

DISTRICT ATTORNEY FOR THE
9TH JUDICIAL DISTRICT



INVESTIGATIVE AUDIT
ISSUED MARCH 30, 2016

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LOUISIANA LEGISLATIVE AUDITOR
DARYL G. PURPERA, CPA, CFE

March 30, 2016

THE HONORABLE PHILLIP TERRELL, JR.,
DISTRICT ATTORNEY OF THE
9th JUDICIAL DISTRICT
Alexandria, Louisiana

We have audited certain transactions of the District Attorney of the 9th Judicial District. Our audit was conducted in accordance with Title 24 of the Louisiana Revised Statutes to determine the validity of allegations we received.

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

The accompanying report presents our findings and recommendations as well as management's response. This is a public report. Copies of this report have been delivered to the District Attorney for the 9th Judicial District of Louisiana, the Attorney General of Louisiana, the United States Attorney for the Western District of Louisiana, and others as required by law.

Respectfully submitted,

Daryl G. Purpera, CPA, CFE
Legislative Auditor

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EXECUTIVE SUMMARY

Seized Cash Assets Not Deposited

Records indicate that the District Attorney for the 9th Judicial District (District Attorney) received \$794,166 in seized cash assets from local law enforcement agencies from January 1, 2009 through October 31, 2015, that were not deposited into the District Attorney's bank accounts. The records further indicate that: (a) \$267,640 in funds from sources other than seized assets were deposited improperly into the asset forfeiture bank account; and (b) the District Attorney's Office failed to disburse \$281,015 in asset forfeitures as ordered by the 9th Judicial District Court (Court). Former Bookkeeper Margaurette Beard was primarily responsible for receiving, recording, and depositing seized cash assets and disbursing those funds in accordance with Court judgments. By failing to ensure that all seized cash assets were properly recorded and deposited, allowing funds from sources other than asset forfeitures to be diverted into the asset forfeiture bank account, failing to comply with Court orders, and failing to properly disburse asset forfeiture funds, Ms. Beard may have violated state and federal laws.

BACKGROUND AND METHODOLOGY

Article V, Section 26 of the Louisiana Constitution of 1974 provides that the District Attorney has charge of every state criminal prosecution in his district, is the representative of the state before the grand jury in the district, and is the legal advisor to the grand jury. The District Attorney also performs other duties, as provided by law, and is elected by the qualified electors of the judicial district for a term of six years. The 9th Judicial District encompasses Rapides Parish.

In October 2015, an Assistant District Attorney performed a review of the District Attorney's asset forfeiture bank account after hearing the account balance was less than he expected. Based on seized assets received from local law enforcement agencies, the asset forfeiture bank account balance should have been approximately \$740,000; however, the balance of the account was only \$389,548. This information was brought to the attention of the District Attorney, who placed Ms. Margarett Beard, the bookkeeper responsible for receiving and depositing seized cash assets, on administrative leave on October 26, 2015. Ms. Beard announced her intention to retire from the District Attorney's Office the following day.

The District Attorney notified the Louisiana State Police and the Louisiana Legislative Auditor of the possible misappropriation of seized cash assets. The State Police inspected Ms. Beard's office and found approximately \$77,000 of seized cash assets that had not been deposited. On January 15, 2016, Ms. Beard was arrested and charged with felony theft, first-degree injuring public records, and malfeasance in office. This audit was initiated to determine the amount of seized cash assets the District Attorney's Office received that were not deposited. The procedures performed during this audit included:

- (1) interviewing District Attorney's Office employees;
- (2) interviewing other persons as appropriate;
- (3) examining selected District Attorney's Office documents and records;
- (4) gathering and examining external parties' documents and records; and
- (5) reviewing applicable state and federal laws and regulations.

FINDING AND RECOMMENDATIONS

Seized Cash Assets Not Deposited

Records indicate that the District Attorney for the 9th Judicial District (District Attorney) received \$794,166 in seized cash assets from local law enforcement agencies from January 1, 2009 through October 31, 2015, that were not deposited into the District Attorney’s bank accounts. The records further indicate that: (a) \$267,640 in funds from sources other than seized assets were deposited improperly into the asset forfeiture bank account; and (b) the District Attorney’s Office failed to disburse \$281,015 in asset forfeitures as ordered by the 9th Judicial District Court (Court). Former Bookkeeper Margarett Beard was primarily responsible for receiving, recording, and depositing seized cash assets and disbursing those funds in accordance with Court judgments. By failing to ensure that all seized cash assets were properly recorded and deposited, allowing funds from sources other than asset forfeitures to be diverted into the asset forfeiture bank account, failing to comply with Court orders, and failing to properly disburse asset forfeiture funds, Ms. Beard may have violated state and federal laws.¹

