



New York State Office of the State Comptroller
Thomas P. DiNapoli

Division of State Government Accountability

Dual Employment

Unified Court System Office of Court Administration



Report 2012-S-79

December 2013

Executive Summary

Purpose

To determine whether Unified Court System (UCS) employees who are dually employed at other State agencies are working their required hours at each job. The audit covered the period April 1, 2010 to March 31, 2012.

Background

UCS' mission is to promote the rule of law and to serve the public by providing just and timely resolution of all matters before the courts. UCS is comprised of several program components including Supreme and County courts, Family Courts, Surrogate's Court and City and District courts. UCS includes the Office of Court Administration (OCA), which is the administrative arm of UCS, under the direction of the Chief Administrative Judge. UCS employs about 17,936 individuals throughout the State, some of whom are also employed by other government agencies. Regulations promulgated by UCS require non-judicial employees to obtain approval in writing prior to engaging in any outside employment. Such employment may not interfere with the employee's job responsibilities nor represent a conflict of interest.

Key Findings

- Between April 2010 and March 2012, seven UCS/OCA employees were dually employed and obtained at least \$40,000 in combined pay. Follow-up showed two of these staff had conflicting work schedules resulting in payroll payments of at least \$17,336 for time not worked during the audit period.
- Another UCS employee who received a salary, and was under contract with UCS to provide legal services, reported nine occasions where the hours worked conflicted.
- The two cases included patterns of claiming to be working two places at the same time, or not allowing sufficient commute time between the end of one shift and the beginning of the next with another employer. Failure to enforce time and attendance requirements allowed these individuals to circumvent controls, sometimes with management's knowledge.

Key Recommendations

- The Inspector General of UCS should investigate the cases we identified and take appropriate actions as warranted, such as recovery of salary payments and adjustment of service credits for pension purposes.
- Provide pertinent time and attendance training to dually employed staff and their supervisors, and ensure that required policies and procedures are followed.
- Develop a standardized writing that can be submitted to the Chief Administrator of the Courts to ensure employees do not engage in outside work without the previous consent in writing.

Other Related Audits/Reports of Interest

[Metropolitan Transportation Authority/Metro-North Railroad: Forensic Audit of Select Payroll and Overtime Practices and Related Transactions \(2010-S-60\)](#)

[Office of Court Administration: Controls Over Overtime Costs \(2011-S-2\)](#)

**State of New York
Office of the State Comptroller**

Division of State Government Accountability

December 18, 2013

Honorable A. Gail Prudenti
Chief Administrative Judge of the State of New York
Unified Court System
Office of Court Administration
25 Beaver Street
New York, NY 10004-2982

Dear Judge Prudenti:

The Office of the State Comptroller is committed to helping State agencies, public authorities and local government agencies manage government resources efficiently and effectively and, by so doing, providing accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit entitled *Dual Employment*. This audit was performed pursuant to the State Comptroller's authority under Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

*Office of the State Comptroller
Division of State Government Accountability*

Table of Contents

Background	4
Audit Findings and Recommendations	5
Overlapping Schedules and Adjoining Work Schedules	5
Adherence to Laws and Regulations	6
Other Matters	6
Recommendations	7
Audit Scope and Methodology	7
Authority	8
Reporting Requirements	8
Contributors to This Report	9
Agency Comments	10
State Comptroller's Comment	12

State Government Accountability Contact Information:

Audit Director: Carmen Maldonado

Phone: (212) 417-5200

Email: StateGovernmentAccountability@osc.state.ny.us

Address:

Office of the State Comptroller
 Division of State Government Accountability
 110 State Street, 11th Floor
 Albany, NY 12236

This report is also available on our website at: www.osc.state.ny.us

Background

UCS promotes the rule of law and serves the public by providing just and timely resolution of all matters before the courts. UCS is comprised of several program components including Supreme and County courts, Family Courts, Surrogate's Court and City and District courts. UCS also includes the Office of Court Administration (OCA), which is the administrative arm of UCS, under the direction of the Chief Administrative Judge. UCS employs about 17,936 individuals throughout the State, some of whom are also employed by other government agencies. These dual employment situations can be advantageous for employees, but also pose additional risks for management ranging from conflicts of interest to opportunities for payroll fraud or abuse.

