

**Office of Inspector General
City of New Orleans**

**A Performance Audit of the
Municipal Court's Remittances to the City
OIG-A&R-10PAU002**

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I. EXECUTIVE SUMMARY

The mission of the Municipal Court of New Orleans (Municipal Court or the Court) is to administer justice in cases involving alleged violations of the City of New Orleans Ordinances (City Code), except traffic violations.

Louisiana state law granted the Municipal Court the authority to impose fines not to exceed \$500 for each violation of the City Code.¹ In addition to the collection of fines for violations of the City Code, the legislature also provided for a myriad of other costs and fees to be collected by the Court.²

State law and the City Code required the Municipal Court to remit all collected fines, fees, penalties, costs and forfeitures to the City's Department of Finance; fines, penalties, and forfeitures were to be remitted daily.³ The City Code required forfeited bonds to be paid into a special fund, the "municipal court judicial expense fund" (JEF), to be administered by the Municipal Court judges for expenses relating to the operation of the Court. If the JEF had a surplus at the end of the year, one-half of the surplus would be retained in the JEF and the other half remitted to the City's General Fund.⁴

The Municipal Court received most of its funding from the City's General Fund. In 2009, the Court's budget was more than \$3 million, which included the City's appropriation of \$1.8 million from the General Fund. The Municipal Court used the City's entire appropriated amount for payroll. The Court also retained and used \$1.2 million received from fines, fees, penalties, costs and forfeitures for payroll and operations. The fines, fees, penalties, costs and forfeitures should have been remitted to the City as required by state law and the City Code. (See Table 1) The Municipal Court was not in compliance with state law and the City Code by not remitting fines, fees, penalties, costs and forfeitures to the City for fiscal year 2009. The City's Department of Finance was aware of this historical long-standing custom.

Four elected judges with staggered eight-year terms managed the Municipal Court. Under state law, the judges had the authority to adopt rules and regulations that govern the Municipal Court's operations.⁵

The Office of Inspector General conducted a performance audit (audit) of the Municipal Court's remittances to the City for the period January 1, 2009 through December 31, 2009.

¹ Except in cases involving certain environmental pollution violations that may not exceed \$1,000 per violation, or unless otherwise authorized by law. La. R.S. 13:2500.

² See Table 1 for an outline of fines, fees and costs that the Court must collect and remit to the City. This Table does not include third party costs.

³ La. R.S. 13:2501; City Code Section 50-104.

⁴ Section 50-6 of the City Code states, "One-half shall be retained in the judicial expense fund and the remaining one-half shall be remitted to the city general fund."

⁵ La. R.S. 13.2494.

The objective of this audit was to evaluate the propriety and completeness of the amounts paid to the City by the Municipal Court and audit the Court's operating expenses which impact the surplus calculation.

Our audit revealed that the Municipal Court failed to remit the fines, fees, penalties, costs and forfeitures it collected to the City as required by law.⁶ The City also failed to perform an annual audit of the Municipal Court's JEF and quarterly audits of fines and cash bond collections as required by law.⁷

During our audit of certain expenses, it was noted that the Municipal Court's practices and policies warranted further development to strengthen the Municipal Court's administrative and fiscal efficiency.

The recommendations in this audit report, if adopted, should improve the City and Municipal Court's accountability and reduce the risk of fraud, waste and abuse.

The Court appears to have completely agreed with five of the findings per their responses in Section VI. Although the Court did not fully agree or disagree with the other findings, the Court's responses suggest that legislative action is needed to rectify the issues relating to the other findings.

The City agreed with Finding #1 and #3 and committed to work with the Municipal Court "to develop a set of changes to city ordinances...." The other findings did not directly relate to the City.

All responses by the Court and the City in the body of this report are direct statements and have not been modified.

⁶ In 2009, the Municipal Court collected an adjusted amount of \$1,125,292 in fines, fees, and forfeitures.

⁷ City Code Sections 50-6 and 50-105.

II.OBJECTIVES, SCOPE, AND METHODOLOGY

The objective of the audit was to review the propriety and completeness of the amounts remitted to the City by the Municipal Court and audit the Court's operating expenses, which impacted the surplus calculation. The audit covered the period of January 1, 2009 through December 31, 2009.

This audit was conducted in accordance with the *Principles and Standards for Offices of Inspector General* (the Green Book) and *Generally Accepted Governmental Auditing Standards* (GAGAS or the "Yellow Book").

To accomplish the audit's objectives, the auditors:

1. Conducted interviews with Municipal Court staff and managers;
2. Conducted interviews with City staff and managers;
3. Observed Municipal Court operations;
4. Reviewed State legislation;
5. Reviewed applicable provisions of the City Code;
6. Reviewed Municipal Court policies;
7. Tested the Municipal Court's imposition of fines, fees, penalties, costs and forfeitures;
8. Tested the Municipal Court's payroll and contract labor;
9. Tested the Municipal Court's expenses;
10. Tested revenue and expense cut-off;⁸ and
11. Tested and reviewed the Municipal Court's unclaimed bonds.

A finding indicates a material or significant⁹ weakness in controls or compliance that was not detected or corrected by the Municipal Court in the normal course of performing its duties. Findings in a performance audit could be *any one or a combination* of the following:¹⁰

1. Significant deficiencies in internal control,
2. Fraud and illegal acts,
3. Violations of laws, ordinances, contracts and grant agreements and/or
4. Abuse.

The audit included findings, recommendations and conclusions relating to the propriety and completeness of amounts that should have been remitted to the City by the Municipal Court.

⁸ Cut-off was tested to determine that expenses incurred and revenues earned were recorded in the proper period.

The beginning of 2009 and the beginning of 2010 was tested in our cut-off testing.

⁹ Significance is a "judgment call" by the auditor and is usually based upon the frequency and magnitude of the deficiency.

¹⁰ General Accounting Office (July 2007 Revision) *Government Auditing Standards* (p. 165) United States Government Accountability Office by the Comptroller General of the United States.

III. MUNICIPAL COURT FINDINGS

Background: State laws and the City Code required the Municipal Court to remit all fines, penalties, and forfeitures daily to the City Treasurer. State law also required the Court to collect specific costs and fees in addition to the fines imposed by the judges for violations of the City Code. These costs and fees were required to be remitted to the City's Department of Finance. Furthermore, the City Code required the City's Department of Finance to audit all fine collections and cash bond records quarterly.

Finding # 1

Condition: The Municipal Court did not remit fines, fees, penalties, costs or forfeitures collected in 2009 to the City's Department of Finance at any time during 2009.

Criteria: La. R.S. 13:2501 states, "Each judge of the municipal court of New Orleans shall see to it that all fines imposed by him are collected and remitted daily to the city treasurer of New Orleans." In addition to state law, Section 50-104 of the City Code states, "All fines, penalties or forfeitures imposed...shall be...paid daily to the city treasurer."

State laws also provided for the collection and remittance of certain costs and fees as described below in Table 1.

Cause: The Municipal Court failed to comply with state law and the City Code. The City's Department of Finance was aware of this long-standing custom. *Note: The Court has asserted that its authority to keep the fines, fees, penalties, costs and forfeitures in its own bank accounts was established in prior years; however, no written documentation for this arrangement was forthcoming from the Court.*

Effect: The Municipal Court deposited all of the money it collected into bank accounts established by the Court rather than remitting the money to the City's Department of Finance for deposit in the General Fund or credit toward the Municipal Court JEF or the Municipal Court Probation Department Fund. The money deposited in the Court's own bank account was used to supplement the Court's appropriation from the City's General Fund for personnel and operating expenses. In 2009, the Municipal Court collected a total of \$1.2 million in fines, fees, penalties, costs and forfeitures. Because these fees were retained and spent by the Court rather than remitted to the City's Department of Finance, the Court was not compliant with state law and the City Code.

