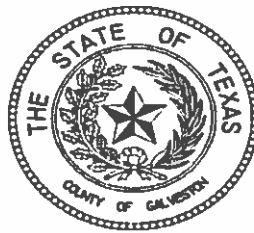


GALVESTON COUNTY



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

October 23, 2017

Honorable Judge Mark A. Henry and
Members of the Commissioners' Court

Honorable Judge and Members of the Court:

Attached for your consideration is the internal audit report of the Galveston County Mediation Services Program Fund that covered the period February 1, 2016 through January 31, 2017. Also attached is the response letter from Robert E. Booth, dated October 10, 2017.

Sincerely,

A handwritten signature in blue ink, appearing to read "Randall Rice", is written over a faint, larger version of the same signature.

Randall Rice CPA
County Auditor

cc: Robert E. Booth, President

Attachment: Mediation Services Program Fund Audit Report
Response Letter, Robert E. Booth

GALVESTON COUNTY



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722 Moody Ave 4th Floor, Galveston, TX 77550

July 27, 2017

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

From: Mr. Randall Rice
County Auditor

Re: Galveston County Mediation Services Program Fund

The Internal Audit division conducted an internal audit of the Mediation Services Program Fund, in accordance with Local Government Code §115. The internal audit covered the period February 1, 2016 through January 31, 2017.

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

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

Texas Civil Practice & Remedies Code §152 Alternative Dispute Resolution System Established By Counties

Texas Civil Practice & Remedies Code (CPR) §152 Alternative Dispute Resolution System Established by Counties sets the guidelines for the Mediation Services Fund. CPR §152.002 (Establishment) states the following:

- a) The commissioners court of a county by order may establish an alternative dispute resolution system for the peaceable and expeditious resolution of disputes.
- b) The commissioners court may do all necessary acts to make the alternative dispute resolution system effective, including:
 - 1) Contracting with a private nonprofit corporation, a political subdivision, a public corporation, or a combination of these entities for the purpose of administering the system
 - 2) Making reasonable rules relating to the system, including rules specifying whether criminal cases may be referred to the system
 - 3) Vesting management of the system in a committee selected by the county bar association.
- c) The actions of a committee authorized by Subsection (b)(3) are subject to the approval of the Commissioners Court.

Galveston County Mediation Services Program

A 'Proposal For Mediation Services of Galveston County, Texas' was approved by Commissioners Court on January 27, 1992, in accordance with CPR §152.002(a). The goals, as stated in the proposal, were to provide the courts with qualified mediators who would provide mediation for parties who needed financial assistance to afford mediation and to address the needs of civil and family courts. Section I(B) of the proposal created the Mediation Services Board (the Board), whose responsibilities include:

- Establishing guidelines for qualifications by a litigant for financially-aided mediation services
- Establishing guidelines for a qualifying mediator, based on statutory requirements
- Setting policy for the mediation services
- Working with the Galveston County judges as liaison for the mediation services
- Work with the appropriate Galveston County officials to establish a budget for the mediation services

The 'By-Laws of the Galveston County Mediation Services Board' (the By-Laws) were revised and approved by Commissioners Court in December of 2010 and provide the current guidelines for the Board, including the membership requirements, duties and jurisdiction.

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

The clerks of the county or district courts shall collect and pay the costs to the county treasurer, who shall deposit the costs in a separate fund known as the alternative dispute resolution system fund. The fund shall be administered by the Commissioners Court and may only be used to establish and maintain the system.

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 clerks of the justice courts shall collect and pay the costs in the manner prescribed by Section 152.004.

The county and district courts currently collect a \$15 mediation fee for each civil case that meets the criteria set by CPR §152.004. The justice courts currently collect a \$5 mediation fee for each civil case that meets the criteria set by CPR §152.005. The mediation fee collected by all courts is deposited in the county demand account and recorded in the special revenue fund titled 'Mediation Services Program'.

Appointment of Impartial Third Parties

CPR §154.051 allows the court to appoint an impartial third party to a case if it is agreed upon by the parties. The qualifications the third parties must meet in order to be eligible to participate are outlined in CPR §154.052:

- a) A person must have completed a minimum of 40 classroom hours of training in dispute resolution techniques in a course conducted by an alternative dispute resolution system or other dispute resolution organization approved by the court making the appointment.
- b) For disputes relating to the parent-child relationship, a person must complete the training required by section a) and an additional 24 hours of training in the field of family dynamics, child development, and family law.
- c) In appropriate circumstances, a court may in its discretion appoint a person as an impartial third party who does not qualify under sections a) or b) if the court bases its appointment on legal or professional training or experience in a particular dispute resolution process.

