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IOWA DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

August 28, 2025

Kristi Onstot, Executive Secretary
Executive Council
State Capitol

By email

Re: Request to appoint special counsel for Auditor of State

Dear Kristi:

Our office requests that the Executive Council appoint special counsel for the Auditor of State as described below. *See* Iowa Code §§ 13.3, 13.7.

Background: The *City of Davenport* case

The Auditor's Office is the appellee in *City of Davenport v. Office of Auditor of State*, No. 24-1160 in the Supreme Court of Iowa. As has been reported, the Auditor disagreed with both our legal advice and further disagreed with our interpretation of chapter 13 of the Iowa Code as, first, requiring the Attorney General to represent the Auditor's Office before the Supreme Court and, second, preventing the Auditor's Office from being represented by anyone other than the Attorney General without permission from the Executive Council.

An employee of the Auditor's Office, John McCormally, filed several papers with the Supreme Court on the Auditor's behalf in the *City of Davenport* case. Mr. McCormally currently serves as the Auditor's general counsel and chief of staff. One paper was a brief arguing a position for the Auditor on the merits. Other filings asked the Court to remove the Attorney General as the Auditor's counsel in that case; to replace her as counsel with Mr. McCormally; and to strike the brief the Attorney General filed for the Auditor's Office.

On August 13, the Supreme Court, on its own motion, ordered "the Solicitor General" and "the State Auditor" to file supplemental briefs on their "arguments as to the Attorney General's exclusive authority to represent the State Auditor in this appeal." The Court also scheduled argument on that question for October 8.

The Supreme Court's order:

- Notes that it was prompted in part by “the State Auditor’s” filings in the case,
- States that it has reviewed “filings by the Attorney General and the State Auditor,”
- Describes the dispute as “whether the Attorney General has the exclusive right and responsibility to represent the State Auditor in the” *City of Davenport* case before it,
- Says it will decide “the issue regarding the representation of the State Auditor” with oral argument, and
- Directs “the State Auditor” to file a supplemental statement of his position.

Why we cannot proceed as usual

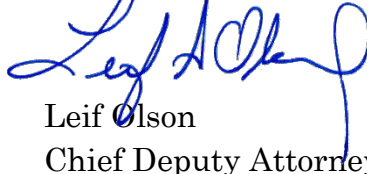
By using strict ethical screens that prevent communication among personnel on certain matters, the Attorney General’s Office frequently represents State officers and agencies even when they have opposing interests—including, in some instances, having assistant attorneys general argue opposing positions at the Supreme Court. In the usual course, we would thus establish an ethical screen and designate particular assistant attorneys general to represent the Auditor’s interest and others to represent the Attorney General’s. One must, however, read the Supreme Court’s orders in context. The context here is that “the Solicitor General,” an employee of the Attorney General, and “the State Auditor” are separately being directed to file papers—and that an employee of the Auditor has already filed papers on the Auditor’s behalf demanding that the Auditor be allowed to file without being represented by the Attorney General.

We therefore conclude that the Supreme Court contemplates the Auditor proceeding separately from the Attorney General for the discrete purpose of deciding the pending “issue regarding representation of the State Auditor[.]” Thus, “the department of justice cannot ... perform the service” of representing the Auditor and his Office in the further briefing and arguing that the Supreme Court has directed. *See* Iowa Code § 13.7.

Request to appoint special counsel for Auditor of State

For these reasons, the Attorney General requests that the Executive Council authorize the Auditor's Office to employ John McCormally as special counsel. This authorization would be for the purposes of (1) preparing and filing the statement ordered by the Supreme Court, (2) preparing for and presenting argument at the scheduled hearing, and (3) preparing for and filing with the Supreme Court any necessary post-argument statements relating to only the representational question. This authorization would not extend to the merits of the dispute between the Auditor and the City before the Supreme Court. Because Mr. McCormally is already a State employee, we also ask that the portion of his salary attributable to his work as appointed special counsel be explicitly authorized to be paid as "reasonable compensation" for that work.

Sincerely,



Leif Olson

Chief Deputy Attorney General

Attachment: Supreme Court order

cc: Gov. Reynolds

Sec. Naig

Sec. Pate

Auditor Sand

Treasurer Smith

Mr. John McCormally

IN THE SUPREME COURT OF IOWA

No. 24–1160

Scott County No. IFIF005448

ORDER

**CITY OF DAVENPORT,
Plaintiff-Appellant,**

vs.

**OFFICE OF AUDITOR OF
STATE OF IOWA,
Defendant-Appellee.**

This matter comes before the court. en banc, Waterman, J., not participating, on: (1) the Solicitor General’s statement, filed June 4, 2025, regarding the Attorney General’s Office’s Intent to file and Appear in supreme court no. 24-1160; (2) the State Auditor’s motion to strike the Solicitor General’s statement and attached brief; and (3) the court’s own motion regarding the manner in which the representational issue shall be resolved.

As set forth in filings by the Attorney General and the State Auditor, a dispute has arisen in this appeal as to whether the Attorney General has the exclusive right and responsibility to represent the State Auditor in the appeal, or whether the State Auditor may choose his own counsel.

Upon consideration, the court concludes the issue regarding the representation of the State Auditor shall be submitted to the court en banc, Waterman, J., not participating, with oral argument.

Within ten days of the filing of this order, the Solicitor General shall submit a statement setting forth its arguments as to the Attorney General’s exclusive authority to represent the State Auditor in this appeal. The State Auditor shall file a responsive statement within ten days of the filing of the Attorney General’s statement. The Solicitor

General may file a reply within 7 days of the filing of the State Auditor's statement. The respective statements shall not exceed ½ the length limitations of appellate rule 6.903(1)(i) for briefs and reply briefs.

The issue regarding representation of the State Auditor in the appeal is scheduled to be submitted with oral argument to this court on **Tuesday, October 7, 2025, at 9:00 a.m.** The Attorney General and the State Auditor will each have 15 minutes, and the Attorney General will have an additional 5 minutes for reply. The City of Davenport will not be heard in oral argument on this issue.

The court stays screening and submission of the appeal pending resolution of the representational issue.

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IOWA APPELLATE COURTS

State of Iowa Courts

Case Number
24-1160

Case Title
City of Davenport v. Iowa Auditor of State

So Ordered

A handwritten signature in black ink, appearing to be "SLC", is written over a horizontal line.

Susan Larson Christensen, Chief Justice

Electronically signed on 2025-08-13 11:17:31