## **CONFIDENTIAL**

OGIG Case #17-0177

**Vernon Downs Officials** 

May 22, 2020

Lisa Lee Acting Gaming Inspector General

Annette B. Almazan Special Assistant to the Gaming Inspector General

# Origin of Case

In November of 2017, this Office received a complaint from regarding Jeffrey Tallarino, former
Presiding Judge at Vernon Downs. The crux of the complaint was internally referred to Human Resources ("HR") for notification to the designated authority for such matters. however, continued to contact this Office on issues related to her initial complaint.
Nature of Allegation
alleged that Tallarino retaliated against her when she complained about his unprofessional demeanor and poor management of the office. Specifically, she claimed that Tallarino  Vernon Downs  provided a video of a phallic-shaped cake that Tallarino brought into the judges' stand in June 2017. She further alleged that when she complained about how Tallarino managed the office, he withheld her paychecks and tried to reduce the days she worked.  1. **Tallarino**  Tallarino**  Tallarino
Subsequently, reported that she was given a late start date for the 2018 Vernon Downs meet. Then in 2019, again reported that she was given a late start date for the Vernon Downs meet. She claimed that no one explained why she had received either of the late start dates and did not understand why other started earlier than her.
It should be noted that initial claims related to were referred by HR to the  However, this Office did investigate the claims of mismanagement of the Commission office at Vernon Downs, in particular, whether Tallarino and the other judges were conducting business professionally and according to Commission rules and regulations, whether the recommendations were
implemented as agreed upon, as well as if there was retaliatory action taken against
Investigative Action
As part of this investigation, Commission records were reviewed and interviews of Commission staff, including, but not limited to,  , Vernon Downs employee; and ,
<sup>1</sup> Commission employees assigned to racetracks are per diem and are only paid when they work.

### Relevant Statutes and Commission Policies and Procedures

#### Public Officers Law §74 – Code of Ethics

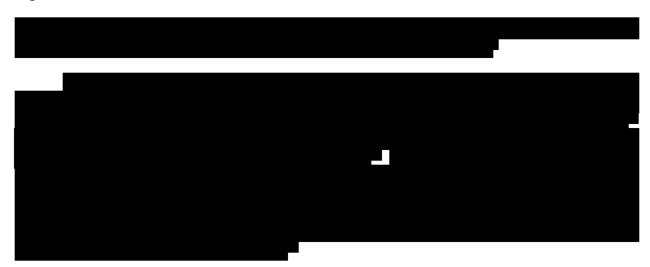
In general, Public Officers Law §74(3)(c), (d), (f), and (h) prohibit any officer or employee of the State from engaging in any business or transaction which is in substantial conflict with the proper discharge of ones' duties. This prohibition includes not only actual conflicts, but also perceived conflicts as well. Specifically, Subsections 3 (f) and (h) states that the conduct "should not give reasonable basis for the impression that any person can improperly influence" the employee and that the employee should engage in "a course of conduct which will not raise suspicion among the public" that the employee is likely to have acted in a manner which violates his or her trust.

### Codes, Rules and Regulations §4105.7(g) – Special Duties of Presiding Judge

In addition to being responsible for the performance of the judges' duties by himself or herself and other officials under his or her supervision, the presiding judge shall supervise "[t]he admittance of persons to judges' stand<sup>3</sup> subject to the direction of the [C]ommission."



<sup>3</sup> Staff interchangeably used the terms judges' stand, judges' booth, and crow's nest to refer to the stand at Vernon Downs. For consistency, this Report will use judges' stand as referenced in the Commission's rules.



Commission Code HR-002 – Code of Ethics for Gaming Commission Employees

Commission Code HR-002 establishes a code of ethics which govern the conduct and responsibilities of employees. The guiding principle of this policy is that Commission employees are held to the highest standards of conduct and integrity and are expected to perform their duties promptly, courteously, thoughtfully and free from improper influence or bias. Additionally, employees are expected to exhibit ethical behavior both in and out of the workplace and are expected to perform their duties in an impartial manner and avoid any appearance of acting otherwise.







