

OFFICE OF THE STATE AUDITOR



City of Ruidoso Downs

Municipal Court

Independent Accountant's Report on Applying Agreed-Upon Procedures

For the Period of January 1, 2012 through October 31, 2015

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State Auditor



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Deputy State Auditor

State of New Mexico
OFFICE OF THE STATE AUDITOR

February 17, 2016

Gary Williams, Mayor
City Councilors
City of Ruidoso Downs
P.O. Box 348
Ruidoso Downs, New Mexico 88346

Dear Mayor and City Councilors:

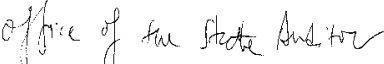
We have performed the agreed-upon procedures for the City of Ruidoso Downs Municipal Court (the "Court") for the period of January 1, 2012, through October 31, 2015. These procedures are solely with respect to the Municipal Court's transactions related to payroll, mileage reimbursements, and daily bank deposits.

On behalf of the City of Ruidoso (the "City"), the Mayor agreed to the procedures. The City's management is responsible for its accounting records and the subject matter. This agreed-upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of the parties specified in this report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

We were not engaged to and did not conduct an examination, the objective of which would be the expression of an opinion on the agreed-upon procedures. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of management of the City of Ruidoso Downs, City of Ruidoso Downs Municipal Court and the New Mexico State Auditor, and is not intended to be and should not be used by anyone other than these specified parties. Please do not hesitate to contact us at (505) 476-3800 if you have any questions regarding this report.

Sincerely,


Office of the State Auditor

**City of Ruidoso Downs
Municipal Court**

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**City of Ruidoso Downs
Municipal Court**

OFFICIAL ROSTER

CITY COUNCIL

Gary L. Williams

Mayor

Margie Morales

Councilor

Judy Miller

Councilor

Ronald P. Ritter

Councilor

L. Dale Perry

Councilor

MUNICIPAL COURT

The Honorable Harrold R. Mansell

Municipal Judge

Independent Accountant's Report on Applying Agreed-Upon Procedures For the Period of January 1, 2012 through October 31, 2015

I. EXECUTIVE SUMMARY

On March 27, 2015 the Office of the State Auditor (OSA) met with the Mayor and legal counsel for the City of Ruidoso Downs. The Mayor expressed concerns about the operations of the Municipal Court (the "Court") and requested the OSA's assistance in evaluating issues related to payroll and personnel management. After discussing the concerns with the Judge of the Municipal Court, the OSA determined that the matters raised were appropriate for review.

In a letter dated November 13, 2015, the OSA designated the City for a Special Audit pursuant to Section 12-6-3(C) NMSA 1978 ("Audit Act"), which provides that the State Auditor "may cause the financial affairs and transactions of an agency to be audited in whole or in part." Additionally, in accordance with the Section 2.2.2.15 NMAC ("Audit Rule"), the State Auditor may initiate a Special Audit regarding the financial affairs and transactions of an agency or local public body based on information it receives.

The designation was made in order to address the City's concerns regarding the Municipal Court's compliance with applicable laws, regulations, policies and procedures. On December 10, 2015, the City and the OSA executed a contract for an agreed-upon procedures engagement. This report resulted from the OSA's designation and agreed-upon procedures engagement. The OSA is grateful to the City and Municipal Court personnel for their cooperation.

In summary, the OSA's findings focus on the need to develop clear policies and procedures related to Municipal Court operations and improve coordination with the City to safeguard public funds and ensure compliance with applicable rules and best practices. Once these policies and procedures are implemented, training will be key to ensuring that they are properly administered by staff.

Specifically, the OSA identified shortcomings with respect to the payment of overtime, reimbursement for use of personal vehicles, lack of segregation of duties, cash handling procedures, and document retention. Based on the samples tested in the engagement, the findings with a monetary value indicate \$4,743.62 in potential overpayments to Court employees. While this financial impact may not be significant compared to the City's overall payroll, the report highlights various internal control and policy deficiencies which may make the City susceptible to fraud, waste and abuse if left unaddressed.

This report was developed based on information from interviews, observations of processes, and our review of selected documentation and records. Based on the samples tested and the limited procedures performed, the OSA did not find instances of any intentional wrongdoing. However, had additional procedures been performed, other matters may have come to light that would have been reported.

