

IBERIA PARISH CLERK OF COURT



INVESTIGATIVE AUDIT  
ISSUED OCTOBER 12, 2016

**LOUISIANA LEGISLATIVE AUDITOR  
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**LEGISLATIVE AUDITOR**  
DARYL G. PURPERA, CPA, CFE

**DIRECTOR OF INVESTIGATIVE AUDIT**  
ROGER W. HARRIS, J.D., CCEP

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LOUISIANA LEGISLATIVE AUDITOR  
DARYL G. PURPERA, CPA, CFE

October 12, 2016

**THE HONORABLE MIKE THIBODEAUX**  
**IBERIA PARISH CLERK OF COURT**  
New Iberia, Louisiana

We have audited certain transactions of the Iberia Parish Clerk of Court. Our audit was conducted in accordance with Title 24 of the Louisiana Revised Statutes to determine the validity of complaints we received.

Our audit consisted primarily of inquiries and the examination of selected financial records and other documentation. The scope of our audit was significantly less than that required by *Government Auditing Standards*.

The accompanying report presents our findings and recommendations as well as management's response. This is a public report. Copies of this report have been delivered to the District Attorney for the 16<sup>th</sup> Judicial District of Louisiana and others as required by law.

Respectfully submitted,

Daryl G. Purpera, CPA, CFE  
Legislative Auditor

DGP/aa

IPCOC



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## EXECUTIVE SUMMARY

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### **Clerk of Court Improperly Retained Unused Advance Court Costs**

From May 2013 to May 2016, the Iberia Parish Clerk of Court/Iberia Parish Clerk of Court's Office (Clerk of Court) improperly retained \$314,495 in unused advance court costs that state law required to be refunded to the persons who originally deposited those monies. Of this amount, the Clerk of Court transferred \$218,021 from the advance deposit bank account (advance deposit fund) to the Clerk of Court's salary fund bank account (salary fund) to pay Clerk of Court salaries and other expenses. The remaining \$96,924 represents monies currently in the Clerk of Court's advance deposit fund that should be returned to the persons who made the original deposits. By failing to refund unused advance court costs to the appropriate persons and then using these monies to operate the Clerk of Court's office, Clerk of Court management may have violated state law.

### **Clerk of Court Failed to Remit Unclaimed Property to State Treasurer**

The Clerk of Court failed to report and remit unclaimed property to the state treasurer in accordance with Louisiana Revised Statute (La. R.S.) 9:151, *et seq.* Records indicate that checks issued from the Clerk of Court's advance deposit fund did not clear the bank resulting in outstanding checks. Although state law (La. R.S. 9:159-160) requires that unclaimed property be reported and remitted to the state treasurer on an annual basis, the Clerk of Court's office has not done so. Furthermore, records indicate that the Clerk of Court's office reissued at least 334 of these outstanding checks totaling \$47,611 to the Clerk of Court's salary fund in April 2012. By failing to report and remit unclaimed property to the state treasurer, Clerk of Court management may have violated state law.





## BACKGROUND AND METHODOLOGY

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In accordance with Article V, Section 28 of the Louisiana Constitution, clerks of court are elected for four-year terms and serve as ex-officio notaries public; recorders of conveyances, mortgages, and other acts; and have such other duties and powers as provided by law. One of the duties provided by law, which is the subject of this report, requires clerks of court to collect advance costs from plaintiffs when they file civil lawsuits. Louisiana Revised Statute (La. R.S.) 13:842(B) provides that if a lawsuit becomes completely inactive and five years pass without any pleadings being filed, clerks of court are mandated to refund the unused advance costs associated with the case to the person who made the original deposit.

In April 2016, the Louisiana Legislative Auditor (LLA) received a complaint that the Iberia Parish Clerk of Court/Iberia Parish Clerk of Court's Office (Clerk of Court) improperly retained unused advance costs on inactive civil suits that should have been refunded to the persons who made the original deposits, charged fees for services the Clerk of Court did not perform, and transferred monies that should have been refunded to the original depositors from the Clerk of Court's advance deposit fund to the Clerk of Court's salary fund. LLA initiated this audit to determine the validity of this complaint.

The procedures performed during this audit included:

- (1) interviewing Clerk of Court employees and officials;
- (2) interviewing other persons as appropriate;
- (3) examining selected Clerk of Court documents and records;
- (4) gathering and examining external parties' documents and records; and
- (5) reviewing applicable state laws and regulations.



