

BEFORE THE BOARD OF CLARK COUNTY COMMISSIONERS

STATE OF INDIANA

//-
RESOLUTION NO. 2010-

**A RESOLUTION APPROVING MEDIATION
SETTLEMENT AGREEMENT DATED SEPTEMBER 1, 2010, AND
AGREED ORDER/JUDGMENT PURSUANT TO THE TERMS THEREOF**

WHEREAS, the Board of Clark County Commissioners (hereinafter the "Commissioners") is a party to a judicial mandate action brought in Clark Superior Court No. 2 under Case No. 10D02-1003-CB-0001; and,

WHEREAS, the parties to such action were ordered to attend mediation; and,

WHEREAS, duly authorized representatives of the Commissioners attended mediation on September 1, 2010; and,

WHEREAS, a Mediation Settlement Agreement was reached subject to approval by the Commissioners at a public meeting in accordance with Indiana law; and,

WHEREAS, a copy of such Mediation Settlement Agreement is attached herewith and made a part hereof as marked Exhibit "A"; and,

WHEREAS, counsel for the Commissioners has participated in the preparation of the Agreed Order/Judgment attached herewith and made a part hereof as marked Exhibit "B" that is intended to effect the Mediation Settlement Agreement; and,

WHEREAS, the Commissioners desire to settle the mandate action brought in Clark Superior Court No. 2 under Case No. 10D02-1003-CB-0001 in accordance with the terms set forth in attached Exhibits "A" and "B"; and,

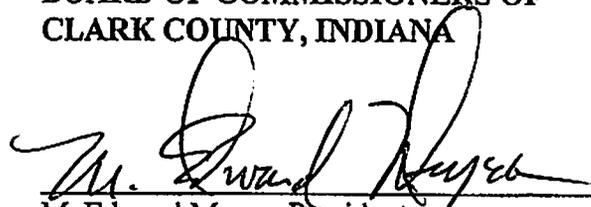
WHEREAS, it is in the best interests of the citizens of Clark County to avoid further litigation in this matter thereby saving the taxpayers unnecessary attorney fees and litigation expenses.

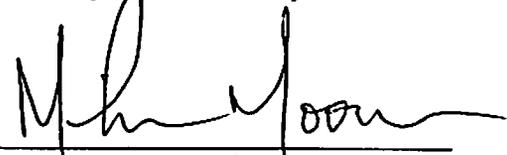
NOW, THEREFORE, BE IT RESOLVED by this Board of Commissioners of Clark County, Indiana, that the terms and conditions of Exhibit "A" and Exhibit "B" shall be, and are hereby, approved, and the President of this Board and the Clark County Attorney shall be, and are hereby, authorized to execute the attached Agreed Order/Judgment on behalf of the Commissioners.

BE IT FURTHER RESOLVED that the attorney for the Commissioners, jointly with the attorney for the Clark County Council and the attorney for the judge of the Clark Superior Court No. 2, shall cause the fully executed Agreed Order/Judgment to be tendered to the Hon. Leanna K. Weissmann, the special judge appointed by the Indiana Supreme Court in the mandate proceeding, for approval by the court and entry into the record of the mandate proceeding. Upon such approval and entry this Board shall promptly take the actions necessary to fulfill its obligations under the Agreed Order/Judgment.

So Resolved by this Board of Commissioners of Clark County, Indiana, this 16th day of September, 2010.

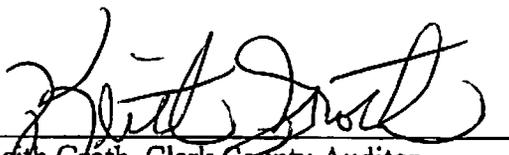
**BOARD OF COMMISSIONERS OF
CLARK COUNTY, INDIANA**


M. Edward Meyer, President


Mike Moore


Les Young

ATTEST:


