



# Memorandum



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To: Chief Judge Joel H. Brown, Eleventh Judicial Circuit of Florida

From: Christopher Mazzella, Inspector General

Date: March 6, 2012

Subject: OIG Final Report Re: *Administrative Office of the Courts' Approval of County Employee's Reduced Work Schedule to Work an Unrelated Second Full-Time Job, Retaining Full-Time County Employment Status, and Drawing Maximum Florida Retirement Benefits*; Ref. IG11-31

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Attached please find the Office of Inspector General's final report regarding the above-captioned matter. This report, as a draft, was provided to Mmes. Haspil, Perez-Pollo, Muñoz, Garcia, Lonergan, Kearson, and you, for review and comment. Written responses were received from Ms. Haspil, through her attorney, and from you and Ms. Lonergan, on behalf of the Eleventh Judicial Circuit. The responses are summarized in the final report and are attached to report as Appendix A and B, respectively.

Our report on this matter contains our investigative findings and conclusions, and is being provided for whatever action is deemed appropriate.

Attachment

cc: Sandra M. Lonergan, Trial Court Administrator, Administrative Office of the Courts  
Jennifer Moon, Director, Office of Management and Budget, Miami-Dade County  
Lester Sola, Director, Internal Services Department, Miami-Dade County  
Individuals previously furnished with the draft report

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**INTRODUCTION & SYNOPSIS**

In early June 2011, the Miami-Dade County Office of the Inspector General (OIG) was notified by the Miami-Dade County General Services Administration, Risk Management Division, Benefits Administration Unit (GSA/BAU),<sup>1</sup> that Ms. Joelle Haspil, a Miami-Dade County (County) full-time employee assigned to the Administrative Office of the Courts (AOC), was approved to work a reduced schedule of one hour per day. The GSA/BAU also advised that this reduced work schedule began on June 1, 2010 and Ms. Haspil was scheduled to retire September 2011. After conferring with GSA/BAU, the OIG also learned that Ms. Haspil had requested an emergency withdrawal of her deferred compensation (IRS Section 457(b) Plan) balance account based upon a loss of income resulting from a reduced schedule.

During its investigation, the OIG obtained documents directly from the GSA/BAU, Nationwide Retirement Solutions (NRS), as well as the United States District Court, Southern District of Florida, and interviewed numerous individuals. The OIG received full cooperation from these entities. The OIG also obtained all requested documents from the AOC, and received full cooperation from the AOC personnel interviewed. As a result, the OIG investigation determined that Ms. Haspil's explanation for a loss of income was false. Ms. Haspil was working a significantly less number of hours each week (87 percent less) but it was not because of "illness and surgeries" as she had claimed on her application. The OIG investigation revealed that Ms. Haspil's work schedule was reduced in order to accommodate her accepting a full-time job with the federal courts as an interpreter making over \$100,000 a year. Due to explanations and verifications sought by the GSA/BAU (relayed from the County's 457(b) Plan provider, Nationwide Retirement Solutions (NRS), Ms. Haspil was persuaded by the AOC General Counsel to withdraw her request for an emergency distribution.

The question of Ms. Haspil's reduced work schedule continued to be raised when Ms. Haspil met with GSA/BAU staff to complete her paperwork to effectuate her retirement based upon reaching 30 years of creditable service in the Florida Retirement System (FRS). From June 2010 to September 2011, Ms. Haspil remained a full-time employee, earning insurance and retirement benefits accorded to full-time employees, albeit working only 10 hours per bi-weekly pay period. The OIG learned that Ms. Haspil's work schedule was from 7:00 am to 8:00 am, Monday – Friday. Thereafter, she worked from 8:30 am – 5:00 pm with the United States District Court, Southern District of Florida—a job that she disclosed and sought approval for as "outside employment." A review of applicable authorities revealed that this arrangement was contrary to both County and AOC policies on outside employment and leaves of absences.

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<sup>1</sup> The County's GSA Department was recently merged into the newly formed Internal Services Department. Because the activities reported herein pre-date the merger, this report's narrative will continue to refer to the department as GSA.

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The AOC expressly acknowledged that this special arrangement, which would last for 15 months, was specifically intended to allow Ms. Haspil to qualify for full FRS retirement benefits at the end of 30 years service. This special arrangement allowed Ms. Haspil to receive her full pension (\$42,998 annually) upon reaching 30 years service, beginning October 1, 2011. Without this special arrangement, if Ms. Haspil resigned from County employment to take the job with the federal courts, she would have to wait until age 62 (ten more years) to get her full pension benefits or take early retirement where her annual pension benefits would be reduced by 50 percent.

## **OIG JURISDICTIONAL AUTHORITY**

In accordance with Section 2-1076 of the Code of Miami-Dade County, the Inspector General has the authority to make investigations of County affairs and the power to review past, present and proposed County and Public Health Trust programs, accounts, records, contracts, and transactions. The Inspector General is authorized to conduct any reviews, audits, inspections, investigations, or analyses relating to departments, offices, boards, activities, programs, and agencies of the County and the Public Health Trust. The Inspector General shall have the power to review and investigate any citizen's complaints regarding County or Public Health Trust projects, programs, contracts, or transactions. The Inspector General may also investigate alleged violations of the Conflict of Interest and Code of Ethics Ordinance, and may either file a complaint directly with or refer the matter to the Ethics Commission. The Inspector General may exercise any of the powers contained in Section 2-1076, upon his or her own initiative.

## **BACKGROUND**

### ***The Eleventh Judicial Circuit of Florida and the Administrative Office of the Courts***

The State of Florida is divided into 20 judicial circuits, or areas of jurisdiction, which encompass the circuit and county courts of the Florida State Courts System. The Eleventh Judicial Circuit of Florida, serving Miami-Dade County, is the largest in the state and the fourth largest trial court system in the nation. The Chief Judge of the Eleventh Judicial Circuit provides direct judicial administration for the circuit and county courts. The Court Administrator manages the Administrative Office of the Courts (AOC). The primary purpose of the AOC is to provide support for the judiciary and maintain the efficient operations of the courts.<sup>2</sup>

The Chief Judge is elected by a majority of the judges in the circuit for a term of two years. The Chief Judge appoints the Court Administrator for the Administrative Offices of

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<sup>2</sup> From the Eleventh Judicial Circuit of Florida's Employee Handbook (AOC Handbook), *General Policies and Information, About the Eleventh Judicial Circuit*, page 1. (AOC Handbook attached as **EXHIBIT 1**.)

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the Courts, subject to the concurrence of a majority of the circuit and county court judges. The current Chief Judge of the Eleventh Judicial Circuit is Judge Joel H. Brown, who began serving in this capacity in July 2009. The current Court Administrator is Sandra M. Lonergan, who was appointed in February 2010 by the Chief Judge.

The AOC employs non-judicial staff members who provide a myriad of support services to assist the judiciary in the daily operations of the court. This support includes case management, courtroom assignments, trial calendar scheduling, court reporting, and coordination of interpreter services. The Office also manages a number of programs and services that assist the judiciary in resolving problems impacting the court and the community. Included in these programs is the Mediation/Arbitration Division.

The Mediation/Arbitration Division, under the supervision of Director Vivian Perez-Pollo, allows litigants to solve their disputes without having to go to trial. Mediators encourage discussion between the parties in an attempt to reach an agreement.

The AOC further serves the judiciary by providing legal counsel and legal research to the judiciary. The Office of the General Counsel (OGC), under the supervision of General Counsel Linda Kelly Kearson, supervises 23 staff attorneys who provide support to the judiciary and the AOC. The OGC also provides legal services to the Chief Judge, in his administrative capacity, as well as the Court Administrator and managers of the AOC, including advising management on personnel matters.

Miami-Dade County funds the salaries, costs, and expenses of the Eleventh Judicial Circuit to meet local requirements, such as specialized programs; non-judicial staff and other expenses associated with specialized court programs, including County Court Mediation.<sup>3</sup> Miami-Dade County also funds additional court personnel, pursuant to an agreement between the County and the Chief Judge, to assist in the operation of the Circuit.<sup>4</sup> Funding for the AOC is provided annually by the Miami-Dade County Board of County Commissioners as part of the County's budget process. For Fiscal Year 2010-2011, the AOC was allocated \$20.457 million in countywide general funds. For Fiscal Year 2011-2012, the AOC was allocated \$20.293 million in countywide general funds.

The AOC, like other County-funded departments and independent offices, has its own Human Resources Division for the direct administration of personnel matters, including employment classification and compensation, employee benefits, employee relations, employee records, and employee training and development. Payroll for AOC employees funded by Miami-Dade County is processed through the County's Human

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<sup>3</sup> Pursuant to Florida Statutes, Section 29.008(2)

<sup>4</sup> Pursuant to Florida Statutes, Section 29.0081

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Resources Department.<sup>5</sup> Likewise, employee benefits (health, dental, and life insurances, and Florida Retirement System benefits) for AOC employees funded by the County are administered through the County's General Services Administration's Risk Management and Benefits Administrative Unit (GSA/BAU). As such, the AOC's HR Division coordinates payroll and benefits with these two respective County Departments. The AOC's HR Division is headed by HR Director Sandria Garcia, who is also the Chief Deputy Court Administrator. The AOC HR Division is managed by HR Manager Ileana B. Muñoz, who supervises a staff of five employees.

***IRS Section 457(b) Deferred Compensation Plans, Nationwide Retirement Solutions (NRS) and Unforeseeable Emergency Withdrawals of Funds***

Miami-Dade County provides its employees with access to participate in a deferred compensation retirement plan. Nationwide Retirement Solutions<sup>6</sup> (NRS) is one of two plan providers contracted by the County to provide deferred compensation plans to County employees.

As defined by the Internal Revenue Service (IRS), a Section 457(b) deferred compensation plan gives government employees the opportunity to put money aside for retirement using payroll deductions. Employees wishing to participate in a deferred compensation plan establish their accounts directly with the service provider. Investment allocations, changes to the account, and applications for disbursement or withdrawal of account funds are made directly with the service provider. Because contributions to deferred compensation plans are tax-deferred, disbursements from the account may only be had when one reaches eligible retirement age. Funds may also be withdrawn prior to reaching eligible retirement age only upon separation from County employment, in the event of an unforeseeable emergency necessitating the employee's access to account funds, or if no contributions have been made to the account for two years and the account balance is less than \$5,000.<sup>7</sup>

IRS Reg. § 1.457-6(c)(2)(i) defines an unforeseeable emergency as "a severe hardship resulting from an illness or accident, loss of property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control" of a Section 457 program participant.

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<sup>5</sup> The County's Human Resources Department was recently merged into the newly formed Internal Services Department. Because the activities reported herein pre-date the merger, this report's narrative will continue to refer to the department as the Human Resources Department.

<sup>6</sup> NRS is a subsidiary of Nationwide Financial Services, Inc.

<sup>7</sup> The IRS Section 457(b) plan does not have any penalty provisions for early withdrawal, but one may receive disbursement(s) of account funds prior to retirement under the three aforementioned criteria. A participant may also make a "loan" from his/her 457(b) account.

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The withdrawal procedure is outlined in the Miami-Dade County Procedures Manual, Chapter 435, as follows:

- The employee must contact their provider directly for an unforeseeable emergency withdrawal packet. It includes a pamphlet explaining IRS requirements governing unforeseeable emergency withdrawals.
- The employee must complete the forms and return them to the provider.
- The provider then reviews the forms and informs the employee if the situation qualifies under the IRS guidelines.
- Thereafter, if the unforeseeable emergency withdrawal is approved, the provider will release the money to the employee.

