

ST. BERNARD PARISH CLERK OF COURT



INVESTIGATIVE AUDIT
ISSUED DECEMBER 5, 2012

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LOUISIANA LEGISLATIVE AUDITOR
DARYL G. PURPERA, CPA, CFE

December 5, 2012

THE HONORABLE RANDY NUNEZ
ST. BERNARD PARISH CLERK OF COURT
Chalmette, Louisiana

We have audited certain transactions of the St. Bernard Parish Clerk of Court. Our audit was conducted in accordance with Title 24 of the Louisiana Revised Statutes to determine the propriety of certain allegations made against the clerk of court.

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

The accompanying report presents our findings and recommendations as well as management's response (see Appendix A) and our rebuttal (see Appendix B) to certain assertions made in management's response. This is a public report. Copies of this report have been delivered to the District Attorney for the Thirty-fourth Judicial District of Louisiana and others as required by law.

Respectfully submitted,

Daryl G. Purpera, CPA, CFE
Legislative Auditor

DGP/ch

SBPCOC 2012

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EXECUTIVE SUMMARY

Advance Court Costs Not Collected at Time of Filing Civil Suits

Former St. Bernard Parish Clerk of Court Lena Torres did not collect the advance court costs for civil suit filings from her son, Attorney Sidney D. Torres, III, as required by Louisiana Revised Statute 13:842.¹ Clerk of Court records show that from June 2009 to May 2011, advance court costs totaling \$174,300 were not collected at the time Mr. Torres filed 581 civil suits relating to insurance claims and damages caused by Hurricane Katrina. Ms. Torres allowed these court costs to go unpaid by Mr. Torres for up to two years. By not requiring her son to pay the advance court costs at the time of filing, Ms. Torres may have violated state law.² In addition, by allowing her son this extended period of time to pay these costs, it appears that Ms. Torres provided her son with a loan of public funds which may have violated the Louisiana Constitution.³ Finally, former Chief Deputy Clerk Lena Nunez may have violated state law⁴ by destroying clerk of court billing records relating to Mr. Torres' account.

Advance Court Costs Not Charged or Collected

Of the 581 civil suits filed by Mr. Torres, Ms. Torres failed to charge or collect advance court costs from Mr. Torres on 23 suits totaling \$4,830. This amount was comprised of statutorily prescribed fees totaling \$1,656 and non-statutory fees totaling \$3,174. Based on her actions, Ms. Torres may have violated state law.⁸

BACKGROUND AND METHODOLOGY

As provided by Article V, Section 28 of the Louisiana Constitution, the Clerk of Court is elected for a four-year term and serves as the ex-officio notary public, the recorder of conveyances, mortgages and other acts, and shall have other duties and powers provided by law. One of the duties provided by law, which is the subject of this report, is for the Clerk of Court to charge and collect, in advance, fees for costs associated with civil lawsuits.

The Louisiana Legislative Auditor (LLA) received an allegation from the Metropolitan Crime Commission alleging that the former St. Bernard Parish Clerk of Court (Clerk), Ms. Lena Torres, did not appropriately collect advance court costs from her son, Attorney Sidney D. Torres, III, in accordance with Louisiana Revised Statute 13:842. As a result, the LLA conducted an audit of the available records of the Clerk's Office to determine the credibility of the allegation.

The procedures performed during this audit consisted of:

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

FINDINGS AND RECOMMENDATIONS

Advance Court Costs Not Collected at Time of Filing Civil Suits

Former St. Bernard Parish Clerk of Court Lena Torres did not collect the advance court costs for civil suit filings from her son, Attorney Sidney D. Torres, III, as required by Louisiana Revised Statute (R.S.) 13:842.¹ Clerk of Court records show that from June 2009 to May 2011 advance court costs totaling \$174,300 were not collected at the time Mr. Torres filed 581 civil suits relating to insurance claims and damages caused by Hurricane Katrina. Ms. Torres allowed these court costs to go unpaid by Mr. Torres for up to two years. By not requiring her son to pay the advance court costs at the time of filing, Ms. Torres may have violated state law.² In addition, by allowing her son this extended period of time to pay these costs, it appears that Ms. Torres provided her son with a loan of public funds which may have violated the Louisiana Constitution.³ Finally, former Chief Deputy Clerk Lena Nunez may have violated state law⁴ by destroying Clerk of Court billing records relating to Mr. Torres' account.

The 581 lawsuits discussed in this report all involved property damage claims for which Mr. Torres did not pay the advanced court costs at the time of filing. In addition to not paying at the time of filing, Mr. Torres was not charged and therefore did not pay the appropriate amount

¹ **R.S. 13:842** provides, in part, that the clerks of the district courts shall demand and receive from the plaintiff or plaintiffs in each ordinary suit, whether accompanied by conservatory writs or not, not less than twenty dollars or such other amount as may be fixed by law for advanced costs, to be disbursed to the clerk's salary fund or to others as their fees accrue.

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

R.S. 14:68 provides, in part, that unauthorized use of a movable is the intentional taking or use of a movable which belongs to another, either without the other's consent, or by means of fraudulent conduct, practices, or representations, but without any intention to deprive the other of the movable permanently. The fact that the movable so taken or used may be classified as an immovable, according to the law pertaining to civil matters, is immaterial.

³ **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.

⁴ **R.S. 14:132 (B)** provides, in part, that second degree injuring public records is the intentional removal, mutilation, destruction, alteration, falsification, or concealment of any record, document, or other thing, defined as a public record pursuant to R.S. 44:1 et seq. and required to be preserved in any public office or by any person or public officer pursuant to R.S. 44:36.

R.S. 44:36 (A) provides, in part, that all persons and public bodies having custody or control of any public record, other than conveyance, probate, mortgage, or other permanent records required by existing law to be kept for all time, shall exercise diligence and care in preserving the public record for the period or periods of time specified for such public records in formal records retention schedules developed and approved by the state archivist and director of the division of archives, records management, and history of the Department of State. However, in all instances in which a formal retention schedule has not been executed, such public records shall be preserved and maintained for a period of at least three years from the date on which the public record was made.

of advanced court costs for 23 of the 581 lawsuits, which is discussed in the next finding titled, “Advanced Court Costs Not Charged or Collected.” The 581 lawsuits consist of 461 lawsuits resulting from six “severed” mass joinder suits and 120 lawsuits originally filed as individual suits.

Overview of Advanced Court Costs for Civil Lawsuits

Advance court costs charged by the Clerk of Court (Clerk) consists of all costs expected to be incurred during the lawsuit by the plaintiff’s attorney, which are required by law to be paid at the time the lawsuit is filed. Included in these costs are statutorily prescribed fees charged and collected by the Clerk and non-statutory fees determined by the Clerk and collected as self-generated fees/income of the Clerk’s Office. During litigation, if the advance court costs paid by the plaintiff’s attorney at the time of filing are not sufficient to pay for all costs incurred, the attorney is required by the Clerk to pay additional advance court costs until the lawsuit is settled. After the lawsuit is settled and all costs have been incurred, the Clerk remits back to the plaintiff’s attorney any excess advanced court costs paid at the time of filing or during the lawsuit.

The statutorily required fees to be collected by the Clerk for each civil suit total \$71.50,⁵ and are distributed (monthly) by the Clerk according to law as follows:

- \$20 to the St. Bernard Parish Government to pay for court stenographers
- \$30 to the 34th Judicial District Court to pay law clerks
- \$21.50 to the State Treasurer as a judge’s fee

The non-statutory fees charged by the Clerk’s Office for services related to filing lawsuits are retained by the Clerk to pay for employee salaries and other general operating expenses.

Clerk’s Practice of Charging and Collecting Advance Court Costs

To understand the Clerk’s practice of charging and collecting advanced court costs, we reviewed the 581 lawsuits and other lawsuits filed by Mr. Torres, as well as all types of lawsuits filed by other attorneys. Based on the Clerk’s practices, it appears that other attorneys were not allowed to pay advance court costs in the same manner in which Mr. Torres was allowed.

According to the Clerk’s records, between June 2009 and April 2010, Mr. Torres filed 592 (35%) of the total 1,710 individual civil lawsuits, which required payment of advance costs, filed in St. Bernard Parish. Mr. Torres paid the advanced court costs at the time of filing on only 37 (6%) of the 592 suits filed. In comparison, our review of the remaining 1,118 (1,710 - 592) lawsuits filed by other attorneys indicates that the advance court costs were paid at the time of filing for 1,034 (93%) of the suits, and the court costs were paid within seven days of filing for 72 (6%) of the suits. The remaining 12 suits (1%) were paid after seven days of filing.

⁵ In 2011, when two of Mr. Torres’ mass joinder lawsuits were severed and new lawsuits were filed, total statutory required fees had increased from \$71.50 to \$72 per suit.

Therefore, it appears that the Clerk's normal practice was to charge and collect the advanced court costs at the time of filing the lawsuits.

Also, during our review of the 1,710 civil lawsuits filed during this period, we noted that according to the Clerk's practices:

- (1) \$300 was the total customary advanced court costs (includes both statutory and non-statutory fees) charged and collected from other attorneys at the time of filing a property damage related suit; and
- (2) \$188 was the average advanced court costs charged to Mr. Torres at the time of filing property damage related suits, and he was allowed to make payment over an extended period of time rather than at the time of filing the lawsuit.

Of the \$300 customary advanced court costs charged and collected from other attorneys, Ms. Torres could not explain or provide documentation to support what the \$228.50 (\$300 - \$71.50 statutory fees) non-statutory fee component represented.

Mass Joinder and Individual Lawsuits Filed by Mr. Torres

From June 2009 to May 2011, Mr. Torres filed six mass joinder lawsuits and 120 individual lawsuits for property damage claims. Clerk records show that advanced court costs were not charged or collected at the time of filing the 120 individual lawsuits. However, the advanced court costs for five of the six mass joinder lawsuits were paid at the time of filing, and the advanced court costs for the remaining suit was paid one month after filing, all of which totaled \$2,188. The six mass joinder lawsuits were later severed by the court, which resulted in 461 new lawsuits for Mr. Torres. Combined, Mr. Torres ultimately filed 581 (461 + 120) individual lawsuits relating to property damage claims.

The following table provides a summary of lawsuits filed with the court, the amount of advanced costs customarily charged and collected by the Clerk at the time of filing the lawsuits, and the total amount of advance court costs charged and collected from Mr. Torres.

Original Number and Type of Lawsuits Filed by Mr. Torres	Total Number of Plaintiffs/Lawsuits Filed by Mr. Torres	Advanced Court Costs Customarily Charged and Collected at Time of Filing	Advanced Court Costs Charged and Collected From Mr. Torres Over a Two-Year Period
4 - Mass Joinder	438	\$131,400	\$73,581
2 - Mass Joinder	23	6,900	2,070
120 - Individual	120	36,000	23,915
Total	581	\$174,300	\$99,566

Mr. Torres was allowed to pay \$99,566 in court costs over a two-year period instead of paying the customary advanced court costs of \$174,300 (\$300 x 581 lawsuits) at the time of filing. Therefore, by not collecting the advance court costs at the time of filing from Mr. Torres

on these 581 cases, Ms. Torres did not timely remit statutory fees totaling \$39,897⁶ to the appropriate agencies in accordance with office practice. Based on our analysis, for up to two years, \$11,997 was not remitted to the State Treasurer; \$11,160 was not remitted to the parish government; and \$16,740 was not remitted to the Judicial Clerk Fund. In addition, during this two-year period the Clerk did not timely collect \$59,669 (\$99,566 - \$39,897 statutory fees) of non-statutory fees from Mr. Torres for services performed by the Clerk's Office relating to these lawsuits. Since Mr. Torres was charged far less than \$300 for filing each of the 581 lawsuits, it appears that some customary fees were not charged or collected by the Clerk. However, because there was not sufficient documentation supporting the charges in Mr. Torres' account, we could not determine whether the \$99,566 ultimately paid by Mr. Torres was the appropriate amount.

Prescriptive Period of Hurricane Katrina Related Lawsuits

According to the current Clerk of Court and Attorney Randy Nunez, Hurricane Katrina related lawsuits filed before the August 30, 2007, prescriptive period were financially lucrative for attorneys in St. Bernard Parish due to the likelihood that insurance companies would settle the suits. In Louisiana, civil suits have a one-year period to be filed after the act triggering the suit; this is known as the prescriptive period. However, because of the mass destruction caused by Hurricane Katrina, during the 2006 Regular Legislative Session, the Louisiana Legislature enacted Act 802, which extended the prescriptive period one additional year from August 30, 2006 to August 30, 2007. This meant that homeowners who wanted to file suit against their insurance companies for hurricane damages had until August 30, 2007, to do so, or their right to file suit would be lost.

Because homeowners were filing lawsuits after the August 30, 2007, prescriptive period deadline, in June 2008, litigation was heard at the district court level concerning the August 30, 2007, deadline. The district court ruled on January 6, 2009, that the prescription period could not be extended past August 30, 2007, and this ruling was appealed to the Appellate Court on March 5, 2009. On December 16, 2009, the Appellate Court overturned the district court ruling and opined that the prescription period involving Katrina cases had not expired.

Four Mass Joinder Lawsuits Severed into 438 Suits and Court Costs Not Collected at Time of New Filings

In December 2008, June 2009, and July 2009 (after the August 30, 2007, prescriptive period but before the ruling of the Appellate Court), Mr. Torres filed four lawsuits against insurance companies for property damages caused by Hurricane Katrina. Each of these suits was filed as a mass joinder case with a total of 515 plaintiffs.

Since the Appellate Court had not issued a ruling at the time Mr. Torres filed four of the six mass joinder lawsuits, there was a risk that the mass joinder suits would not be allowed. The financial risk to Mr. Torres of having the four lawsuits dismissed, should the Appellate Court decide the prescriptive period had expired, was reduced by filing as mass joinder suits rather than

⁶ Mr. Torres was not charged statutory fees on 23 lawsuits he filed, which will be explained further in the next finding titled "Advanced Court Costs Not Charged or Collected" ($581 - 23 = 558 \times \$71.50 = \$39,897$).

as 515 individual suits. Also, should the Appellate Court overturn the district court's decision and allow the suits to stand, the financial gain from the mass joinder suits could be lucrative for Mr. Torres.

However, in July, August, and November 2009, a district judge ordered each of the four mass joinder suits to be severed. According to the consent judgments, (1) each plaintiff had 45/60 days to file a new suit; (2) a new docket number was to be assigned to each new suit; and (3) each new suit was to be randomly allotted among the courts. Since the mass joinder suits were ordered to be severed and filed individually prior to the Appellate Court reaching its decision, Mr. Torres' financial risk increased substantially. Mr. Torres went from having paid \$1,588 in advanced court costs to file four mass joinder lawsuits to potentially having to pay \$154,500 (\$300 average court costs x 515) in court costs.

Of the 515 plaintiffs in the four mass joinder suits, 438 plaintiffs filed new lawsuits. Based on the requirements of the consent judgment, for each new suit filed, the Clerk was to collect advanced court costs as required by R.S. 13:8421.¹ However, the Clerk's records show that advanced court costs were not collected from Mr. Torres on any of the 438 new suits. Therefore, Mr. Torres was relieved of having to pay a total of \$131,400 (\$300 x 438) at the time of filing. According to Mr. David Jarrell, a former staff attorney for Mr. Torres, it was because of this increased financial risk that Mr. Torres did not pay the advance court costs at the time of filing the individual suits.

Two Mass Joinder Lawsuits Severed into 23 Suits and Court Costs Not Collected at Time of New Filings

Besides the four mass joinder suits discussed previously, on March 21, 2011 and May 20, 2011, Mr. Torres filed two additional mass joinder lawsuits related to Hurricane Katrina that were also ordered to be severed. There were a total of 24 plaintiffs in these two mass joinder suits and all plaintiffs filed new lawsuits. Mr. Torres was retained by 23 plaintiffs as their attorney. Clerk records show that advance court costs were not collected at the time of filing from Mr. Torres on any of the 23 new lawsuits. As a result, Mr. Torres was relieved of having to pay a total of \$6,900 (\$300 x 23) at the time of filing.

