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OFFICE OF THE STATE INSPECTOR GENERAL
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INTRODUCTION AND BACKGROUND

The Inspector's General's Report of March 24, 2009

On March 24, 2009, the Inspector General issued a report entitled, "Report on the Abuse of the Civil Service System by the Department of Taxation and Finance and Acting Commissioner Barbara Billet." In that report, the Inspector General detailed actions taken by the New York State Department of Taxation and Finance (DTF) in 2006 at the instigation of Barbara Billet, who at the time served as DTF's Executive Deputy Commissioner, to secure tenured positions for herself and eight other attorneys in DTF's employ who served in at-will positions to ensure their retention after the imminent change in administrations. The Inspector General found that this goal was accomplished by tapping into DTF's historic manipulation of the civil service system for hiring entry level attorneys¹ – the legal specialties examination – which existed under the then-head of DTF's Human Resources Department, Deborah Dammer. At the conclusion of the report, the Inspector General referred the findings to the Department of Civil Service (Civil Service) to review in consultation with the Inspector General, "instances of other attorneys in DTF and other agencies who while serving in non-tenured positions obtained appointments to tenured attorney positions via the legal specialties examination for evidence of illegality, irregularity or fraud" and "in collaboration with the Inspector General, conduct further investigation as warranted." The Inspector General further recommended that Civil Service "review the legal specialties examination process and implement prophylactic measures designed to enhance compliance with the law and deter abuse of the system."

In response to the Inspector General's report, on March 24, 2009, Governor David A. Paterson announced, among other initiatives designed to protect the integrity of the testing process, the creation of a task force to study whether DTF's manipulation was indicative of broader systematic abuse, whether existing safeguards are adequate, and whether alternative safeguards could be implemented to prevent future misconduct.

¹ An applicant hired under this process proceeds through several traineeship titles until, if he or she performs satisfactorily at the conclusion of each phase, the employee achieves the position of "Senior Attorney." For ease of reference, the position will be referred to as a "Senior Attorney" position throughout this report.

Subsequent to the release of the Inspector General's report, Civil Service has engaged in an analysis of past legal specialties examinations for evidence of potential manipulation. Instances warranting further review regarding agencies within the Inspector General's jurisdiction have been forwarded to the Inspector General and examined. During this review, two additional hires made by DTF after Billet's departure but prior to the Inspector General's investigation, the hiring of Tyler Feane and Sarah Larsen/Dasenbrock, were noted as suspicious and forwarded to this office for further investigation. Civil Service also identified the hiring of Kent Vanderwal by the New York State Division of the Lottery as worthy of further examination.

The Legal Specialties Examination

To understand the abuse of the civil service system underpinning this report, a discussion of the legal specialties examination process is required. A full description of the process is contained in the Inspector General's March 24, 2009 report and reference is made to that report for a comprehensive description. In summary, the legal specialties examination does not seek answers to substantive questions, and applicants do not apply for a specific job opening. Rather, the examination requires applicants to fill in "bubbles" on a computerized form (a so-called "bubble-sheet") listing numbers which correspond to categories reflecting their training and experience derived from a menu of such categories and codes provided by Civil Service. Applicants do not apply for any specific job or a position in a specific agency. Instead, the data from applicants' bubble-sheets are pooled pending submissions by any agency with a job opening.

When an agency has a job opening related to legal specialties, it must complete a profile. This profile is the mirror image of applicants' bubble-sheets in that the agency is required to list the codes from a corresponding menu describing the perfect candidate to fill the vacant position. The agency does so by listing both the codes for the specific relevant categories it has chosen and by allotting 30 points among the items listed. This profile is then collated against the pool of applicants maintained by Civil Service and a list (referred to as a "LERT") is generated. The LERT lists candidates by score. The score consists of the 70 points (which an applicant must possess to even be considered eligible to appear in the pool) plus whatever portion of the 30 points the applicant received based on his or her bubble-sheet's match with the agency's profile.

While this examination process is distinct from a test measuring substantive knowledge, it is still a merit-based civil service examination open to all applicants based upon their bubble-sheet submissions. Applicants are forbidden from participating in development of the agency profile and the agency is prohibited from drafting a profile designed to hire a particular person.

The Department of Taxation and Finance

As discussed in the Inspector General's March 24, 2009 report, in order to secure tenured positions for Billet and the other named DTF employees, DTF tapped into a system of institutionalized abuse and manipulation of the civil service examination

system existing within DTF during the tenure of Deborah Dammer. Although DTF has now instituted changes to its process as a result of the Inspector General's report, the process existing within DTF at the time of Feane and Larsen's hire was well-established.

Briefly, when DTF wished to hire an attorney within its Office of Counsel to a tenured item, a request to draft a profile was made to Paul Lefebvre, an attorney at DTF, who had become the agency's expert in the area. As detailed in the March 24, 2009 report, when interviewed by the Inspector General, Lefebvre evinced contempt for the civil service system and unabashedly admitted to regularly crafting profiles in order to circumvent the system and hire targeted candidates. Lefebvre would hand-draft a profile and provide it to Anne Sager, an employee in counsel's office, who would formally type the profile and submit it to DTF's Human Resources Department for transmission to Civil Service for processing. Profiles would generally be signed by the human resources representative and DTF General Counsel.

THE INSPECTOR GENERAL'S INVESTIGATION

Tyler Feane

Tyler Feane graduated from Albany Law School in May 2007. While still a law student, Feane decided to seek a career in public service and, prior to any interactions with DTF, submitted his bubble-sheet profile to Civil Service. On the day he graduated from law school, Feane received an award as the student who had demonstrated academic excellence in the fields of tax law, tax policy, and government finance. At a reception following graduation, Feane was approached by one of his professors who recommended that Feane seek employment at DTF and offered to help arrange a job interview for him. While Feane expressed interest in working at DTF, he did not solicit this professor's offer of assistance and had no connections or contacts within DTF at the time.

Unknown to Feane, his information was passed to Deborah Dammer, who provided it to Daniel Smirlock, DTF Deputy Commissioner and Counsel. At the time, two tenured attorney positions had recently become available in DTF counsel's office due to retirements. After reviewing Feane's resume, Smirlock e-mailed Dammer on June 6, 2007, that he was "definitely interested in Tyler Feane" for DTF's E-Gov unit² and that if Feane was interested "he can come in for an interview and we can create a job profile." On June 8, 2007, Dammer e-mailed DTF attorney Robert Rivers, the head of DTF's E-Gov Unit, copying Smirlock that she had spoken with Feane and that he "believes he kept a copy of his profile [his bubble-sheet information] so if your interested in him and he in us, we can get that from him in order to develop a job description for civil service."

