

# Investigative Report

## Legislative Joint Auditing Committee

August 1, 2007

# Review of Selected Activity

## Cycle Breakers, Inc.

### INTRODUCTION

This report is issued pursuant to a request from Representative Sandra Prater for the Division of Legislative Audit to conduct a financial review of Cycle Breakers, Incorporated (Cycle Breakers, Inc.), a nonprofit organization. Cycle Breakers, Inc. was formed to further efforts of, and financially partner with, the Cycle Breakers Program (Program) implemented by Judge Willard Proctor, Jr. (Judge), through the Sixth Judicial District, Pulaski County Fifth Division Circuit Court (Court). The purpose of the Program is to assist with rehabilitating individuals while under the Court's jurisdiction. Other questionable activities are also discussed in this report.

### HIGHLIGHTS OF REPORT

- ◆ Other than the fact Cycle Breakers, Inc. is incorporated as a nonprofit organization, this review indicated there is **little division and no arms-length transactions** between Cycle Breakers, Inc. and Pulaski County, Court, Program, and Judge.
- ◆ In addition to assessing probationers a \$40 monthly probation fee, the Court requires many probationers to participate in the Program. The Court **does not** assess a fee to defendants ordered to participate in the Program, but has established additional fees, **without apparent statutory authority**, for various assessments/services. While collected by Court personnel and deposited in a Cycle Breakers, Inc. bank account, these fees are related to probation and/or the Program and may be considered County funds.
- ◆ The County Quorum Court allows probation fees be given to, and other resources be used on behalf of, Cycle Breakers, Inc. even though Article 12, Section 5 of the Arkansas Constitution **prohibits** a county from obtaining or appropriating money for any corporation.
- ◆ The existing relationship the Judge, Court, and Court employees have with Cycle Breakers, Inc. appears to conflict with state laws relating to **conflict of interest and ethics** provisions. Numerous instances occurred in which the Judge, Court, and Court employees received financial benefits from Cycle Breakers, Inc.

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## OBJECTIVES

The objectives in conducting this review were as follows:

- *Ascertain amounts of probation and probation-related fees assessed;*
- *Review Cycle Breakers, Inc.'s financial records;*
- *Review the relationship between Cycle Breakers, Inc. and Pulaski County (County), Court, Program, and Judge to determine compliance with applicable sections of Arkansas Code Annotated (Code);*
- *Determine the amount of County resources used, if any, for Cycle Breakers Inc.'s operations as well as for the Court;*
- *Analyze selected Cycle Breakers, Inc.'s disbursements and determine propriety;*
- *Review revenue collection procedures and examine selected Court receipts to determine if distribution of funds to the County, Cycle Breakers, Inc., and victims of crime was proper; and*
- *Evaluate internal controls and policies of Cycle Breakers, Inc. for adequacy.*

## SCOPE AND METHODOLOGY

This review was conducted primarily for the period January 1, 2006 through December 31, 2006. Relevant Cycle Breakers, Inc.'s financial records were analyzed as well as those of the Court and County. Court documents were also examined. In addition, applicable state laws and Attorney General's opinions were reviewed. To gain an understanding of Cycle Breakers, Inc. and its relationship with the Court, appropriate personnel were interviewed. Applicable Cycle Breakers, Inc.'s internal controls and policies were also assessed for sufficiency.

The methodology used in conducting this investigative review was developed uniquely to address the stated objectives, and therefore, this review was more limited in scope than an audit or attestation engagement performed in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States.

## BACKGROUND

### Sixth Judicial District Circuit Court, Fifth Division

#### *Organization*

The Court is one of seventeen divisions of circuit court of the Sixth Judicial District. Willard Proctor, Jr. became the Judge of Fifth Division on January 1, 2001. In addition to the Judge, the Court has a staff of six probation officers, two case coordinators, two bailiffs, a court reporter, and a law clerk. Court personnel are County employees, with the exception of the Judge, court reporter, and a civil case coordinator who are state employees.

While Code §16-13-1412 allows the circuit judges of the First, Fourth, and Fifth Circuit Court Divisions of the Sixth Judicial District to appoint a chief probation officer and a deputy probation officer, only the First and Fifth Divisions utilize this Code provision. All other judicial districts, as well as the remaining fifteen divisions of the Sixth Judicial District, use the Department of Community Correction for probation and supervisory functions relating to court offenders.

According to Code §16-13-1412, probation officers appointed under this law are considered County employees whose salaries are established by the same Code section. The Court's Chief Probation Officer's duties include supervision of all persons on probation, attendance at

Program meetings, and investigation of matters referred by the Court relating to granting of suspended sentences or any other issues. The Deputy Probation Officer performs duties assigned by the Chief Probation Officer and Court.

#### *Court Probation and Related Fees*

The Court's common practice is to assess a fee of \$40 per month to Court offenders placed on probation. In addition to assessing probation fees, the Court requires many probationers to participate in the Program. Approximately 100 defendants take part, at any one time, in the Program. Currently, the Court **does not** assess a fee to participate in the Program. However, the Court established additional fees, relating to Program violations and other probation services, for Cycle Breakers, Inc.'s use.

#### *Collection of Fees*

The Court Office collects and receipts fines and fees assessed by the Court and remits collections daily to the County Circuit Clerk for receipt, deposit, and distribution to the appropriate County funds and state agencies. In addition, the Court Office collects court-ordered restitution and remits the same to victims. The Court Office is also responsible for collecting and depositing various fees assessed by the Judge for Cycle Breakers, Inc.

#### **Court's Program - Cycle Breakers**

The Program was started by the Judge, through the Court on January 1, 2001, before Cycle Breakers, Inc. existed, and is considered part of Court probation. The mission of the Program is to aggressively intervene in lives of individuals to stop the cycle of crime and deter further involvement in the judicial system. The Program uses time a defendant is under the Court's jurisdiction to affect change in the individual's lifestyle, behavior, and decision-making ability through intensive supervision.

