

June 18, 2018

Louisiana Ethics Administration Program
P.O. Box 4368
Baton Rouge, LA 70821

RE: Complaint Against District Attorneys Richard Ward, Joel Chaisson, II, Gary Evans, John DeRosier, and other District Attorneys for Abusing Their Prosecutorial Charging Authority in Violation of La. Stat. Ann. § 42:1116

Dear Chairman McAnelly:

Twenty-five years ago, Richard J. Ward, Jr., the District Attorney for the Eighteenth Judicial District (West Baton Rouge, Iberville, and Pointe Coupee Parishes), requested an advisory opinion from the Louisiana Attorney General about whether his office could charge fees for participating in a prosecutorial diversion program without creating the appearance that prosecutors are for sale. The Attorney General advised him that any diversion fees must be limited to the cost of administering diversion, because the State's ethics laws prohibit him from using his charging authority to profit from diversion. The Attorney General warned that "[a]ny additional fees charged" would be an abuse of authority in violation of Louisiana's Code of Governmental Ethics, because it would amount to "payments for the dismissal of prosecutions." La. Atty. Gen. Op. No. 93-481, 1993 WL 438522 (Aug. 31, 1993), attached as Ex. A.

District Attorney Ward disregarded the Attorney General's clear guidance and has been flouting Louisiana's ethics laws by leveraging his prosecutorial authority into a money-making enterprise. Ward generates hundreds of thousands of dollars in traffic ticket diversion fees each

year, far in excess of the amount necessary to run his traffic ticket diversion program. He generates this money by hiring off-duty police officers to operate a dragnet on local highways and roads, resulting in thousands of additional traffic tickets each year that offer motorists the possibility of “diversion” if the motorist pays the District Attorney’s Office \$175.

Ward is not alone. District attorneys across the State openly violate Louisiana’s ethics laws by using their charging authority as a cudgel to extract millions of dollars each year from residents. Sam D’Aquila, the District Attorney for the Twentieth Judicial District (West Feliciana and East Feliciana Parishes), boasted that district attorneys have created a new diversion “industry” because “we just weren’t making . . . money.”¹ District Attorney Keith Stutes, the District Attorney for the Fifteenth Judicial District (Acadia, Lafayette, and Vermilion Parishes), conceded that it “would be improper” to allow people to pay a fee to make a charge “go away,” but that is precisely what is happening in West Baton Rouge, Iberville, and other Parishes throughout the State.² Indeed, DeSoto Parish Sheriff Rodney Arbuckle explained that traffic ticket diversion is “all about a money-making program. Sure it helps you with traffic safety. But in the long run, it’s all about the money.”³

The Southern Poverty Law Center (“SPLC”) submits this complaint against the Eighteenth Judicial District Attorney Richard J. Ward; Twenty-Ninth Judicial District Attorney Joel Chaisson, II; Forty-Second Judicial District Attorney Gary Evans; and Fourteenth Judicial District Attorney John DeRosier for violating Section 42:1116 of the Louisiana Code. We request the Louisiana Ethics Board (“Board”) to use its broad investigatory authority to conduct

¹ Samantha Sunne, *Louisiana DAs offer motorists a deal: Write us a check and we’ll dismiss your speeding ticket*, The Lens (July 27, 2017), available at <https://goo.gl/7Zbftw>, attached as Ex. B.

² Jim Mustian, *DAs just don’t offer it to some people’: Pretrial diversion draws new scrutiny amid soaring costs, state budget crisis*, The Advocate (May 19, 2018), available at <https://goo.gl/R3SZQW>, attached as Ex. C.

³ Gerry May, *Top DeSoto law enforcers’ feud stifles criminal justice funds*, ktbs.com (Jan. 25, 2018), available at <https://goo.gl/qYRLwm>, attached as Ex. D.

a thorough investigation into these and the rest of the State’s traffic ticket diversion programs.⁴ The Board should reaffirm that district attorneys may not profit from traffic ticket diversion and should order these district attorneys to return the millions of dollars generated through a perversion of their prosecutorial authority. The State deserves more from its elected district attorneys than this unethical scheme to generate profits through the threat of prosecution.

A. District Attorneys Are Profiting From Traffic Ticket Diversion in Violation of Louisiana’s Code of Governmental Ethics.

State law grants district attorneys complete control over diversion programs. La. Att’y Gen. Op. No. 98-482A (May 13, 1999). This authority is consistent with district attorneys’ “unlimited power” under state law “to prosecute whom, when, and how he chooses.” *State v. Dauzart*, 07-15 (La. App. 5 Cir. 5/15/07), 960 So. 2d 1079, 1084–85.⁵ Such awesome power comes with great responsibility. Sometimes prosecutors use their authority responsibly to divert low-level defendants out of the criminal justice system and into community-based treatment. But, too often, Louisiana’s district attorneys have been motivated by their desire to generate revenue rather than the attainment of justice.

