



Muskogee District Attorney Muskogee County Special Audit Report July 1, 2002-December 31, 2006

JEFF A. McMAHAN, CFE

OKLAHOMA OFFICE
OF THE
STATE AUDITOR & INSPECTOR

Why the audit was performed

The Muskogee County District Attorney, District No. 15 audit was performed pursuant to the District Attorney's request in accordance with **74 O.S. 2001, § 227.8.**

Audit Summary:

- ✓ Prior to the request of this audit, the Attorney General's Office requested that our agency "...ascertain the existence or nonexistence of inventories, accounts, property safe combinations and other information necessary to a smooth and successful transition..." This audit was performed at the Muskogee District Attorney's Office from December 27-29, 2006. **Pgs 6-7**
- ✓ In January 2007 the newly elected District Attorney and his staff located approximately \$2,500.00 in cash and money orders (victim restitution) that had not been receipted or deposited. In addition, they located approximately \$780.00 in cash and property in a basement safe. The former District Attorney employees did not disclose the existence of this cash and property to auditors during the December 2006 audit. **Pgs 7-8**
- ✓ The former District Attorney's Office failed to provide records to the newly-elected District Attorney. Office files could not be located. Computer software and files were deleted. **Pgs 8-11**
- ✓ Software applications (Justware, Kelpro, File Tracker and Microsoft Office) and EXE and DLL files critical to the successful operation of the District Attorney's Office, were removed, leaving the District Attorney's Office inert until available software could be reinstalled. The File Tracker software has not been located and could not be reinstalled. **Pgs 8-11**
- ✓ Approximately 8,669 files were deleted from one computer during the month of December 2006. On December 21, 2006, at 5:40 p.m. a file shredding program was installed and accessed on this computer. The company for the website that sells this program states in part: "Easily, securely and permanently shred and wash away your online tracks, system history, confidential files, deleted e-mails, recycle bin contents and more. If you only delete a file it is recoverable, if you shred it, it's gone for good..." **Pgs 8-11**
- ✓ Lack of internal controls: there were no records that indicated the District Attorney's Office reconciled monthly with the County Treasurer's records—cancelled vouchers were not reissued. On one occasion fees were deposited into the wrong account. **Pgs 9-10**
- ✓ Cash and money orders were not deposited within ten (10) days: in one instance approximately 338 days passed from receipt of funds until the deposit of funds. **Pg 14**
- ✓ Restitution was not paid to victims in a timely manner: as of December 31, 2006, there was approximately \$88,700.00 of victim restitution collected that had not been paid to victims. **Pg 12**
- ✓ Subsequent events: the newly elected District Attorney has identified and paid out approximately \$30,000.00 to victims. **Pg 12**

**DISTRICT ATTORNEY'S OFFICE, DISTRICT NO. 15
MUSKOGEE COUNTY, OKLAHOMA
SPECIAL AUDIT REPORT
JULY 1, 2002 THROUGH DECEMBER 31, 2006**

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STATE OF OKLAHOMA
OFFICE OF THE AUDITOR AND INSPECTOR

Jeff A. McMahan
State Auditor and Inspector

May 2, 2007

Honorable Larry Moore
District Attorney, District No. 15
Muskogee County Courthouse
220 State Street
Muskogee, OK 74401

Honorable District Attorney Moore:

Transmitted herewith is the Special Audit Report for the Muskogee County District Attorney's Office, Muskogee, Oklahoma. We performed our special audit pursuant to a request from your office in accordance with the requirements of **74 O.S. 2001, § 227.8**.

A report of this type tends to be critical in nature; however, failure to report commendable features in the accounting and operating procedures of the entity should not be interpreted to mean that they do not exist.

The Office of the State Auditor and Inspector is committed to serve the public interest by providing independent oversight and by issuing reports that serve as a management tool to the State. Our goal is to ensure a government, which is accountable to the people of the State of Oklahoma.

We wish to take this opportunity to express our appreciation for the assistance and cooperation extended to our Office during the course of our special audit.

