JOINT COMMITTEE ON GOVERNMENT AND FINANCE
WEST VIRGINIA OFFICE OF THE LEGISLATIVE AUDITOR

Post Audit Division

LEGISLATIVE AUDIT REPORT

Supreme Court of Appeals of West Virginia

Report 4

ISSUE 1:
Over a Period of Four Years, the Supreme Court Depleted $29 Million of Surplus Re-Appropriated Funds to a Balance of $333,514.

ISSUE 2:
The Supreme Court of Appeals of West Virginia Spent Approximately $3.4 Million on Renovations Between 2012 and 2016. Several of the Renovation Projects Do Not Contain Invoice Documentation with Sufficient Detail for Analysis.

ISSUE 3:
Between 2009 and 2017, the Chief Justices of the Supreme Court of Appeals of West Virginia Allowed 10 Senior Status Judges in the Judicial Retirement System to Exceed the Statutory Compensation Cap 20 Times for a Total of $271,000.

Legislative Auditor: Aaron Allred
Post Audit Director: Justin Robinson

GENERALLY ACCEPTED GOVERNMENT AUDITING STANDARDS STATEMENT

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards **(GAGAS)**. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

POST AUDIT DIVISION
Justin Robinson, Director

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SUPREME COURT OF APPEALS OF WEST VIRGINIA

REPORT 4

SEPTEMBER 16, 2018

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Executive Summary

This report on the Supreme Court of Appeals of West Virginia is authorized under Chapter 4, Article 2, Section 5 of the *West Virginia Code*. The objectives of this audits were to expound upon previous analyses of the Court's spend down of its re-appropriated fund balance and renovation costs, and to review the Court's payments to Senior Status Circuit Court Judges.

Report Highlights

Issue 1: Over a Period of Four Years, the Supreme Court Depleted $29 Million of Surplus Re-Appropriated Funds to a Balance of $333,514.

- The results of this analysis show that a majority of all re-appropriated funds were spent within two categories, Personal Services (Payroll) and Unclassified/Current Expenses.

- In Fiscal Year 2014, the Court decreased its re-appropriated fund balance by the greatest amount in the four-year period. In this year, the balance was reduced by $13.4 million for a total year-end balance of $1.8 million.

Issue 2: The Supreme Court of Appeals of West Virginia Spent Approximately $3.4 Million on Renovations Between 2012 and 2016. Several of the Renovation Projects Do Not Contain Invoice Documentation with Sufficient Detail for Analysis.

- The Legislative Auditor's analysis determined that the total combined cost of the renovations to the Justices' Chambers totaled $1,943,357. However, the Legislative Auditor is only able to provide a detailed analysis for $1,568,786 or 81 percent of the total.

- Due to insufficient invoice detail for $521,543 of expenditures related to the renovations of a number of the Court's facilities located at the Capitol Complex, the Legislative Auditor is unable to provide analysis for approximately 15 percent of the total costs incurred by the Court for those renovations.

Issue 3: Between 2009 and 2017, the Chief Justices of the Supreme Court of Appeals of West Virginia Allowed 10 Senior Status Judges in the Judicial Retirement System to Exceed the Statutory Compensation Cap 20 Times for a Total of $271,000.

- The Court has allowed certain Senior Status Judges to receive compensation in excess of the statutory limit set in W. Va. Code for Judges also receiving retirement benefits.

- From 2012 to 2016, the Court engaged in a practice of converting some Senior Status Judges from employees to independent contractors to enable them to continue to receive full retirement benefits after they were no longer eligible for those benefits as a result of exceeding the statutory compensation cap.

Recommendations

1. The Legislative Auditor recommends that the Supreme Court of Appeals of West Virginia comply with West Virginia Code and cease all compensation in excess of the statutory limits.

2. The Legislative Auditor recommends that the Judges who received compensation in excess of the statutory cap between 2009 and 2017 and the Consolidated Public Retirement Board comply with W. Va. Code §51-9-18 and correct all issues of overpayment.

Evaluation of the Court's Written Response

The Post Audit Division held its exit conference with the Court on September 12, 2018. Based on discussions with Court representatives at this meeting, some minor changes were made to the report that was originally released on Friday, September 7, 2018, which are outlined in this executive summary. Due to the changes made, the Court revised the response originally provided at the exit conference and submitted its updated response to the report on September 14, 2018. This response is available in its entirety on page 51, Appendix G of this report. With respect to Issue 1, the Court does not raise any particular disagreements, but offers clarifications and additional information for context.

Regarding Issue 2 of this report, the Court raised the following questions regarding calculations contained in this section:

- The Court indicates that the $450 charge for Justice Walker that is attributed to the vendor Silling on page 10 is actually a charge from Ed Weber Architects. The report now reflects this change.

- The Court indicates that it has documentation showing that the original cost to the Court for the furniture purchased by Justice Benjamin was $17,047.57. Additional documentation was provided to the Post Audit Division on September 13, 2018 showing that Justice Benjamin paid approximately $6,700 to reupholster two of the pieces of furniture he purchased from the Court. The cost of the reupholstery has been added.

- The Court correctly points out that the amounts in Table 15 on page 16 of the report do not sum to the total stated. After reviewing this issue, we have determined that the total is correct however, a charge of approximately $4,000 for architecture services was erroneously omitted from an amount listed in that table. Those figures have been corrected. Also, the Court's calculation for the Table 15 total is $50 higher than the total reflected in the table due to an error in the summary total prepared by the Court in its provided documentation, overstating the amount by $50. The invoice amount and amount paid by the Court for this invoice reflects the amount noted in our analysis.

With respect to Issue 3, the Court does not dispute the calculations and figures, but does not agree, from a legal standpoint, with the ultimate finding. The Court argues that in the instances identified, application of the statutory cap on compensation for Senior Status Circuit Court Judges would be unconstitutional. However, making such determination as to the constitutionality of the application of the statutory cap was not within the scope of this audit. The Court's opinion on Issue 3, included in its response to this report, is located on page 54.

Introduction

During the June 2018 Post Audits Subcommittee meeting, the Legislative Auditor released a report concerning the spend down of $29 million in excess re-appropriated funds by the Supreme Court of Appeals of West Virginia (the Court) from Fiscal Year 2012 through Fiscal Year 2015. In that report, the Legislative Auditor expressed concern with the Court's accumulation of appropriated General Revenue Funds, with particular regard to the fact that in just five fiscal years from 2007 to 2012 this surplus fund balance grew from $1.4 million to $29 million. Of equal concern was the fact that this $29 million surplus was subsequently depleted to a balance of $333,514 over the following four years. In this prior report, the Legislative Auditor attempted to account for the spend down by highlighting spending categories that saw significant increases over prior years. This audit report is a continuation of that effort attempting to further account for the spending that depleted the $29 million over the four-year period of Fiscal Years 2012 - 2015.

This report also includes an analysis of the Court's renovation costs to various offices located within the Capitol, including the Justices' chambers, as well as noting the expenditures for renovations of Court facilities outside of the Capitol. Many of the renovations could be attributed as a portion of the reduction of the $29 million of re-appropriated funds as they occurred during that same period.

Finally, this report discusses the Court's payments to Senior Status Judges. In some instances, these payments were in excess of statutory limits for Consolidated Public Retirement Board (CPRB) annuity recipients. The Court's process of paying Senior Status Judges as independent contractors appears to be an attempt to exceed those statutory limits.

Issue 1: Over a Period of Four Years, the Supreme Court Depleted $29 Million of Surplus Re-Appropriated Funds to a Balance of $333,514.

As reported during the June 2018 Post Audits Subcommittee meeting, the Legislative Auditor became aware of concerns regarding the spend down of the Court's re-appropriated fund balance while reviewing memos written by Justice Loughry responding to questions from other justices concerning his Court vehicle use. In that same report, the Legislative Auditor outlined various categories of expenditures that significantly increased over the prior year. The Legislative Auditor has continued to research the increased spending and reduction of the $29 million of excess funds in an attempt to further account for how this balance was depleted.

This analysis does not attempt to account for every expenditure directly attributable to the spend-down as doing so is not practical. The volume of invoices and lack of institutional knowledge regarding the expenditures make it difficult to determine if an expenditure was contemplated for budgeting purposes within the Court's appropriation request. However, the Legislative Auditor has been able to attribute the spending to specific categories by calculating the difference between what was budgeted each fiscal year and what was actually spent. Any expenditures above that year's appropriated funds were considered spending from the re-appropriated surplus funds. In analyzing the Court's expenditures by budget category and vendor, we were able to segregate expenditures not in-line with the Court's usual spending. Although these results are not complete due to a lack of information available and those limitations previously stated, the majority of expenditures could be traced to specific categories and/or vendors. **The results of this analysis show that a majority of all re-appropriated funds were spent within two categories, *Personal Services* (Payroll) and *Unclassified/Current Expenses*.**

Where Did the Money Go?

Fiscal Year 2012

As the beginning of Fiscal Year 2012, the Court had a surplus re-appropriated fund balance of $29 million. During this fiscal year, the balance was decreased by approximately $6.3 million to $22.7 million. Due to the increase in salaries for judges, justices, and magistrates, the Court's salary expenses, including all employee benefits and employer taxes, increased by approximately $12.4 million. **Approximately $4.6 million of the surplus re-appropriated funds were spent on salary increases.**

Renovations

An additional $1.7 million was spent in excess of the budgeted amount, under the category *Unclassified/Current Expenses*. An overview of the total $24 million spent by the Court in this budget category revealed certain vendors for which the spending could be attributed. Specifically, Neighborgall Construction Company and Capitol Business Interiors were paid $1.18 million and $1.02 million, respectively. Both of these vendors were used by the Court for various renovation projects at the Capitol, including the Justices' chambers. **Thus, the remaining $1.7 million of re-appropriated funds depleted in this year could be attributable to the total $2.2 million in payments to these vendors.**

Summary of Fiscal Year 2012 Spend-Down

The Fiscal Year 2012 spend-down of the re-appropriated funds are summarized in the table below:

Table 1
Fiscal Year 2012 Spend-Down of Supreme Court Re-Appropriated Funds

	Expenditures	Balance
FY 2012 Beginning Balance		$29,082,340
Salary Increases	$4,631,427	
Renovations	$1,702,147	
Total Expenditures	$6,333,574	
FY 2012 Ending Balance		$22,748,766

Source: Legislative Auditor's analysis of appropriated funds, re-appropriated funds, and expenditures for Fiscal Year 2012.

Fiscal Year 2013

In Fiscal Year 2013, the re-appropriated balance was further decreased by approximately $7.5 million, from $22.7 million to $15.2 million. Payroll related expenses increased an additional $900,491 over the prior year, but with only an additional $1.8 million in appropriations, the Court was still absorbing some of the salary increases from the prior year through its re-appropriated fund balance. Specifically, the Court spent $2.9 million on salaries from the re-appropriated funds. The remaining $4.6 million was expended from the *Unclassified/Current Expenses* category.

Unclassified/Current Expenses

The previous Post Audit report noted that expenses increased in areas such as Contractual Services, Computer Services, Office Equipment, etc. during Fiscal Year 2013. The Legislative Auditor's analysis revealed the following Contractual Services expenditures:

Table 2
FY 2013 Contractual Services Noted in Spend-Down

Category	Amount
Drug Courts	$978,635
Senior Status Judges & Magistrates	$95,913
CIP Training	$76,330
Temporary Employee Services	$41,172
Contract Law Clerk for Justice Ketchum	$15,000
Portrait of Justice McHugh	$4,000
Total	**$1,211,050**

Source: Legislative Auditor's analysis of appropriated funds, re-appropriated funds, and expenditures for Fiscal Year 2013.

Computer services and equipment also accounted for much of the spending throughout Fiscal Year 2013. Approximately $1.6 million was spent on multiple vendors. Those vendors

making up the largest cost of computer services and computer equipment include the following:

- Dell Marketing, LP at a cost of $846,446.
- Oracle America, Inc. at a cost of $573,817.
- Global Science & Technology, Inc. at a cost of $171,421.

At least $1,488,489 of these expenses can be attributed to the spend-down of the re-appropriated funds.

Adult and Juvenile Drug Courts

Due to the Legislative mandate that drug courts serve all counties throughout the State, there was an additional cost to the Court beginning in Fiscal Year 2013. Excluding the payroll and contractual service payments noted above, the Court spent an additional $266,026 on Adult and Juvenile Drug Courts.

Renovations

Supreme Court renovations continued to be a significant expense. The Legislative Auditor was able to account for approximately $1.67 million of renovation expenses that contributed to the spend-down. Vendors included in this amount are listed in the following table:

Table 3
FY2013 Expenses Attributable to the Spend-Down

Vendor	Amount
Neighborgall Construction Company	$771,451
Capitol Business Interiors	$311,267
Silling Associates	$169,563
State Electric Supply Company	$140,426
Electronic Specialty Company	$94,821
Carpet Gallery	$55,554
DSL Sound, Inc.	$53,466
Design Works, LLC	$51,592
Edward Hillenbrand Furnituremaker	$19,847
Total	**$1,667,987**

Source: Legislative Auditor's analysis of appropriated funds, re-appropriated funds, and expenditures for Fiscal Year 2013.

The most notable renovation project expenses during Fiscal Year 2013 occurred within the Capitol. However, requests for additional information made by the Legislative Auditor's Office concerning the renovations have remained unanswered as of the date of this report.

Summary of Fiscal Year 2013 Spend-Down

The Fiscal Year 2013 re-appropriated funds for the year is summarized in the following table:

Table 4
Fiscal Year 2013 Spend-Down of Supreme Court Re-Appropriated Funds

	Expenditures	Balance
Fiscal Year 2013 Beginning Balance		$22,748,766
Salary Increases from FY2012	$2,905,376	
Contractual Services	$1,211,050	
Computer Services and Equipment	$1,488,489	
Drug Courts	$226,027	
Renovations	$1,667,987	
Total Expenditures	$7,498,929	
FY 2013 Ending Balance		$15,249,837

Source: Legislative Auditor's analysis of appropriated funds, re-appropriated funds, and expenditures for Fiscal Year 2013.

