

**State of New York  
Office of the Inspector General**



**Report on the Abuse of the Civil Service System  
by the Department of Taxation and Finance  
and Acting Commissioner Barbara Billet**

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## **I. EXECUTIVE SUMMARY**

The Inspector General commenced an investigation after receiving a complaint alleging that “highly irregular actions” had occurred in relation to the retirement of New York State Department of Taxation and Finance (DTF) Acting Commissioner Barbara Billet, including Billet’s reverting to a tenured civil service position she had never held. The complainant also questioned the propriety of Billet’s post-retirement employment with DTF, which she allegedly conducted by telecommuting from South Carolina.

Billet began her employment at DTF in 2000 as Deputy Commissioner and Counsel, and was promoted to Executive Deputy Commissioner in 2003. In November 2006, upon the resignation of Commissioner Andrew Eristoff, Governor George E. Pataki appointed Billet as Acting Commissioner, a position she held until Governor Eliot Spitzer appointed Robert Megna as Commissioner in January 2008. Billet retired from state service on January 26, 2008, and moved to South Carolina. In March 2008, Billet was reinstated as a part-time DTF Senior Attorney, earning up to \$30,000 a year. She remained in this position until July 2008, when she resigned following public criticism.

The Inspector General determined that beginning in December 2005 and continuing through September 2006, DTF, at Billet’s direction, engaged in a scheme to manipulate the civil service system to secure tenured civil service positions for Billet and for selected other attorneys in its employ who were at risk of losing their jobs as a result of the anticipated January 2007 change of administration. In essence, the scheme involved crafting the civil service examination for entry level attorneys to ensure that selected individuals, including Billet herself and nine other attorneys holding at-will jobs, could be placed in tenured civil service positions. The actions taken by DTF employees

at Billet's instigation violated provisions of the state Civil Service Law intended to ensure an open, competitive examination and a merit-based hiring process.

The Inspector General also determined that Billet's abuse of the civil service system was the culmination and most egregious example of an entrenched and pervasive pattern of DTF's circumvention of the Civil Service Law over a long period. Specifically, the DTF official most directly involved in designing the attorney examinations admitted that manipulation of the process for the purpose of hiring targeted individuals has been DTF's regular practice for more than a decade.

Further, Billet, after assuming the title of Acting Commissioner, used the civil service position she had created for herself as a means of arranging her own post-retirement employment with DTF. Compounding an appearance of impropriety, Billet's post-retirement work was conducted entirely by telecommuting, a privilege not granted to any other current or former DTF employee. Moreover, Billet attempted to conduct her post-retirement work outside the purview of others at DTF by using an e-mail alias. Although then newly appointed DTF Commissioner Robert Megna was aware of, and approved Billet's post-retirement employment, Billet failed to disclose to Megna how she had secured her tenured position, the uniqueness of her telecommuting agreement, and that she would be operating under an e-mail alias.

The Inspector General recommends that the New York State Department of Civil Service examine the propriety of the appointments made by DTF and take appropriate action. The Inspector General further urges that DTF and Civil Service comprehensively examine DTF's attorney hiring procedures to ensure compliance with the Civil Service Law.

The Inspector General is forwarding the findings of this investigation to the New York State Commission on Public Integrity and the New York State Attorney General's Office.

## **II. ALLEGATIONS**

On April 15, 2008, the Inspector General received a confidential complaint alleging that a "series of highly irregular actions" occurred in relation to Billet's retirement, including her reverting to a tenured Senior Attorney position even though she had never held that position. The complainant also questioned Billet's receipt of a \$1,000 "longevity award" and the propriety of her post-retirement employment, which she performed by telecommuting from South Carolina.

The Inspector General conducted this investigation in conjunction with the DTF Deputy Inspector General. The Inspector General's investigation was impeded and delayed by the refusal of certain now-retired key witnesses, particularly Billet and Deborah Dammer, former DTF Director of Human Resources, to cooperate and be interviewed, and the unforthcoming responses of Wesley Ryan, former DTF Director of Personnel. Although not requested by the Inspector General, Billet through counsel supplied a five-page affirmation in her defense. Notably, this affirmation omits any discussion of the manner in which Billet obtained her tenured position and solely focuses on her post-retirement employment. After the Inspector General informed Billet, through her representative, that her affirmation was not sufficient and an interview was necessary, Billet unexpectedly resigned from her post-retirement employment claiming that she had completed the project. Dammer, who is retired and living out of state, refused to be interviewed by the Inspector General. Ryan, who is also retired and living out of state,

was interviewed over the telephone and claimed not to remember a number of salient details, despite the fact that the evidence demonstrates his intimate involvement in the process.

### **III. INVESTIGATION**

#### **A. Background**

##### The New York State Department of Taxation and Finance and Barbara Billet

DTF has approximately 4,800 employees and collects more than \$100 billion in state and local tax revenues, as well as administering taxes and managing the state Treasury. DTF employs attorneys in many capacities, both in its Office of Counsel and various other divisions.

In 2000 Barbara Billet was hired as Deputy Commissioner and Counsel to DTF. Prior to this appointment, Billet served in several positions, including Solicitor General of New York State.<sup>1</sup> Upon the ascension of Andrew Eristoff from Executive Deputy Commissioner to Commissioner in 2003, Billet was promoted from Deputy Commissioner and Counsel to Executive Deputy Commissioner. In November 2006, after Eristoff resigned, Governor George E. Pataki appointed Billet as Acting Commissioner. Billet served as Acting Commissioner for 14 months at a salary of \$155,070. She remained Acting Commissioner until Governor Eliot Spitzer's appointee, Robert Megna, became Commissioner on January 23, 2008. Billet retired from state service on January 25, 2008, and moved to South Carolina. On March 6, 2008, Billet was reinstated as a part-time DTF Senior Attorney, earning no more than \$30,000 a year,

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<sup>1</sup> Under state law, the Solicitor General is appointed by the New York State Attorney General.

working on DTF's Clear Language Initiative, a program to clarify complex tax and legal requirements for the general public.

### The New York State Civil Service System and Classification of Positions

The New York State Constitution provides that appointments to the state civil service are to be made "according to merit and fitness to be ascertained, as far as practicable, by examination which, as far as practicable, shall be competitive."<sup>2</sup> Based on this constitutional mandate, four jurisdictional classifications of state civil service positions have been established: competitive, noncompetitive, labor, and exempt.<sup>3</sup> The classification of an employee's position directly affects the security of that position. In sum, employees in the competitive and certain noncompetitive classifications can only be terminated for cause and receive certain procedural rights in regard to discipline as enumerated in the state Civil Service Law and collective bargaining agreements between the state and union representatives.<sup>4</sup> By contrast, in general, employees in exempt and noncompetitive confidential or policy-influencing positions serve at the pleasure of the head of the agency by which they are employed and can be terminated or demoted at will without a hearing.

The exempt classification is the smallest part of the state workforce, comprising less than 2 percent of all employees in state service.<sup>5</sup> For a position to be classified as exempt, the State Civil Service Commission must examine various factors, including the confidential nature of the position, the performance of duties that require the exercise of authority or discretion at a high level, or the need for the appointee to have some

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<sup>2</sup> McKinney's Const. Art. 5, § 6

<sup>3</sup> Civil Service Law Art. II, Title B. The labor classification is not relevant to this investigation.

<sup>4</sup> Civil Service Law § 75.

<sup>5</sup> For complete statistics, see <http://www.cs.state.ny.us/businesssuite/docs/workforceplans/2008.pdf>.

expertise or personal qualities that cannot be measured by a competitive or noncompetitive examination.

### Hold Items

State employees in tenured positions who wish to pursue executive level policymaking or other positions, which are in the exempt classification, are faced with the dilemma of having to abandon the security of their competitive or noncompetitive position in order to seek advancement. In order to encourage qualified civil servants to take this risk and provide the state with the benefit of their expertise, these civil servants may seek a leave of absence from their tenured position. The position from which they are on leave is commonly referred to as a “hold item.” In sum, a hold item allows an employee to maintain a tenured position as a fallback for a set period while the employee serves in an exempt position. The mechanics of leaves of absence are set forth in the Civil Service Law and related regulations. A state agency may unilaterally grant a permanent employee a leave of absence from a non-exempt position for up to two years, during which the employee may serve in an exempt position. Only the state Civil Service Commission may grant an extension of the leave of absence upon a showing of good cause and “where the interest of government would be served.”

