

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

AUDIT REPORT

OF

CLERK OF THE CIRCUIT COURT

LAKE COUNTY, INDIANA

January 1, 2011 to December 31, 2011



**FILED**  
09/21/2012



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COUNTY OFFICIALS

<u>Office</u>	<u>Official</u>	<u>Term</u>
Clerk	Michael A. Brown	01-01-10 to 12-31-13
President of the County Council	Ted Bilski	01-01-11 to 12-31-11
	Jerome A. Prince	01-01-12 to 12-31-12
President of the Board of County Commissioners	Roosevelt Allen, Jr.	01-01-11 to 12-31-11
	Gerry J. Scheub	01-01-12 to 12-31-12



**STATE OF INDIANA**  
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TO: THE OFFICIALS OF LAKE COUNTY

We have audited the records of the Clerk of the Circuit Court for the period from January 1, 2011 to December 31, 2011, and certify that the records and accountability for cash and other assets are satisfactory to the best of our knowledge and belief, except as stated in the Audit Results and Comments. The financial transactions of this office are reflected in the Annual Report of Lake County for the year 2011.

STATE BOARD OF ACCOUNTS

July 11, 2012

CLERK OF THE CIRCUIT COURT  
LAKE COUNTY  
AUDIT RESULTS AND COMMENTS

**INTERNAL CONTROLS OVER FINANCIAL REPORTING**

The Lake County Clerk of the Circuit Court does not have the adequate internal controls over financial reporting that would facilitate the preparation of accurate and complete financial reports. The Clerk's financial transactions are accounted for in an Agency Fund in the Lake County Annual Report. The fund includes all receipts and disbursements of the Clerk, as well as the cash balance due to the County and the State, and items held in trust for others.

The Clerk's information contained in the 2011 Lake County Annual Report (CAR) contained numerous errors and omissions which required audit adjustments. The Clerk of the Circuit Court has offices in multiple locations (Crown Point, East Chicago, Gary and Hammond) and divisions (Civil, Small Claims, Criminal, and Traffic) within these locations. These offices and divisions were responsible for reporting their individual cash and investment balances as of December 31, 2011, as well as their receipts and disbursements for 2011 to the Financial Manager in the Crown Point office. The individual offices' and divisions' reports are combined and reported in total to the County Auditor. The total cash and investments reported on the 2011 CAR was \$19,210,027; the audited cash and investments balance as of December 31, 2011, was \$14,913,004 resulting in a difference of \$4,297,023. Identified errors that contributed to the differences included the reporting of depository balances instead of reconciled record balances and the responsible employees not knowing what amounts should be reported.

The Clerk did not ensure that employees had the adequate training to prepare complete and accurate financial reports. In addition, there was a lack of management oversight of the financial report before it was filed with the County Auditor and the state. Adequate internal control over financial reporting requires that employees understand the importance of complete and accurate financial reporting and that they have the requisite knowledge and skills to prepare them. In addition, adequate internal control requires sufficient supervision and oversight by management and the governing bodies to ensure complete and accurate financial reporting.

Indiana Code 36-2-2-19 concerning annual statement of county's receipts and expenditures, states: "At its second regular meeting each year, the executive shall make an accurate statement of the county's receipts and expenditures during the preceding calendar year . . ."

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 Clerks of the Circuit Courts of Indiana, Chapter 13)

**ACCOUNTING FOR INVESTMENTS**

The Clerk invests excess funds into savings accounts or higher interest-bearing investments. These investments are made from "total monies on deposit" and have not been accounted for consistently or accurately among the several offices and divisions of the Clerk. Investments made from "total monies on deposit" should not be recorded in the Account Balance Listing (ABL), the approved form which replaces the prescribed Cash Book. Six of the seven offices and divisions which had investments incorrectly recorded these investments; a total of \$2,925,000 was reported as positive amounts and \$455,000 was reported as negative investments. These errors and inconsistencies resulted in total outstanding trust items to be understated or overstated at many offices and divisions of the Clerk.