Recommendation: The Municipal Court and the City's Department of Finance must comply with state law and the City Code by ensuring that all money collected by the Court is remitted to the City's Department of Finance daily where required.

The Court's Response to Finding # 1.¹¹

“R.S. 13:2496; R.S. 13:2496.1; R.S. 13:2496.2, R.S. 13:2497; R.S. 13:2499 requires the City to fully fund the personnel and operational costs of the Municipal Court. Prior to the adoption of the 2011 city budget, the Executive and Legislative branches have historically failed to comply with these provisions of State law. This is especially true for 2009, the period of this audit. In 2009 the Court received less than full funding from the City as required by law. In fact, the Court received just above half of the required funding prescribed by law from the City. Accordingly, the Court, pursuant to (a) the inherent powers of the judiciary, (b) by tacit agreement with the executive and legislative branches and (c) by custom and practice, has historically maintained all collections of fines, fees and court costs in its judicial expense fund. These funds were retained in order to ensure operation of the court and to provide for unfunded personnel and operating costs. R.S.13:2496.2 particularly provides for “a majority of the court...to authorize a payment from the judicial expense fund of the court to defray any expense of the court including salary supplements for any personnel as in their discretion may be necessary to expedite the business and function of the court.” The Court maintains when these statutes are read in conjunction with the case of City Court of Breaux Bridge v. Town of Breaux Bridge, 440So.2d 1374 (La. App. 3rd Cir. 1983) which held that “the power of the City Court to require that all its necessary expenses of operating the court be provided by the legislative body of the Town lies in the inherent power of the City Court,” the court had the duty and obligation to hold these funds until all branches of city government came into compliance with the statutory scheme designed for the court’s full funding.

The New Orleans Municipal Court is compelled to operate as a guardian of the constitutionally guaranteed rights enumerated in the United States and Louisiana Constitutions. Municipal Court in fact operates 6 days a week in order to insure those protections enumerated in those constitutions. In order to provide those constitutional protections Municipal Court must maintain continual operations.

As a result, the Court has developed an informal tacit agreement with the executive and legislative branches that maintained the Court’s operations in light of the deficiency in funding of the Court by the City as required by State law. The Inspector General’s report acknowledges that the City was aware of this long-standing custom. Similarly, in the exit interview relative to this report the City acknowledged that the current legislative scheme is a relic of past collection and accounting practices and recommended, as do the Judges of Municipal Court, that these outdated laws be amended and/or repealed. Toward that end, the Court has already requested that the separate branches of city government convene a working group to study these issues and make recommendations relative to amending and/or repealing existing law so as to recognize the current operations of government and to move toward implementing increased efficiency and best practices.”

¹¹ See Section VI for the Court’s complete response.

The City's Response to Finding # 1.¹²

"The Department of Finance, Bureau of Treasury, will work with Municipal Court in 2011 to ensure money collected by the Municipal Court is remitted to the City."

OIG's Comment: *The informal tacit agreement developed by the Court and the City is in non-compliance with State and local law. Operating outside the law overrides the internal controls that protect against fraud and abuse and diminishes respect for the law.*

Finding # 2

Condition: Neither the Court's accounting records nor the Court's Case Chronology Reports could be properly audited to determine whether the appropriate fees and costs were imposed. Fees and costs were added to fines and included in the total amounts that defendants were ordered to pay to the Court.¹³ In cases involving multiple offenses, there was no breakdown to indicate the amount of the fine for each offense.

A certain cost designed to defray the Court's operating expenses (La. R.S. 13:2500.2) did not seem to be collected at all by the Court.¹⁴

The Court's records did not reflect any imposition or collection of the Bail Bond Fee imposed by La. R.S. 13:2500.3, which was also designed to defray the cost of the Court's operations.¹⁵

See Table 1 for fines, fees and costs that the Court was required or allowed to assess.

Criteria: Several state laws and City Code ordinances required the Municipal Court to collect fines, fees, penalties and costs. See Table 1.

Cause: The Court's records were inadequate to determine whether these fees, penalties and costs were assessed and collected as required by law. Defendants were ordered to pay an amount into the "Municipal Court Operating Fund (MCOF)."¹⁶ Neither the Court's Case Chronology Report nor the Court's accounting records indicated if this lump sum encompassed only a fine or if it also included the cost and fee identified in Rows 4 and 5 of Table 1.

¹² See Section VI for the City's complete response.

¹³ Court costs are lumped together on the Case Chronology Report but are dissected and identifiable in the Court's accounting records. However, the Court's accounting records did not include separate line items for the fifteen dollar cost imposed by La. R.S. 13:2500.2(A) or the Bail Bond Fee imposed by La. R.S. 13:2500.3.

¹⁴ However, the Traffic Court has been collecting its portion of the cost under La. R.S. 13:2500.2 and remitting these funds to the Municipal Court. The Municipal Court did not remit these amounts to the department of finance in 2009.

¹⁵ The Administrative Judge stated that, though there was no Court rule on the matter, the Court had not been imposing the Bail Bond Fee because several attorneys had objected to it and challenged the legality of the fee. The Administrative Judge did not know whether the issue had been litigated or if the fee had been ruled illegal.

¹⁶ M.C.O.F. = the Municipal Court's Operating Fund. This account is kept and maintained by the Municipal Court.

The cost and fee described in Rows 2 and 3 of Table 1 were being collected; however, no explanation or statement of suspension of the cost is given in the court's records when the cost or fee is not imposed, nor were exceptions noted on the record during numerous court sessions observed by OIG personnel.

Effect: The lack of detail in the Court's records impaired the audit trail and prevented certain costs and fees from being properly audited.

Recommendation: The Municipal Court should provide a detailed identification of all fines, fees, and costs assessed within the Court's Case Chronology and Revenue Reports, as well as, an indication that a cost or fee is suspended or waived when it is not imposed.

Table 1: Costs and Fees Required to be Remitted to the Department of Finance¹⁷

	Legal Authority	Assessment Rationale	Amount of Fine, Cost or Fee	Remittance Requirements	Waiver Allowed/ Disallowed	Collection Confirmed
1	La. R.S. 13:2500, 2501; City Code Chapter 54 and Sec. 50-104	Fine imposed at the discretion of the Court on Defendant who pleads guilty or is convicted.	"Not to exceed" \$500 or six months in jail, or both	Sums collected remitted daily to City Treasurer.	Fined at the discretion of the Court.	Yes
2	La. R.S. 13:2500.1	Cost imposed on non-indigent Defendant who "pleads guilty or is convicted" by New Orleans Municipal Court.	Not to exceed \$15	Sums collected remitted to Director of Finance and credited to a special fund designated as the Municipal Court Probation Department Fund.	May be waived for indigents.	Yes
3	City Code Sec. 50-149	Fee imposed on Defendant who is convicted in Municipal Court.	\$5.00 ¹⁸	Collected fees shall be deposited in separate fund established for maintenance, upkeep, and security of municipal court facilities.	Indigency not addressed in ordinance.	Yes
4	La. R.S. 13:2500.2(A)	Cost imposed on Defendant who is "convicted," "pleads guilty," or "forfeits his bond."	\$15.00	Sums collected remitted to the Director of Finance and deposited to the credit of the Municipal Court JEF.	Indigency not addressed in statute.	No
5	La. R.S. 13:2500.3	Fee imposed on Defendant when Bail bond issued or accused is released on own recognizance.	Greater of \$15 or 2% of face value of bond if bond issued; \$15 if defendant is released on recognizance.	Collected fees remitted to the Director of Finance for deposit into the Municipal Court JEF; must be refunded to Defendant if he is acquitted or charges are dismissed.	Waivable if Defendant is indigent or entitled to court appointed counsel.	No

¹⁷ Other fees that must be collected and transmitted to third parties such as the Indigent Defender, CDC, L.C.L.E., CMIS and Crime Stoppers were not audited in this report.

