

DISTRICT ATTORNEY FOR THE 42ND JUDICIAL DISTRICT
TRAFFIC DIVERSION PROGRAM



INVESTIGATIVE AUDIT
ISSUED JULY 12, 2018

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LOUISIANA LEGISLATIVE AUDITOR
DARYL G. PURPERA, CPA, CFE

July 12, 2018

THE HONORABLE GARY EVANS
DISTRICT ATTORNEY FOR THE
42ND JUDICIAL DISTRICT
Mansfield, Louisiana

We have audited certain transactions of the District Attorney of the 42nd Judicial District. Our audit was conducted in accordance with Title 24 of the Louisiana Revised Statutes to determine the validity of complaints we received.

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

The accompanying report presents our findings and recommendations as well as management's and other's responses. This is a public report. Copies of this report have been delivered to the Louisiana Attorney General and others as required by law.

Respectfully submitted,

Daryl G. Purpera, CPA, CFE
Legislative Auditor

DGP/aa

42NDJDC DA TRAFFIC DIVERSION

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EXECUTIVE SUMMARY

DA's Traffic Diversion Program Has Significantly Reduced Funds Flowing to Criminal Justice System

Local Agency Compensated Enforcement (LACE) details have been operating in DeSoto Parish for many years and predate the creation of the 42nd Judicial District. Until March 2017, the DeSoto Parish Sheriff collected fine and court costs generated from LACE details and distributed them to the Criminal Court Fund, the DeSoto Parish Sheriff's Office (DPSO), the District Attorney for the 42nd Judicial District (DA), and 11 other agencies/organizations as prescribed by state law. The Criminal Court Fund reimbursed the agency performing LACE details for payroll and related costs. In March 2017, the DA began paying for LACE details directly and offering pretrial diversion (PTD) to drivers receiving traffic citations during those details. Between March 23, 2017 and March 31, 2018, 3,629 drivers entered the DA's PTD program. The DA's PTD account recorded deposits of \$811,766 during this time and made payouts of \$470,949 for PTD-related expenses, leaving the DA with a balance of \$340,817. If the 3,629 drivers were not offered PTD for their traffic citations, the fines and court costs due would have resulted in revenue of \$1.07 million that would have been distributed to the Criminal Court Fund, DPSO, the DA, and the 11 other agencies/organizations.

DA's Cooperative Endeavor Agreement with Public Defender Appears to be Improper

On March 19, 2018, DA Gary Evans and the Public Defender for the 42nd Judicial District, Steven R. Thomas, entered into a cooperative endeavor agreement in which Mr. Evans obligated the DA's Office to pay the Public Defender's Office \$45 for each diverted traffic citation. This arrangement may violate the state constitution and state law.

Inaccurate And Incomplete Financial Records

The DA's records for the PTD program show the DA's Office deposited more money into its PTD bank account than its PTD or other accounting records show was received. In addition, we found deficiencies in record keeping, receipts, refunds issued, and custody of payments received.

BACKGROUND AND METHODOLOGY

Article V, Section 26 of the Louisiana Constitution 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 statutory duties and is elected by the qualified electors of the judicial district for a term of six years. The 42nd Judicial District is a single-parish judicial district comprised of DeSoto Parish.

Pretrial Diversion – In General

Pursuant to their constitutional authority,¹ most, if not all, Louisiana district attorneys operate some form of pretrial diversion program (also known as a pretrial intervention program).^A Although there is no standardized definition of pretrial diversion (PTD), in general terms, it is an alternative to prosecution which seeks to divert certain offenders from the traditional criminal justice process into a program of supervision and services overseen by a district attorney. PTD typically occurs before an offender is charged and may be used to divert any offense within the district attorney's jurisdiction.

With regard to traffic offenses, PTD allows a driver to keep an alleged violation off his or her driving record by participating in programs geared to deter future traffic offenses. For example, a district attorney may require participants to take and successfully complete an online driving course or other safety program before dismissing the traffic citation. If a person chooses to enroll in a pretrial diversion program, state law² authorizes the district attorney to collect a "reasonable fee" from program recipients.

Attorney General (A.G.) Opinion No. 93-481^B addressed a district attorney's ability to charge a fee to participants in a pretrial intervention program. The A.G. concluded that:

^A Louisiana does not have a statutorily-created general pretrial diversion (PTD) program. However, multiple state laws apply to general PTDs, including Louisiana Revised Statute (La. R.S.) 16:17(E) (allows district attorneys to "assess and collect a reasonable fee from participants in pretrial diversion or pretrial intervention programs to support and maintain victims assistance and/or diversionary programs"); and La. R.S. 15:242, which relates to pretrial diversion for driving while intoxicated. In addition, Louisiana law expressly authorizes district attorneys to create special pretrial diversion programs. See, for example, La. R.S. 15:243, which allows district attorneys to create and administer diversion programs for defendants charged with sexual activity offenses involving non-minors.

^B The A.G. released *Opinion No. 93-481* on August 31, 1993. During the 1995 Regular Session, the Louisiana Legislature passed Act No. 1170, which enacted La. R.S. 16:17. La. R.S. 16:17(E) authorizes the district attorney to "assess and collect a reasonable fee from participants in pretrial diversion or pretrial intervention programs to support and maintain victims assistance and/or diversionary programs." As a result, it appears that PTD funds may be used to support and maintain victims assistance and/or diversionary programs, but may not be used for purposes that fall outside of La. R.S. 16:17(E).

“... [I]t is permissible for a district attorney’s office to charge a fee to participants in a pretrial intervention program. However, the fee charged should be for expenses incurred for participation in the program and for administrative costs. Any additional fees charged would be payments for the dismissal of prosecutions. This would be a violation of La. R.S. 42:1116³...”

Traffic Diversion – DeSoto Parish

The District Attorney for the 42nd Judicial District (DA) defines PTD^{C,D} for traffic diversion purposes as “a formal program, used at the discretion of the District Attorney, as an alternative to formal processing of a traffic citation adjudication.”^E

Gary Evans was elected District Attorney for the 42nd Judicial District on November 4, 2014, and took office on January 12, 2015. Mr. Evans told us that he started using PTD for Local Agency Compensated Enforcement (LACE)^F traffic citations in March 2017. The PTD program provides that the “pretrial diversion option will be presented only after an initial determination has been made by the prosecuting authority that the defendant will be released to pretrial diversion. The District Attorney or his designated traffic diversion specialist shall review all diversion cases in DeSoto Parish.”^G

The DA’s Office sent letters^H to 91%^I of LACE traffic citation recipients for the 12-month period beginning March 1, 2017 and ending February 28, 2018. The letter offers the person receiving the LACE traffic citation “the opportunity to enter a Traffic Diversion Program on a voluntary basis to avoid any further court appearances. The program allows participants to have their citation considered for dismissal by the court date, upon compliance with the following requirements:

^C According to DA Office employees, PTD was covered by Pretrial Diversion Standards and Policies for the Office of the 42nd Judicial District Attorney through October 31, 2017; traffic citation PTD falls under the DA’s Traffic Diversion Standards and Policies for the Office of the 42nd Judicial District Attorney, effective November 1, 2017. The definition for PTD used in this report comes from the Traffic Diversion Standards and Policies.

^D As used in this report, “PTD” refers to the DA’s pretrial Traffic Diversion Program used in conjunction with LACE traffic citations.

^E Traffic Diversion Standards and Policies for the Office of the 42nd Judicial District Attorney, at paragraph 1. This definition is consistent with the definition set forth in the Louisiana District Attorneys Association’s Pretrial Diversion Standards, dated October 30, 2017.

^F LACE is explained in greater detail on pages 7-8 of this report.

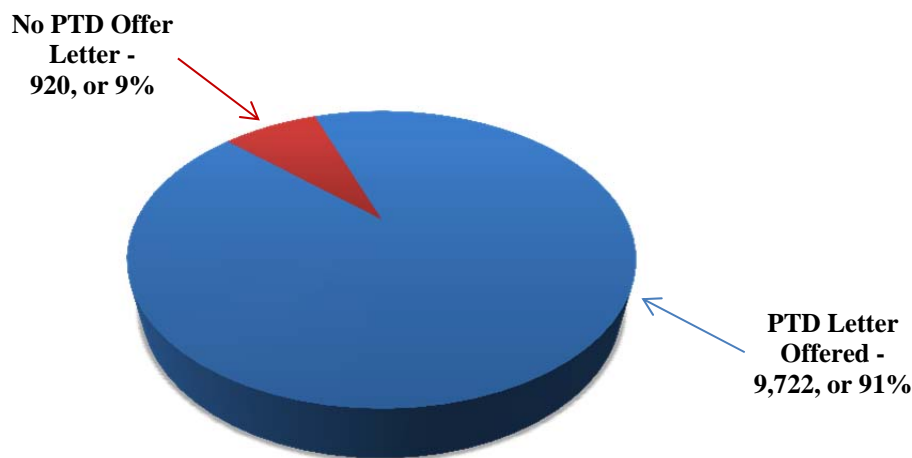
^G Traffic Diversion Standards and Policies for the Office of the 42nd Judicial District Attorney, at paragraph 2.2.

^H See Exhibit 1 for the letter (“Traffic Diversion Program Enrollment and Participation Agreement”) and the two attachments that accompany the letter, “Voluntary Request and Acknowledgment Form,” and the one-page “Safety Information” the DA sends to LACE citation recipients offered PTD for speeding.

^I When we began the audit, the DA estimated that he was diverting only 26% of LACE traffic citations. During our audit, we observed that the DA sent PTD offer letters to 91% of LACE traffic citation recipients, suggesting that the DA is actively seeking to divert the vast majority of LACE traffic citations away from DeSoto Parish’s criminal justice system. That is, the DA’s Office mailed 9,722 letters offering PTD to 10,642 LACE traffic citation recipients issued between March 1, 2017 and February 28, 2018 (91% of all LACE traffic citations issued).

- “1. Carefully read the driver safety information brochure attached, determine the proper amount of costs as listed in the table below and if paying by mail, return a signed copy of the Voluntary Request and Acknowledgment form.”^{J,K}*

**PTD Offers for Citations Issued
March 1, 2017 to February 28, 2018**



The DA’s PTD program typically costs \$200^L to enter, which is less than the fine and court costs for a traffic citation that is not diverted. For example, a traffic citation issued to a driver traveling 10 miles per hour in excess of the posted speed limit that is not diverted results in a fine and court costs of \$267.50; the same citation costs the driver \$200 if diverted. A traffic citation issued to a driver traveling 20 miles per hour in excess of the posted speed limit that is not diverted results in a fine and court costs of \$292.50; the same citation costs the driver \$200 if diverted.

^J “Traffic Diversion Program Enrollment and Participation Agreement,” first paragraph.

^K The Voluntary Request and Acknowledgment form requires the driver seeking to participate in PTD to make three agreements: He/she has read the “Safety Information;” understands that participation in PTD is voluntary; and understands that charges may be reinstituted if he/she commits any further criminal violations within 90 days of the original violation. During our audit, we observed records of multiple drivers who received more than one LACE traffic citation within the 90-day period. All of the records we reviewed indicated that the drivers were allowed to participate in pretrial diversion each time and that none of the drivers’ charges were reinstituted.

^L According to the DA’s “Traffic Diversion Program Enrollment and Participation Agreement,” all listed offenses (with the exception of \$50 for a seat belt violation, which appears to have been used only once) require a \$200 payment of “costs” (i.e., not a “fee”) to enter PTD. A 2017 version of this Agreement charged a \$170 “fee” for persons driving 10-15 miles per hour over the limit; a \$220 fee for persons driving 16-20 miles per hour over the limit; and \$275 for persons driving 21+ miles per hour over the limit. DA employees told us that they no longer automatically send a letter to offenders driving 21+ miles per hour over the limit. During our review of LACE records, we found 254 persons driving 21+ miles per hour over the limit entered PTD, including four persons who were driving 31+ miles per hour over the limit. La. R.S. 32:57(E)(2) and (4) anticipates that persons cited for driving 15 miles per hour above the speed limit and/or driving under suspension will be required to appear in court.

Bank records show the first deposit to the PTD bank account was on March 23, 2017. The DA's case management software (CRIMES) database shows that 3,629 drivers entered the PTD program between March 23, 2017 and March 31, 2018, resulting in total deposits of \$811,766.23 during the 12-month, one-week period.

The DeSoto Parish Sheriff's Office (DPSO) and Louisiana State Police Troop G (Troop G) issued LACE traffic citations for many years before DPSO stopped working LACE details in June 2017. During this time, DPSO's contact information was found in the Court Appearance section of all LACE traffic citations. (DPSO is the ex-officio collector for the district court.) Beginning January 1, 2018, all LACE citations are issued by the City of Mansfield Police Department (Mansfield PD) and Troop G and contain only the DA's contact information. By changing the payment address and contact information, drivers who received LACE traffic citations are directed to contact the DA's Office to determine the cost of the traffic citation. Mr. Evans told us he changed the address on these citations in order to direct drivers with LACE citations to his office.

LACE Traffic Citations when Troop G and DPSO Were Issuing Them

LOUISIANA UNIFORM TRAFFIC TICKET & COMPLAINT
STATE OF LOUISIANA COMPLAINT - AFFIDAVIT
PARISH OF DESOTO NO. G11000000A
42ND JUD. DIST. Court

The undersigned being duly sworn upon his oath deposes and says:
On the 13 day of December, 2017, at 20:58 Hrs.
Name [REDACTED]
City [REDACTED] State [REDACTED] Zip [REDACTED]
DOB [REDACTED] Age [REDACTED] Sex [REDACTED] Eyes [REDACTED]
Hair [REDACTED]
[] Carrying [] Carrying [] CDL [] Ins. [] Priv. [] Hs. [] Fatal
[] School Zone [] Construction Zone
Vehicle Operated Year [REDACTED] Make [REDACTED] Model [REDACTED]
Veh. Lic. [REDACTED] State [REDACTED] Year [REDACTED]
Veh. [REDACTED]
Location [REDACTED] M P H. in a 75 Zone Method RADAR Radar # 3001

1. Title / Section 30-61 Description - SPEEDING
2.
3.

The undersigned authority further states that he has full and reasonable grounds to believe and know before that the above complained (the offender) herein did both contrary to law of the State of Louisiana in violation of title and provided and against the peace and dignity of the same.

DATE AND SIGNATURE [REDACTED] day of [REDACTED] DATA # [REDACTED]

COURT APPEARANCE
[] Juv. [X] Signed Personal [] Booked [] Other [] No Court Date Issued
Contact Agency Below
Court Date / Time 2/7/2018 9:00 AM
Physical Address 205 FRANKLIN ST MANSE ELD LA 71052
Phone (318) 872-3956 Online Phone (855) 873-9715
Pay online at WWW.DPSOTIX.COM
I understand the terms and conditions of the summons and promise to appear at the time and place shown above. Failure to appear will be cause for the suspension of my driving privileges and the imposition of additional fines and/or fees by the Louisiana Department of Public Safety and Corrections.

NOTARY OR EX OFFICIO NOTARY
[] Notary [X] Ex Officio Notary
Court Date / Time 2/7/2018 9:00 AM
Physical Address 205 FRANKLIN ST MANSE ELD LA 71052
Phone (318) 872-3956 Online Phone (855) 873-9715
Pay online at WWW.DPSOTIX.COM
I understand the terms and conditions of the summons and promise to appear at the time and place shown above. Failure to appear will be cause for the suspension of my driving privileges and the imposition of additional fines and/or fees by the Louisiana Department of Public Safety and Corrections.
In addition to complying with the above listed court information, if you have been cited for a violation related to Vehicle License, Operator's License, or MVI, within (5) days, report to the Office of Motor Vehicles to secure a proper license or a Motor Vehicles Inspection station to secure a proper MVI station.

