

Funding of Traffic Court

Final Report • July 29, 2015



OIG NEW ORLEANS OFFICE OF
INSPECTOR GENERAL

E. R. Quatrevaux, Inspector General

OFFICE OF INSPECTOR GENERAL
CITY OF NEW ORLEANS



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July 29, 2015

Re: Funding of Traffic Court

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

A handwritten signature in blue ink, appearing to read "E.R. Quatrevaux", positioned above the printed name.

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 Traffic Court (Court). The purpose of the evaluation was to determine the full cost of the Court during the years 2008 to 2012 and to determine how the City of New Orleans (City), State of Louisiana (State), and Court allocated resources to achieve the goals and objectives of the Court.

Funding the Court had become a contentious issue during budget hearings from 2008 through 2012. During this period the Court increasingly relied on fees assessed on defendants in the Court for its funding, a matter that had become a point of contention and concern.

On the one hand, members of the New Orleans City Council expressed concern that the Court was too expensive, had too many employees, and was wasting public dollars. In response, City funding of the Court almost disappeared during this period. On the other hand, Traffic Court judges expressed concern that their responsibility to raise funds for Court operations through fees assessed on convictions created a structural conflict of interest: judges had an inherent incentive to find defendants guilty in order to raise revenue and fund the Court. The judges stated that the funding structure violated a defendant's right to due process and an impartial judge.

The Court's funding structure evolved in the 40 years since it was established in the state statutes in 1974. When it was established, the Court relied on general fund appropriations from the City Council, which had both the responsibility and the authority to appropriate a budget for the Court. However in a series of amendments, the Louisiana State Legislature removed the City Council's authority to budget for the Court, empowered the judges to set their own budget, established a Judicial Expense Fund, and authorized the Court to fund the Court by charging a conviction fee to defendants.

The financial effect of these changes was a shift in the primary source of the Court's funding: in 1984 the City general fund provided 82 percent of the total of City and Court funding, 4.5 times the amount of funding the Court provided through self-generated funds. By 2012 the Court was funded almost entirely by the JEF, and the City's appropriation had dipped to 7 percent of the Court's

funding. The funding structure that emerged suggests three main questions regarding Court financing:

- 1) Could the Council play its legislative role in balancing the financial needs of City agencies and departments without the authority to provide budgetary oversight of the Court by approving its budget?
- 2) Could Traffic Court judges maintain impartiality when the Court was responsible for funding itself through a fee assessed on convictions?
- 3) To what extent did the City support Court operations as mandated by state law?

This evaluation includes six findings and recommendations:

- State law requires the City Council to fund the Traffic Court and also grants the Court the ability to raise its own funds; in doing so, it undermines the Council's authority to provide the oversight necessary to ensure the responsible stewardship of public funds. The City and the Court should seek amendments to state statutes that return budgetary oversight of the Traffic Court to the New Orleans City Council.
- The Traffic Court did not collect data necessary for and/or report performance measures that could document its efficiency, demonstrate accountability, and ensure the effective use of public resources. The Court should track case time to disposition, age of active pending caseload, and its collection rate.
- The Court's reliance on its Judicial Expense Fund created a conflict of interest that undermined judicial independence. The City should adequately fund core Court operations from a general fund appropriation and the Court should reduce its reliance on the JEF.
- The Court used deficit spending to fund payroll expenses contrary to the Louisiana Local Government Budget Act. Until state statutes are amended as suggested above, the Court should withhold City fine money and use the funds to pay the outstanding balance due to the City for payroll invoices when self-generated funds do not cover expenses.
- The City did not update its cost allocation plan between 2010 and 2014. The City should adopt an accurate cost allocation plan each year.
- City staff overrode budgetary controls to use funds the City Council allocated to Traffic Court to pay for expenses in the Coroner's Office. Executive staff in the budget and finance offices should comply with the

City Charter and only disburse operating funds appropriated by the City Council.

Tensions between legislative bodies and courts over funding are inherent in the effort to balance powers among the three branches of government established in the Constitution. The State Legislature responded to the tension between the New Orleans Traffic Court and City Council by removing the City Council's budgetary authority and giving judges executive control over a JEF. In doing so, legislators' actions undermined the local framework already in place for resolving the inherent tension transparently and in a fiscally responsible manner, resulting in a Court for which there was no fiscal oversight.

The recommendations in this report are intended to help answer questions about the appropriateness of Court spending, remove doubts about the possible influence of financial concerns on judicial decisions, and make Court expenses more transparent.

I. OBJECTIVES, SCOPE, AND METHODS

The Office of Inspector General of the City of New Orleans (OIG) conducted an evaluation of the funding structure of the New Orleans Traffic Court (Court). The purpose of the evaluation was to determine the full cost of the Court during the years 2008 through 2012 and to determine 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 for each year 2008 to 2012;
2. Determine whether the Court's funding structure was in accordance with legal standards including constitutional standards for due process; and
3. Determine how the Court, City, and State made decisions about how to fund the Court and whether those decisions were guided by the mission and objectives of the Court.

The scope of the evaluation included Court expenses and performance during the years 2008 through 2012. Evaluators selected these years to include the most recent audited financial data available at the time of the evaluation and five years' worth of data in order to measure trends. Evaluators included all sources of revenue for Court expenses including City general fund Traffic Court line item appropriations and General Fund indirect costs for Court-related expenses, State general fund Traffic Court line item appropriations, and Traffic Court's Judicial Expense Fund.

In addition to the review of financial data, evaluators conducted a literature search of prior reports written about the Court, interviewed City and Court staff and City Councilmembers about how resources were allocated, and requested performance data from the Court based on recommendations from the National Center for State Courts' CourTools program.

This report is the third 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 objective of the series is to document all

agency revenues and expenditures and 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 include reports that use information from 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 will include: the City of New Orleans Law Department, City of New Orleans Municipal Court, 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 2011," in the spring of 2013 and the second, "New Orleans Police Department Funding," in the spring of 2015.¹

This review was conducted in accordance with the Principles and Standards for Offices of Inspector General for Inspections, Evaluations, and Reviews.² This report includes findings and recommendations to bring the City's funding of the Traffic Court into compliance with the law and improve the transparency of Court finances.

¹ 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.

² "Quality Standards for Inspections, Evaluations, and Reviews by Offices of Inspector General," *Principles and Standards for Offices of Inspector General* (Association of Inspectors General, 2004).

II. INTRODUCTION

The Office of Inspector General performed an in-depth evaluation of the funding structure of the New Orleans Traffic Court (Court).³ Funding the Court had become a contentious issue during budget hearings from 2008 through 2012. During this period the Court was largely funded through fees assessed on defendants in the Court, a matter that had become a point of discussion and concern.

On the one hand, members of the City Council expressed concern that the Court was too expensive, that it had too many employees, and was wasting public dollars. On the other hand, Traffic Court judges expressed concern that their responsibility to raise funds for Court operations through fees assessed on convictions created a structural conflict of interest: judges had an incentive to find defendants guilty in order to raise revenue and fund the Court. Traffic Court judges stated that the funding structure violated due process and a defendant's right to an impartial judge.

Tension between the legislative and judicial branches of government over court funding is not unique to New Orleans; in fact it is inherent in the financial relationship between governing bodies. Both the State and U.S. constitutions authorize three branches of government: the executive branch, the legislative branch, and the judicial branch. Each branch provides checks and balances on the other two branches. The checks and balances create a fundamental tension among the three branches that is especially pronounced in their financial relationship. Legislatures pass laws, raise funds, and approve a budget authorizing government to spend its funds. In doing so, legislatures must prioritize government functions and responsibilities, such as courts, when determining how much to allocate.

However, courts are not just another governmental function. The judicial function is a separate branch of government, and New Orleans courts have a critical charge: to protect the rights guaranteed to citizens in the U.S. and

³ Acts No. 845 of the 2014 Regular Session amended the laws relating to the New Orleans Municipal Court and repealed laws related to the New Orleans Traffic Court in order to merge the two courts effective January 1, 2017. As written, Act 845 does not affect the findings of this report, include any provisions that would increase the efficiency of the courts, or reduce the number of judges or staff.

Louisiana constitutions. Courts cannot fulfill their obligation to protect citizens' rights if they do not receive adequate funds, and legislative bodies are constitutionally required to fund courts adequately. However, there is no definition of what constitutes adequate funding for courts.⁴

When the Louisiana State Legislature established the New Orleans Traffic Court in statute in 1975, the Court was subjected to the budgetary authority of the City Council, but over the next 40 years, amendments to that law eroded the Council's authority.⁵ The amendments required the City Council to pay for four judges, whether they were necessary or not, as well as any staff they wished to hire. The effect of the changes was to give the Court permission to increase its budget unchecked: the Court was authorized to set its own budget without oversight and regardless of other public needs. In effect, state law put all Traffic Court expenditures first in line for funding, even in front of other essential city services: police and fire protection, social services, and street maintenance.

In practice, however, the Court did not make unlimited demands on the City's General Fund. Instead, it paid for salaries from its Judicial Expense Fund (JEF). The City Council authorized the Court's Judicial Expense Fund (JEF) in 1974. According to the ordinance, the fund consisted of contempt fines and could be used for any purposes connected to the Court, including non-judicial salaries.⁶ The ordinance was especially attractive to the City Council and Mayor because it created a new revenue stream for the City: the Court was required to contribute to the City's General Fund half of any remaining revenue in the JEF at the end of the year.

⁴ Courts have used the doctrine of inherent power to issue court orders that compel legislative bodies to provide the funds necessary to administer justice and to protect the rights of citizens. Jim Carrigan defined inherent powers in his article "Inherent Powers of the Courts" as "all powers reasonably required to enable a court to perform efficiently its judicial functions, to protect its dignity, independence, and integrity, and to make its lawful actions effective." Jim R. Carrigan, "Inherent Powers Of the Courts." *Juvenile Justice* 24, no. 1 (May 1973): 40. Court orders are usually a last resort, and legislatures and judges are reluctant to ask higher courts to enforce the provision of adequate funding because seeking assistance from a higher court erodes the ability of the governmental entity to govern its own affairs. See G. Gregg Webb and Keith E. Whittington, "Judicial Independence, the Power of the Purse, and Inherent Judicial Powers." *Judicature* 88, no. 1 (July-August 2004): 12-19, accessed March 3, 2015, http://www.princeton.edu/~kewhitt/inherent_judicature.pdf.

⁵ See Appendix A for a list of amendments.

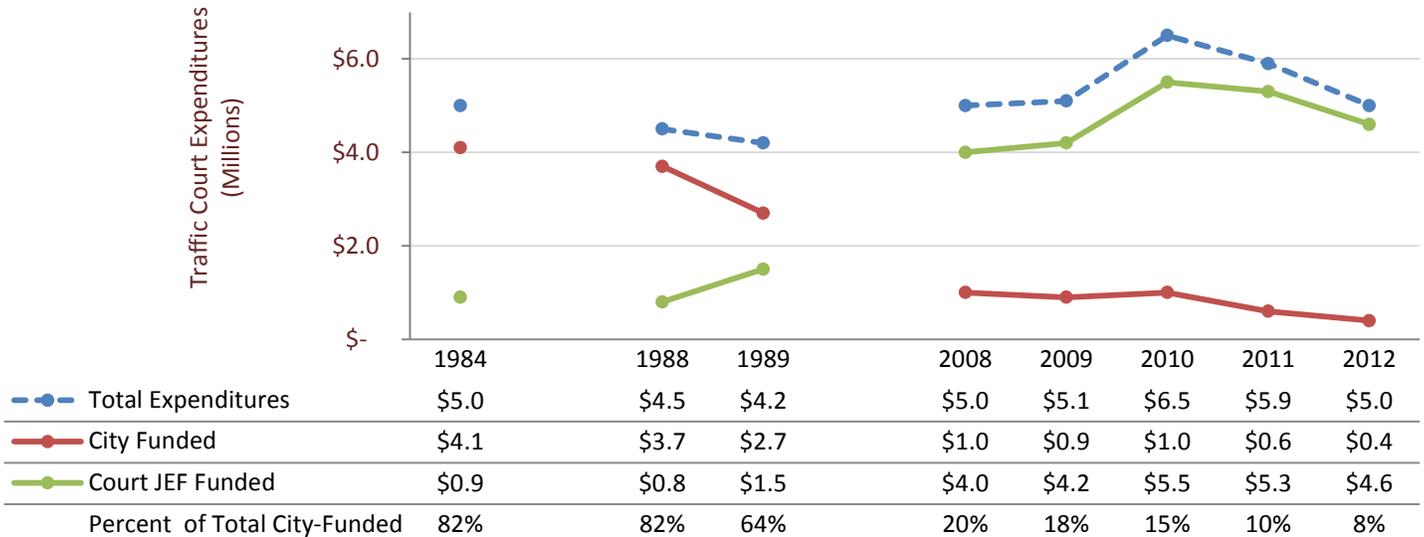
⁶ City Ordinance, M.C.S. 5412 (4/18/1974).

In 2004 the Legislature established the JEF in state law, overriding the City's control over the JEF and giving the Court sole authority over JEF funds. Then in 2011 the State further reduced the City's budgetary authority by authorizing the Court to collect a \$30 fee on each conviction, significantly increasing the Court's ability to generate additional funds for the JEF.⁷

In the last 30 years the financial effect of these changes was a shift in the primary source of the Court's funding: in 1984 it was largely supported by the General Fund; in 2012 it was funded almost entirely by the JEF. In 1984 the City provided 82 percent of the total of City and Court funding, 4.5 times the amount of funding the Court provided through self-generated funds; in 2012 it provided 7 percent of the Court's funding (Figure 1).

⁷ La. R.S. 13:2507.1 and La. R.S. 13:2501.1.

Figure 1. City and Traffic Court-Related Expenditures by Source (1984, 1988 to 1989, & 2008 to 2012 in 2012 Dollars)⁸



⁸ Evaluators obtained expenditures for 1984, 1988, and 1989 from reports by two different organizations. Expenditures for other years were not readily available and therefore not included in the figure. For 1984 data see: National Center for State Courts, *Operation and Management of the Traffic Court, City of New Orleans* (Williamsburg, VA: National Center for State Courts, 1984), 129, accessed February 11, 2015, <http://cdm16501.contentdm.oclc.org/cdm/ref/collection/traffic/id/20>. In 1984 dollars the amounts were \$1,857,466 City-funded and \$415,000 Court JEF-funded. For 1988 and 1989 data see: Bureau of Governmental Research, *Study of the Judicial/Parochial Agencies in Orleans Parish* (New Orleans, LA: Bureau of Governmental Research, 1991), 100. In 1988 dollars the amounts were \$1,922,472 City-funded and \$399,650 Court JEF-funded and in 1989 dollars the amounts were \$1,477,514 City-funded and \$796,493 Court JEF-funded. City-funded dollars for 2008–2012 came from the City’s general ledger, Great Plains. Court JEF-funded dollars for 2008–2012 came from financial reports by third party auditors and submitted to the Louisiana Legislative Auditor. All dollars were converted to 2012 dollars using the U.S. Bureau of Labor Statistics consumer price index inflation calculator. Evaluators did not have access to City of New Orleans indirect costs or state General Fund appropriations in 1984 or 1988 to 1989; therefore, financial information for those years was not included in Figure 1.

