

June 25, 2018

Louisiana Ethics Administration Program
P.O. Box 4368
Baton Rouge, LA 70821

RE: Complaint Against District Attorneys Richard Ward, Joel Chaisson, II, Gary Evans, John DeRosier, and other District Attorneys for Abusing Their Prosecutorial Charging Authority in Violation of La. Stat. Ann. § 42:1116

Dear Chairman McAnelly:

The Southern Poverty Law Center (SPLC) writes to supplement our June 18, 2018 ethics complaint (“Ethics Complaint”) in three respects. The first two relate specifically to allegations made regarding Twenty-Ninth Judicial District Attorney Joel Chaisson, II. The third applies generally to the Ethics Complaint.

First, the Ethics Complaint represented that the diversion traffic tickets issued in the Twenty-Ninth Judicial District threaten suspension of a driver’s license for non-payment. *See* Ethics Complaint at 5. This allegation is in error. The diversion tickets issued in the Twenty-Ninth Judicial District do not threaten license suspension. *See* Exhibit K to the Ethics Complaint (copy of diversion ticket from the Twenty-Ninth Judicial District). However, some other districts do make this threat, including diversion tickets from the Eighteenth Judicial District. *See* Ethics Complaint at 5-6; *see also* Ex. J to the Ethics Complaint.

Second, after SPLC submitted the complaint, Mr. Chaisson contacted our office and represented that no money collected from traffic ticket diversion is used to supplement the operating expenses of the Twenty-Ninth Judicial District Attorney’s Office. He represents that

any monies collected from traffic ticket diversion are used exclusively to compensate the law enforcement officers who issue diversion tickets and for the district attorney's administrative expenses related to the processing of diversion tickets. Mr. Chaisson told us that any amount collected in excess of (1) the office's administrative expenses and (2) the amount paid out to law enforcement officers (the excess amount is currently about \$400,000) is being held in a bank account and will be used exclusively to pay for law enforcement officers to issue diversion tickets, if the revenue generated from the program in the future is insufficient to cover this amount directly, which Mr. Chaisson further represents has occurred in years past. Mr. Chaisson represents to SPLC that the true purpose of his program is to increase officer presence on local highways and roads, not to off-set his office's operating expenses.

The SPLC has no reason to doubt Mr. Chaisson's representations, but respectfully believes his office is still deriving an economic benefit from diversion, in violation of the ethics code. *See* La. Att'y Gen. Op. No. 93-481, 1993 WL 438522 (Aug. 31, 1993). The administrative cost of processing the diversion tickets in the Twenty-Ninth Judicial District was about \$30,000 last year. This is a legitimate expense that may be covered by a diversion fee, according to the Attorney General's opinion. The crux of the dispute seems to be whether paying law enforcement officers to issue diversion tickets is an operational cost of the diversion program, or whether Mr. Chaisson's office is charging more for diversion than the actual operational cost of the program (i.e., processing diversion traffic tickets) and using those profits to pay for something that it could otherwise not afford— increased traffic patrol.

Pretrial diversion is an alternative to prosecution where prosecution would be counterproductive, ineffective, or unwarranted. The cost of operating driver improvement classes could be an appropriate expense for diversion. The cost of reviewing and making diversion decisions based on the motorist's traffic record and criminal history could be an appropriate expense. However, the cost of hiring law enforcement officers to patrol local

highways and roads and to issue diversion tickets is not an operational cost of the *diversion* program; it is instead a cost related to increasing law enforcement presence on local highways and roads. Mr. Chaisson's office is deriving an economic benefit from diversion in violation of the ethics code because it is charging more for diversion than the cost of processing diversion traffic tickets and using the profits from diversion to pay for highway patrol. His apparent desire to enhance officer presence may be laudable, but it is unethical to achieve that goal by charging more for diversion than the minimal cost of processing diversion traffic tickets.