Defendant's Signature [REDACTED] SIGNATURE IS NOT AN ADMISSION OF GUILT
G11000000A

LACE Traffic Citations Issued by Troop G and Mansfield Police Department after January 1, 2018^M

The image shows two forms. The left form is a "LOUISIANA UNIFORM TRAFFIC TICKET & COMPLAINT" from the State of Louisiana, Parish of DeSoto. It contains fields for the defendant's name, address, date of birth, and vehicle information. The citation is for "NO SEAT BELT" (Section 304.1). The right form is the "DeSoto Parish District Attorney's Office Address" form, which includes contact information for the district attorney's office and a section for the defendant's signature and acknowledgment of the citation. A red arrow points from the address form to the citation form.

Local Agency Compensated Enforcement – In General

District attorneys frequently enter into agreements with local and/or state law enforcement agencies to perform LACE details to enhance public safety and generate revenue. Off-duty law enforcement officers work LACE details and typically receive overtime pay at the rate of time and a half in exchange for generating revenue by writing citations; in addition, law enforcement agencies often receive mileage payments or hourly rates to compensate them for operating costs and wear and tear on public vehicles, equipment, etc.

According to *A.G. Opinion No. 87-244*, district attorneys may pay for LACE details using the 12% discretionary fund disbursed to them from criminal court funds in accordance with La. R.S. 15:571.11(A)(1)(b). *A.G. Opinion No. 87-244-A* provides that the criminal court fund also may pay for LACE details.

^M Louisiana State Police suspended LACE details from November 8, 2017 until Troop G reinstated DeSoto LACE patrols on February 8, 2018. As of January 1, 2018, Mansfield PD began issuing LACE citations with the DA's contact information listed. For Troop G, all LACE citations subsequent to the suspension of LACE have the DA's contact information listed instead of DPSO.

Local Agency Compensated Enforcement – DeSoto Parish

LACE details have been operating in DeSoto Parish for many years and predate the creation of the 42nd Judicial District.^N Until March 2017, the Criminal Court Fund paid for all DeSoto Parish LACE details and the revenue from LACE traffic citations helped fund DeSoto Parish's criminal justice system. To illustrate, a LACE traffic citation issued to a driver traveling 10 miles per hour in excess of the posted speed limit resulted in a fine and costs of \$267.50 (\$100.00 fine and \$167.50 court costs). The fine and court costs were collected by DPSO and distributed as follows:

10 Miles Per Hour Traffic Citation Example		
Distribution of Traffic Citation Fine		
Agency	Statutory Authorization	Amount
Criminal Court Fund – 76%	La. R.S. 15:571.11(A)(1)(a)	\$76.00
DeSoto District Attorney – 12%	La. R.S. 15:571.11(A)(1)(b)	12.00
DeSoto Parish Sheriff's Office – 12%	La. R.S. 15:571.11(A)(1)(b)	12.00
Total Fines		\$100.00
Distribution of Traffic Citation Court Costs		
Agency	Statutory Authorization	Amount
Crime Stoppers	La. C.Cr.P. Article 895.4	\$2.00
DeSoto Parish Clerk of Court	La. R.S. 13:846-13:847	12.50
DeSoto Parish District Attorney	La. R.S. 16:16-16:16.1	20.00
DeSoto Parish Police Jury	La. R.S. 15:255	10.00
DeSoto Parish Police Jury – Juror Fund	La. R.S. 13:3049	10.00
DeSoto Parish Sheriff's Office	La. R.S. 13:5535	10.00
Indigent Defender Fund ^O	La. R.S. 15:168	45.00
Judicial Expense Fund	La. R.S. 13:996.65	10.00
Louisiana Commission on Law Enforcement – Training	La. R.S. 46:1816(E)	2.00
Louisiana Supreme Court	La. R.S. 13:841(A)(4)(a)	0.50
Northwest Louisiana Crime Lab	La. R.S. 40:2264; 40:2266.1; and 40:2266.1(B)(1)(b)	30.00
Traumatic Head and Spinal Cord Injury Trust Fund	La. R.S. 46:2633	5.00
Trial Court Management Information System	La. Code of Criminal Procedure (C.Cr.P.) Article 887(F)	3.00
Ware Youth Center	La. R.S. 15:1097.6	7.50
Total Court Costs		\$167.50
Total Fine and Court Costs		\$267.50

^N Act 416 of the 2007 Regular Session of the Louisiana Legislature created the 42nd Judicial District out of the 11th Judicial District after ratification by the voters of DeSoto and Sabine parishes. Prior to January 1, 2009, the 11th Judicial District was comprised of DeSoto and Sabine parishes. As of January 1, 2009, the 11th Judicial District is comprised of Sabine Parish, and the 42nd Judicial District Court is comprised of DeSoto Parish.

^O The Indigent Defender Fund was created by La. R.S. 15:168(A) and is administered by the district Public Defender.

The DA began offering PTD to drivers receiving LACE traffic citations in March 2017. In accordance with the DA's current Traffic Diversion Program Enrollment and Participation Agreement, offenders entering PTD typically pay the DA \$200 to enroll in the program. The enrollment cost is less than or equal to the fines and court costs assessed for traffic citations that are not diverted. In addition, diverted traffic citations do not become part of the offender's official driving record. Revenue generated through the DA's PTD is collected and retained by the DA.

We initiated this audit after receiving complaints that the DA's extensive use of pretrial diversion for LACE traffic citations since March 2017 was having an adverse effect on DeSoto Parish's criminal justice system. Prior to March 2017, LACE traffic citations typically were not diverted.

The procedures performed during the audit included:

- (1) interviewing DA Office employees and other persons, as appropriate;
- (2) examining selected DA Office documents and records;
- (3) gathering and examining external documents and records; and
- (4) reviewing applicable state laws and regulations.

FINDINGS AND RECOMMENDATIONS

DA's Traffic Diversion Program Has Significantly Reduced Funds Flowing to Criminal Justice System

Local Agency Compensated Enforcement (LACE) details have been operating in DeSoto Parish for many years and predate the creation of the 42nd Judicial District.^N Until March 2017, the DeSoto Parish Sheriff collected fine and court costs generated from LACE details and distributed them to the Criminal Court Fund, the DeSoto Parish Sheriff's Office (DPSO), the District Attorney of the 42nd Judicial District (DA), and 11 other agencies/organizations as prescribed by state law.^P The Criminal Court Fund reimbursed the agency performing LACE details for payroll and related costs. In March 2017, the DA began paying for LACE details directly and offering pretrial diversion (PTD) to drivers receiving traffic citations during those details. Between March 23, 2017 and March 31, 2018, 3,629 drivers entered the DA's PTD program. The DA's PTD account recorded deposits of \$811,766 during this time and made payouts of \$470,949 for PTD-related expenses, leaving the DA with a balance of \$340,817.^Q If the 3,629 drivers were not offered PTD for their traffic citations, the fines and court costs due would have resulted in revenue of \$1.07 million that would have been distributed to the Criminal Court Fund, DPSO, the DA, and the 11 other agencies/organizations.

DA Gary Evans told us DPSO^R and Louisiana State Police Troop G (Troop G) were performing LACE details when he became DA in January 2015. At that time, the DA's Office had a written agreement with Troop G, but it was in the name of the previous district attorney. The DA then executed a new written agreement with Troop G to perform LACE details in DeSoto Parish. The DA's Office never had a written agreement with DPSO.

Until March 2017,^S substantially all fines and court costs resulting from LACE traffic citations were collected by DPSO and disbursed to the Criminal Court Fund, the DA, DPSO, and 11 other agencies/organizations as prescribed by state law.^P The Criminal Court Fund reimbursed DPSO and LSP for the costs of the LACE detail upon the DA's motion and court approval.

According to records we reviewed, the Criminal Court Fund paid DPSO \$55^T for each hour a deputy worked a LACE detail. The DA filed motions for court approval to pay DPSO

^P See Table of Distribution of Traffic Citation Fine and Court Costs on page 8 for a breakdown and statutory authority of fines and court costs.

^Q The actual account balance is \$375,871, because when Mr. Evans took office the account had a balance of \$35,054.

^R DPSO's deputies previously worked LACE details. Then-Sheriff Rodney Arbuckle discontinued participation in the LACE program on June 2, 2017, over a dispute between DPSO and the DA regarding payment for services provided by DPSO deputies.

^S In March 2017, the DA began a PTD program for traffic citations. If a driver elected to participate in PTD, the cost of participation was paid to the DA's Office.

^T Calculated as \$45 per hour for each deputy's time, plus \$10 per hour for use of DPSO patrol units.

invoices for LACE details performed by DPSO deputies from the Criminal Court Fund, even though there was no written agreement with DPSO.

Pursuant to its written agreement, LSP received: (1) time and a half for each hour worked on LACE details; (2) Medicare reimbursement of 1.45% on all salaries paid in conjunction with the agreement; and (3) Fifty-two cents (\$0.52) per mile driven on details. LSP submitted monthly invoices to the DA for LACE details worked by LSP troopers; the DA filed motions for and the court approved payments to LSP from the Criminal Court Fund.

Although we found a small percentage of traffic citations were issued during regular working hours, the vast majority were written during overtime LACE details. For example, in March 2017, the month the DA began his Traffic Diversion Program, DPSO deputies issued 994 traffic citations; 26 (2.6%) of them were written during regular working hours and 968 (97.4%) were written during overtime LACE details. During the same month, Troop G issued 994 traffic citations in DeSoto Parish, 182 (18%) of which were written during regular working hours and 812 (82%) were written during overtime LACE details.

The Criminal Court Fund paid DPSO and LSP's invoices for LACE details through March 2017. The DA told us that he relied on DPSO to manage the LACE patrols when he first took office in 2015; however, two years into his term, he learned other DAs were managing the LACE patrols themselves and using pretrial diversion (PTD) funds to pay for them. This prompted Mr. Evans to create a PTD program for LACE traffic citations in March 2017 and discontinue participation in the LACE program funded by the Criminal Court Fund. He began sending letters to substantially all LACE traffic citation recipients, offering PTD in exchange for payment of program entry costs (currently \$200). From then on, Troop G was paid from the DA's PTD fund. Mr. Evans also told us his PTD program has resulted in an increase in the Criminal Court Fund since the PTD account is reimbursing wages for Troop G and the Mansfield Police Department (Mansfield PD) instead of the Criminal Court Fund. We reviewed the Criminal Court Fund records and found there were reduced deposits and disbursements. In addition, the Police Jury's assistant treasurer told us that the Police Jury is paying the DA's Office expenses using its general fund instead of the Criminal Court Fund.

However, DPSO's invoices for LACE details billed from March through June 2017 – totaling \$107,140 – remain unpaid. A dispute arose between the DA and DPSO as to whether the Criminal Court Fund or the DA should pay DPSO the amount invoiced. The Sheriff told us that he has paid deputies for LACE details and is entitled to reimbursement. The DA said that all the services were not performed as invoiced and he does not owe reimbursement. As a result of nonpayment, DPSO stopped working LACE details on June 2, 2017.

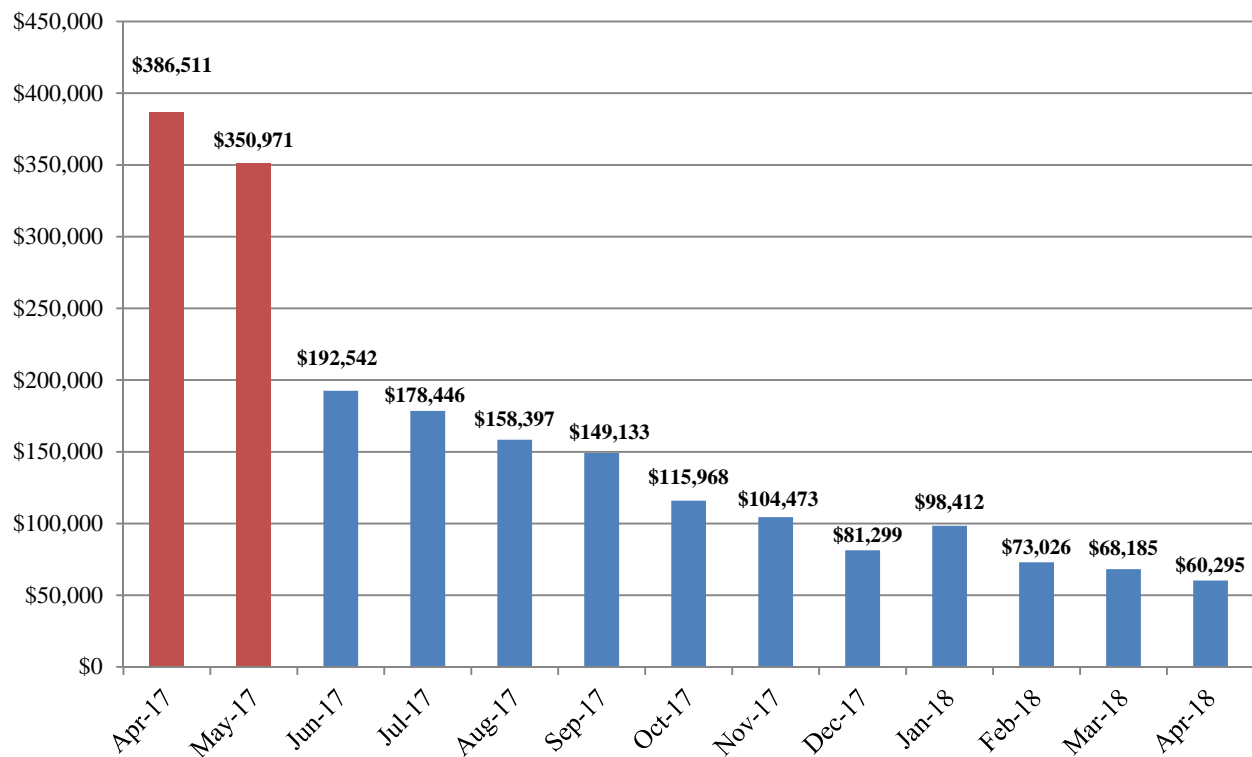
On June 30, 2017, the DA contracted with the City of Mansfield to provide LACE patrols using its off-duty police officers. The Mansfield PD began working LACE details on January 1, 2018, and is paid from the DA's PTD funds.

The letter ("Traffic Diversion Program Enrollment and Participation Agreement") and two attachments that accompany the letter – "Voluntary Request and Acknowledgment Form" and the one-page "Safety Information" the DA sends to drivers cited for speeding – may be

found as Exhibit A of this report. The current version of the “Voluntary Request and Acknowledgment Form” requires the driver seeking to participate in PTD to pay the DA a cost of enrollment (typically \$200) and make three agreements: (1) he/she has read the “Safety Information;” (2) understands that participation in PTD is voluntary; and (3) understands that charges may be reinstituted if he/she commits any further criminal violations within 90 days of the original violation. During our audit, we observed records of multiple drivers who received more than one LACE traffic citation within the 90-day period. All of the records we reviewed indicated that the drivers were allowed to participate in pretrial diversion each time and that none of the drivers’ charges were reinstituted.

The DA’s Traffic Diversion Program has significantly reduced funds flowing through DeSoto Parish’s criminal justice system,^U as displayed in the chart below. We attempted to determine the number and percentage of LACE citations that were run through the PTD program; however, the DA’s records were incomplete (discussed on page 14 of this report).