## FINDINGS AND RECOMMENDATIONS

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### **Clerk of Court Improperly Retained Unused Advance Court Costs**

**From May 2013 to May 2016, the Iberia Parish Clerk of Court/Iberia Parish Clerk of Court's Office (Clerk of Court) improperly retained \$314,495 in unused advance court costs that state law<sup>1</sup> required to be refunded to the persons who originally deposited those monies. Of this amount, the Clerk of Court transferred \$218,021 from the advance deposit bank account (advance deposit fund) to the Clerk of Court's salary fund bank account (salary fund) to pay Clerk of Court salaries and other expenses. The remaining \$96,924 represents monies currently in the Clerk of Court's advance deposit fund that should be returned to the persons who made the original deposits. By failing to refund unused advance court costs to the appropriate persons and then using these monies to operate the Clerk of Court's office, Clerk of Court management may have violated state law.<sup>1,2,3,4</sup>**

Louisiana Revised Statute (La. R.S.) 13:842(A) requires clerks of court to collect advance costs from plaintiffs when they file lawsuits; advance costs are to be disbursed to the clerk's salary fund or to others as their fees accrue. Once a plaintiff's advance costs have been exhausted, a clerk of court may refuse to perform any further action until the plaintiff pays additional costs. Advance costs are deposited into the advance deposit fund and are used to pay costs expected to be incurred by the plaintiff during the course of litigation. Advance costs pay for services performed by the clerk of court and other governmental agencies, such as the sheriff's office (e.g., service of process fees). Once incurred, the costs of these services are charged against the plaintiff's advance deposit and then disbursed to the office that performed the service. Most advance costs are used to pay for services performed by the Clerk of Court's office (e.g., opening civil matters, filing and serving civil pleadings, giving notice, making copies, certifying copies, etc.). Services rendered by the Clerk of Court are charged against advance costs as self-generated fees/income; earned amounts are then transferred from the advance deposit fund to the salary fund and used to pay Clerk of Court salaries, benefits, and other operating expenses. The Clerk of Court's current Advance Deposit Fee Schedule, effective January 1, 2015, is attached to this report as Exhibit A.

Once a lawsuit is concluded and all fees and other charges of record are paid, clerks of court are obligated to refund unused advance costs to the plaintiff's attorney. Clerks of court are also required to refund unused advance costs even when a lawsuit is not concluded if no pleadings have been filed and the suit has been completely inactive for five years pursuant to La. R.S. 13:842(B). In April 2016, the Louisiana Legislative Auditor (LLA) received a complaint that the Clerk of Court improperly retained unused advance costs on inactive civil suits that should have been refunded to the persons who made the original deposits, charged fees for services the Clerk of Court did not perform, and transferred monies that should have been refunded to the original depositors from the Clerk of Court's advance deposit fund to the Clerk of Court's salary fund.

### Clerk of Court Improperly Retained Unused Advance Court Costs

We used the Clerk of Court’s computerized case management system to obtain a listing of all civil cases that were inactive for five years (i.e., cases in which the unused advance deposits should have been refunded to the original depositor in accordance with La. R.S. 13:842(B)). The case management system listed 3,778 inactive cases representing \$314,945 in unused advance costs that the Clerk of Court did not refund to the original depositor as required by law from May 2013 to May 2016. This amount included \$218,021 from 2,906 inactive suits where the Clerk of Court charged the advance deposit fund for services not performed (e.g., in one case, charging the advance deposit fund \$5,732 for certified copy fees when no copies were made) and then transferred those monies to the Clerk of Court’s salary fund. The case management system also showed an additional \$96,924 in the advance deposit fund corresponding to 872 inactive cases, which should be refunded to the original depositor.

Although La. R.S. 13:842(B) requires the Clerk of Court to refund unused advance costs to the original depositor for inactive lawsuits, Clerk of Court Mike Thibodeaux and his office personnel informed us that inactive cases are closed out of the case management system and the unused advance costs are transferred to the Clerk of Court’s salary fund. Mr. Thibodeaux stated that his office periodically performs a practice he called “Suit Cleanup,” in which inactive suits are removed from the case management system by charging copy fees not incurred against the unused advance costs of each inactive suit. Mr. Thibodeaux added that once the inactive cases are closed from the case management system, the unused advance costs are transferred from the advance deposit fund to the Clerk of Court’s salary fund. The following table shows five of the largest suits closed by charging copy fees not incurred and transferring those fees to the salary fund during our audit period.