Fiscal Year 2014

In Fiscal Year 2014, the Court decreased its re-appropriated fund balance by the greatest amount in the four-year period. In this year, the balance was reduced by $13.4 million for a total year-end balance of $1.8 million. Due to the Governor's request for additional funds to be made available to help with budget shortfalls that year, the Court analyzed its discretionary funds and chose to return $4 million to the State's General Revenue Fund. The remaining $9.4 million was spent on *Payroll, Current Expenses,* and *Other Assets*.

Payroll expenses again increased by approximately $2.4 million over the prior year. Approximately $2 million of this increased expense was covered by the surplus re-appropriated funds. Computer Services and Equipment continued to be a significant cost as well. Dell Marketing, LP expenditures totaled over $846,000 in Fiscal Year 2014, as well as Global Science and Technology, Inc. at almost $477,000 and Oracle America, Inc. at $422,000.

Other areas of spending that can be attributed to the spend-down include an increase in Travel Expenses by $909,000 and an increase in Attorney Legal Services Payments by $1.1 million. Attorney Legal Services cover a multitude of services including, but not limited to, special prosecutors, mental hygiene, and guardian ad litem. Additionally, rental expenses increased during the year by $375,965. The majority of the increase in rent expenses was paid to one specific vendor, General Corp, which increased by over $314,000 from the previous year's expenditures. The increased payments to General Corp can be attributed to the rental of additional space at the City Center East building. Excluding General Corp, there are sixty-one other vendors to which rent was paid. Therefore, the remaining $62,000 is spread out over those vendors.

Renovations

Throughout Fiscal Year 2014, renovations for the Supreme Court continued. The most significant renovation expenditures for this year appear to have occurred under the category *Other Assets.* Vendors paid under this category include Neighborgall Construction Company totaling $644,000 and Geiger Brothers, Inc. totaling $600,000. A little over $433,000 of the amount paid to Geiger Brothers is attributable to the renovations of Justice Davis' Chambers. Other vendors paid in relation to the renovations include Electronic Specialty Company totaling over $116,000; Design Works, Inc. totaling over $64,000; and Capitol Business Interiors totaling $158,000. Also, during this fiscal year Carpet Gallery received $47,000, which included the $32,000 couch for Justice Loughry's office.

Payments made toward renovations during Fiscal Year 2014 can be attributed to the chambers of Justice Davis, Justice Loughry, and Justice Workman, as well as the 1st floor hallway, the Clerk's Office, and the 2nd and 6th floors at City Center East. The Legislative Auditor has not received the information requested from the Court concerning City Center East thus, all renovation expenses have not been accounted for in this report. As a result, we cannot specifically account for $1.75 million in expenses paid using the re-appropriated fund balance during Fiscal Year 2014.

Summary of Fiscal Year 2014 Spend-Down

The spend-down of re-appropriated funds for the year, including the unaccounted-for balance, is summarized in the following table:

Table 5
Fiscal Year 2014 Spend-Down of Supreme Court Re-Appropriated Funds

	Expenditures	Balance
Fiscal Year 2014 Beginning Balance		$15,249,837
Returned to General Revenue Fund	$4,000,000	
Salary Increases	$1,956,757	
Computer Services and Equipment	$1,745,748	
Travel	$909,251	
Attorney Legal Service Payments	$1,058,542	
Renovations	$1,630,373	
Rental Expenses (Real Property)	$375,965	
Unaccounted for	$1,746,527	
Total Expenditures	$13,423,163	
Fiscal Year 2014 Ending Balance		$1,826,674

Source: Legislative Auditor's analysis of appropriated funds, re-appropriated funds, and expenditures for Fiscal Year 2014.

Fiscal Year 2015

The Court carried over approximately $1.8 million in unused funds into Fiscal Year 2015. Total expenditures of $133.3 million reduced the Court's re-appropriated fund balance

to $333,514 at the end of this fiscal year. Payroll expenses again increased, this time by $1.45 million. Approximately $912,000 of the remaining surplus re-appropriated funds were spent to cover this increase. The only other area of spending that saw a significant increase was Contractual Services in the amount of $2.7 million which accounts for the remaining $581,000 reduction of the re-appropriated fund balance. These contractual services expenses appear to include, but are not limited to, juror reimbursement, drug courts, and the new e-file system to be used for court filing by outside attorneys.

Summary of Spend-Down

A summary of the complete spend-down can be viewed in the following table. Unfortunately, there are some expenses that we are unable to extract from the current records. One issue noted is that the majority of all expenses within the *Unclassified/Current Expenses* category for each fiscal year were purchased on a Purchasing Card. Prior to Fiscal Year 2015, individual purchasing card transaction documentation is not included in the current accessible records for our review.

Table 6 Spend-down of Supreme Court Re-Appropriated Funds		
	Expenditures	**Balance**
Fiscal Year 2012 Beginning Balance		$29,082,340
Salary Increases	$4,631,427	
Renovations	$1,702,147	
Total Expenses	$6,333,574	
Fiscal Year 2013 Beginning Balance		$22,748,766
Salary Increases from FY2012	$2,905,376	
Drug Courts	$978,635	
Senior Status Judges & Magistrates	$95,913	
CIP Training	$76,330	
Temporary Employee Services	$41,172	
Contracted Law Clerk for Justice (3 months)	$15,000	
Portrait of Justice	$4,000	
Computer Services and Equipment	$1,488,489	
Adult and Juvenile Drug Courts	$226,027	
Renovations	$1,667,987	
Total Expenses	$7,498,929	
Fiscal Year 2014 Beginning Balance		$15,249,837
Returned to General Revenue Fund	$4,000,000	
Salary Increases	$1,956,757	
Computer Services and Equipment	$1,745,748	
Travel	$909,251	
Attorney Legal Service Payments	$1,058,542	
Renovations	$1,630,373	
Rental Expenses (Real Property)	$375,965	
Unaccounted for	$1,746,527	
Total Expenses	$13,423,163	
Fiscal Year 2015 Beginning Balance		$1,826,674
Salary Increases	$911,728	
Contractual Services	$581,432	
Total Expenses	$1,493,160	
Fiscal Year 2015 Ending Balance		$333,514

Source: Legislative Auditor's analysis of appropriated funds, re-appropriated funds, and expenditures for Fiscal Year 2012-2015.

Issue 2: The Supreme Court of Appeals of West Virginia Spent Approximately $3.4 Million on Renovations Between 2012 and 2016. Several of the Renovation Projects Do Not Contain Invoice Documentation with Sufficient Detail for Analysis.

The Legislative Auditor analyzed all available invoices provided by the Court for the renovations conducted at the Capitol Building. These invoice documents cover multiple renovation projects including each of the Justices' Chambers, the Courtroom, various Court restrooms, and other Court spaces at the Capitol. Table 7 provides a top-level breakdown of the total cost associated with each renovation project. The total combined cost of all of these renovations was $3,407,726.

Table 7

Supreme Court Capitol Renovation Project Costs

Renovation Project	Total Renovation Cost
Justice Benjamin's Chamber	$264,836
Justice Walker's Chamber	$130,655
Justice Ketchum's Chamber	$188,931
Justice Workman's Chamber	$112,780
Justice Davis's Chamber	$503,668
Justice Loughry's Chamber	$367,915
Unattributed Silling Invoices for Chambers	$374,571
3rd Floor Men's Restroom	$38,887
3rd Floor Women's Restroom	$77,725
1st Floor Hallway	$79,145
Saferoom	$98,513
Courtroom	$162,596
Justice's Conference Room	$300,350
Common Area	$324,509
Clerk's Office	$282,793
Chief Counsel's Office	$90,279
Elevator Upgrades	$9,572
Total	**$3,407,726**

Source: Legislative Auditor's analysis of renovation invoices provided by the Court.

The Legislative Auditor attempted to analyze all of the renovations undertaken by the Court from 2009 to 2016. Currently, the Court has not provided the Legislative Auditor with invoice documentation related to the renovations to the Supreme Court's law library or the administrative offices located in the Capitol Building's East Wing. Further, while the Court has provided some of the invoice documentation for the renovations to the Clerk's Office and the Chief Counsel's Office, the Legislative Auditor is still waiting to receive a portion of these invoices, which were originally requested on July 25, 2018.

In addition, the Legislative Auditor has not yet been able to fully analyze the renovation documentation related to the Court's leased spaces, such as the extensive renovations undertaken at the Court's office space at City Center East, located in Kanawha City, but will provide that analysis in a future report.

The following report sections provide a breakdown of each renovation project for which the invoice documentation contained sufficient detail. The expenditures for these renovations were allocated by the Legislative Auditor into broad classification types, such as infrastructure (structural work to walls, electrical, plumbing); fixtures (cabinetry, shelves, counters); décor (rugs, marble work, glass work, window treatments and blinds); and furniture.

The Five Justices' Chambers Were Renovated for a Combined Cost of Approximately $1.9 Million.

The Legislative Auditor's analysis determined that the total combined cost of the renovations to the Justices' Chambers totaled $1,943,357. However, the Legislative Auditor is only able to provide a detailed analysis for $1,568,786 or 81 percent of the total. This is due to a lack of sufficient detail in the invoice documents submitted by the architecture and design vendor Silling Associates, Inc (Silling).

Silling Associates, Inc.

Silling billed the Court a total of $374,571 for work they conducted on the renovations of the Justices' Chambers. However, none of the invoice documents submitted to and paid by the Court provide a breakdown for work that was conducted by Silling, nor on which Justice's chamber the work was conducted. The Director of Finance for the Court indicated that she had attempted to contact Silling to obtain more detail but had not been provided any additional information from the vendor.

The Legislative Auditor was informed by the Court's Director of Finance that Justices Walker[1] and Ketchum used Silling in a very limited capacity, and that Justice Davis did not use their services at all. Further, all of the Silling invoices provided to the Legislative Auditor were submitted between March 3, 2009 and September 10, 2013. Only two invoices, totaling $4,481 were submitted to the Court during Justice Loughry's tenure as a Justice of the Court. The Legislative Auditor is unable to further attribute these expenses due to lack of invoice detail.

Justice Benjamin's Chambers

According to the invoice documentation reviewed by the Legislative Auditor, the renovations to Justice Benjamin's Chambers cost $264,836. The Legislative Auditor believes that this amount is, to some degree, understated since the full costs of any architectural or design services provided by Silling cannot be attributed. The renovation expenditures included $25,489 for flooring, approximately $38,000 for wood work, and $21,000 for window treatments.

The Legislative Auditor allocated the renovation costs into broad categories of expenditures. The largest categories of expenditures for this renovation project were for fixtures

[1] Justice Walker had one charge, totaling $450, for work conducted by Ed Weber. The Court indicates that Mr. Weber's firm was no longer working for Silling at the time.

(37 percent) followed by infrastructure costs (19 percent). Table 8 shows the total dollar amount spent for each category of expenditure and the percent of the total.

Table 8

Breakdown of Renovation Expenditures for Justice Benjamin's Chambers

Expenditure Category	Amount	Percent of Total
Décor	$26,395	9.97%
Fixtures	$98,748	37.29%
Flooring	$25,489	9.62%
Furniture	$26,764	10.11%
Infrastructure	$51,497	19.44%
Miscellaneous	$11,037	4.17%
Painting	$24,906	9.40%
Total	**$264,836**	**100.00%**

Source: Legislative Auditor's analysis of renovation invoices provided by the Supreme Court.

Justice Walker's Chambers

The total cost to renovate Justice Walker's Chambers was $130,655 and includes expenditures such as $9,000 for flooring, over $7,000 for cabinetry, and approximately $23,000 for tables and chairs. The Legislative Auditor notes that Justice Walker "inherited" Justice Benjamin's Chambers when she replaced him on the bench. Therefore, Justice Walker's renovation costs are in addition to the $265,000 spent by Justice Benjamin seven years prior, for a total of $395,491. Approximately $9,000 of flooring costs in Justice Walker's Chambers are attributable to her covering the $25,000 of flooring completed approximately seven years prior in the same chambers under Justice Benjamin.

The Legislative Auditor notes that upon leaving office, Justice Benjamin purchased eight pieces of office furniture from the Court for a total of $6,720. The original price paid by the Court for these office furnishings was $17,048. Justice Walker, upon election to the Court, may have needed to replace these items either by purchasing new items or selecting items from the Court's storage warehouse.

The Legislative Auditor similarly appropriated the renovation costs for Justice Walker's Chambers into broad expenditure categories. The largest category of expenditures for this renovation project was for furniture (23 percent). Since these Chambers had recently undergone extensive renovations, only 16 percent of Justice Walker's renovations are attributable to infrastructure. Table 9 provides a full breakdown.

Table 9 Breakdown of Renovation Expenditures for Justice Walker's Chambers		
Expenditure Category	**Amount**	**Percent of Total**
Décor	$28,747	22.00%
Fixtures	$26,435	20.23%
Flooring	$9,145	7.00%
Furniture	$30,625	23.44%
Infrastructure	$20,686	15.83%
Miscellaneous	$15,016	11.49%
Total	**$130,655**	**100.00%**
Source: Legislative Auditor's analysis of renovation invoices provided by the Supreme Court.		

Justice Ketchum's Chambers

The total cost to renovate Justice Ketchum's Chambers was originally totaled at $193,970 by the Court, which includes approximately $9,100 of work to two Cass Gilbert Desks. The Legislative Auditor notes that Justice Ketchum disputes two charges attributed to his office, totaling $18,098, indicating that the work encompassed by these charges was not done in his Chambers. At least $5,038 does appear to be for work in another Justice's chamber; therefore, reducing Justice Ketchum's amount to $188,931. If the remaining $13,060 of work was misattributed, the corrected renovation costs for Justice Ketchum's Chambers would be $175,871. However, the Legislative Auditor has no way of verifying whether this charge is appropriately attributed based on the available documentation.

The renovation expenditures were allocated into broad categories. For Justice Ketchum's Chambers, the largest expenditure category was infrastructure, which accounted for approximately 43 percent of the total renovation costs for this project. Table 10 shows the total dollar amount spent for each category of expenditure and the percent of the total.