Sincerely,



JEFF A. MCMAHAN, CFE
State Auditor and Inspector

table of contents

	page
District Attorney	4
State Auditor and Inspector's Report	5
Introduction	6
Concerns, Findings and Recommendations	7

Index of specific concerns

The following concerns are presented in their entirety in italics as they were communicated to us:

I. CONCERN: <i>Possible irregularities in the Victim Restitution and DA Supervision Fees Accounts</i>	7
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**MUSKOGEE COUNTY DISTRICT ATTORNEY, DISTRICT No. 15
MUSKOGEE COUNTY
SPECIAL AUDIT REPORT
JULY 1, 2002 THROUGH DECEMBER 31, 2006**

**DISTRICT ATTORNEY
JOHN DAVID LUTON
DURING AUDIT PERIOD: JULY 1, 2002-DECEMBER 31, 2006**

**DISTRICT ATTORNEY
LARRY MOORE
AS OF JANUARY 2, 2007**



STATE OF OKLAHOMA
OFFICE OF THE AUDITOR AND INSPECTOR

Jeff A. McMahan
State Auditor and Inspector

Honorable Larry Moore
District Attorney, District No. 15
Muskogee County Courthouse
220 State Street
Muskogee, OK 74401

Honorable District Attorney Moore:

Pursuant to a request by your office, and in accordance with the requirements of **74 O.S. 2001, § 227.8**, we performed a special audit with respect to the Muskogee County District Attorney's Office, Muskogee County, for the period of July 1, 2002-December 31, 2006.

The objectives of our special audit primarily included, but were not limited to, the areas noted in the "index of specific concerns" and are presented in their entirety in italics as they were communicated to us. Our findings and recommendations related to these procedures are presented in the accompanying report.

Because the above procedures do not constitute an audit conducted in accordance with generally accepted auditing standards, we do not express an opinion on the account balances or financial statements of the Muskogee County District Attorney's Office for the period of July 1, 2002 through December 31, 2006. Further, due to the test nature and other inherent limitations of a special audit report, together with the inherent limitations of any internal control structure, there is an unavoidable risk that some material misstatements may remain undiscovered. This report relates only to the accounts and items specified above and do not extend to any financial statements of the District taken as a whole.

This report is intended solely for the information and use of District Attorney Larry Moore and should not be used for any other purpose. This report is also a public document pursuant to the **Oklahoma Open Records Act (51O.S. 2001, § 24A.1 et seq.)**, and shall be open to any person for inspection and copying.

Sincerely,

A handwritten signature in blue ink that reads "Jeff A. McMahan".

JEFF A. MCMAHAN, CFE
State Auditor and Inspector

March 13, 2007

INTRODUCTION

Various District Attorneys throughout the State have official depository accounts set up through their local Treasurer's office. As of December 31, 2006, the Muskogee County District Attorney's Office had approximately 20 (15 with balances) official depository accounts set up with the County Treasurer. Some of these accounts included, but were not limited to, bogus check restitution, drug fund forfeitures and drug fund contributions, victim restitution and District Attorney supervision fees.

The victim restitution account was established pursuant to **Title 22 O.S. § 991f**. This statute sets forth the following definitions:

1. "Restitution" means the sum to be paid by the defendant to the victim of the criminal act to compensate that victim for up to three times the amount of the economic loss suffered as a direct result of the criminal act of the defendant;
2. "Victim" means any person, partnership, corporation or legal entity that suffers an economic loss as a direct result of the criminal act of another person;
3. "Economic loss" means actual financial detriment suffered by the victim consisting of medical expenses actually incurred, damage to or loss of real and personal property and any other out-of-pocket expenses, including loss of earnings, reasonably incurred as the direct result of the criminal act of the defendant. No other elements of damage shall be included as an economic loss for purposes of this section.

Under the provisions of the above-referenced statute, the Court may order the defendant to pay restitution to the victim and "the District Attorney is authorized to act as a clearing house for collection and disbursement of restitution payments made pursuant to this section....".

The District Attorney's office set up this account with the Muskogee County Treasurer's Office so that they could deposit victim restitution payments received and pay the victims. The account was established in the official depository account, a revolving account.