Ms. Torres, Ms. Nunez, and Mr. Torres' Positions

We spoke with Ms. Torres and her daughter, former Chief Deputy Clerk Lena Nunez, regarding the nonpayment of advance court costs on all 461 (438 + 23) of these new lawsuits filed by Mr. Torres. Both stated that they were unaware Mr. Torres had unpaid court costs on any of his cases until it was reported by the local media. According to Ms. Nunez, nonpayment of the advance costs was not uncommon. She stated that although the Clerk's Office did not have written policies or procedures, it was office practice to accept and file all civil lawsuits whether the advance costs were paid at the time of filing or not. Ms. Nunez further stated that if the fees were not paid at the time of filing, the office practice was to submit a bill to the attorney and place a copy of the bill in the case file.

When we asked why no one was aware that Mr. Torres had not paid advance court costs for up to two years on these cases, Ms. Nunez stated that once a bill was issued, the Clerk's Office did not follow up to ensure that payment was made. She stated that once it was brought to their attention that Mr. Torres had unpaid advance court costs, she generated an "attorney case report" (from the computer system) which indicated that the severed suits filed as individual suits by Mr. Torres had unpaid balances. According to Ms. Nunez, the Clerk's Office then informed Mr. Torres, and within weeks he paid the balances owed. Our review of Clerk records indicates that in a one-week period (between October 13 and 21, 2011), the unpaid balances on 300 lawsuits were paid. Ms. Nunez also stated that the Clerk did not file the final judgment of a case until all court costs have been paid. We were told that it was at this point in time that the Clerk's Office would have become aware of the nonpayment of costs and then required payment of outstanding fees.

According to Ms. Torres, the severing of the mass joinder suits did not remove the statutory requirement that advance court costs be paid on the new suits at the time of filing. However, when we asked her when the advance costs were to be collected, Ms. Torres could not answer the question. Ms. Torres stated that Mr. Jarrell, on behalf of Mr. Torres, often times filed the new suits and did not have the money to pay the advance court costs at the time of filing. Ms. Torres further stated that the non-payment of the advance costs on Mr. Torres' cases was not done intentionally and that it was something she should have paid more attention to.

According to the attorney retained by Mr. Torres, he does not agree with Ms. Torres and stated, "...These are not new suits, nor "initial filings" as contemplated by LSA-R.S. Title 13, §842, and therefore, the filing fees required by that statute were inapplicable to these filings." Mr. Torres' attorney went on to say, "In order to lessen the adverse consequences of the slanderous attack upon Mrs. Torres during her campaign, while not yet required or mandated by La. Law, Mr. Torres paid all court costs which had accrued..."

Advance Court Costs Not Collected at Time of Filing 120 Individual Lawsuits

During our audit, Clerk records show that advance court costs were not collected from Mr. Torres on any of the 120 property damage lawsuits he filed that were unrelated to the severed mass joinder suits. Therefore, Mr. Torres was relieved of having to pay a total of \$36,000 (\$300 x 120) at the time of filing.

Although Ms. Torres, Ms. Nunez, and Mr. Torres explained their position concerning the severed mass joinder suits, their explanations do not address why, during this same time period, the Clerk failed to collect, during the normal course of business, advance court costs from Mr. Torres for filing these 120 individual lawsuits.

Summary

Based on Ms. Torres and Ms. Nunez's statements, the Clerk's Office had no account management process and had no way of determining if any court costs were paid until the court rendered final judgment on a lawsuit. Ms. Torres also acknowledged that she had the responsibility of collecting advance court costs from Mr. Torres at the time his cases were filed. Based on our review of the Clerk's processes and employee interviews, it appears that Ms. Torres, Ms. Nunez, and possibly other employees of the Clerk's Office were aware that Mr. Torres did not pay the required advance court costs at the time his lawsuits were filed. The following are reasons why we maintain this position:

1. According to Mr. Jarrell, upon his resignation from the law firm of Sidney D. Torres, III, he acquired lawsuits from the firm in which the advance court costs were not paid. He stated that on July 18, 2011, he filed paperwork with the Clerk's Office to transfer the first of 16 acquired suits into his name and the Clerk required him to pay all of the unpaid costs (\$3,373) on the cases before the transfers would take place.
2. If advance court costs are not paid at the time of filing, Ms. Nunez said the Clerk's Office generates a bill which is given to the attorney and a copy of the bill is placed in the individual case file. Since Ms. Nunez told us that Mr. Torres' case files included several bills, the Clerk's Office would have had knowledge that he was not paying the advance court costs.
3. Clerk records indicate that activity occurred in Mr. Torres' account for certain cases after the initial lawsuit filing. Therefore, when employees input such activity into Mr. Torres' account (in the computer system), they could see that Mr. Torres did not pay his advance court costs.
4. Although Ms. Nunez stated that it was not uncommon for lawsuits to be filed without the advance court costs being paid, according to Clerk records and employees, advance costs are routinely paid at the time of filing lawsuits (e.g., as was required when Mr. Jarrell filed the individual lawsuits in his name).
5. Ms. Nunez reviewed attorney case reports which indicated that Mr. Torres was the only attorney that routinely did not pay advance court costs at the time of filing.

By not requiring Mr. Torres to pay \$174,300 (\$300 x 581) in advance cost at the time of filing, Ms. Torres assisted Mr. Torres in reducing his financial risk associated with the 581 lawsuits and allowed him up to two years to pay the court costs. Through their business dealings, Ms. Torres and Mr. Torres may have violated state law.² In addition, Ms. Torres may have violated the Louisiana Constitution.³

Clerk's Billing Records Destroyed

According to Ms. Nunez, when it was discovered that Mr. Torres was not paying advance court costs, she went through Mr. Torres' case files and noticed there were numerous copies of Clerk bills that had been issued to Mr. Torres. Ms. Nunez stated that when payment was received from Mr. Torres, she removed the bills from his case files and destroyed them.

By destroying documents generated during the collection of outstanding accounts receivable, Ms. Nunez may have injured public records. Since the Clerk has not filed a record retention schedule with the Secretary of State, the Clerk is required to preserve and maintain the public record for at least three years. Because Mr. Torres made payments on 300 lawsuits within days of being notified in October 2011, the three-year mandatory retention period had not expired when the bills were destroyed; therefore, Ms. Nunez may have violated state law.⁴

Advance Court Costs Not Charged or Collected

Of the 581 suits filed by Mr. Torres, Ms. Torres failed to charge or collect advance court costs from Mr. Torres on 23 suits totaling \$4,830. This amount was comprised of statutorily prescribed fees totaling \$1,656 and non-statutory fees totaling \$3,174. Based on her actions, Ms. Torres may have violated state law.⁸

As discussed previously, on March 21, 2011 and May 20, 2011, Mr. Torres filed two additional mass joinder lawsuits related to Hurricane Katrina that were ordered to be severed. Clerk records show that Mr. Torres was retained by 23 plaintiffs as their attorney, and one plaintiff retained Mr. Jarrell as his attorney.

Clerk records indicate that on July 1, 2011 and September 16, 2011, statutorily required fees totaling \$1,656⁷ were not charged to Mr. Torres at the time of filing these new suits. Furthermore, none of these unpaid statutory fees were recorded in his account or subsequently collected by the Clerk's office.

At the time of filing these new lawsuits, Mr. Torres was charged \$1,063 in non-statutory fees which was an average of \$46 per suit. Although Mr. Torres eventually paid a total of \$2,070 (\$90 average per suit) in non-statutory fees, the fees were still substantially (\$138 per lawsuit) less than the fees charged other attorneys and they were not paid by Mr. Torres until September 30 and October 13, 2011, respectively.

Although the statutorily required fees were not charged or collected on Mr. Torres' 23 cases, the Clerk charged and collected from Mr. Jarrell the statutory and non-statutory fees at the time of filing his new lawsuit. On September 12, 2011, Mr. Jarrell paid advance court costs of \$300 (\$72 statutory + \$228 non-statutory) at the time of filing his one lawsuit. Therefore, Mr. Jarrell was required to pay \$182 (\$228 - \$46) more in non-statutory fees than Mr. Torres was required to pay per suit at the time of filing. Based on the Clerk's billing practices with other attorneys, the Clerk should have charged and collected from Mr. Torres at the time of filing the

⁷ During this time period, statutorily required fees increased from \$71.50 to \$72 per suit [\$72 x 23 = \$1,656].

new lawsuits an additional \$3,174 ($\$228 \times 23 \text{ suits} = \$5,244 - \$2,070 \text{ paid} = \$3,174 \text{ unpaid}$) in non-statutory fees.

By not charging and collecting from Mr. Torres a total of \$1,656 in statutorily prescribed fees, and by only collecting \$2,070 from Mr. Torres instead of the customary \$5,244 (a difference of \$3,174) in non-statutory fees, it appears that former Clerk of Court Lena Torres gave favorable treatment to her son and in the process may have violated state law.⁸

Conclusion

It appears that Mr. Torres was treated differently from other attorneys regarding his business dealings with the former Clerk of Court Lena Torres. It appears Ms. Torres provided her son favorable treatment as it related to the filings of 581 civil lawsuits. By allowing him not to pay \$174,300 ($\300×581) in advance cost at the time of filing, Ms. Torres assisted Mr. Torres in reducing his financial risk associated with the lawsuits. Although Mr. Torres did eventually pay \$99,566 to the Clerk's Office, through the course of their business dealings, Ms. Torres and Mr. Torres may have violated state law.² In addition, by allowing Mr. Torres to pay advance court cost over a two-year period and pay less than what appears should have been paid, Ms. Torres may have violated the Louisiana Constitution.³ Furthermore, by destroying bills that were placed in Mr. Torres' case files, Ms. Nunez may have injured public records.⁴ It also appears that, for 23 suits, Ms. Torres did not intend on charging or collecting from her son, \$1,656 in fees statutorily required by law¹ and \$3,174 in non-statutory fees customarily charged other attorneys. Based on her actions, Ms. Torres may have again violated state law.⁸

Recommendations

We recommend that the Clerk adopt written policies and procedures regarding the collection and charging of fees for civil lawsuits. The Clerk should:

- (1) follow a uniformed method of collecting advance court cost;
- (2) generate an attorney case report monthly to determine if any costs are in arrears;
- (3) maintain public records as required by state law; and
- (4) submit statutorily required fees to state agencies in a timely manner.

⁸ **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. An intent to deprive the other permanently of whatever may be the subject of the misappropriation or taking is essential.

APPENDIX A

Management's Response

This "Management's Response" section contains three separate responses to the audit report placed in the following order:

1. Clerk of Court Randy Nunez
2. Mr. Freeman R. Matthews, legal counsel representing Ms. Lena Torres and Ms. Lena Nunez
3. Mr. Leonard L. Levenson, legal counsel representing Mr. Sidney D. Torres, III

Combined, Mr. Matthews and Mr. Levenson's responses are 62 pages plus an additional 209 pages of exhibits supporting Mr. Levenson's response. Both responses are included in this section in their entirety with the exception of the exhibits, which is on file for public viewing in the Legislative Auditor's office.

Following the three responses is Appendix B, titled "Rebuttal." Appendix B contains a two-and-one-half-page rebuttal from the Legislative Auditor to certain assertions made in Mr. Matthews and Mr. Levenson's responses.



RANDY S. NUNEZ

Clerk Of Court

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October 9, 2012

Daryl G. Pupera, CPA, CFE
LOUISIANA LEGISLATIVE AUDITOR
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Re: St. Bernard Parish Clerk of Court

Dear Mr. Pupera,

The Office of the St. Bernard Parish Clerk of Court has already implemented or has begun to implement the recommendations of the Legislative Auditor. The Office has already implemented a uniform method for determining and collecting advanced court costs in accordance with Louisiana law. The schedule will be made available to the public in our office and will also be made available via our website in the near future. This Office has also utilized monthly reports to determine any amounts in arrears that are due this Office and will take appropriate steps to collect any amounts in arrearages. This Office has maintained and will continue to maintain all public record in accordance with the uniform policy adopted by this Office. This Office has and will continue to remit all statutorily required fees due other agencies in a timely manner. Furthermore, this Office has adhered to and will continue to adhere to a policy of impartiality in the rendition of services. This Office has not and will not provide any preferential treatment to any particular person or group.

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Re: St. Bernard Parish Clerk of Court

The Office of the Clerk of Court for the Parish of St. Bernard has conducted its own investigation into many of the issues raised by the Legislative Auditor and has confirmed that these allegations have merit. The investigation of this Office has also discovered additional issues such as significant discrepancies with the amount of cash deposits during the tenure of the previous Clerk of Court, Lena R. Torres. The preliminary results of the investigation indicate that there are significant amounts of cash that may not have been deposited into the account of this Office during the tenure of Ms. Torres, which ended on June 30th, 2012, as evidenced by the following:

1. The cash deposits of the Clerk's Office for the entire fiscal year from July 1st, 2011 through June 30th, 2012 (Ms. Torres' tenure) totaled \$20,341.00;
2. The cash deposits of the Clerk's Office from July 1st, 2012 through September 30th, 2012 (the first three months of the current Clerk's term) totaled \$16,929.00;
(It should be noted that the Clerk's Office was closed for two weeks as the result of Hurricane Isaac.)
3. The cash deposits of the Clerk's Office during Ms. Torres' tenure for the months of July, August and September 2011, the same time period referenced in No. 2 above, totaled \$5,696.00;
4. Further, the cash deposits on a weekly basis for both administrations are as follows:
 - a.) Torres administration: \$391.17 per week; and
 - b.) Current administration: \$1,539.00 per week.

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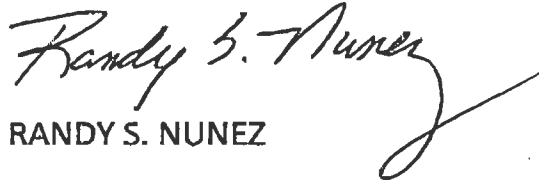
Re: St. Bernard Parish Clerk of Court

The Office of the Clerk of Court will make every effort to recover all funds due by the Law Office of Sidney D. Torres, III, APLC, Lena R. Torres, and/or any other person owning funds to the Office of the Clerk of Court for the Parish of St. Bernard.

If any further assistance is required of our office, please do not hesitate to contact the undersigned.

Sincerely,

CLERK OF COURT
PARISH OF ST. BERNARD


RANDY S. NUNEZ

RSN/ccs

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October 29, 2012

**VIA FACSIMILE (225-339-3870)
AND REGULAR MAIL**

Daryl G. Pupera, CPA, CPE
Louisiana Legislative Auditor
1600 N. Third Street
P O Box 94397
Baton Rouge LA 70804-9397

Re: Audit Report - St. Bernard Parish Clerk of Court

Dear Mr. Pupera:

As you know, we represent former St. Bernard Parish Clerk of Court Lena Torres and her former first assistant Lena Nunez with reference to your draft audit report concerning certain operations of the clerk's office. Please accept this letter as our formal response on behalf of Ms. Torres and Ms. Nunez to the issues raised in your draft report. We hope that this response prompts you to revise some, if not all, of your proposed conclusions.

Ms. Torres denies the allegations and implications of the draft report that attempt to assert that she had afforded her son special treatment with respect to the assessment and collection of certain fees and costs that are to be assessed and collected in civil litigation in St. Bernard Parish. She received no request from her son for any special treatment or accommodations, as is alleged and/or implied in the draft report. She did not grant any special accommodations to her son, as is alleged and/or implied in the draft report.

We initially observe that the draft report appears to suffer from a fundamental misunderstanding of the clerks of court fee and cost regime and a misapprehension of the particulars of the Katrina lawsuits filed by David Jarrell when he was employed by the Torres law firm. The draft report misclassifies six of the original filings as class action lawsuits, as opposed to the mass joinder of claims they actually were. A class action is understood to be a single claim made by many people, while a mass joinder consists of many claims of many people joined in one proceeding for efficiency's sake. The difference is subtle but significant. The individual claims "severed" for separate trials in the mass joinder dockets were not newly-filed lawsuits, they were separate claims within a single litigation. As a consequence, the post-severance filings were not to be treated as initial pleadings

triggering assessment of the fees and costs associated with pleadings that initiate civil proceedings. In these circumstances, because the initial filing fees had been paid with the initial mass joinder action, the “severed” claims should not have been treated as new lawsuits for the purpose of collecting additional sets of “initial fees and costs.”