CLERK OF THE CIRCUIT COURT  
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AUDIT RESULTS AND COMMENTS  
(Continued)

In addition, three of the offices and divisions of the Clerk used the incorrect amount of invested funds in their reconcilements of the depository balances to the record balances which resulted in inaccurate reconciled balances each month. Only \$2,355,000 of the \$8,355,000 in funds invested from "total monies on deposit" was used in the cash reconcilements.

When an investment is made from "total monies on deposit," the check issued by the clerk will not be posted as a disbursement in the cash book. This is for the reason that funds are not actually disbursed but are merely transferred to an investment account. No entries will be made in the upper portion of the clerk's cash book and daily balance record. However, the investment purchased should be shown in the daily cash reconcilment section of the clerk's cash book and daily balance record . . . (Accounting and Uniform Compliance Guidelines Manual for Clerks of the Circuit Courts of Indiana, Chapter 9)

***INTERNAL CONTROLS AND BANK RECONCILIATIONS***

The Clerk's offices have been using Court View (a case management and financial software program) for several years. All financial transactions are processed through Court View which produces the official records. However, only five of the Clerk's eight divisions reconcile their adjusted bank balances to Court View's Account Balance Listing (ABL) cash balance. Other divisions reconcile to a manual ledger or Excel (a commercially prepared software program) spreadsheet instead of the ABL. Also, three of the eight divisions used the incorrect investment balance in their monthly reconcilements. Differences in the adjusted bank balance to the record balance were assumed to be credit card payments in transit in some divisions; therefore, errors are not always detected and/or corrected. Many prior year adjustments on the bank reconcilments have been used for months or even years as reconciling items without research or correction. We noted the following additional deficiencies at the various Clerks' divisions:

*Crown Point*

*Civil*

A manual Cash Book/Ledger is maintained and used to reconcile to the adjusted bank balance instead of the ABL which is the official record. As of December 31, 2011, the reconciled bank balance was \$3,054.10 in excess of the manual Cash Book balance. The ABL balance does not include a \$1,100,000 investment and is \$87,140.35 in excess of the manual Cash Book balance after adjusting for the investment. No attempt was made to research the difference between the official record and the manual Cash Book.

*Criminal*

As of December 31, 2011, the reconciled bank balance was only \$1,100 in excess of the ledger balance (ABL) after corrections were made to recognize the \$2,825,000 investment balance not included in the reconcilment.

*Traffic*

An Excel (commercially purchased software) spreadsheet is maintained and used to reconcile to the adjusted bank balance instead of the ABL which is the official record. This spreadsheet is prepared by the Traffic Division bookkeeper from daily receipts and disbursements generated by Court View and from the related bank activity (deposits, credits, and withdrawals). The spreadsheet also does not properly include investments of \$3,075,000. As of December 31, 2011, the

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adjusted bank balance and the Excel spreadsheet were \$86,207.84 less than the ledger balance (ABL) after adjusting for the investments. The difference noted between the ABL and the units Excel spreadsheet plus the investment balance during the 2010 audit was \$88,417.31. No attempt was made to research the difference between the official record and the Excel spreadsheet.

Officials and employees are required to use State Board of Accounts prescribed or approved forms in the manner prescribed. (Accounting and Uniform Compliance Guidelines Manual for Clerks of the Circuit Courts, Chapter 13)

At all times, the manual and/or computerized records, subsidiary ledgers, control ledger, and reconciled bank balance should agree. If the reconciled bank balance is less than the subsidiary or control ledgers, then the responsible official or employee may be held personally responsible for the amount needed to balance the fund. (Accounting and Uniform Compliance Guidelines Manual for Clerks of the Circuit Courts, Chapter 13)

*East Chicago*

As of December 31, 2011, the reconciled bank balance for the East Chicago Clerk's office exceeded the ABL by \$102,854.48. Incorrect recording of an investment from "total monies on deposit" accounted for \$100,000 of the difference. The remaining \$2,854.48 was not identified and was an accumulation of many years of uncorrected errors.

