

THE CAPITAL APPEALS PROJECT



COMPLIANCE AUDIT
ISSUED JUNE 30, 2010

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LOUISIANA LEGISLATIVE AUDITOR
DARYL G. PURPERA, CPA, CFE

June 30, 2010

**MS. SARAH OTTINGER, DIRECTOR,
JUDGE CALVIN JOHNSON,
(RETIRED) CHAIRPERSON,
AND MEMBERS OF THE BOARD
THE CAPITAL APPEALS PROJECT**
New Orleans, Louisiana

We have audited certain transactions of The Capital Appeals Project. Our audit was conducted in accordance with Title 24 of the Louisiana Revised Statutes to determine the propriety of certain financial transactions.

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*; therefore, we are not offering an opinion on The Capital Appeals Project's financial statements or system of internal control nor assurance as to compliance with laws and regulations.

The accompanying report presents our findings and recommendations as well as management's response. This correspondence is intended primarily for the information and use of management of The Capital Appeals Project. Copies of this report have been delivered to the District Attorney for Orleans Parish Judicial District of Louisiana and others as required by law.

Respectfully submitted,

Daryl G. Purpera, CPA, CFE
Legislative Auditor

DGP:DD:dl

CAPITAL APPEALS PROJECT 2010

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Executive Summary

- From May 2004 to October 2009, Mr. Jelpi Picou, former executive director of The Capital Appeals Project (CAP), withdrew agency funds totaling \$206,169 for his personal use.
- CAP did not maintain documentation for meals, travel expenses, and miscellaneous purchases made with the agency's debit card. Mr. Picou admitted that at least \$4,060 of the debit card purchases were for his personal use.
- CAP did not submit its required annual audit to the Louisiana Legislative Auditor.

Background

The Louisiana Public Defender Board (LPDB) [formerly referred to as the Louisiana Indigent Defendant Assistance Board (LIDAB)] contracts with CAP, a non-profit corporation organized under the laws of Louisiana to provide criminal defense services on behalf of indigents on appeal of capital convictions. CAP represents clients in their direct appeals to the Louisiana Supreme Court and on certiorari to the United States Supreme Court. In addition to direct representation, CAP resources ongoing capital trials, provides training and consultation for capital defense attorneys, engages in public outreach and education on issues relating to capital punishment, and advocates for continued improvement in the criminal justice system.

CAP was organized with its own board of directors. In May 2004, LIDAB appointed Mr. Jelpi Picou, director of CAP. Shortly after Mr. Picou's appointment, the CAP board experienced turnover and became inactive. On November 2, 2009, Mr. Picou resigned from CAP indicating that his resignation was because of his inattention and mismanagement of the organization. He resigned days before the LPDB was to conduct an inspection of CAP's books.

According to current Executive Director Ms. Sarah Ottinger and Office Administrator Ms. Kim Watts, after Mr. Picou resigned, they compared accounting records to CAP's bank statements and noted that some bank transactions were not listed in the accounting records. These transactions included ATM withdrawals from CAP's bank accounts and purchases charged to CAP's debit card for meals, travel, and other miscellaneous items.

On November 19, 2009, the Louisiana Legislative Auditor (LLA) received a request from the district attorney of Orleans Parish to conduct an audit of CAP. On December 18, 2009, compliance auditors met with representatives of CAP to conduct a preliminary examination of their records. It was later determined that the LLA would conduct an audit of CAP. The following are the results of the audit.

Cash Withdrawals

From May 2004 to October 2009, Mr. Picou, through his own admission, made 868 withdrawal transactions totaling \$206,169 from CAP's checking and money market bank accounts for his personal use. Of the \$206,169 in withdrawals, bank records indicate that a total of \$195,496 was withdrawn from the checking and money market bank accounts using CAP's credit/ATM card (debit card). The remaining \$10,673 of CAP's funds were withdrawn from the money market account and indicated "Withdrawal" on the bank statements, which represents transactions by money orders, cashier checks, or cash withdrawals (other than ATM).

According to Ms. Ottinger, after Mr. Picou resigned from CAP, she and Ms. Watts compared the accounting records to CAP's bank statements and noticed ATM withdrawals and other purchases made with the debit card that Mr. Picou had not entered in the accounting records. We examined CAP's bank statements and accounting records during Mr. Picou's employment from May 2004 to October 2009, and did not find any records to indicate the business purpose of the \$206,169 in withdrawals. Ms. Ottinger stated that the debit card is a business card that should not be used for personal purposes. CAP had only one debit card, which Mr. Picou always kept in his possession and was the only employee that knew the PIN number of the card. Ms. Ottinger further stated that she was not aware Mr. Picou used the debit card as an ATM card.