Moreover, though unrelated to District Attorney Chaisson, SPLC also notes that several other district attorneys have made statements to the press confirming that in their district, the traffic ticket diversion program is also padding the district attorney office's general operations budget. *See, e.g.,* Ethics Complaint at 2 (West Feliciana and East Feliciana Parish District Attorney Sam D'Aquila: "It's an industry that we created" because "we just weren't making the money"); *id.* at 7 (De Soto Parish District Attorney: "If I can make enough money, I'm going to try to pay for a drug court judge, and maybe a mental illness court"); Jim Mustian, *'Abuse of office?' Ethics complaint claims DAs' diversion of tickets 'puts justice up for sale'*, The Advocate (June 19, 2018), attached as Ex. A (Calcasieu Parish District Attorney John DeRosier: "I cannot deny the fact that it is a positive financial impact for district attorneys, as opposed to negative. But we put that money to good use, and it's a user-pay system."); Opp. Prel. Inj., *Rapides Parish Police Jury v. Phillip Terrell*, Case No. 261,465 (filed May 3, 2018) at 5, attached as Ex. B (Rapides Parish District Attorney Phillip Terrell: "Presently and for the past two years, any funds derived from the PTI Programs are and have been deposited into an account under the control of the District Attorney's office. Such funds are used, in part, to help defray the expenses of the PTI programs, as well as the general expenses of the office."). We respectfully submit this underscores the need for the Board to investigate this issue further across the state, as we requested in the Ethics Complaint. *See* Ethics Complaint at 2-3.

Third, it has come to our attention after filing the Ethics Complaint that La. Stat. Ann. § 32:398.2 does not appear to authorize law enforcement officers and district attorneys to handle traffic tickets outside of the ordinary judicial process. The statute requires law enforcement officers to file any tickets issued “with a court having jurisdiction over the alleged offense” and provides that any traffic citations may only be disposed of “by trial” or other “official action by a judge of the court,” such as “payment of a fine,” or by “entry of a nolle prosequi” by the district attorney’s office. La. Stat. Ann. § 32:398.2(B), (F). The statute provides that it is “unlawful for any traffic enforcement officer or any other office or public employee to dispose of a traffic citation . . . in a manner other than as required herein.” *Id.* § 32:398.2(C). The Attorney General has advised that it is malfeasance “for anyone to dispose of traffic citations in contravention of La. R.S. 32:398.2,” La. Att’y Gen. Op. No. 98-426, 1998 WL 842611 (Nov. 9, 1998), and a separate statute provides for criminal penalties for “[a]ny person who cancels or solicits the cancellation of any traffic citation, in any manner other than as provided in this Part.” La. Stat. Ann. § 32:398.3.

We contacted the district courts in the Eighteenth Judicial District (West Baton Rouge, Iberville, and Pointe Coupee parishes), Twenty-Ninth Judicial District (St. Charles Parish), and Fourteenth Judicial District (Calcasieu Parish) and asked if diversion tickets are filed with the court. Representatives from these courts said that the tickets are not filed with them, and are instead handled by the district attorneys’ offices, outside the purview of the courts. We also contacted the district court in the Forty-Second Judicial District (De Soto Parish); this court representative would not answer the question directly, but told us we would have to request these records from, or talk to, the District Attorney. Based on this, we believe the way diversion traffic tickets are handled in many jurisdictions may not only violate the state’s ethics laws, but the state’s criminal laws, too.

I declare under penalty of perjury that the foregoing is true and correct to the best of my ability.

EXECUTED this 25 day of June, 2018.

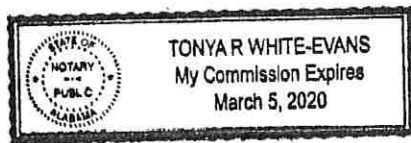
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STATE OF ALABAMA, County of Montgomery

On this 25th day of June, 2018, before me personally appeared Micah West, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed it as his free act and deed.

Tonya R. White-Evans
Notary Public

Notary ID Number: _____



I declare under penalty of perjury that the foregoing is true and correct to the best of my ability.

EXECUTED this 25th day of June, 2018.

Danielle E. Davis

Danielle E. Davis

Staff Attorney

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STATE OF LOUISIANA, Parish of Orleans

On this 25th day of June, 2018, before me personally appeared
Danielle Davis, to me known to be the person described in and who executed
the foregoing instrument, and acknowledged that he executed it as his free act and deed.

