



STATE OF NEW YORK  
OFFICE OF THE STATE INSPECTOR GENERAL  
**Final Report**  
**March 19, 2009**

## SUMMARY OF FINDINGS/RECOMMENDATIONS

The New York State Inspector General determined that State Division of Human Rights Deputy Commissioner Thomas Shanahan intentionally purchased personal items with his state-issued credit card and improperly sought reimbursement for duplicative expense items on a travel voucher.

The Inspector General also found that Lawrence Wizman, the Division's Director of Compliance, failed to report Shanahan's unauthorized charges in a timely manner and incorrectly advised Shanahan that he could make personal purchases on his state credit card to offset money owed to him by the state.

Finally, the Inspector General found that Shanahan continued to represent private law practice clients after he joined the Division, without informing the Commissioner and obtaining permission to do so, and that he used his Division computer to draft documents related to that practice.

The Inspector General recommended that the Division take disciplinary action against Shanahan and Wizman as it deems appropriate. The Division fired Shanahan on March 18, 2009, and counseled Wizman.

## ALLEGATIONS

Executive Law Article 4-A obligates state officers and employees to promptly report to the Inspector General "any information concerning corruption, fraud, criminal activity, conflicts of interest or abuse by another state officer or employee relating to his or her office or employment . . . ." In June 2008, Jeffrey Mans, then-Assistant Secretary to the Governor for Labor Relations, referred allegations regarding Shanahan's credit card use and operation of a private practice to the Inspector General. Mans forwarded to the Inspector General an April 2008 complaint to the Governor from then Commissioner Kumiki Gibson, alleging that Shanahan had improperly engaged in the private practice of law while working for the Division and had used his Division computer in support of his private practice. Mans further alleged that Shanahan made unauthorized charges on his state-issued credit card.

## SUMMARY OF INVESTIGATION

### *Representation of Private Clients*

Shanahan joined the Division of Human Rights on March 19, 2007. For a number of years prior to his employment by the state, he was involved in the private practice of law, most recently as a sole practitioner. By all accounts, Shanahan agreed to discontinue his private practice after joining the Division. Gibson testified that it was her understanding that Shanahan had either ended his client relationships or was in the process of doing so when he joined the Division. Similarly, General Counsel Caroline Downey informed the Inspector General that it was her understanding that Shanahan would be concluding his representation of private clients shortly after joining the Division. She said that, as a result of that understanding, Shanahan was not required to file a request to engage in outside employment.

Consistent with that understanding, during the first few weeks after he joined the Division, Shanahan told Gibson and Downey that he was making efforts to close his private practice, including filing motions to be relieved as counsel. For example, on April 19, 2007, he sent an e-mail to Downey stating, "I am arguing my hopefully last application to be relieved." Similarly, on April 2, 2007, he wrote to an adversary, Ted Rogers of Sullivan & Cromwell, that "I have a waiver from my new employer to 'wind-up' affairs and a window to do so of April 11, 2007."

Despite these statements, Shanahan did not end his representation of two clients for some time. As he stated in an affirmation voluntarily submitted to the Inspector General in July 2008, Shanahan "closed down almost all matters on or about late June 2007. Two cases were exceptions to this general statement. Those cases were *Jourdan Balkany v. Goldman Sachs* and *Gering v. Tavano*." Shanahan admitted that the *Balkany* case was not substantively resolved until August 2007, by settlement (a fee dispute in that case continued until after October 2007), and *Tavano* was not resolved until June 2008. He admitted to the Inspector General that he worked "evenings and weekends" for both clients after joining the Division. While Shanahan claims that he ultimately earned nothing for representing the two clients after joining the Division, evidence reflects that he accrued fees after joining the Division, and attempted to collect those fees. Shanahan informed the Inspector General that, on or about October 11, 2007, he sent a Notice of Right to Arbitrate to Balkany for "Legal Fees Owed" of \$15,500, including an unstated amount accrued from March through August 2007. In that Notice, Shanahan stated, "I also believe that I am entitled to the fee as I continued to advocate for Mr. Balkany even after I left private practice."

