



## COMPTROLLER'S INVESTIGATIVE REPORT

### 28th Judicial District Attorney General's Office

*November 9, 2023*

**Jason E. Mumpower**  
*Comptroller of the Treasury*



**DIVISION OF INVESTIGATIONS**



JASON E. MUMPOWER  
*Comptroller*

November 9, 2023

General Frederick Agee  
28<sup>th</sup> Judicial District Attorney General's Office  
P.O. Box 145  
113-B West Eaton Street  
Trenton, TN 38382

General Frederick Agee:

The Office of the Comptroller of the Treasury conducted an investigation of selected records of the 28<sup>th</sup> Judicial District Attorney's Office, and the results are presented herein.

Copies of this report are being forwarded to Governor Bill Lee, the Office of the Tennessee Attorney General and Reporter, 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, appearing to read "Jason E. Mumpower", with a long horizontal flourish extending to the right.

Jason E. Mumpower  
Comptroller of the Treasury

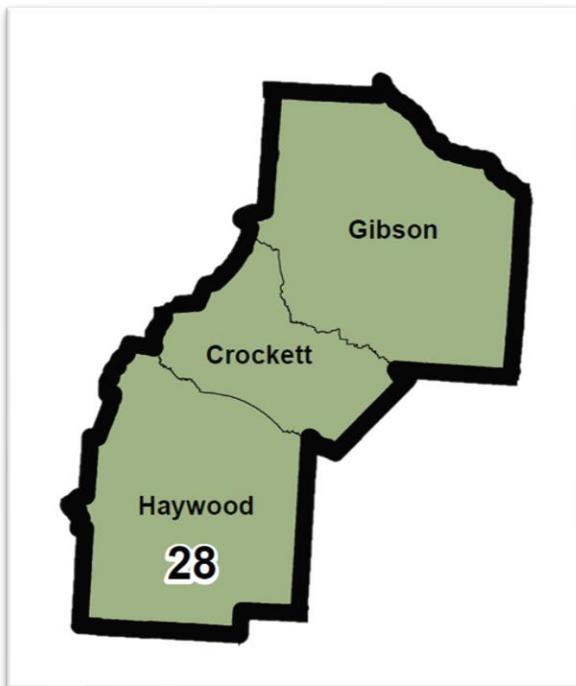
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# INVESTIGATIVE REPORT

## 28<sup>th</sup> Judicial District Attorney General's Office

The Office of the Comptroller of the Treasury investigated allegations of malfeasance related to the 28<sup>th</sup> Judicial District Attorney General's Office. The investigation was limited to selected records for the period August 1, 2021 through November 30, 2022. The results of the investigation were communicated with the Office of the Tennessee Attorney General & Reporter.

### BACKGROUND



As provided in the Tennessee Constitution, District Attorneys General (DAG) serve as attorneys for the state within their respective judicial districts. They are elected to serve eight-year terms by the voters in their districts and have the sole authority and responsibility for the prosecution of criminal offenses that occur within their districts. The District Attorney General of the 28<sup>th</sup> Judicial District serves three counties: Gibson, Crockett, and Haywood. The main office is in Gibson County, with a second office in Haywood County.

The Tennessee District Attorneys General Conference (conference) was created in 1961 and consists of the DAGs from the state's 32 judicial districts and is overseen by an Executive Director. Its primary function is to equip, support, and advocate for the DAGs by managing the fiscal, personnel, property management, technology,

training, and specialized prosecution needs of their offices. The conference also serves as the liaison between the DAGs and other governmental agencies.

Tenn. Code Ann. § 8-30-102, defines "state service" as all officers and positions of trust or employment in the service of state government. The statute also exempts many departments, including DAG offices, from the definition of state service and thereby the requirement of leave. As a result, the statute gives DAGs the authority to formulate and implement leave policies at their discretion. Additionally, Tenn. Code Ann. § 8-7-103(6) provides that DAGs shall have discretion in the performance of duties and responsibilities in the allocation of resources available to their respective offices.

## RESULTS OF INVESTIGATION

### 1. 28<sup>TH</sup> JUDICIAL DISTRICT ATTORNEY GENERAL ABUSED HIS MANAGERIAL DISCRETION BY APPROVING SALARY AND BENEFITS TOTALING \$34,917.07 FOR AN EMPLOYEE WITH INSUFFICIENT ACCRUED LEAVE AND IN THE ABSENCE OF A FORMAL WRITTEN LEAVE POLICY

The Family Medical Leave Act (FMLA), 28 U.S.C. §§ 2611-2620, provides that an eligible employee may take up to 12 weeks of unpaid leave for various qualifying events, including after the birth of a child.

To assist DAGs in their development of a policy to govern medical leave, including leave for pregnancy and childbirth, the conference has adopted a maternity leave policy that closely tracks the FMLA statute, which the district attorneys general may in their discretion follow or decline to implement. According to the maternity leave policy in the conference's administrative handbook (**Refer to Exhibit 1**), a female employee may be absent from employment for up to four months for pregnancy, childbirth, and nursing an infant. The employee is allowed 12 weeks of maternity leave under the FMLA and may take an additional four weeks of leave, either unpaid or paid, depending on the DAG's leave policy. While FMLA only entitles eligible employees to unpaid leave, employees may use accrued leave for some or all FMLA depending on the employer's policy.

