

**Stankoski / Stout Investigation
of
Sexual Harassment**

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I. INTRODUCTION

A. SCOPE OF THE INVESTIGATION.

On April 8, 2008, Attorney General Marc Dann requested that the undersigned, Ben E. Espy, Executive Assistant Attorney General and Julie Pfeiffer, Senior Assistant Attorney General, investigate the complaints lodged with the Equal Employment Opportunity office against Anthony Gutierrez. The scope of the investigation also was extended to any other policy violations that were uncovered as a result of or rose out of the Gutierrez investigation.

Upon receiving the appointment to investigate the above referenced matters, undersigned counsel reviewed the initial EEO packet which included standard EEO checklist forms, notes of interviews of Stankoski and Stout by Stephanie Bostos-Demers, Director of Human Resources, Alethea Botts, Deputy Director of Human Resources and Angela Smedlund, EEO Officer, notes of an interview of Gutierrez by Smedlund, notes of an interview of Mariellen Aranda by Stephanie Bostos Demers, and copies of several text messages and email communications.

All of the employees that interviewed were instructed to search for and disclose all documents in their possession that were relevant to the investigation. Undersigned counsel also gathered all desk telephone logs and email communications for Stankoski, Stout and Gutierrez.

The investigators conducted interviews, under oath and before a court reporter, of the following people:

1. Cindy Stankoski

2. Vanessa Stout
3. Jessica Utovich
4. Leo Andrew Jennings, III
5. Charlie Rosol
6. Molly Taylor
7. Doug Armbrust
8. Marc Polster
9. Andy Miller
10. Stephanie Bostos – Demers
11. Anthony Gutierrez
12. Alethea Botts
13. Angela Smedlund
14. Pete Mash
15. Joyce Chapple
16. Amanda Saxton
17. Jennifer Urban
18. Edgar C. Simpson
19. Mariellen Aranda
20. Erika Haske
21. James Ford
22. Attorney General Marc Dann

In addition to the interviews, the investigators also reviewed the following documents:

1. Personnel files of Cindy Stankoski, Vanessa Stout, Leo A. Jennings, III, Pete Mash, Jennifer Urban, Andrew Miller, James Ford, Charlie Rosol, Jessica Utovich, Molly S. Taylor, and Anthony Gutierrez.
2. Blackberry records of Anthony Gutierrez
3. Desk telephone records of Anthony Gutierrez
4. Desk telephone records of Vanessa Stout
5. Desk telephone records of Cindy Stankoski
6. Vehicle records of Anthony Gutierrez
7. Itinerary of Marc Dann on September 10, 2007
8. Personal telephone records of Vanessa Stout
9. Vehicle damage and repair records
10. E-mails between Vanessa Stout and Cindy Stankoski
11. E-mails between Anthony Gutierrez, Jennifer Urban, Leo Jennings, and Jessica Utovich
12. E-mails between Andy Miller and Cindy Stankoski
13. E-mails between Marc Dann and Jessica Utovich
14. E-mails between Anthony Gutierrez, Vanessa Stout, Cindy Stankoski, and Charlie Rosol
15. BCI analysis of Anthony Gutierrez's laptop and blackberry

16. E-mails from Cindy Stankoski re Gutierrez birthday and Bosses Day
17. E-mail from Jennifer Urban and Marc Dann re Leo Jennings
18. Invoices re sound proofing of Anthony Gutierrez's office
19. State credit card records re concealed carry permit
20. BCI report on handwriting analysis

B. OHIO ATTORNEY GENERAL OFFICE POLICIES AND PROCEDURES.

Chapter 5 of the Policies and Procedures of the Office of the Ohio Attorney General (EEO/Professional Conduct) prohibits “*any* form of workplace harassment” including but not limited to discrimination or harassment on the basis of “race, color, religion, sex, including sexual harassment, sexual orientation, gender identity, national origin, age (40 years or more), ancestry, disability, or veteran status, including discriminatory harassment which adversely affects, directly or indirectly, an employees’ terms or conditions of employment.”

The policy defines discrimination and harassment as:

- a) Disparate Treatment: Treating employees differently regarding the terms and conditions of employment, including hiring, firing, and/or receipt of benefits based upon membership in a protected class.
- b) Hostile Environment: Any unwelcome verbal or non-verbal conduct relating to an individual’s or a group’s race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability which creates an intimidating, hostile, or offensive working

environment; including but not limited to: racial or ethnic slurs, demeaning pictures, offensive cartoons, etc.

The EEO/Professional Conduct policy provides that “profanity, practical and off color jokes will not be tolerated. If an employee believes that a remark or certain words are offensive, please refrain from using them. Any employee who finds themselves a victim of profanity, practical or off color jokes should contact their immediate supervisor or a member of the human Resources management staff.” This behavior is also prohibited under Chapter 1 of the Policy Manual entitled Conditions of Employment – Professional Behavior.

The EEO/Professional Conduct policy enables employees who believe they have suffered discrimination or harassment to discuss the matter with (1) the EEO Officer; (2) the Director of Human Resources; (3) an immediate supervisor; or (4) a manager above the immediate supervisor. The policy encourages employees to submit their complaints in writing within thirty days of the offending conduct, but permits verbal complaints as well. After an EEO complaint is filed, the EEO Officer is required to seek informal resolution of the matter. If the complaint cannot be resolved informally, the EEO Officer must initiate an internal investigation. At the conclusion of the investigation, the complainant has the right to appeal the findings, at such time an independent investigation will be designated by the Director of Human Resources.

The EEO/Professional Conduct policy does not infer with or otherwise prohibit employees from filing complaints with the Equal Employment Opportunity Commission (EEOC) and/or the Ohio Civil Rights Commission (OCRC).

All persons associated with the Attorney General's office including but not limited to, the administration and employees are expected to conduct themselves at all times so as to provide an atmosphere free from sexual harassment. Any person who engages in sexual harassment while acting as an employee of the Attorney General's office will be in violation of this policy. All matters involving sexual harassment complaints will remain confidential to the extent possible.

Definition of Sexual Harassment: Unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature may constitute sexual harassment where:

Submission to such conduct is made either explicitly or implicitly a term or condition of a person's employment or participation in an educational function, or submission to or rejection of such conduct by an individual is used as the basis for employment or decisions affecting such individual's work environment.

Sexual harassment, as defined above, may include but is not limited to:

1. Sex oriented verbal "kidding", abuse, or harassment;
2. Pressure for sexual activity;
3. Repeated remarks to a person with sexual or demeaning implications;
4. Unwelcome touching such as patting, pinching, or constant brushing against another's body;
5. Suggesting or demanding sexual involvement accompanied by implied or explicit or explicit threats concerning one's employment status or similar personal concerns;

6. Uninvited letters, telephone calls or materials of a sexual nature;
7. Visual harassment, including offensive posters, cards, cartoons, graffiti, drawings, or gestures;
8. Attempted or actual rape or sexual assault.

The policies of the Ohio Attorney General's office are written to respect the confidentiality of the complainant(s) and the individual(s) against who the complaint has been filed, consistent with the office's legal obligations, the necessity to investigate allegations of harassment, and disciplinary actions when necessary.

The Ohio Attorney General's office will discipline any individual who retaliates against any person who reports alleged sexual harassment or who retaliates against any person who testifies, assist or participates in an investigation, proceeding or hearing relating to a sexual harassment complaint. Retaliation includes, but is not limited to, any form of intimidation, reprisal or harassment.

Any person who believes sexual harassment is occurring is encouraged to immediately inform the person engaging in the behavior that it is offensive and must stop.

II. DESCRIPTION OF THE ISSUE:

Were Cindy Stankoski and Vanessa Stout subjected to discrimination and/or sexual harassment in the form of a hostile work environment(s) created by Anthony Gutierrez?

III. BACKGROUND INFORMATION

A. ORGANIZATIONAL STRUCTURE.

Anthony Gutierrez was hired as the Director of General Services for the Office of the Ohio Attorney General in February 2007. Gutierrez is directly supervised by Joyce Chapple, Chief Operating Officer who is directly supervised by Ed Simpson, Chief of Policy and Administration. Ed Simpson answers directly to the Ohio Attorney General.

The Department of General Services is responsible for office services and facilities. Cindy Stankoski was hired on August 20, 2007 as a Telecommunications Assistant and Vanessa Stout was hired on November 26, 2007 also as a Telecommunications Assistant in the General Services Department, both working Mondays through Fridays during normal business hours. Stankoski's primary duties entailed assisting in the maintenance of all state issued desk telephones and other telecommunications equipment and Stout's primary duties consisted of assisting in the maintenance of fixed assets. During all relevant times, Stankoski and Stout were directly supervised by Charlie Rosol, Deputy Director of General Services who answered directly to Gutierrez.

On November 11, 2007, Stankoski was promoted within General Services with an increase in pay. Vanessa Stout was transferred to the Department of Information Technology as a Special Projects Coordinator on January 18, 2008.

B. SUMMARY OF ALLEGATIONS BY CINDY STANKOSKI.

Cindy Stankoski alleges that on three occasions: (1) during the evening of September 10, 2007, (2) during the afternoon and early evening of October 3, 2007, and (3) during an evening in mid-October, 2007, Gutierrez took her out for drinks and behaved in a sexually inappropriate manner. Stankoski also alleges that Gutierrez acted in a sexually inappropriate manner towards her and other female employees in the workplace by making lewd comments, using extreme profanity, frequently leering at her and other females, and intimidating her with stories of his alleged power and authority, which he obtained through his alleged association with the Mafia and his close friendship with the Attorney General.

C. SUMMARY OF ALLEGATIONS BY VANESSA STOUT.

Vanessa Stout alleges that Gutierrez made vulgar, sexually explicit comments to her and other female employees in the workplace and then effectuated her transfer (involuntarily) to the IT Department upon the direction of the Attorney General because of inaccurate rumors that she was engaging in an inappropriate relationship with Gutierrez.