Non-violent, first-time Court offenders placed on probation are usually required to participate in the Program, without a participation fee, as a condition of their probation. County Probation Officers evaluate defendants, assist in developing individuals' case plans, goals, and objectives, and match Program participants with mentors. Mentors are past participants who have successfully completed the Program or community volunteers.

To meet the Program's objectives, participants are required to make contact with mentors, attend mandatory monthly/quarterly meetings, submit to random drug testing, and perform community service.

#### **Cycle Breakers, Incorporated**

##### *Creation, Purpose, and Funding*

With the intent to expand Program functions and form an organization independent of the Court, a nonprofit organization was incorporated, in August 2002, by an employee of the Court. Cycle Breakers, Inc. was granted tax-exempt status under Section 503(c)(3) of the Internal Revenue Code and recognized as a public charity.

Cycle Breakers, Inc. is governed by a volunteer, fifteen member Board of Directors (Board) comprised of eleven present and past Program participants and four at-large members selected from the community. The Board appoints an Executive Director to oversee and administer Cycle Breakers, Inc.'s operations and events.

In addition to partnering with the Program to finance mandatory/missed meetings expenses, Cycle Breakers, Inc. hosts four mandatory meetings per year for Program participants, other probationers, and defendants under a suspended sentence or monitored by the Court. Approximately 500 to 600 probationers attend each quarterly mandatory meeting. To conduct mandatory meetings, Cycle Breakers, Inc. also partners

with state and county agencies, private companies, and individuals. These partners include Arkansas Minority Health Commission, Arkansas Prostate Cancer Foundation, Family Services Agency, The Witness Program, University of Arkansas Medical Sciences, medical/dental/health associations, counselors, doctors, nurses, lawyers, and representatives from other advocacy groups.

The mandatory meetings focus on four topics:

- Health (physical and mental);
- Abuse and addiction;
- Family issues; and
- Education (topics relate to general education development diploma, employment, basic finances, and trade or technical training).

These topics are discussed during a probationer's monthly appointments with his/her Probation Officer and used to assist all probationers with their case plans.

Another Cycle Breakers, Inc. function is operating a chemical free house to provide temporary living arrangements for individuals recovering from substance abuse.

Court personnel collect and deposit in a Cycle Breakers, Inc. bank account fees established by the Court. The majority of funding consists of fees assessed for missing a mandatory monthly/quarterly Program meeting and drug screen testing. In October 2006, Cycle Breakers, Inc. began receiving a portion of Court-assessed probation fees and designated the use of fees for a building fund. Cycle Breakers, Inc. uses funds for Program meeting expenses, drug screening and health fair supplies, chemical free house operations, and equipment.

### *Building*

In an effort to consolidate all Cycle Breakers, Inc.'s functions, the Board authorized, in November 2005, the purchase of a facility. After the City of Little Rock approved a rezoning request, the Board purchased, for \$300,000, a 37,400 square foot building located at 800 Apperson Street from the Little Rock School District in February 2007. Subsequently, the City twice rescinded the original rezoning of the building location for Cycle Breakers, Inc. activities because of close proximity to an elementary school.

Since the building cannot be used for Cycle Breakers, Inc.'s purposes, the Board, in July 2007, decided to sell the property.

### **Results of Review**

Other than the fact Cycle Breakers, Inc. is incorporated as a nonprofit organization, this review indicated there is little division and no arms-length transactions between Cycle Breakers, Inc. and the County, Court, Program, and Judge. In appearance, Cycle Breakers, Inc. operates similarly to any other County department.

Review results and recommendations are discussed below by topic. To assist in understanding the sequence of events, a timeline was prepared and is presented in **Schedule 1 on pages 15 and 16.**

### **Court Probation Fees**

Code provisions authorizing probation related fees are listed in **Exhibit I on page 5.**

Code §5-4-303(a) states, "If a court suspends imposition of sentence on a defendant or places him or her on probation, the court shall attach such conditions as are reasonably necessary to assist the defendant in leading a law-abiding life." In addition, Code §5-4-303(c)(10) provides for a defendant to satisfy any other condition reasonably related to his or her rehabilitation.

Further, Code §5-4-303(c)(5) allows a court, as a condition of probation, to require a defendant to participate in community-based rehabilitative programs meeting state standards for certification and to impose, on a defendant, a reasonable fee or assessment to support the program.

Assessment of supervision, or probation, fees upon a defendant is another condition of probation mentioned in Code §5-4-303(j). Although this Code section is silent as to the amount of probation fees allowed, the Court's common practice is to assess a fee of \$40 per month, per probationer. The majority of offenders on probation or parole under supervision of the Department of Community Correction pay a fee, currently \$25, determined by the Board of Corrections as Code §16-93-104 allows.

The Judge has also established additional fees, presented in **Exhibit II on page 6**, appearing to relate to probation and/or the Program. Other than fees for supervision and support of a community-based rehabilitative program, Code §5-4-301 et seq. does not address allowable fees to support a court-based program. Since the Program is considered part of the Court and

a condition of probation, the Judge assessing additional fees related to the Program and permitting these fees be given Cycle Breakers, Inc. is **questionable**.

If a determination is made these additional fees are allowable, the question remains which entity, the County or Cycle Breakers, Inc., is entitled to the additional fees.

According to the Judge, at times Court offenders are immediately placed on civil, rather than criminal, probation. The Judge also indicated some probationers are able to move to civil probation status and have their records expunged after completing the Program. To monitor these probationers, a civil probation fee of \$40 per month, per probationer is assessed. The Judge requests payment of civil probation fees and continued attendance at quarterly mandatory meetings even after a defendant's record is expunged.

**We recommend** the Judge and County Quorum Court, in conjunction with legal counsel, review applicable Code relating to allowable probation fees and if questions remain, request an Attorney General's opinion.