**Traffic Citation Revenue Flowing through
DeSoto Parish's Criminal Justice System**



DPSO was still writing LACE traffic citations until June 2, 2017.

^U The disbursements include payments to the Criminal Court Fund, DA, DPSO, and 11 other agencies as illustrated on page 8 of the Background.

The traffic diversion bank account shows deposits of \$811,766 between March 23, 2017 and March 31, 2018. During this period, administrative costs to run the program and LACE detail reimbursements to LSP and Mansfield PD totaled \$470,949, leaving a balance of \$340,817.^Q It appears the amounts charged and collected by the DA for traffic diversion may be excessive and unreasonable. The DA told us that he is waiting for the completion of this audit and some court matters before spending any additional funds. However, the DA has entered into a cooperative endeavor agreement (CEA) with the Public Defender (discussed in the next finding). Also, the DA's PTD policy mentions funding "other community programs."

DA's Cooperative Endeavor Agreement with Public Defender Appears to be Improper

On March 19, 2018, Mr. Evans and the Public Defender for the 42nd Judicial District, Steven R. Thomas, entered into a CEA in which Mr. Evans obligated the DA's Office to pay the Public Defender's Office \$45 for each diverted traffic citation. This arrangement^V may violate the state constitution and state law.^{1,4,5,6}

State law⁷ provides that the district indigent defender fund^O is to receive \$45 for each case "in which a defendant is convicted after a trial, a plea of guilty or nolo contendere, or after forfeiting bond and shall be in addition to all other fines, costs, or forfeitures imposed." Before the DA began diverting LACE traffic citations, DPSO remitted \$45 on each paid traffic citation to the district Public Defender in accordance with state law.^W However, no one is convicted and bond is forfeited when a case is diverted. During the first 12 months and one week of the DA's Traffic Diversion Program, the DA's records show that he diverted 3,655 traffic citations. If the 3,655 traffic citations were collected by the DPSO and distributed according to state law,^W the Public Defender would have received \$164,475.^X Since the traffic citations were collected by the DA's Office through the PTD program, the Public Defender received nothing.

The DA apparently seeks to lessen the PTD's effect on the Public Defender by entering into a CEA to pay the Public Defender \$45 for each diverted traffic citation to "insure the Indigent Defender can continue to provide competent and professional representation...." In exchange, the Public Defender agreed to "maintain an adequate level of attorney and support staff that is competent, professional, diverse and dedicated to providing professional representation to the indigent accused and further represents that this cooperative endeavor

^V On June 4, 2018, Judge Amy Burford McCartney issued "Written Reasons for Ruling" in a matter titled, "In re: Cooperative Endeavor Agreement between the 42nd Judicial District Attorney's Office and the 42nd Judicial District Public Defender's Office," Docket No. 18-CR-29385, 42nd Judicial District Court, DeSoto Parish, Louisiana. In her "Written Reasons for Ruling," Judge McCartney noted that the CEA implicated a variety of laws, including Article V, Section 26, Paragraph C of the Louisiana Constitution; Code of Criminal Procedure article 65; and La. R.S. 16:17(E). In the Judgment, Judge McCartney ordered that the CEA "between the 42nd Judicial District Attorney's Office and the 42nd Judicial District Public Defender's Office is unconstitutional, unlawful, against public policy, and without legal effect." The Judgment has been appealed to the Second Circuit Court of Appeal (Docket No. 52,393-CA).

^W See page 8.

^X DPSO records show that \$241,750 was disbursed to the Public Defender from traffic citation collections during the first four months of 2017; for the same period in 2018, only \$44,600 was disbursed to the Public Defender. This is a reduction from the prior year of \$197,150.

agreement restores the status quo regarding funding ... and insures the future viability of said office....” In addition, the Public Defender obligated his office “to make reasonable efforts to employ an African-American attorney/attorneys to assist in the defense of DeSoto Parish criminal defendants.”

As was mentioned previously, state law² limits the use of PTD funds “to the support and maintenance of victims assistance and/or the diversionary programs.” Providing PTD funds to the Public Defender does not fall within either of these limited uses. Moreover, the CEA may violate the state constitution^{1,4} and state law^{5,6} prohibitions against donations and district attorneys assisting in the defense of any prosecution or charge.

A.G. Opinion No. 16-0022 provides that, “...in order for an expenditure of public funds to be permissible under La. Const. Art. VII, Sec. 14(A), the public entity must have the legal authority to make the expenditure and must show: (i) a public purpose of the expenditure or transfer that comports with the governmental purpose for which the public entity has legal authority to pursue; (ii) that the expenditure or transfer, taken as a whole, does not appear to be gratuitous; and (iii) that the public entity has a demonstrable, objective, and reasonable expectation of receiving at least equivalent value in exchange for the expenditure or transfer of public funds....” Although having a properly funded public defense function is essential to the fair administration of justice, that responsibility does not fall on the DA. Because payment of money to the Public Defender is not included within the DA’s governmental purpose, any such transfer may violate both the state constitution^{1,4} and state law.^{5,6}

A.G. Opinion No. 93-481 suggests that PTD funds can be remitted to others, such as a judicial expense or criminal court fund, but only for the purpose of reimbursing “that fund for expenditures made to finance” the PTD. In this case, the Public Defender contributed no money to finance the PTD and, therefore, is not entitled to reimbursement from, or to otherwise share in, the PTD funds.

Inaccurate and Incomplete Financial Records

The DA’s records for the PTD program show the DA’s Office deposited more money into its PTD bank account than its PTD or other accounting records show was received. In addition, we found deficiencies in record keeping, receipts, refunds issued, and custody of payments received.

The DA began collecting funds for the PTD program of LACE traffic citations on March 23, 2017. Bank records show that the DA’s Office deposited \$811,766 of funds to the PTD Traffic bank account between March 23, 2017 and March 31, 2018. LACE traffic citations may be paid in four ways:

- (1) In Person - The DA’s traffic coordinator collects all payments (money orders or cashier’s checks) from traffic offenders who pay in person, but she does not issue a receipt and does not have a record of what she collected.

- (2) Online Through the DA's Website - Online payments are received through the website. The traffic diversion administrator runs a daily report from the website that shows payment and citation information that she posts in the case management software (CRIMES).
- (3) By Mail - The DA's Office receives its mail at a United States Post Office box. The traffic coordinator collects the mail and brings it back to the DA's Office where she and the traffic administrator open the mail and process the payments. They use an adding machine to determine the total amount received and then give the payments and the adding machine tape to the administrative assistant. However, they do not keep a copy.
- (4) By Phone - The DA's Office offers a toll-free phone number that allows payments to be made over the phone by entering the traffic citation number, credit card information, and payment amount.

COLLECTIONS

The DA's Office had no process or procedures in place when it began collecting PTD funds and used numerous employees to receive payments and post those payments to the CRIMES system. However, no receipts were issued to persons paying citations, and other records of amounts to be deposited were incomplete. Using available records, we found the following differences for the same collection period in the DA's records:

Records Showing Collections from March 23, 2017 – December 31, 2017:	Amounts Posted as Received
Bank Statement Deposits	\$700,626
QuickBooks Recorded Revenue	\$660,162
Monthly Collection Spreadsheets	\$638,041
CRIMES Collections	\$633,969
Daily Collection Records	\$580,331
Receipt Books	None

Simply put, all deposits were not posted to the other accounting records. In addition to inaccurate records, this could result in the improper suspension of driver's licenses, inaccurate court dockets, and/or missing funds.

REFUNDS

Traffic citation recipients sometimes pay the full amount of the citation (fine and court costs) before accepting the DA's offer to enter the PTD program,^Y while at other times pay the wrong amount. If a payment is received by cashier's check or money order and results in an overpayment, the traffic citation recipient receives a refund check from the DA's Office. If an

^Y If the full amount of the fine and court costs are paid before voluntarily entering the PTD program, it appears that such payment should be considered an admission of guilt, and the traffic citation recipient should not be entitled to diversion or a refund.

overpayment is remitted online, the DA's traffic diversion administrator refunds the traffic citation recipient's credit card. The DA's traffic diversion administrator keeps track of these refunds and collections on a daily collection spreadsheet and sends a copy to the DA's financial administrator. The DA's financial administrator compiles a monthly refund report using the daily collection spreadsheets and the contracted accountant uses QuickBooks to disburse and post refund checks. The table below shows a summary of the records discussed on the previous page. All three records should match. However, we found differences in the amounts recorded as refunds in the different records as listed in the following table.

Records Showing Refunds from March 23, 2017 - December 31, 2017	Amounts Posted as Refunded
Daily Collection Records	\$12,398
Monthly Refund Report	\$12,402
Refunds Posted to QuickBooks (Accounting Software)	\$7,290

The discrepancies indicate that approximately \$5,100 of refunds were identified, but the refund payments were not made. However, the condition of the financial records were such that we were unable to determine the disposition of those funds.

OTHER DEFICIENCIES

We also noted the following deficiencies in the DA's collection and accounting process for PTD payments:

- Bank deposits were not made daily in accordance with state law.⁸
- The funds collected by the DA's traffic assistant were not summarized or reconciled before they were provided to the traffic administrator for posting to the CRIMES software and subsequent deposit to the bank.
- There is no record of the chain of custody when funds are provided to another employee.
- The contract accountant who reconciles PTD bank statements also prepares disbursement checks.
- A password to the CRIMES software was observed on an employee's desk and openly accessible to anyone in the office area.
- The employees using the CRIMES case management software did not receive training and were not using the payment collection function. If used, this function will allow the user to generate reports of payments posted in CRIMES to reconcile to bank and accounting records.
- There are no written policies and procedures for collections or refunds of PTD revenues.

- The supervisor does not review daily collections and deposits to the amounts posted to the CRIMES software.
- Sixteen employees can modify traffic citation records in the CRIMES software.

CONCLUSION

The DA's Traffic Diversion Program appears to be redirecting substantial revenue historically paid to the Criminal Court Fund, DPSO, the DA, and 11 other agencies/organizations to the DA's Office. At the end of our audit period, March 31, 2018, \$340,817 of those funds were unspent and still in the DA's possession. It appears that the amount collected may be excessive and unreasonable, considering the only PTD funds that were spent as of March 31, 2018, were for PTD program expenses in the amount of \$470,949, and that the remaining PTD funds may be used "to support and maintain victims assistance and/or diversionary programs" only.² In addition, the DA's CEA with the Public Defender may be prohibited by the state constitution and state law.^{1,4,5,6} Finally, the DA needs to improve its collection procedures to ensure no funds are missing and that all records are accurate.

Recommendations

We recommend that the DA:

- (1) Reduce PTD fees to a reasonable amount;
- (2) Ensure the use of PTD funds comply with state law;
- (3) Cancel the CEA with the Public Defender;
- (4) Develop and implement written policies and procedures for collections and refunds of PTD revenue;
- (5) Ensure the receipt of PTD payments are documented adequately and recorded accurately;
- (6) Issue receipts for all payments collected and retain copies of such receipts;
- (7) Reconcile receipts, deposits, and CRIMES database monthly;
- (8) Implement financial module in CRIMES database;
- (9) Reconcile refunds to accounting data monthly;
- (10) Make daily deposits as required by law;
- (11) Ensure chain of custody of funds;

- (12) Assign different employees to reconcile bank statements and prepare checks;
- (13) Enact a policy to require employees to safeguard passwords;
- (14) Provide training for employees; and
- (15) Restrict access to CRIMES database to necessary employees only and ensure that each employee uses only his or her secure password.

EXHIBIT A - Pre-Trial Diversion Offer Letter



GARY V. EVANS
DISTRICT ATTORNEY
FORTY-SECOND JUDICIAL DISTRICT
PARISH OF DESOTO

206 ADAMS STREET
P.O. BOX 432
MANSFIELD, LA 71052

February 28, 2018

PHONE (318) 270-4710
FAX: (318) 270-6323



TRAFFIC DIVERSION PROGRAM ENROLLMENT AND PARTICIPATION AGREEMENT

I would like to offer you the opportunity to enter a Traffic Diversion Program on a voluntary basis to avoid any further court appearances. The program allows participants to have their citation considered for dismissal by the court date, upon compliance with the following requirements:

1. Carefully read the driver safety information brochure attached, determine the proper amount of costs as listed in the table below and if paying by mail, return a signed copy of the Voluntary Request and Acknowledgment form.

You do not have to elect to participate in the diversion program. Should you choose not to participate, you may still contest your citation on your court date or pay the prefixed fine and costs. Should you fail to comply with the above mentioned stipulations, your driving privileges will be suspended as indicated on your original citation. Payment of these citations can be made before the court date by using the following schedule.

MOVING VIOLATIONS	\$200
Speeding (only up to 20 mph over the speed limit)	
Stop sign violation or Failure to Yield, Failure to yield to Emergency Vehicle,	
Following too close, Texting while driving	
NON-MOVING VIOLATIONS	\$200
Expired Plate of Inspection Sticker, Expired Driver's License,	
No Driver's License on Person, Excessive Window Tint, No Child Restraint	
SEAT BELT VIOLATION	\$50

For speeding 20 mph over the limit, along with all other violations not listed above, and if you have any questions, please call the District Attorney's Office at (318) 872-2991 to determine amount of fine or eligibility under the traffic diversion program.

Money orders or cashier's checks should be made payable to District Attorney's Traffic Diversion Program, P.O. Box 432 Mansfield, Louisiana 71052, ten (10) days prior to the court date. You may pay online at www.desotoda.org, or by phone, 1-844-726-3495. Please include your name and citation number on the money order. If you do not wish to participate in the traffic diversion program or if you are not eligible to participate, then contact the Desoto Parish sheriff's Office at (318) 872-3956 to pay your original fine and costs.

Sincerely,

Gary V. Evans
District Attorney

SAFETY INFORMATION

SPEEDING

Speeding directly affects reaction time and thinking distance to stop (even if you are alert and attentive). The faster your vehicle is traveling, the greater the distance you will travel before you can react to a hazardous situation. The following equation illustrates this principle:

Take the first digit of your speed and add it to your speed to calculate the distance the vehicle will travel before you can react to a dangerous situation. For example, at 60 mph, the vehicle will travel 66 feet before braking begins in response to driver reaction ($60 \text{ mph} + 6 = 66 \text{ feet}$). At 70 mph, the vehicle will travel 77 feet before driver response.

At 60 mph, a vehicle will travel approximately 200 feet, once braking begins, to come to a stop. As you can see, the faster the vehicle is traveling, the greater the distance the vehicle will travel before the driver can respond and brake for a hazardous occurrence.

Severity of injuries and property damage are proportionate to the speed of the vehicle or vehicles involved in a crash. When vehicles are approaching each other, the speeds of each vehicle are combined, and the effects of a collision between the two vehicles are substantially greater.

Speeding vehicles are dangerous instrumentalities, and other factors increase the dangers associated with speeding.

Speeding becomes more dangerous because of: a) fatigue b) inclement weather (rain, heavy fog) c) heavy traffic d) vehicle condition e) road condition f) pre-occupied and inattentive drivers g) intoxication

If you leave late, or you are running late for an appointment, expect to arrive late. Do not try to make up time by speeding. Additionally, avoid distraction while driving, such as: talking on a cell phone, eating, reading, disciplining children, and planning activities.

Speeding causes you to catch up with and pass slower moving traffic, this exposing you to more hazardous situations. Drivers who speed find themselves following too close in anticipation of passing slower moving vehicles. Observe the legal speed limit, and, when necessary, reduce your speed for the following reasons: inclement weather, traffic congestion, and when being passed or overtaken by another vehicle.