#### Vernon Downs

Vernon Downs is one of seven harness tracks in New York, opening on July 1, 1953. Racing takes place from April through November, generally on Friday and Saturday evenings. In 2018, Vernon Downs had 68 race days with 54,933 in total attendance. Its live handle was \$1,726,851 and simulcast handle was \$5,388,886, totaling \$7,115,737, which was more than any other harness track except for Yonkers Raceway. Interestingly, its handle was less than 10% of Yonkers Raceway's though it had two and half times as many patrons.

The Commission has approximately 20 per diem employees assigned to Vernon Downs, including a Presiding Judge, two Associate Judges, an Assistant to the Presiding Judge, Recording Judge, Paddock Judge, Supervising Inspector, Inspectors, Veterinarian, Starter, and track Investigator. All employees are expected to arrive at least one hour prior to post time, usually 6:10 P.M., to prepare for races. Commission racing officials are also at the track on dark days to perform administrative tasks, as well as for qualifiers.

According to staff, the judges' stand is not solely occupied by the Presiding Judge and Associate Judges. Rather, an employee of Vernon Downs, also sits in the booth. Vernon Downs', sits in the room adjacent to the booth, which is connected by an open window/pass-through.

### Jeffrey Tallarino - Personnel and Background Information

Tallarino was previously a harness owner, trainer, and driver and had been licensed by the the Commission's predecessor, the New York State Racing and Wagering Board ("RWB"). In November 2007, he began his State employment with the RWB as an Associate Judge at Saratoga Harness Track and also served as a Starter. On January 3, 2014, he was promoted to Presiding Judge at Vernon Downs. During the summers, and on an as needed basis, Tallarino also served as a Starter, Associate Judge and/or Presiding Judge at other harness tracks. The most recent performance evaluation in Tallarino's PHF covered the period from July 24, 2012, through December 7, 2012, prior to the formation of the Commission.

Tallarino's PHF contained multiple acknowledgements that he received and read or participated in the following: Joint Commission on Public Ethics' ("JCOPE") Comprehensive Ethics Training Course dated July 8, 2013;

GOER's Integrity Outreach course dated July 25, 2011;
Plain Language Version of New York State Ethics Law dated June 3, 2010 and February 3, 2010;

GOER's Ethics and NYS Employment course dated February 11, 2008;
RWB's Employee Handbook dated November 29, 2007; and State Employee Statement in Lieu of

Oath dated November 18, 2007.<sup>21</sup> Tallarino also attended this Office's Corruption Awareness training on June 23, 2016.<sup>22</sup>

## - Personnel and Background Information was previously an owner, trainer, and driver and was licensed by the RWB. In June began her State employment with the RWB as a at Vernon Downs. Following receipt of her licensure, she served as an During the summers, and on an as needed basis, she would fill-in at other tracks. is also employed as a though there was no paperwork indicating same in her PHF. The most recent performance evaluation in PHF covered the period from April 27, at Vernon Downs and prior to 2012, through November 3, 2012, when was still the the formation of the Commission. PHF contained multiple acknowledgements that she received and read or participated in the following: State Employee Statements in Lieu of Oath and Public Officers §78 dated June 19, 2018 and May 19, 2017; JCOPE's Comprehensive Ethics Training Course dated July 8, 2013; GOER's Integrity Outreach course dated July 26, 2011; Plain Language Version of New York State Ethics Law dated June 3, 2010; June 19, 2008 email regarding previous year's completion of ethics and sexual harassment training; RWB's Employee Handbook dated August

28, 2007; and Oath of Office and acknowledgment of receipt of Public Officers Law section 73

