



COMPTROLLER'S INVESTIGATIVE REPORT

Clay County Circuit Court Clerk

December 17, 2021

Jason E. Mumpower
Comptroller of the Treasury



DIVISION OF INVESTIGATIONS



JASON E. MUMPOWER
Comptroller

December 17, 2021

Clay County Board of Mayor
and Commissioners
145 Cordell Hull Dr
Celina, TN 38551

Clay County Board Officials:

The Office of the Comptroller of the Treasury conducted an investigation of selected records of the Clay County Circuit Court Clerk, and the results are presented herein.

Copies of this report are being forwarded to Governor Bill Lee, the State Attorney General, the District Attorney General of the 13th Judicial District, certain state legislators, and various other interested parties. A copy of the report is available for public inspection in our Office and may be viewed at <http://www.comptroller.tn.gov/ia/>.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jason E. Mumpower", with a long horizontal flourish extending to the right.

Jason E. Mumpower
Comptroller of the Treasury

JEM/MLC

INVESTIGATIVE REPORT

CLAY COUNTY CIRCUIT COURT CLERK

The Office of the Comptroller of the Treasury, in conjunction with the Tennessee Bureau of Investigation (TBI), investigated allegations of malfeasance related to the Clay County Circuit Court Clerk. The investigation was limited to selected records for the period of January 1, 2019 through June 30, 2021. The results of the investigation were communicated with the District Attorney General *Pro Tem* who was appointed to represent the State in this matter.

BACKGROUND



The Clay County Circuit Court Clerk is responsible for maintaining records and performing other administrative duties for three courts: circuit, general sessions, and juvenile, including the expungement of records pursuant to court orders. Expungement is a court-ordered process which removes and destroys public records related to criminal proceedings against individual defendants, pursuant to Tenn. Code Ann. § 40-32-101. The clerk is responsible for processing the orders of the court by filing and maintaining or removing and destroying the appropriate records according to law.

The Clay County Circuit Court Clerk also offers a traffic school for eligible participants. Upon completion, the individual's traffic citations are dismissed, and no points are added to the individual's driving record. The cost to attend this traffic school is \$50.

RESULTS OF INVESTIGATION

- 1. CIRCUIT COURT CLERK SUSAN BIRDWELL CIRCUMVENTED THE JUDICIAL PROCESS BY PHOTOCOPYING THE SIGNATURE OF THE GENERAL SESSIONS JUDGE ONTO EXPUNGEMENT ORDERS, WHICH SHE THEN KEPT IN UNSECURED PLACES IN THE OFFICE**

Circuit Court Clerk Susan Birdwell circumvented the judicial process by photocopying the signature of the General Sessions Judge Diana Monroe onto expungement orders, which she then kept in unsecured places in the office. Since the expungements containing a photocopied signature were not reviewed or approved by Judge Monroe, investigators questioned the legal sufficiency of the expungements.

A. Birdwell expunged records and charges not authorized by Judge Monroe by photocopying the Judge’s signature on expungement orders in at least 117 cases and filing them with the TBI in Nashville for processing.

Birdwell expunged records related to criminal proceedings and charges by photocopying the signature of Judge Monroe on expungement orders in at least 117 cases without the Judge’s prior knowledge or approval and filed the expungement orders with the TBI in Nashville for processing and entry into its expunged offender and diversion database. Investigators were unable to determine the legal sufficiency of the expungement orders due to the lack of documentation remaining in the individual cases.

It is common practice for Judge Monroe and other court personnel to use only blue ink on court documents. **(Refer to Exhibit 1.)**

Exhibit 1



Photocopied signature (Left) compared to a legitimate signature (Right) of Diana Monroe, Clay County General Sessions Judge.

The example on the above left of a photocopied signature also reveals an area surrounding the signature line containing small black specks, which occurs when pieces of dirt or dust are present on the glass of the photocopier.

B. Birdwell improperly retained at least 497 original expungement orders, sometimes for one or more years, in unsecured places within the office.

Birdwell improperly retained at least 497 original expungement orders in unsecured places within the office, contrary to Tenn. Code Ann. § 40-32-101, which does not expressly authorize the court clerk to retain the original expungement order or a copy thereof. A three ring binder containing 490 original expungement orders was found on a fold-out table within the office. Two additional binders, estimated to contain a similar number of original expungement orders, were stored in a drawer of an unlocked filing cabinet. All but seven of the original

expungement orders located in the two additional binders were shredded by Birdwell shortly following an interview with investigators. The original expungement orders obtained by investigators had dates of completion ranging from January 2, 2019 through May 11, 2021. Pursuant to Tenn. Code Ann. § 40-32-102(a), the clerk is required to remove and destroy all public records within sixty (60) days from the date the expungement order is issued. Investigators noted of the 497 original expungement orders obtained and reviewed, only 45 were signed by the Office of the District Attorney General.