Suit Number	Date of Last Activity	Balance of Advance Costs on Date of Last Activity	Suit Closure Date	Description of Fees Charged Against Advance Costs	Fees Charged Against Advance Costs
<b>098747</b>	01/12/2007	\$5,732	07/10/2015	Certified Copies	\$5,732
<b>107017</b>	02/27/2009	\$3,047	11/21/2014	Certified Copies	\$3,047
<b>104779</b>	10/29/2007	\$2,504	07/24/2013	Certified Copies	\$2,504
<b>092950</b>	05/18/2004	\$2,440	10/03/2013	Certified Copies	\$2,440
<b>106114</b>	07/07/2009	\$2,100	06/10/2014	Certified Copies	\$2,100

Mr. Thibodeaux told us he was unaware that the balances on inactive suits were to be refunded to the original depositor. He also said that the current suit cleanup process was in place when he took office and he merely continued that process. Mr. Thibodeaux said he understood that the process consisted of charging fees for certified or regular copies for the amount of the suit’s unused advance costs and transferring those fees to the Clerk of Court’s salary fund. Mr. Thibodeaux provided us with copies of Louisiana Attorney General *Opinions No. 93-273* and *96-167*. In *Opinion No. 93-273*, the Attorney General (A.G.) referred to A.G. *Opinion No. 87-836*, which was addressed to the Washington Parish Clerk of Court, and opined that “if all suits whose advanced deposits were placed in the Advanced Deposit Account were closed and

the proper refunds given, any excess representing fees earned by the Clerk could be transferred from the account to the Clerk's Salary Fund." A.G. *Opinion 96-167* opined that "it is legally permissible to transfer from your advance account to the clerk's salary fund account those fees which have been earned by the clerk under La. R.S. 13:781."

Based on the A.G. Opinions provided by Mr. Thibodeaux and state law, it appears that the Clerk of Court has the authority to transfer monies from the advance deposit fund to the salary fund once those fees are earned. However, if the fees charged by the Clerk of Court are not earned, then state law requires the Clerk of Court to refund the unused advance costs to the persons making the original deposits. By failing to refund unused advance costs to the original depositor and transferring advance costs not earned to the Clerk of Court's salary fund, Clerk of Court management may have violated state law.<sup>1,2,3,4</sup>

### **Clerk of Court Failed to Remit Unclaimed Property to State Treasurer**

**The Clerk of Court failed to report and remit unclaimed property to the state treasurer in accordance with La. R.S. 9:151, et seq. Records indicate that checks issued from the Clerk of Court's advance deposit fund did not clear the bank resulting in outstanding checks. Although state law (La. R.S. 9:159-160) requires that unclaimed property be reported and remitted to the state treasurer on an annual basis, the Clerk of Court has not done so. Furthermore, records indicate that the Clerk of Court reissued at least 334 of these outstanding checks totaling \$47,611 to the Clerk of Court's salary fund in April 2012. By failing to report and remit unclaimed property to the state treasurer, Clerk of Court management may have violated state law.<sup>5,4</sup>**

During our audit of the advance deposit fund, we observed that the Clerk of Court transfers earned fees for services performed on lawsuits from the advance deposit fund to the salary fund. According to Clerk of Court office personnel, a check drawn on the advance deposit fund is deposited to the salary fund twice monthly. However, our review of the advance deposit fund revealed that an additional 334 checks totaling \$47,611 were issued to the Clerk of Court and deposited into the Clerk of Court's salary fund in April 2012 alone.

Mr. Thibodeaux stated that these checks were originally issued to litigants in lawsuits who were due a refund; however, the checks were never negotiated, resulting in outstanding checks. Mr. Thibodeaux stated that the external auditor wanted to clear the old outstanding checks from the advance deposit fund, but many of the checks were from old, closed suits where the original check payees were unknown. He further stated that without knowing the name of the original payee his office could not submit the monies to the state treasurer as unclaimed property. Mr. Thibodeaux stated that in order to clear the outstanding checks from the advance deposit fund, the checks were reissued payable to the salary fund. Additionally, Mr. Thibodeaux stated that he was aware the monies should have been submitted to the state treasurer as unclaimed property; however, he had concerns that the bank would pay the outdated check if the payee attempted to cash it, which would have meant his office would have paid the expense twice.