On June 25, 2007, Shanahan sought advice from Gibson and Downey about a client who was contesting a judge's order relieving him as counsel. That morning, he forwarded an e-mail from the client to Downey, and stated that he needed "to discuss the attached with Kumiki [but] wanted to get [Downey's] input first." The attachment, a letter from his client, stated her intent to contest Shanahan's having been relieved as

counsel. Shanahan also e-mailed Gibson that afternoon on the same subject, noting that he had been relieved as counsel but his client had objected. He did not mention his continued representation of Balkany and Tavano. Shanahan sent no other correspondence on that matter, and never requested specific permission to work on *Balkany*.

On November 17, 2007, Shanahan sent a memorandum to Gibson requesting permission “to contact the Ethics Commission to seek approval to perform legal work on an extremely limited basis on weekends and some evenings.” In that memorandum, in which he noted that his “personal financial situation [was] in a very difficult state[,]” he did not mention his ongoing representation of Tavano. Gibson denied his request.

On or about March 11, 2008 – almost one year after Shanahan commenced work at the Division – Gibson learned that Shanahan was still representing a client, Tavano. On March 12, 2008, at 6:48 a.m., Gibson sent Shanahan an e-mail stating, “I was surprised to hear that you are still representing a client in a matter. I really though that that matter was resolved months ago (actually almost a year ago), and “I made clear a couple of months ago that I could not allow any of my appointees to practice law.” She directed Shanahan to discuss the matter with Downey.

Shanahan responded by e-mail at 9:02 that morning, arguing that he had not “engaged in outside activities without [her] knowledge or permission.” Gibson responded at 9:03 a.m., and again directed Shanahan to discuss the matter with Downey. Later that day, in a memorandum to Gibson, Shanahan sought permission to argue an appeal in the *Tavano* case. He attempted to argue that his continued representation of Tavano was somehow permissible because it was not an “active” case. The memo also conspicuously avoided mentioning Shanahan’s work on *Balkany*, which had not been formally filed and therefore never required court appearances: “My appearances, with the exception of the appeal referenced above, were resolved within a month-and-a-half of my appointment.” Without explaining his failure to inform Gibson of his continued representation of Tavano, he argued that he had expected that case to be finished by September 2007 – six months after he commenced Division employment – but the appeal had been delayed for several months. Finally, apparently without considering his ethical obligations to the Division, he argued that he had continued representing Tavano for ethical reasons and because his client was difficult. Gibson did not respond to Shanahan’s request to attend the hearing, but he argued the appeal nonetheless.

In late March 2008, Gibson directed agency staff to search Shanahan’s state-owned computer for material related to his private practice. Documents relating to his private practice were discovered, including a letter to the court in the *Tavano* matter, a letter to a disciplinary committee on another matter, and a letter to a third client.

When Gibson referred the private practice issues to the Governor’s office and the Inspector General, Shanahan argued that Gibson’s allegations were “frivolous,” “malicious,” “retaliatory,” and “utterly untrue.” In his affirmation and interview with the Inspector General, Shanahan attempted to divert attention away from himself to Gibson,

arguing that Gibson had tendered the allegations in retaliation for Shanahan's allegations of Gibson's discriminatory conduct.

Many of Shanahan's assertions in response to Gibson's allegations or in support of his own arguments are, at best, specious. For example, Shanahan claimed in his affirmation that attorney Ted Rogers, his adversary in *Balkany*, "can likely confirm that Gibson knew I was engaged in this matter." To the contrary, Rogers informed the Inspector General that Gibson knew nothing of that matter. Shanahan also asserted that he had received the "explicit approval of Gibson and General Counsel Caroline Downey," to continue work on his private practice cases, but ultimately admitted to the Inspector General that he had no basis for that assertion. Shanahan claimed in an interview that his April 2007 e-mail to Downey stating that he was arguing his "hopefully last application to be relieved" should have been construed to refer only to only those cases from which he was seeking to be relieved. Finally, in his interviews with the Inspector General, Shanahan claimed that he was "winding down" his cases, however slowly that might have proceeded, and that Gibson and Downey were aware that he was doing so. Both Downey and Gibson testified that they were not so aware.

#### *Credit Card Charges*

Shanahan informed the Inspector General that he was provided a credit card for travel charges shortly after joining the Division. He claimed that he did not recall receiving any related paperwork other than a travel manual, which he "put with all the other documents they gave me." Though he signed an acknowledgement form stating that use of his state card was subject to certain terms and conditions, Shanahan could not recall any such document. (The form states, "You may use the travel card to pay for travel expenses when you are on official State business . . . . You may not use this credit card for personal charges.") While Shanahan recognized that the face of the card indicates that it is "for official government use only," he claimed that no one had trained him about what was appropriate to charge or what receipts to keep.

