

LOUISIANA CLERKS OF COURT
RETIREMENT AND RELIEF FUND



COMPLIANCE AUDIT
ISSUED AUGUST 18, 2010

**LEGISLATIVE AUDITOR
1600 NORTH THIRD STREET
POST OFFICE BOX 94397
BATON ROUGE, LOUISIANA 70804-9397**

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LOUISIANA LEGISLATIVE AUDITOR
DARYL G. PURPERA, CPA, CFE

August 18, 2010

Ms. Debbie D. Hudnall
Executive Director
Louisiana Clerks of Court Retirement and Relief Fund
11745 Bricksome Avenue
Suite B-1
Baton Rouge, LA 70816

Dear Ms. Hudnall:

We have audited certain transactions of the Louisiana Clerks of Court Retirement and Relief Fund (Retirement Fund) for the fiscal year ended June 30, 2007. Our audit was conducted in accordance with Title 24 of the Louisiana Revised Statutes to determine the propriety of certain allegations brought to our attention during a concurrent audit of the Louisiana Municipal Police Employees' Retirement System and the East Baton Rouge City/Parish Employees' Retirement System. All audits were performed in conjunction with the Louisiana Attorney General's office and the Louisiana Office of the Inspector General.

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 of an audit by *Government Auditing Standards*; therefore, we are not offering an opinion on the Fund's financial statements or system of internal control nor assurance as to compliance with laws and regulations. The concerns and results of our audit are listed below for your consideration.

The Retirement Fund received two checks dated December 15, 2006, from the WorldCom Settlement Fund in the amounts of \$114,544 and \$114,536. These checks were based on claims filed by the Retirement Fund for investments lost in the WorldCom bankruptcy. It appears that one claim was made by one of the Retirement Fund's money managers and an identical claim was made by the Retirement Fund's custodial bank. One of the checks was deposited in the cash account of the custodial bank for the Retirement Fund. According to the Retirement Fund's executive director, she asked its contract attorney, Randy Zinna, to determine whether the second check was duplicative because of the similar timing and amount relative to the first check.

According to the executive director, Mr. Zinna subsequently informed her that although the second check, in the amount of \$114,536, was not duplicative, the Retirement Fund was only owed \$36,026. On May 16, 2007, Mr. Zinna deposited the \$114,536 WorldCom Settlement check into his personal law office escrow account. Several months later, on February 27, 2008, Mr. Zinna provided a \$36,026 cashiers' check to the Retirement Fund. According to the law firm handling the class action lawsuit against WorldCom, there is no record of any settlement funds being returned by the Retirement Fund to the WorldCom Settlement Fund. On February 8, 2010, Mr. Zinna provided a cashier's check for \$78,510 to the Retirement Fund to make up the balance owed on the original \$114,536 check from the WorldCom Settlement Fund.

During an interview with staff from the Legislative Auditor's Office, Mr. Zinna stated that he initially thought the checks were duplicates; however, he could not obtain a definitive statement from WorldCom representatives. Based on his own research, he determined that the Retirement Fund was only owed a portion of the second check and added that it was necessary to deposit the check because it would void if it was not negotiated within a certain time frame. Mr. Zinna further stated that he deposited the check into his escrow account because it is a legal matter and he was concerned that the Retirement Fund should not deposit funds that did not belong to it.

A review of Mr. Zinna's escrow account indicates that its working balance was below \$78,510 prior to Mr. Zinna returning the balance of the proceeds to the Retirement Fund. As a result, it appears Mr. Zinna used the WorldCom settlement proceeds for purposes other than retaining them pending resolution of the legal matter. Because Mr. Zinna appears to have used the WorldCom settlement proceeds for other purposes, we question the necessity for the proceeds to be deposited into Mr. Zinna's escrow account rather than the Retirement Fund for its general operations and possible interest earnings. In addition, because of the manner in which Mr. Zinna managed these funds, he may have violated the Louisiana Rules of Professional Conduct and state law.¹

¹ (a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Except as provided in (g) and the IOLTA Rules below, funds shall be kept in one or more separate interest-bearing client trust accounts maintained in a bank or savings and loan association...No earnings on a client trust account may be made available to or utilized by a lawyer or law firm. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

(b) A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying bank service charges on that account or obtaining a waiver of those charges, but only in an amount necessary for that purpose.