An interview was scheduled and on June 27, 2007, Smirlock e-mailed Dammer (subject "Tyler Feane") that he had "just interviewed" Feane and wished to hire him for the E-Gov unit. Leaving no doubt as to DTF's intention to manipulate the civil service examination system to guarantee Feane's selection, Dammer replied to Smirlock the next

² According to Smirlock, the E-Gov unit essentially serves as house counsel at DTF.

day that “Paul Lefebvre is doing the profile of the job so that we can make a 100% match against Tyler’s skills. We can move forward as soon as that’s done so if Lefebvre’s schedule can be freed up for just a bit to finish that up, we’ll be set to go.” Smirlock forwarded his exchange with Dammer to Lefebvre inquiring, “Where are you on this?” Lefebvre replied that he could draft the profile the next day if Smirlock wished, to which Smirlock replied “That would be great.” Near-contemporaneous with the aforementioned exchange, on June 28, 2007, Anne Sager, the official in DTF’s Office of Counsel who traditionally acted as a liaison between counsel’s office and Human Resources, e-mailed Deputy Counsel Mark Volk her understanding that Smirlock was “VERY interested” (emphasis in original) in Feane, asked Volk if he agreed with this assessment, and that if Smirlock wanted Feane hired “ASAP” “I’ll let Paul [Lefebvre] know so that he can get the profile done quickly.” As promised, on June 29, 2007, Lefebvre sent an e-mail to Sager under the subject “Tyler Feane” stating “I have done the profile” and containing a job description. Further confirming that the profile was crafted specifically in order to effectuate Feane’s employment, the handwritten draft profile created by Lefebvre and delivered for typing to Sager bore the heading “T. Feane.”

Despite knowledge that DTF had designed the profile for the express purpose of hiring Feane, on July 2, 2007, Smirlock signed the typed profile to be submitted to Civil Service under a certification declaring: “I certify this profile accurately reflects the duties of the position being filled, that the agency has a current position description supporting this profile, and that the elements of this profile were not developed with reference to any known candidate.” (Emphasis added). This profile was also signed and certified by Deborah Shimkus, a DTF Human Resources employee whose duties included forwarding profiles to Civil Service.³ When questioned by the Inspector General under oath, Smirlock testified that he had no memory “whatever” of signing the profile but admitted that the certification was false in that the profile had been “actually developed” for the distinct purpose of hiring Feane. Smirlock further confirmed that the examination was not designed to fill an agency need by culling the best candidate from Civil Service’s general pool in that DTF “didn’t even talk about there being a position . . . until we . . . decided we were interested in Tyler [Feane].” Smirlock further testified in regard to the profile and certification, “Frankly, I am sure that I didn’t look at it even when I signed it.” When asked by the Inspector General whether he had any concerns at the time about steering a profile in a competitive examination process towards a chosen candidate, Smirlock testified that he did not because that was his “understanding” of how competitive class attorneys were hired when the agency had a particular candidate in mind.

Unsurprisingly, on July 11, 2007, Civil Service generated a LERT in which Feane scored a perfect 100. On July 17, 2007, Sager informed Volk that “[t]he list came back from Civil Service and Tyler Feane is immediately reachable. The item has been posted within the Department but we do not have to wait until the posting comes down to make an appointment. If we want to, we are free to make the offer to Tyler [Feane] now.” On July 18, 2007, Volk forwarded Sager’s e-mail to Smirlock inquiring “Would you like us

³ Shimkus also certified the profiles submitted for Billet and the other DTF attorneys in 2006 as discussed in the Inspector General’s March 24, 2009 report.

to proceed?” Feane accepted the position on July 20, 2007; no other candidates were canvassed or interviewed by DTF.

Deputy Commissioner and Counsel Smirlock Inquires About the Legal Specialties Examination Process

After learning of an opening in a senior attorney position which he wished to potentially fill, on December 19, 2007, Smirlock e-mailed Kiaran Johnson-Lew, who had assumed the position as DTF’s head of Human Resources upon Dammer’s retirement, and inquired as to the process to hire for that position. Johnson-Lew responded that same day summarizing the legal specialties examination process including the fact that DTF was required to use Civil Service’s “menu to identify the education and experience that we want in an ideal candidate (e.g. a Masters in Taxation and 4 years of post bar, white collar crime, litigation experience) . . . to create a job profile”. Johnson-Lew advised Smirlock that after this profile is submitted, Civil Service “runs our profile against all candidates’ profiles and an approximation list is produced. The closer the candidate is to our profile, the higher his/her score . . . We receive[] the eligible list from CS and canvas, interview and hire as normal.” Johnson-Lew also added that “Paul Lefebvre has a lot of profile development experience in [Office of Counsel].” Johnson-Lew testified to the Inspector General that she had not previously worked on legal specialties examination matters at DTF and was unaware prior to the Inspector General’s March 2009 report of DTF’s misuse of the process under her predecessor and Lefebvre’s integral role in this misconduct.

Nearly simultaneous with his e-mails with Johnson-Lew, on December 19, 2007, Smirlock also e-mailed his two deputy counsel, Mark Volk and Deborah Liebman, and inquired as to the manner in which to fill a Senior Attorney position. Along with his inquiry to Johnson-Lew, this exchange is relevant to this report and an assessment of Smirlock’s behavior because Smirlock’s questions to Volk and Liebman evince ignorance of how Senior Attorney positions are actually filled under the state’s civil service system. Specifically, after informing the two that he had received permission to fill a position, Smirlock asked:

I assume there’s such a thing as a Senior Attorney civil service list. Does it consist entirely of people who are Senior Attorneys in other agencies?
Another way of asking the same question is: When we hire someone who has passed the bar exam but who’s not a Senior Attorney at another agency, does that person always come in as an Assistant Attorney? And of the people who are now Senior Attorneys in OOC but didn’t start their careers here, how did they get here?

Volk replied:

There is a Senior Attorney “list”, but it really isn’t an all encompassing list. Attorneys fill out a profile with Civil Service and it is put on file. When an agency wishes to hire the agency gives Civil Service their

requirements and Civil Service matches the requirements with the attorney profiles and produces a list. The attorneys that are on that list are generally attorneys not working for the State. Senior Attorneys from other agencies are allowed to “lateral” to other agencies so their [sic] is no need for them to be on a list. Most of the attorneys in OoC [DTF Office of Counsel] came off of a civil service list.

