

State of New York
Office of the Inspector General



Investigation of Conflicts of Interest
at the Division of Veterans' Affairs

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Inspector General

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EXECUTIVE SUMMARY

The New York State Division of Veterans' Affairs (DVA) referred to the Inspector General complaints alleging that DVA employees Tracy Kinn and Pamela Tanner were improperly named beneficiaries of the estates of two veterans who were DVA clients. A separate complaint alleged that Kinn failed to submit a benefit form within the requisite time, preventing a third veteran from receiving benefits to which he was entitled.

The Inspector General's investigation, which examined conduct during the period 1999-2012, revealed that DVA lacked agency policy pertaining to the interaction of employees with veterans who use DVA services, including employees' receipt of gifts from veterans.

The Inspector General also determined that Kinn had a personal relationship with a veteran while she was assisting him as a DVA client. Kinn also accepted from the veteran gifts of significant value, including the majority of his estate upon his death. The investigation further found that Tanner developed a personal relationship with a veteran and his wife during the time she assisted the veteran as a DVA client. Tanner accepted a monetary bequest from the veteran's wife upon their deaths.

Although DVA counseled Kinn regarding her relationship with the veteran, it took no action to ensure that she did not assist him on DVA matters in the future. The Inspector General shared these findings with DVA during the pendency of this investigation. DVA, as a result, adopted new agency policy related to conflicts of interest that may arise from the interaction of DVA Counselors and veteran clients, and to the receipt of gifts by Counselors from veteran clients.

Regarding the separate complaint, the Inspector General's investigation determined that the veteran provided a "Declaration of Status of Dependents" Form 21-686c to Kinn on or before March 29, 2010, and that she failed to submit the form to the U.S. Department of Veterans Affairs within the requisite time. As a result, the veteran lost \$5,273 in dependent benefits. Having counseled Kinn just three weeks earlier about a similar instance of negligence, DVA did not ensure that she implemented an effective tracking system for such cases, as DVA had recommended in the counseling.

As recommended by the Inspector General, DVA advised that it will implement enhanced supervisory review of pending benefit applications.

The Inspector General is referring these findings to the Joint Commission on Public Ethics.

INTRODUCTION AND BACKGROUND

The New York State Division of Veterans' Affairs

The New York State Division of Veterans' Affairs advocates on behalf of New York veterans and their families to ensure they receive benefits granted by law for service in the armed forces. DVA maintains executive offices in Albany and a regional office in Buffalo. It also provides services at sites in United States Department of Veterans Affairs medical centers and state and local government facilities. DVA employs State Veteran Counselors (Counselors) to assist veterans or family members in completing applications, obtaining necessary documentation, and filing claims for federal, state, local, and private veterans' benefits. Counselors also assist veteran clients by responding to follow-up correspondence and, when necessary, appealing unfavorable rulings.¹

With respect to federal benefits, the United States Department of Veterans Affairs requires veterans to submit a representative appointment. DVA requires that veterans availing themselves of its assistance designate DVA, as an agency, and not specific Counselors, as their representatives. Representative appointments can be terminated at any time by the veteran, and automatically terminate upon the veteran's death.

New York State Public Officers Law Provisions and DVA Practices Regarding Conflicts of Interest

Provisions of the New York State Public Officers Law relating to state government employee conduct bear on the issues examined in this investigation. Public Officers Law section 73 addresses the acceptance of gifts, and states in pertinent part:

¹ DVA's functions and programs are described on the agency's website, <http://veterans.ny.gov/>.

No . . . state officer or employee . . . shall, directly or indirectly . . . solicit, accept or receive any gift having more than a nominal value, whether in the form of money, service, loan, travel, lodging, meals, refreshments, entertainment, discount, forbearance or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence him, or could reasonably be expected to influence him, in the performance of his official duties or was intended as a reward for any official action on his part.²

In addition, section 74 (“Code of Ethics”) of the Public Officers Law provides:

An officer or employee of a state agency, member of the legislature or legislative employee 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, or that he is affected by the kinship, rank, position or influence of any party or person.³

The Inspector General’s investigation found that during the time of the events examined in this investigation, DVA relied solely on the Public Officers Law, which addresses standards of ethical conduct by state employees in general terms. DVA employees were provided with a copy of the relevant sections of the law at the time of their hiring, and required to sign an attestation acknowledging that they have read the sections and “agree to conform to the provisions thereof.”