Table 10 Breakdown of Renovation Expenditures for Justice Ketchum's Chambers		
Expenditure Category	**Amount**	**Percent of Total**
Décor	$18,664	9.88%
Fixtures	$59,312	31.39%
Flooring	$10,453	5.53%
Furniture	$12,396	6.56%
Infrastructure	$81,782	43.29%
Miscellaneous	$6,324	3.35%
Total	**$188,931**	**100.00%**
Source: Legislative Auditor's analysis of renovation invoices provided by the Supreme Court.		

Justice Workman's Chambers

The total cost attributed to the renovations in Justice Workman's Chambers totaled $112,780. These renovation expenditures include $12,000 for cabinetry, $35,000 for flooring, and $17,000 for fabrics and reupholstery of various pieces of furniture. An additional invoice for floor repair, costing $5,038, indicates that the work was done in Justice Workman's Chambers. However, her name is marked out on the invoice and Justice Ketchum's is written in; this is one of the charges that Justice Ketchum disputes. During the Impeachment Hearing in the House of Delegates, testimony was provided that indicated Justice Workman's floor required repairs; therefore, it is possible that these charges could be attributed to her office. Thus, Justice Workman's cost for renovations could be as much as $117,818, not including the Silling invoices. Additionally, since the $374,571 paid to Silling for architectural and design services cannot be attributed to any one Justice's chamber, as previously stated on page 10 of this report, the Legislative Auditor believes that this total renovation cost is potentially understated.

The largest category of expenditure for the renovations to Justice Workman's Chambers was flooring (32 percent). Table 11 shows the total dollar amount spent for each category of expenditure and the percent of the total.

Table 11

Breakdown of Renovation Expenditures for Justice Workman's Chambers

Expenditure Category	Amount	Percent of Total
Décor	$14,745	13.07%
Fixtures	$16,986	15.06%
Flooring	$35,605	31.57%
Furniture	$18,460	16.37%
Infrastructure	$22,034	19.54%
Painting	$4,950	4.39%
Total	**$112,780**	**100.00%**

Source: Legislative Auditor's analysis of renovation invoices provided by the Supreme Court.

Justice Loughry's Chambers

The total costs associated with the renovations to Justice Loughry's office total $367,915. This includes expenditures such as an $8,500 custom sofa upholstered for $23,000 totaling almost $32,000, a desk totaling $3,300, and approximately $20,000 for chairs. The Legislative Auditor notes that only $4,481 of architectural or design service fees from Silling could potentially be attributed to the renovations to Justice Loughry's Chambers, but it is possible that this amount is higher. While it has been suggested by the Court's Director of Finance that this renovation project used these services extensively, any additional costs for such cannot be accurately attributed.

The largest expenditure categories for the renovations to Justice Loughry's Chambers were fixtures (36 percent) and infrastructure (29 percent). Table 12 shows the total dollar amount spent for each category of expenditure and the percent of the total.

Table 12 Breakdown of Renovation Expenditures for Justice Loughry's Chambers		
Expenditure Category	**Amount**	**Percent of Total**
Décor	$18,552	5.04%
Fixtures	$131,068	35.62%
Flooring	$35,445	9.63%
Furniture	$67,411	18.32%
Infrastructure	$107,539	29.23%
Painting	$7,900	2.15%
Total	**$367,915**	**100.00%**
Source: Legislative Auditor's analysis of renovation invoices provided by the Supreme Court.		

Justice Davis's Chambers

The total costs for the renovations to Justice Davis's Chambers total $503,668. Justice Davis's Chambers renovations cost more than any other Capitol renovation project undertaken by the Court and includes expenditures such as $8,000 for a chair, $22,000 for flooring and tile work, and $28,000 for a pair of rugs.

The largest categories of expenditures for the renovations to Justice Davis's Chambers are fixtures (38 percent) and infrastructure (35 percent), which includes over $56,000 for glass countertops. Table 13 shows the total dollar amount spent for each category of expenditure and the percent of the total.

Table 13 Breakdown of Renovation Expenditures for Justice Davis's Chambers		
Expenditure Category	**Amount**	**Percent of Total**
Décor	$85,454	16.97%
Fixtures	$192,250	38.17%
Flooring	$22,160	4.40%
Furniture	$16,950	3.37%
Infrastructure	$177,900	35.32%
Painting	$8,955	1.78%
Total	**$503,668**	**100.00%**
Source: Legislative Auditor's analysis of renovation invoices provided by the Supreme Court.		

Other Renovation Projects Undertaken by the Court Had a Combined Total Cost of $1,464,369.

In addition to the renovations to the Justices' Chambers, the Legislative Auditor also analyzed the invoice documents for other renovation projects undertaken by the Court to its office spaces and facilities at the Capitol. The sections below provide a more detailed analysis of each project.

3rd Floor Women's Restroom

The Court spent a total of $77,725 to renovate the public women's restroom on the third floor of the Capitol's East Wing. The majority of this cost is attributable to infrastructure costs (59 percent). Table 14 provides a breakdown of the renovation costs by expenditure category.

Table 14

Breakdown of Renovation Expenditures for the 3rd Floor Women's Restroom

Expenditure Category	Amount	Percent of Total
Décor	$896	1.15%
Equipment	$1,234	1.59%
Fixtures	$15,256	19.63%
Furniture	$1,263	1.62%
Infrastructure	$45,747	58.86%
Miscellaneous	$10,095	12.99%
Painting	$3,234	4.16%
Total	**$77,725**	**100.00%**

Source: Legislative Auditor's analysis of renovation invoices provided by the Supreme Court.

1st Floor Hallway

The Court spent $79,145 on renovations and upgrades to the lighting fixtures in the first-floor hallway of the East Wing. In addition, the Court paid $47,570 (60 percent) of the total renovation costs to have the marble walls cleaned and polished. Table 15 provides a breakdown of the renovation costs by expenditure category.

Table 15 Breakdown of Renovation Expenditures for the 1st Floor Hallway		
Expenditure Category	**Amount**	**Percent of Total**
Architect	$12,915	16.32%
Décor	$47,570	60.11%
Fixtures	$10,500	13.27%
Labor	$1,983	2.51%
Materials	$3,437	4.34%
Miscellaneous	$2,146	2.71%
Printing	$319	0.40%
Travel	$275	0.35%
Total	**$79,145**	**100.00%**
Source: Legislative Auditor's analysis of renovation invoices provided by the Supreme Court.		

The Courtroom

The Court spent a total of $162,596 to renovate the Courtroom from December 2010 through February 2013. The majority of these costs are attributable to flooring, for which the Court paid $143,017. Table 16 provides a breakdown of the renovation costs by expenditure category.

Table 16 Breakdown of Renovation Expenditures for the Courtroom		
Expenditure Category	**Amount**	**Percent of Total**
Architects	$216	0.13%
Décor	$3,548	2.18%
Flooring	$143,017	87.96%
Furniture	$5,260	3.24%
Infrastructure	$3,625	2.23%
Painting	$6,931	4.26%
Total	**$162,596**	**100.00%**
Source: Legislative Auditor's analysis of renovation invoices provided by the Supreme Court.		

The Justices' Conference Room

The Court spent $300,350 to renovate the Justices' Conference Room beginning in 2009. This included $18,000 for a cabinet to house a 55" flat panel television, approximately $20,000 for a custom bookcase, and over $34,000 for a conference room table. The largest expenditure category for this renovation project was for furnishings (42 percent). Table 17 provides a breakdown of the renovation costs by expenditure category.

Table 17 Breakdown of Renovation Expenditures for the Justices' Conference Room		
Expenditure Category	**Amount**	**Percent of Total**
Appliances	$11,998	3.99%
Décor	$24,043	8.00%
Fixtures	$26,247	8.74%
Flooring	$23,786	7.92%
Furniture	$125,044	41.63%
Infrastructure	$42,360	14.10%
Miscellaneous	$28,001	9.32%
Painting	$18,871	6.28%
Total	**$300,350**	**100.00%**
Source: Legislative Auditor's analysis of renovation invoices provided by the Supreme Court.		

The Common Area

The Court spent $324,509 to renovate its common area between 2009 and 2014. The vast majority of these costs, $216,593, (67 percent) were billed to the Court through a change order by Neighborgall Construction. The Legislative Auditor determined that the supporting documentation for this payment provides no details other than attributing the dollar amount to *"additional cost for renovation of 3rd floor Hallway Renovation* [sic]*."* The change order references a number of "Drawing Sheets" wherein additional details were supposed to be included, but the Legislative Auditor has not received copies of any "Drawing Sheets." Table 18 provides a breakdown of the renovation costs by expenditure category.

Table 18 Breakdown of Renovation Expenditures for the Court's Common Area		
Expenditure Category	**Amount**	**Percent of Total**
Décor	$76,881	23.69%
Fixtures	$1,453	0.45%
Flooring	$19,491	6.01%
Infrastructure	$224,910	69.31%
Miscellaneous	$1,774	0.55%
Total	**$324,509**	**100.00%**
Source: Legislative Auditor's analysis of renovation invoices provided by the Supreme Court.		

The Chief Counsel's and Clerk's Offices

As mentioned above, the Legislative Auditor has received and analyzed some of the renovation costs associated with the Chief Counsel's Office and the Clerk's Office but has not yet

been provided full documentation by the Court. All of the information reviewed relates to architectural, design, or construction services. The Court spent at least $90,279 to renovate the Chief Counsel's Office and at least $282,793 to renovate the Clerk's Office. Tables 19 and 20 provide a breakdown of the known renovation costs to the Chief Counsel's Office and the Clerk's Office, respectively.

Table 19

Breakdown of Known Renovation Expenditures for the Chief Counsel's Office

Expenditure Category	Amount	Percent of Total
Bidding & Negotiations	$2,409	2.67%
Construction Administration	$28,529	31.60%
Design Development	$19,518	21.62%
Expenses not in contract	$2,761	3.06%
Schematic Design	$37,063	41.05%
Total	**$90,279**	**100.00%**

Source: Legislative Auditor's analysis of renovation invoices provided by the Supreme Court.

Table 20

Breakdown of Known Renovation Expenditures for the Clerk's Office

Expenditure Category	Amount	Percent of Total
Construction Administration	$25,115	8.88%
Construction Documents	$65,894	23.30%
Consultant Services	$60,047	21.23%
Design Development	$95,010	33.60%
Schematic Design	$36,728	12.99%
Total	**$282,793**	**100.00%**

Source: Legislative Auditor's analysis of renovation invoices provided by the Supreme Court.

There is Not Sufficient Invoice Detail to Determine the Nature of the Work or, In Some Cases, Where the Work Was Performed for Approximately $522,000 of Renovation Expenses.

In addition to the renovation projects detailed earlier, the Court also renovated the public men's restroom on the third floor of the East Wing, the East Wing Elevators, and the "Saferoom". However, the invoice documentation provided for these renovation projects does not list any details about what work was performed. When the total costs associated with these renovation projects are added together with the unattributable Silling invoices, the Legislative Auditor determined that the Court paid nearly $522,000 in renovation costs for which it has incomplete or

insufficiently detailed invoice documentation. Table 21 provides a breakdown of the total renovation costs of these projects.

Table 21

Total Renovation Expenditures Without Detailed Invoice Documentation

Renovation Project	Amount
Silling Associates Inc.	$374,571
"Saferoom"	$98,513
3rd Floor Men's Restroom	$38,887
Elevator Upgrades	$9,572
Total	**$521,543**

Source: Legislative Auditor's analysis of renovation invoices provided by the Supreme Court.

Issue 2 Conclusion

Because of the insufficient invoice detail for the $521,543 spent to renovate a number of the Court's Capitol facilities, **the Legislative Auditor is unable to provide analysis for approximately 15 percent of the total renovation costs incurred by the Court at the Capitol Complex.**

The Legislative Auditor plans to continue to evaluate the cost of the Court's renovations at its City Center East facility in Kanawha City, its leased spaces on Quarrier Street in downtown Charleston, and the remainder of the Court's renovations at the Capitol Complex. The results of those analyses will be provided in a future report.

Issue 3: Between 2009 and 2017, the Chief Justices of the Supreme Court of Appeals of West Virginia Allowed 10 Senior Status Judges in the Judicial Retirement System to Exceed the Statutory Compensation Cap 20 Times for a Total of $271,000.

During the ongoing audit of the Court, the Legislative Auditor became aware of an audit conducted by the Internal Revenue Service (IRS). In April 2017, the IRS began conducting an audit of the Court's 2015 federal employment tax returns. The scope of the audit covered the Court's payroll processes and procedures, travel reimbursements and related policies, payments to independent contractors, educational reimbursements, and the classification of employees.

One of the findings of the IRS audit dealt with the Court inappropriately designating certain employees, including Senior Status Judges, as independent contractors. The audit, which concluded in January 2018, resulted in the Court paying a settlement to the IRS totaling $227,541 in relation to eight notices of adjustment for workers inappropriately classified by the Court as independent contractors, in 2015 - the only year covered by the IRS audit, who should have been treated as employees for tax purposes. Based upon other concerns, beyond issues of state and federal taxes, the Legislative Auditor directed the Post Audit Division to conduct an audit of the Court's practice of designating certain employees as independent contractors.

The Legislature Authorized the Court, by Statute, to Empanel a Slate of Retired Judges to Serve as Senior Status Judges to Fill in for Active Judges, as Needed.

In 1991, the Legislature authorized the Court to create a panel of retired judges admitted to senior status from retired circuit judges and Supreme Court Justices. These Senior Status Judges serve as temporary replacements in circuit courts throughout the State when an active Circuit Judge is absent from duty or caseloads necessitate the services of these Senior Status Judges. The Court was required to promulgate rules governing the eligibility, compensation, and assignment of these judges.

