility and other appropriate services
(2) Clinical Assessment
(3) Education
(4) Referral
(5) Service coordination and case management.

(4)

Under the board's narrow and unrealistic view the phrase "intervention services" excludes any possibility of funding for services for prevention of drug or alcohol abuse because, in their view, intervention and prevention are mutually exclusive categories. The American Heritage College Dictionary includes the plain everyday meaning of "intervene" as, "to come in or between so as to hinder or alter an action."

Thus, an intervention may "come between" an individual at risk for drug or alcohol addiction, because of social or genetic challenges, and "hinder or alter," that is, prevent, the otherwise too probable occurrence of actual addiction. The term "intervention" may therefore encompass services aimed at prevention, such as the subsidy of youth sports leagues. The supervising judges have in good faith given the term "intervention" a broad and reasonable interpretation to enable them to "intervene" for the good of persons at risk of addiction in our community.

When the statute says that a "range of services" can be offered by the court, "including the following." it clearly does not mean to limit the range of services to only those five that are then listed. The five listed services are illustrative only. The wording and structure of the statute itself necessarily implies that other services not listed are also authorized. The statute wisely provides for the exercise of local discretion and initiative. If the author of the statute had assumed he could name every conceivable beneficial service, he could have easily written the statute to say, "necessary intervention services consist of and are limited to the following."

The State Board of Accounts cannot use IC 12-23-14-6 to define and limit the scope of services properly related to the alcohol and drug services program because the statute is clearly intended to be open-ended. The list of five services presented is illustrative only, not exclusive or prohibitory. The statute clearly contemplates the provision of other services to be developed at local discretion.

In substituting its opinion of what is a "financial activity" properly "related to the alcohol and drug services program," for the opinion of the supervising judges, the board also overlooks the general grant of local discretion in program operation afforded by **IC 12-23-14-3.** That law states: **"The court may establish uniform rules and may make special orders and rules as necessary."**

IC 12-23-14-4 has been construed by the supervising judge from 1985 through 2008 as follows:

IC 36-1-3-9 states: The area inside the boundaries of a county comprises its territorial jurisdiction. All services have been delivered to and for the benefit of individuals within this territorial jurisdiction. The court has potential personal jurisdiction over all persons within this territorial jurisdiction. Addicted persons and persons at risk of addiction are among those most likely to become subject to the personal jurisdiction of the court.

(5)

Nevertheless, the alcohol and drug program exercises no coercive authority over any individual not personally subject to the jurisdiction of the court. No services are forced upon an individual not subject to the personal jurisdiction of the court. No fees are charged to any individual not subject to the personal jurisdiction of the court. In all these senses, the program is not open to individuals not actually subject to the personal jurisdiction of the court.

However, a constraint upon the exercise of coercive authority is not the same as a constraint upon giving help where it is needed and requested. There is in the latter instance no danger of the abuse of coercive government power. Rightly or wrongly but certainly in good faith, the supervising judge has not viewed **IC 12-23-14-4** as a barrier to financially assisting schools, youth leagues, half-way houses, city and town governments, police agencies, the Clark County Drug Treatment Court, the NAACP Stepping Stone Project and the Clark County Youth Coalition, (which is the local coordinating council appointed by the Commission for a Drug Free Indiana) in their efforts to combat drug and alcohol abuse in Clark County.

The assistance that has been given these other agencies and units of government has all been **rationally related** to the over-riding purpose of the Clark County Alcohol and Drug Services Program as defined by its supervising judge for twenty-four years of its operation. Further, all these expenditures have been made in the spirit of the broad, comprehensive approach to fighting drug abuse expressed in **IC 5-2-6-16** and other sections of the Indiana Drug Free Communities Initiative and are consistent with the public purpose.

Where the audit purports to identify "a substantial amount of financial activity unrelated to the alcohol and drug services program," it is referring not to theft or loss but rather to the intelligent sharing of program receipts with other agencies, institutions and units of government all working together to combat alcohol and drug abuse. It is equivalent to raising the shout, **"Oh my God, the local people are cooperating with each other and we can't find any authority for them to do that!"** At worst, it may amount to an effort to shut-down an auxiliary revenue source for Clark County and convert county revenue to state revenue. At a time when the Clark County General Fund is in dire circumstances this would be an example of kicking the county when it is down, comparable to insisting that the expenses of the county building authority now be included within the levy contrary to many years of precedent and at the worst possible time.