The following table summarizes the OSA’s findings:

Finding Number	Description	Potential Overpayments
2015-001	Court Administrator Received Overtime In Conflict with Court Policies	\$1,015.17
2015-002	Court Employees Received Mileage Reimbursement for In-Town Personal Vehicle In Conflict with City Polices	\$3,728.45
2015-003	Court Employees have Complete Control of Receivables Without Independent Verification Process	
2015-004	Lack of Implementation of Cash Handling Procedures	
2015-005	Conflict between Employee Schedules and Required Hours of Operation	
2015-006	Lack of Documentation for the 2012 Court Employee Pay Raises	
Totals		\$4,743.62

In response to the findings, the OSA recommends that the Court take the following actions:

- Develop a Court Policy Manual detailing specific position descriptions for all court employees and their respective compensation mechanisms. This would clarify the positions eligible for overtime payments.
- Develop a procedure where the Court provides the City with their daily collections for deposit. This would help ensure accountability for the daily deposits and eliminate the need for Court staff to use personal vehicles and close the Court in their absence.
- Create procedures for transaction processing. The procedures should embody the Committee on Sponsoring Organizations (COSO) Internal Control Integrated Framework Principles and comply with JEC guidelines. The procedures must ensure segregation of duties and also provide monitoring oversight. Due to a small Court staff this will require utilizing City personnel for some aspects of the transactions as recommended by the JEC Municipal Court Manual. It is the responsibility of management, specifically the City’s Chief Financial Officer, to design, implement, maintain and monitor appropriate internal controls and to promptly take corrective action when deficiencies are identified.
- Develop a Court Policy and Procedures Manual that establishes cash handling procedures. The procedures should embody the COSO Internal Control Integrated Framework Principles and comply with JEC recommendations. The procedures must ensure segregation of duties and also provide monitoring oversight.
- Reflect, in Court policies the actual hours of operation and ensure public access is convenient and consistent. The Court needs to work with the staff to ensure adequate coverage during the hours of operation listed in the Court Policies.

Additionally, the OSA recommends that the City take the following actions:

- Maintain employee files with the necessary documents and ensure there are clear policies and procedures in place that comply with document retention requirements.

The City and the Court both provided responses to each audit finding. The responses included in the schedule of findings and responses have not been audited or edited.

II. BACKGROUND

New Mexico state statute defines the legislative body of a municipality as the governing body, in this case the City of Ruidoso Downs City Council. The mayor is by statute the chief executive officer. The Municipal Court is part of the judicial department and is headed by an elected municipal judge. *See* N.M. Const. art. VI, § 26; NMSA 1978, § 3-10-1. Each of the three distinct departments has specific powers and responsibilities but they must work together to achieve their respective mandates.

The Municipal Court has authority to hear cases involving offences for which the City government has adopted an ordinance. The Municipal Court is governed by the Rules of Procedures for the Municipal Courts, adopted by the New Mexico Supreme Court. The rules are published in Chapter 8 of the New Mexico Rules Annotated (NMRA). The New Mexico Judicial Education Center (JEC) within the Institute of Public Law at the University of New Mexico Law School provides training and guidance for municipal courts. The NMRA and the Municipal Court Manual for Judges and Staff published by the JEC provide specific and detailed rules and guidance for court procedures. However, neither sources provide the same level of detail for administrative procedures. They do contain general guidance for daily operations. In *Mowrer v. Rusk*, 1980-NMCA-1, 95 N.M. 48, the New Mexico Supreme Court stated that municipal courts can, “as a matter of constitutional law, directly control court personnel.”

The separation of powers between the mayor, city council, and municipal court can pose challenges with respect to judicial administration. The lack of definitive guidance for municipal courts has led to tension between the Mayor and the Court concerning financial controls and the policies and procedures that should be followed. The City personnel policy manual specifically excludes Court employees unless the Court determines otherwise. In addition, the Judge confirmed that in the absence of a specific Court policy the City policy is enforced. Although the Court has attempted to develop its own personnel policies, as evidenced by the multiple conflicting copies provided to the OSA, there remains a significant lack of clarity. The Court may wish to consider utilizing the City policies with an addendum specific to the Court.

III. SCOPE AND PROCEDURES

The City engaged the Office of the State Auditor (OSA) to perform certain procedures to assess the Municipal Court's compliance with applicable laws, regulations, policies and procedures in various areas. The following procedures were agreed to:

- Determine if the Court's personnel policy is properly approved.
- Determine if employee work hours and/or schedules are consistent with approved personnel policy.
- Determine if extra hours worked, compensation time, and overtime are allowed by the Court's approved personnel policy.
- Review on a sample basis if employee timesheets and hours reported are properly approved and appear reasonable.
- Document the procedures for the Court's daily bank deposits.
- Determine if the daily deposit procedures follow applicable policies and guidelines.
- Review on a sample basis mileage and per diem payments to Court employees for compliance with applicable policy.
- Review the Court's deposits on a sample basis and compare deposits to bank statements and Court receipting records.