### Exhibit I

Judicial District Circuit Courts Arkansas Code Annotated (Code) Authorizing Certain Probation Related Fees			
Code Provision	Fee Purpose/Recipient	Fee Established By	Assessed Fee as of 12/31/2006
§5-4-303(c)(5)	Support of a community-based rehabilitative program/ Community program	Sixth Judicial District, 5th Division Circuit Court	\$ 0
§5-4-303(j)	Probation supervisory fee/ County general fund	Sixth Judicial District, 5th Division Circuit Court	\$ 40
§16-93-104	Probation supervisory fee/ Department of Community Correction	State Board of Corrections	\$ 25

**Source:** Arkansas Code, Sixth Judicial District, Fifth Division Circuit Court records, and Department of Community Correction policy manual

## Exhibit II

**Cycle Breakers, Inc.**  
**Schedule of Fees Assessed by**  
**Fifth Division Circuit Court**  
**January 1, 2006 through December 31, 2006**

<u>Fee Type</u>	<u>Amount</u> (Note 1)
Civil probation	\$40/month
Civil probation-Program (Note 2)	\$40/month
Adjudication monitoring	Note 3
Pre-disposition monitoring	Note 3
Drug screening	\$15/test
Missed meeting	\$100
Lack of class notebook	\$10
Missed appointment	\$5
Anger management/ domestic violence class	\$250
Chemical free house (after \$200 deposit)	\$90/week

Note 1: These fees are collected by Court personnel and deposited in a Cycle Breakers, Inc. bank account

Note 2: Refers to the Cycle Breakers Program started by the Judge through the Court

Note 3: Court establishes individual's amount

**Source:** Sixth Judicial District, Fifth Division Circuit Court's Probation Policy and Procedure Manual

### Cycle Breakers, Inc.'s Financial Data

Cycle Breakers, Inc. maintained five bank accounts (two for operations and one each for savings, building fund, and victim restitution) during the year ended December 31, 2006. After analyzing the bank accounts and reviewing the cash receipts and disbursements journal and supporting documentation, Cycle Breakers, Inc.'s sources and uses of funds were summarized as illustrated in **Exhibit III on page 7**.

Analysis of deposits indicated court-ordered restitution and a portion of County probation fees were improperly deposited into a Cycle Breakers, Inc.'s bank account rather than a County account. As shown in **Exhibit III on page 7**, Cycle Breakers, Inc. collected

restitution of \$61,059 and disbursed the same to victims of crime. The review of Cycle Breakers, Inc.'s disbursements identified several payments on behalf of the Court, including Court employees and Judge. Issues relating to Cycle Breakers, Inc.'s sources and uses of funds are discussed in the next two sections as well as the section titled "Fine and Fee Collection Process" of this report.

In February 2007, Cycle Breakers, Inc. obtained a bank loan of \$502,500 and used \$290,000 toward purchase of property located at 800 Apperson Street, leaving a balance to draw upon of \$212,500.

Cycle Breakers, Inc. annually obtains a financial audit and reports to the Internal Revenue Service on Form 990 (Return of Organization Exempt From Income Tax).

### Cycle Breakers, Inc.'s Relationship with the County

County revenues and expenditures relating to the Court, for the years ended December 31, 2006 and 2005, are shown in **Exhibit IV on page 8**. In 2006 and 2005, the County Quorum Court appropriated \$10,000 and \$45,000, respectively, for overtime incurred by County employees working to support the Program.

Article 12, Section 5 of the Arkansas Constitution (Ark. Const. art.12, §5) states, in part, "No county ... shall ... obtain or appropriate money for, or loan its credit to, any corporation, association ... or individual."

To determine if County funds were used for Cycle Breakers, Inc.'s operations, selected County claims relating to Court operations were reviewed for propriety. **No instances** were noted in which County expenditures were directly for Cycle Breakers, Inc.'s purposes.

While County funds normally were not used for routine expenses of Cycle Breakers, Inc.'s operations, several pertinent instances

**Exhibit III**

Cycle Breakers, Inc. Sources and Uses of Funds For the Period January 1, 2006 through December 31, 2006		
<b>Sources of Funds</b>	<b>Total Amounts</b>	
Fees:		
Adjudicated monitoring	\$2,574	
Anger management	1,775	
Civil probation	10,182	
Drug testing	41,902	
Missed meeting	85,138	
Pre-disposition	1,440	
Probation - designated for building fund	22,413	\$ 165,424
Chemical free house rent		5,584
Concession sales		3,056
Donations/grants		521
Miscellaneous income		3,306
Restitution received/due to victims		61,059
<b>Total Sources of Funds</b>		<b><u><u>\$ 238,950</u></u></b>
<b>Uses of Funds</b>		
Fees:		
Accounting	\$2,385	
Anger management	1,725	
Bookkeeping	7,972	
Other professional fees	1,984	\$ 14,066
Annual Court staff meeting		1,454
Chemical free house (utilities, phone, internet)		7,124
Chemical free house (rent, repairs, operations, and maintenance)		14,919
Consulting fees - AXS Computing		26,750
Contributions, donations, and advertising		1,530
Court employees:		
Internet service - Judge Proctor's home	706	
Professional development and training	2,469	
Sam's Club memberships	1,292	4,467
Drug testing supplies/health fair expenses		23,628
Equipment:		
For Court (leased projectors, projector lamp, taser belt)	4,368	
For Cycle Breakers, Inc. (sound system, miscellaneous)	9,754	14,122
Food and refreshments (meetings, chemical free house, jury trials)		14,329
Meeting expenses:		
Annual meeting	2,444	
Awards and gifts	3,974	
Security and staff	10,532	
Setup, rental, and other fees	23,152	40,102
Office supplies and miscellaneous		2,916
Postage, printing, and delivery		4,230
Purchase of new building (earnest money, attorney and other fees)		5,725
Restitution payments to victims		61,059
Wireless internet services for meetings and courtroom		2,207
<b>Total Uses of Funds</b>		<b><u><u>\$ 238,628</u></u></b>

Source: Cycle Breakers, Inc.'s financial records

were noted of County resources indirectly used, which may conflict with Ark. Const. art.12, §5, to benefit Cycle Breakers, Inc.

