



THE CITY OF SAN DIEGO

DATE: September 28, 2018

TO: Ron Villa, Acting Assistant Chief Operating Officer
Tracy McCraner, Department of Finance Director
Darrin Schwabe, Interim Human Resources Department Director

FROM: Eduardo Luna, CIA, CGFM, City Auditor
Office of the City Auditor

SUBJECT: Hotline Report of Jury Duty Service Fraud

Summary of Investigative Results

The Office of the City Auditor investigated a Fraud Hotline report related to jury duty service fraud. The report identified potential weaknesses in the City's payroll procedures related to jury duty that could allow employees to receive compensation for service that was never performed. During our investigation, we also identified a risk that City employees may be performing jury duty service more frequently than required by the state and federal courts, which may be wasteful.

We reviewed Citywide payroll records from July 1, 2012 through November 13, 2017 and identified an employee who received payment from the City for jury duty service that apparently was not performed. The employee was paid the equivalent of over two weeks' salary for jury duty service on dates that were not included in the court records we obtained.

We learned that City supervisors did not consistently enforce existing internal controls as outlined in the City's Personnel Manual. As a result, City employees were able to record jury duty service without providing any documentation in some cases. Without stronger internal control procedures, employees could provide false confirmation information for jury service not actually performed.



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We also identified 137 employees who performed jury duty service more frequently than required by the courts; equivalent in hours to one year of full-time work that may not have been necessary and a potential waste of City time.

We made four recommendations and management agreed to implement all four recommendations.

Jury Duty Service and City Policy Background

City employees may be randomly selected to report for jury duty in either the state or federal court system¹. Since the two systems are independent, eligible employees may be called to take part in either pool and may be in both pools at the same time. City policy makes no distinction between federal and state jury duty service. Unlike typical state jury duty service, federal grand jury service may require a commitment of several months.

Both court systems provide prospective jurors with a unique juror summons number as part of the summons documentation. The City's Personnel Manual Index Code I-9 (II)(A) requires supervisors to personally review the jury duty summons, if possible. There is no requirement that the summons be maintained in the employee's file, and the juror summons number is not currently being used to verify the City employee's service.

Personnel Manual Index Code I-9 (II)(B) states, "Only full-time or part-time salaried employees who would have been at work in a paid status during the period of court duty shall be eligible to receive Court Leave with pay." Jury Duty leave is also addressed in four of the six Memoranda of Understanding between the City and the recognized employee organizations.

Excuses from Jury Duty Service

Both the state and federal court systems allow excuses from jury duty service under certain circumstances. City policy notes that if the jury duty service "would constitute a hardship" the employee should request a postponement from service. If a different court date is not available, Personnel Manual Index Code I-9 (II)(A)(2) states, "the employee must be released from work to perform his/her legally required court duty." There is no City policy requiring employees to perform jury duty service more frequently than the minimum legally required.

¹ The state court system is formally known as the Superior Court of California, County of San Diego, and the federal court is the United States District Court, Southern District of California.

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In general, recent jury duty service qualifies as an excuse from a subsequent summons. In the state system, the excuse is automatic, but in the federal system it is at the discretion of the court. Although existing City policy does not address how employees should handle a summons for jury duty that is more frequent than required, the phrase “legally required court duty” could be interpreted to mean: no more frequent jury duty service than legally required. Specifically, City employees who are summoned for jury duty in the state court can ask to be automatically excused from jury service if they served as a juror within the past three years or reported as a prospective juror in the last year.

Both the state and federal courts have websites that provide additional information regarding jury duty, including the option to postpone or be excused from service without having to appear in person. City employees may also call the courts in lieu of appearing in person. Either option would be more efficient than taking time off of work to request a change in the employee’s reporting date.

In the state court, potential jurors may request to be excused from service online. Or they may call in to postpone their service for up to six months, or request to be excused if they have been summoned twice in 12 months or served on a jury within three years. The south county court location offers telephone standby instructions for potential jurors, potentially allowing a phone call to replace an in-person appearance.

The federal court provides potential jurors with updated recorded messages by phone with the status of jury service requirements and reporting instructions. This information is also available on the federal court’s website.

Jury Duty Service Verification Documents

After jury duty service, both court systems provide documents to verify the service. We will refer to the documents here as Attendance Certifications and Work Certificates.

