



# AUDITOR GENERAL

## DAVID W. MARTIN, CPA



### STATE JUDICIAL AGENCY ADMINISTRATION OF TRUST FUNDS

#### Operational Audit

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#### SUMMARY

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The General Appropriations Acts for the 2005-06 and 2006-07 fiscal years included appropriations of approximately \$79 and \$84 million, respectively, from seven trust funds administered by the State’s judicial offices. Most of these trust funds are administered by judicial agencies, including the Supreme Court, Justice Administrative Commission, state attorneys, public defenders, and the Guardian Ad Litem program. Our operational audit of these trust funds for the period July 1, 2005, through March 31, 2007, disclosed the following:

#### Supreme Court

**Finding No. 1:** As of December 2007, the Supreme Court had not completed its annual physical inventory, which began in March 2006 due to problems encountered in converting to a new inventory system.

**Finding No. 2:** The Supreme Court’s policy for using cellular telephones did not provide for adequate monitoring of cellular telephone usage. Also, the Supreme Court did not report to the Internal Revenue Service the value of cellular telephone services as income for employees who did not make an adequate accounting of the business use of their assigned cellular telephones.

**Finding No. 3:** The Supreme Court did not use signed transfer receipts, which would document the transfer of responsibility for the funds from one employee to the other, when receiving and depositing funds in their trust funds.

**Finding No. 4:** The Supreme Court did not meet the deadline for filing the Court Education Trust Fund activities report required by Section

25.384(4), Florida Statutes. The report was 51 days late.

#### Justice Administrative Commission, State Attorneys, Public Defenders, and the Guardian Ad Litem Program

**Finding No. 5:** The Justice Administrative Commission (JAC) voucher packages did not always contain sufficient documentation to support the payments.

**Finding No. 6:** JAC’s policy for using cellular telephones did not provide for adequate monitoring of cellular telephone usage. Also, JAC did not report to the Internal Revenue Service the value of cellular telephone services as income for employees who did not make an adequate accounting of the business use of their assigned cellular telephones.

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#### BACKGROUND

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The General Appropriations Acts for the 2005-06 and 2006-07 fiscal years included appropriations of approximately \$79 and \$84 million, respectively, from seven trust funds to the State’s various judicial offices. These included the following trust funds: Court Education, Mediation and Arbitration, Grants and Donations, and Indigent Criminal Defense administered by judicial agencies, including the Supreme Court, Justice Administrative Commission, state attorneys, public defenders, and the Guardian Ad Litem Program, and the Child Support Incentive Trust Fund administered by the 11<sup>th</sup> Circuit State Attorney. In some instances, the trust funds are

partially administered by other State agencies, including the Department of Revenue.

Each trust fund was established to provide funding for specific purposes as set forth in the statutes that authorize the trust funds, specific proviso language in the General Appropriations Act, and contract and grant agreements.

**FINDINGS AND RECOMMENDATIONS**

**Supreme Court**

**Finding No. 1: Tangible Personal Property**

The Supreme Court began its annual physical inventory process in March 2006 and, as part of this process, was converting from a manual physical inventory process to a process using scanning equipment which reads a barcode on the property tag affixed to the property item. The inventory process included property located at 27 locations (Supreme Court, 5 District Courts of Appeal, 20 judicial circuits, and the Judicial Qualifications Commission). However, as of December 2007, the inventory process had not yet been completed due to problems encountered in transitioning to the new inventory system.

In a memorandum dated December 20, 2007, the State Court Administrator stated that, “they did encounter a lot of problems the first year such as lost data, dead scanners, programming issues, shortage of staff, and additional workload.” She further stated that attempts were made to reconcile the data, but that it became evident that there was a need to learn more about the scanner, the software, and that additional training was necessary. She concluded by indicating that that all employees had been trained and inventories had been completed at more than half of the locations.

