



**SUPREME COURT OF OHIO
FRANKLIN COUNTY**

REPORT ON VISITING JUDGES PROGRAM

DECEMBER 27, 2001



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AUDITOR OF STATE

STATE OF OHIO



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December 27, 2001

Mr. Steven C. Hollon
Administrative Director
The Supreme Court of Ohio
30 East Broad Street, 3rd Floor
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Dear Mr. Hollon:

The Supreme Court of Ohio's (Court) requested our assistance in its internal review of its policies and procedures regarding compensation of judges who sit by assignment of the Chief Justice in a letter dated June 1, 2001. We proposed a scope of services which was accepted by the Court on June 29, 2001.

We completed our review of the Court's draft of policies and procedures regarding its assignment and payment of judges who sit by assignment of the Chief Justice (commonly called visiting judges) and our review of Court administrative procedures applied to claims for compensation and reimbursement of expenses paid since July 1, 2000. This document contains comments and recommendations based on our review.

Objectives

1. Review the policies and procedures to be utilized by the Court prospectively (from June 2001) in the assignment and payment of assigned judges, including a review of a draft of the forthcoming revision to *Guidelines for Assignment of Judges*, and the information technology systems supporting the assignment and payment processes, and
2. Review Court administrative procedures used in its examination of assigned judges payments made from July 1, 2000 through June 13, 2001.
3. Provide the Court with observations and recommendations which we deem appropriate based on our review.

Major Work Steps

1. We read the provisions of the Ohio Constitution, Ohio Revised Code, and Ohio Rules of Court which authorize the assignment and compensation of judges and the reimbursement of their assignment expenses.
2. We read *The Supreme Court of Ohio Guidelines for Assignment of Judges* (Guidelines)

applicable since July 1, 2000 and a draft of its proposed revision.

3. We made detailed inquiries of the persons directly involved in the assignment of judges.
4. We observed the process of making assignments including maintenance of assignments database.
5. We made detailed inquiries of the persons directly involved in the payment of claims for per diem compensation and reimbursement of assignment expenses.
6. We observed the per diem compensation claims review, evaluation and payment processes for claims submitted by retired assigned judges. The Supreme Court reviews, evaluates and pays claims for per diem compensation submitted by retired judges assigned to the courts of appeals and courts of common pleas.
7. We observed the entry of per diem compensation claims from retired assigned judges into the Judicial Assignment Payment (JASPAY) system and the state payroll system.
8. We observed the per diem compensation claims review, evaluation and payment processes for claims submitted by currently elected assigned judges. The Supreme Court processes these claims for assignments of judges of courts of appeals.
9. We observed the entry of per diem compensation claims from currently elected assigned judges of courts of appeals into the state payroll system.
10. We evaluated the systems development process used in the development of the JASPAY system.
11. We analyzed the database of claims for compensation submitted by retired assigned judges to the Court (JASPAY System) and paid by the Court from July 1, 2000 through June 13, 2001 to identify instances of a payment to a retired assigned judge for more than 8 hours in a single day.
12. We analyzed the database of assignments made by the Court and provided to us in June, 2001 which contained per diem compensation claims paid from July 1, 2000 through June 13, 2001. We reviewed instances of claims for per diem compensation paid against an assignment for a date not specified in that assignment.
13. For retired assigned judges, we compared their State payroll records to the database accounting for their compensation claims to determine whether:
 - a. All compensation claims in the database were paid, and
 - b. All payments made to these judges were supported by claims for compensation.

Background

In Ohio, according to Article IV, Section 1 of the Ohio Constitution, the judicial power of the State is vested in the Supreme Court, the courts of appeals, courts of common pleas and other lower courts as may be established from time to time by the General Assembly. There are 12 court of appeals districts covering the State. A court of common pleas is established in each county of the State. Probate and domestic relations courts are set apart as divisions of a court of common pleas to hear specific types of cases. Some common pleas courts may set apart separate divisions to consider civil and criminal complaints. In turn, common pleas divisions may set apart sub-divisions. For example, a domestic relations division may set apart a separate divisions to deal with matters involving juveniles or divorces. This division can proceed to even further levels of refinement. For example, a juvenile court may establish a separate division to hear traffic related complaints against minors. The refinements are designed to streamline the adjudication of complaints.

Lower courts, established by the General Assembly include municipal, county courts and mayors' courts. These courts' jurisdictions are local in nature and more limited than a common pleas court. These courts may also establish divisions (e.g., municipal traffic courts) to streamline the adjudication of specific types of complaints.

The Ohio Constitution vests in The Supreme Court of Ohio, and, specifically, its Chief Justice, the responsibility of superintendence, or management, of the court systems. This authority extends to both the state and local court systems and includes authority to assign both currently elected and retired judges to courts in order to minimize docket backlogs.

The Court of Claims is a entity separate from the Supreme Court. It is constituted as necessary to hear complaints against the State of Ohio and to hear appeals of reparation awards under the Victims of Crime Compensation Program administered by the Attorney General. The Supreme Court does not process claims for compensation or reimbursement of expenses submitted by judges assigned to sit in a Court of Claims, and Court of Claims policies and procedures were not reviewed for the purposes of the letter.

Per diem compensation paid to retired and currently elected judges as a result of these assignments amounted to approximately \$3.5 million during fiscal year 2001. Actual total expenses of the Supreme Court for fiscal year 2001 were \$98.6 million. Claims for compensation paid and expenses reimbursed during fiscal year 2001 amounted to under 4% of actual expenses of the Supreme Court for that year.