The amount of revenue generated from traffic ticket diversion fees is staggering—and rapidly increasing. In 2017, for example, the Forty-Second Judicial District Attorney’s Office (De Soto Parish) generated \$700,904.07 in traffic ticket diversion fees.⁶ That same year, the Twenty-Ninth Judicial District Attorney’s Office (St. Charles Parish) generated \$1,030,731.56 in

⁴ The Board has the authority to initiate an investigation on “any matter which it has reason to believe may be a violation of” the Code of Governmental Ethics. La. Stat. Ann. § 42:1141.

⁵ *See also* La. Code Crim. P. art. 61 (Louisiana law grants district attorneys “entire . . . control” over “whom, when, and how” to prosecute). “This authority also includes the ‘broad discretionary power’ *not* to institute a prosecution.” *State v. Franklin*, 2013-1489 (La. App. 4 Cir. 6/11/14), 147 So. 3d 231, 237 (citations omitted); *see also* La. Code Crim. Proc. Ann. art. 691 (“The district attorney has the power, in his discretion, to dismiss an indictment or a count in an indictment, and in order to exercise that power it is not necessary that he obtain consent of the court.”).

⁶ *See* Forty-Second Judicial District Attorney’s Office’s Response to Public Records Request, attached as Ex. E, at 10.

traffic ticket diversion fees—a seven-fold increase from 2015.⁷ And in 2017, the Eighteenth Judicial District Attorney’s Office (West Baton Rouge and Iberville Parishes)⁸ generated \$2,095,082⁹ from traffic ticket diversion whereas the Fourteenth Judicial District Attorney’s Office (Calcasieu Parish) generated \$4,361,961.33.¹⁰ Indeed, in a 2014 report, the Legislative Auditor concluded that “[d]istrict attorneys depend on revenue from . . . self-generated funds from . . . pre-trial diversion programs.”¹¹ The Legislative Auditor estimated that statewide pretrial diversion and other “charges for services” (i.e., statutory fines, forfeitures, fees, and court costs) make up about 30 percent of the district attorneys’ budgets.¹² District attorneys’ reliance on traffic ticket diversion fees has only increased; it now represents the single largest source of revenue for many district attorney offices.¹³

These district attorneys are not diverting tickets after an evaluation about whether prosecution is in the public interest. Instead, they are using the threat of prosecution as a way to make money. This money-making enterprise is made possible because district attorneys are paying police officers to work overtime to facilitate their for-profit diversion scheme. The officers hired by the district attorneys issue special tickets for minor traffic violations that offer motorists the option of paying the district attorney’s office hundreds of dollars to dismiss the ticket. Louisiana’s standard traffic ticket does not give motorists this option to buy their way out of prosecution.

⁷ See Twenty-Ninth Judicial District Attorney’s Office’s Response to Public Records Request, attached as Ex. F, at 5.

⁸ Although Pointe Coupee Parish is part of the Eighteenth Judicial District, law enforcement in that Parish does not participate in traffic ticket diversion.

⁹ See Eighteenth Judicial District Attorney’s Office Response to Public Records Request, attached as Ex. G, at 5.

¹⁰ See Fourteenth Judicial District Attorney’s Office Response to Public Records Request, attached as Ex. H, at 6.

¹¹ Daryl G. Purpera, et al., Evaluation of Revenues and Expenditures Louisiana District Attorney Offices, at 15 (July 28, 2016), available at <https://goo.gl/122KR2>, attached as Ex. I.

¹² *Id.* at 8.

¹³ See, e.g., Eighteenth Judicial District Attorney’s Response to Public Records Request, *supra* note 9 at 5, 14 (showing \$2,095,082 in monies generated from traffic ticket diversion out of \$3,419,073 in projected revenue); Fourteenth Judicial District Attorney’s Office’s Response to Public Records Request, *supra* note 10 at 47 (budgeting \$3,850,000 in “STP Fees” in 2017 out of \$5,420,486 in total budgeted revenues).

For example, the diversion traffic tickets issued in West Baton Rouge and St. Charles Parish inform motorists that they can avoid the ticket by paying the district attorney's Office \$175.00 within 15 days of their court date. This is about nine times the amount that they would receive in court costs if the motorist pleaded guilty or was found guilty following court prosecution (i.e., \$175.00 versus \$20.00).¹⁴ Moreover, the ticket states that payment of this fee will result in the ticket being reduced to a non-moving violation: but, in fact, the district attorney's office doesn't actually file any charge or violation with the court if payment is made. The ticket also states that if a person elects to use this diversion process but then fails to mail the \$175 to the district attorney's office, this will "result in the suspension of your driver's license," even though district attorneys have no legal authority under state law to suspend driver's licenses for non-payment of diversion fees.

