

# Municipal Court Funding

December 8, 2016



**OIG** NEW ORLEANS OFFICE OF  
INSPECTOR GENERAL

Ed Quatrevaux, Inspector General

December 8, 2016

Re: Municipal Court Funding

I certify that the inspector general personnel assigned to this project are free of personal or other external impairments to independence.



E.R. Quatrevaux  
Inspector General

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The Office of Inspector General for the City of New Orleans (OIG) conducted an evaluation of the funding structure of the New Orleans Municipal Court (Court). The purpose of the evaluation was to determine (1) the full cost of the Court from 2008 through 2015; and (2) how the City of New Orleans (City), State of Louisiana (State), and Court allocated resources to achieve the goals and objectives of the Court. The objectives of the evaluation were to:

1. document all sources of revenue and expenditures related to the Court each year from 2008 through 2015;
2. determine whether the City and Court followed applicable laws and policies regarding funding the Court and budgeting public funds; and
3. determine whether the Court developed performance measures that enabled judges, City Councilmembers, and State legislators to determine if the Court had the financial resources it needed to achieve its mission and objectives.

Municipal Court cost \$4.7 million to operate in 2015, approximately 20 percent more than it cost to operate in 2008. The OIG found that laws governing the Municipal Court's funding structure failed to establish clear lines of funding responsibility. The City was legally obligated to fund most Court staff positions, but the law also allowed the Court's self-generated revenues to be used to fund these positions if the City failed to meet this obligation. As a result, the City and the Court shared responsibility for funding in a way that limited transparency and impeded rational financial and operational planning. In addition, expecting the Court to fund a significant portion of its own expenses increased the risk of impeding defendants' due process rights.

Although state statutes required the City to fund the Court's non-judicial payroll, the Court and the City agreed that the Court was responsible for the difference between the City's allocated amount for payroll and actual payroll expenses. Both entities treated this difference as money "owed" to the City, resulting in deficit spending by the Court. Budgeting deficit spending in this manner is prohibited by the Louisiana Local Government Budget Act, which requires political subdivisions to balance their budgets.

The City and Court also exchanged money through informal arrangements, which contributed to a lack of transparency regarding how the Court was funded and resulted in inconsistent accounting records. For example, the City and the Court

recorded amounts for Court contributions to payroll that differed by as much as \$900,000 in a single year.

The evaluation includes the following findings:

- The City and Court's shared responsibility for funding (1) contributed to informal financial arrangements inconsistent with standard financial practices, and (2) created a potential impediment to due process.
- Municipal Court performance reporting did not allow decision-makers to evaluate its performance or assess the Court's financial needs.

Municipal Court judges have argued that fewer citations for minor municipal offenses in recent years have reduced court revenues, while additional programming and the processing of state misdemeanor cases have increased the Court's workload and expenditures. However, the Court did not provide evidence to support these assertions, and the limited performance measures it tracked provided insufficient information by which to assess the Court's financial needs, its efficiency, or its performance.

Based on these findings, the OIG made the following recommendations:

- The City should fund Municipal Court operations through a general fund appropriation. The City and Court should increase the transparency of their financial practices, and the City should lobby the state legislature to repeal laws creating fees to fund Municipal Court operations.
- The Court should develop and report performance measures that are capable of providing information that describes the financial needs of the Court.

The pending consolidation of Municipal Court and Traffic Court in 2017 provides the courts an opportunity to create efficiencies and improve transparency in the funding structures of both entities. The total cost for operating the Municipal and Traffic Courts included both the \$4.7 million cost of Municipal Court in 2015 and the cost of Traffic Court, which the OIG previously calculated at \$5.5 million as of 2012. The consolidation should improve both the effectiveness and the efficiency of the combined Court; establishing a baseline and determining impediments to efficiency in both Courts is a necessary first step.

## I. OBJECTIVES, SCOPE, AND METHODS

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3. determine whether the Court developed performance measures that enabled judges, City Councilmembers, and State legislators to determine if the Court had the financial resources it needed to achieve its mission and objectives.

The scope of the evaluation included Court expenses and performance from 2008 through 2015. Evaluators selected these years to include the most recent financial data available at the time of the evaluation and compare those data to data from other New Orleans justice agencies. Evaluators included all sources of revenue for Court expenses including City General Fund line item appropriations and General Fund indirect costs for Court-related expenses, State General Fund line item appropriations, and the Court's Judicial Expense Fund and other special funds.

In addition to reviewing financial data, evaluators conducted a literature search of prior reports written about the Court and interviewed City and Court staff and City Councilmembers about how resources were allocated.

In 2014 the Louisiana State Legislature passed a bill to merge the New Orleans Municipal and Traffic Courts by early 2017.<sup>1</sup> As the date of the merger approached and planning intensified, it became apparent that the merger would affect some of the objectives included in the original scope of this evaluation. Therefore,

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<sup>1</sup> 2014 La. Acts No. 845. The New Orleans Municipal Court was the only local court in Louisiana that did not handle traffic violations.

evaluators postponed accomplishing the following objectives until after the merger:

1. determine whether the Court engaged in a strategic planning process to define its mission, goals, and objectives;
2. determine if the Court's information systems were capable of providing accurate and timely data; and
3. determine whether the Court had appropriate policies and procedures in place to guide its operations.

This report is the fifth installment in a wider examination of spending across the New Orleans justice system that will include a series of similar funding analyses of the various justice agencies. The objectives of the series are to document all agency revenues and expenditures and to assess agency performance. To the extent that available data will allow, the OIG intends to connect spending and policy decisions to justice outcomes and to promote a rational overall spending structure for justice agencies. The series will also use information from the examinations of individual agencies to explore systemic issues: e.g., how do funding and policy decisions directed toward one agency affect other agencies?

The series includes the Orleans Parish District Attorney's Office, Orleans Public Defenders, Orleans Parish Criminal District Court and Clerk of Criminal District Court, New Orleans Coroner's Office, Orleans Parish Juvenile Court, the Youth Study Center, Orleans Parish Civil District Court, Orleans Parish First and Second City Courts, Constables of First and Second City Courts, and Clerks of First and Second City Courts. The OIG issued the first report in this series, "Inspection of Taxpayer/City Funding to Orleans Parish Sheriff's Office" in 2013 and issued "New Orleans Police Department Funding" and "Traffic Court Funding" in the spring and summer of 2015. In early 2016 the OIG issued the fourth report in the series "Law Department Funding."<sup>2</sup>

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<sup>2</sup> This series was made possible in part by a grant from Baptist Community Ministries, which had no input into or advance knowledge of any of the information contained in this report.

The OIG staff was greatly assisted in the preparation of this report by the full cooperation of City of New Orleans and New Orleans Municipal Court employees and officials.

This review was conducted in accordance with the Principles and Standards for Offices of Inspector General for Inspections, Evaluations, and Reviews.<sup>3</sup> This report includes findings and recommendations to bring the City's funding of the Municipal Court into compliance with the law and improve the transparency of Court finances.

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<sup>3</sup> Association of Inspectors General, "Quality Standards for Inspections, Evaluations, and Reviews by Offices of Inspector General," *Principles and Standards for Offices of Inspector General* (New York: Association of Inspectors General, 2014), <http://inspectorsgeneral.org/files/2014/11/AIG-Principles-and-Standards-May-2014-Revision-2.pdf>.

## II. MUNICIPAL COURT FINANCES, 2008—2015

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The Court’s mission, as stated in the City’s budget, was “the fair and impartial administration of justice for alleged violators of the ordinances of the City of New Orleans and criminal statutes of the State of Louisiana.”<sup>4</sup> The Court had limited jurisdiction and was specifically authorized to conduct trials for violations of the Code of the City of New Orleans (except traffic violations) and violations of Louisiana statutes including criminal code violations. The Court did not have jurisdiction over any state offense that required a trial by jury. The jurisdiction of the Court over state misdemeanors was concurrent with the Criminal District Court for the Parish of Orleans.<sup>5</sup>

Municipal Court consisted of four divisions (A-D), each with its own elected judge.<sup>6</sup> The four judges also appointed a Clerk of Court and selected a Judicial Administrator.<sup>7</sup>

Municipal Court cost between \$3.8 million and \$4.7 million each year between 2008 and 2015. Evaluators reviewed City and Court financial documents and requested information from the Louisiana Supreme Court to understand all sources of funding for the Municipal Court. The review included all sources of revenue for Court expenses, including those paid by the City in dedicated line item appropriations, indirect costs incurred by the City for court-related services, State of Louisiana (State)-dedicated line item appropriations, and expenses funded through the Court’s Judicial Expense Fund (JEF) and other court-controlled funds.

Figure 1 depicts the in- and out-flows of the Court’s revenues and expenditures. It shows that the Court was responsible for collecting revenue and funding a portion of its expenses from this revenue. The City and State provided appropriations for salaries and some indirect expenses. The Court also facilitated the collection of a variety of fees for other agencies, which it held in escrow and paid on a monthly basis.

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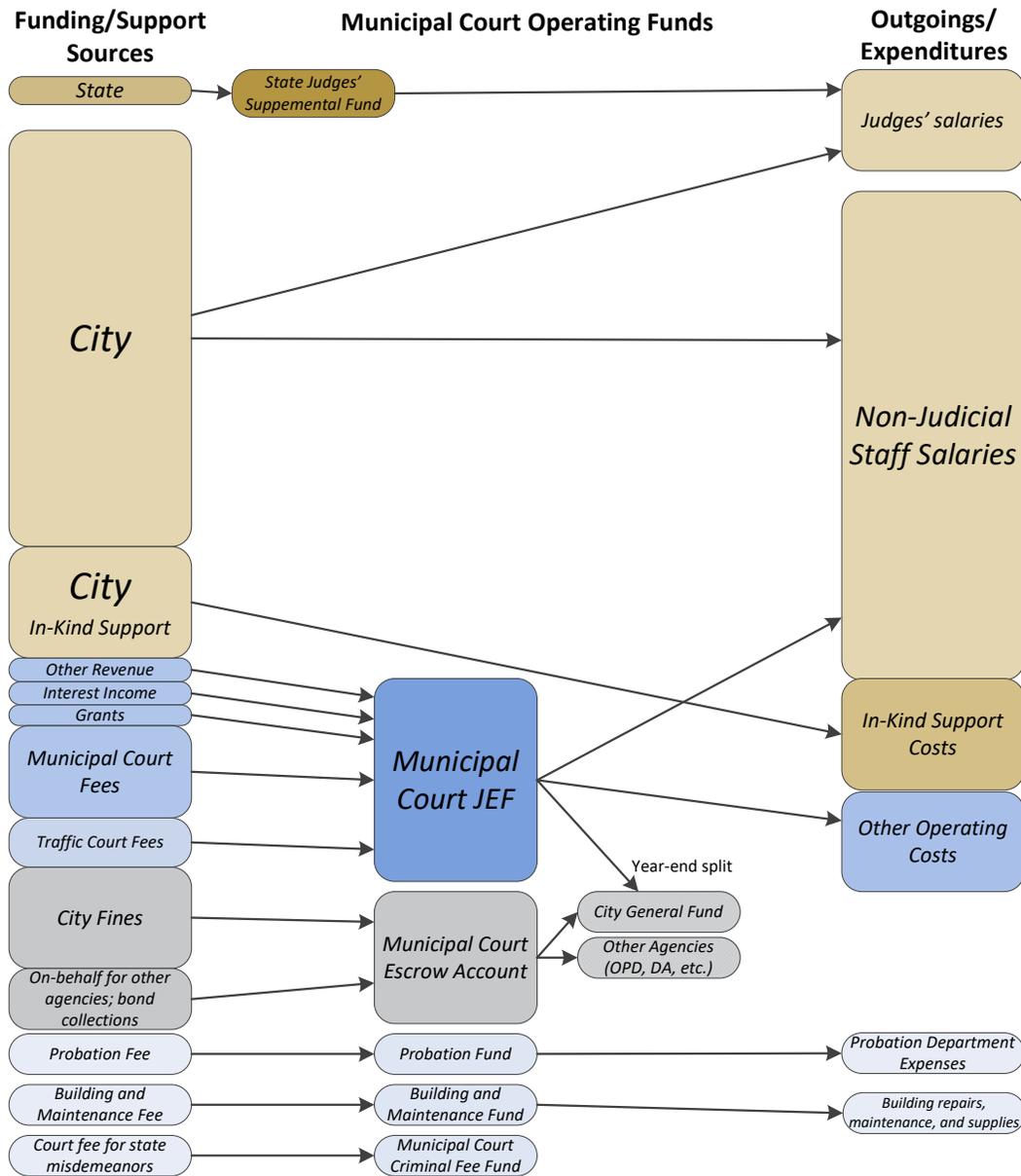
<sup>4</sup> City of New Orleans, *2015 Annual Operating Budget* (New Orleans, LA: City of New Orleans, 2015), 506, accessed February 29, 2016, <http://www.nola.gov/getattachment/Mayor/Budget/2015-Adopted-Budget-Book.pdf/>.

<sup>5</sup> La. R.S. 13:2493.

<sup>6</sup> La. R.S. 13:2492.

<sup>7</sup> La. R.S. 13:2495 and La. R.S. 13:2495.1.

**Figure 1.** In- and out-flows of Municipal Court funding<sup>8</sup>



The following subsections provide an in-depth review of the Court’s revenue and expenditures between 2008 and 2015. After analyzing monies the Court collected for itself and on behalf of other entities, evaluators examine the revenues the

<sup>8</sup> Figure 1 represents a standard year in which the Court was able to raise enough funds to finance a portion of its personnel expenses. In some years the Court raised excess funds and saved them, while in other years, it did not raise enough funds to cover expenses and either relied on savings or “borrowed” money from the City. “Other Agency” funds included money for Orleans Public Defenders (OPD), Orleans Parish District Attorney’s Office (DA), and other entities.

Court received, its expenditures, and other transfers of funds between the City and the Court. In later sections of the report, evaluators discuss problems identified during a review of Court finances.

### **COURT COLLECTIONS**

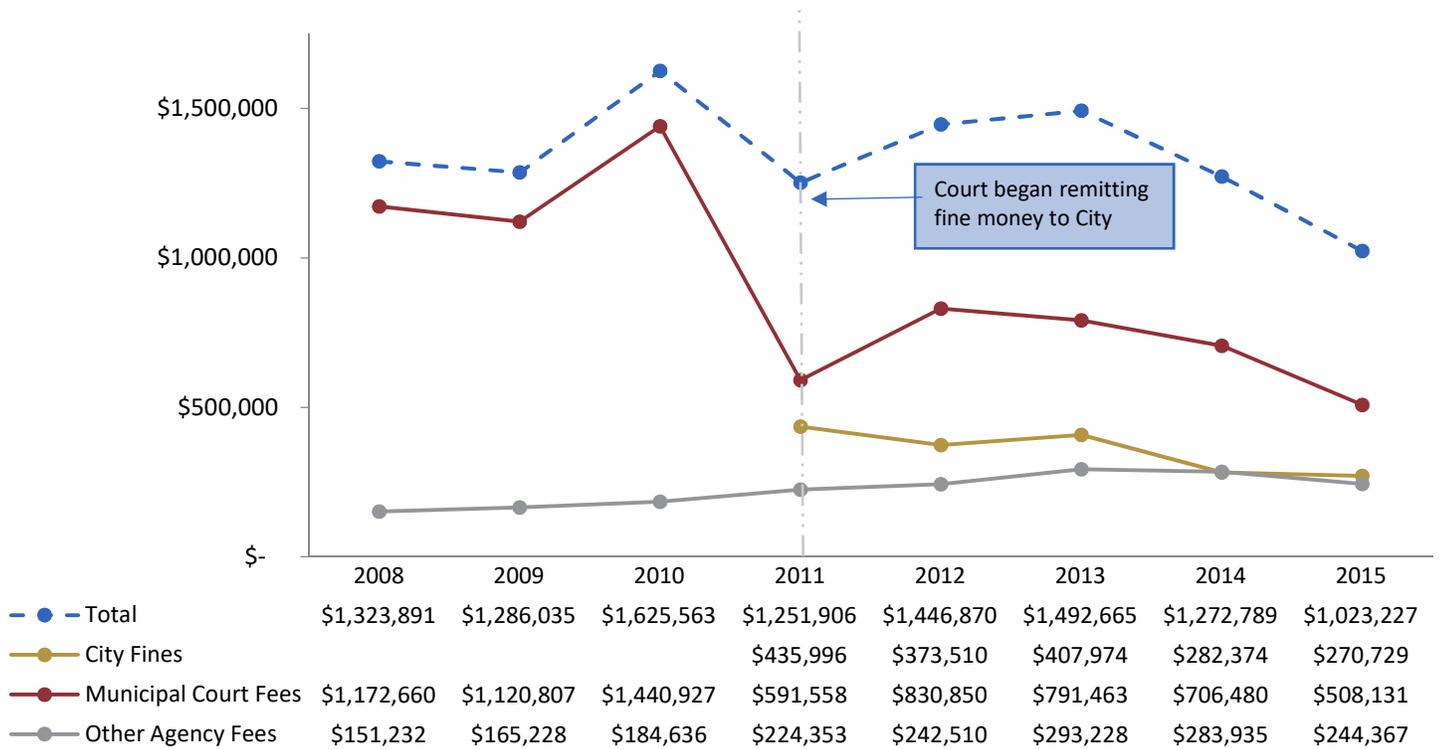
Municipal Court generates revenue: it collected between \$1 million and \$1.6 million each year between 2008 and 2015, approximately \$3 million per year less than it cost to operate the Court. This revenue included:

1. fines disbursed to the City of New Orleans;
2. fees on behalf of a variety of entities for which the Louisiana State Legislature established fees by law; and
3. certain fees and bond forfeitures deposited in funds administered by the Municipal Court.<sup>9</sup>

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<sup>9</sup> See Figure 3 for a list of entities and associated fees.

**Figure 2.** Municipal Court collections (2008-2015)<sup>10</sup>



**CITY FINE REVENUE**

State law instructed Municipal Court to collect revenue for the City from fines assessed on convictions for violations of state laws and city ordinances.<sup>11</sup> Violations required an appearance at court, at which time a judge determined an appropriate fine. From 2008 through 2010 the Court did not remit fines to the City as required by law.<sup>12</sup> However, in 2011 the Court began remitting fines to the City. The annual amount of fines the Court collected for the City averaged \$354,000

<sup>10</sup> Court staff provided the dollar amounts for City fines and other agency fees. Evaluators obtained totals for Municipal Court fees from the Court’s audited financial statements, except for 2008 and 2009 when audits were not conducted. For these years, Court staff provided fee amounts.

<sup>11</sup> La. R.S. 13:2501.

<sup>12</sup> Office of Inspector General of the City of New Orleans, *A Performance Audit of the Municipal Court’s Remittances to the City* (New Orleans, LA: Office of Inspector General of the City of New Orleans, 2011), 5, accessed June 8, 2016, [http://www.nolaog.gov/index.php?option=com\\_mtree&task=att\\_download&link\\_id=133&cf\\_id=37](http://www.nolaog.gov/index.php?option=com_mtree&task=att_download&link_id=133&cf_id=37).

from 2011 through 2015, but fine revenue decreased 38 percent during those five years, from approximately \$436,000 to \$271,000.

#### **FEES COLLECTED ON BEHALF OF OTHER ENTITIES**

The Court collected conviction fees on behalf of a variety of agencies as provided in state law. Between 2008 and 2015, the Court collected an average of \$223,000 in fee revenue for these other entities. These fees are described in Figure 3.

#### **FEES COLLECTED FOR MUNICIPAL COURT**

The Court collected an average of \$1.2 million in Court fees during 2008 through 2010. During this period, the Court retained fine revenue and classified it as Court revenue. When the Court began to remit this money to the City, the amount of revenue the Court retained decreased significantly, averaging less than \$700,000 per year between 2011 and 2015.