Good internal control necessitates that a complete and timely physical inventory of property be taken annually and that the inventory be compared with the property records and all discrepancies traced and reconciled. While we recognize that the Supreme Court has

encountered unanticipated problems with the implementation of a new inventory system and, as noted above, is currently working to resolve these issues, it is important that this inventory process be completed as timely as possible to assure proper accountability and safeguarding of tangible personal property.

**Recommendation: To assure proper accountability and safeguarding of tangible personal property, the State Court system should expedite the completion of its annual inventory and ensure that all discrepancies are reconciled.**

**Finding No. 2: Cellular Telephones**

The Supreme Court’s June 2007 bill for cellular telephone services included 46 cellular telephones assigned to various employees. Total cost of cellular telephones services for the 12-month period of July 1, 2006, through June 30, 2007, was approximately \$70,300 (as recorded in the Supreme Court’s accounting records for this object code).

The Supreme Court’s cellular telephone policy stated that personal use is strongly discouraged and required reimbursement for personal calls when the pooled airtime minutes were exceeded in a month. When this occurred, each cellular telephone user was required to review his or her monthly cellular telephone bill and identify any personal calls. Supreme Court personnel responsible for reviewing and paying the cellular telephone bills indicated that the pooled airtime minutes were rarely exceeded in any month (and were not exceeded at all during our audit period). Consequently, reimbursement for personal calls made by employees assigned cellular telephones were not required.

The Department of Financial Services’ Reference Guide for State Expenditures (Guide), requires reimbursement for all personal calls made by employees whether or not the monthly airtime minutes have been exceeded. The Guide includes instructions on how to compute the amount due for personal calls when the plan minutes allowed are not

exceeded and when the plan minutes allowed are exceeded.

The cellular telephone policy adopted by the Supreme Court only addressed instances where the plan minutes were exceeded, but did not address reimbursement for personal calls when the plan minutes allowed were not exceeded. While we recognize that the Guide is not applicable to the State Court System, it nonetheless could be used to further refine the Court's current policy as it relates to reimbursement of personal calls.

Pursuant to United States Treasury Regulations, Section 1.274-5T(e), an employee may not exclude from gross income any amount of the value of property listed in Section 280F(d)(4) of the Internal Revenue Code (IRC), unless the employee substantiates the amount of the exclusion in accordance with the requirements of Section 274(d) IRC, and United States Treasury Regulations, Section 1-274.5T. Because cellular telephones are listed property, their use is subject to the substantiation requirements of the United States Treasury Regulations, Section 1.274-5T(b)(6), which requires employees to submit records to establish the amount, date, place, and business purpose for each business call. A notated copy of the employee's cellular telephone bill is an example of such a record.

Since the Supreme Court's policy did not require employees assigned cellular telephones to submit records substantiating the business use of the cellular telephone, and cellular telephones bills were not routinely reviewed by Supreme Court personnel to ascertain personal calls, the value of the cellular telephone services provided to each employee assigned a cellular telephone should have been reported as income to the Internal Revenue Service (IRS). Supreme Court personnel indicated that the value of the cellular telephone services was not reported as income for those employees assigned cellular telephones.

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**Recommendation:** The Supreme Court should amend its cellular telephone policy to require documentation of the business use of cellular telephones and to require reviews of cellular telephone bills to ascertain personal calls made and reimbursement thereof. In the absence of amending its policy, the Supreme Court should report appropriate amounts in income to the IRS in accordance with Federal requirements. In connection with amending its policy and any corrective actions, the Supreme Court should confer with the IRS and Department of Financial Services.

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### Finding No. 3: Mail Receipts

For the period July 1, 2005, through March 31, 2007, funds totaling approximately \$1.1 million were received through the mail and deposited into the Mediation & Arbitration Trust Fund (\$461,000) and Grants & Donations Trust Fund (\$640,000). Our review of the processes used in receiving, depositing, and accounting for these funds disclosed that the Supreme Court had developed internal policies and procedures for such activities as the recording of checks received in the mail, depositing various types of refunds, handling dishonored checks, and check security. However, we noted that when funds were transferred from one employee to the other, signed transfer receipts, which would document the transfer of responsibility for the funds from one employee to the other, were not used.