OSA auditors met with City management and the Municipal Court Judge. We conducted interviews of City and Court staff, including interviews intended to detect fraud. The Court provided the OSA with two versions of a Municipal Court Personnel Policies and Procedures manual as well as a Municipal Court Personnel Policy Manual. One version of the Municipal Court Personnel Policies and Procedures was revised and accepted by the Municipal Court Judge on November 29, 2007. The City provided OSA with a copy of the City of Ruidoso Downs Personnel Policy Manual with a revision date of September 14, 2015.

IV. GENERAL OBSERVATIONS

Our procedures highlight internal control and policy deficiencies, which may make the City susceptible to fraud, waste and abuse.

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City of Ruidoso Downs Municipal Court

SCHEDULE OF FINDINGS AND RESPONSES

2016-001 – Court Administrator Received Overtime in Conflict with Court Policies

Condition:

A sample of 35 weeks was tested out of a 200 week time period, from January 1, 2012 through October 31, 2015. It was noted that from July 1, 2012 through October 31, 2015 Employee 1 submitted timesheets reflecting overtime and received overtime pay on nine separate occasions.

Judge Harrold Mansell promoted employee 1 from Court Clerk to Court Administrator on July 1, 2012. According to the position description the employee “[p]erforms a wide variety of routine and complex supervisory, administrative and clerical tasks for the Municipal Court,” and “[s]upervises court clerks; may supervise court ordered community service workers or other full or part-time or temporary staff, as assigned.”

On May 8, 2014, Judge Mansell notified the City that the Court Administrator “position is equal to that of the City Clerk or any other department directors in status and responsibility.”

Criteria:

Ruidoso Downs Municipal Court Personnel Policies and Procedures (Court Policies) – 100.2 Administrative Staff states: “Staff who have responsibilities for formulating and administration of Court policies; who direct the work of the other court staff, and who have overall responsibility for the operation of the Municipal Court are considered administrative. Such employees are salaried and not entitled to payment of overtime.”

The Federal Labor Standards Act (FLSA) specifically states that for Administrative Exemptions, the following tests must be met:

- The employee must be compensated on a salary or fee basis at a rate not less than \$455 per week.
- The employee’s primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer’s customers; and
- The employee’s primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

The Court Administrator earns more than \$455 per week. The Court Administrator as stated in the Court Personnel Policy supervises and directs the operations of the Court and its employees, thus manages the Court and its employees. Lastly, the Court Administrator formulates and administers the Court policies and is responsible for the operation of the Court. By the FLSA standard, the Court Administrator is an exempt employee and therefore, not entitled to overtime.

Effect:

In the 35 week sample, we noted nine timesheets that reflected a total of 41 hours of overtime for the Court Administrator. The timesheets were completed and signed by the employee and the Judge. The payroll register indicates the Court Administrator received \$1,015.17 in overtime pay.

Cause:

There appears to be confusion as to whether the Court Administrator is a salaried employee ineligible for overtime or an hourly employee entitled to receive overtime. On June 13, 2011 the Court Policy was revised to reflect that in general staff can receive overtime but the handwritten changes did not include the Court Administrator.

Recommendation:

The Court needs to develop a Court Policy Manual detailing specific position descriptions for all court employees and their respective compensation mechanisms. This would clarify the positions eligible for overtime payments.

Agency Response:

City:

“The City maintains the responsibility to pay overtime in accordance with the law. The City will review the finalized Court Policy Manual when received from the Court and will ensure that any requests for overtime are handled in accordance with the finalized Court Policy Manual and with state and federal law. Should there be discrepancies between the Court Policy Manual and state and federal law, particularly the FLSA stated in the Criteria, the City will default to paying overtime in accordance with applicable state and federal law.”

Court:

“Judge did promote the court clerk to the Court Administrator because she is handling the all aspects of court. Judge wanted to her have a salary comparable to the other directors in the city. But city Council refused to give her the salary. She is a non exempt employee. All the overtime is approved by the Judge, and is in the approved court budget. Being that the court is short staffed I chose to give the court administrator overtime and she could not do the com time because there is no one to cover when she is gone. This would result in the court having to close for those hours. This will be added to the court policy.

As far as the Court Policy Manual detailing specific position descriptions for all court employees and their respective compensation mechanisms. There are some issues that do to the court being short staffed the court will need to come up with a solution to take care of these issues. We are working on a policy to handle the problems that have arisen. This is a work in progress.”

2016-002 – Court Employees Received Mileage Reimbursements for In-Town Personal Vehicle Use to Make Daily Deposits in Conflict with City Policies and JEC Municipal Court Manual

Condition:

For the time period of September 2012 through December 2015, 80 mileage reimbursement forms were reviewed (40 for Employee 1 and 40 for Employee 2). It was noted that on all 80 forms the employee requested reimbursement for the use of a personal vehicle for in-town travel to and from the bank to make daily court deposits. In total the City paid the Court employees \$3,728.45 for in-town travel reimbursement. Employee 1 submitted and was paid in-town travel reimbursements of \$295.04 in 2012, \$795.80 in 2013, \$672.39 in 2014 and \$635.50 in 2015 for a total of \$2,398.73. Employee 2 submitted in-town travel reimbursements of \$222.40 in 2012, \$405.37 in 2013, \$428.33 in 2014 and \$273.62 in 2015 for a total of \$1,329.72.