Hold items have not only been historically used to provide this measure of security for those moving from a tenured to an at-will position, but have also been used in the reverse situation for those in non-tenured positions to insulate them from the vagaries of at-will employment. In the latter situation, a non-tenured employee will be examined and, if eligible, appointed to a competitive or noncompetitive position and

immediately placed on leave from that position for hold purposes for up to two years by the agency or beyond subject to Civil Service Commission approval.

Under civil service regulations, an employee appointed to any competitive or noncompetitive title must serve an initial probationary period of 26 to 52 weeks before securing permanent entitlement to that position. This raises a complication in regard to employees in a non-tenured position who obtain a hold item in a tenured position. Under those circumstances, longstanding civil service rules have allowed, in the discretion of the agency employing the individual, an exempt employee who obtains a hold item for a tenured position, to count the time in the non-tenured position toward completion of their probation in such position. In other words, the employee is allowed to complete probation and obtain permanent status in the hold item without ever having served in that tenured position.

#### Examinations and Appointments of Attorneys in the State Civil Service

The Civil Service Law authorizes the Department of Civil Service (“Civil Service”) to determine the most appropriate examination to administer for any title. Under this mandate, examinations for attorney positions (entitled “legal specialties”) in the state civil service system have three relevant attributes: 1) The written test is an evaluation of training and experience; 2) the examination is subject to continuing recruitment; and 3) the examination is position-specific.

The examination for attorneys does not seek answers to substantive questions concerning the law or otherwise. Rather, the attorney examination consists of the applicant filling in “bubbles” on a standardized computer form (known as a “bubble sheet”) detailing his or her background, training, and experience. Thus, the examination

truly amounts to the coding and cataloguing of a person's resume and credentials. This bubble sheet is submitted to the Department of Civil Service and is available to any state agency wishing to fill any legal specialties position. The legal specialties examination is also subject to continuing recruitment, meaning that an applicant meeting the minimal qualifications for an attorney to be employed by the state (i.e., a law school graduate) can complete a bubble sheet at any time and submit it to the Department of Civil Service without awaiting the announcement of a specific open position.

Civil Service regularly pools all bubble sheets received and maintains them in a central database for a finite period. As discussed in more detail below, when an agency wishes to fill a legal specialties position, it must complete and submit to Civil Service a position-specific form containing a profile reflecting of the duties of the position to be filled. As attorneys perform many different tasks and serve in many different roles within an agency, attorney positions may require different education and skills. To accommodate this need, agencies are tasked with drafting a profile of the background and skills required to fulfill the specific position they wish to fill and submit the profile to Civil Service. Therefore, the agency is necessarily granted broad discretion in fashioning a profile as only it knows the optimum credentials for the position it seeks to fill.

Matching an agency's needs with the candidates in the attorney applicant pool is accomplished at the Department of Civil Service by collating an agency's profile for the position with the information obtained from candidates' bubble sheets. In filling out a bubble sheet, a candidate is provided with a list of items in five categories: legal coursework; legal experience; general experience; other education; and legal tasks. The applicant is then supplied possible "answers" to choose from each category and a

corresponding code number for each item. For example, under legal experience, a candidate who completed an introduction to civil litigation course in law school may enter code 1003 on the bubble sheet; for general experience, a candidate who has worked in bookkeeping in a past employment may enter code 0204 under the heading of general experience. Applicants are instructed to enter as many codes as apply to them and are only limited to 18 codes in legal coursework; 12 codes in legal experience; and 12 codes in general experience. In addition to choosing codes to enter, in the categories of legal experience and general experience, the applicant must designate whether he or she garnered the experience in the private or governmental setting and whether he or she obtained up to three months, four to six months, or more than six months of such experience.

The agency drafts a profile reflecting the duties of the particular position to be filled. In designing a profile, an agency is allotted 30 points (to be added to the 70 points required of any candidate to be considered for any legal specialties position) to distribute among the categories it has determined are relevant to the position. In other words, the profile is truly a formula of how the agency wishes to weigh various factors which appear on an applicant's bubble sheet by dividing its 30 points. A potential candidate receives one point for each match between his or her bubble sheet and the agency's profile. In the case of legal and general experience, one point is awarded for a perfect match between the type and length of experience and half a point for an imperfect match.<sup>6</sup> For example, if a state agency wishes an attorney to assist in the examination of contracts, it most likely will tailor a profile heavily weighing contract course work and contract law

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<sup>6</sup> Therefore, if an agency seeks a candidate with six months legal experience in banking law in the governmental setting, an applicant with six months banking law experience in the private setting will only be awarded half a point.

experience; on the other hand, if the same state agency wishes to hire an attorney to assist in litigation, it will allot a higher portion of its 30 points to litigation background and experience.

The agency submits this profile to Civil Service. Civil Service then generates a list of candidates sorted by score from the pool of applicants who have submitted bubble sheets. The list is referred to as a “LERT”.<sup>7</sup> The LERT is then supplied to the agency for them to pursue the selection process. In order to prevent reshuffling by an agency potentially unsatisfied with the LERT it receives, only one profile may be submitted for any specific position during a one-year period.

### The Rule of Three

Under state law applicable to any civil service examination including legal specialties, an agency may hire any candidate who has scored in the top three scores in a list generated by Civil Service. The so-called “rule of three” refers to the three top scores, not candidates. Accordingly, all candidates achieving one of the top three scores, no matter how many, are “reachable,” meaning they may be selected from the list and hired by the agency.

### Susceptibility to Manipulation of the Legal Specialties Examination

While not a test of substantive knowledge, the legal specialties examination is still a civil service examination legally and constitutionally intended to reward qualifications and merit and open to all qualified applicants. However, unlike tests of substantive knowledge, the legal specialties examination is particularly easy to manipulate to achieve

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<sup>7</sup> “LERT” is an invented term derived from the combination of the words “list” and “certification,” commonly known as a “cert.”

a desired end by those intent on ignoring the law. If an agency wishes to maximize, if not guarantee, that a targeted candidate will fall within the top three scores and be reachable on a LERT, it need only create a profile that emphasizes (if not mirrors) the codes the applicant has entered on his or her bubble sheet. Recognizing this susceptibility, the Department of Civil Service has clearly instructed agencies that it is a violation of the Civil Service Law to contrive a profile aimed at a chosen candidate. The Civil Service training manual supplied to agency personnel on the LERT process includes a rules section stating:

**THIS IS AN EXAMINATION.** Participants in the development of the agency profile must keep it confidential from any potential candidates. Failure to adhere to this restriction may result in a candidate's/agency's disqualification from future participation in the legal specialties examination process and possible revocation of any appointment made from the list. (Emphasis in original.)

In addition to this general warning, an agency submitting a profile must certify that “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.”

## **B. Billet Secures Tenured Positions for Herself and Other Tax Attorneys**

### Billet and DTF Manipulate the Civil Service System in 2006

The Inspector General determined that commencing in December 2005 and continuing through September 2006, DTF, at the instigation of Barbara Billet, engaged in a scheme to manipulate the civil service system to secure tenured civil service hold items for Billet and eight other non-tenured attorneys. This plan became active in two phases:

the February 2006 appointments of Billet and DTF attorney Marvis Warren; and the July to September appointments of eight other attorneys.

December 2005 – February 2006: Barbara Billet and Marvis Warren

By late 2005 through early 2006, it was well known that Governor George Pataki, a Republican, would not seek election to a fourth term. It was also widely assumed that then-Attorney General Eliot Spitzer, a Democrat, was the front-runner to be elected the next governor. This probable transfer of power between parties directly endangered the job status of at-will employees in the state civil service, many of whom wished to secure tenured positions to guarantee their retention. As then-DTF Commissioner Andrew Eristoff aptly informed the Inspector General, exempt employees came “out of the woodwork” seeking to protect their employment status at this time. Many wished to do so by securing “hold items” on tenured jobs hoping that the new administration would retain them in a policymaking capacity while possessing the fallback of the secure hold item.

The most vulnerable exempt employees in a transfer of power between parties are the highest level executives of an agency as a new administration is likely to replace the incumbents in these positions. Evidence demonstrates that Billet was very much attuned to the potentially tenuous nature of her position. Billet informed numerous DTF officials that she was less than a year short of acquiring 20 years of state service – a significant benchmark in the retirement and pension system – and that she wished to retire once she reached that point. She further informed various DTF officials that, to ensure herself 20

years of service, she wanted to obtain a permanent Senior Attorney<sup>8</sup> position as a hold item in the event she was not retained in her exempt position.<sup>9</sup>

Although Billet refused to be interviewed by the Inspector General and tellingly omitted in her written statement any mention of how she secured a hold item, the Inspector General discovered evidence of the steps Billet took to protect her future retirement. These measures bypassed the standard DTF procedure for hiring attorneys – processed through DTF’s Office of Counsel – and, instead, directly utilized DTF’s Human Resources Management unit and its Director Deborah Dammer, her deputy Wesley Ryan, and Director of Personnel Barbara Severance.