To which Smirlock responded, “So the pool from which the ‘list’ is drawn consists of everyone, from recent law school graduates to experienced attorneys, except Senior Attorneys from other agencies? How many candidates are typically on a list? Just three?” Volk replied, “Yes, that is who is on the list. The list usually consists of many, sometimes hundreds of attorneys. We can only look at the top three candidates.”

While Smirlock’s lack of understanding of the legitimate process does not remotely excuse his signing false certifications, this colloquy is consistent with his professed unfamiliarity with the process at the time of Feane’s hiring.

Sarah Larsen/Dasenbrock⁴

The hiring of Sarah Larsen was similarly accomplished through patent manipulation of the legal specialties examination process. Larsen commenced her employment as a student intern with DTF while attending law school. Larsen obtained her internship through the law school’s general intern placement program and no evidence exists that she possessed any connections with DTF or otherwise prior to obtaining her internship. By all reports, Larsen performed well as an intern and impressed members of the department for whom she completed assignments. While in law school and prior to engaging in any discussions with DTF about the possibility of securing a permanent position, Larsen considered seeking employment with the state and submitted her bubble-sheet to Civil Service.

On April 24, 2008, DTF submitted a profile to Civil Service in order to fill a vacant senior attorney position. As discussed below, this profile was apparently constructed with an eye towards hiring another individual who had interned in the department, the daughter of current DTF attorney Marvis Warren.⁵ On April 30, 2008, Volk e-mailed Smirlock regarding the possibility of also retaining Larsen as an intern after her graduation while she was studying for the bar exam stating, “Sarah is a keeper and if we are ever allowed to fill another senior attorney item I would put her at the top of the list.” Smirlock replied that, “I don’t view hiring Marvis’s daughter as a fait accompli has Sarah applied?” Volk responded, “Not yet. I wouldn’t want to do anything that

⁴ During DTF’s hiring process, Ms. Larsen married and changed her surname to “Dasenbrock.” In order to avoid confusion, she will be referred to herein as “Larsen” the name by which she is referred to in DTF paperwork and correspondence noted in this report.

⁵ As detailed in The Inspector General’s prior report, Warren was previously the recipient of a tenured hold item at DTF under the direction of Barbara Billet.

would jeopardize [Marvis Warren's daughter's] chances but I would like to keep Sarah in mind."⁶

Larsen testified that some time in May 2008 Marvis Warren called Larsen into her office "out of the blue" and said there may be a position "opening up" in DTF's legislation unit. Larsen had met Warren's daughter during their internships but did not have a close relationship with her and had never worked directly for Warren. Larsen informed Warren that she had already submitted her bubble-sheet to Civil Service.

On May 15, 2008, Smirlock inquired via e-mail to the head of DTF's finance unit and then-First Deputy Commissioner Jamie Woodward as to the possibility of retaining Larsen as an intern while she studied for the bar with the hope of eventually employing her permanently. Smirlock inquired as to whether there was "any chance" for DTF to "fill the senior attorney line, presumably with her [Larsen], assuming we can craft our job description to correspond to her application." Upon receiving approval to retain Larsen, Smirlock e-mailed Kiaran Johnson-Lew, who had succeeded Dammer as head of Human Resources, and informed her that he had received "the ok to hire Sarah Larsen" and inquired as to the next step "to make this happen." The matter was referred to Marian Beckett, a subordinate of Johnson-Lew's, who e-mailed Smirlock on May 16, 2008, that she had contacted Civil Service in order to ensure that Larsen and Warren's daughter were in the pool of potential candidates. She further informed Smirlock that if he wished to appoint Larsen "we will need to have a profile prepared for that item and request (Paul Lefebvre is our resident Guru for that process) and we can submit that so we can move her appointment." Smirlock responded that "unfortunately" Warren's daughter had accepted private sector employment so he now wished for Larsen to fill the open position. In a response to Smirlock and Volk, Beckett e-mailed: "thanks for the update-I will let you know. Mark [Volk], since the profile we have Civil Service holding was constructed around [Warren's daughter's] candidate inventory do we need to ask for the LERT to be returned for that item and revise it so that it reflects Sarah's inventory?" Volk responded, copying Smirlock, "Yes, please do." On May 19, 2008, Beckett e-mailed Smirlock and Volk that she had confirmed that Larsen was in the pool of applicants at Civil Service and that a profile could now be prepared, adding, "After we get the list [the LERT from Civil Service] we have to be sure that Sarah will be reachable and consider any candidates we need to consider to reach her."

During this same period, Anne Sager requested that Larsen provide her with a copy of the bubble-sheet that Larsen had submitted to Civil Service. Sager obtained the bubble-sheet information from Larsen and, without Larsen's knowledge or participation, DTF then used her bubble-sheet information to manipulate the legal specialties examination to guarantee her hiring. On May 16, 2008, Sager e-mailed Lefebvre (subject "profile for Sarah Larsen"): "Attached is what Sarah submitted and received back from Civil service so that you can write up her profile." Attached to this e-mail were a scanned-in copy of Sarah Larsen's bubble-sheet and the printout Civil Service had

⁶ The profile in DTF's records apparently drafted with the intent of hiring Warren's daughter was also signed and certified by Smirlock. As with the profiles designed to hire Feane and Larsen, Smirlock testified that he had no memory of signing this certification.

produced to Larsen listing her submissions. Lefebvre immediately responded, “I also need to write a job description to match the profile. So I need to know where we say she will be working.” Sager replied, “Mark [Volk] said that Dan [Smirlock] hasn’t decided yet where we will be filling this item so we need to make it generic for all of OoC [Office of Counsel].” On May 19, 2008, Lefebvre e-mailed Volk and Sager that he had completed the profile. On May 21, 2008, the same day a profile was eventually certified by Smirlock, Volk e-mailed Smirlock (subject “Sarah Larsen”) that he had spoken with Larsen that that she was excited by the potential opportunity to work at DTF. Smirlock replied, “great. Please make sure all the spadework gets done.”

As with Feane’s profile, despite contemporaneous knowledge that the profile had been expressly crafted to secure Larsen’s employment, on May 21, 2008, Smirlock signed a certification declaring that the elements of the profile “were not developed with reference to any known candidate.” This profile was also signed and certified by Shimkus. When interviewed by the Inspector General, Smirlock denied any memory of signing the profile, but conceded that the certification was “false” in that he agreed that the profile was “absolutely” developed specifically to hire Larsen. A review of the profile itself is further revealing. Indeed, the categories listed on DTF’s profile substantially mirror the order in which Larsen entered the corresponding categories on her bubble-sheet. Consistent with DTF’s manipulation, when Civil Service generated the LERT on June 9, 2008, Larsen scored a perfect 100, the only candidate in the entire applicant pool to do so. Larsen was appointed to her position with DTF on June 26, 2008.