In sum, the State's legislative changes gave the Court a significant source of revenue over which it had sole authority. The statutes also mandated the City to pay for a potentially unlimited number of Court positions, authorized the Court to charge a conviction fee, and created a separate fund to pay for judicial branch salaries. In doing so, the laws effectively removed the Court from the City's budgeting process and the oversight the budget process provided.

The funding structure that emerged suggests three main questions regarding Court financing:

- 1) Could the Council play its role in balancing the financial needs of City agencies and departments without the authority to provide budgetary oversight of the Court by approving its budget?
- 2) Could Traffic Court judges maintain impartiality when the Court was responsible for funding itself primarily through a fee assessed on convictions?
- 3) To what extent did the City support Court operations as mandated by state law?

III. REVENUE AND EXPENDITURES

The Court's stated mission is "to adjudicate violations of City of New Orleans traffic ordinances and state traffic laws."⁹ The Court has limited jurisdiction and is specifically authorized to conduct trials for violations of City of New Orleans (City) traffic ordinances and violations of Louisiana statutes related to traffic, including Louisiana criminal code violations. The jurisdiction of the Court over state traffic violations is concurrent with the Criminal District Court for the Parish of Orleans. The Court also has jurisdiction over appeals from administrative hearings associated with traffic violations enforced by the City's automated traffic enforcement system.¹⁰ The New Orleans Traffic Court does not have jurisdiction over any state offense that requires a trial by jury. Therefore, the Court has jurisdiction over first and second offense driving while intoxicated charges, but not third or higher offenses.¹¹

The New Orleans Traffic Court is the only remaining traffic court in the United States.¹² General-purpose courts handle traffic matters in all other Louisiana jurisdictions, so it is difficult to compare the workload of the Court to other courts across the state. According to officials in the Louisiana Supreme Court Judicial Administrator's office, there are no standards for reporting the number of cases filed in city or parish courts. The Louisiana Supreme Court reported that there were more than 150,000 cases filed in the New Orleans Traffic Court in 2012.¹³

⁹ City of New Orleans, *Proposed 2014 Operating Budget* (New Orleans, LA: City of New Orleans, 2013), 523, accessed February 11, 2015, http://www.nola.gov/getattachment/Mayor/Budget/2014_Proposed_Budget_Book.pdf/.

¹⁰ Traffic camera tickets.

¹¹ La. R.S. 13:2501.1.

¹² Joe Palazzolo, "The Last Traffic Court Still Has Some Left in the Tank," *Wall Street Journal Law Blog*, May 28, 2014, accessed May 25, 2015, <http://blogs.wsj.com/law/2014/05/28/the-last-traffic-court-still-has-some-left-in-the-tank/>; Bill Raftery, "Louisiana: House votes Tuesday to end America's last 'Traffic Court'," *Gavel to Gavel: A review of state legislation affecting courts*, accessed May 25, 2015, <http://gaveltogavel.us/2014/05/12/louisiana-house-votes-tuesday-to-end-americas-last-traffic-courto-end-americas-last-true-traffic-court/>.

¹³ Supreme Court of Louisiana, *Annual Report, 2012* (New Orleans, LA: Supreme Court of Louisiana, 2012), 16, accessed February 11, 2015, http://www.lasc.org/press_room/annual_reports/reports/2012_Annual_Report.pdf. A traffic case is a charge and not a ticket, and traffic tickets can contain more than one case. For example, a single motorist might be charged with speeding and not having insurance: two cases (or charges) on one ticket. If charges are amended after plea bargaining, both the original charge and the new charge are counted as cases. Therefore, a single individual with two or three

Traffic Court consists of four divisions (A-D), each with its own elected judge, and a Violations Bureau overseen by an appointed Clerk of Court. The four judges also select a Judicial Administrator who oversees personnel and financial management of the Court.

Between 2008 and 2012 the operations of the Traffic Court cost between \$5.5 million and \$7.1 million each year. Evaluators reviewed City and Court financial documents and requested information from the Louisiana Supreme Court to understand all sources of funding for the Traffic 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).

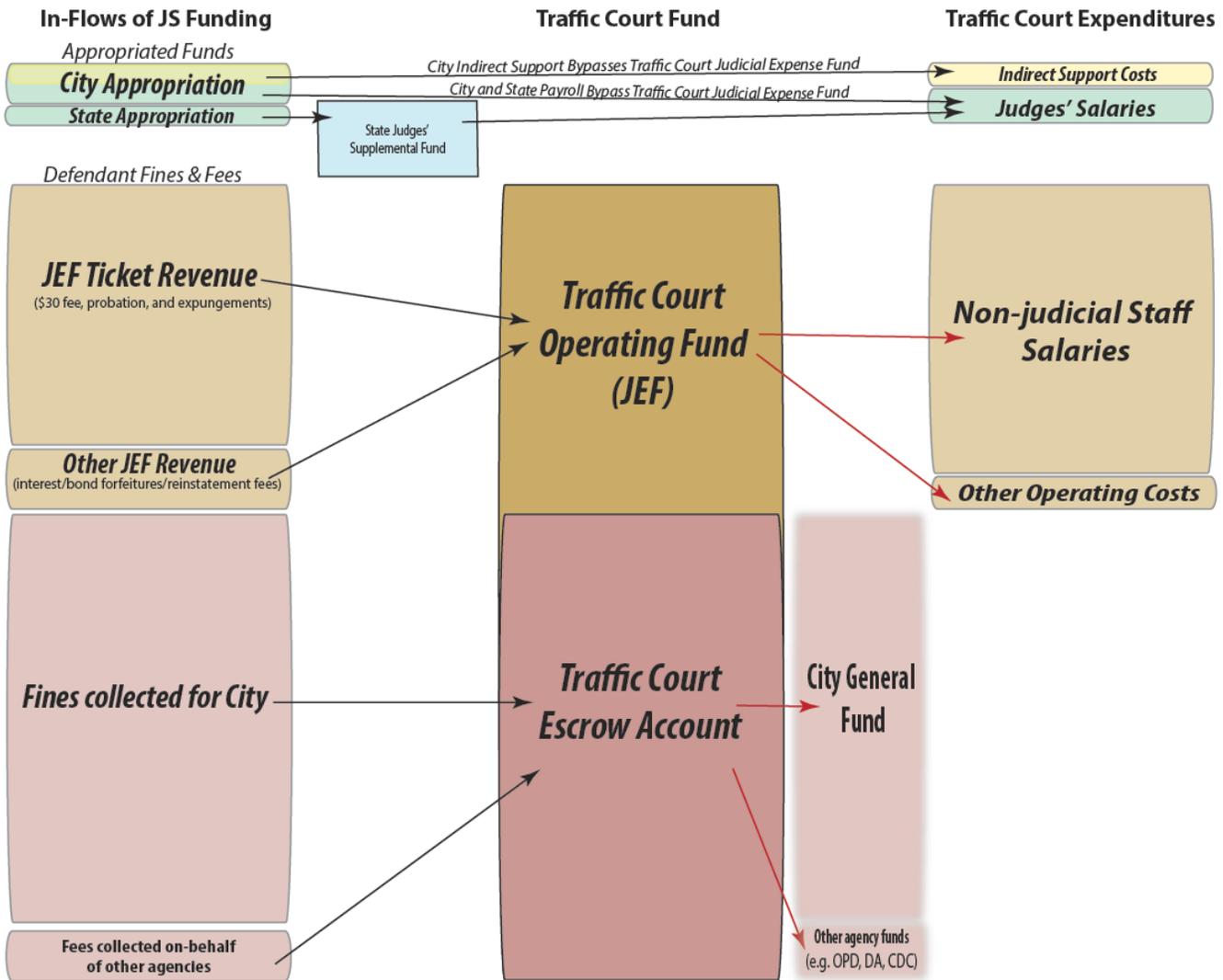
Traffic Court is a revenue-generating entity: it collected between \$9.1 million and \$12.9 million each year between 2008 and 2012, approximately \$4 million to \$6 million per year more than it cost. The Court collected fines assessed on traffic violations for the City's general fund; fees to fund its own JEF; and additional state-mandated fees on behalf of other entities, including the Orleans Public Defenders, the Orleans Parish District Attorney's Office, and the Orleans Parish Criminal District Court.

Figure 2 depicts the in- and out-flows of revenues and expenditures to illustrate the process. It shows that the Court was responsible for collecting a majority of its revenue and appropriating a majority of its expenses. The City and State provided only a small appropriation for judicial 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.¹⁴

charges on a ticket could have up to six "cases" in the Court's case management system if each of the original charges was changed.

¹⁴ Between 2008 and 2012 the Court did not always remit these fees as required by law. See New Orleans Office of Inspector General, *Assessment of New Orleans' System of City Courts and Performance Review of New Orleans Traffic Court* (New Orleans, LA: New Orleans Office of Inspector General City, 2010), 28, http://www.nolaog.org/uploads/File/All/11-17-11_Final_Public_Report_10013.pdf.

Figure 2. 2012 In- and Out-Flows of Court Funding¹⁵

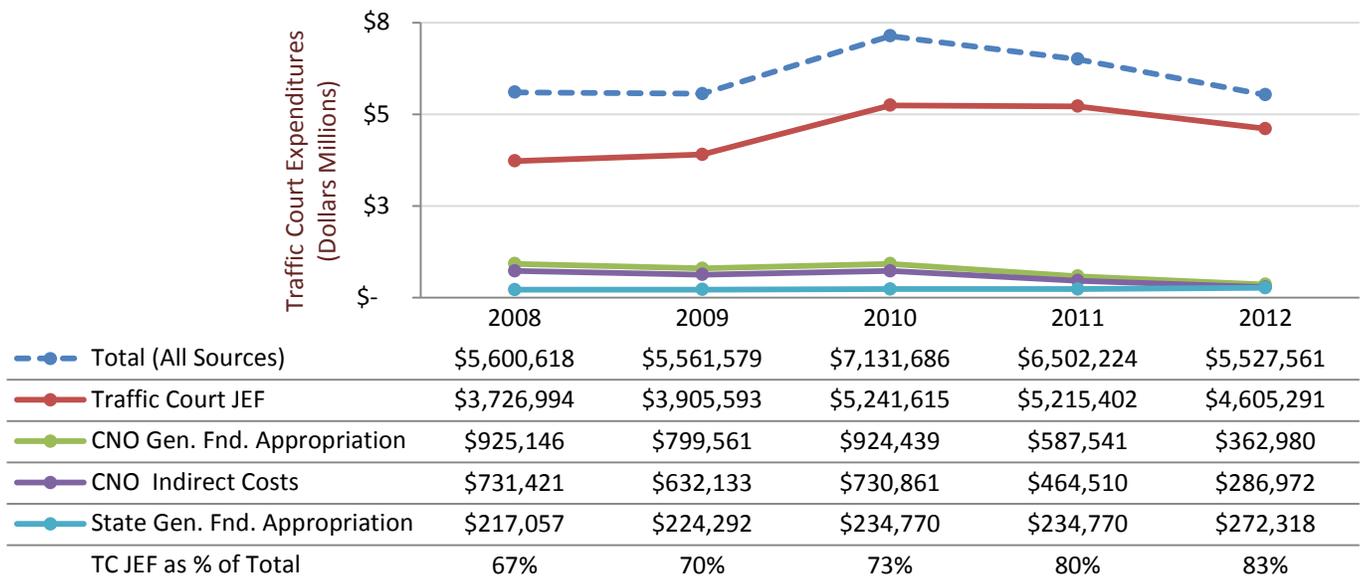


From 2008 through 2012 three entities had responsibility for funding the Court’s expenditures: the City of New Orleans, the State of Louisiana, and Traffic Court. The State provided funds for judicial compensation, including a portion of salaries and all of the judges’ healthcare and retirement benefits. During the same period, the City paid for a portion of judicial salaries and salaries for ad hoc judges (lawyers and retired judges hired to replace judges who were temporarily absent due to illness, vacation, or continuing education). The Court

¹⁵ For specific amounts of revenue collected each year see Figure 5. For specific amounts of expenditures see Figure 3. Other agency funds: Orleans Public Defenders (OPD), Orleans Parish District Attorney’s Office (DA); and Orleans Parish Criminal District Court (CDC).

financed the majority of its expenses (including payroll, professional services, and supplies) through its JEF. From 2008 through 2011 the City also provided a small allocation for Court personnel, which disappeared in 2012 and is not included in Figure 2.¹⁶ The City provided indirect financial support to the Court that does not appear in budget documents as Traffic Court costs. These expenses include support for building operations and maintenance, utilities, information technology support, payroll administration, and vehicle fuel.¹⁷

Figure 3. Traffic Court-related Expenditures by Year and Source of Funds (2008 to 2012)¹⁸



¹⁶ The amount of City funding for Court staff ranged from \$632,668 in 2008 to \$239,671 in 2011, but disappeared entirely in 2012. The absence of City funding for Court staff continued in 2013 and 2014.

¹⁷ Evaluators used the City’s Cost Allocation Plan to determine City indirect costs, but evaluators noted that the rate was likely not accurate. See Finding 5 for more details on the City’s Cost Allocation Plan.

¹⁸ Figure 3 differs slightly from Figure 1. Evaluators did not have access to City of New Orleans indirect costs or State general fund appropriations in 1984 or 1988 to 1989; therefore, financial information for those years was not included in Figure 1. Also, Figure 1 is in 2012 constant dollars and Figure 3 includes reported dollar amounts. Figure 3 does not include Law Enforcement District (LED) funds spent on behalf of the Traffic Court. La. R.S. 13:5901 established the LED, and the Orleans Parish Sheriff is the ex officio chief executive officer. The LED spent a total of \$311,455 from 2010–2012 on architectural plans for a renovation of the Traffic Court: \$28,046 in 2010, \$192,455 in 2011, and \$90,954 in 2012.

Figure 4. Traffic Court Percent of Expenditures by Year and Source of Funds (2008 to 2012)

	2008	2009	2010	2011	2012
Traffic Court JEF	67%	70%	73%	80%	83%
CNO Gen. Fnd. Appropriation	17%	14%	13%	9%	7%
CNO Indirect Costs	13%	11%	10%	7%	5%
State Gen. Fnd. Appropriation	4%	4%	3%	4%	5%

The following subsections provide more detail on the Court’s revenue and expenditures.