A copy of this ticket follows:

¹⁴ The District Attorney's Office receives \$20.00 following a court conviction in a traffic case to reimburse the District Attorney's Office for the cost of prosecution. La. Stat. Ann. § 16:16 (imposing court costs in the amount of \$10 on each conviction); La. Stat. Ann. § 16:16.1 (imposing an additional \$10 as court costs to defray the expenses of prosecution).

If you wish to pay this citation and have it designated as a **non-moving violation** you can do so by complying with the following requirements:

1. Pay **\$175.00** by Money Order (Made out to DA P.T.D.). You have 15 days after your court date to pay the **\$175.00**. Failure to do so will result in the suspension of your driver's license.
Mail Money Order to P.O. Box 765
Port Allen, LA 70767

OR

2. Pay online at www.courtmoney.com. Select MAKE A PAYMENT. Login ID is **124101**.
3. You can also call 1-800-352-9870 if you would like to pay by credit card over the phone.
4. Should you choose not to participate in the Diversion program, you may still contest your citation and appear in court on the assigned date or pay the preset fine and court costs.

NOTE: We DO NOT accept partial payments.

PLEASE ALLOW 2 OR 3 WEEKS FOR PROCESSING!

NO REFUNDS!

See West Baton Rouge Parish Diversion Ticket, attached as Ex. J; St. Charles Parish Diversion Ticket, attached as Ex. K.

The Calcasieu Parish and De Soto Parish district attorneys' diversion programs are similarly structured. These district attorneys will *dismiss* a traffic ticket if a motorist mails a money order to the district attorney in an amount ranging from \$25.00 to \$225.00 and reads a two-page driver safety information brochure (the brochure is about speeding, seatbelts, and driving while intoxicated—but traffic ticket diversion is offered to people cited for unrelated reasons such as an expired inspection sticker, expired license, and no proof of insurance).¹⁵

¹⁵ See Fourteenth Judicial District Attorney's Office Speed Termination Program-STP, attached as Ex. L, <https://goo.gl/JmZnS1>; see also De Soto Parish District Attorney's Payment Portal, attached as Ex. M, http://desotoda.org/?page_id=25.

The cost of administering traffic ticket diversion is minimal. In 2017, for example, the Twenty-Ninth Judicial District Attorney generated about \$1,030,731.56 through traffic ticket diversion and spent only about \$30,000 on salaries, office expenses, and advisory fees.¹⁶ There is good reason why these programs are so profitable: traffic ticket diversion is simply a monetary transaction. Motorists pay the district attorney's office a lump sum to ensure that the traffic ticket is dismissed or never filed in court. Indeed, most district attorney offices do not screen tickets, counsel motorists, or provide any rehabilitative programming. Those who cannot pay in full face court prosecution simply because they do not have the financial resources to pay off the district attorney: both the Twenty-Ninth (St. Charles Parish) and Eighteenth Judicial District Attorney (West Baton Rouge, Iberville, and Pointe Coupee Parishes) traffic ticket diversion programs, for example, explicitly prohibit partial payments.

Statements from district attorneys across the State reinforce that the purpose of traffic ticket diversion is not rehabilitative: it is to raise revenue. Fourteenth Judicial District Attorney John DeRosier explained that traffic ticket diversion pays for law enforcement officers "work[ing] overtime," "the Sulphur City Marshall's Office," "vehicles for law enforcement agencies," "various types of equipment (such as automated speed indicating trailers, body cameras and tactical gear), significant funding for the Calcasieu Parish Public Defender's Office, as well as the Calcasieu Parish District Attorney's Early Intervention Program in elementary schools."¹⁷ Forty-Second Judicial District Attorney Gary Evans plans "to pay for a drug court judge, and maybe a mental illness court" "[i]f I can make enough money" from traffic ticket

¹⁶ See *supra* note 7 at 4. While the St. Charles District Attorney also transferred about \$591,183.39 to law enforcement officers in overtime payments, this is not a proper "cost" of diversion within the meaning of La. Att'y Gen. Op. No. 93-481, 1993 WL 438522 (Aug. 31, 1993), because the function of diversion is not to generate additional tickets for the purpose of revenue generation.