### Exhibit IV

**Sixth Judicial District, Fifth Division Circuit Court  
Pulaski County Revenue and Expenditures**  
For the Period January 1, 2005 through December 31, 2006

- County Intake Officer, Alice Abson, served as Cycle Breakers, Inc.'s Executive Director until February 2007.
- The County provided office space, within the Court Office, to Cycle Breakers, Inc.
- County personnel performed Cycle Breakers, Inc.'s bookkeeping functions, such as collecting fees, making bank deposits, paying bills, and posting journals.
- County personnel collected a \$15 fee, given Cycle Breakers, Inc., for drug screening tests administered by Probation Officers.
- The County provided storage space for Cycle Breakers, Inc.'s files, pamphlets, and drug screening supplies.
- County computers were used to maintain Cycle Breakers, Inc.'s records.
- Court Office address and telephone number were used by Cycle Breakers, Inc. on its letterhead and web site.
- A County Probation Officer assisted with negotiations involving Cycle Breakers, Inc.'s purchase of the Apperson property.

Because the Court Office did not allocate County employees' work time and use of

	Year Ended December 31,	
	2006	2005
<b>Revenues</b>		
Court probation fees (Note 1)	\$ 241,414	\$ 216,772
<b>Expenditures</b>		
Salaries and benefits (Note 2)	506,211	524,832
Operations and maintenance:		
Printing and postage	8,050	6,539
Small equipment/ office supplies	8,305	15,033
Other professional services	5,936	2,910
Travel/conference expenses (Note 3)	4,426	8,751
Machinery/equipment - rent	7,674	8,477
Dues, memberships, and subscriptions	6,020	6,973
Other expenses	2,176	2,117
Total expenditures	\$ 548,798	\$ 575,632

Note 1: The County does not record fines/court costs by individual circuit court division

Note 2: Does not include salaries of \$210,852 (2006) and \$219,320 (2005) funded by the State for Circuit Judge, Court Reporter, and Case Coordinator

Note 3: Includes \$3,462 for 2006 annual staff meeting in Memphis, TN

**Source:** Pulaski County financial records and Arkansas Administrative Statewide Information System (AASIS)

County equipment and office space between Court and Cycle Breakers, Inc. functions, the value of County resources used on behalf of Cycle Breakers, Inc. could not be quantified.

In addition to Cycle Breakers, Inc. receiving the aforementioned benefits, the County Quorum Court allowed a portion of County probation fees<sup>1</sup> (\$22,413) to be improperly

given, beginning in October 2006, Cycle Breakers, Inc. for its building fund. Civil probation fees, deposited in a Cycle Breakers, Inc. bank account, totaling \$10,182 in 2006, also appear to be County probation fees<sup>1</sup>.

**We recommend** the County Quorum Court implement procedures to ensure the County complies with Ark. Const. art.12, §5. These procedures include **separating** Cycle Breakers, Inc.'s operating functions from the County. Since drug testing is an allowable role of probation officers, **we also recommend** the County consider merging the drug testing process into County financial operations. This requires drug testing fees be collected by the County, deposited with the County Treasurer, and appropriated by the County Quorum Court to purchase test kits.

*Responses of the County Attorney and the Judge are provided in the section titled as such on page 14 and in the Appendix.*

### **Cycle Breakers, Inc.'s Relationship with the Court, Judge, and Court Employees**

The existing relationship the Judge and Court, including employees, have with Cycle Breakers, Inc. appears to conflict with state laws relating to conflict of interest and ethics provisions. Applicable laws reviewed include:

- Code §21-8-304 which states, in part, "No public official or state employee shall use ... his ... position to secure special privileges or exemption for himself ... not available to others ...." Code further states, "No public official or state employee shall disclose ... information gained by reason of his ... position, nor shall ... otherwise use such information for his ... personal gain or benefit."

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<sup>1</sup>County probation fee applicable laws and recommendations are discussed on pages 4, 5, and 11 through 13.

- Code §19-11-701 et seq. discusses general standards of ethical conduct relating to public employees. In particular, Code §19-11-705 states, in part, "It shall be a breach of ethical standards for any employee to participate directly or indirectly in any proceeding or application ... in which to the employee's knowledge the employee ... has a financial interest .... Direct or indirect participation shall include ... involvement through decision, approval, disapproval, recommendation, preparation of any part of a procurement request ... rendering of advice ... or in any other advisory capacity."
- Code §14-14-1202 states, in part, "No ... employee of county government shall be interested ... directly or indirectly, in any ... transaction made, authorized, or entered into on behalf of the county ... or ... receive any property, money, or other valuable thing for his ... benefit on account ... of any ... transaction ...." According to Code §14-14-1202, a quorum court may, by ordinance, permit the county to purchase goods or services directly or indirectly from county employees due to unusual circumstances, and if the quorum court determines it is in the best interest of the county.

After reviewing Code, interviewing pertinent individuals, and analyzing Cycle Breakers, Inc.'s disbursements, there appears to be a financial benefit to the Court, Judge, and Court employees.

Summarized in **Exhibit V on page 11** are Cycle Breakers, Inc.'s payments to Court employees for **services rendered** and tuition as well as payments benefiting the Court and Judge. **Exhibit V on page 11** also indicates amounts Court employees/Judge were reimbursed for expenses incurred on behalf of Cycle Breakers, Inc. In addition, **Exhibit III on page 7** includes other Cycle Breakers, Inc. disbursements for Court purposes and Court employees' benefit.

Reasons state ethics provisions appear to have been breached are presented below.