Meredith Angelson
Notary Public Meredith Angelson

Notary ID Number: 149197

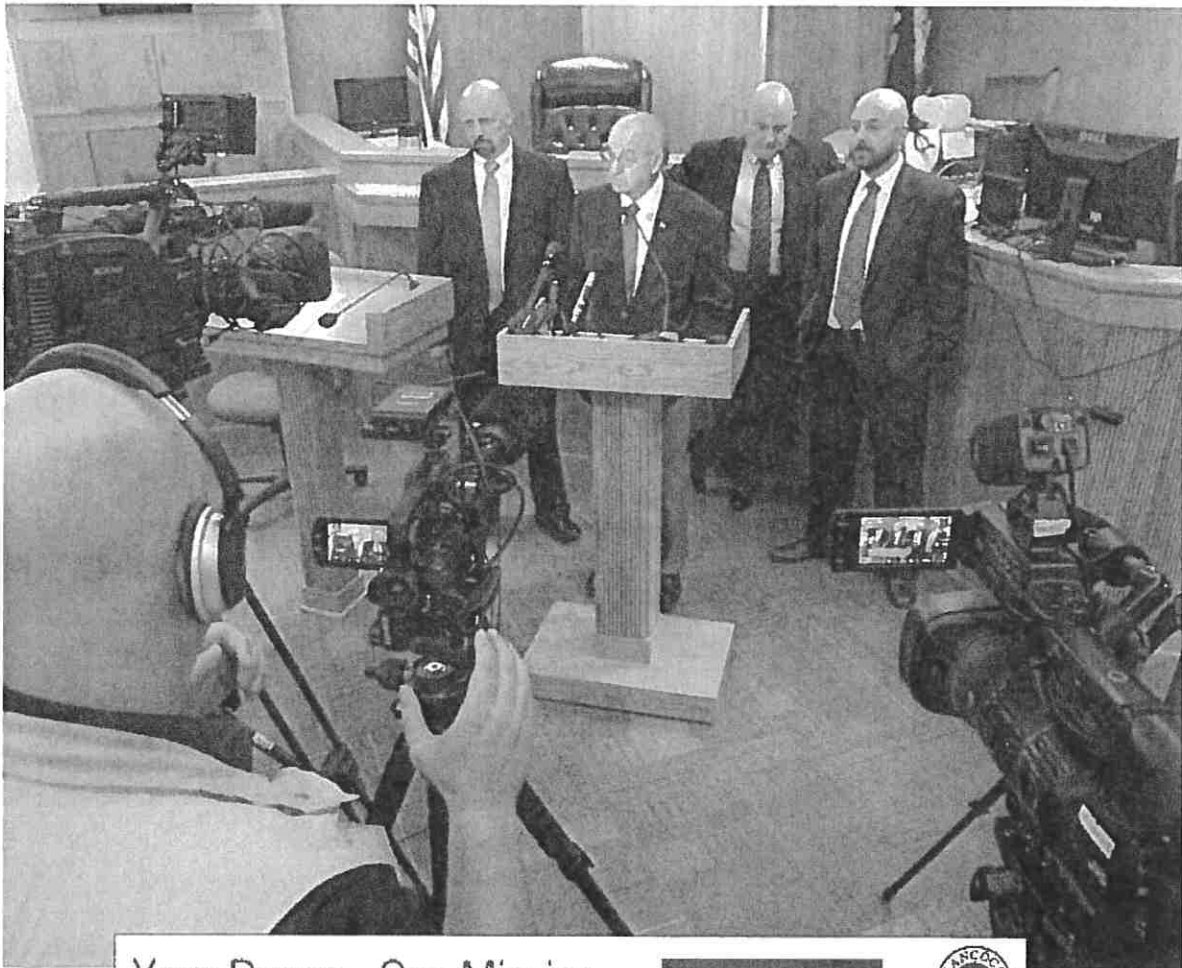
Exhibit A

http://www.theadvocate.com/baton_rouge/news/courts/article_177d9500-73f5-11e8-86c3-078c52772970.html

'Abuse of office?' Ethics complaint claims DAs' diversion of tickets 'puts justice up for sale'

BY JIM MUSTIAN | JMUSTIAN@THEADVOCATE.COM

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Rick Hickman

Jim Mustian

A legal advocacy group filed an ethics complaint this week against four Louisiana district attorneys over their practice of shifting thousands of traffic tickets into lucrative pre-trial diversion programs. It accused the prosecutors of leveraging their authority "into a money-making enterprise" for their offices.

