

CRIMINAL DISTRICT COURT
FOR THE PARISH OF ORLEANS



INVESTIGATIVE AUDIT
ISSUED NOVEMBER 21, 2012

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LOUISIANA LEGISLATIVE AUDITOR
DARYL G. PURPERA, CPA, CFE

November 21, 2012

**THE HONORABLE CAMILLE BURAS, CHIEF JUDGE,
AND JUDGES OF THE CRIMINAL DISTRICT COURT
FOR THE PARISH OF ORLEANS**

New Orleans, Louisiana

Dear Judge Buras:

We have audited certain transactions of the Criminal 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 CDC 2012

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EXECUTIVE SUMMARY

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 Criminal District Court for the Parish of Orleans (Court) improperly used public funds totaling \$637,367 to provide themselves with supplemental and additional insurance benefits.

These insurance benefits included:

1. Payment of 100% of the premiums totaling \$447,967 for additional health, dental, hospitalization, cancer, critical illness, long-term care, accidental death and dismemberment, and life insurance policies.
2. Use of Court funds totaling \$154,750 for the administration and reimbursement of out-of-pocket medical expenses incurred by judges.
3. Payment of 100% of the premiums totaling \$34,650 for professional liability insurance for judges.

Travel and Lodging Expenses

Our review of travel expenses for the period January 2009 to December 2011 revealed that the Court (1) lacked adequate documentation to support all amounts expended for travel as required by the Supreme Court's travel policy and (2) allowed judges to pay excessive amounts for lodging during the Summer School for Judges and the Annual Meeting of the State Bar Association. Without complete travel records or detailed receipts, we could not determine the business purpose of all travel expenses.

Time and Attendance Records Not Prepared by All Court Employees

Court employees under the direct supervision of judges were not required to document their time/attendance at work.

BACKGROUND AND METHODOLOGY

Background

Louisiana Revised Statute (R.S.) 13§1335 established the Criminal District Court for the Parish of Orleans (Court). The Court is composed of 13 elected judges (including one elected magistrate), each serving six-year terms and has exclusive jurisdiction over the trial and punishment of all crimes, misdemeanors, and offenses committed within the Parish of Orleans. The Court has appellate jurisdiction for all cases tried before the Municipal Court of New Orleans and the Traffic Court of New Orleans. In addition, R.S. 13§1346 established the Magistrate Section of the Court which is composed of one elected judge and four commissioners who are appointed by the judges, each serving six-year terms.

The Court currently operates with 13 elected judges (including one elected magistrate), four appointed commissioners and approximately 150 employees. Most Court employees are employees of the State of Louisiana (State) whose salaries are subsidized through the City of New Orleans and Court funds. Judges and commissioners are employees of the State whose salaries are funded by the State and paid by the Louisiana Supreme Court. The annual salaries of district court judges, including those of the Court, 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.

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 judges of the Court. As a result, the LLA conducted an audit of the available Court records to determine the credibility of the information. In October 2011, after we began our audit, the judges decided to terminate a majority of their insurance benefits. The procedures performed during this audit included:

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

FINDINGS AND RECOMMENDATIONS

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 Criminal District Court for the Parish of Orleans (Court) improperly used public funds totaling \$637,367 to provide themselves with supplemental and additional insurance benefits.

These insurance benefits included:

1. Payment of 100% of the premiums totaling \$447,967 for additional health, dental, hospitalization, cancer, critical illness, long-term care, accidental death and dismemberment, and life insurance policies.
2. Use of Court funds totaling \$154,750 for the administration and reimbursement of out-of-pocket medical expenses incurred by judges.
3. Payment of 100% of the premiums totaling \$34,650 for professional liability insurance for judges.

State law [Louisiana Revised Statute (R.S.) 13§691¹] provides for the annual salary of district judges and prohibits judges from receiving any additional compensation or benefits other than their salary. Because the additional insurance benefits received by the judges are not provided for in R.S. 13§691, 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 judges received benefits in violation of R.S. 13§691 and expended funds in violation of the Louisiana Constitution² which prohibits the donation of public funds.

¹ **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., as determined by recommendation of the Judicial Compensation Commission and approved by the legislature, and 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.

² **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.

Summary of Insurance Benefits Provided Contrary to State Law

The judges, commissioners, and other Court employees are eligible to enroll in health insurance plans offered through the Office of Group Benefits, the State's insurance administrator, at the same rates as other State employees. Although state law prohibits judges from receiving any additional compensation or benefits other than their salary and the benefits provided for in R.S. 13§691 (B), the judges have historically selected and approved by vote to provide themselves and other Court employees with supplemental and additional insurance including policies providing for additional health, dental, hospitalization, cancer, critical illness, long-term care, accidental death and dismemberment, and life insurance. Court funds are used to pay 100% of the cost of the policy premiums for judges, commissioners, and judicial administrators, whereas other Court employees are responsible for paying a portion (or their dependent's portion) of their premiums through payroll deduction.³

In addition, we found that Court funds were used to pay for the administration and reimbursement of out-of-pocket medical expenses incurred by judges and to pay for professional liability insurance for judges.