1. The Judge, while not a Cycle Breakers, Inc. Board member, attends Board meetings. The Judge appears to serve in an advisory capacity to the Board as well as be involved in Cycle Breakers, Inc. financial affairs. For example,

- The Judge has access to all Cycle Breakers, Inc. financial records.
- The Judge purchased supplies for Program meetings, drug test kits, and health fairs, and paid for chemical free house repairs and maintenance, for which he was reimbursed. Of the \$14,099 the Judge was reimbursed, **\$3,117 was undocumented**. While Cycle Breakers, Inc.'s records and the Judge indicate the undocumented amounts reimbursed were for a Cycle Breakers, Inc. purpose, this assertion could not be verified without adequate supporting documentation.
- The Judge indicated a server, purchased by Cycle Breakers, Inc. prior to 2006, is located in his home, contains County data and requires a static IP address due to the County's computer security requirements. Internet service costing \$1,207 was paid by Cycle Breakers, Inc.
- The Judge's volunteer organization dues of \$175 were paid by Cycle Breakers, Inc.

2. The Court benefited because Cycle Breakers, Inc., at the Judge's request, paid for several Court-related expenses, such as:

- Equipment for the court room (projectors and taser belt) costing \$4,368;
- Computer consulting and software development costing \$26,750;

- Food and beverage for jurors;
- Wireless internet services; and
- Travel costs associated with the annual Court staff meeting in Memphis, TN. Of the staff meeting costs totaling \$4,916, Cycle Breakers, Inc. paid \$1,454 with the balance paid by the County.

In addition to establishing a financial relationship with Cycle Breakers, Inc., the Judge, by requesting Cycle Breakers, Inc. pay some expenses of the Court, appears to be circumventing the County appropriation process. Further, while the Judge indicates equipment items and the server purchased by Cycle Breakers, Inc. were donated to the County, County administration has not been notified nor have the items been added to the County's inventory.

3. Court employees also received benefits due to the Court's relationship with Cycle Breakers, Inc. These benefits were:

- Compensation for **services rendered** including counseling, bookkeeping, Program meeting leaders, and security;
- Tuition for anger management continuing education;
- Reimbursements of \$845 which were not properly documented; and
- Sam's Club memberships.

**We recommend** the County, Judge, and Cycle Breakers, Inc., in conjunction with legal counsel, review Code ethics provisions and establish procedures to ensure compliance with applicable laws. In addition, the County should ensure donated items are properly recorded. **We also recommend** Board review undocumented reimbursements to the Judge and Court employees and determine corrective action.

**Exhibit V**

Cycle Breakers, Inc.  
 Payments and Reimbursements to Employees of  
 Sixth Judicial District, Fifth Division Circuit Court  
 For the Period January 1, 2006 through December 31, 2006

	Payments for					Reimbursements for			Totals
	Services Rendered			Other	Tuition	Cycle Breakers, Inc.'s Expenses			
	Anger Mgmt. Counselor	Meeting Leaders/ Security	Other Services	Benefits (Note 1)			Meeting Supplies	Other (Note 2)	Unknown (Note 3)
<u>Court Employee</u>									
Kenny Haskin	\$ 1,725	\$ 600			\$2,000				\$ 4,325
Teresa Hart (Note 4)		100	\$ 207						307
Janelle Jones (Note 4)		1,100	7,972			\$ 661			9,733
Lynnette Brimley		400							400
Zane Chrisman		100							100
Alice Abson		200				2,613			2,813
Jimmy Lamon		500				1,610		\$ 790	2,900
Arthur Kelly		250				1,964			2,214
Richard Day		500				168			668
Paul Worthy		300				99		55	454
LaShannon Robinson						1,400			1,400
Treva Cooper						57			57
Judge Willard Proctor, Jr.				\$1,380		2,931	\$8,051	3,117	15,479
<b>Totals</b>	<b>\$ 1,725</b>	<b>\$4,050</b>	<b>\$8,179</b>	<b>\$1,380</b>	<b>\$2,000</b>	<b>\$11,503</b>	<b>\$8,051</b>	<b>\$ 3,962</b>	<b>\$40,850</b>

Note 1: Includes expenses for Court staff meeting (\$704), Judge's internet service (\$501), and Judge's dues (\$175)

Note 2: Chemical free house repairs and drug screening/health fair supplies

Note 3: Purpose of reimbursement unknown due to lack of supporting documentation

Note 4: Other services include probation duty (\$207) and bookkeeping (\$7,972)

**Source:** Cycle Breakers, Inc.'s financial records and supporting documentation

*Responses of the County Attorney and the Judge are provided in the section titled as such on page 14 and in the Appendix.*

**Cycle Breakers, Inc.'s Proposal**

To secure financing for the purchase of a facility in which to conduct functions, Cycle Breakers, Inc., on September 18, 2006, requested the Court assess a fee of \$20 per

month, per probationer participating in the Program.

In return for the fee, Cycle Breakers, Inc. proposed establishing a separate bank account for these fees; using funds for the purchase, upkeep, maintenance, and operation of a facility; acquiring a facility to benefit the County; and transferring title and ownership of a facility to the County after a period of time.

According to County Quorum Court Budget Committee (QC Budget Committee) meeting minutes, the County has no interest, now or in the future, in acquiring the building Cycle Breakers, Inc. was in the process of buying. However, according to the Judge, Cycle Breakers, Inc. plans to give proceeds from the sale of the building to the County.

### Circuit Court Orders

In response to Cycle Breakers, Inc.'s proposal, the Judge issued a Circuit Court Order (Order) on October 2, 2006. The Order required one-half of probation supervisory fees collected after this date be given Cycle Breakers, Inc. upon the condition of compliance with terms in its proposal of September 18, 2006.

After learning of the Order, the QC Budget Committee froze the Court's 2007 budget request and asked the Court to cut \$150,000 from its budget to offset the estimated loss of County probation fee revenue resulting from the Order. According to QC Budget Committee meeting minutes, the County Attorney indicated the Judge had the discretion to issue the Order.

Rather than reduce the Court's operating budget, the Judge revised the Order, on December 12, 2006, with the following stipulations.