More speeding violations are issued than any other traffic violations. Receiving speeding tickets expensive, could lead to the loss of your driving privileges and result in higher insurance rates.

In every crash, there is usually a driver who did nothing wrong. Allow other drivers who are driving recklessly to pull away from your vehicle. Do not allow unsafe drivers to involve you in an accident.

VOLUNTARY REQUEST AND ACKNOWLEDGEMENT FORM

I hereby agree to the following:

- I have read the Safety Information
- I understand that the decision to participate in this program is made freely and voluntarily on my part.
- I understand that any further criminal violations within ninety (90) days of the date of the original violation may result in my being removed from the Pre-Trial Diversion Program, any fees that I have paid will be forfeited, and the 42nd Judicial District Attorney's Office may reinstitute criminal prosecution for the original charges.

The Diversion Program is made available to you on a voluntary basis as an alternative to prosecution. **Successful completion of the requirements will result in the case being closed (dismissed) without a guilty plea or a trial, and will not show on your record as a conviction.**

- I understand the decision to participate in this program must be made freely and voluntarily on my part.

_____ Yes _____ No

**I HAVE READ AND UNDERSTAND THE ABOVE ENROLLMENT AGREEMENT. I
HEREBY REQUEST THE DISTRICT ATTORNEY OF THE 42ND JUDICIAL DISTRICT
PLACE ME IN THE DIVERSION PROGRAM.**

Return to: **District Attorney's Office**
Attn: Pre-Trial Diversion Coordinator
PO Box 432
Mansfield, Louisiana 71052

LEGAL PROVISIONS

¹ **Louisiana Constitution Article V, Section 26** states, “(A) Election; Qualifications; Assistants. In each judicial district a district attorney shall be elected for a term of six years. He shall have been admitted to the practice of law in the state for at least five years prior to his election and shall have resided in the district for the two years preceding election. A district attorney may select assistants as authorized by law, and other personnel. (B) Powers. Except as otherwise provided by this constitution, a district attorney, or his designated assistant, shall have charge of every criminal prosecution by the state in his district, be the representative of the state before the grand jury in his district, and be the legal advisor to the grand jury. He shall perform other duties provided by law. (C) Prohibition. No district attorney or assistant district attorney shall appear, plead, or in any way defend or assist in defending any criminal prosecution or charge. A violation of this Paragraph shall be cause for removal.”

² **Louisiana Revised Statute (La. R.S.) 16:17 (E)** states, “The district attorney may assess and collect a reasonable fee from participants in pretrial diversion or pretrial intervention programs to support and maintain victims assistance and/or diversionary programs.”

³ **La. R.S. 42:1116(A)** states, “No public servant shall use the authority of his office or position, directly or indirectly, in a manner intended to compel or coerce any person or other public servant to provide himself, any other public servant, or other person with any thing of economic value. This Subsection shall not be construed to limit that authority authorized by law, statute, ordinance, or legislative rule in carrying out official duties.”

⁴ **Louisiana Constitution Article VII, Section 14(A)** states, in part, “Prohibited Uses. 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.”

⁵ **Louisiana Code of Criminal Procedure Article 65** states, “It is unlawful for the following officers or their law partners to defend or assist in the defense of any person charged with an offense in any parish of the state: (1) Any district attorney or assistant district attorney; or (2) The attorney general or any assistant attorney general, provided that the provisions of this article shall not apply to the law partners of any assistant attorney general not employed to handle criminal matters for the attorney general, when any such law partner is judicially appointed to defend an indigent defendant.”

⁶ **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 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.”

⁷ **La. R.S. 15:168(B)(1)** states, “Every court of original criminal jurisdiction, except in the town of Jonesville, in the city of Plaquemine, and in mayors’ courts in municipalities having a population of less than five thousand, shall remit the following special costs to the district indigent defender fund for the following violations, under state statute as well as under parish or municipal ordinance, except a parking violation. The sum of forty-five dollars shall be assessed in cases in which a defendant is convicted after a trial, a plea of guilty or nolo contendere, or after forfeiting bond and shall be in addition to all other fines, costs, or forfeitures imposed.”

⁸ **La. R.S. 39:1212** states, “After the expiration of existing contracts, all funds of local depositing authorities shall be deposited daily whenever practicable, in the fiscal agency provided for, upon the terms and conditions, and in the manner set forth in this Chapter. Deposits shall be made in the name of the depositing authority authorized by law to have custody and control over the disbursements.”

APPENDIX A

Management's Response



GARY V. EVANS

District Attorney

206 ADAMS STREET
POST OFFICE BOX 432
MANSFIELD, LA 71052

FORTY-SECOND JUDICIAL DISTRICT
STATE OF LOUISIANA
PARISH OF DESOTO

PHONE 318-872-2991
FAX 318-872-6422

June 21, 2018

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

Re: Response to Legislative Audit Report
dated June 7, 2018.

Dear Sir:

This is the response of the DeSoto Parish District Attorney to your report dated June 7, 2018. I agree with the results listed in the report except as to the constitutionality of a cooperative endeavor agreement the question of which should be established by judicial ruling which is now being pursued in a Louisiana court. I add additional background, facts and attachments for clarity. Please include this response in your report.

BACKGROUND

Criminal pre-trial diversion in DeSoto Parish is relatively small with very few participants. By far the most involve misdemeanor charges with very minimal fees. For the past three (3) years less than 20 persons have been diverted each year. Revenue from this programs is very limited.

The ticket diversion program was in operation for years in DeSoto Parish with all tickets being collected and revenues administered by the DeSoto Parish Sheriff's Office. LACE is a program first started as a federal program in the 1960's and typically administered by DA's all over the State of Louisiana for many decades.

Immediately after taking office on January 12, 2015, a DeSoto Parish Police Juryman approached the new DA and complained that the LACE program was losing money as evidenced by the chronic deficiency in the Criminal Court Fund which had to be sometimes subsidized. The problem was discussed at more than one meeting of various parish officials at which time it was

agreed that information would be shared by DPSO with other non-administering agencies including the DA.

After three (3) years of continued failure to provide financial information by DPSO, the DA determined he would administer the LACE program through the DA's office to determine the truth. In the second (2nd) quarter of 2017 he did so. Other agencies were informed and notified that data as to tickets and receipts would be collected and the information reported to the Police Jury after the expiration of a ninety (90) day period.

Soon after the District Attorney's office began collecting data on LACE it was discovered that virtually ALL tickets written by DPSO were written under the LACE program. Immediately DPSO stopped writing tickets which typically averaged around a thousand tickets per month. DPSO tickets amounted to over half (½) of total number of tickets ordinarily written by all agencies throughout the Parish. Later in 2017, LACE was suspended by the State Police which amounted to several hundred other tickets that no longer came through the system. Consequently, a severe drop in revenue resulted, not because of diversion, but mainly because of a unprecedented loss in the total number of tickets being written.

The LACE is a program for which the District Attorney is solely responsible. Law enforcement officers are paid overtime to provide extra details in working traffic enforcement on all roads within the parish. A District Attorney is required to have a contract with the participating law enforcement agency. There was a contract between Troop G of the State Police, but no contract between the DA and DPSO.

The purpose of LACE is to act as a police enforcement enhancer not only for traffic enforcement, but also to supplement general law enforcement, crime prevention, emergencies and most importantly, traffic fatality reduction. State Police statistics confirm that an increase in traffic enforcement is directly proportional to traffic fatalities. One example is in the first half of 2017 in DeSoto Parish where LACE was provided, there was one (1) traffic death. In the second half, when LACE was suspended, there were five (5) fatalities, an increase of five hundred (500%) .

In DeSoto Parish, only LACE tickets are permitted into diversion--no regular duty tickets at all. Participation is strictly voluntary. Statistically only 25-30% of the total number of tickets issued are diverted. The lion's share of all tickets (around 70%) remains to be distributed by ordinary means to all state agencies. By far, the greatest portion of the proceeds of the LACE program are required to reimburse the participating law enforcement agencies in the overtime worked by police officers.

As promised, after administering the LACE program to collect data, statistics and information, the DA appeared before the Police Jury to report his findings. Under date of August 14, 2017, a report was made and the DeSoto Parish Police Jury resolved to request and audit of the LACE

program and the Criminal Court Fund by the Legislative Auditor as more fully shown on the attached Resolution of same date.

As a result of further investigation in the LACE program in DeSoto Parish, many persons came forward and provided information about the DPSO's administration of the program. Even the Sheriff admitted in his letter dated January 11, 2018, that he had "...reasonable cause to believe that there had been a misappropriation of public funds or assets of my agency in regards to the operation of the Local Agency Compensation Enforcement (L.A.C.E.) program." (copy attached)

Of course, paying the costs for extra police details ultimately takes from one government agency and gives to another. But extra police details are providing services directly to the people of DeSoto Parish. For this reason, some agencies will experience some reduction in revenue. More interestingly, in regards to the Criminal Court Fund, which is the major recipient of the proceeds from tickets @ the rate of \$76 for each ticket written, the fund skyrocketed since the DA began administration of the LACE program. The starting balance was \$145,219.77 as of April 30, 2017. The end of year 2017 balance was \$548,796.56, an incredible increase of over four hundred thousand dollars (\$400,000+). That balance goes to local governing bodies, especially the Police Jury who, I understand, has a right to deposit half (½) in its general fund at each year's end. At present the Criminal Court fund balance remains at over \$550,000 and is anticipated to grow to over \$600,000 easily by year's end. (copies of fund balances attached)

RESPONSE TO RECOMMENDATIONS

- (1) Finding: Reduce PTD fees to reasonable amount

Response: Diversion fees under criminal pre-trial diversion are minimal and there are few participants. Most are misdemeanors with only an occasional first time felony. All monies are used to assist in programs related to directly assisting the participants in the diversion programs through training and education programs (e.g. CHOICE program with La. Technical School). The more substantial fees are collected under traffic diversion, the majority of which are required to reimbursement participating agencies for police officer overtime. The current balance is held in reserve to share with local Indigent Defender upon settlement of legal issue as to Cooperative Endeavor Agreement which is currently actively being litigated in the 2nd Circuit Court of appeals, in the matter entitled In Re: Cooperative Endeavor Agreement. Upon disposition of the pending litigation a more accurate assessment of the costs and expenses related to administration of the program may allow a reduction in fees and will be implemented if justified when considering all costs.

- (2) Finding: Ensure the use of PTD funds to comply with state law

Response: Most funds collected are held in reserve until such time as CEA issues have been resolved. For LACE only funds distributed have been related to program administration and distribution to law enforcement for overtime reimbursement. All future expenditures of diversion funds will be distributed as direct reimbursement to participating law enforcement agencies, to provide training, treatment or other services to participants in any diversion program or in program administration. All funds have been and will continue to be used in compliance with state law.

- (3) Finding: Cancel CEA with the public defender

Response: The Cooperative Endeavor Agreement between the DeSoto Parish Indigent Defender and the DeSoto District Attorney has been declared a nullity at the trial level in the matter styled In Re: Cooperative Endeavor Agreement. There is no need to cancel an agreement that is null. A final and definitive judgment on this issue is sought in the 2nd Circuit Court of Appeal which appeal has been recently lodged and is needed to give guidance to other jurisdictions who share proceeds with indigent defenders. Not a dime has ever spent by the District Attorney on this agreement. A final judgment has not yet been rendered. Since Cooperative Endeavor Agreements are used by many DA's across the entire United States, it would be advantageous to many varied jurisdictions if the issue is decided definitively by a court. The parties to this agreement are actively litigating the issue now in an effort to clarify this issue.

- (4) Finding: Develop and implement written policies and procedures for collections and refunds of PTD revenue

Response: Written policies and procedures for collections and refunds of PTD revenue are now developed based on the samples provided for in the website for the Louisiana Legislative Auditor and adapted for use in DeSoto Parish.

- (5) Finding: Ensure the receipt of PTD payments are documented adequately and recorded accurately

Response: In accordance with the written policies and procedures developed based on the samples provided for in the website for the

Louisiana Legislative Auditor, receipt of PTD payments will be documented adequately and recorded.

- (6) Finding: Issue receipts for all payments collected and retain copies of such receipts

Response: Receipts are now issued for all payments collected and copies are retained.

- (7) Finding: Reconcile receipts, deposits and CRIMES database monthly

Response: Written policies and procedures now require monthly reconciliation of all receipts and deposits INCLUDING the CRIMES database. Some alteration was required to the CRIMES program to accommodate this accounting solution. Training has been provided and updating to the CRIMES database has been ongoing for several weeks. A complete reconciliation of CRIMES will be accomplished as to past receipts and deposits soon. Beginning now, the CRIMES database will be reconciled for all future receipts and deposits.

- (8) Finding: Implement financial module in CRIMES database

Response: Since CRIMES is the primary database for many District Attorney offices throughout the entire United States, and because it is the most used application in DeSoto Parish operations, financial transactions are most appropriately used in CRIMES. An investment was made to update features of the CRIMES program in the past year and a half (1 ½) and any other updates will be added to make it fully functional for all financial transactions.

- (9) Finding: Reconcile refunds to accounting data monthly

Response: Written policies and procedures now require monthly reconciliation as to all refunds.

- (10) Finding: Make daily deposits as required by law

Response: In the past efforts were made to make daily deposits. However, there were failures on occasion sometimes due to unavailability of personnel most of whom perform multiple tasks. Most recently, we

have lost a long time and faithful employee due to terminal illness. A new employee will be hired to ensure that deposits are made daily in accordance with state law.

- (11) Finding: Ensure chain of custody of funds

Response: Written policies and procedures now address chain of custody of funds. Chain of custody will be ensured.

- (12) Finding: Assign different employees to reconcile bank statements and prepare checks.

Response: Written policies and procedures now address assignment of different employees to retrieve mail, reconcile bank statements and prepare checks.

- (13) Finding: Enact a policy to require employees to safeguard passwords.

Response: Written policies and procedures now address the safeguarding of employee passwords and all employees are instructed to keep passwords secure. In the event passwords are required to be stored, all passwords will be kept under lock and key with access available only through designated administrators.

- (14) Finding: Provide training for employees

Response: A training session was performed on Friday, June 15, 2018, for all employees to advise them of new procedures. Copies of newly policies and procedures will be provided to all employees having finance and revenue producing duties. Monthly meetings will be held to provide training if needed and to determine if employees are complying with policies and procedures.

- (15) Finding: Restrict access to CRIMES database to necessary employees only and ensure that each employee uses only his or her password

Response: Written policies and procedures now address the restriction of access to CRIMES database. Only persons who are necessary may access the database. When an employee is no longer needing access to

CRIMES, their password and entry authorization will be cancelled. Each employee with access to CRIMES will be instructed to use only their assigned password, to secure their password from the eyes of any others and to share their individual password with no one else.

As an ending note to this response I include a most recent judgment of a Louisiana court relating to pre-trial diversion which was rendered under date of May 18, 2018, in the matter styled Rapides Parish Police Jury vs. Phillip Terrell, District Attorney for the Parish of Rapides, in the 9th Judicial District Court, Suit #261,465, 9th Judicial District Court, Rapides Parish, La. (copy attached). The judgment speaks for itself in clearly confirming the authority of a district attorney to administer, collect fines and utilize fees for pre-trial diversion programs. The judgment was appealed by the Rapides Parish Police Jury to the 3rd Circuit Court where it is currently pending.

