



COMPTROLLER'S INVESTIGATIVE REPORT

Metropolitan Nashville and Davidson County General Sessions Court

July 31, 2023

Jason E. Mumpower
Comptroller of the Treasury



DIVISION OF INVESTIGATIONS



JASON E. MUMPOWER
Comptroller

July 31, 2023

Tennessee Board of Judicial Conduct
403 Seventh Avenue North, Room 202
Nashville, TN 37243

and

Tennessee Administrative Office of the Courts
511 Union Street, Suite 600
Nashville, TN 37219

Metropolitan Nashville and Davidson County General Sessions Court Management:

The Office of the Comptroller of the Treasury conducted an investigation of selected records of the Metropolitan Nashville and Davidson County General Sessions Court, and the results are presented herein.

Copies of this report are being forwarded to Governor Bill Lee, the State Attorney General, the District Attorney General of the 20th Judicial District, certain state legislators, and various other interested parties. A copy of the report is available for public inspection in our Office and may be viewed at <http://www.comptroller.tn.gov/ia/>.

Sincerely,

A handwritten signature in blue ink that reads "Jason E. Mumpower".

Jason E. Mumpower
Comptroller of the Treasury

JEM/MLC

INVESTIGATIVE REPORT

Metropolitan Nashville & Davidson County General Sessions Court

The Office of the Comptroller of the Treasury investigated allegations of malfeasance related to the Metropolitan Nashville & Davidson County General Sessions Court. The Comptroller's Office initiated the investigation after receiving an allegation of a potential conflict of interest regarding a grant. This investigation was limited to selected records for the period from October 1, 2018, through June 30, 2021. The results of the investigation were communicated with the Office of the District Attorney General of the 20th Judicial District and the Tennessee Board of Judicial Conduct.

BACKGROUND



In 2018, a Metropolitan Nashville & Davidson County General Sessions Court Judge (judge), in partnership with the Tennessee Administrative Office of the Courts (AOC), applied for and was awarded a grant to establish a community court under the 2018 Community Court Grant Program (program) initiative. The purpose of the grant was to establish a diversionary program to rehabilitate 18-26 year old non-violent offenders. The grant was supported by the U.S. Department of Justice and was overseen by Center for Court Innovation (CCI), a non-profit entity that provided the technical assistance and reimbursement payments for the program.

The judge was responsible for the overall supervision, coordination, and performance of the program. The AOC's role was to assist the judge with fiscal tasks and responsibilities. The grant provided for the reimbursement of program related expenses, and invoices for incurred expenses were submitted by either the judge or court staff and were then reviewed by both AOC and CCI officials before reimbursement. The program received grant funds totaling \$198,146.37 for the applicable grant period October 1, 2018, through August 31, 2020. The grant had a closeout period from September 1, 2020, through June 30, 2021. During this time period, different vendors provided services and supplies for the program and received a portion of the grant proceeds. The judge selected a for-profit company, owned by the judge and the judge's spouse, called Solutions NOW, Inc., (the company) to receive grant proceeds.

RESULTS OF INVESTIGATION

- 1. THE JUDGE HAD AN UNDISCLOSED POTENTIAL CONFLICT OF INTEREST RELATED TO THE COMMUNITY COURT GRANT PROGRAM**

- A. The judge did not disclose materially significant information in the Community Court grant, thus creating a potential conflict of interest.

Between October 2018 and June 2021, a total of 12 invoices were submitted for reimbursement payments on behalf of the company owned by the judge and the judge's spouse. These reimbursements were repayments of expenses previously paid or incurred by the company for items on behalf of the judge. Both CCI and AOC officials approved the submitted invoices and processed the reimbursement payments, totaling \$22,772.14 (Refer to Table 1).

Table 1

| Reimbursed Expenses | # of Invoices | Amount Reimbursed | | |
|--------------------------------------|---------------|---------------------|--------------|----|
| Office Rent | 8 | \$ 14,950.00 | \$ 22,077.46 | * |
| Containers storage rental | 1 | 4,870.44 | | |
| Office supplies and furniture | 1 | 1,793.90 | | |
| Graphic design software subscription | 1 | 463.12 | | |
| Graphic design software subscription | 1 | | 694.68 | ** |
| Total | 12 | \$ 22,772.14 | | |

* AOC reimbursed the company directly for these expenses upon receiving the grant proceeds from CCI.

