



STATE OF NEW YORK
OFFICE OF THE STATE INSPECTOR GENERAL

I.G. FINDS DOCS ATTORNEY FALSIFIED TIME RECORDS

May 1, 2008

SUMMARY OF FINDINGS/RECOMMENDATIONS

An investigation by the New York State Inspector General's Office determined that Department of Correctional Services (DOCS) Associate Counsel James A. McCarthy, a 13-year employee, falsified his time and attendance records by claiming he was working at DOCS during hours he was elsewhere. The Inspector General recommends that DOCS take appropriate disciplinary action against McCarthy and seek to recoup the thousands of dollars paid to McCarthy for work hours during which he was not present. In the 12 weeks examined by investigators, McCarthy was paid approximately \$6,000 for hours not worked. DOCS has advised the Inspector General that it will take the appropriate disciplinary action against McCarthy as a result of the findings.

The Inspector General's Office is also referring this matter pursuant to Section 63.3 of the Executive Law to the New York State Attorney General's Office for criminal prosecution.

ALLEGATIONS

On March 27, 2007, the Inspector General received an anonymous letter of complaint alleging that McCarthy maintained a "no-show" job at DOCS and that his supervisors failed to manage him and hold him accountable.

SUMMARY OF INVESTIGATION

A. Background

James McCarthy, 52, is employed as an Associate Counsel at DOCS. He is a half-time employee of DOCS required to work 18.75 hours a week for which he currently is paid \$60,867 per year. McCarthy is also "Of Counsel" at the private law firm of Girvin & Ferlazzo in Albany. McCarthy's primary role with DOCS is to serve as the Governor's Extradition Secretary. As such, he is responsible for completing and coordinating the relevant paperwork for extradition (the surrender by a state or country of

an individual accused or convicted of a crime outside of its own territory) and rendition (the return of a fugitive to the state in which he is accused).

The extradition/rendition process requires McCarthy's presence at three locations: DOCS main office on the State Campus, the Executive Chamber in the Capitol, and the offices of the Secretary of State, all within a seven-mile radius in Albany. McCarthy has one assistant, an Extradition Specialist, who prepares the relevant paperwork for McCarthy's review. After McCarthy approves the material, the Extradition Specialist forwards the information to the Governor's Counsel. Once necessary modifications are made and the documents are approved, McCarthy brings the originals to the Executive Chamber for the Governor's signature, usually by the autopen machine.

According to Governor's counsel staff, it typically requires 10 to 20 minutes for McCarthy to obtain the Governor's signature, although sometimes the wait "could have been hours from start to finish" and "could be the better part of the day." On occasion, McCarthy would leave while the documents were reviewed and return when he was called. Then, McCarthy would transport the documents back to the DOCS counsel's office. Similarly, McCarthy would process executive agreements between the Governor and the governor of another state, transporting them to the Secretary of State's offices.

Anthony Annucci, DOCS Deputy Commissioner and Counsel, is McCarthy's supervisor. Deputy Commissioner Annucci informed the Inspector General that although McCarthy is an Associate Counsel, McCarthy has been under his supervision only since February 2007. Prior to that, McCarthy primarily worked on legislative matters and reported to a Deputy Commissioner who is no longer employed by DOCS. Annucci stated that during this prior period he had little contact with McCarthy; therefore, he could not attest for his time and attendance.

In describing McCarthy's office as small and overcrowded, Annucci added that McCarthy had not maintained a desk in the office for some time. Once Annucci became McCarthy's direct supervisor, Annucci assigned McCarthy a desk. Annucci also required McCarthy to submit a weekly attendance log denoting his actual time spent at the three locations where he is authorized to perform his duties: "Office," "Chamber," and "Secretary of State." Annucci specifically informed the Inspector General that these are the only three locations at which McCarthy is permitted to complete state work and that he had not approved of, or had knowledge about, McCarthy conducting state-related business at any other location.

In addition to the weekly attendance logs, McCarthy must abide by departmental rules regarding time and attendance. DOCS has numerous policies and directives governing time and attendance of its employees. For example, DOCS policy Section 26 requires that an employee "be present for duty during all scheduled work hours unless he is absent with prior approval or is unable to be present because of illness. Absence at any other time is unauthorized and may result in a payroll deduction and/or in disciplinary action." This DOCS policy also provides that "each employee is responsible for recording his time in the prescribed manner." DOCS directive Number 2202 states that

“Employees are responsible for submitting accurate, legible, and complete timecards,” and that “employees shall report unscheduled absences or lateness to their immediate supervisor...” DOCS directive Number 2205 further states that “Falsifying an employee’s record of attendance in any way is grounds for disciplinary action. This includes ... entering false information on a time card.”

