



August 4, 2011

Attorney General James D. "Buddy" Caldwell
Department of Justice
1885 North Third Street
Baton Rouge, LA 70802

Dear Mr. Attorney General:

Certain public allegations have been made about the Orleans Parish Criminal District Court Judicial Expense Fund, the manner and means of collecting those funds, the nature of those funds and the use of those funds. The public allegations made and a cursory review of the law and the public practices of the Criminal District Court for the Parish of Orleans reveal several serious legal and possibly criminal issues. The District Attorney, Leon A. Cannizzaro, Jr., was a duly elected Judge of the Criminal District Court for the Parish of Orleans from 1986 until 2002 and may have participated at some time in the conduct discussed above. Out of a sense of caution, Independent Ethics Counsel was employed to opine and give advice about any actual conflicts of interest or any appearance of impropriety in having this office further the investigation and potential prosecutions resulting from this inquiry. While Ethics Counsel found no personal conflict of interest he has recommended that this investigation and any prosecutions be forwarded to your office to avoid the appearance of impropriety and to instill public confidence in the integrity and impartiality of the inquiry and any prosecutions that may result.

I am writing to ask the Department of Justice to investigate whether the judges of the Criminal District Court for the Parish of Orleans are committing malfeasance in office by (1) extracting money from defendants who have been convicted and ordering incarceration as the consequence of non-payment, (2) failing to account for the moneys so collected, and (3) using the money so collected for their own personal benefit. This conduct undermines the public confidence in the legal system and constitutes a violation of the laws of Louisiana.

This matter has come to my attention by way of media reports, citizen complaints, and a referral by the Metropolitan Crime Commission, a non-profit anti-corruption agency. Particularly, on June 29, 2011, WWL-TV published an article entitled, "Orleans judges awarding themselves extra health care benefits," which reports that the judges in Orleans

Parish have been using the judicial expense fund to provide supplemental insurance for themselves.¹ In a follow-up article dated June 30, WWL-TV reported that the criminal court judges have paid one million nine hundred forty-four thousand five hundred seventy-six dollars (\$1,944,576) in supplemental health care benefits to themselves since 2006.² The judges have further decided to insulate themselves from public scrutiny by refusing to allow public inspection of the expenditures of the judicial expense fund³ and by failing to submit audits of that fund to the legislative auditor as required by law.⁴

I.

La. R.S. 13:1381.4 ("Judicial Expense Fund for Criminal District Court") provides in relevant part:

In addition to all other fines, costs, or forfeitures lawfully imposed by this Section or any other provision, the court may impose an additional cost against any defendant who has been finally convicted of a misdemeanor, excluding traffic violations, or a felony. The additional costs authorized in this Paragraph shall not exceed two hundred fifty dollars in the case of a misdemeanor nor exceed two thousand dollars in the case of a felony.

R.S. 13:1381.4(A)(2).

The money "shall be transmitted to the judicial administrator of the Criminal District Court for Orleans Parish" (§ 1381.4(A)(2)), who "shall place all sums collected or received . . . in a separate account to be designated as the judicial expense fund for the Criminal District Court for Orleans Parish" (§ 1381.4(B)). The money collected "may be used for any purpose connected with, incidental to, or related to the proper administration or function of the court or the office of the judges thereof" (§ 1381.4(C)), except that "*no salary shall be paid from the judicial expense fund to any judges of the court.*" (§ 1381.4(D)).

The statute additionally provides that the judicial expense fund "is in addition to any and all other funds, salaries, expenses, or other monies that are provided, authorized, or established by law (§ 1381.4(C)) and that "*the judges of the court shall cause to be conducted annually an audit of the fund and the books and accounts relating thereto and shall file the same with the office of the legislative auditor where it shall be available for public inspection*" (§ 1381.4(B)).

Additionally, the statute providing for the salaries of criminal district court judges, La. R.S. 13:691, provides in relevant part as follows:

- 1 Exhibit A.
- 2 Exhibit B.
- 3 Exhibit C.

4 Although there is an "audit" that has been submitted to the legislative auditor on an annual basis, a conversation with the accountant – Mr. Luther Speight – indicates that the audit is an "OMB 833 Single Audit," which is required as a matter of federal law. See OMB Circular A-133, available online at: <www.whitehouse.gov/sites/default/files/omb/circulars/a133/a133.pdf>. To date, there has never been a separate audit of the judicial expense fund itself.

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

- (1) Retirement benefits.
- (2) Reimbursement of those expenses provided for and authorized by R.S. 13:694, 13:698, and 13:1341.2.
- (3) Payment of premiums for health, medical, dental, and hospitalization insurance programs contributions to which shall be at the same rate as those paid by other state employees.
- (4) Educational grants.
- (5) Reimbursement for lease payments and expenses of no more than five hundred dollars per month incurred for vehicles used for official purposes in multiparish jurisdictions, provided that any such vehicles shall be leased in accordance with the provisions for public bid.

The Louisiana Supreme Court has explained that legislative intent behind La. R.S. 13:691 "is clear: judges are to receive no additional compensation except that specified." State ex rel Guste v. City of New Orleans, 363 So.2d 678, 683 (La. 1978) (invalidating a city ordinance which provided that the city would pay half of judges' contributions to retirement system).

II.

The judges of Orleans Parish Criminal District Court have, as a matter of custom, been requiring convicted defendants to pay "special assessments" to the judicial expense fund as a part of the sentence imposed by the court upon conviction. The consequence of non-payment of such a "special assessment" is revocation of probation, i.e., jail time.

