

hearing should be held after expedited discovery so that all parties can properly present their positions on the issue of funding. Indeed, as the City has repeatedly stated, it has engaged experts to analyze the staffing needs at the jail. The City further submits that a forensic accounting analysis or audit is needed to determine how the funds currently provided to the Sheriff are being used, whether the funds are being properly used, and whether the Sheriff has other revenue sources that will allow him to operate the jail constitutionally.

There has been no proof that any alleged unconstitutional conditions at the jail are the result of a lack of funding. These statements are pure speculation at this point. Additional information that can be obtained through discovery will elucidate that lack of funding is not the reason for any alleged constitutional violations. As the City stated during the last status conference held on Monday, October 15, 2012, the City is keenly interested in obtaining additional information on the issue of funding as the City is not prepared to “write a blank check.” The additional funding being sought by the Sheriff would have a crippling effect on the City’s operations. It is worth repeating—for every million dollars requested, the City will need to furlough at least 24 employees between now and the end of the year. This would include critical personnel such as police officers and firefighters. The safety of the citizens of New Orleans should not be jeopardized by the payment of unsubstantiated amounts to the Sheriff when the Sheriff simply may need to use his current funding more effectively. Indeed, the Louisiana Constitution, the Code of Civil Procedure, and the Louisiana Revised Statutes prevent courts from ordering a municipality from appropriating funds if such action would create a deficit that would require the City to lay-off or furlough a significant number of employees. *See* Article XII, Section 10 of the Louisiana Constitution, Louisiana Code of Civil Procedure Art. 3862, and La. Rev. Stat. §13:5109(B)(2), (C).

As the City further stated during the last status conference, the Sheriff has provided information purporting to support his request for 38-39 million dollars in interim funding. But the information that the Sheriff provided as support for this much increased interim funding¹ does not include certain revenue sources that were included in previous budgetary documents that were submitted to the City just a few months prior to the Sheriff's most recent submission.² This obvious deletion of revenue sources certainly highlights the need for a forensic accounting analysis or audit. Further underscoring the need for a detailed probe into the use of funds by the Sheriff is the Sheriff's counsel's statement during the last status conference suggesting that the Sheriff's ingenuity and ability to generate revenue does not relieve the City of any obligation to fund the jail. The City recognizes that it currently is obligated to pay for certain items at the jail, such as housing/board, medical expenses, court services, utilities, gasoline, oil, health insurance, workmen's compensation, and unemployment insurance. *See Hamilton v. Morial*, No. 69-2443, (E.D. La. March 26, 2003). The Sheriff, however, cannot mismanage the funds paid by the City, generate additional funds, then use those additional funds he may generate to purchase items that are not essential to the operation of the jail³ while still alleging that he does not have sufficient funds to operate the jail.

The Sheriff has repeatedly asserted that lack of funding has caused a staff retention and hiring problem. Based on merely an initial review of the scant information recently provided by

¹ Notably, after providing the City with the 38-39 million dollar estimate of interim funding, it took the Sheriff an entire week to compile the mere 11 pages that purportedly supports the estimate. It defies logic that documents supporting an estimate would be generated *after* the estimate has been provided.

² As one example, the City has received conflicting information regarding whether the revenues produced by the Civil Division of the Sheriff's office are being used to fund the jail.

³ For example, the City is aware that the Sheriff has purchased a fleet of motorcycles, maintains a large fleet of vehicles resulting in fuel costs to the City that exceed the fuel costs of any other City department or City-funded agency, and expends resources to maintain horses for a mounted division. The City submits that additional information is needed to ascertain whether other purchases have been made that are not essential to the Sheriff's operation of the jail.

the Sheriff, the City's expert, Ken McGinnis, has noted that the Sheriff has not provided a retention study to determine why there is a retention problem. Mr. McGinnis has noted that, contrary to the Sheriff's position, rarely do salary increases resolve turnover problems. Mr. McGinnis noted that the qualification and selection process of the deputies should be addressed to resolve retention issues. This has nothing to do with staff salaries or funding. Further, the City's expert Dr. James Austin has indicated that, based on an initial review, the staff issue is related to improper deployment rather than the number of staff members. These are critical issues that deserve further evaluation through the discovery process and an evidentiary hearing.

3. **Special Master:** Again, the City submits that the most appropriate procedure for resolving any question related to the funding issue is through discovery and an evidentiary hearing. Through that process, the parties could present their evidence as well as any expert reports or testimony. This would obviate the need for a Special Master. Although the City recognizes that the Court has discretion to appoint a Special Master under Federal Rule of Civil Procedure 53, the City does not believe such an appointment is necessary.

Nonetheless, if the Court is inclined to appoint a Special Master, and in particular Ret. Judge Terry Alarcon, the City has no objection to Judge Alarcon. The City must inform the Court, however, that Mayor Mitchell J. Landrieu previously occupied office space with Judge Alarcon when both practiced law. Further, the City requests that the Court consider that the parties share the responsibility of compensating any Special Master rather than imposing that cost on the City.

The City looks forward to further discussing these issues with the Court.

Respectfully submitted,

/s/ Sharonda R. Williams

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading has been served on all counsel of record through the Court's CM/ECF electronic filing system this 17th day of October, 2012.

/s/ Sharonda R. Williams

SHARONDA R. WILLIAMS