The State Court Administrator stated that transfer receipts were not used since most receipts are in the form of checks payable to the State, no cash is accepted, and that for the past three years, no instances of missing moneys were reported.

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**Recommendation:** The Supreme Court should use signed transfer receipts to document the transfer of responsibility for the funds from one employee to the other as a means of enhancing controls over these funds.

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**Finding No. 4: Financial Reporting**

Section 25.384(4), Florida Statutes, requires the Supreme Court to submit a report annually, on October 1, to the President of the Senate and the Speaker of the House of Representatives on activities sponsored through the Court Education Trust Fund. The report for the 2005-06 fiscal year was filed on November 21, 2006, or 51 days past the deadline of October 1, 2006. The late filing of the required report impacts the timeliness of the availability of the data contained in the report for use in the Legislative decision-making process.

**Recommendation: The Supreme Court should ensure that the deadline for submitting the Court Education Trust Fund report required pursuant to Section 25.384(4), Florida Statutes, is met.**

**Justice Administrative Commission, State Attorneys, Public Defenders, and the Guardian Ad Litem Program**

**Finding No. 5: Voucher Documentation**

Our test of expenditures made from the Grants and Donations Trust Fund and the Indigent Criminal Defense Trust Fund by the Justice Administrative Commission (JAC), state attorneys, public defenders, and the Guardian Ad Litem Program disclosed that fourteen vouchers lacked sufficient documentation to support the payment. Deficiencies in the documentation included missing purchase orders; lack of supervisory signatures approving contracts; and instances where documentation for payments processed for various state attorney and public defender offices did not, when initially submitted to JAC for processing, have adequate support. However, in these instances, documentation was subsequently requested from the applicable offices and obtained. While JAC was able to subsequently provide the needed documentation upon our inquiry, this

information should have been in the voucher package at the time payment was authorized.

**Recommendation: JAC should ensure that adequate documentation is obtained prior to authorizing payment for goods and services.**

**Finding No. 6: Cellular Telephones**

JAC assigned eight employees cellular telephones. Total cost of cellular telephones services for the 12-month period of July 1, 2006, through June 30, 2007, was approximately \$11,400.

JAC personnel indicated that the Department of Financial Services' Reference Guide for State Expenditures (Guide) constituted the JAC's cellular telephone policy. The Guide requires reimbursement for all personal calls made by employees whether or not the monthly airtime minutes have been exceeded. JAC procedures included a review of a sample of cellular telephone bills by a designated employee, but did not include a detailed review of each employee's bill to identify any personal calls that may have been made. Absent a review of each bill, it is not apparent how the JAC's procedures ensure compliance with the Guide.

Pursuant to United States Treasury Regulations, Section 1.274-5T(e), an employee may not exclude from gross income any amount of the value of property listed in Section 280F(d)(4) of the Internal Revenue Code (IRC), unless the employee substantiates the amount of the exclusion in accordance with the requirements of Section 274(d) IRC, and United States Treasury Regulations, Section 1-274.5T. Because cellular telephones are listed property, their use is subject to the substantiation requirements of the United States Treasury Regulations, Section 1.274-5T(b)(6), which requires employees to submit records to establish the amount, date, place, and business purpose for each business call. A notated copy of the employee's cellular telephone bill is an example of such a record.

Since the JAC did not require employees assigned cellular telephones to submit records substantiating the business use of the cellular telephone, and cellular telephones bills were not routinely reviewed to ascertain personal calls, the value of the cellular telephone services provided to each employee assigned a cellular telephone should have been reported as income to the Internal Revenue Service (IRS). JAC personnel indicated that the value of the cellular telephone services was not reported as income for those employees assigned cellular telephones.