During an April 2010 interview with Mr. Picou, he stated that he maintained possession of the debit card and bank statements. He was the only one that knew the PIN for the debit card and did not allow other employees to review the charges on the bank statements. Mr. Picou admitted he made all the withdrawals from CAP's bank accounts for personal purposes and routinely gave away the money to a sick friend, gambled at a casino or played video poker, and gave some to the church. Finally, Mr. Picou stated that he made purchases using the debit card, but rarely submitted any receipts. By using CAP's funds for personal use Mr. Picou may have violated Louisiana law.¹

CAP also incurred transaction fees for Mr. Picou's ATM withdrawals totaling \$1,008 during the period of May 2004 to October 2009.

Debit Card Purchases

From May 2004 to October 2009, CAP's bank records indicate 382 purchases were made with the debit card totaling \$98,631. The purchases included meals, travel expenses, and other miscellaneous purchases such as books and office supplies. Of the \$98,631, we found receipts for 136 purchases totaling \$28,731 (29 percent); however, the remaining 246 expenditures totaling \$69,900 (71 percent) lack documentation to support the business purpose of the expense. Because CAP did not maintain adequate documentation for the meals, travel expenses, and miscellaneous purchases, we could not determine if the expenditures were reasonable and served a public purpose. During an interview with Mr. Picou, he admitted that of the 246 purchases

¹ Louisiana Revised Statute (R.S.) 14:67 provides, in part, that theft is the misappropriation or taking of anything of value which belongs to another, either without the consent of the other to the misappropriation or taking, or by means of fraudulent conduct, practices, or representations.

with no documentation, at least 5 debit card purchases totaling \$4,060 were for his personal use. Since there is no documentation for the remaining 241 purchases, we could not determine if the purchases were for a legitimate business purpose.

Debit Card Purchases From May 2004 to October 2009		
	Quantity	Dollar Amount
Purchases with receipts	136	\$28,731
Purchases without receipts	241	65,840
Personal use (no receipt)	5	4,060
Total	382	\$98,631

Mr. Picou stated that he refused to allow the office administrator to review the statements fearing she would question the purpose of his expenditures and withdrawals. Ms. Ottinger and Mr. Picou stated the debit card is a business card that should not be used for personal purposes.

Purchases With No Receipts

During our examination of the bank statements, we noted that 241 expenditures totaling \$65,840 (67 percent) lack documentation to support the business purpose of the expense. CAP did not maintain itemized debit card receipts or invoices for meals, travel expenses, and miscellaneous purchases; as a result, we could not determine the business purpose, necessity, and reasonableness of these expenses.

Mr. Picou stated that the charges associated with purchases of meals, travel expenses, and miscellaneous purchases could be for CAP, but that he usually did not turn in receipts or invoices. Since CAP administration did not maintain all documentation to support debit card purchases, we could not determine the business purpose, necessity, or reasonableness of the purchases or if the purchases benefited CAP. Purchases with no valid business purpose, that are not necessary to the operations of CAP or that are made at an unreasonable price may be a violation of the Louisiana Constitution,² which prohibits the donation of public funds. The attorney general provides guidance with regard to the Louisiana Constitution² in Opinion No. 07-0134, which outlines a three-prong test for the expenditure of public funds as follows:

1. There must be a public purpose.
2. When taken as a whole, the expenditure does not appear to be gratuitous.
3. There must be evidence demonstrating that the public entity has a reasonable expectation of receiving a benefit or value at least equivalent to the amount expended or transferred.

² Article 7, Section 14 of the Louisiana Constitution provides, in part, that except as otherwise provided by this constitution, the funds, credit, property, or things of value of the state or of any political subdivision shall not be loaned, pledged, or donated to or for any person, association, or corporation, public or private.

Personal Debit Card Charges

Based on our review of documentation and an interview with Mr. Picou, we identified the following purchases between April 2008 and July 2009, totaling \$4,060 that Mr. Picou stated were personal charges to CAP's debit card:

- April 14, 2008, purchased clothing totaling \$138 from Urban Outfitter, New York City.
- September 15, 2008, purchased bamboo flooring totaling \$965 from Lowe's, Metairie.
- December 24, 2008, made purchases totaling \$702 from Circuit City, New Orleans
- February 27, 2009, made purchases totaling \$1,962 from Best Buy.com.
- July 20, 2009, made purchases totaling \$293 from Elizabeth's Restaurant New Orleans.

