



DISTRICT ATTORNEY DISTRICT 22

Statutory Report

For the Period of July 1, 2015 through June 30, 2017

Cindy Byrd, CPA
State Auditor & Inspector

**PAUL SMITH, DISTRICT ATTORNEY
DISTRICT 22**

**STATUTORY REPORT
BOGUS CHECK RESTITUTION PROGRAM
SUPERVISION PROGRAM
SUPERVISION 991 PROGRAM
DRUG ASSET FORFEITURE PROGRAM**

FOR THE PERIOD OF JULY 1, 2015 THROUGH JUNE 30, 2017



Cindy Byrd, CPA | State Auditor & Inspector

2300 N. Lincoln Blvd., Room 123, Oklahoma City, OK 73105 | 405.521.3495 | www.sai.ok.gov

March 14, 2019

Paul Smith, District Attorney
District 22
Pontotoc County Courthouse
Ada, Oklahoma 74821

Transmitted herewith is the statutory report for the District Attorney of District 22, Pontotoc, Seminole, and Hughes County, Oklahoma (the District) for the period of July 1, 2015 through June 30, 2017.

A report of this type is critical in nature; however, we do not intend to imply that there were not commendable features in the present accounting and operating procedures of the District.

The goal of the State Auditor and Inspector is to promote accountability and fiscal integrity in state and local government. Maintaining our independence as we provide this service to the taxpayers of Oklahoma is of utmost importance.

We wish to take this opportunity to express our appreciation for the assistance and cooperation extended to our office during our engagement.

Sincerely,

A handwritten signature in blue ink that reads "Cindy Byrd". The signature is fluid and cursive, with the first and last names clearly legible.

CINDY BYRD, CPA
OKLAHOMA STATE AUDITOR & INSPECTOR



**PAUL SMITH, DISTRICT ATTORNEY
DISTRICT 22
STATUTORY REPORT
FOR THE PERIOD OF JULY 1, 2015 THROUGH JUNE 30, 2017**

TABLE OF CONTENTS

Introductory Information	ii
Statutory Report of State Auditor and Inspector	1
Schedule of Findings and Responses	3

**PAUL SMITH, DISTRICT ATTORNEY
DISTRICT 22
STATUTORY REPORT
FOR THE PERIOD OF JULY 1, 2015 THROUGH JUNE 30, 2017**

INTRODUCTORY INFORMATION

BOGUS CHECK RESTITUTION PROGRAM

The bogus check program was created by the Oklahoma Legislature in 1982 as a special type of deferred prosecution program and every district attorney is required to operate a bogus check program. The program provides an alternative way to handle bogus check cases without any additional cost to courts, prosecutors, or the state prison system. The primary emphasis of the program is collecting restitution for the victim of the crime, rather than punishing the offender.

Bogus checks are a significant cost to business, a cost that is passed on to the consumer and paid by all citizens and taxpayers in the state. The bogus check program has been an effective way to address the economic problem caused by bogus checks. The program offers a way to address criminal conduct without sending a large number of offenders to state correctional facilities.

DISTRICT ATTORNEY SUPERVISION PROGRAM

The district attorney supervision program was created by the Oklahoma Legislature in 2005 as an alternative from supervision by the Department of Corrections. When the court imposes a deferred or a suspended sentence for any offense and does not order supervision by the Department of Corrections, the offender shall be required to pay the district attorney a monthly supervision fee. However, the legislation provides that in hardship cases, the district attorney shall expressly waive all or part of the fee.

DISTRICT ATTORNEY SUPERVISION 991 PROGRAM

The district attorney supervision 991 program was created by the Oklahoma Legislature in 2013. When the offender is *not* ordered supervision by the district attorney (as described above) “the offender shall be required to pay a fee to the district attorney’s office during the first two (2) years of probation to compensate the district for the costs incurred during the prosecution of the offender and for the additional work of verifying the compliance of the offender with the rules and conditions of his or her probation”. However, the legislation provides the district attorney may waive any part of this requirement in the best interests of justice.