Attendance Certifications are time sheets provided by both the federal and state court systems. The forms include areas to clock in and out each day. Attendance Certifications provide City employees with an exact accounting of their time at court. The City’s Personnel Manual Index Code I-9 (III)(B) states, “The employee shall obtain proof of court attendance for each day, or any portion thereof, for which Court Leave is requested.” This requirement is generally understood by City management to mean that employees are required to provide time-stamped Attendance Certifications as proof of their jury duty service.

Work Certificates are also available online through the websites for the state and federal² court systems. The documents show the dates when jury duty service was performed, but does not show the specific hours of attendance. One advantage of Work Certificates is that they can be retrieved directly from the court's website by a City employee.

Employees May Be Required to Return to Work After a Partial Day of Service

City policy does not require employees to return to work after a partial day of jury duty service. Rather, the expectation is left to the discretion of each department's management. Personnel Manual Index Code I-9 (II)(C)(1) states,

An employee serving less than a normal work day on court duty may reasonably be required, at the discretion of the appointing authority, to report to work for completion of the normal work day or otherwise make up the remaining work hours by either using vacation or compensatory time credits, if any, at the discretion of the employee. (It would in general not be reasonable to require completion of the work day or make up time if less than one hour remained to be worked.)

Travel time back to the employee's workplace is also accounted for by the policy. However, City employees may abuse the ambiguity in the policy and an early dismissal from jury duty service as an opportunity to take time off of work without being held accountable for the time.

² Federal court Work Certificates include the amounts paid for jury duty service. City Personnel Manual Index Code I-9 (II)(D) allows employees to collect and keep jury duty fees in addition to payment through the City's payroll process.

Theft of Time Investigation

We obtained and reviewed over 9,000 records of jury duty payments to over 3,800 City employees between July 1, 2012 through November 13, 2017. Our objectives were to determine:

1. Were City employees paid for jury duty service that they did not perform?
2. Did City employees serve jury duty more frequently than required by the courts?
3. Were the procedures and internal controls over jury duty payments adequate?

The following sections detail the results of our investigation.

Were City employees paid for jury duty service that they did not perform?

Based on our investigation, it appears that one City employee was paid for a substantial amount of jury duty service that was not performed. We used a non-statistical sample of jury duty payments to City employees and requested confirmation of jury duty service from both federal and state courts. In most cases, the discrepancies in the records were attributable to clerical errors, or involved employees who no longer work for the City.

One employee received jury duty service payments from the City for 12 non-consecutive days in excess of what we confirmed through federal court records. We interviewed the employee and learned that the service was related to an 18-month federal grand jury that met once a week. The employee did not provide Attendance Certifications or Work Certificates to substantiate the jury duty service, the discrepancies could not be explained by the employee, and the department was unable to locate any records related to the service. Other than the 12 jury duty service dates we identified, all other dates in the federal court records matched leave time entries in the City's payroll records. Therefore, the discrepancies we found were not the result of a clerical error. Although allowable under City policy, the employee received \$2,600 from the federal court for jury duty service in addition to the payments from the City.

Did City employees serve jury duty more frequently than required by the courts?

