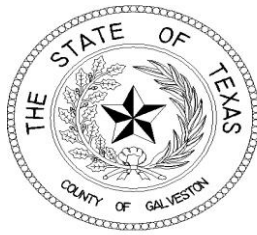


GALVESTON COUNTY



Office of County Auditor

Randall Rice CPA CISA CIO, County Auditor
Kristin Bulanek CIA, First Assistant County Auditor

P.O. Box 1418, Galveston, Texas 77553

(409) 770-5304

722 Moody Ave 4th Floor, Galveston, TX 77550

December 14, 2020

Honorable Mark A. Henry, County Judge, and
Members of the Commissioners Court
722 Moody Avenue
Galveston, Texas 77550

Honorable Judge and Members of the Court:

Attached for your consideration is the internal audit report of the Alternative Dispute Resolution Fund that covered the period September 1, 2019 through August 31, 2020. Also attached is the response letter from Thayer Evans, dated November 25, 2020.

Sincerely,

Randall Rice CPA
County Auditor

cc: Thayer Evans, President

Attachment: Mediation Services Program Fund Audit Report
Response Letter, Thayer Evans

GALVESTON COUNTY



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722 Moody Ave 4th Floor, Galveston, TX 77550

October 19, 2020

To: Honorable Mark A. Henry, County Judge, and
Members of the Commissioners Court

From: Mr. Randall Rice
County Auditor

Re: Galveston County Alternative Dispute Resolution Fund FY2020 Audit Report

The Internal Audit division conducted an internal audit of the Alternative Dispute Resolution Fund (referred to as Mediation Services Fund), in accordance with Local Government Code §115. The internal audit covered the period September 1, 2019 thru August 31, 2020.

The objectives of the audit were to provide reasonable assurance concerning:

- Reliability and integrity of information
- Compliance with laws, regulations, contracts, policies and procedures

Mediation Fee

CPR §152.004 (Financing) states to establish and maintain an alternative dispute resolution system, the Commissioners Court may set a court cost in an amount not to exceed \$15 to be paid as other court costs in each civil case filed in a county or district court in the county, including a civil case relating to probate matters but not including:

- 1) A suit for delinquent taxes
- 2) A condemnation proceeding under Chapter 21, Property Code
- 3) A proceeding under Subtitle C, Title 7, Health and Safety Code

CPR §152.005 (Additional Fee For Justice Courts) states to establish and maintain an alternative dispute resolution system, the Commissioners Court may, in addition to the court cost authorized under Section 152.004, set a court cost in an amount not to exceed \$5 for civil cases filed in a justice court located in the county, but not including:

- 1) A suit for delinquent taxes
- 2) An eviction proceeding, including a forcible detainer, a forcible entry and detainer or a writ of re-entry

The mediation fee collected by all courts is deposited in the county demand account and recorded in the special revenue fund titled 'Alternative Dispute Resolution', previously called 'Mediation Services'.

Mediation Fee (continued)

The following table reflects the total mediation fees collected by the county during the audit period:

District Clerk's Office	\$ 53,466.44
County Clerk's Office	\$ 50,327.56
Justice Precinct -Court #1	\$ 4,200.00
Justice Precinct -Court #2	\$ 3,840.00
Justice Precinct -Court #3	\$ 2,390.00
Justice Precinct -Court #4	\$ 3,960.00
Court Collections	\$ 640.00
Total Collections	\$ 118,824.00

Mediator Invoices – Family Cases

Article VII Section 1 of the By-Laws states the Board shall authorize the hourly rate of compensation for mediation from the Alternative Dispute Resolution Fund. The fees shall be paid to mediators performing subsidized mediation pursuant to the fee guidelines promulgated by the Board. Actual payment shall be authorized and approved by the judge of the referring court on a case by case basis. The Mediation Board set the standard rate for mediation services as \$200 per hour with a maximum of four hours of mediation services allowed per mediator session. The form titled 'Claim and Order for Payment for Mediation Services under Special Authorization of the Galveston County Mediation Board', submitted by the mediator and signed by the presiding judge, serves as an invoice to the county and must reflect the date of the mediation session, the number of hours for the session and any payments made to the mediator by either party.

A sample of invoices (authorization forms) were tested for compliance with rate and hours set by the Mediation Board and for proper authorization. No exceptions were noted.