By using CAP's funds for his personal use, Mr. Picou may have violated Louisiana Law.¹

We recommend that CAP's administration:

- (1) establish a functional board of directors as an advisory board to provide oversight over CAP's operation which may require a supervisor or board approval of credit card purchases before payment;
- (2) implement a credit card policy with guidelines and restrictions for credit card usage and require documentation (itemized receipts) of the business purpose; and
- (3) prohibit cash withdrawals using the ATM or debit card.

Annual Audit

Louisiana Law³ requires not-for-profits receiving \$25,000 or more in state assistance to be audited annually. According to LPDB, CAP received \$3,954,297 through its contract with LPDB (LIDAB). As a result, CAP is required to receive and submit an annual audit to the LLA. To date, the LLA has not received any audits of CAP.

We recommend that CAP management comply with Louisiana Law.

³ R.S. 24:513 J(d) provides, in part, that "...if state or local assistance received and/or expended by a quasi public agency or body is commingled with other funds of the quasi public agency of body then such state or local assistance and other funds of the quasi public agency or body shall be audited pursuant of Subparagraph (1)(c) of this Subsection."

Statutes enacted by the Louisiana Legislature provide that the State of Louisiana through the LIDAB allocate funds for indigent defense. As a result of Act No. 307 of the 2007 Regular Session, LIDAB was renamed the Louisiana Public Defender Board (LPDB). The LPDB is an Executive Branch Board of the State of Louisiana. Its mission is to improve the criminal justice system and the quality of criminal defense services provided to individuals through a community-based delivery system; ensure equal justice for all citizens without regard to race, color, religion, age, sex, national origin, political affiliation or disability; guarantee the respect for personal rights of individuals charged with criminal or delinquent acts; and, uphold the highest ethical standards of the legal profession.

LPDB contracts with CAP to provide criminal defense services on behalf of Indigents on Appeal of Capital Convictions. CAP is a 501(c) (3) non-profit law office established in 2001 to provide representation to all indigent defendants sentenced to death in Louisiana. CAP represents clients in their direct appeals to the Louisiana Supreme Court and on certiorari to the United States Supreme Court. In addition to direct representation, CAP resources ongoing capital trials, provides training and consultation for capital defense attorneys, engages in public outreach and education on issues relating to capital punishment and advocates for continued improvement in the criminal justice system. CAP's main source of funding is provided through state grants it receives from LPDB.

On November 19, 2009, the LLA received a request from the Orleans Parish district attorney's office to conduct an audit of CAP. The procedures followed during this audit consisted of:

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

Management's Response

THE CAPITAL APPEALS PROJECT

A Non-Profit Law Office

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June 23, 2010

STAFF

SARAH OTTINGER
Executive Director

WILLIAM SOTHERN
Deputy Director

BETTY LILLEY
Office Administrator

BIDISH SARMA
Attorney

BLYTHE TAPLIN
Attorney

CECELIA TRENTICOSTA
Attorney

ELIZABETH CUMMING
EJW Fellow

MICHAEL ADMIRAND
Fellow

KIM WATTS
Paralegal

G. BEN COHEN
Of Counsel

Daryl G. Purpera, CPA, CFE
Louisiana Legislative Auditor
1600 North Third Street
Post Office Box 94397
Baton Rouge, LA 70804-9397

Dear Mr. Purpera:

I am in receipt of your compliance audit report (Report) on the Capital Appeals Project (CAP), covering the period of May 2004 through November 2, 2009—the period during which Jelpi Picou served as Executive Director of CAP. I submit this letter in response to the Report.

First, I want to thank you for the professionalism exhibited by all your staff in the course of the audit. Members of your staff were respectful, responsive, and thorough in the analysis of CAP's finances. Difficult as this audit has been, it has been a pleasure working with your staff.

I respond in my capacity as Executive Director of CAP. As you indicate, I was appointed Executive Director after Mr. Picou's resignation on November 2, 2009. Prior to Mr. Picou's resignation, I was an attorney with CAP and had no administrative duties whatsoever. My understanding of what occurred during his tenure is based on my review of financial records.

Report Findings

Implicit in your Report is a finding that all irregularities that occurred during the period in which Mr. Picou was Executive Director are attributable to him alone. No other member of CAP's staff was involved, nor did any other CAP staff have knowledge of Mr. Picou's misuse of CAP funds.