- One-half of probation supervisory fees collected during the months October through December 2006 will be given Cycle Breakers, Inc.
- One-half of probation supervisory fees collected, beginning January 1, 2007, will be given Cycle Breakers, Inc. with the following terms:
  1. Based on estimated collections of \$280,000 in fees, Cycle Breakers, Inc. will receive \$140,000 and one-half, or \$70,000, will be returned to the County; and

2. The payment to the County will be made in four quarterly installments of not less than \$17,500.

As a result of the amended Order, the QC Budget Committee approved the Court's 2007 budget without any reductions. Further, the parties *verbally* agreed for years in which fees collected exceed \$280,000, any excess will be divided equally between the County and Cycle Breakers, Inc.; however, in no event, will Cycle Breakers, Inc. receive less than \$70,000 per year.

Both the Order and verbal arrangement relating to probation fees appear to conflict with Code §14-14-1313 which states, in part, "All public funds coming into the possession of any officer of the county shall be remitted to the county treasury ...." As public funds, all Court probation fees **must** be deposited with the County Treasurer and appropriated by the County Quorum Court before spent.

Cycle Breakers, Inc.'s direct receipt of any share of County probation fees also conflicts with Ark. Const. art.12, §5, which prohibits a county from giving funds to a corporation. Further, Attorney General's Opinion No. 2005-205 interpreted Ark. Const. art.12, §5 to appear to prohibit donations to a private, nonprofit corporation similar to Cycle Breakers, Inc.

Previously discussed on page 9, Cycle Breakers, Inc. appears to have improperly received, in 2006, County probation fees, totaling \$32,595, of which \$22,413 and \$10,182 were collected for its building fund and civil probation fee assessments, respectively.

The Attorney General has opined local governments may contract with a private, nonprofit charity to provide services, as long as the contract is supported by adequate consideration and serves a proper government purpose. According to Code §14-14-802, a county government, acting through the quorum court, may through

ordinance provide social and rehabilitative services, such as those offered by Cycle Breakers, Inc.

For proper revenue accountability, **we recommend** all probation fees be remitted to the County Treasurer. **To determine corrective action** relating to County probation fees improperly given Cycle Breakers, Inc. in 2006 and 2007, the County Quorum Court and County Attorney should review applicable Code. **We also recommend** the County Quorum Court, in conjunction with the County Attorney, determine social services needed for County inhabitants. Should the County use Cycle Breakers, Inc. services, the County Judge must approve a contract outlining agreement terms and the County Quorum Court adopt an appropriation ordinance to pay for services rendered.

*Responses of the County Attorney and the Judge are provided in the section titled as such on page 14 and in the Appendix.*

### **Fine and Fee Collection Process**

Code §16-13-709 provides a quorum court **shall** designate a county official or department responsible for the collections of fines assessed in circuit courts. The term “fines” is defined, in Code §16-13-701, as monetary penalties imposed by courts including fines, court costs, restitution, probation fees, and public service work supervisory fees.

The County Quorum Court adopted Ordinance No. 04-OR-01, in January 2004, designating the County Circuit Clerk as the official responsible for collecting fines and fees assessed in all divisions of County circuit court.

However, the County Treasurer, in conflict with Ordinance No. 04-OR-01, collected all circuit court divisions’ fines and fees until late 2005 when a new accounting system was implemented. With the exception of the Court, the County Circuit Clerk began

collecting fines and fees as prescribed by Code and Ordinance No. 04-OR-01.

According to the Judge, the Court needed “real time” information relating to Court offenders and their payment of fines and fees to best serve offenders placed on probation. Therefore, Cycle Breakers, Inc. paid a consultant \$26,750<sup>2</sup> to develop a software program which allowed the Court to track all probationer activity. The Court’s desire was a “one stop shop” for probationers to meet with County Probation Officers as well as pay monetary penalties assessed by the Court and fees charged by Cycle Breakers, Inc. As a result of this arrangement, the Court improperly collects fines, as defined above, and Cycle Breakers, Inc.’s fees.

The Court remitted all fines, court costs, and probation fees to the County Circuit Clerk for deposit until the Judge issued the Order requiring one-half of probation fees be directly remitted to Cycle Breakers, Inc. Because the Court Office has control of Cycle Breakers, Inc.’s bank accounts, Court personnel deposited one-half of probation fees in a Cycle Breakers, Inc.’s account.

Although the Court’s probation policy manual mandates fines and fees generally be paid by money order, numerous instances of “cash” receipts were noted. A surprise cash count conducted on July 3, 2007 indicated receipts and funds on hand balanced and totaled \$2,395. Of this amount, \$2,120 was in currency and County and Cycle Breakers, Inc. receipts were improperly commingled.

**We recommend** the County implement procedures to ensure compliance with County Quorum Court ordinances. **We also recommend** the Court discontinue the collection of County funds and fees assessed by Cycle Breakers, Inc.

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<sup>2</sup>Cycle Breakers, Inc. also paid \$4,000 to this consultant in 2005 and the County paid \$5,936 in 2006 relating to software program costs.

*Responses of the County Attorney and the Judge are provided in the section titled as such and in the Appendix.*

**Internal Control/Policy Weaknesses**

Cycle Breakers, Inc. did not have internal controls established because Court personnel maintained all financial records. In addition, the Board did not exercise adequate fiscal oversight responsibilities as supporting documentation was not required for all disbursements. Furthermore, board of directors liability and workers' compensation insurance had not been obtained. Board meeting minutes were maintained, but were not authenticated with signatures of any Board member. Other than bylaws, Cycle Breakers, Inc. did not have a policy manual.

**We recommend** the Board consult with its accountant and legal counsel to establish internal controls and adequate fiscal oversight procedures, adopt an operations policy manual, and obtain necessary insurance coverage.