Dual employment for non-judicial UCS employees is governed by the Rules of the Chief Judge. These Rules provide that no UCS employees may accept appointment or employment with another State or local government entity without first having obtained the approval of his or her appointing authority. A separate Code of Ethics set forth in the Rules requires that UCS employees avoid impropriety and the appearance of impropriety in all their activities, and adhere to other prescribed ethical standards. It is critical that each State agency establish its own policies and procedures governing dual employment situations and that supervisors diligently monitor and enforce appropriate time and attendance requirements.

At the operational level, when individuals work for more than one State agency, they receive separate payroll checks generated through the State's central payroll system, which is operated by the Office of the State Comptroller's (OSC) Bureau of State Payroll Services. To receive payroll checks for both State positions, the employee is required to complete a Dual Employment/Extra Service Approval Form describing the work to be performed and, optionally, the work schedule of both positions. Non-judicial employees must state that the second State position will not interfere with their regular duties nor represent a conflict of interest and must obtain the previous consent of his or her appointing authority. Such consent is also subject to the approval of the Chief Administrator of the Courts for employees of courts other than the appellate courts.

UCS policy dictates that outside employment by any employees must not adversely affect their ability or capacity to perform their duties or functions. Section 24.2 Attendance from the Rules of the Chief Judge stated that the deputy chief administrator for management support will establish procedures. The UCS Time and Leave Benefit booklet contains procedures for the use of time and leave benefits. It also states that an employee's use of leave must be correctly indicated on the employee's time records.

Audit Findings and Recommendations

Because of weaknesses in UCS policies and practices, in certain instances managers and supervisors do not always know when staff members are involved in dual employment situations. Even when these arrangements are known and sanctioned, our review shows supervisors sometimes do not take necessary steps to verify work schedules and attendance or otherwise ensure that employees do not engage in payroll abuse.

We identified 53 UCS individuals who earned at least \$20,000 at both UCS and another State agency during our audit period. Between April 2010 and March 2012, we determined that seven of these staff posed a higher risk for payroll abuse such as potential overlapping work hours at different jobs.

Our review of time and attendance records submitted by these seven staff identified two individuals who engaged in abusive payroll activity that resulted in payments for time not worked. In these cases, the records showed a pattern of routine, improper activity such as claiming to have worked two places at the same time. Specific examples of these situations are detailed in subsequent sections of this report. We found these individuals were able to circumvent controls in place due to management's lack of supervision or, in some cases, with management's knowledge. For the two individuals whom we identified as abusing their dual employment situation, we communicated specific results to the UCS Inspector General.

Supervisors are responsible for monitoring their employees and ensuring that they accurately report their time and attendance in accordance with UCS requirements. Employees and supervisors both must certify that the time records correctly report time worked, leave accruals used and overtime to be paid. Certifications on these time records hold employees and supervisors responsible for any misrepresentations. We determined that failure to enforce time and attendance requirements resulted in an increased risk that dually employed individuals are being paid for time they do not work.

Our review clearly showed that, due to the failure of supervisors to properly enforce time and attendance rules, the two employees' dual employment we took exception with were paid for more time than they could have actually worked. It was not always clear whether these staff members failed to work their required time at UCS, another agency or the combination of both. We estimate the cost of these abuses to State taxpayers may be as much as \$17,336 for these two employees over the two-year audit period. Since all of the people we reviewed have been dually employed for many years, it is likely that the cost of their abuse is significantly higher. In addition, the effect of these abuses can continue to cost taxpayers for years to come, since the employees' inflated salaries can increase the cost of future pension benefits.

Overlapping Schedules and Adjoining Work Schedules

A basic risk posed by dual employment is the possibility that a person could be improperly paid for the same hours by both employers. Another risk is that the employee does not have sufficient

time to travel to a second job to arrive on schedule. As a result, the employee leaves early from one job or arrives late at the second job without charging accruals. Our analysis identified two dually employed staff where these risks actually occurred. Our analysis of their time records submitted to each employer identified a total of 175 occasions from April 1, 2010 through March 31, 2012, when they claimed to have worked for both employers simultaneously. These claims amounted to almost 350 hours of work that could not have been performed.

One UCS employee taught at two schools in the CUNY system. We reviewed records from these schools and found that he was teaching classes during hours that he was supposed to be working at UCS. We have calculated that he was paid by UCS for about 344 hours that he spent either teaching or traveling to and from his classes. In addition, his supervisor admitted to us that he was aware of this situation and had given permission to the employee to work the overlapping schedules. He also stated that the employee 'made up' the time, but we were provided with no records to corroborate this and the employee's UCS time sheets do not reflect any additional time worked.