Retired judge assignments constitute the majority of assignment activity. Article IV, Section 6(C) of the Ohio Constitution provides that retired judges may be assigned to active duty by the Chief Justice and shall be paid compensation for the judgeship to which they are assigned computed on a *per diem* basis. There are no legal authorities specifically interpreting what

computed on a per diem basis means. Applying the customary meaning of *per diem* yields the conclusion that retired judges assigned to active duty are to be paid on a *per day* basis.

Recently the billing practices of several retired assigned judges has been questioned. Retired assigned judges claiming compensation for more than 8 hours in a day and submitting for reimbursement of expenses incurred on days when not conducting session in court were among the questioned practices.

In a letter dated June 1, 2001 the Court requested our assistance to review the:

“policies and procedures to be used prospectively in the assignment and payment of assigned judges, including the *Guidelines of Assignment of Judges* we are currently redrafting . . . [including] an examination of our information technology support systems, and the controls we have instituted to prevent duplication of reimbursement. Finally, we ask your office to provide a review of our audit procedures in our examination of payments made by the Court to assigned judges since July 1, 2000 when this process first became automated by the Court.”

Scope

The Supreme Court, specifically its Chief Justice, is provided broad constitutional and statutory authority to assign judges, both currently elected and retired, to courts established by the Constitution or by law. The Court’s responsibility for evaluating and paying claims submitted by assigned judges for per diem compensation and reimbursement of expenses, however, is more limited. Currently elected judges are compensated on the basis of their current elected position. For example, an elected judge of a court of appeals assigned to assist a court of common pleas would be compensated using the per diem rate applicable to judges of courts of appeals, not courts of common pleas. For each day of the assignment the judge is also paid \$50 in addition to his or her actual salary computed on a per diem basis. Table I, below, summarizes the payment responsibilities for different types of judges.

Retired assigned judges are compensated on the basis of the per diem rate applicable to the court to which they are assigned. For example, a retired judge of the court of appeals assigned to a court of common pleas would be compensated at the per diem rate applicable to courts of common pleas, not courts of appeals. Table II, below, summarizes the payment responsibilities for different types of assignments

Table I
Parties Responsible for Paying Claims of Assigned Judges Currently Elected to Another Court

If Judge is Elected to:	Party Responsible for Paying Claims Related to:	
	Per Diem Compensation	Expenses
Municipal or County Courts ¹	Municipality or county	Municipality or County
Courts of Common Pleas ²	County	County
Courts of Appeals ³	County	Supreme Court
Supreme Court ⁴	Supreme Court	Supreme Court

Table II
Parties Responsible for Paying Claims of Retired Assigned Judges

Retired Judge Assigned to:	Party Responsible for Paying Claims Related to:	
	Per Diem Compensation	Expenses
Municipal or County Courts ⁵	Municipality or county	Municipality or County
Courts of Common Pleas ⁶	Supreme Court ⁷	County
Courts of Appeals ⁸	Supreme Court	Supreme Court
Supreme Court ⁹	Supreme Court	Supreme Court

Our review of assignment policies and procedures and claims evaluation and payment policies and procedures extended to the extent of the Court's responsibility and no further. For example,

¹Ohio Rev. Code Section 1901.121 (B); Rules of Superintendence for the Courts of Ohio Sup R 17 (B).

²Ohio Rev. Code Section 141.07.

³Ohio Rev. Code Sections 141.10 (A) for expenses; 141.10 (B) for per diem compensation.

⁴Ohio Rev. Code Sections 141.11 (A) for expenses; 141.11 (B) for per diem compensation.

⁵Rules of Superintendence for the Courts of Ohio Sup R 17

⁶Ohio Rev. Code Section 141.16 for compensation; Ohio Rev. Code Section 141.07 for expenses.

⁷The Supreme Court receives and pays claims for per diem compensation submitted by retired judge and recovers a portion of the payment through an annual billing to the counties served by the appointments.

⁸Ohio Rev. Code Section 141.16 for compensation; Ohio Rev. Code Section 141.10 for expenses.

⁹Ohio Rev. Code Section 141.16 for compensation; Ohio Rev. Code Section 141.11 for expenses.

we reviewed per diem compensation claims' receipt, processing and payment activities for currently elected judges of courts of appeals who sit by assignment on the Supreme Court, and for retired judges of courts of appeals and court of common pleas who sit by assignment on the Supreme Court, courts of appeals or courts of common pleas.

For activities associated with reimbursement of expenses, we evaluated procedures applied to claims received from currently elected judges of courts of appeals and for retired judges sitting on courts of appeals or the Supreme Court, since these are the only expense claims submitted to the Supreme Court for reimbursement. We did not evaluate procedures associated with claims for per diem compensation and reimbursement of expenses associated with currently elected judges of courts of common pleas or municipal or county courts, or retired judges of municipal or county courts because the Supreme Court is not responsible for receiving processing or paying those claims for compensation and reimbursement of expenses.

Authority

The Ohio Constitution, for the effective and efficient administration of justice, provides authority to the Chief Justice to assign judges to sit on courts to which they were not elected. These judges are commonly called visiting judges. Common reasons to assign visiting judges are to:

1. Temporarily fill judicial vacancies,
2. Temporarily fill judicial absences,
3. Excuse a judge from considering a matter in which he or she has an interest in the outcome, and
4. Reduce the backlog of cases pending before a court.