Mediator Invoices – Child Protective Services Cases

Family Code §107.015 ATTORNEY FEES states an attorney appointed as an attorney ad litem for a child, an attorney in the dual role, or an attorney ad litem for a parent is entitled to reasonable fees and expenses in the amount set by the court to be paid by the parents of the child unless the parents are indigent. If it is determined the parents are indigent, an attorney ad litem, appointed to represent a child or parent in a suit filed by a governmental entity, shall be paid from the general funds of the county according to the fee schedule that applies to an attorney appointed to represent a child in a suit under Title 3 as provided by Chapter 51. A person appointed as a guardian ad litem or attorney ad litem shall complete and submit to the court a voucher or claim for payment that lists the fees charged and hours worked by the guardian ad litem or attorney ad litem.

For every mediator invoice submitted for a child protective services (CPS) case, a corresponding attorney voucher is submitted for the mediation session. A sample of mediator invoices for CPS cases was tested to ensure an attorney voucher was also submitted.

Finding: Numerous invoices submitted by mediators charged more hours for the mediation session than the corresponding attorney voucher.

Finding: Numerous invoices submitted by mediators did not have a corresponding attorney voucher submitted for attending the mediation session.

Mediator Rotation Wheel

Government Code §37.004 Appointment of Attorneys Ad Litem, Guardians Ad Litem, Mediators, and Guardians; Maintenance of Lists states in each case in which the appointment of an attorney ad litem, guardian ad litem, or guardian is necessary, a court using a rotation system shall appoint the person whose name appears first on the applicable list maintained by the court. The court may appoint a person included on the applicable list whose name does not appear first on the list, or a person who meets statutory or other requirements to serve and who is not included on the list, if the appointment of that person as attorney ad litem, guardian ad litem, or guardian is agreed on by the parties and approved by the court. The court may appoint a person included on the applicable list whose name does not appear first on the list, or a person who meets statutory or other requirements to serve on the case and who is not included on the list, if the appointment of that person as attorney ad litem, guardian ad litem, mediator, or guardian is required on a complex matter because the person possesses relevant specialized education, training, certification, skill, language proficiency, or knowledge of the subject matter of the case, has relevant prior involvement with the parties or case, or is in a relevant geographic location. The Mediation Services Board policy for appointing mediators states for every case, the Court will select mediators from the Calendar Wheel created from the Approved Court Appointed Mediators List. A mediator may not be bypassed for appointment more than two (2) times unless the Court/Judge finds, in writing, that a conflict of interest exists or that other good cause exists for bypassing the Mediator.

The following table reflects the mediators on the approved list and the amount of mediation services provided during the audit period, summarized by mediator:

	PEID	NAME	COUNT	AMOUNT	PERCENT
1	702478	DAN AMERSON	48	\$ 26,800.00	15.1%
2	701360	ORTIZ-TAING LAW FIRM PC	31	\$ 14,000.00	9.7%
3	710160	TURNER MEDIATION	30	\$ 14,525.00	9.4%
4	702604	KRISTINA LUCAS	25	\$ 11,430.00	7.9%
5	720548	SHARI GOLDSBERRY	22	\$ 10,110.00	6.9%
6	703381	DIANE CLARK	20	\$ 8,900.00	6.3%
7	700067	BRENDA DUSHANE	19	\$ 8,190.00	6.0%
8	33290	JEFF KILGORE	18	\$ 9,562.50	5.7%
9	708153	LAW OFFICE OF KATHRYN BRADFIELD LANAN	17	\$ 7,490.00	5.3%
10	136689	MCLEOD, ALEXANDER, POWEL & APFFEL PC	15	\$ 7,310.00	4.7%
11	707452	HUMPHREYS & HUMPHREYS	15	\$ 6,850.00	4.7%
12	403751	SHAUNA BERARDINELLI CORREIRA	14	\$ 6,650.00	4.4%
13	405987	DINAH MUELLER	12	\$ 5,500.00	3.8%
14	719352	WADE ALLEN GREINER	10	\$ 4,600.00	3.1%
15	717800	ALSTON & ENGELHAUPT, LLC	5	\$ 2,600.00	1.6%
16	706338	RESOURCE CRISIS CENTER	5	\$ 2,250.00	1.6%
17	721628	WILLIAM B BONEY	3	\$ 1,600.00	0.9%
18	708879	SCHWAB-RADCLIFF	3	\$ 1,200.00	0.9%
19	709070	SHIRLEY MILLS LLP	2	\$ 1,350.00	0.6%
20	404921	LAW OFFICES OF SUSAN M EDMONSON PLLC	2	\$ 1,200.00	0.6%
21	714244	SALINSKY LAW OFFICES	2	\$ 640.00	0.6%
22	192161	ROBERT SHATTUCK	0	\$ -	0.0%
23	204149	HELEN TRUSCOTT	0	\$ -	0.0%
24	700160	KAREN MAHONEY	0	\$ -	0.0%
25	701045	MARIE TREFETHERN	0	\$ -	0.0%
26	720888	BESS HARRISON	0	\$ -	0.0%
27	721077	WAYNE MALLIA	0	\$ -	0.0%
28	721676	JOHN MCKENNA	0	\$ -	0.0%
			318	\$ 152,757.50	100%