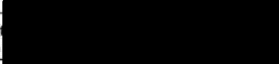
** AOC reimbursed Metropolitan Nashville & Davidson County government (Metro) after Metro's prior reimbursement of the expense to the judge for presenting the company's invoice. Essentially, the company was indirectly reimbursed for the expense through the judge.

Both CCI and AOC officials informed investigators that during the grant period they were unaware that the company was owned by the judge. There were two legal documents associated with the grant: 1) Executed Contract Between AOC and CCI, a 106-page packet consisting of the contract supported by various attachments and supplements; and 2) Memorandum of Understanding Between AOC and the General Sessions Community Court, a 26-page document outlining duties and responsibilities of each party. The judge did not disclose the ownership ties to the company in either of the grant documents.

Investigators were not provided with any documentation discussing the judge's ties to the company prior to the beginning of the grant period. In April 2019, and approximately seven months into the grant period, the company submitted to AOC a W-9¹ form that included the signature of the judge's spouse (Refer to Exhibit 1). AOC officials told investigators that at the time they did not know about the relationship between the judge and the judge's spouse, whose last names are different.

¹ W-9 is an Internal Revenue Service document, and its purpose is to provide correct taxpayer identifiers to external parties. Before the payments could be processed, AOC collected these forms from vendors to obtain their Taxpayer Identification Number and Certification.

Exhibit 1

| Part II Certification | |
|--|--|
| Under penalties of perjury, I certify that: | |
| 1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and | |
| 2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and | |
| 3. I am a U.S. citizen or other U.S. person (defined below); and | |
| 4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct. | |
| Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later. | |
| Sign Here | Signature of U.S. person  |
| | Date ▶ 04/29/19 |

An excerpt of the company's W-9 provided to AOC in April 2019. The form was signed by the judge's spouse whose last name is different from the judge's last name.

The judge stated to investigators that based on the discussions with AOC officials during the grant period, it was always understood that the judge owned the company. Investigators obtained email correspondence between the judge and AOC officials implying or indirectly indicating that the judge had ownership ties to the company. The judge provided investigators with an email sent to AOC in June 2020 which included the company's W-9 form signed by the judge. However, the judge sent this email approximately 21 months into the grant period and approximately two months before the grant period ended. The judge also reported an ownership interest in the company to AOC that was documented on other required disclosures. However, the company was not included in the disclosures during all years applicable to the grant period (**Refer to Finding 2**).

Investigators determined that the reimbursement payments made to the company owned by the judge and the judge's spouse were justified and approved expenses consistent with the contract budget. However, by failing to disclose the company's ownership in the grant documents or failing to obtain a documented disclosure equivalent prior to the grant period, the judge created an appearance of impropriety due to a potential conflict of interest.

The AOC's Administrative Policy and Procedure 2.01 establishes guidelines for avoidance of conflict of interest for employees of the judicial system. Paragraph V of the policy states:

Employees shall avoid any action, which might result in or create the appearance of a conflict of interest.

In addition, Rule 10 of the Code of Judicial Conduct establishes standards for the ethical conduct of judges and judicial candidates. Rule 1.2 on promoting confidence in the judiciary states:

A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

To ensure compliance with the AOC's Administrative Policy and Procedure and the rules of the Code of Judicial Conduct, the judge should have sought written approval from both AOC and CCI officials prior to the start of the grant period documenting whether such a business interest and arrangement was an acceptable practice while coordinating the grant.

- B. The judge did not properly disclose that the community court rented office space in a building owned by the judge's parents. The judge rented the office space for the duration of the grant period in a building owned by the judge's parents without disclosure of the details of the rent arrangement in the grant documents. The company owned by the judge and the judge's spouse invoiced the grant and was paid office rent of \$650 a month, or a total of \$14,950 for 23 months.

The judge informed investigators that the company the judge owned leased the building from her parents at the rate of \$800 a month in 2018, and \$1,000 a month during 2019 and 2020. One of the three suites in the building was utilized for the program, which was reimbursed at the rate of \$650 a month. The judge further stated that the related party rent agreement was discussed with AOC officials.