On December 19, 2005, Ryan e-mailed Marian Beckett, an employee in Human Resources Management, and Severance directing Beckett to “identify a Sr Attorney permanent vacancy for which a position specific profile has not been done and make sure that a profile is not submitted for that item until Deb Dammer provides the position specific profile that is to be submitted.” The next morning, Beckett responded by informing Ryan that she had identified two lines, 3344 and 3261, and potentially a third that met Ryan’s criteria.<sup>10</sup>

At some point in December 2005 Billet summoned Marvis Warren, a non-tenured attorney at DTF, to her office.<sup>11</sup> According to Warren, Billet informed her that Billet

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<sup>8</sup> The Senior Attorney position is an entry level attorney position in the state civil service. Billet could only seek an entry-level Senior Attorney position because she lacked the qualifications for a higher level, non-exempt attorney position

<sup>9</sup> DTF Deputy Counsel Mark Volk testified that after Billet had secured her protected Senior Attorney hold item, she quipped that she should be nice to him because someday he might be her boss.

<sup>10</sup> Each agency in the state is granted a certain number of positions or “lines” they can fill. Each agency line is numbered by Civil Service.

<sup>11</sup> Warren is the wife of former Assemblyman Glenn E. Warren. At the time, Glenn Warren served as director of administration at the New York State Workers’ Compensation Board. In August 2006, he was appointed Executive Director of the Workers’ Compensation Board. He retired in August 2007.

had received approval to obtain a tenured hold item for Warren. Warren testified that although she had not actively sought such a position, she stated her interest in the hold item because she wished to continue working at DTF. Shortly thereafter, Warren testified, it was arranged for her to meet with Deborah Dammer, and during their discussion Warren informed Dammer that she had previously submitted a bubble sheet to Civil Service. While Warren acknowledged that DTF had her resume on file from the time she re-joined the agency in the summer of 2005, she could not remember if Dammer had asked her for a copy of her bubble sheet or if she had provided it.

On January 3, 2006, Dammer e-mailed Ryan, "I need to have two items identified that can be used to appoint and place on leave two current exempt employees." Ryan responded by once again asking Beckett to identify two lines for which no profile had been submitted in a year. Reflecting the irregular nature of their endeavor, Ryan also informed Beckett, "Shirley [a Secretary in DTF's Office of Counsel] isn't in the know on this, so we should keep this within our office." Beckett complied by re-sending Ryan the e-mail concerning lines 3344 and 3261 she had sent him in December 2005. In a reply e-mail, Ryan thanked Beckett stating that he wanted to ensure that the information he provided Dammer was "fresh." Ryan then forwarded the information provided by Beckett to Dammer.

On February 6, 2006, Dammer requested by e-mail that Ryan supply her with a list of vacant positions. That day Ryan provided Dammer the requested list, containing 13 position numbers, and reminded Dammer: "We had reserved items 3261 and 3344 for Barbara [Billet] and Marvis [Warren]." Dammer then asked Ryan to determine if there were any existing profiles for the other referenced line numbers. Ryan forwarded this

question to Severance who e-mailed Deborah Shimkus, the DTF human resources employee responsible for submitting completed profiles to Civil Service. Ryan further instructed Shimkus to contact Civil Service and determine if profiles had been submitted for two lines (one of which, 3344, was soon to be filled by Billet) within the last year because “[w]e intend to submit something for each very soon. We need to be sure that we didn’t send something over to Civil Service that would lock that item in.” Shimkus responded that same day informing Severance and Ryan that no profiles had been submitted for the two lines in the preceding year. She also informed Severance that candidate bubble sheets are scanned in by Civil Service once a month and that no new LERTS would be generated by Civil Service until newly submitted bubble sheets had been added.

Interestingly, as noted above, in addition to Billet, DTF was also seeking a hold item for attorney Marvis Warren. In the aforementioned February 6, 2006, e-mail exchange, Severance informed Ryan that Warren had scored 82 on a LERT for a previous item DTF sought to fill, a score substantially too low to be reachable. Presaging later developments, Ryan replied tersely that Warren would “[m]ost likely fare better on the next profile.”

#### Billet’s Profile

Billet submitted her bubble sheet to Civil Service on January 10, 2006. In the application accompanying her bubble sheet, Billet listed her title as “Executive Deputy Commissioner” of DTF and described her duties as “[s]erving as the Chief Operating Officer of the agency – the number 2 person in charge of running the Department.” Former DTF Commissioner Eristoff and others confirmed that Billet supervised the day-

to-day operations of DTF during her tenure as Executive Deputy Commissioner and had an involved, “hands-on” management style on projects that interested her.

Many witnesses testified that, pursuant to well-established procedure for drafting profiles at DTF, either the Office of Counsel itself or another unit in DTF would alert the Office of Counsel that it wished to fill a position. Paul Lefebvre, a Principal Attorney in the Office of Counsel, would then hand draft a profile meeting the specifications supplied by the Office of Counsel or other unit.<sup>12</sup> Lefebvre would then give the draft profile to Anne Sager, a Secretary in the Office of Counsel, who would type Lefebvre’s profile onto an official profile form and e-mail it to Shimkus in human resources. Shimkus would then e-mail the profile to the Department of Civil Service for a LERT to be generated.

The evidence reveals that DTF’s longstanding process was circumvented with Billet’s and Warren’s profiles. In January or early February 2006, a profile for line 3344 (the position intended for Billet) was drafted, almost certainly by Wesley Ryan, the DTF Deputy Director of Human Resources Management. Neither Lefebvre nor Sager was involved in, or even aware of, the creation or processing of these profiles, which instead were handled within human resources. While Ryan told the Inspector General he did not recall being involved in drafting Billet’s profile, he acknowledged he had discussions about Billet’s hold item, most likely with Dammer or Billet herself, and, notably, he admitted that line 3344 had been “reserved” for Billet. In contrast, Severance testified that Ryan not only informed her at the time that that he had drafted the profile for Billet,

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<sup>12</sup> As discussed in the following section of this report, Billet’s decision to avoid using Lefebvre was unnecessary as Lefebvre was anything but averse to manipulating the civil service system, testifying that he had intentionally been doing so for DTF for over a decade.

but that Ryan even quipped that he had not drafted a profile in some time and hoped he remembered how to do it. Billet's profile was delivered to then-DTF Counsel Christopher O'Brien who signed the certification. O'Brien testified he was not informed that the profile was designed for Billet or any other particular DTF employee and the Inspector General found no evidence to the contrary.<sup>13</sup>

Shimkus testified that unlike any other profile she had ever processed before or since (with the exception of the contemporaneous Marvis Warren profile), the profile for line 3344 was not processed through Sager. Rather, Ryan personally delivered this profile to her. Severance confirmed the uniqueness of Ryan drafting and delivering a profile. However, in an attempt to explain the discrepancy, she remarked that because it related to an executive in the agency, namely Billet, it was logical that the profile would be completed directly by high-level human resources officials. Of course, Severance's "explanation" provides additional evidence that this profile was specifically drafted for Billet, not intended to be open and competitive, and not drafted to fill any legitimate need of the agency.

Further corroborating that, in contravention of the Civil Service Law, the profile for line 3344 was designed specifically to select Billet, on February 6, 2006, Ryan instructed Shimkus to call Civil Service to ensure it had received and processed Billet's bubble sheet before this profile was submitted. Shimkus followed Ryan's order and informed him that "[t]hey have the bubble sheet for Barbara." Ryan responded by thanking Shimkus and stating "this is very helpful." Knowing that Billet's bubble sheet was in the pool of applicants, the profile for item 3344 was transmitted by Shimkus to

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<sup>13</sup> Former Counsel O'Brien informed the Inspector General that once in passing Billet asked if he was interested in a protected Senior Attorney position. O'Brien said he declined interest.

Civil Service on February 15, 2006. The next day, a LERT was generated listing Billet with a perfect score of 100. DTF immediately appointed Billet to the Senior Attorney position for hold purposes effective February 17, 2006, and the necessary documentation was subsequently approved by Ryan. This same documentation also approved Billet's serving of her probationary period while acting as Executive Deputy Commissioner. Billet's probation was deemed complete on August 18, 2006, upon Dammer's approval.

