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CPA, CFE

## Report Highlights

# Judicial Expense Fund for the Civil District Court for the Parish of Orleans

Audit Control # 50110023

Investigative Audit Services • November 2012

### Why We Conducted This Audit

The Louisiana Legislative Auditor (LLA) received information alleging the improper use of public funds to provide supplemental insurance benefits to the judges of the Civil District Court and the First and Second City Courts (collectively referred to as Courts). As a result, the LLA conducted an audit of available Judicial Expense Fund records (that the judges of the Courts have oversight) to determine the credibility of the information.

### What We Found

#### Judges Provided Themselves With Improper Insurance Benefits

It appears that, contrary to state law, from January 1, 2009, to December 31, 2011, the judges of the Civil District Court for the Parish of Orleans (Civil District Court) and the First and Second City Courts for the City of New Orleans (City Courts) improperly used Judicial Expense Funds monies totaling \$191,073 to provide themselves with additional insurance benefits.

#### Lodging Expenses of Judges

From July 2009 to July 2011, several judges of the Courts incurred lodging expenses which appear excessive while attending the Summer School for Judges and the Annual Meeting of the State Bar Association.

#### Time and Attendance Records Not Prepared by All Employees

Employees working under the direct supervision of the judges of the Civil District Court and City Courts were not required to document their time and attendance at work.

View the full report at [www.la.gov](http://www.la.gov).

JUDICIAL EXPENSE FUND FOR THE CIVIL DISTRICT COURT  
FOR THE PARISH OF ORLEANS



INVESTIGATIVE AUDIT  
ISSUED NOVEMBER 21, 2012

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Under the provisions of state law, this report is a public document. A copy of this report has been submitted to the Governor, to the Attorney General, and to other public officials as required by state law. A copy of this report has been made available for public inspection at the Baton Rouge office of the Louisiana Legislative Auditor.

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LOUISIANA LEGISLATIVE AUDITOR  
DARYL G. PURPERA, CPA, CFE

November 21, 2012

**THE HONORABLE PIPER D. GRIFFIN, CHIEF JUDGE,  
AND JUDGES OF THE JUDICIAL EXPENSE FUND FOR THE  
CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS**  
New Orleans, Louisiana

Dear Judge Griffin:

We have audited certain transactions of the Judicial Expense Fund for the Civil District Court for the Parish of Orleans. Our audit was conducted in accordance with Title 24 of the Louisiana Revised Statutes to determine the credibility of allegations we received from the Metropolitan Crime Commission.

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 (see Appendix A) and our rebuttal (see Appendix B) to certain assertions made in management's response. This is a public report. Copies of this report have been delivered to the District Attorney for the Orleans Judicial District of Louisiana and others as required by law.

Respectfully submitted,

Daryl G. Purpera, CPA, CFE  
Legislative Auditor

DGP/ch

ORLEANS CIVIL COURT 2012

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## EXECUTIVE SUMMARY

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### **Judges Provided Themselves With Improper Insurance Benefits**

It appears that, contrary to state law, from January 1, 2009, to December 31, 2011, the judges of the Civil District Court for the Parish of Orleans (Civil District Court) and the First and Second City Courts for the City of New Orleans (City Courts) improperly used Judicial Expense Fund monies totaling \$191,073 to provide themselves with additional insurance benefits.

These insurance benefits included:

1. Use of Judicial Expense Fund monies totaling \$114,843 for the administration and reimbursement of out-of-pocket medical expenses incurred by the judges of the Courts.
2. Payment of 100% of the premiums totaling \$76,230 for professional liability insurance for the judges of the Courts.

### **Lodging Expenses of Judges**

From July 2009 to July 2011, several judges of the Courts incurred lodging expenses which appear excessive while attending the Summer School for Judges and the Annual Meeting of the State Bar Association.

### **Time and Attendance Records Not Prepared by All Employees**

Employees working under the direct supervision of the judges of the Civil District Court and City Courts (Courts) were not required to document their time and attendance at work.

## BACKGROUND AND METHODOLOGY

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### Background

Louisiana Revised Statute (R.S.) 13§1312 provides for the establishment and operation of the Judicial Expense Fund for the Civil District Court for the Parish of Orleans (Judicial Expense Fund). The monies within the Judicial Expense Fund are designated for use by the Civil District Court for the Parish of Orleans (Civil District Court) and the First and Second City Courts of the City of New Orleans (City Courts).

The clerk of the Civil District Court, the clerk of the City Courts, the register of conveyances, and the recorder of mortgages place all sums collected/received in a separate account designated as the Judicial Expense Fund for the Civil District Court for the Parish of Orleans. The judges, sitting en banc (a majority of said judges constituting a quorum of the Civil District Court and the City Courts as set forth in R.S. 13§1312), have sole responsibility and oversight over the funds and all disbursements made therefrom.

R.S. 13§1136 created the Civil District Court which is composed of 14 judges each serving six-year terms. District judges are State of Louisiana (state) employees whose salaries are funded by the state and paid by the Louisiana Supreme Court. The annual salaries of the Civil District Court judges are provided for in R.S. 13§691 (A). In addition, R.S. 13§691 (B) specifically prohibits district court judges from receiving any additional salary, compensation, emolument, or benefit from the state or any of its political subdivisions except:

- (1) payment of retirement benefits;
- (2) reimbursement for certain expenses (office, travel);
- (3) payment of premiums for health, medical, dental, and hospitalization insurance programs contributions to which shall be at the same rate as those paid by other state employees; and
- (4) educational grants.

R.S. 13§2151 created the two City Courts which are composed of a total of four judges each serving six-year terms. City Court judges are also state employees. Although the provisions of R.S. 13§691 do not apply to City Court judges, according to R.S. 13§2152.2, the salary of the City Court judges shall in no case exceed the salary of a judge of the Civil or Criminal District Court for the Parish of Orleans. State law further provides that the amount payable by the state to the City Court judges shall be paid by the state, and the remainder shall be payable out of the Judicial Expense Fund. As such, City Court judges are currently paid the same salary as the district judges for Orleans Parish.

The Louisiana Legislative Auditor (LLA) received information from the Metropolitan Crime Commission alleging the improper use of public funds to provide supplemental insurance benefits to the judges of the Civil District Court and City Courts (collectively referred to as Courts). As a result, the LLA conducted an audit of available Judicial Expense Fund records to determine the credibility of the information. In July 2011, before we began our audit, the judges of the Courts discontinued submitting claims for reimbursements to their supplemental insurance provider. The procedures performed during this audit included:

- (1) interviewing judges and employees of the Courts;
- (2) interviewing other persons as appropriate;
- (3) examining selected documents and records of the Courts;
- (4) gathering documents from external parties; and
- (5) reviewing applicable state laws and regulations.



## FINDINGS AND RECOMMENDATIONS

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### Judges Provided Themselves With Improper Insurance Benefits

**It appears that, contrary to state law, from January 1, 2009, to December 31, 2011, the judges of the Civil District Court for the Parish of Orleans (Civil District Court) and the First and Second City Courts for the City of New Orleans (City Courts) improperly used Judicial Expense Fund monies totaling \$191,073 to provide themselves with additional insurance benefits.**

These insurance benefits included:

1. Use of Judicial Expense Fund monies totaling \$114,843 for the administration and reimbursement of out-of-pocket medical expenses incurred by the judges of the Courts.
2. Payment of 100% of the premiums totaling \$76,230 for professional liability insurance for the judges of the Courts.

State law [Louisiana Revised Statute (R.S.) R.S. 13§691<sup>1</sup>] provides for the annual salary of district court judges and prohibits district court judges from receiving any additional compensation or benefits other than their salary except as noted in the statute. R.S. 13§2152<sup>2</sup> provides for the compensation of the judges of the City Courts and restricts the maximum salary (directly or indirectly from all sources for services as judge) of the judges of the City Courts to the salary of the district court judges.

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<sup>1</sup> **R.S.13§691 (A).** The annual salary of each of the several district judges of judicial districts, including the civil district court judges and the criminal district court judges of the parish of Orleans; the magistrate of the criminal district court for the parish of Orleans; the judges of the juvenile court of the parish of Orleans, the parish of Caddo, the parish of East Baton Rouge, and the parish of Jefferson; and the judges of the family court of East Baton Rouge Parish, shall be in the amount provided in accordance with the provisions of R.S. 13:42 et seq., payable monthly upon the warrant of the judge. **(B)** Provides, in part, that no judge whose salary is provided for shall receive for his services as a judge, directly or indirectly, any additional salary, compensation, emolument, or benefit from the state or any of its political subdivisions except: (1) Retirement benefits. (2) Reimbursement of those expenses provided for and authorized by R.S. 13:694 and 13:698. (3) Payment of premiums for health, medical, dental, and hospitalization insurance programs contributions to which shall be at the same rate as those paid by other state employees. (4) Educational grants.

<sup>2</sup> **R.S.13§2152,** provides, in part, that **(A)** the salary of each of the judges of the First City Court of the city of New Orleans shall be the same as provided for district court judges in the state, payable monthly on their own respective warrants, of which the amount payable by the state to city judges of the state shall be paid by the state, and the remainder shall be payable out of the Judicial Expense Fund of the Parish of Orleans; provided that the term of the said court shall be twelve months per year with the judges of the court fixing their own personal vacations of not more than thirty days per annum. **(B)** The salary of the judge of the Second City Court of the city of New Orleans, who is also judge of Section D of the First City Court, shall be the same as and payable in the same manner and from the same sources as the judges of the First City Court.

**R.S 13§2152.2 (A)** provides, in part, that the salary of a judge of the First or Second City Court of the city of New Orleans shall in no case exceed the salary of a judge of the Civil or Criminal District Court for the parish of Orleans.

Our audit reveals that from January 1, 2009, to December 31, 2011, the judges of the Courts, sitting en banc, approved by vote to use monies of the Judicial Expense Fund totaling \$191,073 to provide themselves with additional insurance benefits. These additional benefits included reimbursement of out-of-pocket medical expenses and the payment of their professional liability insurances. Because the additional insurance benefits are not provided for in R.S. 13§691,<sup>1</sup> it does not appear that the judges had the legal authority to vote themselves additional benefits or to incur these added expenditures. As a result, it appears that the district court judges received benefits in violation of R.S. 13§691 and the City Court judges, who are paid at the same rate as the district court judges, improperly received benefits in addition to the maximum compensation allowable by R.S. 13§2152.2.<sup>2</sup> By providing themselves with improper benefits, the judges also may have violated the Louisiana Constitution<sup>3</sup> which prohibits the donation of public funds. A description of the benefits provided is included in the sections below.