DISTRICT ATTORNEY DRUG ASSET FORFEITURE PROGRAM

Most district attorneys in the state have a Drug Asset Forfeiture Fund. The fund is not subject to fiscal year limitations and is to be used for enforcement of controlled dangerous substance laws, drug abuse prevention and education, and is maintained by the District Attorney to be used at his or her discretion for those purposes. The revenues for said fund come from the proceeds of forfeited assets. Any cash, vehicles, real

**PAUL SMITH, DISTRICT ATTORNEY
DISTRICT 22
STATUTORY REPORT
FOR THE PERIOD OF JULY 1, 2015 THROUGH JUNE 30, 2017**

property, or other assets used in the commission of or acquired as a result of a crime as described in the Uniform Controlled Dangerous Substances Act is presumed to be forfeitable.

Asset forfeiture is an effective law enforcement tool used by local district attorneys to deprive criminals of their ill-gotten gains by seizing the proceeds of criminal activity and property used to facilitate crime. The proceeds of seized, forfeited assets make a substantial contribution to the investigation and prosecution of drug related offenses.

Statutory Report

Paul Smith, District Attorney
District 22
Pontotoc County Courthouse
Ada, Oklahoma 74821

For the purpose of complying with 74 O.S. § 212.E and 22 O.S. §§ 114, 991d, 991a (hh), and 63 O.S. § 2-506, we have performed the following procedures as they relate to the records of the District Attorney's programs for the period of July 1, 2015 through June 30, 2017.

Bogus Check, Supervision, and Supervision 991 Programs:

- Determine that internal controls are designed and operating over the collections and disbursement process.
- Examine fees to determine that the correct fees are assessed, receipted, and deposited in compliance with 28 O.S. § 153, 22 O.S. §§ 114, 991d, 991a (hh), and 19 O.S. § 215.11.
- Determine whether disbursements are used to defray the expenses of the District Attorney's office in accordance with 22 O.S. §§ 114, and whether disbursements are supported by approved claims, invoices, and verification that goods or services paid for were received.
- Determine whether the District Attorney reconciles all accounts with the County Treasurer's ledgers.
- Determine whether the District Attorney prepares and submits an annual report to the District Attorneys Council that shows total deposits and total disbursements for the Bogus Check Restitution Program, the Supervision Program, and the Supervision 991 Program.

Drug Asset Forfeiture Program:

- Determine that internal controls are designed and operating over the collections and disbursement process.
- Determine that the District Attorney maintains a true and accurate inventory of all property seized in accordance with 63 O.S. § 2-506.K.
- Review sale documentation for selected cases to determine whether forfeited assets were sold after due notice at public auction to the highest bidder in accordance with 63 O.S. §§ 2-506 and 2-508.
- Review the distribution of proceeds to determine the distribution was in accordance with court orders pursuant to 63 O.S. §§ 2-506.K and 2-508.
- Test disbursements to determine they are supported by approved claims, invoices, and independent verification that goods or services paid for were received.



- Determine if the District Attorney prepared and submitted an annual report to the District Attorneys Council showing the total deposits, total disbursements, beginning and ending balances in accordance with 63 O.S. § 2-506.L.3.
- Determine if the District Attorney reconciles account balances with the County Treasurer.

All information included in the financial records of the bogus check restitution program, supervision program, supervision 991 program, and the drug asset forfeiture program are the representation of the District Attorney for their respective district.

Our engagement was limited to the procedures performed above and was less in scope than an audit performed in accordance with auditing standards generally accepted in the United States of America. Accordingly, we do not express an opinion on any basic financial statement of Pontotoc, Seminole, or Hughes County.

Based on our procedures performed, we have presented our findings in the accompanying schedule.

This report is intended for the information and use of the District Attorney and the County Officials. However, this report is a matter of public record and its distribution is not limited.