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**Recommendation: JAC should amend its cellular telephone policy to require documentation of the business use of cellular telephones and to require reviews of cellular telephone bills to ascertain personal calls made and reimbursement thereof. In the absence of amending its policy, JAC should report appropriate amounts in income to the IRS in accordance with Federal requirements. In connection with amending its policy and any corrective actions, JAC should confer with the IRS and Department of Financial Services.**

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## SCOPE AND OBJECTIVES

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Our audit included examinations of various transactions (as well as events and conditions) during the period July 1, 2005, through March 31, 2007.

Our audit objectives were:

- To document our understanding of management controls relevant to the judicial agencies administration of State trust funds.
- To evaluate management's performance in administering its assigned responsibilities in accordance with applicable laws, administrative rules and other guidelines.
- To determine the extent to which the management controls promote and encourage the achievement of management's control objectives in the categories of compliance with controlling laws, administrative rules, and other guidelines; the economic and efficient operation of the trust funds; the reliability of financial records and reports; and the safeguarding of assets.
- To identify recommended statutory and fiscal changes that may be included in the audit report and subsequently reported to the Legislature pursuant to Section 11.45(7)(h), Florida Statutes.

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## METHODOLOGY

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This operational audit was conducted in accordance with applicable Generally Accepted Government Auditing Standards.

**AUTHORITY**

Pursuant to the provisions of Section 11.45, Florida Statutes, I have directed that this report be prepared to present the results of our operational audit.



David W. Martin, CPA  
Auditor General

**MANAGEMENT RESPONSE**

The Chief Justice of the Florida Supreme Court and the Executive Director of the Justice Administrative Commission provided responses to our preliminary and tentative findings. These letters are included in this report as Appendix A.

This audit was conducted by Hardee Ratliff, Jr., CPA. Please address inquiries regarding this report to Marilyn D. Rosetti, CPA, Audit Manager, via e-mail at [marilynrosetti@aud.state.fl.us](mailto:marilynrosetti@aud.state.fl.us) or by telephone at (850) 487-9031.

This report, and other audit reports prepared by the Auditor General, can be obtained on our Web site at <http://www.myflorida.com/audgen>; by telephone at (850) 487-9024; or by mail at G74 Claude Pepper Building, 111 West Madison Street, Tallahassee, Florida 32399-1450.

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APPENDIX A  
RESPONSES



*Supreme Court of Florida*

500 South Duval Street  
Tallahassee, Florida 32399-1925

R. FRED LEWIS  
CHIEF JUSTICE  
CHARLES T. WELLS  
HARRY LEE ANSTEAD  
BARBARA J. PARIENTE  
PEGGY A. QUINCE  
RAOUL G. CANTERO, III  
KENNETH B. BELL  
JUSTICES

THOMAS D. HALL  
CLERK OF COURT  
  
EDWARD DeCOSTE  
MARSHAL

March 13, 2008

Mr. David W. Martin  
Auditor General  
State of Florida  
Claude Pepper Building  
111 West Madison Street  
Tallahassee, FL 32399-1450

Dear Mr. Martin:

Thank you for transmitting to me the preliminary review findings of your audit of State Courts System (State Judicial Agency) administration of trust funds and operations. Please consider this to be the written statement of explanation required to be submitted pursuant to Section 11.45(4)(d), Florida Statutes.

Finding No. 1

Recommendation:

To assure proper accountability and safeguarding of tangible personal property, the State Courts System should expedite the completion of its annual inventory and ensure that all discrepancies are reconciled.



David W. Martin  
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Response:

The State Courts System agrees with the recommendation. The physical inventory update has been completed and the reconciliation process is under way and on schedule for an April 30, 2008, completion date.

Finding No. 2

Recommendation:

The Supreme Court should amend its cellular telephone policy to require documentation of the business use of cellular telephones and to require reviews of cellular telephone bills to ascertain personal calls made and reimbursement thereof. In the absence of amending its policy, the Supreme Court should report appropriate amounts in income to the IRS in accordance with Federal requirements. In connection with amending its policy and any corrective actions, the Supreme Court should confer with the IRS and Department of Financial Services.