Based on state law, the outstanding checks issued from the advance deposit fund should have been reported and remitted to the state treasurer. As such, the Clerk of Court had no legal authority to transfer these monies to the salary fund. In addition, records indicate that the Clerk of Court had outstanding checks totaling \$152,578 as of May 18, 2016. These outstanding checks were monies disbursed from the advance deposit fund to litigants in lawsuits who were due a refund. According to the state treasurer's office, the Clerk of Court has not submitted any unclaimed property to its office since 2003. Because outstanding checks issued from the advance deposit fund were not reported (with the corresponding amounts transferred) to the state treasurer, the Clerk of Court failed to comply with state law.<sup>5,4</sup>

### **Recommendations**

We recommend that Clerk of Court management:

- (1) seek legal advice to determine the appropriate actions to be taken, including refunding amounts to the original depositors of inactive lawsuits that were improperly transferred to the Clerk of Court's salary fund;
- (2) perform the appropriate reconciliations and reviews to attempt to determine amounts owed to plaintiffs from inactive lawsuits;
- (3) develop written policies and procedures to monitor the status of lawsuits and identify lawsuits as they become inactive;
- (4) establish written policies and procedures to ensure that unused advance costs from inactive lawsuits are returned to the appropriate persons as required by state law in a timely fashion;
- (5) ensure that all information entered into the case management system is genuine and accurate;
- (6) implement written policies and procedures to ensure that all unclaimed property is properly reported and remitted to the state in compliance with state law;
- (7) maintain records clearly identifying the names and contact information of persons making advance deposits and persons to whom refund checks are payable;
- (8) perform the appropriate reconciliations and reviews to attempt to determine amounts owed to the state as unclaimed property; and
- (9) meet with representatives of financial institutions holding Clerk of Court demand deposit (checking) accounts to ensure that stale dated checks will not be paid by the financial institutions.

## LEGAL PROVISIONS

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<sup>1</sup> **Louisiana Revised Statute (La. R.S.) 13:842(B)**, states, in part, “After an ordinary suit has been filed, if a period of five years elapses without any pleadings being filed and the suit has been completely inactive during this five-year period, the clerk shall refund any unused balance remaining in the clerk’s advance deposit fund (to the credit of this particular suit) to the person who made the original deposit, after paying all fees or other charges of record in the suit.”

<sup>2</sup> **La. R.S. 14:132(B)** provides that, “Second degree injuring public records is the intentional removal, mutilation, destruction, alteration, falsification, or concealment of any record, document, or other thing, defined as a public record pursuant to R.S. 44:1 et seq. and required to be preserved in any public office or by any person or public officer pursuant to R.S. 44:36.”

<sup>3</sup> **La. R.S. 14:133(A)** provides that, “Filing or maintaining false public records is the filing or depositing for record in any public office or with any public official, or the maintaining as required by law, regulation, or rule, with knowledge of its falsity, of any of the following: (1) Any forged document. (2) Any wrongfully altered document. (3) Any document containing a false statement or false representation of a material fact.”

<sup>4</sup> **La. R.S. 42:1461(A)** provides that, “Officials, whether elected or appointed and whether compensated or not, and employees of any ‘public entity,’ which, for purposes of this Section shall mean and include any department, division, office, board, agency, commission, or other organizational unit of any of the three branches of state government or of any parish, municipality, school board or district, court of limited jurisdiction, or other political subdivision or district, or the office of any sheriff, district attorney, coroner, or clerk of court, by the act of accepting such office or employment assume a personal obligation not to misappropriate, misapply, convert, misuse, or otherwise wrongfully take any funds, property, or other thing of value belonging to or under the custody or control of the public entity in which they hold office or are employed.”

<sup>5</sup> **La. R.S. 9:154(A)** provides, in part, “Property is presumed abandoned if it is unclaimed by the apparent owner during the time set forth below for the particular property for the following: (10) Property held by a court, state or other government, governmental subdivision or agency, public corporation, or other public authority, one year after the property becomes distributable, except as provided in R.S. 15:86.1.”