COURT COLLECTIONS

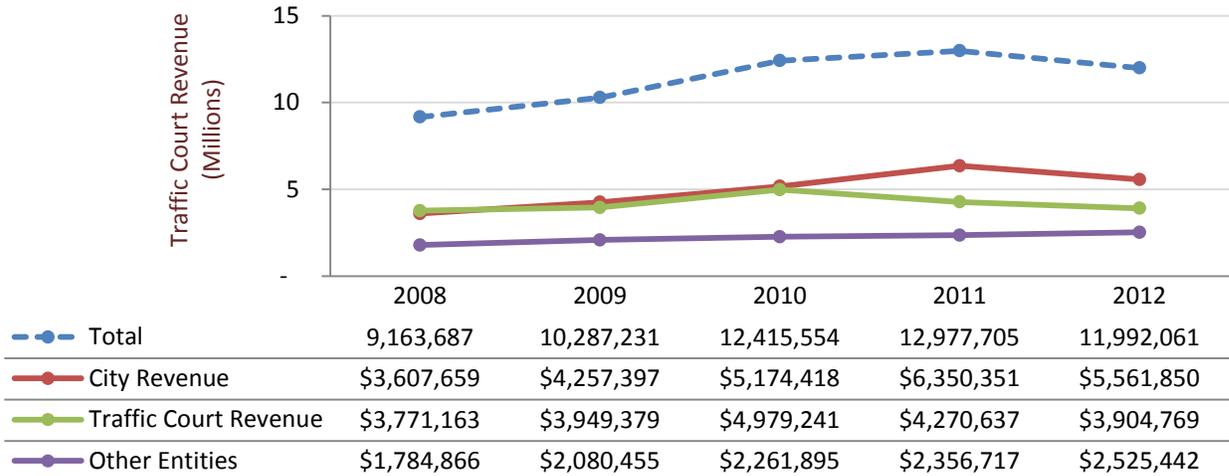
Traffic Court is a revenue-generating entity. The Court collects fines and fees from guilty parties. The Court collects:

1. Ticket fines and disburses those funds to the City of New Orleans,
2. Fees on behalf of a variety of entities for which the Louisiana State Legislature has established fees by law, and
3. Contempt fines and certain fees for the Traffic Court Judicial Expense Fund (JEF).¹⁹

The Court collected an annual average of \$11 million from 2008 through 2012: approximately \$4 million in fee revenue for the Court, \$5 million in fine revenue for the City, and \$2 million in fee revenue for the other entities (See Figure 5).

¹⁹ For a list of entities and their associated fees see Figure 6.

Figure 5. Traffic Court Collections by Year (Dollars)



CITY REVENUE

Traffic Court collects revenue for the City from fines assessed on convictions for violations of traffic laws outlined in both state law and city ordinances. The City has set minimum fines for some traffic violations in a schedule of fines in Sec. 154-177(b) of the City Code of Ordinances. Other violations require an appearance at court, at which time a judge determines an appropriate fine. The yearly amount of fines Traffic Court collected for the City ranged from \$3,607,659 to \$6,350,351 from 2008 through 2012.

REVENUE COLLECTED ON BEHALF OF OTHER ENTITIES

The Court also collects fees on convictions on behalf of a variety of agencies according to state law. Fees range from \$62 for a violation on a city street, to \$89.50 for a violation on a state highway, to \$214.50 for conviction of a second offense of driving while intoxicated. These fees are outlined in Figure 6.

Figure 6. Agencies with Traffic Fees Authorized in State Law

Agency	Fee	Authority
Criminal District Court for Orleans Parish	\$5 on each conviction	La. R.S. 13:1381.4(A)(1)
Municipal Court of New Orleans	\$5 on each conviction	La. R.S. 13:2500.2(B)(1)
Orleans Public Defender	\$45 on each conviction	La. R.S. 15:168(B)(1)
Orleans Parish District Attorney	\$20 on each conviction of a state offense	La. R.S. 16:16.3
Louisiana Commission on Law Enforcement Crime Victims Reparations Fund	\$7.50 on each conviction of a violation of Title 14 of the Louisiana Revised Statutes	La. R.S. 46:1816(D)(1)(a)
Louisiana Commission on Law Enforcement to be used to train local law enforcement agencies	\$2 on each conviction	La. R.S. 46:1816(E)(1)
Traumatic Head and Spinal Cord Injury Trust Fund	<ul style="list-style-type: none"> • \$25 for a 1st conviction of DWI²⁰ • \$50 for a 2nd conviction of DWI • \$5 for conviction of reckless operation or speeding 	La. R.S. 46:2633
Applied Technology Unit of the Louisiana State Police	\$75 for conviction of DWI if the defendant was subjected to a blood, breath, or urinary analysis for alcohol or any controlled dangerous substance	La. C.Cr.P. Art. 887(C)
Trial Court Case Management Fund	\$3 for each conviction	La. C.Cr.P. Art. 887(F)(1)
Crime Stoppers	\$2 for each conviction	La. C.Cr.P. 895.4

²⁰ Driving while intoxicated.

TRAFFIC COURT REVENUE

In addition to the revenue the Court collects for other agencies, the Court collects revenue for its own JEF. The City Council created the JEF in 1974 and ordained that the fund consist of “monies collected from contempt fines and penalties paid by persons charged with traffic violations.”²¹ The Court interpreted this to include the \$30 conviction fee the Legislature authorized Traffic Court to collect, contempt fines, bond forfeitures, and license reinstatement fees.²² Traffic Court JEF revenue peaked in 2010 with nearly \$5 million in revenue before falling back to just below \$4 million in 2012. See Figure 7 for details on JEF revenue by revenue stream.

Figure 7. Judicial Expense Fund Revenues 2008 to 2012 (Dollars)

	2008	2009	2010	2011	2012
Fees Assessed on Traffic Tickets ²³	\$3,010,521	\$3,800,794	\$4,796,714 ²⁴	\$3,643,763	\$3,580,146
Interest Income	\$134,861	\$4,212	\$4,588	\$27,160	\$1,273
Bond Forfeiture	\$593,483	\$18,023	\$56,864	\$506,676	\$217,232
Reinstatement Fee	\$31,613	\$126,350	\$121,075	\$91,075	\$105,188
Miscellaneous	\$685			\$1,963	\$930
Total	\$3,771,163	\$3,949,379	\$4,979,241	\$4,270,637	\$3,904,769

PERSONNEL EXPENDITURES

Traffic Court personnel expenses increased 2008–2012 primarily from increases in the numbers of staff. Traffic Court staff decreased by over 60 percent after Hurricane Katrina, and prior to 2009, the Court was operating in small temporary facilities at the Algiers courthouse while it waited for post-Katrina renovations at

²¹ City Ordinance, M.C.S. 5412 (4/25/74).

²² From 2008 to early 2012 the Court collected \$10 per conviction under the authority of La. R.S. 32:393 and in 2012 began collecting \$30 per conviction under the authority of La. R.S. 13:2501.1.

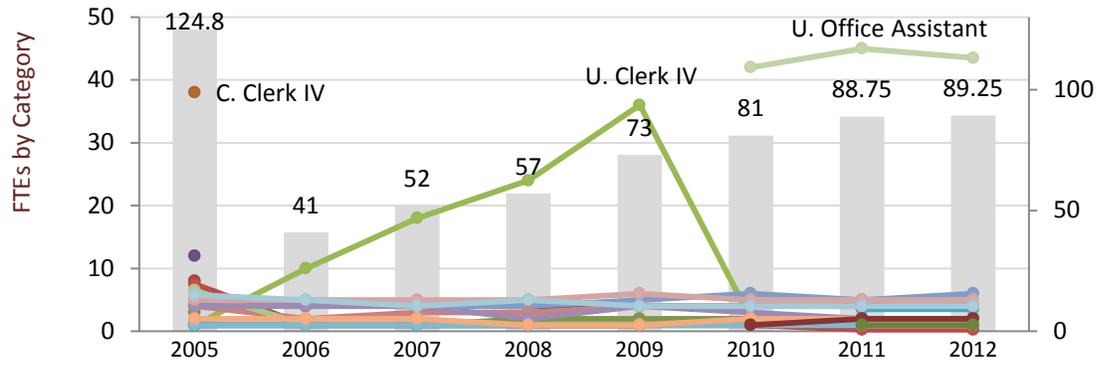
²³ These fees include the \$30 conviction fee the Legislature authorized Traffic Court to collect, contempt fines, and fees the judges are authorized to assess in some cases in which a defendant pleads guilty. The Traffic Court’s financial statement did not itemize these revenues.

²⁴ In 2010 the Court included in this amount some fees assessed for other agencies and City fine money. See *OIG, Assessment of City Courts*, 28.

the Broad Street courthouse. Figure 8 illustrates the changes in staffing from 2005 through 2012.

Overall numbers for most positions remained consistent, but a large number of personnel were reclassified. The largest shift was of classified employees, preceded by a "C," to unclassified employees, preceded by a "U." Classified employees have civil service protections intended to select, promote, and terminate employees based on merit or performance. Unclassified employees serve at the pleasure of the judges. Movement from the Classified Clerk IV position to the Unclassified Clerk IV and finally to the Unclassified Office Assistant positions accounted for most of the shift.

Figure 8. Budget Full Time Equivalent Employees by Classification (2008 to 2012)



	2005	2006	2007	2008	2009	2010	2011	2012
FTEs	124.8	41	52	57	73	81	88.75	89.25
E. Judge	4	4	4	4	4	4	4	4
C. Clerk of Court, Assistant	1		1					
C. Court Probation Officer								1
C. Court Probation Officer, Sr.	3		1	2	2	2	2	2
C. Office Assistant I	12							
C. Office Assistant II	8							
C. Office Assistant III	5							
C. Office Assistant IV	1							
C. Office Assistant, Trainee	8							
C. Office Support Specialist	1							
C. Court Support Services	1	1	1	1	1			
C. Clerk IV	38							
U. Clerk IV	1	10	18	24	36	2	2	2
U. Office Assistant						42	45	43.5
U. Accountant				1	1	2	2	2
U. Accountant, Sr.				1	1			
U. Administrative Assistant	1	1	1	1	1			
U. Clerk I	7.5	1	1	1	1	1	0.25	0.25
U. Clerk of Court	1		1			1	1	1
U. Court Clerk I							3.5	3.5
U. Court Clerk Supervisor							1	1
U. Court Crier	4	4	4	4	5	6	5	6
U. Court Reporter	4	2	3	3	4	4	4	4
U. Customer Service Specialist	6.5	1	1	1	1	1		
U. DWI Clerk	4	4	4	2	4	3	2	2
U. Judicial Administrator	1	1	1	1	1	1	1	1
U. Judicial Administrator, Asst.	2	2	2	1	1	2	2	2
U. Management Services Super							1	1
U. Minute Clerk	5	5	5	5	6	5	5	5
U. Office Assistant, Sr.							1	1
U. Office Support Specialist						1	2	2
U. Program Specialist							1	1
U. Secretary	5.8	5	4	5	4	4	4	4

OTHER OPERATING EXPENSES

Evaluators used line items described in the Court’s annual reports to the Louisiana Legislative Auditor to analyze other operating expenses and found that the Court decreased spending over the time period in most categories.

Figure 9. Other Operating Expenditures by Category (Dollars)²⁵

	2008	2009	2010	2011	2012
Automobile	21,758	4,262	2,685	2,810	9,683
Bank Charges	190	4,920	143	98	322
Capital Outlays	162,929	88,458	153,628	80,629	10,540
Contract Labor	436,058	357,760	203,374	219,533	39,452
Distribution to City of New Orleans ²⁶			110,467		
Dues & Subscriptions				16,012	16,045
Employee Testing				228	282
Equipment/Computers	57,384	45,326	17,624	80,002	103,447
Insurance	4,608	2,558	3,753	2,539	
Miscellaneous/Rounding	144	279	666	(2,866)	(809)
Office Expenses		1,900	1,070		
Office rent (Hurricane relocation)	7,200				
Office Supplies	113,577	78,332	108,517	87,073	47,407
Parking	9,950	26,748	25,946	30,398	25,295
Postage	3,135	2,638	2,941	1,353	763
Printing	44,801	32,695	17,765	21,874	21,016
Professional Services	856,003	615,274	783,984	738,714	487,003
Repairs and Maintenance	110,297	12,154	11,186	2,350	67,116
Security	4,812				
Telephone	18,438	16,555	9,837	7,896	8,418
Travel and Continuing Education	43,048	46,957	57,617	54,610	27,541
Uniforms	1,982	5,903	622	6,776	1,910
Total	1,896,314	1,342,719	1,511,825	1,350,029	865,431

²⁵ The line items in gray font include categories with less than \$10,000 in expenditures and a one-time distribution to the City in 2010. These categories are excluded from the charts in Figure 10.

²⁶ The end-of-year payment distributed half the year-end balance in the JEF to the City. See City Ordinance, M.C.S. 5412 (4/18/1974) § 5.

Figure 10 illustrates some of the changes in expenditure categories over the review period and includes the total amount spent in each category. The figure shows that the Court's largest expenditures during 2008 through 2012 were for Professional Services and Contract Labor. These expenses decreased as the Court moved more of its resources to personnel expenses rather than contract labor.

A 2011 OIG report included findings related to the Court's Professional Services and Contract Labor line item expenditures, noting that in 2010 the Court paid \$681,565 to Thomas & Thomas Accounting Services and \$185,840 to Major Services through sole-source contracts.²⁷ The 2011 report also found that the Court's spending on Contract Labor was for employees who were not included in the City's payroll system.²⁸

The Court's response to the findings explains the decreases in these categories. In a 2013 follow-up to the 2011 report, evaluators noted that in 2012 the Court ended the professional service contracts noted above and brought the functions in house.²⁹ As a result, amounts spent on professional services and contract labor dropped by 43 and 85 percent respectively. The 2013 OIG report also noted that the Court stopped hiring employees as contracted labor; instead, they were brought on as staff and paid through the employee payroll system.³⁰

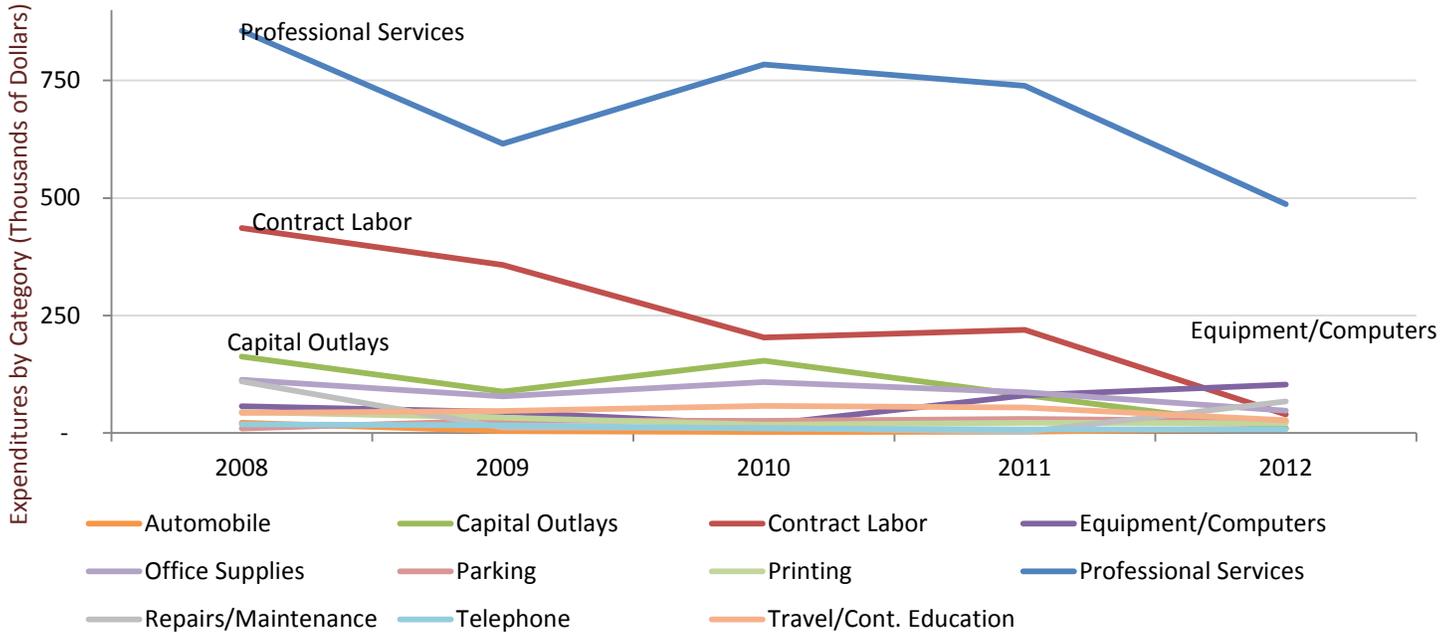
²⁷ OIG, *Assessment of City Courts*, 45.