At the time, however, DVA lacked specific agency policy regarding an employee code of conduct, including such issues as the receipt of gifts from, or personal relationships with, agency clients. When questioned about this deficiency, William Krauss, the DVA Acting Director at the time of this investigation, stated that because DVA employees were subject to the Public Officers Law, the agency relied on the law in lieu of policy on these issues.⁴

DVA clearly recognized the importance of employees disclosing legal or fiduciary relationships with veterans that could result in conflicts of interest because DVA required such disclosure by employees at the time of their hiring.⁵ This disclosure requirement, however, was not formalized in policy, and, significantly, DVA did not require employees to disclose such relationships that developed after their initial hiring.

² N.Y. Pub. Off. Law § 73(5)(a) (McKinney 2012).

³ N.Y. Pub. Off. Law § 74(3)(f) (McKinney 2010).

⁴ Eric J. Hesse was appointed DVA Director on March 11, 2013.

⁵ The employees must disclose if they have been “designated, assigned or acted as a legal guardian, committee, or fiduciary” of a veteran or as “executor, administrator, executrix or administratrix of any will, estate or trust fund” of a veteran.

THE INSPECTOR GENERAL FOUND DVA COUNSELORS TRACY KINN AND PAMELA TANNER ACCEPTED GIFTS OR BEQUESTS FROM VETERAN CLIENTS, AND KINN ACTED NEGLIGENTLY IN ANOTHER VETERAN'S BENEFIT CASE

DVA Counselor Tracy Kinn's Relationship with a Veteran Client

Tracy Kinn commenced employment as a DVA Counselor in August 2001, assigned to the western New York region. At the time of her hiring, Kinn completed and signed a DVA form stating that she had no legal or fiduciary relationship with a veteran. Kinn signed at the same time an acknowledgement of her receipt of the Public Officers Law. Months later, in early 2002, a World War II veteran, executed an appointment agreement designating DVA as his representative with regard to federal veteran benefit claims, and Kinn began assisting him with his claims. Specifically, on April 15, 2002, the veteran, with Kinn's assistance, applied to the United States Department of Veterans Affairs for increased payments for a disability he suffered in the war. On April 16, 2002, the veteran, with Kinn's assistance, submitted a new claim stemming from other service-related wounds.

Kinn had a close personal relationship with the veteran during the time DVA represented him and she assisted him with his claims. According to Kinn, she first met the veteran in 1998 when she was attending college. Later, Kinn and the veteran socialized often, and Kinn regularly assisted him in his personal affairs. Among other help, Kinn managed the veteran's personal finances and arranged lawn care and cleaning services for him. The veteran also spent holidays with Kinn and her husband. These activities are not part of the job duties of a DVA Counselor.

On September 2, 2004, while DVA was still his designated representative, the veteran granted Kinn his personal Power of Attorney and designated her as his Health Care Proxy, authorizing her to act on his behalf with regard to his personal matters. No evidence exists that the veteran was not competent to take these actions. As noted, DVA at the time only required new employees to disclose such relationships at the time of their hiring. DVA policy did not require Kinn to disclose, and she did not disclose, these relationships with the veteran, which arose more than two years after her hiring. Notably, if a broader disclosure policy had been in place, Kinn would have been required to report her relationship with the veteran and, at the very

least, DVA could have taken steps to ensure that a Counselor other than Kinn represented the veteran.

Later in 2004, Kinn became aware that a friend of the veteran had raised questions about her relationship with him. As a result, Kinn requested the veteran to revoke his grant of Power of Attorney to her and his designation of her as his Health Care Proxy. The veteran, through his attorney, revoked these powers on December 29, 2004. Kinn's DVA supervisor received a complaint about her relationship with the veteran from a social worker at the United States Veterans Administration Medical Center, where the veteran had received care. On May 16, 2005, DVA conducted a counseling session with Kinn. After the counseling session, Harry Rudy, a Senior State Veteran Counselor, emailed William Brennan, then-DVA counsel and ethics officer, reporting that during the counseling he had advised Kinn of the "appearance of 'conflict of interest' this relationship could have with her and [DVA]." According to Rudy's email, Kinn was confrontational when asked about her relationship with the veteran, stating that he was "a personal friend" and that it was "none of [DVA's] business." Nonetheless, Rudy noted that Kinn advised during the counseling session that the veteran already had revoked his grant of Power of Attorney to her and his designation of her as his Health Care Proxy. In a letter to DVA dated May 17, 2005, the day following the counseling session, the veteran expressed his displeasure about the revocations, noting his long relationship with Kinn whom he characterized as "my family" and the "only trusted person to help me with my wishes."