The Seizure and Controlled Dangerous Substances Property Forfeiture Act of 1989 (Property Forfeiture Act), found at Louisiana Revised Statute (La. R.S.) 40:2601, *et seq.*, establishes the process for handling seizures and forfeitures. La. R.S. 40:2616(A) provides that the “proceeds of any sale and any monies forfeited or obtained by judgment or settlement ... shall be deposited in the Special Asset Forfeiture Fund ... until disposed of pursuant to court order.” The Special Asset Forfeiture Fund is part of the Special District Attorney Asset Forfeiture Fund. La. R.S. 40:2616(B) requires that “[a] all monies obtained under the provisions of [the Property Forfeiture Act] shall be deposited” in the Special Asset Forfeiture Fund.

Cash, vehicles, weapons, and other items linked to criminal activity and seized by local law enforcement agencies are types of property subject to forfeiture. Law enforcement officers remit seized assets for forfeiture to the District Attorney’s Office, where the cash and the proceeds from asset sales are deposited into the Special Asset Forfeiture Fund (referred to here as the “asset forfeiture bank account”). Distributions of asset forfeitures typically are made pursuant to Court judgments and paid with checks drawn on the asset forfeiture bank account. After expenses^A are paid, the remaining funds are allocated 60 percent to the law enforcement agency making the seizure, 20 percent to the criminal court fund, and 20 percent to the district attorney’s office.

During the period covered by our audit, Ms. Beard was the District Attorney’s bookkeeper and was responsible for receiving and depositing seized assets, recording receipt of these assets in the asset forfeiture ledger, preparing checks drawn on this account, and performing reconciliations for the asset forfeiture bank account. In October 2015, the Assistant

^A Expenses include clerk of court costs and funds for the Drug Asset Recovery Team (DART) managed by the Louisiana District Attorney’s Association.

District Attorney responsible for asset forfeitures was informed that the balance of the asset forfeiture bank account was only \$389,548. He reviewed asset forfeiture case files and determined that the account balance should have been approximately \$740,000. This information was brought to the attention of the District Attorney, who placed Ms. Beard on administrative leave on October 26, 2015. Ms. Beard announced her intention to retire from the District Attorney's Office the following day.

Seized Cash Assets Not Deposited

We examined records obtained from local law enforcement agencies detailing seized assets remitted to the District Attorney's Office for forfeiture from January 1, 2009 through October 31, 2015, and compared these amounts to the District Attorney's asset forfeiture bank account records. We found that local law enforcement agencies remitted \$2,296,249 in cash asset seizures to the District Attorney's Office; according to the District Attorney's asset forfeiture bank account records, only \$1,502,083 of cash was deposited, leaving a \$794,166 shortage. Records from local law enforcement agencies indicate that the majority of the cash asset seizures they remitted to the District Attorney's Office were received by Ms. Beard. In addition, District Attorney staff informed us that Ms. Beard was responsible for receiving and depositing cash received from local law enforcement agencies into the asset forfeiture bank account.

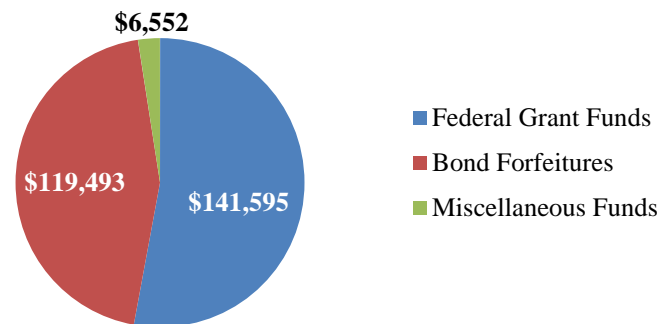
During our audit, we observed that asset forfeiture bank account deposits were not made immediately upon receipt of the funds. In some cases, there were extensive periods when no cash deposits were made into the asset forfeiture bank account. For example, from February 2013 through April 2014, local law enforcement agencies' records indicate that they remitted \$142,949 in cash asset seizures to Ms. Beard; however, there were no corresponding cash deposits in the asset forfeiture bank account during this period. We contacted Ms. Beard's attorney and requested to interview her in regard to these transactions. Ms. Beard's attorney declined our request.