Sound business practice dictates that paid leave should only be approved when an employee has accrued sufficient leave balances. While the 28<sup>th</sup> DAG had a policy addressing the usage of annual and sick leave, it did not have a policy that specifies what employees are eligible for maternity leave, the time and length of leave, and if the employee will receive pay during the leave period, nor did it adopt the conference's maternity leave policy.

#### Exhibit 1

##### MATERNITY LEAVE

Any female employee may be absent from employment for a period not to exceed four (4) months for pregnancy, childbirth and nursing the infant. The 4-month period shall include any sick and annual leave. Under the Family Medical Leave Act (FMLA), the employee with the intention to return to full-time employment after maternity leave is allowed 12 weeks under FMLA and an additional 4 weeks, either paid or unpaid, depending on your leave policy. Under the 12 weeks of FMLA the State will continue to pay its share of the medical insurance. In situations where a female employee takes more than twelve weeks' maternity leave the employee must assume the State's share and her share of the Insurance. FMLA leave can be paid or unpaid leave at the discretion of the District Attorney and based on his or her leave policy.

#### *The conference's maternity leave policy*

On July 6, 2022, a former employee submitted a memorandum to the 28<sup>th</sup> DAG requesting four months of maternity leave to begin on August 4, 2022. On July 13, 2022, the 28<sup>th</sup> DAG notified

the conference that the former employee would be placed on leave with pay for a total of four months. Additionally, the 28<sup>th</sup> DAG stated that the former employee would use the remaining annual leave balance of one and one-half weeks (54.75 hours). On November 22, 2022, the former employee resigned.

Investigators confirmed that the former employee received full salary from August 2022 through November 2022 even though the 28<sup>th</sup> DAG did not have a policy to permit paid leave while on FMLA. Investigators reviewed the former employee's leave logs and noted that the sick leave balance had previously been miscalculated, resulting in the former employee having a sick leave balance of approximately one day (6.75 hours) upon resignation. In total, the former employee was entitled to receive 61.5 hours of paid leave instead of the 660 hours of paid leave received. The 28<sup>th</sup> DAG failed to establish and adopt a formal written maternity leave policy and abused his managerial discretion by approving a paid salary totaling \$28,920.25 to a former employee with insufficient accrued leave.

The former employee also received paid payroll benefits totaling \$5,996.82 while on maternity leave. This amount represents matching benefits and payments for Medicare, Social Security, retirement, and four weeks of medical insurance costs that the employee received in excess of the required 12 weeks to be paid by the employer under FMLA. If an employee takes more than 12 weeks of FMLA, the employee must assume the employer's share of medical insurance.

Summary of the Former Employee's Compensation	
Description	Amount
A. Salary	\$28,920.25
B. Payroll Benefits	<u>5,996.82</u>
<b>Total Compensation Received</b>	<b>\$34,917.07</b>

## INTERNAL CONTROL AND COMPLIANCE DEFICIENCIES

Our investigation revealed the following deficiencies in internal controls and compliance related to employee leave and timekeeping:

**Deficiency 1: The 28<sup>th</sup> Judicial District Attorney General's Office did not have or adopt a formal written maternity leave policy**

Sound business practices require the implementation of formal written policies related to medical leave, including for pregnancy and childbirth. That policy should specify what employees are eligible for the leave, the time and length of the leave, and if the employee will receive pay during the leave period. While the absence of such policies can afford an agency head with wide latitude to tailor well-intentioned responses to individual circumstances, it can and often does, lead to

negative unintended consequences. and can create an appearance of favoritism. Additionally, the absence of a formal written leave policy may increase the risk of legal liabilities based upon alleged discrimination in the approval or denial of leave requests. The 28<sup>th</sup> Judicial District Attorney General's Office thus failed to follow sound business practices by failing to have or adopt a formal written maternity leave policy at the time the former employee requested leave. Even though the 28<sup>th</sup> DAG permitted the former employee to be paid during her leave, investigators determined the 28<sup>th</sup> DAG abused his managerial discretion and failed to follow sound business practices by approving payment of salary and benefits while on leave without sufficient accrued leave balances and in the absence of a formal written leave policy.

**Deficiency 2: The 28<sup>th</sup> Judicial District Attorney General's Office did not require employees to submit timesheets**

The 28<sup>th</sup> Judicial District Attorney General's Office did not require employees to submit timesheets reflecting their time and attendance at work. Timesheets provide supporting documentation for hours worked so that payroll and accumulated leave can be calculated accurately. Timesheets should also be approved by a supervisor to provide reasonable assurance of the accuracy and reliability of the hours reported on the timesheets.

28<sup>th</sup> Judicial District Attorney General's Office officials indicated that they have corrected or intend to correct these deficiencies.

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