**La. R.S. 9:159** provides, in part, “(A) A holder of property presumed abandoned shall make a report to the administrator concerning the property. (B) The report shall be verified and shall include all of the following: (1) Except with respect to a traveler’s check or money order, the name if known, and last known address, if any, and the social security number or taxpayer identification number, if readily ascertainable, of the apparent owner of property of the value of fifty dollars or more. (2) An aggregated amount of items valued under fifty dollars each. (3) In the case of unclaimed money amounting to fifty dollars or more held or owing under any annuity or life or endowment insurance policy the full name and last known address of the insured or annuitant and of the beneficiary. (4) In the case of tangible property held in a safe deposit box or other safekeeping depository, a description of the property and the place where it is held and where it may be inspected by the administrator, and any amounts owing to the holder. (5) The date, if any, on which the property became payable, demandable, or returnable, and the date of the last transaction with the apparent owner with respect to the property. (6) Other information that the administrator by rule prescribes as necessary for the administration of this Chapter.”

**La. R.S. 9:160(A)** provides that, “Upon filing the report required by R.S. 9:159, the holder of property presumed abandoned shall pay, transfer, or cause to be paid or transferred to the administrator the property described in the report as unclaimed, but if the property is an automatically renewable deposit, and a penalty or forfeiture in the payment of interest would result, the time for compliance is extended until a penalty or forfeiture would no longer result.”





# EXHIBIT A

4/18/2016

IPCOC-Court

## ADVANCE DEPOSIT FEE SCHEDULE SIXTEENTH JUDICIAL DISTRICT IBERIA PARISH

### CIVIL FEE SCHEDULE

JANUARY 1, 2015

#### **ADVANCE DEPOSITS**

#### **FOR OPENING THE FOLLOWING CIVIL MATTERS:**

Clerk's Docket under \$5,000.00	200.00
Adoption	300.00
Damages	300.00
Divorce w/citation only	300.00
Divorce w/rule	350.00
Executory Process	300.00
Make Judgment Executory	300.00
Open Account	300.00
Promissory Note	300.00
Restricted Driver's License	300.00
Partition	300.00
Sequestration	300.00
Suit on Open Account	300.00
Worker's Compensation	300.00
Each additional defendant	100.00
Service on Sec. Of State - additional	50.00
Service on Commissioner of Insurance	50.00
Change of Name	200.00
Emancipation	200.00
Mandamus	200.00
Succession/Probate	
Small (under \$75,000.00)	125.00
Large (over \$75,000.00)	250.00

#### **FOR FILING AND SERVING THE FOLLOWING:**

Amending or Supplemental Petition	250.00
Cross-claim	250.00
Deficiency Judgment	250.00
Exception Set for Hearing	250.00
Garnishments	300.00
Intervention	250.00
Judgment Debtor Rule	175.00
Motion for New Trial	250.00
Motion for Summary Judgment	250.00
Reconventional Demand	250.00
Reconventional Demand w/rule	300.00
Rules for Custody, Child Support, Contempt, etc.	300.00
Third Party Petition	250.00
Each additional service	100.00
(Note: this includes sheriff fees)	

4/18/2016

IPCOC-Court

**FOR FILING AND NOTICE OF THE FOLLOWING:**

Answers	per page
Answers with Jury Order	100.00
Answer and Exceptions	per page
Default Judgments	per page
Joint Custody Plan With Order	per page
Letters Rogatory	per page
Motion for Preliminary Default	per page
Motion to Appoint Curator	per page
Motion to Appoint Private Process Server	per page
Motion to Continue (for two notices)	per page
Motion to Cont. & Reset w/ Service	per page
Motion to Enroll or Withdraw (for two notices)	per page
Motion to Set for Trial (for two notices)	per page
Motion for Status Conference (for two notices)	per page
Notice of Lis Pendens	per page
Objection to Hearing Officer Conference	per page
Rules for Custody, Child Support, etc.	250.00

Faxes (first page)	5.00
(all other pages)	2.00

Originals must be filed within Seven (7) days  
**AS PER R.S. 13.841 (EFFECTIVE AUGUST 15, 2006)**

**Initialization:**

Faxes (first page)	5.00
(all other pages)	2.00

Initialization fee (each case)	20.00
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**Filing each document:**

First page	6.00
Each subsequent page	4.00
Paper exhibits, attachments, transcripts and depositions (per page)	2.00
All other exhibits (per exhibit) (Big Maps, etc.)	5.00

**Indexing:**

Each name in Civil, Probate & Adoption Indexes	2.00
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**Issuing Documents:**