CINDY BYRD, CPA
OKLAHOMA STATE AUDITOR & INSPECTOR

October 23, 2018

**PAUL SMITH, DISTRICT ATTORNEY
DISTRICT 22
STATUTORY REPORT
FOR THE PERIOD OF JULY 1, 2015 THROUGH JUNE 30, 2017**

SCHEDULE OF FINDINGS AND RESPONSES

Finding 2017-001 – Segregation of Duties Over the Bogus Check Restitution, Supervision Fee, Supervision Fee 991, and Drug Asset Forfeiture Programs (Repeat Finding)

Condition: Discussion with the District Attorney staff and observation of records indicated the District has designed policies and procedures to segregate the duties relating to accounting for the Bogus Check Restitution, Supervision Fee, Supervision Fee 991, and Drug Asset Forfeiture Programs.

However, upon review of those programs, policies and procedures to segregate duties in personnel within the District Attorney's programs indicated implementation of policies and procedures have not been completely accomplished.

Pontotoc County

A review of the procedural process regarding the Drug Asset Forfeiture (Drug Fund), Supervision Fee (Bouncer and Supervision accounts), and Bogus Check (Merchant and DA Fees) Programs indicated the same employee (for each account, respectively) prepared deposits, prepared and issued vouchers, maintained ledgers, and reconciled monthly to the County Treasurer. Indication that someone other than the preparer of the monthly reconciliations independently reviewed the documentation for completeness and accuracy when compared to the County Treasurer's records was not evidenced on documents reviewed.

In addition, policies and procedures over purchasing were not completely implemented in that one employee prepared purchase claims, signed claims, and registered and issued vouchers. The review of disbursements indicated the same employee signed the District Attorney's name for approval of the claim with his permission or instructed other employees to backdate and sign claims.

Seminole County

A review of the procedural process of the Bogus Check (Merchant) and Supervision Fee (CORD 2 account), and Supervision Fee 991 Programs indicated one employee received and entered payments and prepared and delivered deposits to the County Treasurer. Indication that someone other than the preparer reviewed the deposits for completeness and accuracy was not evidenced on documents reviewed.

Hughes County

A review of the procedural process of the Bogus Check (Merchant) and Supervision Fee (CORD 2 account), and Supervision Fee 991 Programs indicated one employee received and entered payments and prepared and delivered deposits to the County Treasurer. Indication that someone other than the preparer reviewed the deposits for completeness and accuracy was not evidenced on documents reviewed.

**PAUL SMITH, DISTRICT ATTORNEY
DISTRICT 22
STATUTORY REPORT
FOR THE PERIOD OF JULY 1, 2015 THROUGH JUNE 30, 2017**

Cause of Condition: Although the District Attorney has developed policies regarding internal controls, procedures have not been designed and completely implemented to provide evidence that documents have been reviewed for accuracy and completeness and duties have been segregated to provide assurance of safeguarding financial activities for the District Attorney Programs.

Effect of Condition: A single person having responsibility for more than one area of recording, authorization, custody of assets, and execution of transactions could result in unrecorded transactions, misstated financial reports, clerical errors, or misappropriation of funds not being detected in a timely manner.

Recommendation: The Oklahoma State Auditor and Inspector's Office (OSAI) recommends management be aware of these conditions and realize that concentration of duties and responsibilities in a limited number of individuals is not desired from a control point of view. The most effective controls lie in management's overseeing of office operations and a periodic review of operations. OSAI recommends management provide segregation of duties so that no one employee is able to perform all accounting functions. In the event that segregation of duties is not possible due to limited personnel, OSAI recommends implementing compensating controls to mitigate the risks involved with a concentration of duties. Compensating controls would include separating key processes and /or critical functions of the office and providing evidence on documents that management reviews and approves accounting functions.

Management Response:

District Attorney: The controls in place are clearly working because no accounting discrepancies or missing or embezzled funds are indicated. Deposits are in fact verified by the preparer and checked for accuracy and completeness by the Treasurer's office. You have properly identified the "reoccurring problem" in your recommendation section "due to limited personnel" and we in fact periodically do management review and approval of accounting functions as you have suggested. A lack of segregation of duties is easily explained by lack of personnel and a shortage of enough hands, minds and hearts to do any more than is humanly possible given the restraints of humanity and a limited budget.