With respect to the payment of fees on the spot at the time of filing, in the instances cited in the draft report, it appears that Mr. Jarrell took advantage of a courtesy afforded all persons filing pleadings in St. Bernard Parish. It was the practice of the Clerk’s Office to allow persons attempting to file civil pleadings to file the documents without paying the associated fee if the filer did not have the fee in cash or did not have a check on his or her person at the time of filing. The fees would be noted in the computerized financial records of the Clerk’s Office and a bill would be issued to the party for the amount due. The financial record of the docket would be checked every time an additional filing was attempted to be made or when activity was requested in the docket, and if a negative balance in fees and costs was found, demand would be made not only for the current fees or costs being assessed, but for those that were in arrears. If somehow a balance remained at the termination of a lawsuit, the Clerk’s Office would refuse to file any judgments or dismissals unless or until all costs were paid.

This system was in place and was effective for Ms. Torres during her forty-plus years in office, without a single write-up by her internal audit staff or your office (or your predecessors).

We also note the lack of any direct evidence or credible testimony or statements that Ms. Torres was even aware of the specific filings by Mr. Jarrell, or the fees and costs imposed or not imposed by her staff for these filings. The report’s references to criminal statutes for which intentional or knowing misconduct is an essential element is highly inappropriate and offensive in this context and under the facts of the matter.

As the draft report notes, Louisiana law requires clerk’s of court to collect certain fees and costs in connection with the filing and prosecution of civil lawsuits. The draft report’s use of the phrases “statutory fees” and “non-statutory fees,” as well as its grouping of various fees under the category of an “advanced deposit” is misleading and does not mesh with the Clerk’s understanding of the elements of the fee regime, which all derive from statutory authorization. The Clerk’s understanding of the fees and costs collectible in civil matters such as the subject lawsuits is as follows:

The first set of statutes authorize and require the collection of certain set fees, including a \$20.00 fee to help fund court stenographers (La R.S. 13:980(I)(1)), a \$30.00 fee to help fund law clerks’ and support staff salaries (La. R.S. 13:996.48), and a \$21.50 fee paid to the State Treasurer as a judge’s fee (La R.S. 13:10.3(C) & (E)). We shall refer to these fees collectively as “mandatory fees.” In addition into the mandatory fees, the clerks’ of court are authorized and required to collect as an advanced deposit for future fees or costs a sum of at least \$20.00, from which costs and fees incurred

after the initial pleadings were filed could be deducted. *See* La R.S. 13:842(A). We will refer to this charge as the “advance deposit.” Clerks are also authorized to collect an “initialization fee” of up to \$20.00. *See* La. R.S. 13:841(A)(1). Finally, the clerk of court is authorized to collect for every filing a fee that amounts to \$6.00 for the first page of the filing and \$4.00 for each page thereafter. *See* La R.S. 13:841(A)(2). We shall refer to these per page fees as the “variable filing fees.” If service by the sheriff is requested for any pleading, the clerk is authorized to collect a fee to be paid over to the sheriff. We shall refer to these as the “sheriff’s service fees.”

But the statutes do not say when or at what point in the proceedings the mandatory or variable fees must be collected or even demanded, except that “[w]hen the costs have exhausted the amount of the original advance deposit, the clerk may refuse to perform any further function in the proceeding until the additional costs for the function have been paid ...” La. R.S. 13:842(A).

In St. Bernard Parish, the practice was to demand the payment of any accrued but unpaid fees or costs when the next filing by the party owing fees was attempted or when the next activity or function in the matter was requested of the Clerk’s Office. This was possible because of the Clerk’s Office practice of entering the costs and fees at the time of filing and the simultaneous check of the financial record to determine whether and to what extent there was a negative balance on the books for the affected file. The Clerk’s Office even on occasion refused to enter judgments into the record of proceedings unless and until all current and other outstanding costs and fees were paid. This is the only realistic hammer available to the Clerk’s Office to collect fees and costs, other than to seek an order directing a litigant to pay an additional advanced deposit for anticipated fees and costs that may arise in the course of the litigation.

It was the long standing policy and practice of the St. Bernard Parish Clerk’s Office under the administration of Ms. Torres to calculate and demand payment of the mandatory fees; the appropriate variable filing fees; the initialization fee; an advanced deposit; and the sheriff’s service fees, if any, from the party filing the initial pleading of a civil suit at the time of the filing. On some occasions, however, the person or representative making the filing would not have a check or other method of payment at the time of the filing. In such instances, it was the policy of the clerk’s office to allow the pleading to be filed with the assurance of the filer that a payment of the fees would be forthcoming. This courtesy was afforded all persons filing pleadings with the St. Bernard Parish Clerk of Court, not just Sidney Torres or David Jarrell.

It is important again to note here that at the time of filing, the clerk’s office would calculate the amount of fees and costs based on the filing and would enter into its financial records the amount of each fee or costs that accompanied each filing. If the fees were paid at filing, this would also be noted. If the fees were not paid at the time of filing, a negative balance would be indicated in the financial records of the clerk. In addition, in situations where the fees and costs were not paid upon filing, a “clerk bill” would be generated and issued to the filer, with a duplicate physically placed

inside the front cover of the suit file. If costs remained unpaid, this information would be evident when another filing was made or some subsequent action was requested of the clerk because the clerk's staff would use the computer records to generate the cost or fee associated with the new filing or action requested, and the computer system would simultaneously indicate that prior unpaid fees were still due. If the computer records indicated a negative balance, the person making the new filing or requesting the new action would be notified of the full balance due and the clerk's office would demand payment of the entire balance then due.

This was possible because of the Clerk's Office practice of entering the costs and fees into the computer system at the time of filing and the simultaneous check of the financial record to determine whether and to what extent there was a negative balance on the books for the affected file. Thus, the conclusions found in the draft report to the effect that the Clerk's office had no account management; did not maintain sufficient records or documentation of amounts assessed, paid, or owing; and had no way of determining if court costs were paid until final judgment was entered is absolutely at odds with the reality of the situation.

It is presumed that the draft report in reaching these incorrect conclusions relied on the fact that what it describes as the "clerk bills" were removed from the physical files when the outstanding fees and costs were paid. That is overreaching. The piece of paper the report refers to as the "clerk's bill" was a duplicate of the fee statement issued to a filer who did not have the means to pay a fee at filing. It was a transitory note that fees were due, intended to be a redundant alert for clerk's office personnel that unpaid fees were due. The formal record of the fees, costs, and payments were the computer records into which all fees and costs, along with any payments, were recorded contemporaneously at the time of the filing or request for activity.

There was no filing or activity performed without a corresponding charge being entered into the computer system at the time of the filing or request for activity. When the fee balance was brought to zero by payment, the electronic files would be updated and the duplicate physical statement indicating a balance was discarded as no longer valid because the official records would accurately reflect the nature and amount of the charges incurred, the date(s) they were incurred, and the date(s) payments were received. The system would not allow a reversal of a charge without a void line showing the original charge and the date the charge was voided. Thus no fee or cost could be eliminated without a trace. We believe that under any set of standards, this comprehensive system of accounting constitutes sufficient documentation of the financial transactions within the Clerk's Office with respect to the civil proceedings at issue.

The clerk's office successfully operated in this fashion for decades. These policies and practices were developed in accordance with the statutory regime, which the clerk interpreted as requiring the payment of the mandatory and authorized fees at some unspecified point during the pendency of the lawsuit. The statutes themselves do not require payment at filing. The statutes provide that the clerk

“shall collect,” or in some cases “shall demand,” the identified respective fees. But the statutes do not say when these fees are to be collected.

The statutes *do* say that if a fee bill remains unpaid, the clerk *may* refuse to process a filing or activity subsequent to the initial pleading until the fee account was brought current. *See* La. R.S. 13:842(A). Ms. Torres interpreted this provision as allowing her to refuse to process or file any filing, up to and including a judgment in any given case unless and until all costs were paid. The law also allows that a clerk of court *may* seek collection of past due fees by seeking formal court orders if a balance for unpaid fees remains after demand by the clerk. *See* La. R.S. 13:843(B)(2). Neither of these two options are mandatory, but both contemplate a clerk accepting filings and performing functions without the associated fees having been paid at the time the filing or request for activity was made. If it were mandatory that all fees and costs be paid on the spot, then no procedures for collecting unpaid fees and costs would be necessary. Similarly, if rejection of a filing or refusal to conduct a requested activity were mandatory for the clerk, legislation must say so. *See Jacobs v. Coca Cola bottling Company*, 37,775, 859 So.2d 250, 254 (La. App. 2 Cir, 10/20/2003), *writ denied*, 2003-3183, 865 So.2d 725 (La. 2/6/2004).

The *Jacobs* decision dealt with the situation of a petition being filed with a deposit of fees and costs that was less than that required by the court’s standing orders. At the time, however, R.S. 13:841 required that the clerk “shall ... demand and receive” the payment of a two dollar fee for “endorsing, registering and filing” a petition. The court concluded that the clerk could not refuse to accept and file the petition because that full amount of the court’s advance deposit had not been paid because the amount deposited was more than enough to satisfy the two dollar fee. The *Jacobs* decision rejected the argument that R.S. 13:843 allowed the clerk to reject a filing for failure pay advanced costs and held that the clerk’s duty to accept filings was broader than the clerk’s duty to collect fees. *See Jacobs*, 859 So.2d at 254 (“Although La. R.S. 13:842 and 843 allow the clerk to demand and receive advanced costs, demanding and receiving advanced costs do not negate the clerk’s obligation to endorse, register, and file a petition presented for that purpose along with the statutorily-required fee.”)

R.S. 13:841 now provides that the clerk “may be entitled to demand and receive” an “initialization fee” of twenty dollars. We believe it significant that the statutory language was changed from “shall” to “may.” This change alters the effect of the *Jacobs* decision in the context of your draft report. Now, there is no fee upon which the filing of a petition could be held up under the *Jacobs* decision, the mandatory two dollar fee having been replaced by the discretionary twenty dollar initialization fee.

We strongly believe that the above discussion we believe addresses the draft report’s incorrect assumptions upon which its invalid conclusions were based and warrants a re-assessment of the draft report’s conclusions. With regard to specific points of discussion identified in the draft report, we

respond on behalf of Ms. Torres and Ms. Nunez as follows:

1. Clerk's practice of charging and collecting advance court costs

In the time reluctantly allowed by your office for a response, the respondents were unable to review all of the court records that are referenced in the draft report and were unable to review each and every case file or interview all potential witnesses who might clarify some of the finer points. However, speaking generally, the basic assumption that there were 581 stand-alone lawsuits filed by Mr. Torres for which initial mandatory fees, variable filing fees, initialization fees, and advance deposits were due is incorrect based on the analysis set forth above.

The draft report acknowledges that with respect to the six mass joinder cases, all fees implicated by initial civil filings were assessed by the Clerk's Office and paid by Mr. Torres' office. When some number of individual claims were severed for separate trials, the filings that resulted should not have been treated or considered to be initial filings for which another set of initial fees would have to be filed. Only the variable filing fees associated with the particular pleadings filed (\$6.00 for the first page and \$4.00 for every page thereafter) were required to be assessed. The records, we believe, reflect that these variable filings fees were, in fact, assessed for every filing that resulted from the severance orders. Admittedly, some of these filings fees were not paid at the time that the pleadings were submitted for filing. Nevertheless, it can not be controverted that the fees were in fact assessed and entered into the computer system at the time of the filings and that a fee bill was generated for each fee assessment and that the fees assessed were ultimately paid by either Mr. Torres or Mr. Jarrell.

Mr. Jarrell apparently complained that he was treated differently than Mr. Torres in that when he filed motions to enroll in the cases he took with him when he left Mr. Torres' employ he was required to pay all outstanding costs, plus the variable filing fees assessed for the motions to enroll. This result is in line with the policy and practice of the Clerk's Office as explained above in that when Mr. Jarrell requested that a pleading be filed into the record of those particular proceedings, a fee for the filing was calculated and assessed. At that time, since there were outstanding costs showing in the computer records for the case and that particular claim, demand was made for Mr. Jarrell to "zero-out" the negative balance and pay the variable filing fee associated with his particular filing. Ms. Torres takes the position, which is uncontroverted by any facts available or referenced in the draft report, that had Mr. Torres attempted to make a similar or other filing subsequent to the initial filing of the mass joinder cases in any of the claims severed for separate trials, the Clerk's Office would have demanded payment of the outstanding fees shown in the electronic records, as well as the variable filing fees for that particular filing. The draft report references no instances where this was not the case.

The draft report, however, does accurately reflect that when the Clerk's Office became aware of the

negative balances on the severed claims created by Mr. Jarrell when he was employed by Mr. Torres, the Clerk's Office demanded payment of all of the outstanding balances from Mr. Torres' office and these demands were met with payment in full of the outstanding fees and costs by that office.

The calculations and statistics referenced in this section of the draft report are insufficient to support the conclusion of impropriety, based as they are, on incorrect assumptions. Not only are the number of lawsuits inflated by the misunderstanding with respect to the mass joinder claims, but the discussion of "advanced costs" is balanced precariously on the basic misunderstanding of the nature of the fees and costs to be assessed and collected by the Clerk's Office, as discussed above. Thus, when the draft report speaks of the three hundred dollar "customary advanced court costs," a comparison with the variable filing fees charged for the post-severance filings in the hundreds of claims that were severed for separate trials is an invalid comparison. Ms. Torres reiterates her request that the investigators revisit their assumptions and conclusions based on the discussions above.

2. Class action and individual lawsuits filed by Mr. Torres

Again, the assumptions underlying this discussion are invalid in so far as the draft report treats the claims severed for separate trials in the six mass joinder cases as new initial filings. This assumption is addressed above. With respect to the "120 individual lawsuits for property damage claims," it is submitted that initial filing fees were indeed assessed and collected as appropriate under the circumstances for any individual lawsuits that were filed by Mr. Torres. Our review of records pertaining to these 120 lawsuits revealed that many of them were, in fact, severed claims from the various mass joinder suits and that in the cases that were actually stand-alone individual lawsuits, the initial fees were calculated, assessed, and recorded by the Clerk's Office at the time of filing and were paid by Mr. Torres' firm, either on the date of filing or within a month thereafter. Ms. Torres respectfully requests that a review of the records be conducted, that an adjustment of the assumptions be made and that the statement of facts in this respect be corrected. If corrected, the conclusion that anything untoward occurred with respect to the 120 lawsuits must be abandoned.

3. Prescriptive period of Hurricane Katrina related lawsuits

It is unclear how or to what extent this discussion relates to the issue of the assessment and collection of fees by the Clerk's Office. It appears that this discussion was placed in the draft report for reasons other than to attempt to present the facts.

4. Four class action lawsuits severed into four hundred thirty-eight suits and court costs not collected at time of new filings

Once again, the draft report incorrectly refers to the mass joinder of claims as class action lawsuits.

This distinction is discussed above. We also observe that many lawsuits, in many different forms, can be profitable for the attorneys handling them. We also observe that in many of these cases, prescription may become an issue. The fact that Mr. Torres availed himself of the mass joinder provisions of the Louisiana Code of Civil Procedure, instead of some other authorized mechanism, are truly of no concern of the Clerk of Court. The question of whether the mass joinder lawsuits were improperly filed is a question that is left to the parties to the proceedings to raise and for the courts to decide. The Clerk of Court can only operate within the contexts of the proceedings as filed.

In addition, the draft report in this section utilizes misguided statistics as a basis for its assertions. The Clerk of Court should have interpreted the orders severing claims for separate trials as not requiring new initial pleadings for each claim that was included in the mass joinder suits. The court orders did not require new citations for each claim, service of process was not required and the orders themselves were silent about the assessment of new initial fees. Under these circumstances, the Clerk's Office treatment of the filing of the severed claims as filings subsequent to the initial petition requiring only the payment of the variable filing fees is a reasonable one.

These actions should be evaluated in the context of the unprecedented nature of these proceedings. Ms. Nunez, who was more "hands-on" with the filings in civil litigation than Ms. Torres, consulted with a judge who issued a severance order and confirmed that it would be acceptable to treat the claims severed for separate trials as filings subsequent to the initial petition requiring that only the variable filing fees, as opposed to the full panoply of initial fees, be paid at the time of filing. This inquiry was not made to aid or benefit Mr. Torres' law practice, but rather to assure that the Clerk's Office was proceeding appropriately under the circumstances of the mass joinder of Katrina claims.

It also must be understood that Mr. Torres did not make the actual filings for any of these matters. That task was apparently delegated to Mr. Jarrell. Whether and to what extent Mr. Jarrell may or may not have advised Mr. Torres of his activities is not for these respondents to address. Suffice to say that the assessment and collection of fees in all of these cases were performed in accordance with long standing policies and practices of the Clerk's Office that were uniformly applicable to all persons dealing with the Clerk's Office. There is no evidence to the contrary.