Keith Groth, Clark County Auditor

IN THE SUPERIOR COURT NO. 2 FOR CLARK COUNTY

STATE OF INDIANA

ORDER FOR MANDATE OF FUNDS
AND FOR ADOPTION OF SALARY
ORDINANCE

IN THE MATTER OF COUNTY COUNCIL
FAILURE TO ESTABLISH A BUDGET FOR
THE COURT'S PROBATION DEPARTMENT

CASE NO. 10D02-1003-CB-0001



MEDIATION SETTLEMENT AGREEMENT

This cause having been referred to mediation by order of the court in the above-referenced cause pursuant to the Ind. Rules for Alternative Dispute Resolution, and the petitioner, Jerome F. Jacobi, as the duly elected judge of the Clark Superior Court No. 2 (the "Court"), and, by counsel, David A. Lewis, and the respondent, Clark County Council (the "Council"), having appeared by its representative, Jack Coffman, its duly appointed president, and by counsel, R. Scott Lewis, and respondent, Clark County Commissioners (the "Commissioners"), having appeared by its representative, M. Edward Meyer, as its duly appointed president, and by counsel, C. Gregory Fifer, on September 1, 2010, now enter this Mediation Settlement Agreement (this "Agreement") in full settlement and compromise of all of the claims between them in the above-referenced action on the following terms and conditions:

The parties agree that this Agreement shall be submitted for final approval by the respective governmental bodies in accordance with Indiana law on the following terms:

1. Counsel for each of the respective parties shall submit a proposed agreed order for final approval by the governmental bodies in the manner provided by Indiana law providing for the payment of the sum of \$172,483.63 (which sum consists of \$94,822.50 as an additional appropriation to supplement the Court's 2010 probation budget, and \$77,661.13 for restoration

of the Court's 2010 Supplemental Adult Probation Services Fund), at the next regular or special meeting of each governmental body. Upon approval by the Council and the Commissioners, the proposed final agreed order shall be presented by the respective counsel for each of the parties to the Special Judge in this matter with a request that it be formally approved, in whole or in part, and entered in the record of this proceeding.

2. In the event that the proposed agreed order is approved by both the Council and the Commissioners, and in the further event that the Special Judge enters such agreed order, in whole or in part, into the record of this proceeding, the parties shall take the administrative actions necessary to promptly cause payment of the above referenced sum to be paid to the Court in full satisfaction of the Court's mandate in this proceeding.

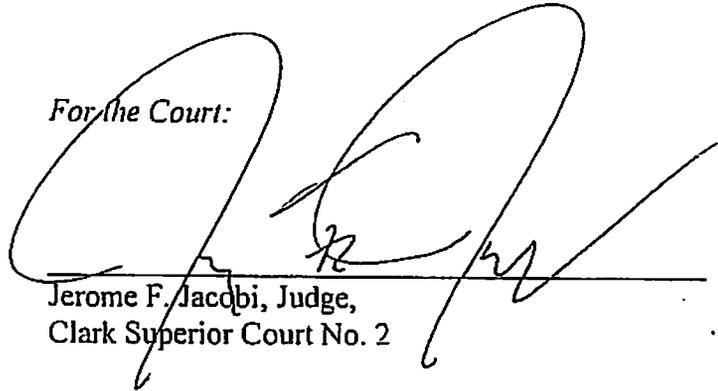
3. Upon receipt of the funds pursuant to the approved agreed order as entered in this proceeding, the Court shall file a satisfaction of the agreed judgment herein.

4. The costs of the mediation and the Court's reasonable attorney fees shall be paid by the Commissioners and the Council in the manner required by Indiana law.

WHEREFORE, this Mediation Settlement Agreement is approved by the undersigned as representatives of each of the parties to this proceeding on the terms and conditions set forth herein on this 1st day of September, 2010.

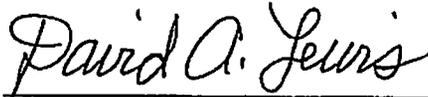
[Signature page follows.]

