



STATE OF NEW YORK
OFFICE OF THE STATE INSPECTOR GENERAL
Final Report
April 27, 2010

SUMMARY OF FINDINGS/RECOMMENDATIONS

The New York State Inspector General determined that Lee Kyriacou, former Executive Director of the New York State Office of Real Property Services (ORPS), improperly utilized state personnel and equipment for his personal use. Kyriacou frequently instructed his assistant to schedule and arrange personal matters for himself and his family and on multiple occasions directed his assistant to drive his daughter to school from scheduled medical appointments. Kyriacou further used a state vehicle and state cellular phone for personal matters without sufficiently reimbursing the state or claiming such as income for tax purposes. Kyriacou further failed to complete and submit an accurate record of his time and attendance as required by state law. Kyriacou resigned from state service during the pendency of this investigation.

The Inspector General further found that Kyriacou's conduct was facilitated by weaknesses in ORPS policies and procedures regarding reporting of business and personal mileage, personal use of EZ Pass and state cell phones, working from home, and accurately accounting for time and attendance. The Inspector General recommended a review and strengthening of ORPS's policies and procedures in these matters.

ALLEGATION

The Inspector General received an allegation that then ORPS Executive Director Lee Kyriacou required his executive assistant, Mary Beth Cimino, to conduct his personal business during her state work hours. Additionally, during the investigation, the Inspector General learned of additional allegations regarding Kyriacou, including alleged excessive personal use of his state cell phone, failure to properly document his personal use of a state vehicle and EZ Pass, and his improper time and attendance record keeping.

SUMMARY OF INVESTIGATION

Background

ORPS is an Executive Department agency responsible for the multitude of tasks related to real property assessments, such as developing formulas for the equitable apportionment of property taxes among various divisions of local government, approving tax mapping programs, and certifying payments and exemptions under the STAR program. ORPS's main office is located in Albany, with regional offices located in Batavia, Syracuse, Newburgh, Ray Brook, Hauppauge, and New York City.

ORPS works in conjunction with the State Board of Real Property Services, consisting of five members appointed by the Governor, which delegates a large majority of its responsibilities and functions to ORPS staff. The State Board of Real Property Services appoints the Executive Director of the Office of Real Property Services, pursuant to New York Real Property Tax Law § 201(1), who serves "as head of the office of real property services" and is charged with the duty to "effectuate the policies of the board in accordance with principles and procedures established by it."

Lee Kyriacou was appointed ORPS Executive Director on September 27, 2007. In addition to his service as ORPS Executive Director, Kyriacou served as the Policy Director for the Commission on Property Tax Relief, a commission established by an Executive Order (No. 22) issued by Governor Eliot Spitzer "to examine and investigate the management and affairs of any and all departments, boards, bureaus or commissions of the State of New York with respect to the issue of local property taxes." Prior to his appointment as ORPS Executive Director, Kyriacou lived in Beacon, New York, and worked in the private sector, most recently for a financial services consulting firm. After his appointment to the position of Executive Director of ORPS, Kyriacou relocated to the Albany area along with one of his children, while his wife and other child remained in Beacon. In the fall of 2008, Kyriacou's wife and other child joined him in the Albany area.

The Inspector General interviewed Kyriacou's current and former personal assistants, as well as several members of ORPS Executive Staff and other relevant ORPS personnel.¹ The Inspector General also interviewed Kyriacou, under oath and in the presence of his attorney, over the course of two days and provided him with an opportunity to submit additional materials in writing. Furthermore, the Inspector General

¹ As Executive Director, Kyriacou was responsible for the abolishment of two ORPS units (human resources and fiscal) when their functions were transferred to the Department of Taxation and Finance. This restructuring resulted in the elimination of several ORPS staff positions. Perhaps not coincidentally, the initial complaint against Kyriacou came soon after the announcement of this administrative transfer. Regardless of the complainant's motivation, the Inspector General pursued the allegation against Kyriacou and during the course of the investigation, learned of additional allegations against Kyriacou, including his excessive personal use of his state-assigned cell phone, his failure to properly document his personal use of a state vehicle and EZ Pass, and his improper time and attendance recordkeeping.

analyzed, among other records, Kyriacou's e-mail, electronic calendar, state-assigned cell phone records, and state vehicle logs. The Inspector General also reviewed ORPS's policies and procedures, Civil Service manuals, Executive Orders, and other governing rules.

During the course of the Inspector General's investigation, Kyriacou resigned from his position as ORPS Executive Director, effective December 18, 2009.

Kyriacou's Use of ORPS Staff for Personal Matters

In regard to the initial allegation, the Inspector General confirmed that Kyriacou required his former executive assistant, Mary Beth Cimino, to undertake his personal business during state time. Cimino, a Real Property Analyst, served as Kyriacou's executive assistant from October 2007 until she was reassigned at her request in September 2008. Cimino was succeeded as Kyriacou's assistant by Frank Palmeri, an Administrative Assistant Trainee II.