5. Two class action lawsuits severed into twenty-three suits and court costs not collected at the time of new filings

Please see the preceding discussions concerning the policies and procedures of the Clerk's Office as they relate to the fees assessed and collected for the claims were severed for separate trials in the mass joinder actions.

6. Ms. Torres, Ms. Nunez and Mr. Torres' positions

The discussion in this section is fairly accurate, but leaves out an important element of the operations of the Clerk's Office under Ms. Torres. As explained above, the fees assessed in a civil action were not necessarily carried as unpaid until the case was terminated by judgment, as implied by the draft report. In the period intervening in a lawsuit between filing and judgment, should a party to attempt to file additional pleadings or request any activity be undertaken by the clerk in the case, the Clerk's Office would calculate and assess the appropriate fee for that filing or activity and would also be advised by the Clerk's record system that a negative balance would have to be paid at that time. The draft report's contrary implications in this section that the Clerk's Office was remiss in attempting to collect outstanding fees owed by a litigant is without basis.

7. Advance court costs not collected at time of filing 120 individual lawsuits

Again, we refer you to the discussion above, wherein we point out that our review of the records available to us indicate that, contrary to the assertions made in the draft report, appropriate fees were assessed in the "120 lawsuits" and that these fees and costs were paid by Mr. Torres.

8. Summary

The assertions of the summary section of the draft report are simply outrageous and without basis in fact. As shown above, the Clerk of Court's Office had detailed financial records concerning the calculation, assessment, recordation, and payment of fees and costs in civil litigation matters. Anytime a filing or activity arose in the course of a civil case, the appropriate fees and costs were calculated and assessed and entered into the computer system, which would also indicate whether a balance was due. If a balance was due, the Clerk's Office would make demand for payment not only of the current variable filing fee being assessed but also for payment of the balance that was previously recorded as being due. In addition, if there was a balance due at the conclusion of the case, the Clerk's practice was to refuse to file the judgment unless and until all costs were paid.

In addition, the statement that Ms. Torres and Ms. Nunez "were aware that Mr. Torres did not pay required advance court costs at the time his lawsuits were filed" is absolutely and unequivocally without basis in fact. The notations allegedly supporting the draft report's specious conclusions in this regard offer no direct proof of the misconduct alleged.

Mr. Jarrell's statement that he was required to pay outstanding court costs on those claims severed for separate trials in the mass joinder actions is accord with the policy and practice of the Clerk's Office as explained above. When Mr. Jarrell made filings in those claims, demand was made for not only the variable filing fees associated with his filing, but for the then outstanding balance of fees and costs due and owing.

The draft report then goes on to misinterpret Ms. Nunez's statements regarding the duplicate statements of costs attached to the physical files. As explained above, these duplicate statements were redundant reminders that fees and costs were outstanding with respect to the particular matter involved. When the fees and costs were paid, these reminders were removed as no longer being useful or accurate. Again, all calculations, assessments, and payments of fees and costs were accurately recorded and memorialized in the electronic financial records of the Clerk of Court.

Neither Ms. Torres nor Ms. Nunez are aware of any civil proceeding in which Mr. Torres did not pay appropriate fees and costs according to the policy and practices of the Clerk's Office that were applicable to all attorneys and litigants. The respondents take exception to the use of the word "routinely" in describing Mr. Torres' alleged non payment of advanced court costs. Given the unique nature of the mass joinder of Katrina claims that made up the bulk of the draft report's observations, the matters could not be considered "routine." It is submitted that a more fulsome and less jaded review of the records would indicate that aside from the less-than-routine claims severed for separate trial, Mr. Torres routinely paid the fees calculated and assessed by the Clerk's Office in the course of conducting his law practice in the 34th Judicial District Court.

Once again, there is no evidence that would indicate that either Ms. Torres or Ms. Nunez intentionally conducted the business of the Clerk's Office to purposefully benefit Mr. Torres in contravention of any law. The contrary conclusion should be revisited and corrected.

9. Clerk's billing records destroyed

As explained above, the piece of paper the draft report refers as to a "clerk bill" is not as important as the draft report makes it out to be. These pieces of paper were redundant reminders that a balance was due in the file. These reminders were perhaps a vestige of pre-electronic age practices. During the period under investigation, the clerk's financial records had long been computerized. These computer records were the official records of the clerk's office. In these records were reflected all fee assessments and payments. At any given time, these records could be consulted to determine whether any fees were still owed to the clerk's office in any given matter.

It is true that the clerk's office did not constantly review all files pending the 34th Judicial District Court to determine whether fee bills should be re-issued. As noted above, Ms. Torres' practices and procedures nevertheless routinely resulted in the payment of fees and costs without resort to motion practice or some other time-consuming and inefficient discretionary mechanism. The notes that were removed from the files upon payment of outstanding fees were not considered significant records of the clerk of court, insofar as the assessment of fees and subsequent payment of those fees were all accurately recorded in the electronic system in a more efficient and sophisticated manner. Retention of the redundant statements of account that had been paid are not required by the Public Records Act.

Daryl G. Pupera, CPA, CPE
Louisiana Legislative Auditor
October 29, 2012
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In conclusion, we reiterate our position on behalf of Ms. Torres and Ms. Nunez that the draft report is riddled with misunderstandings, misapprehensions, faulty presumptions, improperly skewed statistics and conclusions that are not supported by the facts of the matter. We urge your office to revisit its assumptions and conclusions and find that no violations of any laws were committed by either Ms. Torres or Ms. Nunez.

Sincerely,



Freeman R. Matthews

FRM/gw

cc: Ms. Lena Torres

H:\st bernard clerk\legis auditor inquiry\response to audit report 01.wpd

USRY, WEEKS & MATTHEWS

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October 30, 2012

VIA ELECTRONIC MAIL (abrown@lla.la.gov) AND REGULAR MAIL

Daryl G. Purpera, CPA, CPE
Louisiana Legislative Auditor
1600 N. Third Street
P O Box 94397
Baton Rouge LA 70804-9397

Re: Audit Report - St. Bernard Parish Clerk of Court

Dear Mr. Purpera:

We write to provide you with additional information to support that part of our response to the draft report concerning Former St. Bernard Parish Clerk of Court Lena Torres and Ms. Lena Nunez, the former First Assistant to Ms. Torres.

In that response, we addressed the contention that the Public Records Act may have been violated because a half sheet of paper intended as a redundant reminder of a fee balance due would be removed from the physical file in the Clerk's Office after the amount due had been paid. We indicated that the electronic record of fees calculated and assessed by the Clerk's Office and of all payments made in satisfaction of the assessed fees was the official record of such transactions and was retained by the Office in accordance with the Act.

We took the position on behalf of Ms. Torres and Ms. Nunez that the half pieces of paper that were discarded were at best "redundant statements of account that had been paid" and, as such, should not be considered public records required to be retained by the Public Records Act, insofar as the official electronic record reflected all fees imposed, when they were imposed, and when payments were made. We find support for this proposition in Attorney General Opinions, which take the view that the "mere existence in a public office does not make ... a document a 'public record.'" La. A.G. Op. No. 10-272; *citing* La. A.G. Op. No. 79-242. In an extension of this principle, the Attorney General's Office found that after personnel records had been microfilmed, the microfilm became the original and the hard records could be discarded as "a means of maintaining efficient and economical records management programs and conserving storage space." La. A.G. Op. No. 90-364.

It is the opinion of the Attorney General's Office, therefore that "the definition of 'public records' requires a content-driven analysis for a connection between the record and the conduct of public business or the functioning of a public body." La. A.G. Op. No. 10-272. This line of opinions also takes the position that the legislature did not intend "to include everything (e.g. memos, work papers) which any public official may happen to reduce to writing" in the coverage of the Public Records Act. *Id.* The Attorney General's Office thus concluded that the definition of public records found at R.S. 44:1 "includes only those writings which are used in the performance of functions of the public body." *Id.* As a result, only records "which are deemed *relevant to the functioning of the public body* are public records subject to the retention requirements under the Public Records Act." La. A.G. Op. No. 08-312 (emphasis in original); *citing* La. A.G. Op. No. 90-364.

Under this doctrine, the slips of paper referenced in the draft report as having been discarded in contravention of the Public Records Act, being redundant of the official records and not actually "relevant to the functioning of the public body," could legally be discarded after the balance shown as due thereon had been paid. We respectfully request that this section of the draft report be revisited and revised accordingly to conclude that no violation of the public record retention requirements took place.

We thank you for your consideration of this additional information and support for the position taken on behalf of Ms. Torres and Ms. Nunez in the referenced matter.

Sincerely,



Freeman R. Matthews

FRM/gw

cc: Ms. Lena Torres

H:\st bernard clerk\legis auditor inquiry\response to audit report 03.wpd

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*A PROFESSIONAL LAW CORPORATION

October 29, 2012

Daryl G. Purpera, CPA, CFE
Legislative Auditor
State of Louisiana
1600 No. Third Street
Baton Rouge, LA 70804

VIA FACSIMILE TRANSMISSION
225.339.3870
and
FEDERAL EXPRESS
OVERNIGHT DELIVERY

Attn: Mr. Eric S. Sloan, CPA
Assistant Legislative Auditor &
Director of Compliance Audit and Advisory Services

Re: *Law Offices of Sidney D. Torres, III, APLC*
Mr. Sidney D. Torres, III

Dear Gentlemen:

Thank you again for your kind consideration and permitting me additional time within which to respond to your draft compliance audit report under cover letter of September 27, 2012, with respect to the St. Bernard Parish Clerk of Court.

As I appreciate the draft report, it alleges that the former St. Bernard Parish Clerk of Court, Mrs. Lena Torres, allegedly did not collect the "advance court costs" for civil suit filings from her son, (and my client), Sidney D. Torres, III, as you allege is required by La. R.S. 13: §842 during the period of June 2009 to May 2011.

The draft report continues to state that from June 2009 to May 2011, alleged advance court costs totaling \$174,300.00 were not collected when Mr. Torres filed 581 civil suits relating to insurance claims and damages caused by Hurricane Katrina, and/or that Mr. Torres was some how being provided a (mythical) "loan of public funds." This is incorrect, inaccurate and unsupported by the facts and the law.

The implication of the draft report, and certain direct statements contained in the draft

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RE: LAW OFFICES OF SIDNEY D. TORRES, III, APLC
MR. SIDNEY D. TORRES, III
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report improperly accuse my client of possible violations of Louisiana law.¹ In addition, the draft report erroneously concluded that some type of “financial benefit” was gained by my client through some imaginary “reduction of financial risk” associated with the filing of the lawsuits. Nothing could be further from the truth. These conclusions are based upon erroneous facts, a clear misunderstanding of Louisiana law and illogical conclusions based upon the misapplication of Louisiana law.

Factual Background

The complaint that led to this audit arose out of the contentious election between Mrs. Torres and the current, newly elected Clerk, Randy Nunez.

An attack ad was published by a supporter of Mr. Nunez. A copy of that attack ad is attached hereto as Exhibit “A”. The ad is riddled with misstatements, falsehoods and untruths.

As you state in the draft report, it relies upon information and opinions set forth by the current Clerk of Court and a disgruntled, former associate attorney of my client. It is perplexing to me that the draft report would rely upon statements by an individual who has been reprimanded by the Louisiana Supreme Court for attorney misconduct, and has been the subject of several suits for legal malpractice for breach of his legal obligations unto his unwitting clients.²

It does not appear that the auditors made any inquiries of any of the District Judges regarding the facts surrounding the severing of the six (6) of the mass joinder suits and

¹ See page 10 of the draft report.

² See attached Exhibit “B”, *In re: Randy Scott Nunez*, No. 2004-B-1458, La. Sup. Ct. July 2, 2004, 876 So.2d 785. See also: 101-156; 103,375 and 114-761, 34TH Judicial District Court for the Parish of St. Bernard.

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what, if any, were the special circumstances of the Consent Judgments and subsequent filings which the draft report incorrectly refers to as “new suits” and/or “new filings.”

There is no explanation in the draft report why so many other mass joinder suits were never “severed,” nor why Judge Manuel Fernandez, in particular, recognizes the mass joinder procedure and purpose in this procedure and refused to “sever” those cases pending before him at the insistence of the defendants in the manner in which the others were “severed.”

One of the most glaring errors contained in the draft report is the constant mis-reference to “six (6) class action lawsuits” filed by Mr. Torres’ office. *These are not class action lawsuits.* These lawsuits are, more accurately and correctly filed as “mass joinder” lawsuits.

The six (6) mass joinder lawsuits which were identified to me in the Legislative Auditor’s correspondence of October 12, 2012,³ and incorrectly described as “class action lawsuits” are as follows:

Thomas Payn, et al v. Louisiana Citizens Property Ins. Co., No. 112-976, 34TH JDC, Division “D”, Hon. Kirk Vaughn presiding, (“Payn”).⁴

Kathleen Aldrich, et al vs. Allstate Insurance Co., No. 113-871, 34TH JDC, Division “C”, Hon. Robert Klees, Judge *pro tempore*, presiding at the time of filing. The presiding Judge is currently the Hon. Perry A. Nicosia.⁵

³ See attached Exhibit “C.”

⁴ On the date of filing, Dec. 23, 2008, \$275.00 court costs were paid.

⁵ Judge Nicosia was elected in February 2010. He is the former law partner of the current Clerk of Court, Randy Nunez.

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("Aldrich")⁶

Tommy Alfonso, et al v. Allstate Insurance Co., No. 114-005, 34TH JDC,
Division "E", Hon. Jacques Sanborn presiding, ("Alfonso")⁷

Ronald Allange, et al v. Allstate Insurance Co., No. 114-057, 34TH JDC,
Division "E", Hon. Jacques Sanborn presiding, ("Allange")⁸

Angie Vaccarella, et al v. Hartford Casualty Insurance Co., No. 117-239,
34TH JDC, Division "D", Hon. Kirk Vaughn, presiding, ("Vaccarella")⁹

Margaret Daugmol, et al v. Scottsdale Insurance Co., No. 117-554, 34TH
JDC, Division "D", Hon. Kirk Vaughn, presiding, ("Daugmol")¹⁰

While the draft report has focused on these six (6) mass joinder lawsuits for the purposes of your report, there is no comment or mention of approximately eighteen (18) additional mass joinder suits which were filed by Mr. Torres, randomly allotted to

⁶ On the date of filing, June 25, 2009, \$575.00 court costs were paid.

⁷ On the date of filing, July 20, 2009, \$550.00 court costs were paid.

⁸ On the date of filing, July 22, 2009, \$187.50 court costs were paid (the actual amount incurred) and an additional \$137.86 was paid approximately 2 months later. Assuming *arguendo* only, that there was a requirement to pay the "advanced court costs" at the time of filing, (which there is not as explained herein) more than the \$300 amount was paid by Mr. Torres' office.

⁹ On the date of filing, March 21, 2001, \$300.00 court costs were paid.

¹⁰ On the date of filing, May 20, 2011, \$300.00 court costs were paid.

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Division “B”, Hon. Manuel Fernandez, presiding, which were *not* ordered severed.¹¹

Further, there is no mention of approximately thirty-three (33) other mass joinder suits filed by Mr. Torres’ office during the period covered by your report, which also were not ordered to be severed.¹²

Louisiana Law Pertaining to Advance Court Costs

While the draft report makes certain limited references to Louisiana law addressing the commencement and institution of certain types of lawsuits in Louisiana and the charging, collection and payment of court costs, including “advance court costs,” the report does not include or address the full extent of the Louisiana statutory scheme which leads to invalid or incorrect conclusions.

First, it will be helpful to explain the extreme differences between “class action” lawsuits and “mass joinder” lawsuits. They are very different in concept, procedure and application. Generally, the only principal common element of “class action” lawsuits and “mass joinder” lawsuits is that they are initiated by the filing of a petition.

A “class action” is brought by one, or more persons, on behalf of a “definable class” of innumerable other persons. In fact, a “class action” involves persons too numerous to be practicably joined in a lawsuit. (SEE La. Code of Civil Procedure art. 591(A)(1) below).

¹¹ Approximately 62 mass joinder suits were filed by Mr. Torres office of which five are mentioned in the audit. In these 62 mass joinder suits at least \$300 was paid and in many instances much more than \$300 was paid.

¹² See fn. 11 above.