¹⁸ The fee is to be deposited into a separate fund established for maintenance, upkeep and security of the Municipal Court's facilities. The ordinance does not explicitly require the Court to remit this fee to the Department of Finance.

The Court's Response to Finding # 2.

"The Court would incorporate its Response to Finding #1 with this additional response.

The court's accounting records do allow for auditing to determine if appropriate fees and costs were imposed and collected. (See the *OIG comment below and cause in Finding #2*) The Court's computer templates demonstrate each entity to which collections are distributed. The court is in the process of changing the collections/disbursements templates in light of the anticipated full funding of our court.

R. S. 13:2500.2 pertains to imposition of a fifteen dollar court costs to defray the Court's operating expenses. Imposition of this fee, in light of the court maintaining all fines, fees and non-enumerated costs was superfluous. Assuming the current legislative scheme and full funding of the court as mandated by state law, the court is prepared to add this delineated cost to our computer template starting in 2011.

R.S. 13:2500.3 has not been collected as Constitutional arguments relative to equal protection of the law have been raised before the Court. Individuals who receive summons to appear in Municipal Court are not required to pay this fee but those who are arrested are required to pay it. That means that more than half of the people who appear before the court would not pay this fee. In addition, indigents are not required to pay this fee. The fee would have to be collected when the person appears in court on arraignment and would have to be refunded if the person is acquitted or the charges are dismissed. On the most common surety bond, \$300 bond the court would collect \$15 which would have to be returned if that person is acquitted. The cost of collection and return would not be offset by the collections retained. Additional personnel would have to be hired, if the Court were required to collect, post and refund this fee. This fee would not apply when a person is given an alternative sentence on a conviction since they are unable to make a fine payment. Notwithstanding the questionable constitutionality of the fee, the Judges would recommend repeal of this statute as being inefficient and not worth the effort to collect and process. If the executive and legislative branches of city government do not agree then we will seek additional court personnel and begin collections upon that determination.

R.S.13: 2500.1 legislates a probation fee for Municipal Court. The court has been collecting the fee when possible. That statute, however, contains another example of archaic punitive punishment that runs directly opposite to the Court's philosophical move toward restorative and rehabilitative justice. The Municipal Court for the last three years has worked in concert with the City Council to study "best practices" for a community court. The Court has embraced a number of initiatives, such as, alternative sentencing, summons in lieu of arrest, prisoner fast tracking, triage services for the mentally ill, substance addicted and the homeless. The Court has abandoned the practice of incarceration and fines and fees as the only forms of criminal justice. The results have been phenomenal. In the first eight months of 2005 the City of New Orleans paid \$4,949,018., in prisoner housing costs for municipal court detainees only. Extrapolated out for twelve months prisoner housing costs would have approached 6.5 million dollars, this is a little less than what the city paid the prior two years of 2003 and 2004."

"In 2009, the City paid \$3,120,449 in prisoner housing for municipal court detainees. Between 2005 and 2009 Municipal Court undertook initiatives to reduce prisoner housing costs.

"These initiatives were successful, saving the City over 3 million dollars in municipal court prisoner housing costs per year. This sum is more than the entire payroll of the Court. This statute contains a provision which reads in part, "When any defendant...fails to pay the added costs referred to hereinabove, he shall be sentenced to a term of thirty days in the House of Detention (emphasis added)". Under the prisoner housing rates in effect in 2009 that would mean that the City would have to pay \$675 dollars to incarcerate someone who failed to pay a \$15 court cost. I would again make the case that this 30 year old law is counterproductive, to what we as a community and this court, are hoping to accomplish in the criminal justice system (emphasis added). This is one of the laws slated for legislative action.

Regarding the finding relative to the detail of information available to the City and to the public, the Court agrees with the Inspector General's recommendation and is presently working with our IT contractor to provide a more detailed identification of all fines, fees and costs assessed within the Court's case chronologies and revenue reports. Usually the suspension of fines, fees and court costs are entered into the court record, in instances where this is not being done, it will be corrected."

OIG's Comment: *We disagree with the Court's response relating to "The court's accounting records do allow for auditing to determine if appropriate fees and costs were imposed and collected". As stated in the cause of the finding above: Defendants were ordered to pay a lump sum amount into the "Municipal Court Operating Fund (MCOF). Neither the Court's Case Chronology Report nor the Court's accounting records indicated if this lump sum encompassed only a fine or if it also included the cost and fee identified in Rows 4 and 5 of Table 1. The Court's accounting for amounts collected for other entities was not audited within the scope of this audit.*

The Court stated, "R.S. 13:2500.3... In addition, indigents are not required to pay this fee" As stated earlier, no explanation or statement of suspension of the cost is given in the court's chronology when the cost or fee is not imposed, nor were exceptions noted on the record during numerous court sessions observed by OIG personnel.

Finding # 3

Condition: The City did not audit the Municipal Court in 2009.

Criteria: Section 50-105 of the City Code states, "The city treasurer shall furnish to each judge of the municipal court a printed receipt book with marginal stubs....Such receipt books and stubs shall always be open for public inspection. There shall be an audit made at least quarterly by the director of the department of finance, or his authorized deputy, of all fine collections and the cash bond records."

Section 50-6 of the City Code states that the Judicial Expense Fund “shall be annually audited by the director of the department of finance.”

Cause: The City’s Department of Finance failed to perform quarterly audits of the Municipal Court’s fine collections and cash bond records and failed to perform an annual audit of the Judicial Expense Fund in 2009 as required by law.¹⁹ The Department of Finance, upon being requested to provide audits of the Municipal Court, responded by sending their external audits. No other documents were provided. Due to the insignificant amount of the Municipal Court’s revenue collections in comparison to the overall City budget, there was little or no testing of the Municipal Court’s specific revenues and expenses by the external auditors.

Effect: The City was unable to determine the accuracy of the monies that should have been remitted to the City. The City was unable to determine whether the Municipal Court was collecting all the fines, fees, penalties, costs and forfeitures it was legally required to collect and remit.

Recommendation: The Department of Finance must conduct quarterly audits of the Municipal Court’s collection of fines, its cash bond records and an annual audit of the Municipal Court’s Judicial Expense Fund, as mandated by the City Code. The Court should maintain sufficient detail in its Case Chronology Report and accounting records for proper identification of fees and costs.

The Court’s Response to Finding # 3.

“While this finding relates to the City it nonetheless deserves comment.

A complete reading of this City Code ordinance illustrates exactly what our responses to Findings 1-3 are attempting to show, and that is that many of the statutes and ordinances cited by the Inspector General’s report have no place in the modern world. They are archaic and relics of a distant past. Does anyone contend that in the 21st century we would be operating efficiently if given printed receipt books with marginal stubs and asked to carry our daily receipts, section by section, to City Hall to be verified, balanced and receipted. Thankfully, the court was finally computerized in 2002. We are now able to transfer funds, make deposits, balance, reconcile and make disbursements through computerized technology.

To reiterate, the Court stands ready to work with the other branches of city government to fashion a new legislative scheme that conforms to modern technologies and achieves maximum efficiency and best practices. We will accommodate the City’s requests as to any updated format that they may want us to employ and we welcome their audits at any time.”