1. Judicial Expense Fund Monies Used to Reimburse  
Out-of-Pocket Medical Expenses

**During our audit, Judicial Expense Fund payments totaling \$114,843 were issued to Exec-U-Care, a third-party administrator, to administer a medical reimbursement program for judges of the Civil District Court and City Courts (collectively referred to as Courts). Of the \$114,843 paid to Exec-U-Care, \$12,687 was for premiums,<sup>4</sup> \$12,750 was for administrative fees, and the remaining \$89,406 was for the reimbursement payments Exec-U-Care paid to judges for their out-of-pocket medical expenses. As a result of these payments, it appears that the judges of the Courts received additional compensation and benefits in violation of state law<sup>1,2</sup> and expended funds in violation of the Louisiana Constitution<sup>3</sup> which prohibits the donation of public assets.**

Exec-U-Care reimburses the judges directly for their out-of-pocket medical expenses (e.g., co-payments and prescription drugs) and then bills the Judicial Expense Fund monthly for the amounts paid to judges, including premiums and administrative fees. This benefit was provided to 20 different judges during our audit (January 2009 to December 2011). The Courts limit the reimbursement amount paid to judges to \$50,000 per year, per judge. The reimbursement claim forms are filed through the Judicial Administrator's Office and then submitted to Exec-U-Care. Exec-U-Care reviews the claims and then reimburses the judges for eligible claims. Nine of the judges we spoke with regarding Exec-U-Care indicated they were not aware that monies from the Judicial Expense Fund were used to reimburse them for their out-of-pocket medical expenses.

Judge Kern Reese stated that when he became a judge of the Civil District Court 11 years ago, he was introduced to Exec-U-Care by a former judicial administrator. He stated that he was told being a judge is stressful and that maintaining his health was important. He believed Exec-U-Care would be useful in helping to maintain good health so he enrolled in it. He recalls that

<sup>3</sup> **Article VII, Section 14 of the Louisiana Constitution** provides, in part, that except as otherwise provided by this constitution, the funds, credit, property, or things of value of the state or of any political subdivision shall not be loaned, pledged, or donated to or for any person, association, or corporation, public or private.

<sup>4</sup> According to Exec-U-Care, premiums are considered enrollment fees as they do not provide insurance.

Exec-U-Care became an issue (on whether judges could legally receive reimbursement for medical expenses) in early 2010, and the judges discussed the coverage and decided to suspend filing claims until further research could be done. He indicated that a former Civil District Court judge had done thorough and exhaustive research on Exec-U-Care and did not find anything wrong with judges having it.

Judge Lloyd Medley stated that when he was elected as a Civil District Court judge 16 years ago, he most likely signed up for whatever insurance was available to judges. He stated that five or six months after becoming a judge, he was informed that Exec-U-Care was a supplemental insurance available to judges. He stated that he basically uses Exec-U-Care to reimburse his out-of-pocket costs for dental care. He was recently made aware that the reimbursement claims for out-of-pocket expenses paid to judges was actually paid by the Court (Judicial Expense Fund), not Exec-U-Care. He stated he was not concerned about Exec-U-Care because the judges before him had already determined it was legal.

Because the additional insurance benefits received by the district judges are not provided for in R.S. 13§691 and the benefits are in addition to the maximum compensation allowable to judges of City Courts (R.S. 13§2152.2), it does not appear that the judges had the legal authority to vote themselves additional benefits or to incur these added expenditures.

Currently, the judges of the Courts continue to use monies of the Judicial Expense Fund to pay monthly premiums to Exec-U-Care; however, since July 2011, the judges have suspended submission of claims for reimbursement.

## 2. Judge's Professional Liability Insurance Paid by Judicial Expense Fund

From January 2009 to December 2011, Judicial Expense Fund payments totaling \$76,230 were issued to Herbert L. Jamison & Company, LLC (Jamison) to purchase professional liability insurance coverage for 21 judges of the Courts. By providing these judges with professional liability insurance, a service which is already provided by the state, it appears that the judges of the Courts received additional compensation and benefits in violation of state law<sup>1,2</sup> and expended funds in violation of the Louisiana Constitution<sup>3</sup> which prohibits the donation of public assets.

Although professional liability coverage was offered to the judges of the Courts, R.S. 13§5108.1<sup>5</sup> statutorily provides that the state shall defend and indemnify a public official against any claim, demand, suit, complaint or petition seeking damages in any court over alleged negligence or any other act while the individual was engaged in the performance of the duties of the individual's office or employment with the state.

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<sup>5</sup> **R.S.13§5108.1 (A).** Indemnification

(1) The state shall defend and indemnify a covered individual against any claim, demand, suit, complaint or petition seeking damages filed in any court over alleged negligence or other act by the individual, including any demand under any federal statute when the act that forms the basis of the cause of action took place while the individual was engaged in the performance of the duties of the individual's office or employment with the state.

According to Judicial Administrator Traci Dias, Jamison provides malpractice insurance for the judges of the Courts. Ms. Dias stated that Jamison was “optional” insurance and that most of the judges chose to have this coverage.

Eight of the judges we spoke with stated that they have used Jamison for legal representation. One judge stated that when he was sued personally the attorney general did not represent him. Another judge explained that the attorney general does not get involved until a lawsuit has been filed in court. This judge stated that by having legal representation which Jamison provides, complaints against a judge filed with the Judicial Commission could be dismissed or settled prior to the case going to court.

Currently, the Courts continue to provide professional liability coverage to judges who choose to receive the benefit.

#### Recommendations:

We recommend that the judges, sitting en banc, adopt and implement policies and procedures to ensure that Judicial Expense Fund monies (public funds) are spent in accordance with state law. The judges should:

- (1) discontinue using public funds to provide additional insurance and benefits to themselves, such as reimbursement of their out-of-pocket medical expenses and professional liability insurance;
- (2) seek reimbursement of payments made from the Judicial Expense Fund for all improper reimbursements and for additional insurances provided to current and former judges; and
- (3) consider any tax consequences as a result of the additional benefits provided to judges.

#### **Lodging Expenses of Judges**

**From July 2009 to July 2011, several judges of the Courts incurred lodging expenses which appear excessive while attending the Summer School for Judges and the Annual Meeting of the State Bar Association.**

According to Mr. Terence Sims, deputy judicial administrator for the Louisiana Supreme Court (Supreme Court), the Supreme Court determines the total allowable reimbursement for lodging expenses for judges attending the Summer School for Judges and the Annual Meeting of the State Bar Association (conference). Once the total allowable lodging reimbursement is established, the Judicial Administrator for the Supreme Court distributes a “lodging reimbursement” memorandum to the various courts, including the Louisiana District Courts and City Courts, providing the maximum amount that an attendee may be reimbursed for lodging while attending the conference. We examined the “lodging reimbursement” memorandum from the Judicial Administrator for the Supreme Court for the 2009, 2010, and 2011 conferences,

which provided maximum lodging reimbursements of \$2,000 for 2009 and \$2,200 for 2010 and 2011.

Our understanding is that the Supreme Court reviews the rates for various conference hotels and condominiums and then sets a maximum amount that an attendee may be reimbursed for lodging. Because the amount is set by the Supreme Court and such is communicated to other courts, one can assume that the Supreme Court has determined that the amount set is reasonable.

Based on conversations with various judges, it has been a long standing practice that a judge could be reimbursed up to the maximum amount. There is no requirement that the attendee seek out the lowest cost for lodging. As such, several judges stated that they obtained two or three bedroom hotel suites or condominiums and attended the conferences with their families. According to these judges, the accommodations were reasonable and in compliance with the Supreme Court travel policy as long as they did not exceed the total allowable lodging reimbursement established by the Supreme Court.

To evaluate the lodging rates paid by the Courts for 2009, 2010, and 2011 conferences, we used the lowest available room rate offered to the judges by the conference hotel which was the standard one bedroom rate. Such rates varied from \$169 to \$195 a night. We noted that five judges chose to stay in two or three bedroom condominiums or hotel suites as opposed to a standard (one bedroom) hotel room which were available at the conferences. As a result, these officials incurred and Court funds were used to pay lodging expenses totaling approximately \$7,567 (over a three-year period) above the standard one bedroom rate offered at the conferences.

According to Attorney General Opinion 03-0157 “. . . Providing exclusive or luxurious accommodations for attendance at a conference, when safe, reasonably priced accommodations could instead be provided, would be unreasonable . . .” The current practice of booking two or three bedroom condos when a single hotel room is available does not appear congruent with this opinion. In addition, the use of public funds to pay lodging charges that are more than what is necessary appears to be a donation in violation of Article VII, Section 14 of the Louisiana Constitution which provides, in part, that “except as otherwise provided by this constitution, the funds, credit, property, or things of value of the state or of any political subdivision shall not be loaned, pledged, or donated to or for any person, association, or corporation, public or private.”

#### Recommendations:

The judges of the Courts have complied with the Supreme Court instructions related to the Summer School for Judges and the Annual Meeting of the State Bar Association conference lodging expenses. However, we recommend that the judges consult with the Supreme Court as to possible changes as to total allowable reimbursement amount to ensure that such reimbursements are congruent with Attorney General Opinion 03-0157 and the Louisiana Constitution.

### **Time and Attendance Records Not Prepared by All Employees**

**Employees working under the direct supervision of the judges of the Civil District Court and City Courts (Courts) were not required to document their time and attendance at work.** Good controls dictate that all employees should be required to document their hours worked and leave taken each pay period. Such documentation supports payroll and the vacation and sick leave balances for employees.

Administrative employees of the Courts report to the judicial administrator. All other employees (approximately 71) work directly under the supervision of the individual judges of the Courts. The judges operate independent of one another and are responsible for managing and supervising employees in their section of the Courts. We spoke with eight judges of the Courts who informed us that their employees are not required to sign in or punch a time clock. They indicated to us that they (the judges) manually recorded, calculated, and tracked vacation and sick leave earned or used by their employees.

Our audit of the Judicial Expense Fund revealed the following deficiencies with respect to the time and attendance of employees managed by judges:

- Judges do not require the employees to prepare and submit time/attendance reports for their review and approval. However, at the end of each pay period, the judges certify that their employees worked the required number of hours. According to Ms. Dias, the Courts operate from 9 a.m. to 12 p.m. and 1 p.m. to 5 p.m. which constitutes 35 hours as the required number of work hours. She stated that employees generally do not work beyond 5 p.m.
- Adequate records are not being maintained to account for leave balances of employees. Judges approve leave for employees without requiring documentation to be completed and filed to account for the leave taken. Also, employees can accumulate undocumented overtime hours and use that time to leave work early on slow days. The overtime worked and leave used is not recorded and submitted to the Judicial Administrator's Office to be included in the general accounting system. Without maintaining accurate records, the judges of the Courts cannot ensure that leave privileges are reasonable and not being abused. Furthermore, as a result of the lack of documentation maintained to support time and attendance, employees that terminate their employment may be paid leave balances based on incomplete or inaccurate information.

Ms. Dias stated that administrative employees under her supervision work from 8 a.m. to 12 p.m. and 1 p.m. to 5 p.m. and are required to punch a time clock. She stated that she maintains leave records for these employees but does not maintain leave records for the employees that work for individual judges of the Courts. She stated that judges manage leave for their employees including approving leave and maintaining leave balances. She indicated that she relies on the judges to provide her with accurate employee payroll information. She also

indicated that she was not aware of any sick or vacation leave records that the judges maintained on their employees.