2. CIRCUIT COURT CLERK SUSAN BIRDWELL DESTROYED EVIDENCE SHORTLY AFTER HER INTERVIEW WITH INVESTIGATORS

Birdwell destroyed evidence relevant to the pending investigation shortly following her interview with investigators. On August 17, 2021 investigators met with Birdwell and revealed a binder, previously obtained by investigators, containing original expungement orders, including those expungement orders with the photocopied signature of Judge Monroe. During the interview, Birdwell admitted she knew it was wrong to photocopy the Judge's signature and not destroy the expungement orders as required by law. Two days later, Birdwell gathered two additional binders containing original expungement orders and shredded all but seven expungement orders. Birdwell did not inform investigators about those binders during the previous interview and made no attempt to contact investigators before shredding the documents in those binders.

In a follow-up interview, Birdwell advised that the two additional binders contained approximately the same number of expungement orders as the first binder obtained by investigators; however, an accurate total could not be determined since the records were shredded. Investigators recovered six disposable plastic bags containing shredded documents. Birdwell stated the bags of shredded documents contained expungement orders and other court orders. Investigators were unable to determine the number of records destroyed. **(Refer to Exhibit 2.)**

Exhibit 2



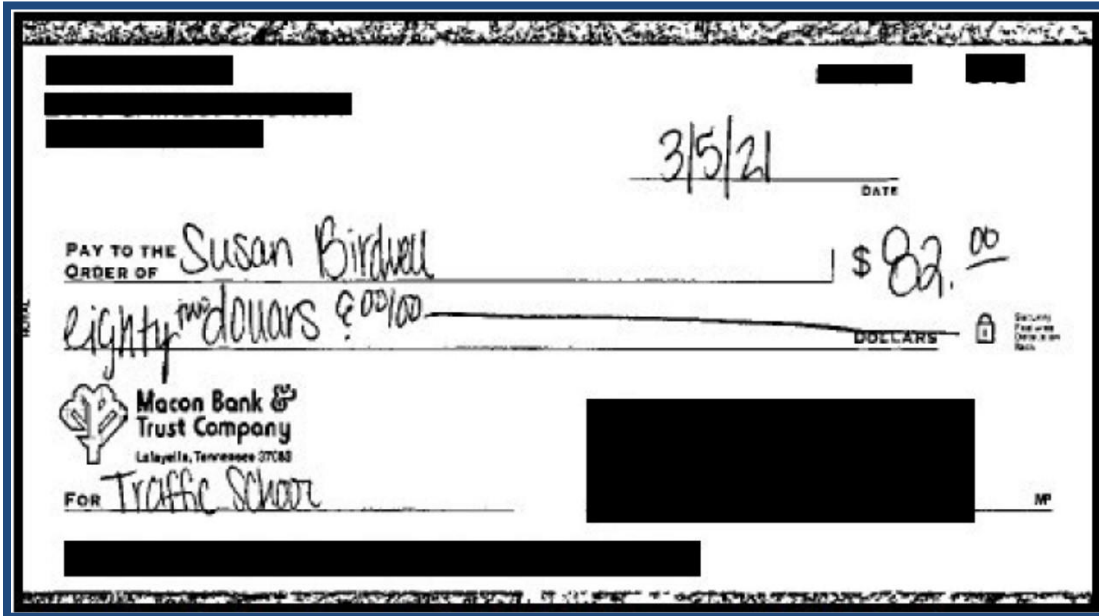
Plastic bags containing expungement orders shredded by Birdwell shortly following an interview with investigators.

3. CIRCUIT COURT CLERK SUSAN BIRDWELL RECEIVED COMPENSATION FROM THE EMPLOYEE WHO ADMINISTERED THE TRAFFIC SCHOOL WHICH SHE WAS NOT ENTITLED TO RECEIVE

Birdwell received compensation from the employee who administered the traffic school which she was not entitled to receive. The traffic school was administered by one employee who was designated by Birdwell, and other employees assisted as needed. The designated employee in charge of traffic school received additional monthly compensation in the amount of \$200 for the time and effort dedicated to its oversight. The employees, who were paid hourly and received their paycheck biweekly, received the additional compensation in the form of a paycheck from the county.

According to Tenn. Code Ann. § 8-22-101, Birdwell is compensated for her services as the Circuit Court Clerk by a county officer salary in lieu of all other compensation, and is therefore not entitled to receive additional compensation for her assistance with traffic school. However, Birdwell required employees who were responsible for the operation of the traffic school to remit \$82 to her each month. Birdwell used the following calculation to arrive at the \$82 payment: $\$200 \times 0.5$ (half) = \$100; $\$100 - \18 ("taxes") = \$82 to be paid to Birdwell. **(Refer to Exhibit 3.)**

Exhibit 3



Check written by an employee to Birdwell for a portion of compensation received for teaching traffic school.