For the Court:



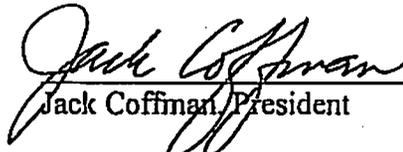
Jerome F. Jacobi, Judge,
Clark Superior Court No. 2

Read and approved:



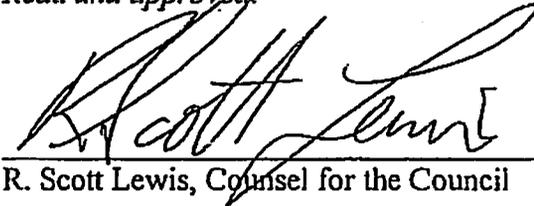
David A. Lewis, Counsel for the Court

For the Council:



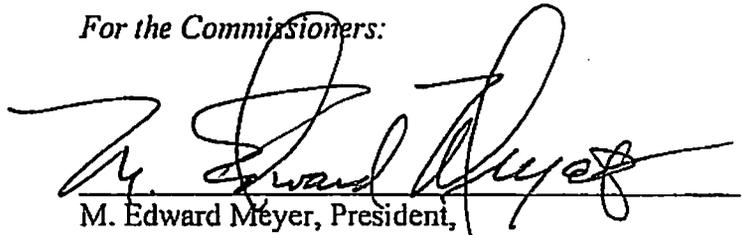
Jack Coffman, President

Read and approved:



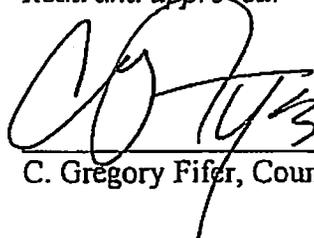
R. Scott Lewis, Counsel for the Council

For the Commissioners:



M. Edward Meyer, President,
Board of County Commissioners

Read and approved:



C. Gregory Fifer, Counsel for the Commissioners

STATE OF INDIANA

IN THE SUPERIOR COURT NO. 2 OF CLARK COUNTY

IN THE MATTER OF)	Supreme Court No. 10S00-1005-SJ-274
ORDER FOR MANDATE OF FUNDS)	
AND FOR ADOPTION OF SALARY)	Case No. 10D02-1003-CB-0001
ORDINANCE and COUNTY COUNCIL)	
FAILURE TO ESTABLISH A BUDGET)	The Honorable Leanna K. Weissmann,
FOR THE COURT'S PROBATION)	Special Judge
DEPARTMENT)	

AGREED ORDER/JUDGMENT

This matter comes before the Honorable Leanna K. Weissmann as Special Judge on appointment by the Indiana Supreme Court to preside over a Mandate of Funds ordered by Jerome F. Jacobi, Judge of Clark Superior Court No. 2, and pursuant to a request of the parties for the Court to approve an agreed order/judgment for the payment of monies pursuant to settlement agreement reached at mediation; and comes now the Petitioner, Hon. Jerome F. Jacobi, Judge of Clark Superior Court No.2, in person and by counsel, David A. Lewis; and comes also the Respondent, Clark County Council (the "County Council"), by its President, Jack Coffman, in person and by counsel, R. Scott Lewis; and comes also the Respondent, Board of Clark County Commissioners (the "County Commissioners"), by its President, M. Edward Meyer, in person and by counsel, C. Gregory Fifer; and the parties hereby advise the Court that they agree and stipulate as follows:

1. The Honorable Jerome F. Jacobi, Judge of Clark Superior Court No. 2, pursuant to Ind. Trial Rule 60.5, filed with the Indiana Supreme Court on May 20, 2010, his Order for Mandate of Funds.
2. The Indiana Supreme Court entered an order dated June 23, 2010, appointing the

EXHIBIT
"B"

Honorable Leanna Kay Weissmann as special judge to hear this matter in the Clark Superior Court No. 2, pursuant to Ind. Trial Rule 60.5.

3. The Honorable John L. Krauss was appointed to mediate this case pursuant to the Ind. Rules for Alternative Dispute Resolution.

4. The parties through their duly authorized representatives met in mediation on September 1, 2010, and reached a Mediation Settlement Agreement, a copy of which is attached herewith and made a part hereof as marked Exhibit A, which said Agreement was made subject to final approval by the County Council and County Commissioners in the manner provided by Indiana law.