¹⁹ In our discussions with the Administrative Judge, the OIG notes that the Court has no record of an audit performed by the Department of Finance in 2009 for the 2008 fiscal year.

The City's Response to Finding # 3.

"The practice in recent years of collecting fines in Municipal Court has not included the use of receipt books as assumed in City Code 50-105 and reconciliation was undertaken as part of the annual citywide audit. In 2011, with Municipal Court funds being remitted directly to the City, reconciliations will be undertaken on a frequent basis (likely monthly) to ensure all revenues are accounted for."

OIG's Comment: *Regardless of the format of the records (manual or electronic), the audits were never conducted. The Court's computerized technology should make both the audits and the transfers to the City easier to accomplish.*

Noncompliance with the law is not an option when the law is archaic.

Finding # 4

Background: A bond is a promise made to the Court by the defendant that (s) he will appear for his/her future court date and remain within the jurisdiction of the Municipal Court. There are two types of bail bonds used for this purpose: a surety bond and a cash bond.²⁰ Bail bonds may be returned to the defendant if all court appearances were made, regardless of the verdict. The clerk of the Municipal Court is responsible for keeping a complete record of all cash bonds.²¹ The Court is required to deposit the bond money into the Municipal Court of New Orleans Bond Account within one business day of receipt.²²

This account is a separate checking account and amounts held in the account are not included as revenue in the Municipal Court's Judicial Expense Fund unless:

1. The accused person fails to appear for trial after being notified at his address.²³ The judge *may*²⁴ then decree the bond forfeited and after two days the Municipal Court shall remit the amount to the Municipal Court Judicial Expense Fund;²⁵ or
2. The accused person fails to collect the unclaimed cash bond within a period of one year from the final disposition.²⁶

Condition: The Municipal Court did not transfer the unclaimed cash bonds from its escrow account for remittance to the Department of Finance for crediting to the Judicial Expense Fund in accordance with the City Code.²⁷ The Court also failed to transfer forfeited bonds to the City for crediting to the JEF.

²⁰ Surety bonds are guaranteed by a bond agency and are usually secured by a person's real property. A cash bond is the total amount of the bond set in cash.

²¹ Section 50-96 of the City Code.

²² Section 50-94 of the City Code.

²³ Section 50-98 of the City Code.

²⁴ Judges have the discretion to decree the bond forfeited.

²⁵ Section 50-98 and 50-99 of the City Code.

²⁶ Section 50-100 of the City Code.

²⁷ Bonds forfeited in 2007, 2008, and 2009 accumulated in the escrow account until 2010 when the Court reconciled the account.

Criteria: Section 50-98 of the City Code states, “Should the accused fail to appear for trial after having been notified at that address, according to law, any cash bail bond or certified check given as a bond, as set forth in this article may be decreed forfeited by the judge having jurisdiction, without further notice, and the notice of such forfeiture shall be given to the treasurer of the city.”

Section 50-99 of the City Code states, “After the expiration of two days after the entrance of a decree of forfeiture of a cash bond, the clerk of the municipal court shall remit the amount of the forfeited bond to the municipal court judicial fund²⁸ and this remittance must be made not later than the fourth business day after the judgment of forfeiture has been entered.”

Section 50-100 of the City Code states, “If an accused has failed to collect a cash bond made by him for a period of one year following the date of the final disposition of his case, the amount of such bond shall be remitted to the municipal court judicial fund.”

Cause: The Municipal Court did not give notice to the Department of Finance of each bond forfeiture or remit forfeited bonds within four days of the entry of each judgment of forfeiture. The Municipal Court did not remit unclaimed cash bonds remaining in the escrow account one year after the final disposition of each case. In addition, the Municipal Court did not reconcile the bond escrow account for several years, which would have revealed unclaimed cash bonds remaining in the account. The Court attributed the failure to reconcile on employee turnover and backlog.

Effect: By not performing monthly reconciliations, the Municipal Court failed to transfer unclaimed bonds out of the Municipal Court of New Orleans Bond Account (an escrow account) to the Department of Finance to be credited to the JEF. The balance of the Municipal Court of New Orleans Bond Account was overstated in 2007, 2008 and 2009. Because the funds remained in escrow, they were not available to the City or the Court to defray the Court’s expenses.

In addition, the Municipal Court failed to transfer forfeited unclaimed bonds in 2007 and 2008. The total amount of unclaimed bonds remaining in escrow and not transferred as of December 2009 was \$65,118. See recap below in Table 2.

Table 2: Unclaimed Bonds Remaining in Escrow

Year	2007	2008	2009	Total
Bond Amount	\$1,500	\$27,995	\$35,623	\$65,118

Recommendation: The Municipal Court must comply with the City Code by remitting forfeited bonds to the Department of Finance to be credited to the JEF and notifying the City of the forfeiture. The Court should reconcile the escrow bank balance to its detailed listing on a monthly basis in order for unclaimed bonds to be timely transferred from the escrow account.

²⁸ Judicial Fund and Judicial Expense Fund are used interchangeably in the Code.

The Court's Response to Finding # 4.

“The Municipal Court has taken corrective action with regard to the reconciliations of the bond accounts. Working with the Court’s contracted CPA the Court made the necessary accounting adjustments to reconcile the accounts. In addition the court now reconciles the cash bond forfeitures and unclaimed bond accounts on a monthly basis.”

“In regard to the remittance of these bond forfeitures to the finance department, we again suggest that these ordinances need to be amended to account for modern accounting practices. Bond forfeitures are reinstated on a daily basis. To remit these forfeitures to the City on a daily basis only to have the City transfer the funds back to the Court when they are reinstated is unnecessarily time consuming and bureaucratically burdensome.”

IV. MUNICIPAL COURT ADMINISTRATIVE FINDINGS

In the course of auditing the Municipal Court's operating expenses, findings regarding the Municipal Court's administrative efficiencies were noted. Because the Municipal Court's operating budget was largely funded by the City, strengthening controls to improve administrative efficiencies impacted the amount of the Municipal Court's Judicial Expense Fund transferred to the City's General Fund.

Finding # 5

Condition: The Municipal Court permitted the purchase of items that could create an appearance of improper and wasteful spending.

Criteria: Under La. R.S. 13:2494, "The court may adopt such rules and regulations governing the operation thereof as may be necessary for the proper functioning of the court."

Cause: The Court purchased a \$1,200 leather vehicle seat upgrade for a take-home vehicle²⁹ for one of its judges. According to the administrative judge, the leather seat upgrade was purchased so that all judges have equally valued take-home vehicles.³⁰ We question the business purpose of the new leather seats for the judge's "take-home" vehicle.³¹

Effect: Unnecessary purchases reduce the surplus funds remaining at yearend to be split between the JEF and the City's General Fund.

Recommendation: The Court should evaluate and determine the necessary business purpose for its purchases.

The Court's Response to Finding # 5.

"The Court en banc has adopted the following rules relative to the determination of the necessary business purposes for the purchases made for or on behalf of the judges. The judges are allowed to individually determine the business purpose for purchases up to \$50, subject to approval of the administrative judge for reimbursement. Purchases from \$50 to \$200 must be done by requisition approved by the administrative judge. Purchases above \$200 must be done with the approval of the court en banc."

²⁹ The City provided six vehicles to the Court for use by judges and Court employees. The Court has assigned one car for each of the four judges, one car for the clerk of court and one "pool" vehicle for the Court. Five of the six vehicles are "take-home" vehicles.

³⁰ One of the six vehicles had cloth seats while the others had leather seats. To make the vehicles equal in value between the three existing judges in 2009 and a newly elected judge, one car was upgraded from cloth seats to leather seats for the new judge in 2009.