Mediator Rotation Wheel (continued)

Effective January 1, 2020, the Mediation Services Board revised the mediation rotation wheel plan. The following table reflects the mediation services provided from January 1, 2020 through August 31, 2020 summarized by mediator:

	PEID	NAME	COUNT	AMOUNT	PERCENT
1	702604	KRISTINA LUCAS	23	\$ 10,830.00	9.6%
2	701360	TURNER MEDIATION	22	\$ 11,200.00	9.2%
3	720548	SHARI GOLDSBERRY	22	\$ 10,110.00	9.2%
4	710160	ORTIZ-TAING LAW FIRM PC	21	\$ 11,575.00	8.8%
5	702478	DAN AMERSON	21	\$ 11,500.00	8.8%
6	703381	BRENDA DUSHANE	17	\$ 8,050.00	7.1%
7	136689	MCLEOD, ALEXANDER, POWEL & APFFEL PC	15	\$ 7,310.00	6.3%
8	707452	HUMPHREYS & HUMPHREYS	14	\$ 6,550.00	5.9%
9	33290	DIANE CLARK	13	\$ 7,750.00	5.4%
10	708153	LAW OFFICE OF KATHRYN BRADFIELD LANAN	13	\$ 5,900.00	5.4%
11	700067	JEFF KILGORE	11	\$ 4,980.00	4.6%
12	405987	DINAH MUELLER	10	\$ 4,950.00	4.2%
13	719352	WADE ALLEN GREINER	10	\$ 4,600.00	4.2%
14	403751	SHAUNA BERARDINELLI CORREIRA	9	\$ 3,650.00	3.8%
15	706338	RESOURCE CRISIS CENTER	5	\$ 2,250.00	2.1%
16	717800	ALSTON & ENGELHAUPT, LLC	3	\$ 1,700.00	1.3%
17	721628	WILLIAM B BONEY	3	\$ 1,600.00	1.3%
18	708879	LAW OFFICES OF SUSAN M EDMONSON PLLC	3	\$ 1,200.00	1.3%
19	404921	SHIRLEY MILLS LLP	2	\$ 1,200.00	0.8%
20	709070	SCHWAB-RADCLIFF	1	\$ 800.00	0.4%
21	714244	SALINSKY LAW OFFICES	1	\$ 500.00	0.4%
22	192161	ROBERT SHATTUCK	0	\$ -	0.0%
23	204149	HELEN TRUSCOTT	0	\$ -	0.0%
24	700160	KAREN MAHONEY	0	\$ -	0.0%
25	701045	MARIE TREFETHERN	0	\$ -	0.0%
26	720888	BESS HARRISON	0	\$ -	0.0%
27	721077	WAYNE MALLIA	0	\$ -	0.0%
28	721676	JOHN MCKENNA	0	\$ -	0.0%
			239	\$ 118,205.00	100%

Mediator Qualifications

Civil Practice & Remedies (CPR) §154.052 states to qualify as a mediator you must have completed a minimum of 40 classroom hours in mediation training. To qualify as a mediator in a dispute relating to a parent-child relationship the person must complete an additional 24 hours in the fields of family dynamics, child development, or family law including a minimum of 4 hours of family violence training. A court may appoint in certain circumstances a mediator who does not qualify under Subsection (a) or (b) if the mediator is appointed based on legal, professional training or experience in mediation.

The Mediation Services Board requires each mediator to submit an application for appointment as mediator to the Court Administrator. The applications are submitted to the Mediation Board for approval and to be added to the approved appointed list. Mediators (non-attorney) must be a member of the County Mediation Association and attorney mediators must be a member of the Galveston County Bar Association. Mediators must have 40 hours of basic training and may be required by the Mediation Board to have advance training in family, juvenile, CPS and criminal cases. CPS pre-trial mediators must complete an 8 hour CPS mediation training program. CPS pre-trial advisory mediators must complete an 8 hour CPS mediation training program and must have 3 years of family mediation which includes 15 mediations (Family or CPS pre-trial). If the mediator is an attorney, they must prove they have participated in Pre-Adversary Mediations as an attorney at least 10 times, of which five need to be pick-up mediations. If the mediator is not an attorney, they must prove they have participated in five CPS pre-trial mediations and observed at least five pre-adversary mediations. All mediators must complete a minimum of 3 hours of continuing education in Alternate Dispute Resolution/Mediation every 12 months.