**Figure 3.** Agencies with Municipal Court fees authorized in state law with average amount collected per year (2008-2015)

Recipient Agency	Fee Description	Authority	Avg. Annual Amount
Criminal District Court for Orleans Parish	\$5 on each conviction or bond forfeiture	La. R.S. 13:1381.4(A)(1)	\$15,000
Municipal Court of New Orleans Probation Fund	\$15 on each conviction or bond forfeiture	La. R.S. 13:2500.1(A)	See Note
Municipal Court of New Orleans	\$30 on each conviction or bond forfeiture <sup>13</sup>	La. R.S. 13:2500.2(A)(1)	See Note
Municipal Court of New Orleans	Judges can suspend sentences and order the defendant to pay court costs as a term of probation.	La. C.Cr.P. art. 895.1	See Note
Orleans Parish Coroner <sup>14</sup>	\$10 on each conviction	La. R.S. 13:5722	\$18,000
Orleans Parish District Attorney	\$20 on each conviction or bond forfeiture in a state criminal case	La. R.S. 16:16.3	\$10,000
Orleans Parish Public Defender	\$45 on each conviction or bond forfeiture <sup>15</sup>	La. R.S. 15:168(B)(1)	\$150,000
City of New Orleans Municipal and Traffic Court Maintenance Fund	\$5 on each conviction	City Code Sec. 50-149	See Note
Louisiana Commission on Law Enforcement Crime Victims Reparations Fund	\$7.50 on each conviction	La. R.S. 46:1816(D)(1)(a)	See Note
Louisiana Commission on Law Enforcement to be used to train local law enforcement agencies	\$2 on each conviction <sup>16</sup>	La. R.S. 46:1816(E)(1)	See Note
Trial Court Case Management Fund	\$3 on each conviction <sup>17</sup>	La. C.Cr.P. art. 887(F)(1)	\$7,000
Crime Stoppers	\$2 on each conviction	La. C.Cr.P. art. 895.4(I)	\$6,000

*Note: Collections on behalf of Municipal Court averaged approximately \$900,000 per year between 2008 and 2015. Collections on behalf of the Louisiana Commission on Law Enforcement averaged \$6,000 per year during the same period.*

<sup>13</sup> This fee was \$15 prior to 2012 La. Acts No. 337, which increased the fee to \$30.

<sup>14</sup> Unlike the other fees in this list, this one is authorized but not mandated by state law. The Court did not begin collecting this fee until 2014.

<sup>15</sup> Prior to June 7, 2012 the Orleans Parish Public Defender Fee was \$35 on each conviction.

<sup>16</sup> This fee was authorized by 2009 La. Acts No. 440.

<sup>17</sup> This fee was increased from \$2 to \$3 by 2011 La. Acts No. 23.

## MUNICIPAL COURT REVENUE

As noted in the previous section, Municipal Court collected fees on behalf of various entities, including itself. The revenue the Court had available to fund its operations also included the revenue it received from other sources, such as grants, fees collected on its behalf by the Traffic Court, and interest earned from its bank accounts.

**Municipal Court Fees:** The New Orleans City Council established two court fees. Prior to 1956 the City Council established a Municipal Court Judicial Expense Fund (JEF) “administered by the municipal court judges of the city.”<sup>18</sup> The JEF’s establishing ordinance stated that the fund was to consist of payments from bond forfeitures and that the Court should remit to the City’s General Fund half of any surplus remaining in the fund at the end of the year.<sup>19</sup> In 2000 the City Council adopted an ordinance establishing a five dollar fee on every defendant convicted in Municipal Court and dedicating those funds to building maintenance and security at the Court.<sup>20</sup>

In addition to the two City-authorized fees described above, the Louisiana State Legislature authorized the Court to collect two additional fees. In 1980 the legislature created a Municipal Court Probation Department Fund. The statute permitted the assessment of a fifteen dollar fee assessed on each offense. The Fund was to be used to “monitor the behavior of defendants and to develop a comprehensive probationary service program at the municipal court.”<sup>21</sup> The statute originally instructed the City to administer the Fund, but in 2011 the legislature amended the statute and assigned to the Municipal Court judges the responsibility for administering the Fund.

In 1987 the legislature authorized the Court to collect fifteen dollars from each convicted defendant and to place the funds into the JEF, which was administered by the City of New Orleans.<sup>22</sup> In 2011 the state legislature amended the statute to

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<sup>18</sup> City Code Sec. 50-6.

<sup>19</sup> Ibid.

<sup>20</sup> City Code Sec. 50-149.

<sup>21</sup> La. R.S. 13:2500.1.

<sup>22</sup> La. R.S. 13:2500.2.

permit the fee to be deposited into a fund administered by the Municipal Court Judicial Administrator.<sup>23</sup> In 2012 the legislature increased the fee to thirty dollars.<sup>24</sup>

In addition to state statutes authorizing the Court to assess fees, the state Code of Criminal Procedure also authorized judges to assess fees for court costs when they suspended sentences.<sup>25</sup>

**Fees Collected by Traffic Court:** The same statute that authorized the Municipal Court to assess fees for its operations also required the New Orleans Traffic Court to collect five dollars from each convicted defendant on behalf of the Municipal Court. The five dollar fee was administered in the same manner as the thirty dollar fee; first by the City and then by the Municipal Court in 2011.<sup>26</sup> A timeline of the establishment of funds and fees that generated revenue for Municipal Court appears in Figure 4.

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<sup>23</sup> This change in the law reflected the fact that in practice the Court had been administering its own Funds since after Hurricane Katrina.

<sup>24</sup> 2012 La. Acts No. 337.

<sup>25</sup> La. C.Cr.P. Art. 895.1.

<sup>26</sup> La. R.S. 13:2500.2.

**Figure 4.** Timeline of creation of Municipal Court funds and fees

Year	Law	Description
Pre 1956	City Code Sec. 50-6	City established a Judicial Expense Fund for Municipal Court made up of bond forfeitures. The fund was administered by judges.
1980	La. R.S. 13:2500.1 <sup>27</sup>	State established a Municipal Court Probation Department Fund administered by the City of New Orleans.
1980	La. R.S. 13:2500.1(A) <sup>28</sup>	State established \$15 probation fee.
1987	La. R.S. 13:2500.2 <sup>29</sup>	State established \$15 fee for Municipal Court cases remitted to City's director of finance to be deposited in the Judicial Expense Fund.
1989	La. R.S. 13:2500.2 <sup>30</sup>	State established \$5 fee for Traffic Court cases remitted to City's director of finance to be deposited in the Judicial Expense Fund.
2000	City Code Sec. 50-149 <sup>31</sup>	City established a Municipal Court maintenance fund and \$5 fee.
2011	La. R.S. 13:2500.1 <sup>32</sup>	State amended the law so that the Court Probation Fund was administered by Municipal Court judges.
2011	La. R.S. 13:2496.4 <sup>33</sup>	State established Municipal Court Judicial Expense Fund under the control and administration of the judges.
2011	La. R.S. 13:2500.2 <sup>34</sup>	State amended the law so that fees described in La. R.S. 13:2500.2 would be deposited into a fund administered by Municipal Court judges.
2012	La. R.S. 13:2500.2 <sup>35</sup>	State raised the fee to \$30.

**Grants and Other Revenue:** In addition to revenue generated by fees, the Municipal Court also generated revenue from grants; interest on bank accounts; and other sources, which included money collected for copies of documents, including certified copies. In 2010 income from other revenue sources peaked due

<sup>27</sup> 1980 La. Acts No. 814.

<sup>28</sup> 1980 La. Acts No. 814.

<sup>29</sup> 1987 La. Acts No. 93.

<sup>30</sup> 1989 La. Acts No. 312.

<sup>31</sup> City Ordinance, M.C.S. 19942 (12/1/00).

<sup>32</sup> 2011 La. Acts No. 339.

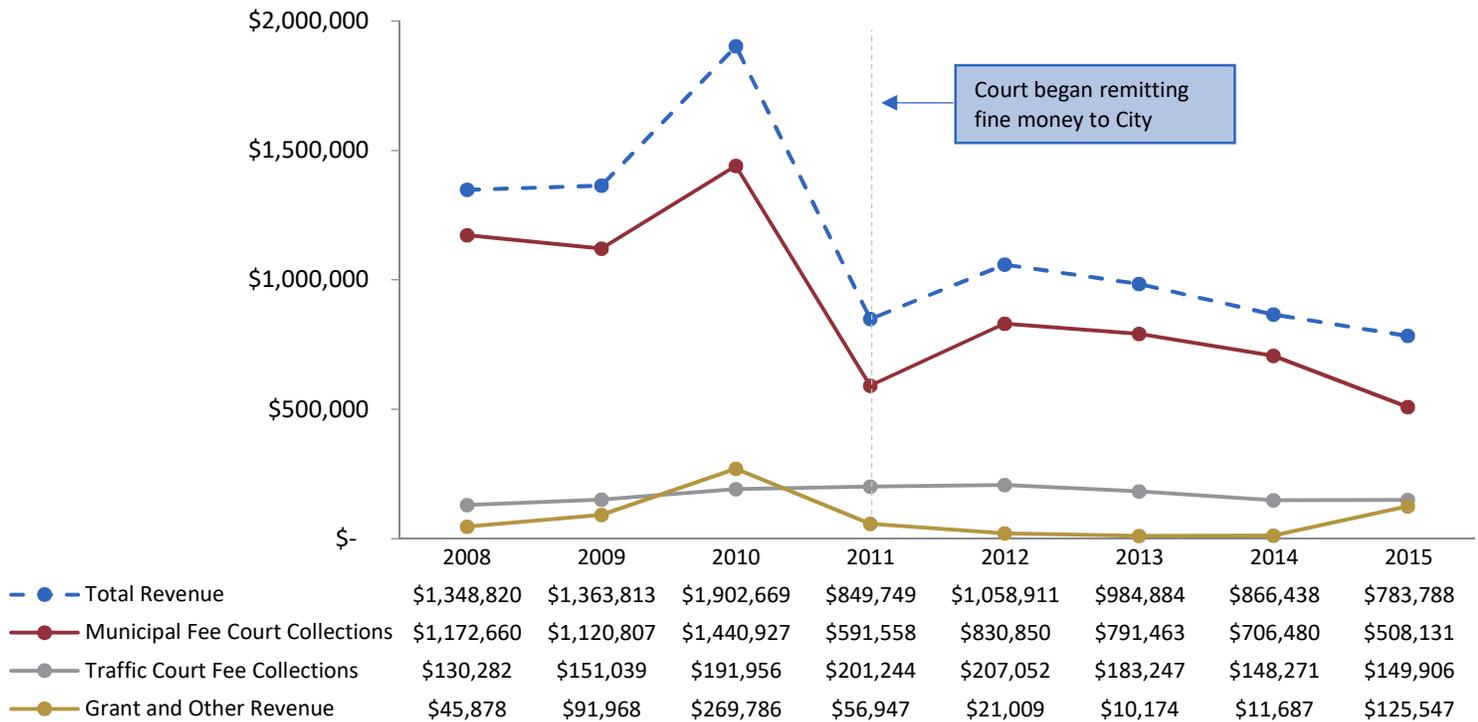
<sup>33</sup> 2011 La. Acts No. 339.

<sup>34</sup> 2011 La. Acts No. 339.

<sup>35</sup> 2012 La. Acts No. 337.

to restitution payments related to two thefts: one from a former court employee, and one from a vendor. See Figure 5 for a breakdown of Municipal Court revenue by these three categories.

**Figure 5.** Municipal Court revenues (2008-2015)<sup>36</sup>



As shown in Figure 5, Municipal Court revenues were higher when it was not remitting fine money to the City from 2008 through 2010. As discussed previously, total revenue during these years was over \$1 million per year, but it dropped below \$1 million after the Court began remitting fines to the City.

The Court’s accounting of its revenues also changed during the timeframe evaluated. From 2008 through 2011 the Court recorded all revenue in the JEF. In 2012 it began recording probation and building maintenance fees into separate accounts. In 2013 it added a separate account for criminal court fees. See Figure 6 for additional details regarding Municipal Court revenue by year.

<sup>36</sup> Evaluators obtained the amounts of Municipal Court fees from the Court’s audited financial statements, with the exception of 2008 and 2009, for which audits were not conducted. For these years, dollar amounts were provided by Court staff.

**Figure 6.** Municipal Court revenues (detail)<sup>37</sup>

	2008	2009	2010	2011	2012	2013	2014	2015
<b>Judicial Expense Fund (JEF)</b>								
Forfeitures and Fees	\$1,025,082	\$1,021,311	\$1,266,071	\$527,615	\$515,156	\$477,561	\$456,846	\$354,313
Building and Maintenance Fees	\$15,760	\$17,743	\$69,249	\$23,493				
Probation Fees	\$7,260	\$13,395						
Traffic Collections	\$130,282	\$151,039	\$191,956	\$201,244	\$207,052	\$183,247	\$148,271	\$149,906
Unclaimed Bonds	\$124,558	\$68,358	\$105,607	\$40,450	\$27,765	\$30,785	\$32,089	\$27,161
Grant Revenue		\$44,091	\$152,875	\$26,888				\$115,658
Interest Earned	\$45,878	\$40,312	\$28,897	\$29,137	\$6,943	\$1,744		
Other Revenue		\$7,565	\$88,014	\$922	\$9,238	\$6,536	\$7,890	\$9,889
<b>Building and Maintenance Fund</b>								
Fees					\$17,164	\$17,268	\$16,308	\$13,117
Interest Earned					\$4,828	\$1,894	\$3,797	
<b>Probation Fund</b>								
Fees					\$270,765	\$254,196	\$189,868	\$112,300
<b>Municipal Court Criminal Fee Fund</b>								
Fees						\$11,653	\$11,369	\$1,240
<b>Total</b>	<b>\$1,348,820</b>	<b>\$1,363,813</b>	<b>\$1,902,669</b>	<b>\$849,749</b>	<b>\$1,058,911</b>	<b>\$984,884</b>	<b>\$866,438</b>	<b>\$783,584</b>

## EXPENDITURES

State law indicated which entity had responsibility for funding different expenses of the Court. Figure 7 shows which entity was legally responsible for expenses. The City was legally obligated to fund most Court staff positions, but the law also allowed JEF monies to be used to fund these positions if the City failed to meet this obligation.

<sup>37</sup> 2008 and 2009 numbers are unaudited. Building and Maintenance Fees and Probation Fees were reported in the Judicial Expense Fund until 2011 and then reported in their own respective funds. Municipal Court staff could not explain why the reports did not include probation fees in 2010 and 2011.

**Figure 7.** Entities responsible for funding Municipal Court expenses

	<b>Expense</b>	<b>Responsible Entity</b>	<b>Reference</b>
Personnel	Part of judicial salaries	State	La. R.S. 13:1874(E) <sup>38</sup>
	Four Judges (Sections A-D)	City	La. R.S. 13:2492(C)
	Four Criers (one for each judge)	City (or JEF if City didn't cover cost)	La. R.S. 13:2496.1
	Judicial staff—minute clerk, court reporter, secretarial, clerical, administrative, or other personnel as the judge may deem necessary	City	La. R.S. 13:2496
	Judicial Administrator	City (or JEF if City didn't cover cost)	La. R.S. 13:2495.1
	Clerk of Court	JEF	La. R.S. 13:2495(C)
	Clerk's staff—deputies, assistants and employees (as the legislature may provide, no less than 20)	City	La. R.S. 13:2497
	First Appearance Hearings Officer	City	La. R.S. 13:2496.3(D)
	Hearings Officer staff (as deemed necessary)	City	La. R.S. 13:2496.3(E)
	Probation staff	Probation Fund	La. R.S. 13:2500.1(C)
Operating	Quarters, furniture, stationary, and police detail	City	La. R.S. 13:2499
	Quarters for Hearings Officer	City or Court	La. R.S. 13:2496.3(F)
	Hearings Officer expenses	As provided by rules of court	La. R.S. 13:2496.3(D)

Three entities appropriated funds for the Court's expenditures: the State of Louisiana, the City of New Orleans, and the Municipal Court. By law the State provided funds for judicial compensation, including a portion of salaries and all of the judges' healthcare and retirement benefits. The City paid for a portion of judicial salaries and compensation for ad hoc judges and the hearings officer.<sup>39</sup>

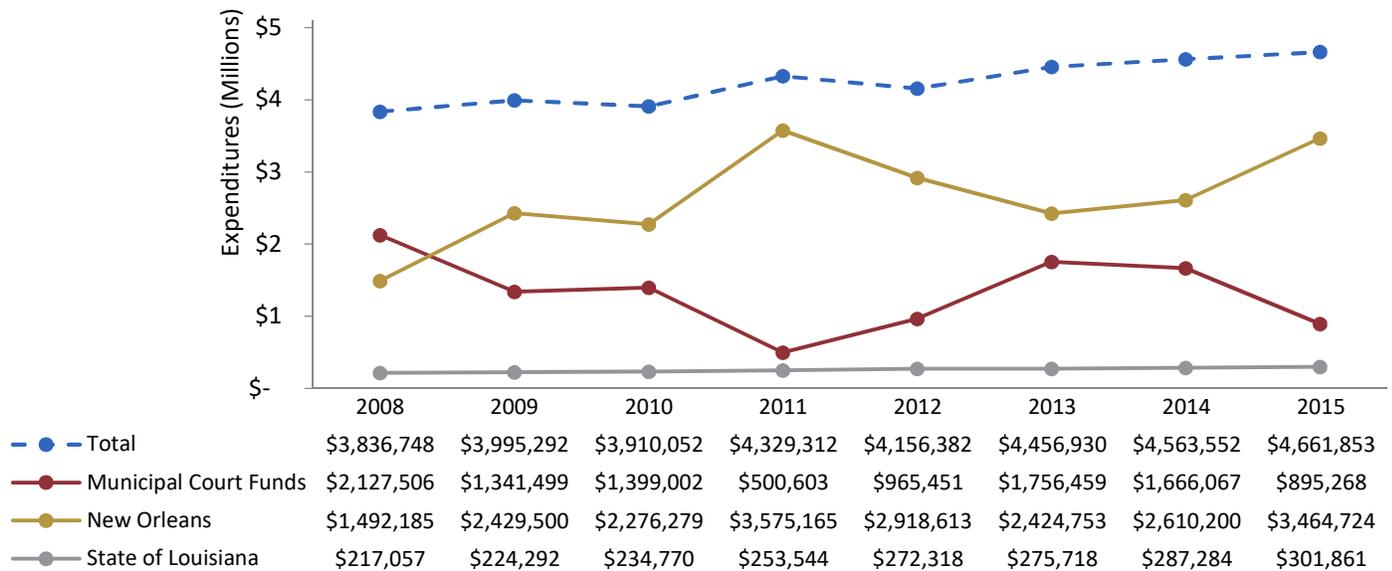
<sup>38</sup> See also La. R.S. 13:48-50 (concerning yearly salary adjustments).

<sup>39</sup> Ad hoc judges were lawyers and retired judges hired to replace judges who were temporarily absent due to illness, vacation, or continuing education requirements.

In addition to paying a portion of the Court’s non-judicial payroll, the City provided indirect financial support to the Court that did not appear in budget documents as Municipal Court costs.<sup>40</sup> These expenses included support for building operations and maintenance, utilities, information technology support, payroll administration, vehicle fuel, and courtroom security provided by New Orleans Police Department Officers.

The Court financed a portion of its payroll expenses and all non-payroll operating expenses (including professional services and supplies) through the funds it controlled (i.e. Probation Fund, Building and Maintenance Fund, and Judicial Expense Fund).<sup>41</sup> See Figure 8 for an illustration of the Municipal Court expenses by responsible entity by year.