We have over several years employed the suggestions of the OSAI to our procedures and practices and maintain the folder of "write-off's" for overpayments and adjustments recommended as a mitigating/compensating control. We have already undertaken policies and mandated procedures to fulfill this new suggested compensation or mitigation control. However, we might observe that the goal post to get this finding removed keeps on moving and increases the distance of when we might see this finding rendered moot; and what next will be required to reach the expected goal line.

Criteria: Demonstration of accountability and stewardship are goals used in evaluating management's accounting for funds. A basic component of adequate internal controls is the segregation of duties so that each accounting function is reviewed and approved by someone other than the preparer to deter the possibility of errors and irregularities occurring in the normal course of duties. To help ensure a proper accounting of funds and strong internal controls, the duties of receiving, receipting, recording, and depositing cash and checks should be separated among employees and the duties associated with the

PAUL SMITH, DISTRICT ATTORNEY
DISTRICT 22
STATUTORY REPORT
FOR THE PERIOD OF JULY 1, 2015 THROUGH JUNE 30, 2017

preparation and approval of claims and vouchers for payment of expenses should be separated among employees, including the approval of claims by management in a timely manner.

Finding 2017-002 – Internal Controls Over the Control Environment - Written Policies and Procedures for Bogus Check Restitution, Supervision Fee, and Supervision Fee 991 Programs (Repeat Finding)

Condition: The District Attorney has established written policies and procedures for the safeguarding and reporting of program funds. The review of District Attorney accounts and records, and the test of receipts, disbursements, cash balances, and information technology controls, indicated some weaknesses in the implementation of program internal controls in certain areas, which include the following:

Bogus Check Restitution Program

Pontotoc County

- The test of deposits for five (5) dates reflected (2) to four (4) days had lapsed before payments were deposited with the County Treasurer, resulting in funds received not being deposited in a timely manner.

The test of (10) disbursements reflected the following exceptions:

- Six (6) disbursements did not have indication that goods and/or services had been received by the District (i.e., receiving reports, signature of receipt, etc.).
- Five (5) of the ten (10) disbursements tested were not properly approved by management.

Hughes County

The test of (10) disbursements reflected the following exceptions:

- Three (3) disbursements tested did not have indication that goods and/or services had been received by the District (i.e., receiving reports, signature of receipt, etc.).
- Two (2) disbursements tested were not properly approved by management.

Supervision Fee Program

Pontotoc County

- The test of deposits for five (5) dates reflected two (2) to four (4) days had lapsed before payments were deposited with the County Treasurer resulting in funds received not being deposited in a timely manner.

PAUL SMITH, DISTRICT ATTORNEY
DISTRICT 22
STATUTORY REPORT
FOR THE PERIOD OF JULY 1, 2015 THROUGH JUNE 30, 2017

Supervision Fee 991 (Prosecution Reimbursement) Program

Pontotoc County

- The test of deposits for five (5) dates reflected two (2) to five (5) days had lapsed before payments were deposited with the County Treasurer resulting in funds received not being deposited in a timely manner.
- Evidence of supporting documentation attached to validate the expense for reimbursements for overpayments and deposit errors were not performed by the District staff.

Cause of Condition: Although, the District Attorney's office has established written policies, procedures have not been fully implemented to ensure payments are properly receipted and deposited in a timely manner, and to ensure disbursements are properly approved by management, have supporting documentation, and evidence of goods and/or services being received by the District.

Effect of Condition: These conditions could result in employee error for the reporting and documentation of the collection of payments, defendant file maintenance, restitution payments, disbursement transactions, and the accounting of funds. Also, without proper receiving information, invoices could be processed for goods/services that were not received by the District or that were not for the appropriate use of District programs.