4. CIRCUIT COURT CLERK SUSAN BIRDWELL IMPROPERLY ACCEPTED CASH PAYMENTS FROM CITIZENS TO MAKE ONLINE PAYMENTS TOTALING \$8,464 TO THE TENNESSEE DEPARTMENT OF SAFETY USING HER PERSONAL CREDIT CARD

Birdwell improperly accepted a total of \$8,464 in cash payments from citizens and then used her personal credit card to make online payments to the Tennessee Department of Safety instead of receipting the payment and depositing the cash with the Trustee's Office. Investigators noted payments totaling \$3,257 to the Tennessee Department of Safety from Birdwell's personal credit card that matched cash deposits into Birdwell's personal checking account on or about the same day of the credit card transaction with the Tennessee Department of Safety. The remaining \$5,207 could not be traced directly to Birdwell's personal checking account, so investigators were unable to determine the total amount of cash payments Birdwell accepted.

Birdwell earned at least \$169.28 in cash back rewards on her credit card for her personal benefit because of her payments made to the Tennessee Department of Safety.

On November 10, 2021, the Davidson County Grand Jury indicted Susan Beth Birdwell for 6 counts of Forgery, 3 counts of Tampering with Governmental Records, and 2 counts of Official Misconduct.

On December 14, 2021, the Clay County Grand Jury indicted Susan Beth Birdwell for one count of Soliciting Unlawful Compensation, one count of Misrepresenting Information to a State Auditor, and 3 counts of Official Misconduct.

On December 16, 2021, Susan Beth Birdwell was suspended from office by Order of Suspension by the Honorable Criminal Court Judge of the 13th Judicial District by Designation. Jennifer Louann Ritter was appointed to serve as Circuit Court Clerk *Pro Tempore* during Birdwell's suspension.

The charges and allegations contained in the indictments are merely accusations of criminal conduct, and not evidence. The defendant is presumed innocent unless and until proven guilty beyond a reasonable doubt and convicted through due process of law.

[Clay County Circuit Court Clerk Investigative Exhibit](#)

INTERNAL CONTROL AND COMPLIANCE DEFICIENCIES

Our investigation revealed the following deficiencies in internal controls and compliance, which contributed to Birdwell's ability to expunge unauthorized charges as well as personally benefit from a service otherwise not offered by the Circuit Court Clerk's office:

Deficiency 1: Cash payments for Tennessee driver license reinstatement fees were not properly collected or accounted for

Birdwell circumvented her office and internal controls by accepting cash payments for Tennessee driver license reinstatement fees. Birdwell failed to properly receipt the cash payments, deposit the cash with the Trustee's office, or perform a reconciliation of the cash payments for reinstatement fees. Tenn. Code Ann. §§ 8-22-103 and 8-22-104 provide that all excess fees that are or may be directly or indirectly collected by virtue of her office as the Circuit Court Clerk shall be paid to the county trustee as a part of the county revenue; and require the clerk to keep a complete account of every fee of every nature, commission or charge collected. Investigators noted at least one instance in which an e-mailed receipt from the Tennessee Department of Safety was printed and given to the citizen who had made the cash payment for Tennessee driver license reinstatement fees; however, investigators could not determine if this was common practice for all citizens who made

cash payments for reinstatement fees. Tennessee driver license reinstatement fees can be paid by citizens online, by mail, or in person at one of the many driver service centers in the state.

Deficiency 2: Documentation does not exist to support the legal sufficiency of expungement orders

Birdwell exceeded her official authority by photocopying the signature of Judge Monroe onto expungement orders without her prior knowledge or consent and thus failed to follow established procedures for the expungement of criminal records. Therefore, investigators question the legal sufficiency of the expungement orders. Attempts to locate supporting documentation to verify the validity of the expungement orders in question were conducted by means of software access to records maintained by the Tennessee Administrative Office of the Courts (AOC); an inquiry through the TBI's Division of Diversions, Expungements, & Dispositions; as well as requesting documentation of judgments from the office of the 13th Judicial District Attorney General. Investigators found that once a court enters an order of expungement, all charging instruments and other records that are contained within the case jacket are destroyed and all electronic records are deleted from the AOC's TnCIS software. As a result, no remaining documentation exists to verify that the expungement orders were in accordance with the legal requirements of Tenn. Code Ann. § 40-32-101.

Deficiency 3: Birdwell maintained \$108.09 in personal cash within the office

Birdwell maintained \$108.09 in personal cash within the office. According to Birdwell, the personal cash was intended to make change for the office when needed. Of the \$108.09 found within the office, \$100.00, in denominations of \$20 bills, was located in Birdwell's front desk and \$8.09 was located in a desk in a separate part of the office.

Deficiency 4: Blank documents were signed by the General Sessions Judge

The Judge signed blank documents to be used at the discretion of others. The signed, blank documents found by investigators include 1 Order Appointment Legal Counsel form and 3 Uniform Affidavit of Indigency forms. According to the judge, the signing of the blank documents listed above was the result of additional regulations and restrictions regarding court processes during COVID-19. Investigators also located 6 signed, blank Order for Restricted Driver License forms. According to the judge, the orders were prematurely signed to assist the Tennessee Department of Safety and Homeland Security, who ultimately determines the qualification of the individual applying for a restricted driver license. The judge reiterated, however, that she did not have knowledge of signing blank expungement orders, nor did she give permission for Birdwell to photocopy her signature onto blank expungement orders.