³¹ *The City's "take-home" vehicle policy with the Municipal Court will be handled in a separate correspondence to the City.*

Finding # 6

Background: When Municipal Court employees were absent, the Municipal Court substituted other employees from a different shift for the absent employees. Thus employees worked two shifts in one day. The Municipal Court classified the substituted employee as a contractor for his/her “extra” shift and gave the substituted employee a Form 1099 for pay received for working the “extra” shift, instead of reporting income to payroll for inclusion on the employee’s Form W-2.

Condition: The Municipal Court inappropriately classified employees as contractors. Employers were not required to remit a Form 1099 to contract employees who earn less than \$600 annually. Thus, the Municipal Court did not give two employees a Form 1099 because they earned less than \$600 as a “contract employee.”

Criteria: Internal Revenue Code Sec. 3509³² mandates that if an employer classified an employee as an independent contractor and had no reasonable basis for doing so, the employer may be held liable for employment taxes for that employee. Penalties and interest on the employment taxes should also be assessed.

Cause: The Municipal Court substituted another existing employee for an absent employee.

Effect: The Municipal Court included the substituted employees’ additional wages on a Form 1099 instead of a W-2. The Municipal Court was (is) liable for withholding taxes (the employee and employer portions).³³ Because the Municipal Court should have paid each employee through the City’s payroll system and withheld the appropriate amount of taxes, the Municipal Court owed additional withholding and social security tax on the amount indicated on Form 1099 in 2009. See Table 3.³⁴

³² 26 U.S.C., SEC. 3509(a) If any employer fails to deduct and withhold any tax under chapter 24 or subchapter A of chapter 21 with respect to any employee by reason of treating such employee as not being an employee for purposes of such chapter or subchapter, the amount of the employer's liability for - (1) Withholding taxes under chapter 24 for such year with respect to such employee shall be determined as if the amount required to be deducted and withheld were equal to 1.5 percent of the wages (as defined in section 3401) paid to such employee. (2) Employee social security tax under subchapter A of chapter 21 with respect to such employee shall be determined as if the taxes imposed under such subchapter were 20 percent of the amount imposed under such subchapter without regard to this subparagraph.

³³ Ibid.

³⁴ The employees are liable for any interest and penalties for 2009 personal income taxes, if they failed to calculate the total salary that was not properly reported.

Table 3: Municipal Court Employees who Received a 1099

Employee Position	Amount Paid on 1099s to Employees (A)	Withholding Tax 1.5% ³⁵ (B) = (A x 1.5%)	Employer/ Employee Portion of Social Security & Medicare Tax 15.3% (C)= (A x 15.3%)	Employer's Liability for Unpaid Social Security 20% ³⁶ (D) = (C x 20%)	2009 Court Potential Liability (B + C + D)
Court Reporter	1,554	23	237	47	307
Court Clerk Supervisor	1,920	29	294	59	382
Court Crier	3,420	51	523	104	678
TOTAL	\$6,894	\$103	\$1,054	\$210	\$1,367

Recommendation: The Municipal Court should pay all employees through the payroll process. Payroll tax forms 941, W-2, W-3, 1099 and 1096 for 2009 must be amended by the City³⁷ to reflect these erroneous 1099 payments.

The Court's Response to Finding # 6.

"The Court has taken corrective action relative to this finding. The Court now pays all employees through the City's payroll system, except contract employees who are independent of court authority. An example of an independent contractor would be a contracted court stenographer. By way of explanation, in 2009 employees of one section of court were required to train the employees of a newly elected judge. The Court did not intentionally disregard regulations, but believed that because the individuals were not performing their regular court duties, they could be paid outside the payroll system. In the future those employees who train new employees will be paid through the payroll system."

Finding # 7

Condition: The Municipal Court did not have a policy requiring timesheets and/or supporting documentation for hours worked by contract employees.

Criteria: La. R.S. 13:2494 states, "The court may adopt such rules and regulations governing the operation thereof as may be necessary for the proper functioning of the court." Additionally, La. R.S. 13:2496.2(A) states, "Notwithstanding any other law to the contrary, a majority of the judges of any municipal court...may authorize a payment from the judicial expense fund of the court to defray any expense of the court including salary supplements for any personnel as in their discretion may be necessary to expedite the business and function of the court."

Cause: The Municipal Court failed to establish written policies related to contract employees' timesheets.

³⁵ 26 U.S.C., SEC. 3509.

³⁶ Ibid.

³⁷ The Court's payroll is processed by the City of New Orleans.

Effect: Without timesheets and proper supporting documentation for hours worked by the contract employees, the Municipal Court lacked sufficient documentation to pay for the services provided by the contractor.

Recommendation: The Municipal Court should develop and enforce a policy requiring signed documentation of hours worked by contract employees.

The Court's Response to Finding # 7.

"The Court has taken corrective action relative to this finding. The Court now requires signed time sheets by contract employees. The Court presently has three sets of contract service providers; an interpreter, court reporters and a contracted psychiatric doctor. The interpreter is a grant employee who is paid by an hourly wage determined in the grant. She submits timesheets to the Court's Judicial Administrator who verifies the time and sends documentation to the grantor for reimbursement. The contract court reporters are paid \$75 per court session, which is well below the current market rates. The psychiatrist is contracted on a flat rate of \$3000 per month and he performs psychiatric evaluations on all defendants who the judges determine to have questionable mental capabilities.

We disagree with the calculation of the Court's potential tax liability, specifically Col. C. The potential tax liability is 20% of the employee's social security withholding, not 20% of the "Amount Paid" shown in Col. A. Additionally, the City cannot amend Form 1098 for 2009 as requested as Form 1098 reports Mortgage interest."

OIG's Comment: *Note: The second paragraph of the Court's response relates to Finding # 6 and not Finding # 7.*

The typographical error which originally stated Form 1098 in Finding # 6 has been changed to indicate Form 1096. The 20% estimate in Table 3 has been adjusted to include an additional column (D) for the employee and employer's portion of the social security and Medicare taxes. The difference in the calculation reduced the estimated liability by \$ 115 from the original estimate of \$1,482.

Forms 1099 and 1096 will need to be amended by the Court. All other forms will need to be amended by the City. It should be noted that column B and D of Table 3 could increase to 3% and 40%, respectively, if the IRS finds that there was a disregard for the filing requirements.³⁸

³⁸ 26 U.S.C., SEC. 3509.

Finding # 8

Condition: The Municipal Court lacked effective disbursement controls. Based on a sample of 60 checks selected from a population of 580 checks written during 2009:

- Nine exceptions to the August 2009 requisition policy were noted;³⁹
- Three checks lacked supporting documentation for disbursements; and⁴⁰
- Seven checks related to reimbursements for Court employees were noted.

The Court does not have a written reimbursement policy. In 2009, the Municipal Court made disbursements without requiring supporting documentation.

Table 4: Disbursement Controls – Projection of Error in Population

Description	# of Checks with Exceptions/ Checks Sampled (A)	% of Checks in Error in Sample (B)	Projected Checks in Error in Population C = (B x 580)
Checks Relating to Requisition Policy	9/60	15%	87
Checks Lacking Documentation	3/60	5%	29
Checks Relating to Reimbursement	7/60	11.67%	68

Criteria: Effective internal controls over cash disbursements should include written requisition and reimbursement policies and procedures. In August of 2009, the Municipal Court drafted a requisition policy that became effective August 19, 2009.⁴¹ The policy requires purchases to be supported by a requisition form and that proper approval be obtained prior to submitting the request.