¹⁷ Local Agency Compensated Enforcement (L.A.C.E.), Fourteenth Judicial District Attorney's Office, attached as Ex. N, available at <https://www.calcasieuda.com/programs-services/l-a-c-e/>.

diversion.¹⁸ And Thirty-First Judicial District Attorney (Jefferson Davis Parish) Michael Cassidy subsidizes a portion of the public defender's office through traffic ticket diversion funds.¹⁹

Some, perhaps all, of these expenditures are worthwhile in the abstract. But none of these are costs charged to offset “expenses for participation” in traffic ticket diversion or for administering diversion. La. Att’y Gen. Op. No. 93-481 (Aug. 31, 1993).

B. The Board of Ethics Should Re-Affirm that District Attorneys May Not Profit From Diversion—as the Louisiana Attorney General Long Ago Concluded—and Order Them to Return Any Profit From Their Diversion Programs.

The Louisiana Code of Governmental Ethics (“Code”) provides that “[n]o public servant shall use the authority of his office or position, directly or indirectly, in a manner intended to compel or coerce any person or other public servant to provide himself, any other public servant, or other person with any thing of economic value.” La. Stat. Ann. § 42:1116. This prohibition is intended “to prevent not only the actuality of conflicts of interest, but also to prevent the occurrence of those situations that tend to create a perception of [a] conflict of interest.” *In re Beychok*, 495 So. 2d 1278, 1281 (La. 1986); *Glazer v. Comm’n on Ethics for Pub. Employees*, 431 So. 2d 752, 756 (La. 1983) (“A conflict of interest is a situation which would require an official to serve two masters, presenting a potential, rather than an actuality, of wrongdoing.”).

The Louisiana Board of Ethics (“Board”) is responsible for enforcing the Code. La. Stat. Ann. § 42:1132. The Board is empowered to investigate any complaint and to determine whether a practice violates the Code. If the Board determines that an elected official violated La. Stat. Ann. § 42:1116, it may order “recovery” in “an amount equal to such economic advantage” and “penalties not to exceed one half of the amount of the economic advantage.”

¹⁸ Jeff Beimfohr, *Diversion creates division in DeSoto Parish*, ktbs.com, (July 6, 2017), attached as Ex. O, available at <https://goo.gl/8M8pRr>.

¹⁹ *Jeff Davis District Attorney helps fund public defenders*, KATC.com (May 24, 2016), attached as Ex. P, available at <https://goo.gl/nigiJn>.

La. Stat. Ann. § 42:1155. The Board may also censure or fine the elected official. La. Stat. Ann. § 42:1153.

The Attorney General relied on the Code over 25 years ago in advising district attorneys that it would be unethical to use diversion to generate revenue. La. Att’y Gen. Op. No. 93-481 (Aug. 31, 1993). Although district attorneys may charge criminal defendants to participate in diversion, those fees must be limited to offsetting “expenses incurred for participation in the program” and “administrative costs.” *Id.* “Any additional fees” violate the ethics Code because they would amount to “payments for the dismissal of prosecutions.” *Id.*

The Board should reach the same conclusion: district attorneys may not finance their office or other agencies through traffic ticket diversion fees. La. Att’y Gen. Op. No. 93-481 (Aug. 31, 1993). This prohibition is necessary to preserve the integrity of the criminal justice system and to avoid the appearance that prosecutors are for sale. As the United States Supreme Court held, “[i]t is a fundamental premise of our society that the state wield its formidable criminal enforcement powers in a rigorously disinterested fashion, for liberty itself may be at stake in such matters.” *Young v. U.S. ex rel. Vuitton et Fils S.A.*, 481 U.S. 787, 810 (1987). The requirement that a prosecutor be disinterested is particularly salient in the charging context, where “the discretionary power exercised by the prosecuting attorney . . . gives him more control over an individual’s liberty and reputation than any other public official.” *Ganger v. Peyton*, 379 F.2d 709, 712, n.4 (4th Cir. 1967) (citation omitted). Indeed, the rules of professional conduct *and* due process may be violated if financial interests are “inject[ed]” “into the prosecutorial decision.” *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 249-50 (1980) (citation omitted); *see also* *People v. Eubanks*, 927 P.2d 310, 319-20 (Ca. 1996) (“[A] scheme that provides monetary rewards to a prosecutorial office might carry the potential impermissibly to skew a prosecutor’s exercise of the charging and plea bargaining functions.”).