Former Chief Judge Terry Alarcon stated that seventeen years ago supplemental health insurance for judges was reviewed by consultants and accountants who determined that Court funds could be used to pay the premiums for supplemental insurance. In addition, Judge Frank Marullo stated that when he became chief judge in 1994, the judges, during their monthly meetings, agreed to retain an insurance consultant to evaluate medical insurance coverage for judges. He believes that the first supplemental insurance that judges voted to obtain was a dental care policy. Judge Marullo further stated that the judges later voted to obtain other supplemental insurance coverage.

We spoke with several judges who informed us that when they were elected, they signed up for whatever benefits the Court made available to them. Some indicated that they may have signed insurance documents to initiate the insurance but were not provided an actual policy and were never required to have a physical examination. Others indicated that they had more insurance than they needed. However, all judges participated in the supplemental policies to some degree.

Although judges are only entitled to the salary and benefits provided for in R.S. 13§691, from January 1, 2009, to December 31, 2011, records indicate that the Court issued payments totaling \$637,367 for supplemental and additional benefits for district judges. Because the supplemental and additional insurance benefits received by the judges are not provided for in R.S. 13§691, it does not appear that the judges had the legal authority to vote themselves supplemental and additional benefits or to incur these added expenditures. As a result, it appears that the judges received benefits in violation of R.S. 13§691 and expended funds in violation of the Louisiana Constitution which prohibits the donation of public funds. A description of the benefits provided is included in the following sections.

³ State law does not expressly prohibit Court employees whose compensation is not subject to the provisions of R.S. 13§691 from receiving supplemental insurance benefits.

1. Supplemental Insurance Policies Purchased
for Judges With Public Funds

Our audit revealed that from January 1, 2009, to December 31, 2011, the Court improperly paid \$447,967 to provide supplemental insurance benefits to the district judges. The judges' insurance premiums for their supplemental policies were fully (100%) funded by the Court and included policies for accident, accidental death and dismemberment, cancer, critical illness, dental, health, hospital indemnity, heart intensive care, life, long-term care, and vision. Also, because the State provides judges with healthcare benefits as well as the option to purchase additional healthcare-related benefits through the State's plan, the supplemental coverage/benefits provided by the Court appear to be excessive and unnecessary as well as not permitted by R.S. 13§691.

Court records indicate that during the period of our audit, all 13 judges participated in the supplemental insurance benefits. The number of policies, annual cost, and average cost per judge are included in the following table.

Supplemental Insurance Policies for Judges in Effect From January 2009 to December 2011					
Year	Total Number of Policies in Effect	Average Number of Policies Per Judge		Annual Cost of Supplemental Policies	Average Cost Per Judge
2009	197	15		\$94,639	\$7,280
2010	249	19		189,364	14,566
2011	242	18		163,964	12,613
Average	229		Total	\$447,967	

As shown in the table above, the average number of policies per judge (per year) ranged from 15 to 19 and the average cost per judge (per year) ranged from \$7,280 to \$14,566. Using calendar year 2010 as an example, the following table provides the different types of policies/coverages as well as the total number of policies purchased for the 13 judges (and spouses).

Policies in Effect for Calendar Year 2010						
Type of Coverage	Judge (Individually)	Spouse (Individually)	Judge and Spouse	Judge and Dependent	Family	Total
Accident	14	1	0	0	0	15
Accidental Death and Dismemberment	13	0	0	0	0	13
Cancer	13	2	0	0	0	15
Critical Illness	25	0	0	0	0	25
Dental	1	0	4	1	7	13
Health	8	0	0	0	0	8
Hospital Indemnity	6	0	0	0	1	7
Heart Intensive Care	0	0	0	0	4	4
Life	77	0	6	1	1	85
Long-Term Care	32	19	0	0	0	51
Vision	1	0	4	2	6	13
Total	190	22	14	4	19	249

For the calendar year 2010, there were a total of 249 supplemental insurance policies in effect for judges. During our review of these policies, we noted there was an excessive number of policies and that judges had obtained multiple policies for certain types of insurance such as long-term care and life insurance for themselves and their spouses. All premiums for these policies were paid by the Court. Examples of what we found are as follows:

- All 13 judges carried multiple long-term care policies.
- Eleven judges had separate long-term care policies for their spouses. Eight of these spouses had multiple long-term care policies.
- All 13 judges carried multiple life insurance policies.
- Twelve judges carried multiple critical illness policies.
- One judge carried multiple accident policies.

Since the Court first obtained supplemental insurance benefits, the Court has added providers to provide additional benefits and/or to replace existing providers who discontinued writing new policies. According to former Judicial Administrator Elizabeth Stogner, the Court provided supplemental insurance coverage from various insurance providers that offered similar types of coverage such as life and long-term care. She believes that the judges obtained multiple life and long-term care policies as a result of the Court transitioning from one insurance provider to another without canceling the previous policy that was in effect. For example, she explained that the Court provided long-term care coverage through a provider whose rating dropped and when the Court transitioned to another long-term care provider the judges ended up with policies from both providers.

As previously stated, during interviews of several judges, they indicated that they signed up for whatever supplemental insurance benefits were available and many indicated they did not review their supplemental insurance policies. The judges recall obtaining duplicate policies; however, one judge stated that he believed his life insurance policies came as a package deal with other supplemental insurance policies. Another judge indicated that he advised the Court to eliminate multiple-life and long-term care policies.