Unlike loans from the plan, which are limited in amount and require repayment with interest, unforeseeable emergency withdrawals are limited only by the dollar amount required to resolve the emergency, and need not be paid back into the plan. Instead, the money received by an employee pursuant to an unforeseeable emergency disbursement is considered taxable by the IRS.

Applications for withdrawal of account funds based on unforeseeable emergencies are submitted directly to NRS and are not reviewed by either the GSA/BAU or any other County department. NRS may, however, contact the participating employer, Miami-Dade County, to verify information in the employee's application.

***The Florida Retirement System (FRS)***

The Florida Legislature established the Florida Retirement System (FRS) in 1970. FRS provides retirement, disability and death benefits to public employee retirees or their designated beneficiaries. Miami-Dade County participates in FRS and pays retirement contributions to FRS on behalf of its employees. Public employees in the FRS are eligible to receive full retirement benefits after 30 years of creditable service or upon reaching 62 years of age—whichever comes first. Reduced retirement benefits are available, based upon a reduction schedule, for individuals who do not have 30 years of creditable service and who do not wish to wait until they are 62 years of age to receive benefits.

***Relevant AOC and Miami-Dade County Policies Governing  
Outside Employment and Leaves of Absence***

The Eleventh Judicial Circuit of Florida publishes an employee handbook (AOC Handbook) to provide all of its employees with a "summary of certain personnel policies and procedures applicable to all employees—regardless of the source of the funds or

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budget.<sup>8</sup> (Emphasis in original.) The handbook is also meant to “complement the specific policies and procedures for state and county funded employees working with and for the Eleventh Judicial Circuit.”<sup>9</sup>

***Outside Employment***

The AOC Handbook contains a section on outside employment. It provides, in relevant part, that:

Employment outside the Eleventh Judicial Circuit is allowed to the extent that the outside employment does not pose a conflict with employment by the Eleventh Judicial Circuit. Conflicts may be of interest, of time or of confidentiality, and cannot be tolerated, since any conflict would be detrimental to the Eleventh Judicial Circuit as a whole. . . . Outside employment is strictly prohibited whenever it conflicts with the operations and interests of the Eleventh Judicial Circuit or raises the appearance of, or potential for, any conflict of interest or impropriety. Outside employment must be fully disclosed to and discussed with the AOC Human Resources Division. . . Any employee who wishes to engage in outside employment is required to complete a “Request for Outside Employment” form and present it to his/her supervisor for approval prior to engaging in the outside employment and notification given to the AOC Human Resources Division to document the employee’s file to reflect such authorization.<sup>10</sup>

This section of the Handbook also expressly notices that:

Because the positions held by employees of the Eleventh Judicial Circuit are funded or authorized by different sources, the specific policies and procedures manual issued by the employee’s respective funding source should be consulted for a detailed description of the outside employment policy provided by the respective funding source.<sup>11</sup>

Miami-Dade County’s policies governing outside employment for County employees are prescribed in Section 2-11 of the Code of Miami-Dade County (County Code). Section 2-11(a) recognizes that outside employment is generally prohibited for full-time employees and states that:

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<sup>8</sup> From the AOC Handbook, *Purpose of the Policies and Procedures Handbook*, page 2. (Previously referenced as **EXHIBIT 1**.)

<sup>9</sup> Id.

<sup>10</sup> Id., page 44

<sup>11</sup> Id., page 44-45

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No full-time County employee shall accept outside employment, either incidental, occasional, or otherwise, where County time, equipment or material is to be used or where such employment or any part thereof is to be performed on County time.

Sections 2-11(b) and 2-11(c), however, permit County employees to accept incidental or occasional outside employment as long as such employment is not contrary, detrimental, or adverse to the interest of the County or any of its departments, and the County employee first obtains the approval to engage in the outside employment activity by his/her department head.

Section 2-11 is expounded upon by Administrative Order (A.O.) 7-1, *Outside Employment and Gratuities*, which states in part:

Under no circumstances shall a County employee accept outside employment or render other than official services to a private interest where County time, equipment or material is to be used, or where a real or apparent conflict of interest with one's official or public duties are possible.

***Leaves of Absence***

First, it is noted that the Eleventh Judicial Circuit/AOC Handbook only addresses leaves of absence in relation to the Federal Family and Medical Leave Act (FMLA). In fact, the Handbook expressly refers to the policies and procedures manual issued by the employee's respective funding source for consultation on other types of leave, including but not limited to annual, sick, military, holiday leave, personal time, and leaves other than leave under the FMLA.<sup>12</sup> The Miami-Dade County Leave Manual does address these other leave provisions.

The relevant provisions from the County's Leave Manual that prescribe the taking of leave without pay and leaves of absence in general—not involving FMLA—are set forth below:

**Section 23.03.00      Leave Without Pay: Authorized Use**

23.03.01      Leave without pay is used for an authorized absence when no appropriate accrued leave, birthday holiday, or floating holiday is available.

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<sup>12</sup> Id., page 16.

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23.03.02 Leave without pay is not intended to allow an employee to take time off without pay when appropriate leave is available. The proper method to account for long absences without pay is to grant a leave of absence (see section 08.03.00).

Under certain extenuating circumstances, a department director may formally approve, on an individual case basis, the use of leave without pay where appropriate leave is available. The formal approval for each individual situation must be attached to the PAR (payroll attendance record).

**Section 08**

**Leave of Absence: General**

A leave of absence is an approved absence without pay for a maximum period of one year. Before granting or denying any leave of absence under this Section 8, the department director must review Section 27, *Family Medical Leave*, to determine if such leave applies. Leaves of absence under this Section 8 shall be granted only at expiration of family medical leave or when the provisions of family medical leave do not apply.

08.03.00 Leave of Absence: Authorized Use

08.03.01 A leave of absence may be granted for the following reasons:

a. Medical reasons

- 1) Personal illness or disability (Status Code: CD or CH)
- 2) Maternity (Status Code: CB)

b. Job-related Reasons

- 1) Education related to the job (Status Code: CC)
- 2) To serve as a full-time representative of an organization composed entirely of County employees
- 3) To accept an exempt position
- 4) For other job-related reasons in the best interest of the County service (Status Code: CF)

c. Personal Reasons

- 1) Education not related to the job (Status Code: CG)
- 2) Dependent care for a child, spouse, parent or other dependent for federal income tax purposes who is physically or mentally incapable of caring for himself (Status Code: CG)

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3) For other personal reasons in the best interest of the County Service (Status Code: CG)

d. Military

When called to active or inactive duty in the armed forces, the national guard or the reserves (Status Code: CA)

08.03.02 ***A leave of absence may NOT be granted to permit an employee to accept employment elsewhere or to establish a business***, except with the written approval from the County Manager. (Emphasis added by OIG.)

Of significance to later discussion, it is noted that the term "reduced work schedule" is only found within the Miami-Dade County Leave Manual's provisions governing Family Medical Leave; specifically, Section 27.02 *Family Medical Leave: Eligibility*.

27.02.02 Definitions

q. *Reduced leave schedule* means a leave schedule that reduces the usual number of hours per work week or hours per work day of an employee.

## **CASE INITIATION & INVESTIGATIVE METHODOLOGY**

### ***Case Initiation***

On June 9, 2011, the OIG was contacted by the County's GSA/BAU questioning an arrangement authorized by the AOC that allowed Ms. Haspil to work a reduced work schedule of 10 hours per bi-weekly pay period (5 hours per week/1 hour a day) yet remain in full-time employment status. After conferring with GSA/BAU staff, the OIG also learned of an inquiry by NRS into Ms. Haspil's request for an emergency withdrawal of her deferred compensation (457(b) plan) balance account. According to the hardship justification, Ms. Haspil stated in her application that she had suffered a loss of income because of "illness and surgeries" that necessitated her working only 20 hours per month. Supplied as documentary evidence supporting her loss of wages, Ms. Haspil provided NRS with two Miami-Dade County pay stubs demonstrating her decrease in pay (pay stub for pay period ending 5/3/2010 showing gross bi-weekly pay in the amount of \$3,588.66 and pay stub for pay period ending 1/23/2011 showing her reduced gross bi-weekly pay in the amount of \$493.44). The OIG was advised by GSA/BAU that when contacted by NRS to verify the claim for emergency withdrawal of funds, GSA/BAU questioned the basis for Ms. Haspil's reduced work schedule.

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GSA/BAU's questioning led it to contact the AOC's HR Division. According to the GSA/BAU, it was not provided with an adequate explanation as to why Ms. Haspil was working a reduced work schedule. Shortly after inquiries were made, AOC HR staff informed the GSA/BAU that Ms. Haspil had withdrawn her request from NRS, thereby terminating the need for the GSA/BAU to verify the reason stated in the *Unforeseeable Emergency Distribution Application* form.

Around the same time as the questions arose regarding Ms. Haspil's reduced work schedule, Ms. Haspil met with GSA/BAU staff to complete her paperwork to effectuate her retirement, based upon reaching 30 years of creditable service in the Florida Retirement Service (FRS). Again, the question of Ms. Haspil's reduced work schedule (10 hours per bi-weekly pay period) was raised and the information was brought to the attention of the OIG. At no time was the GSA/BAU aware that the reason for Ms. Haspil's reduced work schedule was to allow her to work another full-time job earning over \$100,000 per year.

***Investigative Methodology***

Our review was primarily conducted through the gathering and examination of key documents, including but not limited to documents obtained directly from the AOC, the GSA/BAU, and the County's HR Department. These documents included payroll and attendance records; personnel records, including outside employment authorizations; and employee handbooks and other manuals containing personnel policies and procedures. Documents were also obtained directly from NRS, as well as verification of Ms. Haspil's employment with the United States District Court, Southern District of Florida. During the course of the investigation, OIG Special Agents interviewed Eleventh Judicial Circuit officials, including the Chief Judge; AOC personnel, including the Trial Court Administrator, the HR Division Director, the HR Division Manager, and the General Counsel; GSA/BAU staff; and County HR Department staff.

Lastly, the OIG analyzed the aforementioned relevant governing authorities, applicable FRS rules (as codified in the Florida Administrative Code) and IRS rules relating to the permissible reasons for withdrawal of funds from a 457(b) deferred compensation plan.

This investigation was conducted in accordance with the *Principles and Standards for Offices of Inspector General, Quality Standards for Investigations*, as promulgated by the Association of Inspectors General.

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## **INVESTIGATIVE FINDINGS**

The remainder of this report discusses the two distinct—but factually related—areas of concern brought to the attention of the OIG. The first involves the purported justification and supporting documentation provided by Ms. Haspil to the County's 457(b) deferred compensation plan provider, NRS, to justify her application seeking withdrawal of funds based on an unforeseeable emergency.

The second concern, as a consequence of reviewing the justification provided, involves the arrangement by which Ms. Haspil was given authorization to reduce her work schedule to 10 hours bi-weekly (one hour per day), in order to take a full-time job with another employer, yet remain a full-time County employee.