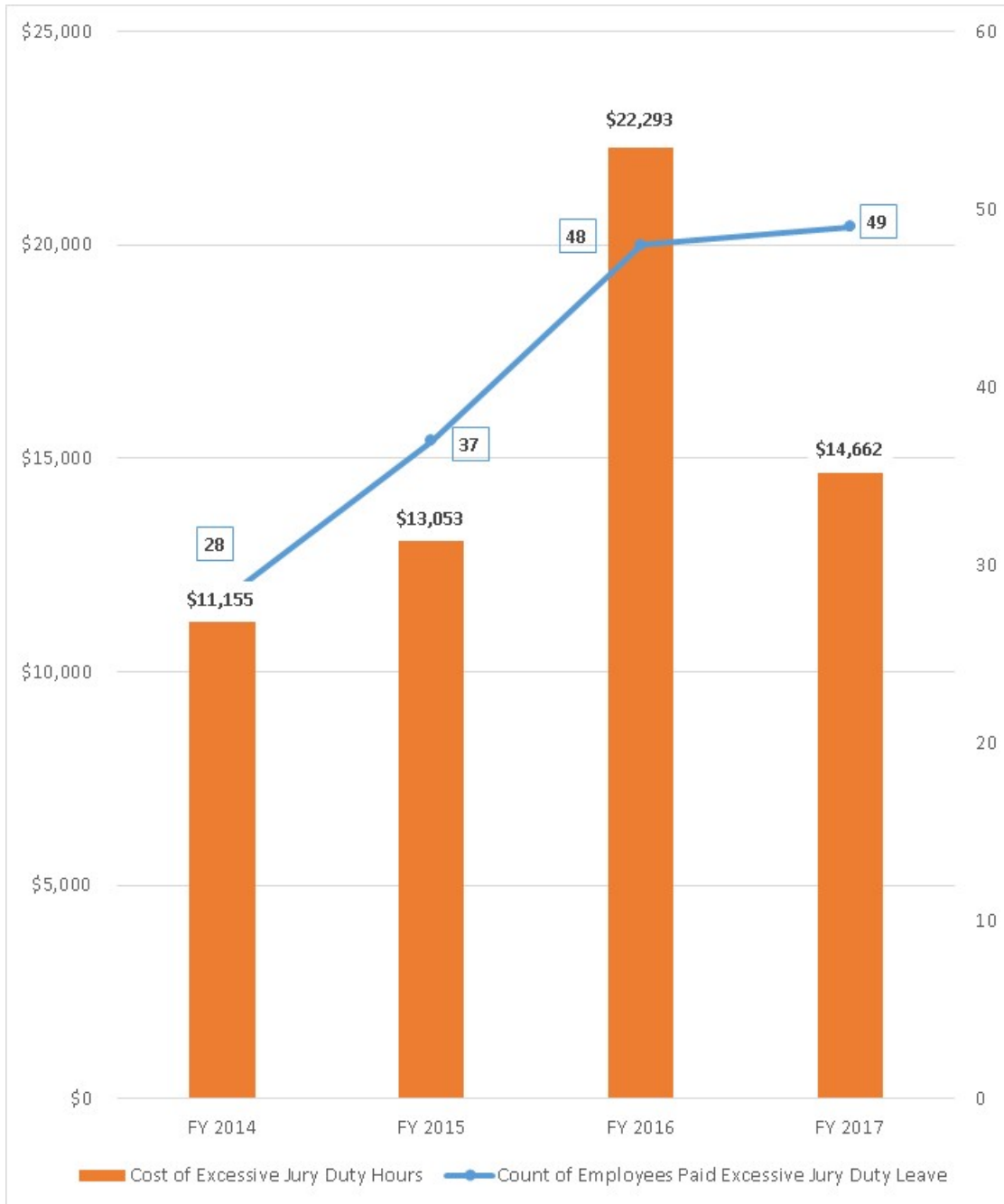
Our review of the City's jury duty payment records revealed that 137 employees³ were paid for 307 days of jury duty service that were unnecessary because the service appears to have been more frequent than required by the state court and could have been excused. City policy does not state whether or not employees should only serve jury duty for the minimum frequency legally required. The service in excess of the minimum may be viewed as a waste of City resources, or it may be supported as a valuable Civic duty.

As summarized in **Exhibit 1** below, during Fiscal Year 2014 through 2017, the cumulative days or portion of days that appeared to exceed court requirements resulted in a potential loss of 2,079 work hours that would equate to \$61,163 of salary paid to City employees without the City benefiting from work provided by the employees. Our salary data was based on the actual salaries of the City employees we identified. Cumulatively, the jury duty service payments could pay the salary for a full-time City employee.

³ The total number of employees in **Exhibit 1** is greater (162) due to the time cutoffs and repeated occurrences, the net number of unique employees was 137.

Exhibit 1

**Summary of Jury Duty Payments in Excess of Court Requirements
Fiscal Year 2014-17**



Were the procedures and internal controls over jury duty payments adequate?

During our investigation, we learned that some supervisors and employees were not clear about what documentation was required in order to substantiate jury duty service payments. As a result, the documentation was not always retained, and some of the employees, supervisors, and payroll staff we interviewed were unable to provide us with the documentation we requested.

Attendance Certification time sheets were available from both state and federal courts, but City employees were not consistently informed that completing the form was a requirement. Not having the forms in payroll records made it difficult to determine whether some employees actually served on the dates indicated by their payroll records.

In order to improve internal controls, the City's Department of Finance could provide training to payroll staff to ensure that the summons and Attendance Certification documents are maintained in employee files. Additionally, Finance could establish and implement review procedures to ensure that the backup documentation is on file, as required by the City's Personnel Manual.