Subsequently, the Court issued an Administrative Order, entered on June 9, 1991, governing Senior Status Judges, a copy of which can be found in Appendix C. In establishing eligibility, the Court's order indicates that to qualify for senior status, one must:

- be receiving benefits under the Judicial Retirement System pursuant to W.Va. Code, Chapter 51, Article 9; or
- meets one of the following criteria:
    - served in the judicial office with the eligibility equivalency for judicial retirement under W.Va. Code, Chapter 51, Article 9, but retires under Public Employees Retirement System pursuant to W.Va. Code, Chapter 5, Article 10;
    - has served in the judicial office for one full term and retires at the end of that term under the Public Employees Retirement System; or
    - has served in the judicial office for more than one full term and subsequently receives benefits under the Judicial Retirement System or the Public Employees Retirement System.

Additionally, the judge must be a bona fide resident of the State of West Virginia and is prohibited from being engaged in a substantial law practice (e.g., association with a law firm or

full-time law practice). Limited law practice would disqualify a retired judge admitted to senior status from assignment to duty in any circuit where he or she engages in practice. Furthermore, to qualify for senior status, a judge or justice must agree, in advance, to comply with the provisions of the Rule on Retired Judges Admitted to Senior Status as promulgated by the above Administrative Order.

Senior Status Judges Receive a $435 Per Diem for Their Service but Are Prohibited by Statute from Making More Than Active Circuit Court Judges.

When the system of senior status for retired judges was established in 1991, the Court set compensation rates for Senior Status Judges on a per diem basis. The initial per diem rate was $200. There were subsequent raises to $225 in 1995, $300 in 2000, $350 in 2007, and $400 in 2010. Effective July 1, 2011, the per diem rate was raised to $435. For service rendered in a judge's circuit of residence, judges must bill in half-day increments ($217.50). In addition, Senior Status Judges are entitled to receive reimbursement for necessary and related travel and/or other necessary expenses.

The Court's 1991 order also established a compensation cap for Senior Status Judges. While the Court wanted to incentivize retired judges to accept these appointments to senior status, neither the Court, nor the Legislature, desired for retired judges to earn more than active Circuit Court Judges. Therefore, the court established a compensation cap and wrote, "… *the per diem and retirement compensation of a retired judge, admitted to senior status shall not exceed the salary of a sitting judge*."

W.Va. Code §51-9-10 mirrors the Court's 1991 Administrative Order on *Retired Judges Admitted to Senior Status* by indicating, "…the per diem and retirement compensation of a senior judge shall not exceed the salary of a sitting judge..." The salaries for judges are set by the Legislature in statute. W.Va. Code §51-2-13 sets the salary of a sitting Circuit Court Judge. From July 1, 2005 until July 1, 2011 the annual salary was $116,000. Since July 1, 2011, it has been set at $126,000. Therefore, the cap established by statute for a Senior Status Judge participating in the Judges Retirement System was $116,000 prior to July 1, 2011 and $126,000 after that date. Any judge serving as a Senior Status Judge whose combined compensation and retirement benefits reaches the cap is required to cease receiving their monthly retirement annuity or forego additional assignment or compensation as a Senior Status Judge.

The Legislative Auditor Reviewed All Senior Status Judges Appointed by the Court from 2009 Through 2017.

The Legislative Auditor requested that the Court provide a list of all Senior Status Judges from 2009 through 2017, a copy of which can be found in Appendix D. The Legislative Auditor determined that over this 9-year period, 34 judges had been appointed to senior status. The Legislative Auditor's analysis shows that 16 judges were appointed five or more times over this period. This includes six judges who have been appointed every year since 2009. Table 22 provides a breakdown of these appointments.

The Legislative Auditor reviewed the Court's handling of Senior Status Judges appointed between 2009 and 2017. Based upon an analysis of these appointments, as well as the compensation and retirement benefits for each respective judge, the Legislative Auditor identifies the following issues:

1. The Court has allowed certain Senior Status Judges to receive compensation in excess of the statutory limit set in W. Va. Code for Judges also receiving retirement benefits.
2. From 2012 to 2016, the Court engaged in a practice of converting some Senior Status Judges from employees to independent contractors to enable them to continue to receive full retirement benefits after they were no longer eligible for those benefits as a result of exceeding the statutory compensation cap.
3. Although the Court ceased the practice of converting employees to independent contractor status in 2017, certain Senior Status Judges are still being allowed to exceed the statutory compensation cap.

The Legislative Auditor obtained the annual retirement annuity amount for each Senior Status Judge from the West Virginia Consolidated Public Retirement Board (CPRB). The retirement benefits received by each Judge from 2009 through 2017 were then added to the total per diem compensation for their service as a Senior Status Judge to determine if the statutory cap on allowable compensation had been exceeded.

Of the 34 Senior Status Judges from 2009 to 2017, 10 judges (29 percent) were paid in excess of the cap, and six (17 percent) were paid over the cap on more than one occasion. This includes Judge Thomas Keadle who exceeded the cap for three consecutive years from 2013 through 2015, and Judge John Henning who exceeded the cap three out of four years between 2013 and 2016. Table 22 provides a breakdown of judges who exceeded the statutory compensation cap and the amount by which it was exceeded.

Table 22 Breakdown of Judges Who Exceeded the Statutory Compensation Cap		
Judge's Name	Year	**Overpayment**
John L. Cummings	2011	$942
John L. Cummings	2014	$10,976
Fred L. Fox	2011	$13,773
Andrew N. Frye	2012	$1,995
John L. Henning	2013	$23,818
John L. Henning	2015	$783
John L. Henning	2016	$10,551
John S. Hrko	2016	$3,953
Thomas H. Keadle	2013	$27,962
Thomas H. Keadle	2014	$24,518
Thomas H. Keadle	2015	$21,570
Arthur M. Recht	2012	$278
James J. Rowe	2016	$7,033
James J. Rowe	2017	$55,064
Larry V. Starcher	2012	$9,930
Larry V. Starcher	2013	$9,930
Thomas W. Steptoe	2012	$35,925
Thomas W. Steptoe	2014	$12,000
	Total	**$271,000***

Source: *Legislative Auditor's calculations based upon wage earnings from WV State Auditor's Office My App1 and retirement benefit amounts provided by CPRB.*

**Difference due to rounding.*

In 2011, two judges' total retirement plus compensation exceeded $121,000[2] by a total amount of $14,715, all reported on a W-2. On July 1, 2011 the allowable compensation went from $116,000 to $126,000. For calendar year 2011, for purposes of analysis, the total allowable compensation was prorated to $121,000. This compensated for half a year at $116,000 and half at $126,000. From 2012 to 2017, nine judges received a combination of retirement benefits and compensation in excess of the statutory cap of $126,000. These nine judges exceeded the cap a combined 16 times by a total of $256,286. Table 23 displays each instance of overpayment from 2009 through 2017 and whether such compensation was reported as W-2 or 1099 income.

[2] On July 1, 2011, the total compensation of Circuit Court Judges was increased by $10,000 to $126,000. Since this occurred mid-calendar year, we allocated 50%, or $5,000, of this increase to the retirement cap as our analysis is on a calendar year basis.

Table 23 Instances of Overpayment from 2009-2017							
#	Year	Retirement Benefits	W-2 Wages	1099 Wages	Total Wages	Limit	Overpayment
1	2011	$84,127	$37,815	---	$121,942	$121,000*	$942
2	2011	$90,750	$44,023	---	$134,773	$121,000*	$13,773
3	2012	$94,500	$27,840	$5,655	$127,995	$126,000	$1,995
4	2012	$86,625	$39,653	---	$126,278	$126,000	$278
5	2012	$102,000	$33,930	---	$135,930	$126,000	$9,930
6	2012	$94,500	$30,668	$36,758	$161,925	$126,000	$35,925
7	2013	$84,133	$30,233	$35,453	$149,818	$126,000	$23,818
8	2013	$86,625	$40,367	$26,970	$153,962	$126,000	$27,962
9	2013	$102,000	$33,930	---	$135,930	$126,000	$9,930
10	2014	$87,603	$38,280	$11,093	$136,976	$126,000	$10,976
11	2014	$94,500	$29,918	$26,100	$150,518	$126,000	$24,518
12	2014	$94,500	$26,970	$16,530	$138,000	$126,000	$12,000
13	2015	$84,133	$31,320	$11,330	$126,783	$126,000	$783
14	2015	$94,500	$31,320	$21,750	$147,570	$126,000	$21,570
15	2016	$84,133	$30,450	$21,968	$136,551	$126,000	$10,551
16	2016	$94,500	$35,453	---	$129,953	$126,000	$3,953
17	2016	$78,750	$54,283	---	$133,033	$126,000	$7,033
18	2017	$94,500	$86,565	---	$181,065	$126,000	$55,065

*Source: Legislative Auditor's calculations based upon wage earnings from WV State Auditor's Office My Apps and retirement benefit amounts provided by CPRB. *$10,000 Increase to JRS Limit on July 1, 2011, $5,000 (50%) of the increase applied to 2011 calendar year.*

The Legislative Auditor noted that in six of the instances between 2012 and 2016, judges exceeded the compensation cap through W-2 wages in the total amount of $86,189, but the other ten instances included compensation received through both a W-2 and a 1099. These ten instances resulted in judges exceeding the cap by a combined total of $170,098.

The Legislative Auditor observed that in each of the years reviewed, only a small number of Senior Status Judges exceeded the compensation cap. The vast majority of Senior Status Judges were below the statutory cap. Table 24 compares the total number of Senior Status Judges appointed by the Court from 2009 through 2017 with the number who exceeded the cap.

Table 24
Number of Senior Status Judges Who Exceeded Statutory Limits by Year

Year	Number of Judges Appointed to Senior Status	Number Exceeded Statutory Limit
2009	17	0
2010	14	0
2011	15	2
2012	14	4
2013	16	3
2014	17	3
2015	21	2
2016	18	3
2017	17	1

Source: Legislative Auditor's calculations based upon wage earnings obtained from WV State Auditor's MyApps and retirement benefit amounts provided by CPRB.

During the time of these overpayments, other Senior Status Judges were well below the cap and would not have been in excess of the sitting judge's salary if they had been selected to fill the same appointment. In each of the years reviewed, the Legislative Auditor determined that there were at least ten judges who did not exceed the cap.

The Legislative Auditor conducted an analysis of the remaining unused eligibility days for each year's panel of Senior Status Circuit Court Judges. The Legislative Auditor calculated the total dollar amount below the cap for each year's panel of judges and divided the total by the per diem compensation rate of $435. Based on this analysis, the Legislative Auditor determined that the Court's panel of Senior Status Judges retained between 233 and 1042 combined days of unused eligibility in the same year another judge was allowed to exceed the compensation cap. Table 25 provides a breakdown of the total unused eligible days in each year where the cap was exceeded.

Table 25 Average Number of Days Other Senior Status Judges Were Available				
Year	**Number of Judges Under Statutory Limit**	**Total Amount Under Statutory Limit**	**Ave. Number of Available Days**	**Total Eligible Days**
2011	13	$302,706	54	696
2012	10	$101,177	23	233
2013	13	$163,360	29	376
2014	14	$156,604	26	365
2015	19	$275,214	33	633
2016	15	$269,739	41	620
2017	16	$453,105	65	1042

Source: Legislative Auditor's calculations based upon wage earnings from WV State Auditor's Office My Apps and retirement benefit amounts provided by CPRB.

In addition to the unused days which accumulated among the Senior Status Judges, there have been other avenues open to the Court to assure the statewide continuity of judicial services. The June 9, 1991 Administrative Order by the Court states the following:

> Section(e) Assignment of Duty subsection (4)
>
> *Nothing in this rule shall preclude the recall or assignment to active judicial service of any retired judge or justice who has not been admitted to senior status but who agrees to serve,…*

This provides an additional population from which the Court may secure coverage, assuming there is no one in the Senior Status Judge pool who would be willing to cover a particular jurisdiction.

It is also within the purview of the Court under the State Constitution, Article VII, Section 3, to be able to assign a judge from one circuit court to another for temporary service.

In 2012, the Court Began Converting Senior Status Judges from Employees to Independent Contractors When Exceeding the Statutory Compensation Cap.

The Legislative Auditor determined that between 2009 and 2011, the judges who exceeded the compensation cap set in West Virginia Code did so through wages earned as an employee of the Court, whose wages were reported on a W-2 form. Beginning in 2012, however, the Court began the practice of converting these judges from employees to independent contractors.

The Legislative Auditor conducted an interview with the Director of Finance Division with the Court. She indicated that the practice of converting Senior Status Judges from W-2 employees to independent contractors was in place prior to the start of her employment with the Court. According to the Director, **the Court's Payroll Division and the recusal assistant actively monitored the accumulated compensation for judges and initiated the conversion when they were at the statutory cap.** She stated that the Payroll Division would notify the recusal administrative assistant when a judge was about to exceed the allowable level of compensation, triggering the conversion from employee to independent contractor.

For Senior Status Judges nearing the salary of a sitting judge, the Chief Justice and the Senior Status Judge signed a WV-48 form from the State of West Virginia Purchasing Division which theoretically changed the Senior Status Judge from an employee to an independent contractor. However, as found by the IRS audit, these individuals were not independent contractors and were in fact still employees of the Court. Importantly, the Legislative Auditor notes that the Senior Status Judges received the same per diem as independent contractors as they did when they were treated as employees.

The judges received a letter explaining the theoretical transition from employee to independent contractor, a copy of which can be found in Appendix E. A letter to one judge in 2013 began:

> *Enclosed is a copy of the Independent Contractor Agreement. I have given the original to . . . the Director of Financial Services.*
>
> *Your "retirement" allowed per diem may run out on May 7th, depending on your work days. Thereafter, please submit an invoice for your $435 per diem for your service after May 7, 2013 directly to* [the Director of Financial Services].

From 2012 to 2017, the Legislative Auditor identified ten instances in which the conversion to independent contractor status allowed a Senior Status Judge to exceed the statutory compensation cap. Table 26 provides a breakdown of each judge who received wages reported on a 1099 when exceeding the cap, the amount of those 1099 wages in excess of the cap, and the number of occurrences.

Table 26
Number of Appointments by Judge (2009-2017)

Last Name	First Name	Times in Which 1099 Wages Received in Excess of Cap	Total Amount Over Cap
Henning	John L.	3	$35,152
Keadle	Thomas H.	3	$74,050
Steptoe	Thomas W.	2	$47,925
Cummings	John L.	1	$10,976
Frye	Andrew N.	1	$1,995

Source: Legislative Auditor's calculations based upon wage earnings obtained from the WV State Auditor's MyApp1 and retirement benefit amounts provided by CPRB.