The Ohio Constitution also vests in its Supreme Court the power and duty of general superintendence over all courts in the state and to establish rules by which it will exercise that power and duty,¹⁰ including rules to provide for the temporary assignment of judges to sit and hold court in any court established by law.¹¹ The Constitution specifically provides for the Chief (or acting Chief) Justice of the Supreme Court to assign judges from common pleas and appeals courts to any other common pleas or appeals court as necessity arises,¹² and from a court of appeals to sit with the Supreme Court in the case of illness, disability or disqualification of any justice.¹³ To assist the Court in its duty of general superintendence, the Constitution provides for the creation of a pool of additional, judicial experience by allowing the recall of retired judges to

¹⁰Ohio Const. Art. IV, Section 5 (A) (1).

¹¹Ohio Const. Art. IV, Section 5 (A) (3).

¹²Ohio Const. Art. IV, Section 5 (A) (3).

¹³Ohio Const. Art. II, Section 2 (A).

active duty, with their consent, and for their payment on a *per diem* basis.¹⁴

Pursuant to its constitutional authority, the Supreme Court has established rules for the assignment of any currently elected or retired municipal or county court judge to any municipal or county court, and their compensation. The rules provide for daily or *per diem* compensation and for the reimbursement of the judge's actual and necessary expenses.¹⁵

The Chief Justice of the Supreme Court has established *Guidelines for the Assignment of Judges* to establish assignment standards consistent with the Constitution and law and to provide guidance in areas not specifically addressed by the Constitution or law.¹⁶

Payment of Judges for Days other than Court Days

Paying judges for judicial services rendered is not at issue. Questions have been raised, however, about whether judicial services are rendered when judges submit claims for per diem compensation for days on which they did not hold court.

This issue has been raised before. In 1952, the Attorney General wrote that common pleas judges, assigned by the Chief Justice to aid in disposing of the business of counties other than those in which they reside, aid in disposing of the business of that county on all days when, pursuant to such assignment, they are engaged in the judicial business of that county, whether or not such be performed within the geographical limits of such other county or appellate district to which they are assigned.¹⁷ In ruling on whether a judge was *aiding in the disposition* of another county's business while not physically present in that county, the Attorney General wrote:

No one can deny that research, study, and preparation of opinions and decisions by such judge in or out of his home county on matters submitted to him as judge of the Court of Common Pleas in a county in which he does not reside and to which he has been assigned is an aid in the disposition of such other county's business. The clear meaning of the statutory provision is that such assigned judge is to be paid for judicial services rendered for such other county. I find nothing in the statute providing that such services must be rendered within the geographical confines of the county assignment. Aside from personal reasons, there may well be official reasons for a judge to follow this course. He may have a better research library in his home county or at

¹⁴Ohio Const. Art. IV, Section 6 (C).

¹⁵Ohio Rule of Court, Sup R 17.

¹⁶The *Guidelines for Assignment of Judges* were adopted May 24, 1988 and revised on February 25, 1994 and March 25, 1994. At the time of our review, these *Guidelines* were being re-visited with the objective of revising them. For the purpose of our historical review we referred to the March 25th revision.

¹⁷1952 Op. Atty. Gen. 52-1024.

least one with which he is more familiar, thus expediting his work. By remaining in his home county he may desire to lessen the expenses of transportation, meals and lodging which would otherwise have to be paid by the county of assignment.

Thus, it would appear that Ohio law does not require a visiting judge to always be physically in the county or court to which he or she is assigned in order to aid in the disposition of the business of that county or court.

Actual and Necessary Expenses

The criteria against which the expenses of visiting judges are evaluated are whether the expenses were *actual and necessary*.¹⁸ *Actual* means that the expense was incurred by the judge. Judges can meet this criteria by submitting receipts or certifications that the expenses were incurred by them along with their requests for reimbursement. *Necessary* means that the expenses were incurred in the performance of the duties required under the assignment. For example, the expenses incurred by a judge traveling to a location to hear the testimony of a witness in a case to which that judge was assigned would qualify as a necessary expense.

1. Review the policies and procedures to be utilized by the Court prospectively in the assignment and payment of assigned judges, including a review of the recently revised *Guidelines for Assignment of Judges*, and the information technology systems supporting the assignment and payment processes.

Review of *Guidelines for Assignment of Judges*

Guidelines for Assignment of Judges were announced by the Chief Justice of the Ohio Supreme Court on May 24, 1988, and revised on February 25, 1994 and March 25, 1994. The *Guidelines* summarize provisions of the Ohio Constitution, laws and rules prescribed by the Court pursuant to its Constitutional authority, and establish assignment procedures covering issues not directly addressed by the Constitution, laws or rules.

The guidelines exist to assist the Chief Justice in his responsibilities for superintendence of the courts and are designed to provide an efficient and effective method for the temporary assignment of judges to serve in any court in Ohio established by law. The guidelines have not

¹⁸ The following statutes and court cases establish the criteria for reimbursing expenses as *actual and necessary*: Ohio Rev. Code Section 141.07 (common pleas court judges); 141.10 (A) (appellate court judges); 141.11 (A) (appellate court judges sitting on the Supreme Court); Ohio Rule of Court Sup R17 (active and retired municipal and county court judges); and State ex rel. Winn v. Galvin (Ohio 1974) 39 Ohio St.2d 58, 313 N.E.2d 813, 68 O.O.2d 33 (retired judge).

been adopted as rules pursuant to Article IV, Section 5 of the Ohio Constitution.¹⁹

We read the guidelines adopted on March 25, 1994 and a draft of proposed changes. We noted that the guidelines are appropriately detailed and contain definitions designed to explicitly identify parties such as *retired judge* and *assigned judge*.