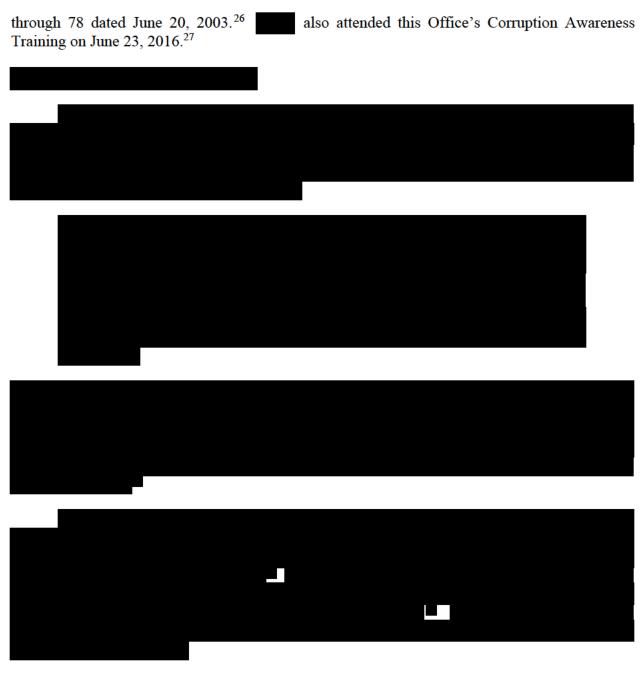
24 See May 5, 2018 resignation letter; undated email from to ; and NYS Dept. of Civil Service report, annexed hereto as Exhibit "3C." Since Tallarino worked on that day, his resignation was made effective March 30, 2018.

25 See Oct. 15, 2009 email from , at Vernon Downs; and , then annexed hereto as Exhibit "5A." Exhibits related to employment with the Commission are collectively referred to as Exhibit "5," with each type of record assigned an individual letter.

<sup>&</sup>lt;sup>21</sup> See Tallarino certificates, verifications, and acknowledgement, annexed hereto as Exhibit "3A." Exhibits related to Tallarino's employment with the Commission are collectively referred to as Exhibit "3," with each type of record assigned an individual letter. As trainings are now conducted mostly online, compliance is tracked in the Statewide Learning Management System, which can be accessed by HR staff, and proof of completion of such trainings is no longer included in employee PHF files. If staff are delinquent, a notification is sent to the employee and his/her supervisor. However, as of May 2019, JCOPE no longer sends copies of delinquency notifications regarding training to the Commission's Ethics Officer.

<sup>&</sup>lt;sup>22</sup> See Jun. 23, 2016 sign-in sheet, annexed hereto as Exhibit "4."

<sup>&</sup>lt;sup>23</sup> See Jan. 5, 2018 appointment letter and Commission Request for Budget Director's Approval List for Yonkers Raceway for the period of Apr. 26, 2018 to Sep. 6, 2018, annexed hereto as Exhibit "3B."



As noted above, Tallarino had already been reassigned to Monticello Raceway as an Associate Judge and tendered his resignation prior to his appointment to Yonkers Raceway as

<sup>28</sup> See Mar. 1, 2018 memorandum to annexed hereto as Exhibit "6A." Exhibits related to the Commission's review of the are collectively referred to as Exhibit "6," with each record assigned its own letter.

<sup>&</sup>lt;sup>26</sup> See certificates, verifications, and acknowledgment, annexed hereto as Exhibit "5B."

<sup>&</sup>lt;sup>27</sup> See Exhibit "4."

<sup>&</sup>lt;sup>29</sup> *Ibid*.

<sup>&</sup>lt;sup>30</sup> See Mar. 1, 2018 memorandum to File, annexed hereto as Exhibit "6B." It should be noted that the title of the electronic document included the word "DRAFT."