It bears noting as well that all financial irregularities during the period of the audit revolved around the use of CAP's debit card—either to withdraw cash from ATMs or to make undocumented purchases with it. Checks were issued for the vast majority of CAP's expenditures during the period audited. The Office Administrator was responsible for securing documentation from all staff for those expenditures; she then entered the information supporting the expenditures into a QuickBooks database and cut the checks. Expenditures made by check were thoroughly documented during the period audited.

The Report details the theft of a substantial amount of money from CAP, via cash withdrawals with CAP's debit card, between May 2004 and November 2, 2009. In addition, it details the failure to document many debit card expenditures and the purpose of those expenditures.

In his position as Executive Director, Mr. Picou was solely responsible for implementing policies and procedures for the use of CAP's debit card and ensuring compliance with them. As you note in your Report, Mr. Picou had exclusive possession of the debit card, was the only employee who knew its PIN number, and was the only employee with access to bank statements. Unbeknownst to anyone else at CAP, Mr. Picou used the debit card at will and failed to document cash withdrawals and purchases. As he acknowledged in the course of your audit, he "refused to allow" even the Office Administrator to review bank statements "fearing she would question the purpose of his expenditures and withdrawals." See Report at 3.

CAP does not contest any of your findings with respect to money withdrawn from CAP's bank accounts with CAP's debit card between 2004 and 2009, nor does it contest your findings regarding undocumented debit card expenditures during the same period.

Since his resignation, Mr. Picou has pled guilty in Orleans Parish Criminal District Court to multiple charges of theft arising from his unauthorized use of CAP funds. He is currently scheduled to be sentenced for his criminal acts on June 25, 2010.

Since Mr. Picou's resignation, the Board and administration at CAP have worked tirelessly to ensure that CAP's funding is directed toward the public purpose for which it is designated.

Report Recommendations

Since I became Executive Director, numerous changes have been instituted at CAP. Those changes have brought us in compliance with all of the recommendations you make on page 4 of the Report. I will address the recommendations in the order you make them:

1) Functional Board of Directors

You correctly identify that CAP's Board of Directors had become inactive by the time of Mr. Picou's resignation, and it does not appear that the Board met at all during Mr. Picou's time as Executive Director. Indeed, only one member remained on the Board when he resigned.

Upon Mr. Picou's resignation, CAP sought legal advice regarding the proper method of electing new board members. The law firm of Sher Garner Cahill Richter Kline & Hilbert, LLC researched the issue and provided CAP with an opinion letter on the subject. Pursuant to counsel's advice, on November 24, 2009, a new slate of board members was elected and the sole remaining board member from Mr. Picou's tenure then resigned.

CAP's current Board of Directors consists of two former jurists, several prominent civil and criminal attorneys, a law professor, and former counsel to the Judiciary Commission. The biographies of the current Board of Directors are attached to this letter as Exhibit 1.

Since its election on November 24, 2009, the Board has met in December of 2009 and January, March, and April of 2010. Beginning in January 2010, the Board has received reports on income and expenditures from the Treasurer and/or Executive Director at each meeting. The Board has substantial ongoing involvement in monitoring CAP's financial affairs.

2) Implement Credit Card Policy

Upon Mr. Picou's resignation, CAP immediately cancelled all debit cards associated with CAP's bank accounts. After full review of income and expenditures over the last fiscal year, CAP also separated its operating account into two accounts, one reserved exclusively for funding distributed under our contract with the Louisiana Public Defender Board (LPDB) and the other reserved for independent funding CAP receives.

Pursuant to the Board's recommendation, CAP recently obtained two credit cards, both tied to the operating account *not associated* with our contract with the LPDB. The cards cannot be used to make cash withdrawals.

Under newly-implemented policy, CAP's Office Administrator ensures that the credit cards are kept in a locked file cabinet. Only the Executive Director, Accountant, and Office Administrator have access to the key to the locked cabinet. Any usage of the credit card must be approved in advance by the Office Administrator or Executive Director.

The Office Administrator maintains a log detailing the person granted use of the credit card. If the card is removed from the office for use, the Office Administrator additionally documents when it was removed and when returned.

Any person using the credit card must submit to the Office Administrator an itemized receipt attached to a form provided to staff on which the person indicates the business purpose of the purchase. CAP's Accountant enters the purchases into QuickBooks and maintains hard copies of the receipts and forms detailing the purpose of the expenditures.