**Figure 8.** Municipal Court-related expenditures (2008-2015)



The Court’s overall expenses increased by over 20 percent between 2008 and 2015. However, the shares the City and Court contributed were inversely related

<sup>40</sup> To determine indirect costs, evaluators used the indirect cost rate from the City’s 2014 Cost Allocation Plan, which was based on actual expenditures from 2012.

<sup>41</sup> The Orleans Parish Sheriff’s Office paid for a three person security detail at Municipal Court at a cost of \$100,000 per year. These officers provided security in the halls and staffed the metal detector at the entrance to the Court.

to each other, and there were significant fluctuations in each entity's yearly contribution.

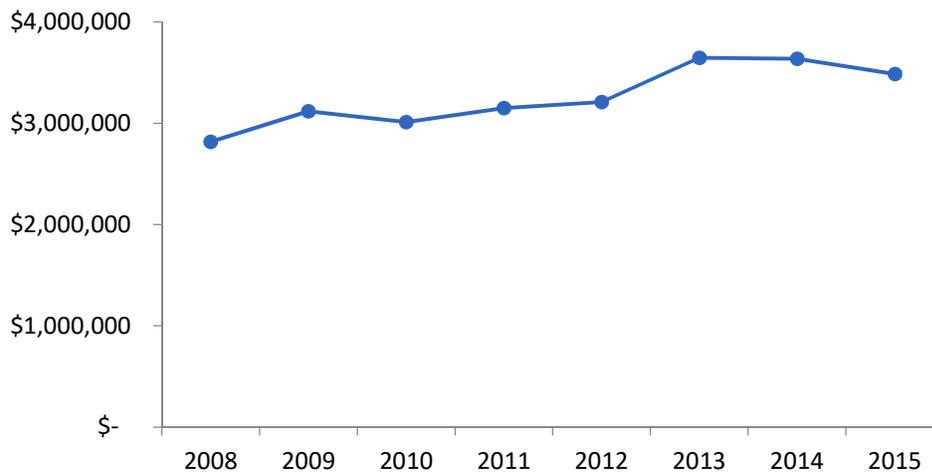
### PERSONNEL EXPENDITURES

All non-judicial Municipal Court positions are unclassified except for staff in the Probation Department and the Clerk's Office, and payroll is administered by the City.

Municipal Court personnel expenses increased from 2008 through 2015, surpassing \$3 million per year every year beginning in 2009. Average salaries for full-time court employees increased by almost \$9,000 between 2008 and 2015.

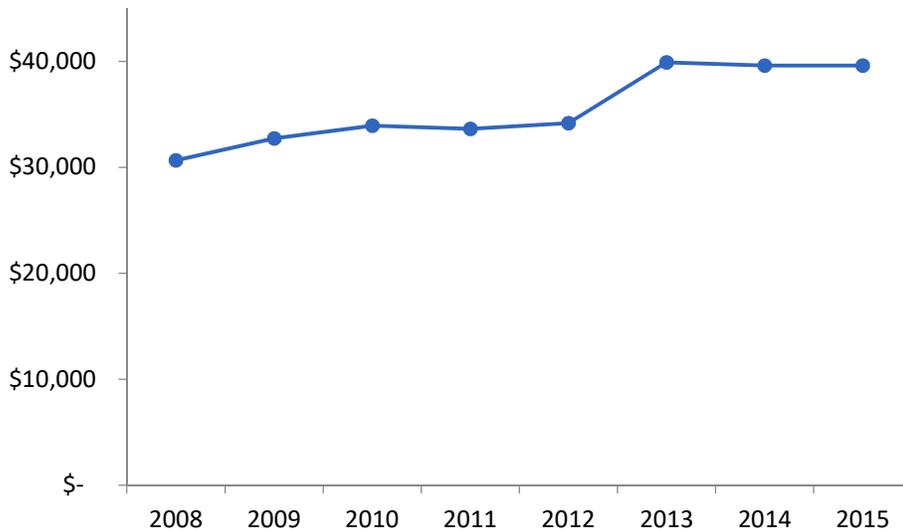
The largest increase occurred in 2013 when the City approved across-the-board pay raises for Municipal Court employees.<sup>42</sup> According to court staff, the City raised pay to make salaries for Municipal Court employees equivalent to the higher salaries paid to Criminal District Court employees. The Municipal Court judges argued that the salaries of Municipal Court and Criminal District Court employees should be comparable when the District Attorney began prosecuting state misdemeanor cases in Municipal Court. (See Figure 9.)

**Figure 9.** Municipal Court personnel expenses (2008–2015)



<sup>42</sup> This included salary increases of approximately \$20,000 each for the Judicial Administrator and Assistant Judicial Administrator.

**Figure 10.** Average salary for full-time non-judicial Municipal Court employees (2008 – 2015)



#### **MUNICIPAL COURT ORGANIZATION AND STAFFING**

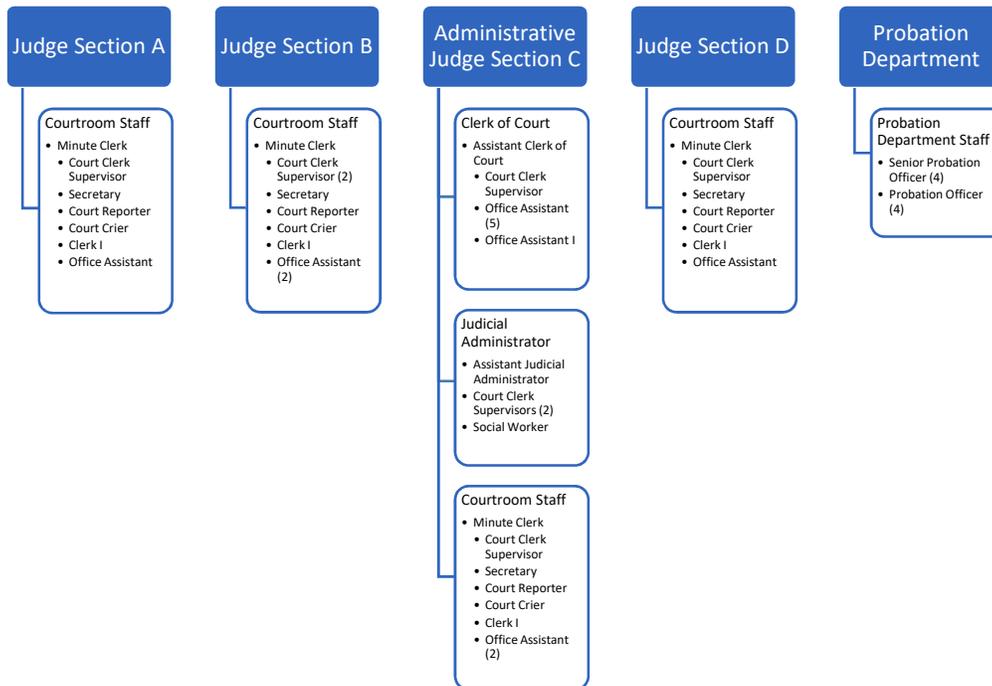
New Orleans voters elected four Municipal Court judges, each of which served in a specific section of Court. Municipal Court staff reported directly to the judge who oversaw the section of court in which they worked. Each section had a minute clerk who oversaw a secretary, a court reporter, a crier, clerks, and office assistants. The judges also oversaw the probation department.

One of the judges served as the administrative judge, who supervised the Judicial Administrator and Clerk of Court. The Clerk of Court was responsible for court records and oversaw other clerks and office assistants. The Judicial Administrator was responsible for payroll, purchasing, and financial reporting, and oversaw an assistant judicial administrator, clerks, and a social worker. The Court also had a probation department and a law clerk.<sup>43</sup>

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<sup>43</sup> Organization chart adapted from Nial Raaen and Carla Smith, *City of New Orleans Municipal and Traffic Courts Consolidation Study* (Denver, CO: National Center for State Courts, 2015), 34, accessed September 30, 2016, <http://ncsc.contentdm.oclc.org/cdm/ref/collection/traffic/id/71>.

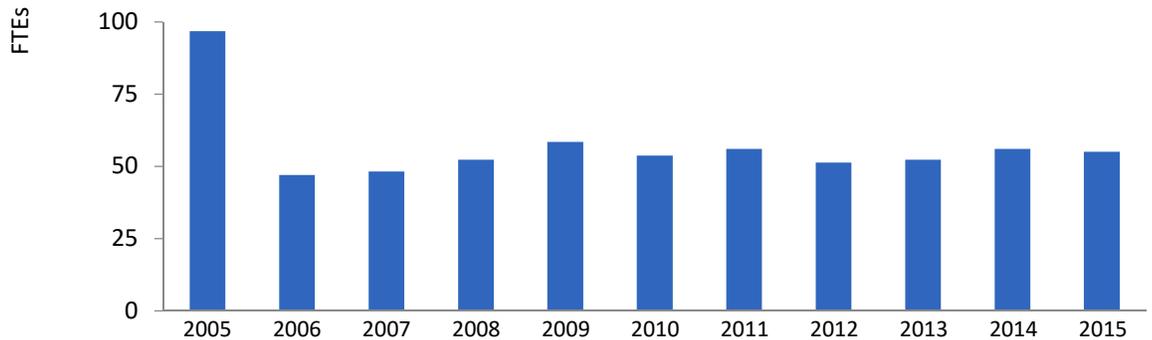
**Figure 11.** Municipal Court organization chart (2015)<sup>44</sup>



According to court staff, after Hurricane Katrina the City requested that the Court reduce its staff to essential employees required to operate the Court. The Court complied, and in 2006 the number of staff decreased from 96.74 full time equivalents to 47 full time equivalents. After the 2006 reduction in staff, Municipal Court staffing levels remained relatively steady through 2015 as shown in Figure 12.

<sup>44</sup> Ibid.

**Figure 12.** Municipal Court budgeted full-time equivalents (FTE) by classification (2005-2015)

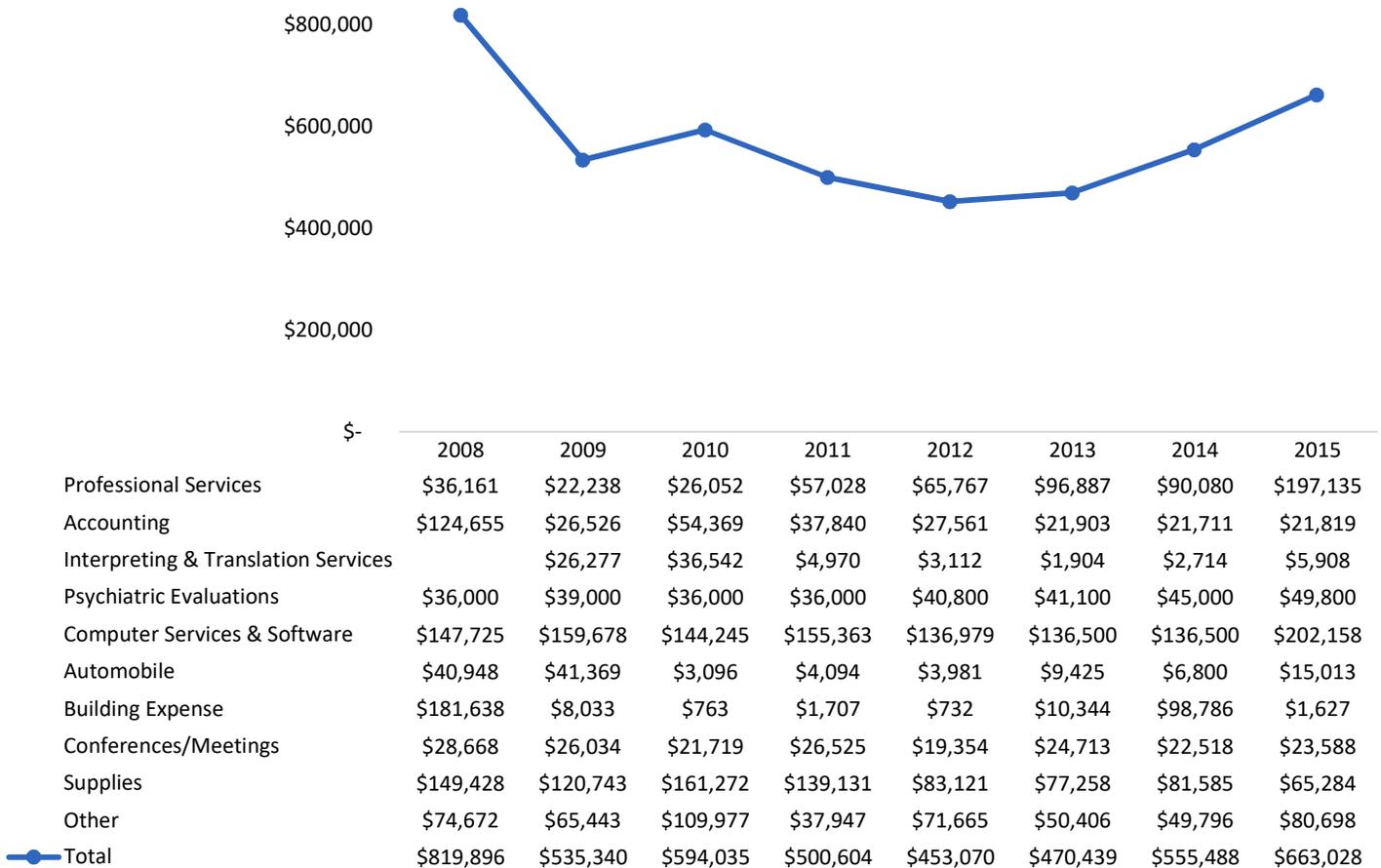


	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
<b>Total FTEs</b>	96.74	47	48.25	52.25	58.5	53.75	56	51.25	52.25	56	55
Court Probation Officer	3	1	1	3	3	3	3	3	3	5	4
Senior Court Probation Officer	1	1	1	1	1	1	1	1	1	3	4
Assistant Court Probation Coordinator	1										
Office Assistant I	2										
Office Assistant III	5.49	2	2	1	1	1	1	1	1	1	
Office Assistant IV	1										
Office Assistant						7.5	13	9.25	9.25	9	9
Administrative Support Specialist							1	1	1	1	1
Secretary	5	5	4	5	5	5	2	2	2	2	2
Senior Office Assistant							1	1	1	1	1
Account Clerk	1										
Information Processor Operator	4	1	1								
Asst. Judicial Administrator							1	1	1	1	1
Judicial Administrator					1	1	1	1	1	1	1
Clerk I	6.25	4	4.25	4.25	5	4	4	4	4	4	4
Clerk II	3			1	4.5	0.25					
Clerk IV	37	10	10	10	11	4					
Court Clerk, Supervisor							10	9	9	9	9
Clerk of Court, Assistant	2	2	2	2	1	1		1	2	1	1
Deputy Clerk of Court							1				
Clerk of Court	1	1	1	1	1	1	1	1	1	1	1
Law Clerk										1	1
Court Reporter	4	2	4	3	3	3	4	4	4	4	4
Domestic Violence Clerk	4	4	4	4	4	4					
Court Crier	6	4	4	7	8	8	4	4	4	4	4
Minute Clerk	6	6	6	6	6	6	4	4	4	4	4
Judge	4	4	4	4	4	4	4	4	4	4	4

## OTHER OPERATING EXPENSES

Detailed audited numbers were unavailable for all years, so evaluators used information provided by court staff from their general ledger to determine how much the Court spent on supplies and services.<sup>45</sup> As shown in Figure 13, evaluators found that Court spending on other operating expenses decreased until 2012 but increased between 2012 and 2015.

**Figure 13.** Municipal Court other operating expenditures by category (2008-2015)



<sup>45</sup> There was no audit of the Court in 2008 and 2009. Because the categories of expenses tracked in the Court's data and those tracked in the audit reports differed, evaluators used the numbers provided by Court staff for all years in order to compare amounts spent in each category.

Court staff provided information to evaluators about expenses that appeared to be outliers based on typical spending levels during the eight-year period. According to Court staff:

- “Other” expenses were higher in 2010 because the category included costs for a new scanner and server.
- Accounting expenses were higher in 2008 because the Court was overcharged by its accounting firm. Court staff stated that the firm was billing the Court for bookkeeping that was already performed by court staff. Accounting expenses were higher in 2010 because the Court hired a forensic auditor to investigate the poor accounting work done prior to 2009.
- The amount spent on supplies decreased because the Court made an effort to decrease these costs. For example, according to staff, the Court reduced costs by no longer allowing sections of Court to purchase their own printer cartridges.
- The increase in professional service costs in 2015 was due to costs associated with the upcoming Municipal and Traffic Court consolidation. The Court hired the National Center for State Courts as a consultant to develop a planning document for the consolidation.
- Court staff were not sure why building expenses were higher in 2008 but stated that 2008 was the year the Court returned to their building after Hurricane Katrina and they had to replace furniture, make repairs, and clean. The building expenses in 2014 were for small renovations that the Court had delayed in anticipation of a large-scale renovation but could no longer defer.

## **TRANSFERS AND FUND BALANCES**

Municipal Court revenues did not equal expenditures each year. In years in which revenues, including self-generated monies, grants, and the allocation from the City exceeded expenditures, the Court saved money for later years.<sup>46</sup> In other years revenue was lower than expenditures. In those years the Court used surplus money from previous years to pay for expenses or “owed” money to the City for unpaid payroll expenses.

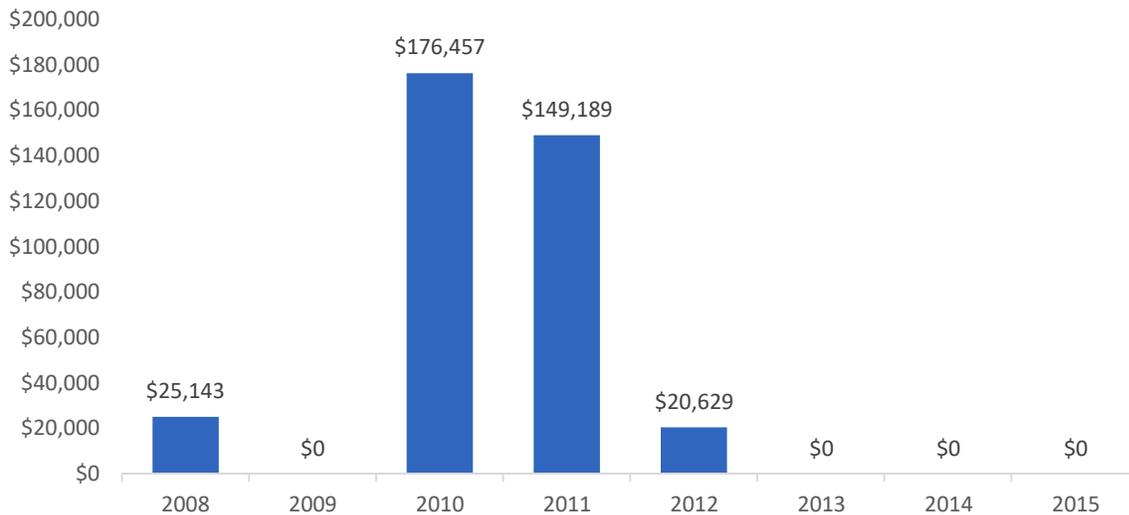
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<sup>46</sup> See Figure 6 for a detailed breakdown of Court revenue sources.

## YEAR END SPLIT

When revenues exceeded expenditures, the Court saved some of its self-generated monies in funds it controlled. By 2010 the Court had accumulated \$2.5 million in savings. The ordinance that established the JEF also required the Municipal Court to split with the City any excess revenue remaining in the fund at the end of the year.<sup>47</sup> See Figure 14 for the amount the Court transferred to the City as the result of this income split at the end of each year.