As Kyriacou's assistants, Cimino and Palmeri scheduled Kyriacou's appointments and meetings and performed other administrative duties. However, some of the appointments Kyriacou required Cimino to schedule were personal appointments not only for Kyriacou but also for members of Kyriacou's family. Kyriacou also required Cimino to undertake personal tasks for him. Cimino, for example, was instructed to contact real estate agents to aid Kyriacou in relocating his family, arrange family vacation travel plans, and research local school districts for a school for Kyriacou's daughter. Most significantly, as discussed further below, Cimino also was directed to transport Kyriacou's daughter to school on various occasions.

Cimino informed the Inspector General that she felt pressured to carry out a variety of Kyriacou's personal tasks outside of her job description. Cimino revealed that the directives were not confined to Kyriacou himself as Kyriacou's wife would telephone and e-mail Cimino directly requesting that specific personal appointments be scheduled and personal tasks managed. At least one of Cimino's coworkers characterized Kyriacou's treatment of Cimino as "abuse."

The Inspector General's review of Kyriacou's e-mail confirmed that Kyriacou or his wife periodically e-mailed Cimino regarding assignments that were personal in nature. For example, on April 2, 2008, Kyriacou e-mailed Cimino to schedule an appointment for one of his daughters. And, on July 11, 2008, Cimino received an e-mail from Kyriacou's wife regarding the Kyriacou family's relocation from Beacon to Albany. In the e-mail Kyriacou's wife asked for Cimino to "set up some appointments to tour apartments tomorrow." She further informed Cimino that, "We would like to focus on apartments in the North Colonie school district, [sic] second choice Bethlehem (Delmar). We definitely want to see Dutch Village in Menands first on Saturday a.m. ... [We] need internet, laundry, parking, other stuff would be nice." Although she complied, Cimino reported that Kyriacou's wife later criticized her, complaining that too few tours had been scheduled. Along with receiving the e-mail from Kyriacou's wife regarding the

relocation of the Kyriacou family, Cimino received a second e-mail on that day from Kyriacou's wife requesting Cimino to book airline tickets for an upcoming Kyriacou family vacation to California. These two e-mails prompted Cimino to write a formal complaint to Kyriacou regarding his use of her for personal tasks. In an e-mail dated July 14, 2008, Cimino wrote to Kyriacou stating that she was uncomfortable using state resources to plan his vacation and other personal activities. Kyriacou then sought the advice of ORPS General Counsel James O'Keefe, who advised Kyriacou that Cimino "should not be asked" to conduct personal business during state time. Despite this clear guidance from the agency's counsel, Kyriacou's wife again subsequently e-mailed Cimino requesting that she provide contact information for local moving companies.

Cimino also testified that Kyriacou directed her on multiple occasions to transport his child from medical appointments in Guilderland and drive her approximately 13 miles to school in Troy. Cimino used her personal vehicle for this task which required Cimino to begin her work day early and caused her to miss a portion of her state-assigned work hours. In addition to being beyond the scope of her state responsibilities, Cimino expressed concern about her exposure to liability should Kyriacou's daughter be injured while in her care. Therefore, in an effort to avoid transporting Kyriacou's daughter, Cimino informed the Inspector General that she would purposefully leave Kyriacou's schedule open during school days in the hope that Kyriacou would himself take care of his personal family responsibilities.

Palmeri reported to the Inspector General that once he became Kyriacou's assistant, he coordinated his work calendar with Kyriacou's wife to accommodate any family appointments, but he otherwise did not assist Kyriacou with any matters of a personal nature. Palmeri explained that unlike Cimino he was not afraid to refuse Kyriacou's improper requests. Palmeri believed that Kyriacou intimidated Cimino and that Cimino was afraid to challenge Kyriacou for fear of angering her supervisor.

During questioning by the Inspector General, Kyriacou explained that in his experience in the private sector, personal assistants regularly undertook such personal tasks. Kyriacou testified that he lacked organizational skills and relied on his personal assistant to manage his travel and schedule personal appointments and commitments. Kyriacou added that as a parent living with a child apart from his spouse he relied upon his assistant to manage his personal arrangements. Kyriacou further justified his use of Cimino for personal business by implying that Cimino lacked an adequate workload stating, "This is a person that . . . wasn't doing anything."

Kyriacou acknowledged only one occasion, on April 30, 2008, when in a purported "emergency" he asked Cimino to drive his child as a "favor" from her medical appointment to school. This particular instance is confirmed by an e-mail dated April 29, 2008, from Kyriacou and Cimino. Nonetheless, evidence reveals that Kyriacou regularly directed Cimino to transport his daughter. Although the Inspector General was unable to determine the exact number of occasions Cimino transported Kyriacou's child for him, both ORPS Director of Intergovernmental Affairs Susan Savage and former Deputy Executive Director Stephen King testified that Cimino complained to them about

Kyriacou's directives to transport his child in March of 2008, a month prior to the confirmed April occurrence. Cimino told the Inspector General that she definitely recalled at least five such trips.