Also attached is the trial court judgment hereinabove mentioned and rendered under date of June 4th, 2018, in the matter styled IN RE: Cooperative Endeavor Agreement between 42nd Judicial District Attorney's Office and the 42nd Judicial District Public Defender's Office, Suit #: 18-CR-29385, 42nd Judicial District Court, DeSoto Parish, La. This judgment is related to constitutionality of Cooperative Endeavor Agreements that are commonly used by district attorneys to share funds that benefit the indigent with legal counsel in criminal matters. This matter is also currently appealed by both the District Attorney and Public Defender's Office and is pending in the 2nd Circuit Court of Appeals. (copy attached)

I appreciate all you have caused to be done in DeSoto Parish and especially thank you for sending agents who performed such courteous and professional work. Thanks also in providing recommendations so that we may better improve our service to all the people of DeSoto Parish and the State of Louisiana.

Sincerely,



Gary V. Evans
District Attorney

State of Louisiana

Parish of DeSoto In the Name and By the Authority of The Police Jury of DeSoto Parish

A RESOLUTION SUPPORTING AN AUDIT OF THE LOCAL AGENCY COMPENSATED ENFORCEMENT PROGRAM (L.A.C.E.) AND THE FORTY-SECOND JUDICIAL DISTRICT CRIMINAL COURT FUND BY THE LOUISIANA LEGISLATIVE AUDITOR, AND TO OTHERWISE PROVIDE WITH RESPECT THERETO

WHEREAS, under the provisions of La.R.S.15:571.11, fines, criminal fees and certain statutory forfeitures deposited into the Forty-Second Judicial District Criminal Court Fund (the "Criminal Court Fund"), may be utilized to defray the expenses of criminal prosecutions, law enforcement services and the criminal justice system; and

WHEREAS, the Local Agency Compensated Enforcement Program (the "L.A.C.E." Program) has been instrumental in providing effective and efficient law enforcement services and related endeavors to further the interests of the criminal justice system; and

WHEREAS, the revenue derived from the Criminal Court Fund may be utilized to fund the L.A.C.E Program; and

WHEREAS, it is in the public's interest to ensure the expenditure of funds generated or otherwise derived by or through the Criminal Court Fund are in compliance with the applicable provisions of Louisiana law; and

WHEREAS, the DeSoto Parish Police Jury is fully supportive of an audit of the L.A.C.E Program and the Criminal Court Fund by the Louisiana Legislative Auditor.

NOW THEREFORE, BE IT RESOLVED, by the DeSoto Parish Police Jury, in legal and regular session convened, that the DeSoto Parish Police Jury is fully supportive an audit of the L.A.C.E Program and the Criminal Court Fund by the Louisiana Legislative Auditor.

BE IT FURTHER RESOLVED, that if any provision or item of this Resolution or the application thereof is held invalid, such invalidity shall not affect other provisions, items or applications of this Resolution which can be given effect without the invalid provisions, items or applications, and to this end the provisions of this Resolution are hereby declared severable.

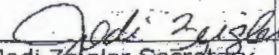
BE IT FURTHER RESOLVED, that all Resolutions or parts thereof in conflict herewith are hereby repealed.

CERTIFICATE

I, Jodi Zeigler, Secretary for the DeSoto Parish Police Jury, hereby certifies that the above constitutes a true and accurate copy of a Resolution, which UPON MOTION of Mr. Fuller, and seconded by Mr. Thomas Jones, was adopted by the following Yea and Nay vote:

YEA: 11 NAY: 0 ABSENT: 0

And the same was declared and adopted by the President on this 14th day of August, 2017.


Jodi Zeigler Secretary
DeSoto Parish, Louisiana



DeSoto Parish Sheriff's Office

RODNEY ARBUCKLE
SHERIFF

JAYSON RICHARDSON
Chief Criminal Deputy

MONICA CASON
Chief Civil Deputy

January 11, 2018

Louisiana Legislative Auditor
ATN: Daryl G. Purpera
P.O. Box 94397
Baton Rouge, LA 70804-9397

To Whom It May Concern:

I am writing this letter pursuant to L.R.S. 24:523.A to notify you that I have reasonable cause to believe that there has been a misappropriation of public funds or assets of my agency in regards to the operation of the Local Agency Compensation Enforcement (L.A.C.E) program. The program has been suspended since June 2, 2017 and any possible misappropriation is no longer considered to be on-going. After reviewing documentation that the Louisiana Legislative Auditor's Office has requested, I have opened an internal investigation to further look into possible discrepancies. Additional information may be supplied at the request of either your office or the DeSoto Parish District Attorney's Office to investigate such misappropriation as you deem necessary.

Respectfully,

A handwritten signature in black ink, appearing to read "Rodney Arbuckle", is written over the word "Respectfully,".

Rodney Arbuckle
Sheriff

CC: Honorable Gary V. Evans

RA/bw

JAN 19 2018

205 Franklin Street • Mansfield, Louisiana 71052
Phone (318) 872-3956 • Fax (318) 872-2304
www.dpsa.org

DeSoto Parish Police Jury
CRIMINAL COURT FUND
Budget Comparison Cash Basis
For the 4 Months ended April 30, 2017

	Actual	Annual Budget	(Over)Under Budget	% of Actual to Budget
REVENUES				
Fines & Forfeitures	(399,525.81)	(1,325,904.00)	(926,378.19)	30.13 %
Investment earnings	(1,165.24)	(2,500.00)	(1,334.76)	46.61 %
Total Revenues	<u>(400,691.05)</u>	<u>(1,328,404.00)</u>	<u>(927,712.95)</u>	<u>30.16 %</u>
EXPENDITURES				
Current:				
Salaries Court	48,556.44	143,377.00	94,820.56	33.87 %
Juvenile Probation Officer/Judicial Administrator	19,820.73	82,281.00	62,460.27	24.09 %
Social Security-Court	3,495.08	10,402.00	6,906.92	33.60 %
Retirement-Court	3,884.52	11,245.00	7,360.48	34.54 %
Group Insurance-Court	11,237.46	34,173.00	22,935.54	32.88 %
Group Insurance-Court-Retirees	2,289.01	6,492.00	4,202.99	35.26 %
L. A. C. E. Payment	217,276.56	850,000.00	632,723.44	25.56 %
Official Fees	2,666.68	8,000.00	5,333.32	33.33 %
Professional Fees	6,343.45	18,000.00	11,656.55	35.24 %
Insurance-Professional Liability	36.78	-	(36.78)	- %
Insurance - General, Worker's Compensation, Etc.	-	500.00	500.00	- %
Maintenance of Courtroom & Offices	1,695.00	-	(1,695.00)	- %
Office Expense	21,481.47	80,000.00	58,518.53	26.85 %
Small Equipment Purchases	-	5,000.00	5,000.00	- %
Total Judicial	<u>338,783.18</u>	<u>1,249,470.00</u>	<u>910,686.82</u>	<u>27.11 %</u>
Transfer to Other Funds	-	75,000.00	75,000.00	- %
Total Transfers Out	<u>-</u>	<u>75,000.00</u>	<u>75,000.00</u>	<u>- %</u>
Total expenditures	338,783.18	1,324,470.00	985,686.82	25.58 %
Net change in fund balances	61,907.87			
Fund balances--beginning	83,311.90			
Fund balances--ending	145,219.77			

DeSoto Parish Police Jury
CRIMINAL COURT FUND
Budget Comparison Cash Basis
For the 12 Months ended December 31, 2017

	Actual	Annual Budget	(Over)Under Budget	% of Actual to Budget
REVENUES				
Fines & Forfeitures	(1,022,535.83)	(1,325,904.00)	(303,368.17)	77.12 %
Investment earnings	(8,932.54)	(2,500.00)	6,432.54	357.30 %
Total Revenues	<u>(1,031,468.37)</u>	<u>(1,328,404.00)</u>	<u>(296,935.63)</u>	<u>77.65 %</u>
EXPENDITURES				
Current:				
Salaries Court	146,269.32	143,377.00	(2,892.32)	102.02 %
Juvenile Probation Officer/Judicial Administrator	87,784.14	82,281.00	(5,503.14)	106.69 %
Social Security-Court	10,530.12	10,402.00	(128.12)	101.23 %
Retirement-Court	11,701.56	11,245.00	(456.56)	104.06 %
Group Insurance-Court	34,039.68	34,173.00	133.32	99.61 %
Group Insurance-Court-Retirees	6,628.93	6,492.00	(136.93)	102.11 %
L. A. C. E. Payment	217,276.56	850,000.00	632,723.44	25.56 %
Official Fees	2,666.68	8,000.00	5,333.32	33.33 %
Professional Fees	20,250.54	18,000.00	(2,250.54)	112.50 %
Insurance-Professional Liability	225.96	-	(225.96)	- %
Insurance - General, Worker's Compensation, Etc.	-	500.00	500.00	- %
Maintenance of Courtroom & Offices	1,695.00	-	(1,695.00)	- %
Office Expense	27,015.22	80,000.00	52,984.78	33.77 %
Small Equipment Purchases	-	5,000.00	5,000.00	- %
Total Judicial	<u>566,083.71</u>	<u>1,249,470.00</u>	<u>683,386.29</u>	<u>45.31 %</u>
Transfer to Other Funds	-	75,000.00	75,000.00	- %
Total Transfers Out	<u>-</u>	<u>75,000.00</u>	<u>75,000.00</u>	<u>- %</u>
Total expenditures	566,083.71	1,324,470.00	758,386.29	42.74 %
Net change in fund balances	465,384.66			
Fund balances--begining	83,311.90			
Fund balances--ending	548,696.56			

DeSoto Parish Police Jury
CRIMINAL COURT FUND
Budget Comparison Cash Basis
For the 5 Months ended May 31, 2018

	Actual	Annual Budget	(Over)Under Budget	% of Actual to Budget
REVENUES				
Fines & Forfeitures	(133,701.81)	(600,000.00)	(466,298.19)	22.28 %
Investment earnings	(3,508.64)	(3,000.00)	508.64	116.95 %
Total Revenues	(137,210.45)	(603,000.00)	(465,789.55)	22.75 %
EXPENDITURES				
Current:				
Salaries Court	63,730.35	152,953.00	89,222.65	41.67 %
Juvenile Probation Officer/Judicial Administrator	19,984.59	93,794.00	73,809.41	21.31 %
Social Security-Court	4,594.77	11,013.00	6,418.23	41.72 %
Retirement-Court	4,779.80	11,471.00	6,691.20	41.67 %
Group Insurance-Court	14,533.58	34,599.00	20,065.42	42.01 %
Group Insurance-Court-Retirees	2,758.10	7,218.00	4,459.90	38.21 %
Official Fees	-	5,000.00	5,000.00	- %
Professional Fees	4,402.25	18,000.00	13,597.75	24.46 %
Insurance-Professional Liability	73.87	-	(73.87)	- %
Insurance - General, Worker's Compensation, Etc.	-	500.00	500.00	- %
Maintenance of Courtroom & Offices	-	2,000.00	2,000.00	- %
Office Expense	1,662.36	50,000.00	48,337.64	3.32 %
Small Equipment Purchases	-	5,000.00	5,000.00	- %
Total Judicial	116,519.67	391,548.00	275,028.33	29.76 %
Transfer to Other Funds	-	220,176.00	220,176.00	- %
Total Transfers Out	-	220,176.00	220,176.00	- %
Total expenditures	116,519.67	611,724.00	495,204.33	19.05 %
Net change in fund balances	20,690.78			
Fund balances--begining	548,696.56			
Fund balances--ending	569,387.34			

RAPIDES PARISH POLICE JURY

NINTH JUDICIAL DISTRICT COURT

VERSUS

PARISH OF RAPIDES

PHILLIP TERRELL, DISTRICT
ATTORNEY FOR THE PARISH OF
RAPIDES

STATE OF LOUISIANA

JUDGMENT

This matter came before the Court for hearing on May 4, 2018 on the following:

Dilatory Exception of Vagueness and Ambiguity and Dilatory Exception of Prematurity and/or Peremptory Exception of No Cause of Action by Defendant, District Attorney Phillip Terrell;

Leave to file First Amended Petition for Declaratory Judgment and Injunctive Relief by Plaintiff, Rapides Parish Police Jury; and

Requests for Preliminary Injunction seeking relief on four items under the First Amended Petition, as set forth in the Order setting the Rule to Show Cause issued April 27, 2018.

Present in Court for Plaintiff was Jimmy Faircloth, and for Defendant were Martha Crenshaw and Kay Michiels. Having considered the law, evidence, and argument of counsel, it is:

HEREBY ORDERED that Plaintiff's First Amended Petition is **ALLOWED**;

FURTHER ORDERED that Defendant's Dilatory Exception of Vagueness and Ambiguity is **GRANTED** as to the scope of the Attorney/Client relationship as set forth in both the original and amended petitions;

FURTHER ORDERED that Defendant's Exception of Prematurity is rendered **MOOT** by the Attorney General's approval of the Rapides Parish Police Jury's Resolution to hire private counsel;

IT IS FURTHER ORDERED as follows with regard to the requests of preliminary injunction:

1. That Plaintiff's request for injunctive relief enjoining the District Attorney from representing the Police Jury in any matter prohibited by the Louisiana Rules of Professional Conduct was withdrawn following a stipulation between the Parties that the Rules of Professional Conduct apply to the District Attorney, which stipulation was **ACCEPTED** by

2. That Plaintiff's request for injunctive relief enjoining the District Attorney from taking any action against the Police Jury, its members and staff arising out of activities over which the District Attorney or his staff served as attorney for the Police Jury, including, but not limited to any investigation of the Coliseum Authority is DENIED;

3. That Plaintiff's request for injunctive relief compelling the District Attorney to deposit all revenue received in connection with the PTI Program into the Criminal Court Fund in accordance with the Criminal Court Fund Statute, La. R.S. 15:571.11A(1)(a) is DENIED.

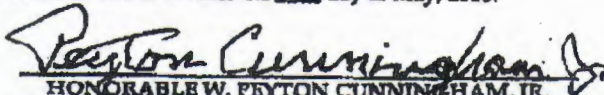
4. That Plaintiff's request for injunctive relief compelling the District Attorney to provide an accounting of all funds received and/or expended in connection with the PTI Program for 2017 and 2018 was withdrawn.

In rendering the above rulings, it was the finding of the Court that the District Attorney has authority to administer the PTI Program and to assess and utilize fees from the PTI Program. Having considered the request of counsel and in the interest of judicial economy,

IT IS HEREBY ORDERED that the finding of the Court relative to the authority of the District Attorney to administer the PTI Program and to assess and utilize fees, be converted to ruling on the merits and is designated a final judgment.

Each party is to bear their own costs.

THUS DONE AND SIGNED on this the 18th day of May, 2018.