Criteria: City of Ruidoso Downs Personnel Policy Manual (City Manual) - #529, Ruidoso Downs Municipal Court Personnel Policies and Procedures (Court Policies) - #110 Travel and Training, and the New Mexico Judicial Education Center Municipal Court Manual for Judges and Staff - 12.3.2 Guidelines for Daily Deposits.

The City Policies state, “If the City is not able to provide a vehicle then the staffer will be paid the standard mileage in line with state statute and City Ordinance. The staffer will also receive the standard per diem. If a vehicle is available for travel and the staffer chooses not to take said vehicle they will not be paid mileage to the training.” The Court Policies do not specifically address the use of vehicles or the payment of mileage for personal vehicle reimbursement outside of the context of training.

The City’s Manual provides that “[a]ll employees must drive a City-owned or authorized vehicle while on City business unless specifically exempted, in writing, by authorization of the Mayor.”

The JEC guidance in the New Mexico Municipal Court Manual for Judges and Staff. In section 12.3.2 Guidance for Daily Deposits states, “All funds collected by the municipal court should be deposited daily. Some courts have a bank account while others deposit funds with the municipality to deposit into a bank account. Both ways of doing business are fine. The courts that maintain a bank account must remit the funds to the municipality no later than the tenth of each month. The court must also provide instructions on how the money is to be dispersed.” The Municipal Court does not maintain a separate bank account and based on the JEC guidance should be transferring the funds to the City for deposit with the bank.

Effect:

Since the Court should be providing the daily collections to the City for deposit, and its offices are located in the same building, the daily trips to the bank by Court personnel in private vehicles are unnecessary. Additionally, if such trips are required, the City can provide Court employees with City-owned vehicles. The reimbursements for private vehicle use appear to be unnecessary and wasteful.

Cause:

It appears that the Court does not have a policy regarding in-town travel reimbursement and did not default to the City Policy. In addition the Court has chosen to deposit directly to the City's bank account rather than transferring the daily collections to the City for deposit.

Recommendation:

The Court needs to develop a procedure where the Court provides the City with its daily collections for deposit. This would help ensure accountability for the daily deposits and eliminate the need for Court staff to use personal vehicles and close the Court in their absence.

Agency Response:

City:

"The City has a deposit procedure that is followed on a daily basis. The Finance Director maintains a procedure that is followed whereby the deposits are placed in sealed bags that allow for separation of duties. The Court is responsible for counting the money and the City will be responsible for depositing the money for the Court without tampering with any of the deposits. The City is in the process of creating a deposit procedure with the Court. The City will continue to work on a process for taking the Court's deposits to the bank on a daily basis."

Court:

"The court polices have been review and there is no policy for travel for deposits, this is something that will be added to our policy. The Judge decided to continue having his court staff, which consists of a full time and a part time employee, which deposits the daily deposits. The court will set a meeting with the finance and see if we can come up with some agreement on the procedures in depositing our daily deposits.

We are now currently allowing the city finance officer to deposit court daily deposits, so there will not be a problem with the mileage rebursements for paying milage.

All travel is in the court approved budget and approved by the Judge."

2016-003 – Court Employees have Complete Control of Receivables Without Independent Verification Process

Condition:

During an interview with Employee 1 we determined that court employees have complete control of all receivables and Court files and record processing with no formal independent review process. Several elements of the Committee of Sponsoring Organizations (COSO) Internal Control Framework are absent. Employee 1 receives all issued citations from the Police Department and enters the citations into the court database, Caselle. Once the citations are entered they are placed in a file cabinet in the Court office. When an individual pays the citation, whether in person or by mail, a Court employee records the payment in Caselle and a receipt is provided to the individual. If an individual appears before the Judge, the case

disposition is entered into Caselle by an employee, at which time fees can be waived per the Judge's ruling. All employees have full access to data entry, voids, deletions, citation fee waivers and payment processing.

A sample of 10 citations was reviewed for completeness to ensure the court maintained adequate supporting documentation. These citations were also reviewed for voids or deletions. It was noted that citations were entered into Caselle within three business days of issuance, payments were recorded and if a fee or penalty was waived courts records were maintained to justify the waiver. However, it was determined that no review is performed routinely to ensure that all citations are handled in the correct manner.

