



Office of the Washington State Auditor
Pat McCarthy

Whistleblower Investigation Report
Department of Social and Health
Services

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February 12, 2018

Cheryl Strange, Secretary
Department of Social and Health Services

Report on Whistleblower Investigation

Attached is the official report on Whistleblower Case No. 17-026 at the Department of Social and Health Services.

The State Auditor's Office received an assertion of improper governmental activity at the Agency. This assertion was submitted to us under the provisions of Chapter 42.40 of the Revised Code of Washington, the Whistleblower Act. We have investigated the assertion independently and objectively through interviews and by reviewing relevant documents. This report contains the result of our investigation.

If you are a member of the media and have questions about this report, please contact Assistant Director for Communications Kathleen Cooper at (360) 902-0470. Otherwise, please contact Whistleblower Manager Jim Brownell at (360) 725-5352.

Sincerely,

Pat McCarthy
State Auditor
Olympia, WA

cc: Governor Jay Inslee
Andrew Colvin, Discovery/Ethics Administrator
Kate Reynolds, Executive Director, Executive Ethics Board
Jennifer Wirawan, Investigator

WHISTLEBLOWER INVESTIGATION REPORT

Assertions and Results

Our Office received a whistleblower complaint asserting two Department of Social and Health Services (Department) employees violated state ethics laws.

We found reasonable cause to believe improper governmental actions occurred.

Background

At the start of the events in this report, both employees (the subjects of this investigation) worked in the same unit; one was the unit chief (chief) and the other was her administrative assistant.

The chief planned to retire near the end of 2016, and her supervisor, the unit director, began the process of hiring her replacement. Even though she was set to retire, and a replacement was being selected, the chief took numerous personnel actions within the unit between March 2016 and August 2016. She restructured the unit organization, promoted and transferred staff, increased staff salaries, created new positions, and laid off one staff member.

As part of the unit restructuring, the chief promoted her administrative assistant to a “unit supervisor” position. Her official start date in this new position was August 1, 2016.

About the Investigation

Office Assistant Position

On August 3, 2016, both employees met with a human resources employee to discuss the process for creating an office assistant position. The position would assist in entering handwritten forms into a computer system, a task that could be accomplished from home.

We spoke with the human resources employee, who told us that during this meeting the employees asked her if, after the chief retired, they could hire her for the office assistant position instead of recruiting for the position. The human resources employee told them that since the position is not permanent, the agency could directly hire someone without recruiting for it; however, the human resources employee cautioned the chief that if she was then hired, it would create the “perception [that] you created the position for yourself.”

Within a few days of that conversation, the chief drafted a position description form outlining the office assistant’s responsibilities. On August 11, 2016, both employees signed the position description form (PDF) and a position action request (PAR) form to create the position. The newly appointed unit supervisor signed both documents as the hiring manager, while the chief signed the PDF as the approving authority and the PAR as the appointing authority.

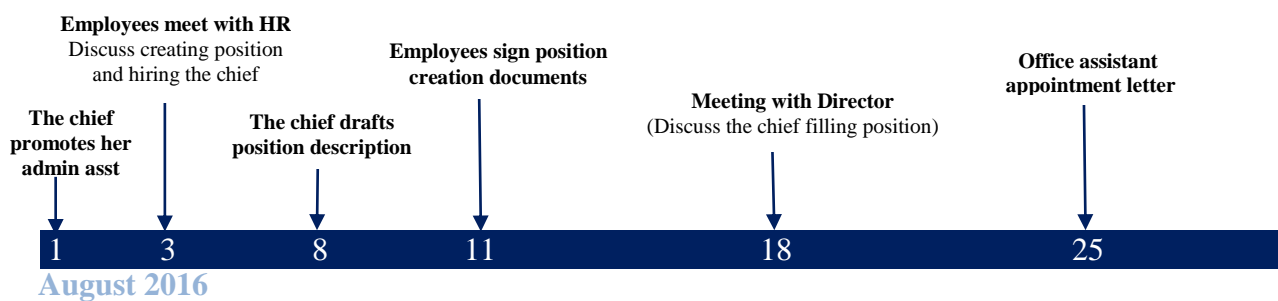
Appointing authorities are individuals who have authority to take personnel actions at the Department. The chief is not an appointing authority. According to Department policy, the Department Secretary delegates appointing authority to limited exempt management positions. Department policy permits the further delegation of appointing authority as long as it is documented in writing and is time-limited. The director, the unit's appointing authority, said she had not delegated appointing authority to the chief, but was under the impression that prior leadership had. However, the assistant secretary, the unit's prior director, told our Office the chief did not have this authority.