Deputy Commissioner and Counsel Daniel Smirlock

As discussed above, DTF General Counsel Smirlock was directly involved in the hiring processes and signed and certified the profiles submitted by DTF to Civil Service that resulted in Feane’s and Larsen’s employment. When interviewed by the Inspector General, Smirlock testified that prior to joining DTF he had been employed as a supervisor, Deputy Solicitor General, in the Office of the Attorney General’s Appeals and Opinions Bureau. He averred that he had no prior experience with regard to the legal specialties examination process as all the attorneys he hired at the Attorney General’s Office were in the exempt classification and thus could be hired without utilizing this process based solely upon the agency’s assessment of the candidate’s credentials. When Smirlock assumed his duties at DTF in late April 2007, he learned that (substantially due to DTF’s actions under Billet as described in the Inspector General’s March 24, 2009 report) every attorney in his employ in Albany had a tenured position, and, as a result, Smirlock had little flexibility in shaping the department.

Smirlock testified that he never questioned DTF’s crafting of the profiles for the purposes of hiring Feane and Larsen because this mechanism comported with his previous experience in hiring exempt class attorneys at the Attorney General’s Office and his notion of the appropriate method for hiring attorneys. In regard to Feane’s hiring, Smirlock testified that he “was clueless” about the process once he had determined that he wished to hire him. When questioned about his understanding after receiving the e-

mail from Dammer bluntly stating that Lefebvre was to draft a profile ensuring a “100% match”, Smirlock testified that he believed “that it was the way senior attorneys got hired at least when you knew that there was a particular candidate you were interested in.”

In regard to Larsen’s hiring, Smirlock stated that he perceived no “warning bells” regarding the tailoring of the profile because the same procedure had received “the unquestioned seal of approval” from Dammer, DTF’s head of Human Resources in regard to Feane’s targeted hiring the year before. Smirlock added that although the proper examination procedure had been explained to him between the hires by Johnson-Lew, he “didn’t view the explanation as precluding this approach in other words . . . I undertook the inquiry of Karen at that point because I didn’t know what happened when you had a job that you didn’t have candidate in front of you for.” Smirlock further testified that, “to me, I was asking about an alternative procedure.”

Although Smirlock admitted to certifying both relevant profiles and further confessed that his certifications were both false as Feane’s and Larsen’s profiles had been “targeted,” he denied any memory “whatever” of signing the documents.

Smirlock testified that he believed the circumstances of Feane’s and Larsen’s hiring, although admittedly “targeted” by DTF and thus “problematic” from a Civil Service perspective, “differed radically” from DTF’s actions in 2006 at the direction of Billet. Smirlock elaborated that, in his view, the attorneys mentioned in the Inspector General’s March 2009 report had originally been hired by DTF for exempt positions and that the Inspector General had determined that they were subsequently selected for tenured positions in order to create a “safe harbor from expected firings” when the administration changed. Smirlock posited that notwithstanding the requirements of the state’s civil service law and “looking at the equities,” the “breakdown” of the system was “not clearly so critical” in his hiring of Feane and Larsen. Smirlock testified that he believed that the system actually employed by DTF to hire Feane and Larsen, which he believed to be “legitimate” at the time, worked in the same manner familiar to him from his years with the Office of the Attorney General and, further, according to Smirlock, was consistent with the manner in which a system for hiring attorneys “should work as a general proposition of good practice and good government.” Smirlock did concur that, notwithstanding any difference in motivation, from the “narrow perspective” of whether DTF targeted profiles for designated individuals, Feane and Larsen were in the “same boat” as the attorneys mentioned in the Inspector General’s March 2009 report.

The Department of Civil Service’s Review of DTF’s Submissions

Smirlock’s signing of false certifications is particularly significant in light of the critical importance of the certification in the integrity of the examination process. Indeed, the Inspector General’s examination revealed that the certification is the primary, if not sole, bulwark in the system to prevent fraud.

The legal specialties examination system is based on the premise that because attorneys engage in varied and disparate tasks across and within state agencies, each

requiring different skills and background, agencies are considered the best judges of the qualifications required to fill a specific position. Therefore, agencies are granted broad discretion in generating examinations (or the profile) consistent with the duties of the particular position they are seeking to fill. While meeting this individualized need of state agencies, the system's decentralization and necessary reliance on individual agency assessment of qualifications concomitantly renders oversight of agency profiles by Civil Service inherently difficult.

The Inspector General interviewed Erika Bacher who, at the time of Larsen's hiring by DTF, was employed by Civil Service as Chief Staffing Services Representative. In that role she was a third level supervisor in the process of generating and reviewing a LERT after the submission of a profile by an agency. According to Bacher, once an agency completes a profile, it is submitted by that agency to Civil Service's staffing services unit. At staffing services, a clerk reviews the profile to ensure that all the necessary information is contained in the document and to determine whether the scoring on the profile form matched the accompanying job description submitted by the agency. If the profile and job description are consistent, the profile is processed and a LERT generated. Absent abnormalities readily apparent on the profile or in the job description, such as categories not conceivably related to the agency's mission or a disconnect between the profile and accompanying job description, staffing service relies on the agency's certification as the primary, if not sole, safeguard against manipulation and abuse. Once the LERT is generated and returned to staffing services, Bacher required the clerk to prepare a score breakdown for review by supervisors in the unit. Bacher testified that she instituted this breakdown in order to reveal any anomalies in the LERT such as a wildly anomalous score distribution. Even with this review of score breakdown, because the legal specialties process affords agencies submitting profiles great latitude and staffing services does not possess knowledge of any relationship between a candidate listed on the LERT and the submitting agency, the Civil Service's staffing services unit is necessarily reliant on the agency's description of the nature of the specific position it wishes to fill. Due to these factors, Bacher testified her unit was instructed that unless something appeared which was "absolutely egregious," the agency was taken "at its word" as reflected in the certification that the profile was legitimate.