The complaint, filed by the Southern Poverty Law Center, urges the state Board of Ethics to investigate the growing use of diversion programs around the state, and to force district attorneys to refund millions of dollars to delinquent motorists who paid diversion fees "to buy their way out of prosecution."

What once was considered an "opportunity for a second chance," the complaint claims, "has been transformed into a racket."

"The state deserves more from its elected district attorneys than this unethical scheme to generate profits," Micah West, a staff attorney for the law center, said in a news release. "Traffic-ticket diversion is nothing more than a money-making ploy that outrageously puts justice up for sale."

The complaint comes amid a growing debate in Louisiana over the propriety of pre-trial diversion, an alternative to prosecution that has expanded rapidly in some parishes as district attorneys seek to cope with the state's perennial budget crisis.

Diversion programs in some parishes have siphoned funding away from other criminal justice stakeholders, such as public defenders, who rely on money from regularly adjudicated traffic tickets to fund their offices.

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A study underway by the Louisiana Judicial Council, a research arm of the Supreme Court, has asked every district attorney in the state to provide three years of data to show how often prosecutors are steering cases away from the courtroom and into pretrial diversion programs. The high court's chief justice, Bernette Johnson, has questioned the impact that diversion is having on courts' funding around the state.

'DAs just don't offer it to some people': Pretrial diversion draws new scrutiny amid soaring costs, state budget crisis

While a wide array of offenders can be eligible for diversion, the ethics complaint focuses solely on the diversion of traffic tickets, saying that district attorneys across the state use "their charging authority as a cudgel to extract millions of dollars each year."

While it paints a broad picture of malfeasance, it names just four prosecutors as defendants: St. Charles Parish District Attorney Joel Chaisson II; DeSoto Parish District Attorney Gary Evans; Calcasieu Parish District Attorney John DeRosier; and District Attorney Ricky Ward of the state's 18th Judicial District, which covers Iberville, Pointe Coupee and West Baton Rouge parishes.

It alleges those district attorneys have violated a state ethics law forbidding "abuse of office." That statute states that "no public servant shall use the authority of his office or position, directly or indirectly, in a manner intended to compel or coerce any person or other public servant to provide himself, any other public servant, or other person with any thing of economic value."

The diversion programs typically allow motorists to have traffic tickets dismissed or downgraded to non-moving violations in exchange for making a payment to the District Attorney's Office.

The asking price in St. Charles and West Baton Rouge parishes is \$175, a rate the Southern Poverty Law Center described as "nine times the amount that (the DA's Office) would receive in court costs if the motorist pleaded guilty or was found guilty

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following court prosecution." Those district attorneys would receive just \$20 from a non-diverted traffic ticket, the complaint says, with other court costs being disbursed to other criminal justice entities that receive a cut of each adjudicated case.

Chaisson said the ethics complaint is "riddled with errors and falsehoods" regarding his office's finances. He said revenue from diverted tickets has barely covered the expenses of running the program some years, adding that surplus funds are not used to perform any other function of his office.

"It's very disconcerting that the Southern Poverty Law Center would file such a reckless and poorly researched complaint," Chaisson said in an interview. "We don't profit from LACE," he added, referring to Local Area Compensated Enforcement, a controversial statewide initiative in which district attorneys pay off-duty police officers and state troopers to issue traffic citations.

Chaisson disputed the portrayal of the program's costs in the complaint, which accurately said his office received more than \$1 million last year from traffic ticket diversion, or about half of his overall budget.

The complaint notes that his office spent just \$30,000 on salaries, office expenses and advisory fees related to the program, but it relegates to a footnote the nearly \$600,000 the office paid in overtime to the officers and troopers who wrote the tickets that generated the revenue.

The complaint alleges that those expenditures are "not a proper cost of diversion" because "the function of diversion is not to generate additional tickets for the purpose of revenue generation."

"We've got a speedway in this parish," Chaisson said, referring to Interstates 10 and 310. "This is about public safety."

DeRosier, for his part, dismissed the Southern Poverty Law Center as an "ultra-liberal organization" that has "nothing good to say about law enforcement." He said the traffic-ticket diversion program has improved highway safety in Lake Charles and even reduced details.