Recommendation:

We recommend that the judges of the Courts develop a comprehensive, written time and attendance policy for all employees to include implementing the following policies and procedures pertaining to payroll:

1. Require all employees to prepare time/attendance reports to document hours worked, including overtime, each pay period. Employees should sign the time/attendance reports and submit them to the appropriate supervisor for review and approval.
2. Require employees to complete standardized leave slips for all leave taken and submit them to the appropriate supervisor for approval.
3. Maintain accurate records to account for all leave earned and taken by employees and review and update its personnel policies to address compensatory time.

## APPENDIX A

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### Management's Response

Following Management's Response is Appendix B titled "Legislative Auditor's Rebuttal." Appendix B contains a rebuttal from the Legislative Auditor to certain assertions made in Management's Response.



**CIVIL DISTRICT COURT  
FOR THE PARISH OF ORLEANS  
421 LOYOLA AVENUE  
NEW ORLEANS, LOUISIANA 70112**

November 14, 2012

**CONFIDENTIAL**

**VIA EMAIL: DPURPERA@LLA.LA.GOV**  
**AND UPS OVERNIGHT DELIVERY**

The Honorable Daryl G. Purpera  
Louisiana Legislative Auditor  
1600 North Third Street  
Baton Rouge, LA 70804-9397

Re: Audit Issues relating to the Civil District Court for the Parish of Orleans

Dear Mr. Purpera:

The proposed audit report provided to this Court by letter dated September 5, 2012 is based upon numerous legal and factual errors. The Judges of the Court are prepared to meet with you and your staff as soon as possible to respond further to contentions in the report. It is important for the Legislative Auditor, public officials, and the residents of this State to understand the serious deficiencies and misapplication of basic legal principles permeating the report.

In the report, you identify three issues relating to the operations of the Court. These three topics are:

1. Insurance protection for the Judges of this Court;
2. Travel procedures and documentation relating to a limited number of instances that are not systemic and that comport with Supreme Court policies; and
3. Recordkeeping with respect to the time worked by some employees of the Court.

Initially, this Court is constrained to reiterate that the Supreme Court has been vested through the Constitution as the body that oversees administrative and policy issues for district courts. *See* Article V of the Constitution. In view of this delegation of authority to the Supreme Court, it is respectfully submitted that the Legislative Auditor lacks the legal authority to second-guess or supplant the Supreme Court's actions through an audit by your office. Nor has the

Legislative Auditor been empowered to interpret the laws of this State. Without waiving these constitutional and jurisdictional objections, and out of courtesy for your office, we are submitting this response. The Court will address the issues in the same order in which they are set forth in the report.

1. **Insurance protection for the Judges of this Court is statutorily authorized.**

In the report, your office indicates that "it appears" that public funds were used to provide the Judges of this Court with supplemental insurance benefits. This statement is both factually and legally incorrect. Furthermore, the report questions alike the conduct by retired judges, deceased judges, active judges and even challenges the actions by judges who were not members of the Court during the audit period.

At the outset, you should be aware of the over-arching fact that an arm of the Supreme Court questioned the propriety of the same type of insurance benefits as far back as 1994. This Court retained independent legal counsel to analyze the issue in 1994. The independent law firm concluded that providing Judges of this Court with health insurance benefits was legally proper. Shortly thereafter, the division of the Louisiana Supreme Court, after scrutinizing this insurance issue and the response from independent legal counsel, concluded that no action should be taken as the result of the Court's decision to provide health insurance to the Judges of this Court. It was then determined by the Supreme Court that the Judicial Council, another branch of the Supreme Court, would re-examine if anything was questionable about securing health insurance benefits for the Judges of this Court. In short, in the Summer of 1994, the same program that is examined in your report was referred to an entity that functions under the auspices and control of the Louisiana Supreme Court. The Judicial Council voiced no concern over the propriety of this practice. Since 1994, the Louisiana Supreme Court never expressed concern about the health insurance protection afforded the Judges of this Court. The Court encourages you to confirm that the Judicial Council has not taken any action criticizing or proscribing this practice during the past 18 years. The Court trusts you and your audit staff realize that the Judicial Administrator of the Supreme Court oversees the operations of the Judicial Council.

We likewise assume you are aware that a number of other District Courts throughout the State of Louisiana, as well as all the Courts of Appeal, apparently have supplemental health insurance benefits for the members of those Courts or use Judicial Expense Funds for a comparable purpose. The practices followed by the Civil District Court for the Parish of Orleans with respect to making this health insurance program available to the Judges not only comports with the State Constitution, but is authorized by statute. In the report, you refer to La. R.S. 13:691 (District Court Judges) and La. R.S. 13:2152 (City Court Judges) to suggest that it may be impermissible for Judges to receive such health insurance benefits. Yet the report did not examine the history of these statutes nor does the report even address the existence of other Legislative acts/statutes that permit this type of health insurance benefit to be afforded to the Judges of this Court as well as other Courts throughout the State.

The report also implies that some Judges accepted the program provided to them without embarking upon a legal analysis whether they are entitled to participate in this program. This supposition by the auditors is not only improper *per se*, but apparently glosses over the facts recited in the report as well as the reality of the workplace. When Judges begin work, they, just like newly hired assistant legislative auditors, City Attorneys, police officers, and teachers, do not examine the genesis or validity of benefits they are told are available to them. Rather, they, as the Judges of this Court did when they began service, defer to the Human Resources Director or the Judicial Administrator to apprise them of these benefits. They have no reason to challenge the experience of the Judicial Administrator or the Human Resources Department. Indeed, that is one of the primary purposes of the Human Resources Department and/or the Judicial Administrator. If these Judges, or other public servants, were required to question the propriety of benefits conveyed by the Human Resources Department or the Judicial Administrator before work begins and then conduct a legal analysis of the work benefits that they are told exist, and have existed for years, precious limited judicial resources would be wasted in this type of out of the ordinary exercise. The conduct of the Judges of this Court should not be criticized because they relied upon the Court's administrative personnel and chose not to examine personnel practices that were established years before virtually all of them were elected and took office. Moreover, the report alludes to an interview of one of the Judges about this issue. Tellingly, as the report recounts, that Judge not only relied upon the guidance by the Judicial Administrator but was aware that other Judges of the Court conducted extensive legal research in the early 1990's, which research corroborated the propriety of this program. Indeed, some members of the Court at that time now serve on the Court of Appeal and the Supreme Court. Most importantly, the report focuses on whether the Judges of the Court in 1994 had the legal authority to approve this expenditure; however, only very few members of the Court participated in this decision because most Judges were elected years, if not decades, after this studied decision. Absent from the report is any indication that the auditors even questioned the Judges who formulated this program.

In view of the reliance upon only a fraction of the statutory framework by the auditors in the report, the Court expects that you will consider the complete factual and legal backdrop to this insurance issue. The Judicial Expense Fund for the Civil District Court for the Parish of Orleans was established through Article VII, Section 95 of the Louisiana Constitution. Article XIV, Section 16(a) of the Louisiana Constitution of 1974 preserved this earlier Constitutional provision as a statute enacted by the Louisiana Legislature. That statute, known as La. R.S. 13:1312, provides in pertinent part as follows:

*C. The judges, en banc, may further appoint such secretarial, clerical, research, administrative, or other personnel as they deem necessary to expedite the business and function of the court and fix and pay all or any part of the salaries of such personnel out of the monies in the judicial expense fund. In like manner, the judges, en banc, may utilize the monies in the judicial expense fund to pay all or any part of the cost of establishing or maintaining, or both, a law library for the court, or for buying or maintaining, or both,*

*any type of equipment, supplies, or other items consistent with or germane to the efficient operation of the court. In general, the judicial expense fund is established and may be used for any purpose or purposes connected with, incidental to, or related to the proper administration or function of the said court or the offices of the individual judges and is in addition to any and all other funds, salaries, expenses, or other monies that are now or hereafter provided, authorized, or established by law for any of the aforesaid purposes.*

Based upon these Constitutional and statutory authorities, the Civil District Court decided to authorize and has permitted the use of Judicial Expense Funds to pay the expenditure for health and accident insurance in conformity with Louisiana law, and specifically, based upon the language in La. R.S. 13:1312. It appears that other judicial districts throughout Louisiana have taken a similar approach. Before issuing the report, we are certain that you will examine the practices of all of the judicial districts throughout this State, as well as ascertain what all the Appellate Courts in this State are doing, to learn if this approach regarding health insurance is well-accepted, pervasive within the state Judiciary, and accepted by the Supreme Court. Consistent with both the purpose and philosophy of providing these insurance benefits to public employees, we refer you to La. R.S. 42:821 *et seq.* and La. R.S. 42:851 *et seq.*; these statutory sections pertain to life insurance (Section 821) as well as health and accident insurance (Section 851) with regard to departments and agencies of the State of Louisiana. It was determined in 1994 (and even earlier), again based upon advice of professionals guiding the Court, that La. R.S. 42:851 authorized the State of Louisiana and each of its "governmental and administrative subdivisions, departments or agencies of the Executive, Legislative, or Judicial Branches...to [p]rocure private contracts of insurance covering their respective employees, officials, and department heads...under policies of group health, accident, accidental death and dismemberment, and hospital, surgical, or medical expense benefits." As noted above, the Supreme Court, which is the governing body of the State Judiciary under the Constitution, has been aware of this practice for nearly 20 years. Not once has the Supreme Court questioned this Court's use of self-generated proceeds for this purpose. In like fashion, audits of this Court have been completed every year for at least the past 14 years; these audits, of course, are furnished to your office every year.

In 2011, the Judges for the Civil District Court for the Parish of Orleans requested and received a second, independent, legal opinion from outside counsel regarding these issues related to the payment of health insurance benefits for the members of the Court. Yet again, a different law firm concluded that such payments were authorized by statutory and Constitutional authorities. In short, both law firms over a period of 18 years, and apparently the Supreme Court through its silence and tacit approval for nearly two decades, concluded that Louisiana law does not proscribe this practice of providing insurance benefits to Judges of this Court. A number of legal reasons support these conclusions.

The repeated proposition in the report, that “public funds” were used to purchase supplemental insurance for the Court, in violation of La. R.S. 13:691 and Article 7, Section 14 of the Louisiana Constitution, is mistaken. We believe the error may stem from the failure to identify and evaluate the nature and source of the specific funds used to purchase the contested insurance. The Court’s Judicial Expense Fund pays the insurance premiums. This is a self-generated fund separate from the state funds administered by the Court. Consequently, the premise of the report is fundamentally flawed, rendering the conclusions drawn factually misleading and legally inaccurate. The Court respectfully requests that the report be revised to accurately reflect the true nature of the Court’s actions and the long-standing history of the program in question.