Kyriacou also claimed that, because no ORPS staff brought any concerns to his attention, he was unaware that such activity was inappropriate. Contradicting his claims, several ORPS officials testified that on multiple occasions, Kyriacou was confronted regarding his use of Cimino for personal activities, but he refused to modify his behavior.

Cimino testified that she expressed concern regarding Kyriacou's personal requests to several ORPS executives, including Savage, King, current Executive Deputy Director Victor Mallison, and General Counsel O'Keefe. In March 2008, for example, several months prior to above-referenced July incident, Cimino complained to Savage and King that Kyriacou was requiring her to manage his personal tasks. In an interview with the Inspector General, King averred that Cimino complained to him that Kyriacou had asked her, on at least one occasion that King could recall, to transport his daughter before work and schedule personal appointments for him unrelated to state business. King reported that Cimino appeared very upset by these requests. King testified that he admonished Kyriacou that he could not have Cimino conduct personal errands for him. Although Kyriacou agreed to cease this behavior, Kyriacou attempted to excuse it by stating that he was new to state service and unaware that requests for personal assistance made to subordinates are unacceptable in state service.

Savage testified that she too confronted Kyriacou about his misuse of Cimino. In fact, Savage noted to Kyriacou that his conduct was similar to that of former State Comptroller Alan Hevesi, who was convicted of a crime for inappropriately using state employees for personal endeavors. Savage said that Kyriacou was dismissive of her advice and, in fact, expressed that he saw nothing wrong with Hevesi's conduct.

Similarly, Cimino later complained to Mallison that Kyriacou was requiring her to conduct his personal business. Mallison testified that he also approached Kyriacou and counseled Kyriacou to refrain from using Cimino for personal business. Mallison reported that Kyriacou appeared frustrated, stating "these rules are stupid. I'm here to run an agency and whatever it takes for me to get that done should be provided to me."

Recording of Mileage for the State Vehicle

ORPS's primary objective under Kyriacou was to reform the property tax system by helping communities across the state establish equity in the assessment rolls through annual or cyclical reassessments. Kyriacou therefore, in his official capacity, traveled extensively to meetings and engagements with state and local government officials. Pursuant to ORPS policy, Kyriacou was assigned a state vehicle and allowed "unrestricted use" of it, meaning that he was permitted to use the vehicle for personal purposes. Nevertheless, since the personal use of state vehicle is a taxable benefit, state and federal rules require an accurate record to be maintained distinguishing business and personal mileage. Executive Order Number 1 issued by Governor Eliot Spitzer in

January 2007 clearly states that “individuals who are authorized by their agency to use a vehicle for personal purposes shall keep records of such use, and the value of such personal use shall be calculated and reported as personal income to such individual for tax purposes.” A memorandum issued by the Governor’s Office in May 2007 further informed state officials assigned a state vehicle, such as Kyriacou:

Individually-assigned vehicles . . . are assigned to certain state officials who are allowed unrestricted use of the vehicles. However, employees assigned such a vehicle must maintain a detailed log of all their business-related uses of the vehicle. Any mileage not reported as having a valid business purpose will be treated as imputed personal income to the employee, and all employees who have individually-assigned vehicles must report the imputed income from non-business travel on their tax returns.

Although ORPS’s policy manual fails to include mileage accountability procedures, ORPS has devised forms or logs to specifically track mileage and the purpose of the trip. The Inspector General reviewed vehicle logs maintained by ORPS for Kyriacou and his predecessor, Donald DeWitt, and determined that the logs for both Kyriacou and DeWitt were improperly maintained as they did not document each instance in which the vehicle was used. Instead, a starting and ending mileage figure was recorded at the beginning and end of each calendar month, and an estimated number of personal miles were noted.

The Inspector General determined that Kyriacou grossly understated his personal use of his state assigned vehicle and did not reimburse the state for personal usage of EZ Pass or properly report these charges as a taxable fringe benefit. Specifically, while Kyriacou drove his state-provided vehicle extensively for business purposes, he also regularly used the vehicle to commute during the weekends to his residence in Beacon prior to the relocation of his family to the Albany area.

When Kyriacou commenced his employment at ORPS in the fall of 2007, he was informed by Director of Financial Administration Linda Mason that he was required to complete a vehicle use report that detailed his business and personal use. Mason told the Inspector General that Kyriacou was annoyed at having to detail his vehicle use and stated, “I don’t have time to write all of this down.” Kyriacou then delegated the responsibility of completing his vehicle usage report to his personal assistants – Cimino and later Palmeri – and instructed them to note an estimated amount of daily personal mileage. This delegation of responsibility to his assistants required them to verify the odometer reading in Kyriacou’s vehicle on a daily basis. Further, the personal assistants, without further direct information from Kyriacou, could not determine what exact mileage was personal in nature.