B. Investigation into McCarthy’s Time & Attendance

As set forth above, as a half-time employee, McCarthy is required to work 18.75 hours a week, or 75 hours during a one-month pay period. To determine whether further investigation was warranted, the Inspector General initially reviewed McCarthy’s time and attendance records for a one-month period (April - May 2007) and compared those records with electronic access card records for McCarthy. Access card records capture the time and location a DOCS employee enters and exits the DOCS office building on the State Campus (“Office”). This comparison revealed numerous discrepancies and a pattern of McCarthy inflating the hours he spent at DOCS, to the extent that McCarthy claimed on his timesheet that he worked almost double the hours recorded by his DOCS access card.

Given the evidence, the Inspector General then examined a subsequent time period (from June 29 to July 17, 2007) and compared McCarthy’s access card records with the “Office” hours he documented on his weekly time sheet. This comparison revealed a near-tripling of hours on McCarthy’s time sheet compared to the actual hours he was logged in. Further investigation, including surveillance, corroborated the access card information. In an additional two-week period in August, 2007, and then again for the entire month of November, 2007, McCarthy essentially doubled his actual work presence on his DOCS time sheets.

The Inspector General found exaggerations in McCarthy’s time reporting at all three locations (“Office,” “Chamber,” and “Secretary of State”) during the time periods examined. McCarthy’s reported hours at the DOCS Office had the greatest number of irregularities; therefore the Inspector General’s analysis focused on that location. In sum, during the 12 weeks in 2007 examined by investigators, McCarthy documented that he was at the DOCS “Office” for 218 hours, when the evidence established that he was there for only 98 hours, resulting in an overstatement by McCarthy of 120 hours (or 122%).

Illustrative of McCarthy’s false reporting, in his time record for July 6, 2007, McCarthy claimed to have spent two hours at DOCS Office. In reality, McCarthy spent zero hours at DOCS that day. Instead, he spent the morning at his private law practice at Corporate Woods and his afternoon at the Wolferts Roost Country Club in Albany. Similarly, McCarthy in his time records claimed that he worked 6.5 hours at the DOCS Office on November 6, 2007; in actuality, he only was present at DOCS for three hours and 40 minutes. McCarthy spent the remainder of the day at his private law office and visited Wolferts Roost. On November 21, McCarthy claimed he worked 2.5 hours at the office; in actuality he worked 20 minutes. Further exemplifying his consistent pattern of misreporting and time inflation, McCarthy claimed to have spent 4.5 hours at the DOCS

Office and 1.5 hours at the Secretary of State's Office on August 8, 2007. In reality, McCarthy spent 2.5 hours at DOCS and just seven minutes at the Secretary of State on that date. His true day consisted of time at his law office, the Troy School District (a private client) and two trips to Wolferts Roost.

C. McCarthy's Inconsistent Testimony Under Oath

On January 9, 2008, the Inspector General interviewed McCarthy under oath regarding his time and attendance and job responsibilities as DOCS Associate Counsel and Extradition Secretary. In addition to his extradition duties, McCarthy claimed to have had additional responsibilities assigned to him "since March of this year [2007]," when he began reporting to the Deputy Commissioner and General Counsel. These included assignments to "inmate appeals on visitation: revocations or suspensions." McCarthy confirmed that unlike other employees in the DOCS Office of Counsel, he is required to submit a separate weekly timesheet in addition to the monthly DOCS time and attendance record. McCarthy maintained that these weekly timesheets reflect his hours during workdays at the several different locations that he is required to visit while processing extradition and rendition requests.

Consistent with Deputy Commissioner Annucci's testimony, McCarthy initially testified that the locations on the weekly time sheet - the Office, Executive Chamber and Secretary of State - were the only locations where he completed his DOCS work. Upon twice being queried as to whether he ever completes DOCS work in locations other than the three denoted on his weekly time log, McCarthy unequivocally testified that there were no other locations where he performs his DOCS-related work, apart from his infrequent visits to DOCS correctional facilities. Regarding his documentation of the hours which he spends at each of the three authorized locations, McCarthy testified, "[the Extradition Specialist] created a document...which lists my weekly hours and it says: Corrections, Chamber, Secretary of State. And I put down for every day that I'm here the number of hours I spend in each." McCarthy maintained that the time he records at the Chamber and the Secretary of State includes his travel time to and from these destinations.