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by LACE

"The people who benefit the most from diversion are the clients of the Southern Poverty Law Center," DeRosier said. "I cannot deny the fact that it is a positive financial impact for district attorneys, as opposed to negative. But we put that money to good use, and it's a user-pay system."

Traffic-ticket diversion accounted for more than \$4.3 million in revenue for the Calcasieu Parish District Attorney's Office in 2017, or more than half of DeRosier's \$7 million budget. But he said more than \$2 million of that income is used to cover the costs of the program, and that the remaining funds are used to pay for a host of special programs operated by his office, including a DWI court and a drug court.

"It's hard to say that none of it finds its way into the (office's) general fund," said DeRosier. "But all of these special programs are not only public services, they're dynamic public services."

The ethics complaint notes that Ward, the longtime DA in the 18th Judicial District, requested an attorney general's opinion in 1993 "about whether his office could charge fees for participating in a prosecutorial diversion program without creating the appearance that prosecutors are for sale."

The attorney general at the time, Richard Ieyoub, told Ward that any diversion fees "must be limited to the cost of administering diversion because the state's ethics laws prohibit him from using his charging authority to profit from diversion," according to the complaint.

"Ward disregarded the attorney general's clear guidance and has been flouting Louisiana's ethics law by leveraging his prosecutorial authority into a money-making enterprise," the complaint alleges. "Ward generates hundreds of thousands of dollars in traffic-ticket diversion fees each year, far in excess of the amount necessary to run his traffic-ticket diversion program."

Scott Stassi, the first assistant district attorney under Ward, denied that the office has done anything wrong.

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"Pre-trial diversion is something that's been accepted in Louisiana for a long time," Stassi said. "We feel that this ethics complaint is just something filed out there to target a program that we think is working."

Evans, the DeSoto Parish district attorney, did not return calls seeking comment Tuesday. The Louisiana Legislative Auditor's Office has been investigating the diversion program in DeSoto Parish for months and is preparing to release a series of reports on its findings.

Traffic-ticket diversion contributed to a bitter falling-out between Evans and Rodney Arbuckle, the former DeSoto Parish sheriff, who said in a recent interview that he discontinued LACE details for a time after Evans refused to share any revenue with other criminal justice agencies that were legislatively mandated to receive some of the money from traffic tickets.

The investigations turned up evidence that some DeSoto deputies were bilking the LACE program for extra-duty hours they never worked. Four current and former State Police troopers were recently arrested on similar allegations of payroll fraud in other parishes.

"It's just been a mess," Arbuckle said.

FOLLOW JIM MUSTIAN ON TWITTER, @JIMMUSTIAN.

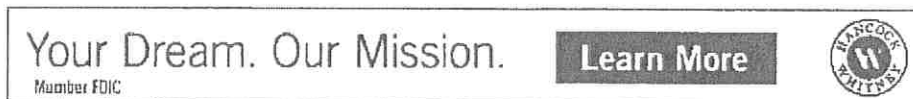


Exhibit B

CIVIL SUIT NUMBER: 261,465

RAPIDES PARISH POLICE JURY

NINTH JUDICIAL DISTRICT COURT

VERSUS

PARISH OF RAPIDES

PHILLIP TERRELL, DISTRICT
ATTORNEY FOR THE PARISH OF
RAPIDES

STATE OF LOUISIANA

OPPOSITION TO PRELIMINARY INJUNCTION

MAY IT PLEASE THE COURT:

Plaintiff, the Rapides Parish Police Jury, filed suit for declaratory judgment against District Attorney Phillip Terrell seeking to have the court define the attorney client/relationship in the context of the Louisiana Rules of Professional Conduct and also challenging the authority of the District Attorney to establish a Pretrial Intervention Program. The Petition for Declaratory Judgment was amended and supplemented on April 27, 2018 to include a request for injunctive relief. For the reasons set forth herein below, District Attorney Phillip Terrell shows that the Rapides Parish Police Jury is not entitled to the injunctive relief sought and that their claims for such should be denied.