Employee 1 informed us that a report is provided to the Police Department regarding the entry of all citation and the Finance Officer confirmed that the Police Chief is currently verifying that citations are entered. However, in regards to payment and fee waivers, voids and deletions, no review process is in place. Employee 1 stated that the system could not print any report to track voids or deletions that were completed.

Criteria:

Committee of Sponsoring Organizations Internal Control Integrated Framework consisting of five principles: control environment, risk assessment, control activities, information and communication and monitoring activities. The control environment demonstrates an organization's commitment to internal control and integrity. Risk assessment identifies and analyzes organizational risks. Control activities are developed and employed to mitigate risks. Information and communication disseminates information to support internal controls. Monitoring activities review and evaluate components of internal control for effectiveness. COSO guidelines help improve organizational performance and reduce the potential of fraud in organizations.

New Mexico Judicial Education Center Municipal Court Manual for Judges and Staff - 12.3.1 Collection of Fines, Fees and Costs and 12.3.2 Guidelines for Daily Deposits.

Section 12.3.1 of the New Mexico Municipal Court Manual for Judges notes, "A major portion of a clerk's responsibilities includes processing payments of fines, fees and costs. Every municipality is required to enact an ordinance requiring assessment of fines, fees, and costs in criminal proceedings in which the defendant pleads or is found guilty in municipal court. Every municipal judge is required to collect any assessed fines and all fees and costs from convicted persons." It continues in section 12.3.2, Guidelines for Daily Deposits, "When preparing deposits for the municipal treasurer, the finance department, or directly for deposit to the bank: Account for all receipts in numeric sequence. Any receipt missing from the day's sequence should be attached to the daily deposit with an explanation and a supervisor's signature." In addition the manual recommends the following: "The cash register should be balanced by the clerk who receipted the money, and then given to the chief clerk (or designee of the chief clerk) to verify the deposit. If the court has only one clerk it is recommended that someone within the municipal government is assigned to assist with this process. This is a protection for the clerk and the court."

Effect:

Internal control weaknesses can allow errors to go undetected and also provide the opportunity to commit fraudulent activity without detection. Failure to implement effective internal controls increases the Court's and City's exposure to theft and misappropriation of funds.

Cause:

Segregation of duties is necessary to prevent or reduce the potential for fraud and errors. No one employee should have complete control over all aspects of a transaction, meaning the authorization, custody, record keeping and reconciliation of the transaction. It appears that the internal control integrated framework is deficient and contributing to poor control and monitoring activities.

Recommendation:

The Court needs to create procedures for transaction processing. The procedures should embody the COSO Internal Control Integrated Framework Principles and comply with JEC guidelines. The procedures must ensure segregation of duties and also provide monitoring oversight. Due to a small Court staff this will require utilizing City personnel for some aspects of the transactions as recommended by the JEC Municipal Court Manual. It is the responsibility of management to design, implement, maintain and monitor appropriate internal controls and to promptly take corrective action when deficiencies are identified.

Agency Response:

City:

"The City, through the Finance Director primarily, has procedures in place to account for receivables and independent verification. The City is ready, willing and able to share these procedures with the Court and help assist the Court with implementing those procedures. Due to the necessity for the Finance Director to review the Court's current system, update the system, and train on the system, the City states that there can be an efficient, operating system in place with the Court by July 1, 2016, assuming the Court fully cooperates with the City."

Court:

"The court consists of two employees; both employees are responsible for entering citations, entering payments and process deposits. There is not one person responsible and in charge of those duties. There is a computer record of all transactions and all receipts are copied and a file is kept in the office.

At the end of the day a copy of the case summary report is printed and given to the Finance Director with the receipt of the deposit.

After a case has been completed the case cannot be voided or deleted. If there is a problem with a case the clerks need to call Caselle support to help with the problems that arise.

If there is a problem with court staff and if any deficiencies are identified, The Chief Financial Officer and Management will need to report to the Judge and he will look in to the

problems and take care of them, as he is the supervisor of his court employees. We are working on a policy and have contacted the Caselle on helping add a number sequence to all transactions, the program did not have a number sequence in the payment register. But will see if Caselle can add that to our report. This will be added to our report in the cash handling policy.

The Judge is in charge of his court, Separation of Powers and Mower v Rusk., 1980-NMSC-113,95 N.M. 48, 618P. 2d 886 (S.CT. 1980)”

2016-004 – Lack of Implementation of Cash Handling Procedures

Condition:

Upon reviewing the cash handling process within the Court, it was noted that the Court is not following an official written cash handling procedure. In addition several elements of the Committee of Sponsoring Organizations (COSO) Internal Control Framework are absent. A Court employee cannot make change as no cash register is maintained. Only money orders, checks or exact cash amounts are accepted and placed in a desk drawer. Mid-day the money is counted, by the same employee who received the money from the customer, and a deposit slip is created. All money is then taken to the bank and deposited, again by the same employee that accepted the money and created the deposit slip. That deposit slip is then given to the City’s Finance Department. Any money taken after the bank deposit is made is left in the desk drawer overnight and is not counted until the next day when the next deposit is prepared.