We found widespread confusion regarding the City's policy and procedures related to jury duty service that led to inconsistent documentation. In response, the Human Resources Department could provide a step-by-step guide as part of the new HR Quick Reference resource that contains information related to various City policies, procedures, and other hard-to-find information. We have included a proposed jury duty service guide that could be provided to employees as **Appendix A** of this report.

Conclusion

We identified potential weaknesses in the City's internal control procedures that could allow employees to receive compensation for jury duty service that was never performed. We identified one employee who was paid the equivalent of more than two weeks' salary for jury duty service that was not performed, according to court records we obtained.

Based on our investigation, we made the following recommendations to improve the City's internal controls and hold the identified employee accountable for the apparent theft of time we identified. Management's responses to our recommendations are also incorporated below.

Recommendations and Management's Responses
(See Attachment B for Definitions of Fraud Hotline Recommendation Priorities)

Recommendation 1

We recommend that the Assistant Chief Operating Officer determine whether an independent Fact Finding investigation into the employee identified in the confidential version of our report should be conducted in order to determine if City policies were violated regarding the jury duty leave time that was not confirmed by the court, and, if so, ensure that the appropriate corrective action is taken with respect to the employee and supervisor regarding the unsupported jury duty payroll compensation. (Priority 2)

Management Response: Management agrees with the recommendation. The Chief Operating Officer has determined that due to the number of years that have lapsed since the alleged jury duty attendance indiscretion occurred, a fact finding would not be a prudent use of City resources. The Department of Finance and Human Resources Department are working to ensure moving forward that the policies in the Personnel Manual, Section I-9, Court Leave are adhered to. The Department of Finance will be providing refresher retraining to all Payroll Specialists on processing approved Court Leave documentation and Human Resources will be adding Court Leave guidelines and a link to the Personnel Manual, I-9, policy in its HR Quick Reference Guide for all employees. The HR Quick Reference Guide will be sent out to all Department Directors to share with their Appointing Authorities, reminding them of their responsibilities when approving Jury Duty.

Target Implementation Date: January 2019

Recommendation 2

We recommend that the Assistant Chief Operating Officer consider whether City employees should serve the minimum frequency of jury duty required, or that the service should be performed as often as summoned, or that the appointing authorities in each City department should exercise their discretion regarding the frequency of jury duty service, in consultation with the employee. (Priority 3)

Management Response: Management agrees with the recommendation. Management will review the appropriate frequency for Jury Duty based on the additional oversight that could be necessary to track the number of instances for supervisors, payroll, or the Department of Finance. Additional factors that will be considered are the impact to operations, and the belief that jury duty is an essential part of maintaining the civic infrastructure which supports employees performing their civic responsibility.

Target Implementation Date: March 2019

Recommendation 3

We recommend that the Department of Finance provide training to payroll staff regarding jury duty service document requirements, and establish and implement review procedures to ensure that backup documentation is on file as required by the Personnel Manual. (Priority 2)

Management Response: Management agrees with the recommendation. The Department of Finance and Human Resources Department are working to ensure moving forward that the policies in the Personnel Manual, Section I-9, Court Leave are adhered to. The Department of Finance will be providing refresher retraining to all Payroll Specialists on processing approved Court Leave documentation and Human Resources will be adding Court Leave guidelines and a link to the Personnel Manual, I-9, policy in its HR Quick Reference Guide for all employees. The HR Quick Reference Guide will be sent out to all Department Directors to share with their Appointing Authorities, reminding them of their responsibilities when approving Jury Duty.

Target Implementation Date: January 2019

Recommendation 4

We recommend that the Human Resources Department update the HR Quick Reference resource to include instructions related to jury duty reporting procedures and requirements. (Priority 3)

Management Response: Management agrees with the recommendation. The Department of Finance and Human Resources Department are working to ensure moving forward that the policies in the Personnel Manual, Section I-9, Court Leave are adhered to. The Department of Finance will be providing refresher retraining to all Payroll Specialists on processing approved Court Leave documentation and Human Resources will be adding Court Leave guidelines and a link to the Personnel Manual, I-9, policy in its HR Quick Reference Guide for all employees. The HR Quick Reference Guide will be sent out to all Department Directors to share with their Appointing Authorities, reminding them of their responsibilities when approving Jury Duty.