The Inspector General requested Daniel Wall, the President of the Civil Service Commissioner and head of the Department of Civil Service in 2006, to examine the profile used to appoint Billet to a hold item. Wall, who had no knowledge of or direct involvement in the creation of the LERT that resulted in Billet's hiring, testified that the timing of Billet's submission of a bubble sheet and the allotment of points in this profile were suspicious. In regard to the latter, Wall testified that although a Senior Attorney title is an entry level position, Billet's profile weighted experience more than would be expected for an entry level employee, noting that 20 out of 30 points were allotted to legal and general experience. Indeed, a further examination of this profile reveals that DTF's optimal candidate for this entry level position, while gaining minimal points for having completed taxation courses in law school (4 out of 30 points), was more heavily rewarded for having at least six months experience in drafting, analyzing and monitoring legislation while in government service (7 out of 30 points worth) and experience in the tasks of research and analysis, advisory memoranda, and drafting legislation and rules and regulations (6 out of 30 points). In fact, this optimal candidate most heavily benefited from gaining over six months worth of legal experience in a government setting (13 out of 30 points). Standing alone, this profile contains no categories completely

irrelevant to the work of DTF. However, the weight accorded to various factors coupled with the manner in which the profile was drafted and submitted, in conjunction with Billet's actions in regard to other hold items discussed below, reveals that it was almost certainly tailored to ensure a sufficient grade for Billet to be reachable.

The LERT used to hire Marvis Warren also demonstrates how Billet's unquestionably broad experience alone would not have been sufficient to guarantee her a high enough grade on any applicable LERT to be reachable. As their profiles were submitted nearly simultaneously, Billet was also graded on the LERT that led to Warren's appointment to a Senior Attorney hold item. On this LERT, Billet failed to score within the top three scores and was not reachable for appointment. The reason for this disparity is that Warren's profile more heavily emphasized legal course work (8 points) and disproportionately weighted legal tasks (15 out of 30 points) while allotting a mere two points to "General Experience." Warren scored a perfect 100 on this exam and was immediately appointed to the position for hold purposes.

Apart from this evidence of Billet's direct manipulation of the system, the mere notion of the second in command of a state agency using her Department to obtain a hold item raises intractable ethical difficulties. Daniel Wall, past President of the State Civil Service Commission, testified that it is unusual and troubling for an appointed commissioner to seek a hold item while acting as an agency executive, "because, obviously, you're the appointing authority. You're making decisions that are directly benefitting you." Wall further specifically testified that it was problematic for Billet to acquire a Senior Attorney slot because:

She ultimately was appointing herself to the position, which is a little troubling, and approving her (own) probation as well. If you are inclined [to do that] you'd better erect a Chinese wall . . . It's inappropriate.

In Billet's case, Wall added, "my concern would be about her ability to influence subordinate staff. And if she had any role in the development of the LERT requirements, that would be deeply troubling to me." Wall further testified that, at a minimum, an agency executive contemplating seeking a tenured position in her own agency should effectuate measures designed to create a "special distance" between herself and the hiring process to ensure that subordinate staff are not influenced in the hiring process and act in the best interest of the agency and in compliance with the civil service law. As described above, Wall's fears of abuse appear to have come to fruition in regard to Billet in 2006 in that it is beyond dispute that Billet's subordinates explicitly "reserved" a position for her prior to submitting a profile and then drafted a profile with the specific intent of benefiting Billet by allowing her to secure a tenured position.

#### July-September, 2006: Hold Items Are Secured for Other Non-Tenured Tax Attorneys

In addition to Barbara Billet and Marvis Warren, who, as described above, obtained their hold items in February 2006, the Inspector General determined that at least eight other exempt tax attorneys obtained hold items during the summer of 2006 as part of a predetermined plan to manipulate the civil service system.

As noted above, by early 2006 it was widely anticipated there would be a change of gubernatorial administrations in 2007, and many exempt employees in state service desired hold items to protect their employment with the state. Andrew Eristoff, DTF Commissioner in 2006, testified that he was not directly involved in the process of securing hold items for DTF attorneys due to what he described as his aversion to the

political maneuvering accompanying these actions. Instead, Eristoff testified, Billet personally “handled” discussions with Governor Pataki’s office regarding the DTF employees for whom the agency would seek hold items. Eristoff added that Billet periodically updated him on these matters.

In early July 2006, Billet summoned DTF Deputy Counsel Mark Volk to her office and instructed him that “downtown” (Governor Pataki’s Executive Chamber) had approved securing tenured civil service positions for a number of exempt DTF attorneys. Billet provided Volk with the names of the attorneys for whom she wished to secure tenured positions, the line numbers they were to be placed in, and ordered Volk to accomplish this task.<sup>14</sup> Volk then provided the list to Lefebvre to draft the necessary profiles to satisfy Billet’s direction. On July 11, 2006, Lefebvre e-mailed Dammer that he “h[ad] just been given a list of items that we now have permission to fill” and requested some further information. Leaving no doubt as to the use of the ensuing profiles to hire specific individuals identified by Billet, Lefebvre followed up with a second e-mail several hours later stating that “[w]e received permission to fill all our vacant senior attorney items. We will be striving to place our appointees in these items.”

On July 13, 2006, Dammer e-mailed Shimkus, with a copy to Ryan, Severance, Lefebvre and Volk, regarding “the items to be filled and, if possible, the specific individuals who should go into them.” The list read as follows:

3238 Christopher O’Brien (NOT the Dep Commissioner and Counsel)<sup>15</sup>  
3240 Andy McEvoy

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<sup>14</sup> Although certain of Billet’s presence and the fact that she directed his actions, Volk testified that Dammer may also have been present at this meeting.

<sup>15</sup> Two people with the name “Christopher O’Brien” were employed by DTF at the time. The Christopher O’Brien who eventually secured a hold item was not the same Christopher O’Brien who was Deputy Commissioner and Counsel at the time.

- 3251 Marc Strange
- 3252 Michael DeMartino (he is currently employed with the Executive Chamber; OOC will be discussing with him what he needs to do to file for the exam)
- 3234 Ellen Roesch
- 3236 Robyn Cotrona
- 3335 Michele Milavec

Dammer further instructed Shimkus to “work with Paul Lefebvre to get this done.” On July 13, 2006, another non-tenured attorney then employed by DTF was added to the list of attorneys for whom a hold item would be secured. On that date, Volk e-mailed Dammer that he had “checked with Dave Demeter and he is interested and has filed the paperwork [his bubble sheet] with Civil Service.” Volk also indicated that yet another attorney, Marc Ganz, “would be interested” in a “fall back” Senior Attorney position if he could not be reinstated in a prior civil service position he held years earlier. Dammer replied the next day with a question about Demeter and then asked, “Did Barb indicate to you that she wanted to move forward on this immediately? I know she wanted to keep it under the radar screen . . .” (ellipses in original). Volk replied that he had spoken to Billet by phone and that he understood that Billet “wanted to act on this immediately.” Volk further informed Dammer that they must wait for Billet to return from vacation because Billet had mentioned to him that she may not be able to secure sufficient hold items for all the attorneys they wished, “[w]hich means I think we will need to approach the attorneys and ask if they are willing to go into the senior attorney item.”

Within days, profiles were submitted to the Department of Civil Service for the mentioned lines and employees with the exception of the profile for DeMartino which was submitted in October 2006. Lefebvre admitted to the Inspector General that he

customized these profiles with the intention of ensuring that the targeted candidate for each line would be reachable on the resulting LERT. To aid him, many candidates supplied Lefebvre with their resumes or even the bubble sheets they had submitted to Civil Service. Lefebvre hand drafted the profile for each targeted candidate and delivered them to Sager. Lefebvre informed Sager as to the candidate each profile was designed for and went so far as to place the initials of the targeted employee on the top right of many of the forms he supplied to Sager. Sager then typed the profile into a computer document, which she supplied to Shimkus to be forwarded to Civil Service.

Review of contemporaneous e-mails between the individuals involved leaves no doubt that these profiles were drafted to hire specific individuals and not to fill any legitimate objective need at DTF, as well as the lengths to which DTF, at Billet's direction, was willing to pervert Civil Service Law. For example, on August 7, 2006, after informing Severance that two attorneys they were working to place in hold items, Christopher O'Brien and Dave Demeter, had scored sufficiently high to be chosen to fill two submitted profiles, Shimkus asked Severance, "Can I now submit the profile for Cotrona & Roesch? We would like to use the same profile that we submitted on 9/12/05 and use the same item number which is 3336. They both came up on top last year." Severance responded by informing Dammer that O'Brien and Demeter could be appointed and asked if they were "ready to move" to appoint Demeter.