Cause: The Municipal Court failed to follow its own internal requisition policy after August 19, 2009. In addition, the Court did not establish a written policy for making purchases and receiving reimbursements.

Effect: The Municipal Court allowed its employees to override existing internal controls after August 19, 2009. Lack of support for disbursements could lead to misappropriation of funds and/or wasteful spending.

Unauthorized spending reduced the surplus remaining at year-end.

Recommendation: Each requisition should be properly approved prior to purchasing, as stated in the Municipal Court’s requisition policy. This ensures that purchases are authorized and budgeted prior to purchase. Employees should not be allowed to override existing controls.

³⁹ All exceptions to the August 2009 policy occurred after the policy was put into effect.

⁴⁰ One exception created an overpayment for several months to Standard Parking for an additional parking spot that the Court did not request.

⁴¹ Prior to August of 2009, the Municipal Court lacked a requisition policy.

The Municipal Court should require all supporting documentation, such as memos from the Louisiana Supreme Court stating per diem rates, continuing legal education, etc. to be submitted prior to approval.

Finally, the Court should establish a written reimbursement policy.

The Court's Response to Finding # 8.

“The Court has taken corrective action relative to this finding. The Court now requires all purchases, except the one mentioned in Response to Finding #5, to be by written requisition approved by the judge of the requesting section of court or by the administrative judge for the Clerk of Court's office and then signed and processed by the Judicial Administrator. Employees are not allowed to override existing controls.

Judges' reimbursements are subject to written rule delineated in Response to finding #5. Supporting documentation is required in all instances and Louisiana Supreme Court memos pertaining to appropriate per diem reimbursements are required prior to approval.

The court has established, see Response to Finding #5, a written reimbursement policy.”

V. CONCLUSIONS

During 2009, the Municipal Court collected \$1.2 million from fines, fees, penalties, costs and forfeitures; however, it did not remit any of this money to the City in 2009 as required by law. The City's Department of Finance was aware of this long-standing custom.

Proper collection and remittance of all fines, fees, penalties, costs and forfeitures by the Municipal Court would allow the City Administration and the City Council to understand the Court's needs and budget for those needs adequately. Errors in remittances could be detected and prevented by the City if the legally mandated quarterly and annual audits were performed.

Auditors also noted inefficiencies in the Municipal Court's administrative policies. Specifically, the Municipal Court did not follow its requisition policy and lacked a written reimbursement policy. The undocumented policies allowed for contractors to be paid without proper supporting documentation and allowed the Court to purchase items that could create an appearance of improper and wasteful spending. These practices ultimately affect the surplus remaining at the end of the year, half of which is to be remitted to the City's General Fund.

The Court appears to have completely agreed with five of the findings per its response. Although the Court did not fully agree or disagree with the other findings, the Court's response suggests that legislative action is needed to rectify the issues relating to the finding.

The City agreed with Finding #1 and #3 and committed to work with the Municipal Court "to develop a set of changes to city ordinances...." The other findings did not directly relate to the City.

The Office of Inspector General will conduct a follow-up review in 2012 to determine the status of the findings stated in this report.

VI. RESPONSES

City Code Ordinance 2-1120 section (9)(c) “Reporting the results of inspector general findings” provides that a person or entity that is the subject of a report “shall have 30 working days to submit a written explanation or rebuttal of the findings before the report is finalized, and such timely submitted written explanation or rebuttal shall be attached to the finalized report or recommendation.”

An internal review copy of this report was distributed on November 22, 2010 to the Municipal Court and the City of New Orleans to provide an opportunity for comment on the report prior to the public release of the Final Report. The comments were due December 27, 2010. The Court’s response was mailed on December 23, 2010 and received on December 29, 2010.

The City of New Orleans’ response was received on January 7, 2011, which was after the due date but prior to the release date of January 13, 2011.

The Court’s and City’s responses were included in the body of this report after each applicable finding.

Complete copies of the Court’s and City’s responses are attached.



State of Louisiana
City of New Orleans
Municipal Court



PAUL N. SENS, CHIEF JUDGE
SECTION "A"

SEAN P. EARLY, JUDGE
SECTION "B"

DESIRÉE M. CHARBONNET, JUDGE
SECTION "C"

JOSEPH B. LANDRY, JUDGE
SECTION "D"

RONALD E. LAMPARD
CLERK OF COURT

727 SOUTH BROAD STREET
NEW ORLEANS, LA 70119

December 23, 2010

Eileen S. Andrus
Deputy Inspector General for Audit and Review
City of New Orleans
Office of the Inspector General
525 St. Charles Avenue
New Orleans, Louisiana 70130

Dear Ms. Andrus:

Enclosed please find New Orleans Municipal Court's Response to The Inspector General's Performance Audit of the Municipal Court's Remittance to the City, OIG-A&R-10PAU002.

If you have any questions or require further clarification, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul N. Sens".

Paul N. Sens
Administrative Judge
New Orleans Municipal Court

New Orleans Municipal Court

City of New Orleans

State of Louisiana

New Orleans Municipal Court's Response

To

The Inspector General's Performance Audit of the

Municipal Court's Remittances to the City

OIG-A&R-10PAU002

RESPONSE TO EXECUTIVE SUMMARY

In addition to the administration of justice for all alleged violations of the City of New Orleans Ordinances, except traffic offenses, pursuant to state law New Orleans Municipal Court maintains concurrent jurisdiction with Orleans Parish Criminal District Court over violations of state misdemeanors. Besides authorization to assess fines, fees and court costs the Municipal Court of New Orleans is also vested with authority to imprison in lieu of or along with the Court's ability to assess fines, fees and court costs. Incarceration of municipal inmates costs the City \$ 22.39 per day. Alternatively, the Court has authority to order performance of community service work or other alternative sentencing options in lieu of fines and incarcerations.

State law and the City Code allows for forfeited bonds to be paid into the Court's Judicial Expense Fund. State law also requires the Court to collect legislated court costs for various entities and to remit those funds on a monthly basis to the enumerated entities. Historically the legislative and executive branches of city government have failed to comply with state law requiring the full funding of the Municipal Court's operations, as set forth under the state statutes R.S. 13:2496 et sequitur. This was certainly true during the period of time reviewed by the Inspector General's performance audit. By tacit agreement, which pre-dates all of the current members of the Municipal Court bench, it was custom and practice for the executive and legislative branches to allow the Court to collect and maintain all fines, fees and court costs in the Court's Judicial Expense Fund. This fund was subject to the City's audit. It was used to disburse funds to the enumerated entities and to pay for the Court's unfunded payroll and operational costs.

In the Inspector General's report it is stated that the Court received most of its funding from the City, while that is technically correct, Municipal Court did receive 55% funding from the City's General Fund, the City is actually responsible for the full funding of the Court's operations. The report should read that the City failed to pay 45% of the Court's operational costs as required by law. The remaining unfunded personnel costs and all of the Court's operational expenses were paid from the Court's judicial expense fund. At the end of the Nagin Administration, the City was still unable to reconcile the amounts received from Municipal Court in 2009. As a consequence, the Court was unable to finalize its accounts without the City's reconciliation of the personnel funds received from the Court's judicial expense fund. The Court's records do show there will be a surplus of funds once the City's reconciliation is completed, resulting in City's general fund sharing in that surplus.

The Inspector General's report contends that "Municipal Court failed to remit the fines, fees, penalties, costs and forfeiture it collected to the City as required by law". The report fails or refuses to recognize the custom and practice developed among the 3 branches of government. The funds retained were used solely for the payment of personnel and operational costs of the Court which the City itself was obligated to pay under the same statutory scheme but failed to do so.