²⁸ *Ibid.*, 42.

²⁹ New Orleans Office of Inspector General City, *Follow-up Report: Assessment of New Orleans' System of City Courts and Performance Review of New Orleans Traffic Court* (New Orleans, LA: New Orleans Office of Inspector General City, 2013), 12-13, <http://www.nolaoig.org/uploads/File/OIG%20Follow-up%20to%202011%20City%20Court%20Assessment%20130919.pdf>.

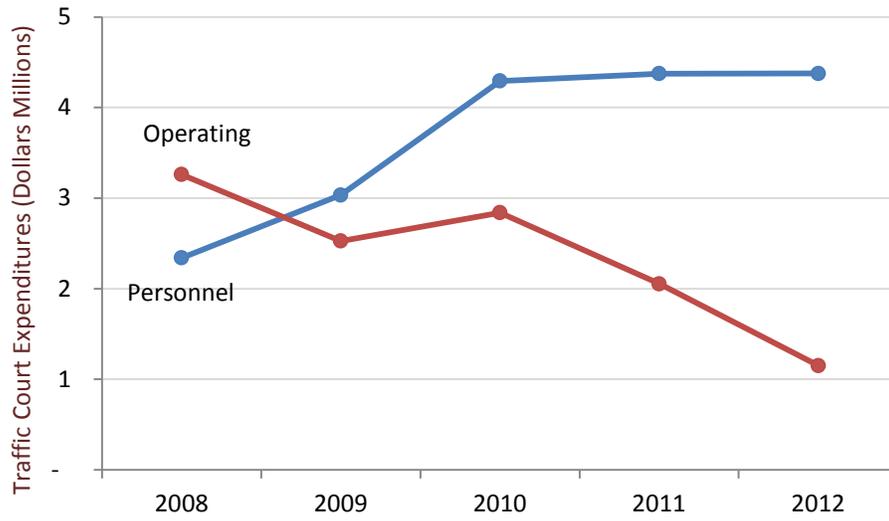
³⁰ *Ibid.*, 14.

Figure 10. Court Expenditures in Dollars (2008 to 2012)



The result of the Court’s effort to reduce its reliance on contracts was a decrease in operating costs and a corresponding rise in personnel costs. However, the total cost of the Court changed little between 2008 and 2012: 2008 expenditures totaled approximately \$5.6 million, rose to a high of \$7.1 million in 2010, and then fell to \$5.5 million in 2012.

Figure 11. Traffic Court Expenditures by Year and by Type of Expenditure (Dollars)



V. FINDINGS RELATED TO COURT FUNDING

FINDING 1. STATE LAW REQUIRES THE CITY COUNCIL TO FUND THE TRAFFIC COURT AND ALSO GRANTS THE COURT THE ABILITY TO RAISE ITS OWN FUNDS; IN DOING SO, IT UNDERMINES THE COUNCIL’S AUTHORITY TO PROVIDE THE OVERSIGHT NECESSARY TO ENSURE THE RESPONSIBLE STEWARDSHIP OF PUBLIC FUNDS.

Legislatures are responsible for balancing the competing needs of multiple users of public funds, and they use the budgeting process to make decisions about how to allocate resources among departments and agencies. Through a series of acts in the 1980s, the Louisiana State Legislature undermined the City Council’s legislative authority over the Traffic Court budget. The Louisiana Legislature gave Traffic Court the ability to raise and expend its own funds, making it independent of the local legislative budgeting process. State law removed the City Council’s ability to oversee the public funds it allocated to the Court by ordering the City to fund the Court but denying it the authority to approve the Court’s expenditures.

Though members of the Court have appeared at Council budget hearings, the appearance was largely ceremonial for two reasons. First, because state law requires the Council to pay for four judges and their staff regardless of other competing funding priorities; and second, because the Court has relied on self-generated dedicated funds maintained in the Court’s operating account (JEF) for the majority of its expenses.³¹

Independent reviewers and Traffic Court judges recognized that Traffic Court employed more staff than necessary. Reports published over the past 30 years have consistently raised questions about the efficiency of the Court’s staffing patterns and spending on operational expenses. See Figure 12 for a list of sources and findings.

³¹ From 2008 to 2011 the Council appropriated small discretionary amounts to the Court: \$632,668 (9 percent of all Court expenditures) in 2008, \$552,018 (7 percent of all Court expenditures) in 2009, 596,179 (6 percent of all Court expenditures) in 2010, and \$274,243 (2 percent of all Court expenditures) in 2011.

Figure 12. References to Staffing and Expenses in Past Reports

Report	Relevant Information
Bureau of Governmental Research, <i>Benchmarking the Bench</i> (New Orleans, LA: Bureau of Governmental Research, 2013), 15. ³²	Traffic Court had four judges, although a workload analysis showed it needed only 1.2.
The PFM Group, <i>A 21st Century Criminal Justice System Part II: Improving the Operations of the Court System</i> (Philadelphia, PA: The PFM Group, 2012), 5. ³³	“In Interviews Traffic Court officials conceded that it would be possible to perform its current administrative functions with one-quarter fewer staff.”
New Orleans Office of Inspector General City, <i>Assessment of New Orleans' System of City Courts and Performance Review of New Orleans Traffic Court</i> (New Orleans, LA: New Orleans Office of Inspector General City, 2011), 44-45. ³⁴	Traffic Court spent \$250,000 on supplies and \$887,405 on professional services without any competitive procurement.
New Orleans Office of Inspector General City, <i>Follow-up Report: Assessment of New Orleans' System of City Courts and Performance Review of New Orleans Traffic Court</i> (New Orleans, LA: Office of New Orleans Inspector General City, 2013), 13. ³⁵	The Court still had no policy requiring a competitive process for professional services (the largest category of spending).
Bureau of Governmental Research, <i>Study of the Judicial/Parochial Agencies in Orleans Parish</i> (New Orleans, LA: Bureau of Governmental Research, 1991), 123.	BGR recommended reducing each judge’s staff to three positions based on state statutes and a “review of the most common judicial appointments in other courts.”
National Center for State Courts, <i>A Study of the Administration and Financing of the Orleans Parish Trial Courts New Orleans, Louisiana</i> (Williamsburg, VA: National Center for State Courts, 1989), 80. ³⁶	“... [I]t is unusual to see, as in New Orleans Traffic and Municipal Courts, the large number of clerical personnel reporting directly to a judge. To have three to ten clerical staff over and above a core judicial support staff appears to be over staffing.”

³² Accessed February 11, 2015, http://www.bgr.org/files/reports/BGR_Judgeships-2013.pdf.

³³ Accessed February 11, 2015, <http://www.nola.gov/getattachment/bd349640-56ea-420c-9445-321a13a96a49/PFM-2.pdf>.

³⁴ Accessed February 11, 2015, http://www.nolaoig.org/uploads/File/All/11-17-11_Final_Public_Report_10013.pdf.

³⁵ Accessed February 11, 2015, <http://www.nolaoig.org/uploads/File/OIG%20Follow-up%20to%202011%20City%20Court%20Assessment%20130919.pdf>.

³⁶ Accessed February 11, 2015, <http://cdm16501.contentdm.oclc.org/cdm/ref/collection/ctadmin/id/272>.

National Center for State Courts, *Operation and Management of the Traffic Court, City of New Orleans* (Williamsburg, VA: National Center for State Courts, 1984), 149-150.³⁷

Traffic Court had 1,400 case filings per staff member compared to an average of 3,671 case filings per staff member in other comparable courts. “[Data presented suggest that] courts with relatively lower filings-to-staff ratios may be overstaffed in comparison to the other courts ... and are not making the most efficient use of their personnel, and that there exists a potential for increased employee productivity through the adoption of improved office management practices and modern office technologies.”³⁸

The City Council attempted to exercise its legislative role and to use public meetings to limit Court spending, but the judges had ultimate authority in deciding how much the Court should cost. An interchange between Traffic Court judges and City Councilmembers at a 2011 City Council Governmental Affairs Committee meeting illustrated the Council’s inability to exercise its legislative duty to control Court spending.

Traffic Court judges admitted during the meeting that they could not justify the number of staff members assigned to each judge and planned to reduce staff through attrition. A Councilmember expressed concern that in the meantime limited public funds were being used to pay for more employees than the workload of the Court demanded. One judge admitted that he had “to find work for them to do.” The Councilmember responded, “... [T]hen the City is paying for these employees that ... actually only have part-time work and there were too many of them to begin with. ... I know this is difficult, but when you’re talking about a cash-strapped City, it’s also difficult to try to justify that [paying for too many employees].” In response, another judge asked the Councilmember, “Are you suggesting that we fire people instead of losing them through attrition?”³⁹

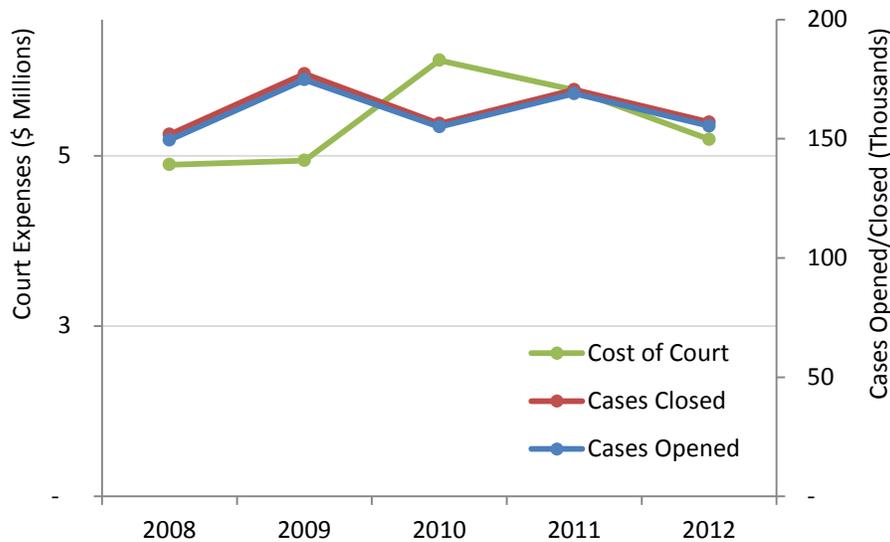
³⁷ Accessed February 11, 2015, <http://cdm16501.contentdm.oclc.org/cdm/ref/collection/traffic/id/20>.

³⁸ In 2012 despite the passage of nearly 30 years and the availability of new technologies, there were 1,822 case filings per employee; a number still far below the other courts mentioned in the 1984 report.

³⁹ New Orleans City Council, “Presentation and discussion of report by the New Orleans Inspector General titled ‘Assessment of New Orleans’ System of City Courts and Performance Review of New Orleans Traffic Court’” (video of Governmental Affairs Committee Meeting, December 5, 2011 at 02:12:50), accessed October 14, 2014, http://cityofno.granicus.com/MediaPlayer.php?view_id=7&clip_id=1074.

From 2008–2012 Court spending did not respond to changes in workload, and increased spending did not produce more output at the Court. Evaluators conducted a correlation analysis to understand the relationship between Court spending and performance. The number of cases opened in Court was used as a measure of the amount of work that the agency must complete, and the number of cases closed was used to measure the amount of work actually done by the agency (the output measure). Neither measure correlated highly with the cost of the court: there was a $-.03$ correlation between cost and cases opened and a $-.07$ correlation between cost and cases closed.⁴⁰ See Figure 13 for an illustration of expenses and workload.

Figure 13. Connection between the Cost of Court and Cases Opened/Closed (2008 to 2012)



The figure illustrates that workload and output did not move in tandem (i.e., were not correlated) with the cost of the Court: from 2008 through 2012 there was not a strong connection between the cost of the Court and its workload or

⁴⁰ Correlation measures the similarity in the movement of two variables. Correlations range from 1 (the two variables increase or decrease together in perfect tandem) to 0 (there is no relationship between the variables) to -1 (there is a perfect inverse relationship between the two variables: as one increases, the other decreases accordingly).

output. In fact, between 2009 and 2010 the cost of the Court increased while the Court's workload and output decreased.

RECOMMENDATION 1. THE CITY AND COURT SHOULD SEEK AMENDMENTS TO STATE STATUTES THAT RETURN BUDGETARY OVERSIGHT OF THE TRAFFIC COURT TO THE NEW ORLEANS CITY COUNCIL AS IT WAS IN THE 1975 STATUTE.

When the Legislature undermined Council authority to provide budgetary oversight of the Court, it also removed the external check on the size and resulting cost of the Court; the Legislature effectively authorized the Court to grow as big—and as expensive—as the judges saw fit independent of the Court's workload or the City's other financial needs. The Legislature's decision resulted in no financial consequences to the State.

In order to enable the effective and efficient oversight of public monies, the entity overseeing the cost of the Court and the entity funding the Court should be one and the same. If the State were to restore the Council's budgetary oversight of the Court, the discussions and trade-offs that occur during the budget process could encourage fiscal restraint in the Court's budget so that the cost of the Court might be based on its workload and needs.

FINDING 2. THE TRAFFIC COURT DID NOT MONITOR DATA NECESSARY FOR AND/OR REPORT PERFORMANCE MEASURES THAT COULD DOCUMENT ITS EFFICIENCY, DEMONSTRATE ACCOUNTABILITY, AND ENSURE THE EFFECTIVE USE OF PUBLIC RESOURCES.