Each credit card has a monthly limit of \$4,000. The credit cards cannot be used to withdraw cash.

CAP's Accountant checks the status of credit card usage online at least once a week to ensure that no unwarranted purchases have occurred.

3) Prohibit Cash Withdrawals

The credit cards do not have PINs associated with them and cannot be used for cash withdrawals.

4) Annual Audit

It appears that CAP has never submitted an annual audit to LLA. Thank you for bringing this omission to our attention. CAP will be receiving and submitting an annual audit of fiscal year 2009-2010 by December 31, 2010, as required by law.

Additional Safeguards

CAP takes very seriously the theft of such a large amount of money from our organization. We are funded largely to provide representation to indigent clients who have been sentenced to death, and all the funding allotted to us must be used for its intended purpose. This is not only a legal imperative, but also a moral imperative.

Immediately upon Mr. Picou's resignation, CAP changed the persons authorized to access its bank accounts and sign checks. Currently those persons are our Executive Director, Accountant, and Office Administrator.

Within a month of Mr. Picou's resignation, CAP contracted with a Certified Public Accountant to manage its financial affairs. Her duties include: depositing checks, writing checks (which require two signatures), documenting all income and expenditures in QuickBooks, reviewing banks statements on a monthly basis, balancing bank accounts, monitoring credit card usage, submitting financial reports to the LPDB on a monthly basis, producing financial reports for Treasurer review and for every board meeting, assisting with the preparation of taxes, and assisting with the yearly audit.

Any expenditure over \$100.00 (with the exception of monthly bills) requires written approval from the Executive Director. In addition to the Accountant, the Executive Director also reviews bank statements on a monthly basis.

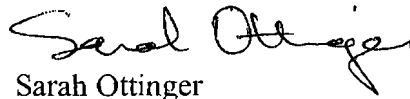
As set out above, CAP now has a Board consisting of seven members. In preparation for each board meeting, the Executive Director and Treasurer meet to review financial information. The Treasurer then reports on CAP's finances to the board at every meeting.

Conclusion

Exclusive power and control over finances creates ample opportunity for misuse and mismanagement. Since Mr. Picou's resignation, CAP has focused its efforts on creating a system of checks and balances in which no one person has exclusive control. Both the LPDB and CAP's Board of Directors now provide direct oversight of CAP's finances and the expenditure of state funding. Both the Executive Director and Accountant now review all expenditures over \$100.00 and the Executive Director approves them in writing. CAP's bank accounts are balanced on a monthly basis and both the Accountant and Executive Director review income and expenditures reflected in the bank statements on at least a monthly basis. CAP limits access to its credit cards, documents all credit card purchases, and has ensured that the credit cards cannot be used by anyone for cash withdrawals. Every effort has been made to ensure that what occurred during Mr. Picou's tenure as Executive Director will never occur again.

Once again, thank you for your careful audit of CAP and your recommendations. If you have any questions about the manner in which CAP now conducts business, please do not hesitate to be in touch.

Sincerely,

A handwritten signature in black ink that reads "Sarah Ottinger". The signature is written in a cursive style with a large, looped "S" and a long, sweeping "g".

Sarah Ottinger

EXHIBIT 1

The Capital Appeals Project Board of Directors

Judge Calvin Johnson (Retired), Chairperson

Calvin Johnson is currently the Executive Director of Metropolitan Human Services District and an adjunct Law Professor at Loyola University School of Law. Before retiring, he was District Court Judge for Orleans Parish Criminal District Court from 1990 through 2007, where he served as Deputy Chief Judge from 1999 to 2000 and Chief Judge from 2004 to 2006. Before becoming a judge, he worked as a Staff Attorney for Orleans Parish Indigent Defender's Program.

Judge Johnson is a past president of the Louis A. Martinet Society and the founder of Orleans Parish Mental Health Treatment Center. He is the recipient of Louis A. Martinet Society's Outstanding Achievement Award in 1985 and Distinguished Jurist Award in 2009. In 1992, he received the Justice Albert Tate Award. He is also the recipient of the 2008 Louisiana ACLU's Benjamin Smith Award.