CCI and AOC officials informed investigators they were unaware during the grant period that the judge rented the office space for the program in a building owned by the judge's parents. Both CCI and AOC officials stated that the rent arrangement between the judge and the judge's parents should have been properly disclosed and documented in the grant documents.

Investigators determined that the use of the office space at the rate of \$650 a month was included in the grant contract, and the overall rent payment in the amount of \$14,950 was an approved and justified expense. The rate of \$650 a month for the use of the office space was a below-market rental value compared to similar offices in the area.

The fact that the judge's parents owned the building and were ultimately paid by the grant proceeds was omitted in two grant documents, which created a potential conflict of interest. Per the AOC's Administrative Policy and Procedure 2.01, this practice should have been avoided.

2. THE JUDGE FAILED TO ADEQUATELY DISCLOSE BUSINESS ACTIVITY

Metro judges file three types of disclosures annually to address extra-judicial activities and income received from such activities. Our review of the judge's disclosures applicable during the grant period revealed the following deficiencies with the reporting requirements and disclosures:

- A. *Metro Code of Laws 2.222.030* requires public officials to file an *Annual Disclosure Statement and Annual Benefit Reporting Statement* with the Metropolitan Court Clerk's Office (clerk's office) by the end of January for the year ended December 31 of the preceding year.

A review of the judge's 2018 Annual Disclosure Statement filed in January 2019 revealed that the judge did not report the ownership interest in the company the judge and the judge's spouse owned (**Refer to Exhibit 2**). From October 2018 through December 2018, the company was a vendor for the program, and the judge should have reported the ownership interest of the company on the 2018 Annual Disclosure Statement.

Exhibit 2

3. Do you or your spouse presently have a financial interest of at least 5% (five percent) of any business with operations, offices, or interests in the Metropolitan Nashville area?

Yes No

The judge's 2018 Annual Disclosure Statement filed in January 2019.

The judge stated that the non-disclosure of the company on the 2018 statement was an oversight error, and that the company should have been listed on the form.

- B. Pursuant to *Rule 10 of the Code of Judicial Conduct, Cannon 3.15*, judges must file a Public Report of Compensation (PRC) to address compensation received from extrajudicial activities. Judges file PRC disclosures annually as a public document with AOC and with the Office of the Clerk of the Court in which judges serve.

The review of the judge's PRCs applicable to the grant period showed that the judge did not report any income from the company in question during the years 2018 through 2020; however, the judge reported income of \$18,000 generated by the company during the calendar year 2021 (filed in January 2022).

The payments to the company from the grant proceeds are reportable items for PRC purposes only if such transactions generate income. In addition to the company's involvement with the grant, the judge told investigators that the company sold wristbands and T-shirts, and that at one point the company had one employee. It was also noted that the company the judge and the judge's spouse owned had three other companies registered under the same control number at the Tennessee Secretary of State website. Investigators asked the judge to provide documentation showing the income and all business activities pertaining to the company during the years 2018 through 2021. The judge did not provide this information to investigators.

- C. Tenn. Code Ann. § 8-50-501 requires certain public officials to file a *Statement of Disclosure of Interests* (SDI) annually with the Tennessee Ethics Commission. The form includes a question requiring filers to "List major source(s) of private (non-governmental) income of more than \$1,000 for yourself, your spouse or minor child residing with you."

The review of the judge's SDI during the corresponding grant period showed that the company was not listed in the years 2018 through 2021 under sources of income. Since the judge did not provide the income information generated by the company during the same period, it is unclear whether the judge complied with the applicable reporting requirements.

Investigators noted a discrepancy between the judge's PRC and SDI forms in the 2021 reporting year. The judge reported the income of \$18,000 generated by the company on the 2021 PRC form while the company was not listed on the judge's 2021 SDI form under the sources of income question. The judge stated this was an inadvertent clerical error.

The reporting requirements of judges are essential for the maintenance of public trust and confidence in the court system. They are a vital means of maintaining transparency in court operations and thus provide the public with assurances that the courts are operating in an open and honest manner. Failure or refusal by a judge to provide complete and truthful information, regardless of whether such information is submitted in connection with a grant or other required reporting form, reflects poorly on a judge's integrity and can undermine public confidence in the judicial system.

The judge informed investigators that all documents submitted during the 2012-2022 years would be reviewed to ensure the information provided to applicable reporting agencies was accurate.