The District Attorney supervision fee account was established pursuant to **Title 22 O.S. § 991d**. This statute provides as follows:

- A.2. When the court imposes a suspended or deferred sentence and does not order supervision by the Department of Corrections, the offender shall be required to pay to the district attorney a supervision fee of Twenty Dollars (\$20.00) per month. . . .
3. If restitution is ordered by the court in conjunction with supervision, the supervision fee will be paid in addition to the restitution ordered. . . .

In January 2004, the District Attorney's Office set up a DA supervision fee account for the above-referenced purposes. The account was set up with the Muskogee County Treasurer's Office as an official depository account.

The State Auditor and Inspector conducted a special audit of the records of the Muskogee County District Attorney's Office, primarily those records relating to the District Attorney's concerns listed in the "index of specific concerns" noted in the table of contents. The results of the special audit are in the following report.

BACKGROUND: Prior to the request of this audit, a new District Attorney was elected in the most recent Muskogee County District Attorney's election. During the turnover process, the District Attorney-elect had difficulty obtaining information regarding office inventories and accounts. He requested the assistance of the Attorney General. Subsequently, the Attorney General's Office

requested our agency "...ascertain the existence or nonexistence of inventories, accounts, property, safe combinations and other information necessary to a smooth and successful transition.

Subsequent to the audit performed December 2006 and after the new District Attorney took office in January 2007, the newly-elected District Attorney requested an investigative audit on some of the official depository accounts. The following is a report of our findings:

CONCERNS, FINDINGS AND RECOMMENDATIONS

I. CONCERN: *Possible irregularities in the DA Supervision and Victim Restitution Accounts.*

SUMMARY OF FINDINGS:

- Failure to provide records to successor: Computer software and files were deleted. The computer forensic examiner for the State Auditor and Inspector noted a digital file shredder program had been used to permanently delete files. The District Attorney's Council confirmed that computer files had been deleted during the prior District Attorney's term.
- In January 2007, the newly-elected District Attorney and his staff located approximately \$2,500.00 in cash and money orders that had not been receipted or deposited. They located the cash and money orders on a desk, in a desk and in a locked file cabinet. The former District Attorney's office employees did not disclose the existence of these funds at the end of December 2006 while auditors were performing a prior audit pursuant to the Attorney General's request.
- Lack of internal controls: There were no records that indicated the District Attorney's office reconciled monthly with the County Treasurer's records—cancelled vouchers were not reissued. District Attorney supervision fees in the amount of \$300.00 were deposited into the wrong account.
- The District Attorney's Office was unable to locate five of the seven defendants' files tested (DA supervision); the District Attorney's office was unable to locate the office file. In these instances the District Attorney personnel provided court files for our review.
- Cash and money orders were not deposited within ten (10) days: In one instance approximately 338 days passed from receipt of funds until the deposit of funds.
- Restitution was not paid to victims in a timely manner: As of December 31, 2006, there was approximately \$88,700.00 of victim restitution collected that had not been paid to victims.

Victim Restitution July 1, 2002-December 31, 2006:

From December 27-29, 2006 our agency was in the Muskogee County District Attorney's office on a prior audit engagement requested by the Attorney General's Office. During our audit, the Chief of Staff represented to auditors that the District Attorney personnel had deposited all but \$50.00. However, on January 3, 2007, the incoming District Attorney contacted our office and advised that when the new employees went into the victim/witness coordinator's office, they located cash and money orders in envelopes in the desk, on the desk and in a locked file cabinet. In addition to the funds located in the victim/witness coordinator's office, the newly-elected District Attorney's office located cash and property in a basement safe.

During the course of this audit we spoke with witnesses who verified that cash and money orders in the amount of approximately \$2,512.00 was located in the victim/witness coordinator's office on January 2, 2007. This amount was not disclosed to auditors. The funds were received and deposited in January 2007 by the new District Attorney staff.