LAW AND ARGUMENT

A preliminary injunction may issue during the pendency of an action where irreparable injury, loss, or damages will result to the petitioner. La. C.C.P. art. 3601. The purpose of a preliminary injunction is to maintain the status quo during the pendency of the proceedings. *Dynamic Constructors, L.L.C. v. Plaquemines Parish Government*, 2015-0271 (La. App. 4 Cir 8/26/15) 173 So. 3d 1239. Generally, to obtain preliminary injunctive relief, the petitioner must show that he will suffer irreparable injury, that he is entitled to the relief sought, and that he will prevail on the merits of the case. *Kruger v. Garden Dist. Ass'n*, 2000-1135 (La. App. 4 Cir. 1/17/01), 779 So. 2d 986. Irreparable injury is a loss that cannot be adequately compensated in money damages or is not susceptible of measurement by pecuniary standards. *Shaw v. Hingle*, 648 So. 2d 903 (La. 1995); *Terrebonne Parish Police Jury v. Matherne*, 405 So. 2d. 314 (La. 1981).

Traditionally, injunction has been held to be a harsh, drastic and extraordinary remedy which should only issue where the petitioner is threatened with irreparable harm

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and has no adequate remedy at law. *Kruger*, supra. If the preliminary injunction is issued, it must describe the acts enjoined "in reasonable detail" and the court must provide security to indemnify a party wrongfully enjoined for the payment of costs and damages. La. C.C.P. arts 3605 and 3610.

1. **A preliminary injunction enjoining the District Attorney from representing the Police Jury in "any matter prohibited by the Louisiana Rules of Professional Conduct" does not meet the requirements of La. C.C.P. art. 3605 and would be invalid.**

The request that the District Attorney be enjoined in any matter prohibited by the Rules of Professional Conduct is vague, overbroad, and lacks sufficient detail to identify the acts enjoined. La. C.C.P. art. 3605 provides that an order granting a preliminary injunction shall describe in reasonable detail the act or acts sought to be restrained. A preliminary injunction that lacks such detail is invalid. See *Brown v. East Baton Rouge Parish Sch. Bd.* (La. App. 2 Cir. 10/12/81) 405 So. 2d 1148 where a final injunction "enjoining defendant from further violations of the open meetings law" was struck down and declared invalid because it was overly broad and failed to describe the acts to be enjoined in sufficient detail. Also see *Lenfants Caterers, Inc. v. Firemen's Charitable and Benev. Ass'n of New Orleans*, La. App. 4 Cir 7/2/80, 386 So. 2d 1053, where a preliminary injunction enjoining defendants from precluding plaintiff "from the free exercise of its rights under the lease" was found held overbroad and invalid.

As in *Brown*, supra, and *Lenfants Caterers*, supra, the requested injunction is simply overbroad and should be denied.

2. **The District Attorney has an affirmative duty to investigate allegations of potential violations of legal obligations or law of the political subdivisions under his jurisdiction and such activity is not prohibited by the Rules of Professional Conduct.**

The District Attorney has dual roles in his district, both of which are mandated by law. First, as provided by La. Constitution Art. 5 sec. 26(b) and C.Cr.P. art. 61, he has the exclusive authority for every criminal prosecution by the state in his district and the exclusive authority to determine whom, when and how to prosecute. In addition, pursuant to La. R.S. 16:2(A), the district attorney is also mandated to serve as the regular attorney and counsel for the police jury and other boards and commissions. While serving in these

dual roles, the District Attorney is also subject to the Rules of Professional Conduct. Plaintiff mistakenly interprets the Rules of Professional Conduct to prohibit the District Attorney's obligation to investigate and potentially prosecute in matters which involve the Police Jury or its subdivisions, members or staff.

Louisiana Rules of Professional Conduct, Rule 1.13 provides for the representation of an organization as a client and clearly states that when a lawyer is retained to represent an organization, he represents the organization, not the individual constituents of the organization. The organization acts through its duly authorized constituents. The rule further provides that where a lawyer for an organization becomes aware of acts of a constituent that are a violation of a legal obligation or law that could reasonably be imputed to the organization and cause harm to the organization, he is to proceed as is reasonably necessary in the best interest of the organization. Inasmuch as the lawyer, the District Attorney in the present case, does not represent the individual constituents, there is not conflict of interest in investigating alleged violations of legal obligations or law. Any such investigation is performed in fulfillment of the lawyers duty to the organization under Rule 1.13.