At all times, the manual and/or computerized records, subsidiary ledgers, control ledger, and reconciled bank balance should agree. If the reconciled bank balance is less than the subsidiary or control ledgers, then the responsible official or employee may be held personally responsible for the amount needed to balance the fund. (Accounting and Uniform Compliance Guidelines Manual for Clerks of the Circuit Courts, Chapter 13)

*Gary*

A manual Cash Book/Ledger is maintained and used to reconcile to the adjusted bank balance instead of the ABL which is the official record. As of December 31, 2011, the manual Cash Book balance was \$165,376.23 greater than the ABL. No attempt was made to research the difference between the official record and the manual Cash Book.

Credit card receipts are verified to subsequent bank deposits; however, other miscellaneous adjustments totaling \$3,885.36 were used on the December 31, 2011 bank reconciliation. This miscellaneous adjustment amount changes monthly in order to "balance" to the manual Cash Book. The change in the adjustment amount indicates errors in the current month that should be investigated and corrected.

Officials and employees are required to use State Board of Accounts prescribed or approved forms in the manner prescribed. (Accounting and Uniform Compliance Guidelines Manual for Clerks of the Circuit Courts, Chapter 13)

At all times, the manual and/or computerized records, subsidiary ledgers, control ledger, and reconciled bank balance should agree. If the reconciled bank balance is less than the subsidiary or control ledgers, then the responsible official or employee may be held personally responsible for the amount needed to balance the fund. (Accounting and Uniform Compliance Guidelines Manual for Clerks of the Circuit Courts, Chapter 13)

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LAKE COUNTY  
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*Hammond*

The Clerk's office in Hammond includes three divisions: Civil, Small Claims, and Traffic. The bank reconcilements of the three divisions included reconciling items that were noted prior to 2008. Most of these items could not be verified to supporting documentation. Those items that were identified and verified in prior audits were still not corrected as of December 31, 2011. The Hammond office reconciles to the ABLs for each division; however, unidentified reconciling items with no documentation resulted in various cash shorts and longs. In addition, credit card receipts are not verified to actual deposits on a consistent basis. The Small Claims reconciled bank balance was \$1,791.99 less than the ABL; the Civil reconciled bank balance was \$11,977.07 in excess of the ABL; and the Traffic reconciled bank balance was \$2,049.43 in excess of the ABL.

At all times, the manual and/or computerized records, subsidiary ledgers, control ledger, and reconciled bank balance should agree. If the reconciled bank balance is less than the subsidiary or control ledgers, then the responsible official or employee may be held personally responsible for the amount needed to balance the fund. (Accounting and Uniform Compliance Guidelines Manual for Clerks of the Circuit Courts of Indiana, Chapter 13)

**OLD OUTSTANDING CHECKS**

Our review of the bank reconcilements as of December 31, 2011, revealed checks outstanding in excess of two years as follows:

Office	Division	Years Issued	Amount
Crown Point	Criminal	2006-2008	\$ 28,130.21
Crown Point	Traffic	2005-2007	351.00
Crown Point	Child Support	1999-2006	820.34
Hammond	Civil	2007-2008	364.25
Hammond	Small Claims	2007-2008	10,564.85
Hammond	Traffic	2007-2008	7,806.65

Indiana Code 5-11-10.5-2 states in part: "All warrants or checks drawn upon public funds of a political subdivision that are outstanding and unpaid for a period of two (2) or more years as of the last day of December of each year are void. . . ."

Indiana Code 5-11-10.5-3 states:

"Not later than March 1 of each year, the treasurer of each political subdivision shall prepare or cause to be prepared a list in triplicate of all warrants or checks that have been outstanding for a period of two (2) or more years as of December 31 of the preceding year. The original copy of each list shall be filed with the board:

- (1) of finance of the political subdivision; or
- (2) the fiscal body of a city or town.