We viewed the cash and items located in the basement safe. The contents of the safe were not disclosed to auditors during the prior audit. Contents of the safe included:

- Total Cash in the amount of \$775.45
- 2 gold plated rings
- 1 gold plated money clip
- 2 gold plated rings w/diamonds (horse shoe and cluster)
- 11 ea. 28 gauge shells
- 1 INA 38 Special #030992
- 1 evidence bag w/cigarette package, zig-zag papers and pipe
- 1 sealed FBI Evidence bag containing:
 - 1 Guess Watch
 - 1 necklace w/Krugerrand Medallion w/chain
 - 1 earring
 - 1 sealed plastic bag labeled "1 old Chain"
- 1 small burgundy plastic box with drug paraphernalia
- 4 assorted clips
- 1 brown paper sack containing:
 - 380 Pistol #B101768
 - assorted pictures
 - assorted pill bottles
- 1 large envelope containing:
 - trial exhibits

We reviewed the following records: Treasurer's monthly reports, official depository general ledgers, District Attorney's office duplicate receipt books, deposit books, payment ledgers, voucher (check) books, defendants' files and court files.

The victim/witness coordinator was responsible for the collection and disbursement of monies collected on behalf of crime victims. We viewed the former victim/witness computer hard drive and files and were unable to find any such information. There was no financial or defendant payment information on the computer. We also noted that there were very few computer files on this computer hard drive.

The District Attorney's Council (hereinafter referred to as D.A.C.) Information Technology (hereinafter referred to as IT) Director confirmed that the former user did not have any files stored on the server.

According to the current financial officer of the District Attorney, when the incoming District Attorney and his staff took office January 2007, they discovered that they had very little computer data and/or missing software programs on some of their computers. Computer software had been deleted, leaving the incoming District Attorney's office inert until the computer software (that was available) was reinstalled.

The office had been paying for nine (9) licenses for Kelpro software. An employee verified that nine (9) computers had this program installed and working during the prior administration. Kelpro software allows the District Attorney's office to view cases and case activity (court appearances, subpoenas and other legal documents) on file with the Court Clerk. However, in January 2007, there were only three (3) computers that had working software for this program.

The office had previously purchased and been using a software program called "File Tracker." This program had been previously installed on almost all of the computers and was used to locate office files. This program was deleted on some of the computers and the software owned by the District Attorney's office could not be located to reinstall the software. The financial officer stated that personnel from the D.A.C. advised her that the software "File Tracker" was in the former Chief of Staff/Chief Investigator's office. However, the Chief of Staff/Chief Investigator did not list this on his office inventory provided to auditors, and the software was not viewed in his office on December 29, 2006.

The office also had to have a program called "Justware" reinstalled. We verified that this program had been on computers used by prior employees. However, in January 2007, this program was not usable on some of the same computers. "Justware" is used by the District Attorney's office to prepare criminal charges, warrants, subpoenas and other legal documents. All of the above software programs are critical to the daily operation of the District Attorney's office.

Due to this information being relayed to us, the State Auditor and Inspector's computer forensics examiner imaged five (5) of the computer hard drives. In addition, we reviewed the program file history (date file created and date modified). After viewing program file information on five (5) of the drives and viewing the imaged drives of three (3) of the computers, we noted the following: (For the purposes of this report, we have assigned numbers to the computers. However, we have also documented the employees who were users on these computers.)

Computer (1): On December 21, 2006, at 5:40 p.m., a file shredding program was installed. The website for the company that sells this software states in part: "Easily, securely and permanently shred and wash away your online tracks, system history, confidential files, deleted e-mails, recycle bin contents and more. If you only delete a file it is recoverable, if you shred it, it's gone for good..."

Some of the other applications listed, included but was not limited to:

- Permanently delete files, folders and free space from your computer.
- Shreds Data on Hard Drives, Floppies, External Drives, Flash Memory
- Shreds your internet's tracks—History, Cookies, Temp Files, Cache and more
- Shreds your deleted E-mails making them unrecoverable
- Shreds your Recycle Bin, assuring your deleted files are gone for good
- Shreds most popular Instant Messenger History, Cache and tracks
- Verifies that your data has been erased

It also states that the application will:

- **Make Any File Go Away Forever:** With “*software name*”, you can simply right click any file or folder to shred it and render it permanently unrecoverable. You can automate this process to perform regularly scheduled file shredding and even automate the program to routinely shred your Recycle Bin and Deleted E-mail Folder.
- **Take Back Your Privacy:** “*Software name*”’s System Cleaner lets you take back your privacy by regularly cleaning your Web browsing and application history. It will ensure that all traces of your Internet and computer activities are permanently deleted and unrecoverable on your PC by cleaning your cache, cookies, history, recent documents lists, system registry, index.dat and even informational rich files in hidden areas.
- **Increased System Performance:** “*Software name*”’s routine cleaning of your system restores valuable hard drive space and speeds up your system’s performance.
- **Protect:** With the click of a button, “*software name*” will permanently shred the files and folders you want gone for good. You can automate this process and even set the program to routinely shred your recycle bin and deleted E-mails.
- **Safeguard:** Easily shield your privacy by ensuring all traces of your online Internet and computer activities are permanently erased using the “*software name*”’s System Cleaner.