Finding: The Mediation Services Board was unable to provide proof the current mediators meet the qualifications described in CPR §154.

Recommendation MS-17-01: All mediators should submit proof of qualifications which should be retained by the Mediation Services Board as support for compliance with CPR §154.

Compensation of Mediators and Support Staff

Article VII Section 1 of the By-Laws states the Board shall authorize the hourly rate of compensation for mediation from the mediation 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 standard rate for mediation services was \$125 per hour with a maximum of five hours of mediation services allowed per case. On November 28, 2016, the Board approved a new form titled 'Claim and Order for Payment for Mediation Services under Special Authorization of the Galveston County Mediation Board'. The approved authorization form increased the standard rate to \$200.00 per hour with a maximum of four hours of mediation services allowed per case. The form, submitted by the mediator and signed by the presiding judge, serves as an invoice to the county and must reflect the amount of hours worked on the case and any payments made to the mediator by either party.

A sample of invoices (authorization forms) was tested for compliance with rate and hours set by the Mediation Board.

Finding: The requested claim amount on the invoices (authorization forms) is not consistently being calculated accurately.

Recommendation MS-17-02: To be in compliance with the rate and hours set by the Mediation Services Board, the requested claim amount is calculated by multiplying the number of mediation service hours by the standard rate of \$200 (or \$125, depending on the date of mediation), then deducting any payments received by either party.

Finding: Several invoices (authorization forms) exceeded the number of mediation services hours allowable per case.

Recommendation MS-17-03: To be in compliance with the maximum hours set by the Mediation Board, mediation services must not exceed 4 hours (or 5 hours, depending on the date of mediation) per case.

Finding: Several invoices (authorization forms) were filled out on a party basis instead of on a case basis.

Recommendation MS-17-04: To be in compliance with the Mediation Board's By-Laws, mediation services invoices (authorization forms) must be submitted on a case by case basis, not by parties.

Parenting Seminars

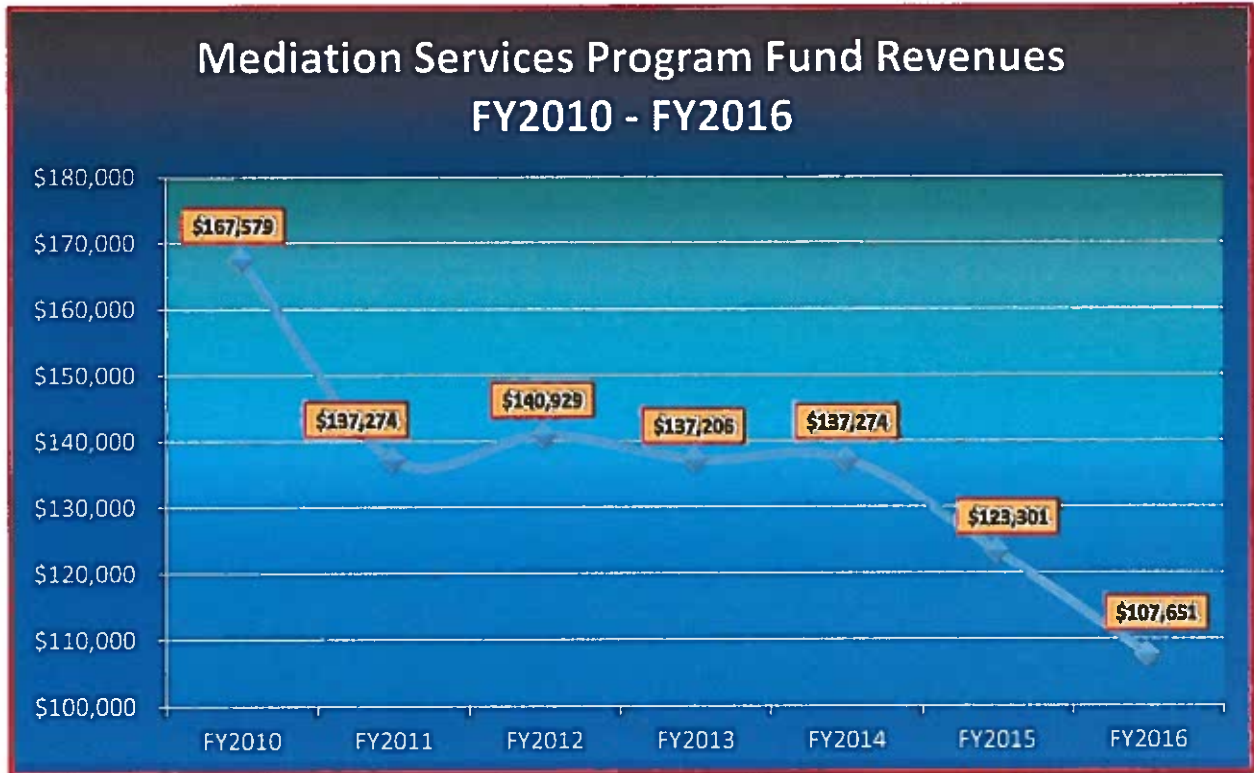
Under Section 1 of Article V of the revised By-Laws, the Mediation Services Board shall especially authorize all commitments and/or contracts which shall entail the payment of money, and shall authorize the expenditure of all monies appropriated for the use and benefit of the Mediation Services Board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

