



# INTERNAL AUDIT SERVICES REPORT

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SPECIAL INVESTIGATION

2005-004

**CONFIDENTIAL**



ADMINISTRATIVE OFFICE  
OF THE COURTS

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FINANCE DIVISION  
INTERNAL AUDIT SERVICES

## INTRODUCTION

In February of 2005 the presiding judge (PJ) of the Superior Court of Marin County discussed the necessity of having Internal Audit Services (IAS) investigate certain allegations concerning John P. Montgomery, the court executive officer (CEO) at that time. The request to perform the investigation was communicated to IAS by the Office of the General Counsel (OGC) of the Administrative Office of the Courts (AOC) as the attorneys for the court. As such, this report is privileged unless waived by the court.

Ms. Kim Turner, assistant CEO, first started to become concerned enough to internally investigate irregularities regarding Mr. Montgomery in December 2004 when she had a discussion about mortgage rates with Mr. Montgomery. According to Ms. Turner, Mr. Montgomery inquired about her interest rate and he told her that his was a little better. He indicated to her that the rate he was discussing was on his Hercules home, but due to her observation of a fax sent to the Court, she knew that his home in Hercules had been sold. She thus became concerned about his "covering up" his address and found out about the properties that Mr. Montgomery owned with Ms. Lau, a contractor employee working for the court. This led to the request discussed above and the allegations below.

The allegations specifically were:

1. Was there a conflict of interest relating to personal and financial relationships with a contractor employed by the court? The conflict specifically related to the CEO having a financial interest in properties with the contractor. An additional concern was whether the products/services were beneficial to the court for the price paid?
2. Did the CEO travel out of state without proper authorization? A question was also raised about the propriety of the charges on the travel and expense claims of the CEO.

IAS conducted interviews with numerous court employees during the course of this investigation. Some of the interviews were conducted as part of the audit of the court. The employees who were contacted and interviewed included:

John Montgomery	Rick Langlais	Sylvia Lautsch
Karen Richardson	Neil Cossman	Dorothy McCarthy
Kim Turner	Evelyn Conroy	Kit Tiura
Scott Beseda	Rachel Creyer	

IAS also interviewed PJ Boren, Judge Lynn Taylor (the presiding judge of the court during the calendar years 2002 and 2003), and Linda Lau, contractor's employee. The interview with Mr. Montgomery was conducted by John Judnick and, unfortunately, was terminated by Mr. Montgomery after questions were asked concerning his financial and personal relationship with Ms. Lau. Mr. Montgomery stated that he had "nothing further to say." Subsequently through discussions between Mr. Montgomery's attorney and the OGC attorney assigned to this investigation, a request was made to arrange a meeting at which Mr. Montgomery could discuss the situation. IAS wanted to complete its interview of Mr. Montgomery at this

meeting. The meeting did not take place because Mr. Montgomery's attorney declined to arrange it.

## CONCLUSIONS

### **1. CEO Conflict of Interest**

Under California Rules of Court, the CEO under the direction of the presiding judge shall perform various duties. These duties include providing general direction to and supervision of the employees of the court. Under the Personnel Plan and Policies of the Superior Court of Marin County, employees of the court are "expected to use good judgment and avoid situations that create an actual, potential, or perceived conflict between their personal interests and the interests of the court."

The CEO has had a conflict of interest as defined by the court's personnel manual since 2002. The conflict of interest specifically pertains to the CEO's financial interests in properties with a contractor's employee working for the court. Mr. Montgomery had an affirmative obligation to disclose to the court his financial relationship with Ms. Lau at the time of the initial transaction with her. He never did so. Indeed, he may have taken active steps to conceal his conflict of interest. Details concerning this conflict are discussed below.

### **2. Out-of-State Travel Without the Authorization of the Presiding Judge and Other Questionable Expenditures On Expense Claims Submitted by the CEO**

Pursuant to a Finance Memorandum (AE 2004 ~ 002), which the court received in February 2004, any out-of-state travel must be approved by the PJ. Detailed below are numerous out-of-state trips by the CEO that do not have the PJ's pre-approval. The out-of-state trips by Mr. Montgomery after the issuance of the policy memorandum are therefore considered unauthorized under AOC policy. These claims total \$20,997.63. IAS also considers the earlier out-of-state travel and conferences to be excessive for Mr. Montgomery. These claims total \$18,731.05. All of these travel claims for the last three years are detailed below.