There were approximately 8,669 files deleted in December 2006. Two days in December 2006 (December 21, 2006 and December 29, 2006) had the highest amount of deletion activity. On December 21, 2006 approximately 4,335 files were deleted with over 2,700 of the files having been deleted with an automated deletion tool. According to the computer forensics examiner, manual deletion does not allow an end user to delete 100 files in the same second as was seen with these file deletions.

The second highest date of deletion was December 29, 2006 with 742 files having been deleted. This was also the same date that auditors were in the Muskogee County District Attorney’s Office at the request of the Attorney General’s Office to assist in a “...smooth and successful transition.”

Computer (2): The incoming District Attorney employee found very little data on the hard drive. The only folders she was able to access were “My Music” and “My Pictures” and they were empty. According to this employee, she did not have Microsoft Office applications, Word or Excel. The prior user had been employed with the District Attorney’s office for several years and her job-related products and documents are critical to the successful operation of the job duties of this incoming employee.

The State Auditor and Inspector’s Computer Forensics Examiner (hereinafter referred to as CFE) recovered information from this computer that indicated the hard drive may not be the original drive or at one time there may have been more than one hard disk drive on the computer. There was evidence that this user had files on this machine at one time, but there were no files to be found.

The D.A.C. IT System Administrator confirmed there were no files for this former employee on the server to be recovered and restored.

Computer (3): Approximately 406 files were deleted from this computer during the month of December 2006. Of this amount, approximately 277 files were deleted on December 29, 2006. A sample of the deleted files included, but were not limited to:

- ❖ C:\Documents and Settings\(\username)\Favorites\SexOnline.Lnk
- ❖ C:\Documents and Settings\(\username)\Desktop\casino.exe
- ❖ C:\Documents and Settings\(\username)\Desktop\data\slots\Bermuda.gam
- ❖ C:\Documents and Settings\(\username)\Favorites\Internet Tools\Internet Privacy Software.url
- ❖ C:\Program Files\Kazaa\Kazaa.exe
- ❖ C:\WINDOWS\..\blankdialer\LiveGirls
- ❖ C:\WINDOWS\Favorites\Gambling\Golden Palace Casino.url
- ❖ C:\WINDOWS\Favorites\HotLinks\Date A Hottie.url

In addition to these files, a vast majority of the deleted files were EXE and DLL files. The CFE reported that any programs on a computer that are designed to operate and compute data files are one of three primary types of files. The file types are Command (COM), Executable (EXE), and Dynamic Link Library (DLL) files.

His report stated that since so many files of the EXE and DLL variety were found deleted, the functionality of this computer would have been seriously compromised. The possibility that any programs would run and function as expected would have been very unlikely.

The D.A.C. IT System Administrator verified that numerous data had been deleted during the former District Attorney's term. He also confirmed that there were no files available to restore from the server for two of the former users (the financial officer and the victim/witness coordinator) and that there were very few files to restore for two other users (the Chief of Staff/Chief Investigator and an Assistant District Attorney). The CFE imaged two out of four of the above-referenced hard drives.

From July 1, 2002 to December 31, 2006 (four and one-half years), the District Attorney's office paid out approximately \$273,000.00 in victim restitution. During the same period of time the balance increased by \$69,700.00, which indicates there is restitution that needs to be paid to victims. This does not include the \$2,512.00 that was discovered by the incoming District Attorney's office.

After we noted the balance of victim restitution in this account, we selected defendants' files to determine if restitution had been ordered, properly collected and paid to the victim. For the purposes of this report, we assigned tested files as "defendant no. 1, defendant no. 2", etc. The actual case numbers and defendants are documented in the work papers.