Andrea Armstrong, Treasurer

Andrea Armstrong is an Assistant Professor at Loyola College of Law where she teaches criminal law and procedure. She earned her Juris Doctorate from Yale Law School, her Masters in Public Affairs from the Woodrow Wilson School at Princeton University and her Bachelor of Arts from New York University. Prior to joining Loyola's faculty, Ms. Armstrong clerked for the Honorable Helen G. Berrigan in the Eastern District of Louisiana. Ms. Armstrong litigated prisoner civil rights cases as a Thomas Emerson Fellow and researched international human rights issues for the International Center for Transitional Justice, the Center on International Cooperation, and the United Nations. She has published articles on reparations, peacebuilding, and pre-emptive war.

Steven Scheckman, Secretary

Steven Scheckman is currently the General Counsel to the Ethics Review Board of the City of New Orleans. From 2008- 2009, he served as the Deputy Administrator of the New York State Commission on Judicial Conduct. From 1994-2008, he served as the Special Counsel to the Judiciary Commission of Louisiana. In both Louisiana and New York, together with staff, he was responsible for the investigation and prosecution of cases of judicial misconduct before each State's judicial conduct commission and before the highest Courts of each State, the Louisiana Supreme Court and the New York Court of Appeals.

Mr. Scheckman is a graduate of Ohio University (cum laude) and the Tulane University School of Law (cum laude). From 1978-1994, Mr. Scheckman was engaged in the

practice of law in New Orleans, including as a staff attorney for three years with the New Orleans Legal Assistance Corporation, and then in private practice with an emphasis in the areas of civil rights, civil liberties and juvenile justice issues. He also previously served as an Adjunct Professor of Law on the faculty of Tulane's Law School and as an *ad hoc* judge for the Orleans Parish Juvenile Court.

Mr. Scheckman is the immediate past President of the Board of Directors of the Association of Judicial Disciplinary Counsel. He is currently a member of the Board of Directors of the Capital Appeals Project, the statewide office for capital appeals in Louisiana and is a member of the Louisiana State Law Institute Children's Code Revision Committee. He is also a Fellow of the Louisiana Bar Foundation. He was previously a member of the Louisiana Task Force on Indigent Defense, was a founding member and former Vice President of CASA New Orleans, was a member of the Board of Directors of the Louisiana CASA Association, and was a member and Treasurer of the Board of Directors of the Greater New Orleans Fair Housing Action Center.

Chief Justice Pascal F. Calogero, Jr. (Retired)

Pascal F. Calogero, Jr., a native of New Orleans, was four times elected and re-elected to the Louisiana Supreme Court from a district comprised of the seven parishes in and around metropolitan New Orleans area. Retired Chief Justice Calogero graduated from St. Aloysius High School in New Orleans (1949) and Loyola University School of Law (1954), where he graduated first in his class and received his LLB. In 1982 he earned a Master of Laws Degree in judicial process from University of Virginia. He served in the U. S. Army 1954 – 1957 in the Judge Advocate General's Corps – separated with rank of Captain. A law clerk for the judges of the Civil District Court for the Parish of Orleans for one year, he formed a law firm in 1958 with Moon Landrieu and Charles A. Kronlage, Jr. He practiced law with the firm of Landrieu, Calogero and Kronlage until 1968, then with the firm of Calogero and Kronlage until 1972 when he was elected to the Louisiana Supreme Court. He was elected three more times where he served a total of 36 years, 18 of them as Chief Justice. He retired at the end of his final term in office on December 31, 2008.

Upon his retirement Mr. Calogero had served longer than any other justice in the history of the Louisiana Supreme Court.

President of the student editorial board of the Loyola Law Review, he has authored articles in law reviews and legal periodicals and lectured to law classes at the University of New Orleans, Harvard Law School and Loyola Law School. He was the recipient of Louisiana Bar Foundation's 1991 Distinguished Jurist Award. He has been selected as a member of LSU's Law Center's Order of Coif and Hall of Fame and has received numerous awards including being named the 1995 Distinguished National Jurist by the Indiana University School of Law – Indianapolis; the national 1995 Judge Bob Jones Memorial Award, presented annually to a judge by the American Judges Association for significant contribution to judicial education, in 2007 the American Judicature Society, awarded the Chief Justice the Fourth Annual Dwight D. Opperman Award for Judicial

Excellence, an award presented annually to a state judge of a trial or appellate court who has had a career of distinguished judicial service.

Following the conclusion of his fourth term in office, the Chief Justice has returned to the practice of law in association, of counsel, with the Law Firm of Ajubita, Leftwich and Salzer, with a practice primarily as a consultant and the handling of appellate cases.