IV. FACTUAL ALLEGATIONS AND CONCLUSIONS.

Cindy Stankoski and Vanessa Stout allege that Gutierrez caused them to suffer a hostile environment through both generalized sex-based and intimidation-based comments, innuendos and acts inside and outside the workplace and by committing specific (and perhaps more serious) acts of misconduct against them separately. While their allegations will be analyzed by a totality of the circumstances, we will discuss the specific acts of misconduct alleged by each

complainant first and then follow up with their generalized allegations of atmospheric hostile environment.

A. CINDY STANKOSKI.

Based on the information received including eyewitness accounts, Ms. Cindy Stankoski's (hereinafter "Stankoski") and Mr. Anthony Gutierrez's (hereinafter "Gutierrez") sworn statements, and documentary evidence, the following events are alleged:

1. INCIDENT ON SEPTEMBER 10, 2007.

Towards the end of the business day on September 10, 2007, Gutierrez invited Stankoski for "drinks" at the Ringside restaurant located behind the Rhodes Tower. Although Stankoski initially declined his offer, she finally agreed because he "wasn't taking no for an answer." Stankoski invited her co-worker, Andy Miller to accompany her to Ringside via email but he declined.¹ Stankoski met Gutierrez outside at 5:30 pm and they walked to Ringside where he ordered a "Grey Goose" for her and "chilled shots of Crown" for himself. Stankoski claims that Gutierrez discussed the "power" that he possessed, his private construction business and his hatred for his wife.²

¹ While Miller did not recall receiving this invitation, undersigned obtained a copy of an email string where Stankoski did in fact ask him to join her and Gutierrez for drinks after work.

² Stankoski claims that on numerous occasions, Gutierrez talked openly about his alleged ties to the Mafia, that he often remarked "no one messes with my crew," and bragged that he could "get anything done." She claims that Gutierrez frequently bragged about his power and influence he enjoyed from his close friendship with the Attorney General which, she believed, enabled him to act with virtual impunity. Other employees also witnessed Gutierrez brag about his Mob ties and friendship with the Attorney General. It was because of this actual or perceived unchecked power, and the common knowledge that Gutierrez shared

Gutierrez and Stankoski then went to the TipTop restaurant where he ordered “more shots and vodka.” While there, Gutierrez offered to take Stankoski along with his boat to visit her friend in North Carolina so they could “have some fun.” Charlie Rosol (Deputy Director of General Services) telephoned Gutierrez and Gutierrez stated that he was “there with a smokin’ hot girl.” Stankoski spoke with Rosol but did not identify herself. Throughout the evening, Gutierrez told Stankoski that she was “hot” and let his eyes wander over her.

Because Stankoski was feeling “tipsy” at the TipTop, Gutierrez suggested they go to Mitchell’s Steakhouse to eat. Upon arriving at Mitchell’s, Gutierrez, without asking, ordered Stankoski another Grey Goose and minutes later the Attorney General called Gutierrez on his cell phone. Gutierrez told the Attorney General that he was with Cindy Stankoski and then handed the telephone to her. Stankoski claims that the Attorney General said, “hey, how are you? How’s the office treating you? Are you having fun? Why don’t you come over for some pizza?” Stankoski replied “only if you have Hawaiian pizza.” She returned the telephone to Gutierrez and they left the restaurant. Stankoski claims that when she expressed reservations about going to the Attorney General’s house, Gutierrez stated, “you’re with the big dogs. Don’t worry about it.”

Stankoski claims that she accompanied Gutierrez to the Dublin apartment because she had been drinking and “felt trapped.” During the car ride, she alleges that she began text messaging her coworker Mariellen Aranda “like, oh,

an apartment with the Attorney General, that Stankoski claims caused her to believe she had no ability to challenge or decline Gutierrez’s actions.

my God, get me out of this situation.”³ When she arrived at the apartment between 9:00 pm and 10:00 pm, the Attorney General was seated in a single sofa chair in the living room.⁴ She shook his hand and he instructed her to call him “Marc.” A box of Hawaiian pizza was sitting on the kitchen counter and Stankoski claims that the Attorney General “brought out the tequila and margarita mix and told me to have some drinks.” Approximately 10-15 minutes later, Jessica Utovich (the Attorney General’s scheduler) walked into the apartment without knocking and clothed in “sweatpants and a T-shirt.”⁵ Stankoski went outside to smoke a cigarette and she called Aranda again asking for a ride. Aranda declined to pick her up at the apartment and offered to contact other coworkers to assist. Stankoski claims she declined as she was embarrassed and scared because she was “pressured into going out for drinks” and because she “was sitting with powerful people.” Stankoski claims she had no money to hire a taxi and she did not know where she was.

When she returned to the apartment, Utovich was sitting on the floor, the Attorney General was seated in the chair and Tony was in the kitchen eating pizza. Stankoski claims that the Attorney General poured her a margarita but

³ In October 2007, during a meeting with Human Resources officials which is discussed *infra*, Mariellen Aranda complained about behavior by Gutierrez and disclosed copies of the text messages that Stankoski sent her that night. Aranda did not save her responses to the messages.

⁴ From approximately June to December 2007, the “Dublin apartment” was occupied by Leo Jennings, Communications Director, Gutierrez, and the Attorney General when they were in Columbus. The first floor consisted of a living room, kitchen and Gutierrez’s bedroom and bathroom. The Attorney General and Jennings each had a bedroom and bathroom on the second floor.

⁵ Angela Smedlund’s notes of her March 31, 2008 interview with Stankoski indicated that Stankoski claimed that Utovich was dressed in “pj’s.” Stankoski denies this statement claiming that Smedlund must have misunderstood her.

she did not drink it. Stankoski began to feel sick and Gutierrez told her to lie down on his bed. Stankoski never went upstairs. Stankoski fell asleep over the covers on Gutierrez's bed and awoke at 4:30 am with Gutierrez lying next to her in his underwear. When Stankoski woke up, she claimed that three buttons on her pants were undone and her zipper was partially down. Stankoski stated that she "didn't feel violated down there" but she went into the living room and cried because she was not sure what had happened. She woke Gutierrez up and told him to take her to her car. Gutierrez took a shower and then he drove her back to downtown Columbus between approximately 6:00 am and 6:30 am. Stankoski claims that she left her car keys in her desk from the previous day and Gutierrez went into the State Office Tower to retrieve them. She claimed that her coworker Erika Haske was already at work and Gutierrez ran into her. Upon returning with her keys, Gutierrez told Stankoski that she could take her time reporting for work and that he would tell the office that she had a doctor's appointment. Stankoski reported to work at approximately 11:30 am (three hours late). Gutierrez later told Stankoski to make up for the time she took off by taking half-hour lunches.

Stankoski claims that after Aranda disclosed copies of her text messages in October 2007 to Molly Taylor in Human Resources, Gutierrez "pulled me into his office and he said, when and if you are approached by HR, you are to tell them a friend of yours picked you up."⁶

a. VERSION OF INCIDENT BY GUTIERREZ.

⁶ Later on, Gutierrez told Rosol that Stankoski's friend picked her up from his apartment.

Gutierrez admits that he asked Stankoski to join him for drinks at Ringside and she accepted. He claims that while there, Stankoski drank a substance that was "clear, and she drank it straight." He claims that he drank two Bud Lights. Gutierrez admits that they went to the TipTop patio for approximately 45 minutes where he drank two more beers and Stankoski drank two more vodkas. As to the telephone call from Stankoski's girlfriend in North Carolina, Gutierrez claims that Stankoski gave him the phone and the friend stated "Don't worry, Cindy will sleep her way up to the top. She always does," which Gutierrez found to be strange. Gutierrez and the friend continued to talk and at some point, Gutierrez stated "I've been there before; maybe we'll come down and see you sometime." Gutierrez denies making the statement to Charlie Rosol that he was with a "smoking hot girl."⁷ Gutierrez claims that he told Stankoski that his grandfather may have been connected to the mafia, but only because she shared personal family matters.

Gutierrez admits that approximately 45 minutes later, they went to Mitchell's and he continued to consume Bud Light and Stankoski drank vodka. Gutierrez admits that he received a telephone call from the Attorney General. He claims that "Marc wanted to know where I was at and if I wanted pizza. And I had told him I was having a drink with Cindy. He asked who it was. I says, one of our admins in the department. And as I mentioned pizza, she says, I want pizza. She says, I want Hawaiian pizza. And I says, hold on a minute. I never even heard of Hawaiian pizza. She took the phone and explained to Marc what

⁷ Charlie Rosol does not recall Gutierrez making that comment.

Hawaiian pizza was. And I says, I guess you're coming for pizza? She says, yeah. We finished our drink and went to the Dublin apartment for pizza."

Gutierrez claims that Stankoski never resisted in any way having drinks with him or going to the Dublin apartment. Nor does Gutierrez admit that he referred to himself or the Attorney General as "big dogs." When they arrived at the apartment, the pizza was sitting on the "snack bar" and, while Gutierrez put plates out, he claims that Stankoski and the Attorney General engaged in small talk about her job and how long she had been employed with the office. Utovich then showed up and she and the Attorney General started to work on his schedule. Gutierrez claims that only Stankoski was drinking at the apartment - she helped herself to a glass of wine that was sitting on the kitchen counter.

Gutierrez admits that Stankoski stated she wasn't feeling well between 10:00 pm and 11:00 pm and went into the first floor bathroom. Gutierrez, Utovich and the Attorney General were seated in the living room. Gutierrez heard the bathroom door open and he went into his bedroom where Stankoski followed and laid down on the bed on top of the covers. Gutierrez claims that he never invited Stankoski to use his bed. He claims that he asked Stankoski "are you all right, do you need anything, do you want a basket to throw up or anything else like that? She says no, I just need to lie down." Gutierrez claims that he went into the living room and spoke with the Attorney General and Utovich for a brief period and then he returned to his bedroom, got a pair of shorts and a T-shirt, changed in the bathroom, and then went back into his bedroom where he watched television in a chair with his feet propped up on the bed. Gutierrez

claims that he never laid on the bed with Stankoski and knew nothing about how her pants became unbuttoned.