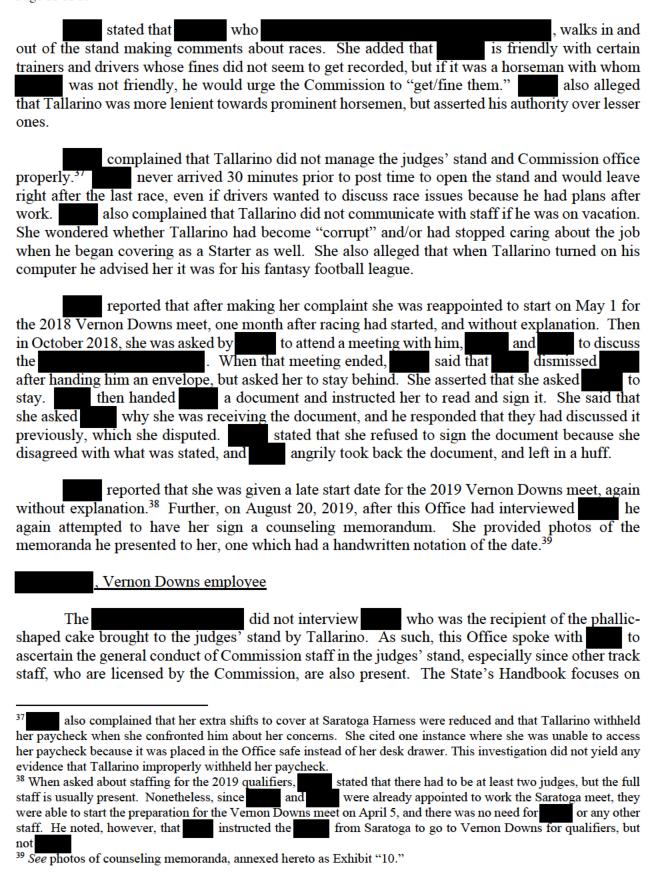
Presiding Judge. <sup>31</sup> , was aware of , but nevertheless told Tallarino that he was "one of the best employees the
Gaming Commission ever had. Presiding Judge, Starter, you did both very well. On a personal note, I will miss your great positive outlook on life and your humor." <sup>32</sup> Additionally, staff reported that there was no request to initiate disciplinary action against Tallarino, and neither a letter of reprimand nor a counseling memorandum were located in Tallarino's PHF.
In contrast, although the Commission gave and a delayed start of one month for the and to inform the and to inform the and to inform the was given the late start date. However, no counseling memorandum was found in a counseling session took place between and prior to the 2018 Vernon Downs meet.
conferred with then- disciplinary action should be taken against the other  Although the made no specific findings related to the noted that other  Commission staff was present during the Contrary to the State's Handbook and  Commission policy, stated his belief that there  Based on his review of the
and
35
It should be noted that was present during the interview of Tallarino and advised this Office of Tallarino's admissions as cited earlier. Tallarino also believed that he had a good relationship with until an incident regarding the driver board, at which point their relationship deteriorated and prompted her complaint.
then relationship deteriorated and prohipted her complaint.

<sup>&</sup>lt;sup>31</sup> This Office was advised that Tallarino relocated to Florida. An internet search reveals that Tallarino has been working as a licensed insurance agent in Florida since June 2018.

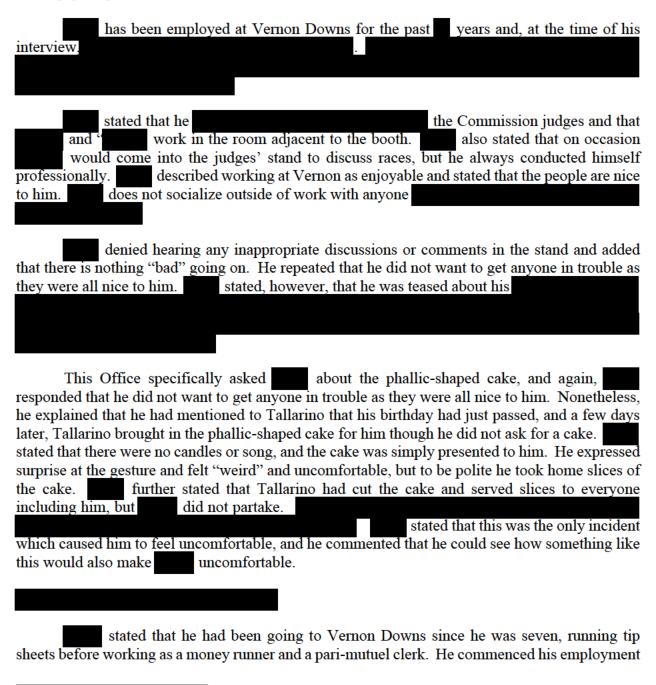
32 See May 5, 2018 email from to Tallarino, annexed hereto as Exhibit "7."