John Holdridge

John Holdridge is director of the ACLU's Capital Punishment Project in Durham, North Carolina. Prior to his appointment at the ACLU, he was a public defender in Connecticut's Capital Defense and Trial Services Unit, where he spearheaded the litigation seeking to prevent the execution of Michael Ross, a volunteer and the first person executed in New England in forty-five years. Before that, he spent 11 years as director of the Mississippi and Louisiana Capital Trial Assistance Project in New Orleans, where he successfully represented numerous clients at trial and on direct appeal. In Louisiana, John was lead counsel for Michael Ray Graham, who was exonerated after spending close to fourteen years on death row. John also wrote the pleadings and co-argued the seminal cases of *State v. Peart*, 621 So.2d 780 (La. 1993), in which the Louisiana Supreme Court recognized that indigent defendants have a pre-trial right to effective counsel and that the overwhelming caseloads of the indigent defender system in New Orleans violated that right, and *State v. Wigley*, 624 So.2d 425 (La. 1993), where the Court held that private attorneys appointed to represent indigents were entitled to reimbursement for their overhead costs and to compensation after a reasonable number of pro bono hours.

Julian Murray

Mr. Murray is a member of Chehardy, Sherman, Ellis, Murray, Recile, Griffith, Stakelum, and Hayes, LLP where he specializes in business litigation, white collar criminal defense, and personal injury law. Prior to entering private practice, he was an Assistant District Attorney, Orleans Parish, and was supervisor of the Fraud Section. He then was appointed an Assistant United States Attorney for the Eastern District of Louisiana, was promoted to Chief of the Criminal Division and served for two years as the First Assistant U.S. Attorney. He also served as the Chief Prosecutor of the Organized Crime Unit in the Louisiana State Attorney General's Office.

Mr. Murray received his Bachelor of Arts from Louisiana State University and his Juris Doctor from Tulane University School of Law. He is a past president of the Louisiana Association of Criminal Defense Lawyers.

Martin Stern

Martin Stern began his career at Adams and Reese in 1985 when the firm had only one office and approximately 50 lawyers. Now with the firm over five times as large, Martin serves as its Appellate Team Leader, overseeing its fast-growing appellate practice and also focusing on class action, products liability and constitutional litigation.

Martin has argued numerous appeals, ranging from the appeal of a \$1 billion punitive damage award for a major oil and gas company to working on the pro bono team that won *Kennedy v. Louisiana*, where the United States Supreme Court handed down its landmark decision that the death penalty is unconstitutional for non-homicide crimes against individuals.

Martin has worked on a wide array of other high profile cases, including:

- Leading the successful effort to defeat class certification in several toxic tort cases, including most recently one based on alleged exposure to naturally occurring radioactive material (NORM) from oil and gas exploration.
- Leading the successful effort to defeat other cases—even before class certification could be sought—including one alleging that oil and gas production caused coastal erosion and, in turn, Hurricane Katrina-related damage.
- Serving as lead counsel for a local governmental body to defeat alleged violations of the Takings, Due Process and Interstate Commerce Clauses.
- Representing defendants in complex litigation involving product liability claims, particularly in the pharmaceutical arena.

Martin also has a deep background in legal ethics, having represented judges before the Louisiana State Judiciary Commission as well as lawyers before the Louisiana State Disciplinary Board, for which he formerly served as Hearing Committee Chair. Martin makes use of this experience in his position as Claims Counsel for the firm, essentially serving as in-house counsel for Adams and Reese. Martin was the first Chair of the firm's Ethics Committee and was also Chair of the Recruiting Committee.

One of Martin's great passions is his pro bono work. He is a current director of Louisiana Appleseed and a past director of national Appleseed, a non-profit organization that attacks systemic injustice at its root cause—what *American Lawyer Magazine* called “pro bono's new frontier.” Martin is a recipient of Appleseed's Evelyn Singer Award, a nationwide award for outstanding pro bono service.

In addition, Martin received the “Outstanding Pro Bono Lawyer of the Year” at Adams and Reese and was named one of 50 “Leaders in Law” by New Orleans *CityBusiness* for spearheading the reestablishment of an Appleseed Center in Louisiana following Hurricane Katrina. Martin also serves on the Board of the Louisiana Capital Appeals Project, the nonprofit entity responsible for all indigent capital appeals in the State of Louisiana.