Between 1:00 am and 1:30 am. Gutierrez noticed that there was silence in the living room so he moved to the living room couch, turned on the television and fell asleep where he remained all night. The next morning, Gutierrez woke approximately 5:00 am and “grabbed my stuff for the day, went in and took a shower, came out from the shower, dressed in my pants and shirt.” He claims that Stankoski was walking around the kitchen and he told her that he would finish getting ready and take her to her car which was parked near the State Office Tower. Gutierrez drove Stankoski to her car and retrieved her keys from her office desk where he may have seen Erika Haske.⁸ Gutierrez denies telling Stankoski that he would “cover for her” for being late to work and he never reviewed her time sheet because Charlie Rosol was responsible for monitoring her time.⁹

b. VERSION OF INCIDENT BY JESSICA UTOVICH.

Utovich claimed that she came to the apartment that evening to drop off the Attorney General’s schedule and to obtain his assistance in completing an application for “the Young Democrats of America Resolutions Chair.” Utovich and the Attorney General stated that he prefers his daily schedules to be delivered to him in paper form instead of via email for efficiency and

⁸ Erika Haske does not recall seeing Gutierrez during the early morning of September 11, 2007.

⁹ Charlie Rosol recalls that on the morning of September 11, 2007, Gutierrez told him that Stankoski had a doctor’s appointment. Rosol believes that Stankoski may have made up the time by using flex time.

confidentiality reasons. Utovich dropped off schedules to the Attorney General at the apartment both at night and in the early morning approximately six to ten times.

Utovich does not recall whether she was already in the apartment when Stankoski arrived but claims that Stankoski and Gutierrez were sitting on a couch talking. She was introduced to Stankoski and she learned that she was an employee with the office. Utovich claims that she, Stankoski and maybe Gutierrez drank margaritas and the Attorney General drank Diet Coke. She claims that Gutierrez and not the Attorney General poured the drinks. Utovich claims that she did not pay much attention to events in the room as she was primarily focused on completing her application. During this time, Utovich claims that she was on the floor working on her laptop computer and the Attorney General was still seated in a chair working on his laptop computer, watching television and advising Utovich on how to complete her application. Utovich claims that she left the apartment shortly after submitting her application via email.¹⁰ She does not recall noticing Stankoski leaving the living area and lying down in Gutierrez's bedroom.

c. VERSION OF INCIDENT BY MARC DANN.

The Attorney General states that he was in the Dublin apartment alone and "I got hungry, and I called Tony and asked if he was planning on coming home soon, because I was planning on ordering pizza. So when he answered the phone, I talked to him. He said he would like to come home and have pizza.

¹⁰ Subsequent to her interview, Utovich forwarded to undersigned an email showing that she submitted her application on September 10, 2007 at 11:03 pm.

And then he handed a phone to a woman, whose voice I did not recognize...She told me that Tony wanted Hawaiian pizza, and that they would be home in a short while. I then went ahead and ordered pizza and waited for them to come home.” The Attorney General states that he did not know the identity of the woman that he spoke with on the telephone until they arrived and Gutierrez introduced Stankoski as “his new employee.”

The Attorney General states that both Gutierrez and Stankoski were likely intoxicated but he does not recall whether they drank alcohol while in the apartment. The Attorney General was seated in a chair, Stankoski was seated on the couch and Gutierrez was in the kitchen gathering plates for the pizza. Jessica Utovich arrived with the Attorney General’s schedule for the next day and a laptop computer wearing sweatpants and a sweatshirt or T-shirt. He did not know in advance she was coming to the apartment.

The Attorney General states that Utovich requested his assistance with her application for the Young Democrats and he reluctantly agreed. He states, “it’s an awkward position, and I’ve been adjusting to becoming a boss, and I would have preferred to just ask her and Cindy and Tony to leave – and Cindy to leave, but I didn’t quite know what to do, so I offered – I agreed to help her with her work. And it wasn’t a very big deal. We just spent a few minutes.”

The Attorney General states that he noticed Stankoski leave the room and walk towards the area of Gutierrez’s bedroom and bathroom but he did not know exactly where she went. The Attorney General states that she did not return to the living room before he retired upstairs to his bedroom. He explained, “I went

upstairs. I made the pretense to Jessica that I had to go to – that I was tired and wanted to go to bed, and I actually shooed her out the door not long after Cindy walked out of the room. It was a very uncomfortable situation that I wanted to get out of.” The Attorney General did not see Gutierrez walk into his bedroom area. The Attorney General did not see Stankoski or Gutierrez in the morning before he left for work.

2. STANKOSKI’S VERSION OF INCIDENT ON OCTOBER 3, 2007.

Stankoski claims that after the events of September 10, 2007, she tried to avoid contact with Gutierrez. However, on October 3, 2007, Charlie Rosol and Gutierrez assigned Stankoski to travel to Cincinnati along with two interns, Dustin Carter and Lindsay Cates to pick up computer monitors and bring them back to Columbus. Since the vehicles would be loaded with equipment, Stankoski was instructed to ride back with Gutierrez who was already in Cincinnati for other reasons.

During the evening of October 2, Gutierrez left a voice mail on Stankoski’s personal cell phone where he sounded “buzzed” and stated, “Hey Cindy, its Tony. He said, give me a call. I want to – I want you to bring some nice clothes to work tomorrow so that I can take you somewhere nice in Cincinnati. And he’s like, please call me. Bye.” Stankoski did not return his call and she did not follow his directions.

While in Cincinnati and after the three employees had loaded the equipment in the vehicle, they drove to a food court where they met Gutierrez. Gutierrez allegedly had a “second meeting” and Stankoski was to wait at the food

court until he finished. Upon Carter and Cates departing the food cart, Gutierrez informed Stankoski that he fabricated the second meeting and that “we could do whatever we want.” Gutierrez changed into jeans and drove around Cincinnati “looking for something to do.” Stankoski claims that she told him to return to Columbus. On their return trip to Columbus, they encountered an accident which delayed their arrival and Stankoski began text messaging Mariellen Aranda. Stankoski claims that Gutierrez told her she was sexy and suggested they stop at Rack’ems in Grove City for a drink. Stankoski did not refuse but attempted without success via text messaging to have Aranda and another coworker Doug Armbrust meet her and Gutierrez at the bar.¹¹

Stankoski claims that they got to Rack’ems bar during the late afternoon where she drank one beer, they shot one game of pool and left less than one hour later. She claims that while they were sitting on the patio, she asked Gutierrez, “why didn’t you ask me anything during my interview? He goes, because you’re hot. Your ass and your tits got you your job. And I said, fuck you. He goes, what? I’m just being honest. You got a nice rack. And I just was like, unbelievable.”¹² While saying this, Gutierrez allegedly bit on his lip in a very sexual, disgusting way. Stankoski claims that Gutierrez then received a

¹¹ Aranda and Armbrust verified that Stankoski invited them to Rack’ems. None of the individuals saved their October 3rd text messages.

¹² Stankoski’s father also works at the State Office Tower and he approached Gutierrez during the summer of 2007 regarding Stankoski obtaining employment with the Attorney General. Upon her father’s request, Stankoski was interviewed by Gutierrez, Rosol and Pete Mash (Telecommunications Coordinator) and was offered the General Services position. Stankoski claims that during her interview, Gutierrez failed to ask her any questions about her qualifications but instead, just stared at her and bit his lip.

telephone call from his wife where he began screaming at her calling her a “bitch” and a “cunt.” Stankoski claims that she insisted that they leave and Gutierrez dropped her off at her car. Gutierrez invited her to dinner at Mitchell’s with Leo Jennings (Communications Director) but she declined. Gutierrez drove a state vehicle back from Cincinnati.

a. GUTIERREZ’S VERSION OF INCIDENT ON OCTOBER 3, 2007.

Gutierrez admits that he told Stankoski to bring nice clothes for dinner in Cincinnati. He claims that he drove around Cincinnati looking for gas and not for a restaurant. Gutierrez admits that he and Stankoski stopped at Rack’ems bar in Grove City, but it was at her suggestion. Gutierrez claims that Stankoski actually stated “the only reason you hired me is because of (my ass and tits), and I said that’s not true....I actually remember telling her, everybody interviewed you and it was a unanimous decision to hire you.”¹³ Gutierrez admits that he engaged in a heated argument with his wife but can not recall the specific words that he used.

3. STANKOSKI’S VERSION OF INCIDENT AT THE OCEAN CLUB.

Shortly after the October 3, 2007 incident, Stankoski received a telephone call in the evening from Gutierrez inviting her to have dinner with him at the Ocean Club at the Easton Mall. Gutierrez was at the Ocean Club with Jennifer Urban (Assistant Attorney General) and Leo Jennings, the Director of

¹³ Pete Mass verified that Gutierrez admitted to him that Gutierrez told Stankoski that her “ass and tits” got her the job.

Communications.¹⁴ Stankoski claims that she resisted the invitation stating that she was not dressed appropriately and Gutierrez responded, “You fucking owe me.”¹⁵

Gutierrez handed the telephone to Urban and she persuaded Stankoski to meet them at the restaurant. When Stankoski arrived, the four individuals were seated for dinner. Gutierrez told the group the story about Stankoski breaking the camera. Stankoski claims that she was very uncomfortable at dinner because Gutierrez was sitting close to her and, it seemed and though he was attempting to “make me his girlfriend like all the other guys had.” Stankoski explained that she felt this way in part because she “picked up quickly that Leo and Jen were a thing by, they were holding hands, they were rubbing each other’s legs, they were kissing.” Stankoski claims that she had one alcoholic beverage at dinner and she believes Jennings paid the table’s tab. The group also went to Adobe Gila’s but Stankoski did not drink. After dinner, Stankoski, Urban and Gutierrez went outside to smoke cigarettes and Gutierrez alleged stated to Stankoski “listen, I know that you woke up with your pants undone when you stayed the night...I just want you to know, I didn’t do anything. Of course I

¹⁴ Although Leo Jennings was present at the Ocean Club and purportedly had only one glass of wine, he remembers virtually nothing about the entire evenings’ events.

¹⁵ Stankoski claims that Gutierrez’s comment directly resulted from a situation that occurred earlier that day where she had broken her parent’s digital camera and Gutierrez took the blame, telling her father that he broke the camera. Stankoski claims that after Gutierrez told her father that he had broken the camera, he approached her and stated, “you fucking owe me big time.” Gutierrez admits that he told Stankoski’s father that he broke the camera, and claims that he may have benignly stated that she “owed him.”

wanted to fuck you, he goes, but I realized it was wrong. You were my employee.” Stankoski claims that she called Gutierrez a “son of a bitch” and left.