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Art. 591. Prerequisites; maintainable class actions

A. One or more members of a class may sue or be sued as representative parties on behalf of all, only if:

- (1) The class is so numerous that joinder of all members is impracticable.
- (2) There are questions of law or fact common to the class.
- (3) The claims or defenses of the representative parties are typical of the claims or defenses of the class.
- (4) The representative parties will fairly and adequately protect the interests of the class.
- (5) The class is or may be defined objectively in terms of ascertainable criteria, such that the court may determine the constituency of the class for purposes of the conclusiveness of any judgment that may be rendered in the case.

B. An action may be maintained as a class action only if all of the prerequisites of Paragraph A of this Article are satisfied, and in addition:

- (1) The prosecution of separate actions by or against individual members of the class would create a risk of:
 - (a) Inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or
 - (b) Adjudications with respect to individual members of the class which would as a

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practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or

- (2) The party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or
- (3) The court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to these findings include:
 - (a) The interest of the members of the class in individually controlling the prosecution or defense of separate actions;
 - (b) The extent and nature of any litigation concerning the controversy already commenced by or against members of the class;
 - (c) The desirability or undesirability of concentrating the litigation in the particular forum;
 - (d) The difficulties likely to be encountered in the management of a class action;

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- (e) The practical ability of individual class members to pursue their claims without class certification;
 - (f) The extent to which the relief plausibly demanded on behalf of or against the class, including the vindication of such public policies or legal rights as may be implicated, justifies the costs and burdens of class litigation; or
- (4) The parties to a settlement request certification under Subparagraph B(3) for purposes of settlement, even though the requirements of Subparagraph B(3) might not otherwise be met.
- C. Certification shall not be for the purpose of adjudicating claims or defenses dependent for their resolution on proof individual to a member of the class. However, following certification, the court shall retain jurisdiction over claims or defenses dependent for their resolution on proof individual to a member of the class.

“Class action” lawsuits also require a special procedure to determine whether or not a particular lawsuit meets the requirements of La. CCP art. 591. An examination of what you have referred to as six (6) “class action lawsuits” do not meet these requirements, and therefore are *not* “class action” lawsuits.

La. CCP art. 592 provides, in pertinent part:

Art. 592. Certification procedure; notice; judgment; orders

- A. (1) Within ninety days after service on all adverse parties of the initial pleading demanding relief on behalf of or against a class, the proponent of the class shall file a motion to certify the action as a class action. The delay for filing the motion may be extended by stipulation of the parties

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or on motion for good cause shown.

* * *

- (3)(a) No motion to certify an action as a class action shall be granted prior to a hearing on the motion. Such hearing shall be held as soon as practicable, but in no event before:
- (i) All named adverse parties have been served with the pleading containing the demand for class relief or have made an appearance or, with respect to unserved defendants who have not appeared, the proponent of the class has made due and diligent effort to perfect service of such pleading; and
 - (ii) The parties have had a reasonable opportunity to obtain discovery on class certification issues, on such terms and conditions as the court deems necessary, which may include expert witness testimony or evidence. The admissibility of expert witness testimony or evidence for class certification purposes shall also be governed by Article 1425(F), although the court in its discretion may change the deadlines for filing or hearing a motion as set forth in Article 1425(F) provided such deadlines are prior to or contemporaneous with the class certification hearing.
- (b) If the court finds that the action should be maintained as a class action, it shall certify the action accordingly. If the

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court finds that the action should not be maintained as a class action, the action may continue between the named parties. In either event, the court shall give in writing its findings of fact and reasons for judgment provided a request is made not later than ten days after notice of the order or judgment. A suspensive or devolutive appeal, as provided in Article 2081 et seq. of the Code of Civil Procedure, may be taken as a matter of right from an order or judgment provided for herein.

* * *

E. In the conduct of actions to which Article 591 and this Article apply, the court may make any of the following appropriate orders:

- (1) Determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument.

* * *

On the other hand, where there is a commonality among numerous parties, who are not so many in number that it is impractical, or impossible, to join them, they may "join" together in a single lawsuit. These types of suits are referred to as "mass joinder" lawsuits.

La. Code of Civil Procedure art. 463 provides:

Art. 463. Cumulation, plural plaintiffs or defendants

Two or more parties may be joined in the same suit, either as plaintiffs or as defendants, if:

- (1) There is a community of interest between the parties joined;

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(2) Each of the actions cumulated is within the jurisdiction of the court and is brought in the proper venue; and

(3) All of the actions cumulated are mutually consistent and employ the same form of procedure.

Except as otherwise provided in Article 3657, inconsistent or mutually exclusive actions may be cumulated in the same suit if pleaded in the alternative.

La. Code Civ. Proc. Ann. art. 463

The six cases which the draft report mistakenly refers to as “class action lawsuits”s were properly filed as “mass joinder” petitions. Any reference in the draft report that there was some untoward effort on behalf of my client, or his office to “reduce any financial risk” by filing the mass joinder suits is a misrepresentation and a blatant misunderstanding of Louisiana civil procedure. This is a procedure provided for by Louisiana law to address situations as the citizens of St. Bernard Parish experienced with the disaster of Hurricane Katrina and the loss of their homes and personal possessions. (SEE La. CCP art. 463 above.)

The “community of interest” in the mass joinder suits address in the draft report are the losses of property and personal possessions caused by Hurricane Katrina. The actions for each plaintiff are “mutually consistent” and “employ the same form of procedure” because they are suits for property damages and personal property damages sustained by the citizens of St. Bernard Parish resulting from Hurricane Katrina. In *each* of these mass joinder suits, the plaintiffs all maintained homeowners’ insurance with that particular defendant, in that particular case, i.e., *Payn* involved La. Citizen’s policies, *Aldrich*, *Alfonso* and *Allagewere* all Allstate insurance policies, *Vaccarella* were Hartford policy holders and *Daugmol* were Scottsdale policy holders.

The advantage of these cumulated actions is that in each case, the Court, who would adjudicate these cases *without* a jury, would not be required to take evidence of the

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“cause of the loss,” the “terms of the policies,” the “conditions and limitations” of the policies or other “common” facts or legal issues. This greatly lessens the burden upon the legal system.

As required by LSA-R.S. Title 13, §842, the “advance costs” were paid in connection with these mass joinder suits. However, please note that *nowhere* in §842, of Title 13 of the Louisiana Revised Statutes does it state that the “advance costs” *must*, or *are required* to be paid at the time of the filing of a lawsuit. This is a misguided interpretation of this statute which you must have been provided. While at best a custom, it is not a legal requirement. [However, as explained further below, even without the payment of these “advance court costs” or the full amount of these “advance costs” the Clerk of Court may not prejudice the filing plaintiff.

First, LSA-R.S. Title 13, §841, provides, in pertinent part:

§ 841. Enumeration of fees in civil matters; miscellaneous

A. The clerks of the several district courts may be entitled to demand and receive fees of office, which fees may be less than, but shall not exceed, the following amounts:

(1) Initialization fee, twenty dollars.

* * *

La. Rev. Stat. Ann. § 13:841

Please note this statute entitles the Clerk to a permissive, not mandatory, initialization fee, not to exceed \$20.00. The statute goes on to list various other charges the various Clerks *may* charge or collect for varying matters, however, *nothing in this statute* requires this fee to be charged, and/or collected at any particular time. Contrary to the conclusions in the draft report, this statute does *not* mandate the Clerks charge or collect this initialization fee at the time of filing of any suit.

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LSA-R.S. Title 13, §842 provides:

§ 842. Advance costs

A. The clerks of the district courts shall demand and receive from the plaintiff or plaintiffs in each ordinary suit, whether accompanied by conservatory writs or not, not less than twenty dollars or such other amount as may be fixed by law for advanced costs, to be disbursed to the clerk's salary fund or to others as their fees accrue. Whenever the costs have exhausted the amount of the original advance deposit, the clerk may refuse to perform any further function in the proceeding until the additional costs for the function have been paid, in accordance with the fees set forth in R.S. 13:841 or, in Orleans Parish, in R.S. 13:1213.

La. Rev. Stat. Ann. § 13:842

This statute requires the Clerks of District Courts to demand and receive from the plaintiffs¹³, in ordinary suits, (a) not less than \$20.00 or (b) such other amounts fixed for advanced costs to be disbursed to the clerk's salary fund, or others, as their fees accrue.

These "other amounts" are provided for by LSA-R.S. 13:§996.48 (Judicial Clerk's Fund), LSA-R.S. 13:§980 (Court Reporter's Fund), LSA-R.S. 13:§841.1 (Supreme Court Reporting Fund), and LSA-R.S. 13:§10.3 (Judge's Supplemental Compensation Fund).

They provide, in pertinent part, as follows:

§ 996.48. Judicial clerk's fund for Thirty-Fourth Judicial District

- A. In addition to all other fees or costs now or hereafter provided by law, the clerk of court in the Thirty-Fourth Judicial District shall collect from every person filing

¹³ The statute does not state plaintiff's "attorneys."

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any type of civil suit or proceeding, and who is not otherwise exempted by law from the payment of court costs, a sum to be determined by the judges of the district, sitting en banc,¹⁴ which sum shall not exceed thirty dollars, subject, however, to the provisions of Code of Civil Procedure Art. 5181, et seq...

La. Rev. Stat. Ann. § 13:996.48

§ 980. Court reporters for the Thirty-Fourth Judicial District

* * *

- I. The clerk of court of the Thirty-Fourth Judicial District shall collect from the litigant filing a suit the following amounts, which shall be paid over by him to the governing authority of the parish in which the suit is filed to be deposited into a separate account designated as the Judicial Court Reporter's Fund:

- (1) In suits for divorce or separation of property, receivership proceedings, concursus proceedings, money demands of one thousand dollars or more, money demands irrespective of amount involved when accompanied by a writ of attachment, injunction, or sequestration--twenty dollars in each suit.

* * *

La. Rev. Stat. Ann. § 13:980

§ 841.1. Additional fee for offset of supreme court reporting system expense

In addition to any other fees or costs imposed or authorized to be imposed and collected, the clerk of court of each district court may demand and receive from each party liable for

¹⁴ We have searched the local rules of the 34TH Judicial District Court and were unable to locate any such *en banc* order. It is possible that the order exists and is simply not published as part of the local rules of the 34TH Judicial District Court.

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court costs the additional sum of one dollar and fifty cents on all civil and probate matters. Any additional amount so imposed shall be used, in addition to any other available funds, to defray expenses incurred to meet the requirements of the supreme court reporting system.

La. Rev. Stat. Ann. § 13:841.1

§ 10.3. Judges' Supplemental Compensation Fund; creation; sources of funds

* * *

- C. In addition to any other filing fee imposed by law, a nonrefundable fee of ten dollars for every civil filing in the office of each clerk of city, parish, juvenile, family, district, appellate, and supreme court is hereby levied.

* * *

- E. The additional filing fee of ten dollars shall be considered the base additional fee for purposes of this Subsection. Beginning in July, 1986, the base fee shall be increased an amount equal to the percent of increase in the average consumer price index (all items-city average) as published by the United States Department of Labor, bureau of labor statistics, between the figures for the calendar years 1984 and 1985. The amount of increase so calculated shall be rounded off to the nearest half-dollar. Each succeeding July, a similar adjustment shall be made to the base fee, as adjusted, based upon the percent of change to the nearest half-dollar in the average consumer price index between the two complete calendar years preceding July of the year in which the adjustment is made. Under no circumstances shall the base fee or any escalation thereof, pursuant to the provisions of this Paragraph, be reduced.

La. Rev. Stat. Ann. § 13:10.3

While the Clerks of Court, of the various District Courts of Louisiana *shall demand and receive* not less than twenty dollars, or such other amount as may be fixed by law for advanced costs (which the draft report refers to as \$71.50 statutory costs), *none* of the

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foregoing statutes provide *any time period* for their payment, nor do *any* require these sums to be paid *at the time of filing* any lawsuit.

I previously directed you to Att. Gen. Op. No. 77-1574 which involved six inquiries regarding the Clerk of Court's authority to demand the "required advance deposit" to file "initial pleadings" and an "additional advance deposit" following the expenditure of the initial required deposit. This Atty. Gen. Op. provides, in pertinent part:

* * *

In our opinion except for pleadings sought to be filed by a plaintiff who is indigent, or who is exempted by statute from the payment of costs under R.S. 13:4521, a clerk may refuse to file initial pleadings for a plaintiff or intervenor if not accompanied by the required advance deposit unless appropriate security for costs is furnished by such plaintiff or intervenor.¹⁵

* * *

1976-77 La. Op. Att'y Gen. 326 (1977)

Please note that the Attorney General acknowledges the Clerk's right to "refuse" is only permissive, *not mandatory*. This is within the various Clerk's discretion.

This Attorney General Opinion goes on to state, in pertinent part:

* * *

In our opinion he may not demand a new advance for future costs.

* * *

1976-77 La. Op. Att'y Gen. 326 (1977)

¹⁵ This Atty. Gen. Opinion was specifically *not* followed in *Jacobs v. Coca Cola Bottling Co.*, 859 So2d 250 (La. App. 2ND Cir. 2003) wherein the Court declared that the Clerk *could not refuse* an initial filing if the full amount of the advance deposit was not tendered with the pleading. This will be discussed further herein below.

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As will be explained and addressed below, this portion of the Opinion prohibiting the Clerk from demanding an additional or “new advance” for future costs will be very germane to the issues presented in the draft report since all appropriate court costs, including “advance court costs” were paid in the six (6) mass joinder suits addressed in your report well in advance of the severing of the claims.

The Severed Cases and Non-Severed Cases

We cannot explain to you, nor has the draft report addressed *why* these six (6) mass joinder cases were ordered to be “severed” by “consent,” while many others were not ordered to be severed by consent, or otherwise. Nor can we explain the legal reason for this disparity. Nonetheless, you must acknowledge two important facts that bear directly upon incorrect conclusions contained in the draft report.

First, many mass joinders were *never* ordered severed, and in fact, Judge Manuel Fernandez has been adamant in his position that severing these cases is not procedurally proper.¹⁶

Second, the individual who “consented” to the “severances” on behalf of the Law Offices of Sidney D. Torres, III, APLC, was David C. Jarrell the estranged, disgruntled former attorney-employee.

¹⁶ I have attached for clarification, a transcript from a recent hearing before Judge Fernandez in one of the mass joinder cases *not addressed* in your report. Judge Fernandez sets forth an excellent analysis of mass joinder, cumulation of actions and why they are not proper for severance, which may provide some further insight and understanding of that procedure and why it is not untoward to file these types of suits as the draft report suggests, or that my client has enjoyed some type of “financial gain” by filing these suits in this fashion. See Exhibit “D” attached hereto.

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The Consent Judgments Severing the Six (6) Mass Joinder Cases

Thomas Payn, et al v. Louisiana Citizens Property Insurance Corp.

The *Payn* mass joinder suit was originally filed on December 23, 2008, as Proceedings No. 112-976. This suit was first amended on December 29, 2008 with the filing of an "Amended Petition." The suit was amended a second time with the filing of a Second Amended and Supplemental Petition on July 20, 2009. The *Payn* suit was amended a third time with the filing of a Third Amended and Supplemental Petition on July 21, 2009, and for a fourth time on July 22, 2009. Although not stated in the draft report, the following court costs were paid in these proceedings, including, "advance court costs," as follows: \$275.00 paid on 12/23/2008, date of initial filing; \$125.00 additoinal paid on 12/29/2008; \$250.00 paid on 1/15/2009 and \$540.81 paid on 2/3/10. SEE Exhibits "E" *in globo* attached hereto.

On August 25, 2009, Judge Kirk A. Vaughn entered the Consent Judgment which caused the severance of these claims which were properly cumulated pursuant to La. CCP art. 463. This Consent Judgment was entered into by Mr. David C. Jarrell, on behalf of the Torres Law Offices. (SEE comments set forth above.)

This Consent Judgment, attached hereto as Exhibit "F," provided, in pertinent part as follows:

"IT IS FURTHER ORDERED that the claims asserted by each plaintiff for each property in the above captioned case are hereby severed and that a separate trial is ordered for each severed case." (Emphasis Added)

Please note that the severance provides for separate trials. (SEE the comments of Judge Fernandez described above.)

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“IT IS HEREBY FURTHER ORDERED that an individual lawsuit must be filed for each severed claim.”

This portion of the order does not provide for a “new suit” or another “initial filing,” but only the filing of “an individual lawsuit.” In fact, the true “original lawsuit” or “initial filing” remains pending to this date. This order does not provide for the payment of any additional “advance court costs,” [which according to the Attorney General, is not permitted. SEE Attorney General Opinion referenced above.]