With notice of service (any service requiring notification of service)	20.00
Without notice of service (by mail) (any service that does not require notification of service)	15.00

**Copies:**

Copy Cost (per page)	1.00
Certification of copy	5.00
Act of Congress	5.00

**Minutes:**

Extract of minute entry (each)	15.00
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**Swearing:**

<http://www.iberiaclerk.com/court.html>

2/3

4/18/2016	IPCOC-Court	
Witness (each)		2.00
Jury empanelled (each juror)		2.00
<b>Appeals:</b>		
Complete preparation of all copies and volumes (per original document page)		
Exhibits		5.00
<b>Recordings:</b>		
Filing all judgments that are also recorded in the Mortgages or Conveyance Records (includes indexing up to 4 names)		
First page		31.00
Each additional page		12.00
For indexing each name after the 4th name		5.00
<b>Cancellations:</b>		
Authorization to cancel judgment		30.00
Authorization to cancel judgment w/ Satisfaction of judgment		61.00
<b>Subpoenas:</b>		
Regular Subpoena		100.00

**NOTE:**

Your attention is called to that portion of R.S. 13.842 which reads in part: "Whenever the costs have exhausted the amount of the original advance deposit, the clerk may refuse to perform any further function in the proceeding until the additional costs for the function have been paid."

**NEW SUIT CHARGES:**

\$35.00	Judicial Expense Fund
\$23.50	LA State Treasurer
\$14.25	Iberia Parish Council
\$0.75	Adm fee Iberia Parish Council
\$20.00	Initialization Fee
\$1.50	Jamis Fee
\$4.00	Indexing
\$.50	Judicial College
\$1.50	Supreme Court
\$99.50	Total

**SMALL CLAIMS NEW SUITS CHARGES:**

\$20.00	Initialization Fee
\$1.50	Supreme Court Reporting
\$4.00	Indexing
\$25.50	Total

**TAX ID: 72-6000541**

**Iberia Parish**

01/01/2015



## APPENDIX A

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### Management's Response



ROEDEL PARSONS KOCH  
BLACHE BALHOFF & McCOLLISTER

A L A W C O R P O R A T I O N

JUDITH R. ATKINSON  
THOMAS E. BALHOFF  
CECIL J. BLACHE  
CORINNE M. BLACHE†  
ANDRÉ G. BOURGEOIS  
BRENT J. BOURGEOIS  
RYAN R. BROWN  
GAYLE THOMASSON BUSCH‡  
THOMAS J. CAPELLA\*  
ROSS A. DOOLEY

TERRY T. DUNLEVY\*  
SKYE S. FANTACI  
DAVID C. FLESHMAN  
WAYNE J. FONTANA  
SHANNON M. FRESE  
DAVID H. HARDY†  
TIMOTHY W. HARDY  
DEBORAH DUPLECHIN HARKINS\*  
CARLTON JONES, III  
K. SCOTT KIRKPATRICK

JOHN D. KOCH  
JOHANNA POSADA KYLES  
JENNIFER F. LEWIS  
V. JOYCE MATTHEWS  
STEPHEN G. McCOLLISTER  
SHELLEY ANN McGLATHERY  
SHERI M. MORRIS  
J. KENTON PARSONS  
CHRISTINA B. PECK  
LUKE F. PIONTEK

CHARLES M. PISANO  
CHRISTIAN J. RHODES  
LARRY M. ROEDEL  
DON R. SCHNEIDER†  
RICHARD L. SEELMAN‡  
W.L. WEST‡  
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October 4, 2016

Daryl G. Purpera, CPA, CFE  
Louisiana Legislative Auditor  
Post Office Box 94397  
Baton Rouge, Louisiana 70804-9397

Re: Response to Findings and Recommendations

Dear Mr. Purpera:

On behalf of Iberia Parish Clerk of Court and the Iberia Parish Clerk of Court's Office, I would like to thank you for the opportunity to provide a formal response to your assessment of certain accounting procedures within the Iberia Parish Clerk of Court's Office. I believe this response will provide further insight and clarity to your findings.

**I. Response to Findings from May 2013 to October 2015**

From May of 2013 through October 2015, the individual responsible for overseeing the closure of inactive suits and the related accounting procedures was Chief Deputy Clerk of Court, Ryan Huval. Since October 2015, the Management of the Clerk of Court's Office has changed and Mr. Huval is no longer employed by the Iberia Parish Clerk of Court's Office.