HONORABLE W. PEYTON CUNNINGHAM, JR.
JUDGE AD HOC - NINTH JUDICIAL DISTRICT COURT

APPROVED AS TO FORM:

FAIRCLOTH, MELTON & SOBEL, LLC

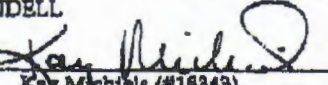
BY:

Jimmy R. Faircloth, Jr. (#20643)
Brook L. Villa (#31988)
105 Yorktown Drive
Alexandria, LA 70303

ATTORNEYS FOR PLAINTIFF,
RAPIDES PARISH POLICE JURY

GOLD, WEEMS, BRUSER, SUES &
RUNDELL

BY:


Kay Michels (#18343)
Martha R. Crenshaw (#27420)
2001 MacArthur Drive
Alexandria, LA 71307

ATTORNEYS FOR DEFENDANT,
PHILLIP TERRELL, RAPIDES PARISH
DISTRICT ATTORNEY

RECEIVED & FILED
DESOTO PARISH, LA

2018 JUN -4 PM 2:16

IN RE:

NUMBER: 18-CR-29385

**COOPERATIVE ENDEAVOR
AGREEMENT BETWEEN THE
42ND JUDICIAL DISTRICT
DISTRICT ATTORNEY'S OFFICE
AND THE 42ND JUDICIAL DISTRICT
PUBLIC DEFENDER'S OFFICE**

42ND JUDICIAL DISTRICT COURT


DESOTO PARISH, LOUISIANA

JUDGMENT

For the written reasons assigned, **IT IS ORDERED, ADJUDGED, AND DECREED** THAT there exists an actual and unwaivable conflict of interests for the 42nd District Public Defender's Office.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Cooperative Endeavor Agreement between the 42nd Judicial District District Attorney's Office and the 42nd Judicial District Public Defender's Office executed on March 19, 2018 is unconstitutional, unlawful, against public policy, and without legal effect.

THUS DONE AND SIGNED in Mansfield, DeSoto Parish, Louisiana on the 4th day of June, 2018.



Amy Hurlford McCartney, Judge
42nd Judicial District Court

APPENDIX B

Public Defender's Response

ROBERT S. NOEL, II
ATTORNEY AT LAW

2901 EVANGELINE
MONROE, LA 71201
bobnoelaty@hotmail.com

PHONE: 318.388.1700
FAX: 318.388.1738

June 25, 2018

Daryl J. Purpera, CPA, CFE
Louisiana Legislative Auditor
P.O. 94397
Baton Rouge, Louisiana 70804-9397

RE: Response to report on Pre-Trial Diversion of June 7, 2018

Dear Sir:

We would assert that Subsection B and C of La. Const. Art. VII, § 14 should be applicable in whether the monies received pursuant to the Cooperative Endeavor Agreement

B. Authorized Uses. — Nothing in this Section shall prevent (1) the use of public funds for programs of social welfare for the aid and support of the needy; (2) contributions of public funds to pension and insurance programs for the benefit of public employees; (3) the pledge of public funds, credit, property, or things of value for public purposes with respect to the issuance of bonds or other evidences of indebtedness to meet public obligations as provided by law; (4) the return of property, including mineral rights, to a former owner from whom the property had previously been expropriated, or purchased under threat of expropriation, when the legislature by law declares that the public and necessary purpose which originally supported the expropriation has ceased to exist and orders the return of the property to the former owner under such terms and conditions as specified by the legislature; (5) acquisition of stock by any institution of higher education in exchange for any intellectual property; (6) the donation of abandoned or blighted housing property by the governing authority of a municipality or a parish to a nonprofit organization which is recognized by the Internal Revenue Service as a 501(c)(3) or 501(c)(4) nonprofit organization and which agrees to renovate and maintain such property until conveyance of the property by such organization; (7) the deduction of any tax, interest, penalty, or other charges forming the basis of tax liens on blighted property so that they may be subordinated and waived in favor of any purchaser who is not a member of the immediate family of the blighted property owner or which is not any entity in which the owner has a substantial economic interest, but only in connection with a property renovation plan approved by an administrative hearing officer appointed by the parish or municipal government where the property is located; (8) the deduction of past due taxes, interest, and penalties in favor of an owner of a blighted property, but only when the owner sells the property at less than the appraised value to facilitate the blighted property renovation plan approved by the parish or municipal government and only after the renovation is completed such deduction being canceled, null and void, and to no effect in the event ownership of the property in the future reverts back to the owner or any member of his immediate family; (9) the donation by the state of asphalt which has been removed from state roads and highways to the governing authority of the parish or municipality where the asphalt was removed, or if not needed by such governing authority, then to any other parish or municipal governing authority, but only pursuant to a cooperative endeavor agreement between the state and the governing authority receiving the donated property; (10) the investment in stocks of a portion of the Rockefeller Wildlife Refuge Trust and Protection Fund, created under the provisions of R.S. 56:797, and the Russell Sage or Marsh Island Refuge Fund, created under the

provisions of R.S. 56:798, such portion not to exceed thirty-five percent of each fund; (11) the investment in stocks of a portion of the state-funded permanently endowed funds of a public or private college or university, not to exceed thirty-five percent of the public funds endowed; or (12) the investment in equities of a portion of the Medicaid Trust Fund for the Elderly created under the provisions of R.S. 46:2691 et seq., such portion not to exceed thirty-five percent of the fund.

C. Cooperative Endeavors. — For a public purpose, the state and its political subdivisions or political corporations may engage in **cooperative endeavors** with each other, with the United States or its agencies, or with any public or private association, corporation, or individual.

We are currently on appeal to the 2nd Circuit Court of Appeals and have cited as an assignment of error this issue. We are seeking a judicial remedy rather relying on an Attorney General Opinion.

As to the other issues raised in your letter:

We acknowledge the prohibitions under Code of Criminal Procedure Article 61 concerning the defense of criminal defendants by District Attorneys and their Assistants. There is no argument that District Attorneys cannot defend someone charged with a crime. The only exceptions made are for City Attorneys representing criminal defendants in District Court.

This matter is clearly distinguishable in regards to Article 65. The District Attorneys by statute are literally the gatekeepers of all funds derived by court costs, diversion fees or any other fee generated by the institution or the discretion in not instituting a criminal charge. Article 61 clearly gives the DA that power. There is no question that the District Attorney is not seeking in the CEA to represent Clients or to specifically dictate outcomes. The CEA clearly prohibits that.

Does the administration of funds controlled by the District Attorney violate Article 65? If that were the case then agreeing to prosecute rather than divert would also be an act of practicing criminal defense law, since a choice is made to fund the system in that manner. While diversion is done at the discretion of the District Attorney in how a matter may be disposed, the monies are public monies and in essence money that unless the charge were dismissed, the accused found not guilty, would be subjected to the imposition of costs of which the Public Defender would be entitled to the same \$45 fee.

The Cooperative Endeavor agreement in the 42nd would grant to the Public Defender only what the Public Defender would have received had the traffic tickets been processed as during the normal course of traffic prosecution. The issue addressed in AG 93-481 concerned whether a portion of diversion fees could be remitted to the judicial expense fund or criminal court fund of the parish. The opinion allowed for those payments for reimbursements to those funds for expenditures made to finance the pretrial intervention program. No inquiry was made as to Public Defense programs, although Public Defenders often negotiate deals to achieve diversion for their clients. While that it happens rarely in traffic matters, it is common practice in all other areas of pretrial diversion for the Public Defender to expend time and paid personnel for that outcome. That issue was not addressed in the opinion and the opinion was limited in scope.

L.R.S. 16:17 cited in your letter concerns the creation of Victims Assistance programs. Subsection E allows for:

E. The district attorney may assess and collect a reasonable fee from participants in pretrial diversion or pretrial intervention programs to support and maintain victims assistance and/or diversionary programs.

This 2018 legislation appears to be permissive and does not per se restrict the use of funds when read with all pertinent parts of the statute. The definition of a reasonable fee or diversionary programs has not to my knowledge been addressed by the Courts as yet.

The contents of the CEA require more than what is currently required by the Code of Professional Responsibility, Title 22 of the State Regulations concerning the Standards of Practice, and the requirements of diversity in hiring in Title 15. The CEA grants no rights to the District Attorney to determine the methods or outcomes of any litigation. We have sought an ethics opinion from Leslie Schiff, which is attached to this letter.

The current litigation in the 42nd JDC seeks a judicial determination of all of these issues, rather than relying on opinions from the Attorney General.

Yours truly,

A handwritten signature in dark ink, appearing to read 'R. S. Noel, II', with a stylized flourish at the end.

Robert S. Noel, II
Bar No. 17337
Attorney for 42nd JDC Public Defender

SCHIFF, SCHECKMAN & WHITE, LLP

117 W. LANDRY STREET
P.O. BOX 10
OPELOUSAS, LOUISIANA 70570
(337) 942-9771
FAX (337) 942-2821

FACSIMILE TRANSMITTAL SHEET

TO:	MR. STEVEN THOMAS	FROM:	LESLIE J. SCHIFF /SSW
COMPANY:	CHIEF DEFENDER - 42 ND JDC	DATE:	18 APRIL 2018
FAX NUMBER:	318-872-6262	TOTAL NO. OF PAGES INCLUDING COVER:	26
PHONE NUMBER:		SENDER'S REFERENCE NUMBER:	
RE:		YOUR REFERENCE NUMBER:	

☐ URGENT ☒ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS:



SCHIFF, SCHIECKMAN & WHITE LLP

April 18, 2018

Via Regular U.S. Mail & Facsimile (318-872-6262)

Mr. Steven Thomas

Chief Defender –42nd Judicial District Court

P.O. Box 612

Mansfield, LA 71052

Dear Mr. Thomas:

This letter will confirm our most recent telephone conversation concerning the recent developments in Desoto Parish having to do with the cooperative endeavor agreement between the 42nd District Indigent Defender Office and the 42nd Judicial District, Office of District Attorney.

You informed us that recently an agreement has been reached whereby the 42nd Judicial District Office of the District Attorney agreed to assist in the funding of the 42nd District Indigent Defender service by making payment of \$45.00 to the Indigent Defender office on each traffic ticket diverted (excluding seat belt offences). This funding agreement, entitled "Cooperative Endeavor Agreement" (hereinafter referred to as "CEA") was apparently an effort by the 42nd Judicial District Office of District Attorney to ensure the continued performance of statutory and constitutional duties for the competent and professional representation of Indigent Defendants in the criminal process (copy of CEA attached hereto as *Exhibit 1*). We believe that this is an interest shared not only by the 42nd District Indigent Defender office but also by the 42nd Judicial District, Office of the District Attorney. The ethical responsibilities of all Louisiana District Attorneys are outlined in pertinent part in Rule of Professional Conduct 3.8, a copy of which is attached hereto as *Exhibit A*.

You informed us that as a result of comments made by Judge Charles Adams in his order dated March 29, 2018, there was some concern and hesitancy on the part of the 42nd District Indigent Defender Office's contract lawyers to continue in the representation in criminal matters assigned to them by your office. You reported to us that the concern stems from comments by the Judge of his perception that pursuant to the CEA their continued representation under these circumstances might involve ethical violations (copy of order of Judge Adams dated March 29, 2018, attached hereto as *Exhibit 2*).

You informed us that the cases assigned by the 42nd District Indigent Defender Office to the contract attorneys (who incidentally do not represent indigent defendants in traffic matters) had nothing to do with the CEA. You further informed us that the funding provided pursuant to the CEA was anticipated to go into the regular operating account of the 42nd District Indigent Defender Office to be used to cover expenses, including attorneys' fees, for the defense of indigents. The funds would obviously be commingled with funds received from other revenue sources. To date, you advise that no money has been received by the 42nd Indigent Defender Office as a result of the CEA.

LESLIE J. SCHIFF

117 W. Landry Street
Opelousas, Louisiana 70570
Phone 337.942.9771
Fax 337.942.2821
leslie@sswethiclaw.com

STEVEN SCHECKMAN

829 Baronne Street
New Orleans, Louisiana 70118
Phone 504.581.9522
Fax 504.581.7651
ssw@sswethiclaw.com

JULIE BROWN WHITE

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DAMON S. MANNING

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Hammond, Louisiana 70401
Phone 985.602.9201
Fax 985.595.1130
damon@sswethiclaw.com

You have asked us to withhold comment on whether or not you, in your capacity as Chief Defender of the 42nd District Indigent Defender Office, may have potential ethical issues in connection with entering into the CEA. This letter will not address that issue. You have asked us to consider and render an opinion on whether or not your contract attorneys are in violation of any ethical rules should they continue to receive appointments from your office for the representation of indigent defenders and to defend those individuals. It would appear that any funds received in connection with the CEA would provide, in part, funds for the payment of these attorneys.

You have further informed us that the 42nd District Indigent Defender Office is not involved in the vast majority of traffic offenses. Per the CEA, the funds at issue are generated solely from costs paid by participants in the diversion program offered to them as resolution in traffic offense matters only. More specifically, you have informed us that the cases assigned by your office to the contract lawyers referenced above do not include traffic offense cases and have nothing to do with the District Attorney's decision to divert or not divert.

DOCUMENTS REVIEWED

You have provided the following documents for our consideration:

1. Cooperative Endeavor Agreement ("CEA") between 42nd District Indigent Defender Office and the 42nd Judicial District, Office of District Attorney;
2. Signed Order of District Judge Charles B. Adams dated March 29, 2018;
3. Motion to Recuse the Judge filed on behalf of the Public Defender for the 42nd Judicial District represented by Robert S. Noel, II;
4. Motion to Recuse the Judges of the 42nd Judicial District Court filed by the District Attorney;
5. Ruling on the Motion to Recuse signed by Judge Charles B. Adams on April 03, 2018; and
6. Contract between Steven R. Thomas, Chief Defender of the 42nd District Indigent Defender office and Brooks Greer, Attorney at Law.

These documents have been considered, form a part of this opinion letter and a copy of each is attached hereto and marked as *Exhibits 1-6* for ready reference.

OPINION REQUESTED

Does the continued representation of indigent defendants assigned to contract lawyers by the 42nd District Indigent Defender Office raise ethical concerns for the contract lawyers handling individual cases based upon the fact that payment for the services rendered by these contract lawyers will be partially funded per the CEA by funds generated by the diversion fees paid to the 42nd Judicial District Office of District Attorney?

OPINION

Based upon the above facts and documents referenced above, it is our opinion that there is no ethical violation on the part of the contract lawyers for continued representation of indigent defendants Assigned to them by the 42nd District Indigent Defender Office under the circumstances presented.

The 42nd District Indigent Defender Office has statutory and constitutional duties consistent with those of the 42nd Judicial District Office of District Attorney to see to it that trials are fair and impartial and that indigent defendants are provided with competent legal services. Therefore, it is our view that there is no conflict between the 42nd District Indigent Defender Office and the 42nd Judicial District Office of District Attorney in this regard.

Pursuant to Rule 5.4(c) of the Louisiana Rules of Professional Conduct, a lawyer who received payment of his fee from a third person is nonetheless obliged to give his full and complete competent service to his client irrespective of the fact that the source of payment is from a third person. A copy of Rule 5.4(c) is attached hereto as *Exhibit B*. While not directly on point, the theory or philosophy behind such a rule is applicable, in our view, to the inquiry presented. That is, irrespective of the source of funding, the lawyer appointed to represent an indigent defender owes his full loyalty and competent service to his client, the indigent defendant.

Further explanation of our view of the significance of Rule of 5.4(c) of the Louisiana Rules of Professional Conduct is as follows: a common scenario is when a parent pays the legal fees for defense of their child who is accused of a crime. The child is the client in this situation irrespective of whether the parent pays the attorney's fee, the lawyer's ethical obligations are to his client, the child. In the instance under consideration, the funds emanating from the CEA would flow from the 42nd Judicial District Office of District Attorney to the 42nd District Indigent Defender Office and from the 42nd District Indigent Defender Office to the contract lawyer.

The theory of Rule 5.4(c) makes it clear that the District Attorney who may be the source of some of the funds may not ethically control or attempt to control delivery of services to the indigent defendant.

Under the circumstances, it is our opinion that there is no ethical violation created for your contract attorneys by virtue of the CEA.