The degree of reliance placed on the agency's certification is exemplified in the case of Larsen's hire. Indeed, viewing the score breakdown in that LERT, DTF's profile and Larsen's bubble-sheet, an employee in the staffing services unit assigned to complete the score breakdown of that LERT noted on an internal file to another clerk, Jonathan O'Rourke, who was training her, that "Larsen is worth a look over. It's perfectly ordered." O'Rourke further examined the LERT and in a written note informed Bacher that "[t]he only candidate to score a perfect 100 pts just happens to be a Temp status employee at Tax. She also just applied in March – she finished law school in May. The profile does appear legit in terms of relative similarity to the duties and agency mission." O'Rourke added in his typed "Analysis" section of the breakdown the extraordinary distribution of scores in that one candidate (Larsen) scored a perfect 100 while the next highest score was a mere 88 without the benefit of additional veterans credits. He further noted that the LERT resulted in 80% of the candidate pool achieving scores below 80.

Despite these admittedly “skewed” results and knowledge that the beneficiary of this statistical aberration was a temporary employee at DTF at the time of the examination, O’Rourke concluded his “analysis” stating that, “[t]he items selected were narrowly focused in various fields of Tax law. Each item can be directly linked to the duties provided by the agency. Though there are a large number of low scores, the list appears appropriate.” Compounding the failings of his analysis, O’Rourke neglected to inform his supervisor of the additional suspicious factor that the LERT was “perfectly ordered” when compared with Larsen’s bubble-sheet. When questioned by the Inspector General why he took no further action in regard to this LERT, O’Rourke responded that because the agency had signed a certification as to the legitimacy of the profile, Civil Service lacked “grounds to challenge it” and did not “really have any recourse.”

While the Inspector General does not accept the proposition that Civil Service is mandated to accept an agency’s certification despite ample evidence of potential tampering, O’Rourke’s actions demonstrate the intrinsic difficulty in analyzing an agency profile and resultant LERT, the degree to which this analysis depends on the reviewer’s talents and energy, and the extent of Civil Service’s reliance on the agency’s certification. Indeed, when asked by the Inspector General to review O’Rourke’s conduct, Civil Service responded by “acknowledg[ing] that the procedures that were in place [at the time of O’Rourke’s review] were not sufficient to guard against deliberate manipulation of the civil service examination process.” Civil Service proceeded to inform the Inspector General that O’Rourke “was following the required procedures and doing what he was required to do” and “while in hindsight his reliance on a certification signed by a high ranking government official was misplaced, it cannot be ignored that the certification was . . . knowingly false and intentionally misleading.” Civil Service’s response, while diminishing any individual fault on the part of O’Rourke, reveals that the Department had no mechanism in effect prior to the Inspector general’s initial investigation to detect and prevent manipulation of the legal specialties examination and further evinces its total reliance on the agency’s certification as the sole existing prophylactic measure to prevent this type of abuse of the examination process.

Division of the Lottery

Civil Service’s analysis of LERTs ensuing from the Inspector General’s March 24, 2009 report also identified the June 2008 hiring of Kent Vanderwal by the New York State Division of the Lottery (Lottery) as warranting further investigation. Suspicions arose regarding this LERT because Vanderwal had previously been employed as an intern at Lottery and the uncanny similarity between the profile Lottery submitted to Civil Service and Vanderwal’s bubble-sheet information. In fact, despite the apparently somewhat random order of entries on Vanderwal’s bubble-sheet, Lottery’s profile substantially mirrors this haphazard non-numerical ordering of codes. After investigation, the Inspector General has determined that this similarity is not coincidental and that the profile was developed with reference to Vanderwal using his bubble-sheet information as a resource. Although Lottery’s actions do not share the degree of premeditation or evince the institutionalized circumvention of the system which existed

at DTF, nonetheless, the examination resulting in Vanderwal's hiring was not regular or legitimate under the Civil Service Law.

Kent Vanderwal was originally hired by Lottery as a summer student intern from June to September 2006 while he was attending law school. Lottery officials were impressed with his performance and solicited his return as a student assistant in the summer of 2007 and while studying for the bar examination in the summer of 2008. Vanderwal obtained his internship through a normal application process and no evidence exists that he obtained his internship illegitimately or received preferential treatment.

The legal department at Lottery is small: prior to Vanderwal's employment, the entire department consisted of the General Counsel, who also serves as Deputy Director, an Associate Counsel, a paralegal and an administrative assistant. Well before Vanderwal was considered for a permanent position, discussions occurred that counsel's office should be expanded in order to adequately address the increased workload of the department. Julie Barker, an Associate Attorney at Lottery who served as Acting General Counsel prior to the appointment of William Murray to that position in November 2007, testified that she advocated for increased staff during her tenure as Acting General counsel without success. Finally, in May 2008, Lottery decided to seek the creation of an additional attorney position with Civil Service. As set forth above, by May 2008, Vanderwal had interned in the department over the course of two summers and was currently employed as a student assistant while preparing for the bar examination.

By letter dated April 11, 2008, Lottery's Director of Human Resources Management Lisa Fitzmaurice filed a request on Lottery's behalf with Civil Service to, among other changes, create a new senior attorney position. Civil Service granted this request that same day. Fitzmaurice subsequently prepared the internal Lottery paperwork seeking the Director's permission to fill the newly created attorney position. Notably, in this internal documentation, on May 7, 2008, Fitzmaurice stated: "This is an add as it will entail bringing a temp worker on board permanently." When questioned by the Inspector General, Fitzmaurice conceded that the "temp worker" referred to in her documentation was Vanderwal, but claimed that it was her assumption that Vanderwal would be a candidate for the position and maintained that such was not created specifically for him. When asked what led her to specifically write that the position was intended to bring Vanderwal "on board permanently," Fitzmaurice initially responded "I don't know." When further pressed, Fitzmaurice elaborated, "We were hoping that we would fill it with Kent, probably, I'm assuming, I don't know." Fitzmaurice asserted that her May 2008 statement was "not good wording," but she could not provide a credible explanation for her choice of words.

Prior to drafting the profile or seeking to create the position, Vanderwal was perceived as an ideal candidate to fill a new position based upon his qualifications, performance, and the experience he had garnered as an intern. Barker and Vanderwal both testified that Barker had asked Vanderwal about his duties as an intern in order to assist in developing a job description for the new position. It is not inappropriate for an agency to hope that a particular person known to be qualified will appear on a legitimate

LERT. It is further understandable that a person who has interned in an agency would acquire a legitimate advantage in the process due to the skill acquired while working in the agency. Where this justified hope on the part of the agency and natural advantage acquired by the applicant becomes violative of the law is when they coalesce to influence the drafting of the profile submitted to Civil Service.