Another UCS employee was also employed at the CUNY-College of Staten Island. Our analysis of time records showed 19 instances of adjoining work schedules. His time sheets show he ended UCS work at 5:00 p.m. However, his College time sheets show that he started work exactly the same time - 5:00 p.m. Using Internet mapping applications, we determined that travel time to drive from his UCS job to the CUNY-College of Staten Island should have been about 15 to 20 minutes. As a result, the employee would have had to leave one job early, or arrive at the other job late. Between April 1, 2010 and March 31, 2012 this employee for these 19 instances could have been paid for six hours not worked.

Adherence to Laws and Regulations

Dual employment in State Agencies is covered by Civil Service Law. In addition, within UCS it is controlled by the Rules of The Chief Judge, as well as several contracts with unions representing segments of the UCS workforce. The requirements for non-judicial employees call for the submission of a written form and for written prior approval of any instances of dual employment.

Officials of UCS supplied us with written consents for one of the two non-judicial employees in our sample, but were unable to provide forms or evidence of prior written approval for the other one.

Other Matters

We identified a judge who also had a contract with UCS for legal services to children. We found conflicts between the time she was at court and the time she reported as working on the contract. We compared these time records to the court calendars and found nine instances of conflicts between the time the judge was at court and the time the judge reported as working on the contract. The total cost for these instances is \$309 based on salary paid by UCS. We communicated specific results regarding this individual to the UCS Inspector General.

Recommendations

1. The UCS Inspector General should investigate the cases we identified and take appropriate actions as warranted, such as recovery of salary payments and adjustment of pension credits.

(UCS officials replied that its Inspector General conducted confidential internal investigations of the three individuals identified in the report. The IG reports were provided to the appropriate Deputy Chief Administrative Judges who are responsible for determining whether discipline or other action may be warranted.)

2. Provide pertinent time and attendance training to dually employed staff and their supervisors, and ensure that required policies and procedures are followed.

(UCS officials replied to our draft report that they are drafting language for the consideration of the Administrative Board of the Courts in response to the audit recommendations to amend the Rules of the Chief Judge, 22 NYCRR Part 50, Rules Governing Conduct of Non-judicial Court Employees. They added staff and supervisors will be provided training as appropriate.)

3. Develop a standardized writing that can be submitted to the Chief Administrator of the Courts and ensure employees do not engage in outside work without the previous consent in writing.

(UCS officials replied that they will take action to implement the recommendation.)

Audit Scope and Methodology

The objective of our audit was to determine whether UCS employees who are dually employed at other State agencies are working their required hours at each job. Our audit period was April 1, 2010 through March 31, 2012.

To accomplish our objective, we interviewed UCS officials, other State officials, and made site visits and observations. We used computer-based audit techniques to match State payroll records for the 24-month period April 2010 through March 2012. This analysis identified seven UCS employees who also worked for other State agencies with income over \$20,000 at each state agency. We also matched UCS payroll identification numbers with the vendor payments in FirstNY for the audit period. This match identified an UCS employee who was under contract with UCS to provide legal services. We reviewed payroll records, time sheets and other supporting documentation. Our tests were designed to uncover conflicts in the work schedules and time records submitted for each employee.

We conducted our 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 we obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

Authority

The audit was performed according to the State Comptroller's authority as set forth in Article V, Section 1, of the State Constitution and Article II, Section 8, of the State Finance Law.

Reporting Requirements

We provided a draft copy of this report to UCS/OCA officials for their review and comments. Their comments were considered in preparing this final report and are included in their entirety at the end of it. Our response to certain UCS/OCA comments is included in the report's State Comptroller's Comment.

Within 90 days of the final release of this report, as required by Section 170 of the Executive Law, the Chief Administrative Judge of the Unified Court System shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons why.

Contributors to This Report

Carmen Maldonado, Audit Director
Stephen Goss, Audit Manager
Christine Chu, Audit Supervisor
Abe Fish, Audit Supervisor
Richard Moriarty, Examiner-in-Charge
Aurora Caamano, Staff Examiner
Carole LeMieux, Staff Examiner

Division of State Government Accountability

Andrew A. SanFilippo, Executive Deputy Comptroller
518-474-4593, asanfilippo@osc.state.ny.us

Elliot Pagliaccio, Deputy Comptroller
518-473-3596, epagliaccio@osc.state.ny.us

Brian Mason, Acting Assistant Comptroller
518-473-0334, bmason@osc.state.ny.us

Vision

A team of accountability experts respected for providing information that decision makers value.