During our audit, the Court canceled all supplemental insurance policies including life insurance policies covering judges, spouses, and judicial administrators. We noted that the Court was not the beneficiary of these policies; the beneficiaries were generally family members or spouses chosen by the policyholder. As a result, when the policies were canceled, any refunds were issued directly to the judges and judicial administrators and then remitted to the Court. From November 11, 2011, to March 29, 2012, the Court received a total of \$71,983 in refunds of premium, cash surrender value, and interest associated with the canceled policies. This amount comprised of \$65,711 received from judges and \$6,272 received from judicial administrators.

Because the supplemental insurance benefits received by the judges are not provided for in R.S. 13§691, 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 judges received benefits in violation of R.S. 13§691 and expended funds in violation of the Louisiana Constitution which prohibits the donation of public funds.

2. Reimbursement of Out-of-Pocket Medical Expenses
of Judges With Public Funds

During our audit, the Court issued payments totaling \$154,750 to Exec-U-Care, a third-party administrator, to administer a medical reimbursement program for the judges. Of the \$154,750 paid by the Court to Exec-U-Care, \$9,687 was for insurance premiums,⁴ \$17,459 was for administrative fees, and the remaining \$127,604 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 received benefits in violation of R.S. 13§691¹ and expended funds in violation of the Louisiana Constitution² 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 Court monthly for the amounts paid to judges, including premiums and administrative fees. This benefit is provided to each of the judges. The Court limits the reimbursement amount paid to judges to \$10,000 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. Five of the judges we spoke with regarding Exec-U-Care indicated they were not aware that the Court was the actual party who reimbursed them for their out-of-pocket medical expenses.

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

Currently, the Court continues to pay premiums to Exec-U-Care; however, since we began our audit, the judges have suspended submission of claims for reimbursement.

3. Professional Liability Insurance of Judges
Purchased With Public Funds

From January 2009 to December 2011, the Court issued payments totaling \$34,650 to Herbert L. Jamison & Company, LLC to purchase professional liability insurance coverage for nine of the judges. As a result of these payments, it appears that the judges received benefits in violation of R.S. 13§691.¹ In addition, by providing these judges with professional liability insurance, a service which is already provided by the State, the Court may be in violation of the Louisiana Constitution² which prohibits the donation of public assets.

Although the Court offers this professional liability coverage to judges, R.S. 13§5108.1⁵ 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.

According to Ms. Stogner, Herbert L. Jamison & Company, LLC provides malpractice insurance for judges. She stated that some of the judges chose not to have this coverage. She explained that in the past, the Court never used this insurance because the Attorney General for the State of Louisiana handled these types of cases. Ms. Stogner stated that in recent years, some judges elected to have professional liability coverage to defend themselves against an increasing number of complaints filed with the Louisiana Judicial Commission.

Currently, the Court continues to provide professional liability coverage to judges who choose to receive the benefit.

Recommendations

We recommend that the Court adopt policies and procedures to ensure public funds are spent in accordance with State law. The Court should:

- (1) discontinue using public funds to purchase supplemental insurances for judges and spouses;
- (2) discontinue using public funds to provide additional insurance and benefits to judges, such as reimbursement of their out-of-pocket medical expenses and professional liability insurance;

⁵ **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.

- (3) seek reimbursement of Court payments for all improper purchases and reimbursements of supplemental and additional insurances provided to current and former judges and spouses;
- (4) require and ensure that all cash surrender value, unexpired premiums, and/or interest accrued on life insurance policies purchased with public funds for current and former judges are deposited with the Court; and
- (5) consider any tax consequences as a result of the supplemental and additional benefits provided to judges and spouses.

Travel and Lodging Expenses

Our review of travel expenses for the period January 2009 to December 2011 revealed that the Court (1) lacked adequate documentation to support all amounts expended for travel as required by the Supreme Court's travel policy and (2) allowed judges to pay excessive amounts for lodging during the Summer School for Judges and the Annual Meeting of the State Bar Association. Without complete travel records or detailed receipts, we could not determine the business purpose of all travel expenses.

1. Lack of Documentation to Support All Travel

Travel expenses incurred by district court judges are governed by the Louisiana Supreme Court's travel policy (policy). Although the policy indicates that the judges may otherwise adopt more restrictive travel regulations, the Court has not done so. The policy defines allowable travel, reimbursable amounts, and the documentation required, such as detailed receipts, to obtain reimbursement of or payment for travel expenses incurred or to be incurred, from any source of public funds.

The judges we spoke with and the judicial administrator informed us that the Court did not have its own comprehensive written travel policy or rules. They also indicated that judges generally do not follow the Supreme Court's travel policy. Each judge decides where he or she wants to travel to attend training and that no one approves his or her travel. One judge stated that he uses the honor system when he traveled and he was not aware of any requirement to keep records from his trips or to submit records to support his travel.

Currently, the Court also does not have written guidance for any Court employees, including judges, regarding proper approval of expenses, payment methods, and documentation of travel expenses. As a result, we found several instances in which the judges received reimbursement for travel expenses from public funds without the proper documentation required by the Supreme Court's policy.

During our audit of the judges' travel files from January 2009 to December 2011, we noted that the records supporting the business purpose, approval and payment of travel expenses were filed in multiple locations or missing from the judges' files. In addition, there is no consistency in the manner in which judges requested reimbursement for their travel expenses.