Here, the Board should find that district attorneys are violating the Code by operating a traffic ticket diversion program motivated by a desire to maximize profits rather than to serve the public interest. The cost to administer most traffic ticket diversion programs is minimal, as these diversion programs consist of merely accepting money orders and then reducing, dismissing, or simply not filing the charging document. However, rather than limiting traffic ticket diversion fees to any administrative costs, District Attorneys Ward, Chaisson, Evans, and DeRosier are using traffic ticket diversion as a funding mechanism to generate hundreds of thousands of dollars in profits each year and to pay for unrelated staff, programs, and expenses.

The Board should also affirm the Attorney General's conclusion that district attorneys may not subsidize the budgets of the police, public defenders, marshals, and courts with traffic ticket diversion proceeds. *See* La. Att'y Gen. Op. No. 93-481 (Aug. 31, 1993). Each of these agencies is partially funded through court costs generated through traffic tickets. However, these agencies' budgets suffer when traffic tickets are diverted out of the court system, because court costs are no longer generated. In response, several district attorneys have agreed to share some of their profits with the public defender, marshal, and other agencies—supplanting, in part, the legislature and the executive branch as the local agency that holds the purse strings for the criminal justice system. For example, the De Soto Parish District Attorney recently agreed to give the public defender \$45 collected from each diversion traffic ticket.²⁰ Of course, a well-funded public defender's office is a laudable goal. But, as Louisiana District Judge Amy Burford McCartney recently held, it undermines the public defender's independence when its adversary controls public defender funding.²¹ Indeed, courts "have always been sensitive to the possibility

²⁰ Vickie Welbourn, *Update Legal showdown in DeSoto court could have statewide ramifications*, KTBS.com (April 5, 2018), attached as Ex. Q, <https://goo.gl/gToCCL>.

²¹ "The transfer of money between [the Forty-Second Judicial District Attorney's Office and the public defender] creates an actual conflict of interest," Judge McCartney held. "The agreement places an indigent defendant in the precarious situation where the party seeking to convict him is now paying for the attorney who is supposed to be advocating for him in his attempt to avoid a conviction, mitigate his criminal liability and protect his constitutional and statutory rights. The obligations created by the agreement offend the contradictory nature of the criminal

that important actors in the criminal justice system may be influenced by factors that threaten to compromise the performance of their duty.” *Young*, 481 U.S. at 810. The Board should respond to this concern and send a message to the public that the justice system should not be beholden to district attorneys as their financial patron. It is inappropriate for the district attorneys to play any role—let alone an outsized role—in how their adversaries are funded. Indeed, when public defenders are forced to rely on the largess of their adversary, it creates the appearance to indigent defendants that their own advocates are for sale.

Of course, diverting motorists out of the criminal justice system is commendable if done in the right way. But what used to be a considered opportunity for a second chance has been transformed into a racket. Prosecutors should not be prosecuting (or not prosecuting) for profit. As Louisiana Chief Justice Bernette Joshua Johnson recently said, “Would you have faith in the system if you knew that ever single actor in the criminal justice system—including the judge and your court appointed lawyer—relied upon a steady stream of guilty pleas and verdicts to fund their offices? Would you doubt your ability to get justice? . . . [Y]ou’ve got to concede that there is something about the system that does not feel right.”²²

We respectfully request that the Board send a clear message that profiting from traffic ticket diversion is unethical and that it is impermissible to offer justice for sale. As permitted by La. Stat. Ann. § 42:1155, the Board should order the district attorneys to return the ill-gotten proceeds they’ve extracted through their unethical for-profit diversion scheme.

defense system.” Vickie Welborn, *DeSoto judge: D.A., public defender financing agreement unconstitutional*, KTBS.com (June 6, 2018), attached as Ex. R, <https://goo.gl/3z1MKW>.

²² Chief Justice Bernette Joshua Johnson, *2018 State of Judiciary Address to the Jt. Sess. Of the La. Leg.* (April 23, 2018), attached as Ex. S, http://www.lasc.org/press_room/press_releases/2018/2018-05.asp

I declare under penalty of perjury that the foregoing is true and correct to the best of my ability.

EXECUTED this 18 day of June, 2018.

Micah West

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STATE OF ALABAMA, County of MONTGOMERY

On this 18th day of June, 2018, before me personally appeared

Micah West, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed it as his free act and deed.

[Signature]
Notary Public

Notary ID Number: _____



I declare under penalty of perjury that the foregoing is true and correct to the best of my ability.

EXECUTED this 18th day of June, 2018.

Danielle E. Davis

Danielle E. Davis
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STATE OF LOUISIANA, Parish of Orleans

On this 18th day of June, 2018, before me personally appeared

Danielle Davis, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that she executed it as her free act and deed.

Sara Godchaux
Notary Public

Notary ID Number: 135007



Sara Godchaux
Notary Public
Notary ID No. 135007
Orleans Parish, Louisiana