**Figure 14.** Municipal Court year-end income split with the City (2008-2015)



## “OWING” MONEY TO THE CITY

The City performed the Court’s payroll, and through the City’s yearly budget process the City Council appropriated General Fund monies to cover a portion of the Court’s payroll costs. The City considered the Court to be responsible for paying any payroll costs not covered by this appropriation. This arrangement contradicted the legal requirement that the City fund the Court’s payroll.

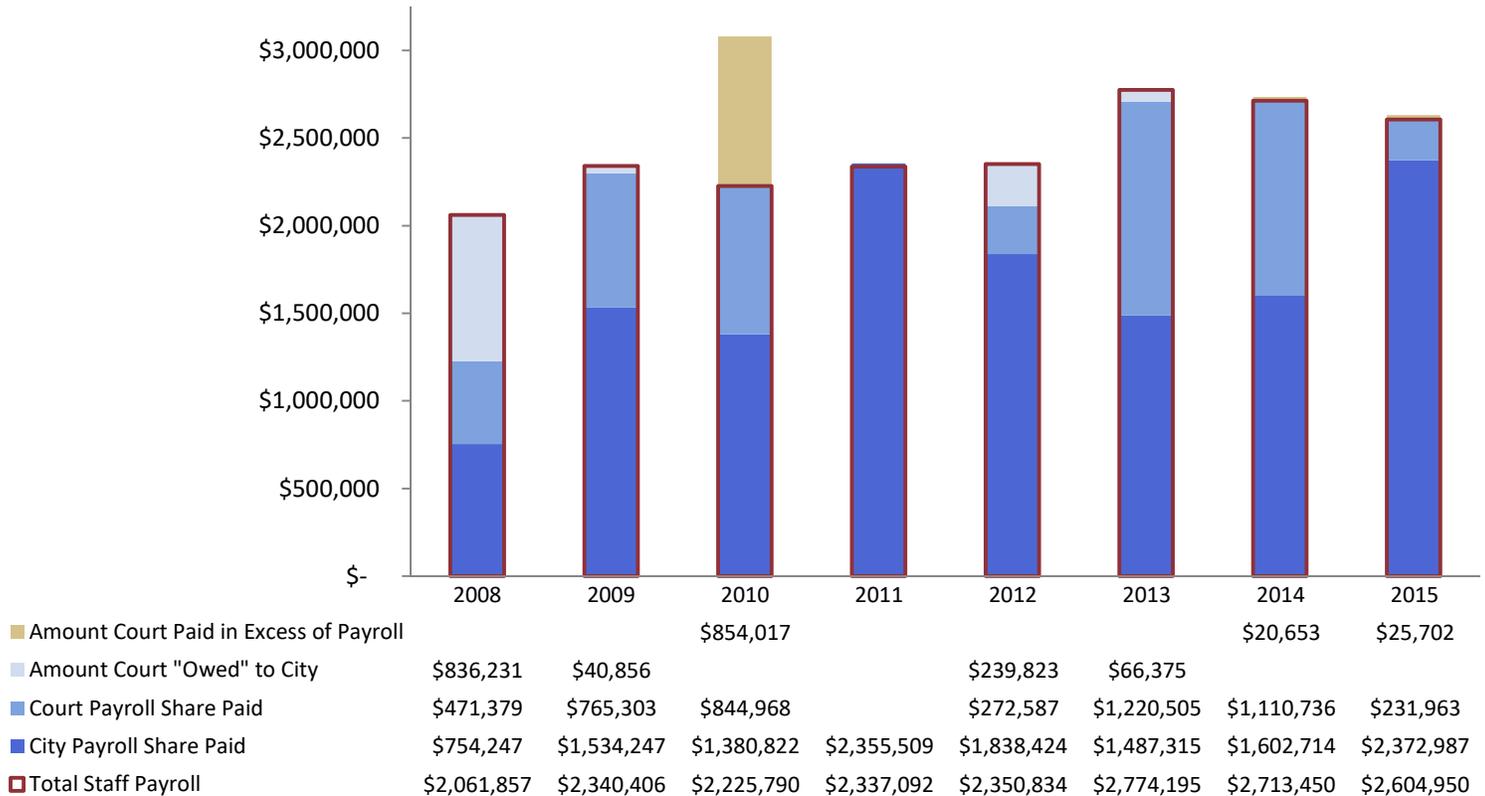
The City processed the Court’s payroll from a separate reimbursable fund and paid court staff from this fund whether or not the City had appropriated sufficient funds to cover the cost. The City’s accounting department billed the Court for the

<sup>47</sup> City Code Sec. 50-6.

remaining balance each month the Court’s allocation did not cover payroll expenses.

Municipal Court’s contributions to the reimbursable payroll fund varied by year depending on how much the City Council budgeted for the fund and whether or not the Court had monies available for payroll expenses. When there was less money available than needed, the Court ended the year “owing” money to the City.<sup>48</sup> When there were sufficient resources available, the Court could reimburse the City for money owed from previous years. See Figure 15 for an illustration of the Court’s financial situation in each year from 2008 through 2015 as documented in the Court’s financial statements.

**Figure 15.** Municipal Court and City payroll sharing by year (2008 – 2015)<sup>49</sup>



<sup>48</sup> Because both the City and the Court considered this money to be owed to the City by the Court, the report uses this terminology. State law, however, requires the City to pay these costs.

<sup>49</sup> Figure 15 includes the breakdown of total payroll for each year. For instance, in 2012 the City allocated \$1,838,424 to Court payroll, while the Court contributed \$272,587. Because the total payroll was \$2,350,834, the Court owed the City the remaining \$239,823.

Figure 15 illustrates the trends in City and Court payroll payments across the review period:

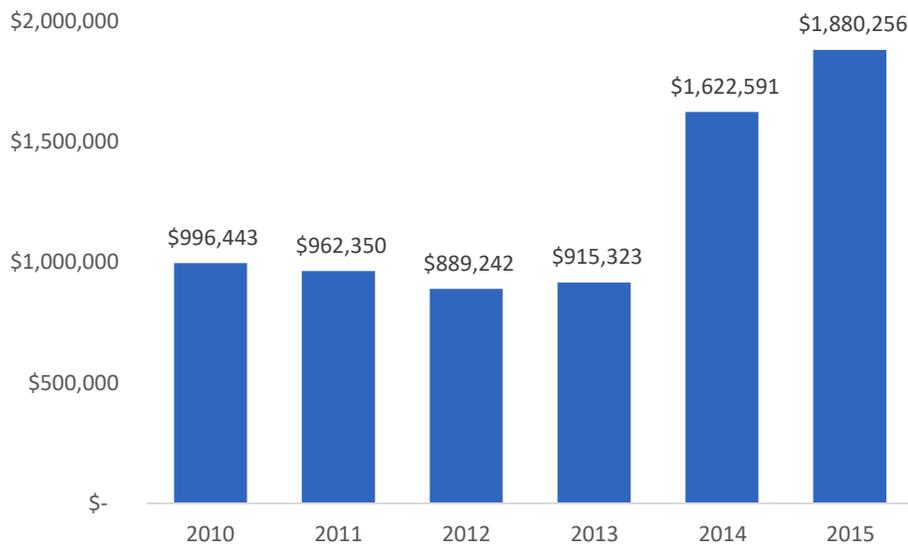
- In 2008, 2009, 2012, and 2013 the Court paid less than its required share of payroll and ended the year with funds due to the City, as indicated by the light blue shading.
- In 2010, 2014, and 2015, the Court paid more than its required share for the year and therefore decreased the amount it owed to the City overall. These excess payments are indicated in gold.
- In 2011 the City Council appropriated the entire cost of Municipal Court staff as indicated by the dark blue shading and the Court did not contribute to payroll costs.

The Court's third-party auditors recorded the cumulative amount that Municipal Court owed to the City each year in the year-end financial statements. In 2010 the Court owed just under \$1 million to the City. As shown in Figure 16, the amount owed decreased slightly over the next three years, but then increased to \$1.6 million in 2014 and \$1.9 million in 2015.<sup>50</sup>

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<sup>50</sup> These are the amounts the Court reported owing to the City. The amounts the City reported the Court owing for payroll differed significantly, making it difficult to determine the actual amount of money owed.

**Figure 16.** Total amount Municipal Court reported “owing” to the City (2010-2015)<sup>51</sup>



#### OTHER TRANSFERS

The Court recorded three other transfers in its financial statements in addition to expenses and year-end splits. In 2012 an OIG audit found that the Court was improperly collecting building and maintenance fees on bond forfeitures.<sup>52</sup> After the OIG issued a public letter regarding this finding, the Court transferred \$42,466 to the City in 2012, half of the building and maintenance fees collected from bond forfeitures.

The two other transfers, \$1 million in 2011 and \$525,000 in 2014, transferred savings the Court had accumulated over time to the City.

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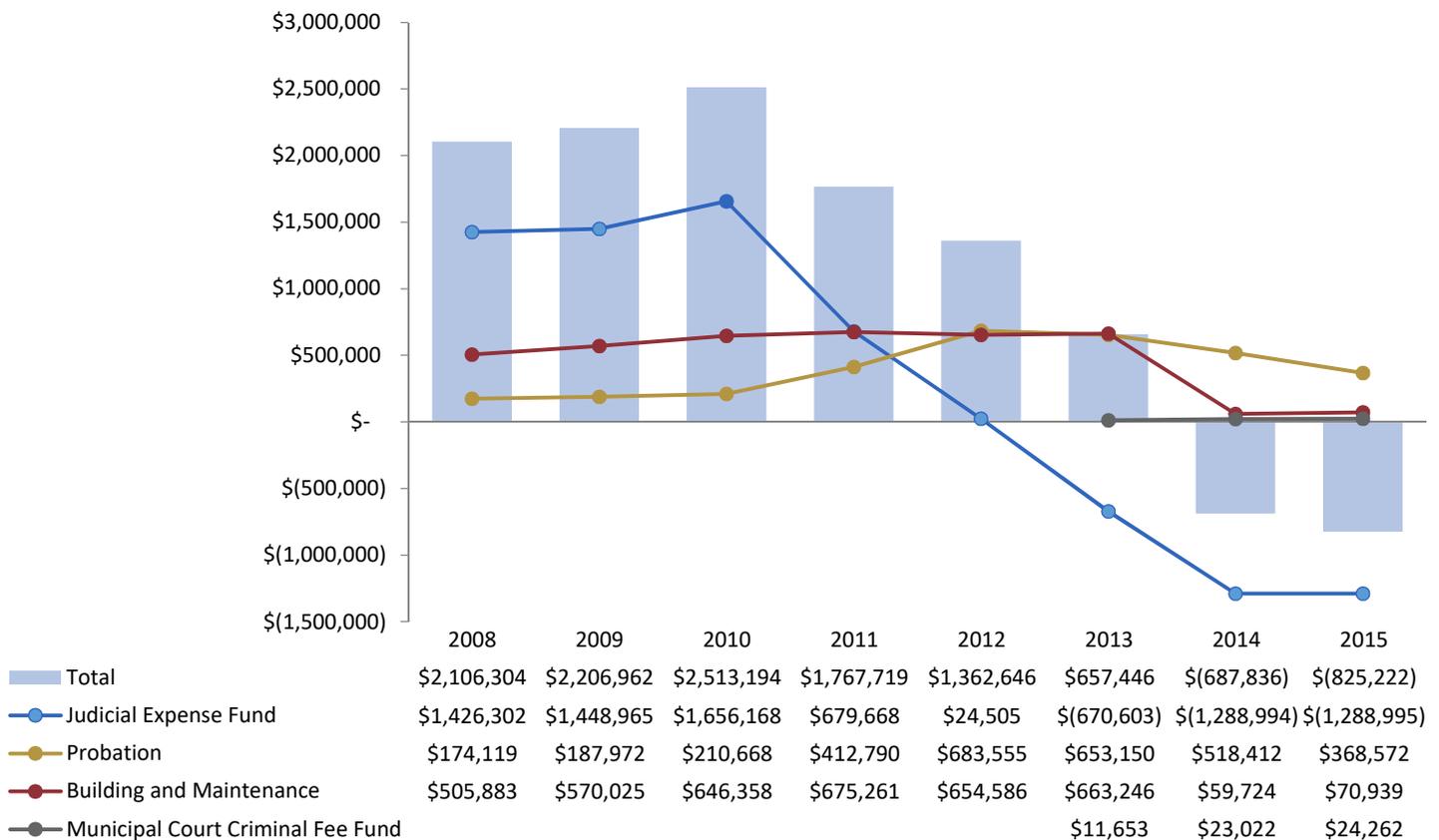
<sup>51</sup> Because these numbers are taken from the Court’s audit, figures for 2008 and 2009 are not available because no audit was conducted in those years.

<sup>52</sup> Edouard Quatrevaux, Inspector General, Office of Inspector General, City of New Orleans, Public Letter to Desiree Charbonnet, Chief Administrative Judge, New Orleans Municipal Court, 17 July 2012, accessed June 6, 2016, [http://www.nolaoig.gov/index.php?option=com\\_mtree&task=att\\_download&link\\_id=77&cf\\_id=55](http://www.nolaoig.gov/index.php?option=com_mtree&task=att_download&link_id=77&cf_id=55).

## FUND BALANCES

The Court’s revenues, expenses, savings, borrowings, and transfers all affected the Court’s fund balances over time. At its highest point in 2010, the Municipal Court JEF had a fund balance of \$1.7 million in savings, but by 2014 and 2015 the JEF had a negative balance of \$1.3 million. The Court’s other funds (i.e., the Probation Fund, Building and Maintenance Fund, and Criminal Expense Fund) registered positive balances during this period.<sup>53</sup> See Figure 17 for these fund balances by year.

**Figure 17.** Municipal Court cumulative year-end fund balances (2008-2015)



<sup>53</sup> The Probation Fund accounted for fees collected under La. R.S. 13:2500.1, and the Building and Maintenance Fund accounted for fees collected under City Code Sec. 50-149. The Court began separately accounting for the Criminal Fee Fund in later years to account for fees collected under La. C.Cr.P. Art. 895.1.

### III. INFORMAL FINANCIAL ARRANGEMENTS

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In the course of the above analysis, evaluators calculated the full cost of the Court and identified all sources of revenue. Evaluators determined that the full cost of operating the Court increased by over \$800,000 from 2008 through 2015, an increase of 21 percent.

Three entities (i.e., City, State, Court) were responsible for funding the Court, and a complete picture of court finances emerged only after evaluators examined three sets of financial records. As a result, it would be difficult for government decision-makers and the public to gauge the Court's financial situation accurately, assess its optimal funding level, and ensure accountability for the efficient use of funds.

**Finding 1: The City and the Court's shared responsibility for funding (1) contributed to informal financial arrangements inconsistent with standard financial practices, and (2) created a potential impediment to due process.**

The lack of clarity regarding the obligations of the City and the Court to fund Court expenses led to the use of informal financial arrangements that limited the transparency of the Court's funding and increased the risk of accounting discrepancies. This funding structure contributed to two problems. First, the shared funding obligation contributed to wide variations in the amount provided for payroll each year, creating unreliable funding streams for the Court and prompting ad hoc transfers of funds between the Court and the City. Second, the fact that the Court generated a portion of its own funding could undermine the due process rights of defendants.

The City and Court each contributed to funding court payroll, but the ambiguity of the legal framework failed to delineate clearly each entity's responsibilities. State law required the City to fund most of the Court's payroll.<sup>54</sup> However, despite the

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<sup>54</sup> See Figure 7 for a detailed breakdown of entities responsible for funding Court expenses.

City's legal obligation, City and state laws also authorized the Municipal Court to establish funds that could be used to fund payroll.<sup>55</sup>

As shown earlier, the portion paid by the Court and the City varied widely from year to year and resulted in constantly shifting financial situations for the Court, which impeded rational strategic and financial planning. The Court's contribution to its overall expenses ranged from 12 percent in 2011 to 55 percent in 2008 and was inversely related to the amount the City paid.<sup>56</sup>

The dual funding structure also led to the creation of multiple records of court finances, which reduced the Court's financial transparency and made it difficult to determine how the Court spent its resources and to assess the efficiency and effectiveness of court operations.<sup>57</sup>

Lastly, the informal financial arrangement between the Court and the City resulted in unreliable payroll accounting and other instances of questionable accounting practices, which included deficit spending, problematic transfers of funds, and Court retention of fine money due to the City.

### **UNRELIABLE PAYROLL ACCOUNTING**

The City and Court negotiated the amount each would contribute to payroll each year through the City's budget process. This system resulted in two problems with respect to payroll accounting: (1) lack of transparency concerning the costs, revenues, and obligations of the court, and (2) deficit spending by the Court when payroll expenditures exceeded available revenue.

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<sup>55</sup> The City Code established a Municipal Court Judicial Expense Fund but did not include directives for how it should be used. See City Code Sec. 50-6. In 2011 a Judicial Expense Fund was established in state law with the directive that it could be used for "any operating expense of the court, including salaries for court reporters, bailiffs, minute clerks, and other court personnel," except for judges' salaries. See La. R.S. 13:2496.4. La. R.S. 13:2500.1 established a probation department special fund administered by the judges to fund probation staff.

<sup>56</sup> See Figure 8 for additional information about entities responsible for Court-related expenditures.

<sup>57</sup> For the purposes of this discussion evaluators are referring to payroll for non-judicial staff. The City and state shared responsibility for paying for judges' salaries and the City provided compensation for ad hoc judges. Municipal Court payroll accounting was very similar to Traffic Court payroll accounting. See: Office of Inspector General of the City of New Orleans, *Funding of Traffic Court* (New Orleans, LA: Office of Inspector General of the City of New Orleans, 2015), 41, accessed February 8, 2016, [http://www.nolaog.gov/index.php?option=com\\_mtreet&task=att\\_download&link\\_id=113&cf\\_id=37](http://www.nolaog.gov/index.php?option=com_mtreet&task=att_download&link_id=113&cf_id=37).

## LACK OF TRANSPARENCY

First, the full cost of the Municipal Court's payroll was impossible to calculate without reviewing two sources of information. The City's budget books reported the amount the City Council appropriated for Municipal Court payroll each year, and the amount the Court spent on payroll expenses appeared in the Court's report for the Louisiana Legislative Auditor. Neither report noted the amount the other entity spent on payroll: there was no single, complete accounting of Municipal Court's revenues and expenditures.

As a result, years in which both the Court and the City provided considerable funds for court personnel costs significantly underrepresented the total amount spent on court payroll. For example, the City reported in its budget book that it paid \$1,487,314 in payroll expenses for 2013, while the Court reported to the Louisiana Legislative Auditor that the Court spent \$1,220,505 on payroll in the same year.<sup>58</sup> Actual payroll costs for Municipal Court in 2013 were \$2,707,819 rather than half that amount. This total amount appeared in no single financial report.

Second, the amounts reported by the City and Court for the same expenses did not reconcile. Evaluators compared the amount the Court reported contributing to its payroll to the amount the City's accounting database showed the Court contributing. There was no year in which the amounts agreed; the largest discrepancy in reported amounts was more than \$900,000.

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<sup>58</sup> La Porte, *City of New Orleans Municipal Court Audit of Financial Statements December 31, 2013* (New Orleans, LA: La Porte, 2014), 5, accessed March 19, 2014, [http://app.la.state.la.us/PublicReports.nsf/0/42B3B3B9CA82152186257D41006478B8/\\$FILE/000029AC.pdf](http://app.la.state.la.us/PublicReports.nsf/0/42B3B3B9CA82152186257D41006478B8/$FILE/000029AC.pdf); City of New Orleans, *2015 Annual Operating Budget*, 509. (The budget line item for Municipal Court personnel expenses is labeled "Other Operating.")