Upon information and belief, the practice used for closing inactive suits is more than 30 years old. There was absolutely no intent on the part of anyone acting on behalf of the Clerk of Court's Office to remove, destroy or conceal any record therefore, the statutes requiring intent cited in your report as possible violations are inapplicable.

The accounting records of the Clerk of Court's Office have been and remain both transparent and readily available. The records requested by your staff were made available to them immediately. Further, the ledgers of both open and closed suits are available for view through the public terminals located in the Clerk of Court's Office and are available for remote viewing by attorneys who practice within the jurisdiction through their online access. The suit ledgers clearly show the accounting transactions related to closing suits in which no activity occurred in the prior five year period ("Inactive Suits").

The advance deposits referred to in your report were identified as inactive through a computer program which shows suits in which no entries were made for a five-year period. All of the advance deposits from the Inactive Suits remain in the custody of the Clerk of Court's Office in a public account. The conclusion that the funds transferred from Inactive Suit advance deposits to the Operating Account

and were used “to operate the Clerk of Court’s office” is unsupported by the records of the Clerk of Court’s office. Specifically, the monthly financial reports of the Clerk of Court’s Office for the period of May 2013 through May 2016, demonstrate that the fund balance in the operating account far exceeded the total amount of advance deposits from Inactive Suits transferred to the Operating Account.

While remaining advance deposits from Inactive Suits were transferred from the Advance Deposit Account to the Operating Account, your conclusion that the transferred funds were used to pay office expenses is inaccurate. The transferred funds were not expended and remain in the Operating Account as shown by the fund balances on the monthly financial statements of the Operating Account provided to your office. The monthly financial statements reinforce our position that advance deposits from the Inactive Suits were never utilized to pay office expenses.

The Clerk of Court’s Office has implemented the enclosed written procedures for Closing Inactive Suits, which are consistent with La. R.S. 13:842, (Exhibits A and B). These written procedures will provide for a review of the ledgers of Inactive Suits prior to closure. If it is determined that a refund is due, the refund will be issued prior to closure of the Inactive Suit. Additionally, with respect to the Inactive Suits referred to in your report, the Chief Deputy will oversee the review of the ledgers for those Inactive Suits and will determine whether any refunds are due. If a refund of \$50 or more is due, the refund will be issued.

As part of the procedures regarding Inactive Suits any refund check returned by the post office as undeliverable or any refund check which is not timely negotiated of \$50 or more will be handled in accordance with the applicable provisions of the Uniform Unclaimed Property Act, La. R.S. 9:151, *et seq.*

While the report shows five large advance deposits which were transferred to the operating account, the majority of the advance deposits transferred were much smaller, some only 1¢. In fact, more than one-third of the transferred advance deposits were less than \$10. Over 1800 of the Inactive Suits had advance deposits of less than \$50, the amount required to be reported pursuant to the Unclaimed Property Act, La. R.S. 9:151, *et seq.*

## **II. Response to Recommendations**

The Clerk of Court’s Office will comply with your recommendations where appropriate including but not limited to taking the following actions:

### **A. Implementation of Accounting Procedures for Closure of Inactive Suits**

The accounting procedures used for suits concluded by final disposition will immediately be implemented for inactive suits whereby, after five years of inactivity the suit account will be reviewed to ensure all charges were posted, all fees were assessed to the proper party and all disbursements have been made. If after all fees and disbursements are posted there are any remaining advanced funds in the suit account, a refund will be mailed to the depositor at the last known address, provided the refund exceeds the cost of mailing the refund.

### **B. Transfer of Funds from Operating Account to Deposit Account**

The funds which your office contends should not have been transferred to the Operating Account from the Advance Deposit Account will not be expended. The Chief Deputy will oversee the review of



the ledgers of the Inactive Suits to first determine whether all charges were posted to the account, all fees were assessed to the proper party and all disbursements have been made. If after all fees and disbursements are posted there are any remaining advanced funds in the suit account, a refund will be mailed to the depositor at the last known address, provided the refund exceeds the cost of mailing the refund.

**C. Review of Accounts for Suits Inactive in Excess of 5 Years**

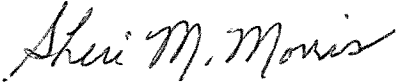
With respect to suits which have been inactive for a period in excess of five years, the new written procedure have been implemented for reviewing the inactive suit accounts determining whether all charges were posted to the account, all fees were assessed to the proper party and all disbursements have been made. If after all fees and disbursements are posted there are any remaining advanced funds in the suit account, a refund will be mailed to the depositor at the last known address, provided the refund exceeds the cost of mailing the refund.