A glaring example of DTF's improper efforts concerns attorney Michele Milavec. On August 23, 2006, Sager e-mailed Shimkus a computer document entitled "Profile 3335." In the message accompanying this document, Sager unequivocally informed Shimkus that she was attaching the "Profile for Michele Milavec." Furthermore, a

review of Lefebvre's handwritten draft profile supplied to Sager bears the initials "MM" on the top. This profile was signed by Shimkus and Deputy Counsel Mark Volk and submitted by Shimkus to Civil Service. Unsurprisingly, when Civil Service processed this profile and generated a LERT, Milavec achieved a perfect score of 100. After receiving this result from Civil Service, on August 25, 2006, Shimkus passed the information on to Sager remarking that "[Lefebvre] worked his magic again."

Further evidence of how DTF flouted the LERT process appears in an August 4, 2006, e-mail in which Severance informed Dammer that David Demeter had previously submitted a bubble sheet and appeared on a LERT, but his score was too low for them to appoint him to any available position. Severance then asked Dammer what action she should take. Dammer replied, "[t]his is on Barb Billet's plate at the moment. Can you tell if we proceed with the rest of our hiring plan, whether he's likely to become reachable?" Severance responded, "We cannot predict. His score is an 82 and each lert is different." Tellingly, Dammer replied to Severance, "His expertise is bankruptcy. Can we focus a profile in that specific area?" Severance responded, "That is what we are sending in now?" Accordingly, the profile submitted on August 7, 2006, which resulted in Demeter receiving a hold item, awarded three points for bankruptcy coursework in law school and four points for bankruptcy experience while awarding only one point for taking an introductory tax course in law school and four points for tax experience since. Even with this advantage, Demeter scored a 90 (tied with three others at that score), the third highest score and, thus, barely fitting within the rule of three. Interestingly, Christopher O'Brien, who also possessed bankruptcy experience, achieved the highest

score (a 100) on this LERT and was also granted a hold item.<sup>16</sup> Both Demeter and O'Brien were appointed to hold items from this LERT.

On September 5, 2006, Shimkus provided Dammer, at Dammer's request, with an updated chart of the progress of their plan to appoint targeted attorneys to hold items. This chart indicated that, as planned on July 5, 2006, five intended attorneys had been granted holds on the items targeted for them. Further evincing the manner in which the LERT process was abused, Shimkus informed Dammer that line 3252's status was "pending" because the DTF was "Waiting for Michael DeMartino [a non-DTF employee then employed in the Executive Chamber] to be added" to the Civil Service candidate pool which was anticipated to occur later that month. In fact, e-mail evidence demonstrates that DeMartino was apparently in the process of choosing an agency in which to secure a hold item. On July 17, 2006, DeMartino's resume was e-mailed to DTF Executive Secretary Taffy Gray and forwarded by her to Lefebvre and Volk with the message that DeMartino had not yet submitted his bubble sheet to Civil Service "cause he doesn't know what to submit. Please reach out." Lefebvre responded that he was unable to reach DeMartino but had sent an e-mail "explaining how to get the civil service process moving." In this e-mail, dated July 21, 2006, Lefebvre provided DeMartino instructions on how to submit his bubble sheet to Civil Service. On July 22, 2006, DeMartino e-mailed Lefebvre that he was sending his materials to Civil Service that week. In reply, Lefebvre asked DeMartino to send him Civil Service's confirmation

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<sup>16</sup> A review of other profiles designed to garner hold items further reveals the manipulation that was occurring. For example, the profile for item 3251, intended since July 2006 for Marc Strange, was submitted to Civil Service on August 2, 2008. This profile did not award a single point for tax course work in law school or tax experience, while allotting nine points for generally drafting rules and regulations, five points for general "report writing", two points for completing law school course work in "sales and consumer protection," and three points for education in mathematics. Strange scored a perfect 100 on this LERT and was appointed to a hold item effective August 10, 2006.

letter when he received it, and advised that “I’ll keep you informed as we go.” On August 4, 2006, DeMartino apprised Lefebvre that he had filed his “paperwork” with Civil Service. Lefebvre forwarded this information to Volk and Gray referring to it as “step one.” On September 15, 2006, DeMartino again informed Lefebvre that his application and “‘test’ or bubble resume . . . whatever the hell they want to call it” had been submitted to Civil Service. On October 5, 2006, Lefebvre e-mailed Volk and others that DeMartino was exploring a position in another agency and wished to meet with DTF to discuss “what he might do here.” Lefebvre then inquired, “[d]o we proceed with a hold here or should he make a career choice first and then have that agency do it?” Gray replied, “[I]et’s proceed – worst case scenario is that he changes his mind. Barb is also OK with proceeding.” Lefebvre then scheduled a meeting with DeMartino and others at DTF. On October 25, 2006, Lefebvre submitted a profile designed for DeMartino. DeMartino scored a perfect 100 on this “examination.” DeMartino never accepted his hold item which was granted to him and rescinded the same day. Further corroborating the manipulation of the system in 2006, on June 26, 2007, Shimkus e-mailed counsel’s office and referred to this profile as “supposed to be for the DiMartino appointment.”<sup>17</sup>

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<sup>17</sup> The scores obtained by the individuals whom DTF targeted for placement in tenured positions in 2006 confirm that the profiles were customized to ensure their selection. As discussed above, a score of 100 means that the candidate possesses every criteria sought by the agency and, thus, embodies the ideal candidate for the position. Of the nine individuals whom DTF selected before submitting profiles, seven — Billet, Warren, Milavic, O'Brien, McAvoy, DiMartino, and Strange — not only scored a perfect 100, but were so squarely matched to the profile submitted by DTF that they were the only individuals in the entire statewide, non-agency specific candidate pool to achieve a perfect score. A review of the scores of the three exceptions to this perfect match further underscored DTF’s manipulation. Roesch and Cortona did not score 100, but, as set forth above, contemporaneous evidence conclusively demonstrates that Lefebvre saved effort and ensured their selection by recycling a previously used profile which DTF knew would result in their being reachable. The only other exception was Demeter, who possessed sufficient overlapping bankruptcy experience with O'Brien that allowed DTF to couple the two by selecting him from the same LERT.

On September 25, 2006, Billet called and presided over a meeting of all those individuals for whom she had secured hold items. At this meeting, Billet and Dammer informed the attendees of their options of voluntarily resigning their exempt positions and assuming their hold items right away or awaiting later action by DTF.

In fact, Marc Strange and Michele Milavec had resigned their exempt positions and assumed their Senior Attorney hold items on September 7 and 21, 2006 respectively. Christopher O'Brien resigned from his exempt position and assumed his Senior Attorney hold item position on October 5, 2006. Marc Ganz, Ellen Roesch and Robyn Cotrona all vacated their exempt positions on February 25, 2008, and assumed their hold items that day. Roesch and Cotrona testified that they were terminated from their exempt positions. Marc Ganz, Marvis Warren, David Demeter and Andrew McEvoy continue to serve in their non-tenured positions and have received extensions of their hold items from the Civil Service Commission: Warren on February 2, 2009, and Demeter and McAvoy on August 12, 2008.

#### The Involvement of the DTF Attorneys Who Received Hold Items

The Inspector General interviewed the attorneys who received hold items from DTF in 2006 and are currently employed by the agency. All of these individuals cooperated with the investigation and the interviews were conducted under oath. While the attorneys all testified to varying degrees of contemporaneous knowledge that DTF was seeking to obtain hold items for them, all testified that they had no knowledge of the specific manner in which DTF would go about obtaining these positions. Consistent with Lefebvre's testimony, the attorneys with the shortest tenure at DTF – whose training and experience Lefebvre was least familiar with – admitted to having provided or possibly

having provided DTF officials with their resumes and/or bubble sheets to aid in the process.

It is not the Inspector General's role in this investigation to assess the qualifications and job performance of the individuals who received hold items from Billet and DTF. While it is not possible under these circumstances to determine what the outcome of a legitimate examination would have been, some of these attorneys likely would have been reachable given their qualifications and experience. Lefebvre's admission that DTF had manipulated the civil service system for more than a decade, coupled with the position-specific nature of a legitimate examination, renders it impossible to construct a template for a "regular" and legitimate examination.

#### Posting and Canvassing for the Open Positions

As might be expected, once the targeted candidates became reachable on the LERT, they were immediately hired. DTF did not post in advance that it would be submitting a profile for any of these positions, nor did it canvass or interview any other candidates who scored high enough to be reachable on the LERT. While the Civil Service Law does not govern the posting of jobs, DTF "typically posts" openings, according to the testimony of Kieran Johnson-Lew, currently the Director of the Office of Human Resources Management.