The Inspector General also determined that the estimated personal use mileage figure that Kyriacou provided to his assistant was far below his actual personal use. Additionally, the Inspector General’s analysis of records for the EZ Pass account

assigned to Kyriacou's state assigned vehicle confirmed that Kyriacou underreported his personal use. The Inspector General conservatively focused only on Kyriacou's use of the vehicle on weekends and holidays when Kyriacou clearly was not working. Even limiting analysis to these occasions, Kyriacou's EZ Pass account details numerous weekend and holiday trips which appear personal in nature, but for which his vehicle log does not indicate as personal mileage. For example, in February 2008 Kyriacou recorded 420 personal miles with a note stating that he commuted 20 miles per day on 21 days of the month. Because Kyriacou refused to complete the Vehicle Cost and Usage Record as required by state rules and applicable tax guidelines, the Inspector General was unable to confirm the location from which Kyriacou was commuting. However, the EZ Pass records did reveal that he made three round trips between Albany and Beacon on the weekends. The one way distance between Albany and Beacon is approximately 90 miles. Kyriacou's travel between Albany and Beacon on the weekends in February 2008 totaled approximately 540 miles, which the Inspector General determined were not recorded by Kyriacou as personal taxable vehicle miles. While Kyriacou reported 420 miles for the month, the Inspector General determined that Kyriacou should have reported at least 960 miles of personal use.

Kyriacou testified that when he attended the inauguration of President Obama in January 2009, he provided his assistant (Frank Palmeri) with a personal use mileage figure that intentionally overestimated the mileage of the round trip between Albany and Washington, D.C., in order to ensure that he was reporting the mileage properly. However, when questioned by the Inspector General as to why he failed to report weekend and holiday personal use, Kyriacou claimed that he discussed the reporting of weekend and holiday personal mileage with former ORPS Deputy Director Stephen King. That assertion notwithstanding, when the Inspector General queried King about Kyriacou's claim, King testified that he did not recall Kyriacou ever seeking guidance as to how to record personal mileage. Moreover, King added that had Kyriacou sought his advice on the subject, he would have instructed Kyriacou to properly record personal and business mileage, including weekend travel to his residence in Beacon.

The Inspector General also observed that for the months of July through October 2008, Kyriacou did not report any personal use of his vehicle despite incurring over 8,000 total miles during that time span. Internal Revenue Service guidelines state that separate records for personal and business use must be maintained and that if an employee does not record the distinction between personal and business use of an assigned vehicle, all mileage is to be considered personal in nature (Internal Revenue Code § 274[d]).

In July 2009, Executive Deputy Director Mallison approached Palmeri, after meeting with the Inspector General and having reviewed Kyriacou's vehicle log sheets, and advised Palmeri that the log sheets were being filled out inappropriately and asked Palmeri to change the way he was recording Kyriacou's mileage to comport with applicable rules. Palmeri stated that although he informed Kyriacou that as Executive Director he should track his own mileage, Kyriacou still refused to record his beginning and ending mileage each day as required by the Executive Chamber. As a result, Palmeri was forced to write down the vehicle's mileage for Kyriacou's vehicle every morning

when Kyriacou arrived at work, calculate the ending mileage from the day before, and record this information in the vehicle log.

Between October 2007 and December 2009, Kyriacou claimed that he drove 9,784 personal miles in the state vehicle. However, even examining only the intervening weekends, the Inspector General determined that, in total, Kyriacou underreported his personal mileage by over 6,000 miles.

Analysis of Vehicle Logs and EZ Pass Records for Kyriacou's State Vehicle

Vehicle Log			EZ Pass Review		
Month/Year	Total Miles	Personal Miles	Business Miles	Un-Reported Weekend Mileage	EZ Pass Tolls
October 2007	784	200	584	333.20	\$ 13.30
November 2007	2,854	400	2,454	510.30	\$ 20.28
December 2007	1,268	200	1,068	81.80	\$ 2.88
January 2008	1,947	380	1,567	-	\$ -
February 2008	1,944	420	1,524	598.60	\$ 24.16
March 2008	2,002	320	1,682	503.80	\$ 19.28
April 2008	2,460	420	2,040	170.10	\$ 6.76
May 2008	1,549	420	1,129	487.90	\$ 19.74
June 2008	2,193	100	2,093	422.00	\$ 16.85
July/ August 2008	3,141	-	3,141	673.90	\$ 29.64
September 2008	3,029	-	3,029	451.80	\$ 20.55
October 2008	1,994	-	1,994	-	\$ -
November 2008	1,463	380	1,083	-	\$ -
December 2008	1,732	500	1,232	251.90	\$ 10.99
January 2009	2,040	1,360	680	170.10	\$ 27.57
February 2009	2,089	420	1,669	163.60	\$ 7.04
March 2009	2,293	400	1,893	582.70	\$ 27.97
April 2009	2,868	500	2,368	147.70	\$ 7.37
May 2009	876	260	616	-	\$ -
June 2009	2,337	300	2,037	197.50	\$ 10.46
July 2009	3,040	1,420	1,620	337.80	\$ 16.02
August 2009	2,164	400	1,764		
September 2009	2,727	398	2,329		
October 2009	1,201	336	865		
November 2009	1,700	250	1,450		
Totals:	51,695	9,784	41,911	6,084.70	\$280.86