### **ISSUE 1. Ms. Haspil's application for an emergency withdrawal of deferred compensation funds submitted to NRS.**

#### ***The Application That Was Submitted***

On or about May 16, 2011, Ms. Haspil completed an NRS *Deferred Compensation Unforeseeable Emergency Distribution Application*. Handwritten on the form to explain her severe financial hardship Ms. Haspil wrote, "After an extended period of illness and surgeries, I suffered a loss of income due to the fact that I can only work 20 hours per month. My income was drastically reduced."<sup>13</sup> As supporting documentation, she attached two Miami-Dade County payroll stubs: one for pay period ending May 30, 2010, showing total regular hours worked as 80 with regular pay as \$3,588.66; the second stub for the pay period ending January 23, 2011, depicting total regular hours worked as 11, and regular pay as \$493.44. Ms. Haspil also attached her NRS statement for the quarterly period of January 1, 2011 to March 31, 2011, showing a balance of \$7,360.24. (EXHIBIT 2 Composite)

Consistent with IRS regulations and Chapter 435 of the Miami-Dade County Procedures Manual, NRS requires proper documentation for an unforeseeable emergency withdrawal. The application form requires that the applicant submit documentation to support the unforeseeable emergency distribution request. Under the reason of "Involuntary Loss of Income" (the box checked by Ms. Haspil), the form lists examples of documentation that may be required:

- Last full pay stub indicating regular full pay rate.
- Letter from employer indicating dates of employment and UNPAID dates of work missed due to involuntary reasons. This must indicate any sick

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<sup>13</sup> While claiming a loss of income, Ms. Haspil noticeably failed to disclose that she was making over \$100,000 annually in her new job with the federal courts.

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pay, vacation pay, worker's compensation, unemployment benefits or any other form of compensation received while out of work.

- A two-year pay history must be documented with previous year's W-2 forms.
- Documentation from unemployment office, if applicable. Documentation should list date when benefits start and the dollar amount you are eligible to receive.

***Further Explanation Required by NRS Regarding Ms. Haspil's Application***

Apparently, the two aforementioned pay stubs submitted by Ms. Haspil were not sufficient and NRS appropriately contacted the GSA/BAU requesting additional information. In turn, GSA/BAU requested the information numerous times from the AOC HR Manager, without success.

OIG Special Agents interviewed Ms. Ileana B. Muñoz, the AOC HR Manager, regarding her knowledge of Ms. Haspil's application to withdraw her deferred compensation account funds. Ms. Muñoz recalled that around the time Ms. Haspil began her reduced work schedule, Ms. Haspil asked if she could access the money in her deferred compensation account. Ms. Muñoz stated that she told Ms. Haspil that her deferred compensation funds were only accessible upon separation from County employment. Ms. Muñoz also told her that if her account was considered dormant for two (2) years, she could access up to \$5,000. According to Ms. Muñoz, Ms. Haspil told her that she had \$7,000 in her account and that she wanted the entire amount. Ms. Muñoz researched her request by contacting a GSA/BAU supervisor. (See **EXHIBIT 3**, email correspondence inquiring how account funds can be accessed; note that the inquiry made on May 12, 2011 states that "It is not a qualified emergency. . ." Further email correspondence on May 16, 2011, asks again, what are the options to withdraw the entirety of the account balance.)

According to Ms. Muñoz, Ms. Haspil advised her that she (Ms. Haspil) had made a request to withdraw her deferred compensation funds based on loss of income due to her reduced work schedule. Ms. Muñoz received an email on May 16, 2011 from Ms. Haspil stating that she had filed the request under "loss of income" and that NRS would be contacting the County to verify the information. (**EXHIBIT 4**, email correspondence dated May 16, 2011.)

Several days later, Ms. Muñoz received an email from the GSA/BAU requesting the reason for Ms. Haspil's loss of income. Ms. Muñoz responded to the email confirming that Ms. Haspil was on a reduced work schedule and attached a memorandum showing that Ms. Haspil was approved to work the reduced work schedule. Five days later, on May 25, 2011, the GSA/BAU again inquired about the reason why Ms. Haspil's work schedule was reduced. The next day, Ms. Muñoz replied by stating that Ms. Haspil had withdrawn her

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request for the emergency distribution of funds. (**EXHIBIT 5**, email correspondence between AOC HR Manager and GSA/BAU staff.<sup>14</sup>)

During her interview, Ms. Muñoz explained that she did not provide any additional information because she was concerned about releasing personal information of AOC personnel—much of which is excluded from public record law. This was especially true of Ms. Haspil, who according to Ms. Muñoz is married to a circuit court judge. But Ms. Muñoz also acknowledged to OIG Special Agents that she was aware that the actual reason Ms. Haspil had entered into a reduced work schedule was to accommodate her full-time employment as an interpreter with the federal court and as such there was no loss of income. She told the OIG Special Agents that she had relayed her concern to Ms. Haspil, who then told her that she had gone on FMLA leave (Family Medical Leave Act) for an illness, and returned to work with a reduced work schedule, thus suffering a loss of income. Ms. Muñoz described feeling “uncomfortable” with Ms. Haspil’s loss of income claim and referred the matter to the AOC General Counsel. It was after she had referred the matter to the AOC General Counsel that Ms. Muñoz learned that Ms. Haspil had withdrawn her request to access the deferred compensation funds.

The OIG also spoke with the AOC General Counsel Linda Kelly Kearson, who advised that she had been contacted by AOC HR Manager Ileana Muñoz about Ms. Haspil’s reduced work schedule. Ms. Kearson learned that the County was making the inquiry because of Ms. Haspil’s application for withdrawal of funds based on an unforeseeable emergency. Ms. Kearson stated that she spoke to Ms. Haspil, who acknowledged that she wrote on her application that due to health reasons her schedule was reduced. According to Ms. Kearson, she told Ms. Haspil that the AOC would not corroborate her claim, as the AOC was aware that she was on a reduced work schedule in order to work a full-time job with the federal courts. Ms. Kearson suggested to Ms. Haspil that she withdraw her request; and Ms. Haspil agreed.

***Ms. Haspil's Contacts with NRS Regarding the Status of her Distribution Request***

Before Ms. Haspil withdrew her request for her deferred compensation funds, she contacted NRS numerous times inquiring about the status of her request. The OIG reviewed records obtained from NRS regarding Ms. Haspil’s request and inquiries, including five recorded telephone conversations between Ms. Haspil and NRS representatives. Call details are summarized in the following chart:

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<sup>14</sup> This particular email was provided by a GSA/BAU staff member.

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<b>Telephone Calls from Joelle Haspil to NRS</b>		
<b>Date</b>	<b>Time</b>	<b>Call Detail</b>
5/19/11 Thursday	8:22 a.m.	Ms. Haspil called stating that she had met with a NRS representative on Monday and had put in a request to withdraw her funds based on a loss of income. Ms. Haspil wanted to know the status of her request. The NRS call center representative told her that her request had not yet been received.
5/19/11 Thursday	2:31 p.m.	Ms. Haspil called and wanted to know the status of her request for "an emergency distribution." She was told the request was in processing and to call back tomorrow.
5/20/11 Friday	1:31 p.m.	Ms. Haspil stated that she had made a request for the disbursement of funds for a loss of income and asked for the status of her request. She was told that NRS was awaiting loss of income verification. Ms. Haspil replied that she had provided NRS with copies of her two paycheck stubs "that showed what I earned and what I'm earning now." Ms. Haspil was told to check back next week.
5/23/11 Monday	9:16 a.m.	Ms. Haspil called to check on the status of her request and was advised by the NRS representative that NRS had received her paperwork on Thursday and NRS was awaiting information from the County for her loss of income.
5/26/11 Thursday	8:37 a.m.	Ms. Haspil called and stated she had put in a request to withdraw her money for loss of wages and wanted to withdraw her request. The NRS representative stated that the file was still "pending" and she would close the file.

As a result of the withdrawal of the request for emergency distribution of her deferred compensation, GSA/BAU never received an explanation for Ms. Haspil's reduced work schedule. Accordingly, the question of why Ms. Haspil was on a reduced work schedule, while remaining in full-time work status, continued unanswered resulting in the further investigation by the OIG.

**ISSUE 2. Authorization granted to Ms. Haspil to work 10 hours per bi-weekly pay period, in order to take a full-time job with another employer, yet remain as a full-time employee in order to qualify for retirement benefits.**

***Ms. Haspil's Employment History with Miami-Dade County***

Ms. Haspil began her employment with Miami-Dade County in 1978 as a court interpreter assigned to the AOC. After a brief break in service, Ms. Haspil returned to the County in 1982; later resigning to work as a language specialist with the Federal Bureau of Investigation from November 1988 to September 1989. She was rehired by the County in September 1989, again assigned to the AOC with the job classification of County Court Mediator. In February 1993, Ms. Haspil was promoted to Supervisor of the County Court Mediation Unit (an exempt position later reclassified as a Judicial Support Administrator 3), a position she held until her retirement from County service on September 2, 2011.

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***Ms. Haspil's Request to Work a Reduced Schedule, and Resulting Approvals***

***Initial Request***

On March 3, 2010, Ms. Haspil submitted a letter to her immediate supervisor, Ms. Vivian Perez-Pollo, the Director of the AOC Mediation/Arbitration Department, requesting to be "permitted to work a reduced hour schedule of 20 hours per month commencing on June 1, 2010 through September 1, 2011." (**EXHIBIT 6**) While the reasons for the request were not stated in her March 3<sup>rd</sup> letter, later documents explicitly describe her reasons for the request.

The OIG interviewed Ms. Perez-Pollo, who stated that Ms. Haspil told her that she was near retirement and requested to have her hours reduced and work in a "limited capacity." She stated that a federal court interpreter position had become available and that she wanted to apply. Ms. Perez-Pollo admitted that she was unfamiliar with the term "reduced hour schedule." According to Ms. Perez-Pollo, it was her impression that Ms. Haspil had already "worked out the details" for the reduced work schedule and she approved Ms. Haspil's request and forwarded it to the AOC's HR Division.

***Intermediary Research – Issue Sheet***

OIG Special Agents obtained a March 18, 2010 "Issue Sheet" that outlined issues related to Ms. Haspil's request for a reduced work schedule, the reasons for it, and continuing Miami-Dade County employment considerations. In sum, the document states that Ms. Haspil has 28.5 years of creditable service with the FRS and will be eligible for full retirement (30 years) in September 2011. The document states that Ms. Haspil has been offered—and accepted—a position with the federal courts beginning on June 1, 2010, but she wishes to remain an employee for another 15 months in order to reach her full retirement service with the FRS. As proposed, Ms. Haspil would work five hours per week. If approved, Ms. Haspil's work schedule, leave accruals, and benefits would be adjusted accordingly, but "[a]s long as Ms. Haspil remains in a full-time budgeted position, she will be eligible to receive a payout equivalent to 100% of her annual and sick leave based on the hourly rate at the time of separation."<sup>15</sup> The "Issue Sheet" also provides that, "Full time employees are eligible for health benefits regardless of the number of hours worked in a pay period. A reduced work schedule is not a qualifying event for canceling health benefits; therefore, [Ms. Haspil] will continue to be eligible for health benefits . . ." Lastly, the document outlines purported budgetary savings by partially staffing a full-time budgeted position, the forfeiting of certain leave accruals and paid holidays based on working part-time,<sup>16</sup> and a historical recap of four other individuals who were granted reduced work

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<sup>15</sup> The document notes: (704.5 total hours x \$44.86 = \$31,604; excluding fringes).

<sup>16</sup> The OIG observes that throughout the documentation reviewed, the term "part-time" is utilized even though the context of the document clearly refers to the individual remaining in a full time status as far as benefits are concerned, albeit working only 10 hours bi-weekly.