Some judges completed travel expense forms and other judges completed purchase orders detailing their travel expenses. In many cases, multiple expense forms and purchase orders were submitted to request reimbursement for one trip. These forms did not always include information such as the time and dates in which travel began and ended to determine the appropriate amounts to be reimbursed for lodging and per diem.

We examined the travel files of 12 judges and four commissioners and noted that 81 travel expense forms were lacking detailed supporting documentation, such as registration forms, conference brochures and agendas, detailed hotel receipts, transportation invoices, receipts for baggage charges and parking, and proof of continuing legal education credits.

2. Lodging Expenses of Judges and Commissioners

From July 2009 to July 2011, several judges and commissioners 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, 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 Court 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 four judges and two commissioners 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 \$8,298 (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

We recommend that the Court comply with the Supreme Court’s travel policy for judges and adopt a similar, comprehensive travel policy to provide guidance for all Court employees. This policy should:

- (1) adopt specific rules regarding reimbursement for lodging and meals;
- (2) require itemized vouchers for actual travel expenses together with the original receipts, invoices, and other supporting documentation;
- (3) require proper review and approval of travel expense reports before payment; and
- (4) require that the Court maintain appropriate documentation to support the necessity and business purpose of all travel expenditures.

The judges of the Court 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 the funding structure for the conference 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 Court Employees

Court employees under the direct supervision of judges were not required to document their time/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 the Court’s payroll payments and supports vacation and sick leave balances for employees.

Court employees generally report to the judicial administrator with the exception of approximately 76 employees who work directly under the supervision of the individual judges.

The judges operate independent of one another and are responsible for managing and supervising employees in their section of the Court. We spoke with four judges 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 calculated, recorded, and tracked vacation and sick leave earned or used by their employees.

Our audit of the Court 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. (Note: No one could provide us with documentation as to what constituted the required number of work hours.)
- 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 of the Court. Without maintaining accurate records, the Court 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.

According to Mr. Robert Kazik, judicial administrator, he maintains leave records for the employees under his supervision but does not maintain leave records for the employees that work for the judges. He stated that he was not aware of any sick or vacation leave records that the judges maintained on their employees.

Recommendation

We recommend that the Court develop a comprehensive, written time and attendance policy for all Court 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

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.



Criminal District Court

PARISH OF ORLEANS
OFFICE OF THE
JUDICIAL ADMINISTRATOR

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November 9, 2012

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The Honorable Daryl G. Purpera
Louisiana Legislative Auditor
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Baton Rouge, Louisiana 70804-9397

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

Dear Mr. Purpera:

Because the audit report provided to this Court on August 13, 2012 is riddled with legal error and key factual omissions, the Court is constrained to respond. The Judges of the Court are prepared to meet with you and your staff as soon as possible to address all the contentions in your report. It is important for your office, public officials, and the members of our community to understand the shortcomings that cause a reasonable person to question the contents of the report. Stated simply, the proposed report is both misleading and unsound.

In the report, you have raised three issues relating to the operations of the Court, namely:

1. Insurance protection for the Judges of this Court;
2. Travel documentation; and
3. Recordkeeping with respect to the time worked by a few employees of the Court.

This Court states at the outset that the Supreme Court has been empowered through the State Constitution as the body that oversees administrative and policy issues for district courts. Article V of the Constitution. In view of this constitutional mandate, it is submitted that the Legislative Auditor lacks the legal authority to second-guess or supersede the Supreme Court's actions. Nor is the Legislative Auditor authorized to interpret the laws of this State, as you have done. Without waiving these constitutional and jurisdictional objections, the Court submits its

response. We will address these issues in the same order in which they are set forth in your 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, in a broad-brush stroke that blurs all distinctions 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 fact, if you are not already cognizant of the history of the insurance issue, 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. In addition, this Court also retained a national accounting firm to provide guidance to the Court. Both the independent legal counsel and the national accounting firm concluded that providing Judges of this Court with health insurance benefits was legally permissible. 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 that the Judicial Council, another branch of the Supreme Court, would examine anew if anything was improper 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, including these operating departments under the control of the 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. 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 and the Supreme Court, apparently have similar health insurance benefits for the members of those Courts. The practices followed by the Criminal District Court for the Parish of Orleans with respect to making health insurance 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 to suggest that it "may" be impermissible for Judges to receive health insurance benefits. Regrettably, the report did not examine the history of this statutory framework nor does it even address the existence of other Legislative acts/statutes that specifically permit health insurance benefits to be afforded to the Judges of this Court as well as other Courts throughout the State.

As an aside, your report also notes (and may indirectly criticize) that most Judges accepted the benefits provided to them without embarking upon a legal analysis with respect to whether they are entitled to receive such benefits. This second-guessing by the auditors is not only improper *per se*, but apparently brushes aside the reality of the workplace. When Judges begin work, they, just like newly hired assistant legislative auditors, Parish Attorneys, fire fighters 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, one of the primary purposes of the Human Resources Department and/or the Judicial Administrator is to address these ministerial issues in order to permit the Judges to begin working on their criminal docket as quickly as possible. 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.