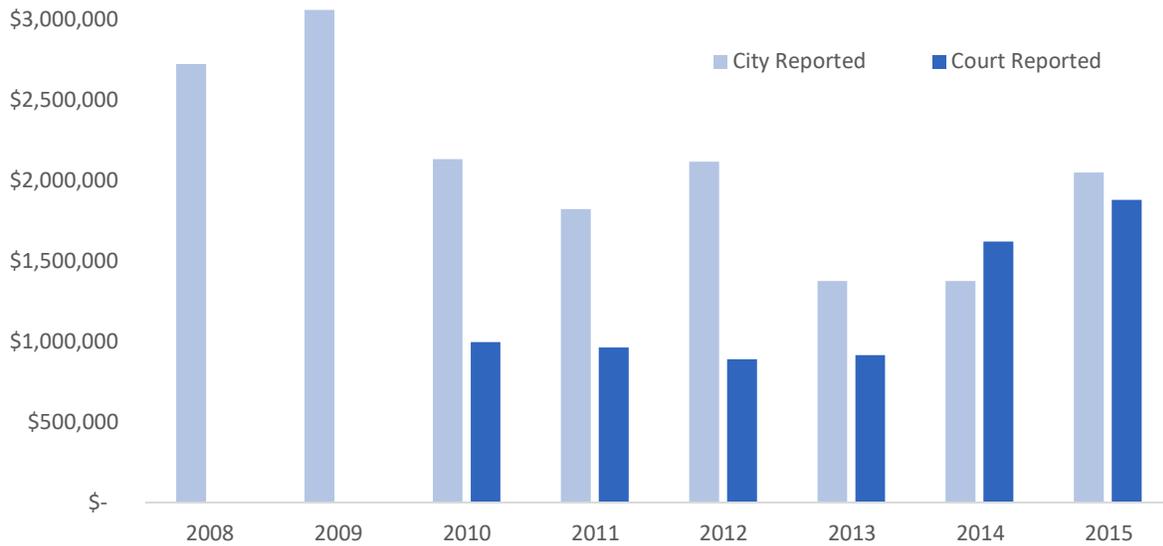
**Figure 18.** Municipal Court contributions to payroll as reported by the City and Court differed significantly<sup>59</sup>



The City and Court also reported conflicting information about the amount the Court owed to the City for payroll expenses. Figure 16 showed the amount the Court reported that it owed to the City, but these numbers did not reconcile with the amount the City recorded in its ledger. As shown in Figure 19, in all but one of the eight years reviewed, the City consistently reported that the Court owed more money than the Court reported. The difference between the two reports varied widely; in 2012 the City reported that the Court owed more than twice the amount reported by the Court.

<sup>59</sup> These numbers are the total of what the Court paid for its share of the year's payroll and any amount it paid towards previous years' payroll obligations.

**Figure 19.** Reported amounts Municipal Court “owed” the City also differed<sup>60</sup>



Although the divided responsibility for funding the Court did not necessarily cause these inconsistencies in accounting, the informal practices that emerged increased the likelihood that irregularities would occur and raised concerns about whether it would be possible to assess the Court’s financial situation accurately.

There was no single, complete financial report of all of Municipal Court’s revenues and expenditures, making effective auditing of its funds virtually impossible. And its financial transactions were both complex and unpredictable. These practices not only challenged financial transparency and efficiency, they could lead to waste and abuse.

#### **DEFICIT SPENDING**

At the beginning of each year, the City Council appropriated funds for Court payroll, an amount which varied depending on the revenue the City had available. The City’s budget office applied the amount appropriated by the City Council to the Court’s payroll expenses.

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<sup>60</sup> The Court did not report amounts owed in 2008 and 2009.

In the event the appropriation did not cover payroll expenditures, the City invoiced the Court for the balance. If the Court had funds available, it paid the invoice. However, by 2014 the Court no longer had additional funds to contribute. As a result, it ended the year with a negative fund balance of \$687,836, which it owed to the City.<sup>61</sup>

Budgeting deficit spending in this manner is not one of the budgeting options permitted by the Louisiana Local Government Budget Act, which did not allow deficit spending.<sup>62</sup> The convoluted system for funding Court payroll, and the opaque and unreliable accounting scheme, made it difficult to recognize a deficit. Moreover, it was not clear which entity had the legal obligation to rectify the problem.

### **TRANSFERS OF MUNICIPAL COURT FUNDS**

Financial practices for managing Court surpluses were also problematic. Although state laws required the City to fund most expenses in Municipal Court, the state also authorized the Court to collect fees to fund itself.<sup>63</sup> The Court collected an average of more than \$1 million per year for its expenses between 2008 and 2015, but it did not always spend the entire amount. The Court reported having saved more than \$2.5 million in reserve funds by the end of 2010.

There were two instances in which the Court transferred a fund balance to the City. In 2010 when the Court reported a surplus of \$2.5 million, the City was facing a potential budget deficit.<sup>64</sup> City administrators asserted that it was inappropriate

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<sup>61</sup> See Figure 15 for additional information about Court and City payroll sharing; see Figure 17 for additional information about the Court's year-end fund balances.

<sup>62</sup> La. R.S. 39:1309(B).

<sup>63</sup> See Figures 4 and 7 for additional information about this funding structure.

<sup>64</sup> In 2008 and 2009 the City relied on one-time grants from the federal government to fund operating expenses because tax revenue decreased after Hurricane Katrina. Federal government Community Disaster Loans (CDLs) helped the City finance its police department and other City functions by supplementing the tax revenue lost due to Hurricane Katrina. During those two years, the City relied on these one-time funds to pay for NOPD personnel expenses. In 2010 the funding was exhausted, and the City's budget shrank by 7 percent in 2010 and another 4 percent in 2011. See: Office of Inspector General of the City of New Orleans, *New Orleans Police Department Funding* (New Orleans, LA: Office of Inspector General of the City of New Orleans, 2015), 10-11, accessed July 30, 2015, [http://www.nolaog.gov/index.php?option=com\\_mtree&task=att\\_download&link\\_id=115&cf\\_id=37](http://www.nolaog.gov/index.php?option=com_mtree&task=att_download&link_id=115&cf_id=37).

for the Court to amass a reserve fund when the City needed funds to pay for other high priority needs in addition to funding the Court.

In 2011 the City asked the Court to transfer \$1 million of its \$2.5 million surplus to the City. Both City and Court staff explained to evaluators that the City agreed to relieve the Court of an earlier obligation it made to fund a building renovation in exchange for the \$1 million, and the City provided the Court with a letter to this effect. Court staff also believed the money would be used to eliminate funds owed to the City for payroll.

In 2014 a similar situation occurred when the City's Chief Administrative Officer learned that the Court had a significant amount of money saved in the Building and Maintenance Fund. The CAO decreased the amount proposed in the City's budget for Municipal Court payroll, expecting the Court to contribute some of the savings in the Fund to the Court's payroll expenses.

However, the Municipal Court judges did not use Building and Maintenance Fund monies for payroll. Instead, they accounted for the 2014 payment as a transfer to the City rather than include the funds with payroll payments. The City and Court reported these funds in two different ways in their financial records, confounding efforts to develop an accurate picture of the Court's finances. These transactions may provide a possible explanation for why amounts reported by the City and the Court could differ.

In addition, the Louisiana Constitution prohibits political subdivisions, such as the Court, from donating funds, or anything else of value, to any other entity.<sup>65</sup> In order for a transfer of funds to be constitutionally valid, it cannot be gratuitous, and the Court must have a "demonstrable, objective, and reasonable expectation of receiving at least equivalent value in exchange" for the transfer.<sup>66</sup>

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<sup>65</sup> La. Const. art. VII, §14(A).

<sup>66</sup> La. Atty. Gen. Op. No. 12-0011; La. Atty. Gen. Op. No. 08-0285. La. Const. art. VII, §14(E) provides an exception for the transfer of movable surplus property between political subdivisions with public safety functions. However, the definition of surplus movable property when it appears in the Revised Statutes includes only nonconsumable movable property, which would exclude cash. La. R.S.33:4711.1.

The lack of formal documentation of the transfers made it difficult for either entity to demonstrate that the transfer resulted in an “equivalent value in exchange.” In the past, the Louisiana Supreme Court relied heavily on documentation of the transfer or expenditure to determine the intent of the parties and whether the transfer was gratuitous.<sup>67</sup> For this reason, the Attorney General recommended in his opinions that political subdivisions enter into a formal arrangement such as a Cooperative Endeavor Agreement so that their intentions in making the transfer would be sufficiently documented.<sup>68</sup>

The 2011 transfer was accompanied by a letter from the City stating that the money was linked to the Court’s commitment to contribute to capital expenses for a new court complex. However, it was unclear from that letter whether the Court anticipated that it would receive equivalent value in exchange for the transfer.<sup>69</sup> Moreover, evaluators’ interviews with Court and City staff indicated that their understandings of the agreement may have differed. The informal nature of these transfers from the Court to the City decreased the likelihood of adequate documentation, making it difficult to establish that they were constitutionally permissible.

With respect to the 2014 transfer, Court staff indicated that there was a verbal agreement that the City would credit the amount of the transfer (\$525,000) toward payroll, and also “forgive or appropriate more funds” for the \$200,833 balance of the 2014 payroll that the JEF lacked the money to pay. At the time of this evaluation, the City and the Court were disputing the \$725,833, highlighting the uncertainty that can arise from such ad hoc transfers, especially when they are not sufficiently documented.

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<sup>67</sup> La. Atty. Gen. Op. No. 08-0285.

<sup>68</sup> Ibid. The City Attorney had no record of any Cooperative Endeavor Agreements between the City and the Court during the period being studied. The letter provided to the judges may be a less formal effort to comply with these requirements.

<sup>69</sup> The letter referenced the City’s deficit and requested that Municipal Court “act expeditiously to forward the \$1.0 million you have available to the City of New Orleans as soon as possible this year. While the \$1.0 million will be deposited in our general fund, you have the commitment of Mayor Landrieu and our entire administration that we will construct the Court Complex facility exactly as we have promised—including the facilities for the Municipal Court that you all have requested. We will use additional sources of capital funding to replace the full contribution from Municipal Court.”

## RETAINING FINES

In 2011 the OIG found that the Court was not remitting fines to the City as required by law.<sup>70</sup> In its response to the report, the Court stated that it retained fines, with tacit agreement from the City, in order to pay expenses that the City did not fund.<sup>71</sup> The Court began remitting fine money to the City after the OIG issued the report; court revenue subsequently dropped from an average of \$1.2 million per year to just under \$700,000 per year.<sup>72</sup>

Although the Court was remitting most fine money, the Court was still retaining fines associated with charges of contempt. According to Court staff, the Court did so because judges believed that penalties associated with contempt of court were fees and not fines.

Notwithstanding the Court's interpretation, Article 25 of the Louisiana Code of Criminal Procedure outlines penalties for contempt and defines them as fines: "a court may punish a person adjudged guilty of contempt of court in connection with a criminal proceeding by a **fine** [emphasis added] of not more than five hundred dollars, or by imprisonment for not more than six months, or both."<sup>73</sup>

Legal counsel for the Court offered another interpretation of Article 25 during the course of this evaluation: the penalties associated with contempt were fines, but the Court was entitled to retain them because they were imposed to vindicate the authority of the Court rather than the City.

The ambiguity about court funding obligations created the potential for conflict between the City and the Court over control of different revenue sources. In the case of contempt fine revenue, the Court offered legal interpretations supporting a compromise that contradicted the existing laws regarding disposition of fines and raised concerns about transparency and clear accounting.

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<sup>70</sup> Office of Inspector General, *A Performance Audit of the Municipal Court's Remittances to the City* (New Orleans, LA: Office of Inspector General, 2011), 5, accessed June 8, 2016, [http://www.nolaig.gov/index.php?option=com\\_mtree&task=att\\_download&link\\_id=133&cf\\_id=37](http://www.nolaig.gov/index.php?option=com_mtree&task=att_download&link_id=133&cf_id=37). See also La. R.S. 13:2501.

<sup>71</sup> OIG, *Municipal Court's Remittances*, 6.

<sup>72</sup> Office of Inspector General, *Follow-up Report: Performance Audit of the Municipal Court's Remittances* (New Orleans, LA: Office of Inspector General, 2012), 4, [http://www.nolaig.gov/index.php?option=com\\_mtree&task=att\\_download&link\\_id=77&cf\\_id=37](http://www.nolaig.gov/index.php?option=com_mtree&task=att_download&link_id=77&cf_id=37). See Figure 2 for yearly amounts of court collections.

<sup>73</sup> La. C.Cr.P. Art. 25.

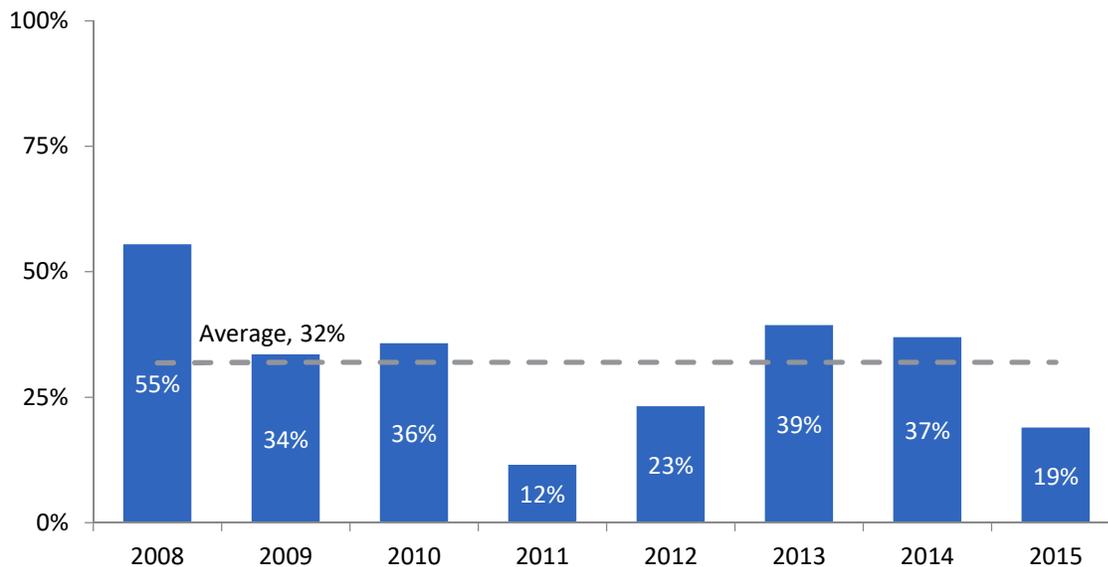
## IMPEDIMENTS TO PROCEDURAL DUE PROCESS AND EQUAL PROTECTION

Higher courts and professional organizations have raised concerns about due process in situations in which courts are responsible for raising a portion of their operating budgets by assessing fines and fees. The Court's byzantine funding structure increased the risk of compromising defendants' constitutional rights.

### **IMPARTIAL DECISION-MAKER**

As shown in Figure 20, between 2008 and 2015 Municipal Court judges were responsible for raising funds to pay for an average of 32 percent of the expenses associated with court operations.<sup>74</sup>

**Figure 20.** Municipal Court judges raised 32% of court expenses on average



The responsibility of judges to raise funds for Court operations created a potential conflict of interest because judges had a financial incentive to find defendants guilty. Both the National Center for State Courts and the OIG have previously commented on the extent to which Municipal Court relied on fees to finance court

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<sup>74</sup> The funding structure was similar to the situation described in a 2015 OIG report on New Orleans Traffic Court funding. See OIG, *Funding of Traffic Court*, 33-37.

operations.<sup>75</sup> Federal courts and the Louisiana Supreme Court have also issued numerous opinions on the topic of court fees and the conflict of interest they can create.<sup>76</sup>

The Conference of State Court Administrators (COSCA) argued against relying on fees to fund courts in its Standard 4.1:

Neither courts nor specific court functions should be expected to operate from proceeds produced by fees and miscellaneous charges. Courts should receive adequate financial funding from governmental sources to enable them to fully carry out their constitutional mandates.<sup>77</sup>

Municipal Court funded an average of 32 percent of the cost of expenditures from 2008 through 2015, an amount significantly less than the 80 percent of its cost the Traffic Court funded.<sup>78</sup> However, a court that generates 32 percent of its funding raises the specter of conflict of interest. In *Rose v. Village of Peninsula*, the U.S. District Court for the Northern District of Ohio found that funding 10 percent of

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<sup>75</sup> National Center for State Courts, Southeast Regional Office, *A Study of the Administration and Financing of the Orleans Parish Trial Courts* (Williamsburg, VA: National Center for State Courts, 1989), 31 and 127; Office of Inspector General of the City of New Orleans, *Assessment of New Orleans' System of City Courts and Performance Review of New Orleans Traffic Court* (New Orleans, LA: Office of Inspector General of the City of New Orleans, 2010), 51-52, accessed February 11, 2015, [http://www.nolaog.org/uploads/File/All/11-17-11\\_Final\\_Public\\_Report\\_10013.pdf](http://www.nolaog.org/uploads/File/All/11-17-11_Final_Public_Report_10013.pdf).

<sup>76</sup> In *Tumey v. Ohio*, the U.S. Supreme Court found that when judges, or those acting in a judicial capacity, relied on fees for compensation, there was a violation of defendants' right to due process. See *Tumey v. Ohio*, 273 U.S. 510 (1927). In *Ward v. Monroeville*, the Supreme Court found that the violation extended beyond direct compensation of judges and that the same "possible temptation" at issue in the *Tumey* case "may also exist when the mayor's executive responsibilities for village finances may make him partisan to maintain the high level of contribution from the mayor's court." See *Ward v. Village of Monroeville*, 409 U.S. 57, 60 (1972). In *Augustus v. Roemer*, the U.S. District Court for the Eastern District of Louisiana found that a defendant's due process rights were violated when judges had "complete executive control" over a judicial expense fund that was funded through surplus bail bond fees. See *Augustus v. Roemer*, 771 F. Supp. 1458 (E.D. La. 1991). The Louisiana Supreme Court has held that "Due Process requires that a decision maker not have a direct or indirect financial stake which would give a possible temptation to the average person as a decision maker to make him partisan towards maintaining a high level of revenue generated by his adjudicative function." See *Wilson v. City of New Orleans*, 479 So. 2d 891, 901 (La. 1985).

<sup>77</sup> Conference of State Court Administrators, *Standards Relating to Court Costs: Fees, Miscellaneous Charges and Surcharges and a National Survey of Practice* (June 1986), 9-10.

<sup>78</sup> OIG, *Funding of Traffic Court*, 11.

expenses from fees assessed on judgments was enough to cause a conflict of interest.<sup>79</sup>

Municipal Court judges recognized the dilemma: in 2013 one of the Municipal Court judges stated that he believed that the Mayor's proposed funding for the Court for the 2014 budget year was unconstitutional. "We cannot carry the burden of operating a court of criminal jurisdiction on the back of the people appearing before us," stated the judge.<sup>80</sup>

## EQUAL PROTECTION

The pressure on judges to generate revenue for court operations may lead to unconstitutional behavior that violates defendants' rights to equal protection under the law. For example, an indigent defendant who suffered from chronic physical and mental disabilities had been arrested in New Orleans and charged with begging in 2007. A Municipal Court judge found the defendant guilty of begging and sentenced him either to pay a \$200 fine or spend 20 days in jail.

The defendant brought a class action suit against the Municipal Court judges.<sup>81</sup> The suit alleged that the practice of jailing individuals who could not afford to pay fines violated the 14<sup>th</sup> Amendment to the United States Constitution because it treated those who could afford to pay fines differently from those who could not: indigent defendants who could not pay fines were sentenced to jail time while those who were non-indigent paid fines. The case was dismissed before trial after the judges agreed not to use this practice in future, but there was no formal settlement.

Municipal Court judges have consistently stated that the result of the case reduced their ability to raise revenue.<sup>82</sup>

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<sup>79</sup> *Rose v. Village of Peninsula*, 875 F. Supp. 442, 451 (N.D. Ohio 1995).