The board's narrow view of the proper scope of the county alcohol and drug services program is comparable to rules of engagement so restrictive and impractical that the success of the mission is jeopardized. For example, the audit suggested that probation officers who also serve as county alcohol program personnel should document how much time they spend on strictly alcohol and drug related concerns versus general probation supervision duties.

In fact when dealing with an addicted offender the issues are so intertwined as to be inseparable. A probation officer cannot neatly detach the facts that (A) the probationer beats his wife, and (B) he is drunk when he does so. The intertwined problems must be approached holistically. The artificial and impractical distinction between probation services and alcohol and drug program services which this audit suggests would be counterproductive in the real world of fighting addictions.

Likewise, only an auditor inexperienced and untrained in helping persons achieve freedom from addiction would consider assisting a Twelve Step half-way house as "unrelated to the alcohol and drug services program." Such half-way houses and other recipients of program funds are essential partners in carrying out the mission of the alcohol and drug program. The program constantly uses these facilities as a more therapeutic and cost-efficient alternative to the county jail for offenders who wish to work to turn their lives around. In helping them to continue their work, we help ourselves. We serve our mutual clients. We honor the spirit of the Drug Free Communities Initiative that seeks to **ensure, "that COMPREHENSIVE alcohol and other drug programs are available throughout Indiana." IC 5-2-6-16.**

An alcohol and drug program of narrow, rigid, and limited scope, unwilling to cooperate or share its resources with partners, could never help achieve this public purpose. Yet it is only by postulating such a narrow, rigid, limited and selfish program as its favored model that the audit can reach its unrealistic conclusion that a great amount of money has been spent on "unrelated" purposes. The assistance given to other units of local government and to non-profit non-governmental institutions has been rationally related to the mission of the Clark County Alcohol and Drug Services Program, which is essentially the same mission as that of the Drug Free Communities initiative. The cooperation and resource sharing noted in the audit should be commended rather than condemned. That any local official should be threatened with the prospect of a civil lawsuit as a result of such cooperation is perverse.

END OF SEVEN PAGES
OF RESPONSE
TO THAT PORTION
OF CONFIDENTIAL DISCUSSION DRAFT
LABELED "PROGRAM FINANCIAL ACCOUNTABILITY'
AND CLAIMING
"A SUBSTANTIAL AMOUNT OF FINANCIAL ACTIVITY
UNRELATED TO THE ALCOHOL AND DRUG
SERVICES PROGRAM.

(RESPONSES TO OTHER SECTIONS SEPARATELY PAGINATED

STATE OF INDIANA
CLARK SUPERIOR COURT NO. 3
4TH JUDICIAL CIRCUIT
CLARK COUNTY, INDIANA

CLARK SUPERIOR COURT NO. 3
CLARK COUNTY GOVERNMENT BUILDING
501 E. COURT AVENUE
JEFFERSONVILLE, IN 47130
(812) 285-6316
Fax (812) 285-6284

JOSEPH P. WEBER
JUDGE

OFFICIAL RESPONSE
STATE BOARD OF ACCOUNTS

January 3, 2012

State Board of Accounts
Attention: Ron Robertson
348 Muriel Drive
Scottsburg, IN 47170

RE: Clark Superior Court #3
Clark County Drug/Alcohol Services
Clark County Driver Improvement Program

For some two decades prior to my tenure as Judge of the Clark Superior Court #3, Clark County Drug and Alcohol Services have been funded by retaining a portion of each traffic infraction fine collected. The statutory premise for this arrangement was predicated on the stipulation that the Court, by way of its probation department, was providing drug and alcohol assessment and treatment upon request.

It is my understanding that the distribution of the funds was to be limited to use for "drug and alcohol intervention". The interpretation of what constituted intervention has varied over the years and has, at times, included the purchase of equipment for law enforcement (state, county, and local), prosecutor's office, funding for programs such as youth sports and activities, funding for local support organizations, Scouting, and school programs, as well as supplemental funding for probation for drug and alcohol offenders. Funds were also used to offset clerical and office expenses used to administer the CCADS program and the traffic division which processes the traffic infractions.