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schedules. The "Issue Sheet" denotes that it was authored by Ms. Sandria Garcia, the AOC Deputy Court Administrator/HR Director. The "Issue Sheet" was signed approved by AOC Trial Court Administrator Sandra M. Lonergan, dated April 6, 2010. **(EXHIBIT 7)**

***Actual Approval***

OIG Special Agents also obtained a March 22, 2010 AOC memorandum that was from Ms. Sandria Garcia, the AOC Deputy Court Administrator/HR Director, to Ms. Muñoz, the HR Manager. The subject of the memorandum reads: "Joelle Haspil – Request to Work a Reduced Schedule." This document, while formatted differently, contains the same content as the "Issue Sheet" minus the historical recap of the other individuals who had requested, and been approved, reduced work schedules. The March 22<sup>nd</sup> memorandum ends by showing four signatory lines to "document the written approval of the personnel action." The four approvers were: Amy Negrin, Director of the Administrative Services Division<sup>17</sup>; Sandria Garcia, Chief Deputy Court Administrator/HR Director; Sandra M. Lonergan, Trial Court Administrator; and Joel H. Brown, Chief Judge. All four signed the memorandum approving the personnel action. **(EXHIBIT 8)**

The OIG interviewed Ms. Garcia in connection with two documents. Ms. Garcia stated that the Trial Court Administrator and the Director of Operations (Administrative Services Division) asked her to evaluate the request for the "reduced hour schedule" from a human resources perspective and to see if a reduced work schedule had been previously granted to other AOC employees. Ms. Garcia explained to the OIG that when evaluating the request, she did not take into consideration that Ms. Haspil was reducing her work schedule to seek full-time employment elsewhere, as she had been previously advised by General Counsel Kearson that this was not an issue. Her primary concern was to see if it had been done before and if there was a conflict of interest. She found that four AOC employees had previously been approved to work reduced schedules. She also stated that the General Counsel opined that there was no conflict of interest and it was within the AOC's jurisdiction to grant the request.

The OIG interviewed Ms. Sandra M. Lonergan, the AOC Trial Court Administrator, regarding her approval. Ms. Lonergan stated that she was not "completely comfortable" with Ms. Haspil's request given that she is married to a circuit court judge, but Ms. Lonergan also stated that she did not want to hold Ms. Haspil to a different standard. As such, Ms. Lonergan had Ms. Garcia research and add information to the "Issue Sheet" listing other employees who have been granted reduced work schedules by the AOC and to add information regarding budgetary savings that would accrue to the AOC due to the reduced work schedule. Ms. Lonergan also sought the legal opinion of General Counsel Kearson.

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<sup>17</sup> The OIG was unable to interview Ms. Negrin, as she was on long-term leave.

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The OIG also interviewed Chief Judge Brown in connection with him signing the request. Chief Judge Brown explained that he considered the request as just one of the many administrative and personnel matters that come across his desk on a regular basis. He noticed the approval signatures of several AOC administrators on the memorandum, the reasons and justification for the reduced work schedule, and he signed and approved the action as well.

The memorandum was directed to Ms. Muñoz, the AOC HR Manager, and it was apparently returned to her complete with all necessary approvals.

***Ms. Haspil's Request for Outside Employment***

On April 15, 2010, Ms. Haspil requested approval to engage in outside employment by submitting an *Eleventh Judicial Circuit, Outside Employment Form*. Ms. Haspil stated that her proposed outside employment would be with the United States District Court, Southern District of Florida and that she would be employed as a Court Interpreter, working 40 hours per week with an 8:30 am – 5:00 pm schedule. The form contains four approval lines (supervisory chain of command) and a fifth line indicating that it has been reviewed by the AOC Human Resources. All five lines were signed by the respective individuals on April 15, 2010. **(EXHIBIT 9)**

While AOC General Counsel Kearson neither signed any of the aforementioned approvals nor was in Ms. Haspil's supervisory chain of command, several of those interviewed by the OIG mentioned that they either spoke to Ms. Kearson or indirectly received information from Ms. Kearson regarding the requested personnel action. As such, the OIG interviewed Ms. Kearson regarding Ms. Haspil's request for a reduced work schedule, as well as events regarding Ms. Haspil's request to withdraw deferred compensation funds.

Specifically, with regards to the reduced work schedule request, Ms. Kearson relayed that she became aware that Ms. Haspil was requesting a "reduced hour schedule" in order to work full-time with the federal court when she was asked by AOC HR staff if it would present a conflict of interest. She stated that she researched the request by reviewing the AOC Handbook, and that although she was aware that Ms. Haspil is a Miami-Dade County employee working for the court, she did not research Miami-Dade County's personnel rules and regulations because, in her opinion, AOC employees were not subject to these rules and regulations. Furthermore, in her opinion, the County's Outside Employment regulations do not apply to AOC personnel, including those whose salaries are funded by the County. Ms. Kearson stated that she found no conflict of interest. She also stated that she only consulted the "Outside Employment Policy" as set forth in the AOC Handbook.

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***Ms. Haspil's Reduced Work Schedule with the AOC after Beginning Employment with the Federal Courts***

The OIG confirmed that Ms. Haspil began full-time employment with the United States District Court, Southern District of Florida on May 17, 2010.<sup>18</sup> She is employed on a full-time basis as a court interpreter. On June 1, 2010, Ms. Haspil's work schedule was reduced to 10 hours bi-weekly with the County.

According to Ms. Garcia, she was under the impression that part of Ms. Haspil's duties under the reduced work schedule would include working as a mediator on Saturdays and she advised the OIG special agents that she had provided Ms. Haspil with an AOC form, titled *Assignment Log*, to document all work conducted outside of the courthouse. According to Ms. Garcia, the *Assignment Log* is required of all AOC employees who perform work at home or who work on weekends. The OIG found that no *Assignment Logs* were submitted by Ms. Haspil during the 15-month period when she was on a reduced work schedule.

According to Ms. Haspil's immediate supervisor, Ms. Perez-Pollo, Ms. Haspil's resulting reduced work schedule was 7:00 am to 8:00 am, Monday through Friday. Ms. Perez-Pollo admitted that due to the change in Ms. Haspil's work status, much of Ms. Haspil's work had to be reassigned to others, including herself, creating somewhat of a burden.

Ms. Perez-Pollo stated that in Ms. Haspil's reduced work capacity, she helps in scheduling and calendaring mediation cases for all courts, including branch courts. She also stated that she is unaware of any mediation work performed by Ms. Haspil since Ms. Haspil began her reduced work schedule.<sup>19</sup> Lastly, Ms. Perez-Pollo noted that while Ms. Haspil's reduced work schedule could be perceived as disruptive, she was grateful for the few hours that Ms. Haspil put in, which provided a valuable service to the AOC.

OIG review of the electronic payroll attendance reports (ePARs) show that since June 1, 2010 through Sept. 2, 2011, Ms. Haspil's ePARs reflect her as working 10 hours Regular Time, with 70 hours Leave Without Pay each bi-weekly pay period. As submitted, each pay period still reflected a total of 80 hours as being reported—even though 70 hours were not worked and, thus, unpaid. Her status as a full-time employee (remaining eligible for benefits) was not changed during these 15 months.

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<sup>18</sup> County payroll records show that during her first two weeks of employment with the USDC, prior to her reduced work schedule beginning, she took a combination of administrative leave, annual leave, floating holiday and sick leave.

<sup>19</sup> As for work that may have been performed at home, Ms. Perez-Pollo stated that Ms. Haspil sometimes, but rarely, performed work at home through the County's VPN (virtual private network) system. The OIG investigation found, however, that Ms. Haspil has not been issued a County computer programmed with VPN access.

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***Application of the AOC's and Miami-Dade County's Policies on  
Outside Employment and Leaves of Absence***

According to the AOC's General Counsel, only the Outside Employment provisions in the aforementioned Eleventh Judicial Circuit Handbook were reviewed in conjunction with the request. However, the Handbook is clear that:

Because the positions held by employees of the Eleventh Judicial Circuit are funded or authorized by different sources, the specific policies and procedures manual issued by the employee's respective funding source should be consulted for a detailed description of the outside employment policy provided by the respective funding source.

Contrary to the AOC General Counsel's assertions, the application of Miami-Dade County policies on outside employment and requests for absences are indeed relevant.

Notwithstanding Miami-Dade County policies governing outside employment (discussed below), the AOC Handbook is also clear that outside employment that conflicts with AOC employment will not be allowed. Conflicts are described as conflicts of interest, conflicts of confidentiality, and conflicts of time. It is with regard to a conflict of time that the OIG contends that a conflict existed. Clearly, the work hours of Ms. Haspil's new full-time job with the Federal Courts (8:30 am – 5:00 pm) conflicted with her incumbent full-time work schedule with the AOC. In an attempt to alleviate this conflict, Ms. Haspil's work schedule was reduced to one hour per day.<sup>20</sup>

Miami-Dade County's outside employment policies are similar, in that outside employment for full-time employees may only be incidental or occasional and may not interfere with County time. Again, the OIG contends that reducing an employee's work schedule to one hour per day in order to accommodate a second job demonstrates an interference with one's work schedule.

Lastly, the most relevant authority in this matter is found in the County's policies for leaves of absence. It is expressly prohibited to grant a leave of absence to permit an employee to accept employment elsewhere (see Section 08.03.02 of the County's Leave Manual). And while this prohibition is stated in the County's Leave Manual and not the AOC Handbook, as earlier discussed, the AOC Handbook expressly defers to the policies and procedures of the employee's funding agency—Miami-Dade County—for leaves of absence other than FMLA.

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<sup>20</sup> The AOC Handbook states that, "The business hours for the Eleventh Judicial Circuit are from 8:00 a.m. to 5:00 p.m. – Monday through Friday." Working one hour per day from 7:00 am to 8:00 am reasonably conflicts with the regular business hours of the Courts.

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***Dissimilarities to Previous Reduced Work Schedules Granted to AOC Employees***

During her interview, AOC General Counsel Kearson told the OIG of another occasion where an employee was authorized an extended reduced leave schedule in order to work another job. She told of the case where a former AOC employee had been granted a reduced work schedule to work on a mental health project with the Florida Department of Children and Families (DCF). She admitted, however, that in that case, the employee was working on a project that had a direct benefit to the Circuit Court,<sup>21</sup> whereas there was no such benefit with Ms. Haspil's employment as an interpreter with the federal court.

In addition to the employee referenced above, the "Issue Sheet" (previously referenced as Exhibit 6) contained anecdotal information about three other employees who were granted reduced work schedules. These employees were listed as past examples to justify Ms. Haspil's request, but two employees' reduced work schedules were approved for them to complete their doctoral internship and clinical hours. The third employee was already a part-time employee working 35 hours per month whose hours were reduced to 16 hours per month with no reason given for the reduction. Hence, none of the four employees cited as examples on the "Issue Sheet" to justify Ms. Haspil's reduced work schedule were approved in order to accommodate working another full-time job.

***Retention of Full-time County Benefits***

During its investigation, the OIG determined that although Ms. Haspil worked only 10 hours per bi-weekly pay period, she continued to receive insurance benefits worth over \$10,000 annually, contrary to County policy. County policies require that employees work a minimum of 60 hours per bi-weekly pay period in order to receive health benefits. Working one hour per day for a 15-month period, Ms. Haspil should not have been eligible to receive any benefits, including health insurance, group life insurance, dental, or vision. However, by keeping Ms. Haspil in full-time employment status, even though she was only working one hour a day, Ms. Haspil received all the insurance benefits that a full-time employee received.

***Retention of Supervisory Rate of Pay***

During the 15-month period when Ms. Haspil was only working one hour per day, her hourly rate of pay was \$44.86 based on her position as a supervisor and mediator of the County Court Mediation Unit. While originally anticipated that Ms. Haspil would provide mediation services on Saturdays, her supervisor, Ms. Perez-Pollo stated that Ms. Haspil

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<sup>21</sup> According to the Issue Sheet (see Exhibit 6 previously referenced), this employee was assigned to assist an Eleventh Judicial Circuit Court Judge in his role as a Special Advisor to the Chief Judge of Criminal Justice and Mental Health issues. His compensation for this assignment (32 hours per week) was funded by the state agency DCF.

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wound up working a schedule of 7:00 am – 8:00 am (Monday to Friday) and her duties involved scheduling and calendaring mediation cases for the courts. Ms. Haspil was neither performing supervisory duties nor mediation services, but she was being paid a rate of pay based on duties associated with a position involving more responsibilities.

