



STATE OF NEW YORK
OFFICE OF THE STATE INSPECTOR GENERAL
Final Report
January 15, 2009

SUMMARY OF FINDINGS/RECOMMENDATIONS

An investigation by the New York State Inspector General determined that State Liquor Authority Administrative Law Judge Robert Karr utilized state resources to support his private law practice during work time, and violated time and leave regulations by arriving late to work but crediting himself for a full work day. The Inspector General recommended the Authority take appropriate disciplinary action against Karr. The Authority should also ensure that Karr and other employees submit time sheets that accurately reflect their work schedules. Finally, the Authority should require its administrative law judges and similarly-situated employees to review rules regarding outside work and about time and leave regulations.

The Inspector General also found that Chief Administrative Law Judge Roger Rock inadvisably conducted his own investigation of Karr's alleged misconduct. The Inspector General recommended the Authority review Rock's conduct.

The Authority advised the Inspector General that Rock's employment has been terminated and that Karr will be disciplined.

ALLEGATIONS

On April 28, 2008, State Liquor Authority Chief Administrative Law Judge Roger Rock alleged to the Inspector General that Karr had used state resources and time to support his private law practice. Rock also suspected that Karr may have abused time and leave regulations before Rock joined the Authority in December 2007. Rock also informed the Inspector General that Karr had requested that he be permitted to leave work early on Fridays without charging his accrued vacation or personal leave time.

SUMMARY OF INVESTIGATION

The Inspector General interviewed Chief Judge Rock, Judge Karr, and former Chief Administrative Law Judge Steven Kalinsky. The Inspector General also conducted

a forensic analysis of Karr's computer and e-mail to examine relevant documents and messages. Additionally, the Inspector General reviewed Karr's timesheets and Authority building access card data.

Chief Judge Rock informed the Inspector General that he first became aware of Karr's apparent misuse of state resources during work time on April 14, 2008, when he found letters that Karr had discarded that appeared to relate to Karr's private law practice. Rock, who subsequently provided the documents to the Inspector General, noted that the letterhead contained Karr's name and New Jersey home address, but listed only Karr's State Liquor Authority telephone and fax numbers.

During the week of April 21, 2008, while Karr was on vacation, Rock, without conferring with the Authority's counsel or contacting the Inspector General, conducted his own investigation. Rock sought documents on and in Karr's desk and in his file cabinet to determine whether Karr was working on his private law practice during the state workday. He also reviewed Karr's desk calendar entries. Rock copied all the documents that he found and placed the copies in a box without noting specifically where he had found them. Over the next few weeks, he copied additional documents and some of Karr's floppy disks. He obtained Karr's work telephone records and made printouts of a log of numbers dialed by people using the office fax machine near Karr. On three occasions (once on May 9, 2008, and twice on July 1, 2008), Rock recorded Karr's voice from the open cubicle adjacent to Karr's when Karr appeared to be speaking to clients on his Authority phone. During the conversations, Karr raised a number of substantive and administrative private practice issues. Rock provided the recordings from his recorder to the Inspector General.

Rock informed the Inspector General that, on May 9, 2008, he observed Karr working on clients' wills on his state computer. At Rock's request, Karr gave him the will drafts, and Rock provided them to the Inspector General. Despite being confronted with the aforementioned evidence, in a conversation a few days after that incident, Karr nevertheless told Rock that he was not running a law practice from his office at the Authority.

The Inspector General examined Karr's state-issued computer, and recovered 59 separate documents that related to Karr's private law practice, as well as several duplicate copies of those documents. The Inspector General identified 11 e-mails related to drafts of wills apparently produced for Karr's private clients.

In regard to the allegation of time abuse, the Inspector General examined attendance records from the two-and-a-half year period from September 8, 2005, through May 14, 2008, to determine if Karr had been absent from work without reflecting such on his timesheets. Comparing his entries on the state's Leave and Accrual Tracking System, "LATSnet," to records of entry into the building where Karr worked, the Inspector General found that Karr had not swiped his entry card on nine days when he had indicated on his LATSnet entries that he had been present at work. During the same three-year period, card swipe data indicated that Karr had arrived regularly at approximately 10:00 a.m., whereas Karr's LATSnet entries reflected that he had arrived regularly at 9:00 a.m.

On September 10, 2008, the Inspector General interviewed Karr, who stated that his regular work hours for the past several years have been from 9:00 a.m. to 5:00 p.m., with a 30-minute lunch period and two additional 15-minute breaks. When confronted with records that appeared to reflect his having credited himself on multiple occasions with a day's work when he did not swipe in to work in the morning, or in at lunch, Karr offered several excuses for the apparent anomaly. First, Karr suggested that, on some occasions when he enters the Authority's office building, the turnstile light is already green before he swipes, so he can enter without having to do so. Second, because the guards at the building know him, they would sometimes admit him by swiping their own cards. Third, he suggested that one or more of the anomalies might have resulted from his clerical error in entering his attendance data. Finally, he added that he was "confident that [he] never put in for an entire day when [he] didn't appear at work." The Inspector General also confronted Karr about the apparent conflict between his LATSnet records and his usual entrance time as recorded when he swiped his card at the Authority's entrance. Karr offered no plausible reason for the conflict.