5. Thereafter the County Council held a properly advertised public meeting on the 13th day of September, 2010, during which this Agreed Order/Judgment was presented and reviewed, and during which the Council adopted a Resolution approving the Mediation Settlement Agreement and authorizing its President and attorney to execute this Agreed Order/Judgment on behalf of the Council. A copy of such Resolution is attached herewith and made a part hereof as marked Exhibit B.

6. Thereafter the County Commissioners held a properly advertised public meeting on the 16th day of September, 2010, during which this Agreed Order/Judgment was presented and reviewed, and during which the County Commissioners adopted a Resolution approving the Mediation Settlement Agreement and authorizing its President and attorney to execute this Agreed Order/Judgment on behalf of the County Commissioners. A copy of such Resolution is attached herewith and made a part hereof as marked Exhibit C.

7. At the time that the mandate was filed, and at all times subsequent thereto, there were no funds appropriated from which the mandate or the terms of the Mediation Settlement

Agreement could have been satisfied. Furthermore, at the time that the mandate was filed, and at all times subsequent thereto, the County lacked sufficient otherwise unobligated funds from which this Agreed Order/Judgment could be satisfied. As such, this Agreed Order/Judgment shall constitute a judgment for which an order of mandamus of payment of the amounts set forth in the Mediation Settlement Agreement should properly be entered in accordance with the provisions of Ind. Code § 34-55-12-1.

8. At the time of entry of this Agreed Order/Judgment, neither the Commissioners nor the County Council have sufficient unobligated funds, in reserves or otherwise, available from which the payments required herein could be satisfied by special or additional appropriation of the County Council.

9. Any significant delay in payment of the amounts provided in the Mediation Settlement Agreement pursuant to the provisions of Ind. Code § 34-55-12-1(b) would so unduly hinder the operation of the Clark Superior Court No. 2 as to jeopardize the public safety and welfare of the citizens of Clark County.

10. Upon entry of this Agreed Order/Judgment, the County Council shall therefore promptly take the actions necessary to fully pay the amounts set forth herein through the issuance of judgment funding bonds in accordance with the provisions of Ind. Code § 5-1-8-1.

11. The sum of \$172,483.63 shall be transferred and/or paid from the proceeds of the judgment funding bonds for the Probation Department of Clark Superior Court No. 2 as follows:

a. The sum of \$94,822.50 shall be transferred or paid to supplement the 2010 Superior Court No. 2 Probation Department budget; and,

b. The sum of \$77,661.13 shall be transferred or paid to the Superior Court No. 2 Supplemental Adult Probation Services Fund to reimburse such fund for probation user

fees expended for items which should properly have been paid from the County's General Fund budget.

13. Clark Superior Court No. 2 shall have judgment, jointly and severally, against the Clark County Council and Clark County Commissioners in the amount of \$172,483.63, and such judgment shall be subject to the mandamus provisions with respect to the payment thereof in accordance with the provisions of Ind. Code § 34-55-12-1.

14. Upon receipt of the funds pursuant to this Agreed Order/Judgment, the Honorable Jerome F. Jacobi shall file a satisfaction of the Agreed Order/Judgment herein.

15. The costs of mediation and the Clark Superior Court No. 2's reasonable attorney fees shall be paid by the Commissioners and the Council as additional costs from the judgment funding bonds in the manner required by Indiana law.

16. Hon. Jerome F. Jacobi acknowledges that the County Council has previously satisfied that portion of his mandate order which directed the Council to adopt a salary ordinance adjusting the salaries of Leann Holloway, Darla Stahl and Patricia Hill.

17. Hon. Jerome F. Jacobi has approved and accepted this Agreed Order/Judgment in full and final satisfaction of the mandate proceeding commenced herein.

18. The parties jointly request the Honorable Leanna K. Weissmann to approve this Agreement Order/Judgment and enter it into the record of the proceedings in this cause in its entirety.

And the Court having read such stipulation and having been otherwise duly advised in the premises, now hereby finds that the foregoing Agreement Order/Judgment shall be approved by the Court and ordered into effect by the Court as a legally binding judgment.