The New Orleans Traffic Court (Court) states that its mission is "to adjudicate violations of City of New Orleans traffic ordinances and state traffic laws."⁴¹ This statement describes the work the Court does, but does not include the outcomes the Court hopes to achieve or create any standards that could be used to measure how effectively or efficiently the Court carries out its responsibilities.

⁴¹ City of New Orleans, *Proposed 2014 Operating Budget* (New Orleans, LA: City of New Orleans, 2013), 523, accessed February 11, 2015, http://www.nola.gov/getattachment/Mayor/Budget/2014_Proposed_Budget_Book.pdf/.

Though numerous studies question whether the cost of the Court is appropriate (see Figure 12), evaluators found it impossible to draw definitive conclusions. Courts in other jurisdictions use performance measures to justify expenditure requests before legislative bodies. The National Center for State Courts (NCSC) developed a set of nationally accepted performance measures for trial courts for just this purpose, and the Court could collect data for these measures to justify its expenditures.

The NCSC advocates the use of performance measures in courts for a variety of reasons. One reason is that measuring performance legitimates courts' administrative independence and their role as a third branch of government. The NCSC states:

For the nation's courts, failure to highlight performance goals and measure them undermines the judiciary's proclaimed ability and need to govern its own affairs **Since courts use public resources, taxpayers and their elected representatives are legitimately entitled to raise questions about efficiency and effectiveness in the expenditure of court funds** [emphasis added].⁴²

The NCSC emphasizes that courts should consider cost-effectiveness when making funding requests to ensure that resources are allocated to programs with the greatest value. It states:

If improvements in performance fail to increase proportionately to additional outlays of time and resources, new money would be better distributed to another activity, function, or program. At some point, for example, the impact on case-processing time of adding more staff will be negligible. Therefore, performance measurement should be conducted with an eye on two fundamental criteria: the outcomes the court delivers to its customers and the cost-effectiveness the court achieves in distributing resources.⁴³

Evaluators attempted to collect data to measure performance on five of the ten NCSC measures: cost per case, case clearance rate, time to disposition, age of active pending caseload, and collection of monetary penalties. We also asked the

⁴² National Center for State Courts, *Courtools: Why Measure Performance* (Denver, CO: Court Consulting Services, National Center for State Courts, 2005), 3, accessed February 11, 2015, http://www.courtools.org/~media/Microsites/Files/CourTools/CourTools_Trial_Why_Measure.ashx.

⁴³ Ibid.

Court to conduct a staffing questionnaire to determine how it allocated staffing resources. Figure 14 provides a description of the measures and why they were included.

Figure 14. Selected Court Performance Measures

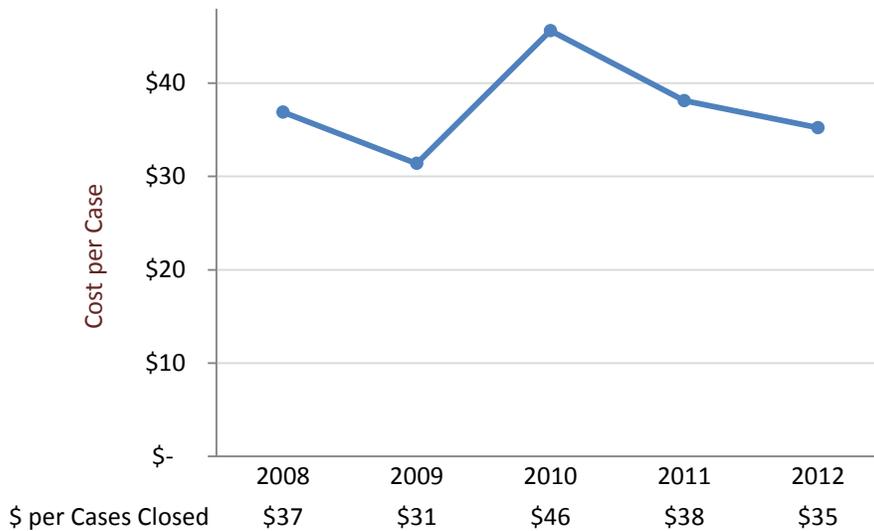
Performance measure	How to calculate	How it can be used
Cost per case	The total expenditures of the court divided by the number of cases closed	Measures the overall financial efficiency of the court
Clearance rate	The number of outgoing cases as a percentage of the number of incoming cases	Reflects the court's ability to keep up with caseload
Time to disposition	The percent of cases closed or resolved within established time frames	Measures timeliness of court processes
Age of active pending caseload	The age of active cases pending before the court	A vital component to the other case processing measures; other measures may not include cases that are older than the time period measured
Collection of monetary penalties	The percentage of all fines assessed during a year that were collected during the year	Measures how well court orders are observed
Staffing questionnaire	17-question web-based questionnaire of employees regarding job roles	Measures how staff resources are deployed throughout the Court

Evaluators describe the results of the performance review of Traffic Court below. Traffic Court provided adequate data to measure cost per case and clearance rate. However, the Court could not provide the data needed for the analyses of the three remaining performance measures.⁴⁴

⁴⁴ The New Orleans Traffic Court presents another challenge to analysts trying to determine the court's performance: it is the only court in the country devoted entirely to traffic cases and therefore its performance cannot be benchmarked.

Cost per Case: The Court provided the number of cases opened and closed each year to the Louisiana Supreme Court, which publishes the numbers in its annual report.⁴⁵ Evaluators calculated the dollar cost per case using the total expenditures from each year based on Figure 3 and divided the amount by the number of closed cases reported to the Louisiana Supreme Court. The Court’s cost per case varied between 2008 and 2012, with a high of \$46 per case closed in 2010 to a low of \$31 per case closed in 2009. Cost per case was 45 percent greater in 2010 than it was in 2009 (see Figure 15).

Figure 15. Dollar Cost per Case Closed (2008 to 2012)



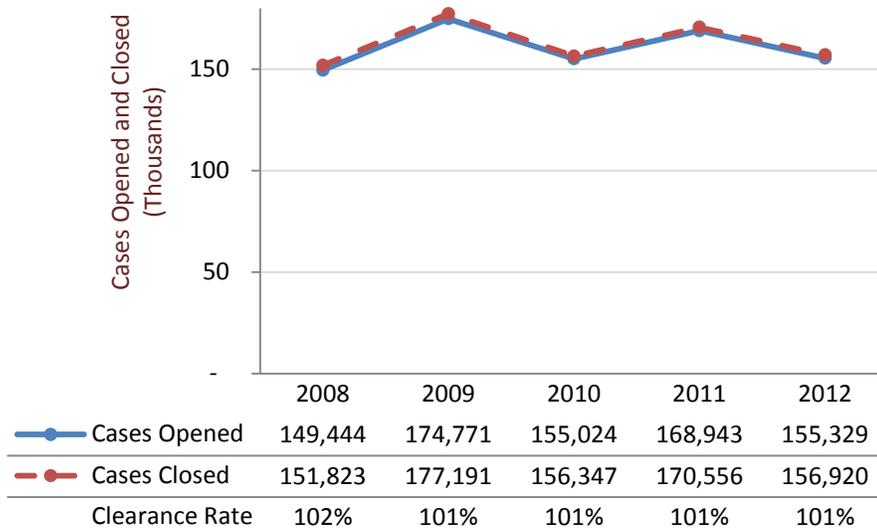
Cost per case increased between 2009 and 2010 because caseload decreased at the same time as personnel costs increased.⁴⁶ Costs came down in 2011 and 2012 as the Court decreased spending on personnel and other operating expenses.

Clearance Rate: Evaluators also used opened and closed cases reported to the Louisiana Supreme Court to determine the Court’s clearance rate. The Court’s clearance rate remained steady from 2008 through 2012 at just over 100 percent (see Figure 16).

⁴⁵ Evaluators did not audit these numbers for accuracy or completeness. See footnote 13 for information about how the Court counted cases.

⁴⁶ See Figure 8 for the increase in personnel expenditures.

Figure 16. Clearance Rate 2008 to 2012



The Court’s clearance rate was greater than 100 percent because it closed cases that were filed prior to the year in which they were closed.⁴⁷

Time to Disposition and Age of Active Pending Caseload: The Court did not report the time to disposition or the age of active pending caseload. One reason the Court could not provide this information is that records from prior to 2008 were incomplete. The Court’s counsel reported to evaluators that “the information in the SunGard system pre-2008 is either incomplete or unreliable.” Court staff also stated that the records were incomplete.

The Court provided a report that included cases opened between 2000 and 2012 and the report included **more than 260,000 pending cases over a year old**. However, court staff stated that it was possible some of those cases may have been closed, confirming the unreliability of the data.

⁴⁷ NCSC reports time standards for completion of cases. The standards recommend that 98 percent of traffic cases be closed within 90 days. See 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.

The Court implemented a new case management system in late 2014 and the new system has the capability to report time to disposition and age of pending caseload. However, if the Court tracks these measures, the system will only be able to report these important metrics moving forward because older data are flawed.

Collection of Monetary Penalties: A court’s collection rate—the percent of total fines collected within a specific timeframe—is a widely recognized performance measure. The Court did not report its collection rate from 2008–2012, although it added collection rate to its 2013 performance measures.⁴⁸

The Court provided data from its case management system that included the amount of fines assessed within a given year, but the amount collected included fines collected on all cases, regardless of the age of the case. Older cases, which had been open longer, had higher collection rates because there was simply more time to collect on them. Evaluators could not determine the rate of collection only for those cases opened within a given calendar year from the data provided.

The Court reported data for a financial performance measure, but it reported the total amount collected within a year instead of the percent of fines collected. In 2013 it participated in the City’s BottomLineStat (BLS). At BLS meetings, Court officials presented information on the total amount collected year to date and strategized with City officials about how to increase the amount collected. The monthly BLS reports include charts showing a comparison of collections to prior years.⁴⁹

It is important to know the amount the Court collected, but it is meaningless as a performance measure without knowing the total amount of penalties the Court assessed. The amount the Court collects may be influenced by variables outside its control. For example, if the number of citations issued by New Orleans police officers decreased, one could expect the amount of money the Court collected

⁴⁸ City of New Orleans, *Proposed 2014 Operating Budget* (New Orleans, LA: City of New Orleans, 2013), 523, accessed February 11, 2015, http://www.nola.gov/getattachment/Mayor/Budget/2014_Proposed_Budget_Book.pdf/.

⁴⁹ City of New Orleans, *BottomLineStat December 2013 Reporting Period* (New Orleans, LA: City of New Orleans, 2013), 19, accessed February 11, 2015, <http://www.nola.gov/getattachment/314a469f-8135-4af7-aab8-df3d13cf5584/BottomLineSTAT-December-2-Master-Presentation/>.

to decrease as well. In this scenario, only the collection rate, as opposed to the total amount collected, could accurately measure how successful the Court was in collecting fines.

Staffing Questionnaire: Evaluators administered a questionnaire to Court staff to determine how the Court allocated personnel resources to various court functions. The questionnaire consisted of basic questions about the employee’s position and his or her role and duties at the Court. The questionnaire was intended to determine how much time staff spent on a variety of Court activities: case processing, calendar management, records management, financial management, courtroom support, monitoring and enforcement, and social work. Respondents could also add other categories. (See Appendix B for a copy of the questionnaire.)

Evaluators distributed the questionnaire through web-based survey software and offered to collect responses in person if respondents were not comfortable with the software. Unfortunately, evaluators did not receive enough responses to make the results meaningful: only eight of 64 employees provided responses to the questionnaire. Traffic Court judges refused to allow evaluators direct access to staff to obtain a larger number of responses.⁵⁰

RECOMMENDATION 2. THE COURT SHOULD TRACK CASE TIME TO DISPOSITION, AGE OF ACTIVE PENDING CASELOAD, AND ITS COLLECTION RATE. THE COURT SHOULD ALSO PROVIDE MORE INFORMATION REGARDING THE ACTIVITIES OF ITS STAFF.

The Court should add to the measures it uses to assess its performance. The Court had information available to measure its cost per case and clearance rate. However, the NCSC also recommends that the Court report time to disposition, age of pending caseload, collection of monetary penalties.⁵¹ The Court should also provide information on the activities of its staff.

⁵⁰ The City Charter provides Office of Inspector General staff “direct and prompt access to all employees of the city.” City Charter Sec. 2-1120(12)(c). However, Traffic Court employees are not considered city employees.

⁵¹ Evaluators focused on these measures because they were most related to making decisions about funding the Court. NCSC recommends additional measures including user opinions of access and fairness, trial date certainty, reliability of case files, and employee satisfaction.

It is difficult to use the existing performance data available to draw conclusions regarding the appropriateness of Traffic Court expenditures. The fact that the cost per case was 45 percent higher in 2010 than it was in 2009 raises questions about whether the Court's additional spending increased the efficiency or effectiveness of the Court. In fact, **the Court's clearance rate did not increase from 2008 to 2012 despite a 36 percent increase in personnel expenditures and a 45 percent increase in cost per case.**

This information suggests an excess in workforce capacity at the Court, but the lack of data regarding time to disposition and age of active pending caseload complicates drawing conclusions about case management. The Court needs to provide better measures of the work it is doing and how available resources affect performance.

FINDING 3. THE COURT'S RELIANCE ON ITS JUDICIAL EXPENSE FUND CREATED A CONFLICT OF INTEREST THAT UNDERMINED JUDICIAL INDEPENDENCE.

From 2008 through 2012 New Orleans Traffic Court judges were responsible for raising 67 percent to 83 percent of their operating expenses through court fees assessed on guilty convictions (see Figure 3). Raising such a large percentage of funds from guilty convictions creates a conflict of interest because judges have an incentive to find defendants guilty in order to fund the operations of the court.

Numerous legal scholars and governmental oversight organizations have commented on the extent to which Louisiana courts, and Traffic Court in particular, rely on fees to finance court operations. See Figure 17 for a selected list of sources and references.

Figure 17. References to Conflicts of Interest in Past Reports

Report	Relevant Information
National Center for State Courts, Southeast Regional Office, <i>A Study of the Administration and Financing of the Orleans Parish Trial Courts</i> (Williamsburg, VA: National Center for State Courts, 1989), 31. ⁵²	“The fact that fines and discretionary probation assessments are paid into an internal court fund used to finance court operations raises some difficult ethical and legal problems. ... 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.”
National Center for State Courts. <i>A Study of the Administration and Financing of the Orleans Parish Trial Courts New Orleans, Louisiana</i> . (Williamsburg, VA: National Center for State Courts, 1989), 127.	“Judicial expense funds are a reflection of the inability or unwillingness of local governments to fund courts. The practice is fraught with constitutional and ethical ramifications. Moreover, the concept of an entrepreneurial court is demeaning to the judiciary and opens up opportunities for abuse of judicial expense funds.”
New Orleans Office of Inspector General City, <i>Assessment of New Orleans' System of City Courts and Performance Review of New Orleans Traffic Court</i> (New Orleans, LA: New Orleans Office of Inspector General City, 2010), 45-46. ⁵³	“The judicial expense funds established for Municipal and Traffic Court are funded by penalties imposed in criminal cases. The use of criminal penalties to fund court operations not only erodes budgetary controls and accountability, but also raises constitutional concerns about due process.”
Micah West. "Financial Conflicts of Interest and the Funding of New Orleans's Criminal Courts." <i>California Law Review</i> , (2013): 101-131. ⁵⁴	“These statements highlight the constitutional, political, and human costs of the funding structures in New Orleans’s adult criminal courts. The judiciary’s reliance on judicial expense funds and other financial assessments creates the possibility of a structural conflict of interest.”