“IT IS FURTHER ORDERED that the Clerk of Court shall randomly allocate each lawsuit and assign a new docket number for each severed claim as identified on the attached Exhibit.”

This portion of the order also does not provide for a “new suit,” nor another “initial filing,” nor for the payment of *any* “advance court costs.” This is obviously because the “advance court costs” including all statutory costs had been previously paid.¹⁷

¹⁷ This Consent Judgment does not address the requirements of the La. CCP art. 1561 nor *Uniform Rules for District Courts, Rule 9.4(b)*. In fact, none of the Consent Judgments address the issues raised by these legal mandates. La. CCP art. 1561 provides for “consolidation for trial “when two or more separate actions are pending in the same court, section or division of the court in which the first filed action is pending... upon a finding that common issues of fact and law predominate. This provision of the La. CCP would provide for permissive consolidation of the cases although “severed.” Obviously, because each of these “suits” arise out of Katrina damages and Louisiana Citizen’s polices, common issues of fact and law predominate. *Rule 9.4(b)* provides, in pertinent part: “Judge or forum shopping is prohibited. To achieve community of case management and avoid the appearance of judge or forum shopping *all subsequent actions asserting the same claim by the same parties shall be transferred to the division to which the first case filed was allotted*, whether or not the first case is still pending. Therefore, if each of the plaintiffs originally instituted their suit in the mass joinder, irrespective of the severing of these claims and a new random allotment, they *shall* be transferred to the division where

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“IT IS FURTHER ORDERED that any each (*sic*) severed claim will retain the filing date of the original lawsuit, or amendment thereto.”

This is an important fact evidencing that these “individual suits” are *not* “new suits” or “initial filings” as proposed in the draft report. It is a legal impossibility for any “new suit” or “initial filing” to “retain the filing date of another (original) lawsuit.” This single fact alone negates any conclusion of the draft report that any “advance court costs” were due, or should have been paid. Again, in this portion of the order, the Court does not order the payment of any “advance court costs”.

As will be explained more fully below, this situation is a legal aberration. To our knowledge, this has never previously occurred in the 34TH Judicial District Court. There is no legal basis, or authority for your conclusion that any “advance court costs” would be due when these “severed claims” were filed, “retain[ing] the filing date of the original lawsuit...”

“IT IS AGREED TO BY THE PARTIES AND HEREBY ORDERED that defendant Louisiana Citizens Property Insurance Corporation shall waive service and citation for each severed claim being a new docket number and allotment upon receipt of same.”

This portion of the order requires waiver of service and citation of the severed claims notwithstanding the giving of new docket numbers by the Clerk of Court. There is no requirement of the payment of any “advance court costs.”

“IT IS FURTHER ORDERED that a copy of this order shall be attached to each lawsuit for each severed claim.”

the mass joinder was filed.

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This requirement is also extremely unusual. Requiring a copy of the order to be attached to “each lawsuit for each severed claim,” is to connote that these severed claims are not new suits, or initial filings and are not the proper subject of any “advance court costs.”

Kathleen Aldrich, et al v. Allstate Insurance Co.

The *Aldrich* mass joinder suit was originally filed on June 25, 2009, as Proceedings No. 113-871. Although not stated in the draft report, the Clerk’s civil ledger indicates that all court costs, including “advance court costs,” were paid in connection with this suit through that date. SEE Exhibit “G” attached hereto.

On November 2, 2009, Judge Robert J. Klees, *pro tempore*, entered the Consent Judgment which caused the severance of these claims which were properly cumulated pursuant to La. CCP art. 463. This Consent Judgment was entered into by Mr. David C. Jarrell, on behalf of the Torres Law Offices. (SEE comments set forth above.)

This Consent Judgment, attached hereto as Exhibit “H,” provided, in pertinent part as follows:

“IT IS ORDERED, ADJUDGED AND DECREED that, pursuant to La. C.C.P. art. 464, the above-captioned matter is hereby severed and that Plaintiffs herein are to proceed with their claims separately against Defendant.”¹⁸

¹⁸ This article provides, in pertinent part:
Art. 464. Improper cumulation, effect

* * *

When the cumulation is improper for any other reason, the court may: (1) order separate trials of the actions; or (2) order the plaintiff to elect which actions he shall proceed with, and to amend his petition so as to delete therefrom all allegations relating to the action which he elects to discontinue. The penalty for noncompliance with an order to amend

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The individual claims of the individual plaintiffs were severed so that they could proceed separately. As provided by the order, and Louisiana law, these are *not* “new suits” or “initial filings.” In fact, as provided by art. 464, (or more appropriately art. 465 in this circumstance) it is separate trials that are ordered, and the original petition is “amended,” *not* newly filed. An amended petition is simply an amendment of the original petition and therefore, additional “advance court costs” are not due or payable.

“IT IS FURTHER ORDERED, ADJUDGED AND DECREED that any Plaintiff electing to proceed with their claim separately against Defendant *shall file an amended petition* for each individual property claim no later than sixty days of the entry of this Order or otherwise be forever barred from asserting any and all claims assert in the above-captioned matter. Plaintiff’s *amended petition* shall contain only the individual plaintiff and defendant that are the subject of that specific claim, shall be assigned a new docket number by the Clerk and randomly allotted among the Sections of this Court...” (Emphasis Added)

* * *

“IT IS FURTHER ORDERED, ADJUDGED AND DECREED that any claim not timely re-filed *as an amended petition*, in accordance with this Order shall be considered untimely and subject to dismissal, with prejudice, upon motion of any interested part.” (Emphasis Added)

This order properly notes that these individual claims are to be asserted by “amended

is a dismissal of plaintiff’s suit.

La. Code Civ. Proc. Ann. art. 464

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petitions,” not “new suits” or “initial filings.” While they are ordered to be assigned new docket numbers and randomly allotted, they are nonetheless *only* amended petitions and “advance court costs” are not due. SEE Attorney General Opinion referenced above.

Tommy Alfonso, et al v. Allstate Insurance Co.

The *Alfonso* mass joinder suit was originally filed on July 25, 2009, as Proceedings No. 114-005. Although not stated in your report, the Clerk’s civil ledger indicates that all court costs, including “advance court costs,” were paid in connection with this suit through that date. SEE Exhibit “I” attached hereto.

On November 19, 2009, Judge Jacques Sanborn entered the Consent Judgment which caused the severance of these claims which were properly cumulated pursuant to La. CCP art. 463. This Consent Judgment was entered into by Mr. David C. Jarrell, on behalf of the Torres Law Offices. (SEE comments set forth above.)

This Consent Judgment, identical to *Aldrich*, attached hereto as Exhibit “J”, provided, in pertinent part as follows:

“IT IS ORDERED, ADJUDGED AND DECREED that, pursuant to La. C.C.P. art. 464, the above-captioned matter is hereby severed and that Plaintiffs herein are to proceed with their claims separately against Defendant.”¹⁹

¹⁹ See fn. 18 which quotes La. CCP art. 464.

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The individual claims of the individual plaintiffs were severed so that they could proceed separately. As provided by the order, and Louisiana law, these are *not* “new suits” or “initial filings.” In fact, as provided by art. 464, (or more appropriately art. 465 in this circumstance) it is separate trials that are ordered, and the original petition is “amended,” *not* newly filed. An amended petition is simply an amendment of the original petition and therefore, additional “advance court costs” are not due or payable.

“IT IS FURTHER ORDERED, ADJUDGED AND DECREED that any Plaintiff electing to proceed with their claim separately against Defendant *shall file an amended petition* for each individual property claim no later than sixty days of the entry of this Order or otherwise be forever barred from asserting any and all claims assert in the above-captioned matter. Plaintiff’s *amended petition* shall contain only the individual plaintiff and defendant that are the subject of that specific claim, shall be assigned a new docket number by the Clerk and randomly allotted among the Sections of this Court...” (Emphasis Added)

* * *

“IT IS FURTHER ORDERED, ADJUDGED AND DECREED that any claim not timely re-filed *as an amended petition*, in accordance with this Order shall be considered untimely and subject to dismissal, with prejudice, upon motion of any interested part.” (Emphasis Added)

As in *Aldrich*, this order properly notes that these individual claims are to be asserted by “amended petitions,” not “new suits” or “initial filings.” While they are ordered to be assigned new docket numbers and randomly allotted, they are nonetheless *only* amended

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petitions and “advance court costs” are not due. SEE Attorney General Opinion referenced above.

Ronald Allange, et al v. Allstate Insurance Co.

The *Allange* mass joinder suit was originally filed on July 22, 2009, as Proceedings No. 114-057. Although not stated in your report, the Clerk’s civil ledger indicates that all court costs, including “advance court costs,” were paid in connection with this suit through that date. SEE Exhibit “K” attached hereto.

On November 10, 2009, Judge Jacques Sanborn entered the Consent Judgment which caused the severance of these claims which were properly cumulated pursuant to La. CCP art. 463. This Consent Judgment was entered into by Mr. David C. Jarrell, on behalf of the Torres Law Offices. (SEE comments set forth above.)

This Consent Judgment, identical to *Aldrich* and *Alfonso*, attached hereto as Exhibit “L”, provided, in pertinent part as follows:

“IT IS ORDERED, ADJUDGED AND DECREED that, pursuant to La. C.C.P. art. 464, the above-captioned matter is hereby severed and that Plaintiffs herein are to proceed with their claims separately against Defendant.”²⁰

²⁰ See fn. 18 which quotes La. CCP art. 464.

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Identically to *Aldrich* and *Alfonso*, the individual claims of the individual plaintiffs were severed so that they could proceed separately. As provided by the order, and Louisiana law, these are *not* “new suits” or “initial filings.” In fact, as provided by art. 464 (or more appropriately to this circumstance CCP art. 465), it is separate trials that are ordered, and the original petition is “amended,” *not* newly filed. An amended petition is simply an amendment of the original petition and therefore, additional “advance court costs” are not due or payable.

“IT IS FURTHER ORDERED, ADJUDGED AND DECREED that any Plaintiff electing to proceed with their claim separately against Defendant *shall file an amended petition* for each individual property claim no later than sixty days of the entry of this Order or otherwise be forever barred from asserting any and all claims assert in the above-captioned matter. Plaintiff’s *amended petition* shall contain only the individual plaintiff and defendant that are the subject of that specific claim, shall be assigned a new docket number by the Clerk and randomly allotted among the Sections of this Court...” (Emphasis Added)

* * *

“IT IS FURTHER ORDERED, ADJUDGED AND DECREED that any claim not timely re-filed *as an amended petition*, in accordance with this Order shall be considered untimely and subject to dismissal, with prejudice, upon motion of any interested part.” (Emphasis Added)

As in *Aldrich* and *Alfonso*, this order properly notes that these individual claims are to be asserted by “amended petitions,” not “new suits” or “initial filings.” While they are ordered to be assigned new docket numbers and randomly allotted, they are nonetheless

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only amended petitions and “advance court costs” are not due. SEE Attorney General Opinion referenced above.

Angie Vaccarella, et al v. Hartford Casualty Insurance Co.

The *Vaccarella* mass joinder suit was originally filed on March 21, 2011, as Proceedings No. 117-239. Although not stated in your report, the Clerk’s civil ledger indicates that all court costs, including “advance court costs” were paid in connection with this suit through that date. SEE Exhibit “M” attached hereto.

On July 1, 2011, Judge Kirk A. Vaughn entered the Consent Judgment which caused the severance of these claims which were properly cumulated pursuant to La. CCP art. 463. This Consent Judgment was entered into by Mr. David C. Jarrell, on behalf of the Torres Law Offices. (SEE comments set forth above.)

This Consent Judgment, attached hereto as Exhibit “N”, provided, in pertinent part as follows:

“The original petition(s) included the claims of multiple plaintiffs, all of whom are asserting claims against the same defendant, arising out of Hurricane Katrina. Defendant has advised plaintiffs that it has filed, or intends to file an *Exception of Improper Cumulation*, *Exception of Lis Pendens*, and *Exception of Lack of Procedural Capacity* in response to the Petition(s) for damages filed. In lieu of a hearing on the aforementioned Exceptions, the parties have agreed and hereby consent to severing the claims of the individual Plaintiffs subject to the Conditions set forth below:”

This Consent Ordered was entered into by David C. Jarrell on behalf of the Law Offices of Sidney D. Torres, III, APLC. (SEE comments above with respect to Mr. Jarrell.) This

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agreement was to “sever the claims of the individual Plaintiffs,” not to file “new suits” or any “initial filings.” As will be shown below, these were nothing more than the “amended petitions” contemplated by CCP art. 464 set forth in detail above.

“IT IS HEREBY ORDERED that the claims asserted by the following plaintiffs (“SEVERED PLAINTIFFS”) are hereby severed and that a separate trial is ordered for each severed case:”

[NOTE: the individual plaintiffs’ names are omitted here.]

The order provides that the “claims” are “severed... for trial.” This is as provided by La. CCP art. 464 detailed above. The order does not contemplate, or direct any “new suit” or “initial filing” as will be shown below therefore, no “advance court costs” are due.

“IT IS FURTHER ORDERED that an individual lawsuit must be filed for each severed claim identified above within thirty (30) days of the date of this order;

“IT IS FURTHER ORDERED that the Clerk of Court shall randomly allocate each lawsuit and assign a new docket number for each severed claim lawsuit identified above;”

While this order provides for the filing of an “individual lawsuit” as provided by La. CCP art. 464, this is nothing more than a mere amending petition, although not specifically identified as such. It is clear these “individual lawsuit[s]” are not “new suits” or “initial filings” and “advance court costs” are not due. In fact, additional “advance court costs” are not legally permissible (SEE Attorney General Opinion above) because they had already been paid at the time of the initial filing.

The order provides for new docket numbers and random allotment, but it does not

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require any payment of any additional “advance court costs” because none are legally due.

“IT IS FURTHER ORDERED that each severed claim lawsuit filed within thirty (30) days from the date of this order will retain the filing date of this original lawsuit, or amendment thereto for all purposes;

* * *

“IT IS FURTHER ORDERED that a copy of this order shall be attached to the lawsuit for each severed claim identified above, *and along with a copy of the original petition, be filed in each record.*”²¹

This order, consistent with the other orders severing these claims *for trial*, mandates that the claims “will retain the filing date of this original lawsuit, or amendment thereto.” As I have described above, this is a legal impossibility for a “new suit” or “initial filing.” It can only apply to an “amending petition” which relates back to the original lawsuit filing.²² Because this is not a “new suit” or an “initial filing” no “advance court costs”

²¹ Emphasis in original. This portion of the Order is a handwritten insertion by Judge Kirk A. Vaughn.

²² The La. CCP specifically provides for amendments to petitions and “relation back” to the original filing date.

Art. 1151. Amendment of petition and answer; answer to amended petition

A plaintiff may amend his petition without leave of court at any time before the answer thereto is served. He may be ordered to amend his petition under Articles 932 through 934.

* * *

La. Code Civ. Proc. Ann. art. 1151

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are due, nor or they legally permissible as set forth in the above described Attorney General Opinion.

Margaret Daugimol, et al v. Scottsdale Insurance Co.

The *Daugimol* mass joinder suit was originally filed on May 20, 2011, as Proceedings No. 117-564. Although not stated in your report, the Clerk's civil ledger indicates that all court costs, including "advance court costs," were paid in connection with this suit through that date. SEE Exhibit "O" attached hereto.

On August 4, 2011, Judge Kirk A. Vaughn entered the Consent Judgment which caused the severance of these claims which were properly cumulated pursuant to La. CCP art. 463.

This Consent Judgment, while strikingly similar to *Vaccarella*, but not identical, attached hereto as Exhibit "P", provided, in pertinent part as follows:

"The original petition(s) included the claims of multiple plaintiffs, all of whom are asserting claims against the same defendant, arising out of Hurricane Katrina. Defendant has advised plaintiffs that it intends to file

Art. 1153. Amendment relates back

When the action or defense asserted in the amended petition or answer arises out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of filing the original pleading.

