

ROBERT BURNS

NUMBER 602.922 DOCKET: 24

19<sup>TH</sup> JUDICIAL DISTRICT COURT

VERSUS

PARISH OF EAST BATON ROUGE

SANDY EDMONDS

STATE OF LOUISIANA

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**MEMORANDUM IN OPPOSITION TO EXCEPTION OF NO CAUSE OF ACTION AND SPECIAL MOTION TO STRIKE**

NOW UNTO COURT comes Plaintiff, Robert Edwin Burns, in proper person, who submits to this Honorable Court this Memorandum in Opposition to Defendant’s Exception of No Cause of Action and Special Motion to Strike which is scheduled for hearing on Monday, November 14, 2011 at 9:30 a.m.

Defendant, through counsel, has asserted a number of prior court cases as a foundation for conveying that Defendant Edmonds is entitled to absolute immunity pursuant to CCP 971 in exercising her right of free speech where a public body is concerned. Several vexing problems exist for Defendant in posing this defense, to wit:

**Ms. Edmonds is NOT an employee of the LALB or the Interior Design Board**

Upon the resignation of Ms. Sherrie Wilks, the LALB’s former Executive Director effective August 7, 2009, Ms. Edmonds, as reflected in the sworn affidavit of Ms. Wilks, which is attached hereto and made a part hereof as Exhibit P-22-a, after having told Ms. Wilks numerous times that she wouldn’t have Ms. Wilks’ job because “her Board,” the Interior Design Board, “was so easy to work for and the LALB sounds like a bunch of crazy people,” nevertheless immediately accepted Ms. Wilks’ former position upon Ms. Wilks’ resignation. In fact, Ms. Edmonds informed Petitioner soon after accepting the position that, the moment Ms. Wilks resigned, she went to Ms. Dow, LALB Legal Counsel (who also is Legal Counsel for the Interior Design Board), with a list of conditions under which she would “accept the job.” After making her required conditions known to Ms. Dow, Ms. Edmonds then drafted a vague proposal for “employment” with the LALB dated August 3, 2009, which is attached hereto and made a part hereof as Exhibit P-18.

Petitioner is a CPA (inactive) and very knowledgeable of the differing work conditions under which the IRS will deem a person to be an employee vs. being an independent contractor. For that reason, Petitioner, upon reading Ms. Edmonds' proposal at the August 17, 2009 LALB meeting (a week after Ms. Edmonds had already been hired without Board approval), inquired directly of Ms. Edmonds as to how much time she would be spending in the office. Ms. Edmonds responded with words along the following: "Oh, I will be in the office more than you can imagine." Petitioner was also concerned with the fact that Ms. Edmonds' proposal stated, "this fee will cover all work done regardless of whether it is renewal season or not." Petitioner was also concerned that Ms. Edmonds provided verbal commentary at that August 17, 2009 LALB meeting in pitching her being "hired" that, "I know there will be weeks that I won't do any work at all, but then I'll be very busy during renewal season, and it should all balance out." That statement on the part of Ms. Edmonds formed the basis for why Petitioner asked if Ms. Edmonds would be in the office with any degree of regularity serving the general needs of licensees and the public at large as those needs arose.

The IRS has very specific criteria for classifying someone as an employee vs. an independent contractor. Chief among those criteria is a set of "behavioral control" issues entailing the degree of control which an employer has over an employee. The specific type items the IRS examines in making a determination of employee vs. independent contractor are outlined in Exhibit P-19, which is attached hereto and made a part hereof. Ms. Edmonds fails all of the applicable behavioral control issues analyzed by the IRS; furthermore, neither the LALB nor the Interior Design Board has on file an IRS Form SS-8 determination that Ms. Edmonds is indeed an employee.

Additionally, at the January 10, 2011 LALB meeting, after Ms. Edmonds had been on the job for 1 ½ years, Board Member Rev. Freddie Phillips inquired if a written performance evaluation had been drafted regarding Ms. Edmonds' job performance by then-Chairman James Kenneth Comer. Mr. Comer responded that no such written performance evaluation had been drafted by him and that he preferred to just give a verbal assessment that very day to the Board of Ms. Edmonds' job performance. In fact, to this date, well over two (2) years after Ms. Edmonds was "hired," there has been no formal performance evaluation regarding Ms. Edmonds' "job performance." Such a

practice is totally inconsistent with IRS guidelines regarding analyzing whether an individual is an employee or an independent contractor. Furthermore, the absence of a job evaluation is totally inconsistent with being a State employee. State employees are given written evaluations yearly by their supervisors, and these are kept on file in the personnel files of the employees!