<sup>80</sup> City of New Orleans City Council Hearings on 2014 Proposed Budget, October 28, 2013, at 1:23:31, accessed June 8, 2016, [http://cityofno.granicus.com/MediaPlayer.php?view\\_id=7&clip\\_id=1680](http://cityofno.granicus.com/MediaPlayer.php?view_id=7&clip_id=1680).

<sup>81</sup> Complaint, *Dear v. Shea*, 07-1186 (E.D. La. March 6, 2007).

<sup>82</sup> City of New Orleans City Council Hearings on 2008 Proposed Budget, November 16, 2007, at 2:34:00, accessed May 24, 2016, [https://www.youtube.com/watch?v=VKw84nBg\\_04&list=PLy1\\_Soh9xhmAPHISXwFUtPfyortsRr6gn&index=5](https://www.youtube.com/watch?v=VKw84nBg_04&list=PLy1_Soh9xhmAPHISXwFUtPfyortsRr6gn&index=5); City of New

**Recommendation 1. The City should fund Municipal Court operations through a general fund appropriation. The City and Court should increase the transparency of their financial practices, and the City should lobby the state legislature to repeal laws creating fees to fund Municipal Court operations.**

Evaluators found that the Court’s ability to raise and administer funds led to informal financial arrangements that undermined transparency and effective strategic planning and created a potential impediment to due process. To remedy these problems, the OIG recommends that the City Council fully fund Court operations through a general fund appropriation.

The City and Court could improve the transparency and accuracy of their accounting practices by entering into Cooperative Endeavor Agreements to define the purpose of transfers of funds. In addition, the City could request an accounting of fines assessed and collected from defendants (including fines for contempt) and reconcile those amounts with the amounts the Court paid to the City each month.

The City should also lobby the state legislature to repeal laws that authorize judges to collect fees and eliminate the funds associated with these fees. This funding structure threatens the impartiality of judges by providing a financial incentive to deny defendants equal access to justice.

Evaluators recommend the elimination of Municipal Court fees and funds administered by the judges. Municipal Court should adopt a similar arrangement to that in effect for Traffic Court: all fines and fees should be remitted to the City, which would fully fund the Court in accordance with its funding obligations under state law. Ultimately, this arrangement should be codified in state law.

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Orleans City Council Hearings on 2009 Proposed Budget, November 5, 2008, at 0:20:09, accessed May 24, 2016, [https://www.youtube.com/watch?v=Rnes7p8vBl8&list=PLy1\\_Soh9xhmAPHISXwFUtPfYortsRr6gn&index=10](https://www.youtube.com/watch?v=Rnes7p8vBl8&list=PLy1_Soh9xhmAPHISXwFUtPfYortsRr6gn&index=10); City of New Orleans City Council Hearings on 2011 Proposed Budget, November 3, 2010, at 3:56:26, accessed May 24, 2016, [http://cityofno.granicus.com/MediaPlayer.php?view\\_id=7&clip\\_id=709](http://cityofno.granicus.com/MediaPlayer.php?view_id=7&clip_id=709).

## IV. MUNICIPAL COURT PERFORMANCE MEASURES, 2008–2015

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Evaluators examined the extent to which the Municipal Court measured performance and accurately demonstrated its need for resources. The National Center for State Courts has stressed the importance of “performance data for preparing, justifying, and presenting budgetary requests” because they provide “a critical foundation for building evidence-based requests for new initiatives and additional resources.”<sup>83</sup>

Documenting performance using reliable data is particularly critical at a time when the Court is undergoing significant changes. Additionally, “taxpayers and their elected representatives are legitimately entitled to raise questions about efficiency and effectiveness in the expenditure of court funds.”<sup>84</sup> Municipal Court currently provides data on some performance measures, but these measures are insufficient both to develop and justify effective policy changes and to allow the City to assess the Court’s use of City-provided funding.

**Finding 2. Municipal Court performance reporting did not allow decision-makers to evaluate its performance or assess the Court’s financial needs.**

### EXTERNAL FACTORS AFFECTING FUNDING NEEDS AT THE COURT

Court staff and judges identified several external factors that affected the funding needs of the Court in recent years. First, they asserted that changes in New Orleans Police Department (NOPD) policies reduced the revenue available. Second, according to Municipal Court judges, the work of the Municipal Court changed fundamentally from 2008 through 2015.

The Court took on three new responsibilities: adjudication of state cases, court supervised diversion, and alternative sentencing. These changes affected all stages of the adjudication process, including the number and type of cases, how cases were filed in court, and how judges made sentencing decisions. These

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<sup>83</sup> National Center for State Courts, *Courtools: Why Measure Performance* (Denver, CO: Court Consulting Services, National Center for State Courts, 2005), 2, accessed February 11, 2015, [http://www.courtools.org/~media/Microsites/Files/CourTools/CourTools\\_Trial\\_Why\\_Measure.ashx](http://www.courtools.org/~media/Microsites/Files/CourTools/CourTools_Trial_Why_Measure.ashx).

<sup>84</sup> *Ibid.*, 3.

changes in turn altered the duties of court staff, the nature of their work, and the Court's ability to raise funds. However, the Court struggled to define meaningful ways to describe its changing financial needs.

### **NOPD POLICY CHANGES**

Municipal Court funded itself in part through fees paid by defendants found guilty in court. As a result, the number of cases the Court heard and the number of defendants judges found guilty likely affected the amount of revenue it collected. Municipal Court judges stated in budget hearings that two policy decisions by NOPD reduced the amount of revenue the Court generated: NOPD's decision to focus officers' attention on more serious crime and the decision to issue summonses instead of conducting custodial arrests for some municipal offenses.<sup>85</sup>

In fact, both cases filed and self-generated revenue decreased. Municipal Court reported the number of cases filed to the Louisiana Supreme Court each year. These reports show that the Municipal Court averaged 78,000 cases per year from 2000 through 2004, prior to Hurricane Katrina. After the storm, filings dropped to below 50,000 and then continued to decline to approximately 25,000 in 2015.<sup>86</sup> Also, the amount of self-generated revenue the Municipal Court had available to fund itself decreased 26 percent from 2012 through 2015, from just over \$1 million to less than \$800,000.<sup>87</sup>

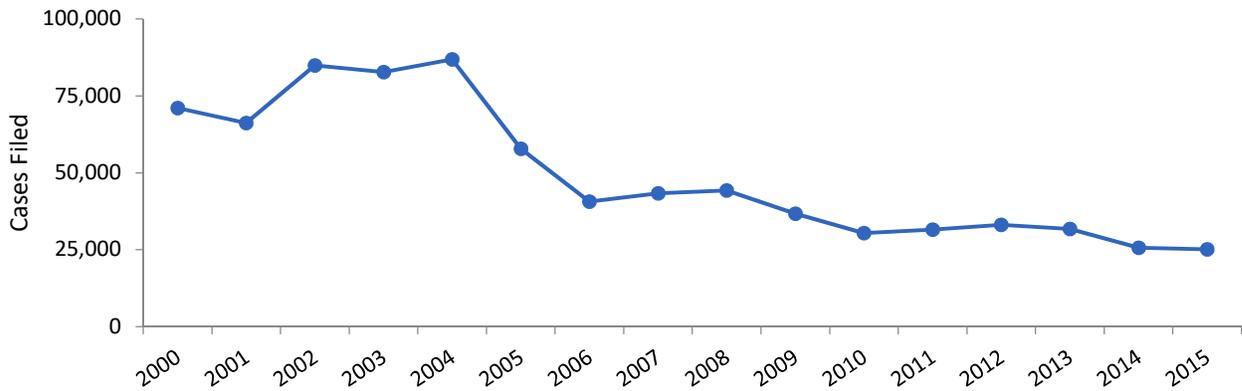
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<sup>85</sup> City of New Orleans City Council Hearings on 2011 Proposed Budget, November 3, 2010, at 3:30:50 and 3:48:08, accessed June 8, 2016, [http://cityofno.granicus.com/MediaPlayer.php?view\\_id=7&clip\\_id=709](http://cityofno.granicus.com/MediaPlayer.php?view_id=7&clip_id=709).

<sup>86</sup> Some of the decrease in case filings can be attributed to the decrease in population after Hurricane Katrina.

<sup>87</sup> See Figure 5 for additional information about Court revenues.

**Figure 21.** Cases filed in Municipal Court have decreased since Hurricane Katrina<sup>88</sup>



The 2008 ordinance that prohibited custodial arrests for municipal offenses except in certain circumstances could also result in reduced revenue from unclaimed and forfeited bonds.<sup>89</sup> Municipal Court judges stated in a budget hearing that this policy change reduced the revenue they could collect because defendants who were summoned to Court did not pay bonds, but detainees who were arrested often posted bonds in order to be released from jail.<sup>90</sup>

### ADJUDICATING STATE CASES

Although the Municipal Court caseload was decreasing overall, the District Attorney’s decision to prosecute stand-alone misdemeanor cases in Municipal Court changed the composition of cases filed at the Court.<sup>91</sup> Prior to 2010 the District Attorney’s Office prosecuted misdemeanor violations of state law before

<sup>88</sup> Figure 21 includes both municipal offenses and state misdemeanor cases. The breakdown between the two types of cases will be analyzed further in Figure 22.

<sup>89</sup> City Code Sec. 54-28.

<sup>90</sup> City of New Orleans City Council Hearings on 2011 Proposed Budget, November 9, 2009, at 3:30:50 and 3:56:26, accessed June 8, 2016, [http://cityofno.granicus.com/MediaPlayer.php?view\\_id=7&clip\\_id=709](http://cityofno.granicus.com/MediaPlayer.php?view_id=7&clip_id=709). Municipal Court fee collections averaged 45 percent less from 2011 through 2015 than from 2008 through 2010 (see Figure 2). Although these policy changes may have reduced revenue for Municipal Court, these losses would likely be offset in other parts of the criminal justice system, such as by reduced jail costs for detaining Municipal Court defendants and police manpower that could be reassigned to more emergent situations.

<sup>91</sup> Cases that included both felony and misdemeanor charges were still tried at Criminal District Court.

the magistrate commissioners at Criminal District Court. However, in *State v. Smalls* (2010) the state Supreme Court held:

Commissioners of the Magistrate Section of the Criminal District Court for the Parish of Orleans may not conduct trials or accept guilty pleas in misdemeanor cases, i.e., because they are not elected judges, the commissioners may not lawfully exercise the adjudicatory power of the state.<sup>92</sup>

According to staff at the District Attorney's office, after the ruling the District Attorney had trouble getting misdemeanor cases onto the docket at Criminal District Court. As a result, it was difficult for attorneys to prosecute cases within the one-year legal limit for prosecution. In 2011 the District Attorney's Office transferred all stand-alone state misdemeanors to Municipal Court.<sup>93</sup>

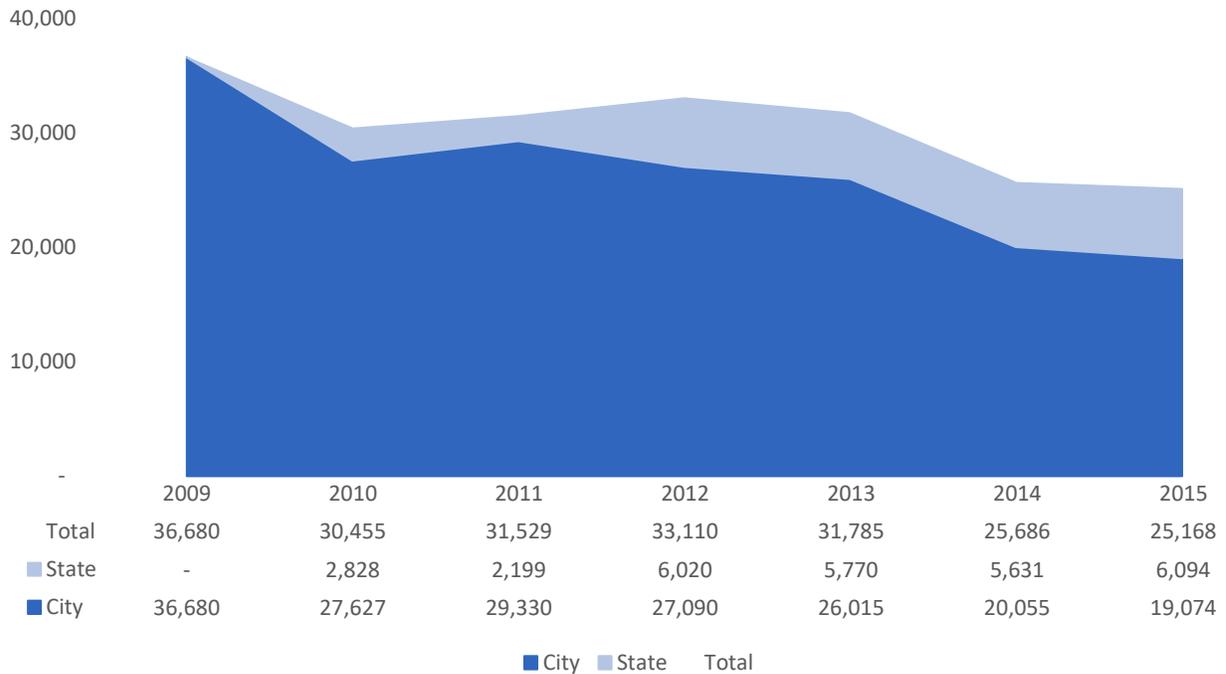
The composition of cases at Municipal Court changed as a result of the District Attorney's decision. According to reports filed by the Municipal Court Clerk of Court, the Court did not hear any state cases in 2009, but by 2015 nearly a quarter of cases filed in the Court were state cases.

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<sup>92</sup> *State v. Smalls*, 48 So. 3d 212 (La. 2010).

<sup>93</sup> City Council Criminal Justice Committee Meeting, July 6, 2011, at 1:33:45, accessed January 13, 2015, [http://cityofno.granicus.com/MediaPlayer.php?view\\_id=7&clip\\_id=927](http://cityofno.granicus.com/MediaPlayer.php?view_id=7&clip_id=927).

**Figure 22.** State and city cases filed in Municipal Court (2009-2015)<sup>94</sup>



Although Municipal Court staff contended that it took more work and resources to adjudicate state cases, the Court did not have data substantiating the expenditure of additional time and money. Furthermore, during the years when the Court reported the average number of days to disposition, the number fluctuated from 305 days in 2013 to 172 days in 2014 and 205 days in 2015. These numbers suggest that there was not a direct relationship between workload and the number of state cases: it is possible that the decline in the overall number of cases may have offset any increased work generated by the addition of state cases.

## **ADDITIONAL COURT PROGRAMMING**

### **COURT SUPERVISED DIVERSION**

The Court established four new diversion programs during the period of the OIG’s review. Diversion programs can offer defendants an opportunity to avoid criminal

<sup>94</sup> Data for 2008 case filings were not available. These figures came from forms Municipal Court submitted to the Louisiana Supreme Court each year, and those from earlier years could not be located.

prosecution and conviction, and one of their key objectives is to reduce the risk of future criminal behavior.

The Court supervised two diversion programs developed by the City's Law Department: one for defendants charged with first time marijuana possession and one for defendants charged as minors in possession of alcohol. The marijuana program included multiple visits with a mental health counselor, a \$200 program fee paid to the Court, and drug testing paid for by defendants.<sup>95</sup>

The minors in possession of alcohol program included attendance at one Mothers Against Drunk Driving meeting, eight hours of community service, and a \$150 fee paid to the Court's probation fund. Court probation staff oversaw defendant compliance with the terms of each of these programs. After successful completion of the program, prosecuting attorneys dismissed the charges.

The Court developed and oversaw two additional diversion programs. The Crossroads program diverted defendants charged with prostitution. The Court developed this program in partnership with a community-based non-profit, Women with a Vision. According to court staff, the program took six weeks to complete, and defendants were given training in subjects like developing healthy relationships, completing job applications, and interviewing for jobs. There were no fees associated with participation in this program, and after successful completion defendants' charges were dismissed.

The Court's final diversion program was the Community Alternatives Program developed in conjunction with the City's Health Department. Funded by grants from the U.S. Department of Justice, the program diverted defendants charged with non-violent crimes from prosecution if they successfully completed the program.

Health Department staff screened participants and coordinated the program, which connected defendants to social services, including treatment for mental illness, housing assistance, and addiction treatment. Participating defendants did not pay court fees, but might have to pay for drug tests.

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<sup>95</sup> The Law Department was responsible for prosecuting violations of the City's municipal code. The District Attorney also had a diversion program in place for defendants charged with some state misdemeanors, but the Court had a limited role in these programs.

## ALTERNATIVE SENTENCING

In reaction to the *Dear* case referenced earlier in this report, Court officials stated that they increased the use of community service sentences rather than rely exclusively on jail or fine sentences. According to information submitted to the City for its budget, the Court increased the number of community service hours sentenced from 24,226 in 2008 to 54,000 in 2011.<sup>96</sup> Court officials noted that this also had a negative impact on their budget.<sup>97</sup>

## PERFORMANCE REPORTING IN CITY BUDGETS

Only through the collection and dissemination of reliable data can the Court provide evidence of its workload and performance. Those data must demonstrate that the Court's needs changed and that its responses to changes in workload have been effective. However, the Court has not provided such evidence.

According to the City's annual budget books, from 2008 through 2010 the Court provided no measures of its performance: the City's budget indicated that the Court's "measures will be determined."<sup>98</sup> In 2011 the City began to report Municipal Court performance measures and reported measures for the three previous years. However, the performance measures, which measured the number of cases filed and the number of community service hours imposed, did not adequately track performance. These measures by themselves would not provide information that reflected the Court's goals regarding efficient operations or fair outcomes, nor would they provide evidence of increased workload or the need for additional resources.<sup>99</sup>

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<sup>96</sup> After 2011, the Court changed the measures it used, tracking the percentage of sentences that included community service instead.

<sup>97</sup> City of New Orleans City Council Hearings on 2008 Proposed Budget, November 16, 2007, at 2:33:50, accessed May 24, 2016, [https://www.youtube.com/watch?v=VKw84nBg\\_04&list=PLy1\\_Soh9xhmAPHISXwFUtPfyortsRr6gn&index=5](https://www.youtube.com/watch?v=VKw84nBg_04&list=PLy1_Soh9xhmAPHISXwFUtPfyortsRr6gn&index=5).

<sup>98</sup> The Court's performance measures appeared in the City's ResultsNOLA reports and the City's annual budget.

<sup>99</sup> The number of cases filed may have indicated changes in the Court's workload, but it did not provide any information about how the Court performed in resolving those cases. Furthermore, it was difficult to compare the Court's workload to that of other courts in the state for two reasons.

In fact, in 2013 the City listed these new measures for the Court as “management statistics.” According to the definition in the ResultsNOLA reports, a management statistic is reported “[i]f a measure is a workload indicator, or a measure of the amount of work that comes into an organization (such as the number of customers that come in for a service).”<sup>100</sup> By themselves, inputs may indicate the amount of work an organization faces, but they do not provide information about how long it takes to accomplish each task or how efficiently or effectively an agency handles the amount of work it has.

The performance measures listed in the City’s budget documents were not adequate to explain the needs of the Court.<sup>101</sup> In most years from 2008 through 2015, the judges requested more funding from the City Council than the administration proposed. In the absence of relevant data, judges used creative arguments for additional funding. For example, at the 2014 budget hearing the judges reasoned that they needed additional funding based on a comparison to the NOPD’s budget allocation.<sup>102</sup> The approach was unsuccessful.

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First, it was the only local court that did not handle traffic violations. Second, according to the Louisiana Supreme Court Judicial Administrator’s office, there were no uniform standards for determining the number of cases filed in city or parish courts. The number of community service hours by itself did not indicate how the Court’s approach to community service sentences had changed. This measure failed to identify, for instance, the number of defendants receiving community service sentences relative to other types of sentences, and the severity of the sentences imposed.