The guidelines take into account assignment considerations such as circumstances under which judges may be assigned. For example, the absence of a judge for personal reasons or the recusal of a judge who may have an interest in the outcome of a case. An assignment may occur to relieve docket backlogs which is consistent with the Court's responsibility for superintendence.

The guidelines take into account considerations in selecting judges for assignment. For example, the guidelines address the judges' competence for the prospective assignment, including his or her experiences on courts of the level for which the judge is being considered. The guidelines also suggest assessing the docket of a currently elected judge being considered for assignment to avoid creating or exacerbating a docket backlog in one court to relieve a docket backlog in another.

The guidelines take into account the procedures to be followed in requesting the Chief Justice to make an assignment, and principles for the efficient use of assigned judges.

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| <p>2. Review Court administrative procedures used in its examination of assigned judges' payments made from July 1, 2000 through June 13, 2001.</p> |
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The Court's responsibility for receiving, processing, recording and reporting claims for compensation and expense reimbursement from assigned judges is more limited than its assignment authority. As noted previously, the currently elected or retired assigned judges of municipal or county courts do not submit claims for per diem compensation or reimbursement of expenses to the Supreme Court. Neither do currently elected judges of courts of common pleas who are assigned to courts other than those to which they were elected. Consequently, the Court has established procedures to receive, evaluate process and pay such claims only from retired judges assigned to courts of appeals or common pleas and currently elected judges of courts of appeals.

Retired Judges Assigned to Courts of Appeals and Common Pleas

Compensation

Retired assigned judges serving on a common pleas or appellate bench report their work using the *Retired Judge Assignment Compensation Report* (Compensation Report). The Compensation

¹⁹*Guidelines for the Assignment of Judges* (revised March 24, 1994), page 1.

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Report is the sole original source document, prepared by the judge or at the judge's direction, signed by the judge certifying the time worked, and submitted to the Supreme Court for processing and payment. There is no provision on the Compensation Report or in policy for an assigned judges' certification to be countersigned by anyone in a position to corroborate the judges' certification.

The Compensation Report provides for a judge seeking compensation to record a judicial assignment number against which the judge claims a right to compensation and without which compensation will not be processed. It provides for documenting the days or fractions of days worked by the judge and the judge's expectation for payment from county and state sources based on per diem rates established by statute and, for county reimbursement, by the county census.

The Compensation Reports forms are directed to the Human Resources department. The department receptionist receives the form which consists of an original and three copies. The receptionist receipt stamps the original form and gives them to an HR Specialist for processing.

All Compensation Reports received by the HR specialist are prepared for input by reviewing the form to determine that all required entries are complete and writing the pay period ending date of the next scheduled state payroll on the top copy. The HR Specialist then accesses the Supreme Court of Ohio Judge Assignment System (a.k.a. JASPAY). She selects the option to enter payments. On the input screen she enters the assignment number recorded on the Compensation Report. The assignment number is linked to the judge assignment database, maintained by the Court's Division of Judicial and Court Services, and by entering the assignment number, data fields for the visiting and requesting judges' names and attorney registration numbers, court, and type of assignment are automatically populated and secured from alteration. The HR specialist enters each date recorded on the Compensation Report and for which per diem compensation is claimed and a number of hours claimed on that day for compensation. For request for compensation of full days, judges just record the date on the Compensation Report, for partial days, the judges generally report the date and fractions for that date (e.g., ½ or 0.5). Under this system, the HR Specialist is required to translate the fraction to a number of hours on the JASPAY payment entry form. For example, if a judge records a date at ½, the HR Specialist enters 4 hours in the time worked field for that date (the default for this field is 8 hours). The hours worked field will accept entries for 1, 2, 4, 6 or 8. The HR specialist enters each date the judge has certified on the Compensation Report in the same matter. We observed that the JASPAY system will not allow duplicate entries for the same date against an identical judicial assignment number.

Per diem rates are set by statute, and, for 2001 the rate for retired assigned judges is \$414 when

sitting on a court of common pleas and \$450 when sitting on a court of appeals.²⁰ The state and county share in funding the compensation of judges assigned to sit on courts of common pleas. County portions of per diem rates vary by county population and, for 2001 are capped at \$56.²¹ County per diem rates are maintained by the HR Specialist using the administration menu of JASPAY. Annually, the portions of the per diem payments made to retired assigned judges that are the counties' responsibility are summarized and each county is invoiced their portions of retired assigned judges' per diem payments. The HR specialist prepares the invoices and monitors payments returned by the counties.

Upon completing data entry for a Compensation Report, the HR Specialist accesses the print menu of JASPAY, and produces a report of per diem compensation claimed on the Compensation Report by the judge. Since the judicial assignment number is directly linked to a particular court and, by extension, a particular county, the correct county, state, and statutory total per diem rates are printed on the report for each date on which compensation is claimed. These rates are totaled and become the basis for data entry into the state payroll system.