Stankoski claims that the next morning, Gutierrez arrived to work late looking “horrible” and reeking of “booze” with “vomit hanging from his nose.” Gutierrez allegedly told Stankoski that he had been so intoxicated while driving his state-issued vehicle home that he fell asleep at the wheel and hit a guard rail. Stankoski allegedly told Rosol that she was going to have to start “making up a boyfriend...so he can just back off.”

a. GUTIERREZ VERSION OF INCIDENT AT THE OCEAN CLUB.

Gutierrez admits that he invited Stankoski to dinner at the Ocean Club, however, Stankoski expressed excitement to meet him for dinner because she was already close to Easton. Gutierrez claims that he never intimidated Stankoski into dinner by telling her that she owed him and he denies making the alleged statement while they were outside smoking cigarettes. Gutierrez claims that he drank Bud Light the entire evening and that Stankoski may have been “a little tipsy.”

Gutierrez admits that he was driving his state-issued vehicle but denies hitting a guardrail. Instead, Gutierrez alleges that he damaged the vehicle by hitting a cement post in a Kroger’s parking lot. Gutierrez alleges that he called Ed Simpson (Director of Policy and Administration) and Simpson informed him

that he did not need to fill out an accident report. Gutierrez had the damage repaired at the BCI garage.

b. JENNIFER URBAN'S VERSION OF INCIDENT AT THE OCEAN CLUB.

Jennifer Urban is an Assistant Attorney General working in the Charitable Law Section. Urban became friends with the Attorney General, Leo Jennings and Gutierrez through working on healthcare issues with the office but she did not know Stankoski prior to that night. Urban admits that Stankoski was reluctant to meet the group at Ocean Club, but agreed after Urban asked her. Urban claims that Stankoski did not seem uncomfortable around Gutierrez at dinner, however, after arriving at Adobe Gila's Stankoski told Urban that "nothing was going on between she and Gutierrez," which Urban "found strange." Urban and Jennings departed together first and left Stankoski and Gutierrez behind. However, just before leaving, Urban told Stankoski to call her on her cell phone if she felt "uncomfortable" because she didn't want Stankoski to "feel like we were leaving her with a drunk guy." Urban claims that Stankoski was also intoxicated, indeed they all had "had enough alcohol to become intoxicated."

B. VANESSA STOUT.

Based on the information received including eyewitness accounts, Ms. Vanessa Stout's (hereinafter "Stout") and Mr. Anthony Gutierrez's (hereafter "Gutierrez") sworn statements, and documentary evidence, the following events are alleged:

1. PRE-EMPLOYMENT RELATIONSHIP WITH GUTIERREZ.

Stout does not specifically allege that Gutierrez committed acts of harassment within the context of her obtaining employment with the office. However, several aspects of her pre-employment relationship with Gutierrez, and the circumstances surrounding her hiring are important to the overall analysis of her complaint.

Stout was hired as a Telecommunications Assistant in the General Services Department on November 26, 2007. At all relevant times, Stout lived in the same apartment complex as the apartment shared by the Attorney General, Gutierrez and Jennings. In late July or early August, 2007, Stout confronted Gutierrez after he allegedly backed into her father's vehicle in the apartment complex parking lot. She claims that Gutierrez apologized and handed her his business card.¹⁶ Shortly there after, Stout claims that she was seated outside of her apartment smoking a cigarette when Gutierrez approached her and offered her a glass of wine. They began talking and, when Stout indicated that she was unemployed, Gutierrez offered her a job with the office. Stout claims that she informed Gutierrez of her criminal record and how it had prevented her from obtaining employment in the past.¹⁷ Stout claims that she and Gutierrez talked

¹⁶ Subsequent to her interview, Kristy August, Gutierrez's Administrative Assistant informed undersigned that, upon Gutierrez's direction, she contacted Vanessa Stout's father regarding the alleged damage to his vehicle caused by Gutierrez. She stated that Mr. Stout told her that he knew Gutierrez's family in Youngstown and told her not to worry about the damage to his vehicle. Maintenance records show that Gutierrez did not bring his state vehicle to the BCI garage to have any alleged damage repaired due to his accident with Mr. Stout.

¹⁷ Stout has the following criminal convictions: OMVI (2000), Assault (2002), Harassment (2002), and three convictions of Retail Theft (2003).

from approximately 10:00 pm until nearly 4:00 am where he complained that he and his wife no longer had relations and that he watches “porn.” Gutierrez allegedly “came onto” Stout and she rebuffed him.

Stout claims that she and Gutierrez continued to converse whenever they were outside smoking cigarettes and that Gutierrez would invite her into the apartment where they would continue to “bullshit.” Stout claims that during these conversations, Gutierrez would make comments “like he’d like to have sex with me. Like, he’s always telling me how pretty I was, you’re gorgeous, and look at me like he just wanted to eat me up.”¹⁸

From their first meeting and continuing on after her employment, Stout socialized with Gutierrez in his apartment “maybe more than 10 times.” Jennings was frequently present, but he did not become actively involved in their conversations. On approximately three occasions, she was in the apartment with Gutierrez while the Attorney General was there but only on one of those occasions did she actually speak to him.

On that occasion during October 2007, Stout alleges that she was sitting in her apartment around midnight watching the television show “COPS” when Gutierrez called her and stated “Marc needs a gallon of milk.” She told Gutierrez what she was watching on the television and he replied, “come on over and sit and hang out with the real cops.” Stout alleges that she took a gallon of milk out

¹⁸ Gutierrez admits that he and Stout spent time together talking outside their apartments and on several occasions, inside his apartment. He denies that he pursued Stout sexually. Additionally, Gutierrez admits that he met Stout for drinks approximately four or fives and that, “Vanessa has invited me (for drinks) many times.”

of her refrigerator and walked over to the apartment. When she arrived, the Attorney General, Jessica Utovich and Gutierrez were standing in the kitchen. Stout claims that Gutierrez advised the Attorney General in her presence that she was looking for employment. Stout alleges that she immediately informed them of her “DUI and a couple other things” and the Attorney General stated “yeah, there’s no problem there’s ways to go around that, Tony will work through that...he told Tony, get her on anywhere you can.”¹⁹

2. THE SEX TOY.

At some point either shortly before she began employment or shortly thereafter, Gutierrez gave Stout a sex toy (dildo).²⁰ While at the apartment, Gutierrez overheard an argument between Stout and her ex-boyfriend where her boyfriend admitted to breaking Stout’s “battery operated boyfriend” out of jealousy. Stout and Gutierrez later had a conversation where they laughed about Gutierrez overhearing the argument. Gutierrez then gave her the sex toy as a gag gift. Stout alleges that Gutierrez then called her into his office on several occasions and stated “when are you going to – have you used that thing yet? I’d say no, it’s still in the package. He’s like, you know, am I going to get to see you use it when you open it up? I’m like, that’s gross. Why are you talking to me like

¹⁹ Utovich and the Attorney General stated that Stout was in the apartment for a very short time and that neither Stout’s employment nor her criminal record was discussed. The Attorney General further explained that numerous individuals on a daily basis approach him about employment with his office and he normally encourages them to apply, however, he would never have advised Stout to lie on her application. Gutierrez alleges that Stout told them she had “things” on her record but did not give specifics.

²⁰ During her interview, Stout claimed that Gutierrez gave it to her one week before her first day of work. Gutierrez claims that he gave her the toy two weeks after.

that, like it's a joke, but trying to put it out there that he's making me uncomfortable with it."²¹

3. STOUT'S HIRING PROCESS.

Several weeks prior to her employment, Kristy August, Gutierrez's Administrative Assistant called Stout and offered to assist her in applying for jobs with the Attorney General's office. In fact, Stout went into General Services on two or three occasions where August typed her application and submitted it online on Gutierrez's computer.²² Stout did not disclose her Retail Theft convictions on her application. She claims that Gutierrez, "told me that Marc had said to him for me not to disclose the retail thefts because they could get past all that" since they were "summary offenses" and not technically criminal convictions.²³

During the evening before her interview, Stout alleges that Gutierrez invited her to the Round Bar to "brief" her on her interview. While there, Stout claims that Gutierrez told her to tell the interviewers that she was knowledgeable in word processing programs such as "Word" and "Excel" even though she has no computer skills. She also claims that Gutierrez advised her to mention that

²¹ Gutierrez and Stout basically agree on the events surrounding the sex toy except that he claims that he completely dropped the subject after he gave her the sex toy.

²² Kristy August explained that Gutierrez directed her to assist Stout in obtaining employment. August stated that she followed Gutierrez's orders and did not make any inquiries even though she believed Gutierrez's directions to be somewhat inappropriate. August had never before been directed to assist a non-employee in obtaining employment with the office.

²³ Kristy August stated that she recorded the information on Stout's application exactly how Stout relayed it. She does not recall Stout state that Gutierrez advised her not to divulge some of her criminal convictions.

she was a single mother and would do anything she could to assist the telecommunications department. Stout interviewed with Rosol, Pete Mash and Gutierrez.

a. HUMAN RESOURCES' RESPONSE TO STOUT'S APPLICATION.

Stephanie Bostos-Demers (Director of Human Resources) explained that Stout's hiring did not follow usual procedures, which consists of a supervisor requesting that a position be filled through an "HR request form" and awaiting approval prior to submitting applicants for background checks. With regard to Stout, Bostos-Demers simply found an HR request form together with Stout's background check on her desk. When she noticed that Stout's street address was "Tuttle View Drive," she suspected that Stout was Gutierrez's neighbor and inquired further. She then noticed Stout's lengthy criminal conviction history and determined that she would not approve her hire. Gutierrez "kept bugging" Bostos-Demers about the status of Stout's application and she finally told him that she would not approve it. Gutierrez took Stout's application and had Ed Simpson approve Stout's hire over Bostos-Demers' protests.²⁴

4. STOUT'S POST- HIRE RELATIONSHIP WITH GUTIERREZ.

After she was hired, Stout accompanied Gutierrez to the Dub Pub for drinks once in December 2007 and once in January 2008 shortly before her transfer. During one if these occasions, Stout met Gutierrez and Jennings there

²⁴ Ed Simpson admits that he approved Stout's hire despite her criminal history and further admits that it was a mistake.

and “we went and sat down and just – we basically just bullshitted the whole night. Not the whole night, because we were only there probably until midnight or 1:00 am.” Stout alleges that “Tony...put his hand on my back and was rubbing my back and trying to come closer to me, but I was backing up. I don’t remember what he said.”