The critical difference between “self-generated” funds on one hand, and state or incorrectly labeled public funds on the other, was recently articulated by the Louisiana Supreme Court in *Dejoie v. Medley*.<sup>1</sup> Your office wrongly chose to ignore this critical Louisiana Supreme Court decision. In *Dejoie*, an employee of this Court filed suit under Louisiana’s Employment Discrimination Law. The plaintiff was employed as a Minute Clerk. She took an extended leave of absence from work when she experienced a difficult pregnancy and childbirth. During the interim, the plaintiff’s position was eliminated while she was out on extended leave. She then sued the State of Louisiana for employment discrimination. The State of Louisiana sought summary judgment on the grounds “the State was not plaintiff’s employer as it did not give compensation to plaintiff and did not receive services from plaintiff.”<sup>2</sup>

The Supreme Court concluded that the State did not receive services from the claimant and that the claimant was not a State employee. Thus, the State could not be sued for employment discrimination. As the Supreme Court observed, “The record indicates, and plaintiff has admitted, that she was paid through the JEF. The Supreme Court further recognized that La. R.S. 13:1312, (creating the Orleans Parish Civil District Court’s Judicial Expense Fund) gave the district court judges authority to appoint court personnel and “fix and pay all or any part of the salaries of such personnel out of the monies in the judicial expense fund.”<sup>3</sup> Specifically addressing the incorrect premise in the report, the Supreme Court stated:

***The funds contained in the JEF are not State funds but are self-generated funds*** collected pursuant to the provisions of LSA-R.S. 13:1312. All monies received by the State or by any state board, agency, or commission shall be deposited immediately upon receipt in the state treasury, according to La. Const. art. 7, § 9. The funds received by the JEF are not placed in the state treasury.”

\* \* \*

<sup>1</sup> 08-2223 (La. 05/05/09); 9 So. 3d 826.

<sup>2</sup> 9 So. 3d at 828.

<sup>3</sup> *Id.*, citing La. R.S. 13:1312(C).

*Thus, the statute provides for immediate deposit of state funds, but the funds of the judicial branch, as designated in the Louisiana Constitution, and the political subdivisions, as described in the statute, are excepted by the statute from the deposit requirement. Considering the above referenced provisions, we conclude the funds in the JEF are not state funds<sup>4</sup>.*

Thus, the Louisiana Supreme Court concluded that the “costs” permitted to be taxed pursuant to La. R.S. 13:1312 “are ‘self-generated funds’ collected pursuant to the provisions of” La. R.S. 13:1312. These self-generated funds are not state funds. The Supreme Court’s decision relied on its comprehensive parsing of the language of La. R.S. 49:308. La. R.S. 49:308(A) provides that all money received by the State or by any state board, commission, or agency shall be deposited immediately upon receipt in the state treasury. But La. R.S. 49:308(E)(2)(a) states that the term “state or state board, agency, or commission” as used in Subsection (A) does not include “Offices and officers referred to in Article V of the Constitution of Louisiana.” The judicial branch of government is established by Article V of the Constitution. Therefore, the Supreme Court reasoned that monies received by the courts are not state funds under La. R. S. 49:308(E)(2)(a), and are not required to be deposited into the State Treasury. Because the funds are not required to be deposited into the State Treasury, they are not required to be appropriated by the Legislature.<sup>5</sup> This certainly suggests the proceeds in the Judicial Expense Funds can be used for purposes in addition to the appropriations made to State Judges by the Legislature, subject only to the express limitation in La. R.S. 13:1312.

The contention that the use of Judicial Expense Funds to facilitate health insurance exceeds the Legislative limitation on salary, compensation, emoluments, and benefits for district court judges found at La. R.S. 13:691 is dispensed similarly. Subsection B(3) of Section 691 provides:

B. No judge whose salary is provided for herein shall receive for his services as a judge, directly or indirectly, any additional salary, compensation, emolument, or benefit *from the state* or any of its political subdivisions except:

- (3) Payment of premiums for health, medical, dental, and hospitalization insurance programs

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<sup>4</sup> 9 So. 3d at 831. Statutory authority also exists to support the conclusion that public/state funds were not used for the purpose of paying for the health insurance protection afforded the District Judges. *Compare*, La. R.S. 42:851, La. R.S. 49:308 and La. R.S. 33:5151. A copy of these statutes is attached as Exhibit A for your reference.

<sup>5</sup> See La. Const. Article III, Section 16 and Article VII, Sections 9 and 10. See also, La. Atty. Gen Op. No. 2000-83 (Court fees assessed against a child support obligor in addition to their child support obligation, used to fund child support hearing officers under the authority of La. R.S. 46:236.5, are not state funds under La. R.S. 49:308 because they are not deposited in the state treasury, nor are they appropriated by the Legislature).

contributions to which shall be at the same rate as those paid by other state employees.

The Supreme Court's ruling in *Dejoie* and La. R.S. 49:308(E)(2)(a) clearly establish that an insurance policy paid for by the Court's Judicial Expense Fund is not a "salary, compensation, emolument, or benefit *from the state or any of its political subdivisions*" because state (or, as your office inaccurately characterizes them "public") funds are not being used. Moreover, neither the Court nor the Judicial Expense Fund is a "political subdivision" of the state. La. Const. Art. VI § 44(2) defines "political subdivision" to mean "a parish, municipality, and any other unit of local government, including a school board and a special district, authorized by law to perform governmental functions." The district courts are plainly not "political subdivisions." Consequently, the Court is not prohibited from using Judicial Expense Funds proceeds to defray the expense of limited benefits beyond those provided under La. R.S. 13:691(B)(3) and La. R.S. 13:2152.

As noted above, the courts are created by Article V of the Louisiana Constitution, not by Article VI. Article VI § 25 specifically states that "Notwithstanding any provision of this Article, courts and their officers may be established *or affected only as provided in Article V of this constitution.*" The purpose of La. Const. Art. VI § 25 was addressed in *Twenty-First Judicial District Court v. State of Louisiana*.<sup>6</sup> There, the court cited statements made by Delegate (and soon to be Louisiana Supreme Court Justice) Dennis to the Constitutional Convention of 1973 during the proceedings adopting Section 25. Speaking to the purpose of Section 25, Justice Dennis (now a senior member of the United States Fifth Circuit Court of Appeal) stated: "We said in the Judiciary Article that "The judicial power is vested in courts authorized by this constitution." Now, in [Article VI], you are authorizing local governments; query: does that include courts? I think that somebody might say it does, so I'm asking you to make it clear that it does not."<sup>7</sup>

In short, neither La. R.S. 13:691(B)(3) nor La. R.S. 13:2152 apply to or restrict the use of self-generated Judicial Expense Funds proceeds to purchase additional insurance benefits for the Judges other than, as noted above, to prohibit the Judicial Expense Funds proceeds from being used to pay for additional salary for the Court. Moreover, the language of La. R.S. 13:1312 is extremely broad, permitting the JEF to be used for "any purpose connected with, incidental to, or related to the proper administration or function of the court or the office of the individual judges ...." This state law further provides that the Judicial Expense Fund "is in addition to any and all other funds, salaries, expenses, or other monies that are provided, authorized, or established by law." Assessing this issue under controlling Constitutional and statutory law, as well as Supreme Court pronouncements, indicates that payment for a health insurance program from the Judicial Expense Fund is a purpose "incidental to, or related to" the office of the judges and properly would be "in addition to" the benefits and emoluments authorized for the Judges under La. R.S. 13:691. In sum, the report errs again in concluding that the Judicial Expense Funds used to

<sup>6</sup> 563 So. 2d 1185 (La. Ct. App. 1st Cir. 1990).

<sup>7</sup> 563 So. 2d at 1190.

purchase the supplemental insurance protection are state funds, and the report should be revised to accurately reflect the source and character of the funds used by the Court.

It also bears noting that the Civil District Court (including the Judicial Expense Fund) has been audited over time the insurance program was in place, but never once have auditors from your office seen fit to question the practice. Certainly, the public and the State Judiciary must wonder why, without any discussion or forewarning, some auditors in your office now believe that prior audits and Legislative Auditors supposedly got it wrong. We sincerely hope that upon reflection and examination of controlling legal authorities that have not been included in the report, you will agree that your report misstates Louisiana law, relies only upon a portion of statutory law, and glosses over practices entrenched in the judicial history of this Court after careful legal analysis, and that have been accepted for decades by the Supreme Court, as the governing head of all Louisiana courts.

The report singularly focuses upon Section 691 to reach the conclusion that the payment of health insurance premiums "appears" to be inconsistent with State law. Just like it is improper for an accountant within the Legislature Auditor's Office to only look at a portion of the balance sheet when conducting an audit, it is similarly improper for the same auditor to consider only a portion of State law and ignore other applicable statutory provisions. Exacerbating this fundamental error is the fact that Section 691, contrary to the belief expressed by the auditor in the report, authorizes payment for these health insurance benefits to members of this Court. It is important for you to recognize that the amendment to Section 691 passed in 1999, according to the author of this statutory language and other participants involved in this statutory amendment, intended for the amended version of Section 691 to authorize insurance benefits to all public employees so all Judges are treated in the same fashion.

Put another way, it was the purpose of amending Section 691 in 1999 to broaden its scope and provide all State Judges with similar opportunities. In other words, the Legislative purpose of Section 691 is to ensure that there is no disparity among all State Court Judges with regard to insurance protection. Even if the auditors, expressing their opinions in the report, interpret Section 691 differently than it is written, these differing interpretations (also known as an "ambiguity" in a legal context) should not be used to punish the members of the Court who relied, in good faith and with a legal basis, upon a straightforward reading of Section 691 as well as relied upon the seasoned professionals they retained for advice. If you ultimately determine that an ambiguity exists, it would be appropriate to obtain clarification from the Legislature or the Supreme Court to guide future conduct. Needless to say, it is both Constitutionally repugnant and inherently unfair to rely upon an interpretation of only one portion of the statutory scheme through an audit and then make a quantum leap that historical conduct may somehow be perceived as possibly improper. This Court, like presumably every other District Court, is willing to abide by plain Legislative expression or a Supreme Court Rule if either the Legislature or the Supreme Court agree with the suggested belief in the audit.



Before the Office of the Legislative Auditor decides to issue a final report, we also ask you to consider the remainder of the statutory framework. The report issued by the Legislative Auditor fails to discuss or reconcile the determinative statutory provision of La. R.S. 13:1312. It similarly fails to recognize that Section 691 was broadened through the 1999 Amendment, as the Court has reason to believe after conferring with the author of this Amendment. Section 1312 entirely undermines the restricted and truncated reading of Section 691 that the Legislative Auditor now suggests in the proposed report.

There has never been a judicial declaration regarding the interplay between Section 691 and Section 1312. Similarly, there has never been a judicial pronouncement as to the breadth of Section 691. The Louisiana Supreme Court, notably, has never uttered a critical word about this Court's practice, or, for that matter, any District Court's practice of securing or fostering health insurance benefits for Judges through Judicial Expense Fund proceeds. The Louisiana Supreme Court and its senior staff were aware of this issue since 1994. It never criticized this reasoned undertaking followed by the Civil District Court for the Parish of Orleans. Respectfully, a Legislative audit is not a proper method to decide the meaning of statutory provisions; furthermore, the audit that was premised upon a fraction of these statutory nuances did not appear to include the views of an attorney retained by the Office of the Legislative Auditor, much less a judicial tribunal. If there is any doubt that Section 691 was amended in 1999 to broaden its scope, the Court asks you to consider the other statutory provisions that permit all Appellate Judges in the State of Louisiana to receive the same benefits. Compare, *La. R.S. 13:352* (affording all appellate court judges the same health insurance benefits). (A copy of La. R.S. 13:352 is attached as Exhibit B for your reference.) We also ask you to consider in this context the fact that the members of the Supreme Court may receive insurance benefits akin to the benefits being examined in the report. *See, La. R.S. 13:124*. (A copy of the statute allowing Supreme Court Justices to receive comparable benefits or to use its funds for parallel benefits is attached as Exhibit C.) These statutes identify the use of court fees to defray costs of employment benefits, such as dental insurance. Surely, the Legislature did not intend to discriminate among classes of Judges in the State of Louisiana. In the same vein, we believe it is improper for the Legislative Auditor to differentiate arbitrarily among the levels of the State Judiciary, and, exacerbating this error, to then selectively consider only one geographic location of a court.