Notably, DVA, despite its knowledge of the personal relationship between Kinn and the veteran, and its own stated concerns about the relationship, did not take any action, including increased supervision of, or direction to, Kinn, to ensure that Kinn did not assist him on official veteran matters in the future. Further, even though it recognized what was, at a minimum, an apparent conflict of interest, DVA did not refer Kinn's conduct to the Inspector General or the then-Commission on Public Integrity (the predecessor to the current Joint Commission on Public Ethics).

Kinn Received Substantial Gifts and an Inheritance from the Veteran

The Inspector General's investigation further revealed that Kinn, while employed as a DVA Counselor, accepted gifts from the veteran. Most significantly, on March 13, 2008, the veteran gave Kinn his car, a 2006 BMW valued at approximately \$23,000. During the same month, the veteran opened a joint bank account with Kinn funded entirely by his money. The investigation uncovered that while Kinn primarily used the account to pay the veteran's bills, she also used it to pay a number of her own personal expenses. For example, on March 18, 2010, Kinn used \$2,438 from the account to pay for a personal expense she had recently incurred.

At about that time, the veteran revoked his appointment of DVA to represent him on veteran matters, effective March 20, 2008. However, Kinn's personal relationship with the veteran continued, as did her acceptance of benefits from him. For example, Kinn used money from the joint bank account to pay her personal utility bills for October 2008 and March 2009, totaling \$190, and her personal insurance bills for January, February, April, and August 2009, totaling \$319. In addition, according to Kinn, the veteran gave her "books and sentimental things," including his mother's china prior to his death.

The veteran died in May 2010, and his will designated Kinn as executrix and primary beneficiary. Accordingly, Kinn inherited the majority of the veteran's estate, which included his house, stocks, and other assets. The veteran's family members filed legal action challenging the will, but the suit was settled in August 2011 with the will remaining in effect.

When interviewed under oath by the Inspector General, Kinn initially claimed that she had not accepted any gifts from the veteran prior to his death. With respect to the veteran, she stated, "He didn't give it to me. He was at the point where he couldn't drive it anymore so he wanted me to drive it." Later in the interview, she admitted that she received the car as a gift from the veteran and that she sold it prior to his death. Similarly, when asked about her use of the joint bank account, Kinn first answered that she only used the account to pay the veteran's bills, but, upon further questioning, admitted that she had used the account to pay some of her own expenses.

In the interview, Kinn acknowledged that she did not report the gift of the car to her DVA supervisor, claiming that she did not think she was required to do so. Indeed, as noted, DVA lacked policy regarding gifts received by agency employees from veteran clients. Kinn additionally stated that she believed that she was required to file a report annually listing any gifts that a veteran client gave her, but she believed that she only needed to report gifts over \$75 in value.⁶ Regardless of her stated belief that she was required to report gifts over \$75, Kinn conceded that she had not reported the veteran's gift of his car, his paying her various bills, or his testamentary disposition as gifts, all of which far exceeded \$75. She added that she did not consider her receipt of gifts from friends such as the veteran a "veteran issue." It is indisputable, however, that the veteran was a veteran client of DVA when Kinn received the car and possibly other gifts from him.

In addition to the gifts she accepted from the veteran, Kinn also received gifts from other DVA veterans throughout her employment, including gift cards⁷ and memorabilia (plaques and other wall hangings). When questioned by the Inspector General about the gift cards she received, Kinn stated that she often gave the gift cards to other veterans or used them to purchase things such as coffee for visitors. She acknowledged, however, that she occasionally used the gift cards to purchase items for herself.

Other DVA employees also advised the Inspector General that they frequently find themselves in the awkward position of being offered small gifts from veteran clients who are grateful for the assistance provided in obtaining benefits. None of the employees admitted accepting the gifts.

DVA Counselor Pamela Tanner's Relationship with a Veteran Client

In the course of investigating the allegation pertaining to Kinn, the Inspector General received from DVA a complaint that DVA Counselor Pamela Tanner had inappropriately befriended a veteran client and received a portion of the veteran's estate after his death.