The Court's Director of Finance indicated that it was common knowledge that the Court engaged in this practice to get around the statutory cap and allow a Senior Status Circuit Court Judge to continue to receive their retirement while serving. Quoting the Director of the Division of Finance, ***"I was told so they would not stop receiving their pension"***. The Director of the Finance Division indicated that each time a Senior Status Judge was changed from an employee to an independent contractor, a WV-48 form was executed.

While this practice of allowing Senior Status Judges to exceed compensation limits established by statute seems to have been common knowledge of both the Court and the judges, it should not be assumed that this practice was never questioned or considered improper. The Director of the Court's Division of Finance informed the Legislative Auditor that Justice Thomas McHugh, when presented with compensation for services rendered as a Senior Status Judge appointed by the Supreme Court to fill Justice Joseph Albright's unexpired term, immediately returned the payments that were in excess of the limit. She indicated that Justice McHugh thought that it was wrong to accept the payments while continuing to receive retirement benefits, indicating that at least one judge was aware of the limits established and that the practice of being paid in excess of those limits was not proper.

The Court continued the theoretical conversion these employees to independent contractors until the IRS audit. Prior to the release of the IRS audit, then-Chief Justice Allen Loughry entered an Administrative Order dated, May 19, 2017, in which he attempted to legitimize the Court's practice of allowing Senior Status Judges to exceed the statutory cap. Chief Justice Loughry invoked the administrative authority granted to the Court in the Constitution claiming that:

> *…in certain exigent situations involving protracted illness, lengthy suspensions due to ethical violations, or other extraordinary circumstances, it is impossible to assure statewide continuity of judicial services without exceeding the payment limitations imposed by the statutory proviso.*

After Justice Loughry's Administrative Order, the Court stopped converting Senior Status Judges from employees to independent contractors. As a result, the Court continued enabling these judges to receive compensation in excess of the statutory cap. In fact, one judge exceeded the cap by over $55,000 in 2017 through wages reported on a W-2. **The Legislative Auditor recommends that the Supreme Court of Appeals of West Virginia comply with West Virginia Code and cease all compensation in excess of the statutory limits.**

West Virginia Code Requires Both the Consolidated Public Retirement Board and the Retiree to Correct Overpayment of Benefits.

W.Va. Code §51-9-18 governs all instances of overpayments, underpayments, and the corrections of errors that may arise under West Virginia's judicial retirement systems. W. Va. Code §51-9-18(e) states:

> *… If any error results in any member, retirant, beneficiary, entity or other individual receiving from the system more than he would have been entitled to receive had the error not occurred the board, upon learning of the error, shall correct the error in a timely manner.*
>
> *If correction of the error occurs after annuity payments to a retirant or beneficiary have commenced, the board shall prospectively adjust the payment of the benefit to the correct amount. In addition, the member, retirant, beneficiary, entity or other person who received the overpayment from the retirement system shall repay the amount of any overpayment to the retirement system in any manner permitted by the board.*

On August 21, 2018, the Legislative Auditor met with CPRB to discuss issues related to these Senior Status Judges. At the meeting, CPRB informed the Legislative Auditor that it was

never made aware of any issues concerning judges receiving compensation in excess of the statutory limit. As such, the Legislative Auditor concludes that no judge who exceeded the statutory compensation cap has notified CPRB and corrected the overpayment. **Therefore, the Legislative Auditor recommends that the judges who received compensation in excess of the statutory cap between 2009 and 2017 and the Consolidated Public Retirement Board comply with W. Va. Code §51-9-18 and correct all issues of overpayment.**

Issue 3 Conclusion

The Supreme Court of Appeals of West Virginia serves a critical governmental function as the final interpreter, arbiter, and upholder of the law in the State. As such, the Court should exercise great care to ensure that it operates within the confines of those laws. While arguments can and have been made with respect to the legality of the Court's practice of allowing Senior Status Judges to exceed West Virginia Code's compensation caps, the IRS audit made clear that the Court's conversion of employees to independent contractor status ran afoul of federal tax law. This error, and others, on the Court's part cost the State upwards of $200,000. What cannot be quantified is the extent to which these potential violations of the law diminish the public's confidence in its judiciary.

Further, it is the opinion of the Legislative Auditor that circumvention of State law, even where legally permissible, should be a matter of last resort rather than a matter of convenience. While the Administrative Order issued by then-Chief Justice Loughry argues that it was necessary to allow Senior Status Judges to exceed the statutory limits, the Legislative Auditor questions whether it was truly necessary "to assure statewide continuity of judicial services" when the Court's panel of Senior Status Judges retained **hundreds of unused days of eligibility each year.**

The Post Audit Division plans to continue its evaluation of the Court's use of independent contractors and other Senior Status Judges (such as Magistrate and Family Court Judges). These issues will be presented to the Post Audits Subcommittee at a future interim meeting.

Recommendations

3.1 The Legislative Auditor recommends that the Supreme Court of Appeals of West Virginia comply with West Virginia Code and cease all compensation in excess of the statutory limits.

3.2 The Legislative Auditor recommends that the Judges who received compensation in excess of the statutory cap between 2009 and 2017 and the Consolidated Public Retirement Board comply with W. Va. Code §51-9-18 and correct all issues of overpayment.

Appendices

Appendix A

WEST VIRGINIA LEGISLATIVE AUDITOR'S OFFICE

Post Audit Division

1900 Kanawha Blvd. East, Room W-329
Charleston, WV 25305-0610
(304) 347-4881

Justin Robinson
Director

August 31, 2018

Barbara H. Allen, Interim Administrative Director
Supreme Court of Appeals of West Virginia
Capitol Complex
1900 Kanawha Blvd., East
Bldg. 1, Room E-100
Charleston, WV 25305-0830

Dear Ms. Allen:

This letter is to transmit a draft copy of the Post Audit Division's fourth report on the Supreme Court of Appeals of West Virginia. This report will be released and issued on September 10, 2018. Members of the Post Audits Subcommittee will receive the report on that date and it will also be released to the public through the Legislature's website. While it is still uncertain, it is likely that the September interim meetings of the Legislature will still occur. It is our anticipation that if they are held, the Post Audits Subcommittee will meet at 1:00 pm on Sunday, September 16, 2018 in the Senate Finance Committee room, 451-M. This report will be presented to the Committee at that meeting, and a representative from the Court is asked to be in attendance to respond to the report should the Committee members have any questions.

We would also like to extend the invitation to hold an exit conference to discuss the report, and any concerns the Court may have. Please contact Nathan Harris, Assistant to the Director at 304-347-4880 as soon as possible to schedule this meeting to occur prior to the end of next week. In addition, if the Court wishes to provide a formal response to this report to be included in the final print copy, we ask that it be provided to us by 12:00 pm on Friday, September 7th, 2018. Thank you for your cooperation, and please contact us if you have any questions or concerns.

Sincerely,

Justin Robinson, Director

Enclosure

cc. Justices of the Supreme Court of Appeals of West Virginia
Sarah B. Massey, Esq. Associate Administrative Counsel

WEST VIRGINIA LEGISLATURE
Joint Committee on Government and Finance

1900 Kanawha Blvd. East, Room E-132
Charleston, WV 25305-0610
(304) 347-4800
(304) 347-4819 FAX

Aaron Allred
Legislative Manager

September 5, 2018

Barbara H. Allen, Interim Administrative Director
Supreme Court of Appeals of West Virginia
Capitol Complex
1900 Kanawha Blvd., East
Bldg. 1, Room E-100
Charleston, WV 25305-0830

Dear Ms. Allen:

This letter is to transmit a revised draft copy of the Post Audit Division's fourth report on the Supreme Court of Appeals of West Virginia. Based on our conversation with Chief Justice Workman, we have revised the total cost of renovations to her chambers from $163,127 to $117,818. The draft previously provided was done so to inform the Court of the issues contained in the report prior to its release. Unfortunately, due to the anticipated release date of the report being less than two weeks away, this draft was provided prior to it going through our internal review process that would normally have caught such an error, which in this case resulted from a miscalculation. The copy of the report currently being provided with this letter has also yet to be fully subjected to this review process, which is currently ongoing. However, as part of our effort to keep the Court informed and be transparent in our process, we felt it prudent to provide this draft correcting the error noted by the Chief Justice as well as an issue noted in your September 4, 2018 letter. Significant changes made in this draft are provided in a listing also enclosed with this letter. Once this report has been fully reviewed and revised, a final draft version will be submitted to the Court for its inspection.

After much consideration, the Legislative Auditor has determined it best to release this report prior to our scheduled exit conference on September 12, 2018. We encourage the Court to contact us with any issues or concerns related to this draft report prior to its release, which we anticipate being Friday, September 7, 2018. Any issues brought to our attention prior to Noon on Friday, September 7, 2018 will be addressed in the report prior to its release. Any issues after that time will be addressed through a corrected version of the report after its release. Thank you for your cooperation and attention to the matter, and please contact us should you have any questions or concerns.

Sincerely,

Justin Robinson

Enclosure

Cc: Justices, Supreme Court of Appeals of West Virginia
Sarah B. Massey, Esq., Associate Administrative Counsel

Objective, Scope, and Methodology

The Post Audit Division within the Office of the Legislative Auditor conducted this review as authorized by Chapter 4, Article 2, Section 5 of the *West Virginia Code*, as amended.

Objectives

The objectives of this review were to:

- Provide a detailed breakdown of the Court's spend down of approximately $29 million in reappropriated General Revenue Funds between FY 2012 and 2015;
- Provide a detailed breakdown of the renovation costs for all renovation projects undertaken by the Court at the State Capitol Complex; and
- Determine to what extent the Court's practice of using Senior Status Circuit Court Judges is appropriate and in compliance with West Virginia Code.

Scope

The scope of this review consists of the all documentation regarding the Court's renovation projects at the Capitol building, which encompasses thousands of individual invoices. In addition, the scope consists of the line-item budget amounts for each year from FY 2012 through FY 2015. For Issue 3, the scope consists of reviewing the Senior Status Circuit Court Judge appointments made by the Court and the compensation and retirement annuity benefits paid to each judge from 2009 through 2017.

Methodology

Post Audit staff gathered and analyzed several sources of information and assessed the sufficiency and appropriateness of the information used as evidence. Testimonial evidence was gathered through interviews with various agencies that oversee, collect, or maintain information. The purpose for testimonial evidence was to gain a better understanding or clarification of certain issues, to confirm the existence or non-existence of a condition, or to understand the respective agency's position on an issue. Such testimonial evidence was confirmed by either written statements or the receipt of corroborating or physical evidence.

Audit staff analyzed various source documents that were either provided to us by the Court, or publicly available through wvOASIS. In addition, information was obtained using the Legislature's Impeachment Proceedings webpage, and information provided by the Consolidated Public Retirement Board.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix C

Number of Appointments by Judge (2009-2017)	
Judge	**Number of Appointments**
Henning	9
Hrko	9
Starcher	9
Steptoe	9
Stone	9
Vickers	9
Chafin	8
Cummings	8
Frye	8
Holliday	8
Jolliffe	7
Keadle	5
Recht	6
Fox	5
Knight	5
McHugh	5
Pomponio	4
Perry	3
Rowe	2
Canady Jr.	2
Cookman	2
Gaughan	2
Jordan	2
Taylor	2
Zakaib	2
Cline	1
Egnor Jr.	1
Halbritter	1
Hott	1
Madden	1
O'Hanlon	1
Schlaegel	1
Pancake	1
Marks	1
Source: List of Senior Status Judges provided to the Legislative Auditor, by the Court.	

SUPREME COURT OF APPEALS OF WEST VIRGINIA

ADMINISTRATIVE ORDER

RULE ON RETIRED JUDGES ADMITTED TO SENIOR STATUS

WHEREAS, The Supreme Court of Appeals has been authorized and empowered to create a panel of retired judges admitted to senior status from among former circuit judges and Supreme Court justices of this State, and to promulgate rules providing for such judges and justices to be assigned duties as needed and as feasible;

IT IS THEREFORE ORDERED that there is hereby established, effective June 9, 1991, a system of senior status for retired judges, pursuant to W.Va. Code § 51-9-10.

(a) Eligibility.

(1) Former Judge or Justice. To qualify for senior status, one must: (A) be receiving benefits under the Judicial Retirement System pursuant to W.Va. Code, Chapter 51, Article 9; or (B) meets one of the following criteria: (i) served in the judicial office with the eligibility equivalency for judicial retirement under W. Va. Code, Chapter 51, Article 9, but retires under Public Employees Retirement System pursuant to W. Va. Code, Chapter 5, Article 10; (ii) has served in the judicial office for one full term and retires at the end of that term under the Public Employees Retirement System; or (iii) has served in the judicial office for more than one full term and

subsequently receives benefits under the Judicial Retirement System or the Public Employees Retirement System.

(2) Residence. To qualify and to remain qualified for senior status, one must be a bona fide resident of the State of West Virginia.

(3) Practice of Law. (A) Engagement in a substantial law practice (e.g., association with a law firm or full-time law practice) shall disqualify a retired judge or justice from eligibility for senior status. (B) Engagement in a limited law practice (e.g., no association with a law firm or part-time practice) shall not disqualify a retired judge or justice from eligibility for senior status, but shall disqualify a retired judge admitted to senior status from assignment to duty in any circuit where he or she engages in practice.

(4) Ethics Code. A judge admitted to senior status shall be bound by the prevailing canons of judicial ethics and by the prevailing rules on complaints against judges and justices.

(5) Training. Senior status judges are required to attend the judicial training conferences and will be reimbursed for expenses as active judges.

(6) Compliance with Rule. To qualify, a retired judge or justice must agree in advance to comply with the provisions of this rule.

(7) Other Considerations. The Supreme Court of Appeals may take into account such other considerations as it deems pertinent (i.e., age, health, etc.).