Stout also had drinks with Gutierrez at Classics Bar on her birthday, February 5, 2008. Also after her transfer in January 2008, Stout claims that she was in Youngstown and called Gutierrez to invite him out to have drinks so that she could attempt to “record” him speaking about her transfer. Gutierrez declined stating that he was with his family. Stout claims that Gutierrez never threatened her or otherwise coerced her into accompanying him for drinks.

5. STOUT’S “RACY” HOLIDAY TEXT MESSAGE TO GUTIERREZ.

Stout admits that she sent Gutierrez text messages “of jokes and stuff.” In particular, during the Christmas Holiday, Stout sent Gutierrez and several other individuals a racy text message that said “it’s New Year’s, let’s party, have Bacardi and “you’re my bitch for New Year’s.” Gutierrez showed the text message to his wife and she instructed him to reprimand Stout. Gutierrez admits that his wife “likely” told the Attorney General’s wife. Stout alleges that she heard rumors that this text message contributed to her transfer.

In February, 2008 over one month after Stout sent the message, Gutierrez directed Rosol to draft a written reprimand and back date it to January 5, 2008. Rosol admits that he backdated the reprimand and Stout admits that she

backdated her signature. Gutierrez claims that he has no knowledge of this matter as he allowed Rosol to “handle it.”

6. STOUT’S TRANSFER TO INFORMATION TECHNOLOGY SECTION (IT).

On January 18, 2008, Stout was involuntarily transferred from her position as General Services Assistant in the General Services Division to the Information Technology Division as a Special Projects Coordinator. Shortly before her transfer, Bostos-Demers alleges that she was summoned to a meeting with Ed Simpson where he informed her that Stout needed to be terminated because the Attorney General did not want to see her on the 17th floor anymore because of rumors that Gutierrez and Stout were involved in a personal relationship.²⁵ Bostos-Demers advised Simpson against terminating Stout in part because of these rumors. Several days later, Simpson informed Bostos-Demers that Stout would be transferred to IT instead and she was to coordinate with Marc Polster the IT Director.²⁶ Simpson stated that Gutierrez would inform Stout of the transfer because “Tony got us in this mess. Tony’s going to get us out if it.”

²⁵ The Attorney General and his immediate staff are located on the 17th floor of the State Office Tower. Various General Services employees including Stout take turns manning the telephone and reception area on the 17th floor. The area in which the employees are located is referred to as “the box.”

²⁶ Indeed, there were no vacancies in the IT Department at the time so Polster developed some clerical job duties for Stout such as filing, cleaning computers, and data entry. Polster stated that through his conversations with Simpson, Bostos-Demers and Gutierrez, he believed that accepting Stout’s transfer was “something he was being asked to do” and he did not ask for the reasons.

As to the reasons for Stout's transfer, Simpson claims that he "discussed" with the Attorney General the alleged personal relationship between Stout and Gutierrez but he was not "directed" to move her from General Services. Instead, Simpson claims that he believed there was an "operational need" in IT, even though Polster never expressed a need for a clerical employee.²⁷ Gutierrez, on the other hand, claims that he does not know the reasons for Stout's transfer. He claims that "Ed brought me in, asked me if there was anything going on with Vanessa and I, that if we transferred her, would it bring any backlash against the office or anything else. And I says no. He asks me, are you sure? I says, there is nothing going on, other than we've been out and had a couple drinks." Simpson then ordered her transfer. The Attorney General denies any knowledge regarding the reasons for Stout's transfer.

Gutierrez's statements to Stout and other General Services employees offer little insight into the reasons for her transfer. Most of the General Services employees who were interviewed stated that Gutierrez told them that Stout was being temporarily transferred for approximately six to eight weeks for budgetary and/or re-organizational reasons. Stout alleges that several days after her transfer, Gutierrez called her in the evening and invited her over to the apartment. Stout alleges that she was crying and Gutierrez told her that "it

²⁷ The Attorney General stated that he "had a concern that Vanessa, who was the person – when I found out she was the person that was across the street, smoking with Tony, was hired...I didn't think it was appropriate for him to be hiring somebody who was his personal friend." Simpson told the Attorney General that he would "look into it."

makes Marc Dann sick to his stomach to see me in the State Office Tower, knowing that Tony hasn't told his wife about me and Tony having sex."²⁸

Both Stankoski and Stout were extremely upset about Stout's transfer to IT. On March 6, 2008, Stout was in General Services with Stankoski eating lunch. Stankoski stated to Gutierrez, "next week is Vanessa's eighth week she's been gone so she will be coming back," to which he responded "quit being a smartass." Shortly thereafter, Stout alleges that Gutierrez called her into his office and asked her for her personal cell phone number which Stout avoided doing. After she left, Stout alleges that Gutierrez stated to Stankoski that he was offended that Stout would not give him her phone number and that "I hope she doesn't get offended when you tell her that I'm replacing her position."²⁹ Stout admits that "when she told me that, I had it, and walked over to HR and was done with the whole situation with him." Prior to March 6, 2008, Stout did not complain to any supervisors or other administrators about Gutierrez's behavior.

C. GENERAL ATMOSPHERE OF HARASSMENT AND INTIMIDATION.

Stankoski and Stout claim that through inappropriate comments and acts by Gutierrez toward them and other employees, and, on one occasion by Alyssa Lenhoff (the Attorney General's wife), they were subjected to an atmosphere of harassment and intimidation which silenced their complaints and made them feel powerless over their workplace environment.

²⁸ Stout claims that she and Gutierrez never had sexual relations.

²⁹ Stout also told Stankoski that "she was the next to go...that Tony and Marc want you out of there too."

1. INAPPROPRIATE SEXUAL AND/OR INTIMIDATING COMMENTS.

Stankoski claims that at the beginning of her employment, Gutierrez would “undress” her with his eyes and stare at her chest and body while biting her lip. On one occasion, Gutierrez handed Stankoski a postcard from Las Vegas and stated, “pick a weekend, I’ll take you.” During a “handful” of occasions, Stankoski was eating snacks in the office and Gutierrez commented “that’s going to go to your fucking ass.” Gutierrez also commented on her chest stating that she had a “nice rack” and told her that her shirt was “not tight or low enough.”

Stankoski alleges that once Stout was hired, Gutierrez shifted his attention to Stout and he did not favor Stankoski as much. She claims that Gutierrez would frequently linger at Stout’s desk, stand very close to her and make statements about how Stout’s shirt wasn’t cut low enough. Stankoski had very little contact with Gutierrez after Stout’s transfer in January 2008.

Both Stankoski and Stout allege that Gutierrez frequently called them from his personal cell phone(s) after business hours. They also allege that Gutierrez expressed anger when they would not give him Stout’s new telephone numbers.³⁰ Stankoski and Stout claim that Gutierrez frequently told them that they “owed him” as a way to intimidate them into going out for drinks since he assisted both in obtaining employment and he took the blame for Stankoski breaking her parents’ camera. Stout also claims that, after she was hired, Gutierrez would request sex from her and add that she “owed him.”

³⁰ Stout frequently changed her cell phone number due to problems with an ex-boyfriend. Stout never saved any of the voice mail messages from Gutierrez.

Gutierrez also made inappropriate sexual comments to other female employees. On one occasion, Amanda Saxton was running through the office holding her hand over the V-neck of her sweater and Gutierrez told her to “just let them fall out.” Also, whenever Saxton wore a particular wrap-style shirt over a T-shirt, Gutierrez stated that she should “lose the shirt underneath.” Saxton explained that these comments did not make her feel uncomfortable because she has been “hit on” a lot. Gutierrez invited Erika Haske (Fixed Asset Manager) for drinks on a few occasions and also to his apartment “once or twice...to go swimming, to go tanning or work out” but she never accepted and, while she knew it was inappropriate, she was not offended or intimidated. Gutierrez did not invite any of the male employees to socialize after hours.

Stankoski and Stout also claim that Gutierrez frequently used extreme profanity in the workplace like he was in a “construction zone.” Gutierrez also belittled employees, calling Rosol an idiot and frequently yelling at Pete Mash. Most of the General Services employees that were interviewed also explained that Gutierrez frequently used profanity in the workplace. For example, several employees witnessed Gutierrez loudly arguing with his wife on the telephone and calling her “bitch” and using terms such as “mother fucker.” Gutierrez was overheard using the word “cunt” and other derogatory terms toward females in general. Indeed, Rosol and Mash spoke with Gutierrez about his lack of professionalism and advised that he should improve his interpersonal communications skills.

Finally, Stankoski claims that she witnessed Gutierrez carrying a firearm under the driver's seat in his state-issued vehicle. Doug Armbrust also claims that he has seen a gun case belonging to Gutierrez located in his state-issued vehicle. Pete Mash stated that, on occasions where an employee was preparing to drive Gutierrez's vehicle, Gutierrez made a joke like "I hope she doesn't look under the seat." Gutierrez was not authorized nor was he ever issued a state owned weapon. Stankoski testified that she saw the weapon prior to Gutierrez applying and receiving a concealed carry permit.

2. GUTIERREZ'S ALLEGED MAFIA CONNECTIONS.

Stankoski claims that on numerous occasions, Gutierrez talked openly about his alleged ties to the Mafia, that he often remarked "everyone knows that Youngstown is associated with the Mafia...everyone knows not to mess with him and his group" because "he's a Gutierrez, and he knows people, and no one wants to mess with them." Additionally, Stankoski stated that Gutierrez "made orders, and they happened you know. Every time he would be in the office, the tension level would be very high, because he would always bark orders, and he would be just real aggressive with people."