Recommendation: OSAI recommends management implement written policies and procedures for the accounting of program funds and the maintenance of client files. Implementing this recommendation would ensure that all employees are aware of their duties and responsibilities and that each program is properly accounted for and ensure compliance with applicable state statutes. Such policies should include the following:

- Guidelines for the oversight of the daily collection process and the depositing of funds.
- Guidelines for the oversight of disbursements regarding supporting documentation with indication that the goods/services were received by the District and the invoice is ready to be paid.
- Guidelines for the oversight of authorization and approval by management of all disbursements.

Furthermore, we recommend management identify, analyze, and manage risks. Management should also assess the quality and effectiveness of the organization's internal control process over time and implement appropriate controls and oversight of each program's daily transactions and recordkeeping. This will ensure that management has taken the necessary steps in safeguarding the District's assets.

Management Response:

District Attorney: Written policies are in place as you have acknowledged. We make every effort to document all expenditures with approval of management and document receipt of goods and services. Thank you for identifying, by plain and simple language, that on a specific date a receipt was found missing

**PAUL SMITH, DISTRICT ATTORNEY
DISTRICT 22
STATUTORY REPORT
FOR THE PERIOD OF JULY 1, 2015 THROUGH JUNE 30, 2017**

or on a specific date the approval was not documented. These oversights have already been corrected and we will work hard to make sure that the same are not repeated.

Criteria: Basic components of effective internal controls include ensuring written policies and procedures for performing essential duties are adequately documented to ensure compliance with state statutes, to facilitate efficient transition of duties when changes in personnel occur, and to obtain supporting documentation for transactions and items affecting management decisions and to safeguard data.

Finding 2017-003 – Internal Controls Over the District Attorney Drug Fund (Drug Asset Forfeiture) Program (Repeat Finding)

Condition: The District Attorney has established written policies and procedures for the safeguarding and reporting of program funds. The review of District Attorney accounts and records, and the test of receipts, disbursements, cash balances, and the status of forfeiture case activity indicated some weaknesses in the implementation of program internal controls in certain areas, which include the following:

Pontotoc County

- Evidence of an inventory of seized and/or forfeited property being maintained by the District was not documented.

The test of ten (10) disbursements reflected the following exceptions:

- Four (4) disbursements did not have indication goods and/or services had been received by the District (i.e., receiving reports, signature of receipt, etc.).
- Three (3) of the ten (10) disbursements tested were not properly approved by management.

Hughes County

- Evidence of Drug Fund disbursements being properly authorized and approved by management was not documented on the disbursements reviewed.
- The test of two (2) disbursements reflected there was no indication goods and/or services were received by the District (i.e., receiving reports, signature of receipt, etc.).

Cause of Condition: Although District-wide policies and procedures for collections, disbursements, and financial reporting for the Drug Fund (Drug Asset Forfeiture) Program have been designed; however, policies have not been completely implemented, including documenting civil forfeiture cases, the disposition of property on a forfeiture inventory, documentation of receiving goods and/or services, and authorization and approval of disbursements.

Effect of Condition: Lack of documentation concerning an inventory of seized and/or forfeited property resulted in noncompliance with state statute, and the other conditions could result in inaccurate or improper expenditures and create errors in the accounting and reporting of collections for the District. These conditions could also affect forfeiture case activity and the location or disposition of seized property.

**PAUL SMITH, DISTRICT ATTORNEY
DISTRICT 22
STATUTORY REPORT
FOR THE PERIOD OF JULY 1, 2015 THROUGH JUNE 30, 2017**

Further, without proper receiving information and management approval invoices could be processed for goods and/or services that were not received by the District or that were not for District purposes.

Recommendation: OSAI recommends that management adhere to written policies and procedures for the accounting of program funds and the maintenance of files. Implementing this recommendation would ensure that all employees are aware of their duties and responsibilities and that the program is properly accounted for and is in compliance with applicable state statutes. Such policies should include the following:

- Guidelines for the oversight and documentation of case file maintenance and status of forfeited and pending forfeiture inventory.
- Guidelines for the process of approval by management and verification of the receipt of goods and/or services of program disbursements.