**Responses of the County Attorney and the Judge**

*The County Attorney has indicated recommendations contained in this report will be reviewed and presented to the County Judge and Quorum Court for corrective action.*

*The Judge has provided a letter of response presented in the Appendix on pages A-1 through A-3.*

**Conclusion**

The Program was started by the Judge, through the Court, before Cycle Breakers, Inc. existed, and is considered part of Court probation. The mission of the Program is to aggressively intervene in lives of individuals to stop the cycle of crime and deter further involvement in the judicial system. With the

intent to expand Program functions and form an organization independent of the Court, a nonprofit organization was incorporated.

Other than the fact Cycle Breakers, Inc. is incorporated as a nonprofit organization, this review indicated there is little division and no arms-length transactions between Cycle Breakers, Inc. and the County, Court, Program, and Judge.

In addition to assessing probationers a \$40 monthly probation fee, the Court requires many probationers to participate in the Program. The Court does not assess a fee to defendants ordered to participate, but has established additional fees, without apparent statutory authority, for various assessments/ services. These fees, while collected by Court personnel and deposited in a Cycle Breakers, Inc. bank account, are related to probation and may be considered County funds.

The County Quorum Court allows a portion of probation fees be given, and other resources be used on behalf of, Cycle Breakers, Inc. even though Article 12, Section 5 of the Arkansas Constitution prohibits a county from obtaining or appropriating money for any corporation.

The existing relationship the Judge, Court, and Court employees have with Cycle Breakers, Inc. appears to conflict with state laws relating to conflict of interest and ethics provisions. Numerous instances occurred in which the Judge, Court, and Court employees received financial benefits from Cycle Breakers, Inc.

This report will be forwarded to Cycle Breakers, Inc.'s Board of Directors and Legal Counsel; Pulaski County Quorum Court, Judge, and Attorney; the Arkansas Ethics Commission; Sixth Judicial District Prosecuting Attorney; and Fifth Division Circuit Court Judge.

## Schedule 1

Cycle Breakers, Inc. Timeline of Events For the Period January 1, 2001 through July 17, 2007	
Date	Event
January 1, 2001	Judge Willard Proctor, Jr. (Judge) became Fifth Division Pulaski County Circuit Court Judge and established Cycle Breakers Program (Program) to rehabilitate probationers.
August 16, 2002	Articles of Incorporation were filed for Cycle Breakers, Inc.
December 14, 2002	Articles of Incorporation were amended.
April 15, 2003	Articles of Amendment with Restatement were filed with the Secretary of State.
April 17, 2003	Cycle Breakers, Inc. adopted bylaws.
May 2003	Cycle Breakers, Inc. was granted tax-exempt status under Section 503 (c)(3) of the Internal Revenue Code and recognized as a public charity by the Internal Revenue Service (IRS).
January 29, 2004	The Arkansas Department of Finance and Administration determined Cycle Breakers, Inc. was exempt from state income tax under provisions of Arkansas Code Annotated 26-51-303(a)(9).
December 17, 2004	Cycle Breakers, Inc. entered a lease agreement for a chemical free house.
November 2005	The Board of Directors (Board) authorized the purchase of a facility to consolidate all functions of Cycle Breakers, Inc. in one location.
September 14, 2006	IRS reaffirmed Cycle Breakers, Inc.'s classification as a public charity rather than a private foundation.
September 18, 2006	Cycle Breakers, Inc. requested the Court assess a \$20 per month fee to each Program participant for the purchase, maintenance, and upkeep of a facility in which to conduct rehabilitative services for probationers.
October 2, 2006	Judge issued Court Order CV 1901-5 (Order) requiring one-half of all probation supervisory fees collected beginning October 2, 2006 be given Cycle Breakers, Inc. Provisions include fees be deposited in a separate account, Cycle Breakers, Inc. maintain its 501(c)(3) status, and keep all Form 990's on file.
December 6, 2006	Steve Goss, Justice of the Peace, District 15, Pulaski County Quorum Court, asked Sandra Prater, State Representative, to request an audit of Cycle Breakers, Inc. by Division of Legislative Audit (DLA).
December 12, 2006	Order was amended. Cycle Breakers, Inc. will continue to receive one-half of the fees, but will return \$70,000 to the County in four quarterly installments; however, Cycle Breakers, Inc. will receive at least \$70,000 per year to secure financing, loans, and grants.

*Continued on page 16*

## Schedule 1

Continued from page 15

Cycle Breakers, Inc.	
Timeline of Events	
For the Period January 1, 2001 through July 17, 2007	
Date	Event
January 19, 2007	DLA held entrance conference with Judge and Alice Abson, Executive Director of Cycle Breakers, Inc., to begin investigative review of Cycle Breakers, Inc.
January 30, 2007	The City of Little Rock Board of Directors (City) voted to rezone property located at 800 Apperson for Cycle Breakers, Inc.'s use.
February 2007	Board appointed Karen Alford as Executive Director.
February 16, 2007	Cycle Breakers, Inc. finalized purchase of property, located at 800 Apperson, from Little Rock School District.
February 27, 2007	The City rescinded original vote to rezone property due to close proximity to an elementary school.
April 26, 2007	The City rejected Cycle Breakers, Inc.'s request to rezone the property at 800 Apperson.
June 26, 2007	City rejected, for a second time, plan to rezone Apperson property.
July 3, 2007	DLA conducted a surprise cash count of funds on hand in the Court Office.
July 17, 2007	Board voted to sell the Apperson property.

**Source:** *Cycle Breakers, Inc.'s financial records and documents, Sixth Judicial District, Fifth Division Circuit Court documents, and interviews with Fifth Division Circuit Court Judge*

# **APPENDIX**



**Response to Report  
Judge Willard Proctor, Jr.**



Willard Proctor, Jr.  
CIRCUIT JUDGE  
SIXTH JUDICIAL DISTRICT, FIFTH DIVISION  
401 West Markham, Suite 410  
Little Rock, AR 72201  
(501) 340-8550

July 30, 2007

Ms. Kim Williams  
Bureau of Legislative Audit  
State of Arkansas  
Little Rock, AR 72201

RE: Audit of Fifth Division Circuit Court and Cycle Breakers, Inc.