(c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred. The lawyer shall deposit legal fees and expenses into the client trust account consistent with Rule 1.5(f).

(d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. For purposes of this rule, the third person's interest shall be one of which the lawyer has actual knowledge, and shall be limited to a statutory lien or privilege, a final judgment addressing disposition of those funds or property, or a written agreement by the client or the lawyer on behalf of the client guaranteeing payment out of those funds or property. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

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.

Ms. Debbie D. Hudnall
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We recommend the Retirement Fund adopt procedures to ensure that future claims are not duplicated within the organization. Such procedures could include designating either the appropriate money manager or the custodial bank as the party responsible for filing claims. In addition, the Retirement Fund should implement written policies and procedures to ensure that revenues are deposited intact on a timely basis.

This correspondence represents our finding and recommendations as well as management's response. This correspondence is intended primarily for the information and use of management of the Retirement Fund. I trust this information will assist you in the efficient and effective operations of the Retirement Fund. Copies of this correspondence have been delivered to the District Attorney for the Nineteenth Judicial District.

Sincerely,



Daryl G. Purpera, CPA, CFE
Legislative Auditor

DGP:GD:DD:dl

Management's Response



LOUISIANA CLERKS OF COURT RETIREMENT AND RELIEF FUND
11745 Bricksome Avenue • Suite B-1 • Baton Rouge, Louisiana 70816

(225) 293-1162
(800) 256-6660
Fax (225) 291-7859

July 1, 2010

Via E-mail: dpurpera@lla.la.gov

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

RE: Louisiana Clerks' of Court Retirement and Relief Fund
Response to Preliminary Draft Report

Dear Mr. Purpera:

This correspondence is in response to the Preliminary Draft Report concerning the audit of certain transactions of the Louisiana Clerks' of Court Retirement and Relief Fund ("Retirement Fund") for the fiscal year ended June 30, 2007. As indicated in the Preliminary Draft Report, in December of 2005, the Retirement Fund received two checks from the WorldCom Settlement Fund ("Settlement Fund"). The first check, received by the custodial bank in the amount of \$114,544, was credited to the Retirement Fund's account. The second check, in the amount of \$114,536 was given to the Retirement Fund's legal counsel. Since claims on behalf of the Retirement Fund had been filed by the Retirement Fund's custodial bank and money manager, the Retirement Fund requested its legal counsel to determine whether the second check was a duplicative payment or an overpayment.

In early 2008, the Retirement Fund's legal counsel advised that the Settlement Fund issued an overpayment of \$78,510 to the Retirement Fund and tendered a cashier's check to the Retirement Fund in the amount of \$35,036. Legal counsel did not provide any supporting documentation to verify the amount owed by the Settlement Fund to the Retirement Fund or the disposition of the \$78,510 alleged to be an overpayment.

Upon receipt of a request from the Legislative Auditor's office for documentation regarding the transactions related to the payments from the Settlement Fund to the Retirement Fund, the Retirement Fund's legal counsel was requested to provide documentation regarding the alleged overpayment by the Settlement Fund and the disposition of the funds alleged to be an overpayment. In February of 2010, legal counsel indicated that he was unable to provide the requested documentation and presented a cashier's check to the Retirement Fund in the amount of the alleged overpayment. Subsequently, the legal counsel resigned effective June 30, 2010.

The Settlement Fund has advised that no documentation confirming the amount of the overpayment can be provided.

Having reviewed the recommendations of your office, the Retirement Fund's Chairman will recommend to the Board of Directors at its July 19th meeting, the adoption and implementation of written procedures requiring the following:

- Monitoring of the status of all pending claims;
- Deposit of all revenues received by the Retirement Fund including any payment which may be duplicative or an overpayment within 72 hours of receipt; and
- Documentation of the disposition of all funds received by and all refunds issued by the Retirement Fund.

The Louisiana Clerks' of Court Retirement and Relief Fund intends to fully cooperate with your office and remains committed to establishing procedures to ensure a greater accountability.

Sincerely,

A handwritten signature in black ink that reads "Debbie D. Hudnall". The signature is written in a cursive style with a large, stylized 'D' at the beginning.

Debbie D. Hudnall, Executive Director

Response from Mr. Randy Zinna

In a letter dated June 22, 2010, we asked Mr. Zinna to respond, in writing to this report. As of the date of this report, Mr. Zinna has chosen not to respond.