Other employees also witnessed Gutierrez discuss his association with the Mafia.

3. GUTIERREZ'S CLOSE ASSOCIATION WITH THE ATTORNEY GENERAL.

Stankoski and Stout claim that Gutierrez also frequently bragged about his power and influence he enjoyed from his close friendship with the Attorney General which, they believed, enabled him to act with virtual impunity. Other employees also witnessed Gutierrez brag about his friendship with the Attorney General. Other employees explained that there existed a general feeling that Gutierrez was "untouchable" because he lived with the Attorney General and spoke often of their long term, close friendship. Simpson admits that he even counseled Gutierrez against invoking the Attorney General's name for the purpose of intimidating other employees to perform tasks for Gutierrez. It was because of this actual or perceived unchecked power, and the common knowledge that Gutierrez shared an apartment with the Attorney General, that Stankoski and Stout claim caused them to believe they had no ability to challenge or decline Gutierrez's actions.

4. ALLEGATION CONCERNING ALYSSA LENHOFF

Stankoski alleges that during the Christmas holiday, she was on the 17th floor with Pete Mash and Andy Miller when the Attorney General's wife, Alyssa Lenhoff, intimidated her while passing out Christmas candy. Pete Mash also witnessed the incident and described it as follows: Mash, Andy Miller and Stankoski were setting up in the press room when the Attorney General and his wife walked in. The Attorney General handed Miller and Mash a mug filled with

candy but did not give Stankoski a mug. After the Attorney General thanked them for their hard work, Ms. Lenhoff walked up to Mash and introduced herself and did the same with Miller, but then she stepped up very close to Stankoski and asked her what her name was. Mash stated that Mrs. Lenhoff did not give Stankoski any Christmas candy, but instead invaded Stankoski's personal space and gave her an intimidating look. Stankoski claims that Mrs. Lenhoff asked her name twice and then stated "Really? Oh, *you're* Cindy." Finally, Stankoski and Stout allege that in early January 2008, Mrs. Lenhoff also "stared them down" during an elevator ride in the State Office Tower and while in General Services.³¹

Ed Simpson acknowledged that the elevator ride was an "uncomfortable moment." Simpson also admits that he discussed with the Attorney General's wife the rumor that Gutierrez and Stout were engaging in a personal relationship.

5. RUMORS OF AFFAIRS AND CONSEQUENCES.

Stout and Stankoski claim that rumors of alleged affairs between female subordinates and their high ranking supervisors and, what appeared to be, subsequent negative consequences against one if these subordinates, Jessica Utovich, contributed to their own fears of reprisal against Gutierrez or other administrators. While the scope of this investigation does not include investigating all potential relationships occurring in the workplace, to analyze Stout and Stankoski's claims regarding the impact of these rumors, *their*

³¹ The Attorney General does not recall any alleged inappropriate behavior by his wife or that she was cautioned.

perceptions of these rumors, and the knowledge *they* possessed which would tend to legitimize these rumors in *their* minds must be analyzed.³²

Stout states that in early January 2008, shortly before she was transferred, Gutierrez told her that “Marc had went to his wife and told her that he had an affair with her and, you know, Marc was trying to bring everybody down with him, telling his wife, well Leo was doing it, Tony was doing it. And he made a remark that Marc Dann had said to Tony that employment for me started because I had sex with Tony, which I never did. He made the assumption that I had sex with Tony for Tony to want to get me the job.”³³ As a result, Stout felt she was being targeted because of her alleged affair with Gutierrez.

Additionally, Stankoski claims that she too became alarmed after learning of Gutierrez’s comments to Stout regarding her transfer and after learning that Utovich had been moved from the 17th floor “on the same day.” She states, “Apparently Marc Dann believes that Tony and Vanessa were having a relationship of some sort. I’m not really sure what kind of reasoning, how far into the reasoning he went with Vanessa, but he told Vanessa that Cindy’s next to go. That same day is when Jessica Utovich – Jessica Utovich’s office was being

³² Utovich states that she was approached by Pat McLean (Chief Financial Officer) and he asked her to consider accepting the position of Director of Travel Services. She started the Director’s position on January 29, 2008 and moved her office from the 17th Floor to the 15th Floor.

³³ Stout states that she previously witnessed Utovich coming from the Dublin apartment during the early morning hours. Utovich and the Attorney General state that, on several occasions, Utovich arrived at the Dublin apartment during the early morning hours to drop off schedules. The Attorney General states that he has knowledge that Utovich stayed overnight at the Dublin apartment for a variety of reasons which he would not discuss. Utovich refused to answer the question as to whether she ever stayed overnight at the apartment.

moved again. Because we're telecommunications, and I know, like, Andy Miller would say, we have to move her office again, and her fax line, like, I just understood that Jessica Utovich as being moved around a lot, and then it was to the 15th floor. And I thought, okay, if that's not a coincidence." Stankoski alleges that she heard rumors that she was involved with Gutierrez and, like Stout and Utovich, she would be transferred too.

6. OTHER EMPLOYEES' ACCOUNTS.

Some of the General Services employees expressed surprise at Stout's and Stankoski's complaints against Gutierrez. They indicated that, from their perspective, Stout and Stankoski "flirted" with Gutierrez in the office, played pranks on him, frequently took smoke breaks with him, and spent a considerable amount of time in his office eating lunch and socializing. For example, employees indicated, and email communications confirm, that Stankoski planned and coordinated Gutierrez's birthday celebration in December 2007 including seeking suggestions for practical jokes to play on Gutierrez, gathering donations and purchasing food. Additionally, employees relayed an incident where Stankoski "farted" in a Tupperware container, closed the lid and placed it on Gutierrez's desk chair as a joke. Another employee stated that in December 2007, despite her more recent complaints of a hostile work environment, Stankoski referred one of her girlfriends (Ashley Tackett) for a vacant intern position.

D. ADMINISTRATION'S KNOWLEDGE OF INAPPROPRIATE ACTS AND RESPONSE TO COMPLAINTS.

Vanessa Stout did not complain to her supervisors or any other administrators about Gutierrez's alleged conduct until March 6, 2008 when she made a verbal complaint to Alethea Botts (Deputy Director of Human Resources). Stankoski did not initiate a formal complaint under the office's EEO guidelines until March 7, 2008 when she made a verbal complaint to Stephanie Bostos Demers and Alethea Botts. Nonetheless, Stankoski claims that she complained on several occasions to Rosol, her immediate supervisor. Additionally, in October 2007, while making her own complaints against Gutierrez, Mariellen Aranda informed members of the Human Resources Department of some of the events occurring between Stankoski and Gutierrez. In order to determine whether the EEO policies and procedures were properly followed, the administration's knowledge of Gutierrez's alleged inappropriate acts and its response thereto will be analyzed.

1. COMPLAINT BY MARIELLEN ARANDA.

On October 10, 2007, Mariellen Aranda (General Services Assistant) approached Molly Taylor (Human Resources employee) and Stephanie Bostos-Demers and complained that Gutierrez yelled at her to "shut up and not speak unless spoke to." Aranda also told them that she could no longer tolerate "the sexual inappropriateness, the ethics issues...I couldn't handle it anymore, and I

needed to talk to someone.”³⁴ Aranda gave copies of the September 10, 2007 text messages to Bostos-Demers and Taylor, and she also advised them of Stankoski’s trip to Rack’ems bar with Gutierrez, that Gutierrez allegedly invited Haske to his apartment, and that Gutierrez bragged about breaking the law. Aranda told Bostos-Demers that Stankoski did not want to speak with Human Resources officials about Gutierrez and that Stankoski would be “very upset” with Aranda if she found out that Aranda had complained. Bostos Demers stated that, at the time of Aranda’s complaint, she had heard rumors that Stankoski was having a consensual relationship with Gutierrez. She later heard that Stout also was engaging in a consensual relationship with Gutierrez.

Bostos Demers immediately reported the situation, including the information regarding Stankoski, to Ed Simpson and Joyce Chapple. Simpson and Chapple told Bostos Demers not to speak with Stankoski and not to begin an investigation as they would handle the situation.³⁵ Bostos Demers did not prepare a written report on the matter.

a. ADMINISTRATION’S ORAL REPRIMANDS TO GUTIERREZ.

Simpson instructed Chapple to counsel Gutierrez against fraternizing with young female employees. He also approached Jennings, who had somehow received a copy of the September 10, 2007 text messages, and requested that

³⁴ In accordance with her request, Aranda was transferred to another job outside of the General Services Department.

³⁵ The Attorney General stated that “what did filter to me was back in the fall, there was a concern that was raised by another employee about Cindy and the visit to our apartment, and that what I was told through human resources is that Cindy was invited to file an EEO complaint and that she decided not to do that.”

he speak with Gutierrez about proper decorum with his subordinates. Simpson elicited Jennings' assistance due to his personal relationship with Gutierrez.

Chapple contacted Gutierrez on the telephone while he was traveling and told him that "if the information that we've heard about you dating or trying to take out your staff is true, you need to cease and desist that immediately. I said, Tony, you don't date or do anything with people who work in this office. And I was very – I was very intense with him. And he's trying to explain. I said, don't explain anything to me. I don't know if this is true....and he said, I understand. I will – it will not happen again. I promise you." Chapple stated that the verbal reprimand was sufficient because the information she received was merely secondhand and Stankoski refused to make a complaint. As such, Chapple was not clear as to what misconduct, if any, Gutierrez had committed. Chapple did not reduce Gutierrez's reprimand to writing.³⁶

2. STANKOSKI'S INFORMAL DISCUSSIONS WITH ROSOL.

Stankoski claims that, on numerous occasions, she complained to Rosol about inappropriate behavior by Gutierrez.³⁷ Rosol explained that during the evening of September 10, 2007, when he received a telephone call from Aranda about Stankoski and Gutierrez being in the apartment together, he believed that Stankoski was acting on her own accord and he did not get involved. Rosol stated that, while he did not recall many instances, he does remember Stankoski

³⁶Bostos Demers also informally advised Gutierrez against fraternizing with female subordinates on at least two occasions. Finally, after the September 10, 2007 incident, the Attorney General stated he "took Tony aside, and I very firmly asked him to stop drinking in Columbus and to not fraternize with office employees and suggested that he put us in a very, very bad position."