All mediators must submit a sworn affidavit to the County Court Administration, as proof they met their mediator requirements for the year. The mediators must submit a new affidavit by December 31st of each year to be included on the approved mediator list.

The current approved mediator list was obtained from County Court Administration. All mediators who submitted an invoice for mediation services during the audit period were on the list of approved mediators.

For Kid's Sake Parenting Seminars

Under Section 1 of Article V of the revised By-Laws, the Mediation Services Board shall especially authorize all commitments and/or contracts which shall entail the payment of money, and shall authorize the expenditure of all monies appropriated for the use and benefit of the Mediation Services Board and/or Galveston County residents.

Rule 4.53 of the Local Rules for the County Courts at Law and District Courts of Galveston County mandates that in all cases in which the conservatorship, rights and duties or possession of a child is at issue, the parties shall attend the parenting seminar "For Kid's Sake" or the equivalent thereof at their own expense, and file proof thereof with the court. The court may, upon proper motion, waive or reduce the fee for the seminar sponsored by the Mediation Services Board.

The Resource Crisis Center sponsors the For Kid's Sake parenting seminars. A 'Registration Form For Kid's Sake Seminar' must be submitted by the client in order to attend the seminar. The registration form provides the client information and the court and case number. The Resource Crisis Center invoices the county monthly for mediation services provided through the parenting seminars. The cost to the county is \$450 per seminar. The following is the schedule of the parenting seminars provided during the audit period:

Date of Seminar	# of Attendees
9/7/2019	3
11/2/2019	2
12/7/2019	1
1/4/2020	3
2/1/2020	2
3/7/2020	3
6/6/2020	2
8/1/2020	1

The invoices submitting by the Resource Crisis Center during the audit period were reviewed. No discrepancies were noted.

Finding: The Resource Crisis Center is not submitting invoices to the county in a timely manner. On average, the center is submitting invoices 5 months after the date of the For Kid's Sake parenting seminar.

Statistical Analysis

An analysis was performed on the case types for which expenditures were made from the Alternative Dispute Resolution Fund (Mediation Services Fund) for the audit period. A total of 318 cases were included in the analysis. 55% of the cases were child protective services (CPS) cases and 40% were for family cases. The following reflects the case types for which expenditures were made from Alternative Dispute Resolution Fund.