Management Response:

District Attorney: We acknowledge 63 O.S. § 2-506 K; however, we take issue with the OSAI's use of the term "custody". The term refers to legal custody and not physical custody. We further acknowledge that Pontotoc County District Attorneys Drug and Violent Crime Task Force (DADTF) maintains an inventory of items that we have in our physical custody but the facts of life in law enforcement and limited storage space restrict the DADTF's ability to maintain an inventory of items seized by other agencies or not in the physical custody of the DADTF. Additionally, the employee assigned the management of the DADTF and the supervision responsibilities over the District Attorney Drug Fund has had two severe life-threatening health issues and extended episodes during this audit period which has affected his ability to effectively manage this area of responsibility. Again, this is a material fact of life which impairs the District Attorney's realistic ability to completely ensure compliance with the internal controls of the District Attorney Drug Fund.

Going forward, we will make every effort to maintain an inventory of items seized by any agency wherein we have instituted forfeiture proceedings. Written policies are in place as we have acknowledged. We make every effort to document all expenditures with approval of management and document receipt of goods and services. Thank you for identifying, by plain and simple language, that on a specific date a receipt was found missing or on a specific date the approval was not documented. These oversights have already been corrected and we will work hard to make sure that the same are not repeated.

Criteria: Basic components of effective internal controls include ensuring written policies and procedures for performing essential duties are adequately documented to ensure compliance with laws and regulations, to facilitate efficient transition of duties when changes in personnel occur, and to obtain supporting documentation for transactions and items affecting management decisions.

Title 63 O.S. § 2-506 K states in part, "Property taken or detained under this section shall not be repleviable, but shall be deemed to be in the custody of the office of the district attorney of the county wherein the property was seized, subject only to the orders and decrees of the

PAUL SMITH, DISTRICT ATTORNEY
DISTRICT 22
STATUTORY REPORT
FOR THE PERIOD OF JULY 1, 2015 THROUGH JUNE 30, 2017

court or the official having jurisdiction thereof; said official shall maintain a true and accurate inventory and record of all such property seized under the provisions of this section...”

Concluding Management Response:

District Attorney: These findings are partially disputed with a request for a clear statement acknowledging accomplishments and the realities that while conditions could result in inaccurate or improper expenditures and or accounting errors; none were found; and ultimately the finding that there is “no evidence of missing funds or embezzlement” which seems to be the entire overriding assurance that the public purpose of the audit is all about.

Lastly, we would ask that the report accurately reflect that the undersigned District Attorney, Paul B. Smith, took over as the appointed District Attorney on February 10, 2017 and had only a very limited time within this audit period to affect any meaningful changes to existing office practice or policies covered by this audit period. In fact, less than five months of this audit reporting period fall under the tenure of the undersigned as District Attorney.

Auditor Response: OSAI acknowledges the District Attorney, Paul B. Smith, was appointed District Attorney for District 22 on February 10, 2017.

All information included in the financial records of the bogus check restitution program, supervision program, supervision 991 program, and the drug asset forfeiture program are the representation of the District Attorney for District 22.

Our engagement was limited to the procedures performed to determine compliance with 74 O.S. § 212.E and 22 O.S. §§ 114, 991d, 991a (hh), and 63 O.S. § 2-506. We have performed procedures as they relate to the records of the District Attorney’s programs for the period of July 1, 2015 through June 30, 2017. Our recommendations are based on those procedures performed.

Our engagement was less in scope than an audit performed in accordance with auditing standards generally accepted in the United States of America. Accordingly, we do not express an opinion on any basic financial statement of Pontotoc, Seminole, or Hughes County.



Cindy Byrd, CPA | State Auditor & Inspector

2300 N. Lincoln Blvd., Room 123, Oklahoma City, OK 73105 | 405.521.3495 | www.sai.ok.gov