CLERK OF THE CIRCUIT COURT  
LAKE COUNTY  
AUDIT RESULTS AND COMMENTS  
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The duplicate copy shall be transmitted to the disbursing officer of the political subdivision. The triplicate copy of each list shall be filed in the office of the treasurer of the political subdivision. If the treasurer serves also as the disbursing officer of the political subdivision, only two (2) copies of each list need be prepared or caused to be prepared by the treasurer."

Indiana Code 5-11-10.5-5 states:

"(a) Upon the preparation and transmission of the copies of the list of the outstanding warrants or checks, the treasurer of the political subdivision shall enter the amounts so listed as a receipt into the fund or funds from which they were originally drawn and shall also remove the warrants or checks from the record of outstanding warrants or checks.

(b) If the disbursing officer does not serve also as treasurer of the political subdivision, the disbursing officer shall also enter the amounts so listed as a receipt into the fund or funds from which the warrants or checks were originally drawn. If the fund from which the warrant or check was originally drawn is not in existence, or cannot be ascertained, the amount of the outstanding warrant or check shall be receipted into the general fund of the political subdivision."

***TRANSACTION RECORDING***

Interest due on court ordered garnishments in the Small Claims/Garnishments division was not entered in the records of the Clerk of the Circuit Court. The amount of the original garnishment was changed to include interest when the debt is paid off. Until then, the garnishment amount is equal to the judgment amount plus court costs. Therefore, amounts owed per the Court View system did not always agree with the calculated amounts due using the amount of the court ordered garnishment plus court costs net of payments received. Staff in the Clerk's Small Claims/Garnishments division attributed the differences to the interest charged; however, the amount of the differences is not identified separately or verified to a supporting entry in the computerized docket. The computer system in use does not calculate or verify the interest. Interest must be computed manually by the staff which increases the potential for errors in calculating interest on small claims garnishments. In addition, when the Clerk's staff calculates the interest, it is based on the original judgment for the entire period; not on the declining balance as payments are received. A similar comment appeared in prior reports.

All financial transactions pertaining to the governmental unit should be recorded in the records of the governmental unit. (Accounting and Uniform Compliance Guidelines Manual for Clerks of the Circuit Courts of Indiana, Chapter 13)

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 Clerks of the Circuit Courts of Indiana, Chapter 13)

***FINES AND FEES NOT CHARGED IN ACCORDANCE WITH STATUTES***

An offender of certain criminal misdemeanors has the option of entering a Pretrial Diversion Program. Under this program the offender must abide by certain terms as agreed to in a formal written agreement between the County Prosecutor and the offender. The offender is then required to pay fees allowed by Indiana statutes as follows:

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Deferred Prosecution Fee \$120  
Public Defense Administration Fee \$5  
Judicial Insurance Adjustment Fee \$1  
Judicial Salaries Fee \$19  
Court Administration Fee \$5  
DNA Sample Processing Fee \$2  
Document Storage Fee \$2  
Highway Worksite Zone Fee \$0.50 (for a driving offense)  
Automated Recordkeeping Document Fee \$5  
Pretrial Diversion Fee:  
    Initial User's fee \$50 and  
    Monthly user's fee \$10 (for each month the person remains in the program; at least 6 months)

Several cases from the Hammond Clerk's office were observed in which offenders who chose the Pretrial Diversion Program were charged only the Pretrial Diversion Fees; \$110 for 6 months or \$170 for 12 months. We are unaware of any circumstances under the statutes in which an offender can enter into a Pretrial Diversion Program, without paying any other statutorily required fees.