Response:

The Auditor General reported that the total cost of cellular telephone services for the fiscal year 2006-07 was approximately \$70,300. While this amount is the total charged to the cellular telephone service object code (#221100) in our accounting records, it does not accurately reflect the amount of cellular telephone service. While reviewing our monthly bills from this past year, we realized that charges for wireless air cards (for wireless access from a laptop to our network) and the periodic purchase of new cell phones were included in the billings. When processed for payment, these charges were assigned to the cellular telephone service object code when they actually should have been charged to a different object code. We have corrected this for future billings so that the charges for cellular telephone service will not be inflated by non-cellular telephone service expenses.

David W. Martin  
March 13, 2008  
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We are currently conducting a review of our cellular telephone plan/billings to ensure that our plan is the most economically available, and that the provider is not assessing any additional charges which are already included in our basic plan. We are also reviewing usage to ensure that each user still has a legitimate business need for a cellular phone as outlined in our policy. By these steps, we hope to significantly reduce our annual expenditures for cellular telephone services.

We agree that the current Federal Tax rules require a detailed accounting of personal and business usage of employer-provided cell phones. We also agree that the rules require that expenses incurred for personal usage should be calculated and be either reimbursed by the employee or reported as taxable income. However, the IRS rule was initiated in 1989, when cell phones were just beginning to gain in popularity and when cell phone minutes were expensive. Now, with cellular providers offering pooled minutes, included minutes (such as unlimited night and weekend minutes, mobile-to-mobile use) and various other features all for one basic price, it becomes increasingly difficult and time consuming to review cell phone bills for personal usage. We amended our cell phone policy a few years ago because we believed that it was no longer cost effective for each employee to review their cell phone bill each month and to process any needed reimbursements.

Recently, a congressional bill (H.R. 5450) was introduced to amend the Internal Revenue Code of 1986 to remove cell phones from listed property under section 280F. If this bill is passed by congress and becomes law, cell phones would be treated like an employee's desk phone, and personal usage would no longer need to be differentiated. While we are hopeful that this legislation will be passed, we realize that in the interim, we need to comply with the existing Federal Tax rules. Therefore, we plan to do the following:

- Re-emphasize to our employees that state-owned cellular phones are to be used for state-related business when a conventional telephone is not readily available, and that personal use is strongly discouraged.

David W. Martin  
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- Require each cellular phone user to review a copy of their monthly cellular phone billing. Each user will be required to sign a *Cellular Phone Affidavit* stating that the cellular phone billing has been reviewed and that all calls were business related. If any personal calls were made, they will be identified on the *Affidavit* and a reimbursement check will be submitted accordance with the guidelines provided by the Department of Financial Services.
- Any cellular phone user who chooses not to review their monthly cellular phone billings will have the option of having the cost of their cellular phone service reported as income to the IRS. At the end of the calendar year, the entire value of a user's cellular telephone service will be reported on a form W-2, and the employee would have to include that income on their federal tax return.

### Finding No. 3

#### Recommendation:

The Supreme Court should use signed transfer receipts to document the transfer of responsibility for the funds from one employee to the other as a means of enhancing controls over the funds.

#### Response:

The State Courts System agrees with the recommendation. Operating procedures have been updated and are currently being tested to ensure that the controls over the transfer of funds are improved. Testing will be complete with full operational implementation effective not later than March 14, 2008.

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Finding No. 4

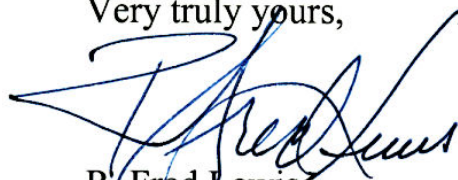
Recommendation:

The Supreme Court should ensure that the deadline for submitting the Court Education Trust Fund report required pursuant to Section 25.384(4), Florida Statutes, is met.