Other (non-travel) expense claims as submitted by the CEO for the period reviewed (the last three fiscal years) contain numerous irregularities and expenses that are questionable. The expense claims were approved within the procedures that the court had in place, yet there remain questionable items, which are detailed in Appendix G in the amount of \$8,301.84.

The total expenses identified above are \$48,030.52.

## 1. FINANCIAL RELATIONSHIP/CONFLICT OF INTEREST

Pursuant to the California Rules of Court, the CEO under the direction of the presiding judge (PJ) shall perform various duties. These duties include providing general direction to and supervision of the employees of the court. (See Appendix I for the rule of court referred to.) Under the Personnel Plan and Policies of the Superior Court of Marin County, employees of the court are "expected to use good judgment and avoid situations that create an actual, potential, or perceived conflict between their personal interests and the interests of the court." (See Appendix A for the Personnel Plan and Policy.)

Appendix B of this report contains the listing of contracts and dollars of the contracts of the court for the period 2001 through 2005. Linda Lau was an employee of a contractor retained by the court as part of the contracts between the court and Andrews Technology, Inc. (see Appendix C for the contracts) and Corporate Consulting Services, Inc. (see Appendix D for the contracts). Andrews Technology, Inc. went out of business in 2002 and the service contracts were assumed by Corporate Consulting Services, Inc. The contract listing details the time frame and expenditures for the contracts for which Linda Lau was the project manager. Ms. Lau was the sole service provider under these contracts to the Marin Superior Court.

The initial contract with Andrews Technology, Inc., entered into in September 2001 was to perform two projects:

1. Courtesy notices conversion from impact to laser print.
2. Workflow and process documentation of the traffic and criminal divisions of the court

Subsequent amendments to this contract continued to contain some specificity regarding services to be provided. However, beginning with the initial Corporate Consulting Services, Inc. contract in January 2003, the services to be performed were only defined as "Project Management."

John Montgomery did not personally sign any of the contracts between the court and Andrews Technology, Inc. or Corporate Consulting Services, Inc. Mr. Montgomery, however, was fully aware of the contracts and was involved in the initial selection of the firm, the consultant assigned by the firms, the services requested, and any modification of terms (i.e., hourly rate change from \$100 to \$90 in the amendment dated June 2004). Although Linda Lau was an employee of the two firms mentioned, she was managed and supervised by the court (by Karen Richardson, assistant CEO) during the periods of the contracts. The amounts paid by the court to Corporate Consulting Services, Inc. and Andrews Technology, Inc. for the last three and one-half fiscal years are:

Andrews Technology, Inc.

2001 - 2002	\$ 135,550
2002 - 2003	104,000

Corporate Consulting Services, Inc.

2002 - 2003	\$ 108,950
2003 - 2004	\$ 201,850
2004 - 2005	\$ 102,196 through January 2005

The total of the payments above is \$ 652,546.

Ms. Turner stated that both she and Ms. Richardson had told Mr. Montgomery several times that Ms. Lau was not meeting expectations and that the court was paying too much for the services. She stated that Mr. Montgomery insisted that the court continue the contract. Ms. Richardson corroborates these facts. IAS reviewed the work produced by Ms. Lau to determine if work was actually performed and whether there was any discrepancy between the hours charged and the product provided. While it is difficult to determine whether there is any discrepancy, the work appeared to be of assistance to and useful to the court. During the most recent period of work, Ms. Lau's work involved assisting the court in transitioning from its case management system to the statewide case management system. The rates as charged during the course of the contract were adjusted (\$100 per hour to \$90 per hour) but generally fell within ranges normally paid for systems consultants.

According to discussions with Ms. Turner, shortly after Mr. Montgomery's wife died in April 2002, Mr. Montgomery began to be seen frequently with Ms. Lau during breaks, lunch, etc. According to Ms. Turner and other employees we discussed this with, there appeared to be concern/rumors about an "extended relationship" between Mr. Montgomery and Ms. Lau that was beyond the normal work relationship. Ms. Turner stated that at that time she felt it was inappropriate and in conflict with the personnel manual. She told IAS that she discussed this with Mr. Montgomery and his response to her was that he had no trouble keeping his business and personal life separate and that she (Ms. Turner) should mind her own business. Again according to Ms. Turner, shortly after her discussion with Mr. Montgomery, Ms. Lau and Mr. Montgomery were no longer seen together as frequently as before.