33 See Apr. 24, 2018 email from to annexed hereto as Exhibit "8."

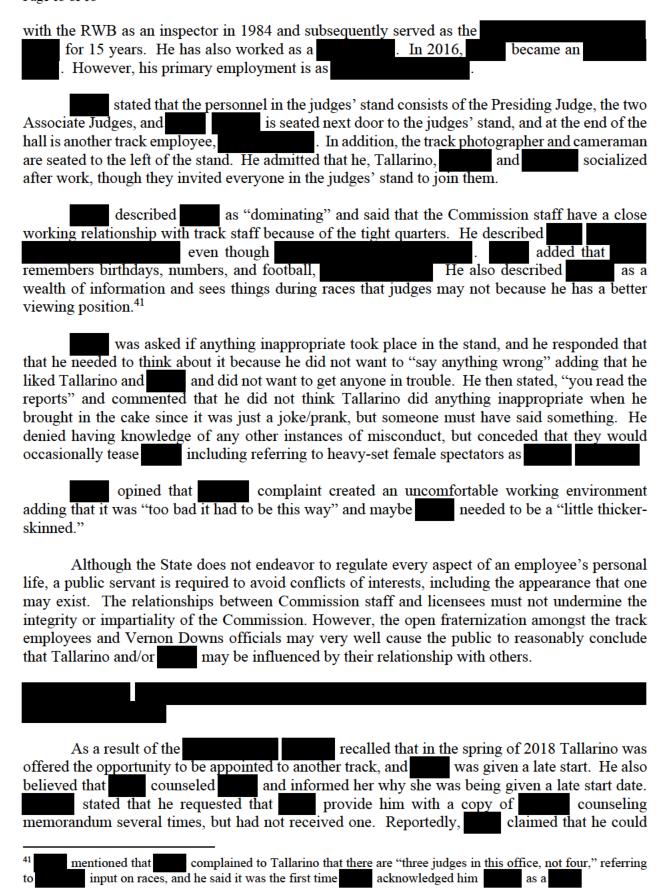
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year, in 2019, was again given a late start at Vernon Downs. Specifically, she started a week after the date of April 5, 2019. Speculated that it was due to her 2017 complaint. Contributing to the confusion, on October 30, 2018, and August 20, 2019, much-belatedly attempted to have
Key Interviews
attended for horse training and was licensed as a driver, trainer, and owner for about years prior to working for the RWB. She explained that called her about a position at the RWB. Following that call, went to school to be a and in June 2003 commenced working at Saratoga Harness. In 2012, she was appointed to be an 36 assigned to Vernon Downs, working for Presiding Judges and Tallarino.
said that she has known Tallarino dating back to when they were both racing. She noted that she can no longer associate with horseman because of her position and shared that complained that she would not accept his Facebook friend request. Opined that Tallarino did not share the same perspective and commented that Tallarino has mentioned that he is "buddies" with of Vernon Downs.
When asked who works in the judges' stand, replied that in addition to the Presiding Judge and Associate Judges, who works for Vernon Downs, as "so smart" with numbers
described the banter in the judges' stand as "locker room talk." She said it was the "three blind mice" in the stand, referring to Tallarino, and and it had escalated over the two years prior to Tallarino bringing in the phallic-shaped cake. She recounted that they often looked at the crowd through their binoculars and made comments, such as there was a "fat chick" for She said that there was also talk of sex and Viagra, among other things.
34 See Jul. 25, 2018 Mandated Training Sign-In Sheets, annexed hereto as Exhibit "9."  35 See Apr. 15, 2019 appointment letters for and annexed hereto as Exhibit "5C." It was noted that the appointment letter is dated after the start date. However, staff reported that it was common for appointment letters to be delayed, and typically staff are verbally informed of their start date prior to receiving the letter.  36 expressed her belief that she was because complained that it was a "high risk" for the work almost every day.