Criteria:

Committee of Sponsoring Organizations Internal Control Integrated Framework consisting of five principles: control environment, risk assessment, control activities, information and communication and monitoring activities. The control environment demonstrates an organization’s commitment to internal control and integrity. Risk assessment identifies and analyzes organizational risks. Control activities are developed and employed to mitigate risks. Information and communication disseminates information to support internal controls. Monitoring activities review and evaluate components of internal control for effectiveness. COSO guidelines help improve organizational performance and reduce the potential of fraud in organizations.

City of Ruidoso Downs Cash Handling and Procedures Manual – V. Procedures and New Mexico Judicial Education Center Municipal Court Manual for Judges and Staff – 12.3 Financial Management.

The Court Policies were reviewed and no policies related to cash handling were found.

The City’s Cash Handling Policy V. B. 1. b) states: “A clear separation of duties must be maintained at the cash collection point. An individual should not have responsibility for more than one of the cash handling components; collecting, depositing, and reconciling. In the event there is limited staff, there absolutely must be a clear separation of duties between the person performing the review and reconciliation. In this situation, it is essential the

supervisor of the person collecting the money or her/his designee perform the review and reconciliation.”

The JEC also provides guidance in the New Mexico Municipal Court Manual for Judges and Staff. Section 12.3.2 notes, “The cash register should be balanced by the clerk who receipted the money and then given to the chief clerk (or designee of the chief clerk) to verify the deposit. If the court has only one clerk it is recommended that someone within the municipal government is assigned to assist with this process.” The JEC Municipal Court Manual further details how to document transactions and the deposits.

Effect:

Internal control weaknesses can allow errors to go undetected and also provide the opportunity to commit fraudulent activity without detection. Failure to implement effective internal controls increases the Court’s and City’s exposure to theft and misappropriation of funds.

Cause:

The Court does not have a policy in its Manual regarding cash handling and did not default to the City Policy. It appears that the internal control integrated framework is deficient and contributing to poor control and monitoring activities.

Recommendation:

The Court needs to establish cash handling procedures. The procedures should embody the COSO Internal Control Integrated Framework Principles and comply with JEC guidelines. The procedures must ensure segregation of duties and also provide monitoring oversight.

Agency Response:

City:

“The City, through the Finance Director primarily, has procedures in place for cash handling procedures. The City is ready, willing and able to share these procedures with the Court and help assist the Court with implementing those procedures. Due to the necessity for the Finance Director to review the Court’s current system, update the system, and train on the system, the City states that there can be an efficient, operating system in place with the Court by July 1, 2016, assuming the Court fully cooperates with the City.”

Court:

“There is a locking filing cabinet that when on occasion which is very rare money is received after the daily deposit has be deposited. The money is placed in a locked filing cabinet. There are two employees in the court both employees are responsible for the entering of payments and the deposits.

A receipt is given to the payee and one stapled to the citation. All cash, money orders and checks are copied along with the case # and history.

The court is working on the implementation of a cash handling procedures. In the Court Policy and Procedures Manual. We will purchase a fireproof safe and will get a locking cash bag to secure our monies.”

2016-005 –Conflict between Employee Schedules and Required Hours of Operation

Condition:

According to statements from the Judge and the Court Administrator, staff arrive at 7:00 AM and the office opens to the public at 7:30 AM and closes at 5:00 PM, Monday through Thursday and is open 8:00 AM to 12:00 PM on Friday. They close 30 minutes for lunch and one hour for bank deposits, Monday through Thursday, and 30 minutes for bank deposits on Friday. The Court opens early and stays open late to allow the public to handle business with the Court outside the normal 8:00 AM to 5:00 PM workday. The hours of operation are not clearly posted or advertised for the public and change on a daily basis depending on when lunch or bank deposits are taken.

Criteria:

City of Ruidoso Downs Court Personnel Policies and Procedures (Court Policies) Section 103.1 Attendance and Punctuality and Section 107 Work Week.

Section 103.1 of the Court Policies state, “Unless otherwise specified, the regular work day is from 7:30 A.M. to 4:30 P.M., Monday through Thursday and Friday 8:00 to 12:00.” Section 107 provides, “The Ruidoso Downs Municipal Court is required to be open for 40 hours a week. 8 am to 5 pm Monday through Friday. Employees are required to spend 40 hours a week working for the Court. As long as one person is there to work with the public during business hours the work hours for other clerical workers is flexible.”