(b) Application. Application for senior status shall be submitted to the Administrative Director of the Supreme Court of Appeals, on the form prescribed by the Administrative Director. The applicant shall provide all the information called for by the form; Provided, however, that the Supreme Court may require the applicant to submit additional information. Application may be made within one year before the applicant's anticipated date of eligibility or at anytime after the applicant's date of eligibility.

(c) Admission; Oath; Revocation. Admission to senior status shall be a privilege; admission may granted or denied by the Supreme Court, in its discretion, acting in administrative conference and recording such action in an administrative order duly entered; admission may be for indefinite duration or temporary duration of a specified period. Before commencing service, a judge admitted to senior status shall take an oath of office, and file such oath with the Administrative Director. The Supreme Court may, for failure to comply with provisions of this rule or for incapacity, revoke senior status, by acting in administrative conference and recording such action in an administrative order duly entered.

(d) Change of Circumstances; Withdrawal. A judge admitted to senior status shall forthwith inform the

Administrative Director of any change of circumstances bearing on his or her senior judicial status, and may at anytime by written notice withdraw from senior status.

(e) Assignment to Duty.

(1) The Chief Justice may, by order duly entered, assign a judge admitted to senior status to such judicial duties in such courts as the Chief Justice deems appropriate and as consistent with applicable provisions of law.

(2) No retired judge admitted to senior status who has been defeated in an election for a circuit judgeship shall be assigned to duty in the circuit where he or she was defeated.

(3) All judges admitted to senior status are hereby generally assigned and empowered to perform marriages and to administer oaths in any county of this State.

(4) Nothing in this rule shall preclude the recall or assignment to active judicial service of any retired judge or justice who has not been admitted to senior status but who agrees to serve, all subject to any applicable rules or provisions of law.

(f) Financial Allowances.

(1) Per Diem. (A) Compensation for service by a judge admitted to senior status will be at the rate of $200 per day. (B) For service within the circuit of residence, service will be billable in half-day increments; for service outside the

circuit of residence, service will be billable in full-day increments. (C) Provided, however, that the per diem and retirement compensation of a retired judge, admitted to senior status shall not exceed the salary of a sitting judge.

(2) Expenses. Reimbursement for travel and/or other necessary expenses incurred during assigned service will be made according to the prevailing Supreme Court regulations.

(3) Allowances Form. Statements for per diem and expense allowances under subdivisions (1) and (2) of this subsection (g) must be submitted to and approved by the Administrative Director, on the form prescribed by the Administrative Director.

(4) Staff Support. Insofar as feasible, a judge admitted to senior status, while on assignment, must rely on the services of regular staff personnel of the court of assignment; Provided, however, that upon good cause shown and advance approval by the Administrative Director, a judge admitted to senior status may arrange, consistent with prevailing Supreme Court regulations, for temporary workers to provide secretarial and/or court-reporting services.

ENTER, this 15th day of November 1991.

Thomas B. Miller
CHIEF JUSTICE

SUPREME COURT OF APPEALS
STATE OF WEST VIRGINIA

STEVEN D. CANTERBURY
ADMINISTRATIVE DIRECTOR

ADMINISTRATIVE OFFICE
BUILDING 1, ROOM E-100
1900 KANAWHA BOULEVARD, E.
CHARLESTON, WV 25305-0832
(VOICE) 304/558-0145
(TTY) 304/558-4219
(FAX) 304/558-1212
www.state.wv.us/wvsca/

25 April 2013

Honorable John L. Henning
[redacted]

Dear Judge Henning:

Enclosed is a copy of the Independent Contractor Agreement. I have given the original to Sue Tory, the Director of Financial Services.

Your "retirement" allowed per diem may run out on May 7th, depending on your work days. Thereafter, please submit an invoice for your $435 per diem for your service after May 7, 2013 directly to Sue Tory. The invoice can be simply your name, home address, date of service (list each date of service separately), per diem amount and total. The total may help you to tract payments. Ms. Troy will be handling all contract payments. As an independent contractor, you may have to pay income tax directly to both the State and federal governments.

Please continue to submit your expenses of the Senior Status Allowance form to me. The expenses will continue to be processed in the same way.

I have not heard about any appointments by the Governor.

Thank you so much for continuing to serve. The Court appreciates your dedication and willingness to make sure that Justice is not delayed in the 26th Circuit.

Please let me know if you have any questions.

I am looking forward seeing at the Spring Judicial Conference.

Sincerely,

Kathleen S. Gross
Deputy Administrative Director

KSG/mg
Enclosure
cc: Sue Troy
Shannon Green

WV-13 (rev 10/04)

State of West Virginia
Purchasing Division

AGREEMENT

Purchase Order # _____ WVFIMS Account # _____

TEAM Vendor # _____ WVFIMS Vendor # 52003

I, Thomas W. Steptoe Jr. (Name and address) , agree to perform the following services

for WV Supreme Court of Appeals (Agency) at Charleston, WV (Location)

Senior Status Judge Thomas W. Steptoe Jr., pursuant to past and future assignments ordered by the WV Supreme Court of Appeals in Administrative Orders, is directed to preside as a temporary circuit judge in proceedings in, but not limited to, the Counties of Berkeley, Jefferson, Kanawha, Marion, Mercer, Morgan, and Randolph in the State of West Virginia. (Detailed description of services to be performed)

Date(s) of Service: from June 25, 2012 to December 31, 2012

The rate of pay shall be $436.00 per day

not to exceed $ $39,150.00 for the entire term of the contract.

Please check the appropriate box below:

☑ I am not currently a full-time employee of the State of West Virginia;

☐ I am currently a full-time employee of the State of West Virginia (complete certification below).

It is hereby certified that the services to be performed under this agreement will not interfere with or detract from the full-time duties of the employee and the amount of annual compensation received by _____ (above named vendor) from the State of West Virginia for full-time employment during the current fiscal year will be $ _____.

The vendor serves as _____ (Position) with the title of _____

certified by _____ (Supervisor's Signature)

HIPAA Business Associate Addendum – The West Virginia State Government HIPAA Business Associate (BAA), approved by the Attorney General, and available online at the Purchasing Division's web site (http://www.state.wv.us/admin/purchase/vrc/hipaa.htm) is hereby made part of the agreement. Provided that, the Agency meets the definition of a Covered Entity (45 CFR §160.103) and will be disclosing Protected Health Information (45 CFR §160.103) to the vendor.

APPROVED BY:

Agency WV supreme court

Menis E. Ketchum (Authorized Signature of Agency)

Chief Justice (Title)

June 27, 2012 (Date)

Vendor Thomas W. Steptoe Jr.

Thomas W. Steptoe Jr.

(Social Security or FEIN)

June 27, 2012 (Date)

WV-48 (rev 10/04)

State of West Virginia
Purchasing Division

AGREEMENT

Purchase Order # _____ WVFIMS Account # _____

TEAM Vendor # _____ WVFIMS Vendor # _____

I, Andrew N. Frye, Jr., _____, agree to perform the following services
(Name and address)

for WV Supreme Court of Appeals (Agency) at Charleston, WV. (Location)

Senior Status Judge Andrew N. Frye, Jr., pursuant to past and future assignments ordered by the WV Supreme Court of
(Detailed description of services to be performed)
Appeals in Administrative Orders, is directed to preside as a temporary circuit judge in proceedings in the Circuit Courts of WV.

Date(s) of Service: from August 1, 2012 to December 31, 2012

The rate of pay shall be $435.00 per day

Please check the appropriate box below:

☑ I am not currently a full-time employee of the State of West Virginia;

☐ I am currently a full-time employee of the State of West Virginia (complete certification below).

It is hereby certified that the services to be performed under this agreement will not interfere with or detract from the full-time duties of the employee and the amount of annual compensation received by _____ (above named vendor) from the State of West Virginia for full-time employment during the current fiscal year will be $ _____.

The vendor serves as _____ with the title of _____
(Position)

certified by _____.
(Supervisor's Signature)

HIPAA Business Associate Addendum – The West Virginia State Government HIPAA Business Associate (BAA), approved by the Attorney General, and available online at the Purchasing Division's web site (http://www.state.wv.us/admin/purchase/vrc/hipaa.htm) is herby made part of the agreement. Provided that, the Agency meets the definition of a Covered Entity (45 CFR §160.103) and will be disclosing Protected Health Information (45 CFR §160.103) to the vendor.

APPROVED BY:

Agency Supreme Court of Appeals of West Virginia

E. Kelley
(Authorized Signature of Agency)

Chief Justice
(Title)

August 6, 2012
(Date)

Vendor Andrew N. Frye, Jr.

Andrew N. Frye, Jr.

(Social Security or FEIN)

August 6, 2012
(Date)

WV-48 (rev. 06/08/12)

State of West Virginia
Purchasing Division

AGREEMENT

Purchase Order # _____ WVFIMS Account # 51746

TEAM Vendor # _____ WVFIMS Vendor # _____

I, Thomas H. Keadle, Senior Status Judge (Name and Address), agree to perform the following services for W.Va. Supreme Court (Agency) at as appointed, (Location) as of April 16, 2013, 22nd Judicial Circuit (Detailed description of services to be performed) as a Senior Status Judge.

Date(s) of Service: from April 16, 2013 to December 31, 2013.

The rate of pay shall be 435.00 per day not to exceed $ to be determined for the entire term of the contract.

NOTE: **Any anticipated travel must be incorporated into the vendor's fee. No travel will be reimbursed by the State and is the sole responsibility of the vendor. The following certification must be completed and signed if the vendor is a full-time employee of the State of West Virginia.**

Please check the appropriate box below:

☒ I am not currently a full-time employee of the State of West Virginia;

☐ I am currently a full-time employee of the State of West Virginia (complete certification below).

It is hereby certified that the services to be performed under this agreement will not interfere with or detract from the full-time duties of the employee and the amount of annual compensation received by _____ (above named vendor) from the State of West Virginia for full-time employment during the current fiscal year will be $ _____. The vendor serves as Senior Status Judge (Position) with the title of Senior Status Judge, certified by _____ (Supervisor's Signature).

GENERAL TERMS AND CONDITIONS: The General Terms and Conditions for Agency Delegated Master Terms and Conditions located on the Purchasing Division's website at *http://www.state.wv.us/admin/purchase/TCA.pdf*, ("Terms and Conditions") are hereby made a part of this agreement and are specifically incorporated herein by reference. By signing this agreement, Vendor certifies that it has reviewed the Terms and Conditions, fully understands them, and agrees to be bound by their provisions.

APPROVED BY:

Agency: Brent Benjamin, C.J.
Brent D. Benjamin (Authorized Signature of Agency)
Chief Justice (Title)
4/11/2013 (Date)

Vendor: Thomas H. Keadle
Senior Status Judge
Thomas H. Keadle (Vendor's Signature)
(Social Security or FEIN)
April 11, 2013 (Date)

WV 48 (rev. 06/08/12)

State of West Virginia
Purchasing Division

AGREEMENT

Purchase Order #_____ WVFIMS Account #_____

TEAM Vendor # _____ WVFIMS Vendor # 149031

I, John Henning, (Name and address) agree to perform the following services for W Va Supreme Ct (Agency) at as appointed (Location) as of May 8, 2013 (Detailed description of services to be performed)

Date(s) of Service: from May 8, 2013 to 31 December 2013.
The rate of pay shall be $435.00 per day not to exceed
$ to be determined for the entire term of the contract.

NOTE: Any anticipated travel must be incorporated into the vendor's fee. No travel will be reimbursed by the State and is the sole responsibility of the vendor. The following certification must be completed and signed if the vendor is a full-time employee of the State of West Virginia.

Please check the appropriate box below:

☒ I am not currently a full-time employee of the State of West Virginia;

☐ I am currently a full-time employee of the State of West Virginia (complete certification below).

It is hereby certified that the services to be performed under this agreement will not interfere with or detract from the full-time duties of the employee and the amount of annual compensation received by _____(above named vendor) from the State of West Virginia for full-time employment during the current fiscal year will be $_____. The vendor serves as Senior Status Judge (Position) with the title of Senior Status Judge, certified by _____ (Supervisor's Signature).

GENERAL TERMS AND CONDITIONS: The General Terms and Conditions for Agency Delegated Master Terms and Conditions located on the Purchasing Division's website at ***http://www.state.wv.us/admin/purchase/TCA.pdf***, ("Terms and Conditions") are hereby made a part of this agreement and are specifically incorporated herein by reference. By signing this agreement, Vendor certifies that it has reviewed the Terms and Conditions, fully understands them, and agrees to be bound by their provisions.

APPROVED BY:

Agency Brent Benjamin (Authorized Signature of Agency)
Chief Justice (Title)
04/24/2013 (Date)

Vendor John T. Henning (Social Security or FEIN)
April 20 2013 (Date)

WV-18 (rev. 06/08/12)

State of West Virginia
Purchasing Division

AGREEMENT

Purchase Order #_____ WVFIMS Account #_____

TEAM Vendor #_____ WVFIMS Vendor #_____

I, The Hon. Thomas H. Keadle, _____ (Name and address), agree to perform the following services for WV Supreme Court of Appeal (Agency) at Charleston, WV (Location)

The Honorable Thomas H. Keadle, is directed to preside as a Senior Status Circuit Judge where needed in the state court system, pursuant to an Administrative Order entered by the Chief Justice of the Supreme Court of Appeals of West Virginia. Judge Keadle is authorized to preside in any proceeding as assigned under this agreement. (Detailed description of services to be performed)

Date(s) of Service: from June 30, 2014 to December 31, 2014.

The rate of pay shall be 435.00 per day not to exceed

$ n/a for the entire term of the contract.

NOTE: ~~Any anticipated travel must be incorporated into the vendor's fee. No travel will be reimbursed by the State and is the sole responsibility of the vendor.~~ **The following certification must be completed and signed if the vendor is a full-time employee of the State of West Virginia.**

Please check the appropriate box below:

☒ I am not currently a full-time employee of the State of West Virginia;

☐ I am currently a full-time employee of the State of West Virginia (complete certification below).