In contrast to his prior testimony, when asked if he ever conducts DOCS-related business outside of these locations ("Office," "Chamber" and "Secretary of State"), and specifically, at his private practice, he initially responded, "I get many calls from [the Extradition Specialist] at my office, both my cell phone and my law firm phone, usually [regarding] extraditions and renditions." Later in the interview, McCarthy modified his testimony, and claimed that he also worked on inmate appeals while at his law office. He said that this work occurred "a couple of days a week, at least" and for periods, "depending on how complicated the issues are... [of] an hour to three hours [per inmate appeal]... four or five inmate appeals [each] week." The time, in part, reflects the fact that he is "not computer literate" and thus he must "hand write everything."

Then, even later in the interview, McCarthy again modified his testimony, saying, "I do it [extradition and rendition work] in my office [private law office] too. We used to

fax stuff all the time. [The Extradition Specialist] would fax all the documents to me and I would review them.” According to McCarthy, however, after the procedure changed sometime around August of 2007 to sending information by e-mail as opposed to facsimile, he stated “I don’t do extradition stuff at the law firm.”

When asked why he chose to purportedly conduct state business at his private law office rather than at the DOCS Office building, McCarthy responded, “I have no explanation for that, other than I might have to be over there for some reason and I just want to bring it with me so I can get it done.” He added that he “doubt[s]” anyone at his private law office would be aware that he has conducted state business while in the office and that no documentation exists (a diary, a calendar, etc.) that would reflect the hours he worked on state business outside of the DOCS building. McCarthy later claimed that facsimile records could be obtained to show that there was a flow of faxes from DOCS building to his private office prior to August of 2007 (before which the packets were transmitted via facsimile).

McCarthy was shown copies of his weekly timesheets and the hours that he had recorded during the period April to December 2007. The hours documented were contrasted with DOCS building access card time stamps for McCarthy and with hours recorded by the Inspector General through surveillance. McCarthy was asked to comment on the numerous discrepancies between the two records. He responded, “Well I was physically, obviously only here that amount of time [referring to the hours indicated by McCarthy’s access card swipe]. The only explanation I could have is that I was doing work at the law firm which involved” DOCS work.

When confronted with the evidence of his DOCS building access card records and that of surveillance which showed what appeared to be the near doubling of hours at the DOCS “Office,” McCarthy stated, “The time obviously I’m not going to dispute because that’s...you have the swipe cards. But, that probably shouldn’t have been put down as four-point-five [hours]. I probably should somehow indicate somewhere that the work was done outside this building.” When asked if anyone was aware that he was supposedly doing state-related work while at his private practice, McCarthy responded, “I don’t know.” McCarthy admitted that he had neither requested nor received authorization to work on state business at his private practice.

In an effort to justify his time records, McCarthy further stated, “The only thing I can tell you is that I estimated. I mean, I didn’t look at my watch every time I filled it out.” “The only explanation I have is that...it was overestimated.” “I don’t have a logical explanation other than the fact that I might have done work elsewhere but it shouldn’t indicate that here [the timesheet row reflecting hours worked at DOCS building].” When asked if he intended that the hours recorded on his timesheet under the heading “Office” were to reflect those hours spent at the DOCS Office and elsewhere while conducting state business, McCarthy replied, “I would say a vast portion of it [the hours recorded] is, but that’s probably not an accurate number.” When asked what would be an accurate number, McCarthy responded, “Clearly, I think I worked the required seventeen-and-a-half or eighteen hours per week.” McCarthy was asked if he thought the

hours recorded by his DOCS swipe card entries and exits and/or those recorded by the Inspector General during the investigation were more accurate than those he recorded, he said, "I'm going to tell you that you probably should assume the number [recorded by the Inspector General] is the correct number...with few exceptions, one, as I said, I do bring work to my law firm to work on appeals."

McCarthy posited that there might have been occasions when his entry into the DOCS building was not recorded. He said that he could have "unknowingly" walked into the DOCS building without using his swipe card. "But sometimes, who knows, it doesn't register. I walk in behind people, people hold the door open all the time." He recognized that in those events, he would likely be recorded upon exiting (swipe-out) the building. He further claimed, "I didn't intentionally fill out incorrect numbers." In concluding the interview, McCarthy stated, "I think that I probably put in more time than the swipe cards indicate. I would take the work from here and bring it to my law firm and do it there." When asked if that would account for all the discrepancies found while comparing records, McCarthy replied, "I'm not going to dispute that [the discrepancies]." "For the most part they [swipe card records] probably are [correct]; I'm not going to dispute that. All I can tell you is that it wasn't done intentionally."