Funds from Other Sources Deposited into the Asset Forfeiture Account

District Attorney bank records reflect that \$267,640 in funds from sources other than asset forfeitures were deposited into the asset forfeiture bank account. This amount included \$141,595 in federal grant funds received through the state of Louisiana, \$119,493 in bond forfeitures, and \$6,552 in miscellaneous funds.^B These amounts should have been deposited to other District Attorney bank accounts (e.g., General Fund or the Bond Forfeiture Fund). The following chart provides the composition of funds received from other sources that were deposited into the asset forfeiture bank account during our audit period.

^B The miscellaneous funds included pre-trial intervention funds, restitution funds, and legal fees received from the Rapides Parish School Board.

Funds from Other Sources Deposited into the Asset Forfeiture Account



During our review, we found that the funds from other sources that were deposited into the asset forfeiture bank account were recorded on the asset forfeiture ledger (ledger) apparently to replace (or substitute for) funds that had been previously received by the District Attorney's Office but not deposited. For example, the ledger shows that the District Attorney's Office received \$79,531 in cash asset seizures on May 30, 2013. A detailed review shows that the cash from those seizures was received by the District Attorney's Office four to 26 months earlier but was not deposited into the District Attorney's asset forfeiture bank account. Four days later, on June 3, 2013, two checks from other sources totaling \$79,531 were deposited into the asset forfeiture bank account.

According to the District Attorney's records, the funds from other sources that were deposited into the asset forfeiture bank account were destined for other District Attorney bank accounts before being diverted. Because the funds from other sources were deposited into the asset forfeiture bank account and used to pay Court judgments, they were not used for their intended purposes. For example, the federal grant funds were intended for child support enforcement activities. Additionally, bond forfeitures should have been distributed to other agencies in accordance with state law.^C As a result, the District Attorney's Office and other local agencies, such as the Rapides Parish Sheriff, the Criminal Court Fund, and the 9th Judicial District Public Defender, were deprived of resources necessary to fund their operations.

Asset Forfeiture Judgments Not Paid

The Court reviews asset seizures and issues judgments specifying the disposition of the seized assets. If the Court finds facts sufficient to show probable cause for forfeiture, the Court orders the property forfeited to the state. In these instances, La. R.S. 40:2616(C) requires, after payment of expenses, that the remaining funds be allocated as follows:

- 60 percent to the seizing law enforcement agency or agencies,
- 20 percent to the criminal court fund, and

^C La. R.S. 15:571.11(L)(1) specifies that bond forfeitures are to be distributed as follows: 30% to the District Attorney, 25% to the Criminal Court Fund, 25% to the Sheriff, and 20% to the Indigent Defenders Program.

- 20 percent to the district attorney's office.

If the Court does not find probable cause for the seizure, the Court will order the seized funds to be returned to the defendant.

We requested that the Clerk of Court for the 9th Judicial District Court provide the judgments for all asset seizures issued from January 1, 2009 to March 30, 2015. During this period, Court judgments were sent to Ms. Beard, who was responsible for making payments required by these judgments. We compared these judgments to the amounts disbursed from the District Attorney's asset forfeiture bank account. Based on this review, we determined that the District Attorney should have paid out \$521,783 to comply with these judgments; however, bank records for the asset forfeiture bank account show payments of only \$240,768. The difference of \$281,015 (\$521,783 - \$240,768) represents amounts owed, but not paid. The table below provides the outstanding amounts owed based on the judgments issued by the Court.

Unpaid Asset Forfeiture Judgements by Intended Recipient (January 2009 - March 2015)						
Alexandria Police Department	Rapides Parish Sheriff	District Attorney	Criminal Court Fund	Clerk of Court	Other	Total
\$86,781	\$70,426	\$54,024	\$54,024	\$7,997	\$7,763	\$281,015

According to the Assistant District Attorney responsible for asset forfeitures, payments of Court judgments should have been made upon receipt of the judgment. During our review, we observed that many judgments remained unpaid for years. Further, of the judgments actually paid by the District Attorney's Office, some judgments were not paid until three years after the judgment was rendered. Because judgments were not paid timely, local law enforcement agencies, the Criminal Court Fund, and the District Attorney were deprived of much-needed resources to fund their operations.