Contrary to being “in the office more than you can imagine,” Ms. Edmonds, with the full support of the LALB, has steadfastly refused to make the LALB office open to the public even for any minimal number of hours, despite the agency being a public one supposedly serving the needs of the licensees and general public at large. Furthermore, Ms. Edmonds has readily dictated to licensees when she will arrive at the office to take care of impromptu needs that arise such as the issuing of a license for out-of-state licensees. Furthermore, Ms. Edmonds’ proposal conveys, “even when I go on vacation, you won’t need to worry about the office. I take the cell phone and laptop with me. Everything is still taken care of in a timely fashion.” Now, upon reading that commentary, one likely would infer that Ms. Edmonds is industrious and willing to handle office affairs “even when on vacation.” Well, contrary to that meaning, what Ms. Edmonds meant, but did not reduce to writing, is that she would not be taking any annual leave when she went on vacation and would instead continue to be “on the clock” just as if she was in the office working!

That particular aspect of Ms. Edmonds “job” raised serious concerns with the LALB’s former Executive Director, Sherrie Wilks, who, in sharp contrast, was required to physically be in the office anytime she was deemed “on the clock,” and, if she was not, she had to complete leave slips for taking vacations out of town. In fact, Ms. Wilks relayed to Petitioner that, on one occasion while she served as Executive Director of the LALB and Ms. Edmonds served in that same capacity for the Interior Design Board, Ms. Edmonds saw Ms. Wilks completing a leave card. Ms. Edmonds then inquired what Ms. Wilks was completing. When Ms. Wilks responded that it was a leave card for vacation she was taking the following week, Ms. Edmonds indicated that her Board (the Interior Design Board) didn’t require such paperwork. Ms. Wilks responded that it was a Louisiana State requirement and not optional and that any State employee was required to take annual leave when on vacation. Ms. Wilks even offered to provide Ms. Edmonds

with leave cards. Ms. Edmonds responded by indicating that, if anybody from the State ever said anything or made inquiry, she would just claim that she didn't know anything about it. All of these statements regarding Ms. Edmonds' attitude and manner (or lack thereof) for handling annual leave are readily substantiated via the previously referenced sworn affidavit of Ms. Sherrie Wilks (Exhibit P-22-a).

Once Ms. Wilks became aware of the office setup to which Ms. Edmonds had been afforded and the very liberal and generous terms associated with it, she became concerned about the legality of the whole setup. Ms. Wilks indicated to Petitioner that Ms. Edmonds was trying to have the freedom and the luxury of an independent contractor but still accrue the benefits of an employee in terms of accruing annual and sick leave. Further, Ms. Wilks felt strongly that going on vacations and not taking leave and claiming to be "on the clock" merely because Ms. Edmonds had a cell phone in her possession was not ethical, moral, or even legal. Accordingly, around September of 2010, Ms. Wilks began a behind-the-scenes effort to gather corroborating evidence that the arrangement that Ms. Edmonds had with the LALB (and the Interior Design Board) was improper. As referenced in her sworn affidavit, Exhibit P-22-a, and the fact that Ms. Wilks had been employed with the State in various capacities for well over 10 years, and given that she herself had been through and had passed an audit by Civil Service whereby all of her payroll-related documents had been scrutinized, Ms. Wilks knew what documents needed to be obtained to substantiate the allegations. Ms. Wilks then asked that Petitioner, along with LALB Member Rev. Freddie Phillips, obtain historical time accumulation records from Ms. Edmonds via Freedom of Information Acts, which Petitioner did for the LALB, and Rev. Phillips did for the Interior Design Board.

On October 21, 2010, Ms. Edmonds provided a response to Petitioner regarding his Freedom of Information Act request regarding her time accumulation, her usage of time sheets, etc. as it pertained to the LALB. Ms. Edmonds' response is attached hereto and made a part hereof as Exhibit P-20. Meanwhile, on November 5, 2010, Ms. Edmonds provided a response to Rev. Phillips regarding his Freedom of Information Act request regarding her time accumulation, her usage of time sheets, etc., as it pertained to the Interior Design Board. Ms. Edmonds' response is attached here to and made a part hereof as Exhibit P-20-a. Petitioner immediately noticed that it was obvious that Ms.

Edmonds had no intention of ever utilizing annual leave with the LALB as she did not even have a column for taking annual leave!

As Petitioner and Rev. Phillips gathered the payroll information on Ms. Edmonds for the two agencies, Ms. Wilks was busy calling other small State Boards and Commissions to ascertain what posted office hours they listed for serving the public (i.e. times at which a human being would staff the office) and ascertain whether any other small Board or Commission did not utilize time and attendance sheets (as is the case with Ms. Edmonds both for the LALB and the Interior Design Board). Her findings were compiled into two spreadsheets, which are attached hereto and made a part hereof as Exhibit P-21. They demonstrate than not a single other small Board of Commission fails to have office hours during which time the public is served on a walk-in basis; furthermore, no agency fails to utilize a formal time and attendance sheet (or have computer input of same which is reviewed by its Board) and leave cards were found to be mandatory at each of the other Boards and Commissions contacted.