Indiana Code 33-39-1-8 states in part:

- ". . . (d) A prosecuting attorney may withhold prosecution against an accused person if:
- (1) the person is charged with a misdemeanor;
  - (2) the person agrees to conditions of a pretrial diversion program offered by the prosecuting attorney;
  - (3) the terms of the agreement are recorded in an instrument signed by the person and the prosecuting attorney and filed in the court in which the charge is pending; and
  - (4) the prosecuting attorney electronically transmits information required by the prosecuting attorneys council concerning the withheld prosecution to the prosecuting attorneys council, in a manner and format designated by the prosecuting attorneys council.
- (e) An agreement under subsection (d) may include conditions that the person:
- (1) pay to the clerk of the court an initial user's fee and monthly user's fees in the amounts specified in IC 33-37-4-1; . . ."

Indiana Code 33-37-4-1 states in part:

"(a) For each action that results in a felony conviction under IC 35-50-2 or a misdemeanor conviction under IC 35-50-3, the clerk shall collect from the defendant a criminal costs fee of one hundred twenty dollars (\$120).

(b) In addition to the criminal costs fee collected under this section, the clerk shall collect from the defendant the following fees if they are required under IC 33-37-5: . . .

CLERK OF THE CIRCUIT COURT  
LAKE COUNTY  
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- (9) A highway work zone fee (IC 33-37-5-14).
- (10) A deferred prosecution fee (IC 33-37-5-17).
- (11) A document storage fee (IC 33-37-5-20).
- (12) An automated record keeping fee (IC 33-37-5-21).
- (15) A public defense administration fee (IC 33-37-5-21.2).
- (16) A judicial insurance adjustment fee (IC 33-37-5-25).
- (17) A judicial salaries fee (IC 33-37-5-26).
- (18) A court administration fee (IC 33-37-5-27).
- (19) A DNA sample processing fee (IC 33-37-5-26.2).

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

- (1) an initial user's fee of fifty dollars (\$50); and
- (2) a monthly user's fee of ten dollars (\$10) for each month that the person remains in the pretrial diversion program. . . ."

Indiana Code 33-37-5-17 states:

"(a) This section applies to actions in which the court defers prosecution under IC 33-39-1-8.

(b) In each action in which prosecution is deferred, the clerk shall collect from the defendant a deferred prosecution fee of one hundred twenty dollars (\$120) for court costs."

**BOND FORFEITURE**

Indiana Code requires the court to forfeit the bond of a defendant who fails to appear in court. The amount of the forfeited bond shall be transferred to the state common school fund less any court fees retained by the clerk or any amounts collected in satisfaction of a judgment. In Lake County a bond is not forfeited; instead, a warrant is issued for the defendant's arrest. If the defendant is arrested within five years the bond will be used to pay fines and fees, court cost, and attorney fees. If the defendant is not arrested within five years the bond is remitted to the state as unclaimed property where the defendant could potentially recover the bond amount.

CLERK OF THE CIRCUIT COURT  
LAKE COUNTY  
AUDIT RESULTS AND COMMENTS  
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Indiana Code 35-33-8-7 states:

"(a) If a defendant:

- (1) was admitted to bail under section 3.2(a)(2) of this chapter; and
- (2) has failed to appear before the court as ordered;

the court shall, except as provided in subsection (b) or section 8(b) of this chapter, declare the bond forfeited not earlier than one hundred twenty (120) days after the defendant's failure to appear and issue a warrant for the defendant's arrest.

(b) In a criminal case, if the court having jurisdiction over the criminal case receives written notice of a pending civil action or unsatisfied judgment against the criminal defendant arising out of the same transaction or occurrence forming the basis of the criminal case, funds deposited with the clerk of the court under section 3.2(a)(2) of this chapter may not be declared forfeited by the court, and the court shall order the deposited funds to be held by the clerk. If there is an entry of final judgment in favor of the plaintiff in the civil action, and if the deposit and the bond are subject to forfeiture, the criminal court shall order payment of all or any part of the deposit to the plaintiff in the action, as is necessary to satisfy the judgment. The court shall then order the remainder of the deposit, if any, and the bond forfeited.