**Non-disclosure of Conflict of Interest**

We have detailed below various property transactions that contain references to Mr. Montgomery and/or Ms. Lau. The transactions below document a financial relationship between Mr. Montgomery and the contractor's employee Linda Lau. (In Appendix F of this report are the documents from the recorder's offices supporting the transactions.)

Property Transactions

Property 1

Quitclaim Deed

Date May 10, 2000

Seller Carl McCosker, an Unmarried Man

Transfer Under a Quitclaim Deed

Property **Hidden Valley Lake, Unit No. 7, Lake County**

Purchaser Linda L. Lau, an unmarried woman

Grant Deed  
Date November 22, 2002  
Seller Linda L. Lau, An Unmarried Woman  
Property **Hidden Valley Lake, Unit No. 7, Lake County**  
Purchaser Lynda D. Shanahan and Dennis Shanahan, Wife and Husband as  
Community Property with rights of survivorship

The above property indicates that Ms. Lau had a property next to the following purchase. This shows only a location and not any involvement with John Montgomery.

Property 2

Grant Deeds  
Date August 12, 2002  
Seller Marcella Holland, a widow  
Property **Hidden Valley Lake, Unit No. 9, Lake County**  
Purchaser John P. Montgomery, an unmarried man and Linda L. Lau, a single  
Woman, as Joint Tenants

Mailing  
Address John P. Montgomery, **17117 Squirrel Hill Road, Middletown, CA**  
95461

Note: Linda Lau had a Middletown address until December 2002.

Date December 30, 2003  
Seller John P. Montgomery, An Unmarried Man and Linda L. Lau, A  
Single Woman  
Property **Hidden Valley Lake, Unit No. 9, Lake County**  
Purchaser Warren S. Ashworth and Carolyn L. Ashworth, Husband and Wife

The date of the purchase of this property, August 12, 2002, establishes the beginning of the financial conflict of Mr. Montgomery, as we have been able to establish it.

Property 3

Grant Deed  
Date October 9, 2002  
Seller Timothy M. Curran and Paula M. Curran  
Property 19 Buhman Court, Napa  
Purchaser John P. Montgomery, an unmarried man and Linda L. Lau, a single  
Woman, as Joint Tenants

Mailing  
Address 19 Buhman Court, Napa

Borrowing

Deed of Trust filing	
Date	October 15, 2002
Borrower	John P. Montgomery, an unmarried man and Linda L. Lau, an unmarried person
Bank	Fleet Financial
Borrower's Address	19 Buhman Court, Napa

In my interview with Mr. Montgomery, he was asked concerning the process at the court of reporting conflicts of interest. Mr. Montgomery stated that employees should report any potential or perceived conflicts to their supervisor. Mr. Montgomery was asked to whom he would report any such conflicts. He stated that he would report them to the PJ. He was asked whether he had ever reported any to the PJ of the court. He stated that he had not. Mr. Montgomery was then shown the transaction documentation relating to the real estate purchases with Ms. Lau and was asked whether these transactions represented a conflict of interest that should be reported. He stated "I have nothing further to say" and ended the interview. PJ Boren has confirmed that Mr. Montgomery has never reported any conflicts to him.

Additionally, the prior presiding judge, Judge Taylor, also confirmed to IAS that Mr. Montgomery did not report any conflicts of interest to her during her tenure as presiding judge, nor was she aware of any relationship or financial transactions between Mr. Montgomery and Ms. Lau.

**Possible Concealment of Conflict of Interest**

The current payroll/personnel file of the court identifies Mr. Montgomery's residence as **127 Pavon Way, Hercules, CA.** (See Appendix H for this documentation.) In August of 2004, all court employees were notified to update their file information for their address, phone, emergency contact, etc. Mr. Montgomery did not do this. Mr. Montgomery sold the Hercules property in September 2002 but did not change his court personnel file information. We were unable to complete our interview of Mr. Montgomery to determine his past and current residences. This is important as it pertains to the information below concerning properties in which he has a financial interest with Ms. Lau and whether any of these were his personal residence at any time. There are also indications that Mr. Montgomery attempted to conceal his current residence by redacting his address on the *Electronic Deposit Authorization* form submitted in November 2002. (The form is in Appendix H.) His misrepresentation, as reported by Ms. Turner, in their discussion regarding mortgage rates is further evidence of an attempt to conceal his conflict of interest.