The Inspector General also determined that Kyriacou failed to reimburse the state or claim as a taxable fringe benefit the incurred personal use charges on the vehicle's state EZ Pass account. Kyriacou conceded that he never reimbursed the state for these

charges or reported such as income but testified to the Inspector General that he believed that the EZ Pass charges were calculated into a personal-use expense formula. Kyriacou asserted that, in doing so, he was following the counsel of Linda Mason. However, similar to other such “advice” Kyriacou claimed to have received, Mason reported to the Inspector General that at no time did she explain an expense formula to Kyriacou for the accounting of personal use EZ Pass charges. The Inspector General determined that between November 1, 2007, and July 30, 2009, Kyriacou did not reimburse or report approximately \$275 of EZ Pass transactions related to weekend and holiday personal travel.

Kyriacou’s Personal Use of a State-Assigned Cell Phone

Kyriacou was also provided a state cellular telephone to be used for official business and limited personal use. It soon became apparent, however, that Kyriacou’s use of the phone exceeded the usage plan utilized by ORPS; consequently, ORPS upgraded its usage plan in order to cover Kyriacou’s usage and any overage charges incurred by his use.

Executive Order Number 1 issued by Governor Spitzer in January 2007 provides, in general, that “State supplies, equipment, computers, personnel and other resources may not be utilized for non-governmental purposes. . . .” More specifically this prohibition includes, “State telephones may be used for incidental and necessary personal local calls that are limited in number and duration. . . .” Executive Order Number 7, issued by Governor David A. Paterson in June 2008, similarly states: “State telephones may not be used for non-governmental long-distance calls, except for toll-free calls, collect calls, and calls billed to a personal telephone number. State telephones may be used for incidental and necessary personal local calls that are of limited number and duration and do not conflict with the proper exercise of the duties of the State employee.” ORPS’s policy mirrors the language of Executive Order Number 7; no additional guidance is provided by the agency’s policy manual regarding the use of state-issued cell phones.

The Inspector General examined Kyriacou’s cell phone usage and determined that the number of personal incoming and outgoing calls went well beyond what could reasonably be considered “incidental” and “limited in number and duration.” From October 2007 to October 2009, Kyriacou’s total personal cell phone activity, including both incoming and outgoing calls, totaled 1,987 out of 4,942 calls. In other words, 40 percent of Kyriacou’s calls on the state cell phone were personal in nature.

When questioned by the Inspector General about his excessive cell phone usage, Kyriacou testified that he receives numerous calls from family members and returns the majority of these calls on his state cell phone. When confronted with the high percentage of personal calls, Kyriacou questioned the Inspector General’s calculation of the percentage of personal calls. Kyriacou argued that an examination of the duration of his business versus personal calls would more accurately reflect his phone usage. Kyriacou, therefore, requested that the Inspector General calculate the percentage of minutes. The Inspector General conducted this suggested analysis and determined that even under Kyriacou’s suggested computation, his personal calls totaled 7,178 out of 21,606

minutes, or 33 percent of all his cell phone minutes used. Both figures establish that Kyriacou's personal use of the cell phone was excessive.

When asked by the Inspector General whether his usage was consistent with the rules, Kyriacou evaded the question and responded that because ORPS had expanded its cell phone usage plan the personal phone calls he was conducting were of no expense to the taxpayers of New York State. While the Inspector General recognizes that the ORPS cell phone usage plan did encompass Kyriacou's personal use, a state agency should not expand its cell phone plan, at an increased cost to taxpayers, in order to cover the personal usage of the agency's Executive Director. Moreover, state resources should not serve as a substitute for personal expenses. Kyriacou was spared the additional expenses to his personal cell phone plan by his high frequency of personal calls that he conducted on his state phone, and the State of New York provided him with an additional benefit by absorbing the cost of his numerous personal calls. The Inspector General further notes that under existing tax law, Kyriacou was required to maintain a log of personal calls and either reimburse the state or report such as income for federal and state tax purposes.