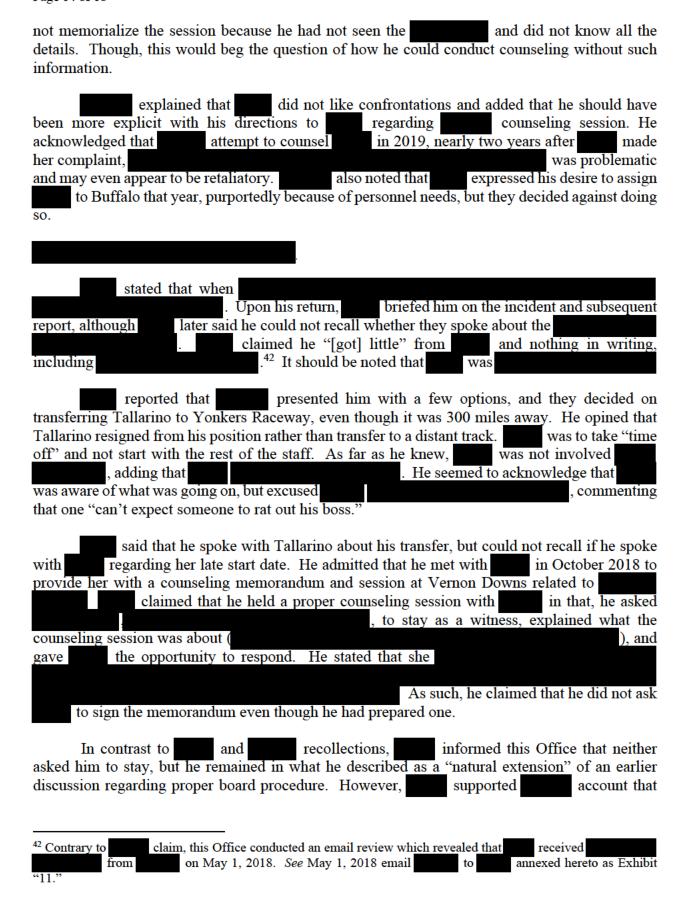


State employees "hav[ing] the right to be free from unlawful discrimination and the responsibility to assure that their actions do not contribute to an atmosphere in which the State's policy of promoting a bias-free work environment is frustrated." It is reasonable to conclude that this policy extends to work environments which may include other non-State employees, given that Commission staff regularly interact with licensees. As such, Commission employees should also not engage in prohibited conduct in front of or towards such individuals.