Barker was tasked with drafting the profile for the newly created position. Barker obtained her position through the legal specialties examination process and was familiar with the procedure and the merit-based nature of the examination. Prior to Barker's submission of a draft profile for Murray's review, on June 11, 2008, Vanderwal e-mailed Fitzmaurice copying Marker and Murray, under the subject "Kent's legal specialties profile" and informed them that he had updated his Civil Service profile stating, "For your reference, I have attached the confirmation sent by Civil Service as well as my current profile in Word format that is easier to read." Attached to this e-mail were a scanned-in version of the letter Civil Service had sent to him reflecting his updated profile and a Microsoft Word document created by Vanderwal neatly listing the entries on his bubble-sheet with their corresponding code number and category description. When questioned under oath, Vanderwal testified that he had created the word document and sent this information to keep Lottery's human resources staff "advised" and "updated," but he denied sending this material for the purpose of influencing the drafting of a profile. In fact, Vanderwal testified that he believed that the profile had already been drafted prior to his sending of this information.

Barker testified that she drafted the profile based on the duties she felt the new position entailed and the qualifications ideally suited for those duties. Barker added that it was difficult to prepare the "perfect" profile for the position because the categories provided on Civil Service's menu of items do not include elements critical to the duties of an attorney at Lottery such as experience in gaming law. When initially asked to explain the specific non-numerical order of her entries on Lottery's profile, Barker claimed "it may have been relevance" and "probably was relevance" of the categories in relation to the agency's needs that explained the order she chose. Later, after she was confronted with the correspondence between the non-numerical order appearing on the profile she drafted for the agency with the same unusual order on Vanderwal's bubble-sheet, Barker conceded she "must have referred to" Vanderwal's bubble-sheet when drafting the profile and "obviously, there must have been some influence" by Vanderwal's bubble-sheet information on her choice of categories. When shown the certification signed by Murray and Fitzmaurice that the profile was not developed "in reference to any known candidate," Barker responded she was "surprised" that the profile and bubble-sheet were in the same order and did not recall having the documents side-by-side but admitted she "must have reflected on Kent's profile at some point" when drafting the profile. Barker concluded that she did not intend to manipulate the system. Rather, she intended to find "the best candidate for the job" but "obviously, I must have relied on his profile [Vanderwal's bubble-sheet information] somewhat to try to do that."

Barker and Murray both testified that they discussed Barker's draft profile and that Murray had specific questions regarding some of the entries. Barker testified that

she answered Murray's questions but that this exchange did not result in any change to the draft which was eventually typed and given to Fitzmaurice for submission to Civil Service. No evidence exists that Murray was informed by Barker that she used Vanderwal's bubble-sheet as a reference for drafting the profile, and Murray certified the profile on June 18, 2009. Fitzmaurice then certified the profile on June 20, 2009, and a LERT was generated by Civil Service on June 23, 2009 resulting in Vanderwal's score of a perfect 100 points. Vanderwal was immediately hired, effective June 26, 2008.

In addition to the aforementioned evidence of direct influence, the score distribution on Vanderwal's LERT raises further doubts regarding the legitimacy of the examination. Specifically, while Vanderwal scored a perfect 100 points, the next highest score (subtracting added veterans credits) was an 81 and the third highest score (minus veterans credits) was an 80. Therefore, in order to sustain belief that this examination was legitimate and not structured to Vanderwal's advantage, it would not only have to be proven coincidental that the agency profile and Vanderwal's bubble-sheet were substantially in the same order, that the only perfect candidate for the position in the entire civil service pool happened to already be employed by Lottery, and that this candidate also, by happenstance, provided his bubble-sheet information to the profile drafter; but it would also have to be assumed that this perfect candidate is so unique in his experience and background that no other applicant in the candidate pool for the entire state of New York is remotely suited to fill the position by a wide margin. A claim of such a confluence of coincidences is not credible.

The LERT resulting in Vanderwal's employment was also processed by Jonathan O'Rourke at Civil Service. As with Larsen, O'Rourke noted in his "analysis" of the score breakdown to Bacher that only one candidate had scored a perfect 100 "and the majority of other candidates [scored] at mid to low score ranges." Despite this odd distribution of scores, O'Rourke found, "Although the scores do diverge after the top scorer, the profile appears to be appropriate, therefore the list also appears to be adequate and appropriate." Bacher signed the LERT on June 24, 2008.

FINDINGS AND RECOMMENDATIONS

Department of Taxation and Finance

Pursuant to § 50(4) of the New York State Civil Service Law, the Department of Civil Service has authority to "investigate the qualifications and background of an eligible after he has been appointed from the list, and upon finding facts which if known prior to appointment, would have warranted his disqualification, or upon a finding of illegality, irregularity or fraud of a substantial nature in his application, examination or appointment, may revoke such eligible's certification and appointment and direct that his employment be terminated, provided, however, that no such certification shall be revoked or appointment terminated more than three years after it is made, except in the case of fraud." The Inspector General finds that DTF manipulated the Civil Service legal specialties examination system in violation of Civil Service Law in hiring Feane and

Larsen. The matter is therefore referred to the Department of Civil Service for appropriate action.

It must be noted that neither Feane nor Larsen was aware of or complicit in the abuse of the civil service system carried out by DTF to guarantee their hire. Rather, Feane and Larsen were the innocent beneficiaries of the improper actions of others that rendered their examinations unlawful. As with the attorneys mentioned in the March 24, 2009 report, it is not the Inspector General's function to assess the qualifications of applicants for employment with DTF. Nonetheless, the ultimate disservice of DTF's actions to these individuals, the department and the state is that given Feane and Larsen's obvious qualifications, two people of the type who should be recruited for state employment and may well have scored highly on legitimate examinations, are now in jeopardy of losing their employment. Additionally, it is difficult to fully appreciate the effect of DTF's historic abuse of the legal specialties examination process because of the impossibility of definitively accounting for potential applicants of equally impressive qualifications who could have benefited the department and the state but were not given the opportunity because of DTF's willful circumvention of the competitive examination process.

The Inspector General finds that DTF personnel willfully manipulated the legal specialties examination process. As the Inspector General is informed that many of these employees are currently under review for discipline by DTF, the Inspector General is forwarding these additional findings for inclusion in the process.

The Inspector General finds that DTF Deputy Commissioner and Counsel Daniel Smirlock signed false and inaccurate certifications declaring that the two profiles were not "developed with reference to any known candidate" while possessing personal knowledge that the two profiles were undeniably developed with reference to Feane and Larsen. Although the Inspector General finds that, especially at the time of Feane's hire, Smirlock was ignorant of the proper method for hiring attorneys through the legal specialties examination system and discovered no evidence to disprove Smirlock's sworn testimony that he did not read the certifications prior to signing them, given Smirlock's position and experience as an attorney, the nature and purpose of a certification on any official document, and the critical function of the certification in safeguarding the integrity of the legal specialties examination process, Smirlock's actions are referred to DTF for review and appropriate disciplinary action. Moreover, although the Inspector General finds that, unlike Billet, Smirlock obtained no personal benefit from DTF's manipulation of the process and appears to have been solely motivated by the desire to bring qualified entry-level attorneys into DTF, his lack of self-interest or political motivation does not render the examination legitimate under the Civil Service Law or excuse his signing of false certifications.