Conclusion

Records indicate that the District Attorney received \$794,166 in seized cash assets from January 1, 2009 through October 31, 2015, that were not deposited into the District Attorney's bank accounts. The records further indicate that: (a) \$267,640 in funds from sources other than asset forfeitures were deposited improperly into the asset forfeiture bank account; and (b) the District Attorney's Office failed to disburse \$281,015 in asset forfeitures as ordered by the 9th Judicial District Court (Court). Former Bookkeeper Margaurette Beard was primarily responsible for receiving, recording, and depositing seized cash assets and disbursing those funds in accordance with Court judgments. By failing to ensure that all seized cash assets were properly recorded and deposited, allowing funds from sources other than asset forfeitures to be diverted into the asset forfeiture bank account, failing to comply with Court orders, and failing to properly disburse asset forfeiture funds, Ms. Beard may have violated state and federal laws.¹

Recommendations

We recommend the District Attorney consult with legal counsel to determine the appropriate legal actions to be taken, including recovery of the missing funds and/or restitution. In addition, the District Attorney's Office should develop and implement policies and procedures to ensure that all seized cash assets received from local law enforcement agencies are accounted for, deposited, and distributed in accordance with state law and Court judgments. District Attorney management should:

- (1) require that all funds collected be adequately documented, accurately recorded, and deposited daily in accordance with state law;
- (2) issue and maintain receipts for all cash collections;
- (3) ensure that employees are properly trained on cash handling policies and procedures;
- (4) review and compare the daily total deposits to the total receipts on a regular basis and immediately investigate any differences;
- (5) segregate the duties of collecting cash from making deposits, recording deposits in the general ledger, and performing bank reconciliations;
- (6) maintain a ledger documenting all Court-ordered asset forfeiture judgments and the corresponding disbursements;
- (7) ensure that disbursements from the asset forfeiture bank account are properly approved and made timely and in accordance with Court judgments; and
- (8) maintain appropriate documentation to support all payments made from the asset forfeiture bank account.

LEGAL PROVISIONS

¹ **Louisiana Revised Statute (La. R.S.) 14:67(A)** states, “Theft is the misappropriation or taking of anything of value which belongs to another, either without the consent of the other to the misappropriation or taking, or by means of fraudulent conduct, practices, or representations. An intent to deprive the other permanently of whatever may be the subject of the misappropriation or taking is essential.”

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

La. R.S. 14:134(A) states, “Malfeasance in office is committed when any public officer or public employee shall: (1) Intentionally refuse or fail to perform any duty lawfully required of him, as such officer or employee; or (2) Intentionally perform any such duty in an unlawful manner; or (3) Knowingly permit any other public officer or public employee, under his authority, to intentionally refuse or fail to perform any duty lawfully required of him, or to perform any such duty in an unlawful manner.”

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

18 U.S.C. § 666(A) provides, in part, that “theft concerning programs receiving federal funds occurs when an agent of an organization, state, local, or Indian tribal government or any agency thereof embezzles, steals, obtains by fraud, or otherwise intentionally misapplies property that is valued at \$5,000 or more and is owned by or under control of such organization, state, or agency when the organization, state, or agency receives in any one year period, benefits in excess of \$10,000 under a federal program involving a grant contract, or other form of federal assistance.”

APPENDIX A

Management's Response



PHILLIP TERRELL

District Attorney

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March 8, 2016

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

Dear Mr. Purpera:

Enclosed please find my written response to the investigative audit report provided by your agency to be included in the final official report.

It was a pleasure working with your staff. All tasks were performed in a professional and discreet manner, in cooperation with my staff and daily business functions.

Sincerely,

Phillip Terrell
District Attorney

District Attorney Audit Response

This agency is committed to performing all legally designated functions in a lawful, professional, and efficient manner. The beginning of my term was used in becoming educated in the daily processes, and identifying potential areas of improvement.

The financial functioning of the department was identified as an area of improvement immediately. The indiscretions disclosed in this investigative report surfaced during our own internal review of the financial areas of this agency and during the transition of accounting software and processes. It was determined that it was necessary to hire additional finance personnel and a Finance Director was hired to perform the accounting functions and implement proper internal controls. We also hired a Director of Financial Programs to manage all the financial legal processes and personnel involved. These legal processes include worthless checks, asset forfeitures, bond forfeitures, restitution, and pre-trial intervention.

All of the recommendations outlined on page 5, paragraphs 1-8, have been implemented. Additionally, no cash is accepted from local law enforcement agencies for asset forfeitures. Only cashier's checks are accepted to create a paper trail for funds held on behalf of others. Also, all employees who handle cash are now bonded, and their work areas are under recorded surveillance. Finally, policies and procedures are being written as processes are reviewed and improved.

This agency will continue to move forward, evaluating and improving processes, while serving the citizens by the highest standards. We appreciate all of the assistance provided to us by the Legislative Auditors Office and the Louisiana State Police in performance of this investigation.