It is hereby certified that the services to be performed under this agreement will not interfere with or detract from the full-time duties of the employee and the amount of annual compensation received by _____(above named vendor) from the State of West Virginia for full-time employment during the current fiscal year will be $_____. The vendor serves as _____ (Position) with the title of _____, certified by _____ (Supervisor's Signature).

GENERAL TERMS AND CONDITIONS: The General Terms and Conditions for Agency Delegated Master Terms and Conditions located on the Purchasing Division's website at ***http://www.state.wv.us/admin/purchase/TCA.pdf***, ("Terms and Conditions") are hereby made a part of this agreement and are specifically incorporated herein by reference. By signing this agreement, Vendor certifies that it has reviewed the Terms and Conditions, fully understands them, and agrees to be bound by their provisions.

APPROVED BY:

Agency Robin Jean Davis, C.J.
West Virginia Supreme Court of Appeals (Authorized Signature of Agency)
Chief Justice (Title)
September 17, 2014 (Date)

Vendor The Hon. Thomas H. Keadle
Thomas H Keadle
(Social Security or FEIN)
Sept. 9, 2014 (Date)

WV-48 (rev. 06/08/12)

State of West Virginia
Purchasing Division
AGREEMENT

Purchase Order #_____ WVFIMS Account #_____

TEAM Vendor # _____ WVFIMS Vendor # _____

I, the Hon. Charles M. Vickers, _____ (Name and address), agree to perform the following services for WV Supreme Court of Appeal (Agency) at Charleston, WV (Location)

The Honorable Charles M. Vickers is directed to preside as a Senior Status Circuit Judge where needed in the state court system, pursuant to an Administrative Order entered by the Chief Justice of hte Supreme Court of Appeals of West Virgini (Detailed description of services to be performed)

Judge Vickers is authorized to preside in any proceeding as assigned under this agreement.

Date(s) of Service: from September 17, 2014 to December 31, 2014.

The rate of pay shall be 435.00 per day not to exceed

$ N/A for the entire term of the contract.

NOTE: ~~Any anticipated travel must be incorporated into the vendor's fee. No travel will be reimbursed by the State and is the sole responsibility of the vendor.~~ **The following certification must be completed and signed if the vendor is a full-time employee of the State of West Virginia.**

Please check the appropriate box below:

- ☑ I am not currently a full-time employee of the State of West Virginia;
- ☐ I am currently a full-time employee of the State of West Virginia (complete certification below).

It is hereby certified that the services to be performed under this agreement will not interfere with or detract from the full-time duties of the employee and the amount of annual compensation received by _____(above named vendor) from the State of West Virginia for full-time employment during the current fiscal year will be $_____. The vendor serves as _____ (Position) with the title of _____, certified by _____ (Supervisor's Signature).

GENERAL TERMS AND CONDITIONS: The General Terms and Conditions for Agency Delegated Master Terms and Conditions located on the Purchasing Division's website at ***http://www.state.wv.us/admin/purchase/TCA.pdf***, ("Terms and Conditions") are hereby made a part of this agreement and are specifically incorporated herein by reference. By signing this agreement, Vendor certifies that it has reviewed the Terms and Conditions, fully understands them, and agrees to be bound by their provisions.

APPROVED BY:

Agency Supreme Court of Appeals of West Virginia

(Authorized Signature of Agency)

Chief Justice (Title)

10/16/14 (Date)

Vendor The Hon. Charles M. Vickers

Charles M. Vickers

(Social Security or FEIN)

Sept 29, 2014 (Date)

WV-48 (rev. 06/08/12)

State of West Virginia
Purchasing Division

AGREEMENT

Purchase Order #_____ WVFIMS Account #_____

TEAM Vendor # _____ WVFIMS Vendor # _____

I, The Hon. Thomas W. Steptoe, Jr. (Name and address), agree to perform the following services for WV Supreme Court of Appeal (Agency) at Charleston, WV (Location)

The Honorable Thomas W. Steptoe, Jr., is directed to preside as a Senior Status Circuit Judge where needed in the state court system, pursuant to an Administrative Order entered by the Chief Justice of the Supreme Court of Appeals of West Virginia. Judge Steptoe is authorized to preside in any proceeding as assigned under this agreement. (Detailed description of services to be performed)

Date(s) of Service: from September 20, 2014 to December 31, 2014.

The rate of pay shall be 435.00 per day not to exceed

$ n/a for the entire term of the contract.

NOTE: ~~Any anticipated travel must be incorporated into the vendor's fee. No travel will be reimbursed by the State and is the sole responsibility of the vendor.~~ **The following certification must be completed and signed if the vendor is a full-time employee of the State of West Virginia.**

Please check the appropriate box below:

☒ I am not currently a full-time employee of the State of West Virginia;

☐ I am currently a full-time employee of the State of West Virginia (complete certification below).

It is hereby certified that the services to be performed under this agreement will not interfere with or detract from the full-time duties of the employee and the amount of annual compensation received by _____(above named vendor) from the State of West Virginia for full-time employment during the current fiscal year will be $_____. The vendor serves as _____ (Position) with the title of _____, certified by _____ (Supervisor's Signature).

GENERAL TERMS AND CONDITIONS: The General Terms and Conditions for Agency Delegated Master Terms and Conditions located on the Purchasing Division's website at ***http://www.state.wv.us/admin/purchase/TCA.pdf***, ("Terms and Conditions") are hereby made a part of this agreement and are specifically incorporated herein by reference. By signing this agreement, Vendor certifies that it has reviewed the Terms and Conditions, fully understands them, and agrees to be bound by their provisions.

APPROVED BY

Agency Robin Jean Davis, C.J.

West Virginia Supreme Court of Appeals (Authorized Signature of Agency)

Chief Justice (Title)

SEptember 17, 2014 (Date)

Vendor The Hon. Thomas W. Steptoe, Jr. Chr Steptoe

(Social Security or FEIN)

September 15, 2014 (Date)

WV-48 (rev. 06/08/12)

State of West Virginia
Purchasing Division

AGREEMENT

Purchase Order # _____ WVFIMS Account # _____

TEAM Vendor # _____ WVFIMS Vendor # _____

I, The Hon. John L. Henning (Name and address), agree to perform the following services for WV Supreme Court of Appeal (Agency) at Charleston, WV (Location)

The Honorable John L. Henning is directed to preside as a Senior Status Judge where needed in the state court system, pursuant to an Administrative Order entered by the Chief Justice of the Supreme Court of Appeals of West Virginia. (Detailed description of services to be performed)

Judge Henning is authorized to preside in any proceeding as assigned under this agreement.

Date(s) of Service: from May 21, 2015 to December 31, 2015.

The rate of pay shall be 435.00 per day not to exceed

$ N/A for the entire term of the contract.

NOTE: ~~Any anticipated travel must be incorporated into the vendor's fee. No travel will be reimbursed by the State and is the sole responsibility of the vendor.~~ **The following certification must be completed and signed if the vendor is a full-time employee of the State of West Virginia.**

Please check the appropriate box below:

☑ I am **not** currently a full-time employee of the State of West Virginia;

☐ I am currently a full-time employee of the State of West Virginia (complete certification below).

It is hereby certified that the services to be performed under this agreement will not interfere with or detract from the full-time duties of the employee and the amount of annual compensation received by _____ (above named vendor) from the State of West Virginia for full-time employment during the current fiscal year will be $ _____. The vendor serves as _____ (Position) with the title of _____, certified by _____ (Supervisor's Signature).

GENERAL TERMS AND CONDITIONS: The General Terms and Conditions for Agency Delegated Master Terms and Conditions located on the Purchasing Division's website at ***http://www.state.wv.us/admin/purchase/TCA.pdf***, ("Terms and Conditions") are hereby made a part of this agreement and are specifically incorporated herein by reference. By signing this agreement, Vendor certifies that it has reviewed the Terms and Conditions, fully understands them, and agrees to be bound by their provisions.

APPROVED BY:

Agency Supreme Court of Appeals of WV

Margaret L. Workman, C.J. (Authorized Signature of Agency)

Chief Justice (Title)

7/31/15 (Date)

Vendor The Hon. John L. Henning

(Social Security or FEIN)

(Date)

WV-48 (rev. 06/08/12)

State of West Virginia
Purchasing Division

AGREEMENT

Purchase Order #_____ WVFIMS Account #_____

TEAM Vendor # _____ WVFIMS Vendor # _____

I, the Hon. Thomas H. Keadle (Name and address), agree to perform the following services for WV Supreme Court of Appeal (Agency) at Charleston, WV (Location)

The Hon. Thomas H. Keadle is directed to preside as Senior Status Circuit Judge where needed in the state court system pursuant to an Administrative Order entered by the Chief Justice of the Supreme Court of Appeals of West Virginia. (Detailed description of services to be performed) Judge Keadle is authorized to preside in any proceeding as assigned under this contract.

Date(s) of Service: from September 1, 2015 to December 31, 2015.

The rate of pay shall be 435.00 per day not to exceed

$ N/A for the entire term of the contract.

NOTE: ~~Any anticipated travel must be incorporated into the vendor's fee. No travel will be reimbursed by the State and is the sole responsibility of the vendor.~~ **The following certification must be completed and signed if the vendor is a full-time employee of the State of West Virginia.**

Please check the appropriate box below:

☑ I am **not** currently a full-time employee of the State of West Virginia;

☐ I am currently a full-time employee of the State of West Virginia (complete certification below).

It is hereby certified that the services to be performed under this agreement will not interfere with or detract from the full-time duties of the employee and the amount of annual compensation received by _____(above named vendor) from the State of West Virginia for full-time employment during the current fiscal year will be $ _____. The vendor serves as _____ (Position) with the title of _____, certified by _____ (Supervisor's Signature).

GENERAL TERMS AND CONDITIONS: The General Terms and Conditions for Agency Delegated Master Terms and Conditions located on the Purchasing Division's website at ***http://www.state.wv.us/admin/purchase/TCA.pdf***, ("Terms and Conditions") are hereby made a part of this agreement and are specifically incorporated herein by reference. By signing this agreement, Vendor certifies that it has reviewed the Terms and Conditions, fully understands them, and agrees to be bound by their provisions.

APPROVED BY:

Agency

(Authorized Signature of Agency)

CHIEF JUSTICE
(Title)

9/9/15
(Date)

Vendor

(Vendor's Signature)

(Social Security or FEIN)

September 5, 2015
(Date)

Appendix G

SUPREME COURT OF APPEALS
OF WEST VIRGINIA

BARBARA H. ALLEN
INTERIM ADMINISTRATIVE DIRECTOR

ADMINISTRATIVE OFFICE
BUILDING 1, ROOM E-100
1900 KANAWHA BOULEVARD, E.
CHARLESTON, WV 25305-0832
(VOICE) 304/558-0145
(FAX) 304/558-1212
www.courtswv.gov

September 14, 2018

Dear Mr. Allred:

Please accept this letter as the Court's response to the Post Audit Division's Legislative Audit of the Supreme Court of Appeals of West Virginia, *Report 4*. (hereinafter "the Report").

ISSUE #1: Over a Period of Four Years, the Supreme Court Depleted $29 Million of Surplus Re-Appropriated Funds to a Balance of $333,514.

The Legislative Auditor's discussion of the Court's spenddown of a $29,000,000.00 surplus, page 2 of the Report, involves the years 2012, 2013, 2014 and 2015. It should be noted that Justice Walker did not take office until 2017.

On page 3 of the Report, it is stated that there was approximately a $12.4 million "increase in salaries for judges, justices, and magistrates, . . ., including all employee benefits and employer taxes[.]" The Court notes that these increases in the salaries of justices, circuit court judges, family court judges, and magistrates were all statutorily mandated. *See* W. Va. Code §§ 51-1-10a, 51-2-13, 51-2A-6, and 50-1-3.

On page 4 of the Report, it is stated that "requests for additional information made by the Legislative Auditor's Office concerning the renovations have remained unanswered as of the date of this report." We have made attempts to answer the questions asked and to secure the documents requested as quickly as possible. *See* Tabs 1 and 2, letters to Silling (architectural firm) and Neighborgall (construction firm). Information supplied by Neighborgall on September 3, 2018, and information supplied by Silling on September 10, 2018, was supplied to the Legislative Auditor on September 11, 2018. The Court is diligently continuing to respond to the Legislative Auditor's requests regarding renovation costs.

On page 6 of the Report, it is stated that the "Legislative Auditor has not received the information requested from the Court concerning City Center East thus, all renovation expenses have not been

accounted for in this report." As we have discussed with the Legislative Auditor, the Court is and has been diligently working on fulfilling your requests.

Throughout the Report, there are numerous references to increases in the amount of payroll expenditures. These increases can be explained by various factors. For example, on July 1, 2011, there was an across-the-board pay increase of 2% for all state employees, including Court employees. Further, as previously noted, in Fiscal Year 2012 there were statutorily mandated payroll increases for justices, circuit judges, family court judges, and magistrates. On July 1, 2014, there was an across-the-board pay increase for state employees. This across-the-board pay raise was generally not given to all Court employees. However, pursuant to statute, this pay raise was given to all Magistrate Court employees and Family Court employees. Each of those individuals received approximately a $504.00 raise.

Moreover, there are built-in step educational and step raises that take effect when they are achieved and every January 1 or July 1, respectively. Additionally, the total number of employees, including elected officials and temporary/senior status employees, consistently grew each Fiscal Year from 2012 to 2017 (from 1397 total employees to 1494 total employees). Every member of the Court family is valuable and necessary to operation of the state-wide judiciary.

Furthermore, the Court would like to note that during Fiscal Year 2012, the Court returned $2 million to the General Revenue Fund and in Fiscal Year 2014, the Court returned $4 million to the General Revenue Fund.

ISSUE #2: The Supreme Court of Appeals of West Virginia Spent Approximately $3.4 Million on Renovations Between 2012 and 2016. Several of the Renovation Projects Do Not Contain Invoice Documentation with Sufficient Detail for Analysis.

Issue 2, page 9 of the Report, is entitled (in relevant part) "The Supreme Court of Appeals of West Virginia spent approximately $3.4 Million on Renovations between 2012 and 2016." Again, it should be noted that Justice Walker took office in 2017.