As mentioned earlier, this Court believes that other Judicial Districts throughout the State provide access to supplemental insurance benefits to District Judges within those Judicial Districts located in other parts of the State. We encourage you to contact the Judicial Administrator of the Louisiana Supreme Court to confirm these facts and recognize what appears to be systemic usage of this approach by other district courts regarding health insurance benefits. If judicial court funds likewise are expended by other Judicial Districts to foster health insurance benefits for District Judges, fairness and logic seem to compel the Legislative Auditor to consider this issue instead of isolating this Court for criticism. At the very least, the Legislative Auditor first should ascertain how widespread this custom is before implying that the judges of this Court are the only state judges that use this type of statutory protocol. The Supreme Court's approval, either explicitly or implicitly during the past 18 years, should weigh heavily in favor of

recognizing the propriety of this Court's practice. In sum, it is reasonable for this Court to rely upon the advice of professionals since 1994, the institutional nature of this practice that started a century earlier, the fact that all of the Appellate Judges have access to the same type of health insurance benefits, Justices of the Supreme Court may receive similar benefits, the statutory language that endorses this approach, as well as the Louisiana Supreme Court's decision not to question the legal validity of this approach, for almost two decades.

It is also significant for your office to recognize that this Court voluntarily suspended the practice of securing health insurance benefits for the District Judges when the issue was raised anew in the Fall of 2011. The Judges of this Court are not receiving access to health insurance benefits that they believe are permitted by law in order to allow the Supreme Court or the Legislature to take decisive action. In contrast, this Court has no reason to believe that other Courts have voluntarily abated or suspended this practice, as the members of this Court decided more than a year ago. Stated simply, none of the Judges in this Court now use the limited health insurance program that your report questions – even though other judges apparently engage in the same practice or a close offshoot.

#### **Professional Liability Insurance**

As part of the auditors' review of insurance practices, they also have questioned the existence of professional liability insurance protecting the Judges of this Court. The Judges of this Court, like numerous other Judges in Louisiana and across the country, are often sued by disgruntled litigants. These complaints invariably are lodged against the Judge because she or he was performing their duty for the community by enforcing the law. This is part of their Constitutional duties that they perform each and every day. Your report suggests that securing professional liability insurance to provide the Judges with an attorney who can defend them against these unwarranted attacks "may" violate the Louisiana Constitution. It does not.

While La. R.S. 13:5108.1 cited in the report provides the State will defend and indemnify Judges against claims for damages, this statutory provision does not encompass all situations involving written attacks and complaints against members of the Judiciary. The report relies solely upon a comment allegedly made by Traci Dias that this type of insurance is optional; while it does not appear Ms. Dias made such a comment, it would be unusual for Ms. Dias to understand the dynamics of a Judge being required to respond and defend himself or herself against these written assaults. Litigants and attorneys frequently file complaints against District Judges. Not surprisingly, such occurrences almost always seem to follow on the heels of an adverse verdict or an unfavorable ruling. It is precisely for this type of situation that the Court secures professional liability insurance. In this fashion, these Judges do not have to retain an attorney at their personal expense and are not financially punished for performing their job duties for the benefit of their fellow residents.

Securing this professional liability insurance protection is authorized by La. R.S. 13:1312 and also comports with La. R.S. 13:698. Equally as important, the Louisiana Attorney General's approval of professional liability insurance to protect District Judges has been formalized. We

refer you to Opinion No. 84-751 issued by the Louisiana Attorney General; a copy of this Opinion rendered by the Attorney General is attached as Exhibit D for your ease of reference. The Opinion by the Louisiana Attorney General squarely addresses and approves this type of reasonable expenditure by the District Courts. The legal soundness of this Attorney General Opinion remains intact. Further dispelling the auditor's unorthodox view of legal authority is that as recently as a few months ago the Judicial Administrator for the Supreme Court identified the same Attorney General Opinion as the basis for this Court to retain the professional liability insurance.

This expense is not only essential to prevent the members of the Court from being diverted from their daily work, but also assures them that they will not be penalized for administering justice. In fact, this expense falls squarely within statutory authority. Pointedly, it is believed that other Judicial Districts in Louisiana retain the same safeguard for their District Judges. Such a legitimate expense cannot be viewed as a possibly questionable expense – even if a strained approach analysis is used. In contrast, the Attorney General's legal analysis confirms the validity of procuring this type of insurance.

Besides the absolute need to provide District Court Judges with protection and legal assistance when the Attorney General is unable to do so, District Judges throughout the State are often sued for damages in like fashion. While a statute theoretically indicates the State will provide a defense through the Attorney General's Office in these damage lawsuits, the Attorney General is not always able to do so. Equally significant, as the contents of the report acknowledge through conversations with Judges, the Attorney General does not get involved until litigation is formally commenced, in court, while there is an undisputed benefit in having representation to resolve disputes and claims before lawsuits are launched. The limited resources of the Office of the Attorney General are not depleted if Judges, as they have done, can use this professional liability insurance to secure counsel to defend themselves in lawsuits seeking damages or other forms of relief that would be assessed against a State Court Judge. This approach seems to be in the best interests of the State. Again, if the Supreme Court or the Legislature explicitly expresses the view that professional liability insurance is proscribed for all Judges in this State regardless of the detrimental consequences and regardless of the existence of the Attorney General's persuasive Opinion as to the propriety of professional liability insurance, the members of this Court, of course, will abide by such a directive. As of today, no such suggestion, much less an internal Order, has been issued by the Louisiana Supreme Court and the Attorney General has not changed his formal legal opinion as to the propriety of such insurance.

## **2. Compliance with the Court's Travel Policy.**

The report next questions the completeness of travel documentation and isolated lodging entries by five of the eighteen judges at events for attendance at two events encouraged by the Supreme Court and appellate judges. Once again, critical facts have either been omitted or overlooked.

The Supreme Court has a travel policy. This Court has followed and continues to abide by the terms of that policy.

Each Judge is allowed to travel for Continuing Legal Education (CLE) and Court business. The Supreme Court has set the amount allowed each year for this Continuing Legal Education expense. Each of the Judges of this Court have acted consistently with this annual limit and respected the maximum amount for travel set by the Supreme Court.

It is also the Court's policy to have each Judge submit documentation to be reimbursed for travel expenses. All of the Judges of this Court understand the need to do so and have routinely complied. The Judicial Administrator for this Court is aware that reimbursements are not to be made unless all paperwork is submitted by the requesting party. The Judicial Administrator for this Court knows of the Court's rigid enforcement of these requirements for reimbursement and she understands that no reimbursements will be issued to any Judge or employee unless all documentation is presented with the request for reimbursement consistent with this Court's written travel policy.

In the context of travel, the report expresses concern about the lodging expenses for five of the Judges to attend the Summer School for Judges and the Annual Meeting of the State Bar Association. Specifically, the report questions usage of multi-bedroom lodging by a few judges rather than use of a one-bedroom rate. The Louisiana Supreme Court addressed this very issue. The expenses of these Judges fully comported with the allowance and travel policy issued by the Supreme Court. It is noteworthy that the Supreme Court differentiates between regular travel and "Judges travel to attend the Summer School for Judges and the State Bar Association." Presumably, this distinction is based, in large measure, on the importance of these two events as perceived by the Supreme Court and the anticipated expense.

In its Travel Policy, the Supreme Court states:

*Lodging.*

*(c) On an annual basis, the Supreme Court shall set the reimbursable rate for lodging for both the Louisiana State Bar Association annual meeting and the Summer School for Judges sponsored by the Louisiana Judicial College.*

In other words, each year, the Louisiana Supreme Court sets the rate for lodging at this important series of legal and judicial educational programs. In 2009, the lodging rate set by the Supreme Court was \$2,000 for these two events. For the years 2010 and 2011, the lodging rate was increased by the Supreme Court to \$2,200. A copy of the Supreme Court's travel allowance for these events is attached as Exhibit E. The lodging expense for each of the District Judges of this Court did not exceed the Supreme Court's travel policy; most of the Judges only spent a fraction of the amount permitted by the Supreme Court for lodging. If, as the report speculates, every Judge was required to use a one-bedroom rate, then there would be no logical reason for the Supreme Court to establish the amount of lodging at more than twice the amount an auditor

believes, in hindsight, should have been used by several of the District Judges of this Court. Tellingly, the report barely alludes to this threshold set annually by the Louisiana Supreme Court – a threshold that the Supreme Court apparently determined was reasonable. Besides this forced conclusion, the report does not take into consideration the encouragement voiced by the Supreme Court and appellate Judges for attendance at these events nor does it consider the lack of one bedroom accommodations nor does it consider that some judges shared their rooms with other judges or invited speakers for the CLE program.

In one instance cited in the report, a judge is criticized for spending less than 75% of the amount the Supreme Court has determined to be reasonable and allowable. Obviously, in contrast to the auditor's subjective view, the Supreme Court considers these lodging expenses to be reasonable. See also, Louisiana Supreme Court Rules Part G, Section 1(b). We ask you to assess if the auditors, without explanation, chose not to consider the Supreme Court's Rules and the Judges' compliance with the Supreme Court's Travel Policy.

Once again, to ensure there is parity within the Judiciary in the State of Louisiana and evenhandedness in the approach taken by the Legislative Auditor, this Court expects that before you issue a final report you will examine lodging expenses of other Judges throughout the State, including members of the Supreme Court, who attended these same functions. Stated another way, consideration of the reasonableness of the lodging expenses incurred by a few judges of this Court cannot be determined in a vacuum, and, at a minimum, should respect the Supreme Court's policy as to this type of Continuing Legal Education expense. Otherwise, the Constitutional authority of the Supreme Court would be usurped through a purely subjective view by an assistant auditor.

### **3. Maintenance of Complete Time Records by Several Court Employees.**

Lastly, the report questions the time records for the relatively nominal number of Court employees working under the direct supervision of Judges. The audit does not conclude the time expended by these Court employees was exaggerated or mistaken. Instead, the auditors suggest a different form of recordkeeping could be implemented. Before the audit, a number of the judges employed recordkeeping methods that appear to be the preference of the auditors. Yet, the auditors failed to recognize that court proceedings in Civil District Court for the Parish of Orleans frequently demanded irregular Court hours. In an effort to accommodate jurors, witnesses, attorneys and litigants, the Judges of this Court have been willing to work during irregular work hours. The attendance of these few Court employees during these times to provide services to the jurors, witnesses, litigants, and general public is essential.