Target Implementation Date: January 2019

This investigation was conducted under the authority of California Government Code §53087.6 which states:

(e) (2) Any investigative audit conducted pursuant to this subdivision shall be kept confidential, except to issue any report of an investigation that has been substantiated, or to release any findings resulting from a completed investigation that are deemed necessary to serve the interests of the public. In any event, the identity of the individual or individuals reporting the improper government activity, and the subject employee or employees shall be kept confidential.

(3) Notwithstanding paragraph (2), the auditor or controller may provide a copy of a substantiated audit report that includes the identities of the subject employee or employees and other pertinent information concerning the investigation to the appropriate appointing authority for disciplinary purposes. The substantiated audit report, any subsequent investigatory materials or information, and the disposition of any resulting disciplinary proceedings are subject to the confidentiality provisions of applicable local, state, and federal statutes, rules, and regulations.

Thank you for taking action on this issue.

Respectfully submitted,

A handwritten signature in black ink that reads "Eduardo Luna". The signature is written in a cursive, flowing style.

Eduardo Luna
City Auditor

Attachment A – Proposed Jury Duty Service Guide

Step	Responsible Individual/Action	Rationale	Policy
1	Employee provides supervisor with court summons.	Verification of summons	Currently required I-9 (II)(A)
2	<p>Supervisor or employee checks payroll records for last jury leave recorded.</p> <p>a. If the last jury duty service was within three years, or reporting as a potential juror was within one year, the employee may request an excuse from jury duty online or by telephone.</p> <p>b. If the employee intends to report to the court for jury duty service, the employee should obtain Attendance Certifications with time and date stamps for each day, a Work Certificate after service using the court’s website, and to retain the summons</p> <p>c. Employees may be expected to return to work after serving partial days (in general, it may not be reasonable to require return to work for less than one hour after considering travel time)</p>	<p>Review for possible excuse from service</p> <p>Documentation to support jury duty service</p> <p>Provide instructions for partial day service</p>	<p>Not current policy</p> <p>Not current policy</p> <p>Currently required I-9 (II)(C)</p>
3	If warranted, employee requests postponement or excuse from jury service using the court website or by phone, rather than in person	Reduce time away from work	Not current policy
4	Employee serves jury duty and records time in and out by stamping the court-provided copy of the Attendance Certification time sheet	Documentation of actual dates/time of jury service	Currently required I-9 (III)(B)

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Step	Responsible Individual/Action	Rationale	Policy
5	Employee downloads Work Certificate from court website	Documentation of dates of attendance from court records	Not current policy
6	<p>Employee enters leave time in SAP and submits Request for Leave of Absence to supervisor for review and approval, along with:</p> <p>a) Summons</p> <p>b) Attendance Certification with time and date stamps for each day signed by a court official; and</p> <p>c) Work Certificate from the court's website</p>	<p>Confirms court summons</p> <p>Confirms daily attendance</p> <p>Verifies dates of attendance</p>	<p>Not current policy</p> <p>Currently required I-9 (III)(B)</p> <p>Not current policy</p>
7	Payroll clerk processes leave request and files summons, Attendance Certification, and Work Certificate with payroll documents	Retention of supporting documentation	Not current policy

Attachment B – Definition of Fraud Hotline Recommendation Priorities

DEFINITIONS OF PRIORITY 1, 2, AND 3 FRAUD HOTLINE RECOMMENDATIONS

The Office of the City Auditor maintains a priority classification scheme for Fraud Hotline recommendations based on the importance of each recommendation to the City, as described in the table below. While the City Auditor is responsible for providing a priority classification for recommendations, it is the City Administration’s responsibility to establish a target date to implement each recommendation taking into considerations its priority. The City Auditor requests that target dates be included in the Administration’s official response to the findings and recommendations.

Priority Class ⁴	Description
1	Fraud or serious violations are being committed. Significant fiscal and/or equivalent non-fiscal losses are occurring. Costly and/or detrimental operational inefficiencies are taking place. A significant internal control weakness has been identified.
2	The potential for incurring significant fiscal and/or equivalent non-fiscal losses exists. The potential for costly and/or detrimental operational inefficiencies exists. The potential for strengthening or improving internal controls exists.
3	Operation or administrative process will be improved.

⁴The City Auditor is responsible for assigning Fraud Hotline recommendation priority class numbers. A recommendation which clearly fits the description for more than one priority class shall be assigned the higher number.