Rev. Phillips became actively involved in the investigation of Ms. Edmonds' work arrangement largely as a result of her steadfast and adamant refusal to grant him access to the auctioneer file of Ken Buhler, an auctioneer whose license had been revoked in 2006 due to millions of dollars in losses to consignors and investors, as Mr. Buhler applied for reinstatement of a residential license at the September 20, 2010 LALB meeting. As reflected in his sworn affidavit, which is attached hereto and made a part hereof as Exhibit P-22, Rev. Phillips inquired of Ms. Edmonds regarding his ability to come into the office to view Mr. Buhler's file prior to that September 20, 2010 LALB meeting. When he did so, as reflected in Exhibit P-22, Ms. Edmonds stated to Rev. Phillips: "Freddie, this is not what I signed up for. I agreed to work 12-15 hours per week and no more." Ms. Edmonds' revelation was the first indication that anyone had gotten regarding any specific number of hours Ms. Edmonds was to work weekly, and Rev. Phillips felt that her \$20,000 annual salary was obscenely high given that she was almost never in the office and seemed to be taking little initiative to accommodate core functions that the office is designated with performing in order to protect and serve the public.

Rev. Phillips ultimately did get the opportunity to view Mr. Buhler's file in detail; however, that opportunity was presented to him only about a week after the LALB had approved reinstatement of Mr. Buhler's residential license (a vote for which Rev. Phillips dissented). During his review of Mr. Buhler's file, he uncovered several problems with his application which should have been uncovered by Ms. Edmonds during her review of his application, the most significant of which entailed the fact that Mr. Buhler failed to qualify for a reinstated Louisiana residential license since his file contained a Texas voter registration. Rev. Phillips documented all of his concerns in a certified letter to all LALB members and several other regulatory agencies. That letter, which was dated October 4, 2010, is attached hereto and made a part hereof as Exhibit P-23.

Rev. Phillips also pointed out in the letter that Ms. Edmonds failed to provide proper guidance to Mr. Dan Mahaney, an auctioneer from Indiana who conducted a major real estate auction in the French Quarter of New Orleans in July of 2010. In Ms. Edmonds' haste to scramble into the office for one of her rare such appearances, Ms. Edmonds failed to even ask of Mr. Mahaney the questions on a checklist for out-of-state auctioneers. As a result of that failure on Ms. Edmonds' part, Mr. Mahaney lacked the proper company license to conduct the auction, and he ultimately had to surrender control of the auction to Mr. Dave Gilmore, a Louisiana real estate auctioneer based in Kenner, LA. Because Mr. Mahaney had to split the commission with Mr. Gilmore, Ms. Edmonds' oversight cost Mr. Mahaney approximately \$34,000! In his letter of October 4, 2010 to all LALB Members (Exhibit P-23), Rev. Phillips expressed frustration over the Buhler and Mahaney incidents and stated that Ms. Edmonds may be in need of "remedial training." Rev. Phillips' letter ultimately became the subject of a major article published in The Advocate on October 15, 2010. That article is attached hereto and made a part hereof as Exhibit P-24.

As indicated in the next section of this memorandum, Ms. Wilks amassed considerable documentation to be presented to Louisiana State Civil Service in an attempt to resolve whether Ms. Edmonds' work arrangements were permissible or not.

*Ms. Edmonds deemed committing "blatant payroll fraud" by*

*Louisiana Civil Service Chief of Accountability Patrick Lowery*

Armed with the materials that Ms. Wilks had obtained herself and through the efforts of Rev. Phillips and Petitioner, she requested that Petitioner arrange a meeting with Ms. Melinda Robert, HR Consultant Supervisor with the Louisiana Department of Civil Service. As evidenced by the email exchange between Ms. Robert and Petitioner, which is attached hereto and made a part hereof as Exhibit P-25, Petitioner arranged that meeting on Monday, November 22, 2010 at 9:00 a.m. Furthermore, as requested by Ms. Robert, her supervisor, Mr. Patrick Lowery, who is the Chief of Accountability of Civil Service, attended the meeting as well (making the full slate of attendees Ms. Wilks, Petitioner, Ms. Robert, and Mr. Patrick Lowery).

Mr. Lowery listened very attentively to Ms. Wilks explain Ms. Edmonds' employment arrangement in great detail both with the LALB and the Interior Design Board. After asking several questions and analyzing the material Ms. Wilks presented to him, Mr. Lowery stated, "I will tell you what this is: **it's blatant payroll fraud!**" Mr. Lowery then indicated that, if Ms. Edmonds were a classified State employee, he would pursue her for payroll fraud. He relayed, however, that because she is unclassified, his "hands are tied" and that Civil Service would be unable to pursue the matter.