IT IS THEREFORE CONSIDERED, ORDERED, ADJUDGED AND DECREED by the Court as follows:-

1. The stipulations and agreement of the parties set forth above are hereby approved in their entirety.
2. The sum of One Hundred Seventy-two Thousand Four Hundred Eighty-three and 63/100 Dollars (\$172,483.63) shall be transferred and/or paid to the Probation Department of Clark Superior Court No. 2 as follows:
 - a. The sum of Ninety-four Thousand Eight Hundred Twenty-two and 50/100 Dollars (\$94,822.50) shall be transferred and/or paid as an additional appropriation to supplement the 2010 Superior Court No. 2 Probation Department budget; and
 - b. The sum of Seventy-seven Thousand Six Hundred Sixty-one and 13/100 Dollars (\$77,661.13) shall be transferred and/or paid to the Superior Court No. 2 Supplemental Adult Probation Services Fund to reimburse such fund for probation user fees expended for items which should have been paid from the County's General Fund budget.
3. Clark Superior Court No. 2 shall have judgment, jointly and severally, against the Clark County Council and Clark County Commissioners in the amount of \$172,483.63, and such judgment shall be subject to the mandamus provisions with respect to the payment thereof in accordance with the provisions of Ind. Code § 34-55-12-1.
4. Upon entry of this Agreed Order/Judgment, the County Council shall therefore promptly take the actions necessary to fully pay the amounts set forth herein through the issuance of judgment funding bonds in accordance with the provisions of Ind. Code § 5-1-8-1.
5. The portion of the Clark County tax rate necessary to fully pay the judgment funding bonds to be issued in order to satisfy this Agreed Order/Judgment shall not be

considered in computing the Clark County tax rate limits in accordance with the provisions of Ind. Code 6-1.1-18-3(b)(5).

6. The costs of mediation and the Clark Superior Court No. 2's reasonable attorney fees shall be paid by the Council from the proceeds of the judgment funding bonds in the manner required by Indiana law.

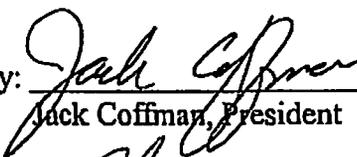
7. Upon receipt of the funds pursuant to this Agreed Order/Judgment, the Honorable Jerome F. Jacobi shall file a satisfaction of the Agreed Order/Judgment herein.

8. The parties shall be, and are hereby, ORDERED to take all actions as necessary to carry out the obligations of the foregoing agreement.

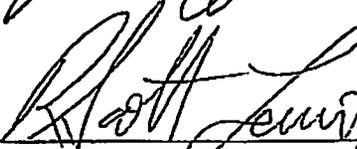
SO ORDERED this 16th day of September, 2010.

**LEANNA KAY WEISSMAN, Special Judge,
Clark Superior Court No. 2**

Read and approved for the
CLARK COUNTY COUNCIL:

By: 

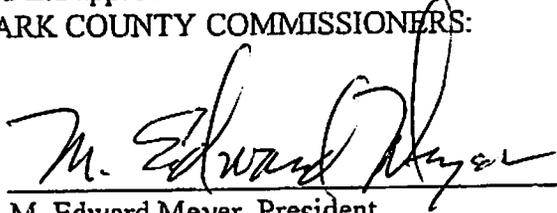
Jack Coffman, President



R. Scott Lewis, Attorney # 18756-49
530 E. Court Avenue
Jeffersonville, IN 47130
(812) 282-6820
Attorney for the Clark County Council

Read and approved for the
CLARK COUNTY COMMISSIONERS:

By: _____


M. Edward Meyer, President

C. Gregory Fifer, Attorney #8121-98
APPLEGATE FIFER PULLIAM, LLC
428 Meigs Avenue
Jeffersonville, IN 47131-1418
(812) 284-9499
Attorney for the Clark County Commissioners

Read and approved for the Elected Judge of the
CLARK SUPERIOR COURT NO. 2:

By: _____

Jerome F. Jacobi, Elected Judge

David A. Lewis, Attorney #8797-10
209 E. Chestnut Street
Jeffersonville, IN 47130
(812) 282-8429
Attorney for the Honorable Jerome F. Jacobi