Each of the Judges of the Court have been committed to achieving and believe they have achieved full compliance with accurate recordkeeping of the time expended by their respective staff members. Each Judge makes certain that leave time corresponds with the extended work days. The Judges physically see these key employees at work and are aware if absences occur.

As always, this Court welcomes input from the Supreme Court and suggestions from your office as to these administrative tasks, but it appears the current procedures have been effective.

**Conclusion.**

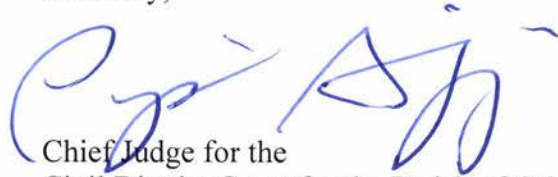
The insurance and travel policies for this Court comport exactly with what the Louisiana Supreme Court has allowed. Equally as significant, this Court's practices are statutorily authorized and Constitutionally permissible. For unexplained reasons, the report does not address a number of the statutes authorizing the actions taken by this Court. In like fashion, the report failed to identify Supreme Court Rules and seems to give perfunctory lip service to Supreme Court policies regarding travel. Instead, the auditors used their subjective benchmark, which is at odds with the Supreme Court's notices to all District Judges throughout the State of Louisiana setting the reasonable amounts established by the Supreme Court. Not once has a judge of this Court exceeded that amount. Plainly, the decision by the auditors not to defer to the Supreme Court's policy-making role and the Attorney General's Opinion creates serious Constitutional issues regarding the independence of the State Judiciary and the Attorney General's Office. At best, the report places the District Judges in choosing between rules and policies issued by the Supreme Court, as their Constitutional beacon, and the subjective views by the Legislative Auditor years after the fact.

Besides these deficiencies, the Legislative Auditor has apparently chosen not to recognize or inquire about the systemic nature of, and the historical and traditional practices now being questioned in the report, which have been in compliance with the laws of the State. If such issues or policies are intended to be the subject of a final audit, the Court expects that you will examine all Judicial Districts in this State with respect to the same issues and the same practices before issuing a final report that would be misleading at best. In this fashion, the public will understand that the topics raised by the current version of the report are not peculiar to Orleans Parish and are not limited to District Judges. Moreover, the public, as well as elected officials, will understand the Supreme Court's role in connection with the issues that are now being criticized in the report. At a minimum, the Legislative Auditor should ascertain the Supreme Court's involvement in these issues, the reliance by District Judges upon the notices and actions by the Supreme Court, whether other Judges, both at the District Court level as well as at the Appellate Court level, follow similar practices throughout the State of Louisiana, and, if there is any reason why the report relies upon a skewed interpretation of a single statutory provision, compounded by the fact that the audit does not state why other applicable law that establishes the legitimacy of this Court's actions was not mentioned.

The Honorable Daryl G. Purpera  
Louisiana Legislative Auditor  
November 14, 2012  
Page 15

Thanking you for your attention to these new legal issues and facts that were omitted from your report.

Sincerely,

A handwritten signature in blue ink, appearing to be 'C. J. ...', is written over the typed name.

Chief Judge for the  
Civil District Court for the Parish of Orleans

Enclosures

## PART III. HEALTH AND ACCIDENT INSURANCE

§851. Authority for employee benefit programs; payroll deduction for payment of premiums

A. The state of Louisiana, through the Office of Group Benefits and each of its governmental and administrative subdivisions, departments, or agencies of the executive, legislative, or judicial branches, and the governing boards and authorities of each state university, college, or public elementary and secondary school system in this state are authorized to:

(1) Procure private contracts of insurance covering their respective employees, officials, and department heads, or any class or classes thereof, and the dependents of such employees, officials, or department heads under a policy or policies of group health, accident, accidental death and dismemberment, and hospital, surgical, or medical expense benefits.

(2) Adopt, administer, or operate or contract for all or a portion of the administration, operation, or both of a self-funded program for that purpose.

B. Each such private contract or self-funded program, the premiums of which are paid in whole or in part with state funds, shall be approved by the Office of Group Benefits, except that any city or parish school board may enter into such private contract or self-funded program without approval. The employee or retiree eligibility provided in such private contract or self-funded program must be identical to the eligibility provided in the Office of Group Benefits programs.

C.(1) Except as provided in Paragraphs (D)(1) and (2) and Subsection E of this Section, and except for those retirees who are not covered by Medicare and who are qualified for coverage in accordance with the rules and regulations of the Office of Group Benefits, the contribution of the state shall not be less than fifty percent of the total premium paid out of funds contributed by the state.

(2) However, except for those retirees who are not covered by Medicare, the contribution by the state shall not be in excess of the dollar amount paid on behalf of members in the rating classification for employees of state departments and agencies.

(3) The employee portion of the premium rate for retirees without Medicare coverage shall not exceed the active employee portion of the premium rates for the same classification of coverage.

D.(1) For those retirees who are covered by Medicare, the minimum contribution of the state shall be seventy-five percent.

(2) For those active employees covered by the provisions of Paragraph (C)(1) of this Section whose state contribution was not less than fifty percent of the total premium paid out of funds of the state on June 30, 2001, the minimum contribution of the state shall be as follows:

(a) Beginning July 1, 2001, the minimum contribution by the state shall be fifty-eight percent of the total premium.

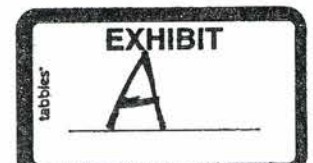
(b) Beginning July 1, 2002, the minimum contribution by the state shall be sixty-five percent of the total premium.

(c) Beginning July 1, 2003, and each year thereafter, the minimum contribution by the state shall be seventy-five percent of the total premium.

(3) Nothing herein shall be construed to prohibit the state from providing contributions at a higher level for participants as provided in Paragraph (2) of this Subsection.

(4) Notwithstanding any provision of law to the contrary, any lapse in participation for employees furloughed or terminated as the result of Hurricanes Katrina and Rita and subsequently rehired between August 30, 2005, and December 31, 2006, shall not reduce the state minimum contribution.

E.(1) Notwithstanding any other provision of this Part to the contrary, for any person who is an active employee as defined by R.S. 42:808 and who does not participate in the Office of Group Benefits program provided by this Part before January 1, 2002, but subsequently enrolls in the program, or for any person who is hired on or after January 1, 2002, who meets the definition of employee as provided by R.S. 42:808 the state contribution of the total premium shall, upon retirement, be:





(a) Nineteen percent for those persons with less than ten years of participation in the Office of Group Benefits program before retirement.

(b) Thirty-eight percent for those persons with ten years of participation but less than fifteen years of participation in the Office of Group Benefits program before retirement.

(c) Fifty-six percent for those persons with fifteen years of participation but less than twenty years of participation in the Office of Group Benefits program before retirement.

(d) Seventy-five percent for those persons with twenty or more years of participation in the Office of Group Benefits program before retirement.

(2) The Office of Group Benefits shall promulgate all rules necessary to carry out the provisions of Subsections A through E of this Section.

(3) Nothing herein shall be construed to prohibit the state from providing contributions at a higher level for participants as provided in this Subsection.

(4) The provisions of this Subsection shall not affect the contributions paid by the state for any retiree covered under this Part on June 29, 2001, or the contributions paid by the state for any participant who retires before January 1, 2002.

F. The contributions of employees, officials, or department heads to the premiums for such benefits may be deducted by the employer from the salaries of the employees, officials, or department heads when authorized in writing by the respective persons. However, the amount paid toward the premium by the state or any of its governmental and administrative subdivisions, departments, or agencies and the governing boards and authorities of each state university, college, or public elementary and secondary school system of the state shall be subject to the approval of the office.

G. No reductions of state contributions shall be made on contracts heretofore written and continued in force, and, in addition, the premiums shall be paid out of funds appropriated for the purpose and included in the respective budgets of the state or other entity.

H.(1) Nothing herein shall be construed as limiting the authority of the office to adopt, administer, or operate or to contract for all or a portion of the administration, operation, or both of a primary self-funded program or additional programs with premium rate structures and state contribution rates which are different from the primary program.

(2) Under any such self-funded program the office, for purposes of establishing rates and premiums, may group risks into multiple classifications. There may be one classification for employees of state departments and agencies; there may be one classification for employees of eligible school boards; there may be one classification for employees of eligible political subdivisions and other public entities of the state; and there may be one or more classifications for retirees.

(3) For the purposes of this Subsection, the classification of state departments and agencies shall mean that group of eligible participants in the executive, legislative, or judicial branch of state government whose contributions for premiums are paid in whole or in part through appropriations by the legislature. The classification of school boards shall mean that group of eligible participants of city or parish school systems which receive funding through the Minimum Foundation Program. The classification of political subdivisions and other public entities shall mean participants of all other entities eligible for the program under the provisions of this Section not included in the classification of state departments and agencies or the classification of school boards.

(4) The rates and premiums adopted for each classification shall take into consideration the loss experience in the classification as well as other relevant factors.

(5) If a state department or agency, school board, or political subdivision or other public entity elects to participate in the state group health and accident insurance program after participation in another group health and accident program, the premium rate applicable to such employees and former employees intended to be covered by the program shall be the greater of the premium rate based on the loss experience of the group under the prior plan or the premium rate based on the loss experience of the

classification into which the group is entering.

(6) The rates so fixed shall not be excessive, inadequate, or unfairly discriminatory and shall be uniform within each classification.

I. Notwithstanding any provision of law to the contrary, nothing herein shall be construed to exclude city and parish school board members from eligibility for participation as provided in R.S. 17:1223.

J. Notwithstanding any provision of law to the contrary, any eligible entity which elects to participate in the life insurance coverage as provided in Part II of Chapter 12 of Title 42 of the Louisiana Revised Statutes of 1950 shall also participate in the group health and accident insurance coverage as provided in this Part.

K. Notwithstanding any provision of law to the contrary, the employee portion of the premium rate for active employees or retirees shall not be increased to fund any deficit related to the provision of coverage. If a deficit is identified, the minimum contribution by the state may be increased to fully fund such deficit.

L.(1) School boards may pay from local funds any portion of the cost of the group policy.

(2) Nothing in this Section shall be construed to require any school board to use local funds to pay all or any portion of the cost of the group policy for participating former employees now retired.

M.(1) Notwithstanding any provision of law or any rule or regulation to the contrary, the state of Louisiana shall continue to contribute its portion of the premium or charges due under this Section for which an employee is granted leave of absence without pay due to a service-related injury for a period not to exceed twelve months. The state may contribute its portion of the premium and charges due under this Section for which an employee is granted leave of absence without pay due to active military duty or is granted leave without pay under the provisions of the federal Family and Medical Leave Act.