**D. Refund Checks Issued Returned Undeliverable or Not Timely Negotiated**

Management will immediately implement procedures whereby refund checks of \$50 or more which are returned as undeliverable or not timely negotiated by the depositors are handled in accordance with the Uniform Unclaimed Property Act, La. R.S. 9:151, *et seq.*

Mr. Thibodeaux's intent is and has always been to follow all applicable laws and to serve the public in an efficient and effective matter. Your recommendations which will assist in the efficient and effective operations of the Iberia Parish Clerk of Court's office are much appreciated.

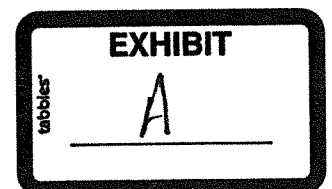
Very truly yours,

  
Sheri M. Morris

Enclosures

**Iberia Parish Clerk of Court  
Procedure for Review of Inactive Suits  
Closed from May 2013 through May 2016**

1. For Inactive Suits closed from May 2013 through May 2016, the ledger for each suit will be reviewed to determine whether all charges were properly posted.
2. Any adjustments to the ledger will be made to reflect the appropriate charges for services performed.
3. Prior to closing the Inactive Suit, if one or more parties have an outstanding balance for services performed, the party or parties shall be billed.
4. Prior to closing the Inactive Suit, if one or more parties have any funds remaining in the Advance Deposit Account required to be refunded, a refund check shall be prepared from the Advance Deposit Account.
5. Each bill and refund check shall be mailed via First Class U.S. Mail to the party's last known address.
6. If any refund check is returned by the U.S. Post Office as undeliverable, a reasonable effort shall be made to contact the payee.
7. If a refund check in excess of \$50 is returned undeliverable by the U.S. Post Office and the Clerk of Court's Office is unable to contact the payee, the refund check will be handled in accordance with the applicable provisions of the Uniform Unclaimed Property Act, La. R.S. 9:151, *et seq.*
8. If a refund check in excess of \$50 is not negotiated within one year of the date of its issue, the refund check shall be handled in accordance with the applicable provisions of the Uniform Unclaimed Property Act, La. R.S. 9:151, *et seq.*
9. If any bill is returned by the U.S. Post Office as undeliverable, a reasonable effort will be made to contact the addressee.
10. Appropriate measures shall be taken to attempt collection of the outstanding fees considering the amount and the cost of collection.



## Iberia Parish Clerk of Court Procedure for Closing Inactive Suits

1. Monthly on or about the 10<sup>th</sup> of the month, the Chief Deputy Clerk of Court shall run a report to identify any suits which meet the definition of inactive in R.S. 13:842(B).
2. The ledger for each suit appearing on the inactive suit report will be reviewed to verify that all charges for services performed were properly posted.
3. Any adjustments to the ledger shall be made to reflect the appropriate charges for services performed.
4. Prior to closing the Inactive Suit, if one or more parties have an outstanding balance for services performed, the party or parties shall be billed.
5. Prior to closing the Inactive Suit, if one or more parties have any funds remaining in the Advance Deposit Account required to be refunded, a refund check shall be prepared from the Advance Deposit Account.
6. Each bill and refund check shall be mailed via First Class U.S. Mail to the party's last known address.
7. If any refund check is returned by the U.S. Post Office as undeliverable, a reasonable effort shall be made to contact the payee.
8. If any refund check in excess of \$50 is returned undeliverable by the U.S. Post Office and the Clerk of Court's Office is unable to contact the payee, the refund check will be handled in accordance with the applicable provisions of the Uniform Unclaimed Property Act, La. R.S. 9:151, *et seq.*
9. If a refund check in excess of \$50 is not negotiated within one year of the date of its issue, the refund check will be handled in accordance with the applicable provisions of the Uniform Unclaimed Property Act, La. R.S. 9:151, *et seq.*
10. If any bill is returned by the U.S. Post Office as undeliverable, a reasonable effort shall be made to contact the addressee.
11. Appropriate measures shall be taken to attempt collection of any outstanding fees considering the amount and the cost of collection.