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June 25, 2010

Darly G. Purpera, CPA, CFE
Louisiana Legislative Auditor
P.O. Box 94397
1600 North Third Street
Baton Rouge, Louisiana 70804-9397

Facsimile (225) 339-3987; E-Mail; First Class Mail

Dear Mr. Purpera:

Thank you for the opportunity for Mr. Picou and I to comment on the draft report regarding your Office's recent audit and review of the Louisiana Capital Appeals Project at least as to that portion of the report that relates to Mr. Picou. As Mr. Picou has been fully cooperating with your office in its review of this matter, and therefore the portion of the report related to Mr. Picou is as expected, our comments will be brief. There are, however, a couple of points that we did want to make regarding the draft report, which are fully consistent with the report, but which we believe bear some elaboration.

First, we want to reiterate what Mr. Picou has repeatedly said to all concerned, including your staff and the Orleans District Attorney's Office, which is that Mr. Picou accepts full and complete responsibility for the improper use of funds and his mismanagement of the Louisiana Capital Appeals Project. Any and all mismanagement and improper use of funds is his responsibility and no one else's, and especially not the fault of anyone else at the Capital Appeals Project, specifically including Ms. Kim Watts, the Office Administrator. Mr. Picou kept all financial matters close to the vest and did not allow anyone else in the office to be privy to these activities. The blame is his, and his alone.

Second, throughout this process Mr. Picou has been fully cooperative with the Legislative Auditor's Office in assisting the Office in its audit and review of the Louisiana Capital Appeals Project. Mr. Picou has met in person with members of your staff to be questioned and interviewed, has been available for follow-up questions, and has provided all information at his disposal to your staff to assist them in conducting their review.

Third, the dates referenced in the report of May 2004 to October 2009, reflect the dates of Mr. Picou's entire tenure as Executive Director of the Louisiana Capital Appeals Project, and do not necessarily reflect the dates of improper activity, and more specifically, the dates of improper use of funds.

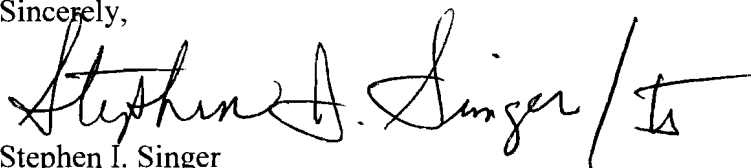
Darly G. Purpera, CPA, CFE
June 25, 2010
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Fourth, during the process of Mr. Picou's resignation from the Louisiana Capital Appeals Project, Mr. Picou communicated to personnel at The Louisiana Capital Appeals Project that his resignation related to his mismanagement of the Office, and that the Office should review the Office's finances for mismanagement. Thus, Capital Appeals Project personnel were not simply left to discover Mr. Picou's mismanagement of the office on their own. Mr. Picou directed Louisiana Capital Appeals project personnel to his own mismanagement during the resignation process.

Finally, as noted in the draft report, there is a substantial amount of money that may well have been, and even likely was, properly spent for proper business purposes related to the Capital Appeals Project for which there is a lack of documentation. We want to reiterate what Mr. Picou has said both in meeting with staff from the Legislative Auditor's Office, and with the Orleans District Attorney's Office. Mr. Picou accepts full responsibility for whatever amounts these Office's, and ultimately the Courts, deem it appropriate for him to reimburse regardless whether much of it was actually spent for proper Capital Appeals Project business purposes. Mr. Picou is not interested in quibbling over each and every expenditure, nor does he want time and other resources to be wasted trying to track down each and every penny or dollar that was in fact actually properly spent on Office business in order to reduce his own liability. From Mr. Picou's perspective, it was his responsibility to make sure that there was proper documentation for each expenditure of Office funds, and to the extent he failed in that responsibility he should be accountable for it. To the extent that this means that Mr. Picou will be paying restitution in an amount greater than that which was actually improperly spent, Mr. Picou views that as an appropriate penalty that he should properly bear for failing in his obligation to properly manage the office.

Thank you in advance for incorporating Mr. Picou's comments into your final report. Please feel free to contact me if you have any questions or require any further information from myself or Mr. Picou. As he has thus far, Mr. Picou remains committed to cooperating and assisting all parties in any way he can in investigating, reviewing, and remedying any and all issues related to his involvement with the Louisiana Capital Appeals Project. If he can be of any further assistance, please do not hesitate to contact me. You may reach me at the address above, or by telephone at 504-214-3943 or e-mail at sisinger@loyno.edu.

Sincerely,

A handwritten signature in black ink that reads "Stephen I. Singer" followed by a stylized flourish or initials.

Stephen I. Singer
Assistant Clinical Professor of Law
Loyola University New Orleans College of Law