Mr. Lowery then inquired how the LALB or the Interior Design Board could have possibly approved work arrangements such as Ms. Edmonds has. Petitioner responded that he had concerns when Ms. Edmonds presented her proposal; however, upon Ms. Edmonds' statement at the August 17, 2009 LALB meeting assuring LALB Members that she would be in the office "more than you can imagine," Petitioner felt the arrangement would work. Her statement was heavily relied upon by Petitioner to be truthful and thereby eliminate the potential that the IRS would deem her to be an independent contractor rather than an employee. Petitioner then relayed to Mr. Lowery that he was shocked and dismayed at just how little time Ms. Edmonds was spending in the office. In fact, he referenced this fact to her in an email dated December 1, 2010 in which Petitioner openly questioned exactly for what the LALB was paying Ms. Edmonds. Petitioner reminded Ms. Edmonds of her quotation at the August 17, 2009

LALB meeting (“I’ll be in the office more than you can imagine,”) and relayed that he thought her statement was highly misleading given that the LALB was having to pay the Attorney General’s Office up to \$50/hour for a paralegal to come into the LALB’s Office to do what should be Ms. Edmonds’ job. Petitioner concluded the email by reminding Ms. Edmonds that the LALB is a “public agency.” That email is attached hereto and made a part hereof as Exhibit P-26.

Subsequent to the aforementioned email, sometime in late March of 2011, Petitioner and Rev. Phillips requested the audio tape of the August 17, 2009 LALB meeting to substantiate exactly what Ms. Edmonds had relayed regarding how much time she intended to spend in the LALB office. Ms. Edmonds, who has sole control and possession of the audio tapes of meetings, relayed in a response letter to Petitioner dated March 29, 2011, which is attached hereto and made a part hereof as Exhibit P-27, that **“the audio tape from August 17, 2009 has not been located. I will continue to search and let you know when and if it is located.”** As of the date of this submission, Petitioner has received no such notification from Ms. Edmonds. Petitioner also notes that, of all the tapes he requested prior to him commencing videotaping of the meetings, and he requested numerous other audio tapes for review, the August 17, 2009 tape is the only one to have gone inexplicably “missing.”

After Mr. Lowery stated that his “hands are tied” regarding pursuing Ms. Edmonds for “blatant payroll fraud,” he encouraged Petitioner and Ms. Edmonds to present all of the material to the Louisiana Legislative Auditor’s Office. Accordingly, Petitioner and Ms. Wilks, as reflected in Ms. Wilks’ sworn affidavit (Exhibit P-22-a), immediately upon leaving the meeting with Mr. Lowery, proceeded directly on to the Louisiana Legislative Auditor’s Office. At that office, Petitioner and Ms. Wilks met with Mr. Calvin Moore, Senior Auditor of the Compliance Audit Division, who extended about two hours of his time to review thoroughly all of the documents and take extensive hand-written notes of the work arrangement as explained by Ms. Wilks and as contrasted to her own work arrangement during her prior tenure as Executive Director of the LALB.

After stating that he, like Mr. Lowery, did not believe that being “on call” by virtue of having a cell phone equated to being “on the clock,” Mr. Moore indicated that the Louisiana Legislative Auditor’s Office was opening up a case file for the



investigation of Ms. Edmonds' unique "work arrangements" with the LALB and the Interior Design Board. Mr. Moore also actively encouraged Petitioner, Ms. Wilks, and Rev. Phillips to continue gathering payroll information as well as other evidence to substantiate that each Board (LALB and Interior Design Board) was knowledgeable of exactly what the work situation with Ms. Edmonds entailed.

LALB (and Interior Design Board) Attorney Anna Dow, in apparent uneasiness over Ms. Edmonds' work arrangements and the Freedom of Information Requests by Petitioner and Rev. Phillips, alleged at the January 10, 2011 LALB meeting that she consulted then-Civil Service Legal Counsel Robert Boland. Ms. Dow's uneasiness may have also been exacerbated by the fact that she personally had endorsed, encouraged, and recommended Ms. Edmonds' work arrangements at the LALB meeting of August 17, 2009 and the fact that Ms. Dow never recommended, nor did the Board ever even consider, advertising the position to solicit other qualified candidates for the position. Ms. Dow alleged at the January 10, 2011 LALB meeting that Mr. Boland purportedly informed Ms. Dow that she should merely have the LALB and Interior Design Board approve an "agreement" calling for Ms. Edmonds' "employment" to be "performance-based" and not a function of hours worked. Assuming Mr. Boland was even apprised of all of the details and unique aspects of Ms. Edmonds' work arrangement, he apparently offered that suggestion irrespective of the fact that Ms. Edmonds would continue to record that she works 15 hours per week for the LALB as the basis for her accrual of annual and sick leave every pay period. Ms. Dow did not elaborate as to what extent she may have conveyed the work arrangement that Ms. Edmonds had at the time with the LALB or the Interior Design Board; furthermore, while Ms. Dow stated that Mr. Boland gave Ms. Dow guidance, such guidance wasn't reduced to writing on Mr. Boland's part. Accordingly, Ms. Dow had the LALB approve such an agreement, which is attached hereto and made a part hereof as Exhibit P-28, which was hurriedly created and presented at the January 10, 2011 LALB meeting. In fact, it was stated to still be a "work in progress" right up to an hour or two prior to the meeting.