Kyriacou further advised the Inspector General that he has never been presented with a cell phone bill and is unaware of his overall usage. Kyriacou also asserted that he was unaware of any ORPS policies regarding cell phone usage or any limitation of using state cell phones for personal use. Mallison corroborated Kyriacou's testimony and advised the Inspector General that ORPS does not require their employees to reimburse for personal calls, a policy inherited by Kyriacou and Mallison. Mallison averred that he saw no need to modify the plan since they are not exceeding the allocated minutes per month. According to Mallison, the "rollover minutes system" employed by ORPS provides "unused" minutes on the plan which Kyriacou and Mallison use to make/receive personal calls. Since ORPS is in the process of merging many administrative tasks into the Department of Taxation and Finance, the agency is in the process of evaluating the Department's policies and possibly incorporating them.²

Kyriacou's Time and Attendance Reporting

Although he served as the head of a sub-division of state government, the ORPS Executive Director is treated differently than most other agency heads for time and attendance purposes. Specifically, the vast majority of agency heads in state government are, by statute, placed in the "unclassified service" of the state civil service system.³ Due to their placement in the "unclassified service", these officials do not accrue leave credits but also are not subject to the state's time and attendance rules.⁴ In contrast, by statute,

² Notably, following Kyriacou's interview with the Inspector General, his personal use of his state cell phone dropped precipitously.

³ See Civil Service Law § 35.

⁴ Specifically, the New York State Department of Civil Service Attendance and Leave Manual Section 26.1 states in pertinent part that "Only employees compensated on an annual salary, hourly, biweekly or per diem basis and holding positions in the classified service of the Executive Branch of State Service are eligible for coverage under the Attendance Rules for Employees in New York State Departments and Institutions . . . The Attendance Rules do not apply to employees holding positions in the Legislative or Judicial branch or positions in unclassified service."

ORPS's Executive Director is expressly placed in the "competitive class of the classified civil service." As a member of the "competitive class," the ORPS Executive Director is required to abide by the same work guidelines and attendance rules which apply to the vast majority of state employees. Consequently, the ORPS Executive Director must work a standard 7.5 hour shift and when not able to do so on a given day, must use leave credit he has accrued.

In regard to recordkeeping, as a member of the "competitive" class, Kyriacou was mandated to follow the directives contained in Civil Service Time Manual § 20.2 which requires state employees to maintain an "adequate and accurate record" of their time and attendance and further "maintain a positive record of daily presence and absence and leave credits earned and used."

Despite these clear rules, both Kyriacou's former and current personal assistants testified that Kyriacou refused to complete his time and attendance record and instead delegated the responsibility to them. His assistant would record Kyriacou's attendance and would ask Kyriacou if he would be taking leave on days when he was out of the office. Kyriacou testified to the Inspector General that he did not keep track of his time and attendance even declaring, "I'm unaware of what is on my timesheet." Kyriacou explained that tasks such as filling out timesheets and expense forms should be delegated to his personal assistant and voiced frustration stating, "Why don't I . . . just do everything in the agency?"

In addition to Kyriacou's delegation of his time-keeping responsibilities, Kyriacou failed to abide by rules applicable to other employees in the competitive class regarding when leave credit must be utilized. Specifically, as Kyriacou refused to complete his own time and attendance forms, in order to complete Kyriacou's time and attendance record, his assistant was required to ask Kyriacou what type of leave he would be taking (annual leave, sick leave or personal leave). Kyriacou's former assistant, Cimino, testified to the Inspector General that on several occasions, when Kyriacou was out of the office for vacation or other personal business, he ordered her not to charge the appropriate personal, vacation, or sick leave because Kyriacou believed that because he was "reachable" through a cell phone and personal digital assistant he was not required to "charge leave." Palmeri (Cimino's successor) said that he completed Kyriacou's time and attendance record without expressly asking Kyriacou what leave should be charged. Palmeri explained that in doing so, he avoided the conflict that Cimino encountered. Similar to Cimino's experience, however, Palmeri said that Kyriacou believed that he should be considered as working even when out of the office and even on a personal matter, because he was still hypothetically "available" for Palmeri to schedule telephone conferences.

Until modified in the summer of 2009, Kyriacou had not only delegated to his assistants the responsibility of completing his time and attendance record, but also approving his, theirs and other executives' time and attendance reports. State employees clearly cannot approve their own time cards and, furthermore, subordinates should not

approve supervisors' time cards. This practice has been revised and potential conflicts remediated.

As for his actual work hours, Kyriacou informed the Inspector General that he was constantly available when out of the office on personal business and/or vacation because of his access to a state-assigned BlackBerry and laptop computer. Kyriacou generalized his work schedule as 8:00 a.m. to 5:00 p.m., but stated he typically worked well over the required 37.5 hours per week. The Inspector General reviewed Kyriacou's time and attendance records, e-mail, electronic calendar, EZ Pass, and cell phone records. The Inspector General found that while Kyriacou frequently worked long hours and in excess of 37.5 hours per week, there were several occasions when Kyriacou did not charge leave accruals on workdays before and after holidays and vacations. In other instances, Kyriacou was out of the state with members of his family on apparent personal trips, but his time records indicated he had worked. The Inspector General sought to confirm if Kyriacou was indeed conducting state business on these occasions.