Rule NMRA 8-103 for Courts of Limited Jurisdiction (Municipal Courts) states, “Each municipal court or division thereof may from time to time make and amend rules governing its practice not inconsistent with law or these rules. Such rules may relate to office hours and procedures, to the performance of clerical duties by clerical assistants and to other procedures for effecting a just, speedy and inexpensive determination of causes pending before such court.”

Effect:

Based on the schedule provided by the Judge and Court Administrator the office is only open to the public 35.5 hours per week, 8 hours per day Monday through Thursday and 3.5 hours on Friday. The office is also closed every Friday afternoon, which goes against the Court Policies. This can create confusion and challenges for the public trying to handle Court business.

Cause:

The Court has conflicting policies regarding office hours and employee work schedules.

Recommendation:

The Court Policies need to reflect the actual hours of operation and ensure public access is convenient and consistent. The Court needs to work with the staff to ensure adequate coverage during the hours of operation listed in the Court Policies.

Agency Response:

City:

“The City will review that the Court Policies reflect actual hours of operation and that public access is convenient and consistent and that the Court is operating during the stated hours.”

Court:

“The court opens for the public at 7:30 a.m. and closes at 5:00 p.m. With ½ hour lunch. Which is 9 hours X 4 days = 36 hours on Friday 4hours X1 = 4 a total of 40 hours. A sign posted outside the court clearly states the Court Hours. When one clerk is in the office and has to go to the bank the court is closed with a sign posted on the door that states clerk will be back in 30 or 40 minutes sometimes it takes less time depending on traffic. The court clerk informs the clerk in the next office she is going to the bank asks her to take any messages. The City refuses to hire any more help so court can be covered for the 30 minute lunch and the 30 minute trip to the bank. The court is working on the policy manuel and will add the court hours 7:30 a.m. and closes 5:00 Monday thru Thursday and ½ hour lunch and 8:00 a.m. to 12:00 p.m. on Friday.

The Judge is in charge of his own court, Staff, and court hours; The court is open for business 40 hours a week which is required. (Separation of Powers and and Mowrer V Rusk., 1980-NMSC-113,95 N.M. 48, 618P. 2d 886 (S.CT. 1980)”

2016-006 – Lack of Documentation for 2012 Court Employee Pay Raises

Condition:

Human resource records were reviewed for the three Court employees that were employed between January 2012 and October 2015. Three employees were given pay increases in July 2012. Employee 1 received a \$2.02/hour increase, Employee 2 received a \$0.70/hour increase, and Employee 3 received a \$0.35/hour increase. In reviewing the employee files, documentation authorizing the increases was not located. The City Manager stated that in 2012 the Judge sent an email to the City authorizing the increase and that was the only documentation that was done. The City Manager noted that the Payroll Manager during that time period is no longer with the City and she is unsure why the documentation is not in the file. We also asked the Court for records approving the pay increase and they could not provide any documentation.

Criteria:

1.15.7 NMAC General Records Retention and Disposition Schedule – General Personnel Records. Paragraph C of 1.16.7.101 NMAC states provides that personnel folders shall include personnel action requests and salary adjustment notices. The personnel files are to be retained for a period of 55 years after the employee is terminated or retires.

Effect:

Due to the lack of documentation we were unable to validate proper authorization for the pay increases for three court employees in July 2012.

Cause:

Lack of internal controls regarding the necessity of proper authorization documentation and the maintenance of those documents can increase the risk to the Court and the City due to erroneous or unauthorized pay increases for employees.

Recommendation:

The City must maintain employee files with the necessary documents and ensure there are clear policies and procedures in place that comply with document retention requirements.

Agency Response:

City:

“The City ensured that for raises given in July of 2015 that all raises were properly documented and that the policy and procedure for properly handling raises was met by the City. The City will continue to follow the policy and procedure in place for any future raises for the Court.”

Court:

“The Judge makes recommendations for raises, but due to the Court is under the same umbrella of the City,. He submits his budget, but if the council does not approve his recommendations, the Court is at the mercy of the council, including raises. The Personnel Department / Human Resources are in charge of keeping all files on employees. The courts Staff are employees of the City, but under the judicial department which is ruled under the Court.

All monies spent in the court for overtime and trips to the bank are budgeted and approved by the Judge. This court has never gone over the approved budget. The court was unaware of the problems with the policies not being in place but this is all something the court is working on.”

City of Ruidoso Downs Municipal Court

EXIT CONFERENCE

On February 17, 2016 the OSA held an exit conference with the following individuals to discuss the results of the agreed upon procedures and the contents of this report.