On January 25, 2008, Shanahan submitted a check for \$251.83 and a memorandum to the Division's Director of Regulatory Compliance, Lawrence Wizman, stating that the check was to "reimburse the state for personal expenses I accidentally placed on my travel card back in October." Attached to the memorandum was a copy of Shanahan's state credit card bill indicating that Shanahan had charged personal items on seven separate occasions at a supermarket, drug store, oil change service station, and restaurant over three days in October 2007. Shanahan concluded, "I apologize for any convenience [sic] and will ensure that this does not happen again." Wizman never submitted Shanahan's check to the Division for deposit, and Shanahan's charges were not brought to the attention of senior management until four months later when, on May 12, 2008, a memo was sent to him about another employee who was disciplined for similar behavior. (That employee was required to attend a counseling session and have a counseling memo placed in his file). On that date, Wizman informed then-Deputy Commissioner Alphonso David of Shanahan's unauthorized charges, and stated that he had not told management earlier because the issue "fell through the cracks." David

informed Mans about Shanahan's unauthorized charges and Wizman's stated reason for the delay in reporting the charges. At the time, Mans was supervising the Division's operations during a period between Commissioner Gibson's resignation and the appointment of her successor, Galen Kirkland.

Shanahan was formally counseled by Mans, had a counseling memo placed in his personnel file, and was required to reimburse the state for the unauthorized charges. Shanahan also received a warning that "any such further unauthorized use would result in disciplinary action." On May 14, 2008, at the counseling session, Shanahan reiterated his claim that his use of the card on seven different occasions had been inadvertent. Shanahan represented to Mans that Wizman had "advised him that he thought he could use the money that the State owed him at the time as an offset against the personal charges he made on his DHR credit card."

The next day, May 15, 2008, additional charges to Shanahan's card totaling \$131.12 that appeared to be unauthorized were uncovered in the course of processing his counseling memo. The charges included \$86.25 for travel in July 2007 and \$44.87 for food and gas for travel in November 2007. Initially, Shanahan claimed he was "not sure" whether the July charges were authorized. However, he reimbursed the \$131.12 and sent an e-mail the next day to Mans in which he admitted, "I cannot justify the July 2007 trip." He provided no justification for having charged food to his state-issued card in November 2007.

Division review of Shanahan's travel vouchers also revealed that Shanahan had, in fact, improperly paid for gas with his state credit card and sought reimbursement for a mileage allowance for the same November 2007 travel. The State Comptroller's Travel Manual, which is publicly available on the Internet, explains that employees may travel in personal vehicles under certain circumstances, and employees may seek reimbursement of a predetermined mileage allowance. Gasoline and other expenditures, however, are not permitted, as they are considered operational costs that are covered in the mileage allowance.

On June 4, 2008, Mans sent a memorandum to then Acting Commissioner Kirkland. Mans wrote that he found it troubling "that the timing of this disclosure by Mr. Wizman might be connected with Mr. Shanahan's receipt of information" that relatively moderate discipline had been meted out in the other employee credit card matter. He also expressed concern that Wizman might have advised Shanahan that he was permitted to offset money owed him by the state against personal charges on his Division credit card. Mans stated that he had told Shanahan at the time that "this was "troubling and not authorized under any circumstance." Wizman admitted to the Inspector General that he had, in fact, so advised Shanahan.

Mans noted in his memorandum that Wizman had initially represented that Shanahan's July and November charges had been authorized; that this representation was incorrect; and that Wizman had retracted his incorrect statement in an e-mail dated May 14, 2008. While noting that he was taking no formal additional action regarding

Shanahan's July and November 2007 unauthorized charges, Mans suggested that Shanahan had attempted to pay the additional \$131.12 in order to include the charges in the list of unauthorized activities covered in his counseling memo, rather than face additional discipline. Mans concluded his memorandum to Commissioner Kirkland, "While I cannot comment on any advice or information that may have purportedly been provided at DHR regarding travel and appropriate use of the Division's credit card, the above seems well beyond any rational interpretation of the rules governing travel, reimbursement and authorized use of the Division's credit card."