Kyriacou provided the Inspector General with detailed explanations of his activity during these occasions. Kyriacou also testified that he would spend time during work days in ORPS's Newburgh office, near his residence in Beacon. Kyriacou further emphasized how his home office in Beacon was his preferred work space, stating: "My home office is a lot nicer than anything that's in Newburgh . . . I have half of an entire floor of a Victorian that is my office . . . I have four phone lines; I have Internet; I have much better internet access than the office does . . . I'm more comfortable [there]." The Inspector General also interviewed ORPS's Director of the Southern Region who recalled Kyriacou regularly working from the Newburgh office and, occasionally, from his Beacon home.

Kyriacou further explained to the Inspector General that he worked on days when he traveled out-of-state with his family. For instance, when he and his family returned from the Presidential Inauguration in Washington, D.C., he claimed that his wife drove the state vehicle for a portion of the trip, so that he could work on his laptop computer. (Kyriacou's admission that his wife, who is not a state employee, drove the state vehicle illustrates his violation of ORPS policy which clearly restricts the operation of state vehicles to only state employees.)

The Inspector General interviewed several ORPS executives regarding Kyriacou's schedule and time and attendance practices. Deputy Director Mallison, for example, said that Kyriacou arrived to work early in the morning and usually traveled alone. Mallison described Kyriacou as a hard worker, constantly attending meetings in the field, working from home, and actively engaged in agency work. Mallison added that Kyriacou has been "out for a week" working from home. Mallison, however, voiced concern regarding the lack of verification as to when Kyriacou was actually working and from what location. Another ORPS official, Susan Savage, raised concern regarding Kyriacou's practice of working from home, relating an occasion during a teleconference that Kyriacou's children could be heard in the background. The Inspector General found that

ORPS does not maintain any policy or procedure regarding the ability of employees to work from home.

Most troubling, Mallison testified that Kyriacou informed Mallison (in apparent disregard of applicable law, rules and regulations) that agency executives should have “flexibility” in their time and attendance requirements and that it is acceptable to take “some personal time without having to report it.” Mallison recalled how, on one occasion, he had voiced his frustration to Kyriacou regarding state time and attendance rules and his limited number of leave hours. Kyriacou purportedly responded that if Mallison carried his state cell phone while out of the office, he was “reachable” and could count that day as a “working day,” even though he was not actually working. Mallison refuted Kyriacou’s suggestion and advised Kyriacou not to engage in similar activity. However, Mallison recalled that on several occasions, Kyriacou intimated that he would be out of the office on personal business, but would not be charging leave accruals because he would be available by cell phone. Summarizing Kyriacou’s attitude, Mallison explained that Kyriacou was aware of the state time and attendance rules, but “Lee [Kyriacou] is a stubborn guy. I think he will change the system before he changes his behavior.” Mallison noted that Kyriacou “takes more of a private sector view” and believes that “executives should be given a certain leeway.”

Kyriacou attempted to shift responsibility to his subordinates asserting to the Inspector General that any inaccurate time and attendance record keeping, as well as discrepancies in his mileage log, could be attributed to the incompetence of his personal assistant. However, it was Kyriacou who abdicated these duties, refused to follow applicable rules, declined to supply the necessary information, and, inappropriately placed the burden on his assistants who were not in a position to accurately record the information.

In response to the allegations leveled against him, Kyriacou repeatedly emphasized to the Inspector General that he believed such to be retaliation for the elimination of ORPS human resource and fiscal units that Kyriacou undertook during his first year as Executive Director. Kyriacou said that it is his belief that the downsizing of ORPS angered staff who then made it their intention to mar Kyriacou’s reputation. Kyriacou stated, “I suppose had I not announced the down sizing of my H.R. [human resources] and my fiscal function . . . I wouldn’t be here.”

Kyriacou further claimed that he established a “firewall” to ensure that he complied with state rules and regulations, since he was new to state service and unfamiliar the requirements. Having worked in the private sector, and being unfamiliar with state rules, Kyriacou reportedly relied on the supposed “experts” in the agency to advise him of the applicable policies and procedures. Kyriacou said that he constantly told his executive staff to tell him if he was violating any policies or rules. Contrary to Kyriacou’s testimony, the Inspector General asked current and former ORPS executives including King, Mallison, O’Keefe, and Savage whether Kyriacou maintained this approach and none corroborated his assertion. According to witnesses, the only time Kyriacou sought such advice from O’Keefe was in July 2007, after Cimino had

complained about Kyriacou's request that she book his reservations for a family vacation to California.

Kyriacou confirmed that he was aware of Executive Order Number 1, and he acknowledged receiving a copy of the ORPS Policy and Procedure Manual and the Public Officers Law. However, during subsequent questioning by the Inspector General, Kyriacou repeatedly denied having knowledge of ORPS policies and procedures, and, at one point, he said, "I am not going to go through every single step that the agency does and make a personal verification that it is accurate and in compliance with everything."