<sup>100</sup> City of New Orleans, *ResultsNOLA 2014 Year-End Performance Report* (New Orleans, LA: City of New Orleans, 2015), 7, accessed March 9, 2016, <http://www.nola.gov/getattachment/d7f457f3-1104-432b-ae22-459c9b3fef20/ResultsNOLA-Year-End-Report/>.

<sup>101</sup> See Appendix A for a complete list of performance measures and results included in city budget books from 2008 through 2015.

<sup>102</sup> The judges testified that the Mayor proposed to spend \$128 million for the NOPD, but that 80 percent of NOPD matters were tried in Municipal Court. They stated that there were 1,200 police officers and the City spent \$106,000 per officer. They stated that there were 33,000 cases going to Municipal Court and the Mayor proposed \$3 million in spending on Municipal Court (\$60 per case). The judges stated that they believed that justified the Court’s need for more funds. See: City of New Orleans City Council Hearings on 2014 Proposed Budget, October 28, 2013, at 0:07:49, accessed June 8, 2016, [http://cityofno.granicus.com/MediaPlayer.php?view\\_id=7&clip\\_id=1680](http://cityofno.granicus.com/MediaPlayer.php?view_id=7&clip_id=1680).

Between 2008 and 2015, the City Council either adopted the Mayor's proposed allocation for Municipal Court or allocated fewer funds than proposed by the Mayor.<sup>103</sup>

### **NATIONAL CENTER FOR STATE COURTS PERFORMANCE MEASURES**

The National Center for State Courts (NCSC) created a standard set of performance measures that courts can use to define their work. Courts can use these measures to benchmark performance both against their own goals and with peer courts across the nation. The NCSC states in its materials that courts can use the measures it has developed to make more convincing arguments before legislative bodies about funding:

Performance assessment is a critical foundation for building evidence-based requests for new initiatives and additional resources. Performance assessment across a spectrum of goals establishes a natural priority of emphasis and shields courts from the criticism that budget requests are the product of some individual judge's or administrator's personal preference. Instead, budget proposals flow from the mission of meeting agreed-upon goals.<sup>104</sup>

The NCSC proposes that courts use ten standard measures based on three criteria: measures will reflect court values, measures will create a balanced perspective, and measures will be easy to collect to make measurement an on-going process. Figure 23 lists the ten measures and provides a brief description of how to calculate them and how they can be used.<sup>105</sup>

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<sup>103</sup> According to Court staff, the City fully funded court payroll only in 2011 and 2016.

<sup>104</sup> National Center for State Courts, *Courtools: Why Measure Performance*, 3.

<sup>105</sup> For more information about the Courtools performance measurement program see NCSC, *Courtools*, <http://www.courtools.org/>.

**Figure 23.** NCSC performance measures

Performance Measure	How to calculate	How it can be used
1) Access and fairness	NCSC developed a survey of court users including defendants, attorneys, victims, witnesses, and law enforcement.	Measures the perceptions of court users about court facilities and fairness
2) Clearance rate	The number of outgoing cases as a percentage of the number of incoming cases	Reflects the court's ability to keep up with caseload
3) Time to disposition	The percentage of cases closed or resolved within established time frames	Measures timeliness of court processes
4) Age of active pending caseload	The age of active cases pending before the court	A vital complement to the other case processing measures; other measures may not include cases that are older than the time period measured
5) Trial date certainty	The percentage of cases closed that were continued before the first date they were set for trial	Used to evaluate the effectiveness of calendaring and continuance practices
6) Reliability and integrity of case files	The percentage of case files that can be found within a certain time standard and meet standards for completeness and accuracy	Measures the reliability of the case filing system
7) Collection of monetary penalties	The percentage of all fines assessed that were collected within a certain timeframe	Measures how well court orders are observed and enforced
8) Use of jurors	Not applicable to Municipal Court because the Court cannot hear jury cases. <sup>106</sup>	
9) Employee satisfaction	NCSC developed a standard survey to measure the quality of the work environment and relationships between staff and management	Employee satisfaction has a direct impact on court performance
10) Cost per case	The total expenditures of the court divided by the number of cases closed	Measures the overall financial efficiency of the court

<sup>106</sup> La. R.S. 13:2793(C).

## **INFORMATION AVAILABLE TO DECISION-MAKERS**

The Court reported data for some of the metrics that could be used to calculate three of the NCSC's suggested performance measures. However, the information was not always readily accessible, and the Court had not developed performance goals against which to measure the quality of performance.

### **DAYS TO DISPOSITION**

The Court reported the average number of days to disposition in the City's budget books from 2013 to 2015, a metric similar to NCSC's time to disposition. The average number of days to disposition was 305 days in 2013, 172 days in 2014, and 205 days in 2015. The Court did not include any goals by which to determine whether these numbers indicated good or poor performance.

In contrast, the NCSC focuses on the percentage of cases disposed of within a certain time period. It recommends case disposition standards based on those approved by the Conference of Chief Justices, the Conference of State Court Administrators, the American Bar Association, and the National Association for Court Management. According to these professional organizations, 75 percent of misdemeanor cases should be completed within 60 days, 90 percent within 90 days, and 98 percent within 180 days.<sup>107</sup>

### **CLEARANCE RATE**

The Court's clearance rate could be calculated from the ratio of cases closed to cases filed that the Court reported to the City for inclusion in the budget. However, the Court only provided information on both cases filed and cases closed in 2011 and 2013.<sup>108</sup> In 2011 the clearance rate was 115 percent (more cases were closed than filed), and in 2013 the clearance rate was 99 percent. The Court also reported

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<sup>107</sup> National Center for State Courts, *Courtools: Time to Disposition* (Williamsburg, VA: National Center for State Courts, 2005), 1, accessed June 1, 2015, [http://www.courtools.org/~media/Microsites/Files/CourTools/Courtools\\_Trial\\_measure3\\_Time\\_To\\_Disposition\\_pdf.ashx](http://www.courtools.org/~media/Microsites/Files/CourTools/Courtools_Trial_measure3_Time_To_Disposition_pdf.ashx). Average days to disposition numbers cannot be directly compared to NCSC's recommended percent of cases completed within a given timeframe because a small number of outlier cases could skew the Court's average. However, the fact that the three yearly Court averages for days to disposition surpass NCSC's maximum number of recommended days to completion suggests that it is possible the Court may not be meeting NCSC standards.

<sup>108</sup> See Appendix A for additional information.

cases filed and closed to the Louisiana Supreme Court for inclusion in its annual report. As shown in Figure 24, the clearance rate fluctuated from below 70 percent in 2008 to above 100 percent in 2010 and 2011.

**Figure 24.** Municipal Court clearance rate as reported to the Louisiana Supreme Court<sup>109</sup>



However, the numbers reported in the budget books did not reconcile with those reported to the Supreme Court. These two inconsistent data sets, one of which was incomplete, prevented a determination of whether the Court had a backlog of cases.

### COST PER CASE

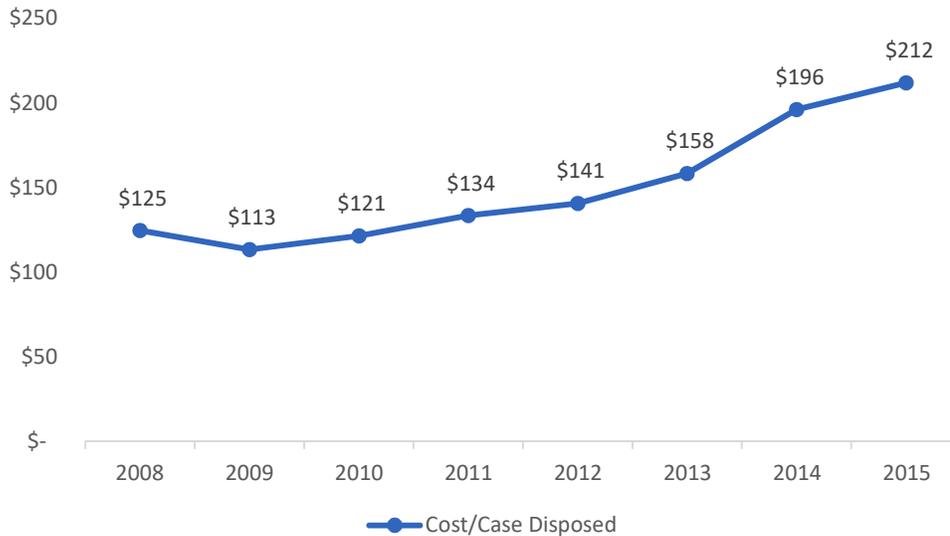
The Court made some information available that could be used to calculate the cost per case, but it was difficult to compile information for this measure. The information was not available in one place: the Court had three funding sources and no single financial report.<sup>110</sup> However, evaluators calculated cost per case

<sup>109</sup> Evaluators calculated the clearance rate using the ratio of cases closed to cases filed as reported to the Louisiana Supreme Court each year.

<sup>110</sup> See Finding 1 for additional information about the Court’s funding structure.

using the expenses listed in Figure 8 and the number of cases closed reported to the Louisiana Supreme Court.

**Figure 25.** Municipal Court cost per case increased over time



As shown in Figure 25, the cost per case at the Court increased by 70 percent from 2008 through 2015. The increase may have been related to the addition of state misdemeanors to the Court’s dockets. It may also have been driven in part by increases in court staff salaries. However, without other data that explain how specific changes in the activities of the Court affected its workload, it is not possible to determine a definitive reason for the rising cost per case since 2009.

**Recommendation 2. The Court should develop and report performance measures that are capable of providing information that describes the financial needs of the Court.**

Between 2008 and 2015, several external factors likely affected the funding needs of the Court. Changes in NOPD policy may have reduced the revenue available. Other factors may also have affected court finances, such as the District Attorney’s decision to prosecute state cases in Municipal Court and the increased use of diversion and alternative sentencing. However, the Court could not provide evidence that supported its claims that these changes affected the amount and nature of its work, and justified the need for increased funding.

The measures reported in the City's budget lacked performance goals, and the Court did not report standard measures, such as those suggested by the NCSC, that could be used to benchmark performance.

The lack of data that support the Court's assertions about its changing workload raises questions given the 70 percent increase in the cost per case from 2008 through 2015. The Court should develop performance metrics that accurately and reliably measure its activities and goals and provide evidence that any changes in workload justify the need for additional funding.

For example, the Court could quantify how much more work it takes to adjudicate state cases and how much time staff spend administering community service sentences or diversion programs. The Court should also develop measures, such as those developed by the NCSC, which could be used to benchmark performance against stated goals, its own past performance, or the performance of peer courts.

## V. CONCLUSION

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The pending consolidation of Municipal Court and Traffic Court in 2017 provides the courts an opportunity to address concerns with the funding structures of both entities. The consolidation will likely require a careful examination of how the two courts are currently operating. In considering changes to Municipal Court's funding structure in preparation for the consolidation, Court and City officials should consider the problems evaluators highlighted in this report and in the *Funding of Traffic Court* report and avoid replicating them in the unified Municipal and Traffic Court. Municipal Court cost \$4.7 million to operate in 2015, roughly 20 percent more than it cost to operate in 2008, while Traffic Court cost \$5.5 million as of 2012.<sup>111</sup> An effective consolidation process could result in overall savings.

The lack of fiscal transparency made determining the cost of Municipal Court more challenging than it should have been because portions of the Court's funding were reported in separate reports by different entities. State law mandated that three entities share the responsibility to fund the Court. The State provided a portion of judicial salaries and paid for judges' health insurance and pension benefits. State law required the City to pay for most other court expenses, but it also established fees and funds administered by the judges that could be used to fund expenses. Evaluators had to compile separate financial records generated by the State, City, and Court to create a full picture of funding.

Evaluators found that the Court's contribution to its overall expenses ranged from 12 percent in 2011 to 55 percent in 2008 and was inversely related to the amount the City paid. The variability in the proportions of expenses paid by both the City and Court was due to flexibility in the state laws related to the party responsible for expenses.

Evaluators found that laws granting the judges the ability to raise and administer funds while at the same time directing the City to pay certain costs blurred the lines of responsibility and contributed to informal financial practices that (1) did not conform to standards for the control and budgeting of public money and (2) raised questions about defendants' rights to due process. Moreover, the uncertainty about how much and from where the Court's funding would come

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<sup>111</sup> OIG, *Funding of Traffic Court*, 11.

each year would make it difficult for any entity to budget effectively or plan consistent operations.

Evaluators also found that the cost per case at the Court increased by 70 percent from 2008 through 2015, from \$125 per case to \$212. The increase may have been due to changing external factors that affected the Court's workload, including adjudicating a greater proportion of state cases, issuing more sentences for community service rather than relying on fines and jail time, and overseeing pretrial diversion programs. It may also have resulted from court staff pay increases. Regardless, the Court's performance measures did not provide information that could support a causal relationship between changing activities and increased cost.

Evaluators offered two recommendations to the City and Court designed to address these issues:

- The City Council should allocate full funding for Municipal Court expenses, and the City should seek the repeal of state laws related to the Municipal Court's ability to raise and administer funds.
- To provide evidence of financial need, the Court should develop performance measures that quantify its workload and other operational changes, and measures that enable it to benchmark its performance against peer courts and its own goals.

Better performance measures could enable Municipal Court Judges to use evidence-based arguments when communicating the Court's financial need to City Council members at budget hearings. With better information, the City Council might be more likely to provide the Court with a General Fund appropriation sufficient to offset the absence of a JEF administered by the judges.

## APPENDIX A: MUNICIPAL COURT PERFORMANCE MEASURES IN CITY BUDGET

		2008	2009	2010	2011	2012 <sup>112</sup>	2013	2014	2015
All Cases Filed	Outcome	44,260	36,680	44,676* ^	30,754* #		35,356* #	27,260* #	26,222* #
	Goal				42,500	32,500	EB	MS	MS
All Cases Disposed	Outcome				35,218* #		34,946* #		
	Goal					36,200	EB		
City Cases Filed	Outcome			41,266^	29,644#		28,768#	21,632#	20,318#
	Goal				40,000	30,000	EB	MS	MS
City Cases Disposed	Outcome				34,048#		28,810#		
	Goal					34,000	EB		
Ratio of New City Cases Disposed to Cases Filed	Outcome							0.94	1
	Goal							Not Set	MS
State Cases Filed	Outcome			3,410^	1,110#		6,588#	5,628#	5,904#
	Goal				2,500	2,500	EB	MS	MS
State Cases Disposed	Outcome				1,170#		6,136#		
	Goal					2,200	MS		
Ratio of New State Cases Disposed to Filed	Outcome							0.86	1
	Goal							Not Set	MS
% of Monetary Penalties Collected	Outcome								
	Goal						EB		
Community Service Hours	Outcome	24,226	44,509	46,648^	54,000#				
	Goal				80,000	56,250			
% of Sentences with Community Service	Outcome						9%	10%	8%
	Goal						EB	Not Set	MS
Avg. Days Filing to First Trial Set	Outcome						67	71.5	73
	Goal						MS	MS	MS
Avg. Days Arraignment to First Trial Set	Outcome								
	Goal						EB		
Avg. Days to Disposition All Cases	Outcome						305	172	205
	Goal						MS	MS	MS
Avg. Days to Disposition City Cases	Outcome							181	213
	Goal							MS	MS
Avg. Days to Disposition State Cases	Outcome							137	179
	Goal							MS	MS
Avg. Days to Disposition Non-Warrant Cases	Outcome						81	60	64.8
	Goal						EB	MS	MS

EB means Establishing Baseline, MS means Management Statistic, \* evaluators summed city and state cases because *all cases* was not reported, ^ Projected number reported, # Six-month number reported, evaluators multiplied by two.

<sup>112</sup> The City added new performance measure topics to its budget book in 2013 but did not report any actual results until the 2014 budget book. As a result, the budget books do not contain any records of 2012 performance.

## OFFICIAL COMMENTS FROM MUNICIPAL COURT AND CITY OF NEW ORLEANS

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City Ordinance section 2-1120(8)(b) provides that a person or entity who is the subject of a report shall have 30 days to submit a written response to the findings before the report is finalized, and that such timely submitted written response shall be attached to the finalized report.

An Internal Review Copy of this report was distributed on November 7, 2016 to the entities who were the subject of the evaluation in order that they would have an opportunity to comment on the report prior to the public release of this Final Report. Comments were received from the City of New Orleans and from the Municipal Court; these comments are attached as Appendix B and Appendix C.

The OIG would like to make the following points in response to the Municipal Court's comments:

1. Regarding the assertion that the "*de minimus*" number of cases in which the Municipal Court finds a defendant guilty does not meet the standard in *Ward v. Village of Monroeville*: the issue is not the number of cases in which the judges found a defendant guilty. Higher courts and professional organizations have consistently found that a conflict of interest and/or a potential risk to due process is possible when *a percentage of the Court's funding* is attributable to fines and fees collected on convictions. A 1989 National Center for State Courts study of the Orleans Parish trial courts concluded:

Few judges would be swayed in their judgment by the small sums of money involved in costs and fees, but the practice reflects poorly on the court and is not fair to defendants. It may, in fact, be unconstitutional.<sup>113</sup>

When the NCSC made this statement, the self-generated revenue for Municipal Court was less than 15 percent of the Court's expenditures.<sup>114</sup> For the 2008 – 2015 timeframe covered in this OIG report, the average percentage of Court funding attributable to self-generated revenue was 32 percent.

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<sup>113</sup> National Center for State Courts, Southeast Regional Office, *A Study of the Administration and Financing of the Orleans Parish Trial Courts* (Williamsburg, VA: National Center for State Courts, 1989), 31-32.

<sup>114</sup> *Ibid.*, 26.

2. The OIG determined that *Broussard v. Parish of Orleans* was not relevant because it involves fees assessed by sheriffs and Clerks of Court rather than fees assessed by judges. *Broussard* therefore has no relevance to the issue of whether judges' complete control of a JEF funded by fees assessed by the Court poses a risk of due process violations.
3. The OIG cites the following additional examples of Municipal Court judges' concern about the Court's reliance on the collection of fines and fees as a potential conflict of interest:
  - "We use court-generated funds to make up the difference in personnel and therein lies the problem with the constitutional issue relative to the operation of the Court. Basically, the allegation is that we are operating the court on the backs of the defendants who are coming before us and in essence are they getting a fair and impartial trial by appearing before us when we have to generate funds to finance our personnel."<sup>115</sup>
  - "I think it's a constitutional conflict personally. We're trying and using money we're collecting off the backs of the people who are coming before us to operate the system and so I don't [assess that fee] for that reason."<sup>116</sup>

(Note: Time stamps precede access dates in all footnotes with links to Council videos.)

It is unfortunate that the Court chose to focus on the above issues; the report's main argument was intended to assist the Court:

- 1) the City should fully fund the Municipal Court to remove any possible conflict of interest or potential risk to due process, and
- 2) the Court should collect and analyze data for performance measures that clearly document the extent of its workload and operational needs in order to be able to argue persuasively for the funding level it deems adequate.

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<sup>115</sup> City of New Orleans City Council Hearings on 2011 Proposed Budget, November 3, 2010, at 3:26:00, accessed June 8, 2016, [http://cityofno.granicus.com/MediaPlayer.php?view\\_id=7&clip\\_id=709](http://cityofno.granicus.com/MediaPlayer.php?view_id=7&clip_id=709).

<sup>116</sup> City of New Orleans City Council Criminal Justice Committee Hearing, June 25, 2014, at 50:16, accessed June 8, 2016, [http://cityofno.granicus.com/MediaPlayer.php?view\\_id=7&clip\\_id=1836](http://cityofno.granicus.com/MediaPlayer.php?view_id=7&clip_id=1836).