(c) Any proceedings concerning the bond, or its forfeiture, judgment, or execution of judgment, shall be held in the court that admitted the defendant to bail.

(d) After a bond has been forfeited under subsection (a) or (b), the clerk shall mail notice of forfeiture to the defendant. In addition, unless the court finds that there was justification for the defendant's failure to appear, the court shall immediately enter judgment, without pleadings and without change of judge or change of venue, against the defendant for the amount of the bail bond, and the clerk shall record the judgment.

(e) If a bond is forfeited and the court has entered a judgment under subsection (d), the clerk shall transfer to the state common school fund:

- (1) any amount remaining on deposit with the court (less the fees retained by the clerk);  
and
- (2) any amount collected in satisfaction of the judgment.

(f) The clerk shall return a deposit, less the administrative fee, made under section 3.2(a)(2) of this chapter to the defendant, if the defendant appeared at trial and the other critical stages of the legal proceedings."

CLERK OF THE CIRCUIT COURT  
LAKE COUNTY  
EXIT CONFERENCE

The contents of this report were discussed on July 11, 2012, with Michael A. Brown, Clerk; Marilyn Hrnjak, Executive Chief Deputy; and Rebecca Dowling, Financial Director. The official response has been made a part of this report and may be found on pages 13 and 14.

**MICHAEL A. BROWN  
CLERK LAKE CIRCUIT/SUPERIOR COURT  
2293 NORTH MAIN STREET  
CROWN POINT, INDIANA 46307**

**LAKE COUNTY CLERK'S CORRECTIVE ACTION PLAN  
JULY 19, 2012**

**INTERNAL CONTROLS OVER FINANCIAL PLANNING**

The Lake County Clerk has addressed the issue of adequacy of internal controls as it affects the various office locations, namely Crown Point, Gary, Hammond, and East Chicago. We intend to more aggressively train each financial officer and set up monthly sessions of training and review of procedures with an eye towards consistency and accuracy at each of our offices. Rebecca Dowling the Chief Financial Officer will continue to be responsible for the training of all financial personnel and will make the monthly visits to the outer offices as well as to the divisions in Crown Point. The issue of reporting depository balances instead of reconciled record balances will be addressed at the monthly meeting and each financial officer will be retrained until he/she understands this concept. If we are able to send the financial officers to training seminars outside of the office, we will do so. In the event that these employees are unable to be trained, they will if necessary, be replaced.

**ACCOUNTING FOR INVESTMENTS**

As stated previously retraining financial personnel will become a priority and will be more aggressive. We believe this will go a long way in correcting the incorrect recording of investments and create accurate reconciled balances.

**INTERNAL CONTROLS AND BANK RECONCILIATIONS**

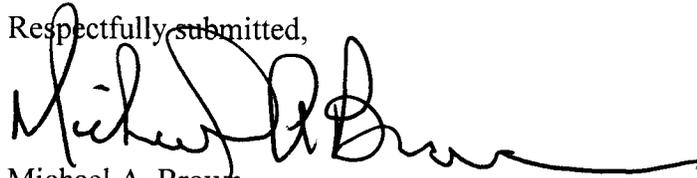
The three Clerk's offices who are not using the required Court View Account Balance Listing cash balance will begin to do so. Although it will be difficult, a serious effort to bring these offices into compliance with SBOA required accounting practices will be made. With regard to Traffic issues, it should be noted that on April 18, 2012 a correction to this department's manual records was made with traffic checks and a special deposit.

**OUTSTANDING CHECKS**

The outdated checks will be voided and credited to the appropriate case.

With regard to the matter of Fines and Fees Not Charged and Bond Forfeitures, we understand that the Prosecutor has been apprised of this, and the errors will be corrected.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael A. Brown". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Michael A. Brown

Clerk of the Lake Circuit and Superior Courts

By Marilyn Hrnjak

Executive Chief Deputy Clerk