The Judges of Municipal Court have been the leading proponents of the three separate but equal branches of government coming into compliance with existing law and repealing or amending the law,

where practical, to conform with current accounting, collection and best practices. In addition, the Judges have stressed the need for the Executive and Legislative Branches to repeal laws that are counter to prevailing and modern concepts of justice, namely moving from out dated concepts of punitive punishment to concepts of restorative and rehabilitative justice. The current members of the Municipal Court bench have consistently and constantly maintained that a court of criminal jurisdiction should never be placed in a position requiring it to fund the operations of the court on the backs of the people who appear before it.

The Judges of Municipal Court have relied upon the inherent powers of the judiciary to operate the court in some difficult times and to maintain the constitutional protections of personal fundamental rights of those charged with violating the law. This was accomplished while waiting for compliance of all three of the separate but equal branches of City government to comply with the statutory scheme for the full funding of the court.

The Judges of Municipal court are hopeful of all three separate but equal branches of City government presenting a unified legislative package at both the State and local levels to cure the auditors' concerns raised in the Inspector General's report. This is a concept which the Inspector General's report either purposely fails to acknowledge or does not understand.

NEW ORLEANS MUNICIPAL COURT'S RESPONSES TO FINDINGS

Response to Finding #1.

R.S. 13:2496; R.S. 13:2496.1; R.S. 13:2496.2, R.S. 13:2497; R.S. 13:2499 requires the City to fully fund the personnel and operational costs of the Municipal Court. Prior to the adoption of the 2011 city budget, the Executive and Legislative branches have historically failed to comply with these provisions of State law. This is especially true for 2009, the period of this audit. In 2009 the Court received less than full funding from the City as required by law. In fact, the Court received just above half of the required funding prescribed by law from the City. Accordingly, the Court, pursuant to (a) the inherent powers of the judiciary, (b) by tacit agreement with the executive and legislative branches and (c) by custom and practice, has historically maintained all collections of fines, fees and court costs in its judicial expense fund. These funds were retained in order to ensure operation of the court and to provide for unfunded personnel and operating costs. R.S.13:2496.2 particularly provides for "a majority of the court...to authorize a payment from the judicial expense fund of the court to defray any expense of the court including salary supplements for any personnel as in their discretion may be necessary to expedite the business and function of the court." The Court maintains when these statutes are read in conjunction with the case of City Court of Breaux Bridge v. Town of Breaux Bridge, 440So.2d 1374 (La. App. 3rd Cir. 1983) which held that "the power of the City Court to require that all its necessary expenses of operating the court be provided by the legislative body of the Town lies in the inherent power of the City Court", the court had the duty and obligation to hold these funds until all branches of city government came into compliance with the statutory scheme designed for the court's full funding.

The New Orleans Municipal Court is compelled to operate as a guardian of the constitutionally guaranteed rights enumerated in the United States and Louisiana Constitutions. Municipal Court in fact operates 6 days a week in order to insure those protections enumerated in those constitutions. In order to provide those constitutional protections Municipal Court must maintain continual operations.

As a result, the Court has developed an informal tacit agreement with the executive and legislative branches that maintained the Court's operations in light of the deficiency in funding of the Court by the City as required by State law. The Inspector General's report acknowledges that the City was aware of this long-standing custom. Similarly, in the exit interview relative to this report the City acknowledged that the current legislative scheme is a relic of past collection and accounting practices and recommended, as do the Judges of Municipal Court, that these outdated laws be amended and/or repealed. Toward that end, the Court has already requested that the separate branches of city

government convene a working group to study these issues and make recommendations relative to amending and/or repealing existing law so as to recognize the current operations of government and to move toward implementing increased efficiency and best practices.

Response to Finding #2

The Court would incorporate its Response to Finding #1 with this additional response.

The court's accounting records do allow for auditing to determine if appropriate fees and costs were imposed and collected. The Court's computer templates demonstrate each entity to which collections are distributed. The court is in the process of changing the collections/disbursements templates in light of the anticipated full funding of our court.

R. S. 13:2500.2 pertains to imposition of a fifteen dollar court costs to defray the Court's operating expenses. Imposition of this fee, in light of the court maintaining all fines, fees and non-enumerated costs was superfluous. Assuming the current legislative scheme and full funding of the court as mandated by state law, the court is prepared to add this delineated cost to our computer template starting in 2011.

R.S. 13:2500.3 has not been collected as Constitutional arguments relative to equal protection of the law have been raised before the Court. Individuals who receive summons to appear in Municipal Court are not required to pay this fee but those who are arrested are required to pay it. That means that more than half of the people who appear before the court would not pay this fee. In addition, indigents are not required to pay this fee. The fee would have to be collected when the person appears in court on arraignment and would have to be refunded if the person is acquitted or the charges are dismissed. On the most common surety bond, \$300 bond the court would collect \$15 which would have to be returned if that person is acquitted. The cost of collection and return would not be offset by the collections retained. Additional personnel would have to be hired, if the Court were required to collect, post and refund this fee. This fee would not apply when a person is given an alternative sentence on a conviction since they are unable to make a fine payment. Notwithstanding the questionable constitutionality of the fee, the Judges would recommend repeal of this statute as being inefficient and not worth the effort to collect and process. If the executive and legislative branches of city government do not agree then we will seek additional court personnel and begin collections upon that determination.

R.S.13: 2500.1 legislates a probation fee for Municipal Court. The court has been collecting the fee when possible. That statute, however, contains another example of archaic punitive punishment that runs directly opposite to the Court's philosophical move toward restorative and rehabilitative justice. The Municipal Court for the last three years has worked in concert with the City Council to study "best practices" for a community court. The Court has embraced a number of initiatives, such as, alternative sentencing, summons in lieu of arrest, prisoner fast tracking, triage services for the mentally ill, substance addicted and the homeless. The Court has abandoned the practice of incarceration and fines

and fees as the only forms of criminal justice. The results have been phenomenal. In the first eight months of 2005 the City of New Orleans paid \$4,949,018., in prisoner housing costs for municipal court detainees only. Extrapolated out for twelve months prisoner housing costs would have approached 6.5 million dollars, this is a little less than what the city paid the prior two years of 2003 and 2004. In 2009, the City paid \$3,120,449. in prisoner housing for municipal court detainees. Between 2005 and 2009 Municipal Court undertook initiatives to reduce prisoner housing costs. These initiatives were successful, saving the City over 3 million dollars in municipal court prisoner housing costs per year. This sum is more than the entire payroll of the Court. This statute contains a provision which reads in part, "When any defendant...fails to pay the added costs referred to hereinabove, he shall be sentenced to a term of thirty days in the House of Detention (emphasis added)". Under the prisoner housing rates in effect in 2009 that would mean that the City would have to pay \$675 dollars to incarcerate someone who failed to pay a \$15 court cost. I would again make the case that this 30 year old law is counterproductive, to what we as a community and this court, are hoping to accomplish in the criminal justice system (emphasis added). This is one of the laws slated for legislative action.

Regarding the finding relative to the detail of information available to the City and to the public, the Court agrees with the Inspector General's recommendation and is presently working with our IT contractor to provide a more detailed identification of all fines, fees and costs assessed within the Court's case chronologies and revenue reports. Usually the suspension of fines, fees and court costs are entered into the court record, in instances where this is not being done, it will be corrected.

Response to Finding #3

While this finding relates to the City it nonetheless deserves comment.