Additionally, in late 2002, Mr. Montgomery cancelled his court-paid cell phone and got his own plan. Starting at that time he submitted only the cover sheet to the bill and not the billing detail. The detail would provide information as to calls being made that would enable IAS to identify locations, and potentially Mr. Montgomery's residence. There are cell phone bills

during the later part of 2004 that have been submitted by Mr. Montgomery and have the address redacted. Prior to that time, the cell phone bills were sent to the court with the address as Marin County Courts, Room 116. This situation again appears to be a means by which he may have attempted to conceal his address. (The bills are included in Appendix G.)

It appears that Mr. Montgomery tried to conceal these transactions by not filing his Form 700 (Statement of Economic Interests). Each year the court sent out an e-mail to remind employees to file the form. This filing would have provided some information concerning the above transactions (investments schedule, loan or real estate rental schedule) but probably not of his financial interest with Linda Lau. It should be noted that previously Mr. Montgomery had filed the form but had stopped doing so in recent years. However, due to his financial transactions, especially the real estate purchases, he was under an affirmative obligation to file the form. This appears to be another means by which he may have attempted to conceal his address. (The bills are included in Appendix G.)

Based on the above, the CEO, John Montgomery, has had a financial conflict of interest as defined by the court's personnel manual since at least August 2002. The financial conflict of interest was expressly due to Mr. Montgomery having an interest in Ms. Lau's income stream while at the same time both jointly owning property with her and acquiring a loan on that property. While he did not sign the contracts with the firms Ms. Lau worked for, Mr. Montgomery was fully aware of the contracts and was involved in the initial selection of the firms and responsible as the court executive officer for non-judicial operations of the court. Mr. Montgomery had an affirmative obligation to disclose to the court, at the minimum a discussion/disclosure to the PJ, his financial relationship with Ms. Lau at the time of his initial transaction with her. Additionally, it appears that Mr. Montgomery may have tried to conceal this information in court records as discussed above.

IAS could not determine whether Ms. Lau was solely dependent on the court's payments on the contract to meet any of these financial obligations or whether she had other sources of income or funds.

IAS was not able to establish whether Mr. Montgomery also had a personal conflict of interest. The IAS interview with Mr. Montgomery was terminated by him without his responding to questions concerning his personal relationship with Ms. Lau. Ms. Lau also did not comment on the personal relationship when asked.

## **2. TRAVEL AND OTHER EXPENDITURES**

### **Travel and Expense Claim Policy and Procedures**

The trial court is responsible for developing and implementing a system for the submission and approval of travel expense reimbursement claims that is impartial and appropriate and that complies with the policies, schedules, and procedures approved by the Judicial Council. (Gov. Code § 69505 (b))

The court does not have its own policies and procedures at the local level dealing with travel and expense claims. Rather, the court processes all travel and expense claims through the county, and adheres to the County of Marin Signature Authorization methodology to reimburse judges and employees for travel expenses incurred on court business. Specifically, it designates the CEO as the "Head of the Department" and authorizes him to designate certain key court officers to sign documents in his behalf including the County of Marin's Accounts Payable (claims) -Travel Expense form. Individuals designated include the assistant CEOs and the fiscal officer.

Expense claim forms specifically state for the approval of the claim a review and approval threshold. The certification of the approver includes the following: "I have reviewed this claim and approve the expenses listed as properly authorized and necessary for the conduct of official business for the Superior Court of Marin County." Expense claims reviewed by IAS were all approved by the designated approvers indicated above. None of the claims was approved by the PJ of the court. The claims were all approved by individuals authorized by Mr. Montgomery.

All of the travel claims of Mr. Montgomery for the period discussed above are contained in Appendix G.