Response:

The Office of the State Courts Administrator acknowledges the report was filed late. Due to staff turnover for the past several years and a lack of current automated processes to avoid duplicate data entry, it has been difficult to compile and verify the data expeditiously. In addition, the submission of reimbursement requests and processing and input of expenditure data, has been slowed due to increased responsibilities, lack of automation technology, and staff turnover as indicated above. Court Education staff is conducting a review of its internal work processes and consulting with user support offices on IT applications for longer term solutions that will expedite the development and submission of the Annual Report by October 1.

Very truly yours,



R. Fred Lewis  
Chief Justice

RFL/cdj



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Victoria A. Montanaro  
 Executive Director

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COMMISSIONERS

Dennis Roberts, Chair  
 Public Defender

Diamond R. Litty  
 Public Defender

Jerry Hill  
 State Attorney

Jerry M. Blair  
 State Attorney

March 5, 2008

David W. Martin, CPA  
 Auditor General, State of Florida  
 Claude Denson Pepper Building  
 111 West Madison Street  
 Tallahassee, FL 32399-1450

Dear Mr. Martin:

Thank you for the opportunity to respond to the preliminary and tentative audit findings and recommendations of your Operational Audit of State Judicial Agency Administration of Trust Funds – Justice Administrative Commission (JAC), State Attorneys, Public Defenders, and the Guardian Ad Litem Program for the period July 1, 2005 – March 31, 2007. The following responses address each finding:

Finding No. 1: Voucher Documentation

Recommendation:

JAC should ensure that adequate documentation is obtained prior to authorizing payment for goods and services.

Agency Response:

Historically, the primary audits of invoices and the review of the inclusion of the appropriate supporting documentation were performed at the individual circuit or office. In contrast this audit was performed using documents held by JAC in Tallahassee.

Due to this historical auditing practice, some agencies limited the supporting documentation submitted to JAC to only those necessary to process the transaction. Fewer copies made and smaller packages mailed to JAC reduced the cost of paper and postage. These individual agencies maintain in their respective offices more extensive and complete supporting documentation, such as purchase orders. When it becomes necessary for JAC to respond to requests from outside entities, such as DFS or for audit purposes, then we work closely with the respective offices to produce requested documentation.

The Justice Administrative Commission administratively serves the offices of State Attorneys, Public Defenders, Capital Collateral Regional Counsels, the Statewide Guardian Ad Litem Program, and Criminal Conflict and Civil Regional Counsels; and, provides compliance and financial review of the court-appointed attorney due process costs.

Finding No. 2: Cellular TelephonesRecommendation:

JAC should amend its cellular telephone policy to require documentation of the business use of cellular telephones and to require reviews of cellular telephone bills to ascertain personal calls made and reimbursement thereof. In the absence of amending its policy, JAC should report appropriate amounts in income to the IRS in accordance with Federal requirements. In connection with amending its policy and any corrective actions, JAC should confer with the IRS and Department of Financial Services.

Agency Response:

I would like to provide clarification on the dollar amount for cellular service provided to the auditor. The information provided to the auditor was the total cost of blackberry (data) and cellular telephone service. The portion of the bills for cellular telephone service totaled \$6,423 not \$11,400.

It is true that historically, the agency did not have a formal written policy regarding cellular service. However, each staff member who received a blackberry with cellular capability was instructed at the time of receipt that the device was to be used for business purposes only. Each staff member has affirmed they only used the assigned blackberry device for business purposes. Each of these employees also carries their own personal cell phone.

As a result of this finding, our current policy is that each employee with a blackberry device with cellular capability will be provided a copy of their portion of the monthly invoice. They are to review the bill and notate the number of minutes that were for personal use, if any, sign the bill and return it to the JAC accounting office for processing. If an employee used their blackberry device for personal use for a period constituting a dollar amount in excess of the threshold set forth in the DFS guidelines, they will be required to reimburse the Justice Administrative Commission for the charge. Due to budgetary constraints we have reduced the cost of cellular service dramatically.

I hope this information and clarification is helpful and I look forward to working with you in the future.

Sincerely,



Victoria A. Montanaro  
Executive Director

cc: Hardee Ratliff, Audit Supervisor