(2) If the employee should suffer a job-related injury that meets the definition of a total and permanent disability under the workers' compensation laws of Louisiana, the state of Louisiana shall continue to contribute its portion of the premiums or charges due under this Section until the employee becomes gainfully employed or is placed on state disability retirement.

(3) However, such contribution shall not be made for any period during which an employee is under a suspension from his employment without pay unless reinstated.

(4) An employee who is granted leave of absence without pay for any reason other than those enumerated above may continue participation in the Office of Group Benefits program for a period not to exceed twelve months upon the employee's payment of the full premium or charges due.

N. The Department of Insurance shall make an examination, at least once every five years, of the health indemnity plan of the Office of Group Benefits following the same guidelines applied to other health insurers, and report its findings to the Joint Legislative Committee on the Budget along with any recommendations for assuring plan solvency and quality.

O. Notwithstanding any provision of law to the contrary, any person who is an active employee, as defined in R.S. 42:808(A)(1), of the state Department of Education, special school district or the Department of Public Safety and Corrections, office of youth services who was employed by such state agency on or after January 1, 2002, but no later than March 29, 2004, who has participated in the Office of Group Benefits continuously during his state employment who, prior to such employment, was a professional and fully qualified employee of a city, parish, or other local public school system in a position that required certification by the state Department of Education and who participated in the group health insurance program made available by the school system for not less than twenty years shall, upon retirement, be eligible to maintain enrollment in the Office of Group Benefits program with a state contribution of seventy-five percent of his premium.

P. Any person who is eligible for and receives disability retirement benefits from a retirement system created under the laws of this state shall receive the same retiree health care premium subsidy as

an individual who has participated for twenty or more years in the Office of Group Benefits health care program. In order to be eligible for the retiree health care premium subsidy, the person shall have participated in health care programs sponsored by the Office of Group Benefits for the number of years sufficient to earn disability retirement benefits.

Q. Notwithstanding any provision of law to the contrary, any person who is an active employee of the Jefferson Parish School System, or is employed as a probation and parole officer with the Department of Public Safety and Corrections on or before August 15, 1986, and participates in the Office of Group Benefits program, who elects to take retirement within the Louisiana State Employees' Retirement System pursuant to Act No. 194 of the 2004 Regular Session of the Legislature, and who has participated in the Office of Group Benefits program provided by this Part for at least ten years, shall, upon retirement, be eligible to maintain enrollment in the Office of Group Benefits program with a state contribution of seventy-five percent of his premium.

R. Notwithstanding any other provision of law to the contrary, persons made eligible as part of a special group for participation in programs sponsored by the office of group benefits pursuant to R.S. 42:808(A)(11) may elect to participate in group health insurance programs upon the end of their state service as provided in R.S. 42:808(A)(11) provided they participated in a program of group health insurance sponsored by the office of group benefits for not less than ten consecutive years prior to the end of their service. One hundred percent of the premium cost for coverage of any person in such group electing to participate shall be paid entirely by such person and shall be risk rated by the office of group benefits. The election to continue insurance coverage pursuant to this Subsection must be made by the employee on or before the termination of the employee's service and the payment of the premiums to be paid pursuant to this Subsection shall begin on the date of termination.

S. Notwithstanding Paragraph (E)(1) of this Section or any provision of law to the contrary, any person who retires within the Louisiana State Employees' Retirement System and who elects to suspend his retirement benefits pursuant to the laws applicable to that system shall be eligible to maintain enrollment in programs sponsored by the Office of Group Benefits with the same contribution by the state as was applicable to such person upon his retirement. If such person is reemployed subsequent to his retirement, such contributions by the state shall be maintained through the course of such person's reemployment and his subsequent retirement thereafter.

Acts 1950, No. 531, §1. Amended by Acts 1956, No. 294, §1; Acts 1975, No. 486, §1; Acts 1976, No. 521, §2; Acts 1978, No. 768, §1; Acts 1979, No. 653, §1; Acts 1979, No. 745, §3, eff. July 1, 1979; Acts 1980, No. 791, §2; Acts 1981, No. 419, §2; Acts 1981, No. 686, §1; Acts 1981, No. 704, §1; Acts 1981, No. 710, §2; Acts 1982, No. 243, §1; Acts 1984, No. 884, §1; Acts 1985, No. 812, §1; Acts 1985, No. 840, §1; Acts 1986, No. 644, §1; Acts 1988, No. 902, §1; Acts 1988, No. 1009, §1; Acts 1989, No. 726, §1, eff. Jan. 31, 1990; Acts 1990, No. 615, §1, eff. July 19, 1990; Acts 1991, No. 424, §1; Acts 1991, No. 705, §1; Acts 1992, No. 447, §4; Acts 1992, No. 635, §2, eff. July 2, 1992; Acts 1992, No. 1044, §§1, 2; Acts 1997, No. 1357, §1, eff. July 1, 1997; Acts 1998, 1st Ex. Sess., No. 150, §2, eff. July 1, 1998; Acts 1999, No. 1005, §1, eff. July 1, 1999; Acts 1999, No. 1069, §1, eff. July 9, 1999; Acts 2000, 1st Ex. Sess., No. 41, §1; Acts 2000, 1st Ex. Sess., No. 128, §1, eff. April 19, 2000; Acts 2001, No. 767, §1, eff. June 26, 2001; Acts 2001, No. 1079, §1, eff. July 1, 2001; Acts 2001, No. 1174, §2, eff. July 1, 2001; Acts 2001, No. 1178, §5, eff. June 29, 2001; Acts 2003, No. 897, §1; Acts 2005, No. 498, §1; Acts 2005, 1st Ex. Sess., No. 57, §1, eff. Dec. 6, 2005; Acts 2006, No. 757, §1, eff. June 30, 2006; Acts 2007, No. 366, §1, eff. July 10, 2007.

NOTE: See Acts 2001, No. 767, §3.

NOTE: See Acts 2007, No. 366, §2, regarding effectiveness of R.S. 42:851(S). See also Acts 2007, No. 252.

Office of the Attorney General  
State of LOUISIANA

Opinion No. 84-751  
November 14, 1984

JUDGES ..... 56

R.S. 13:698

Premium payments for professional liability insurance for members of the state judiciary may be paid from the offense expense fund, as provided for under R.S. 13:698.

Honorable Samuel T. Rowe  
Judge  
Division C  
Twenty-First Judicial District Court  
General Delivery  
Livingston, LOUISIANA 70754

Dear Judge Rowe,

Thank you for your recent request for the Attorney General's opinion on liability insurance for the state judiciary. Your question as I appreciate it is as follows:

May premium payments for professional liability insurance for members of the state judiciary be paid from the criminal court fund?

In response to your question, we draw your attention to R.S. 13:698 and R.S. 13:699. These statutes appropriate the monies required to operate a state judicial office, without distinguishing between civil or criminal courts. R.S. 13:698 provides:

District judges and the judge or judges of the The Family Court for the Parish of East Baton Rouge and the judge or judges of the Juvenile Court for Caddo Parish, the Juvenile Court for the Parish of Jefferson, and the Orleans Parish Juvenile Court shall be reimbursed actual expenses of the salaries of stenographers, clerks, law books, legal periodicals, stationery, telephone, and like expenses incurred in the discharge of their duties. Such expenses shall not exceed the sum of five thousand dollars for any judge in any one year.

The cost of professional liability insurance is a "like expense incurred in the discharge of their (a judge's) duties."

Therefore, it is appropriate that premiums be paid out of this general office expense fund, rather than the Criminal Court Fund. The criminal court fund is described in R.S. 15:571.11A.(1). Although the language of that statute may be interpreted broadly to cover the cost of insurance premiums, this fund would only provide for expenses related to judges of the criminal courts.



Title 13 covers all state courts, both civil and criminal. R.S. 13:699 explains the procedure each judge must follow to be reimbursed for expenses such as the cost of his professional liability premium. That statute states the following:

A. Prior to the payment of all or any part of the expenses for which reimbursement is provided in or authorized by R.S. 13:698 or R.S. 13:1341.2, each judge shall file a written itemized statement of his actual office or other expenses with the judicial administrator. The allowance payable to the judge shall be equivalent to those expenses which have been actually incurred by such judge in the discharge of his duties and which have been approved by the judicial administrator.

B. The expenses authorized by R.S. 13:698 and R.S. 13:1341.2 shall be payable monthly from the state general fund on each judge's own warrant. The warrant shall be accompanied by the judicial administrator's written certification approving such expenses.

It is the opinion of this office that premium payments for professional liability insurance for members of the state judiciary may be paid from the office expense fund, as provided for under R.S. 13:698.

Thank you for writing, and I hope this opinion satisfies your inquiry. If I may be of further assistance on this or another matter, please do not hesitate to call me.

With kindest regards, I remain

Sincerely,

William J. Guste, Jr.  
Attorney General

By: Rene Salomon  
Assistant Attorney General  
La. Atty. Gen. Op. No. 84-751  
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(ii) Lodging. Reimbursement or payment from any public funds for lodging expenses for meetings must be supported by an original receipt, under the following rules:

(a) Except as provided in Section 1(b)(ii)(c), reimbursement or payment from any public funds for a judge's lodging while attending a meeting shall be limited to the special group rate charged at the hotel of the meeting site. If lodging at the special group rate at the hotel of the meeting site is not available, the amount of reimbursement shall be based on reasonableness. Reimbursement for lodging without adequate supporting documentation, as required by the IRS, shall be made at a rate not to exceed the applicable IRS Federal Lodging Rate. When appropriate, the hotel charge for automobile parking shall also be reimbursable.

(b) Reimbursement or payment from any public funds for lodging expenses shall be limited to expenses incurred during the official days, including the closing day, that the meeting is held, plus one day of lodging for early arrival. Lodging expenses incurred beyond official meeting days, plus one day for early arrival, shall be reimbursed on cost-efficiency basis only when the request includes documentation that the extended stay resulted in a saving of public funds.

**(c) On an annual basis, the Supreme Court shall set the reimbursable rate for lodging for both the Louisiana State Bar Association Annual Meeting and the Summer School for Judges sponsored by the Louisiana Judicial College.**

(iii) Meals, Tips and Miscellaneous Expenses .

Reimbursement or payment from any public funds of meals, tips and miscellaneous expenses shall be limited either to the flat per diem rate promulgated annually and approved by the Supreme Court, or to the actual and reasonable cost of such expenditures which are supported by an original receipt, not to exceed the per diem rates. On or about January 15 of each year, the Judicial Administrator shall mail to every judge the flat per diem and partial per diem rates approved by the Supreme Court for the year.

In accordance with Internal Revenue Service regulations, payments of per diem for travel that does not require an overnight stay will be reported to the IRS as income on form W-2 or 1099 on a calendar year basis. Payments of per diem in excess of IRS Federal Standard Rates will be reported to the IRS as income on form W-2 or 1099 on a calendar year basis if and as required by the Internal Revenue Service.

(iv) Registration Expenses. Reimbursement or payment from any public funds for registration fees for a judge for attendance at meetings shall be limited to the fee actually paid or to be paid. Requests for reimbursement or payment shall include a copy of the completed registration form and the meeting agenda or program.