***Accumulated Leave Payouts Based on Full-time Employment Status***

County employees, in a full-time budgeted position, separating from County service are eligible to receive a payout equivalent to 100% of their accrued annual leave (capped at 500 hours), and upon reaching 30 years service with the County, are eligible a payout equivalent to 100% of their accrued sick leave. Ms. Haspil's eligibility to receive these payouts was expressly contemplated in the aforementioned Issue Sheet: "As long as Ms. Haspil remains in a full-time budgeted position, she will be eligible to receive a payout equivalent to 100% of her annual and sick leave based on the hourly rate at the time of separation." (**EXHIBIT 7**, previously referenced.) It was estimated that Ms. Haspil would be eligible to receive the payment of 275 hours of annual leave and 429.50 hours of sick leave (equivalent to \$31,604), as long as she stayed in a full-time budgeted position.<sup>22</sup> Moreover, Ms. Haspil was not required to expend any of her available leave in lieu of taking time off as "leave without pay" (see Section 23.03.02 of the County's Leave Manual previously discussed). This ensured that Ms. Haspil could separate from the County with her full leave balances intact, thus allowing the maximum payout of accrued annual and sick leave.

***Qualifying for full FRS Benefits Based on 30 Years of Creditable Service***

Ms. Haspil could have resigned in May 2010 in order to take the full-time position being offered by the federal courts. That would have, however, interrupted her eligibility to qualify for FRS pension benefits based upon reaching 30 years of service. As expressly stated in the *Request to Work a Reduced Schedule* memorandum dated March 22, 2010 (**EXHIBIT 8**, previously referenced):

Ms. Haspil has been an Employee of the Eleventh Judicial Circuit for approximately 28.5 years (excluding short breaks in service). She will reach 30 years of service with the Florida Retirement System (FRS) in September 2011.

Ms. Haspil has been offered employment with the Federal Courts as a Court Interpreter; an opportunity she's been seeking for many years. The

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<sup>22</sup> The "Issue Sheet" also attempts to justify the reduction in work hours to the full-time position as a budgetary savings. The OIG questions the AOC's justification for continual funding for a full-time position for fiscal year 2010-2011, when in March/April of 2010 it was authorizing that the person in that full-time position be allowed to work only 10 hours bi-weekly.

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employment is scheduled to commence June 1, 2010. Ms. Haspil has accepted the Federal Court's employment offer, but wishes to stay employed on a part time basis with the Eleventh Judicial Circuit. Her continued service with the State Courts for an additional 15 months will allow her to reach full retirement with the FRS.

The memorandum reveals that Ms. Haspil had already accepted the job with the federal courts. All that was left to do was devise a way for her to continue earning FRS credit for the last 15 months, up until September 2011.

Had Ms. Haspil resigned, she still would have been eligible to receive FRS pension benefits, albeit at an early retirement reduction rate (reduced by 50 percent equating to approximately \$21,000 annually) or she also would have been eligible to receive full retirement benefits upon reaching age 62 (waiting ten more years). A third option of purchasing 15 months of creditable service upon returning from a leave of absence may also have been available.<sup>23</sup> Instead, a special arrangement allowing Ms. Haspil to remain a full-time employee for the last 15 months of County employment was made. Working one hour a day for the AOC for 15 more months allowed Ms. Haspil to retire from County service with 30 years of creditable FRS service. On October 1, 2011, Ms. Haspil, at age 53, began receiving full FRS pension benefits of \$42,998 annually.<sup>24</sup>

**RESPONSES TO THE DRAFT REPORT & OIG COMMENT**

This report, as a draft, was provided to Chief Judge Joel H. Brown and Mmes. Haspil, Lonergan, Perez-Pollo, Muñoz, Garcia, and Kearson, for their discretionary written responses. The OIG received only two responses: a response on behalf of Ms. Haspil from her attorney and a joint response from Chief Judge Brown and Ms. Lonergan, on behalf of the Eleventh Judicial Circuit. The responses are attached and incorporated herein as Appendix A and Appendix B, respectively. We appreciate receiving the responses.

***Response of Joelle Haspil***

On behalf of Ms. Haspil, Attorney Jeffrey S. Weiner submitted a 3-page response addressing Ms. Haspil's request to NRS for her deferred compensation, as well as the approval by the AOC for her reduced work schedule.

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<sup>23</sup> FRS allows a member to purchase creditable service up to 2 work years of authorized leaves of absence, but the member must return to work immediately after the leave of absence and remain on the employer's payroll for 1 calendar month, Section 121.121, Florida Statutes.

<sup>24</sup> According to County employment records, Ms. Haspil separated from County service on September 2, 2011, and began receiving FRS pension benefits on October 1, 2011.

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As to the deferred compensation, the response does not dispute that Ms. Haspil gave a false explanation on her application for an emergency withdrawal of funds. Instead the response maintains that it was her money, and that the request was not made to any public entity, employee or official. The response totally ignores the fact that the supplied justification—reduced work schedule due to medical condition—was not only false and in violation of IRS Regulations, but it also fails to acknowledge that Ms. Haspil's co-workers were placed in a position of either having to corroborate her false representations to NRS or resorting to the AOC's legal counsel to resolve.

Through counsel, Ms. Haspil's response further states that "the deferred compensation in question involved \$7,360, \$5,000 of which Ms. Haspil would have been entitled to without explanations as hers was considered "dormant" for two (2) years." This is an incorrect statement on their part. Under the Deminimus Rule, as it is called, an employee's balance must be under \$5,000 and inactive for 2 years, in order to be entitled to disbursement (see EXHIBIT 3-email from Dan Gonzales to Ileana Munoz), Accordingly, Ms. Haspil was not entitled to receive the \$5,000 or the remaining \$2,360 without justification pursuant to IRS Regulation.

Regarding the approval by the AOC allowing Ms. Haspil to work 10 hours bi-weekly, while at the same time working full-time for the federal court system, we do not dispute that the AOC was at all times fully informed of Ms. Haspil's intention to ride out her last 15 months of county service. The fact that the AOC not only knew of her intentions but also expressly sanctioned the plan to keep her as a full-time employee for 15 months is the troubling aspect. Not only was the AOC informed, the AOC appeared to go to great lengths, creating an Issue Sheet complete with—what staff could provide as—purported past precedent and budgetary savings, to justify its actions.

***Joint Response on Behalf of the Eleventh Judicial Circuit***

Chief Judge Brown and Ms. Lonergan submitted a joint response on behalf of the Eleventh Judicial Circuit in which various exhibits, some dating back to 1978, were attached. The main focus of the joint response is that the AOC and the employees who work for the Eleventh Judicial Circuit of Florida, regardless of whether they are County-funded, are not subject to the personnel policies established for County employees. The joint response concludes that the Eleventh Judicial Circuit has the discretion to approve and/or establish policies governing all Court employees. According to the joint response, because Ms. Haspil was at all times a Court employee—albeit funded by the County—her request for, and the resulting approval of, a reduced work schedule in order to take another job did not violate established Court policies or procedures.

The OIG disagrees with this conclusion, namely because the AOC's own handbook expressly refers to the policies and procedures of the employee's funding agency for leaves of absences and outside employment. More striking, however, is the absence of

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Retaining Full-Time County Employment Status, and Drawing Maximum Florida Retirement Benefits*

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any response to the OIG's discussion about Ms. Haspil retaining her full-time employment status. In fact, one of the authorities cited in the joint response's exhibits (the Personnel Regulations Manual for the Florida State Court System) states that "[t]he workweek for each full-time employee shall be 40 hours during a given 7-day period." (Section 4.032 of the Personnel Regulations Manual for the Florida State Court System, September 1999 Revision.) Thus, we question how Ms. Haspil, working 5 hours per week, could still be classified as a full-time employee.

The joint response reiterates that approving Ms. Haspil's request generated savings, and that those savings were instrumental in reducing the number of unpaid furlough days for other County-funded staff. Even if it were entirely appropriate and allowable to reduce Ms. Haspil's work schedule to one hour per day—following either AOC or County policy—how can it be justified to give an employee full-time benefits when she works one hour per day, and then continue those benefits for 15 months? If budgetary savings were truly a reason for reducing the work hours of an employee, then that position should have been reclassified to part-time status in order to generate even greater savings. Instead, this special arrangement begs another question—whether there was a compelling need for funding a position that was so readily discarded and left vacant for 15 months.

Lastly, the joint response also notes that the AOC is "undertaking a review of its current policies and procedures regarding outside employment and the circumstances by which employees will be permitted to work reduced hours to ensure that all employees are not (and do not give the appearance of) taking a leave or reduced schedule for an improper or prohibited reason." We welcome the AOC's internal review of its policies and we hope that the issue of full-time employment status versus part-time employment status as it relates to a reduced work schedule is also addressed.

## **CONCLUSION**

The investigation revealed that Ms. Haspil had already accepted the job offer with the Federal Courts by the time AOC staff was researching ways to keep her employed in full-time status for another 15 months. Ms. Haspil had researched the retirement benefit options available to her and was well aware that early retirement would reduce her pension by 50% if she were to separate from County service. Therefore, in order for Ms. Haspil to be paid her full pension before age 62—at no cost to her—she needed to remain employed in her County-funded, full-time position for another 15 months. The resulting arrangement, which was a reduced work schedule of one hour per day, allowed her to garner her last 15 months of FRS-credited service. This arrangement raises perceptual concerns and should have been avoided.

# **Miami-Dade County Office of the Inspector General**

## **Appendix A**

**Response to Draft Report Received from Legal Counsel on Behalf of Joelle Haspil**  
(3 page response)

**Final Report  
IG11-31**

**JEFFREY S. WEINER, P.A.**  
**CRIMINAL DEFENSE ATTORNEYS**

**JEFFREY S. WEINER**

BOARD CERTIFIED CRIMINAL TRIAL ADVOCATE  
NATIONAL BOARD OF LEGAL SPECIALTY CERTIFICATION

FELLOW, THE AMERICAN BOARD OF  
CRIMINAL LAWYERS

MEMBER OF THE UNITED STATES, FLORIDA  
AND ILLINOIS SUPREME COURT BARS

**JUDE M. FACCIDOMO**

MEMBER OF THE UNITED STATES AND  
FLORIDA SUPREME COURT BARS

**ALEXANDER M. TURNER**

MEMBER OF THE FLORIDA BAR

**TWO DATRAN CENTER**

**NINETEENTH FLOOR • SUITE 1910**  
**9130 SOUTH DADELAND BOULEVARD**  
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**305 670 9919 (24 HOURS)**  
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**LAWFIRM@JEFFWEINER.COM**  
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**YISEL VILLAR**

LICENCIADA EN DERECHO  
FLORIDA REGISTERED PARALEGAL  
FORENSIC INTERPRETER AND TRANSLATOR

**TANIA MONTEAGUDO**

OFFICE MANAGER  
PARALEGAL

**BONNIE WEINER**

PROFESSIONAL FORENSIC INTERPRETER  
AND DOCUMENT TRANSLATOR  
PARALEGAL

**GUIDO DEL PRADO**

CONSULTANT ON DIPLOMATIC MATTERS

January 25, 2012

Inspector General Christopher Mazzella  
Miami-Dade County Office of the Inspector General  
19 West Flagler Street  
Suite 220  
Miami, Florida 33130

**Re: *OIG Draft Report - IG11-31***

Dear Inspector General Mazzella:

On behalf of my client, Joelle Haspil, we appreciate the opportunity to respond to *OIG Draft Report-IG11-31*. Nonetheless, we take exception to a number of its findings and conclusions.