Federal courts and the Louisiana Supreme Court have issued numerous opinions on the topic of court fees and the conflict of interest they can create.⁵⁵ The

⁵² Accessed February 11, 2015, <http://cdm16501.contentdm.oclc.org/cdm/ref/collection/ctadmin/id/272>.

⁵³ Accessed February 11, 2015, http://www.nolaoig.org/uploads/File/All/11-17-11_Final_Public_Report_10013.pdf.

⁵⁴ Accessed February 11, 2015, <http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=4200&context=californialawreview>.

⁵⁵ 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

Conference of State Court Administrators (COSCA) argues against relying on fees to fund courts in two of its standards:

- 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.”
- 4.2 “The proceeds from any fee should not be earmarked for the benefit of any judge, court official, or other criminal justice official who may have direct or indirect control over cases filed or disposed in the judicial system.”⁵⁶

The legal and administrative standards outlined above raise serious questions about Traffic Court’s funding structure since over 80 percent of Traffic Court expenditures (including salaries of court officials) are funded through fees.

Traffic Court judges agree that the Court should not be reliant on self-generated fees because they create a structural conflict of interest. According to the administrative judge, the collection of revenue became a performance measure when he first became a judge in 1998. JEF revenue went up and the City reduced its direct financial support to the Court. The judge observed that the funding structure was unconstitutional and claimed that he had become more like a businessman and less like a judge.

process. See Tumey v. Ohio, 273 US 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 finance may make him partisan to maintain the high level of contribution from the mayor’s court.” See Ward v. Village of Monroeville, Ohio, 409 US 57, 59 (1972). In Augustus v. Roemer, the U.S. District Court for the Eastern District of Louisiana found that 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, et al., 771 F. Supp. 1458(ED 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). The Department of Justice Civil Rights Division confirmed these findings in its recent *Investigation of the Ferguson Police Department*: “The impact that revenue concerns have on court operations undermines the court’s role as a fair and impartial judicial body.” (Washington, D.C.: Department of Justice, March 2015), 42.

⁵⁶ Conference of State Court Administrators, “Standards Relating to Court Costs: Fees, Miscellaneous Charges and Surcharges and A National Survey of Practice.” June 1986. 9-11, accessed February 11, 2015, <http://cdm16501.contentdm.oclc.org/cdm/ref/collection/financial/id/81>.

In the 2014 Traffic Court budget hearing before the City Council, a second Traffic Court judge spoke about the structural conflict of interest created when a court must raise funds by assessing fees after guilty verdicts. The judge's opinion was widely publicized when a local television station covered the budget hearing and quoted the judge.⁵⁷ At the hearing the judge stated:

The lack of proper funding requires the court to be dependent upon fines, fees, and costs imposed on defendants to pay operating costs. This dependence creates a conflict of interest that violates defendants' due process rights to impartial judges. **The present funding structure (i.e., shifting funding responsibility to the defendant) creates an unconstitutional financial conflict of interest, violates state and local budgetary laws, and contradicts national best practices [emphasis added].**⁵⁸

RECOMMENDATION 3. THE CITY SHOULD FUND CORE COURT OPERATIONS ADEQUATELY FROM A GENERAL FUND APPROPRIATION AND THE COURT SHOULD REDUCE ITS RELIANCE ON THE JEF. THE CITY AND COURT SHOULD ASK THE LEGISLATURE TO AMEND LA. R.S. 13:2507.1(N) TO LOWER THE AMOUNT THE COURT IS AUTHORIZED TO COLLECT TO AN AMOUNT THAT WILL NOT CAUSE A STRUCTURAL CONFLICT OF INTEREST.

The current funding structure creates doubt that defendants before the Court receive access to an impartial judge, and the City should explore other options for funding the Court. The City should fund the Court adequately from a general fund appropriation.⁵⁹ However, adequately funding the Court through the City's general fund will not be sufficient to remove the conflict of interest. The City and Court should also ask the State Legislature to amend La. R.S. 13:2507.1(N) to

⁵⁷ "Traffic Court Judges Urge a Change in Funding Process," Casey Farrand, WDSU 6 News on Your Side, aired October 28, 2013, on WDSU, accessed August 22, 2014, <http://www.wdsu.com/news/local-news/new-orleans/traffic-court-judges-urge-a-change-in-funding-process/22682632#!bldBbD>.

⁵⁸ *City Council Budget Hearings on 2014 Proposed Budget*, "Traffic Court Budget Presentation," October 28, 2013 at 01:33:14, accessed October 13, 2014. http://cityofno.granicus.com/MediaPlayer.php?view_id=7&clip_id=1680.

⁵⁹ In the interest of full disclosure: if all proceeds from penalties collected by the Court were directed to the City's General Fund, all entities that receive a guaranteed portion of the General Fund would benefit. This includes the Office of Inspector General, which receives .75 of 1 percent of the General Fund as its annual budget (\$7,500 out of every \$1 million).

decrease the amount the Court is authorized to collect in conviction fees to an amount that will not cause a conflict of interest.⁶⁰

The scenario presented in this recommendation will reduce the overall amount of revenue available to the City and increase demands on general fund dollars. To compensate for lost JEF revenue, the City could raise traffic fines, which already go to the City's general fund, by \$30.

⁶⁰ In the fall of 2012, a Councilmember proposed an ordinance that gave the City Council authority to appropriate the JEF, but the effort was not successful. Even if the Council had passed the ordinance, La. R.S. 13:2507.1 would still have given judges control over the JEF and the judges would have had an incentive to maximize the JEF balance.

VI. FINDINGS RELATED TO CITY SUPPORT OF COURT OPERATIONS

As discussed previously in this report, evaluators found that it was difficult to quantify the extent to which the City of New Orleans (City) funded the Court. The City's General Fund appropriation provided some funding to the Court, but the City's budget did not reflect the entire amount. Also, the cost of the Court may have been higher than necessary because of the City Council's inability to fulfill its oversight function. Finally, the Court's reliance on fees raises questions about whether judicial decisions might be influenced by the need to raise revenue for the Court.

This section explores the City's support of court operations in more detail. An examination of the Court's finances revealed that two state statutes send a mixed message about which entity is responsible for funding the Court, leading the City and Traffic Court to engage in financial manipulations inconsistent with best practices.

FINDING 4. THE COURT USED DEFICIT SPENDING TO FUND PAYROLL EXPENSES INSTEAD OF WITHHOLDING CITY FINE MONIES AS REQUIRED BY STATE LAW.

State law creates three funding sources for the Court. La. R.S. 13:2507 clearly makes the City responsible for paying all Court staff by stating that salaries "shall be paid by the city of New Orleans." However, the statute anticipates the possibility that the City might not comply and creates a second option for Court funding if the City does not appropriate enough funds to the Court: "In the event that the city shall refuse or fail to pay any such salaries, the judge, or judges, of the court shall withhold from the funds collected under the jurisdiction of the court sufficient money to pay any salaries not paid by the city... ." ⁶¹ These funds would not come from the Court's Judicial Expense Fund (JEF); they could be withheld from the escrow account in which the Court deposited fine revenues collected for the City.

The State creates a third possibility in La. R.S. 13:2507.1, which established the Traffic Court JEF and gave the Court permission to use the JEF to pay for salaries

⁶¹La. R.S. 13:2507. The Clerk of Court is the only employee at the Court for whom the City is not financially responsible; the Clerk of Court is paid from the Judicial Expense Fund. La. R.S. 13:2495(C).

if there was revenue available. The statute states that JEF funds “may be used for any operating expense of the court, including salaries for court reporters, bailiffs, minute clerks, and other court personnel and is in addition to any and all other funds, salaries, expenses, or other monies that are provided, authorized, or established by law.” See Figure 18 for a summary of these three possible Traffic Court funding sources.

Figure 18: Traffic Court Funding Sources Authorized in State Law

A. City General Fund Appropriation	B. Withhold Funds Due to the City	C. Traffic Court JEF
<p>La. R.S. 13:2507</p> <p>State law requires the City to pay for the salaries of Traffic Court staff.</p>	<p>La. R.S. 13:2507</p> <p>State law allows the Court to withhold funds to pay for staff if the City refuses to pay.</p>	<p>La. R.S. 13:2507.1</p> <p>State law allows the Traffic Court to pay the salaries of staff (except judges) using the JEF.</p>
<p>This option creates expenses for the City’s General Fund.</p>	<p>This option reduces revenue to the City’s General Fund and increases revenue to the Court which it can then use to pay personnel expenses from its JEF.</p>	<p>This option creates expenses for the Traffic Court’s JEF.</p>

State law provides three options for funding Court payroll. From 2008 through 2010 both allocations from the City’s General Fund and Court’s JEF funded the Court’s expenditures (options A and C from Figure 18). However, in 2011 and 2012, there was not enough money in the JEF to fund payroll expenses. Instead of withholding funds from the City (option B), the Court carried the deficit on its books.

From 2008 through 2010 the City appropriated just under \$1 million to the Court. In 2011 that amount dropped to \$600,000, and in 2012 it dropped to \$362,980 (See Figure 3). Traffic Court paid an increasing portion of staff salaries as the City’s funding appropriation declined, and by 2012 the City’s payment of \$362,980 was only enough to cover its share of the Court’s judicial salaries. As a result, in 2012 the Court was paying all staff personnel costs from its JEF.

From 2008 through 2010 the JEF operated with a positive fund balance, and there was enough revenue available to pay Court staff salaries using only the City’s general fund appropriation and the Court JEF as funding sources. However, the Court had a negative balance in 2011 and 2012 due to a transfer of \$2.4 million to the City in 2011 and a negative cash flow. As a result, in 2011 and 2012 the Court’s expenditures exceeded the amount of revenue and assets available because there was not enough revenue in the JEF to fund all expenses fully.

Figure 19. JEF Fund Balances and Assets (2008 to 2012)⁶²

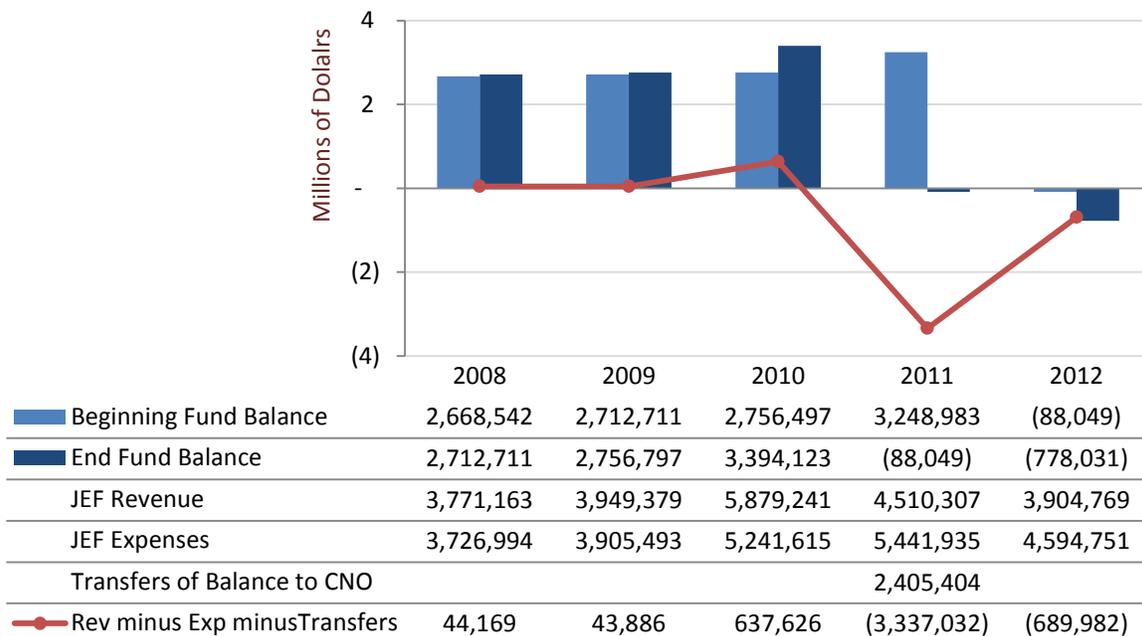


Figure 19 shows the Court’s JEF with negative assets in 2011 and 2012 because its payroll expenses exceeded the amount of revenue available in the fund. The deficit spending was possible because the City performed payroll for the Court; the City paid Court employees and then invoiced the Court for the expenses. These invoices created a balance due on the Court’s financial records.

⁶² The 2011 beginning year fund balance does not match the 2010 end-of-year balance because the Court hired new third-party auditors who restated the Court’s 2011 account balance in the 2012 audit.

Figure 20 illustrates the financial relationship among the entities. In addition to City and Court JEF funds, the State paid a portion of judicial salaries directly to the judges out of its General Fund (see A in Figure 20).

The City typically allocated two line items for court-related expenses from 2008 through 2012: it made direct payments for judicial salaries from the General Fund (B) for the entire five years, and in 2008–2011 it also transferred monies to a special fund to pay a portion of Court staff salaries (C). But in 2012 the City did not allocate any funds to Court staff salaries.

The Court allocated funds from the “Court-Controlled Judicial Expense Fund” in two ways. First, because the Court did not perform its own payroll, it transferred a portion of the JEF to the City to pay for Court staff (D). Second, the Court made direct payments from JEF funds for operating expenses such as supplies and professional services (F).

The money paid to Court employees from both the Court and the City is represented in “E, Payment to Court Staff.” The amounts allocated each year for these purposes are listed in Figure 21.