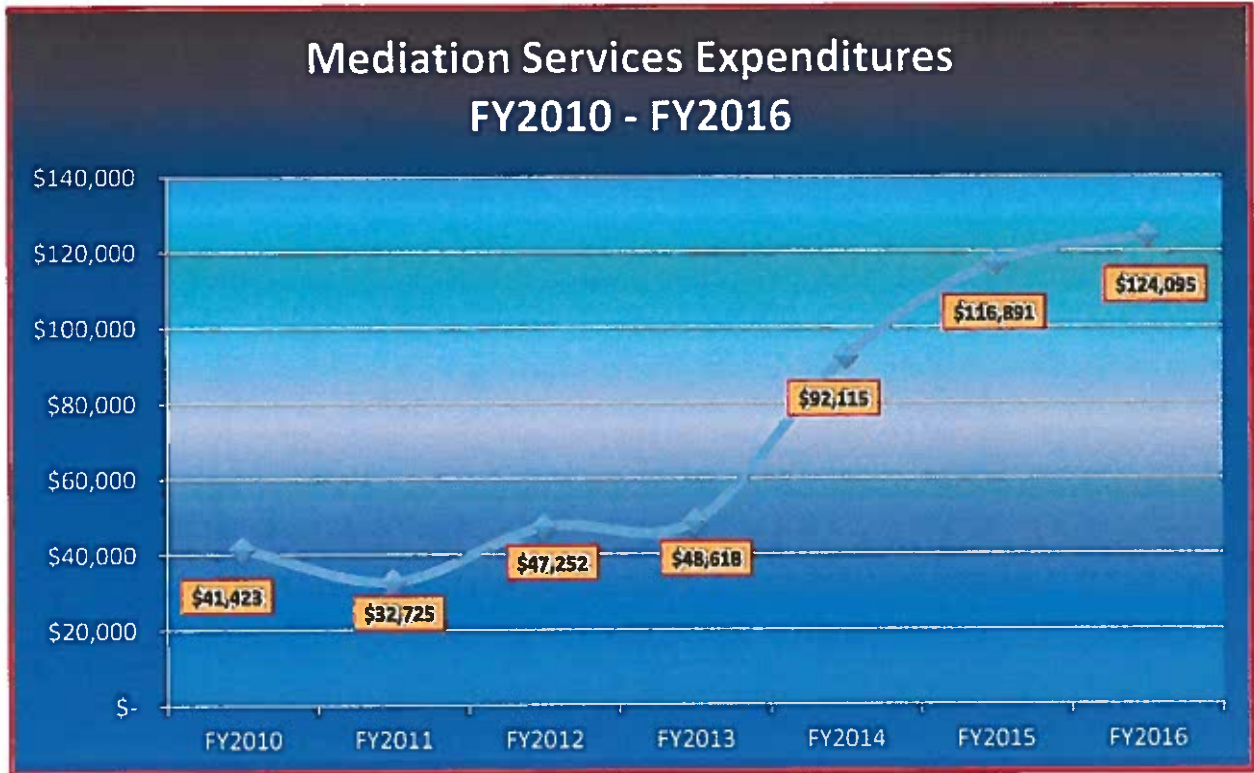
During the audit period, \$10,350.00 was paid to the Resource Crisis Center for "For Kid's Sake" seminars. A 'Claim Under Special Authorization of Galveston County Mediation Board' form is submitted as a monthly invoice for payment. This form includes the number of facilitator sessions performed and the dates the sessions were performed. Each form is signed by a representative of the Resource Crisis Center and the presiding judge.