FINDINGS AND RECOMMENDATIONS

The Inspector General found that former ORPS Executive Director Lee Kyriacou ignored the distinction between private and public employment and disregarded state rules regarding the utilization of state personnel and equipment for personal use. Kyriacou maintained what ORPS staff described as a "private sector" attitude and refused to alter his behavior to comport with the rules which apply to state officials. He has since left state service and returned to the private sector.

The Inspector General found that Kyriacou directed his executive assistant, Mary Beth Cimino, to conduct his personal business. On multiple occasions, Kyriacou directed Cimino to transport his daughter from a medical appointment to her school. Furthermore, Kyriacou, along with his wife, directed his executive assistant to conduct other personal tasks, such as scheduling appointments to view apartments, finding potential schools for Kyriacou's child, and researching airline fares for the family's vacation. Notably, Kyriacou's use of state resources can not be excused as impromptu, incidental or de minimis utilization of such resources reasonably attendant to the performance of his official duties. To the contrary, Kyriacou and his family's personal use of state resources was regular and wholly disconnected from his official function.

The Inspector General also established that Kyriacou refused to complete required vehicle mileage log for his state-assigned car, delegating that responsibility to his assistants. Consequently, the logs were not completed properly, inaccurately delineating personal from business miles. In fact, regarding his weekend and holiday travel, the Inspector General found that Kyriacou underreported his personal mileage by over 5,700 miles. The Inspector General determined that Kyriacou grossly understated his personal use of his state assigned vehicle and did not reimburse the state for personal usage of EZ Pass or properly report these charges as a taxable fringe benefit. The Inspector General recommended that ORPS develop a more detailed policy clearly explaining the reporting of business and personal mileage and the personal use of EZ Pass.

The Inspector General also found that 33 percent of all Kyriacou's cell phone minutes used and 40 percent of Kyriacou's calls on the state cell phone were personal in nature. Such frequency of personal calls on a state-issued cell phone is beyond what can reasonably be considered "incidental" and "limited number and duration," in violation of Executive Orders and state policy. Furthermore, the Inspector General determined that

ORPS lacks an adequate policy addressing the usage of state-provided cell phones. The Inspector General, therefore, recommended that ORPS issue a clear and detailed policy that delineates the appropriate usage of state cell phones and consider the inclusion of a provision for the repayment of cell phone charges incurred by personal use.

As ORPS Executive Director, Kyriacou was required to complete an “adequate and accurate record” of his time and attendance (Civil Service Time Manual § 20.2); yet he delegated that responsibility to his assistant who was unable to know when Kyriacou was working, particularly since he frequently was out of the office. Although Kyriacou seemed to regularly work in excess of 37.5 hours per week, given the testimony of several witnesses, the Inspector General still has concerns about the accuracy of his time and attendance records. In order to avoid similar issues in the future, time and attendance reports should be completed and certified by the individual whose time is being recorded. Additionally, ORPS should enact a policy governing working from home and accurate accounting for the work time spent at home.

When interviewed by the Inspector General, Kyriacou justified his conduct by noting that his employment with ORPS was his first government employment and that he was not accustomed to the policies that control government conduct. However, as a new state employee, Kyriacou was provided with copies of the Public Officer Law and the ORPS policy manual. Furthermore, as an Executive Director of an agency, Kyriacou was required to be cognizant of executive orders and policy memoranda delineating the proper use of state resources. And while the Inspector General found weaknesses in certain areas of ORPS’s policy manual, Kyriacou was less interested in policies and procedures than with ORPS’s substantive work. Victor Mallison perhaps best described Kyriacou’s attitude when he recounted Kyriacou saying, “These rules are stupid. I’m here to run an agency and whatever it takes for me to get that done should be provided to me.” Since Kyriacou is no longer a state employee, he cannot be subject to administrative or disciplinary action. The Inspector General, however, submitted this report to ORPS and the New York State Department of Taxation and Finance for their review and strengthening of ORPS’s policies and procedures.

Response of the Office of Real Property Services

In response to the Inspector General’s recommendations, OPRS advised that subsequent to a directive from the Director of State Operations it no longer assigns State vehicles to individuals, including agency management. All vehicles and associated EZ Passes have been placed in a pool to be utilized for State work only, and usage of vehicle mileage records is strictly monitored and enforced.

ORPS further advised that a new policy has been developed incorporating the applicable Executive Order requiring only limited and reasonable use of State cell phones. The new policy requires the monitoring of cell phone usage by supervisors and payment employees for the cost of long distance calls and damage to any State equipment.

Finally, ORPS advised that it has reviewed its time and attendance procedures to ensure that employees do not sign off on their own timesheets. Management has clearly communicated to staff that the agency does not have a formal telecommuting policy.