Figure 20. The Court’s Financial Relationship with the State and the City

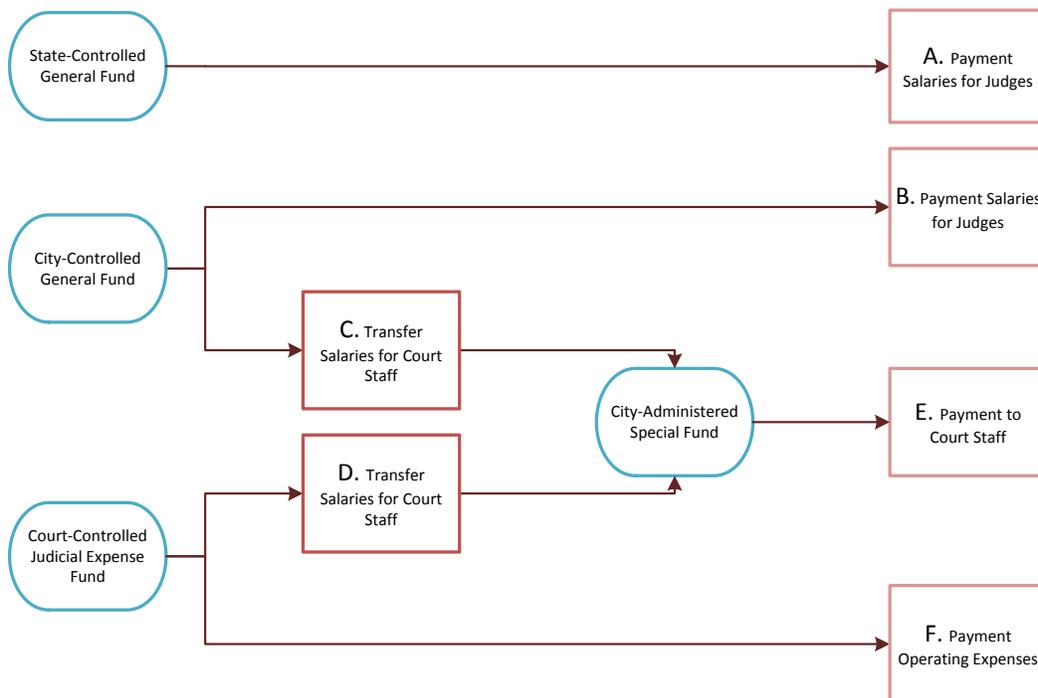


Figure 21. Annual Allocations for Figure 20 (Dollars)

	2008	2009	2010	2011	2012
A. State Salaries for Judges	217,057	224,292	234,770	234,770	272,318
B. City Salaries for Judges	292,478	247,543	328,260	274,243	362,980
C. City Transfer Court Staff	632,668	552,018	596,179	239,671	
D. Court Transfer Court Staff	1,830,680	2,562,874	3,729,790	3,865,373	3,739,860
E. Payments to Court Staff	2,463,348	3,144,892	4,325,969	4,105,044	3,739,860
F. Court Operating Expenses	1,896,314	1,342,719	1,511,825	1,350,029	865,431

As Figure 20 illustrates, both the City (C) and the Court (D) contributed funding to the City-administered fund used to pay salaries. In 2011 and 2012 the amount coming from the Court (D) and the amount the City allocated in the budget for Court salaries (C) was not enough to cover the liabilities, but the City issued payments to staff nonetheless. The Court could not transfer funds to the city-administered special salary fund to cover the shortfall, because court expenditures exceeded revenue and assets available.

However, rather than increasing its allocation to the Court to cover salaries (as required in state law), the City invoiced the Court for the amount it could not pay, creating a liability on the Court’s balance sheet. The 2011 deficit first became apparent when the Court’s external auditors re-stated the Court’s 2011 finances during its 2012 audit.⁶³

State law allows for three options to fund Court staff: City General Fund appropriations, withholding funds due to the City, and the JEF. Deficit spending, the funding mechanism the City and Court adopted in 2011 and 2012, is not one of the permitted options, and The Louisiana Local Government Budget Act does not allow deficit spending.⁶⁴

Although the City was legally obligated to pay staff salaries and the Court did not have funds available to cover the cost of staff personnel in the JEF, both the City

⁶³ Silva, Gurtner, & Abney, *New Orleans Traffic Court Financial Statements as of December 31, 2012* (New Orleans: Silva, Gurtner, & Abney, 2013), 5, accessed February 11, 2015, [http://app.la.state.la.us/PublicReports.nsf/9FAAD277F4CF79AA86257C2E0067FD64/\\$FILE/00036829.pdf](http://app.la.state.la.us/PublicReports.nsf/9FAAD277F4CF79AA86257C2E0067FD64/$FILE/00036829.pdf). In the audit the Court stated that it expected to eliminate the deficit within a period of five to ten years by increasing revenues and decreasing operating expenses. Silva, Gurtner, & Abney, *New Orleans Traffic Court*, 27.

⁶⁴ La. R.S. 39:1309(B).

and the Court benefited from creating a deficit instead of drawing on the City's General Fund. The Court could maintain its personnel expenditures without reducing City general fund obligations for other budgetary needs, and the City administration and Council could avoid a contentious discussion about reducing the Court's appropriation (and possible staff layoffs) while keeping liabilities off the City's balance sheets.

RECOMMENDATION 4. THE COURT SHOULD WITHHOLD CITY FINE MONEY AND USE THE FUNDS TO PAY THE OUTSTANDING BALANCE DUE TO THE CITY FOR PAYROLL INVOICES.

La. R.S. 13:2507 and 13:2507.1 establish three funding sources for Court payroll: City General Fund appropriations, funds withheld from the City, and the Court's JEF. However, the Court used deficit spending, an illegal fourth option to fund payroll in 2011 and 2012. Instead, barring legislative changes to statutes that created the existing funding structure, the Court should withhold fine money due to the City to pay the outstanding payroll liability.⁶⁵

When the Court withholds funds from the City, it should make the transaction transparent. It should send a memo to the City stating that the Court is invoking La. R.S. 13:2507 and document the amount it is withholding and the reason for doing so. If it withholds funds, the Court should also amend its revenue budget to account for the added fine monies.

Also, the Court should not use the mechanisms it used in 2010 to withhold funds from the City. As described in the OIG's 2011 assessment of the city court system, in 2010 the Court used two mechanisms to increase revenue to the JEF: it directed funds to the JEF that were due to other agencies by writing "JEF" as dispositions on tickets, thus directing individual fines and fees to the JEF;⁶⁶ it also retained approximately \$500,000 in fines due to the City without documentation.⁶⁷ The Court should make withholding fine monies from the City transparent so that the City, the Court, and the public can determine the full cost of the Court.

⁶⁵ The Court also had the option to reduce expenses.

⁶⁶ See Finding 9 in OIG, *Assessment of City Courts*, 28.

⁶⁷ See Finding 10; *Ibid.*, 29.

In addition, although reaching an agreement may be challenging, the City and Traffic Court should establish a protocol for determining future funding needs and responsibilities that will reduce the need for the Court to withhold funds from the City. Other options authorized in state law provide more transparent funding mechanism: City general fund appropriations and JEF expenditures when there are funds available.

FINDING 5. THE CITY DID NOT UPDATE ITS COST ALLOCATION PLAN BETWEEN 2010 AND 2014; THEREFORE, THE CITY WAS UNAWARE OF THE EXTENT TO WHICH IT SUBSIDIZED COURT EXPENSES AND COULD NOT MAKE THIS INFORMATION TRANSPARENT TO THE PUBLIC.

In addition to line item appropriations, the City provided other support to the Court such as building operations and maintenance, utilities, information technology support, payroll administration, and vehicle fuel. The Cost Allocation Plan (CAP) estimates city expenditures that do not appear in an entity's budget but are included elsewhere in the City's budget.⁶⁸ The City did not update its CAP between 2010 and 2014 even though CAO Policy Memorandum No. 35 states that "[t]he Bureau of Internal Audit, Department of Finance, is responsible for the yearly development and negotiation of a City Wide Cost Allocation Plan."

Evaluators also doubted the accuracy of the 2010 CAP for Traffic Court, because the "building use" cost (the City's cost associated with owning and operating the Traffic Court building) was estimated at \$1,390,425 per year; nearly four times as much as the next largest building user (Recreation at \$365,436), 60 times the average charged to other courts that used City buildings, and 80 times the amount charged to Municipal Court, which shared the building with the Traffic Court. Upon further inquiry, the contractor who created the CAP stated that he believed the Court's building use charge was an error.

When asked why the City had not updated its CAP between 2010 and 2014, city staff responded that there was no specific reason the plan had not been updated, but that there had been some internal issues with the contractor. The City adopted a new cost allocation plan in November of 2014, but it contained

⁶⁸ The City also used the Cost Allocation Plan (CAP) when applying for grants to determine how much various departments and agencies should request to compensate the City for its financial support to grant-funded programs.

the same error in the Traffic Court's "building use" cost as the 2010 cost allocation plan.

RECOMMENDATION 5. THE CITY SHOULD ADOPT AN ACCURATE COST ALLOCATION PLAN EACH YEAR.

To increase transparency about the extent to which it subsidizes Court operations, the City should keep its cost allocation plan up to date. The plan should make it clear how much the City spends to operate and maintain buildings on behalf of departments and agencies. CAO Memorandum No. 35 requires the City to update the cost allocation plan yearly.

The City should review the plan to ensure that it accurately reflects costs when an updated CAP is complete. During the course of this review, the contractor who created the CAP agreed that the Court allocation was a mistake and committed to revising the 2014 CAP to fix the error. However, evaluators had alerted city staff to the mistake in the 2010 CAP prior to the completion of the 2014 CAP, and the City did not follow through with the contractor to fix the problem; evaluators contacted the contractor directly.

FINDING 6. CITY STAFF OVERRODE BUDGETARY CONTROLS TO USE FUNDS THE CITY COUNCIL ALLOCATED TO TRAFFIC COURT TO PAY FOR EXPENSES IN THE CORONER'S OFFICE WITHOUT AN ORDINANCE TO RE-ALLOCATE FUNDS.

Evaluators found that the City spent over \$70,000 from funds the City Council appropriated to the Traffic Court in 2011 on expenses related to the Coroner's Office. Staff in the budget and finance offices overrode budgetary controls in the City's procurement software to make these payments in violation of the City Charter, which states: "No moneys shall be disbursed from operating funds except in accordance with an appropriation made by the operating budget ordinance... ." ⁶⁹

Evaluators noticed the expenditures while reviewing the Court's account in the City's general ledger and were curious about why the Court was purchasing body bags.

⁶⁹ City Charter Article VI, Chapter 2 § 6-201(3).

These expenses made the Court look more expensive than it was. Evaluators subtracted these expenses from the Traffic Court expenditures used in this report.

RECOMMENDATION 6. EXECUTIVE STAFF IN THE BUDGET AND FINANCE OFFICE SHOULD COMPLY WITH THE CITY CHARTER AND ONLY DISBURSE OPERATING FUNDS APPROPRIATED BY THE CITY COUNCIL.

City staff should only disburse funds appropriated by the City Council, as required by law. In this case, the Council should have passed an amendment to the budget authorizing the transfer of these funds. Instead, the transaction was not transparent and increased the reported cost of the Traffic Court.

The budgetary controls in place are intended to guard against financial transactions that are in violation of law and policy. The deliberate actions of staff in the budget and finance offices to override these safeguards undermined the reliability of the City's financial controls.

This is the second instance of a budgetary "work-around" that evaluators discovered during the course of this evaluation.⁷⁰ In both cases, the City and the Court resolved a financial problem with a pragmatic solution inconsistent with sound public financial practices, fiscal controls, and transparent governing.

⁷⁰ The first instance is described in Finding 4; the Court's expenditures exceeded its revenues and resulted in a liability on the Court's books.

VII. CONCLUSION

From 2008 through 2012, the New Orleans Traffic Court (Court) cost between \$5.5 million and \$7.1 million, with a yearly average of \$6 million. Court finances were a point of contention between the City Council and Traffic Court judges. Councilmembers said that the Court was too expensive relative to other pressing needs in City government. The judges said the Court's reliance on self-generated revenue from guilty convictions infringed on defendant rights to impartial judges.

The Court and City Council arrived at this impasse because of two changes to State of Louisiana law. First, amendments to state law between 1979 and 1985 removed City Council authority to authorize the Court's budget and the oversight inherent in the budget process. Second, the State Legislature created a judicial expense fund (JEF) financed mainly through fees assessed on guilty verdicts and granted the judges executive control of the fund.

By undermining City Council budgetary authority over the Court, the State eliminated a venue where the financial needs of the Court could be discussed publicly and considered in the context of the City's other funding needs. The lack of a meaningful public discussion about the Court's budget and the Court's lack of fiscal accountability raised unanswered questions about the Court's finances. Numerous professional organizations have studied the Court over the past 30 years and noted that the Court appeared to be overstaffed and costly. Evaluators recommend that the City and Court seek a change in state law to return the Court to budgetary oversight by the City Council.

Even if it had budgetary authority over the Court, the City Council would have difficulty determining how much funding the Court needed because the Court did not provide adequate information about its performance. The Court provided some useful information in this regard, including case load numbers from which the clearance rate and cost per case could be calculated. It has also stated a commitment to tracking money collected by the Court as a percent of money owed.

However, it would be impossible to assess Court performance or determine its financial need without additional sound performance measures. Evaluators recommend that the Court begin collecting and reporting on performance

measures such as case time to disposition, age of active pending caseload, and collection rate. The Court should also provide information about how Court employees spend their time.

Judges raised 60 to 80 percent of the Court's revenue from conviction fees during the period examined. Financing the Court largely through fees of this kind raises questions about a defendant's right to an impartial judge. Evaluators recommend that the City Council appropriate an adequate budget from the General Fund and that the City and Court seek legislative amendments to reduce the amount that the Traffic Court can charge in JEF fees.

Finally, during the course of this review, evaluators found that it was difficult to quantify the cost of the Court. The Court engaged in deficit spending, the City could not easily quantify the Court's indirect expenses, and the City used some funds allocated to the Court to fund the Coroner's Office. Evaluators recommend that the Court withhold city fine money rather than engage in deficit spending. Evaluators also recommend that the City update its cost allocation plan and request ordinances from the City Council before using funds for another agency.

Tensions between legislative bodies and courts over funding are inherent in the effort to balance powers among the three branches of government established in the Constitution. The State Legislature responded to the tension between the New Orleans Traffic Court and City Council by removing the City Council's budgetary authority, authorizing judges to raise a significant amount of funds to operate the Court, and giving judges executive control over a JEF.

Legislators' actions undermined the local framework already in place for resolving the inherent tension transparently and in a fiscally responsible manner, resulting in a Court for which there was no effective fiscal oversight. The recommendations in this report are intended to help answer questions about the appropriateness of Court spending, remove doubts about the possible influence of financial concerns on judicial decisions, and make Court expenses more transparent.

APPENDIX A. AMENDMENTS TO STATE LAW REGARDING TRAFFIC COURT FUNDING

1975 La. Acts No. 127, § 1 Established the Traffic Court in the Louisiana Revised Statutes. The City Council had discretion in the funding of the Traffic Court. The City Council determined the number of judges, though each judge was guaranteed two personal employees. The judges could appoint a Clerk of Court.

1979 La. Act No. 696, §1 Added one position to the total number of judicial personal employees, bringing the total to three for each judge.

1984 La. Acts No. 668, § 1 Allowed judges to hire additional personal employees, but also granted City Council discretion over the creation of the additional positions (above the three). The Act also authorized the judges to hire a judicial administrator at the discretion of the City Council.