**(c) International Travel.** Reimbursement or payment for international travel for a meeting, as defined in this section, shall be limited to the annual and/or semi-annual official business



meetings, including related continuing legal education meetings, of the American Bar Association, the National Bar Association, and the Louisiana State Bar Association. [Amended effective May 28, 2003]

**(d) Limitation of Reimbursement or Payment of Travel Expenses.**

The judges of each court of appeal, judicial district court, juvenile court, family court, parish court, city court, municipal court, and traffic court may otherwise adopt more restrictive travel regulations to control the reimbursement or payment of public funds for travel expenses for meetings. Each court's travel regulations shall be submitted for information purposes to the Supreme Court and to the auditor(s) of relevant public funds. No reimbursement or payment of travel expenses from any public funds will be permitted unless reimbursement or payment is in compliance with this Section or with the travel regulations of the court on which that judge is presiding.

Whenever federal or private funds are available for the expenses of a meeting, as defined in this Section, whether such funds are in the form of payment for or reimbursement of the expenses or an honorarium for participation in the meeting, the judge should seek to obtain such funds. Thereafter, the judge may either (1) apply these funds first to the expenses and then seek reimbursement from other public funds only to the extent that the expense reimbursement under this Section exceeds the amount already received, or (2) may seek partial or full payment or reimbursement first from other public funds and then, upon receipt of the federal or private funds, remit the federal or private funds to the administrator of the pertinent public fund. In no event shall a judge obtain duplicate reimbursement or payment for the same travel expense from more than one source, public or private.

The requests for reimbursement or payment of travel expenses shall provide an itemized voucher for the actual travel expenses incurred, together with the required original receipts, invoices, and other required supporting documentation.

Effective June 1, 2000



Supreme Court

STATE OF LOUISIANA  
400 ROYAL STREET  
SUITE 1190


New Orleans  
70130-8101

CHIEF JUSTICE  
CATHERINE D. KIMBALL  
JUDICIAL ADMINISTRATOR  
TIMOTHY F. AVERILL, J.D., M.P.A.

MEMORANDUM

TELEPHONE (504) 310-2550  
FAX: (504) 310-2587

**TO: JUDGES OF THE LOUISIANA DISTRICT COURTS, JUVENILE AND FAMILY COURTS, CITY COURTS, PARISH COURTS, MUNICIPAL COURT AND TRAFFIC COURT**

**FROM: TIMOTHY F. AVERILL, JUDICIAL ADMINISTRATOR** 

**DATE: MARCH 30, 2011**

**RE: LODGING REIMBURSEMENT  
2011 SUMMER SCHOOL FOR JUDGES AND NUTS & BOLTS CONFERENCE**

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The Supreme Court Conference has limited the total reimbursement for lodging while attending the 2011 Summer School for Judges and the Nuts & Bolts Conference to \$2,200.00, inclusive of taxes. In the event a judge stays for less than one week, the appropriate reimbursement rate is the daily rate charged by the hotel or condominium, but in no case shall the total reimbursement exceed \$2,200.00. The 2011 reimbursement rate is the same for all state justices and judges. In accordance with Supreme Court General Administrative Rules, Part G, Section 1(d), requests for lodging reimbursement must include an original receipt.

TFA/ebg

cc: John T. Olivier, Clerk of Court

Terence Sims, Deputy Judicial Administrator, Accounting Services ✓

Randy Certoma, Deputy Judicial Administrator, Budget

Maisha Nash, Accounting Specialist

TFA\MEMOS\ALLJUDGES\2011SUMMERSCHOOL





# Supreme Court

STATE OF LOUISIANA  
400 ROYAL STREET  
SUITE 1190

New Orleans  
70130-8101

CHIEF JUSTICE  
CATHERINE D. KIMBALL  
JUDICIAL ADMINISTRATOR  
HUGH M. COLLINS, PH.D.

TELEPHONE (504) 310-2550  
FAX: (504) 310-2587

## MEMORANDUM

**TO: JUDGES OF THE LOUISIANA DISTRICT COURTS,  
JUVENILE AND FAMILY COURTS, CITY COURTS, PARISH  
COURTS, MUNICIPAL COURT AND TRAFFIC COURT**

**FROM: HUGH M. COLLINS, Ph.D., JUDICIAL ADMINISTRATOR**

**DATE: MARCH 16, 2010**

**RE: LODGING REIMBURSEMENTS  
2010 SUMMER SCHOOL FOR JUDGES AND THE ANNUAL  
MEETING OF THE LOUISIANA STATE BAR ASSOCIATION**

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The Supreme Court Conference has limited the total reimbursement for lodging while attending the 2010 Summer School for Judges and the Annual Meeting of the Louisiana State Bar Association to \$2,200.00, inclusive of taxes. The reimbursable daily rate shall be the rate charged by the hotel or condominium, but in no case shall the total reimbursement exceed \$2,200.00. The 2010 reimbursement rate is the same for all state justices and judges. In accordance with Supreme Court General Administrative Rules, Part G, Section 1(d), requests for lodging reimbursement must include an original receipt.

HMC/ebg

cc: Timothy J. Palmatier, Chief Deputy Judicial Administrator  
Terence Sims, Deputy Judicial Administrator, Accounting Services ✓  
Randy Certoma, Deputy Judicial Administrator, Budget  
Maisha Nash, Accounting Specialist

HMCMEMOSIALLJUDGES16



# Supreme Court

STATE OF LOUISIANA  
400 ROYAL STREET  
SUITE 1190

New Orleans  
70130-8101

CHIEF JUSTICE

CATHERINE D. KIMBALL

JUDICIAL ADMINISTRATOR

HUGH M. COLLINS, Ph.D.

TELEPHONE (504) 310-2550

FAX: (504) 310-2587

## MEMORANDUM

**TO: JUDGES OF THE LOUISIANA DISTRICT COURTS, JUVENILE AND FAMILY COURTS, CITY COURTS, PARISH COURTS, MUNICIPAL COURT AND TRAFFIC COURT**

**FROM: HUGH M. COLLINS, Ph.D., JUDICIAL ADMINISTRATOR *HMC***

**DATE: APRIL 14, 2009**

**RE: LODGING REIMBURSEMENTS  
2009 SUMMER SCHOOL FOR JUDGES AND THE ANNUAL  
MEETING OF THE LOUISIANA STATE BAR ASSOCIATION**

---

This office has received inquiries regarding the use of judicial expense funds in connection with lodging expenses incurred while attending the 2009 Summer School for Judges and the Annual Meeting of the LSBA.

As we previously informed you, the Supreme Court Conference has limited the total reimbursement for lodging while attending the 2009 Summer School for Judges and the Annual Meeting of the LSBA to \$2,000.00, inclusive of taxes.

Please be advised that pursuant to the Louisiana Supreme Court Administrative Rules, Part G, Section 1, no other public funds may be expended for lodging over and above this \$2,000.00 limit. "Public funds" means legislatively appropriated funds, judicial expense funds, self-generated funds, funds of federal, state, local, parish or municipal governments, and any other sources of public funds.

HMC/ebg

cc: Timothy J. Palmatier, Chief Deputy Judicial Administrator  
Terence Sims, Deputy Judicial Administrator, Accounting Services ✓  
Randy Certoma, Accounting Services Manager  
Maisha Nash, Accounting Specialist

HMC\MEMOS\ALLJUDGES13

## APPENDIX B

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### Legislative Auditor's Rebuttal

### **Judges Provided Themselves With Improper Insurance Benefits**

R.S. 13§691(B) unequivocally mandates that “No judge whose salary is provided for herein shall receive for his services as a judge, directly or indirectly, any additional salary, compensation, emolument, or benefit from the state or any of its political subdivision except...” as provided by law. In addition, R.S. 13§2152 provides for the compensation of the judges of the City Courts and restricts the maximum salary (directly or indirectly from all sources for services as judge) of the judges of the City Courts to the salary of the district court judges.

Further, in *Guste v. City of New Orleans*, the Louisiana Supreme Court concluded that “The legislative intent in enacting 13§691(C) is clear: judges are to receive no additional compensation except that specified.” Paragraph (C) referred to in this court case is currently paragraph (B) referred to above.

However, the judge’s response seems to suggest that the use of Judicial Expense Funds (JEF) to provide additional insurance benefits for judges is permissible because JEF are self-generated funds, and as such are possibly (1) not public funds; (2) not State funds; and (3) not political subdivision funds. This assertion leads the judges of the Civil District Court and the City Courts (Courts) to the conclusion that they are entitled and legally authorized to provide themselves with additional benefits from the JEF beyond that which is enumerated explicitly by the Legislature in R.S. 13§691 and R.S. 13§2152. We respectfully disagree.

In Opinion Number 04-0174, the Louisiana Attorney General opined that in light of the provisions of R.S. 13§691(B), the JEF cannot be used for the payment of dental insurance premiums on behalf of the district court judges and their dependents. This opinion adds that to pay dental insurance premiums from the JEF “...would be tantamount to allowing the judge to receive a prohibited addition to his salary.” The opinion, which also refers to prior opinions 88-632 and 76-89, further states that the JEF “... must be considered public funds and specifically ‘state funds.’”

The judge’s response cites the case of *Dejoie v. Medley*. In this case the Louisiana Supreme Court did not address whether or not the judges could pay themselves benefits from the JEF.

If one is still of the opinion that the funds are not public funds (state or political subdivision), there is the consideration of R.S. 39§1302 (1)(K) (Local Government Budget Act) which specifically defines Judicial Expense Funds as political subdivisions subject to the provisions of the Local Government Budget Act. As such it appears that contrary to 13§691(C) and 13§2152, the judges improperly used the funds of a political subdivision (JEF) to provide themselves with additional insurance benefits. In addition, the JEF is audited under the authority of the Louisiana Legislative Auditor. The Legislative Auditor does not audit non-public funds.

Finally, Louisiana law defines what funds must go into the JEF, generally fines and fees assessed by the judges. It would appear to be a tremendous conflict of interest for judges to be able to assess fines and fees that they may then use for their own personal benefit.

Whether one considers the JEF to be state funds or political subdivision funds, to use such to pay for additional insurance benefits of the judges referred to in this report would appear to be contrary to law.

### **Lodging Expenses of Judges**

The judge's response with regard to travel seems to ignore Article VII, Section 14 of the Louisiana Constitution. The judges exempt themselves from the constitutional provision, which states in relevant part:

**Except as otherwise provided by this constitution, the funds...of the state or of any political subdivision shall not be...donated to or for any person, association, or corporation, public or private.**

Although the Louisiana Supreme Court may establish maximum lodging reimbursement rates, the constitution mandates reimbursement of only costs attributable to the expenses of judges and not to the expenses of their spouses and families. The Attorney General in Opinion Nos. 80-154 (concerning city court judges); 03-0157 (concerning spouses of volunteer firemen); and 03-0387 (concerning spouses of university presidents) stated that Article VII, Section 14 prohibits the expenditure of public funds on costs attributable to the meals and lodging of spouses, family, and friends of public employees, officials, and officers. There is no reason to conclude that the Attorney General would exempt district court judges from these opinions.