In view of the reliance upon only one portion of the statutory framework by the auditors in the report, we believe that it would be productive to provide you with a more thorough factual and legal backdrop to this insurance issue. The Judicial Expense Fund for the Criminal 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. 13:1381.4, provides in pertinent part as follows:

C. ***

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 Court or the offices of the individual Judges and is in addition to any and all other funds, salaries, expense, or other monies that are now or hereafter provided, authorized or established by law.

Based upon these Constitutional and statutory authorities, the Criminal 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. 13:1381.4. Other judicial districts throughout Louisiana have taken a similar approach. 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. While we, of course, are reticent to single out other judicial districts, it is our understanding that a number of judicial districts follow a similar if not identical practice for district judges. 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 October, 2011, the Judges for the Criminal 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, independent counsel advising the Court concluded that such payments were authorized by statutory and Constitutional authorities. In short, both law firms over a period of 17 years, and apparently the Supreme Court through its silence and tacit approval for nearly two decades, concluded that La. R.S. 13:691 does not proscribe this practice of providing insurance benefits to District Court Judges. 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 your report is fundamentally flawed, rendering the conclusions drawn factually misleading and legally inaccurate.

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*.¹ It is disappointing that, without explanation, your office chose to ignore this critical Louisiana Supreme Court decision that governs the core criticism in the report. In *Dejoie*, an Orleans Parish Civil District Court employee filed suit under Louisiana's Employment Discrimination Law. The plaintiff was employed as a Minute Clerk, but her salary and benefits were paid from the Court's Judicial Expense Fund ("JEF"). She took an extended

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

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."²

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."³ 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."

* * *

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 funds⁴.

Thus, the Louisiana Supreme Court concluded that the "costs" permitted to be taxed pursuant to La. R.S. 13:1381.4 "are 'self-generated funds' collected pursuant to the provisions of" La. R.S. 13:1381.4. 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

² 9 So. 3d at 828.

³ *Id.*, citing La. R.S. 13:1312(C).

⁴ 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.

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.⁵ This certainly suggests the funds comprising the JEF 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. 13:1381.4(D) that "No salary shall be paid from the judicial expense fund to any judges of the court."

The contention that the use of Judicial Expense Funds to purchase 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) 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 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 JEF 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).

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*

⁵ 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).

*Judicial District Court v. State of Louisiana.*⁶ 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."⁷

In short, La. R.S. 13:691(B)(3) does not apply to or restrict the use of self-generated Judicial Expense Funds proceeds to purchase additional insurance benefits for the Judges. Moreover, the language of La. R.S. 13:1381.4(C) 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 judges thereof" Subsection (C) further provides that the JEF 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, indicate that payment for insurance premiums 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, your report errs in concluding that the Judicial Expense Funds used to purchase the supplemental insurance protection are state funds.

It also bears noting that the Criminal District Court (including the Judicial Expense Fund) has been audited multiple times over the 18-year period the insurance program was in place, but never once have the auditors seen fit to question the practice, much less (without a shred of legal support) deem it to violate state law. This is extremely disturbing. Certainly, the public must wonder why, without any discussion or forewarning, some auditors in your office believe that prior audits and Legislative Auditors as well as the generations of predecessors to these auditors supposedly got it wrong. We sincerely hope that upon reflection and examination of legal authorities that appear to have been brushed aside, 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 and the State Judiciary spanning decades.

The report singularly focuses upon Section 691 to reach the conclusion that the payment of health insurance premiums "appear" 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

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

⁷ 563 So. 2d at 1190.

important for you to recognize that the amendment to Section 691 passed in 1999, according to the author of this statutory language, intended for the amended version of Section 691 to authorize insurance benefits to all public employees, including District Court Judges.

Put another way, it was the purpose of amending Section 691 in 1999 to broaden its scope. In other words, the Legislative purpose of Section 691 is to ensure that all State Court Judges serving the public are treated in the same manner. 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 offensive and inherently unfair to rely upon an auditor's interpretation of only one portion of the statutory scheme in an effort to reach a conclusion that historical conduct may somehow be perceived as possibly improper. This Court, like presumably every other District Court, is willing to assiduously adhere to both plain Legislative expression or a Supreme Court Rule if either the Legislature or the Supreme Court agree with the auditor's opinion that is hinged upon his interpretation of statutory law.

Before the Office of the Legislative Auditor decides to issue its 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. 13:1381.4. 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 1381.4 entirely undermines the restricted and truncated reading of Section 691 that the Legislative Auditor now suggests in the report.

While this Court respects the work of the Office of the Legislative Auditor, there has never been a judicial declaration regarding the interplay between Section 691 and Section 1381.4. 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 health insurance benefits for District Judges through JEF proceeds. The Louisiana Supreme Court and its staff were aware of this issue since 1994. It never criticized this reasoned undertaking followed by the Criminal 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.

As mentioned earlier, this Court believes that other Judicial Districts throughout the State provide similar 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 obtain supplemental health insurance benefits for District Judges, fairness and logic seem to compel the Legislative Auditor to consider this issue instead of singling out this Court. At the very least, the Legislative Auditor first should ascertain how widespread this custom is before implying that this Court is the only District Court that has followed 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.

The report also mentions, almost in passing, that some of the insurance policies for a few Judges overlapped as a result of the cancellation of a policy and the Court subsequently securing a different insurer. The Court, of course, regrets if a clerical oversight occurred, even though state funds were not expended. Needless to say, the individual Judges did not attend to this type of administrative task; rather, it is the responsibility of the Judicial Administrator and his staff to be certain this type of clerical error does not occur. In this regard, the Court has brought this administrative omission to the attention of the Judicial Administrator, and it is certain that the timing issue will never reoccur.