This occurs despite the fact that a payment to the judicial expense fund is not a lawful condition of probation. *See* La. C.Cr.P. 895.1(B) (listing payments which *are* authorized as conditions of probation); State v. Wells, 10-1338 (La. App. 4 Cir. 3/30/11), 64 So.3d 303; State v. Swan, 569 So.2d 1255 (La. App. 1 Cir. 1990).

III.

Even though La. R.S. 13:1381.4(D) provides that "no salary shall be paid from the judicial expense fund to any judges of the court" and La. R.S. 13:691(B) provides that "no judge . . . shall receive for his services as a judge, directly or indirectly, any additional salary, compensation, emolument, or benefit from the state or any of its political subdivisions," the judges of criminal district court have no qualms with increasing their salaries with supplemental health insurance benefits.

The Attorney General has, on two separate occasions, stated that R.S. 13:691 prohibits the use of a judicial expense fund to supplement a judge's insurance benefits. *See* A.G. Op. 04-0174 (judicial expense funds cannot be used for the payment of dental insurance premiums);

A.G. Op. 88-632 (judicial expense funds cannot be used to pay for additional health insurance premiums).

Nevertheless, even though the judges of the criminal district court *know* that they are in violation of R.S. 13:691 as that statute has been interpreted by the Attorney General, the judges believe that the statute is inapplicable and that the Attorney General is wrong because the moneys in the judicial expense fund are not "state funds." Rather, the judges of the Orleans Parish Criminal District Court have retained private counsel who has issued an opinion to the effect that these funds – which are collected under threat of imprisonment – are "self-generated" funds.

IV.

In addition to refusing to allow public inspection of the books and accounts relating to the judicial expense fund (Exhibit C),⁵ the judges of the criminal district court have *never* filed with the legislative auditor an audit pertaining to the judicial expense fund, namely, "the fund and the books and accounts relating thereto," as required by La. R.S. 13:1381.4(B).

"Malfeasance in office is committed when any public officer or public employee shall *intentionally refuse or fail to perform any duty lawfully required of him*, as such officer or employee." La. R.S. 14:134(1).

The statutes pertaining to the office of the legislative auditor, particularly La. R.S. 24:518(A), provides:

Any auditee, local auditee, or public officer, employee, or other person of said auditee: . . . who refuses, fails, or neglects to transmit to the legislative auditor reports, statements of accounts or other documents upon request as provided by law . . . shall be fined not less than five hundred dollars, nor more than five thousand dollars, or imprisoned for not less than ten days, nor more than six months, or both.

Any officer of an auditee or local auditee who violates any of the provisions of this Chapter shall, *in addition* to the above fines and penalties, *be deemed guilty of malfeasance* and gross misconduct in office, and shall be subject to removal.

By use of the language "[t]he judges of the court *shall*. . .," La. R.S. 13:1381.4(B) creates by law a duty upon the judges of the criminal district court. The judges' failure to abide by this mandatory duty places them in violation of the malfeasance statute.

V.

Finally, it appears that the statute enabling the judicial expense fund is itself unconstitutional because it authorizes judges to order the payment of moneys that they

⁵ The Fourth Circuit in Henderson v. Bigelow, 982 So.2d 941 (La. App. 4 Cir. 2008), *writ denied*, 983 So.2d 1292, specifically held that documents pertaining to the judicial expense fund created by R.S. 13:1381.4 are "public records" within the meaning of the Public Records Acts (La. R.S. 44:1 *et seq.*). However, the cause of action created by refusal to allow inspection and copying is civil rather than criminal. *See* La. R.S. 44:35.

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Re: CDC Judicial Expense Fund
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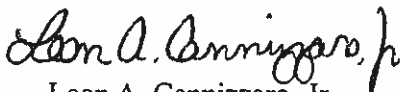
themselves will spend. In a case very much on point, the United States District Court for the Eastern District of Louisiana struck down as unconstitutional a statute which gave judges control of a "bail bond fee" which consisted of two percent of the amount of the bail set by the judge. Augustus v. Roemer, 771 F.Supp. 1458, 1472-1473 (E.D. La. 1991). The court explained: "Although no one contests that the judges do not receive direct compensation from the funds raised by the 2% charge, the judges regardless *exercise or potentially exercise total control over the amounts collected.*" Id. at 1493 (emphasis supplied). Even though there was no suggestion that the judges were using the two percent fund to enrich themselves, the "temptation for the judges to forego due process and assess high bail amounts in order to maintain the level of funding necessary to run their respective criminal justice systems" was such that the statutory scheme was unconstitutional. Id. The Louisiana Supreme Court has cited Augustus v. Roemer for the proposition that "if judges impose fines they will spend, [this] system offends [the] Due Process clause." State v. Brumfield, 96-2667 (La. 10/20/98), 737 So.2d 660, 688 (citing Ward v. Village of Monroeville, 409 U.S. 57 (1972) and Tumey v. Ohio, 273 U.S. 510 (1927)).

In Augustus v. Roemer, the mere fact that judges had the authority to simultaneously raise revenue from defendants and spend the revenue so raised was unconstitutional – even though there was no suggestion that the judges were *actually* using that system to enrich themselves. In this instance, however, the system is particularly odious because the judges are willing to publicly announce that they are using moneys, collected from defendants under threat of imprisonment, for their own private gain.

In order to promote public confidence in the integrity and impartiality of the investigation and any subsequent prosecutions that may arise from the issues enumerated in this correspondence, I respectfully request that the Attorney General accept the responsibility to conduct a thorough investigation of the issues contained in this correspondence and institute any prosecution warranted under the circumstances.

With kindest regards, I remain,

Very Respectfully yours,



Leon A. Cannizzaro, Jr.
District Attorney

Encl.