³⁷ Stout never informally complained to Rosol or any Human Resources officials.

complaining about Gutierrez making comments about her body (i.e., food going to her “butt” in front of others). He also recalls a conversation in mid-October where Stankoski cried and he informed her that if she was having problems, she should go to Human Resources. Rosol remembers that Stankoski complained to him about her interaction with the Attorney General's wife. Rosol also heard rumors that both Stankoski and Stout were having affairs with Gutierrez.³⁸

3. STANKOSKI'S AND STOUT'S FIRST COMPLAINT.

Finally on **Thursday, March 6, 2008** Stout approached Alethea Botts to complain of Gutierrez and on **Friday, March 7, 2008** Stankoski met with Bostos Demers and Botts to complain as well. The following is a timeline of events that occurred after these complaints:

Monday, March 10, 2008 – Bostos Demers informed Simpson of the allegations and advised Simpson to separate Stankoski and Gutierrez by transferring Gutierrez or placing him on leave pending an investigation. (Stout was already working in IT at the time). Simpson decided that immediately removing Gutierrez from General Services would “punish” him before all the facts had been gathered, so he instructed Bostos-Demers to reassure Stout and Stankoski that they would not be terminated and to instruct them on how to file EEOC Complaints.³⁹ Bostos Demers notified Angela Smedlund (EEO Officer) of

³⁸ Rosol also informed Bostos Demers about “things that he felt Tony was doing that were probably inappropriate...to female staff members” and that “he was trying to convince Cindy...to come to human resources.” Bostos Demers

³⁹ Simpson allegedly did not view their March 6 and 7 meetings with Human Resources as a “complaint” under the office’s EEO Guidelines.

the complaints. Finally, Bostos Demers met with Stankoski to update her on her complaint. While Stankoski had copies of her personal journal, Bostos Demers advised her to keep them because they were very personal and she could not insure confidentiality at that time.

Tuesday, March 11, 2008 – Bostos Demers met with Simpson and Chapple and strongly recommended that an investigation commence. She advised that, should they decide against investigating the matter, Gutierrez should be immediately terminated or transferred to a non-supervisory position outside of the General Services Department. Bostos Demers claims that Simpson and Chapple declined her offer to investigate the matter because they perceived her as being “bias” against Gutierrez. Chapple and Simpson agree that Bostos Demers’ perceived bias was discussed at the meeting. Simpson and Chapple instructed Bostos Demers to again reassure the complainants that they will not suffer retaliation and to tell them to file a “formal complaint” per the policy manual so the EEO Officer could investigate.

Wednesday, March 12, 2008 – On March 11 or March 12, 2008, Bostos Demers met with Stankoski in the basement of the State Office Tower because Stankoski was fearful of Gutierrez learning that she was speaking with Human Resources.⁴⁰ Stankoski told Bostos Demers that Gutierrez had been glaring at her, however, he since ignored her. She also stated that Gutierrez had brought Alyssa Lenhoff to the General Services Department where she greeted everyone

⁴⁰ Bostos Demers stated that she also was afraid of Gutierrez because of his close association with the Attorney General, his rumored Mafia connections and she was in fear of losing her job if she angered Gutierrez.

except Stankoski. Bostos Demers assured Stankoski that the matter was being handled and to let her know if she was suffering retaliation of any kind.

Tuesday, March 18, 2008 – Stankoski called Alethea Botts and informed her that she received a telephone call from a reporter at the Dayton Daily News asking her about her recent complaints. She also informed Botts that Stout’s ex-boyfriend “Fuzz” reported that, during the prior evening, he met Gutierrez at Dub Pub and Gutierrez called Stankoski and Stout “bitches and whores” and complained that they were “trying to get him in trouble.”⁴¹ Stankoski was very upset so Botts let her take paid administrative leave to rest at home. When Botts informed Chapple of her conversation with Stankoski, Chapple allegedly stated “would you people just get off it? We are taking care of it.” Botts was also advised to move Stankoski’s desk so that she was not in Gutierrez’s direct line of sight.

Wednesday, March 19, 2008 – While on paid administrative leave, Stankoski emailed Botts and requested a copy of her September 10, 2007 text messages as public records. On March 18 or March 19, Bostos Demers also met with Stout and told her that her previous General Services position would not be filled. Stout also left a voice message for Bostos Demers informing her that she had copies of her personal diary and telephone records.

Thursday, March 27, 2008 – Bostos Demers received an email from Stankoski inquiring about her March 7th complaint. Bostos Demers approached Smedlund and advised her to immediately commence an investigation.

⁴¹ Stout did not report the occurrence with her ex-boyfriend.

Smedlund opened an investigation and meetings with Stankoski and Stout were scheduled for March 31, 2008.

Monday, March 31, 2008 – Smedlund interviewed Stankoski, Stout and Gutierrez regarding their complaints.

Monday, April 7, 2008 - Undersigned were appointed to investigate the matter in place of Smedlund due to potential conflicts arising from a news report. The Attorney General recused himself from the investigation and appointed First Assistant, Thomas Winters to act on his behalf. Gutierrez was placed on administrative leave pending investigation.

IV. ALLEGED MISCONDUCT UNCOVERED DURING THE INVESTIGATION.

Through out the investigation of Stout and Stankoski's complaints against Gutierrez, Undersigned received evidence of misconduct by Gutierrez and other employees as follows:

A. LEO JENNINGS ATTEMPTED TO PERSUADE JENNIFER URBAN TO GIVE FALSE TESTIMONY UNDER OATH.

On Friday, April 11, 2008 at 11:36 pm, Jennifer Urban sent a text message to the Attorney General which stated, "I will not lie like Leo wants me to. I will not risk my bar admission. I love you and Tony and Leo, but not enough to get disbarred." The Attorney General forwarded the text message to Ben Espy on Saturday, April 12, 2008 at 8:56 am. Jennifer Urban was scheduled to testify in the investigation the following Monday afternoon. Urban attended her interview as scheduled and she stated that she met Leo Jennings in August 2007

while working on healthcare issues with the office. They met for drinks at Mitchell's and other establishments and she attended Monday night football games at the Dublin apartment. She's been to the Dublin apartment approximately 6 or 7 times.

Urban states that prior to her text message to the Attorney General, she had a conversation with Jennings where he, "wanted me (Urban) to play a little bit fast and loose with you (Espy), and I was not willing to do that." She explained that Jennings "thought that it would be wrong to say that we drove in the same car to the Ocean Club, and he wanted me to say that we drove separately when that wasn't the case. And I didn't feel [un]comfortable playing loose with the facts." As to Jennings' reasons for asking Urban to lie about their dealings at the Ocean Club, Urban explained "he did not want you or Julie to believe that there was anything extramarital going on between him and I. And he did not want – basically he wanted to go fast and loose around the edges so that it didn't seem like there was anything extramarital going on."

Jennings claims that he and Urban have a "personal friendship" which evolved out of "hundreds" of hours working together on healthcare issues. He claims that on Thursday, April 10, 2008, he called Urban to inform her that a public records request had been made for her personnel file and "because I know that we were going to be asked about the – the dinner at the Ocean Club, and I didn't have a clear recollection of exactly what happened that night, I just asked her if she could give me what she remembered about it and, you know, try to refresh my memory." Jennings further claims that Urban simply misinterpreted

his attempt to recollect the events at the Ocean Club as an invitation to lie or be “fuzzy” with the facts. He stated, “I said I was fuzzy with about the facts, because I was. And, you know, I knew that we had gone to dinner. There was – there was absolutely no doubt about that. So, you know, I was just – I – was not clear about how we got there. But other than that, you know, I – absolutely, we went to dinner. And so that was – that was always going to be a fact that was going to be entered into the record in this case.” Jennings offered that he has no reason to lie because he is proud of his friendship with Urban and that “if I was going to ask someone to lie...I think I would say lie about the whole thing.”

Subsequent to their interviews, undersigned obtained an email string between Jennifer Urban and Gutierrez which strong suggests that Urban and Jennings were engaged in an extramarital affair, which if true, lends credence to Urban’s testimony and provides a strong motivation for Jennings (who is married) to attempt to cover-up his affair by making it appear that he and Urban simply “met” for dinner as work acquaintances often do.

B. GUTIERREZ MISUSED HIS PUBLIC POSITION.

Gutierrez admits that, at least on three occasions (on September 10, 2007, during the Cincinnati Trip, and to the Ocean Club), he drove his state-issued vehicle(s) to and/or from restaurants and bars after he had consumed alcoholic beverages. While Gutierrez attempted to downplay his alcohol intake during those events (he claims he only drank one or two Bud Light beers at a time), any alcohol consumption while operating a state-issued vehicle clearly

creates serious liability issues for the Office of the Attorney General and the State of Ohio.

Moreover, Ed Simpson admits that he suspected that Gutierrez was driving his state-issued vehicle while under the influence of alcohol and he “discussed” the matter with Gutierrez. Simpson did not conduct an investigation into the matter, nor did he monitor the situation further.

Gutierrez admits that he damaged a state-issued vehicle and, upon the direction of Simpson, did not complete the proper paperwork as required by AGO Fleet Management Policies. In accordance with Policy 300.3, Gutierrez should have immediately completed the report located in the Driver’s Accident Report Kit and forwarded it to General Services. Additionally, Gutierrez should have contacted the nearest police department or State Highway Patrol and obtained an accident report. Instead, Gutierrez simply directed the BCI garage to repair the damages to his vehicle.

Gutierrez admits that he instructed his subordinate, Kristy August to assist Stout (a non-employee at the time) in submitting an application for employment. Instructing Kristy August to assist a non-employee in obtaining employment was an improper use of her time, and clearly created an unfair advantage to Stout over other potential applicants. These kinds of acts create potential conflicts of interest and the appearance of impropriety.

Finally, there is substantial evidence to suggest that Gutierrez transported a firearm in his state-issued vehicle(s), which he parked in the State Office Tower

Parking Garage. His conduct, if proven, may have violated state laws prohibiting the transportation of a firearm onto state property.