Comment 9 to Rule 1.13 relative to representing an organization as a client confirms that the Rule applies to government lawyers but also acknowledges that the government lawyer may have additional authority under applicable law beyond that of a private lawyer.

"[9] The duty defined in this Rule applies to governmental organizations. Defining precisely the identity of the client and prescribing the resulting obligations of such lawyers may be more difficult in the government context and is a matter beyond the scope of these Rules. See Scope [18]. Although in some circumstances the client may be a specific agency, it may also be a branch of government, such as the executive branch, or the government as a whole. For example, if the action or failure to act involves the head of a bureau, either the department of which the bureau is a part or the relevant branch of government may be the client for purposes of this Rule. Moreover, in a matter involving the conduct of government officials, a government lawyer may have authority under applicable law to question such conduct more extensively than that of a lawyer for a private organization in similar circumstances. Thus, when the client is a governmental organization, a different balance may be appropriate between maintaining confidentiality and assuring that the wrongful act is prevented or rectified, for public business is involved. In addition, duties of lawyers employed by the government or lawyers in military service may be defined by statutes and regulation. This Rule does not limit that authority. See Scope."

The Rules of Professional Conduct are broad and general, intended to cover all aspects of the legal practice, however they must be applied in the context of the representation. They are rules of reason and should be interpreted with reference to the purposes of the legal representation and the law itself. The commentators to the Rules recognize that government lawyers, under various legal provisions, have responsibilities that may include authority concerning legal matters that differ from the private client-lawyer relationship. The authority of government lawyers in various respects is generally vested in the attorney general in state government. (Such authority is clearly vested in the District Attorney pursuant to La. Constitution Art. 5 sec. 26(b) in the present case.) "Lawyers under the supervision of these officers may be authorize to represent several government agencies in intragovernmental legal controversies in circumstances where private lawyer could not represent multiple private clients. These Rules do not abrogate any such authority." (Scope, comment 18)

Clearly, the Rules of Professional Conduct do not prohibit the District Attorney fulfilling his obligations under the Louisiana Constitution and under Rule 1.13 to investigate alleged or suspected improper acts of constituents of the governmental body. There is no conflict under the Rules, as the governmental body, not the constituents, is the client. The duty is owed to the governmental body to protect it from harm that could be imputed to the governmental body through the improper acts of its constituents. Accordingly, the Police Jury's request for a preliminary injunction prohibiting the any investigation of the Police Jury or its subdivisions is without merit and should be denied.

3. **The Police Jury cannot show irreparable harm upon which to grant a preliminary injunction requiring the District Attorney to deposit all PTI revenue into the Criminal Court Fund.**

The purpose of a preliminary injunction is to maintain the status quo pending trial on the merits. Presently and for the past two years, any funds derived from the PTI Programs are and have been deposited into an account under the control of the District Attorney's office. Such funds are used, in part, to help defray the expenses of the PTI programs, as well as the general expenses of the office. The issuance of a preliminary injunction compelling the District Attorney to deposit such funds into the Criminal Court

Fund would cause immediate harm to the operations of the District Attorney's office and would not maintain the status quo.

Further, a preliminary injunction can only issue upon the showing of irreparable injury by the Police Jury. Irreparable injury is a loss that cannot be adequately compensated in money damages or is not susceptible of measurement by pecuniary standards. *Shaw v. Hingle*, 648 So. 2d 903 (La. 1995); *Terrebonne Parish Police Jury v. Matherne*, 405 So. 2d 314 (La. 1981). Here, the dispute is over money and can certainly be adequately compensated by money damages if ultimately proven at the trial on the merits that the Police Jury is entitled to the recovery sought, which is specifically denied.

4. **The Police Jury cannot make a prima facie showing that PTI program funds generated in the absence of prosecution are required to be deposited into the Criminal Court Fund under La. R.S. 15:571.11.**

Finally, the Police Jury will be unable to make a prima facie showing that they are entitled to the relief sought. La. R.S. 15:571.11 specifically states "all fines and forfeitures...conviction fees in criminal cases, and prosecutions for violations of state law or parish ordinances, upon collection by the sheriff or executive officer of the court, shall be paid into the treasury of the parish in which the court is situated and deposited in a special "Criminal Court Fund" account...". Not included in the clear and unambiguous language of the statute are the funds collected by the District Attorney pursuant to Pretrial Intervention Programs. The criminal court fund is limited to those fines, forfeitures, conviction fees and prosecution fees collected by the sheriff.