The Inspector General's March 24, 2009, report has been forwarded to the New York State Commission on Public Integrity for its review regarding possible violations of the state's code of ethics. The report was also forwarded to the Office of the Attorney

General for its review. The Inspector General refers this addendum to these two agencies for their further consideration.

Division of the Lottery

The Inspector General finds that Lottery's use of Vanderwal's bubble-sheet information to draft the profile may constitute an illegality or irregularity of a substantial nature in the examination process and is referring this matter to Civil Service for appropriate action.

The Inspector General is further referring the actions of the Lottery employees involved in the creation of the position and the job profile to the Director of the Division of the Lottery for appropriate action.

Department of Civil Service

As discussed above, as a result of the Inspector General's March 24, 2009 report, Governor Paterson convened a task force to examine systemic issues with the legal specialties examination and determine mechanisms for improving the process to prevent fraud. The Inspector General is forwarding these additional findings to the Governor's Task Force for its review.

Jonathan O'Rourke, the Civil Service employee who completed the breakdown of the LERT but failed to take any action despite highly exceptional results, has been transferred within Civil Service to another unit and no longer reviews examinations. The Inspector General recommends that Civil Service review O'Rourke's performance and take action as appropriate.⁷

* * *

The responses of the Department of Civil Service, the Department of Taxation and Finance, and the Division of the Lottery to the Inspector General's findings and recommendations are included beginning on the following page.

⁷ Erika Bacher, O'Rourke's supervisor, is no longer employed by the agency.



DAVID A. PATERSON
GOVERNOR

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NANCY G. GROENWEGEN
COMMISSIONER

December 11, 2009

Honorable Joseph Fisch
Inspector General
Office of the Inspector General
Agency Building 2
Empire State Plaza
Albany, New York 12223-1250

RE: NYS IG 0644-037-20089

Dear Inspector General Fisch:

Thank you for sharing a draft of the above-referenced report with the Department of Civil Service ("Department") by letter dated November 12, 2009 and providing us with an opportunity to respond.

As explained in the Department's March 23, 2009 response to the initial March 2009 report on the Abuse of the Civil Service System by the Department of Taxation and Finance (DTF) and Acting Commissioner Barbara Billet, the Department, in administering the merit and fitness system, must rely on the integrity of agency human resource and program officials who share responsibility for carrying out the examination process. This follow-up report presents additional evidence of illegality and irregularity in the examination process by officials at DTF, and also evidence of manipulation at the Division of the Lottery, which resulted in the hiring of three attorneys to Senior Attorney positions.

Since the issuance of the March 2009 report, the Department reviewed appointments made from the Legal Specialties exam from January 1, 2006 to March 10, 2009, limited to that period because Civil Service Law §50.4 precludes the revocation of a certification or termination of an appointment more than three years after it is made except in the case of fraud.

In addition to appointments of persons serving in non-tenured positions at the time of appointment, the Department reviewed the employment history of all appointments where the appointee had prior service, tenured or non-tenured. The Department considered whether the appointee was still employed by the State, whether the appointee received an appointment from a Legal Specialties LERT in the same agency in which he or she was employed at the time of appointment, and whether the appointee continued to have any rights to (or a "hold" on) the position to which he or she was appointed from the Legal Specialties LERT. Staff familiar with the Legal Specialties examination undertook a rigorous review of a somewhat random sampling of appointments of employees made by a number of agencies looking for indicia of irregularity, however, all appointments where the appointee had status in the classified service at the time of appointment were included in this sampling.

The entire record maintained by the Department for each of the above-referenced examinations was reviewed to determine if the profiles were fair and appropriate and whether there was a strong indication that a profile was deliberately constructed to match a given candidate. The review included a comparison of the position description submitted by the agency of the attorney position the agency was seeking to fill against the profile submitted by the agency to create the LERT.

Based upon familiarity with the duties and responsibilities of various attorney positions in State agencies and his experience reviewing hundreds of profiles, an experienced Department staff member was able to make informed judgments as to whether the elements of the profile were consistent with and related to the duties and responsibilities of the position being filled and the mission of the agency. Where the inventory included elements not apparently consistent with the position description, the level of the position being filled (i.e., experienced attorney versus entry level) or lacked certain obvious job related elements, there was further analysis. Additionally, the profiles were reviewed for internal inconsistencies in terms of the legal or general experience required.

Where a profile had idiosyncrasies or was inconsistent with the job description, it was compared against the appointee's "bubble sheet" to see if the elements listed in the profile mirrored the education and experience on the appointee's bubble sheet. Where the internal inconsistencies in the profile mirrored the entries of education and experience by the appointee, it raised an inference that the profile was created with reference to that specific candidate. Dates on which the appointees submitted their profile, the dates of appointment and the array of scores on the LERTS were also considered.

As a result of this intensive and comprehensive review, no systemic widespread abuses were found. Instances that warranted further investigation were identified and sent to your office leading to the subject follow-up report referencing the three attorneys named therein. Since its receipt, Department staff have reviewed your office's investigation information on the appointments of the named attorneys. Based upon this review I am advised by staff that appropriate action will be taken pursuant to Civil Service Law section 50(4) and 4 NYCRR section 66.4. The Department will also continue to conduct these more intensive reviews of all future LERT requests.

In reviewing the appointments as set forth above, Department staff critically analyzed the examination and appointment process to determine what changes could be made to protect against further abuses. In addition to the existing safeguards, the Department will implement the following measures:

1. Agencies will now be required to provide a detailed duties description linking each profile item with a specific task or set of tasks and to prioritize the critical duties/essential tasks linking each with a profile item and the level of the experience or education required in the item. The Department will thus obtain well-documented clear information about the specific position which, in turn, will support the profile.