Very truly yours,

SCHIFF, SCHECKMAN & WHITE LLP

By: 

LESLIE J. SCHIFF

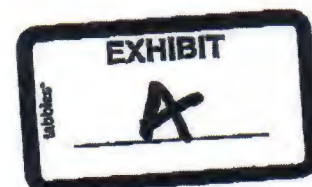
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Enclosure



Louisiana Rules of Professional Conduct

With amendments through July 1, 2016

Published by the
Louisiana Attorney Disciplinary Board
2800 Veterans Memorial Boulevard
Suite 310
Metairie, Louisiana 70002
(504) 834-1488 or (800) 489-8411



ADVOCATE**Rule 3.8. Special Responsibilities of a Prosecutor (amended and effective 4/12/2006)**

The prosecutor in a criminal case shall:

- (a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;
- (b) make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;
- (c) not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to preliminary hearing;
- (d) make timely disclosure to the defense of all evidence or information known to the prosecutor that the prosecutor knows, or reasonably should know, either tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal;
- (e) Not subpoena a lawyer in a grand jury or other criminal proceeding to present evidence about a past or present client unless the prosecutor reasonably believes:
 - (1) the information sought is not protected from disclosure by any applicable privilege;
 - (2) the evidence sought is essential to the successful completion of an ongoing investigation or prosecution; and
 - (3) there is no other feasible alternative to obtain the information;
- (f) except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused and exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6 or this Rule.

04/11/2018 15:18 CNB
04/11/2018 13:02 criminal

(FAX)318 872 0074
(FAX)318 872 4202

P.002/019
P.008/008

03/27/2018 15:00

(FAX)

P.002/008

42ND DISTRICT INDIGENT
DEFENDER OFFICE

STATE OF LOUISIANA

and

PARISH OF DESOTO

42ND JUDICIAL DISTRICT
OFFICE OF DISTRICT ATTORNEY

42ND JUDICIAL DISTRICT

COOPERATIVE ENDEAVOR AGREEMENT

Whereas, the OFFICE OF THE DISTRICT ATTORNEY prosecutes all criminal matters and administers a Pre-Trial Diversion Program, and further recognizes that successful performance of this function requires competent and professional representation of the indigent accused individuals charged with a criminal offense,

Whereas, the revenue stream of the INDIGENT DEFENDER OFFICE is insufficient to permanently maintain a staffing level adequate to provide such representation,

Whereas, each of the parties has a reasonable expectation of receiving a benefit or value that is at least equivalent to the consideration that is described in this agreement; and

Whereas, the transfer or expenditure of public funds herein below described is not a gratuitous donation,

Whereas, the interest of the citizens and taxpayers of this Parish would be better served by a cooperative endeavor agreement between the OFFICE OF THE DISTRICT ATTORNEY and the INDIGENT DEFENDER OFFICE under the authority of the Louisiana constitution of 1974, Article VII, Section 14(e) which provides that "for a public purpose...political subdivisions may engage in cooperative endeavors with each other..." and other laws of this State, They do hereby desire to exercise the aforesaid authority by entering into the following cooperative endeavor agreement:

1.) The OFFICE OF THE DISTRICT ATTORNEY, represented herein by GARY V. EVANS, DISTRICT ATTORNEY, obligates itself to tender the sum of Forty-Five and no/100 Dollars (\$45.00) on each ticket diverted, (except seatbelt tickets), to insure that the INDIGENT DEFENDER OFFICE can continue to provide competent and professional representation of the indigent accused which plays a pivotal role in the efficient and fair administration of justice in the criminal system.



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2.) The INDIGENT DEFENDER OFFICE, obligates itself to apply the proceeds from this agreement to maintain an adequate level of attorney and support staff that is competent, professional, diverse and dedicated to providing professional representation to the indigent accused and further represents that this cooperative endeavor agreement restores the status quo regarding funding for the INDIGENT DEFENDER OFFICE and insures the future viability of said office, without regard to any Pre-Trial Diversion program, that the execution of this cooperative endeavor agreement, in no way, modifies the contradictory nature of the relationship between the parties or the ethical duties that each party owes to their respective clients, either criminal defendants or crime victims.


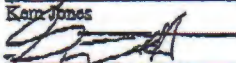
3.) On considering that the majority of criminal defendants in DeSoto Parish are African/American, and that it would be equitable if an African/American attorney would be available for their defense, then the INDIGENT DEFENDER OFFICE obligates itself to make reasonable efforts to employ an African/American attorney/attorneys to assist in the defense of DeSoto Parish criminal defendants.

4.) Any violation of the Provisions contained herein on the part of either party will constitute immediate grounds for termination of the agreement with thirty (30) days written notice.

This cooperative endeavor agreement shall have a term of one (1) year from date of execution. However, it shall automatically renew for additional successive one (1) year terms unless there is written notice provided by either party that the agreement will not be renewed said notice to be given at least thirty (30) days before the end of each term.

THIS DONE AND SIGNED in duplicate originals on this the 19th day of March, 2018, before the undersigned competent witnesses and me, Notary Public.

WITNESSES:


Karen Jones

George Winston

42ND JUDICIAL DISTRICT ATTORNEY

BY:

GARY V EVANS, DISTRICT ATTORNEY

INDEBENT DEFENDER/OFFICE

BY:

STEVEN THOMAS, CHIEF DEFENDER

NOTARY PUBLIC

My Comm. Expires 12/31/19
Blanca C. Holder

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P.004/019

NOTICE OF SIGNED ORDER**State of Louisiana**

Vs.

TRENTON J RAYLES**Case:17-CR-028776**
Division: B
42ND Judicial District Court
Parish of DeSoto
State of Louisiana

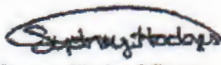
March 29, 2018

42ND JUDICIAL DISTRICT PUBLIC DEFENDER'S OFFICE

Please find attached certified copies of the ORDER signed by the Honorable Charles B. Adams on March 29, 2018 set for **HEARING** on **APRIL 3, 2018 AT 9:30 A.M.**

If I can be of further assistance, please do not hesitate to call.

Jeremy M. Evans
DeSoto Parish Clerk of Court
42ND Judicial District Court
State of Louisiana
Parish of DeSoto


Deputy Clerk of Court

FILE

EXHIBIT

2

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P.005/019

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2018 MAR 29 PM 1:24

STATE OF LOUISIANA

NUMBER: 17-CR-28776

VERSUS

42ND JUDICIAL DISTRICT COURT

TRENTON BAYLES

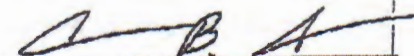
DESOTO PARISH, LOUISIANA

ORDER

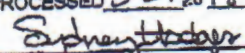
It has come to the attention of the Court that the District Attorney for the 42nd Judicial District, Gary Evans, has entered into a cooperative endeavor agreement with the 42nd Judicial District Public Defender's Office, whereby the district attorney obligates himself to pay a portion of his diversion funds to the public defender's office. This agreement raises serious questions concerning conflicts of interest for both parties, and serious constitutional questions.

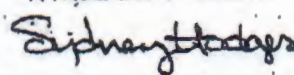
Accordingly, IT IS ORDERED THAT the 42nd Judicial District Public Defender's Office and the District Attorney appear and show cause on the 3rd day of April, 2018 at 9:30 a.m. why the 42nd Judicial District Public Defender's Office should not be removed, or other appropriate relief granted, in this case, and all other cases in which the 42nd Judicial District Public Defender's Office has been appointed, due to a conflict of interests.

THUS DONE AND SIGNED in Mansfield, DeSoto Parish, Louisiana on the 29th day of March, 2018.


Charles B. Adams, Judge
42nd Judicial District Court

Please Serve:
District Attorney for the 42nd Judicial District
42nd Judicial District Public Defender's Office
Trenton Bayles, DeSoto Parish Detention Center
Broocks Greer, III

PROCESSED 324 2018

Deputy Clerk

A TRUE COPY - ATTEST

Deputy Clerk of the District Court
DeSoto Parish, Louisiana

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(FAX)318 872 0074

P.006/018

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STATE OF LOUISIANA * PARISH OF DE SOTO
DE SOTO PARISH, LA

*ORTY-SECOND DISTRICT COURT

STATE OF LOUISIANA

FILED:

NO. 17-CR-28776

TRENTON BAYLES

DEPUTY CLERK

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DE SOTO PARISH, LA

MOTION TO RECUSE THE JUDGE

Appearing before the Court, comes the Public Defender for the 42nd Judicial District Court for the Parish of DeSoto, through the undersigned counsel who represents that:

1. He is appearing in his capacity as Public Defender for the 42 Judicial District, a political subdivision of the State of Louisiana created by Act 307 of the Legislature, 2007.
2. The Mover further urges that he is responding to an order of the Court served on March 29, 2018 to appear to show cause why the 42nd Judicial District Public Defender's Office should not be removed from this and all other cases in which they have been appointed.
3. The Mover urges that Louisiana Code of Criminal Procedure Article 671 provides as follows:

In a criminal case a judge of any court, trial or appellate, shall be recused when he:

- (1) Is biased, prejudiced, or personally interested in the cause to such an extent that he would be unable to conduct a fair and impartial trial;
- (2) Is the spouse of the accused, of the party injured, of an attorney employed in the cause, or of the district attorney; or is related to the accused or the party injured, or to the spouse of the accused or party injured, within the fourth degree; or is related to an attorney employed in the cause or to the district attorney, or to the spouse of either, within the second degree;
- (3) Has been employed or consulted as an attorney in the cause, or has been associated with an attorney during the latter's employment in the cause;
- (4) Is a witness in the cause;
- (5) Has performed a judicial act in the case in another court; or
- (6) Would be unable, for any other reason, to conduct a fair and impartial trial.

B. In any cause in which the state, or a political subdivision thereof, or a religious body is interested, the fact that the judge is a citizen of the state or a resident of the political subdivision, or pays taxes thereto, or is a member of the religious body is not of itself a ground for recusation.

L.a. Code Crim. Proc. Ann. § art.671

EXHIBIT

3

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4. Mover asserts that this matter relates to the eligibility of counsel to represent indigent defendants in the 42nd JDC based on alleged conflicts of interest raised by the Court itself. The Question is whether the Judges of the 42nd JDC should be recused as the action sought by the Court seeks to disqualify or regulate the Public Defender of the 42nd JDC. We assert that there is personal interest on the part of both Judges of the 42nd JDC in this matter.
5. Mover also asserts that the relief sought by the Court on its own motion only seeks to recuse the 42nd JDC Public Defender and not the District Attorney for the 42nd JDC from all actions in all cases it has been appointed. Mover asserts that the relief sought effectively shuts down one political subdivision of the State while exempting the other from the same solution. We would assert that the Public Defender's Office is entitled to the same treatment as the District Attorney and the relief sought favors one office over another.
6. Mover asserts that the issues involved in the Court's motion are unique issues that have not been previously litigated. The Mover asserts that a specific bill was filed this session in legislature, in which a member of the Court was active in attempting to advance its goals. As a result of this advocacy, the Mover asserts that the Court has a personal interest in the outcome of the rule to show cause that it has issued.
7. Mover asserts that the relationships of both parties tied into court and the Court, who has initiated this action are such that it is impossible for any Judge within this Judicial District to not have an interest in the outcome or a bias in some manner and would assert that recusal is necessary and requests that the Louisiana Supreme Court appoint a Judge Ad Hoc to hear this motion if there is no voluntary recusal.

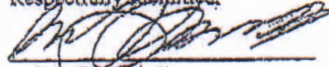
The defendant-in-rule, the District Defender for the 42nd Judicial District through undersigned counsel, respectfully prays for the recusal of the Judges of the 42nd Judicial District Court, from further proceedings in this case, pursuant to Louisiana Code of Criminal Procedure, Article 671 and as provided for by Louisiana Code of Criminal Procedure Articles 674-676

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P.008/019

Respectfully submitted,



Robert S. Noel, II
Bar No. 17337

Attorney for Defendant-in-Rule
Steven Thomas, District Defender for the 42nd IDC
2901 Evangeline
Monroe, Louisiana 71201
(318) 388-1700

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(FAX) 318 872 0074

P.009/019

STATE OF LOUISIANA NUMBER: 17-CR-28776
VERSUS 42ND JUDICIAL DISTRICT COURT
TRENTON BAYLES DESOTO, LOUISIANA

ORDER

Considering the above and foregoing:

IT IS ORDERED that a contradictory hearing be held at ____ a.m.
on the _____ day of _____, 2018.

THUS DONE AND SIGNED, in Mansfield, DeSoto Parish,
Louisiana on the _____ day of _____, 2018.

DISTRICT JUDGE

SERVICE INSTRUCTIONS:

DeSoto Parish District Attorney
Gary V. Evans
206 Adams Street
Mansfield, Louisiana 71052

Honorable Charles B. Adams
42nd Judicial District Judge
210 Adams Street
Mansfield, Louisiana 71052

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STATE OF LOUISIANA 2018 APR -3 AM 9:00 CRIMINAL DOCKET #: 17-CR-28776
VERSUS 42ND JUDICIAL DISTRICT COURT
TRENTON BAYLES DESOTO PARISH, LOUISIANA

MOTION TO RECUSE

On motion of Gary V. Evans, in his capacity as District Attorney for the 42nd Judicial District for the State of Louisiana, and on suggesting to the court that:

1.

This matter has been fixed on a rule-to-show-cause filed by the Court on its own discretion to be held on the 2nd day of April, 2018.

2.

The issue relates to whether the indigent defender's office may represent the indigent defendants in criminal proceedings in DeSoto Parish in light of a Cooperative Endeavor Agreement executed between the Office of the District Attorney and the Office of the Indigent Defender in DeSoto Parish.

3.

Any judge in the 42nd Judicial District has a personal interest in the cause to such an extent that he/she would be unable to conduct a fair and impartial hearing as is required by Louisiana Code of Criminal Procedure Article 671. outcome It has now been learned that defendant has again been incarcerated and is now an inmate at Caddo Correctional Center.

WHEREFORE, mover respectfully prays for the recusal of Judges of the 42nd Judicial District Court, from further proceedings in this case, pursuant to Louisiana Code of Criminal Procedure Article 671.

RESPECTFULLY SUBMITTED:

Gary V. Evans
GARY V. EVANS, District Attorney
for 42nd Judicial District
206 Adams Street
Mansfield, LA 71052
Phone #: (318) 872-2991

CERTIFICATE OF SERVICE

Gary V. Evans
I, the undersigned, do hereby certify that a true and correct copy of the foregoing pleading, motion, or other document has been served by mail on the party or parties named below, and that the same has been filed with the court.

GARY V. EVANS, Notary Public
PROCESSED 4-3-2018

Deputy Clerk
Deputy Clerk

EXHIBIT

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(FAX) 318 872 4202

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STATE OF LOUISIANA

NUMBER: 17-CR-28776

VERSUS

42ND JUDICIAL DISTRICT COURT

TRENTON RAYLES

DESOTO PARISH, LOUISIANA

RULING ON MOTION TO RECUSE

It has come to the attention of the Court that the District Attorney for the 42nd Judicial District, Garry Evans, has entered into a cooperative endeavor agreement with the 42nd Judicial District Public Defender's Office, referred to as the Indigent Defender Office in the agreement, whereby the District Attorney obligates himself to pay a portion of his diversion funds to the Public Defender's Office. Exhibit A. This agreement raises serious federal and state constitutional questions and ethical questions regarding conflicts of interest for both parties. Because this Court has raised these questions, the parties have filed a motion to recuse the Court as being personally interested in the outcome of these issues.