The Report focuses on two primary areas of concern: (1) Ms. Haspil's request of Nationwide Retirement Solutions (NRS) for distribution of her deferred compensation; and (2) the approval by the Administrative Office of the Courts (AOC) allowing Ms. Haspil, as a court employee, to reduce her work schedule with the state court system to 10 hours bi-weekly, in

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INSPECTOR GENERAL

Inspector General Christopher Mazzella  
January 25, 2012  
Page 2

order to accept a full-time position as an interpreter with the Federal court system.

As the Report points out, the deferred compensation in question represented wages actually earned by Ms. Haspil and deposited with NRS for latter distribution to her. Her request was for the return of her own monies. No County or State funds were involved; nor was her request made to any public entity, employee or official.

Further, the deferred compensation in question involved \$7,360, \$5,000 of which Ms. Haspil would have been entitled to without explanation as hers was considered "dormant" for two (2) years. Thus, the issue at hand is whether her justification for early distribution of the remaining \$2,360 satisfied the requirements of the program. After speaking with legal counsel, Ms. Haspil withdrew her application for early withdrawal of the deferred compensation and, instead, elected to wait until September 2, 2011 to receive the entire amount of her deferred compensation, to which she was entitled. Consequently, Ms. Haspil's deferred compensation is still on deposit with NRS; Ms. Haspil never received any disbursement.

The Report also takes issue with whether it was appropriate for the AOC to approve Ms. Haspil's reduced weekly working hours, asserting that in doing so it violated county policy. There is no question that Ms. Haspil, a court employee, actually worked the hours she was approved to work, and that her supervisor was grateful for her continued contribution to the



Inspector General Christopher Mazzella  
January 25, 2012  
Page 3

court's mediation program. Moreover, as the Report notes, the AOC was at all times fully informed of Ms. Haspil's intention, if approved, to accept a position as an interpreter with the Federal court system. Ms. Haspil possesses unique qualifications and this is a situation where both the Eleventh Judicial Circuit and the Federal court benefited from her dual employment. Regarding whether this arrangement was contrary to county policy or procedure, the Report candidly acknowledges that Ms. Haspil relied on the advice of the General Counsel for AOC, who was of the opinion that there was no conflict of interest and that, in these circumstances, AOC employees are not subject to county rules and regulations. Furthermore, the dual employment was fully approved by the Eleventh Judicial Circuit, and was made known to the Federal court authorities before my client accepted the position with the Federal court for the Southern District of Florida.

Having addressed the two areas of concern, please accept the above comments as our response to the Report in question.

Sincerely,



Jeffrey S. Weiner, Esquire  
Counsel for Joelle Haspil



# **Miami-Dade County Office of the Inspector General**

## **Appendix B**

**Response to Draft Report Received from Chief Judge Joel H. Brown and the  
Administrative Office of the Courts for the Eleventh Judicial Circuit**

(3 page response with 16 page attachment )

**Final Report  
IG11-31**



ELEVENTH JUDICIAL CIRCUIT OF FLORIDA  
ADMINISTRATIVE OFFICE OF THE COURTS

**JOEL H. BROWN**  
CHIEF JUDGE  
**SANDRA M. LONERGAN**  
TRIAL COURT ADMINISTRATOR

LAWSON E. THOMAS COURTHOUSE CENTER  
175 N.W. FIRST AVENUE  
MIAMI, FLORIDA 33128  
(305) 349-7000  
FAX (305) 349-7011

February 2, 2012

Mr. Christopher Mazzella  
Inspector General  
Office of the Inspector General Miami-Dade County  
19 West Flagler Street #220  
Miami Florida 33130-4406

RE: Office of the Inspector General Report.

Dear Mr. Mazzella,

Enclosed herewith is the response from the Eleventh Judicial Circuit to the Report of the Office of the Inspector General.

Respectfully,

Sandra M. Lonergan  
Trial Court Administrator

Joel H. Brown  
Chief Judge

The Chief Judge and the Administrative Office of the Courts (AOC) are grateful for the Inspector General's office (OIG) taking the time to review and provide a thorough report with regard to Court employee, Joelle Haspil. Not unlike the goal of the Inspector General in reviewing this matter, the AOC strives to ensure candor and transparency in its dealings with all Court employees, and the individuals who rely on the Court system for the administration of justice.

The Inspector General's Report addressed two major points. The first issue concerned Ms. Haspil's application for release of funds from her personal deferred compensation pension plan. Although the court does not approve of the conduct as alleged by the OIG with regard to Ms. Haspil's application for release of her funds, we have no comment to the OIG report as those actions were outside of her scope of employment.

The second issue is whether a violation of County policy occurred when Ms. Haspil was approved to work a reduced schedule in order to accept outside employment with the federal court system. With respect to this second issue, the AOC is undertaking a review of its current policies and procedures regarding outside employment and the circumstances by which employees will be permitted to work reduced hours to ensure that all employees are not (and do not give the appearance of) taking a leave or reduced schedule for an improper or prohibited reason. Such a review includes modification to existing policy regarding what constitutes a conflict of interest, and requiring exhaustion of all paid time off before any reduced schedules are approved. The AOC agrees that it is important to develop comprehensive internal procedures to provide further guidance on how such requests will be handled in the future.

The Court would like to clarify the AOC is not a department, division or arm of Miami-Dade County. Rather, the AOC and the employees who work for the Eleventh Judicial Circuit of Florida are considered part of the State Courts System, which is an independent and autonomous branch of state government.

This conclusion is supported by various legal opinions from the County Attorney's office and the Court's Legal Counsel (*see* Composite Exhibit #1) in addition to language found in the Miami-Dade County Code, itself. *See* Miami-Dade Code, Art. III, Sec. 2-41(5) (expressly exempting "all members of the staff of the Eleventh Circuit and the employees of the Administrative Office of the Court" from inclusion in the County's classified service – which applies to most other full-time County employees).<sup>1</sup> The fact that some Court positions are funded by the County does not change this analysis. Consequently, personnel issues pertaining to Court employees (whether County or State funded), are not subject to policies established for County employees. The Eleventh Judicial Circuit has the discretion to approve and/or establish policies governing all Court employees.

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<sup>1</sup> Section 25.382, Fla. Stat., defines "state courts system" to include all officers, employees and divisions of the Supreme Court, district courts of appeal, circuit courts and county courts. The statute goes on to state that: "the manner of selection of employees, the determination of qualifications and compensation, and the establishment of policies relating to the work of such employees, including hours of work, leave and other matters shall be determined by rule of the Supreme Court as provided in s. 2(a), Art. V of the State Constitution." Fla. Stat. § 25.382(3).

The Inspector General's report concluded that AOC violated County policies and procedures in approving Ms. Haspil's request to work reduced hours (thereby enabling her to accept another full-time position) as such outside employment is prohibited by County policy. However, Ms. Haspil, although in a County funded position, was not a County employee who was subject to the County's personnel policies. The process applied to Ms. Haspil for approving a reduced schedule was the same as those procedures applied to other Court employees in past years and we believe was not in violation of existing AOC policy.

In the context of Ms. Haspil's request to work a reduced schedule, the AOC personnel handling the request sought and relied upon advice from its General Counsel, Linda Kearson, as to whether such a request was permissible (*see* Exhibit #1). The General Counsel's opinion was, and continues to be, that Ms. Haspil was at all times a Court Employee Funded by the County and that such a request did not violate established Court policies or procedures.<sup>2</sup>

When this request was approved, the Administrative Office of the Court reviewed the financial implications of allowing Ms. Haspil to work a reduced schedule. This review showed that approving Ms. Haspil's request would generate savings as Ms. Haspil was only paid for the hours she actually worked. Given the budgetary issues impacting the Court system, such savings contributed significantly in allowing the Court to reduce the number of unpaid furlough days to County funded Court staff. The fact that Ms. Haspil also possessed vast institutional knowledge and expertise cannot be ignored. Such factors were viewed favorably especially in light of difficult budgetary issues.

The Eleventh Judicial Circuit remains committed to evaluating its policies and procedures to ensure that its operations remain efficient, transparent and consistent with all applicable rules and regulations.<sup>3</sup>

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<sup>2</sup> The Inspector General's Report concludes that Ms. Haspil's acceptance of a full-time position with the Federal Court system violated AOC policy regarding conflicts of interest. Specifically, the Inspector General concludes that a conflict of interest existed with respect to the time Ms. Haspil could devote to her duties as a Circuit Court employee. This conclusion is premised on the assumption that all Court employees must work the hours of operation for the Court (i.e., 8:00 a.m. to 5:00 p.m.). However, Ms. Haspil's reduced work schedule did not overlap with her work hours as a federal court employee. The hours Ms. Haspil devoted to her duties at the Eleventh Circuit were separate and apart from the hours she devoted to her position with the federal court system.

<sup>3</sup> By filing this Response, the AOC does not concede or otherwise admit any fact, argument or issue addressed in the Inspector General's Report that is not expressly discussed in this Response. Rather, the focus of this Response is with respect to the Inspector General's conclusions.

**EXHIBIT 1**  
**(COMPOSITE)**



ELEVENTH JUDICIAL CIRCUIT OF FLORIDA  
ADMINISTRATIVE OFFICE OF THE COURTS  
OFFICE OF THE GENERAL COUNSEL

JOEL H. BROWN  
CHIEF JUDGE  
SANDRA M. LONERGAN  
TRIAL COURT ADMINISTRATOR

LAWSON E. THOMAS COURTHOUSE CENTER  
175 N.W. FIRST AVENUE  
MIAMI, FLORIDA 33128  
(305) 349-7165  
FAX (305) 349-7168

June 13, 2011

Mr. Christopher Mazzella, Inspector General  
Office of the Inspector General Miami-Dade County  
19 West Flagler Street #220  
Miami, Florida 33130-4406

Re: Joelle Haspil  
Reduced Work Schedule

Dear Mr. Mazzella:

In March, 2010, as General Counsel to the Eleventh Judicial Circuit of Florida ("Circuit"), our office was asked for a legal opinion regarding the propriety of approving a reduced work schedule for Ms. Joelle Haspil. Based upon the following information, this office opined that Ms. Haspil's request for a reduced work schedule was legally permissible:

1. Pursuant to Section 29.008(2), Florida Statutes, Miami-Dade County funds the salaries, costs, and expenses of the Circuit to meet local requirements. Local requirements are those specialized programs, nonjudicial staff, and other expenses associated with specialized court programs required of Miami-Dade County as a result of special factors or circumstances. County Court Mediation is one such local requirement determined to be a specialized court program. Ms. Haspil's position as a County Court Mediator has been funded with county funds, for a significant period of time, to provide mediation services for this specialized court program.
2. It has been long established between Miami-Dade County and the Circuit that personnel decisions involving such positions are within the purview of the Circuit. Accordingly, the Circuit has always made personnel decisions internally and merely provided the County with relevant information regarding the decision(s) for payroll purposes only.

Mr. Christopher Mazzell

Page 2

June 13, 2011

3. Ms. Haspil's reduced work schedule did not adversely impact the services provided by County Court Mediation. In fact, her continued assistance was considered to be and in fact, has been invaluable to the effective and efficient operations of County Court Mediation.
4. In accordance with the Circuit's Outside Employment policy, employment outside the Eleventh Judicial Circuit is allowed to the extent the outside employment does not pose a conflict with employment by the Circuit. Ms. Haspil's outside employment did not conflict with her position with the Circuit.

Accordingly, our opinion was in 2010, and still remains, that the approved reduced work schedule for Ms. Haspil is appropriately authorized.

Should you need additional information, please contact me at (305) 349-7165.