City of Ruidoso Downs

Gary Williams, Mayor
The Honorable Harrold R. Mansell, Municipal Judge
John Underwood, Attorney for City
Alexandra Bobbit, Attorney for City
Mary Castaneda, Finance Procurement Director
Donna Miller, Personnel Payroll Clerk
Carol Virden, City Clerk / Treasurer
Margie Morales, City Councilor / Mayor Pro-Tem
Virginia Armstrong, Court Administrator

Office of the State Auditor

Sanjay Bhakta, CPA, CGFM, CFE, CGMA, Deputy State Auditor
Kevin Sourisseau, CPA, Special Investigations Division Director
Kelly Mercer, CFE, Special Investigations Supervisor

City of Ruidoso Downs Municipal Court

EXHIBITS

The following additional guidance, rules, and administrative code is applicable:

The New Mexico Judicial Education Center – New Mexico Municipal Court Manual for Judges and Staff

- ***12.3.1 Collection of Fines, Fees, and Costs***

A major portion of a clerk's responsibilities includes processing payments of fines, fees and costs. Every municipality is required to enact an ordinance requiring assessment of fines, fees, and costs in criminal proceedings in which the defendant pleads or is found guilty in municipal court. Every municipal judge is required to collect any assessed fines and all fees and costs from convicted persons. §35-14-11.

- ***12.3.2 Guidelines for Daily Deposits***

All funds collected by the municipal court should be deposited daily. Some courts have a bank account while others deposit funds with the municipality to deposit into a bank account. Both ways of doing business are fine. The courts that maintain a bank account must remit the funds to the municipality no later than the tenth of each month. The court must also provide instructions on how the money is to be dispersed.

The court should have receipts that:

- Are in numeric sequence.
- Designate the amount that goes to fines and the different fees that are collected by municipal court
- Have three copies. The defendant receives the original, a copy is kept with the payment, and one is retained in the receipt book.

When preparing deposits for the municipal treasurer, the finance department, or directly for deposit to the bank:

- Account for all receipts in numeric sequence. Any receipt missing from the day's sequence should be attached to the daily deposit with an explanation and a supervisor's signature.
- The cash register should be balanced by the clerk who receipted the money, and then given to the chief clerk (or designee of the chief clerk) to verify the deposit. If the court has only one clerk it is recommended that someone within the municipal government is assigned to assist with this process. This is a protection for the clerk and the court.
- Document cash total and list check numbers and individual checks by payors' names. Reconcile the daily deposit slip, total cash, and individual checks. The clerk making the deposit should obtain the deposit slip that has been validated by the bank or city.
- Keep all records related to the daily deposit together.
- In order to safeguard against loss or theft, courts should deposit all monies. Monies should not be left in the court overnight. If overnight deposits are available at your banking facility, make a deposit at the end of the business day. Exceptions to this will be those courts unable to reach a banking facility.

If the money cannot be deposited until the following day, make a note on the bank deposit slip. In the event the money or change fund is held at the court overnight, it must be secured in the safe.

- **1.5.4 General Duties of a Court Clerk**

Receipting of money.

The court clerk of the municipal court is responsible for the receiving and receipting of all filing fees, fines, bonds, corrections fees, lab fees, court automation fee, judicial education fee, and other fees and costs authorized. All receipts shall be submitted to the proper entities within time frames as provided by law.

- **1.6.3 Oversight of the Courts**

Oversight of court staff.

The judge in the municipal court is ultimately held responsible for the actions of court staff. The judge may employ a court administrator who handles the day-to-day human resource responsibilities. Depending on the size of court and whether or not the court has its own personnel rules it may be the court administrator, judge, or both who has responsibility for disciplining court staff.

New Mexico Rules Annotated

- **8-103 Rules; forms; fees.**

A. Rules

(1) Each municipal court or division thereof may from time to time make and amend rules governing its practice not inconsistent with law or these rules. Such rules may relate to office hours and procedures, to the performance of clerical duties by clerical assistants and to other procedures for effecting a just, speedy and inexpensive determination of causes pending before such court.

(2) To be effective any rule promulgated by a municipal court and any amendments thereto shall be filed with the clerk of the court and made readily available to members of the public.

New Mexico Administrative Code

- **1.15.7 General Records Retention and Disposition Schedules, General Personnel Records**

1.15.7.101 PERSONNEL FOLDERS:

A. Program: personnel files

B. Maintenance system: alphabetical by employee

C. Description: can include but are not limited to personnel action requests. Salary adjustment notices. Employee payroll information sheets, performance evaluations, correspondence (includes disciplinary actions, commendations, recommendation, etc.). General (includes applications, job descriptions, test grades, certificates, resumes, transcripts, disclaimers, etc.)

D. Retention:

(1) Other department copies: three years after employee terminated or retired

(2) Personnel department copy: 55 years after employee terminated or retires