So, Ms. Edmonds, after having been so emphatic with Rev. Phillips in September of 2010 that she would work "12-15 hours a week and no more," then signs a contract four months later indicating hours worked have nothing to do with her job! The

agreement clearly states (refer to the end of the third paragraph of Exhibit P-28): "...this is a performance based contract rather than an hourly contract....) So, in theory, Ms. Edmonds can continue to report 15 hours worked per week on her own internal spreadsheet, which has never been reviewed or audited by anyone, and work as little as she so desires at whatever location she may desire (including Disneyworld) provided those who evaluate her deem her to have met "performance-based" criteria (and that "evaluation" can be verbal). Petitioner, as a CPA (inactive) knew that action, once signed by the then-Chairman of the LALB, killed any chance whatsoever that Ms. Edmonds had of being declared an "employee" by the IRS since any person performing services designated to be "results oriented" is going to be deemed to be an independent contractor by the IRS and not an employee. Furthermore, when an employer hires an employee, it is the employer who specifies the parameters of what is expected of the employee. When the process is reversed, and the "employee" dictates all of the conditions of "employment," that individual is in no way an employee but rather an independent contractor!

During that January 10, 2011 LALB meeting, LALB Member Rev. Freddie Phillips objected strenuously to the proposed "employment agreement" and insisted that the LALB should provide office hours for which the office would be open to serve the public. He was repeatedly rebuffed by other Board Members, with the stiffest commentary coming from then-Chairman Ken Comer, who resigned from the LALB before ever attending another LALB meeting. As outlined in his sworn affidavit (Exhibit P-22), in keeping with Mr. Moore's admonition to obtain evidence that the LALB really fully understood the dynamics of Ms. Edmonds' work arrangement, Rev. Phillips asked the Board a "baited question." That question follows: "So if Ms. Edmonds is vacationing in Miami, Florida and she has her cell phone with her, then we consider her to be on the job and on the clock?" All of the Board Members except Rev. Phillips responded emphatically, "Yes!" Rev. Phillips then received the following commentary from audience members in attendance at the meeting:

**Marvin Henderson:** "If the majority of the Board supports the work arrangement, then everybody else just needs to keep their mouth shut!"

**Larry Nobles:** “Every time you [referencing Rev. Freddie Phillips] come over here, it’s a show! What’s your problem? I mean, where you going with this?.....Well, you need to just get off this Board!”

As mentioned previously, Rev. Phillips also demonstrated that Ms. Edmonds cannot be considered an employee when he inquired at that January 10, 2011 LALB meeting, after Ms. Edmonds had been on the job for 1 ½ years, if a written performance evaluation had been drafted regarding Ms. Edmonds by then-Chairman James Kenneth Comer and Mr. Comer responded that no such performance evaluation had been drafted by him and that he preferred to just give a verbal assessment of Ms. Edmonds’ job performance. Furthermore, as referenced in Rev. Phillips’ affidavit (Exhibit P-22), again in keeping with Mr. Moore’s admonitions, Rev. Phillips inquired of the Board as to whether the LALB would be better served to design a job description and position such that it would be appropriate for Ms. Edmonds or anyone who would succeed her; however, again as referenced in his sworn affidavit (Exhibit P-22), the Board informed him that these “unique work arrangements” extended only to Ms. Edmonds and would not extend to anyone who succeeded her. In fact, that language was incorporated into the “employment agreement” executed by the Board and Ms. Edmonds (Exhibit P-28) where it states: **“This agreement applies to Edmonds and the Board only, and cannot be transferred to any other party.”** Wording could not possibly be more definitive in establishing that the arrangement is that of an independent contractor and not an employee! Because the “job” Ms. Edmonds has is unique to her, and, by the LALB’s on admission, the conditions would not extend to any future (true) employee, she is, without question, and independent contractor!

Ms. Wilks, who attended that January 10, 2011 LALB meeting to assist the Legislative Auditor’s investigation, contrasted Ms. Edmonds’ work arrangement with that of her own when she was LALB Executive Director in which she #1) was required to punch a time clock, #2) was required to take some form of leave (sick or annual) if she was not physically in the office, and #3) was frequently required to contact the State-approved temp agency, Westaff, and ensure a “warm body” occupied the office on days she would be out. Again, all of these facts are corroborated via Ms. Wilks’ sworn affidavit (Exhibit P-22-a).

Mr. Moore, the Senior Auditor with the Compliance Audit Division of the Legislative Auditor's Office, was provided with the You Tube links for the discussion of the January 10, 2011 meeting pertaining to Ms. Edmonds' employment situation. He was also provided with a copy of the executed "employment agreement," and the receipt of it did absolutely nothing to change his stand, nor that of the Legislative Auditor's Office, that the entire arrangement, both with the LALB and the Interior Design Board, is improper.