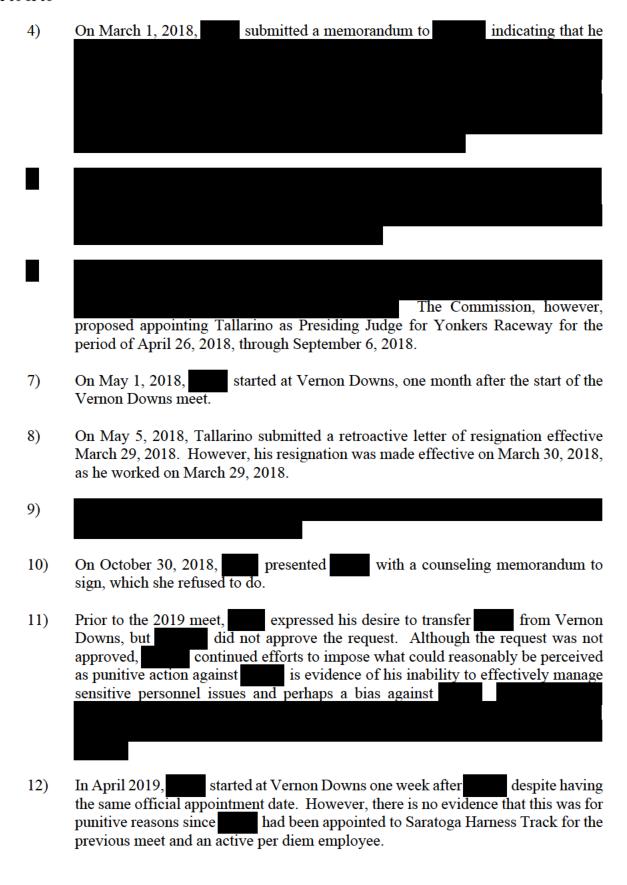


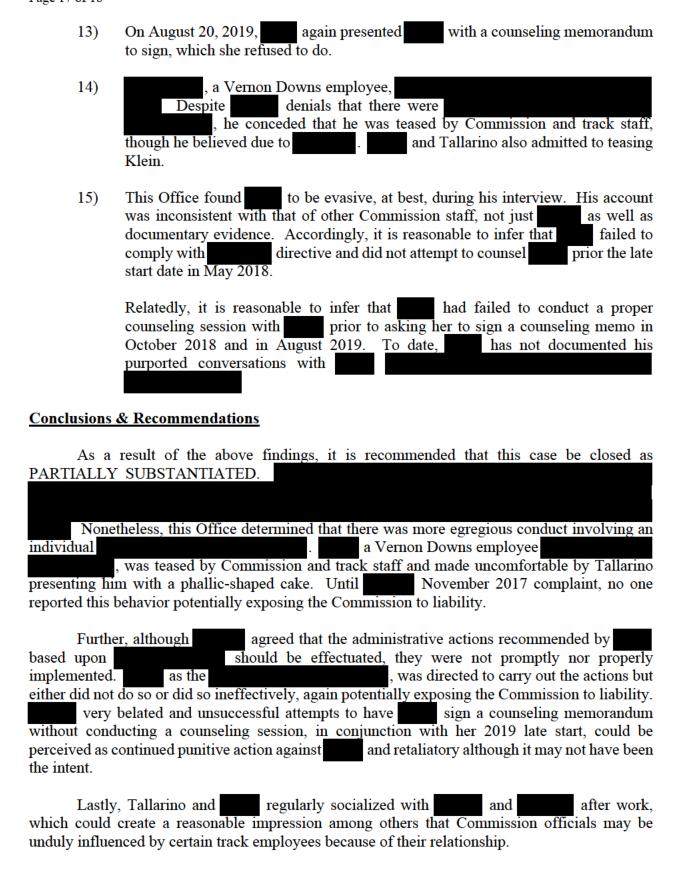
<sup>&</sup>lt;sup>40</sup> See 2011 Handbook, at 1. See also 2018 and 2020 Handbooks, at 1 adding interns and "non-employees, such as contractors and consultants," respectively. There is no reference to protections for individuals with whom State employees may interact with in the course of their duties, although State employees are expected to maintain an appropriate work environment.





asked her to sign the memorandum, and when she refused to sign took the memorandum back.
Interestingly, when asked why start date, claimed not to recall any conversation about counseling just that she would be given a late start. Yet, at the same time, a cknowledged that a counseling memorandum, which he had not done because insisted that he could not have them, though he could not assert that he had requested them. Nevertheless, this Office's review of Commission records revealed that he began drafting a counseling memorandum as early as April 2018. The professed that additional corrective action was to be taken, including transferring to another track the following year. He maintained that he and to transfer both and Tallarino, but that it would have been difficult to remove from the same location at the same time.
Jeffrey Tallarino, former Presiding Judge at Vernon Downs
Before this Office could arrange to speak with Tallarino, he resigned from the Commission and relocated to Florida. <sup>44</sup>
<u>Findings</u>
This investigation determined the following:
confirmed that he, Tallarino, and socialized with one another outside of Vernon Downs after work. If Commission judges and track employees are observed regularly socializing, others could reasonably believe that such track employees have the ability to improperly influence those judges.
This Office did not substantiate that Tallarino had a close relationship with of Vernon Downs or that Tallarino was improperly influenced by him.
<sup>43</sup> See Apr. 9, 2018 email and counseling memorandum template from to and cc'ed to annexed hereto as Exhibit "12." An electronic copy of the Supervisor's Guide to Counseling may be provided upon request.  44 This Office did not attempt speak with Tallarino prior to





Accordingly, the following are recommended:

failure to act as directed raises serious questions about his judgment and ability to manage staff, specifically regarding the handling of employee counseling and/or discipline. Accordingly, the findings as it pertains to his conduct is referred to the Executive Director for review and any other action deemed appropriate;



4) Staff should be reminded that they should not engage in professional or personal conduct that could reasonably give the impression that certain persons could improperly influence them.