Ten minutes after his interview had concluded, McCarthy unexpectedly returned to speak further with the Inspector General. He now offered another alternative explanation for his false time records. In this new version, he told the Inspector General that, "I didn't have a phone here at the Department of Corrections from April through probably November [2007]. It was kind of a joke that I didn't have a phone. People were kidding me about it. And I still, to this day, do not have a computer. So a lot of what I did involved my own cell phone and involved me having to work from my law firm and take calls and conduct business for the Department of Corrections from April [2007] through, whenever I got the phone, which was, I think, the early part of November or the middle of November [2007]. Now that doesn't explain for all the time that...the discrepancies in the timesheets, but I think that it accounts for a lot of it." He closed his statement by adding, "So, while the time here [at the DOCS Office] may not have been completely accurate on those timesheets, I submit that I did work substantially close to what was put down on those documents."

When it was pointed out that these statements contradict his earlier testimony, McCarthy said, "I understand that...I think that I did work those hours, although I will admit, that I was not physically present during, in this building, during those times." Again he stated that he is not aware of any evidence that would corroborate this, but for facsimiles sent between DOCS and his private law office.

In an endeavor to corroborate McCarthy's claim that he completed state work at his private law firm, the Inspector General interviewed the Extradition Specialist who has worked closely with McCarthy to coordinate the extradition process for the last 11 years. Although generally supportive of McCarthy, in direct contradiction to his testimony, she informed the Inspector General that she tries not to contact McCarthy outside of the DOCS Office because she does not want to "interfere" with his private practice. She

further stated, "What I try to do is keep all my questions and my issues when he comes to the office. The only time that I ever have to call him is usually because I have been fed information after he has left the building." She further stated that prior to the current method of reviewing and sending the materials electronically to the Governor's Office, there had been instances when she faxed documents to McCarthy at his private practice for him to review; although she could not quantify the number of occasions this occurred. She added that she has e-mailed documents, in lieu of fax, to McCarthy at his private practice after the new procedures were implemented however, "not very often, I would say it's more the exception." The Extradition Specialist provided the Inspector General with 10 fax transmittal forms, covering a 14-month period from May 2006 to July 2007, memorializing her communication with McCarthy from DOCS to his private practice. However, she added that she may not have retained records of all of her faxes to McCarthy.

The Inspector General subsequently analyzed records of the DOCS fax machines identified by the Extradition Specialist as those that she used to transmit documents to McCarthy at his private law firm from April to November, 2007. Contrary to McCarthy's claim of a "flow" of facsimiles, this review revealed that there were only three facsimiles transmitted from the Extradition Specialist to McCarthy's private law firm during the time the Inspector General monitored McCarthy's time and attendance.

The Inspector General also analyzed telephone records of calls made from the Extradition Specialist to McCarthy. These records confirmed the Extradition Specialist's version of events in that although there were a significant number of calls made over a year period, they were generally of a very brief duration and averaged approximately a combined three minutes a week. For example, on the days discussed earlier in this report – July 6, August 8 and November 6 - McCarthy was sent no faxes from DOCS at his private firm and received no phone calls from DOCS. He received two phone calls from DOCS on November 21, 2007, taking the first (for 1 minute and 6 seconds) at his law practice and the second (for 42 seconds) while at the Wolferts Roost Country Club.

Notably, after he was interviewed by the Inspector General's office, McCarthy markedly changed his method of filling out his time sheet to provide arrival and departure time to match his access card.

FINDINGS AND RECOMMENDATIONS

The Inspector General's investigation established that McCarthy failed to comply with DOCS rules on time and attendance. Although the Inspector General cannot definitively prove that McCarthy did no DOCS work at his private law office, the evidence strongly suggests that he did not complete the hours he was paid for by the state. In addition, he never sought nor was granted permission to complete state work at his private law office.

McCarthy was not present at his work locations – the Office, the Chamber and Secretary of State’s offices – for the amount of time that he claimed. He submitted false weekly timesheets by documenting hours that he purportedly worked at DOCS when, in fact, he was elsewhere. The discrepancies identified by the Inspector General during the investigation period revealed a doubling of the number of hours worked by McCarthy. Specifically, in the 12 weeks examined by investigators, he claimed to have worked for DOCS for more than 100 hours that are not supported by the evidence.

Furthermore, McCarthy’s inconsistent explanations, under oath, to the Inspector General are troublesome. He initially admitted that his documentation of his hours worked at DOCS was inaccurate, but he later claimed to have substantially worked all hours as documented, which is belied by the facts. The Inspector General recommends that DOCS take the appropriate disciplinary action against McCarthy and seek to recoup the additional moneys paid to McCarthy for 100 work hours during which he was not present. In the 12 weeks targeted by the Inspector General, McCarthy was paid approximately \$6,000 for hours not worked.

The Department of Correctional Services has reviewed the Inspector General’s investigation and has advised that it will take the appropriate disciplinary action against McCarthy as a result of the findings.

The Inspector General’s Office is also referring this matter pursuant to Section 63.3 of the Executive Law to the New York State Attorney General’s Office for criminal prosecution.