Furthermore, Mr. Moore, Rev. Phillips, Ms. Wilks, and Petitioner made note of the fact that Ms. Dow indicated at that January 10, 2011 LALB meeting that the Interior Design Board would need to approve a similar "employment agreement." In fact, as evidenced by Exhibit P-29, which is attached hereto and made a part hereof, Ms. Dow even billed the Interior Design Board on January 5, 2011 for a conference with Ms. Edmonds pertaining to the employment agreement and drafting of same. Petitioner and Rev. Phillips began attending and videotaping the Interior Design Board meetings in order that any such "employment agreement" adoption on the part of the Interior Design Board could be documented. As of the filing of this memorandum, no such adoption (or even discussion of same) has transpired.

As stated previously, Ms. Dow alleged that the employment agreement arose after Mr. Robert Boland, General Counsel of Louisiana Civil Service, and she spoke and he purportedly recommended drafting the agreement. Upon hearing that the Civil Service General Counsel, Robert Boland, had purportedly relayed to Ms. Dow that fixing Ms. Edmonds' work setup required no more than the LALB indicating that her position is to be a "performance-based employee," Petitioner contacted Civil Service and asked to speak with Mr. Boland. Petitioner was informed that Mr. Boland retired effective January 7, 2011 (three days prior to the "employment agreement" being adopted by the LALB). Petitioner therefore inquired if newly-appointed Civil Service General Counsel, Adrienne Bordelon, wished to stand behind Mr. Boland's alleged statement regarding Ms. Edmonds' work arrangement and the relative ease with which it could be considered acceptable. Ms. Bordelon opted instead to refer the matter back to Mr. Patrick Lowery, the Chief of Accountability for Civil Service with whom Petitioner and Ms. Wilks had met on November 22, 2010. Mr. Lowery, in turn, sent Petitioner a letter dated April 1,

2011, which is attached hereto and made a part hereof as Exhibit P-30, which relayed that Mr. Lowery acknowledged the fact that Petitioner had done as Mr. Lowery advised regarding providing all of the relevant information to the Legislative Auditor's Office and that, "We'll have to await their inquiry of the matter." Mr. Lowery even suggested another avenue: The Governor's Office of Constituent Affairs. Petitioner did contact the Governor's Office of Constituent Affairs regarding the matter, and they indicated that, since it was already a matter being pursued by the Louisiana Legislative Auditor's Office, that office would defer to them for handling the matter.

Petitioner, Ms. Wilks, and Rev. Phillips have continued to assist Mr. Moore with relevant updated payroll information pertaining to Ms. Edmonds as well as holding periodic meetings with Mr. Moore, the most recent of which was conducted on or around July 26, 2011. During that meeting, Mr. Moore was provided with the package of Edmonds-related payroll material contained in Exhibit P-31, which is attached hereto and made a part hereof. As evidenced by that material, Ms. Edmonds suddenly "got religion" and began occasionally taking annual leave after the initial payroll-related request of late October, 2010 (and even created a column for doing so!); however, one can only logically inquire that, if an "employment agreement" is "performance-based and not a function of hours," how is it appropriate to either accrue or take leave? The simple answer is that it is not because, as has been made abundantly clear, Ms. Edmonds is not an employee but rather an independent contractor! Furthermore, as previously relayed, the execution of the "employment agreement," which was supplied to Mr. Calvin Moore, did nothing to dissuade him from the observation that Ms. Edmonds was and is engaging in a work arrangement that is not proper and not in conformity with Civil Service guidelines to be considered an employee.

Also, on page six (6) of that material (Exhibit P-31), Ms. Edmonds admits in writing that there has never been any written employment agreement between herself and the Interior Design Board. Finally, and interestingly enough, Ms. Edmonds, over the course of nine (9) historical payroll periods for the Interior Design Board covering the timeframe from September 30, 2007 through April 27, 2008 magically "manufactured" 51 hours of work she'd previously not disclosed on her prior payroll spreadsheet

admission. Those 51 hours and the pay periods for which the hours were increased are highlighted on page ten (10) of that package of material (Exhibit P-31).

At that last meeting with Mr. Moore of the Legislative Auditor's Office on or around July 26, 2011, Mr. Moore informed Petitioner, Rev. Phillips, and Ms. Wilks that the on-site investigation of Ms. Edmonds' work arrangements regarding the LALB and Interior Design Board should be conducted by Legislative Auditor Field Investigators within the next year or so. Petitioner requested of Mr. Moore if it was acceptable for him to reveal the fact that the Legislative Auditor's Office has been gathering the information supplied by Petitioner, Ms. Wilks, and Rev. Phillips and that an on-site investigation would be forthcoming. Mr. Moore relayed that doing so was perfectly acceptable, and he relayed that it would be his hope and desire that, upon each Board being informed of the fact that an investigation has been ongoing, each Board would take action to remedy the present work arrangement and avoid adverse findings by the Louisiana Legislative Auditor's Office when they conduct the on-site investigation. Accordingly, Petitioner is revealing all of those facts via this memorandum.