Very truly yours,

  
Linda Kelly Kearson  
General Counsel

LKK/W030

Cc: Honorable Joel H. Brown, Chief Judge, Eleventh Judicial Circuit of Florida  
Sandra M. Lonergan, Trial Court Administrator

M E M O R A N D U M

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TO: Donald S. Allen  
Director, Personnel Services

DATE: April 9, 1991

FROM: <sup>15/</sup> Ellis D. Pettigrew  
Court Administrator  
Administrative Office of the Courts

SUBJECT: Judicial Employees  
Exemption from Bumping  
Process

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I am writing in response to Grace Poley's memo of March 19, 1991, regarding exemptions from layoff/bidding process.

Please note that the employees of the Dade County Law Library are employees of the Eleventh Judicial Circuit Court. I am therefore including herein the response of Mr. Wilbur McDuff, Director of Law Libraries, to your memorandum.

As indicated in the attached memorandum of Murray Greenberg, Assistant County Attorney, dated April 6, 1978, court employees "are, pursuant to Article V, Section 2(d), Florida Constitution, subject only to control and supervision by the Chief Judge and thus are not subject to Dade County personnel rules." Therefore, court employees are exempt from the bumping rules and procedures of the County Personnel Department.

If I can be of further assistance in this matter, please feel free to contact me at 375-5278.

EDP/ges  
Att.  
cc: Mr. Wilbur S. McDuff

THU 09:00 FAX

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Walbur S. McDuff  
Executive Officer  
Courts

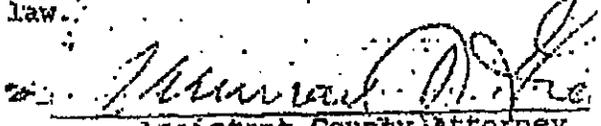
DATE April 6, 1978  
SUBJECT Law Library Employees

Murray A. Greenberg  
Assistant County Attorney

You requested this office to advise you whether employees the Dade County Law Library were subject to county personnel rules. We have reviewed the problem and have concluded that the employ of the Dade County Law Library are not county employees subject county personnel rules.

The foregoing conclusion is predicated upon the belief the employees of the Dade County Law Library are employees of the courts. See Chapter 17720, Laws of Florida, 1937; Chapter 270, Laws of Florida, 1951; Chapter 30145, Laws of Florida, 1955; C: Court Order dated June 2, 1937, recorded in Circuit Court Appeal Minute Book 104 at page 18; Circuit Court Administrative Order 39, dated March 28, 1972; and Circuit Court Administrative Ord 77-246, dated October 21, 1977. As court employees, such empl are, pursuant to Article V, Section 2 (d), Florida Constitution subject only to control and supervision by the Chief Judge and are not subject to Dade County personnel rules.

Nothing contained herein, however, shall be construed to exempt the law library from being subject to audit and other regulations as required by law.

  
Assistant County Attorney

MAG/mjh

TO: Ellis D. Pettigrew, Court Administrator  
FROM: Donald I. Pollock, Esq., Legal Division  
DATE: October 30, 1992  
SUBJECT: STATE COURTS SYSTEM EMPLOYEES

Inquiry is made whether with respect to the recruitment, appointment, training, promotion or retention of county funded<sup>1</sup> "state courts system" employees,<sup>2</sup> the Chief Judge and/or Court Administrator are bound to comply with Dade County's personnel rules and employment practices.

Apparently, a \$49 million budget has been approved for the courts for 1992-93.<sup>3</sup> Within the parameters of this budget, the

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<sup>1</sup>By general law, counties shall provide appropriate personnel necessary to operate the circuit and county courts (§ 43.28, F.S.) and unless the state shall pay such expenses the county shall pay all reasonable salaries of bailiffs, secretaries and assistants of the circuit and county courts as well as all reasonable expenses of the offices of circuit and county court judges (§ 34.171, F.S.). It would thus seem that while the county has a limited fiscal involvement with the court system, its control over the administrative aspect is minimal.

<sup>2</sup>"State courts system" means all officers, employees, and divisions of the Supreme Court, district courts of appeal, circuit courts, and county courts. §25.382(1), F.S. It is declared and determined that the officers, employees, committees and divisions of the state courts system of the judicial branch are and shall continue to be officers, employees, committees, and divisions of the state court system to perform such services as may be provided by the State Constitution, by law, by rules of practice and procedure adopted by the Supreme Court, or by administrative order of the Chief Justice, whichever is applicable. §25.382(2), F.S.

<sup>3</sup>The following cases involve the broadest assertion of judicial inherent power to determine the overall budget of the court; here, the focus is not upon a specific court function, or a specific cost, but instead upon the sum total of the costs for all the functions of the court. See, e.g., Commonwealth v. Tate, 442 Pa. 45, 274 A.2d 193 (1971); Mowrer v. Rusk, *supra*; Beckert v. Warren, 497 Pa. 137, 329 A.2d 638 (1981).

court should be able to set its own rules and policies for the hiring, qualifications and reclassification of court employees.<sup>4</sup>

Since the courts are a co-equal branch of government and not merely a county agency or department,<sup>5</sup> there seems to be no legal basis for the County to force the courts to comply with county personnel regulations imposed from without rather than developed within the judicial system.<sup>6</sup>

Courts have the inherent and constitutional authority to employ necessary personnel to perform its inherent and constitutional functions, to fix salaries of these employees, within reasonable standards, and to require appropriations for the payment of their salaries.<sup>7</sup> The real issue, however, is not the existence or nature of the court's inherent power, but rather,

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<sup>4</sup>The Chief Judge has the power to set policies for the selection, qualifications and compensations of state courts system employees, regardless of whether those employees are paid with county funds.

<sup>5</sup>See Chiles v. Children A, B, C, D, E, and F, 589 So.2d 260 (Fla. 1991) (The inclusion of the judicial branch within the definition of "state agency," and hence the placing of the judiciary's fiscal affairs under the management of the executive branch, disregards the constitutional mandate of coordinate power-sharing. Under the constitution, the judiciary is a coequal branch of the Florida government vested with the sole authority to exercise the judicial power.)

<sup>6</sup>Better practice dictates that county personnel regulations and procedures be viewed as discretionary "guidelines." They serve also as a check upon the unauthorized expenditure of public funds for a purpose not in furtherance of the judicial function. However, since county personnel regulations and procedures ordinarily are imposed from without rather than developed within the state courts system, the Chief Judge and/or Court Administrator need not blindly adhere to county personnel policies if such will hinder the efficient performance of judicial functions. Unnecessary administrative delays or snafus should not be tolerated. If the county insists on compliance with county personnel policies, notwithstanding explanation by the Chief Judge that compliance will impact adversely on the effective operation of the judicial system, a separation of powers show-down between the courts and the county may be imminent.

(Footnote Continued)

the procedure by which that power may be exercised. It seems clear that before a court may exercise its inherent power to order the payment of public funds for a judicial purpose, certain findings must be made. The court must find that the expense is for a compelling need essential to the orderly administration of the court. The court must also find that the appropriating agency has abused its authority in refusing payment. Each of these findings must be based upon clear and convincing evidence, and a record must be made. Grimsley v. Twiggs County, 249 Ga. 632, 292 S.E.2d 675 (1982).

A. COURT EMPLOYEES NOT SUBJECT TO COUNTY PERSONNEL RULES

The County Personnel Director, as executive head of the Personnel Department,<sup>9</sup> submits and prepares proposed rules for the County's classified service.<sup>9</sup> Dade County Code, §2-28. By definition, the County's classified service is comprised of "all full time positions in the county service"<sup>10</sup> . . . except all members of the staff of the Eleventh Judicial Circuit and the

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(Footnote Continued)

<sup>7</sup>The doctrine of inherent judicial power provides courts with a method of responding to the actions of the legislative and executive branches of government that threaten a court's ability to function. The doctrine exists because it is essential to the survival of the courts as an independent branch of government.

<sup>9</sup>The County Manager shall appoint a personnel director who shall head the Department of Personnel and whose duty it shall be to administer the personnel and civil service programs and the rules governing them. Charter, §4.05.

<sup>10</sup>Note that the Metro-Dade Procedures Manual contains a compilation of the "policies affecting employment." The Procedures Manual makes reference to "Exempt" (AL Status) which are "job classifications exempted from the classified service by the Dade County Code. Generally, these are upper level management, technical, elected officials and their direct support staff. Procedures Manual at p. 483.

<sup>10</sup>County service shall mean employment, payment for which is made in whole or part by the County Commission. §2-23(c), Dade County Code.

employees of the Office of the Court Administrator." Dade County Code, §2-46(5).

Since members of the staff of the Eleventh Judicial Circuit and employees of the Office of the State Court are not defined as part of the county's classified service, they should not be subject to county personnel regulations promulgated by the Personnel Director.<sup>11</sup> Neither should court employees be subject to regulation by the County Manager in administrative orders.<sup>12</sup> As a general proposition, the judiciary must, as a matter of constitutional law, directly control court personnel.<sup>13</sup>

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<sup>11</sup>The County Manager shall have the power to issue and place into effect administrative orders. §4.01, Charter. Administrative orders setting forth county employment practices and policies apply only to county departments. The judicial branch is not, and cannot be a department of county government. See §4.01, Charter.

<sup>12</sup>Certain employment practices relating primarily to termination give rise to constitutional concerns. For example, an employee has a due process right to a name-clearing hearing. Such right has been extended to state court system employees. See, Memo. from Office of State Courts Administrator dated February 25, 1992, re: Liberty Interest Protection for Discharged State Courts System Employees. To the extent the County has implemented name-clearing procedures or other liberty interest protections for discharged employees within its personnel regulations or administrative orders, adherence thereto by the courts is suggested. See, e.g. James W. Linn, *Liberty Interest Protection for Discharged Public Employees*, Fla.B.J. Oct. 1990, p. 76.

<sup>13</sup>See *Mowrer v. Rusk*, 618 P.2d 886 (N.M. 1980) (Municipal ordinance which placed broad discretion, authority and power in executive relating to hiring, supervising and discharging of personnel working for municipal court and relating to certain administrative functions of court infringed upon judiciary's power, as matter of constitutional law, to direct court personnel, and thus was unconstitutional. Personnel directly employed by municipal courts cannot constitutionally be included in general merit system or ordinance, in that such would constitute invasion of independence of judiciary.)

1. Opinion of County Attorney

On April 6, 1978, Assistant County Attorney Murray Greenberg opined<sup>14</sup> that "court employees . . . are pursuant to Article V, §2(d), Florida Constitution, subject only to control and supervision by the Chief Judge and are thus not subject to Dade County personnel rules."

B. ALL STATE COURTS SYSTEM EMPLOYEES SUBJECT TO REGULATION BY CHIEF JUDGE

The officers, employees and divisions of the circuit and county courts are "state courts system" employees.<sup>15</sup> Sec. 25.382(3), Fla. Stat. provides that "the selection of [state courts system . . . employees, the determination of qualifications and compensation, and the establishment of policies relating to the work of such employees, including hours of work, leave, and other matters, shall be determined by rule of the Supreme Court as provided in §2(a), Art. V of the State Constitution." §25.382(3), Fla. Stat.

The Chief Judge, as chief judicial officer of the Circuit, is responsible for the administrative supervision of the

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<sup>14</sup>This opinion was in response to an inquiry by Wilbur S. McDuff, then Executive Officer of the Courts, whether employees of the Dade County Law Library were subject to county personnel rules. Mr. Greenberg concluded that as court employees, they were not.