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. Based upon the Court's knowledge, no Judge has retained any insurance dividend; such dividends, though nominal, were deposited in the Court's account. The Judges of this Court are not receiving the 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 Judicial Districts have voluntarily abated or suspended this practice, as the members of this Court decided more than a year ago. Stated simply, this Court cancelled the insurance policies that are the subject of the report. None

of the Judges in this Court now receive health insurance benefits that your report questions – even though other District Judges as well as Appellate Judges engage in the same practice or a close offshoot.

As part of the auditors' review of insurance practices, they also have questioned the existence of professional liability insurance protecting the District Judges of this Court. The Judges of this Court, like numerous other Judges in Louisiana and across the country, are often sued by disgruntled defendants and 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. The 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. For example, this statute does not encompass legal assistance in connection with judicial disciplinary complaints. Correspondingly, the report does not consider that the State would have an irreconcilable conflict in representing a Judge while pursuing a charge against that Judge at the same time. The report relies solely upon comments supposedly made by Elizabeth Stogner, a Deputy Administrator; yet, Ms. Stogner apparently does not understand the dynamics of a Judge being required to respond and defend himself or herself against these written assaults. Ms. Stogner, quite naturally, has never been on the receiving end of complaints lodged by convicted felons with the Judiciary Commission. Criminal defendants frequently file complaints against District Judges. Not surprisingly, such occurrences almost always seem to follow on the heels of a guilty verdict. It is for this type of situation, among others, 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. 13:1381.4 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. Although one of the auditors insinuated that the age of the Attorney General Opinion permits it to be ignored, there is no rational or legal basis for such a myopic view. 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 not only referred this Court to the same Attorney General Opinion but identified it 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 and 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 citizens of this 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.

2. Compliance with the Court’s Travel Policy.

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

The Supreme Court has a travel policy. This Court abides by the terms of that policy. Although the Court did not memorialize adoption of the Supreme Court’s policy in writing, it regularly was used for travel policies and procedures. Because this technical issue was raised, this Court has now reduced to writing its particularized travel policy including the procedures required for being reimbursed for business and legal education expenses. All Judges will continue to adhere to the terms of the written procedures for seeking reimbursement for travel.

Initially, the report notes that no one approves the travel of Judges. Even the Supreme Court does not suggest nor impose this type of requirement. Rather, 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 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. The Judges of this Court understand the need to do so and have routinely complied. If, as the report suggests, there have been "instances" when all of the documentation was not available, such as a copy of a conference brochure or a receipt for parking, the Court does not condone reimbursement unless all documentation is presented even if such documentation overlaps with other supporting travel documentation. In this regard, and as part of the Court's travel policy, the Court has reminded its Judicial Administrator that reimbursements are not to be made unless all paperwork is submitted by the requesting party, irrespective of whether the amount is \$5 for parking and irrespective of whether the missing paperwork is only a brochure from the Continuing Legal Education conference. Although a missing brochure or proof of CLE credits (for which the Supreme Court maintains records that are readily accessible to corroborate CLE attendance) were rarely not included within the stack of documentation supporting reimbursement, it should be considered that the report covers the travel of 16 Judges and Commissioners over a span of three years. In view of the scope of requested documentation, it is almost inevitable that these isolated portions of paperwork have been misplaced by the administrative staff or inadvertently not included for several of the Judges as the report indicates. Regardless of the reasonableness of these aberrant and technical omissions, the Court and its administrative staff will not authorize travel reimbursements unless all of the necessary paperwork is submitted in strict accordance with the Court's travel policy and the Court's continued adherence to the Supreme Court's procedures. As the Judicial Administrator for this Court, I and my staff have been instructed of the Court's rigid enforcement of these requirements for reimbursement and they understand 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 four 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 rather than use of a one-bedroom rate. The Louisiana Supreme Court addressed this very issue, as the report acknowledges. Notably, the report recites without equivocation that the maximum amount established by the Supreme Court was communicated to all courts in the State and that this amount is "reasonable." 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 \$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, particularly when Judges and their families are encouraged to attend these events, 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 believed to be reasonable. Compounding this skewed reliance, the report does not take into consideration the encouragement by appellate courts for attendance at these events nor does it consider the lack of one bedroom accommodations.

In one instance cited in the report, the difference between what was expended for lodging and the amount the Legislative Auditor believes to be reasonable was \$94.42 for seven nights attending the Judges School/State Bar Association; stated another way, this amounts to a \$13.49 per day difference of opinion. Despite this relatively nominal sum between what was expended and the auditor's forced rate, the amount expended by that Judge was still below the amount authorized by the Supreme Court for lodging. Obviously, in contrast to the auditor's view, the Supreme Court does not consider the lodging expense to be excessive. To the contrary, the auditors concede that the Supreme Court deems the maximum amount allowed to be "reasonable." Without explanation, the auditors apparently then decide that they know better than the Justices of the Louisiana Supreme Court in determining reasonable lodging rates. In addition to the disrespect for the Supreme Court's policies, the auditors fail to explicate their basis for ignoring Article V of the State Constitution; Article V makes clear that the Supreme Court, as an independent branch of government, cannot be trumped by another branch of state government. In short, this Court hewed to Supreme Court policy and the State Constitution; remarkably, the auditors do not conclude otherwise.