The Court has "an independent duty to ensure that criminal defendants receive a trial that is fair and does not contravene the Sixth Amendment." *Wheat v. United States*, 486 U.S. 153, 161 (1988). "Courts have an independent interest in ensuring that criminal trials are conducted within the ethical standards of the profession and that legal proceedings appear fair to all who observe them." *Id.* at 160. After the trial court has been alerted that conflicts of interest exist, the judge must take the proper steps to assure that the defendant's Sixth Amendment right to effective assistance of counsel is not violated. *State v. Claco*, 01-2732 (La.12/3/03), 861 So.2d 118, 132, cert. denied, 541 U.S. 1005 (2004). Therefore, the Court must determine if the agreement between the District Attorney and the Public Defender, whereby the District Attorney agrees to fund the defense of criminal prosecutions, creates a situation whereby the assistance of defense counsel is no longer effective and conflict free.

The United States Constitution and the Louisiana Constitution of 1974 provide those accused of a crime the right to counsel. U.S. Const. Amend. VI and XIV; La. Const. art. I, §13. That right includes the right to the effective assistance of counsel and the right to conflict free counsel. U.S. Const. Amend. VI and XIV; La. Const. Art. I, § 13; *Strickland v. Washington*, 466 U.S. 668 (1984); *Wheat v. United States*, 486 U.S. 153 (1988); *State v. Franklin*, 400 So.2d 616,

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Sylvia [Signature]
Deputy Clerk

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620 (La.1981). As a general rule, courts have held that an attorney laboring under an actual conflict of interest cannot render effective legal assistance to the defendant he is representing. *Franklin*, 400 So. 2d at 620. A lack of effective assistance of counsel implicates the very integrity of the system, as the adversarial process heavily depends on effective counsel to produce just results. *United States v. Gonzalez-Lopez*, 548 U.S. 140, 147 (2006).

The Supreme Court in *Wheat* held, "The Sixth Amendment right to choose one's own counsel is circumscribed in several important respects....a defendant may [not] insist on the counsel of an attorney who has a previous or ongoing relationship with an opposing party, even when the opposing party is the Government." 486 U.S. at 159.

The Public Defender's Office was established to be "free from undue political and judicial interference and free of conflicts of interest." LSA-RS, 15:142(B)(2) (emphasis added). The Legislature has attempted to establish independent funding for the public defenders through the payment of misdemeanor and felony court costs, Forty-Five U.S. Dollars (\$45.00) per traffic ticket, and other means. Many jurisdictions have long faced the problem of under-funding of the public defender's office. DeSoto Parish had not faced that problem until the District Attorney began a diversion program in May 2017. Since that time, funding for all the recipients of court costs, including the Public Defender's Office, has declined by at least eighty percent (80%). The de-funding is, at least, partially attributable to the District Attorney's diversion program. Regardless of the competing arguments attempting to explain the drastic decline, the Public Defender's Office has been put in the untenable position of having to ask for funding from the District Attorney's diversion funds.

Does not the mere existence of the agreement run afoul of *Wheat*'s prohibition of defense counsel having an ongoing relationship with the opposing party? The agreement also suggests that the District Attorney assumes authority or control over the competency and professionalism of the attorneys hired by the Public Defender's Office. Rule 1.8(f)(2) of the Rules of Professional Conduct provides, "A lawyer shall not accept compensation for representing a client from one other than the client unless....there is no interference with the lawyer's independence or professional judgment or with the client-lawyer relationship...." Do these observations support

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P.013/019
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the legislative purpose in creating the Public Defender's Office as being free from undue political interference and free of conflicts of interest?

Additionally, the Louisiana Constitution of 1974, Article V, Section 26(C) provides that "[n]o district attorney or assistant district attorney shall appear, plead, or in any way defend or assist in defending any criminal prosecution or charge. A violation of this Paragraph shall be cause for removal." Does the very existence of the agreement and the specific terms of the agreement reveal that the District Attorney has exercised his discretion to assist the defending of the very criminal prosecutions he has compelled?

The agreement attempts to address this issue when it provides, "...this cooperative endeavor agreement restores the status quo regarding funding for the Indigent Defender Office and insures [sic] the future viability of said office, without regard to any Pre-Trial Diversion program..." The agreement further provides, "that the execution of this cooperative endeavor agreement, in no way, modifies the contradictory nature of the relationship between the parties or the ethical duties that each party owes to their respective clients..." Are not the proceeds of a pre-trial diversion program discretionary funds for the District Attorney, and can be utilized as the District Attorney sees fit?

The Court has a constitutional duty to determine for itself if the contradictory nature of the justice system has been compromised. Is the Public Defender's Office is now dependent upon the discretion of the District Attorney's Office for at least some of its funding?

The integrity of criminal convictions, specifically, and the integrity of criminal justice systems, generally, are the appropriate concerns of the Court. This Court is required to look to the future in an attempt to determine whether on a Post Conviction Relief Application a state appellate Court, or the federal court system, would find there to be conflicts of interest when the defense is funded by the discretionary funds of the prosecution. Additionally, the Court is required to preserve the integrity and independence of the judiciary. Code of Judicial Conduct, Canon 1. The integrity of the judiciary cannot be separated from the integrity of the court process or system. If these conflicts of interest questions are not addressed, then the conduct of the district attorneys and the public defenders will consume and dictate the integrity of the judiciary.

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Should an indigent criminal defendant be forced to rely upon the parties' self-serving assertions that there is no conflict?

The normal remedy for the finding of a conflict of interest is the removal of the conflicted attorney or waiver of the conflict. However, under these systemic circumstances, removal of the Public Defender's Office would severely cripple the criminal justice system, and have the greatest adverse consequence for the indigent defendants themselves.

In addition to the conflict of interests issue, the agreement may be a violation of Louisiana Constitution of 1974, Article VII, Section 14(A) concerning prohibited donations of public funds. While Article VII, Section 14(C) allows for cooperative endeavor agreements, such are not an exception to Section 14(A); rather, it supplements the prohibition against donations in Section 14(A).

For cooperative endeavor agreements to be constitutional in this situation the funds conveyed by the District Attorney must not be "gratuitously alienated" to the Public Defender's Office. *Bd. Of Dir. of the Indus. Dev. Bd. of the City of Gonzales, Louisiana, Inc. v Taxpayers*, 2005-C-2293 (La. 9/6/06), 938 So. 2d 11.

In an attempt to avoid this prohibition, the agreement maintains that:

Whereas, each of the parties has a reasonable expectation of receiving a benefit or value that is at least equivalent to the consideration that is described in this agreement; and

Whereas, the transfer or expenditure of public funds herein below described in [sic] not a gratuitous donation.

The agreement further asserts that "...competent and professional representation of the indigent accused...plays a pivotal role in the efficient and fair administration of justice in the criminal system." This Court wholeheartedly agrees with this assertion, but questions whether funding provided to the Public Defender by the District Attorney advances the public defenders' competency and professionalism. The Court further questions, what, if any, benefit or value the District Attorney's Office might receive and if the agreement is truly "not a gratuitous donation."

Arguably, there is a "benefit" to the prosecution to have indigent criminal defense counsel available, otherwise, the criminal justice system could not function. While the agreement

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purports to "restore the status quo...without regard to any pre-trial diversion program...." does not the fact that the parties have entered into this agreement reveal that the District Attorney has chosen to fund the entity he desires to fund? The discretionary nature of the funds indicates that the "tender" of funds may be more of a gratuity.

In light of these constitutional issues, the contractual validity of the agreement should be addressed. Persons may not by their juridical acts derogate from laws enacted for the protection of the public interest. Any act in derogation of such laws is an absolute nullity. LSA-C.C. art. 7. A contract is absolutely null when it violates a rule of public order, as when the object of a contract is illicit or immoral. A contract that is absolutely null may not be confirmed. Absolute nullity may be invoked by any person or may be declared by the court on its own initiative. LSA-C.C. art. 2030.

It is being demanded by the parties that the Court not address whether the agreement is in conflict with the Sixth Amendment to the United States Constitution; Article I, Section 13 and Article V, Section 26(C) of the Louisiana Constitution of 1974; Rule 1.8 of the Rules of Professional Conduct, and not determine whether the agreement undermines the integrity of the criminal justice system. The Code of Judicial Conduct, Canon 1, provides:

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and shall personally observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code are to be construed and applied to further that objective. As a necessary corollary, the judge must be protected in the exercise of judicial independence.

This motion to recuse is in essence a challenge to the Court's attempt to protect the integrity of the criminal justice system. It is a challenge to the Court's endeavor to ensure that indigent criminal defendants are represented by counsel that do not have conflicts of interest. It is a challenge to the Court's endeavor to ensure that the District Attorney is not violating the Constitution by assisting in defending criminal prosecutions. It is a challenge to the Court's endeavor to ensure that the Rules of Professional Conduct are adhered to. It is ultimately, a challenge to the Court's endeavor to prevent our criminal justice system from being "for sale." The interest of the Court is not personal, it is professional. Not only are there no valid grounds

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for recusal, the failure of the Court to raise and address these issues would be an abdication of the Court's responsibilities.

Accordingly, the request for the Court to recuse itself is **DENIED**.

THUS DONE AND SIGNED in Mansfield, DeSoto Parish, Louisiana on the 3rd day of April, 2018.


Charles B. Adams, Judge
42nd Judicial District Court

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CONTRACT**STATE OF LOUISIANA
PARISH OF DESOTO**

THIS CONTRACT is entered into this 1st day of October, 2017, by and between the 11th/42nd Judicial District Indigent Defender Fund (hereinafter, "IDF"), represented herein by Steven R. Thomas, its Chief Defender, whose mailing address is:

Steven R. Thomas
P.O. Box 1004
Mansfield, Louisiana 71052

And Brooks Greer, (hereinafter "Attorney"), whose mailing and physical addresses are:

Brooks Greer
839 Kings Hwy.
Shreveport, Louisiana 71134

The IDF does hereby contract and agree with Attorney to retain the services of Attorney for a period of twelve (12) months to run from the date of signing of contract. Attorney agrees to ethically represent as attorney of record all persons appointed to the IDF and assigned to Attorney during the term of this contract. The types of cases to be handled by Attorney are described on Addendum "A" to this contract.

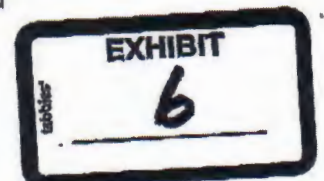
Attorney further agrees that Attorney shall maintain a physical office at the physical address identified above. All files and records pertaining to the individual-defendants represented by the Attorney at the request of the IDF shall be maintained at that office on an individual client basis. Attorney shall be responsible for entering appropriate notes, entries concerning this case in the Louisiana Public Defender's Online Case Management System.

Attorney has been furnished a copy of the standards of performance of the Louisiana Public Defender Board ("LPDB"). Attorney agrees to adhere to those standards and all rules, guidelines, standards of practice, and regulations of the LPDB. Attorney agrees to report to the Chief Defender any complaint or Office of Disciplinary Counsel complaint made by an IDF client against Attorney.

Attorney has also been furnished with a copy of or the internet address link to the LPDB's standard District Defender Contract, and Attorney agrees to comply with all terms therein that apply to attorneys who enter into contracts with the IDF. Upon request of the IDF, Attorney agrees to complete any report, including but not limited to the reports identified in this contract to enable the IDF to comply with any and all reporting requirements contained in the District Defender Contract.

Attorney may not accept any payment or anything of value from any person Attorney is representing pursuant to the terms of this contract, nor may Attorney refer such person to any other IDF attorney for paid representation.

Attorney agrees that all files and records relating to IDF assigned cases are the property of the IDF and shall be turned over to the Chief Defender at the completion of a case or upon the termination of this contract, whichever occurs first. Attorney shall maintain a listing of all persons appointed to Attorney as set out above and shall provide a report of said list, on a form to be furnished by the IDF, on or before the 5th day of each calendar month, reporting thereon (1) the total number of persons or cases appointed or opened, (2) the total number of cases completed and closed by Attorney and (3) the total number of cases remaining open at the end of the month for which the report is made. Attorney also agrees that all of the files concerning Attorneys IDF cases shall be made available to the Chief Defender or his designee for inspection and review at any reasonable time and place upon reasonable notice to Attorney.



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Attorney further agrees to provide and maintain insurance during the period of this contract for the following: (1) professional liability insurance of not less than \$1,000,000.00 coverage; (2) general liability insurance on the premises of Attorney's office; and (3) automobile liability insurance. Attorney shall provide the IDF with proof of the same at the inception of this contract. Attorney agrees to indemnify and hold Chief Defender and the IDF harmless from any claim or liability of any nature whatsoever made against Attorney or Attorney's insurance.

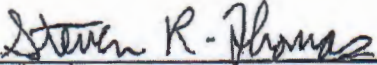
IDF agrees to provide Attorney with standard file folders and interview sheets to be utilized for each person appointed during the period of this contract. Attorney shall furnish all other books, materials, supplies, and equipment. Attorney shall be responsible for using Attorney's independent professional judgment in providing services rendered under this contract and shall be responsible for providing and supervising any office personnel performing work relating to the Attorney's services under this agreement. Attorney understands that Attorney is an independent contractor in the performance of this Agreement and not an employee of the IDF. Nothing contained herein shall be construed to imply an employment, joint venture or principal and agent relationship between the parties, and neither party shall have any right, power or authority to create any obligations, express or implied, on behalf of the other. Attorney agrees that the IDF will make no deductions from any compensation paid to Attorney for, and Attorney shall have full and exclusive liability for, the payment of any taxes and/or contributions for unemployment insurance, workers' compensation or any other employment-related costs or obligations, related to the provision of the services rendered under this contract.


For the services rendered, IDF agrees to pay Attorney the sum of SIX THOUSAND TWO HUNDRED FIFTY AND NO/100 (\$6250.00) per month, beginning with the first day of each month, payable on or before the 15th day of the succeeding month, beginning with the second month of this contract and a like amount on the same day of each month thereafter until the contract is terminated either by the completion of its term or for cause as set forth hereafter.

Attorney agrees to have the full responsibility for representing each individual defendant appointed to Attorney in accordance with all applicable standards of the Code of Professional Responsibility of the Louisiana State Bar Association, as amended. Attorney further agrees to exercise his best professional efforts in the representation of each individual defendant appointed to Attorney and to comply with all applicable standards of the Louisiana State Bar Association and the LPDB.

This contract may be terminated by either party without cause upon thirty (30) days written notice to the other at the mailing addresses for the parties as set forth hereinabove. The IDF may terminate this contract for failure of Attorney to comply with the insurance requirements of this contract or for the failure of Attorney to remain in good standing or to maintain a license to practice law in the State of Louisiana.

This contract is entered into by and between the IDF and Attorney on the date first above written in Desoto Parish, Louisiana.


11th/42nd JUDICIAL DISTRICT
INDIGENT DEFENDER FUND
STEVEN R. THOMAS, CHIEF DEFENDER


BROOKS GREER SSN # 437-64-5789
ATTORNEY

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ADDENDUM

- 1) Handle felony cases in Desoto Parish, including serious felonies;
- 2) Represent juveniles in delinquency cases in Desoto Parish;
- 3) Represent parents in CINC cases in Desoto Parish as necessary;

NOTE: While it is the intention of the parties to comply with DOJ guidelines pertaining to caseload, it is acknowledged by the parties that this will not be possible during the term of this contract.



Louisiana Rules of Professional Conduct

With amendments through July 1, 2016

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2800 Veterans Memorial Boulevard
Suite 310
Metairie, Louisiana 70002
(504) 834-1488 or (800) 489-8411



LAW FIRMS AND ASSOCIATIONS

Rule 5.4. Professional Independence of a Lawyer (amended effective July 1, 2016)

(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.