After entry of the Compensation Report and printing of the summary report from JASPAY, the HR Specialist compares the Compensation Report to the JASPAY summary report. She compares assignment number, dates and sum of county, state and total per diem rates claimed for compensation between the two reports. For partial days, she determines that the per diem rates reflect the request for fractional per diem compensation. If she makes a keypunching error, she reenters the payment menu, corrects the record, and replaces the JASPAY summary report with a corrected version.

After assuring the accuracy of the JASPAY data, the HR Specialist exits the JASPAY system and enters the state payroll system. She accesses a template payroll screen for each judge claiming compensation. All judges are set up in the state payroll system as zero pays and do not receive payment under this program unless the HR Specialist processes a pay adjustment for them. In the template payroll screen, the HR Specialist enters the county total and statutory total per diem amount for each county in which a judge has worked. The system calculates the state per diem total from the other two. She then updates the payroll record and prints a copy of it for her file.

Nightly, the state payroll system updates its files and calculates the appropriate withholdings based on the gross pay entered. After payroll entry and before providing the state with final authorization to process the payroll and produce the checks, the HR Specialist compares the JASPAY totals for county and total per diem for each judge listed for payment to the updated

²⁰Per diem rate is computed on the basis of the annual compensation for judges specified in Ohio Rev. Code Section 141.04 (A)(3)(b) for judges of courts of appeals and Section 141.04 (A)(4)(b) for judges of courts of common pleas divided by 250.

²¹County reimbursement is authorized under Ohio Rev. Code Section 141.16.

record in the state payroll system after update.

After assuring that all pay records submitted to the state payroll system accurately reflect the expected payment from the JASPAY system, The Supreme Court of Ohio authorizes state payroll to process the payroll and produce a payroll journal. The HR Specialist receives the payroll journal from state payroll, picks up the warrants from the Auditor's office, stuffs the warrants and a copy of the Compensation report into an envelop and provides the envelop to the mail room to be sealed and mailed.

Expenses

The Supreme Court is responsible for paying expenses incurred by retired judges assigned to duty on a court of appeals. Retired assigned judges submit their expenses to the Court's Fiscal Office on a *Judges' Expense Report*. Criteria for expense allowability and documentation are contained in the *Revised Guidelines for Completion of Judges' Travel Expense Reports* (July 31, 2000).²² A Fiscal Office employee applies the criteria to the expense report, communicates adjustments²³, if any, to the judge, and prepares an expense voucher for payment in the State's Central Accounting System. Once entered into the Central Accounting System, the requests for reimbursement are scheduled for payment in the normal course of accounts payable processing.

Currently Elected Judges of Courts of Appeals

Compensation and Expenses

Supreme Court of Ohio – Visiting appellate judges sitting on the Supreme Court of Ohio claim reimbursement for their per diem compensation and expenses using the Appellate Judge Per Diem Compensation and Expense Report (Compensation and Expense Report). These claims are relatively few when compared to the program which exists to provide visiting judges to courts of common pleas and appeals. The Compensation and Expense Report is the sole original source document, prepared by the judge or under the judge's direction, signed and dated by the judge certifying the claim for per diem compensation, mileage and expenses, countersigned and dated by the Chief Justice who acknowledges his examination of the report and certifies it for payment.

The report documents a judicial assignment number against which the judge claims per diem compensation and expenses, and without which compensation and reimbursement will not be processed. It also provides for documenting the days worked, and mileage and expenses incurred against the assignment number.

The form is submitted to the Court's Fiscal Office for processing. The Fiscal Office examines the documentation supporting the expense portion of the claim and enters a payable transaction

²² *Revised Guidelines for Completion of Judges' Travel Expense Reports*, Section I.

²³ Examples of adjustments are simple arithmetic errors and insufficient documentation submitted with the expense reports.

into the Central Accounting System to reimburse expenses. The Fiscal Office then forwards the Compensation and Expense Report to Human Resources where the per diem compensation is reviewed for accuracy, entered into the JASPAY system (if the judge is a retired assigned judge) and entered into the state payroll system. It should be noted that under proposed revision to *Guidelines for Assignment of Judges*, retired judges are no longer considered for assignment to the Supreme Court.²⁴

Courts of Appeals – The \$50 additional per diem compensation of appellate court judges who are assigned to assist other courts of appeals districts is paid by the county of that district from which the case originated. The Supreme Court of Ohio does not receive, evaluate, process, record or report these per diem compensation claims. The Court does, however, receive, evaluate, process, record and report appellate judge claims for reimbursement of assignment expenses. The procedures for receipt, review, processing, recording, and reporting of these expenses is the same as described for retired judges assigned to a court of appeals.

3. Observations and Recommendations

Development of the Judicial Assignments Payment (JASPAY) System

The JASPAY System was developed as an evolutionary prototype information system. A prototype information system is a working model built to learn about the system's true requirements by testing possible features of a proposed system. Instead of asking users to imagine how a proposed information system might operate, the prototype approach allows them to work actively with a model of the system. This helps users identify features they need. The system is evolutionary because it is designed to be adapted for permanent use after ideas are clarified. In the case of JASPAY, the prototype was designed to replace a cumbersome manual system, and became, almost immediately the primary means of recording, summarizing and reporting retired assigned judge per diem claims payment activity.