Statistical Analysis

A statistical analysis was performed on the revenue collected for the Mediation Services Program Fund from FY2010 through FY2016. Since FY2010, the amount of revenue collected has decreased from \$167,579 to \$107,651, a 35.8% decrease. The chart below reflects the trend of the revenue collected for the Mediation Services Fund.



A statistical analysis was performed on the expenditures from the Mediation Services Program Fund from FY2010 through FY2016. Since FY2010, the amount of expenditures has increased from \$41,423 to \$124,095, a 199.6% increase. Of the \$124,095 spent in fiscal year 2016, \$7,200 was spent on facilitator sessions and \$116,895 was spent on mediator fees. The chart below reflects the trend of the expenditures from the Mediation Services Fund.



cc: Honorable Lonnie Cox, 56th Judicial District Court
Honorable Jack Ewing, County Court at Law #3
Robert Booth, President Galveston County Mediation Services Board

MILLS SHIRLEY L.L.P.

ESTABLISHED 1846

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October 10, 2017

Randall Rice, CPA
Office of County Auditor
722 Moody Ave
4th Flood
Galveston, TX 77550

**Re: Response to Draft Internal Audit Report of the Galveston County
Mediation Services Program Fund**

Mr. Rice:

Thank you for providing the draft report. On September 11th, the Mediation Services Board met and voted to give me authority to write this response to your proposed findings.

Over the past year and during my term as President, the Mediation Services Board has worked to implement a number of changes to address many of the issues raised in your draft.

Your proposed findings are critical of inconsistent calculations of the mediation subsidy and party descriptions. The Board recognized this problem last year and determined the root cause to be varying versions of the claim form. Many mediators were submitting forms they had created with unapproved calculations of fees.

On November 28, 2016, the Board adopted the attached Claim and Order. The form is vastly improved from the older form because the calculation is strictly limited to make sure that the fees are accurately applied. As part of this form, the Board decided that the maximum subsidy for a mediation would be \$800.00. Furthermore, the form requires the mediator to disclose whether the mediation was successful, which should allow the County to track efficiency.

Did the audit find these problems after the Board adopted the revised form?

With respect to the Mediation fund's budget, there is a sizeable reserve of over \$1 million. The Board decided that slightly deficit spending is in a good use of the public resources because it will resolve more cases without further Court action.

Tuesday, October 10, 2017

Page 2 of 2

Lastly, the Mediation Services Board has undertaken a significant revision of the Bylaw to address several issues. A draft of the revision is attached. I'm available to meet to discuss the reasons for these changes. The Board expects to forward a final version for approved revised bylaws to Commissions Court by October 31, 2017.

Please call me if you would like to set an in-person meeting.

Sincerely,

A handwritten signature in blue ink, appearing to read 'R. Booth', written over the printed name.

Robert E. Booth

Texas Bar No. 24040546

cc:

Judge Mark A. Henry

Judge Lonnie Cox, 56th Judicial District

Judge Jack Ewing, County Court at Law # 3

**Claim and Order for Payment for Mediation
Services under Special Authorization of the Galveston County Mediation Board**

To: Galveston County, Texas Date of Mediation: _____

Cause No.: _____

Style of Suit: _____

Mediator's Certification

By my signature below, I certify that I served as a mediator of the above-referenced cause on the specified date. I further certify that below is calculation of the Mediator's Requested Claim Amount that: (1) is just and correct; (2) is made in accordance with the rules for Mediation Service of Galveston County, and under Title 7 of Civil Practice and Remedies Code, Chapter 154; (3) reflects a credit for any and all funds directly received; and (4) is for unpaid services.

The Mediation [_____ was or _____ was not] successful in completely resolving the suit.

With respect to fees paid directly to me for the Mediation,

on _____, I received \$_____ from _____, and

on _____, I received \$_____ from _____.

	* \$ 200.00	=	\$	-	\$	=	\$
Hours	Rate/hour		Subtotal		Received Payments		Mediator's Requested Claim Amount
[1 to 4]							

By: _____
Mediator's Signature Mediator's Printed Name

Address: _____

Telephone: _____ Fax: _____

Email: _____ EIN: _____

Approval and Order for Payment to Mediator

The Court FINDS, CERTIFIES and APPROVES the Mediator's Requested Claim Amount as set forth above because it complies with the Galveston County Mediation Board's rules and procedures for compensation for mediation services provided in a suit pending before this Court. It is further ORDERED that within 30 days, Galveston County, Texas, its auditor or other representative, shall pay to the Mediator, the Mediator's Requested Claim Amount from Galveston County's from the Mediation Funds Account.

SIGNED this _____ day of _____, 20____.

 Presiding Judge

 Court Designation