FINDINGS:

- Defendant No. 1: From November 14, 2005 through December 16, 2006, the defendant paid the District Attorney's office approximately \$870.00. As of December 31, 2006, the \$870.00 had not been paid to the victim. In addition, there was a calculation error on the ledger sheet wherein the balance forward after a payment was incorrectly calculated.

- Defendant No. 2: The defendant paid approximately \$1,250.00 to the District Attorney's office from January 2004 through August 2005. During this time period, the District Attorney's office mailed six (6) vouchers to the same victim. However, the vouchers were repeatedly returned and the envelopes were marked "moved left no address unable to forward return to sender". The District Attorney's office continued to mail the vouchers to the same address and the vouchers continued to be returned. There was no apparent attempt to locate the correct address. As of December 31, 2006, there was \$1,250.00 of unpaid restitution.
- Defendant No. 3: On June 29, 2004, the defendant was charged with Malicious Injury to Property that alleged vandalism to Honor Heights Park in the City of Muskogee. The City of Muskogee was listed as the victim. From November 11, 2004 through November 8, 2006 (a two-year period), the defendant paid \$3,030.00. One of the payments made by the defendant on February 17, 2006 for \$100.00 cash was not deposited until March 27, 2006 (over a month later). As of December 31, 2006, the victim had not been paid any restitution.
- Defendant No. 4: On June 28, 2005, the defendant appeared to pay the full restitution of \$1,000.00, which was receipted and deposited on the same date. However, as of December 31, 2006 (approximately one and a half years later), the victim had not been paid.
- Defendant No. 5: From August 15, 2003 through July 28, 2005, the defendant paid the District Attorney's office approximately \$15,050.00 that was subsequently paid to the victim, Presbyterian Church. However, from September 2, 2005 through December 12, 2006, the defendant paid the District Attorney's office an additional \$5,050.00 and as of December 31, 2006, the funds had not been disbursed to the victim. One of the payments made by the defendant on April 26, 2002 for \$300.00 was not deposited until June 13, 2002 (over a month later).
- Subsequent to the audit period: the current District Attorney's office paid out the above-referenced restitution to the victims. As of the end of February 2007, the current District Attorney's office has reviewed this account and identified and mailed out approximately \$30,000.00.

After reviewing defendants' files, ledgers, receipts, deposits, vouchers and County Treasurer's reports, it appears that the increase in the victim restitution was due to restitution being deposited but not paid to victims and vouchers being cancelled but not reissued.

Of the \$88,700.00 December 31, 2006 balance with the County Treasurer, approximately \$62,700.00 of this balance represented victim restitution that was deposited but never paid to victims and the remaining \$7,000.00 represented cancelled vouchers.

Vouchers may be cancelled by the District Attorney's office after they are issued or vouchers are cancelled by the Treasurer's office after they have been outstanding for a period of one year. Vouchers that are outstanding are vouchers that have not been redeemed (cashed) by the victim. Examples that can cause this to occur may include, but not be limited to, vouchers issued by the District Attorney's office but never mailed out, vouchers mailed to incorrect addresses, vouchers lost in the mail, etc—all vouchers not cashed by the victims.

We found no one financial record in the District Attorney's office that identifies the cases (victims) that make up the \$88,700.00 balance with the Treasurer. We reviewed defendants' payment ledgers in an attempt to verify defendants' posted payments (not paid out to victims)

were equal to the Treasurer's ending balance. We found that these ledgers were inaccurate and unreliable due to all information not being recorded.

At least four and one-half (4 1/2) years of records (receipts, deposits, vouchers, defendants' files, treasurer's reports) will have to be reviewed to determine the victims to be paid. Furthermore, as of July 1, 2002 (prior to the audit period), there was a \$19,000.00 beginning balance. This amount will need to be identified and paid to victims. Consequently, the process of identifying the December 31, 2006 balance and paying the amount to the proper victims may take several months.

It is not cost effective for the District Attorney's office to have our agency review defendants' files, receipts, deposits and vouchers to identify victim restitution funds that have not been paid. Due to the time-intensive work that will be involved, the District Attorney opted for his employees to handle this internally.