Our courts have recognized the clear authority of the District Attorney to develop and utilize pre-trial intervention programs free from interference of the courts or other bodies. Constitutionally, the District Attorney has the sole authority over every criminal prosecution instituted by the State of Louisiana in his district. The bounds of this discretion extend to determination of whom, when, and how to prosecute. This authority also includes the "broad discretionary power not to institute prosecution, which can be exercised in numerous constitutionally permissible ways." *State v. Franklin*, 2013-1489 (La. App. 4 Cir. 6/11/14), 147 So. 3d 231. An agreement not to prosecute is generally formed when the district attorney offers to refrain from instituting prosecution for certain charges

upon a defendant's successful completion of a pre-trial diversion program. *Id.* In determining the conditions of any agreement to divert a defendant from the processes of prosecution, the district attorney is at the outset of the agreement free of judicial interference or coercion. *Id.* (The trial court lacks authority to compel a defendant's admission into a drug diversion program in the absence of a recommendation by the district attorney. *State v. Thomas*, 00-0129 (La. 1/26/01), 778 So. 2d 1126.)

Flowing from the constitutional authority of the District Attorney to develop and utilize pretrial intervention programs, is the authority to charge fees to offset the costs of such programs and supplement the expenses of the office of the District Attorney. Clearly, La. R.S. 15:571.11 was designed to provide for collection and distribution of fees in connection with actual prosecutions for which the courts are involved. There is nothing to indicate, or from which to infer, that pretrial intervention program fees which do not involve prosecution or the courts are required to be deposited into the Criminal Court Fund.

Accordingly, the Police Jury's request for a mandatory injunction requiring that the District Attorney deposit PTI funds into the Criminal Court Fund is without merit should be denied.

5. **The Police Jury is not entitled to a preliminary injunction requiring the District Attorney to provide an accounting for all PTI funds, as there is no irreparable harm and the Police Jury has other adequate remedy at law.**

A request for an accounting of PTI funds is simply not a proper subject for injunctive relief. It is well settled that injunctive relief is a harsh, drastic and extraordinary remedy which should only issue where the petitioner is threatened with irreparable harm and has no adequate remedy at law. Here, the Police Jury can seek discovery of the accounting of PTI funds through the regular course of discovery, and in fact has asked for the same in the Request for Production propounded with their Amended Petition for Declaratory and Injunctive Relief. Further, there is no irreparable harm, as again, the dispute is over money which can certainly be adequately compensated by money damages if ultimately proven at the trial on the merits that the Police Jury is entitled to the recovery sought, which is specifically denied. There being no irreparable harm and plaintiff having adequate remedy

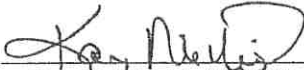
at law, the request for preliminary injunction compelling an accounting of all PTI funds should be denied.

CONCLUSION

Injunctive relief is a harsh, drastic and extraordinary remedy which should only issue where the petitioner is threatened with irreparable harm and has no adequate remedy at law. In the present matter, the injunctive relief sought by the Police Jury is supported by irreparable harm and there is adequate remedy at law through which the Police Jury can seek and is seeking resolution of their complaints relative to the attorney-client relationship and the authority of the District Attorney to operate a Pretrial Intervention Program. Accordingly, the Police Jury's request for injunctive relief should be denied in its entirety.

Respectfully submitted,

GOLD, WEEMS, BRUSER, SUES & RUNDELL

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TERRELL, DISTRICT ATTORNEY FOR THE
PARISH OF RAPIDES

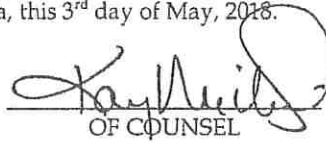
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing Opposition to Preliminary Injunction has been filed and sent to the following party by placing a copy of same, postage prepaid and properly addressed, in the United States Mail:

Jimmy R. Faircloth, Jr.
Faircloth, Melton & Sobel, LLC
105 Yorktown Drive
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Brook L. Villa
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OF COUNSEL