CHIEF ADMINISTRATIVE OFFICE  
CITY OF NEW ORLEANS

MITCHELL J. LANDRIEU  
MAYOR

JEFFREY P. HEBERT  
DEPUTY MAYOR &  
CHIEF ADMINISTRATIVE OFFICER

November 30, 2016

Mr. Edouard Quatrevaux  
Inspector General  
City of New Orleans  
525 St. Charles Avenue  
New Orleans, LA 70130

Re: Funding of Municipal Court

Dear Mr. Quatrevaux:

The Administration is in receipt of the Office of Inspector General's report on "Funding of Municipal Court." In this report, you have performed an in-depth evaluation of the funding structure of the New Orleans Municipal Court (Court).

As you know, the Mayor, the City Council and various Courts, including Municipal Court, have been engaged in multiple discussions in various forums for a number of years relating to the appropriate relationship between the City, State and the Court in terms of both legislative and budgetary responsibilities and roles. These discussions are ongoing and in some cases involve litigation; therefore, the comments made in this response should be understood in that context.

The first portion of Recommendation 1 states that "The City should fund Municipal Court operations through a general fund appropriation." The City agrees with this recommendation, provided the Municipal Court Judicial Expense Fund (JEF) collections can be remitted directly to the City's General Fund so that such an appropriation can be made. The 2017 approved budget includes general fund appropriation for 100% of the personnel costs of the consolidated Municipal and Traffic Court and 100% of the costs of other operations of the Traffic Court section. As of the writing of this letter, only the Traffic Court JEF collections are remitted to the City's General Fund. Upon remitting the Municipal Court JEF collections, the City will agree to provide 100% of the costs of other operations for the Municipal Court section.

The second portion of Recommendation 1 states that "The City and Court should increase the transparency of their financial practices and lobby the State Legislature to repeal laws creating fees to fund Municipal Court operations." As we understand it, this recommendation regarding changes to the composition of Municipal Court funding sources, specifically the reliance on the level of funding through fees collected for their Judicial Expense Fund is related to how such funding may result in a conflict of interest for the Court. The City understands and agrees that core Court operations should be funded adequately and with general fund appropriations and has made this change for 2017 for personnel costs. If the fees for the JEF were deposited directly in the City's General Fund, (in a manner similar to how the Traffic Court JEF is now deposited into the City's General Fund), then the potential conflict of interest would be lessened substantially. However, the City believes that the Court and the City can reach a mutual agreement on this matter without the need to lobby the state legislature to change state law regarding the Municipal and Traffic Court JEF collections.

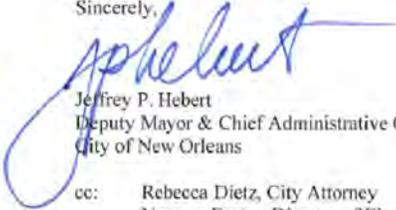
1300 PERDIDO STREET SUITE 9E06 NEW ORLEANS, LOUISIANA 70112  
PHONE 504-658-8900



Mr. Edouard Quatrevaux  
Funding of Municipal Court  
Page 2

Recommendation 2 states that "The Court should develop and report performance measures that are capable of providing information that describes the financial needs of the Court." While this recommendation is directed to the Court, the City's Office of Performance and Accountability stands ready to work with the Court to ensure that the performance measures established in the City's Budgeting for Outcomes reflect a set of metrics that accurately and reliability measure the activities and goals of the Court.

Sincerely,



Jeffrey P. Hebert  
Deputy Mayor & Chief Administrative Officer  
City of New Orleans

cc: Rebecca Dietz, City Attorney  
Norman Foster, Director of Finance  
Oliver Wise, Director of the Office of Performance & Accountability

OFFICE OF INSPECTOR GENERAL  
**CITY OF NEW ORLEANS**



MANAGEMENT RESPONSE FORM

**PLEASE COMPLETE THIS FORM AND RETURN AS SPECIFIED BELOW. SUPPLY YOUR RESPONSES IN THE SHADED BOXES.**

PLEASE INDICATE YOUR AGREEMENT OR DISAGREEMENT WITH EACH OF THE FOLLOWING RECOMMENDATIONS BY SELECTING A RESPONSE FROM THE DROPDOWN BOX. IF YOU REJECT OR PARTIALLY ACCEPT THE RECOMMENDATION, PLEASE EXPLAIN WHY IN THE SPACE PROVIDED. PLEASE DESCRIBE EACH ACTION YOUR AGENCY WILL TAKE TO IMPLEMENT THE RECOMMENDATION, OR FIX THE PROBLEM, ALONG WITH THE NAME AND CONTACT INFORMATION OF THE PERSON(S) RESPONSIBLE FOR THE ACTION AND THE COMPLETION DATE (IF ONE IS ALREADY NOT PROVIDED).

**RETURN THIS COMPLETED FORM TO MEGHAN RAGANY AT MRAGANY@NOLA.OIG.GOV BY NOVEMBER 29, 2016.**

ENTER NAME HERE: **JEFFREY HEBERT**

<b>RECOMMENDATION #1</b> REQUIRING IMMEDIATE ACTION:	RESPONSIBLE PERSON: (NAME AND CONTACT)	RESPONSE CHOICE (SELECT ONE):
<b>1. THE CITY SHOULD FUND MUNICIPAL COURT OPERATIONS THROUGH A GENERAL FUND APPROPRIATION. THE CITY AND COURT SHOULD INCREASE THE TRANSPARENCY OF THEIR FINANCIAL PRACTICES AND LOBBY THE STATE LEGISLATURE TO REPEAL LAWS CREATING FEES TO FUND MUNICIPAL COURT OPERATIONS.</b>	<b>JEFFREY HEBERT</b>	<b>Partially Accept</b>
IF YOU <u>REJECT</u> OR <u>PARTIALLY ACCEPT</u> RECOMMENDATION #1, PLEASE EXPLAIN WHY: SEE ATTACHED LETTER FOR RESPONSE		
DESCRIBE THE ACTIONS YOU WILL TAKE TO IMPLEMENT RECOMMENDATION #1 OR FIX THE PROBLEM:	RESPONSIBLE PERSON:	COMPLETION DATE:
<b>1.1 SEE ATTACHED LETTER FOR RESPONSE</b>		
<b>1.2</b>		
<b>1.3</b>		
<b>1.4</b>		
<b>1.5</b>		

Municipal Court Funding  
 November 7, 2016

Management Response for: Jeff Hebert  
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OFFICE OF INSPECTOR GENERAL  
**CITY OF NEW ORLEANS**



<b>RECOMMENDATION #2</b> REQUIRING IMMEDIATE ACTION:	RESPONSIBLE PERSON: (NAME AND CONTACT)	RESPONSE CHOICE (SELECT ONE):
2. THE COURT SHOULD DEVELOP AND REPORT PERFORMANCE MEASURES THAT ARE CAPABLE OF PROVIDING INFORMATION THAT DESCRIBES THE FINANCIAL NEEDS OF THE COURT.		Accept
IF YOU <i>REJECT</i> OR <i>PARTIALLY ACCEPT</i> RECOMMENDATION #2, PLEASE EXPLAIN WHY:SEE ATTACHED LETTER FOR RESPONSE		
DESCRIBE THE ACTIONS YOU WILL TAKE TO IMPLEMENT RECOMMENDATION #2 OR FIX THE PROBLEM:	RESPONSIBLE PERSON:	COMPLETION DATE:
2.1 SEE ATTACHED LETTER FOR RESPONSE		
2.2		
2.3		
2.4		
2.5		

Municipal Court Funding  
 November 7, 2016

Management Response for: Jeff Hebert  
 Page 2 of 2

GILBERT R. BURAS, JR.

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**VIA E-MAIL TRANSMISSION**

[nvandyke@nolaog.gov](mailto:nvandyke@nolaog.gov)

Ms. Nadiene Van Dyke  
Asst IG, Government Performance

Re: Municipal Court Funding

Dear Ms. Van Dyke:

Judge Desireé Charbonnet, Administrative Judge of the Municipal Court for the City of New Orleans, has asked that I respond to the revised internal review copy of the proposed report on "Municipal Court Funding". The following is to be deemed a supplement to the Management Response Form forwarded by Judge Charbonnet on November 29, 2016.

We note that Finding 1(2) "The City and Court's Shared Responsibility for Funding...Impeded Due Process For Defendants" has now been changed to read: (2) *CREATED A POTENTIAL IMPEDIMENT TO DUE PROCESS*.

This finding is elaborated upon beginning on page 35. On page 36 the sentence "The responsibility of judges to raise funds for Court operations created a potential conflict of interest because judges had a financial incentive to find defendants guilty" has been retained but modified from the original by inclusion of the word "potential".

As Judge Charbonnet has observed, in the years 2008 through 2015, 85,238 cases were disposed of by plea of guilty or no contest. Only 281 cases were tried to a Municipal Court judge resulting in a finding of guilt. This is a *de minimis* number of cases and does not meet the standard announced in Ward v. Village of Monroe, 409 U.S. 57, 93 S.Ct. 78 (1972) in which it was stated:

"[T]he test is whether [the individual's] situation is one which would offer a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant, or which might lead him not to

hold the balance nice, clear and true between the State and the accused...!

Id at 59-60, 80

Further, as we noted in our meeting, the Augustus case, relied on in fn. 66, has been criticized in later 5<sup>th</sup> Cir. jurisprudence, See, Broussard v. Parish of Orleans, 318 F.3rd 644 (5th Cir., 2003) relying on Schilb v. Kuebel, 404 U.S. 357, 92 S.Ct. 479, 30 L.Ed.2d 502 (1971).

On Page 37, in the section entitled “Equal Protection”, it is stated “[T]he pressure on judges to generate revenue for court operations may lead to unconstitutional behavior...”

There is no evidence of any such “pressure”. In 2015, of 5831 cases in which pleas of guilty or no contest were entered or the defendant was found guilty by a judge, 3037 were the subject of *judicial* conversion of costs to a civil judgment as a consequence of the defendant’s indigency. In 2016, 2694 of 3037 such cases have had the costs so converted.

The lack of a substantive issue in this regard is demonstrated by the citation, on page 37, of a case dismissed nearly a decade ago relative to a long-discontinued practice. The citation of this case is a specific example of the unsupported, accusatory nature of the proposed report. We point to the following statement:

*Municipal Court judges have consistently stated that the result of the case reduced their ability to raise revenue.*

To the casual reader of this statement, the report intimates that “raising revenue” is the intention of the judges, but that they are hamstrung in doing so by constitutional considerations. For support of this statement your office hyperlinks the *entire* videos of the 2008, 2009 and 2011 New Orleans City Council Budget Committee hearings, without citation to a specific date or timestamp to support the statement.

An actual viewing of these videos shows that in the 2011 budget hearings, Judge Paul Sens, (timestamp 3:23:00 forward) prefaced his comments with citation to La. R.S. 13:2496 relative to the City’s mandated full funding of the Court and its concomitant insulation of the Court from constitutional challenges. (timestamp 3:24:13). Addressing the in-kind benefits resulting to the City of New Orleans from “alternative sentencing” programs and the change of the Court to a “community court” from an “incarceration court”, Judge Sens noted that the savings to the City from “in-kind” services justified the City’s general fund appropriation to the Court in order to offset the Court’s “static collection rate” and the loss of bond forfeiture revenue. With regard to “ability”, Judge Sens stated:

We're still doing very aggressive collection work, but were not collecting the fines. If someone is coming before us and saying they're indigent, does not have a job, we're referring those persons to community service, so the ability to collect from them is taken away.

(timestamp 3:32:30)

A review of what was *actually* said shows that the word "ability", in context, was being used in a passive sense, that is, that community service, as opposed to fine and incarceration, rendered fine revenue unavailable, and that the Court was changing its character from a primarily punitive one to one of social service that warranted funding from sources *other* than fines.

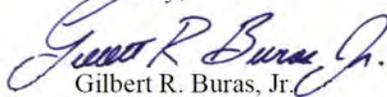
Instead of calling attention to the change in the Court's character to one focused on community-oriented practices and the need for full City funding to accommodate the change in mission, your office has decided to use the word "ability" in a sentence that insinuates that revenue collection was the judges' primary aim and that a 2007 lawsuit took away that "ability".

A candid analysis of the Court's position relative to its funding shows that since 2008 the Court has endeavored to obtain, and justify, full funding of its operation without regard to fine and fee revenue.

If it is the intention of your office to suggest a method of funding for the Municipal Court that entirely removes its financing from the economic activity that, of necessity, passes through it, that point may be made without insinuating that the Judges of the Court are the beneficiaries of that economic activity or that their primary motivation is not the dispensing of justice but the collection of fines, neither of which is true, but which is the conclusion to which this report, in tone and invited conjecture, leads the reader.

In short, it our position that the entire section entitled "IMPEDIMENTS TO PROCEDURAL DUE PROCESS AND EQUAL PROTECTION " is without basis in fact or law and should be removed.

Sincerely,



Gilbert R. Buras, Jr.

cc: Hon. Desireé Charbonnet  
Hon. Paul N. Sens

OFFICE OF INSPECTOR GENERAL  
**CITY OF NEW ORLEANS**



MANAGEMENT RESPONSE FORM

PLEASE COMPLETE THIS FORM AND RETURN AS SPECIFIED BELOW. SUPPLY YOUR RESPONSES IN THE SHADED BOXES.

PLEASE INDICATE YOUR AGREEMENT OR DISAGREEMENT WITH EACH OF THE FOLLOWING RECOMMENDATIONS BY SELECTING A RESPONSE FROM THE DROPDOWN BOX. IF YOU REJECT OR PARTIALLY ACCEPT THE RECOMMENDATION, PLEASE EXPLAIN WHY IN THE SPACE PROVIDED. PLEASE DESCRIBE EACH ACTION YOUR AGENCY WILL TAKE TO IMPLEMENT THE RECOMMENDATION, OR FIX THE PROBLEM, ALONG WITH THE NAME AND CONTACT INFORMATION OF THE PERSON(S) RESPONSIBLE FOR THE ACTION AND THE COMPLETION DATE (IF ONE IS ALREADY NOT PROVIDED).

RETURN THIS COMPLETED FORM TO MEGHAN RAGANY AT MRAGANY@NOLAOIG.GOV BY NOVEMBER 29, 2016.

ENTER NAME HERE: **DESIREE M. CHARBONNET**

<b>RECOMMENDATION #1</b> REQUIRING IMMEDIATE ACTION:	RESPONSIBLE PERSON: (NAME AND CONTACT)	RESPONSE CHOICE (SELECT ONE):
1. THE CITY SHOULD FUND MUNICIPAL COURT OPERATIONS THROUGH A GENERAL FUND APPROPRIATION. THE CITY AND COURT SHOULD INCREASE THE TRANSPARENCY OF THEIR FINANCIAL PRACTICES AND LOBBY THE STATE LEGISLATURE TO REPEAL LAWS CREATING FEES TO FUND MUNICIPAL COURT OPERATIONS.	DESIREE M. CHARBONNET [REDACTED]	Reject
IF YOU <u>REJECT</u> OR <u>PARTIALLY ACCEPT</u> RECOMMENDATION #1, PLEASE EXPLAIN WHY: THE COURT AGREES THAT THE CITY SHOULD FUND COURT OPERATIONS. THE COURT REJECTS THE SUGGESTION THAT THE COURT SHOULD INCREASE THE TRANSPARENCY OF ITS FINANCIAL PRACTICES. THE COURT BELIEVES THIS ASSERTION IS MISDIRECTED AT MUNICIPAL COURT BECAUSE OF THE CITY'S CURRENT BUDGETING PRACTICES.		
DESCRIBE THE ACTIONS YOU WILL TAKE TO IMPLEMENT RECOMMENDATION #1 OR FIX THE PROBLEM:	RESPONSIBLE PERSON:	COMPLETION DATE:
1.1 EACH YEAR IN ITS BUDGET OFFER, MUNICIPAL COURT REQUESTS AN APPROPRIATION FOR ITS OPERATIONAL COSTS. HISTORICALLY, THE CITY HAS FAILED TO DO SO. IN ORDER PROVIDE COURT SERVIICES, THE COURT HAS NO CHOICE BUT TO PAY FOR ITS OWN OPERATIONAL EXPENSES. THE COURT FURTHER REJECTS THE ASSERTION THAT DUE PROCESS IS IMPEDED BY THE COLLECTION OF COURT COSTS. FOR THE PERIOD OF 2008 - 2015 THE COURT ACCEPTED 85,238 VOLUNTARY GUILTY/NO CONTEST PLEAS. DURING THAT SAME PERIOD, 281 INDIVIDUALS WERE FOUND GUILTY AT TRIAL. THEREFORE, OVER AN 8 YEAR PERIOD THE FOUR JUDGES RENDERED 8.78 CONVICTIONS EACH PER YEAR. THE JUDGES DO NOT REQUIRE INDIGENT DEFENDANTS TO PAY COURT COSTS.	DESIREE M. CHARBONNET [REDACTED]	N/A
1.2 THE JUDGES OF MUNICIPAL COURT ARE PROHIBITED FROM LOBBYING THE LEGISLATURE PUSUANT TO THE CODE OF JUDICIAL		

Municipal Court Funding  
November 7, 2016

Management Response for: Judge Desiree Charbonnet  
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OFFICE OF INSPECTOR GENERAL  
CITY OF NEW ORLEANS



<b>CONDUCT. CANON 4(B) STATES "A JUDGE MAY APPEAR AT A PUBLIC HEARING BEFORE AN EXECUTIVE OR LEGISLATIVE BODY OR OFFICIAL ON MATTERS CONCERNING THE LAW, THE LEGAL SYSTEM, AND THE ADMINISTRATION OF JUSTICE, AND MAY OTHERWISE CONSULT WITH AN EXECUTIVE OR LEGISLATIVE BODY OR OFFICIAL, BUT ONLY ON MATTERS CONCERNING THE ADMINISTRATION OF JUSTICE.</b>		
<b>1.3</b>		
<b>1.4</b>		
<b>1.5</b>		

OFFICE OF INSPECTOR GENERAL  
**CITY OF NEW ORLEANS**



<b>RECOMMENDATION #2</b> REQUIRING IMMEDIATE ACTION:	RESPONSIBLE PERSON: (NAME AND CONTACT)	RESPONSE CHOICE (SELECT ONE):
2. THE COURT SHOULD DEVELOP AND REPORT PERFORMANCE MEASURES THAT ARE CAPABLE OF PROVIDING INFORMATION THAT DESCRIBES THE FINANCIAL NEEDS OF THE COURT.	DESIREE M. CHARBONNET  ██████████	Reject
IF YOU <u>REJECT</u> OR <u>PARTIALLY ACCEPT</u> RECOMMENDATION #2, PLEASE EXPLAIN WHY: MUNICIPAL COURT CURRENTLY REPORTS PERFORMANCE MEASURES TO THE CITY OF NEW ORLEANS THROUGH RESULTS NOLA ON A QUARTERLY BASIS.		
DESCRIBE THE ACTIONS YOU WILL TAKE TO IMPLEMENT RECOMMENDATION #2 OR FIX THE PROBLEM:	RESPONSIBLE PERSON:	COMPLETION DATE:
2.1 ON JANUARY 1, 2017 MUNICIPAL AND TRAFFIC COURT WILL MERGE INTO ONE NEW COURT. THE NEW COURT WILL CONSIDER IMPLEMENTING COURTOOLS.ORG "TRIAL COURT PERFORMANCE MEASURES" THIS RECOMMENDATION WILL BE PRESENTED TO THE JUDGES EN BANC FOR CONSIDERATION AT ITS FIRST EN BANC AS A MERGED COURT	DESIREE M. CHARBONNET  ██████████	JANUARY 2017
2.2		
2.3		
2.4		
2.5		