#### **Out-of-State Travel**

In an AOC Finance Memorandum (AE 2004 ~ 002) issued and effective February 2004, which the court received, any out-of-state travel must be approved by the PJ. There was no documentation provided to IAS to support the PJ pre-approval of the travel by the CEO out of state for the period where the policy was applicable. Ms. Turner has indicated that in February 2004 when the new policy was received by the court, a discussion with Mr. Montgomery was held and he instructed her and Ms. Richardson to disregard both the prior approval requirement of the policy and the associated required documentation.

The last three fiscal years the CEO's travel out of state with location is summarized below. Additionally, Appendix B contains an analysis of all travel claims inclusive of the claims below grouped by fiscal year of claim payment.

Fiscal Year 2002 - 2003	\$ 10,700.37	7 conferences
Florida	\$1,104.95	June 8 - 11, 2002
Washington, D.C	\$1,593.93	June 12 - 16, 2002
Boston	\$1,512.12	July 10 - 16, 2002
Florida	\$1,710.83	Sept. 25 - 29, 2002
Boston	\$1,508.76	Nov. 16 - 20, 2002
Washington, D.C	\$2,529.29	Jan. 8 - 12, 2003
Philadelphia	\$1,486.95	March 15 - 18, 2003

Fiscal Year 2003 - 2004	\$ 22,378.22	11 conferences
Washington, D.C	\$2,103.42	July 13 - 17, 2003
Washington, D.C.	\$1,594.22	July 27 - 30, 2003
Kansas	\$1,076.09	Sept. 13 - 16, 2003
Kansas	\$2,102.73	Oct. 28 - 30, 2003
Savannah	\$1,154.22	Feb. 1 - 3, 2004
Boston	\$2,758.77	March 15 - 16, 2004
Atlanta	\$1,269.65	April 14 - 17, 2004
Boston	\$2,580.65	April 29 - 30, 2004
San Antonio	\$1,425.84	May 12 - 15, 2004
Chicago	\$ 871.28	May 22 - 25, 2004
Milwaukee	\$1,541.35	June 2 - 5, 2004
Payments:		
Boston conference registration fee	\$1,950.00	Sept. 9 - 10, 2004 conf. date
Boston conference registration fee	\$1,950.00	Oct. 14 - 15, 2004 conf. date

Note: Payments on claims submitted for fiscal year 2003-2004 subsequent to the February 2004 prior approval policy total \$14,347.54 and for fiscal year 2004-2005 \$6,650.09. The total for both periods is \$20,997.63. Dates are included above to indicate travel after the February 2004 policy issuance. Additionally, the Boston conference registration fees above were claimed and paid in fiscal year 2003 - 2004 for conferences the following year.

Fiscal Year 2004 - 2005 (through 12-31-04)	\$ 6,650.09	5 conferences
Dallas	\$1,631.88	July 10 - 16, 2004
Pittsburgh	\$1,448.23	Aug. 3 - 6, 2004
Boston	\$1,449.01	Sept. 9 - 10, 2004
Australia	\$ 876.90	Sept. 17 - 19, 2004
Boston	\$1,244.07	Oct. 14 - 15, 2004

Based on other audits and reviews of courts, the number of out-of-state trips for purposes of individual, professional educational development in total is, in the opinion of IAS, excessive and questionable for a court of this size. Although the out-of-state travel is considered excessive and questionable, it is the responsibility of the presiding judge to monitor and approve the travel. Both the current and prior PJs have indicated that they did not know that this travel was being charged to the court and would never have approved the level of travel had they known it was being paid for out of court funds. It should be noted that the conferences all pertain in some manner to court administration or training that could be considered beneficial to a court administrator. The total amount involved in trips prior to the AOC February 2004 travel memorandum during the period under review is \$18,731.05.

### **Employee Expense Reimbursement**

Procedure FIN 8.03, Unallowable Expenses, in the *Trial Court Financial Policies and Procedures Manual* (Manual) states that “expenses incurred for the sole benefit of the trial court employee shall not be allowed as reimbursable expenses.” Additionally, paragraph (b) of the section states:

Personal Telephone Charges. Personal telephone charges that are not court business related are not allowed as reimbursable travel expense.