Given the evidence uncovered by the Inspector General's investigation, posting for these positions almost surely would have been pointless, as DTF's maneuverings ensured that the positions in question were designed and reserved for the targeted candidates.

## Institutionalized Abuse of the Civil Service System by DTF

Equally if not more disturbing than DTF's and Billet's actions in 2006, the Inspector General discovered that an institutionalized disregard for the Civil Service Law has existed at DTF for more than a decade. Indeed, Billet did not invent the manipulation by DTF that occurred in 2006 but merely tapped into a longstanding culture of circumvention of the Civil Service Law.

Lefebvre, the DTF employee who has drafted profiles for DTF since the inception of the legal specialties examination in 1991, testified that at the behest of DTF he has regularly drafted profiles designed to result in the hiring of specific candidates. To achieve this end, Lefebvre further testified that DTF regularly interviewed candidates and obtained resumes and bubble sheets from individuals it wished to hire prior to submitting a profile to Civil Service. Lefebvre added that he has been successful in crafting a profile targeted at a chosen candidate on the majority of occasions.

Lacking any remorse, Lefebvre justified his actions by denigrating the legal specialties examination process and touting his contributions to DTF over the years by allowing it to hire "people we know" and avoiding getting "stuck with a list of people we don't know" but whom, under Civil service Law, must be considered for the position to be filled.<sup>18</sup> Lefebvre added that DTF had been "burnt so many times with the civil service system" in the past by hires who were chosen from lists legitimately created or where his manipulation failed. When rhetorically asked if the legal specialties examination was competitive, Lefebvre responded that DTF "never treated it that way." Similarly, Severance attempted to educate the Inspector General by asserting there exists

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<sup>18</sup> Ironically, Lefebvre himself is a tenured civil servant hired under a prior more-highly criticized civil service examination system for attorneys.

a difference between hiring an individual to meet a need in DTF and “appointing” a person to a hold item. While apparently reflecting the reality of her and DTF’s actions in 2006 and beyond, Severance’s distinction is not supported or countenanced by the Civil Service Law.

### **C. Billet’s Post-Retirement Employment**

As events transpired, Billet’s concern about keeping her state position after the change in administration was unnecessary.<sup>19</sup> The Spitzer administration did not immediately terminate Billet, but chose to retain her as Acting Commissioner of DTF until a successor was appointed. As a result, Billet, prior to her retirement, did not revert to the Senior Attorney hold item she had secured for herself in 2006. Instead, as Acting Commissioner, Billet turned her attention to her impending post-retirement life.

Sometime in the summer of 2007, Billet, while still Acting Commissioner, broached with subordinates the idea of returning to DTF after her retirement in a part-time position using her Senior Attorney hold item. Under state law, a state employee who retires or resigns may be rehired by his or her agency within a year of leaving employment.<sup>20</sup> As long as the employee earns under a minimum salary (currently \$30,000 annually), the agency does not require permission or approval from Civil Service and can unilaterally rehire the employee.<sup>21</sup>

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<sup>19</sup> While, as set forth above, Billet informed various persons that she was seeking to reach 20 years of state service prior to retirement, it does not appear that at the time of her retirement in February 2008 that Billet was credited with 20 years of state services for purposes of calculating her pension. With Billet’s refusal to be interviewed in this investigation, it is not possible to determine whether Billet miscalculated her service credits or decided to retire short of 20 years of service.

<sup>20</sup> Civil Service Rules and Regulations, § 5.4

<sup>21</sup> Retirement and Social Security Law § 212.

Many witnesses testified as to Billet's genuine interest in DTF's Clear Language Initiative, a program Billet had created while Acting Commissioner that is designed to re-draft tax forms into common English to enhance compliance with the tax law. In August 2007, Billet recruited to DTF a former subordinate from the New York State Attorney General's Office, Patrick Barnett-Mulligan, to direct the project. Billet told DTF staff that she wished to continue working on the project in retirement. In her written statement to the Inspector General, Billet noted her "interest in furthering the start-up of the program," adding, "I had enjoyed a very fulfilling career with the State of New York, and wanted to make a last contribution to public service that I believed could be of real benefit to the State and its taxpayers."

Margaret Sherman, who had recently been hired as DTF's Deputy Commissioner for Administration, reporting directly to Billet, testified that beginning around September 2007 she and Billet had "serious discussions" about Billet's post-retirement employment. According to Sherman, by early 2008 the discussions became more definite. In a January 9, 2008, e-mail to Kiaran Johnson-Lew, who had succeeded Deborah Dammer as Director of Human Resources Management, and Barnett-Mulligan, Sherman wrote: "I think Barb is almost convinced that the Sr. Attorney job will work just fine for her post-retirement clear language work. (And she doesn't want to wait, she's hoping to even start some of this work before she leaves)". As Billet's planned late January 2008 retirement date approached, Sherman testified, Billet decided "she wanted to do it."

Billet's intention was to revert to the protected Senior Attorney hold item she had secured for herself in 2006 and to work from her retirement residence in South Carolina by telecommuting. To effectuate this plan, Billet's subordinates took a series of actions.

In response to a request from Sherman, human resources staff assembled a fact sheet calculating Billet's potential post-retirement earnings depending on how many hours a week she worked. The calculations assumed that Billet would be appointed to the top of a grade 25 Senior Attorney position that at the time paid \$79,342 annually if worked full time. On January 11, 2008, Sherman e-mailed the information to Billet. On January 17, 2008, after discussing the matter with Billet, Sherman again e-mailed Johnson-Lew, asking, "What do we need to do to appoint [Billet] to the Sr. Attorney position? She says she is ready."

A "Telecommuting Work Agreement" detailing the terms of Billet's post-retirement employment was drafted by Barnett-Mulligan, the director of the Clear Language Initiative to whom Billet would report. Billet, through Sherman, provided input in finalizing the agreement. Barnett-Mulligan signed and dated the agreement on January 25, 2008. It is not certain from the evidence when Billet signed the agreement. Her signature on the document is dated March 6, 2008, which is also the starting date of her post-retirement employment. In her written statement to the Inspector General, Billet said she "did not make any firm or final commitment" about the telecommuting position prior to her retirement, as she wanted to settle in South Carolina "before making a final decision on whether to re-engage." However, contemporaneous e-mails between Barnett-Mulligan, Sherman, and Billet indicate that the agreement was forwarded to her for signing on January 23, 2008, and Sherman testified that Billet "did sign the telecommuting agreement right before she left." Billet retired on January 26, 2008.

The technical arrangements to provide Billet with telecommuting capability from her South Carolina residence were also arranged at this time. As discussed more fully

below, this included Billet adopting an alias for use in e-mails between her and DTF. On March 3, 2008, Billet's appointment to the Senior Attorney hold item was processed by human resources management staff. Billet's re-hiring was effective March 6, 2008.

Robert Megna, Billet's successor as DTF Commissioner, was aware of, and approved, Billet's post-retirement plan. In her written statement to the Inspector General, Billet said, "Prior to leaving state service, I spoke with incoming Commissioner Robert Megna concerning the Clear Language program and my interest in furthering the start-up of the program," adding, "Commissioner Megna expressed strong support for the initiative and was in accord with my doing this post-retirement work. Obviously in order to work on the program, I would be required to telecommute, which was also discussed with Commissioner Megna and others and met with approval."

Megna confirmed Billet's account. In his testimony, Megna stated that in the period just before he assumed his position as commissioner on January 23, 2008, Billet raised the subject of her post-retirement employment with him on several occasions, and that Sherman also spoke with him about it. Megna testified, "[Billet] mentioned to me that she was interested in pursuing the Clear Language project on a part-time basis from South Carolina, what did I think about that, was I okay with her doing that, and I was." Megna added, "I thought that she brought a lot to the job, and that she could really make some progress in doing something very productive that was useful for the department."

However, Megna testified that "We didn't spend a lot of time talking about the details," as he assumed that DTF staff "had worked out the details in the appropriate and proper way."

Megna again signaled his approval with Billet's post-retirement employment on March 3, 2008, in an e-mail exchange with Sherman. On that date, Sherman e-mailed Megna, "I want to confirm that you are OK with Barb Billet telecommuting and working for the Enterprise Communications Office (Pat Barnett-Mulligan) on redrafting materials using clear language principles . . . We're ready to put her on the payroll as a Senior Attorney, 40% time (2 days a week) starting on Thursday 3/6. At this rate, her total earnings for the year will not reach the \$30K earnings cap for retirees." Megna responded, "I am confirming."