Prototyping is a recognized systems development alternative to the traditional systems development life cycle. Prototyping's advantages are that it facilitates the creation of a more accurate idea of what users really need. During implementation, prototyped systems tend to be more on target with users' requirements and more readily accepted by users due to their early and ongoing design input. Among its disadvantages, the succession of rapid changes in design force users to spend large amounts of time verifying the updates and may result in database errors.

In this case of JASPAY, the user group's commitment to verifying the accuracy of system design changes has been very good, but not perfect. As a result, errors exist in the database.

²⁴ Proposed revision to *Guidelines for Assignment of Judges*, Section 15(a)(iii).

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We recommend that the Court review its retired assigned judge per diem claims payment activity since June 13, 2001 and identify and correct errors of the type reported in this letter. We recommend that the Court take steps to mitigate the risks introduced by the decision to conduct future development (JASPAY or other systems) under an evolutionary prototype systems development model.

Completeness of JASPAY Payment Records

The JASPAY system currently does not store all payments made to retired assigned judges. The Court intends for the JASPAY system to evolve into a complete and accurate record of retired assigned judge compensation information. During the Period, the JASPAY payment record (tblPayments file) was adjusted for assigned judge repayments of amounts paid for more than eight hours in a single day by either 1) changing the HoursWorked and TotalDue fields to zero or 2) deleting the payment record. In either case, all original records (including Court requests for repayment, copies of checks and assigned judge correspondence received in response to the request, and the copies of the compensation records which resulted in the overpayment) were maintained and were reviewed by us.

Accounting applications such as JASPAY should accurately and completely record, process, summarize and report transactions for which it was designed.

The tblPayments file contains 7,775 payment records since July 1, 2000 through June 13, 2001. A total of 56 payment records are maintained with zero balances in the HoursWorked and Total Due fields. An unknown number of records were deleted. As it is currently constituted, the JASPAY system is not a complete record of retired assigned judge payment transactions.

Initial programming effort was devoted to creating the databases and the programming processes required to shift the Court from an entirely manual process to one that can store the payment data electronically for simpler summarization and reporting. Resource constraints inhibited the Court's ability to incorporate sufficient controls over completeness and accuracy of input during the initial phase of the project.

We recommend that program changes be undertaken to assure completeness and accuracy of input into the JASPAY system. Among these changes should be that, once entered, no record can be deleted, that subsequent adjustments to a record be treated as separate records, and all entries to the system be associated with the operator who made them.

Segregation of Duties

Warrants which pay compensation to retired assigned judges are returned for mailing to the same HR specialist who entered the claim for compensation into the accounting record (JASPAY). The HR specialist is also responsible for preparing summary annual reports to retired judges of

their compensation.

Proper segregation of duties avoids concentrating access to funds and accounting for those transactions in a single individual.

By having control over the accounting records and the disbursements, the HR specialist is in a position to initiate and conceal unauthorized transactions with respect to retired assigned judges.

We recommend that the warrants be returned for mailing to an individual who does not have access to JASPAY or State payment systems.

Completeness of Input Documents

The Court does not control the completeness of the original source documents to the retired assigned judge compensation system. Compensation report forms received from retired assigned judges are not controlled by assigning a unique, sequentially-assigned document control number which becomes part of the transaction record in JASPAY.

Original source documents whose data is captured by an accounting system should be controlled by a unique, sequentially-assigned document control number to assure completeness of input. All issued document control numbers should be accounted for.

By not controlling compensation report forms by use of a unique, sequentially-numbered document control number, completeness of input cannot be assured. Compensation reports could be misplaced. The Court points out that a mitigating control for this weakness is the judge who may complain if his/her compensation report is not processed, but that control serves only to notify the Court that a mistake has been made. Controlling data input forms can prevent the mistake from being made.

We recommend that the Court control each compensation request form submitted for payment with a unique, sequentially-assigned document control number. The document control number should become part of each payment record entered into JASPAY for processing. We also recommend that the Court establish a policy that requires its employees to account for all issued document control numbers. Each document control number can be accounted for by its use in JASPAY to control payment transactions or by a log of numbers issued but not used to control compensation reports.

Payments to Retired Judges for More than Eight Hours on a Single Day

A query of the JASPAY system for payment records since July 1, 2000 which total to more than eight hours in a single day, returned five instances. A detailed comparison of state payroll records to JASPAY identified 15 additional instances for a total of 20 instances of payments for

more than eight hours on a single day out of 7,617 unique judge/performance date records (0.3%). Assuming that instances of more than eight hours charged against a single day are considered errors, we note that an error rate of 0.3% is low and could possibly be attributed to random human error.

Accounting systems should assure completeness and accuracy of the transactions they are designed to record. In addition, they should incorporate controls over input that management deems important. For example, a control that assures no more than eight hours can be charged by a judge for a particular date of performance.

The JASPAY system was not a complete and accurate repository during the period as evidenced by the 15 additional instances of payments for more than eight hours in a single day. In addition, attempts to correct the accounting system for data input errors introduced new errors into the database. JASPAY entries are not associated with the operator making them.

Prior to our involvement, programming changes were implemented to not allow more than eight hours to be charged by a judge for a single day. We observed that this control is effective now and will prevent instances of a single judge billing for more than 8 hours on a single day going forward. In addition we recommend that future JASPAY design modifications account for adjustments to or corrections of payment transactions and include a method of linking all JASPAY entries to the operator who made them.