La. Code Civ. Proc. Ann. art. 1153

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an Exception of Improper Cumulation in response to the Petition for Damages filed. Plaintiffs would seek to oppose the Exception. However, in lieu of a hearing on the aforementioned exception, and in satisfaction thereof, the parties have agreed and hereby consent to severing the claims of the individual plaintiffs pursuant to La. Code of Civ. Proc. art. 465, subject to the conditions set forth below:²³

This agreement was to “sever the claims of the individual Plaintiffs,” not to file “new suits” or any “initial filings.” As will be shown below, these were nothing more than the “amended petitions” contemplated by CCP art. 464 and/or the ordering of “separate trials” set forth in La. CCP art. 465. This does not, and cannot, trigger the imposition of any “advance court costs.”

“IT IS HEREBY ORDERED that the claims of the following plaintiffs, save for the first named plaintiff (“SEVERED PLAINTIFFS”), are hereby severed and that a separate trial is ordered for each severed case:”

[NOTE: the individual plaintiffs’ names are omitted here.]

²³ La. CCP art. 465 provides:
Art. 465. Separate trials of cumulated actions

When the court is of the opinion that it would simplify the proceedings, would permit a more orderly disposition of the case, or would otherwise be in the interest of justice, at any time prior to trial, it may order a separate trial of cumulated actions, even if the cumulation is proper.

La. Code Civ. Proc. Ann. art. 465

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The order provides that the “claims” are “severed... for trial.” This is as provided by CCP art. 465 detailed above. The order does not contemplate, or direct any “new suit” or “initial filing” as will be shown below therefore, no “advance court costs” are due. Please note that this order specifically addresses the continued existence of the original lawsuit, on behalf of the original named plaintiff, Margaret Daugimol. The only conclusion which can be drawn is that the additional “suits” or more appropriately “amended petitions” cannot constitute “new suits” or “initial filings.”

“IT IS FURTHER ORDERED that:

- (1) Each Severed Plaintiff shall file a new, separate lawsuit within forty-five (45) days of the date of entry of this Consent Judgment;
- (2) Each severed lawsuit pursuant to this Consent Judgment shall retain the filing date of this original Petition, MARGARET DAUGIMOL, ET ALS V. SCOTTSDALE INSURANCE COMPANY, No. 117-564, Div. “D”, or amendment thereto for all purposes;
- (3) Each Severed Lawsuit filed pursuant to this Consent Judgment shall be captioned as an “AMENDING PETITION”;
- (4) The Clerk of Court shall randomly allocate each severed and amending lawsuit assigning a new docket number for each severed claim lawsuit in accordance with the rules of court;”

* * *

- (7) Each new AMENDING PETITION shall proceed

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independently of this and all other suits.

IT IS FURTHER ORDERED that a copy of this Consent Judgment, to be marked "Exhibit 1", and a copy of the Original Petition, as amended, if applicable, to be marked "Exhibit 2", shall be attached to each new AMENDING PETITION for each severed claim identified herein; and," (Emphasis Included in Original)

* * *

While this order provides, in a single paragraph, for the filing of a "new separate lawsuit" this is a misnomer and is not supported by the remaining provisions of the order. The order *specifically* refers to La. CCP art. 465, which provides for separate trials. Further La. CCP art. 464 provides solely for the filing of "amending petitions." Reviewing the order it is seen that the Court specifically references "AMENDING PETITION" no less than six (6) times. The Court specially orders that these suits be captioned "as an AMENDING PETITION." these "severed lawsuit[s]" are not "new suits" or "initial filings" and "advance court costs" are not due.

The order provides for new docket numbers and random allotment, but it does not require any payment of any additional "advance court costs" because none are legally due.

This order, consistent with the other orders severing these claims *for trial*, mandates that the claims "will retain the filing date of this original lawsuit, or amendment thereto." As I have described above, this is a legal impossibility for a "new suit" or "initial filing." It can only apply to an "amending petition" which relates back to the original lawsuit

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filing.²⁴ Because this is not a “new suit” or an “initial filing” no “advance court costs” are due, nor are they legally permissible as set forth in the above described Attorney General Opinion.

Response to Specific Allegations and Disputed
Facts Contained in the Draft Report

While it is physically impossible to respond to each and every allegation of wrongdoing you have alleged against my client, either directly, or by implication, within the time constraints imposed, we shall respond to the primary allegations set forth in the draft report. In due course, if required, additional responses can be provided.

Mr. Torres denies any and all allegations and insinuations of any wrongdoing or questionable conduct. Mr. Torres has never requested, and was never afforded, any special treatment by his mother, nor was he relieved of any financial obligation or responsibility.

Allegations of intentional or conscious wrongdoing by Mr. Torres in violation of any criminal statute, or procedural rule or regulation is denied. We also find these allegations extremely offensive.

“Former St. Bernard Parish Clerk of Court, Lena Torres, did not collect the advance court costs for civil suit filings from her son, attorney Sidney D. Torres III, as required by Louisiana Revised Statute 13:842. Clerk of Court records show that from June 2009 to May 2011, advance court costs totaling \$174,300 were not collected at the time Mr. Torres filed 581 civil

²⁴ See the above discussion of La. CCP arts. 1151 and 1153, specifically providing for amendments to petitions and “relation back” to the original filing date.

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suits relating to insurance claims and damages caused by Hurricane Katrina."

These advance court costs were not due by my client. The 581 civil suit filings to which the draft report refers is a mischaracterization of these pleadings and as set forth in detail in this response to the draft report, no advance court costs are required by LSA-R.S. 13: §842, nor were they otherwise legally due. The vast majority of what you have referred to as "civil suit filings from her son," are merely severed claims filed in the form of amended petitions as provided by La. CCP arts. 464 and 465. These are not "new suits" or "initial filings" and any comparison of these filings with new civil suits is a mistaken understanding of Louisiana law.

"...it appears that Ms. Torres provided her son with a loan of public funds which may have violated the Louisiana Constitution."

My client was not "loaned" any public funds as discussed more fully below. It would have been inappropriate and legally impermissible to charge my client the "advance court costs" to which you refer because nearly all of the 581 lawsuits are merely amended petitions of the originally filed mass joinder lawsuits for which "advance court costs" may not be charged or collected. In addition, as discussed above, these statutes do not require payment of these "advanced court costs" at any particular time.

"Advance Court Costs charged by the Clerk of Court (Clerk) consists of all costs expected to be incurred during the course of the lawsuit by the plaintiff's attorney, which are required by law to be paid at the time the lawsuit is filed."

I am unaware of any statute, or law, that makes the payment of court costs the obligation of the plaintiff's attorney. Court costs are the obligation of the litigants, not their attorneys. While it may be customary for attorneys to advance these costs on

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behalf of their clients, the law does not mandate this obligation to the attorney. The Clerk's remedy for non-payment of court costs, is, in most circumstances the right to refuse to perform the clerk's services, but even this is limited. SEE *Jacobs*, *infra*.

Specifically, *article 1920 of the Louisiana Code of Civil Procedure*, entitled, "Costs; parties liable; procedure for taxing" states, in pertinent part, "Unless the judgment provides otherwise, costs shall be paid by the party cast, and may be taxed by a rule to show cause." Regarding the payment of costs, LSA-R.S. Title 13, § 843 specifically provides, in pertinent part, "After any cost advance furnished under *R.S. 13:842* has been exhausted, all accrued costs shall be paid by the party incurring the additional costs."

"Different kinds of costs may be incurred during the course of litigation ... These costs are paid by the litigants in advance or as they accrue, unless the particular litigant is excused from advance payment of costs... The clerk may demand security for the primary costs at the time the suit is filed. Presumably, since both the plaintiff and defendant may be liable, for costs during the course of litigation, the clerk may demand security from either or both." *1 La. Civ. L. Treatise, Civil Procedure 8:1 (2d ed.)*

One who is not a "party" cannot be taxed with costs of that suit. *Evans v. Louisiana Farm Bureau Mutual Insurance Company*, 291 So.2d 865, (La. App. 3rd Cir. 1974). The term "party" refers to one who has filed a claim, who has been named in a suit, or who, although unnamed, has been allowed to enter a general appearance and seek certain relief. *Socorro v. City of New Orleans*, 579 So.2d 931, (La. 1991). In *Cormier*, it was held that counsel for the plaintiff was not a party to the litigation and could not be held responsible for the payment of court costs. *Cormier v. Robertson*, 691 So.2d 807, (La. App. 1st Cir. 1997).

I have set forth in detail above that none of the statutes pertaining to the payment of "Advance Court Costs," including what is referred to in the draft report as "statutory

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costs,” set forth *any* requirement that they “be paid at the time the lawsuit is filed.” This is a misstatement of the law as written.

“To understand the Clerk’s practice of charging and collecting advance court costs, we reviewed the 581 lawsuits and other lawsuits filed by Mr. Torres, as well as all types of lawsuits filed by other attorneys. Based upon the Clerk’s practices, it appears that other attorneys were not allowed to pay advance court costs in the same manner in which Mr. Torres, was allowed.”

While the draft report does not specifically identify the “581 lawsuits” or the “other lawsuits filed by Mr. Torres” you provided me with the identification of the “120 individual lawsuits” of which 52 are actually the claims, “severed” from the six (6) “class action lawsuits” (misnomer) discussed in the draft report.²⁵ Unless you have compared these “severed” claims/suits to other filed “severed” claims/suits in other cases, the analysis set forth in the draft report is in error. These “severed” and filed amended petitions are simply *not* new civil suit filings both as a matter of Louisiana law and as ordered by the various Consent Judgments attached hereto and discussed herein. SEE Exhibit “Q” attached hereto.

As discussed in detail above, the very vast majority are not “new suits” or “initial filings.” They are nothing more than amended petitions filed for the sole purpose of severing these numerous individual claims for trial. My client cannot be charged for any “advance court costs” in connection with the filing of any amended petitions as set forth in the Attorney General Opinion discussed above.

Because I was not provided the identification of other lawsuits either filed by my client,

²⁵ The draft report states that of the 581 lawsuits, 120 are “lawsuits originally filed as individual suits.” This is incorrect and inaccurate as set forth herein.

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or more appropriately filed on behalf of his law firm, or “other lawsuits” filed by “other attorneys” it is impossible to address this allegation.

“According to the Clerk’s records, between June 2009 and April 2010, Mr. Torres filed 592 (35%) of the total 1,710 individual civil lawsuits which required payment of advance costs, filed in St. Bernard Parish. Mr. Torres paid the advanced costs at the time of filing on only 37 (6%) of the 592 suits filed.”

The draft report does not identify the 592 suits upon which it relies, nor does it identify the 37 suits the costs were paid. As set forth in detail herein, no advance costs were due, nor could be legally charged in the cases which were severed from the mass joinder lawsuits.²⁶ As I appreciate the report, it states that “581 lawsuits all involve property damage claims,” with “461 lawsuits resulting from six “severed class action suits and 120 lawsuits originally filed as individual suits.” As I stated above, and will explain below, the totality of the “120 lawsuits” identified as “individual suits,” is inaccurate.

Therefore, how the “592 suits” and the “37 suits” relate to the “581 suits” is indeterminable from the draft report. Upon receipt of that information a response will be provided.

“\$188 was the average advanced court costs charged to Mr. Torres at the time of filing property damage related suits, and he was allowed to make payment over an extended period of time rather than at the time of filing.”

²⁶ See foregoing explanation that filing of amended petitions do not permit the Clerk of Court to charge, or collect, advance court costs. Also, to the extent the draft report’s analysis of court costs customarily charged and collected compare “severed” claims with “new suits,” please see the above explanation of the invalidity of comparing “new suits” or “initial filings” with the “severed claims.”

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Because of the lack of documentation regarding how the draft report arrived at the sum of "\$188" as "the average advanced court costs charged to Mr. Torres" it is impossible to reply specifically to this conclusion. However, if this is based upon the inclusion of any of the "severed claims" which are merely amended petitions for which "advanced court costs" may not be charged, or collected, this average is an erroneous amount.

"From June 2009 to May 2011, Mr. Torres filed six class action lawsuits and 120 individual lawsuits for property damage claims. Clerk records show that advanced costs were not charged or collected at the time of filing the 120 individual lawsuits."

* * *

"The six class action lawsuits were later severed by the Court which resulted in 461 new lawsuits for Mr. Torres. Combined Mr. Torres ultimately filed 581 individual lawsuits relating to property damage claims."

As discussed in detail above, the six "class action lawsuits" to which the draft report refers, were, in actuality, six "mass joinder lawsuits" as authorized by the La. CCP.

What the draft report incorrectly refers to as 120 individual lawsuits were, at a minimum, 52 severed lawsuits from the mass joinder lawsuits. Attached hereto as Ex. "Q", are the lawsuits the draft report identifies as "120 individual lawsuits." An additional 18 are other "mass joinder suits" where court costs were paid several in excess of what the draft report identifies as the "customary advanced court costs." The remainder may be "individual lawsuits," however, due to time constraints this cannot be confirmed with certitude. These suits were being filed around the time of the "severed claims." Of these, in approximately 16 cases, the sums paid at the time of filing were equal to, or exceeded the "advanced court costs" amount. A further detailed analysis cannot be provided at this time due to the time constraints imposed.

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However, the identification of the 120 suits as “individual suits” where these alleged “advanced court costs” were not paid at the time of filing is inaccurate. [Please also note that there is nothing in the applicable statutes that mandate these payments “at the time of filing” as explained herein.]

Also as explained in detail above, the 461 “severed” lawsuits/claims, are incorrectly identified as “new lawsuits for Mr. Torres.” Pursuant to the various Consent Judgments, described above, and Louisiana law set forth above, these are incorrectly identified as “new lawsuits.”

The draft report contains the following table:

ORIGINAL NUMBER AND TYPE OF LAWSUITS FILED BY MR. TORRES	TOTAL NUMBER OF PLAINTIFFS/LAWSUITS FILED BY MR. TORRES	ADVANCED COURT COSTS CUSTOMARILY CHARGED AND COLLECTED AT TIME OF FILING	ADVANCED COURT COSTS CHARGED AND COLLECTED FROM MR. TORRES OVER A TWO-YEAR PERIOD
4 - CLASS ACTION	438	\$131,400	\$73,581
2 - CLASS ACTION	23	\$6,900	\$2,070
120 - INDIVIDUAL	120	\$36,000	\$23,916
TOTALS	581	\$174,300	\$99,566

“Mr. Torres was allowed to pay \$99,566 in court costs over a two year period instead of paying the customary advanced court costs of \$174,300 (\$300 x 581 lawsuits) at the time of filing. Therefore, by not collecting the advance court costs at the time of filing from Mr. Torres on these 581 cases... “

”Since Mr. Torres was charged far less than \$300 for filing each of the 581 lawsuits, it appears that some customary fees were not charged or collected by the Clerk. However... we could not determine whether the \$99,566

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ultimately paid by Mr. Torres was the appropriate amount. ”

The following sets forth the errors and misunderstandings set forth in the chart contained in the draft report as well as the conclusions drawn therefrom.

There were not six “class action” lawsuits. There were six “mass joinder” lawsuits where the advanced cost amount determined by the draft report to be “customary,” or greater, were paid at the time of filing in five of the six suits. In one suit, the actual cost incurred was paid at the time of filing, and an additional deposit was paid shortly thereafter.

As explained in detail above, the 461 suits identified by the draft report as “new suits” were in fact “severed” suits, only being amended petitions of the original six suits the draft report identified and for which the law does not permit the Clerk to again charge “advance court costs.”

In addition, out of the 120 individual suits that were identified in the draft report, approximately 52 were actually “severed claims”, as set forth in detail above. Again, as to these suits, mistakenly reported as new “individual lawsuits” no additional “advance court costs” could be legally charged to my client.

Between October 10, 2011, and October 14, 2011, my client tendered the sum of \$99,566 to the Clerk. These sums were the *actual* court costs incurred in connection with those lawsuits. It is disputed as to whether or not these sums were actually due at that time, or whether my client was legally obligated to pay. SEE *Cormier*, *infra*. As explained above, the Clerk’s remedy is to refuse to file documents if there are unpaid charges. Since these cases were dormant at that time, it is disputed as to whether or not these sums were due.

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As explained previously, during the course of Mrs. Torres election²⁷, an “attack ad” was published accusing Mr. Torres of not paying court costs. Of course, the “attack ad” was misinforming, inaccurate and based upon untrue statements. One of the persons spearheading the attack was intimately familiar with these facts as it was he who actually, physically filed the mass joinder suits. It was he who filed the amended petitions as ordered by the Court, and it was he who had the primary responsibility of confirming payment and following through on payment of court costs that may have been due, or as they would come due. He apparently also participated in the concoction of this ruse for the purpose of Mrs. Torres’ opponent in her re-election bid. He, as was Mrs. Torres opponent, personally knowledgeable that the fees required by LSA-R.S. Title, 13, §842 were inapplicable pursuant to Louisiana law and the Consent Judgments (to the lawsuits identified in the draft report).²⁸

In order to lessen the adverse consequences of the slanderous attack upon Mrs. Torres during her campaign, while not yet required or mandated by Louisiana law, Mr. Torres paid all court costs which had accrued, irrespective of whether or not they were due as a matter of law. This payment does not stand for the proposition that these costs were due and/or unpaid, but was merely an expedited attempt to seek the immediate termination of the untrue, unfair and malicious attack.