#### Billet's Telecommuting Arrangement Unique at DTF

The Inspector General found that Billet's telecommuting arrangement was unique. Working from her retirement home in South Carolina, Billet became DTF's first "full" telecommuter. Although a number of DTF auditors and technology workers telecommute, they do so only for a portion of their work time when their responsibilities require that they work from outside the office. In fact, a DTF attorney who had been diagnosed with a chronic, progressive disease testified that when she sought to telecommute on occasion when her condition made travel difficult, she was bluntly told by Billet that telecommuting was contrary to policy.

Sherman acknowledged in her testimony that while discussions about an agency-wide telecommuting policy were beginning at DTF, Billet's arrangement was a "separate situation" unrelated to those broader discussions. In his testimony, Megna expressed concern about Billet's arrangement, stating, "On the telecommuting side of it, probably could have spent more time thinking that through."

The Inspector General also determined that Billet's post-retirement employment was not commonly known at DTF. As Sherman testified: "Did Barbara not want to widely broadcast this? Yeah, it wasn't something that she brought up with people when she was talking about her retirement." According to Sherman, when Billet spoke about her future plans at her retirement party, she didn't mention the telecommuting job. Nor was it mentioned, Sherman testified, in Billet's meetings with staff near the end of her tenure at DTF. Billet correctly noted in her written statement that Megna was aware of, and approved her post-retirement employment, and that a number of human resource and information technology staff knew about it, as these individuals had helped facilitate the establishment of her position. Billet also noted that in her post-retirement position she paid fees to the Public Employees Federation and that the union sent her correspondence.

Notably, DTF made no formal announcement of Billet's re-hiring when it occurred. Billet correctly noted in her statement that her re-hiring had been reported on DTF's intranet site, "to which almost all DTF employees have access." However, DTF made the posting on its internal website, on June 12, 2008, only after it had received a news media inquiry regarding Billet's employment. As Commissioner Megna testified:

I must tell you, I never thought this was something that the rest of the Department wasn't keenly aware of. I had no reason to believe we should shelter anyone from this; in fact, as soon as it had been — I didn't know about the e-mail alias until even after the first story came out, but as soon as the [DTF] press person came to me and said, "You know, there's some rumblings out there that nobody knows about Barbara." I put it on the Department e-mail intranet that day, because my assumption, clearly a bad one, was that people within the Department were aware that Barbara was working on it, and I had no problem sharing that with the Department.

In light of these facts, and as discussed further below, Billet's claims in her statement that her appointment was "open and transparent" is specious.

### Billet's Use of an E-Mail Alias

Prior to starting her post-retirement job, Billet decided she wished to appear under an alias on DTF's e-mail system. According to Deputy Commissioner Sherman's testimony, the idea of an alias originated with the agency's information technology staff. In a March 3, 2008, e-mail to Barnett-Mulligan and Catherine Collins, Billet's secretary, Sherman wrote, "Wasn't there some discussion that [Billet] might want to have a department e-mail account that is an alias? That's a question for us to ask her when we speak with her – does she want to use a different name?"

Sherman testified that she then discussed the suggestion with Billet, who said it was a "good idea." On March 4, 2008, Sherman requested the director of production services to set up an e-mail account for Billet under the alias "Barbara Clarkstone." The name was derived from the combination of the maiden names of Billet's grandmothers.

In her August 2008 written statement to the Inspector General, Billet attempted to justify the use of an alias in that she was concerned about receiving "a high volume of e-mails from within and outside DTF", as she had "been in charge of the DTF for quite some time" and did not want to be drawn into management, policy or personnel issues. She also claimed that she felt, given the limited scope of her new job, that it would be prudent for her not to be in a position "where I could be privy to, or drawn into, the wide range of sensitive matters handled at the upper echelon of DTF." Billet maintained that, in response to those stated concerns, DTF staff suggested setting up a "screen and instant messaging name" other than her own. Billet noted that following publicity of her use of an "alias," she reverted to the use of her own name and almost immediately "received a higher volume of email" including a message from a Native American tribe

representative “seeking my help resolving a matter — the very type of email that was now outside my purview and that I had been concerned about continuing to receive.”

In her statement to the Inspector General, Billet claimed that she did not attempt to conceal her identity and minimized the use of an alias referring to this device instead as a “screen name.” E-mails sent by Billet under her alias demonstrate, at a minimum, that she realized that the function of an alias, by its very nature, was to conceal her identity and, in fact, found humor in its employment:

*March 12, 2008. “Hey there. Its (sic) me, emailing in from Beaufort (not sure you knew my “alias”!).”*

*April 16, 2008. “Its actually me, Barbara Billet, writing you under my new alias (suggested by HR) . . . We thought it was best not to have my name turning up on document transmissions. Don’t want to do anything to take attention away from Bob [Megna], the clear language project, etc.*

*April 30, 2008. “This is your old friend, Barb Billet, under the disguise of my “alias”!!! . . . Just don’t tell anyone its me!!”*

In addition to avoiding a large amount of e-mails, Billet asserted in her statement and aforementioned e-mail that working with an alias would ensure she did not undermine the new Commissioner. However, Billet failed to inform Commissioner Megna of her plans to use an alias or seek his approval to do so. Additionally, her subordinate, Deputy Commissioner Sherman, who was the DTF ethics officer, failed to tell Megna about Billet’s use of an alias.

Sherman in her testimony admitted that in retrospect the use of an alias by Billet was “stupid” and the “wrong thing to do.” Megna, who only learned of Billet’s use of an alias when it was reported in the news media, testified that he thought it was “ridiculous.” Contradicting Billet’s stated justification for the alias, Megna testified that Billet using

her actual name in e-mails would not have undercut his authority. “[T]o my view, it would have been an advantage to have her on clearly as herself.”

Sherman testified that it was “unusual,” but certainly a benefit to DTF, for a person “at the top of the agency” to take an interest in working on the Clear Language Initiative. Deputy Commissioner Sherman testified that she considered Billet a “very ethical, very dedicated public servant,” but said she understood how it could appear that Billet was given preferential treatment in designing post-retirement telecommuting employment. “Was she given special treatment? Yes. She was my boss, she was the commissioner. I wanted to make this transition work and I wanted a productive employee working on the Clear Language Initiative . . . Preferential? Not exactly, because there really wasn’t anybody else that we knew of that was available to do this job.” Sherman added, “I really assumed it would get vetted before it happened.” “We weren’t going to go ahead if he [Megna] didn’t approve,” Sherman stated.

In retrospect, Sherman testified, “it was ill advised” for Billet to effectuate her own post-retirement plan at DTF. However, Sherman said she felt certain that no rules or laws were violated and believed that “we thought we were getting a bargain for the taxpayer’s dollars in terms of the work that we were going to get out of a talented person.”

#### Billet’s Post-Retirement Work Activities

On March 6, 2008, Billet commenced her employment with DTF as a Senior Attorney, working two days a week and earning an annual salary of approximately \$28,000. Records examined by the Inspector General show she worked regularly, editing or writing more than 50 documents for the Clear Language Initiative. She communicated

regularly with her DTF supervisor, Patrick Barnett-Mulligan. As a reinstated employee, Billet also qualified, as did thousands of other state workers, for a longevity bonus. Listed on the payroll as Barbara Billet, working part-time, she was paid \$1,000, 40 percent of the \$2,500 bonus for which a full-time employee would be eligible.

On June 23, 2008, the news media first reported Billet's post-retirement employment.<sup>22</sup> On June 25, 2008, a DTF spokesman stated publicly that Billet would cease using her alias and that her employment arrangement was under review by DTF. Billet resigned her position on July 28, 2008, during the Inspector General's investigation.

Megna testified, in an agency "of 5,000 people with enormous responsibilities to collect revenue in very difficult fiscal times, you cannot even have the hint of management kind of doing things to benefit themselves down the line, creating special privileges for themselves that are not available to other employees...It's not the way we manage the department. I don't believe it's the way Barbara managed the department when she was there, and certainly not what I want to do."

## **IV. FINDINGS AND RECOMMENDATIONS**

### **A. Barbara Billet**

The Inspector General determined that Barbara Billet, while Executive Deputy Commissioner of the Department of Taxation and Finance, directed DTF's actions to secure tenured civil service positions for herself and chosen others in violation of the state Civil Service Law. Further, Billet, while Acting Commissioner, used the position she had created for herself as a means of arranging her own post-retirement employment

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<sup>22</sup> Brendan Lyons, "Drawing state pay from a distance" in the Albany Times Union.

with DTF. Compounding an appearance of impropriety, Billet's post-retirement work was conducted entirely by telecommuting, a privilege not granted to any other current or former DTF employee. Moreover, Billet attempted to conduct her post-retirement work outside the purview of others at DTF by using an e-mail alias.

