

Stracener defends taking 'extra' pay at previous job

By Cole Mayer, Mountain Democrat

Judge Warren "Curt" Stracener received more than \$200,000 upon leaving his job at the Department of Personnel to become a judge as part of a payout for time off he had accrued. He was also paid arduous pay, a little-known method of paying for excessive hours worked. It has been alleged, however, that both of these payments were not above reproach.

Stracener, currently embroiled in a campaign against judicial candidate Joe Hoffman, left the Department of Personnel – now known as the California Department of Human Resources or CalHR and essentially acting as the HR department of state employees – with a salary of \$138,768, according to DPA/CalHR spokesperson Lynelle Jolley. This was his salary, including furloughs, for 2009 and 2010.

According to records from the Controller's Office, Stracener retired on Dec. 31, 2010. Over two payments, Stracener received a total of just under \$208,000 in cashing out unused paid time off, or PTO, that he had accrued. This is in addition to his normal salary.

The extra payout was the result of having a total of 3,116 hours of PTO upon retirement. However, according to an internal memo on April 12, 2010, sent from John Barlow, chief of human resources in the then-DPA, the cap on hours is 640 – far less than Stracener's total.

The memo states, "The expectation is that division management will encourage employees with projected leave balances in excess of 200 hours (840 plus hours) to submit a plan to start using down their time this calendar year." The goal was for every employee over the cap to create a plan to whittle down

the number of leave hours available by taking time off. It also has a list with 12 redacted names over the 640 cap. It shows five employees with leave balance of more than 1,000 hours, with one just more than 1,900 hours as of March 17, 2010.

According to Jacob Roper, a spokesman for the Controller's Office, a personal leave program had been instituted in previous years that a 5 percent reduction in salary resulted in more leave time to compensate. Time off had also been given in lieu of a promotion, he said, due to the budget crunch at the time. Thus, it had been fairly easy to accrue leave time under previous administrations.

Stracener, however, said that the number the Controller's Office gave is 700 hours too high and the 640-hour cap "is not a hard cap." Rather, he said, the cap and the plans for spending the time off acted as a "tool to put people off on vacation. They could be ordered to take a week or two weeks off."

Stracener also went over how he was able to accrue the hours: Every month, 20 hours are accrued during furlough times, plus annual holidays, plus a personal day off meant as a "birthday" holiday. Leave time for actual furlough days amounts to about 280 hours, given if an employee works during the furlough as Stracener did during litigation "defending the right of the governor" to institute the furlough system. All of this added to two 5 percent pay cuts, one in 2003 and one in 2010, each of which added 100 hours to the Personal Leave Program; paid time off, he said, is inaccurate.

"That's about 630 if you had all these, not including the Personal Leave Program," Stracener said. He added that the plan to manage those hours had to be "modified and changed on the fly by workload."

Being the deputy chief attorney, he found it hard to take time

off. Instead, he would take long weekends, often as part of holiday weekends. For example, he said, he would take six days off in a row, but only three of the days would be counted toward his vacation time as one day was a holiday and the other two were the weekend. His original plan, however, would be to take a week off a month – something that, with litigation, was no possible.

Management positions, he said, would be filled by a “rank and file” member of the organization that would be temporarily promoted for the “out of class assignment” and paid time-and-a-half. Or, another supervisor would take over and have to do the work of two supervisors.

Jolley and Roper stressed the PTO payout did not affect Stracener’s pension.

Meanwhile, there are also allegations that Stracener used a loophole to receive “arduous funds,” meant for firefighters, police and the like when responding to disaster situations. Specifically, it is meant for managers who are not normally eligible for overtime, while their subordinates are.

Joan Branin, a retired attorney for the DPA, noted that Unit 2, the unit for lawyers and attorney generals, is not listed on the state’s pay differential list for arduous pay. However, “Excluded” employees are. Excluded means the employees are “considered confidential,” Branin said, referencing their knowledge, and that they dealt with collective bargaining. “Every DPA employee was ‘excluded,’ even lawyers,” she said. “That little word allowed Bill Curtis (chief attorney) and Curt Stracener...it gave them a little hook to slide the lawyers in. Are they violating the exact words? Probably not. Are they violating the spirit of arduous pay? Absolutely.”

This, she said, was Curtis and Stracener’s way of getting around furloughs – which they said in the staff meeting where they introduced the pay differential.

“One of the things Curt said was, ‘This is just a way we can ease the pain of the furloughs.’ (Arduous pay) was never meant to ease the pain of the furloughs,” she said. “It’s not what the differential was meant for.”

Every month between March 2009 and June 2009, Stracener was paid \$1,200 in arduous pay, according to the Controller’s records. The same was true for between December 2009 and May 2010.

Even more, Stracener was considered a CEA, or Career Executive Assignment – something the pay differential rules say cannot be given arduous pay unless the governor declares a disaster, something that was not done during that time, Branin said.

“It was never meant for lawyers or to ease the pain of furloughs,” she said. “It was certainly misapplied.”

Stracener said that a variety of departments, including his, have an arduous pay program, including the Department of Finance and the Franchise Tax Board and that it was a fairly normal program. As to being a CEA getting arduous pay, Stracener said that the governor, contrary to what Branin said, did indeed declare emergencies – twice. Once in 2008 and once in 2009. There was no time frame on declarations, which were declared during times of financial emergency for the state, “to deal with the fiscal crisis.”

The judge also noted that it had nothing to do with “overtime,” meaning working over 40 hours in a week. Rather, it dealt with “excessive hours,” as attorneys do not get paid time-and-a-half overtime. “They do what’s needed to get the job done,” he said. As an example, he said, litigation may cause an attorney to “work 14 or 15 days straight without a break, or 12 hours straight, such as during furlough litigation.” Or there might only be a half day off in two weeks with no weekends off.

He also noted that arduous pay was, again contrary to Branin’s

statement, not his idea. "I never requested arduous pay, the decision was made by the executive office, and they included me in it," he said. He said he wanted the people who worked for him to have it, but he "specifically asked" to not be included in the arduous pay program.

Stracener was working three different pieces of litigation in the past few years, including working on the "last vested offer" for contracts for the Department of Corrections, essentially making sure things went "without a hitch" for three years while a new, final contract was made; litigation surrounding the Department of Corrections and the contract issue; and the litigation surrounding the furloughs.

"Any one of those jobs could keep a person busy full time," Stracener said, between meetings, monitoring the situation, prepping for court and actually being in court.

Though he has not been on a traditional family vacation in close to 20 years, he would still take a day or two off periodically – but the time off accrued surpassed time he could spend away from court. "I've just always been a very hard worker."