1985 La. Acts No. 818, § 1 Diminished the authority of the City Council by removing discretion over the creation of the additional judicial personal positions and the judicial administrator.⁷¹

1988 La. Acts No. 884, § 1 Removed the final authority of the City Council by removing its ability to determine the number of judges at the Traffic Court.⁷²

⁷¹ The language regarding pay did not change and states: “The salaries and benefits of such personnel shall be paid by the city of New Orleans.” In 1991 the state Constitution was amended to prevent the Legislature from adopting unfunded mandates, such as this one, but laws that had been adopted prior to 1991 were grandfathered in. La. Const. art. VI § 14 as originally adopted in 1974 only applied to “political subdivision employees” (City employees) (See City of New Orleans v. State, 426 So. 2d 1318, 1321 (1983)). In 1991 the article was amended to include expenditures “for any purpose.”

⁷² Prior to 1988 state law authorized up to four judges at the discretion of the City Council. After 1988 state law simply stated that “The Traffic Court of New Orleans shall consist of four judges ...”

APPENDIX B. STAFFING QUESTIONNAIRE

New Orleans Office of Inspector General Staffing Analysis

Greeting

The Office of Inspector General (OIG) is conducting an analysis to determine how staffing resources are allocated within Traffic and Municipal courts. The analysis is part of a larger three-year study developed to evaluate the allocation of resources across all criminal justice agencies in Orleans Parish.

This form is comprised of 17 items, some multiple choice and others open-ended, and should take less than 10 minutes to complete. We request your cooperation in responding to each of the 17 items to the best of your ability. Your responses will be quantified and combined with that of all other staff to provide a comprehensive picture of the amount of time employees spend per week working on tasks common to local court function.

The deadline to complete the form is Friday, June 13th, 2014. If you have not responded by this date, OIG staff will follow-up with you in person at the Court to obtain your responses. If you have any questions or concerns, please contact Inspector and Evaluator [REDACTED] at [REDACTED].

Thank you for your time. We greatly appreciate your cooperation.

Form

Please keep in mind that your responses are not anonymous. However, you may request that your responses be kept confidential from any source outside of the Office of Inspector General.

- 1. I would like to request that my responses be held confidential from any source outside the Office of Inspector General:**
 - a. **Yes**
 - b. **No**
- 2. Your Name:** _____
- 3. Court Name:**
 - a. **Municipal Court**
 - b. **Traffic Court**
- 4. Position title within the court:**
- 5. Division within the court:**
 - a. **Administrative**

- b. Clerk of Court
- c. Judges' Staff
- d. Probation
- e. Other _____

6. In the space below, please type the name of your supervisor. _____
7. If you are a supervisor, how many people do you supervise? _____
8. What is the average number of hours you work per week? _____
9. How long (in years) have you worked in this position? _____
10. For the following 8 categories, please record the average number of hours (numerically) you spend on any or all of the tasks listed during a typical work week:

***The number of hours you list per category should total to the average number of hours you work per week reported previously.*

- 1) **Case Processing:** Filing, docketing, and case-person indexing; assisting litigants regarding conditions of case or documents; updating case records (e.g. minutes); providing summaries of financial transactions; duplicating documents; transmitting documents to other courts; notifying department of licensing about judgments related to motor vehicle and traffic cases. _____
- 2) **Calendar Management:** Scheduling cases, assigning cases, and handling notifications of hearing dates; screening records' completeness and consistency; screening cases for procedural compliance prior to proceeding; scheduling events. _____
- 3) **Records Management:** Maintaining cases and exhibit records; managing file storage, archiving, and destruction; managing file checkout and security; designing, inventorying, and distributing forms; IT support. _____
- 4) **Financial Management:** Managing the receipt and disbursement of money; handling bail, child support accounts, time payments, and installments; formulating budgets, negotiations with state or local funding agencies. _____
- 5) **Courtroom Support:** Maintaining courtroom files and minutes of proceedings; handling in-court exhibits and security; empanelling juries; court reporting, maintaining responsibility for sound and video equipment, court interpretation services, secretarial support, and the law library. _____
- 6) **Monitoring and Enforcement:** Monitoring compliance with such matters as garnishments, appeals, probation reports, child support payments, fee collections; monitoring compliance with court orders and treatment requirements. _____
- 7) **Social work:** Aiding the court in evaluating and making appropriate decisions about clients; assisting clients under court supervision to comply with court orders.
- 8) **Other:** Attending conferences and receiving training; traveling between courts; down time.

11. Please list any other tasks not covered in the previously listed categories and the average number of hours you spend a week on them (e.g. Data Entry- 10 hours).

12. Comments: Please note any additional comments you may have regarding your position or staffing in your court.

OFFICIAL COMMENTS FROM THE CITY OF NEW ORLEANS AND THE NEW ORLEANS TRAFFIC COURT

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 explanation or rebuttal of the findings before the report is finalized, and that such timely submitted written explanation or rebuttal shall be attached to the finalized report.

An Internal Review Copy of this report was distributed on June 26, 2015 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 the New Orleans Traffic Court; these comments are attached to this report.

The OIG would like to clarify the following points from Traffic Court's response.

- The Traffic Court stated that the report is stale. The OIG is aware that the number of court staff has decreased recently. Numbers of staff have historically varied with no correlation to work load or output because, without changes to state statutes, there is no oversight or accountability.
- In response to the numbers of staff and cost of the court presented by the Traffic Court, it is impossible to explain the differences between the Traffic Court's numbers and the results of the OIG analysis. There is no way to know if the numbers are comparable without a comparison of the methods used. OIG standards and processes include numerous layers of oversight and review to ensure that results are reliable and verifiable.
- Finally in response to the comment regarding data available in the case management system, Evaluators spoke with IT staff, the Judicial Administrator, and Traffic Court's counsel; no one was able to provide these numbers. Even if the Court's case management system was capable of producing the data, the Court could not retrieve the information, did not record it, and did not use it to support budget requests or improve the efficiency or effectiveness of its operations.

OFFICIAL COMMENTS FROM CITY OF NEW ORLEANS

CHIEF ADMINISTRATIVE OFFICE
CITY OF NEW ORLEANS

Mitchell J. Landrieu
Mayor

Andrew D. Kopplin
First Deputy Mayor &
Chief Administrative Officer

July 27, 2015

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

Re: Funding of Traffic Court

Dear Mr. Quatrevaux:

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

As you know, the Mayor, the City Council and various Courts, including Traffic 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.

Recommendation 1 states that "The City and Court should seek amendments to state statutes that return budgetary oversight of the Traffic Court to the New Orleans City Council as it was in the original 1975 statute." The City agrees that state law should be clarified to expressly state that the City has budgetary oversight over Traffic Court. La. R.S. 13:2501.1(l)(1) states that each Traffic Court judge shall appoint staff that he/she deems necessary to perform court functions. La. R.S. 13:2496, which relates to Municipal Court staffing, also provides that Municipal Court judges "shall fix the[ir] salaries and benefits" of the judges' staff. La. R.S. 13:2501.1 does not contain similar language requiring Traffic Court judges to fix salaries and benefits of their staff. Nonetheless, other provisions of state law suggest that Traffic Court judges have the ability to set the salaries of their staff, and there has been litigation on this issue. The City believes that funding for the Courts should be considered along with all other City activities through the annual budget process, and returning the budget process to the City is warranted.

Recommendation 2 relates more directly to the Traffic Court's tracking of certain key information, such as time to disposition for cases and collection rates. The City supports efforts to track key performance and other data and has worked with the Traffic Court on examples of this through its "STAT" programs and other joint activities.

Recommendation 3 proposes changes to the composition of Traffic Court funding sources, specifically the reliance on the level of funding through fees collected for the Judicial Expense Fund (JEF) and the how that may result in a conflict of interest for the Court. The City understands and agrees that core

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PHONE: 504.658.8600 / FAX: 504.658.8648



MR. EDOUARD QUATREVAUX
July 27, 2015
Page 2 of 3

Court operations should be funded adequately, but the scope, scale, and funding level of core operations have been the subject of several policy differences between the City and the Court. If the fees for the JEF were deposited directly in the City's General Fund as has been proposed, then the City could accommodate a higher level of general fund appropriations to the Traffic Court and the potential conflict of interest would be lessened substantially or even eliminated without changes to the current JEF fee schedule.

Recommendation 4 relates to how payroll is administered for Traffic Court. Each biweekly payroll is run and an amount from the City Council's appropriation to the Court (equal to one 26th) is used to fund that payroll. Any excess amount is billed to the Traffic Court, who pays these invoices back to the City from funds generated at the Court. The recommendation notes that in recent times the Court has not always paid the full amount of the invoices, leaving a "deficit." The recommendation is that the Court withhold part of fine revenues that otherwise would go to the City to fund the "deficit."

The underlying issue relates to the actual spending level of the Court overall differing from the level consistent with the City Council's annual appropriation. That basic issue can result in a payroll "deficit" or a shortfall in anticipated fine revenue to the City's General Fund, and until the underlying issue is resolved, mismatches between resources can be expected to continue.

Recommendation 5 relates to the City's cost allocation plan. The data used in the plan has been updated and a new cost allocation plan is currently in the final stages of approval.

Recommendation 6 relates to budgetary controls over appropriations in the operation of the enacted annual budget. The Coroner's office had additional cost pressures during 2011 and the Council did reallocate by ordinance funding from the Traffic Court to the Coroner's budget. The amount reallocated underestimated the cost pressures somewhat. The City will review budgetary controls further so that any additional request for reallocation by ordinance will be made more timely in future in such rare circumstances.

Sincerely,



Andrew D. Kopplin
First Deputy Mayor and Chief Administrative Officer
City of New Orleans

cc: Sharonda Williams, City Attorney
Cary Grant, Assistant CAO
Norman Foster, Director of Finance
Beverley Garipey, Deputy Director of Finance

OFFICIAL COMMENTS FROM NEW ORLEANS TRAFFIC COURT



JUDGE ROBERT E. JONES, III
DIVISION "B"
CHIEF JUDGE

JUDGE HERBERT A. CADE
DIVISION "A"

JUDGE MARK J. SHEA
DIVISION "C"

JUDGE STEVEN M. JUPITER
DIVISION "D"

State of Louisiana City of New Orleans Traffic Court

727 SOUTH BROAD STREET
NEW ORLEANS, LA 70119
(504) 658-8500



DEBRA A. HALL
JUDICIAL ADMINISTRATOR

July 27, 2015

The Judges of the Traffic Court of New Orleans have reviewed the draft of the report title "Traffic Court Funding". After joint conference we submit the following response.

First, we observe that the report is stale. In limiting its analysis to years 2008 through 2012 the report fails to reflect current positive trends in reduction of staff and expenses as shown on the attached charts.

Certain statements in the report appear to be intended to cast the Traffic Court in an unfavorable light. For example, the statement "[B]etween 2008 and 2012 the operations of the Traffic Court cost between \$5.5 million and \$7.1 million each year"¹ fails to correlate the costs with the years in question. The reader cannot determine from this statement whether any trend is exhibited when, in fact, the trend for cost reduction has been positive.

Since 2012 the Traffic Court has implemented financial policies and administrative policies and procedures which provide for separation of duties and internal controls, and the Traffic Court has had excellent financial audits over the past couple of years and **received a clean financial audit in 2014.**

Second, the Traffic Court takes strong exception to the any intimation that is engaged in "deficit" spending with regard to the Traffic Court budget. The Traffic

¹ Pg 9

Court's staff is paid through the payroll system of the City of New Orleans, which then "invoices" the Traffic Court JEF for the payroll costs. The OIG has taken this accounting fiction and accused the Traffic Court of "illegal" "deficit spending".

The payroll costs of the Traffic Court are a legally mandated obligation of the City of New Orleans. Further, the financial facts are clear: the avails of Traffic Court revenues (fines, fees and JEF receipts) exceed the costs of operating the Traffic Court.

We expect to have these "observations", appearing on pages 39, 43 and 44 of the draft removed from the final report.

Third, with respect to the OIG's representation that it could not obtain data on "Court Performance Measures", specifically data enabling to determine "Time to Disposition", "Age of Active Pending Caseload" and "Collection of Monetary Penalties" it is the position of the Traffic Court that the Traffic Court's now-superseded "SunGard" database contains, from year 2009 forward, data sufficient to derive the information sought. The OIG did not interview persons having the requisite knowledge to generate the reports, despite having been advised in September 2014 of the complexity of generating the reports it sought and having been given the report of the database consulting expert retained by the Traffic Court to analyze the database in conjunction with litigation in 2013.

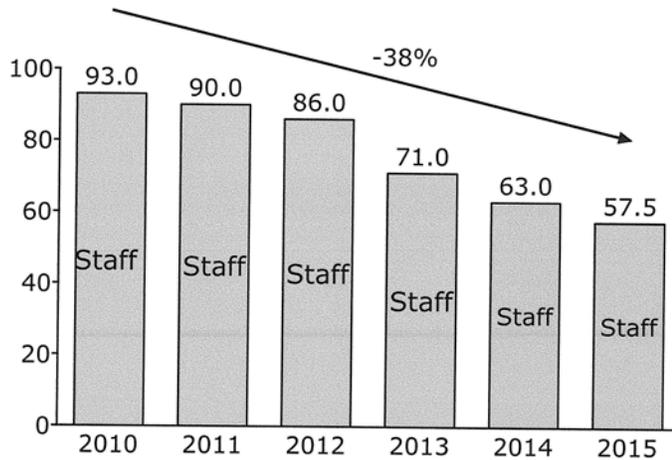
The Traffic Court will continue to focus on efficiencies in its budget and operation in anticipation of the 2017 merger of the Municipal and Traffic Courts of New Orleans.

Sincerely



Debra A. Hall
Judicial Administrator/Clerk of Court

Traffic Court has reduced staff

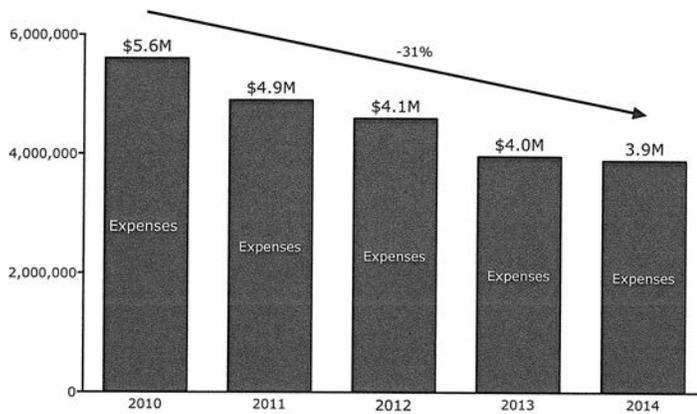


As of July 1, 2015 NOTC has a total of 57.5 FTEs

1

NOTC 07.27.15

Traffic Court has substantially reduced expenses



2

NOTC 07.27.15