Dear Ms. Williams:

I would like to thank-you for the opportunity that you have given me to discuss your findings. While I do not agree with many of your conclusions, I will make the following changes to address the issues that have been raised:

1. **Collection of Fines.**

As noted, fines (which include probation fees, restitution, and court costs) have been receipted by our Probation staff and then given to the Pulaski County Circuit Clerk for collection since November of 2005. This was done after the Pulaski County Treasurer informed us that they would no longer be collecting fees and the Pulaski County Circuit Clerk informed us that they would not be able to provide probationer's balances due on fees broken down on a monthly basis in real time. There has been an arrangement between the Pulaski County Circuit Clerk and our Court that has allowed the daily transfer of these funds using a system that was created in response to the inability of the County to provide real time data related to fees and restitution paid by probationers. Effective August 1, 2007, our Court will no longer receipt fines(that means probation fees, fines, court costs or restitution) from probationers. All probationers will be directed to pay their fines directly to the Pulaski County Circuit Clerk. Those probationers paying restitution will be directed to pay by money order made directly payable to the victim. The probationer will place the money order in a stamped envelope addressed to the victim. The probationer will also be asked to place a letter from the probation officer addressed to the victim explaining the amount of the payment and the balance left. The probationer will then place the envelope

in a mail basket. The probation staff will keep a copy of the money order, but, they will not mail or handle the money order. Those money orders that are mailed to the probation staff for other fines will be taken to the Pulaski County Clerk for processing.

The Pulaski County Quorum Court has the authority to formalize the arrangement that has existed between our Court and the Pulaski County Circuit Clerk. I have provided you a copy of an Ordinance that was filed by Justice of the Peace Mary Louise Williams that formalizes this arrangement. The Ordinance was to be considered at the July 24, 2007 Quorum Court meeting, but, I requested that it be pulled until the entire Audit was completed and released. I will now ask Justice Williams to re-submit this Ordinance. It is my understanding that these changes should alleviate any problems concerning collection of fines.

## **2. Drug Screens.**

One of the means that has proven effective in measuring compliance with the requirement that probationers not use illegal drugs has been the requirement that probationers submit to weekly drug test. This report raises a concern about a potential conflict of interest because Court staff are administering drug tests that are provided by Cycle Breakers, Inc. and then collecting payments from probationers for the screens. Presently, there is money in the Court's budget that can be used to purchase drug screens. I will use this money to purchase as many drug screens as possible and then require probationers to reimburse the County \$15.00 for the administration of the tests. This money will be paid directly to Pulaski County and as such it will go into General Revenues. Once these tests have been used, we will have no other money in our budget to purchase drug screens. With the supplies that are presently on hand and the money available in the budget, the drug screens should take the staff through the month of August. Therefore, I will ask the Pulaski County Quorum Court to pass an Ordinance that would allow funds generated from the drug screens to go back into our budget so that we will have enough money to purchase the tests in the future. There are about 200 drug tests that we presently have on hand and we will continue to use those tests. However, effective August 1, 2007, probationers will mail payments directly to Cycle Breakers, Inc. for those tests and our Court staff will not be involved in the receipt of funds for those tests. Payments for tests that are purchased by Pulaski County will be paid directly to the Pulaski County Clerk in the event the Quorum Court does pass the Ordinance related to the collection of fines and sets up a process for the return of funds into our budget for the purchase of drug screens.

## **3. Payment and Reimbursements of Staff by Cycle Breakers, Inc.**

This Audit raises issues about a possible conflict of interest that may exist by Cycle Breakers, Inc. paying and reimbursing Staff. To resolve any possible conflict of interest, effective immediately,

Court staff will not be allowed to receive payment from Cycle Breakers, Inc. for work performed at the Mandatory Meeting, Monthly Meetings, counseling services or other events. In addition, Court staff will not be allowed to receive payment for reimbursement for tuition or training expenses. I have provided you with a copy of a second Ordinance that was filed by Justice of the Peace Mary Louise Williams. It is my understanding that this Ordinance would address the issues raised concerning a possible conflict if it is passed. The Ordinance as drafted will have to be amended to specifically state the unusual circumstances that exist and specifically state which purchases are allowed and the limitations on the authority. It is my understanding that this will address the issues raised concerning payments and reimbursements to staff.

4. **Receipt of payments by Staff for Cycle Breakers, Inc and other entities.** The Audit raises issues about a possible conflict of interest that may exist for Staff to collect and receipt payments made by probationers to Cycle Breakers, Inc. Effective August 1, 2007, Staff will no longer collect or receipt payments made by probationers to Cycle Breakers, Inc. or for that matter any other entity. Probationers will be required to make payments directly to Cycle Breakers, Inc. These payments will be mailed to Cycle Breakers, Inc. or collected directly by Cycle Breakers, Inc. staff members. We did not discuss any other corrective measures regarding this issue other than stopping collections and receipting by Staff so I believe that this would resolve this issue.

5. **Probation fees used to purchase facility.** The Audit raises issues about the Order that was entered related to the use of probation fees for the purchase of a facility to conduct meetings and other services. While I believe the Order adequately outlines the justification for such a procedure, the requirements that would have to be met to leave the Order as it is would be too burdensome and confusing. Therefore, effective August 1, 2007, the Order will be amended. I will no longer require that any of the probation fees be used for support of the building. I will, however, require probationers, effective August 1, 2007, to instead pay a \$20.00 per month fee directly to Cycle Breakers, Inc. and participate in the monthly and/or quarterly meetings which Cycle Breakers, Inc. will be primarily responsible for sponsoring. It is my understanding that this corrective measure will resolve any issues regarding the Order.

It is my understanding that these corrective measures will resolve all issues that have been raised by this Audit. Thank-you for your consideration. I remain,

Very truly yours,

A handwritten signature in black ink that reads "Willard Proctor, Jr." with a stylized flourish at the end.

Willard Proctor, Jr.