“Since the Appellate Court had not issued a ruling at the time Mr. Torres filed four of the six class action lawsuits, there was a risk that the class

²⁷ Mrs. Torres was seeking re-election as the Clerk of Court, 34TH JDC, a position she has held with distinction since 1988. Prior to that, Mrs. Torres was the Chief Deputy Clerk from 1955 to 1988.

²⁸ Please note that the Consent Judgments *do not* require the payment of additional costs at the time of the filing of the amended petitions, or the advance deposit required by LSA-R.S. 13:842, because they are not “initial” filings. Mr. Jarrell was intimately familiar with those facts.

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action lawsuits would not be allowed. The financial risk to Mr. Torres of having four lawsuits dismissed, should the Appellate Court decide the prescriptive period had expired, was reduced by filing as class action suits rather than 515 individual suits. Also, should the Appellate Court overturn the district court's decision and allow the suits to stand, the financial gain from the class action suits could be lucrative for Mr. Torres."

While redundant, once again, the reference in the draft report to "class action lawsuits" is erroneous. The filing of four, or six, "mass joinder suits" is proper and permitted by Louisiana law. The suggestion of the draft report that Mr. Torres acted in an improper manner by filing these "mass joinder" suits as opposed to "individual suits" is misplaced, inaccurate and without legal basis or authority.

Further, none of the rulings in the "severed cases" suggest that there was anything impermissible or untoward in filing the "mass joinder suits." Nor has any of the District Judges suggested this, at least no such allegation is contained in the draft report. Further, as set forth above and in the attached Exhibits, even as recently as October 19, 2012, District Judge Manuel Fernandez has reiterated this position.

In fact, as discussed above and set forth in the attached exhibits, these severed claims were only severed for purposes of trial. Only amended petitions were filed, not "new suits" as set forth in the draft report. Therefore, no additional "advance court costs" could be charged or collected as a matter of law.

Filing these six mass joinder suits has nothing to do with financial risk. I have provided you the appropriate provisions of the La. CCP and the Uniform District Court Rules that clearly show that even if the 581 suits had been filed individually, consolidation would have ultimately been properly ordered.

While I do not understand the purpose of the gratuitous comment that "...the financial

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gain from the class action suits could be lucrative for Mr. Torres,” it is clear that the draft report gives no consideration given for the time, effort, costs, expenses, risk, and labor involved in handling “contingency fee” cases, or to bring them to fruition, or the benefit to the citizens of St. Bernard Parish who were deprived of their just compensation from their insurers as a result of their losses sustained during Hurricane Katrina. Apparently one of the two sources relied upon in the draft report have provided less than complete information to lead one to believe that simply filing a lawsuit results in recovery, or that no effort or expense (in addition to court costs) would be expended.

“However, in July, August, and November 2009, a district judge ordered each of the four class action suits to be severed.”

This statement is erroneous. There was no single ruling by any single District Judge. In fact, there was no ruling by *any* District Judge. The truth is that six “Consent Judgments” were entered at the request of the counsel for the parties²⁹ before three different District Judges, who accepted the Consent Judgments. This has been explained in detail above, and copies of the actual “Consent Judgments” are attached to this response.

“According to the consent judgment: (1) each plaintiff had 60 days to file a new suit; (2) a new docket number was to be assigned to each new suit; and (3) each new suit was to be randomly allotted among the courts. Since the class action suits were ordered to be severed and filed individually prior to the Appellate Court reaching its decision, Mr. Torres’ financial risk increased substantially. Mr. Torres went from having paid \$1,588 in advanced costs to file four class action lawsuits to potentially having to pay \$154,500 (\$300 average court costs x 515) in court costs.”

²⁹ Please recall that Mr. David C. Jarrell was the attorney who undertook this action on behalf of the plaintiffs for the Law Offices of Sidney D. Torres, III, APLC.

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This portion of the draft report is plagued with errors, misstatements and faulty conclusions, including, but not limited to the following:

- (a) there is no single consent judgment. This has been detailed herein and the several consent judgments are attached to this response.
- (b) while similar, not all six Consent Judgments are identical. Not every Consent Judgment permitted the filing of the amended petitions for severing the claims for trial 60 days.
- (c) while a new docket number was to be assigned, and randomly allotted,³⁰ these are *not* “new suits.” All of the Consent Judgments clearly state that the individual cases were severed for a “separate trial.” All were to retain the date of filing of the originally filed mass joinder suit from which they were severed.³¹ Four of the Consent Judgments *specifically state* the filing of AMENDED PETITIONS is required. Two of the four Consent Judgments require attachment of the Consent Judgment and/or the Original Petition as part of the individual suit clearly indicating they are nothing more than AMENDED PETITIONS of the originally filed mass joinder suits.
- (d) There was no increased financial risk to Mr. Torres as result of these Consent Judgments, much less \$154,500. As explained in detail above, these were *not* “new suits” or “initial filings” and even if LSA-R.S. 13: §842

³⁰ See above, regarding the Consent Judgments’ failure to address CCP art. 1561 and *Uniform District Court Rules, Rule 9.4(b)*.

³¹ As explained above, this can only be legally accomplished by amending an existing petition, it cannot be accomplished by filing a “new suit.”

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required payment at the time of filing, (which it does not), this statute is *not applicable* to these severed cases because they are merely amended petitions to the originally filed suits and advance court costs may not be charged, also as explained hereinabove.

"Of the 515 plaintiffs in four class action suits, 438 plaintiffs filed new lawsuits. Based on the requirements of the consent judgment, for each new suit filed, the Clerk was to collect advanced court costs as required by Louisiana Revised Statute 13:8421" (sic).

There were no class action suits. There were no "new lawsuits" filed. The individual claims were merely severed. There is absolutely no requirement of the Consent Judgments³² for the "Clerk... to collect advanced court costs as required by Louisiana Revised Statute 13:8421" (sic). I have attached copies of each of the Consent Judgments to this response to substantiate that no such "requirement" exists. In addition, as explained above, these "advance court costs" are not subject to being charged or collected in this instance.

"However, the Clerk's records show that advanced court costs were not collected from Mr. Torres on any of the 438 new suits. Therefore, Mr. Torres was relieved of having to pay a total of \$131,400 (\$300 x 438) at the time of filing. According to Mr. David Jarrell, a former staff attorney for Mr. Torres, it was because of this increased financial risk that Mr. Torres did not pay the advance court costs at the time of filing the individual suits."

Mr. Torres was not charged advance court costs for the 438 "severed" claims (not "new

³² The draft report erroneously refers to a single Consent Judgment. In reality there were six separate Consent Judgments for each of the six "mass joinder" lawsuits.

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LEGISLATIVE AUDITOR

STATE OF LOUISIANA

ATTN: MR. ERIC S. SLOAN, CPA

ASSISTANT LEGISLATIVE AUDITOR &

DIRECTOR OF COMPLIANCE AUDIT AND ADVISORY SERVICES

RE: LAW OFFICES OF SIDNEY D. TORRES, III, APLC

MR. SIDNEY D. TORRES, III

OCTOBER 29, 2012

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suits”) because they could not be legally charged or collected. Mr. Torres could not be relieved of having to pay \$131,400, because this was not owed, and could not be charged, as a matter of Louisiana law.

The statement attributed to Mr. David C. Jarrell, if made, is a falsehood and fabrication. As a licensed attorney, and as the self-professed attorney primarily responsible for these Consent Judgments on behalf of the plaintiffs, was aware, or should have been, aware that the law does not permit the charging or collecting of these “advanced court costs.”

While these costs may, as a matter of custom, be advanced by counsel for the plaintiff, court costs are the ultimate responsibility of the client. (See above explanation.) The law does not permit the various Clerks of the District Courts to impose these charges on these citizens, in these circumstances. They are entitled to a single advanced court cost chargeable for the original filing *only*. It is also very doubtful that the Judges who entered these Consent Judgments would have imposed this unnecessary burden upon these 438 plaintiffs, particularly since the Consent Judgments imposed no such requirement, notwithstanding the draft report to the contrary.

“Besides the four class action suits discussed previously, on March 21, 2011 and May 20, 2011, Mr. Torres filed two additional class action lawsuits related to Hurricane Katrina that were also ordered to be severed. There were a total of 24 plaintiffs in these two class action suits and all plaintiffs filed new lawsuits. Mr. Torres was retained by 23 plaintiffs as their attorney. Clerk records show that advance court costs were not collected at the time of filing from Mr. Torres on any of the 23 new lawsuits. As a result, Mr. Torres was relieved of having to pay a total of \$6,900 (\$300 x 23) at the time of filing.”

For the reasons explained thoroughly above, no advanced court costs were due for these “severed” claims either. Mr. Torres was not “relieved” of having to pay any advanced

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court costs. They were not legally due or collectable.

“During the period of our audit, Clerk records show that advance court costs were not collected from Mr. Torres on any of the 120 property damage lawsuits he filed that were unrelated to the severed class action suits. Therefore, Mr. Torres was relieved of having to pay a total of \$36,000 (\$300 x 120) at the time of filing.”

As explained above, approximately 52 of these 120 suits identified as 120 “individual suits” were in fact severed from other mass joinder lawsuits. In addition, approximately 18 of these are other “mass joinder” suits. While we are unable to provide you the detailed analysis because of time constraints, court costs were paid in all of the non-severed suits either at the time of filing, or shortly thereafter. These suits were filed by David C. Jarrell who was authorized to pay any and all court costs at the time of filing.

“Through the course of their business dealings, Ms. Lena Torres and Mr. Sidney Torres may have violated Louisiana state laws and the State Constitution.”

While Mrs. Torres’ attorney will address these allegations on her behalf, it is an improper and incorrect conclusion that Mr. Torres violated *any* Louisiana law nor the State Constitution. There is no basis in fact or law for this erroneous conclusion. It is based upon inaccurate facts, misinterpretation and misapplication of Louisiana law. This conclusion is purely and simply wrong.

Thank you for your kind attention and cooperation in this matter.

DARYL G. PURPERA, CPA, CFE
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STATE OF LOUISIANA

ATTN: MR. ERIC S. SLOAN, CPA
ASSISTANT LEGISLATIVE AUDITOR &
DIRECTOR OF COMPLIANCE AUDIT AND ADVISORY SERVICES

RE: *LAW OFFICES OF SIDNEY D. TORRES, III, APLC*
MR. SIDNEY D. TORRES, III

OCTOBER 29, 2012

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Sincerely,



LEONARD L. LEVENSON

LLL/rmi

APPENDIX B

Legislative Auditor's Rebuttal

After reviewing Mr. Matthews and Mr. Levenson's responses, the most relevant statements in the responses can be summarized into six topics. These topics, followed by the relevant statements from the responses, as well as the legislative auditor's (LLA) rebuttals are as follows:

1. Terminology - Class Action vs. Mass Joinder

"These are not class action lawsuits. These lawsuits are, more accurately and correctly filed as mass joinder lawsuits." (Mr. Levenson, page 3)

LLA Rebuttal

The LLA's draft report used the terminology as used by the Clerk and her staff throughout the audit. Nevertheless, the LLA agrees that Mass Joinder is the more appropriate term and the report has been updated to reflect this change in terminology. The change however from Class Action to Mass Joinder does not alter the information or conclusions contained in the report.

2. New Lawsuits vs. Amended Petitions

"The individual claims severed for separate trials in the mass joinder dockets were not newly filed lawsuits, they were separate claims within a single litigation. As a consequence, the post-severance filings were not to be treated as initial pleadings triggering assessment of fees and costs associated with pleadings that initiate civil proceedings." (Mr. Matthews, page 2)

LLA Rebuttal

- Although Mr. Matthews states in his response that the severed claims "...were not to be treated as initial pleadings triggering assessment of fees...", according to Clerk records, Ms. Torres (1) charged Mr. Torres the advanced costs at the time of filings; (2) Mr. Torres' accounts had "bills" or notices of amounts due; and (3) Mr. Torres eventually paid the amounts owed. Therefore, Ms. Torres' customary practice was to charge the filing fees for the severed claims.
- During an interview with LLA auditors, Ms. Torres stated that severing the lawsuits did not relieve Mr. Torres from paying the advanced costs on the newly filed lawsuits.
- David Jarrell was charged and required to pay all of the advanced costs on his newly filed lawsuit at the time of filing.
- According to Mr. Randy Nunez, as of November 19, 2012, Mr. Torres has not asked for reimbursement of \$99,566 in court costs that Mr. Torres claimed he paid but did not owe to the clerk of court.

3. Payment of Advanced Costs at Time of Filing vs. Paying at a Later Date

“... please note that nowhere in 842 of Title 13 of the Louisiana Revised Statutes does it state that the “advance costs” *must or are required* to be paid at the time of the filing of a lawsuit.” (Mr. Levenson, page 12)

LLA Rebuttal

- The Clerk’s customary practice was to collect advance costs at the time of filing, as stated in the report, excluding suits filed by Mr. Torres, which indicates he received favorable treatment. The advance costs were paid at the time of filing on 93% of suits filed between June 2009 and April 2010, and the remaining 7% was paid within seven days of filing (e.g., Katrina lawsuits filed by Randy Nunez and lawsuits filed by all others). Therefore, Ms. Torres’ customary practice was to collect advanced costs at the time of filing the lawsuits.
- David Jarrell was told by the Clerk that the advanced costs (balance owed) had to be paid at the time he filed the severed suit he acquired from Mr. Torres.
- Ms. Torres stated that not collecting advanced costs from her son in a timely manner was an oversight on her part and not intentional.

4. Statutorily Mandated Fees

“The draft report’s use of the phrases “statutory fees” and “non-statutory fees,” as well as its grouping of various fees under the category of an “advanced deposit” is misleading and does not mesh with the Clerk’s understanding of the elements of the fee regime, which all derive from statutory authorization...” (Mr. Matthews, page 2)

LLA Rebuttal

While we agree that all fees collected by the Clerk are authorized under state law, the terms “statutory fees” and “non-statutory fees” used in the report are in the context of Ms. Torres’ customary practice of charging \$72 of advanced court costs at the time of filing a lawsuit, which are mandated by state law. Ms. Torres routinely charged \$72, which was then forwarded to the St. Bernard Parish Government, the 34th Judicial District Court, and the State Treasurer. The \$72 represented part of the advanced court costs charged by Ms. Torres at the time of filing a lawsuit. LLA auditors asked Ms. Torres to explain the composition of the balance of the filing fee, \$228 (\$300 - \$72) that was customarily charged to others, but Ms. Torres could not give an answer.

5. Clerk's Account Management Controls

“Thus, the conclusions found in the draft report to the effect that the Clerk’s office had no account management... is absolutely at odds with the reality of the situation.” (Mr. Matthews, page 4)

LLA Rebuttal

We agree that the Clerk’s Office had adequate account management controls in place to properly manage Sidney Torres’ accounts. However, based on Ms. Torres and Ms. Nunez’s statements concerning Sidney Torres’ accounts, the Clerk did not have adequate account management. In the audit report, we give five reasons why the Clerk should have been aware of Mr. Torres’ outstanding fees based on account management controls in place.

6. Public Record vs. Transitory Note

“The piece of paper that the report refers to as the “clerk’s bills” was a duplicate of the fee statement issued to a filer who did not have the means to pay a fee at filing. It was a transitory note that fees were due, intended to be a redundant alert for clerk’s office personnel that unpaid fees were due. The formal record of the fees, costs and payments were the computer records into which all fees and costs, along with any payments, were recorded contemporaneously at the time of the filing or request for activity.” (Mr. Matthews, page 4)

LLA Rebuttal

Since the Clerk’s bills are generated when one or more attempts are made to collect the court cost owed, and because the bills generated are not recorded in the accounting software, the physical bills are the only records of attempted collections of court costs by the Clerk. Therefore, the Clerk’s bills (invoices) are not transitory notes but rather public records subject to R.S. 44:36(A).