Expenses as submitted by John Montgomery for the period I reviewed (the last three fiscal years) contain numerous irregularities and expenses that are questionable. One example of an irregularity is the cell phone bills submitted for payment by Mr. Montgomery; he submitted only the cover page of his monthly cell phone and paid 50 percent of the cost. We were unable to determine the exact month in which this submission and approval was initiated; however, it seems to have begun approximately two years ago. Due to this we were not able to distinguish personal from business telephone calls. This is contrary to the above cited policy. Another example of an irregularity is from Mr. Montgomery’s trip to Boston in March 2004, contained in Appendix G. He submitted and was reimbursed for parking at the airport for the period March 14 through March 16 with a parking receipt stamped March 1; Mr. Montgomery flew out on March 13.

An analysis of the expenditures considered questionable is contained in Appendix G. The total amount is \$8,301.84.

While numerous expenses might be considered personal (telephone charges) and there are a significant number of irregularities that IAS was not able to question Mr. Montgomery about, the expenses were approved under the procedures and policy discussed above. AOC policy in the *Manual* requires documentation for all expenditures on the claims unless specified otherwise. The documentation and approval of cell phone bills differs from the requirements of the *Manual* and would have required a request for alternative procedures to be submitted by the court to the AOC for approval. This would normally be submitted under the signature of the court executive officer but this was not done here.

The approvers of claims were generally the court assistant CEOs (the PJ at the time of the submission of the claims did not approve the claims). At no time did the assistant CEOs elevate their concerns to the PJ. Upon questioning, the Asst. CEOs stated that they assumed that the PJ was aware of the expenses being charged to the court. According to discussions with the PJ, the former PJ, assistant PJ, and assistant CEOs, it appears that the process as described was a long time “cultural issue” at the court.

Both assistant CEOs indicated that they were signing the expense claims, including travel claims, either under duress or intimidation, or were uncomfortable not signing them. Ms. Turner has also indicated that staff were frequently berated by Mr. Montgomery and were

fearful of him. Ms. Turner has also stated that "he used this tactic on me only once ... I advised him that if he ever did that again, he would have my resignation. He knows that I will not tolerate this behavior directed at me." This raises a concern as to why she brought the issue to the PJ and the AOC at this time (January 2005) and did not raise it previously.

The court has continued a practice of following local procedures of the county and has not conformed to AOC policy either concerning documentation or pre-approval of out-of-state travel (policies that became effective February 2004). The compliance with approved policies and procedures required by the Judicial Council/AOC are the specific responsibility of the court executive, Mr. Montgomery. Therefore, non-compliance is also attributable to him. Additionally, the non-compliance can and has led to his benefiting from the travel and other claimed expenses that are either not approved or are questionable. As indicated above, if he has his subordinates approve his claims this practice is also inappropriate and supports a conflict of interest, inappropriate/excessive/unauthorized travel, and questionable reimbursements of expense claims.

## APPENDICES

- A. Marin Superior Court, Personnel Plan and Policies
  - Adopted August 29, 2001
  - Revised October 13, 2003
- B. Marin Superior Court, Contract Services Listing
  - a. Fiscal Year 2004 - 2005
  - b. Fiscal Year 2003 - 2004
  - c. Fiscal Year 2002 - 2003
  - d. Fiscal Year 2001 - 2002
- C. Contracts - Andrews Technology, Inc.
  - a. Andrews Technology, Inc., September 18, 2001
  - b. Attachment A, 1-9-2001
  - c. Attachment B, 4-2-2002
  - d. Attachment C, 8-7-2002
  - e. Attachment D, 11-19-2002
- D. Contracts – Master Consulting Agreement with Corporate Consulting Services, Inc.
  - a. Attachment A, 1-1-2003
  - b. Attachment A, 9-1-2003 through 12-31-2003
  - c. Attachment A, 1-1-04 through 3-31-2004
  - d. Attachment A, 3-31-2004 through 4-30-2004
  - e. Attachment A, 6-30-2004 through 12-31-2004
  - f. Attachment A, 1-1-2005 through 3-31-2005
- E. Corporate Consulting Services Website Information
- F. Real Estate
  - a. 19 Buhman Court, Napa, CA
  - b. Hidden Valley Lake, Unit No. 9
- G. Claims from John Montgomery, 2002 through to-date 2005
  - a. Analysis of claims
  - b. Claims
- H. County of Marin, Payroll/Personnel Action Form
  - a. Home Address, John Montgomery
- I. California Rules of Court, Title 6 – Judicial Administration Rules, Division IV – Trial Court Administration