Of equal import is the fact that the section of the report challenging the reasonableness of the hotel rates paid by a few Judges over a period of three years is contrary to Louisiana Supreme Court Rules Part G, Section 1(b). We ask you to assess if the auditors, without explanation, chose not to respect 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 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 statement as to the amount deemed reasonable for continuing legal education expense.

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 better time and attendance recordkeeping could be implemented. However, the auditors failed to recognize that trials in Criminal District Court for the Parish of Orleans frequently demanded erratic Court hours. In an effort to accommodate jurors, witnesses, defendants and victims, the Judges of this Court have historically been willing to work late into the evening on many occasions. Jury deliberations extending past 6:00 p.m. and even past mid-night are often allowed to permit the jurors to reach a verdict, thereby not requiring all the parties, including the jurors who have taken time away from work and their families, to be required to return the next day; while the Court could recess trials at 4:30 p.m. or 5:00 p.m. as some Courts do, such an approach paralleling bank hours would unquestionably require extra days spent by jurors, defendants, and victims at the Courthouse. Obviously, the attendance of these few Court employees past normal business hours was essential during these irregular work hours to provide services to the jurors, witnesses, and families still at the courthouse during deliberations as part of these criminal proceedings.

Each of the Judges of the Court have been committed to achieving full compliance with accurate recordkeeping of the time expended by their key staff members. Each Judge makes certain that leave time corresponds with the extended work days. Each Judge physically sees these key employees at work.⁸

The Court is finalizing its work with its Judicial Administrator to implement a more comprehensive, written time and attendance policy for these few core employees working in the chambers of each of the District Judges. The Court, of course, will coordinate with the Supreme Court as to these administrative procedures. To minimize the occurrence of this situation, the Court is limiting irregular court hours, though it is recognized this approach may impose a hardship upon jurors, witnesses and parties involved in Court proceedings.

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 policies regarding travel; instead, the

⁸ Using the formulaic approach suggested in the audit could have triggered Fair Labor Standards Act issues including the obligation to incur overtime expenses in an effort to accommodate the members of the juries who requested late-evening deliberations.

The Honorable Daryl G. Purpera
Louisiana Legislative Auditor
November 9, 2012
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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 amounts permitted by the Supreme Court. 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 Judiciary and the Attorney General's Office.

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 continue to be questioned, 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 unfairly singles out this Court. In this fashion, the public will understand that the topics raised by the report are not peculiar to Orleans Parish. 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, 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 Legislative Auditor has usurped the authority of the Judiciary by offering his interpretation of a portion of the statutory framework, pushing aside the authority of the Attorney General without explanation, and choosing not to acknowledge constitutional principles approved by the citizens of this State 38 years ago.

We trust you will recognize these controlling legal issues and facts before you issue a skewed report.

Respectfully submitted on behalf of the Court En Banc.

Sincerely,



Robert J. Kazik
Judicial Administrator
Criminal 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.

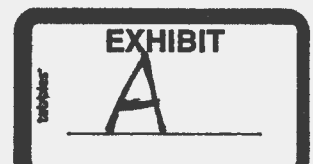
(b) Beginning July 1, 2002, the minimum contribution by the state shall be sixty-five percent of the total premium.

(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.

§308.1. Comprehensive Capital Outlay Budget Acts Interest Earnings Account

A.(1) There is hereby created an account in the state treasury to be known as the **Comprehensive Capital Outlay Budget Acts Interest Earnings Account**, hereafter referred to as the "Account".

(2) As of April 1, 1987, the balance of the account in excess of two million dollars shall be credited to the state general fund.

(3) After July 1, 1983, interest earned from the investment of general fund monies appropriated in any capital outlay act, and from the investment of general obligation bond or note proceeds appropriated in any capital outlay act, and from the investment of monies in the account shall be credited to the state general fund; however, from April 1, 1987, to July 1, 1987, should the balance in the account fall below two million dollars due to allocations for cost over-runs, all interest earned shall be credited to the account until a balance of two million dollars is restored. After July 1, 1987, should the balance in the account fall below five million dollars due to allocations for cost over-runs, all interest earned shall be credited to the account until a balance of five million dollars is restored.

B. If it is determined by the agency, political subdivision, board, or director of the facility planning and control section of the office of the governor that the funds appropriated in any capital outlay budget act are not sufficient to complete the projects contained therein through unavoidable deficiencies in appropriation, including administrative and legal requirements, the commissioner of administration, subject to approval of the Joint Legislative Committee on the Budget, may direct the use of monies in the fund, not to exceed an aggregate of fifteen million dollars in any one fiscal year, for the purpose of completing the projects contained in any capital outlay budget act and such money shall be deemed appropriated in specific amounts necessary for such purpose; provided that such appropriations for administrative purposes shall be processed using existing procedures.

C. All appropriations made pursuant to this Section are made as additions to funds for previously authorized projects, and for accounting purposes shall be included in the account of the previously authorized project.

Added by Acts 1983, No. 307, §1; Acts 1986, 1st Ex. Sess., No. 23, §1, eff. Dec. 24, 1986.

