

MEMORANDUM

TO: Chief Justice Ketchum
Justice Workman
Justice Benjamin
FROM: Justice Loughry
DATE: August 26, 2016
RE: Use of Court Vehicles

As each of you are now aware, Justice Davis has recently questioned the use of Court vehicles. Her new and singular interest in *my* usage of Court vehicles is designed to distract from concerns I recently voiced regarding the unapproved use of \$11,360.03 of State money for a private party for circuit judges and their spouses that was held on October 8, 2013, in her home (see the documentation in the notebook for the August 29 administrative conference). This fishing expedition is also clearly in retaliation for inquiries I made regarding the unilateral authorization of payments by our Court Administrator, Steve Canterbury, to Mark Starcher totaling approximately \$1 million and the depletion of the Court's so-called rainy day fund in the amount of \$26 million, which has never been accounted for despite numerous inquiries from more than one justice. Notwithstanding the obvious motivation for her recent inquiries, I feel that I should provide each of you with a response relative to her memorandum to Arthur Angus and Jess Gundy, dated August 24, 2016, their responsive memorandum to her dated August 25, 2016, as well as various memoranda from Justice Davis to Steve Canterbury, each dated August 25, 2016, regarding my use of Court vehicles. I unhesitatingly assure each of you that on the dates mentioned in Justice Davis' various memoranda to Mr. Canterbury, I was acting in my capacity as a Justice of this Court in utilizing a Court vehicle.

Regarding the memorandum to Mr. Angus and Mr. Gundy, as each of you is well aware, the Court has no written policy regarding the use of Court vehicles by either the members of this Court or Court employees—a fact confirmed by Mr. Angus and Mr. Gundy in their responsive memorandum to Justice Davis dated August 25, 2016. While Mr. Angus and Mr. Gundy represent that I am the only person who has not provided them with a destination for the use of a Court vehicle when asked, I assume they have never asked other justices or Court employees for their destinations. Indeed, as readily seen in information provided by Mr. Angus, as summarized in the attached charts, Mr. Canterbury utilized a Court vehicle on at least 38 occasions without providing a destination. Similarly, on at least 8 occasions, Justice Benjamin checked out a Court vehicle without stating a destination. There are entries for Justice Workman's use of a Court vehicle without a destination being supplied, as well. Likewise, Justice Davis did not list a destination for her use of a Court vehicle on multiple occasions. And, as we are all aware, Chief Justice Ketchum has utilized a Court vehicle for many years without documentation concerning the same, and he has occasionally checked out other Court vehicles without providing a destination. In short, the information retained by Mr. Angus and Mr. Gundy demonstrates that it is a common practice for Justices, as well as Court employees, to utilize Court vehicles without providing destinations—a fact that is undoubtedly attributable to the lack of a written policy requiring the same. Further, to the extent Mr. Angus and Mr. Gundy have referenced a vehicle request that can be completed on the Court's Intranet site, not

only is this the first I have ever heard of such a request, I have never been asked by either Mr. Angus or Mr. Gundy to complete such an on-line request.

While ALL justices have used Court vehicles on numerous occasions without providing either Mr. Angus or Mr. Gundy with destinations, I would never question that your use of vehicles on any of those dates was for anything other than you acting in your capacity as a Justice of this Court. Although Justice Davis has suggested that Court vehicles can only be used for official Court functions, as every member of this Court is aware, we are often called upon to speak individually as heads of the Judicial Branch of state government. In fact, such requests are not unlike the Governor being called upon to speak as head of the state's Executive Branch. Consequently, whether Court events were scheduled on certain dates when I had use of a Court vehicle and whether those events were for the entire Court is entirely irrelevant. Certainly, there could be no objection by a member of this Court to the use of a Court vehicle for speaking at a high school civics class, a legal education program, a graduation ceremony, or similar events, or visiting courthouses in the state, or engaging in any myriad of activities and functions that can arise in our capacity as justices. As for the use of Court vehicles during Court recesses by any justice, it is axiomatic that the function of the state's judiciary is year-round. Clearly, our roles as constitutional officers do not end during Court recesses. To suggest otherwise, as Justice Davis has done, is absurd, particularly since she has used Court vehicles during Court recesses.

In the event the Court decides it wants to formulate a written policy regarding the use of Court vehicles by members of this Court and judicial employees, which I would encourage, one area that should be addressed is the propriety of sitting Justices utilizing Court vehicles and Court security personnel to attend campaign functions related to their bid for reelection. While campaigning to become a Justice of this Court, I personally observed Justice Davis arrive at more than one campaign event in a Court vehicle being driven by Court security. In fact, after announcing her bid for reelection in 2011, Justice Davis used a Court vehicle 18 times that year. Then, in 2012, the year of the election, she checked out a Court vehicle on 37 occasions associated with 57 days of travel accompanied by Court security. Following her reelection, Justice Davis' use of Court vehicles drastically declined. For example, in 2013, she checked out a Court vehicle on only 2 occasions. These are the kinds of issues that I believe we should explore in developing a written policy, in addition to whether we want to require members of the Court to designate a destination when utilizing a Court vehicle.

Lastly, to the extent that Justice Davis' memoranda were directed to Mr. Canterbury, it is without question that he controls neither my schedule nor the schedule of any justice on this Court. Because the information sought by Justice Davis is well outside Mr. Canterbury's bailiwick, her memoranda are undoubtedly designed to elicit planned responses from Mr. Canterbury in their attempt to impugn my character. I refuse, however, to be bullied for raising issues concerning the clearly improper expenditure of State funds for a private party, the money paid to Mr. Starcher, and the depletion of the Court's rainy day fund without adequate explanation.

cc: Justice Davis
Steven Canterbury