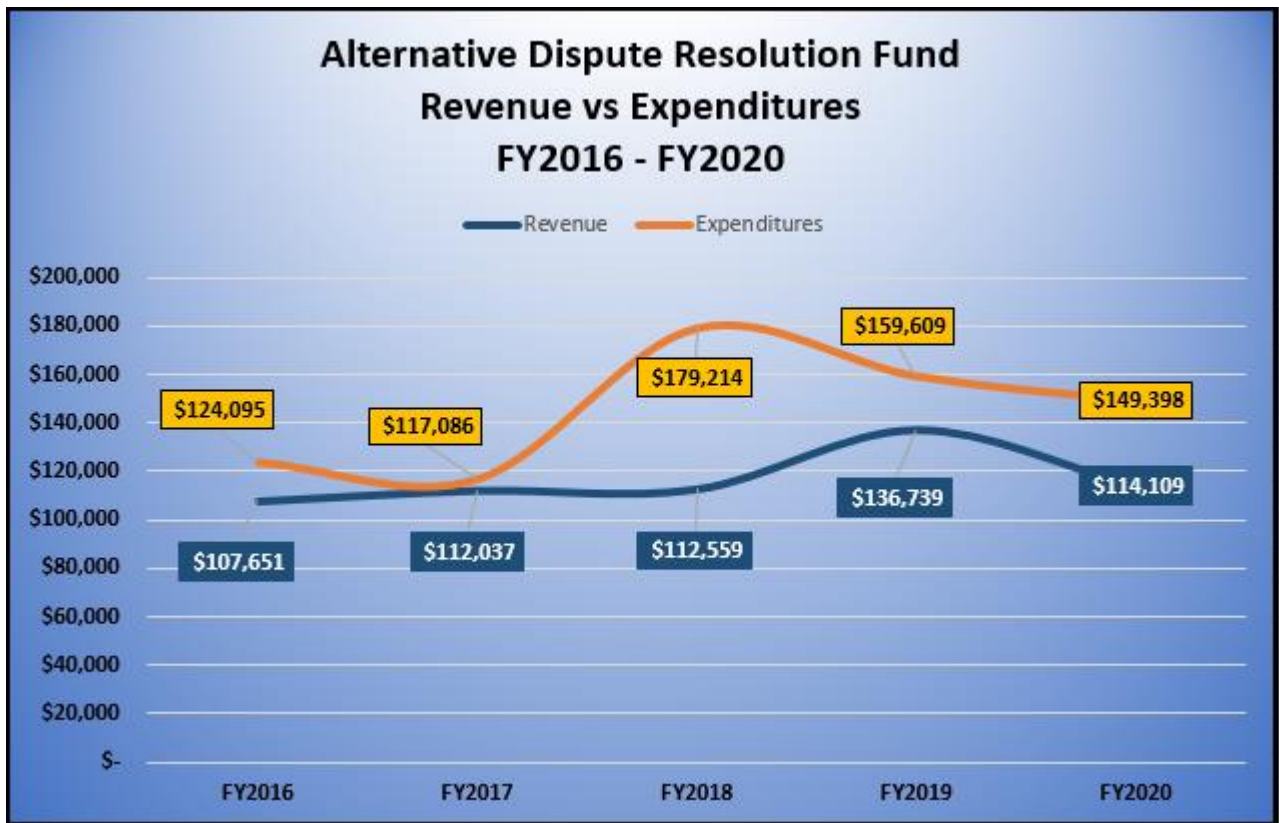
CPS	176	55.35%
Family	128	40.25%
Criminal	5	1.57%
Resource Crisis Center	5	1.57%
Civil	3	0.94%
Civil JP	1	0.31%
Total # of Invoices	<u>318</u>	<u>100.00%</u>

An analysis was performed on cases for which expenditures were made from both the Alternative Dispute Resolution Fund (Mediation Services Fund) and the Galveston County general fund for CPS and Family case expenditures from FY2016 through FY2020. A total of 1,534 cases were included in the analysis. 82% of the cases had expenditures of up to \$5,000 while one case accrued over \$40,000 during the same time period. The following reflects the case count and the expenditure range for both the Alternative Dispute Resolution Fund and CPS and Family case expenditures.

Up to \$5,000	1261	82.20%
\$5,001 - \$10,000	184	11.99%
\$10,001 - \$15,000	55	3.59%
\$15,001 - \$20,000	14	0.91%
\$20,001 - \$25,000	9	0.59%
\$25,001 - \$30,000	5	0.33%
\$30,001 - \$35,000	2	0.13%
\$35,001 - \$40,000	3	0.20%
\$40,001 - \$45,000	1	0.07%
	<u>1534</u>	<u>100.00%</u>

Statistical Analysis (continued)

A statistical analysis was performed on the Alternative Dispute Resolution Fund (Mediation Services Fund) from FY2016 through FY2020. Revenue collected remained fairly stable from FY2016 through FY2018 (\$107,651 and \$112,559 respectively), increased to \$136,739 (21%) in FY2019 then decreased to \$114,109 (16%) in FY2020. Expenditures increased from \$124,095 in FY2016 to \$179,214 in FY2018 (44%) then decreased to \$149,398 in FY2020 (17%). Overall, expenditures from Alternative Dispute Resolution fund from FY2016 through FY2019 have exceeded the amount of revenue collected.



- cc: Mediation Services Board:
Thayer Evans, President, President
Marcela Ortiz-Taing, Vice-President
Elizabeth Gunn, Attorney at Law, Secretary
Judge John Ellisor, 122nd District Court, Local Administrative Court Judge
Judge Anne Darring, 306th District Court
Brad Boney, Attorney
Dinah Mueller, Attorney
Shauna Correia, Attorney
Eric Nevelow, District Court Administrator
Judge Kerri Foley, Attorney

11-25-20

Lori,

The Galveston County Mediation Services Board reviewed, discussed and unanimously approved the September 1, 2019-August 31, 2020 audit report's findings during its November 17th meeting.

The board appreciates your assistance and patience during the audit process.

Sincerely,

A handwritten signature in black ink, appearing to read 'Thayer Evans', written over a horizontal line.

Thayer Evans
President
Galveston County Mediation Services Board