⁶ Kinn's assertion appears to be a reference to an outdated provision of the Public Officers Law. Prior to 2008, the Public Officers Law, among other provisions, prohibited state employees from accepting gifts of more than \$75 from disqualified sources. The current law replaces the \$75 provision with the stricter prohibition barring employees from accepting "any gift having more than a nominal value."

⁷ The Inspector General was unable to determine the value of the gift cards.

Tanner commenced employment as a DVA Counselor in the Syracuse area in February 1999. At the time of her hiring, Tanner signed an acknowledgement of her receipt of the Public Officers Law, but only partially completed the disclosure form regarding legal or fiduciary relationships with veterans.⁸ In December 1999, Tanner began assisting a World War II veteran and former prisoner of war, with his benefit claim. Tanner stated she was not acquainted with the veteran prior to December 1999, at which time she also first met the veteran's wife.

Tanner related that from December 1999 to June 2001, she met with the veteran approximately six times at his residence to assist him in filing a claim for benefits. According to Tanner, after completion of the claim process, she remained in contact with the veteran and his wife, and developed a relationship with the couple that entailed assisting them with grocery shopping, clothing purchases, lawn care, and other errands and household chores. For a time, Tanner's son resided with the veteran and his wife. As noted, such activities are not part of a DVA Counselor's job responsibilities. Tanner stated she had limited contact with the veteran and his wife after 2005, when the veteran moved into a nursing home and his wife received care from neighbors.

Tanner stated that at some point after 2010 she had a conversation with the veteran's wife, in which she was told that she would be named as beneficiary of a mutual fund owned by the veteran and his wife. According to Tanner, she told the veteran's wife not to take such action. Tanner stated that she heard nothing more about the matter until after the deaths of the couple, when she was contacted by a third party and informed that she would receive a bequest from a mutual fund of approximately \$28,000. The veteran died in February 2011; his wife died a month later. DVA learned of the bequest to Tanner when it received a complaint from a relative of the veteran after his death.

Both Kinn and Tanner are still employed as DVA Counselors.

⁸ Tanner completed the section of the form, indicating that she had not been "designated, assigned or acted as a legal guardian, committee, or fiduciary" of a veteran, but did not complete the section addressing designation as "executor, administrator, executrix or administratrix of any will, estate or trust fund" of a veteran. Tanner signed the incomplete form.

Kinn's Negligence Cost Another Veteran \$5,273 in Benefits

In 2006 the U.S. Department of Veterans Affairs issued a decision awarding a different veteran benefits based upon service-related injuries at a rate of 10 percent for each of his knees. In November 2009, Kinn, acting on the veteran's behalf, submitted a claim for additional benefits based upon the veteran's knee replacement surgery. On January 26, 2010, the veteran received a letter from the U.S. Department of Veterans Affairs notifying him that his entitlement had been increased to over 30 percent effective November 1, 2009. This letter also stated:

If You Have Dependents

Veterans who have service-related conditions with a combined evaluation of 30 percent or more may receive an additional allowance for their dependents . . . Before we can pay you additional compensation for any dependents, we need the following:

VA Form 21-686c, "Declaration of Status of Dependents." Please fill out every blank on the form that applies to you.

When and Where to Send the Information or Evidence

Send the information or the evidence to the address at the top of this letter . . . We may be able to pay you from the date we received your claim, if we receive the information or evidence within one year from the date of this letter and we decide that you are entitled to VA benefits. If we do not receive the evidence within one year from the date of this letter, we can only pay you from the date we receive the evidence.

The veteran advised the Inspector General that after receipt of this letter, he hand-delivered the Form 21-686c to Kinn on or about February 1, 2010. The veteran further stated that in March 2010, Kinn advised him that someone in her office had shredded the wrong pile of paperwork and that his claim form may have been included in that pile. According to the veteran, Kinn asked him for a copy of the form for resubmission. The veteran stated that in response, on March 29, 2010, he scanned and emailed Kinn a copy of the claim form.

When interviewed by investigators from the Inspector General's Office, Kinn claimed that the veteran did not deliver the Form 21-686c to her. She further denied that anyone mistakenly shredded documents in her office or telling the veteran that such an action had occurred. Kinn further stated that the veteran told her and her supervisor that he submitted the

form directly to the U.S. Department of Veterans Affairs. Kinn claimed that she first received the VA Form 21-686c from the veteran on May 15, 2011, and that she submitted it that day. This was, however, past the one-year period required by the U.S. Department of Veterans Affairs in order for the veteran to receive benefits from the date of his claim. As a result, the veteran lost approximately \$5,273.