On page 9 of the Report, it is stated that "[c]urrently, the Court has not provided the Legislative Auditor with invoice documentation related to the renovations to the Supreme Court's law library or the administrative offices located in the Capitol Building's East Wing." The Court has provided some documentation for these areas of renovations. See Silling invoices concerning renovations to the law library and 1st floor administrative office hallway, which were provided to the Legislative Auditor on or about July 23, 2018. Additionally, Neighborgall change orders and other documentation regarding renovations to the law library, attorney offices located within the law library, 1st floor hallway, and administrative offices were provided to the Legislative Auditor on July 30, 2018. The Administrative

Office is working diligently to secure additional information; and in fact, as noted above, the AO has received additional documentation from both Silling and Neighborgall which was turned over to the Legislative Auditor on September 11, 2018.

In similar vein, on page 9 of the Report, it is stated that "while the Court has provided some of the invoice documentation for the renovations to the Clerk's Office and the Chief Counsel's Office, the Legislative Auditor is still waiting for a portion of these invoices, which were originally requested on July 25, 2018." The Court has already provided over 100 pages of documents responsive to this request and, again, is diligently working on gathering any additional information.

On page 10 of the Report, it is stated that "Silling billed the Court a total of $374,571 for work they conducted on the renovations of the Justices' Chambers." In response, the Court contends that this amount cannot be solely attributed to work done on the "Justices' Chambers"; a review of the invoices, as well as the supporting documentation submitted to the Legislative Auditor on September 11, 2018, makes it clear that "Justices' Chambers" was used by Silling as a generic term encompassing multiple areas of the Court's environs. In this regard, in must be noted that the Silling invoices are broken down into six (6) categories: 4th Floor-Chief Counsel's Office, Justices' Office Renovations, Law Library, Clerk's Office, 1st Floor Hallway, and Elevator Upgrade. However, the additional Silling documents received on September 10, 2018, clearly demonstrate that Silling performed work on areas that are not encompassed in those categories but are clearly encompassed within the Court's Chambers and environs thereof: women's third floor restroom, third floor main corridor, Justices' Conference Room, Supreme Court of Appeals of West Virginia Courtroom, Public Information Officer's Office, kitchenette off of the Justices' Conference Room, safe room for the Justices, third-floor main hallway, and numerous law clerk offices within the law library.

Viewing this from the opposite side, it would be wholly *unreasonable* to conclude that Silling's billings designated "Justices Chambers," which represent approximately forty-two percent (42%) of Silling's total billings for multiple job locations on the first, third and fourth floors of the East Wing of the Capitol, were for architectural services in four (4) office spaces which together make up a fraction of the total spaces and areas renovated.

On page 16 of the Report, Table 15 indicates that the total amount of expenditures for renovations for the 1st floor hallway was $79,145.00. However, the amounts listed in Table 15 do not add up to $79,145.00; they add up to $75,203.00. Further, according to the documentation provided by the Court to the Legislative Auditor, the cost of the renovations to the 1st floor hallway was $79,197.67.

Issue 3: Between 2009 and 2017, the Chief Justice of the Supreme Court of Appeals of West Virginia Allowed 10 Senior Status Judges in the Judicial Retirement System to Exceed the Statutory Compensation Cap 20 Times for a Total of $271,000.

Issue 3, page 20 of the Report, is entitled (in relevant part) "Between 2009 and 2017, the Chief Justice of the Supreme Court of Appeals of West Virginia Allowed 10 Senior Status Judges ... to Exceed the Statutory Compensation Cap...." It should be noted that Justice Walker took office in 2017 and has not yet held the position of Chief Justice.

Throughout the Report, the Legislative Auditor simply assumes that all senior status judges are ready, willing and able to take any assignment, any time, any place. In fact, some of the retired judges on senior status have health issues that preclude their assignment; some of them are available only in their own or continuous counties; some of them are available only for short-term assignments; some of them are available only during certain times of the year; some of them cannot take assignments in certain counties because they do business (i.e., mediations) there; and some are simply unavailable for a particular assignment for any number of possible reasons. It can be very difficult to find senior status judges willing to take assignments, especially for prolonged periods of time and/or when significant travel is involved.

On Page 27 of the Report, the Legislative Auditor recounts a statement made by the Director of the Court's Division of Finance, specifically, that "it was common knowledge that the Court engaged in this practice to get around the statutory cap and allow a Senior Status Circuit Court Judge to continue to receive their retirement while serving. Quoting the Director of the Division of Finance, 'It was 'so they [the senior status judges] would not stop receiving their pension.'" Whatever the Director's understanding may have been, based as it was on the hearsay statement of some unknown declarant, she was wrong; the law does not require that a senior status judge exceeding the statutory cap must, in effect, "unretire," since under the Judges Retirement System there is no monetary limit on the amount a retired judge may earn from State employment while still remaining pension-eligible. Rather, the only limitation on post-retirement employment vis-a-vis pension eligibility is that "[i]f, after retirement under the provisions of this article, a judge is elected or appointed to any public office or trust for which he or she receives any salary or other compensation from the State of West Virginia, the retired judge is not eligible to participate in any other pension plan maintained by the State of West Virginia, nor accrue additional years of credited service under this system or any other state pension system." W. Va. Code §51-9-8.

On page 28 of the Report, the Legislative Auditor implies that what he terms the Court's "conversion" of senior status judges to the status of independent contractors was done for the purpose of "enabling these judges to receive compensation in excess of the statutory cap." In fact, the purpose of

"converting" the senior status judges was to enable them to provide coverage of a circuit's docket where coverage was needed.

On page 26 of the Report, the Legislative Auditor states that the Court had "other avenues ... to assure the statewide continuity of judicial services," including recalling retired judges or justices not admitted to senior status, or to assign a judge from one circuit court to another for temporary service. As set forth above, the first of these avenues requires that the retired judges or justices be willing to go wherever judicial coverage is needed, for as long as it's needed; and the second requires that the temporary assignment be of very short duration, as no circuit judge can reasonably be expected to cover two dockets simultaneously for more than a week or two.

On page 28 of the Report, the Legislative Auditor recommends that the Court "comply with West Virginia Code and cease all compensation in excess of the statutory limits." First, the Court cannot comply with any Code provision that results in its inability to keep the courts of the State open; said provision would be unconstitutional as applied, and perhaps unconstitutional on its face. Second, the Court has already ceased paying any compensation in excess of the statutory limit; Judge Rowe, who has kept the courthouse doors open in Nicholas County for well over a year, at significant personal sacrifice, is now working without compensation because of the commitment he made to the County's citizens.

Sixth, on pages 28-29 of the Report, the Legislative Auditor recommends that the judges who received compensation over the statutory cap between 2009 and 2017 "comply with W. Va. Code §51-9-18," which requires that any overpayment received from the retirement system as a result of any error be repaid. In fact, this Code section cited does not apply to this situation. Although the statutory provisions governing JRS do not contain a definition of "error," the term is defined in W. Va. Code §5-10-2(12) and would seem to apply here:

> "Employer error" means an omission, misrepresentation or violation of relevant provisions of the West Virginia Code or of the West Virginia Code of State Regulations or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State Regulations by the participating public employer that has resulted in an underpayment or overpayment of contributions required. A deliberate act contrary to the provision of this section by a participating public employer does not constitute employer error.

In short, no "error" within the meaning of W. Va. Code §51-9-18 has occurred, and thus the repayment provision of subsection (e) is not triggered. There is no allegation that any of the affected senior status judges underpaid their contributions, and any allegation that the Court acted for the purpose

of overpaying the judges would, if true, which is denied, be a deliberate act that does not constitute an error.

On page 29 of the Report, the Legislative Auditor continues with the assumption that it wasn't necessary for the Court to appoint senior status judges whose compensation would exceed the statutory cap "when the Court's panel of Senior Status Judges retained hundreds of unused days of eligibility each year." (Emphasis in original) As set forth above, the Legislative Auditor has failed to show that any of these other senior status judges having eligibility were willing to take the particular assignments. (Emphasis supplied)

Finally, the Legislative Auditor's two (2) recommendations made on page 29 of the report have already been addressed herein, and need not be addressed again.

Respectfully,

Barbara H. Allen ym

Barbara H. Allen
For the Supreme Court of Appeals of West Virginia
As Its Interim Director

Encl.

SUPREME COURT OF APPEALS
OF WEST VIRGINIA

BARBARA H. ALLEN
INTERIM ADMINISTRATIVE DIRECTOR

ADMINISTRATIVE OFFICE
BUILDING 1, ROOM E-100
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CHARLESTON, WV 25305-0832
(VOICE) 304/558-0145
(FAX) 304/558-1212
www.courtswv.gov

July 24, 2018

SILLING
405 Capitol Street
Charleston, WV 25301-1730

Re: Supreme Court of Appeals of West Virginia

Ladies and Gentlemen:

Our records indicate that from in or about September, 2008, through in or about June, 2014, Silling provided a variety of professional services, including design development and structural feasibility studies, for the Supreme Court of Appeals of West Virginia. These services involved various areas located in the East Wing of the State Capitol: the Office of Chief Counsel and the State Law Library on the fourth floor; the Justices' chambers, the Courtroom and the Office of the Clerk on the third floor; the hallway on the first floor; and an elevator connecting these areas (as well as legislative areas on the second floor).

The Court is doing an internal audit of its East Wing renovation expenditures during this time period. To this end, we request that you send us copies of the following documents which we cannot locate in our files but should be contained in yours:

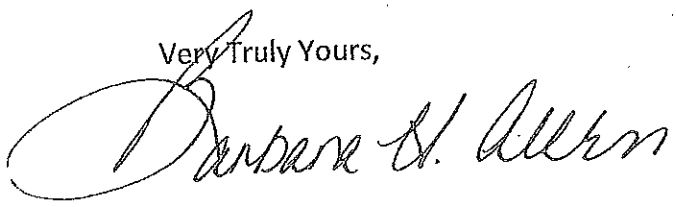
All proposals and contracts between Silling and the Court, or the Court's Administrative Office. In this regard, we can only find a single "Revised PROPOSAL LETTER FOR ARCHITECTURAL & ENGINEERING DESIGN SERVICES 4th Floor East Wing Renovation – West Virginia State Capitol Complex," dated September 17, 2008, with an estimated project fee of $81,380.00. Inasmuch as your work over the ensuing six years covered a variety of projects on three different floors, at a total cost of $893,965.68, it is reasonable to believe that there must have been additional proposals and contracts beyond the initial, limited proposal in 2008.

All notes or other written documentation supporting your invoices, none of which contained anything beyond a very general description of the work performed. For example, all of the invoices involving renovation of Justices' chambers simply list "Justice's Offices" or "Justice's Office Renovations," without specifying what was done or where, i.e., in which Justice's chambers.

Thank you for your attention to these matters. If you have any questions, please feel free to contact me.

With kindest regards, I remain

Very Truly Yours,



Barbara H. Allen
Interim Administrative Director

cc: The Hon. Margaret L. Workman, Chief Justice
Sue Racer-Troy, Chief Financial Officer
Kim Ellis, Director, Division of Facilities and Fleet Management Services

[1] There are 39 such invoices, the first dated March 3, 2009 and the last dated March 7, 2013, totaling $374,139.81.

SUPREME COURT OF APPEALS
OF WEST VIRGINIA

BARBARA H. ALLEN
INTERIM ADMINISTRATIVE DIRECTOR

ADMINISTRATIVE OFFICE
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CHARLESTON, WV 25305-0832
(VOICE) 304/558-0145
(FAX) 304/558-1212
www.courtswv.gov

September 4, 2018

SILLING
405 Capitol Street
Charleston, WV 25301

Re: Supreme Court of Appeals of West Virginia

Ladies and Gentlemen:

This is a follow-up to my letter of July 24, 2018, in which I sought copies of information concerning work Silling performed for the Supreme Court of Appeals in the East Wing of the State Capitol from 2008 – 2014. Specifically, I asked for (1) all proposals and contracts between Silling and the Court, or the Court's Administrative Office, subsequent to your Proposal Letter of September 17, 2008; and (2) all notes or other written documentation supporting your invoices, which would allow the Court to determine what work was done and where, i.e., in which Justice's chambers.

Although I received a telephone call from you informing me that 'we're on it,' I have not received any further communication in the past six weeks. Please let me know immediately what steps you have taken to secure the information sought by the Court. Time is of the essence in this matter.

Please call me if you have any questions.

With kindest regards, I remain

Very Truly Yours,

Barbara H. Allen

Barbara H. Allen
Interim Administrative Director

BHA:jm

SUPREME COURT OF APPEALS
OF WEST VIRGINIA

BARBARA H. ALLEN
INTERIM ADMINISTRATIVE DIRECTOR

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August 6, 2018

Neighborgall Construction
1216 Seventh Avenue
P. O. Box 281
Huntington, WV 25705-0281

Re: Contract with Supreme Court of Appeals of West Virginia
Contract Date: December 19, 2008

Ladies and Gentlemen:

The Supreme Court of Appeals is conducting an audit of its expenditures in renovating Court areas located in the East Wing of the State Capitol. Our records indicate that from 2008 – 2011, you did construction and/or renovation work in the chambers of Justices Benjamin, Ketchum and Workman, as well as in three restrooms located on the third floor. The work was done pursuant to a contract dated December 19, 2008, and several subsequent change orders.

Our records indicate that this job was not put on for competitive bids prior to the Court's decision to enter into a contract with Neighborgall, but we cannot locate any documentation one way or the other. Would you be so kind as to check your records and let me know what they show on this point?

Additionally, if you have any documentation of the specific work done on the Court project, I respectfully request that you furnish copies to us so that we can complete our review.

Thank you for your cooperation in this matter, and if you have any questions, please feel free to contact me.

With kindest regards, I remain

Very Truly Yours,

Barbara H. Allen
Interim Administrative Director

BHA:jm

cc: Margaret L. Workman, Chief Justice

POST AUDITS SUBCOMMITTEE
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WEST VIRGINIA OFFICE OF THE LEGISLATIVE AUDITOR
- POST AUDIT DIVISION -

Legislative Auditor: Aaron Allred
Post Audit Director: Justin Robinson

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