Billing Guidelines

No specific billing guidelines for retired assigned judges have been promulgated by the Court other than what can be implied from the organization of the compensation report itself. Compensation reports submitted by assigned judges in order to receive payment for their services are completed in various ways. For example:

Judge A requests reimbursement for two days as follows: *5/10 - 5/14 - 2 days*

Judge B requests reimbursement for two and one-half days as follows: *2/11, 2/12, 2/13(1/2)*.

Judge C requests reimbursement for one and one-third days as follows: *11/30, 31 - 1.33*

In the cases of Judges A and C, the HR Specialist must either 1) obtain clarification from the judge and, perhaps, delay payment, or 2) make reasonable allocation estimates and process payroll without a clarification. Compounding the complexity of the clerical process are compensation reports submitted months after dates of performance, and, possibly, after submission of a previous compensation report covering a similar period. For example, Judge A, several weeks after submitting his first compensation request for *5/10 - 14 - 2 days*, submits a

compensation report claiming 5/14 - *one day*. If the HR Specialist who processed his first report allocated eight hours on 5/10 and 5/14, this second compensation report may look like a duplicate payment for 5/14, when the judge may have worked on 5/10, 5/13, and 5/14. Adding to the complexity is the JASPAY system which is set up to accept partial day compensation requests in specific increments of 1, 2, 4, 6 or 8 hours. In the case of Judge C, the HR Specialist must round the payment to the nearest acceptable increment and carry over the remainder (or deficit) to be applied against another partial day payment.

Any service invoice should contain information sufficient to assure the party being billed that services were authorized, worked and that the party being billed is not charged twice for the same work.

The lack of detailed billing guidelines, combined with a variety of billing preferences among assigned judges, has resulted in costly administrative efforts to interpret, account for and pay assigned judges accurately, and, despite the best efforts of Court employees, errors in accounting for and paying assigned judges including payments for more than 8 hours in a single day.

We recommend the Court issue detailed billing guidelines and work with judges to effect more consistency in billing. The billing guidelines should take into account not only the format required for reporting days worked, but also the timing of submission of the compensation reports. Situations in which time is submitted for compensation 2 or 3 months after performance should be avoided.

Expense Reimbursement Guidelines

The Supreme Court is responsible for reimbursing the expenses of currently elected judges of courts of appeals and retired judges sitting on courts of appeals. Currently elected appellate judges assigned to assist another appellate district and retired judges recalled to active duty in an appellate district submit their expenses for reimbursement to the Supreme Court using one of two expense forms. The *Appellate Judge Per Diem Compensation and Expense Report* is used by judges assigned to sit with the Supreme Court, and the *Judges' Expense Report* is used by judges sitting on an appellate district court.

An expense form along with receipts or certifications of expenses are submitted to the Court's Fiscal Office, reviewed by a Fiscal Specialist, and a payment voucher is entered for payment into the State's central accounting system. Claims for per diem compensation submitted in cases where a currently elected appellate court judge sits on the Supreme Court are forwarded by the Fiscal Specialist to the Human Resources Specialist where the dates are reviewed for accuracy and a pay adjustment is calculated and entered into the State's payroll system.

The criteria for reimbursing expenses are that they be *actual and necessary*.²⁵ The Court has established a clarification of these criteria in a memorandum entitled *Revised Guidelines for Completion of Judges' Travel Expense Reports*, dated July 31, 2000.²⁶ These guidelines establish the types of expenditures that will be reimbursed, required documentation for the expenses and the types of expenditures that will not be reimbursed. The guidelines also establish deadlines for reporting expenses. Expenses must be submitted within 60 days of the travel or event.

The Guidelines do not provide guidance on travel sufficient to assure cost-effective use of taxpayer funding. For example, it would not be prohibited by the Guidelines for an appellate court judge to travel 10 miles into the next district and incur overnight lodging expenses. The guidelines should specify a minimum travel distance (e.g., 60 miles) before overnight lodging expenses are authorized.

The Guidelines do not specify that travel will be reimbursed at the lowest reasonable price. For example, an appellate court judge from Franklin County assigned to the bench in Cuyahoga County could decide to fly to Cleveland rather than drive. Under the current guidelines, the judge is not advised against submitting the expense of the flight for reimbursement whereas the expense associated with driving might be much less. The Guidelines should specify that travel will be reimbursed at the lowest reasonable cost.

The Guidelines do not specify maximum amounts which will be reimbursed for meals. A judge could choose an expensive meal or restaurant over a less expensive alternative. The Guidelines should specify maximum amounts for meal reimbursement for each day. Separate maximums should be established for breakfast, lunch and dinner. The Guidelines should specify that a judge be on travel status at the time the expense is incurred.

The Guidelines do not specify maximum amounts to be reimbursed for lodging. A judge could choose luxury accommodations when acceptable accommodations at lower prices are available in the area. The Guidelines should specify a reimbursement amount, per night, for overnight accommodations that will be reimbursed by the Court without additional explanation. The State of Ohio has established a maximum nightly amount which could be referred to by the Guidelines.

We recommend the Court revise its *Guidelines for Completion of Judges' Travel Expense Reports* to further clarify them and to limit the possibility for abuses as described above.

Data Interface between JASPAY and Assignments Database

Information about Court assignments and payments is stored in many different tables and

²⁵See previous discussion of the term *actual and necessary* including footnote 18 citing statutes prescribing these criteria.