Petitioner's most recent phone conversation with Mr. Moore transpired on Monday, October 17, 2011, with Mr. Moore relaying that Ms. Edmonds' work arrangements with the LALB and Interior Design Board have been the focus of discussion at recent Louisiana Legislative Auditor internal meetings and that an on-site investigation of Ms. Edmonds' work parameters should take place in coming months.

Ms. Dow, the LALB and Interior Design Board general counsel, who is now known to be neck deep in the present case and who, in consultation with some unnamed official at the Attorney General's Office, recommended that Ms. Edmonds call the Terrorism Unit of Louisiana State Police regarding Petitioner's videotaping, voiced great displeasure directed toward Petitioner and Rev. Phillips at the July 18, 2011 LALB meeting. Ms. Edmonds also joined in expressing great displeasure at having to fulfill the Freedom of Information Act requests of Petitioner and Rev. Phillips, the majority of which, unbeknownst to them, were being requested to facilitate the Louisiana Legislative Auditor's requests for additional payroll information regarding Ms. Edmonds work arrangement. In fact, at the July 18, 2011 LALB meeting, Ms. Dow, as captured on videotape by Petitioner, related that, after having "gotten clearance from the Louisiana

Attorney General's Office," she recommended to the LALB that it procure third-party counsel to explore "potential disciplinary action against the licenses" of Petitioner and Rev. Phillips! Meanwhile, at the same meeting, Ms. Edmonds stated that, due to the presence of Rev. Phillips "and Mr. Burns and his video camera" at the Interior Design Board meetings, "I now have EBRP Deputy Landry there also." It is interesting to note that the Interior Design Board has never taken a vote to approve retaining security for meetings; furthermore, when Petitioner requested in writing that the matter be clarified at the August 11, 2011 Interior Design Board meeting and Rev. Phillips made a similar verbal request for clarification at that meeting, Interior Design Board Chairman Deborah Steinmetz stated that the matter would not be discussed because it was not on the agenda. Petitioner and Rev. Phillips made a joint written request that the item be added to the October 20, 2011 Interior Design Board meeting; however, as evidenced by Exhibit P-32, which is attached hereto and made a part hereof, Ms. Steinmetz, via a letter dated October 6, 2011, declined the request in relaying it was not "germane" to the business of the Board or the Interior Design Industry in Louisiana. Ms. Steinmetz is believed to have responded with the letter upon consultation with Ms. Dow, general counsel; however, neither Ms. Dow nor Ms. Steinmetz offered any explanation for why it apparently was "germane" to discuss the retention of security as a result of the mere presence of Petitioner and Rev. Phillips and the meetings being videotaped by them in accordance with R. S. 42:23. Ms. Dow, by sitting stoically as Ms. Edmonds went on an approximate two-minute diatribe disparaging the characters of Petitioner and Rev. Phillips at the July 18, 2011 LALB meeting, gave the implicit presumption that such a discussion on the part of Ms. Edmonds was "germane." During that discussion, Ms. Edmonds stated that Petitioner and Rev. Phillips had "placed the Interior Design Board in a position to where we can no longer have the luxury of meeting in restaurants, and we certainly can't ask an Interior Design firm to take all of this on [Rev. Phillips and Petitioner videotaping the meetings] and let us meet at their place of business for free." Petitioner genuinely believes that, if the Interior Design Board had been meeting at licensees' places of business "for free," that such an arrangement itself represents a blatant ethics violation on the part of the Board and the licensee! Irrespective of that fact, for Mr. Edmonds to cast Petitioner and Rev. Phillips in such a derogatory light, and for Ms. Dow to tacitly endorse

Ms. Edmonds' commentary by stoically rocking her chair back and forth as captured on video and saying nothing, merely by Petitioner and Rev. Phillips exercising their statutory right pursuant to R. S. 42:23 is inexcusable and continues a consistent, and well documented, pattern on the part of Ms. Edmonds and Ms. Dow in that regard. The October 20, 2011 Interior Design Board Meeting was cancelled without any elaboration as to why and, as of the date of this submission, the meeting has not been rescheduled.

Additionally, Petitioner again heeded the advice of Patrick Lowery and advised the Governor's Office of Constituent Affairs about the calling out of the EBRP Sheriff on April 11, 2011 and Louisiana State Police Terrorism Unit on April 12, 2011 by the LALB. Petitioner informed that office of the incidents on or around Monday, April 18, 2011. Interestingly enough, then-Chairman Comer resigned from the LALB soon thereafter, so perhaps the Governor's Office of Constituent Affairs didn't view this whole incident in a light very favorable to the LALB! It's also interesting to note that the police incidents transpired only ten (10) days after Mr. Lowery's letter to Petitioner dated April 1, 2011 (Exhibit P-30), and Petitioner did in fact advise the Governor's Office of Constituent Affairs of Mr. Lowery's assertions regarding payroll fraud on the part of Ms. Edmonds on April 4, 2011 (one week before the initiation of police reports by Ms. Edmonds).