2. The Department will conduct pre-appointment audits comparing the timing and content of the agency profile against the selected candidate's answer sheet looking for customized profiles.
3. The Department will conduct training for agency general counsel and personnel directors on the appropriate administration of the examination. Training will include information on the nature of the competitive examination process and how to create an appropriate profile against a specific duties description. No substitution of designees for the agency general counsel and personnel director will be allowed in the training and, until an agency participates in the training, it will not be permitted to use the Legal Specialties examination.
4. The Department requires that the agency personnel director and general counsel sign the profile, attesting that it has not been created for a specific candidate(s). The substitution of a designee's signature is not permitted.
5. The Department will include a notification in instructions to candidates that they are participating in an examination, and advise candidates that the information they provide is considered answers to examination questions and should not be discussed or shared with anyone including staff within the Counsel's Office or Human Resources Office in the agency in which they are employed or wish to be employed. The notice will also reiterate that all answer sheets are to be provided exclusively to the Department of Civil Service and any questions directed to the Department.
6. Candidates will be required to execute a certification attesting that they have complied with these terms in their participation in the examination.
7. Candidates will not be allowed to update their inventories during their one year eligibility, except for obtaining licenses and/or certifications or providing the date of graduation and other personal information, in order to limit a candidate's opportunities to create an answer sheet to match a profile.

Additionally, the Department continues to work with the Governor's Civil Service Task Force to recommend further options for civil service reform including changes in testing procedures and policies.

Finally, the report recommends that the Department review the performance of its employee, Jonathan O'Rourke, and take appropriate action. We have reviewed Mr. O'Rourke's performance and have concluded that he was following then required procedures and doing what he was required to do – assessing whether the description submitted by agency for the attorney position to be filled matched the profile submitted by the agency to create the LERT. While in hindsight his reliance on a certification signed by a high ranking government official was misplaced, it cannot be ignored that the certification in question was, as your detailed investigation revealed, knowingly false and intentionally misleading. Indeed, your report recognizes the "critical importance of the certification in the integrity of the examination process" and the "intrinsic difficulty in analyzing an agency profile." Further, it cannot be ignored that Mr. O'Rourke, unlike others identified in the report, had no agenda or improper motivation and did not engage in any intentional wrongdoing. To the extent that the report

Honorable Joseph Fisch

December 11, 2009

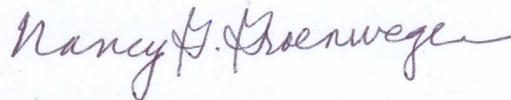
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suggests otherwise, we believe it unnecessarily disparages the reputation of a conscientious employee.

The Department acknowledges that the procedures that were in place were not sufficient to guard against the deliberate manipulation of the civil service examination process. Accordingly, as detailed above, the Department is working with the Governor's Task Force to implement significant additional safeguards to ensure the integrity of the process.

Thank you again for this opportunity to comment on your report before the report is finalized.

Sincerely,

A handwritten signature in cursive script that reads "Nancy G. Groenwegen". The signature is written in dark ink and is positioned above the printed name.

Nancy G. Groenwegen
Commissioner



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
W A HARRIMAN CAMPUS
ALBANY, NY 12227

JAMIE WOODWARD
ACTING COMMISSIONER

December 11, 2009

Honorable Joseph Fisch
Inspector General
Office of Inspector General
Agency Building 2
Empire State Plaza
Albany, NY 12223-1250

Dear Mr. Fisch:

This is in response to your investigation NYS IG 0644-037-2009 in which your office has completed an investigation that found Department of Taxation and Finance personnel manipulated the legal specialties examination process in the hiring of two agency attorneys.

As we noted in our response to your previous and related investigation, we are committed to support any action with respect to the individuals appointed involved that the Civil Service Department deems appropriate; and will take appropriate disciplinary actions against those who failed in their duty.

You have my commitment, and the commitment of my Office of Counsel, that the improper practices have been corrected.

Thank you for the opportunity to comment on your report.

Sincerely,

A handwritten signature in cursive script that reads "Jamie Woodward".

Jamie Woodward
Acting Commissioner



Gordon Medenica, Director

December 11, 2009

Joseph Fisch
Inspector General
Empire State Plaza
Agency Building 2, 16th Floor
Albany, NY 12223

Re: NYS IG 0644-037-2009

Dear Inspector General Fisch:

Thank you for the opportunity to comment on a report by your office concerning the use of the Legal Specialties examination administered by the Department of Civil Service for entry-level attorney positions in the competitive class of the civil service (the "Report"). The Report described your continuing review of a series of appointments in the Department of Taxation and Finance, and a section of the Report reviewed a single filling of a position in the Division of the Lottery.

I appreciate the Report's acknowledgement that the Lottery's preparation of a position profile that led to the hiring of a former student intern, Kent VanderWal, "did not evince the institutionalized circumvention of the system" that you found at the Department of Taxation and Finance. Nevertheless, since the Report concluded that the Lottery did not take adequate steps to prevent staff members from seeing Mr. VanderWal's description of his qualifications before they completed the position profile, it is apparent that corrective action is necessary.

As agency head, I am personally reviewing the issues raised in the Report and I will work with the Department of Civil Service to develop a plan for preventing similar errors in the future. The Lottery's plan will include such other corrective actions as may be necessary under the circumstances, including, but not limited to, possible disciplinary action against Lottery staff members. The plan also will include counseling for the responsible staff members in our Legal and Human Resources units to emphasize safeguards the Department of Civil Service recently recommended, especially:

- A written warning to all examination candidates that they are participating in a competitive civil service examination and the information they provide to the Department of Civil Service as part of the examination process is confidential and

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When New Yorkers Play Responsibly, We All Win.

cannot be disclosed to any other person or agency. A written attestation that no such disclosure has been made will be required.

- A candidate will not be permitted to update his or her examination information more than once a year, except for situations defined by the Department of Civil Service, such as when a law school graduate is admitted to the practice of law, as occurred in this case.

Significantly, the Report found that Mr. VanderWal “obtained his internship through a normal application process and no evidence exists that he obtained his internship illegitimately or received preferential treatment” and that “it is understandable that a person who has interned in an agency would acquire a legitimate advantage in the process due to the skill acquired while working in the agency.” An effective internship program requires an agency to identify the essential elements of the agency’s work and to provide the intern with training and experience in those elements. The preparation of a position profile requires an agency to do the same thing – to identify the essential elements of the work to be performed in order to seek candidates with training and experience in those areas. However, in this case, the lack of assurance that the staff members who prepared the position profile did not see the list of qualifications Mr. VanderWal submitted to the Department of Civil Service made it impossible to avoid the appearance of impropriety. That mistake will be corrected.

We will work with the Department of Civil Service to make sure that an appropriate plan of corrective action is promptly developed and implemented.

Sincerely,



cc: Nancy G. Groenwegen
Commissioner
NYS Department of Civil Service