The new unit chief's (new chief) first day was August 15, 2016. On August 18, 2016, he and the chief – who had not yet officially retired – met with the director and discussed the plan to hire the chief as the office assistant. In a written response to our Office, the chief said they “did not discuss a plan to hire me as a non-permanent, part-time Office Assistant 2 on August 18, 2016.” However, in a subsequent email sent by the director, she referenced the discussion regarding the chief fulfilling the office assistant position.

On August 25, 2016, the director signed the letter appointing the chief as office assistant, with a start date of November 1, 2016. The letter specified that in her new role, she would report to the new unit supervisor.

During interviews, both the chief and the unit supervisor denied the position was created for the chief. Both asserted the chief was helping out with data entry for weeks after the position was created and before she decided to take the office assistant position. However, witness interviews and the following timeline demonstrate this explanation is not likely.

Within a three-week span, the employees created the office assistant position, signed the position creation documents, and the chief was appointed to the position.



We found the chief created an office assistant position by signing the PAR as the appointing authority and then filled the position herself. Therefore, we found reasonable cause to believe she engaged in an improper governmental action by granting herself a special privilege.

Rental Agreement

The whistleblower asserted the unit supervisor lives in the chief's mother-in-law apartment for free in exchange for allowing the chief to collect her salary without producing any work.

In December 2016, the unit supervisor moved into the chief's mother-in-law apartment on a month-to-month lease.

When we spoke with the chief and the unit supervisor, both said the potential conflict of interest came up before the unit supervisor moved in. The chief, who is now an office assistant, was concerned about the perception of renting to her supervisor. She said she recommended that the unit supervisor ask the new chief if he wanted to reassign her to a different supervisor. Shortly after, the unit supervisor told her she spoke with the new chief who chose not to reassign her to a different supervisor. The chief said she was surprised because she would have reassigned someone who was in a rental agreement with his or her supervisor.

The unit supervisor said she is not concerned she could lose her housing if she needs to address the chief's work. She said she had no concerns based on their history and felt comfortable they could keep those relationships separate. She said she spoke with a friend in human resources who told her there were no policies against renting from a direct report. However, the human resources employee told us she was no longer employed at the Department and therefore did not provide professional advice.

The new chief told us he did not know about the arrangement until after the unit supervisor moved in. He said he told her he was not aware of a policy against renting from a supervisor. He said the office assistant position is "numbers driven" and it would be obvious if the job was not getting done, so he did not feel he needed to reassign the chief.

According to the state's Executive Ethics Board, a state employee cannot engage in a business or transaction with anyone he or she supervises that could interfere with the state employee's official duties and impair independent and impartial judgement in exercising those official duties.

We found the unit supervisor does pay rent to the chief and the chief does produce work. However, the lease agreement between the unit supervisor and the chief, her direct report, could interfere with her ability to conduct her official duties. Therefore, we found reasonable cause to believe an improper governmental action occurred.

Department's Plan of Resolution

Thank you for the opportunity to review and respond to the State Auditor's Office (SAO) draft report on Whistleblower Case No. 17-026. The Department of Social and Health Services takes the assertions seriously and appreciates the assistance of the SAO in developing important facts in its investigation.

As outlined to the Department at the beginning of the investigation, among the assertions contained in the whistleblower assertion were that two employees do not work their assigned hours, and the subordinate employee is allowed to not do any work in place of receiving rent from the other (who is her supervisor). The Department appreciates that the investigation found those assertions to be unsubstantiated. Both employees work their assigned hours, and the subordinate employee does a significant amount of work, with a high level of production.

With respect to the reasonable cause finding related to the office assistant position, the Department acknowledges that, upon review, a different process to create the position would have been better. However, the Department would also like to emphasize that the appointment of the retired office chief to the office assistant position was based on business need and the ability of that person to provide an exceptionally high level of production and quality. The Department will use this opportunity to remind staff about ethics provisions relating to special privilege.

With respect to the reasonable cause finding related to the rental agreement, the subordinate employee has been assigned to report to a different supervisor to remove any perceived conflict.

State Auditor's Office Concluding Remarks

We thank Department officials and personnel for their assistance and cooperation during the investigation. We will follow-up with the Department within one year to assess whether it took appropriate action to resolve these matters.

WHISTLEBLOWER INVESTIGATION CRITERIA

We came to our determination in this investigation by evaluating the facts against the criteria below:

RCW 42.52.020 Activities incompatible with public duties.

No state officer or state employee may have an interest, financial or otherwise, direct or indirect, or engage in a business or transaction or professional activity, or incur an obligation of any nature, that is in conflict with the proper discharge of the state officer's or state employee's official duties.

RCW 42.52.070 Special privileges

Except as required to perform duties within the scope of employment, no state officer or state employee may use his or her position to secure special privileges or exemptions for himself or herself, or his or her spouse, child, parents, or other persons.