Karr told the Inspector General that he did operate a private law practice, and had done so for years with the approval of the Authority. He claimed to have taken vacation time on the relatively few occasions when he has needed to leave early to attend to his law practice. Karr further admitted to having used his office computer, e-mail, and fax machine, but claimed that he had done so on few occasions during his scheduled breaks. He further claimed that no one had informed him about any Authority policies against conducting private practice work while at the office; that he is aware of no policy against doing so; and that the forms signed by his supervisors over the years contained no preclusion against doing so.

Karr's Authority personnel file contains numerous requests from Karr to engage in an outside profession, and the Authority's authorizations to do so. In each of his requests, Karr stated that he would be conducting his law practice after work. For example, in March 1997, Karr described his work schedule as "after work sometimes." Notably, contrary to Karr's assertions to the Inspector General, the Authority's approval of that request, which was sent to Karr, unambiguously states that "[a]ctions associated with your outside activity are not permitted during state work hours and should not interfere with your official duties. It is absolutely imperative that no State resources of any type be used to accomplish your outside activity. This applies to telephones, office supplies, postage, photocopying machines, computers, etc. as well as staff support assistance."

Similarly, Karr's personnel file contains a document, signed by Karr on October 21, 1999, indicating that he received the agency's Computer Usage Policy, which states, "Use of the agency computer hardware and software is restricted to official agency business. **Personal use of agency computer hardware and software is prohibited** [emphasis in original]. This restriction includes the use of the Internet and Electronic Mail features, which also may be used only for Official State of New York business."

Karr admitted that the 11 e-mails on his computer that appeared to relate to his law firm, in fact, did. He also admitted that all but five of the 59 questionable documents found on his computer were related to his law practice. Finally, he admitted knowing that a statement of caution regarding computer use appears when a user signs on to a

computer at the Authority's offices. (That caution reads, "Use of the agency computer hardware and software is restricted to official agency business. Personal use of agency computer hardware and software is prohibited. By pressing OK and then logging on to this computer, you are hereby certifying that you have read and agree to the Agency's Computer Usage Policy.") He claimed, however, that until recently, he had not noticed the warning because his computer keystrokes somehow bypassed it. He also asserted that, until recently, because the fax and photocopy machines lack any kind of notice prohibiting usage for personal business, he had not considered their use to be proscribed.

Karr claimed that his understanding of the office policy on the use of equipment for personal business changed on July 7, 2008, when Rock confronted him regarding his use of office equipment and on working on his outside law practice. He advised the Inspector General that Karr has refrained from using any office equipment or working on any private matters since then.

On September 10, 2008, after being interviewed, Karr wrote to the Inspector General. In his letter, he admitted that, during the tenure of former Chief Judge Steven Kalinsky, his arrival time was "approximately 10:00 a.m." He noted, however, that "[e]veryone in the Hearing Bureau arrived at that time or later." Moreover, he argued that, not only was Kalinsky "aware of everyone's arrival time and allowed it," but Kalinsky himself arrived well after 10:00. (Former Chief Judge Kalinsky told the Inspector General that he was unaware of Karr's late arrival time, and believed Karr had arrived early.) Karr also noted that, with Rock joining the Authority, the practice changed. Karr went on to argue that singling him out would be "unfair," and that his union contract precluded discipline for non-criminal matters over one year old.

FINDINGS AND RECOMMENDATIONS

Administrative Law Judge Karr

The Inspector General found that Robert Karr conducted private law firm work during work time; utilized the state's computer and other equipment to do so; and falsely claimed that he had not been notified that personal use of state equipment is prohibited.

The Inspector General also found that Karr's timesheets for over two and a half years did not accurately reflect the hours he actually worked. Specifically, the Inspector General found that Karr had, for some time until Rock joined the Authority in December 2007, engaged in a practice of arriving late to work but crediting himself for a full work day. Others may also have engaged in this practice, but, due to the passage of time, the Inspector General was not able to confirm that Karr was absent for the nine days when he credited himself with having worked but did not swipe his card.

While Chief Judge Rock reported that Judge Karr appeared to have discontinued his use of state time and resources for his personal business, the Inspector General recommended that the Authority take appropriate disciplinary action against Karr. The Authority should also take appropriate action to ensure that all Hearing Bureau staff members' actual work schedule is reflected accurately on their computerized time

records. Finally, the Inspector General recommended that the Authority remind all administrative law judges and similarly situated employees about rules regarding outside work and time and leave regulations.

Chief Administrative Law Judge Rock

The Inspector General finds that Chief Judge Rock's zeal led him to conduct an ill advised investigation into Karr's activities. Dependent on office policy, practice, and attendant circumstances, a state employee may have a limited expectation of privacy in certain areas of their office. Even if the employee possesses such an expectation, and suspicion of work-related misconduct may justify a search, Rock failed to discuss his suspicions with the Authority's counsel before conducting his search or, more appropriately, to contact the Inspector General as mandated by law. Considering Rock's position in the Authority and his significant experience as an attorney, his decision to conduct his own searches and tape record Karr's telephone conversations represented poor judgment, and could have been detrimental to the investigation. In order to avoid compromising the investigation, the Inspector General did not examine any documents that Rock seized under questionable authority. The Inspector General recommended that the Authority evaluate Rock's conduct.

Response by the State Liquor Authority

By letter dated December 23, 2008, the Authority advised the Inspector General that Rock's employment was terminated on December 16, 2008, and that disciplinary action will be taken against Karr. The Authority also advised that it will provide training to all agency staff on the laws and rules concerning outside employment and to ensure that actual work schedules are reflected accurately in computerized time and attendance records.