The Inspector General's investigation further revealed that in or about May 2008, Wizman discovered additional improper charges of \$43.71 made by Shanahan on April 25, 2008, when he rented a car for work using an unapproved vendor and failed to present the vendor with documentation that the rental should be tax-exempt. Additionally, in or about July 2008, Wizman discovered additional improper charges made by Shanahan totaling \$103.50 from May 8 and 9, 2007 and January 19-21, 2008. These improper charges included the payment of tax, charges for food above the amount allowed in his per-diem allowance, and additional charges for gas that were already covered by for reimbursement of mileage allowance. Wizman informed the Inspector General that he had not discovered Shanahan's charges earlier because Shanahan was late in submitting his travel vouchers. While Shanahan reimbursed the state for these charges, Wizman failed to inform senior management of the additional charges and that Shanahan had failed to timely submit vouchers.

Shanahan offered several explanations to the Inspector General for his improper credit card charges. He claimed that some of his credit charges were accidental, but admitted that at least one was purposeful. In his September 12, 2008 interview, when asked if he used his travel card for personal expenses because he lacked sufficient cash for his personal expenses, he replied, "I might have, yeah, I might have. Probably. Probably. Uh-huh. That could be true. But not the October." In that same interview, Shanahan blamed Administrative Assistant Letitia Akens for improperly completing his travel voucher and including both gas and mileage as expenses. Akens later testified that she had not completed the travel voucher in question, and that she was aware that employees cannot submit charges for both mileage allowance and gasoline.

The Inspector General also analyzed Shanahan's bank records, which reflected significant cash outflows, and multiple transfers of cash into his account from a relative. On December 4, 2008, Shanahan was interviewed again, and admitted, "You know, that was embarrassing to me. You asked me about the July charge – the gas, probably – that was a personal charge to go to Albany because I was broke at the time, or whatever. But I wrote the check back to the state right away. I wasn't trying to steal. And I don't do that anymore."

## FINDINGS AND RECOMMENDATIONS

The Inspector General found that Thomas Shanahan used his state-issued credit card for personal use and improperly requested reimbursement for both gasoline and mileage allowance. Shanahan also conducted private law firm work while employed by the Division without approval and even after his request to conduct his private practice was explicitly denied. Shanahan also utilized the state's computer to perform his private practice work. Shanahan's agreement with Gibson and common sense both dictated that he should have promptly ended all private client relationships within a short time after joining the Division, and should have informed the Commissioner of any difficulties he might have faced in that process.

Shanahan's protestations notwithstanding, the Inspector General finds Shanahan's use of his state card for personal expenses was not inadvertent, and that his private work was conducted with the intent to supplement his government salary. His failure to timely submit vouchers and to follow basic policies reflects a disregard for proper procedure. Considering Shanahan's position in the Division and his significant experience as an attorney, his actions are a cause for significant concern. The Inspector General finds Shanahan's unrepentant attitude particularly troubling. Accordingly, the Inspector General recommended that the Division take appropriate disciplinary action against Shanahan.

The Inspector General also finds that Lawrence Wizman failed to report some of Shanahan's unauthorized charges and failed to report others in a timely manner, reflecting either a lack of competence or an attempt to protect Shanahan. Wizman also told Shanahan that he could apply the monies owed him by the state as an offset against the personal charges on his state credit card, thus manifesting a clear misunderstanding of state policies. The Inspector General recommended that the Division take appropriate disciplinary action against Wizman.

In accordance with the Inspector General's mandate to "establish programs for training state officers and employees regarding the prevention and elimination of corruption, fraud, criminal activity, conflicts of interest or abuse", the Inspector General regularly trains employees of agencies within its jurisdiction. The training provides guidance in the principles of personal and professional conduct, and in recognizing and reporting misconduct in State Government. In September 2008, the Inspector General contacted the Division to discuss training, and is working with the Division to schedule such training sessions.

### **Response of the Division of Human Rights**

By letter dated March 18, 2009, Division of Human Rights Commissioner Galen Kirkland advised the Inspector General that Shanahan's employment was terminated effective that date. Kirkland further advised that the Division will hold a counseling session with Wizman, place a counseling memorandum in his personnel file, and provide him additional training.