²⁶*Revised Guidelines for Completion of Judges' Travel Expense Reports*, dated July 31, 2000, Section I.

databases and is shared among them. Currently, as part of an ongoing modernization of the Court's information systems, data kept in older databases is being moved to new databases. During the period of our review of historical records, the JASPAY program searched the older assignments database that was no longer updated for current assignments by the Court.

Data tables referred to by an accounting application should be currently in use and up-to-date.

By referring to the assignments table in the older database which is no longer updated for current assignments, the risk that compensation reports will be received that contain claims against assignment numbers not in the JASPAY system increases.

The Court is aware of the need to modify JASPAY's link to the assignments database and has made the necessary changes.

Approval of Compensation Reports

Per diem compensation reports submitted by retired and currently elected judges are not reviewed by anyone at the Court for accuracy.²⁷ If an assignment number is valid, the claim is processed. The Compensation Report forms contain no field for description of work performed.

Claims for compensation should be reviewed by the Court to assure the accuracy of the claim and whether it corresponds with the assignment provided to the judge. Claims for reimbursement should contain detail sufficient to provide a reviewer with information on the type of service rendered.

Without such a review, claims for compensation could be submitted for days that were not authorized by the assignment. Without sufficient billing detail, the Court may not know what it is paying for or whether the cause of the request for assignment was being addressed by the assignment.

We recommend that the Court redesign its compensation report forms to include a brief description field, and that its Judicial and Court Services, Assignments Section receive, review and approve all Compensation claims submitted by judges sitting by assignment of the Chief Justice and for which the Supreme Court is responsible for payment prior to forwarding them to Human Resources for entry and payment. Review procedures would include comparing the dates claimed for payment against the dates authorized by the assignment and a review of the description fields on the redesigned compensation reports.

²⁷Compensation and Expense Reports submitted by appellate court judges sitting by assignment with the Supreme Court are reviewed and signed by the Chief Justice.

Payments for Work on Days Not Specified in the Notice of Assignment

The Court categorizes assignments into one of four types. The assignment types are:

Case:	Assignment for the duration of a case
Day:	Assignment for a single day or series of days
Week:	Assignment for a week or series of weeks ²⁸
Month:	Assignment for one month up to three months

The assignment number and dates of the assignment are recorded on the notice of assignment provided to the requesting court and assigned judge. The following discussion will refer to day, week and month assignment types as *term assignment types*.

For term assignments, the notice of assignment sets the dates of the assignment and contains language which allows the judge to conclude any proceedings in which he or she participated that are pending at the end of the term of the assignment.

The assignments database records several pieces of information including the number, type and dates of assignment. The payment database records the assignment number, performance date, hours worked and total due, among other fields. We compared the performance date, maintained in the payments database, to the dates of assignment, maintained in the assignments database, and found instances of payment records containing performance dates not specified in the notice of assignment. For example, a payment record for work performed on April 12, 2001 was billed against an assignment for December 15-16, 1997.

Work not performed within guidelines established by the court should not be billed against the assignment number. If a judge expects his or her involvement in a matter pending at the end of the term assignment to extend beyond a reasonable period after the last date specified in the notice of assignment, he or she should request conversion of the term assignment to a case assignment.

We found 81 instances out of 7,775 payment records (1.04%) containing performance dates which were not specified in the notice of term assignment. The performance dates ranged from a few days to nearly 40 months beyond the last date specified in the notice of term assignment. The hours and dollars billed under these records totaled 480 hours and \$24,251.

The Court currently relies on a manual review of the assignment number against the performance date. The assignments database does not store the dates of assignment in a manner that they can be compared electronically, during data input, against performance dates when compensation requests are being entered. A certain amount of random error is expected in any manual control process and the level of error encountered could possibly be attributed to this random error.

²⁸Week assignments generally start on a Monday and end on a Friday.

Mr. Steven C. Hollon
December 27, 2001
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We recommend the Court evaluate the costs and potential benefits of programming changes necessary to store dates of assignment in the assignments database in a format that will facilitate their comparison to performance dates entered in JASPAY and to program a control in JASPAY to compare performance dates entered to assignment dates. We recommend the Court promulgate guidelines establishing a reasonable period after the last date specified in the term assignment (e.g., one or two weeks) in which performance against the assignment will be accepted. For term assignments, payment should not be made for performance dates which fall outside reasonably established guidelines promulgated by the court. Finally, we recommend the Court establish a process to convert term assignments to case assignments for those matters pending at the end of the term assignment which are not expected to be concluded within a reasonable period following the last date specified in the notice of assignment. Due to the low level of error encountered, we do not consider this an urgent programming need and recommend the Court evaluate this change in the context of its ongoing efforts to modernize its entire information infrastructure.

This concludes our review of policies, procedures and practices used in the assignment and payment of assigned judges. This letter is intended primarily for use by the Court in improving its controls over assignment and payment of assigned judges, but its distribution is not limited.

Very truly yours,

Jim Petro
Auditor of State



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SUPREME COURT OF OHIO VISITING JUDGES PROGRAM

FRANKLIN COUNTY

CLERK'S CERTIFICATION

This is a true and correct copy of the report which is required to be filed in the Office of the Auditor of State pursuant to Section 117.26, Revised Code, and which is filed in Columbus, Ohio.

Susan Babbitt

CLERK OF THE BUREAU

**CERTIFIED
DECEMBER 27, 2001**