Mission

To improve government operations by conducting independent audits, reviews and evaluations of New York State and New York City taxpayer financed programs.

Agency Comments



NEW YORK STATE
Unified Court System

OFFICE OF COURT ADMINISTRATION
INTERNAL AUDIT SERVICES

A. GAIL PRUDENTI
CHIEF ADMINISTRATIVE JUDGE

SHERRILL SPATZ
INSPECTOR GENERAL

GEORGE DANYLUK, CIA
CHIEF INTERNAL AUDITOR

LINDA MILLER, CPA, CISA
CHIEF INTERNAL AUDITOR

October 24, 2013

Ms. Carmen Maldonado
Audit Director
Office of the State Comptroller
Division of State Government Accountability
123 William Street - 21st Floor
New York, NY 10038

Dear Ms. Maldonado:

On behalf of the Chief Administrative Judge, thank you for the opportunity to respond to the draft audit report (2012-S-79) entitled *Dual Employment*. We appreciate the efforts made by you and the audit team in conducting this audit. The Unified Court System (UCS) has taken steps to address the reports three recommendations, as follows:

1. The UCS Inspector General has conducted confidential internal investigations of the three individuals identified in the report. Reports have been provided to the appropriate Deputy Chief Administrative Judges, who are responsible for determining whether discipline or other action may be warranted.
2. UCS Counsel's Office is drafting language for the consideration of the Administrative Board of the Courts in response to the audit recommendations, to amend the Rules of the Chief Judge, 22 NYCRR Part 50, Rules Governing Conduct of Nonjudicial Court Employees. While appropriate record keeping has always been required, this amendment to the Rules would reinforce the necessity of keeping detailed time and attendance records, especially for dually employed nonjudicial staff. Dually employed staff and supervisors will be provided training as appropriate to remind them of the required policies and procedures.
3. In addition to the Dual Employment Approval Form required by the OSC Bureau of State Payroll Services, the UCS will develop a form to require approval by the CAJ prior to engaging in outside employment and to ensure that employees who engage in approved outside employment maintain detailed contemporaneous written records of their time and attendance.

These steps will improve accountability and record keeping for nonjudicial employees who engage in outside employment. While sufficient records were not maintained for the three individuals cited in the draft report, the Inspector General's review has provided additional

-2-

information and documentation to conclude that no time abuse occurred. Each of the noted employees were working their required hours at each job. All of them had permission for their outside work and did so with the full knowledge of their supervisors. There was no interference with their regular duties or any conflict of interest.

Finally, the draft report contains several statements alleging that supervisors did not know employees had dual employment and failed to properly enforce time and attendance rules, resulting in employees being paid for hours not worked. The UCS Inspector General's review showed that this was not the case. While record keeping needed to be improved, supervisors were aware of the dual employment and took steps to ensure the employees provided a minimum of 35 hours per week. Therefore, the employees were not paid for hours not worked. We request that these statements be removed from the report.

* Comment 1

Thank you for your consideration of this response in preparation of the final audit report. We look forward to continuing to work with the Office of the State Comptroller to ensure that appropriate controls over employee time and attendance are in place.

Very truly yours,



George Danyluk

/smw

c: Hon. A. Gail Prudenti
 Brian Mason
 Ronald Younkings, Esq.
 Eugene Myers
 Maria Logus, Esq.
 Maria Barrington
 Maureen McAlary
 Lauren DeSole
 Sherrill Spatz, Esq.

* See State Comptroller's Comment, page 12.

State Comptroller's Comment

1. In response to our draft report, UCS/OCA officials expressed their support for our recommendations and the actions taken to implement them. At the same time, officials do not believe that the individuals we cited definitively engaged in abusive payroll activities. They state "...supervisors were aware of the dual employment and took steps to ensure the employees provided a minimum of 35 hours per week. Therefore, employees were not paid for hours not worked. We request that these statements be removed from the report."

The cases we cite are based on the official time records prepared and submitted by these employees, and reviewed and attested to by their supervisors. As the principal employer that initially authorized many of these dual employment relationships, it is incumbent upon UCS/OCA and its supervisory staff to ensure that these records accurately reflect the hours worked. However, it is important to note that falsifying such records is, in and of itself, an abuse of the systems. Further, officials have not provided us with any other records (e.g. time cards, log books or sign-in/sign-out sheets) that demonstrate the employees actually worked during different times. Absent this additional information, we must conclude that staff manipulated or otherwise abused the systems, resulting in payments for time that records indicate was not worked.