

Baine M. Hewle
State Auditor

Doug Cardiner
Chief Deputy

CALIFORNIA STATE AUDITOR

Bureau of State Audits

535 Capitol Mall, Suite 300

Sacramento, CA 95814

916.445.0255

916.327.0019 fax

www.hsa.ca.gov

March 18, 2010

Robert C. Buckley, Managing Attorney
Office of the General Counsel
Judicial Council of California
Administrative Office of the Courts
455 Golden Gate Avenue
San Francisco, California 94102-3688

RE: Audit No. 2009-109

Dear Mr. Buckley:

We are sending this letter to you as counsel for the Marin County Superior Court and the Sacramento County Superior Court (Sacramento Court). As you know, over the past eight months, the Bureau of State Audits (bureau) has attempted to work with the courts to gain access to the records and individuals necessary for the audit of the California Family Court System approved by the Joint Legislative Audit Committee (JLAC) on June 24, 2009. During this time, we have listened to the concerns of the courts including, but not limited to, those related to our need to access case files that may contain confidential materials and the courts' concerns that the audit will "cherry-pick" cases to obtain certain results. We have attempted to alleviate the courts' concerns by providing information regarding our enabling statutes, the audit standards we must operate under, and the prohibitions that apply to the bureau's release of confidential information and documentation that we obtain during the course of an audit.

As you know, since July of 2009, we have made numerous attempts to exercise our statutory right to access the individuals and records of the courts that we determine are necessary to conduct the audit. As we have previously advised, our access statute specifically provides that "[a]ny officer or person who fails or refuses to permit access and examination and reproduction, as required by this section, is guilty of a misdemeanor" (Cal. Gov. C. § 8545.2(e)). Yet despite the fact that our statutes clearly give our office access to the individuals and records we are seeking and make it a misdemeanor for the courts to fail or refuse to grant us access, it is now March 2010 and the courts are still refusing to fully cooperate. In view of the numerous delays and the apparent impasse we have reached, the State Auditor has directed me to issue subpoenas unless the courts agree in writing that our auditors will be provided full and unfettered access to the individuals and records that we determine are necessary to conduct the audit (see Cal. Gov. C., § 8545.4). Please be advised that if the courts fail to respond to our subpoenas, we intend to seek a court order to compel compliance with the subpoenas (see Cal. Gov. C. § 8545.4). To

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avoid the subpoenas, this written assurance must be received by the State Auditor no later than April 5, 2010.

The following chronicles the numerous good faith efforts we have engaged in with the courts to obtain the records and information that we need.

Our audit team first began meeting with the courts in July 2009. As is our standard practice, we made the courts aware of our access statute that provides "stand in the shoes" access authority and we also informed the courts of our obligations under the law to maintain the confidentiality of information and records of the courts to the same extent as it would apply to the courts. The following month, we began our preliminary work on the audit - our "scoping" phase. However, our auditors were denied access to some of the records that they needed during scoping to develop an appropriate audit plan. As a result, the audit team was left with many unanswered questions as to the information available in the courts' databases and the documentation necessary for us to complete an audit consistent with the Scope and Objectives approved by JLAC. As our audit fieldwork could not begin until these issues were resolved, on October 16, 2009, we sent a letter to the courts and the Administrative Office of the Courts (AOC) describing our access requirements and once again providing the courts with information regarding the statutes and standards governing the conduct of the audit.

On November 12, 2009, we received a response from Lynne Urman, an attorney with AOC. Although the letter stated that the courts and the AOC intended to fully cooperate with the bureau, the letter attempted to limit the bureau's access based on confidentiality provisions in statutes and rules applicable to child custody disputes. Over the next four weeks, our office attempted to work with Ms. Urman to identify the concerns raised by the courts and also to determine if we could alleviate those concerns while still obtaining access to the necessary individuals and records. We also informed the courts of the language in our access statute (Government Code, Section 8545.2) that states that "[n]o provision of law providing for the confidentiality of any records or property shall prevent disclosure pursuant to [this section], unless the provision specifically refers to and precludes access and examination and reproduction pursuant to [this section]." Ms. Urman confirmed that the statute making certain information pertaining to child custody cases confidential does not include a provision specifically precluding the bureau's access. In a December 14, 2009 conference call with Ms. Urman, it became apparent that the courts' demands would impede the bureau's access to the individuals and documents necessary to meet the audit objectives and would therefore create a "scope limitation" under the audit standards we must follow. We requested that this matter be raised with Bill Vickrey, the Administrative Director of the Courts and Mary Roberts, General Counsel to the AOC. In the interim, I discussed the problems we were having with the courts with Ms. Roberts, and she indicated that the AOC would attempt to assist us in resolving the issues with the courts.

On January 15 of this year, at the request of Ms. Roberts, you visited our office to discuss these matters further. At that point, we believed that, within a couple weeks, critical discussions

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regarding electronic data would occur between our office and the courts. However, despite our efforts to move the audit forward, it was not until February 23, 2010, that we received notice that such discussions were agreeable to the courts. While you were scheduling meetings for those discussions to occur and with the belief that we now had the full cooperation of the courts after months of delay, we scheduled our first day of fieldwork at the Sacramento Court on March 4, 2010. Late on the afternoon of March 3, 2010, you contacted our office regarding the Sacramento Court's decision to cancel the first day of fieldwork until all the "unknowns" were clarified. The two unknowns that you relayed to us that afternoon on behalf of the court were that the scope of the audit needed to be confirmed in writing and that we had yet to agree on how to handle confidential documents. As the Scope and Objectives of our audit were approved by JLAC and are posted on our Web site, and as Government Code, Sections 8545, 8545.1, and 8545.2 specifically address our access authority and the prohibitions that apply to the bureau's release of confidential information and documentation, the court's decision to deny the bureau access constitutes an unreasonable delay.

As previously stated, if the courts wish to avoid subpoenas, please confirm in writing by Monday, April 5, 2010, that the courts agree to provide full and unfettered access to all of the individuals and records necessary for the completion of this audit.

Sincerely,



SHARON REILLY
Chief Legal Counsel

cc: Assemblymember Alyson Huber, Chair, Joint Legislative Audit Committee
Senator Roy Ashburn, Vice Chair, Joint Legislative Audit Committee
Assemblymember Joe Coto, Joint Legislative Audit Committee
Assemblymember Chuck DeVore, Joint Legislative Audit Committee
Assemblymember Noreen Evans, Joint Legislative Audit Committee
Assemblymember Curt Hagman, Joint Legislative Audit Committee
Assemblymember William Monning, Joint Legislative Audit Committee
Senator Dave Cogdill, Joint Legislative Audit Committee
Senator Denise Duchenev, Joint Legislative Audit Committee
Senator Robert Dutton, Joint Legislative Audit Committee
Senator Alex Padilla, Joint Legislative Audit Committee
Senator Lois Wolk, Joint Legislative Audit Committee
Senator Patricia Wiggins, Joint Legislative Audit Committee
Senator Mark Leno
Senator Leland Yee
Assemblymember Jim Nilsen
Assemblymember Fiona Ma
Assemblymember Jim Beall

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Assemblymember Cameron Smyth
Honorable Stephen W. White, Presiding Judge, Superior Court of California, County of
Sacramento
Honorable Verna Adams, Presiding Judge, Superior Court of California, County of Marin
Mary M. Roberts, General Counsel, Office of the General Counsel, Administrative
Office of the Courts
Cameron Valderrama, Chief Consultant, Joint Legislative Audit Committee