Oklahoma Statutes Citationized

Title 51. Officers

Chapter 1 - General Provisions

Section 19 - Successor to Receive Records, etc.

§ 19 . Successor to Receive Records, etc.

Upon the death, resignation, suspension or removal from office of any officer, or upon the expiration of his term, all public monies, books, records, accounts, papers, documents and property of other kind in his hands or held by him by virtue of his office, shall be delivered to his successor.

Oklahoma Statutes Citationized

Title 19. Counties and County Officers

Chapter 7A - District Attorneys

Section 215.11 - Title 19. Counties and County Officers

Every District Attorney shall on or before the first day of January in each year, file in the office of the county treasurer of each county in his district an account in writing, verified by his affidavit, to be filed with said account, of all monies received by him during the preceding year by virtue of his office in relation to said county, or any fines, recognizances, forfeitures, penalties or costs; and he shall specify in such accounts the name of each person from whom he may have received such monies, the particular amount paid by each person and the cause for which each payment was made. But he shall pay over to the county treasurer of the county in which same is receivable all money he may receive as such District Attorney within ten (10) days after he received it.

RECOMMENDATION:

We recommend the District Attorney's office review defendants' files (Court files when office files are unavailable), ledgers, receipts, deposits and vouchers and Treasurer's reports to identify cancelled vouchers and unpaid restitution so that victims may be paid. We further recommend that the District Attorney's office receipt all funds, deposit monies by the following business day and pay out any new victim restitution in a timely manner. Although the **19 O.S. § 215.11** prescribes 10 days from receipt to deposit, we recommend the District Attorney's office deposit funds within the following business day. We also recommend the District Attorney's office reconcile monthly with the Treasurer's office. By reconciling monthly, deposit errors and cancelled vouchers should be noted immediately.

District Attorney Supervision Fees January 1, 2004-December 31, 2006:

We reviewed the following records: The Treasurer's monthly reports to determine when the District Attorney supervision fees account, hereinafter referred to as DA supervision fee account, was established, and to determine the account activity. We then reviewed defendants' files, payment ledgers, receipts, deposit records and vouchers.

The District Attorney's office began using the DA supervision fees account in January 2004. From January 2004 through December 31, 2006, approximately 17 persons paid DA supervision fees for varying terms, paid at a rate of \$20.00 per month. We selected 7 of the defendants' files to review to determine if the fees were court ordered, receipted and deposited. For the purposes of this report, we assigned tested files as "defendant no. 1, defendant no. 2", etc. The actual case numbers and defendants are documented in the work papers. We also reviewed receipts to deposits.

FINDINGS:

- Defendant No. 1: On July 30, 2004, the District Attorney's office wrote a receipt for \$20.00 cash to the defendant. The cash was not deposited until June 30, 2005, approximately 338 days from receipt to deposit.
- Defendant No. 2: Two \$20.00 (\$40.00) cash payments made in August and September 2004 was not deposited until June 30, 2005.
- Defendant No. 3: A \$20.00 money order receipted by the District Attorney's office on May 15, 2005 was not deposited until June 30, 2005.
- Defendant No. 4: \$200.00 was paid to the District Attorney's office (\$20.00 per month from August 30, 2004 – June 28, 2005) eight of these payments were in the form of cash and two were in the form of money orders. The funds were not deposited until June 30, 2005.
- Defendant No. 5: \$220.00 in cash payments (\$20.00 per month from August 6, 2004-June 9, 2005) was not deposited until June 30, 2005. Approximately \$40.00 cash payments receipted in November and December 2005 was not deposited until July 21, 2006.
- Defendant No. 6: \$100.00 in money orders receipted from August 2, 2004-November 29, 2004 was not deposited until June 30, 2005.
- Defendant No. 7: \$140.00 in cash and money orders receipted from August 2004 through April 2005 was not deposited until June 30, 2005.
- In five of the seven files tested, the District Attorney's office was unable to locate their office file. In these instances the District Attorney personnel provided court files for review.
- After we tested the above-referenced files, we noted that several offenders paid restitution which was not deposited until June 30, 2005. We reviewed the preceding deposit no. 10 and four deposits (nos. 11-14) made on June 30, 2005.
- On July 26, 2004, the District Attorney's office made a \$20.00 deposit on Official Depository Ticket No. 10.
- The next four deposit tickets (numbers 11, 12, 13 and 14) were completed on June 30, 2005, approximately 11 months since deposit no. 10 as referenced above.
- Deposit ticket number 11 was for a total of **\$300.00** (\$220.00 cash and \$80.00 in money orders/checks). This deposit included money that was receipted in the DA supervision fee receipt books from July 27, 2004 through September 15, 2004. The