Based upon the conflicting testimony and lack of supporting evidence, it is impossible to definitively establish whether the veteran hand-delivered the Form 21-686c to Kinn. However, a forensic analysis of the veteran's home computer performed by the Inspector General's Office confirmed that on March 29, 2010, within the one-year period, the veteran sent an email to Kinn, properly addressed, with the completed Form 21-686c attached. Kinn claimed that she did not receive this email, but acknowledged that she may have missed it.

Regardless of whether Kinn received the form from the veteran by hand, she clearly did so by email on March 29, 2010, well within the one-year period. Moreover, she failed to file the form with the U.S. Department of Veterans Affairs. The Inspector General notes that DVA previously counseled Kinn, on March 5, 2010, for failing to file another veteran's claim in a timely manner, at which time DVA recommended that she implement a tracking system to ensure that such incidents do not occur in the future. Given Kinn's negligence subsequent to the counseling, it is clear that DVA did not ensure that she implemented an effective tracking system.

FINDINGS AND RECOMMENDATIONS

The Inspector General's investigation revealed that, at the time of the events examined in this investigation, serious deficiencies existed in DVA policy regarding conflicts of interest and acceptance of gifts. Notably, DVA lacked policy related to conflicts of interest that may arise from the interaction of DVA Counselors and veteran clients, or to the receipt of gifts by Counselors from veteran clients. Instead, DVA relied solely on provisions of the Public Officers Law that, in much more general terms, address these areas of employee conduct. The Inspector General is cognizant of the natural desire of Counselors to assist veterans, many of whom have a

myriad of serious needs, as well as the gratitude veterans often feel toward Counselors. Given this situation, the deficiencies that existed in DVA policy were significant.

The Inspector General's investigation found that Counselor Tracy Kinn had a long personal relationship with a veteran client and was the recipient of substantial gifts from him, including a car, the payment of personal expenses, and, ultimately, the majority of his substantial estate. After DVA learned through a third party of Kinn's legal and fiduciary relationships with the veteran, the agency counseled her regarding the conflict of interest issues resulting from these relationships. However, DVA did not take any action, including increased supervision of, or direction, to Kinn, to ensure that Kinn did not assist the veteran on DVA matters in the future. The investigation also revealed that Counselor Pamela Tanner developed a personal relationship with a veteran client and his wife, and was the recipient of a significant monetary bequest from the couple's estate. DVA learned of Tanner's receipt of a bequest from the veteran after his death.

The Inspector General notes that in December 2013, during the pendency of this investigation, these findings were shared with DVA. As a result, DVA adopted new agency policy related to conflicts of interest that may arise from the interaction of DVA Counselors and veteran clients, and to the receipt of gifts by Counselors from veteran clients. Provisions of the new policy include:

- All DVA employees are prohibited from directly or indirectly soliciting, accepting, or receiving any gift or bequest having more than a nominal value, under circumstances in which it could be inferred that the gift or bequest was intended to influence the employee, or could reasonably be expected to influence the employee, in the performance of official duties, or was intended to reward official action.

- Any gift or bequest received by a DVA employee from a client or former client or person to whom advice was rendered or services provided is prohibited.

- To avoid conflicts of interest, DVA employees are prohibited from assisting personal family members as part of their official duties.

As recommended by the Inspector General, DVA advised that it will provide training to staff in the new policy. To augment this training, the Inspector General will provide training on

ethics issues to DVA staff. DVA also will require employees to annually update disclosure of familial and close personal relations with veteran clients.

With respect to the separate matter involving a different veteran, the Inspector General determined that the veteran provided a “Declaration of Status of Dependents” Form 21-686c to Kinn on or before March 29, 2010, and that she failed to submit the form to the U.S. Department of Veterans Affairs within the requisite time. Kinn’s negligence resulted in the veteran being denied \$5,273 in dependent benefits to which he otherwise would have been entitled. Having counseled Kinn just three weeks earlier about a similar instance of negligence, DVA did not ensure that she implemented an effective tracking system for such cases, as DVA had recommended in the counseling.

As recommended by the Inspector General, DVA advised that it will implement enhanced supervisory review of pending benefit applications.

The Inspector General is referring these findings to the Joint Commission on Public Ethics.