<sup>15</sup>"State courts system" means all officers, employees, and divisions of the Supreme Court, district courts of appeal, circuit courts, and county courts. §25.382(1), F.S. It is declared and determined that the officers, employees, committees and divisions of the state courts system of the judicial branch are and shall continue to be officers, employees, committees, and divisions of the state court system to perform such services as may be provided by the State Constitution, by law, by rules of practice and procedure adopted by the Supreme Court, or by administrative order of the Chief Justice, whichever is applicable. §25.382(2), F.S.

Circuit.<sup>16</sup> Hence, the Chief Judge has the power to set policies for the selection, qualifications and compensations of state court system employees, regardless of whether those employees are paid with county funds.<sup>17</sup>

C. UNIFORM PERSONNEL RULES AND POLICIES SHOULD BE ESTABLISHED BY CHIEF JUDGE FOR STATE COURT SYSTEM EMPLOYEES

The Florida Supreme Court has promulgated a Personnel Regulations Manual for the Florida State Court System (State Manual.) On page 1 of the State Manual it is recognized that:

[I]t is the intention of the Supreme Court of Florida to create a Uniform Florida State Courts Personnel System which shall govern, regulate, and coordinate all personnel and employment practices and activities with respect to recruitment, examination, appointment, training, promotion, retention, separation, or any other employment practice.

While technically the state courts personnel regulations apply only to court employees funded through state appropriations,<sup>18</sup> it is the overall intention that the chief judges of the judicial circuits of Florida be considered the employers of all state courts system employees and that all employees of the Florida State Courts System serve at the pleasure of the appointing authority. Thus, it is the Chief Judge who should develop

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<sup>16</sup>Fla.R.Jud.Admin. 2.050(b)(3).

<sup>17</sup>Note that Leon County has adopted a resolution designating the Chief Circuit Judge of the Second Judicial Circuit as being responsible for recruiting, employment and termination of judicial employees which are on county payroll and exempting said employees from Leon County's employment policies and procedures. As discussed, *infra*, I feel that state courts system employees are already exempted from the county's personnel rules in Dade County.

<sup>18</sup>On page 2 of the State Manual, it is provided that the state courts system personnel regulations apply only to the employees of the Supreme Court, the District Courts of Appeal, and the Circuit and County Courts filling  
(Footnote Continued)

uniform personnel policies and rules for the hiring, reclassification and termination of state court system employees.

D. SEPARATION OF POWERS CONCERNS

Sometimes it becomes impractical for the court to go through normal channels in the hiring and/or reclassification of state court system employees.<sup>19</sup> If the County insists on compliance with County personnel policies, notwithstanding explanation by the Chief Judge that compliance will impact adversely on the effective operation of the judicial system, a separation of powers show-down between the courts and the County may be imminent.<sup>20</sup> It must be remembered that the power to control the personnel functions of the court is the power to coerce the judiciary into compliance with the wishes or whims of the executive.

1. Inherent Power of Florida Courts to Hire Employees and Pay Salaries

The doctrine of inherent judicial power provides courts with a method of responding to the actions of the legislative and executive branches of government that threaten a court's ability.

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(Footnote Continued)

authorized and established positions funded through state appropriations of state and federal revenue. State Manual at p.2.

<sup>19</sup>While better practice dictates compliance with the County's personnel rules where possible, if there is an urgent need for a position to be filled or reclassified, it might be wise to have either the Chief Judge or Court Administrator directly contact the Personnel Director and refuse to be funnelled through subordinates. Unnecessary administrative delays or snafus should not be tolerated.

<sup>20</sup>Mowrer v. Rusk, 619 P.2d 886 (N.M. 1980) (When agreement cannot be reached between a court and a funding unit, the court may initiate suit and shall bear the burden of proof regarding expenditures in excess of appropriations).

to function. The doctrine exists because it is essential to the survival of the courts as an independent branch of government. See *Silver, Inherent Powers of Florida Courts*, 39 U.MiamiL.Rev. 257 (1985); Annotation, *Inherent Power of Court to Compel Appropriation or Expenditure of Funds for Judicial Purposes*, 59 A.L.R.3d 569.<sup>21</sup> Courts have the inherent and constitutional authority to employ necessary personnel to perform its inherent and constitutional functions,<sup>22</sup> to fix the salaries of these employees, within reasonable standards, and to require

<sup>21</sup>The kinds of expenses for which the power to compel funding has been asserted can be classified along a spectrum. In the first kinds of cases, funding is sought for a specific matter necessary to conducting court, and the propriety of the amount sought is not disputed. These cases have often involved expenses necessitated by somewhat unusual, even emergency, circumstances. See, e.g., *O'Coins v. Worcester Co. Treasurer*, 362 Mass. 507, 287 N.E.2d 608 (1972) (tapes and tape recorder for use in criminal trials where stenographer not available); *Stowell v. Jackson Co. Supervisors*, 57 Mich. 31, 23 N.W. 557 (1885) (boarding and lodging costs for sequestered jury); *Grimsley v. Twiggs Co.*, 249 Ga. 632, 292 S.E.2d 675 (1982) (temporary clerical help for court clerk); *Knuepfer v. Fawell*, 96 Ill.2d 284, 449 N.E.2d 1312 (1983) (provision of sufficient number of courtrooms). Closely related are cases in which the authority of the court to employ certain permanent personnel is at issue. See, e.g., *Flathead Co. Comm'rs v. 11th Dist. Court*, 182 Mont. 463, 597 P.2d 728 (1979) (county refused to fund position provided for by statute). In the next category of cases, while the court's authority to hire certain personnel may also be discussed, it is the amount of compensation which is at issue: here the proper amount of funding for the position is disputed. See, e.g., *In re Lyon Co. Court Clerk v. Lyon Co.*, 308 Minn. 172, 241 N.W.2d 781 (1976); *Young v. Pershing Co. Comm'rs*, 91 Nev. 52, 530 P.2d 1204 (1975) (probation officers, secretary, and other court employees). Related cases involve the question of who, the court or the county, has the power to hire, control, and determine the compensation of court personnel. See, e.g., *Mowrer v. Rusk*, 95 N.M. 48, 618 P.2d 886 (1980); *State ex rel. Weinstein v. St. Louis Co.*, 451 S.W.2d 99 (Mo., 1970); *Holohan v. Mahoney*, 106 Ariz. 595, 480 P.2d 351 (1971). Finally, other cases involve the broadest assertion of judicial inherent power to determine the overall budget of the court; here, the focus is not upon a specific court function, or a specific cost, but instead upon the sum total of the costs for all the functions of the court. See, e.g., *Commonwealth v. Tate*, 442 Pa. 45, 274 A.2d 193 (1971); *Mowrer v. Rusk*, *supra*; *Beckert v. Warren*, 497 Pa. 137, 329 A.2d 638 (1981).

<sup>22</sup>Florida law requires counties to provide for necessary personnel. See § 43.28, F.S., §34.171, F.S.

appropriations for the payment of their salaries.<sup>23</sup> Commentators suggest it is for judges, not county commissioners, to determine how many court employees are needed and to set qualifications for those employees.<sup>24</sup> Just as important because it determines the quality of employees available to the court, is the right to fix, raise and require payment of salaries.<sup>25</sup>

The real issue, however, is not the existence or nature of the court's inherent power, but rather, the procedure by which that power may be exercised.<sup>26</sup> It seems clear that before a court may exercise its inherent power to order the payment of

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<sup>23</sup> In the specific area of court employees, some courts have asserted authority to control appointment, duties, and salary of employees. See, e.g., McAfee v. State ex rel. Stodola, 258 Ind. 677, 284 N.E.2d 778 (1972); Noble County Council v. State, 234 Ind. 172, 125 N.E.2d 709, 713 (1955); In re Janitor of Supreme Court, 35 Wis. 410 (1874); Carrigan, *Inherent Powers of the Courts*, pp. 13 to 18; Annotation, 59 A.L.R.3d 569, 590, 605. Cf. State ex rel Douglas v. Westfall, 85 Minn. 437, 446, 89 N.W. 175, 178 (1902).

<sup>24</sup>The scope of a court's inherent power is as broad as its jurisdiction and encompasses authority to provide itself reasonable space within which to work, employees and other assistants, equipment, supplies, and incidental services. Ultimately there is an inherent power for a court to control its own budget to the extent that such control is essential to its survival or its reasonably efficient functioning as a judicial agency. Kaplan, *There Must Be No Interference with The Courts*, VI Munic.Ct.Rev. 15 (April 1966).

<sup>25</sup>So long as the judges act reasonably and set reasonable salaries, the Board must approve. Only upon showing the judges acted arbitrarily or set unreasonable salaries, can the Board overrule the court. And, most important, the Board has the burden of proof. Smith v. Miller, 153 Colo. 35, 384 P.2d 738 (1963). However, in the area of salaries, the traditional legislative powers of appropriation and control of spending should cause the judiciary to proceed cautiously, observing statutory procedures. State ex rel. Hillis v. Sullivan, 48 Mont. 320, 137 P. 392 (1913); Stevenson v. Milwaukee County, 140 Wis. 14, 121 N.W. 654 (1909); Leshey v. Farrell, 362 Pa. 52, 66 A.2d 577 (1949); Employees and Judge v. Hillsdale County, 378 N.W.2d 744 (Mich. 1985) (Inherent power of court to compel funding by county for salaries of court personnel was inapplicable absent allegation that additional salary items were required because judicial functions were in jeopardy).

<sup>26</sup>"The very conception of inherent power carries with it the implication that its use is for occasions not provided for by established methods. . . ."

(Footnote Continued)

public funds for a judicial purpose in a mandamus case,<sup>27</sup> certain findings must be made. The court must find that the expense is for a compelling need essential to the orderly administration of the court. The court must also find that the appropriating agency has abused its authority in refusing payment. Each of these findings must be based upon clear and convincing evidence, and a record must be made. Grimsley v. Twiggs County, 249 Ga. 632, 292 S.E.2d 675 (1982).

#### CONCLUSION

Better practice dictates that county personnel regulations and procedures be viewed as discretionary "guidelines." They serve also as a check upon the unauthorized expenditure of public funds for a purpose not in furtherance of the judicial function. However, since county personnel regulations and procedures ordinarily are imposed from without rather than developed within the state courts system, the Chief Judge and/or Court Administrator need not blindly adhere to county personnel policies if such will hinder the efficient performance of judicial functions. If the county insists on compliance with county personnel policies, notwithstanding explanation by the Chief Judge that compliance will impact adversely on the effective operation of the judicial

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(Footnote Continued)

Only when established methods "fail and the court shall determine that by observing them the assistance necessary for the due and effective exercise of its own functions cannot be had, or when an emergency arises which the established methods cannot or do not instantly meet, then and not until then does occasion arise for the exercise of the inherent power." State ex rel. Hillis v. Sullivan, 48 Mont. 320, 137 P. 392, 395 (1913).

<sup>27</sup>Mandamus is the proper "remedy to compel a public officer or a county board to perform a duty imposed by law."

system, a separation of powers showdown between the courts and the county may be imminent.<sup>28</sup>

The doctrine of inherent judicial power provides courts with a method of responding to the actions of the legislative and executive branches of government that threaten a court's ability to function. The doctrine exists because it is essential to the survival of the courts as an independent branch of government.

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<sup>28</sup>Because of the potential for this conflict, it is suggested that all personnel disputes between the Courts and the County be amicably resolved through mutual cooperation. Intragovernmental cooperation remains the best means of resolving financial difficulties in the face of scarce societal resources and differences of opinion regarding judicial procedures. However, when established and reasonable procedures have failed, a court may assert its inherent judicial power by an independent judicial proceeding brought by the judges of such court or other parties aggrieved. Such proceeding must include a full hearing on the merits in an adversary context before an impartial and disinterested court. Clerk of Court's Comp. for L.C. v. L.C. Com'rs., 241 N.W.2d 781 (Minn. 1975).