My first meeting with State Board as Judge of Clark Superior Court #3 was near the end of my first year in office, 2009. At that time I was made aware that the State Board had concerns regarding the nature

PROBATION DEPARTMENT
(812) 285-6322

TRAFFIC BUREAU
(812) 285-6320, 21 & 99

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of some expenditures. Upon the advice and opinion of the Board, I significantly reduced the scope and nature of the operating definition of "drug and alcohol intervention". Our expenditures and focus have since been on programs and facilities directly related to alcohol and drug treatment, such as Bliss House; a halfway house for women recovering from alcohol and drug addiction, Childplace; a facility with a residential accommodation for teens with alcohol and drug problems, Jerry Westmoreland's Jerry's House; a halfway house for men fighting alcohol and drug addiction; the Clark Superior Court #2 Drug Court, and a few other activities and programs which fit easily within a narrow definition of drug and alcohol intervention. At the suggestion of the Board, each of these entities has entered into a contract with CCADS whereby they will continue to accept defendants referred by the Courts as they are able. In return, the CCADS has continued to supplement the programs financially as funds have been available.

This report's opinion that the offer of drug and alcohol assessment made to each person who receives an infraction citation does not constitute "providing services", is a departure from the theory and practice under which CCADS has operated and been funded since its inception in 1981 in accordance with I.C. 12-23-14. Under certification, and periodic recertification from the Indiana Judicial Center, along with the periodic financial review of the State Board of Accounts, funding of the program has remained largely unchanged. The current opinion, contained in this report, explicitly opines that the CCADS/Court and Probation Department is not entitled to funding without providing actual assessment of individual offenders.

It is now, and has been during my past tenure as a Town Court Judge, my practice to comply with the legitimate advice and demands of the State Board of Accounts while protecting and representing the Court and office over which I preside. To that end I have consulted with the staff attorney at the Indiana Judicial Center who represents and advises drug and alcohol programs around the state. We have each reviewed the report and are of the opinion that, while there is a legitimate argument that the offer of services *does* itself constitute the provision of services, the Board's current opinion would, in all likelihood, prevail. I have also had the opportunity to review the report with counsel for the Clark County Commissioners and the Clark County Council. Each has expressed an interest in pursuing continued funding. They have informed me that they will explore, among other options; revision of CCADS and its criteria for participation in the program; they may seek an opinion from the Indiana Attorney General's office that confirms their belief that the current funding of the program is compliant with governing statute; or seek legislative relief.

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It is therefore my intention, upon the advice of the State Board of Accounts, to cease the retention and use the fine portion of funds collected for traffic infractions to fund CCADS (Clark County Alcohol and Drug Services) at this time. I will instead remit infraction fines to the State. As is currently my policy, any expenditure made from CCADS funds will be for drug and alcohol intervention, and for the administration of the program itself. All expenditures will continue to be upon the approval and appropriation of the Clark County Council.

For a similar period of time the, Clark Superior Court, in cooperation with the Clark County Prosecutor's office, has provided the opportunity for traffic infraction Defendants to attend the Court's Driver Improvement Program (traffic school). The prosecutor would, upon completion of the class, cease prosecution of the Defendant's infraction. In compliance with the State Board's recommendations contained in the current report, I have consulted with Prosecutor Steven Stewart. The collections labeled as infraction judgments with the inception of the Odyssey Program, were in fact not judgments, but rather cases dismissed after completion of the Driver Improvement Program. Beginning today's date, the Court will no longer refer defendants to the Driver Improvement Program. Instead the Prosecutor will, at some time in the near future, initiate a deferral/dismissal program for offenders who meet certain criteria. Absent a ruling to the contrary, the old program will be discontinued.

While I do believe that the CCADS and Driver Improvement Programs have been beneficial to Clark County and its residents, I do not believe that it is the appropriate function of the Indiana Trial Courts to fund government, be it local, county, or state. I lament the loss of services and help to individuals here in Clark County, and know the positive influence of the CCADS program. I hope that County Government will be successful in its efforts to I procure these funds for use in Clark County.

Respectfully,

Joseph P. Weber
Judge, Clark Circuit Court #3

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