funds were deposited on June 30, 2005. (The time period from the receipts to deposit ranged from 288 to 338 days).

- The wrong account number was put on deposit ticket number 11 and the \$300.00 referenced above was deposited into the victim restitution account instead of the DA supervision fee account.
- If the District Attorney's office had reconciled this account at the end of the month, the error would have been caught at that time. The error was not corrected and this account balance is off by \$300.00.
- Deposit ticket number 12 was for a total of **\$320.00** (\$240.00 cash and \$80.00 in money orders). This deposit included funds receipted in the DA supervision fee receipt books from September 20, 2004 through December 10, 2004. The funds were deposited on June 30, 2005.
- Deposit ticket number 13 was for a total of **\$320.00** (\$240.00 cash and \$80.00 in money orders). This deposit included funds receipted in the DA supervision fee receipt books from December 17, 2004 through March 20, 2005. The funds were deposited on June 30, 2005.
- Deposit ticket number 14 was for a total of **\$280.00** (\$200.00 cash and \$80.00 money orders/checks). This deposit included funds receipted in the DA supervision fee receipt books from March 23, 2005 through June 28, 2005. The funds were deposited on June 30, 2005.
- Deposit ticket numbers 11-14 represented **\$1,220.00** (approximately \$900.00 in cash) received by the District Attorney's office but not deposited in a timely manner.
- The District Attorney's office made a deposit to the DA supervision fee account on September 13, 2005 and did not make another deposit to this account until July 21, 2006 (approximately 10 months between deposits).
- Defendants were on probation for varying time periods. However, some of the defendants' ledgers indicated they did not pay probation fees during the entirety of their probation period.

Oklahoma Statutes Citationized

Title 19. Counties and County Officers

Chapter 7A - District Attorneys

Section 215.11 - Title 19. Counties and County Officers

Every District Attorney shall on or before the first day of January in each year, file in the office of the county treasurer of each county in his district an account in writing, verified by his affidavit, to be filed with said account, of all monies received by him during the preceding year by virtue of his office in relation to said county, or any fines, recognizances, forfeitures, penalties or costs; and he shall specify in such accounts the name of each person from whom he may have received such monies, the particular amount paid by each person and the cause for which each payment was made. But he shall pay over to the county treasurer of the county in which same is receivable all money he may receive as such District Attorney within ten (10) days after he received it.

RECOMMENDATIONS:

We recommend the District Attorney's office review the defendants' files to determine if additional supervision fees are due by the defendants. Also, we recommend that funds received be deposited in a timely manner. We also recommend that the District Attorney's office reconcile monthly with the Treasurer.

* * *

Throughout this report there are numerous references to state statutes and legal authorities, which appear to be potentially relevant to issues raised and reviewed by this Office. The State Auditor and Inspector has no jurisdiction, authority, purpose or intent by the issuance of this report to determine the guilt, innocence, culpability or liability, if any, of any person or entity for any act, omission, or transaction reviewed and such determinations are within the exclusive jurisdiction of regulatory, law enforcement, and judicial authorities designated by law.

The inclusion of cites to specific statutes or other authorities within this report does not, and is not intended to, constitute a determination or finding by the State Auditor and Inspector that the Muskogee County District Attorney's Office or any of the individuals named in this report or acting on behalf of the District have violated any statutory requirement or prohibition imposed by law. All cites and/or references to specific legal provisions are included within this report for the sole purpose of enabling the Administration and other interested parties to review and consider the cited provisions, independently ascertain whether or not the District policies, procedures or practices should be modified or discontinued, and to independently evaluate whether or not the recommendations made by this Office should be implemented.