FINDINGS AND RECOMMENDATIONS

After considering the testimony of the complainants, the respondent, other employees of the Ohio Attorney General's Office, and after reviewing all relevant documents, and after assessing the credibility and reasonableness of the witnesses, and after reviewing the applicable policies of the Ohio Attorney General's Office, and the legal standards to establish a violation of said policies, it is the finding of the undersigned investigators that:

1. Anthony Gutierrez violated the policies of the Ohio Attorney General's Office in Chapter 5 relating to creating a hostile working environment for employees of the General Services Section, namely, Cindy Stankoski and Vanessa Stout. The lines were blurred on some occasions as to conduct that was welcomed by the employees and when the conduct by Anthony Gutierrez was unwelcomed.

The evidence clearly shows that both the complainants and the respondent were in numerous situations where the use of alcohol was prevalent. As a manager, Anthony Gutierrez had the responsibility, as stated in the Policies and Procedural Manual, to create the most creative, competitive, and professionally fulfilling workplace possible. He failed miserably. Not only did he abuse his authority but in the process he created an atmosphere in the General Services Section that left the employees fearful by constantly reminding them of

his relationship with the Attorney General and his family's involvement with the Mafia. Numerous times he made statements to the complainants that had sexual overtones and demeaning implications. According to the complainants, he constantly pressured them for sexual activity and even went so far to give Ms. Stout a sex toy and suggested that he wanted to see her use it.

Mr. Gutierrez used his influence to secure a job for Ms. Stout with the Attorney General's office knowing that she had at least two or three theft convictions. After Human Resources rejected Ms. Stout's employment application for convictions for Assault, DUI, and Harassment, Mr. Gutierrez bypassed Human Resources and convinced Edgar Simpson, the Chief of Policy and Administration, to approve the hiring.

Mr. Gutierrez, with the assistance of Edgar Simpson, caused the transfer of Ms. Stout from the General Services Section to the IT Section without a justifiable reason. In December 2007, after Ms. Stout sent a racy joke to Mr. Gutierrez on his blackberry, his wife found out about the transmission and Mr. Gutierrez promised her that he would discipline Ms. Stout. In February 2008, over a month after the incident, Mr. Gutierrez had his Deputy, Charlie Rosol, backdate a letter of reprimand to Ms. Stout and she signed it, backdating her signature to January 5, 2008. After rumors in the office started about Ms. Stout and Mr. Gutierrez having an affair, Edgar Simpson attempted to have Ms. Stout fired but was told by Stephanie Bostos-Demers, the Human Resources Director, that he could not fire her. Mr. Simpson then transferred Ms. Stout to the IT Section. Marc Polster, the IT Section Chief, testified that he did not request the

employee and was surprised that she was being transferred to his Section. Mr. Simpson stated that he transferred Ms. Stout after consultation with the Attorney General. The Attorney General has denied he was involved in her transfer. Normal procedures were not followed in Ms. Stout's transfer.

During the course of his employment, Mr. Gutierrez repeatedly drove a state vehicle after consuming alcohol. The Policies and Procedure Manual clearly states that when using a state vehicle, "Driving under the influence of alcohol or drugs is prohibited." The record is replete with numerous incidents where Mr. Gutierrez with drinking with other employees while driving a state vehicle. During the past year, he had at least four state vehicles assigned to him. It has been alleged that he has crashed state motor vehicles while being under the influence. We will not comment on this further at the request of the State Highway Patrol because this matter is presently under investigation.

We recommend that Mr. Gutierrez be terminated immediately for his transgressions and for creating a hostile work environment.

2. Mr. Leo Jennings, the Director of Communications, attempted to impede the investigation by attempting to persuade Jennifer Urban to give false testimony under oath. As stated previously, on Friday, April 11, 2008 at 11:36 pm, Jennifer Urban, an Assistant Attorney General, sent a text message to Attorney General Marc Dann which stated, "I will not lie like Leo wants me to. I will not risk my bar admission. I love you and Tony and Leo, but not enough to get disbarred." The Attorney General forwarded the text message to Ben Espy on Saturday, April 12, 2008 at 8:56 am. Ms. Urban was questioned extensively

on the intent behind the text message. She testified that Leo Jennings wanted her “to play a little bit fast and loose with Espy” and she was not willing to do that. Leo Jennings is a senior staff member and a confidant to the Attorney General. It is an egregious act to purposely ask a witness to lie under oath. During his interview, Mr. Jennings attempted to explain his conversation with Mr. Urban but the reasoning was not credible.

It is recommended that Mr. Leo Jennings be harshly disciplined for his attempt to improperly interfere with this investigation.

3. Mr. Edgar Simpson violated the EEO/Professional Conduct policy by failing to *promptly* initiate an investigation or take other intermediate remedial action upon receiving Stout and Stankoski’s March 2008 complaints. Additionally, upon receiving the complaint by Mariellen Aranda in October 2007, and upon understanding that additional policy violations may be implicated as to Stankoski, Ed Simpson had an affirmative duty to inquiry into to scope of the problem and take prompt action if necessary regardless of whether Stankoski filed a “formal” complaint.

On March 6, 2008 and March 7, 2008, Vanessa Stout and Cindy Stankoski, respectively, informed Human Resources that they had been sexually harassed by Anthony Gutierrez. On March 10, 2008, Stephanie Bostos-Demers informed Edgar Simpson of the allegations and advised him to separate Stankoski and Gutierrez by transferring Gutierrez or placing him on leave pending an investigation. Mr. Simpson decided that Mr. Gutierrez should not be removed from General Services because it would appear he was being punished

before all the facts had been gathered. On March 11, 2008, Bostos-Demers met with Mr. Simpson and Joyce Chapple, the Chief Operating Officer, and strongly recommended that an investigation commence. Ms. Bostos-Demers stated that Mr. Simpson and Ms. Chapple declined her offer to investigate the matter because they perceived her as being "bias" against Mr. Gutierrez. Between March 6, 2008 to March 31, 2008, neither Mr. Simpson nor Ms. Chapple did anything to separate the complainant from the alleged harasser. Mr. Gutierrez was finally suspended with pay on April 7, 2008.

Mr. Simpson has testified that in the fall of 2007, he had several discussions with Mr. Gutierrez regarding rumors about inappropriate behavior after work, i.e., specifically his drinking. Mr. Simpson stated that it seemed like Tony was going out every night. He further stated that after October, 2007, he had several discussions with Tony regarding rumors of inappropriate conduct with female subordinates. Tony swore up and down that the rumors were false. In spite of Mr. Simpson's knowledge of Mr. Gutierrez's history of policy violations, he neglected his duty as the Chief of Policy and Administration by failing to address inappropriate behavior, failed to immediately and properly investigate allegations of harassment, permitted conditions that contributed to a hostile work environment, and failed to provide the oversight necessary and expected of his position.

It is recommended that Mr. Edgar Simpson be disciplined.

4. Joyce Chapple as the Chief Operating Officer was also aware of Mr. Gutierrez's transgressions and even though she verbally reprimanded him, there

was no follow up to monitor his subsequent behavior. After complaints were made by Ms. Stankoski and Ms. Stout on March 6, 2008 and March 7, 2008, Ms. Chapple and Mr. Simpson had the obligation to separate the complainant and Mr. Gutierrez pending the resolution of the complaints. Even after the Director of Human Resources pointed this fact out to them, nothing was done until Mr. Gutierrez was suspended with pay on April 7, 2008.

It is recommended that Ms. Chapple receive additional management training.

5. The Policies and Procedures Manual sets forth the proper usage for the Blackberry and other state property. The policy clearly states that the Blackberry is intended to be used for business purposes only. During this investigation we discovered massive abuse of this policy by individuals using the Blackberry to set up drinking dates, sending sexually oriented messages or images, using offensive or harassing statements, including, but not limited to, disparagement of others based on their ethnicity. These violations of the office policy by those individuals should be noted and discipline should be imposed.

6. Immediately return Vanessa Stout to her General Services position.

7. Offer Stout and Stankoski reasonable accommodations for seeking counseling and/or other support services as necessary.

8. Provide training (or re-training) on the EEO Policies and Procedures to all employees and supervisors

9. Develop an office wide policy establishing professional decorum and accountability for all levels of management including the Attorney General.

10. Provide management and employee training where necessary on issues regarding professionalism and effective interpersonal communication skills.

CONCLUSION

There was an active effort in the office by long time friends at the administrative level to overlook the transgressions by Mr. Gutierrez over a long period of time. Mr. Gutierrez used these relationships to exert his influence in the General Services Section and to impress female employees of his connections. Obviously, many people at the administrative level and the section level knew or should have known that Mr. Gutierrez was drinking constantly at the same time he was driving a state vehicle. They also knew or should have known that Mr. Gutierrez was socializing with female subordinates on a regular basis. The same could also be said about Leo Jennings. Management fraternizing with employees over drinks and entertaining employees at their homes gave rise to rumors in the office that had a definite impact on office policies. Additionally, management employees encouraged and tolerated a workplace atmosphere of frequent profanity, extremely casual and improper personal interactions with subordinates, and a general lack of professionalism and respect. It is clear that the Attorney General Marc Dann exercised poor judgment by engaging in and permitting Cindy Stankoski to come to his home for drinks and pizza. When it was obvious that she was intoxicated, arrangements should have been made to have her escorted home in a safe manner. The same could be said about poor judgment when Vanessa Stout was allowed to continue to come to the apartment after she became an employee of the office.

It is our hope that all of our recommendations will be accepted and the office can be realigned to maximize its effectiveness.

Our investigative scope was very narrow. We were charged to look into the allegation of two complainants against one individual. We did not assume the role of being the moral police therefore, even though there were rumors of affairs between management and female subordinates, it was not our responsibility to investigate the accuracy of those rumors. We are sure that those rumors were fueled by the actions of a very few people and members of their families. Cronyism has no place in the Attorney General's Office. Individuals should be hired based on their ability to do the job and not because of friendships without regard for their qualifications. It should be noted that this office has over 1400 employees including 400 attorneys and this investigation involved a handful of people. We are confident that the majority of employees are dedicated professionals who provide a valuable service to the Attorney General's Office and the State of Ohio.

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