The Inspector General found that the then newly appointed DTF Commissioner, Robert Megna, was aware of, and approved, Billet's post-retirement employment. The evidence also demonstrates that Billet completed the work for which she was paid. Notably, however, Billet failed to disclose to Megna a number of significant, directly relevant facts. These included the manner by which she had secured her hold item, the uniqueness of her telecommuting agreement, and that she would be operating under an e-mail alias to conceal her identity to the majority of DTF employees.

The evidence gathered by the Inspector General during this investigation supports the conclusion that Billet's conduct violated the following sections of the state Public Officers Law: section 74(3)(d), which provides that "no officer or employee of a state agency . . . should use or attempt to use his official position to secure unwarranted privileges or exemptions for himself or others;" section 74(3)(f), which states that "an officer or employee of a state agency . . . should not by his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties. . . ."; and section 74(3)(h), which states that "An officer or employee of a state agency should endeavor to pursue a course of conduct which will not raise suspicion about the public that he is likely to be engaged in acts which are violation of his trust."

The Inspector General is referring the findings relating to Billet's conduct to the New York State Commission on Public Integrity.

### **B. The Department of Taxation and Finance**

The Inspector General finds that manipulation and abuse of the civil service system for hiring attorneys by DTF was not confined to Billet's actions in 2006. Rather, this abuse has been endemic in DTF for more than a decade, rendering every Senior Attorney position filled under the legal specialties examination process suspect and possibly illegitimate.

The Inspector General has found no evidence that current Commissioner Megna was aware of this institutionalized abuse. The Inspector General recommends that DTF, with the assistance of the Department of Civil Service, comprehensively review and reform DTF's process for hiring attorneys to ensure compliance with the state Civil Service Law. The Inspector General specifically recommends that DTF employees Barbara Severance and Paul Lefebvre be barred from the process entirely based upon their complete and intentional disregard for the requirements of the state Civil Service Law.

The Inspector General will request that the Commission on Public Integrity review the actions of all DTF staff involved in the manipulation of the Civil Service system.

### **C. The Department of Civil Service**

Under state law, the Department of Civil Service has the 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.”

As set forth above, evidence indicates that DTF’s drafting of the profiles used in the examination which preceded the hiring of the named attorneys to Senior Attorney positions resulted in, at a minimum, substantial illegality and irregularity in their appointments. Therefore, the Inspector General refers this matter to the Department of Civil Service for such action as it deems warranted.

The Inspector General further refers these findings to the Department of Civil Service for appropriate action to determine the extent of abuse within DTF.

The Inspector General further recommends that the Department of Civil Service, in consultation with the Inspector General, review 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. The Inspector General recommends that the Department of Civil Service, in collaboration with the Inspector General, conduct further investigation as warranted.

The Inspector General further recommends that the Department of 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.

The Inspector General will assist in this further inquiry as requested by the Department of Civil Service.

**D. The Office of the Attorney General**

The Inspector General is forwarding a copy of this report to the Office of the Attorney General for its review.

**V. AGENCY RESPONSES**

Responses to the Inspector General's findings and recommendations from the Department of Taxation and Finance and the Department of Civil Service are attached.



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

ROBERT L. MEGNA  
COMMISSIONER

March 23, 2009

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

Dear Mr. Fisch

This is in response to your "Report on the Abuse of the Civil Service System by the Department of Tax and Finance and Acting Commissioner Barbara Billet." In your report, you find that former Acting Commissioner Billet and a few other Department employees repeatedly contrived profiles aimed at chosen candidates in order to secure hold items for specific attorneys in exempt positions.

You have my commitment, and the commitment of my entire executive staff, that the improper hiring practices that occurred will not be repeated. The actions you describe were wrong and we repudiate the past actions of the few members of our Department, most of whom have since retired, who were involved.

Working closely with the Department of Civil Service, we will fully comply with their recommendations as well as undertake a comprehensive review and reform of our process of hiring attorneys in order to guarantee future compliance with the Civil Service Law. We are evaluating disciplinary actions to be taken against those who failed in their duties, and we will support any action with respect to the individuals appointed that the Civil Service Department deems appropriate to remedy the situation. At a minimum, we will change our hiring practices to ensure events such as you described will not occur in the future. We will also implement your recommendation that we entirely bar those who remain in our Department who were involved in these misdeeds from any future hiring process.

Integrity is essential not just to this Department's hiring practices but to everything this Department does. We note that the failure of a few employees to discharge their duties faithfully does not represent the integrity of the Department's workforce in general.

In your report, you also take issue with the terms of Barbara Billet's employment after her retirement. When the nature of her employment was raised last year, we took immediate remedial action, announcing to the Department at large her continuing role, establishing a policy barring the use of an alias on internal e-mail, requiring the posting of all competitive items, and finalizing a memorandum of understanding with PEF to permit up to 100% telecommuting in a pilot program. These actions were all completed by July 2008. Since then, we have entered into another memorandum of understanding with PEF for an additional pilot program along these lines.

Again, we are committed to the integrity of the Civil Service system and will take all necessary actions to resolve this situation. I will personally supervise this process to ensure proper management review and implementation.

Thank you for sharing your findings and recommendations with us.

Sincerely,

A handwritten signature in cursive script that reads "Robert L. Megna".

Robert L. Megna



DAVID A. PATERSON  
GOVERNOR

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NANCY G. GROENWEGEN  
COMMISSIONER

March 23, 2009

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

RE: Report on Abuse of the Civil Service System  
by the Department of Taxation and Finance and  
Acting Commissioner Barbara Billet

Dear Inspector General Fisch:

Thank you for sharing a draft of the above-referenced report with the Department of Civil Service ("Department") and providing us with an opportunity to respond. We are stunned by the finding that there was an institutionalized disregard at the Department of Taxation and Finance (DTF) for the Civil Service Law and by the deliberate manipulation of the civil service examination process which was orchestrated by the highest ranking official at the DTF to secure a permanent civil service position for herself and selected other attorneys. The Department, in administering the merit and fitness system, must rely on the integrity of those human resource and program officials within the agency who share responsibility for carrying out the examination process.

The Report presents substantial evidence of illegality and irregularity in the examination process which resulted in the hiring of the named attorneys to Senior Attorney positions. Therefore, the Inspector General recommends that the Department take such action as it deems warranted with respect to these appointments. The Department will promptly conduct an independent review of the entire record to determine if the illegality or irregularity warrants the revocation of these individual's permanent appointments in accordance with section 50 (4) of the Civil Service Law.

The Department, with regard to the second and third recommendations of the Inspector General, will examine the DTF practices for appointment to attorney positions and determine the full extent of abuse and manipulation within that agency. The Department will work with the DTF to reform its process for hiring attorneys to ensure that there is no future misuse of the examination.

As recommended by the Inspector General, the Department has already identified a number of modifications to the examination process to prevent future abuse. In addition to existing safeguards, the Department will promptly implement the following:

- Include a written warning to all candidates that they are participating in a civil service examination and the information they provide to the Department as part of the examination process is confidential and cannot be shared with any other person or agency. A written attestation of no such disclosure will be required.

- Limit a candidate's opportunities to update his or her examination information to once every year, except for defined situations such as obtaining a license and/or certification.
- Require the profile submitted by an agency to be signed by the user agency's Commissioner, Executive Deputy, Counsel or other high-level individual attesting to compliance with the Department's conditions for participation in the examination. The user agency will not be allowed to designate this assignment to lower-level staff.
- Provide refresher training to all user agencies on the Legal Specialties examination and creation of the candidate profile, at regular intervals and on an as-needed basis.

Finally, the Department will conduct an investigation of the records maintained by the Department to determine whether there is misuse of the examination in other State agencies.

While we concur with the findings and recommendations in the Report, we believe it necessary, however, to distinguish the DTF's misuse of the Legal Specialties examination process from certain personnel practices referenced in the report, specifically the granting of leaves and the satisfactory completion of the probationary period while on leave. These practices are important human resource management tools and are permissible under the Civil Service Law, rules and policy. A discretionary leave allows non-tenured employees who wish to have a career in State service to obtain permanent appointments in the competitive class and take promotion examinations to advance.

Similarly, allowing service in a higher level position to count as probationary service in a lower level position is a permissible and an important personnel tool. This practice is based upon the well founded premise that if an employee can perform the higher level duties in a satisfactory manner he or she can also perform satisfactorily the work of a lower level position having related duties and qualifications. The practice is necessary in a merit and fitness system to allow the employee an opportunity to progress in his or her career while at the same time allowing the agency more flexibility to meet its operational needs.

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

Sincerely,



Nancy G. Groenwegen  
Commissioner