{{(NOTE: SEE ACTS 1986, 1ST EX. SESS., NO. 23, §2.)}}

CHAPTER 16. GROUP INSURANCE

§5151. Power to contract for group insurance; premiums

A. Any municipality or political subdivision of the state may make contracts of insurance with any insurance company legally authorized to do business in this state insuring their employees and officials under policies of group insurance covering hospitalization, and retirement, for such employees and officials, and may agree to match the payments of the employees and officials for the premiums or charges for any such contracts payable out of the funds of such municipality or political subdivision, respectively.

B. Nothing in this Section or in R.S. 42:851 shall be construed to limit the contribution of a local governmental subdivision toward the payment of premiums for accident and health protection for its employees or their dependents, or both.

Acts 1950, No. 77, §1. Amended by Acts 1952, No. 523, §1; Acts 1988, No. 154, §1.

§352. Fees; bond premiums; equipment, supplies, and other expenses; reimbursement of expenses of judges of courts of appeal

A. The clerks of all of the courts of appeal shall charge the following fees:

(1) For filing the record of appeal, one hundred dollars.

(2) For filing an application for writs where the supervisory jurisdiction of the court of appeal is invoked, fifty dollars.

(3) For any process issued or copies made in connection with appeals, the same fees as are allowed the clerk of the district court where the court of appeal is domiciled.

(4) For copies of opinions or parts of the record made by the clerk, fifty cents per page.

(5)(a) In all criminal cases, in all proceedings connected with criminal cases relating to a violation of state law except for bond forfeiture proceedings, and in all appeals taken from sentences imposed for the violation of municipal or parochial ordinances, the entire costs of the clerks of the courts of appeal shall be twenty-five dollars which shall be paid by the parish in which the cases or proceedings shall have originated, and in appeals from sentences imposed for the violation of ordinances, shall be paid by the parish or municipality, as the case may be, which shall have adopted the ordinance.

(b) If the inmate is sentenced to the actual physical control and custody of the Department of Public Safety and Corrections, the department shall withdraw funds from an inmate's drawing or savings account for the reimbursement of fees which have been paid by the parish to a clerk of the court of appeal, upon presentation to the Department of Public Safety and Corrections of a certified copy of the appeal or writ to a court of appeal of a matter in which the inmate is a party, upon the written request or authorization of the inmate, or upon order of a court of competent jurisdiction. All funds so collected shall be forwarded to the parish which has paid the fee to the clerk of the court of appeal. The department shall deduct the amount of the fee from the offender's drawing or savings account. Except as otherwise authorized by law, the department shall prohibit withdrawals from the account until the costs have been paid in full to the parish which has paid the cost of appeal.

(6) For filing an application for rehearing, seventy dollars.

B. Each court of appeal by a rule of court, may increase the fees provided in Paragraphs (4), (5), and (6) of Subsection A of this Section.

C. From the fees collected by each clerk, he shall pay the premiums on the fidelity bonds required under R.S. 13:351. The balance shall be retained and may be expended for the purchase of stationery, books, furniture, equipment, to defray the expense of employment benefits for court employees, including judges, and for other expenses in the operation of the court and the clerk's office, as directed by the court. Additionally, any balance may be expended to reimburse the judges of the courts of appeal for expenses related to their office which are incurred while on official duty, payable out of the self-generated funds provided for in this Section in an amount established annually by the Conference of the Court of Appeal Judges, subject to final approval by the Supreme Court of Louisiana.

Amended by Acts 1954, No. 600, §1; Acts 1960, No. 36, §1; Acts 1982, No. 573, §2, eff. July 22, 1982; Acts 1984, No. 208, §1, eff. June 29, 1984; Acts 1986, No. 104, §1; Acts 1994, 3rd Ex. Sess., No. 98, §1; Acts 1999, No. 699, §1; Acts 2001, No. 750, §1, eff. June 25, 2001; Acts 2003, No. 824, §1.



§124. Fees and charges; collection and disposition

That the filing fees and other charges as now authorized by law and presently paid to the clerk of said court shall be collected by said clerk. Out of said fund arising from said fees and charges the said clerk shall first pay the premiums on his fidelity bond, as herein provided, the balance being retained and may be expended for the purchase of stationery, books, furniture, equipment, and any other expenses necessary in the operation of the court and the clerk's office, including the salary of a stenographer to the clerk, salary to be fixed by the court, as directed by the court. The court, in its discretion, may expend any fee fund balance to defray the expense of employment benefits, including dental insurance.

Amended by Acts 1950, No. 334, §1; Acts 1952, No. 24, §1; Acts 1971, No. 143, §1; Acts 2004, No. 612, §1.



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**

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



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

Supreme Court
STATE OF LOUISIANA
400 ROYAL STREET
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New Orleans
70130-8101

TELEPHONE (504) 310-2550
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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**

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

HMC\MEMOS\ALLJUDGES16



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
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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

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.

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 Criminal Court’s (Court) response seems to suggest that the use of Judicial Expense Funds (JEF) to provide supplemental and 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 Court to the conclusion that district court judges 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. 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 Court’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), the judges improperly used the funds of a political subdivision (JEF) to provide themselves with supplemental and 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 supplemental and additional insurance benefits of the judges referred to in this report would appear to be contrary to law.

Travel and Lodging Expenses

The Court'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.