A complete reading of this City Code ordinance illustrates exactly what our responses to Findings 1-3 are attempting to show, and that is that many of the statutes and ordinances cited by the Inspector General's report have no place in the modern world. They are archaic and relics of a distant past. Does anyone contend that in the 21st century we would be operating efficiently if given printed receipt books with marginal stubs and asked to carry our daily receipts, section by section, to City Hall to be verified, balanced and receipted. Thankfully, the court was finally computerized in 2002. We are now able to transfer funds, make deposits, balance, reconcile and make disbursements through computerized technology.

To reiterate, the Court stands ready to work with the other branches of city government to fashion a new legislative scheme that conforms to modern technologies and achieves maximum efficiency and best practices. We will accommodate the City's requests as to any updated format that they may want us to employ and we welcome their audits at any time.

Response to Finding #4

The Municipal Court has taken corrective action with regard to the reconciliations of the bond accounts. Working with the Court's contracted CPA the Court made the necessary accounting adjustments to reconcile the accounts. In addition the court now reconciles the cash bond forfeitures and unclaimed bond accounts on a monthly basis.

In regard to the remittance of these bond forfeitures to the finance department, we again suggest that these ordinances need to be amended to account for modern accounting practices. Bond forfeitures are reinstated on a daily basis. To remit these forfeitures to the City on a daily basis only to have the City transfer the funds back to the Court when they are reinstated is unnecessarily time consuming and bureaucratically burdensome.

Response to Finding #5

The Court en banc has adopted the following rules relative to the determination of the necessary business purposes for the purchases made for or on behalf of the judges. The judges are allowed to individually determine the business purpose for purchases up to \$50, subject to approval of the administrative judge for reimbursement. Purchases from \$50 to \$200 must be done by requisition approved by the administrative judge. Purchases above \$200 must be done with the approval of the court en banc.

Response to Finding #6

The Court has taken corrective action relative to this finding. The Court now pays all employees through the City's payroll system, except contract employees who are independent of court authority. An example of an independent contractor would be a contracted court stenographer. By way of explanation, in 2009 employees of one section of court were required to train the employees of a newly elected judge. The Court did not intentionally disregard regulations, but believed that because the individuals were not performing their regular court duties, they could be paid outside the payroll system. In the future those employees who train new employees will be paid through the payroll system.

Response to Finding #7

The Court has taken corrective action relative to this finding. The Court now requires signed time sheets by contract employees. The Court presently has three sets of contract service providers; an interpreter, court reporters and a contracted psychiatric doctor. The interpreter is a grant employee who is paid by an hourly wage determined in the grant. She submits timesheets to the Court's Judicial Administrator

who verifies the time and sends documentation to the grantor for reimbursement. The contract court reporters are paid \$75 per court session, which is well below the current market rates. The psychiatrist is contracted on a flat rate of \$3000 per month and he performs psychiatric evaluations on all defendants who the judges determine to have questionable mental capabilities.

We disagree with the calculation of the Court's potential tax liability, specifically Col. C. The potential tax liability is 20% of the employee's social security withholding, not 20% of the "Amount Paid" shown in Col. A. Additionally, the City cannot amend Form 1098 for 2009 as requested as Form 1098 reports Mortgage interest.

Response to Finding #8

The Court has taken corrective action relative to this finding. The Court now requires all purchases, except the one mentioned in Response to Finding #5, to be by written requisition approved by the judge of the requesting section of court or by the administrative judge for the Clerk of Court's office and then signed and processed by the Judicial Administrator. Employees are not allowed to override existing controls.

Judges' reimbursements are subject to written rule delineated in Response to finding #5. Supporting documentation is required in all instances and Louisiana Supreme Court memos pertaining to appropriate per diem reimbursements are required prior to approval.

The court has established, see Response to Finding #5, a written reimbursement policy.

CONCLUSION

During 2009, the City of New Orleans failed to comply with Louisiana statutory law relative to the funding of New Orleans Municipal Court. The City, the Chief Administrative Office and in particular the City's Department of Finance were all aware of this long-standing custom and allowed this practice to continue due to budgetary constraints on the full funding of the Court's operations. As a result, the Court continued the long established custom and practice of retaining all collections in the Court's judicial expense fund. Without adequate funding the Court relied on the inherent powers of the Court and this long established custom to make up the shortfall of payroll and operating costs from the retained collections. None of the findings presented by the Inspector General's suggest misappropriation of any kind. These funds were retained and used to fund obligations required to be paid by the City of New Orleans and the Court. This fund was subject to the City's audit. The judicial expense fund was used solely to disburse funds to statutorily enumerated entities and to pay for the Court's unfunded payroll and operational expenses.

Collection of and remittance of fines, fees, forfeitures and costs established under State and City law are outdated. The Judges of Municipal Court have been the leading proponents of the three separate but equal branches of government coming into compliance with existing law and/or where necessary repealing or amending the law to achieve a coherent legislative scheme that represents modern accounting and collection standards. Full funding of the Court and implementation of best practices as it relates to collection and remittance will propel the three branches of government into compliance with the law and will end decades of the constitutionally questionable practice of funding the Court's operation on the backs of those who appear before it. Toward that end, the Court has already requested that representatives of each branch of government convene a working group to study these issues and make recommendations relative to amending and/or repealing existing law.

Relative to the inefficiencies noted by the Inspector General's auditors, the Municipal Court has developed a corrective action plan which has addressed each finding. Those corrective measures are in place currently and will remain in place and no one employed by the Court is allowed the authority to override these established policies and procedures.

The Municipal Court looks forward to the opportunity to work with the Mayor's Office and the City Council in order to design a legislative scheme for the Court that will implement best practices suitable to 21st century judicial operations. The Municipal Court also welcomes a follow-up review by the Inspector General's auditors.

CHIEF ADMINISTRATIVE OFFICE
CITY OF NEW ORLEANS

MITCHELL J. LANDRIEU
MAYOR

ANDREW D. KOPPLIN
FIRST DEPUTY MAYOR & CAO

January 7, 2011

Edouard R. Quatrevaux

Inspector General

City of New Orleans

535 St. Charles Avenue

New Orleans, LA 70130

Dear Inspector General Quatrevaux:

Pursuant to the Municipal Court's Remittances to the City report (OIG-A&R-10PAU002), the City administration respectfully submits the following response.

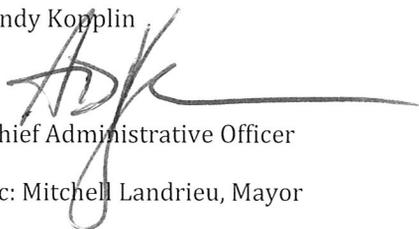
We appreciated the opportunity of meeting with your audit team with the Municipal Court to discuss the draft audit report.

Finding #1. The Department of Finance, Bureau of Treasury, will work with Municipal Court in 2011 to ensure money collected by the Municipal Court is remitted to the City.

Finding #3. The practice in recent years of collecting fines in Municipal Court has not included the use of receipt books as assumed in City Code 50-105 and reconciliation was undertaken as part of the annual citywide audit. In 2011, with Municipal Court funds being remitted directly to the City, reconciliations will be undertaken on a frequent basis (likely monthly) to ensure all revenues are accounted for.

Overall policy: The administration will work in 2011 with the Municipal Court to develop a set of changes to city ordinances that will ensure that city law is updated to reflect current practices (e.g., receipt books are no longer in use) and current reconciliation and audit requirements.

Andy Kopplin



Chief Administrative Officer

Cc: Mitchell Landrieu, Mayor

Nannette V. Jolivet-Brown, City Attorney

Norman Foster, Director of Finance/CFO

Cary Grant, Assistant CAO

Derrick Muse, Deputy Director, Department of Finance

Sharon McDonald, Bureau of Treasury

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