Petitioner has gone to the great lengths of providing the details relayed above in order to lay the foundation for asserting the following points:

- Ms. Edmonds is not an "employee" of either the LALB or the Interior Design Board and has instead, according to the Louisiana Civil Service Chief of Accountability, who serves as the Human Resources authority for all Louisiana State employees, Mr. Patrick Lowery, been engaging in (his words) "blatant payroll fraud."
- Ms. Edmonds, through her "payroll fraud" as assessed by Mr. Lowery, has inappropriately obtained defense counsel from the Attorney General's Office to which she is not entitled (i.e. that defense counsel has been obtained through fraudulent representations).
- Ms. Edmonds, through her "payroll fraud" as assessed by Mr. Lowery, has inappropriately obtained insurance coverage for her acts from FARA to which she



is not entitled (i.e. her insurance coverage has been obtained through fraudulent representations akin to the owner of a rental home indicating to an insurance company that he lives in the home when, in reality, he is a landlord leasing the home to a tenant).

Petitioner even posed a perplexing question during one of the meetings with Mr. Moore. Petitioner first emphasized that the LALB and Interior Design Board have openly stated (even on video at the January 10, 2011 LALB meeting) that Ms. Edmonds is considered “on the clock” when she’s vacationing in Disneyworld or Miami, Florida provided she has her cell phone with her and returns phone calls. That fact is even readily evidenced in the “employment agreement” ratified by the LALB on January 10, 2011. With that being the case, if Ms. Edmonds documents that she responded to a work-related email while on vacation and, in the process of doing so, inadvertently slips while walking through a small puddle of water and twists her ankle, is she covered by workman’s compensation or not? Mr. Moore indicated that was one of many flaws that the whole “work arrangement” that had been negotiated between the Boards and Ms. Edmonds poses.

Rev. Phillips also pointed out at the January 10, 2011 LALB meeting that Ms. Edmonds is in direct and substantial violation of the Division of Administration’s telecommuting policy, which states that telecommuting is permitted only when the employee works designated hours from home exclusively on work business and that no such hours can be used for the care of children or adult parents. In short, the Division of Administration’s telecommuting policy emphasizes that telecommuting cannot be utilized to facilitate a person’s personal lifestyle. Ms. Edmonds places her personal lifestyle above everything related to her LALB position in that she: #1) refuses to provide any office hours to serve the public whatsoever, #2) has on numerous occasions brought her two young children with her to the office when she does opt to spend some time working in the office and has permitted them to run all over the empty offices that existed at Summa Court, and #3) essentially conducts her daily life in such a way that, when she is obligated to come into the office out of sheer necessity such as for the issuance of an out-of-state auctioneer license (as with Mr. Mahaney as previously referenced in this memorandum), it’s a huge inconvenience to her schedule, causing her to hurriedly

perform the service and fail to issue someone like Mr. Mahaney a proper license (which subsequently cost him approximately \$34,000).

Petitioner has spoken directly with Mr. Mahaney regarding the incident, and he made the following near-verbatim quote: “Robert, I’m licensed in 12 states, and I’ve never seen anything as bad as Louisiana. I had to go drive through this residential neighborhood, wait at a building that looked abandoned to me, then go inside with the young lady, have her crank out a license, and we both leave. I wondered what kind of a shoe-string operation is this?” Furthermore, when Petitioner was en route to a real estate auction while riding with his co-listing partner, Mr. Dave Gilmore (the auctioneer who benefited to the tune of \$34,000 from Mr. Mahaney having to surrender control of the auction due to improper licensing), in late June of 2011, Mr. Gilmore stated to Petitioner near-verbatim: “Robert, there’s no denying that I profited handsomely from Mr. Mahaney not having proper licensing, but it’s flat not right what happened to him! There is no excuse for that office not having a proper setup or at least some procedure in place that, once he learned that he didn’t have the proper license, he should have been able to obtain one without the need for the Board to meet again.”

Nevertheless, when Rev. Phillips brought up the issue of the Division of Administration’s telecommuting policy at the January 10, 2011 LALB meeting, everyone on the LALB and Ms. Dow and Ms. Edmonds all admitted that they had no idea such a policy even existed! Ms. Edmonds, at the next LALB meeting of March 21, 2011, stated that, although she uncovered the fact that the policy does exist, she is not subjected to adhering to its provisions since she is not a direct employee of the Division of Administration.

**As an Independent Contractor (or at best an “employee” assessed as engaging in “blatant payroll fraud,”) Ms. Edmonds is NOT entitled to any immunity (blanket or limited) Under CCP 971**

As a result of the foregoing arguments and Ms. Edmonds clearly not conforming to the IRS definition of an “employee,” Ms. Edmonds is an independent contractor. Even under the most liberal assumption the court can grant, Ms. Edmonds is an “employee” committing “blatant payroll fraud” as a result of her exhibiting independent contractor status yet fraudulently claiming to be an employee. This fact alone precludes Ms.